

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

2023 AUG -8 PM 4: 07

JEANNE M. STEPHEN
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF TUSCARAWAS COUNTY, OHIO

DOVER CHEMICAL CORPORATION,)	
)	
Plaintiff/Defendant,)	Judge: Elizabeth Lehigh Thomakos
)	
v.)	Case No.: 2021 CV 02 0097
)	
CITY OF DOVER, OHIO,)	
)	
Defendants/Plaintiff.)	ORAL ARGUMENT REQUESTED

**DOVER CHEMICAL CORPORATION'S
MOTION FOR SANCTIONS**

Now comes Dover Chemical Corporation (“DCC”), by and through counsel, to move this Court for an order of sanctions against the City of Dover arising from its failure to produce a key document (and other documents) in this litigation under a purported claim of attorney-client privilege and Law Director O’Meara’s single-handed derailment of DCC’s first attempt to depose him with his evasiveness, gamesmanship, and eavesdropping on DCC’s counsel.¹ DCC requests that the Court award sanctions in the amount of the additional costs to re-depose City witnesses and the costs incurred relative to the first failed attempt to depose Law Director O’Meara. A memorandum in support of DCC’s motion follows.

BACKGROUND

I. THE CITY WITHHELD THE SEMINAL DOCUMENT IN THE CASE.

For years, both before and after litigation commenced, DCC has asked the City to explain how it calculated the 2.2 million dollars that it has repeatedly alleged that DCC essentially stole from it. It cannot reasonably be disputed that this has been the single biggest issue in this case, at

¹ The document is central to DCC’s motion for *in camera* inspection which is briefed and set for argument.

least from DCC's perspective. DCC's position has always been that the City basically just "made it up" and has no actual proof/evidence of anything. The City, of course, has vehemently disputed such for reasons including the fact that DCC's so-called theft provided the basis for the City's illegal electricity surcharge, and without any actual basis for the surcharge, Law Director O'Meara's entire campaign against DCC falls apart and is easily seen for what it is.

On June 29, 2023, the City testified that there was a letter from Law Director O'Meara to City Council and that City Council had relied largely upon Law Director O'Meara to do its so-called "investigation" for it (the "Council Letter"). *See*, App. A: Gunnoe Deposition at pgs. 35-36. DCC then questioned Shane Gunnoe about a September 10, 2020 Times-Reporter article that quoted extensively from what was at that time an unproduced letter, and he agreed that it appeared that the Council Letter must have been provided to someone at the newspaper but that he personally did not do it. *Id.*, pgs. 33-34, and App. B: Exhibit 84. Given the importance of the issue, DCC's counsel immediately sent an email to the City's counsel during the first break of the Gunnoe deposition requesting the document. The next morning, barely an hour before DCC's deposition of Law Director O'Meara, the City finally produced it and admitted that Law Director O'Meara had given it the Times-Reporter on September 8, 2020 in response to a public records request. *See*, App. C: 6/30/2023 E-mail String and Attachment. Law Director O'Meara identified Exhibit 110 as the council letter, and a copy of the Council Letter is attached hereto. *See*, App. D: O'Meara Deposition at pgs. 26-30, and App. E: Exhibit 110.

On September 14, 2020, however, DCC had served its own public records request upon the City. *See*, App. F: Public Records Request. The City did not produce a copy of the Council Letter to DCC despite having given it to the Times-Reporter less than a week before. If the document was responsive to the Times-Reporter's public records request about DCC, it was clearly

responsive to DCC's as well. Later, on May 28, 2021, DCC served its First Set of Document Requests upon the City, in this litigation, App. F: Document Requests, and again the City failed to produce the Council Letter.

II. LAW DIRECTOR O'MEARA'S GAMESMANSHIP RESULTED IN THE COMPLETE FAILURE OF DCC'S FIRST ATTEMPT TO DEPOSE HIM.

Law Director O'Meara's June 30, 2023 deposition lasted barely over an hour -- including a break -- and was derailed by his gamesmanship. First, Law Director O'Meara admitted that after 8 p.m. the night before, he had personally e-mailed the Council Letter to the City's Attorneys. *See*, App. D, pg. 38, ln. 16 to pg. 39, ln. 4. Nonetheless, just moments before he said this, having literally just searched for, located, and emailed the Council Letter to the City's attorney the night prior, Law Director O'Meara wasted nine minutes and sixteen seconds "examining" the Council Letter before even acknowledging that he was familiar with it.² Even then, for whatever reason, throughout the deposition, Law Director O'Meara remained evasive about the whereabouts of the Council Letter despite knowing precisely where it had been kept from the beginning:

- Q. And so -- and so, Doug, you told me you had no reason to doubt that it was on your computer. Do you remember that?
- A. Yes.
- Q. And is that where you went and got it last night?
- A. Yes.
- Q. So it was, in fact, on your computer?
- A. Yes.
- Q. Okay. So not that you have no reason to doubt 16 that it was there, but it actually was there?
- A. Yes.
- Q. And to the best of your knowledge, it had been there since 2020?
- A. Yes.
- Q. What other documents are on your computer that have anything to do with Dover Chemical?
- * * *
- A. Lots of documents.

² Law Director O'Meara's deposition was videotaped.

See, App. D, pg. 42, lns. 7-24.

For nearly three years, the City withheld from DCC the seminal document setting out and communicating the extent and results of the of the City's "investigation" into its purported claims of improper "gifts" of materials and services from DL&P to DCC. For nearly three years the City has known that the document was responsive to DCC's public records and discovery requests, for nearly three years the City has known that the document was not protected by the attorney-client privilege, and for nearly three years the City has known that the document -- and who knows what else -- was sitting on Law Director Doug O'Meara's computer having never been produced to DCC.³ Meanwhile, DCC has incurred substantial costs deposing DCC witnesses including O'Meara, current mayor Shane Gunnoe, and multiple Ohio R. Civ. P. 30(b)(5) representatives of the City without the benefit of this key document that should have been produced years ago.

To make matters worse, counsel for DCC discovered that Law Director O'Meara had been surreptitiously recording the deposition and even left his telephone recording in the presence of DCC's attorneys when he and the City's attorney left the room. When his deposition began, Law Director O'Meara placed his cell phone on the table in a prominent position directly in front of him. That, of course, is neither here nor there, and it is common for attorneys to have cell phones sitting on the table during a deposition. The deposition then commenced until the first break was taken at 10:57am. During the break, the City's attorney and Law Director O'Meara left the room while counsel for DCC remained behind. When the deposition recommenced at 11:06am, and once we were back on the record, the following exchange occurred:

Q. Is that your phone there, Doug, on the table?
A. Yes.

³ As the seminal document in this case to date, it should have been produced to DCC in response to our public records and discovery requests. The failure to do so is totally inexcusable and easily seen for what it is. The only real question is how deep this issue goes. What else has not been produced? What else in on Law Director O'Meara's computer?

Q. Are you recording this?
A. Yes.
Q. Did you tell anybody that?
A. Nope.
Q. Did you keep it recording when you left the room? You did, because
A. Yes.
Q. -- you haven't touched your phone.
A. Yes, it's still recording.
Q. And that's against the law, let alone putting aside recording a deposition without telling anybody.
MR. BRAUM: [to counsel] And so you need to go talk to him off the record.
MS. WILSON: Okay.
MR. BRAUM: ...So for the record, the deposition was recorded without knowledge. It's been recorded while counsel were talking in the room. That is a crime in the State of Ohio. Did you know that?
THE WITNESS: I did not record your conversation nor did I know you were going to talk outside my presence and no, I didn't turn the phone off when I left.
MR. BRAUM: That's your excuse[?] [Y]ou left it recording and you....assumed I wasn't going to talk?

See, App. D, pg. 47, ln. 13 to pg. 48, ln. 19.

Extensive conversation then ensued about preserving Law Director O'Meara's phone since it contains evidence of much broader issues, the City's attorney recommended that he surrender the phone to the court reporter (which he refused to do), etc. The deposition was then adjourned:

MR. BRAUM: ... Here's the deal. I don't know what other documents weren't produced [although Law Director O'Meara clearly admits that there were others]. I got this document. I have not had time to even digest this thing. It was produced to me literally while I was literally sucking down breakfast at the hotel before I drove over here this morning. I'm not going to proceed the deposition under those conditions, and then we layer the criminal issue on top of that, I'm certainly not going to proceed in light of that. We're going to adjourn. We're going to do what we believe to be best with respect to the court or otherwise. You all have the right to do the same thing and it will be what it will be. Apparently Mr. O'Meara is going to maintain possession of his phone. I'm not going to physically try and take it from him, and so that's where we are.

See, App. D, pg. 58, ln. 19 to pg. 59, ln. 12. The deposition that began at 10:00 a.m. was then adjourned with far less than an hour of actual testimony at 11:22 a.m.

* * * *

In view of the foregoing, DCC now must re-open its depositions of Gunnoe, O'Meara, and the City's 30(b)(5) designated representatives on the issues of its claimed damages and City's Council's basis for enacting its "surcharge" with Ordinance 29-20. The Costs incurred by DCC because of the City's gamesmanship in producing the Council Letter to the media but withholding it from DCC and Law Director O'Meara's surreptitious recording and evasiveness are not yet fully known. Those costs should not be borne by DCC.

ARGUMENT

"Courts have broad discretion over discovery matters, including motions for sanctions." See, *State ex rel. Duncan v. Village of Middlefield* (2008), 120 Ohio St.3d 313, 319; citing *State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register* (2007) 116 Ohio St.3d 88. "A reviewing court shall review these rulings only for an abuse of discretion." *Id.*, citing, *Nakoff v. Fairview Gen. Hosp* (1996), 75 Ohio St.3d 254. The City and Law Director O'Meara withheld the Council Letter -- and who knows what else -- for nearly three years, and DCC should not be left to bear the cost of the City's failure.

I. SANCTIONS ARE PROPERLY IMPOSED AGAINST THE CITY.

A. Sanctions Are Properly Imposed Against The City Under O.R.C. § 2323.51.

O.R.C. § 2323.51 allows for sanctions where a party has engaged in frivolous conduct.

As defined by O.R.C. § 2323.51(A)(2)(a), frivolous conduct includes the following:

It is not warranted under existing law, cannot be supported by a good faith argument of an extension, modification, or reversal of existing

law, or cannot be supported by a good faith argument for the establishment of new law.

Pursuant to O.R.C. § 2323.51(B)(1), a party in a civil action who claims to have been adversely affected by “frivolous conduct” may move for an award of court costs, reasonable attorney fees, and other reasonable expenses incurred in connection with the action. *See, e.g., Mundy v. Centrome, Inc.*, 2023 Ohio App. LEXIS 1303, *P29-30 (12th Dist. 2023); citing, *Baker v. USS/Kobe Steel Co.*, 2000 Ohio App. LEXIS 6 (9th Dist. 2000). Alternatively, a trial court may impose sanctions for frivolous conduct on its own initiative. *Id.* Sanctions may properly be imposed under O.R.C. § 2323.51 upon notice to the parties that a hearing will be held on the issue of sanctions. *Id.*

DCC requests that the Court hold a hearing to determine the appropriate sanctions, including attorney fees and other reasonable expenses, incurred in connection of the City’s unjustifiable withholding of the Council Letter throughout this litigation, asserting a patently baseless privilege claim regarding the letter, etc.

B. Sanctions Are Properly Imposed Against The City Under Ohio R. Civ. P. 37.

“Civ.R. 37 provide the mechanism by which discovery rules can be enforced.” *See, Rardin v. Salon Professional Academy, LLC*, 2017 Ohio App. LEXIS 410, *P17 (6th Dist. 2017) (“the rule specifically authorizes a trial court to make ‘just’ orders in response to discovery violations, including the imposition of sanctions for failure to comply with discovery orders.”). “[F]rivolous conduct is not a condition precedent to the imposition of sanctions under Civ.R. 37.” *Id.*; citing *Shikner v. S&P Solutions*, 2006 Ohio App. LEXIS 1220, *P14 (8th Dist. 2006).

Here, there is no real question that the City’s withholding of the Council Letter for nearly three years was a clear violation of its discovery obligations. The Court’s “imposition of attorney fees for failure to timely provide discovery is mandatory unless the Court makes an express finding

that the withholding of discovery was justified or that an award would be unjust.” *See, Shikner v. S & P Solutions*, 8th Dist. Cuyahoga No. 86291, 2006-Ohio-1339, 2006WL727681, ¶ 14. Here, the City can show neither, and DCC requests that the Court order award DCC its attorney fees in making this motion as well as just sanctions so that the costs of the City’s withholding of this critical document are not borne unjustly by DCC.

II. THE CITY SHOULD BE REQUIRED TO PAY THE EXPENSES OF DCC RE-DEPOSING SHANE GUNNOE AND ITS 30(B)(5) DESIGNEES ON CITY COUNCIL MATTERS AND DAMAGES.

But for the City’s withholding the Council Letter, DCC would have been afforded the opportunity to inquire of the City’s current mayor and former council president Gunnoe as well as the City’s 30(b)(5) designees regarding this seminal document (and the other documents on Law Director O’Meara’s computer) which served as basis for its purported claims and the grounds for its Ordinance 29-20 “surcharge.” Now that the document has finally been produced, DCC will be re-noticing those depositions accordingly after all these documents have been produce. However, DCC will have to incur additional costs for its attorneys to travel to Dover, its court reporters and videographers having to return to Dover, rental of space to conduct the depositions, etc. Because those costs are the direct result of the City’s withholding the Council Letter despite having provided it to the media literally days before DCC’s request (and other documents), those additional costs should properly be borne by the City.

III. THE CITY SHOULD BE REQUIRED TO PAY THE EXPENSES OF DCC’S FAILED DEPOSITION OF LAW DIRECTOR O’MEARA.

Unlike the other depositions, the O’Meara deposition was unique in that it was derailed from the outset and by any measure is rightly considered to be a failed deposition. From Law Director O’Meara’s time wasting and evasiveness to his improper recording of DCC’s counsel and recording of the deposition without providing notice under the rules, the deposition was nothing

less than a waste of everyone's time. This is compounded by the fact that the City only produced the Council Letter barely an hour before Law Director O'Meara's deposition giving DCC no meaningful opportunity to carefully consider and prepare to examine him regarding same, let alone the plethora of other documents on his computer. The only appropriate course was to adjourn and make plans to try again later. Thus, DCC should not be forced to incur the costs of the first failed deposition of Law Director O'Meara when it will have to incur those same costs when the deposition is resumed -- essentially from "square one." Because the costs incurred as to the failed deposition are the direct result of the City's withholding the Council Letter and other documents, Law Director O'Meara's gamesmanship and other improper conduct, those additional costs should properly be borne by the City.

CONCLUSION

The Council Letter and Law Director O'Meara's other documents should have been produced to DCC years ago but were instead withheld under specious claims of attorney-client privilege or just not produced. Law Director O'Meara single-handedly derailed the first attempt to depose him with his time-wasting, evasiveness, and improper eavesdropping. Accordingly, DCC requests an order requiring the City to reimburse DCC for the costs of filing this motion, the costs of re-deposing Shane Gunnoe and the City's 30(b)(5) designees, the costs incurred in conjunction with Law Director O'Meara's failed deposition, and any other sanctions that the Court deems just and appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the following counsel via e-mail on this 8th day of August 2023:

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APPENDIX

A

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2

1 Videotaped Deposition of SHANE GUNNOE, a Witness
 2 herein, called by the Plaintiff/Counterclaim Defendant
 3 for Cross-Examination pursuant to the Ohio Rules of
 4 Civil Procedure, taken before me, the undersigned,
 5 Anika W. Patrick, a Registered Merit Reporter,
 6 Certified Realtime Reporter and Notary Public in and
 7 for the State of Ohio, at the Quality Inn, 2024 OH-39
 8 W, Dover, Ohio, on Thursday, June 29, 2023, at
 9 8:59 a.m.
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3

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1 THE VIDEOGRAPHER: We are on the record.
2 The time is 8:59. Today's date is June 29th,
3 2023. This is the video-recorded deposition
4 of Shane Gunnoe in the case Dover Chemical
5 Corporation versus City of Dover, Ohio, and
6 City of Dover, Ohio, versus Dover Chemical
7 Corporation filed in the Tuscara --
8 Tuscarawas County Court of Common Pleas, Case
9 Number 2021 CV 02 0097.
10 Will counsel please identify themselves
11 for the record?
12 MR. RUDD: On behalf of Dover Chemical
13 Corporation, my name is Timothy Rudd.
14 MS. GARCIA: Delores Garcia on behalf of
15 the City of Dover.
16 THE VIDEOGRAPHER: And will the court
17 reporter please swear in the witness.
18 WHEREUPON,
19 SHANE GUNNOE,
20 after being first duly sworn, as hereinafter
21 certified, testified as follows:
22 CROSS-EXAMINATION
23 BY MR. RUDD:
24 Q. Good morning, Mr. Gunnoe.
25 A. Good morning.

7

1 Q. My name's Tim Rudd. I'm an attorney for Dover
2 Chem -- Dover Chemical Corporation. I'm going to
3 hand you what's been marked as Exhibit 82. I will
4 represent to you that this is a deposition notice
5 for the city to designate an individual to speak
6 to and testify as to certain topics that are
7 identified up on Exhibit A of that document. If
8 you could turn to the very back page. And I'd
9 like you to review those and let me know if you
10 are prepared to testify on behalf of the city as
11 to these topics?
12 MS. GARCIA: And at this point I'll just
13 register the objection that we did provide
14 our responses and objections to these topics
15 and we were producing Mr. Gunnoe subject to
16 those objections.
17 A. Okay.
18 Q. Are you prepared to testify as to those topics
19 today?
20 A. Yes.
21 Q. Okay. I'm also going to hand you what's been
22 marked as Exhibit 83. And I will represent to you
23 that this is a separate deposition notice that was
24 served just to talk to you as an individual and to
25 be able to test and understand your knowledge of

8

1 some factual issues. Do you understand that?
2 A. Okay. Yes.
3 Q. Okay. And there's -- there -- we could do them
4 separately. Counsel and I have conferred. We
5 think that it probably makes sense, especially
6 since you're the mayor now, it makes sense to put
7 the two of them together just for efficiency's
8 sake so that we don't have to go down the same
9 line of questions and the same issues. I think
10 we'll probably go a little faster.
11 So if at any time you have any questions
12 or are confused or want to know whether you're
13 talking as you or as, you know, on behalf of city
14 council, please let me know if you have any
15 questions at all.
16 A. Okay.
17 Q. And your counsel, if there's something confusing,
18 she'll tell me.
19 A. Okay.
20 MS. GARCIA: I will.
21 Q. Yeah. And so have you ever been deposed before?
22 A. I have not.
23 Q. And just a quick 30,000-foot rundown. I'm here to
24 ask you questions. I have a tendency to get a
25 little bit more conversational probably than I

9

1 should, but I'm going to try my best to just ask
2 questions. The answers you give need to be verbal
3 just so that the court reporter can pick up
4 what's -- what the -- what's being said. And so
5 if at any time you don't understand a question I
6 have, you'll -- you'll tell me; and otherwise, I'm
7 just going to assume that you understood the
8 question. So if you don't understand the
9 question, tell me. I will find a way to make it
10 better.
11 A. Okay.
12 Q. All right. So you wear a lot of hats or have worn
13 a lot of hats for the City of Dover. You're
14 currently -- what's your role?
15 A. I currently am the mayor of the City of Dover.
16 Q. Okay. So you were the city council president?
17 A. Correct.
18 Q. How long was that? When did that begin?
19 A. In 2014.
20 Q. Okay. So from 2014 until when were you the city
21 council president?
22 A. I was city council president until May of 2022.
23 Q. Okay. And you became interim mayor at that point?
24 A. Correct.
25 Q. And that was when Mayor Homrighausen was removed

10

1 from office?
2 A. When he was suspended from office.
3 Q. Okay. So how long did you serve as interim
4 council?
5 A. From May until January of this year.
6 Q. Okay. So January of this year you were still
7 interim mayor and then what happened?
8 A. Correct. Mayor Homrighausen was removed.
9 Q. Okay. So when he was officially removed, what
10 happened to your title?
11 A. My position as interim mayor went away.
12 Q. Okay. And so who became actual mayor?
13 A. Council president served, pursuant to Ohio Revised
14 Code, served as the mayor until the Republican
15 Central Committee met and appointed a new mayor.
16 Q. And when did the Republican Central Committee
17 appoint a new mayor?
18 A. February of this year. Of 2023.
19 Q. So -- so basically, there was a couple of weeks
20 where you weren't either interim mayor or mayor in
21 the last year?
22 A. That is correct.
23 Q. Okay. I'm going to hand you what's been marked as
24 Exhibit 87. I will represent to you that this is
25 a -- you can see it's dated. This is an April 18,

11

1 2023 article in TheBargainHunter.com. Are you
2 familiar with TheBargainHunter.com?
3 A. I am.
4 Q. And did you speak with Teri Stein, the reporter,
5 or provide a statement of any kind?
6 A. I did.
7 Q. I'm going to have you turn to the second page, at
8 the very top. That appears to be -- that appears
9 to be a quote from you. Do you see that first
10 paragraph? Is that a quote from you?
11 A. Yes.
12 Q. Is it true?
13 A. Through our attorneys, I believe yes.
14 Q. Okay. So the statement is that "The City of
15 Dover, as late as the latter part of last year" --
16 so this was April of 2023. So the latter part of
17 last year would have been towards the end of 2022?
18 A. The back half of 2022, yes.
19 Q. Okay. All right. "The City of Dover, as late as
20 the back half of 2022, attempted to reach out to
21 see if there was an opportunity to come to a
22 mutually arranged agreement for them to continue
23 with Dover Power." Did I read that right?
24 A. Yes.
25 Q. And that's true?

12

1 A. To my -- yes.
2 Q. "Them" is Dover Chemical? Is that who you're
3 referring to there?
4 A. Yes.
5 Q. And then it says, "We made multiple efforts over
6 the last two years." Did I read that right?
7 A. Correct.
8 Q. And that's efforts to reach out to see if there
9 was an opportunity to come to an agreement for
10 Dover Chemical to continue with Dover Light and
11 Power? Is that -- is that what you're referring
12 to there?
13 A. Correct.
14 Q. Okay. So a representation that Dover Light and
15 Power simply wanted to get rid of Dover Chemical
16 and wasn't interested in keeping them as a
17 customer would be factually inaccurate?
18 MS. GARCIA: Objection.
19 A. Certainly we would -- we would like to have kept
20 Dover Chemical as a customer, but, you know,
21 obviously under -- under terms and conditions that
22 meet our ordinances.
23 Q. When -- when you stated that you made multiple
24 efforts over the last two years to keep Dover
25 Chemical as a customer of Dover Light and Power,

13

1 what were those efforts?
2 A. Those efforts were --
3 MS. GARCIA: I'm sorry. I'm just going
4 to object. Go ahead.
5 A. Those efforts were via our attorneys and outreach
6 in an attempt to find a settlement to this issue.
7 Q. To keep Dover -- to keep Dover Chemical as a
8 customer of Dover Light and Power, if possible?
9 A. If --
10 MS. GARCIA: Objection. Go ahead.
11 A. If possible.
12 Q. I'm going to show you what's been marked -- do we
13 have originals? Oh, you gave them to me -- as
14 Exhibit 6. Do you recognize this document?
15 A. I do.
16 Q. Can you tell me what this document this?
17 A. This --
18 MS. GARCIA: Tim, do you have a copy for
19 me?
20 MR. RUDD: It's one of our older ones. I
21 bet I probably do have an extra one, though.
22 Give me a second. Oh, here's my last copy.
23 MS. GARCIA: Thank you.
24 Q. Tell me again what this is.
25 A. This is Amended Emergency Ordinance 29-20.

14

1 Q. Okay. And if you turn to the very back page.
2 A. Okay.
3 Q. This -- this includes everything up to the veto
4 from the mayor --
5 A. Uh-huh.
6 Q. -- and the override of the veto on March 12th,
7 2021, correct?
8 A. Correct.
9 Q. So I want to understand how we got from trying to
10 see if we could work out a 69 kilowatt -- a
11 kilowatt supply to Dover Chemical in March, which
12 March 2020 the committee of the whole said, hey,
13 we want to explore a 69 killable service to Dover
14 Chemical, how we got from there in March 2020 to
15 March 2021 increasing Dover -- Dover Chemical's
16 rates? So that's -- that's what I'm going to try
17 to spend some time doing today.
18 A. Okay.
19 Q. What is your understanding of why Emergency
20 Ordinance 29-20, specifically a surcharge to Dover
21 Chemical, is appropriate?
22 MS. GARCIA: Objection. Go ahead.
23 A. It is the result of some -- of council's
24 investigation and review into the matter of
25 provision of electric services and what would be

15

1 outside of our electric regulations.
2 Q. Okay.
3 A. Code of electric regulations.
4 Q. When did -- when did city council's investigation
5 begin?
6 A. It would have been in approximately -- well, it
7 would have been in the late summer of 2020.
8 Q. Okay. So when did the issue of alleged materials
9 and services being provided to Dover Chemical
10 first come to city council's attention?
11 A. It would have been brought to my attention or city
12 council's attention in, I'll say the late spring
13 of 2020.
14 Q. So around Memorial Day sound right?
15 A. Probably a little --
16 MS. GARCIA: Objection.
17 THE WITNESS: Sorry.
18 MS. GARCIA: Go ahead.
19 A. Probably a little before that.
20 Q. Little before that like a month or two or little
21 before that a week or two?
22 A. Month.
23 Q. Okay. Sometime April, May time frame --
24 A. Yeah, I would say about April.
25 Q. -- of 2020? There's been a representation in the

16

1 city's counterclaim that the law director
2 allegedly uncovered the issues he allegedly
3 uncovered sometime in the fall of 2019. Why
4 didn't city council find out until 2020?
5 A. The first time I heard about it was from an
6 electric field employee discussing the matter in
7 a -- in a flippant manner, as kind of an
8 off-the-cuff comment as part of ongoing
9 discussions about -- about a potential rate
10 reduction.
11 Q. Who was that employee?
12 A. Bill Abel.
13 Q. And what did Bill Abel say?
14 A. He says, "Gosh, they're already going -- we're
15 already in there doing things for free all the
16 time and now they want a rate reduction, too?"
17 Q. Did you ask him to elaborate?
18 A. I did not at that time.
19 Q. Why not?
20 A. I wanted to confer with some of my colleagues and
21 figure out how to best approach that manner.
22 Q. Who were your colleagues?
23 A. The law director, some of the members of city
24 council.
25 Q. How many members of city council?

17

1 A. Two, maybe. Three.
2 Q. How many members -- how many members are on city
3 council?
4 A. Seven, plus myself at the time.
5 Q. So were those -- were those communications
6 written?
7 A. No.
8 Q. Those were all verbal?
9 A. Yeah, because at that point I wasn't really sure
10 there was much to -- at that point to look into.
11 Q. Okay. So you didn't talk with Bill Abel any -- at
12 that time any further, did you?
13 A. No.
14 Q. Have you talked with Bill Abel since that but
15 prior to the introduction of this ordinance back
16 in August of 2020?
17 MS. GARCIA: Objection. Go ahead.
18 A. I was there -- I was present when the law director
19 interviewed him in the summer of 2020.
20 Q. Summer of 2020?
21 A. Uh-huh.
22 Q. Who else was present when the law director
23 interviewed him?
24 A. Council president pro tem at the time, Don -- Don
25 Maurer.

18

1 **Q. Who else?**
2 A. The law director.
3 **Q. So just the three of you and Bill Abel?**
4 A. And Bill, and in the next room over and was also
5 kind of questioned was Charlie Stull.
6 **Q. So Charlie Stull was there as well?**
7 A. He was in the building, yes.
8 **Q. And how long did this -- did this interview with**
9 **Bill Abel take?**
10 A. It was relatively brief. I'm going to say
11 15 -- 15, 20 minutes.
12 **Q. Okay. When did you next talk with Bill Abel about**
13 **this?**
14 A. At a certain point we felt it was best to retain
15 counsel to assist us in the matter and we stepped
16 back and let the law director and counsel
17 take -- review those -- do those interviews and
18 review those -- those matters.
19 **Q. How long did you talk with Charlie Stull?**
20 A. Fifteen or 20 minutes.
21 **Q. Who else at Dover Light and Power did you or**
22 **anyone else at -- on city council speak with**
23 **regarding this in the summer of 2020?**
24 A. I spoke with --
25 MS. GARCIA: Objection. Go ahead.

19

1 Sorry.
2 A. Okay. I spoke with Beth Jones, our utility
3 billing administrator.
4 **Q. Okay.**
5 A. And I also spoke with Tom Johnson, a former
6 electric field superintendent.
7 **Q. Where did you speak with Beth?**
8 A. Beth was via phone.
9 **Q. How long was that phone call?**
10 A. Ten minutes.
11 **Q. Did you call her from a city phone or from your**
12 **cell?**
13 A. I believe it was from my cell.
14 **Q. What did Beth tell you?**
15 A. My questions were around whether they
16 were -- Dover Chemical was a primary metered
17 customer and whether they had received the 5
18 percent reduction and what bills had been sent
19 out, because her office is in charge of billing --
20 **Q. Okay.**
21 A. -- for those matters on any additional work,
22 service work that would be required.
23 **Q. Did you -- did you talk with -- to Beth about the**
24 **22 cents per kilowatt demand equipment credit?**
25 A. It was mentioned.

20

1 **Q. Who mentioned it?**
2 A. Because it's in the same ordinance and she
3 confirmed they did not receive that.
4 **Q. At the meeting in March of 2021, March 12th when**
5 **council met and overrode the veto of then-Mayor**
6 **Homrighausen, Charlie Stull came and spoke to**
7 **council. Do you recall that?**
8 A. Vaguely.
9 **Q. Do you recall him telling you that of all of the**
10 **primary metered customers that the city had at**
11 **that time, only two got that credit?**
12 MS. GARCIA: Objection.
13 A. I do not recall that specifically.
14 **Q. I'm going to hand you what's been marked as**
15 **Exhibit 107. Sorry. Do you recognize this**
16 **document?**
17 A. I do.
18 **Q. What is this document?**
19 A. This is the Dover City Council special -- special
20 session of council minutes from March 12th, 2021.
21 **Q. When someone comes and presents evidence to**
22 **council or presents -- speaks to council,**
23 **testimony to council, whatever it might be, that**
24 **gets recorded in the minutes, right?**
25 A. Yes.

21

1 **Q. Does council ever meet outside of official**
2 **meetings to deliberate and consider evidence to**
3 **make decisions?**
4 MS. GARCIA: Objection. Go ahead.
5 A. All council meetings are subject to public meeting
6 laws.
7 **Q. Uh-huh.**
8 A. So no, they -- no.
9 **Q. So no. So if -- if there is information presented**
10 **to council and deliberation, it ought to be in the**
11 **minutes; is that accurate?**
12 MS. GARCIA: Objection.
13 A. I would say yes.
14 **Q. And if you turn to page -- and thankfully, these**
15 **things are labeled at the top -- page 4.**
16 A. Okay.
17 **Q. If you go to the bottom, we see at paragraph -- it**
18 **says, "Charlie Stull said that it's come to**
19 **attention that we're being given preferential**
20 **treatment -- that we were given," I think that's**
21 **probably supposed to be giving, "preferential**
22 **treatment to certain customers. That is a false**
23 **accusation."**
24 **Did you ask Charlie why that was a false**
25 **accusation?**

1 A. I did not.
2 **Q. And then he talks about a 22-cent fee. I don't**
3 **think that's accurate. It's not a fee. Do you**
4 **know what I'm talking about, the 22-cent equipment**
5 **credit?**
6 A. Yes.
7 **Q. So in -- at least in every -- in the electric**
8 **service regulations and in every ordinance, the**
9 **2014 one and the 2020 one that I've looked at and**
10 **the ones before it, primary metered customers get**
11 **a 5 percent -- I guess a 0.95 multiplier which**
12 **just takes 5 percent off their bill, right?**
13 A. Correct. For primary metered customers, yeah.
14 **Q. And then it says that primary metered customers**
15 **who maintain their own equipment also get this**
16 **equipment credit of 22 cents per kilowatt of**
17 **demand. Is that accurate?**
18 A. Cor --
19 MS. GARCIA: Objection. Go ahead.
20 A. Yes, that would be accurate.
21 **Q. So there's a -- there are primary metered**
22 **customers who get that credit?**
23 A. Uh-huh.
24 **Q. And some who don't?**
25 A. I am not aware of anybody who receives that

1 credit. The amount of primary metered customers
2 we have are quite small.
3 **Q. I'm going to show you what's been marked as**
4 **Exhibit 29. I'll represent to you this is from 22**
5 **years ago, it was provided by the city, a list of**
6 **primary metered customers. Do you see that there?**
7 A. Yes.
8 **Q. And what -- what perc -- what -- how many -- how**
9 **many are listed on there, total primary metered**
10 **customers?**
11 A. Nine.
12 **Q. Nine? How many of them get the 22-cent equipment**
13 **credit? Or at least in 2001?**
14 A. In 2001 it looks like five.
15 **Q. And four don't?**
16 A. Based off this document, that appears correct.
17 **Q. Do you know how many primary metered customers**
18 **today don't get that credit?**
19 MS. GARCIA: Objection.
20 A. Off the top of my head, I do not.
21 **Q: Could you find out?**
22 A. I could inquire with our utility billing
23 administrator.
24 **Q. Is it important for people to be treated fairly if**
25 **they're customers of Dover Light and Power?**

1 MS. GARCIA: Objection.
2 A. I -- I would -- yes.
3 **Q. If Dover Light and Power paid -- was paid by Dover**
4 **Chemical somewhere between 7- and 8-, maybe \$9,000**
5 **a year every year because they didn't get that**
6 **credit --**
7 A. Uh-huh.
8 **Q. -- when other primary metered customers did --**
9 A. Uh-huh.
10 **Q. -- would that matter in your analysis of what's**
11 **fair?**
12 MS. GARCIA: Objection.
13 A. It would be one factor.
14 **Q. Was it a factor when city council conducted its**
15 **investigation here?**
16 A. Primary metered customers, we have an electric
17 code of regulations that say they're supposed to
18 own and maintain all of their equipment beyond the
19 pole. Council's primary concern was recouping
20 those charges that may have been provided over and
21 above that.
22 **Q. So I spoke with the billing department last week.**
23 **We took the deposition of a representative from**
24 **the city regarding billing and credit issues, and**
25 **the system actually has a data field for are they**

1 **primary metered or are they not.**
2 A. Uh-huh.
3 **Q. Check yes or no.**
4 A. Uh-huh.
5 **Q. Which gets you your 5 -- 95 percent multiplier.**
6 A. Uh-huh.
7 **Q. Do they maintain their own equipment and do they**
8 **not, yes or no? Why does the City of Dover's**
9 **system and the City of Dover's regulations and the**
10 **City of Dover's ordinance have a provision that**
11 **gives an added bonus to primary metered customers**
12 **who maintain their own equipment?**
13 MS. GARCIA: Objection.
14 A. They are responsible for purchasing it and
15 maintaining it and providing that additional
16 upkeep.
17 **Q. Why is there a distinction then between out of**
18 **nine people, five of them don't get treated the**
19 **same?**
20 MS. GARCIA: Objection.
21 A. I have no way to know whether that is -- that
22 information is -- was --
23 **Q. It was provided by the city.**
24 A. Okay.
25 **Q. If it's accurate, what's -- what's the**

1 explanation?
2 MS. GARCIA: Objection.
3 A. Can you repeat the question?
4 **Q. Yes. Why does the city have a system and an**
5 **ordinance and regulations that envision primary**
6 **metered customers who do maintain their own**
7 **equipment get the credit and primary metered**
8 **customers who don't maintain their own equipment**
9 **and don't get that credit?**
10 MS. GARCIA: Objection.
11 A. I'm unable to explain that because, quite
12 honestly, our ordinance requires them to -- or our
13 regulations, I'm sorry, require them to purchase
14 and own that equipment beyond the meter.
15 **Q. And then it -- and then it says primary customers**
16 **who maintain -- who maintain their own equipment**
17 **get this credit. Is it possible to be a primary**
18 **metered customer who doesn't maintain their own**
19 **equipment?**
20 MS. GARCIA: Objection.
21 A. A primary metered customer who does not maintain
22 their own equipment. That should not occur.
23 **Q. Okay. Why are there four on that list?**
24 MS. GARCIA: Objection.
25 A. That's a great question. I have no idea why you

1 would have four -- again, one of those entities is
2 no longer in business.
3 **Q. Which one is that?**
4 A. Reno -- I've never heard of Reno 1000 East Avenue.
5 The other ones, I would have to verify that.
6 **Q. For the last two years Dover Chemical's been**
7 **primary metered?**
8 A. Uh-huh.
9 **Q. Right?**
10 A. Uh-huh.
11 **Q. Certainly since the fall of 2019?**
12 A. Uh-huh. (Witness nodding head up and down.)
13 **Q. And according to the complaint, the city started**
14 **billing with better precision --**
15 A. Uh-huh.
16 **Q. -- when Doug O'Meara supposedly uncovered whatever**
17 **he uncovered. Why has Dover Chemical not been**
18 **provided the 22 cents per kilowatt of demand on**
19 **their two primary metered accounts since that time**
20 **until they left the compa -- until they left Dover**
21 **Light and Power?**
22 MS. GARCIA: Objection.
23 A. The issue becomes who owned and maintained their
24 own equipment.
25 **Q. Correct. And -- and -- and --**

1 A. So the dispute the ownership.
2 **Q. The city disputes ownership?**
3 MS. GARCIA: Objection.
4 A. Yes.
5 **Q. It's the city's position that it owns equipment**
6 **beyond the primary metering point at Dover**
7 **Chemical?**
8 MS. GARCIA: Objection.
9 A. Dover Chemical was provided a letter in 2003 that
10 stated that the city had provided that equipment.
11 **Q. I am asking, is the city claiming that it owns**
12 **that equipment?**
13 MS. GARCIA: Objection.
14 A. That equipment was furnished by the taxpayers of
15 the City of Dover. Ratepayers.
16 **Q. Who owns it?**
17 MS. GARCIA: Objection.
18 A. Based upon that, the City of Dover owns it.
19 **Q. So it's your position, city council, that the**
20 **mayor didn't give anything to Dover Chemical?**
21 MS. GARCIA: Objection.
22 A. The mayor would not have the authority to give
23 that matter -- that amount of equipment away --
24 **Q. So --**
25 A. -- to a private entity.

