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Wednesday Morning Session,
February 13, 2008.

- - -

EXAMINER BOJKO: This is a continuation
of 07-551-EL-AIR, et al., in the Matter of the
Application of Ohio Edison Company, Cleveland
Electric Illuminating Company, and The Toledo Edison
Company for Authority to Increase Rates for
Distribution Service, Modify Certain Accounting
Practices, and for Tariff Approvals.

At this time we'll take abbreviated
appearances to note which attorneys are in the room
at today's hearing. We'll start with the company.

MR. FELD: Good morning, your Honor. My
name is Stephen Feld, counsel for FirstEnergy, along
with Arthur Korkosz, Mark Hayden, Ebony Miller, and
Mark Whitt from the firm of Jones Day. Thank you.

EXAMINER BOJKO: Staff.

MR. WRIGHT: Yes, good morning, your
Honor. On behalf of the staff, Bill Wright and Tom
McNamee.

EXAMINER BOJKO: Schools.

MR. BREITSCHWERDT: Good morning, your
Honor. On behalf of the Ohio Schools Council, Brett

1 Breitschwerdt, Bricker & Eckler.

2 MR. LAVANGA: Good morning, your Honor.
3 On behalf of Nucor Steel Marion, Mike Lavanga of the
4 law firm Brickfield, Burchette, Ritts & Stone.

5 MR. NEILSEN: Good morning, your Honor.
6 On behalf of Industrial Energy Users-Ohio, Daniel
7 Neilsen from McNees, Wallace & Nurick.

8 MR. SMALL: On behalf of the Office of
9 the Ohio Consumers' Counsel, Jeffrey Small and
10 Richard Reese.

11 EXAMINER BOJKO: Thank you.

12 Before we begin with the hearing today,
13 off the record we discussed rebuttal testimony
14 schedules. All rebuttal testimony from all parties
15 will be filed and served by close of business -- I'm
16 sorry, by 5 o'clock on February 20th, and electronic
17 service will be the means of serving all the parties
18 in this case. Then we will begin with the
19 cross-examination of the rebuttal witnesses at 9 a.m.
20 on Friday, February 22nd, and we will continue that
21 rebuttal hearing until Monday, February 25th, which
22 will also be cross-examination of rebuttal witnesses.

23 Does staff have a preliminary matter?

24 MR. WRIGHT: Yes, your Honor, we do. By

1 agreement of all counsel it has been determined that
2 there is no cross-examination for Staff Witnesses
3 Scheck and Bossart. I would like to at this time go
4 ahead and mark their testimonies and move their
5 admission.

6 The testimony of Greg Sheck I would like
7 to have marked as Staff Exhibit No. 9 and the
8 prefiled testimony of Barb Bossart as Staff Exhibit
9 No. 10.

10 EXAMINER BOJKO: Those will be so marked.

11 (EXHIBITS MARKED FOR IDENTIFICATION.)

12 MR. WRIGHT: And I would like to at this
13 time move their admission.

14 EXAMINER BOJKO: Any party opposed to the
15 admission of Staff Exhibit 9, Mr. Scheck's testimony,
16 or Staff Exhibit 10, Miss Bossart's testimony?

17 Hearing none, they will be admitted.

18 MR. WRIGHT: Thank you.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER BOJKO: Does Nucor also have a
21 matter?

22 MR. LAVANGA: Yes, your Honor. It's my
23 understanding that parties will not have
24 cross-examination for Nucor's witness Dr. Dennis

1 Goins. I would ask that Dr. Goins' direct testimony
2 be admitted into the record as Nucor Exhibit No. 1.

3 EXAMINER BOJKO: It will be so marked as
4 Nucor Exhibit 1.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 EXAMINER BOJKO: Is anybody opposed to
7 the admission of Nucor Exhibit 1, Mr. Goins'
8 testimony?

9 Hearing none, it will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 MR. McNAMEE: Your Honor, I have one
12 small matter as well.

13 EXAMINER BOJKO: Yes, Mr. McNamee.

14 MR. McNAMEE: Yesterday during the
15 cross-examination of Mr. Buckley he accepted a
16 November 15 date subject to check, he checked and it
17 is correct.

18 EXAMINER BOJKO: Thank you. I think that
19 November 15th was the date where the staff -- for the
20 Staff Report?

21 MR. McNAMEE: I didn't write down what it
22 was for. I just wrote down the date.

23 EXAMINER PRICE: Data response request.

24 EXAMINER BOJKO: Oh, data response.

1 At this time would staff like to call its
2 next witness?

3 MR. McNAMEE: It would. Staff would call
4 Syeda Choudhury.

5 EXAMINER BOJKO: Ms. Choudhury, would you
6 raise your right hand, please.

7 (Witness sworn.)

8 EXAMINER BOJKO: Thank you.

9 - - -

10 SYEDA CHOUDHURY

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

13 DIRECT EXAMINATION

14 By Mr. McNamee:

15 Q. Ms. Choudhury, would you state and spell
16 your name, please.

17 A. Syeda A. Choudhury, S-y-e-d-a, A,
18 C-h-o-u-d-h-u-r-y.

19 EXAMINER BOJKO: Could you pull the
20 microphone closer.

21 Q. Who is your employer?

22 A. Public Utilities Commission of Ohio.

23 Q. What's your position with the Public
24 Utilities Commission?

1 A. I am Utility Regulatory Accounting
2 Specialist 1.

3 EXAMINER PRICE: Can you pull your
4 microphone closer? There you go.

5 Q. And what's your business address?

6 A. 180 East Broad Street.

7 MR. McNAMEE: Your Honor, at this time I
8 would ask to have two exhibits marked for
9 identification. I would ask to have marked as Staff
10 Exhibit 11 a multipage document filed January 30
11 entitled Prefiled Testimony of Syeda Choudhury.

12 EXAMINER BOJKO: It will be so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MR. McNAMEE: And also to have marked as
15 Staff Exhibit 11A a document filed
16 February 1st entitled Attachments to Prefiled
17 Testimony of Syeda Choudhury.

18 EXAMINER BOJKO: It will be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 EXAMINER PRICE: Mr. McNamee?

21 MR. McNAMEE: Yes.

22 EXAMINER PRICE: I also have corrected
23 attachments.

24 MR. McNAMEE: Yes, I'm sorry. Mark that

1 B, if you would.

2 EXAMINER BOJKO: Corrected attachments
3 will be marked as Staff Exhibit 11B.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. McNAMEE: There's a sad story that
6 goes with that which you'll hear in just a moment.

7 Q. (By Mr. McNamee) Miss Choudhury, do you
8 have before you what's been marked as Staff Exhibits
9 11, 11A, and 11B?

10 A. Yes, I do.

11 Q. What is Staff Exhibit 11?

12 A. My prefiled testimony.

13 Q. And Staff Exhibits 11A and 11B are
14 attachments that would have been made to what's been
15 marked for identification as Exhibit 11 if I would
16 have gotten it right; is that correct?

17 A. Yes.

18 Q. Okay. Now, Miss Choudhury, were these
19 staff exhibits prepared by you?

20 A. Yes.

21 Q. Do you have any additions or corrections
22 or updates that you need to make to any of these?

23 A. Yes, I do.

24 Q. What are those?

1 A. I have an update. I need to withdraw
2 questions and answers to 12 and 13.

3 Q. Okay. And those appear on pages 5 and 6
4 of what's been marked for identification as Staff
5 Exhibit 11?

6 A. Yes.

7 EXAMINER BOJKO: The entire question?

8 THE WITNESS: Yes. Questions and
9 answers.

10 Q. Those questions and answers address
11 objections that have been withdrawn, correct?

12 A. Yes.

13 EXAMINER BOJKO: I have a question. I
14 thought that the stipulation did not withdraw IEU's
15 objection 1. Is that not correct?

16 MR. NEILSEN: One second, your Honor.

17 MR. McNAMEE: That's correct. It does
18 not mention 1.

19 Q. Leave them in then, okay?

20 A. Okay.

21 MR. NEILSEN: That is correct, your
22 Honor.

23 EXAMINER BOJKO: So objection 1 still
24 stands.

1 MR. NEILSEN: Yes.

2 EXAMINER BOJKO: So you're going to leave
3 in questions and answers 12 and 13?

4 MR. McNAMEE: Yes.

5 THE WITNESS: Yes.

6 Q. (By Mr. McNamee) Do you have any other
7 corrections you need to make to the testimony?

8 A. Yes, I do. On page 3, line 18, it should
9 be off instead of "if," it's a "requirement as a
10 result," it should be "off."

11 EXAMINER BOJKO: Which page is that?

12 THE WITNESS: Page 3, line 18.

13 EXAMINER BOJKO: Could you either pull
14 your mike down or speak louder?

15 THE WITNESS: Okay.

16 EXAMINER PRICE: Or both.

17 Q. With that correction are the contents of
18 what's been marked for identification as Staff
19 Exhibits 11, 11A, and 11B true to the best of your
20 knowledge and belief?

21 A. Yes.

22 Q. Do you adopt those as your direct
23 testimony in this case?

24 A. Yes.

1 Q. If I asked you those same questions here
2 this morning, would your answers be as they're
3 presented therein?

4 A. Yes.

5 MR. McNAMEE: Okay. With that, your
6 Honor, Miss Choudhury is available for cross.

7 EXAMINER PRICE: I have a question just
8 to clarify. The schedules in 11A we get to ignore
9 because they've been corrected in 11B?

10 MR. McNAMEE: Yes. That would be the
11 better course of action.

12 EXAMINER BOJKO: 11B fully supplants 11A.

13 MR. McNAMEE: Yes. I didn't include all
14 the tabs in the spreadsheet unfortunately when I
15 attached those.

16 EXAMINER PRICE: Thank you very much.

17 EXAMINER BOJKO: Start with IEU. Any
18 questions?

19 MR. NEILSEN: No questions, your Honor.

20 EXAMINER BOJKO: Nucor?

21 MR. LAVANGA: No questions, your Honor.

22 EXAMINER BOJKO: Schools?

23 MR. BREITSCHWERDT: No questions, your
24 Honor.

1 EXAMINER BOJKO: OCC?

2 MR. SMALL: No questions, your Honor.

3 EXAMINER BOJKO: FirstEnergy?

4 MR. HAYDEN: Yes, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Hayden:

8 Q. Good morning, Miss Choudhury.

9 A. Good morning.

10 Q. I have just a couple quick questions for
11 you. In your calculation of uncollectible expense
12 you included sales for resale in the calculation of
13 the uncollectible ratio; is that correct?

14 A. Yes.

15 Q. Are you aware of any uncollectible
16 associated with sales for resale?

17 A. No.

18 Q. Is it your understanding that sales for
19 resale revenues are associated with wholesale
20 transactions?

21 A. Yes.

22 Q. And do you know how much the wholesale
23 revenues are associated with intercompany
24 transactions?

1 A. No.

2 MR. HAYDEN: No further questions.

3 EXAMINER BOJKO: Any redirect?

4 MR. McNAMEE: No redirect, your Honor.

5 EXAMINER BOJKO: I have one question.

6 Would you look at page 6 of your testimony, please.

7 In response to an objection from IEU you discuss the
8 special contracts and you state that the discounts
9 are attributed to distribution revenues and that they
10 should be left with the distribution company because
11 they are contracts with the distribution company. Do
12 you see that?

13 THE WITNESS: Yes.

14 EXAMINER BOJKO: Just so we're clear that
15 even though they are associated with the distribution
16 company, they are for generation service, the special
17 contracts include generation service, right?

18 THE WITNESS: Yes.

19 EXAMINER BOJKO: Okay. You're excused.

20 MR. McNAMEE: At this time staff would
21 move the admission of Staff Exhibits 11, 11A, and
22 11B.

23 MR. FELD: Your Honor?

24 EXAMINER BOJKO: Yes.

1 MR. FELD: With regard to the section
2 with regard to the objections of IEU, I know we've
3 been over this, but the objection, I'm looking at
4 question 12 on page 5, although it refers to IEU
5 objection No. 1, objection No. 1 was a general
6 revenue requirements objection that IEU posed. The
7 quotation here with regard to the voltage discounts
8 and so forth has been withdrawn, there is no
9 testimony on that, and that objection having to do
10 with the voltage discounts has been withdrawn through
11 the stipulation, of course. So, again, although
12 objection 1 was not withdrawn, the specific quote
13 that she has here has been withdrawn.

14 EXAMINER BOJKO: My concern is that her
15 testimony references all three objections.

16 MR. FELD: Yes.

17 EXAMINER BOJKO: And I guess I thought
18 when she drafted the testimony, that's what she was
19 referring to. It's her testimony, so she needs to
20 make that decision.

21 MR. McNAMEE: We're satisfied with the
22 state of things as they are.

23 EXAMINER BOJKO: You are satisfied with
24 leaving it in as it is?

1 MR. McNAMEE: Yes, that will be fine.

2 MR. FELD: Well, we would object to the
3 admission of the testimony with the reference to the
4 objection numbers that have been withdrawn and to the
5 quotations with regard to objections that have been
6 withdrawn, and the testimony of that subject matter
7 has not been offered.

8 EXAMINER BOJKO: Mr. Nielsen.

9 MR. NEILSEN: Your Honor, just to support
10 the comments of the company, that is correct that
11 IEU's intention was to withdraw those portions of the
12 objections regarding the voltage discounts and the
13 special contract issues which were part of the
14 objections that were included in the objections that
15 we noted that were withdrawn yesterday.

16 EXAMINER BOJKO: 2 and 3.

17 MR. NEILSEN: 2 and 3, yes.

18 MR. McNAMEE: How about if we take a
19 minute and look at this and make sure that there's no
20 problem withdrawing these two questions and answers,
21 and we'll address it in a few minutes.

22 EXAMINER PRICE: That's an excellent
23 suggestion. We'll defer ruling on it.

24 MR. McNAMEE: Yeah, let's do that.

1 EXAMINER BOJKO: May we continue with the
2 next staff witness or do you need 10 minutes, 5
3 minutes?

4 MR. WRIGHT: Well, your Honor, he just
5 walked out the door. My intention was to continue.

6 EXAMINER BOJKO: Let's go off the record.
7 (Off the record.)

8 EXAMINER PRICE: Let's go back on the
9 record.

10 Mr. Wright.

11 MR. WRIGHT: Thank you, your Honor. At
12 this time we would call Frank Rack to the stand,
13 please.

14 (Witness sworn.)

15 EXAMINER PRICE: Please be seated and
16 state your name and business address for the record.

17 THE WITNESS: My name is Francis Rack
18 spelled with an I, Francis with an I, middle initial
19 C, last name is Rack, R-a-c-k. I'm a Public Utility
20 Administrator in the Utilities Department.

21 EXAMINER PRICE: I was just asking for
22 your business address.

23 THE WITNESS: My business address is 180
24 East Broad Street, Columbus, Ohio 43215.

1 EXAMINER PRICE: Mr. Wright.

2 MR. WRIGHT: Thank you, your Honor.

3

4 FRANCIS C. RACK

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

7 DIRECT EXAMINATION

8 By Mr. Wright:

9 Q. Mr. Rack, by whom are you employed?

10 A. Public Utilities Commission of Ohio.

11 Q. And, once again, what is your position?

12 A. I'm a Public Utilities Administrator.

13 Q. Have you prepared testimony in this case?

14 A. Yes, I have.

15 MR. WRIGHT: Your Honor, at this time I
16 would like to have marked as Staff Exhibit 12 the
17 prefiled testimony of Mr. Rack.

18 EXAMINER PRICE: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. WRIGHT: Thank you.

21 Q. Mr. Rack, do you have in front of you
22 what we have just marked as Staff Exhibit No. 12?

23 A. Yes, I do.

24 Q. Would that be your testimony in this

1 case?

2 A. Yes, it is.

3 Q. Do you have any changes or corrections to
4 that testimony?

5 A. Just a minor what appears to be a
6 computer error on page 2, the very bottom, the word
7 "recommended" has not been hyphenated.

8 Q. So would you add a hyphen?

9 A. Yes, I would.

10 Q. Okay. Thank you.

11 Do you adopt the questions and answers in
12 your prefiled testimony here today as true and
13 accurate?

14 A. Yes.

15 MR. WRIGHT: With that, your Honor,
16 Mr. Rack's available for cross-examination.

17 EXAMINER PRICE: Thank you.

18 IEU?

19 MR. NEILSEN: No questions, your Honor.

20 EXAMINER PRICE: Nucor?

21 MR. LAVANGA: No questions, your Honor.

22 EXAMINER PRICE: Schools?

23 MR. BREITSCHWERDT: No questions, your
24 Honor.

1 EXAMINER PRICE: OCC?

2 MR. SMALL: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Small:

6 Q. Mr. Rack, could you please turn to page 2
7 of your testimony. On page 2, lines 16 through 17,
8 you referred to Case No. 05-1125-EL-ATA. Do you see
9 that?

