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COLUMBUS, OHIO (614) 431-1344

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In the Matter of the Application)
of FirstEnergy Corp. on Behalf of)
Ohio Edison Company, The)
Cleveland Electric Illuminating)
Company and The Toledo Edison) Case No. 99-1212-EL-ETP
Company for Approval of Their)
Transition Plans and For)
Authorization to Collect)
Transition Revenues.)
- - -
In the Matter of the Application)
of FirstEnergy Corp. on Behalf of)
Ohio Edison Company, The) Case No. 99-1213-EL-ATA
Cleveland Electric Illuminating)
Company and The Toledo Edison)
Company for Tariff Approval.)
- - -
In the Matter of the Application)
of FirstEnergy Corp. on Behalf of)
Ohio Edison Company, The)
Cleveland Electric Illuminating) Case No. 99-1214-EL-AAM
Company and The Toledo Edison)
Company for Certain Accounting)
Authority.)
- - -

Hearing Room 11-B/C
Borden Building
180 East Broad Street
Columbus, Ohio 43215
Thursday, May 11, 2000

Met, pursuant to assignment, at 1:30 o'clock p.m.

BEFORE:

Dwight D. Nodes and Steven Lesser, Attorney-Examiners.

VOLUME IV

* DEPONET AFFILIATE * CERTIFIED MIN-U-SCRIPT PUBLISHER *

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MC GINNIS & ASSOCIATES, INC.
COLUMBUS, OHIO (614) 431-1344

1 APPEARANCES:

2 ON BEHALF OF FIRSTENERGY:

3 Arthur E. Korkosz, Esq.
4 Trial Attorney
5 Stephen L. Feld, Esq.
6 James W. Burk, Esq.
7 FirstEnergy Corp.
8 76 South Main Street
9 Akron, Ohio 44308

10 Thomas P. Gadsden, Esq.
11 Morgan, Lewis & Bockius, LLP
12 1701 Market Street
13 Philadelphia, Pennsylvania 19103-2921

14 Kevin M. Sullivan, Esq.
15 Calfee, Halter & Griswold, LLP
16 1400 McDonald Investment Center
17 800 Superior Avenue
18 Cleveland, Ohio 44114-2688

19 Paul T. Ruxin, Esq.
20 Helen L. Liebman, Esq.
21 Jones, Day, Reavis & Pogue
22 1900 Huntington Center
23 41 South High Street
24 Columbus, Ohio 43215

25 ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION
OF OHIO:

Betty D. Montgomery, Esq.
Attorney General of Ohio

By: Duane W. Luckey, Esq.
Section Chief
William L. Wright, Esq.
Robert A. Abrams, Esq.
Assistant Attorneys General
Public Utilities Section
Borden Building
180 East Broad Street - Seventh Floor
Columbus, Ohio 43215-3793

MC GINNIS & ASSOCIATES, INC.
COLUMBUS, OHIO (614) 431-1344

1 APPEARANCES (continued):

2 ON BEHALF OF THE RESIDENTIAL CONSUMERS OF THE STATE OF
3 OHIO:

4 Robert S. Tongren, Esq.
Consumers' Counsel

5 By: Barry Cohen, Esq.
6 Associate Consumers' Counsel
7 Office of The Consumers' Counsel
77 South High Street - 15th Floor
Columbus, Ohio 43266-0550

8 ON BEHALF OF THE INDUSTRIAL ENERGY USERS - OHIO:

9 Samuel C. Randazzo, Esq.
10 Gretchen J. Hummel, Esq.
11 Kimberly J. Wile, Esq.
McNees, Wallace & Nurick
12 Fifth Third Center
21 East State Street - Suite 910
Columbus, Ohio 43215-4228

13 ON BEHALF OF THE GREATER CLEVELAND GROWTH ASSOCIATION:

14 Langdon Bell, Esq.
15 Bell, Royer & Sanders
33 South Grant Avenue
Columbus, Ohio 43215

16 ON BEHALF OF THE OHIO MANUFACTURERS ASSOCIATION:

17 Sheldon A. Taft, Esq.
18 Vorys, Sater, Seymour and Pease
52 East Gay Street
19 Columbus, Ohio 43216-1008

20 ON BEHALF OF ENRON ENERGY SERVICES:

21 Janine L. Migden, Esq.
22 Enron Corporation
400 Metro Place North - Suite 310
23 Dublin, Ohio 43017-3373
24
25

MC GINNIS & ASSOCIATES, INC.
COLUMBUS, OHIO (614) 431-1344

1 APPEARANCES (continued):

2 ON BEHALF OF WPS ENERGY SERVICES, INC., NEW ENERGY MIDWEST
3 AND ENRON ENERGY SERVICES:

4 M. Howard Petricoff, Esq.
5 Joseph C. Blasko, Esq.
6 Vorys, Sater, Seymour and Pease
7 52 East Gay Street
8 Columbus, Ohio 43216-1008

9 ON BEHALF OF STRATEGIC ENERGY, LLC, EXELON ENERGY, COLUMBIA
10 ENERGY SERVICES CORPORATION, COLUMBIA ENERGY POWER
11 MARKETING CORPORATION, MID-ATLANTIC POWER SUPPLY
12 ASSOCIATION, THE OHIO ASSOCIATION OF BUILDERS AND
13 CONTRACTORS, NATIONAL AND ELECTRIC CONTRACTORS ASSOCIATION,
14 THE OHIO MECHANICAL INDUSTRY AND NATIONAL ENERGY MARKETERS
15 ASSOCIATION:

16 Sally W. Bloomfield, Esq.
17 Elizabeth H. Watts, Esq.
18 Amy Straker Bartemes, Esq.
19 Bricker & Eckler
20 100 South Third Street
21 Columbus, Ohio 43215

22 ON BEHALF OF THE AMEREN SERVICES COMPANY:

23 Scott A. Fenton, Esq.
24 Carlile, Patchen & Murphy
25 366 East Broad Street
Columbus, Ohio 43215

ON BEHALF OF THE CITY OF CLEVELAND AND AMERICAN MUNICIPAL
POWER-OHIO:

Jeffrey L. Small, Esq.
John W. Bentine, Esq.
Chester, Willcox & Saxbe, LLP
17 South High Street - Suite 900
Columbus, Ohio 43215

ON BEHALF OF THE CITY OF TOLEDO:

Kerry Bruce, Esq.
Leslie Kovacik, Esq.
Department of Public Utilities
420 Madison Avenue - Suite 100
Toledo, Ohio 43604-1219

MC GINNIS & ASSOCIATES, INC.
COLUMBUS, OHIO (614) 431-1344

1 APPEARANCES (continued):

2 ON BEHALF OF OHIO RURAL ELECTRIC COOPERATIVES,
3 BUCKEYE POWER CORP.:

4 Robert P. Mone, Esq.
5 Scott A. Campbell, Esq.
6 Thompson, Hine and Flory
7 One Columbus
8 10 West Broad Street
9 Columbus, Ohio 43215-3435

10 ON BEHALF OF UNICOM ENERGY:

11 James Mayer, Esq.
12 Taft, Stettinius & Hollister, LLP
13 1800 Firststar Tower
14 425 Walnut Street
15 Cincinnati, Ohio 45202

16 ON BEHALF OF UWUA:

17 Scott H. Strauss, Esq.
18 Spiegel & McDiarmid
19 1350 New York Avenue, N.W.
20 Washington, D.C. 20005-4798

21 ON BEHALF OF THE OHIO SCHOOLS COUNCIL, THE CITY OF
22 BROOK PARK AND THE CITY OF EASTLAKE:

23 Glenn S. Krassen, Esq.
24 Arter & Hadden
25 1100 Huntington Building
925 Euclid Avenue
Cleveland, Ohio 44115-1475

Dane Stinson, Esq.
Arter & Hadden
One Columbus
10 West Broad Street - Suite 2100
Columbus, Ohio 43215

ON BEHALF OF THE OHIO CITIZEN ACTION AND SAFE ENERGY
COMMUNICATIONS COUNSEL - OHIO, AND THE OHIO PUBLIC INTEREST
GROUP:

Henry W. Eckhart, Esq.
50 West Broad Street - Suite 2117
Columbus, Ohio 43215

MC GINNIS & ASSOCIATES, INC.
COLUMBUS, OHIO (614) 431-1344

1 APPEARANCES (continued):

2 ON BEHALF OF CITIZEN POWER AND THE OHIO ENVIRONMENTAL
3 COUNCIL:

4 William M. Ondrey Gruber, Esq.
5 2714 Leighton Road
6 Shaker Heights, Ohio 44120

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P R O C E E D I N G S

- - -

Thursday, May 11, 2000
Afternoon Session

- - -

EXAMINER LESSER: Back on the record.
This is the fourth day.
Mr. Korkosz.

MR. KORKOSZ: Mr. Lesser, I neglected yesterday to add
the additional appearances, which I would like to do at this
time, of counsel for on behalf of FirstEnergy, which will
include Mr. Paul Ruxin, Helen Liebman, and Mr. Thomas P.
Gadsden, who is the subject of a motion for admission pro hac
vice.

EXAMINER LESSER: Thank you.

MR. RUXIN: Could we go off the record?

EXAMINER LESSER: Sure.

(Discussion held off the record.)

EXAMINER LESSER: Back on the record.

Any other preliminary matters?

(No response.)

EXAMINER LESSER: Then are you ready to present your
witness?

MS. LIEBMAN: Yes, your Honor. Thank you.
Call Eugene T. Meehan to the stand.

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1 (Witness placed under oath.)
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1 EUGENE T. MEEHAN

2 of lawful age, being first duly placed under oath, as prescribed
3 by law, was examined and testified as follows:

4 DIRECT EXAMINATION

5 MS. LIEBMAN:

6 Q. Mr. Meehan, would you please state your full name and
7 business address?

8 A. My name is Eugene T. Meehan. My business address is
9 1255 23rd Street Northwest, Washington, D.C.

10 Q. And by whom are you employed and in what capacity?

11 A. I am Senior Vice-President with National Economic
12 Research Associates, NERA.

13 MS. LIEBMAN: Your Honor, I'd like to have marked for
14 identification as FirstEnergy Exhibit 10 the direct testimony of
15 Eugene T. Meehan.

16 - - -

17 Thereupon, FirstEnergy Exhibit No. 10
18 was marked for purposes of identification.

19 - - -

20 BY MS. LIEBMAN:

21 Q. Mr. Meehan, do you have in front of you what's been
22 marked as FirstEnergy Exhibit 10?

23 A. Yes.

24 Q. And is this the direct testimony that you prepared and
25 filed in this case?

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1 A. Yes.

2 Q. Was that testimony prepared under your -- by you or
3 under your direct supervision?

4 A. Yes, it was.

5 Q. Do you have any corrections or additions to that
6 testimony?

7 A. I have three corrections.

8 Page 13, Line 4, the word "eight" should be "seven";
9 Page 14, Line 5, the verbs are missing from the sentence, so
10 after the word "capital" and before the comma, the word "was
11 used" -- or, the two words "was used" should be inserted; and
12 Page 15, Line 16, there's a space missing between the word
13 "bill" and "neutrality", and that's the corrections that I have
14 at this time.

15 Q. Mr. Meehan, if I were to ask you today the questions
16 that are in your direct prefiled testimony, would your answers
17 be the same as those contained in the document as mod- -- as
18 corrected by you?

19 A. Yes.

20 Q. And are those answers true and correct to the best of
21 your knowledge, information and belief?

22 A. Yes.

23 MS. LIEBMAN: Your Honor, I offer Mr. Meehan for
24 cross-examination, and would move the admission of FirstEnergy
25 Exhibit 10.

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1 EXAMINER LESSER: Thank you. Subject to
2 cross-examination.

3 MR. SMALL: Excuse me, that was 10?

4 EXAMINER LESSER: Yes.

5 MR. SMALL: Thank you.

6 MR. BRUCE: I'll go first.

7 - - -

8 CROSS-EXAMINATION

9 BY MR. BRUCE:

10 Q. Mr. Meehan, my name is Kerry Bruce, I represent the
11 City of Toledo. I see a lot of your qualifications, but I don't
12 really see a title in your testimony as to whether you're an
13 economist, accountant, an engineer. How would you describe
14 yourself?

15 A. An economist.

16 Q. Would it be fair to state that as a summary of your
17 testimony, that you say the economically efficient price for
18 shopping credits is the market price?

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

20 Q. All right. Can you tell me what the economically
21 efficient price for shopping credits is?

22 A. I believe it's the market price plus what I call the
23 utility supply cost. It's the -- what we call the incremental
24 or avoided cost of the utility supplying these default or
25 standard offer generation service. Primarily, it consists of

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1 the wholesale market price, but then adjusted for the utility's
2 incremental supply cost.

3 Q. All right. As I proceed, when I refer to the market
4 price, I will be referring to the market price plus supply cost.

5 A. That's fair.

6 Q. Okay. You indicate that using a market price for
7 shopping credits encourages retailers to add value to their
8 services. How does it do that?

9 A. Well, I believe it encourages retailers to add value
10 to their services because retailers have access to the same
11 market, can buy that at the market price and pass it through to
12 customers.

13 But in order to cover their customer acquisition
14 costs, the extra costs that they have -- that FirstEnergy would
15 not necessarily have, they are incented to have to do some
16 creative things to add value to make it worthwhile for the
17 customer to buy from the retailer, to make it a value-adding
18 proposition.

19 Q. You feel that even including the innovative services
20 that they have to offer, that they can still make a profit?

21 A. Yes.

22 Q. You don't feel that it's necessary for a marketer to
23 come in with the pricing that you've established and take losses
24 for several years?

25 A. Well, I think you have to look at a profit over a time

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1 frame. I'm not saying they can make -- that they will all make
2 an immediate profit, but certainly ones that provide those
3 value-added services could make a profit.

4 There's going to be some sort of investment that any
5 new business is going to have to establish itself and recover
6 those costs over multiple years.

7 Q. You indicate that it provides retail customers with
8 access to the electric market by using market rates. Can you
9 explain that?

10 A. Well, I think one of the most important things in the
11 deregulation of generation is that retail customers have access
12 to the wholesale market in an efficient manner and at the lowest
13 possible cost.

14 The biggest impact of generation isn't at the retail
15 level, it's at the wholesale level where the operation, the
16 investments, the financing in plants are no longer done by a
17 utility under a regulatory compact of cost recovery, but they
18 are all done at investor's risk.

19 And I believe one of the key points of retail
20 competition is to set up a framework where customers can get
21 efficient and direct access to the benefits of that market
22 without being exposed to added costs that are either unnecessary
23 or did not exist before.

24 Q. What kind of added costs are you talking about?

25 A. They could be the marketing cost, customer acquisition

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1 cost, costs that retailers or competitive retailers may have
2 that a standard offer default service supplier would not have to
3 the same degree or magnitude.

4 Q. Why wouldn't they be subject to marketing costs?

5 A. Well, on a standard offer service there really is no
6 marketing cost. The utility supplies from the market and passes
7 through the market price to customers. It doesn't market to
8 acquire customers.

9 Q. But we're talking about the retailers here. I assume
10 that your statement was that it provides retailers -- retail
11 customers access to the market which includes retail marketers.
12 Wouldn't the customers also be subject to the marketing costs of
13 the retail marketers?

14 A. Yes, but by having the efficient standard offer price,
15 those customer acquisition and retailing costs, there's an
16 incentive for the marketer to cover those by saving in other
17 ways and providing value to customers. Customers are not --
18 have an alternative to those costs which is the efficient --
19 economically efficient price standard offer service.

20 Q. And is it your proposition that by not having to bear
21 those costs, that the customer gets the service at the lowest
22 possible price, or at the market-efficient price?

23 A. Well, by having an alternative where those costs are
24 not incurred by the standard offer supplier, by having the
25 customer have the alternative of being able to take advantage of

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1 that alternative, yes, I believe that is the economically
2 efficient price.

3 Q. All right. You indicate that the customers also don't
4 experience transaction costs of supplier evaluation. What do
5 you mean by that?

6 A. Could you give me a reference to that? I want to make
7 sure of the wording on that.

8 Q. It's on Page 7. Looks like it's Line 10.

9 A. What I'm saying there is that a standard offer
10 generation service that's at the incremental cost of the
11 utility, the market cost plus the utility's -- incremental
12 utility supply cost enables customers to gain the benefits of
13 generation deregulation without being exposed to the higher
14 transaction cost structure that may exist for competitive
15 retailers.

16 Q. I thought you were initially saying that the market
17 price of a retailer, competitive retailer, would be the same as
18 the incumbent generator for all intents and purposes because the
19 marketer has to at least match that price, and then customers
20 would switch to the retailer due to innovative pricing or
21 services that the regulated utility could not offer.

22 A. I don't believe I said that. I said --

23 Q. Can you clarify that?

24 A. I said that would be the benchmark against which they
25 would have to compete, and that they would somehow have to find

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1 a way to add value relative to that benchmark.

2 Q. Would you expect that there would be switching if the
3 competitive retailers had prices higher than the regulated
4 utility?

5 A. There could be instances where that would happen. It
6 would depend what the whole value proposition was.

7 Q. Did you have any assumptions -- You indicate that
8 there could be 20 percent switching with the shopping credits
9 that you've proposed. Did you make any assumptions as to
10 whether those marketers would be able to -- the prices would
11 exceed or beat the price of the regulated utility?

12 A. I didn't make any specific assumption in that regard.
13 I believe that there could be 20 percent switching, with the
14 prices that I have proposed. I believe that the experience in
15 other states, particularly in California, would demonstrate that
16 that is -- that that is possible. The prices that I have
17 proposed are market-based prices with incremental supply cost,
18 and for large customers we've seen circumstances where, in that
19 same circumstance, we've seen substantial switching levels.

20 Q. But you don't have any -- as an economist, you don't
21 believe there's a cut-off anywhere as to price such that any
22 retail marketer that has a price that exceeds the incumbent
23 utility at some point is going to find no switching customers?

24 A. I think price is a very important component of
25 competition, and I think if the price is substantially higher,

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1 it's going to be more difficult to attract customers, but it's
2 not impossible.

3 Q. You also indicate that -- Well, let me go back.

4 If there are a number of marketers along with the
5 incumbent utility, you indicate that the customers don't
6 experience the costs of alternative supplier evaluation. How do
7 they select their supplier if they don't have these costs?

8 A. Well, a customer who can -- stays with the utility
9 service, that's a market price service, will not have to
10 experience that -- the transaction cost of switching.

11 Now, they may actually go through that evaluation and
12 still decide to stay with the utility as well.

13 Q. All right. Maybe you should define for me what you
14 believe are the costs of supplier evaluation.

15 A. That would really be the time that someone would take
16 to look at alternative offers, as well as the uncertainty that
17 they may have in switching to a supplier with whom they are not
18 sure of what the business relationship would be.

19 Q. And I can see that customers who stay with the
20 utility, the incumbent utility, don't have those costs, but
21 anyone who switches, and you're assuming that 20 percent of the
22 load is likely or could switch, isn't it true that those
23 customers would have those costs?

