BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to RC §4928.143 in the Form of an Electric Security Plan. : Case No. 08-935-EL-SSO

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PROCEEDINGS

before Ms. Christine Pirik and Mr. Gregory Price, Attorney Examiners, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-C, Columbus, Ohio, called at 10:00 a.m. on Thursday, October 16, 2008.

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On behalf of Ohio Hospital Association.

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On behalf of Material Science Corporation.

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Thursday Morning Session,
October 16, 2008.

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EXAMINER PRICE: Let's go on the record.

Good morning. The Public Utilities Commission has set for hearing at this time and this place Case No. 08-935-EL-SSO in the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Revised Code Section 4928.143 in the Form of an Electric Security Plan

My name is Greg Price, with me is Christine Pirik, we are the Attorney Examiners assigned to preside over today's hearing.

Let's begin by taking appearances starting with the company.

MR. BURK: Thank you, your Honor.

On behalf of the companies, James W. Burk, Arthur E. Korkosz, Mark A. Hayden, Ebony L. Miller, all of 76 South Main Street, Akron, Ohio.

From the law firm of Jones, Day we have David A. Kutik and Mark A. Whitt, and from the law firm of Calfee, Halter & Griswold we have James F. Lang. Thank you.

EXAMINER PRICE: Thank you.

Mr. Small.

MR. SMALL: Thank you, your Honor.

On behalf of the residential customers of the FirstEnergy Distribution Companies, Janine Migden-Ostrander, Consumers' Counsel, Jeffrey L. Small, counsel of record, Jacqueline Lake Roberts, Richard C. Reese, and Greg Poulos, Assistant Consumers' Counsel, Office of the Ohio Consumers' Counsel, 10 West Broad Street, Columbus, Ohio, 43215.

EXAMINER PRICE: Thank you.

MR. ROBINSON: On behalf of Citizen Power, Theodore Robinson, 2121 Murray Avenue, Pittsburgh, Pennsylvania, 15201.

EXAMINER PRICE: Thank you.

MS. WUNG: Thank you, your Honor. Good morning.

On behalf of Wal-Mart Stores East, LP, Sam's East, Inc., Macy's, Inc, BJ's Wholesale, collectively The Commercial Group, Grace Wung of McDermott, Will & Emery, 600 Thirteenth Street, N.W., Washington, D.C. 20005.

MS. McALISTER: Thank you, your Honor.

On behalf of Industrial Energy Users of Ohio, McNees, Wallace & Nurick, by Lisa McAlister, 21

East State Street, Columbus, Ohio 43215.

EXAMINER PRICE: Thank you.

Mr. Smith.

MR. SMITH: On behalf of the Material Sciences Corporation, Craig I. Smith, Attorney at Law, 2824 Coventry Road, Cleveland, Ohio 44120.

MR. PETRICOFF: On behalf of Constellation NewEnergy, Constellation Energy Commodity Group, Direct Energy Services, and Integrys Energy Services, M. Howard Petricoff, Stephen Howard and Betsy Elders from the law firm of Vorys, Sater, Seymour & Pease, 52 East Gay Street, Columbus, Ohio.

I would also like to enter the appearance of Cynthia A. Fonner on behalf of Constellation NewEnergy and Constellation Energy Commodity Group. And she is senior counsel, 550 West Washington Street, Suite 300, Chicago, Illinois.

I would also like to enter the appearance on behalf of the Ohio Association of School Business Officials, the Ohio School Board Association, and the Buckeye Association of School Administrators, once again represented by the law firm of Vorys, Sater, Seymour & Pease, Howard Petricoff, Steve Howard and Betsy Elders, and once again it's 52 East Gay Street, Columbus, Ohio.

EXAMINER PRICE: Thank you.

Mr. Krassen.

MR. KRASSEN: Thank you, your Honor. On behalf of the Northeast Ohio Public Energy Council and the Ohio Schools Council, Glenn S. Krassen and E. Brett Breitschwerdt, with the law firm of Bricker & Eckler, LLP, 1375 East Ninth Street, Suite 1500, Cleveland, Ohio 44114 and 100 South Third Street, Columbus, Ohio 43215.

MR. STINSON: Thank you, your Honor. On behalf of FPL Energy Marketing, Inc., and Gexa Energy Holdings, Inc., Dane Stinson, Bailey Cavalieri, LLC, 10 West Broad Street, Suite 2100, Columbus, Ohio 43215.

EXAMINER PRICE: Thank you.

MR. KURTZ: Good morning, your Honor. For the Ohio Energy Group, Mike Kurtz and Dave Boehm of the law firm of Boehm, Kurtz & Lowery, 1510 URS Center, Cincinnati, 45202.

MR. LAVANGA: Good morning, your Honor. On behalf of Nucor Steel Marion, Michael Lavanga and Garrett Stone, of the law firm of Brickfield, Burchette, Ritts & Stone, 1025 Thomas Jefferson Street, N.W., 8th Floor, West Tower, Washington, D.C.

EXAMINER PRICE: Thank you.

Mr. O'Brien.

MR. O'BRIEN: I am not appearing, your Honor.

MR. SITES: On behalf of the Ohio Hospital Association, your Honor, Richards L. Sites, general counsel and senior director of Health Policy, 155 East Broad Street, Columbus. Thank you.

EXAMINER PRICE: Thank you.

MR. PORTER: On behalf of the City of Cleveland, Ohio, Robert J. Triozzi, law director, I would like to enter the appearance of Gregory J. Dunn, Christopher L. Miller and Andre T. Porter of the law firm of Schottenstein, Zox & Dunn, 250 West Street, Columbus, Ohio 43215.

EXAMINER PRICE: Thank you.

Mr. Rinebolt.

MR. RINEBOLT: On behalf of Ohio Partners For Affordable Energy, David C. Rinebolt and Colleen L. Mooney, 231 West Lima Street, Findlay, Ohio 45840.

EXAMINER PRICE: Thank you.

MR. ROYER: Thank you, your Honor. Barth Royer, Bell & Royer, 33 South Grant Avenue, Columbus, on behalf of Dominion Retail and the Ohio Environmental Council.

MR. LANG: Langdon Bell of the firm Bell

& Royer, 33 South Grant Avenue, Columbus, Ohio 43215, appearing on behalf of the Ohio Manufacturers Association.

EXAMINER PRICE: Thank you.

MR. KEIFFER: On behalf of the Northwest Ohio Aggregation Coalition, Lance Keiffer, Assistant Prosecuting Attorney, Lucas County, 711 Adam Street, Second Floor, Toledo, Ohio, as well as Leslie Kovacik, City of Cleveland, 420 Madison Avenue, Suite 100, Toledo, Ohio.

EXAMINER PRICE: Thank you.

Are there any other intervenors I have missed?

Mr. Yurick, I'm sorry.

MR. YURICK: I'm easy to miss, your Honor. Thank you.

On behalf of the Kroger Company I would like to enter the appearance of John Bentine, Mark Yurick, and Matthew White, the law firm of Chester, Wilcox & Saxbe, 65 East State Street, Columbus.

EXAMINER PRICE: Thank you.

Staff.

MR. JONES: Good morning, your Honors, on behalf of the staff of the Public Utilities Commission of Ohio, Ohio Attorney General Nancy

Rogers, Thomas McNamee, Bill Wright, John Jones, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio.

EXAMINER PRICE: Thank you.

We have a number of pending issues to discuss before we take our first witness.

The Office of Consumers' Counsel has filed a motion to sever the distribution rate issues from this case.

the motion will be granted to the following extent; anything that can be addressed in the distribution rate case will be addressed in the distribution rate case.

Any evidence which is repetitive or duplicative or otherwise covered in the distribution rate case will not be admitted in this proceeding in the interest of administrative efficiency.

We also have a pending issue with respect to FirstEnergy has included a severable short-term electric service plan as part of their ESP application.

We are going to have briefs for that issue and that issue only, which will be due on October 31, 2008.

Just as an aside, the parties can

certainly have an abbreviated history of the proceeding or no history of the proceeding. The briefs should just focus on that particular issue because I believe FirstEnergy has asked for Commission ruling by November 15.

Any other -- one more issue. The Ohio Association of Independent Colleges and Universities has filed a motion for leave to file out of time and a motion to intervene. We are going to defer ruling on those motions at this time.

Any other preliminary issues we need to address before we take our first witness?

Seeing none, let's begin with our first witness.

Mr. Burk.

MR. BURK: Thank you, your Honor. And before we call our first witness I just wanted to take a moment real quick to thank all the parties. I mean, this is the first of its kind electric security plan case, involves, you know, new ratemaking approaches coming out of Senate Bill 221. You know, the Commission is setting rates now notwithstanding Title 49.

They are not cost based. They are not market based. We don't know what they are, and so everybody was kind of forced to work together, and I really just wanted to express my appreciation through scheduling of depositions and witness order and everybody coming prepared with estimated cost times, that type of thing.

I am not sure we could have gotten it all done, and it was obviously a very short time frame, and as we move into this -- sort of away from traditional ratemaking into this new sort of rate making process the legislature gave, I have to agree with Mr. Fortne, although he's on vacation, this is not your traditional rate case.

Again, with that I just wanted to express my appreciation to the parties, and with that I will turn it over to Mr. Kutik for our first witness.

MR. KUTIK: Your Honors, for our first witness we call Kevin T. Warvell.

EXAMINER PRICE: Thank you.

(witness sworn.)

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

THE WITNESS: My name is Kevin -- my name is Kevin Warvell. I am at 76 South Main Street, Akron, Ohio, director in the rate department for FirstEnergy Services Corporation.

EXAMINER PRICE: Please proceed.

MR. KUTIK: Thank you, your Honor.

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KEVIN T. WARVELL

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

DIRECT EXAMINATION

By Mr. Kutik:

Q. Do you have before you, Mr. Warvell, Company Exhibit 5?

A. Yes. That is my testimony.

Q. Do you also have before you what's been marked for identification as Company's Exhibit 9A through F?

A. Yes, I do.

Q. And let's just identify each one of those.

A. Okay.

Q. Could you do that, please.

A. Yes. The first or A would be the application. The second volume, 1B, is Schedules 1A, 1B, 1C, and 2.

Q. Turning to exhibit -- what's been marked for identification as Exhibit 9C, what's that?

A. 9C would be Schedules 3A, 3B, 3C, 4A, 4B, and 4C.

Q. Please identify what's been marked for identification as Exhibit 9D.

A. That would be Schedules 3A, 3B, 3C, 4A, 4B, and 4C.

Q. 9E?

A. 9E would be Schedules 3A, 3B, 3C, 4A, 4B, and 4C.

Q. And Exhibit 9F.

A. 9F is Schedules 5A through T and Schedules 6A through J and Schedules 7A through C.

Q. Thank you.

Do you also have before you what's been marked for identification as Company Exhibit 10?

A. Yes. That would be the errata items.

MR. KUTIK: Now, your Honor, before we began I did provide copies of the errata sheet to some parties. Some parties may not have those and we do have extra copies.

EXAMINER PRICE: Thank you.

Q. Mr. Warvell, with respect to the errata sheet, do you adopt the items on the errata sheet that have your name next to them?

A. Yes, I do.

Q. And subject to the corrections in the errata sheet, if I asked you the questions that appear in Company Exhibit 5, your testimony, would your answers be the same?

A. Yes, they would.

MR. KUTIK: Your Honor, I have no further questions.

EXAMINER PRICE: Thank you. Let's go off the record for one minute, please.

(Discussion off the record.)

EXAMINER PRICE: Consumers' Counsel.

MS. ROBERTS: Jackie Roberts for OCC.

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CROSS-EXAMINATION

By Ms. Roberts:

Q. Mr. Warvell, in your testimony you sponsor the generation rate filed by FE in this application?

A. I sponsor the rider GEN, yes.

Q. And you sponsor the minimum default rate in this filing?

A. The minimum default service rider, yes.

Q. And the PSR?

A. Per the errata that is changed.

Q. But you sponsored that?

A. I sponsored the SBC charge, yes.

Q. Mr. Warvell, where will the applicants get their power to supply customers in Ohio?

A. Based on the application, it is our contention that there would be some type of power sales agreement with the FirstEnergy Service Corporation.

Q. But you are not aware, are you, of any of the particular aspects of negotiation of such a contract?

A. I am not part of the negotiation with FirstEnergy Services.

Q. Are you aware of any of the terms or conditions that are being considered by FES and the applicants in this case for power -- for a power supply agreement?

A. As I stated before, it's under the assumption in the application that it would be similar to how we have drafted the application that an agreement would be reached.

Q. So you are assuming that what the applicants have filed in this case will prescribe the materials of the power supply agreement?

A. That is our assumption, yes.

Q. Okay. For power supply agreements between FES, FirstEnergy Solutions, and the applicants, are there any requirements that they be filed with the Federal Energy Regulatory Commission?

A. I believe we would need a FERC waiver.

Q. What does that mean?

MR. KUTIK: Note my objection. This calls for a legal conclusion.

EXAMINER PRICE: He can answer if he knows.

A. To the best of my knowledge, we would have to file with -- with FERC as far as our power sales agreement to have a waiver to have that contract between FirstEnergy and FirstEnergy Solutions.

Q. Is there currently a contract between FirstEnergy and FirstEnergy Solutions for power?

A. I believe there is a power sales agreement that ends at the end of 2008.

Q. And that's -- do you know whether that's a full requirements contract?

A. I don't know all the particulars of the contract.

Q. Do you know whether that contract was filed at FERC?

A. I have no personal knowledge of that, no.

Q. Do you have any general or corporate

knowledge of that?

MR. KUTIK: I'm sorry, what was the question?

MS. ROBERTS: If he was aware the contract, the power supply agreement for --

EXAMINER PRICE: I'm sorry, that wasn't the last question. Please read back the last question.

(Record read.)

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

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

THE WITNESS: I'm a little confused. Can we start again what I'm attempting to answer?

MS. ROBERTS: Could you read back the last two questions, please?

(Record read.)

THE WITNESS: The only knowledge I have is that a power sales agreement exists and to my understanding that it ends at the end of 2008.

Q. (By Ms. Roberts) Is it fair to say then that you are completely unaware of any filing requirements that FERC may have for contracts for power between FE and FES?

A. I guess as I stated before, my understanding is that we would need a FERC waiver for a contract to exist.

Q. Has a waiver been requested?

A. I'm -- I'm not aware one way or another at this point.

Q. The generation rates that you are proposing that you are supporting in the application are not rates that have been filed at FERC, are they? If you know.

A. I don't believe so.

Q. All right. And as it relates to the minimum default rate, do you know if -- whether that rate has been filed at FERC for approval?

A. No.

Q. And the SBC, same question?

A. No.

Q. Thank you.

MS. ROBERTS: Your Honor, this witness clearly lacks any personal knowledge whatsoever of what the rate for generation, default service and SBC could be in this proceeding. The rate would result from a filing at FERC. FERC would approve that rate.

He has no knowledge of what FES would propose to charge, and we don't know what would be approved by FERC.

This is the applicant surmising what the rate might be and it's not based on any information or analyses and he's not competent to testify on the generation rate, the default service rate which would be affected by a FERC order, or the SBC rider.

EXAMINER PRICE: Mr. Kutik.

MR. KUTIK: Any rate that would be filed with FERC as the bench would be aware would be a wholesale rate.

This witness is here to testify what the retail rate would be for generation service among other things.

So Ms. -- counsel's surmisal about what this witness knows and doesn't know and the relevance of that was wrong in both accounts.

EXAMINER PRICE: Thank you. Objection to the witness is overruled. Thank you.

Q. (By Ms. Roberts) Mr. Warvell, in your testimony you discuss the generation rate proposed by applicants; is that correct?

A. Yes.

Q. The generation rate that will be paid by applicants 7-1/2 and 8-1/2 cents, do you expect that to be the rate that the applicants will have to pay for their power?

A. I guess as I stated before, the basis of the proposal or the application was based on an understanding of an anticipated contract with FES and the operating companies.

Q. That rate wasn't based on an analysis or study, was it?

A. The GEN rider rate?

Q. Yes.

A. Well, there was no formal analysis done for the generation rate. There was a group of people involved in studying not only where market prices were at but certain auctions that it cleared, different wholesale prices, risks involved with those wholesale prices, and the determination of a basic understanding of the Senate Bill 221.

As far as the ESP plan was concerned is that we were to offer a rate below -- below what was going to be an MRO price and also to stabilize rates. And as we address later in a different rider, also to minimize the impact to customers.

Q. When the management group, committee that you discussed, considered what this rate should be, there were no minutes, documents that they considered, notes of the meetings?

A. Not that I am aware of, no.

Q. None, none whatsoever.

A. Not that I am aware.

Q. All right. And so it's fair to say then, isn't it, this isn't a derived rate?

A. I think I answered how we came up with it.

Q. Well, would you consider how you came up with it to be qualified as a derived rate?

A. I don't -- "derived" to me means that we came up with a proposal of a number, yes.

Q. Okay. And what was the derivation based on, Mr. Warvell?

MR. KUTIK: Objection. Asked and answered.

EXAMINER PRICE: Sustained.

Q. Well, will the generation rate be trued up if the contract between FES and FE yields a lower price than is included in the application?

A. As I indicated before, I am not part of those negotiations and that has not been a proposal that has been filed in the application as far as a true-up, as far as greater expenses or lower expenses in that consideration.

Q. Regarding the 1 point -- the 1 cent

minimum default rider, what is the purpose of that rider?

A. The purpose of the rider is to account for shopping risk, opportunity costs, and some back office and front office administration charges that, depending on the contract that would be structured between FES and the operating companies, those risks would line up.

Q. But you don't know, do you, what -- what costs -- whether any of these costs are going to be requested by FES of the applicants in executing a new power supply agreement?

A. Again, going back to the same -- same thing that I've answered a couple of times already, I don't know that -- specifics of the contract. Our assumption is the contract would be similar to how the application was filed.

Q. And would that also be true for the SBC -- the SBC rider?

A. The standby rider is -- would be slightly different into the fact that once again it would be based on how the contract and how things would be handled between FES and the operating companies but that is a returning customer charge that would be looked at.

Q. You mentioned earlier that you were aware that there was a current power supply agreement between FES and the applicants; is that correct?

A. Yes.

Q. Does that power supply agreement include separate charges for the items and risks that you've identified that are attendant to the minimum default service charge?

A. Not being aware of all the specifics of the power sales agreement, I am not aware if it is included or not included in that price.

Q. And regarding the SBC, are you aware whether FES has any specified charges that would cover the risks associated with -- that are reflected in that rider?

A. I am not aware of any rider that would account for that currently.

Q. Hypothetically speaking, if those costs were included in a rate that FES sold power at to the applicants, would it be necessary to once again charge customers for those same risks by implementing these two riders?

A. What is the hypothetical again? I am not understanding the question.

MS. ROBERTS: Would you read the question back.

(Record read.)

A. So what -- is there any way you could rephrase that somewhat? I am not understanding what I am answering.

Q. There's only one set of risks attendant with these two riders; is that correct?

A. No, I don't agree with that.

Q. And -- well, tell me why you don't agree with that, please.

A. Well, one risk for the minimum default service charge is for customers that are leaving. The SBC or the standby charge, one risk is for customers returning. So to me they are not the same risk.

Q. Agreed. Regarding the customers leaving, the rider that compensates for the risk of customers leaving, would the companies' risks be any different than FES's risks for customers leaving?

A. As proposed in the application, the risk would be dependent on the contract and how the contract would be structured, but the risk would apply to the authority that would have responsibility to serve the POLR obligation so that risk would exist for that person who had that ultimate authority.

Q. And if FES assumed that risk for the applicants, would these riders still be necessary?

A. As we proposed in the plan, the riders would be necessary as far as the amount that is being requested for the -- for those charges as being part of the GEN and also the MDS rider.

Q. The risks of customers leaving that you've identified as reflected in the minimum default charge are risks, aren't they, that would be risks of FES in supplying power to the applicants?

A. It would be dependent on the contract.

Q. The contract would shift the risks one way or the other to FES or to the applicants, correct? Is that your testimony?

A. It would depend on who owns that risk, yes.

Q. But there is still only one risk and it will be either assumed by FES or the applicants.

A. A risk of shopping, is that your question?

Q. A risk of shopping, a risk of -- the risks that you identified; opportunity costs, administration costs, loss of revenue.

If FES assumed those risks for the operating companies, then the operating companies wouldn't have to worry about those risks, would they?

A. The risk would still exist either way.

Q. There would only -- the risk would exist either way, but if FES assumed it, isn't it correct that it would not be a risk of FE applicants?

A. I guess based on the way we file the application, I couldn't agree with that.

Q. I am not asking how you filed the application. I'm asking if FES assumed the risks that you've identified in your application, then they would no longer be risks of the applicants.

A. The risk would exist for whoever was responsible for the POLR obligation to serve the customer.

Q. If the applicants' risk was covered by FES, would the applicants still charge the minimum default service rider?

A. If the -- as presented in the application, if that risk exists, that would be charged to the customers.

Q. That wasn't my question.

A. Okay. What is the question then again?

MS. ROBERTS: Would you read the question back, please.

(Record read.)

MR. KUTIK: Your Honor, I do believe he answered the question.

EXAMINER PRICE: Let's answer the question again this time.

THE WITNESS: Okay, one more time with the question, I'm sorry.

(Record read.)

A. And I believe I answered before that that risk would still exist and that would be charged to the customers.

Q. Do you know whether in the current contract with FES for supplying power to the applicants those risks are assumed by FES?

A. I don't know.

Q. Do you know whether the applicants currently are exposed to those risks when they buy power for Ohio consumers?

THE WITNESS: I am sorry, could you read that question back, please.

(Record read.)

