

PLACE: Dobbs Building, Raleigh, North Carolina

DATE: Tuesday, April 16, 2024

TIME: 10:03 a.m. - 10:59 a.m.

DOCKET: E-2, Sub 1338

BEFORE: Hearing Examiner Kimberly Murrell

IN THE MATTER OF:

Marleen D. Asbury,
3117 Brushy Mountain Street,
Cary, North Carolina 27519

Complainant

v.

Duke Energy Progress, LLC,

Defendant

1 A P P E A R A N C E S:

2 FOR MARLEEN D. ASBURY:

3 Marleen D. Asbury, Pro se

4 3117 Brushy Mountain Street

5 Cary, North Carolina 27519

6

7 FOR DUKE ENERGY PROGRESS, LLC:

8 Robert W. Kaylor, Esq.

9 Robert W. Kaylor, P.A.

10 Post Office Box 30036

11 Raleigh, North Carolina 27622

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E X H I B I T S:

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P R O C E E D I N G S

HEARING EXAMINER MURRELL: Good morning.

Let's come to order and go on the record. My name is Kimberly Murrell, Staff Attorney for the North Carolina Utilities Commission. I have been assigned as the Hearing Examiner to conduct the hearing in this proceeding today.

I have a few housekeeping matters. I apologize for the warm and fuzzy conditions. Please let me know if you get too warm and you need to take a brief recess, we can try to accommodate you as best we can. Please remember, because the fans are running to talk into the microphone so that we can hear you, and, if some reason, you can't hear me, remind me that you can't hear me and I'll try to speak up as best I can.

I now call for hearing Docket Number E-2, Sub 1338. This is the matter of Marleen Asbury versus Duke Progress Energy, LLC (sic). This docket involves the Complaint filed by Ms. Marleen Asbury on January 17th, 2024, against Duke Energy Progress, LLC, related to metering and billing.

This Commission ordered the Complainant -- the Complaint to be served on Duke Energy Progress, which I may refer to as the Company or Duke.

NORTH CAROLINA UTILITIES COMMISSION

1 Duke filed its Answer and Motion to Dismiss
2 on February 2nd, 2024.

3 On February 7th, 2024, the Commission issued
4 an Order serving Duke's Answer and Motion to Dismiss
5 on Complainant. In the Order, the Commission directed
6 Ms. Asbury, who I may refer to as Complainant, to
7 review the Answer and Motion to Dismiss and advise the
8 Commission by February 20th whether the Answer was
9 acceptable and, if not, whether she desired a public
10 hearing.

11 On February 21st, Ms. Asbury advised the
12 Commission that the Answer was not acceptable and
13 requested a public hearing.

14 On October 5th, 2021 (sic), the Commission
15 issued an Order scheduling this matter -- 2024, excuse
16 me -- issued an Order scheduling this matter for
17 hearing at this time and place, which brings us here
18 today.

19 I will now ask the parties to make
20 appearances for the record, beginning with the
21 Complainant.

22 Ms. Asbury, would you like to speak from
23 where you're sitting or would you be comfortable
24 taking the witness stand?

1 MS. ASBURY: No, this is fine.

2 HEARING EXAMINER MURRELL: Okay.

3 Ms. Asbury, would you please state your name and
4 address for the record?

5 MS. ASBURY: Yes. My name is Marleen
6 Asbury, 3117 Brushy Mountain Street, Cary, North
7 Carolina 27519.

8 HEARING EXAMINER MURRELL: Next, who will be
9 presenting Duke's case in evidence?

10 MR. KAYLOR: Hearing Examiner, I'm Robert
11 Kaylor on behalf of Duke Energy Progress.

12 HEARING EXAMINER MURRELL: Thank you. If
13 there are no other preliminary matters to consider, we
14 will begin with the Complainant since you have the
15 burden of proof.

16 Ms. Asbury, as the Complainant, you have the
17 burden to prove your case and you have the right to
18 present evidence first. Duke has the right to
19 question you and any other witnesses who may speak on
20 your behalf, and then I may ask you some questions to
21 follow up as well.

22 Also, I would ask that if you refer to any
23 written documents, that you would present them to be
24 marked and entered as an exhibit in this hearing, even

1 if you've already filed them with the Commission.
2 That just helps us to keep the documents accurate and
3 keep the record clear of everything that transpires
4 here today and any documentary evidence that you
5 present.

6 Lastly, I also want to make sure that you
7 understand that I will not render a decision in this
8 matter today. Rather, as the Hearing Examiner, I will
9 listen to the evidence presented here today. A
10 decision will be issued in written form and the
11 Commission's Chief Clerk's Office at a later time.
12 Does that make sense?

13 MS. ASBURY: Yes.

14 HEARING EXAMINER MURRELL: Are you ready to
15 be sworn in and present your evidence?

16 MS. ASBURY: Yes, ma'am.

17 HEARING EXAMINER MURRELL: Would you like to
18 affirm or swear?

19 MS. ASBURY: Swear. It doesn't matter.

20 HEARING EXAMINER MURRELL: There is a Bible
21 to your left.

22 MS. ASBURY: I swear I'm Marleen Asbury --

23 HEARING EXAMINER MURRELL: I'm sorry. I'll
24 ask you the question.

1 Please place your left hand on the Bible and
2 raise your right hand.

3 MARLEEN D. ASBURY;

4 having been duly sworn,

5 testified as follows:

6 HEARING EXAMINER MURRELL: Now Ms. Asbury,
7 now that you're under oath, you are going to present
8 factual testimony about the matters in your complaint.
9 Please feel free to explain the situation and provide
10 to me any documentation regarding your complaint
11 against Duke. When you are finished, the attorney for
12 Duke will the chance to ask you some questions about
13 your testimony and then as I mentioned before, I may
14 have additional questions after that.

15 THE WITNESS: Do you want the evidence now
16 or after I talk?

17 HEARING EXAMINER MURRELL: You can pass the
18 documents up as you're discussing them. But no, you
19 don't need to pass them up now, just as you come up.
20 And when you pass up the documents, if you'll remember
21 to sort of tell me what they are as you pass them up.

22 THE WITNESS: First of all, can I tell you,
23 when I moved in there, when it all started --

24 HEARING EXAMINER MURRELL: Before we get

1 started, do you have any other questions about the
2 procedure?

3 THE WITNESS: No.

4 HEARING EXAMINER MURRELL: Keep the mic
5 pulled to your mouth as best you can and try to speak
6 clearly and slowly. Thank you.

7 DIRECT STATEMENT BY THE WITNESS:

8 Yeah, I'm over at Crown Park Apartments in
9 Cary. I moved in there in 2018. And the second --
10 that was August the 1st of 2018, I moved in.