24 A. Customers who switch would have to go through that
25 type of evaluation, yes.

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1 Q. All right. I guess I'm still not sure I understand
2 when you say that by setting the shopping credit at market-based
3 pricing, that customers do not have to experience transaction
4 costs of supplier evaluation.

5 You didn't clarify that and say it only applies to
6 those who stay with the incumbent utility, you seem to be saying
7 that that applies to all customers. Perhaps you can clarify
8 that for me.

9 A. Well, it would apply to those who -- Certainly those
10 who don't do the evaluation wouldn't experience the cost. Some,
11 I guess, would experience the cost and still decide not to
12 switch, or some would experience it and still decide to switch.

13 Q. So that statement really should be modified so that it
14 only applies to customers who don't switch?

15 A. Well, maybe the portion with respect to alternative
16 supplier evaluation would be -- could be modified so it applies
17 to those who don't do the evaluation, but the portion of the
18 statement, I think the larger portion of cost dealing with
19 alternative supplier marketing and those costs would be true
20 for --

21 Q. Can you elaborate on that --

22 A. -- both.

23 Q. -- supplier marketing?

24 A. Yes. I would expect that one of the things suppliers
25 will do is they will have to reflect somehow their marketing or

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1 customer acquisition costs in their pricing.

2 Q. I say generically, you're saying they're going to have
3 to eat those costs?

4 A. I think I said the opposite.

5 Q. Okay. You're saying they will have to reflect that in
6 their pricing?

7 A. They will have to reflect that in their pricing
8 somehow, yes. And then add value to overcome those costs.

9 Q. I'm still looking at that sentence. It says it
10 enables customers to gain the benefits of generation
11 deregulation without experiencing the transaction costs, I
12 assume, of supplier market?

13 A. Let's define it. What it is, is an efficient standard
14 offer price that's based on the utility incremental supply cost.

15 Q. If the efficient standard offer is reflected in the
16 marketing price, then how does a customer avoid it?

17 A. The utility doesn't incur any marketing costs for
18 standard offer service.

19 Q. Again, we're only talking about the utility, customers
20 who stay with the utility, we're not talking about competitive
21 retailers?

22 A. Well, all customers would have the opportunity for
23 these benefits, but right, it would not apply to -- we're
24 talking about the benchmark price, their standard offer service,
25 not the price of competitive retailers.

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1 Q. I assume when you're answering the question regarding
2 market-based shopping credit, that that is the shopping credit
3 that a marketer, in essence, has to compete against. I'm sorry,
4 I assume that your answer to this question dealt with the
5 customers who would switch?

6 A. It's the utility standard offer price. I don't think
7 it deals just with customers who would switch, no.

8 Q. You indicate, I believe it's in this same -- beginning
9 on Line 14, that this type of offering ensures that the benefits
10 to be gained from generation deregulation are not lost to
11 customers in the transaction costs associated with switching
12 suppliers.

13 Judging by what you've just said, is it fair to state
14 that if you don't switch from the regulated utility, that's what
15 you're referring to, is that you don't lose -- you don't pay
16 transaction costs?

17 A. I wouldn't limit it to that. I think it's fair to say
18 that if you don't switch you're not exposed to these transaction
19 costs. If you do switch, one of the hallmarks of having an
20 efficient benchmark price is that even though you will be
21 exposed to these transaction costs, there will have to be value
22 added that will cover these transaction costs.

23 What's inefficient is not these transaction costs in
24 and of themselves. It could be quite efficient to have these
25 transaction costs, but then have retailers come up with

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1 offerings that somehow add value to overcome or recover these
2 transaction costs.

3 What is inefficient is injecting a new series of costs
4 into the system, evaluation cost, marketing cost, without
5 similarly injecting into the system the value-added services to
6 offset the costs.

7 That is the -- That's the inefficiency that can occur
8 if you set an artificially high competitive benchmark price, and
9 if you have a system where retailers have an incentive to have
10 to recover their marketing costs, and the evaluation cost for
11 value-added services, but can recover those costs simply because
12 the benchmark price has been set at too high a level.

13 Q. You indicated these inefficient costs. Would an
14 incentive -- what you call an incentive transition component be
15 an inefficient added cost?

16 A. I believe it is, yes.

17 Q. In your testimony, you say there's no valid reason to
18 create an incentive to the shopping credit. Is that still true?

19 A. Could you refer me to that again?

20 Q. Top of Page 8.

21 A. Yes, from an economic perspective, I don't believe
22 that there is any reason to create an incentive transition
23 component.

24 Q. You indicate that if you do create an incentive cost,
25 efficient retailers will not prevail. Can you explain that?

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1 A. I don't believe I said that. Could you give me a
2 reference to that?

3 Q. Look at Line 17, Page 8. It appears you're stating
4 that the disadvantage of offering an incentive is that the most
5 efficient retailers will not capture market share. I simply
6 turned that around and indicate that -- Well, can you explain
7 this to me?

8 A. Yes, I can explain that. With the incentive
9 transition component above the utility incremental supply cost,
10 what I mean by this is not that the most efficient of the
11 retailers won't get the market share that's there to get, but
12 that you can have situations where retailers who have cost and
13 add new cost to the system, be it marketing cost, customer
14 administration cost, cost above what would be associated with
15 standard offer service would capture market share. And there
16 would be extra cost in that case involved in supplying
17 customers' electricity demand. It would be more efficient for
18 more of the customers to stay on standard offer service, and
19 that is what I mean by that.

20 Q. All right. Are you indicating that by providing an
21 incentive, that more customers are likely to stay with the
22 standard offer than to switch?

23 A. No, by providing an incentive, less customers are
24 likely to stay with the standard offer than to switch, but that
25 is not an efficient solution if the standard offer has lower

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1 marketing costs, lower administration cost, than the competitive
2 retailers. That would be an inefficient solution.

3 Q. All right. I thought you indicated that an efficient
4 retailer -- Let's move on.

5 You also indicate that an incentive will not encourage
6 a retailer to offer innovative services. How would that work?

7 A. I said it will not provide the right incentive. The
8 incentive transition component, in my mind, I think according to
9 economic theory, would not provide the right economic incentive.

10 The retailer would be able, even if it had higher
11 costs than the cost of supplying standard offer service, would
12 be able to capture market share without developing new products
13 and innovative value-added solutions.

14 When the price is set at the economically efficient
15 level, the only real way for the retailer to prosper is to
16 provide these value-added services.

17 Q. Wouldn't the efficient retailers be able to undercut
18 the price of the inefficient retailers?

19 A. They would still be able to do that, yes, but that's
20 correct.

21 Q. But you would still -- you still expect a certain
22 level of customer switching to the inefficient retailers?

23 A. The inefficiency is the switching away from the
24 standard offer service, which has lower overall cost of supply,
25 even to the efficient retailers who have higher costs than the

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1 standard offer service.

2 Q. And that's because of the transaction costs that are
3 involved?

4 A. Exactly.

5 Q. Did you ever quantify the type of costs we're talking
6 about?

7 A. I've seen various studies of them, but I have not
8 quantified them, no.

9 Q. You indicate that if there is an incentive offer, that
10 there will be long-term consequences.

11 A. Yes.

12 Q. Can you explain what those long-term consequences are?

13 MS. LIEBMAN: Mr. Bruce, do you have a page reference?

14 MR. BRUCE: It's Page 8, Lines 20, 21.

15 THE WITNESS: Well, I have a few concerns, they are
16 right there in the testimony, that if we have an incentive and
17 we induce people to switch because of the incentive, we haven't
18 really taken a lot of these transaction costs out of the system,
19 and once they switch there will be customer inertia, and they
20 will be exposed to, I think, perhaps higher pricing from the
21 competitive retailer as they will have to go through a whole
22 other set of transaction costs to evaluate another switch.

23 I think it's less likely that that will happen if
24 these customers have been attracted into the market by
25 value-added services, what I would call pulled into the market

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1 rather than pushed into the market, because the standard offer
2 price has been set higher than necessary.

3 I believe all the other long-term consequences is we
4 don't have that incentive from the get go, that in order to get
5 customers and cover those marketing costs, retailers have to
6 develop the value-added services.

7 Instead, they can just compete against each other to
8 draw customers away from an overpriced standard offer service
9 offering, and I think that that's also a negative long-term
10 effect. I think a slower rate of switches would, as I say on
11 Page 9, Lines 7 to 8, in the longer term be more than
12 compensated for by better quality of offerings.

13 BY MR. BRUCE:

14 Q. Down the road, what would be the impact of having such
15 incentives in the marketplace? You've indicated that there
16 would be -- the marketplace would be overpriced. Are there any
17 other long-term consequences for customers?

18 A. The two that I'm most concerned about were the ones
19 that I just spoke of.

20 Q. Are there any adverse impacts to the company, to the
21 incumbent utility?

22 A. Of what?

23 Q. Of having an inefficient marketplace in terms of
24 customers leaving the standard offer and going to market --
25 retail marketers because of this artificial incentive?

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1 A. I don't think that there's any real negative impact on
2 the company, as long as every GTC and RTC recovery are fully
3 provided for. I don't think there's any negative impact.

4 Q. You say the GTC and RTC are altered by the fact that
5 more customers switch than would have switched in an efficient
6 marketplace?

7 A. I don't believe there would be a significant
8 alteration of GTC and RTC, no.

9 Q. Let's get into the switching. You've indicated in
10 your testimony that you believe it's likely or possible for 20
11 percent -- for the legislature under Senate Bill 3 to be met
12 with your shopping credits; is that correct?

13 A. Yes.

14 Q. And you believe that that can be accomplished midway
15 through the transition period?

16 A. I believe that it's possible that it could, yes.

17 Q. Can you quantify "possibly"? Are we talking better
18 than 50/50?

19 A. I haven't quantified it, but I think it would be in
20 that range, a little better than 50/50. I think it depends -- I
21 think it's almost -- much better than 50/50, very highly likely,
22 that with the shopping credits that I have proposed, that your
23 larger customers, your industrials and your large customers
24 always would meet that target midway through the shopping
25 period. With residentials, I believe that it's possible, given

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1 municipal aggregation.

2 Q. How dependent is that possibility of meeting the 20
3 percent goal for residential/commercial customers on
4 aggregation?

5 A. Well, I think as I indicate in my testimony, it's very
6 dependent with the shopping credits that I have proposed. I can
7 give you a reference. I guess on Page 20, Lines 20 to 22, and
8 again, this is with the shopping credits that I have proposed
9 which don't have an incentive component, I say that, "All else
10 being equal, it appears unlikely that a market-based shopping
11 credit for residential customers would result in a level of
12 individual customer switching that would meet the 20 percent
13 goal".

14 I go on to discuss municipal aggregation, and I
15 believe that the municipal aggregation provisions do make it
16 possible that the 20 percent switching target could be met at
17 the shopping credits that I have midway through the period.

18 So it's really for residential, I believe, with the
19 shopping credits that I have proposed, it's very dependent on
20 municipal aggregation, whether you'll get the 20 percent.

21 Q. Mr. Meehan, are you aware that several stipulations
22 have been filed in this case?

23 A. I am, yes.

24 Q. Are you aware that the stipulations provide for
25 incentives?

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1 A. Yes, I am.

2 Q. Have you looked at the numbers that are stated in
3 the --

4 A. Generally. I haven't studied the stipulations, but I
5 have looked at the numbers.

6 Q. So you're relatively familiar with the level of
7 incentives that are proposed?

8 A. Yes.

9 Q. On Page 10 of your testimony, you indicate that in
10 order to develop market-based shopping credits, the shopping
11 credits should be load-weighted. I'm looking at Line 4.

12 A. Yes, I do.

13 Q. Do you know if the shopping -- the incentives --
14 incentivized shopping credits in the stipulations are
15 load-weighted?

16 A. Yes, they are.

17 Q. Do you know if a simple arithmetic average was used to
18 calculate those shopping credits?

19 A. No. It's my understanding that they are load-weighted
20 shopping credits and that they were based upon the numbers that
21 were developed in the work that I had done using the load
22 profiles and the hourly market prices.

23 Q. And you believe that that load weighting remains in
24 place with the incentive that's being added?

25 A. Sure, without a doubt. It's a percentage adjustment.

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1 Q. What about the impact of setting aside a certain block
2 of power in terms of the efficient marketplace, does the fact
3 that the incumbent utility is putting forward a block of power
4 to be used by retailers detract from, enhance, what you would
5 call a market efficient competitive playing field?

6 A. I think it's neutral with respect to a market
7 efficient competitive playing field. It focuses the efficiency
8 just on the retailing side of things.

9 Q. Can a marketer benefit by using this power that's been
10 set aside?

11 A. Yes.

12 Q. And you don't feel that's an artificial incentive that
13 releases -- that causes the marketer to avoid costs that a
14 marketer otherwise would have incurred?

15 A. I don't believe that that's an artificial incentive,
16 no.

17 Q. Why is that?

18 A. You're really just setting aside power, you're really
19 just equating -- you're taking a portion of the shopping credit
20 and making power available at that rate. It's been done in
21 other situations.

22 It's not providing an adder, it's just really ensuring
23 that for some portion of the -- of the competitive supply that
24 supply is available at the more prevailing market price, really,
25 that the credits equal to the market price for that portion.

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1 Q. You feel it's inefficient for 20 percent of customers
2 to have the -- have access to this block of power and the other
3 80 percent don't?

4 MS. LIEBMAN: Excuse me, may I have the question
5 reread, please?

6 EXAMINER LESSER: You want the question repeated?

7 MS. LIEBMAN: Yes, please.

8 (Record read back as requested.)

9 THE WITNESS: No, I don't --

10 MS. LIEBMAN: I'm going to object to the question.

11 EXAMINER LESSER: Basis?

12 MS. LIEBMAN: I don't believe Mr. Bruce has laid a
13 foundation for the assumptions that are in that question.

14 EXAMINER LESSER: Sustained.

15 BY MR. BRUCE:

16 Q. Mr. Meehan, are you aware that the power that's being
17 offered by FirstEnergy is limited to 1,120 megawatts of power?

18 A. Yes.

19 Q. Is it your understanding that that amount of power is
20 sufficient to serve all of the customers in the FirstEnergy
21 service territory?

22 A. No, it is not my understanding.

23 Q. Is it then safe to assume that there will be customers
24 who will not have access to that power?

25 A. Yes.

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1 Q. Does that create a two-tiered competitive standard?

2 A. I don't believe so. I don't believe it's inefficient
3 at all. I believe I testified it was a neutral from my
4 perspective, with respect to efficiency, the availability of
5 that power.

6 All customers have a shopping credit that's based upon
7 the market prices plus FirstEnergy's incremental supply cost,
8 even adjusted for these shopping incentives. The fact that
9 there's an amount of market power made available equal to that
10 shopping credit certainly may help provide a jump start to the
11 market, but I don't think it has any economic efficiency
12 impacts.

13 Q. Let's look at it a different way. Let's say we have
14 two marketers, one who has access to the FirstEnergy power and
15 one who doesn't. Does either one of those have an advantage
16 that you're aware of?

17 A. I'd say the one who has access would, of course, have
18 supply at a price equal to the credit before the incentive. The
19 one who doesn't may be able to get power more or less
20 expensively, so I'm not sure who would have the advantage.
21 There could be some circumstances where one would and other
22 circumstances where another one would.

23 Q. Do you have any opinion as to whether or not the
24 incentive offered by the company for that 20 percent -- for that
25 blocked power is above or below market rates?

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1 A. I believe that it's at market rates, not the
2 incentive, but the actual price for the power is, I believe, at
3 market rates.

4 Q. And what about the power that does not have the
5 incentive applied?

6 A. All the power has the incentive applied that I'm aware
7 of.

8 Q. My understanding is that there's a block of power that
9 is being offered by the company to marketers on a first-come
10 basis, and that's a limited amount.

11 A. I believe that's correct, but there's no differential
12 in the incentive associated with that block versus any other
13 power that a retailer may use.

14 Q. If you're the marketer who takes the last 20 megawatts
15 of the 1,120 megawatts that's available, do you get a better
16 price for that power than the marketer who comes on afterward
17 and buys 20 megawatts from FirstEnergy?

18 A. Not necessarily, no.

19 Q. All right. After the market development period ends
20 and these incentives -- Let's say when the incentives fall off,
21 what happens to the marketplace at that point in terms of
22 customers who switch?

23 A. I think a lot of that will depend upon how standard
24 offer service price is priced in the future. My understanding
25 of Senate Bill 3 is that the utility would actually be required

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1 to price a market-based standard offer offering, and as part of
2 developing that also would be required to go out to get a
3 competitive bid for the wholesale supply.

4 At that point, what will happen to the marketplace
5 will depend on how successful retailers will have been at
6 developing value-added services, because at that point the
7 incentives will go away, the standard offer service will be
8 market-based, and in order to maintain their customer base and
9 have customer switching, retailers will have had to develop some
10 way to attract customers with value-added services. If they
11 don't do that, there probably won't be an active retail market
12 for small customers.

13 Now, again, that doesn't mean that customers aren't
14 getting all the benefits of generation deregulation, they
15 certainly are, there just may not be a lot of competitive
16 retailers after the incentives go away.

17 I think with respect to the larger customers,
18 experience shows that even with market-based offerings such as
19 may be supplied in this default service or standard offer
20 service, once the market development period ends, that there
21 would still be a lot of competitive retailing activity in that
22 sector.

23 Q. But you expect there to be a shake-out of marketers
24 after the period ends?

25 A. No, I don't think I said that at all. It depends on

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1 what type of services the marketers are successful in
2 developing.

3 I think after the period ends, and this -- It doesn't
4 matter whether we have incentives or we don't have incentives
5 after the period ends, the Senate Bill says there's going to be
6 a market-based offering and there's going to be competitive
7 bidding, and whether there's a shake-out, whether there's a lot
8 of retailers or a few retailers, a lot of switching or a little
9 switching, will depend on how well retailers then can compete
10 against those alternatives specified in the Senate Bill.

11 Q. You've indicated that during the market period, with
12 an incentive in place, we have created an artificial form of
13 competition that's somewhat inefficient. When that
14 efficiency -- inefficiency is removed, what impact do you see to
15 customers ignoring the fact that there will be a standard
16 offer -- or, let me put it another way.

17 What would be the difference between an efficient
18 marketplace as you've proposed at the end of the transition
19 period versus an incentivized marketplace at the end of the
20 transition period?

21 A. Well, I think we'll have an efficient marketplace at
22 the end of the transition period. The difference, I believe,
23 will be that at the end of the transition period when there is
24 an efficient marketplace, retailers will have to -- competitive
25 retailers will have to cover all their costs by somehow

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1 providing value-added relative to that standard offer service.

2 During the transition period, while the incentives are
3 in place, I believe retailers will be able to -- they will be
4 competing against a different price, they will be competing
5 against a higher price than the one they are going to be
6 competing against at the end, so I believe retailers will be
7 more active during the transition period.

