

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :  
Commission's Investigation:  
into RPA Energy Inc.'s :  
Compliance with the Ohio : Case No. 22-441-GE-COI  
Administrative Code and :  
Potential Remedial Actions:  
for Non-Compliance. :

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VOLUME I

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PROCEEDINGS

before Gregory Price and Jesse Davis, Hearing  
Examiners, via teleconference (Morning Proceedings)  
and at the Public Utilities Commission of Ohio, 180  
East Broad Street, Room 11-D, Columbus, Ohio  
(Afternoon Proceedings) called at 10:00 a.m. on  
Wednesday, October 26, 2022.

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On behalf of RPA Energy, Inc., dba Green  
Choice Energy.

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Wednesday Morning Session,  
October 26, 2022.

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HEARING EXAMINER DAVIS: Good morning,  
everyone. Thanks for being here. My name is Jesse  
Davis and with me is Greg Price. We're the Attorney  
Examiners assigned to this case.

Today the Public Utilities Commission of  
Ohio has assigned for hearing at this time and place  
Case No. 22-441-GE-COI in the matter of RPA Energy,  
dba Green Choice Energy. What I'd like to do first  
is let's start with appearances. First, Commission  
Staff.

MR. EUBANKS: Robert Eubanks, Attorney  
General's Office on behalf of Staff, 30 East Broad  
Street, Columbus, Ohio, 43215, 26th floor.

HEARING EXAMINER DAVIS: And on behalf of  
RPA Energy.

MR. EUBANKS: We have one other Staff  
member, I thought she might want to introduce  
herself.

MS. PLANT: Rhannon Plant also with  
Staff today. Sorry I didn't get myself unmuted.

HEARING EXAMINER DAVIS: No problem.  
Thank you.

1                   On behalf of RPA Energy.

2                   MR. WHITT: Thank you, your Honor. From  
3 the law firm of Whitt Sturtevant, LLP, Mark Whitt and  
4 Scott Elmer, 88 East Broad Street, Suite 1590,  
5 Columbus, Ohio, 43215.

6                   I would indicate that we have filed a  
7 Motion for Admission Pro Hac Vice for Mr. Elmer which  
8 we can certainly address later in the preliminary  
9 matters if needed.

10                  Also was me in the Hearing Room,  
11 Mr. Brian Trombino from RPA Energy and Valerie  
12 Cahill, paralegal at Whitt Sturtevant. Thank you.

13                  HEARING EXAMINER DAVIS: Thank you,  
14 Mr. Whitt.

15                  On behalf of the Office of Ohio  
16 Consumers' Counsel.

17                  MS. O'BRIEN: Thank you, your Honors, and  
18 good morning. On behalf of the Office of the Ohio  
19 Consumers' Counsel, Bruce Weston, Ohio's Consumer  
20 Counsel, Angela D. O'Brien and Ambrosia Wilson,  
21 Assistant Consumers' Counsel, 65 East State Street,  
22 7th floor, Columbus, Ohio, 43215.

23                  HEARING EXAMINER DAVIS: Thank you,  
24 Miss O'Brien.

25                  With appearances underway, I believe we

1 can get started with Staff's first of the virtual  
2 consumer witnesses today.

3 MR. EUBANKS: Yes, your Honor, Mr. Tokar  
4 would go first.

5 MICAH: Mr. Tokar, I promoted you to a  
6 panelist role, if you could enable your audio and  
7 video.

8 MR. TOKAR: Okay.

9 HEARING EXAMINER DAVIS: Good morning,  
10 Mr. Tokar.

11 MR. TOKAR: Good morning.

12 HEARING EXAMINER DAVIS: Could I please  
13 ask you to raise your right hand. Thank you, sir.

14 (Witness placed under oath.)

15 - - -

16 EDWARD TOKAR

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

19 HEARING EXAMINER DAVIS: First I'd like  
20 you to state and spell your name for the record.

21 THE WITNESS: Edward Tokar, E-D-W-A-R-D  
22 T-O-K-A-R.

23 HEARING EXAMINER DAVIS: Thank you.  
24 Could you please provide your address.

25 THE WITNESS: 1832 North Nantucket Drive,

1 Lorain, Ohio, 44053.

2 HEARING EXAMINER DAVIS: Thank you very  
3 much.

4 Mr. Eubanks, you may proceed.

5 MR. EUBANKS: Okay.

6 - - -

7 DIRECT EXAMINATION

8 By Mr. Eubanks:

9 Q. Good morning, sir.

10 A. Good morning.

11 Q. Today you're here to testify in a hearing  
12 that is concerning RPA. Have you had any  
13 interactions with RPA in the past that would relate  
14 to this case that you would like to discuss?

15 A. I guess I'm here because they came to my  
16 front door wanting me to switch energy suppliers.

17 Q. Okay. And what was your experience with  
18 them when they came to your door to ask you to switch  
19 suppliers?

20 A. When -- They were argumentative when I  
21 told them I had just switched gas suppliers because  
22 mine was going just back into a -- more of a fixed  
23 pipeline kind of company instead of a supplier, and I  
24 just changed companies a month earlier.

25 And I had called Columbia Gas, and they



1 have some kind of aggregate plan that they supply gas  
2 through and that's who I went with and she was  
3 arguing with me to tell me that the gas company does  
4 not provide -- is not an energy choice person, but  
5 that's who I called, that's who I got my gas supply  
6 from, so that's -- she was arguing the point.

7 After that, she wanted me to sign  
8 something, and I told her I wasn't going to sign  
9 anything, so she started walking away. And then she  
10 yelled back that she was going to have her supervisor  
11 come by or something like that, and I said go ahead  
12 and I wasn't going to sign anything for him either  
13 and that's about it.

14 Q. Do you feel like your interactions with  
15 them at RPA was truthful with you when they were  
16 marketing to you door to door?

17 A. I do not.

18 Q. And how so?

19 A. Well, first of all, if I wasn't going to  
20 buy anything from them, I shouldn't have to sign  
21 anything. And once I put my name on a paper of  
22 theirs, they had me and they could switch me to their  
23 gas company, and I didn't want it, and I wasn't going  
24 to sign anything.

25 Q. Did you submit to Staff a video of your

1 interaction with RPA?

2 A. I did.

3 Q. Okay. And how was that video recorded?

4 A. It was a SimpliSafe doorbell.

5 Q. Okay. And have you looked at the video?

6 A. I looked at it after I had taken it and  
7 then I sent it in. I haven't seen it for over a year  
8 because the computer I had it on had the hard drive  
9 crash.

10 Q. Okay. But when you originally looked at,  
11 did it accurately show the interaction that you had  
12 with RPA?

13 A. Yes.

14 Q. And did you do anything to change the  
15 video file before you gave it to Staff?

16 A. I did not.

17 Q. At this time I would request for the  
18 video to be played. And, sir, if while you're  
19 listening to the video if at any point you need to  
20 request for the video to be stopped for you to  
21 explain your experience, just ask for it to be  
22 paused.

23 A. Okay.

24 (Video playback commences.)

25 MR. EUBANKS: I would request that the

1 video be stopped.

2 (Video playback paused.)

3 MR. EUBANKS: I think we probably need to  
4 have the members on this conference have their audios  
5 muted so we don't get the echo. And once that  
6 happens, I guess we can start the video back.

7 (Video playback commences.)

8 (Video playback concludes.)

9 MICAH: That was the end of the first  
10 part. Bear with me a second.

11 Q. (By Mr. Eubanks) I'd like to ask the  
12 witness a question before you start up the next  
13 video. At the end of that video, she stated that you  
14 had sent in a form to ask for the rate to be updated.  
15 Do you remember that? Do you remember sending in a  
16 form for that?

17 A. No, I do not.

18 Q. So to the best of your knowledge, that  
19 statement is not true?

20 A. Yes, I did not send in any forms.

21 MR. EUBANKS: That's my only question.

22 (Video playback commences.)

23 (Video playback paused.)

24 Q. (By Mr. Eubanks) I have another question  
25 for the witness while we're loading up the next

1 video. So in that exchange, and you can correct me  
2 if I'm wrong, but it sounded as if she was trying to  
3 sell to you the fact that you could get a lower rate  
4 if you switch from your utility; is that correct?

5 A. Right, right.

6 Q. Okay. And who were you with? What  
7 utility were you with?

8 A. Columbia Gas.

9 Q. So basically saying you could get a lower  
10 rate than with Columbia Gas?

11 MR. WHITT: Objection, leading and  
12 assumes facts. It's not what was said on the audio  
13 which speaks for itself which I understand to be the  
14 purpose of playing it in the first place.

15 MR. EUBANKS: Well, the audio isn't --  
16 the volume level on it isn't the best, and I'm asking  
17 for his recollection in order to clarify the  
18 conversation that was happening on the video. And if  
19 he doesn't remember, he doesn't remember, but if he  
20 does, he was a participant in that conversation.

21 HEARING EXAMINER DAVIS: Could we get the  
22 audio higher perhaps, Micah, or is this about as  
23 clear as it's going to get?

24 MICAH: That's as loud as we can get it  
25 in Webex. Other than that, you just have to use the

1 audio on your laptop and crank it up.

2 HEARING EXAMINER DAVIS: He can answer to  
3 the extent that he recalls.

4 A. When I told you what happened, that's  
5 pretty much what I remembered. The details and the  
6 rest of it is just from me watching the video right  
7 now.

8 Q. Okay. Let me ask you this, why were you  
9 going back into the house?

10 A. Probably I -- I don't remember exactly,  
11 probably to get the gas bill that had the actual rate  
12 on it.

13 Q. Okay. I have no more questions.

14 (Video playback commences.)

15 (Video playback concludes.)

16 Q. Sir, did you end up signing up for  
17 service with RPA as a result of this door-to-door  
18 marketing?

19 A. No.

20 Q. Okay. And why didn't you?

21 A. Like I said, I had Dominion, and they  
22 were going out of the supplier business. I had  
23 called Columbia Gas. They have some kind of  
24 aggregate price that they offer consumers, and that's  
25 what I took, and I can't remember on the timing. I

1 hear myself talking on the video about at the time I  
2 think Lorain had just signed up with NOPEC that we  
3 were going to switch -- the whole city was going to  
4 switch to them as well, so that's what I remember.

5 Q. All right. It's your understanding at  
6 the time that Columbia was your supplier?

7 A. Correct. That's who I called and they're  
8 the ones that signed me up for whatever rate I was  
9 getting.

10 Q. All right.

11 MR. EUBANKS: I have no further questions  
12 for the witness, and I ask for the video to be  
13 admitted into evidence subject to cross-examination.  
14 I guess we could call that Staff's Exhibit 1.

15 HEARING EXAMINER DAVIS: I apologize, my  
16 mute button was not functioning correctly. It's  
17 marked as Staff Exhibit 1. We'll deal with  
18 admittance of evidence at the end.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 HEARING EXAMINER DAVIS: Mr. Whitt,  
21 proceed to cross.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Whitt:

25 Q. Thank you. Mr. Tokar, my name is

1 Mark Whitt. I represent RPA Energy in this case. I  
2 just have a few questions. It appeared at the end of  
3 the last video we just watched that there may have  
4 been some continuation of an interaction between you  
5 and the salesperson; is that correct?

6 A. Yes.

7 Q. And I didn't catch the part where you had  
8 testified about a comment the agent made as she was  
9 leaving about contacting her supervisor or something  
10 to that effect. That doesn't appear on the video  
11 that we reviewed, correct?

12 A. She was already walking down the street,  
13 walking down my driveway towards the sidewalk.

14 Q. Okay. But that isn't on the video,  
15 right?

16 A. It wasn't on what we just saw. I don't  
17 know if there's anymore. Like I said, I haven't seen  
18 the video since I sent it in.

19 Q. Okay. And I have a question: We watched  
20 the video, I guess, in three segments of three  
21 separate videos and just out of curiosity I guess  
22 more than anything else, I'm wondering if that's just  
23 a function of the size of the file that it had to be  
24 broken up in order to provide that to the Commission  
25 Staff or is that how your system did the recording?

1           A.     That's how the system did the recording.

2           Q.     Okay. Does the system record in segments  
3 of a certain length or something? Is that how it  
4 works?

5           A.     I think it runs for a minute, then starts  
6 again.

7           Q.     Great. And you knew during this  
8 interaction that the person you were interacting with  
9 was working on behalf of RPA Energy or Green Choice,  
10 correct?

11          A.     I knew she was working -- I don't recall.  
12 I knew she was just trying to sell me whatever  
13 service she was trying to sell me.

14          Q.     Okay. But she showed you a badge that  
15 appeared to me early in the conversation; is that  
16 right?

17          A.     If it shows it in the video, I'll agree,  
18 but like I said, I don't remember.

19          Q.     When you called the PUCO, you called to  
20 complain about Green Choice, correct?

21          A.     I must have.

22          Q.     Okay. What was your main goal in  
23 contacting the PUCO?

24          A.     My goal was to have people stop coming to  
25 my door and bothering me. When they come to the



1 door, I say I don't want it, they should leave, not  
2 argue with me about what's happening. There had just  
3 been a segment on TV about door-to-door salesmen and  
4 you should contact the Attorney General or whoever  
5 about unwanted solicitation.

6 Q. I understand. Had people been in your  
7 neighborhood previously selling other things door to  
8 door? Is that what your frustration was part of?

9 A. There's not a whole lot but there are  
10 some.

11 Q. So this wasn't the first time somebody  
12 came by your house to try to sell something?

13 A. Correct.

14 Q. Whatever this person was trying to sell  
15 in the video we just watched, obviously you weren't  
16 interested in buying, fair to say?

17 A. Correct.

18 Q. And this person wasn't able to get you to  
19 switch suppliers, correct?

20 A. Correct.

21 Q. So you didn't rely on anything this  
22 person said to alter who your gas or electricity  
23 supplier was, fair to say?

24 A. Correct. I really did not trust them  
25 especially when she told me to sign something. It

1 doesn't work like that. I don't want anything but  
2 you've got to sign my paper anyways, it's not right.

3 Q. Okay. You've never been a customer of  
4 RPA or Green Choice?

5 A. No.

6 Q. Did anybody from the PUCO follow up with  
7 you about RPA's reaction to -- the interaction you  
8 had with the sales agent?

9 A. I believe I got an e-mail from the person  
10 I had talked to when I reported it, and they had said  
11 that they had let the salesperson go. That's all I  
12 remember.

13 Q. Would you think that would be a  
14 reasonable response on the company's part?

15 MR. EUBANKS: Object.

16 A. Well, it depends if all the salesperson  
17 are --

18 MR. EUBANKS: Sir, sir, sir, when there's  
19 an objection on either side, you have to wait for the  
20 judge to rule on that.

21 THE WITNESS: I'm sorry, I didn't hear  
22 it.

23 HEARING EXAMINER DAVIS: Apologies,  
24 Mr. Eubanks, you're a little quiet. I wasn't sure if  
25 you meant to talk or not when I saw your thing light

1 up.

2 MR. EUBANKS: Yes. I actually think he's  
3 answered the question, but I just wanted to tell him  
4 that for future objection, you know, just to allow  
5 the opportunity for it to be ruled upon. I'm going  
6 to disregard the objection this time, but I just  
7 wanted to tell the witness that. All right.

8 HEARING EXAMINER DAVIS: You may proceed,  
9 Mr. Whitt.

10 MR. WHITT: Can I have the last question  
11 and answer reread, please?

12 (Record read.)

13 MR. EUBANKS: Okay, your Honor, my  
14 objection is basically that that goes to the heart of  
15 the case whether or not this is the activities that  
16 happen or are misleading and whether or not RPA's  
17 response to those activities are appropriate is  
18 something that is determined by the Commission, not  
19 by the witness. The witness already stated how RPA  
20 responded, and that's the extent of his pertinent  
21 testimony on that issue.

22 MR. WHITT: Your Honor, if part of the  
23 issue is the company's response to various  
24 activities, then the witness' knowledge, if they have  
25 one of those activities, is certainly fair game and

1 that's all.

2 MR. EUBANKS: I did not object to him  
3 saying how RPA followed up. I just objected to the  
4 question about characterizing whether or not that  
5 follow-up action was a reasonable follow-up action.

6 HEARING EXAMINER DAVIS: He can give his  
7 opinion from the position that he has, you know.  
8 He's not opining on the reasonableness as an officer  
9 of the Commission or as an expert. I think he can  
10 answer that to the extent as the person interacting,  
11 he opine as just a general thing. You can proceed,  
12 Mr. Whitt.

13 MR. WHITT: We need to reread the  
14 question for the witness.

15 (Record read.)

16 A. In my case, yes, but if all other  
17 salespeople are trained to go out and act in such a  
18 manner, then no.

19 Q. Okay. Would you consider your example of  
20 case study of what not to do that could be shared  
21 with other agents to make sure things like this  
22 weren't repeated?

23 A. Yes.

24 Q. Would you also expect the company to find  
25 out whether this agent had actually gotten other

1 customers to switch?

2 A. As far as -- Could you ask that again?

3 Q. Well, I think obviously you were very  
4 dissatisfied with this interaction to the extent you  
5 called the PUCO to complain about it, correct?

6 A. Correct.

7 Q. And I think we've just agreed that your  
8 interaction would be a good case study for the  
9 company to train other people in what not to do,  
10 correct?

11 A. Yes.

12 Q. And as part of the company's follow-up to  
13 your situation, given what the interaction that we  
14 all just looked at, would you expect the company to  
15 find out whether this agent was actually able to  
16 enroll people?

17 I know that you turned her away, but  
18 shouldn't the company try to find out, well, did this  
19 agent actually get people to sign something or get  
20 people to switch? You would expect them to do that,  
21 I assume?

22 A. Only if they got people to sign paperwork  
23 fraudulently. I mean, just because somebody  
24 switched, there probably are people that would want  
25 to switch, but if they were not told everything that

1 was going on and then have them sign a paper, no,  
2 that's wrong.

3 Q. Okay. And I think you had testified  
4 earlier in your testimony that about a month before  
5 this RPA salesperson came around, you had switched  
6 your gas supplier; is that right?

7 A. Yes.

8 Q. And it sounds like if I understood you  
9 correctly, your previous gas supplier was Dominion  
10 Energy or some Dominion company?

11 A. Yes.

12 Q. And you switched to Columbia?

13 A. Like I said, I called Columbia Gas and  
14 they have -- it's some kind of aggregate plan. It's  
15 not actually Columbia Gas, but they offer through  
16 other companies. And whatever price they were  
17 offering through those other companies, that's what I  
18 was taking.

19 Q. Okay. When you say price they were  
20 offering, are you referring to a price that Columbia  
21 was charging or some supplier that was working  
22 through Columbia's program somehow?

23 A. It was the price that was being charged  
24 from this aggregate that works through Columbia Gas.

25 Q. Do you still have the same gas supplier

1 today?

2 A. I do, but we spent -- I believe we do.  
3 We went to NOPEC because that's what the City of  
4 Lorain did. NOPEC withdrew their -- they weren't  
5 able to supply gas and electric at a price suitable  
6 to them, so they have just withdrawn, and we are  
7 being referred back to Columbia Gas for a supplier.

8 MR. WHITT: Thank you very much, sir. I  
9 have no more questions.

10 HEARING EXAMINER DAVIS: Thank you,  
11 Mr. Whitt.

12 Miss O'Brien?

13 MS. O'BRIEN: No questions, your Honor.  
14 Thank you, Mr. Tokar, for your time.

15 THE WITNESS: Thank you.

16 HEARING EXAMINER DAVIS: Redirect,  
17 Mr. Eubanks?

18 - - -

19 REDIRECT EXAMINATION

20 By Mr. Eubanks:

21 Q. I have one, again for clarification  
22 purposes. At the beginning of the video, is that  
23 your son that comes out onto the porch to meet the  
24 RPA salesperson?

25 A. Yes, it is.

1 Q. And on the second video or the third  
2 video, that's you also; is that correct?

3 A. That's correct.

4 Q. Okay. So when the badge was shown, it  
5 was shown to your son?

6 A. It might have been if it was done right  
7 at the beginning.

8 Q. Okay. Just for clarity purposes, can we  
9 have just the initial video replayed since it's only  
10 a minute?

11 HEARING EXAMINER DAVIS: Certainly.

12 (Video playback commences.)

13 (Video playback concludes.)

14 Q. So, sir, you see there that the person  
15 she showed the badge to, that would have been your  
16 son, correct?

17 A. She showed that to me. I came out and  
18 then she started talking something else besides his  
19 hair. That was me that came back out.

20 Q. Okay. That was you who came outside?

21 A. Yes.

22 Q. Okay, that clarifies things. That's my  
23 only question.

24 HEARING EXAMINER DAVIS: Thank you. I  
25 don't suppose there's any recross there?



1 MR. WHITT: No, your Honor.

2 HEARING EXAMINER DAVIS: Thank you.

3 Okay. With no more questions for this witness,  
4 Mr. Tokar, thank you very much for appearing today.  
5 You're free to leave.

6 THE WITNESS: All right, thank you.

7 HEARING EXAMINER DAVIS: Thank you again.

8 Mr. Eubanks, would you like to call your  
9 second witness.

10 MR. EUBANKS: Yes, your Honor, I'd like  
11 to call Sheila Barton to the stand.

12 MICAH: Miss Barton, you've been promoted  
13 if you want to unmute your video and audio.

14 MS. BARTON-JOHNSON: Okay, how you doing?

15 HEARING EXAMINER DAVIS: Good morning.  
16 Thanks for being here. Could I ask you to raise your  
17 right hand.

18 (Witness placed under oath.)

19 - - -

20 SHEILA BARTON-JOHNSON

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

23 HEARING EXAMINER DAVIS: Thank you.

24 Would you please state and spell your name for the  
25 record.

1 THE WITNESS: Sheila A. Barton-Johnson,  
2 S-H-E-I-L-A B-A-R-T-O-N J-O-H-N-S-O-N.

3 HEARING EXAMINER DAVIS: Thank you. And  
4 could you provide your address.

5 THE WITNESS: 613 Goshen Avenue,  
6 G-H-O-L-S-O-N, Apartment 210, Cincinnati, Ohio,  
7 45229.

8 HEARING EXAMINER DAVIS: Thank you very  
9 much, Miss Barton.

10 Mr. Eubanks, you may proceed.

11 - - -

12 DIRECT EXAMINATION

13 By Mr. Eubanks:

14 Q. Hello, Miss Barton.

15 A. How you doing?

16 Q. I'm doing okay. I have a question, did  
17 you have any interactions with RPA in the past?

18 A. No, I haven't. When they come to my  
19 door, I don't even talk to them. I shut my door in  
20 their face because I know they're tricking, no good.  
21 No, I told them I do Duke Energy only. I don't need  
22 two companies. I don't need to pay two companies for  
23 electric.

24 That's just not -- And then when they  
25 first got on my bill, I called them and asked them

1 could they remove themselves off my bill because I  
2 didn't sign up with them. They just added themself  
3 to my bill. That shouldn't be legal, but they never  
4 removed themself off my bill.

5 The last bill I got was \$274.24 and I've  
6 called Legal Aid Housing Department, the Public  
7 Utilities Commission and Miss Shawn, Miss Shawn, the  
8 case number at the time was 00672275. She helped me.  
9 She investigated. She drew up my -- she subpoenaed  
10 all my gas and electric bills because I told them I  
11 didn't talk to nobody for them to add themselves to  
12 my bill. That shouldn't be legal, and I'm not going  
13 to give them no \$274 because I only do electric.

14 Even if I did gas and electric, it still  
15 shouldn't be that high. I got my October bill right  
16 here I paid two weeks ago. It's only \$71. I've got  
17 a \$73 money order, but the bill was \$71.68, I  
18 believe.

19 And I'm like... So when I got this  
20 \$274.24, RPA was still on my bill, I called legal  
21 aid, the housing department. They gave me the Public  
22 Utilities Commission, and Miss Shawn, she  
23 investigated and, yes, I got all my money back that  
24 RPA was charging me that I did not sign up for.

25 Whoever that James Johnson... my husband

1     been dead three years. I checked it off for all the  
2     information downtown, wherever you go for the  
3     information. I don't know the first name on there  
4     because we've been separated for two years, but he  
5     was dead and I'm the only one on the lease at 613  
6     Gholson.

7                 Nobody talked to me. I do not talk to  
8     them. Even when they called me on the phone, I hang  
9     up. So when I talked to Shawn at the public -- I  
10    told them that's an inside job. There's somebody in  
11    Duke Energy adding them on to people's bills that  
12    they don't -- it just didn't make sense to me.

13                Q.    Ma'am, could I ask you some specific  
14    questions, though?

15                A.    Yes, sir.

16                Q.    Do you recall what date you were  
17    originally signed up with RPA?

18                A.    I didn't sign up with them.

19                Q.    I know you didn't do it, but when you  
20    were fraudulently signed up with RPA.

21                A.    That was a lie.

22                MR. WHITT: I object. I object to the  
23    characterization of fraudulent.

24                HEARING EXAMINER DAVIS: Could you  
25    rephrase the question, Mr. Eubanks.

1           A.     Do I know when they popped up on my bill?

2           Q.     Yes, when did they first end up on your  
3     bills, ma'am?

4           A.     It was probably about two years ago or a  
5     year ago. I could never -- they've always been a  
6     hundred and something. I thought that was normal  
7     until they came up with this \$274, and I've seen RPA,  
8     they've popped up on my bill, and I did not give them  
9     permission to be on my bill. I didn't find out they  
10    was another company until I got the \$274. I got all  
11    my bills and every bill that I've ever received from  
12    day one that I moved in here four years ago, but RPA  
13    popped up on my bill about a year or two ago.

14          Q.     Okay. And you say your bills are  
15    typically around \$100, between \$74 to \$100?

16          A.     No, my bills are like \$71 or \$86 or  
17    something like that. It never reached a hundred. It  
18    never reached a hundred. I like to pay all my bills,  
19    get a copy and mail it in to whoever because I keep  
20    my bills and the money orders.