A. The POLR obligation has been transferred to FES.

Q. Is there any reason to believe that won't be the case in the next power supply agreement with FES?

A. Like I said, that is not the way we have proposed this application.

Q. All right. In proposing this application did you consider the terms of the current power supply agreement with FES and how they are allocating risk between the companies, applicant companies, and FES?

A. No. As I stated before, the focus was to meet the obligations of Senate Bill 221.

Q. All right.

MS. ROBERTS: May I approach?

EXAMINER PRICE: You may.

MS. ROBERTS: Ask that be marked as OCC exhibit first in order.

EXAMINER PRICE: How did you ask that be marked?

MS. ROBERTS: 1, I guess.

EXAMINER PRICE: Exhibit 1.

MR. SMALL: Exhibit 5. OCC will be reserving 1 through 4, so it will be 5.

EXAMINER PRICE: Exhibit 5.

MR. BELL: Will you be distributing to other counsel who will be asking questions of the witness later?

MS. ROBERTS: I will give you the

citation of the document. I have asked to be marked as Exhibit 5 for identification a document that purports to be a filing on behalf of FirstEnergy Solutions Corp. with the Federal Energy Regulatory Commission in docket No. ER-06117 and dated October 17, 2006.

Q. (By Ms. Roberts) Do you see that, Mr. Warvell?

A. You didn't give me a copy.

Q. Oh, that might be a problem.

EXAMINER PRICE: Mr. Kutik.

MR. KUTIK: Perhaps it was inadvertent, but on the fourth page of this document there appears to be an e-mail from J. Randall Woolridge to Ms. Roberts.

MS. ROBERTS: Oh, I think that might be a discovery request. That's in response to an FE discovery request, so I apologize.

MR. KUTIK: Certainly that page --

MS. ROBERTS: That should come out.

MR. KUTIK: -- does not belong in this document.

MS. ROBERTS: Let me remove that.

Q. (By Ms. Roberts) Mr. Warvell, this filing with the FERC appears to be a settlement agreement between FirstEnergy Solutions and the applicants in this case.

Do you see the settlement agreement?

A. Where -- can you direct me to a page?

Q. Second page.

A. Okay.

Q. After the cover letter.

A. Okay.

Q. I would then direct you to page -- if I can find it, page 4.

A. Okay.

Q. It's the carryover paragraph from page 3 entitled "Price to Ohio Operating Companies for Ohio POLR Service."

Do you see the rates listed there?

MR. KUTIK: Your Honor, I would object. There has been no foundation laid for this document, in particular with respect to the witness's knowledge about the document.

EXAMINER PRICE: Sustained.

MS. ROBERTS: I would ask that FE stipulate to the accuracy and voracity of this document.

MR. KUTIK: I'm sorry, you want me to stipulate to it?

MS. ROBERTS: Yes.

MR. KUTIK: We will not stipulate.

MS. ROBERTS: Well, I would say the document speaks for itself. It's a filing by FE at the FERC.

EXAMINER PRICE: Mr. Kutik.

MR. KUTIK: Well, to ask this witness about it, ask questions about it, the witness has to be familiar with the document. That's the point and indeed the characterization -- the prior characterization by this witness -- by this counsel of a document as a matter of fact is incorrect.

MS. ROBERTS: If I may, your Honor, we are discussing the terms included in the application for generation, what the price of the generation is, and whether the riders in addition are reasonable.

It is relevant to this line and to Mr. Warvell's testimony whether those terms are currently in existence.

EXAMINER PRICE: Mr. Kutik.

MR. KUTIK: But this document has to be established that it has any relevance to that fact. We haven't established what this document is. That's the point of laying a foundation.

EXAMINER PRICE: I agree with Mr. Kutik.

You are going to have to lay a proper foundation. He has already -- he has expressed he does not have any particular detailed knowledge of any agreements between FES and the operating companies.

MS. ROBERTS: All right.

Q. (By Ms. Roberts) So you have no knowledge of this agreement? Is that what you said?

MR. KUTIK: Objection to the characterization of the document. Go ahead.

Q. Have you seen what's marked as OCC Exhibit 5 for identification before?

A. No, I have not.

Q. And did you not see it during your deposition when it was faxed to your attorney's office?

A. No. I was never handed that information.

Q. And you have never been provided by applicants any information as it relates to how FES currently structures its power supply agreements with the applicants?

A. I've not seen this document before, no.

MS. ROBERTS: Could you read that question back, please.

(Record read.)

A. Nobody from an operating company has

given me an agreement for the power sales agreement, no.

Q. And you didn't think that was important information in trying to develop a generation rate in this application?

A. No.

Q. You didn't -- do you think it's important whether FERC must waive or approve any contract between FES and FE?

MR. KUTIK: Objection, argumentative.

EXAMINER PRICE: Sustained.

Q. In your consideration of developing the generation rate, did you consider potential FERC approval of what that rate may be between FES and FE?

A. No. As I indicated earlier, the assumption was that we would be required to have a FERC waiver to have an agreement between FES and the operating companies.

Q. All right. Regarding the minimum default rate and the SBC, is -- is it correct -- is my understanding of your testimony correct that, one, the minimum default is to compensate the company for the risk of customers leaving the system, and the other is to compensate the company for risks of customers coming back to the system?

A. In general I would agree with your statement, except as far as the SBC charge, the company is not looking to make a profit or anything of that nature.

The company is just looking for as customers return to charge them the market price rate that the company would be charged to provide service for those customers.

Q. How do you know the company would be charged a market price rate when they returned?

A. The company would be charged market price rate because the company would not have power to serve those customers.

Q. Doesn't that assume that the contract between FES and the applicants has no provision for such purchases?

A. Purchases of what?

Q. Power for returning customers.

A. I don't understand why a company would buy power ahead of time for customers that they don't have.

Q. Doesn't your position assume that that power wouldn't be supplied by FES under a normal contract?

MR. KUTIK: I'm sorry, I am having

trouble hearing counsel. Could she stand by the microphone?

EXAMINER PRICE: That would be very helpful. The heating and cooling system in this room is particularly loud.

MS. ROBERTS: Do you want to read that last question back, please?

(Record read.)

A. Just to be specific, what power are we talking about?

Q. The power that applicants would have to provide to returning customers to supply returning customers.

A. Like I said previously, I don't understand why a company would buy power for customers that they do not have to serve.

Q. Well, in fact, Mr. Warvell, how does the company handle that situation today in its power supply arrangements?

A. Once again, that would be FES and I am not aware of how they would handle that.

Q. Well, you are aware of how applicants handle that risk, aren't you?

A. As stated before, that the POLR obligation in the -- my understanding is under FES, not the operating companies.

Q. If the POLR obligation were not under FES but were subject to the operating companies, would your answer be different?

A. No. I would have no -- the only way that I believe that could happen is to get power from the market to serve those customers.

Q. I believe my question was would your answer be different if FE applicants were providing service to the POLR load and that wasn't assumed by FES?

MR. KUTIK: Objection. I am not sure what the question is at this point. I don't think the record is clear, so I'll object.

EXAMINER PRICE: Let's reread the question again, please.

(Record read.)

MR. KUTIK: My objection is I am not sure different, from what. What was the prior question that his answer was different from.

EXAMINER PRICE: Overruled. If he doesn't understand, he will let us know.

THE WITNESS: Yeah. I don't understand the hypothetical that I'm --

EXAMINER PRICE: Ms. Roberts, please

rephrase.

MS. ROBERTS: Thank you.

Q. (By Ms. Roberts) Was it your testimony a minute ago that FES had assumed the risks for POLR load in its contract with FE operating companies?

A. To my understanding, that is how it works, yes.

Q. If FES had not assumed the risks of POLR loads, then how would -- how would the POLR customers be supplied power? Would you buy through the market?

A. Currently, right now, that would have to be done by a -- a regulated entity that -- a commodity supply planning. They would have to buy it from the MISO market.

Q. And that would be a risk of applicants?

A. Under that hypothetical, yes.

Q. Under that hypothetical, right.

And then on the other hand you have the company being compensated for the risk of customers returning and then having to supply them power, and that's the SBC rider, is it not?

A. The SBC rider is the cost for hedging for the returning customer that they would return and require power from the operating company, yes.

Q. And if FES assumed that risk, you are saying that the customers would still have to pay that charge; is that what your testimony was earlier?

A. If FES assumed -- I am not understanding your question.

Q. The risk of the returning customers as represented by this rider.

A. The risk of a returning customer exists as far as the obligation to serve depending on the contract that would be constructed between the operating companies and FES.

Q. All right. As a hypothetical, if you had a power supply agreement between FES and FE where FES assumed the risks, was a full requirements contract, and FES assumed the risks of customers leaving and customers returning, would these riders be necessary to compensate applicants for any costs?

EXAMINER PRICE: Ms. Roberts, we are going over the same ground here. He has answered this question some time ago. I think you have made your point, and you need to move on to a different area now.

MS. ROBERTS: All right, all right.

I have no other questions.

EXAMINER PRICE: Thank you.

Mr. Robinson.

MR. ROBINSON: No, your Honor.

EXAMINER PRICE: Commercial Group.

Commercial group.

MS. WUNG: I'm sorry, no questions, your Honor.

EXAMINER PRICE: Ms. McAlister.

MS. McALISTER: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. McAlister:

Q. Good morning, Mr. Warvell.

A. Good morning.

EXAMINER PRICE: Could you move the microphone closer to you, please?

MS. McALISTER: Yeah.

EXAMINER PRICE: In fact, do you want to switch microphones with OCC. I know that one is a little better. I want to make sure everybody can hear.

Q. (By Ms. McAlister) Can you hear me?

A. Yeah, I can. Thank you.

Q. Okay. I want to follow up on a couple of discussions that you had with Ms. Roberts.

You stated that you were aware that there would need to be a FERC waiver for the power sales agreement to exist.

Do you recall that discussion?

A. Yes.

Q. A FERC waiver of what?

A. My lack of legal expertise to answer that question would be my understanding is for us to have a wholesale contract between FES and the operating companies, we would need to have a FERC waiver in place.

Q. I'm not sure that you answered the question though.

A waiver of what? What were you thinking when you described a waiver?

A. Power sales agreement, wholesale contract between FES and our operating company.

Q. Are there FERC rules that would prevent it otherwise without a waiver?

MR. KUTIK: Objection. Calls for a legal conclusion.

EXAMINER PRICE: Traditionally we will allow people to testify as to regulatory matters that are not necessarily legal matters, so it's a fine line. He can answer if he knows.

THE WITNESS: Could you repeat that question again.

MS. McALISTER: Could we have it read back, please.

(Record read.)

A. As I said before, my understand is for us to continue and for power between FES and the operating company to supply to retail customers, we need to obtain a waiver to have a wholesale agreement between FES and the operating companies. I don't know how else to state what I know.

Q. Okay. But you don't know specifically then what the waiver would be of? You just know there would need to be a waiver in place?

A. A waiver in place to have a wholesale contract, yes.

Q. Is it your understanding that the retail rates don't need to match the wholesale rates?

A. There is additional costs to supply to a retail customer from a wholesale perspective, so I would say that the wholesale rate is less than a retail rate.

Q. What additional costs are you contemplating?

A. As shown in our expert's exhibits between Mr. Graves and also Mr. Jones, just a basic issue of where a wholesale rate is started from as far as its source compared to its sync.

Also any type of shaping that may need to occur as far as load is considered, wholesale product is normally blocked in that effort.

All around costs to get to a retail customer and capacity items that would be charged as far as additions to the wholesale rate and other items of that nature.

Q. Would the 7-1/2 cent rate need to be the same or more?

A. I am not understanding your question. For?

Q. For generation. The difference between the wholesale rate and the retail rate.

A. As I stated earlier when we first started, as far as the 7-1/2 was concerned, our 7-1/2 retail rate -- 7-1/2 cent retail rate, it was focus on what we thought was the issues regarding Senate Bill 221, which was to offer the ESP plan price that we felt would be below a market rate option, and to stabilize prices for customers.

Q. So is that a no?

MR. KUTIK: Objection.

EXAMINER PRICE: I will give her a little leeway on this one. Overruled.

A. I guess I feel I answered the question of what that 7-1/2 cents represents.

Q. Also in a discussion with Ms. Roberts you said that returning customers would need to be served at market rates because the companies wouldn't have the power to serve them; is that correct?

A. In that categorization, I said that returning customers would be served at the time frame in which they would return at that market rate option that we've proposed. That's to clarify that, I guess.

Q. Okay. How will the company serve new customers?

A. They would be served at the standard offer agreement.

Q. How is that possible if there isn't power available?

A. The companies for a new customer would serve it at the standard service offer -- standard service offer, I'm sorry.

Q. Okay. Are you aware if there are any take or pay provisions that are contemplated in the power sales agreement?

A. Like I said before, I am not part of the negotiations of that process.

Q. Okay. And I just want to make sure that I understand the discussion that you had with Ms. Roberts.

The selection of the 1 cent per kilowatt hour as the POLR charge wasn't the result of any analytical study, was it?

A. Not a written analytical study, no. It was basically based on, as I talked about before, group of management employees with expertise in that area and developed in that manner.

Q. Isn't it true that there are only risks associated with customers leaving if as a result of the customers leaving FirstEnergy is forced to sell the generation that would have otherwise been used to serve the standard service offer customers at a price lower than the SSO price?

THE WITNESS: Could you repeat that question back to me again, please, or have that read back to me, please.

(Record read.)

A. I would agree with that except with the assumption I would use normally a customer would not leave the SSO price and go for a greater price.

So it would only make sense that that risk is being done for customers leaving for a lower priced option, thus the company would be stuck with a loss in that -- in that time frame.

Q. Okay. I am going to shift your attention over to the standby charge now.

Isn't it also true that that was not the result of any analytical study?

A. Well, not an analytical study, but we did go and look at in the money call options in regards to the ability for us to supply customers returning. We also looked at load shape, shopping, and took in those risks.

And when I say "in the money call options," it's the ability for us to buy power in the future at the standard service offer price and then shape that product in regards to customers coming back, and those type of risks were looked at and contemplated in coming up with that number.

Q. Does the company plan to buy any call options?

A. Well, the call options would only be purchased if people paid for the SBC charge. In that case the company would plan to hedge those items either through call options or other hedging instruments for customers returning. That would be the purpose of the charge.

Q. Okay. And isn't it also true there's only risk associated with customers coming back if the company had been making sales into the market at a price that was higher than the SSO rate because then there is the forgone opportunity cost to serve the customers at the SSO rate?

A. This was a lot of information. Is there any way you could maybe shorten that down?

Q. Sure. Put another way, if FirstEnergy is making sales into the market at a price that was less than the SSO rate, then there is actually a benefit of customers coming back, at least from a financial perspective; is that correct?

A. And, once again, I guess I would go back to my previous response on your question as far as customers' shopping ideas.

I would assume that a customer would not return if they were going to lose money in that process, the same way as a customer would not shop to lose money in the process that you asked the question on minimum default service.

Q. Okay. I am going to direct your attention to page 7 of your testimony. In the first question and answer you state "The base generation charges described above include all required renewable energy sources during the Plan period"; is that correct?

A. Is there any particular line you are looking at? I'm sorry.

Q. 4.

A. Yes, that is true.

Q. Isn't it true that FirstEnergy hasn't estimated the costs of renewable energy resource requirements for the planned period?

A. I'm not aware that they have.

Q. So as far as you know, they have not?

A. They have not.

Q. So FirstEnergy doesn't know at this time whether the costs to comply with the benchmarks will exceed its reasonably expected costs otherwise producing or requiring the requisite electricity by 3 percent or more; is that correct?

A. The company will meet the statute, and in meeting that statute that will flow through the generation rider. If there is any risk involved in the pricing of renewable energies, that would be assumed by the company.

Q. Is there any level at which the costs would exceed the costs to comply that the company would decide not to meet the benchmarks?

A. That has not been proposed in this application, no.

Q. Okay. Just so I understand your answer, there is no level at which the price would exceed the costs to comply with the benchmarks that FirstEnergy would choose not to comply?

A. As I -- as I think I answered, the company is willing to meet the statute. Anything that would require as far as costs, that would be assumed risks that would be placed on the company.

EXAMINER PRICE: Has the company included in its proposed pricing compensation for assuming that risk?

THE WITNESS: As I stated before, the way the 7 cents was brought up, the 7 cents is to meet the obligations of the SB-221, which was to have a price that was lower than what we believed an MRO auction would occur and stabilize the prices for the customer so that risk is assumed in our generation pricing.

EXAMINER PRICE: Can you quantify what that risk might be?

THE WITNESS: No. The company has not quantified that.

EXAMINER PRICE: Thank you.

Q. (By Ms. McAlister) I am going to direct your attention to page 12 of your testimony. Specifically around line 22 you state the "FirstEnergy Solutions capacity at the Fremont Station will also be made available to meet such planning reserve requirements"; is that correct?

A. Yes.

Q. And the projected in-service date for the Fremont facility is January of 2010; is that right?

A. Yes.

Q. And isn't it true the customers may be at some financial risk for any slippage in the service state to the extent it moves past May 1, 2010, depending on the level of shopping?

A. Based on the rider CCA, if that slippage occurred and there was planning reserve purchases done by FES that were needed to fulfill the obligations, then, yes, there would be some risk.

Q. Okay. I am going to direct your attention to page 22 through 23 of your testimony. And there you describe the rider ELR, which is economic load response, and OLR, which is the optional load response.

A. Okay, I am at 22 and 23.

Q. For each company the availability of the service under the economic load response program rider is limited to customers that are served under interruptible service arrangements as of July 31, 2008; is that correct?

A. Yes.

Q. What's the justification for restricting services to customers as of that date?

A. I would not characterize it as restricting, but what we tried to do is line up the current interruptible customers with this tariff for the ELR so we could make that line up as far as their ability to use this interruptible rider.

Q. Okay, but there aren't any other justifications?

A. No. We have offered the OLR rider for any new customers that would arrive, and in offering that rider, our belief was they would get the same interruptible credit, emergency interruptible credit, and then based on their criteria, they could apply for a reasonable arrangements rider in which they could get additional credits for items that could lead to economic interruption.

It could lead to other things that were contemplated by the economic development section of the statute.

Q. Is that discussed anywhere in your application?

A. Particularly what was discussed? I'm sorry.

Q. The ability of a customer to use one of the either OLR or ELR plus some special arrangement?

A. The special arrangement rider is discussed in the application, yes.

MS. McALISTER: Could I have just one moment, your Honor?

EXAMINER PRICE: You may.

Q. (By Ms. McAlister) Mr. Warvell, do you have Schedule 3A in front of you?

A. No, I do not.

MS. McALISTER: Your Honor, may I approach the witness?

EXAMINER PRICE: You may.

Q. Mr. Warvell, what I have just handed you is Schedule 3A for Ohio Edison. If you could please turn to page 84 of 103.

A. Okay. The one you handed me, thank you.

Q. You're welcome. Under the applicability section of rider OLR about halfway down it starts talking about whether you can be on rider OLR and other curtailment programs.

Is it your understanding that, notwithstanding this language, a customer could be on rider OLR and use a reasonable arrangement?

A. I guess I would rephrase your question. A customer could be on OLR and use a reasonable arrangement rider as far as it is not to the emergency curtailment load.

Q. Okay. So the reasonable arrangement rider could provide for economic interruptions but not emergency?

A. We would not double-count the emergency interruption, no.

Q. Okay. I am going to direct your attention now to page 24 of your testimony.

MR. KUTIK: I'm sorry, what was the reference?

EXAMINER PRICE: 24.

Q. Are you there?

A. I'm there.

Q. There you talk about why the companies have little to no control over the transmission and ancillary service related costs and congestion costs; is that correct?

A. That is true.

Q. Okay. The ESP doesn't indicate that

FirstEnergy will take any actions to protest or otherwise reduce the charges that may be imposed by the Midwest ISO or other RTOs, does it?

A. We have agreements or groups within our company that sit on committees and are part of subcommittees that are part of MISO that advocate not only for the customer but they also advocate for the reliability of the system.

An example I can give you that was beneficial for customers is recently through a subcommittee as far as the ARR process is concerned, that's with MISO, through that committee we worked with MISO and developed the procedure where if a person shops, that the ARR credit goes along with the customer and does not stay with the operating company or the EDU. It would go with the load serving entity, thus benefiting the customer in that regard.

There is an example of how we have helped in that process.

Q. Okay. I am going to move you to page 25 of your testimony and lines 12 through 13 you state that the companies will continue to file annually to update transmission rates; is that correct?

A. Yes. As a matter of fact, Friday.

Q. Right. I was aware of that. But I did not see in the ESP where there would be a continued staff audit process; is that contemplated anywhere?

A. That is assumed, yes, that would continue.

Q. Okay. But it's not explicit in the application, is it?

A. I would have to search for that. I am not sure.

Q. Isn't it true that the justification for making the generation charges all kilowatt hour based is that there is not a fixed cost basis to develop a demand charge?

A. That -- that's one reason. Another reason is due to the fact if we look at the testimony of Mr. Jones, he did a load weighted LMP pricing for his testimony. And in that, that load weighting worked out to be roughly a difference of about 6 percent between the industrial and residential and commercial load of our -- of all three companies combined.

And when looking at that, we believe that the seasonality adjustment can account for most of that differentiation, so not only the fixed price but also we believe since it's being based on the purchase of wholesale power and with that information, we do not see a need for a demand charge.

MS. McALISTER: I have no further questions. Thank you, Mr. Warvell.

EXAMINER PRICE: Mr. Smith.

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CROSS-EXAMINATION

By Mr. Smith:

Q. Good morning.

A. Good morning.

Q. My name is Craig Smith. I represent Material Sciences Corporation.

Are you sponsoring the electric security plan in those areas that pertain to your testimony today?