8 Q. Do you think that the incentive will artificially
9 protect more market retailers than would otherwise -- than with
10 an efficient marketplace?

11 A. Yes, that's really the whole point of my testimony, an
12 incentive will artificially encourage and protect retailers.

13 Q. I think you've indicated that an inefficient
14 marketplace has costs, whether or not we can quantify them; is
15 that correct?

16 A. Yes.

17 Q. Are you aware of how the costs for the incentives
18 under the stipulation are accounted for?

19 A. I've read through it, but I don't believe I could
20 testify to that in detail, no.

21 Q. But you're generally familiar with the stipulation?

22 A. The credit levels and the incentive levels, but I
23 haven't really followed through the accounting, no.

24 Q. All right. If I were to show you the stipulation and
25 you were to read that the difference between the market support

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1 price and the incentivized shopping credit will be deferred as
2 RTC, would that help you explain to me what the impact of that
3 is?

4 MS. LIEBMAN: Your Honor, I object.

5 EXAMINER LESSER: Basis?

6 MS. LIEBMAN: I think now when we're -- maybe
7 Mr. Bruce is having to read provisions of the stipulation to
8 Mr. Meehan, we're getting into an area that's beyond
9 Mr. Meehan's knowledge. The company is offering Mr. Alexander
10 in support of the stipulation, and I believe questions like this
11 should be deferred to Mr. Alexander.

12 EXAMINER LESSER: Mr. Bruce?

13 MR. BRUCE: Your Honor, I'm asking him from his
14 economist point of view what the impact of deferring shopping
15 credit incentives to the RTC is. I don't believe Mr. Alexander
16 can answer that.

17 EXAMINER LESSER: Objection overruled. I will go down
18 this path just a short distance.

19 THE WITNESS: Okay. Could you just read me the
20 sentence back?

21 BY MR. BRUCE:

22 Q. Let me show you.

23 A. That would even be more helpful.

24 MR. BRUCE: May I approach, your Honor?

25 EXAMINER LESSER: Yes.

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1 MS. LIEBMAN: May we have a moment, your Honor?

2 (Pause.)

3 MS. LIEBMAN: Mr. Bruce, what was the reference?

4 MR. BRUCE: Article VIII, Section 2.

5 EXAMINER LESSER: Are we ready?

6 MS. LIEBMAN: Yes.

7 EXAMINER LESSER: You want the question repeated?

8 THE WITNESS: Yes, please.

9 EXAMINER LESSER: Would you like the reporter to read
10 it back?

11 MR. BRUCE: She better read it.

12 (Record read back as requested.)

13 THE WITNESS: I don't think I understand the question,
14 what the impact of that -- You mean the impact of the deferral?
15 BY MR. BRUCE:

16 Q. Let's see if we can take it in pieces.

17 Where are the costs of the incentives?

18 A. The cost of the incentives are being deferred and I
19 guess would be in a few buckets. One would be one that would be
20 recovered in the future as RTC.

21 Q. What's the other buckets?

22 A. The other buckets. If the -- I know there are limits
23 on RTC recovery, so maybe a bucket increases RTC but it falls
24 out due to a time limit.

25 And then the third bucket would be the interest

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1 charges on the deferrals, which I guess the companies would just
2 absorb those, essentially. It says no interest charges will be
3 capitalized. So they're going to -- looks to me, going to three
4 places.

5 Q. All right. Tell me who's going to pay the costs that
6 are put in those buckets?

7 MS. LIEBMAN: Objection.

8 EXAMINER LESSER: Sustained.

9 BY MR. BRUCE:

10 Q. Let's -- Let's go back to your first bucket.

11 That was the cost that goes into RTC and is recovered
12 within the period allocated under Senate Bill 3; is that
13 correct?

14 A. Yes.

15 Q. Who are those costs charged to?

16 MS. LIEBMAN: Objection.

17 EXAMINER LESSER: Basis?

18 MS. LIEBMAN: These aren't questions that go to an
19 economist. These are fundamentals of the stipulation.

20 MR. BRUCE: I think we have to get -- She asked for a
21 foundation. I'm simply laying the foundation. I have to get
22 him up to speed before I can ask him the economic impact of the
23 cost on the party he is going to tell me is paying the RTC.

24 EXAMINER LESSER: The foundation can't be asking the
25 witness to interpret the stipulation, though.

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1 Objection sustained.

2 BY MR. BRUCE:

3 Q. To the extent that retail customers are paying the RTC
4 of these incentives, what is the economic impact of that?

5 MS. LIEBMAN: Can we assume this is a hypothetical?

6 MR. BRUCE: I think I've laid the foundation for this
7 hypothetical and we can call it a hypothetical, but that's fine.

8 EXAMINER LESSER: Let's let the witness answer the
9 question.

10 THE WITNESS: Well, the economic impact is that
11 eventual- -- in the long-term, customers pay -- pay the
12 in- -- pay a portion of the incentive according to the
13 hypothetical.

14 A portion of the incentive that is used to create the
15 market in the beginning, I guess I would say the economic impact
16 is you have customers subsidizing marketer's costs.

17 BY MR. BRUCE:

18 Q. Let's look at the bucket that cannot be charged to
19 customers that are outside the 10-year limit that you referred
20 to. I'd like you to assume that that will be absorbed by the
21 company. Is that an adverse impact on the incumbent utility?

22 A. Yes.

23 Q. Are there any adverse impacts on retail marketers by
24 having these costs deferred to the RTC?

25 A. I can't think of any, no.

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1 Q. Is it safe to say then that we have two inefficiencies
2 with an incentive program, the first that customers are
3 artificially moved to retail marketers, and then second, that
4 the customers have to pay the cost of being artificially moved
5 to retail marketers?

6 MS. LIEBMAN: Objection. I think since the earlier
7 question was in terms of -- phrased in terms of a hypothetical,
8 I'd just like to make sure that that's carried through this
9 question, as well.

10 EXAMINER LESSER: Mr. Bruce, could you make your
11 question clear as to what you're referring to?

12 MR. BRUCE: Yes.

13 BY MR. BRUCE:

14 Q. You've indicated, hypothetically, that these costs are
15 being charged to retail customers in one sense and the company
16 in another sense. I think we've referred to -- hypothetically
17 to two of the buckets that you testified to.

18 We haven't talked hypothetically about the adverse
19 impacts of customers being artificially moved on to a retail
20 competitive program. I think that was clearly your testimony.

21 Is it safe to say that there is -- that the incentive
22 program causes at least two types of adverse impacts to retail
23 customers, one hypothetical that we've talked about in terms of
24 having to pay for the cost of incentives, and the other that
25 you've testified to regarding being artificially incented to

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1 move off the standard offer?

2 A. I'm going to be careful when I answer because I was
3 looking more from efficiency in terms of society, not just the
4 customer perspective, but I did say that and I believe there is
5 an inefficiency when they are artificially incentivized to move
6 off of the standard offer to retailers who have higher costs.

7 I believe that when that's done, there are subsidies
8 that go to these retailers, and as we established
9 hypothetically, those subsidies can come from two sources, from
10 the company and the shareholders, or from the -- from the
11 customers, and I think it is inefficient to have those
12 subsidies.

13 I don't think I could agree that collecting those, a
14 portion of those from customers, is an added inefficiency. I
15 think the subsidies themselves are the -- are the inefficiency.
16 How you fund the inefficiency is just an impact of it, just
17 depends where the impacts goes, to customers or to -- to the
18 company. I don't think it's a second and distinct inefficiency.

19 Q. That's fair enough.

20 Would it be safe to say that the amount that's
21 deferred to RTC is a proxy for the level of inefficiency?

22 A. I think that would be reasonable; not necessarily an
23 exact estimate, but a reasonable estimate.

24 Q. Were you consulted by the company prior to the
25 stipulations being signed with regard to your expert testimony

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1 on shopping credits?

2 A. No.

3 Q. Hypothetically, if the company had contacted you,
4 would you have advised them to enter into an agreement from
5 purely economic principles at the level of the incentives
6 provided in the stipulations?

7 MS. LIEBMAN: Objection.

8 EXAMINER LESSER: Sustained.

9 BY MR. BRUCE:

10 Q. Having looked at the stipulations and being generally
11 familiar with them, would you recommend to the Commission, from
12 an economic viewpoint, that they be accepted?

13 MS. LIEBMAN: Objection.

14 EXAMINER LESSER: Sustained.

15 Mr. Bruce, if you want to put an economist on the
16 stand, that's your prerogative, but Mr. Meehan has been offered
17 for a limited purpose.

18 MR. BRUCE: Okay.

19 BY MR. BRUCE:

20 Q. Mr. Meehan, you've seen the stipulations. Is it your
21 opinion that the shopping credits that you calculated without
22 the incentives are a better -- provide a better economic benefit
23 to society than the shopping credits with incentives that are in
24 the stipulations?

25 MS. LIEBMAN: Objection.

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1 EXAMINER LESSER: Overruled.

2 THE WITNESS: Yes. Yes. I think, though, you have to
3 recognize, not giving you an opinion on the overall stipulation,
4 I can't do that, and the settlements are a balancing of many
5 interests, but asking strictly from the economic perspective, I
6 think it would be more efficient to have shopping credits set at
7 that market -- what they call in the settlement -- there's two
8 different terms, but the one they call in the settlement the
9 market support price I think is more efficient than the shopping
10 credit with incentives.

11 MR. BRUCE: Thank you. I have no other questions.

12 EXAMINER LESSER: Mr. Small, did you have any
13 questions?

14 MR. SMALL: Yes, your Honor. Thank you. I have a
15 few.

16

- - -

17

CROSS-EXAMINATION

18 BY MR. SMALL:

19 Q. Mr. Meehan, my name is Jeff Small and I represent the
20 City of Cleveland and American Municipal Power.

21 I will follow up with a question concerning -- follow
22 up on some of the questions that you were asked by Mr. Bruce.

23 In the event that marketers, other suppliers, are
24 unable to provide the value-added services that you mentioned in
25 your answers to Mr. Bruce's questions, and we end up with the

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1 result in that case, I believe to summarize your answer, is
2 customers would just be served at the standard offer service, is
3 that -- standard offer service at the standard offer price; is
4 that correct?

5 A. Generally, that -- that's correct. It's a pretty big
6 summary.

7 What we're saying is if marketers are not able to
8 provide standard offer service and, as a result, the standard
9 offer's more attractive, the end result would be most customers
10 would be served by the standard offer service. Again, I think
11 it applies mainly to the smaller customers, not the larger
12 customers.

13 Q. And the price being charged, at least through the
14 market development period, would be essentially the -- or, very
15 close to the unbundled rate that customers are paying currently;
16 isn't that correct?

17 A. Yes.

18 Q. And that -- those prices are considerably higher than
19 the market-based prices that -- that you referred to in your
20 testimony; is that correct?

21 A. Yes.

22 Q. Now, instead of focusing on the efficiency of the
23 supplier, aren't there great inefficiencies in charging a large
24 number of customers over an extended period of time a price that
25 is well above the market price for that commodity?

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1 A. I don't know if I would agree with great
2 inefficiencies. Certainly, it's efficient to -- Efficiency sets
3 prices at marginal costs, but economic theory of utility
4 ratemaking also says recover fully embedded costs and that
5 usually takes precedence in terms of setting the revenue
6 requirement.

7 Q. But my question was concerning economic efficiencies,
8 and is that the price equals marginal cost price answer that you
9 gave originally?

10 A. Yes, when you have prices above marginal costs you
11 could discourage efficient usage.

12 Q. I'm going to go to some more preliminary questions at
13 this point.

14 Would you turn to Page 4 of your testimony? This
15 is --

16 A. I'm there.

17 Q. -- where you use the term "market-based component" on
18 Line 17 --

19 A. Yes.

20 Q. -- and elsewhere in your testimony. Is that the same
21 as the wholesale price of power?

22 A. No, it's the wholesale price of power plus the utility
23 incremental supply cost.

24 Q. All right. So it has two components then, the
25 wholesale price and then an adjustment factor; is that correct?

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1 A. Yes.

2 Q. And where did you -- how did you arrive at the
3 whole- -- wholesale price for purposes of your testimony?

4 A. Forecasts that were done by Mr. Jones and Dr. Rose,
5 and I used their hourly market price forecast combined with load
6 shapes to develop load-weighted average prices.

7 Q. And those are the -- I'm sorry. Those were the
8 wholesale prices that were prepared by Mr. Jones and Mr. Rose
9 and presented in their testimony; is that correct?

10 A. Yes, it was.

11 Q. And what adjustments did you make to that wholesale
12 price to develop the market-based component?

13 A. I added the cost of losses, electric losses from the
14 generator down to the customer delivery point.

15 Q. And just again for purposes of definition and clarity,
16 that market-based component as you've defined it is the shopping
17 credits that you were developing in your testimony?

18 A. Yes.

19 Q. So we have a wholesale price plus the adjustment for
20 losses and that equals -- you're calling that the market-based
21 component or you're also calling it the shopping credit; is that
22 correct?

23 A. I'm definitely calling it the market-based component.

24 Q. Maybe I could make it more clear this way. Is there
25 any other component that goes into the shopping credit?

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1 A. No. I do say on Page 5 that there could be an
2 incentive component, but I have not recommended one.

3 Q. All right. So there could be another component but in
4 your testimony it's the zero incentive portion of it?

5 A. Yes. I do not recommend one, yes.

6 Q. As I understand your previous answers to Mr. Bruce's
7 questions, your theory of developing shopping credits requires
8 adding all the costs incurred by FirstEnergy Operating Company
9 to provide their generation service; is that correct?

10 A. To provide the standard offer service, that's correct.

11 Q. And did you look at the administrative or working
12 capital costs associated with the provision of FirstEnergy
13 generation service?

14 A. Yes, I discussed those with FirstEnergy.

15 Q. But you do not include any -- any costs for those
16 components in your shopping credits; is that correct?

17 A. That's right. My discussion with FirstEnergy
18 indicated that those costs were not measurable, of any
19 measurable significance.

20 Q. Did you consider incurring the shopping credits of
21 payments that would be made to the Public Utilities Commission
22 or the OCC for assessments for suppliers of electricity?

23 A. I did not specifically consider those costs, no. It
24 was my understanding based on discussions with FirstEnergy that
25 they would not avoid any such costs if their standard service

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1 load fell.

2 Q. I'm not sure I understand that last answer. What do
3 you mean by avoid those costs? Who would avoid it?

4 A. Well, what I looked at was FirstEnergy's cost, and
5 specifically what is referred to as FirstEnergy's incremental
6 and decremental service, the standard offer service, so I wanted
7 to make sure we included all the incremental utility supply
8 costs.

9 It was my understanding that there weren't costs that
10 would fall, that there wouldn't be changes in assessments to
11 FirstEnergy because FirstEnergy served less standard offer load
12 than it otherwise did. If that was the case, I would have
13 included that type of cost in my shopping -- in my utility
14 supply cost.

15 Q. I want to revisit this topic of -- of the California
16 experience. Do you remember referring to circumstances in
17 California in answer to Mr. Bruce's earlier questions?

18 A. Yes, I do.

19 Q. And that was -- Your answer concerning the California
20 experience had to do with value-added services; is that correct?

21 A. Indirectly perhaps, but I don't believe directly. It
22 had to do with -- with switching at a market-based rate.

23 Q. And you indicated that there were -- there was
24 customer switching in the California experience; is that
25 correct?

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1 A. Yes, that there was both a market-based shopping
2 credit and substantial customer switching among the larger
3 customers.

4 Q. Could you describe the types of value-added services
5 that supply -- alternative suppliers are providing in California
6 that permit them to reach the market?

7 A. I haven't looked at the specific value-added services
8 that they're performing. What I've looked at is the structure
9 of the credit and the level of switching.

10 Q. Do you have any other -- In any other context, do you
11 have any example of how a marketer is able to sell services that
12 they can't compete on a pure commodity basis with the standard
13 offer?

14 A. I believe I give some examples in my testimony. I'll
15 take a second to look for them. I don't see them right now, but
16 some of them would be, you know, enhanced billing services,
17 energy efficiency services, load management services. These are
18 ways that -- that -- that I think marketers can and will have
19 to -- will have to compete.

20 Q. Are there, of the examples that you just gave me,
21 services that could be provided now in the absence of
22 competition for generation supply?

23 A. Certainly energy efficiency services can. Some of the
24 billing levelization services perhaps could, yes.

25 Q. If you could turn to Page 23 of your testimony.

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1 A. Yes.

2 Q. I'll use it for general reference. Are you familiar
3 with Ohio's electric restructuring legislation commonly referred
4 to as SB 3?

5 A. Generally, yes.

6 Q. There's a question and answer. Is it correct that
7 you -- Well, for purposes -- for the purposes of your answer,
8 are you stating in -- on Page 23 that for purposes of SB 3 that
9 it's reasonable to count municipal customers in the switching
10 rate as designated in the piece of legislation?

11 MS. LIEBMAN: Objection.

12 EXAMINER LESSER: Sustained.

13 BY MR. SMALL:

14 Q. At the bottom of that question and answer -- your
15 answer on Page 23 of your testimony, you generally approach the
16 topic of situations where a municipal electric system has not
17 extended its system to serve customers in municipal limits. Do
18 you see that portion? I believe the --

19 A. Okay. Yes.

20 Q. Starts with the word "Further".

21 A. Yes.

22 Q. Are you assuming at this point in this answer that a
23 municipal electric system operates on the same basis as a
24 private for-profit corporation?

25 A. No. I'm not making an assumption either way with

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1 respect to that.

2 Q. Doesn't the answer essentially state that if there's a
3 market for the municipal utility to cover its costs, that the
4 municipality will extend its service?

5 A. It says --

6 MS. LIEBMAN: Objection.

7 EXAMINER LESSER: Basis?

8 MS. LIEBMAN: I'm not sure that the -- what
9 the -- that the premise of that question is -- there's any
10 statement in the testimony.

11 EXAMINER LESSER: The witness can either answer it or
12 not.

13 Overruled.

14 THE WITNESS: All I'm saying, the municipality has the
15 option to extend its system if it can attract more customers.

16 BY MR. SMALL:

17 Q. Wouldn't you agree, though, that we only have a
18 measure of -- of customer choice or switching if he demands that
19 service or his fellow resident demands that service that the
20 municipality will respond?

21 A. I would agree with that, yes.

22 Q. And might there be other considerations other than a
23 municipality being able to cover its costs that would factor
24 into a municipal decision to supply electricity?

25 A. Yes, there could be.

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1 MR. SMALL: I have no further questions.

2 EXAMINER LESSER: Thank you.

3 Redirect?

4 MS. LIEBMAN: No, your Honor.

5 EXAMINER LESSER: Thank you, Mr. Meehan.

6 THE WITNESS: Thank you.

7 (Witness excused.)

8 EXAMINER LESSER: FirstEnergy Exhibit No. 10, any

9 objections?

10 (No response.)

11 EXAMINER LESSER: Let's admit it.

12 - - -

13 Thereupon, FirstEnergy Exhibit No. 10

14 was received into evidence.