1 **Q. So the mayor has not given any equipment to Dover**
2 **Chemical?**
3 MS. GARCIA: Objection.
4 A. The mayor should not have given away equipment to
5 Dover Chemical.
6 **Q. But did he?**
7 MS. GARCIA: Objection.
8 A. The mayor attempted to give away equipment to
9 Dover Chemical without city council's knowledge or
10 consent.
11 **Q. Did he succeed?**
12 MS. GARCIA: Objection.
13 A. That equipment should be owned by the taxpayers of
14 the city.
15 **Q. But is it?**
16 MS. GARCIA: Objection.
17 A. I think that's part of the dispute today.
18 **Q. What's the city's position? Is -- because you**
19 **know this matters.**
20 A. Uh-huh.
21 **Q. It matters. If the city claims that property**
22 **on -- beyond the meter at Dover Chemical belongs**
23 **to the city --**
24 A. Uh-huh.
25 **Q. -- then it can't bring a conversion claim without**

1 asking for it back.
2 MS. GARCIA: Objection.
3 Q. You know that? You should know that?
4 MS. GARCIA: Objection. Objection.
5 That's not a question. If there's a
6 question, ask the question.
7 Q. Do you know that the city has never asked for
8 transformers or poles back?
9 MS. GARCIA: Objection.
10 A. I do not know that, no.
11 Q. When the city passed Ordinance 29-20, one of the
12 stated purposes -- here, we'll just -- let's just
13 go to the document. You've got Exhibit 6 in front
14 of you.
15 A. Yes.
16 Q. If you go to the second from the bottom "Whereas"
17 clause on page 1. Do you see that?
18 A. Yes.
19 Q. "Whereas, as a primary metered customer the" City
20 of Dover -- or "the Dover Chemical Corporation,
21 alternatively DCC, is required to maintain all
22 equipment and services beyond the meter."
23 Next page, "Whereas upon investigation
24 and deliberation by this council." So your
25 investigation included 15 to 20 minutes with

1 Charlie Stull?
2 A. Okay. Yes.
3 Q. Fifteen minutes with Bill Abel?
4 A. Yes.
5 Q. What documents did city council review?
6 MS. GARCIA: Objection.
7 A. We pro -- again, via the law director and our
8 outside counsel who was assisting us with the
9 matter, we procured documents, including the 2003
10 letter, the electrical service regulations,
11 the -- and a lot of that documentation has been
12 provided to the -- we received an analysis from
13 the logs that were from the electric field
14 department that showed the daily work logs from
15 some years. Not all years, but some years, that
16 showed service calls and things of that nature.
17 Q. Uh-huh.
18 A. I'm trying to think of other things.
19 Q. Did you review all those documents?
20 MS. GARCIA: Objection. He said he was
21 trying to think of other things, so please
22 let him finish the answer.
23 A. The -- we also -- again, as I said, I talked -- we
24 talked with Beth Jones. I had talked with Tom
25 Johnson. And again, those documents, yeah, those

1 documents were made available to us as well as the
2 analysis that was -- with the calls and the
3 specific instances. But the earliest of those was
4 from 1989, and then there were certainly gaps in
5 those years based upon what was -- what was been
6 able to have been found. Also I think there were
7 some e-mail communications.
8 Q. Did -- you said that those documents were
9 gathered. Did you personally review them all?
10 MS. GARCIA: Objection.
11 A. I cannot recall if I personally reviewed all of
12 them. I reviewed some of them, but I --
13 Q. Where did you review those documents that you did
14 review?
15 A. I reviewed them with the law director at council,
16 I believe.
17 Q. Who else was with you?
18 A. Might have -- it might have been just me. I can't
19 recall.
20 Q. The other members of council, did they all review
21 these documents?
22 A. I believe for the most part, they operated off
23 of -- off of a summary that was provided to them.
24 Q. Okay. Who provided the summary?
25 A. I believe it was our outside counsel.

1 Q. I'm going to hand you what's been marked as
2 Exhibit 84. Are you familiar with the Times
3 Reporter?
4 A. I am.
5 Q. And I will represent to you this is a copy of an
6 article from September 10, 2020. Do you recall
7 speaking with or providing a statement to John
8 Baker?
9 A. Not specifically, but I'm sure I did.
10 Q. If you turn to -- if you turn to the second page,
11 do you see where it's underneath "Surcharge," that
12 first sentence, it says, "In a letter to council,
13 he cited one example." Do you see that?
14 A. Yes.
15 Q. And then there are a number of quotes from the
16 letter to council.
17 A. Uh-huh.
18 Q. Do you see that?
19 A. Uh-huh.
20 Q. Who gave Jon Baker that letter to council?
21 A. I do not recall if it was provided during a public
22 meeting. I don't -- I don't recall. I'm sorry.
23 Q. It's all right. You don't have to. You don't
24 know whether you did it, though, right?
25 A. I do not recall giving him a letter. Unless, like

1 I said, it was provided as course of a -- in the
2 course of a public meeting.
3 **Q. The only reason I ask is because there are -- and**
4 **you can see that first column is, on the second**
5 **page, is almost all quotes and then the second**
6 **page -- or in the second column, that first full**
7 **paragraph or that -- rather the second full**
8 **paragraph in the same column, "Thereafter this**
9 **agreement was immediately violated, O'Meara wrote**
10 **in his letter to council, until my discovery in**
11 **late 2019."**

12 **Some -- somehow, either someone from**
13 **council or the law director or outside counsel**
14 **provided this letter to Jon Baker, right?**

15 A. I would assume somehow he got the letter, yes.

16 **Q. Either that or he's guessing really good on these**
17 **quotes?**

18 A. No, I would assume, yeah.

19 MR. RUDD: Lola, I'm going to ask that we
20 be provided a copy of that because it sounds
21 like from council's testimony, well, one,
22 it's pretty clear that it's been published
23 and any privilege has been waived, but two,
24 it sounds like, and tell me if this was a
25 mischaracterization, because if it is, I want

1 to clarify.

2 **Q. It sounds like city council let the law director**
3 **take the laboring order in assessing the situation**
4 **and advising council as to factual issues.**

5 A. I would --

6 **Q. Is that true?**

7 A. I would disagree with that.

8 **Q. Okay. Why would you disagree with that?**

9 A. City council, this was early on in the discussion
10 of the surcharge --

11 **Q. Okay.**

12 A. -- one of the intentions on retaining outside
13 counsel was to get additional eyes to assist in
14 reviewing the matter.

15 **Q. Okay. All right. And so it wasn't then just that**
16 **the city council relied on its law director for**
17 **its own investigation and analysis, it relied on**
18 **the law director and outside counsel to do its**
19 **own -- to do their own investigation and analysis?**

20 A. In addition to the early stuff that had been done
21 that council was -- was -- either myself or as I
22 said Councilman Maurer or others had -- had done
23 in the early phases.

24 **Q. And we're talking about the 20 minutes with Bill**
25 **Abel, the 15 minutes with Charlie Stull, the**

1 **10-minute phone call --**

2 A. Yeah.

3 **Q. -- with Beth and then the conversation with Tom**
4 **Johnson?**

5 A. And then some of the documentation that had
6 already been procured at that point.

7 **Q. Okay. When did you talk with Tom Johnson?**

8 A. It would have been in November of '20, I believe.

9 **Q. All right. So after -- so after this -- so after**
10 **this ordinance was introduced --**

11 A. Uh-huh.

12 **Q. -- stating conclusions in the "Whereas" clauses**
13 **that had already been reached?**

14 A. After the initial -- after the initial draft of
15 the ordinance was -- had been --

16 **Q. First --**

17 A. -- started through the process, yes.

18 **Q. Did it change?**

19 A. Yes.

20 **Q. How did it -- how did it change?**

21 A. A number of things. Some of the "whereases" were
22 changed --

23 **Q. Okay.**

24 A. -- for several reasons, as well as a sunset
25 provision was added after 24 months of -- to the

1 final draft.

2 **Q. Now, that's an interesting provision, the 24**
3 **months, because it says, "The surcharge shall**
4 **expire at the earliest 24 months after enactment."**
5 **It's not really a sunset, is it?**

6 A. I think our intention --

7 MS. GARCIA: Objection. Go ahead.

8 A. I think our intention was that it would end up
9 being a sunset.

10 **Q. Okay. But the actual words don't say this**
11 **terminates in 24 months. It actually says it**
12 **should -- it can't terminate any earlier than 24**
13 **months is what that says, correct?**

14 A. Can you point me to the section? I'm sorry.

15 **Q. Yeah, it's on page 6, section Roman numeral II D.**
16 **"Surcharge shall expire at the earliest 24 months**
17 **after enactment of this ordinance."**

18 MS. GARCIA: Is there a question?

19 **Q. Yeah, I'm asking, that's not a sunset. That's**
20 **actually limiting the ability to terminate before**
21 **24 months. It doesn't term -- it doesn't**
22 **terminate by those terms, does it?**

23 MS. GARCIA: Objection.

24 A. It is coun -- it was council's understanding that
25 it would terminate before 24 months.

1 **Q. Based upon what?**
2 A. Based upon --
3 MS. GARCIA: Objection. Go ahead.
4 A. Based upon the language that was there.
5 **Q. It says that "It will expire at the earliest 24**
6 **months after enactment of this ordinance barring**
7 **any further findings by council that full**
8 **reimbursement to City of Dover has not been**
9 **received."**
10 **What further findings were there as to**
11 **whether full reimbursement was received?**
12 MS. GARCIA: Objection.
13 A. Council discussed the matter -- discussed the
14 matter and as we had originally intended opted to
15 not -- not renew the surcharge.
16 **Q. Did council make a determination that full**
17 **reimbursement to the City of Dover had been**
18 **received?**
19 MS. GARCIA: Objection.
20 A. We're now -- since the matter is now in
21 litigation, no, they did not.
22 **Q. How would they make that determination?**
23 MS. GARCIA: Objection.
24 A. I think you would have to -- at this point you
25 would have to look for if should any additional

1 documentation be found subsequent to the passage
2 of the ordinance, any additional testimony,
3 anything that might come out. Again, at this
4 point, upon final passage, we were -- we were in
5 the -- we had already been sued. We're in the
6 litigation process.
7 **Q. So how much was the city trying to recover through**
8 **this surcharge?**
9 MS. GARCIA: Objection.
10 A. We estimated the amount to be 1.1 million.
11 **Q. Why 1.1? Because I've heard 2.2.**
12 MS. GARCIA: Objection.
13 A. The -- that was an amount that council felt was
14 reasonable.
15 **Q. Well, what do you mean "reasonable"? Based on**
16 **what?**
17 MS. GARCIA: Objection.
18 A. Based upon the information that we were provided
19 at the time.
20 **Q. How much money do you owe me?**
21 MS. GARCIA: Objection.
22 **Q. How much money do you owe me personally?**
23 A. I'm afraid I don't understand the question.
24 MS. GARCIA: Objection.
25 **Q. Do you owe -- do you think you owe me any money?**

1 A. No.
2 **Q. If I think \$50 is reasonable, you're going to say,**
3 **"Why," right?**
4 A. Uh-huh.
5 MS. GARCIA: Objection.
6 **Q. Why is \$1.1 million what the city is trying to**
7 **recover?**
8 MS. GARCIA: Objection.
9 A. You have an issue of -- a significant amount of
10 transformers, you have an issue of poles, wire,
11 service calls over years, routine maintenance,
12 replacement of those items over the course of
13 decades. And when we -- when we calculated that,
14 when we took that into consideration, that was a
15 number that we felt was reasonable.
16 **Q. Well, math isn't about finding a reasonable**
17 **number, it's about figuring out what is owed.**
18 A. Uh-huh.
19 **Q. Did -- did -- did you do any calculations?**
20 MS. GARCIA: Objection.
21 A. We received, again, based off incomplete data, we
22 received a list of the items that were there. We
23 received, again, the poles, the wire, the labor
24 calls that we were aware of knowing that a good
25 number of the logbooks were not there, but based

1 upon the verbal testimony of -- or verbal
2 interviews of the employees knowing that there
3 were more, that is an -- that is the number that
4 we arrived at.
5 **Q. Why was Doug O'Meara saying 2.2?**
6 MS. GARCIA: Objection.
7 A. That was very early in the process. This
8 was -- this was the final product.
9 **Q. What happened to get from 2.2 to 1.1?**
10 MS. GARCIA: Objection.
11 A. Council did continue to do additional due
12 diligence and look into the matter. And again, we
13 hired outside counsel to assist us in advising us
14 in that and that was the number that we felt -- we
15 felt comfortable with.
16 **Q. So it's based on nothing?**
17 MS. GARCIA: Objection. That's not his
18 testimony, Tim.
19 A. I don't think that's fair, no.
20 **Q. It's -- so it's speculation?**
21 MS. GARCIA: Objection.
22 A. No.
23 **Q. It's conjecture?**
24 MS. GARCIA: Objection.
25 A. No.

1 **Q. What is it?**
2 A. Again, it is based upon the calculations that were
3 provided to us --
4 **Q. By whom?**
5 MS. GARCIA: Objection.
6 A. By --
7 MR. RUDD: How is that objectionable, by
8 whom?
9 MS. GARCIA: I think you're badgering my
10 witness, Tim, so that's why I objected.
11 MR. RUDD: I'm not badgering your
12 witness. I'm trying to get -- I'm trying to
13 get a straight answer from the city.
14 MS. GARCIA: He's already answered that
15 question. He said he got an analysis from
16 outside counsel, an analysis that on -- for
17 the record, DCC has been provided.
18 MR. RUDD: That analysis?
19 MS. GARCIA: If you want to keep arguing
20 with my witness -- if you want to make legal
21 arguments, we'll make them in court. If you
22 want to ask him questions, you can ask him
23 questions.
24 MR. RUDD: No, we'll -- we'll -- if -- if
25 we're talking about the analysis you're

1 talking about, then we'll get to it.
2 A. That analysis in addition to the 2003 letter
3 discusses maintenance issues, the interviews with
4 the employees. Again, so all of those things came
5 into play.
6 **Q. You're aware that Bill Abel testified that those
7 poles are worth zero dollars, right?**
8 MS. GARCIA: Objection. That was not his
9 testimony.
10 A. They wouldn't be when they were new put in.
11 **Q. They're worth zero now?**
12 A. I have --
13 MS. GARCIA: Objection.
14 A. I have no idea of the state or the condition of
15 those poles or transformers.
16 **Q. Interestingly, if you go back to Exhibit 84, first
17 column, third full paragraph, begins with "This
18 pole." Can you read that?**
19 MS. GARCIA: On the second page.
20 A. "This pole was broken by DCC after they were told
21 that numerous poles and pieces of equipment on
22 premises behind the DCC meter were dangerous and
23 unsafe. Despite extensive advanced warning and
24 information, they need to repair and maintain the
25 equipment. DCC did not do so."

1 **Q. Okay. But isn't this paragraph saying that those
2 poles weren't maintained and repaired?**
3 MS. GARCIA: Objection.
4 **Q. It's kind of what O'Meara's complaining about,
5 right?**
6 MS. GARCIA: Objection.
7 A. I would say that particular pole, yes. I don't
8 know, again, the status of the others.
9 **Q. Okay. Well, he says numerous poles.**
10 A. Okay.
11 **Q. And he said, "despite warning that they need to
12 repair and maintain the equipment, but DCC did not
13 do so." It kind of sounds like the city didn't do
14 so as to those poles either, right?**
15 MS. GARCIA: Objection.
16 A. That's possible.
17 **Q. Maybe this is a better question for O'Meara, but
18 it kind of sounds like he's saying these were not
19 maintained.**
20 MS. GARCIA: Objection.
21 A. That's possible.
22 **Q. So it's possible that the city didn't maintain
23 these poles?**
24 MS. GARCIA: Objection.
25 A. It would be very difficult to go decades without

1 maintenance to a pole of any kind.
2 **Q. You know we have poles there from the 1950s,
3 right?**
4 MS. GARCIA: Objection.
5 A. That's entirely possible.
6 **Q. Okay. Did you get a chance to read Bill Abel's
7 testimony on his damages deposition?**
8 A. No.
9 **Q. So there was a -- there was an occasion in around
10 2017 where the city came out and looked at some
11 poles and made some recommendations to Dover
12 Chemical and I asked Bill, "Did you do anything on
13 those recommendations?" And he said, "No, they're
14 not our poles. We don't maintain them."**
15 MS. GARCIA: Objection.
16 **Q. Is that consistent with what O'Meara just said in
17 this article?**
18 MS. GARCIA: Objection.
19 A. I would not -- our electric field employees
20 shouldn't be making the determination what is and
21 isn't city property. That should be set by
22 ordinance or regulation.
23 **Q. If the city decided that Dover Chemical owed it,
24 you said 1.1 million?**
25 A. (Witness nodding head up and down.)

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1 **Q. Why didn't it send an invoice?**
2 MS. GARCIA: Objection.
3 A. An invoice for the total amount?
4 **Q. Sure.**
5 MS. GARCIA: Objection.
6 A. Again, we certainly communicated an openness to
7 enter into discussion about resolving the matter.
8 **Q. Did you ask Dover Chemical -- did you send Dover**
9 **Chemical a bill for the poles?**
10 MS. GARCIA: Objection.
11 A. When they were installed?
12 **Q. No, when you decided that they should be paid for**
13 **by Dover Chemical.**
14 A. No, because we had the surcharge already enacted.
15 **Q. Why didn't you send an invoice?**
16 MS. GARCIA: Objection.
17 A. That was not my determine -- I'm not -- at the
18 time, I was not the mayor and I'm not -- was not
19 in charge of utility. Either the electric field
20 department or utility billing administrator.
21 Certainly that would have been something he could
22 have done.
23 **Q. Could council --**
24 A. Could have directed.
25 **Q. Could council have instructed him to do that?**

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1 MS. GARCIA: Objection.
2 **Q. August? July?**
3 MS. GARCIA: Objection.
4 A. No. October, November.
5 **Q. After -- after the ordinance was initially put on**
6 **for its first reading?**
7 MS. GARCIA: Objection.
8 A. The ordinance was held something like 14 times --
9 **Q. Right. Right.**
10 A. -- as these discussions went on.
11 **Q. And ultimately decided -- could the city just add**
12 **a million dollar per kilowatt hour surcharge on**
13 **the first kilowatt hour for an outside customer if**
14 **it wanted to?**
15 MS. GARCIA: Objection. You're asking
16 for a legal conclusion and in a speculative
17 situation. I --
18 A. I -- I would have to look into the legality of
19 that in a -- on a one-time invoice. Certainly
20 council has the authority to set rates and has on
21 many occasions. As to something that large at
22 one -- over one time, I would have to -- I would
23 have to really research that further.
24 **Q. So you came on council, you said in 2014?**
25 A. No, I was elected to council in 2007, so I --

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1 MS. GARCIA: Objection.
2 A. They could have requested him to do that.
3 **Q. Could council have enacted an ordinance requiring**
4 **him to do that?**
5 MS. GARCIA: Objection.
6 A. I don't know the answer to the legality of that.
7 **Q. Was it discussed by council?**
8 MS. GARCIA: Objection.
9 A. Just invoicing the flat 1.1 million?
10 **Q. Yes.**
11 A. I don't believe so.
12 **Q. Why not?**
13 A. My -- my thought is a phased-in surcharge would be
14 more beneficial to the -- to both parties in the
15 long run.
16 **Q. Why?**
17 A. By breaking that number up over a period of time.
18 **Q. Did you consider just having a one-time surcharge**
19 **of \$1.1 million on a bill?**
20 A. I believe it might have been discussed at one
21 point, but -- but ultimately was rejected in a
22 more spread out approach.
23 **Q. Might have been discussed when?**
24 A. Maybe in the early phases of the ordinance.
25 **Q. Give me a ballpark.**

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1 **Q. 2007.**
2 A. I became council president in 2014.
3 **Q. Okay. So you had been around for at least one**
4 **prior rate-making ordinance?**
5 A. Correct.
6 **Q. So the 2014 ordinance setting rates, you were on**
7 **council for that?**
8 A. I was.
9 **Q. How did you decide what rate to set?**
10 A. We took recommendations from administration. We
11 also did research with SSOE.
12 **Q. Okay.**
13 A. A lot of deliberation on that one, because at the
14 time, I was -- it was right about the time I
15 became council president. I was all -- previous
16 to that, as a council member, I was chairman of
17 the utility committee that recommended that
18 ordinance. The -- and there was a lot of back and
19 forth in discussion on it and ultimately, that was
20 the administration's recommendation.
21 **Q. Does the administration interact with SSOE or does**
22 **council interact with them directly?**
23 MS. GARCIA: Objection.
24 A. Council has interacted with them directly, yes.
25 **Q. On the rate-making ordinance in 2014 when SSOE**

1 provided recommendations for the general rates,
2 did council interact directly with SSOE or did
3 SSOE interact with Dover Light and Power and the
4 recommendation was put forward that way?
5 A. I'm trying to remember. I don't remember if we
6 had direct meetings with them or not or if the
7 information was forwarded to us; but certainly,
8 that came into consideration.
9 Q. Okay. So in the 20 -- in the 2020 ordinance,
10 29-20, first -- for residential rates, first 800
11 kilowatt hours is 12.966 --
12 A. Uh-huh.
13 Q. -- cents per kilowatt hour. The next 700 kilowatt
14 hours are 12.373.
15 A. Uh-huh.
16 Q. Does city council get involved in discussions as
17 to whether it should be 373 or 374 or 375? Does
18 city council get involved at that level or does
19 SSOE and the administration present information
20 and the city council approves it?
21 MS. GARCIA: Objection.
22 A. I certainly had conversations expressing concern,
23 discussion about individual rates, kept classes,
24 categories. More broadly about the percentage
25 increase at that time. I think was like 13 or 14

1 percent and then like 1 percent a year. And so I
2 certainly had discussion with administration and I
3 believe SSOE about some alternative options,
4 although this was what we ended up -- ended up
5 adopting.
6 Q. Okay. But those numbers came from SSOE?
7 A. I believe that was the -- yeah, that was their
8 initial recommendation, yeah.
9 Q. Okay. And then you kept the same language on page
10 5, that 95 -- 0.95 multiplier for primary
11 metering. And then for primary service when the
12 customer maintains necessary equipment, there's
13 the credit.
14 A. Uh-huh.
15 Q. And obviously, the city can determine whether or
16 not every primary metering customer gets that.
17 And then we have, on page 6, a 0.3125 per kilowatt
18 hour over 100,000 kilowatt hours. Do you see that
19 at the very bottom?
20 A. Yes.
21 Q. So that's what we've referred to as the surcharge.
22 Who came up with that number? Did SSOE come up
23 with that number?
24 A. No. I don't believe so.
25 Q. How do you think that number came about?

1 A. I believe that number was -- came from the law
2 director after discussion with our utility billing
3 administrator.
4 Q. And what was his explanation for why this was a
5 number that the city council should approve?
6 A. The number works out to approximately, I believe
7 it was -- it was approximately 20 percent,
8 give -- give or take. The -- and the number based
9 off our calculations would calculate -- would
10 recoup 1.1 million.
11 Q. So this --
12 A. Over two years.
13 Q. This doesn't have any -- any relationship at all
14 to the cost of providing electricity going
15 forward, correct? It is simply backwards-looking?
16 MS. GARCIA: Objection.
17 A. It was an attempt to recover costs that had
18 not -- we felt had not been properly recovered for
19 the residents of the City of Dover.
20 Q. Did you discuss filing a lawsuit, initiating a
21 lawsuit against Dover Chemical to try to recover
22 these costs?
23 MS. GARCIA: Objection. At this point
24 I'm going to instruct the witness not to
25 answer any conversations that he may have had

1 with counsel.
2 Q. I'm not asking you with counsel. Did you dis --
3 did council -- did city council discuss filing a
4 lawsuit against Dover Chemical to recover these
5 costs instead of going with a surcharge?
6 A. I believe it might have been discussed, yes.
7 Q. Might have been discussed by who?
8 A. Various council members. I'm sorry, I can't
9 remember the specifics of those conversations, but
10 it -- I certainly think it was one of the options
11 that was considered.
12 Q. Were there negatives to that?
13 MS. GARCIA: Objection.
14 A. Obviously we wanted to avoid, if possible, the
15 cost of litigation.
16 Q. So you didn't want to have to spend the money to
17 sue us for amounts you claim we owe that we
18 dispute?
19 MS. GARCIA: Objection.
20 A. The cost of litigation was a factor.
21 Q. So you didn't want to spend money to recover
22 amounts you claim Dover Chemical owes that Dover
23 Chemical disputes?
24 MS. GARCIA: Objection. He's answered
25 the question.

1 MR. RUDD: No, he hasn't.
2 MS. GARCIA: Yes, he has.
3 MR. RUDD: All right. No, he hasn't.
4 MS. GARCIA: Can we have the court
5 reporter read back the first time you asked
6 that question, please?
7 MR. RUDD: And then when she's done
8 reading, please answer my question.
9 (Whereupon, the Reporter read the record
10 as requested.)
11 A. So the -- as I said, the cost of litigation is a
12 factor, as was we wanted to figure out how to
13 recoup those funds in what we thought were going
14 to be a reasonable manner. We hoped to be able to
15 settle the matter with Dover Chemical.
16 **Q. How?**
17 A. Through discussions with our attorneys and their
18 attorneys.
19 **Q. What -- what -- what possible concession would**
20 **either party make in this case?**
21 MS. GARCIA: Objection. He's not going
22 to speculate on that.
23 MR. RUDD: He's been speculating about
24 everything else.
25 A. To find a reasonable -- reasonable solution to the

1 matter and recover the funds that we believe were
2 owed to the people of Dover.
3 **Q. So if one of the purposes of going the surcharge**
4 **route was to avoid litigation, is it odd to you**
5 **that the city enacted the surcharge after**
6 **litigation was already initiated?**
7 MS. GARCIA: Objection.
8 A. No.
9 **Q. Why not?**
10 A. It was something we were already heavily
11 considering prior to the start of litigate --
12 litigation.
13 **Q. And one of the goals was to avoid the cost of**
14 **litigating, but now that's off the table, right?**
15 MS. GARCIA: Objection.
16 A. Certainly, yeah.
17 **Q. Did city council discuss among itself concerns**
18 **that given the age of some of the disputes that**
19 **there might be limits to their ability to get**
20 **redress in court?**
21 MS. GARCIA: Objection.
22 A. We -- our concern was, again, was recovery of
23 those funds. The hope was certainly that the
24 matter would not end up in court, either through
25 settlement or litigation.

1 MS. GARCIA: At this point we've been
2 going for an hour. I would like a break.
3 MR. RUDD: Yeah, a break's good.
4 THE VIDEOGRAPHER: We're going off the
5 record. The time is 10:03.
6 (Recess was taken.)
7 THE VIDEOGRAPHER: We are back on the
8 record. The time is 10:14.
9 BY MR. RUDD:
10 **Q. Going back to Exhibit 6.**
11 A. Uh-huh.
12 **Q. That paragraph on the surcharge beginning with**
13 **"Notwithstanding," the last paragraph -- or the**
14 **last sentence of that, "any determination of**
15 **amounts still due and owing to the City of Dover**
16 **by DCC must be made at least 60 days prior to the**
17 **determination date with a right of notice to an**
18 **opportunity to be heard by DCC."**
19 **Was any determination ever made that**
20 **amounts were still due and owing to the City of**
21 **Dover?**
22 A. The city did not -- again, litigation had already
23 been filed. The city council did not have
24 intention of renewing the surcharge, so there was
25 no -- in 2023 they did not dive into that matter.

1 **Q. How much have been collected in the surcharge so**
2 **far?**
3 A. Approximately 1.1 million.
4 **Q. More or less?**
5 A. Slightly over.
6 **Q. Is the city going to give back that money that it**
7 **doesn't think it's owed?**
8 MS. GARCIA: Objection.
9 A. The -- the amount over 1.1 million?
10 **Q. Yeah.**
11 A. That would be something we would have to confer
12 with our attorneys on.
13 **Q. Why -- why wouldn't you give back money that you**
14 **he don't think you're owed?**
15 MS. GARCIA: Objection. That's not what
16 his testimony was.
17 A. I -- if we don't think we're owed it, I
18 certainly -- we -- I think we would -- we would do
19 that.
20 **Q. Where -- was there discussion -- I never got a**
21 **clear answer to this. Was there discussion among**
22 **city council members as to the possibility that**
23 **claims they might want to bring to recover this**
24 **would be barred by applicable laws limiting how**
25 **long you can wait to file the claims?**

1 MS. GARCIA: Objection. And I'll just
2 instruct you not to discuss any conversations
3 you would have had with any -- the law
4 director or counsel for the city.
5 **Q. I'll ask the question again.**
6 MR. RUDD: Could you read back my
7 question?
8 (Whereupon, the Reporter read the record
9 as requested.)
10 MS. GARCIA: Same objection, same
11 instruction.
12 THE WITNESS: The instruction is what?
13 MS. GARCIA: Not to discuss any
14 conversations you may have had with the law
15 director or counsel, outside counsel for the
16 city.
17 A. Okay. So amongst council members, without the law
18 director, without discussing anything with the law
19 director or outside counsel, certainly the pros
20 and cons of litigation and what could and may not
21 be recovered was -- was part of a discussion.
22 **Q. That included the possibility that some claims**
23 **might be time barred if they were -- even if they**
24 **were valid?**
25 MS. GARCIA: Objection. Same

1 **Q. Strongly good or strongly bad?**
2 MS. GARCIA: Objection.
3 A. Strongly good.
4 **Q. Interesting. The bottom of page 6, the surcharge,**
5 **which again, that was just arrived at to come to**
6 **an amount you said somewhere approximating 20**
7 **percent of Dover Chemical's primary metered bills?**
8 A. It was arrived at with the intent of collecting
9 about the number that we ended up.
10 **Q. Around 60-, \$70,000 a month?**
11 MS. GARCIA: Objection.
12 A. That wasn't that high.
13 **Q. How high was it?**
14 A. 1.1 million over two years, what's that work-out
15 to?
16 **Q. I don't know.**
17 A. About a little under 50,000 a month.
18 **Q. I'll do math. \$45,000 a month. From the passage**
19 **of the surcharge until Dover left as a -- as a**
20 **customer, did the city continue to maintain any**
21 **equipment belonging -- on the -- beyond the meter**
22 **at Dover Chemical?**
23 A. They were instructed. And again, I was not their
24 supervisor, the electric field department during
25 the -- about half of that time. But it's my

1 instruction, same objection.
2 A. Okay. That included -- yeah, that would include
3 all merits of a potential case against Dover
4 Chemical.
5 **Q. Including the potential that it would be time**
6 **barred?**
7 MS. GARCIA: Objection. Same objection,
8 same instruction.
9 A. Maybe a portion of it.
10 **Q. Maybe a portion of it?**
11 MS. GARCIA: Objection. Same objection,
12 same instruction.
13 **Q. The question was, was it discussed?**
14 MS. GARCIA: And he's answered that.
15 MR. RUDD: No, he hasn't.
16 A. Yeah, all merits of the case, including that,
17 would have been discussed, yes.
18 **Q. So they were discussed?**
19 A. Would have been -- yeah, the pros and cons of that
20 would have been discussed.
21 **Q. And was the possibility of it being time barred a**
22 **pro or a con?**
23 MS. GARCIA: Objection.
24 A. We -- we felt strongly about our case if we needed
25 to proceed, but --

1 understanding they were instructed not to do any
2 work beyond the meter.
3 **Q. Do you have any evidence of them doing work beyond**
4 **the meter without invoicing for it?**
5 A. Not that I'm aware of.
6 **Q. So the city did not maintain the necessary**
7 **equipment beyond the meter from the time the**
8 **surcharge was passed until Dover Chemical left as**
9 **a customer?**
10 A. I'm not aware of us doing work behind the meter
11 after -- from the time of the surcharge.
12 **Q. And the only work you're aware of beyond the meter**
13 **ever is what was in the documents that the city**
14 **produced and what you've gleaned from**
15 **conversations with Johnson, Abel and Stull?**
16 MS. GARCIA: Objection.
17 A. Johnson, Abel, Stull, I'm trying to remember. And
18 again, those would be the primary ones. I'm
19 trying to remember if there -- there might have
20 been somebody else, but those were the primary.
21 The supervisors, so --
22 **Q. Is it fair to say that you relied very heavily on**
23 **and that city council relied very heavily on the**
24 **law director's analysis that was provided in the**
25 **letter that was quoted --**

1 MS. GARCIA: Objection.
2 **Q. -- in the Times Reporter?**
3 A. I think the most damaging -- the most concerning
4 thing to council was the 2003 letter that was
5 provided to us from the mayor to I believe then
6 Dwain Colvin, president of Dover Chemical.
7 **Q. Okay. I notice at the back of Exhibit 107 where**
8 **you overrode the veto and the --**
9 A. Let me find it here.
10 **Q. It's the March 12th special session.**
11 A. Yep. Okay.
12 **Q. At the very back of that there are some things**
13 **attached.**
14 A. Uh-huh.
15 **Q. What -- I don't normally, and I don't --**
16 MS. GARCIA: I don't -- Tim, I just, I
17 don't have that.
18 MR. RUDD: This is -- this is what
19 I -- this is what I --
20 MS. GARCIA: Yeah, and my Exhibit 6, it
21 just ends on the detail page.
22 MR. RUDD: Oh, no, we're on 107.
23 MS. GARCIA: Oh, sorry.
24 MR. RUDD: Yeah. Scared me.
25 MS. GARCIA: Yeah, scared me.