10 A. Yes, sir.

11 Q. Are you generally familiar with the
12 stipulations and the results of that case?

13 A. I am slightly familiar with it.

14 MR. SMALL: If I may, your Honor, I'd
15 like to have OCC Exhibit 11 marked.

16 EXAMINER PRICE: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. SMALL: And approach the witness.

19 EXAMINER PRICE: You may.

20 EXAMINER BOJKO: Mr. Small, are you now
21 going back and using your 11, 12, and 13?

22 MR. SMALL: Yes, I am. I didn't want to
23 have a gap to appear.

24 Q. (By Mr. Small) Mr. Rack, do you have

1 what's been marked as OCC Exhibit 11?

2 A. Yes.

3 Q. All right. OCC Exhibit 11, the first
4 page of it says "Application" but partway through it
5 it attaches a stipulation. Can you find that. It's
6 marked as Exhibit 1 to the application.

7 EXAMINER BOJKO: And you're referring to
8 a document that's been filed in 05-1125?

9 MR. SMALL: Yes. 05-1125, the case
10 that's referred to in his testimony on page 2.

11 EXAMINER PRICE: And that section is
12 after the tenth page. The exhibit is after the
13 tenth page.

14 MR. SMALL: Yes, that's correct. There's
15 a stipulation and recommendation as Exhibit 1 after
16 the ten-page application.

17 Q. Do you have that?

18 A. I found that.

19 Q. Okay. Are you familiar with this
20 document?

21 A. I'm not sure. I have read -- I've
22 skimmed over the opinion and order piece that I think
23 would also have included this document as maybe an
24 appendix.

1 Q. As a general matter, the opinion and
2 order that you referred to and any of the entries
3 associated with it dealt with two stipulations in
4 that case; is that your understanding? The original
5 stipulation and a supplemental stipulation.

6 A. My understanding actually doesn't go
7 quite that deep.

8 Q. I'm a little bit curious about your
9 testimony then on page 2 where you testify about
10 stipulation entered into in Case No. 05-1125. Are
11 you not familiar with that material?

12 A. I'm familiar with it to the extent to
13 which I've used it in my testimony.

14 MR. SMALL: The OCC would like to have
15 another document marked as OCC Exhibit 12.

16 EXAMINER PRICE: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. SMALL: May I approach?

19 EXAMINER PRICE: You may.

20 Q. Mr. Rack, the Bench has marked OCC
21 Exhibit 12 as being a document again taken off the
22 Commission's docketing system entitled "Supplemental
23 Stipulation" also in Case No. 05-1125-EL-ATA and
24 associated cases. Do you have that on the stand?

1 A. Yes, sir.

2 Q. All right. Have you reviewed that
3 stipulation?

4 A. Yes, I have.

5 Q. And this is the second stipulation that I
6 was referring to. If you could -- and this document
7 is stamped on it November 4th, 2005. So that's the
8 document that you're referring to in your testimony
9 here regarding a November 2005 stipulation, line 16
10 on page 2; is that correct?

11 A. Yes, that would be correct.

12 Q. If you could turn to page 2 of OCC
13 Exhibit 12, that would be the Supplemental
14 Stipulation, do you see what's labeled at the top
15 called the "DSM Budget"?

16 A. Yes.

17 Q. Okay. Now, if you take the Home
18 Performance Energy Star figures at the top, there's a
19 figure for 2006, 2007, and 2008, and what's called
20 the residential air conditioning direct load control
21 figures for 2006, 2007, 2008. Do you see those six
22 numbers on OCC Exhibit 12?

23 A. Yes, I do.

24 Q. Okay. If you add those numbers up, you

1 come to \$25 million that's stated in your testimony;
2 is that correct?

3 A. That is correct.

4 Q. Maybe this is restating it, but is that
5 the basis for your statement on lines 17 and 18 that
6 there was a \$25 million DSM program that came out of
7 this case?

8 A. Actually, not directly. The 25 million
9 number I was using came from interviews I had with
10 the company. I'm pleased to note that the numbers do
11 match.

12 Q. So you believe that the document I've
13 shown you is the underlying document which was
14 reflected by conversations with FirstEnergy
15 personnel.

16 A. Yes.

17 Q. Now, the budgeted amounts on page 2 go
18 through 2008; is that correct?

19 A. That's correct.

20 Q. And what is your understanding about the
21 effective date of the first rates that will go into
22 effect as a result of this case?

23 MR. WRIGHT: "This case" referring to?

24 MR. SMALL: This case is the one that

1 we're --

2 MR. WRIGHT: The one we're in now?

3 MR. SMALL: That we're cross-examining
4 the witness in right now.

5 MR. WRIGHT: Thank you.

6 A. I'm sorry, I'm not sure I understand your
7 question.

8 Q. Would you agree with me that the first
9 rates that would go into effect as a result of this
10 distribution rate case would be for January 1st,
11 2009?

12 A. You know, because -- it is my
13 understanding that the companies propose that all the
14 DSM moneys be put into a DSM rider and outside of the
15 base rates in this case, and that moneys are already
16 being spent for these programs sort of in the context
17 of the stipulation. I don't know that I have given
18 much thought to your question because it seems
19 irrelevant to me. What seems relevant is to have a
20 stipulation and a budget to spend a certain amount of
21 money that was agreed to in this stipulation and it
22 appears that they're on their way to doing that.

23 Q. All right. With all due respect,
24 Mr. Rack, I don't think any of that was responsive to

1 my question. My question was: Do you understand
2 that there will be no rates that come out of this
3 particular distribution rate case until 2009? These
4 are not for 2008 rates.

5 A. I wouldn't know.

6 Q. On page 2 of your testimony, line 21, you
7 state that "The staff believes that it is premature,"
8 going over to the next page, "to recommend additional
9 DSM expenditures." Do you see that?

10 A. Yes, sir.

11 Q. Isn't it difficult to know what's
12 premature if you don't know when the rates are going
13 to be effective for this particular case?

14 MR. WRIGHT: Your Honor, with one
15 clarification, I would note that the question did not
16 take into account the entirety of the sentence, the
17 witness's sentence.

18 MR. SMALL: Be happy to read it into the
19 record. "Staff believes it is premature to recommend
20 additional DSM expenditures beyond those agreed to in
21 the 05-1125-EL-ATA stipulation agreement."

22 Q. Now that stipulation agreement is the
23 stipulation that you have in front of you; is that
24 correct?

1 A. That's correct.

2 Q. Okay. Isn't it difficult to know whether
3 it's premature if you don't know when the rates are
4 going into effect in this case?

5 A. I would make that statement irregardless
6 of how much money we were talking about and when you
7 were talking about. That statement really relates to
8 how many months in the field are the DSM measures
9 implemented and when are you getting data back into
10 the knowledge base to find out if these are worthy
11 programs, I mean, money being well spent.

12 Q. Okay. Let's go back to page 2 of your
13 testimony, lines 18 and 19. There it states -- or
14 the sentence beginning with the word "this" says
15 "This DSM program effort is very much in its infancy
16 with the company just starting to invest dollars in
17 the spring of 2007." Do you see that?

18 A. Yes, sir.

19 Q. So that addresses the matter that you
20 just raised that --

21 A. That's correct.

22 Q. -- the programs are just -- have just
23 really been beginning; is that correct?

24 A. That is correct.

1 Q. All right. Now, the stipulation that you
2 have in front of you talks about dollars being spent
3 in 2006, correct?

4 A. That is correct.

5 Q. I'm on page 2 of the supplemental
6 stipulation.

7 A. Yes.

8 Q. All right. And why were -- if you know,
9 why were there no dollars spent in 2006?

10 A. I don't know.

11 Q. Well, would you agree with me that
12 compared to the stipulation the programs got off to a
13 not -- they're in their infancy because they got off
14 to a slower start than was anticipated by the
15 stipulation?

16 A. That certainly appears to be the case.

17 Q. Are you aware of the circumstances under
18 which the program did not get started up in 2006 as
19 anticipated by the stipulation?

20 A. No, I am not.

21 Q. Were you part of the collaborative --
22 have you been at meetings of the collaborative that
23 worked on and helped implement the DSM programs?

24 A. No.

1 Q. Considering the fact that there appears
2 to have been, and I'm not here assessing any
3 particular blame with this, but that there appears to
4 have been some delay in rolling out DSM programs for
5 their design and implementation, wouldn't it be a
6 good idea for the collaborative process to get
7 started well in advance of the time when the money
8 would actually be spent on a DSM program?

9 MR. WRIGHT: Your Honor, I'm going to
10 object. First of all, the witness has indicated he's
11 not a part of that process and has not been a part of
12 that process. And, two, to the extent that counsel
13 has testified that no money was spent in 2006 and,
14 therefore, things have been delayed, I believe the
15 witness has indicated only that that's what the
16 document appears to suggest.

17 MR. SMALL: Well, this is an odd
18 objection because the witness himself states on page
19 3 comments about the "collaborative process."
20 "FirstEnergy and interested stakeholders could
21 benefit by a collaborative process on DSM issues."
22 So Mr. Wright is saying that he doesn't have any
23 knowledge about it, yet he has testimony on page 3
24 concerning the "collaborative process."

1 MR. WRIGHT: If counsel has moved on to
2 that section of the testimony, I appreciate knowing
3 that. Thank you.

4 EXAMINER PRICE: I'm going to overrule
5 the objection.

6 MR. SMALL: Could we have the question
7 reread, please?

8 (Record read.)

9 A. I'm not currently aware that there is a
10 collaborative process with regard to FirstEnergy's
11 DSM programs.

12 Q. Well, have you read the OCC testimony in
13 this case concerning demand-side management, in
14 particular the testimony of Mr. Gonzalez?

15 A. I skimmed through that, yes.

16 Q. And are you aware that he recommends such
17 a collaborative process?

18 A. When I -- yeah, to me that implies that
19 it is not in place, that you're still recommending it
20 take place.

21 Q. Yes. And what I'm asking is, as a matter
22 of the order in this particular case, shouldn't the
23 Commission order such a collaborative process to
24 begin?

1 A. As I state in my testimony, staff would
2 be supportive of that.

3 Q. Okay. Now, considering that there can be
4 and has actually been some delay in rolling out DSM
5 programs even when there was a collaborative -- there
6 was a collaborative process for rolling out these two
7 particular programs; is that correct?

8 A. I don't know.

9 Q. You don't know about the process that
10 developed those programs?

11 A. No, I do not.

12 Q. Considering the delay that apparently
13 happened in these programs, don't you think it's a
14 possibility that the current and existing programs
15 could run out of money before new money is -- well,
16 you oppose -- apparently oppose the OCC's efforts to
17 have additional funding for DSM on the basis that it
18 would be premature, and that word's found twice in
19 your testimony, correct?

20 A. It may be in there twice.

21 Q. Okay. What is the procedure that you
22 would propose for determining whether additional
23 money for DSM should be allocated and placed into
24 rates if it isn't an alternative to putting it into

1 this -- in this particular case and ordered by the
2 Commission in these cases?

3 MR. WRIGHT: Your Honor, again, I would
4 like to clarify. When we're talking about additional
5 money, the witness's testimony says "over and above
6 what is otherwise provided for in the supplemental
7 stipulation." With that clarification, I'll accept
8 the question. Otherwise, I believe it's a
9 mischaracterization of the witness's testimony.

10 EXAMINER PRICE: Go ahead and answer the
11 question with the clarification.

12 THE WITNESS: Can I have the question
13 reread, please?

14 Q. Maybe it will be easier just to start
15 over again. In your testimony when you say it's
16 premature, you're not saying that it's not a -- these
17 are not good programs, are you?

18 A. I'm saying it's premature to judge
19 whether they're good or bad programs.

20 Q. So you're not saying that they're bad
21 programs.

22 A. That's correct.

23 Q. And you're also not saying that there
24 should be an expansion, you're just saying it's

1 premature. You're not saying there's anything wrong
2 with the existing programs or for increasing the
3 programs; is that correct?

4 A. Well, I do state that I think the
5 stipulation provided an adequate amount of money, the
6 \$25 million for these programs, and before we move
7 forward with any recommendation to expand that
8 financially that there ought to be some type of
9 evaluation as to whether these programs are
10 effective.

11 Q. Okay. And that is my next question.
12 What procedure do you recommend for moving forward if
13 we're not going to have an order in this particular
14 case?

15 A. I think I would suggest the collaborative
16 come forward with some type of procedure.

17 Q. And such a collaborative does not exist.
18 That's what you said, right?

19 A. That's my understanding.

20 Q. How is it supposed to come into
21 existence? Wouldn't an order in this particular case
22 be an appropriate way of developing the
23 collaborative?

24 A. If it requires an order. I'm not sure

1 that it does. It seems to me the parties could agree
2 to form a collaborative.

3 Q. Well, in the previous case it was done by
4 stipulation. We don't have such a stipulation in
5 this case. Unless -- do you understand there's
6 anything other than -- anything in existence to
7 create this collaborative at the present time?

8 A. As a procedural matter? I would say no.
9 I mean, common sense might lend one to think that the
10 parties could get together and we could move forward
11 on this.

12 Q. And what are the parties supposed to move
13 forward on considering the fact that the stipulation
14 provides for the money to run out at the end of 2008?
15 What are the parties supposed to meet about?

16 A. It is my recollection that the
17 stipulation also included a sort of a safety valve of
18 an additional year if the money -- if the programs
19 couldn't get up and running quickly enough, that an
20 additional year was added through 2009.

21 Q. I think you're referring to provision D,
22 OCC Exhibit 12, that's on page 3 of that supplemental
23 stipulation.

24 A. Yes.

1 Q. Is that what you're referring to?

2 A. Yes.

3 Q. I realize it does not appear that you've
4 read this stipulation, but you appear to know much of
5 the contents of it, is it provision D on page 3 that
6 you're referring to?

7 A. Yes.

8 Q. So if there's money, it would run out at
9 the end of 2009, correct?

10 A. It may. It may run out sooner.

11 Q. I'm sorry, there certainly isn't anything
12 in the stipulation that runs past 2009 is what I
13 meant.

14 A. That's correct.

15 Q. Okay. Well, let's go to your testimony
16 on page 3 and lines 7 through 8. I previously read
17 this about interested -- the "FirstEnergy and
18 interested stakeholders could benefit by a
19 collaborative process." Do you see that?

20 A. Yes.

21 Q. What are you recommending there? Are you
22 recommending that we start the collaborative process?

23 A. Yes, assuming that one hasn't been
24 started yet.

1 Q. Well, you said --

2 A. I would recommend it.

3 Q. You said that one hasn't been started
4 yet.

5 A. That's my understanding, yes.

6 Q. Okay. Assuming that the collaborative
7 comes into existence either by order of the
8 Commission or otherwise, what is the collaborative --
9 what is the business of the collaborative supposed to
10 be? What would the collaborative that you're
11 recommending undertake? And in particular I don't
12 know exactly what a collaborative does if it doesn't
13 have a budget or any kind of funding, source of
14 funding.

15 A. Well, having never been on a
16 collaborative myself I'm not sure I would be the best
17 person to give advice on how to set one up and what
18 kind of paradigm or constitution one should run one.

19 Q. The original collaborative had
20 \$25 million to work with, right?

21 A. Well, if that was a collaborative. My
22 understanding is there was \$25 million put together
23 provided by the company to run a DSM program.

24 EXAMINER BOJKO: Your understanding is

1 there isn't currently a collaborative to deal with
2 that \$25 million; is that right?

3 THE WITNESS: It's my understanding that
4 with regard to FirstEnergy there is not a
5 collaborative group assisting in the guidance of
6 designing and implementing and evaluating their DSM
7 program.

8 EXAMINER BOJKO: So you were recommending
9 the collaborative going forward in future DSM
10 allotments that may be provided through some
11 mechanism, or are you saying the collaborative should
12 be created to deal with the rollover money to 2009?

13 THE WITNESS: I think the collaborative
14 should -- at this time is limited to the
15 \$25 million already set up for the DSM program.

16 EXAMINER BOJKO: So you're recommending
17 the collaborative to deal with the DSM in the end of
18 2008 to 2009 time frame.

19 THE WITNESS: Yes.

20 Q. (By Mr. Small) Turn again to page 3 and
21 lines 7 and 8 of your testimony, the collaborative
22 process, if I understood your response to the bench,
23 the collaborative process that you're supporting
24 there is dealing with amounts of money that have

1 already been approved by the Commission? Is that
2 what you said? The \$25 million has already been
3 approved by the Commission?