15 - - -

16 EXAMINER LESSER: We'll go off the record first.

17 (Discussion held off the record.)

18 EXAMINER LESSER: Okay. We'll take 10 minutes.

19 (Recess taken.)

20 EXAMINER LESSER: Back on the record.

21 Miss Liebman.

22 MS. LIEBMAN: Thank you, your Honor. FirstEnergy

23 calls Luann Sharp.

24 (Witness placed under oath.)

25 - - -

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1 LUANN SHARP
2 of lawful age, being first duly placed under oath, as prescribed
3 by law, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. LIEBMAN:

6 Q. Would you please state your full name and business
7 address?

8 A. My name is Luann Sharp. My business address is 541
9 North Superior, Toledo, Ohio 43660.

10 MS. LIEBMAN: Your Honor --

11 BY MS. LIEBMAN:

12 Q. Excuse me. Would you state your employer and in what
13 capacity you're employed?

14 A. I'm employed as an Assistant Managing Editor at the
15 Blade in Toledo, Ohio.

16 Q. Is that a position that you took subsequent to the
17 filing of your direct and supplemental direct testimony?

18 A. Yes, it is. I ceased my employment with FirstEnergy
19 on March 17th and I started as an employee at the Blade on March
20 20th of this year.

21 MS. LIEBMAN: Your Honor, I'd like to have marked for
22 identification FirstEnergy Exhibit 11, a document entitled
23 "Direct testimony of Luann Sharp".

24 - - -

25 Thereupon, FirstEnergy Exhibit No. 11 was

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1 marked for purposes of identification.

2

3 BY MS. LIEBMAN:

4 Q. Miss Sharp, do you have before you what has been
5 marked as FirstEnergy Exhibit 11?

6 A. Yes, I do.

7 Q. And is that a copy of your direct testimony that was
8 prefiled in this proceeding?

9 A. Yes, it is.

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

12 A. I do have three changes.

13 One is I just mentioned, I have changed employers
14 since this testimony was filed, so that would affect on Page 1,
15 Lines 6 through 10.

16 And on Page 6 of my testimony, I have two minor
17 corrections. On Line 9, the sentence should read, "Residential
18 and commercial customer results were reported by operating
19 company, industrial results were not".

20 EXAMINER LESSER: What is the second part?

21 THE WITNESS: "...industrial results were not".

22 And on Line 14 of that same page, the percentages, I
23 read the wrong line off the wrong sheet. It should be corrected
24 to be 14 percent for CEI, 31 percent for Toledo Edison and 16
25 percent for Ohio Edison.

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1 And one other change tied to the first one that I just
2 mentioned on that page, is on Page 15, Line 14, that sentence
3 should read, "...survey because the 1998 survey did not break
4 out industrial rates by company instead of commercial".

5 And those are my changes.

6 BY MS. LIEBMAN:

7 Q. Do the changes on Page 6 that you made affect the
8 remainder of your testimony?

9 A. No, they do not.

10 Q. Was this testimony prepared by you or under your
11 direct supervision?

12 A. Yes, it was.

13 Q. If I were to ask you today the questions that are in
14 this testimony, would your answers as corrected today be the
15 same as those contained in the prefiled testimony?

16 A. Yes, they would.

17 Q. And are they true and correct to the best of your
18 knowledge, information and belief?

19 A. Yes, they are.

20 MS. LIEBMAN: Your Honor, may we have marked as
21 FirstEnergy Exhibit 11S the supplemental testimony of Luann
22 Sharp?

23 - - -

24 Thereupon, FirstEnergy Exhibit No. 11S was
25 marked for purposes of identification.

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1

- - -

2 BY MS. LIEBMAN:

3 Q. Miss Sharp, do you have before you what has been
4 marked as FirstEnergy Exhibit 11S?

5 A. Yes, I do.

6 Q. And is this the supplemental testimony that you had
7 prepared and filed in this proceeding?

8 A. Yes, it is.

9 Q. Do you have any additions or corrections to the
10 supplemental testimony?

11 A. No, I do not.

12 Q. Was this testimony, the supplemental testimony,
13 prepared by you or under your direct supervision?

14 A. Yes, it was.

15 Q. And is it true -- Are the answers in the supplemental
16 testimony the answers you would give today to the questions
17 contained therein?

18 A. Yes.

19 Q. And are the answers true and correct to the best of
20 your knowledge, information and belief?

21 A. Yes, they are.

22 MS. LIEBMAN: Your Honor, I offer FirstEnergy Exhibits
23 11 and 11S and tender Miss Sharp for cross-examination.

24 EXAMINER LESSER: Thank you.

25 Subject to cross-examination.

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1 Mr. Small.

2 MR. SMALL: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 BY MR. SMALL:

6 Q. Miss Sharp, my name is Jeff Small and I represent the
7 City of Cleveland and American Municipal Power.

8 Can I conclude from your testimony that the factors
9 that you consider important to customer switches are price,
10 service by the provider, and company image and various
11 institutional factors?

12 A. The three main factors the customers have, and they
13 there are loyal to their current provider or would switch, are
14 as you mentioned, price, quality of service, and the image that
15 those customers have with their current provider.

16 Q. All right. And the institutional factors that I had
17 in mind were things like government aggregation, formation of
18 buying groups and expiration of contracts. Those are also
19 important in your testimony?

20 A. Yes, they are.

21 Q. Would you care to place those in any particular order?

22 A. No. I could not place them in a particular order.

23 Q. Now, just to make sure that we're clear, the
24 corrections that you made on Page 6 --

25 A. Yes.

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1 Q. -- those corrections were intended to be consistent
2 with what are labeled as Attachment LS-2?

3 A. Yes, they were.

4 Q. Okay. And those -- I believe you rounded in making
5 your corrections. Those numbers in the table are 14.0, 30.6 and
6 15.6?

7 A. They are 14.0, 30.6 and 15.6 in the table.

8 Q. I'm not questioning them, I wanted to make sure that
9 we were -- had the same numbers.

10 A. We are talking about the same thing.

11 Q. Now, addressing those -- the survey which you took
12 those numbers off of, that was -- that was a telephone survey,
13 was it not?

14 A. It was a telephone survey.

15 Q. And could you describe the telephone survey?
16 Approximately how long would a telephone survey like that take?

17 A. The survey that we are currently looking at the
18 results takes approximately 20 minutes on the phone.

19 Q. You did not conduct any of those interviews, let's
20 call it?

21 A. I did not conduct the interviews. They were conducted
22 by the research firm contracted by the utility.

23 Q. Now, the numbers that we just corrected, those numbers
24 are for a response of very likely to favor switching where the
25 question said nothing about customer savings; is that correct?

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1 A. Can I clarify? Are we talking about the numbers
2 listed on Line 14? Because there are a couple surveys
3 referenced in my testimony, I just wanted to make sure we're
4 talking about the same one.

5 Q. Yes. I'm referring to Page 6, Line 14, the numbers
6 we -- that were corrected.

7 A. And those numbers do, in fact, reflect responses by
8 customers without any positing of any savings, that is correct.

9 Q. As part of this telephone survey, was any effort made
10 to determine the reason that the customers responded that they
11 were likely or very likely to switch without any mention of
12 financial savings?

13 A. Yes. The survey did include a question that asked
14 customers to explain why they responded the way they did.

15 Q. And is -- In preparation for your testimony, did you
16 analyze any of the responses regarding why people would switch
17 without any financial incentive?

18 A. I did review the responses, yes.

19 Q. And how many responses of that nature would there have
20 been?

21 A. It would be by residential customer class that we are
22 looking at in Attachment LS-2. The number of customers
23 totalled sampled was 1,245 for all of the FirstEnergy companies,
24 Ohio Edison, CEI and Toledo Edison, and customers that responded
25 to one question then would be asked the follow-up question of

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1 "Why would you say that", or, "What would lead you to give us
2 that answer?"

3 Q. And how many -- how many responses did you review to
4 the question that I just asked about why people would answer
5 that way?

6 A. I did not review any verbatim responses. I reviewed
7 the summary pages that rolled it up by percentages, what percent
8 responded one way or another. So I did not review individual
9 responses, I reviewed the summary sheets.

10 Q. The summary was prepared by the consultant?

11 A. Yes.

12 Q. And they grouped responses into rough categories of --
13 no doubt there were some unique features, but they tried to
14 group the -- the responses and give a summary, is that the idea?

15 A. Yes. They would put like responses together. If 10
16 people said one thing, they would be listed under that line
17 item; if 20 people said another, they would be listed under a
18 different line item.

19 Q. What were those categories?

20 A. There were approximately a dozen responses as to why
21 people would give the response that they gave; price is one,
22 service reliability is another. The availability of
23 environmentally sound power is another. The opportunity to have
24 a choice is another. Dissatisfaction with the utility can be a
25 response that they would list. Those were the kinds of things

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1 that customers would say.

2 Q. Okay. Now, one of the answers that you just gave was
3 price --

4 A. Uh-huh.

5 Q. -- which no doubt is an incorrect interpretation of
6 the -- of the question that they were asked; is that -- is that
7 correct?

8 A. I wouldn't say it's an incorrect interpretation. When
9 asked the question if a choice is available to you, would you
10 consider switching, you could respond yes and behind that it
11 could be some preconceived notion that there might be a savings
12 because choice is present.

13 Q. The people surveyed were asked the questions -- all
14 the questions that are on your LS-2, which the first question
15 has no mention of financial incentive and the next one mentions
16 a 10 percent savings. They were asked both of those questions,
17 right?

18 A. That is correct.

19 Q. So in the context of seeing both of them, you might
20 think that it provides no incentive, but apparently some people
21 responded because they thought there was a price incentive in
22 both of those questions?

23 A. I would believe that, yes, some people could -- just
24 on the basis of saying there's a choice available, could make
25 the assumption there's a savings available as well.

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1 Q. Okay. So maybe they didn't -- they didn't
2 misinterpret it, but they didn't answer it the way the question
3 was intended?

4 A. I wouldn't say that either. I'd say they answered a
5 top of the mind general question of, "If there's a choice, would
6 you switch?" That is just a basic question, and then there are
7 follow-up questions to get deeper behind what people's
8 motivation would be or what will -- what it will take to switch.

9 Q. I notice the questions that are asked in Attachment
10 LS-2 don't distinguish between the sale of generation service
11 and the delivery of the services.

12 Did customers at least in some circumstances not make
13 that separation and -- and make their response due to
14 dissatisfaction with the overall utility service that they were
15 receiving?

16 A. I believe you are correct in that we did not
17 distinguish the difference between distribution service,
18 transmission service or generation service in these surveys and
19 some responses could have been based on dissatisfaction with
20 their current provider. That is correct.

21 Q. Some of the responses could be in response to being
22 cut off, say, having their services disconnected for storms or
23 that type of thing, they would have dissatisfaction with the
24 utility?

25 A. That is a correct statement. You could have a

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1 customer very -- respond negatively toward your current provider
2 based on the service issue that had just occurred for them,
3 either a problem with a bill, or they just had a power outage,
4 or they were mad that somebody drove over their bush in the
5 corner of their yard.

6 Q. So in those instances the person was expressing a
7 desire to be on a new system, not just buying the commodity from
8 a different supplier?

9 A. The questions were not designed on commodity only,
10 that's correct.

11 Q. Do you agree that the results of telephone surveys
12 depend heavily upon the interplay between the interviewer and
13 the inter- -- interviewee, the person who's interviewed?

14 A. I would agree that the quality of the person
15 conducting the interview can have an impact on the person being
16 interviewed, yes.

17 Q. And just to make sure I'm clear on this point, you
18 didn't have any role in designing the survey, that was designed
19 by the -- by the consultants? Maybe that's two questions. Did
20 you have any role in designing the survey?

21 A. I'm going to have to split it into a double answer,
22 too, I think.

23 I did not have any input in the design of the Triad
24 Survey conducted by Ohio Edison, then FirstEnergy. Did have
25 input into the questions, some of the questions included in the

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1 Centerior survey in 1997. Did not develop the design of the
2 questionnaire; however, did have input on what kinds of
3 questions we wanted to have answered and specifics that we were
4 trying to see if we could get customer data on.

5 Q. If you could turn to Page 8 of your testimony, please.
6 Is it correct that you've included existing customers of
7 municipal utilities as customers who have -- in your tally of
8 customers who have switched?

9 A. I did not include all customers of municipalities that
10 have -- are served by municipal systems. I did include in the
11 switching numbers customers who are currently served by
12 Cleveland Public Power and the City of Clyde in my calculations.

13 In addition, I included one other industrial customer
14 that had been served by Toledo Edison and is currently served
15 through Holiday City.

16 Q. That would be Chase Brass?

17 A. That would be correct.

18 Q. And the result of your treatment is that -- Let's
19 clear that up. The CPP customers, you said all the customers
20 were counted; is that correct?

21 A. Customers currently in the City of Cleveland within
22 our certified territory are included in the numbers, that is
23 correct.

24 Q. And that would be Cleveland Electric Illuminating?

25 A. That is correct.

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1 Q. And Clyde, that would be all those customers would
2 have been added to the Toledo Edison numbers?

3 A. That is correct. Clyde has a duplicate electric
4 system and is within Toledo Edison's certified territory and
5 those customers could be served by Toledo Edison at the request
6 of the customer, and the same with the Cleveland customers;
7 that's why I included them in my numbers.

8 Q. And the Chase Brass was also Toledo Edison?

9 A. Chase Brass had been a Toledo Edison customer and
10 could still be served by Toledo Edison if they opted to do so.

11 Q. So due to these three inclusions, isn't it true that
12 you have calculated a switch rate that is positive even before
13 the advent of Consumer -- Customer Choice on January 1st,
14 2000 -- 2001?

15 A. I have included them in the switch rate because they
16 are part of the current available market. Whether they are
17 served by the municipality currently or served by the
18 investor-owned utility, they are part of the available market
19 for the investor-owned utility, therefore, I included them in my
20 switching numbers.

21 Q. The short answer to my question, there's a positive
22 switch rate before -- before January 1st, 2001?

23 A. Customers -- These customers in these communities have
24 already exercised an option to switch.

25 Q. And your switch numbers reflect that?

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1 A. Yes, they do.

2 Q. When you were doing your calculations on switch rates,
3 what did you include in the denominator? The numerator would be
4 the -- the switches, measured somehow, kWh or demand. What is
5 in the denominator?

6 A. The denominator is all of the load in the available
7 marketplace.

8 Q. Okay. Does that -- In your calculations, does that
9 include the entire load of a municipal system? And I will
10 qualify that. I understand that you've only included Cleveland
11 Public Power, Clyde, and we'll have to -- we'll have to treat
12 Chase Brass separately. Did you include the entire load of
13 Cleveland Public Power in the CEI figures for the switch rates?

14 A. In terms of total load before calculating load
15 switching, is that what you're asking?

16 Q. In the denominator.

17 A. In the denominator, they are included as customers
18 that have switched. Total -- Total load is the total load in
19 there; yes, it is.

20 Q. The total load is in the denominator?

21 A. Yes.

22 Q. And the -- Also included in the numerator?

23 A. The percentage that is switched is included in the
24 numerator, yes.

25 Q. For Toledo Edison, the switch rate has -- the switch

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1 rate is a ratio, right?

2 A. Yes.

3 Q. Okay. So for Toledo --

4 A. It's a percentage of load.

5 Q. For Toledo Edison the numerator for -- in that
6 calculation of percentage of load includes City of Clyde load,
7 the entire load; is that correct?

8 A. Let me see if I can help you out a little bit by
9 checking my workpapers, if you don't mind. Is that all right?
10 In terms of total load, it does include Clyde,
11 correct.

12 Q. And does the denominator include the entire load of
13 Clyde?

14 A. Yes.

15 Q. All right. Again, for Toledo Edison, in calculating
16 that percentage of load, Chase Brass was included in the
17 numerator; we have already established that?

18 A. Chase Brass and Whirlpool are the two major customers
19 that have switched -- account for three percent of the
20 industrial load that has switched.

21 Q. Whirlpool was included in your Clyde numbers?

22 A. It is all part of Clyde and it is shown in the
23 industrial line-up, yes.

24 Q. I just -- I think --

25 A. I did not double count Whirlpool, I just want to make

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1 it clear. In the industrial class, the major industrial
2 customer in Clyde is Whirlpool. It is reflected in industrial
3 switching.

4 Q. Okay. I think we have done Cleveland Public Power and
5 Clyde, we're moving on here to Chase Brass.

6 Chase Brass -- The load of Chase Brass appears in both
7 the numerator and the denominator for the percentage of load
8 switched figure; is that correct?

9 A. Yes.

10 Q. Yes?

11 A. Yes.

12 Q. And why did you -- And in the Chase Brass situation
13 you didn't include any of the municipal load for the municipal
14 suppliers of Chase Brass, is that correct, you just selected
15 that one customer?

16 A. I selected customers that reflected more than one
17 percent of the company -- that operating company's total load.

18 Q. All right.

19 A. So other customers that may have switched to other
20 municipalities are not included nor are any of the residential
21 customers or commercial customers in Holiday City.

22 Q. So your rule of thumb for doing these switches was all
23 of Cleveland Power, all of Clyde and any other customer that met
24 a certain threshold number?

25 A. More than one percent of load, yes.

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1 Q. Have you considered that the customers of municipal
2 systems under the new market structure, where they are able to
3 choose their suppliers, may now return to FirstEnergy's supply?

4 A. I did consider that as a possibility, that they could
5 return to FirstEnergy's supply, yes.

6 Q. So it's possible that instead of a municipal service
7 growing, that under circumstances where they can now choose
8 their supplier, we may be at the zenith of our municipal supply
9 of those industrial customers and it could decrease, is that
10 possible?

11 A. It depends on the municipality. According to my
12 understanding of the rules and regulations proposed by the
13 state, a municipality may choose not to participate in
14 competition, so perhaps they won't allow their customers to pick
15 and choose a supplier; however, in the City of Cleveland and in
16 the City of Clyde, they are already offered a choice between the
17 two, they are in our certified territories for FirstEnergy's
18 operating companies.

19 Other municipalities that are not -- were not part of
20 our certified territory, if those municipalities choose not to
21 participate, they could have a fixed number of customers,
22 perhaps, for where they are now. Maybe they won't let their
23 customers leave to pick another provider; I don't know.

24 Q. Okay. In the circumstances that we have -- that you
25 discussed, Cleveland Public Power, Clyde and Chase Brass, do you

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1 know of any restrictions by municipalities that would prevent
2 them from taking FirstEnergy service?

3 A. I am aware of an ordinance in the City of Clyde that
4 any structure built after 1995, I believe it is, according to a
5 ruling and agreement with the PUCO, that you must take service
6 from the Clyde Municipal System.

7 That ordinance, though, allows customers above 69 kV
8 and higher to be able to choose alternate suppliers, so
9 Whirlpool could still shop. It's customers and property that
10 predates '95 can still shop, but they do have an ordinance that
11 says new customers take from Clyde Public Power.

