

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the :
 Commission's Review and :
 Adjustment of the Fuel and: Purchased Power and the : Case No. 07-723-EL-UNC
 System Reliability :
 Tracker Components of Duke:
 Energy Ohio, Inc., and :
 Related Matters. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., to Adjust and :
 Set the Annually Adjusted : Case No. 07-973-EL-UNC
 Component of Its Market :
 Base Standard Service :
 Offer. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., to Adjust and : Case No. 07-975-EL-UNC
 Set Its 2008 System :
 Reliability Tracker. :

PROCEEDINGS

before Ms. Jeanne Kingery and Mr. Scott Farkas,
 Attorney Examiners, at the Public Utilities
 Commission of Ohio, 180 East Broad Street, Room 11-F,
 Columbus, Ohio, called at 10 a.m. on Thursday,
 December 13, 2007.

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11 On behalf of the Staff of the Public
12 Utilities Commission.

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1 Thursday Morning Session,

2 December 13, 2007.

3 - - -

4 ATTORNEY EXAMINER KINGERY: Let's go on
5 the record.

6 Good morning. The Public Utilities
7 Commission of Ohio has called for hearing at this
8 time and place Case No. 07-723-EL-UNC, being In the
9 Matter of the Commission's Review and Adjustment of
10 the Fuel and Purchase Power and System Reliability
11 Tracker Components of Duke Energy Ohio, Inc., and
12 Related Matters; Case No. 07-973-EL-UNC, being In The
13 Matter of the Application of Duke Energy Ohio, Inc.,
14 to Adjust and Set the Annually Adjusted Component of
15 Its Market Based Standard Service Offer; and Case No.
16 07-975-EL-UNC, being In The Matter of the Application
17 of Duke Energy Ohio, Inc., to Adjust and Set Its 2008
18 System Reliability Tracker.

19 My name Jeanne Kingery, this is Scott
20 Farkas, and we are the Attorney Examiners who have
21 been assigned by the Commission to hear this case.

22 At this time let's begin with the
23 appearances of the parties. Duke.

24 MR. D'ASCENZO: Thank you, your Honor.

1 On behalf of Duke Energy Ohio I am Rocco D'Ascenzo.
2 Also with me is Paul Colbert. Our business address
3 is 139 East Fourth Street, Cincinnati, Ohio 45202.

4 ATTORNEY EXAMINER KINGERY: Thank you.

5 MS. MOONEY: Yes, your Honor, on behalf
6 of Ohio Partners for Affordable Energy, David C.
7 Rinebolt, I am Colleen Mooney, 231 West Lima Street,
8 Findlay, Ohio.

9 ATTORNEY EXAMINER KINGERY: Thank you.

10 MR. NEILSEN: Your Honor, for the
11 Industrial Energy Users - Ohio, I am Daniel J.
12 Neilsen with the offices of McNees, Wallace & Nurick,
13 21 East State Street, 17th Floor, Columbus, Ohio
14 43215.

15 MR. BOEHM: Good morning, your Honor.
16 Kurt Boehm, appearing on behalf of Ohio Energy Group,
17 the law firm of Boehm, Kurtz & Lowry, 36 East Seventh
18 Street, Suite 1510, Cincinnati, Ohio 45202.

19 MR. SMALL: Your Honor, on behalf of the
20 Residential Customers of Duke Energy Ohio, Janine
21 Migden-Ostrander, Consumers' Counsel, Jeffrey Small,
22 counsel of record, I think it's called now, and Ann
23 Hotz, Assistant Consumers' Counsel, Office of the
24 Ohio Consumers' Counsel, 10 West Broad Street, Suite

1 1800, Columbus, Ohio 43215.

2 MR. MARGARD: Thank you, your Honor. On
3 behalf of the staff of Public Utilities Commission of
4 Ohio, Marc Dann, Ohio Attorney General, Duane W.
5 Luckey, Section Chief, by Assistant Attorneys General
6 Werner L. Margard and Thomas W. McNamee, 180 East
7 Broad Street, 9th floor, Columbus, Ohio.

8 ATTORNEY EXAMINER KINGERY: Thank you. I
9 believe at this point we -- I understand there is a
10 motion to be made.

11 MR. SMALL: Well, your Honor, I am not
12 sure it's in the form of a motion. It has to do
13 with -- I will explain it, and then I will put it in
14 the form of a motion.

15 ATTORNEY EXAMINER KINGERY: Thank you.

16 MR. SMALL: What the discussion was
17 earlier off the record between counsel had to do with
18 the appearance of representatives of Liberty, the
19 auditors, one or more representatives of that
20 organization to put onto the record and be subject to
21 cross-examination regarding the audit report. The
22 OCC believes that the Commission ordered the audit
23 report. The audit report comes in with a live
24 witness and is an evidentiary matter. That is the

1 proper way to bring in the expert with an opinion of
2 the auditors.

3 That having been said, and I was informed
4 late yesterday that the auditors would not be present
5 in the room today and would not be available until
6 sometime during January, the OCC may have a need to
7 cross-examine the auditor's representatives.
8 However, that need may -- it's possible that that
9 need would not arise.

10 And what we offered today to counsel was
11 a situation where we would have a conversation with
12 one or more representatives of the auditor, a
13 telephone discussion, nothing more, not a deposition
14 or anything but a discussion, to ask certain
15 questions to determine whether we would need to have
16 a live witness or just enter the auditor's report
17 into evidence as a report, and we would make a
18 determination based upon that conversation, and I
19 believe a greater than 50 percent chance that we
20 would not have to have a live -- live witness, and
21 this was our plan to move these proceedings along.

22 Now, in addition to that, as your Honors
23 know, that the SRT/FPP matters have been consolidated
24 but the AAC matters, and I believe nothing I am

1 addressing now involves the AAC at all, so that under
2 no circumstances would there need to be any kind of
3 delay regarding the AAC portions of this. I am not
4 sure whether I am advocating unconsolidating it, but
5 we would have no objection to moving forward with the
6 AAC portion of this proceeding because it doesn't
7 involve a situation with the auditor.

8 It is our position that in the advocacy
9 for speed in this process, the other counsel slowed
10 this process down because apparently the position of
11 other counsel is that we don't have such a right to a
12 live witness of the auditor. So at this time what I
13 ask the Bench, and put this in the form of a motion,
14 is for the Bench to order the procedure that I
15 propose, which is that the audit report which is very
16 important to the testimony of other witnesses, be
17 entered into the record but with a reservation of
18 right for those -- the OCC to later cross-examine
19 that witness when the witness is -- witness or
20 witnesses become available in January and that to my
21 knowledge staff doesn't oppose our talking to the
22 auditor, but we would be given an opportunity to talk
23 to the auditor to determine and to inform the Bench
24 and to inform the other parties whether we would even

1 need to come back in January, and so in the form of a
2 motion, I ask that the Bench order the proposal by
3 the OCC.

4 MR. COLBERT: Thank you, your Honors. I
5 would respond to that motion and state the company's
6 position. The company would oppose at this point
7 bringing in the auditor for cross-examination for OCC
8 or any other witness. OCC has had an opportunity to
9 file testimony and did not. There have, as OCC's
10 counsel represented, been a number of delays for a
11 variety of reasons in these cases. The last was at
12 the request of OCC that we agreed to. At any rate,
13 the traditional methodology which is set forth in the
14 Ohio Administrative Code at 4901-1-28 for reports of
15 investigation ordered by the Commission is that you
16 have five days prior to the hearing to subpoena the
17 auditor or the people that you wish to cross-examine
18 on the report and that they will then be made
19 available.

20 In this case OCC did not do that. Nobody
21 would have opposed that. There was no subpoena that
22 was requested. Under the rules so -- and the rules
23 are also quite clear that the admissibility of the
24 report is not dependent upon the availability of the

1 auditor. In fact, it reads: The unavailability of
2 such person shall not affect the admissibility of the
3 report. That's what the rule is. So we certainly
4 have no objection to the report going in. We have no
5 objection to OCC using the report in any way it
6 wants. We have no objection to OCC talking to the
7 auditor off the record and getting answers to any
8 questions that it may have.

9 We do have an objection to OCC making the
10 case based on people that are unavailable today, the
11 day the hearing is scheduled, where they have not
12 made any attempt to have the auditor available. They
13 haven't filed testimony or other witnesses in the
14 case. We have all of our witnesses here and
15 available. Staff has all of its witnesses. All
16 other parties are ready to proceed based on that, so
17 we do object to a reservation of future
18 cross-examination of the auditor or any other
19 appearance of the auditor in this case.

20 MR. MARGARD: Your Honor, I am going to
21 rise in support of the company's opposition to the
22 motion. As a preliminary matter, the audit report to
23 which we refer filed November 1, I believe it is,
24 2007 in Case No. 723, I would like to have that

1 marked for purposes of our ongoing discussion as
2 Commission-Ordered Exhibit No. 1 just so we can
3 identify that document.

4 ATTORNEY EXAMINER KINGERY: It will be so
5 marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. MARGARD: Thank you, your Honor.
8 Indeed the Commission ordered that an audit be
9 conducted, and an audit was duly done. No request
10 was made to have the auditor appear. No subpoena was
11 issued for the auditor's appearance, and I fully
12 support the company's position in this matter.

13 MR. SMALL: May I, your Honor?

14 ATTORNEY EXAMINER KINGERY: Yes.

15 MR. SMALL: First of all, the argument
16 about whether we submitted testimony is irrelevant.
17 We are talking about the auditor. We are not talking
18 about OCC testimony.

19 On the matter of the applicability of the
20 statute that's cited by Mr. Colbert, Mr. Colbert well
21 knows because he cited it many times in his briefs
22 that 4928.05 makes that statute inapplicable to this
23 proceeding. This proceeding is ordered under 4928.14
24 and proceedings thereafter under the generation

1 provisions of standard service offers. And 4928.05
2 makes the chapter that was cited by Mr. Colbert
3 inapplicable.

4 ATTORNEY EXAMINER KINGERY: Response?

5 MR. COLBERT: Just briefly, your Honor.
6 We would agree that there is some, you know, dispute
7 over the application of the OAC section. Mr. Small
8 is quite right in the arguments that we've made and
9 OCC has made and, in fact, staff has made opposite
10 arguments these procedural sections do still apply.

11 Regardless of that, you know, we are at
12 the day of the hearing and due process would result
13 that if somebody is going to make their case, that
14 they have their witnesses available and notify
15 parties prior to the hearing. OCC, whether it's
16 under these rules or under, you know, common law, due
17 process or any other measure of fairness regarding
18 due process, has failed to do that, and they
19 shouldn't be rewarded at this point for their failure
20 by permitting the appearance in order to make their
21 case at a later date. That certainly would be unfair
22 to the rest of the parties in the case who are
23 prepared to proceed today. Thank you.

24 ATTORNEY EXAMINER KINGERY: Are we

1 correct in assuming the auditor is unavailable by
2 phone today?

3 MR. MARGARD: Your Honor, certain members
4 of the audit team are unavailable by phone today.
5 There may be other members of the audit team who are.
6 But clearly with respect to significant issues
7 involved in this case, some of the audit team are
8 unavailable today, that is correct.

9 MR. COLBERT: Your Honor, just to that if
10 they are available by phone today, we would have no
11 objection to that.

12 MR. SMALL: I am not sure, no objection
13 to what?

14 ATTORNEY EXAMINER KINGERY: Has anybody
15 figured out who OCC needs to talk to and whether
16 those people are available today?

17 MR. SMALL: I believe we in previous --
18 I'm sorry. I believe in previous discussions we've
19 identified the two individuals.

20 MR. MARGARD: Perhaps, your Honor, there
21 are two significant issues that we are aware of;
22 however, in earlier discussions today we understood
23 there were a wide range of issues that OCC may wish
24 to pursue, and I am not certain whether those two

1 individuals alone would suffice. We can certainly
2 check on the availability of the audit team and
3 report back to you.

4 MR. SMALL: The difficulty being here
5 that staff understands the audit team better than we
6 do so that's the reason why we discussed two
7 significant people. We don't -- OCC really doesn't
8 know who is involved as far as background but --

9 ATTORNEY EXAMINER KINGERY: Okay.

10 MR. SMALL: -- it appears from
11 Mr. Margard's representations that there are two
12 individuals that we need to speak to.

13 ATTORNEY EXAMINER KINGERY: And those two
14 individuals we don't know the whereabouts of?

15 MR. MARGARD: We know that the one is not
16 available, your Honor.

17 ATTORNEY EXAMINER KINGERY: One of those
18 two?

19 MR. MARGARD: That is correct. I do not
20 know with respect to the other whether they are
21 available by phone, but we are willing to inquire.

22 ATTORNEY EXAMINER KINGERY: And you don't
23 know whether there is somebody else on the audit team
24 who could have the conversation with OCC that the --

1 that theoretically should be had by the one that is
2 not available?

3 MR. MARGARD: No, your Honor. I can
4 represent there is no one else on the audit team who
5 can have that discussion.

6 ATTORNEY EXAMINER KINGERY: Okay.

7 MR. SMALL: May I inquire of Mr. Margard?
8 You said that he is not available now. Do you know
9 anything about sometime in the near future?

10 MR. MARGARD: Your Honor, I can represent
11 that the witness indicated to us that he would be
12 available the week between Christmas and New Year's.
13 My recollection, and mindful that my recollection is
14 less reliable these days than it has been in the
15 past, was that he was not available this week or
16 next. We do not know to what extent we may be able
17 to make him available by phone. We would have to do
18 some checking on that.

19 ATTORNEY EXAMINER KINGERY: Mr. Colbert,
20 you cited to either a rule or a statute, and I heard
21 some people calling it a rule and some people calling
22 it a statute. What was it you cited to?

23 MR. COLBERT: I cited to a rule. It's
24 the OAC 4901-1-28. I believe the statutory reference

1 was to 4909.18 or 19, which is referenced in the
2 rule, and as Mr. Small said, would otherwise be
3 inapplicable to this as a generation case due to
4 4928.05.

5 ATTORNEY EXAMINER KINGERY: We will be
6 back in five minutes. Let's go off the record.

7 (Recess taken.)

8 ATTORNEY EXAMINER KINGERY: Let's go back
9 on the record. Mr. Small, would you for the Bench's
10 benefit clarify, restate one more time your -- what
11 it is you would like us to order?

12 MR. SMALL: Yes, your Honor, I will do my
13 best. The OCC would like the Bench to order that the
14 Liberty Consulting Group audit report be entered into
15 the record of these proceedings, but with a
16 reservation of the OCC's right to call live witnesses
17 from the Liberty Consulting Group in support of that
18 consulting audit report -- called the audit report --
19 I'm sorry, Commission-Ordered Exhibit 1, and be
20 subject to cross-examination if the need arose after
21 the OCC is permitted to speak to the auditor
22 representatives by telephone to determine whether we
23 need to have a live witness.

24 ATTORNEY EXAMINER KINGERY: Thank you.

1 We are going to Grant OCC's motion. However, we do
2 want to put some fairly tight timing deadlines on it.

3 MR. SMALL: I thought you might, and I
4 have some proposals, the difficulty for me being when
5 we -- when the clock starts, meaning when we have an
6 opportunity to talk to the individuals.

7 ATTORNEY EXAMINER KINGERY: Right. Well,
8 apparently that won't be today.

9 MR. SMALL: Right.

10 ATTORNEY EXAMINER KINGERY: And,
11 Mr. Margard, do you know anything about the various
12 auditors' availability next week? You said they are
13 not available.

14 MR. MARGARD: I hope to shortly. The
15 staff has contacted the audit team. The audit team
16 is checking their availability of the various team
17 members, and they intend to e-mail that information
18 to us shortly. We should have that information
19 today. Unfortunately, it's out of my control exactly
20 when, but we will advise the Bench as soon as we have
21 that information.

22 ATTORNEY EXAMINER KINGERY: Okay. Then
23 why don't we just put this on hold, the scheduling
24 issue on hold, until we find out something about when

1 they are available if that information comes in while
2 we are all still in the room. If we don't have that
3 information, then we will make some contingency plans
4 at the end of the hearing today.

5 Okay. Is there anything else to do
6 before we start with the first witness?

7 MR. SMALL: With that, your Honor, I
8 understand that OCC's motion has been granted, and as
9 part of that, Commission-Ordered Exhibit 1, the
10 motion was to admit that with the availability of OCC
11 to call the witness at a later time, so I take it
12 that the Bench has ordered that that be admitted into
13 the record?

14 ATTORNEY EXAMINER KINGERY: Did anyone
15 have any objections specifically to the admission of
16 Commission-Ordered Exhibit 1?

17 MR. COLBERT: No, your Honor.

18 MR. D'ASCENZO: No, your Honor.

19 ATTORNEY EXAMINER KINGERY: It is
20 admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 ATTORNEY EXAMINER KINGERY: I believe we
23 are prepared for the first witness.

