BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

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 9:00 a.m. on Tuesday, October 21, 2008.

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Tuesday Morning Session,
October 21, 2008.
- - -

EXAMINER PIRIK: We will go on the record. We are in day 4 of our hearing in Case No. 08-935-EL-SSO. Myself, my name is Christine Pirik, and with me is Greg Price presiding in this case.

Ms. Wung.

MS. WUNG: Yes. We are calling Mr. Gorman to the stand.

(Witness sworn.)

MS. WUNG: Your Honor, at this time we would like to mark for identification --

EXAMINER PRICE: Could we pass one of the long neck microphones down. It would be easier for her.

Mr. Lavanga.

MS. WUNG: Is this better?

Good morning, your Honor. I think we

have this now.

Good morning, your Honor. We would like to mark for identification the direct testimony of Mike Gorman as Commercial Group Exhibit 1.

EXAMINER PIRIK: The document is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. WUNG: The document is the prefiled testimony of Mike Gorman.

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MICHAEL GORMAN

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

DIRECT EXAMINATION

By Ms. Wung:

Q. Good morning, Mr. Gorman.

A. Good morning.

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

A. My name is Michael Gorman. My business address is 16690 Swingley Ridge Road, Chesterfield, Missouri.

Q. And who are you employed by?

A. Brubaker & Associates.

Q. And on whose behalf are you testifying today?

A. On behalf of Wal-Mart Stores, Sam's East, Macy's, and BJ's Wholesale Club, The Commercial Group.

Q. Thank you.

Do you have what has been marked for

identification before you as Commercial Group Exhibit 1?

A. Yes.

Q. And that is your direct testimony on behalf of The Commercial Group?

A. Yes.

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

A. One correction.

Q. And what is that correction?

A. Page 16, line 24, five words into that sentence the word "can" should be struck and the word "may" should be inserted.

That concludes my adjustments or corrections.

Q. Thank you, Mr. Gorman.

With that correction if I were to ask you the questions that are in your direct testimony today, would your answers be the same?

A. They would, yes.

MS. WUNG: With that, your Honor, I tender the witness for cross-examination.

EXAMINER PIRIK: Thank you.

Mr. Bell.

MR. BELL: Thank you.

CROSS-EXAMINATION

By Mr. Bell:

Q. Good morning, Mr. Gorman. My name is Langdon Bell, and I represent the Ohio Manufacturers Association.

A. Good morning.

Q. Tell Morris I said hello.

A. I will.

Q. We go back a long, long time.

On page 3 of your testimony you state that the proposal of FirstEnergy is inappropriate and unjust allocation as it shifts the burdens of these costs to customers that are most vulnerable to competition with companies around the country and around the world.

Do you see that statement?

EXAMINER PIRIK: Are you referring to line 24?

MR. BELL: Yes, I'm sorry, I forgot to

mention that.

A. Yes.

Q. Would you agree, Mr. Gorman, that with respect to the current economic downturn, that Wal-Mart and Sam's Club is least affected within the commercial community?

MS. WUNG: Objection, your Honor. I don't see how this is within the scope of his testimony.

MR. BELL: I'm sorry?

MS. WUNG: I don't see how this is within the scope of his testimony.

EXAMINER PIRIK: Mr. Bell.

MR. BELL: His testimony talks about -- on behalf of Sam's and Wal-Mart talks about being subject to competition within this country and outside this country, and my question goes to the fact that the clients that he is representing has been proclaimed to be less affected by the economic downturn and, thus, insulated from competition.

EXAMINER PIRIK: I will overrule the objection.

MR. BELL: Thank you.

Q. (By Mr. Bell) Do you understand the question, Mr. Gorman?

A. Well, I believe I do.

I have not evaluated which class of customers would be most detrimentally impacted through inappropriate price adjustments made in this proceeding.

All of the large commercial and

industrial customers have competition, and the question you are imposing would require a detailed review of the relative cost each of those businesses incur relative to -- and how that impacts their cost structure relative to their competition. I haven't done that analysis.

Q. On the retail side -- and Sam's and Wal-Mart's are retail businesses, are they not?

A. They are.

Q. What foreign competition are they subject to, as you suggest in those lines that I just referenced?

A. Well, I mean, you are going way outside my testimony in this, but they are clearly suppliers that different commercial/retail establishments rely on that can be foreign suppliers.

Q. Then you do not mean by that statement to suggest that Sam's and Wal-Mart are most vulnerable to foreign competition, do you?

A. Well, it was a general statement. Commercial establishments will compete with other commercial establishments in the area, but they do rely on suppliers, and those suppliers can be international suppliers.

Q. How do those international suppliers

impact your competitiveness in the marketplace?
A. Because they supply the goods that are resold in the retail establishments.
Q. Isn't that -- doesn't that inure so Sam's and Wal-Mart's benefit vis-a-vis other smaller commercial customers, commercial outlets, commercial -- commercial businesses?
A. I'm not aware of any restriction on any business's ability to buy goods from international suppliers.
Q. Could you turn to page 10 of your prefiled testimony.
In response to the question appearing on line 7, you state "Many industrial and large commercial customers have already undertaken DSM/EE programs for many years. Many large users have made significant investments in DSM/EE programs, and have modified consumption in order to reduce costs and maximize energy efficiency."

Do you see that?

A. Yes.

Q. Are you suggesting in your testimony or recommending that the Commission, in authorizing a DSM recovery rider, should provide a credit to those customers for actions that may have been taken in

2005, 2006, 2007 so as to eliminate, if you will, the vintaging -- vintage pricing of customers?

A. No. That is not my recommendation in my testimony. My testimony recommended that customers that are undertaking these programs on their own should be able to opt out of the utility sponsored DSL energy efficiency programs.

Q. By "opting out," they would avoid the cost associated with the rider?

A. It would avoid the utilities' costs associated with the rider, but they would incur their own costs of these programs.

Q. Whereas, new customers that don't undertake those measures would be subject to those costs, correct?

A. If they didn't qualify for the opt out, they would, yes.

Q. Doesn't that distinction rest on the fact that you are distinguishing new customers from old customers?

A. No. Distinguishes on whether or not you qualify for the opt out.

MR. BELL: I believe that's all I have. Thank you.

EXAMINER PIRIK: Mr. Small.

MR. SMALL: No questions, your Honor.

EXAMINER PIRIK: Mr. Yurick.

MR. YURICK: No questions, your Honor.

EXAMINER PIRIK: Ms. McAlister.

MS. McALISTER: No questions, your Honor.

EXAMINER PIRIK: Mr. Porter.

MR. PORTER: No questions.

EXAMINER PIRIK: Mr. Rinebolt.

MR. RINEBOLT: One moment, your Honor, if I may.

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CROSS-EXAMINATION

By Mr. Rinebolt:

Q. Good morning, Mr. Gorman. I just have one question. I hope it doesn't turn into a series.

Does Wal-Mart continue to benefit from its preexisting DSM energy efficiency investment?

A. Well, to the extent it modifies its consumption, yes.

Q. Okay. Did those investments meet the companies' internal standards for return on investment or investment criteria?

A. Well, I haven't looked at Wal-Mart's hurdle rates in justifying -- making these types of investments, but I presume it did.

MR. RINEBOLT: That's all the questions I have. Thank you.

THE WITNESS: Thank you.

EXAMINER PIRIK: Mr. Smith?

MR. SMITH: No questions.

EXAMINER PIRIK: Mr. Breitschwerdt.

MR. BREITSCHWERDT: No questions, your Honor.

EXAMINER PIRIK: Mr. Stinson.

MR. STINSON: No questions, your Honor.

EXAMINER PIRIK: Mr. Kurtz.

MR. KURTZ: No questions, your Honor.

EXAMINER PIRIK: Mr. Lavanga.

MR. LAVANGA: No questions, your Honor.

EXAMINER PIRIK: Mr. Lang.

MR. LANG: Yes, your Honor. Jim Lang on behalf of FirstEnergy this morning.

I did want to start with a motion to strike one page of Mr. Gorman's testimony, and I hope

that in this we can continue to define the
relationship of your Honors' previous ruling with
regard to the distribution case and the evidence from
that case and its relationship to the ESP case.

EXAMINER PIRIK: Hold on just a minute.

Also just a reminder as far as motions to strike go, as soon as the witness -- prior to any cross-examination, motions to strike are appropriate at that time.

Since the cross has been so limited at this point, I'll allow this one time one exception, and then we will see what the motion specifically is, but really we should receive those prior to any cross-examination on testimony.

MR. LANG: Yes, your Honor. I apologize for not jumping in.

What we are looking at is page 15 of Mr. Gorman's testimony. And at page 15 he argues that the 10.5 percent return on equity is inappropriate based on his opinion of risks faced by the utilities.

He also makes a recommendation lower down in the page with regard to the appropriate capital structure it's all relating as all relating to distribution case rates.

Now, I should point out that at page 20 of the companies' Application, paragraph A3D, the company does propose under the plan to resolve the distribution case issues by, among other things, establishing allowed rate of return -- allowed rate of return and equity at 10.5 percent.

Now, our understanding of your previous ruling with regard to the distribution case issues is that we are not going to revisit or reargue issues that have already been argued -- evidently issues that have been argued in the distribution case such as the merits of the 10.5 percent, yet the companies are -- the companies are retaining this 10.5 percent number as part of their ESP to the extent that it's offered in this one paragraph of the plan as one of the settlement positions as a way to settle the D case.

But, you know, we believe to the extent -- we believe that your prior ruling is to the extent witnesses are attempting to get into the evidentiary support for issues that have been argued in the distribution case that, you know, that we don't want to reargue all of those issues.

And so I think Mr. Gorman on page 15 of his testimony, is doing that. He is rearguing the appropriateness of the 10.5 percent. He is rearguing or at least making recommendation with regard to the capital structure.

And so on that basis we are moving to strike just this one page of his testimony.

EXAMINER PIRIK: Ms. Wung.

MS. WUNG: Yes, this is the dilemma we were facing when we were attempting to parcel out there is a deferral on the riders and that is what Mr. Gorman is sort of addressing in part of page 15.

And the question is how do you want to parcel that out because the foundation he is using is obviously what the company has in their equity.

EXAMINER PRICE: On the other hand, he is not proposing a different number for the deferral, he is simply saying that -- he's not proposing, no, the Commission should not use the return on equity from the rate case; it should use a different number, long-term cost of debt.

He is going right to whether the appropriateness of this number is -- whether this number is appropriate, not the Commission pick a different number. See what I am saying?

MS. WUNG: Yeah, we do understand that.

Again, we struggled with this page as

well. We are not certain exactly how the Commission
wants us to deal with this particular page.

EXAMINER PRICE: And, again, I think part
of the problem is it's difficult to characterize
FirstEnergy's Application because it's unusual to
have an offer of settlement as part of a formal

docketed case.

I have preferred to look at it as an assumption rather than an offer of settlement because it makes more sense for an Attorney Examiner to view it as an underlying assumption behind the Application rather than we are offering to settle the distribution rate case right now. That's something that needs to be done outside of a formal Application.

EXAMINER PIRIK: I think, as we have stated before, the return on equity is going -- that decision will be made in the distribution case.

That's not going to be made -- those arguments were set forth there, and to the extent it may be inferred that this paragraph in any way is to affect the distribution case, that is not the case.

I mean, it will be taken -- I mean, there is a fine line here between what we are going to allow in this record and what the decisions are going to be in this record.

We are going to deny the motion to strike but with the caveat that, you know, it is a difficult line, and we do appreciate you pointing that out, once again, that we need to walk that fine line.

MR. LANG: Thank you, your Honor.

MS. WUNG: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Lang:

Q. Mr. Gorman, good morning.

A. Good morning.

Q. The Commercial Group that's representing Wal-Mart's, Sam's Club, BJ's Wholesale Club, and Macy's, are these what you refer to in your testimony as high load factor customers?

A. Yes.

Q. The experience that you identify in your testimony, among other things, I believe, and we had discussed previously you have experience with regard to competitive power solicitations and competitive supplier defaults or negotiations with regard to competitive -- competitive supplier defaults; is that correct?

A. Yes.

Q. And with regard to that experience, your clients typically have been industrial or commercial customers; is that correct?

A. Industrial customers.

Q. In the testimony that you have submitted, am I correct that you were not offering an opinion as to whether the electric security plan proposed by the companies is more favorable in the aggregate than the expected results from an MRO?

A. I did not look at their plan from that standpoint, correct.

Q. So you are not offering an opinion on that particular issue?

A. Correct.

Q. And you are not offering an opinion as to what the expected result from an MRO or market rate option might be?

A. I didn't look at that, that's correct.

EXAMINER PIRIK: Mr. Gorman, can you pull the microphone a little closer?

Thank you.

Q. Now, again, as we discussed previously, your understanding of the Commission's review in this proceeding is that the Commission will do what the Commissions traditionally have been, which is apply a

reasonableness and prudence review to the companies'
Application; is that your understanding?

A. To ensure prices are just and reasonable,
yes.

Q. Now, you state in your testimony, I
believe, at page 3, that 80 percent of the revenue

from the plan comes from riders. And you argue that riders will reduce FirstEnergy's incentive to manage costs.

Is that a correct statement of your testimony?

A. Well, that's one concern or criticism of riders, yes.

Q. That criticism does not apply to rider GEN, G-E-N, correct?

A. Well, if it's an automatic pass through rider, then it would apply to that, yes.

Q. What is your understanding of how FirstEnergy will incur costs that are passed through in rider GEN?

A. My understanding is that the prices through rider GEN should be equal to or lower than the prices that would be available under a market rate option.

There is various methods; the company can

procure power as a standard offer rate, including
competitive solicitations or other methods which may
entail contract -- federally-approved contracts with
affiliates.

EXAMINER PIRIK: Mr. Gorman, I think your
counsel is even having a hard time hearing you.

Maybe it's just not picking up very well.

A. I'm sorry, did you hear my response? Is this better?

Q. I did but, yeah, now I think everyone else in the room might be able to.

A. All right. To repeat, my understanding of how they can procure power for rider GEN would be through either competitive solicitation contracts with affiliate generation suppliers, potentially other means.

The objective of rider GEN as I understand it is that it should be at a price that is equal to or lower than a market rate option.

Q. What is your understanding of how the companies as proposed in their electric security plan will acquire the generation that will be then sold to retail customers understand rider GEN?

A. Isn't that the same question?

Q. Well, would your answer be the same?

Your understanding is --

A. Could you repeat the question?

Q. I am asking for your understanding of the companies' proposal in their electric security plan as to how they are going to acquire generation, power, and capacity that they would provide to retail

customers under rider GEN.
A. My understanding of the companies' proposal is that they will procure it from an affiliate company at stated prices in their electric security plan. And they represent that those prices are lower than a market rate option.
Q. Now, back to the issue in your testimony, under that situation how does, you know, the use of a rider to pass through the costs of that generation to retail customers reduce the companies' -- the utilities' incentive to manage costs?
A. Well, the issue with the rider is whatever costs the utility incurs, they simply pass it on to the customers.
If it's a competitive solicitation and the cost is through the rider, the company may not have as much of an incentive to aggressively manage those competitive solicitations to ensure they get the lowest possible cost.

If it is a contract with the supplier or an affiliate, there may be less of an incentive on the companies' part to assure that the affiliate manages its generation split in order to minimize its cost to generation because all those prices would simply be passed on to retail customers.

It takes the economic -- the company -- the distribution utilities' economic interest out of the actual price and price management of the generation element.

Q. Now, in this case the utilities don't own generation assets, correct?

A. The distribution utility does not. FirstEnergy owns generating assets.

Q. And we're here talking about the distribution utilities' electric security plan, correct?

A. Well, you made that clear now. You didn't a minute ago.

Q. So the distribution utilities have to acquire power somehow in order to satisfy their standard service -- standard service offer obligation, correct?

A. Yes.

Q. The determination of the cost pursuant to

which they acquire that power is not affected one way
or the other as to whether the cost of that
acquisition is passed through to customers using a
rider or whether it's passed through to customers
using something that you might call a generation base
rates, is it?

A. Well, it is, yes. There's various elements of risk associated with providing generation service.

And competitive solicitation from an industrial you might price it at a fixed rate, where the supplier takes some of that commodity risk or the volume risk and other elements of generation supply risk so there is risk elements in the provision of generation service that have to be managed.

With a rider mechanism, the distribution utility company has no real incentive to manage those risks on behalf of retail customers.

Q. If the cost of the generation is under the plan -- strike that.

The rider GEN we have been discussing is a large percentage of the 80 percent of the revenue structure that's -- that's in riders; is that correct?

A. Yes.

Q. Do you know what percentage that rider GEN makes up?

A. I didn't calculate that, no.

Q. Criticism, again, about riders with -- and riders relating to incentives to manage costs, that criticism does not apply to riders that are designed to recover costs that have been previously approved by the Commission for recovery; is that correct?

A. Generally, yes, although in this case I think there is an issue with recovering certain deferred fuel costs and the carrying charge methodology proposed to accrue on those deferred fuel balances while they are being amortized -- cost recovery from customers so there can be issues relating to an appropriate charge for those riders even if they are balances of cost that have been approved for recovery.

Q. And the issue specifically is carrying costs may be calculated or may be determined based on those deferrals?

A. In this instance, yes.

Q. Now, let's talk about the -- the issue of incentives to managed costs.

Am I correct that this is -- that the

issue is the recovery of costs to be incurred in the
future or carrying costs to be incurred in the future
such as I think in your testimony you reference the
nondistribution uncollectible rider?

A. That is one element of costs the company
is proposing to recover through the special rider,

yes.

Q. And -- turn the page here. In your opinion, and I'm looking at page 4 of your testimony, lines 14 and 15, it appears your opinion is that a utilities' incentive to manage its costs is reduced if it is -- your statement here, if it "is simply guaranteed immediate dollar-for-dollar recovery of costs through a rider mechanism...."

A. Yes.

Q. Is this a rhetorical flourish on your part, or is it your understanding of these riders that there is immediate dollar-for-dollar recovery of costs?

A. Well, "immediate" may be -- meaning of "immediate" in this is not clear, but there is a relatively quick recovery of the costs incurred and then recovered from customers under these riders.

Q. So when a rider is used, there is still delay in cost recovery, but in the instance of this -- in the example of this plan, it may be less delay or a reduced regulatory lag as compared to what you have in a traditional rate case?

A. That's right.

Q. The NDU rider which I just mentioned, the nondistribution uncollectible rider, do you know how often that rider is reconciled?

A. I believe it's annually.

Q. And so with regard to that rider and others is there still a time value of money issue that provides an incentive to the utilities?

A. Well, there is. I mean, from the standpoint of managing those costs it's -- the uncollectible expense is recovered through a rider.

There is no incentive for the utility to seek collection of those costs from customers that would pay their bill because they will just pass it on to other customers and will receive payment.

So that erodes the companies' incentive to go after customers that owe them money because it will simply be recovered from other customers to the extent customers that don't pay result in uncollectible expense for the utility.

Q. Do you know whether the costs that are proposed to be recovered under any of the cost-based riders will be subject to Commission review?

A. I believe the Commission has the authority to review all the costs and the prices in the ESP.

Q. Is the Commission review and staff review, is that also an incentive?

A. Well, it may be an incentive for complete neglect on the companies' part, but as somebody that used to work for commission staff, it would be extremely difficult to determine whether or not the company is extending reasonable and aggressive efforts to collect uncollectible expense, as an example.

So the prudency standard which would be reasonable standard could be raised in those types of proceedings, but it's a difficult standard to meet when you are on the Commission staff.

Q. Let me just ask, is it your viewpoint from your prior work -- prior work on a commission staff that the -- that the utilities' conduct and the work of the employees of the utility will default to complete neglect as you have just said?

A. Can you repeat that, please?

Q. You just said that to avoid complete neglect on behalf of the employees in, for example,

pursuing uncollectibles, and I want to know is that
your view from working on a commission staff, that
that the default position -- what you expect to
happen -- if there aren't firm regulations in place,
what you expect to happen on behalf of the utility
employees is that they will completely neglect their

jobs in what they are out there doing?

A. Well, no, it's not. My understanding is that a utility management has a fiduciary responsibility to shareholders, and the primary objective of aiding that fiduciary responsibility is increased products, so management would likely direct their employees to put more emphasis on parts of the company that will help it achieve greater earnings.

To the extent you eliminate the cost component of that company from the profit center of the company, then it's probable that that will be given lower priority by utility management and employees to manage.

That would be the case with an expense like an uncollectible account that would be recovered in an annual true-up mechanism such as a rider.

It would not have as great an impact on the bottom line to the utility so it might not get the same priority it would if it was more of a profit center line item issue.

Q. I'm trying to understand, your argument is that that's related to collection of those costs through a rider versus collection of those costs through a traditional rate case format.

How is that -- how is the recovery

through a rider that still has time value of money issue, still has Commission review, how is that -- how does that create a reduced incentive as compared to the rate case?

A. Well, let's consider an example.

A utility had $100 of uncollectible expense built into its base rates and those base rates wouldn't be changed until the next rate filing. Those rates go into effect. The utility has $120 of uncollectible expense.

The utilities' earning -- pretax earnings would be reduced by $20, so it would have the incentive to strengthen its earnings to achieve the authorized return of equity by going after customers that haven't paid their bill.

So it reduces their profit to allow their uncollectible expense to rise above that which was approved in the last base rate case.

Now, let's assume those uncollectible

expenses are recovered through a rider. If the uncollectible expense goes from $100 to $120 through a rider mechanism, the utilities' rider price goes up and that additional $20 of uncollectible expense is passed on to customers that do pay their bill, and it doesn't impact the utilities' earnings.

So recovering through base rates without annual adjustment mechanisms makes than an issue that will impact the utilities' bottom line, so they have to manage that cost.

If it's recovered through a rider, those increased costs will simply be passed on to customers and won't impact the utilities' bottom line. So with the rider mechanisms there is less insensitive for the company to manage costs.

Q. With regard to your testimony discussing the generation charge that's proposed -- the generation charges that are proposed by the company, am I correct that you support the company's proposal for seasonal generation rates that are adjusted by voltage levels?

A. And the time of day option, yes.

Q. And I was going to get to that. And you also support the time of day option.

A. Yes, sorry.

Q. And you are not opposed to deferral of
the discount offered off the generation price to
transition to market pricing; is that correct?

A. No. Based on the assumption that is
equal to the utilities' actual costs of generation,
that would not be -- it would be reasonable to allow

them to defer that and recover it from the customers that got the credit if it's consistent with the companies' actual cost of generation.

Q. And -- and the deferral, you do recommend that the cost of the deferral should be recovered from retail customer classes on the same basis as the -- as the benefit was obtained from those customers; is that correct?

A. Yes, the class of customers that got the credit should reimburse the utility for the credit when the reconciliation takes place.

Q. And you also agree that whichever deferral mechanism is employed, that that mechanism should provide full cost recovery of these deferrals to the companies?

A. That should be the design of -- I don't oppose that design of that reconciliation process.

Q. With regard to your testimony concerning the rider DSE, or the demand-side management energy

efficiency rider, do you agree that high load factor
customers such as your clients you are testifying on
behalf here this morning will have the option of
avoiding charges under that rider?
A. There are avoidance criteria in the
rider, yes.

Q. And, in fact, The Commercial Group of customers desires to have this option available to them; is that correct?

A. Yes.

Q. And as far as you know, are the -- are The Commercial Group entities interested in having their DSM and energy efficiency activities at their facilities qualifying for avoidance both qualifying as part of the energy efficiency improvements that the utility is required to make under state law and qualifying for avoidance under the DSE rider?

A. Well, I understand there is qualification provisions that allows the customers to opt out, and those qualification provisions should reflect those companies' ability to reduce energy and reduce peak demands in line with what the law is prescribing as a policy for statewide targets.

Q. And I believe in your testimony your recommendation is that to the extent a customer such as a Wal-Mart or Wal-Mart Stores already have made significant investments in energy efficiency and that those investments continue to reduce energy consumption or peak demand, that those reductions should contribute to the utilities' requirement to meet energy efficiency thresholds; is that correct?

A. Well, they should qualify for those companies to be able to opt out of the utilities' demand-side management energy efficiency rider because they are making those types of investments reduce their energy and peak demand, and investments they have made in the past have not fully realized their energy reductions and peak demand reductions capabilities.

So simply because it's already been installed doesn't mean you've fully realized all the energy efficiencies that can be obtained from those programs.

Q. Okay. And that's what I wanted to ask is if you could explain how as you are proposing in the store, for example, you know, makes an investment toward energy efficiency or, you know, peak reduction in 2006, which then certainly continues to impact how that store operates on a going forward basis.

How would you -- how would you determine

the value of that for purposes of the -- the energy
efficiency targets that start in 2009 and then 2010
and 2011?

A. Well, I think that's what the customer
would show to the Commission to get authority to opt
out in the rider to show their investments in these

programs will continue to create energy efficiencies, and they are doing it on their own, so they shouldn't be forced to participate in the utilities' programs.

I'm not going to try to identify all -- all analyses and all concepts that may help make that demonstration to the Commission. But it is within the realm of possibility possibly even planning for these types of programs that the energy efficiencies don't come all at once but can come over time as either store's load expands because of the increasing footprint size or other -- other legitimate economic considerations of those programs.

So I am not trying to limit it, but I think it's a demonstration those companies and those customers can show to the Commission in getting authority to opt out of the DSM. The utilities' DSM and energy efficiency programs?

Q. I think actually somewhat a perfect segue to my next question. At page 9 of your testimony, lines 20 and 21, you state that the types of investments which allow a customer to avoid the DSE rider charge are too restrictive. Can you explain what you mean by "too restrictive"?

A. Well, I think we went over this in my deposition. In the tariff there is actually descriptions of specific programs which would qualify a customer to avoid the DSE rider.

I believe that the avoidance criteria should simply be that if they are installing energy efficiency programs, whatever they might be, that reduce energy consumption or reduce peak demand in line of the targets set up for you, the utility company, then that should be a qualifying factor that allows those customers to opt out of the utilities' demand-side management energy efficiency programs. It shouldn't constrain it to simple descriptions that the utility is proposing because you may not have thought of all the programs or initiatives that are available in the marketplace.

Q. So to make sure I understand it, the issue is that the categories of programs identified in the rider that would qualify a company for avoidance may leave something -- may leave another type of energy efficiency or DSM program out that could be developed, for example, might be developed in the future but doesn't fit comfortably into those categories in the rider; is that your -- is that what you are saying?

A. Well, my concern is that if you try to narrow the scope of what would qualify as an energy efficiency in a demand-side management program whether it exists today or exists in the future you may be missing opportunities for a more efficient energy efficiency and demand-side management programs.

The company shouldn't attempt to describe in a tariff all programs that will meet the ultimate goal of reduced energy and demand.

Q. As we sit here today, you don't know what else you would include in that description in terms of other categories, do you?

A. Well, I think we talked about this in my deposition. I think the ultimate standard should be a demonstration by the customer to the Commission they will reduce energy consumption. They will reduce peak demand.