11 On September the 1st, I got a call from
12 management. And also the maintenance guy told me that
13 the -- and it's a brand new apartment. I was the
14 first one there, and they were still doing
15 construction on it. They had put the meters in and
16 when they put them in they hooked them up wrong to the
17 wrong apartments. So he said he was going to change
18 my meter. I had no problem with it. I said, hey,
19 anybody can make a mistake. And from that day until
20 August the 24th of 2023, one gentleman of 2000, 2012
21 apartment called in and said he had a high bill. He
22 hadn't lived there very long and there had been many
23 others there in that apartment. That's the apartment
24 that I was supposed to be hooked up wrong to that Duke

1 says -- they came out. Well, let me say, they came
2 out first and he said that his meter was hooked to
3 mine, mine to his, and they changed them and they
4 fixed it. And I had already got a bill that month.
5 It had already came out for I think it was like
6 \$98.00, somewhere around that area.

7 Then, from there, they -- I went to call in
8 to pay my bill. I always pay it the first of the
9 month. It's not due to the 20th. And I got a bill,
10 they said I owed \$2112.83. I said, "what"? So I
11 called in and they said, yes, they are going to
12 prorate you back to twenty-one.

13 Then I -- after that -- and I talked to many
14 people at Duke's, managers, and they could not give me
15 an answer why. I said, my meter was, you know,
16 changed already in 2018. And I knew it was right.
17 And they could not give me an answer for that. I
18 said, do you go back in your records, look in 2018.
19 And they said we don't have those records anymore. I
20 said -- so I'm thinking to myself, would I stay here
21 today? Even the Internal Revenue tells you, you must
22 hold your records for at least seven years. They did
23 not. Those records are lost. So I have no proof that
24 that meter was changed other than my management.

1 Then, after that, they sent me another bill.
2 They reduced to it to \$2021.05. And then they went
3 from there to \$759.22, plus \$237.29 for that month. A
4 total of \$965.93. And in all this time I paid my
5 bills. I don't mind paying anything that I owe but
6 when I feel that I don't owe it, I'm -- just like I
7 told them I'm going to fight this.

8 And also, since Bob Donaldson came out from
9 Duke, I have found more evidence that there was
10 different meters. Not just different meters,
11 different account numbers. Now, he tried to say that
12 the meter, the number was only changed. No. That
13 meter was changed on the 11th because on the fifth
14 when they came out to change that meter, they did not
15 come up to the apartment to see if it shut on and off.
16 I called Duke. They came back out on the 11th,
17 changed it, and he had the maintenance come up to my
18 apartment to make sure it would shut on and off, and
19 it did not. He went to the truck, got another meter,
20 put it in on the 11th.

21 When Mr. Donaldson came out on -- let's
22 see -- anyway when Mr. Donaldson came out, he had
23 noticed on every one of these -- and I've got pictures
24 of it. Every one of these meters has a plate, a metal

1 plate with a number on it of your apartment. So
2 there's no way you make a mistake. And that was done
3 in 2018 after they made that mistake. But when the
4 guy came out on 2011, and this is my opinion, he took
5 that plate off and that's to cover him on the fifth,
6 that they did not come out and check to see it shut on
7 and off. And when he put that meter in on the 11th,
8 they had him come up there, it did shut on and off.
9 So it was right.

10 And that's about all I've got to say on the
11 matter that I can think of right off. I'm kind of
12 nervous. This is my first time ever having to do
13 this. But like I said, you don't never change account
14 numbers. Even if the meters, let's say hypothetically
15 that Duke is right, you don't change account numbers,
16 and I have two different account numbers and I can
17 show you on the bills.

18 HEARING EXAMINER MURRELL: Thank you,
19 Ms. Asbury.

20 MR. KAYLOR: Hearing Examiner, if she has
21 bills or anything like that that she would like to
22 introduce that are from Duke, we have no objection to
23 those being identified, and they can be placed in the
24 record at any time.

1 HEARING EXAMINER MURRELL: Thank you.

2 Thank you, Ms. Asbury. Are there any
3 documents that you would like to pass up for me to
4 review at this time?

5 THE WITNESS: Yes. Yes.

6 HEARING EXAMINER MURRELL: Thank you.

7 THE WITNESS: And this is some notes that I
8 made that I wanted her to see.

9 There also was, the last six months,
10 inconsistency of them, the payments each month. If
11 you look at that, it's like \$179, \$195, \$267, \$187,
12 \$194. You don't have that kind of inconsistency and
13 you don't -- nothing's changed. And a lot of times,
14 like I told Mr. Donaldson, I didn't even turn the heat
15 on. And when he came in, you know, he asked if could
16 he come to my apartment. And I said, "sure". I had
17 no problem with that. He was going to supposedly to
18 try to find out. Well, the first thing he said when
19 he come in, he looked at a shelf that I had there, and
20 he said, "you're a professional cook". I said, "no,
21 I'm not professional but I like to cook". And it's
22 almost like trying to find evidence that where I'm
23 using the power. Then he points out a little heater
24 that I have. And I've got pictures of it. I want to

1 show you it. That thing, if it costs \$10 a month,
2 it'd be lucky. And that's -- it's very seldom I use
3 that.

4 I also got the meter numbers here and I can
5 show you where the plate's missing. And that's it.

6 HEARING EXAMINER MURRELL: Thank you,
7 Ms. Asbury. If you would pass that up. I have
8 here --

9 MR. KAYLOR: No objection to these
10 documents.

11 HEARING EXAMINER MURRELL: Thank you,
12 Mr. Kaylor.

13 The first set of documents that Ms. Asbury
14 has passed up appear to be about 13 sets of bills.
15 We're going to mark that as Complainant Exhibit 1.
16 Duke has stipulated that it's okay -- I mean, they
17 have no objection to these records, so these documents
18 will be marked as Complainant Exhibit 1.

19 (WHEREUPON, Complainant
20 Exhibit 1 is identified.)

21 HEARING EXAMINER MURRELL: We also have a
22 second document which appears to be a set of notes
23 from Complainant regarding the bills. And so we'll
24 mark those as Complainant's Exhibit 2.

1 (WHEREUPON, Complainant
2 Exhibit 2 is identified.)

3 HEARING EXAMINER MURRELL: And the last,
4 third set, appear to be pictures.

5 THE WITNESS: Yeah. Those are pictures of
6 the meters. And you'll see where I put a pink marker
7 to show you which meter was mine. And where that
8 number is on the globe is where my maintenance guy, he
9 said, "this ain't going to happen again." He put it
10 on there, 3117.