4 I'm trying to distinguish between past,
5 which has been approved by the Commission, this
6 \$25 million in this stipulation, and planning for
7 future programs.

8 EXAMINER PRICE: Let me see if I can
9 help. Just one second. Are you saying in your
10 testimony that you believe that the Commission should
11 order a collaborative to review the effectiveness of
12 the \$25 million that the Commission has already
13 approved to be spent?

14 THE WITNESS: Yes.

15 EXAMINER PRICE: Thank you. I'm sorry,
16 Mr. Small.

17 MR. SMALL: Thank you for that
18 clarification.

19 Q. And what is your position on the
20 collaborative for studying additional DSM programs
21 that would be implemented in the FirstEnergy service
22 areas?

23 A. I think if the collaborative chose to
24 incorporate the future into their mission, that that

1 would be within their bounds to try to design future
2 programs and perhaps a preliminary budget and in a
3 collaborative fashion work with the company and try
4 to get more funding, if that's what they think is a
5 worthwhile endeavor.

6 Assuming -- that would be assuming that
7 the \$25 million worth of DSM is a -- that the
8 collaborative finds that the current moneys were a
9 cost-effective thing to do. If it's a failure, I'm
10 not sure the collaborative would necessarily want to
11 continue DSM past 2009.

12 Q. If I understood that, then, you're
13 recommending that a collaborative be set up to
14 evaluate the programs that have already taken
15 place -- to evaluate the Home Performance Energy Star
16 Program and the Residential Air Conditioning Direct
17 Load Control Programs and then to make further
18 recommendations regarding continued funding of those
19 programs and possibly other programs; is that my
20 understanding of your response?

21 A. Yes, only I would change one term there,
22 you said "taken place." I would say "taking place."
23 These programs are taking place. It's not in the
24 past, it's going on now.

1 Q. Do you have any opinion concerning the
2 cost-effectiveness of the Home Performance Energy
3 Star Program or the Residential Air Conditioning
4 Direct Load Control Programs?

5 A. No, I don't have any information on it.

6 Q. You do realize that both of those
7 programs are residential programs, don't you?

8 A. Yes.

9 Q. Okay. As part of this collaborative
10 process that you apparently support should the
11 collaborative also consider programs that are
12 nonresidential in nature?

13 A. You know, that's difficult for me to say.
14 I really haven't given that much thought.

15 MR. SMALL: That concludes my
16 examination. Thank you.

17 EXAMINER PRICE: Thank you.

18 Company? Mr. Wright, redirect?

19 MR. FELD: We have no questions.

20 MR. WRIGHT: Could I have one minute,
21 your Honor?

22 EXAMINER PRICE: Yes.

23 EXAMINER BOJKO: Let's go off the record.

24 (Off the record.)

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

3 Mr. Wright.

4 MR. WRIGHT: Your Honor, we have no
5 redirect.

6 EXAMINER PRICE: Mr. Rack, were you
7 present for Mr. Gonzalez's testimony yesterday?

8 THE WITNESS: No, I was not.

9 EXAMINER PRICE: That's too bad, there
10 goes my next question.

11 Miss Bojko, do you have any questions?

12 EXAMINER BOJKO: Did you read the
13 transcript of Mr. Gonzalez's testimony?

14 THE WITNESS: No, I have not.

15 EXAMINER PRICE: Would you be surprised
16 to know that Mr. Gonzalez testified yesterday that
17 very little money had been spent coming out -- that
18 was approved by the Commission in the RTC
19 stipulation?

20 THE WITNESS: I think you need to define
21 what you mean by "very little money."

22 EXAMINER PRICE: I'm just going on what
23 he said. That's okay, you don't have to answer my
24 question.

EXAMINATION

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By Examiner Bojko:

Q. Well, were you here when Mr. Ouellette testified, or did you read the transcript of Mr. Ouellette?

A. No, I have not.

Q. Let's assume, I don't know what "very little" means to you but let's assume only \$10 million has been spent of the 25. Is it feasible to spend \$15 million in one year? Is it possible and is it advantageous with regards to the programs to spend that amount of money in one year?

A. Is it possible? It may be.

Q. Is it wise with regard to the operations of the DSM program?

A. I'm not sure -- is it wise to spend the money or is it wise to do DSM? I'm not sure I understand your question.

Q. Is it wise to spend -- I mean you hesitated with the word "possible" so you're implying that maybe it would not be wise to throw a whole bunch of money at one particular program. Given the list of programs in the RCP, can you expend that kind of money in that limited time?

1 A. I think you'd really need to do an
2 assessment of the infrastructure the company has set
3 up to manage the program and, you know, whether it
4 could be expanded in sort of exponential fashion.

5 I didn't -- you know, I looked at some
6 preliminary numbers starting in April of some
7 contracts and my recollection -- I wasn't that
8 worried that they were going to have trouble spending
9 \$25 million by the end of 2009.

10 Q. Do you know what happens to the money if
11 they don't spend the 25 million by the end of 2009?

12 A. I'm going to have to say no. I have
13 three other companies' ideas in my brain right now,
14 I'm not sure which company I'm thinking about. No,
15 I'm not sure what would happen to any unexpended
16 funds. I'm not sure.

17 Q. And you're not suggesting that an
18 expanded amount of money shouldn't be done after the
19 25 million is gone in 2009, you're just saying that
20 we need to look at what's been done and what's
21 currently being done and look at the programs to make
22 sure that the money is being spent wisely and then at
23 that point you would recommend whether more money
24 should be given to such programs?

1 A. That's correct. I'm basically addressing
2 the prudence of the \$25 million program as the
3 company put together sort of an infrastructure to do
4 DSM and are they moving forward down the path in a
5 prudent way.

6 Q. You're not suggesting that the Commission
7 should do anything in this distribution rate case,
8 you are just responding to OCC's objection about
9 expanding the program through this rate case; is that
10 right? You're not suggesting the prudence review be
11 done in this rate case, are you?

12 A. It can't be done in this rate case, we
13 don't have enough information at this time. The
14 programs are too young.

15 EXAMINER BOJKO: Thank you.

16 EXAMINER PRICE: Thank you. You're
17 excused.

18 Mr. Wright.

19 MR. WRIGHT: Your Honor, at this time we
20 would move the admission of Staff Exhibit No. 12.

21 EXAMINER PRICE: Any objections?

22 Hearing none, Staff Exhibit No. 12 will
23 be admitted.

24 MR. WRIGHT: Thank you.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 MR. SMALL: OCC moves for admission of
3 OCC Exhibits 11 and 12.

4 EXAMINER PRICE: We're not going to admit
5 them as evidence, but we will take administrative
6 notice of OCC Exhibits 11 and OCC 12.

7 MR. SMALL: Thank you, your Honor.

8 MR. WRIGHT: Your Honor, at this time we
9 would call Duane Roberts to the stand.

10 EXAMINER PRICE: Let's go off the record
11 one second.

12 (Discussion off the record.)

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

15 MR. WRIGHT: We'd call Duane Roberts to
16 the stand at this time.

17 EXAMINER BOJKO: Mr. Roberts, raise your
18 right hand.

19 (Witness sworn.)

20 EXAMINER BOJKO: Mr. Wright.

21 MR. WRIGHT: Thank you, your Honor.

22 - - -

23

24

1 DUANE A. ROBERTS

2 being first duly sworn, as prescribed by law, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Wright:

6 Q. Good morning, Mr. Roberts.

7 A. Good morning.

8 Q. Would you please state your name for the
9 record.

10 A. Duane, D-u-a-n-e, Roberts, R-o-b-e-r-t-s.

11 Q. And who are you employed by, Mr. Roberts?

12 A. Public Utilities Commission of Ohio.

13 Q. And what is your position?

14 A. Utilities Specialist 3.

15 Q. Have you prepared testimony in this case?

16 A. Yes.

17 EXAMINER PRICE: Mr. Roberts, if you pull
18 the microphone up, you're a little taller than our
19 previous witness.

20 THE WITNESS: All right.

21 MR. WRIGHT: Your Honor, at this time I
22 would like to have marked as Staff Exhibit No. 13 the
23 Prefiled Testimony of Duane A. Roberts.

24 EXAMINER BOJKO: So marked.

1 MR. WRIGHT: Thank you.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Mr. Roberts, do you have in front of you
4 what has just been marked as Staff Exhibit No. 13?

5 A. Yes, I do.

6 Q. And would you identify that document,
7 please?

8 A. That's my prefiled testimony in this rate
9 proceeding.

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

12 A. Yes, I do.

13 Q. Please let us know what those are at this
14 time.

15 A. On the front page somehow mysteriously
16 the words "Utilities Department" appeared, and I need
17 that stricken.

18 Q. Okay. Any other changes to your
19 testimony?

20 A. No.

21 Q. Mr. Roberts, do you adopt the questions
22 and answers in your prefiled testimony here today as
23 being both true and accurate?

24 A. Yes.

1 MR. WRIGHT: Your Honor, Mr. Roberts is
2 tendered for cross-examination.

3 EXAMINER BOJKO: Start with IEU. Do you
4 have any questions?

5 MR. NEILSEN: No questions, your Honor.

6 EXAMINER BOJKO: Nucor?

7 MR. LAVANGA: No questions your Honor.

8 EXAMINER BOJKO: Schools?

9 MR. BREITSCHWERDT: No questions, your
10 Honor.

11 EXAMINER BOJKO: OCC?

12 MR. REESE: Yes, your Honor. Before I
13 get started can I approach the witness? I have
14 several documents I'm going to be referencing in my
15 cross. Most of them are documents, if not all, that
16 we've already referenced in the case.

17 EXAMINER BOJKO: You may.

18 MR. REESE: Thank you.

19 EXAMINER PRICE: Mr. Reese, for the
20 Bench's convenience, can you tell me which documents
21 so I can get them out of my massive stack of
22 documents here?

23 MR. REESE: Yes, your Honor. One would
24 be the CEI Staff Report. The other would be the Ohio

1 Edison Staff Report.

2 EXAMINER PRICE: Thank you.

3 MR. REESE: The other would be Chapter
4 4901:1-10, Electric Service and Safety Standards.
5 The other would be Chapter 4901:1-23 which is also
6 part of the Electric Service and Safety Standards.

7 EXAMINER BOJKO: Are both of those rules
8 in that packet you gave us previously?

9 MR. REESE: 1-23 may not be. Let me
10 provide you with a couple copies.

11 MR. WRIGHT: Can we go off the record for
12 one second, please?

13 EXAMINER PRICE: Yes.

14 (Discussion off the record.)

15 EXAMINER PRICE: Go back on the record.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Reese:

19 Q. Good morning, Mr. Roberts.

20 A. Good morning.

21 Q. First questions I have for you are from
22 page 3 of your testimony in the answer to question 6
23 that begins on -- at line 4 of your testimony,
24 specifically I guess about line 7 is where I'm

1 interested. This section continues with a discussion
2 of the company's system performance for the years
3 2000 through 2006 and then the final sentence is
4 "Staff reported that the Company missed its SAIFI
5 targets for the years 2006" -- "2004 through 2006."
6 Do you see that?

7 A. Yes, I do.

8 Q. Do you know what Ohio Edison's SAIFI
9 performance was for 2007?

10 A. I do not know the official value. I have
11 a preliminary value that I'm aware of, but I do not
12 have the official value, and I'm not sure that will
13 be ready until sometime in late-March.

14 Q. Yesterday I asked Ms. Lettrich some
15 questions on whether CEI had met its 2007 CAIDI and
16 SAIFI targets and she acknowledged that they had not
17 made those targets.

18 A. I was present. I listened to that
19 cross-examination. I have not officially got what
20 that performance is for 2007.

21 Q. So any response you've gotten is an
22 interim response?

23 A. Yes. It's preliminary. There's various
24 adjustments that the company would make to those

1 numbers related to proper customer interruption data
2 or customer minutes interrupted data that they
3 would -- they make verifications after the year is
4 over with.

5 MR. WRIGHT: Your Honor, excuse me. Can
6 I get a clarification. Have we gone from Ohio Edison
7 now to CEI with your questions?

8 MR. REESE: Well, based on the fact that
9 I questioned the witness yesterday on the performance
10 for 2007 for CEI, I'm trying to understand if Ohio
11 Edison is somehow different that the data wouldn't be
12 available.

13 MR. WRIGHT: Okay. Thank you.

14 EXAMINER BOJKO: Mr. Reese, I believe
15 Miss Lettrich was on the stand on Monday. It's all
16 running together for us. Not yesterday.

17 MR. REESE: Oh, it was a long day.
18 Sorry, your Honor.

19 Q. (By Mr. Reese) Let me see if I can -- are
20 you familiar with a response to Staff Data Request
21 92? Well, let me rephrase that.

22 Didn't staff issue a recent data request
23 to the company that asked them their performance for
24 SAIFI and CAIDI for the year 2007?

1 A. Yes.

2 Q. Did you get a response to that data
3 request?

4 A. Staff received a response, but it was --
5 the company noted that it was preliminary, it was not
6 official.

7 Q. All right. The preliminary figures --
8 did the preliminary figures, if not adjusted, would
9 they indicate that the company had met -- that Ohio
10 Edison had met its SAIFI targets for 2007?

11 A. I don't have that in front of me.

12 Q. Okay.

13 A. I recall looking at that data, I don't
14 remember which indices they met or did not meet.

15 MR. REESE: Your Honor, if I might have a
16 minute, I have a copy of that and the response with
17 me.

18 EXAMINER BOJKO: Sure.

19 Mr. Roberts, a couple questions ago you
20 responded that the value would not be ready yet. Did
21 you just mean because you only have preliminary
22 numbers now --

23 THE WITNESS: Yes.

24 EXAMINER BOJKO: -- and they wouldn't be

1 final numbers until after the end of the year?

2 THE WITNESS: Well, they're not
3 officially -- according to ESS Rule 10 or
4 4901:1-10-10 of the Administrative Code, they're not
5 due to be reported to the staff until March 31st of
6 this year.

7 EXAMINER BOJKO: And just for ease, I
8 think we're all familiar with what you mean by ESSS
9 rules or E-S-S, that it's 4901:1-10.

10 MR. REESE: Your Honor, I may want to
11 take a break towards the end of this and see if I can
12 find that data request, if we could come back to it
13 then, but for now I'll move on.

14 Q. (By Mr. Reese) Back to page 3 of your
15 testimony, Mr. Roberts, down at lines 17 and 18 you
16 discuss seven primary causes of outages and the fact
17 that the Ohio Edison report lists these causes in
18 order of their impact on performance. Do you see
19 that?

20 A. That also bleeds into line 19; yes.

21 Q. Do you mean performance on the
22 reliability targets that are filed as part of Rule
23 1-10-10?

24 A. Yes.

1 Q. Any other performance? In other words,
2 any other ESSS rules affected?

3 A. Are you referring to the causes or are
4 you referring to --

5 Q. Well, your testimony says truncating this
6 sentence, "listing these causes in the order of their
7 impact on performance."

8 A. That's relative to Rule 10. There are
9 other rules that these causes would be reflected in.

10 Q. So in addition to affecting, for
11 instance, SAIFI or CAIDI performance it could impact
12 their performance relative to certain other ESSS
13 rules; is that correct?

14 A. It has an impact on Rule 11 as far as
15 circuit performance.

16 Q. Thank you.

17 At the bottom of page 3 you have a
18 sentence, it begins at 19, line 19, "Staff provided
19 the results of further analysis of those primary
20 causes where the Company exercises some control by
21 performing additional maintenance or initiating
22 replacement programs to reduce or prevent customer
23 service outages."

24 Now, that sentence where it says

1 "performing additional maintenance or initiating
2 replacement programs," does that mean something over
3 and above what is in their program or plan on file
4 with the Commission staff?

5 A. Yes, it does.

6 Q. So it would not be required by either
7 their program or any Commission rule.

8 A. Yes.

9 Q. In the Ohio Edison Staff Report, if you
10 can refresh my memory, does this statement come in
11 the context of the staff would recommend some of
12 these additional measures -- I'm sorry, let me
13 rephrase that.

14 Would the staff recommend that some of
15 these additional measures be maintained?

16 A. Are you referring to what the
17 companies -- the actions the company is taking to
18 address some of these seven items?

19 Q. Yes. I'm really trying to focus on the
20 second half of that sentence that begins at 19,
21 "Where the Company exercises some control by
22 performing additional maintenance or initiating
23 replacement programs." I think you've already
24 answered that the additional maintenance that you're

1 talking about there is in addition to something that
2 currently exists in their program or plan filed with
3 the Commission under Rule 27; is that correct?