It shouldn't be restricted to some generic descriptions in specific programs as the company is proposing to do.

Q. When we talked in your deposition on October 8, you were unsure whether The Commercial Group of companies also might have the option of entering into a reasonable arrangement or a special contract with the utilities, that you had said you would have to verify that.

Have you verified whether that's an option for those companies?

A. I have not.

Q. I think we touched on this at the start, but just your review of the generation rates proposed in the electric security plan is that they are cost based, correct?

A. That was my assumption based on the companies' filing. As I understood it, they were buying from their affiliate, and those prices that they stated were at the prices the affiliate was going to sell to them.

Q. So the utilities' cost is the contract price that the companies will pay to acquire generation. That's what you mean by cost based.

A. That would be cost, yes.

Q. In preparing your testimony for the electric security plan case, did you review the companies' market rate option proposal?

A. I did not.

Q. Is it your understanding that if the Commission were to reject the company utilities' electric security plan filing that's under review in this case, that those -- that the company utilities would have to file another electric security plan that the Commission finds acceptable?

A. Yes.

Q. At page 8 of your testimony you make recommendations regarding a possible securitization of the companies' deferred generation costs. And I want to just take you through a couple of your recommendations with regard to securitization.

One of your recommendations is that you recommend, as included in the companies' securitization plan, that the Commission should conduct a separate proceeding in the future to investigate the merits of securitization financing; is that -- do I have that -- did I correctly relate that?

A. Yes, you did.

Q. Thank you.

And you recognize the securitization has the potential to significantly lower the cost of carrying these deferrals.

A. Yes.

Q. Am I correct that for security -- well, let me ask you first have -- with regard to the securitization recommendations that you have in your testimony, what experience do you draw upon with regard to securitization, particularly utility securitizations, in making your recommendation in that portion of your testimony?

A. Well, I participated in many securitization proceedings related to standard cost proceedings that took place in the late '90s on storm damage cost recoveries, securitizations taking place more recently.

All of those proceedings are prior to the current change in the financial markets and whether or not that is the impact of the securitization financing remains to be seen, but the first -- over the last 10 years I have been involved in several securitization proceedings.

Q. And from your experience for a securitization to succeed, among other things, that would you agree that there needs to be an irrevocable securitization bond charge and reconciliation of bond charge?

A. In order to achieve the highest corporate bond rating on the securitization bonds, those are typical features that are required, and in both the legislative approval of securitization bonds and the irrevocable Commission order providing for those features.

Q. And are these features that you have

mentioned included in the securitization framework that's Attachment A to the -- to the electric security plan application?

A. They are basic features in there, yes.

Q. And I believe also when we talked about this in your deposition, you identified that there is an Internal-IRS issue. Is that -- is that an issue that requires the use of what's called a special purpose or single purpose entity?

A. Yes.

Q. And --

A. At least it has in the past.

Q. Okay. And is that also part of the companies' securitization proposal?

A. The outline of it, yes.

Q. Now, in your testimony you also discuss the NDU rider, and you recommend that the Commission not approve the NDU rider, correct?

I think we are around page 14, pages 13

and 14.

A. Yes, that's correct.

Q. Do you agree that the utilities will incur uncollectible costs in providing standard service offer generation to customers?

A. Yes.

Q. And you also agree that the utilities should be able to recover their reasonable uncollectible expenses, correct?

A. Yes.

Q. Am I correct that you recommend that the utility recover these costs -- should be able to recover these costs either as part of distribution rates or as a component of the generation service rider?

A. Well, my understanding is part of the distribution rate structure is the generation service rider, so it should be related to the generation component of that rate, because I'm certainly customers will charge the market rate option but will buy distribution services from the company, so it should coincide with the companies' generation service rider, or some cost recovery of uncollectible nondistribution costs should be collected from the customers that are providing -- receiving that service from the company which is predominantly generation and transmission service. So it should be allocated to customers buying generation from the company.

Q. We will go to the your return on equity discussion, and I just have a few questions. And one a clarifying question at page 15 of your testimony on line 7. That's a sentence that appears on lines 6 and 7.

In this -- in this paragraph you refer both to the companies and to FirstEnergy. Your use of "FirstEnergy" in the last line of that paragraph, what do you mean when you say FirstEnergy there?

A. It should be FirstEnergy's distribution utility affiliates, Toledo Edison, Ohio Edison, and Cleveland Electric Illuminating Company.

Q. So you are using "FirstEnergy" interchangeably with "companies"?

A. At that point in the testimony, yes.

Q. On page -- on line 10, the same page, you refer to traditional ratemaking practices. Can you spell out for me what you mean by "traditional ratemaking practices"?

A. Traditional ratemaking practices are proceedings which the Commission monitoring the utilities' cost to ensure they are just and reasonable and that the price is paid by retail customers -- pardon me.

That the costs incurred by the utility are reasonable and prudent and that the prices paid by retail customers is just and reasonable and provides fair compensation to the utility.

Q. And when you get to a determination of the return on equity, is that -- those traditional practices normally include the use of a -- of a DCF or a CAPM or risk premium studies to estimate the utilities' current market cost of equity; is that correct?

A. Yes.

Q. And that -- what's done there is a forward-looking process, is it not?

A. Well, it's -- those models use forward-looking expectations to derive the current market cost of equity, yes.

Q. In recommendation in your testimony that a -- that return on equity around 10 percent should be used. You did not perform that traditional ratemaking analysis, correct?

A. Well, not for this case, but I routinely perform those -- those cases in other rate proceedings and I generally keep informed on current market cost of equity for utility companies.

Q. With regard to what you reviewed, you did not review any testimony filed in the companies' distribution case on that subject, correct?

A. Correct.

Q. So you don't know what the range of recommendations was that was made in the distribution case, correct?

A. I know 10.5 percent is staff's pinpoint range is identified in the companies' filing.

Q. On page 16 of your testimony.

A. I'm there.

Q. And another issue we just -- we discussed previously at line 16, three-quarters of the way into that line you have a sentence that starts "all incremental additions" and then carrying over, "all incremental additions to distribution plant would then be deferred in a deferral account."

Your reference to "all incremental," "all incremental additions," is that -- is that a correct description of the companies' proposal?

A. That's my understanding it is. The company is proposing to defer certain line extensions and all incremental plant inductions after 2008 and deferred accounts, which include plant investments, depreciation expense on it, and interest related to that plant.

Q. And at the bottom of that page 16, line 24, you made a correction to your testimony at the start changing "can" to "may."

Did you make that change because you don't know, you know, sitting here today whether the change that you are referencing in this sentence, "This change in net plant and rate base can be supported at current distribution rates...."

A. That's -- it would depend on the actual capital additions to the plan relative to the buildup of the accumulation of depreciation reserves and deferred income taxes.

Q. And you have not conducted that analysis to determine whether that's the case?

A. That's right. I didn't see it in the companies' filing in this case either to demonstrate it was necessary or appropriate to allow for those deferrals.

Q. On page 17 of your testimony where you discuss the companies' performance targets proposal, I don't see there and you are not suggesting that the companies should adopt any particular kind of reliability target, are you?

A. I believe the companies' proposed SAIDI target set is reasonable. I just don't believe they have justified an appropriateness of getting a price increase if they achieved their targets.

Q. So you are not -- so you are not

recommending a particular target for SAIDI that the companies would use, correct?

A. Correct.

Q. And the companies' SAIDI target may be appropriate, correct?

A. May be appropriate, correct.

Q. If the companies can make the case that they are providing superior service, then you agree that a performance reward might be justified, correct?

A. It might be justified if the company made that filing, yes -- made that demonstration.

MR. LANG: Your Honors, I have no other questions.

EXAMINER PIRIK: Thank you.

Mr. Wright.

MR. WRIGHT: Yes, thank you, your Honor. Could I have just one moment, please?

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CROSS-EXAMINATION

By Mr. Wright:

Q. Good morning, Mr. Gorman. I am Bill Wright and I represent the Commission staff --

A. Good morning.

Q. -- in this case.

MR. BELL: Excuse me, could we use the mike? He's better but it's still a little light over there.

MR. WRIGHT: Thank you, Mr. Bell.

Q. Following up on the last line of questioning, did I understand you to just testify that you believe that the companies' proposed SAIDI target in this case is reasonable?

A. I did not --

Q. Did I misunderstand?

A. You misunderstood.

I think the question was along the lines do I have reason to believe it was not reasonable, and I have no reason to believe it's not reasonable.

I didn't specifically look at the SAIDI target to determine whether it was an appropriate target. I simply recommended they shouldn't get a price increase simply by providing reliable service because I think they are already -- have a responsibility to provide reliable service.

Q. Is it -- based on that statement, is it your testimony that if the company -- and I believe let's talk about CEI, for example -- if the company is able to establish superior service, that they should be rewarded in some way for that?

A. I think the question was -- I'm sorry, that's a new question. I apologize.

If an establishment can be made for superior service, then the company, I think, could make a request and show the appropriateness of receiving some sort of reward for it.

The standard should certainly be something far outside of what is reasonable to expect a utility to provide in terms of reliability and show, I would think, that there is some measurable economic benefit to customers because the reliability is above and beyond what is reasonable to expect from a utility.

MR. WRIGHT: That's all I have. Thank you.

EXAMINER PIRIK: Ms. Wung?

MS. WUNG: May I have a moment, your Honor?

EXAMINER PIRIK: Yes.

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

EXAMINER PIRIK: We will go back on the record.

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REDIRECT EXAMINATION

By Ms. Wung:

Q. I just have one question, Mr. Gorman. Do you remember the line of questioning from Mr. Lang with respect to the forward-looking process or looking at the return on equity?

A. Yes.

Q. Is it also fair to say that using that process, would you still use historical numbers for comparison purposes?

A. Well, yeah. I mean, that -- the idea behind making an -- estimating current market cost of equity is based on what has happened in the past to form expectations of what will happen in the future.

For example, the relative relationship of the authorized return on equity relationship to contemporary bond to develop risk premiums, that's generally derived from historical information, use that historical information to then form expectations of what will happen into the future.

So history provides sound information to form expectations of the future, and that generally is used to make estimates of what the current market cost of equity is at this time.

MS. WUNG: Thank you. I have no further

questions.

EXAMINER PIRIK: Mr. Bell?

MR. BELL: No questions.

EXAMINER PIRIK: Mr. Small.

MR. SMALL: No questions, your Honor.

EXAMINER PIRIK: Mr. Yurick.

MR. YURICK: No questions, your Honor.

EXAMINER PIRIK: Ms. McAlister.

MS. McALISTER: No, your Honor.

EXAMINER PIRIK: Mr. Rinebolt.

MR. RINEBOLT: No, thanks, your Honor.

EXAMINER PIRIK: Mr. Smith.

MR. SMITH: No, your Honor.

EXAMINER PIRIK: Mr. Breitschwerdt.

MR. BREITSCHWERDT: No questions.

EXAMINER PIRIK: Mr. Stinson.

MR. STINSON: No questions.

EXAMINER PIRIK: Mr. Kurtz.

MR. KURTZ: No questions.

EXAMINER PIRIK: Mr. Lavanga.

MR. LAVANGA: No questions.

EXAMINER PIRIK: Mr. Lang.

MR. LANG: No questions.

EXAMINER PIRIK: Mr. Wright.

MR. WRIGHT: No questions.

MS. WUNG: Your Honor, at this time I would like to move for the admission of Commercial Group Exhibit 1, direct testimony of Michael Gorman.

EXAMINER PIRIK: Are there objections?

MR. LANG: No objections.

EXAMINER PIRIK: Hearing none, Commercial Group Exhibit 1 shall be admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PIRIK: We will take a break until -- why don't we take a break until 25 till, so we'll take a 15-minute break and give some time.

(Recess taken.)

EXAMINER PIRIK: We will go back on the record.

Mr. Yurick.

MR. YURICK: Thank you, your Honor.

if I could have marked as Kroger Exhibit 1 which is the prefiled testimony of Kevin Higgins.

EXAMINER PIRIK: The document will be so

marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

(Witness sworn.)

MR. YURICK: Mr. Higgins -- is this on?

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KEVIN C. HIGGINS

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

DIRECT EXAMINATION

By Mr. Yurick:

Q. Mr. Higgins, could you please state your full name, spell your last name for the record, and state your business address, please.

A. Yes. My name is Kevin C. Higgins, H-I-G-G-I-N-S. My business address is Energy Strategies, 215 South State Street, Suite 200, Salt Lake City, Utah 84111.

Q. And, Mr. Higgins, by whom are you employed?

A. I'm employed by Energy Strategies.

Q. And on whose behalf are you offering testimony in this proceeding?

A. I am here on behalf of The Kroger Company.

Q. Showing you what's been marked Kroger's Exhibit No. 1, is that your prefiled direct testimony in this case?

A. Yes, it is.

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

A. I do not.

Q. If I were to ask you the questions set forth in your prefiled testimony, would your answers be the same as they were in the testimony?

A. Yes, they would.

MR. YURICK: Your Honor, the witness is tendered for cross-examination.

EXAMINER PIRIK: Thank you.

Mr. Bell.

MR. BELL: Thank you.

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CROSS-EXAMINATION

By Mr. Bell:

Q. If you turn to page 3 of your prefiled testimony, Mr. Higgins. By the way, my name is Langdon Bell, and I represent the Ohio Manufacturers Association.

A. Good morning, Mr. Bell.

Q. On line 14 where you speak of the overall

impact of the generation rates, you mean the overall
impact of the generation rates to be charged under
the ESP for the next three years?

A. Yes.

Q. You are speaking in terms of the total
revenues to be received by the company over those

three years, are you not, and the increases in those revenues from year to year?

A. Yes, sir. The total revenues, and that would be excluding the companies' proposal to defer certain generation revenues.

Q. I understand that. We aren't talking about authorized revenues; we are talking about the collected revenues, are we not, over the -- over the three-year period?

A. Exactly.

Q. Thank you.

Now, you do not address in your testimony in any way, shape, or form the companies' proposed distribution of revenue responsibility for those revenues in each of those years between each of the three companies, do you?

A. Between each of the three companies, no, I do not.

Q. You recognize, do you not, Mr. Higgins,

that the company has proposed rate increases --
revenue increases, so that we are using the same
terminology here, to be collected twice the increase
on Toledo Edison customers in terms of total revenue
than it has proposed collecting from CEI and Ohio
Edison?

A. Well, I realize that there is -- that there is differences in the revenues, and subject to check, I'll accept what you said in terms of the impact on Toledo Edison with respect to revenue.

Q. I guess my point is simply this, did you not attempt to inquire into the reasonableness or the alleged bases upon which the company is suggesting that revenue collection distribution is reasonable or appropriate in this case?

A. That is correct.

Q. Turn to page 4 of your filed testimony. You address the issues of the impact of the companies' proposals upon high load factor customers and then state, beginning on line 5, "To remedy this problem, I recommend that the Commission modify the generation charge rate design for any rate schedule that has load-factor-differentiated generation rates."

Could you identify those particular rate schedules?

A. For all practical purposes, it would be all nonresidential rate schedules with the exception of street lighting.

Q. Thank you.

In effect then it -- it includes rate

schedules beyond those rate schedules under which
Kroger's secures service; is that correct?
A. That is correct.
Q. And that is to eliminate, if I understand
your testimony correctly, the substantial impact upon
high load factored tariff classes; is that correct?
A. No, sir.
Q. Aren't you indicating that the impact --
you are attempting to portray for the Commission the
difference in impacts upon tariff schedules that
currently have a demand component in the rates?
A. I'm -- I'm identifying a problem that
affects every rate schedule that has a demand
component or a load factor related component in the
generation rate.
The proposal though speaks to affects
within each rate schedule as opposed to across the
different rate schedules, and so you might have a
rate schedule, for example, that was not a

particularly high load factor rate schedule.

Within that rate schedule there are going to be customers who would be higher load factor customers than others, and so my proposal speaks to the differential impacts within each rate schedule with respect to load factoring and attempts to address a problem I see with the companies' proposal.

Q. Thank you, Mr. Higgins.

Have you attempted in your review of the rate design embodied in the ESP what is the -- what rate schedule sustains the greatest revenue increase in terms of a percentage increase?

A. In general, it's the GT rate schedule.

Q. Is it not -- is it not -- excuse me.

Is it not a fact, Mr. Higgins, that some rate schedules actually have decreases in revenues?

A. For Toledo Edison, that's the case.

Q. And what rate schedules in Toledo Edison would actually sustain a rate decrease under these -- this ESP?

A. Well, I don't have the list in front of me, but I would -- my recollection is it's most of them.

Q. Most of them?

A. Most of the rate schedules for Toledo

Edison would experience a rate decrease under the companies' proposal, except under GT, as I recall.

Q. And that would be true you are suggesting even with respect to if those tariff rate schedules that have higher than average load factors?

A. Well, I would -- I'm not quite following your question. I would presume that GT probably has the highest load factor on average, and so it receives -- it does receive a rate increase under the companies' proposal.

Q. You have not attempted to quantify it, those rate increases?

A. Well, I've seen them. I mean, they are already in the record.

Q. Now, is it correct that on the basis that you are recommending the approval of the proposed charges to be levied upon customers and collected from customers over the next three years from -- under the ESP plan?

A. Did you ask me if I was recommending approval of that?

Q. Yes.

A. No. I don't make a specific recommendation to approve it. I indicate that it -- it may be reasonable, but I don't recommend its specific adoption.

I realize there will be other factors that the Commission will consider that are put before it and will be weighed by the Commission.

Q. You state in your testimony, do you not, that it is modest, and as a result of its being modest, it may be reasonable?

A. That is correct.

Q. Might it also be unreasonable?

A. That goes -- that is certainly possible as well.

Q. And it might be unreasonably high or unreasonably low from your analysis?

A. I don't think it's unreasonably low.

Q. Upon what basis do you arrive at that conclusion?

A. Well, if it was unreasonably low, I don't believe the company would have proposed it.

Q. Well, the companies' proposing it, could the companies propose it on the basis of the collection of those revenues would meet their cash flow requirements during the three-year period?

A. If that was -- if that was the companies' motivation, it would still be the case a higher rate would provide more cash flow than a lower rate and

so, again, I don't believe that the -- that the rate
is -- that the rate will be too low.

Q. You are specifically opposing the
generation deferral, are you not?

A. Yes, I am.

Q. And the basis for that is it's

intergenerational transfer of responsibility?

A. Yes. In significant part, yes.

Q. Is that something along the lines of passing off cost that we incur today to our children and our grandchildren, our successive customers?

A. That's -- yes, that is a reasonable analogy.

Q. And if, in fact, those deferrals enable us to receive service today that we can't afford and, as a result, pass those costs on to future generations, is that not, Mr. Higgins, something akin to the sub-prime problem that we've had where -- may I finish the question and then we can have an objection -- where we allow individuals who can't afford homes that are not creditworthy to purchase homes and then we bail it out with future generations paying the cost in government bailouts?

MR. YURICK: Mr. Bell, I apologize for cutting you off, but with all due respect to my

distinguished colleague, Mr. Bell, there will be an
objection. I think that question goes far beyond the
scope of Mr. Higgins' testimony.

MR. BELL: I am asking him for the
rationale and is that not in affect an analogous
situation.

EXAMINER PIRIK: I'll allow the question. Objection overruled.

MR. YURICK: Thank you very much.

A. Mr. Bell, I don't believe that that is -- that is not how I would characterize the analogy. I don't -- I don't believe it is quite as extreme as the sub-prime lending problems that we've experienced.

I do agree with the portion of your characterization that says it does create a situation in which consumption occurs today. There are benefits that occur today. And the cost is left for some -- perhaps some other party to pay at a later date. I agree with that.

EXAMINER PIRIK: Mr. Higgins, could you pull your microphone towards you a little?

THE WITNESS: Sure.

EXAMINER PIRIK: Thank you.

Q. Would you also agree that the beneficiary

today is the company, to the extent that the current
benefit in increased cash flow and current benefit
insofar as deferred cost recognition has the affect
of increasing the reported earnings of the company?

A. I agree that the company would benefit
from de -- would -- there would be a benefit to the

company in deferring recovery of the generation expense for the reasons you indicated and, you know, it creates a -- a regulatory asset that would create the basis for future earnings for the company.

Q. Mr. Higgins, does not the companies' proposal effectively and substantially reduce the quality of the companies' reported earnings?

A. Could you repeat that question, please, Mr. Bell?

Q. Does not the companies' propose -- as I have just outlined it for you with respect to the deferrals, has -- which has the tendency to increase reported earnings, you will agree with me there, do you not?

A. Yes.

Q. Does not that proposal substantially impair the quality of the reported earnings?

A. Mr. Bell, I haven't made an analysis of the extent to which the quality of the companies'

reported earnings would be -- would be impaired.
You know, I see the thrust of your point in that these are earnings that are -- are really deferred and so they are not cash in hand and so one might view that as less desirable than cash in hand, but I have not made an attempt to analyze that, sir.

Q. With respect to the deferrals, you also do not recommend deferral of distribution-related cost, do you?

A. That is correct. I recommend against that.

Q. Could you turn to the bottom of page 7 of your prefiled testimony, Mr. Higgins. You state there, do you not, "I realize there is precedent on the FirstEnergy system for deferring current generation expense for future recovery. While this may be appropriate in certain extenuating circumstances, the general practice of deferring current generation expense for later recovery raises concerns with respect to the intergenerational equity."

Focusing on that statement, you're comparing the Commission's past deferrals with -- the practice of the Commission in granting past deferrals with the deferrals that are requested in this case, are you not?

A. I'm not comparing but I'm -- so much as to say acknowledging that they have occurred in the past, and I'm not really commenting on those so much as to say that it is important to view the current proposal on its own merit and to really seriously consider the consequences for intergenerational equity of a deferral of these magnitudes.

Q. With respect to intergenerational equity --

A. Yes.

Q. -- the current generation versus the succeeding generation, in the past when the Commission has authorized deferrals, those deferrals have been of fixed, known, measurable, and costs that have been determined to be reasonable by the Commission, have they not?

A. Mr. Bell, I'm generally aware of some of the deferrals. I don't have the -- I can't say that I can confirm what you just said.

Q. Well, let's say storm damage.

A. Yes.

Q. Would that fall into that category?

A. Generally I would expect it would.

Q. How about experienced fuel costs?

A. Generally I would expect it would fall into that category.

Q. Could you name me of one past deferral where this Commission has authorized the deferral of unknown, unmeasurable, nonfixed future generation costs or future costs of any kind?

A. I am not aware of any specific incidents.

MR. BELL: That's all I have. Thank you, Mr. Higgins.

THE WITNESS: Thank you, sir.

EXAMINER PIRIK: Mr. Sites, do you have any questions?

MR. SITES: Your Honor, no questions.

EXAMINER PIRIK: Mr. Small.

MR. SMALL: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Small:

Q. I just have one or two questions, Mr. Higgins. Jeff Small, Office of Consumers' Counsel.

A. Good morning, Mr. Small.

Q. I have a couple of questions concerning page 11 of your testimony and in particular on and around line 18 at the bottom of page 11.

A. Yes, sir.

Q. And here you discuss and you have in parenthesis "ESP generation rider," do you see that?

A. Yes, sir.

Q. For your purposes, your stated purposes in your testimony, wouldn't it be simpler and more direct to just introduce into the FirstEnergy rate design, the demand charges that the company took out in going from current rates to their proposal in this case?

A. Not necessarily, but I do believe that there could be an approach along the lines that you are describing.

It wouldn't be just the demand charge, but FirstEnergy has quite a number of what are called hours-use charges which are charges that are expressed as kilowatt hours per kW of demand or kilowatt hours per kVA, and those types of charges are all -- are very load-factor sensitive.

They are designed to be, and so you would also have to replicate those charges and, in essence, I'm -- I'm suggesting that that set of charges all be retained, and to your point one could either apply a percentage rider as I have proposed or design in a percentage change to each of those components, both

the demand charges and the hours-use energy charges,
and they would accomplish the same thing.
As to which one would be simpler, I would
leave that to someone who is administering that, but
to me it seemed simpler to express it the way I
recommended, but it could also be done another way.

Q. Okay. So if I understood your answer then, and I realize you went beyond the -- my suggestion that it reintroduce the demand charges, but it could be taken care of -- for purposes that you state in your testimony could be taken care of by reintroducing the type of charges not limiting it to demand the types of charges that were taken out by the company in their present proposal; is that correct?

A. Yes, sir.

MR. SMALL: Thank you very much. I have no further questions.

EXAMINER PIRIK: Ms. Wung.

MS. WUNG: No questions.

EXAMINER PIRIK: Ms. McAlister.

MS. McALISTER: No questions.

EXAMINER PIRIK: Mr. Rinebolt.

MR. RINEBOLT: No questions, your Honor.

EXAMINER PIRIK: Mr. Porter.

MR. PORTER: No questions.

EXAMINER PIRIK: Mr. Smith.

MR. SMITH: No questions.

EXAMINER PIRIK: Mr. Breitschwerdt.

MR. BREITSCHWERDT: No questions, your Honor.

EXAMINER PIRIK: Mr. Keiffer.

MR. KEIFFER: No questions.

EXAMINER PIRIK: Mr. Stinson.

MR. STINSON: No questions, your Honor.

EXAMINER PIRIK: Mr. Kurtz.

MR. KURTZ: Yes, your Honor, thank you.

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CROSS-EXAMINATION

By Mr. Kurtz:

Q. Good morning, Mr. Higgins.

A. Good morning, Mr. Kurtz.

Q. I want to ask you about your rate design recommendation.

A. Yes.

Q. First of all, let's sort of define rate design. As I'm going to use that term, assume that the utility, any utility, allocates or wants to recover $1 million -- or $100 million from a rate schedule, they can design their rates any number of

ways to collect that -- that amount of money; is that
correct so far?

A. Yes. It speaks to how you collect a revenue requirement that has been assigned to the class of customers.

Q. And you could collect it all through an energy rate, a kilowatt hour charge is one rate design?

A. Correct.

Q. Could you collect it all through a demand charge would be another rate design?

A. Correct.

Q. You could collect it all through an hours-use blocking mechanism you described with Mr. Small.

A. Yes.

Q. You could even, in an extreme case, collect it all in a customer charge, charge every customer the same amount per capita?

A. Yes, you could.

Q. Okay, so rate design is really how you collect money within a rate schedule, and it has no inter -- interclass implications; is that correct?

A. That is correct.

Q. So your business rate design would have no affect on residential customers?

A. Correct, it would have no affect on residential customers.

Q. It really has an affect between the high load factor customers on the rate schedule and the low load factor customers on the rate schedule.

A. Exactly.

Q. And it also is revenue neutral to the utility.

A. Yes, it is.

Q. Okay. Now, the current design of the -- of the operating company tariffs has a load factor sensitive design; is that correct?