21                 I put it in the bill that I paid, like I  
22    paid this one. I paid this with \$71 and I got a \$73  
23    money order and a receipt. I put it in with the  
24    bill, and I write it on the envelope that I was  
25    charged October of 2022, so I know when that bill was

1     paid.

2             Q.     Okay.   So you can correct me if I'm  
3     wrong --

4             A.     I'm not giving them \$150 or \$274 electric  
5     bill.   I only sent them -- I wrote down everything.  
6     This is the last bill I got from RPA.

7             Q.     What's the date on that bill?

8             A.     It's March the 3rd, 2021 for service  
9     February the 1st to March 2nd, 25 days.

10            Q.     Okay.   And you said that was the last  
11    bill?

12            A.     This is the last bill I received because  
13    I called legal aid.   I've got all the information  
14    from over here because you can see it what happened.

15            Q.     Ma'am, your video went off.

16            A.     I know.   Okay.   See, I wrote everything  
17    down.   The lady I talked to, the Public Utility  
18    Commission, Legal Aid, I even got the Community  
19    Action Agency on here and I kept this bill.   I keep  
20    all my bills.

21            Q.     Okay.

22            A.     I keep all my bills.

23            Q.     All right.

24            A.     For something like this.

25            Q.     I just want to be clear, and I think you

1 already stated this, but just for the record, you  
2 never spoke with RPA on the phone --

3 A. No --

4 Q. -- to give permission?

5 A. -- I didn't talk to them on the phone or  
6 nothing.

7 Q. You never gave them permission on the  
8 phone to sign you up; is that right?

9 A. No, sir, I did not.

10 Q. Is there anyone in your house that has  
11 the authority to sign you up for electric service?

12 A. No. Even when I was in a relationship,  
13 he didn't answer my door. He didn't answer my  
14 cellphone --

15 Q. Okay.

16 A. -- as far as that, and he wouldn't have  
17 did that, no way.

18 Q. Ma'am, I want to play an audio for you  
19 and after you listen to the audio, hear it all the  
20 way through, and after you have listened to the  
21 audio, if you could let me know if that person had  
22 the authority to sign you up for services.

23 A. Is this the person that signed me up?

24 Q. Well....

25 A. Is it James Johnson? Because I heard

1 that video. I don't recognize his voice. I don't  
2 know who he is, and I was never in a relationship  
3 with James Johnson.

4 Q. Okay. If we can have the video played at  
5 this point?

6 A. Yes, sir.

7 Q. I'm sorry, the audio, and we can mark the  
8 audio as Staff's Exhibit 2.

9 HEARING EXAMINER DAVIS: It's marked as  
10 Staff's Exhibit 2.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 A. My October bill was \$71.38.

13 (Audio playback commences.)

14 (Audio playback concludes.)

15 Q. Miss Johnson, did you get a chance to  
16 hear the video? Were you able to hear it?

17 A. I heard it. I heard it before we got  
18 connected. I don't know who that is. My husband's  
19 name was Donald Johnson. That name James is nowhere  
20 in my relationship. I never went with a James  
21 Johnson. I was married to a Donald Johnson. He's  
22 deceased. And we ain't been together in years, so  
23 there wasn't nobody in my household that did that.  
24 And how he got my information, like I told the Public  
25 Utilities people that called me, that's got to be an



1 inside job. They just add people to people's bills.  
2 That shouldn't be legal.

3 I only got electric, what I need, with  
4 Duke Energy and another company. They don't make  
5 sense with me. I don't have dementia, I'm in my  
6 right mind, and I would never, never agree to  
7 something like that cause they're lying, they're  
8 lying.

9 They did a friend of mine like that.  
10 That's why I didn't do it because they told you your  
11 bill will go lower. No, it won't. Why would they  
12 send me a \$274 bill? If it goes to lower, what's the  
13 274? They added themselves to my -- Oh, Lord, have  
14 mercy, it just don't make no sense. They should not  
15 be allowed to do that.

16 I told them also to remove themselves off  
17 my bill and they never did it. I called Duke Energy  
18 and asked them how could you allow somebody to add  
19 theirselves to my bill without my permission?

20 Q. Yes, ma'am. Can I ask a question?

21 A. Yes, sir.

22 Q. You said you haven't been married in  
23 years?

24 A. I'm still married, but my husband is  
25 dead. And when he wasn't dead, he didn't live in

1 Cincinnati. He lived in Kentucky.

2 Q. When did he die?

3 A. We didn't have no contact. He didn't  
4 visit me.

5 Q. When did he die, ma'am?

6 A. I'm not quite sure because his family  
7 didn't get in touch with me. My son told me he was  
8 dead.

9 Q. Was it before 2021?

10 A. Yes.

11 Q. Was it before 2020?

12 A. Yes. I think he died in 2020 or 2019. I  
13 was intending to go down to City Hall, but without  
14 his birthday and everything, I don't know if I can  
15 get my marriage license. I'm going to go down there  
16 and try to get all that, but I know I need some  
17 information, but I'm going to go and see if I can get  
18 it, his death certificate and everything, and I told  
19 the lady I talked to Miss Shawn that my husband was  
20 dead. And even if he wasn't, he didn't live over  
21 here. He lived in Kentucky.

22 Q. Okay. So it's your testimony today that  
23 you never signed up with RPA and the person on the  
24 phone was not authorized to sign you up with RPA?

25 A. Right, that's for him to get all my

1 information. There's got to be somebody working in  
2 the electric company.

3 Q. Also, ma'am, on the audio, you were asked  
4 a question from a sales rep that the representative  
5 from RPA just leave your home --

6 MR. WHITT: I'll object. I'll object.  
7 The testimony has been that the -- while the  
8 recording reflects that the witness was not a  
9 participant in the conversation.

10 THE WITNESS: Right. I didn't have  
11 nothing to do with that and I don't know who he is.

12 Q. (By Mr. Eubanks) Okay, that's true, I'm  
13 sorry. I'll rephrase my question. That is correct.  
14 Do you recall anyone from RPA coming to your door and  
15 speaking to you?

16 A. Yes, yes, but I don't know who the  
17 gentleman was, but I didn't give him no information.  
18 Like I said, when they tell me -- when they started  
19 talking about another agency, I tell them I Duke  
20 Energy only and I shut my door in their face.

21 Q. Did they come to your door shortly  
22 before, and when I mean shortly, I mean a month or  
23 two before, maybe a week before you were signed up?

24 A. I didn't sign up. I don't know if it's  
25 been going on for a long time. They don't come in

1 this building no more, but I don't know when this  
2 started. Back when it started I know I didn't agree  
3 to it.

4 Q. Okay.

5 A. I know that.

6 MR. EUBANKS: Okay. I guess I have no  
7 more questions for the witness.

8 HEARING EXAMINER DAVIS: Thank you.

9 Mr. Whitt, do you have cross?

10 MR. WHITT: Sure.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Whitt:

14 Q. Thank you, ma'am. My name is Mark Whitt.  
15 I represent RPA Energy. I have just a couple  
16 questions for you. And I want to try to make sure I  
17 understand the timeline, and I believe I heard you  
18 say that you moved to where you live currently about  
19 four years ago; is that correct?

20 A. Yes, I did.

21 Q. And that your husband died about three  
22 years ago?

23 A. Yeah, but even if I did move here four  
24 years ago, even if he wasn't dead, he don't live over  
25 on this side of town. He lives in Kentucky, and we

1 didn't -- we didn't correspond with each other. He  
2 wouldn't know where I live at. I don't care where I  
3 live at and how long I live there, he don't know  
4 where I live at.

5 Q. I understand, ma'am. I'm just trying to  
6 find out when your husband was deceased which I'm  
7 sorry that happened.

8 A. I don't know, but I can get back with  
9 you. I could go to City Hall and find out or  
10 wherever it is down there on Walnut. You go to the  
11 department -- I know where to go, but if I need to  
12 get all that information and mail it in, I'll do  
13 that.

14 Q. No, that's okay, ma'am.

15 A. I know he wasn't living when this  
16 situation happened, I know that much.

17 Q. Do you know if he was alive in  
18 December 2019?

19 A. I don't keep up with him. No, I don't.

20 Q. So he might have been living then?

21 A. No, I'm not -- no. He could have been.  
22 I don't know.

23 Q. Okay. And I thought I heard you mention  
24 another relationship. Have you ever had another  
25 person living in your home since your husband passed?

1           A.    No, he didn't live in my home.  He has  
2   his own apartment.  And like I said, he didn't answer  
3   my door when he was here visiting.  He didn't answer  
4   my door.  He didn't answer my cellphone.  His name is  
5   Robert Malone, so I know who my surroundings is.

6           Q.    I don't want to pry too much in your  
7   business, ma'am, but how often would Mr. Malone come  
8   to visit?

9           A.    He come to my house like a week and go  
10  home for three days and come back.

11          Q.    Okay, thank you.  And do you believe that  
12  that there was some inside job at Duke Energy?

13          A.    Yes, I believe it was somebody in Duke  
14  Energy that signed me up.  I didn't give nobody my  
15  account number, I wouldn't do that.  I wouldn't give  
16  nobody my Social Security number.

17          Q.    Okay.

18          A.    Nobody going to get any information on me  
19  because of the Covid.  And when it was over, I had  
20  nobody run through my house.  So if anybody know  
21  anything about me, it have to come from the computer  
22  or where they got all my information.  So whoever  
23  this James Johnson is, I believe he works at Duke  
24  Energy.

25               MR. WHITT:  Okay, thank you, ma'am, I

1 have no further questions.

2 THE WITNESS: Yes, sir.

3 HEARING EXAMINER DAVIS: Thank you.

4 THE WITNESS: I told him it got to be a  
5 inside job because I didn't give nobody my  
6 information, my account number. Like I told them,  
7 the last person knocked on my door, can I see your  
8 gas and electric bill, I said no, you cannot and shut  
9 the door in their face. What you want with my bill?

10 MR. WHITT: Okay, I don't have anymore  
11 questions for you, ma'am. Thank you.

12 HEARING EXAMINER DAVIS: Thank you,  
13 Miss Johnson.

14 THE WITNESS: You're welcome.

15 HEARING EXAMINER DAVIS: Ms. O'Brien, do  
16 you have any cross?

17 MS. O'BRIEN: No questions, your Honor.  
18 Thank you for your time, Miss Barton-Johnson.

19 THE WITNESS: You're welcome.

20 HEARING EXAMINER DAVIS: Thank you for  
21 being there.

22 MR. EUBANKS: I have a couple.

23 HEARING EXAMINER DAVIS: Redirect?

24 MR. EUBANKS: Yes.

25 HEARING EXAMINER DAVIS: Go ahead,

1 Mr. Eubanks.

2 - - -

3 REDIRECT EXAMINATION

4 By Mr. Eubanks:

5 Q. Hello, ma'am, just to be clear, you are  
6 signed up with Duke; is that correct?

7 A. Duke only. Since this situation  
8 happened, nobody added to my bill. Ever since I  
9 talked to them, them people at the Public Commission,  
10 the government, somebody called me talking about the  
11 government want to -- I said I don't even want the  
12 government on my bill.

13 Q. So you want to be signed up with Duke,  
14 that's correct?

15 A. I'm Duke Energy only. Duke Energy only.  
16 I don't want any other company on my bill.

17 Q. Okay. And you --

18 A. Duke Energy only.

19 Q. Okay, ma'am. The company you did not  
20 want on your bill was RPA; is that correct?

21 A. I don't want no company on my bill, not  
22 only RPA. The government, whatever he had going,  
23 from my electric bill, I didn't want him on there.  
24 So he didn't get added to my bill because I -- my  
25 bill this month was \$71.38. I put the receipt that I



1 paid my money on it in the envelope and write on the  
2 envelope when I paid it and what year. I got all my  
3 receipts. I just got a -- if you want me -- you all  
4 could have my gas and electric bills from the gas and  
5 electric company.

6 Q. That's not necessary, ma'am. I have a  
7 few more questions.

8 A. Yes, sir.

9 Q. I'm sorry, I had a blank there for a  
10 second.

11 A. Okay.

12 Q. Let me get a second for my mind to  
13 reboot.

14 A. Take your time.

15 Q. When you were listening to the video, did  
16 you understand -- did you believe when you were  
17 listening to the video that the representative on the  
18 video or the audio was a Duke employee?

19 A. I didn't know who he was. From listening  
20 to the information, how he got my information, I  
21 believe it was an inside job because I didn't talk to  
22 nobody about my bills and my account number and all  
23 this, so, yes, listening to the video, I believe he  
24 worked for Duke Energy.

25 Q. Okay.

1           A.     Because he would know all that  
2     information.

3           Q.     If I were to tell you that person on the  
4     audio was not from Duke but instead was from RPA --

5           MR. WHITT: I object to that question.

6           A.     I don't even know what he said.

7           MR. WHITT: Let the judge talk before you  
8     do, please. Thank you.

9           A.     Okay.

10          HEARING EXAMINER DAVIS: Can you repeat  
11     the question, Mr. Eubanks.

12          A.     Okay, if he didn't work at Duke Energy,  
13     so how did he get my information?

14          Q.     Right. So I'm going to change the  
15     question. If I were to tell you that the person on  
16     the phone was not from Duke Energy, was from another  
17     company other than Duke, then your problem would be  
18     with that company; is that correct?

19          MR. WHITT: Objection.

20          MR. EUBANKS: What's the objection?

21          MR. WHITT: It calls for speculation.  
22     The witness has said she never talked to anybody,  
23     doesn't know who the folks in this conversation are.

24          THE WITNESS: And I ain't never signed up  
25     with no other company, so how did he get my

1 information from another company? I didn't sign up  
2 with them clearly. I don't even talk to them. Even  
3 when they call on the phone, I hang up. I don't have  
4 no conversation with them but Duke Energy only.

5 Q. Okay, thank you.

6 A. I told them Duke Energy only. Don't call  
7 my phone.

8 MR. EUBANKS: I'll withdraw the question.  
9 I have no more questions for the witness.

10 HEARING EXAMINER DAVIS: Okay.

11 MR. WHITT: Your Honor, I have one  
12 question briefly if I may.

13 HEARING EXAMINER DAVIS: Sure, you may.  
14 Go ahead.

15 - - -

16 RECROSS-EXAMINATION

17 By Mr. Whitt:

18 Q. Ma'am, did the person that helped you get  
19 some money back, was that somebody from the PUCO or  
20 from Legal Aid? Because I thought I heard you  
21 mention both.

22 A. It was from the Public Utility  
23 Commission. Her name is Miss Shawn.

24 Q. All right. That's all I had. Thank you  
25 so much.

1           A.     Uh-huh, she investigated, she subpoenaed  
2     all my bills from back when I first moved here. She  
3     subpoenaed all my bills. And from the day RPA jumped  
4     on my bill, I talked to her because she got all my  
5     information.

6           MR. WHITT:   Okay, thank you very much.

7           THE WITNESS:   The Public Utilities  
8     Commission, her name is Miss Shawn, S-H-A-W-N.

9           HEARING EXAMINER DAVIS:   Are there  
10    any more questions or are we done?

11          MR. EUBANKS:   I have no more questions  
12    for the witness.

13          HEARING EXAMINER DAVIS:   Thank you.  
14    Thank you again, Miss Johnson, for being here today.  
15    You're free to leave.

16          THE WITNESS:   You're welcome. Thank you  
17    all.

18          HEARING EXAMINER DAVIS:   Thank you for  
19    being here.

20          So with our two virtual consumer  
21    witnesses concluded, I think what we'll do now is  
22    we'll take a break and we will reconvene for the in  
23    person portion of today's hearing.

24          HEARING EXAMINER PRICE:   Before we take  
25    our break, Jess, Mr. Davis, I would like counsel to

1 remember that redirect should stay within the scope  
2 of cross and recross should stay within the scope of  
3 redirect. Both parties were very far afield with  
4 that last witness.

5 I know these are consumer witnesses, but  
6 the rules still apply, so let's try to be a little  
7 more on point with our next consumer witnesses and  
8 remaining witnesses we have going today. Thank you.

9 HEARING EXAMINER DAVIS: Thank you,  
10 Judge Price. So with that, we will be proceeding  
11 with Staff's last consumer witness and then we'll  
12 proceed down Staff's remaining witnesses with the  
13 exception of Miss Owen who is testifying on  
14 November 10; is that correct, Mr. Eubanks?

15 MR. EUBANKS: That's correct, your Honor.

16 HEARING EXAMINER DAVIS: Then we have one  
17 witness for OCC and we have one witness testifying  
18 for RPA, correct?

19 MR. WHITT: Yes, your Honor.

20 MS. O'BRIEN: That's correct for OCC as  
21 well, just the one witness.

22 HEARING EXAMINER PRICE: How quickly can  
23 people be downtown?

24 MS. O'BRIEN: I'm actually over just at  
25 our offices, so I mean, I have my things pretty much

1 gathered, so pretty soon. I can be there by -- I  
2 don't know, when do you want us, I guess?

3 MR. EUBANKS: I can probably be there by  
4 12:30. I'm also including the fact that we have  
5 documents that are in the docketing department of  
6 PUCO that we have to move into the Hearing Room.

7 HEARING EXAMINER PRICE: Well, I suggest  
8 everybody take your lunch then while we're -- getting  
9 our lunches while we're waiting to reconvene at  
10 12:30.

11 MS. O'BRIEN: What room are we in again?

12 HEARING EXAMINER DAVIS: 11-D.

13 MS. O'BRIEN: Okay, thank you.

14 HEARING EXAMINER DAVIS: So with that, we  
15 are temporarily adjourned. See you all at 12:30.

16 (At 11:23 a lunch recess was taken until  
17 12:30.)

18 HEARING EXAMINER DAVIS: We're  
19 reconvening this case. This is Case No.  
20 22-441-GE-COI. Once again, my name is Jesse Davis.  
21 With me is Greg Price. We are the Administrative Law  
22 Judges assigned by the Commission to this case. So  
23 we're going to have Staff call their next witness.

24 MR. EUBANKS: I'd like to call to the  
25 stand Tyler Beauregard.

1 HEARING EXAMINER DAVIS: Could I ask you  
2 to raise your right hand.

3 (Witness placed under oath.)

4 - - -

5 TYLER A. BEAUREGARD  
6 being first duly sworn, as prescribed by law, was  
7 examined and testified as follows:

8 HEARING EXAMINER DAVIS: Can you please  
9 state and spell your name.

10 THE WITNESS: My name is Tyler Adrian  
11 Beauregard. It's T-Y-L-E-R A-D-R-I-A-N  
12 B-E-A-U-R-E-G-A-R-D.

13 HEARING EXAMINER PRICE: Let's go off the  
14 record for one moment.

15 (Off the record.)

16 HEARING EXAMINER PRICE: Back on the  
17 record.

18 HEARING EXAMINER DAVIS: Thank you. And  
19 can you please provide your address.

20 THE WITNESS: 5778 Arborwood Court,  
21 Apartment D, Columbus, Ohio, 43229.

22 HEARING EXAMINER DAVIS: You may proceed.

23 DIRECT EXAMINATION

24 By Mr. Eubanks:

25 Q. Mr. Beauregard, good morning.

1           A.    Good morning.

2           Q.    Have you had any interactions with RPA  
3 either through door-to-door sales or telephonic  
4 sales?

5           A.    I don't remember the name of the exact  
6 company. I don't know if it was ever given to me by  
7 the people who came, but I know in the context of  
8 this hearing, there were two people who came to my  
9 house and tried to sign me up for a new energy  
10 provider and it was under fraudulent pretenses.

11          Q.    Okay. How did they go about trying to  
12 sign you up?

13          A.    The initial encounter was not that bad,  
14 just came to the house; pull up your old bill; let me  
15 look at it; oh, this rate is way too high; we have a  
16 new fixed rate we can give you that's lower; would  
17 you like to sign up for this?

18                So we went through that interaction and  
19 being very -- they were being very aggressive about  
20 it which is common for these door-to-door sales as I  
21 found. They asked for a phone number. I remember I  
22 gave them an incorrect phone number thinking that if  
23 I ended up wanting to go through with the transaction  
24 later, that I could correct them, but wanting to keep  
25 that private until I got to that point.



1                   So then they gave me -- asked for an  
2 e-mail address. I gave them the correct e-mail  
3 address. I got their letter stating the actual terms  
4 of the thing they were trying to give me and looking  
5 through it and finding that I did not want to go  
6 through with it, that the low fixed rate was just an  
7 introductory rate and there was a lot of other  
8 problems as well, didn't want to go through with it.  
9 So I just said no, thank you, goodbye.

10                   And then about a week later I think I got  
11 the e-mail from AEP saying that they had switched my  
12 energy provider, and that's when I contacted PUCO and  
13 contacted AEP and tried to get everything canceled.

14               Q.    Okay. I believe you just testified that  
15 they said they were going to give you a lower fixed  
16 rate. Lower than what?

17               A.    Lower than whatever my current rate was.

18               Q.    Who were you with?

19               A.    I'm not sure. I think it was NRG, but  
20 I'm not absolutely sure.

21               Q.    Did they tell you what the rate would be?

22               A.    The people in person did not, but then  
23 when I got the e-mail, that had the rate on it.

24               Q.    Did you ever sign any contract for  
25 service?

1           A.    No, definitely not.  So that came through  
2   with the e-mail.  The e-mail was to finalize and sign  
3   that contract, and that's why upon reading that  
4   e-mail I decided no and absolutely did not go forward  
5   with that, no.

6           Q.    Did anyone ever follow up with you  
7   telephonically?

8           A.    No, I received no phone calls about this  
9   at all.

10           MR. EUBANKS:  At this time, I'd like to  
11   play an audio to see if he can recognize his voice on  
12   the audio or identify it.

13           MR. WHITT:  Objection.  Witness just  
14   testified he had no conversations.

15           MR. EUBANKS:  There's a chance that his  
16   memory needs to be recollected on it.

17           MR. WHITT:  He didn't say he couldn't  
18   remember or didn't know; he said no.

19           MR. EUBANKS:  But the fact is we have an  
20   audio.

21           MR. WHITT:  Are you impeaching your own  
22   witness?

23           MR. EUBANKS:  No, I'm not impeaching my  
24   own witness.

25           MR. WHITT:  I think you are.

1 MR. EUBANKS: No, I'm not, but I have the  
2 ability to call to ask him to recollect his memory.  
3 Also, this is a case -- our case is about fraudulent,  
4 deceptive practices. At the very least, he can  
5 identify a deceptive practice when he hears the  
6 audio.

7 MR. WHITT: Is he being qualified as an  
8 expert qualified to render that opinion?

9 MR. EUBANKS: He's qualified to know his  
10 voice.

11 HEARING EXAMINER PRICE: Are you simply  
12 asking to play the audio so he can say whether that's  
13 his voice or not?

14 MR. EUBANKS: Yes. Yes, your Honor.

15 MR. WHITT: I'm saying there's no need  
16 for it, no basis to play it when the witness has  
17 already testified he hasn't talked to anybody --

18 HEARING EXAMINER DAVIS: Will you  
19 stipulate that that's not his voice on the recording?

20 MR. WHITT: I'm objecting to --

21 HEARING EXAMINER DAVIS: That's not what  
22 I asked. Will you stipulate that's not his voice on  
23 the recording?

24 MR. WHITT: No.

25 HEARING EXAMINER PRICE: Then he should

1 be allowed to go forward.

2 MR. WHITT: Okay.

3 MR. EUBANKS: Your Honor, I'd like to  
4 mark this audio Staff's Exhibit 3.

5 HEARING EXAMINER DAVIS: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 HEARING EXAMINER PRICE: Off the record.

8 (Off the record.)

9 HEARING EXAMINER PRICE: Back on the  
10 record.

11 (Audio playback commence.)

12 (Audio playback concludes.)

13 MR. WHITT: Your Honor, having now been  
14 able to listen to the tape and through our own  
15 perception listened to the tape and having heard the  
16 witness this morning, at this point we would be  
17 prepared to stipulate to the admission of the audio.

18 HEARING EXAMINER PRICE: It's not just  
19 about the admission. Are you willing to stipulate  
20 that that's not his voice?

21 MR. WHITT: Yes, we are.

22 MR. EUBANKS: Is he stipulating to both?

23 MR. WHITT: Well, I guess to be clear,  
24 we're stipulating that the voice we were just  
25 listening to does not appear to be the same voice of

1 the person who is on the stand testifying.

2 MR. EUBANKS: Okay.

3 HEARING EXAMINER PRICE: Thank you.

4 Q. (By Mr. Eubanks) Were you ultimately  
5 signed up with RPA?

6 A. I did get an e-mail saying that they --  
7 AEP was going to go through with it, it had gone  
8 through, and that I needed to go and cancel if I did  
9 not want to do that, and so that it did go and cancel  
10 it before my first billing cycle.

11 HEARING EXAMINER PRICE: You took  
12 advantage of the seven day right to rescind?

13 THE WITNESS: Yes, at least that's my  
14 understanding.

15 MR. EUBANKS: I have no more questions  
16 for the witness.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Whitt:

20 Q. Thank you, Mr. Beauregard. My name is  
21 Mark Whitt, and I represent RPA Energy which does  
22 business as Green Choice Energy. Feel free to  
23 correct me if I mispronounce your name. I'm sorry if  
24 I do that. Do you recall signing an affidavit at  
25 some point in this matter during your interactions

1 with PUCO Staff?

2 A. I do, correct, yes.

3 Q. Do you recall stating in the affidavit  
4 that, quote, I never gave the door-to-door sales  
5 agents my phone number on June 10, 2021?

6 A. Correct, I did not give them my number.

7 Q. You gave them a number but not your  
8 correct number?

9 A. Correct, I gave them my mother's number,  
10 and she also did not get any phone calls from  
11 anybody.

12 Q. Okay. I just want to go through a couple  
13 of details. Was it two agents that visited you on  
14 the day you had this interaction?