1 **Q. So there's page 8 of the special session of**
2 **council and then there's a bunch of stuff.**
3 A. Uh-huh.
4 **Q. That's a legal term. And this stuff is**
5 **interesting to me --**
6 A. Okay.
7 **Q. -- because I don't ever see stuff attached to the**
8 **back of minutes.**
9 A. Uh-huh.
10 **Q. I've looked at a lot of City of Dover board**
11 **minutes. This one has stuff attached to the back.**
12 **What is this stuff and why is it attached to the**
13 **back?**
14 A. This was part of a presentation given to us by a
15 consultant that I was unfamiliar with and -- a
16 consultant that I was unfamiliar with that was
17 brought forward at the meeting that night.
18 **Q. Who was the consultant?**
19 A. Mesa Group, I believe. Mesa Associates.
20 **Q. Okay. And I saw that you were quoted in another**
21 **article saying that we haven't heard from Mesa**
22 **before or since.**
23 A. Correct.
24 **Q. But you heard from them that night?**
25 A. Correct.

1 **Q. Why were they there?**
2 A. The city administration, particularly Mr. Filippi
3 and Mayor Homrighausen, had commissioned a
4 sur -- a study by this organization to present to
5 city council.
6 **Q. And you listened to them?**
7 A. Uh-huh.
8 **Q. But there was no follow-up? Did you just not**
9 **believe them or did you didn't think it was -- you**
10 **didn't like what they had to say? Why did you not**
11 **engage them again?**
12 MS. GARCIA: Objection.
13 A. There were multiple points of concern with
14 their -- with their proposal. One, the nature,
15 the fairly dubious nature in which it was
16 presented, and two, the mathematics of what they
17 were presenting to us.
18 **Q. When was the last cost of service study that the**
19 **City of Dover, Dover Light and Power?**
20 A. 20 -- it would have been prior to the
21 ordinance -- that was done by SSOE, I believe in
22 2014.
23 **Q. Okay. The 2013, 2014 --**
24 A. Yeah.
25 **Q. -- range, somewhere around there?**

1 A. Yeah.
2 **Q. Why hasn't there been another one done since?**
3 A. At this point, city administration or and council
4 doesn't feel it's necessary.
5 **Q. What factors would impact a decision as to whether**
6 **it's necessary?**
7 A. The --
8 MS. GARCIA: Go ahead. Sorry.
9 A. Certainly the position of the electric fund in
10 terms of cash -- cash balances, financials,
11 revenue, the recommend -- we have not -- I've not
12 had a recommendation from city, from our electric
13 generating or electric field superintendent in the
14 last year for that.
15 **Q. When was the last recommendation?**
16 MS. GARCIA: Objection.
17 A. Probably 2019 or 2020.
18 **Q. Dave Filippi recommended one?**
19 A. Correct.
20 **Q. And why did -- why did -- why was there no**
21 **follow-up by the city on that recommendation?**
22 A. Well, for a couple of reasons. Dave was very
23 adamant in pushing for a rate reduction
24 specifically for Dover Chemical, but our -- our
25 finances in terms of our position as the electric

1 fund as a city, we were doing the maintenance that
2 was required. We were -- we were taking care of
3 the business that needed to be and we were -- we
4 were solvent. So we didn't feel like in terms of
5 funds coming in, funds going out, we didn't feel
6 like it was necessary.

7 **Q. Did you ever write down anywhere, even on a**
8 **notepad, the rough calculations to get you to**
9 **\$1.1 million?**

10 MS. GARCIA: Objection.

11 A. Not that I can remember.

12 **Q. What factors did city council employ to arrive at**
13 **a \$1.1 million number?**

14 MS. GARCIA: Objection.

15 A. The analysis that was provided.

16 **Q. By?**

17 A. By our outside counsel detailing the cost in 2021
18 dollars of replacement of those pieces of
19 equipment on Dover Chemical's property, the
20 service calls that we had received, as well as
21 some estimates on what routine, very routine
22 maintenance would be. All of that was in
23 those -- that analysis. And then again, the
24 factors were -- quite honestly, we had those
25 verbal reports from city employees about

1 additional calls that were never logged, never
2 billed, never charged for, and so you have to take
3 those into consideration.

4 **Q. Where would it logged be? What do you mean? When**
5 **you say "logged," where would that be recorded?**

6 A. They were never -- an invoice -- information was
7 never supplied to the utility billing office to
8 submit an invoice.

9 **Q. But we have the calendar sheets showing who was**
10 **where doing what on given days, correct?**

11 A. From some years.

12 **Q. From other years, we don't?**

13 A. Correct.

14 **Q. And do we use that -- the calendar years that we**
15 **do have to make assumptions about the calendar**
16 **years we don't? How do we get to 1.1?**

17 A. Just -- just the way I previously explained. So
18 you have those years that we do have. You have
19 the verbal testimony -- or the verbal -- not
20 testimony, the verbal interviews with the
21 employees. You have the equipment list.

22 **Q. Okay.**

23 A. You have -- you know that equipment has to be
24 replaced and maintained from time to time, and all
25 of those things factor into that number.

1 **Q. Okay. So I have what has been given to me and**
2 **represented as the lists of equipment. I've got**
3 **poles and I've got transformers.**

4 A. Correct.

5 **Q. All right. We discussed these things ad nauseam.**
6 **They're Exhibits 11 and 12.**

7 A. Okay.

8 **Q. Those are worth something. So whatever that value**
9 **is is part of the 1.1 --**

10 A. Uh-huh.

11 **Q. -- in your calculation.**

12 A. Uh-huh.

13 **Q. The rest then is -- it's got to be some sort of**
14 **function that you've come up with, right?**

15 A. So we obviously employ an electric field division
16 to maintain the entirety of our system --

17 **Q. Uh-huh.**

18 A. -- and all of the items that the city takes care
19 of, right, that the city is responsible for, and
20 that includes routine maintenance as well as
21 replacement of those items, replacement of poles
22 as needed, rerunning wire. All of those -- all of
23 those things. And that -- that cost of that
24 service is not insubstantial. So when you have
25 employees testifying that -- or employees

1 interviewing and saying, well, you know, yeah, we
2 were there quite a bit and we were instructed
3 never to give them a bill, then -- then you have
4 to take that into consideration.

5 **Q. How many times a year is "quite a bit"?**

6 MS. GARCIA: Objection.

7 A. I believe the number was five to ten times,
8 depending on the year.

9 **Q. Okay. And if we have records showing that one of**
10 **those times is to spray some weeds, how much**
11 **is -- how much is 30 minutes of spraying weeds?**

12 MS. GARCIA: Objection.

13 A. It would depend on how many employees do it.
14 I -- I wouldn't --

15 **Q. What if it was one?**

16 A. Well, certainly, that would factor into one of
17 the -- one of them.

18 **Q. Okay. So there was one of five. Five of those**
19 **and we're looking at 600 bucks, maybe?**

20 MS. GARCIA: Objection.

21 **Q. Right?**

22 MS. GARCIA: Objection.

23 A. But -- sure.

24 **Q. What -- what -- what number did the city assume**
25 **per visit given a five to ten visits a year?**

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1 MS. GARCIA: Objection.
2 A. It depends on whether the call was on overtime,
3 the number of employees. Some of those calls
4 could have been \$15,000. Some of those calls
5 could have been --
6 **Q. A hundred dollars?**
7 A. -- very little.
8 **Q. What number did the city assume to come up with**
9 **its \$1.1 million?**
10 MS. GARCIA: Objection.
11 A. I can't recall off the top of my head. I'm sorry.
12 **Q. We ought to be able to back out the amounts,**
13 **again, we all dispute whether you get -- whether**
14 **they're '20 or '21 value for a 1958 pole is**
15 **recoverable, that's going to be an issue for the**
16 **court. That said, we can back out what the city**
17 **claims those values are and we'll be left with**
18 **some number.**
19 A. Uh-huh.
20 **Q. And it would seem to me that the function that**
21 **ought to equal the remainder of that number should**
22 **be something like years times visits per year**
23 **times some assumed amount per visit. That's what**
24 **it would seem to me.**
25 A. Uh-huh.

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1 **Q. Is that what the city did?**
2 A. Certainly we took into consideration the number of
3 years since that ordinance had been enacted and
4 the number of visits that were reported to us by
5 our electric field division at five to ten, I
6 believe, and there was the -- there was an attempt
7 to come up -- to quantify that number in our
8 surcharge.
9 **Q. Do you know when the city notified Dover Chemical**
10 **of Doug O'Meara's theory?**
11 MS. GARCIA: Objection.
12 A. I do not.
13 **Q. If I represented it to you that it was sometime in**
14 **late May of 2020, would that sound right?**
15 MS. GARCIA: Objection.
16 A. That sounds possible.
17 **Q. If Doug O'Meara, sometime around September of**
18 **2019, discovered and alerted people at the field**
19 **division of his concerns and if Dover Chemical**
20 **wasn't told until the end of May, you should have**
21 **a pretty solid six-month sample of what was done**
22 **documented right there, right?**
23 MS. GARCIA: Objection.
24 A. Not necessarily.
25 **Q. Why?**

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1 A. The electric field division doesn't report to Doug
2 O'Meara. He can give them an opinion.
3 They -- they report to the mayor, who obviously
4 had a different opinion.
5 **Q. So when Doug O'Meara says that he put an end to it**
6 **in September of 2019, is he just -- is he just**
7 **saying empty words or does that -- or do you have**
8 **reason to believe that's accurate?**
9 MS. GARCIA: Objection. If you know what
10 Law Director O'Meara was thinking.
11 A. I can't speculate on what Doug O'Meara --
12 **Q. Better -- better question for him?**
13 A. I think that's fair.
14 **Q. If -- if beginning -- heck, let's just say the**
15 **beginning of December of 2020 -- or 2019. If in**
16 **the beginning of December of 2019 through the end**
17 **of May 2020 everything the City of Dover was doing**
18 **behind the meter was accounted for and billed, if,**
19 **and if Dover Chemical hadn't been alerted that --**
20 **anything with regard to this until the end of May,**
21 **there ought to be a six-month track record of what**
22 **actually is done over six months, correct?**
23 MS. GARCIA: Objection.
24 A. Certainly the logbooks would be available from
25 that six months, I would -- I would assume.

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1 **Q. Did the -- did city council look to see**
2 **what -- what the City of Dover was actually doing**
3 **during those six months before -- before it ever**
4 **told Dover Chemical that there was a problem?**
5 MS. GARCIA: Objection.
6 A. The logbooks from that were in -- city council
7 certainly had access to those.
8 **Q. Why didn't city council go look at that to see**
9 **what was actually being done in realtime?**
10 MS. GARCIA: Objection.
11 A. The -- the -- I would say that certainly when
12 Mr. O'Meara put his opinion out to the electric
13 field department, it was highly likely that
14 pattern and practice would change; although, they
15 do report to the mayor.
16 **Q. You said it was highly likely or highly unlikely?**
17 A. Highly -- highly poss -- likely, yes.
18 **Q. Well, if the city had been in the pattern or**
19 **practice of providing a bunch of free services --**
20 A. Uh-huh.
21 **Q. -- we would expect some communication from Dover**
22 **Chemical saying, Hey, we need you to come do some**
23 **stuff. Did anybody ever tell you that any such**
24 **communications ever happened?**
25 MS. GARCIA: Objection.

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1 A. We do not have access to Dover -- I did not have
2 access to Dover Chemical's communications with
3 Mayor Homrighausen --
4 **Q. Have --**
5 A. -- at that time.
6 **Q. Do you now?**
7 A. No.
8 **Q. Have you reviewed the City of Dover's document**
9 **production in this case?**
10 MS. GARCIA: Objection.
11 A. I have -- I have reviewed the documents that were
12 provided to me by our counsel.
13 **Q. Have you reviewed Dover Chemical's document**
14 **production in this case?**
15 MS. GARCIA: Objection.
16 A. No.
17 **Q. Okay. So sitting here today, you have no idea**
18 **whether there was any communications in any of**
19 **those productions or verbally between anyone at**
20 **Dover Chemical and the mayor about free anything?**
21 A. The only documentation I've examined was the 2003
22 letter.
23 **Q. That's it?**
24 A. That I've seen from Dover Chemical.
25 **Q. When did you see that first?**

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1 A. August of 2020, approximately. Maybe -- maybe a
2 little bit earlier.
3 **Q. I'm going to hand you what's been marked as**
4 **Exhibit 47. It was previously marked. Do you**
5 **know what this document is?**
6 A. Request for committee assignment.
7 **Q. Okay.**
8 A. Or I'm sorry, the minutes from Dover City Council.
9 **Q. Okay.**
10 MS. GARCIA: Tim, do you have one for me?
11 MR. RUDD: I don't have an extra copy for
12 you, but I'll give -- I'll give you my copy.
13 MS. GARCIA: Okay.
14 MR. RUDD: We're just using the same ones
15 from all the prior deps, but here.
16 MS. GARCIA: I don't think these were
17 admitted at a prior dep.
18 MR. RUDD: Yeah. Yeah. She had it in
19 her pi -- in her file.
20 MS. GARCIA: I'll believe you, I just --
21 I don't remember seeing it in another prior
22 dep and I don't have a copy.
23 MR. RUDD: I'm probably need it to ask
24 questions.
25 MS. GARCIA: Oh. Well, then why did you

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1 give it to me?
2 MR. RUDD: I wanted you to look at it. I
3 thought it would be -- I thought it would be
4 reasonable for you to look at it, but can I
5 have it back for a minute? I'll give it to
6 you when I'm done.
7 MS. GARCIA: Yeah, you can have it back
8 for a minute.
9 MR. RUDD: It doesn't have my writing all
10 over it, does it?
11 MS. GARCIA: It does not.
12 MR. RUDD: Okay.
13 **Q. This is May 26th, 2020.**
14 A. Uh-huh.
15 **Q. The law director asked for two assignments.**
16 **Request for a committee assignment that any**
17 **outside-the-city industrial customer receives any**
18 **services, equipment, manpower or materials from**
19 **Dover Light and Power without paying in full for**
20 **those services, materials, manpower or material**
21 **have a surcharge assessed and collected on that**
22 **customer's bill above the rates assessed by**
23 **Ordinance 34-14 in an amount up to 50 percent of**
24 **the customer's bill until that customer can**
25 **demonstrate and prove by clear and convincing**

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1 **evidence that they have repaid the people in the**
2 **City of Dover in full for all improper or legal --**
3 **or illegal services, materials, equipment or**
4 **manpower received from" that -- "from the date**
5 **first provided until we're paid in full."**
6 **So that's the first committee assignment.**
7 **Did I read that accurately?**
8 A. Yes.
9 **Q. This is May of 2020. Did you -- did you -- did**
10 **you ask -- did you ask the law director what this**
11 **was all about?**
12 A. Certainly he made the committee recommendation.
13 **Q. Yeah.**
14 A. That is the start, the very start of the
15 legislative process.
16 **Q. Okay.**
17 A. So in all subsequent conversations between this
18 and when it was finally passed in February or
19 March of '21, yeah, you would certainly ask what
20 all -- what is -- what is that all about. I don't
21 remember having any committee hearings or
22 discussion on this for probably several months.
23 **Q. You don't recall correspondence among city council**
24 **around Memorial Day?**
25 A. Yeah, we did receive a letter from the law

1 director.
2 **Q. Okay. And given the letter that you received, did**
3 **his recommendation come to you completely with no**
4 **context or did you feel like you had a context**
5 **what this was about?**
6 A. We had -- we had some context. And obviously,
7 that would be subject to much more discussion.
8 **Q. And so at least as of May 26th, you knew that**
9 **someone was claiming that Dover Chemical had**
10 **received things that it shouldn't have?**
11 A. Correct.
12 **Q. And the first suggestion was to just tack a**
13 **50-percent -- up to a 50-percent surcharge on a**
14 **bill until the customer can prove he doesn't owe**
15 **you money.**
16 MS. GARCIA: Objection.
17 **Q. Has the City of Dover, in your now 16 years being**
18 **involved in the government of the City of Dover,**
19 **ever given someone a charge contingent upon them**
20 **proving they just don't owe it?**
21 MS. GARCIA: Objection.
22 A. We had a dispute with the county water and sewer
23 system, but I don't believe there was a contingent
24 charge or a contingent requirement that they prove
25 that they don't owe us anything.

1 **Q. This -- this requirement that they prove that they**
2 **do not owe you anything fell off by the time we**
3 **got to the final ordinance, correct?**
4 A. As is typical through the legislative process,
5 things change.
6 **Q. Was this ever given any real serious**
7 **consideration, the up to 50 percent until they**
8 **prove they don't owe you money?**
9 A. I don't -- I mean, this was the -- that was the
10 initial recommendation. I -- the level of
11 consideration, you know, we didn't have hearings
12 on it for some months. Certainly I think we
13 wanted more information before we moved forward.
14 **Q. But -- but as of Memorial Day weekend 2020, Doug**
15 **O'Meara's already got in the works a plan to**
16 **impose a surcharge on Dover Chemical?**
17 MS. GARCIA: Objection.
18 A. That was his committee recommendation. His
19 request for committee assignment.
20 **Q. Did he talk to you about this before that?**
21 MS. GARCIA: Objection. I'll instruct
22 you not to answer any questions in terms of
23 specific conversations you had with
24 Director -- counsel for the city.
25 **Q. Did you know that these recommendations were going**

1 **to be made at the May 26 special meeting?**
2 A. I can't recall if I knew in advance what the
3 specific committee assignments were, but I knew he
4 had expressed concerns in that letter.
5 **Q. What letter?**
6 A. The letter that was sent to city council
7 approximately around this time.
8 **Q. Is that the letter that was provided to the**
9 **reporter for the Times Reporter in -- for the**
10 **September 2020 article or was that a different**
11 **letter?**
12 A. I -- I don't -- you're ask -- I don't know that
13 answer. I'd have to look.
14 **Q. Yeah, it's in Exhibit 84.**
15 A. It may be the same letter. Let's see, does it
16 have a date on it?
17 MS. GARCIA: We'll -- we'll stipulate
18 that it was the same letter.
19 MR. RUDD: All right.
20 MS. GARCIA: If that makes it easier.
21 MR. RUDD: That does.
22 **Q. If you don't mind, look real quickly, I'll give**
23 **you, it's been used before, it's Exhibit 46. No,**
24 **that's not -- yeah, 46.**
25 MS. GARCIA: You don't have that yet.

1 A. Do I have 46?
2 MS. GARCIA: No.
3 **Q. You do not have it. It's here. I mean, have you**
4 **seen that document before?**
5 MS. GARCIA: Do you have a copy for me,
6 Tim?
7 MR. RUDD: I did at the first exhibit --
8 deposition.
9 A. I have seen this before, yes.
10 **Q. City council knew that Dover Light and Power was**
11 **interacting with Dover Chemical to try to work out**
12 **a rate proposal, right?**
13 A. They knew that Dover Chemical had expressed
14 interest in a rate -- rate reduction proposal.
15 **Q. And --**
16 A. Fee of city administration.
17 **Q. Well, and at the committee of the whole meeting in**
18 **March of 2019, city council thought about it,**
19 **considered it and said, Hey, focus on the 69**
20 **kilowatt analysis.**
21 MS. GARCIA: Objection.
22 A. We were exploring a number of options to attempt
23 to -- to attempt to give -- give the company an
24 option that they -- they could work with.
25 **Q. Okay. So did the city know that the**

1, **administration was trying to come up with a**
2 **solution with Dover Chemical?**
3 MS. GARCIA: Objection.
4 A. The last -- the city knew that administration was
5 actively discussing options with Dover Chemical,
6 however, they were very -- council was very
7 specific that before an option was extended, we
8 were to meet and talk about it further.
9 **Q. How did -- how did everyone know that?**
10 A. It was agreed to at one of our meetings.
11 **Q. That before a proposal was extended, it needed to**
12 **be approved by --**
13 A. I remember specifically a council member saying,
14 you know, can we get some ideas together that we
15 can -- we can agree to before something is
16 extended to Dover Chemical.
17 **Q. Do you remember somebody saying that?**
18 A. Uh-huh.
19 **Q. Do you know if that's in the minutes anywhere?**
20 A. I could not tell you.
21 **Q. If -- if it's not in the minutes, should it be?**
22 MS. GARCIA: Objection.
23 A. I would assume so.
24 **Q. Okay. If it should be and it isn't, is it**
25 **possible that that's not what was said?**

1 MS. GARCIA: Objection.
2 A. No. Everybody on city council was operating on
3 that assumption.
4 **Q. Everybody?**
5 A. That the administration would -- council would
6 authorize in extending a proposal to Dover
7 Chemical once we settled on which proposal would
8 work.
9 **Q. So at some point, the mayor, having worked with**
10 **SSOE --**
11 A. Uh-huh.
12 **Q. -- came up with some ideas that he thought might**
13 **work, right?**
14 A. Uh-huh.
15 **Q. And presented them to --**
16 A. Uh-huh.
17 **Q. -- Dover Chemical?**
18 A. Uh-huh.
19 **Q. Have you reviewed documents with where**
20 **that -- where that -- those three options, I**
21 **guess, were followed?**
22 A. Yeah, I remember the documents.
23 **Q. Yeah. And then -- and then Marc Nolen sent an**
24 **e-mail from Dover Chemical that says, you know,**
25 **we're interested in the, you know, the one-penny**

1 **rate reduction --**
2 A. Uh-huh.
3 **Q. -- essentially is what will be acceptable for now.**
4 **Do you recall that?**
5 A. Yes.
6 **Q. And document 46, I never know what to think of**
7 **this because it seems like this escalates really**
8 **quickly, because O'Meara says Dover council sets**
9 **rates.**
10 A. That is correct.
11 **Q. There was nothing -- I mean, there was nothing in**
12 **Marc Nolen's correspondence that even suggested**
13 **that anybody thought that a new rate wouldn't need**
14 **to go through city council, was there?**
15 MS. GARCIA: Objection.
16 A. I took the correspondence as it had been offered
17 and accepted.
18 **Q. Why did you take it as that?**
19 A. Because it says -- Marc Nolen says Dover accepts
20 the city's proposal.
21 **Q. And so you think that Doug O'Meara was justified**
22 **in assuming that everyone just thought council was**
23 **uninvolved in that process?**
24 MS. GARCIA: Objection.
25 A. I think Mr. O'Meara's statement about the mayor

1 having -- not having authority to offer a gift or
2 other gift of city services, materials, personnel
3 without council's approval is correct.
4 **Q. When he says, "offer this gift," what gift is he**
5 **talking about?**
6 MS. GARCIA: Objection.
7 **Q. The rate proposal?**
8 A. I presume the rate proposal.
9 **Q. You think that's what he's talking about?**
10 MS. GARCIA: Objection.
11 A. Yes.
12 **Q. Why do you think that?**
13 MS. GARCIA: Objection. Answer if you
14 know.
15 A. I presume the -- that by gift he means a rate
16 reduction, you know, to the benefit of the Dover
17 Chemical Corporation. Those are his words.
18 He -- he would be better to answer that.
19 **Q. Yeah. So what is your role in city council with**
20 **the annual comprehensive financial report? The**
21 **auditor puts that out every year.**
22 A. The auditor puts that together.
23 **Q. Okay. At least for the last -- I think the most**
24 **recent one is signed by you as interim mayor.**
25 A. Uh-huh.

1 Q. Is -- are these presented, are the financial
2 reports presented to city council?
3 A. That report -- are you asking is that report
4 approved by council?
5 Q. Well, is it presented to the city council at any
6 time?
7 A. It is given to city council after it's --
8 Q. Finalized?
9 A. -- formalized and sent out, yeah.
10 Q. What role does city council have in providing
11 information to the auditor to prepare this report?
12 Is it an active role or --
13 A. None.
14 Q. -- is it just -- none. Okay. What about the
15 mayor? What role does the mayor have?
16 A. Very little, if any.
17 Q. But you still have to sign it?
18 A. You have to sign it.
19 Q. Okay. Let me hand you what's been marked as
20 Exhibit 85. And I will represent to you that this
21 is a printout --
22 A. Uh-huh.
23 Q. -- from WTUZ.com. What is WTUZ.com?
24 A. It is the website for a local radio station.
25 Q. And are you familiar with Mary Alice, the

1 reporter?
2 A. I am.
3 Q. And so this appears to be a February 2021 news
4 report by Mary Alice on WTUZ.com. And given that
5 date, it appears to be a reporting in response to
6 the passage of the rate surcharge. Does that
7 sound right to you?
8 A. Since COVID began -- yes, since COVID began, WTUZ
9 only attends through Zoom and they clip sessions
10 of comments at council meetings.
11 Q. Okay. So there are two quotes in this report that
12 purport to be from you. Are those quotes
13 accurately attributable to you?
14 A. I presume they clipped it from one of my
15 statements on the council floor, yes.
16 Q. Okay. So there's a quote that says, "The purpose
17 for this ordinance should be to recoup some of the
18 costs and value of the benefits that Dover
19 Chemical received. Recoupment is critical to the
20 financial health of Dover Light and Power
21 customers." Did you say that?
22 MS. GARCIA: Objection. Just you read
23 that a little off, so --
24 Q. "Power and customers. Recoupment is critical for
25 the financial health of Dover Light and Power and

1 customers." Did I read that right?
2 A. Yes.
3 Q. Did you say those words?
4 A. I pre -- I -- I believe I did, yes.
5 Q. How is recoupment of the money that the city seeks
6 to acquire through the surcharge --
7 A. Uh-huh.
8 Q. -- how is that critical to the financial health of
9 Dover Light and Power?
10 A. In my mind it is critical to the financial health
11 of Dover Light and Power and our customers,
12 because I have "and our customers," that everybody
13 be treated in a fair manner and that public
14 resources be expended and consistent with our
15 ordinances and our regulations.
16 Q. What is the impact on Dover Light and Power if it
17 does not recover the \$1.1 million that it claims
18 is owed?
19 MS. GARCIA: Objection.
20 A. All of those funds go into maintenance and
21 overhead of our system.
22 Q. What is the impact of not getting that
23 \$1.1 million?
24 A. We will be out that money towards improvements,
25 maintaining our system, overhead expenses, those

1 kind of things.
2 Q. What is the annual maintenance budget --
3 MS. GARCIA: Objection.
4 Q. -- for the system?
5 MS. GARCIA: Objection.
6 A. The -- so if you were to -- our -- our electric
7 field department is about three and a half
8 million. The other overhead expenses would be the
9 utility billing office, the maintenance and
10 upgrades to our plant to provide the electricity,
11 and those are -- those capital expenditures are
12 significant. Millions between routine maintenance
13 and the major capital projects we do during
14 shutdown. So all of those funds are used to help
15 provide that service to maintain the system.
16 Q. Why do none of the financial reports, the
17 auditor's financial reports for 2020, 2021 -- I
18 haven't seen 2022 year-end yet. Why do none of
19 them mention a \$1.1 million receivable?
20 MS. GARCIA: Objection.
21 A. That's a question for the auditor.
22 Q. Those are -- those are pretty detailed. I mean,
23 they're 190-plus pages, right?
24 A. Uh-huh.
25 Q. Why is there no mention of a claim that the city's

1 **entire electric setup is unconstitutional?**
2 A. The --
3 MS. GARCIA: Objection. Go ahead.
4 A. As part of the annual financial report process,
5 the outside auditors who assist in compiling this
6 information are required to ask about ongoing
7 litigation. That has been reported to them, the
8 claims, the city's counterclaims. They are aware.
9 What they choose to put in that document is
10 between -- is with them, is usually sorted out
11 with them and the city auditor.
12 **Q. If the -- if Dover Light and Power is no longer**
13 **able to purchase electricity to resell outside of**
14 **the city and loses all of its nonresident**
15 **customers, will that have a significant impact on**
16 **Dover Light and Power?**
17 MS. GARCIA: Objection.
18 A. It would have an impact.
19 **Q. A significant impact?**
20 MS. GARCIA: Objection.
21 A. We have not dove deep into that what impact would
22 be.
23 **Q. Why not?**
24 MS. GARCIA: Objection.
25 A. We believe we're constitutionally and legally

1 justified in providing that service to residents
2 who want that service outside of city limits.
3 **Q. To residents who want that --**
4 A. To customers who want that service.
5 **Q. Are you aware that Dover Light and Power doesn't**
6 **even generate enough electricity to serve it's**
7 **nine largest residential customers?**
8 MS. GARCIA: Objection.
9 A. Nine largest residential customers?
10 **Q. Res -- I'll say resident, cit -- not -- it's a bad**
11 **word because there's resident, nonresident in**
12 **terms of are we inside, outside the city --**
13 A. Sure. Yeah, yeah.
14 **Q. -- then there's residential. Terrible word.**
15 A. Okay.
16 **Q. Are you aware that Dover Light and Power doesn't**
17 **even generate enough electricity to serve it's**
18 **nine largest customers inside the city limits?**
19 MS. GARCIA: Objection.
20 A. I -- I wouldn't say I'm aware of that specific
21 number of customers. I am certainly aware that we
22 have to enter into long-term purchase power
23 agreements, as do 60 other municipalities, to
24 procure a portion of our power.
25 **Q. So you're more involved in the -- in the power**

1 **plant now that you're mayor than you were when you**
2 **were simply, and I don't mean this in a demeaning**
3 **way, president of city council?**
4 A. Certainly.
5 **Q. The annual financial reports include a line item**
6 **on electricity purchase?**
7 A. Uh-huh.
8 **Q. And an analysis of the purchasing relationship,**
9 **correct?**
10 A. Uh-huh.
11 MS. GARCIA: Objection.
12 **Q. It's -- if the City of Dover is going to provide**
13 **electricity to anyone outside of the city, it has**
14 **to purchase that electricity, doesn't it?**
15 MS. GARCIA: Objection.
16 A. Our rates -- our power supply is a result of a
17 blended portfolio for a number of reasons.
18 **Q. Uh-huh.**
19 A. So some of it we generate, some of it we enter
20 into these very long-term purchase power -- mostly
21 long-term purchase power agreements. And there
22 are a variety of factors, including stability,
23 some plants are on, some plants are off at
24 different times. There are, you know,
25 some -- some rates are higher, some rates are

1 lower, depending on the particular project.
2 There's a number of green requirements that a lot
3 of manufacturers need to meet, so we have some
4 green energy in that mix. And certainly that's a
5 growing number. So the city has a very diverse
6 portfol -- in addition to generating, we have a
7 very diverse portfolio of electric.
8 **Q. And if any electricity is going to be sold by**
9 **Dover Light and Power outside of the city after**
10 **the city has met what it can of its residents,**
11 **that electricity is going to have to be purchased?**
12 MS. GARCIA: Objection.
13 A. There are times we can get to and we have in the
14 past 100 percent local generation. Those are
15 generally for short periods of time. They call
16 them peak days. We have that ability. Sometimes
17 financially it is better to enter into a purchase
18 power agreement because they can -- for example,
19 you can procure it cheaper through a certain plant
20 at a certain time than, say, running a diesel
21 generator or a gas turbine at our plant. But we
22 do have the ability to scale up our plant to meet
23 those demands.
24 **Q. When was the last time that happened?**
25 A. Just --

1 MS. GARCIA: Objection.
2 A. -- this winter.
3 **Q. For how long?**
4 A. I'm going to say they put out a power generation
5 emergency and we turned on the diesels. And, of
6 course, the one gas unit had a problem, but we had
7 a diesel catch on fire a couple of years ago
8 that's in the process of being rebuilt. But I'd
9 say they ran for two days, couple days. And then
10 they will -- it's more common in the summer.
11 Their limit -- a lot of them are limited by the
12 total amount of hours to a finite amount by
13 environmental rules and things of that nature.
14 **Q. Who -- who would have a better understanding of**
15 **the operations of Dover Chemical's power**
16 **generation, you or Jason Hall?**
17 MS. GARCIA: Objection. Just, I think
18 you might want to restate your question.
19 MR. RUDD: Yes, I do.
20 MS. GARCIA: Yeah, go ahead.
21 MR. RUDD: Dang it, you got me again.
22 Gets me every time.
23 MS. GARCIA: I think you might be ready
24 for lunch. I don't know. It's a little
25 early.

1 MR. RUDD: It is a little early.
2 **Q. I'll restate my question. Who would have a better**
3 **understanding of Dover Light and Power's**
4 **generation capabilities and operations, you or**
5 **Jason Hall?**
6 MS. GARCIA: Objection.
7 A. I think it's fair to say Mr. Hall lives in that
8 world all day all the time, whereas I'm spread out
9 into other -- other areas of city government as
10 well.
11 MR. RUDD: We've been going another hour.
12 Do you want to take another quick break?
13 MS. GARCIA: If you want one.
14 MR. RUDD: Yeah, I want one.
15 THE WITNESS: Has it been an hour
16 already?
17 MR. RUDD: Yeah.
18 MS. GARCIA: Well, about 56 minutes.
19 MR. RUDD: Yeah. Let's go off the
20 record.
21 THE VIDEOGRAPHER: Going off the record.
22 The time is 11:07.
23 (Recess was taken.)
24 THE VIDEOGRAPHER: We are back on the
25 record. The time is 11:18.

1 BY MR. RUDD:
2 **Q. The letter that was provided to Jon Baker,**
3 **Exhibit 84, where would a copy of that letter be**
4 **kept at the city?**
5 A. I would ex -- well, it would be -- if it was
6 e-mailed, it would be -- there would be digital
7 copies in the officials' e-mail inboxes. A hard
8 copy would probably be in possession of either the
9 officials it was given to or the law director.
10 **Q. Like there should be an electronic copy or a paper**
11 **copy of this somewhere?**
12 A. Correct.
13 **Q. Somewhere in, like, within 10 to 15 minutes of**
14 **here?**
15 A. I would assume so, yes.
16 **Q. So it would be possible to get a copy of this**
17 **letter over lunch?**
18 A. It would --
19 MS. GARCIA: I'm going to object to that.
20 We -- you asked for that document. We'll
21 provide it. I don't know that we'll provide
22 it over lunch given time constraints.
23 **Q. What other time constraints do we have today?**
24 A. We have a number -- I've got a number of city
25 issues that I plan to address over lunch.

