

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. :

- - -

PROCEEDINGS

Before Gregory Price and Jesse Davis, Hearing
Examiner, at the Public Utilities Commission of Ohio,
180 East Broad Street, Room 11-D, Columbus, Ohio,
called at 10:00 a.m. on Thursday, November 10, 2022.

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VOLUME II

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Thursday Morning Session,
November 10, 2022.

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HEARING EXAMINER DAVIS: Let's go back on the record. Good morning, everyone. Thanks for being here once again. It's November 10th at approximately 10:05 a.m. We are once more here to recommence the hearing in Case No. 22-441-GE-COI which is captioned In the Matter of RPA Energy, Inc., dba Green Choice Energy.

Just before we get truly back under way, I'd like to take appearances of counsel since it's been some days. So starting with Staff.

MR. EUBANKS: Yes, your Honor. Robert Eubanks with the Attorney General's office here on behalf of Staff, 30 East Broad Street, Columbus, Ohio 43215, 26th floor.

MS. PLANT: And also with the Ohio Attorney General's office, Rhiannon Plant on behalf of Staff.

HEARING EXAMINER DAVIS: And on behalf of the Respondent.

MR. WHITT: Thank you, your Honor. On behalf of the Company, from the law firm of Whitt Sturtevant, LLP, Mark Whitt and Scott Elmer, 88 East

1 Broad Street, Suite 1590, Columbus, Ohio 43215.

2 HEARING EXAMINER DAVIS: And on behalf
3 of Ohio Consumers' Counsel.

4 MS. O'BRIEN: On behalf of the Office of
5 the Ohio Consumers' Counsel, Bruce Weston, Ohio
6 Consumers' Counsel, Angela D. O'Brien, Ambrosia
7 Wilson, Assistant Consumers Counsel, 65 East State
8 Street, Suite 700, Columbus, Ohio 43215. Thank you.

9 HEARING EXAMINER DAVIS: With
10 appearances taken care of, just as a matter of
11 getting things settled since we have been away for a
12 minute, Mr. Eubanks, I just wanted to confirm for the
13 sake of the record that you have no redirect for
14 Ms. Ramsey?

15 MR. EUBANKS: That is correct, your
16 Honor.

17 HEARING EXAMINER DAVIS: And then as a
18 secondary matter -- and your exhibits?

19 MR. EUBANKS: Yes, your Honor. We have
20 Staff Exhibits 7, 8, 9, 10, and 11 that we would like
21 to move into evidence.

22 HEARING EXAMINER DAVIS: And just so my
23 understanding is correct, that would be in order, the
24 Staff Report, the Case History Reports, Ms. Ramsey's
25 Testimony, the errata to her testimony, and then the

1 confidential flash drive?

2 MR. EUBANKS: That is correct, your
3 Honor.

4 HEARING EXAMINER DAVIS: And are there
5 objections to the admission of these items?

6 MR. WHITT: No objection.

7 MS. O'BRIEN: No from OCC.

8 HEARING EXAMINER DAVIS: Then they are
9 admitted.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 HEARING EXAMINER DAVIS: Thank you,
12 Mr. Eubanks. So to our secondary concern. My
13 understanding is that given that we did not have
14 cross for Mr. Williams, who was to be OCC's witness,
15 we will be having OCC moving for his testimony?

16 MS. O'BRIEN: Yes. Thank you, your
17 Honor. At this time OCC would like to move for the
18 admission of OCC Exhibit 1, which is the direct
19 testimony of James D. Williams.

20 HEARING EXAMINER DAVIS: Any objection?

21 MR. WHITT: No objections.

22 MR. EUBANKS: No, your Honor.

23 HEARING EXAMINER DAVIS: So it is so
24 marked as OCC Exhibit 1 and it is admitted. Thank
25 you.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 HEARING EXAMINER DAVIS: So with that
3 out of the way, my understanding is we have two
4 witnesses for today. So Staff, would you like to
5 call your witness?

6 MR. EUBANKS: Yes, your Honor. I'd like
7 to call to the stand Jennifer Owen.

8 HEARING EXAMINER DAVIS: Good morning.
9 Thank you for being here. I'll ask you to raise your
10 right hand. Do you swear or affirm what you're about
11 to tell is the truth?

12 THE WITNESS: Yes, sir.

13 HEARING EXAMINER DAVIS: And could you
14 please state and spell your name, and provide your
15 business address for the record?

16 THE WITNESS: Sure. Jennifer Owen,
17 J-e-n-n-i-f-e-r, O-w-e-n. The business address is
18 632 New Dover Road, and that's Colonia,
19 C-o-l-o-n-i-a, New Jersey 07067.

20 HEARING EXAMINER DAVIS: Thank you.
21 Mr. Eubanks, you may proceed.

22 - - -

23 Jennifer Owen,
24 being first duly sworn, as prescribed by law, was
25 examined and testified as follows:

1 DIRECT EXAMINATION

2 By Mr. Eubanks:

3 Q. Good morning.

4 A. Good morning.

5 Q. Could you state what your profession is
6 for the record?

7 A. Sure. I am a forensic audio and video
8 certified analyst.

9 Q. And who are you employed with?

10 A. Owen Forensic Services.

11 Q. And what is your position with that
12 company?

13 A. I'm the owner.

14 Q. And were you contracted with -- by Staff
15 of the PUCO to write a report for this matter?

16 A. I was.

17 Q. Do you know if that report was
18 documented with the Commission?

19 A. Yes.

20 MR. EUBANKS: May I approach the
21 witness?

22 HEARING EXAMINER DAVIS: You may.

23 MR. EUBANKS: I believe you have a copy
24 of this up there with you. Does anybody else need a
25 copy? I'd like to have the report marked as Staff

1 Exhibit 12.

2 HEARING EXAMINER DAVIS: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 By Mr. Eubanks:

5 Q. Could you identify what has been
6 premarked as Staff Exhibit 12?

7 A. It is the prefiled testimony of Jennifer
8 Owen.

9 Q. And I'd like you to look at the document
10 and make sure that it is a true and accurate copy of
11 your testimony/report?

12 A. It appears to be.

13 Q. If I were to -- are there any
14 corrections that you'd like to make to the report or
15 testimony?

16 A. No.

17 Q. And if I were to ask you the same
18 questions that are posed in your report would you
19 provide the same answers?

20 A. Yes, I would.

21 MR. EUBANKS: With that, I have no
22 further questions for the witness. And I would like
23 to have the Staff's Exhibit 12 moved into evidence
24 subject to cross-examination.

25 HEARING EXAMINER DAVIS: Thank you. Any

1 questions from OCC?

2 MS. O'BRIEN: No, your Honor. Thank
3 you.

4 HEARING EXAMINER DAVIS: RPA?

5 MR. ELMER: Yes, your Honor.

6 HEARING EXAMINER DAVIS: Proceed.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Elmer:

10 Q. Good morning, Ms. Owen. Just a few
11 questions for you.

12 A. Sure. Good morning.

13 Q. Can you tell me when you were retained
14 by Staff in this project?

15 A. I don't know the exact date, but I
16 believe it was several months ago.

17 Q. Could you approximate the month roughly?

18 A. June, possibly.

19 Q. Of this year or last year?

20 A. Again, it's been a while. I don't have
21 an exact date. I'd have to look at my files.

22 Q. But you couldn't tell me whether it was
23 June of this year or June of 2021, a year-and-a-half
24 ago?

25 A. For this particular case it was June of

1 this year.

2 Q. And what was your assignment?

3 A. My assignment was to analyze some audio
4 recordings.

5 Q. Analyze for what purpose?

6 A. For tampering.

7 Q. Okay. What are you charging for this
8 assignment?

9 A. That depends.

10 Q. On what does it depend?

11 A. I charge depending on how many
12 recordings, what's required in the analysis. Some
13 recordings take longer than others, but usually I
14 charge a flat fee per recording, which is ten hours,
15 which is \$2,500.

16 Q. So for this assignment, four recordings,
17 that would be roughly \$10,000?

18 A. Yes.

19 Q. Are you working with the Commission on
20 any other assignments?

21 A. I am.

22 Q. What other assignments are those?

23 A. Other audio recordings.

24 Q. Is that in connection with this case, or
25 some other proceeding?

1 A. It's connected with other -- I don't
2 know if it's a proceeding, but it's just
3 investigatory at this point.

4 Q. Can we go through those and you can tell
5 me what those are?

6 MS. O'BRIEN: Objection, your Honor,
7 relevance.

8 MR. ELMER: And we don't have to get
9 into the particular details of each one of those, I'm
10 just looking for a rough sense of how many other
11 cases, how many other recordings you're listening to.

12 MR. EUBANKS: Your Honor, I would like
13 to make a limited objection to the extent that she's
14 being asked about investigations that are underway
15 currently.

16 HEARING EXAMINER PRICE: She can give a
17 number without revealing any other important
18 information; is that true?

19 MR. EUBANKS: Yeah, I have no problem
20 with that, your Honor.

21 By Mr. Elmer:

22 Q. So again, roughly how many other
23 recordings are you listening to in any other
24 proceedings or investigations?

25 A. I think I have eight other recordings.

1 Q. Okay. So returning back to this
2 proceeding, what info were you given by Staff in
3 connection with this proceeding -- in connection with
4 this proceeding?

5 A. I was given the recordings.

6 Q. Were you given any other information?

7 A. The only other information -- I
8 requested a lot of information, but it wasn't -- they
9 didn't have it or it hasn't been delivered or it
10 wasn't received.

11 Q. Okay. So what info did you request?

12 A. I requested the make and model of the
13 software that records these calls.

14 Q. Anything else?

15 A. I requested anything that had to do with
16 the timekeeping of these calls.

17 Q. When you say "timekeeping," what do you
18 mean by that?

19 A. Well, in some of these -- and like I
20 said, nobody seems to know what the software was that
21 recorded these calls, so I put it a little broader
22 and said okay, well, is there like a time log.
23 Sometimes when these automated calls -- this came in
24 at 11:30 p.m., I was on the phone for 26 minutes,
25 that type of thing.

1 Q. Anything else that you requested?

2 A. Yes. I requested not only the software
3 or any notes or -- anything that was connected to the
4 actual either hardware or software that recorded
5 these calls.

6 Q. Okay. Anything else?

7 A. Make, model.

8 Q. Okay. So we have covered those?

9 A. Version. Yes. And I'm sorry, may I
10 continue?

11 Q. Go ahead.

12 A. And just to be noted, I also asked if it
13 was possible to go on-site.

14 Q. Okay.

15 A. And to do my own retrieval and analysis.

16 Q. And that request was made to Staff?

17 A. Yes.

18 Q. And in fact, all of those requests were
19 made by you to Staff?

20 A. Correct.

21 Q. On page 9 of your report, in the third
22 paragraph, it's roughly in the middle of the page,
23 you say, "When we provide authentication of digital
24 audio recording services, the first step is to
25 establish a chain of custody." Is that accurate?

1 Did I read that right?

2 A. Yes, you did.

3 Q. Would it have been helpful to talk to
4 someone at the company about the chain of custody for
5 the files that you examined?

6 A. Yes.

7 Q. Did you ask if it was possible to speak
8 to anyone at RPA about those files?

9 A. I think that was also under the request
10 of can I go there and can I speak to the people who
11 are in charge of handling these calls.

12 Q. And would it have been helpful to your
13 analysis to do that?

14 A. Of course.

15 Q. Let's go to page 17, the last page of
16 your report. Under the bolded heading "Summary,"
17 could you read that paragraph for us?

18 A. Sure. "It is extremely problematic for
19 this forensic examiner to reach a definitive position
20 on whether modifications, alterations, additions, and
21 deletions occurred in the recording if the opposing
22 party withholds information that can help identify
23 the acoustic anomalies as such."

24 Q. Is that a fair summary of the opinions
25 you're offering in this case?

1 A. Well, it's not a fair summary of each
2 recording and its analysis, but overall, if I'm not
3 provided any documentation of any type of software or
4 hardware in order to reproduce these results and try
5 to see if the acoustic anomalies occur within, then I
6 obviously can't be definitive.

7 Q. And -- well -- so what opinions are you
8 offering in this case?

9 A. The opinions that I am offering is the
10 analysis of these recordings were problematic because
11 they had acoustic anomalies, visually and audibly.

12 So at any time in the point in the
13 analysis when I get recordings and -- while I'm also
14 listening to them, I can see them on waveform what's
15 happening.

16 And then I notate where there's drop
17 outs, you know, where there could be probable issues
18 on the recordings, and then my next step is to
19 contact whoever I'm working for and say hey, are
20 these the original recordings, where is what we would
21 call an audit trail, or in the criminal world, chain
22 of custody, but this would be a digital chain of
23 custody, much like when people have a murder object
24 or so, you know, there's a physical chain of custody
25 and there's documentation and there's paperwork, the

1 same works in the digital world. So you ask, you
2 know, for all of that. There was nothing that I was
3 supplied with other than the recording and the name
4 of the company.

5 Q. So I guess we could summarize to say
6 that you made observations about these recordings
7 reflected in the visuals, the circles, the lines,
8 you're observing what you perceive is anomalies?

9 A. Yes.

10 Q. But you can't go further than that and
11 reach any more conclusive opinions because you
12 weren't provided that information that you requested?

13 A. Yes.

14 Q. Is it fair to say that you're not
15 offering then any opinion as to whether or not these
16 recordings were actually altered?

17 A. As I said before, I can't say
18 definitively, but there are several red flags that
19 wouldn't occur in a typical MP3 recording. So when
20 you see these acoustic anomalies you have to note
21 them as such.

22 Q. Okay. But those are observations, you
23 are not offering an opinion as an expert that they
24 were altered?

25 A. They were not altered, but they were

1 just highly suspect.

2 Q. Okay. In that summary on page 17, you
3 say the phrase, "if the opposing party withholds
4 information."

5 You don't have any opinion as an expert
6 about whether or not RPA actually had possession of
7 the information that you requested; is that fair?

8 A. Well, no, it's not fair, and the sense I
9 mean that is how can a company not know what software
10 it's using.

11 Q. Well, do you have an understanding of
12 what role the company has versus the venders that
13 have worked with? Did anyone at Staff explain that
14 to you?

15 MR. EUBANKS: Objection, calls for a
16 legal conclusion.

17 MR. ELMER: What legal conclusion does
18 that call for?

19 MR. EUBANKS: You're asking what
20 responsibility the vender has versus what
21 responsibility the company has. In my eyes that's a
22 legal issue, that's not a factual.

23 MR. ELMER: We're talking about the role
24 they had, what role the company has, what role the
25 venders have.

1 MR. EUBANKS: Are you talking about the
2 role that you guys set up between yourselves, or are
3 you talking about the legal role that you have?

4 MR. ELMER: I'll reask a different
5 question.

6 By Mr. Elmer:

7 Q. Do you have any idea who actually
8 recorded these recordings?

9 A. As in the person on the phone call? No,
10 I do not.

11 Q. No, I mean the recording, not the
12 talking, but the person actually performing the
13 recording of these recordings. What entity recorded
14 these recordings?

15 A. If you're talking about the vender, I
16 had that name for a limited, I think one or two of
17 them, depending on the phone call.

18 Q. Well, let me reask it again. Do you
19 know whether or not RPA recorded these recordings?

20 MR. EUBANKS: Objection. Again, to the
21 extent that he's asking for a legal conclusion. And
22 to the extent that he's simply stating that they
23 contracted with the vendors to do the recording, we
24 can stipulate to that fact.

25 MR. ELMER: Well, I think I'm drawing a

1 distinction between, and whether it has legal
2 significance, that's not what I'm asking about.

3 It's simply whether the entity actually
4 operating the software, or the recording device, or
5 whatever it is that creates these files, is that
6 entity RPA, or is it a vender with whom they have
7 contracted to perform marketing services or to
8 actually do these phone calls or what have you?

9 THE WITNESS: Well, it's my
10 understanding, and correct me if I'm wrong, that the
11 overhead company, the RPA, I would assume, and the
12 vender is the subsidiary, is that how it works?
13 By Mr. Elmer:

14 Q. I wouldn't say that, but you can go
15 ahead with your understanding.

16 A. Okay. So it's RPA, and then they
17 contract out to these venders. Now, regardless if
18 it's the parent company or the vender, somebody has
19 to pay for the software, so for nobody to know what
20 type of software we're using, that would be
21 ridiculous, whether you're the parent company or
22 you're the vender. It's not a hard question.

23 If I ask you what kind of computer you
24 have, you're going to say I have a Mac. You know
25 what I mean? Regardless if you're the company or

1 you're the vender, somebody is paying for the
2 software. Don't tell me there's not any invoices
3 anywhere. Nobody can tell me what the software is?

4 Q. Well, I guess I'll go back to my
5 original question.

6 You don't know whether RPA had access to
7 that information or not, do you? You're making a
8 bunch of assumptions about how you think things
9 typically work, if you have a computer you know what
10 it does or not.

11 You don't know whether RPA, the entity,
12 or venders, some other entity, regardless of whatever
13 legal relationship they had, you don't know whether
14 RPA had access to that information or not?

15 A. I don't know if they had access to that
16 information, or they said they didn't have access to
17 that information.

18 But when I went back to the Staff over
19 PUCO -- and that's what I was telling them. I said I
20 find it hard to believe that we're running a software
21 that nobody knows where it is or where it's from,
22 regardless of whether it's the guy on top or the
23 vender.

24 You know, that's like saying when you're
25 writing me documents, oh, are you using Word? Sure.

1 I mean, it's an easy -- it's an easy way to say yeah,
2 that's the software. Oh, I typed this record on
3 Word. What did you use to -- what do you guys use to
4 record the phone calls? Oh, it's Vicidial, or
5 whatever the case may be.

6 Q. But to be clear, you are not offering
7 expert opinion that RPA had access to that
8 information, these are all assumptions?

9 A. No, they are not assumptions. But like
10 I said, I wouldn't know definitively or concretely, I
11 had to make all these requests of PUCO.

12 Q. You have no understanding of whether or
13 not RPA had the right to request this information
14 either?

15 A. Well, that would be up to the lawyers.

16 Q. Okay. But again, you don't know that?

17 A. I do not.

18 Q. And so when you say the word "withheld,"
19 to withhold something you have to have that thing,
20 right?

21 A. Yes.

22 Q. And so you can't say one way or another
23 whether RPA withheld anything given that you do not
24 know, you are simply assuming, that RPA had this
25 information that you requested?

1 A. Well, I used the term withheld because I
2 asked for the information and I wasn't provided it.

3 Q. But withheld -- withhold is a verb,
4 isn't it? It reflects action, you are withholding
5 something?

6 A. Yes.

7 Q. And so by offering the statement in your
8 report, "if the opposing party withholds
9 information," you are essentially saying that RPA had
10 that information and didn't provide it to you?

11 A. Correct. And I think it's a fair
12 assumption to make that leap, because there's no
13 company that doesn't know what software they are
14 using.

15 Q. But it is an assumption, correct?

16 A. Yes, a fair assumption.

17 Q. And it is based on the idea that you
18 think RPA is using the software rather than a
19 third-party contractor relationship with another
20 entity who could be using things that they are not
21 involved with?

22 MR. EUBANKS: Objection,
23 mischaracterizes the witness' testimony. She said
24 that either you should know, or the vender should
25 know.

1 HEARING EXAMINER DAVIS: Sustained.

2 By Mr. Elmer:

3 Q. Okay. And I want to close out on this.
4 You don't have any independent knowledge of any of
5 this, everything you have -- all the information you
6 have about this you got from Staff, correct? You
7 didn't speak to anyone at the Company?

8 A. I did not speak to anyone at the
9 Company.

10 Q. And you didn't reach out to any of the
11 vendors that were identified?

12 A. No, I did not.

13 Q. Okay.

14 A. But I did -- actually I wasn't done, I'm
15 sorry. But I did have Staff reach out to them.

16 Q. You asked Staff to reach out to the
17 vendors?

18 A. Yes, to ask for the software -- you
19 know, all of the software, the hardware, and all of
20 those things.

21 Q. And did they provide you with any
22 information in response to that request?

23 A. They said that the vendors and the
24 Company was nonresponsive.

25 Q. Okay. So when listening to these calls,

1 is it fair to say that you have no ability to
2 determine the identity of the person speaking?

3 A. No, I do not know the identity of the
4 person.

5 Q. And that's because you don't have a
6 reference point for who was speaking, right? You
7 don't have another recording that you can use to
8 compare?

9 A. Absolutely.

10 Q. And that would be true for anyone
11 listening to voices for whom they have no reference
12 point?

13 A. Yes, if you don't have someone to
14 compare it to. But that being said, it would be a
15 different story if you and I worked in the same
16 office and I talked to you every day and we were
17 co-workers and we sat next to each other.

18 But if you're talking about a telephone
19 call between someone -- Person A and Person B who
20 I've never met, then yes.

21 MR. ELMER: Okay. No further questions.

22 HEARING EXAMINER DAVIS: Mr. Eubanks,
23 any redirect?

24 MR. EUBANKS: As is typical, I would
25 like to ask to confer with Staff before redirect.

1 HEARING EXAMINER DAVIS: Let's take a
2 break. Five minutes.

3 (Recess taken.)