15 A. Correct.

16 Q. Okay. Did they tell you who they  
17 represented?

18 A. I don't remember.

19 Q. I'm assuming that you would have learned  
20 that information before you gave them your e-mail?

21 A. Most likely, yes.

22 Q. And, in fact, by the time you called the  
23 PUCO, you knew that it was RPA/Green Choice that you  
24 had been dealing with; fair to say?

25 A. I know that's who set me up for my

1 service.

2 Q. You knew that before you contacted the  
3 PUCO?

4 A. Yes.

5 Q. I assume this interaction took place on  
6 your porch?

7 A. Front door, yes.

8 Q. These folks didn't try to force their way  
9 in or anything?

10 A. No, did not.

11 Q. And you chose to sort of hear them out, I  
12 guess?

13 A. Yes.

14 Q. Did you sign anything while the agents  
15 were present?

16 A. Not at all, no.

17 Q. So how long after the agents departed did  
18 you receive the e-mail that you had referenced  
19 earlier?

20 A. The e-mail came while they were still  
21 there.

22 Q. While they were still there?

23 A. Correct.

24 Q. Once you received that e-mail, was there  
25 any further interaction with these agents or what

1 exactly happened next?

2 A. I don't remember the exact details. I  
3 remember that I got the e-mail. I took the time to  
4 read -- They were wanting me to go through and push  
5 the button and sign. I did want to take the time to  
6 read through the terms of service. So I read through  
7 the terms, found them not favorable and said I don't  
8 want to go through with this. Any further  
9 interaction would have been them saying, hey, go  
10 ahead and just go ahead and click through and me  
11 saying no, I don't want to do this.

12 Q. Did they ultimately honor your request  
13 when you said I'm going to read this before I sign  
14 it? Did they honor that and leave?

15 A. When I said I wanted to read it, no, they  
16 stuck around because they wanted to be there when I  
17 pushed the button. When I said I don't want to  
18 further go forward, then eventually they -- I  
19 convinced them to leave, yes.

20 Q. Okay. Did this e-mail that you received,  
21 I believe you testified it included the terms and  
22 conditions of a contract?

23 A. Correct.

24 Q. Is it fair to say that this contract was  
25 written in a manner that you could understand?



1           A.    I mean, I am a Ph.D student at Ohio State  
2           University. I have a much better ability to go  
3           through and read through these kinds of minutia and  
4           details than the average consumer.

5           Q.    Do you think it requires that the  
6           company's documents are written in a manner that  
7           requires a Ph.D to understand; is that your  
8           testimony?

9           A.    No, but I'm saying that they are in the  
10          traditional legalese of contracts.

11          Q.    Fair enough. But recognizing you could  
12          only speak for yourself, that you understood the  
13          contract well enough to be able to draw the  
14          conclusion that you were not interested in what these  
15          folks were selling --

16          A.    Correct.

17          Q.    -- fair to say?

18          A.    (Nods head.)

19          Q.    And you received at some point was it an  
20          e-mail or something in the physical mail from AEP?

21          A.    I don't remember which way. I did get  
22          notified by AEP through their official channels.

23          Q.    That was the piece of paper that prompted  
24          you to call AEP to prevent the enrollment?

25          A.    Correct.

1           Q.    Did you ever receive a similar piece of  
2 paper from Columbia or whoever your gas company is?

3           A.    No, I did not.

4           Q.    When did you realize that Columbia --  
5 that your service had been switched to Columbia?

6           A.    I may be confused just because I don't  
7 remember all the names of everybody. I do know that  
8 I got a separate notification I think it was in  
9 November of that same year of a separate switching of  
10 something, whether it was gas or electricity. I  
11 don't know if that's in this -- if it's germane to  
12 this particular thing or it's a completely separate  
13 thing. I don't know if it was gas or electric. I  
14 just know that I did at some point receive two  
15 different notifications of my energy services,  
16 utilities being switched by some company without my  
17 wanting that switch.

18          Q.    Just for the moment sticking around the  
19 time period that you received this communication from  
20 AEP, you acted on that to cancel your enrollment,  
21 correct?

22          A.    Correct.

23          Q.    But you don't recall receiving anything  
24 from your gas company around that same time?

25          A.    I don't recall, no.

1           Q.    If you had received such a communication  
2   from your gas company, would you have also canceled  
3   your gas enrollment before it was processed?

4           A.    Yes, I would.

5           Q.    Given the circumstances of your  
6   interaction, your complaint to the PUCO, would you  
7   expect RPA to investigate the circumstances of this  
8   recording, whether it was legitimate or not, whether  
9   the voice was yours?

10          A.    Can you rephrase the question, please.

11          Q.    Would you expect RPA to investigate  
12   whether the voice on the recording that we had  
13   listened to previously was actually yours?

14          A.    You're asking for my opinion?

15          Q.    Yes.

16          A.    No.  It seems this is all very fraudulent  
17   and done with malice intent and why would they  
18   investigate something they knew they did.

19          Q.    Do you know whether they did or not?

20          A.    I have no reason to think they didn't.

21          Q.    Would you be surprised to know that they  
22   fired some people involved in this?

23               MR. EUBANKS:  Objection.  Calls for facts  
24   not in evidence.

25               MR. WHITT:  They actually are in evidence

1 or they will be because they are documents attached  
2 to the Staff Report.

3 HEARING EXAMINER DAVIS: It's overruled.

4 A. Could you say the question again? Is  
5 there a question?

6 HEARING EXAMINER PRICE: Read the  
7 question back.

8 (Record read.)

9 A. I guess my opinion would be yes.

10 Q. Have you ever met prior to today anyone  
11 from RPA or Green Choice?

12 A. The two representatives that came to my  
13 door.

14 Q. Other than those folks?

15 A. No, I don't believe so.

16 Q. It's fair to say that apart from the two  
17 agents that you interacted with, nobody would know  
18 who -- what Tyler Beauregard sounds like?

19 A. I don't believe so, no.

20 MR. WHITT: No further questions.

21 HEARING EXAMINER DAVIS: OCC?

22 MS. O'BRIEN: No questions. Thank you,  
23 Mr. Beauregard for your time.

24 HEARING EXAMINER DAVIS: Redirect?

25 MR. EUBANKS: I have no questions.

1 HEARING EXAMINER DAVIS: Thank you very  
2 much, Mr. Beauregard. You may step-down. Let's go  
3 off the record.

4 (Off the record.)

5 HEARING EXAMINER DAVIS: Let's go back on  
6 the record. As we discussed during our brief break,  
7 we have some motions to deal with, so we'll dispose  
8 of those before we proceed with witnesses.

9 First of all, we have a Motion for  
10 Admission for Admission Pro Hac Vice for a Mr. Scott  
11 Elmer. That will be granted.

12 We also have Motions for Protective Order  
13 by both Staff and RPA. Hearing no objections from  
14 the parties on those, those will be granted.

15 And then going forward, we will have  
16 Staff proceed with its next witness.

17 MR. EUBANKS: Your Honor, I'd like to  
18 call to the stand Samantha Boerstler.

19 (Witness placed under oath.)

20 - - -

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

24 HEARING EXAMINER DAVIS: Can you please  
25 state and spell your name for the record.

1 THE WITNESS: Samantha Boerstler,  
2 S-A-M-A-N-T-H-A, Boerstler, B-O-E-R-S-T-L-E-R.

3 HEARING EXAMINER DAVIS: And your  
4 address.

5 THE WITNESS: My business address is 180  
6 East Broad Street, 7th floor, Columbus, Ohio, 43215.

7 HEARING EXAMINER DAVIS: Thank you. You  
8 may proceed.

9 - - -

10 DIRECT EXAMINATION

11 By Mr. Eubanks:

12 Q. What is your position with Staff?

13 A. I am a Utility Specialist 1.

14 Q. And did you file Prefiled Testimony in  
15 this matter?

16 A. Yes, I did.

17 Q. Did you docket it with the Commission?

18 A. I did.

19 MR. EUBANKS: May I approach the witness?

20 HEARING EXAMINER DAVIS: You may.

21 MR. EUBANKS: Would anyone else like a  
22 copy?

23 MR. WHITT: Is that the errata?

24 MR. EUBANKS: Not yet.

25 Q. (By Mr. Eubanks) Is this a copy of the --

1 Could you identify this document?

2 A. This is my testimony for RPA.

3 Q. Is it a true and accurate copy?

4 A. Yes, it is.

5 Q. If I were to ask you the same questions  
6 today that are found in your testimony, would you  
7 provide the same answers?

8 A. I did have some corrections but yes.

9 Q. Okay. That was going to be my next  
10 question whether or not you had any corrections for  
11 your testimony.

12 A. Yes.

13 Q. Did you prepare a document to outline  
14 those corrections?

15 A. I did, yes.

16 Q. May I approach the witness?

17 HEARING EXAMINER DAVIS: You may.

18 MR. EUBANKS: Your Honor, I'd like to  
19 have marked as Staff's Exhibit 4 the Prefiled  
20 Testimony of Samantha and have marked as Staff's  
21 Exhibit 5 the errata.

22 HEARING EXAMINER DAVIS: So marked.

23 (EXHIBITS MARKED FOR IDENTIFICATION.)

24 Q. Could you identify Staff's Exhibit 5 in  
25 front of you.

1           A.     5 would be my errata for my testimony.

2           Q.     Is it a true and accurate copy of your  
3 errata?

4           A.     Yes.

5           Q.     Is it a fair summary to say that this is  
6 corrections to both some of the texts in your  
7 testimony and the footnotes?

8           A.     Yes.

9           Q.     In your testimony, you make citations to  
10 audio files.

11          A.     Yes.

12          Q.     What are the different types of audio  
13 files that Staff would have used, if you can, if you  
14 can categorize them, that Staff would have used in  
15 this hearing. And if you need me to rephrase the  
16 question, let me know.

17          A.     Can you rephrase?

18          Q.     Would it be fair to say some of the audio  
19 files were received from RPA?

20          A.     Yes.

21          Q.     Some were received in response to DRs?

22          A.     Yes.

23          Q.     And can you explain what a hotline audio  
24 would be.

25          A.     A hotline audio, within the PUCO, we have



1 a consumer call center. When a customer calls in, a  
2 consumer calls in, it creates a case number. If it  
3 needs to -- If the customer needs to be further  
4 investigated or any follow-up, we can e-mail the  
5 company.

6 The investigator can ask for any  
7 additional information which can include any audio  
8 files if they're sales calls, TPVs, whatnot. That  
9 would be e-mailed to that case for the investigator  
10 to listen to.

11 Q. So just for an everyday person such as  
12 myself, is it fair to say that hotline files or  
13 hotline audios are calls that are between the PUCO  
14 customer section -- customer complaint section and  
15 consumers who call in to the PUCO?

16 A. Yes.

17 Q. So I want to just go through how Staff  
18 handles the three different types of audios that it  
19 records or that it receives.

20 MR. WHITT: Your Honor, if I may inquire  
21 for the purpose of the questioning, if this is  
22 Supplemental Direct Testimony or what we're doing.

23 MR. EUBANKS: We had already in a  
24 previous prehearing, I asked whether or not the Staff  
25 was going to be able to go through its audio files at

1 the time of the hearing. They have cited several  
2 audio files in their testimony.

3 This is just establishing that they  
4 haven't been altered; that they are authentic audio  
5 calls; they haven't changed them since. RPA provided  
6 them to them through either DRs or through just  
7 investigators asking them for the audio files.

8 HEARING EXAMINER DAVIS: You can proceed.

9 Q. So let's start with the audios that you  
10 would have received through DR requests.

11 A. Okay.

12 Q. If in response to an investigation or  
13 initiated by an investigation Staff requests from RPA  
14 an audio file, how does Staff receive those audio  
15 files?

16 A. Within the RPA case, we receive them via  
17 e-mail from Valerie Cahill.

18 Q. And once you received those e-mails, what  
19 does Staff do with those e-mails?

20 A. Once they were received, we received them  
21 on -- they were zipped and compressed and we just  
22 save them into our One Drive to have and listen to.

23 Q. Did Staff change the name of the audio  
24 file?

25 A. No, they did not.

1           Q.    Did Staff change anything about the  
2 audio?

3           A.    Not that I'm aware of.

4           Q.    Okay.  And when the audios were placed  
5 onto the confidential flash drive, was there any  
6 altering of the audios when they were placed onto the  
7 flash drive?

8           A.    Not that I'm aware of.

9           Q.    Now, you were describing what happens  
10 when there's a customer complaint.

11          A.    Yes.

12          Q.    Is there someone assigned from the PUCO  
13 complaint section to a customer complaint?

14          A.    Yes.  So when the complaint or consumer  
15 contacts the call center and a case is created, that  
16 case is then put into the Salesforce.  It's in the  
17 Salesforce system and there is an assigned supervisor  
18 that would then randomly assign cases to an  
19 investigator.

20          Q.    SalesForce system, is that the program or  
21 the software that the call center uses to -- just  
22 explain to me what the Salesforce....

23          A.    Yeah, so Salesforce is the program that  
24 investigators use and the PUCO uses specifically in  
25 the call center any cases or interactions with

1 consumers and companies. All that information is  
2 housed in Salesforce.

3 Q. Okay. So when there's an e-mail that's  
4 sent back from a consumer to the investigator, what  
5 happens?

6 A. As long as they keep the subject line and  
7 just reply back, it is automatically put into that  
8 case, into the case in Salesforce as an e-mail to  
9 that case. It transfers right over.

10 Q. Are the e-mails altered in any way?

11 A. No.

12 Q. What about the audio files if they're  
13 attached to the e-mails?

14 A. No.

15 Q. Do the audio files automatically transfer  
16 over like the e-mails or what happens?

17 A. It automatically goes just like you'd be  
18 sending an e-mail via Outlook. It's just an  
19 attachment that follows with that e-mail.

20 Q. If Staff wanted to retrieve the audio  
21 file, how would it do so?

22 A. Within the e-mail portion in Salesforce,  
23 there is a section for attachments. You would just  
24 click on that attachment or double click and the  
25 audio, as long as your system allows it, if you have

1 it set up as a default for the audio system, it will  
2 automatically play or the system will request for you  
3 to pick what type of audio playback you would like to  
4 use.

5 Q. What is an audio playback, I'm sorry?

6 A. No, you're fine. So there's different  
7 audio playbacks such as Adobe or just a Windows file  
8 you can listen, different types of programs to listen  
9 to those files.

10 Q. When you choose that audio playback, does  
11 it affect the audio file itself in any way?

12 A. No.

13 Q. Did staff retrieve audio files that would  
14 have come in through Salesforce in this case?

15 A. In regards to the customer contacts in  
16 cases, yes, we would have received audio files.

17 Q. I'm asking did you retrieve them and then  
18 place them onto the confidential flash drive?

19 A. Yeah, sorry, the ones at least that I  
20 cite in my testimony, yes.

21 Q. And did you alter them in any way when  
22 you placed them onto the flash drive?

23 A. No, I did not.

24 Q. How are the hotline calls saved on  
25 Salesforce or are they saved in Salesforce? Where

1 are they saved?

2 A. The hotline calls are not saved in  
3 SalesForce; they're actually saved in Zoom.

4 Q. How does Staff retrieve those?

5 A. Staff has a contract with Zoom as a  
6 program that the -- all the calls through the hotline  
7 are saved into the Zoom system. Their cloud, that as  
8 long as you have the log-in and credentials, you can  
9 go in and retrieve those calls.

10 Q. Did Staff retrieve any hotline calls in  
11 this case?

12 A. In regards to my testimony, yes, I have  
13 one.

14 Q. So just to summarize, has Staff altered  
15 the audio files it has received either through the  
16 hotline calls or through DR requests or through just  
17 calls that went in through SalesForce via  
18 investigators communicating with customer contacts?  
19 Have any of those been altered in any way?

20 A. Not to my knowledge.

21 Q. I'd like to refer to Page 3 of your  
22 testimony.

23 A. Okay.

24 Q. First of all, in your testimony, you cite  
25 the PUCO Case No. 00698115; do you see that?

1 A. Yes.

2 Q. And you've erratted on your errata sheet?

3 A. Yes.

4 Q. To add where the audio file can be found?

5 A. Yes.

6 Q. And the confidential flash drive?

7 A. Yes.

8 Q. Is this a DR audio or a Salesforce audio?

9 A. The -- This would be a Salesforce audio.

10 Well, so, there's two audios for this. The first  
11 one, the 202-10625, that would be a hotline call.

12 And then the REDC0F, et cetera, that would be a call  
13 through Salesforce that we received from RPA.

14 Q. Okay. And the case number itself, the  
15 case report, I neglected to ask you how the case  
16 reports are formulated.

17 A. So within Salesforce, we are able to get  
18 case history reports for a specific case. What that  
19 is, it provides us all the documents within that case  
20 into one file all together instead of going to  
21 different sections within Salesforce. To pull up any  
22 e-mails or attachments, it combines it all into one  
23 file to go through with any e-mail attachments. The  
24 only thing that the case history report will not have  
25 is any audios.

1 Q. Because it's a PDF?

2 A. Yes. Well, because it's MP3. Any type  
3 of audio, PDFs will be there.

4 Q. I mean, the case history form is a PDF  
5 form?

6 A. Yes.

7 Q. So e-mails between the investigator and  
8 the customers would be in the case history report?

9 A. Yes.

10 Q. The investigators sometimes reach out to  
11 the company?

12 A. Yes.

13 Q. So those e-mails would be in there as  
14 well?

15 A. Yes.

16 Q. Would any investigator notes be in there?

17 A. Yes, there would be any notes that were  
18 put into Salesforce in that also.

19 HEARING EXAMINER PRICE: Mr. Eubanks,  
20 you're treading out into the audio and into all other  
21 sorts of records.

22 MR. EUBANKS: I'm sorry.

23 HEARING EXAMINER PRICE: Is there some  
24 reason this dissertation is not in her Prefiled  
25 Direct Testimony.



1 MR. EUBANKS: It's almost there, your  
2 Honor.

3 HEARING EXAMINER PRICE: That's not what  
4 I asked. I said is there some reason it's not in her  
5 Direct Testimony?

6 MR. EUBANKS: Your Honor, typically in  
7 hearings when it comes to the identification of  
8 documents and the authentication of documents, it's  
9 not in Prefiled Testimony. I do --

10 HEARING EXAMINER PRICE: Wow, that's a  
11 new one on me. Okay, let's wrap it up.

12 Q. (By Mr. Eubanks) So the case reports, the  
13 documents in the files that are in them, are they  
14 kept by the PUCO as a normal course of their  
15 business?

16 A. Yes, and there is an Ohio Administrative  
17 Code that we do have to keep documents within a  
18 certain period of time.

19 Q. Are the documents altered in any way?

20 A. No.

21 Q. So just to quicken this up a little bit,  
22 I would like for you to look at your testimony and  
23 make sure -- tell me whether or not there's any case  
24 history report that was cited to that was not kept --  
25 was not generated as you have testified. Is there

1 any case history report that was drafted in some  
2 unusual way?

3 A. No.

4 Q. There's no audio file that's cited in  
5 your testimony that would have fallen outside the  
6 confines of the testimony you gave today?

7 A. No.

8 Q. I have no more questions for the  
9 witness -- I'm sorry, I do, I do. Do you remember  
10 Staff receiving the audio file of Sheila  
11 Barton-Johnson in this case?

12 A. I'm sorry, can you repeat that?

13 Q. Do you remember Staff receiving the audio  
14 file of Sheila Barton-Johnson in this case?

15 A. Yes.

16 Q. How did Staff receive that audio file?

17 A. It would have been through the  
18 investigation. We would have received it through  
19 SalesForce in her case.

20 Q. Do you remember Staff receiving the audio  
21 file of Tyler Beauregard in this matter?

22 A. Yes.

23 Q. How did Staff receive that?

24 A. Through the investigation through  
25 SalesForce.

1 HEARING EXAMINER PRICE: You received  
2 both of these files from whom?

3 THE WITNESS: RPA.

4 MR. EUBANKS: I have no further questions  
5 for the witness.

6 HEARING EXAMINER DAVIS: Mr. Whitt.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Whitt:

10 Q. I learned some new information about  
11 Staff's records, so I want to cover that just a  
12 little bit and make sure I understand. I guess  
13 Salesforce is the platform, if you will, that houses  
14 Staff's investigatory materials; is that right?

15 A. It does house our investigations, yes.

16 Q. Okay. And you also referred to hotline  
17 calls. I want to make sure I understand what those  
18 calls are. Conversations are between or among who?

19 A. I'm sorry, yes, so the hotline calls,  
20 it's our consumer call center. It's between any  
21 consumers that call in or anyone that calls in to the  
22 PUCO and our investigators that we have in the  
23 consumer service department.

24 Q. And are you saying that a recording  
25 automatically is made of conversations of these

1 hotline calls?

2 A. Yes, in Zoom.

3 Q. Which is separate from the Salesforce?

4 A. Yes.

5 Q. And I believe you testified that part of  
6 your work in this case, you reviewed one of these  
7 hotline calls, correct?

8 A. Correct.

9 Q. And these hotline calls haven't been  
10 offered as part of the Staff Report for each of the  
11 Salesforce complaint matters, correct?

12 A. I cannot answer to that.

13 Q. Would you consider the investigator file  
14 incomplete if it doesn't include the hotline call?

15 A. I would not call it incomplete because we  
16 do -- as an investigator when the consumer calls in  
17 to the hotline, they do put in notes of that initial  
18 call if they call in.

19 Q. I understand that, but in addition to  
20 whatever notes the call center agent is writing down,  
21 the actual conversation is being recorded in  
22 realtime, is that what you're saying --

23 A. Correct, yes.

24 Q. -- and that -- those hotline calls for  
25 the complaints referenced in your testimony were not

1 part of the Staff Report, correct?

2 A. I am unaware if they are in the Staff  
3 Report or not.

4 Q. You're testifying for Staff you say to  
5 support the Staff Report?

6 A. Yeah, I'm supporting Staff's  
7 investigational analysis section of the Staff Report.

8 Q. Would the hotline calls be relevant to  
9 the Staff investigation?

10 A. In regards to having the comments that  
11 would be part of the investigation, so we would not  
12 need those calls unless we had any questions  
13 regarding them.

14 Q. Well, did it occur to you that RPA might  
15 have questions about some of the notes that could be  
16 answered or if the Commission had question about the  
17 calls could be answered by having the hotline calls,  
18 correct?

19 A. If they were requested, yes, they could  
20 be used.

21 Q. Right, just as Staff doesn't ask RPA to  
22 summarize its sales calls or TPV calls, it asks for  
23 the recordings, doesn't it?

24 A. And script, yes.

25 Q. And the Commission is obligated under

1 Commission rules to provide that information to  
2 staff, correct?

3 A. Correct.

4 Q. And just as the company records its  
5 interactions with customers, the Commission call  
6 center records interactions with people that call in,  
7 correct?

8 A. And when calls are made out, yes.

9 Q. So both inbound and outbound calls from  
10 the call center are recorded?

11 A. Anything on the call center system  
12 inbound or outbound is recorded, yes.

13 Q. And you're aware that -- Well, is it your  
14 understanding generally in Commission cases that  
15 parties don't have the same discovery rights of  
16 Commission --

17 MR. EUBANKS: Objection. She's not an  
18 attorney.

19 HEARING EXAMINER DAVIS: Sustained.

20 Q. It's fair to say that your written  
21 testimony does not disclose the existence of the  
22 hotline calls that we've been talking about, correct?

23 A. Within my testimony, I do not go over the  
24 procedure of the hotline or speak in regards to those  
25 calls.

1           Q.    The answer to my question is the hotline  
2   calls aren't mentioned or disclosed in your written  
3   testimony, correct?

4           MR. EUBANKS:  Objection, mischaracterizes  
5   the answer of the witness.  That's not what she  
6   testified to.

7           HEARING EXAMINER DAVIS:  Can you  
8   rephrase?

9           Q.    You were asked a series of questions by  
10   your counsel about Staff's records and these hotline  
11   calls, correct?

12          A.    Correct.

13          Q.    And he asked you that because that  
14   information is not in your written testimony,  
15   correct?

16          A.    Within my testimony I did not speak of  
17   how the hotline is operated or how calls or any  
18   recordings are saved, correct.

19          Q.    Nor do you disclose that recordings are  
20   even made of calls inbound and outbound to the call  
21   center, correct?

22          A.    I do not disclose any of that.

23          Q.    Okay.

24          A.    But I as working in call centers and  
25   anyone working within a call center would be aware,

1 that calls are recorded and subject to review.

2 Q. Well, would Staff be okay in the future  
3 if when asked for TPVs the company just sends some  
4 notes summarizing the TPV rather than providing the  
5 TPV?

6 MR. EUBANKS: Objection. Argumentative.

7 HEARING EXAMINER DAVIS: Sustained.

8 Q. What exactly was your assignment in this  
9 case?

10 A. I was assigned -- per my testimony, my  
11 role of the investigation was to analyze the data of  
12 customer contacts from our call center and review the  
13 data that was provided by RPA with the data requests  
14 and I reviewed the Energy Ohio Choice website for any  
15 rate trends at the time of our investigation.

16 Q. When you say review the data, what data  
17 are you referring to?

18 A. Any e-mails or documents that were  
19 provided to Staff by RPA or that Staff sent to RPA.

20 Q. Did you review the Commission's docket to  
21 the determine whether any formal complaints had been  
22 filed against RPA?

23 A. I was directed by Nedra Ramsey to look at  
24 what I did. So I was not directed by her to look for  
25 any formal complaints within the docket so I did not.



1           Q.    Were you trying to find all RPA related  
2           contacts with the call center during the first half  
3           of 2021, more or less the first half of 2021?

4           A.    So I reviewed contacts directed by Nedra  
5           Ramsey in regards to any information within our  
6           investigation, which if you go to Page 3 in my  
7           testimony, it was question 7 from January 1st, 2021  
8           to June 20th, 2021.

9           Q.    Right. I understand. What I'm trying to  
10          find out is was it your job to go and find out how  
11          many contacts existed during this period or were you  
12          given a list and said -- and asked to do something  
13          with the list of contacts?

