

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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	: Case No. 14-375-GA-RDR
In the Matters of the	: Case No. 15-452-GA-RDR
Applications of Duke	: Case No. 16-542-GA-RDR
Energy Ohio, Inc., for	: Case No. 17-596-GA-RDR
Adjustments to Rider MGP	: Case No. 18-283-GA-RDR
Rates.	: Case No. 19-174-GA-RDR

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	: Case No. 14-376-GA-ATA
In the Matters of the	: Case No. 15-453-GA-ATA
Applications of Duke	: Case No. 16-543-GA-ATA
Energy Ohio, Inc.,	: Case No. 17-597-GA-ATA
for Tariff Approval.	: Case No. 18-284-GA-ATA
	: Case No. 19-175-GA-ATA

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PROCEEDINGS

before Ms. Megan J. Addison, Attorney Examiner, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-A, Columbus, Ohio, called at 10:00 a.m. on Monday, November 18, 2019.

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ARMSTRONG & OKEY, INC.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481

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1 APPEARANCES:

2 Duke Energy Ohio, Inc.
3 By Mr. Rocco D'Ascenzo,
4 Ms. Elizabeth Watts,
5 and Ms. Larisa M. Vaysman
6 139 East Fourth Street, ML 1303
7 Cincinnati, Ohio 45202

8 and

9 Frost Brown Todd LLC
10 By Mr. Kevin N. McMurray
11 301 East Fourth Street
12 Great American Tower, Suite 3300
13 Cincinnati, Ohio 45202

14 On behalf of Duke Energy Ohio, Inc.

15 Bruce J. Weston, Consumers' Counsel
16 Office of the Ohio Consumers' Counsel
17 By Mr. Christopher Healey,
18 Ms. Amy Botschner-O'Brien,
19 and Mr. Bryce McKenney,
20 Assistant Consumers' Counsel
21 65 East State Street, 7th Floor
22 Columbus, Ohio 43215

23 On behalf of the Residential Customers of
24 Duke Energy Ohio, Inc.

25 Carpenter Lipps & Leland LLP
By Ms. Kimberly W. Bojko
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of Ohio Manufacturers'
Association Energy Group.

Carpenter Lipps & Leland LLP
By Ms. Angela Paul Whitfield
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of The Kroger Company.

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APPEARANCES:

Ohio Partners for Affordable Energy
By Ms. Colleen Mooney
P.O. Box 12451
Columbus, Ohio 43215

On behalf of Ohio Partners for Affordable
Energy.

Boehm, Kurtz & Lowry
By Ms. Jody Kyler Cohn,
Mr. Michael L. Kurtz,
and Mr. Kurt J. Boehm
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

On behalf of Ohio Energy Group.

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Monday Morning Session,
November 18, 2019.

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EXAMINER ADDISON: Let's go ahead and go
on the record.

The Public Utilities Commission of Ohio
has assigned for hearing at this time and place, Case
Nos. 14-375-GA-RDR, 15-452-GA-RDR, 16-542-GA-RDR,
17-596-GA-RDR, 18-293-GA-RDR, and 19-174-GA-RDR,
being In the Matter of the Applications of Duke
Energy Ohio, Incorporated, for Adjustments to Rider
MGP Rates; as well as Case Nos. 14-376-GA-ATA,
15-453-GA-ATA, 16-543-GA-ATA, 17-597-GA-ATA,
18-284-GA-ATA, and 19-175-GA-ATA, being In the Matter
of the Applications of Duke Energy Ohio, Incorporated
for Tariff Approval.

My name is Megan Addison, and I am the
Attorney Examiner assigned by the Commission to hear
these cases.

At this time, we will go ahead and take
appearances of those present today, starting with
Duke.

MS. WATTS: Thank you, again. Good
morning, your Honor. On behalf of Duke Energy Ohio,
appearing today, Rocco D'Ascenzo and Elizabeth Watts.

1 Also appearing with us, Kevin McMurray from the firm
2 of Frost Brown and Todd.

3 EXAMINER ADDISON: Thank you.

4 And if we could just go around the table.
5 Mr. McNamee.

6 MR. McNAMEE: Thank you, your Honor. I
7 don't know if that's going to work or not. On behalf
8 of the Staff of the Public Utilities Commission of
9 Ohio, I am Thomas W. McNamee, Assistant Attorney
10 General. The address is 30 East Broad Street,
11 Columbus, Ohio, 16th floor, 43215.

12 EXAMINER ADDISON: Thank you.

13 MR. HEALEY: Good morning. On behalf of
14 the Consumers' Counsel, Christopher Healey, Bryce
15 McKenney, and Amy Botschner-O'Brien, 65 East State
16 Street, Suite 700, Columbus, Ohio. Thank you.

17 EXAMINER ADDISON: Thank you.

18 MS. BOJKO: Thank you. Thank you, your
19 Honor. On behalf of the Ohio Manufacturers'
20 Association Energy Group, Kimberly W. Bojko, with the
21 law firm of Carpenter Lipps & Leland, 280 North High
22 Street, Suite 1300, Columbus, Ohio 43215.

23 MS. WHITFIELD: Good morning, your Honor.
24 On behalf of The Kroger Company, Angela Paul
25 Whitfield with the law firm Carpenter Lipps & Leland.

1 EXAMINER ADDISON: Thank you.

2 MS. COHN: Good morning. On behalf of
3 the Ohio Energy Group, Jody Cohn, Mike Kurtz, and
4 Kurt Boehm. The law firm of Boehm, Kurtz & Lowry,
5 36 East 7th Street, Suite 1510, Cincinnati, Ohio
6 45202.

7 EXAMINER ADDISON: Thank you.

8 MS. MOONEY: Yes. On behalf of Ohio
9 Partners for Affordable Energy, I'm Colleen Mooney.
10 Post Office Box 12451, Columbus, Ohio.

11 EXAMINER ADDISON: Thank you.

12 Thank you.

13 Before we begin this morning, I would
14 like to address some pending motions to intervene.

15 Motions to intervene were filed by Ohio
16 Partners for Affordable Energy, Office of Consumers'
17 Counsel, The Kroger Company, the Ohio Manufacturers'
18 Association Energy Group, and the Ohio Energy Group.

19 The motions were filed in one or more of
20 the above-captioned cases and will be considered as
21 motions to intervene in the consolidated proceedings.
22 With no opposition to the motions being filed and the
23 fact that the movants appear to have satisfied the
24 Commission's intervention requirements, the motions
25 to intervene should be granted.

1 Ms. Watts, I believe you had some
2 exhibits to mark this morning.

3 MS. WATTS: Yes, thank you, your Honor.
4 We have a total of 31 exhibits we would like to have
5 marked this morning if that works for you.

6 EXAMINER ADDISON: Please proceed.

7 MS. WATTS: The first six, just so
8 everybody can track a little easier, the first six
9 are each of the applications that were filed in the
10 rider proceeding, so I will read those out but that's
11 what they are going to be so it might be easier to
12 list them that way.

13 EXAMINER ADDISON: Thank you.

14 MS. WATTS: Exhibit No. 1 would be the
15 Application of Duke Energy Ohio in Case No.
16 14-375-GA-RDR.

17 EXAMINER ADDISON: So marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MS. WATTS: Exhibit No. 2 is the
20 application of Duke Energy Ohio in Case No.
21 15-452-GA-RDR.

22 EXAMINER ADDISON: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. WATTS: The third exhibit is the
25 application of Duke Energy Ohio in Case No.

1 16-542-GA-RDR.

2 EXAMINER ADDISON: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MS. WATTS: The fourth exhibit is -- are
5 we going too fast for anybody? Not yet.

6 EXAMINER ADDISON: Please feel free to
7 speak up if we need to restate it.

8 MS. WATTS: The fourth exhibit is the
9 application of Duke Energy Ohio in Case No.
10 17-596-GA-RDR.

11 EXAMINER ADDISON: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MS. WATTS: The fifth exhibit is the
14 application of Duke Energy Ohio in Case No.

15 18-283-GA-RDR.

16 ALJ ADDISON: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MS. WATTS: And the sixth is the
19 application of Duke Energy Ohio in Case No.

20 19-174-GA-RDR.

21 EXAMINER ADDISON: That is so marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MS. WATTS: Moving on to testimony.

24 Exhibit No. 7, we would propose to be the
25 direct testimony of Jessica Bednarcik in Case No.

1 14-375-GA-RDR.

2 MS. BOJKO: I'm sorry, what number is
3 that?

4 MS. WATTS: 7.

5 EXAMINER ADDISON: It will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MS. WATTS: Exhibit No. 8 is the
8 supplemental testimony of Jessica Bednarcik in
9 Case No. 14-375, et al. consolidated MGP cases.

10 EXAMINER ADDISON: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. WATTS: Exhibit No. 9 is the direct
13 testimony of Todd Bachand in Case No. 15-452-GA-RDR.

14 EXAMINER ADDISON: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MS. WATTS: Exhibit No. 10 is the direct
17 testimony of Todd Bachand in Case No. 16-542-GA-RDR.

18 EXAMINER ADDISON: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MS. WATTS: Exhibit No. 11 is the direct
21 testimony of Todd Bachand in Case No. 17-596-GA-RDR.

22 EXAMINER ADDISON: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. WATTS: Exhibit No. 12 is the direct
25 testimony of Todd Bachand in Case No. 18-283-GA-RDR.

1 EXAMINER ADDISON: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MS. WATTS: The 13th is the direct
4 testimony of Todd Bachand in Case No. 19-174-GA-RDR.

5 EXAMINER ADDISON: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MS. WATTS: The 14th is the supplemental
8 testimony of Todd Bachand in Case No. 14-375, et al.
9 consolidated MGP cases.

10 EXAMINER ADDISON: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. WATTS: The 15th is the direct
13 testimony of Shawn Fiore in Case No. 19-174.

14 EXAMINER ADDISON: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MS. WATTS: The 16th is the direct
17 testimony of Dan Brown in Case No. 19-174.

18 EXAMINER ADDISON: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MS. WATTS: The 17th is the direct
21 testimony of Keith Bone in Case No. 14-375.

22 EXAMINER ADDISON: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. WATTS: The 18th is the direct
25 testimony of Keith Bone in Case No. 15-452.

1 EXAMINER ADDISON: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MS. WATTS: The 19th is the direct
4 testimony of Keith Bone in Case No. 16-542. Did I
5 say 522 last time? The first one is 452 and the
6 second one is 542.

7 EXAMINER ADDISON: That's what I had.

8 MS. WATTS: Okay.

9 EXAMINER ADDISON: Thank you. So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MS. WATTS: Great.

12 Exhibit No. 20 is the Direct Testimony of
13 Keith Bone in Case No. 17-596.

14 EXAMINER ADDISON: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MS. WATTS: Exhibit 21 is the direct
17 testimony of Keith Bone in Case No. 18-283.

18 EXAMINER ADDISON: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MS. WATTS: Exhibit No. 22 is the direct
21 testimony of Keith Butler in Case No. 19-174.

22 EXAMINER ADDISON: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. WATTS: Exhibit No. 23 is the
25 supplemental testimony of Keith Butler in Case No.

1 14-375, et al. consolidated MGP cases.

2 EXAMINER ADDISON: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MS. WATTS: Exhibit No. 24 is the direct
5 testimony of Mike Lynch in Case No. 19-174.

6 EXAMINER ADDISON: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MS. WATTS: Exhibit No. 25 is the direct
9 testimony of Peggy Laub in Case No. 14-375.

10 EXAMINER ADDISON: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. WATTS: Exhibit No. 26 will be the
13 direct testimony of Peggy Laub in Case No. 15-452.

14 EXAMINER ADDISON: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MS. WATTS: Exhibit No. 27 is the direct
17 testimony of Peggy Laub in Case No. 16-542.

18 EXAMINER ADDISON: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MS. WATTS: Exhibit No. 28 will be the
21 direct testimony of Sarah Lawler in Case No. 17-596.

22 EXAMINER ADDISON: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. WATTS: Exhibit No. 29 is the direct
25 testimony of Sarah Lawler in Case No. 18-283.

1 EXAMINER ADDISON: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MS. WATTS: Exhibit No. 30 is the direct
4 testimony of Sarah Lawler in Case No. 19-174.

5 EXAMINER ADDISON: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MS. WATTS: Exhibit No. 31 is the
8 supplemental testimony of Sarah Lawler in Case No.
9 14-375, et al. consolidated MGP cases. And thank you
10 for your patience with that process.

11 EXAMINER ADDISON: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 EXAMINER ADDISON: I think we are done
14 for today.

15 MS. WATTS: Can we go home now?

16 EXAMINER ADDISON: Thank you, Ms. Watts.
17 Does anyone need that list reread at this
18 time?

19 MR. HEALEY: Your Honor, does it make
20 sense to mark the Staff Reports in advance because I
21 anticipate talking about them with various witnesses.

22 EXAMINER ADDISON: I think that makes
23 sense with the supplemental testimony as well.

24 Mr. McNamee, would you like to do the
25 honors?

1 MR. McNAMEE: Sure. Just as soon as I
2 find them.

3 EXAMINER ADDISON: Certainly.

4 MR. McNAMEE: Let me see. Okay. Yeah,
5 your Honor, why don't we mark, as Staff Exhibit 1,
6 the September 28, 2018 Staff Report.

7 EXAMINER ADDISON: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MS. WATTS: If I could interrupt for a
10 moment, Counsel, I am sorry to interrupt. Do we want
11 to mark the 12th Staff Report also because we'll
12 probably be using that or do you want to just go
13 ahead with your order?

14 MR. McNAMEE: Pardon?

15 MS. WATTS: Does it make sense to do
16 that?

17 MR. McNAMEE: I have the two.

18 MS. WATTS: We are going to be using the
19 12th also.

20 MR. McNAMEE: Yes, I am going to mark
21 that as well.

22 MS. WATTS: I'm sorry to interrupt.

23 MR. McNAMEE: I am just trying to figure
24 out which was first.

25 MS. WATTS: Yeah. Got it.

1 MR. McNAMEE: Okay. So that's Staff 1.
2 And let's mark, as Staff Exhibit 2, the July 12th,
3 2019, Staff Report.

4 EXAMINER ADDISON: Thank you. It will be
5 so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 EXAMINER ADDISON: Thank you for that
8 recommendation, Mr. Healey.

9 MR. HEALEY: Sure.

10 EXAMINER ADDISON: Ms. Watts, are you
11 ready to proceed?

12 MS. WATTS: We are, your Honor. Thank
13 you. Mr. McMurray is going to go first.

14 EXAMINER ADDISON: Wonderful.

15 MR. McMURRAY: Okay. Duke Energy Ohio
16 calls Jessica Bednarcik to the stand.

17 EXAMINER ADDISON: Welcome.

18 (Witness sworn.)

19 EXAMINER ADDISON: Thank you. If you
20 could just go ahead and push that button. Thank you
21 very much.

22 You may proceed whenever you are ready,
23 Mr. McMurray.

24 MR. McMURRAY: Thank you.

25 Your Honor, may we approach the witness

1 to provide her with her testimony?

2 EXAMINER ADDISON: You may.

3 - - -

4 JESSICA L. BEDNARCIK

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

7 DIRECT EXAMINATION

8 By Mr. McMurray:

9 Q. Ms. Bednarcik, can you please state your
10 name for the record.

11 A. Jessica Lynn Bednarcik.

12 Q. And who are you employed by and in what
13 position?

14 A. I am employed by Duke Energy Business
15 Services, and I am the Vice President of the Coal
16 Combustion Products Organization, Operation,
17 Maintenance and Governance Organization.

18 Q. And what is your business address?

19 A. It is 400 South Tryon, Charlotte, North
20 Carolina 28202.

21 Q. Did you cause to be filed written
22 testimony on behalf of Duke Energy Ohio in this
23 proceeding?

24 A. I did.

25 Q. And do you have that written testimony in

1 front of you now which is marked as Duke Energy Ohio
2 Exhibits 7 and 8?

3 A. I do.

4 Q. Are there any changes or corrections you
5 would make to the testimony that you have filed?

6 A. No.

7 Q. Do you need to correct your business
8 address?

9 A. On the --

10 Q. Supplemental testimony?

11 A. On the sum -- yes, on the supplemental
12 testimony on page 1, line 2, it incorrectly shows 499
13 South Tryon.

14 Q. That should be corrected to 400 South
15 Tryon?

16 A. Yes.

17 Q. So other than that correction to your
18 testimony, is the testimony otherwise true and
19 accurate to the best of your knowledge and belief?

20 A. Yes.

21 Q. Would your answers be the same if I asked
22 you the same questions today?

23 A. Yes.

24 Q. Do you hereby adopt the direct and
25 supplemental testimony that you just identified as

1 your testimony in this proceeding?

2 A. I do.

3 MR. McMURRAY: Duke Energy Ohio moves for
4 admission of Jessica Bednarcik's direct and
5 supplemental testimony which is identified as Duke
6 Energy Ohio Exhibit 7 and 8.

7 EXAMINER ADDISON: Thank you,
8 Mr. McMurray. We will hold off on ruling on the
9 motion for admission as soon as cross-examination is
10 completed. Thank you.

11 MR. McMURRAY: Your Honor, before we
12 start with cross-examination, we would ask to be able
13 to utilize Exhibit JLB-1 in Ms. Bednarcik's testimony
14 which is a figure showing the East End site which we
15 anticipate that there will be a variety of questions
16 related to the East End site.

17 We have caused to be produced a larger
18 depiction of JLB-1 which we would like to use as
19 demonstrative evidence, perhaps putting it on the
20 easel or some fashion where your Honor and the
21 parties could look at and reference as part of her
22 testimony.

23 EXAMINER ADDISON: It is the same as the
24 attachment to her testimony?

25 MR. McMURRAY: It is the same as.

1 EXAMINER ADDISON: Thank you. I
2 apologize. We will address that request once we get
3 to that point but I don't see -- I don't foresee any
4 issues doing that as long as it is an accurate
5 depiction of her attachment.

6 MR. McMURRAY: Thank you, your Honor.

7 EXAMINER ADDISON: Thank you.

8 MR. McMURRAY: With that, Ms. Bednarcik
9 is available for cross-examination.

10 EXAMINER ADDISON: Thank you very much.
11 Let's go off the record for just a
12 moment.

13 (Discussion off the record.)

14 EXAMINER ADDISON: Let's go back on the
15 record.

16 At this time I will entertain any motions
17 to strike.

18 MS. BOJKO: Thank you, your Honor. At
19 this time, OMAEG moves to strike pages 4, line 1 --
20 oh, this is her supplemental testimony.

21 EXAMINER ADDISON: Thank you.

22 MS. BOJKO: So it would be Duke Exhibit
23 8, I believe. Duke Exhibit 8, page 4, line 1,
24 starting with "My" in the middle of the line through
25 line 13. And page 5 -- there are several sites that

1 have the same rationale so I thought I would list
2 them off and then provide the rationale.

3 EXAMINER ADDISON: That makes sense.
4 Please continue.

5 MS. BOJKO: Page 5, line 4 through --
6 starting with the "No" at the beginning of the
7 sentence, through page 16, line 15, ending with the
8 word "site" on line 15. Then page 17 --

9 EXAMINER ADDISON: One moment, Ms. Bojko.
10 I apologize. Please continue.

11 MS. BOJKO: Page 17, line 6, beginning
12 with the word "No" through the end of line 7, the
13 answer to that question.

14 EXAMINER ADDISON: So you would leave the
15 question?

16 MS. BOJKO: I guess I would take off the
17 whole question and answer, your Honor. Thank you.
18 Line 4 through 7.

19 EXAMINER ADDISON: Thank you.

20 MS. BOJKO: Your Honor, OMAEG moves to
21 strike these portions of the testimony about the
22 investigation and remediation efforts claimed to be
23 undertaken and any costs related thereto with regard
24 to the Purchased Parcel which includes what you will
25 be -- hear -- heard as the "WOW," West of the West

1 Parcel, WOW Parcel, as barred by the doctrine of
2 collateral estoppel.

3 As an example, OMAEG moves to strike --
4 well, for instance, if we look at the first testimony
5 that will be struck, the doctrine of collateral
6 estoppel provides that a fact or a point that was
7 actually and directly at issue in a previous action,
8 and was passed upon and determined by a court of
9 common -- competent jurisdiction, may not be drawn
10 into question in a subsequent action between the same
11 parties or their previous, whether the cause of
12 action in the two actions be identical or different,
13 and that is Fort Frye Teachers Association versus
14 State Employment Relations Board, 81 Ohio St.3d 392.

15 Essentially, collateral estoppel prevents
16 parties from re-litigating facts and issues that were
17 fully litigated in a previous case. That's Glidden
18 Company, 112 Ohio St.3d 470.

19 Here, the doctrine of collateral estoppel
20 bars this testimony and any evidence regarding the
21 Purchased Parcel, including WOW, for several reasons.

22 First, in the Opinion and Order in the
23 lower case, 12-1684-GA-AIR, I guess I should say the
24 prior case, the common -- the Commission expressly
25 denied their recovery of any costs associated with

1 the Purchased Parcel and that's page 60 of the 2012
2 Order.

3 On that same page, the Commission held
4 that it was unwilling to consider the request for
5 recovery of costs related to that property because
6 Duke failed to establish that the Purchased Parcel
7 had provided, either in the past or in the present,
8 utility services that cause the statutorily mandated
9 environmental remediation.

10 The Commission went on to conclude that
11 the requested \$2.3 million associated with the
12 Purchased Parcel on the East End site should not be
13 included in any of the costs to be recovered through
14 Rider MGM -- MGP. The Commission explicitly talked
15 about what was requested and it stated remediation
16 costs or investigation costs or other costs.

17 Second, now in this case, to try to get a
18 second bite at the apple, Duke was trying to narrow
19 the 2012 Order, claiming that it is limited to just
20 the premium price for the purchased power but that is
21 not -- the Purchased Parcel but that is not the case.

22 As I just mentioned, the Commission
23 talked about costs associated with the Purchased
24 Parcel. It did not limit it to the purchase price
25 premium for the parcel and, in fact, on page 43 of

1 the Commission's Order, the Commission made it clear
2 that Duke was seeking in that case exactly what it is
3 seeking here, to be allowed to recover investigation
4 remediation costs for the Purchased Parcel.

5 Duke -- the Commission actually stated on
6 page 43, and I quote, "Duke disagrees that the costs
7 to remediate the Purchased Parcel not be recoverable,
8 stating that Duke is responsible not only for the
9 impacts of the MGP directly under the historic site,
10 but also for the cleanup of any impacts off-site that
11 can be linked to the operations conducted at the site
12 while under Duke's ownership." The Commission, in
13 the 2012 Order, disallowed all costs requested with
14 regard to the Purchased Parcel.

15 The simple fact of the matter is that the
16 2012 case, the only costs incurred for the Purchased
17 Parcel at the time was the purchased premium, but the
18 Commission specifically excluded all costs.

19 Finally, the Commission held that the
20 cost recovery, under the MGP Rider, would be limited
21 to the East and West End sites. Those footprints.
22 It's at page 60, 70, and 71. In so ruling, the
23 Commission rejected Duke's contention that it should
24 be allowed to recover, from ratepayers, costs related
25 to cleanup required off-site. As such, the

1 Commission has already ruled in the 2012 Order,
2 affirmed by the Supreme Court, that it specifically
3 rejected Duke's request to recover costs associated
4 with the Purchased Parcel. This includes the WOW
5 Parcel.

6 For these reasons, OMAEG requests your
7 Honor strike the testimony and evidence relating to
8 the Purchased Parcel, including the WOW Parcel, from
9 the proceeding, starting with Ms. Bednarcik's
10 supplemental and initial testimony -- or, starting
11 with her supplemental testimony and the provisions
12 that I noted earlier.

13 EXAMINER ADDISON: Thank you, Ms. Bojko.

14 MS. BOJKO: Thank you.

15 EXAMINER ADDISON: Mr. McMurray, do you
16 have a response?

17 MR. McMURRAY: I do. The motion to
18 strike seems to me to be more of a request for a
19 legal determination from your Honor than it does as
20 to Ms. Bednarcik's testimony.

21 The issue, as Ms. Bojko has framed it, is
22 really the issue that is at issue in this case. From
23 Duke Energy's perspective, the prior proceeding was
24 clear from the standpoint of the Commission denied
25 recovery of costs associated with the Purchased

1 Parcel which ultimately became part of the Area West
2 of the West Parcel. The Commission did not deny
3 recovery of costs associated with investigation of
4 the Purchased Parcel, as Duke Energy was required to
5 do under environmental laws, and for the period of
6 2011 and 2012 there were costs of investigation
7 included in the 2012 natural gas rate case for which
8 Duke was entitled to recovery.

9 And so I would submit that the motion to
10 strike is really a request for a legal determination
11 by you as to what the Commission said in its 2013
12 Opinion and Order. It's not a motion to strike as to
13 the testimony that Ms. Bednarcik is submitting.
14 That's all I have.

15 EXAMINER ADDISON: Thank you,
16 Mr. McMurray.

17 Would anyone else like to weigh in before
18 I provide my ruling?

19 MS. WHITFIELD: Kroger would just note
20 its support of the motion to strike.

21 EXAMINER ADDISON: Thank you,
22 Ms. Whitfield.

23 At this time I will be denying the motion
24 to strike. I do believe that, as Mr. McMurray
25 pointed out, this will be a large issue in contention

1 during the hearing and afterwards during the briefing
2 stage. I certainly invite any party including you,
3 Ms. Bojko, to include your arguments in your brief as
4 to this issue.

5 MS. BOJKO: Thank you, your Honor.

6 EXAMINER ADDISON: Thank you very much.

7 MS. BOJKO: I have another motion, your
8 Honor.

9 EXAMINER ADDISON: Please proceed.

10 MS. BOJKO: Your Honor, at this time
11 OMAEG moves to strike the following excerpts from
12 Ms. Bednarcik's testimony inasmuch as they constitute
13 legal conclusions for which Ms. Bednarcik lacks a
14 proper foundation. She is not qualified to offer a
15 legal opinion and, thus, she cannot offer testimony
16 on the legal issues and the ultimate issue of legal
17 liability.

18 Specifically in the following excerpts,
19 Ms. Bednarcik opines on the liability and potential
20 liability of the Company under undefined
21 environmental laws or statutory mandates. She's not
22 a lawyer and does not have a legal background or even
23 a regulatory background to make such conclusions.

24 We look specifically, your Honor, at
25 page 6 of the supplemental testimony, line 9, is the

1 first one. Sorry. I misread. It's page 6, line 19.
2 Starting with "Moreover" and going through page 7,
3 line 7, after "site." Actually, your Honor, I will
4 modify that. I think we can go up one sentence to
5 after line 3 after the word "Property."

6 EXAMINER ADDISON: Thank you.

7 MS. BOJKO: Then also, your Honor, same
8 rationale would be page 7, line 7, starting with the
9 word "This" and going through line 10, ending with
10 the word "requirements."

11 Here, Ms. Bednarcik states that certain
12 efforts undertaken by Duke were required by state and
13 federal environmental laws. It's not clear that
14 Duke's legal liability under CERCLA, et cetera, is
15 even a relevant issue in this case. The mere fact
16 that Duke is liable under the law does not mean that
17 Duke may take advantage of a cost recovery mechanism
18 to remediate.

19 Even if liability under CERCLA is
20 relevant, this witness is not qualified to render a
21 legal opinion about Duke's legal liability because
22 she lacks a legal background to do so. She is not a
23 lawyer. She doesn't have legal training and she
24 doesn't have a background in regulatory policy.
25 Thus, she is not qualified, under Evidence Rule 701

1 and 702.

2 Your Honor, there are similar other
3 citations where she constantly talks about Duke's
4 legal liability under state and federal laws. For
5 instance, there is one on page 9, line 11, starting
6 with "While" and going through line 15, the word
7 "site." She doesn't have a law degree and cannot
8 render an opinion of potential liability under
9 applicable environmental laws here, nor can she say
10 what the geographical limitations are upon such
11 cleanup under such liability.

12 On page 12, line 7, starting with the
13 word "Duke," here again -- and ending with the line
14 11, the word "impacts," here again she does not have
15 the knowledge about the Company's liability under
16 state and federal environmental laws and what the
17 limits of that liability is. She is not qualified to
18 offer such legal opinions.

19 Page 13, line 5, starting with the word
20 "liability" under state and federal environmental
21 laws, and ending with line 7, the "site" at the end
22 of the sentence. This is an ultimate conclusion of
23 fact. The witness is saying that Duke had liability
24 for cleanup on the Purchased Parcel after
25 repurchasing it. This is not -- this is a legal

1 opinion and she is not qualified to answer that legal
2 opinion.

3 Further, on page 13, line 9, starting
4 with the word "Duke" ending with line 16, the word
5 "sites." Page 14, line 7, it's actually really line
6 6 starting with the word "because" and ending on line
7 8 with the word "impacts." Page 16, line 13,
8 starting with the sentence "All" and ending on
9 line 15 with the word "site." Here, she references
10 statutory mandates. Again, she is not a lawyer. She
11 cannot explain or is not qualified to explain the
12 statutory mandates.

13 So for these reasons, your Honor, these
14 portions should be stricken. At one time she even
15 mentioned that a lawyer advised her, "on the advice
16 of counsel." She doesn't have an opinion to -- she
17 is not able to offer a legal opinion on these
18 statements in her testimony as she is not a lawyer.

19 EXAMINER ADDISON: Thank you, Ms. Bojko.

20 Mr. McMurray.

21 MR. McMURRAY: I would be happy to
22 respond. First, I would say it would seem to me we
23 should first go through her testimony and determine
24 whether in fact she is qualified to make these
25 opinions. But having said that, a couple of things

1 that I would say.

2 One, the issue of Duke Energy Ohio's
3 liability was established by the Commission in the
4 2013 Order and affirmed by the Ohio Supreme Court.

5 There is no question that Duke Energy
6 Ohio has liability under state and federal
7 environmental laws for the investigation and
8 remediation of the MGP impacts. And so, first, I
9 would submit that that issue has been decided already
10 in this case. But beyond that, Ms. Bednarcik is
11 qualified in order to make the statements she makes
12 in her direct testimony and supplemental testimony.

13 Ms. Bednarcik is a 20-plus-year
14 experienced environmental professional who has had
15 extensive experience working under state and federal
16 environmental laws to investigate and remediate
17 sites. You do not need to be a lawyer in order to
18 understand what those obligations are under the
19 environmental laws. She also works closely with
20 state and federal EPAs who provide direction on what
21 those laws require and what is required in order to
22 comply with those laws.

23 As the testimony indicates, she has
24 worked extensively with environmental consultants on
25 these matters that are very experienced in the

1 investigation and remediation of contaminated sites.
2 They have indicated that Duke Energy Ohio has the
3 obligation to investigate and remediate wherever the
4 MGP impacts are located or may be located.

5 She also has worked closely with the Ohio
6 VAP-certified professionals who have advised that
7 that is what is required under the Voluntary Action
8 Program. And so, yes, Ms. Bednarcik is not a lawyer
9 but she has very, very extensive experience with the
10 investigation and remediation of contaminated sites
11 under state and federal laws.

12 Of course she has consulted legal counsel
13 on these matters. This is a very important legal
14 matter for Duke Energy Ohio. That would be the
15 prudent thing to be done. And so I believe that her
16 testimony and her experience certainly qualifies her
17 in order to provide the testimony that she does in
18 this supplemental testimony with regard to the work
19 that Duke is required to do under the environmental
20 laws to meet its statutory obligations.

21 EXAMINER ADDISON: Thank you,
22 Mr. McMurray. And before I open up the floor for
23 others to weigh in on the matter, Ms. Bednarcik, you
24 are not an attorney; is that correct?

25 THE WITNESS: That is correct.

1 EXAMINER ADDISON: Thank you.

2 Would anyone else like to provide some
3 insight into this issue?

4 Ms. Bojko.

5 MS. BOJKO: May I briefly respond?

6 EXAMINER ADDISON: You may.

7 MS. BOJKO: I believe I started out my
8 motion to strike saying it wasn't relevant in this
9 proceeding so including this in her testimony is
10 improper under relevancy grounds as well and it's
11 also prejudicial to the record.

12 But I would also like to respond to
13 counsel's claim that she is an expert. In her
14 deposition, on page 83, we specifically asked the
15 question: "Would you consider yourself an expert in
16 CERCLA?" She stated "No, because I am not a lawyer,
17 I am not an expert in CERCLA. That is why we hired
18 lawyers who were experts in CERCLA to provide
19 guidance and assistance as we move through the
20 process." So she is not a lawyer, she was not
21 qualified to do -- to provide legal conclusions, and
22 we only move to strike the legal conclusions in her
23 testimony.

24 EXAMINER ADDISON: Thank you.

25 Mr. McMurray, would you like to respond

1 to the relevancy?

2 MR. McMURRAY: I would.

3 I believe that what Duke Energy Ohio's
4 obligations are under environmental laws is highly
5 relevant to the proceeding we have today. Duke
6 Energy Ohio's work at both the East End site and West
7 End site has been directed towards addressing its
8 liability under environmental laws. And that has
9 been the focus. As your Honor will see through the
10 testimony of various witnesses, the -- what Duke
11 Energy Ohio's required to do under environmental laws
12 is at the crux of the work that the Company has been
13 doing. So I believe that it is very relevant.