A. Yes. For the charges that are generation related they are very load factor sensitive.

Q. Do you know -- do you know that the operating companies currently own no generation?

A. Yes.

Q. Do you know that they currently buy all of their electricity from FES, an affiliate, under a FERC-approved contract on a straight kilowatt hour basis?

A. I'm not familiar with that contract but I accept.

Q. Assume -- assume for this question that the operating companies are buying right now, today, on a straight kilowatt hour charge from FES.

If that assumption is correct, they could still -- and they are dividing up or designing rates with a load factor sensitive mechanism as you've described.

A. Certainly. That's the rates that are -- those are the rates that are in effect right now.

Q. Okay. Now, the proposal of the companies is to -- again, in this ESP, is to buy all of their electricity from FES; is that correct?

A. Correct.

Q. And they are going to buy it all from FES on a flat kilowatt hour charge, $75 per megawatt hour year one, 80, then 85.

A. Well, they are going to -- yes, that's my understanding, yes.

Q. Okay. And but your objection is -- is that they are proposing to radically change the rate design from the existing tariffs.

A. Yes, it is a radical change.

Q. Okay. And your -- their proposal is to charge every member of the rate schedule the same price per kilowatt hour with a seasonal adjustment, I guess.

A. Yes. And it would -- but your statement is correct that even with the seasonal adjustment, every member of the rate schedule would pay the same charge per kilowatt hour.

Q. And as I understand your testimony, that has a very disparate or very far reaching implication

on the customers within the rate schedule depending
on their load factor?
A. Yes. On page 10 of my direct testimony I cited an example in the case of the Ohio Edison service territory for the GP rate schedule FirstEnergy indicates that the impact on that rate schedule is just 5.33 percent of -- of its 2009 rate impact for the schedule as a whole.
However, the companies' workpapers indicate that for a -- if a customer is 500 kW with a low load factor, they would experience a rate decrease of 38 percent in the summer and a rate decrease of 42 percent in the winter, whereas, the very high load factor customer would see a rate increase of 38 percent in the summer and an increase of 23 percent in the winter.
And so, you know, just around this average of 5 percent you see these very, very dramatic swings from a decrease of 42 percent all the

way to an increase of 38 percent in the summer, so
that's -- you know, we can add those together.

I mean that's -- that's an 80 percent swing in rate impact all for a rate schedule that is experiencing this seemingly, you know, relatively modest 5 percent rate increase.

Q. If one of the Commission's goals in this case was to have customer continuity or no rate shock for customers, is the companies' proposal consistent or inconsistent with that?

A. The companies' proposal is grossly inconsistent with that and would have a -- what I would consider to be a very significantly divergent impact on customers that would be detrimental.

Q. And I understand your proposal is relatively straightforward. You just simply apply 5 percent rate increase to the rate schedule, apply 5 percent increase to each of the billing components essentially.

A. For generation, yes. I would focus on generation but, yes, you would target the generation rate schedule for the rate -- for that -- target the generation rate component for the rate schedule applying equal percentage change either as a rider to the generation component or, as Mr. Small indicated, could -- suggested you could apply a percentage change to each individual component. It would get you to the same place.

Q. Are you familiar with the energy efficiency and peak demand reduction goals of Senate Bill 221?

A. I've read the Bill, and I'm generally familiar that that's an objective. I couldn't tell you the specifics of the objective.

Q. Is the rate design proposed by the company consistent with promoting energy efficiency and peak demand reduction in your opinion?

A. I don't think it's consistent with the goal of promoting peak demand reduction in that it doesn't provide any recognized value for generation capacity.

Since there would be no demand charges, there would be no recognition of that whatsoever. In that sense it would not be consistent with promoting conservation of capacity or recognizing peak demand issues.

Q. Let me go back to your example of a 5 percent rate increase to the schedule and 40 percent increase to high load customers. Why wouldn't the customer just shop at that point, just leave the system?

A. I believe a customer that experiences that kind of rate increase would probably have to take a serious look at shopping, although in my understanding of the companies' proposal is that there are -- there are certain impediments to shopping that are also being built into the proposal.

So even though on the surface the indication would be if you don't like these rates, you can go shop, there are other aspects of the proposal that are not terribly friendly towards shopping.

Q. Would one of those aspects be the $10 per megawatt hour MDS charge that you have to pay if you are going to shop?

A. Certainly.

MR. KURTZ: Thank you, your Honor.

EXAMINER PIRIK: Mr. Lavanga.

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CROSS-EXAMINATION

By Mr. Lavanga:

Q. Good morning, Mr. Higgins. My name is Mike Lavanga, I'm an attorney for Nucor Steel Marion.

A. Good morning, sir.

Q. Just a couple of very quick questions and then following up on some of the other questions.

You are recommending here that to -- to address the disproportionate impact on higher load factor customers that you would -- you would have a -- basically have a percentage adder rider on top of the generation charge for those customers; is that

correct?

A. Yes.

Q. For those specific load factor differentiated generation rates?

A. Yes. The first step would be, of course, to retain the existing generation rates and then, yes, and then to apply percentage rider as you described.

Q. My question is couldn't you -- couldn't you take that approach and apply it to all the existing rate schedules, have just a 5 percent adder on all the existing rate schedules in order to assure consistency and to maintain the relationship between classes?

A. So you're -- are you suggesting rather than a rate schedule specific percentage but to apply instead the same percentage for all its customers?

Q. Yeah, I'm basically saying you retain the current rate schedules and the -- whatever the

generation increase approved under the ESP, say, 5
percent, you would apply that 5 percent to all those
existing rate schedules.

A. That is -- that's not my specific
proposal, but I could -- I could certainly see that
proposal being extended in that fashion.

Q. Would that be reasonable?
A. I would imagine it to be within the range of reasonableness.
MR. LAVANGA: Okay. That's all I have. Thank you.
THE WITNESS: Thank you.
EXAMINER PIRIK: Mr. Petricoff.
MR. PETRICOFF: No questions, your Honor.
EXAMINER PIRIK: Mr. Lang.
MR. LANG: A few questions.
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CROSS-EXAMINATION
By Mr. Lang:
Q. Good morning, Mr. Higgins.
A. Good morning, sir.
Q. If I could just clarify, reviewing your testimony it looked like you had testified previously on several occasions -- several occasions in Ohio regulatory proceedings several involving the

FirstEnergy companies.

Can you just identify for me which proceedings you've testified in in Ohio, say, in the last five years?

A. Certainly. I testified in the FirstEnergy rate stabilization proceeding which was

Case No. 03-2144-EL-ATA. I've testified -- that was in 2004.

In 2005 I testified in the AEP IGCC cost recovery proceeding which was Case No. 05-376-EL-UNC. And I've submitted testimony in the FirstEnergy distribution proceedings which is Case No. 07 point 07-551-EL-AIR, et cetera.

Q. Did you also provide testimony in the FirstEnergy market rate option case?

A. Oh, yes, sir, I did.

Q. And in the market rate option case, am I correct that you -- your opinion in that case was that the MRO was an unattractive option as compared to the ESP?

A. Yes. My testimony was that it appeared to be unattractive in light of the companies' estimate that it would cost customers about $1.3 billion more than the ESP.

Q. And then in your testimony filed in this case, the ESP case, you were -- you were not offering an opinion as to whether the ESP here is more favorable in the aggregate than the expected results of an MRO, correct?

A. That's correct.

Q. You do agree in this case I believe in your testimony that what you -- that the -- the rates that you propose or the deferral of a portion of the generation price of the retail customers does produce a near-term benefit to retail customers, correct?

A. Certainly within the three-year period those customers would not be paying those -- those dollars, so they would experience a benefit in that term, yes.

Q. And as I understand it, you're recommending with regard to overall retail prices is to strip off that deferred portion of the generation price and have the Commission approve a plan that's close -- at least close to the overall price increases that are shown -- that are proposed by the company for that three-year period, correct?

A. Yes.

Q. And so for the -- but the prices that are shown for that three-year period Mr. Bell asked you your opinion is that those prices would have a modest

impact on the overall customer rates during that
period?

A. Yes. You asked me that question, and my
answer is yes, I see it as a modest impact.

Q. And in comparison if the -- if the
deferred portion of the generation price is not

deferred but is added into pricing in the 2009, 2010, 2011 pricing, your opinion would be that the ESP plan at least in that case would be less favorable?

A. Yes, it would be less favorable and I believe would raise serious questions as to whether it should be adopted.

Q. We had talked before, we talked about your experience with the -- the Utah Energy Office. If you could -- was it seven and a half years you were with the Utah Energy Office?

A. Yes.

Q. And what was -- what was the purpose of the Utah Energy Office? Describe its function.

A. Sure, the Energy Utah Office was part of state government in Utah, part of the executive branch, and it had the charge to recommend and implement state energy policy and that focused on state energy conservation programs as well as research and development.

Q. And so that's a separate entity from the -- the entity that regulated public utilities in Utah?

A. Yes.

Q. That would be either the Public Utilities Commission or Public Service Commission?

A. In Utah there is a Public Service Commission that regulates utilities and then there is also a separate regulatory staff that participates in the rate cases called the Division of Public Utilities, and the Utah Energy Office was separate from each of those.

Q. And the Energy Office that you were associated with, that was kind of a -- part of the executive branch that was a -- kind of promoted policy with regard to utility regulation; is that correct?

A. It proceed -- it -- the office was involved in the policy development and some of that touched upon utility regulation, although it was not limited to utility regulation.

Q. Okay. In the seven and a half years you were involved with the Utah Energy Office, how many examples of deferrals of utility costs in the accounting sense did you deal with in Utah?

A. You know, I don't recall having dealt with any deferrals. Of course, the period of time was 1983 to 1990 which I was there, so that -- when I left the Energy Office some 18 years ago.

But to the best of my recollection, I'm not aware of my personal participation in the

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deferral of energy-related costs for a utility.

Q. In your testimony where you recognize that there is -- there has been precedent for deferrals in the FirstEnergy area, is it your opinion that the Commission was wrong in those cases in approving those deferrals because all deferrals have this intergenerational issue you described?

A. No, that is not my opinion that the Commission was wrong. I accept the Commission's de -- you know, I acknowledge that's a decision that the Commission has made and I make no attempt to -- to comment on it except to acknowledge that it's being done and I recognize that's occurred in the past, so it's not my opinion that the Commission was wrong in doing that.

Q. Is the question of whether deferrals are appropriate -- appropriate or not in a particular case a -- a policy issue that the Commission has to consider in the -- when it looks at the overall reasonableness of a proposal?

A. Yes.

Q. When Mr. Bell asked you earlier about whether you knew of any Commission approval of -- I can't go through the list that he did but essentially Commission approval of future nonfixed costs, you said you were not aware of any.

Have you had occasion to analyze all of the Commission orders that -- in Ohio that regard deferrals?

A. No, I have not.

Q. With regard to your recommendations on rate design I will try not to retread the same ground.

Am I correct that your proposal is based -- is it based on your opinion that higher load factor customers used fixed assets relatively efficiently as compared to lower load factor customers?

A. That -- that is a statement in my testimony and it's a statement that is true. But my proposal is not solely based on that consideration.

My proposal is also tied to the overall reasonable -- reasonableness of the companies' proposal and particularly the fact that the company

has emphasized in its Application that the proposal
has modest impacts on customers.

And so the purpose of my rate design
recommendation would be to ensure that the modest
impacts that the company has advertised, if you will,
in fact, come to fruition when applied to actual

customers' rates because as proposed, the impacts on many, many customers would be anything but modest.

And so even though the fact that high load factor customers use the system efficiently is a consideration that warrants ensuring that they do not receive an unduly punitive rate impact the -- my proposal is really broader than that because it speaks to the general reasonableness of the companies' proposal.

Q. With regard to the intraschedule impacts that you've described in your testimony, if the changes are made that you propose, would that accord Kroger as a higher load factor customer some mitigation with respect to generation rates?

A. Yes. Relative to the companies' proposed rate design, it would.

Q. And would the flip side of that also be that it would impose substantial increases on lower load factors customers within the same customer class?

A. Not necessarily, and I think it's important to really parse this question a bit in my answer.

As proposed just in the example I cited in my testimony for the GP rate scheduled for Ohio

Edison, low load rate customers would significantly decrease, double digit rate decreases.

Now, under my proposal in that particular rate schedule those low load factor customers would experience a 5.33 percent rate increase.

So if the thrust of your question is would my proposal deprive those customers of a 42 percent rate decrease in exchange for a 5 percent rate increase, if that's the imposition of costs, then I would agree mathematically that's what occurs.

But my proposal certainly would treat high load factor and low load factor customers equally. They would each receive a 5 -- in the case of Ohio Edison GP they would each receive a 5 percent rate increase.

So it's -- that's why I think it's important to clarify what I'm proposing would not reverse the situation and I'm -- and award a low rate increase to high load factor customers and a high

rate increase to low load factor customers. They
would be treated the same.

Q. But as compared to the -- the companies' proposal that's based on charges based on kilowatt hours, that proposal versus your proposal, again, there is very different impact within each customer class as to who has -- who has increases and who has decreases. That's essentially your testimony, correct?

A. Yes. The companies' proposal for GP has an 80 percent swing in terms of the rate impact on customers, you know, when we look at either side of the 5 percent average increase in my proposal would give every customer in the rate schedule a 5 percent rate increase and so that is, in essence, the difference between our proposals.

Q. And you were previously asked about the impact of kilowatt hour charges on demand-side management and energy efficiency.

Is the -- if you do have the kilowatt hour charges, am I correct that the -- that the impact of that on energy efficiency would be that it would promote reduction of consumption essentially if it's -- if you have a straight charge based on, you know, energy usage, then that's an incentive to reduce energy consumption?

A. Well, all things equal, the higher the energy charge, the greater the incentive to reduce energy consumption, I agree with that.

And, you know, to the extent you want to send price signals to customers to conserve in some fashion and to the extent you don't want to overcharge them, you know, you are looking for balance between the signal that you send to properly conserve peak demand which is to signal -- you would send for a demand charge versus energy, which is the signal you would send for the kilowatt charge.

Q. In terms of peak demand reduction programs would you agree that there are other ways to implement peak demand reductions other than three -- the signal of having a demand charge in a rate component?

A. Yes, but I believe you need to start with the right price signals.

Q. Have you performed an analysis of customer load shape and market pricing for the Kroger operations in Ohio?

A. Are you asking me if I looked -- if I've looked at the impact of -- I'm sorry. Could you please -- I am not really sure I understood your question so I want to make sure I answer it as asked.

Q. I'm just asking if you personally have analyzed customer load shape and potential impact of that on the pricing what Kroger operations were paying in Ohio either through the standard service offer or through competitive retail electric service providers?

A. We -- I have looked at what the impacts would be on Kroger from the companies' proposed standard service offer. I have not analyzed what Kroger would pay under a market price.

Q. If the -- if the companies' proposal has the impact on high load factor customers that -- that you are saying it will, can we expect competing suppliers to design products for those high load factor customers, particularly those suppliers that own their own generation assets?

MR. YURICK: Objection to the form of the question. I think --

EXAMINER PIRIK: I'm sorry, Mr. Yurick, I can't hear you.

MR. YURICK: Sorry. It's off. There would be an objection to the form of the question. I think he's asking the witness to speculate.

EXAMINER PIRIK: Objection overruled.

A. I imagine that competitive suppliers
might attempt to reach this market, given the severity of the rate increase that would occur under the companies' rate design.

And although, you know, they will also be -- same suppliers would also have to consider some of the disadvantages in the economics that are also part of the companies' ESP proposal, so in short, I think I'm sure that competitive suppliers would see what opportunities there were for higher load factor customers in terms of making sales under the companies' proposal.

Q. Do you recognize that the companies' proposal is a provider of last resort standard service offer proposal that has to be provided to all customers, whereas, CRES suppliers can design whatever products they think work best for them to go after whatever customer groups they think are most attractive to their business plans?

A. Yes.

Q. You have a discussion at page 12 of your testimony that's about the proposal, the utility companies' proposal, with regard to new generation capacity.

A. Yes.

Q. And you have -- you include I believe
it's the FirstEnergy utility statement in your
testimony that adding generating capacity through
this provision will alleviate the burden of capacity
constraints.
Do you have -- do you have -- do you

agree with that statement that that will be the impact of this proposal?

A. I don't disagree with it. I don't know to what extent it will -- to what extent it would resolve concerns about capacity constraints, but certainly directionally adding generation would generally logically help alleviate a problem like that.

Q. And you also refer in your testimony to a statewide concern over the lack of generating capacity. Do you agree that is a concern?

A. I'm generally familiar with concerns that have been expressed about generating capacity.

Q. So you agree that's a concern in Ohio?

A. I haven't specifically studied that question, but I have no reason to disagree with that, and I'm generally familiar with that conclusion.

Q. And you include in your testimony a suggestion that capacity expansion needs might be met by reintroducing cost-based generation service for the benefit of customers.

I think that's coming at the top of page 13 of your testimony.

A. Yes.

Q. If this is done -- if that is done, that could have either a positive or a negative impact on rates, correct?

A. It could. I make the suggestion at a very high level recognizing that if such an approach were adopted, it could lower customer rates in the long run but not -- but there also could be periods of time where it was more expensive than pure market purchases.

Q. So your testimony is in the way of a suggestion that this be examined going forward but you can't say today whether it would benefit customers?

A. Correct. I think that's a fair characterization.

Q. Is this a product that a CRES supplier could offer today?

A. I'm not aware of a CRES supplier could offer this product today. The context of my proposal is not in the nature of a product that a CRES

supplier would -- I should -- my recommendation in
examining this issue is not in the nature of having a
CRES supplier offer this product to an individual
customer but is more in the nature of having the
utility structure part of its acquisition on a
standard service offer power from a cost-based

source.

And so I don't know that -- so it's really about a different set of suppliers than CRES suppliers. It is a different set of customers. It's not the individual customers, but it's the utilities' customers on behalf of its retail customers.

Q. At page 14 of your testimony, lines 7 and 8, you refer there to deferrals associated with storm damage expense and also certain changes in line extension recovery costs.

Do you see that?

A. Yes, sir.

Q. And then you have starting at line 9 there is a question and answer that goes through line 18 on that page 14.

Am I correct that your assessment and recommendation that's on lines 9 through 18 does not relate to those two categories of deferrals; the storm damage and line extension recovery costs?

A. Yes, that is correct.

Q. So your assessment is limited to the deferrals that you also discuss above that with regard to distribution capital investment?

A. Yes. It relates to the items described on lines 3 through 5 of page 14 of my testimony.

Q. Those expenses alleged charges proposed for deferral as part of the distribution capital investment are not included in current distribution rates, correct?

A. That is correct.

Q. Okay. Am I correct that your recommendation is to deny those deferrals in exchange for removing the benefit that the company receives from the five-year freeze on new distribution rate cases?

A. Yes, yes. Under my recommendation, these deferrals would not take place but there would not be a distribution rate freeze in effect either. The company would be free to file distribution rate cases.

Q. So you are not saying that the utilities shouldn't recover these expenses and charges. It's more of an issue of what you do is the most appropriate way for them to do that?

A. Yes, sir.

Q. With regard to your discussion of the companies' proposal for DSI rider.

A. Yes.

Q. You, again, in your testimony repeat certain statements that you say is from the

Application and including the statement that the DSI rider revenue will help the utilities manage the increasing costs in providing distribution service.

Do you have any basis for challenging the utility statement that they are faced with increasing costs of providing distribution service?

A. No.

Q. Now, again, looking at what's in your testimony, do you have any basis or challenge from the utilities' statement they need to expand capital for equipment far earlier than before?

A. No.

Q. Do you have any basis for challenging the utilities' statement that they need to train new employees and replace retirees?

A. No.

Q. In addition to reviewing the discussion in the Application of these challenges that the company is facing, did you also have occasion to

review Mr. Schneider -- Donald Schneider's testimony
that also addresses those same challenges?

A. Yes, I did.

Q. And Mr. Schneider in his testimony and
also here yesterday addressed I believe he refers --
refers to rather unique demographic challenge with

regard to employee retirement.

Are you making any statement in your testimony in terms of the accuracy of Mr. Schneider's testimony?

MR. YURICK: There would be an objection to the extent the question is based on Mr. Schneider's testimony that occurred yesterday because I don't think there has been a foundation established that this witness has any knowledge of what Mr. Schneider's testimony yesterday was.

To the extent that it's based on the prefiled testimony that the witness has testified that he's seen, I have no objection to the question. And I would just -- the objection would be to ask for limitation.

EXAMINER PIRIK: Mr. Lang, are you limiting it to the previous filed testimony?

MR. LANG: Yes. Let me rephrase. I think that's a fair -- that's a fair objection.

MR. YURICK: Thank you.

MR. LANG: You're welcome.

MR. YURICK: I just wanted to make sure the court reporter got that.

MR. LANG: That's on the record.

Q. (By Mr. Lang) As -- as your counsel

stated, is it correct that you were not here for Mr. Schneider's testimony yesterday?

A. That is correct.

Q. And you have not reviewed his testimony that he provided yesterday?

A. That is correct.

Q. Just with regard to the statements that you reviewed in his prefiled testimony and in the Application, are you attempting to challenge in any way the testimony that the company is facing a unique demographic challenge with regard to employee -- the number of employee retirements coming over the next three to five years?

A. I make no challenge to that -- to that statement in the companies' testimony. I do not see that those circumstances warrant this rider or this charge but I don't challenge the description of the demographic situation in his testimony.

Q. And Mr. Schneider's prefiled testimony which you reviewed, he also referred to what he thought was the companies' greatest challenge was obtaining capital which he filed several months before what we are facing today with regard to capital.

Do you have any basis for challenging

Mr. Schneider's statement with regard to the companies' challenge concerning obtaining capital?

A. No, I do not.

Q. In fact, would you agree with that statement?

A. I don't know -- I don't have an opinion about the extent to which the company may have challenges raising capital.

Q. And as I understand it, your -- your position is not that there's -- challenges aren't being faced by the company, am I correct your position is, again, that the costs of those challenges should be dealt with using a traditional approach of using rates looking at a snapshot of time of the traditional rate case?

A. It might -- my response is two-fold. It is, yes, I believe that traditional rate case is the appropriate mechanism for addressing those challenges and also that I do not see that this proposed rider -- I do not believe this proposed rider is an appropriate mechanism to address the challenges that the company has raised in Mr. Schneider's testimony or its Application.

Q. You are -- am I correct you are not offering an opinion as to whether the utilities currently are providing reliable service?

A. That's correct.

MR. LANG: I have no other questions. Thank you.

EXAMINER PIRIK: Mr. Wright.

MR. WRIGHT: Yes, your Honor.

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CROSS-EXAMINATION

By Mr. Wright:

Q. I think just one.

EXAMINER PIRIK: Could you please use the microphone?

MR. WRIGHT: Yes, I will.

Q. Thank you.

Good morning, Mr. Higgins. I'm Bill Wright and I represent the Commission staff.

A. Good morning, Mr. Wright.

Q. The last line of questioning that you were engaging in with Mr. Lang I believe you indicated that you do not believe the DSI rider is an appropriate way for the company to address some of the challenges that you've identified in your testimony; is that right?

A. Well, to be specific, they are the challenges Mr. Schneider identified in his testimony.

Q. Yes, sir, I'm sorry, yes, that's right.

A. But, yes, yes, I do not believe the proposed rider is the correct mechanism to address those.

Q. And why do you believe that to be the case?

A. Well, I believe for starters the proposed -- when I read the companies' Application and Mr. Schneider's testimony, it strikes me that the company and Mr. Schneider are being very careful not to say that this rider is going to recover costs, per se.

It does not -- so it does not appear to me to be a connection or a direct connection between the rider and the costs that the company is actually going to incur to meet the challenges it has identified.

So on those grounds alone I believe it is not an appropriate mechanism, and to the extent that the company is facing certain challenges for which it needs to recover additional costs, then a distribution rate case is the right vehicle.

Further, some of the challenges the company identified in Mr. Schneider's testimony do not necessarily seem to be challenges that are going to increase costs.

For example, if you have a lot of employees who are about to retire and you are going to replace them with new employees, you expect generally they are going to be lower paid employees.

Now, I acknowledge there is going to be some training required and that you -- there may be some costs associated with that, but in my mind it's an open question as to whether replacing older retiring employees with new employees on net is going to produce a cost increase.

Q. And would it be correct to say that as a result of your review of Mr. Schneider's testimony, the challenges that have been identified including an aging work force, those -- those would be the types of challenges that would be faced by any utility; is that not correct?

A. Yes.

MR. WRIGHT: That's all the questions I

have. Thank you.

EXAMINER PIRIK: Thank you.

Mr. Yurick.

MR. YURICK: Your Honor, if I could have a moment with my witness.

EXAMINER PIRIK: Yes. A couple of

minutes. We will wait for you.

(Discussion off the record.)

EXAMINER PIRIK: Mr. Yurick.

MR. YURICK: I just have one or two clarifying questions, your Honor.

EXAMINER PIRIK: I'm sorry, we are back on the record.

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REDIRECT EXAMINATION

By Mr. Yurick:

Q. Mr. Higgins, in response to a question by Mr. Lang, I believe the question was you would agree that the companies' proposal represents a modest impact overall.

I just wanted to make sure your -- I think you agree with Mr. Lang that the companies' proposal would provide a modest increase in revenues overall; is that correct?

A. That is correct.

Q. But given the companies -- the way the
companies' proposal is structured at this point, the impact on a particular customer within a customer class could be anything but modest; isn't that correct?

A. Yes. While the overall revenue increase is something that I would characterize as modest, higher load factor customers on the companies' rate schedules could experience -- would experience severe rate increases. And that's the generation rate design issue that I've addressed in my testimony.

MR. YURICK: Thank you. I don't have anything further, your Honor.

EXAMINER PIRIK: Mr. Bell.

MR. BELL: No questions. Mr. Bentine threatened to tackle me if I asked any.

MR. BENTINE: There would have been others.

EXAMINER PIRIK: Mr. Sites.

MR. SITES: No questions, your Honor.

EXAMINER PIRIK: Mr. Poulos.

MR. POULOS: Your Honor, OCC does not have any further questions.

EXAMINER PIRIK: Okay. Ms. McAlister.

MS. McALISTER: No questions.

EXAMINER PIRIK: Mr. Rinebolt.

MR. RINEBOLT: No questions, your Honor.

EXAMINER PIRIK: Mr. Smith.

MR. SMITH: No questions.

EXAMINER PIRIK: Mr. Breitschwerdt.

MR. BREITSCHWERDT: No questions, your

Honor.

EXAMINER PIRIK: Mr. Keiffer.

MR. KEIFFER: No questions, your Honor.

EXAMINER PIRIK: Mr. Stinson.

MR. STINSON: No questions, your Honor.

EXAMINER PIRIK: Mr. Kurtz.

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RECROSS-EXAMINATION

By Mr. Kurtz:

Q. Very quickly, on this modest increase you use the example about 5 percent for Ohio Edison. Do you remember that?

A. Yes.

Q. That was with a 10 percent deferral; is that correct?

A. Yes. To be very clear, the deferred generation costs are excluded from that 5 percent.

Q. Right. And so if you add the 10 percent deferral, do you have an opinion of whether the rate increase would be modest, or do you just not know?