4 HEARING EXAMINER DAVIS: Go back on the
5 record.

6 MR. EUBANKS: I have just two questions,
7 your Honor.

8 HEARING EXAMINER DAVIS: Go ahead.

9 - - -

10 REDIRECT EXAMINATION

11 By Mr. Eubanks:

12 Q. During your cross-examination I believe
13 you made a declarative statement, quote, they were
14 not altered. Could you explain what you meant by
15 that?

16 A. Well, what I meant by that is we can't
17 reach a definitive conclusion that they were altered
18 or not.

19 Q. Okay. And you were also asked a chain
20 of custody question about wouldn't it have been good
21 for you to know about the chain of custody with
22 reference to the audios.

23 Was there a request that you had Staff
24 ask of the -- of RPA in order to address the chain of
25 custody issue?

1 A. Yes, I did. When I spoke to Staff the
2 first thing I said is can we get the digital
3 bit-for-bit copy of an uncompressed audio file format
4 that was not put into any software and that was
5 exported directly from the software that recorded it,
6 the proprietary software, and nothing else.

7 MR. EUBANKS: I have no further
8 questions.

9 MR. ELMER: No further questions. Thank
10 you.

11 HEARING EXAMINER DAVIS: You may step
12 down.

13 (Witness excused.)

14 HEARING EXAMINER DAVIS: RPA prepared to
15 call its first witness?

16 MR. EUBANKS: Your Honor, I'd like to
17 move to have Staff's Exhibit 12 placed into evidence.

18 HEARING EXAMINER DAVIS: The direct
19 testimony of Jennifer Owen?

20 MR. EUBANKS: Yes, your Honor.

21 HEARING EXAMINER DAVIS: Is there any
22 objections?

23 MR. ELMER: No objections.

24 HEARING EXAMINER DAVIS: It's admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 MS. O'BRIEN: And, your Honor, at this
2 time I'd like to move for admission of OCC Exhibit 1,
3 the direct testimony of James Williams.

4 HEARING EXAMINER DAVIS: Is there any
5 objection?

6 MR. WHITT: No objections.

7 MR. EUBANKS: No objections.

8 HEARING EXAMINER DAVIS: It's admitted.
9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 HEARING EXAMINER DAVIS: Are you ready
11 to call your witness?

12 MR. WHITT: Thank you, your Honor. The
13 Company would call Mr. Brian Trombino. Does the
14 Bench and the parties have, I'm assuming, the
15 prefiled testimony?

16 HEARING EXAMINER PRICE: I need a copy
17 of the confidential documents.

18 MR. WHITT: Just the documents?

19 HEARING EXAMINER PRICE: Yes. You can
20 give me the whole packet, it's fine. Thank you.
21 By Mr. Whitt:

22 Q. Good morning, sir. Could you
23 introduce --

24 HEARING EXAMINER DAVIS: I need to swear
25 him in. Mr. Trombino, if you could raise your right

1 hand? Do you swear or affirm what you're about to
2 tell is the truth?

3 THE WITNESS: Yes.

4 HEARING EXAMINER DAVIS: Can you please
5 state and spell your name, and provide your business
6 address for the record?

7 THE WITNESS: Brian Trombino, B-r-i-a-n,
8 T-r-o-m-b-i-n-o, 14 Wall Street, Second Floor,
9 Huntington, New York, 11743.

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

12 MR. WHITT: Thank you, your Honor.

13 - - -

14 BRIAN TROMBINO,
15 being first duly sworn, as prescribed by law, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Whitt:

19 Q. Mr. Trombino, do you have in front of
20 you a document marked for identification as Company
21 Exhibit 1?

22 A. I do.

23 MR. WHITT: And I'll represent to the
24 parties and the Bench that Company Exhibit 1 is a
25 copy of the prefiled testimony previously filed in

1 the docket, the public version has been filed.

2 By Mr. Whitt:

3 Q. Mr. Trombino, is Company Exhibit 1 the
4 direct testimony prepared in this case by you or
5 under your supervision?

6 A. Yes, it was.

7 Q. Do you have any corrections to your
8 testimony?

9 A. On page 1, line 14, Utility Expense
10 Reduction, Inc., it just needs to be changed to LLC.

11 Q. Subject to that correction, if I were to
12 ask you the questions that appear in your direct
13 testimony today, would your answers be the same?

14 A. Yes.

15 MR. WHITT: Thank you. The witness is
16 available for cross.

17 HEARING EXAMINER PRICE: Let's go off
18 the record.

19 (Discussion off the record.)

20 HEARING EXAMINER DAVIS: Go back on the
21 record.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. WHITT: To be clear, your Honor, I
24 believe we previously -- the witness identified
25 Exhibit 1 which is the public version of his prefiled

1 testimony, we'd also like to mark for identification
2 Exhibit 1C, which would be the confidential version
3 of the testimony, also filed under seal.

4 And happy to provide hard copies of the
5 confidential documents as late-filed exhibits or
6 otherwise. I believe that was previously served on
7 the parties, but happy to redo that if we need to.

8 HEARING EXAMINER DAVIS: So the
9 confidential portion of Mr. Trombino's testimony will
10 be marked as 1C.

11 MR. WHITT: Correct.

12 HEARING EXAMINER DAVIS: Thank you.

13 MR. WHITT: And to be clear, the actual
14 question and answer testimony portions of both
15 exhibits are the same. The confidential material is
16 in the actual exhibits, that's the distinction.
17 Thank you.

18 MR. EUBANKS: Your Honor, would this be
19 the time to do motions to strike?

20 HEARING EXAMINER DAVIS: It would.

21 MR. EUBANKS: Your Honor, I would like
22 to move to strike Question and Answer 10. First of
23 all, how COVID-19 affected RPA's business is
24 irrelevant.

25 But second of all, even if the Bench

1 thinks that it would be relevant as a mitigating
2 factor for forfeiture, there is no connecting of the
3 dots in the answer to show how COVID led to
4 violations that would have not otherwise been
5 committed.

6 Furthermore, three, RPA doesn't even
7 admit to any violations, so what this question and
8 answer does is it basically says hey, COVID happened,
9 it affected our business, hey, we're not admitting to
10 any violations, but if a violation occurred, then
11 it's due to COVID, but they set no foundation to
12 connect the dots between COVID and a violation
13 committed. So it's just -- the question and answer
14 here has no foundation.

15 MR. WHITT: Your Honor, the question and
16 answer pertain to a matter that Staff has put at
17 issue.

18 They have questioned the Company's
19 managerial, technical, financial capabilities during
20 a specific point in time, and a point in time that
21 covers the pandemic.

22 The witness and the testimony cannot be
23 fairly characterized as suggesting that the pandemic
24 is any excuse for anything, it's merely one of many
25 factors that were in play during the time period

1 relevant to the investigation.

2 The Commission has a broad range of
3 discretion. If it decides that any violations have
4 occurred, it can issue forfeitures in an amount
5 anywhere from zero to \$10,000, so the Commission, as
6 the ultimate fact finder in the case, is entitled to
7 consider all of the surrounding circumstances and the
8 overall context in which the conduct occurred.

9 And it ultimately goes to, really, the
10 weight of the testimony as opposed to any actual
11 admissibility question.

12 MR. EUBANKS: Your Honor, it is an
13 admissibility question if there's no showing of
14 relevance here.

15 Now, just to be clear, had the question
16 and answer said we committed X and X violations
17 because of COVID, and here is how COVID affected
18 that, there would be no objection here. But that is
19 not what this question and answer does.

20 It admits to no violation whatsoever,
21 and the mere fact that COVID existed during the
22 investigation, I think we all know that with or
23 without this question.

24 HEARING EXAMINER PRICE: Why is he
25 prohibited from arguing the alternative? We don't

1 admit to any violations, but if the Commission finds
2 we did, here are mitigating circumstances?

3 There's no legal principle saying you
4 have to admit to a violation before you present
5 potential mitigating circumstances, are there?

6 MR. EUBANKS: But there has to be a
7 connection -- there always has to be foundation.
8 There has to be a connection between COVID and the
9 violation.

10 If there's no violation even mentioned,
11 what is this? This is a fallback position? We
12 don't -- we don't think we committed any violations
13 whatsoever. But in the instance that you find that
14 we committed one, and we don't know what that might
15 be, it could be anything under the sun, we're going
16 to blame COVID? That's not are a proper question and
17 answer, there's no foundation there.

18 MR. WHITT: If I may, your Honor, again,
19 this is not a fair characterization of the testimony.
20 The witness isn't citing COVID as an affirmative
21 defense to anything, hasn't admitted to anything, nor
22 does he challenge specific representations in the
23 Staff Report.

24 Moreover, one of the alleged violations
25 is failure to comply with an order issued during

1 COVID about notifying Staff before door-to-door sales
2 resume. So Staff has actually placed the matter at
3 issue, and to now say we can't talk about it is a
4 little bit one sided.

5 HEARING EXAMINER DAVIS: So Mr. Eubanks,
6 if I read the question, how did it affect the
7 company's day-to-day operations, and my understanding
8 is the question from Staff was what is their
9 managerial competence and how do they run their
10 company.

11 And I don't know that I feel that the
12 COVID portion of the question necessarily takes away
13 from this being an answer that encompasses how they
14 operated during the period of time where things
15 changed. So I'm not sure how there's not a -- I'm
16 not sure how there's not a connection here.

17 MR. EUBANKS: Your Honor, this case is
18 about violations, it's not just about how you run
19 your business.

20 HEARING EXAMINER DAVIS: It is, but is
21 not the managerial competence and the running of the
22 company something that Staff queried on its own?

23 MR. EUBANKS: But the managerial
24 competence related to their ability to follow the
25 law.

1 HEARING EXAMINER DAVIS: I understand
2 that, and I think this question is relevant enough
3 for what we're doing here. I think it will be given
4 its weight.

5 MR. EUBANKS: My next motion to strike
6 would be to Question and Answer 20, lines 15 through
7 18 -- I'm sorry. I may be on the wrong one. Okay.
8 Well, this is a similar --

9 HEARING EXAMINER PRICE: Where are you
10 moving to strike?

11 MR. EUBANKS: I'm sorry, your Honor,
12 lines 13 through 18, starting with, "As shown in the
13 correspondence, the Company disagrees with
14 characterization that its sales practices are
15 systematically unfair or misleading but acknowledges
16 that some of its operations were not fully compliant
17 with Commission rules during the period of the
18 investigation, due in large part to internal
19 communication challenges posed by the
20 pandemic-related restrictions."

21 Again, they are admitting to nothing,
22 while they say we admit that they weren't fully
23 compliant --

24 HEARING EXAMINER PRICE: What is the
25 basis -- explain again what the basis of your motion

1 to strike is. I mean, is it hearsay? Relevance?
2 Foundation? Some other evidentiary rule?

3 MR. EUBANKS: Your Honor, so as before,
4 it's irrelevant because they are not pinpointing a
5 violation that this is an excuse for.

6 Number two, by not pinpointing a
7 violation that it's an excuse for, there's no
8 foundation to make this -- well, it's just another
9 argument for saying it's irrelevant.

10 So if there's no connecting of the dots
11 between your excuse and a violation, because this
12 case is about violations, then it's irrelevant.

13 MR. WHITT: Your Honor, I think what I
14 hear counsel arguing is that the only thing we're
15 allowed to talk about are staff's allegations, and
16 unless those are admitted the Company is not allowed
17 to talk about anything.

18 The question and answer makes clear why
19 this subject matter is being raised. It is directly
20 responsive to what is alleged in the Staff Report.

21 Again, there's no legal principle that
22 requires a company to confess to anything, and there
23 is another side of the story here that the Commission
24 not only is entitled to know, but it has to know in
25 order to decide the case, and decide what if any

1 remedies are appropriate within its broad range of
2 discretion.

3 MR. EUBANKS: Your Honor, stated
4 differently, there's no way he can know -- he can
5 look with a crystal ball into the future and say here
6 is what I'm going to be found to be not in compliance
7 with. You're going to make that ruling. At some
8 point in time you're going to sit down, pen to
9 paper --

10 HEARING EXAMINER PRICE: I don't
11 understand the relevance to your comment about the
12 relevance to his testimony. Why does he have to be
13 able to predict the future to testify as to why he
14 thinks the conduct was not misleading but may not
15 have been fully compliant?

16 MR. EUBANKS: Well, that goes to
17 foundation, your Honor. He cannot say whatever --

18 HEARING EXAMINER PRICE: He can't
19 testify as to the actions of his Company? If he
20 can't, who can?

21 MR. EUBANKS: I guess what he can't do
22 is say that the pandemic caused whatever violation
23 you're going to find me not to be in compliance with.

24 HEARING EXAMINER PRICE: Why can't he?

25 MR. EUBANKS: Because he can't possibly

1 know what you're going to -- unless he's going to
2 say --

3 HEARING EXAMINER PRICE: He knows what
4 the Staff has alleged.

5 MR. EUBANKS: Unless he's saying that
6 every violation that the Staff has alleged --

7 HEARING EXAMINER PRICE: You've got to
8 show me a case that says that you have to admit to a
9 violation before you present mitigating
10 circumstances. That's a new principle on me.
11 Parties argue in the alternative all the time. And
12 you bear the burden of proof in this case, not him.

13 MR. EUBANKS: That's true, your Honor.
14 That's my objection.

15 HEARING EXAMINER DAVIS: It's overruled.
16 Deny the strike.

17 MR. EUBANKS: Next, Question and Answer
18 22, line 11 through 13. This is talking about
19 confidential settlement discussions. It's not
20 appropriate as any part of a hearing before the
21 Commission, it should be stricken from the record.

22 HEARING EXAMINER DAVIS: Mr. Whitt?

23 MR. WHITT: Well, confidential material
24 is not off limits to the Commission in deciding the
25 case.

1 The testimony doesn't get into, you
2 know, great detail other than address generally the
3 Company's attempt to cooperate with Staff, efforts
4 made to rebut not only inferences, but direct
5 allegations in the Staff Report that this is a
6 recalcitrant company that just doesn't get it and
7 won't cooperate with Staff and refuses to provide
8 information.

9 HEARING EXAMINER PRICE: But you
10 understand that he's opened the door to any cross
11 Mr. Eubanks may have regarding settlement
12 negotiations if we allow this in? You can't say we
13 can selectively determine what is in the record,
14 Mr. Eubanks can ask him any questions about
15 settlement negotiations if we allows this.

16 MR. WHITT: And we understand that, and
17 in fact some of the settlement correspondence are
18 exhibits in the testimony, and again, I think provide
19 really the best evidence of the interactions that
20 occurred between the Company and Staff in the period
21 preceding the Staff Report. And again, these are
22 matters ultimately the Staff has placed in issue.

23 MR. EUBANKS: Your Honor, settlement
24 discussions are not just confidential when it comes
25 to protecting it from the public, it's confidential

1 when it comes to protecting it from the hearing
2 process.

3 This is not even supposed to be before
4 you. It's not supposed to be before the Supreme
5 Court should this go on appeal. These are
6 confidential communications between two party
7 members.

8 If this was to be allowed into evidence
9 and this would be a practice of the Commission to
10 allow this type of thing, it would chill settlement
11 discussions from hence forward. If you just plop in
12 whatever communications you've had with people about
13 settlement discussions and just throw it into the
14 record, it's irrelevant.

15 MS. O'BRIEN: Your Honor, may I weigh
16 in?

17 HEARING EXAMINER DAVIS: Go ahead.

18 MS. O'BRIEN: The lines 11 through 13 I
19 don't think have specific settlement communications
20 in it, it's just a statement. We think that this is
21 proper testimony, and we would prefer that it be in
22 the record.

23 I don't think -- there's nothing
24 confidential here about the Company willing to agree
25 to other corrective action.

1 The substance of communications I
2 understand is -- are privileged, but just making the
3 statement that we would be willing to agree to
4 something else, those aren't privileged
5 communications.

6 MR. EUBANKS: It's talking specifically
7 about using different formulas in order to calculate
8 re-rates.

9 It's talking about why the parties may
10 or may not have come to a settlement agreement. It
11 is a part of the settlement -- it's the back and
12 forth of settlement. No one gets to see the back and
13 forth of settlement, whether that's AEs, Supreme
14 Court, whoever. You get to see --

15 HEARING EXAMINER PRICE: We'll decide
16 what we get to see.

17 MR. EUBANKS: Okay. Well, that's my
18 argument, your Honor.

19 HEARING EXAMINER PRICE: And we'll
20 decide.

21 MR. EUBANKS: Okay.

22 HEARING EXAMINER DAVIS: So just so I
23 understand this clearly, Mr. Eubanks, the part that
24 you're arguing is the specifics of it in contrast to
25 what Ms. O'Brien argued -- well, at least part of it

1 is this question of a different formula, you're
 2 saying that's penetrating more into the broad
 3 discussion that settlement discussions happen and
 4 this is more of a particular -- something that was
 5 actually said in a settlement negotiation query, not
 6 just the broad settlement discussions took place, is
 7 that -- am I understanding correctly, you're saying
 8 this is a particular -- such a communication?

9 MR. EUBANKS: That's part of it, your
 10 Honor, but also the part that says we were willing to
 11 agree to all other corrective actions, that's another
 12 discussion in settlement which may or may not have
 13 happened.

14 And then finally the last part that
 15 says, "Staff did not accept our proposal," that whole
 16 communication that they are alleging here would have
 17 been the back and forth inside of settlement
 18 discussions.

19 HEARING EXAMINER DAVIS: I agree. It's
 20 granted. We're going to strike those lines.

21 MR. EUBANKS: Your Honor, I would also
 22 move to strike BT-6, BT-7, and BT-8 as these are all
 23 documentations of confidential settlement
 24 communications between the parties that should not be
 25 a part of this hearing nor a part of any appeal.

1 HEARING EXAMINER PRICE: BT-6, 7, and 8?

2 MR. EUBANKS: Yes, your Honor.

3 MR. WHITT: Your Honor, the fact that
4 they are marked confidential, it's because it's not
5 made public. They're confidential as to the parties
6 in this proceeding.

7 The -- I'm looking at 6 is something
8 that I authored, or anything the Company certainly
9 authored, we would have the ability to waive any
10 claim of confidentiality anyway.

11 Ultimately the Company hasn't attached
12 the information to necessarily prove the truth of
13 anything that's in the correspondence other than sort
14 of demonstrating the history of how this played out,
15 what the company was asked to do, how it attempted to
16 resolve the issues.

17 To suggest that the Commission isn't
18 allowed to have information about how the Staff that
19 it supervises, you know, that -- its enforcement
20 activities, policies, and so forth, certainly is --
21 is a relevant issue in the case.

22 And, you know, again, the fact that
23 things transpired in a period before Staff issued --
24 or requested a formal investigation doesn't create
25 some blanket prohibition on talking about anything

1 that preceded the request for formal investigation.

2 HEARING EXAMINER PRICE: Well, I
3 understand that, but these aren't -- these aren't
4 Mr. Trombino to Ms. Bossart or -- this is counsel,
5 Mr. Eubanks, to you, emails and letters.

6 MR. WHITT: Actually Ms. Bossart is cc'd
7 on -- Ms. Ramsey.

8 HEARING EXAMINER PRICE: I understand
9 she's cc'd. I'm just saying that the one letter,
10 it's addressed to Mr. Eubanks, and it says Whitt
11 Sturtevant, so it's obviously coming from you, not
12 the Company.

13 MR. WHITT: Right.

14 HEARING EXAMINER PRICE: I mean, you
15 would agree, the general rule, confidential -- some
16 negotiations are confidential before the Commission?

17 MR. WHITT: Depending on the purpose for
18 which the statements at issue are offered.

19 HEARING EXAMINER PRICE: And what's the
20 purpose here?

21 MR. WHITT: The purpose here, as stated
22 in the testimony, is to explain the efforts the
23 Company made to cooperate with Staff in direct
24 response to allegations that this company is
25 uncooperative and ought to have its ticket pulled and

1 barred from the State for doing business.

2 It's a pretty serious matter, and the
3 Commission again is entitled to understand the
4 context in which all of these allegations have been
5 made.

6 HEARING EXAMINER PRICE: Mr. Eubanks,
7 are you contending the Company was uncooperative with
8 the Staff?

9 MR. EUBANKS: Those are his words, your
10 Honor, we did not say that they were uncooperative.

11 HEARING EXAMINER PRICE: Are you
12 alleging that they failed to produce information that
13 you asked?

14 MR. EUBANKS: Well, the make and model
15 of the software.

16 HEARING EXAMINER PRICE: So they were
17 uncooperative.

18 MR. EUBANKS: They did not give us the
19 make and the model of the software, it's in the
20 testimony of Jennifer Owen. I'm not sure I
21 understand your question. But if we could --

22 HEARING EXAMINER PRICE: I mean, he's
23 making the point that you are claiming that the
24 Company failed to cooperate with Staff's
25 investigation, didn't produce all the information

1 requested of the Staff, so is he not entitled to
2 document the steps they took to cooperate with the
3 Staff?

4 MR. EUBANKS: Okay. That's not what his
5 arguments is, I believe, your Honor. I believe what
6 he's saying is they were uncooperative in settlement.