14 With regard to reading an isolated
15 statement from her deposition transcript that's not
16 in the record, the -- I would submit that we should
17 listen to this witness so that you can learn, hear
18 the experience that she has working through
19 environmental laws and environmental programs.

20 You do not need to be a lawyer in order
21 to understand what is required to satisfy
22 environmental requirements. Environmental
23 consultants do that regularly. Environmental
24 professionals, like Ms. Bednarcik, who, part of her
25 job at the company is to advise and implement work

1 required under environmental laws to ensure that the
2 Company's liability are addressed.

3 EXAMINER ADDISON: Thank you very much.

4 At this time I will be denying the motion
5 to strike. Ms. Bednarcik has already indicated she
6 is not an attorney. However, given her experience
7 within this regulatory framework, I believe she is
8 qualified to at least make these initial statements
9 in her prefiled testimony. We can, of course, allow
10 a little more flexibility or latitude in the
11 cross-examination of this witness. I would be
12 willing to reconsider whether or not she is qualified
13 to make such statements after we've allowed some
14 cross-examination to be -- to be held.

15 MS. BOJKO: Thank you, your Honor.

16 EXAMINER ADDISON: Thank you.

17 Any additional motions to strike,
18 Ms. Bojko?

19 MS. BOJKO: No, thank you, your Honor.

20 EXAMINER ADDISON: Thank you.

21 MS. BOJKO: Not at this time.

22 EXAMINER ADDISON: Any other motions to
23 strike from any other parties?

24 MR. HEALEY: I do have one, your Honor.

25 EXAMINER ADDISON: You do.

1 MR. HEALEY: If I may be permitted a
2 brief voir dire with the witness.

3 EXAMINER ADDISON: Please proceed.

4 - - -

5 VOIR DIRE EXAMINATION

6 By Mr. Healey:

7 Q. Ms. Bednarcik, can you please turn to
8 page 10 of your supplemental testimony. And on
9 line 17, there is a dollar number there. I don't
10 need you to say it. I just want to know if you see
11 the number that I am referring to on line 17. Do you
12 see that?

13 A. I do see it.

14 Q. And according to your testimony, this is
15 the cost that was incurred for the Purchased Parcel
16 that was included in Duke's 2012 rate case, correct?

17 A. For the -- yes, for the investigation of
18 the Purchased Parcel.

19 Q. And this number was provided to you by
20 someone in Duke's Rates Department, correct?

21 A. For preparing this testimony, yes.

22 Q. In fact, you believe it was provided to
23 you by your counsel, Elizabeth Watts, correct?

24 A. It was provided by counsel. When we were
25 preparing the testimony, we were discussing the work

1 that had occurred in the 2011, 2012 time frame. I
2 remember work had been done, had occurred, so I asked
3 her for the -- to provide the dollar amount that was
4 included in the rates.

5 Q. And you did not calculate this number
6 yourself, correct?

7 A. I did not.

8 Q. And so you can't state, based on your
9 personal knowledge, whether this number is accurate,
10 correct?

11 A. So when I received the number, it was in
12 line with what I would have expected, what I
13 remembered from -- and recalled from that time period
14 what an investigation would have -- would have
15 occurred and the amount that seemed reasonable.

16 Q. And you didn't go back through invoices
17 from the rate case to determine and identify this as
18 the cost, correct?

19 A. I did not go back through invoices but I
20 did go back through my files and found a spreadsheet
21 where I had been -- I had received a spreadsheet from
22 a consulting firm that I remembered, I went back to
23 them and said can you go through and divvy out and go
24 through invoices and determine how much was part of
25 that parcel. So I found the spreadsheet from back in

1 that time that matched this dollar amount --

2 Q. And that --

3 A. -- in my files.

4 Q. I'm sorry. And that spreadsheet, you
5 didn't create the spreadsheet, correct?

6 A. It was not created by me, but it was
7 created under my direction. I had asked consultants
8 to prepare it for me.

9 Q. And who would those consultants be?

10 A. It was, at that time, Altamont
11 Environmental was the firm that I had asked to look
12 through the invoices and to prepare a spreadsheet.

13 Q. And no one from Altamont is testifying
14 today, correct?

15 A. No.

16 Q. And based on your knowledge today, you
17 don't recall if that number was found in your
18 testimony or anywhere else in the record that was
19 admitted in the 2012 rate case, correct?

20 A. Not that I recall.

21 Q. I would like to understand a little bit
22 better about this spreadsheet you are referencing.
23 That is a spreadsheet that was already created in the
24 rate case?

25 A. It was a spreadsheet that I had -- I

1 don't recall whether it was admitted in the 2012 rate
2 case or not. But it was a spreadsheet that I asked
3 the consultants to prepare for me that broke out some
4 of the individual costs for the East and West End
5 site. So, for example, being able to break out the
6 analytical testing or air monitoring that happened,
7 so this spreadsheet also contained a line item for
8 the investigation costs of the area we purchased.

9 Q. And do you know the name of the person
10 that created this spreadsheet?

11 A. I believe her name was Jennifer Verde.

12 Q. And did you take any steps to check her
13 work, verify invoices, review the calculations she
14 performed?

15 A. So back in -- during that time when --
16 when we were doing those spreadsheets and I would
17 have monthly meetings with her, and she was pulling
18 those together, and she would go over what she
19 prepared, where she had questions, so we would have
20 conversations about what were the invoices she looked
21 at and what was easily able to be pulled apart and
22 whatnot, so that's what I recall.

23 Q. And this was back in the 2011-'12 time
24 frame?

25 A. Yes.

1 Q. And you said this number was provided to
2 you by counsel. Did you do anything, beyond looking
3 at this spreadsheet, to confirm the accuracy of the
4 number immediately prior to preparing your 2019
5 testimony?

6 A. I did not.

7 MR. HEALEY: Thank you.

8 Your Honor, at this time I move to strike
9 Ms. Bednarcik's supplemental testimony, page 10,
10 line 16, at the beginning of that line, through
11 line 19 ending with the word "property."

12 Ms. Bednarcik lacks personal knowledge under Ohio
13 Rules of Evidence 602.

14 Under Rule of Evidence 602, a witness may
15 not testify to a matter unless evidence is introduced
16 sufficient to support a finding that the witness has
17 personal knowledge of the matter.

18 The Ohio Supreme Court, in Bonacorsi v.
19 Wheeling, 95 Ohio St.3d 314, defined "personal
20 knowledge" under Rule 602 as "knowledge gained
21 through firsthand observation or experience as
22 distinguished from a belief based on what someone
23 else has said."

24 That definition precisely describes what
25 we have here with respect to Ms. Bednarcik. She took

1 this number, it was a number that someone else
2 created, it was a number that counsel gave to her for
3 this testimony. She did nothing to verify on her own
4 whether that number is accurate. We do not have an
5 opportunity to cross-examine counsel on this number,
6 how it was derived, whether the invoices are actually
7 accurate as tied to this number. This witness
8 testified she does not know whether this number ever
9 appeared in the rate case. And therefore she cannot
10 personally verify that this number is even remotely
11 accurate, let alone accurate down to the dollar that
12 she is claiming and, on that basis, this portion of
13 her testimony should be struck.

14 EXAMINER ADDISON: Thank you, Mr. Healey.
15 Mr. McMurray.

16 MR. McMURRAY: I disagree with the
17 characterization of her testimony of the -- by
18 Mr. Healey on this. Ms. Bednarcik is really serving
19 in an expert role. She was the project manager for
20 the work at the East End site and West End site
21 during 2011 and 2012.

22 The time period that she was overseeing
23 investigation work in what was at that time known as
24 the Purchased Parcel, she has knowledge that costs
25 were incurred doing the investigatory work. She

1 recalls there were invoices for the costs of that
2 investigatory work at that time that were part of the
3 rate case.

4 The practice as the project manager for
5 this sort of a project is the project manager cannot
6 manage all of the thousands of documents that are
7 associated with the investigation, remediation, and
8 the invoicing and so on, and so they -- they really
9 rely on others to keep track of that information to
10 support the work that's done. This is similar to
11 relying on the work of Haley & Aldrich and other
12 environmental professionals to document the
13 investigation and the remediation work that was done.

14 And so Ms. Bednarcik just indicated when
15 she was preparing this testimony she knew that there
16 had been costs. She has not been involved in this
17 project since transitioning into other projects for
18 the Company. She requested whether she could be
19 provided that spreadsheet. She was provided that
20 spreadsheet. She looked at it. Could she document
21 conclusively that it was \$245,772.47, no, I don't
22 think anyone could probably do that after that time
23 period. But she indicated in the voir dire that that
24 cost seemed in line with what she recalled from the
25 investigation work that was done back in 2011 and

1 2012 under her oversight.

2 And so the spreadsheet that she was
3 looking at, as she indicated, was a spreadsheet
4 prepared by Altamont, a consultant that Duke had
5 hired, under her oversight, to help keep track of the
6 work that was done. And so, you know, as an expert
7 witness, it seems that it's highly appropriate under
8 the Rules of Evidence for her to rely on documents
9 such as this that were prepared under her oversight
10 and request and that she believes Duke does fairly
11 reflect the amount.

12 EXAMINER ADDISON: Thank you,
13 Mr. McMurray.

14 Anyone else have any comments?

15 MS. BOJKO: Yes, your Honor. I would
16 also, OMAEG would move based on it's outside of her
17 personal knowledge but it's also hearsay under rule,
18 Federal Rule of Evidence 801(C) -- 801.

19 Hearsay is generally defined as a
20 statement other than one made by the declarant, while
21 testifying at the trial or hearing, offered in
22 evidence to prove the truth of the matter inserted.
23 Here she is attempting to prove this amount as the
24 truth of the matter asserted. The primary purpose of
25 the hearsay rule is that out-of-court statements

1 amounting to hearsay are not made under oath and are
2 not subject to cross-examination.

3 We have no ability to cross the person
4 that made the statement, counsel. We have no ability
5 to cross the person that allegedly created this
6 spreadsheet. It wasn't attached to her testimony.
7 So we have no ability to even see the spreadsheet at
8 this point. If it there was reliance on such a
9 spreadsheet, then it should have been produced.

10 The Notice of Deposition asked for
11 documents to be produced that caused or that were
12 relied upon in drafting her testimony. And it was
13 not. So, therefore, I think it is hearsay. It's an
14 out-of-court statement for the -- to prove the truth
15 of the matter asserted, and we cannot cross-examine
16 either the attorney that made the statement to her or
17 the consultant that created the spreadsheet. Thank
18 you.

19 EXAMINER ADDISON: Thank you, Ms. Bojko.

20 Mr. McMurray, would you care to respond
21 to the hearsay objection?

22 MR. HEALEY: Your Honor, might I respond
23 to Mr. McMurray's response to mine, first, and then
24 he can do all his of responses?

25 EXAMINER ADDISON: Certainly, Mr. Healey.

1 Please proceed.

2 MR. HEALEY: Just to streamline it a
3 little bit. What we heard from Mr. McMurray was,
4 one, a blunt admission that she cannot verify the
5 number. Mr. McMurray said specifically, can she
6 verify this number is accurate, the answer is no.

7 He further stated, as is clear from her
8 testimony, she has not been involved in these cases
9 for about five years. She lacks personal knowledge
10 of whatever has happened in those five years until
11 she started to get back up to speed in the case in
12 2019.

13 She testified on voir dire that she
14 basically took this number at heart, looked at an old
15 spreadsheet and didn't do anything to verify it and
16 just plopped it in there.

17 I would also respond to Mr. McMurray's
18 seeming -- he seemed to suggest, because she is an
19 expert, there's more leeway here. This is not an
20 expert opinion. This is a factual number. She is
21 saying as a matter of fact this is the amount of cost
22 that was incurred in that period. That's a factual
23 question. She is testifying as a factual witness on
24 that. So there is no leeway on, you know, there
25 might be some leeway on an expert opinion, under 703

1 of the Rules of Evidence, being able to rely on
2 things that might not otherwise be admissible.
3 That's not what she is doing here. She is saying
4 this is a fact that I am testifying to and,
5 therefore, the personal knowledge standard under 602
6 would necessarily apply.

7 And I would echo Ms. Bojko's concern that
8 we have not seen this spreadsheet. We did ask for
9 all workpapers and it was not produced and not given
10 to OCC as backing information for that number, so I
11 have no opportunity to cross-examine her or anyone
12 else on the spreadsheet.

13 EXAMINER ADDISON: Thank you, Mr. Healey.
14 Mr. McMurray.

15 MR. McMURRAY: Okay. So let me try to
16 keep track of all this. With regard to the hearsay
17 argument from Ms. Bojko, what -- what I would submit
18 is that there's exception to that rule and it's
19 records relating to regularly-conducted activity.

20 The way this project was managed by Duke
21 and the way it's managed by, you know, all companies
22 that are, you know, handling this sort of project is
23 the documentation of the work performed, the cost
24 incurred, everything that supports that is being
25 recorded and it is being, you know, maintained by the

1 Company and the consultants. And so with regard to
2 this spreadsheet, I would say that there's an
3 exception to hearsay there that it's the record of
4 regularly-conducted activity.

5 With regard to my observation concerning
6 Ms. Bednarcik's statement concerning the amount is
7 that what I indicated was she clearly recalled from
8 her, first, personal experience that investigation
9 was performed, costs were incurred, and costs were
10 included. The issue is the spreadsheet that she
11 reviewed. When she reviewed that spreadsheet, the --
12 without having all the underlying invoices there to
13 tally that back up, she's looking at really a summary
14 of all that prepared by consultant at her request
15 when this work was being performed.

16 And so as to Mr. Healey's other point,
17 while she has not been personally involved in the
18 work at the site over the last four or five years,
19 that's not really at issue with regard to this
20 statement because what we are talking about is work
21 that was done in 2011 and 2012 and costs that were
22 included as part of the 2012 natural gas rate case,
23 and so the fact that she may not have known what was
24 going on in 2018 is not relevant to this particular
25 issue.

1 But having said that, in looking at the
2 spreadsheet, what she stated was that number is in
3 line with what I recall based upon a level of work
4 that was being done. You know, in terms of is this
5 being submitted for the truth of the matter, you
6 know, what is really being submitted here is that
7 Duke Energy Ohio incurred costs that were included as
8 part of the 2012 natural gas rate case associated
9 with investigating the purchased parcel and so the --
10 was it 245,772.47 or was it something that was off by
11 \$100, you know, that would require looking at the
12 underlying invoices. She's relying on the consultant
13 who rolled that up into the spreadsheet.

14 EXAMINER ADDISON: We don't have the
15 underlying invoices; is that correct?

16 MR. McMURRAY: The underlying invoices
17 would be available. We don't have them with us
18 currently.

19 MS. BOJKO: Your Honor, may I respond to
20 the business record exception?

21 EXAMINER ADDISON: Very quickly.

22 MS. BOJKO: Thanks.

23 He can't claim that it's a business
24 record exception because they didn't produce the
25 business record. His exception may apply if we are

1 talking about admissibility of the spreadsheet, but
2 here we are not. We are talking about an
3 out-of-court statement that was made and put in her
4 testimony. We have no way of knowing if it was a
5 regularly-maintained document.

6 In fact, we just heard from both the
7 witness and counsel that the number wasn't even the
8 same. It was in line with what she thought. So now
9 we have a summary document that isn't even producing
10 the number that she's including in her testimony as
11 hearsay so it needs to be stricken. It's hearsay and
12 there is no exception.

13 EXAMINER ADDISON: Thank you. Anyone
14 else who would like to comment?

15 Thank you.

16 Last word, Mr. McMurray.

17 MR. McMURRAY: One final word on this
18 the -- my understanding is that these invoices and
19 this information would have been produced as part of
20 the 2012 natural gas rate case in response to
21 discovery or otherwise because this is work that was
22 done, investigation that was done in 2011-2012 that
23 rolled up into that case. And so the invoices, the
24 documentation should exist in that case. So that's
25 my final point.

1 EXAMINER ADDISON: But it was not
2 produced as part of her workpapers to support her
3 testimony in this case?

4 MR. McMURRAY: The spreadsheet was not --
5 to my knowledge the spreadsheet was not produced in
6 this case.

7 EXAMINER ADDISON: Thank you.

8 At this time I will grant the motion to
9 strike starting on page 10, line 16, and Mr. Healey
10 could you please remind me if you started your motion
11 to strike with "yes" or the word "the."

12 MR. HEALEY: It was with "yes" and then
13 through line 19 ending with the word "property."

14 EXAMINER ADDISON: Thank you. The motion
15 to strike will be granted, line 16 starting with the
16 word "yes" through line 19 ending with the word
17 "property."

18 Any additional motions to strike,
19 Mr. Healey?

20 MR. HEALEY: Not for Consumers' Counsel.
21 Thank you, your Honor.

22 EXAMINER ADDISON: Thank you very much.

23 Any additional motions to strike from any
24 other party?

25 Thank you. All right. Mr. Healey, I

1 believe you were chosen to be first for
2 cross-examination.

3 MR. HEALEY: Yes, your Honor.

4 EXAMINER ADDISON: Please proceed.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Healey:

8 Q. Ms. Bednarcik, you originally filed
9 testimony in these cases in 2014, correct?

10 A. Yes.

11 Q. And at that time you were the project
12 manager for Duke's MGP site investigation and
13 remediation in Ohio, correct?

14 A. Yes.

15 Q. And around the middle of 2014, Duke hired
16 Mr. Todd Bachand, correct?

17 A. Correct.

18 Q. And he became the project manager for the
19 sites after you, correct?

20 A. During the rest of 2014 was a period of
21 transition, so we worked together on the project
22 management until I handed the reins over to him
23 fully.

24 Q. So there was a period in '14 where you
25 were working together and when you left that role, he

1 became the project manager himself in the beginning
2 of 2015?

3 A. Correct.

4 Q. And you transferred to a new role as
5 Director of Environmental Health and Safety Risk and
6 Compliance Assurance in 2015, correct?

7 A. Correct.

8 Q. And in that role you were not involved in
9 Duke Ohio's environmental remediation efforts at the
10 MGP sites, correct?

11 A. I was not directly related but if
12 Mr. Bachand had any questions during that time
13 period, I still stayed involved in order to help with
14 the transition.

15 Q. And did he, in fact, have questions?

16 A. I remember viewing the testimony that he
17 filed that year in 2015 and I do remember there was
18 conversations. But beyond the extent of what those
19 conversations were, I don't remember the details.

20 Q. And after that role, you became Special
21 Assignment Leader in the Environmental Health and
22 Safety Department, correct?

23 A. Correct.

24 Q. And that was in 2016?

25 A. Yes.

1 Q. And in that role you did not do any work
2 for Duke Ohio, correct?

3 A. That is correct.

4 Q. And in that role you did not do any work
5 on MGP sites, correct?

6 A. Correct.

7 Q. And then in 2018, you became Senior
8 Director of the Grid Investment Program, correct?

9 A. Correct.

10 Q. And that would be work in the electric
11 sector, correct?

12 A. Yes.

13 MS. BOJKO: Your Honor, may I ask the
14 witness to pull the microphone a little closer to
15 her.

16 MR. HEALEY: I am not even sure it's on
17 to be honest.

18 EXAMINER ADDISON: Let's go off the
19 record for a minute.

20 (Discussion off the record.)

21 EXAMINER ADDISON: Let's go back on the
22 record.

23 Q. (By Mr. Healey) And in your role as
24 Senior Director of the Grid Investment Program, you
25 did not do any work with MGP sites, correct?

1 A. I did not do any work with MGP sites.

2 Q. And now your current role is Vice
3 President of Coal Combustion Products Operations,
4 Maintenance, and Governance, correct?

5 A. Correct.

6 Q. And in that role you do not have any
7 involvement with MGP sites other than this case,
8 correct?

9 A. Correct.

10 Q. And so would it be fair to say once you
11 left your role as project manager for the MGP sites
12 back in 2014, you haven't really had any involvement
13 in Duke Ohio's MGP investigation and remediation,
14 other than the couple conversations you might have
15 had with Mr. Bachand.

16 A. Whenever I took on the new role in the
17 beginning of 2015, that is correct.

18 Q. And you only recently became re-engaged
19 in these proceedings around September of 2019?

20 A. Yes.

21 Q. And from 2016 to 2019, you were not
22 involved in Duke's MGP-related issues outside the
23 state of Ohio either, correct?

24 A. That is correct.

25 Q. And since you left your role as project

1 manager for the Ohio MGP sites, you have not spent
2 any time getting up to speed with what has happened
3 since you left, correct?

4 A. I have not.

5 Q. For example, you haven't reviewed any of
6 the invoices from 2015 through 2018, correct?

7 A. I have not.

8 Q. And you haven't looked at any reports
9 provided by any of Duke's vendors, Haley Aldrich, or
10 any others from 2015 on, correct?

11 A. I have not.

12 Q. And so you don't personally know what
13 kinds of investigation or remediation Duke did or did
14 not perform from 2015 to 2018, correct?

15 A. That's correct.

16 Q. And you don't personally know whether
17 Duke did or did not perform any remediation in the
18 Area West of the West from 2015 to 2018, correct?

19 A. Other than reading through Mr. Bachand's
20 testimony, that's how I know that work had -- has
21 occurred but, other than that, I do not have
22 firsthand knowledge of being out there.

23 Q. And which of Mr. Bachand's testimony are
24 you referring to there?

25 A. The testimony that was filed as part of

1 this hearing, the one that was filed in 20 -- 2019.

2 Q. His supplemental testimony?

3 A. Yes.

4 Q. So you did read that testimony?

5 A. I did.

6 Q. When did you read that testimony for the
7 first time?

8 A. This last weekend.

9 Q. So you did not read that testimony prior
10 to drafting your own testimony, correct?

11 A. I did not.

12 Q. Now, based on your own knowledge at the
13 time you filed your testimony in this case, your
14 supplemental testimony, did you know where Duke may
15 have performed any remediation in the West of the
16 West?

17 A. So the investigation of the West of the
18 West happened, the entire Purchased Parcel, in the
19 2011, 2012 time frame. Whenever I was leaving my
20 role as project manager, I do remember we ended up
21 having a propagation report showing where the impacts
22 were both in the West of the West area and the Middle
23 Parcel at the East End site. So I knew that there
24 was impacts there and that work was going to be
25 proceeding but what exactly that work was that was --

1 I recall that we had some reports that showed
2 different remedial options that were being proposed
3 but the actual implementation of those remedial
4 options was done by Mr. Bachand.

5 Q. So if you were -- if you were looking at
6 a map of the West of the West, you wouldn't be able
7 to point to the different areas where remediation had
8 been done, correct?

9 A. No.

10 Q. And when you were working on the MGP
11 sites, you worked with Shawn Fiore, correct?

12 A. Yes.

13 Q. And to the best of your recollection, you
14 haven't spoken to him since 2014; is that right?

15 A. To the best of my recollection, yes.

16 Q. And you haven't read his testimony from
17 these cases, correct?

18 A. I have not.

19 Q. And you don't know whether Mr. Fiore
20 continues to work on the East End and West End sites,
21 do you?

22 A. I do not have firsthand knowledge of
23 that. The fact that he is here implies that he has
24 some -- is -- the fact that he's one of our
25 witnesses, I believe he still is involved.

1 Q. Are you aware that someone named Dan
2 Brown testified on behalf of Duke in these cases?

3 A. I am aware of that.

4 Q. And you have never spoken to Mr. Brown,
5 correct?

6 A. I have not.

7 Q. And you haven't read Mr. Brown's
8 testimony, correct?

9 A. I did not.

10 Q. And you didn't have any discussions with
11 Mr. Bachand prior to filing your supplemental
12 testimony in -- related to your testimony, correct?

13 A. I did not.

14 Q. And have you had any discussions with him
15 since filing your testimony?

16 A. We -- so other than last night over
17 dinner, talking a little bit about what work has been
18 going on, that's the extent.

19 Q. Prior to last night, you hadn't had
20 conferences with him about this case and this
21 hearing.

22 A. I have not.

23 Q. But you said you have now read his
24 supplemental testimony?

25 A. Yes.

1 Q. At the time you filed your supplemental
2 testimony, you had not read his testimony, correct?

3 A. Correct.

4 Q. So you didn't rely on anything in his
5 testimony when you were preparing your own, correct?

6 A. That is correct.

7 Q. And did you do any investigation to
8 determine whether his testimony -- his supplemental
9 testimony was accurate?

10 A. I did not.

11 Q. And so if he were to have made any
12 mistakes in that testimony, we wouldn't be able to
13 ask you about those mistakes, correct?

14 A. That is correct.

15 Q. Have you read any other witnesses'
16 testimony filed in these cases since 2015?

17 A. No.

18 Q. For example, you didn't read any of the
19 Consumers' Counsel testimony?

20 A. Oh, I'm sorry. I assumed you meant Duke
21 Energy witnesses.

22 Q. No. I meant all parties.

23 A. All parties. I did read the Consumers'
24 Counsel, what they provided in 20 -- in 2019, that
25 report. And also I believe there was one filed

1 earlier. I can't remember the year that it was
2 filed.

3 Q. Are you thinking about the Staff Reports?

4 A. Yes, I'm think -- yes, the Staff Reports.

5 Q. Now -- and you read -- you are aware
6 there were two Staff Reports, correct?

7 A. I read both of the Staff Reports.

8 Q. Now, OCC's testimony was filed by two
9 witnesses, one is Kerry Adkins. Do you remember
10 reading his testimony?

11 A. I did not.

12 Q. And another one was Dr. James Campbell.
13 Did you read his testimony?

14 A. I did not.

15 Q. Did you read Staff Witness Nicci
16 Crocker's testimony?

17 A. No.

18 Q. You are generally familiar with the Ohio
19 Voluntary Action Program; is that right?

20 A. Yes.

21 Q. But you would not consider yourself an
22 Ohio expert, correct?

23 A. Not in the details, specific details of
24 the VAP. That's why we an hired expert VAP CP in
25 order to support us as we did the investigation and

1 remediation.

2 Q. Are you testifying as an expert witness
3 today?

4 A. Yes.

5 Q. And what would you consider to be your
6 area of expertise?

7 A. It is the investigation, remediation of
8 contaminated pieces of property. I have over
9 15 years of experience doing that type of work and
10 project managing multiple states, not only
11 manufactured gas plants but underground storage
12 tanks, coal ash sites, also dry cleaning solvent
13 sites, so multiple areas of environmental
14 remediation.

15 Q. You don't consider yourself an expert on
16 Ohio ratemaking, correct?

17 A. No.

18 Q. And you are not an expert on the
19 interpretation of Ohio Revised Code Title 49, are
20 you?

21 A. No.

22 Q. And you are not an expert on the
23 interpretation of Ohio Administrative Code Chapter
24 4901-1, are you?

25 A. No.

1 Q. And you are not an expert on the
2 interpretation of court opinions, are you?

3 A. No.

4 Q. And you are not an expert on the
5 interpretation of administrative opinions, are you?

6 A. No.

7 Q. You are aware in these cases that Duke is
8 asking the PUCO for permission to charge customers
9 for investigation and remediation of the Ohio MGP
10 sites from 2013 to 2018, correct?

11 A. Correct.

12 Q. And you believe that Duke has an
13 obligation under environmental laws to perform this
14 investigation and remediation, correct?

15 A. To perform -- to manage the liability and
16 address the liability, yes.

17 Q. But is it fair to say that in your
18 testimony in general you are not testifying as to who
19 should pay for the investigation and remediation?

20 A. That is correct.

21 Q. Let's turn to your supplemental
22 testimony, please. We will be talking a little bit
23 about JLB-1, and I would like to take Duke up on
24 their offer to put the big map up if that is all
25 right.

1 EXAMINER ADDISON: Certainly.

2 MR. HEALEY: I also printed out slightly
3 larger copies if your Honor would like one like this,
4 or if anyone else. It's easier to see than the filed
5 testimony.

6 EXAMINER ADDISON: Certainly.

7 MR. McNAMEE: I would love one.

8 EXAMINER ADDISON: Let's go ahead and go
9 off the record just for a minute while we get
10 situated.

11 (Discussion off the record.)

12 EXAMINER ADDISON: Let's go back on the
13 record. Mr. Healey.

14 Q. (By Mr. Healey) Now, we are looking at
15 JLB-1 Attachment. You attached this to your
16 supplemental testimony in these cases, correct?

17 A. Correct.

18 Q. And there is a demonstrative next to you
19 which is a blown-up version of this map. Can you
20 just take a look at it and confirm for us this is
21 identical to what you attached to your testimony as
22 JLB-1?

23 A. Yes, it is identical.

24 Q. And I handed you a blown-up copy, and
25 just so the record is clear, we are all looking at

1 that copy, that appears to be identical as well,
2 correct?

3 A. Yes.

4 Q. Now, this JLB-1 attachment is a property
5 map that shows, among other things, the East End
6 site.

7 A. The majority of the East End site. It
8 does not show the east parcel.

9 Q. Right. Do you see something near the
10 middle identified as the "Phase 2 Area"?

11 A. Yes.

12 Q. And the Phase 2 Area is kind of a
13 Pac-Man-shaped area sitting on top of the yellow
14 section; is that accurate?

15 A. Yes, for the most part it's on the yellow
16 section but also it enters into the West Parcel.

17 Q. And you see a purplish-pinkish line
18 running down the middle of the yellow shaded area.
19 It is not a straight line. It kind of turns a couple
20 of times. Do you see that line?

21 A. I do.

22 Q. And on this map it appears that a portion
23 of this Phase 2 Area intersects that line, correct?

24 A. Yes.

25 Q. And you would agree then that while most

1 of the Phase 2 Area is to the right of the line, at
2 least some of it could be on the line or even a
3 little bit to the left of the line, correct?

4 A. So the -- are you talking about
5 specifically the Phase 2 work?

6 Q. I am talking about just the Pac-Man
7 Phase 2 Area on JLB-1.

8 A. So it appears that the majority of the
9 Phase 2 Area is to the left of the line and there is
10 some on the right of the line.

11 Q. Okay. Maybe we will clarify. The line I
12 am referring to is the not-very-straight line that
13 runs down the middle of the yellow section.

14 A. Okay.

15 Q. So let's talk about that line and we will
16 start over so that it's clear what we are talking
17 about. You see that line, correct?

18 A. The not-straight line?

19 Q. The not-straight line that runs down the
20 middle yellow area.

21 A. Yes, I see that.

22 Q. Thank you.

23 Now, my question before was, it appears
24 that the marked Phase 2 Area on this map intersects
25 with that line, correct?

1 A. Correct.

2 Q. And so you would agree that while most of
3 the Phase 2 Area is to the right of that line on this
4 map, at least some of it is on the line or even a
5 little bit to the left of the line, correct?

6 A. Correct.

7 Q. Now on the left side of the map, we see
8 something called the Riverside Drive Property. Do
9 you see that?

10 A. I do.

11 Q. And the yellow area that we mentioned
12 briefly is identified as "Area West of the West
13 Parcel," correct?

14 A. Correct.

15 Q. And then there's a mark on the left of
16 this map that says "Purchased Parcel." Do you see
17 that?

18 A. Yes.

19 Q. And just so we are all on the same page,
20 the Purchased Parcel would be the Riverside Drive
21 Property combined with the Area West of the West
22 Parcel, correct?

23 A. Correct.

24 Q. Now, it's your understanding that Duke
25 purchased the entire Purchased Parcel from DCI

1 properties in 2011, correct?

2 A. Yes.

3 Q. And Duke had initially sold some property
4 to DCI in 2006, correct?

5 A. Correct.

6 Q. And the portion that Duke sold to DCI in
7 2006 would be the yellow-shaded area to the right of
8 that not-very-straight line; is that correct?

9 A. Yes.

10 Q. And so it's your understanding that prior
11 to 2006, Duke never owned anything to the left of the
12 pink line that runs down the middle of the Area West
13 of the West on not this map, correct?

14 A. I do not recall if Duke owned anything to
15 the west of that in 2006. I do know that the smaller
16 portion was sold to DCI, but if there was anything
17 beyond that, I don't recall.

18 Q. And to your knowledge, prior to 2011,
19 Duke never owned the Riverside Drive Property,
20 correct?

21 A. Based upon my recollection we did not own
22 it.

23 Q. Now, this map here, JLB-1 Attachment, was
24 created by Haley Aldrich; is that correct?

25 A. Yes.

1 Q. And you did not create this document, did
2 you?

3 A. I did not.

4 Q. And in fact the first time you saw this
5 document was when your attorney provided it to you
6 for purposes of filing this testimony, correct?

7 A. Correct.

8 Q. And you did not do anything to
9 independently verify the accuracy of this document,
10 correct?

11 A. Well, the fact that I was the project
12 manager of the site from 2006 until the end of 2014
13 when I moved into my new role, I was intimately
14 involved in this project, so being able to look at it
15 and see it -- it aligned with my recollection of the
16 site and the number of years I was out there as
17 project manager.

18 Q. So your belief that this was accurate is
19 based on your historical knowledge from having worked
20 on the rate case?