11 HEARING EXAMINER MURRELL: Okay. Thank you.
12 Mr. Kaylor, would you like to view these pictures?

13 MR. KAYLOR: Not at all. No objection to
14 the pictures.

15 HEARING EXAMINER MURRELL: Okay. Thank you.
16 So these pictures of the meter Ms. Asbury has provided
17 will be marked as Complainant Exhibit 3. And these
18 are deemed admitted into the record, or accepted and
19 admitted into the record.

20 (WHEREUPON, Complainant
21 Exhibit 3 is identified and
22 received into evidence.)

23 THE WITNESS: What about the bills that I
24 sent in to the Commission Board? I have some here

1 that I had paid that used to be my old meter before
2 they changed it. And in '21 -- that was another
3 thing. In '21, they changed it to smart meters. And
4 now it's all controlled by the office. I can't verify
5 to see the kilowatts I'm using. Nothing. So I have
6 to take their word that's what I'm using. But I can
7 show you bills that I had on the meter before and were
8 never that high.

9 HEARING EXAMINER MURRELL: Would you like to
10 pass that up?

11 (Exhibits handed to Hearing Examiner)

12 HEARING EXAMINER MURRELL: Thank you,
13 Ms. Asbury. Mr. Kaylor.

14 MR. KAYLOR: No objection.

15 HEARING EXAMINER MURRELL: Thank you. So
16 the fourth document passed up by Ms. -- by Complainant
17 will be marked as Complainant Exhibit 4 and it appears
18 to be a payment record for bills on this account back
19 through -- up through 2022. So we'll mark this as
20 Complainant's Exhibit 4 and this exhibit is also
21 accepted and will be entered into the record.

22 (WHEREUPON, Complainant
23 Exhibit 4 is identified and
24 received into evidence.)

1 HEARING EXAMINER MURRELL: Ms. Asbury, do
2 you have anything additional to say before Mr. Kaylor
3 asks you questions?

4 THE WITNESS: No. That's about all I can
5 think of right now.

6 HEARING EXAMINER MURRELL: Thank you.
7 Mr. Kaylor, are you ready to cross examine?

8 MR. KAYLOR: Thank you, Chair.

9 CROSS EXAMINATION BY MR. KAYLOR:

10 Q Ms. Asbury, I'm Robert Kaylor. I represent Duke
11 Progress. Just a couple of questions.

12 In your apartment you mentioned that you're
13 a cook. What kind of stove do you have? Is it
14 gas or electric?

15 A I've got electric.

16 Q And do you also have a refrigerator?

17 A Yes.

18 Q Do you also have like a --

19 A It's a little small chest freezer. I gave her a
20 picture of it. And the heater is only about a
21 foot wide and about a foot high. And what it is
22 it's like a little fireplace that you don't even
23 have to turn the heat on, you can just use it for
24 the ambience.

1 Q So you're saying that's a chest freezer in
2 addition to your --

3 A Yeah.

4 Q -- refrigerator?

5 A It's a little chest freezer in the pictures
6 there. It's not that big.

7 Q Okay. So in addition to your refrigerator you
8 have a freezer also.

9 A Yes.

10 MR. KAYLOR: I have nothing further to ask
11 the Complainant.

12 HEARING EXAMINER MURRELL: Thank you,
13 Mr. Kaylor.

14 THE WITNESS: And, oh, by the way, there's
15 only 1100 square feet in that apartment. It's a two
16 bedroom, 1100 square feet.

17 HEARING EXAMINER MURRELL: Thank you,
18 Ms. Asbury.

19 Ms. Asbury, I have one additional question
20 for you.

21 EXAMINATION BY HEARING EXAMINER MURRELL:

22 Q I think you noted that you were turning your
23 power down. You weren't using that much heat?

24 A Yeah. A lot of time we never had the heat on at

1 all.

2 Q Okay.

3 (WHEREUPON, the Court
4 Reporter requested that the
5 witness allow the Hearing
6 Examiner to complete their
7 question before answering.)

8 HEARING EXAMINER MURRELL: Thank you. I'll
9 repeat the question.

10 Q So you mentioned that often times you would turn
11 down your heat or air. Did you ever turn the
12 meter or breaker all the way off?

13 A Yes.

14 Q Where you completely turn the meter off at the --
15 I mean, turn the breaker off, like, flip the
16 switch?

17 A Oh. Not the breaker. No.

18 Q Okay. I just wanted to make sure. I have --

19 A Just the thermostat; I turned the heat off.

20 HEARING EXAMINER MURRELL: Thank you.

21 Mr. Kaylor, any follow up questions to that?

22 MR. KAYLOR: Yes.

23 EXAMINATION BY MR. KAYLOR:

24 Q Let me just go through a series of questions here

1 to confirm what you actually have in your unit.
2 So, it's heated by a heat pump with auxilliary
3 heat; is that correct?

4 A (Nods head in agreement).

5 Q You have a stove and range; that's correct?

6 A I have an electric stove. Yes.

7 Q And you have a microwave?

8 A Yes.

9 Q And you indicated you have a refrigerator and a
10 freezer?

11 A Yes.

12 Q You have a washer/dryer?

13 A Yes.

14 Q Do you have a water purifier?

15 A My water purifier is just a portable on top of
16 the counter.

17 Q Okay. And I think you have -- do you have
18 multiple TVs or just one?

19 A I have my one TV in my living room. I never use
20 my bedroom. I've got one in there but I don't
21 use it.

22 Q And do you have a computer to use?

23 A Yes.

24 MR. KAYLOR: Thank you. That's all we have.

1 HEARING EXAMINER MURRELL: Thank you,
2 Mr. Kaylor.

3 Ms. Asbury, if you have nothing further, do
4 you have another witness that you would like to call?

5 MS. ASBURY: My son can come up to verify
6 everything I've said.

7 HEARING EXAMINER MURRELL: I mean, it's up
8 to you. This is your --

9 MS. ASBURY: And he might -- yeah. He might
10 have something that I've forgot that I didn't mention.

11 HEARING EXAMINER MURRELL: Okay. I'm sorry.
12 What is your son's name?

13 MS. ASBURY: Chris. Chris Asbury.

14 HEARING EXAMINER MURRELL: Mr. Asbury, if
15 you would, approach the witness stand.

16 MS. ASBURY: Oh. By the way, when you
17 mentioned about the electric stove, we've been on a
18 carnivore diet and I've been using an air fryer for
19 quite a few months. So I never use that stove.

20 HEARING EXAMINER MURRELL: Ms. Asbury, once
21 you've had a chance to speak then you will need to
22 actually wait. You will have an opportunity at the
23 end to give any additional information on rebuttal.
24 Okay? Thank you. And please remember to speak one at

1 a time. Thank you.

2 Mr. Asbury, thank you. Would you place your
3 left hand on the Bible and raise your -- would you
4 state your name for the record? I'm sorry.