7 HEARING EXAMINER PRICE: Mr. Whitt, did
8 I mischaracterize?

9 MR. WHITT: You didn't, your Honor. And
10 in addition we -- during Ms. Ramsey's testimony there
11 was testimony about the DRs that Staff issued, a
12 suggestion that some of the information provided was
13 nonresponsive, there was an allegation about one of
14 the recordings having to be asked for multiple times.

15 Staff -- they can't just cherry pick
16 instances that they believe show a lack of
17 cooperation without considering the Company's conduct
18 on the whole.

19 They have raised -- they have -- they
20 have basically begged us to have to respond in this
21 fashion by pointing out the events preceding the
22 Staff Report, and the alternative frankly is for the
23 Company to be permitted to put on a rebuttal case.
24 If we can't do it through the record of actual
25 correspondence that occurred, we need to be allowed

1 to respond somehow.

2 MR. EUBANKS: Okay. So if I can
3 respond, your Honor. There was a DR process in which
4 Staff requested information, got responses back from
5 the Company. There was a back and forth there.

6 Those records and emails and files, they
7 exist. I know they exist because I have a book back
8 here that has them all in there, okay?

9 If they wanted to put that into the
10 record, that's one thing, to show whether or not they
11 were responsive to our requests. That is not what
12 this is. Now --

13 HEARING EXAMINER PRICE: Wait a second.
14 Go to BT-6. I direct your attention to the third
15 page, December 14th, 2020, email at 3:29 p.m. from
16 Robert Eubanks to Mark Whitt saying, "Mark, Staff
17 will get back to you regarding this response."

18 That's not a -- related to data
19 requests, but that said, "Please do not let Staff
20 response to your email delay your client's response
21 to Staff's data requests." That's not related to
22 data requests?

23 MR. EUBANKS: Your Honor, can we just go
24 page by page through the BT-6? And I guess that's
25 what we're going to have to do.

1 Page 1 of BT-6 I have no objection to.
2 Page 2 of BT-6 I have no objection to. Page -- is
3 this 3? It doesn't have a number on it, but I guess
4 it's page 3 of BT-6, I object to.

5 The lower level it says, "Earlier today
6 I received a data request alluded to in your note
7 below. Before responding I need to address the
8 sticking point we had for Staff's re-rate proposal,
9 more importantly a proposed solution." This is
10 directly related to the testimony you just now had
11 stricken.

12 HEARING EXAMINER PRICE: Are you done?

13 MR. EUBANKS: It goes on, on page 4, to
14 speak more about that issue. So the bottom of page 3
15 and the entirety of page 4 I believe should be
16 stricken.

17 Additionally, on page 5, it's just a
18 continuation of that discussion about the re-rates; I
19 believe that should be stricken. As well as page 6,
20 it's a continuation of that discussion, and finally
21 on page 7 as well, and page 8.

22 So with respect to BT-6, if I was being
23 more precise, my objection starts at the bottom of
24 page 3 and continues on to page 8.

25 HEARING EXAMINER DAVIS: It's granted

1 concerning BT-6 and pages 3 and 4 -- the bottom of 3
2 to 4, and then pages 5 through 8, correct?

3 MR. EUBANKS: Yes, your Honor.

4 HEARING EXAMINER DAVIS: It's granted.

5 MR. WHITT: So then we can get no
6 opportunity to respond?

7 HEARING EXAMINER DAVIS: We an talk
8 about this.

9 MR. WHITT: Well, it would have been
10 nice to have had -- perhaps this is the sort of thing
11 that could be brought up in a motion to strike so we
12 don't have to do this on the fly.

13 This has been on file since September
14 30th. And again, I would note Staff, in the Staff
15 Report, talks about the fact that they engaged in
16 settlement -- in settlement discussions with the
17 Company and Staff wasn't able to settle.

18 HEARING EXAMINER PRICE: Well, but
19 that's different than the details of the settlement.

20 MR. WHITT: And moreover, the Staff
21 Report is asking for re-rates as a remedy, and what
22 the correspondence demonstrates is it's again
23 something we have agreed to in principle with some
24 differences over details, but it again rebuts the
25 notion that the Company has been unresponsive and

1 noncooperative.

2 MS. O'BRIEN: Your Honor, may I say
3 something?

4 HEARING EXAMINER DAVIS: Go ahead.

5 MS. O'BRIEN: You know, with respect to
6 having to respond on the fly to motions to strike,
7 OCC is always often in that position, as are other
8 parties in hearings.

9 I think it's -- I think it's perfectly
10 proper for Staff to do a motion to strike here today,
11 and so just want to respond with that.

12 HEARING EXAMINER DAVIS: I think we have
13 made our ruling. The pages in question in BT-6 were
14 I think on point with what Mr. Eubanks said about
15 question 20. Are we moving to BT-7?

16 MR. EUBANKS: Yes, your Honor. Just
17 want to be precise. I'm just perusing through this
18 to make sure I'm objecting to the entire document.

19 Yes, I believe this entire document, as
20 made clear by the very intro paragraph, is concerning
21 what RPA believed to be our misunderstanding about
22 their position on re-rates, and therefore this entire
23 document should be stricken from the record -- well,
24 I'm sorry, that's BT-7, yes -- 1, 2, 3, yes.

25 HEARING EXAMINER PRICE: Mr. Whitt, care

1 to respond to BT-7?

2 MR. WHITT: I would, I think, reiterate
3 what we had to say in the last exhibit we looked at,
4 which is, again, this has been filed under seal, not
5 for general public consumption, but for the parties
6 and the Commission in this case, and in this case I'm
7 not talking about changing of general, you know,
8 policy about settlement communications, but in this
9 particular case there's good cause and good reason to
10 reference this correspondence.

11 HEARING EXAMINER DAVIS: I think as far
12 as BT-7 is concerned it's pretty directly on point as
13 settlement negotiations, and I think consistent with
14 our ruling, I think it's granted. We're going to
15 strike the entirety of BT-7.

16 MR. EUBANKS: Your Honor, I'm going to
17 go page by page for my strikes for BT-8.

18 HEARING EXAMINER DAVIS: Okay.

19 MR. EUBANKS: I have no objection to
20 page 1 of BT-8. I have an objection to page 2 of
21 BT-8 as it's discussing re-rates and forfeitures, the
22 negotiation of those things -- those matters, and
23 re-rating.

24 On page 3 it's once again talking about
25 forfeiture discussions during the process of

1 negotiations and re-rating customers.

2 I have no objection to page 4. Page 5
3 is -- I have no objection to page 5. No objection to
4 page 6.

5 I object to page 7 as it's talking about
6 re-rates, as well as page 8 is talking about
7 re-rates. Page 9 is talking about re-rates as well
8 in the course of settlement.

9 Page 10, once again, it's during the
10 course of settlement talking about how customers
11 would re-rate, talking about a potential stay-out
12 provision in the settlement that would be reached.

13 Page 11 is just -- at least the top of
14 it is just a conclusion of page 10 and therefore
15 improper.

16 The bottom of page 11 I have no
17 objection to. Actually the bottom of page 11 in
18 itself is not a problem, but it's a part of an email
19 that continues on page 12 which is, once again,
20 settlement discussions, re-rating and other
21 provisions that would be in the settlement agreement,
22 so I object to all of 11 and 12.

23 Page 13 is communication to me talking
24 about the litigation risk and that Staff should
25 consider re-rating a legal argument as to why we

1 shouldn't proceed forward and why we shouldn't accept
2 their settlement on page 14, which I object to.
3 Continues on to page 15, should not be -- should be
4 stricken as well. Continues on to page 15.

5 Even page -- page 16 is just more trying
6 to convince I guess me and Staff, through me, that
7 our case is weak and that we should settle.

8 Page 17 concludes talking about a
9 re-rate proposal, so I think that should be stricken
10 as well.

11 So just to be clear, Staff moves to
12 strike pages 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15,
13 16, and 17. So 7 through -- pages 7 through 17, and
14 pages 2 and 3.

15 MR. WHITT: In addition to what has been
16 indicated previously, I would also point out the
17 irony in the fact that the discussion of these
18 matters has brought out far more detail than the
19 actual testimony.

20 The exhibits themselves were filed under
21 seal. Now we're talking publicly about what's in all
22 of this stuff, and arguing and motions being granted
23 that it be stricken over things that previously were
24 unknown, now it's known as a result of this process,
25 and suggesting really that these motions to strike,

1 the purpose of this is highly suspect. It can't be
2 because there's any real concern about legitimate
3 confidentiality issues.

4 I would also note again, the Company's
5 managerial capability in general has been called into
6 question. The Commission is entitled to know who RPA
7 is; what does this Company do when it's asked to turn
8 over information, or when concerns are raised, is
9 this a company that seems competent, responsive wants
10 to get along or are they a problem and should be
11 kicked out.

12 HEARING EXAMINER PRICE: Mr. Whitt, we
13 made Mr. Eubanks go through laboriously, much to his
14 dismay, to excise out the parts that are data
15 requests related versus settlement request related.

16 So we are trying to be responsive to the
17 concerns that you had raised, that's why Mr. Eubanks
18 is going through this exercise page by page.

19 If you have a concern about the
20 confidentiality of what we're talking about in this
21 session, we can ask the reporter to go back and put
22 from the beginning of the motion to strike until we
23 end talking about it in the confidential transcript.

24 MR. WHITT: I have no concerns and we
25 waive any confidentiality.

1 HEARING EXAMINER PRICE: Okay.

2 HEARING EXAMINER DAVIS: So just recap,
3 that's BT-8, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15,
4 16 and 17?

5 MR. EUBANKS: Yes, your Honor.

6 HEARING EXAMINER DAVIS: It's granted.
7 Those will be stricken.

8 MR. EUBANKS: And finally, BT-9 I have
9 no objection to BT-9.

10 Your Honor, opposing counsel does raise
11 a point. I would request that the discussions
12 about -- that were necessary as a part of moving for
13 these motions to strike, that they also be stricken
14 from the record.

15 HEARING EXAMINER PRICE: He just waived
16 confidentiality. He just waived confidentiality.
17 What is the basis?

18 MR. EUBANKS: Both parties have to waive
19 confidentiality.

20 HEARING EXAMINER PRICE: It's his trade
21 secrets. It's his confidential business information.

22 MR. EUBANKS: But it's the
23 communications, the negotiation or discussions that
24 are confidential.

25 HEARING EXAMINER PRICE: They are not

1 admissible.

2 MR. EUBANKS: They are also
3 confidential. The back and forth is confidential.

4 HEARING EXAMINER PRICE: He just waived
5 it. It's only confidential if the confidential
6 business information or trade secrets of the various
7 numbers, none of which we actually discussed on the
8 record, that are in these documents.

9 He said he's waiving it. You're a
10 hundred percent correct, the confidence of settlement
11 negotiations are not admissible.

12 MR. EUBANKS: Okay, your Honor. I'm
13 sorry, did you rule on BT-8?

14 HEARING EXAMINER PRICE: He did.

15 HEARING EXAMINER DAVIS: Yes.

16 MR. EUBANKS: I also would like to have
17 stricken question and answer 32. It falls in the
18 same vein; talks about settlement discussion.

19 HEARING EXAMINER DAVIS: 32?

20 MR. EUBANKS: Yes.

21 HEARING EXAMINER PRICE: Well, on this
22 one isn't he saying not withstanding what we may have
23 agreed to in settlement negotiations, our position is
24 no? I mean, he's not prejudicing Staff by saying he
25 might have been willing to do something in settlement

1 negotiations but then no longer.

2 MR. EUBANKS: Well, what he is saying is
3 that the -- the question part of it says, "You
4 previously testified," so he's referring back to all
5 the things that have just now been stricken, "that
6 the Company was willing to agree to all proposed
7 corrective actions," so that's a part of negotiation
8 discussions, "except for re-rates."

9 HEARING EXAMINER PRICE: Keep reading.

10 MR. EUBANKS: "To the extent corrective
11 actions are now being presented as a recommendations
12 to the Commission, what is the Company's position?"
13 But --

14 HEARING EXAMINER PRICE: So it says the
15 Staff put into its recommendation some of the
16 provisions that were in the settlement negotiations,
17 have they now made them a formal recommendation to
18 the Commission?

19 MR. EUBANKS: Well, two things, your
20 Honor.

21 HEARING EXAMINER PRICE: Answer my
22 question first.

23 MR. EUBANKS: I don't want to answer
24 your question because in answering your question I
25 then have to then disclose what was in the settlement

1 discussion. So that's the problem with this
2 question.

3 HEARING EXAMINER PRICE: But he says to
4 the extent that. I think he's just making clear they
5 have not agreed to anything.

6 MR. EUBANKS: But it's the first part of
7 it, of the question. I know it's posted as a
8 question, but there is a statement in that question,
9 and it is stating -- it's referring back to all the
10 things that have been stricken, and it's saying as
11 you previously testified, you were willing to propose
12 to agree to all proposed corrective actions, except
13 re-rates, all that previous testimony --

14 HEARING EXAMINER PRICE: He's laying a
15 foundation for the question.

16 MR. EUBANKS: But that foundation no
17 longer exists because it's been stricken.

18 HEARING EXAMINER PRICE: Mr. Whitt, are
19 you willing to take out the first sentence of the
20 question?

21 MR. WHITT: It's sort of invited error
22 here, but I'll take out the first question if that
23 resolves it.

24 HEARING EXAMINER PRICE: First sentence?

25 MR. WHITT: First sentence, I'm sorry.

1 MR. EUBANKS: Well, even the first
2 sentence, it's --

3 HEARING EXAMINER PRICE: He took it out.

4 MR. EUBANKS: It talks about settlement
5 negotiations. I'm talking about of the answer.
6 There's really no reason for this question and
7 answer. It's quite apparent that they are
8 challenging our Staff Report.

9 HEARING EXAMINER PRICE: He's just
10 making clear what his position is.

11 MR. EUBANKS: The end of the first
12 sentence doesn't say we do not agree with the Staff
13 Report, it says we do not agree with settlement
14 negotiations.

15 HEARING EXAMINER PRICE: So? The
16 Commission agrees with each conclusion -- "The
17 Company disagrees with each conclusion and
18 recommendation, and," a new whole sentence segment,
19 "we are no longer willing to voluntarily undertake
20 any actions we may previously have agreed to in the
21 contract settlement negotiations."

22 MR. EUBANKS: Yes.

23 HEARING EXAMINER PRICE: There's no
24 disclosure in here of what the settlement
25 negotiations were, it's just saying they failed.

1 MR. WHITT: I would agree to take out
2 the last sentence beginning kind of in the middle of
3 line 26 through 28, if that --

4 MR. EUBANKS: That's actually the only
5 part that isn't objectionable.

6 MR. WHITT: If that keeps us moving.

7 HEARING EXAMINER PRICE: Keeps us
8 moving?

9 MR. EUBANKS: The Bench has made it's
10 really.

11 HEARING EXAMINER DAVIS: Just so I
12 understand, Mr. Eubanks, at minimum, the first
13 sentence starting at line 21 and ending in the middle
14 of line 22 is what you're objecting to?

15 MR. EUBANKS: For the record, I was
16 objecting to that and the first sentence, but I
17 believe he made a ruling on --

18 HEARING EXAMINER DAVIS: I just wanted
19 to make sure I understand it.

20 MR. EUBANKS: Okay. So to be clear on
21 my objection, my objection, yes, it's to the first
22 part of the sentence -- in the question part, the
23 first sentence in the question, and the first
24 sentence in the answer.

25 HEARING EXAMINER DAVIS: So it's granted

1 to the extent that it's the first half of the
2 question, strike that first sentence beginning on
3 line 21 and ending in the middle of line 22.

4 MR. EUBANKS: Okay. And I just have one
5 more and I'll be done.

6 Question 20, line 10 through 13. In
7 this the witness is speculating about the reasoning
8 behind the penalty in the Staff Report, basically
9 testifying on behalf of Staff.

10 He has no foundation to know why
11 Staff -- no reason to know what the reasoning is
12 behind the Staff Report other than what is in the
13 Staff Report. He can't testify on behalf of Staff.

14 MR. WHITT: Your Honor, we'll stipulate
15 that we are speculating as to the basis of the
16 recommended forfeiture. That's part of the problem.

17 And we are entitled to, in this instance
18 by necessity, have some belief as to the basis for
19 this unexplained amount, and the witness is just
20 giving his opinion. Certainly Staff is willing to
21 cross-examination him or show that he's wrong.

22 MR. EUBANKS: Counsel just admitted that
23 he is speculating. That alone sustains the
24 objection.

25 MR. WHITT: Well, if you're willing to

1 withdraw the recommended forfeiture, we'll stipulate
2 to that. Otherwise, again, as the Bench has
3 indicated, Staff has the burden of proof of
4 demonstrating the basis for this \$1.5 million
5 forfeiture that hasn't been provided, and for all the
6 Company knows, apparently this is to send some sort
7 of message. That's the Company's opinion, and it's
8 entitled to have an opinion in response to these
9 allegations.

10 HEARING EXAMINER PRICE: Just as an
11 aside, let's be clear, although it may not have been
12 provided in the Staff Report, Ms. Ramsey did testify
13 to 1.5 million, and that was after your testimony, so
14 I understand that, but she did give the basis; their
15 basis.

16 MR. WHITT: Belatedly.

17 MR. EUBANKS: Again, this witness has no
18 foundation upon which to reach a conclusion about why
19 Staff proposed 1.5 million, as admitted by his own
20 counsel, and therefore I ask for it to be -- the
21 testimony here to be stricken.

22 HEARING EXAMINER DAVIS: And you're just
23 saying the sentence starting on line 10 and ends on
24 13, is that right? Starting with, "The Staff
25 Report," ending with, "corrective action"?

1 MR. EUBANKS: Yes, your Honor.

2 HEARING EXAMINER DAVIS: Just wanted to
3 make sure. It's granted for that sentence. So
4 starting at the second word of line 10 and ending
5 four words into line 13, correct?

6 MR. EUBANKS: Thank you, your Honor.
7 Now I could move into questioning the witness?

8 HEARING EXAMINER PRICE: Let's go off
9 the record.

10 (Discussion off the record.)

11 HEARING EXAMINER DAVIS: Let's go back
12 on the record. We're prepared to entertain
13 cross-examination of Mr. Trombino. We'll start with
14 the Staff.

15 MR. EUBANKS: Yes, your Honor. Thank
16 you.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Eubanks:

20 Q. Good morning, sir.

21 A. Good morning.

22 Q. I'm just going to try to go in order
23 through your questions.

24 HEARING EXAMINER PRICE: Let's go off
25 the record.

1 (Discussion off the record.)

2 HEARING EXAMINER PRICE: Let's go back
3 on the record.

4 By Mr. Eubanks:

5 Q. If we would start at question and answer
6 3. I just wanted to know, is Utility Expense
7 Reduction, I believe, LLC, you said?

8 A. Yes.

9 Q. Was that also a certified gas and
10 electric supplier?

11 A. It was, yes.

12 Q. Okay. Did it operate in Ohio?

13 A. No.

14 Q. Okay. Is it still in existence?

15 A. As a company it's in existence, but it
16 doesn't do business.

17 Q. Okay. Did it stop in 2015?

18 A. No.

19 Q. Okay. When did it end?

20 A. I'm sorry?

21 Q. What date did that company cease, or
22 year?

23 A. I think roughly 2018.

24 Q. Okay. You go on to speak about RPA and
25 the different states that it is licensed as a -- to

1 supply electricity or natural gas, or both. Those
2 states that you list, would you know when RPA
3 began with a license in Pennsylvania, initially?

4 A. So we purchased the company in 2015. I
5 believe the company was formed in 2011. The only
6 license that it held was an electric license in
7 Pennsylvania. I don't know the exact date that the
8 electric license in Pennsylvania was granted to RPA
9 prior to my ownership.

10 Q. Okay. But it was already operating with
11 a license for electric in Pennsylvania when you
12 purchased it?

13 A. It had a license, it had no customers,
14 so essentially it was just a company with a license
15 to just serve electricity in PPL and PECO.

16 Q. From 2016 to the present, do they
17 operate in Pennsylvania with customers?

18 A. Yeah.

19 Q. Okay. And what about in Illinois, from
20 2016 to the present, did RPA operate as an electric
21 supplier?

22 A. Without having my records in front of me
23 I don't know the exact dates which we received
24 licenses in Illinois, Maryland, New Jersey, Delaware,
25 Michigan, and the District of Columbia.

1 Q. Okay. Do they all currently have
2 licenses?

3 A. Yes.

4 Q. And in -- do you know if in 2019 they
5 would have all had a license?

6 A. I don't want to misspeak. I want to say
7 yes, but I would want to confer, you know, but I
8 would believe so, yes.

9 Q. Okay. What about 2020, would you know
10 for sure whether or not all of them --

11 A. There's seven states plus the District
12 of Columbia here. I mean, without looking back I
13 wouldn't be able to tell you for a hundred percent
14 certainty, and I'd want to do that.

15 Q. Let me ask you this: It's now 2022. In
16 2021 did you apply for any license in any state for
17 RPA?

18 A. I think we did for Virginia, yes.

19 Q. Okay. But Virginia isn't listed as one
20 of the --

21 A. No.

22 Q. Okay. So for these, none of these would
23 have been applied for in 2021?

24 A. No, I don't think so.

25 Q. And would any of these have been applied

1 for in 2020?