A. I would not -- I would not describe it as a modest rate increase if the 10 percent generation rate deferral were included in current recovery.

Q. And that's really what we are talking about here, aren't we, the real increase without the deferral?

A. Correct. And I tried to be careful to characterize it that way in my direct -- in my prefiled testimony.

MR. KURTZ: Thank you, Mr. Higgins.

EXAMINER PIRIK: Mr. Lang.

MR. LAVANGA: No questions, your Honor.

EXAMINER PIRIK: Mr. Petricoff.

MR. PETRICOFF: No questions, your Honor.

EXAMINER PIRIK: Mr. Lang.

MR. LANG: No questions.

EXAMINER PIRIK: Mr. Wright.

MR. WRIGHT: No questions, your Honor.

EXAMINER PIRIK: Ms. Wung.

MS. WUNG: No questions.

EXAMINER PIRIK: You're excused.

Mr. Yurick.

MR. YURICK: At this point we would move the admission of Kroger's Exhibit No. 1.

EXAMINER PIRIK: Are there any objections?

Hearing none, Kroger Exhibit 1 shall be admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. YURICK: Thank you, your Honor.

EXAMINER PIRIK: We will go off the record.

(Discussion off the record.)

EXAMINER PIRIK: We will go back on the record.

Mr. Kutik.

MR. KUTIK: Your Honor, at this time the companies call Gregory F. Hussing.

EXAMINER PIRIK: Thank you.

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GREGORY F. HUSSING

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

DIRECT EXAMINATION

By Mr. Kutik:

Q. Please introduce yourself.

A. My name is Greg Hussing. I work for FirstEnergy Service Company in the rate department.

Q. Mr. Hussing, do you have before you

Companies' Exhibits 4 and 10?

A. By 10 are you referring to the errata sheet?

Q. Yes, I am.

A. Yes, I do.

Q. You have just identified Exhibit 10.

What's Exhibit 4?
A. My testimony.
Q. Do you adopt the errata items included on Exhibit 10 that have your name next to them?
A. Yes, I do.
Q. Do you have any other additions or corrections to make to your testimony today?
A. No, I do not.
Q. If I asked you the questions that appear in Exhibit 4 subject to the errata that's on Exhibit 10, would your answers be the same?
A. Yes, they would.
MR. KUTIK: No further questions, your Honor.
EXAMINER PIRIK: Thank you.
OCC.
MR. POULOS: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Poulos:

Q. Mr. Hussing, my name is Greg Poulos and I represent Ohio Consumers' Counsel and I have a few questions for you regarding your prefiled testimony.

As part of your testimony, you sponsor the companies' proposed residential AMI program,

correct?

A. That is correct.

Q. And that's the advanced metering infrastructure program?

A. Yes.

Q. And the parameters of that program were filed as Attachment F of the Application?

A. Yes.

Q. The program as proposed would include 500 residential customers, correct?

A. Yes, but 500 is an approximate number.

Q. And how -- and why is it an approximate? What is it based on?

A. The company's proposing to commit a million dollars to an AMI pilot, and the 500 customer number is an approximation of what the costs may be to fulfill a pilot around a million dollars.

Q. And the program's expected to last for the duration of the ESP term, correct?

A. Yes.

Q. Now, the size of the program, the 500 customers, that was determined by you, correct?

A. Yes.

Q. And you just stated that it was based on spending a million dollars. But isn't it also true that the 500 is based on working within the current company infrastructure?

A. Yes, in order to mitigate the cost, the company is proposing to try and use as much of its existing infrastructure as possible.

Q. In fact, isn't one of the most important aspects of the program is not to place -- not to put into place any new systems but to stay within that infrastructure?

A. In order to mitigate costs as much as possible, we would try and use the existing systems so, yes, where we can utilize existing systems, we will use them to -- in order to save money against the million dollars.

Q. And when you talk about referring to systems, for the record could you state what systems you are referring to?

A. I would characterize them as changes to our billing system or changes to metering systems.

Q. Now, at the end of the program after the last summer period, the companies will assess the results, correct?

A. Where are you referring to?

Q. I'm referring to the attachment, if you have a copy of it, Attachment F.

MR. KUTIK: To be clear, we are talking Attachment F to the Application?

MR. POULOS: Yes. I do have extra copies, if the Bench needs copies, or anyone else.

A. What page are you on?

Q. Page -- the first page of Attachment F.

A. Okay.

Q. Long paragraph at the end on page 1, right in the middle it talks about "Following the last summer period during which it would be in place, the Companies will assess the results of the proposed AMI pilot program...."

A. Yes, I see where you are at.

Q. So based on that, the companies will assess the program at the end -- after the last summer, correct?

A. Yes, but there is also a continuation of assessment in that the companies have offered a collaborative process by which they will -- its other

interested stakeholders can review the results of the
program and the results of the pilot before the
last -- last summer period.

Q. And as part of that collaborative, the
company will consider the information provided by the
collaborative?

A. Yes, that's correct.

Q. So the final say will be the companies' in making a determination of the evaluation?

A. Yes.

Q. Reading a little further on there "...as part of the collaborative to make a determination of whether such AMI implementation is cost effective...."

Is that correct as I read it?

A. Yes.

Q. Now, the residential AMI program as proposed is not intended to look at potential operational cost savings?

A. No, that is not the purpose of the pilot, to look at operational savings. The purpose is to look at metering technologies and pilot and test the metering technologies and also customer response to pricing programs.

Q. And that's in part because it's 500 --

approximately 500 customers within the current
infrastructure?

A. That is correct.

Q. And the proposal is not intended to
evaluate how much the company will pay in adding new
technology, correct?

A. Yeah. Once again, that's not the purpose of the pilot.

Q. And not the purpose but it is not designed to give the companies information about the metering costs for a full implementation in an AMI program?

A. It won't provide the company the cost of a full -- full metering implementation. That's a large -- large number of meters that you would be changing out. But it will provide information on metering and metering types and different smart metering technologies.

Q. And the proposal is not designed to give you information about IT costs of a full implementational program.

A. That is correct.

Q. And the program is not intended to give you information about the communication costs of a full implementation of an AMI program?

A. We will be able to test some communication means by which to communicate with smart meters, but it won't be the end result communication infrastructure put in place. It's not intended to.

Q. So the company will be reviewing the cost effectiveness of the program but it won't be looking at those measures that we just discussed in determining that?

A. When you say "cost effectiveness," what do you mean?

Q. As referred to in the attachment as proposed by the company, the company is proposing to make a determination of whether AMI implementation is cost effective.

A. I think it's referring to looking at not only the results of the pilot and information gained from the pilot, but it's also looking forward to the costs associated with a full implementation.

Q. As part of the -- going a little further on here also looking at the best interest of customers and the companies when the company is making its determination.

A. Where are you at?

Q. Reading the last part of that sentence,

"...a determination of whether such AMI implementation is cost effective and in the best interests of customers and the Companies."

A. Yes, I see that.

Q. And companies will be making that determination, correct?

A. Once again, we'll have a collaborative process that will allow us to understand everybody's viewpoint but, yes, it will be the companies' assessment.

Q. Now, the company did not hire a consultant to help them with this evaluation, did they?

A. No, they did not.

Q. The company does not plan to hire a consultant going forward, does it?

A. For the AMI pilot?

Q. Yes.

A. No.

Q. Now, in respect to the collaborative that we have been talking about that the companies' proposed, that would include any interested parties including the OCC, correct?

A. Yes, that would.

Q. And as stated before, it's only to

provide input on the AMI process.

A. I think "input" is a very valuable word and very valuable tool that the interested parties can provide input to not only the program but input to, you know, the rate designs or communications to customers or even equipment.

Q. Now, I want to talk to you a little bit about your background in proposing the AMI program. As background material, you reviewed the programs of other companies, correct?

A. I reviewed the programs of two other companies and also reviewed the information from EEI.

Q. One of the programs you reviewed was from Gulf Power?

A. That is correct.

Q. And the name of that program is Good Sense, correct?

A. Yeah, that is the Good Sense program.

Q. And are you aware that program has about 7,000 participants?

A. The program has been in place for a number of years. It's an operational program.

Q. And are you aware that 7,000 -- approximately 7,000 out of 450,000 customers?

A. Yes, I am aware that there's -- there's a large number of customers in the program.

Q. Are you also aware that that program has three intervals in its AMI program?

A. Yes. When you say "interval," three time periods?

Q. Yes, three time periods.

Now, the other program that you looked at was Baltimore Gas Electric Company?
A. Baltimore Gas & Electric, that's correct.
Q. And that program, are you aware that it is approximately 5,000 customers, correct?
A. The Baltimore Gas & Electric program is a pilot, and it's a pilot of testing 500 customers on a critical peak pricing program similar to the one the company has proposed in its testing another 500 customers on the peak time rebate program.
Q. So it's your understanding it's 500 customers in the program?
A. Yes.
Q. And are you aware that program has been just -- just started in the last year?
A. It's a pilot program.
Q. Now, were you aware one of the goals of that program is to determine how the AMI system could be integrated with the companies' current system?

A. I looked at the program from a rate design perspective to look at the different features that program was offering. I didn't look at it from the intent of what it was trying to ultimately incorporate into the companies' future.

Q. Is that a no, you weren't aware it was

trying to integrate with the current system?
A. That is correct.
Q. And the last thing you said you looked at an article, Edison Electric article.
A. Yeah, it's a 45-page report from Edison Electric Institute, its foundation is a consultant from Brattle and it basically is entitled quantifying the benefits of dynamic peak pricing and goes into a number of comparing programs and looking at different rate designs.
Q. Those are the only resources you looked at when designing this program?
A. Besides our -- my internal staff I use as well.
Q. I want to talk to you a little bit about the cost of the program as proposed. Right now, it is proposed in the attachment as a $500 per interval meter estimate.
Do you see that?

A. Yes, that is an estimate.

Q. That's Attachment F of the Application.

What do you base that $500 estimate on?

A. $500 estimate comes from our meter department as the approximate cost of a Smart meter. Smart meters could come in a range of costs, depending on the communication technology that you are using with the meter.

Q. Do they have a specific meter they were looking at?

A. They are looking at various manufacturers of meters.

Q. Do you recall any of their names of the various manufacturers?

A. I recall some of their names. We'll -- Itron is one of the companies.

Q. Any others?

A. I don't know of the other ones they may have contacted.

Q. And it's a 500 and also in Attachment F you put an estimate of 500 to 1,000 dollars per installation of customer side usage information system.

A. Yes.

Q. And where did you arrive at that number?

A. That is an estimate that incorporates cost of a home area network which would allow the meter to talk from the side of the house wirelessly through a Digby protocol to the customer through a home interface device and that's where I'd be very interested in the collaborative to find out which home interface device would be best used for customers.

They could range from little devices to much larger desktop devices that allow customers to view the information that the metering is providing.

Q. What -- how did the company arrive at the $500 to $1,000 figure?

A. That's just -- that's just an estimate based on some home area net -- home displayed devices and an insulation cost.

Q. Earlier with the Good Sense program we talked about three intervals, three time periods. I wanted to talk to you about the time periods for your program -- proposed program.

Now, the companies' proposal limits it to evaluation of summertime usage only, correct?

A. The program would run during the summer, that's correct.

Q. And it looks at only the two different time periods. One would be a peak and one would be a nonpeak period.

A. Yes. It has an on peak and off peak.

Q. And what is the peak period?

A. Peak period as shown in Attachment F is 11 a.m. to 5 p.m. Monday through Friday, excluding holidays, and off peak would be the other time periods.

Q. And that was your decision to decide out of two peek -- the two period program, correct?

A. Yes.

Q. Can you describe how you determined the peak pricing rates of the -- that's listed on page 2 of Attachment F?

A. Yes. The two -- the pricing shown on Attachment F comes from the existing time of use. The basis of it is the existing time-of-use rates that the company has offered in rider GEN. And that is the on and off-peak period pricing.

And then the critical peak pricing was an evaluation based on looking at the other utilities' programs. The other utilities' program and according to EEI critical peak pricing or dynamic peak pricing programs, the critical peak period when you are going to change the price of the on-peak tends to be two to three times higher than in the normal period.

Q. And did you do research to figure that out?

A. The research was reading the -- my reading of the EEI dynamic pricing from Brattle and also evaluating both the Baltimore Gas & Electric program and also the Gulf Power program which their critical peaks were three times.

Q. Now, when you talk about the Gulf Power program, the Good Sense, they have three -- three interval periods, correct?

A. Yeah. They refer to them as shoulder periods, yes.

Q. Now, you considered using three periods, didn't you?

A. Yes, I looked at it.

Q. But you dismissed the idea without doing any other research besides that?

A. As a pilot program, that's the benefit of a pilot program. You don't have to make hard, fast decisions on everything.

The pilot that I would propose going forward for rolling this out initially would be two periods because of eliminating customer confusion over a three period.

I look at it from my own perspective as a residential consumer and thought if I was going to try and offer this to a customer, just on peak and off peak may be the simplist thing to start with.

Q. Now, the company doesn't propose having thermostats as part of the proposal, does it?

A. The -- the thermostats as of interfacing a thermostat with the AMI system?

Q. Correct.

A. We didn't -- I didn't look at that aspect. The system may be capable of doing that. And that's something we could look at. We also could include customers that are involved in our direct load control program that have thermostats.

Q. Now, you would agree that the thermostats would help the customer be able to determine the time periods a lot quicker, wouldn't you?

A. My understanding of a thermostat involved in these kind of programs, the thermostat can tell a customer that its a critical price or this is the -- we are on the on-peak price and off-peak price.

Price as well as a home interface device. I know Baltimore Gas & Electric uses the orb which glows different colors during the on and off peak or critical peak.

Q. So you would agree those would help the customers making it simpler for evaluation of on peak and off peak?

A. Yes. A device whether it's a thermostat or some other home -- home display or information would help customers.

Q. I want to turn your attention now a little bit to a different subject to talk about the delta revenues. And just generally delta revenues are revenues that are forgone as a result of discount and special arrangements, correct?
A. Yes.
Q. And the delta revenue rider recovers those revenues, correct?
A. Yes, going forward the delta revenue rider would provide that recovery.
Q. And special arrangements are special contracts with businesses, correct?
A. Special arrangements are -- yes.
Q. As used in the rider.
A. As used in the rider.
Q. Now, those special arrangements would not be with residential customers.
A. Special arrangements are arrangements that would be deemed by the Senate Bill or Commission

rules, the Commission would grant the special arrangements.

Q. I want to turn your attention to the testimony on page 11, have you look at line -- starting with line 8, at the end of line 8.

The -- where it says "The approval of a

special arrangement must also include approval of complete revenue recovery resulting from such an arrangement."

Now, with that statement are you stating that the customers must bear all the costs of those delta revenues?

A. I'm saying that there needs to be a recovery mechanism associated with special arrangements.

Q. And a full -- a full recovery mechanism?

A. That's correct.

Q. So that would pass all those costs on to customers, correct?

A. Yes, it would.

Q. And the next sentence -- and the next sentence talks about the reasons, correct, "To do otherwise jeopardizes the financial viability of the Companies because of the limited ability to absorb such lost revenue."

Do you see that?

A. I see that.

Q. And the reason that the company can't absorb those discounts associated with generation is that the law has changed and the inability of the company to absorb those costs, correct?

A. Yes, that is correct.

Q. And that includes new contracts as they are developed by the company.

A. As developed by -- or approved by the Commission.

Q. Yes. And that's pointed out in the next sentence where it says on line 13, "they," meaning the companies, "cannot absorb the costs of discounts from Commission-approved tariffs...."

Correct?

A. Costs in discounts from Commission-approved tariffs.

Q. Now, those Commission-approved tariffs, those -- those discounts that would be approved by the Commission, those are from contracts that are first negotiated by the companies, correct?

A. The contracts that I'm referring to are contracts that would have been approved by the Commission and have -- have provided for our contract.

Q. And proposed -- those are proposed contracts by the companies first though, correct?

A. No. Under the -- under the rules associated with special contracts as part of Senate Bill 221, the customers can come to the Commission or the process is an application process by which then the Commission reviews the application for -- for a special contract.

Q. Well, as a part of that, let's look at the reasonable arrangement of the rider which is in Schedule 3A, page 141 of 190. Do you have that?

A. Which company are you referring to?

Q. This is Cleveland, CEI. I have copies up here if anyone needs it.

A. What page were you referring to?

Q. 141 of 190.

A. Yes.

MR. KUTIK: Just for the record, it's included in Exhibit 9D as in David.

MR. POULOS: Thank you.

Q. Do you have it in front of you?

A. Yes, I do.

Q. At the top "Reasonable Arrangement Rider"?

A. That is correct.

Q. And this rider is approximately four pages; it is four pages?

A. Yes.

Q. And do you recognize this writer?

A. Yes, I do.

Q. And this is one of the special arrangements that this rider provides for some special arrangements?

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

(Record read.)

MR. KUTIK: I'm sorry, it appears there are two questions there, so I'm objecting.

EXAMINER PIRIK: Could you restate your question.

MR. POULOS: Yes.

Q. The reasonable arrangement rider would include -- or strike that.

Special arrangements that would have delta revenues and are a result of those special arrangements, the reasonable arrangement rider includes some of those, correct?

A. The reasonable arrangement rider is an application process by which then customers would make application for a reasonable arrangement.

Q. And as a result, there could be delta revenues, correct?

A. If the Commission approved the reasonable arrangement.

Q. And before the Commission could approve it, the company would submit that, would approve it, correct?

A. The companies' role in the process is to just facilitate the collection of the information and provide that to the Commission.

Q. Going to have you turn to page 3 of 4. If you see under the heading "Application."

A. Yes.

Q. "The Company shall provide the customer an application form ("Standard Application Form") upon request by the customer."

Do you see that?

A. Yes.

Q. And that's the application form you were just referring to?

A. There is an application form that goes along with this rider, yes.

Q. And then the second paragraph there "Any approved application by the Company shall supersede and replace any prior application approved by the company...."

Correct?

A. Yes.

Q. So the company would have to approve these applications before submitting to the

Commission, correct?

A. Once again, the company is reviewing the application for all of the parts of the requirements and to make sure that it's a complete application.

Q. And then would submit to the Commission for their approval as part of the process.

A. Yes. The Commission would have the -- would be the one that's reviewing it and setting the -- setting any level of special arrangements.

Q. Now, as part of this reasonable arrangement rider, there are a lot of conditions put in here for companies of what they have to do to get a reasonable arrangement, correct?

A. Yes, there's terms and conditions.

Q. Are there any terms and conditions in here that quantify what percent discount the company that is applying will get?

A. No, there is not.

Q. So who makes that determination?

A. The Commission would make that determination.

Q. And who proposes that determination?

A. The company is not -- doesn't have any opinion on that. That would be up to the Commission to determine.

Q. But the company -- the companies submitting the Application would submit it to FirstEnergy first before submitting it to the Commission, correct?

A. Yeah. Based on the rules that were proposed, the rules proposed, an application process by which customers would make an application, so this is just fulfilling that requirement.

Q. And if the Commission approves any delta revenue -- strike that.

If the Commission approves less than full payment of delta revenues, then the company can strike the agreement, the arrangement, correct?

A. Where are you referring to?

Q. The last page, "Delta Revenue Recovery."

A. Yes, that is correct.

Q. Now, generally there are contracts that the company, FirstEnergy, can negotiate with other companies as -- to receive special discounts,

correct?

A. Under the Commission proposed rules the special arrangements would follow a process dictated by the special arrangement rules, the new rules which would fulfill an application process and then a Commission review.

Q. And who would set the number -- who would initially set a number of what the discount would be?

A. I don't know. The -- what I do know is the Commission would review that and set the discount.

Q. Is it your position that the company will not -- FirstEnergy will not set the discount, the proposed discount rate, will not negotiate that rate?

A. I don't know what will happen in the future. That's a speculative event. But I do know the Commission reviews and approves the contracts.

Q. Is it your position that if the company does, you are not certain if the company does, the company being FirstEnergy, the companies do negotiate that discount rate, the companies should be involved in those negotiations?

MR. KUTIK: I guess I object, I am not sure what customers you are referring to. Are we talking about all customers? The customer's potential counterpart to the contract? So I will object to the form.

EXAMINER PIRIK: Could you just clarify, please.

MR. POULOS: Yes.

Q. Is it your position that if the

FirstEnergy companies do negotiate special discounts with a company applying for a special discount, that customers in general, customers of FirstEnergy, should be able to negotiate -- should be a part of those negotiations?

A. I don't -- I don't know. It's not my -- my position to speculate on what customers are -- or the company is going to do.

I understand the application process, and the application process that we are presenting here is the customer would make an application for a special arrangement. That application would then be processed and reviewed and sent to the Commission.

Q. Yes. I understand that, and we have been over that, but my question is because you are uncertain whether the company -- the FirstEnergy companies will have a role in negotiating the discount, correct?

A. I'm not sure what you mean by

"negotiating the discount." The discount would be something that the Commission would approve, so I guess I am saying I'm not sure of what that would be.

EXAMINER PIRIK: I'm sorry. First of all, it's 12:30 and we said we were going to take our break at 12:30, but before we take our break I'm a little confused.

A customer makes an application to the company proposing the discount.

THE WITNESS: That's correct.

EXAMINER PIRIK: So the customer can propose any discount, and the company will then pass that arrangement on to the Commission for approval?

THE WITNESS: For review and approval.

EXAMINER PIRIK: So the company -- I mean, literally the customer could come in with any discount amount, and the customer is just going to pass that on without negotiating with the customer for that what that special arrangement would be?

THE WITNESS: The companies are following what we feel are the rules established.

EXAMINER PIRIK: I just needed a yes or no answer.

THE WITNESS: Could you repeat the question then.

EXAMINER PIRIK: So the company will just pass that proposed special arrangement on to the Commission without negotiating what that arrangement would be or what that discount would be?

THE WITNESS: Yes.

EXAMINER PIRIK: We will take our break

now, and then I believe you all will call us when you
are at the conclusion of your negotiations?

MR. BURK: Yes. Thank you, your Honor.

EXAMINER PIRIK: Thank, Mr. Hussing. We
will see you after the break.

(At 12:32 p.m. a lunch was taken until
2:10 p.m.)

- - -

Tuesday Afternoon Session,
October 21, 2008.
- - -

EXAMINER PIRIK: We will go back on the record.

MR. POULOS: Thank you, your Honor.

- - -

GREGORY F. HUSSING

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

CONTINUED CROSS-EXAMINATION

By Mr. Poulos:

Q. Mr. Hussing, before the break we were talking about the reasonable arrangement rider and applications that the company submits to the Commission.

Do you recall that?

A. Yes.

Q. And from questions from the Bench one of your answers was basically the company -- FirstEnergy companies just pass through applications through without negotiating the discounts, correct?

A. Yes. The reasonable arrangement rider has a set of conditions on it already, and those are basically the prescriptive terms that a customer would need to fulfill in order to meet the Application for the Commission review.

Q. And as we went through, I believe, before, there is nothing in here or the Application that talks about what percentage discount or how to determine what percent discount a company applicant should get?

A. That is correct.

Q. So in conclusion, the companies are submitting an Application that they are passing through and saying the companies -- the FirstEnergy companies can't afford to pay for any of that discount; is that correct?

A. That is correct.

Q. Now, the reasonable rate rider is one type of arrangement where there would be a delta revenue, correct?

A. That is my understanding.

Q. And there is other ones in the delta

revenue -- recovery rider, such as economic
development schedules, energy efficiency, and
government special contracts, correct?

A. The delta revenue rider would recover
revenues for going from special arrangements, from
reasonable arrangement, or unique contracts.

Q. Let's talk about unique contracts. Unique contract situations where the company would be -- FirstEnergy would be negotiating discounts?

A. The unique contract under -- it's my understanding under the proposed rules the customer can contact the Commission directly, large customers, or there would be an arrangement with the company and the company would approach the Commission.

Q. Well, I want to focus your attention on the ones where they would be negotiated with the companies, okay?

With those would you agree with me that the companies are in the best position to know what the cost of generation is?

A. The companies would know the cost of generation that they are providing to their customers.

Q. Yes, correct. Correct?

A. Yes.

Q. The way you answered that it sounded like
a question.

So then the companies, when they are submitting those contracts, those negotiated contracts, to the Commission, they are in the best position to know if they can pay that discount,

correct?

A. Going forward the companies are distribution operating companies with just distribution revenues, so the only revenue source they have is distribution revenue which is a limited resource to fund a special contract.

MR. POULOS: Could I have the question read back, please.

(Record read.)

A. The answer is they can't pay the discount with limited resources as distribution revenues.

Q. So the companies are submitting an Application to the Commission knowing that they can't pay that amount -- that discount.

A. They would be making an Application in this context of a unique contract for approval of a delta -- or unique arrangement and ask for recovery through the delta revenue rider.

Q. In those negotiations -- in those

negotiations those unique arrangements that you are referring to, it is the FirstEnergy companies negotiating with the applicant, for lack of a -- for clarity sake.

A. There would be some negotiation, once again, we're -- it's a prospective area here. And that negotiation then would then be presented to the Commission, which the Commission would have ultimate approval.

MR. KUTIK: Could we go off the record for a minute?

EXAMINER PIRIK: Yes.

(Discussion off the record.)

(Record read.)

MR. POULOS: Thank you.

Q. Unique arrangements where the company, the FirstEnergy companies are negotiating those with -- with an applicant, that could be the percentage of discount is dependent upon the negotiation, correct?

A. Yes.

Q. So it could be anywhere from a 90 percent discount to a 5 percent discount.

A. That's a possibility.

Q. It could be any range.

A. It could be any range.

Q. And it is those unique arrangements that is the company, FirstEnergy companies, that would have the most knowledge about the cost of generation costs.

A. Maybe one group of people that would know cost, yes.

Q. And those unique arrangements, there wouldn't be residential customers involved in those negotiations, correct?

A. Unique contracts, I believe, are for larger customers or mercantile customers, according to Commission rules.

Q. If you had a mercantile customer who is in negotiation with the FirstEnergy companies, residential customers wouldn't be a part of that discussion.

A. Not between the company and the customer.

Q. Yet you're asking customers, including residential customers, to be the ones that are to pay the full amount of that delta revenue discount, correct?

A. All customers would pay as part of a social benefit to -- to the economy for economic development and economic growth, job retention, those would be reasons why all customers should pay for reasonable arrangements.

Q. The reason that all customers should pay for reasonable arrangements that were negotiated by the FirstEnergy companies?

A. But those arrangements would be

ultimately approved by the Commission.

Q. So the answer is, yes, reasonable arrangements that were negotiated by FirstEnergy companies?

A. Negotiated and approved by the Commission, yes.

Q. Thank you.

EXAMINER PRICE: Mr. Hussing, just to follow-up, you have stated that in your Application you've asked for full recovery of delta revenues because now first -- the FirstEnergy operating companies are distribution-only companies; is that correct?