24 Mr. D'Ascenzo.

1 MR. D'ASCENZO: One moment, your Honor.
2 We have -- we circulated while we were on recess what
3 has -- we would like to mark as Joint Exhibit 1,
4 which is a copy of the Stipulation and Recommendation
5 that was reached among the signing parties and which
6 is not being opposed by IEU-Ohio and OEG. We will
7 be -- we will file that when we are on our next
8 recess. I just would like to point that out, and we
9 will move that -- move that into evidence later in
10 the proceeding.

11 ATTORNEY EXAMINER KINGERY: At this point
12 we will mark it.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MR. SMALL: I'm sorry. What was it
15 marked?

16 ATTORNEY EXAMINER KINGERY: Joint Exhibit
17 1. I would like to have a statement on the record
18 from OEG and IEU that you will not be opposing this
19 stipulation.

20 MR. BOEHM: Yes, your Honor, OEG does not
21 oppose the stipulation.

22 ATTORNEY EXAMINER KINGERY: Thank you.

23 MR. NEILSEN: Your Honor, IEU does not
24 oppose the stipulation.

1 ATTORNEY EXAMINER KINGERY: Thank you.

2 MR. D'ASCENZO: Thank you, your Honor.

3 For its first witness Duke Energy Ohio --

4 MR. SMALL: Your Honor, if I may, kind of
5 a housekeeping matter, I wonder if we could have a
6 short conversation off the record?

7 ATTORNEY EXAMINER KINGERY: Yes. Let's
8 go off the record.

9 (Discussion off the record.)

10 ATTORNEY EXAMINER KINGERY: Let's go back
11 on the record.

12 MR. D'ASCENZO: Thank you, your Honor.
13 For its first witness Duke Energy Ohio calls Michael
14 L. Hofmann.

15 The other side of the room, are you able
16 to hear me with the noise over there? Thank you.

17 - - -

18 MICHAEL L. HOFMANN
19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. D'Ascenzo:

23 Q. Mr. Hofmann, would you please state your
24 name and business address for the record.

1 A. My name is Michael L. Hofmann. My
2 business address is 121 East Fourth Street,
3 Cincinnati, Ohio 45202.

4 Q. Mr. Hofmann, did you cause to prefile
5 direct testimony in Case No. 07-723-EL-UNC?

6 A. Yes, I did.

7 MR. D'ASCENZO: Your Honor, may I
8 approach?

9 ATTORNEY EXAMINER KINGERY: You may.

10 MR. D'ASCENZO: Your Honor, we are
11 passing out what we have marked as Duke Energy Ohio
12 Exhibit 1.

13 ATTORNEY EXAMINER KINGERY: It will be so
14 marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. D'ASCENZO: Does everybody have
17 copies of Mr. Hofmann's testimony?

18 MR. BOEHM: I would like a copy.

19 MR. D'ASCENZO: Sure.

20 MR. MARGARD: While we are over here I
21 will take one, less for you to cart back.

22 Q. Mr. Hofmann, do you now have in front of
23 you a document that has been marked as Duke Energy
24 Ohio Exhibit 1?

1 A. Yes, I do.

2 Q. Do you recognize that document?

3 A. Yes, I do.

4 Q. Would you please identify that document.

5 A. That is my direct testimony.

6 Q. And was that testimony prepared by you
7 and under your direction?

8 A. Yes, it was.

9 Q. Do you have any corrections or changes to
10 that testimony?

11 A. No, I do not.

12 Q. If I were to ask you those same questions
13 today, would your answers be the same?

14 A. Yes, they would.

15 MR. D'ASCENZO: Thank you.

16 Your Honor, Mr. Hofmann is available for
17 cross-examination.

18 ATTORNEY EXAMINER KINGERY: Thank you.

19 Ms. Hotz.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Hotz:

23 Q. Good morning, Mr. Hofmann.

24 A. Good morning.

1 Q. I am Ann Hotz from the Ohio Consumers'
2 Counsel. I am going to be asking you questions, and
3 if -- if you don't understand any of the questions I
4 ask you, could you please ask me to clarify?

5 A. Yes, I will.

6 Q. Okay. On page 7 of your direct testimony
7 you identify modes of failure associated with the
8 Zimmer outage besides the use of low pressure blades
9 intended for use in the nuclear plant, "the stress
10 riser at the base of the notch for the Stellite strip
11 and the lack of penetration at the weld root in the
12 under shroud wells on the turbine blade," correct?

13 A. That is correct, yes.

14 Q. What does the term "modes of failure"
15 mean?

16 A. The term "modes of failure" means that
17 there were -- it describes the mechanism of which the
18 components, in this case of the low pressure turbine,
19 were believed to have failed based on metallurgical
20 analysis after the fact that -- of the actual failure
21 itself.

22 Q. So "modes of failure" does not
23 necessarily mean the cause of failure, does it?

24 A. It does not necessarily mean the cause,

1 that's correct.

2 Q. Okay. What does the term "stress riser
3 at the base of the notch for the Stellite strip"
4 mean?

5 A. That term and, I won't repeat the exact
6 term, but what that term describes is in the turbine
7 itself, we have rows of blades. At each end of each
8 blade there is a cover piece called a shroud, and
9 what that stress riser does it locks in the blade
10 itself to the cover, the shroud that I described
11 there. So that piece, as you describe, is actually a
12 keyed lock mechanism that keeps the blades and the
13 covers to the blades intact.

14 Q. So what is a stress riser?

15 A. Well, a stress riser is a piece of metal,
16 and in this case it's a chrome -- a cobalt chrome
17 alloy of higher strength actually to help keep those
18 blades and that cover in place. That is recognized
19 as a very, very stressed contained component though.
20 The turbine itself as it spins at a high rate of
21 speed to that stress riser is actually a beefed-up
22 metal component to provide extra durability and
23 protection against that stress.

24 Q. And what is a "Stellite strip"?

1 A. Well, the Stellite strip is again a piece
2 of metal that is put on there as additional
3 protection. That's also a chrome cobalt alloy, as I
4 mentioned, again, put in there to aid strength in
5 terms of keeping that blade and actual turbine
6 shroud, the covers to the wheels, in place and
7 intact.

8 Q. Where is the notch located in which there
9 was a stress riser?

10 A. Well, the notch is actually located in
11 the blade itself, and to use a visual here, as the
12 blade and the cover sit, the blade sits into a notch
13 actually in the shroud, as I described it there, and
14 that's how they are locked in around the wheel of the
15 turbine itself. And that's where we have, or as I
16 described, the Stellite or the chrome cobalt alloy
17 there to provide that extra protection and keep that
18 cover intact to the blade.

19 Q. Okay. On page 9 of your testimony you
20 state that the consumers were not harmed due to the
21 extended April 2007 outage. If they had to pay more
22 money for power than -- the cost of getting
23 replacement power, they had to pay more, more money
24 for replacement power during that outage than the

1 cost of running Zimmer, don't you think the consumers
2 were harmed?

3 A. Well, my opinion here is based on the
4 fact that as a result of the damage, we extended that
5 outage by two weeks, as you reference.

6 Q. Right.

7 A. And that extension was due to being able
8 to go in and make the proper repairs to come back and
9 operate that unit efficiently.

10 Q. Right.

11 A. We had a decision to make. We could have
12 gone in, closed up, found the damage, closed up that
13 machine and brought it back in service. Now, had we
14 done that, there was a risk we would not have
15 achieved the capability we had prior to the outage
16 nor the efficiency, and what would have happened then
17 if we closed it up, we would have had to come back at
18 another time with an extended outage to reopen the
19 machine and perform the repairs. That would have
20 created an additional two weeks over our previously
21 scheduled outage to do that work so it was kind of a
22 pay me now or pay me later in terms of an additional
23 two-week outage period to make that repair.

24 Q. So you -- so, in other words, you

1 eliminated a planned outage.

2 A. We eliminated a two-week additional
3 planned outage. In other words, we have another
4 outage scheduled for 2009 of four weeks in duration.
5 Had we not made that repair during this outage, we
6 would have had to have extended that outage to six
7 weeks as well in that time period. So my answer is
8 based on over that two-outage cycle or two-year
9 period, it would be the same number of outage weeks
10 required.

11 Q. But when you have a planned outage, you
12 usually plan it off peak; isn't that correct?

13 A. We plan the outage based on the most
14 economical period that we can through the year.

15 Q. Okay.

16 A. Yeah.

17 Q. On page 8 and elsewhere in your testimony
18 you state that the use of existing turbines -- the
19 use of the existing turbine was a significant fact,
20 not the determining fact, in CG&E deciding to go
21 forward with the conversion from nuclear to coal
22 generation in the mid-1980s, correct?

23 A. Correct.

24 Q. I assume from your knowledge of that fact

1 that you were at CG&E at the time of the Zimmer
2 conversion?

3 A. I was, yes.

4 Q. Do you recall why CG&E and its partners
5 did not go forward with completing the Zimmer nuclear
6 plant?

7 A. No, I do not specifically.

8 MS. HOTZ: Your Honor, I would like to
9 approach the witness and provide him with a document
10 from the Nuclear Regulatory Commission that describes
11 why they ordered CG&E to stop the nuclear plant.

12 ATTORNEY EXAMINER KINGERY: You may.

13 MR. D'ASCENZO: Your Honor, I would
14 object. If OCC is pointing to a Nuclear Regulatory
15 Commission order, they can cite to the order. It is
16 a document -- they haven't established whether this
17 witness would even know about that document.

18 MS. HOTZ: The point is -- go ahead. I'm
19 sorry. The point is --

20 ATTORNEY EXAMINER KINGERY: Go ahead.

21 MS. HOTZ: The point is I just wanted to
22 ask him questions about this.

23 ATTORNEY EXAMINER KINGERY: Until he sees
24 the document, we won't know whether he knows anything

1 about it.

2 MR. D'ASCENZO: Fair enough.

3 Q. Have you ever -- have you ever seen that
4 document?

5 A. To the best of my recollection, I have
6 not ever seen this document.

7 Q. Okay. Thank you. Mr. Hofmann, did you
8 ever know the reason why CG&E stopped work on the
9 Zimmer nuclear plant?

10 A. Again, to my recollection, I was never
11 told nor informed of the reason why that was
12 discontinued, no.

13 Q. Did you ever hear that it was welds
14 performed using an unqualified welding procedure?

15 MR. D'ASCENZO: Objection, asked and
16 answered. He said he had no idea.

17 ATTORNEY EXAMINER KINGERY: I will allow
18 a little bit more. You may complete your question.

19 Q. Did you ever hear that it related to
20 welds performed using an unqualified welding
21 procedure for welds greater than .864 inches?

22 A. I do recall hearing statements around
23 welds, but I do not recollect any detail as to the
24 nature of the statements or the -- that the details

1 around the welds themselves.

2 MS. HOTZ: Your Honor, I would like you
3 to take administrative notice of this decision by the
4 Nuclear Regulatory Commission that directly addresses
5 the reason why the Zimmer plant was not -- the Zimmer
6 nuclear plant was not finished.

7 ATTORNEY EXAMINER KINGERY: Objections?

8 MR. D'ASCENZO: Yes, your Honor. I
9 object to Ms. Hotz's characterization of the order.
10 The order speaks for itself, your Honor.

11 ATTORNEY EXAMINER KINGERY: You don't
12 object to our taking administrative notice?

13 MR. D'ASCENZO: Judicial notice, I do
14 not.

15 MR. MARGARD: Your Honor, I have no
16 objection to taking notice either, but as I don't
17 have a copy, I would appreciate being provided a copy
18 or being provided with the citation.

19 ATTORNEY EXAMINER KINGERY: As would the
20 Bench.

21 MS. HOTZ: Okay.

22 ATTORNEY EXAMINER KINGERY: For the
23 record, the document that Ms. Hotz has handed to us
24 is entitled "In the Matter of Cincinnati Gas &

1 Electric Company." It is a Nuclear Regulatory
2 Commission decision. It's Docket No. 50-358, and the
3 citation shown on the document is 16 NRC 1489 and
4 it's from 1982.

5 There being no objections, we will take
6 administrative notice of this document.

7 MS. HOTZ: Thank you, your Honor.

8 Q. Mr. Hofmann, are you familiar at all with
9 any of the Public Utilities Commission of Ohio
10 decisions regarding the Zimmer conversion?

11 A. No, I am not.

12 MS. HOTZ: Okay. That's all I have, your
13 Honor.

14 ATTORNEY EXAMINER KINGERY: Thank you.

15 MS. HOTZ: Thank you.

16 ATTORNEY EXAMINER KINGERY: Ms. Mooney?

17 MS. MOONEY: I have no cross-examination.

18 ATTORNEY EXAMINER KINGERY: Any redirect?

19 MR. D'ASCENZO: No, your Honor.

20 ATTORNEY EXAMINER KINGERY: Thank you
21 very much. You may step down.

22 MR. D'ASCENZO: Just a moment, your
23 Honor.

24 For our next witness Duke Energy Ohio

1 would like to call Charles Whitlock.

2 Could we go off the record just a moment,
3 your Honor?

4 ATTORNEY EXAMINER KINGERY: Yes.

5 (Discussion off the record.)

6 ATTORNEY EXAMINER KINGERY: Let's go back
7 on the record. Let's go ahead and swear the witness
8 in.

9 (Witness sworn.)

10 MR. D'ASCENZO: Thank you, your Honor.
11 We have just passed out several documents reflecting
12 testimony of Mr. Whitlock, and for purposes of the
13 record, I would like to mark them.

14 ATTORNEY EXAMINER KINGERY: Yes, you may
15 do that.

16 MR. D'ASCENZO: We would like to mark
17 Mr. Whitlock's direct testimony in Case No. 07-723,
18 this would be the confidential version, as DE-Ohio
19 Exhibit 2.

20 ATTORNEY EXAMINER KINGERY: It will be so
21 marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. D'ASCENZO: Thank you, your Honor.
24 The redacted public version of Mr. Whitlock's

1 prefiled testimony in Case No. 07-723-EL-UNC as
2 Exhibit Duke -- as DE-Ohio Exhibit 2A.

3 ATTORNEY EXAMINER KINGERY: It will be so
4 marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. D'ASCENZO: Mr. Whitlock's
7 supplemental testimony filed in Case No. 07-723 we
8 would like to mark that as DE-Ohio Exhibit 3.

9 ATTORNEY EXAMINER KINGERY: It will be so
10 marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. D'ASCENZO: And Mr. Whitlock's direct
13 testimony in Case No. 07-975, the confidential
14 version, we would like to mark that as DE-Ohio
15 Exhibit 4.

16 ATTORNEY EXAMINER KINGERY: It will be so
17 mark.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. D'ASCENZO: And the redacted public
20 version of Mr. Whitlock's direct testimony in Case
21 No. 07-975 as DE-Ohio Exhibit 4A.

22 ATTORNEY EXAMINER KINGERY: It will be so
23 marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. D'ASCENZO: Thank you.

2 - - -

3 CHARLES R. WHITLOCK

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

6 DIRECT EXAMINATION

7 By Mr. D'Ascenzo:

8 Q. Mr. Whitlock, would you please state your
9 name and business address for the record.

10 A. Charles R. Whitlock, 139 East Fourth
11 Street, Cincinnati, Ohio.

12 Q. Mr. Whitlock, you have in front of you
13 several documents that have just been marked as
14 exhibits. DE-Ohio Exhibit 2, would you please
15 identify that document.

16 A. That document is my direct testimony
17 filed in the case 07-723-EL-UNC.

18 Q. Do you have before you a document
19 entitled -- that's been marked as DE-Ohio Exhibit 2A?

20 A. I don't have 2A.

21 Q. Sorry about that.

22 A. That's okay.

23 Q. Do you have that document in front of you
24 now?

1 A. Yes.

2 Q. Would you please identify that document.

3 A. This is my redacted testimony in Case
4 07-723-EL-UNC.

5 Q. Do you have in front of you a document
6 that has been marked as DE-Ohio Exhibit 3?

7 A. Yes.

8 Q. Would you please identify that document.

9 A. This is my supplemental testimony in the
10 same case.

11 Q. Thank you. Do you have in front of you a
12 document that has been marked as DE-Ohio Exhibit 4?

13 A. Yes.

14 Q. Would you please identify that document.

15 A. This is my direct testimony in Case No.
16 07-975-EL-UNC.

17 Q. And do you have a document before you
18 that is marked as DE-Ohio Exhibit 4A?

19 A. Yes.

20 Q. Would you please identify that.

21 A. This is my redacted version of the
22 testimony -- my direct testimony in the same case.

23 Q. Thank you. Were those testimonies
24 prepared by you and under your direction?

1 A. Yes.

2 Q. Do you have any changes or corrections to
3 the testimony?

4 A. No.

5 Q. If you were asked those same questions
6 today, would your answers be the same?

7 A. Yes.

8 MR. D'ASCENZO: Thank you, your Honor.
9 Mr. Whitlock is available for cross-examination.

10 ATTORNEY EXAMINER KINGERY: Thank you
11 very much.

12 Mr. Small.

13 MR. SMALL: As a preliminary matter, I
14 have a motion to strike.

15 ATTORNEY EXAMINER KINGERY: All right.

16 MR. SMALL: It is on what I believe has
17 been labeled as DE-Ohio Exhibit 3, the supplemental
18 testimony in 07-723, page 9, starting on line 12,
19 starting with the sentence that begins with "The
20 Staff" and ending on line 15 at the end of that
21 sentence, one sentence. This sentence in
22 Mr. Whitlock's testimony purports to introduce
23 elements of what he calls the "Zimmer Conversion
24 Project Staff Reconnaissance Report." It's hearsay.