14          A.    It was my job to get any contacts that  
15          were to the PUCO for RPA and review those.

16          Q.    Okay. You're the person who figured out  
17          during this period there were 25 of those contacts,  
18          correct?

19          A.    Correct.

20          Q.    And 20 of those were actually  
21          investigated by someone in the call center or staff,  
22          correct?

23          A.    Correct.

24          Q.    And the period of enrollments as you  
25          indicate span from 2019 to --

1           A.    It was the current timeframe, the July  
2   20th of 2021.

3           Q.    Sure.  In other words, the period in  
4   which the enrollments occurred is greater than the  
5   six-month review period, correct?

6           A.    Correct.

7           Q.    By customer contact, what you are  
8   referring to there basically is somebody contacting  
9   the PUCO about something, fair to say?

10          A.    Correct, in regards to RPA.

11          Q.    Okay.  Well, I'm just talking  
12   generally --

13          A.    Yes.

14          Q.    -- the notion of contacts.  And a  
15   customer contact doesn't necessarily mean somebody's  
16   calling to complain; is that true?

17          A.    Yes.

18          Q.    And even when someone's complaining, it  
19   doesn't necessarily mean anything -- anybody did  
20   anything wrong, it's just somebody registering some  
21   concern; fair to say?

22          A.    Yes.

23          Q.    Okay.  Did the 20 contacts that Staff  
24   investigated include or exclude Miss Bossert's  
25   complaint?

1           A.     That includes.

2           Q.     Okay. Fair enough. Again, 20 of these  
3           contacts were actually investigated by Staff,  
4           correct?

5           A.     Correct.

6           Q.     On Page 6, line 1 of your testimony, you  
7           indicate that over 14,000 customers enrolled with RPA  
8           between June of 2020 and June of 2021, correct?

9           A.     Correct.

10          Q.     And if we just arbitrarily have that  
11          period, that would be 7,000 or so customers, correct?

12                 MR. EUBANKS: Objection, calls for  
13          speculation. I mean, it actually calls for the  
14          belief that the same number of customers were  
15          enlisted every month which may or may not be the  
16          case.

17                 MR. WHITT: I'll withdraw the question.

18          Q.     Now, part of your work in this case  
19          involved sampling or listing some of the calls that  
20          RPA provided to Staff, correct?

21          A.     Correct.

22          Q.     And you reviewed 30 calls that RPA had  
23          made during the week of June 6th, 2021; is that  
24          right?

25          A.     Correct.

1           Q.    Do you know how many total calls -- how  
2 many call recordings did RPA provide?

3           A.    I do not have that offhand.

4           Q.    I'll represent to you that Miss Ramsey's  
5 testimony indicates there were 103 recordings made  
6 during that week that were provided. Does that sort  
7 of refresh your recollection?

8           A.    I would have to review, but based on  
9 Miss Ramsey's testimony, that sounds about right.

10          Q.    Was anyone else tasked with reviewing  
11 calls?

12          A.    I am not aware of.

13          Q.    And the calls that you reviewed were,  
14 again, calls that were made on the week of June 6,  
15 2021, right?

16          A.    These are recent, the calls that we  
17 received from RPA that was stated for the week of  
18 June 6, 2021, yes.

19          Q.    And that was the same week the company  
20 enrolled 699 customers, correct? It's on Page 6,  
21 line 3.

22          A.    Yes, that's the information that we  
23 received from RPA on the date of request, correct.

24          Q.    Now, I want to make sure that I'm clear  
25 on your testimony. Let's look specifically at Page

1 8, line 7.

2 MR. EUBANKS: What page is that?

3 Q. I'm sorry, line... The question begins on  
4 line 4. Did you review any of the calls RPA provided  
5 the Staff in response to Staff's DRs, and you say  
6 during the investigation Staff requested all sales  
7 calls placed by RPA for the week of June 6, 2021.  
8 And my question is, when you use the term sales calls  
9 in the sentence I just read, what do you mean  
10 specifically?

11 A. Specifically any calls that were provided  
12 that we asked for in the data requests. These could  
13 have been third party verifications also, not just  
14 sales calls.

15 Q. Well --

16 HEARING EXAMINER PRICE: Are they  
17 outbound telemarketing or inbound telemarketing or  
18 both or neither?

19 A. Inbound. I'm sorry, to clarify, I  
20 listened to sales calls and if there are TPVs  
21 attached to it, they were listened to also with those  
22 30.

23 Q. So would you agree with me that there is  
24 is a difference between a sales call and a TPV?

25 A. Correct, yes.

1           Q.    And a sales call would it be accurate to  
2 say would describe a solicitation, if you will, by an  
3 agent basically making their sales pitch to a  
4 consumer, that would be a sales call, correct?

5           A.    Correct.

6           Q.    And then a TPV is a separate type of call  
7 required by Commission rules, correct?

8           A.    That verifies pertinent information that  
9 should be provided in the sales call, yes.

10          Q.    That wasn't my question. There are sales  
11 calls and there are TPVs and those calls are  
12 different, correct?

13          A.    Correct.

14          Q.    When you say I listened to 30 random  
15 calls, is that sales calls plus TPVs or did you  
16 listen to 60 calls, 30 sales calls plus the  
17 associated TPV, or I guess my question is, again,  
18 what exactly did you listen to?

19          A.    30 calls in total.

20          Q.    Which could have been a mix of sales  
21 calls and TPVs?

22          A.    Could have, yes.

23          Q.    Was it?

24          A.    I would have to review my notes, but from  
25 what I remember, they were sales calls.

1 HEARING EXAMINER PRICE: Were they all  
2 sales calls?

3 THE WITNESS: The calls I listened to,  
4 yes.

5 Q. Are you saying, again, I'm sorry to --  
6 it's an important point and I'm not trying to make  
7 this an exercise of semantics. Are you saying that  
8 you only listened to recorded solicitations and not  
9 third party verifications?

10 A. There could have been third party  
11 verifications. This has been a little while, so I  
12 can't remember exactly.

13 HEARING EXAMINER PRICE: Let me try. The  
14 30 calls, were they all solicitations with some  
15 number of TPVs attached?

16 THE WITNESS: If there was a sales call  
17 and a TPV attached, the TPV would have been listened  
18 to also.

19 HEARING EXAMINER PRICE: Okay. I tried.

20 HEARING EXAMINER DAVIS: Does that still  
21 leave your total at 30?

22 THE WITNESS: Yes, it leaves the total at  
23 30.

24 HEARING EXAMINER DAVIS: So that means if  
25 you had a sales call with a TPV, that's counting as

1 two for the purposes of this 30, or are you saying  
2 that it was purely 30 sales call and if there were  
3 TPVs, that might make it 35 if there were five of  
4 them that had TPVs?

5 THE WITNESS: If there were TPVs, yes, it  
6 would have been additional, but I was just going to  
7 the 30 sales calls. So there could have been TPV  
8 recordings that were attached to this that would have  
9 added to that number, but within my testimony, I'm  
10 just stating the sales calls.

11 HEARING EXAMINER DAVIS: Thank you.

12 Q. (By Mr. Whitt) Would another way of  
13 saying it be that you listened to 30 calls of  
14 something which could have been sales calls or TPVs  
15 or some combination?

16 A. Yes.

17 Q. When Staff requested information from the  
18 company related to its investigation and to the  
19 extent Staff requested the Company to produce sales  
20 calls, if the company returned to Staff recorded  
21 sales solicitations, then that information would be  
22 responsive to such a request, wouldn't it?

23 A. Yes.

24 Q. And to the extent Staff requested the  
25 company to produce TPVs, the information responsive



1 to that type of request would involve a different  
2 type of call than the sales call, correct?

3 A. Yes.

4 Q. Page 3, line 12 of your testimony, you  
5 say that you discovered there were patterns of  
6 unauthorized enrollments and misleading and deceptive  
7 practices; do you see that?

8 A. Yes, I do.

9 Q. Let me ask you some questions about  
10 unauthorized enrollments. When you use that term,  
11 you're basically talking about slamming; fair to say?

12 A. Yes.

13 Q. That means switching of consumer service  
14 without their affirmative consent, correct?

15 A. Yes.

16 Q. And you refer to two cases here. You  
17 cite PUCO Case No. -- I'll just use the last three of  
18 that case number ending in 115.

19 A. Correct.

20 Q. The other case ending in 256.

21 A. Yes.

22 Q. And the 256 case was Mr. Beauregard's  
23 case, the gentleman who just testified before you; is  
24 that correct?

25 A. Correct.

1           Q.    And you heard him testify that he was  
2   able to cancel his enrollment, correct?

3           A.    Yes, he was able to cancel.

4           Q.    And the investigative file, I'm assuming  
5   we could rely on the information in that file to tell  
6   us whether the customer involved in case 115 was ever  
7   actually enrolled as well, couldn't we?

8           A.    Yes.

9           Q.    With regard to Mr. Beauregard's case, did  
10   Staff investigate whether Columbia had sent a  
11   rescission notice to the consumer?

12          A.    I would have to look at the case.  
13   Unfortunately I cannot remember.

14          Q.    Okay. Just as AEP is required to send  
15   out cancellation notices, that's something that the  
16   gas companies are required to do as well, correct?

17          A.    Correct.

18          Q.    And you then say Page 4 of your  
19   testimony, line 5 regarding door-to-door solicitation  
20   complaints, you say that the example of the  
21   misleading and deceptive practices I noticed after  
22   reviewing many door-to-door solicitation complaints  
23   is that the representative posed as the utility or  
24   stated that they were working on behalf of the  
25   utility. Do you see that?

1 A. Yes.

2 Q. And then you cite five case numbers  
3 there, correct?

4 A. Correct.

5 Q. And again, the first case -- I'm sorry,  
6 it's not actually the first case, one of the cases in  
7 your list again is 256 and that's the indication of  
8 Mr. Beauregard, correct?

9 A. Correct, which -- yes.

10 Q. You understand that RPA is the entity  
11 that Mr. Beauregard called the PUCO to call about,  
12 correct?

13 A. Yes.

14 Q. So he knew he was dealing with RPA, fair  
15 to say?

16 A. Within the case history, he was not aware  
17 who he was enrolled with at -- when they came to his  
18 door until he received the letter from the  
19 supplier -- or I'm sorry, from AEP.

20 Q. Are you referring to the case history in  
21 his complaint?

22 A. Yes.

23 Q. Are you looking at a page that has a  
24 Bates number on it?

25 A. I'm sorry?

1           Q.    Are you looking at a page that has a  
2   Bates number at the bottom, a stamp?  Should be  
3   bottom right corner.

4           A.    Yes.

5           Q.    What's your page number say?

6           A.    I'm flipping between the two, 003002 and  
7   003003.

8           Q.    By the time Mr. Beauregard called the  
9   PUCO, he knew that he was dealing with RPA, correct?

10          A.    Correct.

11          Q.    He had to have known that at the very  
12   latest when he received an e-mail with a contract  
13   with RPA's name on it, correct?

14          A.    Correct.

15          Q.    The case ending in 073?

16          A.    Yes.

17                   HEARING EXAMINER PRICE:  Which case was  
18   that, Mr. Whitt?

19                   MR. WHITT:  073.

20          Q.    And in my Bate stamp pile, Bate stamp  
21   748, do you have that in front of you or can you --

22          A.    I do not.

23                   MR. ELMER:  May I approach the witness?  
24   What was the Bate stamp number?

25                   MR. WHITT:  748.

1 HEARING EXAMINER PRICE: 00748?

2 MR. WHITT: Yes, your Honor.

3 HEARING EXAMINER DAVIS: Let's go off the  
4 record.

5 (Off the record.)

6 HEARING EXAMINER PRICE: Back on record.

7 Q. (By Mr. Whitt) Ma'am, if we actually go  
8 one page earlier on the page that's Bate stamped  
9 0747, this would be the cover page, if you will, for  
10 informal complaint number ending in 073; is that  
11 right?

12 A. Yes.

13 Q. And that's one of the cases you cited  
14 here as an example of representatives posing as a  
15 utility, correct?

16 A. Correct.

17 Q. If you go to the next page, 0748, it  
18 appears to be the first entry when this complaint  
19 file was created on April 2021, correct?

20 A. Correct.

21 Q. And there are some notes here, and if we  
22 go just above where the date is, the note says the  
23 rep then says he is not with DP&L but Green Choice  
24 Energy, that he would get a phone call to confirm all  
25 his information is correct. Did I read that

1 correctly?

2 A. That is what that part of the comment  
3 says, yes.

4 Q. And if we had the recording, we would  
5 know, we could listen to that and know exactly what  
6 this customer told the PUCO call center agent,  
7 correct?

8 A. Correct, yep.

9 Q. And the call center person determined  
10 that it was important to note here that the rep said  
11 they were not with the DP&L, correct?

12 A. The call center agent did note that the  
13 customer told them that the agent that came to his  
14 door posed as DP&L, yes.

15 Q. And then says he was not with DP&L?

16 A. Later, yes. He said then the rep said he  
17 is not with DP&L but Green Choice Energy and he'd get  
18 a phone call to confirm all his information was  
19 correct.

20 HEARING EXAMINER PRICE: I think they're  
21 leaving something out. The customer, as I read the  
22 notes and am I misreading this, according to the  
23 notes, the customer said an agent came and posed as  
24 DP&L, the customer then pushed back and said how you  
25 don't have this and you're DP&L, and then after the

1 customer pushed back, the representative said, oh,  
2 no, I'm from Green Choice Energy; isn't that right?  
3 Am I misinterpreting that?

4 THE WITNESS: That's what's in the notes.

5 Q. Well, is it fair to say that the notes  
6 may be susceptible to different interpretations and  
7 that we can't know without the entire conversation in  
8 context exactly what was said?

9 A. From reading the notes, it's not a  
10 transcript of the call, but we can say that in  
11 regards to any of the notes within the case per se if  
12 there's any calls that were made.

13 Q. Was it your testimony that any time a  
14 customer is confused about who they're dealing with,  
15 that constitutes a violation on the solicitor's part?

16 HEARING EXAMINER PRICE: Can I have the  
17 question read back, please.

18 (Record read.)

19 THE WITNESS: That is not said within my  
20 testimony.

21 Q. Okay. Fair to say we have -- we can't  
22 know what the customer believed without talking to  
23 and hearing from the customer, fair to say?

24 A. Unless we heard from the customer or  
25 talked -- spoke to the customer, that would be

1 hearsay because we wouldn't know how they felt unless  
2 that's what was said which as you stated, this is  
3 Tyler Beauregard's case and he said that he wasn't  
4 aware until he got the contract.

5 Q. Actually the one we're looking at is a  
6 different case. Is this a different case? I  
7 apologize. Yep, this is a different case, I'm sorry.  
8 I apologize about that. Would you agree that it's  
9 fair to conclude that by the time -- if a customer  
10 has called the PUCO to complain about a certain  
11 supplier, that somewhere along the way they have  
12 necessarily learned who they were dealing with,  
13 otherwise they couldn't call to complain about that  
14 entity, correct?

15 A. Not always. Some consumers contact not  
16 knowing who the supplier is and during an  
17 investigation the investigator can figure out who  
18 that supplier was if they were enrolled.

19 Q. How would the investigator do that?

20 A. If a customer enrolled with a company but  
21 unawares as to who it was or confused as to who it  
22 is, usually what would happen with an investigation  
23 being opened, the investigator would contact the  
24 utility to find out if an enrollment was sent to them  
25 and find out who the enrollment was from.



1           Q.    Well, let's go -- Why don't you -- Now  
2   that we're on the subject, go forward in your  
3   documents to Page 0763.

4           A.    Okay.

5           Q.    This is the complaint ending in 143?

6           A.    Okay.

7           Q.    And that's another case that's included  
8   in your five examples of the door-to-door activities,  
9   correct?

10          A.    Yes.

11          Q.    And if you go to the second page, go to  
12   Page 0674, as I look in the case comments, I don't  
13   see any reference to RPA or Green Choice other than  
14   somebody reaching out to RPA and the company  
15   responded they don't know who this person is and have  
16   no record of them.

17          A.    Yes.

18          Q.    So why was -- why was RPA contacted in  
19   response to this consumer's inquiry?

20          A.    On this same page, 0764, this is an  
21   online submission from the customer and under the web  
22   information, they do put web account in question RPA  
23   Energy, dba Green Choice Energy.

24          Q.    You're saying the customer puts that  
25   information there?

1           A.    As an online complaint, yes, if they're  
2   aware of the company.

3           Q.    So if somebody is aware of the company,  
4   again, they know who they're dealing with, correct?

5           A.    Yes, but there's a possibility they did  
6   not know at the time.

7           Q.    Well, now I'm confused.  When we look in  
8   the case comments, the first one on 4-12-2021, under  
9   description it says a door-to-door salesman came to  
10   my place acting as if they were my electrical  
11   provider, so on and so forth.

12                   Is there a way we can find out when -- if  
13   RPA Energy, dba Green wasn't entered at the same time  
14   as the first entry under the case comments was  
15   entered, is there something we could look at to tell  
16   us when that entry would have been made?

17           A.    The customer's entry?

18           Q.    Yes.

19           A.    I do not have that answer.

20           Q.    This customer wasn't slammed, fair to  
21   say?

22           A.    They did not have RPA on their account,  
23   correct.

24           Q.    By the way, did you ever talk to this  
25   customer who made the complaint in Case No. 143?

1           A.    Not that I'm aware of.

2           Q.    Have you talked to any of the customers  
3 who made any of the informal complaints referenced in  
4 the Staff Report?

5           A.    During the investigation or any time?

6           Q.    Well, let's start -- well, at any time.

7           A.    Okay, so Barbara Bossart, I would speak  
8 with her which is within the case and then today  
9 Tyler Beauregard.

10          Q.    Anything you're able to tell us about the  
11 complaints -- Other than those two individuals, your  
12 knowledge would be based on the records that are  
13 attached to the Staff Report; is that fair?

14          A.    Yes.

15          Q.    Have you talked to any of the  
16 investigators involved in any of the informal  
17 complaints referenced in the Staff Report?

18          A.    There's a possibility that I did.  
19 Unfortunately I don't have that information offhand.

20          Q.    So you may have?

21          A.    I may have, yes, in regards to cases with  
22 RPA, yes.

23          Q.    If you had contacted one of the  
24 investigators, would that have been regarding  
25 Miss Bossert's or Mr. Beauregard's complaints?

1           A.    I do not recall if I did or not.

2           Q.    Case No. 258, if you go in your documents  
3 to Pages stamped 861 through 875, PUCO case -- the  
4 informal complaint Case No. 258, I believe, relates  
5 to Mr. Tokar, doesn't it, who testified today?

6           A.    Yes.

7           Q.    And were you present when this video of  
8 his interaction with the salesperson was played?

9           A.    Yes.

10          Q.    Did you see the portions where the agent  
11 within ten seconds of going to the door shows the  
12 individual her badge?

13          A.    I did see that, yes.

14          Q.    Did you hear the portion of the  
15 conversation where the agent explained that RPA  
16 Energy was not Columbia?

17          A.    Unfortunately I wasn't able to hear the  
18 audio. It was muted, so as a participant, I couldn't  
19 hear the audio.

20          Q.    On Page 6 of your testimony, line 8 --

21          A.    Correct.

22          Q.    -- you have some testimony here about TPV  
23 scripts and you say that when reviewing the TPV  
24 script, I found that customers were not provided the  
25 correct unit of measurement for natural gas.

1           A.     Correct.

2           Q.     And your conclusion here assumes, doesn't  
3     it, that the script would have been delivered to  
4     consumers or spoken to consumers as written in  
5     whatever it is you were reading, correct?

6           A.     Correct.

7           Q.     And if you go to Page 8 of your  
8     testimony, line 8, you say most, if not all, of the  
9     recorded calls that RPA provided do not go with the  
10    scripts, correct?

11          A.     Correct.

12          Q.     Thank you.  There's no Commission rule,  
13    is there, that you're aware of that requires  
14    representatives of a supplier to solicit customers in  
15    accordance with a written script?  That's not a  
16    requirement, is it?

17          A.     Not that I'm aware of.

18          Q.     You understand the script to be I guess  
19    we'll call it a training aid for lack of a better  
20    term that suppliers use to train folks and sort of  
21    generally how to approach sales solicitations?

22          A.     Yes.

23                 HEARING EXAMINER PRICE:  Or would you  
24    call it a compliance aid to make sure that the  
25    representatives stay within the bounds set forth

1 under the rules?

2 THE WITNESS: I think it would be the  
3 discretion of the company, but saying that, it  
4 would -- I would feel it would be best as a company  
5 to have their agents use that script to stay within  
6 the rules, in compliance with the rules.

7 Q. (By Mr. Whitt) And whether there is  
8 compliance with the rules, we should evaluate that  
9 based on the actual interaction with the consumer,  
10 correct?

11 A. Yes.

12 Q. So if a company is saying -- has a  
13 written script that's wrong but their actual  
14 interaction is correct, there would be compliance  
15 with Commission rules, wouldn't there?

16 A. Yes.

17 Q. And just to make sure I'm clear, on Page  
18 6 of your testimony, the question and answer that  
19 begins on line 13 seems to suggest that you believe  
20 it's misleading to tell customers that they're  
21 receiving 100 percent renewable energy; is that a  
22 fair characterization?

23 A. Yes.

24 Q. And that would be true of any supplier  
25 that represents their renewable energy supply as

1 100 percent renewable?

2 A. It would be -- So if they are  
3 representing that the customer's going to receive  
4 100 percent clean renewable energy, that would be  
5 misleading because there's no way to say the  
6 customer's going to receive that 100 percent  
7 renewable energy.

8 Q. So any supplier making this or an  
9 analogous claim is in violation of Commission rules,  
10 is that your testimony?

11 A. If they are saying that the customer will  
12 receive 100 percent clean renewable energy, that is  
13 misleading to the customer because you cannot --  
14 unless that utility provides the customer with  
15 100 percent renewable energy, you cannot guarantee  
16 the customer's going to receive that.

17 Q. Did it sound to you like the customers  
18 who testified this morning truly understand who is  
19 generating their electricity versus transmitting  
20 versus delivering it?

21 A. I can't answer for them if they would  
22 understand that or not.

23 Q. Would you agree with me it's important  
24 that we have some consideration of a consumer's  
25 understanding since nobody wants to deceive or

1 mislead the consumer? Sort of their knowledge is  
2 relevant here, isn't it?

3 A. Can you ask that again? I'm sorry.

4 Q. Well, you say at line 6 -- I'm sorry,  
5 Page 6, line 18 with regard to the statement that  
6 we've been discussing, I believe it is very  
7 misleading to make a customer believe they will  
8 receive 100 percent green energy to their home which  
9 cannot happen.

10 A. Yes.

11 Q. And I understand that's your belief, but  
12 are you saying that because that's how you interpret  
13 this statement, that the Commission ought to fine  
14 companies who make that statement in violation of  
15 their rules?

16 A. It's a misleading statement from the  
17 quote that I listened to in the call that a rep  
18 states the reason for the call today is explained the  
19 100 percent clean renewable energy that RPA can offer  
20 to a customer in your state. What that means is if  
21 you choose to enroll with RPA as your supplier, your  
22 electricity will be upgraded to 100 percent renewable  
23 energy.

24 Q. Do you have any reason to doubt whether  
25 RPA is purchasing renewable energy credits to satisfy



1 and supply obligation?

2 A. I don't have doubts, but what's stating  
3 is that the customer's electricity will be upgraded  
4 to 100 percent renewable energy. As a consumer, I  
5 would take that statement as I'm going to receive to  
6 my home 100 percent renewable energy.

7 Q. Where does it say receive --

8 HEARING EXAMINER PRICE: Let me ask a  
9 question, Mr. Whitt. What's a renewable energy  
10 credit?

11 THE WITNESS: I would not be able to say  
12 off the top of my head.

13 HEARING EXAMINER PRICE: Doesn't  
14 renewable energy credit represent that one megawatt  
15 of renewable energy has been placed on the system?

16 THE WITNESS: Yes.

17 HEARING EXAMINER PRICE: And if RPA  
18 purchased 100 percent of -- one renewable energy  
19 credit for every megawatt they post on the system,  
20 then they will have sold 100 percent clean renewable  
21 energy, right?

22 THE WITNESS: They would have sold, yes.

23 HEARING EXAMINER PRICE: To the  
24 customers.

25 THE WITNESS: To any customers in that

1 utility, correct.

2 HEARING EXAMINER PRICE: To the customers  
3 they're marketing to.

4 THE WITNESS: It could be to the  
5 customers -- anyone within that distribution, yes.

6 HEARING EXAMINER PRICE: So how is this  
7 misleading?

8 THE WITNESS: I listened to it as that  
9 specific customer would upgrade to 100 percent  
10 renewable energy, not anyone that is with RPA or not.

11 HEARING EXAMINER PRICE: But if RPA sells  
12 you electricity and purchases a renewable energy  
13 credit to cover all electricity, you are using  
14 100 percent renewable energy, right?

15 THE WITNESS: The 100 percent renewable  
16 energy may not be coming into my home specifically.  
17 It would be going back on to the grid, yes.

18 HEARING EXAMINER PRICE: Isn't that in  
19 compliance with the rules?

20 THE WITNESS: That is in compliance with  
21 the rules, yes.

22 HEARING EXAMINER PRICE: We have a system  
23 of renewable portfolios in this state, correct?  
24 Every marketer has to purchase some percentage of  
25 renewable energy.

1 THE WITNESS: (Nods head.)

2 HEARING EXAMINER PRICE: Almost all  
3 marketers do that through -- you have to say yes.  
4 You can't nod.

5 THE WITNESS: Sorry, yes.

6 HEARING EXAMINER PRICE: She can't take  
7 down nods. Marketers generally, but not exclusively,  
8 satisfy their RPS compliance obligation by purchasing  
9 renewable energy credits which means that they  
10 annually hit whatever the benchmark is for renewable  
11 compliance, right?