4 A. There are some additional maintenance
5 that the company performs that is not required by
6 ESSS Rule 27(E)(1) and that being animal protection
7 is not one of the mandated or required programs and
8 they do continuing -- they continue on an ongoing
9 basis to mitigate animal-caused outages by installing
10 animal protection.

11 Q. You're talking about that list of items
12 under 27(E)(1) that includes vegetation management,
13 capacitors --

14 A. Yes.

15 Q. -- reclosers, and animal guards are not
16 part of that. Okay, thank you.

17 I'm looking at page 4 of your testimony,
18 specifically question and answer 7 beginning at line
19 11, you're referring to the companies' objection 13
20 regarding the coding of certain outages as "unknown."
21 Then yours answer begins at line 13, "Staff agrees
22 with Company Witness Susan Lettrich in that the
23 reporting requirements as recommended in the Staff
24 Report for outages causes coded as 'Unknown' are

1 overly burdensome on the Company." Do you see that?

2 A. Yes, I do.

3 Q. The sentence continues: "Therefore, the
4 staff no longer supports the reporting requirement
5 recommendation."

6 So Miss Lettrich in her supplemental
7 testimony stated that improving the coding in
8 accordance with staff recommendation regarding causes
9 coded as "unknown" was overly burdensome, and that
10 was enough reason for staff to drop its
11 recommendation?

12 A. No, it was not. Not just Susan
13 Lettrich's testimony. It included staff's ability to
14 audit any and all records of the company, and what I
15 have recommended is that they keep records as
16 prescribed in my testimony, that we always have that
17 opportunity to audit those records, therefore, we're
18 not requiring a report be generated and filed with
19 the staff.

20 Q. Was this a separate report that staff was
21 originally recommending?

22 A. Yes.

23 EXAMINER BOJKO: So what happened from
24 the time the Staff Report was filed till your

1 testimony was filed?

2 THE WITNESS: Staff realized in that
3 meantime that there is some burden in filing all of
4 the information that would have been required to
5 support each and every unknown outage occurrence.

6 EXAMINER BOJKO: You just didn't
7 understand the ramifications or consequences of the
8 original recommendation until the company explained
9 it?

10 THE WITNESS: Staff -- I can't say --
11 some staff understood, others -- this was a staff
12 opinion and it was after internal discussions about
13 the volume of data that staff chose to change its
14 mind.

15 Q. (By Mr. Reese) As I understand it from
16 reading the Staff Reports and reading Miss Lettrich's
17 testimony, there are quite a number of outages coded
18 as "unknown"; is that correct?

19 A. I don't know what you mean by "quite a
20 bit," but there is a number of outages coded
21 "unknown."

22 Q. Well, more than a little bit, less than a
23 whole lot.

24 MR. WRIGHT: Clarification, your Honor.

1 This is referring to outages coded that way by Ohio
2 Edison.

3 MR. REESE: That's correct.

4 Q. Beginning at line 16 on page 4 your
5 testimony it states that "Staff still sees the
6 importance of the Company thoroughly investigating
7 all service interruptions to determine the root
8 cause." Mr. Roberts, isn't that really a restatement
9 of saying you'd prefer to see less cause codes marked
10 as "unknown"?

11 A. That is not what I'm stating here. What
12 I'm stating here is I'm asking the company to review
13 each outage code or each outage classified as
14 "unknown" to attempt in their best effort to find the
15 root cause.

16 Q. Were you here for Miss Lettrich's
17 testimony?

18 A. Not entirely.

19 Q. You're not requesting -- when staff
20 originally made the recommendation regarding the use
21 of the "unknown" cause code, you weren't encouraging
22 the company to guess as to what certain outages were
23 caused by, were you?

24 A. No, I was not. What I did not want is a

1 guess because that would cause the company to spend
2 resources that was unwarranted.

3 Q. Lines 19 and 20 talk about the actions it
4 takes to determine the root cause of all service
5 interruptions and to track and trend this data for
6 patterns. Now, to be able to track and trend for
7 patterns, you probably don't like -- you would
8 probably like to see fewer outages coded as
9 "unknown"; is that correct?

10 A. I believe so, and I believe the company
11 would too.

12 Q. Back up to lines 16 and 17. "Staff still
13 sees the importance of the Company thoroughly
14 investigating all service interruptions." Can you
15 tell me what comes into your mind when you talk about
16 a thorough investigation of all service
17 interruptions?

18 A. Well, during a lightning storm if there
19 was an outage, look for burn on a conductor or
20 different equipment to see if there was a lightning
21 flash. If there was a dead -- I hate to say this,
22 but if there was a dead squirrel or animal laying at
23 the foot of where a fault may have occurred, that was
24 evidence of an animal-caused outage.

1 EXAMINER PRICE: Mr. Roberts -- I'm
2 sorry, Mr. Reese, just briefly -- I am somewhat
3 confused as to the difference between what you
4 originally recommended in the Staff Report and then
5 withdrew but then -- on withdrawing that
6 recommendation you have a new recommendation. As I
7 look at the two recommendations, they seem fairly
8 similar, so can you explain for the Bench why your
9 new recommendation would be less burdensome to the
10 company than the first recommendation?

11 A. I'm a little confused at what you mean by
12 original versus new because all I'm -- my testimony
13 only withdraws a portion as it pertains to the
14 reporting requirements of these unknowns.

15 EXAMINER PRICE: So that is the
16 distinction is the reporting requirements.

17 THE WITNESS: Yes, only the reporting
18 requirements. I asked them to maintain records of
19 the actions that they take when they're investigating
20 or analyzing these unknown outages.

21 EXAMINER PRICE: If they're maintaining
22 their records anyways, why is the reporting -- I mean
23 they file lots of reports, why is this particular
24 reporting requirement overly burdensome?

1 THE WITNESS: Because of the volume of
2 data included -- that would be included in that
3 report. This could possibly require engineering
4 studies and there is a volume of these type outages
5 that are coded "unknown."

6 EXAMINER PRICE: But you're still
7 requiring them to maintain adequate documentation of
8 all actions and to track and trend this data for
9 patterns. The only thing you're withdrawing is the
10 requirement they report back to the staff.

11 THE WITNESS: Yes, because the staff
12 always has the opportunity and the ability to inspect
13 these records and since there's a volume of records
14 involved, that would create a burden on the company
15 for reporting requirements.

16 EXAMINER PRICE: Okay.

17 EXAMINER BOJKO: Compiling of such
18 reports.

19 THE WITNESS: Yes.

20 EXAMINER PRICE: Thank you.

21 Sorry, Mr. Reese.

22 Q. (By Mr. Reese) Mr. Roberts, at line 19 of
23 your testimony --

24 MR. WRIGHT: Are we still on page 4?

1 MR. REESE: Yes, sir.

2 Q. -- I'm sorry, beginning at line 18,
3 "Staff recommends that the Company be required to
4 maintain adequate documentation," et cetera, et
5 cetera. How long should they be required to maintain
6 this adequate documentation?

7 A. I'd say in this area as it relates to the
8 record retention, I believe a three-year period would
9 be sufficient.

10 Q. So this requirement is separate and apart
11 from some of the other provisions such as occur as a
12 result of Rule 27(D) where 20 percent of certain
13 things have to be maintained every year or with every
14 five years, three years would be the appropriate --

15 A. Yes, because basically what we would do
16 in receiving outage data of all coded outage data
17 each year, we would notice an area of these outage
18 causes that would need investigated and, therefore,
19 we would be able to capture that within that time
20 frame.

21 Q. Okay. Let's move to page 5 of your
22 testimony. On lines 4 and 5 of your testimony on
23 page 5 you state that "'Trees/Not Preventable' was
24 the fourth highest cause of service outages on the

1 Company's system." Now, we are talking here about
2 FirstEnergy or --

3 A. My testimony only pertains to Ohio
4 Edison.

5 Q. So it's all Ohio Edison, okay. What were
6 the three highest categories? Can you tell me?

7 A. Equipment failures, unknown, and then
8 line failures.

9 Q. Now, I know this is addressed some more
10 in your testimony in another testimony filed in the
11 case as well as some Staff Reports, but could you
12 tell me again what "Trees/Not Preventable" covers?

13 A. That would be trees that are located
14 outside of the -- or vegetation, I should say, I
15 don't want to limit it to just trees, vegetation
16 located outside of the companies' current
17 right-of-ways equates to Trees/Not Preventable.

18 Q. And that does not apply to overhang; is
19 that correct?

20 A. Yes, it does apply to overhang. This is
21 overhang that -- there's overhang inside the
22 right-of-way and there's overhang outside the
23 right-of-way. What this is referring to is the
24 overhang outside of the right-of-way as well as

1 dangerous and weak trees that exist outside of that
2 right-of-way, including any -- I notice in
3 cross-examination that there was branches and limbs
4 that were a part of trees that were located outside
5 of the right-of-way that intruded into the
6 right-of-way. The company does trim those branches
7 and limbs. They do have a right to trim anything
8 that intrudes inside that right-of-way.

9 Q. Is that what Miss Lettrich referred to as
10 enhanced vegetation management?

11 A. No. That's not enhanced vegetation
12 management. That is their current practice.

13 Q. So trimming branches that protrude into
14 the right-of-way from outside the right-of-way even
15 on healthy trees, the trimming of those branches
16 would not be enhanced vegetation management.

17 A. No, that wouldn't. That would be a part
18 of their ongoing tree trimming maintenance practice.

19 Q. So let me try to simplify this so I can
20 understand it. If a tree that is outside the
21 right-of-way is blown over in a windstorm, it knocks
22 a wire down, causes an outage, that would be cause
23 coded as "Trees/Not Preventable"?

24 A. Exactly.

1 Q. Conversely, "Trees/Preventable" wouldn't
2 apply to trees that were only inside the
3 right-of-way?

4 A. All vegetation inside the right-of-way,
5 their current right-of-ways, yes.

6 Q. Would it be reasonable in some instances
7 in order to prevent -- let me rephrase that -- in
8 order to reduce the number of outages coded
9 "Trees/Not Preventable" for the company to try to
10 enlarge the right-of-way?

11 A. Either that or get permission from the
12 property owners to do that clearance. As well as --
13 as well as you're not only fighting property owners,
14 you're fighting the company would also have to
15 address communities where they have ordinances that
16 limit that trimming.

17 Q. Let me talk about your discussion of
18 animal guards on page 6, specifically line 19, "Staff
19 further agrees that if exposed energized components
20 are not designed to support animal guarding, then the
21 Company should not be required to install animal
22 guarding to protect those components." What exposed
23 energized components are not designed to support
24 guarding?

1 A. Specifically there may be a certain type
2 of transformer where you cannot apply a device as
3 it's currently designed.

4 Q. Any other examples?

5 A. There's various examples. I can't recall
6 right now.

7 Q. So is staff's recommendation currently
8 that the companies should install animal guarding
9 wherever possible?

10 A. I stated where practical. If you want to
11 equate "possible" and "practical" as one, I
12 believe -- if you want to make that equation, yes.

13 Q. Well, I may not want to equate the terms
14 "practical" and "possible." I guess the company
15 could argue that it's too expensive. I'm talking
16 about where it's possible. Do you mean that they
17 install -- that the company, in this case Ohio
18 Edison, install animal guarding where possible?

19 A. Yes, I do, as far as -- if there's -- if
20 it's not already protected by a perimeter animal
21 protection.

22 Q. Thank you.

23 EXAMINER BOJKO: Regardless of cost?
24 You're saying wherever it's possible.

1 THE WITNESS: Cost is a factor. There
2 are some animal guarding that -- very expensive
3 animal guarding protection when it comes to
4 substation protection that's still preliminary in
5 their review of how effective they are. I don't want
6 the company spending a lot of money on something
7 that's not been proven.

8 MR. REESE: I have no further questions,
9 your Honor.

10 EXAMINER BOJKO: Did you want to find
11 that interrogatory?

12 MR. REESE: Thank you. Let me take a
13 look. Can we have a break?

14 EXAMINER BOJKO: Well, I was thinking
15 that maybe this would be a good time to break for
16 lunch. You find your interrogatory, come back, and
17 finish that up, and then we'll go to the company.

18 MR. WRIGHT: The company's indicated they
19 don't have a whole lot, if we could -- I'd like to
20 wrap up if we could --

21 EXAMINER BOJKO: Is your interrogatory in
22 this room or back at the office?

23 MR. REESE: It's in here.

24 EXAMINER PRICE: Is it possible the

1 parties would be willing to stipulate the admission
2 of that interrogatory?

3 MR. WRIGHT: Do we have a question
4 pending about it? We could talk about that. I'd
5 like to see it.

6 EXAMINER BOJKO: He said it's in the
7 room.

8 MR. WRIGHT: Yeah.

9 EXAMINER BOJKO: Then let's take five
10 minutes and try to find -- the company doesn't have
11 very long?

12 MS. MILLER: No, your Honor.

13 EXAMINER BOJKO: Okay. Let's take five
14 minutes.

15 (Recess taken.)

16 EXAMINER BOJKO: Let's go on the record.

17 Q. (By Mr. Reese) Mr. Roberts, I asked you a
18 question earlier about Ohio Edison's 2007 performance
19 on SAIFI.

20 A. You said "performance." I didn't know
21 which indices you were referring to.

22 Q. Well, specifically SAIFI, but let me --

23 MR. REESE: Your Honor, if I might, I'd
24 like to mark PUCO data request No. 91 as OCC Exhibit

1 13.

2 EXAMINER BOJKO: 91 is the data request?

3 MR. REESE: Yes, it is.

4 EXAMINER BOJKO: It will be so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. REESE: May I approach?

7 EXAMINER BOJKO: Yes, you may.

8 Q. (By Mr. Reese) Mr. Roberts, I'll refer
9 you back to page 3 of your testimony. You're
10 discussing the section of the Ohio Edison Staff
11 Report that dealt with distribution system
12 reliability in accordance with ESS Rule 10. Do you
13 see that?

14 A. Yes, I do.

15 Q. You also state "This section continues
16 the discussion of the Company's system performance
17 for the years 2000 through 2006." Skipping down to
18 the last sentence, "Staff reported that the company
19 missed its SAIFI target for the years 2004 through
20 2006 with an average interruption frequency that
21 exceeds its target level." Do you see that?

22 A. Yes, I do.

23 Q. Referring you to OCC Exhibit 13 which is
24 a response from Susan Lettrich to PUCO Data Request

1 No. 91, there is a table on the second page of the
2 stapled document that lists the CAIDI and SAIFI
3 performance for CEI, Ohio Edison, and Toledo Edison.
4 Do you see that?

5 A. Yes, I do.

6 EXAMINER BOJKO: Just a minute.

7 Mr. Reese, this document's stamped "Confidential."
8 Is it confidential? Their response is stamped
9 "Confidential." Do we need to go into a portion of
10 the confidential record?

11 MR. FELD: I believe we do, especially
12 these preliminary numbers, portions of ESS reports
13 have been deemed confidential in the past.

14 EXAMINER BOJKO: Let's go into a
15 confidential portion of the record.

16 Anybody in the room that has not signed
17 the confidentiality agreement we're going to have to
18 ask to leave. We already have the document.

19 MR. REESE: Actually, your Honor, I'm not
20 going to ask about the numbers themselves, just
21 whether the targets were made.

22 EXAMINER BOJKO: Is that --

23 MR. FELD: That's acceptable.

24 MR. SCARAMELLINO: I didn't hear what

1 confidentiality you were referring to.

2 EXAMINER BOJKO: It's my understanding
3 that the company has agreed to go forward and not
4 discuss the actual numbers which is what's deemed
5 confidential. So we are going to go back into the
6 public record and continue this line of questioning
7 without specifically identifying the numbers that are
8 deemed confidential.

9 MR. REESE: Thank you, your Honor.

10 Q. (By Mr. Reese) Mr. Roberts, in reviewing
11 FirstEnergy's response can you tell me if Ohio Edison
12 met its SAIFI target for 2007?

13 A. I'm unable to because these numbers have
14 been marked "unaudited preliminary" and are subject
15 to change, I cannot use these as fact to determine
16 whether they met or did not meet their targets.

17 EXAMINER BOJKO: Could you read the
18 question again, please, Maria?

19 (Record read.)

20 EXAMINER PRICE: Mr. Roberts --

21 EXAMINER BOJKO: Maybe you could
22 rephrase.

23 EXAMINER PRICE: I have a question.

24 Mr. Roberts. If the numbers didn't change after the

1 audits and they're no longer preliminary and the
2 numbers were the same as they are according to the
3 data request, would they meet the target?