1 It's an attempt to get an out-of-court statement --
2 the statement is being made by staff members for the
3 matter asserted. It should be -- if the company
4 wants to put this kind of testimony on, it could do
5 so through the witness whose opinions are stated in
6 the document or possibly through the document itself.
7 We are not presented with either of them, and I can't
8 cross-examine the staff witnesses that are standing
9 behind these statements.

10 MR. D'ASCENZO: Your Honor, this document
11 was filed and it was an exhibit in the -- in not only
12 Duke Energy's -- well, then CG&E's rate case in 1991,
13 it was also filed in the rate cases for AEP and DP&L.
14 It is available in the Commission docket. It's a
15 report that everybody has access to.

16 MR. SMALL: Your Honor, the issue is
17 whether the witness is available. The document and
18 the witness are two different things.

19 ATTORNEY EXAMINER KINGERY: We are going
20 to grant the motion to strike. However, we will take
21 administrative notice of that document.

22 MR. SMALL: Thank you, your Honor.

23 ATTORNEY EXAMINER KINGERY: You may
24 proceed.

1 MR. SMALL: Up to me for
2 cross-examination?

3 ATTORNEY EXAMINER KINGERY: Yes.

4 MR. SMALL: Yes, thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Small:

8 Q. Mr. Whitlock, would you please turn to --
9 I will be proceeding with documents in a certain
10 order and I will begin with what's been marked as
11 DE-Ohio Exhibit 2. Do you have that in front of you?

12 ATTORNEY EXAMINER KINGERY: Can you hear
13 Mr. Small okay?

14 THE WITNESS: I can, thank you.

15 A. I do.

16 Q. Would you turn to page 4 of that
17 document.

18 ATTORNEY EXAMINER KINGERY: I am going to
19 interrupt for just one minute. We are now looking at
20 a confidential document. As we discussed off the
21 record previously, for anybody who is in the room who
22 does not have a confidentiality agreement with Duke,
23 we would request that you not share the information
24 with your clients.

1 You may proceed.

2 MR. SMALL: I will be working generally
3 in the direction of Exhibit 2, Exhibit 4, and Exhibit
4 3. The first two are confidential documents.

5 ATTORNEY EXAMINER KINGERY: Thank you.

6 Q. Back to page 4 of Exhibit 2 and lines 19
7 through 20, do you have that?

8 A. I do.

9 Q. Do you see the reference to progress in
10 discussions to crediting the FPP? I'm sorry.

11 A. I don't.

12 Q. Mr. Whitlock, I notice that you didn't
13 update your testimony to reflect the current state of
14 the case that you discuss in that section. Are you
15 aware that there has been an order in the matter that
16 you discuss at lines 18 and 19 on page 4?

17 A. The fact that the Commission adopted the
18 stipulation?

19 Q. And issued an order.

20 A. And issued an order.

21 Q. You are aware of that?

22 A. I am.

23 Q. So we no longer have to assume; the
24 Commission adopted the stipulation which you state on

1 page 19; is that correct?

2 A. Yes.

3 Q. Okay. And what is the progress on the
4 matter that you discuss on lines 19 and 20 including
5 the credit on the first rider FPP quarterly filing
6 immediately following the order?

7 A. The company intends to do exactly what we
8 promised in my testimony.

9 Q. And what has -- what has happened to
10 date?

11 A. Not -- nothing yet, but we will. It will
12 be in the first quarter's rate.

13 Q. For 2008?

14 A. Yes.

15 Q. Can you tell me how the company -- the
16 DE-Ohio will accomplish that?

17 A. I am not sure I understand the question.

18 Q. Procedurally. Is there -- are there
19 going to be calculations made and presented to the
20 Commission?

21 A. I believe those happen in the normal
22 course of our FPP estimate filing, right, so we will
23 reduce the FPP estimate by 2.7 million, by the \$2.799
24 million.

1 MR. D'ASCENZO: Your Honor, if I may,
2 Mr. Small, Duke Energy Ohio's witness Don Wathen is
3 the witness in terms of rates, and he would be able
4 to answer those questions more specifically.

5 Q. Mr. Whitlock, would you please turn to
6 page 5 of your testimony and same exhibit until I say
7 otherwise, the Exhibit 2, page 5 and lines 6 through
8 7. See the portion where it states that: "the
9 parties will meet to discuss the terms under which
10 DE-Ohio may recover costs for managing coal, emission
11 allowances," so forth and so on. Do you see that?

12 A. Yes.

13 Q. And what is the progress on that item to
14 date?

15 A. We attempted to schedule meetings with
16 other parties to discuss the post-2008 period, and
17 those discussions were -- they really didn't really
18 produce any fruit changing the legislation landscape,
19 the introduction of the Senate Bill I think it's 221.
20 Is that right? So it's been really postponed or
21 deferred pending what happens on the legislative
22 front.

23 Q. I am not sure I understand what you mean
24 by parties were contacted. Are you talking about in

1 connection with a particular case, for instance, the
2 case that Duke Energy recently withdrew regarding
3 post-2008 generation rates? What were the efforts to
4 contact the parties? I am not familiar with what you
5 are talking about. What efforts did Duke Energy make
6 to contact parties?

7 A. I am trying --

8 Q. If I may, Mr. Whitlock, there is no trick
9 involved here.

10 A. Yeah. No.

11 Q. You were talking about contacts and
12 discussions, and I just don't understand.

13 A. Yeah. I don't know if they were related
14 to a case, and honestly I can't recollect when the
15 specific instances were, but we talked about -- I
16 have had discussions internally with counsel around
17 post-2008 coal procurement and what would happen with
18 gains and losses on purchased power, et cetera, and
19 those things were deferred given the changing
20 legislative landscape.

21 Q. So it's your understanding the
22 introduction of discussions around Senate Bill 221
23 called a halt to those discussions?

24 A. Yes.

1 Q. Turning to page 9 of your testimony,
2 lines 16 through 21, there is another reference here
3 to the adoption of the stipulation by PUCO and a
4 provision for procuring the SRT -- dealing with the
5 2007 SRT rates. Do you see that?

6 A. I do.

7 Q. And what's the progress on that matter?

8 A. I believe the 2007 rate will be the SRT
9 expenditures incurred in 2007 relative to the SRT
10 rider will be included in the January SSO rate.

11 Q. And go for how long?

12 A. I don't know.

13 Q. Now, if you could turn to page 6 and
14 going back a little bit to page 5, lines 21 through
15 22, and keeping your finger there and moving on to
16 page 6, lines 1 and 2, what do you mean when you say
17 that: "DE-Ohio does include the resale of coal
18 provision as a component of its RFP process"?

19 A. Mr. Small, could you -- where is my
20 finger supposed to be?

21 Q. On the bottom of page 5.

22 A. Bottom of page 5, yeah.

23 Q. Do you see the last few words on that
24 page and carry-over to the next page? "DE-Ohio does

1 include the resale of coal provision as a component
2 of its RFP process." That's the portion that I read.

3 A. Okay.

4 Q. What do you mean by that?

5 A. The context of this was the auditor had
6 issue with us including in our request for proposal
7 or any contracting that we did for coal whether or
8 not we required the customer or the supplier to allow
9 us to resell the coal, and I merely state that we
10 include the ability to resell coal as a provision of
11 our RFP process or the process in which we use to
12 procure coal.

13 Q. Okay. Maybe the language just isn't very
14 clear here. Maybe I will walk through it.

15 A. Okay.

16 Q. I am talking about an RFP process, and
17 you put out a document which is your RFP; is that
18 correct?

19 A. Yes.

20 Q. And it solicits bids for coal; is that
21 correct?

22 A. Actually offers, but yeah.

23 Q. I'm sorry. What was the distinction you
24 made?

1 A. To sell is an offer, right? So we
2 solicit offers for somebody to sell us coal.

3 Q. Okay. You're the purchaser, and they are
4 the seller.

5 A. That's right.

6 Q. Okay. And that RFP document that's
7 asking sellers of coal to respond to you, that
8 document contains a provision that says that the
9 seller of coal should permit the resale of that coal;
10 is that correct?

11 A. Yeah. It actually asks the question
12 whether or not they will let us resell the coal.

13 Q. So is there a box you check off or
14 something like that?

15 A. Not having the form in front of me, I
16 don't remember. But the issue was do we require a
17 supplier of coal, do we require that supplier to give
18 us the ability to resell coal.

19 Q. But the matter before us is what the RFP
20 says, and you are saying it asks the bidder the
21 question of whether they would allow them to bid or
22 not?

23 A. I believe so, without the document in
24 front of me, but the best of my recollection it says:

1 Are we allowed to resell your coal?

2 Q. And why does the company ask that
3 question?

4 A. For a couple of reasons, one, it doesn't
5 hurt us to have the ability to resell coal; two, it
6 actually enables us to deploy active management. If
7 we were not able to sell coal, it would restrict our
8 ability. When the market gave us an opportunity to
9 sell coal and buy and purchase power at a cost, we
10 would still be encumbered by that coal.

11 The second thing that -- or third,
12 depending on how they get numbered, would be if we
13 contracted for coal and didn't have the ability to
14 resell that coal, and subsequent to the contracting
15 we found out that there was a characteristic of that
16 coal that subjected the units to -- that made the
17 units unreliable in any way or in -- it might even
18 make the coal not combustible in that unit or that
19 generating station, we would have to have, right, or
20 at least desire the ability to sell that coal.

21 Q. Okay. Let's go through the second factor
22 that you mentioned, which would be the active
23 management. If you are not able to resell the coal,
24 it limits your ability to do the active management.

1 Is that basically what you said?

2 A. I believe so.

3 Q. Okay. So the company favors the contract
4 that permits that flexibility; is that correct?

5 A. I struggle with the word "favor." We
6 desire to have that. If that's the same as favors,
7 then yeah. Maybe this helps. If two suppliers had
8 identical coal in the same price and everything else
9 was identical and I had the ability to buy from the
10 supplier that allowed me to resell the coal, I would
11 select that supplier over the one that didn't allow
12 me to resell the coal. If that's what you mean by
13 favors, then yes.

14 Q. In your -- in Duke Energy Ohio's
15 purchases, what is the procedure for testing the coal
16 that is the subject of the -- of the seller's bid or
17 response to your RFP? What does the company do to
18 test the coal, the physical characteristics of the
19 coal, that is being offered by the seller?

20 A. There are a variety of tests that happen.
21 We do paper tests. We run them through a Vista model
22 where we test them on paper, and then oftentimes if
23 we have never burned the coal before, we will
24 actually physically burn that coal at the unit. And

1 that -- the timing of that could be seven days. It
2 could be shorter than that. It could be longer,
3 depending on how that test burn goes.

4 Q. And what is the sequence of events? When
5 would you do the testing of the coal? I am talking
6 about the sequence of events in the contracting
7 process. Would you buy a whole bunch of low cost
8 coal before you did this testing, or would you test
9 the coal before you made the purchase and executed
10 the contract for coal?

11 A. My experience has been there has been --
12 both of those have occurred, right? I have
13 personally signed contracts where we have tested it
14 where we had a test burn provision in a contract.
15 And so we negotiated all the commercial terms of the
16 contract, and we had a test burn provision in the
17 contract that allowed us to test burn it to figure
18 out whether we would go forward with the contract.

19 There has also been coals that we've test
20 burned coals prior to doing any commercial contract
21 negotiations, that we just say: Hey, we want to test
22 burn your coal, and we will buy, I will make up
23 numbers, 50,000 tons and conduct a test burn. The
24 latter of those two is my preference, and as long as

1 I am doing it, that's how we are going to do it going
2 forward.

3 Q. Okay. But your previous answer
4 suggested, and I think what you've said, is that you
5 would not enter -- are there circumstances where you
6 would just enter into the contract without any
7 provision for testing that coal, or does that -- is
8 that just an empty set that doesn't exist?

9 A. I always hate the empty set, right?

10 Q. I think you just told me as long as you
11 are in charge of this thing, you are going to test
12 the coal.

13 A. Right. But I have coal contracts that
14 exist right now and I don't know if those have all
15 been test burned. That's my point.

16 Q. You have old contracts?

17 A. Sure.

18 Q. And you don't know what the
19 characteristics of that coal is you have been burning
20 for a period of time?

21 A. No, I do know that. But I am just saying
22 I don't know if they were test burned or not.

23 ATTORNEY EXAMINER KINGERY: Did you say
24 old contract or coal?

1 THE WITNESS: Existing coal contracts
2 that I don't know if those were test burned. I just
3 don't know. I assume they were.

4 Q. But the subject that we are addressing
5 are new contracts in the RFP process for acquiring
6 new coal. So in that context we are not dealing with
7 existing contracts, but in that context of putting on
8 an RFP and so forth you would not accept the coal
9 seller's bid and execute a contract without a
10 provision for testing that coal; is that correct?

11 A. That's true. I should say or that we
12 have already burned the coal. I don't know if that
13 qualifies as a test burn. If I have burned the coal
14 historically and have had no issues, I'll contract
15 for that without a test burn on that specific coal.
16 I mean, I don't want to get --

17 Q. You might contract it, in other words, if
18 you -- if you are --

19 A. Cumberland Coal, for example, I have
20 burned for years, right, and the coal works
21 beautifully.

22 Q. You know it's characteristics.

23 A. And I am not going to test burn that
24 coal, and I will sign that. I don't want to back

1 myself into a corner and say, well, you didn't test
2 burn that.

3 Q. You don't take a pig in a poke. You
4 don't buy a bunch of coal you don't know about. You
5 either test it or know about it or have a certain
6 knowledge about coal before you purchase it; is that
7 correct?

8 A. Exactly.

9 Q. Okay. How long have you been at the
10 process of purchasing coal for Duke Energy Ohio or
11 its predecessors?

12 A. January 1, 2006.

13 Q. During the time that you've -- what was
14 your role before January 1, 2006? Were you connected
15 with this activity as well? I am allowing for the
16 fact you may not have been the supervisor, but you
17 may have been in another role. What did you do
18 before January 1, 2006?

19 A. I managed the power and the emissions
20 position associated with both the reg and
21 nonregulated generation for Duke Energy Ohio, at that
22 time it was Cinergy -- or CG&E and PSI as well as
23 ULH&P.

24 Q. So you didn't -- do I understand from

1 that answer you didn't deal with the purchase of coal
2 in that capacity?

3 A. I didn't have responsibility for it for
4 sure.

5 Q. Okay. Well, we will take this in stages.
6 During the period January 1 to the present, do you
7 know of any instances where Duke Energy Ohio or its
8 predecessor purchased coal from suppliers that do not
9 permit the resale of that coal?

10 A. I don't know.

11 Q. You can't -- you can't name an instance
12 when it has occurred? You don't know that it has
13 occurred?

14 A. I don't know that it's occurred.

15 Q. Prior to January 1, 2006, would you have
16 been in your position that you mentioned previously?
17 Were you in a position to know whether such contracts
18 were being entered into by CG&E -- Duke Energy or
19 CG&E?

20 A. Could you restate the question or repeat
21 it?

22 Q. It's really the same question only for
23 the period before January 1, 2006, whether you knew
24 about contracts being entered into by the company

1 that would not permit the utility to resell the coal.

2 A. I don't know.

3 Q. And would you have been in a position to
4 know those details?

5 A. I think I could have reviewed the
6 contracts, if I had wanted to, but I didn't.

7 Q. Okay. Who makes the decision -- after an
8 RFP is issued and there is a response to that RFP,
9 what's the process that the company undertakes before
10 a contract is entered into? I am just envisioning
11 just hypothetically you receive 10 -- 10 offers of
12 coal from coal suppliers. And those offers are in
13 response to an RFP, and the people have checked off
14 various boxes and so forth. Would you walk me
15 through how that RFP process goes until to the point
16 where the contract is signed for that coal?

17 A. Should I assume that the coal has been
18 test burned, or do you want to walk through that?

19 Q. You should assume for purposes of this
20 question that you have followed your procedures and
21 you feel confident about the quality of the coal. I
22 believe you said you --

23 A. Yeah. For me I am going to test burn
24 coals prior to the RFP.

1 Q. Okay. The ten offers that I stated
2 hypothetically are all acceptable quality coal.
3 That's not an issue.

4 A. Okay.

5 Q. What's the approval process? Is there a
6 panel that discusses it? Is it just you? Can you
7 sign it? Does it have to go to another executive?
8 Just walk me through that process.

9 A. There is a delegation of authority that
10 determines how much -- how much coal I can -- how
11 much coal I can commit the company to. If it's
12 within my delegation of authority, then I can make
13 the decision, but how I make the decision, we are
14 going to evaluate the transportation, adjusted BTU,
15 sulfur adjusted, moisture adjusted characteristics of
16 that coal.