12 THE WITNESS: Yes.

13 HEARING EXAMINER PRICE: Why do you think  
14 this is misleading? I mean, they can't control  
15 physics. They put -- No power that they put on the  
16 system gets delivered to the customer except by some  
17 freak accident. They purchase power and the actual  
18 electrons go wherever physics dictates, but you  
19 believe it's misleading to say even if they purchase  
20 100 percent of their energy that's covered by  
21 renewable energy credits, it's still misleading?  
22 That was a terrible question. Strike that.

23 You believe it's misleading for a company  
24 to market 100 percent clean renewable energy  
25 delivered to your home even if the provider is

1 purchasing RECs for 100 percent of their megawatts,  
2 megawatt hours?

3 THE WITNESS: The part that I feel is  
4 misleading is that they're saying it's going to be  
5 delivered to their home. Yes, it can get to the  
6 their home, but they're not getting the 100 percent  
7 renewable green energy to their home, upgraded to  
8 their home. It's going within the grid in the  
9 system.

10 So to tell a customer their electric's  
11 going to be upgraded to 100 percent renewable energy,  
12 that's not correct. It will go onto the grid but not  
13 specifically to that one customer or their customers  
14 that they're marketing.

15 HEARING EXAMINER PRICE: But no energy,  
16 no electronic energy that a marketer puts on the  
17 system goes directly to that customer.

18 THE WITNESS: Correct.

19 HEARING EXAMINER PRICE: No molecule of  
20 natural gas the marketer puts onto the system goes  
21 directly to that customer. It's not the way the  
22 system works.

23 THE WITNESS: Correct.

24 HEARING EXAMINER PRICE: So why is this  
25 different in your mind?

1 THE WITNESS: It's how I'm looking at it  
2 listening as a consumer.

3 HEARING EXAMINER PRICE: This is not your  
4 position; this is the Staff's position, right?

5 THE WITNESS: This is my testimony.

6 HEARING EXAMINER PRICE: This is the  
7 Staff's position, right?

8 THE WITNESS: This would be my testimony  
9 -- within my testimony of what's said.

10 HEARING EXAMINER PRICE: You're  
11 testifying on behalf of the Staff?

12 THE WITNESS: Yes.

13 HEARING EXAMINER PRICE: So it's the  
14 Staff's position?

15 THE WITNESS: Yes.

16 HEARING EXAMINER PRICE: Thank you. I'm  
17 done. Thank you, Mr. Whitt.

18 MR. WHITT: I think we'll let that dead  
19 horse just lay there.

20 Q. (By Mr. Whitt) I want to go to discussion  
21 of variable rates. Before I do that -- well, strike  
22 that. Someplace in your testimony you say -- I'll  
23 find a reference in a minute -- that you determined  
24 that customers were not informed of the variable rate  
25 they would be billed but that the rate would be based

1 on market conditions.

2 HEARING EXAMINER DAVIS: Page 4, line 11.

3 MR. WHITT: Very good, your Honor, thank  
4 you.

5 HEARING EXAMINER DAVIS: Just trying to  
6 help.

7 Q. Page 4, line 10, after reviewing RPA  
8 sales calls, I determined that customers were not  
9 informed of the variable rate they would be billed  
10 but the rate would be based on market conditions. Do  
11 you see that?

12 A. Yes.

13 Q. And then you say in those cases customers  
14 were charged rates as high as 13 percent per kilowatt  
15 hour, correct?

16 A. Correct.

17 Q. Again, assuming the company did meet its  
18 supply obligation through renewable energy credits  
19 would be a rate reflective of renewable energy  
20 purchased by the company, correct?

21 A. And other factors based within the  
22 contract, yes.

23 Q. Well, you understood -- okay. When you  
24 say at the time the average variable rate posted on  
25 the energy choice website was .08514 cents per

1 kilowatt hour, you're not referring to renewable  
2 energy in that figure that you're comparing RPA's  
3 rate to, correct?

4 A. That would be all variable rates.

5 Q. And utility priced to compare is not --  
6 does not reflect a product that is sourced from  
7 100 percent renewable energy, correct?

8 A. Correct.

9 Q. Now, when you say when you make this  
10 comparison of rate on the energy choice website and  
11 the variable rates RPA was charging, what are you  
12 exactly suggesting here was done wrong?

13 A. That based on the rates, the average rate  
14 on the energy choice website that was posted from  
15 other suppliers was larger and not -- it was higher  
16 than the rate that was charged to consumers by RPA on  
17 the variable rate.

18 Q. Are you saying that suppliers are not  
19 permitted to supply energy at a rate that exceeds  
20 some amount?

21 A. No, I'm not.

22 Q. So the fact that RPA was charging the  
23 rates that it was charging and that those rates were  
24 higher than the average variable rate, that in and of  
25 itself doesn't violate anything, does it?

1           A.    It does not.

2           Q.    So what exactly again is the problem?

3           A.    Within that part of my testimony, the  
4 customers weren't informed of the variable rate in  
5 regards to any type -- any enrollment with variable  
6 rate from the Commission Staff's standpoint. There  
7 should be an intro rate. Supplier rates are not  
8 regulated, but saying based on market conditions  
9 customers wouldn't be aware of the rate, at least the  
10 intro rate they would be charged. And then just  
11 stating in here that the average rate is that 8.514  
12 cents per kilowatt hour.

13          Q.    Let's unpack this a little bit. For the  
14 time period you were looking at or whatever snapshot  
15 in time, you determined that RPA's rates were higher  
16 than the average variable rate posted on the energy  
17 choice website, correct?

18          A.    Correct.

19          Q.    And it's also true, isn't it, that RPA is  
20 not charging the highest rates in the market; there  
21 were others charging more than RPA, correct?

22          A.    I would have to look back at the rates  
23 posted.

24          Q.    Why don't we just look at the attachment  
25 to your testimony, SB-1.



1           A.    I don't have a copy.

2           Q.    That's okay.  To the extent you had a  
3 list of rates in your testimony, you don't have any  
4 reason to want to change that, do you?

5           A.    No, reason to change it.

6           Q.    And would you consider the energy choice  
7 website that you've referred to in your testimony,  
8 that's a reliable source of information for  
9 historical rates, isn't it?

10          A.    Historical and -- present and historical,  
11 yes.

12          Q.    Anybody who wanted to do any sort of  
13 comparisons or find out what utilities were charging  
14 at a certain point in time or what various offers  
15 were could go to the energy choice website and they'd  
16 be able to generally rely on the information that  
17 they see there, correct?

18          A.    Yes.

19          Q.    So if we looked at the energy choice  
20 website today and it revealed that in ADS's service  
21 territory, for example, that the current price to  
22 compare is over 10 cents, 10.9 cents, in fact, we  
23 could rely on that?

24          A.    If we went onto the website and that's  
25 what it is at this present time, then yes.

1           Q.    I will represent to you that that's what  
2 the website says. I'm happy to pull up the website  
3 if we need to.

4           HEARING EXAMINER PRICE: It changes every  
5 month, right, so....

6           MR. WHITT: Not for every utility.

7           HEARING EXAMINER PRICE: It's subject to  
8 change.

9           MR. WHITT: Like everything.

10          HEARING EXAMINER PRICE: Is your concern  
11 the fact that the customers are not given an actual  
12 number in the sales calls for like whatever the  
13 current price they would be charging for that month,  
14 or is your concern that they're just saying market  
15 conditions? I guess that's the same thing. What is  
16 your concern if it's not that?

17          THE WITNESS: The concern is that the  
18 customer did not receive that first month's rate, so  
19 they wouldn't know what they would be billed, just  
20 that it's based on market condition.

21          HEARING EXAMINER PRICE: So they're not  
22 disclosing to customers in the sales call what their  
23 current price is even though that is subject to  
24 change the next month and the next month?

25          THE WITNESS: There are calls that I

1 listened to that representatives state that you're  
2 being charged such and such a rate. That was not  
3 correct, but they don't get like their -- if it's a  
4 variable rate, their introductory rate for like that  
5 one month, that first month they'll go with them.  
6 They're just told that it's a market condition, based  
7 on market conditions.

8 Q. (By Mr. Whitt) Well, is it your general  
9 understanding based on the calls you listened to that  
10 at some point during either the sales call or the  
11 TPV, during one of those calls or perhaps those calls  
12 in combination, customers are informed of what the  
13 first month's rate will be and that subsequent months  
14 will be at a variable rate based on market  
15 conditions?

16 A. Not all calls had the rates in the  
17 solicitation call or the TPV. In my testimony, Page  
18 5, line 10 or 11, it states that the customer was  
19 solicited via telephone and was never provided a  
20 rate, only that the enrollment would be a variable  
21 rate based on market condition and a \$5 monthly fee.  
22 During the TPV the customer was not informed of the  
23 \$5 fee, nor was he advised of the rate he would be  
24 billed by RPA.

25 Q. Well, let me stop you there because let's

1 separate the -- Let's talk about this \$5 monthly fee,  
2 not to get off topic, but it's in front of us. The  
3 testimony you just read, you're acknowledging that in  
4 the telephone sales call, the customer was told about  
5 the \$5 monthly service fee, correct?

6 A. Correct.

7 Q. Regardless of whether they were -- that  
8 information was repeated in the separate TPV, during  
9 the interaction, the customer -- the fee was  
10 disclosed to the customer, correct?

11 A. During the telephone solicitation, it  
12 was.

13 Q. Okay.

14 HEARING EXAMINER PRICE: Do the rules  
15 require it also be disclosed during the TPV?

16 THE WITNESS: Yes.

17 Q. That's what you believe the rules say?

18 A. Within the TPV, I believe it states that  
19 any -- the rate and any additional fees would be  
20 disclosed.

21 Q. Well, the rule says what the rule says,  
22 but the rules says the call. It doesn't say  
23 distinguish between sales call or TPV, but we can  
24 argue what the rules say, my point being the customer  
25 is told about the \$5 monthly fee at some point in the

1 sales interaction, whether it's the solicitation for  
2 the TPV, correct?

3 A. Correct.

4 Q. And we can look at the contracts  
5 themselves to see whether the fee's disclosed in the  
6 contract, correct?

7 A. Correct.

8 Q. And would you agree that for a variable  
9 rate product, the supplier can't provide a schedule,  
10 if you will, of what the future variable rates are  
11 going to be, correct?

12 A. Correct.

13 Q. We call that a fixed rate agreement,  
14 right?

15 A. Yes.

16 Q. And the consumer would understand in  
17 signing up for a variable rate product the rate is  
18 going to change in the future, correct?

19 A. If the consumer is knowledgeable or it's  
20 explained to them that a variable rate can change  
21 month-to-month, yes.

22 Q. And you acknowledge here that customers  
23 are told that that's exactly what will happen, it  
24 will vary based on market conditions?

25 A. Correct.

1 Q. And the rules allow suppliers to have  
2 variable rate products, correct?

3 A. Correct.

4 Q. And they don't require a supplier, again,  
5 to provide a schedule of exactly what the future  
6 variable rate might be, true?

7 A. Correct.

8 Q. And there's no rule that requires  
9 suppliers to cap their variable rate products at the  
10 utility price to compare, correct?

11 A. Correct.

12 Q. Or any index or at any price, correct?

13 A. Correct.

14 MR. WHITT: Can we take five, your Honor?  
15 I may be done. I'd like to confer.

16 HEARING EXAMINER PRICE: Yes.

17 HEARING EXAMINER DAVIS: Yes.

18 (Recess taken.)

19 HEARING EXAMINER DAVIS: We'll go back on  
20 the record.

21 MR. WHITT: We have no further questions.

22 HEARING EXAMINER DAVIS: OCC?

23 MS. O'BRIEN: No cross, your Honor.

24 Thank you.

25 HEARING EXAMINER DAVIS: Redirect?

1 MR. EUBANKS: Your Honor, can we have a  
2 minute to commune before redirect?

3 HEARING EXAMINER DAVIS: Yes.

4 HEARING EXAMINER PRICE: Can we go off  
5 the record?

6 (Off the record.)

7 HEARING EXAMINER DAVIS: We're going to  
8 go back on the record. Are you prepared for  
9 redirect, Mr. Eubanks?

10 MR. EUBANKS: Yes, your Honor.

11 HEARING EXAMINER DAVIS: Proceed.

12 - - -

13 REDIRECT EXAMINATION

14 By Mr. Eubanks:

15 Q. You were asked some questions about  
16 variable rates on Page 4. I wanted to follow up on  
17 some of that questioning, mainly between lines 10 and  
18 16.

19 A. Uh-huh, yes.

20 Q. So the customers that were contacted in  
21 these sales calls, were they all customers that were  
22 on with companies that provided renewable energy?

23 A. No, they would not all be on renewable  
24 energy.

25 Q. Would some of them be with a utility on

1 the SSO rate?

2 A. Yes.

3 Q. Did the RPA reps ask what type of rates  
4 they were on?

5 MR. WHITT: I'll object.

6 HEARING EXAMINER DAVIS: Can you repeat  
7 the question?

8 Q. Did the RPA representatives inquire about  
9 what rates the customers were currently paying?

10 A. They did not ask, but in one call within  
11 my testimony, an RPA rep does advise the customer  
12 what they're being charged.

13 Q. Do the RPA reps say that their rates will  
14 be reflective of what renewable energy rates are?

15 A. No, what's advised to customers is that  
16 they're promised savings.

17 MR. WHITT: I'll object and move to  
18 strike. There's no foundation for a claim that any  
19 call promised savings.

20 MR. EUBANKS: It's actually in her  
21 testimony.

22 HEARING EXAMINER DAVIS: Where?

23 MR. EUBANKS: Page 8, question and answer  
24 14, in many of the sales calls RPA's reps promised  
25 customers a lower rate and savings.



1 MR. WHITT: Well, having those words in  
2 quotes really doesn't support the import of what's  
3 being represented here. Moreover, we listened to  
4 actually TPVs earlier which expressly disclaimed  
5 savings.

6 MR. EUBANKS: She has been asked  
7 questions by opposing counsel about what happens  
8 during these sales calls when they're advised they're  
9 going to be given variable rates and several  
10 questions on what's wrong with the rates they charge,  
11 and it's very pertinent to the issue at hand if they  
12 were told they were going to be having savings. I'm  
13 not even sure what the objection is.

14 MR. WHITT: Well, Staff, not the company  
15 but Staff put into evidence calls that we all  
16 listened to where the person is explaining that there  
17 will not be savings. And so to ask the witness a  
18 question assuming that there has been evidence  
19 entered that the company promised savings is contrary  
20 in the record.

21 HEARING EXAMINER PRICE: But in the  
22 testimony --

23 MR. WHITT: But if it's her testimony, I  
24 guess, if you want to ask the witness to make an  
25 assumption that it's flatly contrary to other Staff

1 evidence, I suppose I don't have a problem with that.

2 HEARING EXAMINER PRICE: I don't know why  
3 it's flatly contrary that something might happen in  
4 two TPVs -- might not happen in two TPVs but happen  
5 in other conversations. That's not flatly  
6 contradictory, that's just different conversations.  
7 You had a chance to cross-examine her on Page 8, line  
8 14 through 16, and I don't recall you asked any  
9 questions, so I think there's plenty of foundation.

10 MR. EUBANKS: Could you please read back  
11 the last question.

12 (Record read.)

13 A. They do not.

14 Q. In this line 10 through 16, you give the  
15 average variable rate price there?

16 A. Which page?

17 Q. We're still on Page 4, lines 10 through  
18 16.

19 A. Yes.

20 Q. You give the average variable rate price  
21 there of .08514, but if the customer that was  
22 promised savings was on the utility rate, would their  
23 rate be higher or lower than that?

24 A. It would be based on the company at that  
25 time looking at the archives for that utility

1 company. Until recently with market change during  
2 this time period for the investigation, there would  
3 have been a lower rate for the utility.

4 Q. When you say recently, what does recently  
5 mean?

6 A. In the last few months.

7 Q. Okay. But at the time of the sales calls  
8 that you were listening to, the SSO price would have  
9 been lower than the average variable rate?

10 A. That I recall, yes.

11 Q. Did part of your review involve reviewing  
12 the case of Barbara Bossart?

13 A. Yes.

14 Q. And in that review of Barbara Bossart,  
15 one of the issues was she didn't receive her contract  
16 within a day?

17 A. Yes.

18 Q. And the response from RPA was what with  
19 regard to their TPV script?

20 MR. WHITT: I'll object. I don't believe  
21 I crossed on this.

22 MR. EUBANKS: He didn't, but if I'm  
23 allowed a little rope because this is just going to  
24 the issue of whether or not they use their TPV  
25 script, and he clearly was making the insinuation

1 that they don't.

2 MR. WHITT: Well, she said they don't  
3 based on what she listened to.

4 MR. EUBANKS: Well, I'm asking in that  
5 vein.

6 HEARING EXAMINER DAVIS: Keep it within  
7 just that, just within what was asked on cross, just  
8 to the extent that it's the use or not of the TPV  
9 script.

10 Q. (By Mr. Eubanks) Yes. So what was RPA's  
11 response with regard to the TPV script in addressing  
12 the failure to inform customers about the receiving  
13 their contract within a day if you remember?

14 A. I do not remember, but if we had the case  
15 number, I'm aware that it's in Staff Report of the  
16 case, but I do not recall exactly what was said.

17 Q. Do you recall if they changed their TPV  
18 script?

19 A. I can't remember.

20 MR. EUBANKS: I have no further questions  
21 for the witness.

22 HEARING EXAMINER DAVIS: Thank you. Do  
23 we have recross?

24 MR. WHITT: No.

25 HEARING EXAMINER DAVIS: Thank you very

1 much, Miss Boerstler.

2 THE WITNESS: Do I leave all this here?

3 HEARING EXAMINER DAVIS: You can take  
4 your testimony.

5 HEARING EXAMINER PRICE: The rest of the  
6 mess stays.

7 MR. EUBANKS: I'd like to move into  
8 evidence the Prefiled Testimony of Samantha  
9 Boerstler.

10 HEARING EXAMINER DAVIS: Are there any  
11 objections?

12 MR. WHITT: I guess what is being moved  
13 at this time, just the testimony or does that include  
14 all of the materials referenced?

15 MR. EUBANKS: Yes, I'm asking for the  
16 testimony and all the materials referenced in the  
17 testimony to be moved.

18 HEARING EXAMINER PRICE: The materials  
19 attached or the materials referenced?

20 MR. EUBANKS: Those referenced and  
21 attached.

22 HEARING EXAMINER DAVIS: So that would  
23 include the testimony, the various attachments marked  
24 SB-1 and 2 and we're referring to the referral case  
25 files?

1 MR. EUBANKS: It would be the case files  
2 and the audio files associated with her testimony.

3 HEARING EXAMINER DAVIS: And we have  
4 marked her testimony and the errata for her  
5 testimony.

6 HEARING EXAMINER PRICE: You never marked  
7 these exhibits.

8 MR. EUBANKS: That's true, your Honor.

9 HEARING EXAMINER DAVIS: So we haven't  
10 marked the referenced items, correct? My  
11 recollection is you marked testimony of the  
12 witnesses' video, the audio.

13 MR. EUBANKS: So let me -- let's handle  
14 this separately. Yes, let's handle it one at a time.  
15 First I would like to have the Prefiled Testimony of  
16 Samantha moved into the record without any -- and the  
17 two attachments -- two exhibits.

18 HEARING EXAMINER DAVIS: Exhibit 1 and 2.

19 MR. WHITT: There's no objection to the  
20 written testimony and written attachments included  
21 with the testimony, no objection to that, no  
22 objection to the written errata. I believe that's  
23 the only thing that's been offered.

24 HEARING EXAMINER DAVIS: That's all been  
25 marked to my understanding. You did not ask to mark

1 anything else, right?

2 MR. EUBANKS: I have not.

3 HEARING EXAMINER DAVIS: So what you're  
4 moving for now is just errata, testimony and the  
5 associated attachments to the testimony?

6 MR. EUBANKS: That's correct, and I do  
7 have two others after that, but I'm going to go ahead  
8 and....

9 HEARING EXAMINER DAVIS: Mr. Whitt, you  
10 don't object to those items?

11 MR. WHITT: Correct, to what has been  
12 marked.

13 HEARING EXAMINER PRICE: Staff X4 and  
14 Staff X5, Staff Exhibit 4 and Staff Exhibit 5 is all  
15 we're talking about right now.

16 MR. WHITT: No objection.

17 HEARING EXAMINER DAVIS: Those are  
18 admitted.

19 MR. EUBANKS: Now I'd like to move --

20 HEARING EXAMINER DAVIS: Staff's Exhibit  
21 4 and Staff's Exhibit 5 are admitted.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 MR. EUBANKS: I would like to have moved  
24 into evidence Staff's Exhibit 2 and Staff Exhibit 3.

25 HEARING EXAMINER PRICE: Let's go back

1 one. Staff Exhibit 1 you had previously moved, and  
2 we had not ruled upon that. Why don't you do 1  
3 first.

4 MR. EUBANKS: I thought you admitted  
5 that.

6 HEARING EXAMINER DAVIS: No, not yet.

7 MR. EUBANKS: I asked for it to be moved  
8 into evidence.

9 HEARING EXAMINER DAVIS: So my practice  
10 has tended to be to gather them all up and do them,  
11 but yes, since we're on the topic, Staff Exhibit 1 is  
12 admitted.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 MR. EUBANKS: And then I have testimony  
15 from the witness about Staff's Exhibit 2 and 3. She  
16 authenticated them with her testimony and I'd now  
17 like to have those moved into evidence as well?

18 HEARING EXAMINER DAVIS: Are there any  
19 objections to Staff's Exhibit 2 or 3?

20 MR. WHITT: We don't object to those.

21 HEARING EXAMINER DAVIS: Staff's Exhibit  
22 2 is admitted and Staff's Exhibit 3 is admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 MR. EUBANKS: I think that's all.

25 HEARING EXAMINER DAVIS: Okay. So now we



1 move to your next witness.

2 MR. EUBANKS: I'd like to call to the  
3 stand Barbara Bossart.

4 (Witness placed under oath.)

5 - - -

6 BARBARA BOSSART

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

9 HEARING EXAMINER PRICE: Be seated and  
10 state your name and business address for the record.

11 THE WITNESS: Barbara Bossart,  
12 B-O-S-S-A-R-T. My address is 180 East Broad Street,  
13 Columbus, Ohio, 43215.

14 HEARING EXAMINER DAVIS: Please proceed,  
15 Mr. Eubanks.

16 - - -

17 DIRECT EXAMINATION

18 By Mr. Eubanks:

19 Q. Could you state your position with the  
20 Public Utilities Commission.

21 A. I'm the Chief of the Reliability and  
22 Service Analysis, Division of the Service Monitoring  
23 Enforcement Department.

24 Q. Did you file any Prefiled Testimony in  
25 this matter?

1           A.    Yes, I did.

2                   HEARING EXAMINER PRICE:   Miss Bossart, if  
3   you could speak up, please.

4           A.    Sorry.   Yes.

5           Q.    Did you file any Prefiled Testimony in  
6   this matter?

7           A.    Yes, I did.

8                   MR. EUBANKS:   May I approach the witness?

9                   HEARING EXAMINER DAVIS:   You may.

10                  MR. EUBANKS:   I'd like to have marked as  
11   Staff's Exhibit 6 the Prefiled Testimony of Barbara  
12   Bossart.

13                   HEARING EXAMINER PRICE:   So marked.

14                   (EXHIBIT MARKED FOR IDENTIFICATION.)

15           Q.    If you could review -- Did you have your  
16   testimony docketed with the Commission?

17           A.    Yes, I did.

18           Q.    And can you identify the document in  
19   front of you?

20           A.    Yes, it's my testimony.

21           Q.    So Staff's Exhibit 6 is your testimony,  
22   your Prefiled Testimony?

23           A.    Yes.

24           Q.    If I were to ask you the same questions  
25   that are in your testimony, would you provide the

1 same answers?

2 A. Yes.

3 Q. And are there any corrections that you  
4 would like to make to your testimony?

5 A. No.

6 Q. The audio files that you reference, were  
7 you here for the testimony of Samantha Boerstler --

8 A. Yes, I was.

9 Q. -- and her testimony about the process  
10 for the audio files and the case files for Staff?

11 A. Yes, I did.

12 Q. The audio files that you mentioned in  
13 your testimony, were they all -- did they all -- were  
14 they all unaltered by Staff when they were received?

15 A. From my understanding, yes.

16 Q. Does your testimony refer to case history  
17 reports?

18 A. It refers to my Case History Report.

19 Q. And that Case History Report would have  
20 been generated the same way as it was described in  
21 Samantha's testimony?

22 A. Yes.

23 Q. And the documents contained in that  
24 History Report would be unaltered?

25 A. Correct.

1 MR. EUBANKS: With that, I move for  
2 Staff's Exhibit 6 to be placed into evidence and  
3 subject to cross and offer the witness for  
4 cross-examination.

5 HEARING EXAMINER PRICE: We'll defer  
6 ruling on Commission Staff Exhibit 6 until after  
7 cross-examination. Any motions to strike?

8 MR. WHITT: Not yet.

9 HEARING EXAMINER DAVIS: Consumer's  
10 Counsel, any cross?

11 MS. O'BRIEN: No, your Honor.

12 HEARING EXAMINER DAVIS: Mr. Whitt,  
13 cross-examination.

14 MR. WHITT: Thank you.

15 MR. EUBANKS: Your Honor, may I get up  
16 for one second?

17 HEARING EXAMINER PRICE: (Nods head.)

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Whitt:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. You knew it would eventually happen when  
24 this marketer would call you?

25 A. They do quite often.

1 Q. So RPA's not the first company that's  
2 called you?

3 A. No, I have --

4 Q. How many other calls have you received?

5 A. I could not say. I have enrolled, so I  
6 have gotten calls.

7 Q. And you've gone through the enrollment  
8 process of other entities or other suppliers?

9 A. Yes.

10 Q. Did your participation in the enrollment  
11 process ever lead to follow-up compliance activity  
12 involving those suppliers?