4 THE WITNESS: For SAIFI?

5 EXAMINER PRICE: For SAIFI.

6 THE WITNESS: Yes, they would.

7 EXAMINER PRICE: Thank you.

8 EXAMINER BOJKO: For all the companies?

9 EXAMINER PRICE: No. I was asking just
10 for Ohio Edison.

11 THE WITNESS: It was just Ohio Edison.

12 Q. (By Mr. Reese) And the same question as
13 posed by the Attorney Examiner for CAIDI. If the
14 numbers didn't change, would Ohio Edison meet its
15 CAIDI targets for 2007?

16 A. If the numbers would not change after the
17 audit, then they would have met their CAIDI target
18 also.

19 Q. Can you tell me when these reports are
20 audited? Well, you mentioned that you didn't want to
21 respond originally because these figures were
22 unaudited and subject to change. Can you tell me
23 when an audit of the numbers occurs? Does staff do
24 that?

1 A. What is mentioned here as an audit is the
2 company does an internal audit of this data for
3 accuracy and so that the numbers are not -- and
4 outages are not duplicated or redundant within the
5 data.

6 Q. And the final figures, if you will,
7 regarding these targets are provided at the end of
8 March of every year; is that correct?

9 A. ESSS Rule 10 requires the company to
10 submit this information, this performance information
11 to staff by March 31st of each calendar year.

12 Q. And when those numbers are filed, those
13 are the final numbers?

14 A. As submitted -- as submitted, and there's
15 various -- they submit the data to our staff on a
16 database-type dump and verification is done in that
17 process. After that process is completed, then
18 there's a finalization. Usually that is done by that
19 date.

20 Q. So that's usually completed by
21 March 31st?

22 A. Yes.

23 Q. And if you know, aren't CAIDI and SAIFI
24 and other reliability measures as outlined in Rule

1 10, aren't those performance targets or
2 performance -- excuse me, let me start over.

3 The data that we're looking at here
4 excludes major storms and that is routine for the
5 filing of Rule 10 reports; is that correct?

6 A. They are required to submit their
7 performance excluding major storms as well as the
8 major storm data associated with these indices.

9 MR. REESE: Thank you. I have nothing
10 further.

11 MS. MILLER: Just two seconds, your
12 Honor.

13 Sorry, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Miller:

17 Q. Good afternoon, Mr. Roberts.

18 A. Good afternoon, or noon.

19 Q. Turning to page 4, lines 17 and 18, you
20 state that "Staff still sees the importance of the
21 Company thoroughly investigating all service
22 interruptions to determine the root cause." Do you
23 see that?

24 A. Yes, I do.

1 Q. Based on your testimony this morning,
2 you're referring to all service interruptions coded
3 "unknown" as indicated in Ohio Edison's Staff Report,
4 not all service interruptions; aren't you?

5 A. As it relates to the unknown, yes.

6 Q. Okay.

7 A. I'll stop at that point.

8 Q. Again on page 4, line 20, you again are
9 referring to all service interruptions coded
10 "unknown" as indicated on the Staff Report, aren't
11 you?

12 A. Can you repeat that?

13 EXAMINER BOJKO: First of all,
14 Miss Miller, can you turn your microphone on?

15 And, Mr. Roberts, could you talk into
16 your microphone?

17 Could you repeat that question?

18 MS. MILLER: I can.

19 Q. Again on page 4, line 20, again you're
20 referring to all service interruptions coded
21 "unknown" as indicated in the Ohio -- Staff Report,
22 not all service interruptions; is that correct?

23 A. Yes, that is correct as far as unknown.

24 Q. Then turning to the bottom of page 3

1 beginning on line 15 --

2 EXAMINER BOJKO: Please either pull your
3 mike closer or determine if it's still working.

4 EXAMINER PRICE: It's working.

5 EXAMINER BOJKO: Let's go off the record.

6 (Discussion off the record.)

7 Q. On the bottom of page 3 beginning on line
8 15 and going onto page 4 line -- through 9 you
9 reference the leading causes of outage for Ohio
10 Edison. Do you see that?

11 A. Yes, I do.

12 Q. Ohio Edison's Staff Report does not find
13 trees in the right-of-way as a leading outage cause
14 in recent years, does it?

15 A. No, it doesn't.

16 Q. And neither the Staff Reports of CEI nor
17 Toledo Edison cite trees in the right-of-way as a
18 leading outage cause in recent years, do they?

19 A. No, they don't.

20 Q. The companies' practice for maintaining
21 trees in the right-of-way is adequate, isn't it?

22 A. Extremely adequate.

23 Q. We just referenced trees in the
24 right-of-way. You were also familiar with the

1 companies' practice for vegetation outside of the
2 right-of-way, correct?

3 A. Could I have that repeated, please?

4 (Record read.)

5 A. Yes, I am.

6 Q. If the companies were ordered to enhance
7 their practice to include vegetation outside of the
8 right-of-way, additional funding outside of the
9 companies' proposed rates would be required, wouldn't
10 it?

11 A. Any maintenance that is not ongoing and
12 is a new practice I believe would not be a part of
13 the companies' current -- would not be included in
14 their current base rates since it is something that
15 is new and has not been performed in the past.

16 Q. Thank you.

17 And you spoke about putting up animal
18 guarding. Is it your recommendation that the
19 guarding is to be put up where possible or where
20 practical?

21 A. I believe the better term is where
22 practical, and that would include looking at the
23 cost-to-benefit analysis that would be performed by
24 the company as they are analyzing whether animal

1 guarding or animal mitigation is required.

2 MS. MILLER: Thank you. Nothing further
3 at this time.

4 MR. WRIGHT: May I have a minute, your
5 Honor?

6 EXAMINER BOJKO: You may.

7 MR. WRIGHT: Can I confer briefly with
8 the witness?

9 EXAMINER PRICE: You may. Let's go off
10 the record.

11 MR. WRIGHT: Thank you.

12 (Discussion off the record.)

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

15 MR. WRIGHT: We have no redirect, your
16 Honor.

17 EXAMINER PRICE: I have a couple
18 questions for Mr. Roberts.

19 - - -

20 EXAMINATION

21 By Examiner Price:

22 Q. Mr. Roberts, were you here for
23 Mr. Cleaver's testimony yesterday?

24 A. I believe most of it. I don't know if I

1 left the room or not in the middle, but I believe I
2 was here for a good portion.

3 Q. Yesterday I asked him if the companies
4 had met their SAIFI targets for the last seven years.
5 With respect to Ohio Edison, has it met its SAIFI
6 targets for the last seven years to the best of your
7 recollection?

8 A. SAIFI?

9 Q. SAIFI.

10 A. I believe I have that information, I
11 could look.

12 Q. You have it with you? I'd appreciate it.

13 A. Yes.

14 As far as SAIFI is concerned, they missed
15 their performance targets for the years 2005 and
16 2006.

17 EXAMINER PRICE: Thank you.

18 - - -

19 EXAMINATION

20 By Examiner Bojko:

21 Q. What about CAIDI?

22 A. They missed their performance measurement
23 for CAIDI for 2005.

24 Q. Mr. Roberts, would you agree that

1 compliance with all of the ESSS rules, the companies
2 should currently be complying with all of the ESSS
3 rules?

4 A. Yes.

5 Q. And that that compliance, the costs to
6 fulfill that compliance would currently be included
7 in base rates, then?

8 A. I can't say that for sure because some of
9 these companies -- as a matter of fact, all three of
10 these companies' base rate cases were -- those
11 proceedings and the rate-making and the rates were
12 set prior to the ESSS rules being approved, so I
13 cannot say whether they're in or out.

14 Q. Well, then have you -- I'm trying to
15 figure out a response that you made to Miss Miller.
16 You stated that any enhanced vegetation practices
17 over and above what they're doing now in their plan,
18 which Miss Lettrich -- were you here for
19 Miss Lettrich?

20 A. Not all but most, yes.

21 Q. -- Miss Lettrich stated that -- I believe
22 she stated that she believed their plan to be in
23 compliance with the rules and so any over and above
24 enhanced vegetation management would go beyond that

1 plan and, thus, require additional costs. I think I
2 heard you agree with Miss Miller in that respect; is
3 that right?

4 A. Yes.

5 Q. But then you just stated you're not sure
6 what's in base rates and that the ESSS rules weren't
7 in existence back in the other base rate cases so
8 have you done some kind of analysis?

9 A. How I would know that is the -- one of
10 the reviews that we did back in between 1999 and 2000
11 in the review of these programs was to have a history
12 of what the companies' practices were in the past,
13 and my proposal and what's included in the Staff
14 Report as enhanced vegetation was never a part of the
15 companies' practice before.

16 Q. But have you done some kind of analysis
17 to determine which part of the companies' policy and
18 practices the cost to perform that is included in
19 base rates or which part they would not be
20 compensated in base rates for that?

21 A. I don't know -- whatever maintenance
22 practices were in place back during the test years of
23 these various proceedings, that would be -- the rates
24 would account for those costs of those maintenance

1 programs. It's never the Commission's -- it's never
2 the Commission's position to ever grant
3 dollar-for-dollar recovery so, therefore, I don't
4 know if -- you know, whether these costs are being
5 recovered or not.

6 Q. But I guess I'm asking you did you do any
7 kind of cost analysis to look at what they are doing
8 versus what they could be doing or what staff may be
9 recommending and make any kind of cost determination
10 of what is above and beyond the existing piece?

11 A. I don't know what was included in
12 those -- specific dollar amounts for specific
13 maintenance programs that were included in the base
14 rates. I do have as part of a data request response
15 an estimated value of what has been recommended as
16 additional costs.

17 Q. So I guess the answer still to my
18 question is no, you haven't personally done any kind
19 of analysis regarding costs.

20 A. No, because I -- I mean, it would be a
21 very hard struggle, but I believe if the company had
22 these records, it would take a couple of months of
23 going through the data back at their test years and
24 work orders, because a lot of this work can be traced

1 to work orders if the company has kept those records.

2 I'm not sure they keep time sheet and
3 work order records back that far, but if they were
4 available, I would be able to give some estimate of
5 what was included in the test year for these
6 maintenance items.

7 Q. Okay. I was just wondering if you did it
8 for this case.

9 A. No, I have not.

10 Q. And your testimony, I think you stated a
11 couple times today, is based -- is for Ohio Edison
12 only. Is that right? Your testimony is only for the
13 Ohio Edison Company.

14 A. My testimony is only for the Ohio Edison
15 Company, although I've been questioned on other
16 companies today, yes.

17 Q. Well, I guess I think, correct me if I'm
18 wrong, I thought that the objections the company made
19 and that Miss Lettrich was talking about the other
20 day, for instance, with regard to that unknown outage
21 reporting, I thought that was for all three
22 companies. Is that not right?

23 A. That is correct.

24 Q. It was for -- the objections were for all

1 three companies?

2 A. I don't know if -- I don't know if
3 specifically -- it would probably be addressed in the
4 objections which company that was meant for because
5 they cited, I believe they cited the page in their
6 objection and it was to the Ohio Edison's -- that's
7 the only place -- I lost my mike -- that's the only
8 place in the three staff reports that the "unknown"
9 is addressed. But it would pertain to the other two
10 companies and I had the staff put that in those staff
11 reports.

12 Q. I guess that's -- I'm just trying to
13 figure out, is there another staff witness that's
14 going to address those objections for CEI and Toledo
15 Edison or why is your --

16 A. I don't know if there's an objection
17 to --

18 MR. WRIGHT: Your Honor, that was an
19 OE-specific objection. That was it.

20 EXAMINER BOJKO: That was my question.

21 MR. WRIGHT: Yeah, so the answer is no on
22 that point.

23 EXAMINER BOJKO: Thank you. That was my
24 question then. I didn't get that -- I was unsure

1 from your response. Thank you.

2 That's all I have. You may step down.

3 MR. WRIGHT: At this time we would move
4 admission of Staff Exhibit No. 12.

5 EXAMINER BOJKO: Any opposition to
6 admitting Staff Exhibit 13, I believe --

7 MR. WRIGHT: 13, I'm sorry.

8 EXAMINER BOJKO: -- which is Mr. Roberts'
9 testimony?

10 MR. REESE: Your Honor, I'm not --

11 EXAMINER BOJKO: Are you objecting to the
12 admission of Mr. Roberts' testimony?

13 MR. REESE: No.

14 EXAMINER BOJKO: Hearing none, the
15 testimony will be admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER BOJKO: Mr. Reese.

18 MR. REESE: Your Honor, I'm not sure how
19 we need to treat this now, I wanted to move for
20 admission of OCC Exhibit 13.

21 EXAMINER BOJKO: Which is a confidential
22 document.

23 MR. REESE: That's correct.

24 EXAMINER BOJKO: So any opposition to the

1 admission of the confidential OCC Exhibit 13?

2 MS. MILLER: Can I have a clarification?
3 Did we use that document? Was that document
4 necessary for any of the questions?

5 EXAMINER BOJKO: Yes, we did use it.

6 MS. MILLER: I mean, the fact that we
7 didn't refer to any of the data, the actual answer
8 for the interrogatory, I don't see how it's
9 necessary, but I don't object to admitting it.

10 EXAMINER BOJKO: I believe the witness
11 used it to base his answer.

12 MS. MILLER: I don't object.

13 EXAMINER BOJKO: He reviewed it in
14 answering the question, so -- you don't object now?

15 MS. MILLER: That's correct.

16 EXAMINER BOJKO: We will admit it as a
17 confidential exhibit, and I believe people that
18 haven't signed the confidentiality agreement, I'm not
19 aware if you have or not, you should return that
20 document to the appropriate person.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER BOJKO: We will take a recess at
23 this time, come back at 1:45.

24 Let's go off the record.

1 (At 12:44 p.m. a lunch recess was taken
2 until 1:45 p.m.)

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Wednesday Afternoon Session,
February 13, 2008.

- - -

EXAMINER PRICE: Let's go on the record.
Mr. McNamee.

MR. McNAMEE: Yes, your Honor. This is a
good time I think to address the exhibits for
Choudhury. I would move the admission of 11A and 11B
as before. I'd move for the admission of 11 except
for the answers to questions and answers 12 and 13
which appear on pages 5 and 6 of Staff Exhibit 11.

EXAMINER BOJKO: So those questions and
answers would be stricken in their entirety.

MR. McNAMEE: Yes.

EXAMINER PRICE: Any objections to the
admission of 11, 11A, and 11B as amended by
Mr. McNamee?

Hearing none, those exhibits will be
admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER BOJKO: I'm sorry, did you say
12 and 13?

MR. McNAMEE: Yes, 12 and 13. Yes,
question and answer 12 and 13.

1 EXAMINER PRICE: Mr. Wright.

2 MR. WRIGHT: Yes, thank you, your Honor.

3 At this time the staff would call to the stand Pete
4 Baker.

5 (Witness sworn.)

6 EXAMINER PRICE: Please be seated and
7 state your name and business address for the record.

8 THE WITNESS: My name is Peter Baker. My
9 business address is 180 East Broad Street, Columbus,
10 Ohio 43215.

11 EXAMINER PRICE: Mr. Wright.

12 MR. WRIGHT: Thank you, your Honor.

13 - - -

14 PETER K. BAKER

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

17 DIRECT EXAMINATION

18 By Mr. Wright:

19 Q. Good afternoon, Mr. Baker.

20 A. Good afternoon.

21 Q. By whom are you employed?

22 A. I'm employed by the Public Utilities
23 Commission of Ohio.

24 Q. And what is your position?

1 A. I'm an Administrator in the Service
2 Monitoring and Enforcement Department.

3 Q. Have you provided -- excuse me. Have you
4 prepared testimony in this case?

5 A. Yes, I have.

6 MR. REESE: Excuse me. I can't hear him,
7 your Honor.

8 EXAMINER PRICE: Let's go off the record.
9 (Discussion off the record.)

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

12 MR. WRIGHT: Could I have the last
13 question read back. I'm not sure if we got an answer
14 or not.

15 (Record read.)

16 MR. WRIGHT: Your Honor, at this time I
17 would like to have marked as Staff Exhibit 14, I
18 believe, the prefiled testimony of Mr. Baker.

19 EXAMINER PRICE: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MR. WRIGHT: Thank you.

22 Q. Mr. Baker, do you have in front of you
23 what we've just marked for identification purposes as
24 Staff Exhibit 14?