12 Q. How current is your information on that?

13 A. How current? I attended the public hearing that the
14 PUCO held there. If they have changed the agreement in Clyde or
15 have a new ordinance, I am not aware of it.

16 Q. So you're not aware one way or another whether that
17 ordinance has been repealed?

18 A. I am not.

19 Q. Well, we have established a possibility for customers
20 to return to FirstEnergy. How would you treat the return of a
21 significant portion of municipal load to FirstEnergy in the
22 calculation of switched rates?

23 A. They would be included again in the load served by the
24 incumbent utility, therefore, that would mean a reduction in the
25 percentage that have switched or left the company, because their

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1 load would go up over what's being served by the current
2 utility.

3 Q. The FirstEnergy load?

4 A. Yes.

5 Q. Are you aware that Cleveland Electric Illuminating has
6 challenged the legality of one of its largest customers in
7 Cleveland to take service off of Cleveland Public Power's
8 facilities?

9 A. No, I'm not aware of that specific case.

10 MR. SMALL: Your Honor, if could I have administrative
11 notice taken to the Medical Center proceedings before the
12 Commission, just the existence of such a lawsuit, challenging
13 the legality of Cleveland Public Power's provision of service to
14 the Medical Center.

15 EXAMINER LESSER: We can take notice.

16 MS. LIEBMAN: May I have it clarified? We're just
17 talking administrative notice of the pendency of a complaint
18 case?

19 MR. SMALL: Of?

20 MS. LIEBMAN: Of the pendency of the complaint case.

21 MR. SMALL: Yes, just that there is such a complaint
22 at the Commission.

23 BY MR. SMALL:

24 Q. Are you aware of a pending case before the Supreme
25 Court in which Toledo Edison has challenged the lawfulness of

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1 service to Chase Brass by municipal suppliers?

2 A. Actually, as you mentioned the side bar to CEI, I must
3 correct my previous answer. I am aware of the Medical Center
4 issue, not in details, but I'm aware of it. Just how you
5 phrased the question, that wasn't my understanding of that case,
6 so I apologize, I didn't mean to mislead you there.

7 And the Toledo Edison challenge against service to
8 Chase Brass has to do with an issue surrounding can you serve
9 more than 50 percent of your community load outside of your
10 municipal boundaries, which is what the rules for the State of
11 Ohio had been, a municipality can't serve more than 50 percent
12 of its load, and was that an actual transaction for four
13 municipalities, or was that AMP-Ohio doing a direct service to
14 an industrial customer, and similar circumstance for Medical
15 Center.

16 Q. You appear to be aware of the litigation.

17 A. Sorry. Just misunderstood it from the question.

18 Q. How did you take into consideration that litigation in
19 determining whether those customers would be served by
20 FirstEnergy operating companies or by municipalities for
21 purposes of calculating the switch rates?

22 A. For purposes of calculating the switch rates, I did
23 not consider that litigation. It seems to me that the rules are
24 changing for the State of Ohio on how electric utilities will
25 conduct business. I did not consider that pending lawsuit,

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1 either one of them.

2 Q. How would your calculation of achieving the 20 percent
3 switch rate be altered if you did not count those two large
4 industrial customers? I want to clarify that.

5 A. Which two?

6 Q. Didn't count it for purposes of switching, in the
7 context that we discussed it earlier.

8 A. If I excluded Chase Brass and Whirlpool, are those the
9 two, or were you talking Medical Center --

10 Q. Medical Center and Chase Brass would return to
11 FirstEnergy service, what would that do to your calculation?

12 A. I'm sure FirstEnergy would like to serve both of them.

13 Q. This is just hypothetical. What affect does it have
14 on the numbers?

15 A. It would not affect the ability to reach a 20 percent
16 switch level in any of the customer classes,
17 industrial-specific. Industrial will exceed the 20 percent
18 switching rate, so even removing those two customers, you will
19 still get the 20 percent switching level for that class.

20 Q. You offered a number a while back, something like
21 three percent, was that?

22 A. Three percent reflected Chase Brass and Whirlpool
23 Corporation, Toledo Edison customers.

24 Q. And you don't have any numbers for Medical Center?

25 A. I do not have a Medical Center number, no.

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1 Q. Would you please turn to Page 9 of your testimony?
2 Specifically I'm referring to Line 2 in which you refer to
3 government aggregation as a powerful method for the provision of
4 alternative electric supply. Do you see that?

5 A. Yes, I do.

6 Q. Do you consider -- Do you consider government
7 aggregation to be important in achieving the switching rates of
8 20 percent?

9 A. I do see governmental aggregation as being key to
10 achieving a 20 percent switching level.

11 Q. On Page 18 of your testimony, Lines 12 and 16, on each
12 of those lines there's reference to assistance of government
13 aggregation. The first one says assisting in the government
14 aggregation process; the second one, assistance with government
15 aggregation. Do you see those?

16 A. Yes.

17 Q. Is this assistance by FirstEnergy to the government
18 aggregation important in reaching the 20 percent switching rate?

19 A. I wouldn't say that it's important to reaching the
20 switching rate. I meant it to be if the governmental entity
21 wanted assistance from us in terms of information, attending
22 meetings, answering customer questions, that we would be willing
23 to help them do that.

24 I also believe, though, some of the governmental
25 entities may prefer to do the educational process on their own

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1 and may not want assistance from FirstEnergy. So I guess I
2 would not say, "Gee, it's important to make it happen". I had
3 it there more as it's available if the governmental entity
4 thought it was helpful.

5 Q. Now, specifically the first question says, the
6 company's proposal for assisting the governmental aggregation.
7 I'm not aware in the rest of the testimony of anything that I
8 would characterize as a proposal. What did you have in mind
9 when you used that term?

10 A. I was referring to what I felt would be explained at
11 greater length by other witnesses than myself, mainly Ron Green
12 and/or Kurt Turosky.

13 Q. So part of the answering questions that you were
14 referring to, that was assisting in the educational program or
15 process of educating customers concerning government
16 aggregation? I'm trying to distinguish between educating the
17 municipalities and educating the customers.

18 A. I think that both will be important in terms of
19 education. I meant -- In this reference I was talking about we
20 would work with governmental entities to help them explain the
21 process to other elected officials, maybe attend a city council
22 meeting, et cetera.

23 I do know there is also an education program planned
24 for direct education of customers either by billing inserts or
25 other forms of communication, advertising, et cetera.

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1 Q. Do you know whether that program addresses in more
2 detail the government aggregation situation?

3 A. I don't believe the program has been developed or
4 finalized yet.

5 Q. Would you turn to Page 12 of your testimony, and
6 generally to your comments about formation of or use of supplier
7 groups?

8 A. Yes.

9 Q. Do you believe that the Ohio -- There's a reference on
10 this page to the Ohio Farm Bureau and Cleveland's Council of
11 Smaller Enterprises. Do you see that?

12 A. Yes.

13 Q. Do you believe that these -- the Ohio Farm Bureau and
14 Cleveland's Council of Smaller Enterprises are able to commit
15 its members to purchases?

16 A. I am more familiar with the Ohio Farm Bureau and
17 programs that they have done in response to the state's
18 conjunctive electric service. They did ask members to sign up,
19 they did postcards, et cetera, to try to solicit involvement in
20 conjunctive electric service, and I don't believe that programs
21 were forthcoming from that, but I have seen them approach their
22 members.

23 They have in their publications and direct mail pieces
24 told their members that they would like to come up with methods
25 to achieve lower electric rates for their members, but I did not

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1 include any of the Ohio Farm Bureau members in my switching
2 calculations, I mention them as an additional group that could
3 likely become a buying group.

4 Q. Okay. So your answer reflects the contact between the
5 group and its members, but not the ability to contract for those
6 members?

7 A. I did not include an ability to contract, nor did I
8 include any percentages in my load-switching projections.

9 Q. If the -- You have a preferred reference for these
10 groups, buyer groups, or affinity groups, is that a term that
11 you would use?

12 A. I don't have a preference. I know what you'd mean if
13 you used either phrase.

14 Q. Well, for present purposes I'll refer to these groups
15 as the Ohio Farm Bureau and Cleveland Council of Smaller
16 Enterprises as affinity groups. Do you understand that?

17 A. Yes.

18 Q. In the absence of the ability of these affinity groups
19 to commit their members to purchases of electricity, a supplier
20 is going to have to deal with the individual members in order to
21 have them select that supplier as an alternative provider of
22 electricity; isn't that true?

23 A. Absence of a contract, that would be true.

24 Q. So the alternative supplier is going to be dealing
25 with both the affinity group and the individual members of that

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1 affinity group; is that true?

2 A. Again, I believe it relates to how the members deal
3 with their organization. Depends on what the Ohio Farm Bureau
4 does with its members and if they ask them to sign a contract
5 saying, "Can we be your aggregator and we'll represent your
6 interest". I don't know how they will arrange that.

7 Q. Okay. In the two examples that you gave, you don't
8 know what the arrangement is between the affinity group and its
9 members?

10 A. No, I don't.

11 Q. Would you turn to the top of Page 13 of your testimony
12 where there's a general discussion of multi-state customers
13 towards the top of the page? Do you see that?

14 A. Yes.

15 Q. Now, in an instance when a multi-state commercial or
16 industrial -- Let's take the example of a commercial customer.

17 A multi-state commercial customer is situated in a
18 mall so that they receive their electricity through the mall
19 rather than from the electricity -- the utility company. Do you
20 see that as a barrier towards application of a multi-state
21 contract for electricity?

22 A. I believe it would be another detail that would need
23 to be ironed out between that tenant and the mall. I wouldn't
24 see it as a barrier, I'd see it as another issue that needs to
25 be addressed in order to move forward.

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1 Q. Okay. Would any consideration of those types of
2 arrangements that would be needed in order to fulfill that
3 contract, were any considerations of that master meter type of
4 situation figured into your calculations of the projected switch
5 rates?

6 A. Because I did not include any affinity groups in my
7 actual calculations of switch rates to come up to the 20
8 percent, no, I did not consider the additional issues.

9 Q. Would you turn to the bottom of Page 14 in your
10 testimony, and the top of Page 15? Your answer sort of goes
11 over from one page to the next.

12 A. Yes.

13 Q. And there's a reference to special contracts for
14 industrial customers. Do you see that?

15 A. Yes.

16 Q. Would the extension of the term, I mean -- by "term",
17 I mean the length of time for the contract -- would the
18 extension of the term of special contracts have an important
19 impact on whether FirstEnergy had 20 percent switching?

20 A. When I projected 20 percent switching for the
21 industrial class, I excluded customers who were under contract
22 with the operating companies and I excluded them because they
23 were not part of the available load to shop, so to the extent
24 that they extended their contract with the operating company,
25 they still would no longer -- they would not be available to

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1 shop, therefore, the kilowatt-hours in question wouldn't be part
2 of the base on which the percentage would be calculated.

3 Q. And your calculations of the switch rates would go
4 without them?

5 A. If their contract expired after 2001 and they extended
6 it deeper into the market period, the percentage of load
7 available to shop would go down compared to what I had
8 calculated.

9 What I included in my calculations looked at
10 expiration dates of current contracts. So if a customer's
11 contract expired in 2002, that load then went back into the
12 baseload served by the company and would be available to shop.
13 If they extended into and passed the mid-market period, then the
14 load -- the kilowatt-hours available to shop and the load would
15 be less than what was included in my projection.

16 Q. On Pages 15 and 16 -- Well, first of all, earlier in
17 your testimony there are several references to "I", and in this
18 area of your testimony, I notice that there's a proliferation of
19 the term "we". Can you tell me who we is referring to?

20 A. I was using the universal we for FirstEnergy.

21 Q. Okay.

22 A. Speaking of the company.

23 Q. Did you prepare the calculations that are on these --
24 that are explained on these pages?

25 A. The calculations were prepared at my direction by our

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1 rates department.

2 Q. And the determination of the various percentages that
3 were used for the total calculations, were they determined by
4 you?

5 A. The percentages used for the calculations were
6 determined by me based on customer research, yes.

7 Q. And what customer research supports the various
8 percentages that are used on these pages?

9 A. The percentages that I used to calculate were mine and
10 mine alone. I meant, I was calculating percentages on the
11 results of customer research. So I misspoke previously.

12 Q. All right. My question, just to be clear, does not
13 refer to the survey results that were used.

14 A. Right.

15 Q. Only to the percentages that were applied by you and
16 possibly other people at FirstEnergy to develop the switch rates
17 from those survey results.

18 Who was responsible for those percentages, the ones
19 that were needed to go from the survey to the switch rates?

20 A. I was responsible for determining the percentages and
21 the formula used to calculate the switching.

22 Q. Okay. And do you have any studies or other analysis,
23 for instance, from gas choice programs or something like that to
24 support these percentages that are used on these pages?

25 A. The only active Customer Choice Program that I have

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1 information on is the Columbia Gas program in northwest Ohio,
2 where just about 50 percent of the customers have exercised the
3 option to switch.

4 I did not have access to any of their surveys to see
5 how that compared to what they thought would switch to how many
6 did, I did not have access to anybody else's research other than
7 our own. So I took a very conservative approach in determining
8 a fraction of the results that the customers gave us. I took a
9 fraction of that to determine switching.

10 Q. So the numbers that you used were not dependent upon
11 those other analysis or studies?

12 A. No, they were not.

13 MR. SMALL: I have no further questions.

14 EXAMINER LESSER: Mr. Bruce?

15 MR. BRUCE: No.

16 EXAMINER LESSER: Any redirect?

17 MS. LIEBMAN: No redirect, your Honor.

18 EXAMINER LESSER: Thank you.

19 Any objections to the exhibits?

20 (No response.)

21 EXAMINER LESSER: Exhibits 11 and 11S are admitted.

22 - - -

23 Thereupon, FirstEnergy Exhibit Nos. 11 and 11S
24 were received into evidence.

25 - - -

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1 MS. LIEBMAN: Your Honor, I neglected to identify
2 that there were workpapers in the filing that have been --

3 EXAMINER LESSER: Attachments to 11?

4 MS. LIEBMAN: There were also workpapers, WPLS 1 and
5 WPLS -- through WPLS 3.

6 EXAMINER LESSER: Any objection?

7 (No response.)

8 EXAMINER LESSER: Admitted.

9 - - -

10 Thereupon, FirstEnergy Workpapers LS-1 through
11 LS-3 were received into evidence.

12 - - -

13 EXAMINER LESSER: Let's keep going.

14 (Witness excused.)

15 MR. KORKOSZ: We call Mr. Turosky.

16 (Witness placed under oath.)

17 - - -

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1 KURT E. TUROSKY

2 of lawful age, being first duly placed under oath, as prescribed
3 by law, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. KORKOSZ:

6 Q. Please state your full name and business address.

7 A. My name is Kurt Edward Turosky. My business address
8 is 76 South Main Street, Akron, Ohio 44308.

9 Q. By whom are you employed and in what capacity?

10 A. I'm employed by FirstEnergy Corp., and my present
11 capacity is Manager, Investor Relations.

12 MR. KORKOSZ: I ask, your Honor, to have a multi-page
13 document styled "Direct Testimony of Kurt E. Turosky identified
14 for this record as FirstEnergy Exhibit 12.

15 - - -

16 Thereupon, FirstEnergy Exhibit No. 12 was
17 marked for purposes of identification.

18 - - -

19 BY MR. KORKOSZ:

20 Q. Mr. Turosky, do you have before you what's been
21 identified as FirstEnergy Exhibit 12?

22 A. Yes, I do.

23 Q. Is that your direct testimony in this proceeding?

24 A. Yes, it is.

25 Q. Do you have any additions or corrections to that

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1 testimony?

2 A. No, I do not.

3 Q. If I were to ask you today questions contained in
4 FirstEnergy Exhibit 12, would your answers be the same?

5 A. Yes, they would.

6 MR. KORKOSZ: I ask your Honors to have identified as
7 FirstEnergy Exhibit 12S a multi-page document identified as the
8 supplemental testimony of Kurt E. Turosky.

9 - - -

10 Thereupon, FirstEnergy Exhibit No. 12S was
11 marked for purposes of identification.

12 - - -

13 BY MR. KORKOSZ:

14 Q. Do you have FirstEnergy Exhibit 12S before you,
15 Mr. Turosky?

16 A. Yes, I do.

17 Q. Is that your supplemental testimony in this
18 proceeding?

19 A. Yes, it is.

20 Q. Any additions or corrections to that testimony?

21 A. No.

22 Q. If I were to ask you today the questions contained in
23 FirstEnergy Exhibit 12S, would your answers be the same?

24 A. Yes, they would.

25 MR. KORKOSZ: At this time, your Honors, I would offer

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1 FirstEnergy Exhibit 12, except for that portion of the exhibit
2 as I indicated on the record the other day that deals with the
3 issue of potential responses to achievement or nonachievement of
4 the switching rate, and that is specifically Mr. Turosky's
5 direct testimony, FirstEnergy Exhibit 12, Page 10, Line 8
6 through Page 14, Line 16. With the exception of that portion of
7 the testimony, I would offer FirstEnergy Exhibit 12, FirstEnergy
8 Exhibit 12S into the record, and tender Mr. Turosky for
9 cross-examination.

10 EXAMINER LESSER: Thank you.

11 Who is having the honor? Mr. Bentine.

12 MR. BENTINE: Thank you.

13 - - -

14 CROSS-EXAMINATION

15 BY MR. BENTINE:

16 Q. Mr. Turosky, my name is John Bentine. I'm
17 representing the City of Cleveland in this matter.

18 Before we go exactly to your testimony, Mr. Turosky,
19 are you the same Kurt Turosky that has negotiated and at least
20 signed and executed and then taken care of the filing of a
21 number of contracts between the various FirstEnergy operating
22 companies and customers and had those contracts filed here at
23 the Commission?

24 A. Yes, I am.

25 Q. And I'll pose this question to you or your counsel.

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1 With regard to the treatment of some of those contracts post
2 1-1-2001 under the stipulation, would that be something I would
3 talk to this witness about, or would I talk to Mr. Alexander
4 about that?

5 MR. KORKOSZ: Well, certainly beyond the scope -- I
6 don't know where you're going with it, what your questions would
7 be, but I would suggest that that strikes me as an area that is
8 beyond the scope of this witness' testimony and I would
9 interpose an objection if there were substantive questions to
10 this witness.

11 MR. BENTINE: Well, if that is an objection, I don't
12 believe it -- beyond the scope of direct has been the basis for
13 objection for sometime in Ohio in the civil --

14 EXAMINER LESSER: I can't hear you, Mr. Bentine.

15 MR. BENTINE: I said I don't believe beyond the scope
16 of direct has been a basis for objection under the civil rules
17 in Ohio for some time. If the information is relevant and this
18 witness can testify on it, and if this is the witness to testify
19 on it, then I'll be happy to ask my questions to him.

20 If we can have a representation by counsel that these
21 questions should go to Mr. Alexander, I want to talk about the
22 stipulation and what happens with special contracts under the
23 stipulation on a going-forward basis.

