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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the :
Application of Ohio Edison:
Company, The Cleveland :
Electric Illuminating :
Company, and The Toledo :
Edison Company for : Case Nos. 07-551-EL-AIR
Authority to Increase : 07-552-EL-ATA
Rates for Distribution : 07-553-EL-AAM
Service, Modify Certain : 07-554-EL-UNC
Accounting Practices, and :
For Tariff Approvals. :

PROCEEDINGS

before Ms. Kimberly W. Bojko and Mr. Gregory Price,
Hearing Examiners, at the Public Utilities Commission
of Ohio, 180 East Broad Street, Room 11-C, Columbus,
Ohio, called at 9:00 a.m. on Friday, February 15,
2008.

VOLUME VII

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1 Friday Morning Session,

2 February 15, 2008.

3 - - -

4 EXAMINER BOJKO: Let's go on the record.
5 This is a continuation of Case No. 07-551-EL-AIR, et
6 al., in the Matter of the Application of Ohio Edison
7 Company, The Cleveland Electric Illuminating Company,
8 and The Toledo Edison Company for Authority to
9 Increase Rates for Distribution Service, Modify
10 Certain Accounting Practices, and for Tariff
11 Approvals.

12 As has been the practice the last couple
13 weeks, let's just take abbreviated appearances just
14 to note which attorneys are in the room for which
15 parties.

16 Start with the company.

17 MR. FELD: Good morning, your Honor.
18 Appearing on behalf of the companies today are
19 myself, Stephen Feld, along with Arthur Korkosz, Jim
20 Burk, and Mark Whitt.

21 EXAMINER BOJKO: Staff.

22 MR. WRIGHT: Good morning, your Honor.
23 On behalf of the staff, Tom McNamee, John Jones, Bill
24 Wright.

1 MR. YURICK: Your Honor, Mark Yurick on
2 behalf of the City of Cleveland.

3 MR. LAVANGA: Good morning, your Honor.
4 On behalf of Nucor Steel Marion, Mike Lavanga.

5 MR. BREITSCHWERDT: Good morning, your
6 Honor. On behalf of Ohio Schools Council, Brett
7 Breitschwerdt, Bricker & Eckler.

8 MR. NEILSEN: Good morning, your Honor.
9 On behalf of Industrial Energy Users-Ohio, Daniel J.
10 Neilsen, McNees, Wallace & Nurick.

11 MR. SMALL: On behalf of the Office of
12 the Ohio Consumers' Counsel, Jeffrey Small and
13 Richard Reese.

14 EXAMINER BOJKO: Thank you. And is there
15 anything for the record before we begin with the
16 witnesses this morning?

17 Hearing nothing, staff, would you like to
18 proceed with your witnesses?

19 MR. McNAMEE: Yes, your Honor. At this
20 time the staff would call Michael A. Castle.

21 (Witness sworn.)

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

24 THE WITNESS: My name is Michael A.

1 Castle, business address is 180 East Broad Street,
2 Columbus, Ohio.

3 EXAMINER PRICE: Mr. McNamee, please
4 proceed.

5 - - -

6 MICHAEL A. CASTLE

7 being first duly sworn, as prescribed by law, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 By Mr. McNamee:

11 Q. Mr. Castle, who is your employer?

12 A. I'm employed by the Public Utilities
13 Commission of Ohio.

14 Q. In what capacity are you employed by the
15 Public Utilities Commission of Ohio?

16 A. I'm a Utility Specialist in the Utilities
17 Department.

18 MR. MCNAMEE: Your Honor, at this time
19 staff would ask to have marked for identification
20 Staff Exhibit 16, a multipage document filed in this
21 case on February 11th denominated Prefiled Testimony
22 of Michael A. Castle.

23 EXAMINER PRICE: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. Mr. Castle, do you have before you what's
2 just been marked for identification as Staff Exhibit
3 16?

4 A. Yes, I do.

5 Q. What is that document?

6 A. That is my prefiled testimony in this
7 case.

8 Q. Mr. Castle, was it prepared by you or
9 under your direction?

10 A. Yes, it was.

11 Q. Do you have any additions, corrections,
12 updates, changes, anything like that to this
13 document?

14 A. I have one small change to the exhibits
15 attached to the testimony, and specifically it would
16 be Exhibit MAC-2, the footnote (i) has an incorrect
17 rate in it. Instead of the "7.351 percent," it
18 should be "5.668 percent."

19 MR. SMALL: For those of us who are
20 paging through all the exhibits, maybe we could have
21 that a little more slowly. I'm still trying to find
22 MAC-2.

23 EXAMINER PRICE: MAC-1 is 19 pages so
24 it's after page 19.

1 MR. SMALL: All right, I've got MAC-2.

2 THE WITNESS: Page 3 of 3. The footnote
3 (i) has an incorrect rate in it. Instead of the
4 "7.351 percent" that is shown there, it should say
5 "5.668 percent." That does not change the
6 calculation. The calculation had the correct rate in
7 it, just the footnote was in error.

8 Q. Mr. Castle, with that correction are the
9 contents of what's been marked for identification as
10 Staff Exhibit 16 true to the best of your knowledge
11 and belief?

12 A. Yes, they are.

13 Q. If I were to ask you the questions
14 contained within what's been marked for
15 identification as Staff Exhibit 16 again here this
16 morning, would your answers be as presented therein?

17 A. Yes, they would.

18 MR. McNAMEE: Your Honor, the witness is
19 available for cross.

20 EXAMINER PRICE: Thank you.

21 IEU?

22 MR. NEILSEN: No questions, your Honor.

23 EXAMINER PRICE: Schools.

24 MR. BREITSCHWERDT: No questions, your

1 Honor.

2 EXAMINER PRICE: Mr. Lavanga.

3 MR. LAVANGA: No questions, your Honor.

4 MR. YURICK: No questions from the City
5 of Cleveland, your Honor.

6 EXAMINER PRICE: OCC.

7 MR. SMALL: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Small:

11 Q. Good morning, Mr. Castle, my compliments
12 to your eyesight, those are incredibly small numbers
13 you were looking at.

14 A. Good morning.

15 Q. My name is Jeff Small and I represent the
16 Office of the Ohio Consumers' Counsel and I have a
17 few questions this morning.

18 To start out would you please turn your
19 attention to page 6 of your testimony. And,
20 Mr. Castle, do you have the Staff Report also on the
21 stand with you today?

22 A. Yes, I do.

23 Q. Good. And are you on page 6?

24 A. Yes.

1 Q. And on lines 11 through 13 you state that
2 "OCC Witness Effron," and I quote, "proposes defining
3 distribution O&M as only those costs that are
4 contained under the USOA category 'Distribution
5 Expenses' charged to FERC accounts 580 through 598,"
6 correct?

7 A. Yes.

8 Q. Okay. You also state on line 17 -- 14
9 through 15, that such a definition will result in the
10 inclusion of costs allocated to the transmission
11 function, correct?

12 A. Yes.

13 Q. Okay. And on line 17 you reject the
14 inclusion of transmission costs, correct?

15 A. Yes.

16 Q. All right. Would you please turn to page
17 9 of your testimony, and this is within the same
18 section of your testimony concerning the calculation
19 of distribution deferrals, you state on line 7, it's
20 the very end of this section, that you have attached
21 your workpapers for staff's calculations concerning
22 the distribution deferrals; is that correct?

23 A. Yes.

24 Q. The reference is to Exhibit MAC-1, pages

1 1 through 19.

2 A. Yes.

3 Q. All right. Could you please turn to your
4 attachment MAC-1, page 9 of 19.

5 A. Okay, I have that.

6 Q. The way your tables are structured you
7 have tables for each of the companies, and I've
8 pointed to, as an example, a table for Ohio Edison;
9 is that correct?

10 A. Yes, that is.

11 Q. And there are similar tables in here for
12 Cleveland Electric Illuminating and Toledo Edison,
13 correct?

14 A. That is correct.

15 Q. Okay. And the method used for each one
16 of the companies is the same.

17 A. That is correct.

18 Q. Now, I'm on page 9 of 19, Exhibit MAC-1
19 to your testimony, and this relates to Ohio Edison.
20 Your calculation of total 2006 distribution O&M
21 expense on line 6; do you see that?

22 A. Yes.

23 Q. Is arrived at by starting with the figure
24 on line 1, that line says total 2006 O&M expense, and

1 deducting the values on lines 2 through 5; is that
2 correct?

3 A. Yes, that is correct.

4 MR. SMALL: Your Honors, at this time I'd
5 like to have marked as OCC Exhibit 25 page 321 from a
6 FERC Form 1 for Ohio Edison in 2006.

7 EXAMINER PRICE: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. SMALL: Now, for everybody's
10 clarification, I'd like to explain the exhibits a
11 little bit because we already have some of these
12 pages in the record. I'm going to pass out a packet
13 which contains several pages from this portion of the
14 FERC Form 1. Page 322 is already Exhibit 8, and page
15 323 is already Exhibit 14, so I won't be -- this is
16 not part of the exhibit, I'm just providing it for
17 everybody's convenience.

18 EXAMINER PRICE: Thank you.

19 MR. SMALL: Exhibit 25 will only be page
20 321 of what I'm going to hand out, all right? But
21 it's all together so we can look at it together.

22 EXAMINER PRICE: Thank you.

23 MR. SMALL: May I approach, your Honor?

24 EXAMINER PRICE: You may.

1 Mr. Small, just so everybody can mark
2 these correctly, can you give which exhibit number
3 refers to which page number?

4 MR. SMALL: Okay. Exhibit 8 has already
5 been entered into the record as page 322.

6 EXAMINER PRICE: 322. Page 323 is
7 Exhibit 14. These are all Ohio Edison sheets.

8 MR. McNAMEE: So the last page is which
9 exhibit?

10 EXAMINER BOJKO: 8. Why don't you just
11 go through the packet and tell us which exhibit it
12 is.

13 MR. SMALL: 323 is the first page, that
14 is Exhibit 14. Exhibit 320 is just being provided
15 for convenience, it is not being marked as an
16 exhibit. And the witness is free to look through all
17 the accounts, if he wishes.

18 Page 321 has just been marked by the
19 Bench as Exhibit 25. And page 322 has previously
20 been marked as Exhibit 8.

21 EXAMINER PRICE: Thank you.

22 Q. (By Mr. Small) Mr. Castle, the values
23 shown on MAC-1, we're going to have to keep our
24 fingers in your testimony and also in these FERC

1 accounts that I've passed out, the values shown on
2 MAC-1, page 9 of 19, line 1, that's the \$1.5 billion
3 figure.

4 A. Yes, I see that.

5 Q. That's the same figure as shown in OCC
6 Exhibit 14, that would be page 323, the top sheet,
7 line 198, correct?

8 A. That is correct.

9 Q. That's where the numbers are derived
10 from; is that correct?

11 A. Yes, that is correct.

12 Q. Now, going to MAC-1, the exhibit in your
13 testimony, your only transmission-related reduction
14 from that figure is shown on line 4 which is entitled
15 "2006 Transmission of Electricity by Others Expense,"
16 correct?

17 A. Yes.

18 Q. And that figure, according to the MAC-1
19 footnote (c), and I compliment you, a much bigger
20 footnote on this one, is obtained from the -- and I'm
21 reading down here in the footnotes, the "2006 FERC
22 Form 1 Account No. 565," correct?

23 A. That is correct.

24 Q. Now, turning to FERC Form 1, the handout

1 that I gave you, OCC Exhibit 25, that's page 321, the
2 value for Account No. 565 is located on that page; is
3 that correct?

4 A. That is correct.

5 Q. You did not eliminate the transmission
6 expenses for load dispatch, transmission service, and
7 scheduling, account 561.4 shown on that same page, or
8 any of the other transmission expenses that are shown
9 there, correct?

10 A. That is correct.

11 Q. So the staff calculation of Total 2006
12 Distribution O&M Expense as shown on your MAC-1
13 contains costs allocated to the transmission
14 function; is that correct?

15 A. Can I have that reread?

16 (Record read.)

17 A. The Exhibit MAC-1, page 9, is getting to
18 the distribution function.

19 Q. I realize that. But what we've gone
20 through is your calculations from a total and
21 reducing one item, as you stated, from the
22 transmission, we identified it from the FERC Form 1,
23 and you recognize that there are other transmission
24 items here which you did not deduct. So, therefore,

1 we have transmission values in your calculations on
2 MAC-1; is that correct?

3 A. Yes, there would be items that would be
4 recorded under the FERC USOA title of transmission
5 expenses allocated to the distribution function.

6 Q. All right. You said to the distribution
7 function. On line 88, and I'm looking on OCC Exhibit
8 25 which is page 321, I'm looking on line 88 which is
9 the account 561.4, Scheduling, System Control, and
10 Dispatch Services, and you're saying that in that
11 transmission account there's a distribution function
12 to those items?

13 A. Yes, I believe so.

14 Q. And how do you reach that conclusion?

15 A. Well, the prior case had -- when I say
16 "prior case," the transition case which separated the
17 total revenue requirement to the transmission,
18 distribution, and generation functions allocated a
19 portion of transmission expenses in that case to the
20 distribution function.

21 MR. SMALL: If I may, your Honor, I'd
22 like OCC Exhibit 26 marked. It is Schedule C-2.1
23 from the Ohio Edison Company schedules.

24 EXAMINER PRICE: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. SMALL: May I approach?

3 EXAMINER PRICE: You may.

4 Q. Mr. Castle, would you please direct your
5 attention to OCC Exhibit 26 which is taken from
6 Schedule C-2.1 in this case, Ohio Edison Company. Do
7 you have that in front of you?

8 A. Yes, I do.

9 Q. In account 561.4 is labeled -- do you see
10 account 561.4 at the very top of that exhibit?

11 A. Yes, I do.

12 Q. And it is labeled in this case as
13 nondistribution for determining O&M expense; is that
14 correct?

15 A. It states that the allocation code is
16 nodist, and it doesn't look like any dollars are
17 allocated to distribution.

18 Q. And the allocation factor is zero, right?

19 A. That's correct.

20 Q. So in this accounting of account 561.4,
21 Scheduling, System Control, and Dispatching is not a
22 distribution function; is that correct?

23 A. That's correct on this schedule.

24 Q. Do you have -- and this is the same item

1 that we looked at in the FERC Form 1; is that
2 correct?

3 A. It is the same account.

4 Q. And do you argue with the contents of OCC
5 Exhibit 26 and maintain that this has a distribution
6 component to it?

7 A. Well, I will agree that it has your --
8 Exhibit 26 has a different -- would end up with a
9 different result.

10 Q. And the different result you're talking
11 about is a different result to your calculations
12 shown on MAC-1.

13 A. That is correct.

14 Q. We'll be moving on to other exhibits.
15 Please refer to page 6 of your testimony.

16 EXAMINER BOJKO: Before you move on,
17 Mr. Small.

18 So, Mr. Castle, do you have any reason to
19 believe that Ohio Edison Schedule C-2.1 is incorrect
20 or inaccurate?

21 THE WITNESS: No, I do not.

22 EXAMINER BOJKO: Okay.

23 Q. Please direct your attention to page 6 of
24 your testimony, line 22, and the carryover to page 7

1 at the top of the page in which there you refer to
2 Mr. Effron's analysis that takes into account the,
3 and I quote, "Growth in billing determinants and
4 revenue," correct?

5 A. Yes.

6 Q. I'm going to give you a hypothetical.
7 Let's say that we have a distribution utility that
8 has revenues of \$100 and O&M expenses of \$10. All
9 right? That's our first state. Do you understand
10 that?

11 A. Yes, I do.

12 Q. And suppose after some period of time and
13 under the same rates, okay, we're holding everything
14 else constant, we have the same rate schedules being
15 used for the customers and so forth, the utility grew
16 in size so that it now has revenues of \$200, or twice
17 the revenues, and O&M expenses of \$20, twice the O&M
18 expenses. Do you understand the second situation?

19 A. 200 revenue and 20 expenses.

20 Q. Right, just doubling.

21 A. Okay.

22 Q. Same rates are in effect, everything else
23 is the same.

24 If the doubling to \$200 in revenue

1 occurred due to a growth in sales, we have more sales
2 but we have the same rates, all right, you wouldn't
3 say that the amount for O&M in rates was \$10, would
4 you? It would be \$20.

5 A. I would say what was included in setting
6 the rates would be the \$10 of O&M, that's assuming
7 the rates are the same in the two.

8 Q. And I think we have a -- I think I
9 understand your answer but I don't think it was the
10 answer to my question. What you said was that the
11 \$10 was setting the rates, which was state number one
12 at the beginning, and that's exactly the hypothetical
13 I gave you, I gave you the \$10 at the time of setting
14 of the rates, but my question was what is in rates --
15 what would you say under this hypothetical, what is
16 in rates under the second situation after the years
17 pass and everything doubles, isn't it --

18 MR. McNAMEE: Object.

19 EXAMINER PRICE: Grounds?

20 MR. McNAMEE: He just answered the
21 question. Mr. Small doesn't like the answer, but he
22 answered it.

23 EXAMINER PRICE: I'll overrule this, I
24 would like to hear the answer.

1 MR. SMALL: Let me start again.

2 Q. I gave you state number one we had \$100
3 in revenue and \$10 in O&M and state number two years
4 later where we had \$200 in revenue and \$20 in O&M and
5 when I asked you how much O&M was in the rates, you
6 responded \$10 at the time of setting them, but my
7 question is after the growth and the \$200 in revenue
8 and the \$20 in O&M, at that point, the second point
9 in time after the system has grown and doubled,
10 everything's -- you know, the sales have doubled in
11 this hypothetical, at that point what would you say
12 is in the rates? It's \$20, not \$10, wouldn't you
13 agree?

14 MR. McNAMEE: Object.

15 EXAMINER PRICE: Overruled.

16 A. Not really. Rates were set using the 100
17 and the 10. After time has gone by, it is difficult
18 to say what would be the O&M that was in the second
19 scenario that you have, that you presented.

20 Q. Let's go to state number two. The
21 company has \$200 in revenues at this point, all
22 right? And it's spending \$10, which you just said
23 was in rates, spending \$10 on O&M, from a person
24 experienced -- a staff member of the Public Utilities

1 Commission do you think that the company would be --
2 the customers would be having troubles if only
3 \$10 was being spent on O&M under those conditions?

4 A. May I have that reread?

5 MR. McNAMEE: Object.

6 EXAMINER PRICE: Sustained.

7 Q. Would you please refer to page 7 of your
8 testimony, beginning on line 9. In this portion of
9 your testimony you discuss the calculation of
10 post-in-service carrying charges, correct?

11 A. Yes.

12 Q. On lines 17 and 18 you discuss a
13 reduction in rate base on Schedule B-3; do you see
14 that?

15 A. Line 17?

16 Q. Yes.

17 A. Yes, I see that.

18 Q. Are you familiar with Schedule B-3?

19 A. Somewhat. I'm not responsible for it.

20 Q. All right. Now, the Schedule B-3 that
21 you referred to in the staff reports, and staff
22 reports are on the stand, determine the -- well,
23 let's pull out the Staff Report.

24 EXAMINER PRICE: Which Staff Report?

1 MR. SMALL: Ohio Edison as an example but
2 I don't think it's going to make any difference which
3 one we pull out.

4 EXAMINER PRICE: I want to make sure
5 we're all on the same page.

6 Q. Now, the Schedule B-3 that I have in
7 front of me for Ohio Edison starts on page 108 of the
8 Ohio Edison Staff Report. Do you have that?

9 A. Yes, I do.

10 Q. Does that seem right to you? Do you have
11 that?

12 A. Yes.

13 Q. Okay. And that's where the reserve for
14 accumulated depreciation is shown. That's in the
15 title of Schedule B-3, correct?

16 A. Yes, it is.

17 Q. And then if we go back a few pages to
18 Schedule 1, a few more pages than I expected here, if
19 you go back to Schedule B-1 and that's page 93 of the
20 Ohio Edison report, we see that those numbers are
21 then accumulated in line 2, Reserve for Accumulated
22 Depreciation. Do you see that?

23 A. Yes, I do.

24 Q. And that's where the B-3 information is

1 accumulated in that summary table, correct?

2 A. That's where it is presented.

3 Q. Okay. And Schedule B-3, which is then
4 summarized on line 2 of Schedule B-1, determines the
5 amount to be subtracted from plant in service to
6 arrive at net plant in service. That's shown on line
7 3 of Schedule B-1, correct?

8 A. Yes.

9 Q. And this net plant -- this net plant is
10 used for rate-making purposes, correct?

11 A. Yes.

12 Q. Now, that calculation that we just went
13 through is an entirely different calculation than the
14 one for carrying charges on deferred distribution
15 expenditures; is that correct?

16 A. The calculation with the 100 and 200 that
17 you were talking about?

18 Q. I'm sorry, 100 and 200? I don't
19 understand your reference.

20 A. I'm sorry, I don't understand your
21 question.

22 Q. We've moved on. The 100 and 200 were the
23 hypotheticals in a previous question so, all right.

24 What I'm asking is, we're now on the

1 portion of your testimony on page 7 discussing the
2 calculation of post-in-service carrying charges, all
3 right? A different subject than the hypothetical
4 that we talked about before so let's start over
5 again.