1 A. Yes, I do.

2 Q. And could you please identify that
3 document.

4 A. It is my prefiled testimony in this case.

5 Q. Do you have any changes or corrections to
6 that document?

7 A. Yes, I do. On the cover page, delete the
8 words "Utilities Department." And then on page 4,
9 line 12, insert the word "these" before "activities."

10 Q. I'm sorry, page 4?

11 A. Line 12.

12 Q. Line 12.

13 A. At the end of the line before
14 "activities" insert the word "these." Then on page
15 6, that page --

16 EXAMINER PRICE: One second, please. Can
17 you read that sentence then as you want it to read?

18 THE WITNESS: The sentence should read
19 "Does staff recommend a special recovery mechanism
20 for the cost of these activities?"

21 EXAMINER BOJKO: Which page and line are
22 you on again?

23 THE WITNESS: Page 4.

24 EXAMINER PRICE: Line 12?

1 MR. WRIGHT: It's question 12, I believe,
2 your Honor, line 15.

3 THE WITNESS: Oh, line 15.

4 EXAMINER PRICE: Thank you, Mr. Wright.

5 One second.

6 Thank you.

7 THE WITNESS: And page 6 has been
8 replaced by a corrected page which was filed on
9 February 11th.

10 MR. WRIGHT: Your Honor, I would like
11 to -- the corrected page has previously been
12 distributed to parties, and I would like to mark
13 that, if I could, as Staff Exhibit 14A.

14 EXAMINER PRICE: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. Mr. Baker, could you briefly describe
17 what Exhibit 14A does.

18 A. Yes. The corrected page recognizes the
19 fact that OCC's \$84.7 million capital budget total
20 for 2008 covers both distribution and transmission
21 facilities.

22 EXAMINER PRICE: Mr. Baker, you need to
23 move the microphone closer to you.

24 Q. Do you have any other changes or

1 corrections to your testimony?

2 A. Yes. The cover page to the corrected
3 testimony needs to have the words "Utilities
4 Department" deleted.

5 Q. Does that --

6 EXAMINER PRICE: Do we get a corrected
7 page of the corrected page?

8 Q. Does that complete any changes or
9 corrections to your testimony?

10 A. Yes, it does.

11 Q. Mr. Baker, do you adopt the questions and
12 answers in Staff Exhibit 14 and 14A here today as
13 being true and accurate?

14 A. Yes, I do.

15 MR. WRIGHT: Your Honor, Mr. Baker is
16 available for cross-examination.

17 EXAMINER PRICE: Thank you.

18 IEU?

19 MR. NEILSEN: No questions, your Honor.

20 EXAMINER PRICE: Nucor.

21 MR. LAVANGA: No questions, your Honor.

22 EXAMINER PRICE: Schools.

23 MR. BREITSCHWERDT: No questions, your
24 Honor.

1 EXAMINER PRICE: Mr. Reese.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Reese:

5 Q. Good afternoon, Mr. Baker.

6 A. Good afternoon.

7 Q. I just want to do a document check here,
8 if I could. Do you have a copy of Ohio
9 Administrative Code 4901:1-10 with you up there?

10 A. Yes, I do.

11 Q. We'll probably refer to that as the ESSS
12 rules for most of the cross.

13 Do you have Chapter 4901:1-23?

14 A. No, I do not.

15 Q. Okay.

16 MR. REESE: May I approach, your Honor?

17 EXAMINER PRICE: Yes.

18 Q. And, Mr. Baker, do you have an authentic
19 copy of the UMS report?

20 A. Yes, I do.

21 Q. Do you have a copy of the Ohio Edison and
22 CEI Staff Reports as well?

23 A. I have a copy of the portion that I am
24 responsible for.

1 EXAMINER BOJKO: Mr. Baker, you're going
2 to have to put that microphone closer to you.

3 Q. Mr. Baker, the portion you're responsible
4 for, does that mean the Service Monitoring and
5 Enforcement Department section?

6 A. The part that I prepared.

7 Q. Okay. Can you clarify for me which
8 portions of those Staff Reports you prepared?

9 A. For the CEI Staff Report beginning on
10 page 75 --

11 EXAMINER PRICE: CEI Staff Report is
12 Staff Exhibit 1; is that correct?

13 MR. WRIGHT: That is correct.

14 EXAMINER PRICE: It is correct, yeah.
15 Sorry.

16 A. And ending on 79. For the Ohio Edison
17 Staff Report, beginning on page 72 and ending on 79.

18 I'm also addressing a portion of the
19 Staff Report dealing with tariffs. I only have one
20 of the Staff Reports with me for the Ohio Edison
21 report that is on page 21.

22 MR. WRIGHT: May I approach the witness,
23 your Honor?

24 EXAMINER PRICE: You may.

1 A. I now have complete copies of all three
2 Staff Reports.

3 Q. Thank you.

4 Mr. Baker, if you know --

5 MR. WRIGHT: Excuse me, your Honor.

6 Before we continue, could I request Mr. Baker to
7 denote any additional pages in the CEI Staff Report
8 that he was responsible for? Is there something else
9 in the CEI Staff Report?

10 THE WITNESS: There was a tariff issue
11 that is identical for all three companies, I have the
12 page reference for Ohio Edison for that Staff Report,
13 I don't have it right now, I could look it up in the
14 other Staff Reports, if need be.

15 MR. WRIGHT: That's fine.

16 EXAMINER PRICE: We'll cross that bridge
17 if we need to.

18 Mr. Reese.

19 Q. (By Mr. Reese) Mr. Baker, if you know,
20 can you tell me which portions of the Ohio Edison and
21 CEI Staff Reports Mr. Scaramellino is responsible
22 for?

23 A. No, I cannot.

24 Q. Your testimony regarding -- let me

1 rephrase that.

2 You assisted in preparation of certain
3 portions of the CEI and OE Staff Reports; is that
4 correct?

5 A. Yes.

6 Q. Did you participate in the preparation of
7 any parts of the Toledo Edison Staff Report?

8 A. Yes.

9 Q. Which section?

10 A. It would be the first pages of the
11 reliability -- service reliability assessment --
12 excuse me. Which company were you referring to?

13 Q. Toledo Edison.

14 A. Toledo Edison?

15 That portion begins on page 77 and ends
16 on page 79.

17 Q. And does your prefiled direct testimony
18 only cover those pages of the Staff Reports and
19 related objections that you just discussed?

20 A. Yes, that is correct.

21 EXAMINER BOJKO: With the addition of the
22 one tariff page 21 that's in one of the companies --

23 MR. WRIGHT: That was Ohio Edison, your
24 Honor.

1 EXAMINER BOJKO: Ohio Edison. And then
2 you have two like pages in CEI and Toledo Edison.

3 THE WITNESS: That is correct.

4 Q. So am I correct that the work that you
5 did on the Ohio Edison and CEI Staff Reports began
6 generally with a review of the reliability targets of
7 CEI and Ohio Edison?

8 A. And also of Toledo Edison.

9 Q. Okay. Now, as I understand it, the
10 targets -- the reliability targets that are covered
11 in all three Staff Reports are SAIFI and CAIDI; is
12 that correct?

13 A. Yes.

14 Q. And the charts in the Staff Report within
15 the pages that you cited that you had responsibility
16 for, there's a SAIFI performance chart and a CAIDI
17 performance chart; is that correct?

18 A. Yes.

19 Q. And those are basically line diagrams
20 that denote whether the respective operating
21 companies met their SAIFI and CAIDI targets beginning
22 in 2000 through the year 2006; is that correct?

23 A. Yes, it is.

24 Q. Do you know if CEI achieved its

1 reliability targets for SAIFI and CAIDI in 2007?

2 A. Based on the preliminary data request
3 response, it appears that CEI did not meet its SAIFI
4 and SAIDI requirement targets.

5 Q. And those were with the same caveats that
6 Mr. Roberts gave earlier today, they were preliminary
7 and unadjusted.

8 A. Yes.

9 Q. But if they were to remain unchanged,
10 they would not have achieved their targets, correct?

11 A. Correct.

12 Q. And that's specific to CEI.

13 A. Yes.

14 Q. Thank you. Mr. Baker, I'll be moving
15 around a little bit between the testimony and the
16 rules. I'll try to take my time so neither one of us
17 gets confused. In your prefiled testimony,
18 specifically regarding question 14 on page 5 of your
19 testimony --

20 A. Yes.

21 Q. -- you state that it is not a,
22 quote/unquote, rule violation for an EDU to miss a
23 reliability target; is that correct?

24 A. Yes, that is correct.

1 Q. Is a failure to meet a reliability
2 target -- and for purposes of cross today I'll only
3 be talking about SAIFI and CAIDI, okay? In other
4 words, I won't be referring to SAIDI or ASAI or any
5 of the other measures.

6 If a company fails to meet the
7 reliability targets set for it for a given year, is
8 that in noncompliance with the company's action plan?

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

10 Q. Is it possible for a company to violate
11 either its plan or a Commission rule if it fails to
12 meet its reliability targets?

13 A. I'm not sure what you mean by "plan" in
14 this context.

15 Q. Well, my understanding is that the
16 company provided beginning in the year 2000, I
17 believe they provided certain action plans and
18 programs to the staff and certain performance targets
19 were set and each year, I believe this is in Rule
20 27(E), and if those -- I'm sorry, that is specific to
21 Rule 10, and if they don't meet those targets, aren't
22 they required to provide some sort of action plan to
23 address the failure to meet those targets?

24 A. I'm not sure everything you said was

1 correct. The requirement in Rule 10 for EDUs to file
2 an action plan for a missed target did not become
3 effective until January 1st, 2004, so missed targets
4 would not require an action plan prior to that.

5 Q. So Rule 10 did not take effect till 2004?

6 A. Rule 10 took effect earlier, but that
7 particular provision concerning an action plan did
8 not become effective until 2004.

9 Q. Prior to that time but after the adoption
10 of the Electric Service and Safety Standards were the
11 companies asked to provide the staff or the
12 Commission certain targets for performance?

13 A. You mean -- oh, targets?

14 Q. Yes.

15 A. Could you specify that time period again?

16 Q. 2000 to 2004. You said that the filing
17 of the action plan wasn't required till 2004. Prior
18 to that time but after the adoption of the ESSS were
19 companies required to provide the staff with certain
20 targets for reliability?

21 A. Yes.

22 Q. And between the period of 2000 and 2004
23 what was required of the company if they failed to
24 meet those targets?

1 A. They're supposed to describe the factors
2 causing them to miss the target.

3 Q. And that is something different than the
4 annual report referenced in Rule 10?

5 A. That would be a part of the Rule 10
6 report, the annual report.

7 Q. And that annual report is something new,
8 or has that been in existence since --

9 A. That has been in existence since the
10 inception of the rule.

11 Q. All right. I'm still on Rule 10, let's
12 look at Rule 10(C)(2). "If the annual performance
13 level is worse than the target for any index, each
14 EDU shall include in its report, A, factors which
15 contributed to such performance level for that
16 index." Do you see that?

17 A. Yes, I do.

18 Q. "And, B, an action plan to improve
19 performance to a level that meets or exceeds the
20 target level for each missed reliability index." Do
21 you see that?

22 A. Yes.

23 Q. Is that the rule that's only been in
24 existence since 2004?

1 A. That provision has only been in existence
2 since January 1st, 2004. I'm not sure what -- at
3 this point what other provisions also became
4 effective on that date.

5 Q. Okay. But there have been targets under
6 the ESSS for CEI and Ohio Edison since 2000.

7 A. Yes.

8 Q. Now, back to the action plan. If a
9 company, in this case Ohio Edison or CEI, fails to
10 meet its reliability targets in any given year, it is
11 then required to file an action plan; is that
12 correct?

13 A. The word "file" is incorrect. It should
14 be submit an action plan. It is not filed in
15 Docketing.

16 Q. So it's submitted, it's not docketed. So
17 this means it's given to the staff for review?

18 A. That is correct.

19 Q. Let's take this out several years. So if
20 there's an action plan in 2005 submitted to the staff
21 on March 31st, I believe, if there's an action plan
22 submitted with a proposal, if you will, of how the
23 company is going to achieve its performance targets
24 for the following year, and the company doesn't

1 achieve its targets and files another action plan
2 proposing how it will meet its performance targets
3 for that year, and then we go on and on, is there any
4 point at which there's a noncompliance with either
5 the rule or the company's plan if it fails to meet a
6 reliability target?

7 A. Would you repeat the question?

8 MR. REESE: Can you read that back for
9 me, please?

10 (Record read.)

11 A. I believe what's supposed to happen is
12 that when an action plan is submitted, the staff
13 reviews the action plan for sufficiency, and if the
14 staff does not believe that the action plan is
15 sufficient, then the staff will bring that to the
16 company's attention and a dialogue should begin on
17 improving that plan.

18 Q. So the staff and the companies discuss
19 what a reasonable target might be for the next year?

20 A. No, the dialogue is not over the target.
21 The dialogue is over the plan, the action plan. The
22 targets generally stay the same year after year.

23 Q. Could you explain to me why the targets
24 stay the same each year?

1 A. ESSS Rule 10(B) requires utilities to
2 submit for staff's review and acceptance proposed
3 targets. They were initially required to do that I
4 believe around year -- prior to year 2000. I don't
5 remember whether it was 1998 or 1999. And staff
6 reviewed those targets and had dialogues with the
7 company and accepted targets, and if a company did
8 not initiate a target change after that date, then
9 those targets would still be in effect.

10 Q. Does the staff -- if you know, has the
11 staff, since the year 2000, proposed that the company
12 revise its performance targets for SAIFI or CAIDI?

13 A. Are you asking about a specific company?

14 Q. Yes; CEI.

15 A. And the question was have we done what?

16 Q. Have you recommended that the company
17 adopt revised SAIFI or CAIDI targets since the year
18 2000, if you know?

19 A. No, we have not.

20 Q. Now, I believe there was something in the
21 CEI Staff Report, I believe it's at the bottom of
22 page 76, yeah, 76 of the CEI Staff Report.

23 A. I have it.

24 Q. There's some discussion there that there

1 were issues with CEI not making its, I believe its
2 CAIDI targets and that several -- some sort of
3 interim targets were developed for 2006 and the
4 company failed to meet these interim targets; is that
5 correct?

6 A. That's correct.

7 Q. So these interim targets were developed
8 as a part of a dialogue with the staff and the
9 company?

10 A. Yes.

11 Q. Those weren't submitted or filed
12 anywhere, were they?

13 A. They were submitted to staff as part of
14 an action plan for meeting the official targets.

15 Q. And those targets were lower than the
16 targets that were in effect for the company prior to
17 the development of the interim targets; is that
18 correct?

19 A. Could you repeat that?

20 Q. Were the interim targets lower targets
21 than what existed prior to that time?

22 A. If by "lower" you mean they were more
23 lenient, yes, they were more lenient than the
24 official targets.

1 Q. And the company failed to meet those more
2 lenient targets; is that correct?

3 A. Yes, that is correct.

4 Q. And that's part of the reason that the
5 UMS consultant was hired?

6 A. Yes. As a part -- part of the action
7 plan was a commitment that if they did miss the
8 interim targets, that they would hire a consultant.

9 Q. So with the interim data that we have
10 regarding the performance on the 2007 CAIDI and SAIDI
11 targets for CEI, CEI has failed to meet its CAIDI
12 targets for seven years; is that correct?

13 A. That would be the seven years referenced
14 in the chart on page 76. It would be eight years if
15 you want to include the preliminary data that we
16 discussed earlier.

17 Q. Thank you.

18 Now going back to 10(B)(2) that you
19 referenced earlier regarding the EDU submitting
20 targets and supporting justification, reading further
21 down in 10(B)(2), isn't it true that if the company
22 cannot agree on specific targets, that the company
23 can request a hearing from the Commission, file a
24 written report and/or recommendations, and submit

1 evidence on such targets at the hearing?

2 A. Yes, but it says that either the staff or
3 the company could make such a filing.

4 Q. Okay. Neither the company nor the staff
5 has made such a filing since 2000, have they?

6 A. No, they have not.

7 Q. Going to Rule 10(C)(2)(c), this is in
8 reference to the action plan discussed in
9 10(C)(2)(b), the second part of (C) below, "If the
10 parties cannot agree upon a revised action plan to
11 improve performance to a level that meets or exceeds
12 the target level for each missed reliability index,
13 either party may request a hearing before the
14 Commission."

15 Now, in reference to these action plans
16 have either the company or the staff ever requested
17 such a hearing?

18 A. No, they have not.

19 Q. So based solely on whether a company
20 meets its reliability targets as adopted under ESS
21 Rule 10, regardless of whether a company ever meets
22 those targets it cannot be found in noncompliance
23 with Rule 10; is that correct?