5 MR. ASBURY: Christopher Allen Asbury.

6 HEARING EXAMINER MURRELL: Thank you. And
7 would you place your left hand -- would you place your
8 left hand on the Bible and raise your right hand?

9 CHRISTOPHER ALLEN ASBURY;
10 having been duly sworn,
11 testified as follows:

12 HEARING EXAMINER MURRELL: Thank you.

13 THE WITNESS: Yes, ma'am.

14 HEARING EXAMINER MURRELL: Now that you're
15 under oath, Mr. Asbury, you're going to present
16 factual testimony related to the Complaint. Please
17 feel free to explain the situation. And if you have
18 any documentation you'd like to pass up at that time,
19 please do so; explain what the documents are. And
20 when you're done, the attorney for Duke will -- may
21 ask you some questions, and I may have additional
22 questions after that.

23 Do you understand this procedure?

24 THE WITNESS: I do.

1 HEARING EXAMINER MURRELL: Okay. You may
2 begin.

3 DIRECT STATEMENT BY THE WITNESS:

4 Aside from the testimony my mother gave, I
5 have a question for you, sir. There was the original
6 bill --

7 HEARING EXAMINER MURRELL: I'm sorry. This
8 is your opportunity to testify so you can give any
9 information that you would like to give. Mr. Kaylor
10 will ask you questions afterwards.

11 THE WITNESS: Certainly. Okay. Well, I do
12 know this, that the original bill that we got was like
13 \$2112 and some cents. Okay. The question that I
14 would have is, if we were to pay the bill in full and
15 not have any complaints or not even appear in a
16 courtroom like this, would anything have been said or
17 done to distinguish that bill or lessen it because of
18 mistakes of Duke Energy. I say no. I say it would
19 have been just another day in paradise, you know,
20 because that's just business. If the bill was false,
21 or with error, or maybe the amount was just not
22 configured right, I'm not sure how to describe it, but
23 I do know that thing was reduced at least five times.

24 Is that five times, mom, that -- more than

1 once. I know that much.

2 MS. ASBURY: Yeah.

3 THE WITNESS: And each time they would
4 lessen it, lessen it, lessen it. And it would be only
5 after we got an attorney involved and threatened to
6 take them to court. It's just a little bit suspicious
7 to me. Maybe dishonest. And so what I'd like to do
8 is get an explanation for that, because nobody,
9 including Bob Donaldson that was at the house
10 discussing these matters with us, could not give an
11 explanation. When I presented the proof to him, he
12 said, "well, that was somebody else's error". Or
13 whatever he said. But I would like to have an
14 explanation of that. I mean, it's -- either it's
15 \$2112 or it's not. Who's lying here? Who's
16 presenting a mistruth? And if it is, why -- then it
17 went down to like less than \$1000.

18 So there is some dishonesty going on here.
19 And that's one of the reasons why we're here at this
20 Court, is because there are some people at Duke Energy
21 that doesn't know basic math, and we're paying the
22 price for that. I don't think that's fair and I don't
23 think it's right. And I think the Commission should
24 consider paying back the money, in my opinion, they've

1 stole away from our account. And that's all I have to
2 say.

3 HEARING EXAMINER MURRELL: Thank you,
4 Mr. Asbury. Mr. Kaylor.

5 CROSS EXAMINATION BY MR. KAYLOR:

6 Q Mr. Asbury, did you give your address for the
7 record? If you did, I didn't hear it.

8 A That would be 3117 Brushy Mountain Street, Cary,
9 North Carolina, and that would be 27519.

10 Q So that's the same address as your mother?

11 A That's right.

12 Q And do you recognize Mr. Donaldson?

13 A I do.

14 Q Okay.

15 MR. KAYLOR: Thank you. That's all I have.

16 HEARING EXAMINER MURRELL: Thank you,
17 Mr. Kaylor.

18 Mr. Asbury do you have anything additional
19 you would like to follow up and say?

20 THE WITNESS: Well, everything my mother has
21 told has been true to the facts. You know, I've lived
22 with this woman for many, many years, and there's no
23 way she's lying in testimony. I can tell you that.
24 Everything she says is the absolute truth.

1 As far as the meters and the matters of
2 swapping out meters and the plate, that looks
3 suspicious as well. I mean, every meter that's in the
4 office of the manager of our apartment complex has a
5 plate on there except for ours, and they had to mark
6 the glass in order to distinguish that particular
7 globe and distinguish that from the others. I find
8 that suspicious as well.

9 I think a little bit of dishonest is at hand
10 here but that's just my opinion. So, about that,
11 that's about all I have to say.

12 HEARING EXAMINER MURRELL: Thank you,
13 Mr. Asbury. If you -- if there's nothing further.

14 MR. KAYLOR: Nothing further from Duke.

15 HEARING EXAMINER MURRELL: I'm sorry.

16 MR. KAYLOR: No further questions.

17 HEARING EXAMINER MURRELL: Thank you. You
18 may be excused. You may be seated.

19 THE WITNESS: Yes, ma'am. Thank you.

20 HEARING EXAMINER MURRELL: Ms. Asbury, do
21 you have any other witnesses or --

22 MS. ASBURY: No. I want to say something.

23 HEARING EXAMINER MURRELL: Okay.

24 MS. ASBURY: When Mr. Donaldson was out, he

1 even asked the maintenance guy what happened to the
2 plate. And he said, "I don't know".

3 When they came out on the 11th and, like I
4 said, they changed that meter, that's when the plate
5 was missing.

6 HEARING EXAMINER MURRELL: Okay.

7 MS. ASBURY: When I went back down there,
8 and he was there, there was no plate.

9 HEARING EXAMINER MURRELL: Thank you,
10 Ms. Adkins.

11 Duke, are you ready to present your case?

12 MR. KAYLOR: Yes. We would call Bob
13 Donaldson to the stand.

14 HEARING EXAMINER MURRELL: Thank you.

15 MR. KAYLOR: State your name and address for
16 the record, please.

17 MR. DONALDSON: Bob Donaldson, Regulatory
18 Affairs Manager, Duke Energy.

19 (Pause)

20 HEARING EXAMINER MURRELL: Sorry.

21 Mr. Donaldson, are you ready to be sworn in?

22 MR. DONALDSON: Yes.

23 HEARING EXAMINER MURRELL: Will you place
24 your left hand on the Bible and raise your right hand?

1 BOB DONALDSON;
2 having been duly sworn,
3 testified as follows:

4 HEARING EXAMINER MURRELL: Thank you,
5 Mr. Donaldson. Now, that you're under oath, you're
6 going to resent factual testimony about the matters in
7 the Complaint. Please feel free to give us any
8 additional information regarding Duke's case and pass
9 up any documents and exhibits, and please explain
10 which documents you may be passing up so that we can
11 make sure the record is clear. Do you understand the
12 procedure?