21 A. Not worked on rate case but being the
22 project manager of the site from 2006 up until 2014.

23 Q. And you didn't take any steps in 2019,
24 after seeing this specific document, to look at
25 surveys to compare this map to any other maps that

1 you may have seen to verify the accuracy, did you?

2 A. I didn't need to because of my intimate
3 knowledge of the site.

4 Q. And so, since you didn't need to, you
5 didn't do it, correct?

6 A. I did not do it.

7 Q. In the legend on this map, there are
8 various references to "Sanborn Historic Feature." Do
9 you see those?

10 A. I do.

11 Q. And that refers to historical Sanborn
12 fire safety maps; is that correct?

13 A. Fire insurance maps.

14 Q. Fire insurance maps, thank you. These
15 maps are from the late 19th and early 20th century?

16 A. Yes.

17 Q. And Duke relied on Sanborn maps to
18 identify the location of historical property
19 boundaries and MGP equipment, correct?

20 A. So as part of manufactured gas plant
21 investigation or any type of investigation of a
22 historic property, we rely upon lots of historical
23 documents. The Sanborn fire insurance maps is one of
24 the things we commonly use, in addition to old
25 drawings or anything that we can find, old aerials,

1 put together a -- an idea of where to start the
2 investigation.

3 Q. And the Sanborn maps aren't always
4 100-percent accurate, are they?

5 A. They -- they sometimes are not accurate.

6 Q. For example, there have been instances
7 where you had a Sanborn map and then, as you were
8 investigating and remediating, you found something
9 that was not shown on the map, correct?

10 A. Correct. So the Sanborn maps only show
11 what was -- what was visibly -- most likely --
12 most -- most of the time above grade because they
13 were put together for fire insurance purposes so they
14 would not have shown below-grade structures. So we
15 use these to help us determine where is a starting
16 point for the investigation, but things change.
17 There are, as you can see, the first one was 1891.
18 The second one was 1904. If there was anything that
19 was built, taken down during that time period, was
20 not marked on these maps.

21 Q. And similarly there were -- would be
22 instances where you had a map that indicated
23 something would be there and you found nothing,
24 correct?

25 A. Sometimes that happens.

1 Q. Let's stick with this map a little bit
2 longer and I would like you to look back at the
3 Phase 2 Area. Now, other than looking at this map
4 and seeing the legend, you were not previously
5 familiar with the phrase "Phase 2 Area" before filing
6 your testimony, correct?

7 A. I did not recall Phase 2 Area.

8 Q. And you don't have any personal knowledge
9 of what work was done in the West of the West from
10 2015 to 2018, other than reading Mr. Bachand's
11 testimony, correct?

12 A. That is correct.

13 Q. Let's look at -- we can move on from that
14 for now. We will leave it up because we may come
15 back to it. Let's look at page 9 of your 2014
16 testimony actually.

17 A. I am on page 9.

18 Q. Great. And on line 19, you note that
19 Duke had begun a limited investigation of the Ohio
20 River; is that correct?

21 MR. McMURRAY: Chris, are you in the 2014
22 testimony?

23 MR. HEALEY: Yes.

24 A. Yes, that's correct.

25 Q. And since you filed this in the 2014 case

1 that would have been for 2013 costs, correct?

2 A. Yes.

3 MR. HEALEY: Your Honor, I would like to
4 mark OCC Exhibit 1. This is Duke's response to an
5 OCC Interrogatory INT-01-031 from Case No. 14-375,
6 received by Duke on April 22, 2014. May I approach
7 the witness?

8 EXAMINER ADDISON: You may, and it is so
9 marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. (By Mr. Healey) Ms. Bednarcik, I just
12 handed you a document that's now been marked OCC
13 Exhibit 1. Do you see at the bottom of this document
14 that you are identified as the person responsible for
15 this response?

16 A. Yes.

17 Q. And you, in fact, provided this response
18 back in 2014, correct?

19 A. Yes.

20 Q. And the question asks "What testing/
21 monitoring has been performed by ARCADIS as part of
22 an investigation of contamination in the Ohio River"
23 and then your response refers to sediment samples and
24 then something called TarGOST? Can you tell me how
25 to say that?

1 A. Yes, TarGOST.

2 Q. TarGOST. Can you tell me what TarGOST
3 is?

4 A. TarGOST is a sampling technique where a
5 probe goes down into the soil or the sediment and
6 emits a light and the light bounces off of the
7 tar-like material, oil-like material. It helps
8 identify where there is that product that's in the
9 ground. That's about as much as I remember from --
10 from a number of years ago.

11 Q. Sure. And so this TarGOST is part of the
12 sediment sampling process?

13 A. Yes.

14 Q. And did Duke hire -- I'm sorry, was that
15 done by ARCADIS as well?

16 A. Yes.

17 Q. And so Duke incurred a cost for ARCADIS
18 to use this TarGOST, correct?

19 A. Yes.

20 Q. And do you know how much that cost was?

21 A. I do not recall.

22 Q. Let's look at page 10 still within your
23 2014 testimony, please. And starting at line 1, you
24 identify various entities that you needed to get
25 permits and/or approvals from; is that correct?

1 A. That is correct.

2 Q. One of the ones you listed is the
3 Kentucky Transportation Cabinet.

4 A. Yes.

5 Q. And another is the Kentucky Department of
6 Fish and Wildlife Resources, correct?

7 A. Correct.

8 Q. And you needed to go through these
9 Kentucky departments because the work you were doing
10 in the Ohio River was on the Kentucky side of the
11 river, correct?

12 A. Some of it was in the Ohio side and some
13 of it was in the Kentucky side. When we were looking
14 at doing this investigation, I had the consulting
15 firm, ARCADIS, look at all the different types of
16 permits that we would be required to obtain and this
17 was the list of permits.

18 Q. And so there was, in fact, sediment
19 sampling done on the Kentucky side of the Ohio River?

20 A. Based upon my recollection that some of
21 the sampling was in Kentucky.

22 Q. Let's move to page 13 of your 2014
23 testimony, please.

24 A. I am on page 13.

25 Q. Great. At line 20 to 22, you state "This

1 is the general sequence that Duke Energy Ohio is
2 implementing on both Ohio MGP sites, initially
3 focusing on the soil and groundwater, and then
4 looking off-site." Do you see that?

5 A. I do see that.

6 Q. And you would consider the Ohio River to
7 be off-site, correct?

8 A. I would.

9 Q. While you were project manager in 2013
10 and 2014, you would have done investigation
11 throughout the Area West of the West to determine the
12 extent of the impacts there, correct?

13 A. Correct.

14 Q. And Duke would have incurred costs to do
15 these investigations?

16 A. Yes.

17 Q. Do you know how much it cost to
18 investigate the Area West of the West in 2013 and
19 2014?

20 A. I do not recall the specific amount off
21 the top of my head, but it would have been in line
22 with a typical investigation; \$250,000 generally.

23 Q. But you don't have any specific knowledge
24 on how accurate that 250,000 estimate might be?

25 A. No.

1 Q. And while you were project manager in
2 2013 and 2014, Duke did some soil samples in the Area
3 West of the West, correct?

4 A. Correct.

5 Q. And during that period, Duke installed
6 groundwater wells on the West of the West, correct?

7 A. Yes.

8 Q. And you would have done investigations
9 throughout the entire West of the West to determine
10 the extent of the impacts in that area, correct?

11 A. Yes.

12 Q. Would there have been any part of the
13 West of the West that you did not investigate at all
14 in 2013 and 2014?

15 A. Our investigation would have been to
16 determine the extent of the manufactured gas plant
17 impacts in that area so we would have continued to do
18 investigation in that area so we can find what those
19 limits were. So I am not quite sure what -- what you
20 are asking.

21 Q. Sure.

22 A. We moved until we found -- we knew where
23 the limits of the impacts were located.

24 Q. Let's -- let me take a look at the map
25 briefly. There is the yellow section. Are there any

1 areas on the yellow section of the map that you can
2 point to and say we did not investigate that part of
3 the yellow area?

4 A. At -- in the 2012-2013 we would not have
5 done the river bank or the river portion.

6 Q. Okay.

7 A. But the uplands portion we looked
8 throughout that area.

9 Q. Are you familiar generally with the
10 concept of a No Further Action letter?

11 A. Yes.

12 Q. And that's part of the Ohio VAP rules;
13 isn't that right?

14 A. Correct.

15 Q. And "VAP" being the Ohio Voluntary Action
16 Program?

17 A. Yes.

18 Q. Can you tell me what a No Further Action
19 letter is?

20 A. If I remember what I recall from the Ohio
21 VAP is that there is two different things you can
22 obtain. One is a Covenant Not to Sue, and one is a
23 No Further Action letter. It is -- and this may be a
24 better question for Mr. Fiore as the VAP CP -- based
25 upon my recollection, there is the -- No Further

1 Action is written by the VAP CP to say that the
2 entity that is moving through the VAP has met all
3 obligations and has met all of the environmental
4 obligations that were required and that there would
5 be no further action required, no more additional
6 remediation is needed at that time. A Covenant Not
7 to Sue is the next step.

8 Q. Now, does the Ohio EPA have to do
9 anything to verify the No Further Action?

10 A. I don't recall the specifics. I know, I
11 can't remember if it was a Covenant Not to Sue or NFA
12 if those get audited by Ohio EPA. I do remember
13 that, through the VAP process, the CPs would have a
14 certain amount that would get audited during a time
15 period but I can't remember the amount or if it was
16 just for an NFA or Covenant Not to Sue.

17 Q. And is it your understanding that the
18 Covenant Not to Sue would be issued by the Ohio EPA
19 itself, correct?

20 A. That's -- that's my recollection.

21 Q. Okay. Now, I want to try to understand
22 the process a little bit better. So I hope you can
23 help me. Just generally speaking you have a site
24 that you found to be contaminated. Then you
25 remediate it. The remediation is complete and, at

1 that point, you would seek the No Further Action?

2 A. If you have met all applicable standards.
3 And the VAP CP has certified that, yes, the Company
4 or whoever is doing the -- whoever has the liability
5 has met all the applicable standards, then you can
6 move forward to do a No Further Action letter.

7 Q. And if you, in fact, obtain a Covenant
8 Not to Sue, then you would consider that property to
9 be complete for purposes of remediation under the
10 VAP, correct?

11 A. That is my understanding of the VAP, yes.

12 Q. Let's go back to your supplemental
13 testimony, please. And page 7.

14 A. I'm on page 7.

15 Q. Great. Now, on line 19, starting on
16 line 19, you state that costs associated with the
17 Riverside Drive Property incurred in 2014 and beyond
18 were not included in the Rider MGP Update
19 applications; is that correct?

20 A. That is correct.

21 Q. And so beginning in 2014, Duke segregated
22 any costs it incurred for the Purchased Parcel and
23 then excluded it from its applications; is that
24 right?

25 A. Not exactly. So the Purchased Parcel was

1 the entire area that we purchased from DCI. We did
2 some additional initial investigation of the entire,
3 I think it was 9 acres, in order to determine which
4 portions of the property had been impacted by
5 manufactured gas plant impacts and which portions had
6 not.

7 So in 2014 and beyond, we -- we had
8 determined which portions of that entire Purchased
9 Parcel had been impacted by MGP and that was the West
10 of the West Parcel. And then everything that had not
11 been impacted by manufactured gas plant impacts ended
12 up being the Riverside Drive Parcel. And so anything
13 else that we did after we had made that determination
14 of what had been impacted by MGP and what had not,
15 anything that was not associated with the property,
16 that was not impacted by MGP, was removed from the
17 rider.

18 Q. Thank you. I spoke imprecisely when I
19 said Purchased Parcel. What I meant to ask was,
20 beginning in 2014, you segregated the costs for the
21 Riverside Drive property and excluded them from the
22 applications, correct?

23 A. Correct.

24 Q. Thank you.

25 And you did not segregate costs for the

1 West of the West, however, correct?

2 A. We did not.

3 Q. But if you had been told at the time to
4 segregate the costs for the West of the West that
5 would have been possible, correct?

6 A. If we had been told specifically, yes,
7 the Commission would require that, we would have done
8 that.

9 Q. You're generally familiar with something
10 called the Brent Spence Bridge Corridor Project?

11 A. Yes.

12 Q. Let's go back to your 2014 testimony,
13 please. And we will be on page 7.

14 A. I'm on page 7.

15 Q. In line 4, you refer to construction of
16 new electrical equipment. Do you see that?

17 A. I do see that.

18 Q. And that would be a substation; is that
19 right?

20 A. Yes.

21 Q. And if the Brent Spence Bridge project
22 were terminated, would Duke still need to move the
23 substation?

24 A. I do not believe so but the payment for
25 that new substation was all done by the Brent Spence

1 Bridge project for the substation itself.

2 Q. Let's go back to your supplemental
3 testimony, please, page 5.

4 A. I am on page 5.

5 Q. And on line 10, you state, beginning with
6 full first sentence there "The Commission did not
7 require Duke Energy Ohio to remove any costs for
8 investigation or remediation on any basis...." Do
9 you see that?

10 A. I see that.

11 Q. That statement is not accurate, is it?

12 A. It is accurate because we did not -- were
13 not required to remove any costs for investigation or
14 remediation. We were -- the only -- to the best of
15 my recollection, through the Commission's Order, the
16 only thing that was removed was the cost for the
17 purchase of the parcel. The purchase of the
18 property.

19 Q. Isn't it true that the Commission
20 disallowed investigation costs for the West End for
21 2008?

22 A. Yes, from 2000 -- yes, from 2008. I --

23 Q. So your statement that Duke was not
24 required to remove any costs for investigation would
25 not be accurate then, correct?

1 A. So in line 6, we do call out the 2008
2 cost for the West End site, so it was called out
3 earlier in a previous line. That was called -- that
4 was removed from the Commission.

5 Q. Sure. My question is about your
6 statement on line 10. "The Commission did not
7 require Duke Energy Ohio to remove any costs for
8 investigation or remediation on any basis...." That
9 is not correct or accurate, correct?

10 A. In line -- 2008 costs for the West End
11 site, you are correct.

12 Q. And to your knowledge, Duke didn't
13 challenge the Commission's ruling disallowing those
14 2008 West End costs, correct?

15 A. I do not recall us challenging that.

16 Q. Ms. Bednarcik, do you recall what year
17 Duke predecessors became the owner of part of the
18 West of the West?

19 A. I do not remember. I don't recall at
20 this time.

21 Q. Sure. Let's look at page 4 of your
22 supplemental testimony.

23 A. I am on page 4.

24 Q. And on line 10, you state part -- "Part
25 of the Area West of the West Parcel had previously

1 been owned by Duke Energy Ohio's predecessors from
2 1928 until it was sold to DCI in 2006." Do you see
3 that?

4 A. I do see that.

5 Q. Does that refresh your memory on when
6 Duke's predecessors became the owner of part of the
7 West of the West?

8 A. Yes.

9 Q. And that would be 1928, correct?

10 A. Yes.

11 Q. And to the best of your knowledge, the
12 predecessors didn't own any of the West of the West
13 before 1928, correct?

14 A. Correct.

15 Q. Now, in your supplemental testimony you
16 refer, at various points, to an iron tar tank that
17 you believe to have been found partially in the West
18 Parcel of the East End and partially in the West of
19 the West, correct?

20 A. It was partially in the West Parcel of
21 the site. When we were doing the remediation of the
22 West Parcel, we found portions of it.

23 Q. And do you know when this tar tank was
24 installed?

25 A. I do not recall when it was installed.

1 Looking at the JLB-1, it looks like it was part of, I
2 can't tell on the colors if it was the 1904 or 1917
3 Sanborn but it was at least identified on those
4 Sanborns.

5 Q. Do you know when it was removed?

6 A. I do not know.

7 MR. HEALEY: Your Honor, I would like to
8 mark OCC's next exhibit. This would be OCC Exhibit
9 2. This is Ms. Bednarcik's supplemental direct
10 testimony from the 2012 rate case.

11 EXAMINER ADDISON: It will be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MR. HEALEY: May I approach?

14 EXAMINER ADDISON: You may.

15 Q. (By Mr. Healey) Ms. Bednarcik, I have
16 handed you what has now been marked OCC Exhibit 2.
17 Do you recognize this as the supplemental direct
18 testimony you filed back in Duke's rate case in 2013?

19 A. Yes.

20 Q. Would you like to flip through it just to
21 confirm that I have given you an accurate copy. Or
22 you can trust me, it's up to you.

23 A. It appears to be an accurate copy.

24 Q. Can we turn to page 14 of this testimony,
25 please.

1 A. I am on page 14.

2 Q. And starting at line 11, you testified
3 here "The 1917 Sanborn map shows the same features as
4 the previous Sanborn maps, except the iron tar tank
5 on the West Parcel has been removed...." Do you see
6 that?

7 A. I do see that.

8 Q. So that would suggest to you that the tar
9 tank had been removed sometime between 1904 and 1917?

10 A. Correct.

11 Q. And based on our earlier conversation,
12 that would have been before Duke or its predecessors
13 owned the West of the West, correct, given that they
14 purchased it in 1928?

15 A. That's what it appears, yes.

16 MR. HEALEY: Nothing further, your Honor.

17 EXAMINER ADDISON: Thank you very much,
18 Mr. Healey.

19 Ms. Bojko.

20 MS. BOJKO: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. Bojko:

24 Q. Good afternoon, Ms. Bednarcik. Who are
25 you employed by?

1 A. Duke Energy Business Services.

2 Q. And as an employee of, do you call it
3 "DEBS" as short?

4 A. Yes.

5 Q. Duke Energy Business Services? As an
6 employee of DEBS, how do -- you do work for DEO, is
7 that correct, Duke Energy Ohio?

8 A. Duke Energy Business Services does work
9 for all of the different companies under the Duke
10 Energy umbrella.

11 Q. So in your role prior to 2015, you did
12 work in your capacity as project manager for the MGP
13 remediation sites for affiliates of Duke Energy Ohio,
14 correct?

15 A. So I -- as -- as an employee of Duke
16 Energy Business Services, I did work for Duke Energy
17 Ohio, Duke Energy Indiana, Duke Energy Carolinas,
18 Duke Energy Progress and Duke Energy Florida. So for
19 different companies within the Duke Energy company.

20 Q. And those are affiliates of Duke Energy
21 Ohio that you mentioned?

22 A. If that's the correct term. I am not
23 sure if affiliates is the right term or not. I have
24 never heard it called as an affiliate but there all
25 part of Duke Energy, individual companies under Duke

1 Energy.

2 Q. And some of those companies that you just
3 mentioned are nonregulated entities, correct?

4 A. Those all have -- I believe those all
5 have regulated entities with it. There are some
6 nonregulated portions of Duke Energy. I don't
7 remember specifically underneath those ones that I
8 mentioned.

9 Q. Fair enough. But you did do work for
10 unregulated entities; is that correct?

11 A. If I did any work -- as part of -- as
12 part of my role in DEBS, my focus is on the regulated
13 side. If there was any work that was done on an
14 unregulated side, then that would be minor and would
15 have been charged, of course, appropriately to those
16 unregulated entities.

17 Q. And you are a chemical engineer; is that
18 correct?

19 A. That is my degree.

20 Q. And I am going to try not to repeat
21 questions but sometimes I have to ask some
22 foundational so just so I understand. Could you
23 please pronounce "Bachand"? Is that how you say his
24 name? How would you say his name?

25 A. Todd Bachand.

1 Q. Bachand, thank you. Mr. Bachand holds
2 the position of project manager that you held prior
3 to 2015, correct?

4 A. Currently he does.

5 Q. And you were in the role as project
6 manager when Mr. Bachand was hired, correct?

7 A. Yes. I actually hired him.

8 Q. And when you were in that position as
9 project manager, you filed testimony in this
10 proceeding, in the 2014 proceeding, regarding 2013
11 cleanup costs, correct?

12 A. Correct.

13 Q. And you said that you've now reviewed
14 Bachand's testimony in 2015; is that correct?

15 A. I reviewed -- no, I don't remember
16 specifically which ones but I reviewed his
17 testimonies that were filed as part of this hearing.
18 So the one supplemental that was done in a couple
19 months ago and the one that was done earlier this
20 year.

21 Q. Okay. And when you were transitioning
22 out of your project manager position, you reviewed
23 the 2015 testimony before it was filed, correct?

24 A. The testimony that covered the work that
25 was in 2014, yes, I did review that.

1 Q. And have you reviewed Mr. Bachand's
2 deposition?

3 A. No, I have not.

4 Q. And it's fair to say that you didn't file
5 testimony in the 2015 to 2019 cases that are now part
6 of this big consolidated case for the costs
7 associated with 2014 to '18 because you were no
8 longer in the group, correct?

9 A. That is correct.

10 Q. You have stated previously that you have
11 been advised by legal counsel that Duke is liable for
12 cleanup; is that correct?

13 A. By legal counsel but also based upon my
14 experience working in environmental remediation
15 cleanups of -- that's why we have a remediation group
16 within Duke Energy is to manage and to address the
17 liability that we have.

18 Q. You filed -- Mr. Healey provided you with
19 your testimony in 2013, supplemental direct
20 testimony. Do you recall also filing direct
21 testimony in the 2012 case?

22 A. Yes.

23 Q. And I believe you answered a question to
24 the Bench earlier. You are not an attorney; is that
25 correct?

1 A. I am not an attorney.

2 Q. Can you tell me when Duke became liable,
3 under your statement that Duke is liable?

4 MR. McMURRAY: Objection, it calls for a
5 legal conclusion.

6 MS. BOJKO: Ironical, your Honor, that's
7 the exact reason I moved to strike all of this
8 testimony.

9 EXAMINER ADDISON: Thank you, Ms. Bojko.
10 I will allow the question.

11 THE WITNESS: Can you repeat the
12 question, please?

13 MS. BOJKO: Could I have it reread,
14 please?

15 EXAMINER ADDISON: You may.

16 (Record read.)

17 A. So based upon my experience in
18 environmental remediation is that we are liable under
19 CERCLA for any type of waste that was generated by
20 the entity or by the Company. So with the enactment
21 of CERCLA and with the state laws that also
22 require -- that are a part of the umbrella under
23 CERCLA is that we are required to address any type of
24 hazardous waste that was generated by the company.

25 Q. And have you read the CERCLA act before

1 filing -- did you read the CERCLA act before filing
2 your testimony in the 2019 case?

3 A. I have not reviewed the CERCLA act
4 recently. I did a lot more CERCLA work many years
5 ago.

6 Q. And you wouldn't consider yourself an
7 expert in CERCLA, would you?

8 A. I'm knowledgeable of CERCLA because of
9 the years I've worked on remediation that fall
10 underneath CERCLA, but I am not a legal expert on
11 CERCLA.

12 Q. Are you an expert in CERCLA, a nonlegal
13 expert in CERCLA?

14 A. I would consider myself an expert of
15 remediation and investigation that needs to occur to
16 address CERCLA just based upon my years of experience
17 and the different roles I have had over the years;
18 also being part of there is an EPRI MGP group, there
19 was a USWAG, Utility Solid Waste Action Group, which
20 also addressed these types of remediations so I am --
21 I know CERCLA. I know what the requirements are
22 generally. This is also why we hire attorneys to
23 help us out and people like VAP experts to make sure
24 that we are addressing all the liability and the
25 nuances of each individual state.

1 Q. But just so we're clear, you are not an
2 expert in CERCLA, correct?

3 A. I would not consider myself an expert in
4 CERCLA.

5 Q. And it's your understanding that the
6 remediate -- remediation efforts Duke is performing
7 are being completed under the Voluntary Action Plan
8 not CERCLA, correct?

9 A. It is my understanding that it is
10 being -- they are going through the VAP which is the
11 Ohio EPA Voluntary Action Program but it is -- based
12 upon my recollection, it has been a few years since I
13 have been in the details, but my recollection is
14 there is the federal law which is CERCLA and that the
15 enforcement has been pulled over into Ohio EPA in
16 order to address the sites in Ohio. So it's -- it's
17 an Ohio EPA, Ohio VAP program that we are underneath
18 but that the CERCLA laws, the federal laws also
19 apply.

20 And I believe Mr. Margolis in the,
21 original 2012 testimony, actually applied and
22 discussed what the liability was associated with,
23 what the legal liability is, and he was an attorney
24 or is an attorney.

25 MR. HEALEY: Move to strike, your Honor.

1 MS. BOJKO: Yeah.

2 MR. HEALEY: Move to strike for hearsay
3 basis that she's citing testimony of a witness that's
4 not here in this case and trying to rely on his legal
5 expertise from a prior case to establish her own
6 testimony.

7 EXAMINER ADDISON: Thank you.

8 Mr. McMurray, I will allow you a quick
9 response.

10 MR. McMURRAY: That was testimony that
11 was subject to cross-examination in the prior
12 proceeding. The PUCO issued its Opinion and Order
13 based, in part, on the testimony of Mr. Margolis
14 which is where we've determined that Duke Energy Ohio
15 has liability under CERCLA and other state and
16 federal environmental laws. Again, I think that's
17 been established as the law of the case in this
18 proceeding.

19 EXAMINER ADDISON: Thank you. And the
20 Commission can certainly go back and review the
21 testimony of Mr. Margolis and verify that is in fact
22 his testimony and when comparing it to
23 Ms. Bednarcik's.

24 But on that note, I would like to invoke
25 my one-bite-of-the-apple rule and, from this point

1 forward, Ms. Bednarcik, if you could just answer
2 counsel's question. Counsel's question only.

3 THE WITNESS: Okay.

4 EXAMINER ADDISON: You will certainly
5 have an opportunity to bring any information you find
6 to be necessary upon redirect with your counsel.

7 THE WITNESS: Okay.

8 EXAMINER ADDISON: Thank you.

9 MS. BOJKO: Thank you, your Honor. At
10 this time, for identification purposes, I would like
11 to mark as OMAEG Exhibit 1, the Opinion and Order in
12 the 2012 case.

13 EXAMINER ADDISON: It will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MS. BOJKO: May I approach, your Honor?

16 EXAMINER ADDISON: You may.

17 MR. McMURRAY: Your Honor, while we are
18 doing this, I would ask at what point do you
19 anticipate taking a break in the testimony?

20 EXAMINER ADDISON: Let's go off the
21 record for a moment.

22 (Discussion off the record.)

23 EXAMINER ADDISON: Let's go back on the
24 record.

25 Q. (By Ms. Bojko) Ms. Bednarcik, instead of

1 your reference to another witness's testimony, I
2 would like to see what the Commission actually said
3 about this issue, so if you would turn to page 31 --
4 well, first of all, let me back up with the break.
5 Do you recognize this document?

6 A. Yes.

7 Q. And we've already explained that you were
8 a witness in the case below and you would have
9 expected to see your -- your name is throughout this
10 Order; is that correct?

11 A. Yes.

12 Q. And you're familiar with this Order?
13 You've reviewed it after the Commission issued it?

14 A. Yes.

15 Q. And does the copy I gave you appear to be
16 the Commission Order that you reviewed?

17 A. Yes.

18 Q. So -- I'm sorry I keep saying "the case
19 below." I am talking about the 2012 prior case. Do
20 you understand that to be --

21 A. Yes.

22 Q. -- the case I am speaking of? Okay. So
23 if we could look at page 31 of the Commission Order.
24 And if you look at the top -- first paragraph at the
25 top of the page, it's about the third line down, it

1 starts with "However." Do you see that sentence?

2 A. I do.

3 Q. And this -- it says "However, he" and
4 it's referring back to Duke Witness Fiore, do you see
5 that?

6 A. I do.

7 Q. And it says "he points out that the
8 remediation at the East and West End sites is being
9 done pursuant to the VAP and not under CERCLA,"
10 correct?

11 A. I do see that.

12 Q. Is that correct? Did I read that
13 correctly?

14 A. You did read that correctly.

15 Q. And I'm sorry I know there was an
16 objection, maybe we missed it. Did you tell me when
17 you believed that the liability started?

18 A. My recollection is that the liability
19 started when -- when CERCLA was enacted, as part of
20 the fact that we generated the waste that we had the
21 liability. That's the -- my recollection.

22 Q. So just for the record, you believe it
23 started when CERCLA was enacted in 1980?

24 A. I don't recall the exact year the CERCLA
25 was enacted.

1 Q. And could you -- do you still have with
2 you what's been marked as OCC Exhibit 2 up there?
3 And this is your supplemental testimony in the 2012
4 case.

5 A. Is that the one with the February 25 date
6 of 2013 on it?

7 Q. Yes.

8 A. Yes, I do have it in front of me.

9 Q. Okay. If could you look at page 20,
10 line 7.

11 A. I am on page 20.

12 Q. Lines 6 and 7, you state that the
13 MGP-related obligations have been anticipated at Duke
14 Energy MGP sites since 1988. So eight years after
15 CERCLA was enacted; is that correct?

16 A. Again, I don't remember when CERCLA was
17 enacted but, according to this, we anticipated
18 obligations since 1988.

19 Q. Do you know, do you recall, I am sure I
20 asked you this in the 2012 case, do you recall when
21 the plants stopped operating, the MGP plants?

22 A. As I sit here today, I do not recall
23 those dates.

24 Q. Does 1963 and '67 sound familiar?

25 A. I would have to go back through the

1 documents to be able to say whether or not those
2 sound familiar. I don't recall where I sit today.

3 Q. Well, do you still have OCC Exhibit 2? I
4 found one answer to my question. If you could look
5 at page 4 of your supplemental testimony in the 2012
6 case. It's been marked as OCC Exhibit 2.

7 A. Which -- I don't have the document marked
8 in the top, so which one?

9 Q. Your 2012 supplemental testimony.

10 A. Okay. Which page?

11 Q. Page 4.

12 A. Uh-huh.

13 Q. Lines 10 and 11. Here, do you recognize
14 that the CERCLA was an act of 1980?

15 A. I do see that.

16 Q. Okay. So now let's turn to the
17 Commission Order that you have in front of you on
18 page 25. 2012. It's been marked OMAEG Exhibit 1.

19 A. I am on page 25.

20 Q. And do you see on page 25 that the sites
21 stopped operating -- it's in the second full
22 paragraph.

23 A. It states that manufactured gas
24 operations ended at the West End plant in 1928 and
25 the East End plant in 1963.

1 Q. So is it your recollection that they were
2 restarted for a brief period in '63 and '67? Do you
3 have a recollection of that?

4 A. I don't. The previous -- actually the
5 paragraph talks about the manufactured gas production
6 stopped in 1909 at these sites.

7 Q. Okay.

8 A. But was reinstated in 1918 at West End
9 and 1925 at East End.

10 Q. Okay. Thank you for that clarification.

11 So if we look at 1928 when the plant
12 start -- stopped, around those periods, the
13 remediation though didn't begin until 2006 and 2009
14 on those sites; is that correct?

15 A. 2006 at the East End site, and around
16 2009 in the West End site, yes.

17 Q. And it's your understanding that those
18 sites were considered low priority; is that correct?

19 A. Low priority within the Duke Energy,
20 looking at what needed to occur when it needed to
21 occur, so the priority was done by internal ranking.

22 Q. And that was because they were owned by
23 Duke; is that correct?

24 A. It is for -- based upon my recollection
25 it was a couple of reasons. One was that we owned

1 the property. It was also that the areas were
2 covered over and there was no -- there was no contact
3 impacts on that site where people were coming in
4 contact with it right away, so that was one of the
5 reasons why it was a lower priority than maybe
6 another site that Duke Energy Ohio owned.

7 Q. And when you say "covered over" you mean
8 because the sites were essentially capped by either
9 asphalt, concrete, or soil?

10 A. Yes.

11 Q. And wasn't another reason because the
12 groundwater was not used as a source of drinking
13 water at the sites or by surrounding properties?

14 A. That is to -- my recollection that was
15 another reason. One of the things we looked at is
16 related to priority ranking within the Company, yes.

17 Q. And when did Duke seek accounting
18 authority to defer costs related to the MGP sites?

19 A. I don't recall the exact year.

20 Q. Well, if you look at the Order at
21 page 26, the second full paragraph, isn't it true
22 that it cites, in 2009, deferral authority was
23 granted?

24 A. I'm sorry. I don't see that. What page
25 are you on?

1 Q. Page 26 of the Order, second full
2 paragraph. "By Order issued November 12, 2009, in
3 the Duke Deferral Case, the Commission approved
4 Duke's application to modify its accounting
5 procedures to defer the environmental investigation
6 and remediation costs...."

7 A. I do see that.

8 Q. So if that was in 2009, Duke deferred
9 costs for almost three years before seeking recovery
10 of those costs; is that correct?

11 MR. McMURRAY: Your Honor, I would like
12 to object to this line of questioning because I am
13 failing to see the relevance in all these. We are
14 walking through the 2013 Order that was based on
15 testimony and decisions the Commission made then as
16 to the recoverability of costs. I fail to see how
17 that's relevant to today's proceeding.

18 EXAMINER ADDISON: Thank you,
19 Mr. McMurray. I will allow Ms. Bojko a little bit
20 more leeway but perhaps we can move on to another
21 area shortly. The Order is what it is and you can
22 freely cite to it as you wish in your brief.