6 We were talking about the calculation
7 shown on Schedule B-1, page 93, of the Ohio Edison
8 Staff Report and you said that the net plant then
9 that's shown on line 3 is used for rate-making
10 purposes.

11 A. Yes.

12 Q. All right. Now, that's an entirely
13 different calculation than the calculation for
14 carrying charges on deferred distribution expenses
15 which is the subject of your testimony on page 7.
16 These are completely different concepts, right?

17 A. Yes.

18 Q. As new distribution property was added by
19 the FirstEnergy companies that counted towards the
20 distribution deferrals, carrying charges are assessed
21 pursuant to the results of Case 05-1125-EL-ATA,
22 correct?

23 A. Yes.

24 Q. Even this new plant that was put into

1 service by FirstEnergy depreciates after it's
2 installed, right?

3 A. Yes.

4 Q. And FirstEnergy should only be provided
5 carrying charges on its net additional plant that is
6 counted towards the distribution deferrals, correct?

7 A. Can I have that reread, please?

8 (Record read.)

9 A. Could you define what you mean by "net
10 additional plant"?

11 Q. Net is the concept of taking gross plant
12 which was installed by FirstEnergy and deducting the
13 depreciation that you said occurs even on the new
14 plant. So that's what I meant in the question by
15 "net additional plant."

16 A. With that, yes, and I believe that what
17 is done here is that they -- at least for that first
18 year it is their net additions.

19 Q. Okay. So you agree with the concept that
20 I gave -- that I stated.

21 A. The concept of carrying charges should be
22 on the net?

23 Q. That's correct.

24 A. Yes.

1 Q. Please refer to page 11 of your
2 testimony.

3 A. I have that.

4 Q. Sorry, we're going to have to rearrange
5 the paper a little bit here. At this point in your
6 testimony you discuss the transition tax deferrals,
7 correct?

8 A. That is correct.

9 Q. And on page 12, lines 12 through 14, you
10 state that "Mr. Effron goes further to recommend the
11 accrued carrying charge balances based on the
12 incurred, rather than the embedded cost of debt." Do
13 you see that?

14 A. Yes, I do.

15 Q. Have you -- I take it from the references
16 in Mr. Effron's testimony you have read the
17 testimony.

18 A. Yes, I have, at least portions of it.

19 Q. All right. Do you have Mr. Effron's
20 testimony with you on the stand?

21 A. No, I don't.

22 MR. SMALL: If I may approach. This is
23 OCC Exhibit 1 for counsel, and I will just provide
24 him with a copy of it.

1 EXAMINER PRICE: You may.

2 Q. Now, what I've given you is what we've
3 marked as OCC Exhibit 1, Mr. Effron's testimony with
4 all the attachments. Would you please turn to page
5 29 of Mr. Effron's testimony on lines 3 through 8.

6 A. I have that.

7 Q. And I invite you to read the entire
8 question 51 and Mr. Effron's response beginning on
9 line 3 of page 29.

10 Mr. Effron states that he used the cost
11 of debt as shown in SFR, the standard filing
12 requirement, Schedule D-2, page 2, correct?

13 A. D-5.

14 Q. I'm sorry?

15 A. D-5, page 2.

16 Q. We're having a little trouble. Is your
17 microphone working?

18 A. I don't know if it's on.

19 EXAMINER BOJKO: He stated D-5.

20 EXAMINER PRICE: Let's go off the record
21 a second.

22 (Discussion off the record.)

23 EXAMINER PRICE: Back on the record.

24 Q. I must have misspoke, let me start again.

1 Mr. Effron states that he used the cost of debt as
2 shown on Standard Filing Requirement Schedule D-5, I
3 believe that's what you said, page 2, correct?

4 A. Yes.

5 Q. Okay.

6 MR. SMALL: At this time, your Honor, I
7 have an additional exhibit I'd like to have marked as
8 OCC Exhibit 27, it is Ohio Edison Company Schedule
9 D-5, page 2 of 3.

10 EXAMINER PRICE: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. SMALL: May I approach?

13 EXAMINER PRICE: You may.

14 Q. Do you have OCC Exhibit 27 in front of
15 you?

16 A. I do.

17 Q. Turning to Standard Filing Requirement
18 Schedule D-5, page 2 of 3, now this is the schedule
19 that is referred to in Mr. Effron's testimony,
20 correct?

21 A. Yes.

22 Q. Sorry, we still have --

23 A. Yes.

24 Q. And that schedule lists the embedded cost

1 of long-term debt on line 35, correct?

2 A. That is what it says.

3 Q. Do you have any reason to dispute that
4 that's the embedded long-term debt?

5 A. Because it changes all of the time from
6 year to year, I would assume that that is the actual
7 incurred cost of debt.

8 Q. I'm very uncertain about your response
9 when you say it changes all the time. The table has
10 different years on it, so it's changing by the years
11 within the table, correct?

12 A. Yes. That would lead me to believe that
13 it was the actually incurred cost of debt.

14 Q. The problem I'm having with your response
15 is that the table says "Embedded cost of long-term
16 debt." You're using the word "incurred." Is this on
17 line 35 the embedded cost of long-term debt?

18 A. I believe it's the actual cost of debt
19 that they incurred.

20 MR. McNAMEE: Your Honors, I notice that
21 there is a footnote for this line that we're
22 discussing that does not appear on this exhibit.
23 Perhaps -- do you have the next page? Perhaps that
24 would clarify this.

1 EXAMINER PRICE: Thank you, Mr. McNamee.

2 Mr. Small, do you have the subsequent
3 pages?

4 MR. SMALL: I think we have them handy.
5 I think we have them in the room.

6 Your Honor, of course, OCC 27 I passed
7 out is a photocopy and with the small print we lose a
8 certain amount of definition, so I have that page in
9 front of me which I will, with your permission, hand
10 to the witness, and it shows that the footnote on
11 line 35 is actually a 6, footnote 6, and I will also
12 hand to the witness the subsequent page, 3 of 3,
13 which shows footnote 6.

14 EXAMINER PRICE: Thank you. Please
15 approach.

16 EXAMINER BOJKO: At a break maybe we
17 could just get new copies and modify Exhibit 27 to
18 replace it with the new version.

19 MR. SMALL: Fine.

20 Q. (By Mr. Small) Mr. Castle, I think
21 footnote 6 has something to do with the end of this
22 period, the period that I'm referring to is this
23 table has numbers over a long period of -- over many
24 years and the reference is for the end of that

1 period, footnote 6; is that correct?

2 A. Footnote 6 --

3 Q. Go ahead and read it.

4 A. It says "Test year cost of debt
5 calculated using the staff methodology. Historical
6 costs were calculated using the company's methodology
7 which differs by only utilizing outstanding debt
8 balances (i.e., company does not take into account
9 amortization of gains/losses on reacquired debt)."

10 Q. All right. Now we have page 2 of 3 which
11 Mr. Effron used and I'm looking at line 35 and we
12 have -- you've read footnote 6 attached to that
13 labeled -- and the row is entitled "Embedded cost of
14 long-term debt." Now, is there any reason to believe
15 that Mr. Effron using this table didn't use the
16 embedded cost of long-term debt?

17 A. His footnote 6 indicates historical
18 costs, so those would be incurred costs of debt
19 rather than what's embedded in rates.

20 Q. All right. What is the source of the
21 embedded cost of long-term debt used in your
22 calculations?

23 A. That would be the authorized debt return
24 from prior rate cases, most recent rate cases for

1 each of the three companies.

2 Q. You're drawing an identity between the
3 embedded cost of long-term debt and a rate of return
4 authorized in a previous rate case?

5 A. That is where I got the embedded cost of
6 debt used in my calculations.

7 Q. Let's be entirely clear. When you say
8 "embedded cost of long-term debt" as referred to in
9 the stipulation, all right, the stipulation from
10 05-1125-EL-ATA, what did you use for your
11 calculations?

12 A. I used the rate as I said, the cost of
13 debt from the last rate proceeding for each of the
14 three companies.

15 Q. So it's the cost of debt component of the
16 rate of return?

17 A. Yes. Not weighted, but the cost of debt.

18 Q. All right. Again, to be perfectly clear
19 because you put the "not weighted," what were you
20 distinguishing there?

21 A. Well, rate of return is weighted between
22 debt, equity, and preferred stock, it uses those cost
23 rates and applies a percentage of the overall capital
24 structure to those percentages to get a weighted rate

1 of return. But that is not what I used in my
2 calculation. I used the cost of debt.

3 Q. Which is a component of that rate of
4 return calculation.

5 A. Yes, it is.

6 Q. And so you were using a value that came
7 from, for lack of a better reference, the 95 -- from
8 the last full rate case for each of the companies?

9 A. Yes.

10 Q. Okay.

11 A. Last one where rate of return was
12 addressed.

13 Q. So that would be a '95 case for CEI and
14 Toledo Edison and a case approximately -- sometime in
15 the '90s for Ohio Edison as well.

16 A. Those would be the last rate cases for
17 them.

18 MR. SMALL: Thanks very much. That
19 concludes my examination.

20 EXAMINER PRICE: Thank you.

21 Company?

22 EXAMINER BOJKO: Mr. Burk, before you go,
23 let the record reflect that Mr. Rinebolt has joined
24 us with Ohio Partners for Affordable Energy.

1 Mr. Rinebolt, do you have any questions?

2 MR. RINEBOLT: I do not, your Honor.

3 Thank you.

4 EXAMINER BOJKO: Mr. Burk.

5 MR. BURK: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Burk:

9 Q. Morning, Mr. Castle. My name's Jim Burk.
10 I'm with FirstEnergy and I've got a few questions for
11 you this morning.

12 A. Good morning.

13 Q. We covered some of this ground, but just
14 to be sure, are you familiar with the RCP? And when
15 I say "RCP," I'm referring to Case No. 05-1125-EL-ATA
16 and the associated cases.

17 A. Yes. Somewhat.

18 Q. You understand that terminology?

19 A. Yes.

20 Q. Okay. And you're familiar with the
21 stipulation and the supplemental stipulation and the
22 Commission's orders and entries in that case at least
23 to the extent that they're covered by issues in your
24 testimony?

1 A. Yes, I am.

2 EXAMINER PRICE: Mr. Castle, if you could
3 pull the microphone a little closer, I know now
4 you're talking to Mr. Burk, but I'm sure Mr. Small
5 would like to hear you.

6 THE WITNESS: Can you hear me now?

7 EXAMINER PRICE: Perfect.

8 Q. And specifically with regard to a
9 distribution deferral, in the RCP order the company
10 was ordered to provide a status or an update on an
11 annual basis to the staff, do you recall that,
12 detailing the distribution deferral and how it was
13 calculated and the methodology and all that?

14 A. I do remember there was some language in
15 there that said they were to provide an annual, I
16 don't know about updates, annual --

17 Q. Yeah, I don't remember the specific word,
18 the status or --

19 A. Reports.

20 Q. Report. Do you recall receiving that,
21 the detailed breakdown, whatever word we want to call
22 it?

23 A. Yes, I did get a report.

24 Q. That would have been around March of

1 2007? If you recall.

2 A. I don't recall, but I don't believe that
3 I got it that early in the year.

4 Q. Okay.

5 A. My memory seems more like June or July.

6 Q. Maybe this will help refresh your memory
7 because the order required us to send it to the staff
8 in March, do you recall that from the order?

9 A. I do not recall.

10 Q. Okay. And then do you recall receiving a
11 second report around the beginning of September of
12 '07?

13 A. The revised report?

14 Q. Yes.

15 A. Yes, I do. That was at the end of August
16 as I remember it.

17 Q. Is it your recollection that you received
18 the original?

19 A. Yes. Well, it was forwarded to me.

20 Q. And through that time frame or up until
21 the Staff Report was filed, I guess, did you advise
22 the companies that you disagreed with parts of how
23 they were calculating that distribution deferral?

24 A. No, I did not have discussions with them

1 about that. I really did not get into how the amount
2 of distribution O&M had been calculated at that point
3 in time.

4 Q. Okay.

5 MR. BURK: May I approach, your Honor?

6 EXAMINER PRICE: You may.

7 MR. BURK: Mr. Castle, I'm going to hand
8 you what I've had marked for identification as
9 Company Exhibit 26.

10 EXAMINER PRICE: The record will reflect
11 that it is so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. And I will represent to you that the
14 amounts in columns A, B, and C are taken directly
15 from your Schedule MAC-1. Could you review that
16 quickly and confirm that that is accurate?

17 EXAMINER BOJKO: I'm sorry, this is a
18 newly generated document but just using numbers from
19 his MAC-1?

20 MR. BURK: Yes, your Honor. We prepared
21 this in the hopes that it would save a lot of page
22 flipping and make it easier to work through this.

23 A. Yes, those numbers appear to agree with
24 what is presented on my MAC-1 exhibit.

1 Q. And would you agree with me that, subject
2 to checking the math, if you added line 1 across
3 columns A, B, C, it results in the amount in column
4 D?

5 A. I'll accept that subject to check.

6 Q. And that number would represent the
7 amount above the distribution O&M in base rates for
8 O&M expenses for all three companies combined for
9 2006?

10 A. Yes, that appears to be so.

11 Q. Okay. And then if we added the numbers
12 in line 2 across for columns A, B, C, it would result
13 in the amount of 7,497,403, subject to check?

14 A. I'll accept that subject to check.

15 Q. And that number represents the amount of
16 capital-related deferrals related to the RCP
17 Supplemental Stipulation Attachment 2 for all three
18 companies combined for 2006; is that correct?

19 A. Yes, that's correct.

20 Q. And then just continuing the process,
21 down at line 4 if you added columns A, B, and C
22 across that, it would result in the amount in column
23 D of 154,801,842, subject to check?

24 A. I'll accept that subject to check.

1 Q. And then that number in column D
2 represents the amount of O&M expenses related to the
3 RCP Supplemental Stipulation Attachment 2 for all
4 three companies combined for 2006, correct?

5 A. Yes.

6 Q. Thank you.

7 And then line 5, adding across, which is
8 identical to line 2, adding across columns A, B, C
9 results in 7,497,403 in column D?

10 A. I'll accept that subject to check.

11 Q. So then the total amount then on line 3,
12 adding lines 1 and 2, is 152,787,482; is that right?

13 A. I'll accept that subject to check.

14 Q. And the total amount when you add lines 4
15 and 5 comes up to 162,299,245, right? Do you see
16 that?

17 A. Yes, I do.

18 Q. Is that correct, subject to check?

19 A. Yes, I'll accept that subject to check.

20 Q. And then you would agree that the
21 amounts -- or the amount on line 3 and the amount on
22 line 6 are both greater than 150 million; is that
23 correct?

24 A. Yes, they are.

1 Q. Okay. Now let me refer you to page 1 of
2 19 of your Exhibit MAC-1.

3 EXAMINER PRICE: Mr. Burk, are you done
4 with Company Exhibit 26?

5 MR. BURK: Yes, I am, your Honor.

6 EXAMINER PRICE: Mr. Castle, you verified
7 all the 12 numbers that have been pulled from your
8 Exhibit MAC-1 and they're now on Company Exhibit 26.

9 THE WITNESS: Yes.

10 EXAMINER PRICE: You have. And those
11 numbers are all accurate.

12 THE WITNESS: I checked the numbers prior
13 to taking the stand, actually.

14 EXAMINER PRICE: That's fine.

15 THE WITNESS: And the math I could not
16 check that fast.

17 EXAMINER PRICE: I just asked to make
18 sure the actual numbers they've taken from your
19 exhibit, you verified them, they're accurate.

20 THE WITNESS: Yes.

21 EXAMINER PRICE: Thank you.

22 Sorry, Mr. Burk.

23 Q. (By Mr. Burk) Now, referring to page 1 of
24 19 of Exhibit MAC-1, specifically line 7.

1 A. Yes.

2 Q. And for those three columns, those
3 amounts represent the amount of O&M expense deferrals
4 that meet the Commission-approved definition in
5 Attachment 2 to the supplemental stipulation in the
6 RCP case; is that correct?

7 A. Could I have that reread, please?

8 (Record read.)

9 A. Yes, that is correct.

10 Q. At least for the time period that you
11 have designated there, January to May '07.

12 A. That's correct.

13 Q. And the maximum deferral for a calendar
14 year for all three companies is 150 million; is that
15 correct?

16 A. That is correct.

17 Q. And in line 8 in the total column you
18 have an amount of 62,500,000. Do you see that?

19 A. Yes, sir.

20 Q. And that 62,500,000 represents 5/12 of
21 the \$150 million maximum deferral?

22 A. Yes, that's correct.

23 Q. And that ties into, because it represents
24 the first five months of 2007?

1 A. Yes.

2 Q. And then you make an adjustment on line 9
3 entitled "Excess Over Maximum." Do you see that?

4 A. Yes, I do.

5 Q. And the result of your adjustment
6 reflected there is that the companies are only
7 entitled to a maximum deferral of 62,500,000 between
8 January 1st and May 31st of '07?

9 A. That is the calculation.

10 Q. I mean, that's the position that you're
11 taking, correct?

12 A. That is the position that this exhibit
13 takes, yes.

14 Q. Now, is it then, based upon that, your
15 position that the companies are not so much entitled
16 to defer \$150 million in a calendar year but more
17 that they're entitled to defer 12-1/2 million per
18 month and it just so happens to add up to 150?

19 A. This was the method that I chose to give
20 the date certain deferral maximum.

21 Q. But you'd agree that in the Commission's
22 orders and entries in the RCP case there wasn't any
23 suggestion about this type of proration.

24 A. There was nothing regarding a -- there

1 was nothing other than an annual amount.

2 Q. And there weren't any restrictions in the
3 orders about when expenses would be incurred and
4 deferrals would arise, there was no restriction on
5 when they could defer during the year; is that
6 correct?

7 A. Not that I recall.

8 Q. And let me refer you to page 12 of your
9 testimony, specifically basically lines 9 to 12.

10 A. I have that.

11 Q. You would agree, would you not, that the
12 ETP stipulation, and that's the stipulation from the
13 FirstEnergy companies transition case, you know what
14 I mean by that, ETP stipulation?

15 A. Case No. 99-1212?

16 Q. Correct.

17 You would agree that the stipulation in
18 that case made no mention of or did not require that
19 the basis upon which carrying charges accrue for the
20 transition tax deferral would be net of the tax
21 benefit available due to the current deductibility of
22 the item deferred. There were no words to that
23 effect in that stipulation; is that correct?

24 A. I don't recall any words such as that.

1 Q. Okay. And similarly, referring to page 8
2 of your testimony at line 7, again you would agree
3 that the stipulation and order and the entries in the
4 RCP case made no mention and did not require that the
5 basis for carrying charges on distribution deferrals
6 be net of the tax benefit, correct?

7 A. I don't recall any language that
8 specifically stated that.

9 MR. BURK: Okay. That's all I have, your
10 Honor.

11 Thank you, Mr. Castle.

12 EXAMINER PRICE: Thank you, Mr. Burk.

13 Mr. McNamee?

14 MR. McNAMEE: Your Honor, I believe I
15 will have some redirect. I wonder if I could take a
16 few minutes and chat with the witness.

17 EXAMINER PRICE: Let's take a six-minute
18 break until 10:20. Go off the record.

19 (Recess taken.)

20 EXAMINER PRICE: Let's go back on the
21 record.

22 Mr. McNamee?

23 MR. McNAMEE: Yes, your Honor, I do have
24 some redirect.

REDIRECT EXAMINATION

By Mr. McNamee:

Q. Mr. Castle, do you recall an extended discussion that you had with Mr. Small regarding staff's criticism of Mr. Effron for including transmission costs in the calculation followed by a discussion of an instance of you including transmission costs in Accounts 560 through 567 on your Attachment MAC-1? Do you recall that?

A. Yes, I do.

Q. Why did you include transmission costs in your MAC-1 Attachment?

A. Well, Exhibit MAC-1 was calculating costs properly assigned to the distribution function, so rather than trying to determine just the specific cost charged to certain accounts, we were looking at calculating the O&M that would be assignable to the distribution function.

Q. And how did you make that determination?

A. It is actually the company's calculation, but checking to prior cases that it has been so that certain costs that are not in the accounts that Mr. Effron cites as the distribution expenses are assigned to the distribution function, so it did not

1 appear unreasonable to me.

2 Q. And that's true for your calculation in
3 the MAC-1?

4 A. Yes, MAC-1 allocates -- or calculates the
5 cost allocable to the distribution function.

6 Q. Okay. And how is that different from the
7 criticism that you made of Mr. Effron?

8 A. I don't know that it's really related
9 necessarily to that criticism, but it is two
10 different ideas on what the amount of deferral was
11 related to, whereas, he has the specific accounts,
12 distribution accounts, of the USOA, USOA is Uniform
13 System of Accounts, and the calculation that's in
14 Exhibit MAC-1 which is to the distribution function
15 which would include costs that may not be properly
16 recordable in the distribution expenses but are
17 allocable to the distribution function.