1 **Q. So you have a -- do you have a secretary?**
2 A. I do.
3 **Q. And the reason I'm asking, the reason that, you**
4 **know, I -- obviously, I mean, this was provided to**
5 **Jon Baker. Any claim of privilege is waived with**
6 **publication.**
7 A. Uh-huh.
8 **Q. And it's very clear that city council relied**
9 **heavily on, I'll put evidence in air quotes, but**
10 **the testimony, again, in air quotes, in this**
11 **letter from Doug O'Meara and I --**
12 A. I'm --
13 MS. GARCIA: Well, yeah.
14 **Q. I would be --**
15 A. The letter was e-mailed. I have an e-mail copy of
16 the letter. Is that what you're referring to?
17 **Q. Yeah. I would like -- I would like to see a copy**
18 **of this letter and I would like to be able to talk**
19 **to you guys about it.**
20 MS. GARCIA: I understand. The testimony
21 has been that Shane does not know how that
22 letter made its way to the Times Reporter,
23 and so it's not clear that just because Jon
24 Baker got his hands on it that the city did
25 anything to waive the privilege. And it's

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1 certainly not clear from this testimony.
2 MR. RUDD: Can we go off the record?
3 THE VIDEOGRAPHER: Going off the record.
4 The time is 11:21.
5 (Lunch recess was taken.)
6 THE VIDEOGRAPHER: We are back on the
7 record. The time is 12:29.
8 BY MR. RUDD:
9 **Q. Specifically in preparation for this deposition,**
10 **other than counsel, did you speak with anyone on**
11 **city council to -- to gather additional**
12 **information outside of what would have been within**
13 **your personal knowledge to prep for this**
14 **deposition?**
15 A. Did I speak with any of the other council members?
16 **Q. Yes.**
17 A. No.
18 **Q. So as to items on Exhibit 82 --**
19 A. Okay.
20 **Q. -- on the Exhibit A on the back of that,**
21 **your -- your testimony is limited solely to your**
22 **own personal observation and interactions with**
23 **other people?**
24 MS. GARCIA: Objection.
25 A. Correct. My testimony is limited to the

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1 interaction that I had throughout this process.
2 **Q. So -- so you don't have any information about what**
3 **other council members might have relied upon to**
4 **make their decisions to support this surcharge**
5 **unless that was provided to everybody or -- did**
6 **you do it -- strike that.**
7 **Did you do any independent research into**
8 **any issues other than -- regarding Dover Chemical**
9 **other than what you've told me about today, the**
10 **meeting with Bill Abel, the meeting with Charlie**
11 **Stull, the meeting with Beth Jones and the**
12 **conversation with Tom Johnson?**
13 A. My mind -- I would say that is the extent of my
14 independent research, yes.
15 **Q. Okay. You don't know whether anybody else did any**
16 **other independent research either, right?**
17 A. I would -- I think we were -- we were very reliant
18 to some degree on the people that we had -- we had
19 obtained to assist us with this and also the law
20 director, who has -- you know, supposed to have
21 knowledge of Ohio Revised Code and the processes.
22 **Q. Sure. There is an allegation in the city's**
23 **counterclaims, paragraph 28, that says, "On**
24 **information and belief, Mayor Richard**
25 **Homrighausen, at some point after he was first**

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1 **elected in 1991, against the interests of and in**
2 **breach of his duties to the city, communicated**
3 **with DCC employees or representatives regarding**
4 **the provision of electrical equipment and services**
5 **to DCC."**
6 **That allegation that the mayor**
7 **communicated with DCC employees, do you have any**
8 **direct knowledge of the mayor communicating with**
9 **Dover Chemical about the provision of services?**
10 A. So we have -- obviously we've discussed the 2003
11 letter which deals with electrical services and
12 the materials.
13 **Q. Okay.**
14 A. The only other situation that I can recall ever
15 discussing with the mayor regarding Dover Chemical
16 was in late 2019, we were -- it was a flippant
17 comment after a discussion regarding county water
18 and sewer rates and I said, "Well, we're raising
19 sewer rates 25 percent over five years for
20 out-of-county -- out-of-city customers."
21 **Q. Uh-huh.**
22 A. "Dover Chemical doesn't -- Dover Chemical's not
23 going to like that," and he just made an
24 off-the-cuff comment, "Don't worry about Dover
25 Chemical. I've been taking care of them for

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1 years."
2 **Q. Did you ask him what that meant?**
3 A. No. I assumed it just meant he had a good
4 relationship with them. I didn't presume it meant
5 anything nefarious --
6 **Q. Has --**
7 A. -- or inappropriate.
8 **Q. Have you seen any documents or spoken to anyone**
9 **who told you that it meant something other than**
10 **what you initially assumed?**
11 A. No.
12 **Q. So --**
13 A. Again, besides the 2003 letter. Sorry.
14 **Q. So other than the 2003 letter, you're not**
15 **personally aware of any communications between the**
16 **mayor and Dover Chemical about Dover Chemical**
17 **receiving services or materials?**
18 A. Not that I can recall, no.
19 **Q. Has anyone told you, anyone else told you that**
20 **they are personally aware of conversations between**
21 **the mayor and Dover Chemical regarding the**
22 **provision of electrical services?**
23 A. We have had -- our electric field employees have
24 told me on -- or had relayed on several occasions
25 as part of this process that when there was an

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1 issue, when there was a concern about whether or
2 not they should bill Dover Chemical for the
3 provision of an overtime call or what occurred,
4 they would often run that past the mayor.
5 **Q. Okay.**
6 A. And he would direct them how to re -- how to
7 respond.
8 **Q. Okay. So those are communications between the**
9 **mayor and Dover Light and Power individuals. Has**
10 **anyone told you that they were aware of**
11 **communications between the mayor and Dover**
12 **Chemical regarding whether and what to bill?**
13 A. No, other than that he was a member of their cap
14 board. But again, that -- that's related to the
15 cap board.
16 **Q. Yeah, so --**
17 A. But -- no.
18 **Q. The answer is no. Okay.**
19 A. Yeah.
20 **Q. I'll ask the question, but the city also alleges**
21 **that in those communications, the mayor and DCC**
22 **conspired to provide city-funded electrical**
23 **services and maintenance to DCC without DCC**
24 **compensating the city for same. Again, you --**
25 A. That references the 2003 letter.

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1 **Q. And nothing else that you're aware of?**
2 A. Not -- not that I can recall, unless our attorneys
3 found something different, but not that -- no.
4 Not -- not that I'm -- I can recall.
5 **Q. I don't get to depose Lola.**
6 A. Okay. Sorry.
7 **Q. Yet. We'll find out. So obviously the February**
8 **5th, 2003 letter, we don't need to rehash that.**
9 **You're familiar with that. That's -- that is a**
10 **pivotal and central component of the city's**
11 **position?**
12 MS. GARCIA: Objection.
13 A. That --
14 MS. GARCIA: Go ahead.
15 A. I think that certainly is -- is a summation of
16 what we found with the documentation that we did
17 find, as well as the -- it corroborates what was
18 told to us from the other employees.
19 **Q. Okay. The city alleges that DCC, through its**
20 **owners, officers, members, agents, representatives**
21 **or any other individual acting on behalf of DCC**
22 **acted in concert with Mayor Richard Homrighausen**
23 **in furtherance of DCC's plan to acquire certain**
24 **equipment and property belonging to the city**
25 **without paying for the property and equipment.**

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1 **Is that just a reference to the February**
2 **5th, 2003 letter and receiving that letter?**
3 MS. GARCIA: Objection.
4 A. I would say certainly that letter was directed to
5 the DCC president at the time. In regard to
6 additional things, you know, I'm trying to rack my
7 brain to remember if there are any other e-mails
8 that I have personally seen. I can't -- I can't
9 recall.
10 **Q. If it wasn't in an e-mail, you certainly weren't**
11 **privy to any conversation --**
12 A. No.
13 **Q. -- where DCC --**
14 A. No, I --
15 **Q. -- conspired with --**
16 A. I was not part of any of those conversations.
17 **Q. Do you --**
18 MS. GARCIA: Just make sure he finishes
19 his question, Shane.
20 THE WITNESS: Sorry. Sure.
21 **Q. So you weren't privy to any conversations. You**
22 **don't even know if those conversations even**
23 **existed, correct?**
24 MS. GARCIA: Objection.
25 A. I would have no way to know -- know that

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1 con -- what Mayor Homrighausen's personal
2 correspondence was with them.
3 **Q. Okay. So the answer -- the answer is you don't**
4 **know that these communications ever occurred?**
5 MS. GARCIA: Objection.
6 A. I do not know.
7 **Q. Have you spoken with anybody who's told you that**
8 **they do know that those communications occurred?**
9 MS. GARCIA: Objection.
10 A. Certainly our employees made us aware that the
11 mayor was in frequent contact with Dover Chemical
12 on -- over a number of issues.
13 **Q. But not this issue?**
14 MS. GARCIA: Objection.
15 A. I do not know.
16 **Q. No one's told you that --**
17 A. Yeah.
18 **Q. Let me finish my question here. I'm sorry.**
19 **We're -- we're conversing. It's a bad habit of**
20 **mine.**
21 **No one's told you that they were privy to**
22 **any of these conversations, correct?**
23 A. No one's told me they were directly in the room,
24 no.
25 **Q. Has anyone told you that they were outside of the**

1 room eavesdropping?
2 A. Not that I'm aware of, no.
3 **Q. Has anyone told you that they heard it any other**
4 **way? Telephonically? Lipreading?**
5 A. Not that I can re -- no, not that I can recall.
6 **Q. Okay.**
7 A. So the -- oh, sorry.
8 **Q. I don't know if this is a legitimate question, but**
9 **my next question is, what do you want to tell me?**
10 MS. GARCIA: Objection.
11 MR. RUDD: Thanks.
12 **Q. All right. There's an allegation that in**
13 **September of 2019 Director O'Meara learned that**
14 **DL&P field service employees were performing**
15 **maintenance and repair services without seeking**
16 **payments for those services.**
17 A. Uh-huh.
18 **Q. Did -- did -- do you know how Director O'Meara --**
19 **who those discussions were with when he learned**
20 **this?**
21 MS. GARCIA: Objection. If you know.
22 A. I presume the discussions were with -- between
23 Director O'Meara and the util -- electric field
24 department supervisors.
25 **Q. Okay.**

1 A. But I --
2 **Q. You weren't involved in any of those**
3 **conversations?**
4 A. I was not involved in any of those conversations.
5 **Q. You didn't -- you didn't ask for whoever he talked**
6 **with to come talk to council and tell you the same**
7 **things that they told O'Meara?**
8 MS. GARCIA: Objection.
9 A. No, because I was in the room when they repeated
10 the same thing.
11 **Q. In the 15-minute conversation with Bill Abel?**
12 A. Prior to that.
13 **Q. Okay. Prior to that. So we have the Bill Abel,**
14 **15 to 20 minutes, we have Charlie Stull, 15 to 20**
15 **minutes. We have 10 minutes on the phone with**
16 **Beth. We have a phone -- we have a conversation**
17 **with Tom. When were you in the room prior to**
18 **those conversations with O'Meara when this is**
19 **being explained?**
20 A. That was -- again, that was also from Bill Abel.
21 That was the off-the-cuff remark in spring of
22 2020, as we were discussing the rate reduction
23 proposal about "We go in there all the time for
24 free and now they want a rate reduction on top of
25 it." That raised, obviously, some eyebrows.

1 **Q. How long was that conversation?**
2 A. Exactly that long.
3 **Q. Okay. So we're talking --**
4 A. It was a -- it was an off-the-cuff remark.
5 **Q. Okay. So Bill Abel made an off-the-cuff remark in**
6 **the presence of you --**
7 A. Uh-huh.
8 **Q. -- and the law director?**
9 A. I believe the law director was present, yeah.
10 **Q. Was anyone else present?**
11 A. There may have been -- there may have been a
12 council mem -- one or two council members. It was
13 part of a larger discussion about the reduction of
14 utility rates and trying to come up with
15 a -- formulate a plan. I'm going to assume based
16 off that that the mayor was probably present for
17 that.
18 **Q. Nobody from DCC was present for that --**
19 A. No.
20 **Q. -- conversation?**
21 A. It was a -- it was a city meeting.
22 **Q. Have you spoken personally with anyone from DCC**
23 **outside of a city council meeting about any of**
24 **these issues?**
25 A. Not that I can recall. I received some written

1 correspondence.
2 **Q. From whom?**
3 A. Ryan McElduff.
4 **Q. Okay. Anybody else?**
5 A. No. There were two members of the -- several
6 members of the community, community improvement
7 corporation or members of the economic development
8 world in Tuscarawas County that had expressed some
9 concerns about -- about this, and the reputation
10 that it may give to the City of Dover, but nobody
11 directly with Dover Chemical.
12 **Q. Okay. I'm going to hand you what's been marked as**
13 **Exhibit 103.**
14 A. Okay.
15 **Q. Who is -- who is Don Maurer?**
16 A. He is the -- he was the president pro tem of city
17 council. Council member.
18 **Q. He was on city council?**
19 A. Uh-huh.
20 **Q. In September of 2020?**
21 A. Correct.
22 **Q. Who is John Correll?**
23 A. He is a council member.
24 **Q. Was he on the city council in September of 2020?**
25 A. Yes.

1 **Q. September 14th of 2020 was the night when city**
2 **council first had its first reading of the -- of**
3 **the surcharge ordinance, correct?**
4 MS. GARCIA: Objection.
5 A. I believe so.
6 **Q. Who is -- who receives e-mails from the city**
7 **council e-mail distribution group?**
8 A. All the members of council, some members of
9 administration, like the mayor, the auditor,
10 council president, service director, safety
11 director. That's probably it. There might be one
12 or two more.
13 **Q. So --**
14 A. Law director. Sorry.
15 **Q. If I send -- well, if someone sends an e-mail to**
16 **citycouncilmailgroup@doverohio.com, it will go to**
17 **all members of city council?**
18 A. Yes.
19 **Q. This e-mail from Don Maurer, the subject line is**
20 **"Tonight's meeting."**
21 A. Uh-huh.
22 **Q. Are we in agreement that that probably refers to**
23 **city council's meeting that night?**
24 A. Yes.
25 **Q. Don Maurer shares his thoughts. He does it, so**

1 that there's no mistake, by using the words "My
2 thoughts," call it.
3 A. Uh-huh.
4 **Q. "Everyone elected to council is quickly told of**
5 **council's role in our city government. The city**
6 **is led by the administration, the mayor.**
7 **Council's responsibility is that of approval or**
8 **not of many things, city finances, negotiations**
9 **with unions, projects and ordinances, to name a**
10 **few. Individually, a councilperson is not the**
11 **spokesman for the city. Our principle**
12 **responsibility is to all citizens. How does this**
13 **apply to tonight's meeting?" And then he goes on**
14 **to advocate for a vote that night.**
15 A. Uh-huh.
16 **Q. Right? He says, "A vote is finally called for.**
17 **We need to -- let us consider our responsibilities**
18 **and what has happened to date. No response from**
19 **Dover Chemical or administrative spokesman has**
20 **stepped up to explain or even question the**
21 **research findings. I will be in favor of passing**
22 **the ordinance tonight. Don."**
23 **What research findings is he talking**
24 **about?**
25 A. The information that we had gathered to that point

1 in time, which was the interviews, the information
2 that -- the documents obtained by the law
3 director. Those -- those items, that was his
4 position at that time.
5 **Q. Is this a vote for whether to approve -- is he**
6 **talking about a vote to approve the rate proposal?**
7 **Because I know sometime in September of 2020 the**
8 **city officially voted not to approve the rate**
9 **proposal and then sent a letter to Marc Nolen. Is**
10 **this the letter he's talking about?**
11 MS. GARCIA: Objection.
12 A. So there were two separate matters. There was
13 obviously the rate reduction, which had been
14 already tabled indefinitely for some time. And at
15 some point Mr. Maurer did make a motion to bring
16 that back from the table and send a more
17 definitive message that was not approved. And
18 then there was the process of the 29-20 ordinance
19 which had -- was -- had to go through committee at
20 that point and then the public process.
21 **Q. Who's -- who's on committee for that ordinance?**
22 A. For the committee of the whole is comprised of all
23 council members.
24 **Q. Okay. And obviously, those are public meetings**
25 **with public records?**

1 A. Sure.
2 **Q. And the minutes of those meetings are, of course,**
3 **public and reflect what took place during those**
4 **meetings?**
5 A. Yes. They should.
6 **Q. Does city council keep a record of documentary**
7 **materials that are presented at a meeting such as**
8 **that?**
9 A. For the committee of the whole?
10 **Q. Yeah.**
11 A. I do not -- I -- I -- that would be the
12 responsibility of the clerk. The committee of the
13 whole minutes are usually more brief than the full
14 council meeting minutes.
15 **Q. I guess -- I guess the reason I ask is, how do I**
16 **tell what city council looked at, thought about,**
17 **talked about --**
18 A. Uh-huh.
19 **Q. -- in one of these meetings?**
20 A. That would be the minutes.
21 **Q. And that -- that's it?**
22 A. Uh-huh. (Witness nodding head up and down.)
23 **Q. Would the minutes re --**
24 **A. Or they are recorded, generally.**
25 **Q. Unless you're in executive session, obviously?**

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1 A. Unless you're in executive session.
2 **Q. John Correll responded by affirming his agreement**
3 **as to how city council should proceed at that**
4 **night's meeting, correct?**
5 A. Yes.
6 **Q. Is this a violation of the Ohio Sunshine Law?**
7 MS. GARCIA: Objection.
8 A. I don't think council members expressing their
9 thoughts is a violation of the Sunshine Law.
10 **Q. "A vote is called for. I will be in favor of**
11 **passing the ordinance tonight, Don."**
12 **"Well said, Don. I couldn't agree more."**
13 **Is that not deliberation?**
14 MS. GARCIA: Objection.
15 A. There was no vote called for it that night.
16 **Q. It's still a discussion. Does there have to be a**
17 **vote to violate the Sunshine Law?**
18 MS. GARCIA: Objection.
19 A. These certainly are public records, and council
20 members have at various points expressed their
21 posi -- opinion through -- in writing to their
22 colleagues.
23 **Q. And I will -- I will agree with you this is a**
24 **public record, but there was no notice provided**
25 **that there was going to be an e-mail communication**

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1 **discussing the merits of proceeding.**
2 A. That was --
3 MS. GARCIA: Wait. Hold. Is there a
4 question?
5 **Q. That's a -- I guess I should say, was there?**
6 MS. GARCIA: Objection. Go ahead.
7 A. Was I aware that Mr. Maurer was sending an e-mail
8 to his colleagues --
9 **Q. No.**
10 A. -- in advance of this?
11 **Q. No. Was notice provided to the public that**
12 **council members were going to be convening via**
13 **e-mail to share their thoughts on a matter that**
14 **was going to be a matter of discussion of -- at a**
15 **meeting that was subsequently to be held?**
16 MS. GARCIA: Objection.
17 A. No, because council members routinely communicate
18 through e-mail on a variety of topics.
19 **Q. You don't think this crosses the line into**
20 **deliberation in a nonpublic forum?**
21 MS. GARCIA: Objection.
22 A. I do not think a council member expressing his
23 position and even a second one expressing his
24 position crosses the line, no.
25 **Q. Would it be acceptable for the council members to**

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1 **meet together in public and each share their**
2 **thoughts about what they think they should do that**
3 **night on the vote?**
4 MS. GARCIA: Objection.
5 A. Can you repeat that question?
6 **Q. Yes. Would it be acceptable -- and again, you've**
7 **been on --**
8 A. Uh-huh.
9 **Q. -- city council for some time -- for all of the**
10 **city council members to meet together in**
11 **public and share not only how they think the vote**
12 **should go down, but their reasons why and share**
13 **that information together?**
14 MS. GARCIA: Objection.
15 **Q. Is that allowed to happen outside of the public**
16 **meeting?**
17 MS. GARCIA: Objection. I don't think
18 that Mr. Gunnoe is here to provide a legal
19 opinion.
20 A. I would say if they were meeting in person and
21 this was leading to a formative vote, then that --
22 then that would be a no. But public officials
23 routinely express their positions both in the
24 paper, in advance of a vote, in the media or, you
25 know, actively express concerns. That is -- that

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1 is certainly information that's available to the
2 public.
3 **Q. Does this happen a lot?**
4 MS. GARCIA: Objection.
5 A. Not frequently.
6 **Q. Do city council members text one another about**
7 **council business?**
8 MS. GARCIA: Objection.
9 A. Not that I'm aware of. Not that I can recall.
10 **Q. Do you receive or keep text messages from any**
11 **other city council members on your private phone?**
12 MS. GARCIA: Objection.
13 A. Some of them are friends, so I would have, you
14 know, personal communications, sure, with some of
15 them.
16 **Q. But never anything to do with city council**
17 **business?**
18 MS. GARCIA: Objection.
19 A. To the -- no. Those would be public record.
20 **Q. So you would keep that -- you would keep that**
21 **public on --**
22 A. Yeah, I don't -- no.
23 MS. GARCIA: I just want to clarify your
24 answer. When you say, "No," he's -- there
25 was sort of a question and then you said,

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1 "No."
2 THE WITNESS: No, that -- we don't
3 general -- we do not communicate through text
4 message about upcoming votes or things.
5 **Q. And the reason I ask is because in all -- and I'm**
6 **not going to go through all of them with you**
7 **because that would take too long. But in all of**
8 **the minutes between the initial introduction of**
9 **the surcharge until the final vote and then the**
10 **overriding of the veto --**
11 A. Uh-huh.
12 **Q. -- there's nothing in the minutes that indicate**
13 **any deliberation.**
14 A. Uh-huh.
15 **Q. All right. There's not. And so when a -- when a**
16 **body is making legislation, either there's no**
17 **deliberation, which is bad, right? Then your**
18 **legislation is based on nothing. Or there's**
19 **out-of-the-public-eye deliberation, which is a**
20 **problem, which would be illegal, or there's public**
21 **deliberation. They publicly discuss what do we**
22 **think? What should we do? Are we going to do**
23 **this?**
24 A. Uh-huh. Uh-huh.
25 **Q. In the March 12, 2021 meeting of city council,**

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1 **special meeting the override the veto, there's a**
2 **significant amount of -- a lot of -- lot of words**
3 **on paper. This person talked, this person**
4 **responded, this person talked and this person**
5 **responded. I don't see any substance at the**
6 **second reading, at the third reading, at the**
7 **fourth reading all the way through. Is it fair to**
8 **say that there was really no deliberation on these**
9 **things during those multiple readings where it was**
10 **held over?**
11 MS. GARCIA: Objection.
12 A. So the -- there was obviously some discussion when
13 it was put on the floor through the committee of
14 the whole process, and then there was a lull
15 because we were conferring with our attorneys, we
16 were waiting to see if there were additional
17 documents that were -- that were gathered. We
18 were hoping to come to some sort of -- some sort
19 of reasonable settle -- discussion with Dover
20 Chemical on ways to resolve the matter. And then
21 once all of those processes had gone through -- so
22 essentially, there was not a lot of, if any,
23 discussion on the second, the third, the fourth
24 because that -- we were very much in a holding
25 pattern.

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1 **Q. So you said that there was waiting to see if**
2 **additional documents would be provided.**
3 A. Uh-huh.
4 **Q. How would additional documents get to city council**
5 **to review during this process? Who would -- who**
6 **would present them?**
7 A. Those would be obtained and primarily provided
8 through the -- through the law director.
9 **Q. Okay. And so would these be provided via e-mail**
10 **for the city council members to look at? Would**
11 **there be a box of documents in a room during**
12 **executive session? How does that work?**
13 A. Sometimes they would be provided via that -- via
14 summary.
15 **Q. Okay.**
16 A. They could be provided orally, relayed orally, the
17 information. Did council members sit and go
18 through a box of documents? Prob -- I don't
19 believe that occurred.
20 **Q. And so the summary could be written, it could be**
21 **verbal?**
22 A. Could be, yes.
23 **Q. Yeah. But city council's relying upon the summary**
24 **in essence as the factual evidence and basis for**
25 **its action, correct?**

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1 MS. GARCIA: Objection.
2 A. In addition to the things that they had -- they
3 had already -- I think city council's intent was
4 to take -- take a step back from the process and
5 let other people review the -- review the
6 situation and ensure that that's the conclusion
7 that we can -- we felt we could stand behind.
8 **Q. So if it didn't come -- if it didn't come through**
9 **counsel, and when I say "counsel," I mean**
10 **attorneys, it really didn't factor into the city**
11 **council's decision ultimately?**
12 MS. GARCIA: Objection.
13 A. No, that's not fair.
14 **Q. Okay. Why is that not fair?**
15 A. Because we had already -- we had already been
16 present and interviewed employees. We had already
17 received the first significant document.
18 **Q. Which is the --**
19 A. The 2003 letter.
20 **Q. Okay. So you have the 2003 letter, the two --**
21 **A. The couple of interviews.**
22 **Q. Okay.**
23 A. We had already made sure that they were a primary
24 metered and were receiving that -- that credit,
25 the 5-percent credit.

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1 **Q. Okay.**
2 A. And we had -- and then the rest of it was, you
3 know, is city council going to go through a
4 thousand pages in the middle of their meeting?
5 You know, we -- the rest -- a lot of that we
6 relied on people with expertise in that area.
7 **Q. Right. So -- so -- so apart from those couple of**
8 **interviews and knowing about whether they're**
9 **primary metered in the 2003 letter --**
10 A. Sure.
11 **Q. -- the investigation was really done by council?**
12 MS. GARCIA: Objection.
13 A. I think the law director played a -- played a part
14 in that, yeah. Yeah. Absolutely.
15 **Q. What -- what part do you think the law director**
16 **played in that?**
17 A. He -- he was certainly the one providing us with a
18 lot of the information.
19 **Q. So was he -- was he more or less the gatekeeper of**
20 **what came to city council for their consideration?**
21 A. No.
22 MS. GARCIA: Objection.
23 A. There were -- part of the intent of hiring outside
24 counsel was to confirm the information we were
25 receiving and that it was very acc -- it was

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1 accurate.
2 **Q. So we've talked about your \$1.1 million being a**
3 **component of stuff, like physical poles and**
4 **transformers --**
5 A. Uh-huh.
6 **Q. -- and then a function of some sort --**
7 A. Uh-huh.
8 **Q. -- to evaluate, I guess the rest of it. If it's**
9 **not stuff, it's services?**
10 A. Services, replacement of that stuff. Which again,
11 it's difficult to obtain documents when you go
12 back 25 years, 30 years, 40 years, whatever the
13 number is. But inevitably, those items wear out
14 and they have to be replaced. Some of them, at
15 least. The services that were provided, that
16 was -- that's primarily the portion, the remaining
17 portion of that charge.
18 **Q. Is services?**
19 A. Yeah.
20 **Q. Because if there's materials, and the city**
21 **provided -- the city provided this list. And this**
22 **is Exhibit 11.**
23 MR. RUDD: Lola, I've got an extra one
24 for you if you want it.
25 MS. GARCIA: Thanks. So this is --

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1 MR. RUDD: You've seen this one before.
2 MS. GARCIA: Yeah.
3 **Q. The city provided this list, right?**
4 A. Uh-huh.
5 **Q. These are the -- it says, "Assets to charge Dover**
6 **Chemical given to the mayor 1/17/2020." Do you**
7 **see that? At the very top.**
8 A. Uh-huh.
9 **Q. Do you know whose handwriting that is?**
10 A. I do not.
11 **Q. Okay. And if you'll look on the first page,**
12 **there's a list of poles.**
13 A. Okay.
14 **Q. See those? And on the second page is a list of**
15 **transformers. Well, I guess the third page. The**
16 **second page is --**
17 A. Okay.
18 **Q. -- \$291 worth of wire. I'm not sure where we got**
19 **that information, but it's there. This is what's**
20 **been represented to me as the stuff portion.**
21 A. (Witness shaking head from side to side.)
22 MS. GARCIA: Objection. That's a
23 mischaracterization of earlier testimony.
24 **Q. So you're shaking your head. What is your**
25 **understanding about what this thing is?**

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1 A. So these are correct, but I have absolutely no
2 idea how they obtained those values.
3 **Q. I will -- okay. So let's -- I --**
4 A. These -- let me say this: These may be correct.
5 I --
6 **Q. I'm not going to ask -- I'm not going to ask**
7 **you -- I'm not going to ask you to affirm or**
8 **reject or anything anybody's testimony as to**
9 **values. I'm simply trying to pin down the stuff**
10 **we're talking about.**
11 And so for example, four poles, we have
12 four on that list that were replaced in the 2000s.
13 **Did city council ask for information as to whether**
14 **or not these poles, the new ones, the 2008, 2009,**
15 **2010, and 2012 were paid for?**
16 A. We asked for information about what charges Dover
17 Chemical had shared.
18 **Q. And the City of Dover's recordkeeping is not**
19 **complete on that, is it?**
20 MS. GARCIA: Objection.
21 A. We were provided with everything the city had.
22 **Q. Okay. Do you know --**
23 A. To my knowledge.
24 **Q. And so do you know whether the city's**
25 **recordkeeping was complete?**

1 MS. GARCIA: Objection.
2 A. The city's recordkeeping was made difficult by the
3 fact that there's no invoices for something they
4 were told not to invoice for.
5 **Q. There's a pole placed in 1987. You'll see it.**
6 **It's D -- D30-230. Do you see that, 45-foot pole**
7 **placed in 1987? It's about 15 down?**
8 A. Yes, I see it.
9 **Q. Okay. That was before Homrighausen was mayor,**
10 **right?**
11 A. Yes.
12 **Q. So fairly certain -- if we were to assume that**
13 **there's any merit to the conspiracy theory, it's**
14 **fairly certain Mayor Homrighausen wasn't**
15 **conspiring to give away poles in 1987 before he**
16 **was mayor, right?**
17 A. I would say that's fair.
18 **Q. Okay. And we see poles from 1990, 1976, 1986,**
19 **1958, 1976, 1970, 1966 there at the bottom. We**
20 **don't have records to know who paid for any of**
21 **this, do we?**
22 MS. GARCIA: Objection.
23 A. We do not. We wouldn't -- we do not. And also,
24 all of the key city personnel from those eras are
25 no longer available to interview; they've passed

1 away.
2 **Q. If Dover Chemical paid for all of these, would it**
3 **even matter to your analysis?**
4 MS. GARCIA: Objection.
5 A. It -- if Dover Chemical paid for all of them,
6 certainly.
7 **Q. If it paid for some of them, would it matter to**
8 **your calculation?**
9 MS. GARCIA: Objection.
10 A. Likely.
11 **Q. Frankly, when we start looking at transformers on**
12 **page 3 -- and we have a series of transformers**
13 **from 1990. Again, that was before Mayor**
14 **Homrighausen was mayor, right?**
15 A. Yes. He took over I believe in '91.
16 **Q. So if Dover Chemical was supposed to pay for those**
17 **transformers in 1990, how do we know they didn't?**
18 MS. GARCIA: Objection.
19 A. We -- again, we have some invoices -- well, we
20 have some work logs, I think from '89 and '90.
21 **Q. We do.**
22 A. As far as invoices, we do not have invoices from
23 that era.
24 **Q. So those work logs from '89 or '90 don't say a**
25 **darn thing about who paid for what, right?**

1 A. No.
2 **Q. And yet services from '89 and '90 that we don't**
3 **know whether they were paid for and we don't even**
4 **know what was really done, because they're not**
5 **detailed, you're wanting to recover those as part**
6 **of the surcharge that you're trying to -- you're**
7 **trying to recover that -- that money?**
8 A. The surcharge isn't -- the intent was to recover
9 for all assets beyond the pole. Beyond the meter.
10 **Q. Irrespective of whether they were paid for or how**
11 **they got there?**
12 MS. GARCIA: Objection.
13 A. If -- certainly if there were documentation that
14 could support a different pattern that they were
15 paid for, then that would factor into the
16 surcharge -- would have factored into the
17 surcharge.
18 **Q. Who did the math to back out everything that the**
19 **City of Dover knows Dover Chemical paid for?**
20 MS. GARCIA: Objection.
21 A. The math? We -- we received only a handful of
22 actual invoices where they maybe had paid half.
23 **Q. Okay. And was -- was that half checked out?**
24 MS. GARCIA: Objection.
25 A. I cannot recall.

1 **Q. Doesn't that matter?**
2 A. It would certainly be a factor in the -- in the
3 surcharge.
4 **Q. If you claim -- if you claim I owe you money and I**
5 **can show that I actually paid you some of that**
6 **money, you agree that --**
7 A. Sure.
8 **Q. -- I don't owe you the full amount of that money,**
9 **right?**
10 MS. GARCIA: Objection.
11 A. That would be -- yes, that would certainly be a
12 factor.
13 **Q. So the city believes it has recovered the money**
14 **that it thinks its owed in the 1.1 million if that**
15 **were to be released to -- from escrow, correct?**
16 MS. GARCIA: Objection.
17 A. Yes.
18 **Q. The city also is trying to recover money through**
19 **their claims of unjust enrichment and conversion,**
20 **correct?**
21 MS. GARCIA: Objection.
22 A. Yes.
23 **Q. The city is trying to recover the same money**
24 **twice?**
25 MS. GARCIA: Objection. That's clearly

1 in our complaint. It shows that it's a
2 pleading in the alternative. If you want to
3 show him a copy of the complaint, you can,
4 but I'm --
5 MR. RUDD: I'm not going to show him a
6 copy of the complaint.
7 MS. GARCIA: Okay.
8 A. I believe, as our attorney said, that is -- that
9 is our alternative position.
10 **Q. Ms. Space is a city council member, correct?**
11 A. Correct.
12 **Q. And at some point in the future she will be**
13 **representing the City of Dover as law director?**
14 A. Correct.
15 **Q. And again, barring unforeseen whatever.**
16 A. Sure.
17 **Q. That's the expectation. Have you had any**
18 **conversations with Ms. Space about the Dover**
19 **Chemical matter?**
20 A. Limited.
21 **Q. When did those conversations take place?**
22 A. Maybe within the last six weeks.
23 **Q. Since -- since her election?**
24 A. Obviously she'll be representing the city as law
25 director.