23 MS. BOJKO: Thank you, your Honor. I am
24 laying some foundation to establish how we got where
25 we are today in the cases before us.

1 Q. (By Ms. Bojko) And you listed off some
2 reasons to remediate earlier. One of the reasons to
3 remediate was the contact by the developer in 2006;
4 is that correct?

5 A. It was a change in use and that since
6 residential entities or homes were going to be
7 developed next to the site, one of the reasons we
8 started to look at doing the remediation is because
9 we were having residents near to the site.

10 Q. And it was Duke who unilaterally decided
11 at the time to begin environmental investigation; is
12 that correct?

13 A. Yes.

14 Q. And I'm sorry, did you tell Mr. Healey
15 who actually owned the Purchased Parcel when
16 remediation began?

17 A. In two-thousand -- the investigation
18 started at East End in 2006 and it was also in 2006
19 that some of the small portion was sold to DCI, so
20 the entire Purchased Parcel was owned by DCI.

21 Q. When remediation began?

22 A. When investigation began.

23 Q. Excuse me, thank you, when the
24 investigation began. And it was the same property
25 that was purchased back by Duke in 2011; is that

1 correct?

2 A. What -- what exactly -- which -- because
3 there was -- the purchased property wasn't all sold.
4 There was a small portion that was sold.

5 Q. The portion that was sold, it was the
6 exact same portion that Duke repurchased in 2011,
7 correct?

8 A. Yes.

9 Q. And it was in 2011 when the developer
10 called to obtain easements of that property; is that
11 correct?

12 A. No.

13 Q. Okay. When did that occur?

14 A. When I became project manager in 2006,
15 easements already had been granted for a portion of
16 the property.

17 Q. And would you consider the property sold
18 to DCI what we've been calling the WOW property?

19 A. The property sold to DCI in 2006 is a
20 portion of the WOW property.

21 Q. Did DCI do any investigation or cleanup
22 of the property?

23 A. I do not know.

24 Q. Had DCI retained the property, would it
25 have an obligation to remediate the land?

1 MR. McMURRAY: Objection. That asks for
2 a legal conclusion.

3 EXAMINER ADDISON: Ms. Bojko.

4 MS. BOJKO: Your Honor, as I moved to
5 strike many times where she made legal conclusions
6 about Duke's liability, I am asking her, in her
7 experience, if she believes that DCI had liability.

8 EXAMINER ADDISON: I don't believe she
9 can state that on behalf of DCI, so. Objection
10 sustained. Let's move on.

11 Q. (By Ms. Bojko) It's true that that
12 property that you just referenced was -- that was
13 going to be developed, was never actually developed,
14 correct?

15 A. When I moved into my new role in 2015,
16 the property was not developed.

17 Q. And it hasn't been developed, correct?

18 A. I do not know. I have not gone out to
19 investigate.

20 Q. The land was purchased in 2011 and, as we
21 just discussed, that was after the deferral authority
22 was given in 2009, correct?

23 A. Yes.

24 Q. And isn't it true that Duke said in the
25 2012 case that the purchased property was recorded as

1 nonutility plant because it was not being used to
2 provide utility service?

3 A. I do not recall the specifics of that. I
4 do know it was part of the Order but I can't recall
5 exactly those words.

6 Q. And isn't it true that the Purchased
7 Parcel has not been used and useful in the provision
8 of MGP?

9 A. I don't -- I'm not quite sure what you
10 are asking.

11 Q. Well, do you know whether the -- let's
12 back up.

13 Do you know whether the Purchased Parcel
14 is currently being used to provide utility service?

15 A. I do not know.

16 Q. And given that Duke did not own the
17 Purchased Parcel prior -- or during the MGP sites,
18 it's fair to say it was not used for the MGP plants;
19 is that correct?

20 MR. McMURRAY: Objection. That
21 incorrectly states her prior testimony in that a
22 portion of the Purchased Parcel has been renamed the
23 "Area West of the West Parcel" which her testimony
24 indicated was used for MGP operations.

25 Q. (By Ms. Bojko) Well, I thought you stated

1 to Mr. Healey that the Purchased Parcel, the
2 Riverside Drive property, and the Area West of the
3 West Parcel was not owned by Duke prior to 2011. Is
4 that not correct?

5 A. That is not correct.

6 Q. Okay. What was not owned by Duke prior
7 to 2011?

8 A. So -- so in 2006 is when Duke Energy sold
9 the easternmost portion of the Area West of the West
10 to DCI, so we did own that piece of property prior to
11 2011.

12 Q. So it's that piece of property that you
13 believe was involved in MGP.

14 A. So that piece of property was owned by
15 Duke Energy at -- or a predecessor company of Duke
16 Energy. I don't -- whether or not it was a portion
17 of the old MGP site, I would have to look back
18 through the historical documents. I don't recall.

19 Q. You just don't know.

20 A. I don't recall.

21 Q. A minute ago when I asked you a question
22 about the nonutility plant being used to provide
23 utility service, you said you believed it was in the
24 Order but you didn't recall where. Could you turn to
25 page 42 of the Commission Order.

1 A. I am on page 42.

2 Q. Isn't it true that here the Commission
3 discusses -- do you know who Mr. Wathen is?

4 A. Yes.

5 Q. Mr. Wathen is a Duke employee that was a
6 witness in the 2012 case; is that correct?

7 A. Yes.

8 Q. Isn't it true that because of
9 Mr. Wathen's statements that it was not utility plant
10 and because there was no evidence that the purchased
11 property would eventually be used to provide gas
12 service to customers, Staff recommended that none of
13 the deferred expense associated with the Purchased
14 Parcel be recovered from customers?

15 A. So I'm -- can you please repeat the
16 question?

17 Q. Sure.

18 If you look at the summary of the
19 Commission Order, it states that because Mr. Wathen's
20 statements that it was a nonutility plant and because
21 there was no evidence that the purchased property
22 would eventually be used to provide gas service to
23 customers, Staff recommended that none of the
24 deferred expenses associated with the Purchased
25 Parcel be recovered from customers.

1 A. That appears to be Staff's
2 recommendation. And I do see where it says
3 Mr. Wathen states that the purchased property was
4 recorded on the Company's books as nonutility plant
5 and is not part of the rate base.

6 Q. So that was Staff's recommendation. If
7 you turn to page 43, the Commission summarizes here
8 that Duke disagreed that the costs to remediate, it
9 actually uses the word "remediate" the Purchased
10 Parcel are not recoverable, correct?

11 A. So again I am confused as to what you are
12 asking me. If you want me to read the sentence, I
13 can, but I am not sure what the question is.

14 Q. Well, it was Staff had a recommendation
15 in the 2012 case and Duke had a recommendation. The
16 Commission summarizes Duke's recommendation stating
17 that Duke disagreed that the costs to remediate the
18 Purchased Parcel are not recoverable, correct?

19 A. It reads that Duke disagrees that the
20 costs to remediate the purchased parcel not be
21 recoverable because we were responsible not only for
22 the impacts directly of the MGP under the historic
23 site, but also for cleanups of any impacts off-site.
24 That's what the paragraph states.

25 Q. Right. So the issue was clearly before

1 the Commission, the issue of recovery of the cost to
2 remediate the Purchased Parcel were, in fact, an
3 issue in the 2012 case, correct?

4 A. Based upon my recollection, the
5 remediation of that area was -- was part of the 2012
6 case.

7 Q. And now let's turn to page 60 of the
8 Commission Order. In the first full paragraph of the
9 order, the Commission explicitly stated that "Duke
10 failed to provide, on the record, what, if any, of
11 the Purchased Parcel was, or ever has been, used for
12 the provision of manufactured gas or utility service
13 for the customers of Duke or its predecessors,"
14 correct?

15 A. If you give me a moment, I am trying to
16 find where you are reading from.

17 MR. McMURRAY: Your Honor, I would just
18 like to make the relevancy objection again. I don't
19 see the purpose of reading through what each party
20 was saying that's reflected in the PUCO's Opinion and
21 Order. It seems to me like this would be better
22 suited to briefing after the testimony or after the
23 hearing has been concluded, rather than going through
24 with the witness to try to get the witness to say
25 this is what the Commission's Opinion and Order says.

1 EXAMINER ADDISON: Thank you,
2 Mr. McMurray.

3 Ms. Bojko, are you still laying
4 foundation at this point?

5 MS. BOJKO: Well, your Honor, this is
6 what counsel said was the key issue when I moved to
7 strike based on collateral estoppel. He said this
8 issue is key to this case so --

9 EXAMINER ADDISON: He did, but he also
10 said it was going to be more appropriate to argue in
11 brief.

12 MS. BOJKO: Your Honor, because my motion
13 to strike was denied, her testimony says that this
14 was not an issue in the case below. Her testimony
15 specifically says that remediation costs were not an
16 issue in the case below, it was only the above-market
17 purchase, and I am pointing out on -- on cross here
18 that this issue was in the case below. So it
19 directly contradicts her written testimony in the
20 2019 case. I moved to strike it because I thought it
21 was a collateral attack on the Commission's Order,
22 and that was denied, so now I have a right to
23 challenge the testimony that you've allowed to stand
24 in the record.

25 EXAMINER ADDISON: Aren't you able to

1 cite to the order and make those arguments on brief
2 that her testimony is inconsistent, without going
3 through each page of the Order to make that point?

4 MS. BOJKO: Your Honor, I mean, I think
5 that's the whole point of cross-examination to try to
6 discredit a witness or to point out inconsistencies,
7 to impeach the witness. That's exactly what I am
8 doing here is impeaching the witness.

9 EXAMINER ADDISON: But you are not asking
10 her questions about her testimony. You are asking
11 questions about the Order.

12 MS. BOJKO: Because her testimony says
13 that that was not the case in the case below. Her
14 testimony specifically says that remediation costs
15 were not at issue; it was only the above-market
16 purchase.

17 EXAMINER ADDISON: Perhaps it would help
18 if you cite to the specific areas in her testimony
19 where she is making that argument, that way we can
20 link everything back. I think that's where the
21 disconnect is.

22 MS. BOJKO: Sorry. I was getting there,
23 your Honor. I will move forward more quickly.

24 EXAMINER ADDISON: Thank you.

25 MS. BOJKO: So I am not sure, I think we

1 still have a pending question, your Honor.

2 (Record read.)

3 A. So later on in that paragraph I see where
4 it also says the record reflects the amount submitted
5 for recovery related to the price Duke paid to
6 purchase the property from a third-party and not to
7 the statutorily mandated remediation efforts.

8 So when reading through this, the way
9 that it was interpreted I will say, maybe as an
10 environmental professional, is that what was
11 disallowed was the price to purchase the property,
12 not the price related to the statutorily mandated
13 remediation efforts.

14 Q. Well, isn't it true that the only thing
15 requested in the 2012 case was the above-market
16 charge. There were no remediation efforts at that
17 time, correct?

18 A. There was investigation costs for the
19 entire purchased property that occurred in 2011 and
20 2012 that were included in the overall costs.

21 Q. There were no remediation costs; is that
22 correct?

23 A. When we talk through remediation costs,
24 remediation is the investigation and the actual --
25 when we say "remediation," it covers everything that

1 includes the actual removal of the material or
2 addressing the material and that does include the
3 investigation costs.

4 Q. Okay. I thought, before, you testified
5 that there were investigation costs and remediation
6 costs; is that not correct? It's all one?

7 A. There -- you can break it out into
8 investigation and remediation but, in an
9 environmental lingo, when we talk about remediating a
10 site, I can't remediate until you first investigate.

11 Q. So I don't think you answered my question
12 in -- on page 60, isn't it true that the Commission
13 specifically cited and referenced remediation costs?

14 MR. McMURRAY: I am going to object. To
15 me this further evidences why this is -- is not a
16 good use of everyone's time, is the language in the
17 Order refers to the statutorily mandated remediation
18 efforts. And so remediation efforts, as
19 Ms. Bednarcik testified, you have to investigate and
20 cleanup remediation efforts would include both. And
21 so, again, I don't see how this is beneficial to be
22 trying to walk through the Order and parse individual
23 sentences to the testimony of the witness.

24 EXAMINER ADDISON: Thank you,
25 Mr. McMurray. And Ms. Bojko has noted she will try

1 to move things along a little faster so we will give
2 her a little bit more leeway. And I will allow the
3 witness to have a little bit of latitude in her
4 answer, as well, in the event you need to clarify
5 anything.

6 THE WITNESS: Okay. Thank you.

7 MS. BOJKO: I hate to do this, I still
8 think there's a question pending.

9 Q. (By Ms. Bojko) My question is, the
10 Commission references remediation costs on page 60
11 when issuing its ruling, correct?

12 A. So I don't see exactly -- maybe I just
13 can't find it quickly. What line? About how far
14 down?

15 Q. There are no lines, unfortunately, but if
16 you look at the first full paragraph in the middle,
17 it starts with "Thus" and it talks about statutorily
18 mandated environmental remediation as your counsel
19 just testified to; is that correct?

20 A. I do see a sentence "Thus, when applying
21 the requirement for recovery"?

22 Q. Correct.

23 A. It states that the Commission was not
24 willing to entertain Duke's unsubstantiated request
25 for recovery of costs related to the property, that

1 has not been shown on the record in the case to
2 provide, either in the past or present, utility
3 services that caused -- that caused the statutorily
4 mandated environmental remediation. So, "that caused
5 the statutorily mandated remediation." It does not
6 specifically say it's taking away the remediation
7 costs.

8 Q. Well, on page 43, we talked about Duke's
9 position and the Commission summarizing Duke's
10 position stating that there were remediation costs.
11 Duke disagrees that costs to remediate the Purchased
12 Parcel are not recoverable, correct?

13 A. So the way that -- when we were looking
14 at this and how -- interpreting the Order, how we
15 interpreted it was that the costs that were
16 disallowed was the additional cost to purchase the
17 property, only purchase the property back. Anything
18 that was related to the remediation caused by the
19 manufactured gas plant on that piece of property that
20 was purchased, anything that was related to that
21 environmental liability was included. That was our
22 interpretation of the ruling.

23 Q. Well, you actually argued in the 2012
24 case that you should be able to recover costs to
25 remediate the Purchased Parcel, correct?

1 A. We did.

2 Q. And if you look at page 10 of your
3 supplemental testimony, lines --

4 EXAMINER ADDISON: Ms. Bojko, which
5 supplemental?

6 MS. BOJKO: I'm sorry, the one in this
7 case, the 2019.

8 EXAMINER ADDISON: Thank you very much.

9 MS. BOJKO: Thank you.

10 Q. (By Ms. Bojko) On line 19, this is --
11 this is where you state that you do not believe that
12 the Commission disallowed removal of investigation
13 remediation costs, correct?

14 A. So I did state that in my testimony. And
15 I think I am consistent in that the -- again, the way
16 we interpreted the Order was the cost to purchase the
17 property was disallowed, not costs associated with
18 the liability of the MGP site that had migrated onto
19 that property or had been on that property.

20 Q. Okay. Do you -- after the sentence you
21 just read on page 60 of the 2012 Commission Order,
22 isn't it true that the word "Moreover" is there
23 before it discusses the price of the purchased
24 property?

25 A. I do see the word "Moreover."

1 Q. And doesn't the Commission also say that
2 "any prudently incurred MGP investigation and
3 remediation costs related to the East and West End
4 sites, less costs associated with the purchased
5 parcel on the East End site"?

6 A. I do see that word, or that sentence.

7 Q. And it's your understanding that here and
8 in other places in the Commission Order that the
9 Commission distinguishes between East and West End
10 sites and the Purchased Parcel; is that fair?

11 A. Well, here it says the Purchased Parcel
12 on the East End site, so it's the East End site. In
13 the remediation world and how we look at sites, it
14 includes any area that the -- that impacts are
15 located.

16 Q. But the Commission specifically
17 references Purchased Parcel separately; is that
18 correct?

19 A. It does reference the Purchased Parcel on
20 the East End site.

21 Q. And just to be clear, I'm trying to
22 understand your prior comment. There were no
23 remediation, not investigation, so go to the second
24 step, there were no cleanup costs associated with the
25 Purchased Parcel of that -- that occurred in 2012

1 during the test year, correct?

2 A. During 2011-2012, they were part of the
3 remediation efforts which include the investigation
4 costs, but we had not addressed the impacts by
5 removing them or excavating them or solidifying them.

6 Q. I believe in your testimony that you
7 discuss a collaborative and MGP utility group, do you
8 recall that, that you were a part of?

9 A. Yes, the MGP Consortium was one of many
10 collaborative groups.

11 Q. Thank you, consortium. And how long was
12 Duke a member of that consortium?

13 A. I do not know the exact date that Duke
14 Energy joined the consortium, but when I came into --
15 I started working for Duke Energy in 2005, I do know
16 we were part of that in 2005.

17 Q. And do you know when the other utilities
18 in the collaborative or consortium began remediating
19 plants?

20 A. I do not know.

21 Q. Do you know how long it took those
22 utilities to remediate the plants?

23 A. I don't know specifically how long it has
24 taken to remediate those, but Duke does have other
25 MGP sites other than the Ohio ones, and they all

1 aren't generally the same amount of time. It takes
2 many, many years to properly go through the process
3 and prudently go through the process.

4 MR. McMURRAY: Your Honor --

5 Q. Are you talking about other Duke
6 utilities, or are you talking about the utilities in
7 the consortium?

8 A. Both.

9 MR. McMURRAY: Your Honor --

10 EXAMINER ADDISON: Oh.

11 MR. McMURRAY: It looks like we moved to
12 a different area of questioning, and per our prior
13 discussion it might be appropriate to take a break,
14 unless we're almost done.

15 MS. BOJKO: I realize that, your Honor.
16 Now I just -- can I just have a couple questions on
17 this area and then I will stop? I apologize.

18 EXAMINER ADDISON: Yes. Please proceed.

19 MS. BOJKO: My apologies. I realize that
20 occurred.

21 EXAMINER ADDISON: We are having too much
22 fun in here.

23 MS. BOJKO: Can I have her answer reread?

24 EXAMINER ADDISON: You may.

25 (Record read.)

1 Q. (By Ms. Bojko) How long did it take a
2 utility to complete remediation? Do you know
3 specific time periods, or are you just speculating?

4 A. It is very site specific so there are
5 different sizes of sites. So if it's a small site,
6 it may take a shorter amount of time. If it's a
7 larger site, it may take a larger -- longer amount of
8 time, so it's hard to be able to tell you a specific
9 time frame because every site is different.

10 Q. Right. And you just don't know. You
11 didn't do a poll of those utilities to find out
12 what -- how long it took them to remediate their
13 sites, correct?

14 A. I do not know.

15 Q. And you also don't know what types of
16 remediation that each of those utilities completed,
17 do you?

18 A. So when I was part of the MGP Consortium,
19 we would share practices and what we were doing at
20 our sites. So the type of work that we did at East
21 End, West End, excavation, solidification is very
22 similar and in line with what other utilities were
23 implementing on their sites.

24 Q. But I asked you if you know what specific
25 remediation efforts each utility took to clean up

1 each MGP site.

2 A. Where -- as I sit here today, I cannot
3 tell you the specific ones from each specific
4 utility.

5 Q. And you can't tell me whether each of
6 those utilities sought cost recovery from their
7 ratepayers either, could you?

8 A. I cannot.

9 MS. BOJKO: Okay. I am at a breaking
10 point now.

11 EXAMINER ADDISON: Thank you very much,
12 Ms. Bojko. At this point we will take an hour for
13 lunch. Let's see everyone back about 1:40. Thank
14 you.

15 (Thereupon, at 12:39 p.m., a lunch recess
16 was taken.)

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Monday Afternoon Session,
November 18, 2019.

- - -

EXAMINER ADDISON: At this time we will
go back on the record.

Ms. Bednarcik, I will remind you you are
still under oath.

THE WITNESS: Yes.

EXAMINER ADDISON: Ms. Bojko, you may
proceed.

MS. BOJKO: Thank you, your Honor.

- - -

JESSICA L. BEDNARCIK
being previously duly sworn, as prescribed by law,
was examined and further testified as follows:

- - -

CROSS-EXAMINATION (Continued)
By Ms. Bojko:

Q. Good afternoon. Isn't it true that Duke
has not received a formal order to remediate?

A. We have not received a formal order from
EPA.

Q. And am I correct in my understanding that
part of the West End property houses electrical
facilities?

1 A. Yes.

2 Q. And you mentioned earlier in response to
3 Mr. Healey that the new substation was paid for, I
4 thought you said paid for by the bridge but it would
5 have been paid for by whom?

6 A. So because the substation movement was
7 required for the new bridge project, Ohio Department
8 of Transportation reimbursed Duke Energy for moving
9 of the actual substation.

10 Q. But isn't it true that the -- I'm sorry,
11 the -- it's your understanding that ODOT paid for the
12 new substation or the relocation?

13 A. For the cost to relocate -- to build a
14 new substation because the old substation would have
15 been -- in the pathway of the new Brent Spence Bridge
16 and could not be used.

17 Q. Well, isn't it true there were costs
18 associated with that relocation that Duke did request
19 recovery under the MGP rider?

20 A. So my recollection is that we requested
21 costs to recover the costs for the remediation of the
22 MGP impacts that were underneath the substation
23 because the substation would have made it
24 inaccessible once it was built so it was -- in the
25 MGP prior was only the cost of the liability and

1 remediation of the soils, not the movement of the
2 substation itself.

3 Q. So it's not your understanding that the
4 Company has requested installation of new poles and
5 footings for the new substation in this -- in the MGP
6 Rider, recovery of those costs associated with that
7 in the MGP Rider?

8 A. So do you have a year as to when that
9 work was conducted? I don't remember in my testimony
10 from when it was requested of me prior.

11 Q. Have you reviewed the Staff Reports filed
12 in this case? Well, let's step back. Do you know
13 that there were two Staff Reports filed in this case?

14 A. Yes.

15 Q. Okay. And the first Staff Report was
16 filed on September 28, 2018, in Case Nos. 14 through
17 18; is that correct?

18 A. I don't have them in front of me but I
19 remember -- I reviewed two different Staff Reports.
20 I don't remember the dates.

21 Q. Okay.

22 MS. BOJKO: Mr. McNamee, could you help
23 me out, is it Staff Exhibit 1 and 2?

24 MR. McNAMEE: Staff Exhibit 1 is the
25 September 18 -- or 28 rather.

1 MS. BOJKO: Okay. I wanted to make sure
2 you didn't reserve any numbers.

3 MR. McNAMEE: No, no.

4 MS. BOJKO: Your Honor, may I approach?

5 EXAMINER ADDISON: You may.

6 MS. BOJKO: Let the record reflect I am
7 handing the witness what's been previously marked
8 Staff Exhibit 1. Do you have a copy of that?

9 EXAMINER ADDISON: I do. Thank you.

10 MS. BOJKO: I'm assuming you all have
11 copies.

12 Q. (By Ms. Bojko) Is this the Staff Report
13 that you just mentioned that you had reviewed
14 previously?

15 A. Yes.

16 Q. Okay. Could you turn to page 5, please.

17 A. I am on page 5.

18 Q. On the second paragraph it says that the
19 Company's testimony and invoices describe
20 installation of new poles and footings for the new
21 substation. Do you see that?

22 A. I do see where it says that.

23 Q. And it also says disposal of the soil as
24 well as unspecified substation costs?

25 A. I see where that's written.

1 Q. And in the Staff Report, the Staff
2 recommended disallowances of those costs; isn't that
3 correct?

4 A. They did disallow -- they recommended
5 disallowing those costs.

6 Q. You believe that it's important for a
7 company to be proactive rather than reactive; is that
8 correct?

9 A. Yes, typically it is actually less
10 expensive to be proactive than reactive.

11 Q. Would you consider waiting 39 years to be
12 proactive?

13 A. It depends upon the circumstances of the
14 work that is being asked or what really is a
15 case-by-case, subject-by-subject response.

16 Q. And would your answer be the same with
17 regard to waiting 18 years?

18 A. It would be the same.

19 Q. Were there any activities undertaken, as
20 part of the VAP, that Duke did not seek cost recovery
21 for under the MGP Rider?

22 A. Specifically to what? If you are --
23 specifically to the East End site and West End site,
24 I do not believe there is anything under the VAP that
25 is not to -- the Riverside Drive Property that was

1 not part of the rider.

2 Q. Isn't it true that in the 2014 filing
3 that you were involved in where you submitted
4 testimony, Duke did not include costs associated with
5 the WOW Parcel?

6 A. My recollection is in the 2014, we did
7 include costs associated with investigation of the
8 West of the West Parcel.

9 Q. And would your answer be the same for
10 2015?

11 A. Yes.

12 Q. When did the investigation of the WOW
13 Parcel begin?

14 A. After we had obtained access to the
15 property when we purchased it in 2011.

16 Q. And the 2014 was for 2013 costs. The
17 2014 filings were for 2013 costs; is that correct?

18 A. Yes.

19 Q. Let's turn to page 9 of your supplemental
20 testimony in the consolidated cases.

21 A. Is that the -- February 25, 2013? I want
22 to make sure I am looking at the correct one.

23 Q. In the current case.

24 A. What page again?

25 Q. 9.

1 A. 9. I am on page 9.

2 Q. You say on line 15, "As noted above, in
3 2014, Duke Energy Ohio did begin segregating costs
4 associated with what is now known as the Riverside
5 Drive Property, which is the portion of the Purchased
6 Parcel located west of the Area West of the West
7 Parcel"; is that correct?

8 A. Yes.

9 Q. And then you go on to state that it's
10 your understanding that beginning in 2016, that the
11 Area West of the West Parcel or WOW was separated or
12 given its own designation as Phase 2; is that
13 correct?

14 A. Yes.

15 Q. And it's your understanding that the
16 purchased power (sic) was segregated into two
17 parcels, the Riverside Drive Parcel and the WOW
18 Parcel, correct?

19 A. The purchased property from DCI, yes, it
20 was segregated into two parcels.

21 Q. And there was investigation done on the
22 Riverside property, correct?

23 A. So when we purchased the property in
24 2011, we did an investigation across the entire
25 purchased property and then after we determined which

1 portions had been impacted by MGP constituents and
2 which ones had not, that's when we segregated them
3 and had the Riverside Drive Property and the West of
4 the West Parcel.

5 Q. And so, under your direction, did
6 subcontractors and other parties providing invoices
7 make note of which costs were related to which
8 properties?

9 A. Once the segregation happened, then we
10 knew which area -- once we broke it down to the
11 Riverside Drive Property and West of the West, those
12 -- best of my recollection we had individual invoices
13 for those two areas in order to make sure that the
14 Riverside Drive Property was not added to the riders.

15 Q. And there was no actual cleanup costs
16 done on the Riverside property, correct?

17 A. I don't recall.

18 Q. And on page 10 of your supplemental
19 testimony, line 21, you agree here that the cost of
20 the purchase for the WOW and Riverside Parcel and
21 carrying costs were disallowed by the Commission, is
22 that correct, in the 2012 case?

23 A. What -- based upon my reading and what's
24 in here is what was disallowed was the cost for
25 purchasing the property, not to perform any of the

1 remediation efforts.

2 Q. Isn't it true Duke completed remediation
3 in Kentucky?

4 A. I --

5 MR. McMURRAY: Objection, no foundation
6 for that question.

7 MS. BOJKO: I will rephrase, your Honor.

8 EXAMINER ADDISON: Thank you.

9 Q. Are you aware -- well, has Duke completed
10 remediation in Kentucky?

11 MR. McMURRAY: Objection. Kentucky is a
12 very large state.

13 EXAMINER ADDISON: Could you just be a
14 little more specific, Ms. Bojko?

15 MS. BOJKO: Oh, I'm sorry. I didn't know
16 we had --

17 Q. (By Ms. Bojko) Isn't it true that Duke
18 has completed remediation in Kentucky, right over the
19 border of the -- or nearby the West and East End
20 sites that we were talking about in this case?

21 A. When I was project manager of the East
22 and West End site, I do not recall doing any
23 investigation at the East End site that crossed the
24 border into Kentucky. I recall that the -- we did
25 some preliminary sediment sampling at the West End

1 site, and I believe there may have been one or two
2 borings, I don't remember the exact number, but a few
3 borings that may have been across the Kentucky line
4 but that's all I recall.

5 Q. And isn't it true that Duke has completed
6 remediation on the Kentucky side of the Ohio River
7 near the MGP sites at issue in this case?

8 A. Can you repeat the question, please?

9 EXAMINER ADDISON: Would you like that
10 read back?

11 MS. BOJKO: Yes, please.

12 (Record read.)

13 MS. BOJKO: Let me rephrase.

14 Q. (By Ms. Bojko) Not completed in the sense
15 that you are finished, but isn't it true that
16 remediation has occurred on the Kentucky side of the
17 Ohio River near the MGP sites at issue in this case?

18 A. The only thing that I am aware of is that
19 when I was project manager we did a couple of
20 sediment borings on -- in Kentucky as part of that
21 initial screening of the sediment sampling at the
22 West End site. Anything that's happened beyond, that
23 would be a better question for Mr. Bachand.

24 Q. And to your knowledge did any Kentucky
25 authorities direct you to clean up the site in the

1 Ohio River that you just referenced?

2 A. I am not aware of any specific orders
3 from the state of Kentucky.

4 Q. And isn't it true that you are not aware
5 of Ohio law that does -- that authorizes cost
6 recovery for cleanup in Kentucky?

7 MR. McMURRAY: Objection. That calls for
8 a legal conclusion on matters that Ms. Bednarcik has
9 already testified she is not a PUCO rate recovery
10 expert.

11 EXAMINER ADDISON: She can answer the
12 question if she knows.

13 THE WITNESS: Can you -- sorry -- repeat
14 the question for me, please?

15 EXAMINER ADDISON: Of course.

16 (Record read.)

17 A. I am -- I am not aware of the laws
18 related to recovery in either of those state of Ohio
19 or state of Kentucky.

20 Q. You said you read the 2012 PUCO Order,
21 correct?

22 A. Correct.

23 Q. Isn't it true that in that Order the
24 Commission did not grant authority for cost recovery
25 for cleanup in Kentucky?

1 A. Based upon my recollection from when I
2 read it, I don't remember anything positive or
3 negative that was discussed related to Kentucky.

4 Q. Isn't it true that the 2012 Commission
5 Order limited the deferral to a 10-year period?

6 A. I would have to go back to the Order to
7 get the exact time, but I do remember it did limit it
8 to a certain time period.

9 Q. Okay. And actually Duke conceded that
10 there was a finite period in its 2004 (sic)
11 application that you filed testimony regarding,
12 correct?

13 A. I don't recall that specifically. I
14 would have to go back through and find where that is
15 but I don't recall that where I sit today.

16 Q. Sure. On -- do you have Duke Exhibit 1
17 in front of you?

18 A. What is Duke Exhibit 1?

19 Q. It's the application in the 2014 case. I
20 didn't get your pretty chart.

21 MS. WATTS: That is marked as Duke
22 Exhibit 1, but I haven't provided copies to her.

23 MS. BOJKO: Okay. That was my question.
24 I thought you were shaking your head that I got the
25 exhibit wrong.

1 MS. WATTS: No, no, that's right.

2 MS. BOJKO: Could the Company provide
3 their exhibit to their witness?

4 MS. WATTS: We can but I would note,
5 again, you said 2004 and not 2014 so.

6 MS. BOJKO: Sorry. 2014 application
7 filed in 14-375. And it was filed on March 31, 2014.
8 And it has been marked previously as Duke Exhibit 1.

9 A. I have Duke Exhibit 1 in front of me.

10 Q. Okay. So if you look at page 2 -- and
11 this is the proceeding that you filed testimony in,
12 correct? Direct testimony?

13 A. I believe so, yes.

14 Q. Okay. If you look at page 2, paragraph
15 No. 5, the Company -- or Duke states that the
16 Commission explicitly authorized the Company to
17 continue to defer the MGP costs for the East and West
18 End sites for a 10-year period, correct?

19 A. I see where that's written.

20 Q. And that's your understanding that the
21 Order selected a finite period for recovery, correct?

22 A. I believe that the deferral period was a
23 10-year deferral period.

24 Q. So just so I understand your testimony in
25 this case, I think you agreed with Mr. Healey that

1 you did not take part in the 2015 through 2019
2 filings except for reviewing Mr. Bachand's testimony;
3 is that correct?

4 A. I reviewed Mr. Bachand's testimony that
5 covered the year 2014. Other than that, I have not
6 been -- I have not reviewed any of his other
7 testimony.

8 Q. Okay. 2014 costs but it was the 2015
9 case, correct?

10 A. Correct.

11 Q. And -- and you did not, yourself, submit
12 any kind of testimony in the 2015 to 2019 cases,
13 correct?

14 A. Other than the supplemental that was
15 submitted a few months ago, I have not.

16 Q. Okay. So your -- so you are here today
17 to speak to the 2014 filing, correct?

18 A. Correct.

19 Q. And you also -- I think you stated
20 previously that you did not review Staff's testimony;
21 is that correct? Staff's testimony filed in the
22 consolidated proceedings in this case?

23 A. I reviewed the report by the Staff of the
24 Public Utilities Commission, those two documents, but
25 nothing more than the two reports.