24 MR. KORKOSZ: If that is the area of Mr. Bentine's
25 inquiry, then I would direct him to Mr. Alexander.

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1 EXAMINER LESSER: Does that clear that up?

2 MR. BENTINE: That clears that up.

3 BY MR. BENTINE:

4 Q. Mr. Turosky, I understand that you are responsible for
5 the supplier tariff that has been filed in this proceeding as a
6 proposed tariff for suppliers; is that correct?

7 A. No, it is not.

8 MR. KORKOSZ: That's Mr. Green.

9 MR. BENTINE: That's Mr. Green. All right.

10 BY MR. BENTINE:

11 Q. So you have only the standard rules and regulations
12 under your portion of the testimony; is that correct?

13 A. That is correct. They are also limited in scope.
14 Issues related to the supplier tariff do go to Mr. Green, also.

15 Q. Would you turn to Page 5 of your direct testimony, and
16 I'm sorry but the lines are out on mine, but I believe it's the
17 sentence starting on Line 4, talks about, "The cost of such
18 metering equipment is due to customers' utilization of services
19 of Certified Suppliers..." Do you see that?

20 A. Yes, I do.

21 Q. Could you tell me why that's the case?

22 A. Should there not have been a change in the
23 company/customer relationship, there would not have been a need
24 to change out the meter.

25 With respect to the advent of Certified Suppliers,

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1 there are certain provisions of using a certified supplier that
2 may entail such as a requirement by the certified supplier, a
3 new type of meter, and this section of the testimony is going to
4 the statement that those costs would be borne by the customer or
5 the certified supplier.

6 Q. So it is because the customer would be served by
7 someone other than the company that you believe this charge is
8 necessitated?

9 A. No. The charge would be necessitated by the
10 requirement to install a new meter and, therefore, incur a new
11 cost.

12 Q. I understand that. But is it necessary for your
13 company to serve that customer to have that new meter?

14 THE WITNESS: Can I have that question reread, please?
15 (Record read back as requested.)

16 THE WITNESS: There are certain provisions either a
17 requirement of the new certified supplier who could require a
18 new type meter, or provisions in the supplier tariff that you
19 earlier referenced that may necessitate a new meter. Those
20 would be the actions that would result in the increased cost
21 and, therefore, the need for the charge.

22 BY MR. BENTINE:

23 Q. If I am a customer of CEI, let's say, today, and I
24 switch from a tariff that does not require a demand meter to a
25 tariff that does require a demand meter, do I pay for the meter

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1 installation?

2 A. I believe the cost associated with that meter would be
3 borne in the tariff, in the tariff, the new tariff that you
4 would be served under.

5 Q. In other words, there's no installation charge for the
6 meter in that instance, but that cost is rolled into, so to
7 speak, to the other charges in the tariff?

8 A. That is my understanding, yes.

9 Q. And why is that not the case when a customer switches
10 to a supplier other than CEI in that example to receive their
11 service?

12 A. Again, in not all cases would a customer who switches
13 to a certified supplier have to incur a new meter, so in certain
14 instances they can switch to a new supplier and not incur a new
15 meter and, therefore, not incur a cost or a charge.

16 So it's not necessarily the switch to the certified
17 supplier, but certain other parameters, either the requirement
18 of the certified supplier or the requirement of the supplier
19 tariff.

20 Q. I understand that. But my point is, Mr. Turosky, in
21 the case where a customer changes to another rate schedule of
22 CEI, that requires a demand meter, there is not a charge for the
23 meter, but if a customer of a certified supplier requires a
24 demand meter, there is a charge; isn't that correct?

25 A. To the extent that they did not have a demand meter in

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1 place today and it required a new meter, that would be true, and
2 the reason for that is because there is not a -- the cost of
3 that demand meter is not built into the cost under that tariff,
4 which would be different.

5 Q. I thought you didn't have anything to do with the
6 supplier tariff.

7 A. I do not.

8 Q. How do you know, then, that the cost of those meters
9 are or are not included in any of those rates?

10 A. It's my understanding that the costs associated with
11 the meter charges are covered in the standard rules and not in
12 those tariffs, is my understanding.

13 Q. And by "standard rules", we're talking about the
14 distribution service of a company?

15 A. Yes.

16 Q. So there are meter charges buried in the distribution
17 service as well?

18 A. That would be a question for Mr. Blank, the rate
19 unbundling witness.

20 Q. So the answer is you can't tell me whether or not they
21 are?

22 A. Mr. Blank would have been able to tell you that
23 answer.

24 MR. BENTINE: If I can have a moment.

25 (Pause.)

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1 That's all I have. Thank you.

2 THE WITNESS: Thank you.

3 EXAMINER LESSER: Ms. Bloomfield.

4 - - -

5 CROSS-EXAMINATION

6 BY MS. BLOOMFIELD:

7 Q. Good afternoon, Mr. Turosky, my name is Sally
8 Bloomfield.

9 A. Good afternoon.

10 Q. I represent the Electrical Contractors --
11 (Discussion held off the record.

12 BY MS. BLOOMFIELD:

13 Q. Mr. Turosky, I have questions for you that begin on
14 Page 9.

15 MR. KORKOSZ: So as not to interrupt the flow of
16 questions from Ms. Bloomfield, with a sense of deja vu, I will
17 interpose or at least I will note for the record a discussion we
18 had yesterday regarding the fact that portions of Mr. Hyrnick's
19 and Mr. Turosky's testimony have been adopted and superceded to
20 be placed into testimony of Mr. Clark, and I will not repeat the
21 various arguments and positions espoused, merely to state that I
22 reiterate them with respect to the issue I think which will be
23 posed with respect to this area on Mr. Turosky.

24 EXAMINER LESSER: Ms. Bloomfield?

25 MS. BLOOMFIELD: Your Honor, it is deja vu and I would

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1 make the same arguments that were made yesterday. I'm assuming
2 we're going to have a similar ruling.

3 EXAMINER LESSER: We believe in consistency from the
4 Bench. Will you make that witness available?

5 MR. KORKOSZ: Mr. Clark? We do not plan to call
6 Mr. Clark. We do not plan to call Mr. Clark, we do plan to
7 offer Mr. Clark's testimony.

8 EXAMINER LESSER: Well, I believe we're going to need
9 Mr. Clark here. I believe we're going to need Mr. Clark here if
10 you're accepting that portion of the testimony.

11 MR. KORKOSZ: If your Honors' suggestion to me is that
12 you'll need Mr. Clark unless I adopt the same position I took
13 yesterday with respect to Mr. Hyrnick, then I will make
14 Mr. Turosky available at this time for examination on the
15 portion -- on that portion of his testimony.

16 EXAMINER LESSER: Thank you.

17 BY MS. BLOOMFIELD:

18 Q. I am looking at that portion of the testimony that
19 was -- that you originally wrote and then was to be adopted by
20 Mr. Clark, which starts on -- the question starts on Line 10.

21 A. Okay.

22 Q. On Line 12 you make reference to the fact that you are
23 adding to the company's rules and regulations Section (XI.C); is
24 that correct?

25 A. That is correct.

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1 Q. And is this Paragraph C part of an entire Section XI
2 which is titled Customer Wiring Equipment and Special Services?

3 A. Yes, it is.

4 Q. And in Section XI, is there not a definition section,
5 Paragraph A, and then a liability section, Paragraph B? If it
6 would be helpful I'm looking at Schedule UNB-1 and I'm on
7 Original Sheet No. 4, Page 13 of 32.

8 A. Yes, and I am looking at those sections, they are
9 entitled -- Section A is entitled "Installation" and Section B
10 is titled "Company Responsibility". Section B does address
11 liability. Section A, I thought you had mentioned a definition,
12 and it's more of a description.

13 Q. I'm sorry, I meant to say definition of
14 installation --

15 A. Okay.

16 Q. -- included in there?

17 A. Yes.

18 Q. And so when one is concerned about customer wiring
19 equipment and special services, one would need to read
20 Paragraphs A, B and C, is that correct, to know what the full
21 rules and regulations are for the services that are described in
22 Paragraph C?

23 A. Yes, as well as any other applicable provisions.

24 Q. And it appears that there are portions of Paragraph A
25 that are new, and it looks as if all of Paragraph B and all of

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1 Paragraph C are new; is that correct?

2 MR. KORKOSZ: For clarification, I apologize if I
3 missed it. Which of the companies UNE 1 schedules are you
4 looking at.

5 MS. BLOOMFIELD: I didn't mention that. I have Ohio
6 Edison's. It was my understanding that all the tariffs were
7 going to be made uniform so they would all look the same.

8 MR. KORKOSZ: They are, but for certain companies a
9 provision may not be new.

10 BY MS. BLOOMFIELD:

11 Q. For this purpose I'm looking at Ohio Edison's.

12 A. Okay. If you look at the annotations in the margins,
13 although the wording is changed, the majority of those changes
14 that you identify for Sections A and B are textual changes, not
15 substantive changes.

16 Q. I do see under Paragraph C that there's the annotation
17 "N". Does that not mean at least with respect to Paragraph C,
18 everything in that section is N?

19 A. Yes. Everything in that section is new with respect
20 to its inclusion and specificity in the tariff, itself.

21 Q. Looking at your -- now returning to your testimony for
22 a minute on Page 9. You indicated there that you were proposing
23 to add that section.

24 Isn't it true that this is the first time in the
25 FirstEnergy tariffs that they have spelled out what they will

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1 provide in terms of these services to commercial customers or to
2 customers other than governmental entities?

3 A. With that level of specificity, that is correct. Ohio
4 Edison's tariff Section X F did talk about some special services
5 facilities and instrumentalities, and section -- the special
6 customer services section is really an expansion and more
7 thorough description of the types of services that are currently
8 and have been being conducted by each of the operating
9 companies.

10 Q. I'm not sure that I understood your entire answer.
11 Isn't this the first time that these services are spelled out as
12 being available to, I'm going to call them commercial customers,
13 as distinguished from governmental entities?

14 A. Again, the answer to that is no. If you look at
15 Section X F, "Special Facilities", it talks about services
16 provided for a customer at his request.

17 Q. Are those special facilities in the Paragraph F the
18 same services that are described in Paragraph C of the next
19 section, Section XI?

20 A. Section C is meant to be a more thorough description
21 of the types of services that were covered by Section X F as
22 well as, again, just a more thorough description, and they are
23 practices that all three operating companies in Ohio have been
24 performing.

25 Q. With respect to these special services in X F, you

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1 said -- I noticed here in the Ohio Edison tariff there is not a
2 notation that this particular section is new. Is that also the
3 case with respect to the other two companies.

4 A. No, it is not. This section was a provision in the
5 Ohio Edison tariff, it was a practice at CEI and Toledo Edison,
6 and from a uniformity standpoint was one of the areas where we
7 were trying to get more uniformity among the tariff terms and
8 conditions.

9 Q. So in CEI territory and Toledo Edison territory,
10 Paragraph F was not present, is that what you said? I'm sorry,
11 I'm having difficulty because of the air conditioning. I'm
12 sorry, I didn't hear your answer.

13 A. I'm going to check just to verify.

14 Q. Okay.

15 A. As an example on CEI's standard rules and regulations,
16 it is Section X F as shown being totally underlined and being a
17 reference "T" for a change in text, not a new service, so what
18 that's trying to represent is that we're adding consistency from
19 the language to current practices.

20 Q. Is it indicated in there where the prior language was
21 that you say is merely a change in text?

22 A. In some cases, it wasn't just a -- It does not, that
23 specific section. There were certain other references in CEI's
24 tariffs that do talk about work done for customers at the
25 customer's cost, that were sporadic throughout the tariff, so it

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1 was not as clearly defined in a specific paragraph as it was in
2 Ohio Edison and that's -- that's where we picked up that
3 language and applied that same language to CEI and Toledo
4 Edison, but the practices across the companies were similar.

5 Q. Was it your judgment as to whether or not the
6 annotation "N" for "new" or "T" for "text" appeared next to each
7 section?

8 A. Can you clarify that question, please?

9 Q. Yes. You showed me that on the right-hand column
10 there is an annotation that either -- in the cases that we were
11 looking at, it was either an "N" for new material or a "T" for a
12 textual change.

13 My question is: Are you the person responsible for
14 and had the discretion to indicate on the tariff whether it was
15 a text change or a new change or a new provision?

16 A. With respect to the original filing back in October,
17 it was done under my direction.

18 Q. And was it -- It sounded to me from your prior answers
19 that if you saw a reference somewhere about the subject matter
20 in the tariff that you planned to change, you would call that a
21 text change as opposed to a new provision; is that correct?

22 MR. KORKOSZ: May I have that reread, please?

23 (Record read back as requested.)

24 THE WITNESS: That really wouldn't have been the
25 specific guidance that we were trying to follow. What we were

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1 trying to follow was a guidance that was provided in the -- by
2 the Commission's historical rules in trying to identify things
3 that really weren't a change in practice but maybe just a
4 textual type change; those would be a "T".

5 Where we were talking about new provisions or very
6 expansive descriptions of services that may not have existed
7 before, we probably would have leaned toward calling those an
8 "N" for new.

9 Some cases, there certainly was some latitude in terms
10 of whether one person might consider it a T or an N; sometimes
11 it was judgmental.

12 BY MS. BLOOMFIELD:

13 Q. Okay. In your response to those questions on Line 14
14 in particular, you talk about the companies wanting to continue
15 to provide service -- these services that are described in
16 Paragraph C; is that correct?

17 A. Yes, that is correct.

18 Q. So to the extent that -- that a customer in the past
19 wanted one of these services described in Paragraph C which was
20 not specifically in the tariff before, would that -- how would
21 that service have been rendered? Under what provision would
22 service have been rendered?

23 A. Depending upon which operating company you were
24 talking about, it may have been rendered under various
25 provisions of the standard rules and regulations. Presumably,

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1 in some cases, as I've pointed out for Ohio Edison and CEI,
2 there is some description in the existing tariffs that talk
3 about some of that type of work. So it would have been
4 performed pursuant to those provisions of the tariffs.

5 Q. So is it fair to say that to the extent there wasn't a
6 description, there was -- the company interpreted that some
7 general term in the tariff covered these particular services?

8 A. The company would have -- was under the opinion that
9 these services were able to be performed pursuant to their
10 standard rules and regulations, as well as standard practices
11 that may or may not have been specified extensively in the
12 tariff provisions.

13 Q. You make reference to rules and regulations. In terms
14 of just getting the nomenclature straight, what do you mean by
15 rules and regulations in the tariff?

16 A. Talking about the specific description in the tariff
17 called standard rules and regulations, and then I also talk
18 about -- I just mentioned the word standard practices of a
19 utility company.

20 Q. I take it you have in front of you Schedule UNB-1 for
21 Ohio Edison?

22 A. Some of UNB.

23 Q. Some. Well, looking at the volume that contains
24 Paragraph -- or, Section XI, Paragraph C that we were talking
25 about, is there -- could you give me an example in this

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1 particular volume of the type of rules and regulations that you
2 would have been talking about?

3 A. If you turn to page -- Original Sheet No. 4, Page 1 of
4 32 for Ohio Edison is electric service standard rules and
5 regulations, that was -- that is what I was referring to when I
6 said rules and regulations. Standard practices may have been
7 something that is typical standard practice that may or may not
8 have been specifically defined in the tariff.

9 Q. So did -- did the company then prior to specifying
10 this, when you say continued, the company took the point of view
11 that even if the service were not mentioned, so long as they had
12 general rules and regulations, they could provide the service;
13 is that what you said?

14 A. I believe --

15 THE WITNESS: Can I have my prior answer read back. I
16 think my prior answer responded to your question.

17 (Record read back as requested.)

18 THE WITNESS: And that is how I would answer your most
19 recent question, same answer.

20 BY MS. BLOOMFIELD:

21 Q. So you're saying the service might be rendered
22 pursuant to a standard practice, but I didn't -- but a standard
23 practice might not have been referenced in the tariff; is that
24 correct?

25 A. As I indicated, yes, a standard -- there may be some

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1 standard practices that are performed that are not specifically
2 delineated in a tariff provision; however, for Ohio Edison I did
3 point you to the applicable historical section and also gave you
4 a brief reference, I believe, to some CEI language of similar
5 nature.

6 Q. In the past when someone asked for services that you
7 are now describing on Section XI, Paragraph C, were these
8 provided by special arrangements or special contracts?

9 A. Could you describe for me what you mean between
10 special arrangements and special contracts?

11 Q. I -- Okay. Let me go back. Are there prices in the
12 tariff for any of the services that are described on
13 page -- Original Sheet No. 4, Page 15 of 32, which begin "Such
14 Special Customer Services include..."?

15 A. On Original Sheet No. 4, Page 14 of 32.

16 Q. 15.

17 A. I reference that. I'm trying to respond to the
18 question.

19 On the prior page, Page 14 of 32, at the very bottom
20 of the page, it says, "Such Special Customer Services shall be
21 provided at a rate negotiated with the customer, but in no case
22 at less than the Company's fully allocated cost".

23 Q. That's what you intend to do today, right, today
24 forward or whenever the Commission would approve this? I would
25 be asking about what have you done prior to this time? Have

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1 you -- Have you also negotiated -- made special arrangements or
2 special contracts with customers for these services even though
3 they had not been specifically delineated in the tariff, is
4 that --

5 A. Yes. Yes, the company's historical practices have
6 been to perform these same type of services that we're talking
7 about that we're now specifically delineating in the tariffs.

8 Q. When you use the word "historical", what -- what --
9 approximately what period of time do you have in mind?

10 A. I can't answer that question. I don't know the
11 answer.

12 Q. Why did you chose the word "historical"?

13 A. I know that it's a continuation of an existing
14 practice, so using -- given that it is an existing practice, as
15 we move forward with the new -- new tariff provisions and new
16 effective date of a tariff, I know that these services have been
17 performed at least for the last few years. For all I know,
18 though, they could go back 25 years or 50 years, to my
19 knowledge. I don't know.

20 Q. So from your knowledge, your use of the word
21 "historical" encompasses a few years; is that correct?

22 A. Yes, it does.

23 Q. Line 16, when you state that the services -- these
24 services provided by the companies are "...directly related to
25 the company's normal distribution services", do you mean that

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1 these are the same kinds of services that companies -- the
2 companies have performed with respect to their own systems, that
3 is, the facilities that are owned by each of Ohio Edison, Toledo
4 Edison and CEI?

5 THE WITNESS: Can I have that question read back? I'm
6 struggling here over the fan.

7 MS. BLOOMFIELD: Your Honor, could we go off the
8 record?

9 EXAMINER NODES: Sure.

10 (Discussion held off the record.)

11 THE WITNESS: I cannot say with certainty that those
12 same services were performed on company-owned equipment. My
13 presumption would be yes, but I can't say that for certain. I
14 don't know.

15 BY MS. BLOOMFIELD:

16 Q. In that case, what did you mean when you said,
17 "directly related to the company's normal distribution
18 services"?

19 A. I meant that these are services that are provided by,
20 related to distribution related work, customer substation type
21 of work activities and things like that, things that are related
22 to the line of work that the distribution group does for
23 customers.