24 A. Could you repeat the question?

1 Q. If a company fails to meet its targets,
2 in this case SAIFI or CAIDI, we're sticking strictly
3 to CEI, if they never meet those targets, as long as
4 they file an action plan they cannot be found to be
5 in noncompliance with Rule 10; is that your opinion?

6 A. I think that if we considered the action
7 plan proposed to be insufficient, that we would treat
8 that as a noncompliance, in other words, we read the
9 rule to mean that an action plan submitted needs to
10 be sufficient and if we don't consider it sufficient,
11 I don't think we would consider them in compliance
12 until it was made sufficient to our satisfaction.

13 Q. So under 10(C)(2)(c) the top half of that
14 subsection, if the consumer services department -- I
15 guess that would be SMED these days?

16 A. Yes.

17 Q. If you believe that an action plan is
18 insufficient or unreasonable, you could deem that to
19 be noncompliant; is that your position?

20 A. Yes, and I believe also that if we
21 subsequently determine that an EDU had not
22 implemented its action plan as it had proposed to do,
23 then we would also take the position that the company
24 was out of compliance.

1 Q. Mr. Baker, isn't it axiomatic that a plan
2 is insufficient if the company fails to meet its
3 terms year in and year out?

4 A. Not necessarily. There could be new
5 outage causes introduced in a particular year that
6 did not arise in the prior year and that the action
7 plan for the prior year would be aimed at the outage
8 causes that did cause them to meet the targets in the
9 prior year. So new situations can crop up that would
10 not be addressed by the action plan for the prior
11 year.

12 Q. Is this, in staff's opinion, why CEI has
13 not made its CAIDI targets for seven or eight years,
14 these new outage causes? Would that be one of the
15 reasons?

16 A. It could be.

17 Q. Is it?

18 A. I haven't done a detailed analysis
19 that -- I'll correct that. I don't have on the top
20 of my head the results of all analyses that were done
21 to evaluate Rule 10 performance.

22 Q. Fair enough.

23 Can you give me some examples of new
24 outage causes?

1 A. A recent example that I believe has
2 affected the performance of a number of companies
3 involves a defective fuse cutout that a number of
4 different companies across the country had purchased
5 sometime -- some years ago and is now having an
6 adverse effect on their performance. This would be
7 an example where something new cropped up that
8 didn't -- wasn't occurring in prior years.

9 EXAMINER PRICE: Mr. Baker, when you're
10 saying new outage cause, does that relate solely to
11 SAIFI, or does that relate to SAIFI and CAIDI?

12 THE WITNESS: An outage cause could
13 affect both indices, it could affect both SAIDI
14 and -- SAIFI and CAIDI.

15 EXAMINER PRICE: Why would a new outage
16 cause affect the duration of an outage?

17 THE WITNESS: It's not a direct effect,
18 it's more of a cumulative effect. If a new outage
19 cause increases the frequency of outages, then it may
20 strain the ability of the company to respond to
21 multiple outages at once. And so in trying to
22 address multiple outages, that can increase the
23 restoration time.

24 EXAMINER PRICE: Fair enough.

1 I apologize, Mr. Reese.

2 Q. (By Mr. Reese) Now, if there were
3 defective fuse cutouts out there in the distribution
4 system, isn't it likely that Toledo Edison and Ohio
5 Edison and Cleveland Electric Illuminating Company
6 would all have defective fuse cutout problems?

7 A. If they had all purchased the defective
8 item from the same manufacturer, but I am aware that
9 in the past these companies were separate.

10 Q. So is it your conjecture that CEI
11 purchased more of these defective fuse cutouts than
12 Toledo Edison?

13 A. I'm not saying that one company or
14 another has suffered from this condition. I'm saying
15 that -- I was giving that as a generic example that
16 has affected several companies. I don't have on the
17 top of my head to what extent it has affected -- that
18 this particular cause has affected the performance of
19 each of the FE operating companies.

20 Q. We were talking a little bit ago about
21 the fact that it could be -- an action plan could be
22 noncompliant with the ESSS; is that correct?

23 A. If staff considers it insufficient or
24 inappropriate.

1 Q. Now, if that's considered a
2 noncompliance, can you tell me, has the staff ever
3 issued a notice of probable noncompliance based on
4 the insufficiency of a company's action plan? If you
5 know.

6 A. We have sent letters, formal letters, to
7 the companies or at least to CEI and I believe for
8 Toledo Edison -- for Ohio Edison stating that staff
9 considered their action plan to be insufficient.
10 Those letters were not labeled as a notice of
11 probable noncompliance.

12 Q. So they weren't sent under 4901:1-23 to
13 the best of your knowledge.

14 A. I don't know the legal application of
15 that chapter to these letters that I'm speaking of.
16 They may fall under a general application. I'm just
17 saying that they were not labeled as a notice of
18 probable noncompliance.

19 Q. Do you know when these letters were sent
20 out?

21 A. Within the last five years. I don't have
22 the specific years in mind. I know that it was
23 letters such as these that led to the selection of
24 UMS to do their focused review.

1 Q. But you don't recall if they were
2 entitled "notices of probable noncompliance."

3 A. I know that they were not labeled that
4 way.

5 Q. Did these letters propose corrective
6 actions or suggest that fines or forfeitures might be
7 in order if the company failed to comply?

8 A. They instructed the company to come back
9 with a stronger action plan.

10 Q. And that was the limit of the letters
11 that you recall?

12 A. I'm just saying that they did not include
13 forfeitures or -- that's all.

14 Q. Staff basically said "Fix your action
15 plan." Is that correct?

16 A. That's correct.

17 Q. Okay. Thank you.

18 Let's look at the ESS rules again,
19 specifically Rule 2. If you look at section (A)(2),
20 Rule 2(A)(2).

21 A. I see it.

22 Q. Could you read that for me?

23 A. "The rules in this chapter are intended
24 to promote safe and reliable service to consumers and

1 the public, and to provide minimum standards for
2 uniform and reasonable practices."

3 Q. Do you believe that the companies meeting
4 their reliability targets is part and parcel of
5 providing reliable service?

6 A. It's part of it. I'm not sure what the
7 parcel means, but yes, I think that is a part of
8 providing reliable service.

9 Q. Looking further on in Rule 2, 2(B), can
10 you read just the top portion of Rule (B) for me,
11 Rule 2(B)?

12 A. "The commission may, in addition to the
13 rules in this chapter, require EDUs and/or
14 transmission owners to furnish other or additional
15 service, equipment, and facilities upon any of the
16 following."

17 Q. And that includes upon the Commission's
18 own motion, correct?

19 A. Yes.

20 Q. Now, your understanding of this rule,
21 does that mean to you that the staff can require --
22 or, I'm sorry, the Commission can require the company
23 to provide services or levels of service over and
24 above what exists in Chapter 1-10?

1 A. Did you say the Commission or the staff
2 or both?

3 Q. The Commission.

4 A. The Commission, yes.

5 Q. So the Commission is not limited by the
6 rules in Chapter 1-10; is that correct?

7 A. I don't think so.

8 Q. That would apply to the provision of
9 certain equipment, services, it's not just limited to
10 a piece of equipment or a type of service, is it?

11 A. I don't think so.

12 Q. Thanks.

13 Chapter 1-10 that we've been discussing,
14 the Electric Service and Safety Standards, are
15 sometimes referred to as minimum standards; is that
16 correct?

17 A. I believe the title on the chapter used
18 to read "Minimum Electric Service Standards."

19 Q. But because that acronym spelled m-e-s-s,
20 you changed that, correct?

21 A. As we wanted to clean up the mess.

22 Q. Thank you. Would you characterize them
23 as minimum standards?

24 A. I'm not sure that a hundred percent of

1 this chapter would fall into that category.

2 Q. Do you consider some of these standards
3 higher than minimum standards?

4 A. I guess I'm saying I don't have all the
5 evidence to make the statement that they're all
6 minimums.

7 Q. Fair enough.

8 Do you consider FirstEnergy's reliability
9 targets to be minimum standards?

10 A. I'm looking at ESSS Rule 10 and it
11 doesn't appear that the language in that rule
12 describes the targets as setting a minimum level.

13 So based on that I don't think that we
14 have strong evidence to show that the targets
15 necessarily represent a minimum level of service.

16 Q. So reliability targets, are they
17 guidelines or are they -- how would you characterize
18 those? I mean, you're not sure they're minimum
19 standards, they really don't -- the companies don't
20 have to meet the reliability targets, the staff
21 doesn't take any action necessarily if they don't
22 meet their reliability targets, all the company has
23 to do is file another plan and not make their
24 reliability targets and file a plan? I'm confused.

1 What are the targets for, in your opinion?

2 A. I believe that the targets represent the
3 company's expectations for the level of reliability
4 that they want to provide and they expect themselves
5 to provide, and when staff accepts a target, I
6 believe that they are also jointly adopting that
7 expectation so that if a company misses a target,
8 they are failing to meet their own expectations and
9 failing to meet staff's expectations for their
10 reliability performance.

11 Q. Now, I understand that one of the
12 outcomes from CEI's failure to meet its CAIDI targets
13 in particular in the interim targets in 2006 was the
14 hiring of The UMS Group; is that correct?

15 A. Yes.

16 Q. Now, UMS is actually a consulting firm;
17 is that correct? They didn't do an audit of the
18 company's books or practices, did they?

19 A. Just reading from the title of their
20 report, they did a focused assessment.

21 Q. But they didn't have any auditors on
22 their --

23 A. It was not a financial audit, no.

24 Q. Do you know if they audited the company's

1 books -- did they audit their procedures? I'm just
2 curious. They're labeled a consulting group. I'm
3 just wondering, were they a consultant or were they
4 an auditor?

5 A. I'm confused about the distinction. I
6 thought an auditor could be a consultant and a
7 consultant could be an auditor.

8 Q. Well, let me propose this distinction, I
9 believe you're right that an auditor can be a
10 consultant, but an auditor generally verifies -- this
11 is my -- let's see if we can get there together.

12 Doesn't an auditor verify the data that
13 he or she has been provided?

14 A. I'm sure that's one of the activities
15 they would perform.

16 Q. Well, just let me know -- do you think
17 that UMS performed an auditing function in looking at
18 the service of CEI?

19 MR. WRIGHT: Your Honor, excuse me. I'd
20 like to I guess note an objection. Without
21 foundation we don't know what this witness knows
22 about the report itself. So could we please get some
23 foundation?

24 EXAMINER PRICE: Sustained.

1 Q. Mr. Baker, were you part of the staff
2 that supervised the UMS consulting firm?

3 A. Yes.

4 Q. Have you read the entire report?

5 A. Not all of it, no.

6 Q. Have you read most of it?

7 A. Maybe half.

8 Q. Have you read the half that applies to
9 your testimony and the parts of the Staff Report that
10 you prepared?

11 A. Yes, I did.

12 Q. You've actually cited the UMS report in
13 the Staff Report that you helped compile; is that
14 correct?

15 A. I included recommendations from the UMS
16 report in the Staff Report.

17 Q. Did you include those recommendations
18 because you agreed with them?

19 A. Yes.

20 Q. Did you agree with them because you read
21 the underlying rationale that UMS had provided for
22 those recommendations?

23 A. Yes.

24 Q. I'd still like to ask my question again.

1 Do you believe that UMS performed as an auditor in
2 this case?

3 A. Well, certainly not in the sense of a
4 financial audit, and I can remember the consultants
5 saying that this is not an audit, but I'm not sure
6 what the implication of that is. I mean, they did a
7 focused assessment of the company's reliability.

8 Q. Well, the consultant said it wasn't an
9 audit. You've said it's not a financial audit. So I
10 think we're narrowing it down. UMS did not conduct a
11 financial audit of the company's reliability; is that
12 correct?

13 A. That's correct.

14 Q. The company did, however, make
15 recommendations about what capital expenditures the
16 company should make moving forward; is that correct?

17 A. Yes, they did. That is correct.

18 Q. And actually in the portion of the Staff
19 Report that you compiled in CEI and in your testimony
20 you supported at least one of those recommendations;
21 is that correct? Regarding the going-forward capital
22 expenditures.

23 A. Yes, that is correct.

24 MR. REESE: Your Honor, could I have a

1 short break?

2 EXAMINER PRICE: Sure. Let's go off the
3 record.

4 (Recess taken.)

5 EXAMINER PRICE: Let's go back on the
6 record.

7 Q. Mr. Baker, isn't it correct that the
8 stated purpose of the UMS report is to provide CEI
9 with a plan to meet its SAIFI and CAIDI targets by
10 2009?

11 A. And also to maintain that level of
12 performance for the following ten years.

13 Q. So I guess that means we anticipate
14 that -- I'm sorry, that staff anticipates that the
15 targets, the reliability targets, for CEI will remain
16 the same till the year 2019?

17 A. I don't think that that's mandatory. I
18 think that we could still hold them to that -- to
19 those commitments even if they modified their
20 targets. We could have one set of targets for the
21 purpose of achieving the reliability performance
22 envisioned in the UMS report and we could have
23 another set of official reliability targets pursuant
24 to the rule.

1 Q. Now, will there be a way for other
2 parties to know what the official and unofficial
3 targets are?

4 A. I think that that's possible that it
5 could be arranged.

6 Q. So you'll give me a call? Just kidding.

7 Are you also aware that the UMS report
8 states on page 12 -- let's go to the UMS report.
9 Looking at the last paragraph on page 12 of the UMS
10 report, the fifth line down beginning with the word
11 "however."

12 A. Yes.

13 Q. You see the statement, this is in the
14 executive summary, that "CEI will need favorable
15 conditions, including weather patterns and locations
16 of specific outages, in order to meet its targets as
17 early as 2009"?

18 A. I see that.

19 Q. Does staff agree with this?

20 A. The way we understand that is that if CEI
21 implements all of the recommendations that UMS
22 considers essential to meet the target, that's going
23 to be a close call and conditions will need to be
24 favorable, but if they don't implement all those

1 recommendations, they definitely will not meet the
2 target.

3 Q. One of the examples given was weather
4 patterns. Can you give me an idea what UMS means
5 about weather patterns?

6 A. I believe they're referring to the
7 frequency of minor storms.

8 Q. Are those the storms that wouldn't be
9 excluded as major storms?

10 A. That's correct.

11 Q. So the weather patterns could have a
12 number of minor storms but not major storms; is that
13 correct?

14 A. I'm not sure what you meant.

15 Q. Well, I'm not sure I know what this means
16 either.

17 A. It means if they had an unusually large
18 number of minor storms, then they probably would not
19 meet the target.

20 Q. Let's go out ten years, since that seems
21 to be an objective in what UMS was looking at. CEI,
22 let's just look at the possibility it doesn't make
23 its reliability target or targets in 2009 and it
24 doesn't meet its reliability targets in 2010, 2011,

1 2012. Do you anticipate that we'll still be talking
2 about action plans and no instances of noncompliance?

3 MR. WRIGHT: Objection.

4 EXAMINER PRICE: Grounds?

5 MR. WRIGHT: Speculation.

6 EXAMINER PRICE: Sustained.

7 Q. Mr. Baker, in your opinion if CEI fails
8 to meet its reliability targets in 2010, what would
9 you anticipate staff's actions could entail?

10 MR. WRIGHT: Objection; same basis.

11 EXAMINER PRICE: Sustained.

12 Q. Mr. Baker, is it possible -- strike that.

13 The UMS report recommendations are not
14 binding on either staff or the company, are they?

15 A. We believe they would be binding on the
16 company because they're part of this case and we
17 recommended that they implement the recommendations
18 and the company did not object to that, to those
19 recommendations.

20 Q. Well, these recommendations we're talking
21 about, I note that there are eight recommendations on
22 page 77, I believe, of the CEI Staff Report. There
23 are five recommendations on the next page of the
24 report. The eight that are listed on page 77 are

1 deemed to be short-term actions; is that correct?

2 A. That's right.

3 Q. The five recommendations listed at the
4 top of page 78 are long-term recommendations; is that
5 correct?

6 A. Yes.

7 Q. And the 12 recommendations that begin in
8 the middle of page 78 and extend over to the top of
9 page 79 are short and long-term recommendations that
10 the staff would like the company to seriously
11 consider implementing; is that correct?

12 A. Yes, that is correct.

13 Q. Were you here for the testimony of --

14 EXAMINER PRICE: Mr. Reese, I just have a
15 question.

16 I'm not sure what you mean by that,
17 Mr. Baker. Is the staff asking the Commission to
18 order the company to implement those recommendations
19 or is staff not asking the Commission to order the
20 company to implement those recommendations?