1 Q. Okay. And it's your -- is it your
2 understanding that Mr. Bachand also addresses the
3 Staff Reports in his testimony?

4 A. My understanding is that his -- that,
5 yes, his testimony and supplemental testimony
6 addresses some of the questions that came up through
7 the Staff Reports.

8 Q. In response to Mr. Healey, he was asking
9 you about the investigation of the WOW property and
10 you used the phrase "some reports and different
11 remedial options." Do you recall that discussion?

12 A. I do.

13 Q. What reports were you referring to?

14 A. I don't remember specifically the names
15 of the reports, I don't recall at this time, but I do
16 recall that during that 2014 time period, when we had
17 performed the investigation of the West of the West
18 Parcel, we were looking at what were the remedial
19 options that were going to be evaluated for the West
20 of the West Parcel as well as the Middle Parcel.

21 So there was a report that was put
22 together that looked at the different remedial
23 options that would meet all of the -- all the rules
24 and regulations that we had to meet in order to meet
25 all applicable standards underneath the VAP. So

1 there was something that was put together. The exact
2 name of the report, I can't recall at this time.

3 Q. And you can't recall who put the reports
4 together?

5 A. For the East End site specifically, that
6 would have been Haley & Aldrich at that time.

7 Q. And you didn't attach those reports to
8 your testimony; is that correct?

9 A. I did not.

10 Q. And you didn't review those reports in
11 preparation of your testimony; is that correct?

12 A. I reviewed portions of the reports but
13 not the reports in their entirety.

14 MS. BOJKO: If I could have 2 minutes,
15 your Honor?

16 EXAMINER ADDISON: You may. We will go
17 ahead and go off the record.

18 (Discussion off the record.)

19 EXAMINER ADDISON: We will go ahead and
20 go back on the record.

21 Ms. Bojko.

22 Q. (By Ms. Bojko) Referring back to JLB-1
23 Attachment. I'm sorry, I am just trying to get this
24 clear in my mind. The Riverside Drive Property, so
25 the red block, as well as what's been designated as

1 the Area West of the West Parcel which is to the left
2 of the not-straight line that we talked about before,
3 those two parcels of property depicted on these,
4 those were purchased in 2011, correct?

5 A. So both the pink area or red area, the
6 Riverside Drive Property, plus the Area West of the
7 West Parcel, the entirety of the yellow area was
8 purchased in 2011.

9 Q. Okay. So it's your understanding that
10 because those were purchased in 2011, those two
11 areas, Duke did not own or Duke's predecessors when
12 the MGP sites were operating, correct?

13 A. No. We sold the portion of the property
14 to the east of -- or the easternmost portion of the
15 Area West of the West Parcel, so the yellow -- yellow
16 block has that non-straight line that goes down
17 through the middle of it. So the area to the east of
18 that was owned by Duke Energy and sold in 2006. The
19 area to the west, based upon my recollection today is
20 we did not own that property.

21 Q. Right, and that's why I was saying to
22 the -- on the map, the area left of the not-straight
23 line which is a portion of the Area West of the West
24 Parcel and the Riverside Drive Property, that was not
25 owned by Duke or its predecessors and thus did not

1 have MGP sites on it, correct?

2 A. So based upon my recollection, everything
3 to the left of that not-straight line, that goes down
4 through the middle of the yellow block, did not have
5 historical equipment located on it that was MGP.

6 MS. BOJKO: Okay. Thank you. No further
7 questions, your Honor.

8 EXAMINER ADDISON: Thank you, Ms. Bojko.
9 Ms. Whitfield.

10 MS. WHITFIELD: For some reason mine is
11 blinking.

12 MS. BOJKO: You have to hold it down
13 again.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Whitfield:

17 Q. Good afternoon, Ms. Bednarcik.
18 Ms. Bednarcik, right?

19 A. Yes.

20 Q. Sorry. Okay. Isn't it true that in the
21 2012 case you testified that Duke was pursuing other
22 means of funding for the remediation costs?

23 A. Yes.

24 Q. And one of those other means that you
25 were referring to was claims under insurance

1 policies, correct?

2 A. Correct.

3 Q. And isn't it also true that in the 2012
4 case, the Commission ordered that any insurance
5 proceeds or other proceeds recovered by Duke be
6 credited to customers?

7 MR. McMURRAY: Objection. The Order
8 speaks for itself.

9 EXAMINER ADDISON: We provided Ms. Bojko
10 a little bit of leeway. We will allow Ms. Whitfield
11 the same. You may proceed. You may answer. I
12 apologize.

13 A. I would have to look through the Order.
14 I remember there was some discussion, if we received
15 insurance recovery, how it would be applied.

16 Q. Okay. I will direct you to OMAEG
17 Exhibit 1 and page 67. In the conclusion paragraph,
18 do you see the sentence that states "We find"?

19 A. Yes, I do see that.

20 Q. Does that refresh your memory that the
21 Commission ordered that Duke should refund or credit
22 back to ratepayers any proceeds paid by insurers or
23 third parties?

24 A. It does state that any proceeds returned
25 to ratepayers should be net of costs to achieve those

1 proceeds, e.g., litigation costs, but yes.

2 Q. And are you aware that Duke has collected
3 insurance proceeds for these MGP sites?

4 MR. McMURRAY: Your Honor, I would also
5 like to object. This is beyond the scope of the
6 testimony that Ms. Bednarcik provided in this
7 proceeding.

8 MS. WHITFIELD: Your Honor, she testified
9 in her deposition she was aware of insurance proceeds
10 being sought and so I am just exploring her testimony
11 on that.

12 MR. McMURRAY: But there are other
13 witnesses to speak to the insurance issues.

14 EXAMINER ADDISON: Thank you.

15 Thank you, McMurray.

16 Is there any specific reference in her
17 prefiled testimony in which she specifically speaks
18 to the insurance proceeds, Ms. Whitfield?

19 MS. WHITFIELD: No, Your Honor. It was
20 brought up in her deposition and in her 2012
21 testimony.

22 EXAMINER ADDISON: We will allow you just
23 a small amount of additional leeway, but we should
24 reserve these questions for the witness that is
25 present here today to talk specifically about the

1 insurance proceeds.

2 MS. WHITFIELD: Sure, and I just have
3 one, maybe two more questions.

4 EXAMINER ADDISON: Please proceed.

5 MS. WHITFIELD: I will -- yeah, I have a
6 question pending. Can you read it back?

7 (Record read.)

8 A. I was made aware that we had reached a
9 settlement with a number of the insurance companies,
10 but whether or not we've actually collected the money
11 or not, that would be a better question for Mr. Keith
12 Butler.

13 Q. So your answer is that you are aware that
14 there were insurance proceeds settlements reached, is
15 that what you are saying?

16 A. That's my understanding is that we did
17 reach some settlement, but the details of that I am
18 not -- I am not aware of.

19 MS. WHITFIELD: I have no further
20 questions, your Honor.

21 EXAMINER ADDISON: Thank you,
22 Ms. Whitfield.

23 Ms. Cohn?

24 MS. COHN: No, your Honor.

25 EXAMINER ADDISON: Thank you very much.

1 Mr. McNamee.

2 MR. McNAMEE: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. McNamee:

6 Q. Good afternoon, Ms. Bednarcik. My name
7 is Tom McNamee. I don't believe we have met before.
8 I am Staff counsel. And basically I need you to
9 identify three data responses the Company sent to the
10 Staff. And so that should go pretty quick, I
11 imagine.

12 A. Okay.

13 MR. McNAMEE: To that end, your Honor, I
14 would ask to have marked for identification as Staff
15 Exhibit 3, a four-page document denominated PUCO Case
16 No. 15-452-GA-RDR, Staff-DR-07-001(a) Confidential
17 Attachment, though I am assured by Company counsel
18 that it's not viewed as confidential any longer.

19 EXAMINER ADDISON: Thank you. It will be
20 so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 EXAMINER ADDISON: And if the Company --

23 MS. WATTS: That is correct.

24 EXAMINER ADDISON: Thank you very much,
25 Ms. Watts. You beat me to the punch.

1 MR. McNAMEE: If I might approach the
2 witness, your Honor?

3 EXAMINER ADDISON: You may.

4 MR. McMURRAY: Mr. McNamee, is it
5 possible to obtain the question this is in response
6 to?

7 MR. McNAMEE: I assume you have it. It's
8 your data response. I suppose I could find that.

9 MS. WATTS: We would have it but
10 certainly not here and not right now.

11 EXAMINER ADDISON: Let's go off the
12 record for just a moment.

13 (Discussion off the record.)

14 EXAMINER ADDISON: Let's go back on the
15 record. Thank you.

16 Q. (By Mr. McNamee) Okay. Ms. Bednarcik, I
17 put what's been identified for identification
18 purposes as Staff Exhibit 3 in front of you. And can
19 you tell me if that is a correct copy of pages 9
20 through 12 of the data response that's listed there?

21 A. I do not know because I was not -- I was
22 given a copy of the initial data request that came
23 through and it says the responsible person is Todd
24 Bachand and then Peggy Laub, so I was not the person
25 that responded to this so I would not be able to say

1 whether it's the correct ones or not.

2 Q. Okay. Let me draw your attention to the
3 bottom of each of pages 10, 11, and 12, very last
4 thing on the page. In each instance it says
5 "Attention: Jessica Bednarcik."

6 A. I do see that.

7 Q. Okay. Does that help you remember this
8 at all?

9 A. I mean, these appear to be invoices that
10 came through but whether or not they are accurate of
11 the response, they appear to be a -- pulled out from
12 the larger response.

13 Q. They are, they are indeed.

14 A. Maybe I didn't understand your question.

15 Q. Okay. Did your counsel just give you the
16 response that -- to this overall data request? I'll
17 take that one to Mr. Bachand.

18 A. Okay.

19 Q. Well, tell you what, we will go through
20 the same exercise for the next one.

21 MR. McNAMEE: At this time I would ask to
22 have marked for identification as Staff Exhibit 4,
23 another page taken from this same set of data
24 responses. It's denominated at the top, PUCO Case
25 No. 15-452-GA-RDR, Staff DR-07-001(a) Confidential

1 Attachment, page 2 of 46.

2 EXAMINER ADDISON: It will be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. McNAMEE: May I approach the witness
5 and give her this one too?

6 EXAMINER ADDISON: You may.

7 MR. McNAMEE: I was hoping this would be
8 quicker.

9 Q. (By Mr. McNamee) Okay. Ms. Bednarcik, I
10 have just handed you what's been, excuse me, marked
11 for identification as, excuse me, Staff Exhibit 4.
12 Do you have that?

13 A. Yes, I do.

14 Q. Okay. Excuse me. I would ask you the
15 same question I just asked you about Staff Exhibit 3,
16 can you tell me if -- if that is a copy of what was
17 provided to the Staff in response to that data
18 request?

19 A. I am assuming it is since it has the
20 header on it that's associated with the Staff
21 request.

22 Q. Yes. Okay. Can you tell me if that's a
23 copy of the information that was provided?

24 A. It appears to be so.

25 Q. It appears to be. Okay. Good. Let me

1 draw your attention to the -- if you look to the
2 right side of the page, what's been marked for
3 identification as Staff Exhibit 4, you will see some
4 handwritten information, some words and numbers and
5 things.

6 A. I do see.

7 Q. Do you see those?

8 A. I do see those.

9 Q. Now, those -- those were written by
10 someone at Duke, correct?

11 A. I do not know.

12 Q. You don't know. You didn't write them
13 anyway.

14 A. I did not write those in.

15 MR. McNAMEE: Okay. All right. Fair
16 enough. All right. I'll hold onto that one. And
17 this we will do with Mr. Bachand.

18 That's all I need from you. Thank you.

19 THE WITNESS: Thank you.

20 EXAMINER ADDISON: Thank you,
21 Mr. McNamee.

22 MR. McNAMEE: Oh, I am finished, thank
23 you.

24 EXAMINER ADDISON: I just wanted to be
25 sure. Thank you.

1 Mr. McMurray, redirect?

2 MR. McMURRAY: Thank you.

3 - - -

4 REDIRECT EXAMINATION

5 By Mr. McMurray:

6 Q. I would like to go over a few things that
7 came up during your cross-examination from various
8 counsel to get some clarification. First item is
9 there was some discussion concerning the term
10 "off-site." Do you recall that?

11 A. I do.

12 Q. You testified earlier that you would
13 consider the Ohio River to be off-site, correct?

14 A. Correct.

15 Q. And what do you mean by "off-site"?

16 A. So in the way that I was using it because
17 off-site/on-site, how you look at site boundaries for
18 remediation sites is used by different people in
19 different ways. How I meant it in that context that
20 the Ohio River was off-site is that it was an area
21 that we did not have access to that was beyond the
22 areas that we had access to and that Duke either
23 owned or had an access agreement where we would have
24 to do additional work to see if there was
25 investigation or -- excuse me, if there needed to be

1 any type of -- to do the investigation to see if
2 there were impacts, MGP-related impacts that had
3 reached those areas.

4 Q. So when you use the term "off-site," does
5 that mean it's not part of the cleanup site?

6 A. No. So a cleanup when we -- in the
7 remediation world when you talk about, for example,
8 the East End site or West End site in a remediation
9 aspect, what is typically meant by environmental
10 professionals is the entire area that has been
11 impacted by constituents that emanated from whatever
12 is causing that -- that contamination. So "sites"
13 mean anywhere the contamination goes, not property
14 boundary.

15 Q. So in your definition of the East End
16 site, does that include the Ohio River?

17 A. It would include the -- for remediation
18 -- for environmental reasons, anything that would be
19 impacted by manufactured gas plant constituents from
20 the East End operations would be part of the East End
21 site.

22 Q. Okay. Would you have the same opinion
23 concerning the West End site if there are impacts in
24 the Ohio River associated with that former MGP
25 operation?

1 A. Yes.

2 Q. Do you recall testifying earlier that the
3 substation at the West End site would not need to be
4 moved if the Brent Spence Bridge project had been
5 terminated?

6 A. Yes.

7 Q. Did you mean terminated prior to
8 completion of the remediation work?

9 MR. HEALEY: Objection, leading.

10 EXAMINER ADDISON: Ms. Bednarcik, an
11 objection is pending.

12 Would you care to rephrase your question?

13 MR. McMURRAY: Certainly.

14 EXAMINER ADDISON: Thank you.

15 Q. (By Mr. McMurray) What did you mean when
16 you said that the -- that the substation would not
17 have been moved if the Brent Spence Bridge project
18 had been terminated?

19 A. If the -- because electrical work, it
20 takes a long time, many years, to move that
21 substation to get it -- it was a rather large
22 substation. If the Ohio Department of Transportation
23 came to us and said -- before we started any of the
24 work and said the bridge did not -- was not going to
25 come here anymore, you don't need to continue your

1 work related to moving it, then it would not have
2 been moved. But we never -- at least when I was
3 involved with the project, we had never received
4 anything from the Ohio DOT that said this bridge was
5 not going to happen.

6 Q. To your knowledge has the Brent Spence
7 Bridge project been terminated?

8 A. Not to my knowledge.

9 Q. Do you have any reason to believe that
10 that project may be terminated?

11 A. Not -- not to my knowledge, not as I sit
12 here today.

13 Q. Turn to Attachment JLB-1 from your
14 testimony. Do you recall testifying during your
15 cross-examination that you couldn't point to areas in
16 the Area West of the West Parcel where remediation
17 had been completed on the map?

18 A. After I left the organization, the areas
19 where remediation was completed, that is correct.

20 Q. During your time period as project
21 manager, did you oversee investigation in that area?

22 A. I did.

23 Q. Do you recall the results of that
24 investigation?

25 A. The results were that there were soil

1 samples that were obtained that showed the tar-like
2 material and oil-like material that was consistent
3 with the MGP impacts.

4 Q. Would you have expected remediation to be
5 required based upon the findings of the
6 investigation?

7 A. Yes.

8 Q. Based upon your recollection of the
9 investigation performed, would the Phase 2 Area be
10 one of those areas?

11 A. Yes.

12 Q. Do you recall earlier when Mr. Healey
13 asked you about Sanborn maps and the iron tar tank at
14 the East End site?

15 A. Yes.

16 Q. When you were overseeing work as the
17 project manager involving the West Parcel, did you
18 discover any information regarding an iron tar tank?

19 A. Yes.

20 Q. What did you discover?

21 A. When we were doing the excavation of the
22 West Parcel, we encountered a portion of the iron tar
23 tank and removed what we had access to, but portions
24 of the iron tar tank went past the property border
25 and we didn't have access on the DCI property. So we

1 couldn't address that but we did find portions of it
2 which we did address on the West Parcel.

3 Q. So when you say it extended past the
4 property line, and we have a lot of terminology with
5 the nomenclature, are you referring to the Area West
6 of the West Parcel?

7 A. Yes.

8 Q. To your knowledge were the costs incurred
9 to remove the iron tar tank and remediate on the West
10 Parcel covered under the 2012 natural gas rate case?

11 A. Yes.

12 Q. In response to cross-examine --
13 cross-examination from counsel, you testified earlier
14 that if you had been told that the Commission
15 required segregation of costs associated with the
16 Area West of the West Parcel, that would have been
17 possible.

18 A. I --

19 MS. BOJKO: Objection. Your Honor, he is
20 leading the witness.

21 EXAMINER ADDISON: I think he is just
22 asking if she recalls her earlier testimony, but.
23 Yeah, you can go ahead and answer the question.

24 A. I remember that discussion.

25 Q. What would it have involved in order to

1 be able to segregate those costs?

2 A. So when I mentioned segregating costs, I
3 was really thinking about specific things such as if
4 you took a soil sample in the Area West of the West
5 Parcel you would have been able to say that soil
6 sample or that groundwater well that was installed.

7 There are other costs that are hard to
8 segregate, for example, overall site management or
9 project management or anything that is like an air
10 monitoring across the entire site. Those would have
11 been difficult because they are not finite like a
12 soil sample or groundwater sample that you can look
13 at and say specifically for this well or for this
14 location.

15 Q. For remediation projects such as this, is
16 it common to be invoiced on a parcel-by-parcel basis?

17 A. It depends. Some things you can and some
18 things you do not. For example, the actual
19 remediation, the excavation, solidification, for
20 example, on the West Parcel, we were able to phase
21 that so it would be just on the West Parcel. But the
22 air monitoring that we did for the entire East End
23 site was one cost for the entire site. We did not
24 break that out East Parcel/West Parcel because it was
25 everything. So some things you can segregate out in

1 phases on the implementation but some things you do
2 not.

3 MR. McMURRAY: Can I have one minute,
4 your Honor?

5 EXAMINER ADDISON: You may.

6 MR. McMURRAY: I'm through with redirect.
7 Thank you.

8 EXAMINER ADDISON: Thank you very much.
9 Mr. Healey.

10 MR. HEALEY: Yes, your Honor.

11 - - -

12 RECROSS-EXAMINATION

13 By Mr. Healey:

14 Q. Your counsel just asked you about the
15 phrase, the word "off-site," correct?

16 A. Correct.

17 Q. And it's your belief that the -- when you
18 use that word you are referring to areas that have
19 not yet been determined to have MGP impacts, correct?

20 A. In how I use "off-site" in this
21 connotation, again, different people use it in
22 different ways. When I talk about "off-site" as an
23 environmental professional, it is areas that we don't
24 have access to and have not been investigated yet.
25 So that is why I referred to the river as being an

1 off-site area because we would have to get access
2 agreements or additional -- we had not looked at that
3 area yet and it was kind of off of the main area.

4 Q. So anything that you don't have access to
5 would be off-site; is that accurate based on your
6 definition of "off-site"?

7 A. That is -- in how I look at remediation
8 in an environmental way, that's how I would define
9 it.

10 Q. Okay. So from 2006 to 2011, when Duke
11 did not own the West of the West, that would have
12 been off-site under your definition, correct?

13 A. Yes. Because we -- we did not have
14 access to it.

15 Q. Counsel was -- your counsel was asking or
16 Duke's counsel, rather, was asking if it -- asked you
17 some questions about segregating costs for the WOW
18 Parcel, correct?

19 A. Yes.

20 Q. And you testified that in some instances
21 you can identify investigation and remediation costs
22 on a parcel-by-parcel basis, correct?

23 A. On a -- if you -- kind of a phase or a
24 specific area if you -- some things you can and some
25 things are a lot more difficult, you usually don't.

1 Q. Sure. Do you still have a copy of Staff
2 Exhibit 3 in front of you?

3 A. I do.

4 Q. Can you turn to the last page of that
5 exhibit. And as Mr. McNamee mentioned, at the bottom
6 it says "Attention: Jessica Bednarcik," correct?

7 A. Correct.

8 Q. And this is dated from the 2014 time
9 frame, July 2014, correct?

10 A. Correct.

11 Q. And so, at that time, you would have been
12 involved in approving this invoice?

13 A. Yes.

14 Q. And if you look at Project Task No. 004,
15 it says, I hope you can read it, Phase II PA Report
16 EEGW Middle Parcel"; is that correct?

17 A. That is correct.

18 Q. So that would be one example of a cost
19 you could very specifically identify as being part of
20 a single parcel, correct?

21 A. Yes.

22 Q. And you testified, in response to your
23 counsel's question, there are some examples of things
24 where it is I believe you said hard to segregate or
25 harder to segregate, correct?

1 A. Correct.

2 Q. Hard but not impossible, correct? You
3 could create some kind of method to allocate the
4 costs among the different parcels based on various
5 factors including how much remediation was done on
6 each parcel or how much investigation, correct?

7 A. It -- it's really a site-by-site and you
8 would have to know why you are doing it in order to
9 understand how to segregate it. I wouldn't
10 necessarily say it's the amount because some areas
11 may have a small area that needs to be remediated but
12 needs a lot of oversight and other areas may have a
13 larger area, more volume, but less oversight. So
14 it -- really understanding why it needs to be done
15 and having those bounds around it, you can do it. If
16 it's after the fact and not understanding the means
17 and methods or why, it's very -- it's more difficult
18 to go back and try and allocate all of that.

19 Q. More difficult but for an environmental
20 professional, with a lot of experience, it would at
21 least be feasible to do that, correct?

22 A. It would be -- you could go back -- it
23 would not be -- it would take some time to go through
24 and I don't know if it would be specifically or
25 100 percent correct because you would be going back

1 in history and trying to recreate. It's always
2 easier if you have the understanding beforehand.

3 Q. Sure.

4 Your counsel asked you some questions
5 about the iron tar tank. Do you recall that?

6 A. Yes.

7 Q. And a lot of your knowledge about the
8 location of the tar tank came from the Sanborn maps
9 we've discussed, correct?

10 A. Some of the information. So the Sanborn
11 maps are helping -- are helpful because they tell us
12 kind of generally where the aboveground areas were.
13 I don't believe they were necessarily surveyed then.
14 They were general locations, hand-drawn maps for the
15 most part. But that's only above grade. So once we
16 go out and are removing material and go below grade,
17 that gives us actually what's out in the field.

18 Q. And you relied on the Sanborn maps when
19 you were identifying the location of MGP equipment in
20 the rate case in 2012, correct?

21 A. Yes. That was one of the things we
22 utilized to identify where equipment was located was
23 the Sanborn maps.

24 Q. And that would include relying on those
25 maps to identify where the tar tank that we've

1 discussed was located, correct?

2 A. Yes. We utilized that to help identify
3 where we -- based upon the Sanborns, where it showed,
4 but we also saw it when we were, as part of that
5 case, when we opened up the ground and started doing
6 the remediation.

7 Q. Sure. Your counsel asked you a little
8 bit about the substation on the West End, correct?

9 A. Yes.

10 Q. And do you recall when you testified
11 earlier in response to a question I believe I asked
12 that -- maybe it was Ms. Bojko -- that Duke received
13 some funding from Ohio Department of Transportation;
14 is that correct?

15 A. That is my -- my understanding, yes.

16 Q. And have you personally gone through the
17 invoices, that Duke is seeking recovery for in this
18 case, to make sure that there is no overlap between
19 those costs and what you were reimbursed for from
20 ODOT?

21 A. I did not perform that exercise.

22 MR. HEALEY: That's all I have, your
23 Honor. Thank you.

24 EXAMINER ADDISON: Thank you very much.

25 Ms. Bojko.

1 MS. BOJKO: Thank you, your Honor.

2 - - -

3 RECROSS-EXAMINATION

4 By Ms. Bojko:

5 Q. Ms. Bednarcik, you were talking about the
6 Ohio River with your counsel. It's true that Duke
7 does not own the Ohio River, correct?

8 A. I do not believe we own the Ohio River.

9 Q. And it's true that the Ohio River was not
10 used to render public utility service by Duke to Ohio
11 customers, correct?

12 A. I do remember that there was a portion of
13 the East End site that is now within the Ohio River,
14 but when the Markland Dam was installed it ended up
15 raising the elevation of the Ohio River so there was
16 a portion of the East End site that was there during
17 the time of the operation of the MGP that is no
18 longer present and it's in the Ohio River.

19 Q. The Ohio River itself has not been used
20 to render public utility service to customers,
21 correct?

22 A. I don't believe so.

23 MS. BOJKO: Thank you. I have no further
24 questions.

25 EXAMINER ADDISON: Thank you.

1 Ms. Whitfield?

2 MS. WHITFIELD: No questions, your Honor.

3 EXAMINER ADDISON: Ms. Cohn.

4 MS. COHN: No questions, your Honor.

5 EXAMINER ADDISON: Mr. McNamee.

6 MR. McNAMEE: No questions, your Honor.

7 EXAMINER ADDISON: I have no additional
8 questions. You're excused. Thank you very much.

9 Mr. McMurray, you had previously moved
10 for the admission of, please correct me if I am wrong
11 here, Duke Exhibits No. 7 and 8; is that correct?

12 MR. McMURRAY: Correct.

13 EXAMINER ADDISON: Now that
14 cross-examination is concluded, are there any
15 objections to the admission of Duke Exhibits No. 7
16 and 8, subject to the motion to strike that was
17 granted earlier?

18 MR. McNAMEE: None from Staff.

19 MS. BOJKO: Your Honor, I guess I would
20 just renew my motions to strike, so we object,
21 recognizing the Bench's ruling.

22 EXAMINER ADDISON: Thank you, and your
23 objection is noted. Any additional comments?

24 Thank you.

25 Duke Exhibits 7 and 8 will be admitted.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 EXAMINER ADDISON: Let's go ahead and go
3 off the record for a moment.

4 (Discussion off the record.)

5 EXAMINER ADDISON: Let's go back on the
6 record.

7 Mr. Healey.

8 MR. HEALEY: Yes, your Honor. OCC moves
9 for the admission of OCC 1 and OCC 2.

10 EXAMINER ADDISON: Are there any
11 objections to these exhibits?

12 MS. WATTS: No, your Honor.

13 MR. McMURRAY: No.

14 MR. McNAMEE: No, your Honor.

15 EXAMINER ADDISON: Hearing none, they
16 will being admitted.

17 (EXHIBITS ADMITTED INTO THE RECORD.)

18 EXAMINER ADDISON: Mr. McNamee.

19 MR. McNAMEE: Your Honor, I think I will
20 wait for 3 and 4. I have two more similar things.
21 We will do them with Mr. Bachand.

22 EXAMINER ADDISON: Thank you.

23 MS. BOJKO: Your Honor, I would just ask,
24 I don't want to move it, but take administrative
25 notice, to the extent necessary, for the 2012

1 Commission Order.

2 EXAMINER ADDISON: I don't believe we've
3 ever required administrative notice of Commission
4 Orders, so please feel free to cite to that when it
5 comes to that time.

6 MS. BOJKO: Thank you, your Honor.

7 EXAMINER ADDISON: Thank you, Ms. Bojko.

8 All right. At this time we will go ahead
9 and go off the record.

10 (Discussion off the record.)

11 EXAMINER ADDISON: At this time we'll go
12 ahead and go back on the record.

13 Mr. McMurray.

14 MR. McMURRAY: At this time, your Honor,
15 Duke Energy Ohio calls Todd Bachand to the stand.

16 (Witness sworn.)

17 EXAMINER ADDISON: Thank you. If you
18 could just turn on your mic as well. There you go.

19 Please proceed, Mr. McMurray.

20 MR. McMURRAY: Thank you.

21 - - -

22

23

24

25

1 TODD L. BACHAND

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

4 DIRECT EXAMINATION

5 By Mr. McMurray:

6 Q. Mr. Bachand, can you please state your
7 name for the record.

8 A. It's Todd Leon Bachand.

9 Q. And how do you spell Bachand?

10 A. B-A-C-H-A-N-D.

11 Q. Thank you.

12 And who are you employed by and in what
13 position?

14 A. Duke Energy Business Services, and I am a
15 Lead Environmental Specialist in the Remediation
16 Department.

17 Q. And what is your business address?

18 A. It is 139 East Fourth Street, Cincinnati,
19 Ohio 45202.

20 Q. And did you cause to be filed written
21 testimony on behalf of Duke Energy Ohio in this
22 proceeding?

23 A. I did.

24 MR. McMURRAY: Your Honor, may we
25 approach the witness so we can provide him with

1 copies of his written testimony?

2 EXAMINER ADDISON: You may.

3 Q. Mr. Bachand, do you have that written
4 testimony in front of you now which is marked has
5 Duke Energy Ohio Exhibits 9 to 14?

6 A. Yes, I do.

7 Q. Are there any changes or corrections you
8 would make to the testimony that you have filed?

9 A. No.

10 Q. Is the testimony true and accurate to the
11 best of your knowledge?

12 A. Yes, it is.

13 Q. Would your answers be the same if I asked
14 you the same questions today?

15 A. Yes, they would.

16 Q. Do you hereby adopt the direct and
17 supplemental testimony that you just identified as
18 your testimony in this proceeding?

19 A. I do.

20 MR. McMURRAY: Duke Energy Ohio moves for
21 admission of Mr. Bachand's direct and supplemental
22 testimony which is identified as Duke Energy Ohio
23 Exhibits 9 to 14.

24 EXAMINER ADDISON: Thank you very much,
25 Mr. McMurray. And similar to our prior witness, we

1 will hold up on ruling on the motion for admission
2 subsequent to cross-examination.

3 Ms. Bojko.

4 MS. BOJKO: Thank you, your Honor. If
5 you would like to entertain motions to strike at this
6 point?

7 EXAMINER ADDISON: Certainly.

8 MS. BOJKO: Thank you.

9 OMAEG moves to strike page 6, line 8,
10 through page 7 -- sorry.

11 MR. McMURRAY: Is this supplemental
12 testimony?

13 MS. BOJKO: Yes. Thank you. I was just
14 going to stop to say that.

15 MR. McNAMEE: 7, line what?

16 MS. BOJKO: I'll start over now that we
17 are all on the right testimony. My apologies, your
18 Honor.

19 OMAEG moves to strike page 6 of
20 Mr. Bachand's supplemental testimony filed in the
21 consolidated cases page 6, line 8, through page 7,
22 line 13. Page 14, line 7, beginning with
23 "remediated" through page 15, line 22. Page 18, line
24 21 --

25 EXAMINER ADDISON: Ms. Bojko, could you

1 slow down just a minute.

2 Thank you. Okay. Please continue.

3 MS. BOJKO: Page 18, line 21 -- your
4 Honor, I think that one needs to start at page 18,
5 line 18 through page 20, line 2. Then page 20, line
6 13, starting with "The" through line 16, ending with
7 "invoices." Page 23, line 6, end the sentence
8 start -- or end of the line starting with "As" over
9 to line 22 ending with the word "recovery."

10 EXAMINER ADDISON: Does that previous
11 reference on line -- or page 23, Ms. Bojko, does that
12 include any references on Attachment TLB-6? Or is it
13 just the testimony stated here?

14 MS. BOJKO: Yes. No, your Honor. I was
15 getting to the attachments. Also under this motion
16 to strike would be attachment TLB-6 and TLB-7.

17 Your Honor, all the references that I
18 have provided to you in those opening page references
19 are regarding the issue of the Purchased Parcel
20 including the WOW Parcel and these would be under the
21 same arguments made previously with Ms. Bednarcik
22 which is regarding collateral estoppel of raising
23 previous arguments that have already been litigated
24 in the past. I will not go through all those
25 arguments again recognizing that the Bench made a

1 ruling for Ms. Bednarcik.

2 EXAMINER ADDISON: Thank you, Ms. Bojko.

3 Mr. McMurray, did you have anything to
4 add to your prior argument?

5 MR. McMURRAY: I do not.

6 EXAMINER ADDISON: Consistent with my
7 previous ruling then, the motion to strike will be
8 denied. Thank you, Ms. Bojko.

9 MS. BOJKO: Thank you, your Honor.

10 My next motion to strike is with regard
11 to TLB-3, Attachment TLB-3, which are two photographs
12 that Mr. Bachand did not take and were not under his
13 personal knowledge. He was provided these
14 photographs by another individual, therefore,
15 given -- I mean we can't be certain he can't testify
16 to exactly what they are. There's no chain of
17 custody. He lacks personal knowledge and there is
18 lack of foundation since he did not personally take
19 the photographs.