18 MR. McNAMEE: That's enough.

19 EXAMINER PRICE: Thank you.

20 Mr. Neilsen, cross?

21 Mr. Rinebolt?

22 MR. RINEBOLT: No, your Honor.

23 EXAMINER PRICE: Mr. Lavanga?

24 MR. LAVANGA: No, your Honor.

1 EXAMINER PRICE: Mr. Yurick.

2 MR. YURICK: No questions, your Honor.

3 EXAMINER PRICE: Mr. Small.

4 MR. SMALL: Thank you, your Honor.

5 - - -

6 RECROSS-EXAMINATION

7 By Mr. Small:

8 Q. Mr. Castle, do you still have OCC Exhibit
9 26 in front of you?

10 A. You're going to have to refresh my memory
11 as to what it is.

12 Q. It's the Standard Filing Requirement
13 Schedule C-2.1 for Ohio Edison Company. I don't know
14 if it helps you to visualize this but it looks like
15 that.

16 A. I have it.

17 Q. All right. Have I understood your
18 responses to Mr. McNamee's questions you accepted the
19 company's calculation about functionalizing certain
20 transmission expenses to distribution; is that
21 correct?

22 A. Yes.

23 Q. And the origin of the material found on
24 OCC Exhibit 26 is also from the company, correct?

1 A. Yes, it is.

2 Q. And that information on OCC 26 which
3 comes from the company shows that Account 561.4 that
4 we discussed in my examination is not a
5 distribution -- the amounts there are not
6 distribution -- that is not a distribution account,
7 correct?

8 A. It shows allocation zero to distribution
9 for Account 561.4.

10 MR. SMALL: Thank you, your Honor.

11 EXAMINER PRICE: Mr. Burk?

12 MR. BURK: No questions, your Honor.

13 EXAMINER PRICE: Ms. Bojko?

14 EXAMINER BOJKO: I do have a couple.

15 - - -

16 EXAMINATION

17 By Examiner Bojko:

18 Q. Would you turn to page 10 of your
19 testimony, please, Mr. Castle. Actually, the line
20 extension deferral discussion begins on page 9 and it
21 goes over to 10, and I'm trying to understand staff's
22 position. I believe you're saying you interpreted
23 the Commission's order in 01-2708 to mean one thing
24 and then you're saying, however, if the Commission's

1 intended treatment was not what you included in this
2 Staff Report, then you revised your answer or you're
3 saying your MAC-2 should be revised based on a new
4 interpretation; is that right?

5 A. What I'm saying there -- I present why I
6 did what I did and try to explain why I excluded
7 carrying costs and the monthly customer payments.

8 Q. From the deferral calculation.

9 A. Yes. And then state if that's an
10 improper calculation, MAC-2 would be appropriate.

11 Q. What is your position? Are you telling
12 me that you're changing your position, or are you
13 telling me that you still believe those should be
14 excluded from the deferral calculation as you read
15 the Commission order in 01-2708?

16 A. Well, I still believe what I had
17 originally thought is appropriate, realized that
18 there could be other interpretations of it, and that
19 is why I have provided the MAC-2.

20 Q. So MAC-2 should only be considered if the
21 Commission disagrees with your exclusion which you
22 still believe to be accurate.

23 A. Yes.

24 Q. And then also at the bottom of page 10,

1 the next question and answer, you discuss the
2 companies' objection 2.14 and then you're talking
3 again about these deferrals and you say "Staff again
4 disagrees with this objection." Does that mean that
5 you are continuing to disagree with the companies'
6 objection; is that what you mean by "again"?

7 A. Well, there were several places where the
8 company had objected to staff using date certain
9 measurement versus either the end of the test year or
10 the end of the 12/31/2008. So that is why I say
11 "again." I believe that I have disagreed with going
12 to a end of test year balance in a prior question,
13 but I --

14 Q. But the information you provided in the
15 Staff Report in your mind is still valid, you were
16 not persuaded or changed your mind as a result of the
17 companies' objection in this regard.

18 A. Yes, that's correct.

19 EXAMINER PRICE: Mr. Castle, on page 12
20 of your testimony you had some discussion about
21 whether or not the basis on which carrying charges
22 accrue should be net of tax benefit, Mr. Burk had
23 read some language and asked you about some language
24 in the stipulations. Is it your position that

1 typically in the absence of any language clarifying
2 to the contrary carrying charges should be calculated
3 net of tax benefit?

4 THE WITNESS: I think it makes sound
5 sense. It's what we do in the revenue requirement
6 calculation.

7 EXAMINER PRICE: So it's what the staff
8 would typically do?

9 THE WITNESS: Yes.

10 EXAMINER PRICE: Thank you. You're
11 excused.

12 MR. McNAMEE: Staff would move the
13 admission of Staff Exhibit 16.

14 EXAMINER PRICE: Any objections to the
15 admission of Staff Exhibit 16?

16 Hearing none, Staff Exhibit 16 will be
17 admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 MR. SMALL: OCC moves for admission of
20 OCC Exhibits 21 through 27.

21 EXAMINER BOJKO: 25 through 27?

22 EXAMINER PRICE: I only have 25, 26, and
23 27 this morning.

24 MR. SMALL: I'm sorry, 25 through 27.

1 We'll see the others sometime in the future.

2 EXAMINER PRICE: Soon enough.

3 Any objection to the admission of OCC
4 Exhibits 25, 26, and 27?

5 EXAMINER BOJKO: With the caveat that 27
6 is going to be a two-page document that you're going
7 to provide us later.

8 MR. SMALL: I don't think it has to. The
9 witness read the footnote, I think that's the only
10 thing that -- what he used off of that. I can make
11 it a two-page -- he read the footnote into the record
12 which I think is the only reason why we had that.

13 EXAMINER BOJKO: Okay.

14 EXAMINER PRICE: Okay.

15 EXAMINER BOJKO: Is that satisfactory to
16 staff?

17 MR. McNAMEE: That's fine.

18 EXAMINER PRICE: Any objections?

19 OCC Exhibits 25, 26, and 27 will be
20 admitted into the record.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 MR. BURK: And then, your Honor, I would
23 move the admission of Company Exhibit 26.

24 EXAMINER PRICE: Any objections?

1 Hearing none, Company Exhibit 26 will be
2 admitted.

3 MR. BURK: Thank you.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER PRICE: Mr. Rinebolt.

6 MR. RINEBOLT: Your Honor, I would
7 request that the Direct Testimony of Bill Faith be
8 marked as OPAE Exhibit No. 1.

9 EXAMINER PRICE: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. RINEBOLT: And the Direct Testimony
12 of Michael R. Smalz be marked as OPEA Exhibit No. 2.

13 EXAMINER PRICE: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. RINEBOLT: And I have had discussions
16 with counsel and am informed that no one has
17 cross-examination for these witnesses, so I would
18 move admission of this testimony.

19 EXAMINER PRICE: Any objections?

20 Hearing none, OPAE Exhibits 1 and 2 will
21 be admitted into the record.

22 MR. RINEBOLT: Thank you, your Honor.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER PRICE: Staff?

1 MR. McNAMEE: At this time the staff
2 would call Trisha J. Smith.

3 (Witness sworn.)

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

6 THE WITNESS: My name is Trisha J. Smith,
7 my business address is 180 East Broad Street,
8 Columbus, Ohio 43215.

9 EXAMINER PRICE: Thank you.
10 Mr. McNamee.

11 - - -

12 TRISHA J. SMITH
13 being first duly sworn, as prescribed by law, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Mr. McNamee:

17 Q. Who is your employer, Ms. Smith?

18 A. I'm employed by the Public Utilities
19 Commission of Ohio.

20 Q. In what capacity?

21 A. I'm a Utility Specialist 2.

22 MR. McNAMEE: Your Honor, at this time
23 the staff would like to have marked for
24 identification as Staff Exhibit 17 a document

1 entitled Prefiled Testimony of Trisha J. Smith.

2 EXAMINER PRICE: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Miss Smith, do you have before you what's
5 just been marked for identification as Staff Exhibit
6 17?

7 A. Yes, I do.

8 Q. What is that document?

9 A. That is my prefiled testimony in this
10 proceeding.

11 Q. Was it prepared by you or under your
12 direction?

13 A. It was prepared by me.

14 Q. Do you have any additions, corrections,
15 updates, changes to that document?

16 A. No, I do not.

17 Q. If I were to ask you the questions that
18 are contained therein, would your answers this
19 morning be as presented in that document?

20 A. Yes, they would.

21 Q. Are the contents of what's been marked
22 for identification as Staff Exhibit 17 true to the
23 best of your knowledge and belief?

24 A. Yes, they are.

1 MR. McNAMEE: With that, your Honor, the
2 witness is available for cross.

3 EXAMINER PRICE: Thank you.

4 IEU?

5 MR. NEILSEN: Yes, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Neilsen:

9 Q. Good morning.

10 A. Good morning.

11 Q. My name is Dan Neilsen. I'm representing
12 Industrial Energy Users-Ohio also referred to as
13 IEU-Ohio. I have a few questions for you this
14 morning. Would you refer to page 6 of your testimony
15 which is marked as Staff Exhibit 17, please.

16 A. Yes.

17 Q. Particularly at lines 20 and 21 you state
18 that "Staff was unable to determine the funded status
19 of the plan applicable to the operating companies";
20 is that correct?

21 A. Yes.

22 Q. Did staff ask the companies for that
23 information?

24 A. We had one actuarial report that I

1 believe was soon to be updated within a month or so
2 at the end of our investigation, so it was on its way
3 but we were unable to obtain it at this time.

4 Q. And you still haven't obtained it?

5 A. No, I have not.

6 Q. Are you aware of whether the funded
7 status of the plan for the consolidated FirstEnergy
8 companies is publicly reported anywhere?

9 A. I believe so. But I don't know where.

10 Q. Are you aware of whether or not the
11 information is included in the companies' FERC Form
12 1?

13 A. I didn't review the FERC Form 1, no.

14 Q. Did you review the testimony of IEU-Ohio
15 witness Joe Bowser --

16 A. Yes, I did.

17 Q. -- that's been marked and admitted as
18 IEU-Ohio Exhibit 1?

19 A. Yes.

20 Q. Do you have a copy of that with you?

21 A. No, I do not.

22 MR. NEILSEN: May I approach the Bench,
23 your Honor?

24 EXAMINER PRICE: You may.

1 MR. NEILSEN: Approach the witness?

2 EXAMINER PRICE: Yes.

3 Q. Miss Smith, do you recognize that as the
4 testimony of Mr. Bowser, IEU-Ohio Exhibit 1?

5 A. Yes, I do.

6 Q. Would you turn to the first page of JGB
7 Exhibit 1, please, at the end of the testimony? It
8 will be the first of five pages.

9 A. Yes, I have it.

10 Q. Do you recognize what that exhibit is?

11 A. Appears to be a page from the FERC Form 1
12 as identified at the bottom of the page.

13 Q. So you'd agree, then, that that's a
14 portion of specifically it's Cleveland Electric
15 Illuminating Company's, or CEI's, 2006 FERC Form 1
16 containing the notes to the financial statements,
17 correct?

18 A. Yes.

19 Q. Now, would you flip to page 3 of 5 of
20 that exhibit, please.

21 A. Okay.

22 Q. Do you see at the top there where it says
23 at the end of the sentence, quote, "The following
24 tables detail the consolidated FirstEnergy pension

1 plan and OPEB," do you see that?

2 A. Yes, I do.

3 Q. Do you know the significance of the term
4 "consolidated" as it is used there?

5 A. I believe it means all FirstEnergy
6 companies.

7 Q. So even though the financial statements
8 are for CEI, the funded status data is for
9 consolidated FirstEnergy, correct?

10 A. It appears so, yes.

11 Q. Now, would you agree that the reason
12 consolidated data is presented is because the fair
13 value of plan assets is determined for the entire
14 plan and not for any one specific operating company?

15 A. I don't know.

16 Q. Okay. Let me rephrase it just in case.
17 In other words, the actuaries that provide this data
18 to FirstEnergy are concerned about measuring the
19 total plan assets and there's no need to attempt to
20 allocate the fair value of the plan assets to the
21 operating companies?

22 A. I don't know.

23 Q. Okay. Now, about a third of the way down
24 on that page is a line labeled "Funded Status." Do

1 you see that?

2 A. Yes, I do.

3 Q. Now, would you agree that the figure
4 represented on the line labeled "Funded Status" that
5 we just identified is the difference between the
6 figures labeled "Benefit Obligation as of
7 December 31," and the figures labeled "Fair Value of
8 Plan Assets as of December 31"?

9 A. Yes.

10 Q. And you'd agree that the document there
11 states that the fair value of the pension plan assets
12 as of December 31 for 2006 is 4.818 billion?

13 A. Yes.

14 Q. Miss Smith, keeping that page open would
15 you turn to page 6, again, of your testimony.

16 A. Yes.

17 Q. And specifically at line 15.

18 A. Yes.

19 Q. There you discuss the net periodic costs.
20 Are you aware that one of the components of net
21 periodic costs is expected return on plan assets?

22 A. Yes.

23 Q. Can you tell me what "expected return on
24 plan assets" is?

1 A. What the company expects to be the change
2 in the fair value of the assets during the period.

3 Q. Okay.

4 A. Net of contributions and benefit
5 payments.

6 Q. Okay. Now, would you agree that the net
7 periodic cost is the basis for the pension accrual
8 that the companies book? In other words, the net
9 periodic cost is the amount that FAS 87 says should
10 be recognized on the books.

11 A. Yes, I do.

12 Q. Now, also on page 6, lines 15 and 16 of
13 your testimony, you state that if the net periodic
14 cost is used, then a corresponding asset must be
15 included in rate base; is that correct?

16 A. Yes.

17 Q. Okay. Do you know if the pension plan
18 assets are held in a trust?

19 A. Yes, they are. They are required to be.

20 Q. Okay. And because the assets are in a
21 trust the companies don't have access to those
22 assets, correct?

23 A. That is correct.

24 Q. And where the companies have assets in a

1 trust, those assets aren't included in rate base,
2 right?

3 A. I believe it depends on the plan of the
4 trust, what the trust is for.

5 Q. And in this case the trust would be for
6 pension or OPEB, right?

7 A. If the company's going to choose to
8 follow FASB 87 for pension, then it must also follow
9 FASB 158 because that's an amendment to that first
10 FASB -- or, excuse me, Financial Accounting Standard.

11 Q. Now, would you agree that for a given
12 period the higher the return on plan assets the lower
13 the net periodic cost?

14 A. Yes.

15 Q. Now, if the net periodic cost accounts
16 pension costs -- excuse me, let me restate that.
17 Now, if the net periodic cost accounts for pension
18 cost is recorded on the books and it includes a
19 component for return on plan assets, then why would
20 there be a need to reflect an asset in rate base if
21 the net periodic costs were used for pension and OPEB
22 costs?

23 A. If the net periodic cost is a credit to
24 your expense, that results in a revenue lag and the

1 company has no opportunity to recover that lag
2 because the company is not able to use any earned
3 funds or any other type of earnings from the funds
4 for the benefit of ratepayers or for any other
5 company expense. It's only to be held in trust for
6 employees and employees' beneficiaries.

7 So including that asset in rate base or
8 on the balance sheet which is required by Financial
9 Accounting Standard 158 allows the company to earn a
10 return on that asset to make up for that revenue lag.

11 Q. But isn't a return on that component --
12 isn't the return on that net periodic cost return on
13 assets?

14 A. I didn't say a return on the net periodic
15 cost.

16 Q. I had that backwards. Isn't the return
17 on assets a component of net periodic cost?

18 A. The company's return on the plan assets
19 that are held in trust, yes, but not as a component
20 of rate base.

21 Q. Now, earlier, to an earlier -- your
22 response to an earlier question you said there could
23 be an example where assets in trust could be in a
24 rate base, correct?

1 A. I assume so.

2 Q. Do you have a specific example --

3 A. No. I do not.

4 Q. -- of that? Okay.

5 So, Miss Smith, you agreed that, did you
6 not, that net periodic cost accounts for pension
7 costs recorded on the books and a return on plan
8 assets is also included in net periodic cost,
9 correct?

10 A. Yes.

11 Q. So isn't the funded status of the plan
12 irrelevant in the accounting for the pension and the
13 OPEB expense?

14 A. No; of course not.

15 Q. Can you explain?

16 A. FASB 158 -- or excuse me, Financial
17 Accounting Standard 158 requires the funded status of
18 the plan to be reported on the balance sheet or in
19 this case in rate base, so it could provide either an
20 underfunded or an overfunded nature of the plan. So
21 if the plan is overfunded -- excuse me, if the plan
22 is overfunded, that must be represented in rate base.

23 Q. Okay.

24 MR. NEILSEN: That's all I have, your

1 Honor.

2 EXAMINER PRICE: Thank you.

3 Mr. Rinebolt?

4 MR. RINEBOLT: No questions, your Honor.

5 EXAMINER PRICE: Schools.

6 MR. BREITSCHWERDT: No questions, your
7 Honor.

8 EXAMINER PRICE: Nucor.

9 MR. LAVANGA: No questions, your Honor.

10 EXAMINER PRICE: City of Cleveland?

11 MR. YURICK: No questions, your Honor.

12 EXAMINER PRICE: OCC.

13 MR. SMALL: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Small:

17 Q. Good morning, Ms. Smith.

18 A. Good morning.

19 Q. Again, my name is Jeff Small and I
20 represent the Office of the Ohio Consumers' Counsel.
21 I'd like you to return to page 6 of your testimony.

22 A. Okay.

23 Q. I have a few questions that are on the
24 same subject matter as what were addressed by IEU.

1 At this portion of your testimony this is where you
2 have a discussion of pension expense and other
3 postemployment benefit expense, correct?

4 A. Yes.

5 MR. SMALL: At this time, your Honor, I'd
6 like to have marked OCC Exhibit 21, it's a portion of
7 the FirstEnergy annual report for 2006.

8 EXAMINER PRICE: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. SMALL: May I approach?

11 EXAMINER PRICE: You may.

12 Q. Would you please turn to page 58 of
13 what's been marked as OCC Exhibit 21.

14 A. Yes.

15 Q. At the bottom of the left-hand column
16 you'll find the line or -- I'm sorry, row which is
17 labeled "Funded Status." Do you see that?

18 A. Yes, I do.

19 Q. And the columns there are for pension
20 benefits for two years and also other benefits for
21 two years, correct?

22 A. Yes.

23 Q. And the "Other Benefits" there refers to
24 the -- would you understand my abbreviation if I

1 called it the OPEB?

2 A. Yes, I would.

3 Q. And the "Other Benefits" shown on that
4 table are the OPEB amounts, right?

5 A. Yes.

6 Q. This is an example of what IEU counsel
7 asked about as far as the publicly available
8 information concerning the funded status of the
9 FirstEnergy plans?

10 A. I believe it's identical to what he
11 provided.

12 Q. I'm sorry, is it already an exhibit?

13 A. I believe it was part of his testimony as
14 an attachment.

15 Q. And the figures, just to go through the
16 numbers, there for 2006 are a negative
17 \$43 million for pension benefits and for OPEB
18 negative 594, correct?

19 A. Yes.

20 Q. 594 is in millions of dollars, correct?

21 A. I believe so, yes.

22 Q. And what does the negative value signify?

23 A. I believe a credit.

24 Q. A liability?

1 A. No; an asset.

2 Q. An asset.

3 MR. SMALL: I would like three exhibits
4 labeled OCC Exhibits 22, 23, and 24. And as further
5 explanation, Exhibit 23, I do this because we have
6 the three companies and I want to be complete about
7 this, but I recognize that Exhibit 23 is actually
8 contained in Mr. Bowser's testimony but I just want
9 to have all three companies out there.

10 EXAMINER PRICE: That's fine.

11 MR. SMALL: May I approach?

12 EXAMINER PRICE: Can you just describe
13 the exhibits so I can get my notes done.

14 MR. SMALL: Yes, Exhibit 22 is for Ohio
15 Edison, it is a portion of the FERC Form 1 that deals
16 with the subject matters of the pension and OPEB
17 amounts, OCC 23 is a corresponding document dealing
18 with Cleveland Electric Illuminating, and Exhibit 24
19 is a similar document dealing with Toledo Edison
20 Company.

21 EXAMINER PRICE: Thank you. I have not
22 marked those.

23 MR. SMALL: I'm sorry?

24 EXAMINER PRICE: I can't verify I had

1 those marked so they're marked now.

2 MR. SMALL: 22, 23, and 24.

3 EXAMINER PRICE: Yes.

4 (EXHIBITS MARKED FOR IDENTIFICATION.)

5 Q. (By Mr. Small) Ms. Smith, I hope I've got
6 it clear which exhibit is which.

7 A. We'll see.

8 Q. We'll start out with -- let's start out
9 with Exhibit 23, that's the one for CEI that was
10 referred to by IEU-Ohio.