24 Q. You indicated on the next line that the rule -- and I
25 assume you're talking about the -- about a sentence that is in

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1 Paragraph C -- makes it clear that customers will be informed
2 that they have another -- that they may have another supplier to
3 perform the work and that their choice of supplier will not
4 affect this service that they receive from the company.

5 First of all, is my reference correct?

6 A. I'm going to verify. I believe it to be correct. I
7 will verify it for you.

8 (Pause.)

9 Yes, that is a correct reference.

10 Q. When you -- Isn't that sentence substantially the same
11 as the sentence that appears in the rule itself?

12 A. It is similar.

13 Q. Will you detail how the rule makes it clear that
14 customers will be informed?

15 A. Turning to Page 14 of 32, Original Sheet No. 4, under
16 Section XI C, the provision states, "No such Special Customer
17 Service shall be provided except where Company has informed the
18 customer that such Service is available from and may be obtained
19 from other suppliers".

20 Q. How -- How does the company intend to make that
21 information available?

22 A. Directly to the customer.

23 Q. In what manner?

24 A. Are you talking about verbal, written? I mean, is
25 that what you want me to clarify?

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1 Q. Yes.

2 A. I do not know what the company's distribution plan is
3 in terms of how to provide that notification, whether it would
4 be written, oral, I don't know.

5 Q. Who would be responsible for implementing this tariff?

6 A. All of the employees that are associated with the
7 company's distribution group. And in terms of a -- from a
8 regulatory affairs, in terms of Commission monitoring, a lot of
9 those activities are conducted in the rate department under the
10 direction of Mr. Blank. So that if there was a complaint type
11 proceeding, his group would be involved.

12 Q. Did you or people under your supervision author this
13 particular provision in the tariff?

14 A. Yes. There was a team of individuals that -- that
15 worked on this and they were under my direction. That is
16 correct.

17 Q. Well, when you wrote that the customer will be
18 informed, what did you have in mind when you wrote that?

19 A. My testimony writing that I did was referencing the
20 specific language in the tariff and that specific language
21 was -- was discussed among a group of employees that reported to
22 me, as well as other employees.

23 And from a specific implementation standpoint, the
24 implementation provision would become effective, the tariff
25 becomes effective January 1, 2001, and a specific -- a specific

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1 plan on implementation, to my knowledge, doesn't exist yet. The
2 intent would be to have -- to ensure that one is in place by
3 that time.

4 Q. Is that why the rule was written in the passive voice,
5 so there was no indication of who was going to do what to whom?

6 A. To my knowledge, that was not the intent.

7 Q. So at this point there is no plan as to how a customer
8 will be informed that there may be other alt- -- other
9 suppliers; is that correct?

10 MR. KORKOSZ: I object. That's not the witness'
11 testimony.

12 EXAMINER LESSER: I couldn't hear you.

13 MR. KORKOSZ: I object. That was not the witness'
14 testimony. The question mischaracterizes it.

15 EXAMINER LESSER: Sustained.

16 BY MS. BLOOMFIELD:

17 Q. Did you -- I don't want to mischaracterize your
18 testimony, Mr. Turosky. I thought you said that currently there
19 were no -- there were not yet plans as to how this would be
20 done; is that correct?

21 A. If I didn't say it, I will qualify it. To my
22 knowledge, I don't know if a specific plan exists today or
23 doesn't exist today. I don't know.

24 Q. So you don't know whether there's a plan?

25 A. I would not -- I am not involved in the distribution

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1 group. I'm no longer involved in the rate department, so from a
2 specific implementation standpoint, it's possible Mr. Blank may
3 have known that answer. I do not.

4 Q. Your testimony also indicated that in the event that a
5 customer would like the services that are described in
6 Paragraph C, they would be negotiated; is that correct?

7 A. I'm sorry, could you reference the first part of your
8 sentence again?

9 Q. Your testimony there says that if I as a customer
10 would like the services that are contained in Paragraph C, I
11 would negotiate what I would pay for those services; is that
12 correct?

13 A. That is correct.

14 Q. How will this negotiation work mechanically?

15 A. Again, I am not aware of the specific implementation
16 plan that would be associated with the negotiation of the
17 pricing. I am aware that it occurs today, but I am not aware of
18 the specific mechanics as you had indicated.

19 Q. Your testimony -- You do say in your testimony that,
20 "The rate that will be provided for these services will be
21 negotiated by the customer, but in no case less than the
22 company's fully allocated cost", do you not?

23 A. Yes, I do.

24 Q. Okay. So are you telling me you don't know what those
25 words mean or --

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1 A. That's not what I said.

2 Q. -- how they're effected in the real world?

3 A. That's not what I indicated. I do not know the
4 specific mechanics or the approach used in the negotiation. I
5 do know that as a result of the cost allocation manual and the
6 corporate separation requirements associated with the
7 legislation, I specifically wanted to clarify that these prices
8 would be at no less than the fully compensatory cost.

9 Q. Do you know if your tariffs -- that the tariffs of the
10 FirstEnergy companies that are currently in effect -- I thought
11 you said earlier these services have been provided and they
12 were -- because there are no rates in the tariff they would be
13 provided according to individual negotiations. Is that what you
14 stated earlier?

15 A. That is what I stated.

16 Q. So are you saying that you don't know, pursuant to the
17 tariff, how negotiations -- I'm not telling -- I'm not asking
18 for step one, step two, but just generally how the process of
19 negotiating rates that are for services under your current
20 tariff are -- are conducted?

21 A. With respect to the type of services we're discussing
22 here and the negotiation process, generally I'm aware of the
23 process, not the specific mechanics, but the process would be
24 conducting an evaluation of what the job is, getting an estimate
25 of what the cost would be to complete that work, and then the

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1 company from there offering the customer a price which is in
2 excess of the cost to provide that service.

3 Generally, that's the extent of my knowledge of the
4 mechanics, as you stated, of the negotiation process.

5 Q. In your testimony and the tariff also makes reference
6 to fully -- the company's fully allocated costs. What does that
7 term mean to you?

8 A. The term used in the tariffs is fully compensatory
9 cost, or in my testimony is fully compensatory cost, and what
10 was meant by that would be the cost of -- direct costs as well
11 as indirect costs.

12 Q. The word "compensatory" as you used in your testimony,
13 is that supposed to equate to the fully allocated cost notion
14 that is in Paragraph C?

15 A. Yes.

16 Q. So they're the same?

17 A. In my use of that word in my testimony, yes, it was
18 intended to be the same.

19 Q. Mr. Hyrnick yesterday testified there has been at
20 least one session with all FirstEnergy employees instructing
21 them on the code of conduct. Did you attend such a training
22 session?

23 A. Yes, I did.

24 Q. And under the tariff as written today, would a
25 competitor of Ohio Edison be able to take the tariff services

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1 and use them to serve a third party? Let me rephrase the
2 question.

3 A. Yeah, could you rephrase that.

4 Q. Yesterday, Mr. Turosky's testimony --

5 MR. KORKOSZ: Mr. Hyrnick.

6 BY MS. BLOOMFIELD:

7 Q. Excuse me.

8 -- Mr. Hyrnick's testimony, he indicated that the
9 services that we were talking -- that I'm questioning you about
10 today could be provided either by the electric distribution
11 unit, such as Ohio Edison, or it could be provided by a
12 competitive services unit, which is not regulated.

13 A. Okay.

14 Q. And what I'm asking you is: Could a competitor, let
15 us say, of the competitive services unit of the FirstEnergy
16 companies, let's say a mechanical electrical -- electric -- a
17 person providing electrical mechanical services, could that
18 person come and take these services from the tariff and use
19 them -- use them to serve a third party?

20 A. If I understood your question, I just want to be
21 clear, did you -- you said a competitor of the competitive
22 services unit, so you're talking about a nonaffiliated company
23 of FirstEnergy?

24 Q. No, I am talking -- The competitor would be a
25 nonaffiliate of FirstEnergy, yes. FirstEnergy -- FirstEnergy

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1 owns several companies that do HVAC and other types of
2 competitive services.

3 A. Yes.

4 Q. I am saying a competitor of -- of those services,
5 could that -- could that entity come and take these services
6 from the tariffs and use them to serve a third party?

7 A. If I understand the correct -- the question clearly,
8 and I'll try to phrase my answer so that if I'm not interpreting
9 it correctly that you can revise the question, but I would say
10 any competitor could perform -- could go to that same customer
11 who is seeking to have work done, these type services done, and
12 compete for that activity.

13 Q. And would that competitor, in the instance that you
14 were -- that we were both talking about, would that competitor
15 be charged on the same basis that Ohio Edison would charge its
16 own customer? In other words, this fully allocated cost.

17 A. I know I don't understand your question now because I
18 thought you were getting to what that competitor could charge a
19 customer desiring that service.

20 Q. No. I'm only getting to what Ohio Edison in this
21 instance would charge the competitor. You were -- You were
22 saying that if I were a customer of Ohio Edison and I wanted
23 these services, they would be negotiated, you would charge me no
24 more than the company's -- in no case less than the company's
25 fully allocated cost, whatever that price is, and I'm saying if

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1 I were a competitor would I receive the services on the same
2 basis as a competitor of one of FirstEnergy's competitive --
3 competitive services unit?

4 A. The -- Now, if I understand it, you're talking about a
5 competitor of FirstEnergy serving as a subcontractor for a
6 particular customer, could that -- would the -- would these
7 services be -- would a price be negotiated with that competitor?
8 And I would think that that certainly could occur. And it would
9 occur under the terms that are contained within the tariff
10 provision at a negotiated arrangement.

11 Q. Would the price to what you're calling -- that's a
12 good term -- the subcontractor be the same as the -- as the
13 price that would be negotiated with the direct customer of Ohio
14 Edison?

15 A. If you're asking me -- And I think I know where you're
16 going with this question. If there were two customers, Customer
17 A and Customer B, and would the identical cost be negotiated for
18 a similar type service to that customer, and the -- for this
19 type of activity, it would be at a negotiated price and I can't
20 really say, not knowing the two specific customers, not knowing
21 the specific work activities, whether or not the price bid would
22 be the same, whether the price would be bid by two different
23 employees in the distribution group could be negotiated at a
24 different price.

25 Q. So the price for these services under this tariff, if

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1 they're negotiated, could vary according to which Ohio Edison
2 customer service person I'm dealing with?

3 MR. KORKOSZ: May I have that reread, please?

4 (Question read back as requested.)

5 THE WITNESS: Okay. I'd kind of like to restate my
6 answer to the last question and clarify that answer.

7 As stated earlier, when you tried to get into the
8 specifics of the -- or, the mechanics of the negotiation
9 process, my answer at that time was I am not aware of the
10 specific mechanics of the negotiation process.

11 Now we're starting to get into hypothetical ground
12 that is going to be based on the specific implementation
13 mechanics that I've already indicated I'm not really aware of,
14 so going down the hypothetical road is -- is -- given that I'm
15 not familiar with the mechanics of an implementation plan nor
16 whether -- the specific mechanics that will be rendered under
17 this tariff provision effective January 1, 2001, I really can't
18 answer that question.

19 BY MS. BLOOMFIELD:

20 Q. Let me ask a question about the intent. Is it the
21 intent of the companies that the same price under the same
22 conditions and terms would be available to all customers
23 regardless of who they are for exactly the same work?

24 A. Again, not being familiar with the specific mechanics
25 of the negotiation process, I can't really provide a specific

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1 answer to that question.

2 Q. Where these special services are contracted for by
3 Ohio Edison with a given customer, do -- do those -- do those
4 special services include whatever equipment is required?

5 A. Use of existing equipment, yes, there would be an
6 allocation, and that would be one of those indirect costs that I
7 was trying to reference before when I said fully compensatory or
8 fully allocated would include direct as well as indirect, and an
9 indirect might be an allocation of equipment use time.

10 Q. And what about a piece of equipment that's going to be
11 installed in a -- at the customer's premises?

12 A. That would be a direct cost.

13 Q. And that would be -- That would be pulled from Ohio
14 Edison's inventory; is that correct?

15 A. Whether or not it's pulled from the inventory and the
16 cost -- the full cost credited against the inventory, or it is
17 purchased separately, the intent would be the same, that
18 the -- the utility company or its customers would not be, you
19 know, bearing any of the costs associated with performing that
20 work. So they would be fully -- they would be -- If the
21 equipment was pulled from inventory, the cost of that equipment
22 would be "reimbursed" back to the utility or for the inventory
23 cost.

24 Q. The negotiation that is talked about in the tariff and
25 that is talked about in your testimony, does that

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1 negotiation -- does that term "negotiation" include the ability
2 of Ohio Edison, for example, to bid on public contracts?

3 A. I don't believe that there's any prohibition in the
4 tariffs, so --

5 Q. So it could include bidding -- bidding on
6 public -- public contracts, or private contracts, for that
7 matter; is that correct?

8 A. To the best of my knowledge, yes.

9 Q. And in that case, let's assume that Ohio -- Ohio
10 Edison in this instance bid on a public job. Would all the
11 personnel and equipment that Ohio Edison would use on the job,
12 assuming it gets the bid, would that all be part of -- would all
13 that be paid for by Ohio Edison?

14 MR. KORKOSZ: I'll object. The witness has stated
15 several times that -- that the mechanics and the matter of the
16 specifics of the negotiations and how -- how the price is being
17 negotiated and the like, implementation aspects are beyond his
18 responsibility in the proposal, in the structuring of the tariff
19 language and proposal here, and this is -- the witness has
20 repeatedly answered that this is an area to which he does not
21 have detailed knowledge.

22 MS. BLOOMFIELD: Your Honor --

23 EXAMINER LESSER: Objection overruled.

24 The witness can just state that.

25 MS. BLOOMFIELD: Thank you.

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1 BY MS. BLOOMFIELD:

2 Q. The question was that in the event Ohio Edison bid for
3 a job, would all the equipment and personnel costs be
4 paid that -- that were involved in that bid be paid for by Ohio
5 Edison one way or the other?

6 A. As I had mentioned earlier, the -- the pricing for
7 which the service would be provided would be at the fully
8 compensatory or fully allocated cost, including direct and
9 indirect costs that may have to be allocated, a share of costs,
10 and those would be paid for by the customer. You had stated "by
11 the company". I presume you mean by the customer.

12 Q. I meant charged -- Well, Ohio Edison would -- would
13 make -- would charge the customer for those, correct?

14 Ohio Edison would make a bid and everything that's
15 included in the bid they would expect the customer to pay,
16 correct?

17 A. To the extent what work was done for the customer,
18 again, you would expect the customer to pay for whatever the
19 quoted -- or, negotiated price between the company and the
20 customer was for whatever service was rendered.

21 Q. To the extent that there was inventory pulled out,
22 that would be paid for by the -- that would have been Ohio
23 Edison's and paid for by the -- by the customer, correct?

24 A. As I had previously mentioned, whether or not the
25 equipment was pulled from inventory or whether the equipment was

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1 purchased on the open market, the intent of the fully
2 compensatory cost would be that the customer would pay that
3 cost, and the inventory, to the extent it was pulled from
4 inventory, would be reimbursed the full cost. So there would be
5 no net effect.

6 Q. Okay. So the idea is that Ohio Edison would be
7 compensated fully, there would be no subsidization, as I believe
8 your testimony stated later; is that correct?

9 A. That is the intent of those words in the -- in my
10 testimony, as well as in the tariff provision itself, yes.

11 Q. Are you aware of Ohio Edison or any of the other
12 utility distribution units of FirstEnergy bidding on a public
13 project?

14 A. Specifically, no. No.

15 Q. I'm not asking about a specific instance, but do you
16 know if it's happened generally?

17 A. I do not know.

18 Q. Let's assume that based upon your answer that you
19 think the tariff would not prohibit the company from making a
20 public bid, that they bid a job, and that they were the winner,
21 and let's assume that the job was predicated upon a certain
22 amount of equipment and certain -- they had tallied up in
23 advance a certain amount of equipment and a certain number of
24 people to be used.

25 And ultimately, for reasons that Ohio Edison, for

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1 example, did not anticipate, the job required more equipment or
2 more personnel or both, isn't it true in that instance there
3 would be some subsidization by customers of that particular
4 public project?

5 MR. KORKOSZ: I object.

6 EXAMINER LESSER: Basis?

7 MR. KORKOSZ: Calls for speculation. We don't have
8 any idea of what the nature of the contract that would be
9 entered into is and there's -- there's no way for this witness
10 to be able to answer the question given that limited set of
11 facts.

12 EXAMINER LESSER: Overruled.

13 The witness can just say that.

14 THE WITNESS: Again, I have to go back to I'm not
15 familiar with the specifics of the negotiation process, how that
16 will be done, and what the outcome under your hypothetical
17 scenario might be.

18 BY MS. BLOOMFIELD:

19 Q. I'd like to try one more time. If you will assume
20 with me that there is a law in Chapter -- there are laws,
21 several laws, as a matter of fact, in Chapter 153 that state
22 where a public entity bids -- makes a bid and gets the bid, that
23 that -- that the contractor is required to deliver the service,
24 what was bid for, on time and for a price that is -- does not
25 exceed the bid price.

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1 If Ohio Edison were to be involved in a bid, made a
2 good faith bid and later it turned out for whatever reason that
3 the costs to Ohio Edison were going to be greater than the bid
4 price, and under law it could not increase the bid price, my
5 question is: How would Ohio Edison avoid any subsidization in
6 that instance?

7 MR. KORKOSZ: Objection.

8 EXAMINER LESSER: Overruled.

9 THE WITNESS: Again, I'm not familiar with the
10 mechanics associated with this process. Certainly in
11 negotiating contracts you have the option of having cost
12 overruns built into the negotiated offer price, so
13 that -- should that hypothetical scenario -- I didn't indicate
14 that the company planned on -- whether or not the company
15 planned on making bids to governmental entities or not. I said
16 I did not see a tariff prohibition against that. So I don't
17 know whether that would ever be part of the intent, but I
18 certainly know that there are -- there are contract provisions
19 that can be used to -- should cost overruns occur, that would be
20 borne by the customer.

21 I don't know if that would be used or not, again,
22 going back to not being familiar with the specific mechanics
23 that are planned for the implementation of this process.

24 BY MS. BLOOMFIELD:

25 Q. Do you know whether under a public contract cost

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1 overruns are permitted?

2 MR. KORKOSZ: Objection.

3 EXAMINER LESSER: Sustained. I sustained the
4 objection.

5 BY MS. BLOOMFIELD:

6 Q. Okay. Mr. Turosky, I'm now going to turn to the
7 portion of the tariff that we've been discussing; and going back
8 to Original Sheet No. 4, Page 13 of 32, where there is new
9 language in Paragraph A. The new language states, "As required
10 by the Ohio Administrative Code, all new installations shall be
11 inspected and approved by the local inspection authority",
12 et cetera. Do you see where I'm referring?

13 A. Yes, I do.

14 Q. What part of the Ohio Administrative Code does this
15 tariff have reference to?

16 (Pause.)