20 EXAMINER ADDISON: Mr. McMurray.

21 MR. McMURRAY: With regard to the
22 photographs, the photographs were taken by Haley &
23 Aldrich, the contractor hired by Duke Energy and
24 overseen by Mr. Bachand. Mr. Bachand could also
25 testify that he personally observed the area where

1 the photos were taken and could document that that
2 fairly and accurately depicts the conditions at the
3 time the photos were taken. He has personal
4 firsthand knowledge of that.

5 EXAMINER ADDISON: Thank you. I will
6 deny the motion to strike but I will provide you
7 quite a bit of leeway during your cross-examination,
8 Ms. Bojko, as to these two pictures.

9 MS. BOJKO: Thank you, your Honor.

10 My next motion to strike is on page 16 of
11 the supplemental testimony, line 4. Again we might
12 as well start at line 1 for the question.

13 EXAMINER ADDISON: Thank you.

14 MS. BOJKO: The whole Q and A that starts
15 on page 16 and goes over to page 17, line 8 regarding
16 the Ohio River. Then also line 8 -- oh, I'm sorry,
17 page 18, line 21 -- oops. 18, line 18 through
18 page 20, line 2. Again this is specific to the Ohio
19 River. And page 23, line 15, beginning -- or it's
20 line 14 beginning with "Similarly" and going to
21 line 21 ending with "project." And, your Honor, the
22 corresponding attachments as well, TLB-4 Attachment
23 and TLB-6 Attachment.

24 Your Honor, this argument is a bit
25 different than the prior argument. OMA moves to

1 strike these excerpts from Mr. Bachand's supplemental
2 testimony relating to the investigation and
3 remediation efforts claimed to be undertaken and any
4 cost related thereto as to the Ohio River for two
5 reasons.

6 One, in addition to our prior arguments,
7 they are barred by the doctrine of collateral
8 estoppel but, two, because Duke cannot recover costs
9 for remediation of property it does not even own from
10 ratepayers or that the river could have been used and
11 rendered in the provision of utility service as
12 required by 4909.15(A) (4) of the Revised Code.

13 In the 2012 rate case Order, the
14 Commission held that the cost recovery under the MGP
15 Rider would be limited to the East and West End
16 sites. That was at pages 60 and 71. And in so
17 ruling, the Commission rejected Duke's contention
18 that it should be allowed to recover from ratepayers
19 costs related to cleanup required off-site. And the
20 Ohio River is clearly off-site. It's not
21 utility-owned property. It has not been used to
22 provide services to Ohio ratepayers and, as such,
23 Duke is prohibited from seeking the second bite of
24 the apple regarding the off-site remediation that the
25 Commission specifically ruled against in 2012.

1 EXAMINER ADDISON: Thank you, Ms. Bojko.
2 Mr. McMurray.

3 MR. McMURRAY: So similar to the
4 collateral estoppel discussions we had earlier, it
5 seems to me that these are really legal arguments
6 that Ms. Bojko is making concerning the scope of
7 recovery under the PUCO Order. It is not going to
8 the testimony that Mr. Bachand has prepared.
9 Mr. Bachand's testimony is as to the Ohio River, that
10 portions of what is currently in the Ohio River were
11 in fact part of the MGP when it was operational, but
12 due to changes at the Ohio River that raised the
13 level that those areas are now under water.

14 So I believe that the -- the answer to
15 this is not to seek to strike Mr. Bachand's testimony
16 but this -- these are legal issues to be briefed
17 following the hearing where your Honor can take into
18 consideration facts that are gathered as part of this
19 in connection with the legal evaluation of the scope
20 of recovery under the PUCO Order.

21 EXAMINER ADDISON: Thank you.

22 Did you have anything in response,
23 Ms. Bojko?

24 MS. BOJKO: Yeah. I would just briefly
25 add, your Honor, I agree that they are legal

1 arguments and that's why it gets to my next motion to
2 strike. This witness has no foundation, no legal
3 authority to address those arguments. The issues
4 were raised specifically by Duke, and the Commission
5 specifically said off-site sites are not permitted to
6 be included in the remediation whereas customers
7 would pay for those remediation efforts. So we are
8 trying to redefine "off-site" here today, and that's
9 what the Commission has already ruled on and this is
10 collateral estoppel against that, and the river could
11 not have possibly been used in rendering public
12 utility service so that's the second argument with
13 regard to that.

14 EXAMINER ADDISON: Thank you very much,
15 Ms. Bojko.

16 Similar to my prior rulings regarding
17 these types of arguments with the Area West of the
18 West Parcel, I do think that these are more
19 appropriate to raise during brief. I will allow the
20 testimony to stand as it's been presented today by
21 Mr. Bachand -- Bachand

22 THE WITNESS: Close enough.

23 EXAMINER ADDISON: Okay. Thank you. And
24 I will deny the motion to strike. Thank you.

25 MS. BOJKO: Thank you, your Honor.

1 There are several citations to legal
2 conclusions which I agree with co-counsel -- or
3 counsel for Duke that should be inappropriate for a
4 witness to speak to.

5 In his supplemental testimony, those
6 begin on page 3. We have lines 4 through 12. This
7 explains what Duke is liable or not liable for under
8 CERCLA. He is not an attorney and does not have a
9 legal background or regulatory background in order to
10 make such statements and, thus, under rule -- rule
11 701 and 702 and 704, Mr. Bachand cannot offer opinion
12 testimony on these matters. Similarly, I will give
13 you the other -- do you want me to take them one by
14 one or?

15 EXAMINER ADDISON: If you're going to use
16 the same arguments in support of the motions to
17 strike, then let's go ahead and get them all on the
18 table.

19 MS. BOJKO: Okay. Thank you, your Honor.

20 The other legal conclusions and the
21 lack-of-qualification citations are page 10, line 12,
22 beginning with "that" going to line 13 ending with
23 "sites." Page 11, line 7, through 22, ending with
24 "VAP." In this sentence if you look at page -- or
25 lines 8 and 9, he specifically says with the input

1 from legal counsel, so it is not his opinion. It's
2 input of legal counsel.

3 Page 13, line 5, beginning with "it" to
4 line 7 ending with "Parcel." Also lines 14 on the
5 same page through page 14, line 1. So I guess it
6 would be the whole question and answer beginning on
7 line 12. And lastly, your Honor, page 15, line 14,
8 beginning with the "as" on line 14 and going over to
9 page -- or, I'm sorry, line 14 going to line 15
10 ending with "VAP." So just the parenthetical.

11 EXAMINER ADDISON: Mr. McMurray, any
12 response?

13 MR. McMURRAY: Thank you, your Honor.

14 My response is similar to the response
15 concerning the motion to strike of Ms. Bednarcik,
16 although Mr. Bachand has had actually significantly
17 more experience as an environmental professional than
18 Ms. Bednarcik when it comes to investigating and
19 remediating sites.

20 He's worked extensively with
21 environmental consultants, with regulators in Ohio
22 and other states. And while it is true he is not a
23 lawyer, he has substantial experience concerning what
24 is required under environmental laws with regard to
25 the investigation or remediation of sites, when that

1 is triggered and what you need to do.

2 Yes, he consulted with legal counsel as
3 part of that. That would be the prudent thing to do.
4 But he -- his job as an environmental professional in
5 the Remediation Group at Duke Energy is to understand
6 what is required under environmental laws so he can
7 advise the Company and make sure that the Company
8 executes the actions required to address those
9 liabilities.

10 EXAMINER ADDISON: Thank you.

11 Mr. Bachand, if you could turn to page 11
12 of your supplemental testimony.

13 THE WITNESS: Yes.

14 EXAMINER ADDISON: When you state "the
15 Company is liable under state and federal
16 environmental laws for the remediation of all impacts
17 associated with the former MGP operations at the East
18 End and West End sites," would you have made -- are
19 you making that determination based on your 30 years
20 of experience?

21 THE WITNESS: Yes, ma'am.

22 EXAMINER ADDISON: And you would have
23 thought that regardless of what legal counsel -- what
24 input from legal counsel you received on that
25 subject, based on your experience?

1 THE WITNESS: Yes.

2 MS. BOJKO: Your Honor, since you point
3 out that one particular phrase, I have an additional
4 argument I was going to do, a more narrow, but just
5 for your consideration.

6 EXAMINER ADDISON: Certainly.

7 MS. BOJKO: I was going to move to strike
8 from the "and" to the end of the sentence, "impacts,"
9 based on hearsay because of the input from counsel.
10 Legal counsel is not here to be cross-examined and,
11 under 801(C), it is a hearsay statement other than
12 the one made by the declarant while testifying at the
13 trial or hearing offered in evidence to prove the
14 truth of the matter.

15 EXAMINER ADDISON: Thank you, Ms. Bojko.

16 Mr. McMurray, would you like to quickly
17 respond to the hearsay argument?

18 MR. McMURRAY: I am not sure I followed
19 which -- can you point out the lines you were
20 referring to?

21 MS. BOJKO: Oh, yeah. I was actually
22 referring to the exact portion that the Bench asked
23 him specifically about with regard to "the input from
24 legal counsel" that that's hearsay. And so other
25 than all the legal conclusions, if that was denied,

1 this is a more-narrow request for this selection to
2 deleted -- or stricken because of the hearsay
3 objection.

4 MR. McMURRAY: So is this motion to
5 strike the language "and the input from legal
6 counsel"? Those words only?

7 MS. BOJKO: No. It's to the end of the
8 sentence.

9 MR. McMURRAY: Well, as Mr. Bachand
10 indicated, without input from legal counsel, he could
11 make that statement. An environmental professional
12 who has performed this sort of work that he has done,
13 working with regulators, working with environmental
14 consultants, can make that statement without input
15 from legal counsel. So I don't think that that
16 should be a basis for striking that statement.

17 EXAMINER ADDISON: Thank you.

18 Given the witness's response to my
19 question, I will go ahead and grant the motion to
20 strike on page 11 -- grant the motion to strike, in
21 part, on page 11, starting on line 8, "and the input"
22 and end it on line 9 with "counsel." I believe he
23 has the experience to make these particular
24 statements, as similar to our previous witness, and I
25 will certainly allow counsel a great degree of

1 latitude to explore that experience, so.

2 MS. BOJKO: Thank you, your Honor.

3 EXAMINER ADDISON: Thank you.

4 MS. BOJKO: And a final motion to strike,
5 your Honor. There are several portions, particularly
6 the legal conclusions that I just read, where
7 Mr. Bachand's supplemental testimony is duplicative
8 and redundant of Ms. Bednarcik's supplemental
9 testimony. They purportedly both respond to the
10 Staff reports, addressing the investigation and
11 remediation of the purchased power -- personal and
12 the WOW Parcel and Duke's interpretation of the 2002
13 rate case or -- 2012 rate case Order and the
14 geographic limits of the Order.

15 Such testimony is duplicative and
16 redundant as well as being unnecessary to litter the
17 record with the duplicative testimony. It's a waste
18 of the Commission's time and resources to allow the
19 Company's witnesses to provide unnecessary and
20 duplicative testimony and, thus, it should be
21 stricken as cumulative which your Bench may do under
22 the rules of Ohio evidence.

23 EXAMINER ADDISON: Thank you.

24 Mr. McMurray.

25 MR. McMURRAY: I wasn't aware that a

1 basis to strike testimony is duplicative. It is
2 testimony from two different individuals who have had
3 involvement at these sites during different time
4 periods with different experience and different
5 interpretations of how the laws apply and the work
6 that's performed. I don't see how this would be
7 causing the proceeding to be unnecessarily, you know,
8 littered with too much testimony. The fact that they
9 are saying similar things, it's two different
10 witnesses, that to me doesn't seem like a basis to
11 strike his testimony.

12 EXAMINER ADDISON: Thank you.

13 And I will note that I am allowed to
14 strike testimony if it is determined to be
15 cumulative.

16 MR. McMURRAY: Okay. Thank you.

17 EXAMINER ADDISON: However, in this case,
18 I will not invoke that power. I tend to agree with
19 Mr. McMurray. Both witnesses cover different periods
20 of time and gain two different perspectives on this,
21 in these particular proceedings, and I believe will
22 be beneficial to the Commission's review of this --
23 of these applications, so the motion is denied.

24 MS. BOJKO: Thank you, your Honor.

25 EXAMINER ADDISON: Thank you.

1 MS. BOJKO: No further motions.

2 EXAMINER ADDISON: Thank you.

3 Any additional motions to strike?

4 Mr. Healey, will you be going first?

5 MR. HEALEY: Yes, your Honor.

6 EXAMINER ADDISON: Thank you. Please
7 proceed.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Healey:

11 Q. Good afternoon, Mr. Bachand. Would you
12 consider yourself someone who pays close attention to
13 details?

14 A. Yes, I would.

15 Q. And you recall today your counsel asked
16 you if you had any changes to any of your testimony
17 and you said you did not, correct?

18 A. That's correct.

19 Q. Now, prior to appearing today, did you go
20 back through your testimony to review it and
21 determine whether there were any errors in that
22 testimony?

23 A. I have reviewed my supplemental
24 testimony.

25 Q. Only your supplemental testimony?

1 A. In preparing for the hearing, I reviewed
2 all the testimonies from 2015 through the
3 supplemental.

4 Q. And you reviewed those testimonies, in
5 part, to determine whether you would need to make any
6 corrections, correct?

7 A. Yes, sir.

8 Q. And you determined, after looking at your
9 testimonies, the six pieces you filed, you did not
10 have any corrections, correct?

11 A. Yes, that is correct.

12 Q. The most recent testimony you filed was
13 your supplemental testimony and that was in October
14 of 2019, correct?

15 A. Yes.

16 Q. And you did not coordinate at all with
17 the earlier witness, Ms. Bednarcik, on your
18 supplemental testimony, correct?

19 A. That is correct.

20 Q. And you did not discuss your testimony
21 with her before filing it in October 2019, correct?

22 A. That's correct.

23 Q. And you did not discuss her testimony
24 with her before she filed it, correct?

25 A. That is also correct.

1 Q. Mr. Fiore, who will testify later in this
2 case, is the only VAP CP currently working on the
3 Ohio MGP sites, correct?

4 A. That is correct.

5 Q. And you are aware that someone named Dan
6 Brown filed testimony on behalf of Duke in these
7 cases, correct?

8 A. Yes.

9 Q. You've never spoken to Mr. Brown,
10 correct?

11 A. I've had one encounter -- two encounters
12 with Mr. Brown. One was a site visit, I can't recall
13 the specific year, at East End, and it's some
14 involvement in the insurance matter.

15 MR. HEALEY: Your Honor, may I approach
16 the witness, please?

17 EXAMINER ADDISON: You may.

18 MR. HEALEY: I am handing the witness a
19 copy of his deposition transcript in this case.

20 EXAMINER ADDISON: Thank you.

21 MR. HEALEY: I am not marking it as an
22 exhibit. Do you guys need a copy?

23 MR. McMURRAY: What is it?

24 MR. HEALEY: It's a depo transcript.

25 MR. McMURRAY: No.

1 MR. HEALEY: I only have a few.

2 Q. (By Mr. Healey) Mr. Bachand, can you
3 please turn to page -- well, actually, let me take a
4 step back. You recall being deposed by me about two
5 weeks ago, correct?

6 A. Yes, I do.

7 Q. And when I asked you questions at the
8 deposition, you understood you were under oath,
9 correct?

10 A. Yes.

11 Q. And you, in fact, answered truthfully
12 when I asked you the questions?

13 A. Yes, to the best of my knowledge.

14 Q. And you had an opportunity, after the
15 deposition, to review the transcript and make any
16 corrections that were necessary; is that right?

17 A. Yes.

18 Q. Thank you.

19 Would you turn to page 13 of the
20 deposition transcript, please.

21 A. Yes.

22 Q. At line 9, it says:

23 "Question: Have you ever spoken to
24 Mr. Brown?

25 "Answer: No, I haven't."

1 Did I read that correctly?

2 A. Which page?

3 Q. I'm sorry, page 12. I apologize.

4 EXAMINER ADDISON: Thank you.

5 Q. This is page 12 of your deposition
6 transcript, line 9. Do you see that line?

7 A. Yes.

8 Q. And it says:

9 "Question: Have you ever spoken to
10 Mr. Brown?

11 "Answer: No, I haven't."

12 Did I read that correctly?

13 A. Yes, you are.

14 Q. You are not an expert on the Ohio
15 Voluntary Action Program, correct?

16 A. That is correct.

17 Q. Let's turn to at that Attachment TLB-2 to
18 your supplemented testimony, please. And I will just
19 note the vast majority of my questions will be about
20 your supplemental testimony. I will try to say
21 "supplemental," but if I don't state otherwise, we
22 are talking about your supplemental testimony; is
23 that fair?

24 A. That's fair.

25 Q. Sure. Let's look at TLB-2. And this

1 exhibit, which I have attached to your testimony, is
2 a map showing, among other things, part of the East
3 End site, correct?

4 A. Yes.

5 Q. And is this the same map that
6 Ms. Bednarcik attached and which is also printed out
7 next to you?

8 A. Yes.

9 Q. And I am going to ask you some of the
10 same questions I asked her just to lay some
11 foundation so we know we are talking about the same
12 things. I apologize, it's a little bit repetitive,
13 but you see a pinkish red area on the left called the
14 "Riverside Drive Property," correct?

15 A. Yes.

16 Q. And next to that there is a yellow-shaded
17 area and the entire yellow-shaded area is what you
18 would refer to as the "Area West of the West Parcel,"
19 correct?

20 A. Yes.

21 Q. And then the Purchased Parcel is both of
22 those together, the Riverside Drive Property and the
23 Area West of the West?

24 A. Yes.

25 Q. And you understand that Duke bought the

1 Purchased Parcel from DCI Properties in 2011; is that
2 right?

3 A. Yes.

4 Q. And again I point to the line running
5 down, the not-straight line running down the middle
6 of the yellow area and you see that not-straight
7 line, correct?

8 A. Yes.

9 Q. And you understand that line to be such
10 that to the left of the line, Duke never owned that
11 property prior to 2011, correct?

12 A. Yes. That is correct.

13 Q. And when I say "Duke" I mean Duke or its
14 predecessors.

15 A. Yes.

16 Q. And you would agree -- let me take a step
17 back.

18 Duke sold the remaining portion of the
19 Area West of the West, the yellow area to the right
20 of the line, to DCI Properties in 2006, correct?

21 A. Correct.

22 Q. So it's your understanding, and I think
23 everyone agrees, from 2006 to 2011, Duke did not own
24 any portion of the Purchased Parcel, correct?

25 A. Correct.

1 Q. And so you would agree then that from
2 2006 to '11, Duke couldn't have used -- could not
3 have been using any of the Purchased Parcel for
4 utility service, correct?

5 A. Correct.

6 Q. Do you know whether Duke has installed
7 any distribution equipment on the Riverside Drive
8 Property since 2011?

9 A. I am not aware of any.

10 Q. Are you aware of any distribution
11 equipment that Duke has installed on the West of the
12 West since 2011?

13 A. No, I am not.

14 Q. And Duke does not currently have any
15 distribution operations in the West of the West
16 Parcel, correct?

17 A. Correct.

18 Q. And Duke does not currently have any
19 distribution operations in the Riverside Drive
20 Property, correct?

21 A. Correct.

22 Q. Do you know if Duke ever had any
23 distribution operations being run in the West of the
24 West?

25 A. Are you referring to the natural gas

1 side? I'm not following your question.

2 Q. Sure. My question is, do you know
3 whether Duke ever had any -- we'll say natural gas.
4 Do you know whether Duke had any natural gas
5 distribution operations being run in the West of the
6 West?

7 A. No, I am not aware.

8 Q. Are you aware of Duke ever having any
9 electric operations in the West of the West?

10 A. No, I am not.

11 Q. And do you know of any distribution
12 operations, natural gas or electric, that Duke ever
13 performed in the Riverside Drive Property?

14 A. No.

15 Q. And you did not create this map, correct?

16 A. No, I did not.

17 Q. And you see on the map there is something
18 referred to as the Phase 2 Area, correct?

19 A. Yes.

20 Q. And Duke has, in fact incurred costs
21 remediating in the Phase 2 Area; is that right?

22 A. Yes.

23 Q. And Duke also incurred some costs
24 investigating the rest of the West of the West
25 outside of that Phase 2 Area, correct?

1 A. Correct.

2 Q. For example, there were soil borings,
3 groundwater monitoring wells, and groundwater
4 monitoring in the rest of the West of the West; is
5 that right?

6 A. Yes.

7 Q. And so if we wanted to determine the
8 total cost for investigating and remediating the West
9 of the West, we couldn't look just at the Phase 2
10 Area; is that right?

11 A. Correct. Correct.

12 Q. And it's your understanding that Duke
13 continues to incur at least some costs investigating
14 the Area West of the West outside of the Phase 2
15 Area?

16 A. That is correct.

17 Q. And that would again be for groundwater
18 monitoring costs and some soil boring costs?

19 A. Correct.

20 Q. Let's move to the Attachment TLB-1 to
21 your supplemental testimony, please. And on -- I am
22 on page 1 of 5. You created this attachment
23 yourself?

24 A. Yes.

25 Q. And I would like to look in the box

1 marked 2013, the second bullet point which refers to
2 "Continued VAP Phase II Property Assessment soil and
3 groundwater sampling on the Purchased Parcel." Do
4 you see that?

5 A. Yes.

6 Q. And the reference here to "VAP Phase II
7 Property Assessment," and that's a Phase II with a
8 Roman numeral would be different than the Phase 2
9 Area on the map that you attached to your testimony,
10 correct?

11 A. That is correct.

12 Q. I also would note that you refer to a VAP
13 Phase I with a Roman numeral on your TLB-1; is that
14 correct?

15 A. Yes.

16 Q. But there is no mention, on TLB-1, of a
17 VAP Phase III or IV or V. Are you aware of any other
18 VAP phases beyond Roman numerals I and II?

19 A. No. In this it would be the VAP Phases I
20 and II.

21 Q. And, generally speaking, if someone were
22 to look at a Duke document that said "Phase II," how
23 would they know if it meant VAP Phase II or Phase 2
24 Area?

25 A. If it was Phase 2 Area, it would

1 specifically say "Phase 2 Area." If it was a VAP
2 Phase II report, it would say "VAP Phase II Property
3 Assessment Report."

4 Q. So whenever we are referring to a Duke
5 phase, then it would say phase, number, and then the
6 word "Area"?

7 A. Correct.

8 Q. Was any remediation done anywhere in the
9 Purchased Parcel, including the West of the West,
10 prior to 2013?

11 A. That was before my time but, to my
12 knowledge, no.

13 Q. You understand that Duke divided the East
14 End site into three parcels that are generally
15 referred to as the East Parcel, the Middle or Central
16 Parcel, and the West Parcel, correct?

17 A. Yes.

18 Q. And that was done, to your knowledge,
19 around 2008? Does that sound right?

20 A. Yes. That sounds about right.

21 Q. And at the time, Duke did not include the
22 West of the West as part of the West Parcel, correct?

23 A. Correct.

24 Q. And the reason Duke didn't include the
25 West of the West as part of the West Parcel was

1 because Duke didn't own the West of the West in 2008,
2 correct?

3 A. No. In my opinion it's -- the reason it
4 wasn't included is because they -- there was no --
5 there wasn't an investigation to conclude that there
6 were MGP impacts on that piece of property. It was
7 outside of Duke's control at that point. If it were
8 part of -- inside their control and if they had done
9 the investigation, we would have probably made the
10 West Parcel bigger to just include that area.

11 Q. And the reason that the investigation
12 wasn't done was because Duke didn't own the property
13 and therefore didn't have access to it, correct?

14 A. Correct.

15 MR. HEALEY: Your Honor, I would like to
16 mark the next OCC Exhibit. This will be OCC --

17 EXAMINER ADDISON: I believe it's 3.

18 MR. HEALEY: 3. This is Duke's response
19 to an OCC discovery request from Case No. 18-283,
20 OCC Second Consolidated Set of Interrogatories that
21 was sent on September 6, 2019, and it's Interrogatory
22 OCC-INT-02-023 Consolidated.

23 I will just note for the record the
24 numbering on our discovery requests got a little
25 weird because of the consolidation aspect of this

1 case so that's why these are marked "Consolidated."
2 There was a separate OCC-INT-02 with a bunch of
3 numbers from earlier cases.

4 EXAMINER ADDISON: Thank you for that,
5 Mr. Healey. It will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. HEALEY: If you see some weird
8 marking. May I approach the witness?

9 EXAMINER ADDISON: You may.

10 MS. WATTS: Your word, not mine.

11 MR. HEALEY: I'll own it.

12 Q. (By Mr. Healey) I've handed you what's
13 now been marked OCC Exhibit 3. It goes on to the
14 back page if you want to take a look. Do you need
15 any time to review this document before we move into
16 questioning?

17 A. If I may?

18 Q. Sure.

19 A. I'm good.

20 Q. Now, you are identified as the person
21 responsible for this discovery response, correct?

22 A. Yes.

23 Q. And you, in fact, provided the response?

24 A. Yes.

25 Q. I will direct you to question (c) which

1 is "If Duke was planning to remediate areas west of
2 the West Parcel, why didn't Duke include those areas
3 as part of the West Parcel when it was designating
4 these parcels for purposes of sequencing remediation
5 work under the VAP?"

6 And your response is that "Duke did not
7 include the Area West of the West Parcel as part of
8 the West Parcel because it did not own this property
9 when it began its investigation of the East End site
10 in 2008. Duke did not acquire the Purchased Property
11 until 2011, long after it had begun the investigation
12 and remediation of the West Parcel and learned more
13 about the extent of MGP impacts to the west." Did I
14 read that correctly?

15 A. Yes.

16 Q. And this would generally -- I apologize
17 for drawing this out -- this would generally confirm
18 the response you just gave that the reason you didn't
19 include the West of the West as part of the West
20 Parcel was because Duke didn't own it, correct?

21 A. Correct.

22 Q. Is it your testimony that, in 2008, Duke
23 was not planning to investigate and remediate the
24 West of the West as a result of not owning it?

25 A. I don't know what the plan was in 2008.

1 I joined in 2014.

2 Q. You can put that aside if you would like.

3 Can you tell me what an iron tar tank is
4 as it pertains to MGP sites?

5 A. Based on my understanding of MGP history,
6 it would -- it would essentially be a -- a steel tank
7 which was used to store a waste byproduct from MGP
8 operations, in this case the coal tar. It's
9 identified that way on historical Sanborn maps which
10 is typical in the industry that you would see those
11 types of labels on the Sanborn. You can see tar
12 well, tar holding tank, gas holders, et cetera.

13 Q. Maybe this doesn't matter but is it your
14 testimony that an iron tar tank is made out of steel?

15 A. I would conclude that, yes.

16 Q. Okay. You are not aware of any MGP
17 equipment, other than an iron tar tank, in the West
18 of the West, correct?

19 A. That is correct.

20 MR. HEALEY: I would like to mark the
21 next OCC Exhibit, please. This will be OCC Exhibit 4
22 and this is Duke's response to OCC Interrogatory
23 02-019 Consolidated, also from the Case No. 18-283.
24 May I approach the witness, please?

25 EXAMINER ADDISON: You may. It will be

1 so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. I have handed you now what has been
4 marked OCC Exhibit 4. This is another Duke response.
5 Do you need any time to review this?

6 A. I'm fine. No, I don't.

7 Q. As with the previous one, you are
8 identified as the person responsible for this
9 response, correct?

10 A. Yes.

11 Q. And in your response to (c), you state
12 that DCI brought soil fill onto the sold property,
13 correct?

14 A. That is correct.

15 Q. And the sold property would be the Area
16 West of the West to the right of the not-straight
17 line, correct?

18 A. That is correct.

19 Q. And it's possible that Duke incurred some
20 costs to remove the soil during its investigation and
21 remediation of the West of the West, correct?

22 A. That is possible, yes.

23 MR. HEALEY: Your Honor, I would like to
24 mark the next OCC Exhibit 5. This is an invoice that
25 Duke produced through discovery in response to a

1 Staff Data Request. May I approach the witness,
2 please?

3 EXAMINER ADDISON: You may. It will be
4 so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 EXAMINER ADDISON: Mr. Healey, before we
7 move on. I notice this has a confidential stamp at
8 the top of it. Am I to take it that that
9 confidentiality is no longer --

10 MR. HEALEY: Yes. Good point. My
11 understanding is that these invoices, based on the
12 deposition, are generally not considered
13 confidential. I don't know that we discussed this
14 particular one.

15 MS. WATTS: I would say generally but
16 this one is fine.

17 MR. HEALEY: This one is fine. I
18 apologize. I will double-check with you guys if I
19 have any more along those lines before passing them
20 around.

21 EXAMINER ADDISON: Thank you.

22 Q. (By Mr. Healey) Mr. Bachand, I've handed
23 you what's now been marked OCC Exhibit 5. This is an
24 invoice dated April 26, 2018, correct?

25 A. That is correct.

1 Q. And it says "Approved for Payment" near
2 the bottom, 5-10-18, and then it has your name,
3 correct?

4 A. Yes.

5 Q. You, in fact, would have approved this
6 invoice?

7 A. Yes.

8 Q. At the top of this invoice it says that
9 it is addressed to Duke Energy Ohio/Kentucky, Inc.
10 Do you see that?

11 A. Yes.

12 Q. Did Duke Energy Ohio and Kentucky split
13 this bill?

14 A. No. I don't know why they would have
15 sent it as they did. But this work was not -- had
16 nothing to do with the state of Kentucky or Duke
17 Kentucky, Inc.

18 Q. So it is just a mistake?

19 A. Yes. KS Energy Services, LLC provides
20 services to both Duke Ohio and Duke Kentucky on a
21 regular basis.

22 Q. So they do work for Duke Kentucky?

23 A. Yes, yes. They are a firm in Cincinnati.

24 Q. And what did you do to determine that
25 this invoice pertained to Ohio as opposed to

1 Kentucky?

2 A. It was associated with the installation
3 of a water main that was required to run our batch
4 plant associated with the in-situ solidification
5 process for Phase IV.

6 Q. And that -- this water line that's
7 referenced is located entirely within the State of
8 Ohio?

9 A. Yes. It's located on the East End plant.

10 MR. HEALEY: Your Honor, I would like to
11 mark the next exhibit, OCC Exhibit 6. This is Duke's
12 response to OCC Interrogatory 2-010 Consolidated,
13 also from the 18-283 case, September 6, 2019. May I
14 approach?

15 EXAMINER ADDISON: You may and it is so
16 marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. I will give you a minute to look at this
19 one as well and then you can let me know when you are
20 ready.

21 A. I have reviewed this.

22 Q. Now, again, you are identified as the
23 person responsible for this discovery request,
24 correct?

25 A. Yes.

1 Q. And you, in fact, provided this response
2 and did so truthfully?

3 A. Yes, I did.

4 Q. I would like to look at the second
5 paragraph here. About six lines from the bottom
6 there is a sentence beginning -- that starts
7 "Beginning in 2014." Do you see that?

8 A. It says "Beginning in 2014"?

9 Q. Yeah. Second paragraph.

10 A. I see it, yes.

11 Q. It says "Beginning in 2014, once Duke's
12 investigations determined that the Riverside Drive
13 Property had not been impacted by former MGP
14 operations at the East End site, costs related to the
15 Riverside Drive Property were not included in Duke's
16 annual Rider MGP Updates (filed in 2015 to 2019)."
17 Did I get that right?

18 A. Yes.

19 Q. And you did, in fact, incur costs for the
20 Riverside Drive Property during that period, correct?

21 A. The costs that were incurred for the
22 Riverside Drive Property had to do with the
23 completion of the Ohio VAP No Further Action letter
24 and ultimately the Covenant Not to Sue.

25 Q. And so that's a yes that some costs --

1 A. Those costs were incurred, correct. They
2 were excluded from the rider though.

3 Q. And those costs were more than \$100,000;
4 is that right? To the best of your recollection?

5 A. To the best of my recollection.

6 Q. Are you familiar with the term "technical
7 assistance" as it pertains to the Ohio VAP?

8 A. Yes, I am.

9 Q. And Duke has not requested technical
10 assistance from the Ohio EPA with respect to the East
11 End site, correct?

12 A. That is correct.

13 Q. But Duke did pursue technical assistance
14 with respect to the Riverside Drive Property,
15 correct?

16 A. That's correct.

17 MR. HEALEY: I am going to mark the next
18 OCC Exhibit. This will be OCC Exhibit 7. This is
19 Duke's response to INT-02-006 Consolidated. This one
20 is marked confidential but we received a waiver of
21 this specific one during the deposition. I will
22 allow Duke's counsel to confirm if they would like,
23 but we discussed it on the open record in the
24 deposition.