17 We are going to try to create supply base
18 and diversity so that our stations don't have coal
19 coming from all one direction on the river, so we
20 would like a variety of different -- they are all --
21 most of it is going to come on the Ohio River, but we
22 would like some coal coming from the southern part of
23 the river, some coming from the northern part of the
24 river, so we like to create supply base and

1 diversity. Within that supply base and diversity we
2 would like to have -- we would like to not have
3 credit concentration with any one particular
4 supplier, so we would like to diversify our supplier
5 mix in those two basins.

6 Q. I don't want to slow you down here, but
7 I'm looking more for the procedural part of it. I
8 think you've given me part of my answer, which is, to
9 a certain extent you have the authority to enter into
10 that contract.

11 A. Again, subject to the delegation of
12 authority.

13 Q. And what is your limitation?

14 A. I don't know. I have a piece of paper in
15 front of me, right, that has my DOA on the front of
16 it.

17 Q. If you go beyond your authority, who is
18 the decision-maker then?

19 A. My boss.

20 Q. And who is that?

21 A. Lynn Good.

22 Q. Is there anybody else? Does he -- that's
23 a gentleman?

24 A. She.

1 Q. It's a she?

2 A. She's a she.

3 Q. Does she do the -- can she approve all
4 the other contracts unlimited in that respect?

5 A. Her delegation of authority is not
6 unlimited.

7 Q. She has a dollar limit as well?

8 A. Yes.

9 Q. And who would approve it besides her?

10 A. Jim Rogers.

11 Q. Jim Rogers. I imagine he could. And are
12 there -- get back to the proceedings that you
13 mentioned. Are they written down for evaluating the
14 bids -- offers? You began to explain. I'm worry if
15 I interrupted you a little bit about the
16 considerations that you had for purchasing coal, and
17 I am wondering whether those considerations are
18 written down somewhere in a manual.

19 A. The ones I enumerated are written down.

20 Q. And what's that document called?

21 A. I don't know the name of the document.

22 Q. Did you have contact with personnel from
23 Liberty Consulting Group as part of their inquiries
24 into Duke Energy Ohio's coal procurement? Did you

1 discuss that matter with the people from Liberty
2 Consulting?

3 I will make it a simpler question. Did
4 you have any contact with the Liberty Group
5 representatives at all?

6 A. Yes.

7 Q. Okay. Then we will go back to my
8 original question. On the coal procurement I didn't
9 know whether they were -- did you have contact with
10 them on that matter?

11 A. I don't recall any specific times where I
12 talked to them about coal, the process.

13 Q. Okay. I would like to expand my concept
14 of contact. Were you the recipient of any of their
15 requests, communicate with them in any fashion? Was
16 the document that you just mentioned given to the
17 Liberty Consultant Group?

18 A. I believe it was.

19 Q. And there was more to the question. Did
20 you have other communications, even if it wasn't
21 eyeball to eyeball, with somebody from Liberty
22 Consulting on the topic of coal procurement? Respond
23 to requests for information?

24 A. We answered, I don't know, 118 some -- we

1 answered numerous questions, some of which are
2 related to procurement, the process and procedures,
3 et cetera.

4 Q. The "we" you are referring to is the CAM?

5 A. The company, that we.

6 Q. The company. Okay. If you could return
7 to your testimony on page 7 and line 5 of that
8 testimony.

9 ATTORNEY EXAMINER KINGERY: I am going to
10 interrupt for just a minute. Let's go off the
11 record.

12 (Discussion off the record.)

13 ATTORNEY EXAMINER KINGERY: Let's go back
14 on the record.

15 Q. (By Mr. Small) Okay. Would you turn --
16 please turn to page 7, line 5 of your testimony. And
17 there is a reference to -- or a response to a
18 question regarding -- I am reading this from the
19 question, "alternative sensitivity analysis." Do you
20 see that?

21 A. I do.

22 Q. Okay. I see that it states in your
23 answer on line 5: "DE-Ohio already complies with
24 this recommendation." But the question is was

1 anything done by DE-Ohio in response to the, lack of
2 a better term, old auditor's recommendation?

3 A. Can I see his recommendation?

4 Q. Yes.

5 MR. SMALL: And I would like at this time
6 to mark as OCC Exhibit 1 the Confidential Report of
7 the Financial and Management/Performance Audit of the
8 Fuel and Purchased Power Rider of Duke Energy Ohio
9 prepared by Energy Ventures Analysis and Larkin &
10 Associates dated October 12, 2006, and it's been the
11 subject matter of some of the questions in this
12 matter.

13 ATTORNEY EXAMINER KINGERY: This is in
14 which case?

15 MR. SMALL: This is the previous rider
16 and tracker case.

17 ATTORNEY EXAMINER KINGERY: Okay. It
18 probably has a case number right on the front.

19 MR. SMALL: It doesn't.

20 ATTORNEY EXAMINER KINGERY: It doesn't,
21 okay. That's fine.

22 MR. SMALL: I don't know if other people
23 in the room need this, but it's a fairly widely
24 distributed document.

1 MR. MARGARD: Your Honor, I believe it's
2 05-724 and 725-UNC.

3 ATTORNEY EXAMINER KINGERY: Thank you.

4 MR. SMALL: I hesitate for the moment,
5 and I made this statement to counsel earlier today, I
6 would be happy to hand this out to people but
7 considering the matters of confidentiality and the
8 difficulties that all of us have encountered
9 regarding that matter, I think it might be better for
10 just -- the OCC would like the Bench to take
11 administrative notice of it.

12 ATTORNEY EXAMINER KINGERY: And not mark
13 it as an exhibit.

14 MR. SMALL: Because it just lessens
15 the -- we already have it in a docket, and we are
16 already dealing with it in that docket as far as
17 confidentiality, and I don't want to expand the
18 problem into another docket.

19 ATTORNEY EXAMINER KINGERY: Any
20 objections?

21 MR. D'ASCENZO: No, your Honor.

22 ATTORNEY EXAMINER KINGERY: We will take
23 administrative notice, and this is the confidential
24 October 12, 2006, report of the Financial and

1 Management Performance Audit of the Fuel and Purchase
2 Power Rider of Duke Energy Ohio. It was prepared by
3 Energy Ventures Analysis and Larkin & Associates, and
4 I believe Mr. Margard just gave us the case numbers,
5 05-724 and 05-725.

6 MR. SMALL: I was a little busy with
7 paper. Administrative notice has been taken?

8 ATTORNEY EXAMINER KINGERY: Yes,
9 administrative notice has been taken.

10 Q. (By Mr. Small) Mr. Whitlock, that's the
11 document I believe you requested; is that correct?

12 A. Yes.

13 Q. And that was -- that is the subject of
14 the question and answer on the top of page 7 of your
15 testimony, Exhibit 2; is that correct?

16 A. Yes.

17 Q. And I am not -- I wanted to give you an
18 opportunity to review it, but the pending question is
19 was anything done in response to the -- I referred to
20 it as the old auditor. When I say "the old auditor,"
21 I meant the people who prepared this report, Energy
22 Ventures Analysis and Larkin & Associates. Was
23 anything done in response to that?

24 A. We continued -- just like I answered the

1 question here, I said he asked us to do
2 incremental -- oral -- sensitivity analysis as part
3 of our coal evaluation. We did it then; we do it
4 now. So did anything change? No.

5 Q. Okay. Did you interact with Liberty
6 Consulting Group on that matter?

7 A. Personally, no.

8 Q. Did your -- the group that you supervise
9 deal with Liberty Group in that matter? Are you
10 familiar with any interaction with them on that
11 matter?

12 A. No, I am not.

13 Q. Would you turn to page 8 of your
14 testimony, lines 3 through 4, and there you will find
15 the reference to the Designated Network Resource. Do
16 you see that?

17 A. Yes.

18 Q. And regarding the -- are you familiar
19 with the term DNR Midwest generating assets?

20 A. Yes.

21 Q. And what are the DNR Midwest generating
22 assets just in general? It's a set of a certain
23 number of generators?

24 A. Yes.

1 Q. Half dozen, is it? Five or six?

2 A. I can name them; you count them, right?
3 Lee, Vermilion, Fayette, Washington, and Hanging
4 Rock, five.

5 Q. All right. Which of those five qualified
6 by the Midwest ISO are Designated Network Resources?

7 A. Vermilion.

8 Q. So that's the only one that -- that's the
9 only plant that would be used for the SRT under any
10 circumstances; is that correct?

11 A. No.

12 Q. And why is that?

13 A. Because the other units might be a DNR
14 when -- when we have firm capacity, on PJM those will
15 qualify as DNR. Also Hanging Rock, Washington, or
16 Fayette could also qualify up to 900 megawatts as a
17 DNR in MISO.

18 Q. In my response you used the word "will"
19 like future tense. Is that conditioned on something
20 happening in the future?

21 A. Transmission services taken on PJM.

22 Q. They are not DNR today, correct?

23 A. I don't know.

24 Q. With the exception of Vermilion, of

1 course.

2 A. Now, Vermilion is. And with the firm
3 transmission path those units that I just qualified
4 up to 900 megawatts will be a DNR. I don't know if
5 they are a DNR.

6 Q. What has to happen before you know that
7 they are DNR?

8 A. I hate saying I don't know, but I don't
9 know. We've requested the transmission on PJM. And
10 I think we have said we are going to take that
11 transmission up to 900 megawatts. We have also
12 requested that if we use that specific source, right,
13 inside PJM, we asked MISO to do a network
14 transmission study to see if that -- those units
15 equal -- would qualify as a DNR, so I believe we have
16 done all of the things, and now that I say all this
17 out loud, I think they are a DNR, again, up to
18 900 megawatts but --

19 Q. Okay. You have used the word request
20 and -- and a request and also in your response you
21 talk about a study being conducted. Does the request
22 have to be approved by somebody?

23 A. Yes, both PJM and MISO.

24 Q. And has that approval been received?

1 A. Yes.

2 Q. Is the study that you talked about, has
3 that been completed?

4 A. Up to 900 megawatts, yes.

5 Q. What does that response mean, up to
6 900 megawatts? Does that mean you could use them but
7 there would be a limit to how much you could use?

8 A. Yes.

9 Q. So you couldn't use all -- all five of
10 the units?

11 A. Correct.

12 Q. That would exceed 900 megawatts.

13 A. Correct.

14 Q. I want to wrap up here. Did we establish
15 then they are DNR up to 900 megawatts?

16 A. I think so, the more that I talk about
17 it. Vermilion definitely DNR, I think the other PJM
18 units up to 900 megawatts are a Designated Network
19 Resource inside MISO's footprint. That corrects my
20 only Vermilion statement. Sorry.

21 Q. Is there anything else at the company --
22 or I know you work for shared services, but is there
23 anybody else who needs to know that or approve that
24 or confirm that before DENA Midwest assets or former

1 DENA Midwest assets could be used for purposes of the
2 SRT? Are you the authority? You know that they are
3 DNR, therefore, they could be used, or is there
4 somebody else who has to approve that?

5 A. Well, I just told you MISO ultimately has
6 to say that it's a DNR. Inside of the company if I
7 said it was a DNR, nobody would care. It really
8 matters what MISO says and PJM says, so I don't know
9 what it means if I said it.

10 Q. Well, I mean, aren't you the person
11 that's making the commitments for the company?

12 A. The commitments for what?

13 Q. For the capacity.

14 A. I procure capacity as part of the MBSSO.

15 Q. Right. I am asking if there is any
16 authority other than you that's needed in order to
17 procure that capacity.

18 A. No, there isn't.

19 MR. SMALL: Your Honor, that is the
20 breaking point that I mentioned.

21 ATTORNEY EXAMINER KINGERY: Thank you.
22 Let's go off the record.

23 (Discussion off the record.)

24 ATTORNEY EXAMINER KINGERY: Let's come

1 back in an hour.

2 (Thereupon, at 12:45 p.m., a lunch recess
3 was taken until 1:45 p.m.)

4 - - -

1 Thursday Afternoon Session,
2 December 13, 2007.

3 - - -

4 ATTORNEY EXAMINER KINGERY: Let's go back
5 on the record. Mr. Small.

6 MR. SMALL: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION (Continued)

9 By Mr. Small:

10 Q. Mr. Whitlock, will you turn to DE-Ohio
11 Exhibit 4, your direct testimony in Case 07-975. Do
12 you have that testimony?

13 A. I do.

14 Q. Okay. On page 4, at least on the
15 question on that page dealing with the estimated
16 reserve -- cost of reserve purchases in 2008, do you
17 see that? I'm on page 4.

18 A. Yes.

19 (The following is part of the
20 confidential record.)

21
22
23 MR. SMALL: Can we go off the record for
24 a second.

1 (Discussion off the record.)

2 (The following is part of the public
3 record.)

4 ATTORNEY EXAMINER KINGERY: Back on the
5 record. We are in the open record at this point.

6 MR. SMALL: Yes.

7 Q. (By Mr. Small) Mr. Whitlock, what is that
8 number for 2007?

9 A. The actual expenditures?

10 Q. Yes.

11 A. Around \$8 million.

12 Q. Could you please turn to Company
13 Exhibit 3. It's your supplemental direct testimony
14 in Case 07-723.

15 A. Not in Exhibit 4 anymore?

16 Q. I believe I said Exhibit 3. Am I
17 mistaken about that?

18 ATTORNEY EXAMINER KINGERY: So you're
19 changing to a different piece of testimony.

20 MR. SMALL: That's correct.

21 ATTORNEY EXAMINER KINGERY: Okay.

22 A. Which page?

23 Q. Page 2, on line 12 you used the word
24 "typically." Do you see that?

1 A. Yes.

2 Q. What background information do you use to
3 respond about the typical utility practice?

4 A. Hours, previously we used to do that.

5 Q. "We" being?

6 A. We being the Cinergy companies.

7 Q. And just to clarify that a little bit by
8 Cinergy companies, you mean CG&E and PSI?

9 A. Yeah.

10 Q. Okay.

11 A. Conversations, I mean, I have
12 conversations with other utilities in the state of
13 Ohio, and their organizational structure is such that
14 the emission allowance, compliance, and price risk
15 management is separate from their fuel, is also
16 separate from their power positions.

17 Q. Could you give examples of utilities?

18 A. DP&L and AEP.

19 Q. When you use the word "typically," you're
20 referring to DP&L and AEP and past practice of PSI
21 and C&GE?

22 A. And I think Ameren, I think, and LGE is
23 also separate.

24 Q. Do they fit the description you use on

1 line 13, managed the silos?

2 A. Again, yes.

3 Q. You mentioned PSI in your answer. That
4 is now DE --

5 A. Indiana.

6 Q. Duke Energy Indiana.

7 A. Yes.

8 Q. What is the practice now?

9 A. I'm not sure.

10 Q. There's the company called DE Carolinas;
11 is that correct?

12 A. I believe so.

13 Q. Are you familiar with their practice?

14 A. No.

15 Q. Again, line 16, you refer to "some
16 organizations." Do you see that?

17 A. Yes.

18 Q. What background information do you have
19 for responding about "some organizations"? Do I take
20 it "organizations" means utilities?

21 A. Yes.

22 Q. Okay. And what background information do
23 you have for your statement about "some utilities"?

24 A. Similar to the same information that I

1 gave you before.

2 Q. So it would be the same companies that
3 you mentioned before?

4 A. Yes.

5 Q. And would your answers be the same for
6 Duke Energy Indiana and Duke Energy Carolinas as your
7 previous answers?

8 A. Again, historically, yes. Right now,
9 they sit behind a code of conduct wall, right, that I
10 can't see what they do. There's this reg, nonreg
11 split, and that wall -- that's an impenetrable wall,
12 so I don't see how a lot of their organization
13 structure is set up, but historically that's how it
14 was set up.

15 Q. You don't have the same conversations you
16 had with DP&L and AEP today.

17 A. I still talk to AEP and DP&L.

18 Q. Right; which is different than the other
19 Duke Energy -- Duke affiliates.

20 A. Right.

21 Q. On line 21, you mention that:

22 "Procedures and guidelines recommended by the Auditor
23 are already in place." Now, the "auditor" you're
24 referring to there is the Liberty Consultants, right?

1 A. Yes.

2 Q. You mention on line 23 three documents.
3 Do you see that?

4 A. Yes.

5 Q. Okay. Now, going over to page 3, you
6 state that Duke Energy Ohio is creating a manual. Do
7 you see that, line 5?

8 A. I see it says, "The company has already
9 started to create a manual."

10 Q. Right. The description of the DE-Ohio
11 employs concerning active management, that's the
12 one-page document that was mentioned in the Liberty
13 audit report; is that correct?

14 A. I believe so.

15 Q. In the creating of a manual, what
16 substance is there to that manual? Is that going to
17 be considerably longer than one page?

18 A. Yes. In the manual will be a lot of the
19 documents that the auditor referenced, up to and
20 including the delegation of authority, the coal thing
21 that we talked about earlier, how we looked to
22 procure long-term coal. There will be policies in
23 there about our Vista model. There will be test burn
24 procedures in the manual, so it will be more

1 expansive than a one-page document.