1 **Q. Has she expressed an opinion to you on the merits**
2 **of the city's litigation?**
3 MS. GARCIA: Objection.
4 A. We didn't really get that deep into it, no.
5 **Q. How deep did you get?**
6 A. Certainly I think everyone in city government
7 would like, for the benefit of the city and for
8 the benefit of Dover Chemical, to come to a
9 reasonable resolution. Our essential conversation
10 was "I don't know if that's going to be possible."
11 **Q. The city alleges that DCC demanded that the city**
12 **provide at the city's expense electrical**
13 **equipment, services and maintenance on DCC's**
14 **property beyond the metering location. You don't**
15 **have any personal knowledge of a demand from DCC**
16 **to the city to do anything, do you?**
17 MS. GARCIA: Objection.
18 A. Other than verbal -- verbal testimony from
19 employees that said apparently Mr. Colvin made a
20 comment that "I guess we'll just go to AEP then."
21 **Q. In what context?**
22 A. Shortly after that -- that -- the 2003 letter was
23 sent.
24 **Q. Who told you that?**
25 A. That was -- I heard that from Mr. Douglas, who was

1 relayed that information from the electric field
2 superintendent at the time.
3 **Q. So someone told someone that Dwain Colvin said, "I**
4 **guess we'll go to AEP"?**
5 A. And Mayor Homrighausen at the time told his
6 electric field super -- superintendent that he
7 would take care of -- handle the situation from
8 now on and he should be quiet.
9 **Q. Okay. And who was this that Mayor Homrighausen**
10 **said this to?**
11 A. The electric field superintendent at the time
12 was -- oh --
13 **Q. Was it Larry?**
14 A. Was it -- no. I be -- I believe it was -- well,
15 it might have been Larry or Lynn Singer who
16 preceded immediate -- was from that era.
17 **Q. Okay. Have -- has the city spoken with Larry or**
18 **Lynn?**
19 A. Lynn has passed away.
20 **Q. Lynn's passed away?**
21 A. Uh-huh.
22 **Q. Have you talked to Mayor Homrighausen about this?**
23 A. No.
24 **Q. Did you talk to Mayor Homrighausen about this**
25 **privately back in May, June, July, August of 2020?**

1 A. Certainly we had a couple of conversations, not
2 about this, but about Dover Chemical's request for
3 a rate reduction.
4 **Q. Okay. The request for a rate reduction. How do**
5 **you not ask the mayor if this is true, what's --**
6 **what Doug O'Meara has alleged about him?**
7 MS. GARCIA: Objection.
8 A. I, at that point, I wanted to let that process
9 play out and I thought if there's additional
10 substance, Mr. O'Meara can bring it, bring the
11 information to us and we will figure out where to
12 go from there.
13 **Q. So if Mr. O'Meara didn't bring the information to**
14 **you, you weren't going out and getting it?**
15 A. Well, that's not --
16 MS. GARCIA: Objection.
17 A. No. That's -- he -- he was a -- he was equipped,
18 or I should say he was -- as law director, he had
19 the ability to obtain information that a part-time
20 councilperson probably would be less equipped to
21 know where to look and find.
22 **Q. Did you know where to find Mayor Homrighausen?**
23 MS. GARCIA: Objection.
24 A. I did.
25 **Q. And not a single phone call to discuss any of**

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1 **these issues?**
2 A. To the extent that these issues allege or could
3 possibly have alleged a conflict with the city,
4 I -- again, I thought the appropriate person to
5 handle that matter was Doug O'Meara.
6 **Q. Does Doug O'Meara get along with Mayor**
7 **Homrighausen?**
8 MS. GARCIA: Objection.
9 A. They -- yeah, they have at times. They've
10 certainly had some disagreements the last several
11 years, but prior to this I thought they -- they
12 had a relatively decent relationship.
13 **Q. Prior to this. When did you see that relationship**
14 **start to deteriorate?**
15 A. Around the time we started finding these
16 additional -- or bringing this information
17 forward.
18 **Q. Okay. So around that -- around that time you**
19 **considered Doug O'Meara to be a trustworthy filter**
20 **of what information comes to you and what doesn't?**
21 MS. GARCIA: Objection.
22 A. That was the intent on bringing in outside
23 counsel, to get a second set of eyes on this
24 information.
25 **Q. So I heard you tell me that somebody told somebody**

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1 **that somebody heard Dwain Colvin say, "I'll just**
2 **go to -- we'll just go to AEP."**
3 A. Uh-huh.
4 **Q. Are you aware of anyone else in the city, and**
5 **again, this is -- you're definitely speaking on**
6 **behalf of city council here -- with knowledge of**
7 **DCC demanding services or equipment beyond the**
8 **metering location?**
9 MS. GARCIA: Objection.
10 A. I -- so the -- I -- I am -- the way I understood
11 it was that the communications went between Mayor
12 Homrighausen and DCC. And so only those people
13 have that -- that communication -- had those
14 communications.
15 **Q. The way you --**
16 A. And when there was an issue regarding services or
17 equipment, they went to the mayor, the mayor
18 contacted the staff at DCC.
19 **Q. You told me that's your understanding. What's**
20 **that based on?**
21 A. From the electric field department or other
22 employees.
23 **Q. Somebody at the electric field department told you**
24 **that Dover Chemical would approach the mayor about**
25 **getting services done?**

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1 A. When there was a -- no. When there was an issue
2 regarding Dover Chem -- regarding an overtime call
3 and whether they should bill for that, they
4 approached the mayor and the mayor would
5 communicate with DCC.
6 **Q. How did -- how did anyone -- how would anyone know**
7 **that the mayor communicated with DCC?**
8 MS. GARCIA: Objection.
9 **Q. That's just an assumption, right?**
10 A. I don't know whether he relayed that to them or
11 not.
12 **Q. You just said, "he." You're talking about the**
13 **mayor?**
14 A. Yes.
15 **Q. Okay. When -- when the city filed its**
16 **counterclaim --**
17 A. Uh-huh.
18 **Q. -- back in September of 2022, did city council**
19 **have to approve that filing?**
20 MS. GARCIA: Objection.
21 A. The counterclaim -- the law director represents
22 the city on legal matters, generally speaking.
23 **Q. So the city council did not review that document,**
24 **get a chance to ask questions about it. Somebody**
25 **other than city council wrote those words?**

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1 MS. GARCIA: Objection.
2 A. The specific document was not written by members
3 of city council, no.
4 **Q. What role did city council have in generating the**
5 **counterclaim?**
6 A. Certainly we consulted with our attorneys and were
7 aware that -- aware that certain -- these certain
8 claims were going to be brought. And the actual
9 document itself was obviously generated by
10 attorneys that you -- you -- who are now
11 representing us.
12 **Q. And the allegations in those complaints, they**
13 **weren't run individually by city council to say**
14 **yes or no, we can allege this?**
15 A. I --
16 MS. GARCIA: Objection. And I'm just
17 going to instruct you not to speak to any
18 conversations that you had with outside
19 counsel as part of this litigation.
20 THE WITNESS: Okay.
21 **Q. I'm not worried about conversations. Did city**
22 **council provide the information to generate these**
23 **dozens and dozens of paragraphs of allegations or**
24 **was that information provided by someone other**
25 **than city council?**

1 A. The information and the specifics of the
2 alle -- the city's counterclaim was obviously
3 generated by our attorneys, was reviewed by
4 myself, the law director, I believe the council
5 president prior to being filed.
6 **Q. Was there any discussion within city council about**
7 **O'Meara's waiting for half a year to have a**
8 **discussion with anyone on city council about his**
9 **concerns with Dover Light and Power?**
10 MS. GARCIA: And I'm just going to object
11 and instruct the witness not to answer
12 any -- that question with any conversations
13 where Director O'Meara or outside counsel was
14 present. But assuming that you're asking
15 exclusively with --
16 MR. RUDD: Yes.
17 MS. GARCIA: -- amongst council members,
18 you can answer.
19 A. No.
20 **Q. Well, or if O'Meara was president -- present and**
21 **other people other than your counsel were present,**
22 **were there any such discussions?**
23 MS. GARCIA: Same objection, same
24 limiting instruction.
25 **Q. So -- so we're 100 percent clear, when I'm talking**

1 **about people other than counsel, I'm talking about**
2 **city council can be there, Doug O'Meara and Lola**
3 **can be there --**
4 A. Uh-huh.
5 **Q. -- but like any other person, like say I show up**
6 **and --**
7 A. Sure.
8 **Q. -- this is a conversation in a room at a meeting,**
9 **this is whatever, any other person, was there any**
10 **conversation either with just council, city**
11 **council, or city council, legal counsel and**
12 **someone else where --**
13 A. Regarding --
14 MS. GARCIA: Yeah, let him finish his
15 question.
16 **Q. -- regarding O'Meara's delay in bringing this to**
17 **the attention of council?**
18 MS. GARCIA: And I'll just object and say
19 to the extent any other person includes a
20 non-Dover employee, you may answer that
21 question. Non-City of Dover employee.
22 A. I cannot recall that specifically being discussed,
23 no.
24 **Q. Did you personally wonder why he waited so long?**
25 MS. GARCIA: Objection.

1 A. I -- I wonder now.
2 **Q. Are you aware of any -- is city council aware of**
3 **any invoice ever submitted to Dover Chemical by**
4 **the city that Dover Chemical has failed to pay?**
5 A. I am not aware of that, no.
6 **Q. There's an allegation in the city's counterclaim**
7 **that says, "Partial charges were assessed to DCC**
8 **after September 9th" for recent -- or "September**
9 **2019 for recent service calls." What's that mean?**
10 A. So typically, if there are needed upgrades or
11 service calls, the process is at times the
12 customer pays half, if it's in front of the meter.
13 If it's behind the meter, it's supposed to be
14 theirs. My understanding was there were some
15 service calls behind the meter that were paid for
16 by half, and so I think that's --
17 **Q. This is subsequent to -- this was September '19**
18 **and later. How far do these partial charges go**
19 **into 2019 or into 2020 before the city feels as if**
20 **everything that was supposed to be charged was**
21 **charged?**
22 MS. GARCIA: Objection.
23 A. I would have to review those -- those charges.
24 **Q. Okay. But this is specifically limit -- this is**
25 **specifically addressing where in the documents you**

1 **saw a 50-percent charge?**
2 A. Correct.
3 **Q. Correct?**
4 A. A 50-percent charge behind the meter.
5 **Q. Okay. Paragraph 57, the city alleges that "DCC**
6 **refused to compensate the city for the equipment**
7 **and services provided." But the city never**
8 **invoiced them for the services provided, right?**
9 MS. GARCIA: Objection.
10 A. Based upon instruction, yes.
11 **Q. And if it's counsel, don't tell me, but did**
12 **someone other than counsel instruct you not to**
13 **invoice?**
14 A. No. Not that I'm -- I mean, again, are you
15 talking about somebody externally?
16 **Q. Yeah.**
17 A. Outside the city?
18 **Q. Yeah.**
19 A. Not that I'm aware of. It -- that all came from
20 the standing policy not to invoice Dover Chemical.
21 **Q. How did DCC refuse to compensate the city then?**
22 A. We, during that period, attempted to have
23 discussions regarding this situation and try and
24 come to a reasonable solution that went nowhere.
25 **Q. And that attempt to have discussions, are you**

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1 talking about -- I'll hand you what's been marked
2 as Exhibit 53. It's from a prior deposition.
3 MS. GARCIA: Does that mean you -- is
4 that your way of saying you don't have an
5 extra copy?
6 MR. RUDD: Yeah. It's -- it's -- it's
7 this thing.
8 MS. GARCIA: Yeah.
9 **Q. So in February 2021 we get this. And what you're**
10 **looking at in Exhibit 53, and we do not need to go**
11 **back through it, but that is based upon -- that's**
12 **1990. That's based upon Exhibit 57. And here's a**
13 **copy of Exhibit 57.**
14 A. Okay.
15 **Q. And you'll see that if you turn to the second page**
16 **of Exhibit 53 there's February 13th, 1990 that it**
17 **says Dover DCC 1138. So if you go in**
18 **Exhibit 57 -- I'm sorry, keep that open. Keep 53**
19 **open. We're going to be looking at that.**
20 A. Okay.
21 **Q. Go to Exhibit 57 and turn a couple pages in. And**
22 **I hope it's copied well, but I'm going to --**
23 A. What's --
24 **Q. 1138 is what we're looking for. You might be**
25 **almost there. It's upside down on the top left**

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1 corner of the page numbers. Top left. We're
2 looking for 1138.
3 A. Okay.
4 **Q. Got it?**
5 A. Yeah.
6 **Q. Okay. So we have, "Fuse broken, Dover Chemical."**
7 A. Uh-huh.
8 **Q. All right. And so we have two -- two people, it**
9 **looks like DC and HB were there, but it doesn't**
10 **say anybody else was there. It doesn't say how**
11 **long they were there. All right. It doesn't say**
12 **what time they got there. All right. I don't**
13 **know whether that's overtime. I don't know if it**
14 **took four hours to replace a fuse. I don't know**
15 **anything. Don't know whether this was billed.**
16 **Don't know whether this was paid. It's 1990.**
17 **This was before -- this was before Mayor**
18 **Homrighausen was ever -- was ever even mayor.**
19 A. Uh-huh.
20 **Q. And so what's extrapolated from that is this entry**
21 **that was provided to us by counsel on February**
22 **21st, this is Exhibit 53, that just says, oh, that**
23 **was \$316. And then it does the same analysis for**
24 **a couple other things from 1990.**
25 A. Okay.

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1 **Q. None of which I can tell what was done, how long**
2 **it took, whether it was overtime. Every one of**
3 **these has overtime rate assumed, and whether it**
4 **was invoiced or paid. I guess how does this,**
5 **what's Exhibit 53 being given to me, how do**
6 **I -- how do I come to any conclusion that Dover**
7 **Chemical owes you any money from 1990 based upon**
8 **these things together and nothing more?**
9 MS. GARCIA: Objection.
10 A. The -- so the -- in this particular case you have
11 two employees at 2021 rates would be 146.60.
12 **Q. Yep.**
13 A. And we, in calculating these, we spoke with our
14 electric field department and estimated the amount
15 of time a typical call takes.
16 **Q. A typical call?**
17 A. Typical --
18 **Q. That fuse replacement?**
19 A. Yeah, that particular service.
20 **Q. And then you asked the field division whether this**
21 **was invoice and paid?**
22 MS. GARCIA: Objection.
23 A. We already have that information that they -- no,
24 it wasn't.
25 **Q. How do you have that information that it wasn't?**

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1 MS. GARCIA: Objection.
2 A. Because they had standing orders not to invoice
3 for these things.
4 **Q. But there are other things that are invoiced that**
5 **we have invoices from the 2000s. Those things**
6 **were invoiced. How do we know what's not**
7 **invoiced?**
8 MS. GARCIA: Objection.
9 A. Because no invoice exists that we were able to
10 find.
11 **Q. Okay. So that -- that doesn't mean it**
12 **doesn't -- wasn't invoiced. It means that you**
13 **were unable to find an invoice from 40 years ago.**
14 MS. GARCIA: Objection.
15 **Q. Thirty-three years ago. Right?**
16 MS. GARCIA: Still objectionable. Go
17 ahead.
18 A. I --
19 MR. RUDD: The objection was on my math?
20 A. I --
21 MS. GARCIA: Among other things.
22 MR. RUDD: Okay.
23 A. I -- yes, that means we do not have an invoice
24 from 30 years ago.
25 **Q. That's all that means.**

1 A. Yeah.
2 MS. GARCIA: Objection.
3 **Q. So -- so your \$1.1 million, is that 1990 -- 1990**
4 **from Exhibit 53 supported by Exhibit 57, does that**
5 **include some of that money?**
6 A. It includes the calls that we -- or the work that
7 we were able to track down from the limited
8 logbooks that exist from that era.
9 **Q. And that you can't prove we didn't pay?**
10 MS. GARCIA: Objection.
11 A. How do you prove a document doesn't exist?
12 **Q. You don't wait 20 -- you don't wait 33 years to**
13 **bring the claim.**
14 A. I would --
15 MS. GARCIA: Objection.
16 A. -- completely agree with that.
17 **Q. Yeah. That's fine. We're on the same page.**
18 **All right. I'm going to hand you**
19 **what's -- so -- so that was one effort that we**
20 **just looked at. I want to hand you what's been**
21 **marked as Exhibit 54. It's a new one, so I've got**
22 **one for you. I'll make sure I haven't written all**
23 **over it. I will represent to you that this was an**
24 **e-mail from counsel to --**
25 A. Uh-huh.

1 **Q. -- to my office addressing prelitigation,**
2 **addressing the city's claims?**
3 MS. GARCIA: Objection. Oh, I'm sorry.
4 I'll let you ask your question.
5 **Q. I'm looking through this document. Do you see**
6 **anywhere in this document that says the city's**
7 **concluded that Dover Chemical owes it**
8 **\$1.1 million?**
9 MS. GARCIA: Objection.
10 A. No. The offer to settle was an attempt to meet
11 Dover Chemical partway to resolve the matter.
12 **Q. Oh, so the 650 was like going just a little above**
13 **halfsies on the \$1.1 million? Is that where that**
14 **came from?**
15 A. We were trying to --
16 MS. GARCIA: Objection. Yeah.
17 A. Yeah. We were trying --
18 MS. GARCIA: To the extent you have any
19 information based on that figure with
20 communication with counsel, I instruct you
21 not to answer.
22 THE WITNESS: Okay.
23 **Q. When was the city planning on telling Dover**
24 **Chemical that it thought Dover Chemical owed it**
25 **\$1.1 million?**

1 MS. GARCIA: Objection.
2 A. The communications with Dover Chemical, once the
3 threat of litigation was put out there, went
4 through legal counsel.
5 **Q. You understand that the City of Dover served a**
6 **litigation hold notice first, right?**
7 MS. GARCIA: Objection.
8 A. I understand that yes, in order to -- we wanted to
9 ensure documentation was available.
10 **Q. Okay. So the threat of litigation didn't start**
11 **with Dover Chemical, right?**
12 MS. GARCIA: Objection.
13 A. The threat of litigation -- the litigation hold
14 did not start with Dover Chemical, no.
15 **Q. So in November 2020 we get a communication from**
16 **the city that says, Just give us \$650,000. You**
17 **might imagine Dover Chemical's thought process is**
18 **something along the lines of, Well, what for?**
19 **Do you think it would have been useful at**
20 **any time to have told Dover Chemical what you**
21 **believe their damages were and why?**
22 MS. GARCIA: Objection. And I'll just
23 state to the extent that your answer might
24 reflect any communications with counsel, I
25 instruct you not to answer.

1 A. All communications regarding this matter were
2 relayed from council to our attorneys and then
3 presumably to your Dover Chemical's staff and
4 attorneys as well.
5 **Q. So as of November 24th, at least in this document,**
6 **there's nothing that says what any number that's**
7 **put out by the city is based on, right?**
8 A. Cor --
9 MS. GARCIA: Objection. Yeah, so based
10 on this document.
11 A. Based on this document.
12 **Q. Are you aware of any document prior to this that**
13 **laid out an analysis of how the city arrived at**
14 **its \$1.1 million damages?**
15 MS. GARCIA: Objection.
16 A. Prior to this, no.
17 **Q. Okay. Subsequent to this?**
18 A. Only the documentation that was provided regarding
19 assets and equipment that was a portion of that
20 \$1.1 million.
21 **Q. Okay.**
22 A. Anything else, I'm not -- I'm not aware of.
23 **Q. When did the city decide that Doug O'Meara's**
24 **2-plus-million-dollar estimate that he talked**
25 **about in the newspapers was probably not accurate?**

1 MS. GARCIA: Objection.
2 A. I would say that, you know, obviously we went
3 through the process of what we could document,
4 what we could find and what we believe to be a
5 valid number, a reasonable number based upon what
6 we knew and what else was still out there without
7 documentation those other years. The council felt
8 more comfortable with the number that ended up in
9 the final version of 29-20.
10 **Q. Was there discussion among city council as to why**
11 **1.1 was, in your word, more comfortable than 2.2?**
12 MS. GARCIA: Objection. And I'll just do
13 the same limiting instruction to the extent
14 that it was only among council members, not
15 including outside counsel or Director
16 O'Meara.
17 A. I think the final version was an attempt to be
18 more reasonable in our seek for -- while still
19 protecting the taxpayers that we felt we had an
20 obligation to do to be reasonable in our request
21 for that -- those funds.
22 **Q. I'm going to show you what's been marked as**
23 **Exhibit 55.**
24 MS. GARCIA: And before you move to that,
25 we've been going over an hour. Do you mind

1 if we take a quick break?
2 MR. RUDD: Let's take a break. Now you
3 get to wonder what Exhibit 55 is going to be.
4 All right. Let's go off the record.
5 THE VIDEOGRAPHER: We're going off the
6 record. The time is 1:41.
7 (Recess was taken.)
8 THE VIDEOGRAPHER: Back on the record.
9 The time is 1:46.
10 BY MR. RUDD:
11 **Q. I'm going to hand you what's been marked as**
12 **Exhibit 55.**
13 A. Okay.
14 **Q. I will -- have you seen this document before?**
15 A. Yes.
16 **Q. Would you mind looking through this document and**
17 **tell me whether it says anything about**
18 **\$1.1 million?**
19 A. It lays out a number of replacement costs for
20 different items at that time and then it notes
21 additional costs for labor and equipment to
22 service the units that range from 300 to \$900 and
23 it puts a number to that.
24 **Q. So 160 is the low end and the 990 is the high end.**
25 **So we have poles, some of which are 70 years old,**

1 **but we're valuing them at today's cost. We have**
2 **transformers that we don't even know who paid for**
3 **some of them or at least parts of some of them**
4 **valued at today's cost except for the fact that**
5 **they might be 30-year-old transformers. You put**
6 **those two together, we're looking at, let's just**
7 **call that 80 and 165, we're calling -- we'll call**
8 **that 245,000. And then we have servicing**
9 **transformers and weed killing, and that comes to**
10 **51,000. So we're looking right now at just under**
11 **300,000 if all of that is recoverable and if the**
12 **city can prove both what was done and whether it**
13 **was paid for. And then we might have another**
14 **160,000 on top of that, maybe? We could be**
15 **looking at 400,000 is what the city claims it's**
16 **owed, right?**
17 MS. GARCIA: Objection.
18 A. Once -- it depends on the service. You could be
19 looking at 160 to 990, which would put it at
20 closer to 1.3 million.
21 **Q. Okay. So why doesn't the city just tell us what**
22 **services they were so that we can -- we can hone**
23 **in better on a number?**
24 MS. GARCIA: Objection. Asked and
25 answered.

1 A. Because you can't provide documentation for
2 something that no documentation exists for.
3 **Q. So the city can't prove it?**
4 MS. GARCIA: Objection.
5 A. Beyond oral testimony, oral -- oral interviews
6 that were given and, you know, the acknowledgment
7 that invoices do not appear from those years, no,
8 they cannot. There's no additional documentation.
9 **Q. Is this January 21st, 2021 letter comprehensive in**
10 **its representation of what the city is seeking to**
11 **recover from Dover Chemical?**
12 MS. GARCIA: Objection.
13 A. It was with all of the information that they -- he
14 had at that time. I would have to consult with
15 our attorneys, but I don't know that anything else
16 has been added since then.
17 **Q. And I hope you don't think I'm trying to be**
18 **difficult, because I'm not. It's just at some**
19 **point we have to walk into the court and somebody**
20 **has to say, "What are your damages?" and somebody**
21 **from the city has to answer that question.**
22 A. Sure.
23 **Q. To the best of your knowledge, this January 21st,**
24 **2021 letter is the outline of the city's alleged**
25 **damages?**

1 MS. GARCIA: Objection.
2 A. I -- to the best of my knowledge, I -- there are
3 other employees who probably could testify better
4 to total damages, but to the best of my knowledge,
5 yes.
6 **Q. Who would be able to better testify to total**
7 **damages?**
8 MS. GARCIA: Objection. You did an
9 entire damages deposition.
10 MR. RUDD: I know, and he said he didn't
11 know.
12 MS. GARCIA: He didn't say he didn't
13 know.
14 MR. RUDD: He did say it. I asked him
15 for a number.
16 MS. GARCIA: He didn't say he didn't
17 know.
18 MR. RUDD: 1.1 million --
19 MS. GARCIA: And I don't need you to
20 represent what the city's show of evidence is
21 required.
22 MR. RUDD: So -- what -- what --
23 MS. GARCIA: You can ask what's in the
24 letter, you can ask what the basis
25 of -- informa -- you already asked those

1 questions. If you're trying to get the city
2 to make through shame an off-the-cuff this is
3 the city's absolute position regarding
4 damages, we're not going to do that in this
5 deposition.
6 MR. RUDD: Well, here's -- here's --
7 here's where I have a problem. I have
8 problem is, is that we already scheduled a
9 deposition for damages and I asked the guy
10 that the city supposedly prepared --
11 MS. GARCIA: At this point I'm going to
12 say go off the record.
13 MR. RUDD: No. No, don't go off the
14 record. I want this on.
15 MS. GARCIA: No. I mean, you're about to
16 make representations about what was in a
17 deposition that already exists and --
18 MR. RUDD: I want this on the record.
19 MS. GARCIA: -- I'm guaranteeing that
20 it's not going to be an accurate
21 representation of what his testimony was.
22 MR. RUDD: Okay. I'm telling you, and
23 you can tell me whether this is accurate or
24 not, prior to today, has a single darn
25 witness for the City of Dover said

1 \$1.1 million ever when asked what the city's
2 damages are? The answer is no.
3 MS. GARCIA: That's -- no, the answer is
4 not no, and you're --
5 MR. RUDD: You're going to show me where
6 it is then?
7 MS. GARCIA: No. I mean, you're
8 complaining multi -- he's testified to what
9 he thought was a reasonable figure to recover
10 based on the information that he had. That
11 is not a quantification of the city's
12 damages. And, I mean, it depends on what
13 claim you're talking about, what counterclaim
14 you're talking about. And so no, I'm not
15 going to say -- he says that was what his
16 reasonable estimation was and we have the
17 deposition transcript.
18 MR. RUDD: And I'm allowed to know what
19 the value of the stuff and services that the
20 city claims it has been harmed by having been
21 given to Dover Chemical and not paid for.
22 MS. GARCIA: And that information has
23 been provided. There is a difference between
24 what the city's damages are and what the city
25 thought was a reasonable amount to recoup

1 given the information that it had.
2 MR. RUDD: So again, I served
3 interrogatories on damages. All I get is,
4 look at this January 21st letter. Now you
5 seem to be pushing back that, like, there's
6 something other than this.
7 MS. GARCIA: I'm not saying there's
8 anything other than this. I'm saying if
9 you're asking about a quantification of the
10 city's damages for counterclaims, that's not
11 what this letter represents to be. You've
12 asked what the -- and we can go back to the
13 interrogatories.
14 MR. RUDD: No, this --
15 MS. GARCIA: But you've asked what the
16 basis for the damages are and that
17 information had been provided. I don't know
18 how I can provide it to you in any other way,
19 Tim. What you're tier -- what -- you're
20 misrepresenting his testimony. He
21 provided --
22 MR. RUDD: This is your letter.
23 MS. GARCIA: Yes, he provided what he
24 said --
25 MR. RUDD: Is this a -- the valuation of

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1 labor and equipment?
2 MS. GARCIA: I am not getting -- I'm not
3 getting deposed here.
4 MR. RUDD: I understand. But the answer
5 that I've been given was "This is our answer"
6 and I need consistency here.
7 MS. GARCIA: You might not like the
8 answers you've been getting, Tim --
9 MR. RUDD: I haven't gotten an answer
10 until today, someone finally said \$1.1
11 million.
12 MS. GARCIA: Yeah, and he didn't say
13 those are the city's damages.
14 **Q. What are the city's damages? You're the city**
15 **council. You're trying to recover money.**
16 MS. GARCIA: Objection.
17 A. What I would say --
18 MS. GARCIA: Yeah. So you can ask him
19 questions, but you're not going to get the
20 city's absolute, unequivocal position of what
21 its damages are for its counterclaims in this
22 deposition.
23 MR. RUDD: I'm talking --
24 MS. GARCIA: And Shane is not.
25 MR. RUDD: I'm talking to Shane as Shane

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1 now.
2 **Q. It's just you, Shane. You're not the city. You**
3 **were president of the city council.**
4 A. Correct.
5 **Q. You are now the mayor.**
6 A. Okay.
7 **Q. What is your understanding of the total value that**
8 **was allegedly conferred upon Dover Chemical that**
9 **wasn't paid for?**
10 MS. GARCIA: Objection.
11 **Q. What's your understanding?**
12 A. You're asking me the total -- if I had to put
13 a --
14 **Q. Yeah.**
15 A. A guess?
16 **Q. No, I'm not -- never asking you to guess, because**
17 **you obviously passed this -- you voted to approve**
18 **Ordinance 20 -- 29-20, right?**
19 A. Correct.
20 **Q. Right? You did that based upon your investigation**
21 **and analysis. It, like, literally says that in**
22 **the ordinance.**
23 A. Uh-huh.
24 **Q. I'm asking you, what is your Shane Gunnoe, smart**
25 **guy who's thought it through, done his research,**

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1 **how much value was conferred upon Dover Chemical**
2 **that Dover Chemical didn't pay for?**
3 MS. GARCIA: Objection. You may answer.
4 A. In my opinion, we would be looking at -- you know,
5 you're looking at the replacement numbers of that
6 equipment, which we have, and you're also looking
7 at based upon the information that we have and the
8 information that is not available, you're probably
9 looking at, on the high end of that -- that 160 to
10 990 number on a -- in addition to that.
11 **Q. Okay. The city alleges that it took steps to**
12 **recover some costs, including engaging in**
13 **discussions with DCC and its representatives.**
14 **Just so I'm 100 percent clear, you weren't**
15 **involved in any of those discussions? Those were**
16 **through counsel, correct?**
17 A. Correct. We did receive an e-mail directly to me
18 from Mr. McElduff --
19 **Q. Yep.**
20 A. -- and we thought it was appropriate that those
21 conversations go through counsel.
22 **Q. And then at one point, Mr. McElduff and I came and**
23 **visited everybody at a city council meeting.**
24 A. Uh-huh.
25 **Q. In addition, because it's this word "including" on**

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1 **the counterclaim, paragraph 52, the city took**
2 **steps to recover some of those costs, including**
3 **engaging in discussions with DCC and its**
4 **representatives.**
5 **What else did it do other than those**
6 **discussions with DCC and its representatives?**
7 MS. GARCIA: And I'm just going to
8 object. Unless you're going to provide him a
9 copy of the complaint, I don't think it's
10 fair asking him questions, you know, of
11 paragraphs in a vacuum. But to the best --
12 **Q. I'll just ask you this. I'll just ask you this.**
13 **Other than engaging in discussions with DCC and**
14 **its representatives, what did city council do to**
15 **take steps to recover costs from Dover Chemical?**
16 A. That was the rationale behind the surcharge.
17 **Q. Oh, so that's the steps to recover --**
18 A. That's --
19 **Q. -- was the surcharge?**
20 A. That -- well, the surcharge was an attempt to
21 recover funds that we believe were owed to the
22 people of City of Dover.
23 **Q. Can city council always just resolve legal claims**
24 **against out-of-community customers of Dover Light**
25 **and Power by just adding a charge?**

1 MS. GARCIA: Objection.
2 A. Are you -- city council certainly has rate-making
3 authority and does routinely and has added
4 surcharges in the past for water and sewer and now
5 this electric.
6 **Q. Water and sewer surcharge.**
7 A. Uh-huh.
8 **Q. Give me an example of when that was done.**
9 A. Water was -- I'm sorry. Water was, I'm going
10 to -- water's been for a very long time, and
11 that's a 50-percent surcharge.
12 **Q. Out of --**
13 A. Out-of-city customers. It was renewed or I guess
14 reapproved via ordinance in September of 2019.
15 **Q. Never -- never a water surcharge because you**
16 **thought someone owed you money that they hadn't**
17 **paid you?**
18 MS. GARCIA: Objection.
19 A. Sewer surcharges were related to a dispute with
20 the county involving insufficient payment for
21 years.
22 **Q. How did that -- did that go to litigation?**
23 A. It did.
24 **Q. How did that litigation turn out?**
25 A. It was settled.

1 **Q. How was it settled?**
2 MS. GARCIA: Objection. And to the
3 extent that he's asking about anything that
4 may be in a confidential settlement
5 agreement, I'll instruct you not to answer.
6 MR. RUDD: Can -- can government
7 settlement agreements be confidential?
8 MS. GARCIA: You know, I don't know and I
9 don't know anything about that settlement
10 agreement, so I'm protecting my client --
11 MR. RUDD: Yeah, I think -- I think
12 they're public record.
13 MS. GARCIA: -- in the absence of
14 information that I don't.
15 A. So the county transferred in 20 -- agreed to a
16 settlement involving services that weren't billed
17 for related to the provision of sewer services.
18 Essentially the out-of-city customers, their sewer
19 close to our sewer plant.
20 **Q. Okay.**
21 A. That was a settlement in 2018 that involved -- it
22 was -- may have not been formalized until early
23 2019, but it involved the transfer of assets to
24 the city from the county. It involved a one-time
25 payment, I believe \$250,000, and a 5-percent rate

1 increase -- 5-percent surcharge for out-of-city
2 customers per year for five years until it reached
3 125 percent of city rates.
4 **Q. Because the out-of-city people were simply using**
5 **the city's sewage system without paying for it,**
6 **right?**
7 MS. GARCIA: Objection.
8 A. They were -- they were paying less -- the
9 city's -- the city's argument was that they were
10 paying less than should have been contractually
11 required for a number of years.
12 **Q. Was there a written contract in that context?**
13 A. There was a contract between the city and the
14 county --
15 **Q. Okay.**
16 A. -- in -- from I believe the early '80s.
17 **Q. Whose idea was the sewer surcharge?**
18 MS. GARCIA: Objection.
19 A. The sewer surcharge was an -- I think there were a
20 number of people within city administration that
21 were discussing that. I think the actual initial
22 sewer surcharge recommendation might have come
23 from Mr. O'Meara for the rate. The
24 actual -- that's the initial recommendation. The
25 final recommendation was something I proposed that

1 council adopted.
2 **Q. Do you remember how much the city spent litigating**
3 **that?**
4 MS. GARCIA: Objection.
5 A. I do not.
6 **Q. Could it have been handled better by Doug O'Meara?**
7 MS. GARCIA: Objection. Answer if you
8 can.
9 A. We retained counsel, they retained counsel. It
10 took several years of back and forth, and
11 ultimately, we came to a satisfactory conclusion
12 for all -- for all the parties. So, you know,
13 I -- I'm not a lawyer by trade.
14 **Q. Sure. Are you a lawyer by any other capacity?**
15 A. No.
16 MS. GARCIA: Objection.
17 **Q. Just making sure.**
18 A. No. No, no, no, no.
19 **Q. You're good.**
20 A. No.
21 **Q. So is it fair to say that there's -- that there's**
22 **a pattern --**
23 MS. GARCIA: Objection.
24 **Q. -- of -- because it sounds kind of the same here,**
25 **right? Doug O'Meara gets spun up, comes up with**

1 **an idea to go get something and then parties end**
2 **up in litigation for the next couple of years.**

3 MS. GARCIA: Objection. Are you asking
4 if one other incident is a pattern?

5 MR. RUDD: Yes, I am.

6 A. No. I think to the extent that Mr. O'Meara
7 believes, and I think we all do, to the extent
8 that we find out that the people of the City of
9 Dover deserve to be compensated for a matter,
10 they're going to work as hard as they can to do --
11 to do that for them.

12 **Q. I'm going to hand you what's been marked as**
13 **Exhibit 86. I'll represent to you that this is a**
14 **report of some kind. I don't even have where it's**
15 **from on here, but it's Teri Stein. Do you know**
16 **Teri Stein?**

17 A. I do.

18 **Q. Who does Teri write for?**

19 A. She works for TheBargainHunter.

20 **Q. And this is dated November 2nd, 2021.**

21 A. Uh-huh.

22 **Q. So this is after litigation has been filed?**

23 A. Correct.

24 **Q. There's a quote three paragraphs from the bottom**
25 **on page 2.**

1 **resolved." Is that -- I mean, does that sound**
2 **like something that you said?**

3 A. I don't remember specifically saying that. But
4 certainly even in 20 -- late 2021 I was very
5 hopeful that the issue -- the matter
6 could -- ultimately, the parties could resolve the
7 issue somehow.

8 **Q. Why were you optimistic?**

9 A. I was hopeful that with time, cooler heads would
10 prevail and litigation would not be necessary.

11 **Q. At that point city hall was getting a little bit**
12 **chaotic with the mayor?**

13 A. Fair to say.

14 MS. GARCIA: Objection.

15 **Q. Yeah. I mean, if you look two paragraphs above**
16 **what we just looked at, "Mueller: Mr. Mayor, it's**
17 **getting old," and the response by the mayor,**
18 **"You're getting old, Bob." Pretty fair to say**
19 **that the mayor and city council weren't getting**
20 **along at all at that point?**

21 MS. GARCIA: Objection.

22 A. I think that's fair to say.

23 **Q. Do you think the disharmony in city council has**
24 **impacted the city's interactions with Dover**
25 **Chemical at all?**

1 A. Uh-huh.

2 **Q. Actually, there's -- there's -- there's -- there's**
3 **not a quote, actually, but I need to know if this**
4 **is something you said. "President Shane Gunnoe**
5 **wanted to dispel rumors that the city has refused**
6 **to sit down with Dover Chemical. Were there**
7 **rumors that the city had refused to sit down with**
8 **Dover Chemical?**

9 A. Yes.

10 **Q. Where did you learn of those rumors?**

11 A. They were -- it -- at that point, in November of
12 2021, they were floating around to -- it was
13 political season and they were floating around
14 town from various -- various sources and there
15 were rumors that the power plant was going to
16 close. There were rumors that the city was
17 refusing to talk to Dover Chemical about the
18 matter. And quite frankly, I didn't -- I -- I
19 don't know specifics of this, this quote. I guess
20 it's not a quote.