2 A. Again, without having my exact
3 information in front of me, I want to be a hundred
4 percent accurate for you and I wouldn't be able to do
5 so without having --

6 Q. Would it have been more than one license
7 if you did?

8 A. I'm not sure I understand the question.

9 Q. I'm simply asking -- you seem to be
10 somewhat vague on whether or not you applied for a
11 license in 2020. I'm simply asking would you be more
12 sure that you didn't apply for two of them?

13 MR. WHITT: At this point I'll object to
14 the -- both the form of the question and the
15 mischaracterization of the witness' testimony which
16 has been described as vague. And in fact the witness
17 said what he would need to have to give one hundred
18 percent competent answers.

19 MR. EUBANKS: It's a different question,
20 your Honor. He might be somewhat vague as to whether
21 or not he applied for one in 2020, but he might be
22 sure that no, I didn't apply for two in 2020.

23 I'm just trying to be -- get as specific
24 information as I can out of the witness to the extent
25 that he can answer the question.

1 HEARING EXAMINER DAVIS: Mr. Whitt are
2 you objecting to --

3 MR. WHITT: I object to the question in
4 addition to what I said, that it's not Ohio, none of
5 these questions have been about Ohio, and with that
6 I'll move on.

7 HEARING EXAMINER DAVIS: Mr. Eubanks, to
8 the extent that you said that his answer is vague,
9 can you rephrase the question?

10 MR. EUBANKS: It's not that same -- I'll
11 ask the question again.

12 By Mr. Eubanks:

13 Q. Could you say that you are sure or not
14 that you did not -- that you did not apply for two
15 licenses for RPA in 2020?

16 A. Without having the information in front
17 of me, which I would be happy to go back and get that
18 information for you, I would not be able to say with
19 a hundred percent certainty the answer to your
20 question, not because I'm being evasive, just because
21 I want to be thorough.

22 Q. You say that your testimony -- moving on
23 to question and answer 4, you say it's -- your
24 testimony here today is to talk about sales process,
25 quality assurance functions, interactions with Staff,

1 and then your positions with regard to the Staff
2 Report recommendations.

3 I want to focus first on the quality
4 assurance functions. Specifically in light of your
5 question and answer in 5 where you say you employ 19
6 people, how many people are assigned to the quality
7 assurance division of RPA?

8 A. 11.

9 Q. And are any of them attorneys?

10 A. No.

11 Q. And are they assigned to specific
12 states?

13 A. No.

14 Q. So any one individual quality assurance
15 person could be reviewing the sales calls from any of
16 the states that you have listed for RPA?

17 A. Yes, that is correct.

18 Q. And so they are all trained in the laws
19 that relate to supplying electricity and natural gas
20 in all of the states you have listed where RPA
21 operates?

22 A. We work with specific counsel, like
23 Mark, in each of the states that we operate in. Our
24 contracts are reviewed by counsel, our scripts are
25 reviewed by counsel, our policies and procedures with

1 our staff members are reviewed by counsel. So yes,
2 our team is trained on what it is we're looking for.

3 Q. And just to be clear, in all of the
4 states that you have listed, there including the
5 District of Columbia?

6 A. Yes.

7 Q. You stated that they are not attorneys.
8 What would be their educational background?

9 A. I'm not sure I understand what you mean
10 by the question.

11 Q. You don't know the educational
12 backgrounds of the people you hired to be in your
13 quality assurance division?

14 A. They are educated individuals like those
15 of us who are not attorneys in this room today.

16 Q. Are they educated in utilities? Do they
17 have a degree that relates to utilities?

18 A. I'm not aware of one.

19 Q. Do they have background in utilities law
20 or utilities practice?

21 A. Some of them have backgrounds in being
22 in the industry for a very long time, yes.

23 Q. And some don't?

24 A. Some of the folks that we bring on, we
25 like to train from the ground up so that there are

1 no, you know -- we like to train them from the ground
2 up and have some control over some of the folks that
3 are doing some of the different functions that fall
4 within our quality compliance, like a welcome call
5 or --

6 Q. And you mentioned that they all review
7 all the states. Can I ask you a question? Why
8 wouldn't you have certain members, certain employees,
9 specialize in particular states?

10 MR. WHITT: Objection, relevance.

11 MR. EUBANKS: Your Honor, it's relevant
12 because the issue here is -- one of the issues is
13 whether or not they have done a good job in their
14 compliance section, in their quality assurance
15 section, whether or not it's set up properly to
16 handle the review of calls in all these states. So
17 I'm just simply asking a question that pertains to
18 that.

19 MR. WHITT: The very question implies
20 there's some requirement that retail suppliers have
21 to ring-fence individual employees of individual
22 states, which is not something even regulated
23 electric utilities or their holding companies are
24 required to do.

25 MR. EUBANKS: I would agree, there's no

1 requirement.

2 HEARING OFFICER DAVIS: It seems like
3 you're just asking how HE organizes his people and
4 how the structure of his QA division works, and I
5 think that's -- it's overruled, I think it's a fair
6 question. You can answer it to the extent that you
7 can.

8 THE WITNESS: Would you mind asking it
9 again just so we can --

10 By Mr. Eubanks:

11 Q. Yes. I was just simply wondering why
12 you wouldn't have -- I mean, you have 11 people, you
13 have one, two, three, four, five, six -- seven
14 states.

15 Rather than have all 11 have to be
16 familiar with all the laws in all seven of the
17 different states or districts, why not have one
18 individual or two individuals that specialize in
19 these particular different areas?

20 A. We feel it's important to cross train
21 our employees. We don't have an unlimited amount of
22 resources, and what representatives are able to -- if
23 a representative is able to work in all the different
24 states, we feel it potentially gives them a leg up.

25 Q. You will admit that the laws are

1 different in the different states and districts,
2 correct?

3 A. Yes.

4 Q. Do you know how different the laws are?

5 MR. WHITT: I'll object to that.

6 THE WITNESS: I'm not an attorney.

7 MR. WHITT: When I object, silence.

8 Objection. He answered.

9 MR. EUBANKS: Can I have you read the
10 answer back?

11 (Answer read back.)

12 By Mr. Eubanks:

13 Q. So is your answer to me then, no, you
14 don't know how different the laws are in the
15 different states?

16 A. I know that the laws in different states
17 are different. Would you like -- I mean, if you'd
18 like to give me an example specifically, I can maybe
19 try to answer your question.

20 Q. I'll give you an example. One of the
21 issues in this case was how quickly the contract has
22 to be supplied to the -- to the consumer who signs up
23 with RPA in Ohio. Do you know how quickly that has
24 to occur in Ohio?

25 A. I believe we have to send those in one

1 business day.

2 Q. Okay. That is correct. Is that the
3 same in all states, or at least in the states that
4 you list where RPA operates?

5 A. We have a document that kind of outlines
6 a lot of the different stuff, so I'd want to refer to
7 that. I don't want to speak off-the-cuff about rules
8 and requirements in other states. We have a team of
9 people that oversee that kind of stuff.

10 Q. Is the team of people those 11 people
11 that you were talking about?

12 A. Yes.

13 Q. Okay. And is the answer to your
14 question then -- to my question to you then, you
15 don't know?

16 MR. WHITT: Objection. I'm not sure
17 what question is pending.

18 By Mr. Eubanks:

19 Q. The question that I asked you, it was a
20 simple question. Do you know whether or not the
21 one-day rule for submitting contracts back to
22 consumers is a law that exists -- is the same way in
23 all the states and their districts where RPA
24 operates?

25 HEARING EXAMINER PRICE: What is the

1 relevance of this question to this proceeding?

2 MR. EUBANKS: Your Honor, once again, it
3 goes to quality assurance and the way they have their
4 quality assurance --

5 HEARING EXAMINER PRICE: What we care
6 about is him complying with Ohio laws, and you
7 quizzed him on his knowledge of this and he correctly
8 answered your question. You acknowledged he was
9 correct. What -- the difference what the state is in
10 Pennsylvania, we're not here to enforce Pennsylvania
11 rules.

12 MR. EUBANKS: Well, I guess that would
13 be arguing my case, but the relevance is if you have
14 11 people and they are all reviewing calls that come
15 in from seven different states and/or districts, that
16 all have different rules, and they are reviewing the
17 calls to see if they comply with the law, how are
18 they doing that? They are not attorneys, okay?

19 One call comes in from New Jersey, I'm
20 going to see if that complies with New Jersey law,
21 next call comes in from Ohio, see if that applies
22 with Ohio's laws. The point is if he doesn't know
23 that the laws are different in the different states,
24 then that's a problem.

25 MR. WHITT: Your Honor, I thought there

1 was a Staff Report filed in this case where the Staff
2 looked at the Company's operations over a six-month
3 period, did a deep dive, or at least some sample of
4 what they were doing.

5 Out of 14,000 enrollments there is like
6 these 16 contacts or whatever that are investigated.
7 The Staff has investigated the extent to which the
8 Company complies with Ohio regulations or not. What
9 the president of the Company who doesn't -- isn't
10 necessarily personally involved in all of these
11 matters --

12 HEARING EXAMINER PRICE: Is this a
13 recommendation in the Staff Report, that they have
14 people assigned to individual states?

15 MR. EUBANKS: It's a recommendation
16 in the Staff Report that they accurately --

17 HEARING EXAMINER PRICE: That's not what
18 I asked. I said is there a recommendation in the
19 Staff Report that they have people assigned to
20 individual states?

21 MR. EUBANKS: No, your Honor. The
22 recommendation is that they conduct their operations
23 in a rational way that would allow them to review
24 their sales calls and make sure that they are in
25 compliance --

1 HEARING EXAMINER PRICE: Are you aware
2 of any case where the Staff has denied certification
3 of a CRES or CRNGS provider because their quality
4 assurance people were not organized by state?

5 MR. EUBANKS: No, your Honor.

6 HEARING EXAMINER PRICE: I think we
7 should move on.

8 By Mr. Eubanks:

9 Q. You mentioned that part of the -- first
10 of all, is it not your testimony -- well, I take that
11 back.

12 You have just recently testified that
13 you have scripts for -- for Ohio and all the states
14 in which RPA operates in, correct?

15 A. Yes.

16 Q. TPV scripts?

17 A. TPV scripts.

18 Q. Sales call scripts?

19 A. Sale calls scripts.

20 Q. Door to door scripts?

21 A. Yes.

22 Q. Okay. And you stated that those are
23 partly draft -- or you seek help from counsel when
24 you're drafting those scripts, correct?

25 A. We want to make sure that our scripts

1 comply with the guidelines set forth by Ohio, yes.

2 HEARING EXAMINER PRICE: The other day
3 at the hearing your counsel seemed to imply that
4 scripts were merely advisory rather than something
5 that should be strictly followed. Do you require
6 your personnel to strictly follow the scripts that
7 are prepared?

8 THE WITNESS: Well, there's two separate
9 scripts. There's a TPV script, which is an
10 automated -- it can't be changed essentially. Then
11 there's the sales script.

12 Every interaction that anybody has with
13 any individual at any time is going to be different
14 just naturally. So from a sales perspective it's --
15 it's a baseline, if you will, and then from a TPV
16 perspective, that doesn't change because it's through
17 a system.

18 HEARING EXAMINER PRICE: So with respect
19 to sales calls, the answer to my question would be
20 no, you do not require your personnel to strictly
21 follow the script?

22 THE WITNESS: We want them to stay as
23 close to the script as the natural call will allow
24 them to, I think is the best way to put it.

25 HEARING EXAMINER PRICE: So they should

1 not be introducing new information that's not in the
2 script, they should just be trying to guide people
3 back to the script?

4 THE WITNESS: We have to answer the
5 questions that are asked. If a customer asks a
6 question, we have to answer it. So, you know, that
7 interaction changes each time.

8 I can't speak to every interaction
9 that's ever happened, but I can say that if a
10 customer decides to move forward, the information in
11 the third-party verification script is consistent
12 because it's a third party, so it's a script that
13 isn't going to change. If I didn't answer your
14 question, I'm sorry.

15 HEARING EXAMINER PRICE: That answered
16 my question, that's fine. You may proceed,
17 Mr. Eubanks.

18 By Mr. Eubanks:

19 Q. So I believe you are saying they are
20 required to follow the TPV script?

21 A. The TPV script is not something that an
22 agent would need to follow because it's done by a
23 third party, so it would be -- that TPV script is
24 sort of, I guess, hard coded and approved by us and
25 counsel.

1 Q. And after it's approved by you and
2 counsel, you expect the third party to follow the TPV
3 script?

4 A. Yes.

5 Q. Okay. Were you here during Barbara
6 Bossart's direct examination and cross-examination?

7 A. I was.

8 Q. And you're aware that one of the issues
9 with -- that she raised was that she was told that
10 she was going to receive the contract -- her contract
11 back, but it wasn't within one day, it was something
12 more than one day?

13 I can't remember the exact amount of
14 time, but it did not say that she would receive her
15 contract back within one day. Do you remember that
16 testimony?

17 A. There was a lot going on that day. I'll
18 take your word for it.

19 Q. But you do remember responding to
20 Barbara Bossart when that was brought up, not to you,
21 but when her case was brought up to you, and the
22 issue of her not receiving her contract back in a day
23 was brought up to you, do you remember your response?

24 A. Well, was it brought up to -- maybe --
25 is there something you could show me or point to me?

1 Is this a response from Ms. Ramsey? Is this an
2 informal complaint that was sent over to my staff?

3 Q. Well, first, if the answer to my
4 question is you don't know or you don't remember,
5 then I guess that's fine, but --

6 A. I'm sorry, why don't you repeat the
7 question and let me try again.

8 Q. Okay. And I'll try to refresh your
9 memory, and if this doesn't -- do you remember being
10 presented with the issue from Barbara Bossart that --
11 that when she went through the TPV they did not say
12 that she would get her contract back within a day,
13 and then as a response to that you decided to -- hey,
14 yes, I see that's an issue, we'll change our TPV in
15 order to make sure that it reflects that a contract
16 must be supplied back within a day?

17 A. My memory could be off, but wasn't the
18 contract sent immediately in that case with a text
19 message or --

20 Q. She did not receive the contract back
21 within a day.

22 MR. WHITT: Objection.

23 MR. EUBANKS: If you're asking me. He's
24 asking me a question.

25 MR. WHITT: Well, you're not allowed to

1 misrepresent the record.

2 By Mr. Eubanks:

3 Q. I'm sorry. Again, the issue is not when
4 she received it back, I want you to focus on the
5 question I'm asking. The TPV did not tell her that
6 she would receive it back within a day?

7 MR. WHITT: I'll further object because
8 the question is now misstating the law. The rules do
9 not say the customer has to receive the contract in a
10 business day, it says the supplier is to send it
11 within a day. And so if they mail it out and they
12 are telling people you might receive it within five
13 days, that's not a violation of anything.

14 Moreover, Ms. Bossart testified she got
15 the contract that day by text, which is another thing
16 that they are complaining about, is that they
17 received it by text rather than by snail mail.

18 By Mr. Eubanks:

19 Q. Again, I am not making a legal argument,
20 I'm simply asking whether or not he remembers the
21 case of Ms. Bossart and what she presented as an
22 issue to you, that the TPV did not state that she
23 would receive a contract back within a day. Do you
24 remember that issue being presented to you?

25 A. Sitting here today, from over a

1 year-and-a-half -- almost a year-and-a-half ago, and
2 all of the conversations that we had with Staff and
3 yourself over a year long, I don't remember that
4 specific issue.

5 If the issue was raised and then we
6 looked into it and resolved it, that is our staff
7 working with Commission Staff to rectify an issue.
8 But I can't speak to that directly.

9 Q. Okay. And so you therefore also
10 wouldn't remember making a correction to your TPV
11 script to then include the fact that contracts would
12 be provided within a day?

13 A. Again, I have staff that would work with
14 Mr. Whitt to make necessary changes if something was
15 found to be in correct.

16 Q. Okay. And is it fair to presume that if
17 a change was made, then that necessarily means
18 before, it stated something different?

19 MR. WHITT: I'll object because now
20 we're getting into an area where, you know, we had
21 this long discussion about settlement negotiations
22 before, now this is basically the sort of subsequent
23 remedial measures arguments that if you change
24 something that must mean you were doing something
25 wrong before, and that's improper.

1 MR. EUBANKS: Your Honor, that is not
2 what I'm stating. I'm simply asking him if he
3 changed the wording in the script, is it fair to
4 assume that the wording was different before.

5 MR. WHITT: We'll stipulate that it was.

6 MR. EUBANKS: Okay. That's fine with
7 me.

8 By Mr. Eubanks:

9 Q. How do you -- how does quality assurance
10 track the performance of door-to-door marketers?

11 A. What do you mean by track?

12 Q. How do you make sure that they are
13 complying with the law?

14 A. Our door-to-door uses a geolocation type
15 of tool so we know if the agent is at a specific
16 customer's address.

17 We make welcome calls to each and every
18 customer regardless of whether it was a telemarketing
19 enrollment, or a door-to-door enrollment, to talk to
20 the customer, just like Ms. Bossart received a
21 welcome call to confirm any questions that she would
22 have had, and also giving her the ability to cancel
23 her enrollment. We give that opportunity to every
24 customer.

25 Q. You're saying that all your welcome

1 calls give every customer the chance to opt out of
2 their contract?

3 A. If we're speaking to a customer, they
4 have the ability during that call to say you know
5 what? I've changed my mind, I no longer want to move
6 forward with this arrangement, and we will cancel
7 their contract.

8 Q. Is there a welcome call script?

9 A. Yeah, I believe we do have a welcome
10 call script.

11 Q. Does the welcome call script state --
12 have the person who is calling from RPA state to the
13 customer that if they wish to, they can get out of
14 their contract? Is that a part of the script?

15 A. I don't think it's part of the script,
16 but I think that if a customer had questions or
17 concerns or felt uncomfortable in any way, those
18 questions or concerns would be made clear, and if a
19 customer flat out says I wish not to be enrolled, we
20 would honor the customer's desire to not be enrolled.

21 Q. Okay. So you wait for the customer to
22 raise a concern?

23 A. We make a call to a customer that's not
24 required. We do that because we want to make sure
25 that customers who are enrolled want to be enrolled.

1 We welcome them on board. We ask do you have any
2 questions about your enrollment, and a conversation
3 is had, very similar to the conversation that
4 Ms. Bossart had with one of our representatives.

5 Q. Were the vendors required to use
6 door-to-door scripts by the way?

7 MR. WHITT: Object. Object and ask for
8 clarification. Required by who?

9 By Mr. Eubanks:

10 Q. I think you mentioned that there were
11 door-to-door -- I'll withdraw the question and -- I
12 think you mentioned that there were door-to-door
13 marketing scripts, is that correct, or that there
14 are?

15 A. We have, from a sales perspective,
16 scripts that we would like our agents to follow given
17 the interaction with the customer.

18 Q. But there's no real way for you to
19 monitor whether that they follow those scripts,
20 correct?

21 A. I think that the conversations during
22 the welcome call would give us the understanding if
23 something was drastically different, if that makes
24 sense.

25 Q. Is one of the questions in the welcome

1 call --

2 A. One of the purposes of the welcome call

3 --

4 Q. Can I finish my question?

5 A. Sure. Sorry.

6 Q. Is one of the questions in the welcome
7 call whether or not the door-to-door salesperson
8 asked the following questions of you?

9 MR. WHITT: I'll object at this point.
10 I don't know that a foundation has been established
11 for this particular witness to talk about the details
12 of any script, whatever script Staff is talking
13 about.

14 MR. EUBANKS: He testified about a
15 script.

16 MR. WHITT: That he knows about scripts.
17 Now you're asking him a detailed question about
18 specific language in specific scripts.

19 MR. EUBANKS: His testimony says he's
20 here to talk about quality assurance. He defined the
21 realm of these questions in his own testimony.

22 HEARING EXAMINER DAVIS: He can answer
23 to the extent that he knows about the scripts.

24 THE WITNESS: I know that we have
25 scripts. We'd be happy to provide them. I know that

1 they are not required, and I know that we do them as
2 an extra precaution.

3 By Mr. Eubanks:

4 Q. So you got these quality assurance
5 personnel, 11 of them. They are receiving calls and
6 some of them are coming in from Ohio. They are
7 reviewing sales calls and they get to the point where
8 they are reviewing the TPV.

9 When they get to that point do they take
10 out a physical copy of Ohio's TPV and -- to see
11 whether or not the TPV that they are listening to is
12 in compliance with the TPV script?

13 A. As I testified earlier, our counsel,
14 Mr. Whitt, reviewed our TPV scripts, and in his
15 interpretation of the law approved the script for
16 use. Once that happens we send it to our third
17 party, whether it be Trusted TPV or TPV.com, to use
18 on our behalf.

19 Q. I guess I'm specifically referring to
20 the part of your testimony in which you say that you
21 review all calls that lead to a sale. Do you
22 remember that part of your testimony?

23 MR. WHITT: I object. The question
24 implies that the witness is claiming personal
25 knowledge that he is the one who reviews all calls.