2 Q. You mentioned that some will be documents
3 that preexisted. In the list you gave me just now,
4 are there -- did you mention anything that's new for
5 documents, or are you compiling things that are from
6 other sources and putting it together as a manual?

7 THE WITNESS: Could you read back the
8 list that I gave?

9 (Answer read.)

10 A. The answer is all those documents exist.

11 Q. What is being created that is new, if
12 anything?

13 A. It is more we will formalize and put that
14 into a formalized policy and procedures document.
15 When I read the auditor's report, there were a lot
16 of -- a variety of locations, references to policies,
17 procedures that were deployed in the CAM's business.
18 It will be to summarize those things and put them in
19 a formal procedure. If there are holes in that that
20 are determined, we will create procedures and process
21 around that.

22 Q. Have you determined there are any holes?

23 A. I don't believe that there are.

24 Q. Turn to page 4 of that testimony. For

1 the remainder of this examination, I am referring to
2 Exhibit 3. Page 4, lines 13 and 14, I believe you
3 have the Liberty audit report with you on the stand;
4 is that correct?

5 A. Yes.

6 Q. On lines 13 and 14 you talk about the
7 mismatch between forecast and actual coal consumption
8 is a result of active management. Such a statement
9 is not correct. What in the Liberty audit report are
10 you referring to there? If it helps, and I'm not
11 trying to put words into your mouth, since it's a
12 large document and because you couldn't have
13 anticipated my question, I will volunteer that you
14 might find that type of material in the audit report
15 around page II-16.

16 A. I think it's -- thank you for pointing
17 that out. I think it's in paragraph 3, on II-16,
18 like you say, when they say: "Moreover, even in the
19 absence of active management," and they go on to talk
20 about that there are differences between forecast and
21 actual consumption. That "moreover" seems to imply
22 at the beginning that active management created some
23 of the differences to me.

24 Q. I don't mean to suggest that I agree with

1 you because I disagree. Doesn't the paragraph on the
2 bottom of II-16 say that the incorrect or the poor
3 forecasting has to be responded to by active
4 management? It's not -- Liberty is not saying that
5 the active management is causing the problem with the
6 forecast. They're saying it's responding to the
7 problem with forecasting.

8 A. Again, I'm telling you my interpretation
9 of the word "moreover."

10 Q. It comes from just the word "moreover."

11 A. That's how I read it.

12 ATTORNEY EXAMINER KINGERY: Can we go off
13 the record for a minute.

14 (Discussion off record.)

15 ATTORNEY EXAMINER KINGERY: Back on the
16 record.

17 MR. D'ASCENZO: If I may for
18 clarification, on page II-2 there's a discussion at
19 the top that talks about the mismatch. I refer you
20 to that discussion that relates to that
21 recommendation.

22 THE WITNESS: That's even better.

23 Q. (By Mr. Small) All right. And I did
24 want to have you have an opportunity to look at the

1 document. You are referring to another part of the
2 document. What is that?

3 A. It's II-2. The auditor states: The
4 active management approach of procuring coal can
5 cause such a mismatch between forecast and actual
6 consumption to have a significant impact. It seems
7 to imply that active management creates a variation
8 between forecast and actual.

9 Q. I'm sorry, I was flipping pages, and I
10 wasn't listening to you. Where is that?

11 A. II-2, at the top, the sentence begins
12 "The active management approach."

13 Q. That sentence says that "the active
14 management" -- if you read the end of the line --
15 "causes significant impact," not the problem with the
16 forecast, but causes the significant impact. Isn't
17 that the way you read that sentence?

18 A. I just told you how I read it, so no.

19 Q. Did you prepare a presentation regarding
20 active management results for December 2006 for use
21 by the auditor?

22 A. No.

23 Q. Are you aware of such a presentation made
24 to the Liberty auditors?

1 A. We talked about December, but I'm not
2 aware of any presentation that was made.

3 Q. The reference I'm making is in the audit
4 report on chapter II, page 15. In the very first
5 line it refers to a spreadsheet illustrating
6 proactive management for the month of December 2006.
7 Do you see that?

8 A. I do.

9 Q. Did you have any role in the preparation
10 of that spreadsheet?

11 A. No.

12 Q. Are you aware of that spreadsheet?

13 A. I am.

14 Q. And who prepared that?

15 A. I don't know.

16 Q. Did you at any time discuss that
17 spreadsheet with a representative from the Liberty
18 group?

19 A. We had -- I had a discussion with the
20 Liberty auditor saying that we would prepare a
21 spreadsheet that would demonstrate it, but I never
22 talked to them. I had another meeting that I was in,
23 so I was not in the room when they discussed the
24 actual spreadsheet. But I did talk to them about we

1 would prepare a spreadsheet that takes the month that
2 they talked about in this audit report, December, and
3 show them what happened in the month of December.

4 Q. In your response just now you mentioned
5 "they," that "they discussed," but you weren't
6 actually in the room. Who was the "they"? Who was
7 in the discussion?

8 A. I don't know because I wasn't in the
9 room.

10 Q. You don't know who the company
11 representatives were?

12 A. No.

13 Q. Now, a moment ago we had some questions
14 and answers regarding a manual having to do with
15 active management. What documents exist, currently
16 exist, that analyze the merits of introducing the
17 active management approach?

18 A. I think it's the one-page document.

19 Q. Are there any documents -- I want to be
20 complete here -- that report qualitatively and
21 quantitatively on the effectiveness of active
22 management since its introduction? Would that be
23 that same one-page document?

24 A. Repeat the question one more time,

1 please.

2 Q. Are there documents that report
3 qualitatively and quantitatively on the effectiveness
4 of active management since its introduction, other
5 than that one-page document?

6 A. Yes.

7 Q. What are those documents?

8 A. I mean, there's going to be various
9 emails. There's the wood, glue, and nails
10 presentation we gave that talked about the
11 theoretical benefits of managing a portfolio
12 actively. There are publications about make versus
13 buy decisions in the literature, and those documents
14 have probably gone around inside of the company.

15 Q. Let's go to the first of those items. I
16 didn't quite catch the terminology you used. Did you
17 use the word "wood"?

18 A. Wood, glue, and nails.

19 Q. Right. Does that have to do with the
20 active management of coal?

21 A. It was an attempt in anticipation of
22 discussing active management with a variety of
23 different bodies to dumb down the idea of active
24 management. It argued that if you had a

1 manufacturing company that had wood and glue and
2 nails that were the three components, and they could
3 use the wood, glue, and nails to make a product or
4 they could sell the wood, glue, and nails at an
5 alternative time to buy the product they were making
6 to demonstrate how the price changes in wood, glue,
7 and nails and the output would affect whether you
8 made a decision to manufacture or not.

9 Q. That was an internally produced document?

10 A. I actually produced it.

11 Q. It was given to the auditor?

12 A. I don't believe so, no. I don't know.

13 Q. But it was prepared in preparation for
14 defending the practice?

15 A. I wouldn't use the word to "defend." It
16 was prepared to explain it, again, at a dumbed-down
17 level where people can say does it make sense for the
18 producer of a product to produce and sell the
19 product.

20 Q. What was the intended audience for the
21 document? You prepared the presentation for who?
22 Internal use? External audiences? The auditor?

23 A. Anybody that wanted the presentation.

24 Q. Why did you prepare it?

1 A. I prepared it because it was complicated.
2 There were predispositions. When we talked about the
3 emission allowance prices and power prices, and there
4 was predispositions about liquidity in coal and
5 liquidity in power and liquidity in EA markets, and
6 there were a lot of preconceptions about active
7 management when it was introduced in our business.

8 So I felt it was beneficial, and actually
9 I can't remember who recommended to me to actually
10 put the presentation together to take it out of the
11 world of preconceived notions about whether or not
12 you can actually buy and sell coal and whether or not
13 you can buy and sell emission allowances and how deep
14 markets are and how liquid they are.

15 Q. When did you prepare that?

16 A. I want to go 2004-ish. It was again in
17 the 2000s.

18 Q. That was a period before the company was
19 engaged in that activity, correct?

20 A. No. The idea of active management
21 evolved as active markets evolved. You could see
22 coal prices move and power prices move and markets
23 move. The process evolved. If power prices never
24 moved and emission prices never moved and coal prices

1 never moved, there's really no need. But when you
2 start to see those events occur, it makes sense for
3 you to actively manage that generation. It gives you
4 an option. The generator gives you an option.

5 Q. The real question is when did active
6 management start after the Duke Energy Ohio or CG&E?

7 A. When was it called active management?

8 Q. Not when was it called, when you were
9 actually doing it. Your testimony relates to two
10 types of organizations: Those that don't do it and
11 your company that does do it.

12 A. Right.

13 Q. At some point you must have leapt over
14 the line and started doing it. What was that point?

15 A. I don't know there was a day when all of
16 the sudden we said -- I disagree with the
17 characterization we leapt over a line at some point
18 in time. We walked over the line. The emission
19 market started to move and power market started to
20 develop, and we saw an opportunity the buy back power
21 and sell emission allowances and coal. Instead of
22 the crossing over line, it was a much more fluid type
23 of change into what we call active management now.

24 Q. You mentioned a second document. I think

1 you referred to it as make versus buy. What is that
2 document?

3 A. Could you read back to me? I don't know
4 that I recollect a make versus buy. I think what I
5 was saying was that there's a lot of literature
6 around whether you produce or not produce and the
7 make versus buy decision, and there are probably
8 documents, i.e., e-mails or maybe even presentations
9 that say: Shouldn't we consider our plant in the
10 same manner? Should we make power today or should we
11 sell?

12 Q. Are those internal documents? Were they
13 produced internally?

14 A. Jeff, you asked me if there were other
15 documents, right? I have to be careful about saying
16 there weren't any other documents. There's likely to
17 be other documents, maybe an e-mail, but when I said
18 that, I wasn't thinking of any specific documents
19 that said make versus buy.

20 Q. What other electric utilities use the
21 active management approach as their fuel management
22 philosophy?

23 A. Again, I don't think they would call it
24 active management. I think you would see the likes

1 of Reliant, the likes of Constellation, the likes of
2 Dynergy. Certainly any bank that own a generator
3 that has forward power sales obligations its going to
4 run or not run that generator and sell inputs. And I
5 think to varying degrees other utilities will again
6 along that continuum of active management do certain
7 things that are actively managing their portfolio.

8 Q. Was that information provided to the
9 Liberty Consultants?

10 A. That's my opinion.

11 Q. That these companies use that active
12 management philosophy.

13 A. Yes. If you read annual reports or
14 listen to the CEOs, talking about Reliant in earnings
15 reports, you can glean from that they deploy
16 something very similar to the active management
17 approach. That's my opinion. I haven't sat down
18 with them to talk about whether they actively manage
19 or not, but I believe that they would.

20 Q. What I'm concerned about is the statement
21 in the Liberty Consulting audit report that says that
22 the company was asked to identify all other -- I'm
23 sorry. The company was asked what other electric
24 utilities that it was aware of that used the active

1 management approach to their fuel management
2 philosophy. The response was that the company could
3 not cite specific examples. Was your information
4 shared with the auditor?

5 A. Where is that question?

6 Q. I'm on section II-14, the bottom
7 paragraph, about the middle of the paragraph, right
8 after footnote 19.

9 A. I think that I remember -- I think the
10 question that I was asked -- maybe a better answer
11 would be what I just gave you now, that I think based
12 on information that I gleaned from the market that
13 people do that as a normal course of their business.
14 It might have been I took issue with the word that
15 said it's part of their fuel management philosophy.
16 It's not a fuel management philosophy. It's a
17 philosophy of the management of the entire portfolio.

18 Do I have a problem saying a Reliant
19 Energy or Dynergy or a financial bank or a hedge fund
20 that has an asset that they will actively manage
21 that? I bet that they would. Can I say for sure
22 that they do that? Probably not, right, without
23 working there and seeing exactly what they do. So
24 that's probably part of my struggle. Does that make

1 sense?

2 Q. I'm curious, I'm interested how the
3 company is responding to the auditor's request. Was
4 this request directed to you, to your knowledge?
5 Were you aware of this inquiry?

6 A. Yeah. I read all the responses.

7 Q. And you didn't share with the auditor
8 what you stated on the stand today?

9 A. No.

10 Q. We have had a number of questions
11 concerning purchases of coal, RFP process. We have
12 been talking about the active management of coal.
13 Regarding transactions in coal, do any sales
14 involving Duke Energy Ohio or any purchases involving
15 Duke Energy Ohio take place with Duke Energy Ohio
16 affiliates?

17 A. No.

18 Q. Regarding transactions in energy or
19 capacity, do any sales or purchases take place with
20 DE-Ohio affiliates?

21 A. I believe there are power transactions
22 that are not sold to an affiliate but sold in
23 conjunction with an affiliate as part of long-term
24 agreements that were entered into when there was a

1 Cinergy Company on behalf of CG&E and PSI, but it's
2 not a sale to an affiliate but we serve common
3 customers. The reason I struggle, they were very
4 small deals. I think some still have duration on the
5 contracts. We do not have any affiliate sales or
6 purchase of power other than those sales that were
7 made as two people serving the same entity.

8 Q. I think I have this. You are referring
9 to a sale to a third party that would involve both
10 PSI and --

11 A. Yes.

12 Q. -- or what was PSI and what was CG&E.

13 A. Yes.

14 Q. And but not the sale to and from the
15 affiliates.

16 A. Right.

17 Q. Not involving a third party.

18 A. Right.

19 Q. There are no sales like that.

20 A. I don't believe so.

21 Q. Or purchases.

22 A. Right.

23 Q. With regard to emission allowances, same
24 question, are there any sales or purchases between

1 the company and any of its affiliates?

2 A. I don't believe so.

3 Q. Turning to page 9 of your testimony,
4 Exhibit 3, this area of your testimony you generally
5 refer to the Zimmer Plant. Are you aware that the
6 Commission issued an order dealing with then CG&E's
7 involvement in the Zimmer power plant? Are you aware
8 of that Commission proceeding?

9 A. No.

10 Q. It goes without saying you haven't read a
11 Commission order or anything like that on that
12 subject.

13 A. Right. I did read that document that I
14 referenced that got struck.

15 Q. Ms. Hotz earlier today referred to an NRC
16 document, a decision from the Nuclear Regulatory
17 Commission. Have you read that document?

18 A. I started to read it when she handed it
19 to me today, but I didn't finish it.

20 Q. That was the first you saw that document?

21 A. Yes.

22 Q. Did you discuss the Zimmer matter with
23 Liberty in connection with the Liberty group's audit
24 in this case?

1 A. Not directly.

2 Q. Well, how about indirectly?

3 A. I think Mike Hofmann talked to them about
4 it. If that's indirectly, then, yes.

5 MR. SMALL: May I have just a moment,
6 your Honor?

7 ATTORNEY EXAMINER KINGERY: Yes.

8 MR. SMALL: Your Honor, that concludes my
9 examination.

10 ATTORNEY EXAMINER KINGERY: Thank you.

11 Redirect.

12 MR. D'ASCENZO: If we could have two
13 minutes, your Honor?

14 (Recess taken.)

15 MR. D'ASCENZO: Just some small redirect.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. D'Ascenzo:

19 Q. Mr. Whitlock, do you remember before we
20 broke for lunch, there was some discussion about the
21 Midwest assets formerly known as DENA assets and
22 whether or not they qualified as a designated network
23 resource?

24 A. I do.

1 Q. And do you remember there was a little
2 bit of confusion about whether or not certain assets
3 would qualify?

4 A. Yes.

5 Q. Would you be able to clarify that for us
6 for the record?

7 A. I can try.

8 Q. Okay.

9 A. We were talking about "will be" or "is"
10 or "are" a DNR inside of MISO, and initially I said
11 that Vermilion was the only designated resource in
12 MISO. Then I worked myself through a process that
13 led me to say that both -- all of the PJM assets, so
14 Fayette, Hanging Rock, Lee, and Washington, were also
15 a DNR inside of MISO.

16 My clarification is that we have firm
17 transmission path on PJM giving us the ability to
18 make those generators a DNR, so we have approval from
19 PJM to make those a DNR. We also approval from MISO
20 saying that we can use network transmission inside
21 MISO to serve that load on a firm basis, i.e., it can
22 become a DNR.

23 And I stopped there, and that's why I
24 said that they could be used or they are a DNR. The

1 piece that I missed and the clarification is that
2 those assets in order for them to be a DNR have to be
3 dedicated to MISO and not recallable by another RTO.

4 Those assets that sit in a PJM, so
5 Fayette, Hanging Rock, Washington and Lee, have all
6 been dedicated and committed to PJM through of
7 May 2010 in the RPM capacity auction, and the first
8 week of the January will be committed through the May
9 of 2011. Prior to that time those assets cannot be
10 used as a DNR by MISO.

11 Q. I have just a couple more questions. Do
12 you remember some discussion with Mr. Small about the
13 manual that Duke Energy Ohio was beginning to create
14 that talks about active, its active management?