13 THE WITNESS: I do.

14 HEARING EXAMINER MURRELL: You may begin.

15 DIRECT EXAMINATION BY MR. KAYLOR:

16 Q Mr. Donaldson, how long have been employed by
17 Duke Energy?

18 A Over 25 years.

19 Q What is your educational background?

20 A Bachelor of Science, Mechanical Engineering, NC
21 State 1984.

22 Q And you mentioned your title. Could you state
23 your title again?

24 A Regulatory Affairs Manager in North Carolina.

1 Q And what do those duties encompass for the
2 Company?

3 A Basically, working with the Public Staff,
4 Commission staff, and the Commission. I'll just
5 say specifically here related to escalated
6 customer complaints, a number of regulatory
7 matters in operations from generation,
8 transmission, and distribution.

9 Q And you're familiar with the Asbury Complaint, I
10 believe?

11 A I am.

12 Q And did you help me in preparing the answer to
13 the Complaint which has been filed with the
14 Commission?

15 A I did. I investigated this entire case and
16 drafted the response that we filed with the
17 Commission.

18 Q So, you say you investigated, so you're familiar
19 with all the details that have been described by
20 the Complainant and her son; is that correct?

21 A Yes.

22 Q So, in the Complaint, the Complainant says that
23 she believes that the bills had been prorated
24 somehow. Does -- have any bills been prorated

1 with respect to this account?

2 A No bills have been technically prorated. What we
3 used was the prior meter in the meter base that
4 serves her apartment. We used that meter data
5 specifically to back-bill the customer per
6 Commission Rule.

7 Q And I think you heard the Complainant state that
8 there was now a new meter which she couldn't read
9 or she couldn't tell what her usage was; is that
10 correct?

11 A I'm not quite understanding the Complaint but
12 there is a current meter there that is referenced
13 in our response.

14 Q Can customers read that meter to determine their
15 usage?

16 A Yes, they can. And I just want to add, in
17 regards to -- about her energy use and having
18 interest in it, maybe on a daily basis; do you
19 get your bill electronically or by mail?

20 MS. ASBURY: No. I get it by mail. But I
21 always call in and check it. When the bills --

22 HEARING EXAMINER MURRELL: I'm sorry.

23 THE WITNESS: I'm bad about that. I just
24 want to help.

1 HEARING EXAMINER MURRELL: That's okay.

2 Mr. Kaylor, please continue on.

3 BY MR. KAYLOR:

4 Q Explain what your investigation encompassed with
5 regard to the wrong meter being billed to the
6 Complainant?

7 A Yeah. This is a cross-meter situation which can
8 occasionally happen in apartments. And I
9 basically followed this chronologically from when
10 the Complaint came through from another resident
11 in the apartment as she referenced, I basically
12 investigated that chronologically from the time
13 that Complaint started all the way through. A
14 cross-meter situation is simply where a meter
15 serving one customer is being billed to another
16 customer account.

17 Q How did the Company become aware of this
18 cross-meter situation?

19 A From the Complaint and the resident that was in
20 3112 Brushy Mountain Street. That's in the
21 response as well and she referenced that.

22 Q So, did you on occasion go out and visit the
23 property yourself?

24 A I visited once. It was on February 8th at 9:00

1 a.m.

2 Q Can you explain the back-charge that the Company
3 initiated initially with regard to, once it
4 realized, in their mind, there had been a
5 cross-meter issue?

6 A Yes. I'd like to explain that. And this is in
7 the response as well. We reference a 672
8 period -- a day period where we basically did a
9 complete, what we call a cancel and rebill. We
10 go all the way back to where we have records on
11 that meter on that account. This isn't
12 necessarily the most -- it can be a little
13 confusing and I apologize for that on behalf of
14 the Company. But basically what we did to do the
15 back-bill, and this is all in the response, is we
16 basically took the meter that is physically in
17 her meter base that was applied to the other
18 person's account, now it's on hers, and we
19 basically went all the way back 672 days to a
20 date I have in the response there. And then we
21 credited that account all the way up to the
22 150-day rule, Commission Rule.

23 Q So explain what you mean by the 150-day
24 Commission Rule?

1 A Basically, for back billing, and I've got it
2 referenced here -- let me just reference kind of
3 in our response, page 3, it's paragraph "f". And
4 I put this in here just for this reason so
5 everybody would understand and the customer would
6 understand.

7 HEARING EXAMINER MURRELL: I'm sorry. What
8 are you referencing again?

9 THE WITNESS: In our Response --

10 HEARING EXAMINER MURRELL: Okay.

11 THE WITNESS: -- page 3, paragraph "f" at
12 the bottom.

13 A It says -- we basically said, "Upon discovery of
14 the undercharge, the Complainant's account was
15 rebilled the difference between the correct meter
16 usage and the incorrect meter usage for the
17 entire 672 day period. The rebill difference was
18 then credited for all additional usage, except
19 the last 150 days allowed for back billing by
20 Commission Rule R8-44(4)a."

21 And I put this in the response as well. To
22 get the point across I underlined it. "To be
23 clear, the Complainant was not and has not been
24 back billed for the 672 day period, only the 150

1 days allowed by Commission Rule."

2 Mr. Asbury often references the \$2000 bill.
3 It was never the intent of the Company to bill
4 anybody \$2000. I apologize on behalf of the
5 Company. That was confusing. We kind of used
6 the term "cancel rebill". It's just a
7 methodology in the process. But instantly, okay,
8 there was a credit applied to the account. And
9 all that -- all the math kind of is spelled out
10 there in the response. But it was never the
11 intent to bill the customer for that entire
12 period, only for the Commission Rule back bill
13 period.

14 BY MR. KAYLOR:

15 Q So when did you actually visit the site and look
16 at the meters and discuss that with the Company's
17 representative?

18 A That was on February 8th at 9:00 a.m.

19 Q February 8th of this year?

20 A Yes.

21 Q And what did you determine upon that visit?

22 A When we visited -- I tell you what, I've got my
23 notes right there if I could grab those.

24 HEARING EXAMINER MURRELL: Mr. Kaylor, if

1 you'll pass them up. You're passing up notes. These
2 are just notes, not exhibits, just notes.

3 MR. KAYLOR: Correct.

4 A Yes. So again, we went February 8th, 9:00 a.m.
5 We met there at the meter room and basically went
6 in the meter room, identified the meter number
7 that we believed to be the current meter. I
8 think we were there with a couple of people from
9 the apartment. I think one is the assistant
10 property manager and one is the maintenance man,
11 I guess. They were with us.