13 A. I believe one.

14 Q. Which one was that?

15 A. I'm going to say I had a complaint...  
16 Direct Energy, but I can't recall if it was -- I know  
17 I enrolled and filed the complaint. I know I filed  
18 the complaint.

19 Q. You don't remember who the supplier was?

20 A. Direct Energy.

21 Q. How long ago was this?

22 A. It was before RPA.

23 HEARING EXAMINER PRICE: Was it  
24 pre-Covid?

25 THE WITNESS: No. I think it was during.

1 HEARING EXAMINER PRICE: So kind of in  
2 the last couple years?

3 THE WITNESS: Yes.

4 Q. (By Mr. Whitt) I want to respect the  
5 confidentiality of any processes, but did a direct  
6 matter result in a docketed enforcement proceeding,  
7 to your knowledge?

8 A. I did not -- I was preparing for this  
9 case, so I cannot recall.

10 Q. Your first interaction -- well, let me go  
11 to the attachment to your testimony. Is it labeled  
12 as an attachment?

13 A. Is that a question?

14 Q. Do you have an attachment to your  
15 testimony, basically the informal complaint file that  
16 was started in response to your complaint?

17 A. My Case History Report, it's attached to  
18 my testimony.

19 Q. And if we could go to Page 2 of that  
20 report where the case comments begin, I don't have a  
21 specific question necessarily on the comments at this  
22 point, but just want to sort of clarify the  
23 chronology here, but your first call was received on  
24 June 4th, 2021, correct?

25 A. Correct.

1           Q.    Do you know how RPA or whatever vendor  
2 they were using got your phone number?

3           A.    No, I do not.

4           Q.    And there are ways that consumers can  
5 restrict access to their phone numbers and other  
6 personal information to marketers, correct?

7           A.    Correct.

8           Q.    You're on a do not contact list, aren't  
9 you?

10          A.    My phone number is on the do not contact  
11 list with the FTC, yes.

12          Q.    Was it in June 2021?

13          A.    Yes.

14          Q.    Was it a cellphone or landline?

15          A.    Cellphone.

16          Q.    So you received a call on June 4th, 2021,  
17 started the enrollment process but didn't finish it,  
18 fair to say?

19          A.    Correct.

20          Q.    And you received another call on  
21 June 7th, 2021 and this time completed the enrollment  
22 process, correct?

23          A.    Yes.

24                HEARING EXAMINER PRICE:   Could I go back  
25 one step because the chronology is reverse in

1 testimony. On the first call, was that a RoboCall  
2 also?

3 THE WITNESS: Yes, it was an automated  
4 call, yes.

5 HEARING EXAMINER PRICE: Did it promise  
6 you the \$50 -- press 1 to get a \$50 discount and a  
7 gift card?

8 THE WITNESS: Correct.

9 HEARING EXAMINER PRICE: The second one  
10 was the same, was a RoboCall --

11 THE WITNESS: Correct.

12 HEARING EXAMINER PRICE: -- with the  
13 classic \$50 discount and gift card?

14 THE WITNESS: Yes.

15 Q. (By Mr. Whitt) On the first call, I'm  
16 looking right about in the middle of the comment on  
17 6-4, that says once on the TPV, it was clear I was  
18 enrolling with RPA; do you see that?

19 A. Yes.

20 Q. By the way, did you write these comments?

21 A. Yes.

22 Q. At the bottom still on the same page, the  
23 6-4 entry, it says also she stated that rate would be  
24 4.924, then later she repeated the rate state for  
25 first month and that it could change with the market.



1 That was not really clear that I would be on a  
2 variable rate. The TPV was very clear that I was  
3 signing up for a variable rate. Did I read that semi  
4 correctly?

5 A. Yes.

6 Q. So by the end of this initial  
7 interaction, you had been given a first month's rate  
8 and disclosure that it was variable and would change  
9 going forward?

10 A. I was given a rate of what my rate would  
11 be. Then later on she stated it was going to be --  
12 she stated the rate and then stated it was for the  
13 first month. So the first time the rate was given,  
14 it was just like this is your rate. It wasn't your  
15 first month's rate, then you go on, that it would  
16 vary.

17 Q. But that statement wasn't just left  
18 hanging out there. It was followed up before the  
19 completion of your interaction that how long that  
20 that rate applied and what subsequent rates would be  
21 and how they'd be determined, that was known to you  
22 eventually?

23 A. Eventually.

24 Q. And the purpose of the TPV, is it fair to  
25 say is to ensure that certain disclosures are made to

1 consumers in the event that they haven't understood  
2 something during a sales presentation or something  
3 wasn't stated correctly, that the fact that there's a  
4 TPV process, recognizes a need to confirm and clarify  
5 a consumer's understanding, correct?

6 A. The intent of the verification process  
7 was to verify the information that was presented to  
8 the customer during the sales call and what they are  
9 enrolling in -- this is Staff's interpretation of  
10 course -- and what the customer is enrolling in and  
11 the customer's acknowledgment.

12 Q. And ultimately what the rules want to  
13 ensure is that customers are giving affirmative  
14 consent before their supplier is switched, correct?

15 A. Their acknowledgment that they understand  
16 the terms.

17 Q. Well, I mean, how is anyone to know what  
18 the consumer truly understands or not? I mean....

19 A. As my recollection of the rule, it says  
20 the customer's acknowledgment, so I....

21 Q. At that point, the TPV rule has a list of  
22 disclosures which require a verbal, an affirmative  
23 statement and the consumer's verbal consent,  
24 something along those lines, correct?

25 A. Correct.

1 Q. And to complete a TPV there needs to be  
2 affirmative responses to those statements, correct?

3 A. Correct.

4 Q. As we listened to this morning, the  
5 typical TPV process, statements are read and the  
6 customer's answer will be yes, correct?

7 A. Typically, yes.

8 Q. And that's not unusual with a TPV, right?

9 A. With the third party verification, it  
10 needs to be the verification and the customer's  
11 affirmative consent and acknowledgment.

12 Q. That's the whole part of the TPV rule,  
13 there needs to be certain things said very clearly in  
14 a yes or no from the customer, that's what the rule  
15 seeks, correct?

16 A. That is correct.

17 Q. And that disclosure -- again, these are  
18 mandatory items listed in the rule, right?

19 A. Correct.

20 Q. Separate and apart from these mandatory  
21 disclosures and the requirement for verbal statement  
22 of customer's acknowledgment, there may be -- before  
23 any of that happens, there's some sales solicitation,  
24 correct?

25 A. Yes.

1           Q.   And the sales solicitation may be some --  
2   a more free flowing discussion, correct?

3           A.   It could be, yeah.  Depends on the  
4   company.

5           Q.   In your experience -- Again, you've been  
6   called by suppliers before obviously.  There's some  
7   sales pitch that if successful would then be followed  
8   up with a TPV, correct?

9           A.   That is correct, and there was a sales  
10   call that was misleading that led up to a TPV that  
11   was fairly technical.

12          Q.   We'll get into the misleading part of it,  
13   but there were two separate things that happened, a  
14   solicitation and a TPV, right?

15          A.   The enrollment, yes.

16               HEARING EXAMINER PRICE:  Miss Bossart,  
17   for the record so the Supreme Court is clear on this,  
18   what does TPV stand for?  We're all using this  
19   acronym.

20               THE WITNESS:  Third party verification.

21               HEARING EXAMINER PRICE:  It's done by  
22   somebody separate from the person soliciting?

23               THE WITNESS:  In the rule, it says I  
24   believe the CRES provider or a third party verifier  
25   for electronic -- for electric enrollments.

1 HEARING EXAMINER PRICE: But the sales  
2 rep does not do the TPV?

3 THE WITNESS: Correct.

4 Q. (By Mr. Whitt) When you went through the  
5 enrollment process after the second call with the  
6 sales agent you spoke to, you were not intending to  
7 actually switch suppliers from whoever you were with  
8 to RPA, fair to say?

9 A. I'm sorry, could you repeat that, please?

10 (Record read.)

11 A. I knew that I had the option to rescind  
12 or cancel. I did believe it was very misleading, and  
13 so I probably was not going to stay with them, but I  
14 did want to see the contract terms and conditions,  
15 but I did not -- I did this -- Did I intend to say --  
16 If it was a really good product, I would have, but  
17 no, I did not believe it was a good product.

18 Q. Given your position, you didn't have to  
19 enroll with RPA to have access to their contract?

20 A. As a consumer, I did. For that product  
21 that was offered to me as a consumer, I had wanted to  
22 review the terms and conditions and that I knew I had  
23 seven days to rescind.

24 HEARING EXAMINER PRICE: Miss Bossart, to  
25 be clear, when you did not hang up on the initial

1 RoboCall, you embarked on this as a compliance  
2 investigation, right?

3 You were walking through to see if they  
4 were following the rules?

5 THE WITNESS: Yes, I was wanting to see  
6 if they were following the rules.

7 HEARING EXAMINER PRICE: It is your job?

8 THE WITNESS: It is my job.

9 HEARING EXAMINER PRICE: Your job is to  
10 supervise the people that investigate whether CRES  
11 providers and CRNGS providers are following the  
12 rules?

13 THE WITNESS: That is correct.

14 HEARING EXAMINER PRICE: So this is sort  
15 of like robbing the Chief of Police which happened in  
16 Columbus once; is that correct?

17 MR. WHITT: Had actually anything been  
18 done wrong, we'd agree with that. Allegedly....

19 HEARING EXAMINER PRICE: Allegedly  
20 robbing the Chief of Police. Please proceed.

21 Q. (By Mr. Whitt) The fact that you had  
22 any -- a different agenda other than enrolling, does  
23 not render your -- wouldn't be reasonable to render  
24 what you did unfair and deceptive simply because you  
25 had a different motive of going through this exercise

1 than had been disclosed to everybody; can we all  
2 agree on that?

3 A. I'm sorry....

4 Q. I guess the point I'm trying to make or  
5 see if you would agree with me is that when we're  
6 evaluating words and conduct, that context is  
7 important, right?

8 A. Okay.

9 Q. Do you agree with that?

10 A. Yes.

11 Q. And that's all I'm trying to get to. To  
12 understand the context of some interaction, it's  
13 appropriate to look at the interaction in its  
14 entirety; would you agree with that?

15 A. Yes.

16 Q. In fact, that's why you proceeded through  
17 the enrollment process, because as you indicate on  
18 Page 6, line 16, I wanted to know if my sales call  
19 would be reviewed by RPA's Quality Assurance program,  
20 correct?

21 A. Correct.

22 Q. In fact, you were called the next day by  
23 someone's -- someone from RPA's Quality Assurance  
24 department, correct?

25 A. Correct.

1           Q.   And before we get there, I want to go  
2 back to the TPV that you completed after the second  
3 call.  If we look on Page 3 of your Case History  
4 Report, the entry on 6-7 at 3:49.

5           A.   Okay.

6           Q.   You state toward the bottom the TPV is  
7 good, very clear that I'm signing up with RPA, dba  
8 Green Choice Energy on a variable rate with a  
9 \$5 monthly fee.  At this time I did go all the way  
10 through the TPV.  That's what's indicated here,  
11 correct?

12          A.   Correct.

13          Q.   Then the next day you got a call from  
14 RPA's Quality Assurance program, correct?

15          A.   Yes.

16          Q.   According to the notes, you told this  
17 person, quote, "I advised that I was not informed  
18 about the variable rate or the monthly service fee,"  
19 end quote.

20          A.   On the sales call.

21          Q.   Well --

22          A.   I first said -- I advised that I was not  
23 happy with the sales call I advised them.  So I was  
24 talking about the sales call.

25          Q.   So the information to you was disclosed.



1 Your issue was -- What was your issue? That it was  
2 disclosed at the wrong time or that it wasn't  
3 disclosed twice?

4 A. I was misled previously, and then based  
5 on that information, I was in -- I was motivated to  
6 enroll based on that information. Then when you  
7 enroll, when you say okay because you think you're  
8 just verifying information, then you get different  
9 information than what I was told. So that's what I  
10 was saying to Quality Assurance, that I wasn't told  
11 these things until I get to you agreed to enroll and  
12 then you have to be transferred to a supervisor to  
13 enroll.

14 Q. You said you were misled. Misled into  
15 what?

16 A. That I was going to -- that the reason  
17 for the call was I was on a commercial rate, and they  
18 needed to switch me to a residential rate and that I  
19 was going to -- and then that there was -- I was  
20 gonna -- you know, with the RoboCall or the  
21 recording, that I'd get \$50 and a gift card.

22 So that was -- and then my -- they did  
23 say the rate, but, again, you were misled, and then  
24 you go to the TPV, okay, we're going to verify all  
25 this information, and then I'm like you're verifying

1 information I was never told.

2 Q. But during the sales call, whatever was  
3 said was said, then there was a TPV, correct?

4 A. Which is a third party verification which  
5 verifying what I was told.

6 Q. It's a third party who's required to do  
7 this to ensure that the consumer understands.

8 A. To verify what they were told.

9 Q. No, that's not -- you're saying that  
10 that's what the rule says, that the purpose of a  
11 TPV --

12 HEARING EXAMINER PRICE: The rule will  
13 speak for itself.

14 THE WITNESS: I'm sorry, this is my  
15 interpretation that a third party verification is to  
16 verify --

17 HEARING EXAMINER PRICE: It's your  
18 interpretation as the head of enforcement for this  
19 group which you do every day.

20 THE WITNESS: Yes.

21 Q. (By Mr. Whitt) What exactly is that  
22 interpretation? That whatever is said during the  
23 sales call must be confirmed in the TPV?

24 A. I believe the intent of a verification, a  
25 third party verification, is to verify the

1 information that you were provided that enticed you  
2 to enroll in the product.

3 Q. If there was a discussion that preceded  
4 the TPV -- During the sales discussion, a customer --  
5 is it conceivable that a customer simply  
6 misinterprets something or misunderstands something?  
7 I mean, we have to account for that, correct?

8 A. Correct.

9 Q. Then we have this TPV, the purpose of  
10 which is to stop the enrollment if during that  
11 process the customer realizes, oh, that's not what I  
12 remember this person saying or that's not what I  
13 understood, the TPV sort of gives the consumer an  
14 out, right?

15 A. If the customer was knowledgeable that --  
16 depending on what the Sales Representative told them,  
17 I don't know what -- I was informed that you needed  
18 to say yes, and so if a customer believed that they  
19 needed to say yes to get what they were promised on a  
20 sales call, then that person might have said yes.

21 Q. Okay. But even in those cases, there's  
22 another protection when the utility sends the  
23 customer notice of their right to rescind the  
24 transaction, correct?

25 A. That is another consumer protection, yes.

1           Q.   And also during this process, the  
2 consumer is given a written contract that has the  
3 written terms and conditions, correct?

4           A.   Yes, the customer -- there is a  
5 requirement of the timeline you need to send for  
6 telephonic enrollment, the terms and conditions to  
7 the customer so they can read through it and have  
8 time to rescind in that seven-day period.

9           HEARING EXAMINER PRICE:   Miss Bossart, I  
10 want to understand what you're saying properly.  
11 There's a sales call and there's a TPV, and maybe  
12 there's also a subsequent Quality Assurance call,  
13 right?

14           THE WITNESS:   (Nods head.)

15           HEARING EXAMINER PRICE:   And you were on  
16 a no call list.   Do the rules prohibit calling people  
17 on a no call list?

18           THE WITNESS:   Yes, it does, on the  
19 Federal Trade Commission.   I think there are some  
20 exceptions FTC may have.

21           HEARING EXAMINER PRICE:   Our rules  
22 generally, Commission's rules, prohibit --

23           THE WITNESS:   Yes.

24           HEARING EXAMINER PRICE:   -- phone calls.  
25 You also believe you were misled by the RoboCall.

1 THE WITNESS: Yes.

2 HEARING EXAMINER PRICE: And you believe  
3 you were misled during the residential call?

4 THE WITNESS: Yes.

5 HEARING EXAMINER PRICE: It's your  
6 position that no matter what happens in the TPV, it  
7 does not cure these one, two, three violations?

8 THE WITNESS: Correct.

9 HEARING EXAMINER PRICE: It's your  
10 position that no matter what happens on the Quality  
11 Assurance call, it does not cure the one, two, three  
12 violations that occurred in the initial sales call?

13 THE WITNESS: Correct.

14 HEARING EXAMINER PRICE: Do you think  
15 Mr. Whitt agrees with you on that?

16 THE WITNESS: I do not know what  
17 Mr. Whitt believes.

18 Q. (By Mr. Whitt) To be clear, the  
19 Commission's rules prohibit calls to people on  
20 certain do not call lists, for example, where people  
21 opt out of supplier utility lists and so forth,  
22 correct?

23 A. I believe in '05 it does specifically say  
24 the do not call list from the Federal Trade  
25 Commission, but that's subject to check.

1           Q.    You received a call the day after  
2 enrollment from RPA's Quality Assurance, correct?

3           A.    So I received the call on 6-8, and then  
4 on 6-8 I received a call from Dexter at RPA.

5           Q.    So did you receive one or two calls?

6           A.    I received a call regarding -- for the  
7 Quality Assurance, and then I received another call  
8 from Dexter due to my complaint to the Commission.

9           Q.    Okay. And during one or both of these  
10 calls, you expressed the concerns that you had about  
11 your interaction, correct?

12          A.    Yeah. And I'm sorry, I just want to  
13 clarify, I was looking through the notes and I think  
14 I received a call on 6-9, you were correct, I'm  
15 sorry. Could you repeat that question?

16                   HEARING EXAMINER PRICE: Read the  
17 question back, please.

18                   (Record read.)

19          A.    Correct.

20          Q.    And the Quality Assurance manager  
21 informed you that the written terms and conditions  
22 would be sent to you, correct?

23          A.    Yes.

24          Q.    It also said that you could rescind the  
25 enrollment, correct?

1           A.    Yes, could cancel, yes.

2           Q.    You had the opportunity actually at that  
3 time to cancel if you wished, correct?

4           A.    Yes.

5           Q.    Is it common in your experience for  
6 suppliers to contact consumers after a completed TPV  
7 to gauge the customer's satisfaction with their  
8 experience?

9           A.    I believe there's many that do that.

10          Q.    Okay.  It's not something the rules  
11 actually require, right?

12          A.    No.

13          Q.    It's an extra measure some suppliers  
14 elect to take to follow up with customers, correct?

15          A.    It could probably be part of their  
16 compliance plan.

17          Q.    What criteria does staffing use to  
18 determine whether an act is unfair, deceptive or  
19 unconscionable?

20          A.    If we believe it's not, leads a customer  
21 to believe and take action based on that belief of  
22 either saving money, you know, of something that's  
23 just not factual maybe or leads the customer to take  
24 an action based on false or misleading statements.  
25 I'm not sure....

1           Q.    So there would be -- there's some element  
2 of reliance there that something is said that gets a  
3 consumer to change their position somehow in this  
4 case switching suppliers?

5           A.    That was not factual, that was  
6 misleading.

7           Q.    Well, are you saying that any statement  
8 that is false is automatically in violation of a  
9 Commission rule?

10          A.    It's on a case by case basis. I would  
11 have to -- you know it when you see it. But  
12 basically if it's -- if you represent yourself -- if  
13 you say the customer's on a commercial rate when  
14 they're not, that's false, so that misled the  
15 customer.

16          Q.    But if a customer knows that what's being  
17 said is false and says no, thank you and hangs up, we  
18 can't say that customer was misled, can we?

19                   Whether what was said was true or not,  
20 the customer didn't believe it and has taken no  
21 action objectively hasn't been misled, right?

22          A.    Well, it was deceitful -- maybe it's  
23 not --

24                   HEARING EXAMINER PRICE: You're saying  
25 the statement -- Misleading is only misleading if it



1       tricks the recipient?

2                   MR. WHITT:  There's two different things.

3               Q.     Okay, well, let me give an example.  If I  
4     told you that the moon is made out of cheese, because  
5     that's wrong and false, I mean, does that make it  
6     deceptive to everyone who heard it?

7               A.     It's the intent that we look at.

8               Q.     Okay.  So the intent of the party making  
9     the statement is relevant in determining on a  
10    case-by-case basis whether something is unfair,  
11    unacceptable or unconscionable; is that accurate?

12            A.     Yes.

13            Q.     We listened to testimony from witnesses  
14    this morning who independent of whether or not they  
15    were told the truth or somebody did anything wrong,  
16    at the end of the day customers who declined the  
17    solicitation and did not switch suppliers and no  
18    attempt was ever made by RPA to switch them, the  
19    first witness who testified today, that was his  
20    situation, correct?

21            A.     Could you repeat that question, please?

22                   (Record read.)

23            Q.     That's the worst question asked in this  
24    hearing and is hereby withdrawn.  How did Staff  
25    arrive at its recommended forfeiture in this case of

1 1.5 million?

2 A. I believe Staff witness Nedra Ramsey is  
3 supporting the Staff Report. I am here to testify on  
4 my --

5 Q. You have no input into that decision as  
6 Chief of the Division?

7 A. I did, but it basically -- the Staff did  
8 the investigation. I believe they looked into the  
9 violation. They went by the number of violations  
10 they found. And then in accordance with the statute  
11 that says how much we can -- the Commission can  
12 charge per day, they took that into account. And we  
13 believed since I knew my call was not provided, the  
14 full -- my full call, we felt that we needed to  
15 charge the maximum that was allowed.

16 Q. You said this is based in part on the  
17 number of violations found. How many violations were  
18 found?

19 A. Again, my Staff has that number. Nedra  
20 Ramsey would be....

21 Q. So Nedra will be able to tell us how many  
22 violations?

23 HEARING EXAMINER PRICE: Let's do it this  
24 way. Miss Ramsey will testify. If there's any  
25 questions that she can't answer on the penalty, you

1 can recall Miss Bossart. It's not her -- not part of  
2 her direct.

3 Q. Is it fair to say that Staff's  
4 enforcement activities are generally complaint  
5 driven, meaning -- let me back up. There are  
6 literally hundreds of licensed suppliers in Ohio,  
7 correct?

8 A. Yes.

9 Q. And having limited resources like  
10 everyone else, Staff relies on the feedback it  
11 receives from the public into its call center to  
12 decide where to spend its time and attention on  
13 investigations and enforcement, correct?

14 A. If we are -- if we see that there is a  
15 possible pattern or trend of noncompliance, then it  
16 will trigger us to do a more in-depth evaluation.

17 Q. But I'm assuming if you don't receive any  
18 complaints about somebody, then Staff doesn't really  
19 have a reason to -- there's nothing to investigate?  
20 There's nothing to investigate, right, if you don't  
21 know about it?

22 A. Correct. We could do just customer  
23 service audits for compliance, you know, if we wanted  
24 to, if we wanted to explore. I mean, it doesn't have  
25 to be triggered by complaints is what I'm saying.

1 Q. Sure.

2 HEARING EXAMINER PRICE: As a practical  
3 matter today, the overwhelming majority of your  
4 enforcement cases come from, as Mr. Whitt said,  
5 complaints filed through the hotline?

6 THE WITNESS: Correct.

7 Q. And you're aware the Commission prepares  
8 an annual report that comes out just around -- about  
9 this time every year?

10 A. I am aware.

11 Q. Does your department provide information  
12 to that report?

13 A. We provide some information.

14 Q. Do you provide information about the  
15 number of customer contacts that the call center  
16 receives during the reporting year?

17 A. I am not the director, so I'm not part of  
18 the call center. I'm not the Call Center Chief. I  
19 believe they do, but I'm not an expert as to what all  
20 is inputted -- is put into the annual report.

21 Q. There wouldn't be any reason to doubt the  
22 accuracy of a figure that's in the PUCO's annual  
23 report about the number of contacts the call center  
24 receives, correct?

25 A. I would believe it to be true.

1           Q.    And are you aware of communications by  
2   the Commission or its Staff regarding enforcement  
3   activities and savings, representations that Staff  
4   has obtained savings for consumers due to enforcement  
5   activities?

6           A.    I believe there is -- Again, I'm not the  
7   call center chief, and I don't provide that data, but  
8   I believe they do provide call center savings. I  
9   think enforcement is more forfeitures, so I don't  
10   know that's savings. Like I said, I don't know. I  
11   don't know what you're talking about. I mean, I  
12   don't have it in front of me, so I don't know  
13   specifically.

14               HEARING EXAMINER PRICE:  Let's go off the  
15   record.

16               (Off the record.)

17               HEARING EXAMINER PRICE:  Let's go back  
18   on. Miss Bossart, I have one question. You said  
19   earlier you look for patterns of conduct before you  
20   decide whether or not to open a more thorough  
21   investigation of a marketer. Could it also be the  
22   case there might be one incident that's so egregious  
23   to trigger an investigation?

24               THE WITNESS:  Yes, and I think we had --  
25   Yeah, like if somebody provided us with video

1 evidence or if you listen to a sales call and you  
2 know that it's not a complete sales call and -- yeah,  
3 you can take... if it's egregious.

4 HEARING EXAMINER PRICE: And it just  
5 happened to be video evidence?

6 THE WITNESS: Yes, correct.

7 Q. (By Mr. Whitt) Is there a Commission rule  
8 that requires sales calls to be recorded as opposed  
9 to TPVs?

10 A. We believe that you need to show --

11 Q. I'm asking about the rule.

12 A. I understand. Could you repeat that  
13 question?

14 MR. WHITT: Could you read it, please.

15 (Record read.)

16 A. I don't have the rules in front of me. I  
17 would have to look in -- You'd have to look at 06. I  
18 do know that there is a rule that requires that you  
19 be able to show compliance with the rules in order  
20 to -- if a customer said that you were misleading and  
21 deceptive by saying they were on a commercial rate  
22 and they were going to put you on a residential rate,  
23 if you do not have evidence of that call, then I  
24 think the Commission believes that you do not have  
25 the evidence.

1 Q. Is that the Commission or you?

2 A. The Staff, I'm sorry, the Staff would  
3 believe, please. I'm sorry about that.

4 Q. So any time a customer has a complaint  
5 about an enrollment, it's Staff's position that the  
6 transaction is presumptively invalid unless -- Well,  
7 I don't know what the position is. I'll withdraw  
8 that question.