15 A. I do.

16 Q. And do you remember that Mr. Small had
17 asked a question about new information that might be
18 created and added to that manual?

19 A. I do.

20 Q. Are you familiar with the -- are you
21 aware of the fact that a stipulation had been reached
22 in the case No. 07-723?

23 A. Yes.

24 Q. Are you familiar with that stipulation?

1 A. Yes.

2 Q. Were you involved in the negotiation of
3 that stipulation?

4 A. Yes.

5 MR. D'ASCENZO: Your Honor, may I
6 approach the witness?

7 ATTORNEY EXAMINER KINGERY: You may.

8 Q. Mr. Whitlock, I am handing you what has
9 been previously been marked Joint Exhibit 1. Do you
10 recognize that document?

11 A. I do.

12 Q. Could you please identify that document?

13 A. It's the stipulation in case
14 07-723-EL-UNC.

15 Q. Would you please turn the page 4,
16 paragraph 6 of the stipulation?

17 MR. SMALL: Your Honor, I think I have
18 that document here somewhere, but no one has given me
19 one, so if I may have a moment to pull it out.

20 Okay, I'm with you.

21 Q. Are you there, Mr. Whitlock?

22 A. I am.

23 Q. Paragraph 6 is a -- would you please
24 describe paragraph 6 for me.

1 A. Paragraph 6 is really the commitment by
2 the company to work with counterparties to develop a
3 procedural manual that's related to the active
4 management transactions that we include in the rider
5 FPP, and we commit to three things -- four things
6 really. We say we are going to create a clear and
7 comprehensive set of procedures that address the
8 portions -- I don't want to read the whole thing, but
9 we commit to four things. So we're going to have in
10 that likely new documents and new information on
11 policies and procedures that were not included in the
12 audit, and the company is willing to do that.

13 Q. And will that documentation be included
14 in the manual that you discussed previously?

15 A. Yes.

16 MR. D'ASCENZO: Thank you.

17 No further questions, your Honor.

18 ATTORNEY EXAMINER KINGERY: Thank you.

19 Any recross, Mr. Small?

20 MR. SMALL: Yes, I believe there will be.

21 - - -

22 RECROSS-EXAMINATION

23 By Mr. Small:

24 Q. I'm having trouble finding it in my

1 notes, Mr. Whitlock. Can you find in your testimony
2 where you discuss the assembly of that documentation?
3 I gave to you a moment ago.

4 ATTORNEY EXAMINER KINGERY: I believe
5 that's on page 3 of Exhibit 3.

6 MR. SMALL: Thank you, your Honor.

7 Q. By the way, let's turn to page 1 of your
8 Exhibit 3, Duke Exhibit 3. On line 13 we have a
9 misprint, don't we?

10 A. Yes.

11 Q. We have a missing case number there. Is
12 that the one that we just put on the record when we
13 took administrative notice? Mr. Whitlock, do you
14 know what that should say?

15 A. I believe it should say 07-723, I think.

16 Q. That's this case?

17 ATTORNEY EXAMINER KINGERY: 07-724 was
18 the one we were previously referring to, I believe.
19 05-724, that was the old one.

20 THE WITNESS: The purpose of my testimony
21 is to respond to this final report developed by the
22 management consulting firm Liberty and references
23 this 723 case.

24 ATTORNEY EXAMINER KINGERY: So it is the

1 audit report in the present case, 07-723.

2 MR. SMALL: 07-723, this case, thank you.
3 I'm trying to get the old and new audit report
4 straight here.

5 Q. Are you familiar with the recommendations
6 of the old audit report, that would be the 05 case?
7 I don't know what we are calling it, the EVA
8 auditors? Are you familiar with that document?

9 A. I am.

10 Q. And did that auditor make the same
11 recommendation about documenting the active
12 management?

13 A. I'm on page I-9 of that report, and I
14 don't see it.

15 Q. I'll move on. In your response to
16 Mr. D'Ascenzo's question about DENA assets, you
17 referred May 2010 the commitment to the PJM
18 footprint; is that correct?

19 A. Yes.

20 Q. And then you made reference to 2011.

21 A. Yes.

22 Q. Can you repeat that and explain that?

23 A. Sure. There's are series of annual
24 auctions that have occurred where PJM procures for

1 all of the load inside of its footprint capacity
2 reserves. And in January we will participate in that
3 auction for those assets and commit those resources
4 to PJM. That happens in the first week of January of
5 2008. That auction will go through May of 2011.

6 Q. Now, I'm confused. What generators we
7 are talking about? Are we talking about all five of
8 them or talking about four of them but not Vermilion?

9 A. Not Vermilion, Vermilion is not a PJM
10 resource.

11 Q. In answer to the question of about them
12 being committed through the end of 2010 and the
13 company's intention to commit them through May of
14 2011, you are referring to the four of the five
15 plants we referred to of the Midwest; is that
16 correct?

17 A. Correct.

18 Q. How do you keep track of what resources
19 are DNR and which resources are not DNR?

20 A. Can you ask the question a different way?
21 I don't keep a list of all the DNR resources. I know
22 what are DNR resources or capacity resources in each
23 of the markets, but I don't have a list of other
24 resources. I mean, MISO maintains a list of what a

1 network resource is as does PJM. I don't.

2 Q. My concern is that we have gone through
3 considerable process of determining what is, what is
4 not a DNR resource for MISO on the stand today
5 including corrections in response to Mr. D'Ascenzo's
6 questions, and it seems to me a bit of a confusing
7 matter of what is and isn't a DNR resource, and it
8 would appear to be something you would need to know.
9 The question is how do you keep track of them?

10 A. I apologize if I created the confusion.
11 My confusion was hanging on the words "is," "are," or
12 "will be." I forgot about the element of delisting
13 the asset inside of PJM. I got the transmission
14 piece out of PJM, the transmission piece out of MISO,
15 and I got hung up in the words. I made a mistake.
16 If it's not clear now, I can attempt to clarify it
17 more, but it's clear in my head what a DNR is and
18 what RTO they qualify as designated network
19 resources.

20 MR. SMALL: That concludes my
21 examination.

22 MR. D'ASCENZO: Thank you very much.

23 ATTORNEY EXAMINER KINGERY: You may step
24 down.

1 (Witness excused.)

2 ATTORNEY EXAMINER KINGERY: You may call
3 your next witness.

4 MR. D'ASCENZO: Duke Energy Ohio calls
5 William Don Wathen.

6 (Witness sworn.)

7 MR. D'ASCENZO: Your Honor, if we could
8 go off the record for a moment.

9 ATTORNEY EXAMINER KINGERY: Yes.

10 (Discussion off record.)

11 ATTORNEY EXAMINER KINGERY: Back on the
12 record.

13 Mr. D'Ascenzo.

14 MR. D'ASCENZO: Thank you, your Honor.
15 Can we go off the record?

16 ATTORNEY EXAMINER KINGERY: Yes.

17 (Discussion off record.)

18 - - -

19 WILLIAM DON WATHEN, JR.

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

22 DIRECT EXAMINATION

23 By Mr. D'Ascenzo:

24 Q. Mr. Wathen, state your name and business

1 address.

2 A. My name is William Don Waltham. My
3 address is 139 East Fourth Street, Cincinnati, Ohio
4 45202.

5 Q. Mr. Wathen, before you you have a number
6 of documents. The first one is marked Company
7 Exhibit 5. Do you have that in front of you?

8 A. I do.

9 Q. Would you please identify that document.

10 A. Exhibit No. 5 is the prefiled testimony I
11 made in docket 07-723-EL-UNC related to the audit.
12 It's dated August 31. Exhibit 5 is a confidential
13 version of that document.

14 Q. Mr. Wathen, do you have an Exhibit 5A
15 before you?

16 A. Not in front of me, but it was getting
17 kind of busy up here.

18 MR. D'ASCENZO: Your Honor, may I please
19 approach?

20 ATTORNEY EXAMINER KINGERY: Yes.

21 Q. Mr. Wathen, do you have 5A before you
22 now?

23 A. I do.

24 Q. Would you please identify that.

1 A. It's a redacted version of the same
2 testimony in Exhibit 5.

3 Q. Mr. Wathen, do you have before you
4 Exhibit 5B?

5 A. I do.

6 Q. And would you please identify that.

7 A. It's essentially an errata sheet to my
8 Exhibit 5, recognizing that some of the statements I
9 made in August are no longer valid regarding the
10 pendency of the orders in a couple of open cases.

11 Q. Mr. Wathen, do you have before you what
12 has been marked as Company Exhibit 6?

13 A. I do.

14 Q. Would you please identify that document.

15 A. This is my direct testimony filed on
16 August 31 in Docket No. 07-975-EL-UNC.

17 Q. Mr. Wathen, do you have before you what
18 has been marked has Company Exhibit 6A?

19 A. I do.

20 Q. Please identify that document.

21 A. It's a redacted version of the same
22 testimony I identified in Exhibit 6.

23 Q. Mr. Wathen, do you have before you what
24 has been marked as Company Exhibit 6B?

1 A. I do.

2 Q. Would you please identify that document.

3 A. Similar to 5B, it's an errata sheet to
4 recognize some of the changes in the orders since the
5 time of the filing.

6 Q. Mr. Wathen, do you have before you a
7 document that has been marked as Company Exhibit 7?

8 A. I do.

9 Q. Would you please identify that document.

10 A. This is my direct testimony in Case
11 No. 07-973-EL-UNC. This is essentially the AAC
12 filing for 2008.

13 Q. Do you have before you a document that
14 has been identified and marked as company Exhibit 7A?

15 A. I do.

16 Q. Would you please identify that document.

17 A. It's a letter filing made with the
18 Commission. Apparently three of the pages to one of
19 my exhibits was not filed in August, so it was just a
20 supplemental filing to include that attachment, the
21 missing pages.

22 Q. Thank you. Do you have before you a
23 document that was marked as Company Exhibit 7B?

24 A. I do.

1 Q. Would you please identify that document.

2 A. As before, it's an errata sheet to
3 recognize changes in my testimony that would result
4 because of the orders that have been issued since the
5 time of the filing in August.

6 ATTORNEY EXAMINER KINGERY: Exhibits 5A,
7 5B, 6, 6A, 6B, and 7, 7A, 7B will be so marked.

8 (EXHIBITS MARKED FOR IDENTIFICATION.)

9 Q. Mr. Wathen, were the aforementioned
10 exhibits we just identified prepared by you or under
11 your direction?

12 A. Yes.

13 Q. Aside from the errata sheets that you
14 previously identified, do you have any changes or
15 corrections to your testimony?

16 A. I don't.

17 Q. And if I were to ask you those same
18 questions today, would your answers be the same?

19 A. With the errata sheets, yes.

20 Q. Thank you, Mr. Wathen. Do you have
21 before you a document identified as Joint Exhibit 1?

22 A. This isn't marked, but I believe it's
23 Joint Exhibit 1.

24 Q. It should be on the second page.

1 A. Yes.

2 Q. Would you please identify that document.

3 A. This is the stipulation and
4 recommendation reached in two of the dockets that we
5 are dealing with today, in 07-723 and 07-795,
6 essentially the SRT filing and the audit. It's an
7 agreement reached by most of the parties in the
8 cases.

9 Q. So are you familiar with the stipulation?

10 A. I am.

11 MR. SMALL: At this point I object. This
12 material having to do with the stipulation is not the
13 subject of Mr. Wathen's testimony. We have gotten
14 off the track. We started with his testimony. We
15 did redacted versions of it. We did errata sheets.
16 I have no objection to this material. In fact, the
17 corrections are just basically bringing things up to
18 date, and I have no problem doing my
19 cross-examination.

20 However, the stipulation is another
21 matter, and Mr. D'Ascenzo is beginning a line of
22 cross-examination which is not the subject of his
23 testimony, and expert testimony submitted before the
24 Commission must be written down and filed, and this

1 line of questioning is inappropriate.

2 MR. D'ASCENZO: Your Honor, Mr. Wathen
3 would testify on direct he was involved in the
4 negotiation process. The stipulation was reached
5 this morning and signed this morning in order to give
6 the opportunity for OCC to participate because they
7 weren't able to participate in discussions yesterday
8 that occurred. So that is the reason why testimony
9 had not been prefiled testimony, in order to give all
10 parties another chance for the negotiations.

11 ATTORNEY EXAMINER KINGERY: What areas of
12 questioning do you propose to cover with him with
13 regard to the stipulation?

14 MR. D'ASCENZO: Mr. Wathen would
15 essentially support the stipulation. He would
16 testify to the negotiation process that went into it,
17 the various opportunities that the parties had, and
18 otherwise support the stipulation itself, that it was
19 a product of serious bargaining, that there are
20 benefits to the stipulation, and that it is
21 consistent with regulatory principles.

22 MR. SMALL: Your Honor, if I understood
23 that argument, it seems a little bit odd to me that
24 somehow for the benefit of the OCC this morning, and

1 I don't see how that can be parlayed into putting the
2 OCC at a disadvantage in not being able to review the
3 prefiled testimony of the witness. I don't even
4 understand the argument there was some benefit to the
5 OCC that his testimony should be written down and
6 filed.

7 MR. D'ASCENZO: Your Honor, Mr. Wathen
8 can testify on direct, and OCC is able to -- would be
9 able to cross-examine him today.

10 ATTORNEY EXAMINER KINGERY: We are going
11 to allow you to ask the questions on direct of
12 Mr. Wathen, and then following the direct, we can
13 evaluate whether or not OCC needs to have some time
14 to prepare its cross, and we will resolve it at that
15 time.

16 MR. SMALL: As I understand it, the
17 procedure might be to use the transcript as the
18 written testimony?

19 ATTORNEY EXAMINER KINGERY: If necessary,
20 that's correct. I understand the transcript is to be
21 prepared fast anyway, so you would have the
22 transcript to prepare for your cross-examination if
23 it turns out we allow time for that.

24 MR. SMALL: I realize that you've made a

1 determination, but as a matter of practicality, it
2 seems like it would be easier and faster to just
3 commit it to paper and reconvene in the morning,
4 because transcripts are more difficult to prepare
5 than a short piece of testimony.

6 ATTORNEY EXAMINER KINGERY: If you had
7 overnight, you would be able to prepare
8 cross-examination?

9 MR. SMALL: I would be perfectly willing
10 to cross-examine in the morning.

11 ATTORNEY EXAMINER KINGERY: Is there
12 anyone not available in the morning?

13 (No response.)

14 ATTORNEY EXAMINER KINGERY: Would you be
15 able to prepare written testimony on the stipulation
16 this evening?

17 MR. D'ASCENZO: Yes.

18 ATTORNEY EXAMINER KINGERY: It would have
19 to get to people early enough they could see it.

20 MR. D'ASCENZO: Yes, your Honor.

21 ATTORNEY EXAMINER KINGERY: Go off the
22 record a moment.

23 (Discussion off record.)

24 ATTORNEY EXAMINER KINGERY: Back on the

1 record. Following the discussion off the record, we
2 have determined we will allow Mr. D'Ascenzo to
3 prepare written testimony of this witness with regard
4 to the stipulation. He will provide it
5 electronically to the parties this evening, no later
6 than 8 o'clock p.m., and file it in the morning with
7 the Docketing Division at the Commission. Following
8 that, we will have cross-examination of this witness
9 with regard to the stipulation tomorrow morning.

10 MR. SMALL: What time will we reconvene?

11 ATTORNEY EXAMINER KINGERY: We will talk
12 about that when we finish. We will work out
13 something reasonable.

14 You may proceed with your redirect if you
15 were not done on nonstipulation matters.

16 MR. D'ASCENZO: All right.

17 Q. (By Mr. D'Ascenzo) I believe I asked
18 this question, Mr. Wathen, but I will ask it one more
19 time to be sure. If I were to ask you the same
20 questions in your direct testimony and on the errata
21 sheets and the supplemental testimony, direct
22 testimony, would your answers be the same?

23 A. Yes, they would.

24 MR. D'ASCENZO: Your Honor, he is ready

1 for cross.

2 ATTORNEY EXAMINER KINGERY: Thank you.

3 Mr. Small.

4 MR. SMALL: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Small:

8 Q. Good afternoon, Mr. Wathen. I will be
9 proceeding by asking some questions about DE-Ohio
10 Exhibit 6. Do you have that out? I will be
11 proceeding to Company Exhibit 7.

12 Page 1, line 5 of your testimony, you
13 mention you're employed by Duke Energy Corporation,
14 correct?

15 A. That's correct.

16 Q. Who is Duke Energy Corporation?

17 A. It's just a holding company for Duke
18 Energy, all the affiliate companies of Duke Energy.

19 Q. It's a holding company and Duke
20 Energy Ohio is one of the companies that it holds.

21 A. That's correct.

22 Q. Are you employed by Duke Energy Shared
23 Services, which is the entity that employs, according
24 to Mr. Whitlock's testimony, Mr. Whitlock?