A. Yes, I believe they are listed there in my testimony.

Q. Okay. And did you partly write the plan?

A. When you say "the plan," the application?

Q. The ESP, yes.

A. I did not specifically write the plan. I was involved along with many other people that were part of the rate department and legal department and management in putting it together.

Q. Okay. Would you agree that the plan is based on an expectation that the FirstEnergy operating companies will enter into a wholesale power agreement with FirstEnergy Solutions?

A. Yeah, I think that's been stated earlier in the day, yes.

Q. And in writing the plan, despite not having an agreement, you have made assumptions as to what the future agreement would be?

A. We've laid out the plan in the application how we think things may be structured in that agreement, yes.

Q. Well, have you negotiated with FirstEnergy Solutions over a wholesale agreement?

MR. KUTIK: Objection. Asked and answered.

MR. SMITH: I don't believe so.

MR. KUTIK: Yes.

EXAMINER PRICE: Overruled.

THE WITNESS: I'm sorry, could you repeat the question.

(Record read.)

A. Personally I have not been involved with any negotiations with FirstEnergy.

Q. Do you know if there are any negotiations underway at this point?

A. I am not aware of -- personally I am not aware because I am not involved so. I couldn't tell you if they are or they aren't.

Q. So the information that is provided in your testimony is not based on firsthand knowledge about the deal between the operating companies and FirstEnergy Solutions?

A. My testimony is based on an assumption that there will be an agreement that's representative of the application between FirstEnergy Solutions and the operating companies.

Q. Do you have daily dealings with FirstEnergy Solutions?

A. No.

Q. Okay. In your position are you involved in forecasting energy usage?

A. No, I am not.

Q. Do you know who is?

A. As far as we have a department from an EDU side that is in charge of forecasting, that is a part of the rate department.

Q. Are you aware of how many megawatts FirstEnergy Solutions has in MISO?

A. Not down to the megawatt, no.

Q. Do you have an estimate?

A. An estimate I think 11,500 would be close.

Q. Thank you.

Your testimony supports a proposed generation rate which is part of the GEN rider; is that correct?

A. Yes.

Q. And did you -- what was the basis for the rate proposed?

A. As I stated earlier, the basis was to meet the intent of SB-221 in that we believe the rates that we have provided would be less than a market rate option that would occur, and also give customers stability as knowing what the generation rate would be going into the future.

Q. Well, is not the generation rate you are charging retail customers related to the wholesale costs of generation being charged by your wholesale supplier?

A. We did not develop a rate based on costs.

Q. How do you know what the cost is for energy for FirstEnergy Solutions if they are the supplier?

A. That is not the way we've proposed the G rate.

Q. How did you propose the G rate, as you already expressed?

A. Yes.

Q. Is that because -- well, would you consider that to be risky to propose the generation rate without knowing what your supplier will be charging?

A. As I said before under the assumption of the application, it's assumed that we would be -- that a contract between FES and the operating companies would be similar to what has been proposed in the application.

Q. So the companies have a high degree of confidence your proposed rate is in the ballpark of what FES would be charging?

A. Yeah. I have no way of knowing other than what I stated earlier as far as the assumption is part of the application.

Q. Well, then -- now, that's a fixed generation rate, correct? It's a fixed generation rate, the GEN charge?

A. Fixed retail rate to the customer per year?

Q. Yes.

A. Yes.

Q. And are there adjustments to that generation rate allowed for by the ESP such as for fuel, environmental costs?

A. To the generation rate?

Q. Yes.

A. No. We have additional riders that are part of the application.

Q. Okay. So the generation rate stays fixed for 2009 and there is a higher rate in 2010; am I correct?

A. Yes.

Q. Okay. And the rider is supposed to capture what costs?

A. What rider are you pertaining to?

Q. Well, just generally you have proposed a number of riders to recover additional costs of receiving generation from FES; is that correct?

A. There are additional riders, yes.

Q. Okay.

EXAMINER PRICE: One minute, Mr. Smith. I would like to return to the FES question for one second.

You are proposing fixed rates in here on the assumption that FES will supply those rates; is that correct?

You are asking the Commission to approve fixed rates on the assumption you will enter into a contract with FirstEnergy Solutions which will allow you to supply -- which will supply those -- the power for those rates; is that correct?

THE WITNESS: That is true, yes.

EXAMINER PRICE: And any negotiation with FES will be an arm's length transaction; is that correct?

THE WITNESS: Yes.

EXAMINER PRICE: What will you do if FirstEnergy Solutions declines to supply you the power at these rates?

THE WITNESS: I believe in the application if we cannot reach an agreement, that we would not have an ESP plan.

EXAMINER PRICE: Can you point to me where it says that?

THE WITNESS: The last page of the agreement, "As the Commission is aware, the companies must enter into an agreement with FES or wholesale supplier in order to obtain the generation services sufficient to satisfy the plan commencement to proceed."

EXAMINER PRICE: I don't see where there

it says that "if FES declines to supply, that there will be no ESP."

In fact, Mr. Warvell, does it not say "the Commission's decision in this proceeding will determine whether FES will continue" -- "either continue to dedicate generation resources to the companies' Ohio customers or will use those resources to supply other obligations," at page 41, second sentence?

THE WITNESS: Yes, that's what it says.

EXAMINER PRICE: Doesn't that imply that FES has already agreed to supply power according to this application?

THE WITNESS: I'm not aware that they have.

EXAMINER PRICE: You've indicated that these prices were set in accordance with Senate Bill 221.

THE WITNESS: With what we believe the intent of the bill was.

EXAMINER PRICE: The intent of 221. Is there anything in the Senate Bill 221 that says you do not need to have an ESP if your supplier won't supply you power?

THE WITNESS: Not that I am aware of. I

don't know.

EXAMINER PRICE: Thank you. I'm sorry, Mr. Smith, for the tangent there. Please proceed.

MR. SMITH: Okay. Thank you.

Q. (By Mr. Smith) Let's turn to your testimony, please. On page 4 -- unless you ask me for a line reference, I am just going to refer to your page 4 because these are general questions.

You gave the opinion -- the opinion that Dr. Jones and Dr. Graves had a logical approach to their analysis; is that true? Is that what you are testifying to?

A. Yes, that is true.

Q. Okay. And what was your involvement with these two experts?

A. I was the person that basically was the contact for them as far as information that they requested from the company and as well as contact for them to deal with the rate department as far as this case is concerned.

Q. Did you instruct them how to prepare their analysis?

A. No, I did not.

Q. So your -- your expression of logical approach is -- does not extend to the work product they actually produced; is that true?

A. I guess what I was referencing is the logical approach, it made sense to me on how they went about getting to their retail price.

Q. In fact, you sort of listed the steps that you believe they went through to reach their conclusion.

A. Yes.

Q. But your -- strike that.

In having related this logical approach, you reach the conclusion their market price is also conservative, and that would be on page 6.

A. Yes.

Q. And what do you mean by "conservative"?

A. It would be on a lower range of outcomes to be conservative.

For instance, for what has happened in the last couple of weeks, if we look and see as far as auctions that have occurred that they were kind of addressing in their testimony, PP&L just had an auction that cleared at 11.4 cents here recently in the last week or two which converted back using the same kinds of methodology that Mr. Graves used in the auction process in eliminating the transmission and congestion would be above the number that he has put in the application.

Q. Is a conservative price, is that a lower price or a higher price?

A. In my opinion what I was addressing conservative, I would say that when I was talking about that, that it was -- it would be on the lower end.

Q. But then you further testified that indeed the price could go higher, and you listed a number of reasons why. And that would be on page 6 and perhaps follow over to page 7. Is that true?

A. Yes. As I said, there is a range of outcomes.

Q. Okay. Now, was that the basis for your proposed generation rates, Drs. Jones and Graves' conservative numbers? Is that how you developed the generation rate proposed in this case?

A. No, not -- no.

Q. What did you use those -- what did you use Dr. Jones' and Mr. Graves' market-based price for in your testimony?

A. I was just summarizing what Drs. Jones and Graves had done as far as the market rate option as in comparison to the prices we were proposing as a generation charge.

Q. And you had your generation charge is lower than what they determined to be conservative market prices?

A. Yes, to give the Commission information in regards to where a market price option may clear at.

Q. Okay. Then -- then your phase-in proposal is meant to mitigate generation rates in order to make it more gradual; is that a fair characterization of the reason --

A. It minimizes the impact to customers, yes.

Q. And how did you choose 10 percent?

A. Well, it's not 10 percent. It adjusts each year, so the first year just happens to be 10 percent.

It's a phase-in that we thought more customers would mitigate the rate increase as well as look at the cash obligations of the company that we were -- that we could willingly forego.

Q. How did you weigh how much a customer could afford to pay for energy, if you did it at all?

A. I am not understanding your question.

Q. When you developed a 10 percent phase-in to reduce the costs downward, I believe your previous answer was you considered the companies' cash flow, et cetera.

How did you factor in what the customer could afford, if you did at all, in your phase-in proposal?

A. I'm not understanding your question.

Q. Why did you not choose 15 percent?

A. As I stated before, we weighed what the company looked at as far as its cash obligations as well as mitigating the customer's price increase.

Q. And on page 8 you provided the estimated deferrals that would result from phase-in generation rates; is that correct?

A. Yes.

Q. Now, do you have a sense of once those deferrals are deferred with interest to be recovered over time what the final cost of phase-in rates would be to customers?

A. As far as the charge to a customer?

Q. Yeah. How much does the customer end up paying for the 10 percent phase-in on a total dollar basis after the charges are deferred with interest and then recovered over time? Do you have a sense of magnitude?

A. I believe that's in the workpapers. I don't know the number off the top of my head, but I believe it's in the workpapers.

EXAMINER PRICE: Is there any other witness that would know that number?

THE WITNESS: I mean, just adding up the numbers there, it's roughly a deferral of about 1.4 billion dollars.

Q. Which increases over time. Do you know what the total number would be?

A. No, I do not.

EXAMINER PRICE: Again, do you know which witness would know that information?

THE WITNESS: Mr. Wagner probably would know that information, yes.

EXAMINER PRICE: Mr. Wagner?

THE WITNESS: Yes.

Q. In any event, I'm sorry --

A. Go ahead.

Q. In any event, the deferral will end after 10 years? It is a 10-year deferral or will not exceed 10 years?

A. Will not exceed 10 years, yes, that's what's stated.

Q. Okay. And then on page 9 -- excuse me a second.

I will refer you to lines 6 through 13, and specifically lines 10 through 13, and I don't really understand the meaning of that sentence. Would you explain it in a different way?

A. That line is from the -- roughly the statute on how gov ag customers would pay their proportional benefit of a phase-in charge.

Q. Well, how is proportional benefit determined?

A. The benefit that they receive the phase-in.

Q. Okay. The aggregation group is responsible for some part of the rider DGC charge. That's clear; is that true? Is that a clear statement?

A. Based on their benefit, yes.

Q. That is proportional to the benefit that the load centers receive. How do you determine the benefit?

A. The amount of the credit that the customers receive as far as the DGC is concerned.

EXAMINER PRICE: How will you calculate that?

THE WITNESS: That has not been determined yet, but our current thinking is that once there's been determined how much gov ag has gone into this process, that we would use at least in the first process the two-year megawatt hours that would be located to a particular load zone of that gov ag customer by operating company, by class, figure out its proportional benefit in relationship to that load center, and charge those customers for their -- give them a discount for the benefit portion that they received in the process.

Q. (By Mr. Smith) Then turning you to page 10, a discussion about the minimum default service rider, lines 19 through 23, now, this rider is -- I don't need to paraphrase what your testimony is, but are those not costs incurred by FirstEnergy Solutions?

A. Once again, it depends on how the contract would be structured between the two companies but that -- that could mean costs incurred by FirstEnergy Solutions or the operating companies. It depends on who has the POLR obligation during this process.

Q. But does the operating companies have the expertise to hedge generation?

A. Not at this time.

Q. So it's possible you would start doing that responsibility?

A. Once again, it would depend on the contract and the division in that contract.

EXAMINER PRICE: Excuse me, Mr. Smith. This charge you state is necessary to recover generation weighed administrative costs and hedging costs; is that correct?

THE WITNESS: Yes, hedging.

EXAMINER PRICE: You estimated the hedging costs?

THE WITNESS: No. What we have done is looked at what a put option may require in this process from brokers and also looked at the opportunity costs in relationship with a fixed product for a three-year and molded the shaping risks around a put option, which roughly at the time we looked at it was about 7-1/2 cents.

EXAMINER PRICE: And where in the application or the --

THE WITNESS: I'm sorry, not 7-1/2, three/quarters of a cent.

EXAMINER PRICE: That's okay.

Where in the application is that calculation?

THE WITNESS: There is no calculations.

We talked to some brokers.

EXAMINER PRICE: Have you estimated generation-related administrative costs?

THE WITNESS: We have not put any costs associated with that in the application or workpapers.

EXAMINER PRICE: So you are asking the Commission to give you a rider to recover costs that you have not even estimated those costs at this point?

THE WITNESS: As I said before, we looked at them as a group of costs and risks that exist in round, not only the administration but shopping and opportunity costs.

EXAMINER PRICE: Thank you, Mr. Smith.

Q. (By Mr. Smith) Well, just following up, doesn't the generation rate have a penny for those kind of costs included -- embedded in the total rate?

A. The minimum default service is for a penny is being picked up as part of the G rate for nonshopping customers and being charged to the shopping customers in the minimum default rider.

Q. But that's to compensate the company for --

A. For these type of risks, yes.

Q. Hedging costs, hedging, those kind of risks?

A. (Witness nods head.)

MR. KUTIK: You need to answer out loud.

A. Sorry, yes.

Q. Now, we go to page 12 and you testify FES will -- well, I think the lines would be starting at line 12, "FES will provide through its own capacity the capacity of purchases required to meet FERC, NERC, and MISO and all other applicable standards planning reserve margin requirements."

Same question, that's based on your expectation that would be the situation between the operating companies and FES?

A. Expectation of a contract between FES and the operating companies?

Q. Yes, sir.

A. Yes.

Q. In fact -- I'm sorry, was that your answer?

A. Yes.

Q. And, in fact, you are proposing a rider, rider CCA, to recover those kind of costs; is that correct?

A. No.

Q. What does CCA recover?

A. The rider CCA is in regards to the planning reserve requirements that would be over and above the base load capacity requirements of the load obligations of the operating company, so this CCA rider is limited to May through September's cost of planning reserve requirement that may or may not happen based on the amount of load that the operating companies are serving.

Q. Now, are you aware of the current contract where FES also provides service to its own retail competitive customers?

A. I don't know of any contract.

Q. Well, let's do it this way, is it true that FES is a power marketer?

A. Yes.

Q. And is it true that if you have this contract in 2009, that the operating companies would be one of its customers?

A. There would be a wholesale agreement between the operating -- or FES and the operating companies.

Q. And it's also true that FES supplies other customers simultaneously with the operating companies within the MISO service territory; is that correct?

A. Currently today I believe they serve customers in MISO, yes, as well as other jurisdictions.

Q. Okay. Are you suggesting in 2009 FES would not serve other customers in MISO?

A. I can't make a suggestion on FES. I don't know about it.

Q. Well, you also testify under this CCA rider page 13, lines 2 through 7, that if the capacity is insufficient, if FES's capacity is insufficient to serve the operating companies, it shall be the operating companies' responsibility through this rider to charge its customers for purchase power costs during the months May through September; is that correct?

A. No, that is not correct.

Q. Okay. Can you tell me what this CCA rider recovers during the May through September period?

A. Okay. I stated that earlier. The CCA rider is to recover the planning reserve requirements that would be needed to meet the load May through September of DNR costs, that would be capacity costs, of the planning reserve requirement.

To give you a simple example, I guess, the load requirement is 10,000. If there is a planning reserve that is instructed by MISO that is, I don't know, 15 percent, that has not been determined yet by MISO, so my load of 10,000 now becomes 15 above that, excuse my math if I screw it up, is -- is an additional 11,500 megawatts.

If -- if the amount of the capacity that is in the MISO plus OVEC plus Fremont is less than the 10,000 megawatts that was for the load, then FES would have to pay for the additional whatever, let's say they only had 9,000 worth of megawatts, FES would be responsible for 1,000, the 1,500 that would be for the planning reserve would be passed on to the operating companies which then would flow that through this rider.

Now, if the -- on an opposite way to look at that is if we have 12,000 megawatts and our load is 10,000 during that time period and there's 15 -- and the planning reserve requirement is the same, 15 percent or 1,500 megawatts, so now we have 12,000 megawatts worth of load -- or worth of capacity or DNR from those units and you only have 11,500 megawatts during that time period, there would be no charge to the customer.

So it is dependent upon the load requirements that would be applicable to the planning reserve percentage that MISO determines. That is the only way the customer will be charged. It's a very limited volatility then for the customer. Hopefully that helps in the explanation

EXAMINER PRICE: But this will be an actual cost-based rider; is that correct?

THE WITNESS: Yes, it would be cost based on a bilateral transaction with a third party for DNR.

EXAMINER PRICE: Is it possible that the customers, if you have an excess of capacity, will ever get a credit?

THE WITNESS: When you say "an excess of capacity" --

EXAMINER PRICE: FES.

THE WITNESS: -- would DNR be sold into the market and credited back to the customer?

EXAMINER PRICE: Yeah, yes.

THE WITNESS: That is not shown in the rider, no.

EXAMINER PRICE: So it's not possible.

THE WITNESS: It's not shown in the rider.

EXAMINER PRICE: As you have proposed your application.

THE WITNESS: Correct.

EXAMINER PRICE: Thank you.

Q. (By Mr. Smith) What safeguards do the operating companies have that they are not paying a disproportionate amount for FES to meet MISO reserve requirements?

A. I'm not understanding your question.

Q. FES has additional customers than the operating companies; is that true?

A. That's not related to this rider.

Q. Then moving on, you discuss the transportation surcharge and environmental control rider. That would be on page 13 moving over to 14.

Now, you refer to that as an "opener." It's a type of accommodation. That would be on the top of page 14, line 3.

A. Yes.

Q. What do you mean by that?

A. We've limited the number of cost adjustment riders in this plan.

Q. Well, does that not seem like pretty definitive negotiations going on between the operating companies and FES? I mean --

A. My answer is no.

Q. How do you know they even require the opener? You don't have a contract yet.

A. As I said, this was an assumption built that these would be the type of requirements that FES may look for and see if they could live with in this process.

Q. Okay. And then on page 15, talking about the rider FTE, now, that's going to be applied across all three operating companies; is that your plan?

A. Yes.

Q. And instead of charging each company a different rate?

A. Yes.

Q. Okay. Thank you.

Now, we move to rider FCA, which is on page 16, now, at least until -- between 2009 and 2010 you are not separately recovering fuel costs through a rider?

A. That is true.

Q. And the purpose of the rider is because of the uncertainty going out three years?

A. Yes.

Q. Now, also on page 16, there is an assumption. I just have to find the cite.

I'm sorry, it's page 15, lines 16 through 19. The companies agree to assume that they are responsible for 100 percent of the fuel costs of FirstEnergy's -- FirstEnergy Solutions' generation during that time period; is that correct?

A. Once again, the assumption is that there is a contract between FES and the operating companies during this process so that would be assumed either by the operating companies or by FES passing those charges along.

Q. Does that also not assume that FES does not have other customers that it's serving from those plants?

A. That's one way to look at it, yes.

Q. And isn't it true FES is probably buying purchase power rather than again generating during the times --

A. I would assume they were doing that today.

EXAMINER PRICE: Excuse me, Mr. Smith, I have a couple of questions about the FCA rider.

You state in your testimony that under the RSP there was a fuel cost recovery rider for 2006, 2007, and 2008; is that correct?

THE WITNESS: Yes, there was approved

deferral, yes.

EXAMINER PRICE: And you have a fuel cost recovery rider for 2011. But the company is willing to bear the risk and the cost for 2009, 2010; is that correct?

THE WITNESS: That is correct. The rider in '11 though is not as expansive as far as the items that are currently in the fuel deferral rider.

EXAMINER PRICE: Can you quantify within the base rates for 2009 and 2010 how much of that is fuel costs and how much of that is compensation for the risk that you are assuming or bearing the risk of increased fuel -- all the issues that you raised, fuel purchase power?

THE WITNESS: And I have not looked at any of those numbers, so I couldn't -- I couldn't quantify that.

EXAMINER PRICE: Can you give me a ballpark estimate?

THE WITNESS: I have not looked at any of FES's fuel numbers for forecasts.

EXAMINER PRICE: Is there any FirstEnergy witness that may have that knowledge?

THE WITNESS: Not that I am aware of in the case.

EXAMINER PRICE: Thank you, Mr. Smith.

Q. (By Mr. Smith) Thank you.

Turning to rider DCF, page 18 -- actually top of page 19, lines 1 through 3, you estimate $235 million will be recovered through that rider for each of the three companies.

Now, is that total costs or do we add interest and time of recovery to that amount?

A. As stated in the DCF as we just talked about, this is a deferral that's already been approved by the Commission that includes carrying charges with it, and that number is basically as of the end of 2008's forecasting carrying charges with that.

Q. Thank you. Moving on --

EXAMINER PRICE: I'm sorry, Mr. Smith, I have another DCF question before you move on.

The companies filed a separate case 08-124-EL-ATA?

THE WITNESS: Yes.

EXAMINER PRICE: Is that correct?

THE WITNESS: Yes.

EXAMINER PRICE: If the Commission decided to allow rider DCF, then that case would be withdrawn or dismissed?

THE WITNESS: Yes.

EXAMINER PRICE: On the other hand if the Commission decided to defer ruling on this issue, that issue would be taken up in 08-124?

THE WITNESS: Without being a legal person, I would say yes to that question, yes.

EXAMINER PRICE: And you are involved in 08-124? You understand that application.