11 A. Okay.

12 Q. If you could please turn to page 123.19
13 in that document.

14 A. Okay.

15 Q. About midway down on that page there's,
16 again, the label "Funded Status." Do you see that?

17 A. Yes, I do.

18 Q. And at the top we have similar labels to
19 the annual report of two years of pension benefits
20 and two years of OPEB, correct?

21 A. Yes.

22 Q. And those values under "Funded Status"
23 are for FirstEnergy on a consolidated basis, correct?

24 A. Yes.

1 Q. And those are the same numbers we just
2 saw in the annual report.

3 A. Yes.

4 Q. And the values, again, were negative
5 43 million and negative 594 million, correct?

6 A. Yes.

7 Q. A few lines down the liability is labeled
8 "Company Share of Net Pension Asset End of Year." Do
9 you see that?

10 A. Yes, I do.

11 Q. And the values for 2006 for that line are
12 negative 13 million for pension benefits and negative
13 110 million for OPEB, correct?

14 A. For OPEB, yes.

15 Q. Now, the negative values there shown in
16 parentheses correspond with the parentheses shown in
17 the label "Liability" correct?

18 A. Yes.

19 Q. So these are liabilities.

20 A. No, I believe it's asset -- could you
21 restate that? I think I'm backwards here.

22 MR. SMALL: Why don't we have the
23 question reread.

24 (Record read.)

1 A. Yes.

2 Q. And I believe the part of the question
3 that wasn't read, so these are liabilities, correct?

4 A. Yes.

5 Q. And turning to Exhibit 22, and that's the
6 one that I -- it was corresponding but it was for
7 Ohio Edison.

8 A. Okay.

9 Q. Turn to 123.21.

10 A. Okay.

11 Q. Correspondingly we see the "Funded
12 Status" there again, we have the same values that we
13 had because it's all for FirstEnergy, correct?

14 A. Correct.

15 Q. And then we go down to the liability
16 company's share of that pension asset at end of year
17 and we have figures for Ohio Edison, correct?

18 A. Yes.

19 Q. And for 2006 we have \$55 million, a
20 positive \$55 million, and a negative 138 million for
21 OPEB, correct?

22 A. Yes.

23 Q. And so the negative value is a liability
24 and the positive value is an asset and netted

1 together they're a liability, correct?

2 A. Yes.

3 Q. Just doing this a little bit for
4 completeness. If you could turn to OCC Exhibit 24
5 and that would be for Toledo Edison, page 123.21,
6 again we have "Funded Status," the same values that
7 we had before, correct?

8 A. Yes.

9 Q. And then the company's share shown
10 further down on it and for 2006 it was negative
11 \$3 million for pensions and negative \$74 million for
12 OPEB, correct?

13 A. Correct.

14 Q. For a total liability of \$77 million for
15 those two categories for 2006, correct?

16 A. Yes.

17 MR. SMALL: At this time, your Honor, I
18 have an order -- finding and order, Case
19 92-1751-AU-COI, I passed this out a couple weeks ago,
20 it's not an exhibit but I have additional copies
21 certainly for the witness and for anybody else's
22 convenience if you don't have the previous handout.

23 May I approach, your Honor?

24 EXAMINER PRICE: You may.

1 Q. Ms. Smith, as I mentioned in introducing
2 this document, this was handed out a couple weeks ago
3 in cross-examination of Mr. Kalata. Were you present
4 for that cross-examination?

5 A. Yes, I was.

6 Q. And so you were -- do you remember the
7 cross-examination concerning this document?

8 A. No, I do not.

9 Q. Okay. Are you familiar with Case No.
10 92-1751-AU-COI having read the order or anything else
11 about the case?

12 A. No. It's prior to my employment here
13 with the Commission.

14 Q. That document is labeled "In the Matter
15 of the Commission's Investigation into the Financial
16 Impact of FASB Statement No. 106 'Employers
17 Accounting for Postretirement Benefits Other Than
18 Pensions"? Do you see that at the top of the finding
19 and order?

20 A. Yes, I do.

21 Q. And that's the subject matter that we've
22 been discussing in your testimony, correct?

23 A. For OPEB, yes.

24 Q. For OPEB, right.

1 Please turn to page 6 of the order,
2 paragraph (15). That paragraph provides, and I
3 quote, "The Staff proposal to adopt SFAS 106 accrual
4 of OPEB," that's O-P-E-B, "costs for ratemaking and
5 regulatory accounting purposes is the most reasonable
6 approach." Do you see that?

7 A. Yes, I do.

8 Q. To your knowledge, has the Commission
9 ever rescinded or modified the directive that is
10 found on page 6 of this order?

11 MR. McNAMEE: Object.

12 EXAMINER PRICE: Grounds?

13 MR. McNAMEE: The witness said she's not
14 familiar with this. How could she know?

15 MR. SMALL: I'm not asking about -- your
16 Honor.

17 EXAMINER PRICE: Overruled.

18 You can answer if you know.

19 THE WITNESS: Could you restate the
20 question, please?

21 (Record read.)

22 A. I don't know, but FASB 158 was not in
23 effect at the time of this order so it's sort of
24 irrelevant. FASB 158 is an amendment to FASB 106.

1 Q. When did that amendment go into effect?

2 A. It was effective December 15th, 2006, for
3 publicly-traded companies and June 15th, 2007, for
4 nonpublicly-traded companies.

5 MR. SMALL: That completes my
6 examination. Thank you, your Honor.

7 EXAMINER PRICE: Thank you.

8 Company?

9 MR. WHITT: Very briefly, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Whitt:

13 Q. Good morning.

14 A. Good morning.

15 Q. On page 4 of your testimony in the
16 sentence that starts toward the end of line 5.

17 A. Yes.

18 Q. In reference to employee counts, the
19 sentence says, quote, "The Staff used an average
20 employee count to smooth any variances in employee
21 counts." Do you see that?

22 A. Yes.

23 Q. And that's another way of saying that
24 staff attempted to normalize or annualize the

1 employee count?

2 A. Yes.

3 MR. SMALL: I'm sorry, your Honor, we're
4 having a lot of difficulty hearing Mr. Whitt.

5 EXAMINER PRICE: Mr. Whitt, if you could
6 use the microphone or stand up or --

7 MR. WHITT: I only have one more
8 question.

9 EXAMINER PRICE: Okay.

10 MR. WHITT: I'll stand up to ask it.

11 EXAMINER PRICE: Thank you. Project.

12 EXAMINER BOJKO: Mr. Small, did you hear
13 the last question and answer?

14 MR. SMALL: No.

15 EXAMINER BOJKO: Could you reread it.

16 EXAMINER PRICE: Read the last question
17 and answer, please.

18 (Record read.)

19 Q. Would you agree, ma'am, that the method
20 of annualization used to arrive at employee counts
21 should reflect the employee counts for the period
22 when rates are in effect?

23 A. Yes.

24 MR. WHITT: Thank you.

1 EXAMINER PRICE: Mr. McNamee?

2 MR. McNAMEE: I will have redirect, but I
3 need to chat with the witness first, if I could have
4 a moment or two.

5 EXAMINER PRICE: Let's go off the record.
6 Five minutes.

7 (Recess taken.)

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

10 Mr. McNamee?

11 MR. McNAMEE: Yes, your Honor. Two
12 matters, both small.

13 - - -

14 REDIRECT EXAMINATION

15 By Mr. McNamee:

16 Q. Ms. Smith, let me direct your attention
17 to your testimony page 6, lines 11 and 12.

18 A. Yes.

19 Q. Do you see there a phrase "And OEG's
20 Operating Income Objections 1 and 2"?

21 A. Yes, I do.

22 Q. Do you mean to strike that out?

23 A. Yes, I do.

24 Q. Good.

1 EXAMINER PRICE: So this is a late
2 correction?

3 MR. McNAMEE: Yeah, it was.

4 THE WITNESS: I thought those particular
5 objections were withdrawn as well.

6 Q. Ms. Smith, you were asked a question
7 about employee counts when the rates will be in
8 effect.

9 A. Yes.

10 Q. Do you know what those employee counts
11 will be?

12 A. No, I do not. They're not known and
13 measurable at this point.

14 MR. McNAMEE: That's all I have.

15 EXAMINER PRICE: IEU?

16 MR. NEILSEN: No questions, your Honor.

17 EXAMINER PRICE: Schools?

18 MR. BREITSCHWERDT: No, your Honor.

19 MR. LAVANGA: No questions, your Honor.

20 MR. YURICK: No questions.

21 EXAMINER PRICE: OCC.

22 MR. SMALL: No, your Honor.

23 EXAMINER PRICE: Company?

24 EXAMINER BOJKO: Recross?

1 MR. FELD: No, your Honor.

2 - - -

3 EXAMINATION

4 By Examiner Price:

5 Q. Can you just briefly describe for the
6 Bench's benefit how FAS 158 amended or superseded FAS
7 106?

8 A. Yes.

9 Q. As it relates to this case.

10 A. Right, as it relates to this case. It
11 just required that rather than put the funded status
12 of the plan in the footnotes, to bring it up on the
13 balance sheet as part of the company's statement of
14 financial position. So if it's overfunded or
15 underfunded, it's reflected on the balance sheet so
16 that makes the information to users more readily
17 available rather than searching through the notes and
18 trying to find out what the funded status of either
19 pension or any other postemployment benefit plan
20 would be.

21 Prior to that a fund could be underfunded
22 and it was not properly reflected on the balance
23 sheet. You had to search through footnotes to
24 understand that.

1 MR. SMALL: Your Honor, I don't think the
2 microphone's working.

3 EXAMINER PRICE: Let's go off the record.
4 (Off the record.)

5 EXAMINER PRICE: Back on the record.

6 EXAMINER BOJKO: Do you know how what you
7 just explained to us would change the practice of the
8 Commission from what they were doing? Did anything
9 change by the revision to 106?

10 THE WITNESS: The rate base would be
11 increased.

12 Q. (By Examiner Price) By showing it on the
13 balance sheet the rate case would be increased?

14 A. If it was an overfunded plan.

15 EXAMINER BOJKO: But moving it from the
16 footnotes up to the balance sheet it has that result.

17 THE WITNESS: Moving it to the balance
18 sheet would equivocate with moving it to rate base,
19 into rate base, so a higher rate base, they would
20 earn a higher return on. Not due to the rate but
21 just because the rate base itself would be higher.

22 EXAMINER BOJKO: And was that, if you
23 know, was that the intended consequence of FASB 158?

24 THE WITNESS: That was one of them, yes.

1 Probably the main one, yes.

2 EXAMINER PRICE: Thank you, you're
3 excused.

4 THE WITNESS: Thank you.

5 EXAMINER PRICE: Mr. McNamee.

6 MR. MCNAMEE: Staff would move the
7 admission of Staff Exhibit 17.

8 EXAMINER PRICE: Any objections to the
9 admission of Staff Exhibit 17 as corrected on
10 redirect?

11 Hearing none, that exhibit will be
12 admitted.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 EXAMINER PRICE: Mr. Small.

15 MR. SMALL: OCC moves for admission of
16 OCC Exhibits 21 through 24.

17 EXAMINER PRICE: Any objections to the
18 admission of OCC Exhibits 21 through 24?

19 Hearing none, those exhibits will be
20 admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

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

23 (Discussion off the record.)

24 EXAMINER BOJKO: Come back at 12:45.

1 (At 11:29 a.m., a lunch recess was taken
2 until 12:45 p.m.)

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Friday Afternoon Session,
February 15, 2008.

- - -

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

Mr. Jones?

MR. JONES: Yes, your Honor. At this
time staff would call Robert Fortney to the stand.

EXAMINER BOJKO: Please raise your right
hand.

(Witness sworn.)

- - -

ROBERT B. FORTNEY

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

DIRECT EXAMINATION

By Mr. Jones:

Q. Would you please state your name and
business address for the record, please.

A. Robert B. Fortney, that's F as in Frank,
o-r-t-n-e-y, 180 East Broad Street, Columbus, Ohio,
43215.

Q. And, Mr. Fortney, who is your employer?

A. Public Utilities Commission of Ohio.

1 Q. And what is your position?

2 A. I'm a Public Utilities Administrator 3 in
3 the Rates and Tariffs Division of the Utilities
4 Department.

5 Q. And have you prepared testimony for this
6 proceeding?

7 A. Yes, I have.

8 MR. JONES: Your Honors, I'd like to have
9 the Prefiled Testimony of Robert B. Fortney that was
10 filed in the docket of this record February 11th,
11 2008, marked as Staff Exhibit 18.

12 EXAMINER BOJKO: It will be so marked.

13 MR. JONES: Thank you.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. Mr. Fortney, do you have what has been
16 marked as Staff Exhibit 18 in front of you?

17 A. Yes, I do.

18 Q. Can you identify that document for the
19 record, please.

20 A. That is my prefiled written testimony in
21 this proceeding.

22 Q. Was that testimony prepared by you or at
23 your direction?

24 A. It was prepared by me.

1 Q. And do you have any changes, additions,
2 or corrections to make to Staff Exhibit 18?

3 A. Yes, I do. Start out on page 6 of my
4 testimony, line 6, that sentence doesn't read well.
5 Insert the word -- in between the word "contract" and
6 "and" insert the word "terms," t-e-r-m-s.

7 And then I have one other omission I
8 would like to note. Earlier this week I was struck
9 by pangs of guilt in that I failed to properly credit
10 the source of one of my -- part of my testimony so if
11 you go to page 4, line 5, preceding the word "like"
12 insert beginning quotation marks, strike the words
13 "the slope of the," and replace it by "a snow
14 covered," and after the word "hill," insert the end
15 quotes and I would like to credit that part of my
16 testimony -- that's the first line from a song called
17 "It's Growing" by the group called the Temptations,
18 and interestingly enough although it was written by
19 the Temptations -- although it was sung by the
20 Temptations, it was written by a guy named William
21 Robinson who is better known as Smokey.

22 MR. WHITT: Could we have the witness
23 sing the complete corrected sentence?

24 THE WITNESS: Other than that --

1 EXAMINER PRICE: Definitely a rule of
2 completeness issue there.

3 THE WITNESS: Two of my favorite groups
4 by the way, Temptations and Smokey Robinson and the
5 Miracles.

6 EXAMINER BOJKO: Are you going to play
7 that song for the record and have it marked?

8 THE WITNESS: I could.

9 MR. JONES: That's a first.

10 EXAMINER BOJKO: But you're still not a
11 good proofreader, right?

12 THE WITNESS: Yeah, I misquoted my quote.

13 Q. (By Mr. Jones) Mr. Fortney, any other
14 corrections to be noted to Staff Exhibit 18 besides
15 the ones you just noted on pages 4 and 6?

16 A. No, sir.

17 Q. Then, Mr. Fortney, noting those changes
18 that you've made for the record to Staff Exhibit 18,
19 if I were to ask you the same questions that are
20 contained in Exhibit 18, would your answers be the
21 same?

22 A. Yes, they would.

23 Q. Okay. Mr. Fortney, your testimony, is it
24 true and accurate to the best of your knowledge and

1 belief?

2 A. Yes, it is.

3 Q. Mr. Fortney, there was a stipulation and
4 recommendation on proposed revenue distribution that
5 was signed by some of the parties in this proceeding
6 which was docketed in the record on February 11th,
7 2008, and marked for identification as Signatory
8 Parties' Exhibit 1. Are you familiar with that
9 document?

10 A. Yes, I am.

11 Q. Did staff sign that document?

12 A. No, they did not.

13 Q. Does staff have a position on that
14 stipulation and recommendation in the Signatory
15 Parties' Exhibit 1?

16 A. Staff finds the stipulation -- the terms
17 of the stipulation very reasonable.

18 Q. So you would agree, then, with that
19 recommendation and stipulation that's been proposed
20 by some of the parties in this case?

21 A. Yes, I would.

22 MR. JONES: Your Honor, I would offer
23 this witness then for cross-examination.

24 EXAMINER BOJKO: Let's begin with Nucor.

EXAMINATION

By Mr. Lavanga:

Q. Good afternoon, Mr. Fortney.

A. Good afternoon.

Q. My name is Mike Lavanga and I'm an attorney for Nucor Steel Marion and I have just a couple questions for you. If you could turn to page 12 of your testimony. Now, at page 12 you testify that Nucor has raised legitimate concerns in its objections. Am I correct that the concerns you're speaking of here regard the elimination of all of FirstEnergy's rates that include generation and transmission components?

MR. JONES: Your Honor, I would object, that's beyond the scope of this proceeding dealing with distribution rates.

EXAMINER BOJKO: Could I have the question reread?

(Record read.)

EXAMINER BOJKO: Overruled.

A. Yes, I believe that's a legitimate concern.

Q. And would you agree that FirstEnergy has not proposed any generation and transmission rates in

1 this proceeding to replace the generation and
2 transmission rates that they're proposing to
3 eliminate?

4 MR. JONES: Your Honor, I just want to
5 maintain a continuing objection, please.

6 EXAMINER BOJKO: And based on our prior
7 rulings around this subject we're going to overrule
8 that. It's noted for the record.

9 MR. JONES: Thank you.

10 A. Yes, I would agree, in this proceeding
11 they have simply put place holders in their proposed
12 tariffs for generation and transmission.

13 Q. Thank you, Mr. Fortney.

14 Continuing further down on page 12 of
15 your testimony --

16 EXAMINER BOJKO: Excuse me, before we
17 leave that subject, just so we don't have to go back,
18 is that the only concern that you were referencing on
19 line 8 on page 12, the elimination of the -- do you
20 understand the term "full requirements tariff" or
21 service?

22 THE WITNESS: Yes. And, yeah, that is my
23 concern, that the entire tariffs have been eliminated
24 and only distribution tariffs and place holders have

1 been proposed to replace them.

2 EXAMINER BOJKO: Do you have any
3 knowledge of what would be replaced eventually?

4 THE WITNESS: I have an opinion.

5 EXAMINER BOJKO: Okay. Could you tell me
6 that?

7 THE WITNESS: Well, my professional
8 belief is that sometime prior to January 1st, '09,
9 this Commission will initiate some proceeding and it
10 could be in the companies' current competitive bid
11 case, which I think is 07-794, it could be something
12 that comes out of legislation, or it could be
13 something that I have not even contemplated, and I
14 believe in that proceeding the Commission will hold a
15 hearing in which case generation rates for beginning
16 1/1/09 will be determined.

17 EXAMINER BOJKO: For those tariffs that
18 are being eliminated as well as any other ones.

19 THE WITNESS: Pardon?

20 EXAMINER BOJKO: Any other generation
21 rates.

22 THE WITNESS: Yes.

23 EXAMINER BOJKO: Thank you. Sorry,
24 Mr. Lavanga.

1 MR. LAVANGA: That's okay.

2 Q. (By Mr. Lavanga) Okay, Mr. Fortney,
3 further down on page 12 you talk about interruptible
4 rates. You testify that interruptible programs
5 provide little benefit to the distribution system.
6 Just to be clear, is it accurate to say that this
7 opinion is limited to distribution and does not
8 address the generation and transmission benefits
9 provided by interruptible load?

10 A. Yes, it's limited strictly to
11 distribution.

12 Q. Would you agree that the interruptible
13 rates that FirstEnergy is proposing to eliminate in
14 this proceeding provide generation and transmission
15 benefits?

16 MR. JONES: Object again, your Honor,
17 getting into a generation component here that is not
18 part of the proceeding. Relevance.

19 MR. LAVANGA: Your Honor, may I?

20 EXAMINER BOJKO: I just need to hear it
21 again, I'm sorry.

22 (Record read.)

23 EXAMINER BOJKO: Overruled.

24 A. Yes, I believe the interruptible

1 contracts or tariffs in the current circumstances
2 provide generation and transmission benefits. I have
3 yet to -- since I do not know the structure of the
4 generation or transmission rates that will come about
5 after 1/1/09, I have no opinion on whether they will
6 provide any benefits through that structure.

7 Q. Now, is it your testimony that
8 interruptible load might provide certain benefits to
9 a utility's distribution system if the utility could
10 be assured that the interruptible customer will
11 interrupt when the utility calls for an interruption?

12 A. I actually laid awake at night thinking
13 about that and I came to one possible benefit, and
14 here again, if the utility had assurance, 100 percent
15 assurance, that the customer would be interrupted if
16 you're in a -- talking about a distribution circuit
17 and I know that FirstEnergy, but, for instance, up in
18 the Polaris area where it's growing rapidly, if there
19 was a sizable customer that could guarantee that the
20 utility could interrupt them, they might provide some
21 short-term, very short-term benefits in the upgrading
22 or adding to the distribution circuit. That was the
23 only scenario I could come up with.

24 EXAMINER BOJKO: With respect to

1 alleviating the system at that time for that growth?

2 THE WITNESS: Yes. If the circuit was
3 becoming overloaded and a fairly large customer could
4 guarantee that they would be interrupted, the company
5 may be able to put off for some, probably a very
6 short term, an upgrade.