12 We identified the meter and the meter number
13 that is on her account at that time and now. All
14 right. And at 9:12 a.m., we turned the main
15 circuit breaker off beside that meter and then we
16 were going to proceed up to the apartment to
17 confirm that the power was out. So we turned
18 that breaker off. We proceeded up to their
19 apartment, and the power was out. And then we
20 basically -- you know, we just had some Q and A,
21 and just talked about the issues at hand. I
22 tried to kind of go through my response with the
23 parties here. And after we did that we
24 basically, we went back down and turned the

1 breaker on. And we turned the breaker on, let's
2 see here, I got a time, at 9:52 a.m.

3 BY MR. KAYLOR:

4 Q So let's back up a second and let's read the
5 meter numbers that were on Ms. Asbury's account.
6 What was the original meter number on her
7 account?

8 A Okay. All right. So let's bring all of this up.
9 So -- and this is in my response and this has
10 been verified by two service technicians in some
11 visits that are in my response. The one that was
12 physically in her meter base is the meter ending
13 in -- I'll just use three numbers -- ending in
14 413.

15 Q And what was the other meter number for the
16 adjacent-type apartment?

17 A The meter for the adjacent apartment physically
18 there was 411. That's referenced.

19 Q So explain how the bills were sent over these
20 three-year period to those different addresses,
21 based on the meter numbers?

22 A So over this period of time, up until the
23 complaint came about from this other resident,
24 the meter number 411 which served 3112 Brushy

1 Mountain was being billed to 3117 and Ms. Asbury.

2 Q So let's state that again. The meter number 411
3 which was the adjacent apartment, and the usage
4 there in that apartment was being billed to
5 Ms. Asbury?

6 A Ms. Asbury.

7 Q And how was she being billed?

8 A She was being billed -- yeah, she was -- well,
9 your question should be for the other resident.
10 The other resident was being billed on 413.
11 Okay. So here, I'm going to kind of classify it
12 this way: 413 was generally the higher usage.
13 Okay. 411 was the lower usage.

14 Q So the adjacent apartment that had lower usage
15 was paying for a meter that showed higher usage.

16 A Correct.

17 Q And so this was the purpose of you're saying
18 switched meters, basically?

19 A Right. Okay. Now, I want to clarify this. Once
20 this was discovered by the service technician,
21 there was not a physical meter swap. This is
22 common in the utility industry. This is the
23 first go-around to get it all straight. We just
24 swap meter numbers on accounts. We don't swap

1 physical meters.

2 Q So you changed the meter number and then you did
3 a study or an investigation to determine what
4 Ms. Asbury should have been billed over these
5 periods going back to 2021?

6 A Correct.

7 Q And then various bills were sent out to reflect
8 that. Various changes were made to that based on
9 the Commission Rule; is that correct?

10 A Correct.

11 Q Now, was there at some point another meter put in
12 that serves her apartment?

13 A There was.

14 Q And why -- how did that happen and why did that
15 happen?

16 A Yeah. So let's go through kind of the sequence
17 here. So once we swapped meter numbers,
18 obviously Ms. Asbury started getting new correct
19 bills with higher usage. And she questioned
20 that. And as such, you know, she wanted another
21 investigation to confirm from our first service
22 technician that confirmed the meter swap, called
23 again.

24 And I'm going to go back to my response

1 here. This was kind of in the "Second Defense"
2 section. This is on page 5 of my response.

3 MR. KAYLOR: This will be page 5 of the
4 Company's Answer.

5 A So this is a very important kind of fact here in
6 chronology. All right. So in the Second
7 Defense, we basically state, *With respect to*
8 *Complainant's comments that meter 413 was not*
9 *historically her correct meter, the Company's*
10 *confirmation of cross meters is incorrect.* She
11 kept claiming that. And then, *the energy usage*
12 *is incorrect.* So I kind of go through the whole
13 response there.

14 So she contacted the Company on
15 September 6th to come out and, I guess, kind of
16 confirm the meter again if need be. We came out.
17 This was -- now, this was when we actually did a
18 physical meter change and I want to be able to
19 explain why that meter change was made.

20 On September 11th, the Company completed the
21 service order. He came out. And she makes
22 comments about he went back to a truck and get a
23 meter. I want to explain what that is. So he
24 came out. He basically removed -- you know, he

1 came to remove a meter, all right, to confirm
2 that the power was out in the apartment.

3 Q So just to be clear here, he removed the meter
4 ending in 413; is that correct?

5 A Correct.

6 Q Okay. Proceed.

7 A That is correct. Here's a key fact, maybe not
8 detailed in the response, but I want to bring
9 this up and about this part about why the power
10 didn't go off. AMI meters have in them what is
11 called a remote disconnect switch. We use these
12 now to remotely disconnect customers. So it's
13 basically like a switch or a relay in a meter.
14 All right. So, he basically -- he removed the
15 meter, okay, and then when he went to put it back
16 in that switch was open and he could not restore
17 service to her apartment. So, in other words,
18 the remote disconnect switch was not operating
19 properly. All right.

20 And one thing I want to make clear about
21 that is, that has nothing to do with its
22 metrology and its measuring of energy use. It's
23 simply a switch in the meter. So, when he
24 realized that, he noticed, hey, I have to restore

1 Ms. Asbury's service. So that's why he went back
2 to the truck and got another meter and put it in,
3 and that's her current meter today.

4 Q And how does -- what's the three last numbers of
5 that meter?

6 A Of today's meter?

7 Q Yes.

8 A It is 214. And I confirmed that on February 8th
9 when I visited and turned the power off to her
10 apartment. That service technician, on September
11 11th, removed 413 and put in 214. And the most
12 fact is we back billed on 413 which was
13 physically there in that meter base.

14 Q So, have you done an analysis of the meter
15 readings for a time period on meter number 413
16 compared with readings on meter number 214?

17 A I have and at the time when I provided this
18 response, I looked at a 29-day period of
19 January 2023 and then January 2024. Okay. In
20 2023, it was meter 413, and I'm really reciting
21 this from the response, the energy usage for that
22 29-day period was 1400-kilowatt hours; the prior
23 meter. All right. Then, in January 2024, the
24 same 29-day period, the same intervals and

1 everything, different meter, current meter, okay,
2 1491-kilowatt hours; very, very close.

3 I just want to add to that, I've looked at
4 some additional data since that timeframe. I've
5 looked at that same type of comparison from
6 February 18, 2023 to 4-14-2023, okay, on meter
7 ending in 413. Those kilowatt hours are 2172.
8 Her current meter today from 2-18-2024 to
9 4-13-2024, still the same 55-day period. There
10 is a leap year in there so that's why it's one
11 day off. The kilowatt usage there is 2047.
12 Also, very close and very similar. And I do all
13 that to make a point that to confirm or basically
14 support that these meter numbers -- that these
15 meters were in the meter base and reading
16 accurately.