THE WITNESS: Yes.

EXAMINER PRICE: In the past FirstEnergy, when it was an integrated utility, did not get full recovery of delta revenues; is that not correct?

THE WITNESS: As that is my understanding.

EXAMINER PRICE: In fact, generally it was more like 50 percent; is that correct?

THE WITNESS: I've heard that term. I don't know the value of it but it was -- it's a portion.

EXAMINER PRICE: Let's assume

hypothetically it was 50 percent in the past. One can understand that since it's no longer an integrated utility, that 50 percent is not the right number, but why is the right number for FirstEnergy's contribution something that is less than 50 percent and more than zero percent, and what would be the right number if that was the case?

THE WITNESS: I think it's best explained in an example.

If I look at an industrial customer's total bill and I looked at the distribution portion of that bill, the distribution portion of that bill for a transmission customer is about 1 percent of the bill.

To a -- maybe a general service primary or subtransmission customer that may be 5 percent. And -- of the total bill.

So if, for example, a special arrangement were granted and it's 5 percent off the total bill for the transmission customer, the utility not only has zero distribution revenue, it's losing money on the transaction.

And for the 5 percent discount, on 5 percent of the distribution total bill then they have zero distribution revenue.

EXAMINER PRICE: Fair enough. Thank you.
Thank you.
MR. POULOS: Thank you.
Q. (By Mr. Poulos) To further that example, Mr. Hussing, if you are in a situation where you are negotiating knowing that you are going to lose money on a negotiation on the delta revenue, wouldn't you agree you shouldn't propose such a discount?
MR. KUTIK: Objection. Assumes contrary to the evidence in the case so far.
EXAMINER PIRIK: Objection overruled.
A. The company would be requesting full recovery of that example 5 percent discount.
Q. Wouldn't you agree though the company knows it can't pay that discount, correct?
A. Would be -- yes, it can't pay the discount, but it would be requesting that discount be recovered through a delta revenue rider.
Q. If the company -- if there is a

negotiation with the discount the company couldn't pay and expected customers to pay, wouldn't you agree that customers should be a part of the negotiation?

A. The customer could be part of a negotiation when the Commission is reviewing the contract.

Q. Shouldn't the customer be part of the initial investigation or negotiation?

A. Excuse me. When you mean customer, are you -- what are you referring to? What customer?

Q. Thank you.

The FirstEnergy customers who will be paying the delta revenue that the -- the company is negotiating -- FirstEnergy companies are negotiating and is saying they can't pay.

A. It's my understanding when the Commission would review the Application for unique contract or process dealing with delta revenue or revenues, that that would be something that would be in a forum that people could participate in.

Q. But you are not in a position to say the customers who will be paying the delta revenue can be in the negotiation for the discount.

A. Well, I think I am saying the customers may have the opportunity when the Commission is reviewing the contract.

Q. I want to go flip over back to your testimony, page 11.

One of the things that your -- address the hypothetical you were addressing the companies' -- FirstEnergy companies' ability to pay the costs of generation and its inability to do that, and here in this testimony you talk about that as well to do otherwise jeopardizes the financial viability of the companies.

Do you see that?

A. Yes, I do.

Q. Now, in our discussions about the companies' financial viability, isn't it true that you couldn't state for certain anything more than not receiving 75 percent of the recovery of the delta revenues would affect the companies' financial viability?

A. In our -- when you referred to our discussion, our deposition.

Q. Yes.

A. Basically what our context of our discussion was at what point in time or what level was the companies' financial viability jeopardized, and my answer was I don't know. We went through various number of points, and I don't know.

But when I come back to my scenario that I just pointed out, if the company is -- has -- doesn't have any distribution revenue or is not collecting any distribution revenue, then I don't think that is a financial viable situation where the company is -- is selling at a loss.

Q. Now, as you recall, in our deposition I did ask you about 50 percent which is the -- another -- you don't get 50 percent of the discounted revenue, if that would affect the financial viability of the company, and you said yes, you were aware that would be a situation where the financial viability of the company would be affected, correct?

A. Yes, I agree.

Q. And then at 75 percent you were not sure at that point, correct?

A. No, that's not correct. My answer is that the -- you know, I don't know what level that the financial viability ultimately of the company would be affected but, once again, I come back to my scenario if it's a 50 percent, that's a significant impact on distribution revenue of the company.

Q. Now, let me clarify something for the record. When we talk about financial viability as

you use it in this sentence here, your definition of
"financial viability" is the companies' ability to
maintain its rate of return.
A. That's correct.
Q. So when we are talking about 25 or
50 percent delta revenue, it's not about the company

going out of business. It's about the company being able to maintain its rate of return, correct?

A. That is correct.

Q. And you haven't done any studies about the companies' financial viability and what it could -- what it could take in or absorb, correct?

A. No, I haven't done any studies, but when you look at the rate of return, if a company isn't collecting any distribution revenue because its supporting a contract, then it's not maintaining its rate of return.

Q. So as I understand it, you have not done any studies?

A. No, I have not done any studies.

Q. And you have not done any analysis of the companies' financial -- how not getting delta revenues would affect the financial viability of the company, correct?

A. That is correct.

Q. If you look a little further down in the same -- on paragraph or -- excuse me, sentence No. 11, "To do otherwise jeopardizes the financial viability of the Companies because of the limited ability to absorb such lost revenue."

Do you see where I'm discussing that?

A. Can you repeat the line number, please?

Q. No. 11.

A. Yes.

Q. Now, you state there is a limited ability to absorb such lost revenue. You have not done any studies to absorb the lost revenue, correct?

A. I have not done any studies but I'm referring to the distribution revenues of the company.

Q. You haven't done any studies and you also have not done any analysis on the companies' limited ability to absorb the lost revenues, correct?

A. That is correct.

Q. In fact, you can't state a breaking point where the company will not have the ability to absorb that lost revenue, isn't that true?

A. I have not done a -- any studies. I'm just presenting the -- a general scenario of what the impact of lost distribution revenues -- lost revenues would be.

MR. POULOS: Can I have my question read back, please.

(Record read.)

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

EXAMINER PIRIK: Could you restate your answer then, please?

MR. KUTIK: Could we read it?

EXAMINER PIRIK: I think could you answer the question that she just read again, please.

THE WITNESS: Did I have the answer? I thought I answered the question.

EXAMINER PIRIK: Could you read the question.

THE WITNESS: And the answer.

EXAMINER PIRIK: I asked you to restate the answer.

Go ahead and read the question again, it's been a while.

(Record read.)

THE WITNESS: Yes, I can't state the breaking point.

Q. (By Mr. Poulos) Thank you.

With economic development or with unique arrangements comes new customers, correct?

A. Economic development or retention, that could be a result.

Q. As part of the reason for -- let's just stick to economic development.

With economic development there would be

new customers, correct?
A. Yes, that could be the result of an economic development.
Q. Do the FirstEnergy companies receive any benefit when there are new customers?
A. You know, there may or may not be a benefit. I don't know. I haven't done a study or I have a basis to -- to form an opinion, but if there is a special contract or reasonable arrangement associated with that and the companies don't have full recovery, then there may be a loss associated with that, and I wouldn't consider that a benefit.
Q. Would you agree that if there is new customers, it would at least provide the company an extra source to recover the companies' facility costs?
A. Once again, there may or may not be benefits of a new customer would be providing distribution revenues to the company.

Q. These economic development situations
where there is an arrangement made with the company,
it's, again, FirstEnergy companies negotiating these
deals, correct?

A. Once again, it would be whether the
customer is seeking a reasonable arrangement process

through the reasonable arrangement rider or would it be under a unique contract. Which one are you referring to?

Q. Economic development.

A. Economic development a customer could ask for reasonable arrangements. Under the reasonable arrangements process or economic development can be done through a unique contract. Which one are you referring to?

Q. All right. I'm referring to the ones where the company negotiates them, so under a unique arrangement.

A. Under a unique arrangement.

Q. Yes.

A. What was your question?

Q. My question was when we have a unique arrangement, the company, for economic development -- the FirstEnergy companies are the ones that are negotiating that discount, correct?

A. Under an economic development process depending on the size of the customer, again, the customer could be requesting that economic development discount with the Commission directly under unique arrangements rules or the company could be presenting that with the customer to the

Commission, it's my understanding.

Which one are you referring to?

MR. POULOS: I'm sorry, would you read that answer back again.

(Record read.)

Q. I'm referring to the ones where the company is negotiating, FirstEnergy companies are negotiating with the applicant.

A. Okay. And what was your question?

Q. In those situations it is the FirstEnergy companies that are negotiating the discounts, correct?

A. They are -- they would be negotiating a -- some form of discount but, once again, the Commission would be approving that discount through the Commission process.

Q. And in those situations the FirstEnergy companies would be submitting this proposal to the Commission to approve, as you were stating, they would be alluding to the fact they could not pay that themselves, correct?

A. That is correct. They would be asking for recovery through the delta revenue rider.

Q. Looking at your testimony, again, I want to take you down to the last line on page 11. Or actually line 21 and 22.

"Less than complete recovery of foregone revenue would also hinder the companies' abilities to undertake the significant investment the companies have committed to improve the energy delivery system...."

Do you see where I'm referring to?

A. Yes, I do.

Q. Isn't it true that you can't name a specific project that was affected by the fact the companies did not get full recovery in the past?

A. Yes, I can't name an investment but, once again, I'm presenting a situation that could occur, and I go back to my example is if companies are -- the discount is larger than the distribution revenues, then the companies aren't able to use distribution revenues in their operations whether to -- for operations of the service of the companies or to make any investment in infrastructure or run the business.

Q. So what you are saying then based on your extra part of the answer, the second part, that if there's any delta revenue that's lost, even a small percent, that it -- that it would impact significantly the companies' ability to improve the energy delivery system.

A. Yes. I am saying it affects the distribution utility business.

Q. Significantly.

A. Yes.

Q. So $1,000 off of a discount would significantly affect the companies' ability to improve the energy delivery system?

A. In your hypothetical $1,000 off, is that a single customer or is that a continuing process or such as the -- just if it's a one-time occurrence, it's not going to significantly affect the investment, but if it happens over and over and over again, yes, it does, it will have a significant impact on the company.

Q. Have you done any study on the significance -- what it would take to significantly impact the energy delivery system?

A. No, I have not.

Q. Have you done any analysis of what it would take to impact the energy delivery system?

A. No, I have not.

Q. And you are aware that -- that the negotiated discounts the FirstEnergy companies have done in the past have given a 50 percent discount,

correct?

A. I'm not a -- I am not aware of the specifics of -- of the recovery of -- of the revenues or delta revenues of the existing contracts.

Q. And those -- some of those -- some of those delta revenue loads discounted on contracts are going forward, correct?

A. Yes. They have been extended through 2010.

Q. And you are the sponsor of those contracts as well, correct?

A. I'm sponsoring the delta revenues associated with those contracts moving forward in 2009 with the ESP plan, yes.

Q. But you are not aware of the amount of discount for those?

A. Under the current structure, no.

EXAMINER PRICE: Are you aware of the amount of revenue you are asking for under that rider?

THE WITNESS: Yes.

EXAMINER PRICE: Would you care to tell me?

THE WITNESS: I will give you an example. I'm referring to my Schedule 5N, it is $78.5 million in 2009.

EXAMINER PRICE: Thank you. That's the amount of the rider in the rider to be recovered?

THE WITNESS: Yeah, that is the amount in the rider to be recovered.

EXAMINER PRICE: Thank you.

Q. (By Mr. Poulos) Mr. Hussing, I would like to turn your attention to a different part of your testimony regarding the delivery service improvement rider, and I would like you to look a schedule 5I in the Cleveland -- for CEI.

A. Page 5I?

Q. There are -- there are four pages, correct?

A. Yes.

Q. Do you recognize these -- this four pages?

A. Yes, I do.

Q. Are you the sponsor for these four pages?

A. Yes, I am.

Q. Referring to the table on page 1 of 4,
which would be the answer to your question 4, would
you please explain the numbers in column B starting
with the $131.

A. That's 131 million.

Q. Yes. Could you explain how you arrived at that number?

A. I received that number from -- from our energy delivery group.

Q. Would that be the same answer for the 118?

A. Yes.

Q. The second -- that's in column No. 2 of B?

A. Yes.

Q. And the same for the $46?

A. 46 million.

Q. 46 million. And in the total number as well?

A. Yes.

Q. That's $295 million.

A. That is correct.

Q. Could you explain to me in column E how you arrived at the 112,942,418 figure?

A. If you see on the page there is the DSI rider charge, it's a dollar per megawatt hour? It's the .002.

Q. Yes?

A. You take .002 times the annual kilowatt hours of 56,471,209,081, you will arrive at the

112,942,418.

Q. And where did you get those figures from?

A. Which figure are you referring to?

Q. Let me ask you DSI charge, .002.

A. I received that number from Mr. Blank.

Q. Is .002 kilowatt per kilowatt hour, is that the correct amount of the DSI charge --

A. Yes.

Q. -- to the best of your knowledge?

A. Yes.

Q. Is the .002 per kilowatt hour charge cost based?

A. My understanding that the DSI is not cost -- the DSI charge is not cost based.

Q. And what is your understanding?

A. My understanding is that this is an area that Mr. Schneider covered yesterday.

EXAMINER PRICE: Mr. Schneider didn't answer that question yesterday, so he didn't cover that part of it. You will have to pick a different witness to direct that question to.

A. Yes, it's my understanding the DSI dollars are not cost based.

Q. If they are not cost based, what are they?

A. I'm supporting the mechanics of the rider. Mr. Schneider was supporting in his testimony the -- the sources and the uses to help, you know, improve and help support the distribution system.

Q. So is your answer you don't know?

A. I don't know.

MR. POULOS: If I may have a moment, your Honor.

EXAMINER PRICE: If I could have a moment, please.

MR. POULOS: Yes.

EXAMINER PRICE: You said that you are supporting the mechanics of the rider? Does that mean you are simply supporting the mechanics of how the rider is collected and how much revenue it will generate?

THE WITNESS: Yes, I'm allocating the .002 cents to the rate classes in producing the revenue.

EXAMINER PRICE: Does your testimony encompass whether or not the expenditures will be subject to audit by the Commission staff?

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

EXAMINER PRICE: Whether the expenditures will be subject to audit by the Commission staff.

MR. KUTIK: You asked him if that's the plan?

EXAMINER PRICE: I am asking him if that's parts of his testimony.

THE WITNESS: No, that's not part of my testimony.

EXAMINER PRICE: Can you tell me who the proper witness to direct that to would be? And don't say Mr. Schneider because that was my question yesterday.

THE WITNESS: Well, then Mr. Blank.

EXAMINER PRICE: That was his answer as well.

Thank you.

Q. (By Mr. Poulos) I have just one further question for you. If I could have you look at page 21 of the Application.

A. Yes.

Q. The top of the page it says in paragraph labeled E, do you see that?

A. Yes.

Q. And the last sentence of that paragraph, "The DSI rider shall be a nonbypassable distribution charge equal on average, prior to the annual

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adjustment described from paragraph A.3.f., to 0.2 cents per kilowatt hour in 2009 through 2011."

The numbers we were just talking about were .002.

A. But it represents .2 cents per kilowatt hour.

MR. POULOS: I have no further questions, thank you.

THE WITNESS: Thank you.

EXAMINER PIRIK: Mr. Sites.

MR. SITES: No questions, your Honor.

EXAMINER PIRIK: Mr. Bell?

MR. BELL: Yes, I have a number. Thank you.

\- - -

CROSS-EXAMINATION

By Mr. Bell:

Q. Good afternoon, Mr. Hussing. My name is Langdon Bell, and I represent the Ohio Manufacturers

Association.

Could you turn to page 1 of your testimony. You are employed as director of regulatory analytics?

A. That is correct.

Q. Report to Mr. Blank, don't you?

A. Yes, I do.
Q. Your testimony is awful hazy about when you assumed your current position as director of regulatory analytics. On line 15 you just say "...and prior to my current position, I have held...."
When did you assume your current position?
A. About two years ago.
Q. Now, is it correct that as suggested in some of the cross-examination that's just been completed, that Mr. Blank tells you what the revenue targets are and then you make a construct into which to fulfill Mr. Blank's request; is that correct?
A. In what specific rider or part of the plan are you talking about?
Q. Well, let's talk about distribution rates, the tariff rate schedules. Did he tell you in designing the rates, for instance, from CEI what the

revenue requirement was for CEI?

A. 150 million are you referring to?

Q. I am asking you whether he told you what the target was, regardless of what the amount was.

A. Mr. Blank told me about the -- the revenue targets of 150 million.

Q. And he told you the revenue target with respect to Ohio Edison, didn't he?

A. Yes.

Q. And he gave you the revenue target with respect to Toledo Edison, didn't he?

A. Yes.

Q. Did he give you the rationale underlying his proposed revenue increase for each of those three companies?

A. He didn't give me the rationale. That would be something you would ask Mr. Blank.

Q. Do you know what the rationale was independent of whether Mr. Blank gave you this rationale or not?

A. I do not.

Q. Then you are not in a position to indicate why, for instance, Toledo Edison was assigned twice the increase that CEI and Ohio Edison was assigned; is that correct?

A. That's correct.

Q. You have no idea?

A. I designed rates per the 150 million.

Q. And with respect to the the riders and the applications of the riders, did you design the construct of those riders so as to ensure that the revenue target for each of those riders that Mr. Blank provided you was met?

A. Distribution targets, yes.

Q. With respect to the distribution riders.

A. The distribution riders and the DSI rider, yes. Excuse me. The distribution is the base distribution, it's not a rider.

Q. With respect to the economic development rider, which you characterize, I believe, as a reasonable arrangement, correct?

A. The -- we have a reasonable arrangements rider and an economic development rider.

Q. With respect to the economic development rider, did he give you the revenue target?

A. The economic development rider is a revenue neutral rider. There isn't a target.

Q. So there's no risk of underrecovery or overrecovery from the companies' standpoint, correct?

A. It's a revenue neutral mitigation effort under the -- are we speaking about the economic development rider?

Q. Yes.

A. It's a revenue neutral rider used to make rate increases. And it did have a target. I'm sorry, it had a target of which we used for mitigating rate increases.

Q. With respect to these riders, did not Mr. Blank instruct you on the construct for the revenue recovery provided for in those riders?

A. Could you repeat the question?

MR. BELL: May I have the question reread.

EXAMINER PIRIK: Could you reread that.

(Record read.)

A. No.

Q. Would you turn to page 12 of your prefiled testimony.

With respect to the delta revenue recovery rider mechanism to recover the delta revenue associated with existing special contracts that continue past December 31, 2008 -- strike that.

With respect to exist -- respect to existing contracts, you are recovering those only on a going-forward basis from CEI customers; is that

correct?

A. That is correct.

Q. As shown on line 7 of page 12.

A. Yes.

Q. But with respect to other reasonable arrangements or unique contracts, you're recovering the lost revenues from all three of the companies' customers, are you not?

A. That is our proposal, yes.

Q. Did you make that decision or did Mr. Blank tell you to make that construct with respect to the riders?

A. That is a collaborative decision that was made within the rate department and Mr. Blank was a part of that, and we are using the provisions of the Senate Bill for that.

Q. Did Mr. Blank tell you to recover the special contract revenues from CEI customers -- from CEI customers and the reasonable arrangements revenues from all other customers -- all other companies' customers from all -- all of the companies' customers?

Strike that.

In one case you are recovering CEI lost revenues from CEI customers, but with respect to the other riders, Toledo Edison lost revenues will be recovered from Ohio Edison and CEI customers, will it not?

A. Going forward for any new contracts.

Q. Yes.

A. Yes. The new contracts, whether they are in Toledo or Ohio Edison or CEI, would be recovered from all customers.

Q. And were you not instructed to so construct the recovery by Mr. Blank?

MR. KUTIK: Objection, asked and answered.

EXAMINER PIRIK: Objection overruled.

A. No.

Q. Could you turn to page 3 of your prefiled testimony. You said, and I quote, "In order to illustrate the ESP's year to year comparisons, the billing determinants for Schedules 1A through 1C have been kept constant," do you not?

A. Which page are you on?

Q. Page 3, the last sentence beginning on line 16 through line 18.

A. Yes.

Q. Was the purpose of that for purposes of illustration to this Commission and for purposes of meeting the targets established by Mr. Blank to assure the company made its revenue projections in each of the three years covered by those schedules?

A. The purpose of having the billing units remain constant was to show the affect of the riders year after year.

Q. Now, if, for instance, Mr. Hussing, your rate design, by the way, recovers fixed demand and generation costs through an energy collection component, does it not? Your rate design?

A. When you mean fixed generation costs what are you referring to?

Q. Costs -- fixed costs in providing generation.

A. I don't know the terms of the generation procurement.

Q. Regardless of the terms of the generation procurement agreement, would you agree that the terms of the agreement provide for the recovery of variable and fixed costs including a return?

A. Which agreement are you talking about?

Q. Haven't we been talking about the procurement agreement?

A. Which procurement agreement?

Q. The procurement agreement between CEI, Toledo Edison, Ohio Edison, and FirstEnergy Solutions.

A. I have no knowledge of the procurement agreement. I did the rate design on the distribution portion of the ESP case.

Q. Are you stating to me that for purposes of assuring revenue recovery and meeting CEI, Toledo Edison, and Ohio Edison, and indeed FirstEnergy holding companies' return requirements, i.e., cost of capital, you don't know whether or not the rates that you have designed will or will not recover fixed generating costs?

A. I did not design the generation rates.

Q. In the procurement contract.

A. I didn't design any generation rates.

Q. Did you design the means by which CEI, Toledo Edison, and Ohio Edison will recover fixed generation costs?

A. I'm saying I didn't design any of the generation rates in the ESP case.

Q. All right. Let's assume for purposes of illustration that FirstEnergy Solutions, an affiliate company, has entered into a contract with each of the three operating companies that provides for it the recovery of its fixed costs.

Can you make that assumption with me, sir?

A. Can you define what you mean by "fixed costs"?

Q. Oh, generating plant, very expense fixed costs. That's not a variable cost, is it?

A. It's a -- it's a generating plant.

Q. Is that a fixed cost or don't you know?

A. I don't know.

Now, if the assumption, the illustration that you allude to on page 3, does not hold true, and as a result of a severe economic downturn less kilowatt hours are sold than were sold during the base period that you utilize for purposes of illustrating kilowatt hour sales in 2009, 2010, and 2011, do you know whether or not it is less likely or more likely that the company will meet the revenue requirements that Mr. Blank established for you?

A. The revenue requirements that we had for distribution, the companies' distribution rates, are a demand-based rate.

And the only affected revenue that would be if there was less kilowatt hours would be the residential customers, which is a kilowatt hour based rate.

Q. It wouldn't affect the generation fixed cost at all.

A. I thought your question was would there be less revenue.

Q. If your industrial sales went down in 2009, '10, and '11, that would not affect the revenues for those classes?

A. Your question to me was the targets that Mr. Blank gave me.

Q. That's correct.

A. He gave me the distribution targets.

Q. And those targets do not contemplate diminishing kilowatt hour sales coverage?

A. What I'm explaining is that the distribution rate design is a demand-based rate design.

Q. On page 4 of your testimony, you acknowledge that -- and I'm referencing now line 13, "Due to the extent and nature of the changes, portions of the current tariffs have been completely deleted and replaced."

Is that a radical change from the companies' past practice when securing a rate increase?

A. The change is -- the change is referring to that the current legacy rate schedules have been replaced with new rate schedules that are common between all of the operating companies.

Q. And does that change itself impact the rates that tariff customers in each of the three companies will receive?

A. Yes.

Q. So that aside from the increase, even absent an increase in authorized revenues, those changes will impact tariff classes and individual customers within each tariff class of each of the three companies, will it not?

A. Yes.

Q. Now, did you make that decision or did Mr. Blank make that decision?

A. The movement to the common rate schedules was initiated in the companies' distribution case.

Q. For purposes of illustration if we wanted to determine the amount of the rate increase for each company as a result of both the increased revenues which you are requesting as well as the changes flowing from these significant tariff provision changes that we've discussed, we could identify that -- those revenue increases, could we not, through an examination of each of your schedules?

A. If you are referring to Schedule 1A.

Q. Yes, for instance, in Schedule 1A, you have, do you not, and I'm referencing now page 1 of 3, do you have your schedules with you, Mr. Hussing?

A. Yes, I do.

Q. Page 1 of 3, that covers Toledo Edison, does it not, for the year 2008?

A. Was that page 33?

Q. Rate impact, No. 33, yes.

A. Yes, that is for 2009.

Q. For instance, on line 9, column F, it shows 940,112,777 revenue dollars, does it not?

A. That is correct.

Q. And by the way, just for purposes of interpreting this sheet, could we go to column C? That portrays the number of customer bills rendered for each of the tariff classifications set forth in column B, does it not?

A. Yes.

Q. So that we could take, for instance, general service transmission 63 and divide it by 12, recognizing some customers go in and some customers come out during the 12-month period, you could have a fractional average number of customers being impacted, could you not?

A. Yes.

Q. And would you agree that the 63 divided by 12 is 5.25 customers?

A. Yes.

Q. Stated differently, the 5.25 customers generated revenue in 2008 of $9,014,762, correct?

A. Yes, for general service subtransmission.

Q. And for that tariff class, they generated .76 percent of the companies' total revenues?

A. That is correct.

Q. Now, if we were to take the 2011 revenues as shown on your schedule 1C, page 1 of 13, rate impact 123, that would show us the revenue expected from that class from those 5.25 customers, would it not, for the year 2011?

A. Yes.

Q. And similarly it would indicate the percentage responsibility proportional to the total revenue responsibility for Toledo Edison?

A. Yes.

Q. Now, if -- and we could do that virtually for every class shown there, could we not, to determine the dollar impact -- the percentage impact?

A. Yes.

MR. BELL: I would like a single page

document marked for purposes of identification, if I may, Ohio Manufacturers Exhibit 1.

EXAMINER PIRIK: The document will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Now, forgive me, Mr. Hussing, I lack the resources that The Kroger Company and the Ohio Energy Group of having a paid consultant. I'm the Ohio Manufacturers' consultant in this case, as well as its attorney, and I constructed this document.

But would you agree that taking the class that we just went through in the manner in which it was constructed, that would represent the subtransmission line for Toledo Edison?

A. Yes.

Q. And it would represent proportionally both the percentage increase or decrease each tariff class for each of the three companies would receive?

A. Subject to doing the calculation, yes.

Q. And does that not, in fact, demonstrate that Toledo Edison customers as a whole are bearing a 19 percent increase as well as Ohio Edison and CEI's receiving a 10 percent increase?

A. Going from year 2008 through 2011, yes.

Q. So that effectively your rate design is accomplishing revenue targets established either by the infamous Mr. Blank, who I dearly love, or this collaborative group; is that correct?