21 **Q. Yeah, I don't see quotation marks.**

22 A. Yeah, but I would say that I was fairly adamant
23 that both of those things were not true.

24 **Q. Okay. Then there's this sentence, "They have sent**
25 **a letter and the city is optimistic issues can be**

1 MS. GARCIA: Objection.

2 A. I don't know that I can answer that because I
3 don't generally directly communicate with Dover
4 Chemical.

5 **Q. I'm going to hand you what's been marked as**
6 **Exhibit 88. Sorry. This is another Times**
7 **Reporter article, this one dated April 19, 2023.**

8 A. Uh-huh.

9 **Q. That third paragraph that says, "The city has**
10 **worked hard," is that a quote from you? I'll give**
11 **you a chance to read it.**

12 A. Yes.

13 **Q. Okay. And so if we go on further where it says,**
14 **"When Dover purchases power from other sources,**
15 **there are transmission and capacity costs, he**
16 **quote -- he noted," why will the city need to buy**
17 **less electricity with Dover Chemical gone?**

18 MS. GARCIA: Objection.

19 A. Because we won't have -- we have -- like I said,
20 we have a number of purchase power contracts.
21 Those are always evolving. One drops off, some
22 drop on. And one of the mitigating -- one of
23 several mitigating factors would be we would not
24 renew some of those purchase power contracts.

25 **Q. Did you -- did you -- do you recall seeing and**

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1 reading this article?
2 A. I do.
3 Q. The second page, it says, "City officials allege
4 that the company had improperly received about 2.2
5 million in benefits and services from Dover's
6 electric field department and the surcharge was
7 designed to help recoup that money."
8 Has the city alleged \$2.2 million in
9 benefit or has that just been Doug O'Meara?
10 MS. GARCIA: Objection.
11 A. That was written by the reporter.
12 Q. I understand. And this was -- this was a month
13 and a half ago.
14 A. Uh-huh.
15 Q. This was --
16 A. Uh-huh.
17 Q. -- April 19th. And I'm asking you, has city
18 council ever alleged that Dover Chemical owes it
19 \$2.2 million? Or has that always just been Doug
20 O'Meara?
21 MS. GARCIA: Objection.
22 A. I do not -- certainly the surcharge did not come
23 out to \$2.2 million.
24 Q. I'm not asking about the surcharge.
25 A. Okay.

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1 Q. Has city council ever alleged that Dover Chemical
2 had improperly received about \$2.2 million in
3 benefits and services from Dover's electric field
4 department?
5 A. The only time I've ever seen that number was in
6 the letter from Doug O'Meara.
7 Q. City council has not alleged \$2.2 million?
8 A. I do not believe so, no.
9 Q. So when it says the surcharge was designed to help
10 Dover recoup that money from city council's
11 standpoint, that's simply not accurate?
12 MS. GARCIA: Objection. Obviously this
13 is a reporter's take.
14 Q. And I'm asking whether it's accurate.
15 A. No, the -- the next paragraph about the 1.1
16 million would be accurate.
17 Q. Well, yeah, but that doesn't say \$1.1 million in
18 damages, that just says how much is currently in
19 the escrow account. That turned out to be pretty
20 fortuitous, though, right? 1.1 exactly? Can't
21 beat that.
22 Let me give you an example here. And I
23 don't want to go through all of them, but I want
24 to go through one. Here is Exhibit 91. It's
25 October 5th, 2020, a couple weeks after the -- the

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1 initial 29-20 was put forth for its first reading.
2 If you go to the very back page, page 4,
3 there's -- just simply "Emergency Ordinance 29-20
4 up for second reading. Emergency ordinance to
5 reset the rates for electric use provided by Dover
6 Electric Light and Power. Motion by Moss to hold,
7 second by Maurer. Discussion, motion carried.
8 Hold."
9 It's fair to say the discussion was
10 nothing of substance --
11 MS. GARCIA: Objection.
12 Q. -- because there's no substance recorded here?
13 Everywhere else it talks about what people say.
14 MS. GARCIA: Object.
15 Q. I mean, what -- what should I take from this? Or
16 do I just need to go listen again to all these
17 things?
18 MS. GARCIA: Objection.
19 A. On a second, third, however many, right, readings
20 in between the initial -- the initial first
21 hearing, first reading --
22 Q. Yep.
23 A. -- and the final passage, whatever that may be, I
24 think in this case it was like 14.
25 Q. It was a lot.

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1 A. Something like that. It's not uncommon for there
2 simply just to be a motion to hold and you
3 continue -- continue on until you're ready to take
4 it up for final debate.
5 Q. I'm going to hand you what's been marked as
6 Exhibit 92. This is a week after. This is
7 October 12th, 2020, committee of the whole. It
8 says you called the meeting to continue discussion
9 on proposed Ordinance 29-20. Was Homrighausen
10 excluded from this meeting specifically?
11 MS. GARCIA: Objection.
12 A. It says, "O'Meara stated he would recommend
13 starting with only the seven members, the auditor
14 and the president. Motion by Mueller entered into
15 executive session." So only those members would
16 be present.
17 Q. Okay. So do we know -- I don't see an attendance
18 on this. Do we know whether Homrighausen was
19 there and excluded or --
20 A. The mayor is not necessarily required to attend
21 the committee of the whole meetings.
22 Q. Uh-huh. Correct. So we don't know from this
23 whether he was there or not?
24 A. I do not.
25 Q. Okay.

1 A. I would not be able to answer that for sure.
2 **Q. All right. And it says you were in the executive**
3 **session for an hour and 28 minutes. Do you**
4 **recall -- again, don't get into any conversations**
5 **with counsel. Do you recall what city council**
6 **discussed in that meeting specifically?**

7 MS. GARCIA: And I'm going to object and
8 instruct you not to answer what was discussed
9 in executive session of the council
10 meeting -- the council committee meeting.

11 MR. RUDD: So not everything that was
12 discussed in executive session is necessarily
13 confidential. You know that?

14 MS. GARCIA: I do know that, but I'm
15 right now, I'm instructing him not to answer
16 any questions about what was discussed in
17 executive session.

18 MR. RUDD: Well, why don't you maybe
19 consider instructing him what he shouldn't
20 talk about and then he can answer anything
21 that's not confidential?

22 MS. GARCIA: I'm going to go and stick
23 with my original instruction.

24 MR. RUDD: I mean, obviously you
25 understand -- and then we'll just make this

1 A. So I did -- Tom Johnson is a former employee.
2 **Q. Okay. So you spoke with him. Did you get any**
3 **written statement from him?**

4 A. No.

5 **Q. Larry Lautzen -- I don't want to say it wrong.**

6 A. Lautzenheiser.

7 **Q. Lautzenheiser. I'm sorry.**

8 A. We did not get a written statement from him.

9 **Q. Okay. From anybody else that isn't part of the**
10 **city?**

11 A. No. There was a general reluctance to become
12 involved in this matter.

13 **Q. By other people?**

14 A. Yeah.

15 **Q. Not by the city. All right.**

16 MR. RUDD: The -- let's go off the record
17 for about five minutes. I might be almost
18 done.

19 MS. GARCIA: Okay.

20 THE VIDEOGRAPHER: Off the record. The
21 time is 2:23.

22 (Recess was taken.)

23 THE VIDEOGRAPHER: We're back on the
24 record. The time is 2:25.

25 BY MR. RUDD:

1 note for the record. The only way to know
2 what information city council had and what
3 information and the motives city council had
4 is -- are facts that are legally significant
5 for the challenge to whether or not this is a
6 legal action on their part to -- to impose
7 this surcharge.

8 And so obviously, I'm not going to argue
9 with you about whether your witness is going
10 to answer that question, but we need to try
11 to come up with something to -- to allow me
12 to explore this. And if we need to come back
13 and do it, we'll come back and do it, but I
14 at least want it on the record that I'm
15 trying.

16 MS. GARCIA: Okay.

17 **Q. I'm going to do my best to skip as many of these**
18 **as I can.**

19 **Did city council obtain statements from**
20 **any nonparties to this litigation to substantiate**
21 **its claimed --**

22 A. Explain what you mean by "nonparties."

23 **Q. I mean someone who doesn't work with the city**
24 **currently. Someone who isn't the city. All**
25 **right. So, like, former employees.**

1 **Q. I'm going to hand you what's been marked as**
2 **Exhibit 104. I will represent to you that this is**
3 **an open letter sent out around campaign time by**
4 **Douglas O'Meara. Do you see that? Have you seen**
5 **this document before?**

6 A. I don't know if I've seen this document before,
7 but I certainly was -- I'm aware he was handing
8 out letters and fliers.

9 **Q. So you haven't seen this document before?**

10 A. Around campaign time I was a little busy with my
11 own stuff.

12 **Q. Okay. Has -- has anyone at city council or**
13 **elsewhere talked to you about Mr. O'Meara's claim**
14 **that recovery in this case for the city will far**
15 **exceed \$1 million?**

16 MS. GARCIA: Objection.

17 A. No.

18 **Q. You wouldn't have any idea what that claim's based**
19 **on?**

20 MS. GARCIA: Objection. It says, "In my
21 opinion," so --

22 MR. RUDD: I know. It's still a claim.

23 A. This was his campaign document. He obviously
24 doesn't run those past me in any way, shape or
25 form.

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1 **Q. Okay.**
2 A. So I did not talk to him any -- about any of the
3 specifics of this document.
4 **Q. Has the city -- has the city made any fiscal**
5 **decisions based upon the contingency of what may**
6 **or may not be recovered in this case?**
7 MS. GARCIA: Objection.
8 A. Not at this point, no.
9 **Q. I'm going to hand you what's been marked as**
10 **Exhibit 105. I will represent to you that this is**
11 **a response signed by then-Mayor Homrighausen**
12 **recommending to city council not to move forward**
13 **with the Ordinance 29-20. Have you seen this**
14 **document before?**
15 A. I have.
16 **Q. Was there discussion among council as to the**
17 **merits of Mayor Homrighausen's position as set**
18 **forth here?**
19 A. I'm sorry, I'm reading the letter. I remember
20 council received the letter.
21 **Q. Uh-huh.**
22 A. To the extent individual council members discussed
23 or debated parts of that proposal, certainly they
24 could. Or at that point everybody was aware of
25 the 2003 document and, you know, the mayor's

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1 position on the matter, this matter. So
2 I -- council certainly had that information to
3 consider.
4 **Q. Mayor Homrighausen says, "To date" -- this is the**
5 **second page, second paragraph down, second**
6 **sentence of the second paragraph on the second**
7 **page. "To date, there has not been any public**
8 **mention of whether members of city council have**
9 **met with company representatives to have**
10 **meaningful discussions to possibly avoid the cost**
11 **of litigation."**
12 City council reached out to invite Dover
13 Chemical to come to a board meeting, or a council
14 meeting sometime in 2021, did they not?
15 A. I believe they did, yes.
16 **Q. What -- what -- what did city council -- why did**
17 **city council make that invitation?**
18 A. There was a willingness to try and resolve the
19 matter.
20 **Q. Is this -- is this what you talked about in the**
21 **quote about the many efforts to try to keep Dover**
22 **Chemical as a customer?**
23 MS. GARCIA: Objection.
24 A. I think both -- both the meeting as well as other
25 attempts that we made to sit down and discuss the

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1 matter or relay communications to resolve the
2 matter through our attorneys, all of those would
3 go into that -- that effort.
4 **Q. That effort?**
5 A. Yeah.
6 **Q. So that includes an invitation to come to an**
7 **executive session? Do you recall that invitation?**
8 A. Potentially. I'm trying to remember that, that
9 specific invite, but I do remember we sat down
10 with Dover Chemical on at least one occasion
11 directly.
12 **Q. When was that?**
13 A. 2021.
14 **Q. Who did you sit down with at Dover Chemical?**
15 A. That may have been regarding, though, the rate
16 reduction. That may have been 2020.
17 **Q. It would have been 2020?**
18 A. That may have been 2020 regarding the rate
19 reduction. But certainly there were attempts to
20 communicate via -- or enter into mediation or
21 discuss the matter via our counsel as well.
22 **Q. Okay. Those meetings with Dover Chemical, those**
23 **were before O'Meara's litigation hold notice back**
24 **in May of 2020?**
25 MS. GARCIA: Objection.

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1 A. I could not answer that specifically without
2 reviewing more.
3 **Q. Well, we looked at -- we looked at Doug O'Meara's**
4 **e-mail to Marc Nolen that was May 24th.**
5 A. Uh-huh.
6 **Q. Memorial Day weekend.**
7 A. Uh-huh.
8 **Q. Dover had -- Dover council sets rates.**
9 A. Uh-huh.
10 **Q. There -- there were no sit-down rate reduction**
11 **meetings after that, were there?**
12 MS. GARCIA: And I'll just object. I
13 think you originally said litigation hold,
14 which was later.
15 MR. RUDD: When was that?
16 MS. GARCIA: The source of confusion. I
17 think it was --
18 THE WITNESS: The litigation hold was,
19 like, what was much later.
20 MS. GARCIA: Yeah.
21 THE WITNESS: Several months later.
22 MS. GARCIA: I think that might have been
23 what was confusing about the question, at
24 least to me.
25 MR. RUDD: All right.

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1 MS. GARCIA: But you know, you're asking
 2 after the May 24th e-mail from --
 3 MR. RUDD: Yeah, so let's talk about --
 4 let -- let --
 5 MS. GARCIA: -- Director O'Meara to Marc
 6 Nolen about the rate reduction?
 7 **Q. After the May 24th e-mail from O'Meara to Nolen --**
 8 **A. I cannot --**
 9 **Q. -- you didn't sit down with Dover Chemical to talk**
 10 **about rate reduction after that, did you?**
 11 **A. I do not believe so. I couldn't recall**
 12 **specifically, but I do not believe so.**
 13 **Q. It would be kind of awkward to do that --**
 14 **A. Yeah.**
 15 **Q. -- at that point?**
 16 **A. Yeah, understood.**
 17 **Q. I think we're done. I think we're done.**
 18 MS. GARCIA: Oh. Okay. Great. Took me
 19 by surprise.
 20 THE VIDEOGRAPHER: We're going off the
 21 record. The time is 2:35.
 22 THE COURT REPORTER: Signature?
 23 MS. GARCIA: Yeah, we'll read if the
 24 transcript is ordered.
 25 -----

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1 (Signature was not waived by the Witness.)
 2 -----
 3 (The deposition was concluded at 2:35 p.m.)
 4 -----
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1 WITNESS CERTIFICATE
 2
 3 I, SHANE GUNNOE, do hereby certify that I have
 4 read my deposition taken on June 29, 2023, in the case
 5 of Dover Chemical Corporation versus City of Dover,
 6 Ohio and City of Dover, Ohio versus Dover Chemical
 7 Corporation, consisting of 186 pages, and that said
 8 deposition is a true and correct transcription of my
 9 testimony with changes as noted on the errata sheet.
 10
 11 _____
 12 Shane Gunnoe
 13 Dated this _____ day of _____, 2023.
 14
 15
 16 Sworn to and subscribed before me this _____
 17 day of _____, 2023.
 18
 19 _____
 20 Notary Public
 21
 22 My commission expires _____
 23
 24
 25 AP

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1 ERRATA SHEET
 2 Witness Name: Shane Gunnoe
 3 Date of Deposition: June 29, 2023
 4 Case: Dover Chemical Corporation versus City of Dover,
 5 Ohio and City of Dover, Ohio versus Dover Chemical
 6 Corporation
 7 Page Line Change and Reason for Change
 8 _____
 9 _____
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 12 _____
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 14 _____
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 16 _____
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 18 _____
 19 _____
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 21 _____
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 25 _____
 AP

1 CERTIFICATE

2 STATE OF OHIO,)

) SS:

3 SUMMIT COUNTY.)

4 I, Anika W. Patrick, a Registered Merit Reporter,
Certified Realtime Reporter and Notary Public within
5 and for the State of Ohio, duly commissioned and
qualified, do hereby certify that the within-named
6 Witness, SHANE GUNNOE, was by me first duly sworn to
testify the truth, the whole truth and nothing but the
7 truth in the cause aforesaid; that the testimony so
given by him was by me reduced to Stenotypy in the
8 presence of said witness; afterwards prepared and
produced by means of Computer-Aided Transcription, and
9 that the foregoing is a true and correct transcription
of the testimony so given by him as aforesaid.

10 I do further certify that this deposition was
11 taken at the time and place in the foregoing caption
specified, and was completed without adjournment.

12 I do further certify that I am not a relative,
13 employee of or attorney for any party or counsel, or
otherwise financially interested in this action.

14 I do further certify that I am not, nor is the
15 court reporting firm with which I am affiliated, under
a contract as defined in Civil Rule 28(D).

16 IN WITNESS WHEREOF, I have hereunto set my hand
17 and affixed my seal of office at Akron, Ohio, this 7th
18 day of July, 2023.

19
20

Anika W. Patrick, RMR, CRR & Notary Public
My commission expires March 13, 2025

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22
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A				
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APPENDIX

B




RIDGEWOOD THE NEXT HILL THAT SANDY VALLEY HAS TO CLIMB

SPORTS, PAGE B1



DUO USING FACEBOOK TO HELP NC'TOWN

LOCAL, PAGE B1

TODAY FRI SAT
  
 87°/61° 77°/61° 82°/67°

Complete forecast, Page A2

Good morning,
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The Times-Reporter

MOVING OUR COMMUNITY FORWARD

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Thursday, September 10, 2020

TimesReporter.com

Dover Chemical may face surcharge

City wants to recoup cost from 44 years of service

By Jon Baker
 Times Reporter staff writer

DOVER Council is considering an ordinance to put a surcharge on electricity used by Dover Chemical Corp.,

which would allow the city to recoup the cost of what Law Director Doug O'Meara says is illegal services the Dover Electric Field Division has been providing the company for 44 years.

The ordinance, which will be discussed at a council committee of the whole meeting at 7 p.m. Monday, would put the surcharge on all city electric customers outside the corporation limit that

use more than 100,000 kilowatt hours per month. Recently, council members rejected a request by Dover Chemical for a reduction in its electric rates by about \$1 million per year.

"Of course, the rest of the customers of the city of Dover would have to pick that up," O'Meara said.

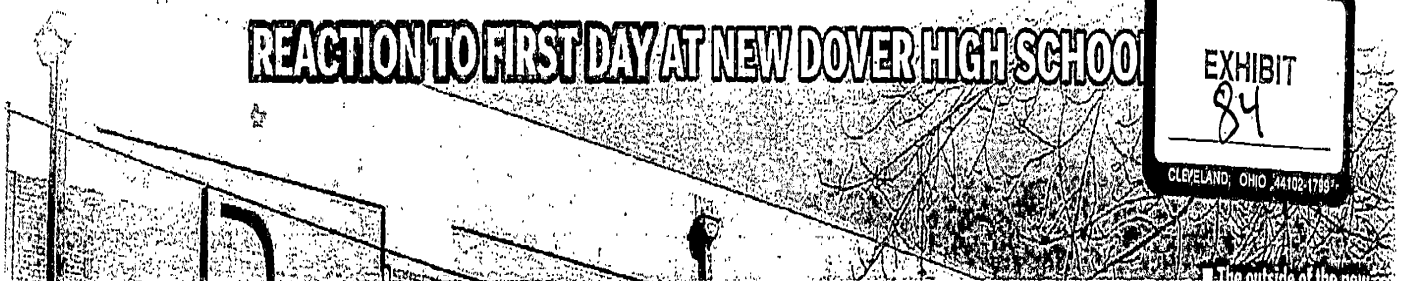
According to the law director, employees of the Electric Field Division have been maintaining and upgrading the lines and equipment inside

the plant, in violation of an ordinance passed by council in 1975.

Power customers are responsible for maintenance of all infrastructure beyond their electric meter, but O'Meara says the city has performed

SEE SURCHARGE, A5

REACTION TO FIRST DAY AT NEW DOVER HIGH SCHOOL



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 CLEVELAND, OHIO 44102-1769

SURCHARGE

From Page A1

that maintenance for Dover Chemical.

In a letter to council, he cited one example.

On Feb. 25, 2017, at least seven employees worked 14.5 hours of overtime to repair a pole broken at Dover Chemical.

"The employees performed extensive maintenance directly as a result of extensive damage when DCC (Dover Chemical Corp.) damaged and caused an extensive failure," he wrote.

"This pole was broken by DCC after they were told that numerous poles and pieces of equipment on the premises and behind the DCC meter were dangerous and unsafe. Despite extensive advanced warning and information that they need to repair and maintain the equipment, DCC did not do so."

O'Meara estimated that over the past 44 years, Dover Chemical has received about \$2.2 million in free uncompensated services.

"They would have a breakdown or something would happen and we would go in there with our expensive equipment, with our expensive materials, our expensive employees and do the work and not bill them," he said.

The language of the proposed ordinance also says that Mayor Richard Homrighausen knew about "this illegal, improper and unsafe arrangement," citing a letter the mayor wrote to Dover Chemical on Feb. 5, 2003.

"It is the city's opinion that continuing the practice of the City of

Dover maintaining and upgrading the lines and equipment inside the main plant of Dover Chemical, past the Primary Metering Pole, is not in accordance with the Electric Service Regulations of the City of Dover, nor is it in the best interests for safety concerns for Dover city personnel," the mayor wrote.

So on May 1, 2003, the city turned over ownership of all electric facilities and equipment at the plant to the company.

"Thereafter this agreement was immediately violated," O'Meara wrote in his letter to council. "Until my discovery in late 2019, Dover electric field division continued to improperly and illegally maintain DCC's facilities and equipment."

Asked at Tuesday's city council meeting about the situation, Homrighausen said he had no comment.

O'Meara said the surcharge, if approved, would help Dover recoup some of the money it has spent over the years servicing the company's equipment.

"It probably won't be enough but it will be at least something to repay some of the benefits that nobody else got, certainly nobody in the city," he said.

He added, "It should not have occurred. It should not have happened, and it should not have been allowed. When I discovered it, I essentially issued the order that they stop providing the illegal gift."

Contacted for comment, Dover Chemical President Jack Teat said, "I have no facts to make a comment right now."

APPENDIX

C

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
2023 AUG - 8 PM 4: 07
JEANNE M. STEPHEN
CLERK OF COURTS

Madison Duff

From: Tim
Sent: Monday, August 7, 2023 3:17 PM
To: Madison Duff
Subject: Fwd: O'Meara Deposition
Attachments: Doug Letter provided to Jon Baker on Sept. 8, 2020.pdf

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From: Garcia, Dolores <dgarcia@ulmer.com>
Sent: Friday, June 30, 2023 8:47:02 AM
To: Tim <trr@braumrudd.com>
Cc: John McLandrich <jmclandrich@mrrlaw.com>; Scott Braum <slb@braumlaw.com>; Schwallie, Halden <hschwallie@ulmer.com>; Wilson, Robin <rwilson@ulmer.com>
Subject: RE: O'Meara Deposition

Tim,

We will produce a bates stamped version of this document, but in advance of the depo today attached is a pdf. This was provided to Jon Baker on September 8, 2020.

Lola

Dolores Garcia
Ulmer & Berne LLP
p 216.583.7430
c 216.973.2701

From: Tim <trr@braumrudd.com>
Sent: Thursday, June 29, 2023 10:13 AM
To: Garcia, Dolores <dgarcia@ulmer.com>
Cc: John McLandrich <jmclandrich@mrrlaw.com>; Scott Braum <slb@braumlaw.com>; Schwallie, Halden <hschwallie@ulmer.com>
Subject: O'Meara Deposition

Before tomorrow's deposition, please identify and produce O'Meara's letter to city council that was quoted extensively in Jon Baker's Sep. 10, 2020 Times-Reporter article.

Tim

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DOUGLAS J. O'MEARA
DOVER OHIO LAW DIRECTOR
DOUG.OMEARA@DOVEROHIO.COM

Dover city council

Re:
Dover Chemical

Updated with additional information August 17, 2020 in red below (please review) June 30, 2020

Ladies and gentlemen:

On December 15, 1975, Dover council passed ordinance 111-75 which approved the Dover Light and Power electric service regulations (ESR). The regulations mandated by council governed development, service, and charges for electric services by the electric field division of Dover Light and Power (DLP) for the city of Dover, Ohio. These regulations have been applied for Dover light and power customers from January 1, 1976 until the present with regards to electric service from the city of Dover with one exception.

That exception is Dover Chemical Corporation (DCC). Without consent from council by ordinance or an amendment of the ESR regulations approved by council, in violation of the ESR regulations, and as an illegal gift to DCC, improper and illegal services have been provided for decades, and certainly within the memory of all present employees with knowledge. Possibly, as early as June 1, 1976, the regulations were violated by a possible side agreement contrary to the ordinance 111-75 and the ESR regulations. Even the purported side agreement was immediately violated by DCC. In other words, in the entire memory of existing employees, contrary to the ESR and ordinance 111-75, and probably as early as June 1, 1976, an illegal arrangement was made with DCC.

Today, I have seen a letter dated February 5, 2003. It is apparent from that letter that the issues addressed recently were reported back then and at the insistence of someone ostensibly addressed. I say ostensibly because they were addressed (at least in part) in that letter. The letter acknowledges that the arrangement violated Dover's own rules and regulations. The rules and regulations were the 1975 ordinance adopting the electric service regulations. They were referenced and included with the letter.

The letter said the practice of maintaining and upgrading the lines and equipment inside of Dover Chemical would end since it was not in accordance with the rules and regulations, unsafe, and DCC was the only customer who received those services, and was certainly unfair to other customers.

Dover thereupon gave to Dover Chemical poles, lights, transformers without any payment and then said that Dover Chemical would be responsible for all maintenance, remain in compliance with the rules and regulations, and comply with Dover ordinances.

Thereafter this agreement was immediately violated. Until my discovery in late 2019, Dover electric field division continued to improperly and illegally maintain DCC's facilities and equipment. DCC never did the upgrades required in large part because the Dover electric field division continued to the rescue whenever the equipment of DCC failed or needed attention. This was always (I would venture) on employee overtime or effectively overtime (causing more than

8 hours a day or more than 40 hours per week) even when not done after customary work hours with our expensive equipment and our expensive materials.

At a meeting on another subject matter in late 2019 (probably September 2019), in an off the cuff after the meeting conversation, I learned that DLP employees were performing behind the meter services for DCC, and most upsetting, providing those highly skilled, high cost services, equipment, and materials to DCC without charge. I immediately said that it was an illegal gift to a private corporate entity that was not permissible under Ohio law. Therefore, the next few times that Dover DLP employees went on the DCC premises for work behind the meter, some of the costs were charged, but certainly not all, and not at industry emergency rates that would have been charged had a private skilled contractor been called to perform these emergency highly skilled after hours work.

As council is aware, much of the information that has been discovered, was discovered as a result of the request of DCC for a lowering of its electric service rates. After inquiry, it was discovered that Dover had adopted an ordinance imposing electric service regulations (ESR) and had required electric service be provided pursuant to those regulations. With possible rare one-time exceptions, the only customer and service provision that has violated these ESR regulations is DCC. After further investigation, and with notice to DCC, the illegal services have been terminated.

Council requested that an estimate of the value of these illegal services be chronicled. Without a full litigation discovery process, those accurate figures for each year cannot at present be determined. Nonetheless, there are some parameters that have been determined and some costs that can be estimated in a probable range. Also, historically, the illegal and improper services were more regular before 2008 after a change was made in late 2007. After 2008, the best estimate is that DLP employees have gone behind the meter to perform services about 5 times a year. Before 2008, those behind the meter services were provided much more often.

An example of services provided is the February 25, 2017 service performed and described as "pole broken off at Dover Chemical". This is a clearly limited and inadequate description. We had at least 7 employees (not counting supervisory employees) who worked 14.5 hours of overtime with Dover DLP equipment, and Dover DLP materials. The employees performed extensive maintenance directly as a result of extensive damage when DCC damaged and caused an extensive failure. The fact we were doing this extensive maintenance and repair was not the only unusual situation. This pole was broken by DCC after they were told that numerous poles and pieces of equipment on their premises and behind the DCC meter were dangerous and unsafe. Despite extensive advance warning and information that they need to repair and maintain this equipment, DCC did not do so.

One of the DCC considerations probably was the fact that if it or the other inadequate and dangerous equipment did fail, as it did, Dover DLP would come to the rescue and repair, replace, and maintain this problem that was caused by DCC willful behavior free of any cost or charge. DCC was right: that is what occurred after they caused the failure. The failure also caused extensive other damage that was repaired and replaced by DLP employees at Dover DLP expense. The description "pole broken off" was a gross understatement of the damage caused and the work that was performed, materials repaired and replaced, and equipment used.

Another unusual aspect is the fact that had anyone else negligently damaged a Dover DLP pole, we would keep track of all employee costs, all equipment used, all materials used, and then we would cause a bill to be sent to the responsible party and collect that obligation. We do that if our property was damaged. So not only did we not collect when we would collect from all

others responsible, we provided these services, equipment, and materials for free to DCC for damage they caused to their own equipment, after full knowledge that this equipment would fail.

Again, without going through a full accounting through extensive discovery, the exact amount of this one instance, as a cost to the city of Dover and its citizens, is unknown with absolute certainty. Nonetheless, based upon my conversations with DLP personnel, the probable range of this uncollected amount is in the \$10,000.00 to \$25,000.00 range. Further discussions have led me to believe that a probable cost (if charged by private industry on an emergency basis, after hours, without advance notice for similar services) on a regular and consistent basis (about 5 times a year since 2007 and much more often before that) would be an average of at least \$5,000.00 per episode and perhaps up to \$10,000.00 per episode on average. If the average cost was only \$5,000.00 per episode and there was an average of only 10 episodes per year for 44 years, the total would be in the range of \$2,200,000.00 of free uncompensated services. If triple damages (due to a pattern of corrupt activity – a very reasonable finding) were awarded, that figure would be \$6,600,000.00 plus all costs and attorney's fees.

Council could take this approach.

[As an aside, I do not believe that this is the only time that the city has been damaged by DCC. The purchase of the old armory in 1995 and 1996 for the amount paid is highly suspect. DCC used the armory after it was sold to Dover free of rent for many years. The rent of the parking lot for \$300.00 per year is extremely low and undercharged. We can terminate that ridiculous parking lot rental agreement and amount immediately and should do so. If DCC then wants to rent parking at a reasonable rate with full protections to the city of Dover, we can consider a new parking lot agreement.]

The other approach would be to collect an amount in addition to the present charges by an ordinance providing that DCC would have a surcharge added to all out of the city customer's bills, but only for electric services over the 200,000, 300,000, 400,000, 500,000, or 600,000 KVA (I believe that is the correct term), so that only customers over that threshold would be billed and collected. The threshold would be selected so that it applied to DCC only. The threshold would be established so it only affected the one customer that received these valuable illegal services over the last 44 years until \$2.2 million is collected or they leave the Dover system. This action is clearly justified. The ordinance supplemental rate charge amount should include an addition for the unpaid services and an addition for the unpaid KWH taxes (to Dover).

A rate adjustment applicable to only out of the city customers, and only customers over a specific monthly KVA threshold is appropriate. The city of Diver should adjust that KVA rate over the needed threshold to collect at least \$50,000.00 to \$100,000.00 per month until DCC attempts to leave. Said action and adjusted rate would be easily justified.

As I have noted, DCC and AEP cannot simply throw the switch and DCC leave DLP. Also, AEP has safety and engineering standards which DCC probably does not meet and probably will not meet in the short term. The internal DCC improvements before AEP will connect are likely \$200,000.00 or more. Also, the non-redundant AEP line at 15,000 KV (the service presently provided to DCC by DLP but in a redundant, and therefore, more reliable fashion) would cost DCC about \$800,000.00.

I would therefore ask council to consider an out of the city customer surcharge over a stated and specific monthly usage. If council would consider, then we can ask what the highest regular out of the city customer use (that is not DCC) is from the billing department. The new adjusted higher rate would then apply to KVA only over that usage.

Though we can do this without statement of the justification, I would propose that the ordinance state the reasons and justifications. While I consider the DCC threats to be in the realm of blackmail and extortion, I believe our legal response to collect the illegal benefits that have been garnered by DCC over the last 44 years to be perfectly appropriate, measured, responsible to our citizens, and a way to collect part of what is owed.

I await council's direction.

Considering this additional information, I believe it is more imperative to take the action of raising the DCC rates. The letter of February 5, 2003 acknowledged the illegality of the behavior and the need to correct the situation. Despite that clear knowledge, the situation was not only not corrected, but continued unabated.

I would ask again that council schedule a meeting to consider the increase in 'out of city customer' industrial rates for electric service over 100,000 kWh per month to recoup some of these improper and illegal benefits provided to one singular customer. Recovering some of these illegal benefits is undoubtedly justified. As noted previously, this customer is not in the city, does not pay income tax to Dover, does not pay property taxes to Dover on most of its property, and does not pay KWH taxes to Dover. And yet despite these facts, these benefits were given to this singular customer, and not to any other city customer.

Despite these inequities, this large industrial customer received these illegal benefits not only since June 1, 1976, but more importantly after February 5, 2003 after the knowledge of the situation is shown and addressed in black and white. I believe it is time to act.

Douglas J. O'Meara
Dover Ohio Law Director
Doug.omeara@doverohio.com

APPENDIX

D

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
2023 AUG - 8 PM 4: 07
JEANNE M. STEPHEN
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

DOVER CHEMICAL CORPORATION,)	CASE NO. 2021 CV 02 0097
)	
Plaintiff,)	JUDGE THOMAKOS
)	
versus)	
)	
CITY OF DOVER, OHIO,)	
)	
Defendant.)	

CITY OF DOVER, OHIO,)
)
Counterclaim Plaintiff,)
)
versus)
)
DOVER CHEMICAL CORPORATION,)
)
Counterclaim Defendant.)

VIDEOTAPED DEPOSITION OF DOUGLAS J. O'MEARA, ESQ.