17 Q So, all in all, after all of this was discovered
18 and the Commission, I mean the Company realized
19 that the Complainant had been under-billed, you
20 did come up with a new bill. And did you offer
21 the Complainant a method where she could spread
22 out those payments like a payment plan?

23 A We did.

24 Q And she --

1 A She refused.

2 Q And as she indicated, her bills are current.
3 She's always paid --

4 A I just -- if I wanted to emphasize anything,
5 Ms. Asbury is a good customer and is a good payer
6 on her account. So, we thank her for that.

7 Q Thank you, Mr. Donaldson.

8 MR. KAYLOR: I have no further questions.

9 HEARING EXAMINER MURRELL: Thank you,
10 Mr. Kaylor.

11 Ms. Asbury, do you have any questions for
12 Mr. Donaldson?

13 MS. ASBURY: Yes, I do.

14 CROSS EXAMINATION BY MS. ASBURY:

15 Q He says on the 5th, when they came out to change
16 that meter, and never came to the apartment to
17 see if it shut on and off and that's what they do
18 every time, because they did the first time when
19 I moved in, in 2018, and then when I -- so he
20 left and that's why I called Duke back to come
21 back out on the 11th, and she sent him out, he
22 came up, before he even pulled that meter --

23 HEARING EXAMINER MURRELL: Ms. Asbury. I'm
24 sorry. Do you have a question for Mr. Donaldson?

1 MS. ASBURY: Yeah.

2 HEARING EXAMINER MURRELL: This is your --
3 I'm sorry.

4 MS. ASBURY: My question is the 5th, he's
5 saying that the meter was only changed once. No. It
6 was changed in 2018, and he wants to ignore that fact,
7 that they don't have records.

8 HEARING EXAMINER MURRELL: Okay.

9 MS. ASBURY: Then, it was changed --

10 MR. KAYLOR: Objection. I believe you need
11 to ask a question and let the witness answer.

12 HEARING EXAMINER MURRELL: Ms. Asbury,
13 again, so at this time, this is your opportunity to
14 ask Mr. Donaldson any questions that you have and then
15 you have to give him the opportunity to respond.

16 MS. ASBURY: Okay.

17 HEARING EXAMINER MURRELL: Does that make
18 sense?

19 MS. ASBURY: Yes.

20 HEARING EXAMINER MURRELL: So you can ask
21 your question.

22 BY MS. ASBURY:

23 Q What I'm asking is on the 5th, how come they
24 didn't come to the apartment to see if it shut on

1 and off? They just left. Put the meter in.
2 That was right after the guy called on August the
3 24th.

4 HEARING EXAMINER MURRELL: Okay. So you
5 need to let him answer the question.

6 A I have work order records of simply what they did
7 as far as exchanging the meter. I've already,
8 kind of, explained the connection/reconnection
9 issue. That's all I have is the Company records
10 on that.

11 I also just want to correct, she keeps
12 referencing the 5th. It was September 11th. I
13 have that in the response.

14 HEARING EXAMINER MURRELL: Thank you.
15 Ms. Asbury, your next question, if any.

16 MS. ASBURY: There was two -- there was two
17 times they came out. They came out on the 5th and
18 they came out on the 11th. And, in fact --

19 HEARING EXAMINER MURRELL: Okay.
20 Ms. Asbury, you have to ask him a question. You'll
21 have an opportunity to say any additional --

22 BY MS. ASBURY:

23 Q How do you explain it? They did come out.

24 A I don't have any Company records on that.

1 HEARING EXAMINER MURRELL: Okay. So,
2 Ms. Asbury, do you have another question or --

3 MS. ASBURY: Yeah. My question -- they
4 don't have a record of it. They don't have a record of
5 2018 but he don't have a record of that either.

6 This is what I'm saying. This whole thing.
7 And then to go back and prorate me.

8 HEARING EXAMINER MURRELL: Okay, Ms. Asbury.
9 So if you don't have any additional with questions,
10 we're going to move on from that.

11 THE WITNESS: Can I share one comment?

12 HEARING EXAMINER MURRELL: Anything related
13 to --

14 THE WITNESS: It's kind of related to that.

15 HEARING EXAMINER MURRELL: Okay.

16 THE WITNESS: Ms. Asbury keeps referring
17 back to the 2018 thing. What I would just like to
18 point out, based on the meters that have been in her
19 meter base and all the prior period, she has been
20 under-billed. She has been the recipient of being
21 under-billed. And she keeps referring to 2018, and
22 all I'll say is this whole matter, it's only about
23 150-day back bill from when it was discovered, per the
24 Commission Rules. I just want to bring that up.

1 HEARING EXAMINER MURRELL: Okay.

2 Ms. Asbury, if you do not have any further questions,
3 we're going to move on to Duke.

4 MS. ASBURY: No.

5 HEARING EXAMINER MURRELL: Okay. Do you
6 have any follow-up --

7 MR. KAYLOR: No further questions for
8 Mr. Donaldson.

9 HEARING EXAMINER MURRELL: Thank you.
10 Mr. Donaldson, you may be excused. Thank you. And
11 then --

12 MR. ASBURY: Could I ask him a question?

13 HEARING EXAMINER MURRELL: I'm sorry. One
14 second.

15 MR. ASBURY: May I ask a question. Would
16 that be possible or am I too late on that?

17 HEARING EXAMINER MURRELL: You can -- can
18 you confer with your mother and see if she --

19 MS. ASBURY: Yeah. Sure, he can ask him.

20 HEARING EXAMINER MURRELL: Can you confer
21 with your mother and see if she can articulate your
22 question?

23 MS. ASBURY: So in other words, you want him
24 to do it or me to do it?

1 HEARING EXAMINER MURRELL: You to do it.

2 (Discussion at Complainant's table)

3 BY MS. ASBURY:

4 Q Yeah. The word -- when you said it's not
5 prorated. When I talked to the manager -- and
6 she is very good at Duke -- in fact, they put me
7 to her after many, after many weeks -- and she
8 checked everything out and she said it was
9 prorated back to '21. That's how they came up to
10 the two thousand something figure. Yeah. And
11 prorated is a guess. It's not actual. That's my
12 question.

13 HEARING EXAMINER MURRELL: Okay. Are you
14 done, Ms. Asbury?

15 A I think we already -- I thought I already
16 addressed the proration issue. But we used
17 actual meter data to do the back bill for meter
18 ending in 413.

19 Q There has been four meters. Deny that one.

20 MR. KAYLOR: I object. I think -- I object
21 to the question.

22 HEARING EXAMINER MURRELL: Ms. Asbury,
23 again, you have to ask a question. So, if you're done
24 asking direct questions then we're going to move on.