THE WITNESS: I understand that, yes.

EXAMINER PRICE: So it is an either/or situation.

THE WITNESS: Yes.

EXAMINER PRICE: Is it my understanding the companies' preference would be ESP?

THE WITNESS: Yes.

EXAMINER PRICE: Thank you.

Q. (By Mr. Smith) Then turning to standby charge looking at page 20, page 21, you testified that -- on page 21 at lines 18 thereafter "Implementation of standby charge is recognition that providing protection from market prices --" well, I am misparaphrasing.

"Implementation of standby charge is recognition that providing protection from market prices, and the volatility associated with market pricing, imposes a significant cost and risk on the companies."

That's referring to hedging; is that correct?

A. No, not in particular. If a customer has left the -- or left the POLR provider or the SSO, standard service offer, in 2009 and then was going to return in 2010, we do not know what the market prices are going to be and so we would have to not only hedge -- hedge against that for the SBC, but also the rate in which that customer would return would not be at the standard offer rate.

Q. Thank you. On page 22 you --

EXAMINER PRICE: I'm sorry.

THE WITNESS: I'm sorry, I need to clarify what I just said.

If the person does pay the SBC charge, they would return at the standard offer rate. If they do not pay the SBC charge, then part of this rider is how they will be charged for market pricing and so that customer would need to be charged that market price rate which is part of the SBC rider.

EXAMINER PRICE: I'm sorry, Mr. Smith. I had a couple of questions before we move on. Your cross-examining has vehemently gone through rider by rider which has given me the opportunity to ask the questions I already was going to ask.

The SBC rider is not designed to recover the company's actual costs. It's the company's estimate of what the costs are and the company will bear the risk whether it under-recovers those costs?

THE WITNESS: As far as -- as far as hedging is concerned?

EXAMINER PRICE: Yes.

THE WITNESS: Yes.

EXAMINER PRICE: And the company then, if the rider over-collects, the hedging costs are less, then the company stands to benefit; is that correct?

THE WITNESS: Yes. We're looking just to ensure ourselves of the risk, not to make money on this process.

EXAMINER PRICE: You are looking just to recover your actual costs.

THE WITNESS: Costs.

EXAMINER PRICE: Would the company have an issue if the Commission ruled that this rider should just recover actual costs rather than the flat rates that you have proposed?

THE WITNESS: I'm not sure how the Commission would look at actual costs in regards to a customer deciding if they were going to --

EXAMINER PRICE: You could look at your actual hedging costs. You discussed how you would hedge.

MR. KUTIK: Your Honor, if you were just a regular lawyer, I would object because the witness hadn't finished answering his question.

EXAMINER PRICE: I understand. I'm sorry, please finish your answer and then I will follow-up.

You are correct, Mr. Kutik.

THE WITNESS: As far as the customers were concerned how that actual hedging cost occurred, there are some other risks involved that are not necessarily a flat hedge cost that are associated with the shaping of that customer returning.

So I'm not sure that we would be able to agree that it would be just based on a hedge cost because there are some costs in regards to shaping for that customer's load shape and returning in that process.

EXAMINER PRICE: Are those costs quantifiable?

THE WITNESS: I believe that we would have to try some mechanism to quantify that to meet that standard.

EXAMINER PRICE: But the companies' intent in rider SBC is to only recover its actual prudently incurred costs of customers returning to the system?

THE WITNESS: That would be required to hedge that, yes.

EXAMINER PRICE: Thank you, Mr. Smith.

Q. (By Mr. Smith) On page 22, discussion about rider ELR, how did you determine to limit customers as of July 31, 2008, who could qualify for that rider?

MR. KUTIK: Objection. Ms. McAlister asked that very same question.

MR. SMITH: I'm sorry, what?

MR. KUTIK: Ms. McAlister asked that very same question.

MR. SMITH: What was his answer?

EXAMINER PRICE: Let's have the question back again, please.

(Record read.)

EXAMINER PRICE: It is substantially similar to Ms. McAlister's, Mr. Kutik, yeah, point is well taken, but I am going to direct the witness to answer the question anyway.

THE WITNESS: As I stated earlier, this is basically to line up the current interruptible customers with this tariff.

Q. Current interruptible customers as of July 31, 2008, correct?

A. Yes.

Q. And isn't it true that in February, 2008, at least Toledo Edison terminated a number of interruptible contracts that were approved by the Commision?

A. I'm not aware of that, no.

Q. How many customers can qualify for this tariff with the July 31, 2008, cutoff?

A. I'm not aware of the specific number.

Q. Well, doesn't it matter to you?

A. As I said before, we're -- the portion of this was to line up the current interruptible customers with a similar tariff for them.

Q. How many current interruptible customers are there?

A. I don't have that number.

Q. Are you applying this tariff across all three companies?

A. For the current interruptible customers, yes.

Q. Including Toledo Edison customers?

A. Yes.

Q. Who would have the number of customers who would qualify?

MR. KUTIK: I'm sorry, I didn't hear the question.

EXAMINER PRICE: Please repeat the question.

(Record read.)

A. I think that could be answered by Mr. Hussing.

Q. Thank you. As far as the OLR rider, Ms. McAlister asked the same question. I will abide by your answer.

Is the July 31 deadline -- 2008 deadline for this rider the same as -- the same basis as the ELR rider?

A. There's no basis for this -- no date for a sign-up for this number.

Q. Okay. That's true.

You refer also in your testimony on page 23 to SBE, society benefits economic development rider?

A. If you look at the errata, that's been changed to the current name, which is EDR, economic development rider.

Q. Okay.

A. Which we talked about earlier.

Q. But that again is based on July 31, 2008, eligibility?

A. Eligibility for the OLR -- there is the eligibility for the OLR rider is for customers that would qualify under its contents and any new customers that would want to sign up for the emergency load curtailment.

Q. Finally, pages 28 and 29, you summarize the bypassable riders; is that correct, lines 18 through 23 on 28, and lines 1 through 4 on page 29?

A. Yes.

Q. Could you summarize the overriding basis for making a rider avoidable as opposed to making it nonavoidable?

A. The ability for a customer to bypass these riders outside of Commission ruling of the nonbypassable or bypassable of a charge in this case was based on the amount that that customer or person would contribute to the expense or not.

MR. SMITH: I have nothing further. Thank you.

EXAMINER PRICE: Let's go off the record.

(At 12:30 p.m., a lunch recess was taken until 1:45 p.m.)

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Thursday Afternoon Session,
October 16, 2008.

- - -

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

Mr. Petricoff.

MR. PETRICOFF: Thank you, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Petricoff:

Q. Good afternoon, Mr. Warvell.

A. Good morning -- good afternoon, I'm sorry.

Q. Oh, that's okay.

I am Howard Petricoff and I am here on behalf of Direct Energy, Constellation NewEnergy, Constellation Energy Commodity Group, and Integrys Energy. We're working together as the competitive suppliers.

In your preparation for the testimony you filed in this case what did you do to familiarize yourself with the wholesale energy market?

A. As far as previous experiences in regards to the wholesale industry that I had been dealing with at FES gave me somewhat of a familiarity.

Q. But specifically did you look at forward curves? Did you monitor fuel prices? What kind of steps did you take to prepare -- what kind of steps did you take in order to prepare this testimony? In terms of wholesale prices for energy?

A. Wholesale prices for energy, we had personally been following those probably over the last six months or so, beginning late January, I recall, February, throughout the term to the time that we filed the application.

Q. Do you continue to watch the wholesale energy market, or did you stop once the testimony was filed?

A. No. I have looked at some forward prices, yes.

Q. And how about fuel prices, what did you do in terms of reviewing fuel prices to prepare your testimony?

A. As far as fuel prices, I have looked at some of NYMEX coal numbers in regards to forwards as far as coal prices were concerned.

Q. How about gas or oil?

A. Limited looking at natural gas as far as prices that -- just trending of natural gas as far as that's been concerned, and price, and also storage.

Q. In terms of the wholesale energy market, would you agree with me that gas-fired generation is usually the incremental units that are sold in the market?

A. Yes, as far as gas fired, yes, except I would say at times it depends on PJM. It may not be that case.

Q. But generally the incremental capacity comes from gas-fired units?

A. Yes.

Q. I would like now to direct you to page 6 of your testimony, line 18, and there you say "Finally, I believe that 2010 and 2011 market forwards do not fully reflect the recent dramatic rise in fuel costs."

A. Yes.

Q. Okay.

A. And that was --

Q. When did you write that -- when did you write that sentence?

A. Writing that sentence was probably sometime in June.

Q. And what was the price of gas in June on the NYMEX?

A. I don't specifically recall.

Q. Order of magnitude. Was it $10? $9?

A. I don't specifically recall. I believe it might have been even a little less than that, but the reference here was mainly to coal prices, especially considering where the dispatch of units were being done off-peak in the MISO market in relationship to the forward coal NYMEX prices.

Q. And what were coal prices in June?

A. I believe roughly about for the NYMEX from a forward perspective were about $100 per ton.

Q. And what are they now?

A. They've fallen somewhat to I would say the last I seen was in the $90 range.

Q. Let me direct you now to page 5 of your testimony, line 1. Actually it really starts over on page 4, the last line.

You were talking about forward energy prices and "These prices can fluctuate daily based on changes and other commodity prices that drive energy costs, such as oil, natural gas, and coal...."

What were oil prices in June?

A. Significantly higher than what they are today.

Q. So if we were rewriting the line 18, page 6 of your testimony today, should we just change the word and say "I believe that the 2010-2011 market forwards do not yet reflect the recent decrease in fuel prices"?

MR. KUTIK: Could I have the question read, please.

(Record read.)

A. I guess I would categorize it that with the recent decreases, especially in the 2009 time frame, is forward market prices that reflect, as you pointed out, the natural gas slippage that has occurred over the last month or so that prices in 2009 have gone down, but overall for 2010, due to other items that are outside of coal and natural gas, such as air quality legislation and other items, I will not necessarily say 2009 -- or 2010 and 2011 fully reflect those type of costs that may be still to come.

Q. Let's take a look at overall prices.

On page 4 of your -- of your testimony, line 18, you indicate that Dr. Jones and Dr. Graves had a logical approach for developing retail prices by looking at the forward curves.

Do you see where I am referencing?

A. Yes.

Q. What was the time frame that Dr. Jones and Dr. Graves looked at forward prices?

A. I believe from their testimony it was -- the date was July 15.

Q. And have you been watching the forward curves today? Have you been following the forward curves since -- since July 15?

A. Yes. I've seen that.

Q. And wouldn't you agree with me that the trend in prices is down?

A. As I just stated, yes, I would agree that the trend in prices for 2009 has been down, '10 has been down a little bit, and '11 has not moved as much, but those prices can as easily move up and down based on what we just talked about, not only natural gas markets and oil markets but also issues to do with credit and other items that are affecting us today.

Q. Now, I believe this morning you testified there was no agreement yet for FES to supply generation for the electric security plan that's offered in this application, but that such would be negotiated at an arm's length basis; is that correct, my memory correct?

A. In general, yes.

Q. Knowing what we now know about fuel

prices in the forward curve, is the price you can negotiate with FES on an arm's length basis likely to be lower for generation today than it was July 15?

A. I guess not being part of the negotiations, I don't think I could answer that.

Q. Was the ESP program that was filed designed to leave the operating companies with a margin on the resale generation?

A. No.

Q. If the price for energy generation goes down below what was anticipated in the prices that you have listed on page 4 of your testimony, wouldn't the operating companies have a margin in the resale of generation?

THE WITNESS: Could you read that question back, please.

Q. Let me rephrase it, or actually let me break it up.

A. Okay.

Q. Let's look at page 4, page 4, lines 11 through 13, you list the prices for generation that are a part of your -- your generation rider; is that correct?

A. Yes.

Q. And if the companies now negotiating at an arm's length basis can get a lower price for generation from the supplier and yet maintain the prices that you have here on lines 11 to 13, won't they have a margin in the resale of generation?

A. In that hypothetical situation, yes.

Q. Now, I want to explore the -- what's fixed and what is subject to escalation clauses in terms of these generation prices on lines 11 to 13 on page 4.

Actually let me take that back. I have another avenue of questions I would like to ask you first, if you don't mind.

These prices you've listed on 11 through 13, do they have in them the risk for the operating companies that we might have mild weather and so kilowatt hour sales would be depressed?

A. Overall volatility would be in the price related to not only this but also the volatility as we talked about in the risk of the MDS charge in that portion of the risk, yes.

Q. For now, let's just focus in on the GEN rider. So in the GEN rider price where we see these fixed prices on pages 11 to 13, is it fair to say that the risk of weather, the risk of economic conditions -- which appears to be a bigger risk today

than two weeks ago, but that's for another
discussion -- let me go back and start the question
over.
Isn't it true that the prices between --
that are shown on lines 1 through 13 for the GEN
include the risk of weather, economic conditions,
customer conservation, substitution to other fuels,
cogeneration, and competition with the CRES?
A. Yes. Some of those charges though would
be also -- some of those risks are embedded in the
MDS charge.
Q. But for customers who are buying standard
service -- standard service product, they don't pay
an MDS charge; isn't that correct?
A. It's part of the generation service
charge.
Q. That's right. And the generation service
we are talking about are those prices that are
between lines 11 and 13 on page 4?
A. Yes.
Q. Now, there are some adjustments that can
be made to these generation prices; isn't that --
under the application; isn't that true?
A. What do you mean by "adjustments"?
Q. Okay.

A. Just clarify.
Q. Well, let's -- let's get very specific.
Do you have -- and I know that we marked this as an exhibit today, and I must admit I am still going under the old numbering system.
Do you have the Schedule 5s with you that you are sponsoring?
A. Yes, I do, yes.
Q. I think it's Exhibit 9 now, but I'm not sure. But if you don't mind, let's continue just using the schedule numbers and letters.
MR. KUTIK: That would be Exhibit 9F.
MR. PETRICOFF: Thank you, Counsel.
Q. Let's take a look at Schedule 5D. 5D is the FTE schedule.
A. Okay.
Q. And if we look at the FTE -- if you turn to Schedule 5D, we have a -- we have a chart here and this chart is illustrative of fuel transportation surcharges and environmental control rider charges.
A. Are you on page 2 of 4?
Q. Page 2 of 4, that's a good schedule. Let's go to that one.
A. Yes.
Q. And is the purpose of -- is one of the

purposes of the -- of this FTE rider to offset any increase in the costs of transportation going from the source to the generating unit?

A. A portion of the FTE rider is for fuel surcharges associated with moving fuel from the source to a generator.

Q. And am I correct that the operating companies don't own any generation units at this time?

A. That is true.

Q. So this is not to move fuel to your generation units; it's to move fuel to your supplier's generation units?

A. To FES's, yes.

Q. Okay. Do we know what units are going to be generating that FES uses to supply the ESP plan as filed?

A. I believe we've listed out all of the MISO operating units that FES controls.

Q. But it's up to FES at this point to decide which units it's going to use to meet the -- that demand?

A. As part of the application, it would be all the units to meet that demand.

Q. Will FES need all the output for all of the units all of the time?

A. No. Based on the load shapes, I would not think they would need all the output all the time.

Q. Is there anything in the application as filed that would indicate that the company could select which units are going to be used to meet the demand of the ESP program?

A. No. As stated in the application, there is going to be all of the MISO operating units for FES plus the OVEC purchase power agreement.

Q. So FES could basically select the units with the largest transportation -- fuel transportation charges and assign those and send the invoice to the operating companies for pass-through the FTE rider?

THE WITNESS: Would you repeat that again. Would you read it back.

(Record read.)

A. There's no provision that is specifically saying what units would be run at any specific time. All the units are going to be required to meet the obligation of the retail load so FES does not indicate individual units in this rider.

Q. May I accept that as an affirmative

answer to my question?

THE WITNESS: I guess read the question back again so.

(Record read.)

A. I guess I look at it the majority of the units would need to be run to serve retail load at any particular time and there is no specification in this rider of what units FES would be obligated to put towards this source.

EXAMINER PRICE: I think Mr. Petricoff is asking you for a yes or no answer.

Q. A yes or no answer.

A. It's a possibility, yes.

Q. Let's move down now to line 23 on Exhibit 5D, 2 of 4, and this is a section that's called "Environmental Control Changes."

A. I'm sorry, could you repeat where I am going?

Q. Oh, sure, sure. Actually I gave the wrong line numbers, so I am really glad you asked me the question.

Line 10 on that schedule says "Environmental Control Costs in excess of $50 million." Explain to me what environmental control costs are.

A. As we've stated in the rider, environmental control costs would be any additional requirements needed by the operating companies or FES that are not stated in the Senate Bill 221 for us to comply.

Q. Okay. And, once again, at this point FES could assign any -- any costs that it had on any of the units that it might use to fulfill. the -- the ESP plan and list those charges on line 10 of your exhibit?

A. I guess I look at it as if this is a threshold in which the company is absorbing $50 million of environmental charges of unknown regulations, taxes, or anything that may come about as environmental charges, so I would not necessarily agree with that statement on FES.

EXAMINER PRICE: Which company? Mr. Petricoff.

You said "the company." Which company are you talking about?

THE WITNESS: The operating companies or FES.

EXAMINER PRICE: Okay.

Q. Let's look at the inverse then. If that's the case then, wouldn't you agree with me that any environmental cost from FES over $50 million on any of its units can be charged through to the Ohio customers?

A. It would be based on new legislation and new rules that are not in effect today.

EXAMINER PRICE: Is that yes? Yes, it would be based on any new legislation?

THE WITNESS: Yes.

EXAMINER PRICE: Thank you.

Q. Okay. Okay. Let's -- one last question, if the company went with the -- with the market rate option, which I will refer to now as the MRO, if it went through the MRO, would there be a -- an equivalent to the FTE rider?

A. Basing the hypothetical question on what you are asking me on MRO, it would be assumed that the risk factors that would be associated with the retail price would incorporate the factors that are part of the FTE rider, as well as any of the other riders that the company is absorbing the threshold quantity and then taking the rest to the customer. The MRO process does not guarantee any retail rate for any of the years.

Q. But the MRO process would not have the customers bear a similar risk for fuel transportation

and environmental compliance as we see in rider FTE?
A. It would be associated with the retail price that would be offered under the MRO process.
Q. Let's take a look at 5E now, that's the fuel adjustment clause. And the fuel adjustment clause, which is rider FCA, would permit the operating companies to charge a fuel expense to the customers in the year 2011 if certain conditions are met?
A. It would be an incremental cost over 2010, yes.
Q. And if the company went with the MRO, would there be a similar right for the MRO supplier to charge increased fuel costs -- increased fuel costs in the year 2010?
A. As stated last time, that would be assumed to be incorporated into the retail risk price in the MRO process.
Q. Okay. Now, I want to take you to Schedule 5K. This is the transmission and ancillary service rider.
Is it true that the purpose of this rider is to basically have the company collect all the transmission and ancillary service costs that are associated with providing service to the SSO

customers?

A. Yes, based on the MISO bill, yes.

Q. And it's more or less a discrete charge, that is whatever those -- those expenses are, go through the TAS to the customer?

A. Yes, based on energy and demand basis.

MR. PETRICOFF: Your Honor, at this time I would like to have an exhibit marked.

EXAMINER PRICE: How are you identifying your exhibits today?

MR. PETRICOFF: I think probably -- in following the lead from the OCC, let's make this Competitive Suppliers No. 4.

EXAMINER PRICE: Thank you. So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Mr. Petricoff) Actually, just so people will know that -- that you are already in pretty good shape. You will agree with me this is page 33 of 199 of Schedule 5K, which if you have your schedules with you, you already have a copy.

A. Yes, it looks like it, yes.

Q. And the title on -- on this page is "Summary of Total Projected Transmission Costs." And is it a fair statement, I mean, does this list all of the transmission and ancillary service costs, at least the expected ones from the MISO?

A. At this point in time, yes, I would agree.

Q. Okay. And on schedule 1 through 26, is it fair to say these are the -- are the network transmission charges?

A. Demand charges, yes, demand-based charges, yes.

Q. And the -- as we look down to the -- to the other schedules, are some of the expenses that are in the -- in the -- and they are not numbered and I'm sorry to say, in the second block that also begins with the word "schedule," we have a series of other charges.

Are some of those what we would refer to as sync-to-source-type charges?

A. Some of them, I would agree with that statement.

Q. Okay. And in the wholesale market generally is it the wholesale supplier who pays the sync-to-source charges?

A. I guess I am not familiar enough to make that claim one way or another.

Q. Okay. If you look down in that second block marked Schedule, you'll see in the, oh, about the sixth row down it says "Congestion Expenses."

Are congestion expenses generally a sync-to-source charge?

A. Yes.

Q. And then two under that is "net losses." Are net losses generally a sync-to-source charge?

A. Yes.

Q. And would you expect congestion expenses and net losses to be part of the -- of the fixed price bid that bidders would -- would supply in the MRO -- let me start that over again.

Would you expect that bidders in the MRO as applied for in docket 08-936-EL SSO, would you expect the congestion expenses and net losses to be within the bids of MRO bidders?

A. I would expect all these schedules to be in the bid for the MRO process as filed in our docket.

Q. Okay. Thank you. That's the end of my questioning on this.

And, now, I would like to take your -- your attention to the -- to the MDS rider. We have had a substantial amount of cross-examination on this area, so I will try to be -- try to be brief.

Is it fair to say that the 1 cent M --

MDS charge is designed to recover for the company the risks associated with opportunity costs, administration costs, and the loss of revenue due to customers leaving the utility?

A. And shopping risk, yes, I would agree with that.

Q. Okay. We established earlier that the price of generation already had some risk contingencies in it for fluctuations in the market.

Isn't there going to be an overlap here if you take out the market risks and put that in part of the fixed price and then also charge the minimum default service charge?