25 EXAMINER ADDISON: Thank you very much.

1 It is so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. HEALEY: Thank you. May I approach
4 the witness?

5 EXAMINER ADDISON: You may.

6 Q. (By Mr. Healey) I've handed you what's
7 now been marked OCC Exhibit 7. Do you need any time
8 to review this one?

9 A. No. I'm fine with it.

10 Q. And you are identified again as the
11 person responsible for the response to this
12 interrogatory, correct?

13 A. That is correct.

14 Q. And once again you answered this
15 truthfully to the best of your knowledge, correct?

16 A. Yes.

17 Q. About --

18 EXAMINER ADDISON: Mr. Healey, I am so
19 sorry to interrupt. I just wanted to confirm on the
20 record that --

21 MS. WATTS: Yes, that's confirmed, your
22 Honor. Thank you for asking.

23 EXAMINER ADDISON: Thank you very much.

24 MR. HEALEY: Thank you, Your Honor.

25 EXAMINER ADDISON: I apologize. Better

1 safe than sorry.

2 MR. HEALEY: Yes, of course.

3 Q. (By Mr. Healey) About halfway through
4 this paragraph there's a number, \$15 million, and
5 that is Duke's preliminary estimate for the cost of
6 remediating the inaccessible upland portion of the
7 Middle Parcel of the East End, correct?

8 A. Correct.

9 Q. And then the second-to-last sentence in
10 this paragraph says "For 2019, Duke is projecting
11 approximately \$9,587,288.65 in investigation and
12 remediation expenses of the uplands of the East End
13 site"; is that correct?

14 A. That is correct.

15 Q. And just so I understand the -- that 9 --
16 approximately \$9.6 million number is in addition to
17 the 15 million, correct?

18 A. Correct. The 15 million is future. Post
19 '19.

20 Q. So the 15 million would be for 2020 and
21 beyond?

22 A. Yes.

23 Q. Now the -- the \$9 million number, it says
24 "approximately" but then it goes all the way down to
25 very precise 65 cents.

1 A. Yes, it does.

2 Q. I am curious. Is it an approximation or
3 is it an exact number?

4 A. It's an exact approximation. The reason
5 I am able to do that is because of -- we are -- we
6 were finishing up the remediation in the uplands and
7 we had specific tasks that were budgeted out; so we
8 knew what was relatively accurate enough to throw it
9 down to the nickels, if you will, because of unit
10 costs with the subcontractors and so on and so forth,
11 and the scheduled scope of work that was remaining
12 from the time of -- of -- what we've spent to date at
13 this date in September and what we are going to
14 carry forward so.

15 Q. And the \$15 million amount, is that --
16 correct me if I am wrong -- is that the amount it
17 will take to remediate the area where the peaking
18 plant is currently located?

19 A. It's to remediate two areas that we've
20 identified as currently inaccessible. One is over
21 the propane storage cavern and the other area is
22 underneath what we refer to as the compressor
23 building. Both are located within the Middle Parcel.

24 MR. HEALEY: Your Honor, I am going to
25 mark the next OCC Exhibit 8. This one is

1 confidential and I will hand it to Duke's counsel,
2 first, before handing it to anybody else, to see if
3 they have any other waiver.

4 EXAMINER ADDISON: Thank you.

5 MS. WATTS: It's fine, Chris.

6 MR. HEALEY: Thank you.

7 May I approach, your Honor?

8 EXAMINER ADDISON: You may.

9 MR. HEALEY: Oh, I guess I will note for
10 the record this is Duke's response to OCC-INT-02-005
11 Consolidated Confidential from the 18-283 case.

12 EXAMINER ADDISON: Thank you. It will be
13 so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. (By Mr. Healey) Mr. Bachand, have you had
16 a chance to look at this exhibit?

17 A. Yes, I have.

18 Q. And once again you are identified as the
19 person responsible for the response?

20 A. Yes, I am.

21 Q. And you, in fact, provided a truthful
22 response here?

23 A. Yes, I did.

24 Q. Now, this says, "For 2019, Duke is
25 projecting approximately \$25,289,770 in investigation

1 and remediation expenses of the uplands of the West
2 End site"; is that right?

3 A. That is correct.

4 Q. Can you explain to me how you arrived at
5 that approximation?

6 A. Yes. During this year we are remediating
7 what is referred to as the Phase 2 Area which is the
8 area of the former substation at the West End site
9 and north of that which we refer to as the Tower
10 Area. That area is also being remediated. This
11 number is the costs associated with the remediation
12 of -- of those two areas.

13 Q. And you referenced the substation, so is
14 it your understanding that it was not remediated
15 previously because the substation was previously
16 there?

17 A. Correct.

18 Q. When was that substation removed?

19 A. That substation was relocated, I am not
20 sure exactly when it was started, but during 2014 and
21 '15 it was being relocated to further west at the
22 West End site to make room for the Brent Spence new
23 bridge.

24 Q. And so if the old substation was moved in
25 2014 or 2015, why are you waiting until 2019 to start

1 remediating the uplands area where the substation
2 used to be?

3 A. We had to go through an investigative
4 process to determine the area of impacts and develop
5 that technical report, and then we had to create a
6 bid event for engineering design services and then go
7 through a design phase and then go out to bid for the
8 construction and then implement construction, so
9 that's a -- that process takes some time.

10 Q. Sure. And the bid you referenced, when
11 did that take place?

12 A. Which -- there were two bid events.
13 There were bid events associated with the VAP Phase
14 II and there was a bid event for the engineering
15 design services.

16 Q. And when was -- when did each of those
17 take place?

18 A. They are referenced in my TLB-1 in my
19 supplemental. So just if I may just refresh my
20 memory?

21 Q. Sure.

22 A. I want to say -- so the -- 2017, the
23 property assessment VAP Phase II, and then the
24 engineering work was done for the design in 2018. So
25 page 4 and 5 on TLB-1.

1 Q. Can you help me out, you referenced 2017.
2 Which bullet point are you referring to?

3 A. Well, we did the -- we conducted the bid
4 event and the VAP Phase II Property Assessment in
5 2017. The first bullet.

6 Q. Thank you.

7 Then you said there was a second bid
8 event?

9 A. Yes. Once we finished the VAP Phase II,
10 we created a bid event for the design services
11 associated with the remedial plan for the Phase 3
12 Area and the Tower Area.

13 Q. And the Phase 3 Area on the West End
14 would be where the substation is located?

15 A. Right.

16 Q. Now looking at your TLB-1, I don't see
17 any reference to any investigation of the Phase 3
18 Area in 2015; is that correct?

19 A. That is correct.

20 Q. And then there is no reference to any
21 investigation of the Phase 3 Area in 2016, correct?

22 A. Correct.

23 Q. Coming back to -- coming back to your OCC
24 Exhibit 8, there's a reference in your response at
25 the end to a \$1.1 million cost for the Ohio River

1 investigation, correct?

2 A. Correct.

3 Q. And that would be for investigation only,
4 no remediation, correct?

5 A. That is correct.

6 Q. And Duke has not started remediating the
7 Ohio River at the West End, correct?

8 A. Correct.

9 Q. Nor has it done any actual remediation in
10 the Ohio River at the East End, correct?

11 A. Correct.

12 Q. You mentioned moving the electric
13 substation, correct?

14 A. Yes.

15 Q. And you were here when Ms. Bednarcik
16 referenced money that Duke received from the Ohio
17 Department of Transportation, correct?

18 A. Yes.

19 Q. And were the costs to demolish the old
20 substation the costs that were reimbursed by ODOT?

21 A. I was not involved with that project, but
22 I can tell you that when the parcel was turned over
23 to the remediation group, the substation lattice was
24 completely removed, so I would assume that that was
25 funded through the ODOT mechanism.

1 Q. Part of the VAP process at the East End
2 involves groundwater monitoring, correct?

3 A. Yes.

4 Q. And that involves digging wells?

5 A. Yes.

6 Q. And the wells vary at depth; is that
7 correct?

8 A. Yes.

9 Q. For example, a shallow well might be
10 around 35 feet; whereas, a deeper well might be
11 110-feet deep. Is that about right?

12 A. Yes.

13 Q. And it costs more to dig a deeper well as
14 opposed to a shallow well, correct?

15 A. Yes.

16 Q. And it's more burdensome to obtain
17 groundwater from a 110-foot-deep well as opposed to a
18 35-foot-deep well, correct?

19 A. Yes. More time would be involved.

20 Q. Let's take a look at your Attachment
21 TLB-6 to your supplemental testimony, please.

22 MR. HEALEY: Now might be a good time, if
23 the witness would be amenable, I printed an extra
24 copy of just this one attachment because I am going
25 to ask a lot of questions about it and he might want

1 to refer to this and other parts of his testimony
2 simultaneously, so is it all right with you and the
3 witness if I give him an extra copy of just TLB-6?

4 EXAMINER ADDISON: Certainly. You may
5 approach.

6 Q. (By Mr. Healey) I would like to focus for
7 now on the first page of the TLB-6 Attachment and the
8 year 2014. And you'll see, in 2014, there is a box
9 under "Description" for "Site-wide Groundwater
10 Monitoring," correct?

11 A. Yes.

12 Q. And you allocated some of the costs for
13 groundwater monitoring to the Area West of the West,
14 correct?

15 A. Yes.

16 Q. And so what you were doing here, and if
17 I'm mischaracterizing it, please tell me, what you
18 were doing was taking the total cost for groundwater
19 monitoring on the East End and then trying to
20 segregate part of that out for the ground --
21 groundwater monitoring that would be attributable to
22 the West of the West, correct?

23 A. This -- what I was trying to do here was
24 demonstrate -- let me -- can I start from the
25 beginning?

1 Q. Sure.

2 A. So site-wide -- site-wide groundwater
3 monitoring is exactly what -- what it states. We
4 would, in this case, have Haley & Aldrich conduct
5 quarterly groundwater monitoring events. When they
6 scope the work and when they price the work, it's for
7 the entire site.

8 So in this case there were 21 wells
9 spread across the East End MGP site throughout the
10 different parcels. The -- the scope of work, the
11 costing, and the invoicing is not on a per-well basis
12 or on a parcel-by-parcel basis. It's for the entire
13 site.

14 What I was trying to do here was
15 demonstrate that it's not -- it's not very easily --
16 it's not very easy to segregate out costs on a
17 parcel-by-parcel basis and I was trying to
18 demonstrate a more applicable or fair way to assess
19 what those costs might be on a -- on simple math
20 which is dividing out the wells by the number of
21 wells on a specific parcel. In this case we are
22 focusing on the WOW Parcel. So that's purely the
23 mechanism behind this

24 Q. Sure. So you -- so just to look at the
25 numbers a little more closely, you took this 46,977

1 number and then multiplied that by 2 over 21.

2 A. Correct.

3 Q. Correct? And that's how you got 4,474?

4 A. Yes. 2/21.

5 Q. And we just discussed that groundwater
6 wells are not all the same depth, correct?

7 A. Correct.

8 Q. And so you didn't go through the 21
9 wells, well by well, and try to allocate more costs
10 to the deeper wells, correct?

11 A. No. As I said, it was a simple
12 mathematical division of number of wells divided by
13 the total cost.

14 Q. So this 4,474 number that you had
15 allocated to the West of the West, that would be a
16 very rough approximation; is that fair?

17 A. Correct. Simple division.

18 Q. And if you wanted to, being an
19 environmental expert, you could do the more-thorough
20 examination I described, where you go well by well to
21 try to figure out exactly how much it costs based on
22 the depth of the well and the amount of water and
23 then allocate it slightly more precisely, correct?

24 A. Well, let me explain what that would
25 entail.

1 Q. Sure.

2 A. That would entail going through every
3 single well monitoring sampling record or log that
4 the person in the field would keep. So there's a
5 start and a stop time for purging that well. You
6 have to remove three times the well's volume. And
7 then look at how much time is spent on the sampling
8 of that well, collection of the actual sample,
9 packaging that specific sample, and then shipping
10 that sample off to the lab.

11 So it's not just a function of making an
12 arbitrary assessment of a well that's this deep, it
13 should take this long, because there are a lot of
14 other factors that come into play here.

15 And then looking at the invoices from
16 Haley & Aldrich and parsing out specific labor by
17 labor, whether it's a field tech and then also a
18 person in the office reviewing the data for that
19 particular well, it goes much deeper than that. It's
20 a very cumbersome task.

21 Q. Sure. And you didn't -- you did not
22 endeavor to perform that cumbersome task, correct?

23 A. No. As I stated, simple math. 2/21.

24 Q. And if you had chosen to undertake the
25 process you just described, you very likely would

1 have gotten a number that was not exactly 4,474,
2 correct?

3 A. Yes. And that would not have been a very
4 prudent use of my time.

5 Q. Let's turn to Exhibit TLB-5 in your
6 supplemental testimony. And you attached this to
7 your testimony. This is a Duke response to a Staff
8 Data Request in Case 19-174, correct?

9 A. Correct.

10 Q. And you were the person that provided
11 this response?

12 A. Correct.

13 Q. And I assume, as we discussed before,
14 that you told the truth and gave a complete answer
15 when you were providing it?

16 A. Yes.

17 Q. Now, on the second page there is an
18 all-caps word "NOTE." Do you see that?

19 A. Yes.

20 Q. And then in the second sentence it says
21 "Due to the site-wide nature of many of the above
22 tasks, it is impracticable to segregate costs out by
23 parcel"; is that correct?

24 A. That's correct.

25 Q. And you believe that's a true statement?

1 A. It -- yes, except for the remediation
2 expenses.

3 Q. So you -- you believe that it is
4 practical -- practicable to segregate out the
5 remediation expenses?

6 A. Re -- yes. I think we can segregate out
7 the remediation expenses.

8 Q. But in response to this Staff Data
9 Request you did not, in fact, do that, did you?

10 A. In this particular one, I did because if
11 you look at responses to -- this is specifically
12 requesting information associated with Area West of
13 the West and if you look at item number 5, it says
14 "Construction Management/Detailed Design" and my
15 response was "There were no active remediation
16 activities conducted in the Area West of the West
17 parcel requiring construction management/detailed
18 design in 2018."

19 Vibration monitoring, same response.
20 There was none -- no vibration monitoring activities
21 conducted in 2018 in the Area West of the West
22 Parcel. Same for No. 8 for disposal. And those are
23 actual remediation tasks.

24 Q. Sure.

25 Now, the Duke internal expenses, some of

1 those go towards remediation expenses, don't they?

2 A. Yes.

3 Q. And in your response to Staff, you didn't
4 make any attempt to identify which internal costs for
5 Duke were specifically attributable to remediating
6 the West of the West; is that correct?

7 A. That's correct.

8 Q. And just generally if we go back to the
9 beginning of this Data Request, Staff asks Duke to
10 describe in detail the projects and associated costs.
11 Your response doesn't have any specific cost
12 information, correct? There is no dollar signs
13 anywhere.

14 A. Well, that's correct because, as I
15 mentioned, the investigative component is very
16 cumbersome which I actually say in here that it's
17 impractical. And as you were looking at my TLB-6 --
18 or not TLB-6, TLB -- yeah, TLB-6 Attachment, it's
19 difficult to break out those types of costs.

20 Q. We talked a little bit before about
21 groundwater monitoring, correct?

22 A. Yes.

23 Q. That's an ongoing process?

24 A. Yes; quarterly.

25 Q. So there were quarterly ground -- you

1 performed the groundwater monitoring quarterly during
2 2018 in the West of the West as well, correct?

3 A. Correct.

4 Q. Now, your statement in this response that
5 it's impracticable to segregate costs out by parcel,
6 does that apply to groundwater monitoring?

7 A. Yes. For the same reasons I just
8 discussed.

9 Q. So when Staff asked you to provide that
10 information in this Data Request, you said it was
11 impracticable but then in your testimony now you have
12 come up with a way by dividing 2/21 of the costs and,
13 in fact, segregate those costs --

14 A. Right.

15 Q. -- to the best of your ability, correct?

16 A. May I elaborate?

17 Q. Sure.

18 A. If you read my supplemental testimony,
19 you will see why this was created. This was created
20 in response to Staff's reports and the areas that
21 were being disallowed, the dollar amounts being
22 disallowed. So this isn't being -- I didn't create
23 this to respond to this particular DR or the same DR
24 which appeared in many of the other rider filings.
25 So it's -- I think there's a little disconnect

1 between the two.

2 Q. My point is when -- when Staff asked you
3 to segregate out the costs, you could have done
4 exactly what you did in TLB-6 and said here is an
5 approximation but, instead, you chose to do nothing
6 and said it's impracticable, correct?

7 A. I chose to -- to follow the means and
8 methods in which we do our work in the industry which
9 is assign a task-by-task scope of work for
10 investigation and typically a task is not segregated
11 out by parcel or by area. It's for the site as I
12 indicated. So the site work would be performed on an
13 investigation basis. The costs for remediation were
14 broken out but the rest of them we said it's
15 impractical.

16 And I think just by what we were talking
17 about on the groundwater monitoring from 2014,
18 impracticality came into our discussion where I
19 showed you that it was 2/21, and you continued the
20 discussion by saying, well, isn't it taking longer to
21 sample a well that's deeper than a shallow well which
22 would be more costs. And that, in and of itself, is
23 demonstrating the impracticality behind all of this.

24 Q. That would go to the difficulty but not
25 the impossibility, correct?

1 A. I think I touched on it but, again, where
2 does prudence come into play here? If I have my
3 contractors segregating out their -- out all their
4 costs, somebody has to pay for that. Versus the way
5 we've been doing the work where it is site-wide and
6 they don't have to worry about stopping and tracking
7 every single well, how much work is going into
8 sampling each well. It's a site-wide program.
9 That's cheaper than saying give me a proposal to
10 sample well -- the two wells here and so on and so
11 forth all the way around the site. That takes more
12 time and that costs more money so.

13 Q. Sure. You have to draw the line
14 somewhere, right?

15 A. Exactly.

16 Q. You have to do some reports. They have
17 to keep some track of what they are doing. It would
18 be cheaper than all this if they just said "Pay us
19 \$50,000, we won't tell you anything," right?

20 A. No. That's not how it works.

21 Q. That's not how it works, but my point is
22 you are saying it's cheaper if they have to do less
23 reporting. If they did no reporting that would be
24 even more cost effective, wouldn't it?

25 A. In environmental work there is no such

1 thing as no reporting.

2 Q. That's what I am getting at.

3 A. Yeah.

4 Q. Okay. We discussed earlier today the
5 fact that the Purchased Parcel is made up -- I guess
6 I will take a pause for a second. Are you good? Do
7 we need a break?

8 A. I'm fine.

9 MR. HEALEY: I am at a transition so if
10 anybody wants a break.

11 EXAMINER ADDISON: Let's keep going for
12 now.

13 MR. HEALEY: Okay. Thank you.

14 EXAMINER ADDISON: Thank you.

15 Q. (By Mr. Healey) We discussed earlier that
16 the Purchased Parcel is made up of the Riverside
17 Drive Property and the Area West of the West
18 combined, correct?

19 A. Yes.

20 Q. And you are aware that, in this case,
21 Staff has taken the position that customers should
22 not pay for the investigation and remediation of the
23 Purchased Parcel, correct?

24 A. Based on the Order, it's -- from what I
25 read in the Order, Staff is -- or the Commission is

1 disallowing the premium paid on the Purchased Parcel.
2 The investigation of the Purchased Parcel from my
3 recollection -- recollection was covered under the
4 rider. Once we determined where the limits of
5 contamination were, if you figure we drew the line
6 around the area of contamination, all the costs for
7 continued investigation and/or remediation in the
8 impacted area was -- continued to pass through the
9 rider, and then the Purchased Parcel was subdivided
10 into Riverside Drive and WOW. The rest of the work
11 on the Riverside Drive Property, which consisted of
12 the Ohio VAP NFA and Covenant Not to Sue, those costs
13 were excluded from the rider.

14 Q. Okay. Maybe we are crossing paths a
15 little bit. Have you read the Staff Reports filed in
16 these -- in these rider cases?

17 A. Yes.

18 Q. I know sometimes you know what I am
19 asking, but it makes a better record if I just finish
20 it and you answer.

21 You are aware that Staff filed two
22 reports in these cases, correct?

23 A. Yes.

24 Q. The rider cases, correct?

25 A. Yes.

1 Q. And those reports are separate from the
2 earlier rate case, correct?

3 A. Yes.

4 Q. And in those reports, Staff is
5 recommending for 2013 to 2018 costs, customers not
6 pay for the investigation and remediation in the West
7 of the West, correct?

8 A. That's correct.

9 Q. And as part of its investigation, Staff
10 asked Duke to identify the costs associated with
11 investigating and remediating the West of the West,
12 correct?

13 A. You're saying that's in the Staff Report?

14 Q. No. I am just saying that as they were
15 investigating in advance of preparing the Staff
16 Report, they sent various Data Requests to Duke,
17 correct?

18 A. That is correct.

19 Q. And some of those Data Requests were
20 aimed at asking Duke to identify the costs to
21 investigate and remediate the West of the West,
22 correct?

23 A. That is correct.

24 Q. Let's go back to your TLB-5 briefly,
25 please, your supplemental testimony. And in the note

1 at the end, the last sentence, we already discussed
2 the previous portion of this, the last sentence notes
3 that "All associated fees are provided on the SEL-1
4 attachment previously provided to Staff." Do you see
5 that?

6 A. Yes.

7 Q. And the SEL-1 would be an attachment to.
8 Ms. Lawler's testimony, correct?

9 A. That's correct.

10 Q. And that attachment doesn't segregate
11 costs out by parcel on the East End, does it?

12 A. No, it does.

13 Q. So looking at that SEL-1 there is no way
14 for anyone to determine which of those costs are for
15 West of the West and which are for other portions of
16 the East End, correct?

17 A. On the SEL, that would be correct.

18 Q. And just to confirm -- no, actually, I
19 will just move on. Strike that.

20 MR. HEALEY: I will mark the next OCC
21 Exhibit. I believe we are on number OCC 9. And
22 actually I would like to mark three Exhibits OCC 9,
23 10, and 11, at the same time, because they are
24 somewhat related. The first one is Duke's response
25 to OCC Interrogatory 01-006 Consolidated from the

1 18-283 case.

2 EXAMINER ADDISON: It will be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. HEALEY: The second one is OCC 10.

5 That's Duke's response to OCC Interrogatory 01-007

6 Consolidated from the same case.

7 EXAMINER ADDISON: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. HEALEY: If I could please mark OCC
10 Exhibit 11 and that would be the response to OCC
11 Interrogatory 01-008 Consolidated, also in the same
12 case.

13 EXAMINER ADDISON: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. HEALEY: May I approach the witness,
16 your Honor?

17 EXAMINER ADDISON: You may.

18 MR. HEALEY: I will just reiterate so
19 parties are aware. OCC 9 is Interrogatory 006.
20 Interrogatory 10 is -- sorry. OCC 10 is
21 Interrogatory 007, and OCC Exhibit 11 is
22 Interrogatory 008.

23 EXAMINER ADDISON: Thank you very much,
24 Mr. Healey.

25 Q. (By Mr. Healey) Mr. Bachand, if you could

1 take a moment to refamiliarize yourself with these,
2 please.

3 A. Yes.

4 Q. I've just now marked three discovery
5 requests as OCC exhibits and in each of these you are
6 identified as the person responsible for the answer,
7 correct?

8 A. That is correct.

9 Q. And you, in fact, provided truthful and
10 complete answers to each of these?

11 A. Yes.

12 Q. Now, in -- let's start with OCC Exhibit
13 9. Here OCC is asking Duke to identify the amount of
14 costs for remediating the WOW Parcel that would have
15 been for 2013. And your response is similar to the
16 Staff response that it is impractical to determine
17 whether any of the costs were associated solely with
18 the Area West of the West Parcel, correct?

19 A. That is correct.

20 Q. And then -- maybe I'll just shortcut
21 this. It is true that in OCC Exhibits 10 and 11, you
22 made a similar response for the next two cases that
23 it was impractical to determine whether any costs
24 were associated solely with the Area West of the
25 West, correct?

1 A. Correct.

2 Q. I'll move on.

3 Do you still have OCC Exhibit 6 in front
4 of you? That would be the Interrogatory 02-010.

5 A. 02.

6 Q. 02-010 Consolidated.

7 A. Yes.

8 Q. And the question that OCC asked in this
9 interrogatory was for Duke to state the total amount
10 spent investigating and remediating the Purchased
11 Parcel in each of 2013 through 2018, correct?

12 A. Correct.

13 Q. And looking at the bottom of this
14 exhibit, you, in fact, provided dollar numbers for
15 2013 through 2018, correct?

16 A. That is correct.

17 Q. And so those would be the costs that you
18 identified for investigation and remediation of the
19 Purchased Parcel from 2013 through 2018.

20 A. This is associated with the West of the
21 West Parcel.

22 Q. Okay. So this would not include any
23 costs for investigating or remediating the Riverside
24 Drive Property?

25 A. In 2013, the 66,827 is for the Phase II

1 Property Assessment of the Purchased Parcel. The
2 rest of these costs are strictly for the West of the
3 West Parcel.

4 Q. And you calculated these numbers for the
5 first time after you received this interrogatory from
6 OCC, correct?

7 A. That is correct.

8 Q. So fair to say you received this
9 interrogatory and then endeavored to calculate these
10 numbers and then provided them in response to the
11 interrogatory, correct?

12 A. That is correct.

13 Q. And so, before receiving this
14 interrogatory, you had not calculated any of these
15 numbers.

16 A. That is correct.

17 Q. And so help me out, year after year,
18 Staff is asking you to segregate costs for
19 investigating and remediating the West of the West,
20 you repeatedly tell Staff it's impractical to do so,
21 and then I am honored that when OCC asks, you
22 suddenly were able to provide a number. Can you
23 explain to me how that happened to be the case?

24 A. Yes. Can I refer in my supplemental
25 testimony where I explain that?

1 Q. Well, however you need to answer it.

2 A. I just want -- just like to refresh some
3 of my rationale if you don't mind just giving me a
4 moment.

5 Q. Yeah. Take your time.

6 A. So after -- after reviewing the Staff
7 Report which showed by year the disallowances, in
8 particular the amount of disallowances in 2017 and
9 2018 for East End, our over \$19 million and the
10 rationale behind that was that was work that was done
11 on the West of the West Parcel or at least alluded to
12 that. And at that point I had to go through all of
13 the costs that were incurred and come up with what I
14 thought was a more practical approach on what -- what
15 is the amount of money that has actually been spent
16 investigating and/or remediating this WOW Parcel
17 since it's a focus of contention.

18 I'm not here to tell you that my analysis
19 is 100 percent accurate or 100 percent all inclusive.
20 As I indicated in my deposition, there are some costs
21 that aren't incurred in here, internal labor, you
22 know, things like that that are more difficult to
23 segregate out exactly where I was on that particular
24 day, what was I doing. I was on site the entire time
25 we were investigating and remediating this property

1 since I started with Duke Energy. If there was work
2 going on, I was there. That's -- I can attest to
3 that.

4 Segregating out these costs that I did
5 here and then provided the response to INT-02-010,
6 again, was an effort to demonstrate how difficult it
7 is and -- but also what those numbers realistically
8 would look like. That's the premise behind it.
9 It's -- and as you can see, the number is a lot less
10 than \$19 million.

11 Q. Sure. That's all helpful information.
12 My question was why it took you until September of
13 2019 or thereabouts to calculate these numbers when
14 Staff had been asking you for this exact information
15 through Data Requests for years in these rider
16 proceedings.

17 A. That's what I am here to tell you, it's
18 still impractical. It is not 100 percent accurate.
19 But it was a way to demonstrate a difference between
20 what was being requested to be disallowed versus what
21 was potentially or realistically incurred.

22 Q. And you could have done this analysis in
23 2016, 2017, a similar analysis for those costs at
24 that time, correct?

25 A. I probably could have, yes.

1 Q. Do you have a copy of the 2018 Staff
2 Report in front of you, the Staff Exhibit 1?

3 A. I don't believe I do.

4 Q. Okay. I don't know that you need one. I
5 will just note for the record on Staff Exhibit 1,
6 that it was filed on September 28, 2018; is that
7 correct?

8 A. That's correct.

9 Q. And if we look at your supplemental
10 testimony, TLB-5. Are you there?

11 A. Yeah.

12 Q. And that would be the Staff Data Request
13 that was sent to Duke in April of 2019, correct?

14 A. That is correct.

15 Q. And so at the time of that Data Request
16 to you, you were well aware that Duke -- that -- I
17 apologize.

18 At the time that you received this Data
19 Request in April 2019, you were well aware that Staff
20 had taken the position, in the 2018 Staff Report,
21 that costs in the West of the West should be
22 disallowed, correct?

23 A. Yes, obviously that same -- that goes
24 back to 2014.

25 Q. So when Staff asked you, in 2019, what

1 the costs were for the West of the West, wouldn't it
2 have been smart to say, whoa, it's way less than the
3 2018 Staff Report, let me give you these numbers,
4 instead of just saying that's impractical, I can't do
5 it?

6 A. The bulk of -- when we -- you referred to
7 the PDL spreadsheet that is submitted by Duke for the
8 rate recovery which has the total costs spent by year
9 which goes to Staff. And on that there are different
10 categories broken out on the PDL spreadsheet for both
11 East End and West End, particularly we will talk
12 about East End. You had asked me a question.
13 Looking at that spreadsheet, can you break out costs
14 by parcel. My response to you was no.

15 However, but part of our filing is we
16 submit invoices to Staff. Some of those invoices in
17 particular are from Haley & Aldrich for the
18 remediation which is the bulk of the amount of work.
19 It's the biggest piece of dollars spent on the WOW
20 Parcel. Those invoices clearly state what phase is
21 contained within that invoice. It dem -- it breaks
22 it out by cost, the Phase 1 Area, the Phase 2 Area,
23 the Phase 3 Area, et cetera. We've been talking
24 about that as the Phase 2 Area, so those invoices
25 were -- were there.

1 And I think if I go back and look at some
2 of my responses to -- to Staff, similar to this type
3 of a response, I had indicated what work was done in
4 what area, by year, and referenced the fact that the
5 invoices were submitted.

6 So the only thing that I -- that was
7 demonstrating on TLB-6, which is partly reflected in
8 TLB-5, is the impracticality of breaking out some of
9 the other costs.

10 Q. You keep using the work "impracticality"
11 and suggesting, it seems, it's impossibility. Those
12 are not the same word, correct?

13 A. No. Those are two different words.

14 Q. Right. And so while you maintain that
15 it's impractical, it may or may not be.

16 EXAMINER ADDISON: Thank you.

17 Q. Your testimony does not say anywhere that
18 it's impossible, correct?

19 A. That is correct.

20 Q. Let's turn back to your TLB-6, please.
21 And the first page of this attachment says
22 "Investigation and Remediation Costs for Recovery
23 Purchased Parcel -- Parcel/Area West of the West
24 Parcel," correct?

25 A. Correct.

1 Q. And I think, as you've started to explain
2 at least a little bit, what you were trying to do in
3 this document is provide a more accurate calculation
4 of the costs of investigating and remediating the
5 West of the West and Purchased Parcel, correct?

6 A. Correct.

7 Q. And then on pages 4 and 5 of this
8 document, you are doing the same thing for the Ohio
9 River at the East End and the West End, correct?

10 A. That is correct. Those are -- yes.

11 Q. And so you were attempting here to refute
12 the Staff's recommended disallowance of \$23 million
13 for those areas, correct?

14 A. That's correct.

15 Q. And you discuss -- well, I guess you
16 based the numbers on this attachment on the various
17 invoices that you cite on this attachment, correct?

18 A. Correct.

19 Q. And other than the invoices you identify
20 in TLB-6, there are other invoices from 2013 to 2018
21 that might possibly relate to the West of the West as
22 well; isn't that right?

23 A. Yes.

24 Q. And so if we were attempting to be more
25 complete, we would have to include those other

1 invoices that you didn't include, correct?

2 A. That's correct.

3 Q. And so it's fair to say that this
4 Attachment TLB-6 is not a comprehensive summary of
5 all the costs of investigating and remediating the
6 West of the West from 2013 to 2018, correct?

7 A. That's correct.

8 Q. And, similarly, other than the invoices
9 you've cited here in TLB-6, there are other invoices
10 from 2013 to 2018 that might have costs related to
11 the Ohio River, correct?

12 A. Yes, laboratory costs.

13 Q. So, again, for the Ohio River, this
14 attachment would not be a comprehensive summary of
15 all investigation and remediation costs from 2013 to
16 2018 for the Ohio River, correct?

17 A. Correct.

18 Q. And all the invoices that you identify
19 here on TLB-6, those are from outside vendors,
20 correct?

21 A. Yes.

22 Q. None of the costs identified on this
23 attachment are for Duke's internal costs, correct?

24 A. Correct.

25 Q. But Duke does, in fact, incur some

1 internal costs for investigating and remediating the
2 West of the West, correct?

3 A. Yes.

4 MR. HEALEY: I would like to mark the
5 next OCC exhibit. This is OCC Exhibit 12, and it is
6 a Duke response to a Staff Data Request No. 03-001
7 Supplemental from Case 17-596, received April 10,
8 2017.

9 EXAMINER ADDISON: It is so marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. HEALEY: May I approach, your Honor?

12 EXAMINER ADDISON: You may.

13 Q. (By Mr. Healey) Do you need a moment to
14 review?

15 A. I'm good, Chris.

16 Q. Great. Now, this is another discovery
17 response that Duke provided to Staff in Case 17-596,
18 correct?

19 A. Correct.

20 Q. You are again identified as the person
21 responsible for this response?

22 A. Correct.

23 Q. And here Staff was asking Duke to provide
24 a detail of a project and associated costs for work
25 completed in the West of the West in 2016, correct?