1 That's not the testimony.

2 He's the president of a company that has
3 11 quality assurance people who perform these
4 functions. He can certainly answer general questions
5 about it, but asking him to get into the weeds is a
6 little bit unfair, especially since there's a
7 question about scripts or anything else that's been
8 provided to Staff, then it can be shown to the
9 witness, then I'm sure he'll be happy to answer
10 questions about it.

11 MR. EUBANKS: In his testimony the
12 witness describes the process that they go through
13 when they are reviewing sales calls, TPV calls, and
14 one part of that process is that if -- according to
15 his testimony, is if it leads to a sale, they then
16 review the call, and all I'm asking him a question
17 about is how they go about doing that.

18 HEARING EXAMINER DAVIS: So can you
19 repeat the question that you just asked him to which
20 Mr. Whitt objected?

21 MR. EUBANKS: Yes.

22 By Mr. Eubanks:

23 Q. So again, you have these 11 employees,
24 you got vendors who are doing calls of how to get
25 customers for RPA. Some of those are successful,

1 people sign up.

2 Your quality assurance then, based off
3 of your testimony, reviews the ones that were
4 successful, the sales calls and TPVs.

5 When they are reviewing the TPV, your
6 personnel, how do they review it? Is the way that
7 they review it by listening to the call and also
8 having in hand the TPV for Ohio to see if the call
9 matches up to the script?

10 HEARING EXAMINER DAVIS: Mr. Whitt, you
11 objected on grounds that he may not necessarily know
12 the particulars how that's executed; is that a fair
13 characterization?

14 MR. WHITT: I'll withdraw my objection
15 and let the witness attempt to answer.

16 HEARING EXAMINER DAVIS: Okay.

17 THE WITNESS: The script is a fixed
18 script, it doesn't change. Our staff has listened to
19 that script over and over and over again. They know
20 it.

21 So I'm not exactly sure what you're
22 insinuating, but what -- I guess the point would be
23 the script was approved by our counsel, it's being
24 listened to by our staff to make sure that the
25 customers are agreeing to the 12 minutes, or however

1 long that recording is, to make sure that they
2 understand and they are agreeing to the terms within
3 that TPV, I think is the best way for me to put it.
4 By Mr. Eubanks:

5 Q. And all I'm asking is as an aide, are
6 they using the TPV script in order to determine
7 whether or not the TPV that they are listening to is
8 in compliance with Ohio law?

9 A. Are you suggesting that they -- at the
10 same time as listening to the script, they are taking
11 a look at the Ohio law and matching it up?

12 Q. The Ohio TPV.

13 A. The Ohio TPV. At the same time that
14 they are listening to the Ohio TPV, they are looking
15 at the statute and matching it up, is that what
16 you're suggesting?

17 Q. No, they are looking at your TPV script.

18 A. I'm sure that in the beginning for a new
19 agent they do that, but after the agent has listened
20 to as many calls as they have listened to, there
21 would be no reason because it wouldn't change.

22 Q. Wouldn't one reason be that they might
23 be confused between the different states that they
24 are listening to?

25 MR. WHITT: Objection, calls for

1 speculation.

2 THE WITNESS: No.

3 By Mr. Eubanks:

4 Q. No? Okay.

5 HEARING EXAMINER DAVIS: Sorry,
6 Mr. Trombino, just in the future when they object,
7 give me a minute to --

8 MR. WHITT: If you're not going to
9 listen to me, listen to him.

10 HEARING EXAMINER DAVIS: If you would
11 remember counsel is objecting, please give him his
12 word there and let me have a chance.

13 THE WITNESS: Sorry.

14 By Mr. Eubanks:

15 Q. You state in your testimony that you use
16 experienced vendors. What do you mean by that?

17 A. Vendors that have -- we have worked with
18 in the past, or vendors that work in the market
19 currently.

20 HEARING EXAMINER PRICE: Do you do a
21 background check on the vendors before you hire them?

22 THE WITNESS: So we do -- so each and
23 every single representative that goes door-to-door
24 for us, every single one of them has a background
25 check that gets done.

1 HEARING EXAMINER PRICE: I was
2 imprecise. Do you do a background check of the
3 vendor who you're hiring, not the employees they are
4 hiring, but the vendor themselves, to check their
5 references?

6 THE WITNESS: Yes. Yes. When you say
7 background check --

8 HEARING EXAMINER PRICE: You're thinking
9 criminal background check.

10 THE WITNESS: -- I'm thinking the actual
11 background check.

12 HEARING EXAMINER PRICE: I'm saying do
13 you look into the background --

14 THE WITNESS: Yeah, well, our sales
15 department, you know, is looking to talk to folks
16 that these -- companies that these folks have worked
17 with and, you know, all that kind of stuff from a
18 vetting process, yes.

19 HEARING EXAMINER PRICE: Your contracts
20 with vendors, do they contain incentives based upon
21 the amount of sales for the vendors?

22 THE WITNESS: We're a commission driven
23 business so, you know, the -- they get paid for
24 producing a verified -- verified I mean, you know,
25 pass QA, a verified enrollment.

1 HEARING EXAMINER PRICE: So yes, there's
2 a financial incentive, the more enrollments the more
3 vendors get paid?

4 THE WITNESS: It's the only way they get
5 paid.

6 HEARING EXAMINER PRICE: Do you have
7 penalties built into the contract for failure to
8 comply with state rules?

9 THE WITNESS: Well, we could terminate
10 the contract obviously for failure to comply. And
11 then I think --

12 HEARING EXAMINER PRICE: Do you have
13 financial penalties built into them?

14 THE WITNESS: Through the normal means,
15 litigation, such like that.

16 HEARING EXAMINER PRICE: So there's no
17 specific liquidated damages penalty clauses in there
18 for failure to comply?

19 THE WITNESS: We make sure that
20 everybody has insurance. We don't have a formula or
21 a calculation tied to liquidated damages, we'd have
22 to understand what the damages were and then look to
23 go after them through the normal means of litigation.

24 HEARING EXAMINER PRICE: Thank you.
25 Mr. Eubanks.

1 By Mr. Eubanks:

2 Q. Did you fire any of the vendors that you
3 used in Ohio related to this matter?

4 MR. WHITT: I'll object and just ask for
5 clarification, which matter? We have talked about
6 literally 20 of them in the Staff Report.

7 By Mr. Eubanks:

8 Q. I'm talking about this case.

9 A. Yes.

10 Q. Which vendors did you fire?

11 A. Specifically the vendor that called
12 Ms. Bossart.

13 Q. Do you know the name of the vendor?

14 A. I believe it was MBM Telemarketing or
15 HiTech, I'm not sure exactly.

16 Q. Fire any other vendors?

17 A. I don't know off the top of my head
18 right now. Vendors -- I'm sorry.

19 HEARING EXAMINER PRICE: Finish what you
20 were saying, please.

21 THE WITNESS: Vendors come in and out
22 based on different -- you know, we stopped marketing
23 in Ohio in June of '21, so effectively we fired them
24 from marketing in Ohio, if that answers your
25 question.

1 HEARING EXAMINER PRICE: You're not
2 currently using any vendors operating in Ohio?

3 THE WITNESS: That is correct, yes.

4 HEARING EXAMINER PRICE: I'm sorry. You
5 were in the hearing room when we played a telephone
6 verification for a consumer that came and testified
7 before us?

8 THE WITNESS: I was here, yes.

9 HEARING EXAMINER PRICE: And you
10 listened to that telephone verification?

11 THE WITNESS: I did.

12 HEARING EXAMINER PRICE: You were not
13 happy?

14 THE WITNESS: I was not happy?

15 HEARING EXAMINER PRICE: You were
16 unhappy hearing what you heard, weren't you?

17 THE WITNESS: I don't know if I --

18 HEARING EXAMINER PRICE: Well, your
19 counsel stipulated the voice was different on the --

20 THE WITNESS: Which are you --

21 HEARING EXAMINER PRICE: Mr. Beauregard.

22 THE WITNESS: Yeah, so --

23 HEARING EXAMINER PRICE: The person who
24 was here.

25 THE WITNESS: I know we listened to

1 another one as well. So your question was, was I
2 unhappy with the fact that it -- Yes, of course.

3 HEARING EXAMINER PRICE: So did you then
4 investigate which vendor was involved in that
5 transaction, or have you already?

6 THE WITNESS: I'm sure we have. As soon
7 as it was brought to our attention -- I'm not
8 aware --

9 MR. EUBANKS: I object to the answer
10 because --

11 MR. WHITT: To his question?

12 MR. EUBANKS: No, not to the question,
13 but his answer. He said I'm sure we have. Now,
14 either he knows or doesn't know.

15 MR. WHITT: Your call center records
16 confirmed that they did fire the vendor, so you might
17 want to start looking there.

18 MR. EUBANKS: Stop. He's been asked a
19 direct question, he should be able to give it --

20 HEARING EXAMINER PRICE: Let him finish
21 giving an answer and then if I have need for
22 followup, or if you want to followup up, you may, but
23 let him answer the question and then you can ask him
24 another question.

25 THE WITNESS: Your Honor, I apologize,

1 but we -- the objection sort of took me off my train
2 of thought.

3 HEARING EXAMINER PRICE: One of the
4 questions I posed to you was after the hearing last
5 week did you pose to your staff the question of
6 whether you had fired that particular vendor that had
7 those -- it was the sales rep in the TPV we listened
8 to with Mr. Beauregard?

9 THE WITNESS: After the last session
10 I -- so we kind of try to take care of things as they
11 come up, right?

12 So if -- if this was brought to us
13 through an informal complaint, then actions were
14 taken based on the information that we received
15 through the informal complaint process, which is --
16 which is the process working, right?

17 So the only thing we did do after that
18 was rechecked to see if Ms. Bossart's phone number
19 was actually on the DNC, and it wasn't, it was added
20 a month after the phone call from her, but we didn't
21 check specifically about the customer that you're
22 asking about.

23 HEARING EXAMINER PRICE: Thank you.

24 By Mr. Eubanks:

25 Q. You mentioned MBM and that was the

1 vendor in relation to Ms. Bossart's matter -- issues.

2 I believe you said that you fired them?

3 A. They had two separate arms, a
4 telemarketing arm and a door-to-door arm, so we
5 terminated the telemarketing aspect.

6 Q. But you kept them for door-to-door?

7 A. Well, they were using a separate
8 company, I guess, for the telemarketing, so it's not
9 the same.

10 Q. So MBM --

11 A. I believe they were two separate
12 contracts, two separate companies.

13 Q. So you don't know if MBM was used for
14 door-to-door?

15 A. MBM did door-to-door.

16 Q. Were they fired by RPA for their
17 door-to-door service?

18 A. I can't recall.

19 Q. Okay. Is MBM used by RPA in other
20 states?

21 A. I believe they have been, but I don't --
22 again, I don't want to answer without being a hundred
23 percent certain.

24 Q. Are they currently being used by RPA in
25 other states?

1 A. I don't know.

2 Q. And when you say MBM was fired, was that
3 because you stopped doing door-to-door -- I mean,
4 stopped doing marketing -- telemarketing in 2021, is
5 that why they were fired?

6 A. We took Ms. Bossart's claim as extremely
7 serious, as we responded to Ms. Ramsey's request to
8 us on the very same day, and we, instead of, you
9 know -- instead of doing nothing, we took immediate
10 action to stop that specific marketer from making
11 phone calls on our behalf, and we returned the
12 customers that were called by that vendor back to the
13 utility. You know, I mean, what -- that's what we
14 did.

15 Q. Is that a standard practice of RPA, or
16 did RPA only do that because it was Mrs. Bossart?

17 A. Is what a standard practice?

18 Q. Is it a standard practice that if RPA
19 finds that a vendor is doing misleading or deceptive
20 practices, that you immediately fire them?

21 A. If a vendor is doing -- I think it
22 depends on what it is. I think if there's a training
23 opportunity and we're able to train a little better,
24 there are many calibration calls that we have with
25 these marketers week in and week out, and it's

1 something small, we can train on it.

2 If it's something like this, instead of
3 training we took immediate action because we thought
4 it was the right thing to do, and I still today think
5 it was the right thing to do, because we don't
6 condone that behavior, nor do we direct any of that
7 behavior. We're here to follow the rules --

8 MR. EUBANKS: Your Honor, I now
9 strike --

10 HEARING EXAMINER PRICE: Let him finish
11 his answer, then you can move to strike.

12 THE WITNESS: We're here to follow the
13 rules of Ohio. Thank you. Sorry.

14 MR. EUBANKS: Could you repeat the
15 question back, please, just the question portion?

16 (Question read back.)

17 MR. EUBANKS: I ask for the entire
18 answer to be stricken.

19 HEARING EXAMINER PRICE: Read the
20 answer.

21 (Answer read back.)

22 HEARING EXAMINER DAVIS: Grounds?

23 MR. EUBANKS: I'll just follow up with a
24 question, your Honor.

25 By Mr. Eubanks:

1 Q. I believe your testimony so far has been
2 that you can only recall one vendor that has been
3 fired and that was MBM; is that correct?

4 MR. WHITT: Objection. Mischaracterizes
5 his testimony.

6 MR. EUBANKS: He can say no if I
7 mischaracterized.

8 HEARING EXAMINER DAVIS: The objection
9 is sustained. Can you rephrase that question?
10 By Mr. Eubanks:

11 Q. Is it your testimony that -- well, I'll
12 just ask the question I've already asked before over
13 again. Do you recall any vendors that have been
14 fired by RPA?

15 A. It's a very broad question. We stopped
16 working with vendors for specific reasons; production
17 and such. Sitting here today, I don't -- I don't
18 know specific names of vendors that we have
19 terminated, specifically, sitting here right now
20 today.

21 Q. Do you know any names of any vendors you
22 terminated with regards to compliance issues?

23 MR. WHITT: I'll further object. You
24 know, again, this is a subject area that is in the
25 correspondence that Staff insisted had to be stricken

1 out of the record when all this is asked in realtime,
2 and the answer is given to Staff.

3 Now it's thrown out of the record and we
4 want to put the gentleman to a memory test. It's
5 extraordinarily unfair under any circumstances, and
6 even more so in light of the previous rulings on the
7 motions to strike.

8 MR. EUBANKS: Again, he's here to
9 testify about quality assurance. It is a more than
10 fair question to ask how they follow up with their
11 vendors after they found that their vendors have
12 operated out of compliance with Ohio laws.

13 And so this question again is, do you
14 recall any vendors that you have fired or terminated
15 a contract with because that vendor did not comply
16 with Ohio laws.

17 HEARING EXAMINER DAVIS: So, Mr. Whitt,
18 are you objecting?

19 MR. WHITT: Same objection.

20 HEARING EXAMINER DAVIS: Are you
21 objecting on a subsequent remedial action basis?

22 MR. WHITT: It's not only that, it's a
23 mischaracterization of witness' previous testimony,
24 and --

25 HEARING EXAMINER DAVIS: In what

1 respect?

2 MR. WHITT: Well, when he was asked a
3 question what do you do in response to bad behavior,
4 essentially was the question, and he gave his answer
5 and counsel didn't like it so they moved to strike
6 it, and now he's just trying to reask the same
7 question that the witness has answered, but trying to
8 launder it in a way to get him to agree to things
9 that he has not testified to previously.

10 MR. EUBANKS: To be clear, I haven't
11 asked him to agree to anything. It's a simple
12 question. Does he recall any vendors that RPA has
13 fired because of vendor's noncompliance with Ohio
14 laws.

15 MR. WHITT: Besides the one that was
16 called -- that called Ms. Bossart? He testified to
17 that one.

18 MR. EUBANKS: That's my question to the
19 witness.

20 HEARING EXAMINER DAVIS: He can answer,
21 I mean, to the extent that he's aware if that's
22 happened.

23 THE WITNESS: Sitting here today, with
24 the knowledge that I have, without having discussions
25 with internal staff, the one that I'm aware of is the

1 one regarding Mrs. Bossart -- Ms. Bossart.

2 By Mr. Eubanks:

3 Q. Do you know when that contract was
4 terminated?

5 A. I'm sure immediately after we were
6 notified the call was made and the contract was
7 terminated.

8 Q. Does RPA's quality assurance have any
9 review of sales calls or TPVs -- I'm going to
10 rephrase that question.

11 Does RPA review sales calls in order to
12 see whether or not they have been altered in any way?

13 A. We would really have no reason to do so,
14 but we do try to listen to see if there's anything
15 that doesn't sound right during a sales call.

16 We really record the sales calls for
17 ourselves, right? Like it's not required by Ohio.
18 We do it for ourselves, you know. We review the
19 sales call, we review the TPV, we make the welcome
20 call, you know, we try to go above and beyond.

21 MR. EUBANKS: I'm sorry, my memory is
22 bad this morning. Could you read back my question?

23 (Question read back.)

24 By Mr. Eubanks:

25 Q. I don't believe you answered the

1 question. I'm going to ask is it a different way.

2 Do you do any forensic analysis on sales calls?

3 A. We do not.

4 Q. Do you do any forensic analysis on TPVs?

5 A. No, we do not.

6 Q. Are you aware that that's -- that that
7 could be an issue when it comes to sales calls?

8 MR. WHITT: Objection. I'm not sure
9 what he means by could be an issue, if he's implying
10 some legal requirement and suggest the Company has
11 violated some requirement relative to forensic
12 analysis.

13 MR. EUBANKS: No, it's a simple
14 question. Actually I want to ask it again because I
15 just want to -- I'm going to ask another question.

16 HEARING EXAMINER DAVIS: Okay.

17 By Mr. Eubanks:

18 Q. When reviewing sales calls do you have
19 any concern at all that the sales call could have
20 been altered in some way?

21 A. I don't review the sales calls. We have
22 a team of people that review the sales calls. I
23 can't speak for them.

24 Q. But you can speak for the Company, isn't
25 that correct?

1 A. Sure.

2 Q. So does RPA as a company, is it
3 concerned about any possibility of sales calls being
4 altered?

5 A. If a sales call was altered it wasn't
6 done by us, and that would be a concern.

7 Q. Okay.

8 HEARING EXAMINER PRICE: But that's not
9 what he asked. Try again. I'll try. Does RPA
10 listen to some sample of sales calls to check for
11 compliance with the applicable state's rules?

12 THE WITNESS: Yes.

13 HEARING EXAMINER PRICE: Do you ever
14 perform a forensic analysis of those sales calls that
15 were provided to you to make sure that the sales
16 calls have not been altered or materially modified?

17 THE WITNESS: We don't.

18 By Mr. Eubanks:

19 Q. Okay. Following up on that same line of
20 questioning: Does RPA ever review the TPV
21 forensically in order to see whether or not they have
22 been altered?

23 A. No.

24 Q. Does RPA contract with vendors to review
25 either sales or TPV calls to see whether or not they

1 have been altered?

2 MR. WHITT: Object at this point, and
3 ask for clarification about some time frame here.
4 The gentleman has testified the Company stopped
5 marketing in June of 2021, so there's nothing to
6 check at that point.

7 If the question is in the ordinary
8 course of business prior to being notified by Staff
9 of a concern with a call, were you doing all of these
10 things, if that's the question, we need clarification
11 on the time frame.

12 MR. EUBANKS: Fair enough.
13 By Mr. Eubanks:

14 Q. Has RPA ever, as a matter of normal
15 business practices, done forensic analysis on TPV
16 calls that it is reviewing?

17 A. No.

18 Q. And does it expect for its vendors to do
19 that contractually?

20 A. No.

21 Q. Same question with the sales calls: Has
22 RPA ever done forensic analysis as a normal course of
23 its business practices on sales calls in order to see
24 whether or not the call has been altered?

25 A. No.

1 Q. Has RPA ever kept, as a normal course of
2 its business practices, information on the make and
3 the model of the software used to record sales calls
4 by its vendors?

5 A. No.

6 Q. Has RPA ever, as a normal course of its
7 business practices, kept the make and the model of
8 the software that its vendors use in order to record
9 its TPV recordings?

10 A. No.

11 Q. When you receive a request from Staff
12 during the DR process for sales calls or TPV calls,
13 how does RPA retrieve those calls in order to supply
14 them to Staff?

15 A. My staff would pull that information
16 from either the TPV system or from the sales calls
17 that were sent to us by the marketer.

18 Q. Are the sales calls -- you said they
19 would pull it from -- from the system. What system?
20 System at RPA?

21 A. No, the vendor's system.

22 Q. So you have direct access to the
23 vendor's systems?

24 A. We have a -- I guess you could call it a
25 portal, a website. My understanding, the information

1 would be kept in the cloud from their perspective, so
2 we have the ability to obviously listen to those
3 TPVs.

4 HEARING EXAMINER PRICE: You do not have
5 to ask the vendor to get into that, you don't have to
6 say we want --

7 THE WITNESS: No, they give us a login.

8 HEARING EXAMINER PRICE: You can go
9 right directly in yourself?

10 THE WITNESS: To view only our stuff.

11 HEARING EXAMINER DAVIS: Are you made
12 aware if it's something that they utilize as well
13 like, for example, they take a call and it's reported
14 as it's going and in the end a file, you know, is
15 ultimately produced, have you been informed by them
16 whether the file that you are able to go listen to is
17 that exact file? Is their stuff like saved to that,
18 or is it a separate one where they duplicate
19 everything for you?