7 MR. JONES: Your Honor, could I have some
8 clarification? Are we talking about an emergency
9 interruption or economic interruption or all
10 interruptions?

11 EXAMINER BOJKO: Mr. Fortney, were you
12 thinking --

13 THE WITNESS: I believe an emergency
14 interruption, that they're going to interrupt
15 anyways. They're required to be interrupted.

16 EXAMINER BOJKO: Is it fair your answer
17 was with regards to an economic interruption or all
18 interruptions?

19 THE WITNESS: Well, there's another
20 category in between an economic interruption and an
21 emergency interruption and that's simply if the --
22 here again, we're talking about generation, but that
23 the company needs the capacity and that's not either
24 an economic or an emergency, it's an operational

1 interruption.

2 EXAMINER BOJKO: But the response to the
3 question regarding possible delays or a short-term
4 benefit, possible delays of upgrades or alleviating
5 the systems was with regards to any interruption?

6 THE WITNESS: Once again, that's talking
7 strictly about the distribution system, and yes.

8 Q. (By Mr. Lavanga) Mr. Fortney, are you
9 aware that under some of FirstEnergy's current
10 interruptible rates if FirstEnergy calls for a
11 reliability interruption, the customer is obligated
12 to interrupt, and that if the customer does not
13 interrupt, it's subject to an economic penalty?

14 A. I am aware of that provision, but under
15 that provision if the customer can still not
16 interrupt, then yes, they would have to pay the
17 economic penalty.

18 EXAMINER BOJKO: In response, when you
19 heard the word "reliability interruption," are you
20 equating that to an operational interruption?

21 THE WITNESS: Yes.

22 Q. Would you agree that an interruptible
23 program could be designed to minimize the degree of
24 nonperformance by an interruptible customer through,

1 for example, the type of economic penalties for
2 failure to perform that are contained in
3 FirstEnergy's current interruptible tariffs? In
4 other words, if you have a high enough economic
5 penalty, wouldn't that go along toward pretty much
6 guaranteeing that the interruptible customer would
7 respond?

8 A. It still would not, here again, talking
9 about the distribution portion, it still would not be
10 a hundred percent guarantee that the customer would
11 be interrupted, so I'm not sure what benefit in that
12 case there would be to the distribution system.

13 Q. Okay. Let me give you another
14 hypothetical. If a utility could control the switch
15 on an interruptible customer, wouldn't that also
16 minimize the possibility of the customer not
17 interrupting? In other words, if it's the utility
18 that has -- can turn the customer off itself?

19 A. Yes, in that case the utility would have
20 a hundred percent guarantee that the customer could
21 be interrupted -- would be interrupted.

22 Q. So would you agree that measures such as
23 allowing the company to have -- utility to have the
24 switch could help ensure a very high level of

1 performance by interruptible load?

2 THE WITNESS: Could I have the question
3 reread, please.

4 (Record read.)

5 A. Yes.

6 Q. Also on page 12 of your testimony,
7 Mr. Fortney, you say that interruptible customers can
8 buy through from the company at a market price or
9 from a third party, interruptible customers can
10 ignore the interruption request. You're speaking
11 here about economic interruptions; is that correct?

12 A. Yes. And, there again, the buy-through
13 would only be for generation. If the customer buys
14 through, the company is still going to provide the
15 distribution system.

16 MR. LAVANGA: Okay. That's all I have,
17 Mr. Fortney. Thank you.

18 EXAMINER BOJKO: IEU?

19 MR. NEILSEN: Yes, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Neilsen:

23 Q. Good afternoon, Mr. Fortney.

24 A. Good afternoon.

1 Q. My name is Dan Neilsen, counsel for
2 Industrial Energy Users-Ohio. I just have a couple
3 questions for you.

4 Staying on page 12 of your testimony and
5 coincidentally at lines 15 through 17, those two
6 sentences stating "Interruptible customers can 'buy
7 through' from the company at a market price or from a
8 third party," and "Interruptible customers can ignore
9 the interruption request," is that statement based
10 upon the Commission's interruptible buy-through
11 guidelines?

12 A. I forget exactly what those guidelines
13 say, but yes, as a result of those guidelines, I
14 believe that all utilities have offered a buy-through
15 provision for interruptible customers.

16 Q. Okay. Now, isn't it true that the
17 Commission's interruptible buy-through guidelines
18 provide the utility with an absolute right to
19 interrupt the customer in the event of an emergency?

20 A. In the event of an emergency, yes.

21 MR. NEILSEN: Yes. Thank you, that's all
22 I have.

23 That's all I have, your Honor.

24 EXAMINER BOJKO: Let's go to City of

1 Cleveland.

2 MR. YURICK: Just a couple of questions.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Yurick:

6 Q. Mr. Fortney, my name's Mark Yurick. I
7 represent the City of Cleveland in this proceeding
8 and I just have a couple of questions for you.

9 Sir, did you review the testimony of
10 Kevin Higgins filed in this case?

11 A. I reviewed both his testimonies filed for
12 the City of Cleveland and for the Kroger or Ohio
13 Energy Group, whichever other one he presented
14 testimony, yes.

15 Q. Well, I'm primarily concerned with his
16 testimony submitted on behalf of the City of
17 Cleveland. You read that, right?

18 A. Yes, I did.

19 Q. Okay. Would you agree that, and I'm
20 going to apologize for my double negative here, it
21 might be a little hard to follow, but would you agree
22 that the comments and suggestions that Mr. Higgins
23 makes in his testimony, that that testimony is not
24 unreasonable? Would you agree with that?

1 A. I have no idea what part of the testimony
2 he's referring to.

3 Q. The suggestions and proposals he made in
4 connection with rate design.

5 A. I'm not familiar with that part of the
6 testimony.

7 Q. What part of the testimony are you
8 familiar with?

9 I don't mean to put you on the spot.
10 Were there parts of his testimony that you were, with
11 your expertise, particularly directed to?

12 A. Well, I did read Mr. Higgins' testimony.
13 If you would like to refresh my memory as to what he
14 said with regard to rate design, I would be glad to
15 comment on whether it's reasonable or not
16 unreasonable or unreasonable.

17 Q. I understand you're trying to be helpful
18 and I don't want to get -- you know, I don't want to
19 make this a big deal. But was there a particular
20 part of his testimony that you were necessarily
21 focused on?

22 A. I guess I don't remember what his
23 testimony was as it pertained to the City of
24 Cleveland. My recollection is that Mr. Higgins

1 testimony had more to do with revenue distribution
2 and revenue allocation, so I forget what he
3 recommended in the City of Cleveland's.

4 Q. And with regard to his testimony in
5 connection with distribution and -- what was the
6 other -- I'm sorry.

7 MR. YURICK: Could you read back the
8 witness's testimony? I had a minor brain cramp.

9 (Record read.)

10 Q. Mr. Higgins' testimony with regard to
11 revenue distribution and revenue allocation, would
12 you agree that that testimony was not unreasonable?

13 MR. JONES: Your Honor, I guess I'm going
14 to have to object as to asking for a legal conclusion
15 here. I mean that's really the Commission's
16 determination of what's reasonable and what's
17 unreasonable.

18 EXAMINER BOJKO: If the witness has an
19 opinion, he can state it. Overruled.

20 A. Yes, I would, Mr. Higgins' testimony
21 regarding revenue distribution and revenue allocation
22 was very much in line with what ended up within the
23 stipulation.

24 MR. YURICK: Okay. Thanks very much.

1 And I apologize for the awkward nature of my
2 questions.

3 I have no further questions at this time.
4 Thank you very much, Mr. Fortney.

5 EXAMINER BOJKO: Just to be clear,
6 Mr. Fortney, it's your understanding that
7 Mr. Higgins' testimony with regard to Kroger has been
8 withdrawn, but it was -- with regard to the City it
9 was not withdrawn and is still part of the record in
10 this case. Is that your understanding?

11 THE WITNESS: Yes, and that was why I was
12 confused, because I thought his testimony for the
13 City of Cleveland still was regarding revenue
14 distribution rather than rate design.

15 EXAMINER BOJKO: Okay.

16 MR. YURICK: I think there was testimony
17 from Mr. Higgins submitted on behalf of the City of
18 Cleveland dealing with those issues, and I may have
19 misspoke when I said rate design. I apologize.

20 EXAMINER BOJKO: I just wanted to make
21 sure the record was clear and to make sure we all
22 understood that Mr. Higgins has filed two pieces of
23 testimony in this case, one has been withdrawn and
24 one has not.

1 MR. YURICK: I appreciate somebody making
2 that clear. I certainly did not.

3 MR. BREITSCHWERDT: Can you ask OCC? I
4 think they have no questions.

5 EXAMINER BOJKO: OCC?

6 MR. SMALL: No questions, your Honor.

7 MR. BREITSCHWERDT: You're left with me.

8 EXAMINER BOJKO: Schools.

9 MR. BREITSCHWERDT: Thank you, your
10 Honor. At this time may I approach?

11 EXAMINER BOJKO: You may.

12 MR. BREITSCHWERDT: Your Honor, I've
13 already circulated to the other parties in this case
14 what will be marked as we progress Exhibits 3 through
15 8 of the Ohio Schools Council. I will give them to
16 you now as a package. Mr. Fortney, you as well. And
17 then as we proceed, I'll mark them.

18 EXAMINER BOJKO: Thank you.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Breitschwerdt:

22 Q. Mr. Fortney, do you have the CEI Staff
23 Report?

24 A. Yes, I do.

1 MR. BREITSCHWERDT: One additional thing,
2 your Honor, I'm going to also provide the exhibit
3 that has previously been marked Ohio Schools Council
4 Exhibit 1.

5 EXAMINER BOJKO: Which is?

6 MR. BREITSCHWERDT: The Olmsted Falls
7 school calendar. I have extra copies if you would
8 like.

9 EXAMINER BOJKO: No, that's fine.

10 MR. BREITSCHWERDT: Also providing the
11 witness with the direct testimony of expert Howard
12 Solganick which has been filed in this case as Ohio
13 Schools Council Exhibit 2.

14 Q. (By Mr. Breitschwerdt) Good afternoon,
15 Mr. Fortney.

16 A. Good afternoon. My name is Brett
17 Breitschwerdt. I'm an attorney representing the Ohio
18 Schools Council in this case. Since I haven't asked
19 many questions this week, I'll have a few -- I guess
20 zero to be exact, I'll have a few preliminary
21 clarifications just so we're using the same
22 terminology.

23 OSC is referring to the Ohio Schools
24 Council as an acronym. When I refer to Schools

1 generally, I will be referring to the school
2 districts in FirstEnergy's service territory that
3 participate in OSC's Energy for Education II program
4 and that are represented by the Ohio Schools Council
5 as an intervenor in this case.

6 Company generally is FirstEnergy and
7 includes all three operating companies.

8 The acronym E4E2 refers to the Energy for
9 Education program that's currently in place.

10 Did you understand all of those acronyms
11 and clarifications?

12 A. I understand the acronyms, but I probably
13 won't remember them when you use them, so you'll
14 probably have to remind me.

15 Q. That's fine. Mr. Fortney, did you assist
16 in drafting each of the three staff reports in this
17 case?

18 A. Yes, I did.

19 Q. And what portions or sections of the
20 staff reports were you responsible for drafting?

21 A. Pretty much anything except for the rules
22 and regulations portion.

23 Q. Okay. And the purpose of your testimony
24 in this proceeding is to respond to the parties'

1 objections regarding the sections which -- pretty
2 much anything except for rules and regulations of the
3 Staff Report that you drafted; is that correct?

4 A. That's correct.

5 Q. Okay. And your testimony in part
6 responded to the objections of the schools that are
7 related to rate design, correct? Can you not hear
8 me? I can grab a microphone or speak up, I
9 apologize.

10 Can you hear me now?

11 A. I can hear you now, but I did not hear
12 your question.

13 Q. That's fine. I can repeat it. Your
14 testimony in part responded to the objection to the
15 Ohio Schools Council that related to rate design,
16 correct?

17 A. That's correct.

18 Q. And you have analyzed the rate design
19 proposed by the company in this case?

20 A. Yes, I have.

21 Q. And you support the rate design proposed
22 by the company in this case?

23 A. Yes, I have. Yes, I do.

24 Q. All portions of the rate design proposed

1 by the company in this case?

2 A. With the exception of the residential
3 inclining block rate.

4 Q. Okay. As part of the company's proposed
5 rate design you also support the company's proposal
6 to discontinue the current school rate schedules in
7 place for CI and TE, correct?

8 A. I don't believe that that's the exact
9 recommendation. The recommendation is to adopt the
10 structure of the distribution rates which are the
11 voltage-based general service primary, secondary,
12 primary, sub-transmission and transmission, and the
13 one residential schedule.

14 Q. But effectually that would discontinue
15 the current school rates in place for CEI and TE.

16 A. That's correct.

17 Q. Thank you.

18 And you reviewed the testimony of
19 Mr. Howard Solganick who testified on behalf of the
20 Ohio Schools Council?

21 A. Yes, I read Mr. Solganick's testimony.

22 Q. I'd like to turn your attention to your
23 direct testimony, please, page 3 lines 14 and 15. In
24 your testimony you state that you did not complete a

1 detailed investigation of Mr. Solganick's analysis;
2 is that correct?

3 A. That is correct.

4 Q. So you read it but essentially you didn't
5 delve into his analysis.

6 A. That's correct.

7 Q. So did you review Mr. Solganick's
8 analysis of the load characteristics of the school
9 accounts that's contained in his testimony?

10 A. Only through a reading.

11 Q. Did you review Mr. Solganick's testimony
12 where he concluded that schools are being
13 overallocated costs under the proposed distribution
14 rates?

15 A. I read that, yes.

16 Q. Did you analyze Mr. Solganick's testimony
17 where he concluded that the schools are being
18 overallocated costs based on the proposed
19 distribution rates?

20 A. No, I did not analyze that because it did
21 not make a difference in my recommendation.

22 Q. Okay. Did you review Mr. Solganick's
23 analysis of the impact of the proposed distribution
24 rates on the school accounts in Attachment HS-3 for

1 the Ohio Edison service area?

2 A. There again, I read them at the time.

3 Q. But you didn't analyze them.

4 A. I did not analyze them.

5 Q. I'll simplify this. So did you analyze
6 HS-4 regarding the impact of the proposed school --
7 the proposed rates, excuse me, on school accounts in
8 the CEI service area?

9 A. No, I did not.

10 Q. Did you analyze HS-5 regarding the impact
11 of the proposed rates on school accounts in the TE
12 service area?

13 A. No, I did not.

14 Q. Okay. Did you analyze Mr. Solganick's
15 analysis regarding the impact of a fixed contract
16 demand for the summer months on school accounts?

17 A. I did review that, and I believe that his
18 conclusion was based on the faulty interpretation of
19 the tariff provision regarding the contracts.

20 Q. So you reviewed it and did some analysis.

21 A. Yes.

22 Q. Yes, okay.

23 To your knowledge, did the companies
24 review any of these issues Mr. Solganick addresses in

1 his testimony during their rate design analysis?

2 A. I know that the company did a very good
3 job of analyzing the impacts on all of their
4 customers before they made their recommendations. As
5 to whether they did that particularly -- specifically
6 for the schools I do not know.

7 Q. Can you give an example of something, you
8 said all of their customers, something they
9 specifically did to consider the impact that would,
10 you know, the impact -- excuse me. Let me rephrase.

11 Can you give us some specific examples of
12 considerations or analysis that the company took in
13 considering the impact on the schools in their rate
14 design analysis?

15 A. There again, if you read Mr. Hussing's
16 testimony, he gives some things that they looked at
17 in their rate proposal. I don't believe that he
18 references schools specifically, but they looked at
19 various things.

20 One of the things that they looked at was
21 what the impact on the total bill would be to various
22 customers, they looked at what the impact of the
23 distribution bill would be on various customers, in
24 their E-5 schedules that they provided with their

1 filing there is a E-5 schedule that translates every
2 particular rate schedule currently into what the
3 total bill would look like at the proposed schedules.
4 They were very conscientious on looking at the impact
5 on individual customers as well as customer groups.

6 Q. Okay. Would any of those individual
7 customers -- you said they focused on the total bill
8 for various customers, individual customers. To your
9 knowledge were any of those customers schools or
10 school accounts?

11 A. As I said, if you go to their E-5
12 schedules, they reference the current small school
13 schedules and large school schedules and what their
14 current bills are and what their bills would be under
15 the proposed schedule, whether it be GS, secondary,
16 primary, or sub-transmission, I don't know if there's
17 any on the transmission or not.

18 Q. To your knowledge, did they do a more
19 focused analysis on other customer groups besides the
20 schools?

21 A. They obviously looked at customer groups
22 that were affected by their business credit rider and
23 their residential credit rider, yes.

24 Q. Thank you.

1 In responding to the objection of the
2 schools what did you review in preparing your
3 testimony?

4 A. Could I have that reread, please?

5 (Record read.)

6 A. The applicants' filing.

7 Q. I'd like to turn your attention to
8 what --

9 MR. BREITSCHWERDT: I'm sorry, your
10 Honor. At this time I would like to mark Ohio
11 Schools Council Exhibit 3 which is the 1995 CEI rate
12 case order of the Commission.

13 EXAMINER BOJKO: We will mark it for
14 identification purposes.

15 MR. BREITSCHWERDT: Thank you, your
16 Honor.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. Mr. Fortney, do you recognize this
19 document? In the packet that I gave you it would be
20 the first huge document.

21 A. OSC Exhibit 3?

22 Q. That's correct.

23 A. Well, it is what is titled the Summary of
24 the Commission's Opinion and Order on April 11th of

1 1996 in the Cleveland Electric Illuminating Company's
2 Rate Case and the Toledo Edison Company's Rate Case
3 Nos. 95-299-EL-AIR and 95-300-EL-AIR, et al., and I
4 believe the opinion and order in that case is also
5 included.

6 Q. Thank you.

7 Have you read this case at some point in
8 the past?

9 A. I bet back in 1995 I probably read it,
10 yes.

11 Q. And to your knowledge is this the basis
12 for the current rate regime in place for CEI? I can
13 repeat it. To your knowledge is this the basis for
14 the current rate regime in place for CEI?

15 A. This was their last rate case, so yes,
16 whatever came of it resulting in this case would be
17 the basis for their current rate structure.

18 Q. Thank you.

19 Would you please turn to page 54 of the
20 Commission's opinion in this case? Would you please
21 read the second and third sentences starting with
22 "The Schools argue" and ending with "the system
23 experiences its maximum demand"?

24 A. Could you give me a reference where that

1 starts?

2 Q. Certainly. I'm sorry. The second and
3 third sentences of the first paragraph. If you could
4 read those aloud, please.

5 A. "The Schools argue, as does Benedictine,
6 that school rates should reflect that most school
7 buildings are not in use for at least two months of
8 CEI's peak summer period and, consequently, the rates
9 schools pay should reflect the schools' higher load
10 factor usage pattern."

11 Q. And the next sentence as well, please.

12 A. "CEI agrees that schools are less likely
13 than other nonresidential facilities to be operating
14 during summer afternoons, when the system experiences
15 its maximum demand."

16 Q. Did you consider this when preparing your
17 testimony?

18 A. No, I did not go back to the 1995 rate
19 cases that were used to develop bundled rates at that
20 time.

21 Q. But this would have been the last
22 opportunity that the Commission had to review the
23 impact of the schools on essentially the system
24 demand for CEI. Is that correct?

1 A. That would have been the last time CEI's
2 rate tariffs -- revenue requirements were litigated,
3 yes.

4 Q. On the same page in the second paragraph
5 I'd like you to read aloud the sentence starting "By
6 1990" and read the remainder of that paragraph,
7 please.

8 A. "By 1990, when Toledo Edison applied to
9 the Commission to establish school tariff rates, it
10 had already negotiated rate ordinances which covered
11 215 out of 252 schools in the system."

12 Q. To the end of the paragraph, please.

13 A. "The Commission approved Toledo Edison's
14 proposed tariffs covering the remaining 37 schools
15 served by the company in Toledo Edison Company, Case
16 No. 90-717-EL-ATA (August 2nd, 1990). In that case,
17 Toledo Edison recognized that it is less expensive to
18 serve schools than commercial customers and proposed
19 rates which reflect this conclusion."

20 Q. So would you agree with me that in 1990
21 TE concluded that it was less expensive to provide
22 service to schools than to other commercial customers
23 based on the Commission's language in this opinion?

24 A. That's what this part of the order says.

1 I don't know what the final order says, but that's
2 what this part of the order says in describing the
3 proceedings.

4 Q. That's fine, thank you.

5 If you could turn back to your testimony,
6 please. On page 4 of your testimony at lines 3
7 through 6, and I'm going to have to change that
8 language since you just changed it and attributed it
9 to Smokey Robinson. All right, you said "When one
10 attempts to recognize subgroups within classes (that
11 have been reasonably defined) with rate adjustments,
12 it can be like the snowball rolling down the side of
13 a snow covered hill." Is that the correct --

14 A. "It keeps rolling."

15 Q. -- revised language? Thank you, sir.

16 You go on on line 6 to 12 to create
17 distinctions within the school class to suggest it's
18 not a reasonably defined subclass or group; is that
19 correct?