1 (Discussion at Complainant's table)

2 MS. ASBURY: No, there's no, more.

3 HEARING EXAMINER MURRELL: You're done?

4 MS. ASBURY: Yes.

5 HEARING EXAMINER MURRELL: Thank you,

6 Ms. Asbury.

7 So, Mr. Donaldson, you're excused and may be
8 seated.

9 MR. KAYLOR: Hearing Examiner, I believe
10 that the Answer is usually a part of the record, but I
11 would like to ask that the Company's Answer be a part
12 of the record for this proceeding, also.

13 HEARING EXAMINER MURRELL: Yes. So the --
14 Duke has referred to the Answer, which was already a
15 part of the record, and that is allowed and it is part
16 of the record. We will consider it. So, it's
17 considered admitted even though it's already a part of
18 the record.

19 MR. KAYLOR: Thank you.

20 HEARING EXAMINER MURRELL: Thank you. So,
21 just to follow up -- so all hearing exhibits that have
22 been passed up so far will be considered admitted.

23 (WHEREUPON, Complainant
24 Exhibits 1 and 2 are

1 received into evidence.)

2 HEARING EXAMINER MURRELL: And I believe --
3 did you have --

4 MR. KAYLOR: We had no exhibits other than
5 the Answer itself.

6 HEARING EXAMINER MURRELL: Okay. So we
7 will, I guess, consider the Answer as Duke Exhibit 1,
8 and which you don't have a copy of, but it is a part
9 of the record. If you can hear me.

10 (WHEREUPON, Duke Exhibit 1
11 is identified and received
12 into evidence.)

13 MR. KAYLOR: And that concludes our case.

14 HEARING EXAMINER MURRELL: Thank you.

15 This now concludes Duke's case. I will
16 allow the parties the opportunity to file proposed
17 orders within 30 days of the mailing of the
18 transcript.

19 Ms. Asbury, you are not required to file
20 anything but you may if you wish. If Duke files a
21 proposed order and you do not, it will not prejudice
22 you in any way. I will decide the case based on the
23 evidence presented here today.

24 The proposed order is not evidence, but it

1 is a suggested interpretation of the evidence.

2 Do you have any questions?

3 MS. ASBURY: No. But are you taking final
4 statements?

5 HEARING EXAMINER MURRELL: I'm sorry.

6 MS. ASBURY: Are you taking final
7 statements?

8 HEARING EXAMINER MURRELL: You would like to
9 give a closing statement?

10 MS. ASBURY: Yes.

11 HEARING EXAMINER MURRELL: Okay. Are you
12 prepared to give a closing statement?

13 MR. KAYLOR: No objection.

14 HEARING EXAMINER MURRELL: Okay. So there
15 is no objection, Ms. Asbury. You are -- I'm sorry.
16 You're now, I'm going to say, back under oath. I
17 mean, you're no longer under oath. You can give your
18 closing statement.

19 And Mr. Kaylor, are you going to give a
20 closing statement?

21 MR. KAYLOR: I'll wait and hear --

22 HEARING EXAMINER MURRELL: Okay. I just
23 wanted to make sure.

24 So, Ms. Asbury, you may proceed.

1 MS. ASBURY: What I want to say, I'm not the
2 only one in this condition. I've got a lady from my
3 church, she's 82-years-old. Her bills used to be
4 \$100.

5 MR. KAYLOR: I object to reference to --

6 MS. ASBURY: They sent her a bill --

7 HEARING EXAMINER MURRELL: Hold on,
8 Ms. Asbury.

9 I couldn't hear you, Mr. Kaylor.

10 MR. KAYLOR: I said I object to reference to
11 other parties.

12 HEARING EXAMINER MURRELL: Your objection is
13 noted, duly noted.

14 MS. ASBURY: What about the case that was in
15 Ohio that they -- the same as me. And he had direct
16 deposit out of his account. They took \$4000. He had
17 checks bouncing. He had to get the news involved in
18 it. And he finally got his money back.

19 HEARING EXAMINER MURRELL: Is that it?

20 MS. ASBURY: That's it.

21 HEARING EXAMINER MURRELL: Thank you,
22 Ms. Asbury.

23 Mr. Kaylor.

24 MR. KAYLOR: Nothing further from the

1 Company.

2 HEARING EXAMINER MURRELL: Thank you,
3 Mr. Kaylor.

4 Ms. Asbury and Mr. Kaylor, I'll take note of
5 your closing statement and all of the information
6 you've presented here today.

7 As I stated before, I will allow the parties
8 the opportunity to file proposed orders within 30 days
9 of the mailing of the transcript.

10 Ms. Asbury, you are not required to file
11 anything but you may if you wish. If Duke files a
12 proposed order and you do not, it will not prejudice
13 you in any way. I will decide the case based solely
14 on the evidence presented here today. The proposed
15 order is not evidence but a suggested interpretation
16 of the evidence.

17 Do you have any questions? Any follow-up
18 questions related to what I just said?

19 MS. ASBURY: Yes. When you're talking about
20 the proposed order, in other words, if they put an
21 order in, for what? I mean --

22 HEARING EXAMINER MURRELL: They can submit
23 an order proposing how the case should be decided, but
24 it is simply an interpretation of their evidence. And

1 so you are also allowed to file a proposed order if
2 you would like which just is simply an interpretation
3 of the evidence and how you believe the case should be
4 decided, and I will take them into consideration.

5 MS. ASBURY: But isn't everything that's
6 given here today that I gave you - pictures, all of
7 that - you'll go by that, too?

8 HEARING EXAMINER MURRELL: Yes, that's
9 correct. I'll go by all of the evidence that was
10 presented here today. All of the testimony, including
11 the documentary evidence and then any and all
12 documents that are already in the case file.

13 MS. ASBURY: So I don't see me, you know,
14 filing a proposed order.

15 HEARING EXAMINER MURRELL: No problem. You
16 do not have to.

17 MS. ASBURY: I think you've got enough to.

18 HEARING EXAMINER MURRELL: That's correct,
19 Ms. Asbury. You are not required to file a proposed
20 order. And it will not be held against you if you do
21 not.

22 MS. ASBURY: Okay.

23 HEARING EXAMINER MURRELL: Thank you. Okay,
24 with that then, we are adjourned.

1 Thank you very much for being today. Stay
2 cool.

3 (The proceedings were adjourned)
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C E R T I F I C A T E

I, KIM T. MITCHELL, do hereby certify that the Proceedings in the above-captioned matter were taken before me, that I did report in stenographic shorthand the Proceedings set forth herein, and the foregoing pages are a true and correct transcription to the best of my ability.

Kim T. Mitchell

Kim T. Mitchell