1 A. That's correct.

2 Q. And your response includes Nos. 8 through
3 10 which would be Duke internal costs, correct?

4 A. That's correct.

5 Q. And the same document No. 6 is labeled
6 "Miscellaneous." Do you see that?

7 A. Correct.

8 Q. And one of the miscellaneous costs is
9 performance bonds from AON, A-O-N?

10 A. Correct.

11 Q. Can you tell me what a performance bond
12 is?

13 A. It was bonding associated with the
14 excavation for the East End to the City of Cincinnati
15 and the installation of SOE walls, which are
16 supportive excavations. It's to ensure we don't
17 leave an open hole in the ground.

18 Q. And you did not include any of the costs
19 for these bonds on your Attachment TLB-6, did you?

20 A. I believe they are attached on -- to --
21 they are a part of the Haley & Aldrich invoice.

22 Q. Okay. So you did not pay AON directly.
23 You paid Haley, and then Haley paid AON?

24 A. Correct.

25 Q. Okay. There's also reference to, in No.

1 6, Miscellaneous, Berding Surveying.

2 A. Correct.

3 Q. And did you include any of the Berding
4 Surveying costs on your TLB-6?

5 A. Yes.

6 Q. Yes? And where would those be?

7 A. Oh, TLB-6, I'm sorry. I thought you were
8 referring to PDL and SEL-1. They might not be
9 included in here because, again, it's a site-wide
10 surveying, so I don't think I included them in here.

11 Q. And you didn't allocate any portion of
12 those costs then, you know, the way you calculated
13 like the groundwater wells or anything?

14 A. No, I did not.

15 MR. HEALEY: I would like to mark another
16 OCC exhibit, OCC Exhibit 13, please. And this would
17 be Duke's response to Staff Data Request 04-001 from
18 Case 18-283, April 6, 2018. May I approach, your
19 Honor?

20 EXAMINER ADDISON: You may. It is so
21 marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. (By Mr. Healey) Have you reviewed?

24 A. Yes.

25 Q. And I won't waste too much time. Fair to

1 say this is a similar Data Request that Staff
2 provided in the '18 case to the previous one we
3 discussed and your responses were generally similar
4 as it pertains to internal costs, miscellaneous, the
5 same types of costs, correct?

6 A. That's correct.

7 Q. And I guess I will ask one more question
8 on here on OCC Exhibit 13. There are again
9 references to Duke's internal costs in Nos. 9 through
10 11, correct?

11 A. That is correct.

12 Q. And again, consistent with your prior
13 testimony, those would not have been included on your
14 TLB-6, correct?

15 A. Right.

16 Q. Shifting gears a little bit, is it
17 possible to have sediment somewhere other than in a
18 body of water?

19 A. I suppose one could reference sediment in
20 a wetland area.

21 Q. In a wetland area? Do you have a copy of
22 your deposition transcript still in front of you?

23 A. Yes.

24 Q. And, once again, you were under oath when
25 I deposed you several weeks ago, correct?

1 A. Correct.

2 Q. Can you turn to page 31, please.

3 A. I'm there.

4 Q. And on line 15 it says "Question: Is it
5 possible to have sediment somewhere other than in a
6 body of water?

7 "Answer: Not -- no." Did I read that
8 correctly?

9 A. Yes.

10 Q. And so that being the case, any reference
11 to sediment or sediment testing in these cases would
12 necessarily be related to the -- related to the Ohio
13 River, correct?

14 A. That's correct.

15 Q. And in 2014, there was an investigation
16 in the Ohio River in the area of the proposed Brent
17 Spence Bridge which was conducted by ARCADIS,
18 correct?

19 A. That's correct.

20 MR. HEALEY: I would like to mark the
21 next OCC exhibit. This is OCC 14 and this is a -- I
22 guess, first, I will hand this to Duke's counsel
23 actually because this is another one that's marked as
24 a trade secret. I thank everyone for their patience.
25 This is tedious. Six years of cases there are a lot

1 of docs to go through.

2 MS. WATTS: Chris, we are fine with this.

3 MR. HEALEY: Thank you. May I approach,
4 your Honor?

5 EXAMINER ADDISON: You may. Mr. Healey,
6 could you please provide a quick description of the
7 document?

8 MR. HEALEY: Oh, yes. I apologize. This
9 is an invoice dated December 31, 2017, from Berding
10 Surveying to Mr. Bachand's attention. It was
11 produced in response to a Staff Data Request in the
12 '19 case.

13 EXAMINER ADDISON: Thank you. It will be
14 so marked as OCC Exhibit 14.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. (By Mr. Healey) Mr. Bachand, you have now
17 what has been marked as OCC Exhibit 14. This is
18 several invoices from Berding Surveying directed to
19 your attention, correct?

20 A. Yes.

21 Q. And you, in fact, approved each of these
22 three invoices for payment, correct?

23 A. That is correct.

24 Q. And we -- we mentioned Berding Surveying
25 invoices earlier. Would these be the types of

1 invoices that we were discussing?

2 A. That is correct.

3 Q. And so these would be examples of
4 invoicing that would not be found on your TLB-6; is
5 that correct?

6 A. That's correct.

7 Q. And on the first page, I would note that
8 under the description it says "Monitor buildings and
9 river." Do you see that?

10 A. Yes.

11 Q. And it also references an Ohio River
12 monitoring spreadsheet. Do you see that?

13 A. Yes, I do.

14 Q. So these costs would be associated with
15 investigating the Ohio River?

16 A. No. Part of it is the gauging of the
17 Ohio River. We were monitoring river elevations.
18 And then the monitoring of the building is associated
19 with building on-site -- two buildings on-site that
20 were adjacent to the excavation in the Phase 3 and,
21 well, based on the invoice date, it would be the
22 Phase 3 Area.

23 Q. And that would be in the Middle Parcel?

24 A. Correct.

25 Q. And, in fact, these invoices specifically

1 reference the Middle?

2 A. Yes.

3 Q. These would be examples of invoices we
4 heard today, I think from you and Ms. Bednarcik, that
5 there are at least some times that the invoices
6 specifically reference a parcel, correct?

7 A. Correct.

8 Q. Let's turn back to your TLB-6, please,
9 and look at page 5. And this page 5 of your TLB-6
10 relates to the investigation and remediation costs
11 for recovery in the Ohio River at the West End,
12 correct?

13 A. Correct.

14 Q. And it only includes costs for 2017 and
15 2018, correct?

16 A. That is correct.

17 Q. There is nothing on here from 2013
18 through '16?

19 A. That is correct.

20 Q. But Duke did, in fact, incur costs to
21 investigate the Ohio River at the West End prior to
22 2017, correct?

23 A. That is correct.

24 Q. And that would include sediment
25 investigation in 2013 in the Ohio River, correct?

1 A. Yes. That was -- that was more of a
2 screening versus a VAP Phase II Property Assessment.

3 Q. But it would have been --

4 A. Incurred.

5 Q. It would have been incurred, and it would
6 have been an investigation cost generally that you
7 would have included in the rider, correct?

8 A. Yes.

9 Q. And just to clarify, given that this only
10 covers '17 and '18, those costs from '13 were not
11 included in your TLB-6, correct?

12 A. Correct.

13 Q. And so, once again, if we were
14 calculating the actual costs of investigating and
15 remediating the Ohio River, this would be incomplete
16 because it doesn't include the 2013 investigation of
17 the sediment in the West End portion of the river,
18 correct?

19 A. That is correct.

20 Q. Let's go to page 2 of Attachment TLB-6,
21 please.

22 A. Can you repeat that?

23 Q. Yes. Still on TLB-6, page 2, and
24 focusing on 2016 for now. There's a line for "Soil
25 Disposal Costs - Rumpke." Do you see that?

1 A. Yes.

2 Q. And the total is about 93,000, and then
3 you allocated 83,957 to the West of the West,
4 correct?

5 A. Correct.

6 Q. And it's true that Duke didn't use any
7 vendors other than Rumpke for soil removal; is that
8 right?

9 A. That is correct.

10 Q. And so if we were looking at this TLB-6
11 and we wanted to identify the soil, just look at the
12 lines that say "Soil Disposal Cost - Rumpke,"
13 correct?

14 A. That is correct. Those are the soil
15 disposal costs.

16 Q. And I see for 2016 you identify two
17 invoices, 59301 and 59449, correct?

18 A. That is correct.

19 Q. Is it your understanding that those would
20 have been in December of 2016?

21 A. Without looking at those invoices, I
22 recollect that we started in December of 2016 so that
23 would be my recollection, yes.

24 Q. And was Duke using Rumpke for anything
25 else in December 2016 other than the Area West of the

1 West?

2 A. Yes. They would dispose of soil and/or
3 debris associated with the historical MGP operation,
4 so it could include historical structures consisting
5 of concrete, steel, fabricated equipment, piping,
6 anything that we uncovered that was buried from the
7 old MGP operation.

8 Q. And would any of that that you just
9 described apply to the West of the West for 2016?

10 A. I don't recall other than remnants of the
11 tar tank.

12 Q. And you say you don't recall, so it is
13 possible in 2016 you incurred Rumpke costs to dispose
14 of the remnants of the tar tank?

15 A. 2016, 2017, the excavation was spread
16 across 2016 and 2017, so I can't -- without looking
17 at those invoices, I don't know specifically what was
18 in those invoices.

19 Q. Okay. So these invoices are described as
20 soil disposal costs. Are you suggesting that they
21 might also include excavation and removal of a tar
22 tank?

23 A. "Soil Disposal Costs - Rumpke" is more of
24 a blanket statement. It's what we have to dig out of
25 the ground associated with the MGP to make way for

1 the in-situ solidification process. It could include
2 soil and/or concrete debris. All of it was
3 acceptable to Rumpke under our waste profile. So
4 they didn't distinguish between the -- a solid piece
5 of concrete versus the soil.

6 Q. Okay. So you are using soil as a bit of
7 a shorthand.

8 A. Correct. It's Rumpke.

9 Q. Turning to the next page, there's again a
10 list of invoices for Rumpke for 2017, correct?

11 A. That is correct.

12 Q. And just so I -- I apologize if this is
13 obvious. The invoice numbers get progressively
14 higher, correct?

15 A. Correct.

16 Q. And that would just signal that Rumpke
17 uses some sort of numbering system where they
18 sequence the invoices so a later date invoice would
19 have a higher number, right?

20 A. Correct.

21 MR. HEALEY: I would like to mark OCC's
22 next exhibit.

23 MR. McMURRAY: Your Honor, if we get to a
24 point of changing to a different questioning area,
25 maybe we could take a break. I know at least I need

1 a break.

2 EXAMINER ADDISON: With that being said,
3 we will take a short break at this time.

4 (Recess taken.)

5 EXAMINER ADDISON: At this time we will
6 go back on the record.

7 Mr. Healey.

8 MR. HEALEY: Could I just get -- I forget
9 exactly where we left off. Can I get the last Q and
10 A possibly read.

11 (Record read.)

12 MR. HEALEY: I am going to mark the next
13 OCC exhibit, I believe this is 15, and this is a
14 batch of documents that we used at the deposition.
15 They are marked confidential. I believe they are
16 not, in fact, confidential, but I will double-check
17 with Duke's counsel.

18 MR. McMURRAY: Yeah. That's fine. They
19 are not confidential.

20 MR. HEALEY: So these are Rumpke invoices
21 that Duke produced in response to an OCC Data Request
22 01-009, dated January to February of 2017. May I
23 approach, your Honor?

24 EXAMINER ADDISON: So marked and you may
25 approach.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Mr. Healey) Mr. Bachand, you have now
3 been handed what's been marked OCC Exhibit 15. It is
4 various Rumpke invoices that Duke produced to OCC.
5 You are familiar with these types of invoices from
6 Rumpke, correct?

7 A. Yes, I am.

8 Q. In fact, I understand you haven't just
9 now read them cover to cover, but these invoices are
10 generally sent to your attention, correct?

11 A. That's correct.

12 Q. And you generally approve these types of
13 invoices, correct?

14 A. That is correct.

15 Q. And I will direct you to the first
16 invoice on this exhibit which is No. 59547; is that
17 right?

18 A. Yes.

19 Q. And it's dated January 4, 2017?

20 A. That is correct.

21 Q. And if we look at your Attachment TLB-6,
22 we see in the line for Rumpke that No. 59547. This
23 is one of the invoices included on your TLB-6,
24 correct?

25 A. Yes.

1 Q. And if you turn to the last invoice in
2 this stack, which is a couple pages from the back,
3 it's No. 60122.

4 A. Yes.

5 Q. And that one is also listed as one of the
6 invoices on your TLB-6, correct?

7 A. Yes.

8 Q. And that one is dated February 28, 2017,
9 correct?

10 A. Yes.

11 Q. And given that the first one was January
12 4 and the last one was February 28, we would,
13 therefore, surmise that any Rumpke invoices between
14 those dates would be for the Phase 2 Area, correct?

15 A. Yes. Let me -- yes. The way -- can I
16 elaborate? So the way I distinguish which invoices
17 were for the Phase 2 Area, which is the West of the
18 West Parcel, was by looking at the construction daily
19 reports to determine what work was going on at which
20 location. These invoices all have loads on them. If
21 you look on the first page, 12-28 had a number of
22 loads. Each one of those loads would have a
23 manifest. I get copies of the manifests and the
24 weight tickets, so I went through and made sure that
25 the work was segregated out between the Phase 1 Area

1 which was wrapping up when we started Phase 2, and
2 then when Phase 2 was finishing, we were also
3 starting on Phase 3. So I had to distinguish between
4 those based on daily reports and the waste manifest.

5 Q. Let's flip into this document and I will
6 direct you -- I know it's a little hard to read the
7 page numbers on the top right because they are a
8 little bit on top of some other words, but it's
9 page 506 of 533, and it should be Invoice 59881.

10 A. 506. 59881?

11 Q. Yes.

12 A. I'm here -- I'm there.

13 Q. And this -- based on the January 31,
14 2017, date, that would be for the Phase 2 Area,
15 correct?

16 A. Yes.

17 Q. And if we look back at your TLB-6 on
18 page 3, there is no reference to Invoice 59881, is
19 there?

20 A. No, there's not.

21 Q. And so that would have been an oversight
22 on your part?

23 A. Yes.

24 Q. And so the amount for this invoice, the
25 61,749, that should have been included on your TLB-6,

1 correct?

2 A. Yes.

3 Q. And given that you missed this one, it's
4 possible you may have missed others, correct?

5 A. It's possible.

6 Q. And there is no way for us to know just
7 how many you might have missed, correct?

8 A. Not -- no, there is no way we would know
9 that.

10 Q. Let's -- let's turn -- actually we will
11 stick with this for now. Can you tell me what
12 in-situ solidification is, please?

13 A. Yes. It's the -- it's the mixing of the
14 soils, contaminated soils, whereby reagent is added.
15 In our case it was -- it was a slurry of Portland
16 cement and slag mixed and then put into a slurry and
17 sent from a batch plant to a large drill rig, if you
18 will, which created a 10-foot diameter circular
19 column. And as this drill rig is mixing the soil,
20 it's injecting it with this grout mixture which would
21 cure and create a 10-foot diameter solidified column
22 of soil, and the intent is to render the contaminants
23 of concern and the oil element which is oil-like
24 material and tar-like material, TLM, at the site
25 immobile.

1 Q. And that process is sometimes abbreviated
2 ISS; is that fair?

3 A. That is correct.

4 Q. So if I say ISS, it is easier for me to
5 say, is that okay with you?

6 A. That's perfectly fine.

7 Q. Let's look back at your TLB-6, please,
8 and I would like to focus on page 2 which includes
9 the cost for 2016. And the first category for 2016
10 is "Remedial Design." That is not ISS, correct?

11 A. No. That is the engineering design work
12 associated with the remedy.

13 Q. And the second category, "Completion of
14 Pre-Design Investigation Involving (Middle Parcel and
15 Area West of the West Parcel)," that is not ISS,
16 correct?

17 A. That's correct.

18 Q. And the next category, "Investigation of
19 SBK01/02 in the Area West of the West Parcel," that's
20 not ISS, correct?

21 A. Correct.

22 Q. And the next category, "Installation of
23 Vibration Monitor," that is not ISS, correct?

24 A. That is correct.

25 Q. And the next one, "Vibration Monitoring

1 Plan," that's not ISS, correct?

2 A. Correct.

3 Q. And "Site-wide Groundwater Monitoring,"
4 that would not be considered part of ISS, correct?

5 A. That's correct.

6 Q. Now, on your TLB-1 Attachment, page 2,
7 for 2016, the second-to-last bullet point says
8 "Performed excavation and ISS in Phase 1 Area (Middle
9 Parcel) and Phase 2 Area (Area West of the West
10 Parcel)." Do you see that?

11 A. Uh-huh.

12 Q. So according to your TLB-1, there was, in
13 fact, ISS work done in the Phase 2 Area in 2016,
14 correct?

15 A. No. That's an error.

16 Q. That's an error?

17 A. That is correct.

18 Q. Okay. And I will ask again, given that's
19 an error, are there other errors that you may have
20 missed in this TLB-1?

21 A. I don't recall.

22 Q. But we don't know that for certain,
23 correct?

24 A. My opinion is this would be the only one,
25 but I don't know if you would have any way to know

1 that.

2 Q. Sure. And prior to my pointing that out
3 to you, you were not aware of it, correct?

4 A. That is correct.

5 EXAMINER ADDISON: If you wouldn't mind
6 speaking up. I believe we may have lost the
7 microphone again so just speak up. I am more
8 concerned about the court reporter hearing you --

9 THE WITNESS: Okay.

10 EXAMINER ADDISON: -- what you are
11 saying.

12 Q. (By Mr. Healey) I would like you to look
13 now for the first time today at your testimony filed
14 in Case No. 17-596 that was filed on March 31, 2017.
15 I believe that would be Duke Exhibit 11.

16 A. You said 17?

17 Q. Yes, the 17-596 case. And if you could
18 take a look on page 5 and line 4 says "However, I
19 have submitted written testimony in Case No.
20 14-0375-GA-RDR, et al., Case No. 15-0452-GA-RDR, et
21 al. and Case No. 16-052-GA-RDR." Do you see that?

22 A. Yes.

23 Q. Now, that's not actually true as it
24 pertains to Case No. 14-375, correct?

25 A. 14 would be for '13 costs?

1 Q. Correct.

2 A. Yes, that is.

3 Q. So that would be another error on your
4 part in preparing your testimony, correct?

5 A. Yes, yes.

6 Q. So when your counsel asked you earlier
7 today if you had any corrections, you didn't catch
8 this one as you were reviewing it, correct?

9 A. No, I did not.

10 MR. HEALEY: I am going to mark, if
11 that's all right with your Honor, the next OCC
12 exhibit. We are up to OCC Exhibit 16. And this is
13 Duke's response to OCC Interrogatory 01-009
14 Consolidated from Case No. 18-283. May I approach,
15 your Honor?

16 EXAMINER ADDISON: You may. It will be
17 so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 EXAMINER ADDISON: Let's go off the
20 record for just a minute.

21 (Discussion off the record.)

22 EXAMINER ADDISON: Let's go back on the
23 record. Please proceed.

24 MR. HEALEY: Thank you.

25 Q. (By Mr. Healey) Mr. Bachand, have you had

1 a chance to take a look at OCC Exhibit 16?

2 A. Yes, I have.

3 Q. And you are again identified as the
4 person responsible for this discovery request,
5 correct?

6 A. Yes, I am.

7 Q. And you, in fact, provided a truthful
8 response?

9 A. Yes.

10 Q. In this response, about four lines up,
11 you say "Soil disposal costs associated with the
12 Phase 2 Area was \$156,845.51," correct?

13 A. That is correct.

14 Q. And based on this -- this question asking
15 about the 17-596 case, that would have been 2016
16 costs, correct?

17 A. That is correct.

18 Q. And now let's look at your TLB-6
19 Attachment, page 2. And the line for Rumpke says
20 83,957 for soil disposal costs for 2016, correct?

21 A. That is correct.

22 Q. And so in your TLB-6, you said 83,597,
23 but here in your discovery response you say 156,845.
24 Which one are we to believe?

25 A. I don't have all the invoices in front of

1 me, so I am not exactly sure if some of these
2 invoices were incurred in '16, paid in '17, so I'm
3 not really sure how to distinguish between the two
4 numbers. So I don't know. I can't -- I don't know
5 how -- how I calculated the 156,845 just looking at
6 this.

7 Q. Let's look at your TLB-6 Attachment,
8 page 1, please. And for 2013 costs, you found 66,826
9 for the Purchased Parcel, correct?

10 A. That was based on those invoices,
11 correct.

12 Q. Okay.

13 MR. HEALEY: Your Honor, may I approach
14 the witness?

15 EXAMINER ADDISON: You may.

16 MR. HEALEY: I am going to hand him a
17 copy of Ms. Bednarcik's testimony from the 19 case
18 which was filed, her supplemental testimony, that
19 would be Duke No. 8, just so he has it for reference;
20 is that all right?

21 EXAMINER ADDISON: Yes, you may approach.

22 Q. (By Mr. Healey) Mr. Bachand, can you
23 please turn to page 11 of Ms. Bednarcik's testimony,
24 please. And on page 4 she says that in 2013,
25 approximately 89,223 were incurred in investigating

1 the Purchased Parcel. Do you see that?

2 A. Yes.

3 Q. And that number is different than the
4 66,826 that you included on TLB-6, correct?

5 A. That is correct.

6 Q. And would you happen to know which of
7 those numbers is more accurate?

8 A. As I already testified to, I indicated
9 this is not all inclusive. I think I made that very
10 clear. And then so Jessica, Ms. Bednarcik, was the
11 project manager in 2013, so I believe it's possible
12 with her number of 89,000-and-change is probably more
13 accurate than me trying to pull invoices out of the
14 system and making an analysis of what was spent in
15 2013.

16 Q. Sure. But you didn't make any attempt to
17 work with Ms. Bednarcik to identify the right numbers
18 for '13 and '14 in preparing TLB-6, correct?

19 A. No, I did not.

20 Q. I believe you just said this, but just so
21 I can clarify, it's fair to say we've identified,
22 through the course of your cross-examination, various
23 examples of costs for the West of the West and the
24 Ohio River that you did not include in your TLB-6,
25 correct?

1 A. That is correct.

2 Q. For example, you didn't include internal
3 costs, at least tens, if not hundreds of thousands of
4 dollars in Rumpke costs, costs to investigate the
5 river before 2017, some ISS costs from 2017,
6 surveying costs, those are all things that could have
7 been included in TLB-6, but you did not include,
8 correct?

9 A. That is correct. The only thing I would
10 say is your reference about the 2013 Ohio River
11 costs, that's directly for the West End MGP site.

12 Q. Sure. So if the Commission wanted to
13 determine the cost of investigating and remediating
14 the West of the West, it shouldn't rely on TLB-6,
15 should it?

16 A. Again, I put this together as best I can
17 to demonstrate how cumbersome and difficult it is to
18 segregate out all the costs.

19 Q. Sure. And page 3, you come up with a
20 number for the West of the West of about 4.6 million.

21 A. Correct.

22 Q. You are not suggesting that that is the
23 full cost of remediating and investigating the West
24 of the West, correct?

25 A. I'm suggesting it's a more accurate

1 number versus 19 million-and-change.

2 Q. But you don't know what the actual number
3 would be given that we discussed, throughout the day,
4 that you omitted several different categories of
5 costs from your TLB-6, correct?

6 A. That is correct.

7 Q. And whatever that real number would be
8 wouldn't necessarily be higher than your \$4.6 million
9 number, correct?

10 A. That is correct.

11 Q. And for the same reasons, the numbers you
12 provide for the Ohio River at the East End and the
13 West End, those should be higher as well, correct?

14 A. Yes. They should include -- they could
15 include some internal labor expenses and some of the
16 analytical costs which just haven't been calculated
17 yet.

18 MR. HEALEY: I would like to mark OCC
19 Exhibit 17. This is -- well, I am going to hand it
20 to Duke's counsel. We discussed this document during
21 his deposition without going into confidential
22 session, but I will just confirm that we can do so
23 here as well.

24 MS. WATTS: Yeah, it's fine, Chris.

25 Q. (By Mr. Healey) Mr. Bachand, I have

1 handed you now what's been marked OCC Exhibit 17.

2 EXAMINER ADDISON: I don't believe we
3 have actually marked it.

4 MR. HEALEY: Oh, I apologize, your Honor.

5 EXAMINER ADDISON: Could you provide a
6 quick description?

7 MR. HEALEY: Sure. I would like to mark
8 this as OCC Exhibit 17. These are Haley Aldrich
9 invoices -- or a single Haley Aldrich invoice from
10 January 23, 2019, addressed to the witness, provided
11 by Duke to OCC for discovery.

12 EXAMINER ADDISON: Thank you. It will be
13 so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. (By Mr. Healey) And, Mr. Bachand, you are
16 familiar with these types of invoices, correct?

17 A. Yes, I am.

18 Q. And, in fact, at the top it says
19 "Approved for Payment" and then your name, correct?

20 A. That is correct.

21 Q. So it's fair to say you have seen this
22 particular document before?

23 A. Yes.

24 Q. And this would be an invoice from Haley &
25 Aldrich for Duke regarding the East End, correct?

1 A. Yes.

2 Q. Can you turn to the last page of this
3 exhibit, please. And this page says that it is for
4 services through January 4, 2019, correct?

5 A. Yes.

6 Q. And this is for costs to remediate on the
7 East End, correct?

8 A. Are you talking about what's been
9 accrued, what's been -- or what's currently on this
10 particular invoice?

11 Q. What's been accrued.

12 A. It includes the -- there are 36 tasks
13 listed, or at least specific bullets identified up
14 through 36. So there's a variety of tasks associated
15 with the design phase for the Middle Parcel in the
16 West of the West Parcel, predesigned investigation.
17 The completion of a variety of plans that are
18 typically required during a remediation project. And
19 then as we get further down into the tasks, there's
20 027, 28, 29, 34, 35, and 36 which are associated with
21 the actual remediation component of the work.

22 Q. But this invoice or this page of the
23 invoice does not include any costs for investigation,
24 correct?

25 A. No, it does. There's some investigation

1 tasks that are shown on here. "02 Design
2 Investigation and Treatability Work Plan," that's
3 associated with some of the work out at the site.
4 There's "SBK01/02 Void Investigation," which is task
5 024. That's on here. There's --

6 Q. Oh, I apologize.

7 A. -- task 003 is what's referred to in the
8 industry as a PDI, predesign investigation, to fill
9 in some data gaps from the VAP Phase II. That's on
10 here as well.

11 Q. Are you done? I just want to make sure I
12 am not cutting you off.

13 A. I am pretty sure.

14 Q. Let's take a look at line 34, and the
15 description for that is "Middle & West of the West
16 Parcel - Remedial Construction Phase IV"; is that
17 right?

18 A. Yes.

19 Q. And the costs for that line item for this
20 invoice is about 719,000?

21 A. Yes.

22 Q. And so, in this invoice, Duke incurred
23 719,000 in costs to remediate the Middle and West of
24 the West Parcels, right?

25 A. No. It was for the Phase 4 Area.

1 Q. So it's your testimony that this invoice
2 says "Middle & West of the West Parcel," and you
3 interpret that to mean Middle Parcel only?

4 A. Well, the first page is the actual
5 invoice. That's a summary sheet.

6 Q. Sure.

7 A. So if you go to the first page, it says
8 "Phase 4, Remedial Construction Phase 4."

9 Q. Sure. My question is about page 5,
10 line 34. It says "Middle & West of the West Parcel,"
11 but your testimony is that does not mean West of the
12 West Parcel.

13 A. That's a description on a Haley Aldrich
14 invoice for their internal purposes. That's not
15 designating that that line item was spread across the
16 Middle Parcel and the West of the West Parcel.
17 It's -- it's referencing Phase 4 which is a
18 sequential component of our construction design.
19 You'll see there is Phase 1 through 6 so those are
20 referencing each specific area throughout the Middle
21 Parcel and then over the Phase 2 which is in West of
22 the West Parcel.

23 Q. And unless someone happens to know what
24 Phase 4 means just looking at that line, there is no
25 way to know whether it was Middle or West of the West

1 Parcel, correct?

2 A. Well, the design documents were all
3 submitted as part of discovery, so it's my
4 understanding that they are in there. And then if
5 you -- I believe on my supplemental, the last
6 attachment dem -- identifies the phases, TLB-7. So
7 they are referenced there as well and this is -- this
8 is Drawing C-102 which is taken out of the Haley &
9 Aldrich package for the East End and MGP site.

10 Q. Let's look at line 28 on the same page of
11 this exhibit. Line 28 is identified as Middle & West
12 of the West Parcel - Remedial Construction Phase II,"
13 correct?

14 A. Correct.

15 Q. And now here it says Phase II with a
16 Roman Numeral II, correct?

17 A. That is correct.

18 Q. And it does not say Phase 2 Area, does
19 it?

20 A. No, it does not.

21 Q. And earlier today you testified when
22 looking at Duke documents, anything related to the
23 Duke phases would say Phase, then number, then Area,
24 didn't you?

25 A. Yes.

1 Q. So if you had provided this document to
2 Staff with that understanding, how would Staff know
3 that this Phase II with a Roman numeral in this
4 instance means Duke Phase II, but in other instances
5 Phase II with a Roman numeral means VAP Phase II and
6 sometimes it says Phase 2 Area. A little confusing
7 you have to admit, correct?

8 A. May I continue to elaborate on this point
9 or just -- you want me to just answer?

10 Q. My question was that's a little
11 confusing, isn't it?

12 A. Not to me and I don't think if you read
13 the invoice, which, again, my approval is on the
14 front page of the invoice, not page -- marked as
15 page 5. Page 5 is embedded in the invoice just as a
16 summary of the amount of work completed at the site.
17 And if I look up the actual invoice, the phases are
18 not in Roman numerals. They are in numerical
19 numerals, so. And then the Haley Aldrich cover
20 letter clearly lists Phase 1, 2, 3, 4, 5, 6
21 construction and then there is a summary of their
22 work to date.

23 Q. In line 28, it identifies about
24 3.8 million in costs under prior invoices for
25 Phase II, correct?

1 A. Yes.

2 Q. And you would have allocated those costs
3 on your TLB-6; is that right?

4 A. Yes.

5 Q. And so I guess I will ask you a question
6 similar to the one I asked you before, Staff was
7 asking you, over the years, to provide data
8 segregating the costs between the West of the West
9 and the rest of the East End. Here we have got an
10 invoice that clearly identifies 3.8 million under
11 Phase II. Why didn't you say, in response to Staff,
12 here is an invoice of 3.8 million, instead of saying
13 it's impractical, I can't do it?

14 A. I think in some of my DR responses I
15 reference the SEL sheets and referenced that all
16 associated invoices or costs were submitted to Staff.

17 Q. So your response is Staff asked you for
18 that invoice, and you just handed them a pile of
19 invoices and said figure it out?

20 A. Well, as I indicated, it's on here.

21 Q. Sure, but when Staff asks specifically
22 for Duke to segregate the costs, you didn't point to
23 this invoice; you said it's impractical to do so.

24 A. I think I responded to a DR. I don't
25 know that there is a directive in the Order or there

1 is a directive anywhere else for Duke to segregate
2 the costs out by parcel.

3 Q. Did someone, at Duke, instruct you not to
4 provide that information to Staff?

5 A. No. I prepared my responses, and they
6 were reviewed.

7 Q. Could it be that you didn't really want
8 to give it to Staff because they might use it to
9 disallow costs in their Staff Report?

10 A. No. That's not what I was thinking at
11 all. I was thinking that the information is there
12 and -- but clearly looking at the invoices so -- and
13 I am trying to manage a 30-plus-million-dollar
14 cleanup of, you know, the MGP, and I was doing the
15 best I can to track everything and respond
16 accordingly.

17 MR. HEALEY: That's all I have, your
18 Honor.

19 EXAMINER ADDISON: Thank you very much.

20 I think this would be a great time for us
21 to break for the evening.

22 It's my general practice to begin each
23 subsequent day of hearing at 9:00 a.m. Is there any
24 objection to that in order to get through witnesses
25 as efficiently as possible?

1 All right. Hearing none, we are
2 adjourned for the evening, and we will see everyone
3 again tomorrow at 9:00 a.m. Thank you.

4 (Thereupon, at 5:39 p.m., the hearing was
5 adjourned.)

6 - - -

7 CERTIFICATE

8 I do hereby certify that the foregoing is a
9 true and correct transcript of the proceedings taken
10 by me in this matter on Monday, November 18, 2019,
11 and carefully compared with my original stenographic
12 notes.

13
14

Karen Sue Gibson, Registered
Merit Reporter.

15
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Carolyn M. Burke, Registered
Professional Reporter.

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18 (KSG-6843)

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Summary: Transcript in the matter of Duke Energy Ohio, Inc. hearing held on 11/18/19 - Volume I electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.