20 (Record read.)

21 A. That was not my intention to suggest that
22 it was not a reasonably defined subgroup. My
23 intention was to show that even within that subgroup
24 there are subgroups, subsubgroups and

1 subsubsubgroups.

2 Q. I see. However, even though there are
3 subgroups and subsubgroups, in 1995 the Commission
4 approved the schools as a reasonably defined class in
5 CEI's rate case, or I guess in '96 according to when
6 the order was --

7 A. I don't know. Did they? We didn't go to
8 the ordering paragraphs in the order. Once again,
9 those were only the describing paragraphs.

10 Q. Right. Did school rates result from the
11 '95 CEI rate case?

12 A. Sir, I believe they did.

13 Q. Are there currently school rates in --
14 I'm sorry.

15 A. Since there are school rates in CEI and
16 Toledo Edison's service territories, I assume that
17 the Commission approved schools as a rate schedule.

18 Q. And since there are school rates for TE
19 currently as well, would you agree that the
20 Commission approved schools as a reasonably definable
21 class to have their own rates as well?

22 A. They must have because there are --

23 MR. JONES: I have to object, your Honor.
24 He already testified he doesn't know what the

1 Commission did there as far as categorizing those
2 groups.

3 EXAMINER BOJKO: That's going to be
4 sustained.

5 Why don't you direct the witness to an
6 ordering paragraph such as the discussion that starts
7 on page 56.

8 MR. BREITSCHWERDT: Thank you, your
9 Honor.

10 Your Honor, I think I'll just move on.

11 Q. (By Mr. Breitschwerdt) Mr. Fortney, at
12 this time I'd like to turn your attention --

13 MR. BREITSCHWERDT: I'm sorry, I guess
14 first I need to mark as Ohio Schools Council Exhibits
15 4, 5, and 6. These would be the 2004 Ohio Edison
16 application in case No. 04-1852-EL-AIS and then the
17 Commission's final finding and order in the same case
18 and the Commission's supplemental and final finding
19 and order.

20 EXAMINER BOJKO: For identification
21 purposes the application filed by Ohio Edison in
22 04-1852-EL-AIS will be marked as OSC Exhibit 4, the
23 finding and order in 04-1852-EL-AIS will be marked as
24 OSC Exhibit 5, and the supplemental finding and order

1 in 05-1852-EL-AIS will be OSC Exhibit 6.

2 MR. BREITSCHWERDT: Thank you, your
3 Honor.

4 (EXHIBITS MARKED FOR IDENTIFICATION.)

5 Q. (By Mr. Breitschwerdt) Do you recognize
6 OSC Exhibit 4, Mr. Fortney?

7 A. I recognize none of these documents.

8 Q. Subject to check, would you accept them
9 to be what they have been proffered to be, the
10 application, order, and -- the applications, findings
11 and order, and supplemental findings and order in the
12 case number?

13 A. I'm not sure what it is I'm supposed to
14 check. I will accept that these are the finding and
15 order and supplemental finding and order and
16 application in that case.

17 Q. Okay. I'd like to allow you a minute
18 just to briefly review them. Specifically what I'm
19 looking for is any reference to the Energy for
20 Education II program.

21 EXAMINER BOJKO: Could you maybe direct
22 the witness to a specific provision?

23 MR. BREITSCHWERDT: I could, your Honor.

24 Q. If you would turn to paragraph 5 of

1 Exhibit 4.

2 EXAMINER BOJKO: Exhibit 5?

3 MR. BREITSCHWERDT: No, your Honor,
4 Exhibit 4. Paragraph 5 of Exhibit 4.

5 Q. Mr. Fortney, if you wouldn't mind to read
6 aloud paragraph 5.

7 A. "'Energy for Education II'" is that what
8 the --

9 Q. That's correct.

10 A. -- "Roman Numeral II, (hereinafter
11 'Energy for Education II')" -- that's very
12 appropriate -- "is a program to be offered by the
13 Company and its affiliated Ohio public utilities, The
14 Cleveland Electric Illuminating Company ('CEI') and
15 The Toledo Edison Company ('TE', together with the
16 Company and CEI, the 'Utilities'), in cooperation
17 with the Ohio Schools Council ('OSC'). The Energy
18 for Education II Program is intended to encourage
19 public primary, and secondary schools to offer
20 additional educational programs structured to improve
21 and develop the job skills that will be necessary for
22 students to effectively participate in employment
23 opportunities in the State of Ohio. Public school
24 districts in the service areas of the Company, CEI

1 and TE may participate in Energy for Education
2 II for, in most cases, the period of 2006 through
3 2008. Such participating school districts will
4 receive a discount off the applicable electric
5 service base rate. In addition, OSC will arrange for
6 a bond issuance (the 'OSC bonds') to provide the
7 funds necessary for the prepayment to the
8 participating school districts' applicable utility
9 for their anticipated electric usage at the beginning
10 of the program period."

11 Q. Thank you very much, Mr. Fortney, I
12 really do appreciate your cooperation in reading
13 these paragraphs.

14 And relating to that I understand that
15 these documents are something you haven't had a
16 chance to review before, if you briefly would look
17 over Exhibit 5 and Exhibit 6, I'll get to my question
18 which is essentially the Energy for Education program
19 impacts school rates currently. I'm sorry, can you
20 strike that question.

21 MR. JONES: Objection.

22 Q. Mr. Fortney, do you know what the Energy
23 for Education program is?

24 A. I believe it was what I just read.

1 Q. Outside of your knowledge based on that
2 reading, do you --

3 A. No, I had absolutely no knowledge of what
4 the Energy for Education II program is.

5 Q. Thank you.

6 So it's correct that you did not consider
7 the Energy for Education program in preparing your
8 testimony.

9 MR. JONES: Objection; asked and
10 answered. He doesn't know anything about the
11 program.

12 EXAMINER BOJKO: He can say whether he
13 reviewed it or knew about it.

14 MR. BREITSCHWERDT: Thank you.

15 EXAMINER BOJKO: It seems obvious to me
16 as well, but let's have it answered. Overruled.

17 A. No, I did not review either the
18 application or either of these two Commission orders.

19 MR. BREITSCHWERDT: I apologize, this
20 line of questioning will essentially request answers
21 to ascertain what Mr. Fortney did or did not review
22 in preparing his testimony, so it may be perceived as
23 repetitive at times.

24 Q. In preparing your testimony did you

1 consider that Ohio Revised Code Section 4905-34
2 provides that public utilities can establish special
3 contracts with political subdivisions at reduced
4 service rates?

5 A. No.

6 Q. In preparing your testimony did you
7 consider that the Energy for Education II Program
8 involves 249 public school districts in FirstEnergy's
9 service territory?

10 THE WITNESS: Can I have that reread,
11 please?

12 (Record read.)

13 MR. JONES: Objection; asked and
14 answered.

15 EXAMINER BOJKO: Sustained. He's already
16 testified he knows nothing about Energy for Education
17 II.

18 MR. BREITSCHWERDT: Your Honor, my point
19 is to direct the witness that this is something that
20 he possibly should have considered in his testimony,
21 in preparing his testimony, because it affects the --

22

23 EXAMINER PRICE: Why don't you ask him
24 that question, then?

1 Q. Should you have considered -- I can do it
2 that way. Should you have considered that the Energy
3 for Education II Program involved 249 public school
4 districts in preparing your testimony?

5 A. It would have had nothing to do with my
6 recommendation, so I don't know why I should have
7 considered it.

8 Q. Okay. Should you have considered that
9 this program involves all public school districts in
10 FE's service territory except for only about five?

11 A. It would have nothing to do with my
12 recommendation, so I don't know why I should have
13 considered it.

14 Q. Should you have considered that the
15 Energy for Education II Program involves a base rate
16 discount of 10 percent excluding the electric fuel
17 component to the schools?

18 A. No.

19 Q. Should you have considered that the
20 program includes all classroom-related accounts of
21 all participating school districts?

22 A. No.

23 Q. Should you have considered that the
24 Energy for Education program and the Energy for

1 Education program discount will end on December 31st,
2 2008?

3 A. No.

4 Q. Should you have considered the fact that
5 this discount will end and that will have an impact
6 on school rates beginning January 1st, 2009?

7 EXAMINER PRICE: Can I ask counsel a
8 question?

9 MR. BREITSCHWERDT: Certainly.

10 EXAMINER PRICE: When you say "rates,"
11 are you saying distribution rates or transmission and
12 distribution and generation rates?

13 MR. BREITSCHWERDT: The latter, the
14 school rates include all three at this point.

15 THE WITNESS: Do we have a question
16 pending? I need it reread.

17 Q. That's fine. Essentially should you have
18 considered the impact on the school customers' rates
19 of losing the additional Energy for Education program
20 discount beginning on January 1st, 2009?

21 MR. JONES: I'm going to object. He
22 already answered he didn't need to consider it and
23 that's been stated, so rather than him keep on
24 saying --

1 MR. BREITSCHWERDT: I don't think that
2 specific question --

3 EXAMINER BOJKO: I think there's some
4 underlying assumptions in your question that I
5 haven't heard any foundation for so I'm going to
6 sustain the objection on a different grounds. Maybe
7 you could break that question up, but I think there's
8 at least some underlying facts in that question that
9 the Bench hasn't heard before.

10 Q. Mr. Fortney, in the paragraph 5 that you
11 read moments or minutes ago, one of the sentences
12 says that "Public school districts in the service
13 areas of the Company, CEI and TE may participate in
14 the Energy for Education II Program -- or "Energy for
15 Education II for, in most cases, the period of 2006
16 to 2008." Would you agree that this means that the
17 program will conclude in 2008, at the close of 2008?

18 MR. JONES: Objection, unless he knows.

19 Q. In your opinion, would you agree that
20 this program --

21 MR. JONES: Objection.

22 EXAMINER BOJKO: I'm going to sustain. I
23 think you've made your point and the witness has
24 testified that he's never seen these documents.

1 These are publicly filed documents, we'll be taking
2 administrative notice of them, they're in the case
3 docket, I think they speak for themselves.

4 MR. BREITSCHWERDT: Okay.

5 EXAMINER BOJKO: He says he knows nothing
6 about the Energy for Education II, so I don't think
7 he can speak to the elements of that or even whether
8 they exist.

9 MR. BREITSCHWERDT: That's fine, your
10 Honor, I can move on.

11 EXAMINER BOJKO: Thank you.

12 MR. BREITSCHWERDT: Certainly.

13 Q. (By Mr. Breitschwerdt) Mr. Fortney, I'd
14 like to direct your attention to pages 24 and 25 of
15 the CEI Staff Report.

16 EXAMINER BOJKO: I'm sorry, which page?

17 MR. BREITSCHWERDT: Pages 24 and 25.

18 Q. These pages set forth the rate and
19 revenue guidelines followed by staff in its review of
20 the companies' rate schedules and rate design,
21 correct?

22 A. I'm sorry, at which --

23 Q. Pages 24 and 25.

24 A. Reference point?

1 Q. The general section titled "Rate and
2 Revenue Guidelines" as a whole.

3 A. Do you want to ask the question?

4 Q. Certainly.

5 A. I was looking for a particular sentence.

6 Q. Not a problem. These pages set forth
7 rate and revenue guidelines followed by staff in its
8 review of the companies' rate schedules and rate
9 design; is that correct?

10 A. That's correct.

11 Q. Would you accept, subject to check, that
12 there's identical language in the TE and OE Staff
13 Reports --

14 A. Yes.

15 Q. -- as the language set forth on pages 24
16 through 25? Thank you.

17 These guidelines --

18 EXAMINER BOJKO: Is that a --

19 Q. -- are summarized on page 25 of the --

20 EXAMINER BOJKO: Wait a second. I'm
21 sorry. Is that a yes instead of a nod?

22 THE WITNESS: It doesn't need to be
23 something to check, I am sure that the exact same
24 language is in all three Staff Reports.

1 EXAMINER BOJKO: The witness nodded, and
2 the record can't reflect a nod, so I wanted to make
3 sure he said yes.

4 MR. BREITSCHWERDT: Thank you, your
5 Honor.

6 THE WITNESS: Sorry.

7 Q. Let's look on page 25 of the CEI Staff
8 Report. These guidelines are summarized. Would you
9 please read the first sentence and the set of bullets
10 beginning with "In summary," please?

11 A. "In summary, electric rates should: Be
12 predicated on cost, be fair, equitable and
13 reasonable, provide for customer understanding, cause
14 minimal impact (sometimes called gradualism), provide
15 continuity in pricing structures, provide the utility
16 the opportunity to recover an authorized revenue by
17 providing for the recovery of costs found proper in a
18 regulatory proceeding."

19 Q. Thank you.

20 Staff's guideline that the electric rate
21 should only cause minimal impacts is a principle
22 that's sometimes called gradualism; is that correct?

23 A. That's correct.

24 Q. In your own words, would you explain what

1 the principle of gradualism means?

2 A. The principle of gradualism normally
3 means no large abrupt rate changes, but if you will
4 read the rest of that page, you will see that some of
5 those -- while all those principles are noble, they
6 are not always able to be met in the same proceeding.

7 Q. Can you give me an example of what an
8 abrupt rate change would be?

9 A. Well, let's just talk about rates in
10 general. If rates are increased 100 percent, that
11 would be an abrupt rate change, but if the revenue
12 requirement approved by the Commission necessitated a
13 hundred percent increase in rates, then the principle
14 of gradualism would -- it's pretty relative so it
15 would probably not be fulfilled.

16 Q. Thank you.

17 Would a 207 percent increase in
18 distribution rates for a school's account comport
19 with the principle of gradualism?

20 A. It depends.

21 MR. JONES: Can I get a clarification?
22 Is that just applied to distribution rates? What's
23 the percentage applied to?

24 MR. BREITSCHWERDT: Distribution rates.

1 Q. Would a 207 percent increase in rates for
2 a school account comport with the principle of
3 gradualism?

4 A. Depends on what the overall rate increase
5 would be, but yeah, I would say 207 percent would be
6 an abrupt change which probably would not comport
7 with the theory of gradualism.

8 Q. Would a 40 or 50 percent distribution
9 rate increase that averages across school customers
10 as a class be gradual?

11 A. It's all relative. It depends on what
12 the overall revenue requirement increase is.

13 Q. If your electric bill increased 40 or
14 50 percent, would you perceive that as gradual?

15 A. Could I have that question reread?

16 MR. JONES: I would object, your Honor.

17 Q. In your opinion.

18 MR. JONES: I would object to that
19 question.

20 EXAMINER BOJKO: Sustained.

21 Q. Mr. Fortney, the first bullet point that
22 you read into the record on page 25 of the CEI Staff
23 Report states that electric rates should be
24 predicated on costs; is that correct?

1 A. That's correct.

2 Q. On page 3, lines 15 through 17 of your
3 testimony -- I'm sorry, I'll allow you a moment to
4 get to that point.

5 EXAMINER BOJKO: Which pages?

6 MR. BREITSCHWERDT: Page 3 of his
7 testimony.

8 A. At page 3?

9 Q. Lines 15 through 17. You state that you
10 do not have any doubt that schools have a different
11 level of cost causation than other groups of
12 customers; is that correct?

13 A. That's correct.

14 Q. When you say "different," does that
15 equate with a lower level of cost causation?

16 A. I don't know that answer. No, that's not
17 what I'm equating it with. They have a different
18 level of cost causation as would any subgroup within
19 a group. That's what -- how rates are done, they're
20 averages.

21 Q. So in your opinion school rates -- strike
22 that, please.

23 Cost causation is the principle that --
24 guidelines in the Staff Report referring to in the

1 first bullet point on page 25, correct?

2 A. Uh-huh.

3 Q. Considering cost causation would also
4 comport with the gradualism principle we discussed
5 earlier?

6 A. I need the question reread.

7 (Record read.)

8 A. Sure.

9 Q. Okay. I'd like to refer you back to page
10 24 of CEI's Staff Report. Would you please read the
11 second paragraph of this page that starts with "Rate
12 design criteria"?

13 EXAMINER PRICE: Are you asking him to
14 read this into the record or read it to himself?

15 Q. Unfortunately, Mr. Fortney, I'm asking
16 you to read it aloud, I apologize.

17 A. That's fine, I read to my grandchild.

18 "Rate design criteria are to be viewed as
19 a package, in that they are interrelated. Although
20 each item can be separately identified and applied to
21 rate schedule determinations, no single standard is
22 overriding in determining proper rate design. The
23 rate schedules which comprise a particular utility's
24 tariff should provide for recovery of expenses found

1 proper in the course of a regulatory proceeding. If
2 the rate schedule is designed on the basis of cost
3 causation, it will provide for expense recovery in
4 the long term, given changes in the customer
5 consumption characteristics. Normally, and to the
6 extent sufficient information is available, cost of
7 service studies and related expense analyses are
8 necessary to determine the appropriate level of
9 revenue to be generated and the appropriate recovery
10 of such revenue."

11 Q. Now, I'm trying to make a comparison.
12 I'd like to refer you back to page 3 of your
13 testimony where on lines 19 through 22 you state that
14 "Within each of those classes there will be
15 individual customers or sub-groups of customers who
16 cause less than average costs of the group as a
17 whole." Can you give an example of a customer class
18 that would cause less than average costs of customers
19 as a whole?

20 EXAMINER PRICE: I'm sorry. Can I ask to
21 have that question back again?

22 (Record read.)

23 EXAMINER PRICE: I don't think your --
24 you asked for a customer class, and his testimony is

1 within the classes there will be individual customers
2 or subgroups.

3 MR. BREITSCHWERDT: I apologize, your
4 Honor, I misspoke.

5 EXAMINER PRICE: You might want to
6 rephrase that.

7 Q. Can you provide me an example of an
8 individual customer or a subgroup of customers within
9 a class similarly situated to schools that cause less
10 than average cost customers?

11 A. Well, almost by definition half of the
12 customers in a class are going to cause less than the
13 average cost causation, but for an example, a church
14 that is open only on Sundays and maybe Wednesday
15 night for prayer meeting would cause less cost.

16 Q. Based on their load profile?

17 A. Based upon their hours of operation, yes.
18 If that's what you want to call load profile, yes.

19 Q. That's what I was referring to.

20 Based on the schools' load profile or
21 hours of operation would you agree the schools are a
22 customer class who have less than average costs
23 compared to other customers in the general service
24 class?

1 A. I have no opinion. I did not do any
2 study. I do not know whether they are or not.

3 Q. Okay.

4 A. In Mr. Solganick's testimony a lot of
5 people say that things aren't always what they seem,
6 and the inverse to that is sometimes things are
7 exactly what they seem, but I don't know in this case
8 whether because it seems that schools have a better
9 load factor, whether that's true or not.

10 Q. And the way you would find out whether a
11 subgroup of customers had a better load factor would
12 be through a cost-of-service study; is that correct?

13 A. That's exactly how you would do it, but
14 it would not make any difference in my recommendation
15 whether they did or not.

16 Q. So you didn't ask the company to prepare
17 a cost-of-service study focusing on the schools as a
18 class.

19 A. No, I did not.

20 EXAMINER PRICE: Why is that,
21 Mr. Fortney?

22 THE WITNESS: Pardon me?

23 EXAMINER PRICE: Why is that? Why
24 wouldn't that change your recommendation?

1 THE WITNESS: In this proceeding the
2 company is proposing rate schedules by voltage and
3 each of the schools receive voltage at some level,
4 secondary, primary, sub-transmission, or
5 transmission. My fear, Mr. Price, is that if we -- I
6 am not antischool, please know that, my fear is that
7 it's a rocky road to go down and, two, within those
8 classes to start recognizing groups of customers who
9 may create less cost than the class as an average.

10 I believe that if the Commission grants
11 the schools special rates based upon that rationale
12 in this proceeding, that in the next proceeding there
13 will be three or four other groups that will be
14 represented as having below average costs and maybe
15 rightfully so, and in three or four years we will
16 once again end up with having 10 residential
17 schedules and 15 general service schedules for each
18 company, and I don't think that's good rate-making.

19 EXAMINER PRICE: Thank you.

20 EXAMINER BOJKO: And is your
21 recommendation now somewhat different than how under
22 a regulated regime things occurred and the schools
23 had a special rate then versus now in deregulation?

24 THE WITNESS: It may be different if

1 there are -- were bundled rates, we were trying to
2 look at things as a whole. There again, I don't know
3 what I would recommend in a generation proceeding.
4 It may be something different than the distribution
5 proceeding.

6 EXAMINER BOJKO: Thank you.

7 EXAMINER PRICE: Apologies,
8 Mr. Breitschwerdt. You may proceed.

9 MR. BREITSCHWERDT: Please.

10 Q. (By Mr. Breitschwerdt) Mr. Fortney,
11 moving on, in preparing your testimony you reviewed
12 the business distribution rider; is that correct?