1 A. I can check my paycheck and tell you in
2 the morning. I believe it's Shared Services.

3 Q. Shared Services.

4 A. I would guess.

5 Q. Would you turn to page 2 of Exhibit 6,
6 lines 20 and 21. In there you mention projections of
7 reserve margin requirements. Do you see that,
8 projects its anticipated reserve margin requirements?
9 Do you see that on lines 20 and 21?

10 A. I do.

11 Q. Now, when you use the word "projects,"
12 you're talking about a forecasting function, correct?

13 A. That's correct.

14 Q. Okay. Are those the same -- and in this
15 instance we're talking about a load forecast,
16 correct?

17 A. It's a combination of a load and capacity
18 forecast.

19 Q. Okay. And are those forecasts the same
20 ones that are used to forecast the need for coal
21 consumption?

22 A. I doubt it. Coal consumption would be an
23 energy issue. This is capacity.

24 Q. Okay. Where do the capacity forecasts

1 come from that are used by the company?

2 A. Well, it's not my area but commercial
3 asset management, Chuck Whitlock's group, would do
4 the capacity forecast.

5 Q. They would also do the energy forecast
6 that would form the basis of the coal consumption
7 forecast, correct?

8 A. I believe they use the company's load
9 forecast as their baseline.

10 Q. Okay. Now, I'm a little bit confused
11 because we have been talking about two different
12 kinds of forecasts, right? You made the distinction
13 between energy and the capacity. When you say they
14 would use, are you talking about both of them would
15 come from the load forecasting group?

16 A. Commercial asset management, they would
17 be developing the capacity forecast. That's the
18 amount of capacity, units, et cetera, available in a
19 given month, taking into account forecasts of
20 outages, et cetera.

21 Load forecasting inside of the company,
22 the overall company, has a baseline forecast that the
23 commercial asset management uses to develop its
24 projection of energy requirements.

1 Q. If I understood that correctly, both the
2 energy forecast and the capacity forecasts in one way
3 or the other would lead back to the load forecasting
4 function of the forecasting group. I don't want to
5 use the word "forecasting," the forecasting group.

6 A. The load forecasting has no bearing on
7 the capacity forecast.

8 Q. I tried to not use the word "load."
9 Forecasting group is what I'm talking about, I'm
10 trying to find out the people who are creating the
11 forecast.

12 A. Two different groups. One does the
13 capacity forecast, that's the commercial asset
14 management group. Load forecasting is an entirely
15 different group. Both are needed to do an
16 anticipated reserve margin calculation.

17 Q. Lines 21 and 22 on page 2, you mention
18 estimating or -- "estimates the costs of purchasing a
19 portfolio of capacity products." Where did those
20 estimated costs originate?

21 A. Commercial asset management group has
22 that data.

23 Q. Mr. Whitlock's group.

24 A. Yes.

1 Q. If you could turn to your testimony
2 Company Exhibit 7. Turn to page 5 of Exhibit 7. You
3 discuss environmental compliance costs on line 8. Do
4 you see that reference?

5 A. I do.

6 Q. Do any of the figures in your calculation
7 consider the degree to which environmental upgrades
8 are complete?

9 A. The environmental compliance costs --
10 there's really two components to environmental
11 compliance costs that are here. One is the actual
12 costs that have been spent for the 12 months ending
13 in this case May 31, 2007, and clearly, whether the
14 degree to which a facility is complete or not is
15 reflected in the actual costs.

16 The other component is environmental
17 reagent forecast. As a part of the stipulation and
18 in a prior to FPP audit we moved those costs to the
19 AAC, and it was agreed we would forecast that for the
20 year in question, in this case 2008. The extent we
21 forecasted environmental reagents, and truthfully we
22 have joint owners in three of those plants that give
23 us the data, but to the extent environmental
24 equipment is complete or not complete would be

1 reflected in those forecasts.

2 Q. I think we have gone well beyond my
3 question, which is, as I understand your answer, if a
4 facility is 25 percent complete, and using that in
5 the sense of 25 percent of the costs have been
6 expended, then it goes in the books, and goes into
7 the calculations. I think what your answer is that
8 that 25 percent is reflected in the calculation; is
9 that correct?

10 A. Well, I don't know if I mentioned
11 25 percent.

12 Q. That's just a hypothetical.

13 A. The costs would be included for that,
14 yes, as of May 31, 2007.

15 Q. There isn't any threshold where something
16 is not put in there until it's a certain amount
17 complete was really the question. It just goes in
18 for the amount that has been expended; is that
19 correct?

20 A. That's correct.

21 Q. Are you familiar with the environmental
22 upgrade scrubber installation for the Conesville
23 4 plant?

24 A. I'm not personally familiar with it, no.

1 Q. I guess I'm not entirely sure what you
2 mean by you're not personally familiar with it. You
3 are familiar with that Duke Energy has a share in
4 this Conesville plant?

5 A. We have a share of the Conesville plant,
6 yes.

7 Q. Are you aware there's a scrubber
8 installation either planned or in the progress for
9 that plant?

10 A. Not off the top of my head. I don't have
11 a list of all the projects right in front of me.

12 Q. On page 5 of your testimony on
13 line 22 you mention staff witness L'Nard Tufts. Do
14 you see that?

15 A. Yes.

16 Q. What contacts have you had with Mr. Tufts
17 regarding the 2008 rider AAC amounts?

18 A. Regarding the 2008 AAC?

19 Q. Right.

20 A. I can't think of any formal contacts that
21 I've had. Maybe to the extent he wrote any of the
22 discovery that they submitted to us, that's all I can
23 think of.

24 Q. Okay. So you're saying you've had

1 contact regarding the 2008 rider AAC amounts with the
2 staff.

3 A. With the staff, yes.

4 Q. In the form of request from the staff.

5 A. We had discovery from the staff, and at
6 least two other auditors have come in and done visual
7 and accounting inspections of our books and records.

8 Q. When you say auditors, you are referring
9 to two individuals who are employed by the
10 Commission?

11 A. Yes.

12 Q. Did you have conversations with those
13 individuals?

14 A. With one.

15 Q. What are their names, please?

16 A. Tricia Smith who I've had conversations
17 with, and I believe Dave Erickson has done some
18 analysis as well, but I haven't talked to him
19 personally.

20 Q. And did Duke Energy Ohio host any on-site
21 visits, meaning visits to Duke Energy Ohio
22 facilities?

23 A. I believe virtually every plant that has
24 any significant expenditures have been visited or

1 will be visited by the end of the week by the staff.

2 Q. I'm not entirely clear what you mean by
3 the end of the week.

4 A. No. 7 -- Miami Ford 7 and 8 have not been
5 visited but they will tomorrow.

6 Q. What I'm not clear about is the beginning
7 of the process. You said it will complete very soon,
8 but when did the process start?

9 A. The process started shortly after the
10 filing when we had discovery. That was early
11 September, mid-September.

12 Q. When did you say they'd be complete?

13 A. Well, notwithstanding any disruption of
14 this proceeding going on tomorrow it was supposed to
15 be complete tomorrow, at least the visual
16 inspections.

17 Q. What facilities have yet to be inspected?

18 A. Miami Ford 7 and 8.

19 Q. Who are the individuals of the staff who
20 makes those visits? Are they the same two people
21 that you mentioned or are there other staff members
22 involved?

23 A. I don't know who visited which one, but I
24 know Tricia Smith and Dave Erickson, either or both,

1 have gone to all of those plants and will be
2 tomorrow.

3 Q. But you don't have additional individuals
4 who are involved in this that you're aware of?

5 A. I didn't go with them, so I don't know
6 who all was there, if someone else snuck in.

7 Q. Have you or anyone at your direction
8 discussed the Qualified Domestic Production Deduction
9 mentioned on page 10 of your testimony?

10 A. Could you repeat that question.

11 Q. Did you discuss the Qualified Domestic
12 Production Deduction with anyone on staff? I refer
13 you to page 10 on line 2.

14 A. I have not personally. Folks under my
15 supervision have.

16 Q. And who were those discussions with?

17 A. On the company's side or the staff?

18 Q. On the staff side.

19 A. I believe I spoke to L'Nard Tufts about
20 that, but I have to let L'Nard speak for himself on
21 that.

22 Q. Who was the representative of the
23 company?

24 A. Bob Parsons.

1 Q. Please turn to page 13 of your testimony,
2 lines 11 through 22. There is a discussion of
3 different levels of AAC charges at different times.
4 On line 15 it says -- there's the reference to
5 mitigation. It says: "To mitigate the impact on
6 residential customers." Do you see that?

7 A. I see it.

8 Q. Are you aware of any statement, order,
9 policy, or other directive from the PUCO or PUCO
10 representative to the effect this differential you
11 refer to on that page of your testimony should not
12 continue?

13 A. You're asking me if I'm aware of any
14 direction from the Commission that there's no longer
15 be a differential?

16 Q. Not what I asked, but let me -- maybe my
17 question was a little convoluted. Let me give it
18 another try. The part about the statement, order,
19 policy, something from the PUCO, and I use the word
20 PUCO expansively, Commissioners, staff members,
21 hearing examiners, attorney general, anybody
22 connected with the PUCO, are you aware of any
23 statement directed at the company to do away with the
24 differential that you mention in your testimony?

1 A. Well, other than the general statement
2 that, you know, we don't like to see discriminatory
3 prices persist, I can't think of a specific
4 statement. I certainly haven't had any direct
5 contact that led to a statement like that.

6 Q. Are you aware of some statement coming
7 from anybody connected with the PUCO that practice
8 was a discriminatory practice?

9 A. Well, it's apparent. 6 and 8 percent is
10 an obvious disparity.

11 Q. The question if the company has any
12 directive to do away with the differential, you don't
13 have any specific reference.

14 A. I don't have any, no.

15 MR. SMALL: Your Honor, that completes my
16 examination.

17 ATTORNEY EXAMINER KINGERY: Thank you.

18 Any redirect?

19 MR. D'ASCENZO: No, your Honor.

20 ATTORNEY EXAMINER KINGERY: You may step
21 down.

22 (Witness excused.)

23 MR. D'ASCENZO: Thank you, your Honor.

24 At this time Duke Energy Ohio would like to move its

1 exhibits -- would you want me to list them all
2 including subparts, or 1 through 7B?

3 ATTORNEY EXAMINER KINGERY: How about
4 1 through 7B?

5 MR. D'ASCENZO: 1 through 7B.

6 ATTORNEY EXAMINER KINGERY: Any objection
7 to any of the Duke exhibits?

8 (No response.)

9 ATTORNEY EXAMINER KINGERY: Hearing none,
10 they will all be admitted.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 ATTORNEY EXAMINER KINGERY: You have no
13 further witnesses, correct?

14 MR. D'ASCENZO: We don't, aside from
15 Mr. Wathen taking the stand again tomorrow.

16 ATTORNEY EXAMINER KINGERY: Yes.

17 MR. MARGARD: Your Honor, staff has two
18 witnesses but prior to calling staff witnesses, we
19 have become aware in the course of this proceeding
20 the document marked as Commission-Ordered
21 Exhibit No. 1 is the confidential version of the
22 audit report, and consistent with the company's
23 practice, we would request that we also mark and
24 admit as Commission-Ordered Exhibit 1A the redacted

1 version of the auditor's report.

2 ATTORNEY EXAMINER KINGERY: It will be so
3 marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 ATTORNEY EXAMINER KINGERY: It will be
6 admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 MR. MARGARD: Staff calls L'Nard Tufts.

9 - - -

10 L'NARD TUFTS

11 being first duly sworn, as prescribed by law, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Margard:

15 Q. Please state your name and business
16 address.

17 A. My name is L'Nard E. Tufts. My address
18 is 180 East Broad Street, Columbus, Ohio, 43215.

19 MR. MARGARD: May I have a marked as
20 Staff Exhibit 1 the direct testimony of L'Nard E.
21 Tufts.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Mr. Tufts, do you have a copy of that
24 exhibit before you?

1 A. I do.

2 Q. And can you identify that for us please.

3 A. It is my prepared testimony for this
4 proceeding.

5 Q. And this testimony was prepared by you or
6 at your direction?

7 A. It was.

8 Q. Have you reviewed this document prior to
9 testifying today?

10 A. Yes, I have.

11 Q. And do you have any changes, corrections,
12 alterations, modifications of any kind?

13 A. No, I do not.

14 Q. If I were to ask the same questions of
15 you today, would your responses be the same?

16 A. Yes.

17 MR. MARGARD: Thank you, your Honor, I
18 tender Mr. Tufts for cross-examination.

19 ATTORNEY EXAMINER KINGERY: Thank you.

20 Mr. Small.

21 MR. SMALL: I have one matter, a motion
22 to strike, page 4, line 86 beginning with the word
23 "and," and following through to the end of that
24 sentence. This portion of Mr. Tufts' testimony he is

1 speculating about adjustments that are nowhere in
2 evidence and haven't been performed and asks the
3 Commission to adopt matters of pure speculation and
4 should be stricken on that basis.

5 MR. MARGARD: Your Honor, as company
6 witnesses have already testified, there is some
7 ongoing investigation. It is scheduled to be
8 completed tomorrow. That is the matter that is
9 referred to in this particular section. Obviously,
10 staff cannot testify as to the completeness of that
11 inspection until it has occurred, it is perfectly
12 appropriate for staff to make a recommendation in the
13 event that it finds any such finding. Indeed if any
14 such findings are made, the staff at that time would
15 recommend their adoption. Certainly if a finding is
16 made and reported, we would be happy to make
17 Mr. Tufts available for cross-examination. In the
18 event there are no such finding to the report, there
19 is no issue.

20 ATTORNEY EXAMINER KINGERY: We are not
21 going to strike that language; however, we would like
22 to clarify exactly when you anticipate knowing the
23 results of staff's investigation and when we would
24 expect to find something filed to reflect those

1 results.

2 MR. MARGARD: Thank you, your Honor. I
3 do not know at what time the inspection is scheduled
4 to occur, and Ms. Smith has left the hearing room.
5 She was here until a few moments ago. She is, I
6 believe, the staff person scheduled to conduct that
7 inspection. We would certainly know by the end of
8 the day tomorrow.

9 ATTORNEY EXAMINER KINGERY: And you would
10 propose that once staff is done with its
11 investigation, that staff is going to file something
12 either way, let us know?

13 MR. MARGARD: Your Honor, there would
14 only be a need to file something if there is, in
15 fact, something that is found. To date the
16 investigation has revealed nothing significant to
17 report that would require any adjustment. Staff does
18 not anticipate making such a finding tomorrow, but in
19 the event such a finding is made, staff would make a
20 positive finding in this docket, yes, your Honor.

21 ATTORNEY EXAMINER KINGERY: We would need
22 to have a date certain by which such a filing would
23 have been made, so if the next day comes and there
24 has been no filing, we would know that that meant

1 there was no problem found by staff, so we have to
2 have a deadline.

3 MR. MARGARD: I perfectly understand
4 that. Again, not knowing what time the inspection is
5 scheduled for tomorrow, the best I can offer at this
6 time is to say that we would be able to report to you
7 by the end of the day tomorrow whether any filing
8 would be made. If a filing were to be made,
9 certainly I would think no later than Monday it could
10 be done.

11 ATTORNEY EXAMINER KINGERY: If we can
12 come up with a deadline of the end of the business
13 day on Monday by which you would have filed any
14 adjustments, with regard to any adjustments you were
15 going to propose, then I think that works for us.
16 Then you would offer Mr. Tufts again for
17 cross-examination on that.

18 MR. MARGARD: Of course.

19 ATTORNEY EXAMINER KINGERY: With that, we
20 will let the testimony stand.

21 MR. SMALL: By that it means if there is
22 no filing by Monday, there is no filing that would be
23 coming.

24 ATTORNEY EXAMINER KINGERY: That there is

1 no adjustment found.

2 MR. MARGARD: We would be able to report
3 to all of the parties tomorrow whether they should
4 expect anything to come Monday. By the end of the
5 day we can inform all parties that there is or is not
6 any filing to be made.

7 MR. SMALL: We would have some contact by
8 the end of day tomorrow.

9 MR. MARGARD: Phone call or e-mail, some
10 contact.

11 MR. SMALL: I would prefer electronic
12 contact.

13 MR. MARGARD: I understand.

14 ATTORNEY EXAMINER KINGERY: You may
15 proceed with cross-examination.

16 MR. SMALL: Just had to take all that in.

17 ATTORNEY EXAMINER KINGERY: I understand.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Small:

21 Q. Mr. Tufts, I notice you have testimony
22 that refers to a number of cases, for instance, on
23 page 2 of your testimony. I don't see any reference
24 to 06-1085, commonly referred to in these parts as

1 the remand rider cases that were recently concluded.
2 Is there any reason you haven't included that case in
3 your background?

4 A. No, there isn't. The cases that I have
5 referred to were the cases that specified what should
6 be included in --

7 Q. I'm sorry. I've having a hard time
8 hearing.

9 A. The cases I referred to are the cases
10 that provided a prescription of what should be filed
11 in an AAC application. So the reference to those
12 cases was to get the information as to what to expect
13 or what should be filed by the applicant in this AAC
14 filings.