9 MR. WHITT: May I approach?

10 HEARING EXAMINER PRICE: You may.

11 Q. I want to hand you... you're going to  
12 have to share for a minute, but actually look at the  
13 first page of the stack I handed you. Have you seen  
14 those types of statements in social media or in the  
15 public represented by or attributed to the  
16 Commission?

17 A. I've seen these on Twitter.

18 Q. Okay.

19 A. Not every one of them, but....

20 Q. But generally there is a policy where  
21 this sort of communication is rendered monthly?

22 A. Again, I'm not an expert on the call  
23 center, but I do believe they provide this  
24 information to the Commission to put out there.

25 Q. And I don't want to get too close to you.

1 I'm not going to hurt you. In this communication, it  
2 represents -- it says the call center broke the six  
3 figure mark again. With help from our team of  
4 investigators, Ohioans saved \$140,000 in September is  
5 what it says, correct?

6 A. That is what it says.

7 Q. Staff is taking credit -- or somebody's  
8 taking credit here for savings on behalf of Ohio  
9 consumers, correct?

10 A. Our team of investigators....

11 HEARING EXAMINER PRICE: She already said  
12 she has no idea where these numbers come from. She's  
13 not a part of developing these numbers. Her entire  
14 knowledge is reading this on Twitter, and good for  
15 you following information on Twitter.

16 Q. So you don't know what the 140,000  
17 represents?

18 A. No. I believe, like I said -- Like I  
19 said, I'm not sure what all they take into account  
20 for that. I could guess what part of it is, yeah.

21 Q. What's your best guess?

22 MR. EUBANKS: Objection. Calls for  
23 speculation.

24 MR. WHITT: Well, it's informed  
25 speculation.



1 HEARING EXAMINER PRICE: She opened the  
2 door. Overruled.

3 THE WITNESS: I believe when a  
4 customer -- we do an investigation and somebody --  
5 the customer's bill was reduced as a result of that  
6 investigation or their charge was reduced as a result  
7 of that investigation.

8 Q. I'm not asking you to vouch for like the  
9 accuracy of any of the numbers for any of the months  
10 that are represented here, but is it your  
11 understanding that the figures communicated in these  
12 types of communications represent refunds that have  
13 been secured based on call center involvement in  
14 retail supplier activity?

15 MR. EUBANKS: I'm going to object.  
16 Outside the scope of her testimony.

17 HEARING EXAMINER PRICE: I'll sustain it  
18 on that and also the lack of foundation. She does  
19 not know where the numbers come from.

20 MR. WHITT: That's not what I -- I didn't  
21 ask -- Well, she said I can guess. I've asked her to  
22 guess.

23 HEARING EXAMINER PRICE: We're not  
24 putting a lot of weight on that.

25 Q. Who would know what this number means?

1           A.    The Director of -- either the Director of  
2   the Service Monitoring Enforcement Department.

3           Q.    Anything you see in these, the printouts  
4   I've given you suggest that these are not screenshots  
5   of Linkedin posts or social media of some sort?

6           MR. EUBANKS:  Objection again.  Outside  
7   the scope of her testimony.

8           HEARING EXAMINER PRICE:  Sustained.  Lack  
9   of foundation, relevance.

10          MR. WHITT:  Well, it actually -- When the  
11   investigators are seemingly promoting themselves in  
12   these communications suggesting perhaps some bias,  
13   it's relevant.  And accusing and --

14          HEARING EXAMINER PRICE:  No, it's not  
15   relevant at all.  And again, back to the foundation,  
16   she has no idea where these numbers come from.  She  
17   has no idea what proportion are from retail suppliers  
18   versus regulated utilities, what proportion are  
19   telecom versus electric versus water versus gas.  She  
20   can't testify as to the voracity of these figures.  
21   She only knows she saw them on Twitter.

22          MR. WHITT:  I think we probably have no  
23   more questions.  Can we have like two minutes?

24          HEARING EXAMINER PRICE:  Take a break.  
25   Let's go off the record.

1 (Off the record.)

2 HEARING EXAMINER PRICE: Let's go back on  
3 the record.

4 MR. WHITT: The company has no more  
5 questions.

6 MR. EUBANKS: Staff has no redirect.

7 HEARING EXAMINER PRICE: Any questions,  
8 Miss O'Brien?

9 MS. O'BRIEN: No.

10 HEARING EXAMINER PRICE: Miss Bossart,  
11 you are excused.

12 MR. EUBANKS: I'd like to move into  
13 evidence Staff's Exhibit 6.

14 HEARING EXAMINER PRICE: Any objections  
15 to Staff's Exhibit 6?

16 MS. O'BRIEN: None for us, your Honor.

17 MR. WHITT: No, your Honor.

18 HEARING EXAMINER PRICE: It will be  
19 admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 HEARING EXAMINER PRICE: Call your next  
22 witness, Mr. Eubanks.

23 MR. EUBANKS: I was told my witness had  
24 to take a restroom break.

25 HEARING EXAMINER PRICE: Let's go the

1 record.

2 (Off the record.)

3 HEARING EXAMINER PRICE: Let's go back on  
4 the record.

5 (Witness placed under oath.)

6 - - -

7 NEDRA RAMSEY

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

10 HEARING EXAMINER DAVIS: Please state and  
11 spell your name for the record.

12 THE WITNESS: Nedra Ramsey, N-E-D-R-A  
13 R-A-M-S-E-Y.

14 HEARING EXAMINER DAVIS: And your  
15 business address?

16 THE WITNESS: 180 East Broad, Columbus,  
17 Ohio, 43215.

18 HEARING EXAMINER DAVIS: Thank you. You  
19 may proceed, Mr. Eubanks.

20 - - -

21 DIRECT EXAMINATION

22 By Mr. Eubanks:

23 Q. Could you state your position with Staff.

24 A. I've got to adjust this chair. I'm a  
25 Public Utilities Administrator 2 in the Service

1 Monitoring and Enforcement Department.

2 COURT REPORTER: I'm sorry, can you speak  
3 up.

4 THE WITNESS: I'm a Public Utilities  
5 Administrator 2 in the Service Monitoring and  
6 Enforcement Department in RSAD Division, Reliability.  
7 Service and Analysis Division.

8 Q. And are you familiar with the Staff  
9 Report in this case?

10 A. Yes, I am.

11 Q. Are you familiar with the one that was  
12 filed on the docketing system?

13 A. Yes.

14 Q. And I should say the Amended Staff  
15 Report.

16 A. Yes. Yep.

17 Q. Is it a true and accurate copy of Staff's  
18 Staff Report?

19 A. Yes.

20 Q. And I should say how are you familiar  
21 with the Staff Report?

22 A. I helped draft it.

23 Q. And attached to the Staff Report are the  
24 Case History Reports in this matter; is that correct?

25 A. The 25 Case History Reports referenced in

1 the Staff Report are attached.

2 Q. Are those the same Case History Reports  
3 that are attached to your testimony?

4 A. Yes.

5 Q. How are you familiar with those Case  
6 History Reports?

7 A. I generated them.

8 MR. EUBANKS: I'd like to have marked as  
9 Staff's Exhibit 7 the Staff Report.

10 HEARING EXAMINER DAVIS: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. EUBANKS: Staff's Exhibit 8, the Case  
13 History Reports.

14 HEARING EXAMINER DAVIS: So marked.

15 (EXHIBITS MARKED FOR IDENTIFICATION.)

16 Q. Did you hear the testimony of Samantha  
17 about how Case History Reports are generated?

18 A. Yes, I was here for that.

19 Q. Were the Case History Reports that we're  
20 talking about that are attached to the Staff Report  
21 in your testimony, were they generated in that  
22 manner?

23 A. Yes.

24 Q. Were they altered in any way?

25 A. Not at a -- I take that back. When you

1 say not altered, for public viewing I did redact  
2 certain information that I believe the State of Ohio  
3 might deem as personal identifiable information, PII.

4 Q. Other than the redaction --

5 HEARING EXAMINER PRICE: What would those  
6 types of information be?

7 THE WITNESS: The customer's name, their  
8 address, phone number, account number, if like -- I  
9 think there was reference to a Social Security  
10 number, but I don't really -- if that was in there, I  
11 would have redacted a Social Security number. If  
12 they gave an e-mail address, I would have redacted an  
13 e-mail address. It's right here. That's what I  
14 would have redacted.

15 Q. Okay.

16 A. So customer name, address, service  
17 address and when I say the address, the service  
18 address, we left the city and state. It doesn't  
19 really identify for some stranger to just go knock on  
20 somebody's door if they know they live in Lorain,  
21 Ohio, so that's what was redacted.

22 Q. Okay. And the Case History Reports are  
23 attached to your testimony in the Staff Report and  
24 they are true and accurate copies of the Case History  
25 Reports you generated?

1 A. Yes.

2 Q. Did you file testimony in this matter?

3 A. Yes, I did.

4 Q. Let me ask you this, have you viewed the  
5 version of your testimony that was docketed with the  
6 Commission?

7 A. Yes.

8 Q. Okay. Is that document a true and  
9 accurate copy of your testimony?

10 A. Yes, it is.

11 Q. If I were to ask you the same questions  
12 that are in -- that's in your testimony, would you  
13 provide the same answers today?

14 A. Yes.

15 Q. Do you have any corrections that you  
16 would like to make to your testimony?

17 A. I have a lot of corrections to make.

18 Q. To the footnotes?

19 A. To the footnotes and then when I was  
20 reading through it, there were some grammatical  
21 things I found, some I just skipped over because of  
22 the context or the understanding of what I was saying  
23 is there, but some of them, like I had "customer  
24 consumer," I deleted one of those because it  
25 literally makes no sense.



1 Q. Did you draft an errata?

2 A. Yes, I did.

3 MR. EUBANKS: May I approach the witness,  
4 your Honor?

5 HEARING EXAMINER DAVIS: You may.

6 HEARING EXAMINER PRICE: No copy for the  
7 bench?

8 MR. EUBANKS: How rude of me. Sorry.  
9 I'd like to mark as Staff's Exhibit 10 Nedra Ramsey's  
10 errata to her testimony.

11 HEARING EXAMINER DAVIS: And was 9 the  
12 Case History Reports.

13 MR. EUBANKS: 9 was the Prefiled  
14 Testimony.

15 HEARING EXAMINER DAVIS: So marked as 10.

16 (EXHIBITS MARKED FOR IDENTIFICATION.)

17 Q. You have before you what's marked as  
18 Staff Exhibit 10?

19 A. Yes, I do.

20 Q. Could you identify it?

21 A. It's the errata sheet to my -- the  
22 corrections to my testimony. Most of them are the  
23 footnotes.

24 Q. And is this a true and accurate copy of  
25 your errata?

1 A. Yes.

2 Q. And it was -- Who was it drafted by?

3 A. I drafted it.

4 Q. Are you familiar with the confidential  
5 file -- electronic file that was filed with the  
6 Commission?

7 A. Yes, I am.

8 Q. How are you familiar with the file?

9 A. I created it.

10 Q. You heard the testimony of Samantha  
11 Boerstler about how Staff receives audio files either  
12 from investigators, outlines, recordings or DRs?

13 A. Yes.

14 Q. The files that are contained on the  
15 confidential voter, were they retrieved in the manner  
16 in which she stated in her testimony?

17 A. Yes, the Case History Reports were -- not  
18 the Case History Reports, the audio files that came  
19 from Salesforce, I pulled them out the same way Sam  
20 described them. The ones that came from RPA, I  
21 attached them the same way RPA -- the way Sam  
22 described it, I received it that way and I attached  
23 it as the flash drive without changing anything.

24 Q. And the hotline audios?

25 A. The hotline audios, yeah, the same

1 process. I don't believe that Sam explained that we  
2 actually reached out to the call center because, I  
3 mean, it's important to note that not everyone has  
4 access to pull these calls. So I myself cannot go  
5 into the Zoom system and mess around in there.

6 So we have to -- We have very specific  
7 people who have access to pull a call out of the Zoom  
8 system, so we reached out to the chief of the  
9 Consumer Services division and he provided -- he  
10 pulled the call out and provided it to us.

11 Q. Did you alter any of the calls that you  
12 placed onto the confidential drive?

13 A. No.

14 Q. Did you change the name of any of the  
15 files that were placed on the confidential drive?

16 A. No.

17 MR. EUBANKS: I'd like to have marked as  
18 Staff's Exhibit 11 the confidential flash drive.

19 HEARING EXAMINER DAVIS: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. In your testimony, did you review audio  
22 files in your testimony?

23 A. Yes, I did.

24 MR. EUBANKS: Can we go off the record  
25 for a second?

1 HEARING EXAMINER PRICE: Yes.

2 (Off the record.)

3 HEARING EXAMINER DAVIS: Back on record.

4 MS. BOERSTLER: I don't know if she has  
5 her laptop.

6 THE WITNESS: I can get it. Can I get  
7 it?

8 HEARING EXAMINER PRICE: You may. Off  
9 the record while she's doing that.

10 Q. (By Mr. Eubanks) Were you able to pull  
11 the flash drive?

12 A. Yeah, I've got it.

13 Q. So did you set aside a certain amount of  
14 audio calls you wanted to highlight from your  
15 testimony?

16 A. Yes.

17 Q. And what is the first -- Can you provide  
18 us with the number with the first file or how we  
19 identify it.

20 A. It's going to be 000133096 underscore  
21 6142538328.

22 Q. Okay. And what type of call is it?  
23 Sales call? TPV call?

24 A. It's a sales call.

25 Q. What part of your testimony is it

1 associated with?

2 A. I would need my testimony.

3 MR. WHITT: I guess it would be  
4 helpful -- I'm not telling counsel how to do his job,  
5 but if we could have her identify in the testimony  
6 some reference to a call that's about to be played.

7 MR. EUBANKS: I was just going to.

8 MR. WHITT: Gotcha. Thank you.

9 HEARING EXAMINER PRICE: We're all on the  
10 same page.

11 A. Okay, so this is a big, huge file, and if  
12 I searched, like if I had the PDF and I searched for  
13 the number, it might be easier for me to find it.

14 Q. Give us one second, we're going to do  
15 that for you.

16 A. You're going to do it for me?

17 Q. Yeah. Give us one second.

18 A. So for my testimony if you search the  
19 last four digits.

20 Q. That's 8328?

21 A. Yes.

22 MS. PLANT: It's on the PDF.

23 A. And it's not the case number, it's the  
24 audio file name, so it would be in the footnote.

25 Q. Page 17, I know your testimony isn't....

1 HEARING EXAMINER PRICE: Can you tell us  
2 which note it relates to at least?

3 MR. EUBANKS: What footnote?

4 MS. PLANT: Footnote 32.

5 THE WITNESS: Yes, that's it.

6 MR. WHITT: Sorry, where are we?

7 MR. EUBANKS: Footnote 32.

8 Q. (By Mr. Eubanks) Okay. So I'm sorry,  
9 this footnote 32, the language right immediately  
10 before it says the representative went on to say that  
11 the customer was upgraded to 100 percent renewable  
12 energy, is that the one?

13 A. That's the one.

14 Q. Go ahead and proceed to play it, I guess.

15 (Audio playback commences.)

16 (Audio playback paused.)

17 A. Just for everyone, I pushed Play but it  
18 was on Mute to rewind it because it skipped a button.

19 HEARING EXAMINER PRICE: Did it skip  
20 everything we've heard already?

21 THE WITNESS: Yeah.

22 (Audio playback commences.)

23 (Audio playback concludes.)

24 Q. Is that the end of the recording?

25 A. Yes.

1           Q.    And the point of that recording was to  
2 highlight about the 100 percent renewable energy not  
3 being explained?

4           A.    That's one of the issues.

5           Q.    Okay. Well, what were the issues with  
6 the recording?

7           A.    I have no idea what this customer was  
8 enrolling in. It sounds like she has some type of  
9 service that's going to be upgraded. I know in -- I  
10 might be going too far, so stop me, but in RPA's  
11 script, they said that the representatives are  
12 required to use a script, okay. So in the script it  
13 requires the Sales Representative to explain what it  
14 means by renewable energy.

15                   This customer -- I mean, we're calling to  
16 explain to you renewable energy, you're going to be  
17 upgraded to 100 percent renewable energy, but there's  
18 no explanation as to what exactly that means. Then  
19 the Sales Representative is not offering her -- It's  
20 just you're going to be upgraded, so go get your  
21 bill.

22                   They obtain all the customer's  
23 information before they even ask her if she wants to  
24 enroll with RPA. Then they just throw in your rate's  
25 going to be this, now we're going to send you on to a

1 TPV to confirm. I don't think he said confirm, but  
2 I'm not sure what he said but we're going to place  
3 you into a TPV and then she goes through and answers  
4 yes.

5 The TPV, it was evident what the issues  
6 were in the TPV, I think previous witnesses might  
7 have, but let me just point it out. You're required  
8 to send the contract within a certain period of time  
9 after the solicitation and it's not five business  
10 days.

11 RPA says quickly, I mean, you see that  
12 the call structure, to give the customer information,  
13 take in the information and respond. And then  
14 there's this long winded we're going to send you this  
15 text message, your contract via text message or  
16 e-mail and if anything changes, please go ahead and  
17 let us know. And then it goes into another slow down  
18 question that the customer then has to say yes to.

19 So that, I think RPA in one of their data  
20 requests, I think for Barb's response was that that  
21 was her giving them permission to text her the  
22 contract. I did kind of start looking at to prepare  
23 for the next call, but I'm quite sure they never ask  
24 this customer is the number we're calling you on, is  
25 that a cellphone number, what's your e-mail address.



1                   In the sales call, where does it tell the  
2 customer we're going to send you these terms and  
3 conditions that are important to you making a  
4 decision via text message or e-mail, so be looking  
5 out for it. So those are just a few of the issues  
6 that I can highlight from that call.

7                   Q.    You mentioned that you saw a TPV script  
8 that explained what 100 percent renewable energy was?

9                   A.    It was the sales script.

10                  Q.    And how was it explained?

11                  A.    It goes into your -- It's that RPA  
12 purchases renewable -- or RECs -- but they actually  
13 use RECs instead of like explaining to a layman what  
14 a REC, so that's kind of maybe an issue -- not maybe  
15 an issue, that's an issue with their script, but it  
16 says something about they purchase RECs from solar,  
17 wind and just gives the renewable energy. So it  
18 gives an explanation as to what is meant by  
19 100 percent renewable energy.

20                  MR. EUBANKS: I have no more questions of  
21 the witness on this audio.

22                  HEARING EXAMINER PRICE: Do you think  
23 it's important for the witness to know the process  
24 for ensuring this is renewable energy or do you think  
25 it's important -- not the witness, that the consumer,

1 knows they're upgrading to 100 percent renewable  
2 energy?

3 THE WITNESS: I think it's important for  
4 the customer to know exactly what they're getting,  
5 how does this impact their rate. I mean, is there a  
6 difference between what they're paying now. I mean,  
7 what is the benefit for customer. The customer, just  
8 to say you're being upgraded into something, that  
9 sounds like I'm getting a benefit.

10 So it's important for the customer to  
11 know your rate is based on this. It may be -- It  
12 goes on to say it may be higher. The TPV says your  
13 rate might be higher or lower than the utility's rate  
14 but why is that. That's information that customer  
15 needs to make an informed decision.

16 And this customer didn't ask a single  
17 question. And me who has a working knowledge a bit  
18 about renewable energy and RECs and all that, I had  
19 questions. So, I mean, it concerned me that she  
20 didn't ask a single question in a couple-of-minute  
21 sales call. That sales call lasted just a couple  
22 minutes. It took her longer to get the bill than it  
23 did for the Sales Representative to sell her  
24 something. She didn't ask a single question. That's  
25 pretty concerning.

1 MR. WHITT: May I ask some questions?

2 HEARING EXAMINER PRICE: (Nods head.)

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Whitt:

6 Q. Miss Ramsey, did you ever talk to the  
7 woman who we just listened to on the call, the  
8 consumer?

9 A. No, I didn't.

10 Q. Fair to say that you have more knowledge  
11 of the energy industry generally and Commission rules  
12 on retail marketing than the average person, correct?

13 A. Sure.

14 Q. And as the saying goes, you don't know  
15 what you don't know, that a customer not familiar  
16 with the competitive market may not even know what  
17 questions to ask; is that fair to say?

18 A. Sure, yes.

19 Q. And there aren't Commission rules that --  
20 Well, first of all, as you indicated, the customer  
21 didn't ask questions, correct?

22 A. Correct.

23 Q. And the customer was free to hang up at  
24 any point during the solicitation or during the TPV,  
25 correct?

1           A.    Yes.

2           Q.    And to be clear, there are actually two  
3 distinct portions of the recording we listened to,  
4 aren't there?  There's a sales portion which is then  
5 transferred to an automated TPV, correct?

6           A.    Correct.

7           Q.    And did you listen to anything?  It  
8 didn't appear to me that the consumer was a different  
9 person at any point in the call.  It sounded like  
10 during both the sales process and during the TPV that  
11 it was the same consumer.  Is that your takeaway as  
12 well?

13          A.    Yes.

14          Q.    And this consumer didn't call the call  
15 center, did they, to complain about anything?

16          A.    No, but like you said, what she doesn't  
17 know, she doesn't know.

18          Q.    Well, the fact remains this person is  
19 free to cancel their service with RPA with no  
20 penalty, correct?

21          A.    Yes, but does that change the fact that  
22 she may have been charged some rate that she wasn't  
23 expecting to be charged the second month of her bill  
24 because she's free to cancel at any time?

25          Q.    If Staff wanted to know what this person

1 was thinking, they could have called and asked her,  
2 correct?

3 A. Right.

4 Q. Is it Staff's position if Staff does not  
5 believe that switching is in the consumer's financial  
6 interest or result in a better deal for the consumer,  
7 that the enrollment is per se invalid and in  
8 violation of Commission rules?

9 A. No, I believe Staff's position is that --  
10 in this case it's electric -- 21-05, 4901-21-05, the  
11 solicitation rules, it tells you how to solicit  
12 customers, and you have to give them all of the  
13 information for them to make an informed decision.

14 Q. And the rule lists exactly the  
15 information that's to be given, correct?

16 A. The solicitation, yes -- Well, it's not  
17 limited to. I believe that's what it says.

18 Q. How does this supplier comply? Should  
19 suppliers be asking Staff when it's okay to be out  
20 marketing?

21 A. No, what suppliers could actually do is  
22 make the sales agent follow the script that they put  
23 out and said they were required to follow. Like I  
24 didn't -- no script that RPA provided to us sounded  
25 like that. So RPA itself appeared to have wanted to

1 give the customer all the information that they  
2 needed to know to make an informed decision, but you  
3 could you say in that call --

4 Q. I don't mean to cut you off, I'm sorry.

5 A. No, I'm fine.

6 Q. Ultimately it's the consumer who decides  
7 whether they want to switch, correct?

8 A. Okay. So --

9 Q. The law gives and the Commission's rules  
10 give the consumer the choice and the decision of  
11 whether to switch?

12 A. They do give the consumer the choice to  
13 switch, but also the rule says to the supplier what  
14 you have to -- what information you need to give to a  
15 customer for them to make an informed decision, you  
16 can't mislead and deceive a customer. Another  
17 concern that we have --

18 Q. You've answered my question.

19 A. Okay.

20 Q. Again, if a customer wants to choose for  
21 any reason, the customer is permitted to choose?

22 MR. EUBANKS: Objection.

23 Q. We're talking about who gets to make the  
24 decision of whether to switch suppliers. That  
25 belongs to the consumer, correct?

1 MR. EUBANKS: Objection. Asked and  
2 answered. He literally just said that she answered  
3 the question.

4 HEARING EXAMINER DAVIS: Would you like  
5 to rephrase?

6 MR. WHITT: I'm trying to get it narrowed  
7 down to just the question I asked and get a clean  
8 answer to that.

9 MR. EUBANKS: You said that the question  
10 was answered.

11 HEARING EXAMINER DAVIS: Are you trying  
12 to just get her to restate her answer more like  
13 truncated? What do you mean?

14 Q. (By Mr. Whitt) If Attorney-Examiner Price  
15 for whatever reason decided I want to pay the highest  
16 possible rate I can find, the law gives him the  
17 choice to go do that if he believes that's for him,  
18 correct?

19 A. Correct.

20 Q. And that decision that may be correct for  
21 one person might not make sense to somebody else; is  
22 that fair as a general proposition?

23 A. Yes.

24 Q. Is it fair to say that some consumers may  
25 be willing to pay a higher price for a renewable

1 energy than is available for a non-renewable product?

2 A. Given all the information and they choose  
3 to pay a higher rate, yes, they can make that  
4 decision.

5 Q. There's nothing that obligates the  
6 consumer to listen to or believe anything that  
7 they're being told by the salesperson; fair to say?

8 A. I believe like the intent of a sale is to  
9 tell the customer the truth and give them all the  
10 information to sell your product, not limited  
11 information in order to sell a product.

12 Q. Surely I'm not the only person in this  
13 room who has a relative that insists that man never  
14 landed on the moon and some people are going to  
15 believe what they're going to believe; is that fair  
16 as a general proposition?

17 A. Yeah. I mean, I don't know. Sure, sure,  
18 let's just say that.

19 Q. Certainly one reason a consumer might  
20 want to switch suppliers, because they just want to  
21 find a lower rate; that would make sense, wouldn't  
22 it?

23 MR. EUBANKS: Objection, your Honor.  
24 Even his hypotheticals are outside of the scope of  
25 the recording. There was no information given. He's



1 giving hypotheticals about people wanting to pay to  
2 get renewable and having information about --

3 HEARING EXAMINER PRICE: But she's  
4 arguing essentially that there was no meeting of the  
5 mind in this recording because the consumer didn't  
6 have enough information, and he's entitled to probe  
7 that.

8 MR. WHITT: Could you read my question.

9 (Record read.)