13 A. Yes, I did.

14 EXAMINER BOJKO: Excuse me. Can we go
15 off the record for a second.

16 (Discussion off the record.)

17 EXAMINER BOJKO: Let's take a 10-minute
18 break and come back at 20 after.

19 (Recess taken.)

20 EXAMINER BOJKO: Let's go back on the
21 record.

22 Could I please have the last question and
23 answer reread, please, before the break.

24 (Record read.)

1 EXAMINER BOJKO: Please proceed.

2 MR. BREITSCHWERDT: Thank you, your
3 Honor.

4 Q. Mr. Fortney, were you responsible for
5 drafting the portion of the Staff Report that
6 addressed this rider?

7 A. Yes.

8 Q. Were you responsible for drafting the
9 portion of the Staff Report that addressed the
10 residential distribution credit rider?

11 A. Yes.

12 Q. And these riders apply to customers
13 served by all three companies similarly?

14 A. In each of the three companies and in
15 each of the riders there are current tariffs that are
16 referenced and they're probably not the same names in
17 any of the companies, so I think the answer to your
18 question is no.

19 Q. Okay. We're going to focus on the rider
20 for CEI. If you could turn to page 30 of CEI's Staff
21 Report, please, and read the first paragraph under
22 the heading "Residential Service Schedule RS."

23 EXAMINER BOJKO: Mr. Breitschwerdt,
24 you're either going to have to speak up or raise the

1 microphone or get a taller microphone because now
2 there's a fan that's kicked in.

3 (Discussion off the record.)

4 EXAMINER BOJKO: Do you need the question
5 reread, or it's just to read the paragraph, correct?

6 A. I'm at page 30, Residential Service
7 Schedule RS.

8 Q. Correct. If you could read the paragraph
9 beginning "Applicant proposes."

10 A. "Applicant proposes to simplify the
11 residential distribution rates from multiple
12 schedules to one uniform tariff design. In doing so,
13 the resulting bills of customers on certain schedules
14 have been rather drastically impacted. To mollify
15 this impact, the Applicant has proposed rider RDC -
16 Residential Distribution Credit. Staff recommends
17 approval of the uniform tariff and the credit rider."

18 Q. Thank you.

19 You would agree that the purpose of this
20 residential credit rider is to alleviate this
21 potentially drastic impact on the proposed rate
22 schedule on the residential customer, correct?

23 A. For those schedules to which it's
24 applicable, yes.

1 Q. Which is? Is that all residential
2 schedules?

3 A. No.

4 Q. Which residential schedules is it
5 applicable to?

6 A. I don't have the company's application
7 to --

8 Q. That's not a problem, you can just strike
9 the question. We'll move on.

10 Can you turn your attention to the first
11 paragraph under the heading "General Service
12 Schedules - GS, GP, GSUB & GT" on page 31 of the CEI
13 Staff Report.

14 A. Yes.

15 Q. Would you please read this paragraph.

16 A. "Applicant proposes to simplify the
17 general service distribution rates for multiple
18 schedules to a voltage-based concept that better
19 matches how the distribution system is designed and
20 how customers physically take service. In doing so,
21 the resulting bills of customers on certain schedules
22 have been rather drastically impacted. To mollify
23 this impact, the Applicant has proposed Rider BDC -
24 Business Distribution Credit. Staff recommends

1 approval of the uniform tariffs and the credit
2 rider."

3 Q. So the purpose of the business
4 distribution credit rider for the schedules to which
5 it applies is to alleviate the potentially drastic
6 impact of the proposed rate schedules on business or
7 commercial customers; is that correct?

8 A. That's correct.

9 Q. Would you agree that the business
10 distribution credit rider comports with the principle
11 of gradualism?

12 A. It was a methodology to reduce the
13 increases to certain customers, yes, so to the degree
14 that it reduces the increases, it probably pertains
15 to the principle of gradualism.

16 Q. And that was its purpose, to reduce the
17 increase for those customers to which it applies.

18 A. That's what I've written in the Staff
19 Report. I forget whether there were other
20 explanations in Mr. Hussing's testimony, but
21 basically I believe that's the overall intent, yes.

22 Q. Would you agree that a rate increase of
23 207 percent for a customer account would be a drastic
24 increase?

1 MR. JONES: Objection. Is this
2 hypothetical? There's no foundation for these
3 percentages.

4 EXAMINER BOJKO: I was trying to
5 determine if it was asked or answered and I don't
6 think he used the word "drastic" before so I will
7 allow it.

8 MR. BREITSCHWERDT: That's correct, I
9 have not, your Honor. I can find a reference in
10 Mr. Solganick's testimony if that's required.

11 EXAMINER BOJKO: No, it's overruled. Go
12 ahead.

13 MR. BREITSCHWERDT: Thank you.

14 EXAMINER BOJKO: Answer.

15 A. In almost every rate schedule that was
16 consolidated into a single rate schedule, whether it
17 would be the residential or the four general service
18 schedules, there are probably going to be what you
19 might call outriders that have very drastic increases
20 or perhaps outriders that actually have decreases
21 depending on the individual customer's load and
22 usage. But, yeah, 207 percent is a drastic increase.

23 Q. And a 40 to 50 percent increase across an
24 average -- or, I'm sorry. Strike that, please. I

1 apologize.

2 Would you agree that a distribution rate
3 increase on average for a customer subgroup such as
4 the schools of 40 or 50 percent would be a drastic
5 increase?

6 A. It may be a drastic increase, but if that
7 was what the revenue requirement necessitated, then
8 it is what it is.

9 Q. So the business distribution credit rider
10 does not apply to the schools, correct?

11 A. There again, I don't have the business
12 rider with me, but no, I don't believe it applies to
13 schools.

14 EXAMINER BOJKO: Is that just because it
15 applies to certain schedules and schools aren't one
16 of those schedules? Is that why you would say that?

17 THE WITNESS: Actually, I may have it
18 with me somewhere. No, I don't. I don't have it
19 with me.

20 EXAMINER BOJKO: I mean is that the
21 concept though, it just applies to --

22 THE WITNESS: Yeah. It lists the
23 particular schedules to which the rider will apply
24 and I don't believe that either small or large

1 schools is listed.

2 EXAMINER BOJKO: Thanks.

3 Q. (By Mr. Breitschwerdt) Should it apply to
4 schools?

5 A. I don't know the answer to that question.

6 Q. In your opinion. Do you have an opinion
7 on the topic?

8 A. No, because I -- in my opinion, no,
9 because I do not believe that the overall increase to
10 the small or large school classes as a result of
11 going to a voltage-based rate design creates as a
12 whole rates and bills which necessitate the business
13 credit rider to apply.

14 Q. But earlier you said that you haven't
15 done an analysis of Mr. Solganick's testimony; is
16 that correct?

17 A. That's correct.

18 Q. And his testimony states that some
19 schools will be impacted up to a 207 percent increase
20 in school rates, correct? And his testimony also --
21 I'm sorry.

22 A. That's correct. I'm sorry.

23 Q. And his testimony also says the average
24 increase for the school class would be 40 to

1 50 percent; is that correct?

2 A. I don't know exactly what his testimony
3 says.

4 Q. Subject to check. I can find it for you,
5 if necessary.

6 A. Let me look at my testimony. It shows
7 that the average increase in CEI for the small school
8 class is 11.31 percent and for the large school class
9 is 2.11 percent. Toledo it's significantly higher,
10 for the small school class it's 36.66 percent, for
11 the large school class, 61.41 percent.

12 EXAMINER PRICE: Mr. Fortney, I'd like to
13 clarify the numbers, the percentage increase that you
14 are talking about there is a percentage increase
15 requested by the company, not the percentage increase
16 recommended by the staff.

17 THE WITNESS: That's exactly right. This
18 is taken from the applicant's two-month update E-4
19 and E-4.1 schedule so it reflects their full
20 requested increase.

21 EXAMINER BOJKO: And also does this
22 reflect the rate design that has been stipulated to
23 in the stipulation and recommendation or is this
24 the --

1 THE WITNESS: No, it would not reflect
2 that.

3 EXAMINER BOJKO: It's as filed.

4 THE WITNESS: As filed, yes.

5 EXAMINER BOJKO: Sorry.

6 MR. BREITSCHWERDT: That's all right,
7 your Honor.

8 Q. (By Mr. Breitschwerdt) Mr. Fortney, if
9 you could turn to page 20 of Mr. Solganick's
10 testimony, please, on lines 3 and 4 his testimony
11 states that "For Ohio Edison the distribution rate
12 increases range from 23.4 percent to 103.6 percent,"
13 so taking the high ends of these numbers, for CEI the
14 distribution rate increase ranges up to 31 percent,
15 for TE the distribution rate increase ranges up to
16 208.5 percent for the small schools schedule. So
17 using those numbers, hypothetically, if they are
18 correct, understanding that you haven't done any
19 analysis of those numbers, should the business
20 distribution credit rider apply to the schools?

21 A. No, because I think you have to look at
22 the class as a whole. You can't look at individual
23 customers.

24 Q. And if the class as a whole had a 40 to

1 50 percent increase in distribution rates, should the
2 business distribution credit rider apply to the
3 schools as a class as a whole hypothetically?

4 A. As I think I already answered, that is
5 really relative to what the overall increase would be
6 and in the case of Toledo Edison the overall increase
7 percent was 44.6 percent, in the case of CEI the
8 overall increase was 24.59 percent.

9 Q. Mr. Fortney, I understand that your
10 analysis has come to a different conclusion of the
11 percentage of increase than what Mr. Solganick has
12 proposed to be correct.

13 A. No, I don't know that they come to a
14 different conclusion. My analysis is by class,
15 Mr. Solganick's analysis I assume is on a
16 customer-by-customer basis. So there was a range
17 from probably the lowest customer impacted to the
18 highest customer impacted.

19 EXAMINER PRICE: So, Mr. Fortney, that
20 being true, since you're talking about a class and
21 he's talking about a customer, although there may be
22 customers that have a 200 percent increase, there
23 also is a possibility there are customers that have
24 minimal increase to get to the average class.

1 THE WITNESS: Or perhaps even a decrease.

2 EXAMINER PRICE: Or perhaps even a
3 decrease.

4 THE WITNESS: Yes.

5 EXAMINER PRICE: Thank you.

6 MR. BREITSCHWERDT: I apologize, your
7 Honor, just allow me one moment.

8 EXAMINER BOJKO: Mr. Fortney, earlier
9 this afternoon you responded to some questions that
10 were regarding agreeing with the company's rate
11 design. In response to those questions did you mean
12 as filed or per the stipulation that's been filed?

13 THE WITNESS: The rate design that they
14 propose for general service customers is a
15 demand-based rate design, so I'm agreeing to the
16 structure, the demand-based structure, and actually
17 the revenue requirement that comes out of the
18 stipulation is not out of line with what the company
19 has applied for in rates themselves. They will be
20 different than what the company applied for because
21 of the revenue requirement, but the structure and
22 relative level will probably remain, you know, close
23 to what they have proposed.

24 EXAMINER BOJKO: So I guess would you

1 agree, then, that you agree with the company's
2 application as well as the stipulation?

3 THE WITNESS: Yes.

4 Q. (By Mr. Breitschwerdt) Mr. Fortney,
5 moving on, would you please turn to Ohio Schools
6 Council Exhibit 1 which is the school calendar for
7 Olmsted Falls School District?

8 A. Yes, sir.

9 Q. Thank you. Running through just moving
10 through this document, new teacher orientation
11 occurred on -- strike that.

12 This document relates to the calendar
13 school year 2007-2008; is that correct?

14 A. For the Olmsted Falls Schools, yes.

15 Q. Correct. New teacher orientation
16 occurred on Thursday, August 16th, 2007, correct?
17 The first line.

18 A. Through Monday, August 20th.

19 MR. JONES: I'm going to insert an
20 objection. I don't know where we're going with this
21 exhibit, what the relevance of this exhibit would be
22 to our proceeding.

23 EXAMINER BOJKO: We've already admitted
24 the document, so we'll give a little leeway on the

1 questions here.

2 MR. BREITSCHWERDT: Your Honor, the
3 relevance is I'm attempting to show that when the
4 company has their peak demand which in the
5 summertime --

6 EXAMINER BOJKO: I overruled, keep going.

7 MR. BREITSCHWERDT: Thank you.

8 Q. The first day of students is August 22nd,
9 2007, correct?

10 A. Correct.

11 Q. Last day of students, June 4th, 2008,
12 correct? At the very bottom.

13 A. Correct.

14 Q. Records day would be June 5th, 2008.

15 A. I'm sorry, I didn't hear that.

16 Q. Records day, the day after the last day
17 for students, is June 5th, 2008.

18 A. Records day takes place on June 5th,
19 2008.

20 Q. Essentially what I'm trying to get you to
21 say is that the schools were not in session during
22 the summertime between June 5th and August 16th.
23 Would you agree to that statement?

24 A. I don't see anything else on this Olmsted

1 Falls school calendar school year 2007 and 2008 that
2 indicates that there were activities taking place
3 between those dates.

4 Q. Thank you.

5 And you didn't review a school calendar
6 preparing your testimony, correct?

7 A. No, I did not.

8 Q. Can you tell me which days during the
9 year FirstEnergy has its highest peak loads for each
10 month?

11 A. I don't know that answer. I imagine it's
12 somewhere in the cost of service explanation.
13 Probably Mr. Stein.

14 EXAMINER BOJKO: Mr. Fortney, do you have
15 knowledge of whether any summer school or summer
16 activities would be listed on that calendar? Do you
17 have knowledge as to whether summer activities are
18 listed or would be listed on such calendar?

19 THE WITNESS: No, I have no knowledge
20 other than what's -- I just read what's on this
21 calendar. I don't know whether there are any
22 activities, recreational activities or anything else.

23 EXAMINER PRICE: Do you know if they have
24 a football team? You don't have to answer that.

1 THE WITNESS: If Olmsted Falls has a
2 football team, they probably begin practice before
3 August 16th, yes.

4 EXAMINER BOJKO: Well, I mean are you
5 familiar with this specific school system?

6 THE WITNESS: No.

7 EXAMINER BOJKO: For instance, do you
8 know if they have air conditioning or anything of the
9 like?

10 THE WITNESS: No, I do not.

11 Q. (By Mr. Breitschwerdt) Mr. Fortney, if
12 you could turn to page 18 of Mr. Solganick's
13 testimony, please. The chart between lines 7 and 8,
14 would you accept, subject to check, that this chart
15 was formulated from Ohio Schools Council Set 1
16 Discovery Request?

17 A. Yes. I'm not going to check it, I'll
18 accept it.

19 Q. I understand. We are running out of
20 daylight.

21 In reviewing this chart, this chart
22 focuses on the coincident peaks, primary peaks, and
23 secondary peaks for CEI -- for OE, CEI, and TE during
24 the months of June, July, and August of 2006; is that

1 correct?

2 A. Yes.

3 Q. And would you agree with the statement
4 that none of these dates occur when school is in
5 session according to the Olmsted Falls school
6 calendar?

7 A. It appears that none of those peaks occur
8 prior to June 5th or after August 16th.

9 Q. Thank you. What's the earliest hour of
10 any peak for any of the companies?

11 A. From Mr. Solganick's testimony?

12 Q. That's correct.

13 A. Are we back to that?

14 Hour 14.

15 Q. And would you agree that this is normally
16 after when summer school would end during an average
17 day?

18 A. 2 o'clock? I don't know how late school
19 is.

20 Q. That's fine, thank you. Moving on. I'd
21 like you to turn to page 3 of your testimony, please.
22 On page 3, lines 11 through 13 you state that
23 "Proposed rate classes are designed by service
24 voltage. Each customer is assigned to the voltage

1 class based on how the customer's physically
2 connected to the companies' distribution system"; is
3 that correct?

4 A. That's correct and that's per the
5 company's application, yes.

6 Q. And that's what we were discussing
7 earlier, that you agree with.

8 A. Yes.

9 Q. Okay. Connected to the companies'
10 distribution system is the primary factor in grouping
11 customers within rate classes under the companies'
12 proposed plan, correct?

13 A. Are you reading from something else now
14 or was that a question?

15 Q. That's a question.

16 THE WITNESS: I need it reread.

17 Q. I could -- please.

18 (Record read.)

19 A. Correct.

20 Q. Focusing on the equipment necessary to
21 physically connect a customer to the companies'
22 distribution system, what additional utility-provided
23 equipment is required to service a secondary service
24 customer as opposed to a primary service customer?

1 A. I'm not an engineer so I don't know.

2 Q. You have no knowledge of the subject? In
3 your opinion, is there any additional equipment that
4 would be necessary to connect a secondary service
5 customer as opposed to a primary service customer?

6 MR. JONES: Objection; he's already said
7 he doesn't know. He's not an engineer.

8 EXAMINER BOJKO: Do you know? I mean,
9 that was your final answer?

10 THE WITNESS: Is there would have to be
11 some type of a transformer that steps the primary
12 voltage down to the secondary voltage.

13 Q. Thank you.

14 Are general service and residential
15 customers served from the same utility-provided
16 secondary service equipment?

17 A. I don't know what you mean by the same
18 equipment.

19 Q. Would the same transformer be used to
20 connect a general service customer on the rate GS
21 schedule and the residential service schedule on the
22 rate RS schedule to the companies' distribution
23 system?

24 A. I don't know the answer.

1 Q. Mr. Fortney, I'm a little confused. My
2 understanding is there's a transformer that connects
3 secondary service customers, correct?

4 A. I don't understand the question.

5 Q. You stated earlier that there's a
6 transformer that's used to connect secondary service
7 customers to the distribution system that's the
8 additional utility-provided equipment that's not
9 necessary for the primary service customers.

10 A. I probably misspoke. There has to be a
11 step-down transformer to convert the primary voltage
12 to the secondary voltage.

13 Q. Okay. And both general service
14 secondary -- secondary service customers can be both
15 general service customers and residential service
16 customers, correct?

17 A. That's correct.

18 Q. So that transformer that is used to step
19 down the electricity from primary to secondary
20 service could be used to service both those general
21 service and residential service customers, correct?

22 A. There again, sir, I'm not an engineer,
23 but yes, I believe that's correct.

24 Q. So essentially they could be connected to

1 the companies' distribution system in the same way
2 using the same equipment physically.

3 MR. JONES: Again, I'd object. I don't
4 think he knows.

5 Q. If you know.

6 A. Residential customers and general service
7 secondary customers are probably served off very
8 similar facilities.

9 Q. Thank you.

10 Would you accept, subject to check, that
11 the vast majority of schools are secondary service
12 customers that are also connected to the companies'
13 distribution system in the same way as GS and RS
14 customers using generally, you know, the same
15 equipment?

16 A. I appreciate the fact that you're trying
17 to get through, but you read that too fast. So I
18 need it reread.

19 MR. BREITSCHWERDT: Would you accept --
20 Maria, would you mind reading it back, please.

21 (Record read.)

22 A. What is it I'm supposed to check? If you
23 could give me a reference, maybe we could check it
24 right now and I can answer the question.

1 MR. JONES: I would just have a
2 continuing objection here.

3 EXAMINER BOJKO: Do you know,
4 Mr. Fortney? Do you know if they're served with the
5 same facilities?

6 THE WITNESS: I don't know if the
7 majority of schools are served off of secondary -- by
8 secondary voltage or primary or sub-transmission.

9 Q. Would you accept that some are?

10 MR. JONES: Objection. He doesn't know.

11 EXAMINER BOJKO: I'd like to hear the
12 witness say he doesn't know.

13 Mr. Fortney, do you know?

14 THE WITNESS: I think as a whole that in
15 all three companies, I don't know if it's true in
16 each of the three companies, but there are schools
17 that are served off secondary, there are schools that
18 are served off primary, there are schools that are
19 served off sub-transmission, I don't know about
20 transmission whether there are or not.

21 Q. So based on the equipment used to connect
22 to the distribution system and based on your answers,
23 residential customers, the schools, and all other --
24 or other general service secondary customers are

1 connected to the distribution system in generally the
2 same way.

3 A. That would be my understanding. Very
4 basic understanding.

5 Q. But there's a different residential
6 service and general service rate, correct?

7 A. There are residential rates and there are
8 general service secondary rates, yes.

9 Q. Even though they're connected to the
10 system in generally the same way.

11 A. Yes.

12 Q. So other factors besides how customers
13 like RS customers could be used in designing rate
14 classes, correct?

15 EXAMINER BOJKO: You're going to have to
16 reread that for me, Maria. Or you can say it again
17 if you want.

18 Q. So other factors besides how customers
19 like RS or residential service customers could -- I'm
20 sorry, that question doesn't make any sense at all.

21 So other factors besides how residential
22 customers are connected to the distribution system
23 could be used in designing rate classes; is that
24 correct? Based on the fact that there --

1 A. In designing rates there are other
2 factors that cause costs for residential customers,
3 general service customers that are also factored into
4 the rates.