A. The rate design -- or the numbers that you are referring to would have come from Mr. Warvell for the generation and transmission. I would have done the distribution portion of the bills or distribution portion of the riders.

Q. Looking at transmission in Toledo Edison, how many customers are there in Toledo Edison on the transmission tariff?

Would you accept, subject to check, based upon the same computation that we just went through on the subtransmission that there is a little over 56 average customers in that class?

A. Subject to check, yes.

Q. And those 56 customers are asked to generate for Toledo Edison an additional 120 -- $124 million in revenues?

A. From 2008 to 2011, yes.

Q. Correct. Your answer was?

A. Yes.

Q. Okay. And the same would be true with respect if the percentage increases or decreases shown on the far right, is that not correct?

A. Yes.

Q. Now, to use your own testimony, wasn't your objective in designing rates to provide for gradualism, mitigation of rate impact? Is that your testimony?

A. That is my testimony, yes.

Q. And is it your testimony that the increases which we've just covered accomplish that mission?

A. Well, the first point that I see on your sheet you are covering a two-year period.

Q. I left out the intervening period simply for -- for simplifications. The net result I could have added the second year, but if we take the revenues in the third year and subtract the 2008, doesn't that increase reflect the total increase one, two, and three.

A. That would reflect the three-year increase, yes.

Q. What's your point in bringing out that I omitted the second year for purposes of illustration?

A. Well, I think it's -- when you look at percentage, you can't just take a look at a percentage number. You have to also take a look at what the current position of a customer class group is.

For example, the Toledo Edison number is a large number, but when you look at maybe Ohio Edison, it's a smaller number, and the difference in the two numbers is that the Toledo Edison transmission group was a much lower starting point than the transmission customers for Ohio Edison.

Q. Would you --

MR. KUTIK: Hold on a second.

Had you finished your answer?

Q. Had you finished? I thought you had.

A. Yes.

MR. KUTIK: Sorry. Go ahead.

EXAMINER PIRIK: Mr. Kutik, could you take the microphone just in front of Mr. Jones so I don't miss.

Q. Does the consideration of that gradualism also require understanding and quantification of potential impacts derived from these riders?

A. Yes.

Q. Were you -- where I, as an Ohio Edison customer, are paying for credits given to Toledo Edison customers under reasonable arrangements, et cetera, et cetera?

A. No.

Q. I thought that with respect to the delta
revenue recovery associated with these that all
customers pay for.

A. That's going forward.

Q. Aren't we talking about gradualism not
looking over our shoulder on what was the last rate

increase and how did that get me but on a going-forward basis?

A. Excuse me, I thought you were talking about the delta revenue.

Q. Let's talk about the delta revenue.

On a going-forward basis in any of these customers, any of the -- either of the three companies know what the impact of the delta revenue credits will be and their revenue responsibility for those credits or discounts?

A. For the CEI current contracts, yes, those are in the rights -- in the rates, but any new -- any new contract that would be established is not shown because the contract doesn't exist.

Q. So for standpoint of mitigation I, in reviewing the impact upon me as a transmission customer that's getting a 52 percent increase without the riders, I should ignore how much that rider is going to impact me; is that correct?

A. I don't know the value of that or what
the cost would be.

Q. Have you made any analysis with respect to the impact of a 52 percent increase upon a customer class and the customers served within that class as to whether or not they can sustain that increase or they might have to go out of business?

A. That wasn't your job, was it? I didn't do an individual customer impact on any of what a rate impact would be.

Q. Would you agree, based upon the companies' proposed recovery of generation costs on a kilowatt-hour basis, that even within a class, higher load factor, customers' higher than average load factor, customers will receive an increase higher than the class increase has shown?

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

EXAMINER PIRIK: Yes.

Q. I'll restate it.

The increases and decreases by class shown on Ohio Manufacturer's Exhibit 1 reflects class increases or decreases, does it not?

A. That is correct.

Q. It does not reflect individual increases that customers -- individual customers within the class might be subject to, does it?

A. Yes, it does not.

Q. Given your recovery of generation cost on a kilowatt-hour basis, would you agree that higher than average load factor customers within a given class will receive a greater increase than that depicted on Ohio Manufacturer's Exhibit 1?

A. The increases shown are based on the current rate structure to the proposed rate structure. So if the current rate structure had benefited the customer, then I would agree. If the current rate structure was a kilowatt-hour rate, then there would be no difference in load factor.

Q. I think we all understand what you said, although it was a little difficult to follow.

Under the companies' proposed rate structure as opposed to the current rate structure, would a higher -- would a customer within a given class having a load factor greater than the class load factor average receive increases or decreases -- increases greater than the percentage increases shown on my far right-hand column?

A. Where I'm having trouble is your comparison to -- from the current rates to the proposed rates.

Q. 2008. What we are paying today? We are trying to measure impact and I'm trying to measure the impact of both the rates and the rate design.

Do you want me to restate the question, Mr. --

A. Yes.

Q. Would you agree that if I am a customer within any one of these tariff rate classes having a load factor greater than the average load factor for that class, I will receive a greater increase than the class percentage shown on the far right column? Yes or no.

A. I don't know. I would have to look at the -- look at the data on that customer.

Q. But you haven't done that, have you?

A. No.

Q. But your job as far as being director of analytical -- I believe it was director of regulatory analytics, you made no analysis of that, did you?

A. My analysis was at the class level.

Q. Yet on page 5 of your testimony, line 7 -- let me back up to line 4.

First consideration was to generate the revenue targets established by Mr. Blank for the companies and for the classes, was it not? Isn't that your first consideration?

A. Which line are you referring to?

Q. Line 4, where it says the "first consideration."

Do you see that?

A. Yes, I do.

Q. And that was to generate the revenue targets provided to you by Mr. Blank, was it not?

A. It says "The first consideration is to utilize the rate classifications developed in the Companies' distribution rate case."

I was referring here to utilizing the new rate schedules.

Q. All right. What's the second major consideration that you utilize for designing these rates? Is it to incorporate the concept of gradualism through a reasonable approach; is that correct?

A. Yes.

Q. Avoid substantial adverse impacts on customers, or was that irrelevant --

A. Yes --

Q. -- in your designing the rates?

A. I tried to mitigate rate increases.

Q. Would you agree, Mr. Hussing, that your first and last responsibility in this case is to design rates which produce the revenues that Mr. Blank instructed you to generate?

A. Mr. Blank provided me with the DSI number and the distribution -- distribution levels.

Q. You did not determine the revenue responsibility to be assigned to each of the three companies in this case, did you?

A. I did not do the generation or transmission rate design.

Q. And you did not determine the increases to be generated from each of the tariff classes of each of these three companies, did you? The revenue targets?

A. I took the revenue targets that Mr. Blank gave me for distribution and flowed those through the distribution tariffs.

Q. But Mr. Blank, as I understand it, gave you no instructions or directions with respect to rate design; is that correct?

A. The rate design for distribution was utilized out of our distribution case.

Q. With respect to the rate design in this case, you are the only witness sponsoring it, are you not?

A. Mr. Warvell was sponsoring the transmission and generation rate design.

Q. Okay, I stand corrected to that extent, Mr. Hussing.

On page 7, line 17, where you talk of

the -- and I will let you get to that page first.
A. Thank you.
Q. Line 17, where you say "The new rate classifications will be utilized for all nondistribution related rate calculations."
Do you see that?
A. Yes, I do.
Q. Were you responsible for those rate classifications and calculations?
A. I was responsible for the nondistribution uncollectible portion. But Mr. Warvell did the generation and transmission.
MR. BELL: Thank you, Mr. Hussing, I think that's all I have.
I think I stuck pretty close to my estimate.
EXAMINER PIRIK: Mr. Yurick.
MR. YURICK: Just a few questions.
- - -

CROSS-EXAMINATION

By Mr. Yurick:

Q. Mr. Hussing, you talked a little bit about special contracts in the context of delta revenues?

A. Yes.

Q. Historically has the company entered into special contracts?

A. The company has historically entered into special contracts, yes.

Q. And is one of the reasons that the companies' entered into special contracts is because the company economically benefits from special contracts in certain respects?

A. I don't know. They may or may not have.

Q. It's possible that the company may have economically benefited from special contracts in the past; is that right?

A. I don't know. I don't have a basis to make that determination.

Q. Let's take a hypothetical contract where the company entered into a special contract with a company and as part of the contract, they are required to demonstrate financial viability. Okay?

A. The customer.

Q. If the customer is required to demonstrate financial viability, okay?

Is that potentially an economic benefit to the company?

A. I don't know.

Q. So you don't know whether the fact that a company has to show -- make a showing of financial viability would lessen the risk that the company would have to write off a bad debt, for instance?

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

EXAMINER PIRIK: Yes.

(Record read.)

A. I don't know.

Q. So you would say you don't know whether if a company has to show financial viability to enter into a contract with your companies that that would lessen the risk of an uncollectible expense? You wouldn't think that would follow or you just don't know?

A. Yes, I wouldn't know if that would -- I don't know.

Q. Let me ask you this, to the extent a company were -- the FE companies were to enter into a special contract with a user and that company was

required to purchase a certain amount of power and
energy from the FE companies for a certain period of
time, do you think that would be a financial benefit
to the company?

A. Once again, I don't -- I don't have a
basis to form an opinion.

Q. So you don't think or you don't have a basis to form an opinion, as you say, that if a company is locked into a special contract that that wouldn't -- you don't know whether that would reduce the risk of that company shopping? You just -- no idea?

A. Yes. I don't have a basis to form an opinion.

Q. You would agree with me you would have an opinion that shopping risk is at least potentially a financial cost of the company, wouldn't you?

MR. KUTIK: You are talking about the company. Who are we talking about?

MR. YURICK: I'm sorry, let me rephrase.

EXAMINER PIRIK: Would you be real careful, Mr. Yurick, you are using company in two different ways. I don't know if you want to use customers as opposed to.

Q. If a customer is -- do you -- would you agree with me that if the FE companies --

MR. YURICK: Could you have the last question -- could you have the last question read back. I don't remember what I was thinking. I lost my train of thought there.

(Record read.)

Q. My question is you would agree with me or would it be your opinion that the risk of customers shopping is at least potentially a financial cost to the FE companies?

A. Are you referring to an operating company like Ohio Edison?

Q. Yes.

A. The operating companies are distribution utilities and their revenue is based on distribution revenues.

Q. So there's no -- there's no shopping risk to the generation companies? That's not a potential cost? Is that what you are saying?

A. In your hypothetical the --

Q. Just answer that question first.

MR. KUTIK: I'll object at this point, this witness isn't a witness to testify in any way, shape, or form about shopping risk. That's beyond the scope of his testimony.

EXAMINER PIRIK: I understand the objection. I'm going to overrule it and ask the witness to answer the question if he is able.

A. What I was saying is the distribution utilities are -- receive distribution revenue whether a customer shops or not.

Q. I heard that, so my question is your -- it's your testimony that shopping risk is not a cost either real or potential to the generation company?

MR. KUTIK: Objection.

A. I don't know.

Q. Okay. Could you please turn to your exhibit Schedule 1A.

A. Yes, I have it.

Q. Okay. If you could follow me, line 3, for example, "GP, general service primary."

Do you see that?

MR. KUTIK: Are we on the first page?

MR. BELL: Could we have a reading?

MR. YURICK: Schedule 1A, page 1 of 15.

MR. BELL: How about the impact sheet? That would help us a little better up in the upper right-hand corner. I couldn't remember why your, oh, rate impact 1.

A. Yes, I have it.

Q. The third column over, "Current Average Rates," do you see the number .08540?

A. Yes, I do.

Q. And then proposed rates for 2009, do you see the number .08995?

A. Yes.

Q. The first number, .08540, does that number represent the average of all of the customers in that particular class?

A. Yes.

Q. So would I be correct in stating that no one in that class may be charged that specific rate? That's an arithmetic average?

A. That is correct. That is correct.

Q. The .08995, that's the proposed rate generally across that class?

A. That's the average rate.

Q. Okay. When you say 2009/2008 percentage increase 5.33 percent, do you see that?

A. Yes.

Q. That's just an average increase; is that correct?

A. Represents the increase of the average.

Q. So that doesn't represent the actual increase in costs to any particular ratepayer within that customer class; isn't that true?

A. Yes, that's just the average of the class.

MR. YURICK: If I could have just one moment, your Honor.

Q. Turning to page 13 of your testimony I'm going to ask questions about lines 2 through 7, you are talking about -- there about CRES suppliers, correct?

A. Yes.

Q. And CRES suppliers you are talking about competitive retail electric suppliers, right?

A. Yes.

Q. You state there they can select which customers they wish to supply, do you see that?

A. Yes.

Q. And you say "the companies," which I take it to mean the FE companies, "serve as the default service provider and, therefore, have ultimate responsibility for service to customers in their service territories."

Do you see that?

A. Yes.

Q. You then say "CRES suppliers can establish their own credit rules to minimize uncollectible accounts."

Correct?

A. Yes.

Q. Okay. Could you explain or do you mean by that statement that since CRES suppliers can have rules or conditions under which they will enter into a contract with the prospective customer, that they can limit at least potentially the occurrences of uncollectible accounts?

A. Yes.

Q. And my question kind of going back is would you agree with me that one of the ways that a CRES supplier could potentially protect itself against uncollectible risk would be to have a potential customer prove their financial viability?

MR. KUTIK: Objection. Asked and answered.

EXAMINER PIRIK: Mr. Yurick?

MR. YURICK: I don't think he answered the -- I think he said he didn't know.

MR. KUTIK: That's an answer.

MR. YURICK: Then the new question refers back to this -- his testimony. I think it's a slightly different question.

EXAMINER PIRIK: I will overrule the

objection.

THE WITNESS: Can you restate the question.

MR. YURICK: Could you read it back, please.

(Record read.)

A. I don't know.

Q. (By Mr. Yurick) Okay. If you could look on that same page on lines 9 and 10, you say "The Companies' uncollectible cost, in contract -- in contrast, are the result of implementation of state policy."

Do you see that?

A. Yes, I do.

Q. Now, if you look at page 1 of 4 on your reasonable arrangement rider --

EXAMINER PIRIK: Where are you referring to?

MR. YURICK: I'm sorry, it's Schedule 3A, page 141.

MR. KUTIK: Could you say that again, please?

MR. YURICK: Schedule 3A, page 141 of 190, and it also says original sheet 85, page 1 of 4.

MR. KUTIK: Thank you.

A. Which company are you referring to?

Q. Cleveland Electric Illuminating Company.

A. Could you repeat the page?

Q. I'm sorry, it's page 141 of 190.

Are you there?

A. Yes, I am.

Q. Okay. You see where it says "New or Expanding Facilities?" That sub-heading --

A. Yes.

Q. -- under "Qualification"? Look at numeral little e). One of the requirements as I read this of this reasonable arrangement rider is in order to get a special arrangement, a company has to demonstrate financial viability; isn't that correct?

A. That is correct. These are the Commission -- the proposed rules that the Commission provided as -- as qualifications.

Q. It doesn't -- do you have an opinion or would you agree with me that the fact that an applicant must demonstrate financial viability would tend to lessen the risk, of the uncollectible?

MR. KUTIK: Objection.

EXAMINER PIRIK: Could you repeat the question, please.

(Record read.)

MR. KUTIK: My objection, your Honor, was this is now I think the third or fourth time the question has been answered -- or been asked.

EXAMINER PIRIK: I think -- I think that's true when it comes to the risk issue, so I'm going to sustain the objection.

MR. YURICK: I don't have any further questions. Thank you very much.

EXAMINER PIRIK: Ms. Wung.

MS. WUNG: Yes, your Honor.

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CROSS-EXAMINATION

By Ms. Wung:

Q. Good afternoon, Mr. Hussing. My name is Grace Wung, I am here on behalf of The Commercial Group. Just a few questions.

Can you turn to page 10 to 11 of your testimony. Specifically on page 11 you state there that "In an effort to encourage customers to implement energy efficiency initiatives, the rider is structured in such a way that customers may avoid a charge by implementing customer-sited programs...."

Is that correct?

A. That is correct.

Q. Do you have a list of customer-sited

programs that you were referring to?

A. No, I do not.

Q. Do you have a concept of what customer-sited programs would be acceptable to the company?

A. No, I do not, but we have an application that is in the rider that would be an application that a customer would submit to the company for avoiding the -- avoiding the demand-side management energy efficiency rider charge.

Q. You say there is an application you submitted to the company. It's the companies' determination then they will make the determination based on the Application as to whether or not the customer qualifies to be exempt from the rider charge?

A. It would be a qualification but we -- we would also look for the Commission also to -- to look at that as well.

Q. Do you have any criteria as to what you would use to determine whether or not the customer has satisfied both the companies' and the Commission's requirements?

A. The qualifications that the -- the qualifications listed on the rider.

Q. Well, let's turn to the rider then. I'm actually looking at Schedule 4C, page 10 of 23.

A. For which company?

Q. For Ohio Edison Company.

A. What page was that again?

Q. Page 10 of 23. I think it's sheet 97.

A. Did you say page 10 of 93?

Q. Of 23.

EXAMINER PIRIK: Schedule 4C.

THE WITNESS: Thank you.

Q. Just let me know when you're there.

A. That's 2011 tariffs.

Q. Yes, yes, sorry. I like to jump forward. When you guys --

EXAMINER PIRIK: I don't think he is there yet.

A. I'm there.

Q. Excellent, thank you.

When you guys were -- when you were creating the tariff and the programs within the tariff, did you review Senate Bill 221?

A. I don't have any programs.

Q. I'm sorry, when you guys -- when you were crafting the tariff sheets there on your demand-side management energy efficiency rider, what

considerations did you use in crafting those
provisions?

A. We were utilizing the Commission rules.

Q. So did you use Senate Bill 221 as a
guideline?

A. The -- the Commission proposed rules on reasonable arrangements and -- the reasonable arrangements, and there is some energy efficiency rules built in there.

Q. So specifically with regards to the energy efficiency rules did you review Senate Bill 221 for energy efficiency targets for electric distribution companies?

A. Yes, I have reviewed the energy efficiency targets in Senate Bill 221.

Q. Turning to the targets, let's look -- are you still on Schedule 4C?

A. Yes.

Q. If you to turn to page 11, the next page, 11 of 23, you have a Section 2b there?

A. Yes.

Q. And you guys have percentage. You have a set percentage of reduction of .045 percent for service in 2009, 1.2 percent for service in 2010, and 2.25 percent for service in 2011, and it goes on so on and so forth; is that correct?

A. Yes.

Q. How did you guys set those particular targets?

A. Those targets are one and a half times the requirements that are in Senate Bill 221.

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Q. And how did you settle on one and a half times the requirements?

A. The company, in order to avoid the charge, instead of asking customers just for the average if they are going to avoid the charge if they could be over the average.

Q. So you are seeking higher targets than what's under Senate Bill 221?

A. To avoid the charge.

Q. To avoid -- right. So you are setting higher targets for customers in order to avoid the charge that is set forth in Senate Bill 221?

A. Well, Senate Bill 221 targets are for the company to achieve. These targets are to avoid the charge for customers to provide customer-sited programs so the company can achieve the company targets.

Q. So, again, you are -- again, I guess so I'm clear, you are setting targets for customers who want to opt out, who are seeking to opt out that are higher than what the company is required to achieve under Senate Bill 221; is that correct?

A. No. We're -- we're asking for targets in the frame that you're -- you are asking your question, maybe I can clarify, is that the Senate

Bill 221 targets are -- are established for the
company to meet.
The numerical number that is in there is
higher than the Senate Bill 221 number by one and a
half times.
Q. Again, and that's the target that
customers were opting to -- who are seeking to be
excused from in your rider charge must be in order to
satisfy the requirements for the company.
A. Yes.
Q. Thank you.
And let's turn to page 12 of that same
schedule. On the section where you have a "Failure
To Comply."
Do you see that section?
A. Yes.
Q. And there essentially you are saying if
the customer fails to demonstrate they have met the
target that you've established for them, that then

they will be subject to the rider.

A. Yes.

Q. Have you considered scenarios in which a customer may meet, let's say, 95 percent of the target, are they still subject to the rider?

A. I think the language that's -- specifies that the company will provide reasonable notice where the company then can provide notice that -- to the customers while the customer's going to -- that they may not be in compliance.

Q. So, okay. So let's take a hypothetical example in which a customer comes to you, files an application, demonstrates to you that they've implemented certain customer-sited energy efficiency matters and they anticipate, you know, X amount of savings and that should meet your target.

But for some reason they don't come up to the estimate, that they reach -- they got to 95 percent, but they didn't reach the 100 percent. You would say, well, we are glad you did that, but you still have to pay the rider; is that correct?

A. Under the terms of the rider, yes.

Q. Have you guys considered a scenario where you would make accommodations for customers if they had reached a certain percentage, would you discount the proportion of the rider that he would be responsible for?

A. I don't know.

Q. You have not considered that?

A. I haven't considered that.

Q. And, again, can we go back to the

criteria that you are using to determine -- I'm trying to understand actually what criteria are you guys using to determine whether or not a program is initiated by a customer which would satisfy the requirements?

A. It's under -- it's on page 2 of 3 under the "Avoidability" section.

Q. And so those are all the limited criteria that you would provide as long as the company could -- a customer, excuse me, could demonstrate they met A through E, then they would be entitled to avoid the rider?

A. Yes.

Q. Have you guys talked with customers or customers who you think might be able to meet these requirements or would be seeking to avoid these types of riders?

A. I have not talked to any customers.

MS. WUNG: Thank you, I have no further

questions.

EXAMINER PIRIK: I think now would be a good time to take a 10-minute break and come back in 10 minutes.

(Recess taken.)

EXAMINER PIRIK: Back on the record.

Ms. McAlister.

MS. McALISTER: Your Honor, I have graciously agreed to let Mr. Rinebolt jump ahead of me.

EXAMINER PIRIK: Mr. Rinebolt.

MR. RINEBOLT: I have a meeting at 4:30, so I will be very brief.

EXAMINER PRICE: In Lima?

MR. RINEBOLT: No, no, it's actually here.

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CROSS-EXAMINATION

By Mr. Rinebolt:

Q. Mr. Hussing, good afternoon.

A. Good afternoon.

Q. It has been in the current regulatory world there is a new view that distribution costs are essentially fixed for customers.

Would you agree with that position?

A. Distribution transformers and things are fixed assets.

Q. Yeah. Now, do you -- is FirstEnergy's load growing either collectively or in any particular customer class, if you know?

A. The -- the -- it has a small growth to
it.
Q. Okay. Are you projecting levels of
energy efficiency -- I know the statute requires .3
percent next year.
Are you projecting levels of energy
efficiency that will completely offset load growth?
A. I -- I have not been involved in the --
in the -- any energy efficiency programs where -- for
ways of meeting those targets.
Q. Well, I ask you that because on page
11 -- or page 10 rather at the bottom of the page you
talk about the demand-side management, an energy
efficiency rider, and that you are going to recover
lost revenue -- distribution revenues.
So I guess my question is if distribution
revenues or distribution costs are fixed and you have
adequate load to recover those costs, then why do you
need to recover lost distribution revenues in order

to keep your distribution system financially viable?

A. The lost distribution revenues included in the rider are the basis of -- of the SB-221 where it provides the utility the provision to recover lost distribution revenues. I have not identified any lost distribution revenues.

Q. So it's just an option within that rider that you believe is authorized based on your reading of Senate Bill 221?

A. Yes.

Q. Okay. Now, on the top of page 11, you indicate that customer-sited -- or that customers with customer-sited efficiency would be able to avoid the rider in question, which includes the lost distribution revenues; is that correct?

A. That would be correct.

Q. Okay. Why are you discriminating among customers? Why should a customer with a customer-sited energy efficiency facility not be liable for lost revenues while folks like residential customers have to pay for lost revenues?

A. I don't believe we are discriminating. We are just -- it's a provision within the rider that allows a customer to -- which provides energy efficiency customer-sited efficiencies to avoid the terms of the rider per provisions in the Senate Bill.

Q. Well, do your residential customers have an opportunity to do that?

A. I would have to look at the rider's terms which are based off of Commission -- Commission rules.

Q. Well, if I may, let me suggest to you that residential customers aren't authorized to have customer-sited programs under the statute.

That being the case, all right, do residential customers under your rider structure have the opportunity to bypass collection of foregone distribution revenues?

A. No, they will not be able to bypass the rider.

Q. All right. So you are treating residential customers different than you are treating customers that are eligible for that rider.

A. I don't think it's treating different as the customer is -- the customer that's bypassing the rider is providing a benefit to all customers by providing a program by which other customers don't have to pay.

Q. Well, but wouldn't that -- wouldn't that logic also dictate that if energy efficiency produced by residential customers benefits all customers, that those customers should also pay for the lost distribution revenues? Doesn't the logic work both ways?

A. Can you restate that.

MR. RINEBOLT: Read it back, please.

(Record read.)

A. How can we account for the energy efficiencies of the residential customer?

Q. Well, number one, I am asking the questions, but just assume for the purposes of this discussion you indicated in your answer, and correct me if I am not characterizing properly, but you indicated that because everyone benefits from customer-sited energy efficiency programs, that it's reasonable for the other customers to pay those costs and to absorb the lost distribution revenues that those customer-sited -- those customers with customer-sited efficiencies don't have to pay.

Now, why shouldn't we require those customers to pay for the reductions that result from energy efficiency by residential customers?

A. I don't know.

Q. Okay. I just have one more question for you, Mr. Hussing, or one more series of questions, I suspect.

Let's move to page 12. You indicate that the companies' collection practices are guided by the rules of the Commission, which requires substantial notice periods and seasonal shutoff moratoria.

How many moratoria have we had in this

state in the last 10 years?

A. I'm aware of one for this past -- past winter.

Q. Okay. Now, you indicate these rules promote social objectives. What are these social objectives that you refer to?

A. Social objectives of -- of providing of -- protecting customers that can't pay their bills from being disconnected.

Q. Okay. And would you agree then that keeping people connected is a state policy?

A. Yes. I think it's a state policy that -- that of protecting customers at risk, yes.

MR. RINEBOLT: Thank you very much, Mr. Hussing. I appreciate that.

EXAMINER PIRIK: Ms. McAlister.

MS. McALISTER: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. McAlister:

Q. Good afternoon, Mr. Hussing. My name is Lisa McAlister, and I am here on behalf of Industrial Energy Users - Ohio.

I'm afraid I'm going to jump around a little bit to avoid rehashing discussions you already had, but I do want to start by following up on some of those discussions, and specifically earlier you had a discussion with Mr. Poulos and with one of the Attorney Examiners where you talked about rider DSI. And I believe you said it's not cost based.

Do you recall that discussion?