June 30, 2023

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Premier Court Reporting
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2

1 Videotaped Deposition of DOUGLAS J. O'MEARA, ESQ.,
 2 a witness herein, called by the Plaintiff/Counterclaim
 3 Defendant for Cross-Examination pursuant to the Ohio
 4 Rules of Civil Procedure, taken before me, the
 5 undersigned, Anika W. Patrick, a Registered Merit
 6 Reporter, Certified Realtime Reporter and Notary Public
 7 in and for the State of Ohio, at the Quality Inn, 2024
 8 OH-39 W, Dover, Ohio, on Friday, June 30, 2023, at
 9 10:02 a.m.
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I N D E X

3 EXAMINATION BY	PAGE
4 Mr. Braum	6
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6 EXHIBITS FIRST MARKED	PAGE
7 110, Letter to City Counsel from Law Director O'Meara Re: Dover Chemical	26
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3

1 APPEARANCES:
 2
 3 On Behalf of the Plaintiff/Counterclaim Defendant:
 4 Scott L. Braum, Esq.
 Timothy R. Rudd, Esq.
 Braum Rudd
 5 812 East Franklin Street, Suite C
 Dayton, Ohio 45459
 6 937.396.0089
 slb@braumrudd.com
 trr@braumrudd.com
 7
 8 On Behalf of the Defendant/Counterclaim
 9 Plaintiff:
 10
 11 Robin M. Wilson, Esq.
 Dolores P. Garcia, Esq. (Via Telephone)
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 12 Skylight Office Tower
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 13 Cleveland, Ohio 44113
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 14 rwilson@ulmer.com
 dgarcia@prignitz@ulmer.com
 15
 16 ALSO PRESENT:
 17 Alex Cook, Videographer
 aclegalvideo22@gmail.com
 18
 19 -----
 20
 21
 22
 23
 24
 25

5

1 THE VIDEOGRAPHER: We are on the record.
 2 The time is 10:02. Today's date is June
 3 30th, 2023.
 4 This is the video-recorded deposition of
 5 Douglas O'Meara, and the case is Dover
 6 Chemical Corporation versus City of Dover,
 7 Ohio and the City of Dover, Ohio, versus
 8 Dover Chemical Corporation filed in the
 9 Tuscarawas County Court of Common Pleas, Case
 10 Number 2021 CV 02 0097.
 11 Will the attorneys present please
 12 identify themselves for the record?
 13 MR. BRAUM: Scott Braum on behalf of
 14 Dover Chemical Corporation.
 15 MS. WILSON: Robin -- oh.
 16 MR. RUDD: Timothy Rudd on behalf of
 17 Dover Chemical Corporation.
 18 MS. WILSON: Robin Wilson from Ulmer &
 19 Berne on behalf of the City of Dover.
 20 THE VIDEOGRAPHER: And will the court
 21 reporter please swear the witness.
 22 MS. WILSON: And one more thing, that
 23 Lola Garcia, attorney for City of Dover, is
 24 attending by phone.
 25 WHEREUPON,

6

1 DOUGLAS J. O'MEARA, ESQ.,
2 after being first duly sworn, as hereinafter
3 certified, testified as follows:
4 MS. WILSON: And before we get started,
5 if you don't mind, as we discussed, Scott,
6 I'd like just to put on the record that in
7 light of the deposition notice that DCC,
8 Dover Chemical Corporation, will take the
9 deposition of Douglas O'Meara as an
10 individual. For the purposes of the record,
11 we'd like to insert a standing objection to
12 any questions that seek testimony from
13 Mr. O'Meara in his official capacity as law
14 director.
15 MR. BRAUM: That's fine, standing -- as
16 to the standing objection so we don't have to
17 keep addressing that continuously. I -- I'm
18 not conceiving how we're taking his
19 deposition. We're here deposing Mr. O'Meara.
20 It will be what it will be as we go forward.
21 CROSS-EXAMINATION
22 BY MR. BRAUM:
23 Q. Okay. So let's just jump right into this. So,
24 Doug, and I asked you earlier if I could call you
25 Doug, you are the law director for the City of

7

1 Dover, I believe?
2 A. Yes.
3 Q. And how long have you had that job?
4 A. December of 2006.
5 Q. December 2006. Okay. So 17-ish years? Sixteen,
6 17?
7 A. It will be, yes.
8 Q. Okay. What did you do before that?
9 A. Private practice of law and law director and
10 assistant law director for various municipalities
11 and villages in Tuscarawas County.
12 Q. And so I think I know how it works, but please
13 correct me if I -- if I don't. When you were in
14 private practice and you were the assistant law
15 director for a variety of folks, was --
16 that wasn't a full-time job for those cities, you
17 still had your practice and you did that as part
18 of the your practice?
19 A. Yeah. Well, I did it on the side, yes.
20 Q. Okay. And then obviously, law director at Dover,
21 that's a full-time job?
22 A. It's not designated as full time. It's turned out
23 to be more than full time.
24 Q. Okay. And has it been that way pretty much from
25 the beginning?

8

1 A. When I first got it, I was specifically informed
2 by the prior law director that it was not full
3 time, but it turned out to be.
4 Q. Okay. And that's an elected position?
5 A. Yes.
6 Q. Okay. And so again, I don't know a ton about
7 Dover city politics, but I assume you, like, ran
8 in a primary and then you ran in the general and
9 then you got elected?
10 A. Yes.
11 MS. WILSON: Objection to form.
12 Q. And what -- what was the term on that?
13 A. It's a four-year term.
14 Q. So -- okay. So if you started in December of '06,
15 you would have been elected in November of '06?
16 A. I was appointed by the Dover Democratic Central
17 Committee after a vacancy was created by the
18 election of the prior law director as congressman.
19 Q. Okay. And so when was the first time you ran?
20 A. 2007.
21 Q. Okay. And was that just a regular election or did
22 you -- was it one of the things where you had to
23 run in the next election if you got appointed?
24 A. It was the regularly scheduled election for 2007
25 for the primary and for the general.

9

1 Q. Okay. So then it would have been '07, '11, '15,
2 '19 and '23?
3 A. '23.
4 Q. Okay. Just in general, what does that job entail?
5 A. Representing the people of the City of Dover and
6 the City of Dover.
7 Q. And when you say, "representing," is that -- is
8 that in court? Is that out of court? Is that
9 internally? What do you mean by that?
10 A. Majority of it is not in court.
11 Q. Some of it is?
12 A. A little bit over the years, sure.
13 Q. And what kind of things? Like as a prosecutor or
14 what kind of things would those be?
15 A. No, I have a police prosecutor as a -- there is a
16 railroad case that had been on hold before I was
17 appointed and had to be tried almost immediately
18 for a railroad crossing, and that was the first
19 case. There was a case involving Tuscarawas
20 County. They sued us and we countersued in
21 federal court. And that was in 2018, I believe.
22 Q. Okay. What was that case about?
23 A. That was the dispute between the City of Dover and
24 Tuscarawas County with regards to the 1989
25 wastewater treatment plant agreement signed by

10

1 both Dover and Tuscarawas County.
2 **Q. Okay. And just to make sure we're on the same**
3 **page, like when you say represented in court, do**
4 **you -- I interpret that -- and I just need to ask**
5 **you if you're on the same page. I interpret that**
6 **as like an attorney with an appearance on file in**
7 **that case on behalf of the city? Is that -- is**
8 **that what you mean by that?**
9 A. In the railroad case, absolutely. I do not recall
10 in the Tuscarawas County case whether or not I was
11 one of the attorneys of record or not.
12 **Q. Okay. But there was also outside counsel**
13 **involved?**
14 A. Yes.
15 **Q. All right. Just out of curiosity, how long have**
16 **you been practicing law?**
17 A. November 4th, 1977.
18 **Q. I should remember that for myself. I can't even**
19 **tell you, November whatever, but it somewhere**
20 **around there.**
21 **Okay. What did you do to prepare for**
22 **your deposition today?**
23 A. Reviewed documents and talked to Robin, Lola and
24 Halden, who are the attorneys at Ulmer that
25 represent the City of Dover with regards to this

11

1 matter.
2 **Q. Okay. And I want to be careful here, as you**
3 **totally understand being a lawyer. Your**
4 **conversations with Robin's team, I don't want to**
5 **get into content right now, and so who was present**
6 **during those conversations?**
7 MS. WILSON: Objection. Asked and
8 answered.
9 A. Only attorneys and client.
10 **Q. Okay. So Lola, Robin and Halden?**
11 A. I don't know if all three of them were present,
12 all three all the time or not, to tell you the
13 truth. I don't think they were, actually.
14 **Q. Okay. So were there -- were there multiple**
15 **conversations?**
16 A. I think people getting on and off the phone.
17 **Q. Okay. But so then was it -- it was one**
18 **conversation with --**
19 A. Oh, it would have been --
20 **Q. -- on the telephone?**
21 A. -- two. One on the phone and this morning with
22 Robin.
23 **Q. Okay. And this morning, so I think that one is**
24 **probably easy because Robin's the only one here,**
25 **so that was just with Robin?**

12

1 A. And Lola would have been on the phone.
2 **Q. And Lola on the phone. Okay. Anyone else**
3 **involved in that?**
4 A. Not that I know of. Nobody that I know of.
5 **Q. And then so we have the prior one on the phone.**
6 **When was that one?**
7 A. Yesterday.
8 **Q. And where were you?**
9 A. Sitting in my home office.
10 **Q. And so to the best of your understanding, and I**
11 **get that, like, some people may have come and gone**
12 **during the course of the phone call, but to the**
13 **best of your understanding as you sit here right**
14 **now, was there anybody on that phone call other**
15 **than Lola, Robin or Halden?**
16 A. It was only attorneys representing the city and
17 myself and myself.
18 **Q. Okay. But no, that's what I'm trying to**
19 **specifically pin down. You say attorneys**
20 **representing the city. Do you just mean Robin,**
21 **Lola and Halden or do you mean some other lawyers?**
22 A. Nobody else.
23 **Q. Okay. All right. So that takes us to the**
24 **documents then. Can you tell me as you sit here**
25 **right now what documents you reviewed to prepare**

13

1 **for today's deposition?**
2 A. Not precisely, no.
3 **Q. Okay. What can you tell me nonprecisely?**
4 MS. WILSON: Objection.
5 A. Various documents, but I don't recall which ones.
6 **Q. When did you review these documents?**
7 A. Yesterday and today.
8 **Q. So you reviewed these documents yesterday and**
9 **today. Did you review documents before yesterday**
10 **to prepare for today's deposition?**
11 A. I don't believe so.
12 **Q. Okay. And again, like I -- don't take this as me**
13 **trying to nitpick, but you say you don't believe**
14 **so. As you sit here right now, can you remember**
15 **reviewing documents in preparation for today's**
16 **deposition prior to yesterday?**
17 A. No.
18 MS. WILSON: Objection.
19 **Q. Okay. And so we looked at documents yesterday and**
20 **we looked at documents today and you can't tell me**
21 **any of the documents that you looked at?**
22 A. Not specifically, no.
23 **Q. Generally?**
24 A. Documents related to Dover Chemical, Dover Light
25 and Power, City of Dover.

14

1 **Q. When did you look at those documents this morning?**
2 A. After 8:30.
3 **Q. Okay. And again, I just want to make sure the**
4 **record's clear and I totally understand. So**
5 **sometime between 8:30 and 10:00 you looked at**
6 **documents, but you can't recall what any of them**
7 **were specifically?**
8 MS. WILSON: Objection.
9 A. Not specifically because they weren't identified,
10 but I looked at e-mails and I think a committee of
11 the whole minutes. That's what I recall.
12 **Q. Okay. Those are the ones you looked at this**
13 **morning between 8:30 and 10:00?**
14 A. Yes.
15 **Q. How many e-mails?**
16 A. One or two.
17 **Q. Who were they from?**
18 MS. WILSON: Objection.
19 A. They were from me to Marc Nolen.
20 **Q. What were they about?**
21 A. And I don't recall if it was an e-mail back from
22 Marc Nolen or not. What were they about? They
23 were with regards to the instruction that the
24 mayor had no right to give a gift to Dover
25 Chemical of services, materials, equipment or

15

1 property and the second one was a litigation hold
2 notice.
3 **Q. Okay. And so that -- do you remember, that's the**
4 **May 22, 2020 litigation hold notice that you**
5 **e-mailed to Marc?**
6 A. I believe that could be a correct date.
7 **Q. And you sent it to him. It was the Friday before**
8 **Memorial Day weekend?**
9 A. I have no idea if that was the Friday before
10 Memorial Day weekend.
11 **Q. Okay. It was. You can trust me. On that and**
12 **anything. But -- and so that was an e-mail, and**
13 **the e-mail basically just said something to the**
14 **effect of "Marc, please see the attached," and**
15 **then attached to that was the litigation hold**
16 **notice; is that correct?**
17 A. I believe.
18 **Q. As you sit here right now, is that the best of**
19 **your recollection?**
20 A. On that e-mail, yes.
21 **Q. Okay. So we've got that one.**
22 MS. WILSON: So, Scott, do you want to
23 show him some documents or are you going to
24 pry his memory based on --
25 MR. BRAUM: I don't know.

16

1 **Q. So we've got that one and then we had the one**
2 **where you e-mailed Marc that says, you know,**
3 **council sets rates. Is that the one?**
4 A. Council sets rates and the mayor has no authority
5 to make a gift and no mayor has no authority to
6 make a gift of materials, equipment, employees or
7 property to Dover Chemical Corporation.
8 **Q. Okay. So this morning's docs, we've got one or**
9 **two e-mails. We've talked about two. Can we**
10 **remember any other ones as we sit here right now?**
11 A. The only other one I recall is committee of the
12 whole minutes that I believe were probably May
13 26th, 2020. I'm not sure of that date. And that
14 would be, I think for today, the only ones that
15 were looked at.
16 **Q. Okay. And that was the minutes when you went to**
17 **council and requested the committee assignments to**
18 **start looking into the situation with Dover**
19 **Chemical?**
20 A. Start looking into the situation of the providing
21 of materials, equipment, employees, services and
22 property to the City of Dover by the mayor.
23 **Q. All right. So we've got two e-mails, one set of**
24 **committee meeting minutes. Any other documents**
25 **that you can recall looking at from this morning?**

17

1 A. No.
2 **Q. All right. Now let's talk about yesterday. What**
3 **documents can you tell me that you looked at**
4 **yesterday that you can recall?**
5 A. Very few, if any. The reality is I ended up
6 having to do something for the auditor that took
7 hours. I had to do something for the Dover Board
8 of Education that took hours and I had planned on
9 working on it more but that didn't happen.
10 **Q. Okay. That's all awesome, but let's talk about**
11 **the documents and not what you did for other**
12 **folks. Very few, if any. So how many?**
13 A. I truly don't recall any, but, you know, if you
14 show me something, maybe it will refresh my
15 recollection. But I truly don't remember looking
16 at any yesterday.
17 Oh, I did look at the amended complaint
18 and I never got around looking at the answer
19 because I got tied up.
20 **Q. And that would be Dover Chemical's amended**
21 **complaint?**
22 A. And I did look at a part of the answer before I
23 got interrupted again. So that would have been
24 Dover Chemical's amended complaint and it would
25 have been the City of Dover's answer and

1 counterclaim.
2 **Q. Okay. So then as we sit here right now, any other**
3 **documents that you can recall looking at yesterday**
4 **in preparation for today's deposition?**
5 A. No.
6 **Q. All right. So you -- and again I'm assuming, so**
7 **I've got to ask. I assume -- well, strike that.**
8 **Let's back up a bit.**
9 **Before the litigation was initiated, you**
10 **mentioned that you sent, and I think we can agree,**
11 **a litigation hold notice to Dover Chemical, right?**
12 A. Yes.
13 **Q. And Dover Chemical basically sent a -- and that**
14 **was in May. I'm sorry, that was in May of 2020?**
15 A. Yes.
16 **Q. And then Dover Chemical sent a litigation hold**
17 **notice to the city?**
18 A. I believe, yeah, about the same time, probably.
19 **Q. Does September, does that jog your memory at all?**
20 A. That could be right. I truly don't remember. I
21 don't think I've looked at that, that I can
22 remember, forever.
23 **Q. Hopefully you looked at it at least once.**
24 A. Well, yeah. I mean, we're going to keep every
25 document. We don't destroy documents. And, in

1 fact, we keep documents.
2 **Q. And then obviously, there was public records that**
3 **Dover Chemical requested and were produced?**
4 A. Yes. Not by me. We ended up having Ulmer produce
5 them, as you know.
6 **Q. Yes, yes, but just in general. And then obviously**
7 **once litigation began, the city requested -- or**
8 **received document requests from Dover Chemical, is**
9 **your understanding, correct?**
10 A. The city from Dover Chemical?
11 **Q. Yes.**
12 A. Yes.
13 **Q. And Dover -- I'm sorry. The city, in fact,**
14 **produced documents in response to those document**
15 **requests, correct?**
16 MS. WILSON: Objection.
17 A. I didn't produce anything.
18 **Q. The city did, though?**
19 A. You'd have to ask the attorneys what they
20 produced.
21 **Q. I don't have to ask the attorneys, I'm asking you.**
22 A. I did not --
23 **Q. Are you aware of the fact --**
24 A. I did not produce anything.
25 **Q. I'm not ask -- that's not what I'm asking. Are**

1 **you aware of the fact that the City of Dover**
2 **produced documents in this litigation?**
3 A. There might have been somebody who told me that.
4 I don't remember who.
5 **Q. So you -- I'm not asking who.**
6 A. Okay.
7 **Q. Are you aware of the fact that the City of Dover**
8 **produced documents in this litigation?**
9 MS. WILSON: Objection. Asked and
10 answered.
11 MR. BRAUM: It hasn't been, but it's
12 cool.
13 A. I assume they have.
14 **Q. So you don't know?**
15 MS. WILSON: Objection.
16 A. I know you've been given in part of public records
17 requests and probably part of this litigation
18 hundreds of thousands of pages of documents.
19 Whether or not it was done as part of a public
20 records request and -- or as additional documents
21 were found in litigation, I don't know. You were
22 given them for years.
23 **Q. And see, again --**
24 A. For years.
25 **Q. -- you say, "probably." All I want to know right**

1 **now -- heck, I'm going to ask you to speculate out**
2 **the wazoo later. All I want to know right now,**
3 **though, is what you know. And so are you aware of**
4 **the fact that the city produced documents to Dover**
5 **Chemical in this litigation?**
6 MS. WILSON: Objection.
7 A. As far as I know.
8 **Q. Yes or no?**
9 A. As far as I know, yes.
10 **Q. Okay. You have no reason to take issue with that**
11 **statement, correct?**
12 A. No.
13 **Q. Were you involved in -- strike that.**
14 **You received Dover Chemical's litigation**
15 **hold notice, correct?**
16 A. I assume so.
17 **Q. You don't specifically recall?**
18 A. Don't have any specific recollection of actually
19 receiving it or the date received, no.
20 **Q. Do you have any specific recollection of having**
21 **done anything in response to it?**
22 MS. WILSON: Objection. Stepping into
23 territory here.
24 THE WITNESS: I'm sorry. Should I answer
25 or --

1 Q. Yes.
2 THE WITNESS: Well --
3 MS. WILSON: You can answer whether or
4 not you received it.
5 A. I'm sure I gave instruction to every city employee
6 not to destroy records and to retain any records
7 with regards to Dover Chemical Corporation.
8 Q. But you don't recall that in particular right now?
9 A. No, I don't.
10 Q. Okay. Were you involved in searching for
11 documents to be produced to Dover Chemical --
12 MS. WILSON: Objection.
13 Q. -- in this lawsuit?
14 A. I would have produced anything I had.
15 Q. Again, that's not my question. Right? The City
16 of Dover has a whole bunch of people, right?
17 A. Well, I answered the question. You didn't like
18 the answer, but I produced what I had and
19 instructed city employees to cooperate fully with
20 Ulmer to produce what they had, and I did not
21 participate in that process.
22 Q. Okay. So that's what I'm trying to figure out is
23 what is -- what your involvement in that was. So
24 you obviously somehow came to find out what you
25 were supposed to look for; is that fair?

1 MS. WILSON: Objection. Asked and
2 answered. He'd already told you that he
3 responded.
4 A. I would have given Ulmer everything I had when
5 they got involved. It didn't require anything
6 requested by you or anyone else.
7 Q. Okay. So from the time Ulmer got involved you
8 gave them a bunch of documents, correct?
9 A. Yes.
10 MS. WILSON: Objection.
11 Q. During -- at any point after September of 2020 did
12 you give them any other documents about -- in
13 response to the litigation hold or document
14 requests or anything else?
15 A. I don't know if there's anything additional given
16 after the initial documents I gave them or not. I
17 don't -- really don't know.
18 Q. Okay. So you don't recall sitting here right now?
19 A. No.
20 Q. And I just want to make sure that I'm clear. So
21 you -- you instructed the city employees to
22 produce everything they had to the lawyers; is
23 that fair?
24 A. Yes.
25 Q. And did those -- did those whatever -- whatever

1 may have been produced, did that go through you?
2 Did it go directly to the lawyers? How did that
3 work?
4 MS. WILSON: Objection. This is stepping
5 into a realm that we shouldn't -- you know,
6 that's attorney-client privilege, so we're
7 not going to go into any more discussions
8 about what he -- who he -- what he said to
9 who and what he did. He's answered your
10 question. He told you that he received a
11 request, he directed that it be responded to
12 and that's his answer.
13 MR. BRAUM: Oh, I know, and I'm
14 just -- it's not attorney-client privilege if
15 documents were sent from other people to
16 somebody or they went through him and he sent
17 them to somebody. That's not a
18 priv -- that's not attorney-client privilege.
19 That's all I'm asking him.
20 A. It's attorney work product privilege and
21 therefore -- but I already told you that it was
22 provided to Ulmer.
23 Q. Well, respectfully, you're here as a witness, not
24 as a lawyer, and so your conclusions about --
25 A. I can --

1 Q. -- attorney work product, that's not your role
2 here today, respectfully.
3 A. And I answered your question.
4 Q. Did the city employees give documents to you to
5 produce to somebody or did they give documents
6 directly to somebody, to the best of your
7 knowledge?
8 A. I'm sure I received documents somewhere along the
9 line when I initially discovered that Dover
10 Chemical was receiving free services, materials,
11 equipment and property from the mayor.
12 Q. Okay. I get you like to throw all that stuff in
13 at the end of your answer, but let's talk about
14 the answer. You're saying you sure that somewhere
15 along the line you did. Can you sit here right
16 now today and tell me that's what happened?
17 MS. WILSON: Objection to form.
18 A. Absolutely.
19 Q. That is what happened?
20 A. Absolutely.
21 MR. BRAUM: Tim, what number is this?
22 MR. RUDD: That's going to be 110 based
23 on what we marked yesterday.
24 MR. BRAUM: I'll just write on it. It's
25 fine.

1 (Whereupon, Exhibit 110 was marked for
2 identification.)
3 **Q. Okay. I'm going to show you what I've marked as**
4 **Exhibit 110.**
5 MS. WILSON: For purposes of the record,
6 are we just continuing our exhibit numbers as
7 we go from the beginning of the depositions?
8 Is that how we've been doing it?
9 MR. RUDD: Yes. Yeah.
10 MS. WILSON: Okay. Thank you.
11 MR. RUDD: We've been bringing our own
12 copies of prior depositions.
13 MS. WILSON: Perfect. Thank you.
14 **Q. Are you familiar with that?**
15 **Literally you're more than welcome to**
16 **read it, I encourage you, but my only question**
17 **was, are you familiar with it?**
18 A. Yes, I am familiar with it.
19 **Q. Were you familiar with it before you just read it?**
20 MS. WILSON: Objection.
21 A. I wrote it.
22 **Q. So the answer to my question is "yes"?**
23 A. I had to make sure it was the same document I
24 wrote, and I believe it's the same document I
25 wrote.

1 **Q. So the answer to my question is you were familiar**
2 **with it before you just read it, yes?**
3 THE WITNESS: Can you repeat the
4 question, please?
5 **Q. No, I'll re-ask it. Strike the question.**
6 **Is it fair to that you just read that**
7 **document?**
8 A. Yes.
9 **Q. And prior to you reading that document just now,**
10 **were you familiar with it?**
11 MS. WILSON: Objection. Asked and
12 answered.
13 A. I had to make sure it was the same document that I
14 prepared, and yes, I prepared the document.
15 **Q. So the answer to my question is yes, you were**
16 **familiar with it prior to reading it right now,**
17 **correct?**
18 MS. WILSON: Objection.
19 A. I was familiar with it when I drafted it.
20 **Q. So the answer to my question is yes? Like I --**
21 **it's not a hard question.**
22 A. No, it isn't and I answered it.
23 **Q. No, I'd like a "yes" or "no" question, please. Or**
24 **"yes" or "no" answer, please.**
25 A. Can you answer --

1 **Q. Were you familiar -- just strike everything up to**
2 **that. Were you familiar with that document prior**
3 **to reading it just now, yes or no?**
4 MS. WILSON: Objection.
5 A. Back on June 30th and August 17th, 2020, yes.
6 **Q. At any time since June of 2020, and actually**
7 **August of 2020, because you updated that, correct?**
8 A. June 30th, 2020 and August 17th, 2020.
9 **Q. Okay. So that document was originally drafted in**
10 **June of 2020 and then you added -- it was in red,**
11 **but on my printout it's kind of grayish-looking,**
12 **correct?**
13 MS. WILSON: Objection. I'm -- I'm going
14 to object to this whole line of questioning
15 based on the attorney work-product doctrine,
16 the attorney-client privilege. I'll let you
17 go one more time, but you're really
18 stepping -- starting to step closely into
19 privilege issues.
20 MR. BRAUM: I'm really not.
21 MS. WILSON: I'm going to have to
22 instruct the witness not to answer, so --
23 MR. BRAUM: You can instruct the witness
24 to do anything you want. That's your right.
25 But that was provided to a reporter in 2020.

1 It was not produced in discovery in this
2 lawsuit. That's what I'm trying to get into
3 and I'm entitled to. If you want him not to
4 answer, tell him to do whatever you want.
5 MS. WILSON: I think we've already talked
6 about this prior to the deposition beginning
7 and I think we've decided that we were going
8 to table that and raise it at the appropriate
9 time, so I don't know --
10 MR. BRAUM: No, that was not what we
11 discussed. My understanding of what we
12 discussed and what I said for purposes of the
13 record was this document was provided to a
14 reporter in 2020. It was not produced in
15 discovery in this case. Clearly it should
16 have been. The impact of that we're going to
17 have to address later, but we're going to --
18 I'm going to want to go re-depose people
19 based on this and any other documents that
20 weren't produced and we're going to have to
21 explore with the court the issue of any
22 potential privilege waivers because you can't
23 produce documents to reporters and then
24 maintain privileges.
25 MS. WILSON: Are you -- are you finished?

30

1 MR. BRAUM: I am.
2 MS. WILSON: Okay. So again, there's a
3 lot of suppositions, a lot of beliefs in your
4 statement right there, so --
5 MR. BRAUM: Let's talk about it. Was
6 this --
7 MS. WILSON: This is your deposition, so
8 I'm just saying that -- but as -- as in
9 regards to what you want to ask him about
10 this document, you're getting close to
11 stepping into the attorney-client privilege,
12 so --
13 MR. BRAUM: You tell him to do whatever
14 you want, I'm going to ask whatever I want.
15 The consequences will be whatever they are.
16 **Q. So, Doug, this letter was produced to Jon Baker at**
17 **the newspaper, correct?**
18 A. I believe so.
19 **Q. Who gave that to him?**
20 A. I believe --
21 MS. WILSON: Objection.
22 A. -- that's the result of a public records request,
23 I gave it to them. It was a public record already
24 because of the May 26th, 2020 meeting.
25 **Q. So that was produced to the reporter because you**

31

1 **believed it to be responsive to a public records**
2 **request, correct?**
3 MS. WILSON: Objection.
4 A. Yes.
5 **Q. I'm no public records expert, but I believe that**
6 **Ohio public records laws provide exceptions for**
7 **things like attorney-client privileged documents**
8 **and whatnot.**
9 MS. WILSON: Objection.
10 **Q. Is that your understanding, too?**
11 A. I believe that --
12 MS. WILSON: Objection.
13 A. -- I gave the information to Dover City Council in
14 an open meeting, and therefore, it's an open
15 public record at that point in time.
16 **Q. Right. So not attorney-client privileged.**
17 A. It would have been attorney-client production and
18 attorney-client privileged information that was
19 released to council and then released to the
20 reporter as council in an open session and then
21 released it to the reporter as a result of a
22 public records request.
23 **Q. Right. And if you as the law director of the City**
24 **of Dover, who you're familiar with public records**
25 **requests. Fair?**

32

1 A. Yes.
2 MS. WILSON: Objection.
3 **Q. Okay. And if you believe that to be an**
4 **attorney-client privileged document, you would not**
5 **have produced it in response to a public records**
6 **request; is that fair?**
7 MS. WILSON: Objection. I'm instructing
8 the witness not to answer that question.
9 MR. BRAUM: On what grounds?
10 MS. WILSON: You're looking at his
11 thought processes, what he -- what his work
12 product thoughts were as far as responding to
13 a public records request.
14 MR. BRAUM: And that's why you're
15 instructing him not to answer?
16 MS. WILSON: Yeah.
17 **Q. Didn't Dover Chemical turn in -- turn in a public**
18 **records request?**
19 MS. WILSON: Objection. If you know.
20 MR. BRAUM: Oh, he knows.
21 **Q. We litigated that. You remember all that, right?**
22 A. I believe you turned it in to Ulmer, but I'm not
23 sure who you turned it in to.
24 **Q. Are you aware of whether or not that document was**
25 **produced in response to Dover Chemical's public**

33

1 **record request that covered the topic of that?**
2 MS. WILSON: Objection.
3 A. I have no personal knowledge of what was produced.
4 **Q. Okay. But what about what was gathered? Do you**
5 **have any personal knowledge of that?**
6 MS. WILSON: Objection.
7 A. If I was requested to provide information and I
8 did provide information to the attorneys with
9 regards to everything that I knew, that I had with
10 regards to Dover Chemical Corporation and its
11 dispute with the City of Dover.
12 **Q. You gave everything that you had?**
13 A. I believe, and this is -- this was a council
14 matter. That's public record and council's, to
15 the best of my knowledge.
16 **Q. Did you -- did you have a copy of that document?**
17 MS. WILSON: Objection.
18 A. Before today?
19 **Q. Yeah.**
20 A. I am sure it's on my computer.
21 **Q. You have no reason to think it's not?**
22 A. No reason to think it's not.
23 **Q. Who else have you given that document to besides**
24 **the reporter?**
25 MS. WILSON: Objection.

1 A. All of Dover City Council, city representatives.
2 That's the best of my recollection.
3 **Q. Okay. So sitting here right now, you can't think**
4 **of anyone else?**
5 A. No.
6 **Q. Any idea why that document wasn't produced to**
7 **Dover Chemical as part of the city's document**
8 **production in this case?**
9 A. I do not know that it wasn't.
10 **Q. I'm telling you it wasn't. You can trust me on**
11 **that. Let's just take that as a given.**
12 MS. WILSON: Objection.
13 **Q. Let's assume that it wasn't.**
14 MS. WILSON: You don't assume.
15 Objection.
16 **Q. So any idea why that wasn't produced to the city?**
17 **Or I'm sorry, to Dover Chemical?**
18 A. I do not know that it was not.
19 **Q. Okay. Do you know whether or not it was?**
20 A. I do not know what was produced because I didn't
21 produce anything other than to the attorneys.
22 **Q. Okay. Let's run with that. So for purposes of my**
23 **question, I'm taking it as a given it wasn't**
24 **produced.**
25 MS. WILSON: Objection.

1 **Q. And so there's, I guess, you tell me, I can think**
2 **of two ways that didn't happen. Maybe there's**
3 **more. It's what I want to explore. One is it**
4 **wasn't provided to Ulmer to give to us.**
5 MS. WILSON: Objection.
6 **Q. That's certainly one possibility, correct?**
7 A. I don't accept the premises of your question.
8 **Q. That it wasn't produced?**
9 A. I don't accept that.
10 **Q. Why not?**
11 A. I have no personal knowledge of that.
12 **Q. Okay. And again, for purposes of my question, I'm**
13 **just asking you to assume that.**
14 A. I won't --
15 **Q. And everything you say is based on that**
16 **assumption.**
17 MS. WILSON: Objection.
18 A. I won't assume that.
19 **Q. Why not?**
20 A. I have no personal knowledge.
21 **Q. I know. I'm not asking for personal knowledge.**
22 **I'm asking you to assume.**
23 A. You can ask me to assume anything you want. I
24 won't assume what you say is true just because you
25 say it is true.

1 **Q. Isn't that the nature of an assumption?**
2 A. I'm not going to assume what you say is true is
3 true.
4 **Q. As you sit here right now, you have no**
5 **recollection of giving that document to Ulmer, do**
6 **you?**
7 A. Personal recollection at the moment? I don't have
8 recollection of what occurred back in 2020 on
9 every item, no.
10 **Q. All right. Well, see, and here is where it gets**
11 **messy. We got an e-mail from Lola this morning**
12 **that says, "We'll produce a Bates-stamped version**
13 **of this document, but in advance of the deposition**
14 **today, here is a PDF. This was provided to Jon**
15 **Baker on September 8 of 2020."**
16 **Okay? That's how I got this document.**
17 **Are you tracking me?**
18 A. Is that a question?
19 MS. WILSON: Objection. Is there a
20 question?
21 **Q. Yes. Are you tracking me? Do you understand what**
22 **I'm saying?**
23 A. I'm not tracking you, no.
24 **Q. You're not tracking me?**
25 A. No, I'm not tracking you.

1 **Q. Do you understand what I'm saying?**
2 MS. WILSON: Objection.
3 A. If you have a question, you can ask a question,
4 but I do not track your behavior, no.
5 **Q. I got this document from Lola this morning**
6 **specifically at 8:47 a.m. Okay?**
7 MS. WILSON: Objection. Is there a
8 question?
9 **Q. Yeah. Do you understand that?**
10 A. I don't know what you got and I do not know and
11 I'm not going to assume that anything that you say
12 is correct.
13 **Q. That's fine. You don't have to.**
14 A. I don't have to. It's true.
15 **Q. Oh, I'm -- you don't have to right now. I mean,**
16 **we may get into it later. But all I'm trying to**
17 **get at is where this document has been between**
18 **2020 and 8:47 a.m. this morning. That's what I**
19 **want to talk about. So do you know anything about**
20 **where this document has been between 2020 and 8:47**
21 **this morning?**
22 MS. WILSON: Objection. Asked and
23 answered about five times.
24 A. Before September of 2020, apparently it was
25 provided to Dover council in open meetings with

1 regards to request for assignment on May 26th on
2 two separate occasions, June 30th of 2020,
3 or-abouts, and August 17th, 2020, or thereabouts.
4 And the reason I say thereabouts is that that
5 would be the additional information and in the
6 June 30th would have been based upon information
7 before that date. Whether or not it was
8 distributed to anyone on those exact dates, I
9 don't know. They would have been at meetings,
10 open meetings of council. Exact dates, I don't
11 know.

12 **Q. And then you gave it to Jon Baker on September 8**
13 **of 2020?**

14 MS. WILSON: Objection. Asked and
15 answered.

16 **Q. Correct?**

17 A. I assume so.

18 **Q. You have no reason to doubt that?**

19 A. No reason to doubt that.

20 **Q. And then do you have any knowledge as you sit here**
21 **right now about where that document has been from**
22 **September 8th of 2020 to 8:47 a.m. this morning?**

23 MS. WILSON: Objection. Asked and
24 answered six times now.

25 A. No.

1 Clearly she had it. I'm just trying to
2 figure out how she got it.

3 MS. WILSON: Understood.

4 **Q. And so do you know how that document came to be**
5 **with Lola?**

6 MS. WILSON: Objection. As I said, I'm
7 not -- he's not answering that question.

8 MR. BRAUM: Based on?

9 MS. WILSON: If he even knows. You asked
10 him how --

11 MR. BRAUM: Well, I know. That's --
12 you're objecting and I haven't -- I don't
13 even know if he knows. Why don't we answer
14 that first and then try and worry about some
15 of the other details.