THE WITNESS: Could you read that question back, again.

Q. Let me withdraw the question and I'll start again. Come at it from a different way.

The lost opportunity costs that the company fears is that the price of power that they would sell generation that is given up because a customer leaves would be less than what they could charge the exiting customer; is that correct?

A. What they could charge on the marketplace, I would agree with that statement.

Q. And it's your opinion, is it not, that

the ESP price is below the current market?
A. No, I wouldn't agree with that statement.
Q. Is it your belief that the ESP price is above the current market price?
A. I would say when you are saying "market price," I guess there is two issues to me. One, wholesale versus retail.
If we are comparing an MRO clearing price to what we are proposing as the rider GEN, as a retail price, I would say that I agree with the statement that I believe our retail GEN is less than a clearing price for retail MRO offering.
If you are talking about a wholesale market price, I would disagree and say the wholesale market price is lower than our rider GEN.
Q. Okay. Fair enough. Let's just start with the first part.
If, in fact, your -- ESP retail -- I'm sorry.
If, in fact, the generation component of the ESP is less than the market price, then does the company have any fear that there is going to be migration, that customers will leave to buy in the market, retail market?
A. I can't speak for CRES suppliers or

third-party suppliers of what they could possibly do as far as a price to a customer.

Q. But I'm looking at the other end of the telescope. I'm looking at FirstEnergy. Okay. And we are talking about risks here and if the retail -- if the generation portion of the ESP is below the generation -- is below what the market price is for retail generation, then the company doesn't have a risk, does it, a lost opportunity risk?

A. Yes, as I believe I talked about in my testimony, this is a total package as far as our application, as far as the riders, rider GEN and all of the riders involved in the process, that based on the MDS charge that we've laid out in the application, that without that there would have to be an adjustment possibly to rider GEN or something else to account for those risks.

Q. That's not the question I asked you. I am just looking for a simple answer to a simple question, which is, is there a risk that you are going to lose customers to a retail energy supplier if the ESP price for generation is lower than the retail market price for generation?

A. And as I stated before, I am not sure based on our proposal we believe that the ESP price is below an MRO price. I don't know what a marketer or a CRES supplier's view would be on price.

Q. So is it your testimony that you don't know if you have a risk of migration to another retail supplier even if the ESP generation component is lower than market?

A. Yes. I would agree with that.

Q. Now, earlier I thought you testified that the -- that the MDS was based on hedging the lost opportunity prices for customers that migrate.

To make that assumption wouldn't you have to have a basic view on -- on who is going to leave and why?

A. I'm not understanding the question. I'm sorry.

Q. Okay. When the company designed the MDS charge, did you make any studies or any assumptions as to how many customers were going to shop?

A. No, we did not make any assumptions. We looked at historical data of customers that shop.

Q. And did you make any assumptions as to what the factors -- risk factors are that would make customers shop?

A. And when you are saying "risk factors," you are talking about price or just all around looking at a specific product as far as a green product or things of that nature?

Q. Any reason that would make a customer shop.

A. No, I couldn't -- I couldn't recall one.

Q. Would you agree to me -- with me -- well, let me ask this question first, a preliminary question.

How many kilowatt hours did the company indicate it expected to sell in its recent rate case, Docket 07-511-EL-AIR?

A. I'm sorry, what was the docket again?

Q. It was 07-511-EL-AIR.

But let me withdraw that. Let me ask an easier question.

Roughly speaking, how many kilowatt hours does the company expect to sell? What's a good estimate of kilowatt hour sales by all three of the operating companies?

A. What's forecasted in here I think is roughly about 57 million, 60 million.

Q. Okay?

A. Megawatt hours, I'm sorry, not kilowatt hours.

Q. Right. And I'm sorry, I didn't hear, did you say 57?

A. 57 or 60.

Q. Or 60, okay. Let's take 60 just because it's an easier number to work with.

If all customers in the MDS pay a penny and the estimated sales are 60 million megawatt hours, then we know that the revenue stream coming off of this charge is $60 million.

Is my math correct?

A. No. I think we are missing a decimal. I think it would be 600.

Q. 600 million. My math is not correct. Okay.

600 million, so basically then the company then should expect to make -- to have a revenue stream of $600 million coming off this MDS, correct?

A. In that calculation, yes.

Q. Okay. And it's true that at this point in time there is nothing in your testimony or in the application that indicates what the -- what the expected loss or risks are that are being offset by $600 million?

A. I believe as we talked about before, as far as looking into put options and that factor, you would be looking at roughly three-quarters of a cent of an option to occur for shopping risk --

Q. Can you -- I'm sorry, are you finished? I didn't mean to interrupt.

A. Yes.

Q. Can you show me where in your testimony or in your workpapers you have these figures you have just mentioned about options and option prices?

A. They are not.

Q. If a -- if a customer elects to leave to shop and then wants to return and doesn't pay the SBC charge, what will they pay for power?

And when I say "a customer," assume this is a -- not a member of a -- of a government aggregation group, just a regular customer.

A. Well, based on the filing, they would pay 160 percent of the Cin Hub forward quarterly price on and off-peak, which is a reasonable estimate of the costs to move from a wholesale product to a retail product based on, number one, Mr. Graves's testimony that we have sponsored and also the staff, Mr. Johnson put in his testimony of wholesale price to a market retail price.

Q. So the difference between the price of power -- well, actually let me go back a second.

If you paid 160 percent, will you still have to pay the riders that are in the application here?

A. When you say "the riders that are in the application --"

Q. Yeah. We've identified, I think, you and I, as we have been working our way through here, have identified a number of riders, the fuel adjustment rider, the FTE rider, the -- does a customer who is coming back and paying the 160 percent of the Cin Hub price also have to pay those tariff riders?

A. The customer, I believe the way we have the application filed, would have to definitely pay the transmission rider, the TSA rider, and also any riders that would be connected with the generation, the G charge, the generation rider.

Q. So even though they are paying 160 percent of the market price, they are going to be paying these riders as well related to generation?

MR. KUTIK: Objection. Asked and answered.

MR. PETRICOFF: I don't think it's been answered.

EXAMINER PRICE: Overruled.

THE WITNESS: I'm sorry, repeat the

question.

(Record read.)

A. Yes, I believe that's true.

Q. And is your view that the difference in the -- in the generation price, the -- the LMP price between the Cin Hub and the FirstEnergy sync is 60 percent?

A. Yes.

Q. Let's switch and talk a little bit about the -- about the -- about the deferrals.

Is it fair to say that the -- that the deferrals are basically a loan to customers for power that they are purchasing for the ESP period?

A. If -- I guess you could categorize the deferral as an offset to the price in which the customers would pay under the G charge.

Q. Well, that's a point I am trying to explore.

In your testimony when we talk about it as a phase-in -- but it's really not a phase-in, is it? They are going to be paying those -- the prices that you have listed on page 4 of your testimony, the fixed prices plus all of the escalation clauses we have reviewed today, they are going to be responsible for that, for every kilowatt hour that's consumed.

I say "they." The customer is going to be responsible for every kilowatt that's consumed. The only difference in the deferral is when they pay it; isn't that correct?

MR. KUTIK: Objection. That's an argument.

EXAMINER PRICE: Overruled.

THE WITNESS: Repeat that question again. Could you read it back to me, please.

(Record read.)

A. The timing of the phase-in is over a 10-year period, so they will be responsible for the credit that is in the phase-in, yes.

Q. And the credit will appear as -- and correct me if I have got the wrong acronym here, the credit will appear as a GPI adjustment, GPI rider adjustment?

A. Yes.

Q. Will shopping customers get the GPI credit?

A. No.

Q. Will shopping customers have to pay the DGC rider that pays back for the -- that pays back the GPI credit?

A. I'll answer in two parts, I guess.

Number one, based on the statute, the generation phase-in credit is the responsibility in a nonbypassable charge to everyone, so shopping customers would pay that charge.

The adjustment to that would be based on gov ag customers who would only pay a portion of their benefit for the generation phase-in.

Q. Let me make it simpler. Let's put the gov ag aside and just talk about a regular shopping customer.

I am a residential customer. I'm a shopping customer. I will not be taking any of the generation from the -- from the company that's going to come from my competitive retail electric supplier.

Will I get a GPI credit during the years of the ESP?

A. If you are a shopping customer, no.

Q. I'm still a customer in the year 2012 when the -- when the rider comes to collect for those deferrals. Will I have to pay for the deferral on energy that was -- that I didn't take during 2009 through 2011?

A. As I thought I indicated, based on the statute, the phase-in credit is a nonbypassable charge, so all customers would pay that charge.

Q. You are not a lawyer, correct?
A. I am not a lawyer.
Q. But you do understand how the mechanics work here in terms of charging, correct?
A. Yes.
Q. And if I am a shopping customer who doesn't take power during the years of the ESP, and I remain a customer in the years of the payback, I will have to pay back some of the power -- costs for power I never took; isn't that correct?
MR. KUTIK: Objection, asked and answered. He has answered this twice before.
EXAMINER PRICE: I'm sorry, Mr. Kutik, he has not answered this question, and he does need to answer this question directly. You're overruled.
I am going to direct you to answer the question directly.
A. My answer is yes, based on the statute this is a nonbypassable charge to all customers.
Q. Does the company support the right of retail customers to shop?
A. Yes.
Q. Is the deferral that we've just described a barrier to shopping in your opinion?
A. No. I believe anybody could offer a

deferral to a customer.

Q. Can anybody make all the other customers pay that deferral back with interest?

A. Based on the statute, that is what is available to the organization under the ESP.

Q. So the answer is no?

A. I don't know if that could be legislated. I don't know that answer.

Q. But, right now, it's true that a CRES provider could not charge someone who wasn't their customer for power that those customers didn't take?

A. I don't know the legal ramifications. I would agree with you, yes.

MR. PETRICOFF: I have no further questions. Thank you, your Honor.

EXAMINER PRICE: Thank you.

Mr. Krassen.

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CROSS-EXAMINATION

By Mr. Krassen:

Q. Good afternoon, Mr. Warvell. My name is Glenn Krassen. I am going to be asking you questions today on behalf of the Northeast Ohio Public Energy Council. I am going to use the acronym NOPEC.

A. Okay. Could you possibly move the

microphone just a little closer to you?
EXAMINER PRICE: Let's go off the record.
(Discussion off the record.)
EXAMINER PRICE: Back on the record.
Q. Mr. Warvell, are you familiar with NOPEC?
A. I believe it's a gov ag organization.
Q. And what do you understand NOPEC's purpose as a government aggregation organization?
A. I don't know.
Q. Do you know how many members -- how many member communities are in NOPEC?
A. No, I don't.
Q. In developing the ESP, you reviewed the historical number of customers participating in governmental aggregations; is that correct?
A. Yes. I think I've seen those numbers, yes.
Q. And what were the results of your review of the historical numbers of shopping customers?
A. I don't remember off the top of my head, but I believe in the Cleveland area recently, if my memory serves me right, there would be about 6 million-megawatt hours shopping, and I want to estimate around 2 million in Toledo.
Q. So you did some historical analysis of

customers shopping when you developed the ESP.

A. We looked at numbers, yes.

Q. Other than looking at numbers did the companies complete any other estimates, projections, studies, or analyses examining the amount of customer shopping that potentially could occur or would occur under the proposed ESP?

A. No.

Q. In reviewing the historical numbers of customers participating in government aggregations, were you aware that NOPEC has historically served as the governmental aggregator for as much as 450,000 customers in the OE and CEI service territories?

A. From a customer basis, like I said, I was looking at megawatt hours, and so from my perspective what I told you, I couldn't tell you how many customers that equaled to.

Q. You also wouldn't be aware NOPEC has approximately 600,000 eligible customers in the OE and CEI service territories?

A. Not by customer. I deal in megawatts, as I said.

Q. Let's talk about megawatts.

Are you aware that NOPEC's electric load is currently approximately 7.8 million megawatt hours?

A. No, I am not.

Q. Did you have any understanding as to what NOPEC's electric load currently was?

A. Like I said, I believed it was around 6 million.

Q. Are you aware that NOPEC's electric load is comprised of residential and small commercial customers?

A. Yes.

Q. Are you aware that NOPEC has obtained generation service from the third-party supplier in the past?

A. They would have had to have gotten it from somebody, yes.

Q. Are you aware of who that was?

A. Not specifically but I believe they did have a deal at one point in time with FirstEnergy Solutions.

Q. Are you aware that NOPEC has signed a letter of intent with FPL Energy as its third-party supplier of generation for the duration of the ESP plan?

A. Yes, I seen that news, yes.

Q. I think, you know, we will try not to repeat questions here for the sake of brevity. But it's a correct statement that there's been no contract signed between FE operating companies and FES as contemplated by the ESP application yet, correct?

A. That is correct.

Q. So, right now, FES is not contractually obligated to serve the electric load of the operating companies after January 1, 2009; is that correct?

A. That is correct.

Q. And since there's been no contract finalized between the operating companies and FES, the operating companies similarly are not currently contractually obligated to purchase generation from FES to serve the operating companies' customer load after January 1, 2009; is that correct?

A. Yes, that is correct.

I guess I just would like to state that we've talked about a contract between FES and the operating companies and the arm's length agreement.

I would just like to point out that historically there has also been processes that the Commission has approved, be it the RSP or the RCP, that was done without a signed contract that was formally then initiated with FES.

Q. So let me see if I understand what you just said, Mr. Warvell.

The operating companies have operated under oral agreements with FES on a handshake in the past?

A. No, I don't think I stated it that way. What I said was there was other rate plans that have been developed between the operating company and the Commission that were not formalized prior to an agreement with FES.

Q. But -- let me drop that.

Well, you do agree that there is no contract in place between FE and FES for periods after January 1, 2009, right now, correct?

A. That is true.

Q. So, right now, there's no contractual obligation on the part of FES to serve NOPEC's load for periods after January 1, 2009; is that correct?

THE WITNESS: Could you read that question back to me again.

(Record read.)

A. I don't know the contract between FES and NOPEC.

Q. No, I'm -- let me rephrase the question.

FES has no contractual obligation to the operating companies to serve NOPEC's load or anybody else's load after January 1, 2009, correct?

A. And, once again, I guess I will rephrase the statement so I understand it a little better, and you can tell me if I get it wrong.

I don't know the contract between FES and NOPEC. I understand that the power sales agreement ends at the end of 2008 between FES and the operating companies.

Q. Yes. And assuming that we are talking about that power sales agreement between FES and the operating companies that ends at the end of December, 2008, to your knowledge there's nothing in that agreement that requires FES to contractually sell power to the operating companies to serve anyone's load served by the operating companies; is that your understanding?

A. Yes.

Q. And likewise, the operating companies for periods after January 1, 2009, currently are not contractually obligated to purchase generation from FES to serve any of their customers' load or all of their customers' load; is that correct?

A. That I know of there's no power agreement in place today.

Q. And under the companies' ESP application in this case, the companies have proposed that the rider MDS be nonbypassable for all shopping customers, including large scale government aggregation customers; is that correct?

A. Yes.

Q. So that the 1 cent per kilowatt hour charge that's the MDS proposed charge by the company in this case would be applied to the entire load of retail customers within all of the operating companies' service territories; is that correct?

A. Yes.

Q. And the 1 cent per kilowatt hour charge would equate to $10 per megawatt hour, would you agree with that?

A. Yes. I believe we have covered that.

MR. KRASSEN: Your Honor, I would like to mark an exhibit. It's a discovery response OEG, set 3, Witness Warvell. I would like to mark it as I guess NOPEC Exhibit 1, if that's okay.

EXAMINER PRICE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. KRASSEN: It's been pointed out to me I should mark this Joint NOPEC/NOAC Exhibit No. 2, if that please your Honor.

EXAMINER PRICE: We will revise the marking back to Joint NOPEC/NOAC.

MR. KRASSEN: Exhibit No. 2.

MR. KUTIK: What's the number.

MR. KRASSEN: Joint NOPEC/NOAC Exhibit No. 2.

MR. KUTIK: 2, you said 2?

MR. KRASSEN: 2, dos.

Q. (By Mr. Krassen) Mr. Warvell, could you read the question and the response --

A. Sure.

Q. -- that is in Joint NOPEC/NOAC Exhibit No. 2.

A. "Please provide all documents which provide the cost justification for the proposed 1 cent per kilowatt hour nonbypassable minimum default charge."

Response, "The companies do not have documents responsive to the request because the minimum default service charge is not a cost-based rate."

Q. And this is a true and correct and accurate discovery response from the companies?

MR. KUTIK: Your Honor, we will stipulate to that.

EXAMINER PRICE: He will stipulate to it.
MR. KRASSEN: Thank you.
Q. Just to follow-up a little bit on this, Mr. Warvell, is it a correct statement of your testimony that the development of rider MDS was solely based on management's judgment?
A. I would characterize it as experienced market individuals within our organization looked at a number of factors and developed that price, yes.
Q. So that would be management judgment?
A. Yes.
Q. And there's no documentation of management meetings that arrived at this 1 cent charge? Telephone conversations with options brokers, no documentation whatsoever?
A. No. As I answered before, no.
EXAMINER PRICE: Mr. Krassen, one second, please.
Your statement is that this -- or the response is that it's not a cost-based rate. So what is the relevance of the estimates you got for hedging costs because it's not a cost-based rate under any circumstances?
THE WITNESS: I guess when I -- when I hear the word "cost-based rate," I hear adding up to

a number.

There was many factors taken into consideration as far as shopping risk, the development of the charge itself as far as talking to brokers, as far as puts and calls in that aspect is one component, but there's no adding up to a 1 cent charge.

EXAMINER PRICE: It was just one of the factors you considered?

THE WITNESS: Yes.

EXAMINER PRICE: And how you weighted those factors was totally at the companies' discretion?

THE WITNESS: Yes.

EXAMINER PRICE: Thank you. Thank you.

MR. KRASSEN: Thank you, your Honor, you saved me about four questions.

EXAMINER PRICE: Sorry about that. You probably would have asked them better than I would.

MR. KRASSEN: No, I am not so sure.

Q. (By Mr. Krassen) Is it a correct statement, Mr. Warvell, there is nothing in this ESP application that provides a quantitative analysis as to how the FirstEnergy management developed the MDS charge?

A. Yeah. I think the line of questioning we just went through answers that, yes.

Q. So, you know, management could have decided on a .1 of 1 cent charge or they could have decided on a 3 cent charge. It was totally within the discretion of company management, correct?

A. As I said, it was built on factors started off by looking at items that we could get some factual information on, and the rest was based on experienced market development of individuals of the organization.

Q. Have the operating companies performed or completed any analysis of the revenue that will be generated by the 1 cent per kilowatt hour MDS nonbypassable proposed charge?

A. I guess I'm a little confused by the question.

You just talked about that there's roughly 57,000 megawatts and it's a $10 per megawatt charge so, I mean, that is what the revenue would be.

Q. Well, let's try to nail down the number a little bit closer so we have a good record on that.

Perhaps you can -- perhaps you can refer to the attachment that went to Mr. Blank's testimony, and I'm sorry I don't know what exhibit that is right now.

A. I don't have that.

Q. We'll get you one.

MR. KUTIK: May I approach the witness, your Honor?

EXAMINER PRICE: You may.

MR. KRASSEN: Do your Honors have copies?

EXAMINER PRICE: Yes, I do.

Thank you, Mr. Kutik.

MR. KUTIK: What's our references now? I'm sorry. Where are we looking?

MR. KRASSEN: We are on attachment 1 to Mr. Blank's testimony.

MR. BELL: Any particular page?

MR. KRASSEN: Page 1 of 4 to start with, Mr. Bell.

THE WITNESS: That's attachment 1, page 4 of 4.

Q. (By Mr. Krassen) Attachment 4?

A. Four, page 1 of 4. All I have is 4 of 4 here.

Q. I have 1 of 4 if you want.

A. Okay.

Q. Can you go to the line on attachment 1 to Mr. Blank's testimony, page 1 of 4, that says year, sales, and megawatt hours, do you see that?

A. Yes, 56,471,000?

Q. No.

A. Okay.

Q. It's -- it would be the line that is below the model assumptions block.

A. Oh, okay.

Q. It says "year" and then underneath it it says "sales."

A. Right.

Q. "Megawatt hour," and I'm sorry, there's no lines on this so I can't point out what it is, and you will see that it says in 2009, 57,202,000 megawatt -- million -- 57,202,000-megawatt hours in sales, 2010 it says 57,705,000-megawatt hours in sales, and 2011 has 58,211,000-megawatt hours in sales.

Do you see that?

A. Yes, I do.

Q. And would you agree, subject to check and verification, that the total of those three numbers is 173,118,000 -- I'm sorry.

A. I guess no.

Q. Okay. Yes. It's -- well it's 173,118,000-megawatt hours, correct?

A. Roughly correct.

Q. Close enough for government work?

A. Yes.

Q. Based on the amount of the megawatt hour sales, would you agree that the MDS charge based on those sales levels would generate approximately 1.731 billion dollars in revenue over the three-year term of the ESP plan?

A. If the Commission has guaranteed the three-year plan, yes, I would agree with that.

Q. And, you know, accepting that NOPEC's load is -- annual load is about 7,800,000-megawatt hours per year, when you convert it to kilowatt hours and you multiply it by the MDS 1 cent per kilowatt hour charge, that would generate $78 million of revenues to the companies if it were nonbypassable in each year of the three-year term, or $234 million over the three-year term of the plan?

A. I would agree with your calculation.

Q. And if NOPEC proceeds to finalize a supply agreement with FPL Energy and FPL Energy supplies NOPEC customers with generation starting in early 2009, the NOPEC customers, under your proposed plan, would be paying the $234 million over the next three years; is that correct?