A. Yes.

Q. If it's not cost based, what's the basis for how you allocated it to the customer classes?

A. The way I allocated the DSI rider to customer classes, I allocated the -- it's a .2 cent per kilowatt hour.

I allocated the -- it first to residential -- to residential and nonresidential customers based on kilowatt hours and then I allocated the -- the nonresidential customers based on the distribution revenue allocations out of a distribution case which takes into account the -- takes into respect the -- the nature of customers and how they use the distribution system.

For example, less revenue allocation to a G subtransmission customer versus a general service customer.

Q. And earlier you discussed with Mr. Bell and then also with Mr. Yurick that your analysis was

at the class level; is that correct?
A. Yes.
Q. So you didn't look at what any individual customer increase may be under the ESP; is that right?
A. That's correct.
Q. So it's possible that a customer could see an increase in excess of 100 percent?
A. I don't know. It may be possible.
EXAMINER PRICE: Ms. McAlister, before you go on, back to the DSI rider question, how did you allocate among customer classes?
THE WITNESS: Among customer classes?
EXAMINER PRICE: Uh-huh.
THE WITNESS: I first allocated the dollars to residential and nonresidential as two groups based on kilowatt hours.
EXAMINER PRICE: Never mind, I confused myself. Don't even bother to answer my question.

It's late in the day, I'm sorry.

Q. (By Ms. McAlister) Now, when you look at mitigating the rate impacts, you only tried to mitigate the impact on a rate class level; is that correct?

A. I mitigated it on a rate class level,

that is correct.
Q. Okay. And your -- the reasonable arrangement rider; is that correct?
A. That is correct.
Q. Could you turn in Schedule 3A to page 62 of 103.
A. Which company?
Q. I believe I have Ohio Edison.
A. Could you repeat the page?
Q. Sure, 62 of 103.
A. Yes.
Q. There under the "Availability" section it states that a customer who is "taking service under a unique arrangement," and now per the errata sheet, I believe, it only also says "or avoiding the DSE1 or DSE2 charges are not eligible for the rider RAR"; is that correct?
A. That's correct.
Q. And, now, I'm going to direct your

attention also to rider DSE, which is on page 75 of 103.

A. Yes.

Q. And also under the "Avoidability" section, paragraph 2, it talks about customers who are eligible, and it says that a customer must on a reasonable arrangement or special contract must pay the DSE2 charges; is that correct?

A. Yes, it does.

Q. Okay. We talked a little bit about the basis of how these -- the eligibility or avoidability came into play, and is it the case that you based these on the draft rules that were in Commission Case No. 08-07 77-EL-ORD?

A. That is correct.

Q. And have you reviewed the Commission order that came out on September 17 in that same case where the Commission issued final rules?

A. Yes, I have.

Q. So are you aware that the provision that limited the eligibility to reasonable arrangements is no longer in the final rules as compared to the proposed rules?

A. Yes, I am aware of that.

Q. So is there any reason to retain this limitation on availability either to conform to the proposed rules unless we were trying to conform to the draft rules so that provision the company would look at removing?

Q. Okay. And you talked with Ms. Wung a little bit about the eligibility for customer-sited projects. I just want to be sure I understand what your discussion was.

There aren't any details identifying how the customer-sited capabilities will be relied upon by the companies in the Application or any of the riders or workpapers, are there?

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

(Record read.)

A. How the customer-sited programs would be used, is that your question?

I mean, I would look at the companies relying on the customer-sited programs to -- to help meet the energy efficiency standards. That's how the company would use the customer-sited project.

Q. Okay, but there aren't any specific details on how a particular program would be used compared to another type of program?

A. No.

Q. And you talked with Ms. Wung also that if a customer met only a portion of the targets that are identified in the rider, they would not be eligible for the rider; is that correct?

A. If they didn't meet the conditions by which they committed their customer-sited programs.

Q. Okay. But if a customer does utilize customer-sited programs and then commits them to the companies, whether they meet all of the targets or not, doesn't that have value for the companies?

A. I don't know. I don't have a basis to make a determination.

Q. Okay. Could you turn to the rider which is page 75 of 103, and you may already be there.

A. Yes.

Q. Okay. And under the "Avoidability" section, paragraph 2B, that's where those targets are listed.

A. Yes.

Q. Let's say for 2013 a customer commits a project by which they could demonstrate they have reduced their usage by 4.6 percent. Does that have value for the companies?

A. I think it has value in that the energy efficiencies were produced.

Q. And couldn't they also -- the companies use that value towards the targets that they have to meet for SB-221?

A. If the customer has committed those -- those energy efficiency programs to the company, yes.

Q. Okay, your testimony indicates that the avoidability of the DSE2 charges is intended to provide customers with an incentive to implement customer-sited capabilities; is that correct?

A. That is correct.

Q. However, for the nonresidential customers the initial DSE2 charge is zero; is that correct?

A. That is correct.

Q. And the earliest that it could -- the DSE charge -- excuse me, DSE2 charge for nonresidential customers could increase January 1, 2010?

A. The DSE charge is updated on January 1 and July 1 of each year.

Q. But there won't be any cost January 1 until 2010; is that right?

A. I don't know. I don't -- I am not responsible for the demand-side management energy efficiency programs. I don't know what programs will be implemented.

Q. Okay. Well, assuming there aren't any charges, at least initially, until there are charges, the rider doesn't actually provide any economic incentives, does it?

A. It doesn't provide an incentive for someone to avoid a zero charge.

Q. Okay. And I don't think you were here

for the cross-examination of Mr. Warvell, were you?
A. No, I was not.
Q. He was asked whether he knew what the Midwest ISO's requirement was for response time in order for interruptible load to qualify to reduce a load serving entity's designated network resource requirement.
Are you familiar with the Midwest ISO notice requirements?
A. No, I am not.
Q. Okay, but you are sponsoring all of the tariff sheets; is that correct?
A. I'm sponsoring the distribution tariffs. Mr. Warvell was sponsoring the generation transmission tariffs. If you tell me which rider you are referring to.
MS. McALISTER: That's all I have, Mr. Hussing. Thank you.
EXAMINER PIRIK: Mr. Porter?

MR. PORTER: No questions, your Honor.

EXAMINER PIRIK: Mr. Smith.

MR. SMITH: Yes, your Honor.

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CROSS-EXAMINATION

By Mr. Smith:

Q. Good afternoon, Mr. Hussing. My name is Craig Smith, I'm representing Material Science Corporation.

You testified -- you testified to Mr. Bell that you have been in your current position for about two years?

A. Current position in my director of regulatory analytics. I have been in the rate department for four years.

Q. Four years? And what have your responsibilities been?

A. My responsibilities -- present responsibilities are to perform regulatory analysis, such as rate case work.

Q. And how many do you have as a staff?

A. I have a staff of 3815 people.

Q. And do you have a general knowledge of

FirstEnergy rates -- rate policy and special contracting?

A. Can you -- can you say your question again?

Q. Yes. Are you aware of the FirstEnergy operating companies' policy on special contracts?

A. I am not aware of a policy.

Q. Okay. Are you aware of the special contracts that have been in effect for many customers since 1995, for example, involving Toledo Edison?

A. I am aware of the CEI contracts that have extended into 2009.

Q. You are not aware of the Toledo Edison contracts?

A. Not specifically, no.

Q. Just to find out your knowledge, were you aware that a number of special contracts served by Toledo Edison were terminated by the company on -- during 2008?

MR. KUTIK: Objection.

EXAMINER PIRIK: Objection sustained.

MR. SMITH: I have a purpose to ask that if I may, your Honor.

EXAMINER PIRIK: Go ahead, explain.

MR. SMITH: What I want to establish is

that as Mr. Bell on schedule 2 --

EXAMINER PIRIK: I know it's really hard -- could you use the microphone -- because of the feedback, but I need it.

MR. SMITH: Okay. Mr. Bell asked a number of questions of Mr. Hussing about the revenue distribution for Toledo Edison, and he presented his Exhibit 1 that shows the transmission customers would receive a 52 percent rate increase from 2008 through 2011.

I guess what I want to explore with the witness is the timing of his revenues in 2008 and when did the revenues for the transmission customers -- when were they recognized and also when were the revenues recognized for the primary general service customers.

EXAMINER PIRIK: Given that that's the direction of -- as long as it's going in that direction, I will reconsider and overrule the objection at this point.

MR. SMITH: I appreciate it.

Q. (By Mr. Smith) Maybe the easiest thing to do is turn to Ohio Manufacturers' Association Exhibit 1.

Do you have that in front of you?

A. Yes, I do.

Q. Okay. And as I said -- understood Mr. Lang, he based his numbers on Schedule 1A that you are sponsoring; is that your understanding?

A. These numbers are based off of my Schedule 1.

Q. 1, okay.

A. Yes.

Q. And what I want to determine is when you are comparing 2008 rates with 2009 rates, I would like to find out when revenues were recognized for the 2008 rates.

MR. KUTIK: I object to questions about derivation of this number without going back to where the numbers came from.

Mr. Hussing was gracious enough with Mr. Bell to accept his numbers, subject to check, but if we are going to ask Mr. Hussing about Mr. Hussing's numbers, we should ask Mr. Hussing about those numbers, not the numbers used by Mr. Bell.

EXAMINER PIRIK: Can you tie those back to the numbers that are shown in the witness's testimony and exhibits?

MR. SMITH: To overcome the objection,

yes.

Q. (By Mr. Smith) Well, in looking at Schedule 1A, page 1 of 13, do you have that in front of you, Mr. Hussing, Schedule 1A?

A. Yes. Impact sheet No. 1.

Q. Yes. In looking at the "General Service

Primary" there's 2008 revenue of $112,735,395 in column F.

Do you see that?

A. Can you restate the number, please?

Q. Column F, third line.

A. 274,619.

Q. No, I'm looking at Schedule 1A, page 1 of 13, and what I see for Toledo Edison, this is only a Toledo Edison tariff or schedule --

MR. KUTIK: Could you tell us what rate impact page you are looking at, please?

MR. SMITH: Schedule 1A.

MR. KUTIK: You need to give us a rate impact, see in the upper right-hand corner.

EXAMINER PIRIK: Are you looking at rate impact page 33?

MR. SMITH: 33.

A. Thanks.

Q. On the same page now?

A. Yeah. I was on the other page.

Q. Sorry for the inconvenience.

Line 3, column F, do you see $112 million?

A. Yes, I do.

Q. Okay. What period of time were those

revenues derived?
A. Those revenues were 12 months ending February, 2008, adjusted for transmission and fuel numbers to reflect a current 2008 revenue -- average revenue -- average rate.
Q. So that year end February, 2008?
A. 12 months.
Q. 12 months ending 2008?
A. 12 months ending February, 2008.
Q. Okay. Same answer would be for line 5?
A. Yes.
Q. Okay. All right. In your testimony you are sponsoring a number of rate riders. And what I'm interested in are the riders concerning jobs and retention of business and those types of riders.
Turning to your testimony at page 6, you list those schedules, both schedules, in your response. Specifically at line 25 the reasonable arrangements rider, then on page 7 the economic

development rider.

Focusing on those two riders, you developed proposed rate tariffs based on the proposed Commission rules promulgated earlier this year; is that correct?

A. The reasonable arrangement riders

provisions were based on those rules.

Q. And as Ms. McAlister pointed out, you have since that time new -- new rules have been enacted?

A. There's new rules that the Commission has provided. I believe they are still not finalized.

Q. Well, what is the companies' position on changing their tariffs to conform to the final rules enacted by the Commission for reasonable arrangement riders and other applicable tariffs?

A. There is a provision up in the upper left-hand corner of the rider, says the company can adjust the rider based on when the rules are completed.

Q. Okay. In the electric security plan at page 37, do you have the plan in front of you?

A. Are you referring to the Application?

Q. Yes.

A. There's a few books up here. Which page are you referring to?

Q. Page 37 and 38.

A. Yes, I'm there.

Q. Well, the part -- subpart B "Compliance with Draft Commission Rules," first sentence essentially says if the Commission requires or finds it necessary, you will conform to the plan to meet the substantive requirements of the rules adopted; is that correct?

A. Yes.

Q. And in what manner would you expect the Commission to express to conforming the ESP to their rules?

A. I don't know.

Q. And then you have a converse sentence, "if this plan is inconsistent with the Commission's final rules, the Companies' request waivers to the extent deemed necessary and the Commission's approval of this Plan shall constitute a waiver of any Commission rule that is inconsistent with or in conflict with the provisions of this Plan."

Is that a fair characterization?

A. I am not supporting this from my testimony, so the answer is I don't know.

Q. Who is supporting it?

A. Mr. Blank.

Q. So the state of the record is you are sponsoring -- you are sponsoring the reasonable arrangement rider based on the Commission rules as proposed. And, in fact, there have been some changes made within those rules, correct?

A. Yes. They haven't been finalized.

Q. So -- but it's your intent to have the Commission adopt rules you are sponsoring without any changes?

A. I haven't had any time to review the changes that -- the total of what would have to be made based on the new proposed rules, so I don't have a basis to answer your question.

Q. Well, one of the riders you are sponsoring is the economic development rider?

A. Yes.

Q. And you believe the purpose of this rider is to promote gradualism to mitigate overall bill impacts?

A. That is correct.

Q. And you think the rider provides for economic stability?

A. Economic stability in that it mitigates rate impacts which provides support to the economy and provides -- mitigates increase in customers' bills.

Q. And, therefore, the rider has a -- benefits all customers and should be recovered from all customers; is that correct?

A. Yes.

Q. And you go further that it should be recovered from all customers over three companies regardless of whether or not the rider applies to a particular company?

A. The rider is -- the rider's charges in the economic development rider are being recovered by the general service secondary -- general service primary customers of each company.

Q. Now, you view the reasonable arrangement rider a little bit differently than the economic development rider.

That's a preface.

You find that the reasonable arrangement rider is really intended to address the economic challenges facing Ohio; is that a fair characterization?

A. With the Application of -- of reasonable arrangements that were approved by the Commission, yes.

Q. Okay. And the purpose of this rider is
to promote regional growth.

A. Which rider?

Q. Reasonable arrangement rider.

A. It has a number of different sections
within it based on what the Commission had laid out.

Q. Okay. And it also, according to your testimony, furthers the state policy of making Ohio more effective than the global economy; is that correct?

A. Yes, it provides economic retention capabilities. It also provides for energy if a -- energy efficiency facilities and also for reasonable arrangements that the Commission would grant.

Q. And further economic development, including job creation and retention, correct?

A. Yes.

Q. Capital investments and incremental and retained load, true?

A. Yes.

Q. Okay. Now, is this -- is this rider also the delta revenues being recovered from all the customers of the three companies?

A. Under the companies' proposal if there is a reasonable arrangement granted by the Commission, then the company would recover that from all customers -- from all customers of the companies, yes.

Q. Well, in light of the importance of these riders to the welfare of Ohio and also to mitigating rate impacts, I was a little bit surprised by your answers earlier about how the company plans to administer these riders.

And let me just add, is it your position that a reasonable arrangement Application upon request would be made -- will be given to the customer; is that how it's going to work out?

A. The customer can make an Application to the company which -- which those provisions then on that Application match the Commission rules for the applicability of a -- and the terms by which then that customer must meet to have the Commission rule -- have the Commission review that reasonable arrangement request.

Q. And once the Application -- let me just ask you this way, does the company ever anticipate soliciting reasonable arrangements from its customers?

A. I don't know that.

Q. Once the Application is returned to the

companies, what -- what review do you plan to
undertake?

A. The review of the -- review of the Application.

Q. For completeness?

A. For completeness.

Q. And if you find information lacking, will you contact the customer and work with them to complete the Application?

A. I believe that would be the process.

Q. I mean, a company shouldn't view themselves as gatekeepers in this process, should they?

A. The companies view themselves as the method by which to review the Application for completeness.

Q. Okay. And once completed, is it your testimony the company will not make a decision whether or not to accept the Application but rather send it to the Commission for its acceptance and review?

A. Yes, that's my understanding.

Q. Now, is the company planning on making Application or redirecting the customer to do so?

A. The customer is filling out the

Application.

Q. So fundamentally you are certifying it meets your requirements?

A. It meets that -- it met the Commission requirements.

Q. So while you are sponsoring rider RAR, which is original sheet 85 --

A. For which company?

Q. Toledo Edison. That's page 65 of 106 of Schedule 3A.

A. Can you repeat that?

Q. I'm sorry, page 65 of 106, Schedule 3A.

A. Yes. I'm there.

Q. Okay. You are asking the Commission -- okay?

A. I'm there.

Q. You are asking the Commission to approve this language as a filed rate tariff; is that correct?

A. Yes. With the ability to update it when the final rules are completed.

Q. Okay. And once approved, this is an enforceable tariff on file with the Commission, correct?

A. It's an Application. It shows it's a

tariff, but it's a -- I want to call it a -- an Application process by which customers would seek a reasonable arrangement.

Q. Okay. And are you -- are you representing that -- strike that.

Is the language in this tariff language

proposed and approved -- proposed by Toledo Edison and approved by the Commission?

A. The companies have provided this tariff at the point here in the ESP for approval of the tariff, so it hasn't been approved yet.

Q. Once approved, it's your tariff, correct?

A. Yes.

Q. Okay. So when we go to page 4 of 4, and I represent I don't know what the final rules may say about failure to comply, but as written today in your tariff, your failure to comply has consequences; isn't that true?

A. Yes, it does.

Q. And the consequences that Toledo Edison will charge the customer for all or part of the incentives previously provided by the company; is that correct?

A. Yes.

Q. Now, as a hypothetical, let's say that the customer had this tariff in effect for 12 months and they were in full compliance for 11 months and three weeks.

Okay? Will you accept that just as a hypothetical?

A. I'm with your hypothetical.

Q. Okay. The last week they fall out of compliance. Is it your position they owe the company the total refund for the 12 months or for the last week?

A. I think the reasonable range or -- or the failure to comply language also provides a -- that the company will, after reasonable notice, shall terminate, so it seems to me there is an opportunity for the customer to cure their default position.

Q. All right. Upon receiving notice upon failing to cure, what amount of refund will Toledo Edison look for in the customer?

EXAMINER PRICE: Mr. Smith, could I ask you to clarify how he fell out of compliance?

MR. SMITH: I don't know, they are just out of compliance. Toledo Edison claims they are out of compliance. And the hypothetical goes to amount of refund owing for being out of compliance.

I am not asking -- I am not asking him

why they are out of compliance, but I'm trying to find out from the company the length of time a customer is obligated to refund the benefits of this tariff back to the company for noncompliance.

A. Based on your hypothetical, I can't determine what the situation and what -- what's out of compliance. I don't know.

Q. You won't assume -- you just won't assume noncompliance in order to answer the question?

A. Yes. I don't know.

Q. Okay. I accept you don't -- you cannot interpret this language.

MR. KUTIK: Objection.

MR. SMITH: It's a question. He can say yes or no, sir.

EXAMINER PIRIK: What's your grounds?

MR. KUTIK: It's argumentative.

MR. SMITH: No. I said he cannot interpret this language.

MR. KUTIK: He has already indicated he can't understand in terms of the hypothetical to answer the question, so for counsel to insinuate that he can't interpret is an argument.

MR. SMITH: Fine. I will strike the question.

EXAMINER PIRIK: Thank you.

Q. (By Mr. Smith) Will you please interpret the failure to comply language as you understand it in your tariff?

A. The customer fails to comply with any of the criteria for eligibility, the company after reasonable notice to the customer shall terminate the arrangement under the rider.

So the customer has the opportunity through notification to the company to cure their deficiency.

Q. And what about refunds, does the company -- does the customer have an obligation to refund any amounts under this language?

A. Yes, they do.

Q. Under what circumstances and in what amount over what time period?

A. The language as stated, "customer shall charge for all or part of the incentive previously provided by the company which the customer shall be obligated to pay," so there is an opportunity for all or part.

Q. And who makes that decision?

A. I don't know.

Q. Under "Delta Revenue Recovery," the last sentence, do you see the last sentence starting with "To the extent that...."?

A. Which? Which section are you referring to?

Q. You should see "Failure to Comply" you just referred to.

A. Yes.
Q. And then the next subpart is "Delta Revenue Recovery." And the first sentence defines what delta revenue is. And the second addresses certain PUCO determinations.
Do you see that?
A. Yes.
Q. Now, if the company terminates the arrangement because of Commission -- because of PUCO actions or determinations that resulted in unrecovered delta revenue, would the company then seek to recover from the customer repayment of the benefits?
A. The language as written says the company may terminate the arrangement.
Q. Okay. Assuming the company terminates the arrangement. Will you assume that?
A. Yes.
Q. Will the company then hypothetically

request refunds of the benefits already obtained by
the customer?

A. The rider doesn't specify on recovery
from the customer.

Q. Okay. Also in your testimony end of
page -- or I guess it would be page 11, you talk

about delta revenue recovery rider that -- give you a minute to find it.

A. Which page again?

Q. 11.

A. Yes.

Q. Now, you referred to Revised Code Section 4905.31.

A. Yes.

Q. Correct? And this is the section that allows for Toledo Edison, for example, or it could be OE or CEI, to file a schedule or establish a reasonable arrangement.

Now, parts of the schedule that -- that was a preface, part of the schedule concerns EDU may recover their costs and lost revenues; is that true, because you referred to?

A. It has that provision, yes.

Q. Okay. Now, you are asking the Commission for approval of a delta revenue rider, correct?

A. That is correct.

Q. Okay. And you want to apply -- to apply it to your economic development rider, your reasonable arrangement rider, and your unique contract arrangement; is that true?

MR. KUTIK: May I have the question read.

(Record read.)

A. The delta revenue rider pertains to the reasonable arrangements and if there was a unique contract entered into. The economic development rider is a revenue neutral rider.

Q. All right. That clarification, the delta revenue rider will apply to reasonable arrangement and unique contracts; would you agree with that?

A. That's correct.

Q. Okay. Now, what's -- the purpose of that rider is to make those arrangements revenue neutral to the operating companies; is that true?

A. Yes.

Q. Okay. Now, would not -- would not that make the company indifferent to whether or not a customer is receiving rates under the reasonable arrangement or unique contract because you are being made whole?

A. I don't understand your question.

Q. Because of the revenue recovery rider, you are receiving the same amount of revenue even though a special arrangement or your new contract was in effect or were in effect; is that correct?

A. That is correct.

Q. As a general matter, you are sponsoring a number of riders that are nonbypassable; is that true?

A. Yes.

Q. What is your standard for whether or not a tariff or a rider should be passible or nonpassable?

A. Distribution riders should be nonbypassable. They are distribution related. The reasonable arrangements or delta revenue rider is -- provided a social benefit in supporting economic development so that should be nonbypassable.

And the economic development rider charges that we have in place should be nonbypassable because it's providing -- it's mitigating -- it's providing social benefits by mitigating rate increases to -- which supports customers in the aggregate, so I would believe that is also nonbypassable or nonavoidable.

Q. Thank you.

Just addressing the unique contract, you
have no procedures or rules proposed to how customers
are supposed to apply or enter into unique contracts;
is that correct?

A. We would rely on what rules were provided
for by the Commission.

Q. And they do address unique contracts in the proposed -- in the proposed rules, correct?

A. Yes.

Q. And at least in the proposed rules -- as I said, I have not reviewed the final rules -- at 4901:1-38-05, unique arrangements are the proposed rules.

Do you by any chance have a copy of those?

A. No, I do not.

Q. Okay. I'm just going to refer to part C of that section that I cited, and I will quote, "Reasonable arrangements must reflect terms and conditions for circumstances for which the electric utilities tariffs are not already provided."

As a rates director for the operating companies, how would you -- how would you interpret that language?

MR. KUTIK: Your Honor, if he is going to be asked to interpret language, could he see it?

MR. SMITH: I read it to him. It's very short.

EXAMINER PIRIK: Mr. Smith, in addition since we are at this point in the record could you just cite again the date of the entry that those --

that what you are reading from was issued? Do you have that date?

MR. SMITH: July 2, 2008, I was informed. But let me change my direction a little bit.

Q. (By Mr. Smith) What's your understanding of the purpose of a unique arrangement, unique contract?

A. The purpose of reasonable arrangements -- unique contract or reasonable arrangements is to provide job retention and economic development.

Q. And I believe you testified earlier about unique arrangements or contracts would be more likely entered into by large -- by customers with large usage; is that a correct recollection of your previous testimony?

A. Yes, I believe the Commission has provided some measure of those mercantile customers.

Q. Okay. So your -- are you envisioning these kind of contracts being similar to the traditional contracts that were entered into and approved by the Commission covering large mercantile customers?

A. I would envision they meet the requirements of the Commission if it's mercantile and that's the level of the customer that would be

seeking that type of contract.
Q. You are going to rely on the Commission rules for this, correct?
A. As a basis, yes.
Q. Now, the companies had -- at least Toledo Edison at least had in effect a market based tariff, an experimental market-based tariff. Are you familiar with that?
A. I understand that there is a market-based tariff. I may not be familiar with every aspect of it.
Q. Now, are you proposing a market-based tariff in your ESP?
A. Not as part of the schedules that I'm supporting.
MR. SMITH: Okay. I have nothing further. Thank you.
EXAMINER PIRIK: Mr. Breitschwerdt.
MR. BREITSCHWERDT: Your Honor,

Mr. Petricoff has asked, because he is unable to attend the hearing in the morning, to go first, so I would defer to him at this time.

EXAMINER PIRIK: Thank you.

Mr. Petricoff.

MR. PETRICOFF: Yes, I would indicate

tomorrow morning is -- we have a meeting in the Duke case and I think we have -- counsel for OEG has got the same problem.

MR. KURTZ: Since I only have 5 minutes and Mr. Petricoff has 20, he has agreed that I will go first, if that's okay.

MR. PETRICOFF: In other words, your Honor, since this is football season it's a double reverse.

EXAMINER PIRIK: Mr. Kurtz.

MR. KURTZ: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Kurtz:

Q. Good evening, Mr. Hussing. Page 5 of your direct testimony, please. I would just like to read a few sentences beginning on line 7.

"The second major consideration is to incorporate the concept of gradualism in the transition from historic rate levels and structure to the proposed rate classifications and components of the ESP. The transition from historic rate levels and structures to proposed rates must be accomplished through a reasoned and gradual approach in order to accomplish the objective of mitigating significant customer impacts."

I won't burden the record with reading more. You have two more sentences on the concept of gradualism; is that correct?

A. That's correct.

Q. I would like to ask you to turn to your Toledo Edison rate impact schedule, Schedule 1A, page 1 of 13. This shows the first year rate impact on Toledo Edison by customer class.

MR. KUTIK: If you point to the rate impact page for that.

MR. KURTZ: Schedule 1A, page 1 of 13, workpaper reference Schedule 3A-C, 5A-T.

A. I believe you are looking at rate impact sheet 33 in the corner.

Q. Okay. That's -- yes. That's it. Okay. Third column from the left, the 2009 to -- 2008 to 2009 percentage rate increases, this is on total revenue, isn't it? This is not just generation?