5 Q. Right. And those factors could also be
6 applied to the schools in formulating school rates,
7 correct? Your statement in your testimony says "Each
8 customer class is assigned to the voltage class based
9 on how the customer is physically connected to the
10 companies' distribution system."

11 A. That's how they're assigned to a customer
12 class. That's not the only cost causation factors.

13 Q. Okay. So there are differences between
14 the GS and RS customer groups that are the basis for
15 the different customer rates besides --

16 A. Yes.

17 Q. -- the way they're connected.

18 A. Yes.

19 Q. Okay. But there's --

20 A. For an instance, a very basic example,
21 customer billing, there are many more residential
22 customers than there are general service customers so
23 the customer billing allocation is different.

24 Q. So but there's also differences in the

1 way schools -- there's also a difference -- strike
2 that.

3 There's also a difference between schools
4 and other general service customers that could be the
5 basis for separate rates, correct?

6 A. As I think I've stated several times,
7 that there are different customers that take service
8 at the same voltage that have different load and
9 usage characteristics and cause different costs than
10 the average.

11 Q. Thank you.

12 I'd like you to turn to Ohio Schools
13 Council Exhibit 7, please, Mr. Fortney.

14 A. 7?

15 Q. That's correct.

16 EXAMINER BOJKO: We have not marked 7
17 yet.

18 MR. BREITSCHWERDT: I apologize, your
19 Honor. At this time I would like to mark this
20 document which is a discovery response to the Ohio
21 Schools Council as Ohio Schools Council Exhibit 7,
22 please.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Mr. Fortney, do you know what this

1 document is?

2 EXAMINER BOJKO: Can we go off the record
3 for one minute?

4 (Discussion off the record.)

5 EXAMINER BOJKO: Let's go back on the
6 record. Please continue.

7 A. I can read what it is.

8 Q. Thank you. So you would accept that this
9 is a discovery request that the Ohio Schools Council
10 sent to the company, correct?

11 MR. JONES: I will have to object to this
12 document, your Honor. It doesn't pertain to
13 Mr. Fortney. It's been prepared by responses by
14 Mr. Stein to a data request made by OSC.

15 EXAMINER BOJKO: Let's try to lay a
16 little foundation, see if the witness is familiar
17 with this. Mr. Fortney, are you familiar? Have you
18 reviewed this discovery response?

19 THE WITNESS: I never look at the
20 responses to data requests from other parties, no.
21 So I'm not familiar with them.

22 EXAMINER PRICE: Have you ever seen this
23 before, if you know?

24 THE WITNESS: No, I have not. I've not

1 seen this data request before.

2 EXAMINER BOJKO: Have you seen the table
3 that's attached to the data request?

4 THE WITNESS: I have not seen that
5 particular table. I have seen tables like that, yes.
6 But they're a reflection of the line losses.

7 MR. BREITSCHWERDT: Your Honor, the table
8 is what I would like to focus on if that would be
9 acceptable to proceed.

10 EXAMINER BOJKO: Please proceed.

11 MR. BREITSCHWERDT: Thank you, your
12 Honor.

13 MR. BURK: Your Honor, just to clarify
14 for the record, if this is going to be characterized
15 as a response from the company, the attachments are
16 incomplete. It's not a complete document. I don't
17 know how it's going to be characterized, but it's not
18 a complete -- the complete response to this data
19 request is not attached.

20 MR. BREITSCHWERDT: It would seem that
21 Mr. Burk's correct, that only Attachment 1 is
22 currently connected to the response, however,
23 throughout this hearing, your Honor, we've had
24 sections of documents incorporated into the record,

1 and I will be happy to clarify that this is not a
2 complete response, but I would assume Mr. Burk would
3 agree that this is not an inaccurate representation
4 of the companies' response to the Ohio Schools
5 Council.

6 MR. BURK: Well, it is -- it's
7 incomplete. It's a correct -- I mean the Attachment
8 1 is correct. I think that's what you meant to ask.

9 MR. BREITSCHWERDT: That's correct. And
10 I will -- we can have the exhibit -- we can remark
11 the exhibit as the companies' response minus
12 Attachment 2 to Ohio Schools Council Set 1 No. 14. I
13 apologize that I don't have the second attachment.

14 EXAMINER BOJKO: Mr. Burk, would you
15 prefer that the entire document is complete in the
16 record and that we wait and get a complete copy of
17 the response?

18 MR. BREITSCHWERDT: I would be happy to
19 do so.

20 MR. BURK: I would say if the Schools
21 counsel intends to offer this as an exhibit, then I'd
22 want the complete response.

23 EXAMINER BOJKO: Let's move forward. I
24 assume your questions are only based on Attachment 1.

1 MR. BREITSCHWERDT: That would be
2 correct, your Honor.

3 EXAMINER BOJKO: And that you would
4 supplement OSC Exhibit 7 with a complete response if
5 this is going to move and if it is ultimately
6 admitted.

7 MR. BREITSCHWERDT: I will, your Honor.

8 MR. JONES: Your Honor, I again renew my
9 objection to this document even being introduced
10 because the fact that Mr. Fortney didn't prepare it
11 and hasn't reviewed it.

12 EXAMINER BOJKO: I'm waiting to hear a
13 question first. I haven't heard a question.

14 Please proceed.

15 MR. BREITSCHWERDT: Thank you.

16 Q. (By Mr. Breitschwerdt) Mr. Fortney, what
17 is the service voltage for the GS rate class focusing
18 on Attachment 1?

19 A. The service voltage for the GS rate class
20 appears to be from line 2 there of less than 2.4 kV.

21 Q. And the service voltage for the GP rate
22 class?

23 A. I don't see GT.

24 Q. GP, excuse me.

1 A. GP is 2.4 kV to less than 23 kV.

2 Q. And for the RS rate class?

3 A. Less than 2.4 kV.

4 Q. So the service voltage for the GS and RS
5 rate class are the same, correct?

6 A. That's correct.

7 Q. And both are different from the GP rate
8 class, correct?

9 A. That's correct.

10 Q. And the distribution loss for the GS rate
11 class is 6.7, correct?

12 A. Correct.

13 Q. 6.7 percent distribution loss.

14 A. That's correct, according to this table.

15 MR. JONES: Your Honor, I'm going to have
16 to object again. There's no foundation for this
17 exhibit whatsoever.

18 EXAMINER BOJKO: Are you just intending
19 to have him read this into the record or is there a
20 question? Still I haven't heard a substantive
21 question yet.

22 MR. BREITSCHWERDT: The question is to
23 show that the --

24 EXAMINER BOJKO: No; ask him a question.

1 Do not have him read from the table.

2 MR. BREITSCHWERDT: Your Honor, I'm
3 trying to get him to review all of the information so
4 that I can ask the question. If you could allow me
5 one or two more questions.

6 EXAMINER BOJKO: Just ask him to review
7 the table and then ask him a question. Let's just do
8 that. I don't think you need to have the witness
9 read everything into the record.

10 MR. BREITSCHWERDT: That's fine, thank
11 you, your Honor.

12 EXAMINER BOJKO: Mr. Fortney, could you
13 review the table?

14 THE WITNESS: Pardon?

15 Q. Mr. Fortney, after you have a minute to
16 review the table as your Honor requested, I'd like to
17 ask you that even though the service voltage and
18 distribution loss for the GS and RS customer groups
19 are identical, the company's proposed different rate
20 schedules for these customer classes; is that
21 correct?

22 A. That's because the voltage that they take
23 service under isn't the only factor in developing
24 rates. There are many --

1 Q. There's many other factors.

2 A. -- factors in developing rates.

3 Q. At this time I'd like to move on.

4 Mr. Fortney, would you please turn to page 5 of your
5 testimony. I'd like you to focus on your chart
6 entitled "TE & CEI Distribution Rate Increase
7 Proposals."

8 MR. BREITSCHWERDT: At this time I would
9 also like to mark Ohio Schools Council Exhibit 8.
10 Your Honor, what is included in Ohio Schools Council
11 Exhibit 8 I would like to strike from the exhibit
12 essentially the discovery request portion at the
13 beginning. The remainder of it is what was provided
14 to Ohio Schools Council as Mr. Fortney's workpapers
15 in developing his chart on page 5 of his testimony.

16 EXAMINER BOJKO: What is going to be
17 marked as OSC Exhibit 8 are going to be just the
18 workpapers.

19 MR. BREITSCHWERDT: That's correct.

20 EXAMINER BOJKO: So everybody needs to
21 accordingly modify their documents.

22 MR. BREITSCHWERDT: We can take a moment
23 to modify.

24 EXAMINER BOJKO: OSC Exhibit 8 will start

1 with a table entitled Schedule E-4 (Current), and the
2 court reporter has a corrected version?

3 MR. BREITSCHWERDT: She will.

4 Q. (By Mr. Breitschwerdt) Mr. Fortney, do
5 you know what these documents are?

6 A. I assume that they are the copies that I
7 provided to my counsel to provide to you in response
8 to your data request and they are copies of portions
9 of the companies', Toledo Edison's and CEI's,
10 two-month update E-4 and E-4.1 Schedules.

11 Q. To your knowledge, these documents are
12 accurate?

13 A. They are the documents that the company
14 prepared for their two-month update, yes.

15 Q. You used these workpapers to calculate
16 your chart on page 5 of your testimony?

17 A. Yes, I did.

18 Q. Focusing on page 5 of your testimony --

19 EXAMINER BOJKO: Focusing on what? Page
20 what?

21 MR. BREITSCHWERDT: Focusing on page 5 of
22 Mr. Fortney's testimony.

23 Q. On the chart under TE -- one moment while
24 I find your testimony, Mr. Fortney, I apologize.

1 Will you please explain where the values
2 \$1,115,031 and \$537,526 came from?

3 A. Well, on the copies I provided to you I
4 think I have those things highlighted, so I will have
5 to refind them. What was -- which number are we
6 looking for again and which company?

7 Q. For Toledo Edison, \$1,115,031, and then
8 537,526.

9 A. Toledo Edison Schedule E-4 (Current) page
10 1 of 1, line 18, I have a magnifying glass on my desk
11 so I can read these, line 18 small school rate (sheet
12 41), if you go over to the column labeled "Current
13 Revenue Less Fuel Cost Revenue" is the 1,115,031.
14 And what was the other number?

15 Q. \$537,526.

16 A. That's the number right below the number
17 I just read to you.

18 Q. Correct. Using your workpapers where did
19 the values 408,757 come from and the value 330,100
20 come from.

21 EXAMINER BOJKO: I'm sorry, which values
22 are you referencing in Mr. Fortney's testimony on 5?

23 MR. BREITSCHWERDT: If you go to the
24 third column and go down for TE, 408 and 330 are the

1 increases for the small and large school rates.

2 EXAMINER BOJKO: Thank you.

3 A. The 408,757 is the subtraction of
4 1,115,031 from 1,523,788.

5 Q. Thank you.

6 Can you explain where these numbers are
7 in the following pages of your workpapers entitled
8 "proposed" annualized?

9 A. Which numbers are you referring to?

10 Q. The increases, the 408,000 and the 331 --

11 A. The increases are not on the E-4s and
12 4.1s, they are a result of the subtraction of the
13 proposed which are on the E-4.1 schedules and the
14 currents which are taken from the E.4 schedules.

15 Q. So you used the companies' numbers in
16 your analysis; is that correct?

17 A. That's correct.

18 Q. Thank you.

19 So did you review the companies' billing
20 determinants in formulating the chart on page 5?

21 A. Actually, I go back to the previous
22 question, I may have misspoke, there's actually the
23 increase numbers are on the table E-4 on the column
24 labeled "Revenue Increase Less Fuel Cost." So I'm

1 sorry, now I need the new question.

2 Q. That's fine. Did you review the
3 companies' billing determinants in formulating the
4 chart on page 5?

5 A. No, I did not.

6 Q. Thank you.

7 Can you tell us whether the increase you
8 calculate on page 5 and 6 for the schools includes
9 the impact that contract demand provisions will have
10 on the school accounts?

11 A. To a degree that the proposed revenue has
12 to reflect the billing determinants from the current
13 revenue, yes, I believe that they do.

14 Q. I just have a few more questions.

15 A. I'll go back to that previous answer, I
16 may have to clarify that. The contract part of the
17 minimum demand I believe applies to new schools so it
18 would not be reflected in the proposed revenues.

19 Q. I just have a few more questions related
20 to the stipulation that your counsel asked you a few
21 questions on direct examination about earlier. Have
22 you reviewed the stipulation in detail?

23 A. Yes.

24 Q. Paragraph 2 of the stipulation

1 incorporates rate design, correct?

2 EXAMINER BOJKO: It's on page 3,
3 Mr. Fortney.

4 A. Are you referring to for each of the
5 companies the class revenue requirements the results
6 from schedule A will be collected based on the
7 companies' proposed rate design for the GS, GP, GSUB,
8 and GT schedules?

9 Q. I am, thank you. I was going to actually
10 have you read that into the record so it's very nice
11 that you did that already.

12 A. It refers to the rate design the general
13 service schedules not for the residential schedules.

14 Q. And the schools are in the general
15 service schedule, correct?

16 A. Correct.

17 Q. So when you were -- you made the comment
18 earlier that the stipulation is very reasonable,
19 correct?

20 A. That's correct.

21 Q. Were you referring to the revenue
22 requirement of the stipulation as being very
23 reasonable?

24 A. No, I was referring to the whole

1 stipulation as a whole.

2 Q. The whole stipulation, okay.

3 And I believe someone asked this to you
4 earlier but you're not an attorney, correct? So this
5 would not be a legal conclusion.

6 A. I don't think the question you asked me
7 requires a legal conclusion, but no, I'm not an
8 attorney.

9 MR. BREITSCHWERDT: Your Honor, my
10 examination is complete.

11 Mr. Fortney, thank you very much.

12 THE WITNESS: Thank you.

13 MR. BREITSCHWERDT: I apologize for the
14 length of my cross-examination.

15 EXAMINER BOJKO: Company?

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Burk:

19 Q. I just have a few questions, Mr. Fortney,
20 and they focus in on your testimony starting at the
21 bottom of page 2 and it goes over to the top of page
22 3. Do you have that?

23 A. Question No. 7?

24 Q. Yes.

1 A. Okay.

2 Q. Now, would you agree that the companies
3 in their proposal in this case identified which
4 current residential schedules are grandfathered? Do
5 you recall that being part of the companies'
6 proposal?

7 A. I recall it being part of the proposal.
8 I don't recall exactly where it was.

9 Q. Would you agree that grandfathered in
10 this context means that no new customers can take
11 service under those identified rates?

12 A. That's correct.

13 Q. Would you agree that those residential
14 rates identified as grandfathered were grandfathered
15 as of January 1st, 2007, as part of the RCP
16 proceeding?

17 A. It was a combination of the RSP and the
18 RCP proceeding, yes.

19 Q. So new residential customers have not
20 been able to take service under those grandfathered
21 rate schedules at least since January 1st, 2007, and
22 possibly earlier.

23 A. That's correct.

24 Q. And then looking at Mr. Solganick's

1 testimony on page 18.

2 A. Mr. Solganick's?

3 Q. Mr. Solganick's.

4 A. Okay, page 18?

5 Q. Yeah. His chart. Would you agree that
6 those -- the dates on there relate to June 2006,
7 July 2006, and August 2006?

8 A. That's what the chart says, yes.

9 Q. Would you turn back to his Exhibit 1,
10 HS-1, which is the Olmsted Falls schools calendar?

11 A. Is that --

12 Q. It's attached to his testimony.

13 A. Is that different than the one we were
14 talking about before?

15 Q. It's the same one we were talking about
16 before.

17 A. Okay.

18 Q. And you'd agreed with me that's for
19 school year 2007 to 2008?

20 A. Yes. That's what it says.

21 Q. But none of the dates appearing on
22 Exhibit HS-1 occurred during 2006.

23 A. That's correct, the table is from 2006
24 and the calendar is from the school year 2007 and

1 '08.

2 MR. BURK: That's all the questions I
3 have, your Honor.

4 EXAMINER BOJKO: We're back to redirect.

5 MR. JONES: Your Honor, could I confer
6 with Mr. Fortney real quick?

7 EXAMINER BOJKO: Sure. Let's just take
8 two minutes. Can we just do two minutes?

9 MR. JONES: Yes, ma'am.

10 EXAMINER BOJKO: Two-minute recess.

11 (Recess taken.)

12 EXAMINER BOJKO: Let's go back on the
13 record.

14 Mr. Jones, do you have any redirect?

15 MR. JONES: No redirect, your Honor.

16 EXAMINER BOJKO: Okay. Would staff like
17 to move --

18 MR. JONES: Yes, I'd like to move for the
19 admission of the Prefiled Testimony of Robert B.
20 Fortney as Staff Exhibit 18 into the record.

21 EXAMINER BOJKO: Any objection to the
22 admission of Mr. Fortney's testimony?

23 Hearing none, it will be admitted.

24 THE WITNESS: Thank you, your Honor.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER BOJKO: Schools?

3 MR. BREITSCHWERDT: Your Honor, at this
4 time I would like to move for the admission of Ohio
5 Schools Council Exhibits 3, 4, 5, 6, 7, and 8.

6 EXAMINER BOJKO: Let's take these one at
7 a time. OSC Exhibits 3, 4, and 5, and 6 are publicly
8 filed documents that are publicly available. We will
9 take administrative notice of them, but we will not
10 admit them as evidence.

11 MR. BREITSCHWERDT: Thank you, your
12 Honor.

13 MR. JONES: Your Honor, I would object,
14 there's a summary that's provided in front of the
15 opinion, I don't know what --

16 EXAMINER BOJKO: That's typical of the
17 Commission orders, I believe it's prepared by the
18 Commission.

19 MR. JONES: Okay.

20 EXAMINER BOJKO: Now we are down to OSC
21 Exhibit 7, that is the data response from the
22 company.

23 MR. BREITSCHWERDT: And, your Honor, I
24 will supplement that, that was my understanding that

1 that was what the company requested, to supplement
2 Attachment 2 to the data request.

3 EXAMINER BOJKO: Is there any opposition
4 to the complete data response being entered into the
5 record?

6 MR. WHITT: Your Honor, the companies
7 even if the response is complete would object. I
8 don't believe the foundation was ever established by
9 the witness. He said he doesn't review other data
10 responses and he wasn't familiar with the chart. All
11 he did was read some numbers off of it so now not
12 only is there a foundation problem it's irrelevant.

13 MR. JONES: Staff would join that
14 objection also. He had an opportunity to
15 cross-examine Mr. Stein and offer that exhibit at
16 that time and did not.

17 EXAMINER BOJKO: Do you have a response?

18 MR. BREITSCHWERDT: I do to the first
19 one. Yeah, I would say it is not irrelevant in that
20 the numbers were from the company, they were utilized
21 for the purpose of showing that the residential and
22 general service demands were the same on the system,
23 and I think I showed that --

24 EXAMINER BOJKO: I don't want you to

1 testify. Just tell me why you think the document
2 should be admitted.

3 MR. BREITSCHWERDT: That was why it's
4 relevant.

5 EXAMINER BOJKO: Okay.

6 MR. BREITSCHWERDT: And relative to the
7 foundation I feel there was some foundation laid I
8 would assert. As to why it wasn't admitted with
9 Mr. Stein, it --

10 EXAMINER BOJKO: We agree with the
11 companies and staff that the foundation was not laid
12 appropriately and it could have been used with the
13 proper witness which would have been Mr. Stein, so
14 we're going to deny the admission of OSC Exhibit 7.

15 OSC Exhibit 8 is Mr. Fortney's papers
16 which were the E-4 schedules? Any opposition to the
17 admission of those schedules, Mr. Fortney's
18 workpapers?

19 Hearing none, those will be admitted as
20 OSC Exhibit 8.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER BOJKO: Mr. Wright, Mr. Jones,
23 Mr. McNamee, would one of you like to do the
24 admission of Mr. Tufts?

1 MR. McNAMEE: Sure, and actually before
2 we do that, during the cross-examination of
3 Mr. Castle he accepted, subject to check, the
4 arithmetic accuracy of FirstEnergy Exhibit 26. He
5 has subsequently checked that and the arithmetic is
6 correct.

7 At this time we'd ask to have the
8 Prefiled Testimony of Mr. Tufts marked as Staff
9 Exhibit 19 and we would move for its admission
10 understanding that no one has cross-examination.

11 EXAMINER BOJKO: And there are no
12 modifications to Mr. Tufts' testimony?

13 MR. McNAMEE: Not to Mr. Tufts', no.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 EXAMINER BOJKO: Any opposition to the
16 admission of Staff Exhibit 19, Mr. Tufts' testimony?

17 Hearing none, it will be admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 MR. McNAMEE: At this time the staff
20 would call Richard C. Cahaan.

21 EXAMINER BOJKO: Mr. Cahaan, would you
22 please raise your right hand.

23 (Witness sworn.)

24 EXAMINER BOJKO: You may be seated.