17 A. I don't know the specific Ohio Administrative Code
18 reference, and I was trying to look on Schedule UNB 2.1 to see
19 if there was a specific reference, but I do not see one so I
20 can't answer that question. I don't know the specifics.

21 Q. As I read this tariff, then I don't have any idea what
22 you're referring to, is that correct, because you haven't given
23 me a section?

24 A. I presume you could read the Ohio Administrative Code
25 and --

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1 Q. The entire thing.

2 Inasmuch as this appears to go on to talk about local
3 inspection, do you believe it to be the case that the Ohio
4 Administrative Code references probably to the Ohio Building
5 Code?

6 A. I don't know.

7 Q. Do you know why the language -- the new language is
8 included here pertaining to local inspection authority and the
9 necessity to have a licensed electrician, et cetera, why was
10 that inserted into the tariff?

11 A. I believe this is probably an example of the attempt
12 to get more uniformity across the company's tariff, where there
13 is similar current practices, so -- If you go back to my
14 testimony where I talk about uniformity across the three
15 operating companies, in several instances throughout these
16 tariffs, obviously written by different authors, people chose
17 different words, and these are all textual changes to me which
18 indicates that they were not a change in practice, per se, but
19 rather just a clarification to existing practices.

20 Q. Would you find for me in the other two tariffs where
21 this language is not new?

22 EXAMINER LESSER: Why don't we take a five-minute
23 break while he's looking for that.

24 (Recess taken.)

25 EXAMINER LESSER: Back on the record.

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1 Do you remember the question?

2 THE WITNESS: Yes, I do.

3 And the answer is, the intent of that sentence is to
4 try to indicate our intent is to comply with the Ohio
5 Administrative Code provisions. I had asked about any existing
6 references within the tariffs regarding local inspection
7 authority, and there are some references in Toledo Edison's
8 existing tariffs, Schedule UNB 2, Page 11, Second Revised Sheet
9 No. 7. At the bottom of the page I have 16.

10 BY MS. BLOOMFIELD:

11 Q. Since I don't have that in front of me, would you read
12 that reference, please?

13 A. "The company shall not be obligated to make any
14 service connections where the customer's facilities are subject
15 to building inspection approval by a governmental body until any
16 such approval required by law has been given.

17 "The company does not at any time undertake any
18 obligation to inspect the customer's wiring and electrical
19 facilities or assume any obligation in regard to their safety,
20 adequacy, fitness for the purpose used or otherwise.

21 "The company shall not be liable for damage to any
22 customer or to third persons resulting from the use of the
23 service on the customer's premise or from the presence of the
24 company's appliances or equipment on the customer's premises."

25 So the reference I was trying to get was to the first

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1 sentence I read.

2 Q. Okay. And there was -- You found nothing concerning
3 that in the other tariff, is that correct, CEI's tariff?

4 A. In the five-minute scan of the other tariffs, I did
5 not see another applicable provision.

6 Q. Isn't it the case that whenever electrical work is
7 being done on the customer's side of the attachment, in the
8 parlance of the Ohio Board of Building Standards, the work is
9 referred to as being secondary -- subject to secondary service
10 rules?

11 A. That is beyond the scope of my knowledge.

12 Q. Is it the intent of Paragraph A for the companies to
13 comply with Ohio law and rules and regulations pertaining to
14 customer premise electrical work?

15 THE WITNESS: Can I have that question read back,
16 please?

17 (Record back as requested.)

18 (Pause.)

19 THE WITNESS: I'm sorry. Can you read that one more
20 time, please, now that I've fully read that paragraph?

21 (Record read back as requested.)

22 THE WITNESS: The Paragraph A that we're referencing
23 was trying to describe the requirements for inspection of the
24 wiring done on the customer side of the attachment before the
25 company will perform their service, or their connection. It's

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1 not the company's intent to violate law in establishing its
2 connection, but to verify that there's -- there are safe
3 provisions and that they have been inspected.

4 BY MS. BLOOMFIELD:

5 Q. Let me ask the question a little more narrowly then.
6 Is it the -- Is it the company's intent, to the extent they are
7 providing services indicated in Paragraph C, that the companies
8 comply with all applicable laws, rules and regulations?

9 A. It will be the company's intent to comply with
10 applicable laws in performing services pursuant to this tariff
11 provision.

12 Q. With respect to -- Turning now to Paragraph B. Isn't
13 it the case that anyone who takes services under Paragraph C
14 would be subject to the provisions of Paragraph B?

15 MR. KORKOSZ: May I have that reread, please?

16 (Record read back as requested.)

17 THE WITNESS: The provisions of Paragraph B describe
18 the company responsibility and liability from -- from services
19 performed. Those would govern any company-customer
20 relationships that are governed by these tariffs.

21 With respect to -- I can't say for certain whether all
22 customers who would be served under special customer services
23 would -- would have applicability under Section B.

24 BY MS. BLOOMFIELD:

25 Q. That describes the limitation of liability that the

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1 companies are giving to the customers; is that not correct?

2 MR. KORKOSZ: We're speaking of Paragraph B now?

3 MS. BLOOMFIELD: We're speaking of Paragraph B.

4 THE WITNESS: Yes, resulting from interruptions in
5 service, variations in service characteristics, high or low
6 voltage. I mean, it's possible that somebody could be provided
7 service under special customer services. It may not take
8 service under -- under -- from the company under Paragraph B
9 that would -- where it would be applicable.

10 BY MS. BLOOMFIELD:

11 Q. In other words, you can negotiate away from your
12 exculpation of liability if I took some services under
13 Paragraph C?

14 A. My thinking is that --

15 THE WITNESS: I need that question reread.

16 (Record read back as requested.)

17 THE WITNESS: No, that is not what I was trying to
18 suggest at all. What I was trying to suggest is I think the
19 original question you were phrasing is are all customers who
20 have provided service under Section C covered by Section B, and
21 I guess to the extent that they were -- they are distribution
22 and -- distribution customers of the company Paragraph B would
23 apply.

24 What I was trying to suggest is that it is possible
25 that work done under Paragraph C might not -- you may never run

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1 into a situation where Paragraph B comes into place for that
2 particular customer.

3 BY MS. BLOOMFIELD:

4 Q. So in this instance with respect to Paragraph B,
5 all -- you've indicated a "T" for a text change but all the
6 wording in B is new; is that correct?

7 A. On Ohio Edison's tariff?

8 Q. On Ohio Edison's, yes.

9 A. That is correct.

10 Q. Do you know whether the terms contained in Paragraph B
11 comply with Ohio Revised Code Section 2305.31 relating to
12 indemnity agreements that are against public policy and are void
13 if they purport to require a person with whom the contractor
14 deals to indemnify the contractor against liability for damages
15 arising out of negligence of the contractor?

16 A. No, I do not, and I believe that would be a require a
17 legal opinion and I'm not an attorney.

18 Q. Can you interpret what the company's responsibilities
19 are under this particular paragraph?

20 MR. KORKOSZ: Which paragraph are we speaking of?

21 MS. BLOOMFIELD: Paragraph B.

22 THE WITNESS: Paragraph B deals with liabilities and a
23 distinction between what is in the tariff description and what
24 might be decided by a court of law. And again, I'm not an
25 attorney, I cannot render an opinion on the specific

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1 restrictions of that paragraph.

2 BY MS. BLOOMFIELD:

3 Q. Let me be clear. You or people that you supervise
4 wrote this provision and you don't know what it means; is that
5 would you're telling me?

6 MR. KORKOSZ: I object.

7 EXAMINER LESSER: Sustained.

8 BY MS. BLOOMFIELD:

9 Q. You can't explain what this -- Can you explain what
10 this paragraph means?

11 A. Again, it is legal -- In my layman's interpretation, I
12 am not an attorney, it is describing a specific distinction
13 between what might be decided between PUCO approval of the above
14 tariff language, limiting liability, versus what may be
15 determined in a court of law, so from a generalist perspective,
16 what it to me is suggesting is that the PUCO's above approval
17 may not be upheld in a court of law.

18 Q. You refer to PUCO's approval and I don't see any
19 reference in that paragraph, so is that from your general
20 knowledge, or are you picking that up from some language in that
21 paragraph?

22 A. The specific paragraph that I believe we're talking
23 about says, "The PUCO approval of the above tariff language in
24 respect to the limitation of liability arising from the
25 company's negligence does not constitute a determination that

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1 such limitation language should be upheld in a court of law".

2 Q. I was asking you about the first paragraph, what the
3 first paragraph in Section B meant.

4 A. I missed the switch from the second to the first
5 paragraph.

6 Q. Okay. Let me ask the question again. Can you tell me
7 what the first paragraph in Paragraph B -- or, Section B means?

8 A. Give me a chance to read it right now.

9 (Pause.)

10 The Paragraph before, the first paragraph under
11 Section B, limits the company's liability for losses or damages
12 that result from such distrib- -- such things as interruptions
13 in service, variations in service characteristics, high or low
14 voltage.

15 So what it is essentially indicating is that there are
16 certain things that may cause damage on a customer's property
17 for which the company would not be liable for such damage.

18 Q. All right. And does it also say that whether it's the
19 fault of the company or not, the company still is not liable for
20 damages; is that correct?

21 A. Can you point me to the sentence that you're referring
22 to?

23 Q. Yes. Well, I'm looking at the phrase beginning about
24 six or seven lines down, "...whether such damages are caused or
25 involve any fault, failure or negligence of the company or

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1 otherwise", and then it excepts out willful or wanton
2 misconduct.

3 A. With those specific provisions and statements, yes.

4 Q. Turning now to Paragraph C, and I'm now on the second
5 page -- or, Page 15 rather than 14, where there is a description
6 of the types of special customer services.

7 First of all, you use the -- the tariff uses the term
8 "include", and then it lists a number of services.

9 Does the term "include" imply that there may be other
10 services that are not listed here that could be provided to the
11 customer?

12 A. This was intended to be a description of the types of
13 services that may be performed but not a specific limitation to
14 the types of services. So there may not be -- This may not be
15 an all-inclusive list, which I believe is where you were going
16 with your question.

17 Q. So would the company interpret then that it might
18 provide some services which are not listed in this tariff?

19 A. Again, I believe this was an attempt to categorize or
20 specify the types of service that we envisioned, but I do not
21 believe the way the language is written that it meant to be that
22 this -- unless it fit this exact specified language, there could
23 be categories where providing service entrance cable repair
24 where that could be, you know -- you might indicate that you
25 don't believe that is covered by that provision, whereas an

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1 electrician might say, "Yeah, that's covered by that provision".

2 So again, I think based on the size and magnitude of
3 the list, which it's fairly extensive, the attempt was to try to
4 specify all of the types of activities; but again, the language,
5 I don't believe, was meant to be limiting should there be
6 another similar type activity that is done.

7 Q. So at least this provision is supposed to describe all
8 of the categories or types of services, but maybe not each
9 specific service that could be included in a particular category
10 or type, is that what you're saying?

11 A. Again, possibly not an all-encompassing list, but a
12 directed attempt to specify those types of activities, yes.

13 Q. So some types are specified, some categories are
14 specified, and there may be other categories that are not
15 specified, is that what you're saying?

16 A. I'm trying to indicate that, specifically if you look
17 down to -- let me count the lines for you -- Line 13 under that
18 paragraph on Page 15, there is an "eg" for siding work; "eg" is
19 meant to be not all inclusive of the specific types of work
20 functions that may fall under that category. So there may be
21 other -- that implies otherwise it would have been IE --

22 Q. Right. So that might be a specific service that is
23 included in the category that precedes it, correct?

24 A. Yes, that would be the intent.

25 Q. But not all of the services that might be included in

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1 that category that precedes it, correct?

2 A. That would be my interpretation of that.

3 Q. But what my question was, was: Are all the categories
4 of service or types of service that Ohio Edison, in this case,
5 intends to provide, listed in this particular paragraph?

6 A. Again, I believe the attempt was to be -- to specify
7 the types -- the types or categories of the type of work
8 activities that are going to be done, but various work may be
9 done underneath those categories and those are not all specified
10 as that specific example I just pointed out to you.

11 Q. Right. And I'm not talking about the word specified
12 under the category, I'm trying to focus on the categories
13 themselves, and whether or not the categories are inclusive or
14 not.

15 A. To my knowledge, the attempt again was to specify the
16 types and categories, but not all the specific work activities
17 that may fall under those categories.

18 Q. But the categories, you were attempting to specify all
19 of them, correct?

20 A. Again, while -- As I read this language, the lead-in
21 sentence, and then I go back to sentence one of Paragraph C,
22 "The company may furnish customers special customer services as
23 identified in this section".

24 So there was an attempt to identify the types and
25 categories, but not all the specific work activities that may

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1 occur with those categories. So to my knowledge, again, this
2 was attempted to be a comprehensive list of the types of
3 categories.

4 Q. Among the types of categories that are listed in that
5 paragraph which begin "Such special customer services include;
6 design and construction" at the top. Do you see that?

7 A. I see that.

8 Q. Isn't it true that Ohio law and the Ohio Board of
9 Building Standards requires that design work be done by a
10 licensed professional?

11 MR. KORKOSZ: Objection.

12 EXAMINER LESSER: Sustained.

13 BY MS. BLOOMFIELD:

14 Q. Do you know -- may I ask the question that way --
15 whether the design and construction of substations, the design
16 portion would require a licensed professional engineer to do
17 that design work?

18 A. I do not know that answer.

19 Q. Okay. Do you know if Ohio Edison -- Well, you
20 indicated in here that Ohio Edison would be doing design work.
21 Do you know who in Ohio Edison would be doing that design work
22 of customer substations, for example?

23 A. No, I do not.

24 Q. Do you know if in designing a customer substation, for
25 example, Ohio Edison will seal the plans as required by Section

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1 3791.04?

2 MR. KORKOSZ: Objection.

3 EXAMINER LESSER: Sustained.

4 MS. BLOOMFIELD: Your Honor, may I have the basis for
5 the objection and the ruling so I can craft my next question
6 accordingly, because I'm not clear?

7 EXAMINER LESSER: Does he know that or not. You're
8 assuming knowledge of his in the question.

9 MS. BLOOMFIELD: No, I asked if he knew. I'm assuming
10 knowledge so if I ask --

11 BY MS. BLOOMFIELD:

12 Q. Do you know whether there is any Ohio law that governs
13 the sealing of plans for the design of a customer substation?

14 A. No, I do not know.

15 Q. That's what I asked the first time.

16 Isn't it the case that the special customer services
17 which are delineated in this paragraph that we have just been
18 discussing, either some or all of them are also being provided
19 by various nonregulated units of the FirstEnergy Corporation?

20 A. You're going beyond my knowledge of the specific type
21 work activities.

22 MS. BLOOMFIELD: Your Honor, I have no further
23 questions.

24 EXAMINER LESSER: Redirect?

25 MR. KORKOSZ: I'm sorry, I didn't hear that.

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1 EXAMINER LESSER: She said she had no further
2 questions. Any redirect?

3 MR. KORKOSZ: No redirect, your Honor.

4 EXAMINER LESSER: Exhibits 12 and 12S, and you're no
5 longer taking out Page 10, Lines 8 and Page 14, Line 16, or --

6 MR. KORKOSZ: No, the nonoffer of Page 10, Line 8
7 through Page 14, Line 16 of Mr. Turosky's direct testimony dealt
8 with the area of not the subject that we have been considering
9 over the last several minutes, but instead the area of what the
10 company's response would be to not affecting 20 percent worth of
11 customer switching and that was reserved until such time as it
12 may become necessary if the Commission would reject the
13 stipulation.

14 EXAMINER LESSER: Sorry about that.
15 Any objection?

16 MS. BLOOMFIELD: No.

17 EXAMINER LESSER: Admit it.

18 - - -

19 Thereupon, FirstEnergy Exhibit Nos. 12 and 12S
20 were received into evidence.

21 - - -

22 EXAMINER LESSER: Anything else while we're still on
23 the record?

24 (No response.)

25 EXAMINER LESSER: Okay. Adjourn for the day.

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1 We will come back at 9:00 tomorrow morning.

2 Just off the record to go over it.

3 (Discussion held off the record.)

4 - - -

5 (Thereupon, the hearing was adjourned at

6 5:50 o'clock p.m. on Thursday, May 11, 2000,

7 to be reconvened at 9:00 o'clock a.m.

8 on Friday, May 12, 2000.)

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C E R T I F I C A T E

We, Valerie J. Grubaugh, Registered Merit Reporter,
Certified Realtime Reporter and Notary Public, and Deborah J.
Holmberg, Registered Merit Reporter and Notary Public, hereby
certify that the foregoing is a true and accurate transcript of
the proceedings before the Public Utilities Commission, State of
Ohio, on Thursday, May 11, 2000, as reported in stenotype by us
and transcribed by us or under our supervision.


Valerie J. Grubaugh, Registered
Merit Reporter, Certified
Realtime Reporter and Notary
Public in and for the State of
Ohio.


Deborah J. Holmberg, Registered
Merit Reporter and Notary Public
In and For the State of Ohio.

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I N D E X

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2		- - -	
3	WITNESSES		PAGE
4	Eugene T. Meehan		
	Direct examination by Ms. Liebman		IV-9
5	Cross-examination by Mr. Bruce		IV-11
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7	Direct examination by Ms. Liebman		IV-53
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9	Direct examination by Mr. Korkosz		IV-84
	Cross-examination by Mr. Bentine		IV-86
10	Cross-examination by Ms. Bloomfield		IV-92
11			
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12	EXHIBITS	MARKED	RECEIVED
13			
	FirstEnergy Exhibit No. 10 -	IV-9	IV-52
14	Direct testimony of		
	Eugene T. Meehan		
15			
	FirstEnergy Exhibit No. 11 -	IV-53	IV-82
16	Direct testimony of		
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18	Supplemental testimony of		
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19			
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20	LS-3		
21			
	FirstEnergy Exhibit No. 12 -	IV-84	IV-135
22	Direct testimony of		
	Kurt E. Turosky		
23			
	FirstEnergy Exhibit No. 12S -	IV-85	IV-135
24	Supplemental testimony of		
	Kurt E. Turosky		
25		- - -	

EXHIBIT

99-1212-EL STP
99-1213-EL-ATA
99-1214-EL-AAM

The following exhibit(s) were prefiled and can be located with the pleadings:

Exhibits

Date Filed

FirstEnergy Exhibit No. 10 -
Direct testimony of
Eugene T. Meehan

Dec 22, 1999

FirstEnergy Exhibit No. 11 -
Direct testimony of
Luann Sharp

Dec. 22, 1999

FirstEnergy Exhibit No. 11S -
Supplemental testimony of
Luann Sharp

April 4, 2000

FirstEnergy Workpapers LS-1 through
LS-3

FirstEnergy Exhibit No. 12 -
Direct testimony of
Kurt E. Turosky

Dec 22, 1999

FirstEnergy Exhibit No. 12S -
Supplemental testimony of
Kurt E. Turosky

April 4, 2000