A. If they stayed with NOPEC for all three years, yes.

Q. And that's just your proposed exit charge, correct? That doesn't include any payment of a standby charge that NOPEC could elect to pay to be able to return its customers to FirstEnergy's ESP SSO price; is that correct?

A. Once -- the 1 cent is for a shopping and the risk that we've discussed here today, the standby charge is for the opportunity to return to SSO, yes.

Q. So one is like an exit charge and one is like an entry charge, correct?

A. I look at it as a shopping -- a shopping issue to leave the SSO and one is for returning customers.

Q. Don't you just look at it as a bunch of money?

A. No.

THE WITNESS: Can I get up and grab some water?

Q. Mr. Warvell, I am trying to understand this MDS charge, and I'm frankly having a hard time doing it.

I'm trying to understand your testimony, and if I understand your testimony, your testimony is that the MDS is necessary to pay generation-related administrative costs and hedging costs to the companies as compensation for opportunity costs based on lost revenue to the companies for legal utilities; is that correct?

A. The opportunity costs would -- that you are referencing there is as we talked about earlier, that's the opportunity that generation could be sold at a higher market price than what is being fixed in the possibility of the contract between FES and the operating companies.

Q. Is it correct, Mr. Warvell, that if the operating companies don't incur generation-related administrative costs and don't incur hedging costs in connection with the MDS, then all of the revenue which I guess is $1.713 billion over three years would be kind of pure profit to the company?

A. I'm sorry, could you either read that back or rephrase that question? I don't understand what you are asking.

(Record read.)

A. I guess I look at it as the risk will still exist for either the operating company or FES, depending on how that contract is structured for those same risk factors and administration costs.

Q. Let's talk about the standby charge a little bit, which I guess now is called the SPC?

A. SBC.

Q. SBC?

A. "Standby charge."

Q. I am getting confused with the old telephone company SBC.

MR. KRASSEN: I would like to mark as Joint NOPEC/NOAC Exhibit No. 3, the companies' responses to data requests from OCC, set 2, Witness Mr. Warvell.

EXAMINER PRICE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Do you have that in front of you, Mr. Warvell?

A. Sure, yes, I do.

Q. Is it your testimony that there was no cost basis for the standby charge proposed by the company?

A. I believe, as we have talked about before, we did start by talking with some brokers as far as what call options would be, overall building up of a cost, adding up pieces and parts to an overall cost charge, that is correct.

Q. So there is no quantitative basis or

quantitative analysis that has been used in developing the standby charge; is that correct?

A. If meaning quantitative written analysis, adding up pieces and parts, there is none.

Q. Thank you.

Mr. Warvell, could you turn to page 4 of your testimony, starting at line 18?

A. Yes.

Q. I want to make sure I understand your testimony.

Your testimony is that Dr. Jones followed a logical approach to developing a retail price, correct?

A. Yes, Drs. Jones and Graves, yes.

Q. And is it also your testimony you agree with all aspects of Dr. Jones' analysis in constructing his estimate of the retail price to compare?

A. I am not understanding your question.

Q. As I understand it, you testified that you agreed with Dr. Jones' approach that he had followed a logical approach to develop the retail price, correct?

A. I said, as far as Dr. Jones and Dr. Graves, yes, they followed logical steps.

Q. Okay. And do you agree with all aspects of Dr. Jones' analysis when he constructed his estimate of the retail price to compare?

A. I don't understand what you mean by "all aspects." What does that mean?

Q. Is there anything you disagreed with when Dr. Jones submitted his testimony on behalf of the operating companies in terms of how he estimated the retail price to compare?

A. No. The steps he took made sense to me, yes.

Q. Okay. On page 5 of your testimony you talk a little bit about a need for a load shaping adjustment to develop a market rate offer price, just as Dr. Jones did in his testimony.

Do you see that?

A. Could you point me to a particular line?

Q. Sure. The first full sentence that discusses it is on line 4 when it talks about why load shaping is necessary.

A. Okay.

Q. You understand what load shaping is, of course, correct?

A. Yes, I am familiar with it.

Q. Okay. And you would agree with

Dr. Jones' testimony that it's necessary to factor load shaping costs into the round-the-clock energy prices in order to develop an accurate retail price to compare; is that correct?

A. I agree that that's a way to do that, yes.

Q. And you agree Dr. Jones used an appropriate way of doing it?

A. Yes.

Q. And you agree with Dr. Jones' analysis of the cost of load shaping that's in his testimony, correct?

A. I agree with the methodology in which he used, yes.

Q. And you would agree that the load factor for residential and commercial customers generally makes those customer classes more expensive to serve than industrial customers, for example; would you agree with that?

A. No.

Q. You would not agree with that.

A. No.

MR. KRASSEN: Okay. I would like to mark for identification Joint NOPEC/NOAC Exhibit No. 4.

EXAMINER PRICE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Warvell, I have just handed you Joint NOPEC and NOAC Exhibit No. 4, which is Exhibit 3 to Dr. Jones' prefiled direct testimony in this case entitled "Calculation of Load Shaping Costs."

A. Yes.

Q. Have you seen this document before?

A. Yes.

Q. And this document has -- why don't you tell me what you think this document represents.

A. I think it represents what the title says, load shaping costs.

Q. That's fine. Can you look at -- and do you see where it says "Customer Class" on it in the second column at the top?

A. Yes.

Q. It has various customer classes there, residential, commercial, industrial, street lights, all classes, do you see that?

A. Yes.

Q. And then what does the round-the-clock price represent at the -- in the top column there?

A. That's the round-the-clock market price that was used for this analysis for the forward wholesale market price.

Q. And what does the load-shaped price in the next column represent?

A. It represents the costs to load shape the round-the-clock price.

Q. And maybe we can just go through a couple of these examples, Mr. Warvell. Let's take 2009 as an example.

What's the load-shaped price in 2009 in this exhibit for residential and commercial customers?

MR. KUTIK: Your Honor, at this point I am going to object. This is an exhibit in Mr. Jones' testimony. These questions should be appropriately addressed to Mr. Jones. Mr. Warvell is not here to answer the basis for the costs for Mr. Jones.

MR. KRASSEN: Your Honor, I think the witness has testified he's quite familiar with load shaping, and I'm not going into the derivation of how they were calculated.

I am using it for another purpose, if you can bear with me for another two questions.

EXAMINER PRICE: We will bear with you for two more questions.

MR. KRASSEN: Thank you. Maybe three.

Q. (By Mr. Krassen) Do you see the load

shape price column there, Mr. Warvell?
A. Yes, I do.
Q. And do you see how the residential and commercial price in 2009 is 61.21 and 61.28 respectively?
A. Yes, I do.
Q. And you see the residential -- do you see the industrial price is 58.21?
A. Yes, I do.
Q. And street lights are 46.89?
A. Yes.
Q. Okay. So wouldn't you agree that the load-shaped price is higher for residential and commercial customers than it is for industrial customers?
A. To the aspect of load shaping, I would agree with your statement. But I believe you asked me previously three or four questions ago as far as costs to serve customers, and that is not necessarily. The entire cost to serve customers is not load shaping.
Q. Fair enough. Fair enough clarification.
But the load shape price for industrial customers is less than residential and commercial customers under this exhibit?

A. And, once again, I will agree with you that the load shaping costs for that purpose is true, but to serve a customer, I would not.

Q. Right. I think we're talking about generation supply here. We are not talking about distribution. So I would like to kind of focus in on generation.

A. Neither am I.

Q. So we are talking about the same thing.

A. I believe we are.

Q. That's good. If you reduced the number of residential and commercial customers in the operating companies customer mix, wouldn't that improve the load shape of the resulting load?

A. I couldn't necessarily agree with that. It would depend on the mix of customers. This is an average of the total.

You would have to see which customers left because each customer's load shape is, I believe, somewhat unique. They are not all exactly the same.

Q. Fair enough.

Let's say all the residential customers of the operating companies left. Would that improve the load shape and load shape price for the remaining customers from a generation standpoint?

A. Based on load-shaping costs, yes, I would agree with you. But overall cost to serve, still I would say, no, because you have to add in the risk in regards to shopping and other factors --

Q. I am just talking about generation --

MR. KUTIK: Can he finish his answer, please.

EXAMINER PRICE: Go ahead and finish your answer.

A. I mean, if you are looking in regards to as we talked about before as far as an MRO, as far as pricing a customer, we have witnessed in issues in Pennsylvania as in Penn Power prices for industrial customers are actually higher than residential and commercial to serve.

MR. KRASSEN: I am going to move to strike that answer as being nonresponsive to the question that was asked. The question that was asked was very specific. We can read it back. It was only would the elimination of all the residential customer load in the operating companies service territories result in a lower load shaped price from a generation standpoint as set forth -- or as illustrated on this exhibit. That was the question.

EXAMINER PRICE: Can I have the question back, please?

(Record read.)

EXAMINER PRICE: Motion to strike is granted.

MR. KUTIK: May I speak to that?

EXAMINER PRICE: Sure.

MR. KUTIK: The question was with respect to load shape price. He was talking about prices and so, therefore, his answer was fully responsive.

EXAMINER PRICE: Well, it was sufficiently confusing to me. I thought it was not responsive so why don't we give him the chance to answer it again.

THE WITNESS: Could I have that repeated or do you want to rephrase it or?

MR. KRASSEN: Why don't you repeat, if you could, the last question.

(Record read.)

A. Based on the analysis of the workpaper of Exhibit 3 and only taking into affect what you just talked about, I would agree with that statement, but only to this exhibit, not in total price.

MR. KRASSEN: One moment, your Honor. I think I am finished. Just bear with me. I may have one question.

Q. We are almost at the end here, Mr. Warvell. Glad you will be happy about that.

Do you know when the 1 cent per MDS charge was established? Do you remember when it was established? Within the --

A. As far as a date?

Q. Uh-huh.

A. Roughly, I would say, in the July time frame.

Q. Just before the filing on July 31, in that time frame, 30 days before?

A. Yes, yes, in that time frame.

Q. Okay. And was this something that this management group that used its judgment and discretion in developing spent, you know, an hour on, or was this a process of months of work and consideration?

A. I have a hard time answering that question because not -- different people were involved and I can't say that they weren't thinking about it in other groups and other -- other facets of their responsibilities at times that were outside of a caucused meeting of some sort, so I don't -- I don't think I can answer that in a time frame

perspective.
Q. Did it take more than a day or two to figure out?
A. Yes.
Q. Did it take more than a month?
A. Like I said, I don't think I could put a time frame around other people. Like I said, they did work outside of just a group setting.
Q. And was there one individual, one member of management at FirstEnergy that made the final decision to include this 1 cent MDS in the filing?
A. I would respond to that is basically -- this is based on all of executive management and all parties that were involved in the application during that approval process.
Q. Was there any specific person in management at FirstEnergy who had to sign off on this 1 cent per MDS rider before it could be filed?
A. And I guess the way I look at it is from the top down people have signed off on this ESP plan, so from executive management on down so --
Q. So Mr. Alexander would have made this decision?
A. He would have seen the numbers in the application, yes.

Q. And ultimately it was his decision?

A. I would say the entire executive management.

Q. Who would be included along with Mr. Alexander?

A. He would be included in that, yes.

MR. KRASSEN: He would be?

Your Honor, I have no further questions.

EXAMINER PRICE: Okay.

Mr. Stinson.

MR. STINSON: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Stinson:

Q. Mr. Warvell, I am Dane Stinson, I representing FPL Energy Marking, Inc., and Gexa Energy Holdings, Inc., and I am going to try to be brief. Many of my questions have been asked, so I will try to consolidate.

MR. KUTIK: Your Honor, at this time might it be appropriate for the witness to have a break?

EXAMINER PRICE: I was going to try to get through Mr. Stinson first.

MR. KUTIK: If we have an estimate

because we do not have an estimate from Mr. Stinson.

EXAMINER PRICE: Mr. Stinson, how long?

MR. STINSON: It's only going to be about 10 or 15 minutes.

EXAMINER PRICE: I will hold you to that, Mr. Stinson.

Q. (By Mr. Stinson) Mr. Warvell, you were discussing with Mr. Petricoff about rider FTE, and particularly the fuel transportation surcharge?

Do you recall that?

A. Yes. I don't exactly recall what we talked about, but FTE, I understand the charge.

Q. Okay. I just wanted to follow up on some of those questions and get a more full understanding of what the fuel transportation surcharge is to recover.

I mean exactly what is to be recovered by that surcharge?

A. The fuel transportation surcharge is going to recover the cost of surcharges incurred by FES to move the fuel-related sources, be it coal, via train or barge, to the particular unit.

Q. Particularly an FES unit?

A. Yes.

Q. And we are also talking some of the

billing arrangements there. Am I to assume then that the entity that is moving the fuel bills FES, and FES then in turn bills the operating companies?

A. From a structure standpoint, I don't think it's been exactly laid out, but that would be the -- at this time I would agree with that flow, yes.

Q. And you are not certain because the supply agreement between FES and the operating companies has not been finalized?

A. Correct.

Q. And that payment would be only if the costs exceeded a baseline amount, I believe, of 30 million in 2009, $20 million in 2010, and $10 million in 2011?

A. That is correct.

Q. And how were those baseline figures determined?

A. I believe in a couple of discovery request questions that were asked based on a March budget forecast from FES they had forecasted roughly $30 million in fuel surcharges for that three-year period.

Q. So if that $30 million budget figure were to hold true in 2009, there would be no charge for the FTS?

A. Yes, if that figure held true, yes, there would be no charge for the FTE surcharge for that component.

Q. And in 2010 then, the charge would be 10 million?

A. Yes.

Q. And 2011 then 20 million?

A. Yes.

Q. Do you know upon what data that budgeted amount was based?

A. Not specifically, no.

Q. Do you know unspecifically?

A. Based on some confidential information to -- supplied to the staff, I have acquired somewhat limited knowledge of how that was budgeted.

Q. You say that's a confidential information of FES?

A. Yes.

Q. Do you have -- do you know if those amounts were based upon historical costs?

A. The historical costs were significantly less than that.

Q. Were the amounts based upon future costs, estimated costs?

A. I would -- yes. It was based on, as we talked about before, it's really the forecast of oil prices and the amount of transportation that is going to be required to move product from the source to the sync.

Q. Does the application or your workpapers detail any information as to how those baselines were calculated?

A. No.

Q. Or does the application or workpapers indicate what the FTS component of the FTE rider would be in 2009, '10, and '11?

A. Could you repeat that question back, please.

(Record read.)

A. There are no numbers in the application.

Q. So currently a customer who is considering whether to take SSO service or take service from, say, a large scale aggregate would not know what those FTS charges would be?

A. The company has not proposed what the charge for the FTE rider would be.

Q. Have they proposed what the FTS -- what the fuel transportation surcharge would be?

A. No.

Q. So a customer looking to shop or stay with the SSO would not know that amount either, correct?

A. Correct, I'm sorry.

Q. I note earlier in your testimony as well you talked about the capacity costs adjustment rider. And I just want to go back and try to get a better understanding of that as well.

Now, it's my understanding that FES is making capacity is available to FirstEnergy to meet MISO planning reserve requirements; is that correct?

A. Yes.

Q. And if that capacity is insufficient between May 1 and September 30, then SE -- FES will procure additional capacity to meet those requirements; is that correct?

A. Yeah. I believe I gave a detailed explanation of that earlier of how that works.

Q. Is my summary correct though?

A. Not exactly correct.

Q. Would you like to correct me?

A. Yes, as I did before, it's just the planning reserve requirements associated with the retail load.

Q. Has the applicants provided in the

application or the workpapers an estimate of the expected MISO summer generation capacity that would be available to Ohio customers?

A. I believe in discovery requests we have listed all the units and their capabilities and listed out also that as of right now, MISO has not determined how they are going to value the net demonstrated capability of each of the units yet, nor what the planning reserve requirement percentage is going to be.

Q. If you bear with me just a second, Mr. Warvell.

I would like to direct your attention to page 11 of your testimony, and lines 11 to 14.

Do you see that?

A. Uh-huh. Yes, I'm sorry.

Q. We discussed earlier today or you testified earlier today that the MDS rider was meant to recover the risk of shoppers leaving or customers leaving the SSO; is that correct?

A. Yes.

Q. And in the passages cited in your testimony, you state that "...the companies may find themselves short generation and be forced to go into the market to acquire power to serve the unanticipated load."

A. Yes. That could happen to the companies.

Q. Is that a risk associated with customers leaving?

A. No, that is not part of the risk that was associated with the MDS charge.

EXAMINER PIRIK: Mr. Stinson, I just want to be sure what we are reading off of is something that was on the errata sheet, so I want to be sure that you have the errata sheet language that you are actually referencing because now I believe it says the companies' affiliate.

Mr. Kutik, if could you check that, but I believe --

MR. KUTIK: That was our intent, your Honor, to have that in there.

EXAMINER PIRIK: I just wanted to be sure that was your question.

MR. STINSON: That's fine. My question sort of still remains the same with "affiliates."

EXAMINER PIRIK: Okay.

MR. STINSON: Could you read back that prior question, please.

(Record read.)

Q. (By Mr. Stinson) So through the MDS

charge, you are not anticipating to recover the power acquired to meet this anticipated load.

A. This is another risk that the company encounters is what I am pointing out.

Q. I'm sorry.

A. That's what I am pointing out, this risk exists for the company.

Q. And how is that risk recovered in the ESP?

A. It's a volume-related risk that is associated with -- with the mechanism for hedging.

Q. It's not recovered in the MDS. Is it recovered in the SBC?

A. It would only be recovered in the SBC if customers paid the SBC charge.

Q. But you are stating that the need to acquire power to serve anticipated load if recovered would be properly recovered through the SBC, not the MDS?

A. Correct.

EXAMINER PRICE: Mr. Kutik?

Q. On that same line you talk about the need to go to the market to acquire power to serve unanticipated load. By the same token would the applicants need to acquire power to serve load that they knew would not be taking the SSO?

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

Q. Well, I am just saying right now that you're -- the MDS and ESP are structured such that it is considered that there would be no shopping; is that correct?

A. We have not forecasted shopping in our numbers, no.

Q. And my question is if you're considering the need to serve unanticipated load to go to the market to get that power, if you know, prior to the FSP going into effect that some customers -- you will not be serving some customers, will there be a need to acquire power for those customers?

A. There would not be a need to acquire power for those customers. But a shopping risk would still exist for the remaining customers.

Q. For what remaining customers?

A. Customers that would not -- that would not have been indicating that they were shopping.

Q. That would still be served by the SSO?

A. Correct.

Q. I think we have been over this sufficiently. I just want to touch base on it just a little bit more about how the base generation prices were determined.

And it's my understanding that they were not cost based as you've described that term in your previous testimony here today, but rather they have been based upon a price that is less than the MRO that provides stability to customers; is that correct?

A. That is a correct characterization, yes.

Q. So I understand that the 1 cent per kilowatt hour is charged as a nonbypassable rider for shopping customers, and then the question being that there is also the 1 percent included in base rates for nonshopping customers; is that correct?

THE WITNESS: Could you reread that question for me, please.

(Record read.)

Q. It should be 1 cent.

A. I just wanted to be sure I was not missing that.

THE WITNESS: I need it again, I'm sorry, one more time.

(Record read.)

A. Yes.

Q. So because the base generation rates are not cost based according to your definition of that term, there was no determination then of what the base generation rate would be, and then adding that 1 cent per kilowatt hour to that base generation rate.

In other words, the 1 cent per kilowatt hour is assumed in the base generation rate; is that correct?

A. That is correct.

Q. When speaking about the risk of leaving the SSO, do competitive suppliers also have that same risk that their customers will leave their service?

A. They do not have the same risk. The competitive supplier has the ability to structure a contract around the shopping criteria that they wish to extend to a customer where the operating companies do not have that same luxury to go around an SSO customer.

Q. But a customer could take service from a CRES provider and then terminate that service and the CRES provider would be left with the power it had acquired for that customer, could it not?

A. That's a hypothetical if the CRES supplier did not have some type of out clause or penalty for leaving the CRES supplier.

EXAMINER PRICE: Okay. Mr. Stinson, I

told you I was going to hold you to your time. Unless you have one more question, we are going to give the witness a break now.

MR. STINSON: You better go to a break then.

EXAMINER PRICE: Okay. Let's come back at 20 after.

(Recess taken.)

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

Mr. Stinson.

Q. (By Mr. Stinson) Just one more series of questions, Mr. Warvell, and what I am trying to do is get my hands around trying to quantify the difference between what an SSO customer would take versus what a, say, large scale government aggregation customer would take if they were shopping.

And I will base these figures like we have been doing, in megawatt hours, so the base generation rate that I -- as I understand it for 2009 would be $75, correct?

A. It would be -- are we talking about an SSO customer?

Q. Right.

A. Or a gov ag customer?

Q. SSO.

A. It would be -- it would be 75 less the phase-in of 750.

Q. Okay. So it would be $75 and it would be 10 percent phase-in, that would be -- and that would reduce the SSO customer's rate by $7.50?

A. Correct.

Q. And the government aggregation customer would not receive that same $7.50 phase-in?

A. That is correct.

Q. However, the governmental aggregation customer would be charged the $10 per megawatt hour for the MDS.

A. That is correct as well.

Q. If my math is correct, that would be a differential of $17. between those two; is that correct, between the SSO and government aggregation customer?

A. Yes.

MR. STINSON: Thank you. That's it.

EXAMINER PRICE: Thank you.

Mr. Kurtz.

MR. KURTZ: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Kurtz:

Q. Good afternoon, Mr. Warvell.

A. Good afternoon.

Q. I will try to be brief. Just a few points.

Is it correct that ignoring the deferrals for the time being, the 75,800,85 dollar per megawatt hour standard offer customers times the load, is -- my math is $13.85 billion over the three-year period?