20 THE WITNESS: I believe everything that
21 we're listening to is the same. It's being recorded
22 sort of by them through their software.

23 I mean, the company is now owned by a
24 very large organization called AnswerNet, it's a real
25 big company that every single -- I would say almost

1 everybody who is doing marketing is using one of
2 their companies for TPV, so it's a reputable --
3 beyond a reputable company.

4 By Mr. Eubanks:

5 Q. I just want to make sure I understand
6 your answer. So there's this company called
7 AnswerNet, and you're saying that all the vendors
8 work for AnswerNet?

9 A. No.

10 Q. I'm sorry. I didn't understand.

11 A. It was a little confusing. AnswerNet is
12 a large organization which owns TPV.com, Trusted TPV.
13 Those are the two vendors that we used for our TPV
14 processes which, you know, Nedra -- Ms. Ramsey, I
15 know you've heard their name a number of times
16 listening to the recordings, and that's why you're
17 nodding and smiling at me, but the -- you know,
18 that -- those companies, TPV.com, TrustedTPV that are
19 owned by AnswerNet, they are the -- I'll say the gold
20 standard within the industry for suppliers to use for
21 their TPV.

22 Q. Okay. So you have a vendor on a call,
23 on a sales call. Is this AnswerNet the one who is
24 recording the call?

25 A. Well, again, there's two distinctions of

1 a call; sales aspect of the call and the TPV aspect
2 of the call.

3 Q. Let's take the sales aspect.

4 A. The vendor -- the marketer records that.

5 Q. Okay.

6 A. And the TPV company records the other
7 portion.

8 Q. Is AnswerNet the TPV company?

9 A. AnswerNet now owns the TPV company, but
10 to make it simpler, TrustedTPV, we can use them as an
11 example, they would record the TPVs themselves.

12 Q. Okay. So let's take the sales call.
13 How does the sale call get from the vendor to RPA?

14 A. From my knowledge and understanding of
15 it, again, I don't get involved in the transfer of
16 data, but I'm sure they just sweep it through an FTP
17 site.

18 We get those calls either at the end of
19 the selling day so that we can listen to them the
20 next morning, but they are probably uploaded to an
21 FTP site or some sort of a drop box.

22 Q. And are you only supplied with the sales
23 calls that are successful, or are you supplied with
24 all of them?

25 A. I think we're only supplied with the

1 sales calls that are successful, because there would
2 be no reason for us to necessarily QC -- we're not
3 required to QC those anyway, but there would be no
4 reason to QC -- let me rephrase.

5 We only receive the calls, from my
6 understanding, from completed enrollments.

7 Q. Okay. And with TPV companies, the way
8 you get the TPV files from them is by downloading it
9 from the cloud?

10 A. We're just listening to it from their
11 website.

12 Q. If Staff wanted a copy, how -- how do
13 you download it, or how did you get it to them?

14 A. I'm sure we would click download and
15 just send the file that was downloaded.

16 Q. Okay. Now, those files -- let's take
17 the TPV company -- are they organized by state?

18 A. I'm not sure what you mean.

19 Q. Well, the TPV company that records all
20 the TPV calls for RPA, are they recording them across
21 all the states and districts that RPA is operating
22 in?

23 A. I'm not sure I understand your question.
24 When a TPV is done, if one of those two companies is
25 doing it, then yes, they are recording the TPV.

1 Q. Okay. And it doesn't matter what state
2 it's occurring in?

3 A. No, because we've pre-setup that script.
4 Whether it's an automated script or whether it's a
5 live person reading the actual script, it's already
6 pre-setup by state.

7 Q. So then when you're -- when Staff asks
8 for, let's say just hypothetically, all the TPV's
9 recordings in the month of June, right? How does RPA
10 go about supplying Staff with just the Ohio calls and
11 weed out the other states?

12 A. My staff was involved in pulling the
13 information. I'm sure there's an identifier on the
14 file. So whether they were pivoting a phone number
15 or whatever it is, you know, I can't speak to the
16 exact way that my staff queried a specific time
17 period of recordings. I wasn't the one that did it.

18 MR. EUBANKS: I have no further
19 questions, your Honor.

20 HEARING EXAMINER DAVIS: I actually have
21 a couple of questions. I just thought since we're in
22 a transitional period it my be a good time to ask.

23 - - -

24 EXAMINATION

25 By Hearing Examiner Davis:

1 Q. So question 7, answer 7 in your
2 testimony, I just wondered, you state here if a call
3 does not meet your standards or applicable Ohio
4 rules, you don't process the enrollment in this,
5 which I just have two questions on that.

6 One, could you elaborate on what the
7 standards part of that means?

8 A. If there was something that was just
9 completely crazy that was said during that call that
10 just completely differed from the script, you know,
11 we wouldn't obviously continue with that enrollment,
12 we would reject it.

13 Q. So by standards, it kind of means like
14 sort of behavioral standards relative to what the
15 expectation of the script on behalf of the sales?

16 A. Yeah, just if the call just -- it's hard
17 to explain.

18 HEARING EXAMINER PRICE: Let's take an
19 easy one. If the call person, the salesperson said
20 I'm from AEP Ohio --

21 THE WITNESS: Cancel, we're going to
22 call the marketer immediately, we're going to send
23 them that recording, we're going to have a follow up
24 with them on that, there's going to be a back and
25 forth dialogue, why did that happen, that can't

1 happen, you don't represent yourselves as the
2 utility.

3 It creates -- that's what the sales call
4 helps us with, right, and that's why we do it. And
5 look, I know that most people don't, right, and I
6 know that we keep them and most people wouldn't.

7 We want to utilize the information we
8 have to try to do good, not bad. So if there's a
9 reason for us to reject something and then either
10 train on it or terminate on it, we do.

11 By Hearing Examiner Davis:

12 Q. And are the vendors sort of given some
13 kind of guideposts, i.e., what constitutes your
14 standards in that respect? I mean, it's probably
15 obvious.

16 A. Everybody signs a code of conduct and it
17 goes through a whole process, yes.

18 Q. And then I have one more for you. I
19 just wanted to know specifically -- it says, "We also
20 provide feedback to the vendor about rejected
21 enrollments and will direct retraining of specific
22 sales agents when appropriate." By direct
23 retraining, are you saying kind of what you just went
24 through --

25 A. Yeah, somebody said -- it was a new

1 agent as of yesterday and they said I'm calling about
2 your bill from the utility, you know, we may say
3 something like, you know -- I'm making up a
4 hypothetical -- you're from RPA Energy, Green Choice
5 Energy, that would be like a retraining opportunity.

6 If you had an agent that had been on the
7 program for, making it up, a month, and said I'm
8 calling from AEP, we would get rid of the agent.

9 But we're constantly having
10 conversations with our vendors. We call them
11 calibration calls where we pick certain calls, listen
12 to them at random and we go through them and grade
13 them.

14 I don't do that personally, but our
15 director of compliance does with our supervisor of
16 compliance, you know, that kind of stuff happens,
17 it's we're doing, we take it serious.

18 HEARING EXAMINER DAVIS: Thank you.
19 OCC?

20 MS. WILSON: Yes, your Honor.

21 THE WITNESS: Your Honor, if possible,
22 just -- I'm famished up here.

23 HEARING EXAMINER PRICE: Let's go off
24 the record.

25 (Lunch recess from 1:25 to 2:00.)

1 HEARING EXAMINER DAVIS: Let's go back
2 on the record. And we were about to entertain cross
3 from OCC.

4 MS. WILSON: Yes.

5 HEARING EXAMINER DAVIS: You may
6 proceed.

7 MS. WILSON: Thank you.

8 CROSS-EXAMINATION

9 By Ms. Wilson:

10 Q. Mr. Trombino, do you recall a little bit
11 ago when you were being crossed by Mr. Eubanks?

12 A. I'm sorry?

13 Q. Yeah, this thing is dead so I'm going to
14 try to talk loud. Do you recall the cross you just
15 had with Mr. Eubanks before the break?

16 A. Yes.

17 Q. Okay. And you said that RPA has the
18 ability to log into the vendor portal and listen to
19 TPV calls; was that correct?

20 A. Yes.

21 Q. So in those files or their metadata, it
22 does not identify the software that was used to make
23 the recordings?

24 A. I apologize, I don't know what metadata
25 is, and I do not know the answer to your question.

1 Q. So the metadata is like what you would
2 see on a picture or video that shows you the file
3 type when it was created, all that stuff. No? Okay.

4 And just to confirm what I think you've
5 said before, RPA has never done a spot check, even at
6 the beginning of a contract with a vendor, to ensure
7 that they are following RPA's script in Ohio law?

8 MR. WHITT: Objection. Misstates the
9 testimony.

10 HEARING EXAMINER DAVIS: Can you
11 rephrase the question?

12 MS. WILSON: I mean, he did say earlier
13 that they don't review any TPVs to see if they comply
14 with the script, they don't check the door-to-doors
15 to see in they comply the script.

16 MR. WHITT: To the contrary, he
17 testified they review all the sales calls and TPVs.

18 HEARING EXAMINER DAVIS: Do you recall,
19 Mr. Trombino, did you not state that you do or do not
20 compare them to the script? You don't have to give a
21 thorough answer, but do you recall mentioning that?

22 THE WITNESS: I think what I mentioned
23 was that our TPV scripts are reviewed by counsel so
24 that they meet the required rules of Ohio, then that
25 approved script is put into use.

1 By Ms. Wilson:

2 Q. And my question is, but nobody does any
3 spot checking or verification that the third
4 party TPVs or agents are actually using those
5 scripts?

6 HEARING EXAMINER PRICE: That's kind of
7 compound. Why don't you ask him one at a time?

8 By Ms. Wilson:

9 Q. Okay. So like you said, you provide the
10 script that's been approved by counsel, and you give
11 those out to third parties, the TPV companies,
12 correct?

13 A. That is correct.

14 Q. And your sales agents, if necessary?
15 Any scripts?

16 A. We're talking about two separate --

17 Q. Okay. For your third party
18 verifications where we found some issues -- alleged
19 issues with those, I believe you stated before that
20 RPA has not done a spot check, after these scripts
21 have been approved, to make sure that third party
22 verification companies are following the script?

23 MR. WHITT: I object. I think these are
24 slightly different questions that are being kind of
25 asked and then substituted.

1 Terms like spot checked, the witness
2 testified they review the sales calls and the TPVs.
3 He's testified he doesn't know whether somebody is
4 looking at the Administrative Code while they are
5 listening to a TPV, I think he doesn't know that.

6 HEARING EXAMINER PRICE: The transcript
7 is going to say what he said this morning. But
8 instead of characterizing what you believe he said
9 this morning, why don't you just ask him your
10 question and then he can give an answer, and if it's
11 inconsistent, it's inconsistent, if it's consistent,
12 it's consistent.

13 By Ms. Wilson:

14 Q. Okay. To the best of your knowledge,
15 RPA does not check the TPVs unless there's a
16 complaint or something else that brings it to your
17 attention?

18 A. I wouldn't characterize it that way.

19 Q. Okay. I'll deal with that on brief.

20 Turning to page 2 of your testimony,
21 line 1, you testified that you employ 19 people --
22 that RPA employs 19 people, correct?

23 A. Yes, I did.

24 Q. And are any of those employees
25 physically located in Ohio?

1 A. No, not currently. We're actually all a
2 hundred percent remote.

3 HEARING EXAMINER PRICE: I don't think
4 that's what she's asking.
5 By Ms. Wilson:

6 Q. Do they live in Ohio? Are they
7 physically located in Ohio?

8 A. That is a very good question. I
9 think -- I've had people moving around a lot lately.
10 I don't believe we have anybody located in Ohio right
11 now.

12 Q. Okay. Thank you. Also on page 2 you
13 testified that, "We recognize that we are responsible
14 to the actions of people who interact with new and
15 existing customers on the Company's behalf,
16 regardless of their employment status."

17 Would you agree that's a correct
18 representation of your testimony?

19 A. That's what it says here.

20 Q. Okay. And your use of employment
21 status, what did you mean by that? Do you mean
22 directly employed by Green Choice or employed by a
23 third party that contracts with Green Choice?

24 A. I'm sorry, what is your question?

25 Q. What do you mean by employment status?

1 This is on --

2 A. I see it. I see where it is, I --

3 Q. So what do you mean by employment
4 status? So they can be a direct employee, or an
5 employee of a third party that you contract with. So
6 when you use the phrase employment status here, what
7 are you referring to?

8 A. The vendors that -- you know, the agents
9 that work on our behalf.

10 Q. And they are treated differently from
11 employees you hire directly that are affiliated with
12 RPA directly?

13 A. By law they have to be, right, because
14 they are independent contractors.

15 Q. Okay. So your testimony is that RPA is
16 responsible for the actions of their employees
17 whether they are direct employees, directly hired by
18 RPA, or by these third party vendors?

19 A. We are responsible for the people who
20 interact with the customers, as I've said in my
21 testimony.

22 Q. Okay. With respect to the consumer
23 complaints or contacts to PUCO Staff in this case,
24 what Green Choice vendors were involved?

25 A. I would have to have the Staff Report in

1 front me to take a look at that. My staff responds
2 to the PUCO complaints so, you know, I don't have
3 that information in front of me currently.

4 Q. And so other than -- I think in response
5 to Mr. Eubanks you said that you terminated the
6 contract with MBM. Have you dropped, to your
7 knowledge, any other vendors?

8 A. I think we went through that before.
9 Sitting here right now I don't have that information
10 for you.

11 Q. Okay. And looking at question 10, lines
12 22 through 23, you state, "I am not suggesting the
13 pandemic is an excuse for not following the
14 Commission's rules." Is that what your testimony
15 says?

16 A. That's what it says.

17 Q. Okay. So with that in mind, you admit
18 that the pandemic is not an excuse for not following
19 PUCO rules?

20 MR. WHITT: We'll stipulate she read the
21 testimony correctly.

22 MS. WILSON: I did, but I'm --

23 MR. WHITT: Now you're just being
24 argumentative then.

25 HEARING EXAMINER PRICE: Counsel will

1 address the Bench, not each other, please.

2 MR. WHITT: Sorry, your Honor.

3 HEARING EXAMINER PRICE: Do you have an
4 objection, Mr. Whitt?

5 MR. WHITT: No.

6 HEARING EXAMINER PRICE: I'm sorry. Go
7 ahead.

8 By Ms. Wilson:

9 Q. I'm just phrasing it a slightly
10 different way. He states, "I am not suggesting the
11 pandemic is an excuse." So flip side of that, you're
12 admitting that the pandemic is not an excuse for not
13 following PUCO rules.

14 MR. WHITT: Object only to the extent
15 that it calls for a legal conclusion.

16 MS. WILSON: That's his testimony. He
17 states, "I am not suggesting the pandemic is an
18 excuse for not following the Commission's rules."

19 Read another way, the pandemic is not an
20 excuse for not following PUCO rules. I'm trying to
21 pull out what he's saying here, so -- because it
22 seems that he's admitting that the pandemic -- that
23 there was a violation of Commission's rules, but the
24 pandemic is not an excuse for that.

25 MR. WHITT: The term admission has a

1 legal significance to it that I'm objecting to. His
2 testimony says what it says. It doesn't use the word
3 admission, he's not a lawyer, it's an improper
4 question.

5 HEARING EXAMINER DAVIS: Sustained.
6 Rephrase that question.

7 MS. WILSON: Sure. Just strike that and
8 move on.

9 By Ms. Wilson:

10 Q. I'll ask another question on the second
11 part of that sentence. "Staff's investigation
12 encompasses a period where extreme and unprecedented
13 external conditions should also be taken into
14 consideration."

15 Doesn't that statement imply that the
16 Company did violate PUCO rules?

17 MR. WHITT: Same objection. In fact,
18 I'll instruct the witness not to answer that
19 question.

20 MR. EUBANKS: Your Honor --

21 HEARING EXAMINER PRICE: Joining in the
22 objection?

23 MR. EUBANKS: No.

24 HEARING EXAMINER PRICE: Well, let's let
25 Ms. Wilson respond, then you can have your part to

1 respond to.

2 MS. WILSON: I mean, I read his
3 testimony directly and I'm asking his opinion. It's
4 appropriate cross-examination question form.

5 MR. EUBANKS: Your Honor, I believe this
6 question and the other ones are simply asking him to
7 state what he means by his testimony. Surely we can
8 ask the witness what his testimony means.

9 HEARING EXAMINER PRICE: Can I have the
10 question back again?

11 (Question read back.)

12 HEARING EXAMINER DAVIS: I think to the
13 extent that he's essentially arguing in the
14 alternative that he can make that statement, but I
15 think that objection is sustained to the extent that
16 you can't ask him for a legal conclusion.

17 I'll let you rephrase that question, but
18 I don't want you to be asking him to change what his
19 statement actually means.

20 MS. WILSON: Okay.

21 By Ms. Wilson:

22 Q. So going back to page 3 where I dropped
23 that question, can you explain what you mean with
24 your testimony that says, "I am not suggesting the
25 pandemic is an excuse for not following the

1 Commission's rules"?

2 A. I think during the time period that this
3 was going on, it was unique. We're not using it as
4 an excuse, but it was unique.

5 We had to close our offices in the city,
6 went remote. That's all new to us and I'm sure many
7 other people. And it created challenges, and it's as
8 simple as that. It's a unique time in our lifetime
9 that was -- that created obstacles.

10 Q. Obstacles to following the Commission's
11 rules as your testimony states?

12 A. What do you mean obstacles?

13 Q. Well, you did state pandemic -- you're
14 not suggesting the pandemic is an excuse for not
15 following the Commission's rules. What does that
16 mean? Does that mean RPA did not follow the
17 Commission's rules?

18 A. We're here today because of a formal
19 action. I'm just simply saying I'm not suggesting
20 that the pandemic caused us to be here today.

21 Q. What I'm getting at is, is your
22 statement here for not following the Commission's
23 rules, is it your testimony and your assertion that
24 you did not violate any Commission rules? Why did
25 you use this phrasing? Because it implies the

1 company did not follow the Commission's rules.

2 MR. WHITT: I'll object. It's been
3 asked and answered, and it's argumentative, and it's
4 irrelevant.

5 This witness' opinion on whether a
6 violation occurred frankly is the least relevant
7 opinion of anyone. It's the Commission, the
8 Attorney-Examiners who make that determination based
9 on the evidence in the case.

10 MR. EUBANKS: Your Honor, if I may, this
11 was the very objection that I made, why I asked for
12 it to be stricken. He just said it, it's irrelevant.
13 And why is it irrelevant? Because he doesn't even
14 know if there's a violation that they could be found
15 guilty of. Just like he said, you're going to make
16 that determination.

17 HEARING EXAMINER PRICE: That's what he
18 said this morning. That's what he said this morning.
19 The parties are free to argue in the alternative.
20 He's free to argue that this -- the pandemic was a
21 mitigating circumstance without conceding or
22 implicitly agreeing to a violation.

23 It's I never saw the vase, the vase was
24 broken when I picked it up, and I paid 50 bucks for
25 it. I mean, this is -- this is getting tiresome, to

1 be honest.

2 We need to quit trying to weasel an
3 admission of guilt out of this client and move on --
4 this witness and move on to the testimony in front of
5 him. We do not infer at all he's admitting a
6 violation by this question and answer.

7 MS. WILSON: Thank you, your Honor.

8 By Ms. Wilson:

9 Q. And is it your testimony that Green
10 Choice is not currently marketing to or enrolling
11 customers in Ohio for either gas or -- I'm sorry, for
12 either electric or natural gas?

13 A. We ceased our marketing efforts
14 voluntarily I believe it was in June of '21.

15 Q. Marketing for all services you offer in
16 Ohio, both gas and electric, if you offer electric?

17 A. We're not marketing in Ohio.

18 Q. Anything? Okay.

19 A. Yeah.

20 Q. With respect to sales functions, does
21 Green Choice compensate its vendors and sales agents
22 by commission? Do they receive commission, or are
23 they paid a salary?

24 A. I think we -- I testified earlier that
25 they are paid a commission.

1 Q. The sales agents, but what about the
2 vendors?

3 A. The vendor is paid -- they pay the sales
4 agent.

5 Q. Going back to page 2. And we may have
6 already covered this with Mr. Eubanks, but I just
7 want to clarify. On page 2 of your testimony you
8 testified that Green Choice monitors vendors'
9 performance by reviewing the sales calls and TPV for
10 every telephone enrollment; is that correct?

11 A. What line are you looking at?

12 HEARING EXAMINER DAVIS: 13 and 14.

13 By Ms. Wilson:

14 Q. Yeah.

15 A. I'm sorry, what page?

16 HEARING EXAMINER DAVIS: 13 and 14 on
17 page 2, question 7.

18 THE WITNESS: Yes.

19 By Ms. Wilson:

20 Q. And so that means someone reviews each
21 and every sales call and TPV for compliance in Ohio?

22 A. Yes.

23 Q. And just to confirm what I think you
24 testified earlier, are the agents direct employees or
25 vendors who review the sales and TPV calls directly

1 employed by Green Choice, or are those the vendor as
2 well?