16 **Q. Do you know how that document came to be with Lola**
17 **before it was e-mailed to me this morning?**

18 A. Yes.

19 **Q. And what was that?**

20 A. It was e-mailed.

21 **Q. To her?**

22 A. Yes.

23 **Q. When?**

24 A. After 8 p.m. last night.

25 **Q. It was e-mailed by you?**

1 **Q. Do you know how it came to be with Lola before it**
2 **was given to me this morning?**

3 MS. WILSON: Objection.

4 A. Yes.

5 MS. WILSON: Objection. Not -- you're
6 not going to answer that because that's --
7 that's attorney-client privilege.

8 MR. BRAUM: I don't know whether it is or
9 not.

10 MS. WILSON: Well, I'm objecting to it,
11 so --

12 MR. BRAUM: So I get it --

13 MS. WILSON: I mean --

14 MR. BRAUM: -- but like you just can't
15 make a blanket claim. I mean, I'm allowed to
16 explore it to see whether or not it really
17 is.

18 MS. WILSON: You're asking what he talked
19 to his lawyer --

20 MR. BRAUM: No.

21 MS. WILSON: -- to the city's lawyer
22 about?

23 MR. BRAUM: Nope. I asked if he -- if he
24 knew how it came to be. Lola -- Lola
25 e-mailed it to me at 8:47 this morning.

1 MS. WILSON: Objection. We've already
2 said that we're -- we're not going down this
3 path, other than to -- he just told you that
4 it was e-mailed and that's -- that's the
5 answer.

6 **Q. And so you're not going to tell me by who?**

7 MS. WILSON: Objection.

8 **Q. Okay. You're not going to tell me by who?**

9 A. By who what?

10 **Q. Who -- who e-mailed it after 8:00 last night?**

11 A. I did.

12 **Q. Where did you get it from?**

13 MS. WILSON: Objection.

14 A. Request by the attorneys, so it was in response to
15 a request by my attorneys.

16 **Q. I know, but where did you go get the document**
17 **from?**

18 MS. WILSON: Objection.

19 **Q. You said -- you said you had no reason to doubt**
20 **that it was on your computer. Did you get it from**
21 **your computer?**

22 MS. WILSON: Objection. We're
23 going -- we're going off into a line of
24 inquiry that's really going into
25 attorney-client privileges, so --

1 MR. BRAUM: I don't want to know anything
2 attorney-client privileged. He went and got
3 a document. I'm entitled to know where the
4 document came from. It wasn't given to him
5 by his lawyers. He gave it to them, and I'm
6 just trying to figure out where it came from.
7 **Q. And so -- and so, Doug, you told me you had no**
8 **reason to doubt that it was on your computer. Do**
9 **you remember that?**
10 A. Yes.
11 **Q. And is that where you went and got it last night?**
12 A. Yes.
13 **Q. So it was, in fact, on your computer?**
14 A. Yes.
15 **Q. Okay. So not that you have no reason to doubt**
16 **that it was there, but it actually was there?**
17 A. Yes.
18 **Q. And to the best of your knowledge, it had been**
19 **there since 2020?**
20 A. Yes.
21 **Q. What other documents are on your computer that**
22 **have anything to do with Dover Chemical?**
23 MS. WILSON: Objection.
24 A. Lots of documents.
25 **Q. Like what? Any you can specifically recall**

1 **sitting here right now?**
2 A. Not --
3 MS. WILSON: That's going into
4 attorney-client communication.
5 MR. BRAUM: What are you talking about?
6 Is.
7 MS. WILSON: Attorney work product.
8 You're asking --
9 MR. BRAUM: No, it's not. These are City
10 of Dover documents on his computer. I just
11 want to know what's there. I don't want to
12 know anything privileged or anything else.
13 It's not attorney work product if there's
14 documents between Dover Chemical and Dover
15 Elec -- and the City of Dover.
16 **Q. Do you re -- what kinds of documents are on your**
17 **computer about Dover Chemical?**
18 A. Everything I gathered was in my role as the Dover
19 law director and was the work product of my
20 efforts as the City of Dover law director and no
21 other reason.
22 **Q. How many documents did you give to Jon Baker?**
23 MS. WILSON: Objection. If you recall.
24 A. I don't recall.
25 **Q. Can you give me an estimate? Was this the only**

1 **one?**
2 A. I don't think so, but whatever was probably
3 referenced. There might have been reference,
4 there's an ordinance 111-75 might be there. The
5 electric service regulations might be there.
6 **Q. I don't want -- I don't want -- I don't want might**
7 **to maybes.**
8 A. You're asking might. I don't know with absolute
9 certainty, no.
10 **Q. No, I don't want might and maybes. We'll talk**
11 **about that later. I want to know what you**
12 **remember. Do -- do you recall, did you give any**
13 **other documents to Jon Baker?**
14 MS. WILSON: Objection. If you recall.
15 **Q. Not which ones or what they may have been, but did**
16 **you give other documents to Jon Baker?**
17 A. Gosh, I've given documents for public records
18 requests to Jon Baker over the years on many
19 subject matters.
20 **Q. I'm only talking about this one.**
21 A. Okay.
22 **Q. Did you give -- did you give Jon Baker any other**
23 **documents about the Dover Chemical/Dover Light and**
24 **Power situation?**
25 A. I believe it would have had 111-75 with it. It

1 would have had the electric service regulations
2 with it. My present recollection is I don't know
3 if there were other documents. They would have
4 been all -- but if they are any, all with
5 reference to what's referenced in this report to
6 council.
7 **Q. I get all that, but all I'm asking is as you sit**
8 **here right now, do you recall giving any other**
9 **documents to Jon Baker regarding Dover Chemical**
10 **and Dover --**
11 A. At this moment, no.
12 **Q. Okay. Have you ever reviewed the city's entire**
13 **document production in this case?**
14 MS. WILSON: Objection.
15 A. I do not believe so.
16 **Q. So as you sit here right now, you don't think you**
17 **have?**
18 A. Not to my recollection, no.
19 **Q. Have you ever reviewed Dover Chemical's document**
20 **production in this case?**
21 A. No. Not that I know of, I mean. If there's a few
22 documents that were supplied to me, I don't know,
23 but that came from you, but I really don't know.
24 **Q. Nothing as you -- as you can recall sitting here**
25 **right now?**

1 A. Right.
2 MS. WILSON: Just so we can kind of plan
3 out our day, how long do you think that this
4 deposition will be today as far as --
5 MR. BRAUM: Hard to say.
6 MS. WILSON: Just wondering --
7 MR. BRAUM: Hard to say.
8 MS. WILSON: Let me know when you want to
9 take a break.
10 MR. BRAUM: I can't say right now.
11 MS. WILSON: Okay.
12 MR. BRAUM: So we can take a break now, I
13 don't care. We've been going for --
14 MS. WILSON: An hour.
15 MR. BRAUM: -- roughly an hour. That's
16 cool.
17 MS. WILSON: Would you like to take a
18 break or are you good?
19 THE WITNESS: I was going to see if
20 there's a glass for water over there. Other
21 than that --
22 MR. BRAUM: There's a cup. I see a cup.
23 THE WITNESS: Glass, cup, yeah, I'm more
24 than happy to get some water.
25 MR. RUDD: There's beverages out in the

1 lobby, too.
2 MS. WILSON: Oh, there are. Water would
3 be good.
4 MR. BRAUM: Let's go off.
5 MS. WILSON: Let's take a little break
6 and get some water. That would be great.
7 THE VIDEOGRAPHER: We're going off the
8 record. The time is 10:57.
9 (Recess was taken.)
10 THE VIDEOGRAPHER: We are back on the
11 record. The time is 11:06.
12 BY MR. BRAUM:
13 **Q. Is that your phone there, Doug, on the table?**
14 A. Yes.
15 **Q. Are you recording this?**
16 A. Yes.
17 **Q. Did you tell anybody that?**
18 A. Nope.
19 **Q. Did you keep it recording when you left the room?**
20 **You did, because --**
21 A. Yes.
22 **Q. -- you haven't touched your phone.**
23 A. Yes, it's still recording.
24 **Q. And that's against the law, let alone putting**
25 **aside recording a deposition without telling**

1 **anybody.**
2 MR. BRAUM: And so you need to go talk to
3 him off the record.
4 MS. WILSON: Okay.
5 MR. BRAUM: No, we're on right now. So
6 for the record, the deposition was recorded
7 without knowledge. It's been recorded while
8 counsel were talking in the room. That is a
9 crime in the State of Ohio. Did you know
10 that?
11 THE WITNESS: I did not record your
12 conversation nor did I know you were going to
13 talk outside my presence and no, I didn't
14 turn the phone off when I left.
15 MR. BRAUM: That's your excuse, you left
16 it recording and you --
17 MS. WILSON: Objection.
18 MR. BRAUM: -- assumed I wasn't going to
19 talk?
20 MS. WILSON: Objection.
21 MR. BRAUM: Are you aware of the fact
22 that Ohio is a one-party consent state for
23 recording?
24 MS. WILSON: Objection. We're going
25 to --

1 MR. BRAUM: No, I want an answer on the
2 record.
3 MS. WILSON: I'm instructing the witness
4 not to answer that question. What
5 we're -- what we're going to do is we'll --
6 MR. BRAUM: I want that preserved. I
7 want that phone preserved. I want that
8 recording preserved, and this is going to be
9 a problem. Okay? You can do whatever you
10 want to, but this is not the way this goes,
11 and so I think we're going to take a break
12 right now.
13 MS. WILSON: Yeah, let's take a break.
14 MR. BRAUM: Because frankly, I'm a little
15 hot. But that ain't the way this rolls and
16 you know that.
17 MS. WILSON: I'm going to go off the
18 record --
19 MR. BRAUM: Let me ask. No, on the
20 record, were you aware of the fact that your
21 client was recording me surreptitiously? On
22 the record were you aware of that?
23 MS. GARCIA: We were not.
24 MS. WILSON: We were -- we had -- we had
25 no idea. I didn't -- I didn't have any idea,

1 but I -- before we go any further on this, I
2 can tell you no, but I -- I also think we
3 should stop this for a moment because I would
4 like to talk with my client.
5 MR. BRAUM: I think you should.
6 MS. WILSON: Thank you.
7 MS. GARCIA: Let's go off the record.
8 THE VIDEOGRAPHER: We're off going off
9 the record. The time is 11:08.
10 (Recess was taken.)
11 THE VIDEOGRAPHER: We are back on the
12 record. The time is 11:13.
13 MS. WILSON: Okay. Thank you for
14 bringing to my attention the fact of the
15 phone. It was an inadvertent leaving of the
16 phone in -- on the table when we left the
17 room. I was not aware of this situation.
18 We have -- we're happy to have it
19 deleted. We're happy to handle it however
20 you would like, but of course we will not
21 listen to it.
22 I know that the court reporter and the
23 videographer, I'm assuming, were in here at
24 the time, so I don't think you would have had
25 privileged communication, but of course, we

1 will not listen to that, we will delete it,
2 and thank you for bringing it to my
3 attention.
4 MR. BRAUM: I don't want it deleted, I
5 want it preserved. And I'm not exactly sure
6 how to do that. I guess he could give you
7 his phone and I trust counsel to follow the
8 law and their ethical obligations and not do
9 anything with it.
10 And so that's what I would request. I
11 want the phone surrendered to counsel and I
12 want an agreement from counsel to provide
13 that phone to somebody with appropriate
14 protections in place to get that recording
15 off there and preserved without counsel's
16 involvement.
17 MS. WILSON: Well, I can definitely
18 assure you that we will follow the law and
19 our ethical obligations. We will -- we've
20 already instructed our client to not delete
21 anything. I don't know that I can -- I'm not
22 an office -- I'm not an official in that I
23 can demand that someone surrender their phone
24 to me, but --
25 MR. BRAUM: It's what I want.

1 MS. WILSON: -- we can do whatever that
2 you would like to make sure that you are
3 assured that we are following the law and
4 your request.
5 MR. BRAUM: I want that recording
6 preserved. He can give his phone to me.
7 That's probably not going to happen. I trust
8 you.
9 MS. WILSON: Thank you.
10 MR. BRAUM: I don't trust him. So you
11 got any other ideas, throw them out there.
12 It is -- it is completely improper to allow
13 him to keep that. It's got to get off there.
14 It's got to be preserved with appropriate
15 protections put in place. I don't know how
16 to do that other than give you the phone or
17 give me the phone. I guess give the phone to
18 reporter. I trust her.
19 MS. WILSON: Okay. Can we go -- can we
20 go off the record to discuss --
21 MR. BRAUM: No.
22 MS. WILSON: -- this? Okay. So, Lola,
23 do you have some suggestions? Do you want to
24 talk to Mr. Zirm or what would you like to do
25 as far as how best to safeguard the phone and

1 make sure that we have assured counsel
2 sufficiently that we are not going to delete
3 what's on the phone? I mean, we've already
4 assured them that we're not going to listen
5 to it and --
6 MR. BRAUM: Give it to the police. It's
7 evidence of eavesdropping. I trust the
8 police.
9 MS. WILSON: I know. Lola, are you still
10 there?
11 MS. GARCIA: I'm here. Can you hear me?
12 Can you hear me?
13 MS. WILSON: Yes. Yeah.
14 MR. BRAUM: The phone and the recording
15 is evidence of a crime. It needs to be
16 preserved. Counsel have ethical obligations.
17 You're a lawyer. You should know better
18 than this.
19 MS. GARCIA: Okay.
20 MR. BRAUM: Like this is -- this is --
21 this is just so far beyond the bounds, I'm
22 literally losing my mind. But what's going
23 to happen is that phone and that recording is
24 going to get preserved somewhere other than
25 with Doug O'Meara. It is evidence of a

1 crime. Every single person, every lawyer in
2 this room and on this phone has obligations
3 about that.
4 MS. GARCIA: Scott, I understand and we
5 understand our obligation. We will surrender
6 the phone to the court reporter subject to
7 having a chance to consult with our firm's
8 general counsel in terms of the best way to
9 handle that. But at least for the time
10 being, we're happy to hand it over to the
11 reporter.
12 THE WITNESS: No, the phone is staying in
13 my position.
14 MR. BRAUM: Lola, your client just said
15 that wasn't happening.
16 THE WITNESS: Lola, Lola, the phone is
17 staying in my possession.
18 MS. WILSON: Can we do this? Can we
19 proceed with the deposition while Lola does
20 her conversation --
21 MR. BRAUM: No. No, the deposition is
22 done. Between documents at 8:45 this morning
23 that should have been produced years ago and
24 this, we're done. We're going to the court.
25 What you all choose to do with this phone,

1 I've made my position clear.
2 This is evidence of a crime that I guess
3 I'm a victim of and this is
4 not -- Mr. O'Meara respectfully does not get
5 to make the rules in this forum like he does
6 in some others and, like, that's not the way
7 this works.
8 MS. GARCIA: Okay. I understand that
9 you're choosing to end this deposition now,
10 which is fine and understandable. I think we
11 should go off the record. I don't think
12 there is a purpose in reprimanding Mr.
13 Director O'Meara --
14 MR. BRAUM: I want to know what's
15 happening with the phone on the record. It
16 is evidence of a crime. The alleged criminal
17 doesn't get to keep it. Come up with
18 something else.
19 MS. GARCIA: Well, the solution that
20 Mr. O'Meara is -- Director O'Meara is not
21 willing to do, so I --
22 MR. BRAUM: Are you instructing him to do
23 that or are you going to allow him to keep
24 it? Are you fine with that?
25 MS. WILSON: We're recommending that

1 Director O'Meara --
2 MS. GARCIA: I don't have -- I don't have
3 a -- I don't have a ready answer for you
4 right now in terms of I can't -- nor Robin
5 nor I can force Doug to do
6 anything -- Director O'Meara to do anything
7 with his phone right now.
8 MR. BRAUM: I know you can't physically
9 force him, but what are your instructions?
10 MS. WILSON: We are recommending that he
11 give -- we are recommending that he give it
12 to the court reporter until such time as we
13 have this resolved. But we are recommending
14 that. We cannot --
15 MS. GARCIA: My understanding is that
16 it's his personal cell phone, it's not a city
17 cell phone, so all we can do is recommend it.
18 MR. BRAUM: I understand that.
19 MS. GARCIA: Director O'Meara -- yeah.
20 MR. BRAUM: I completely understand that.
21 MS. WILSON: And we can also tell you
22 that we have directed him not to delete
23 anything, so --
24 MR. BRAUM: Are you going to surrender
25 your phone, Doug, in response to your

1 counsel's recommendations?
2 THE WITNESS: It is my phone. I have it
3 in my pocket. It will not go anywhere other
4 than that.
5 MR. RUDD: So our option is to have him
6 leave here today with an illegal recording?
7 MR. BRAUM: That's what we got.
8 MS. WILSON: No, our option is to
9 continue the deposition -- to finish, not to
10 continue, but to finish the deposition while
11 Lola has an opportunity to, since I am in
12 this deposition, I cannot do that, while she
13 has an opportunity to consult with our
14 general counsel --
15 MR. BRAUM: I can tell you we got
16 documents dumped on us this morning that we
17 all --
18 MS. GARCIA: You got a single --
19 MS. WILSON: You got one document.
20 MS. GARCIA: You got a single document.
21 MR. BRAUM: That is like the seminal --
22 that is like the seminal document, guys.
23 Let's be honest. And it was clear -- hold
24 on, let me -- hold on. One at a time.
25 MS. GARCIA: -- the first draft and the

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1 ordinance.
2 MR. BRAUM: One at a time.
3 MS. GARCIA: There is no new information
4 in the document, the one document that you
5 received this morning.
6 MR. BRAUM: I'm --
7 MS. GARCIA: Obviously we can't force you
8 to continue with the deposition, but
9 presumably you had other things to ask him
10 about, you know, before this morning and I
11 can only encourage you to ask him those --
12 MR. BRAUM: Here's the deal. Here's the
13 deal.
14 MS. WILSON: Yeah, we've made our client
15 available for deposition today.
16 MR. BRAUM: That's fine. Object later
17 when I bring him back. That's fine. We'll
18 take it to the court.
19 Here's the deal. I don't know what other
20 documents weren't produced. I got this
21 document. I have not had time to even digest
22 this thing. It was produced to me literally
23 while I was literally sucking down breakfast
24 at the hotel before I drove over here this
25 morning. I'm not going to proceed the

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1 deposition under those conditions, and then
2 we layer the criminal issue on top of that,
3 I'm certainly not going to proceed in light
4 of that. We're going to adjourn. We're
5 going to do what we believe to be best with
6 respect to the court or otherwise. You all
7 have the right to do the same thing and it
8 will be what it will be.
9 Apparently Mr. O'Meara is going to
10 maintain possession of his phone. I'm not
11 going to physically try and take it from him,
12 and so that's where we are.
13 MS. WILSON: And again, we're going to
14 close our remarks on the record in saying
15 that thank you for bringing this to my
16 attention that the phone was recording. We
17 have advised our client and recommended to
18 him that he give the phone to the court
19 reporter and we have assured you that what is
20 on the phone will not be deleted.
21 MR. BRAUM: You can't assure me of that.
22 You can you assure me that you've asked him
23 to do that.
24 MS. WILSON: Correct, we've assured -- I
25 can assure you that we've asked our client

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1 that he has advised that he will not delete
2 it. And we can also finally state that it's
3 my understanding that the court reporter and
4 the videographer were in the room at the time
5 that we left the room.
6 MR. BRAUM: So there's more victims of
7 the crime. Agreed.
8 MS. WILSON: Anything else before we go
9 off the record?
10 MR. BRAUM: Not from our side.
11 MS. WILSON: Okay. All right.
12 MS. GARCIA: I have nothing additional
13 before we go off the record.
14 MR. RUDD: Those records stay with the
15 court reporter. She should have them.
16 THE VIDEOGRAPHER: Are we all set?
17 MR. BRAUM: Oh, I marked the new one, I
18 marked the one new one was the only thing we
19 marked.
20 MS. WILSON: Okay. All right.
21 THE VIDEOGRAPHER: We are going off the
22 record. The time is 11:22.
23 MS. WILSON: Okay. Thank you.
24 -----
25 (Signature was not waived by the Witness.)

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2 (The deposition was adjourned at 11:22 a.m.)
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1 WITNESS CERTIFICATE

2
3 I, DOUGLAS O'MEARA, ESQ., do hereby certify that I
4 have read my deposition taken on June 30, 2023, in the
5 case of Dover Chemical Corporation versus City of
6 Dover, Ohio and City of Dover, Ohio versus Dover
7 Chemical Corporation, consisting of 64 pages, and that
8 said deposition is a true and correct transcription of
9 my testimony with changes as noted on the errata sheet.

10
11 _____
12 Douglas J. O'Meara, Esq.

13 Dated this _____ day of _____, 2023.

14
15 Sworn to and subscribed before me this _____

16
17 day of _____, 2023.

18
19 _____
20 Notary Public

21 My commission expires _____

22
23
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25 AP

1 CERTIFICATE

2 STATE OF OHIO,)
3) SS:
4 SUMMIT COUNTY.)
5 I, Anika W. Patrick, a Registered Merit Reporter,
6 Certified Realtime Reporter and Notary Public within
7 and for the State of Ohio, duly commissioned and
8 qualified, do hereby certify that the within-named
9 Witness, DOUGLAS J. O'MEARA, ESQ., was by me first duly
10 sworn to testify the truth, the whole truth and nothing
11 but the truth in the cause aforesaid; that the
12 testimony so given by him was by me reduced to
13 Stenotypy in the presence of said witness; afterwards
14 prepared and produced by means of Computer-Aided
15 Transcription, and that the foregoing is a true and
16 correct transcription of the testimony so given by him
17 as aforesaid.

18 I do further certify that this deposition was
19 taken at the time and place in the foregoing caption
20 specified, and was adjourned.

21 I do further certify that I am not a relative,
22 employee of or attorney for any party or counsel, or
23 otherwise financially interested in this action.

24 I do further certify that I am not, nor is the
25 court reporting firm with which I am affiliated, under
a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my seal of office at Akron, Ohio, this 3rd
day of July, 2023.

Anika W. Patrick, RMR, CRR & Notary Public
My commission expires March 13, 2025

1 ERRATA SHEET

2 Witness Name: Douglas O'Meara, ESQ.
3 Date of Deposition: June 30, 2023
4 Case: Dover Chemical Corporation versus City of Dover,
5 Ohio and City of Dover, Ohio versus Dover Chemical
6 Corporation

7 Page Line Change and Reason for Change

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APPENDIX

E

DOUGLAS J. O'MEARA
DOVER OHIO LAW DIRECTOR
DOUG.OMEARA@DOVEROHIO.COM

Dover city council

Re:
Dover Chemical

Updated with additional information August 17, 2020 in red below (please review) June 30, 2020

Ladies and gentlemen:

On December 15, 1975, Dover council passed ordinance 111-75 which approved the Dover Light and Power electric service regulations (ESR). The regulations mandated by council governed development, service, and charges for electric services by the electric field division of Dover Light and Power (DLP) for the city of Dover, Ohio. These regulations have been applied for Dover light and power customers from January 1, 1976 until the present with regards to electric service from the city of Dover with one exception.

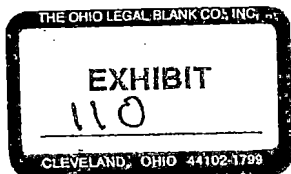
That exception is Dover Chemical Corporation (DCC). Without consent from council by ordinance or an amendment of the ESR regulations approved by council, in violation of the ESR regulations, and as an illegal gift to DCC, improper and illegal services have been provided for decades, and certainly within the memory of all present employees with knowledge. Possibly, as early as June 1, 1976, the regulations were violated by a possible side agreement contrary to the ordinance 111-75 and the ESR regulations. Even the purported side agreement was immediately violated by DCC. In other words, in the entire memory of existing employees, contrary to the ESR and ordinance 111-75, and probably as early as June 1, 1976, an illegal arrangement was made with DCC.

Today, I have seen a letter dated February 5, 2003. It is apparent from that letter that the issues addressed recently were reported back then and at the insistence of someone ostensibly addressed. I say ostensibly because they were addressed (at least in part) in that letter. The letter acknowledges that the arrangement violated Dover's own rules and regulations. The rules and regulations were the 1975 ordinance adopting the electric service regulations. They were referenced and included with the letter.

The letter said the practice of maintaining and upgrading the lines and equipment inside of Dover Chemical would end since it was not in accordance with the rules and regulations, unsafe, and DCC was the only customer who received those services, and was certainly unfair to other customers.

Dover thereupon gave to Dover Chemical poles, lights, transformers without any payment and then said that Dover Chemical would be responsible for all maintenance, remain in compliance with the rules and regulations, and comply with Dover ordinances.

Thereafter this agreement was immediately violated. Until my discovery in late 2019, Dover electric field division continued to improperly and illegally maintain DCC's facilities and equipment. DCC never did the upgrades required in large part because the Dover electric field division continued to the rescue whenever the equipment of DCC failed or needed attention. This was always (I would venture) on employee overtime or effectively overtime (causing more than



8 hours a day or more than 40 hours per week) even when not done after customary work hours with our expensive equipment and our expensive materials.

At a meeting on another subject matter in late 2019 (probably September 2019), in an off the cuff after the meeting conversation, I learned that DLP employees were performing behind the meter services for DCC, and most upsetting, providing those highly skilled, high cost services, equipment, and materials to DCC without charge. I immediately said that it was an illegal gift to a private corporate entity that was not permissible under Ohio law. Therefore, the next few times that Dover DLP employees went on the DCC premises for work behind the meter, some of the costs were charged, but certainly not all, and not at industry emergency rates that would have been charged had a private skilled contractor been called to perform these emergency highly skilled after hours work.

As council is aware, much of the information that has been discovered, was discovered as a result of the request of DCC for a lowering of its electric service rates. After inquiry, it was discovered that Dover had adopted an ordinance imposing electric service regulations (ESR) and had required electric service be provided pursuant to those regulations. With possible rare one-time exceptions, the only customer and service provision that has violated these ESR regulations is DCC. After further investigation, and with notice to DCC, the illegal services have been terminated.

Council requested that an estimate of the value of these illegal services be chronicled. Without a full litigation discovery process, those accurate figures for each year cannot at present be determined. Nonetheless, there are some parameters that have been determined and some costs that can be estimated in a probable range. Also, historically, the illegal and improper services were more regular before 2008 after a change was made in late 2007. After 2008, the best estimate is that DLP employees have gone behind the meter to perform services about 5 times a year. Before 2008, those behind the meter services were provided much more often.

An example of services provided is the February 25, 2017 service performed and described as "pole broken off at Dover Chemical". This is a clearly limited and inadequate description. We had at least 7 employees (not counting supervisory employees) who worked 14.5 hours of overtime with Dover DLP equipment, and Dover DLP materials. The employees performed extensive maintenance directly as a result of extensive damage when DCC damaged and caused an extensive failure. The fact we were doing this extensive maintenance and repair was not the only unusual situation. This pole was broken by DCC after they were told that numerous poles and pieces of equipment on their premises and behind the DCC meter were dangerous and unsafe. Despite extensive advance warning and information that they need to repair and maintain this equipment, DCC did not do so.

One of the DCC considerations probably was the fact that if it or the other inadequate and dangerous equipment did fail, as it did, Dover DLP would come to the rescue and repair, replace, and maintain this problem that was caused by DCC willful behavior free of any cost or charge. DCC was right: that is what occurred after they caused the failure. The failure also caused extensive other damage that was repaired and replaced by DLP employees at Dover DLP expense. The description "pole broken off" was a gross understatement of the damage caused and the work that was performed, materials repaired and replaced, and equipment used.

Another unusual aspect is the fact that had anyone else negligently damaged a Dover DLP pole, we would keep track of all employee costs, all equipment used, all materials used, and then we would cause a bill to be sent to the responsible party and collect that obligation. We do that if our property was damaged. So not only did we not collect when we would collect from all

others responsible, we provided these services, equipment, and materials for free to DCC for damage they caused to their own equipment, after full knowledge that this equipment would fail.

Again, without going through a full accounting through extensive discovery, the exact amount of this one instance, as a cost to the city of Dover and its citizens, is unknown with absolute certainty. Nonetheless, based upon my conversations with DLP personnel, the probable range of this uncollected amount is in the \$10,000.00 to \$25,000.00 range. Further discussions have led me to believe that a probable cost (if charged by private industry on an emergency basis, after hours, without advance notice for similar services) on a regular and consistent basis (about 5 times a year since 2007 and much more often before that) would be an average of at least \$5,000.00 per episode and perhaps up to \$10,000.00 per episode on average. If the average cost was only \$5,000.00 per episode and there was an average of only 10 episodes per year for 44 years, the total would be in the range of \$2,200,000.00 of free uncompensated services. If triple damages (due to a pattern of corrupt activity – a very reasonable finding) were awarded, that figure would be \$6,600,000.00 plus all costs and attorney's fees.

Council could take this approach.

[As an aside, I do not believe that this is the only time that the city has been damaged by DCC. The purchase of the old armory in 1995 and 1996 for the amount paid is highly suspect. DCC used the armory after it was sold to Dover free of rent for many years. The rent of the parking lot for \$300.00 per year is extremely low and undercharged. We can terminate that ridiculous parking lot rental agreement and amount immediately and should do so. If DCC then wants to rent parking at a reasonable rate with full protections to the city of Dover, we can consider a new parking lot agreement.]

The other approach would be to collect an amount in addition to the present charges by an ordinance providing that DCC would have a surcharge added to all out of the city customer's bills, but only for electric services over the 200,000, 300,000, 400,000, 500,000, or 600,000 KVA (I believe that is the correct term), so that only customers over that threshold would be billed and collected. The threshold would be selected so that it applied to DCC only. The threshold would be established so it only affected the one customer that received these valuable illegal services over the last 44 years until \$2.2 million is collected or they leave the Dover system. This action is clearly justified. The ordinance supplemental rate charge amount should include an addition for the unpaid services and an addition for the unpaid KWH taxes (to Dover).

A rate adjustment applicable to only out of the city customers, and only customers over a specific monthly KVA threshold is appropriate. The city of Diver should adjust that KVA rate over the needed threshold to collect at least \$50,000.00 to \$100,000.00 per month until DCC attempts to leave. Said action and adjusted rate would be easily justified.

As I have noted, DCC and AEP cannot simply throw the switch and DCC leave DLP. Also, AEP has safety and engineering standards which DCC probably does not meet and probably will not meet in the short term. The internal DCC improvements before AEP will connect are likely \$200,000.00 or more. Also, the non-redundant AEP line at 15,000 KV (the service presently provided to DCC by DLP but in a redundant, and therefore, more reliable fashion) would cost DCC about \$800,000.00.

I would therefore ask council to consider an out of the city customer surcharge over a stated and specific monthly usage. If council would consider, then we can ask what the highest regular out of the city customer use (that is not DCC) is from the billing department. The new adjusted higher rate would then apply to KVA only over that usage.

Though we can do this without statement of the justification, I would propose that the ordinance state the reasons and justifications. While I consider the DCC threats to be in the realm of blackmail and extortion, I believe our legal response to collect the illegal benefits that have been garnered by DCC over the last 44 years to be perfectly appropriate, measured, responsible to our citizens, and a way to collect part of what is owed.

I await council's direction.

Considering this additional information, I believe it is more imperative to take the action of raising the DCC rates. The letter of February 5, 2003 acknowledged the illegality of the behavior and the need to correct the situation. Despite that clear knowledge, the situation was not only not corrected, but continued unabated.

I would ask again that council schedule a meeting to consider the increase in 'out of city customer' industrial rates for electric service over 100,000 kWh per month to recoup some of these improper and illegal benefits provided to one singular customer. Recovering some of these illegal benefits is undoubtedly justified. As noted previously, this customer is not in the city, does not pay income tax to Dover, does not pay property taxes to Dover on most of its property, and does not pay KWH taxes to Dover. And yet despite these facts, these benefits were given to this singular customer, and not to any other city customer.

Despite these inequities, this large industrial customer received these illegal benefits not only since June 1, 1976, but more importantly after February 5, 2003 after the knowledge of the situation is shown and addressed in black and white. I believe it is time to act.

Douglas J. O'Meara
Dover Ohio Law Director
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APPENDIX

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LITIGATION HOLD AND PUBLIC RECORDS REQUEST

September 14, 2020

**VIA E-MAIL (citycouncilmailgroup@doverohio.com)
AND REGULAR U.S. MAIL**

City of Dover
110 East Third Street
Dover, Ohio 44622

Re: Dover Chemical Corporation
Electric Supply and Delivery

Dear City Council:

We represent Dover Chemical Corporation ("DCC").

In light of the City of Dover's litigation hold notice sent to DCC dated May 22, 2020 and the statements made by City representatives in their personal and official capacities related to DCC that have and/or will cause damage to DCC, its business reputation, and otherwise, the City of Dover is hereby directed to retain all documents in its possession, custody, or control which would be responsive to the City's May 22, 2020 litigation hold notice to the same extent that it expects DCC to do so. In addition to these, the City should also retain any and all documents relating to:

1. Dover Light & Power's purchase of electricity from other suppliers for resale to its customers from 2000 to the present;
2. Dover Light & Power supplying electricity to customers outside of the City from 2000 to the present;
3. Other electric companies supplying electricity or installing infrastructure inside of the City from 2000 to the present;

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4. Other electric companies supplying electricity or installing infrastructure outside of the City to current or former Dover Light & Power customers with or without the City's involvement or consent from 2000 to the present;
5. Initiation or termination of electrical services of customers of Dover Light & Power outside of the City from 2000 to the present;
6. Correspondences, e-mails, attachments, and other documents referenced in the City Council meeting of August 31, 2020;
7. Invoices, payment records, and other records of work performed by Dover Light & Power for or on behalf of DCC from 1974 to the present;
8. Invoices, payment records, and other records pertaining to supply of electricity from Dover Light & Power to DCC from 1974 to the present;
9. Matters raised by Law Director O'Meara at the City Council meetings of May 26, 2020 and August 31, 2020;
10. Provided to City Council by Law Director O'Meara at or in preparation for the City Council meetings of May 26, 2020 and August 31, 2020;
11. The email and attachments from Law Director O'Meara to City Council on August 31, 2020 which was referenced during the City Council meeting that evening; and
12. Correspondence and attachments/enclosures from AMP to the City from 2000 to the present.
13. Records of campaign contributions made to Law Director O'Meara's campaigns.
14. Records of communications between the City and AEP.
15. Records demonstrating the cost of electricity purchased, and the profit margin on the resale of that electricity, from 2000 to the present.

For purposes of this litigation hold notice, DCC adopts and incorporates the instructions and definitions set forth in the City's May 22, 2020 litigation hold notice as if fully rewritten herein.

Moreover, pursuant to O.R.C. 149.43, DCC demands that a copy of all records in the possession, custody, or control of the City that fall within the scope of the above litigation hold be produced to DCC in accordance with Ohio's open records statute as soon as practicable.

SCOTT L. BRAUM & ASSOCIATES, LTD.

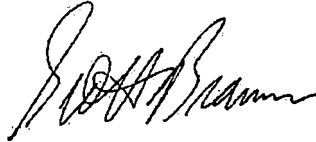
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Given the City's rush to impose penalties on DCC without even attempting to disclose the basis or reasoning to DCC, DCC demands that the production of documents begin immediately, to be supplemented at reasonable intervals thereafter. Presumably, the purported evidence of DCC's alleged misconduct, and rationale for the proposed penalties, should be readily available, particularly as the City has repeatedly accused DCC of illegal conduct.

We look forward to your confirmation of your intent to comply with this notice and request for production, along with a proposed schedule for production, by close of business Monday, September 21, 2020.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott L. Braum", written in a cursive style.

Scott L. Braum

SLB/sdh

cc: Richard Homrighausen, Mayor (mayor.homrighausen@doverohio.com)
Ryan McElduff (ryan.mcelduff@icchem.com)