A. I'll trust your math. Without doing a calculation, it would be a large number, yes.

Q. So approximately we have a $14 billion transaction here?

A. Well, like I said, trusting your math, it's 60 million-megawatt hours a year times those numbers, I would say, yes.

Q. And who did you say negotiated this $14 billion deal for the utilities?

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: Well, there's been no discussion of a negotiation of a deal. In fact, this witness has testified he has no knowledge of any negotiations.

EXAMINER PRICE: Sustained.

Q. How did this $14 billion transaction appear in the ESP? Was it just the numbers that came down from the executive management? Is that what the testimony is?

A. As I've stated before, the $75 along with the escalation of each year was based on our representation of what Senate Bill 221 was -- for us to comply with which was to propose an ESP that would be less than a market rate offer and offer stability to customers.

Q. Okay. The deferral portion of this 14 billion is approximately 1.4 billion, not exactly 10 percent but approximately?

A. Are you talking about the generation phase-in?

Q. Generation phase-in or deferral, yes.

A. The generation phase-in, yes, as stated through the three years based on our assumptions of sales would be roughly about $1.4 billion.

Q. Now, you don't have to phase in all three years. You could choose to phase in the first year so that for whatever reason there wasn't as much of an impact and then put the actual amounts in years two and three, could you, or any variation on that?

A. That wasn't our proposal so, I mean --

Q. Is there any structural reason why you couldn't?

A. Other than this was our proposal based on mitigating rates to customers during the CSP plan, no.

Q. But I mean you could mitigate rates the first year, put the full increase in years two and three, and reduce the deferral?

A. That is not the way we proposed it, but that is a possibility.

Q. Okay. You've been over this a lot, but basically the 75, 80, 85 dollar base generation charge is reasonable in your mind because it's less than what the MRO would have been?

A. That is a correct statement.

Q. Okay. Let's talk really quickly about these -- now the 75, 80, and 85 does not include the fuel transportation surcharge, correct?

A. That is a separate rider, yes.

Q. Okay. That would be an additional, I understand, approximately $10 million in 2010, 20 in 2011?

A. Based on the budgeted forecast, that is a correct statement.

Q. Could be more, could be less?
A. Yes, it could be more or it could be nothing.
Q. Okay. Now, let's see, in addition to the basic $14 billion, let's talk about the environmental.
Now, if environmental costs -- if new environmental costs as a result of new environmental laws or interpretation changes to existing laws are more than $50 million, then there would be another surcharge for that, correct?
A. As I indicated before, the company is absorbing a $50 million risk as far as the environmental regulations changes that you just stipulated and that increase would be put to an MRO process and the MRO costs would also increase at that same rate, you would imagine.
Q. Now, wait a minute. I am not going to let you get away with that one.
MR. KUTIK: Hold on a second, can we strike the comments?
Q. I'll strike that.
If there is an MRO that's a firm delivered price and the supplier has to take all the risk, fuel, transportation, environmental,

everything; isn't that right?

A. That is true.

Q. Okay. Now, let's go back to the environmental.

Anything more than $50 million you -- that FES would incur for changes to environmental laws or new -- or new interpretations of existing environmental laws would be flowed through the FTE rider, correct?

A. That is correct.

Q. Okay. Assume that FES had to put on a scrubber or an NCR or any piece of capital equipment at one of its power plants or nuclear something, one of its nuclear power plants, and assume the capital cost of that was $500 million in 2010.

How much of that -- capital liability, not an expense capital. How much of that $500 million capital expense would run through the FTE rider?

A. Well, based on your assumption, I guess I couldn't -- I could not imagine spending $500 million in a 12-month period for that to happen. But the difference would be the 50 million versus whatever the expenditure is for the current year.

Q. So if -- so even if it's a capital item

that has a 30-year useful life, you would recover the entire difference between the capital costs, 500 million in my example, and 50 million, you would recover the entire 450 million through the FTE rider?
A. That is the way the rider is written, yes.
Q. Why wouldn't it be more reasonable to recover -- the annual carrying charge 30-year item, why wouldn't it be more reasonable to recover the proportionate share one year or two years through the ESP but not 100 percent?
A. That isn't the companies' proposal.
Q. Have you tried to quantify how much the environmental component of the FTE rider would be?
A. No. As stated, we don't know what new governmental regulations may be or changes in environmental laws would be.
Q. If you don't know, how can the Commission decide that it's prudent?
A. That what is prudent?
Q. That the utilities to -- the utilities' decision to accept this unlimited risk, how do you -- how can the Commission determine that was a prudent decision?
THE WITNESS: Could you read that

question back to me one more time, please.

(Record read.)

MR. KUTIK: Your Honor, I am going to object because it -- the question assumes facts not in evidence.

MR. KURTZ: It's a hypothetical question.

MR. KUTIK: No, you asked if the utility accepts an unlimited risk.

MR. KURTZ: That part is in the record, anything over $50 million the utilities pay or customers pay.

MR. KUTIK: But there's nothing in the rider now so there's nothing to determine what's to be prudent or not prudent.

EXAMINER PRICE: Mr. Kurtz, why don't you rephrase your question.

Q. (By Mr. Kurtz) Any environmental expense incurred by FES, its nuclear, gas-fired, coal-fired power plants as a result of new environmental laws or new interpretations of existing environmental laws which includes CARA, doesn't the new interpretation of the Clean Air -- the Clean Air Rules, Clean Air Regulations, that would be a new interpretation of an existing law, wouldn't it?

You are familiar those rules got struck

down and they are -- EPA is going to issue new rules?
A. Yes, so I would assume that the law is not in effect today.
Q. Okay. So any amount of money that FES incurs during the three-year period, whether it's expense or capital, capital expense with a 30-year useful life, 40-year, 20-year, whatever, would be flowed through to customers in the FTE charge? That's the way it works, correct?
A. You've accurately described it, yes.
Q. Now, given the fact that that's an unlimited, uncapped exposure for consumers, how can the Commission determine that's a prudent liability for consumers to accept?
A. I don't have an answer for that.
Q. Now, in the MRO-ESP comparison, that amount -- that portion of FTE went in as a zero cost to ESP, correct?
A. Correct. We do not know what new environmental laws would come along.
Q. So when the company was comparing ESP versus MRO, this part of the ESP went in at zero, right?
A. Yes.
Q. I meant to ask this earlier. It's only

$30 million, not much, but that fuel transportation went into the ESP at zero also?

A. When you say "it went into ESP."

Q. The ESP-MRO comparison, excuse me.

A. Are you referencing Dave Blank's testimony?

Q. Attachment 1.

A. Of Dave Blank's testimony.

Q. Yes.

A. I believe that's true.

Q. Went into zero. Now, the summer capacity -- the MISO summer capacity costs adjustment rider, are you familiar -- did I -- do you know what I am referring to?

A. The CCA?

Q. Yes. Now, how much is that projected to cost FES and the utilities and therefore consumers over the three-year term of the ESP?

A. That is subject to issues where -- wherever sales would be or load would be in relationship to those four months. I don't think you can project that at this point in time.

Q. So -- so the utilities don't know -- have any idea how much liability exposure that may be to consumers?

A. It would be dependent on the shopping that occurs during that year and that time period.

Q. Okay. In MRO-ESP comparison on Blank Attachment 1, this CCA went in at a zero cost for the ESP, didn't it?

A. Not specifically knowing exactly what everything is in Dave Blank's attachment, I believe that is a true statement.

Q. Okay. Now, the fuel adjustment to 2011, fuel adjustment, the difference between actual fuel costs of FES in 2011 versus the 2010 baseline, what -- what's that called?

I call it the fuel adjustment 2011 but there is a better name for it.

EXAMINER PRICE: FCA.

MR. KURTZ: I'm sorry?

EXAMINER PRICE: FCA.

Q. FCA. How much do you forecast that will cost consumers in 2011?

A. Once again, there is no estimate of the incremental price increase because we don't know the baseline for 2010 at this point in time for that charge.

Q. If the 2011 is less than the baseline, do consumers get a credit?

A. The rider is not proposed that way.
Q. Again, same kind of question, since there's this unknown cost out there that you haven't -- you can't forecast, how can the Commission determine that's a prudent part of the plan?
A. I don't have an answer for that.
Q. Okay. 57 million-megawatt hours a year is basically the native load for the three operating companies?
A. Yes, I think we've established that.
Q. So if the 2011 fuel costs were $10 a megawatt hour more than the 2010 baseline, that would be $570 million?
A. Once again, that's a hypothetical situation that I don't think I could attest to other than your -- your math is correct but as far as it happening are different aspects. Sorry.
Q. Do you know if FES has any long-term coal or nuclear fuel contracts that are expiring at the end of 2010 that it would have to replace?
A. I do not know.
Q. Okay. And, again, this SCA went in at a zero cost in Blank Attachment MRO comparison with ESP, correct?
MR. KUTIK: Objection, these are better

questions addressed to Mr. Blank.

MR. KURTZ: If he knows.

EXAMINER PRICE: Answer it if you know.

A. Remember, I would agree with your statement.

Q. Page 4 of your testimony, this is -- I will be brief, but this is where you render the opinion that you think that the -- that the retail market price analysis of Drs. Graves and Jones is reasonable and conservative, correct statement?

A. Yes.

Q. Now, what they did is -- and you walked through it pretty nicely on pages 4 through 5. They started off with the page 4, line 19, began with "publish market forwards" for '9, '10 and '11, from NYMEX and PLATTS.

A. Yes, I believe that's where they got their information.

Q. Okay. That was as of July 15, 2008.

A. That is true.

Q. And you are aware that since that time those forward prices have come down considerably, or are you?

A. I believe we talked earlier in the day based on what I've seen the 2009 prices have decreased and the 2010 has dropped less than that and the 2011 has dropped very little.

But in relationship to how natural gas has dropped significantly over the last month and also oil prices, that this is cyclical and could rebound as quickly as the 2009 prices have dropped.

Q. If there is a recession -- you read the newspapers, right?

A. Not lately, not with this case going on.

Q. Well, you are aware -- you are aware of the credit crunch and the stock market crash and the recession talk and all that.

A. I'm vaguely familiar, yes.

Q. If there is a recession and a reduction in demand for electricity, what would that tend to do to market prices, do you think?

A. Well, from a wholesale perspective, I would assume a lot of it is relationship, as we talked about earlier with the natural gas and how natural gas storage is related to the incremental pricing but as far as retail pricing, due to, as you mentioned, I don't know current affects of the credit situation that would have on the MRO process going forward that would create retail market prices.

Q. Is FirstEnergy Corp. having any credit issues?

MR. KUTIK: Objection.

EXAMINER PRICE: Sustained.

Q. So what you did is -- what the doctors did, they started off with the NYMEX and PLATTS forward prices as of July 15, 2008, correct?

A. Uh-huh. Yes, I am sorry.

Q. Those are what we refer to as the FERC regulated wholesale market price; isn't that true?

A. I refer to them as Cin Hub market forwards. I believe they were used.

Q. Those were wholesale prices, correct?

A. Yes.

Q. And not as a lawyer, but you know those are regulated by FERC, correct?

A. Yes.

Q. Okay. Now, to that then turn the page, they shape -- those were 24 by 7 strips that they got off NYMEX and PLATTS, in other words, around the clock pricing, correct?

A. Based on a 50-megawatt quantity, I believe.

Q. And since consumers use power not at 100 percent load factors, you had to shape -- you had to shape those 24 by 7 strips to match a retail load?

Or they did, the doctors?

A. Yes, they did.

Q. And you described that and you agree they did it reasonably?

A. Yes.

Q. Okay. Then they -- then because they use, I guess, a -- into Cinergy or into PJM West Hub pricing, they had to move it to the FirstEnergy control area and adjust for congestion differentials, congestion pricing, correct?

A. A basis adjustment, yes, that's what they did.

Q. Which you describe. And then they -- they accounted for transmission costs, correct?

A. Yes.

Q. And then they finally -- they adjusted for line losses and they got what somebody has referred to somewhere as sort of a bottom up wholesale price delivered to the FirstEnergy control area?

A. I believe you are missing one factor that they took into consideration; risk and margin development.

Q. I'm sorry, what?

A. They took into risk and margin

development.

Q. I was getting to that, but I was talking about the wholesale product first. The wholesale product delivered to the FES control area.

A. Okay.

Q. Okay. Now, finally, as you discuss on line 21 on page 5, turning the page, they adjusted for -- they were -- the doctors were trying to determine what a bidder would bid in an MRO since in an MRO the bidder has the risk that people will shop, the risk that people will come back who were shopping all that retail risk, they had to adjust the wholesale price upward for this retail risk premium; isn't that correct?

A. Yes, but I don't believe it was all just for a shopping risk.

Q. All kinds of risk, credit risk, whatever risks, they had to adjust the wholesale price up because they were going to -- in the MRO analysis, the providers, the wholesale providers were going -- were assumed to be the provider of last resort and would have all that risk associated with that.

A. They would have numerous risks, yes, which is in their testimony.

Q. And, in fact, Dr. Jones, I think,

describes the risk as on average what he did he marked up the wholesale price 17 percent in 2009, 29 percent in 2010, and 40 percent in 2011, to adjust for that retail risk, did he not?

A. Without having it in front of me, I will have to agree with your assessment.

Q. Okay. Now, so in the MRO-ESP comparison, you determined that 75, 80, and 85 is reasonable and conservative compared to what the MRO would have produced, and what MRO would have produced was a full wholesale and grossed up full retail risk product.

Do you understand my question or should I rephrase it?

A. I don't understand your question. I'm sorry.

Q. The MRO took the wholesale price and then it put in a retail risk premium and that was the MRO number that the doctors came up with and you said -- or you testified that that MRO price was higher than 75, 80, and 85, and, therefore, you conclude 75, 80, and 85 is reasonable.

A. Okay.

Q. Now, the 75, 80, and 85 does not include the fuel transportation surcharges, the fuel adjustment surcharge in 2011, the capacity costs

adjustment, the environmentalist; isn't that true? Those are all added onto 75, 80, and 85.
A. And I guess I'm not -- I am still not following your question.
Q. Well, you are comparing -- you are comparing the full MRO to only part of the ESP, part of the ESP is 75, 80, 85. You have left off the fuel transportation surcharge, the fuel adjustment surcharge, the environmental surcharge, and the capacity cost surcharge.
A. Well, I guess to characterize what you just went through, that full retail MRO product, when I say that it was favorable, we adjusted for the transmission piece, which is incorporated as part of the ESP as a separate issue or separate rider.
And as far as the other riders, we don't know if those riders will have any dollars associated with them or not at this point in time.
Q. So you assume they were zero and plugged them into ESP comparison at zero?
A. As far as Dave Blank's testimony, I agree with that, yes.
Q. Okay. You also didn't account for the fact that if somebody shops in the ESP, they have to pay $10 per megawatt hour for the minimum default

service. You didn't count that as a cost of the ESP, did you?
A. I am not understanding why it would be.
Q. Well, because in the MRO because that risk is already built into the MRO price, Dr. Jones marks up the third year by 40 percent because exactly of that risk, people may shop, people may come back. In the ESP you've covered that with this $10 per megawatt charge, but you haven't included it in your MRO ESP comparison; isn't that true?
A. No, it is not.
Q. You -- it's embedded in the 75, 80, 85, that's what you mean, it's included, right?
A. Yes.
Q. But if somebody shops, there's an additional explicit $10 per megawatt charge --
A. That doesn't change the calculation.
Q. -- that they have to pay.
Well, it changes the math. If people shop as the NOPEC people are pointing out that's an additional charge they have to pay that comes into FES; isn't that right?
A. No. I don't agree with your assessment.
Q. You've also -- you've also not included the standby charge or you assume the standby charge,

the $15 per megawatt hour in 2009, 20 in '10 and $25 per megawatt hour in 2011, you've not factored that into the ESP-MRO comparison, have you?

A. And you keep saying "factor into the ESP comparison." I did not do a -- that is Dave Blank's testimony that you are referencing for a net present value, I believe, that you are referencing and as far as those two charges are concerned, I believe in how you are characterizing the additional revenue would not be correct.

Q. Do you know if Dr. Jones or Dr. Graves are going to update their testimony from more current market prices?

A. I don't know that.

Q. Do you think that the Commission, when judging this matter, trying to get the most reasonable, prudent deal for millions of people and businesses in Northern Ohio should have the most recent information to make that decision on?

A. I believe they should have whatever they feel they need to make their decision, so if that means to have more recent data or past data or future data, I think they should request it.

MR. KURTZ: Thank you, sir. Those are all my questions.

EXAMINER PRICE: Thank you.
Mr. Yurick.
MR. YURICK: I just have a couple. Could you hand me that microphone?
EXAMINER PRICE: Maybe the staff attorneys could sacrifice one of their chairs for Mr. Yurick and Mr. Rinebolt.

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CROSS-EXAMINATION

By Mr. Yurick:
Q. Good afternoon/evening, sir.
A. Good evening.
Q. I just have a couple of questions for you. If you could turn to page 5 of your testimony. Can you hear me okay?
A. Yes, I can.
Q. Okay. If you look at lines 11 through 14, you're talking about -- and I am a little bit confused so I apologize.
You're talking about the experts conservatively assuming a rate of $7-1/2 per megawatt, $7.64, and is that a typo?
A. Oh, the -- yes.
Q. MWH?
A. It should have been in the errata

someplace.

Q. Okay. Which is slightly less than the company's current average transmission rate of $7.92 per megawatt hour. Do you see that?

A. Yes.

Q. First question is what -- what is the $7.92 per megawatt hour, what does that represent? How did you arrive at that number?

A. It represents based on total retail load being served currently today in our current transmission rider, and that would be the cost for transmission services.

Q. So you take the total transmission costs, divide it by the usage, essentially, and come up with a per megawatt hour number?

A. For this testimony, yes.

Q. Okay. So as I understand that, there's a chance that no customer may be paying this particular rate; it's just an average?

A. It's just an average, yes, that is absolutely correct.

Q. And I was a little bit confused in this sentence because you say "with respect to these transmission costs" and then you use the term rate of $7.50 and then rate instead of costs.

Are you talking about the same thing? It seems like you are, but I want to make sure. When you are talking about a rate, you are talking about?

A. I am talking about our current transmission rate to customers on average.

MR. YURICK: Okay. I think I'm done. Thanks.

EXAMINER PRICE: Thank you.

Mr. Rinebolt.

MR. RINEBOLT: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Rinebolt:

Q. I'll pare this down quite a bit.

Good afternoon, Mr. Warvell.

A. Good afternoon.

Q. Do you think that FirstEnergy Solutions might be facing some risks since there is no contract for a large part of their generation after the end of this year?

A. Yes, but as we've -- as I have pointed out throughout the day, that it is our anticipation that a contract would be struck with FirstEnergy Solutions that is representative of the application.

Q. But if they are facing that kind of risk, wouldn't that create a scenario where you might have a little more negotiating leverage, be able to get customers a better price?

A. Since truthfully I am not on the negotiation I couldn't answer that question.

Q. Okay. Let me see, further down on page 4, the doctors talk about the RTO prices. To your knowledge did the doctors look at what a portfolio bilateral contracts combined with short and spot market purchases might result in?

A. I did not -- they did not talk to me about that, no.

Q. Okay. I'm sure I'll get to talk to them next week.

On page 5, Mr. Warvell, you talk about the doctors using historical load data to determine a value for shaping customer loads.

If you know, did the doctors consider the impacts of the energy efficiency and demand response requirements in Senate Bill 221 when looking at load shape?

A. I don't know.

Q. Okay. Oh, on page 6, Mr. Warvell, you talk about the West -- PJM West Hub and the Cinergy Hubs. Are adequate volumes traded on those hubs to serve FirstEnergy's load, existing load?

A. I don't know the specific numbers, but I believe so, yes.

Q. And you indicate just below that in 14, 15, that some of the low prices that they are seeing for off-peak offers appear to be lower than the current market price for coal.

Now, could that mean that some companies have long-term coal contracts so they are buying coal at the lower price and they can provide power at a lower price?

A. I don't know necessarily why the phenomenon is happening. And I have not checked in the last week or two, but as far as making business sense to dispatch a unit below your incremental fuel costs, it doesn't -- from my perspective does not make a prudent decision if you want to stay in business for a long period of time.

Q. Mr. Warvell, have you ever heard of the concept of a lost leader where a merchant, a seller opts to take a lower price to gain market share?

A. I have not been involved in that, no.

Q. Okay. On page 7, there clearly FirstEnergy is looking to phase-in rates, and I just have a couple of questions about that.

You indicate that the phase-in is designed to mitigate the impact changes in retail rates. Okay?

I assume that what you are saying, and correct me if I am wrong, but you are trying to spread out the increases in rates.

A. Eliminate the initial shock of increased rates, yes.

Q. Okay. And could you tell me why that's advantageous to customers?

A. To limit the impact that they would see from the initial first year price increase.

Q. But they are going to pay that later, aren't they?

A. Yes.

Q. Plus interest.

A. Yes.

Q. Okay. Now, you said you wanted to mitigate rate shock. Rate shock, does that mean that residential customers won't be able to afford to pay their bills?

A. I don't have -- I don't have an answer for that.

Q. Okay. So you don't really know how it's going to affect your customers, but you want to mitigate it nonetheless?

A. Based on our interpretation of Senate Bill 221, that was one of the requirements that we were looking to do in this ESP plan.

Q. You treated it as mandated by 221 to defer costs?

And I know you are not a lawyer.

A. Not being a lawyer, I would say not mandate but one of the items that we were to look at for filing an ESP plan.

Q. So you -- is it fair to characterize that as an option under the legislation?

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: Legal.

EXAMINER PRICE: He raised the issue. He is just following up. Overruled.

A. I would say yes.

Q. Okay. Would customers see any credit for fuel used for off-system sales by FES generation for which customers are paying for the fuel?