3 A. Both. So we do our own QC, like we just
4 said, of a hundred percent. The TPV company also has
5 a QC function where they listen to all the calls as
6 well to make sure the information that's being
7 transmitted to us -- we pay for an extra service from
8 the TPV provider to essentially do an initial review
9 themselves, which we end up redoing their review, and
10 then the vendors also have QC processes where they
11 are reviewing their own sales calls, and then we have
12 calibrations with said vendors to discuss calls.

13 Q. So --

14 A. So yes, we -- our employees do -- are
15 the ones that do the QC, yes.

16 Q. But that's based on a self-quality
17 control by the vendor who is supposed to be verifying
18 these calls, right?

19 A. I'm not sure I understand your question.

20 Q. So the third party vendor, its purpose
21 is to confirm that the sales call, the enrollment,
22 whatever, followed the rules -- followed the
23 enrollment rules, and you said that the TPV vendors,
24 they do their own quality control, and then you guys
25 do a quality control on the same stuff, or you do it

1 on their review. So I'm asking, basically, are the
2 third party vendors auditing themselves?

3 A. Are third party vendors auditing
4 themselves? I think the simplest way to do this is
5 we listen to a hundred percent of the TPVs and sales
6 calls. I'm not sure I understand the rest of your
7 statement.

8 Q. Well, you also stated that the vendors
9 do quality controls on these TPV calls as well?

10 A. The vendors -- our TPV vendor reviews
11 the TPV call to make sure that a "yes" was stated for
12 each of the questions. If it wasn't stated, and
13 let's just say somebody said no, they would then fail
14 that TPV. So it wouldn't be a sale necessarily
15 because the customer did not say yes to all of the
16 questions. So then that sale would not be processed.

17 Q. And so in turn, Green Choice would not
18 receive the recording of that call?

19 A. It's not that we wouldn't receive it, it
20 would be made available to us through their system.

21 Q. Okay. I thought you said earlier that
22 you guys -- that Green Choice didn't even see these
23 calls if they failed a TPV.

24 A. Again, we're back to that distinction
25 between a sales call and a TPV, and those are two

1 separate distinctions.

2 Q. I understand that.

3 HEARING EXAMINER DAVIS: Can I ask a
4 clarifying question?

5 THE WITNESS: Sure.

6 HEARING EXAMINER DAVIS: So just for my
7 education, so what your testimony said is that if the
8 ultimate culmination of a sales call and a TPV leads
9 to an enrollment, you will absolutely look at that;
10 is that correct?

11 THE WITNESS: If the sales call and the
12 TPV lead to an enrollment, yes, a hundred percent
13 look at that.

14 HEARING EXAMINER DAVIS: And if it
15 doesn't lead to an enrollment, you still have access
16 to a reporting of one or both, but there's
17 no guarantees --

18 THE WITNESS: There's no guarantees. We
19 would definitely have it for the TPV because it
20 what's an attempt made and the system just keeps it.

21 We may listen to that for training
22 purposes to figure out hey, why did it not complete
23 the process, where was the customer not informed or
24 whatever the case may be, we may utilize that for a
25 training opportunity.

1 HEARING EXAMINER DAVIS: Okay. Thank
2 you.

3 By Ms. Wilson:

4 Q. So does Green Choice have access to all
5 of these -- the third party verification of sales
6 calls. Does Green Choice itself keep records of
7 these calls, or the vendors do and they provide them
8 to you?

9 A. Just want to clarify a statement you
10 started your question with, that we have all. When
11 you say we have all, what specifically are you
12 speaking about?

13 Q. The sales calls and the third party
14 verification calls.

15 A. So for a completed sale, as I testified
16 earlier, that is sent to us typically at the end of
17 the business day for our review the following day,
18 not only for our review, but also for us to be able
19 to make the welcome call and all the other stuff.

20 The TPV call is made available -- or a
21 portion of the TPV call is made available -- let's
22 say the customer decides to hang up during the TPV
23 call. That is available in the portal.

24 Q. And in the event that the portal or the
25 website goes down, how is Green Choice able to review

1 these calls to do its own verification and retraining
2 purposes?

3 A. I'm not aware of that happening, or us
4 not being able to do that sort of analysis.

5 Q. So Green Choice doesn't keep any
6 physical records of any of this stuff, you just
7 download it from the portal when you need to do your
8 initial review, or view it?

9 A. From the TPV perspective, I believe
10 that's how we do it, yes.

11 HEARING EXAMINER PRICE: Is your
12 contract with the TPV providers set up so in the
13 event you moved on to a different TPV provider you'd
14 still be able to access prior information?

15 THE WITNESS: Yes. And I think there's
16 all sorts of, I'll say legal language around the
17 retention of all that stuff. And as I said, they are
18 a large, reputable company.

19 HEARING EXAMINER PRICE: Thank you.
20 By Ms. Wilson:

21 Q. When Green Choice is reviewing the sales
22 calls, does Green Choice only listen for yes/no
23 answers, or does Green Choice also listen to see if
24 there's any anomalies such as a different voice in
25 different parts of the call, or the enrollment?

1 A. I think generally we're listening to the
2 sales call for the purpose of, you know, is this a
3 sale that's worthy of completion; did the sales call
4 happen, is it generally following a guideline script,
5 is it moving on to the third party verification
6 process, is the customer then acknowledging all of
7 those questions in that 12-minute call, or however
8 long that call is. It's pretty extensive.

9 Q. Okay. But to be clear, Green Choice is
10 not like listening for people -- one part of the call
11 having one voice and another part of the call having
12 another voice, you're not listening for anything that
13 shouldn't be happening?

14 A. I think if something like that presented
15 itself, it would be questioned and brought up, I
16 guess. I mean, again, this is handled by, you know,
17 our director of quality compliance who runs a team
18 of, you know, a bunch of people.

19 So, you know, we're not required to
20 record those calls. We listen to them, we use them
21 for training, but I can't speak to specifically what
22 it is that they are listening for.

23 Q. You said that the Company is not
24 required to record these calls.

25 A. The TPV portion of the call that has all

1 the requirements set forth by the State, we record.
 2 To my understanding, we don't have to have the --
 3 I'll call it the sales call necessarily, but we do
 4 anyway.

5 Q. Turning to BT-12, page 2 of 3. Can you
 6 identify what this is?

7 A. If you wouldn't mind just starting out
 8 with what it says just so I understand we're on the
 9 right page.

10 Q. It's an email from Nedra Ramsey at PUCO
 11 to you and Mr. Whitt.

12 A. And it starts out with, "Good afternoon,
 13 Now that the case is open"?

14 Q. Yes.

15 A. Looks like an email from Nedra Ramsey to
 16 Mr. Whitt, cc myself, regarding an information
 17 request.

18 Q. Were you here last Wednesday and did you
 19 listen to the consumer testimony in the doorbell
 20 video from Mr. Tokar?

21 A. I was here, yes.

22 Q. And you're familiar with the video?

23 A. Generally. I don't remember each part
 24 of it.

25 Q. Okay. Based on what you saw or

1 reviewed, would you agree that the field agent's
2 actions in that video were inappropriate?

3 A. If you could play it for me again I
4 think I'd be able to more accurately answer that
5 question, but I don't recall right now whether or not
6 the actions were -- the things that I remember about
7 that call was she presented the badge, said she was
8 from Green Choice Energy. The customer decided not
9 to move forward, she answered some question regarding
10 Green Energy, but to the specifics I can't give them,
11 I don't know right now.

12 Q. And so you wouldn't know if any
13 retraining of that agent, or termination of that
14 agent occurred based on this video?

15 A. I think that we had decided, based on
16 what information came over to us in the Staff
17 Report -- I'm sorry, in the informal complaint, we
18 decided to terminate that agent based on some
19 information about her saying something about a
20 manager, but I don't believe that was part of the
21 video.

22 We also contacted all the other
23 customers that were enrolled by that agent to
24 confirm, you know, their understanding and
25 acceptance as a customer. So I think that we did

1 everything we -- you know, we could do, and it was.

2 Q. So if you terminated that employee and
3 took other steps to confirm with other customers,
4 then that would mean you or your Company found that
5 agent's actions inappropriate --

6 MR. WHITT: Objection.

7 By Ms. Wilson:

8 Q. -- or you would not have terminated?

9 MR. WHITT: Object to the question.

10 Again, it's improper to try to draw the inference
11 that those actions are an admission of guilt,
12 basically the same subsequent remedial measures
13 issue.

14 MS. WILSON: I'm just asking if it was
15 appropriate. I'm not asking --

16 MR. WHITT: Well, they did what they
17 did. If somebody thinks it's inappropriate then they
18 can say that in the brief.

19 HEARING EXAMINER DAVIS: It's sustained.

20 By Ms. Wilson:

21 Q. Are you familiar with the term hard
22 selling?

23 A. Have I ever heard the word -- the term
24 hard selling before?

25 Q. Yes. In this type of industry, yes.

1 A. I don't know if I've heard it
2 specifically to this industry, but I've heard the
3 term a hard sell.

4 Q. So how do you interpret that phrase?
5 What does that mean when you hear that?

6 A. I think it would mean two things. It
7 could mean it's difficult to get the sale, or it
8 could mean the -- it was harder for the agent to get
9 the sale.

10 Q. And the terminated sale agent we were
11 just discussing, would you characterize their
12 behavior, to your knowledge, as hard selling?

13 A. You have to play the video for me so I
14 could relook at that. That was last week and I've
15 been up here for a few hours today.

16 Q. Okay. With respect to door-to-door
17 marketing, does Green Choice provide any specific
18 training or instructions to vendors to prevent hard
19 selling?

20 A. We have a code of conduct, so as I said
21 earlier, each and every agent receives -- a
22 background check is completed, you know, the
23 marketers are certainly given information and have
24 knowledge of, you know, the rules, and then each and
25 every agent does receive a code of conduct in which

1 they sign to receive the certificate and be able to
2 sell on our behalf. I believe we provided that to
3 Staff through a DR.

4 Q. Okay. But to the best of your
5 knowledge, nothing is included in that Code of
6 Conduct that would prevent hard selling tactics?

7 A. I don't think the words hard selling are
8 in there.

9 Q. Okay. And I believe you stated before,
10 Green Choice does not monitor door-to-door sales
11 interactions unless there's a complaint?

12 A. When you say monitor, what exactly --

13 Q. I mean there's no recording, like the
14 agent doesn't have to record interaction with the
15 customer, there's really no way for Green Choice to
16 monitor what its door-to-door sales agents are saying
17 or doing; is that correct?

18 A. Only through our welcome call to the
19 customer.

20 Q. Okay. But again, on those calls you --
21 the customers aren't really asked directly questions
22 that would tell you whether or not the rules were
23 followed?

24 A. I think we have a few questions on our
25 welcome call that are asked. I don't know them

1 specifically, but we do ask questions that would
2 prompt responses from the customer, especially if
3 they felt uncomfortable in any way.

4 Q. Okay. So you directly ask them if they
5 felt uncomfortable during the interaction?

6 A. I didn't say that.

7 Q. I guess what I'm getting to is there's
8 no checklist that you guys directly verify that your
9 agent followed the rules?

10 A. I think that's kind of what the TPV
11 process helps with, and I think that's what the
12 welcome call helps with. I think that's also the
13 information we send out to the customer, the utility
14 then follows up with the customer with. So I think
15 there's a lot of checks and balances there's in
16 general.

17 Q. That's not really what I asked.

18 MR. WHITT: Actually, it is.

19 MS. WILSON: It's not.

20 By Ms. Wilson:

21 Q. I asked if there were checklists or
22 anything they go through with the welcome call or the
23 TPV that would give the customer an opportunity to
24 say "yes" or "no", this happened or didn't happen?

25 A. Yes, the TPV gives a laundry list of

1 questions in which the customers can state yes or no
2 to.

3 Q. But not the welcome call?

4 A. If at any point during the welcome call,
5 which we're not required to do, the customer has any
6 questions, like Ms. Bossart, we're there to answer
7 them.

8 We offered Ms. Bossart the opportunity
9 to cancel, I believe, or think about it and call us
10 back if she didn't want to be a part of the -- you
11 know, the service. She opted out, so I think that's
12 the process working.

13 Q. So if a customer was misled or did not
14 understand the interaction and just went with it,
15 there would really be no way to know if the
16 door-to-door sales or the phone sale was consistent
17 with the rules?

18 A. I can't speak to what -- how people
19 think and operate.

20 Q. I'm just saying that that's not really a
21 fail-safe if the customer does not understand what is
22 being presented to them.

23 A. Is that a statement?

24 Q. Would you agree with that?

25 A. No, I think the customer has ample

1 information to be able to make an educated decision.

2 Q. Okay. Did I hear you correctly earlier
3 that Green Choice used third party vendors for
4 customer service functions as well in Ohio?

5 A. I don't believe we talked about that
6 earlier. I think it's in my testimony, though.

7 Q. Okay. Off the top of your head, is that
8 true?

9 A. Yes, we work with a third party for --
10 for customer service. We also monitor those calls as
11 well to see if there's anything on the customer
12 service calls themselves that potentially might not
13 make sense or create a reason for us to look into
14 things, and also training opportunities for the
15 agents themselves.

16 Q. So what specific customer services do
17 the vendors provide?

18 A. They handle our inbound customer care.

19 Q. So they handle complaints from Ohio
20 consumers?

21 A. No.

22 Q. So how does an Ohio customer get a
23 complaint through to Green Choice?

24 A. When you say complaint, can you explain
25 exactly what you mean?

1 Q. If they have a question or a complaint
2 that, say the rate they are paying is different from
3 what was discussed or what's in their contract. I
4 mean, when consumers have an issue with the service,
5 or the billing or whatever with Green Choice, do
6 these vendors provide answers to that, or respond to
7 that, or is that Green Choice internally?

8 A. Both. So if -- and remember, the agents
9 that are working for said vendor who handle the
10 inbound customer care, they only work for us, meaning
11 they don't -- they are not on the phone for us for
12 one phone call, and then on the phone for XYZ Energy
13 Company for the next, so we have ongoing training
14 with these agents almost as if they are our own,
15 because we're listening to the calls, right?

16 We're overseeing and reviewing the
17 customer service calls internally. Then we're having
18 calibrations with our customer service team to make
19 sure that the questions that the customers have are
20 being answered.

21 And I believe one of the questions at
22 the end of our, I'll say script-ish if you will, is
23 have I satisfied all of your concerns today regarding
24 where -- what you called for, something to that
25 effect.

1 So at the end of that call they are
2 either satisfied with how the agent handled their
3 questions or concerns, or they are escalated to the
4 next level, which would then come internally to our
5 own team.

6 Q. Okay. But if a customer calls in and
7 they have a very specific complaint, not a question
8 to be answered, but a complaint about their service
9 or anything that's happened in that relationship, who
10 handles those? Do those get pushed up?

11 A. That would get escalated to somebody
12 inhouse.

13 Q. Okay. Turning to page 6 of your
14 testimony. Looking at lines 15 and 16, can you read
15 to me beginning at "acknowledges" and finish that
16 sentence?

17 A. "But acknowledges that some of its
18 operations were not fully compliant with Commission
19 rules during the period of the investigation."

20 Q. Thank you. And what operations are you
21 referring to here?

22 MR. WHITT: Your Honor, here I have to
23 object. This was gone into in detail in the
24 settlement correspondence, and the Company's written
25 response to request for -- for the preventive

1 actions, what they were going to agree to. Staff
2 insisted we're not allowed to talk about that, so
3 we're not allowed to talk about that.

4 MS. WILSON: This is his testimony that
5 states, you know, the Company acknowledges that some
6 of its operations were not fully compliant with
7 Commission rules. I don't know that that would
8 necessarily need to be a secret.

9 MR. WHITT: Well --

10 HEARING EXAMINER PRICE: It's not a
11 matter of whether it's a secret, it's a matter of
12 confidential settlement negotiations. So perhaps the
13 witness could answer the question operations,
14 excluding from your answer anything that was
15 confidential settlement negotiations.

16 THE WITNESS: What were the exhibits
17 that were nixed? I just don't want to cross -- there
18 was a lot of our things that got kind of taken out.
19 By Ms. Wilson:

20 Q. Right, but this is directly in your
21 testimony, it's not in the emails or attachments
22 that --

23 MR. WHITT: Well, the sentence begins,
24 "As shown in the correspondence," and it goes on to
25 basically summarize a bunch of stuff that's been

1 stricken, and now we're reploting that field.

2 MR. EUBANKS: Your Honor, if I may
3 speak? The correspondence between RPA and the Staff
4 was not all settlement negotiations, some of the
5 correspondence was DR requests or emails that were
6 follow up on DR requests.

7 So the suggestion that she can't ask any
8 questions here because correspondence might mean
9 settlement discussions, that's really not -- it's not
10 a good argument because there's other correspondence
11 here. So I think your Honor already said just answer
12 the question, excluding settlement correspondence.

13 MS. WILSON: And in fact, the attachment
14 B1-1, it's not marked as confidential, and there is
15 discussions with Staff and Mr. Whitt that are not
16 claimed to be confidential as settlement
17 negotiations.

18 THE WITNESS: So your question exactly
19 is?

20 By Ms. Wilson:

21 Q. When you say, "but acknowledges that
22 some of its operations were not fully compliant with
23 Commission rules," what operations are you referring
24 to?

25 A. I think specifically the Staff Report

1 brought to our attention that we didn't notify Staff
2 prior to marketing, and I think that's really the
3 genesis of that statement.

4 Q. So based on that answer, you're not sure
5 which PUCO rule the Green Choice violated, or
6 operations that were not fully compliant?

7 MR. WHITT: I'll object.

8 HEARING EXAMINER DAVIS: Can you
9 rephrase that question?

10 By Ms. Wilson:

11 Q. If you state you acknowledge that some
12 of its operations were not fully compliant with
13 Commission rules, would you agree that being not
14 fully compliant means the same thing as violates
15 Commission rules?

16 MR. WHITT: Objection, calls for a legal
17 conclusion.

18 HEARING EXAMINER DAVIS: Can you ask him
19 a question without getting him to imply?

20 By Ms. Wilson:

21 Q. Do you know what rules Green Choice
22 allegedly violated?

23 MR. WHITT: I'll object. And I'll tell
24 you what. My fuse is getting real short on a witness
25 who has given very candid testimony about the

1 Company's conduct, and they are here to face whatever
2 music they need to face, counsel knows that these
3 questions are inappropriate.

4 You know that they are, and if you
5 should know anything else, you know that I'm
6 listening to your questions, I'm going to object and
7 I'll stay here as many days as it takes, you're not
8 going to get this witness to admit so some violation
9 or give some confession. It's not what he's here
10 for.

11 MS. WILSON: Your Honor, was he speaking
12 to me or you?

13 MR. WHITT: I was speaking to you.

14 HEARING EXAMINER PRICE: You should be
15 speaking to us. In the future, moving forward,
16 address the Bench not counsel.

17 MS. O'BRIEN: Your Honor, may I say
18 something?

19 HEARING EXAMINER DAVIS: I guess so.

20 MS. O'BRIEN: Well, I'm waiting for --
21 you know, the witness repeatedly says we're not
22 required to do this and that. He's testified to it
23 several times.

24 Ms. Wilson's questions are fair game.
25 And I understand that Mr. Whitt doesn't like to be

1 here and doesn't want to go through this process, but
2 we're here and we're trying to get through the
3 questions as quickly as we can. And the more he
4 objects, the longer we're going to be here.

5 MR. EUBANKS: May I speak your Honor?

6 HEARING EXAMINER DAVIS: Just one thing.
7 Can we not discuss the motives or other inclinations
8 of counsel, please?

9 MS. O'BRIEN: Your Honor, I'm sorry, but
10 when he is being argumentative with our attorneys --
11 we have every right to be here and cross examine the
12 witness, and when he's being argumentative directing
13 it pretty much directly to our attorney, that's
14 uncalled for.

15 MR. EUBANKS: Your Honor, may I speak?

16 HEARING EXAMINER DAVIS: Go ahead.

17 MR. EUBANKS: So we've had testimony
18 from this witness. The testimony was reviewed, I
19 assume, by his counsel before it was submitted to and
20 docketed in this case. And in his testimony he
21 speaks about whether or not he was in compliance --
22 he acknowledges that he is not fully compliant with
23 Commission rules.

24 Now, if Mr. Whitt didn't want him to
25 make a statement about whether or not he's compliant

1 with Commission rules, it shouldn't be in his
2 testimony. But once it's in his testimony, why can't
3 we ask questions?

4 HEARING EXAMINER PRICE: He explained
5 what he meant. And I think it's fair to ask him more
6 questions about it. The questions should be
7 targeted, a little less open ended. He has said that
8 in his understanding of when he said compliant it
9 meant -- I forget what he said.

10 THE WITNESS: I said that --

11 HEARING EXAMINER PRICE: There's no
12 question pending. He said whatever he said. If you
13 want to ask him do you think you're in compliance
14 with the door-to-door requirements, that's a fair
15 question. If you want to ask him were you in
16 compliance with the telephone solicitation rule,
17 that's a fair question.

18 It's the open-endedness that I think is
19 causing the consternation with Mr. Whitt. And again,
20 to say do you know of the 159 discrete violations the
21 Staff claims in the Staff Report, whether you
22 violated any of them, is a little bit hard for a
23 witness to answer that question.