10 Q. Do you agree?

11 A. Yeah. Yes.

12 Q. And isn't it conceivable that other  
13 consumers, for example, employees of a retail  
14 supplier, may wish to enroll in their employer's  
15 product even if it doesn't provide any price  
16 advantage, right?

17 A. Yes.

18 Q. Correct?

19 A. Right, yes.

20 Q. And there's no rule that requires a  
21 supplier to demonstrate that the consumer derives  
22 some benefit out of switching, correct?

23 A. I'm sorry, say that again.

24 Q. There's no rule that requires a supplier  
25 to prove or to demonstrate that a customer received

1 some benefit out of the decision to switch?

2 A. No, there's no rule that says that.

3 MR. WHITT: I think that's all I have on  
4 that call.

5 MR. EUBANKS: I just have one follow-up  
6 question.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. Eubanks:

10 Q. Had you heard on the telephone call that  
11 the customer was informed of the rate that they were  
12 going to be paying, made aware of the fact that what  
13 renewable energy was and how it's supplied to the  
14 customer, basically if they want to follow their  
15 script with regard to that and if the customer was  
16 told -- let me reask, I'm sorry. I'm going to  
17 rephrase that question. Way too many parts to that  
18 question.

19 Was there anything in that telephone call  
20 that made you believe that the customer was fully  
21 aware of the benefits that she would receive by  
22 switching to 100 percent renewable energy?

23 A. No. The 100 percent renewable energy  
24 wasn't explained to the customer, what it meant to  
25 upgrade, and I don't even know what an upgrade to

1 your energy supply is. I know what an upgrade to a  
2 phone is. The context of the upgrade....

3 HEARING EXAMINER PRICE: In all fairness,  
4 if you care about that sort of thing, you might  
5 consider the 100 percent renewable to be an upgrade  
6 versus the regular percentage sort of thing; isn't  
7 that true?

8 THE WITNESS: If you knew what it was and  
9 it was explained to you, it might be in the context  
10 of knowing that's an upgrade, yes.

11 MR. EUBANKS: I have no further questions  
12 for the witness. On this call, could you tell us  
13 what the next audio file is and we'll try to do a  
14 search here real quick.

15 HEARING EXAMINER PRICE: Let's go off the  
16 record.

17 (Off the record.)

18 HEARING EXAMINER PRICE: Back on the  
19 record. Are you done with your Direct Examination?

20 MR. EUBANKS: Your Honor, let me just  
21 reorient for just a second. I'm going to do my  
22 normal skit. I know how you guys operate. Yes, I'm  
23 done with questions for this witness, but I would  
24 like to move to have Staff's Exhibit 7, 8, 9, 10, and  
25 11 placed into evidence subject to cross-examination.

1 HEARING EXAMINER DAVIS: Any objections?

2 MR. WHITT: No.

3 HEARING EXAMINER DAVIS: We'll defer till  
4 after cross.

5 HEARING EXAMINER PRICE: One more piece  
6 of housekeeping business. While we were on the  
7 break, the parties agreed that the parties will  
8 stipulate to the authenticity of the recordings  
9 contained in Staff Exhibit 11; is that correct,  
10 counsel?

11 MR. WHITT: Yes, your Honor.

12 MR. EUBANKS: (Nods head.)

13 - - -

14 RECROSS-EXAMINATION

15 By Mr. Whitt:

16 Q. Ma'am, Page 2, line 20 of your testimony,  
17 you indicate that in February of 2021 the PUCO call  
18 center began to suspect sales calls provided to them  
19 by RPA as a result of customer complaints were  
20 doctored in quotes; do you see that?

21 A. Yes.

22 Q. What exactly do you mean by doctored?

23 A. I put that in quotes because that's the  
24 e-mail I got. The call center investigator conferred  
25 with her supervisor on the call. So she listened to

1 the call, she listened to two calls, and she had  
2 concerns with the recording.

3 So she had her supervisor listen to it,  
4 and her supervisor agreed with her, and they reached  
5 out to me and said, "Hey, we'd like you to take a  
6 listen to these calls; what do you think of it?"  
7 After listening to the calls, I do believe I kind of  
8 explained in my testimony what concerns I had,  
9 somewhere in there.

10 Q. And I think your review of the calls, if  
11 I find it here... we'll get to those I promise, but  
12 the point being this concern was raised in February  
13 of 2021, correct?

14 A. Correct.

15 Q. The concern was not communicated to RPA  
16 at that time, was it?

17 A. The two cases were investigated. I don't  
18 believe like the investigator made the accusation to  
19 RPA because she -- what had happened was she listened  
20 to the calls, she kind of resolved it and RPA issued  
21 re-rates. So she had told the customer -- I believe  
22 they told the customer you're getting a re-rate and  
23 then they sent the calls to me.

24 So then I told them like we need the  
25 customer to listen to the calls. So I reach out to

1 the customer, get a good time -- send the calls to  
2 them, have them listen to it and then get back to me  
3 with what they said. My understanding is that the  
4 customer never replied to the voicemail that the  
5 investigator left or the e-mail that was sent, so we  
6 just decided to monitor the complaints of RPA.

7 Q. So the answer is no, this concern was not  
8 relayed to RPA?

9 A. That's not what I said? What? I'm  
10 sorry, I don't think that's what I said.

11 Q. The concern, whatever Staff's concern was  
12 in February wasn't about calls being doctored, was  
13 not communicated to RPA, to RPA?

14 A. I'm sorry, yeah.

15 Q. Correct?

16 A. It was not communicated to RPA that we  
17 thought something was going on with the call.

18 Q. Okay. That concern was first raised with  
19 RPA in June of 2021, correct?

20 A. Correct.

21 Q. In fact, the very same day that you  
22 raised that concern, Mr. Trombino responded to Staff,  
23 correct?

24 A. I'd have to -- So are you talking about  
25 through the case of Mrs. Bossart where RPA responded

1 or are you talking about when I reached out to  
2 Mr. Trombino and he responded to me?

3 Q. Well, the first time anybody -- you were  
4 the first person to communicate with RPA about a  
5 concern Staff had about some doctor to modify a call,  
6 correct?

7 A. I need to check the case history report  
8 for Barb, but I think that's the first that it might  
9 have been communicated that that was not the complete  
10 sales call that Mrs. Bossart experienced, so that's  
11 the first indication that we told RPA that there was  
12 possibly altered sales calls.

13 Q. When that concern was raised with RPA,  
14 they promptly responded to Staff, correct, like the  
15 same day?

16 A. I don't know the timing on Mrs. Bossart's  
17 case, but my concern, my e-mail, I do believe he  
18 responded that day. We sent the initial -- that was  
19 the initial DR that we sent. He did acknowledge the  
20 DR.

21 Q. And those DRs --

22 A. Data requests.

23 Q. -- right, data requests for the court's  
24 benefit --

25 A. Yeah, sorry.

1           Q.    Page 6, Line 15 of your testimony, you  
2    indicate that Staff began issuing data requests to  
3    RPA on June 22nd, 2021, correct?

4           MR. EUBANKS:   Could you refer to it by  
5    question because I don't think her testimony is --

6           MR. WHITT:   Well, yeah, it doesn't have  
7    page numbers.   Question 10, handwrote them.

8           HEARING EXAMINER PRICE:   Question 10.

9           A.    Yes.

10          Q.    In discussing the company's responses to  
11    those data requests, Question 12, did RPA provide all  
12    requested information; your answer, no, most of the  
13    information was provided, however, RPA refused to  
14    provide certain information.   And my questions will  
15    be about the certain information.   You say Staff  
16    requested a particular sales call and the company  
17    continuously provided the third party verification  
18    call; do you see that?

19          A.    Yes.

20          Q.    And then you specifically say here a  
21    particular sales call suggests a singular call; fair  
22    to say?

23          A.    Yes.

24          Q.    And the company did provide 103 other  
25    call recordings as requested, correct?



1           A.    Well, okay, so in our data request, we  
2   requested all the sales calls made to Ohio consumers  
3   from June -- the week of June 6th. And of the 103  
4   recordings, we got New Jersey calls, Delaware calls  
5   and TPVs that were not attached to a sales call, so  
6   we asked for sales calls and we got a good amount of  
7   TPVs and other states' calls. That's why I had to  
8   follow up on Mrs. Dixon's call because we only got --  
9   am I going too far?

10           Q.   I just want to make sure the record's  
11   clear on what the company provided and didn't and  
12   exactly what the concern here is. Staff asked for  
13   information, and I think what you're saying is the  
14   company gave Staff what it asked for --

15                   MR. EUBANKS:  Objection.

16           Q.    -- except for certain information, and  
17   then you go on to first say you requested a  
18   particular call, and apparently that wasn't provided;  
19   am I correct so far?

20           A.    That's correct.

21                   MR. EUBANKS:  Objection.

22   Mischaracterizes the witness's testimony. She did  
23   not say that you gave her what she asked for. She  
24   specifically said you gave her New Jersey calls,  
25   other out-of-state calls. I'm just saying don't

1 change her testimony.

2 Q. So they gave you more than you asked for?  
3 Is that the problem here?

4 A. What were we going to do with New Jersey  
5 calls?

6 Q. I don't know.

7 A. So you can't --

8 Q. Are you suggesting that the company tried  
9 to bury information by, like, giving you too much?  
10 Is that what you're saying?

11 A. Well, because we had to listen -- to  
12 answer your question, I don't know what the  
13 company's -- why they did that, but I'm not sure why  
14 we would have asked for Ohio calls and get New Jersey  
15 calls. We had to listen painfully -- sorry about  
16 that -- we had to listen to these calls to find out  
17 they were New Jersey calls, Delaware calls. So to  
18 say we got 103 calls we can review for compliance in  
19 Ohio is....

20 Q. How many of the 103 calls were not  
21 related to Ohio?

22 A. So, 78 were Ohio and I can't do math....

23 HEARING EXAMINER PRICE: 103 minus 78,  
24 25.

25 A. 25 of them were not Ohio calls, or they

1       were not sales calls, they were just TPVs.

2               Q.     Okay. That distinction isn't in the  
3       testimony anywhere, is it?

4               A.     The distinction is we asked for sales  
5       calls -- yeah, okay. We asked for sales calls, and  
6       we got a mix of sales calls, TPV, TPVs that didn't  
7       match a sales call. So if the TPV matched a sales  
8       call, okay, but we had TPVs that didn't match the  
9       sales calls, so we had to follow up to get more  
10      information to get those sales calls and then we had  
11      to disregard Delaware and New Jersey.

12              Q.     And you're telling me that like there are  
13      28 calls that aren't related to Ohio --

14              MR. EUBANKS: She said 25.

15              A.     -- that are either not sales calls  
16      because they are only TPVs or they related to New  
17      Jersey or Delaware.

18              Q.     We just listened to a call earlier where  
19      it's a sales call and a TPV on one recording,  
20      correct?

21              A.     Yes.

22              Q.     There may be other TPV vendors that just  
23      do a TPV separately, correct?

24              A.     Yes.

25              Q.     Which would have yet a different

1 recording for the sale portion of a call, correct?

2 A. Correct.

3 Q. All I want to establish and make so the  
4 Commission is aware of a level of cooperation or not  
5 with Staff data requests, Staff asked for sales  
6 calls, the company responded, there may have been  
7 some that were extraneous because it related to a  
8 different state, but would you agree that the company  
9 was responsive to Staff's requests but for this  
10 particular sales call where the company had a third  
11 party verification but not a sales call?

12 A. Yes.

13 Q. Okay.

14 HEARING EXAMINER PRICE: Of the calls you  
15 requested, how many instances did they provide the  
16 TPV only and not the sales call, one or more than  
17 one?

18 THE WITNESS: Okay, so there were a  
19 number of them, but we followed up with --

20 HEARING EXAMINER PRICE: Don't jump  
21 ahead. We're talking about this one point in time.

22 THE WITNESS: I think there was about --  
23 I can't tell you a number, but there were several.

24 HEARING EXAMINER PRICE: You don't have  
25 the exact number off the top of your head?

1 THE WITNESS: I don't.

2 Q. (By Mr. Whitt) You indicate successive  
3 data requests, correct?

4 A. Correct.

5 Q. And you say that on line 17, still  
6 question 12, importantly Staff also requested  
7 information relating to a recording system used to  
8 capture sales calls and the company refused to  
9 provide it. Do you see that?

10 A. Yes.

11 Q. And the information you're talking about  
12 here was requested of the company for the first time  
13 in February of 2022; is that correct?

14 A. That sounds right.

15 Q. Okay. And let me just go back, the three  
16 sets of data requests that Staff asked for preceded  
17 the Notice of Probable Noncompliance, correct?

18 A. Yes.

19 Q. And then after the Notice of Probably  
20 Noncompliance was issued in February of 2022, Staff  
21 inquired about the recording system, correct?

22 A. Correct.

23 Q. So that issue is unrelated to the three  
24 data requests you referenced, correct?

25 A. Yes.

1           Q.    What type of recording system does the  
2 Commission's call center use?

3           A.    Zoom.  I mean, that was in testimony  
4 today.

5           Q.    Okay.  Do you know a particular -- Is the  
6 software version or something -- I'll withdraw that.  
7 And notwithstanding the explanation of the company's  
8 position on what it was being asked to provide, Staff  
9 elected to request the Commission to open a formal  
10 investigation without that information two months  
11 later, correct, in April?

12          A.    Yes.

13          Q.    And then Staff issued the Staff Report  
14 the first time, correct?

15          A.    Yes.

16          Q.    And after the Staff Report was issued,  
17 Staff made a second request for the vendor recording  
18 information, correct?

19          A.    Correct.

20          Q.    And when that request was -- Well, when  
21 the company's position on the request was made known,  
22 Staff amended the Staff Report?

23          A.    Correct.

24          Q.    Does my correspondence which you've  
25 quoted in your testimony make clear that the

1 company's position on the issue of what it was able  
2 to produce was based on the advice of its counsel?

3 A. Yes.

4 Q. I'm not asking for your legal opinion on  
5 this subject, but did the company's position resonate  
6 with Staff at all in terms of the limitations the  
7 company believed it faced in its ability to actually  
8 cooperate?

9 A. I'm going to say no.

10 Q. Did the Staff make any effort to get the  
11 information it was asking the company for through  
12 other means?

13 A. The certified entity is RPA, and that's  
14 who we requested the information from.

15 Q. That's not my question. When RPA said --  
16 when RPA's counsel said it wouldn't be provided, did  
17 Staff make any other sort of effort to get the  
18 information?

19 HEARING EXAMINER PRICE: Are you  
20 suggesting they Watergated it from your vendor? I'm  
21 not sure what other means means, Mr. Whitt.

22 MR. WHITT: Well, I don't know. Perhaps  
23 the Attorney General of the State of Ohio has some  
24 authority to obtain records.

25 HEARING EXAMINER PRICE: Some authority?

1 MR. WHITT: Perhaps. Perhaps more than  
2 RPA might have.

3 MR. EUBANKS: Are your vendors located in  
4 Ohio? No.

5 MR. WHITT: And there is a process for  
6 extraterritorial service of subpoenas.

7 MR. EUBANKS: You were supposed to  
8 provide it to us.

9 HEARING EXAMINER PRICE: Don't argue your  
10 case. Move on to the next question.

11 Q. (By Mr. Whitt) Staff was asking RPA  
12 basically to ask the vendor for the information on  
13 Staff's behalf, correct?

14 A. Staff was asking RPA to ask their  
15 employee to provide information.

16 Q. It's not their employee and you know  
17 that.

18 A. RPA hired a vendor to do their business.  
19 It is RPA's responsibility to follow the rules of  
20 Ohio and maintain records. They hired a vendor to do  
21 their business, and so Staff believes it's RPA's  
22 responsibility to know what that vendor is doing, how  
23 they're recording, if they're altering calls, how  
24 they're storing calls, how calls are being pulled  
25 from the server.



1           Q.    Okay.  Do you have any reason to believe  
2           that the vendor had any legal obligation to respond  
3           to a request from RPA for that entity's information?

4                   MR. EUBANKS:  Objection.

5                   HEARING EXAMINER PRICE:  She's not an  
6           attorney.  She's in no position to render a legal  
7           opinion.

8                   MR. WHITT:  But she is sponsoring a Staff  
9           Report that has been amended to claim a violation of  
10          rules.

11                  HEARING EXAMINER PRICE:  And you can  
12          dispute those violation in your brief but asking her  
13          a legal opinion from a nonlawyer is not going to move  
14          the ball at all.

15                  MR. WHITT:  So they're not allowed to  
16          testify about -- render opinions about unfair  
17          deceptive practices?

18                  HEARING EXAMINER PRICE:  With all due  
19          respect, rendering a legal opinion about your  
20          relationship with your vendor, no, she's in no  
21          position to do that.

22                  Q.    (By Mr. Whitt) Well, I am and it was  
23          communicated to Staff, correct?

24                  A.    Your position was communicated to Staff.  
25          Did we accept it?  No.

1           Q.     Correct.  And if the Commission has an  
2     issue with whether that was appropriate or not, can  
3     we all agree that that ought to be directed to Mark  
4     A. Whitt, Esquire?

5           MR. EUBANKS:  No, we can't.  First of  
6     all, I don't know if he was asking that question to  
7     everybody because he said could we all agree, but we  
8     do not agree to that.

9           HEARING EXAMINER PRICE:  The Commission  
10    will decide who was culpable -- if there was a  
11    failure to comply, who was culpable for the failure  
12    to comply.

13          Q.     (By Mr. Whitt) Just to close the loop on  
14    that, Staff did not seek to obtain the information it  
15    was requesting through some alternative means?

16          A.     No, we requested the information of RPA,  
17    the certified entity.

18          Q.     Page 13, question 16, again, is what led  
19    Staff to believe that sales calls provided by RPA  
20    were modified.  And my takeaway from your answer is  
21    that what you've called sales calls were very short  
22    and just had sort of yes answers to them and that  
23    seemed odd to you.  Is that a fair summary?

24          A.     Give me one second.  I'm going to....

25          MR. EUBANKS:  Objection.  The testimony

1 is literally there. There's no reason to summarize  
2 it. It's naturally mischaracterizing the testimony.

3 HEARING EXAMINER PRICE: Can I have the  
4 question read back.

5 (Record read.)

6 HEARING EXAMINER PRICE: You can answer  
7 if you understand.

8 THE WITNESS: That is not a fair summary  
9 of what's written there in my answer.

10 Q. Well, it sounds like as I read your  
11 answer down to line 14, recognizing it continues, it  
12 sounds as if you're describing a TPV rather than a  
13 sales call.

14 A. That's not correct. I can explain it if  
15 you'd like.

16 Q. To make sure we're using again the same  
17 terminology, I think we recognize a distinction  
18 before between a sales call and a TPV, correct?

19 A. There is a distinction between the sales  
20 call and the TPV.

21 Q. And although you say that, for example,  
22 beginning on line 12, the consumers did not ask a  
23 single question during the solicitation, the  
24 responses to all the questions were most often yes or  
25 some form of agreement. The calls did not seem

1 natural, even logical, correct?

2 A. I am not speaking about the TPV.

3 Q. Okay.

4 A. That was literally the sales call.

5 Q. What's your basis for that conclusion?

6 A. So at line 8 through 11 is my basis for  
7 it. So a perfect stranger calls a customer, tells  
8 them that they're offering them a variable rate  
9 product that could be -- there's no guarantee of  
10 savings without disclosing to the customer a rate at  
11 all, there is no rate in that sales call, and the  
12 customer -- does that sound good to you? And the  
13 customer says yes.

14 Q. And just so we're clear, and I think  
15 you've clarified it, when you say sales call in  
16 question 16, you're talking about sales calls, not  
17 TPVs?

18 A. That's what my previous answer was and  
19 that is still my answer. This is a sales call. And  
20 the TPV customers answered yes in that too. I'm  
21 talking about the sales call.

22 Q. What about in instances where there was  
23 one recording, like the one we listened to earlier  
24 where there's a sales portion of a call and then  
25 there's a TPV? Your answer doesn't seem to

1 acknowledge the latter portion of the same recording;  
2 does that make sense?

3 A. How do --

4 HEARING EXAMINER PRICE: Rephrase that  
5 question, please.

6 Q. Well, again, I think the previous Staff  
7 witness was using -- seemed to be using the term  
8 sales call to include both sales calls and TPVs. I  
9 think that's what the testimony was. There seems to  
10 be a real --

11 HEARING EXAMINER PRICE: I don't think  
12 that's a fair characterization of the testimony. You  
13 need to ask questions and stop summarizing and say  
14 does that make sense. She's laid out her whole  
15 testimony. You need to move on and ask your  
16 questions.

17 Q. Is it conceivable that there might have  
18 been some confusion within Staff, between Staff at  
19 RPA on some distinction between sales calls and TPVs?

20 A. No.

21 Q. Okay. At least it's Staff's view you  
22 knew what you were -- If Staff asked for a sales  
23 call, it expected that what it received would be a  
24 sales call, and if it asked for a TPV, then it wanted  
25 a TPV, correct?

1 HEARING EXAMINER PRICE: In a given year,  
2 how many sales calls do you listen to? Give me a  
3 number. Dozens? Hundreds?

4 THE WITNESS: Yes, hundreds.

5 HEARING EXAMINER PRICE: How many TPVs do  
6 you listen to?

7 THE WITNESS: Equally, hundreds.

8 HEARING EXAMINER PRICE: You know the  
9 difference between the two?

10 THE WITNESS: I know the difference  
11 between the two.

12 MR. EUBANKS: Your Honor, can I go off  
13 the record here?

14 HEARING EXAMINER PRICE: Yes.

15 (Off the record.)

16 HEARING EXAMINER PRICE: Let's go back on  
17 the record.

18 Q. (By Mr. Whitt) What is the basis for  
19 Staff's recommended forfeiture for 1.5 million?

20 A. So, we've reviewed the -- all of the data  
21 requests, the sales scripts, the TPV script, we  
22 verified third party verification, all the  
23 information in the cases that we received throughout  
24 the COI, so we're not talking about the Notice of  
25 Probable Noncompliance, once the COI was opened, we

1 had to go through all the information, and based  
2 on -- I mean, everybody knows, I think Barb talked  
3 about what the rule says regarding violations of the  
4 rule, we had about -- not about, we had 78 specific  
5 audio files or cases that we believed should be  
6 before the Commission for the Commission to determine  
7 if there, in fact, was a rule violation.

8 We believe there were rule violations and  
9 there were at least in each one of these cases two --  
10 at least two egregious what we believe that was  
11 unconscionable actions by RPA sales agents or the  
12 company and we felt that was the appropriate  
13 forfeiture.

14 HEARING EXAMINER PRICE: How many  
15 discreet counts of violations are you alleging?

16 A. It's like 158 or -56, something like  
17 that.

18 HEARING EXAMINER PRICE: Is there an  
19 explanation of how you derived the forfeiture in the  
20 Staff Report?

21 THE WITNESS: In the Staff Report? I  
22 don't recall -- Like specifically how I said it here  
23 today, I don't know that that's in there. In there I  
24 think we just made our recommendation based on the  
25 egregious nature of this particular case.

1 HEARING EXAMINER PRICE: I guess what I'm  
2 asking then, in your testimony is there an  
3 explanation of how you derived the forfeiture?

4 THE WITNESS: Oh, gosh, I hope so. I  
5 don't know if I mentioned specifically the amount of  
6 forfeiture, but in my summaries, like managerial  
7 capability, it kind of lays out the -- the egregious  
8 nature of this particular case. And based on this  
9 information, we recommended a forfeiture to the  
10 Commission, and the Commission can decide if it's  
11 appropriate or not.

12 I laid out all the evidence we had.  
13 There's a spreadsheet that is attached to my  
14 testimony which kind of -- which lays out each case  
15 that we found issues with and what rule violation we  
16 believe that was found in that individual case or  
17 sales call.

18 HEARING EXAMINER PRICE: You simply  
19 multiplied the 158 times \$10,000? That's how you  
20 ended up with the 1.5 million?

21 THE WITNESS: Yes. I don't know if I  
22 should say that, that's kind of conservative  
23 because --

24 HEARING EXAMINER PRICE: No, you should  
25 not. No question pending on that.



1 THE WITNESS: Sorry. Yes, that was the  
2 rationale. The rule says the Commission could assess  
3 a forfeiture penalty of up to \$10,000 per violation  
4 per day. We felt that these violations were at --  
5 they warranted the higher of the up to. So  
6 \$10,000 was what we believe these individual  
7 violations warranted.

8 Q. (By Mr. Whitt) Okay. And the same  
9 informal complaints that are mentioned in the PNC  
10 those are still the same cases that are addressed in  
11 the Staff Report, correct?

12 A. I have not looked at the Staff Report.  
13 If somebody has that, I can take a look. I believe  
14 the Staff Report referenced that since the filing of  
15 the PNC, that we continue to see -- that we continue  
16 to get calls, cases on RPA. So there are additional  
17 cases that we got after the PNC but before the Staff  
18 Report that's referenced in the Staff Report.

19 Q. If there were any cases that came after  
20 the PNC, it would have been from enrollments before  
21 the PNC was issued; is that right?

22 A. No.

23 Q. Because the company stopped marketing in  
24 June of 2021, correct?

25 A. Yes.

1           Q.    There may have been follow-up contact  
2 with the consumers that enrolled prior to June I  
3 understand; is that what you're saying?

4           A.    They could have enrolled prior to the --  
5 Well, we did check to make sure that RPA was not  
6 marketing and we did check to see when the enrollment  
7 occurred. So yes, the enrollment would have occurred  
8 prior to RPA ceasing marketing.

9           MR. WHITT: No further questions.

10          MR. EUBANKS: I will take you up on your  
11 offer to do my redirect. That means you have to come  
12 back.

13          HEARING EXAMINER PRICE: At this time we  
14 will adjourn until 9:30 on Friday, October 28th.  
15 Thank you all.

16          (The hearing was adjourned at 6:10 p.m.)

17                               - - -

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CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Wednesday, October 26,  
2022, and carefully compared with my original  
stenographic notes.

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Cynthia L. Cunningham

- - -

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