A. Could you rephrase that question, I guess?

Q. All right. Customers are paying for the fuel for the FES generation dedicated to the load to provide the ESP power, correct?

A. No.

Q. We are not paying for the fuel?

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

MR. RINEBOLT: Let me put it another way, we are -- pass, I'll withdraw the question.

That's all the questions I have got, your Honor. Thank you.

EXAMINER PRICE: Thank you.

MR. RINEBOLT: Thank you, Mr. Warvell.

EXAMINER PRICE: Hospital Association.

MR. SITES: No questions, your Honor.

EXAMINER PRICE: Mr. Porter.

MR. PORTER: No questions, your Honor.

EXAMINER PRICE: Mr. Bell.

MR. BELL: Yes, sir.

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CROSS-EXAMINATION

By Mr. Bell:

Q. A few.

You indicate on page 1 of your testimony you are employed by FirstEnergy Service as director of "Rate Strategy."

This may sound simple, but I think the

record ought to demonstrate the relationship between the various companies through -- that have been referenced by way of acronyms.

First of all, you have a holding company, do you not, FirstEnergy Holding Company, of which Mr. Alexander is CEO?

A. I don't know that.

Q. Or don't you know the corporate structure of your own company?

A. I do not know all the corporate entities, no.

Q. Well, let me ask you this, you do know FirstEnergy Service Corporation, do you not? They are your employer, correct?

A. Yes.

Q. And FirstEnergy Service Corporation was formed to provide services to FirstEnergy and its affiliates, was it not, if you know the purpose for the existence of your company?

A. No, I don't know.

Q. You don't know what the purpose of your company is?

A. Why it was formed?

Q. Yes.

A. No, I do not.

Q. Do you know for whom FirstEnergy Service Corp. provides services?
A. The operating companies.
Q. Just the operating companies?
A. And I believe the affiliates as well.
Q. What about the holding company?
A. I don't know.
Q. Did FirstEnergy Service Corp. -- is that the corporation, the entity that is responsible for developing this ESP?
A. Along with FirstEnergy's services from a rate department's perspective, yes, as well as the legal department and our executive management.
Q. And your executive management includes not just the executive management of FirstEnergy Service Corp. as an operating subsidiary of FirstEnergy Holding Company, but it also includes the executive management of the holding company, does it not, as you indicated earlier when you said that Mr. Tony Alexander approved this ESP, signed off on it and its components?
A. Could you rephrase -- could you repeat his question, please?
Q. I will withdraw the last question and back up.

With respect to the development of this ESP plan, was it developed solely by employees of FirstEnergy Service Corp.? Can you answer that yes or no or you don't know?

A. I don't know.

Q. Do you know whether or not any employees of FirstEnergy Solutions, the marketing arm affiliate of FirstEnergy Service Corp. and subsidiary of FirstEnergy Holding Company, do you know whether any of those employees participated in the development of this ESP?

A. I was not involved in any meeting with anybody from FirstEnergy Solutions.

Q. That wasn't the question.

The question is do you know whether or not any employees of FirstEnergy Solutions participated in the development of this ESP? Not whether you attended any meetings with them.

Please answer the questions.

A. No, not that I am aware.

Q. But in any event, employees and upper management of the holding company was involved, including Mr. Alexander and other senior officers of the holding company, as I believe you testified to earlier; is that correct?

A. I know Mr. Alexander was involved. I don't know individual executive officers, no.

Q. Now, you report to Mr. Blank, do you not, sir?

A. Yes, I do.

Q. And Mr. Blank reports to Mr. Clark, does he not?

A. Yes, he does.

Q. And who is Mr. Clark?

A. Mark Clark is our VP, senior VP.

Q. Does he hold any position outside of FirstEnergy Service Corp., if you know?

A. I do not know.

Q. Now, I believe in your deposition in response to a query by counsel early today you stated that you have experience in the wholesale market which renders you capable of offering the testimony that you presented here today.

I believe in your deposition you dealt with generation wholesale market for six months, and I believe that term was also referenced in your testimony today, was it not?

A. I don't know about reference today, but I did work for FirstEnergy Solutions in the wholesale power.

Q. For approximately six months?

A. I believe it was roughly about six months, yes.

Q. And it's on the basis of that six months testimony that you're opining as to the credibility of the expert testimony proffered in this case by Drs. Jones and Graves that they went about developing the market rate in an appropriate fashion?

A. That six months as well as the other time that I have spent with FES, yes.

Q. Well, the time that you spent with FES is only about seven years, isn't it, in a number of positions?

A. Yes.

Q. And you were -- worked for a manufacturer before that, correct?

A. Correct.

Q. Corrugated manufacturing company or companies. What did you do for them?

A. I was a corporate controller.

Q. Did you have any background or experience prior to your employment with FirstEnergy with the wholesale markets as far as electricity is concerned?

A. No.

Q. Are you representing yourself as an

expert today with respect to the wholesale markets and the pricing of electricity on the wholesale markets, or are you simply testifying as a management witness of FirstEnergy in this case?

A. I am not representing myself as an expert, but I do understand pieces and parts of the wholesale market.

Q. And it's on that basis that you go on for three or four pages and applaud or at least approve of the manner and method that two Ph.D.s developed their constructed -- constructed future costs of wholesale generation.

A. Yes.

Q. And would you agree that those costs, which I believe Mr. Kurtz so clearly quantified, are simply constructed costs, that are as you've responded to a number of witnesses here -- or a number of attorneys, are neither market nor cost -- directly cost or market related.

A. I'm sorry, could you read that back?

Q. They aren't directly cost or market based, are they? The 75, 80, 85.

A. Once again, I don't understand the question.

Q. Those are future costs, are they not?

A. Of what am I answering? I don't understand the question.

Q. The cost 75, 80, and 85 dollar a megawatt costs are for the years 2009, 2010, and 2011, those are the rates proposed to be charged without the phase-in, correct?

A. For the rider GEN?

Q. Yes.

A. Those are the rates, yes.

Q. Those are perspective or future rates, are they not?

A. Yes.

Q. And they are not based upon future known quantifiable costs?

A. They are not based on any costs, that is correct.

Q. And they aren't based upon any market, as I believe you testified at the outset? This ESP is not a market-based or a cost-based proposal. Wasn't that your testimony, Mr. Warvell?

A. What?

THE WITNESS: Could you read that question back. I'm sorry.

(Record read.)

A. My testimony is those prices were based

off being less than an MRO clearing price cost, yes.
Q. In effect, you agree, looking me straight in the eye, that those rates are simply revenue based or revenue directed.
A. They're exactly what I just estimated that those are based off of being less than a projected MRO clearing price, which is what we were supposed to meet as far as the statute is concerned at filing an ESP.
Q. Stated differently, they are what they are?
A. I don't know how else to answer that question.
Q. Well, with respect to provider of last resort, the -- and forgive me if I can't keep up with all the acronyms on the riders, you get in a couple of these cases and pretty soon you've got letters coming out of your head, but I'll --
MR. KUTIK: Your Honor, while I do appreciate counsel's quandary, could we get to a question?
EXAMINER PRICE: Mr. Bell has waited patiently all day to ask these questions.
MR. KUTIK: I understand that, and we would like to hear questions.

Q. I believe it was Mr. Krassen or Mr. Petricoff that talked about what are deferrals, and I think they referenced it as a loan.

You are sponsoring the deferrals in this case, are you not, sir, as reflected in your testimony the specific deferrals and the workpapers and schedules relating thereto?

A. No. I believe Mr. Wagner is sponsoring the deferrals. I am sponsoring the phase-in charge.

Q. Well, on page 2 of your testimony I see the question what are you responsible for in this proceeding.

"I am responsible for all or part of the following attachments and schedules: Generation Deferral/Recovery."

Now, is that a deferral?

A. I'm sorry, could you reference that again? I didn't catch that.

Q. It's the bottom of page 1, the question is "What are you responsible for in this filing?"

And your answer is "I am responsible for all or part of the following attachments and schedules," including the generation deferral/recovery.

Do you see that?

A. No, I am not there yet.
EXAMINER PRICE: Page 2, bottom.
THE WITNESS: I thought he said page 1.
EXAMINER PRICE: I believe he did.
MR. BELL: I misspoke.
EXAMINER PRICE: Trying to help the witness out here.
MR. BELL: Thank you.
A. Yes, I'm responsible for the numbers in regards to the phase-in credit, yes.
Q. Are you familiar with the concept of deferrals as suggested in your response to I think it was Mr. Petricoff or Mr. Krassen? That a deferral is effectively a loan by the company? Do you remember that exchange?
A. Not specifically, no.
Q. Are you aware of whether or not a deferral requested of this Commission is effectively requesting for the creation of a regulatory asset?
A. Yes, I believe so.
Q. The collection of which an asset, the recovery of which is authorized but the recovery of which is deferred to a future period; is that a succinct characterization of a deferral?
A. I believe so, yes.

Q. And are you aware that regulatory -- such deferrals are authorized only for regulated enterprises under the Financial Accounting Standards Board generally?

A. Okay.

Q. Well, you were controller for a manufacturing company.

A. It was not regulated.

Q. Well, are you aware of whether or not -- what the Commission's practice has been in reviewing and approving deferrals in the past?

A. No, I am not.

Q. All right. Well, would you accept the concept that in past the Commission authorized deferrals? They have been accounting applications where the company comes in and says "We can't book this cost in this time period because it's an extraordinary cost, it's abnormal, it will cause our earnings to go into the sewer, and as a result, we would like to spread out the expensing of this cost over a more reasonable period."

And the Commission says "You may defer that cost, and we will in a subsequent rate proceeding review and determine the appropriateness with which -- and the prudence with which that cost was incurred in order to determine whether you can recover it in rates."

Is that your understanding of rate recovery or deferred -- deferred revenue recovery by a regulated entity such as your employers or the operating companies, CEI, Toledo Edison, and Ohio Edison?

A. I am not an expert in that so I'll have to take what you said as yes.

Q. Now, with respect to the deferrals that you are requesting in this proceeding, and I think as shown on -- strike that.

With respect to the deferrals that you are requesting in this proceeding, there are some -- those deferrals can be segregated in different time deferrals, can they not?

For instance the deferrals associated with the ETP, the rate stabilization period, and up to today in the deferrals requested in this case?

A. I'm sorry, you are way beyond my understanding.

Q. Okay. With respect to the deferrals, Mr. Warvell, would you accept, subject to check, that as reflected in Attachment A to Mr. Blank's testimony, which I believe you have in front of you as a result of inquiry by previous counsel --

A. I no longer have it, but.

MR. BELL: Could Counsel provide him with a copy? Mine is marked up or I would request permission to approach and show him mine.

EXAMINER PRICE: I believe they are getting him a copy even as we speak.

MR. BELL: Thank you.

A. Okay. I have a copy.

Q. Would you agree -- would you agree that if this exhibit represents that the company is requesting in this ESP proceeding the recovery of deferrals for which it is seeking authorization as far out as the year 2035 as shown at the extreme right, the last column, the heading of the last column on that attachment?

MR. KUTIK: Your Honor, I will object again, these questions are better addressed to Mr. Blank.

EXAMINER PRICE: Mr. Bell.

MR. BELL: I'm not -- I'm not going to the dollars. I'm attempting to simply establish the relationship that this application is attempting to establish as between the operating companies and the ratepayers, shoppers and nonshoppers, over a very extended time period of over 25 years, 27 years to be exact. Nothing more, nothing less.

MR. KUTIK: We haven't established this witness is sponsoring any deferral that goes into that time period whatsoever.

EXAMINER PRICE: I believe he does indicate that he is responsible for generation deferrals and recoveries, but that's not necessarily an attachment that we are looking at right now, so if you can lay a little bit better foundation, then perhaps you can get him to answer that question.

Q. (By Mr. Bell) Well, are you supporting the securitization plan? I believe you testified you were.

A. No, I am not.

Q. No, you are not.

With respect to the exit and entry charges of shopping customers, the DSM and the standby charge, whatever their acronym is, you indicated in -- I will try not to be repetitive because there was extensive examination on this, how you attempted to arrive at the charges that the company is proposing in here for customers leaving and customers returning, those were the administrative costs and the opportunity costs and the hedging costs, I believe, were the total package of costs for -- attempting to be recovered in those two riders; is that correct?

A. No, that's -- I would not characterize it that way, no.

Q. What else is included? I thought those were the three main cost components that you identified.

A. I did for the MDS charge, yes.

Q. Okay, the MDS, let's limit it to the MDS then.

Again, you testified time and time again repeatedly that those charges were not based upon any qualitative or quantitative analysis or evaluation beyond a group of you getting together and saying this sounds like the right number; is that correct?

A. You've categorized that properly, yes.

Q. Did you attempt, sir, to go to any outside source to see whether or not this hedging could be provided to you by some outside entity and what they would charge as a basis to submit to this Commission as to either a cost for a market-based standard by which to judge the reasonableness but some empirical data, some objective data that the Commission could rely upon to conclude that the level of the charge, although not cost and not market based, is, in fact, reasonable?

Did you make any such inquiry or attempt to make such a determination?

A. To an outside resource?

Q. Yes.

A. No.

Q. The fuel costs and transportation surcharge, the add-on that Mr. Kurtz talked to you about at length, you earlier testified that you look at historical data, and I am not going to retread that with respect to identification of appropriate charges.

With respect to the exit fee that the DSM, if I have got the right acronym, if you will forgive me, I will just use exit and reentry, on the exit charge did you look at the number of kilowatt hours recent data that are being shopped being compared to the total company?

A. I'm sorry, could you read that question back again. I got confused.

Q. I'll restate it.

Did you look at current data as to what proportion of the kilowatt hours, total kilowatt hours, are being shopped?

A. We looked at historical shopping data.
Q. Did you look at recent data?
A. I don't know. What do you mean by "recent data," I guess?
Q. Did you look at, for instance, the companies' consolidated report to the financial community, the second quarter 2008, released August 1, 2008, to see whether or not the kilowatt hours shopping is on an inclining or increasing basis or on a decreasing basis when compared to historical period?
A. Compared to which historical period?
Q. Any historical period.
A. I'm not understanding your question, I'm sorry, sir.
Q. Well, for instance, did you attempt to determine whether or not the number of kilowatt hours being shopped are going up or going down over time?
A. Over the last four years the kilowatt hours being shopped has gone down.
Q. And more recently it's gone down too, has it not?
A. I don't understand what you mean by "recently."
Q. Okay. Did you agree, as shown on page 15

of the plan -- do you have that in front of you, sir?
A. The application?
Q. Yes. Footnote 12 states, does it not, with respect to the plan, the fuel costs shall be deemed to be those of the generation assets owned or controlled by FirstEnergy Solutions or any of its subsidiaries and used to support this plan asset out in paragraph (A)(2)(n)?
Do you see that?
A. I'm at your footnote on page 15, and, yes, I see that.
Q. Are you -- referencing the consolidated report to the financial community, second quarter 2008, issued by FirstEnergy and signed off by -- on by its chief financial officer, there is a reference to new long-term fuel supply arrangements.
And I quote, on July 16, 2008, a subsidiary of FirstEnergy, it doesn't say FirstEnergy Generation, FirstEnergy Solutions, FirstEnergy Coal, FirstEnergy whatever, it just says a subsidiary of FirstEnergy entered into a joint venture with the Boich, B-O-I-C-H, Company, a Columbus, Ohio, based coal company, to acquire a majority stake in the Bold Mountain Mine Operation in Montana.
FirstEnergy will make a $125 million

equity investment in the joint venture. Under an acquisition and development agreement the joint venture will acquire 80 percent of the Bold Mountain Mining Operations and 100 percent of the rail operations with FirstEnergy, owning a 45 percent economic interest in the joint venture, and an affiliate of the Boich Companies owning a 55 percent economic interest, with both parties having a 50 percent voting interest in the joint venture.

In January, 2010, the joint venture will have an option for 18 months to acquire the remaining 20 percent stake in the mining operation.

It goes on to state in a related transaction FirstEnergy has entered --

MR. KUTIK: At this point, your Honor, at this point I am going to object. There's been no foundation laid with respect to this witness's knowledge with respect to the document or foundation laid with respect to the document, so I move to strike Mr. Bell's speech up to now.

EXAMINER PRICE: Sustained. You haven't established he has ever seen the document, let alone that he is aware what the contents might be.

MR. BELL: Well, I can ask -- I suppose I can put on a witness to indicate where the document came from.

It's a company document. It's issued to the public as indicated on its face. It's got the signature of the officers.

Now, if Counsel for the company wants to deny that this is an authentic document issued by the company to the financial community, so be it.

MR. KUTIK: Counsel for the company will insist that the witness -- that the Counsel lay a foundation with the witness to ask proper questions. And that's what the point of my objection has been.

EXAMINER PRICE: You haven't established the witness is aware of the document. If you could at least show him the document and ask him if he has ever seen it before.

MR. BELL: I appreciate that, your Honor. All I was attempting to do was fill in the footnote. Whether or not the transportation surcharge would allow the operating companies in this case to recover surcharges imposed by an affiliate rail company as evidenced in here by charge -- charge by the shipper and affiliate coal company to FirstEnergy Solutions that they could pass onto the --

EXAMINER PRICE: I understand where you want to go on the merits, but we need to get it into the record properly.

Q. (By Mr. Bell) Are you aware of any of the transactions I have just mentioned?

A. No, I am not.

Q. Not even in general terms?

A. In general terms, I've read the press release that we were acquiring Bold Mountain, yes.

Q. Along with the Boich Company and the rail operations as well?

A. I don't know about the rail operations.

Q. Well, in any event the surcharge would, as you interpret, allow CEI, Toledo Edison, and Ohio Edison to recover charges made by an affiliate shipper and an affiliate rail company to the operating companies without any review by the Commision?

A. I believe it's assumed that the Commission would review all costs that would be charged under that rider.

Q. In advance of their being recovered?

A. What do you mean by "advance of being recovered"?

Q. I thought you are seeking authorization in the ESP plan for the recovery of these costs via a rider.

A. I don't know what those costs are.

Q. I don't either, and that is my point.

EXAMINER PRICE: Under the plan is it your position the Commission and the staff will have a chance to review these costs and determine whether or not they are prudently incurred?

THE WITNESS: The Commission would review the surcharge costs just as they reviewed the fuel deferral charges that have happened through 2006 through 2008.

EXAMINER PRICE: And in your belief there would be some sort of reconciliation process in the event that an expense was not allowed?

THE WITNESS: Yes.

EXAMINER PRICE: Mr. Bell.

MR. BELL: Just a moment, your Honor.

Q. (By Mr. Bell) With respect to charging your customers -- you are vintaging your customers, are you not, as suggested in the earlier -- your earlier testimony?

A. I'm sorry, I didn't hear that question.

Q. You are vintaging your customers for the purposes of establishing rates for them?

A. Could you define "vintaging" for me?

Q. Well, you are treating old customers

different than new customers. A new customer will come on and can get on the SSO but an old customer that has left and comes back is subject to an incremental charge, is it not?

A. No, I don't see it that way, no.

Q. You don't see it that way. You don't see a vintaging of the customers with respect to the economic and emergency interruption where in one case you're allowing that service to be made available only to limited customers that were served as of the given date and not new customers?

A. No, I don't see it that way.

Q. You don't view that as vintaging?

A. No, I do not.

Q. With respect to the rate impact and your desire to mitigate -- and I am not going to beat this dead horse extensively -- as I understand it, sir, you have not attempted to identify the threshold of pain for customers by which you would attempt to mitigate the increase?

A. I'm sorry, you are going to have to read that one back.

Q. Have you attempted to identify the pain threshold of customers as far as a rate increase what they can stand and what they can't stand?

A. I've done no such study, no.

Q. Well, the fact you are mitigating --

MR. KUTIK: Your Honor, I would just ask Mr. Warvell to keep his voice up. I know it's very late in the afternoon but I am sitting very close and I am having trouble hearing him.

EXAMINER PRICE: Thank you, Mr. Kutik.

THE WITNESS: Okay.

Q. The fact that you are offering a mitigation factor suggests a recognition that the 75, 80, and 85-megawatt is beyond the threshold pain level for its customers, do you not?

A. No, I don't see it that way. I think we're responding to the statute of trying to mitigate cost increases to the customer through a phase-in rider.

Q. So your mitigation has nothing to do with the customer's ability to pay?

A. The phase-in rider is based on the statute in which we are phasing in price increases to the customer.

Q. And that phasing in has nothing to do with a customer's ability to pay; is that correct?

A. I don't understand your point.

Q. Did you attempt to identify what impact would be unacceptable?

A. We did no such study, no.

Q. That's for customers as a whole of the three companies?

A. As I said, we did no such study.

Q. Is it correct then that your plan does not attempt to mitigate the severity of the impact of the ESP proposal upon any given tariff class or any customer within the class?

THE WITNESS: Could you read that question back, please.

(Record read.)

A. As far as rate design, that would be covered by Mr. Hussing.

Q. But as far as you're concerned and your involvement in the plan, no consideration was given to the impact upon individual tariff classes or individual customers within those tariff classes?

A. I believe I've already stated that as far as the generation phase-in was concerned, we did no such study in regards to your question.

Q. And by "we," you are referencing FirstEnergy Solutions?

A. No. I am referencing myself or anybody that had worked for me or that had been part of the plan.

MR. BELL: Okay. I believe that's all I have. Thank you, sir.

EXAMINER PRICE: Thank you.

I believe that that is all the intervenors except for Nucor; is that correct?

I have not missed anybody? Excellent.

We will adjourn at this time. We will resume tomorrow morning at 9 o'clock sharp with Nucor's cross-examination of this witness followed by the staff.

Thank you all.

(The hearing was adjourned at 5:41 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, October 16, 2008, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-4998)

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