24 MS. WILSON: I understand, your Honor.
25 I was trying to get to the heart of his testimony

1 that some of the operations were not fully compliant.
2 If he put that in his testimony, then he must have in
3 his mind --

4 HEARING EXAMINER PRICE: And he gave an
5 answer, and we're fine with you following up with
6 other areas beyond his answer, but just give him a
7 specific area that you're asking about.

8 MS. WILSON: Okay. I'm going to move
9 on.

10 By Ms. Wilson:

11 Q. Still on page 6, you state as the
12 reasoning for your previous statement in this
13 question, were a result of internal communication
14 challenges, and that's on line 17, "posed by
15 pandemic-related work restrictions." Is that what
16 your testimony says?

17 A. Yes.

18 Q. And by communication challenges, are you
19 referring to the inability to email or call, or do
20 what you needed to do to run your business in
21 compliance with the PUCO rules?

22 A. As I said earlier, it was unprecedented
23 times and we took unprecedented measures, and we were
24 operating as a company differently than we ever had
25 before.

1 Q. So you don't have any specific internal
2 communication challenges in mind when you made this
3 statement?

4 A. Well, we're used to sitting with
5 somebody in an office and now we're not. So
6 specifically, no. Generally speaking, yes, it was
7 extremely different than how things had operated
8 before.

9 Q. So you didn't regularly email or video
10 call with your employees or agents before the
11 pandemic as a general business practice?

12 A. Did we email with folks outside of our
13 organization? Yes.

14 Q. Okay. And video calls or regular phone
15 calls?

16 A. I don't think video calls were a part of
17 our normal routine prepandemic, or at least not as
18 common as they are now.

19 Q. Okay. But you did have the ability to
20 phone call and email folks much like you're doing now
21 after the pandemic?

22 A. Yes.

23 Q. Okay. Okay. Given the question and
24 part of the answer for 22 was stricken on page 7
25 based on the Staff notice of probable noncompliance,

1 has Green Choice re-rated those consumers?

2 MR. EUBANKS: Hold on a second. I think
3 this was completely stricken. I'm sorry. I'm sorry,
4 I just wanted to --

5 MS. WILSON: The whole answer was
6 stricken?

7 MR. EUBANKS: No, it was 11 through 13.
8 By Ms. Wilson:

9 Q. I'm not -- I'm not discussing what
10 happened in negotiations, I'm asking based on the
11 initial notice of probable noncompliance has Green
12 Choice re-rated any of those consumers that were
13 listed in the notice?

14 A. Any of that information I believe would
15 be in the Staff Report through my staff's
16 correspondence with Staff in terms of the informal
17 complaint process. So if we said we did, we did. If
18 we didn't, we didn't.

19 But I don't have that information here
20 today, nor do I know which specific customers you're
21 referencing.

22 Q. Are you familiar with the term spoofing?

23 A. Yes.

24 Q. And do you understand -- do you have an
25 understanding of what this term means?

1 A. In what context?

2 HEARING EXAMINER PRICE: Telephone
3 solicitations.

4 By Ms. Wilson:

5 Q. Yes.

6 A. Yes, I generally understand that
7 somebody could use a different phone number than the
8 actual phone number.

9 Q. And would you agree that that's one of
10 the allegations of Staff, that Green Choice has
11 spoofed calls to consumers?

12 A. I don't know. If you could point me to
13 that somewhere, I'd be happy to look at it.
14 Certainly not something that we condone.

15 Q. Right. So I get you don't condone it,
16 but is there anything Green Choice does proactively
17 to prevent its third party vendors from spoofing
18 consumers?

19 A. Yeah, I think we actually require that
20 the company send us the phone numbers that are being
21 used to go out so that we understand what phone
22 numbers are being used. I think that's our process.

23 Q. Okay. And I believe you stated this
24 earlier, you're not an attorney, correct?

25 A. Not that I am aware of, no.

1 Q. And so you're not trying to provide any
2 sort of legal opinion, correct?

3 A. Am I --

4 Q. I'm just confirming -- so any of your
5 testimony today, you're not trying to provide any
6 sort of legal opinion, correct?

7 A. I'm answering your questions as
8 honestly --

9 Q. Okay. So taking into consideration
10 you're not an attorney or offering a legal opinion,
11 as president of Green Choice are you aware that Green
12 Choice must have a valid certificate of authority
13 issued by the PUCO in order to provide competitive
14 retail electric or natural gas in Ohio?

15 A. I understand that we need to be licensed
16 by the PUCO to do business in Ohio, yes.

17 Q. Okay. And isn't it true that Green
18 Choice's most current certificate of authority to
19 market natural gas expired July 20, 2022?

20 A. We filed a renewal application, and I
21 believe that was stayed for the purpose of this
22 hearing, so I believe we're in a limbo state.

23 Q. Right, but the current certificate of
24 authority expired July 20th, 2022.

25 MR. WHITT: I'll object.

1 THE WITNESS: I'll defer to my counsel.

2 MR. WHITT: And I object to further
3 questions about the certification process which we
4 actually proposed be consolidated with this
5 proceeding, and that was rejected, so it's not
6 appropriate.

7 MS. WILSON: Your Honor, the Company's
8 president -- I would expect that he would have
9 knowledge of whether or not his Company has a current
10 authority to operate a natural gas or an electricity
11 marketing in Ohio.

12 MR. WHITT: The testimony is the Company
13 is not marketing, number one. Number two, given
14 that -- where we are in the renewal process there are
15 some nuances to the issue of what expired really
16 means, and what authority they do or do not have in
17 light of the filing of a renewal of an otherwise
18 expired certificate. He understands they need a
19 license, that's why he hired me.

20 HEARING EXAMINER PRICE: Could we have
21 the last question back?

22 (Question read back.)

23 HEARING EXAMINER DAVIS: Mr. Whitt, your
24 objection was?

25 MR. WHITT: Well, it's calling for a

1 legal conclusion under the circumstances about
2 what -- what the expiration date on the previously
3 issue certificate, what exactly that means in light
4 of a renewal filing, which is for the express purpose
5 of continuing authority previously granted under that
6 certificate.

7 MS. WILSON: All I asked was if it has
8 expired, not whether or not there's a question as to
9 its renewal application stopping the expiration after
10 the fact.

11 HEARING EXAMINER DAVIS: He can answer
12 to the extent he knows for what that means to him. I
13 don't think he needs to get into any more than that.
14 Go ahead, Mr. Trombino.

15 THE WITNESS: My understanding is that
16 the certificates renew at a certain date. We filed a
17 renewal application when we were required to. That
18 now sits in the Commission's hands. That's my
19 understanding of where we're at today.

20 By Ms. Wilson:

21 Q. On your certificate of service. You
22 just talked about renewal, when the renewal date is,
23 that's not what I asked about. I'm asking about the
24 expiration date on that certificate.

25 A. If you show me the certificate I'd be

1 happy to read what the certificate says.

2 Q. As the president, I guess I just
3 expected you to know whether or not your certificate
4 of authority were expired or on the --

5 HEARING EXAMINER PRICE: He answered the
6 question.

7 MS. WILSON: I'm just trying to pull out
8 the answer and clarify what I'm asking.

9 HEARING EXAMINER PRICE: He doesn't know
10 the expiration. I think it's clear in the record he
11 does not know off the top of his head what the
12 expiration date on the certificate is.

13 MS. WILSON: Okay. I'll move on.
14 By Ms. Wilson:

15 Q. As the president of this Company are you
16 aware that in order to obtain a certificate or to be
17 recertified Green Choice must demonstrate to the PUCO
18 that it has the managerial, technical, and financial
19 capabilities to provide service?

20 MR. WHITT: I'll object. Did we not
21 just -- the questions and answers preceding these
22 establish he's not a lawyer, offers no legal
23 conclusions, and we turn right around and start
24 asking him for legal opinions.

25 MS. WILSON: I'm not. I mean, he's the

1 president.

2 MR. WHITT: A nonlawyer.

3 MS. WILSON: Well, that leaves the
4 managerial function as the president --
5 By Ms. Wilson:

6 Q. As a president of Green Choice do you
7 perform managerial, technical, or financial actions
8 on behalf of the company?

9 A. I think that the certificate was
10 renewed -- was granted originally and then renewed
11 twice. So I think that the PUCO already deemed the
12 fact that we met those qualifications three other
13 times prior to the situation that we're in now.
14 That's really all I can say about that specific
15 thing, because I'm not an attorney as we pointed out
16 earlier.

17 Q. Okay. On page 8, lines 11 through 13 --
18 you state on line 12, "As of the end of August 2022,
19 we have 1,593 electric customers and 1,253 gas
20 customers." Is that correct, is that what your
21 testimony says?

22 A. That's what it says.

23 Q. Okay. Approximately what percentage of
24 the 1,593 customers and 1,253 gas customers are
25 served under variable rate contracts?

1 A. I'll have to defer.

2 Q. Do you know if there's more variable
3 rate versus fixed rate, or you just don't know?

4 A. I would say that there are more variable
5 rate contracts than fixed rate contracts, but we
6 definitely have both.

7 MS. WILSON: I have no further
8 questions. Thank you.

9 HEARING EXAMINER DAVIS: Mr. Whitt.

10 MR. WHITT: Could we take a brief
11 recess? If we do have redirect, I promise it's not
12 going to be long. Like ten minutes?

13 HEARING EXAMINER DAVIS: We'll take ten.

14 (Recess taken.)

15 HEARING EXAMINER DAVIS: Let's go back
16 on the record. I believe we're ready to proceed with
17 redirect.

18 MR. WHITT: Yes, your Honor. Thank you
19 very much.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Whitt:

23 Q. Mr. Trombino, do you recall questions
24 from the Bench earlier when you were asked about
25 whether you investigated certain matters after the

1 hearing when we were last together? You had alluded
2 to checking into Ms. Bossart's presence on the do not
3 call list. Do you recall that testimony generally?

4 A. I do.

5 MR. WHITT: May I approach, your Honor?

6 HEARING EXAMINER DAVIS: You may.

7 MR. WHITT: I'll be handing
8 you momentarily a document, we'll call it Company
9 Exhibit 2.

10 By Mr. Whitt:

11 Q. Could you identify this document?

12 A. It's just an email asking for somebody
13 to check -- some staff member of mine to check into
14 whether or not the phone numbers stated here was on
15 the DNR or not.

16 MR. WHITT: I should add that since the
17 phone number appears in this document, we should
18 probably call this Company Exhibit 2 confidential.

19 HEARING EXAMINER DAVIS: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 By Mr. Whitt:

22 Q. Handing you Exhibit 2, it says it's from
23 Alexa Torez. Who is that?

24 A. She's our director of compliance.

25 Q. And B. Trombino, is that your email?

1 A. Yep.

2 Q. What does the company do to avoid
3 calling people on the do not call list?

4 A. We have our vendors send the leads to
5 us. We don't believe when somebody says necessarily
6 oh, they are prescrubbed, so we rather scrub them
7 ourselves and then send back the clean leads. That's
8 how we can at least do our absolute best to ensure
9 that the call -- the leads being called are not on
10 the DNC.

11 MR. WHITT: Okay. No further questions.

12 HEARING EXAMINER DAVIS: Is there any
13 recross based on those questions?

14 MR. EUBANKS: No, your Honor.

15 HEARING EXAMINER DAVIS: OCC?

16 MS. WILSON: No, your Honor.

17 HEARING EXAMINER DAVIS: I believe that
18 wraps up our last witness then?

19 MR. WHITT: Yes, and I have just brief
20 housekeeping matters. First the Company would move
21 for the admission of Exhibits Company -- Company
22 Exhibit 1, and Company Exhibit 1C, which are the
23 public and confidential versions of Mr. Trombino's
24 direct testimony, and also move for the admission of
25 Company Exhibit 2 confidential, recognizing obviously

1 the motion to strike the testimony.

2 HEARING EXAMINER DAVIS: Are there any
3 objections to the admission of these?

4 MR. EUBANKS: As stricken, no objection.

5 HEARING EXAMINER DAVIS: Okay. OCC?

6 MS. WILSON: Yeah, as long as
7 Ms. Bossart's number isn't made public, I don't have
8 any other concerns about it.

9 HEARING EXAMINER DAVIS: They are
10 admitted, and of course with 1 being subject to the
11 strikes.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 MR. WHITT: Thank you, your Honor. My
14 other housekeeping matter, I believe this was alluded
15 to on the first or second day of hearing. I would
16 ask the Bench to take, to the extent it's necessary,
17 I guess, administrative notice of the Commission's
18 Annual Report for fiscal years 2021 and 2022.

19 I'm happy to print these out and we can
20 submit them as a late-filed exhibit, but they are on
21 the Commission's website.

22 It is a report pursuant to which there's
23 a statutory duty to file it. I don't think there are
24 questions about authenticity and anything else, and
25 in the interest of saving some paper, I would guess

1 propose just to confirm that the Bench would take
2 administrative notice of those materials rather than
3 have us print them, identify them, and do it the hard
4 way.

5 HEARING EXAMINER DAVIS: That's fine,
6 yes.

7 MR. WHITT: Thank you, your Honor. With
8 that the Company has no further witnesses.

9 HEARING EXAMINER DAVIS: You may stand
10 down, Mr. Trombino. Thank you for enduring, it's
11 been a long day.

12 HEARING EXAMINER PRICE: Rebuttal?

13 MR. EUBANKS: We have one rebuttal
14 witness for a limited purpose. I'd lake to call to
15 the stand Nedra Ramsey. Sorry, go ahead.

16 MR. WHITT: If I may inquire --

17 HEARING EXAMINER DAVIS: Let's see where
18 they are going and then you can inquire. Ms. Ramsey,
19 we're going to swear you in again.

20 Do you swear or affirm what you're about
21 to tell is the truth?

22 THE WITNESS: I do.

23 HEARING EXAMINER DAVIS: Please state
24 and spell your name for the record and provide your
25 business address.

1 THE WITNESS: Nedra Ramsey, N-e-d-r-a,
2 R-a-m-s-e-y, business address Public Utilities
3 Commission of Ohio, 180 East Broad Street, Columbus
4 43215.

5 HEARING EXAMINER DAVIS: Thank you.

6 - - -

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

10 DIRECT EXAMINATION

11 By Mr. Eubanks:

12 Q. Ms. Ramsey, do you recall testimony on
13 cross for Mr. Trombino in which he referred to
14 welcome calls and how they are used by RPA?

15 A. Yes, I do.

16 Q. Did Staff ever request any welcome call
17 audios from RPA?

18 A. Yes, we did.

19 Q. And were they supplied to Staff?

20 A. Yes.

21 Q. From RPA?

22 A. Yes.

23 Q. Did Staff modify those recordings in any
24 way?

25 A. No.

1 Q. Did Staff change the name of the
2 recordings?

3 A. No.

4 Q. To the best of your knowledge, are the
5 audios the same as they were when Staff received
6 them?

7 A. Yes.

8 Q. How would you characterize -- did you
9 listen to those welcome calls?

10 A. Yes, I did.

11 MR. WHITT: I'm going to object at this
12 point. If there's any issues with the welcome calls
13 that are the basis for alleged violations, then that
14 should be disclosed in the Staff Report and it's not,
15 nor is there any testimony about any alleged
16 violations based on anything in any welcome calls.

17 This is just -- this isn't rebuttal,
18 this is just supplementation of a case without prior
19 disclosure. It's very unfair.

20 MR. EUBANKS: First of all, he doesn't
21 even know what we going to use welcome calls for.
22 Second of all, the testimony from Mr. Trombino
23 repeatedly, I might add, is that the welcome calls
24 are a part of their process to ensure that customers
25 are satisfied with their service and that -- to make

1 sure that there are no violations committed,
2 compliance was adequate, it's part of their quality
3 assurance.

4 He's used that as -- as a -- well,
5 that's what his testimony was. And all we're doing
6 is submitting the actual welcome calls in order to
7 rebut his characterization of what is indeed on the
8 welcome calls.

9 MR. WHITT: We have testimony from
10 Ms. Bossart that she received a welcome call
11 summarized in the call center record.

12 Again, Staff hasn't raised any
13 allegations about any violations based on welcome
14 calls. The witness didn't even testify on direct
15 about giving any out towards significance as to
16 welcome calls, questions raised of him in
17 cross-examination.

18 Again, it's very unfair for the
19 record -- for Staff to be able to now just give its
20 own characterization of what's on the welcome calls.

21 If the content of the calls bore some
22 significance, it should be part of Staff's direct
23 case. Again, they waived redirect of this witness
24 earlier, and now they are characterizing -- they are
25 calling the witness as rebuttal. I'm not sure what

1 they rebutting. That's my objection.

2 MR. EUBANKS: Again. He is correct, the
3 welcome calls or any mention there -- well, first of
4 all, I do believe they -- they do talk about the
5 welcome calls in his testimony, but on cross, in
6 answering questions about quality assurance and how
7 they follow up on compliance -- and they use the
8 welcome calls in order to do that, and he repeatedly
9 said these calls allow them a chance to see whether
10 or not there was compliance.

11 He's already provided a characterization
12 of what the welcome calls are. He didn't have to do
13 that, but now that that's on the record we have the
14 right, if we disagree with that, to rebut his
15 characterization of what's on the welcome calls.

16 It won't take long, they are very short
17 and you can hear for yourself and the record can
18 reflect for itself what indeed is asked on those
19 welcome calls.

20 HEARING EXAMINER DAVIS: Are you
21 planning to just have the witness state that, or are
22 you also planning to introduce it as evidence?

23 MR. EUBANKS: Yes, we have three, I
24 believe they are like 30-second to a minute, welcome
25 calls.

1 HEARING EXAMINER PRICE: Mr. Whitt
2 raises an interesting question. The propriety of
3 rebuttal testimony regarding testimony elicited on
4 cross-examination, but the parties can brief that
5 issue, so let's hear them.

6 MR. EUBANKS: Can we go off the record
7 real quick?

8 HEARING EXAMINER DAVIS: We're off the
9 record.

10 (Discussion off the record.)

11 HEARING EXAMINER DAVIS: Let's go back
12 on the record. Proceed, Mr. Eubanks.
13 By Mr. Eubanks:

14 Q. The audio recordings, how do you have
15 them stored right now, Ms. Ramsey? Let me ask
16 different, are they on a disk?

17 A. Yes, they are on a flash drive.

18 Q. Flash drive, that's what I meant.

19 MR. EUBANKS: Your Honor, I'd like to
20 mark as Staff Exhibit 13 the flash drive containing
21 the welcome calls.

22 HEARING EXAMINER DAVIS: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 By Mr. Eubanks:

25 Q. How many audio files are on the flash

1 drive?

2 A. Two.

3 Q. Could you play the -- first of all, what
4 was the name reference for the first audio file?

5 A. It's -- the customer's name is Ann
6 Toliver- and then her phone number.

7 Q. Okay. Could you play the first audio
8 file?

9 (Playing audio file.)

10 By Mr. Eubanks:

11 Q. And is that the conclusion of that
12 audio?

13 A. Yes, it was.

14 Q. And what is the name of the second audio
15 file that was provided to Staff?

16 A. Jennifer Jones- and then her -- appears
17 to be her phone number.

18 Q. Could you play that audio file?

19 (Playing audio file.)

20 HEARING EXAMINER PRICE: Ms. Ramsey,
21 play it again.

22 (Playing audio file.)

23 By Mr. Eubanks:

24 Q. Is that the end of the recording?

25 A. It is.

1 MR. EUBANKS: Your Honor, I'd like to
2 move to have Staff's Exhibit 13 admitted into
3 evidence, and I have no more questions to the
4 witness. Obviously I'm moving?

5 MR. WHITT: No cross. No objection to
6 the admission of the exhibit.

7 HEARING EXAMINER DAVIS: OCC?

8 MS. O'BRIEN: No objection.

9 HEARING EXAMINER DAVIS: No cross, no
10 objection?

11 MS. O'BRIEN: No cross.

12 HEARING EXAMINER DAVIS: It's admitted.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 HEARING EXAMINER DAVIS: And if that's
15 it for this witness, you may stand down again.

16 (Witness excused.)

17 HEARING EXAMINER DAVIS: Being through
18 with our witnesses, I think the only thing left to
19 touch on potentially is get some idea about briefing
20 schedule.

21 HEARING EXAMINER PRICE: Let's go off
22 the record.

23 (Discussion off the record.)

24 HEARING EXAMINER DAVIS: Let's go back
25 on the record. We just discussed a briefing

1 schedule, and what we're going to have is January 6,
2 2023 for initial briefs, and January 7, 2023 for
3 reply briefs. Thank you all for being here. We're
4 now adjourned.

5 (Thereupon, the hearing was
6 adjourned at 3:50 p.m.)

7 - - -

CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the proceedings
taken by me in this matter on Thursday, November 10,
2022, and carefully compared with my original
stenographic notes.

Valerie J. Grubaugh,
Court Reporter and Notary
Public in and for the State
of Ohio.

My commission expires August 11, 2026.

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 22-0441-GE-COI

Summary: Transcript November 11th 2022 In the Matter of the Commission's Investigation Into RPA Energy Inc.'s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Grubaugh, Valerie