21 THE WITNESS: There are three sets of
22 recommendations.

23 EXAMINER PRICE: I'm talking about the
24 seriously considered ones, the last set Mr. Reese

1 referred to.

2 THE WITNESS: In the Staff Report we did
3 not mention the Commission in that recommendation.

4 EXAMINER PRICE: So just to make the
5 record clear, the staff is not asking the Commission
6 to require the company to implement those
7 recommendations.

8 THE WITNESS: I guess the Commission
9 could reiterate the recommendation and --

10 EXAMINER PRICE: That's not what I asked.
11 I said the staff is not asking -- I just want to know
12 the remedy the staff is looking for in this section
13 of the Staff Report. Is the staff asking the
14 Commission to order the company to implement those
15 recommendations?

16 THE WITNESS: Not at this time.

17 EXAMINER PRICE: Thank you.

18 EXAMINER BOJKO: Is the staff asking the
19 Commission to order within 60 days of its opinion and
20 order that CEI provide staff with a schedule for
21 those recommendations, schedule for implementation of
22 those recommendations?

23 THE WITNESS: Yes. And also for a
24 statement as to justification as to why they would

1 not want to implement any of those recommendations.

2 EXAMINER PRICE: Thank you.

3 Q. (By Mr. Reese) So, Mr. Baker, it was
4 staff's intention that the Commission at least order
5 a detailed justification why these recommendations
6 are not adopted by the company if the company chooses
7 not to adopt them; is that correct?

8 A. Yes, that plus a timeline for
9 implementation for the ones that they do plan on
10 implementing.

11 Q. Mr. Baker, were you here for the
12 testimony of Ms. Lettrich?

13 A. I heard most of it. I didn't hear the
14 final 30 minutes.

15 Q. I think that means you were probably here
16 for most of my questions, so do you recall when --
17 strike that.

18 MR. REESE: One moment, please.

19 Q. Do you recall Miss Lettrich stating that
20 the company supported 9 of the 12 recommendations
21 contained in CEI's Staff Report on pages 78 and 79?

22 A. Yes, I remember that.

23 Q. On a related note, do you consider each
24 of the 12 recommendations beginning on pages 12 and

1 carrying over to page 13 of the CEI Staff Report, do
2 you consider each of those --

3 MR. WRIGHT: Excuse me, counsel. You
4 mean pages 78 and 79?

5 MR. REESE: What did I say?

6 MR. WRIGHT: 12 carrying over onto 13, I
7 believe.

8 MR. REESE: Sorry. Thank you.

9 Q. Pages 78 and 79 of the CEI Staff Report
10 recommendations 1 to 12, do you consider each of
11 these to be second tier recommendations?

12 A. Not all. Only a few are second tier --
13 or only a few of the recommendations were labeled as
14 tier 2 by UMS.

15 Q. Now, do you consider any of these
16 recommendations to create no benefit for consumers?

17 A. I believe they will all create benefit
18 for consumers.

19 Q. And we're talking here specifically of
20 the 12 recommendations on pages 78 and 79, correct?

21 A. Yes.

22 Q. Back to pages 77 and 78 of the CEI Staff
23 Report, there are five long-term and eight short-term
24 recommendations that the staff recommends that the

1 Commission order CEI to adopt; is that correct?

2 A. Yes, that's correct.

3 Q. Now, if I'm correct, these
4 recommendations occurred throughout the UMS report;
5 is that correct? They weren't centralized in any one
6 location of the report.

7 A. I believe that they appeared in the
8 executive summary in a pretty centralized location.
9 I believe they were split over two pages.

10 Q. So each of these 13 recommendations on
11 pages 78 and 79 are in the executive summary?

12 A. Yes, I believe so.

13 Q. Do you know what part of the executive
14 summary?

15 A. Pages 30 and 31 and also on page 32.

16 Q. Some of these recommendations were split
17 between recommendations that were tier 1 and tier 2;
18 is that correct?

19 A. Yes, that's correct.

20 Q. And the rationale for these particular
21 recommendations, UMS's rationale occurs throughout
22 the UMS report; is that correct?

23 A. I believe most of these recommendations
24 were summarized at the end of chapter 5, chapter 6,

1 and chapter 8.

2 Q. Now, as I understand it from your
3 testimony today, the portions of the CEI and Ohio
4 Edison and Toledo Edison Staff Reports that you were
5 responsible for, you were not looking at compliance
6 with Rule 27(E); is that correct?

7 A. That's correct.

8 Q. Mr. Baker, if you know, does the staff
9 ever consider actions such as forfeitures or other
10 types of economic sanctions if an EDU misses its
11 reliability targets too often?

12 A. We have not done that to date.

13 Q. Now, as I recall, correct me if I get the
14 case number wrong, in the case involving AEP
15 specifically -- I believe it was 05-622 and the
16 predecessor case there was 03-2570-EL-UNC, I believe.
17 Do you recall those cases?

18 A. Yes, I do.

19 Q. Now, that case originated primarily
20 because AEP wasn't complying with Rule 11, is that
21 correct, regarding worst-performing circuits?

22 A. There were some issues involving a set of
23 circuits that were identified in the rule and the
24 report, but I'm not sure about the violation part of

1 it.

2 Q. Wasn't part of what was at issue from
3 staff's perspective was that certain circuits'
4 reliability was not improving? They were
5 poor-performing circuits.

6 A. That is correct.

7 Q. And also, if you know, the circuit
8 reliability in that particular case, the reliability
9 was measured by a performance measure that's akin to
10 SAIFI or CAIDI; is that correct? I think it was
11 SAIFI in that case.

12 A. You can measure circuit performance the
13 same way you measure system performance with those
14 reliability measures, SAIFI, SAIDI, CAIDI.

15 Q. As part of that case, wasn't one of the
16 efforts to get the poor-performing circuits to
17 improve on their SAIDI performance?

18 A. I believe that measure was used
19 predominantly to assess that situation.

20 Q. And if you know, at the termination -- as
21 03-2570 was wrapping up and 05-622, which was a
22 self-complaint case, was being filed, didn't staff
23 recommend certain forfeitures or monetary penalties
24 be assessed against AEP?

1 A. I can't remember exactly.

2 Q. So you don't recall whether the
3 Commission ended up levying any type of financial
4 penalty on the company in that case?

5 A. I do remember that the Commission ordered
6 a financial penalty. I'm not -- what I'm not sure
7 about is to what extent that was a result of a staff
8 recommendation. I'm not saying it's not the case, I
9 just don't remember it. If you were to read me the
10 documents, I could confirm or disconfirm.

11 EXAMINER BOJKO: Mr. Baker, were you
12 involved in that case?

13 THE WITNESS: Yes, I was.

14 Q. Let's move back to your testimony for a
15 moment, please. Just to clarify, regarding the
16 recommendations that the staff recommended CEI
17 seriously consider implementing, can you be any more
18 specific what you mean by "seriously consider"?

19 A. I believe that the burden should be on
20 the company to justify not implementing any of those
21 recommendations.

22 Q. Okay. And, again, I think you've already
23 stated that you don't believe that all of those 12
24 recommendations on 78 and 79 are tier 2

1 recommendations; is that correct?

2 A. That's correct.

3 Q. On page 5 of your testimony, specifically
4 line 12, question and answer 15.

5 A. Yes.

6 Q. The question here is "Do you believe that
7 OE or CEI's history of missed reliability targets
8 constitutes inadequate service?" The answer is "No.
9 Missing targets alone is insufficient evidence to
10 conclude that service is inadequate."

11 Do you know if there's any statement by
12 any of the parties in this case that CEI or Ohio
13 Edison or Toledo Edison is providing inadequate
14 service?

15 A. Not that I'm aware of.

16 Q. From your years of experience do you have
17 any ideas or notions or quantifications of what
18 inadequate service might look like as provided by an
19 EDU, what might constitute inadequate service?

20 A. I think that you would probably need to
21 include three factors, one of them is how bad is the
22 performance, another one is how badly does it impact
23 customers, and the third one would be how little is
24 the EDU responding to those problems.

1 Q. Isn't that one of the things that the
2 reliability targets measure because they measure both
3 frequency and duration of outages?

4 A. They would get at one factor, one of
5 those three factors. They would measure how badly
6 the performance was or how good it was.

7 Q. Mr. Baker, aren't those factors, the
8 duration and frequency of outages, even more
9 important than how often a company inspects its
10 facilities?

11 A. I'm having problems with -- it sounds
12 like you're comparing two different dimensions,
13 whether one's more important. I believe that
14 maintenance practices are important to achieve good
15 reliability, and I think that reliability is
16 typically measured by SAIFI, CAIDI, SAIDI.

17 Q. Isn't that because that's what the
18 customer experiences is the frequency or duration of
19 the outage? They're not really directly impacted by
20 how often the company cuts its trees, are they?

21 A. That's correct.

22 Q. Thanks.

23 Now, on page 4 of your testimony there is
24 some discussion from the OE Staff Report at lines 10

1 to 13, there's some discussion in here about enhanced
2 tree trimming activities. Before I move on, I assume
3 you were here for Mr. Roberts' testimony.

4 A. Yes, I was.

5 Q. Mr. Roberts characterized Ohio Edison's
6 right-of-way vegetation management efforts I believe
7 as "extremely adequate." Do you agree with that
8 statement?

9 A. I do know that all the FirstEnergy
10 companies have a four-year trim cycle and that I
11 believe that is the shortest trim cycle of all the
12 EDUs in Ohio, and we like that fact. We like the
13 fact that they have a short trim cycle.

14 I believe that there's opportunities to
15 improve their performance by implementing the
16 recommendation that Mr. Roberts made in the Staff
17 Report. As the OCC witness mentioned, there are
18 other companies that have different right-of-way
19 practices where instead of defining the right-of-way
20 as a circle that surrounds the lines, they define it
21 in such a way that it begins on the ground up and
22 creates a corridor and everything that falls into
23 that corridor gets trimmed, and so in that respect I
24 think that there's opportunities to improve

1 FirstEnergy's vegetation management program.

2 Q. Now, you mentioned one of the things that
3 staff was pleased with was the four-year cycle that's
4 the shortest of -- did you say of any of the EDUs?

5 A. That's my understanding.

6 Q. Now, isn't there some discussion in the
7 Staff Reports, I believe it's all three of them, that
8 the four-year cycle really isn't a four-year cycle?
9 In other words, it's not 48 months, it's something
10 longer.

11 A. Well, my discussion was on the cycle
12 itself and not whether it's being met or missed.

13 Q. So if a four-year cycle meant 48 months,
14 that would be a good thing, but if a 48 cycle means
15 59 months, it's not quite the same thing, is it?

16 MR. WRIGHT: Your Honor, objection.

17 Mr. Scaramellino specifically addresses this matter
18 in his testimony.

19 MR. REESE: Your Honor, Mr. Baker already
20 spoke to staff's opinion of the four-year cycle, so
21 I'm just following up.

22 EXAMINER PRICE: Overruled. Answer if
23 you know.

24 Can you rephrase your question though? I

1 think you --

2 MR. REESE: Sure.

3 Q. Mr. Baker, I think you stated previously
4 in response to one of my earlier questions that staff
5 liked the four-year trim cycle that FirstEnergy has
6 in place; is that correct?

7 A. That's correct.

8 Q. And your understanding of the four-year
9 cycle is -- is your understanding that a four-year
10 cycle is 48 months long?

11 A. I can't speak to the specifics of that
12 definition.

13 Q. But you know you like the sounds of a
14 four-year cycle.

15 A. Yes.

16 Q. Okay. Does it matter to you if a
17 48-cycle -- a four-year cycle is 48 months?

18 A. I guess what matters to me is that it's
19 better to miss a four-year cycle than to miss a five
20 or six-year cycle.

21 Q. Okay. Now, on page 6 of your
22 testimony --

23 A. You mean the new page 6?

24 Q. Yes, the new page 6. You state that the

1 "Staff considers the \$84.7 million to represent a
2 minimum level of distribution and transmission
3 capital spending going forward" for FE; is that
4 correct?

5 A. For CEI.

6 Q. Oh, for CEI, sorry. Now, I believe that
7 is also one of the recommendations -- I believe it's
8 one of the long-term recommendations in the CEI Staff
9 Report; is that correct?

10 A. Yes, that's correct.

11 Q. I believe that's at the top of page 78 of
12 the CEI Staff Report.

13 A. And also at the top of page 32. Oh, I'm
14 sorry, you're referring to --

15 Q. Page 78 of the CEI Staff Report but also
16 on page 32 of the UMS report. That sound right?

17 A. That's correct.

18 Q. Okay. And this recommendation, and again
19 I'm reading from the CEI Staff Report, "Maintain
20 Capital Spending at the level currently planned for
21 2008 for a minimum of 5 years." Do you see that?

22 A. Yes.

23 Q. And on page 6 of your testimony beginning
24 at line 15 you have a statement "Staff also endorses

1 the UMS recommendation for CEI to maintain its 2007
2 reliability-related investment percentage at that
3 same level going forward." Is that what UMS
4 recommends? Do they recommend the same related
5 investment percentage, or the exact same expenditure
6 for the next five years?

7 A. I need to read from that recommendation.

8 Q. Okay. Take your time.

9 A. As it was made by UMS and as it appears
10 on page 32 of the UMS report, and it is not exactly
11 the same.

12 Q. And isn't the UMS recommendation that the
13 spending be maintained for a minimum of five years
14 but it doesn't recommend it's percentage based?

15 A. Well, first off, I need to make sure
16 we're both on the same recommendation. Are you
17 talking about the one to maintain the overall
18 spending level, or are you talking about the one to
19 maintain the percentage portion of reliability in
20 investments?

21 Q. Well, I'm looking at recommendation No. 1
22 at the top of page 78 of the CEI Staff Report.

23 A. Okay.

24 Q. And what it states is "UMS also makes the

1 following long-term recommendations to ensure that
2 CEI continues to meet its ESSS reliability targets
3 for the 10-years following 2009. No. 1, maintain
4 Capital Spending at the level currently planned for
5 2008 for a minimum of 5 years."

6 Now, does that say to you that UMS is
7 recommending that CEI spend 84.7 million minimum for
8 the next five years or some other amount?

9 A. I think what UMS is trying to do with
10 this recommendation is to establish a floor going
11 forward so that capital expenditures would not fall
12 below that floor.

13 Q. Yet your testimony says something a
14 little bit different on page 6; is that correct?

15 A. Could you point out the difference.

16 Q. Sure. Reading the sentence again
17 beginning at line 15 "Staff also endorses the UMS
18 recommendation for CEI to maintain its 2007
19 reliability-related investment percentage at the same
20 level going forward."

21 A. There were two different recommendations
22 being simultaneously addressed by this paragraph in
23 the answer to No. 18. If you look at the answer to
24 17, I mention two different objections and in the

1 answer to 18 I'm responding to those two OCC
2 objections. And so the last sentence of what you
3 just mentioned starting on line 15 is responding to a
4 different objection on a different UMS recommendation
5 and that is the first part of that answer 18.

6 Q. Let me see if you can clear this up for
7 me. Does UMS recommend a minimum expenditure of
8 84.7 million for capital spending for CEI over the
9 next five years, or does it recommend that the
10 investment percentage remain the same for the next
11 five years?

12 A. It's recommending both.

13 Q. Can you show me where those
14 recommendations are in the UMS report?

15 A. On page 32, the first two bullet points
16 on that page are the two recommendations I'm
17 referring to.

18 Q. So those are two separate
19 recommendations.

20 A. Yes.

21 Q. And the first one recommends the
22 84.7 million moving forward.

23 A. That's correct.

24 Q. For a minimum of five years.

1 A. Yes.

2 Q. So it's not a minimum of 84.7 million,
3 it's a minimum of five years, okay. Thank you.

4 EXAMINER PRICE: Mr. Baker.

5 THE WITNESS: Yes.

6 EXAMINER PRICE: The transmission
7 referred to on page 32 of the UMS report and on page
8 6 of your testimony, is that transmission below 30
9 kV? 365.

10 THE WITNESS: I'm not sure what that
11 voltage level represents.

12 EXAMINER BOJKO: Would it be transmission
13 that's considered distribution facilities or other
14 transmission facilities?

15 THE WITNESS: I would assume it's only
16 that portion that would be considered distribution.

17 EXAMINER PRICE: You assume but you don't
18 know?

19 THE WITNESS: I haven't done an analysis
20 of that topic.

21 EXAMINER PRICE: So it's your belief that
22 the \$84.7 million is all capital spending subject to
23 the jurisdiction of the Commission, it's all going to
24 be distribution or lower voltage transmission.