15 Q. Have you read the decision in -- first of
16 all, Mr. Tufts, you testified in 06-1085, what I
17 referred to as the remand rider case; is that
18 correct?

19 A. Yes.

20 Q. And that was concerning the AAC, the same
21 subject that you testified -- that you're testifying
22 to today.

23 A. Yes.

24 Q. Have you read the opinion in 06-1085?

1 A. Yes.

2 Q. Are you familiar with the part of the
3 order that says Duke should expect that its claim
4 costs may be reviewed for reasonableness?

5 A. I don't recall that language
6 specifically.

7 Q. The real question is -- and I understood
8 your previous answer, that you referred in your
9 testimony to cases which guide you on what the
10 company should file, but is there nothing in the
11 Commission's order on the recent remand rider order
12 that gives instructions on how the staff should
13 review the AAC?

14 A. I read that order sometime ago, and I
15 don't recall exactly the specs of that order.

16 Q. Now, you previously for purposes of
17 reviewing AAC submissions by Duke Energy worked on
18 the calculations for the AAC that was presented in
19 the remand rider case; is that correct?

20 A. The 06-1085 case, that is correct.

21 Q. Right. And in that case you checked for
22 accounting inaccuracies, correct?

23 A. Yes.

24 Q. And did you do the same concerning the

1 AAC submissions for this case?

2 A. That is still a work in progress.

3 Q. Could you explain that, please?

4 A. I am not complete with my review of the
5 tax law change calculation.

6 Q. On page 1 of your testimony, lines 19 and
7 20 you state: "I state that Applicant's filing
8 complies with commission Orders regarding the
9 Annually Adjusted Component." Do you see that?

10 A. Yes, I do.

11 Q. How can you make that statement if you
12 haven't completed your review?

13 A. The filing complies with what was to be
14 included in the filing. The orders stated what was
15 to be included in the filing. I reviewed those
16 orders, reviewed the applicant's application, and the
17 application complied with those orders. I'm not
18 speaking to my investigation, results of my
19 investigation.

20 Q. So when you say the filing complies, you
21 mean in the form and the subject matter but not --
22 you're not testifying about accepting the results, at
23 least not at this time; is that correct?

24 A. Not at this time, that's correct.

1 Q. Did you go on any site visits for the
2 previous case, the remand rider case that recently
3 resulted in an order? Let me step back for a moment.
4 From the staff's perspective, are you the person who
5 is basically in charge of the investigation regarding
6 the AAC calculations?

7 A. Yes.

8 Q. Okay. So we just heard -- you were in
9 the room for Mr. Wathen's examination a few moments
10 ago.

11 A. Yes, I was.

12 Q. And when he mentioned two individuals, I
13 believe one was Tricia Smith and my memory fails me
14 here, one other individual.

15 A. David Erickson.

16 Q. Mr. Erickson, those two individuals work
17 at your direction on this particular project for the
18 Commission; is that correct?

19 A. That's correct.

20 Q. Okay. Do they go on site visits as part
21 of the review of the AAC in this case?

22 A. Yes.

23 Q. Did anyone else go on site visits?

24 A. Not that I'm aware of.

1 Q. And as was just represented, those
2 inspections are near completion but not complete; is
3 that correct?

4 A. That's correct.

5 Q. Are those similar visits -- were the
6 visits in the previous case similar to the ones being
7 conducted in this case?

8 A. Yes.

9 Q. Were any adjustments found in the
10 previous visits for the earlier case?

11 A. For the environmental compliance?

12 Q. Yes.

13 A. I don't recall specifically. There may
14 have been, but I don't recall.

15 Q. And what is the purpose of the site
16 visits?

17 A. To verify that there is actually
18 construction activity going on relative to
19 environmental compliance facilities.

20 Q. Construction that corresponds with the
21 accounting that you're also looking at; is that
22 correct?

23 A. That's correct.

24 Q. And that's your task, I mean, you're

1 looking at the accounting and doing some checking of
2 the physical attributes that go along with that
3 accounting; is that a fair statement?

4 A. Yes. We look at the financial
5 information and then verify the physical existence of
6 the associated facilities.

7 Q. You did not then and you do not now form
8 an opinion regarding whether any particular
9 construction is appropriate; is that correct? I
10 mean, you're just checking the books and making sure
11 that the physical -- checking to make sure that the
12 physical facilities exist. You're not stating here
13 today a recommendation whether anything has been done
14 properly or in compliance with the environmental laws
15 or making any other opinions in that regard? You're
16 just checking the books; is that correct?

17 A. That's correct.

18 Q. And if I'm correct, you didn't state in
19 the previous case any statement about whether
20 something should or should not be included in the
21 AAC, but you're limiting your opinion to whether the
22 accounting basically is correct.

23 A. We are verifying the accounting
24 information as I stated previously, the physical

1 existence, and I'm not sure what you mean by
2 appropriate. You mentioned according to the
3 environmental laws or from an engineering
4 perspective.

5 Q. I'm saying you're not making any policy
6 statements; you're just checking the accounting.

7 A. We check the accounting, that's right.

8 Q. Now, for your group, for the group
9 that -- we don't have to give it a name. The group
10 your supervising to look into the AAC amounts for
11 this case, who is involved in that activity,
12 Ms. Smith, Mr. Erickson, and yourself?

13 A. That's it.

14 Q. What contacts have you had with Duke
15 Energy regarding the rider AAC amounts. In other
16 words, you've already described -- or given an
17 indication there were plant visits. You also made
18 data requests, that sort of thing.

19 A. Yes.

20 Q. Were the conversations with company?

21 A. I would imagine so. I've had one or two
22 concerning tax information. It would be standard
23 procedure for the other investigators to have had
24 contacts, conversations with the company.

1 Q. Who did you have conversations with? You
2 referred to the tax information conversation.

3 A. I've had direct contact with Mr. Robert
4 Parsons.

5 Q. Just trying to get kind of a broad
6 overview of this activity. Were there any visits
7 other than the site visits to the company?

8 A. I don't know if there were any visits to
9 the offices themselves. I have not. I did not make
10 any visits to the offices.

11 Q. Any visits by the company to the PUCO
12 offices on this subject matter?

13 A. Not that I am aware of.

14 Q. Are you familiar with the Qualified
15 Domestic Production Deduction?

16 A. Yes.

17 Q. Could you please describe that deduction?

18 A. It is a tax deduction for certain
19 domestic production activities, one of which is the
20 generation of electricity.

21 Q. What is the deduction?

22 A. In terms of?

23 Q. You mentioned it has to do with the
24 generation of electricity. What is the deduction

1 for?

2 A. A company that generates electricity on
3 the basis of revenues and income can -- I think the
4 percentage has increased from 3 to 6 percent. There
5 is 6 percent deduction.

6 Q. From the corporate income tax; is that
7 the idea?

8 A. Yes.

9 Q. You said there was a change in the
10 percentage.

11 A. Yes.

12 Q. And when did that occur?

13 A. I believe that's applicable for 2007.

14 Q. I think I may be working on a little
15 piece of terminology here. On page 4, line 82,
16 there's the word "verification." Is that the
17 verification coming from the site visits and leading
18 back to the accounting activity? Is that the
19 verification you're talking about?

20 A. Well, that would be a part of it. Also
21 part of that verification would be looking at the
22 income tax statements, income tax returns, and the
23 supporting general ledgers, journal entries, work
24 order information.

1 Q. And so the "subject to" language on
2 line 81, "subject to the verification," means --
3 they're the reference to possible filings of
4 adjustments by the staff?

5 A. Yes.

6 Q. Pardon me if my memory fails me here.
7 You're completing the physical inspection. Did you
8 say you haven't completed the other verification as
9 well?

10 A. For the taxes.

11 Q. How will that be reported to the
12 Commission?

13 A. Same way, if there is an issue or a
14 discrepancy between the information in the filing and
15 the supporting source documents, we would make that
16 known to the examiners and through our AG to the
17 other parties.

18 Q. And what is the expected date of delivery
19 or final determination regarding that effort?

20 A. As we stated earlier, by the end of the
21 day Monday.

22 Q. Okay. I don't want to get into the
23 timing. The notice it was going to be provided on
24 Friday and filed on Monday, but so when you're

1 talking about the tax changes, that wasn't
2 encompassed -- that would be the same filing as the
3 one we mentioned earlier having to do with the site
4 visit; is that correct?

5 A. Yes.

6 MR. SMALL: That concludes my
7 examination.

8 ATTORNEY EXAMINER KINGERY: Thank you.
9 Any redirect?

10 MR. MARGARD: Likely not, if I could have
11 a moment to clarify something with my witness.

12 ATTORNEY EXAMINER KINGERY: Yes.

13 (Discussion off the record.)

14 MR. MARGARD: No other questions.

15 ATTORNEY EXAMINER KINGERY: I can't
16 actually ask you about redirect because I have to go
17 around the room for cross since there is no
18 stipulation on this.

19 Mr. D'Ascenzo.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. D'Ascenzo:

23 Q. Mr. Tufts, you stated a little earlier
24 you were involved in the examination of Duke Energy

1 Ohio's rider AAC application for 2007. Is that a
2 correct characterization?

3 A. Yes.

4 Q. Mr. Tufts, do you recall if Duke Energy
5 Ohio as part of its application in last year's rider
6 AAC, if Duke Energy Ohio had applied to allocate
7 across all customer classes an equal percentage of
8 little "g"?

9 A. I don't recall that.

10 MR. D'ASCENZO: No further questions,
11 your Honor.

12 ATTORNEY EXAMINER KINGERY: Thank you.

13 MR. NEILSEN: No questions, your Honor.

14 MR. BOEHM: No questions, your Honor.

15 ATTORNEY EXAMINER KINGERY: Now any
16 redirect?

17 MR. MARGARD: I have no redirect.

18 ATTORNEY EXAMINER KINGERY: Thank you
19 very much. You may step down.

20 (Witness excused.)

21 ATTORNEY EXAMINER KINGERY: You may call
22 your next witness.

23 MR. MARGARD: Staff would like to call
24 Mr. Richard Caahan to the stand, please.

1 (Witness sworn.)

2 MR. MARGARD: Your Honors, as a
3 preliminary matter, I would request that a document
4 entitled testimony of Richard C. Caahan be marked for
5 purposes of identification Staff Exhibit No. 2.

6 ATTORNEY EXAMINER KINGERY: It will be so
7 marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. MARGARD: We will offer in advance
10 this document was filed in case No. 973, while Mr.
11 Caahan's testimony pertains to case No. 975. We have
12 a corrected cover sheet and we will file a complying
13 copy of the testimony in the correct docket. The
14 testimony will not change.

15 ATTORNEY EXAMINER KINGERY: Thank you.

16 - - -

17 RICHARD CAAHAN

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

20 DIRECT EXAMINATION

21 By Mr. Margard:

22 Q. Mr. Caahan, do you have a copy of that
23 document before you?

24 A. Yes, I do.

1 Q. Can you identify the document for us,
2 please.

3 A. Yes, I can. It's my direct testimony
4 prepared intended for Case No. 975.

5 Q. And this was a document prepared by you
6 or at your direction?

7 A. Yes, it was.

8 Q. Have you had an opportunity to review it
9 prior to your testimony today?

10 A. Yes.

11 Q. Do you have any changes or corrections of
12 any sort?

13 A. No.

14 Q. And if I were to ask you the questions
15 contained in it, would your responses today be the
16 same?

17 A. Yes.

18 MR. MARGARD: Thank you, your Honor, I
19 tender Mr. Caahan for cross-examination.

20 ATTORNEY EXAMINER KINGERY: Thank you.

21 Mr. Small.

22 MR. SMALL: As a preliminary matter, OCC
23 has a motion to strike. Page 2, line 22, the last
24 word, the word "and" and continuing to the end of

1 that sentence which concludes on page 3, the end of
2 line 2. Mr. Caahan's testimony, as I understand it,
3 talks about basically a timing issue and states that
4 he cannot -- on line 7: "Staff cannot make the
5 statements that are contained in the Liberty audit
6 report." Nonetheless on the portions that I have
7 indicated that should be struck, Mr. Caahan tries to
8 introduce part of that information, which is
9 essentially testimony from individuals from Liberty
10 Consulting who are not on the stand for the truth of
11 the matter asserted. It's hearsay and should be
12 stricken. And I repeat Mr. Caahan says even on
13 page 7 that he can't do that.

14 MR. MARGARD: Page 7?

15 MR. SMALL: I'm sorry, page 3, line 7, he
16 says he can't do that, yet it is contained in his
17 testimony on the top of page 3.

18 MR. MARGARD: Your Honor, Mr. Caahan is
19 merely reciting findings made in a public document.
20 What he is saying in his testimony is that he has
21 reviewed that document. He's not sponsoring those
22 conclusions but his review of that document belongs
23 as part of his opinion in this matter. I believe he
24 is entitled to rely on information in that document

1 in forming his opinion. That's all I have to say.

2 ATTORNEY EXAMINER KINGERY: We are going
3 to deny the motion.

4 MR. SMALL: I have no questions for this
5 witness.

6 ATTORNEY EXAMINER KINGERY: Thank you.
7 Duke.

8 MR. D'ASCENZO: No questions, your Honor.

9 ATTORNEY EXAMINER KINGERY: IEU.

10 MR. NEILSEN: No questions, your Honor.

11 MR. BOEHM: No questions, your Honor.

12 ATTORNEY EXAMINER KINGERY: Thank you.

13 You may step down.

14 THE WITNESS: You're welcome.

15 (Witness excused.)

16 ATTORNEY EXAMINER KINGERY: Let's go off
17 the record.

18 (Discussion off the record.)

19 ATTORNEY EXAMINER KINGERY: Back on the
20 record. Mr. Margard.

21 MR. MARGARD: Staff would move the
22 admission of Staff Exhibits 1 and 2.

23 ATTORNEY EXAMINER KINGERY: Any
24 objections?

1 (No response.)

2 ATTORNEY EXAMINER KINGERY: Staff
3 Exhibits 1 and 2 will be admitted.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 ATTORNEY EXAMINER KINGERY: While off the
6 record we discussed the schedule from here on out,
7 and we determined that the AAC case, which is case
8 No. 973, I believe, will be bifurcated for briefing
9 purposes. We will have briefs due on December 21 by
10 the close of the business day. There will be no
11 reply briefs, and all parties have agreed to waive
12 the filing of replies. Briefs on the 21st should be
13 served electronically on all other parties as well as
14 being docketed here with the Docketing Division.
15 We've also agreed that we will back on the record
16 tomorrow morning here at 10 o'clock.

17 MR. SMALL: The only other matter that
18 briefing schedule was contingent upon any filings by
19 the staff.

20 ATTORNEY EXAMINER KINGERY: Yes. If it
21 turns out that staff has any changes in its
22 recommendations, which we will know by the end of the
23 day tomorrow, that briefing schedule will be put on
24 hold.

1 With that, we are adjourned for the day.

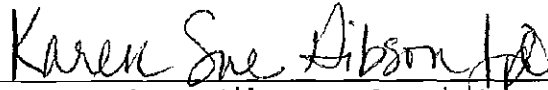
2 (Thereupon, the hearing was adjourned at

3 4:31 p.m.)

4 - - -

1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on Thursday, December 14,
5 2007, and carefully compared with my original
6 stenographic notes.

7
8 
9 Karen Sue Gibson, Registered
Merit Reporter.

10
11 
12 Rosemary Anderson, Professional
Reporter.

13
14 (KSG-4820)
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EXHIBITS

The following exhibit(s) were prefiled and can be located with the pleadings:

Exhibits	Date Filed
JOINT EXHIBITS	
1 - Recommendation and Stipulation	<u>Dec 13, 2007</u>
STAFF EXHIBITS	
1 - Prefiled Testimony of L'Nard E. Tufts <u>07-973-EL-UNC</u>	<u>Dec 12, 2007</u>
2 - Prefiled Testimony of Richard C. Cahaan <u>07-973-EL-UNC</u>	<u>Dec 12, 2007</u>
DE-OHIO EXHIBITS	
1 - Prefiled Testimony of Michael L. Hofmann <u>07-723-EL-UNC</u>	<u>Dec. 6, 2007</u>
2 - Prefiled Testimony of Charles R. Whitlock (Confidential)	
2A - Prefiled Testimony of <u>07-723-EL-UNC</u> Charles R. Whitlock (Redacted)	<u>Sept 4, 2007</u>
3 - Prefiled Supplemental Testimony of Charles R. Whitlock <u>07-723-EL-UNC</u>	<u>Dec. 6, 2007</u>
4 - Prefiled Testimony of Charles R. Whitlock (Confidential)	
4A - Prefiled Testimony of <u>07-975-EL-UNC</u> Charles R. Whitlock (Redacted)	<u>Sept. 4, 2007</u>
5 - Prefiled Testimony of William Don Wathen, Jr. (Confident	
5A - Prefiled Testimony of William Don Wathen, Jr. (Redacted) <u>07-723-EL-UNC</u>	<u>Sept 4, 2007</u>

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