A. Yes. This is total revenue.

Q. Does this sheet include the impact of the proposed riders as well?

A. Yes, it does.

Q. Okay. So let's go to rate GT. Do you see that, "General Service Transmission"?

A. Yes.

Q. That's your large industrial customers?

A. Yes.

Q. Do you know any representative customers on that schedule, for example?

A. Not by name.

Q. Okay. But in any event, from -- in one year the ESP would increase their rates by 33.83 percent; is that right?

A. That is correct.

Q. Okay. And in the same one year the rates for general service subtransmission would be reduced by 14.88 percent. The general service primary would get a rate deduction of 10.27 percent, general service secondary would get a rate reduction of 6.92 percent, and street and traffic lighting which is small class, admittedly, would get a rate reduction of 25.66 percent; is that correct?

A. That is correct.

Q. Okay. Now, I know the gradualism is not a quantative mathematical concept, it may be somewhat subjective, but how do you square a 33.83 percent rate increase for your biggest customers with the rate reductions for the vast majority of the other business customers?

A. When I looked at the mitigating rate impacts, I did mitigate the 33 percent number. It was actually in the 60 percent range. So I did mitigate it through -- through gradualism.

The other thing I think you have to realize when you are looking at gradualism is for every credit that you are going to provide there is an imposing charge.

So the other theory of gradualism that I've presented was not raising those customers that I'm going to charge to provide the credits over the system average.

Q. Now, would you agree that reasonable minds may differ on what is proper application of gradualism and that other people may look at the same numbers and decide that a 33 percent rate increase for one class and a 14 or 15 percent rate increase -- rate decrease for the other is not gradual, is not consistent with gradualism?

A. There's many different things to take a look at. The current rate position compared to another current rate position going to the proposed position. So there could be many different versions of gradualism.

Q. Okay. I would like to ask you a question about something I heard earlier from cross. I forget who, this DSI rider, is that -- did I hear you say that's two-tenths of a cent per kilowatt hour proposed charge?

A. Yes.

Q. Okay. That's about $112 million a year?

A. That is correct.

Q. Okay. Now, you are proposing to allocate that among customer classes on a kilowatt-hour basis?

A. No.

Q. Okay.

A. It's based on -- for residents it is based on a kilowatt-hour basis and it's -- and it's allocated on demand for the general service customers except for transmission which isn't part of the charge.

Q. TS would not get any of this charge?

A. GT.

Q. GT would not get any of this charge?

A. That is correct.

Q. Okay. But, still, between the nonG --
and that's because they don't take distribution service?

A. That's correct. That's correct.

Q. Between the other classes -- I still

don't understand how you are going to allocate it between those rate schedules.

A. We took a look at the -- the $112 million, split that based on kilowatt hours between residential and nonresidential --

Q. Can you stop right there?

MR. KUTIK: Did you need to finish your answer?

Q. Go ahead.

A. And then next we then allocated the -- the nonresidential groups to the general service schedules utilizing the revenue allocations developed in the distribution case.

So that took then dollars to schedules and then utilizing the billing determinants for those schedule demands created a -- a kW or kVA charge.

Q. Forget the design of the actual rate of how you are going to collect it. Between the residential and the other classes other than GT, you take this pot of money and allocate it on kilowatt hours?

A. Between -- between residential and nonresidential it's the initial step to split the dollars.

Q. Okay. So this is a kilowatt-hour

allocation to the nonresidential, nonGT classes.

A. Yes.

Q. Okay, and then you design the rates based upon the method you've used -- you indicated you used?

A. Yes.

Q. Why did you allocate to the -- to the nonGT classes -- why did you use a kilowatt hour allocator, an energy indicator when this is a distribution revenue charge?

A. Because the number given to me was stated as a cent per kilowatt hour number.

Q. Do you know why the company would propose a cent per kilowatt hour method to recover distribution revenues rather than a percentage distribution revenues, for example?

A. That was just the methodology that I chose.

MR. KURTZ: Thank you, your Honor. Those

are all my questions.

EXAMINER PIRIK: Thank you.

Mr. Petricoff.

MR. PETRICOFF: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Petricoff:

Q. Good afternoon, Mr. Hussing.
Mr. Hussing, if you would turn to Schedule 5F.

A. I'm there.

Q. And you are sponsoring this -- this schedule?

A. Yes, I am.

Q. And it was prepared by you or under your direction?

A. Yes, it was prepared under my direction.

Q. And the purpose of this schedule is to calculate a rider to make the operating companies whole for any unpaid generation transmission and ancillary service charges for standard service?

A. Yes, by the title, Nondistribution Uncollectibles.

Q. But the purpose of this is to basically to have the operating companies be made whole for what they have to pay for generation and transmission and ancillary services which they are not able to collect from the customers?

A. Yes.

Q. And the numbers that we see here on 5F, these are your best projections of what the actual cost is going to be for 2009?

A. These aren't 2009. These are the numbers -- are representative from -- of numbers that were put together for our distribution case. So they are reflective of 12 months ending February, 2008. And the rider is a reconcilable type of rider.

Q. But at the moment this is in your opinion an accurate projection of what the cost is going to be for the -- and we will call it the NDU, for the NDU rider?

A. Yes, it's the companies' initial proposed rate.

Q. And if I wanted to determine how many dollars are at stake here, all I would have to do is multiply the number in the totals column on line 28 times the total number on line 27 to come up with the amount of dollars that's going to be collected by this rider in 2009?

A. Yes, or close approximation would be line

24.

Q. Okay. I'm afraid I don't understand. Line 24 is the Uncollected Expense. That's a 22 million -- a $22 million figure?

A. Yes.

Q. But if you were collecting $4 million off of sales of 56 million-kilowatt hours, wouldn't you get a much larger number?

A. I would have to get my calculator out. Subject to check.

Q. Order of magnitude, if we had 56 million-kilowatt hours after 4 mills, aren't we talking 240 millions?

A. Subject to check, I don't -- that's the number here that we are after but --

Q. Okay, help me, because I am driving down for -- I am trying to gauge what the cost is -- what the revenue is going to be that's collected, assuming that you charged the 4 mills per kilowatt hour on every kilowatt that's sold.

A. The uncollectible expense associated with the nondistribution revenues would be the 22 -- 22.7 million number.

Q. Okay, and how is that number derived from this sheet? Take me through the mechanics.

A. The mechanics are that the company would take a look at their total sales and then also then the uncollectible expense that it has and create a percentage of uncollectibles to total revenue.

The next step what it would do is take a look at the customer deposits that have been provided by customers and then reduce the total uncollectible expense by the customer deposits.

The next step would then be to -- to calculate or sum up the nondistribution revenues and multiply that by the uncollectible percentage minus the customer deposit percentage.

Q. But if 22 million -- or $23 million was all the goal was and you collected 4 mills from every kilowatt hour sold, aren't you going to vastly overcollect for that amount of money?

A. Subject to check, we are trying to recover the -- the $22 million figure, so I apologize.

Q. Oh, no, it's late in the day.

EXAMINER PRICE: Can we go off the record? Can we go off the record?

(Discussion off the record.)

EXAMINER PIRIK: Okay. We will go back on the record.

Q. (By Mr. Petricoff) Have we verified the amount?

A. Yes, we have.

Q. And what is the verified amount?

A. It's the calculation is correct.

Q. And that's because we are now in -- it's

not 4 mills, it's four-tenths of a mill?
A. Yes.
Q. Okay. Did you compare this number for -- with the actuals for -- for the 2007 or last 12 months time period for which data is available?
A. No, I have not.
Q. Do you except on that order of magnitude it would be about the same?
A. I don't know.
Q. Is there a rider today that collects for the unrecovered generation, transmission, and ancillary services, any of the operating companies?
A. There's not a rider that collects that, no.
Q. And are these expenses now picked up within the cost of the generation itself?
A. Can you say that question again?
Q. Well, let me try it a different way.
You are familiar with cost of service

ratemaking?

A. Yes.

Q. And in cost of service ratemaking, is one of the unusual procedures for uncollectibles is to put a bad debt component into the cost of the service itself?

A. Traditional distribution ratemaking, that's been the case.

Q. And today in the rates, since there isn't a bad debt rider that's available, can we assume that it's being collected in the service rates that are being charged?

A. It's my understanding that in the legacy distribution rates there is a component of uncollectibles.

Q. Now, earlier Mr. Lang asked you if you were familiar with the generation rates that were being proposed in the Application.

Do you remember that question?

A. There's been quite a few questions today.

Q. Well, let me ask you this question, have you read Mr. -- Mr. Warvell's testimony?

A. It's been quite a while since I've read Mr. Warvell's testimony.

Q. Okay. Are you familiar with the

generation rates that Mr. Warvell is presenting to be charged under the ESP Application?

A. I'm familiar with the numbers in the GEN rider, but I have not focused on the generation rate design.

Q. Is it fair to say then that you are --

you do not have any personal knowledge as to what the cost components were that went into those GEN rate numbers?

A. I do not.

Q. Okay. So it is your testimony then, I take it, you don't know whether there is any bad debt component that's in the generation rates that's being proposed?

A. I do not.

Q. And as a matter of a logic, wouldn't you agree with me that if there was an uncollectible cost component in the generation rate and the company authorized this nondistribution uncollectible rider, that there would be a partial or full double collection for that cost component?

A. I think it would depend on what is being collected in terms of -- of the -- of each rider.

Q. I'm just asking a theoretical question.

If you have uncollectible generation

costs in the generation rate and uncollectible
generation costs in the rider, aren't we going to get
an overcollection for uncollectible generation rates,
uncollectable generation revenues?

A. If they are attempting to collect the
same thing, yes.

Q. What steps did the company take today to -- for customers who were in arrears in order to get back the generation transmission and ancillary services that it has charged for but not been paid?

A. The company follows the Commission rules regarding reconnection/disconnection.

Q. Well, but in addition to that do -- do you send dunning letters; "you are late, you owe this amount"?

A. The company provides notice to customers on their bills if they are in arrears.

Q. Now, does the company -- has the company ever employed a collection agency to -- to retrieve these unpaid bills?

A. I don't know.

Q. And do you have any idea of what the company spends in collection efforts for unpaid bills?

A. No, I do not.

Q. If the company had an uncollectible generation rider that made it 100 percent -- that paid 100 percent of all of the amounts that were due by virtue of a rider, would it have any financial incentive to take any collection matters?

A. Yes, I think it would. It's the

companies' business incentive to collect its revenues as soon as it can and avoid a lag in that collection of that revenue, and I believe also the -- it has incentive because this rider is a -- is updated and approved by the Commission.

So to have -- to show that it is -- it is trying to recover those revenues is also an incentive, I believe, to the company.

Q. The company is going to put this -- this four-tenths of a mill rider into effect January 1, 2009, is it not?

A. That is correct.

Q. And this rider was designed to make you whole from all of the costs that -- for generation, transmission, ancillary service that you are expecting will not be paid by your -- your customers.

Assuming that this number is accurate, aren't you actually going to improve your cash flow rather than harm it?

A. It's going to provide for a collection of an expense.

Q. And if the company spent money on -- on collection efforts, wouldn't that actually be money out of its own pocket that it will not be reimbursed for?

A. Can you restate your question?

Q. Sure. If you are going to get 100 percent back via this rider without taking any collection efforts, why would the company spend any money on collection efforts?

A. To recover the money sooner than waiting for a number that's going to be recovered over an annual period. So I believe it still has a business incentive to go out and collect that revenue -- collect that -- collect the uncollectibles.

Q. And if, in fact, at the end of the year it comes out to be that the uncollectible rider should have been three-tenths of a mill instead of four-tenths of a mill, aren't you actually going to be refunding money that you have -- that you've held and had the use of?

A. It would then be offsetting the amount that would be required when the -- of the new uncollectible amount.

Q. It's a reconcilable rider of what was estimated of an uncollectible expense. If that expense is then trued up, it will provide a -- a smaller continuing rate, but the company would have gotten the cash from day one under the rider. Something it wouldn't do if it was at risk and had to have collection programs.

A. It's recovering for uncollectible expense over an annual kilowatt hour period, over an annual kilowatt annual period. We are recovering an expense.

Q. I understand that. But I'm looking for time. Assuming that this calculation is on the high side, aren't you going to be better off, you being the operating companies, from a cash flow standpoint with this rider than you would be if you were collecting from the customers and using collection methods?

A. I don't know.

Q. Okay. Are you familiar with the companies' MRO Application in Docket 08-936?

A. No. I have been working on the ESP.

Q. Okay. I want you to assume for the moment the hypothetical that a supplier under the -- under the MRO program does not have a -- a nondistribution uncollectible rider.

If you were then going to compare the
price that that supplier pays vis-a-vis the ESP price
for -- for energy, would we have to add these -- this
four-tenths of a mill into the ESP for 2009 to be
able to say the -- compare the price of -- of

generation apples to apples?

MR. KUTIK: Objection. That's nowhere close to the scope of his testimony. He is here to specific riders, not the whole plan, not a comparison of the ESP or the MRO.

EXAMINER PIRIK: Mr. Petricoff.

MR. PETRICOFF: Yes. Well, first of all, it's a hypothetical but it's a hypothetical that's based on testimony that's in this -- in this record.

He's talking about the effects of this rider, and I'm interested in having him compare what the affect of this -- this rider is when the Commission goes to make the ultimate decision it must make as to which is more attractive, the MRO or the ESP. We are just looking at factors.

EXAMINER PIRIK: I'll sustain the objection.

Q. I would like now for to you turn to page 8 of your testimony, line 17.

EXAMINER PRICE: I'm sorry, could I have that reference again?

MR. PETRICOFF: Page 8, line 17.

EXAMINER PRICE: I'm sorry, before you go on, you are changing topics?

MR. PETRICOFF: I'm changing topics.

EXAMINER PRICE: Before we leave this topic, you've stated a number of times that the uncollectible expense rider will be reviewed by the Commission; is that correct?

THE WITNESS: Yes.

EXAMINER PRICE: Does that mean that you -- that the companies' intent is subject to audit by the staff?

THE WITNESS: The -- what I was referring to is the Commission would approve the new rate.

EXAMINER PRICE: That's not what I asked.

In approving the rate do you believe it's subject to audit by the staff?

THE WITNESS: Yes.

EXAMINER PRICE: And being subject to audit by the staff do you believe the staff could recommend to the Commission to disallow any expenses the Commission -- the staff believes and Commission would then review were not prudently incurred?

THE WITNESS: The staff -- yes, the staff would --

EXAMINER PRICE: Can you show me in the Application where it says that?

THE WITNESS: In the Application?

EXAMINER PRICE: Yes.

THE WITNESS: I cannot.

EXAMINER PRICE: Thank you.

Thank you, Mr. Petricoff.

Q. (By Mr. Petricoff) On page 8, line 17, we start the discussion in your direct prepared testimony of the economic development rider.

And since we are running late in the day I'll try to compress these questions together.

Is it fair to say that the -- that basically the way the economic development rider works is that certain customers or certain rate classes will be getting a discount and the amount of that discount will be offset by a rider that's charged all other customers?

A. The rate credits and the rate charges are all within the economic development rider.

Q. But mechanically that's how it works?

A. Yes.

Q. Okay. And so the company is revenue

neutral as to what the -- what the discounts are in terms of what it gets paid and likewise it's -- well, it's revenue -- revenue neutral as to the -- as to the discounts; is that correct?

A. Yes.

Q. At the moment we have a couple of sets of classes that are going to get -- that are going to get a discount automatically under the economic development rider; isn't that true?

A. That is correct.

Q. Okay. And one of them is the residential nonstandard credit -- the residential nonstandard tariff; is that correct?

A. It would be customers that are -- that qualify under the residential nonstandard credit provision. Electric heating is an example.

Q. Okay. And the reason they are getting this discount is because they would have a -- if they didn't get the discount, they would see a large increase between what they are paying now under the current rates and what they would pay under the new rates?

A. Yes. They would see a larger -- larger increase than the system average or so.

Q. If you didn't have the discount, what

would be the size of the increase for these electric
heat customers? These residential nonstandard?

A. From a group total it's around 20 to 25 percent.

Q. So there are other groups out there that are actually seeing larger increases than the residential nonstandard tariff on average?

A. Yes. There's -- there are some schedules larger than 25 percent.

Q. And they are not getting discounts.

A. I believe the -- they are -- the ones that are in large provisions you'd have to be specific, so some of them are -- have been mitigated already. You would have to give me something specific.

Q. Well, okay. I think you've answered my question.

Was the -- was the residential nonstandard rate and incentive rate designed to help compete against competition from gas heat?

A. There isn't a residential nonstandard rate. It's a -- it's a group of customers that's -- that fall within the residential rate, so there is one tariff for residential customers called RS.

This is just provision by which some

customers will get a -- a discount based on the
equipment they have.

Q. But did they originally get the discount
because of competition from gas?

A. You are saying the reason for the legacy
rate they are coming from?

Q. Yes, that's correct.

A. I don't know.

Q. If there was still competition from gas, would this discount be helpful in keeping electric sales up?

A. I don't know because of the comparison price between gas and electricity. I don't know.

Q. Let's say one of these did -- one of these legacy customers came to the company and said, "Gee, I have an offer here that's a little bit lower than generation from a competitive retail electric supplier. Can I take that lower cost of power and still get the credit?"

A. You mean switch to the -- the supplier?

Q. Switch to a competitive supplier. Would they still be entitled to get the -- the discount to get the credit?

MR. KUTIK: Under the EDR?

Q. Under the EDR.

A. No, the prescription is the customer benefiting from getting a lower rate through the supplier from the companies' rate, thus, the customer shouldn't benefit by getting two discounts.

Q. And what does these residential -- what is the size of the discount that these residential customers are going to get under the EDR credit on a kilowatt hour basis?

A. These credits are going to be -- it's a 1.9 cent credit for electric heating of which it's only applicable during the winter season for kilowatt hours over 500.

Q. Okay. What if they have a -- a slightly lower -- well, let me scratch that. Let me go back for a second.

In terms of the company giving the discount and charging the rider to get the money back from a revenue standpoint, is the company neutral whether this customer shops or takes standard service generation?

A. For those customers that would shop they would no longer receive the discount by which then the customers that are paying for the discount, that charge would technically be reduced.

Q. I asked about the company. Would the

company be financially indifferent if the customer was permitted to shop as opposed to take generation from the -- from the SSO supplier?

A. The riders would be -- would be revenue neutral. It would be reconcilable.

Q. And if the -- if the difference between the discount the customer was getting from the CRES supplier was factored out of the -- out of the discount, would all of the other customers paying the rider be indifferent if customers were allowed to shop?

A. I apologize, I lost you there for about ten seconds.

Q. Sure?

A. Can you repeat the question.

Q. Yeah. I'm looking there is a series of questions to see what is the harm that is created if a customer is allowed to shop who is getting the economic development rider.

Now, you will agree with me from a customer's standpoint if they could have both the riders and a lower cost of energy, that they would be benefiting?

A. They would benefit, but those that were paying the charge --

Q. That was my question.

MR. KUTIK: Can he finish his answer?

Q. We are going to come to --

MR. KUTIK: Let him finish his answer.

Q. Go ahead.

A. Those that were paying the charge, they are still paying a charge for a credit being provided to a customer that shopped.

Q. But if the customer didn't shop, they would be paying the credit, right?

A. This is a difference in the magnitude of the number.

Q. Right, but if they -- if the cause of the forfeiture, they looked at it and they didn't shop because now it's -- there is no incentive to shop, then all these customers, the customers who are paying the rider are going to continue to pay the rider because the customer is going to be -- continue to be in the program, correct?

A. Can you say that again?

Q. Sure. If you forfeit a 2 cent -- if you forfeit a 1.9 cent in our example of the water heater customer, if you forfeit that to go out and shop, isn't it true that now someone is going to go out and shop unless they can save more than 1.9 cents?

A. The 1.9 cents is just for -- just to be clear, is just for kilowatt hours that are over 500 in the winter. So it wouldn't be from a -- from an average weight perspective, it will not be 1.9 cent.

Q. But you would agree with me that there would be a disincentive to shopping if you -- there would be a disincentive of shopping if I didn't get the discount by virtue of your shopping.

A. The supplier would have to provide a little rate.

Q. All right. And if the -- and if the customer could get both the lower rate and the discount, then the customer would be in the best -- best position. You have already answered that, correct?

A. Yes, I have.

Q. And if, in fact, the -- the customers who are paying the rider would have their -- the rider reduced by whatever the saving would be if the customer did shop and -- and it was less than the credit they received, then the customers would -- the customers paying the riders would be made whole or be in a better position?

A. How were they -- how were they being bettered? I thought I heard you say that the

customer is still with the CRES provider and getting
the credit; was that in your scenario?

Q. Right.

A. So then a credit is still being created by which then a charge needs to be -- to be offset. So if in your example I believe that the customers that are paying for it, they are not better because they are still paying for a charge. If they are shopping, then the charges in there, then the amount of the credit doesn't have to be made up by that shopped customer.

Q. Do you think it's likely that anyone is going to shop given the size of the credit?

A. The credit, once again, is for kilowatt hours over 500 in the winter, so it would be an average rate so that would be something that I don't know.

Q. Okay. Let's move on and talk about the reasonable arrangement. The reasonable arrangement rider works basically this would be the same way you would -- there would be a discount that went to the customer and the customer would -- there would be a discount that went to the customer and the company would be made whole by charging the delta revenue recovery rider against all other customers?

A. Yes.

Q. Okay. So in -- if a customer shopped and could get a lower rate -- well, actually let me do it this way, let's say a new customer comes to town, a new steel mill. And they need a -- they need a -- a price of energy of, let's say they need 2 cents per kilowatt hour off the standard service rate. And they can get -- they can shop and get 1 cent lower price in the market.

The way the delta revenue recovery rider is -- is configured, could they come in and make an application and say I want to shop and I want to get a 1 cent discount instead of a 2 cent discount through the economic development program?

A. I believe the reasonable arrangement rider application process is for customers that would then still take service under the -- under the -- under the operating company.

Q. So the answer is no.

A. Yes, it would be no.

Q. Now, let's go back and look at this in that case. Aren't all the customers who were paying the delta revenue recovery rider end up paying more than if the situation was such that you could -- a customer could shop and use that as part of the economic development?

A. Are you saying that the differential in what the Commission would grant as far as the discount would be less than -- than what the -- I'm confused on the -- your example.

Is it -- what is the level of incentive

that the -- that the customer is requesting?

Q. That's just it. Let's make sure we are all on the same page.

Under the way it's structured now in the Application, no customer can shop and get an economic development discount, correct?

A. Let me refer to the schedule.

Q. Okay.

A. Which schedule are you looking at? Are you on a specific company?

Q. No. Actually I'm looking at your -- at your testimony.

A. I was going to refer to the rider itself.

Q. Okay. Go ahead and refer to the rider itself.

A. The rider --

Q. I'm sorry.

A. The rider itself is taking service under the distribution companies -- or operating companies.

Q. And that is reflected in your testimony
on page 11, lines 14 and 15. And my question to you is wouldn't all the other customers be better off if it wasn't a requirement that you have to buy your generation from the SSO provider if, in fact, a customer on an economic development program could

find less expensive generation in the market and come in for a lower subsidy?

A. No. If the -- if the customers can get a better deal from shopping than from the reasonable arrangement, then if they take -- take from reasonable arrangement, then the Commission would have to approve a discount.

Q. No, I'm looking for a better deal --

MR. KUTIK: Hold on a second. Had you finished your answer?

Q. Are you finished?

A. Yes.

Q. Now, the hypothetical I gave you is where to have the economic development we need 2 cents off per kilowatt hour.

Under this program as you have it designed now, the only choice is that they basically have to come in and buy the hour from FirstEnergy Solutions and have all the other customers pay 2

cents, and I am asking you wouldn't it be better if
they could go out and find power that's maybe 1 cent
lower than FirstEnergy Solutions is offering under
the SSO program and only have to have a subsidy of 1
cent, wouldn't the customers be better off in that
scenario?

A. From a delta revenue perspective that's being created there would be less to be recovered in a -- in a rider.

Q. So the answer is yes.

A. Yes.

Q. And once again, the company would be financially indifferent given this structure if customers were allowed to shop and bring a shopped energy price in as part of their economic development application?

A. The Commission would approve the process by which a special arrangement discount would be provided, so the answer for me is that that's something that the Commission would need to determine with -- with that process.

Q. Won't we have to change your tariff to allow the Commission to even get this Application in the hypothetical I gave you?

A. In your hypothetical yes.

EXAMINER PRICE: Mr. Hussing, the operating companies will be financially indifferent in Mr. Petricoff's hypothetical, would they not, and financially they would not be impacted financially since you get full recovery of the delta revenue?

THE WITNESS: Yes.

EXAMINER PRICE: Thank you.

Q. And if there was a similar application type process for the economic development rider for those rates that were -- now I'm back on to the -- to page 8 of your testimony on the economic development rider.

If there was a similar process for customers who are getting a discount could go out and find a lower cost supplier and thereby lower the amount of discount that they needed, wouldn't the public be better off in that instance as well?

A. When the customer just shop --

Q. Yes.

A. If the customer just shopped, then there would be no credit needed to supply that customer a credit, thus, the charges would be reduced to those customers that are paying the charges.

Q. But if we had a situation where a customer could come in and say "I will take a lower

subsidy if I could shop and get a lower price,"
wouldn't that end up being a win for the customer in
different company -- indifferent to the company and a
win for the customers who are paying the subsidy?

MR. KUTIK: Objection, asked and answered.

EXAMINER PIRIK: Objection overruled.

A. Can you state it one more time?

MR. PETRICOFF: Could I have the question reread.

(Record read.)

A. So the credit required -- the credit, the tariff credit they are asking, you are saying that the credit would be less.

Q. That's correct.

A. And the question is -- what is the question again? I'm thinking through the scenario.

EXAMINER PIRIK: Before we go back let's go off the record for a minute.

(Discussion off the record.)

EXAMINER PIRIK: We will go back on the record, and could you reread the question?

Q. Rather than that let me just replace it, let me give you an example instead.

Auto electric boilers are a class of

customers who are going to get the automatic economic development rider?

MR. PETRICOFF: That's subpart A.

A. Yes.

Q. Okay. And so if -- if the -- if a customer who qualifies for that came in and said I'm willing to take a lower -- a lower -- a discount as long as I can shop because I can get a lower price, wouldn't that be advantageous to the customer and advantageous to the other customers who are paying the subsidy under the economic development rider?

A. I can think of two scenarios for the answer. One is if the customer shopped entirely, then the credit would be the entire credit.

But in your example there would be -- if they -- basically the supplier paid back the company the credit, in essence, then there would be less credits to be -- to be charged by other customers.

MR. PETRICOFF: Thanks, Mr. Hussing. I have no further questions.

EXAMINER PIRIK: Thank you, Mr. Petricoff.

I think that concludes the hearing for today.

Don't leave yet because we still need

to -- this is off the record.

(Discussion off the record.)

(The hearing adjourned at 6:20 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 Tuesday, October 21, 2008, and carefully compared with my original stenographic notes.

____
Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5000)

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