BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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PROCEEDINGS

before Ms. Christine Pirik and Mr. Gregory Price, Attorney Examiners, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-C, Columbus, Ohio, called at 9:00 a.m. on Wednesday, October 22, 2008.

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ARMSTRONG & OKEY, INC.
185 South Fifth Street, Suite 101
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
FAX - (614) 224-5724

- - -

APPEARANCES:

FirstEnergy Corp.
By Mr. Arthur E. Korkosz,
Mr. Mark A. Hayden,
Ms. Ebony L. Miller
and Mr. James W. Burk
76 South Main Street
Akron, Ohio 44308

Jones Day
By Mr. David A. Kutik
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114

Jones Day
By Mr. Mark A. Whitt
325 John H. McConnell Boulevard
Suite 600
Columbus, Ohio 43215

Calfee, Halter & Griswold, LLP
By Ms. Laura McBride,
Mr. James Lang
and Mr. Trevor Alexander
1400 KeyBank Center
800 Superior Lane
Cleveland, Ohio 44114

On behalf of the Applicants.

Janine L. Migden-Ostrander,
Ohio Consumers' Counsel
By Mr. Jeffrey Small,
Ms. Jacqueline Roberts,
Mr. Richard Reese,
and Mr. Greg Poulos

Assistant Consumers' Counsel
10 West Broad Street, 18th Floor
Columbus, Ohio 43215

On behalf of the Residential Consumers of the FirstEnergy Companies.

APPEARANCES: (Continued)

McNees, Wallace & Nurick, LLC
By Ms. Lisa McAlister
and Samual C. Randazzo
Fifth Third Center, Suite 1700
21 East State Street
Columbus, Ohio 43215-4228

On behalf of the Industrial Energy
Users-Ohio.

Chester, Willcox & Saxbe, LLP
By Mr. John Bentine,
Mr. Mark S. Yurick,
and Mr. Matthew S. White
65 East State Street, Suite 1000
Columbus, Ohio 43215

On behalf of The Kroger Company.

Brickfield, Burchette, Ritts & Stone, PC
By Mr. Michael K. Lavanga,
and Mr. Garrett A. Stone
1025 Thomas Jefferson Street N.W.
8th Floor, West Tower
Washington, DC 2007-5201

On behalf of the Nucor Steel Marion, Inc.

Ohio Partners for Affordable Energy
By Mr. David C. Rinebolt,
and Ms. Colleen Mooney
231 West Lima Street
P.O. Box 1793
Findlay, Ohio 45839-1793

On behalf of the Ohio Partners for

Affordable Energy.

Constellation Energy Group, Inc.
By Ms. Cynthia A. Fonner
550 West Washington Street, Suite 300
Chicago, Illinois 60661

On behalf of Constellation Energy
Commodity Group, Inc., and Constellation
NewEnergy.

APPEARANCES: (Continued)

Vorys, Sater, Seymour and Pease, LLP
By Mr. Howard Petricoff
and Mr. Stephen M. Howard
52 East Gay Street
Columbus, Ohio

On behalf of Constellation NewEnergy, Inc., Constellation Energy Commodity Group, Direct Energy Services, and Integrys Energy Services, Ohio Association of School Business Officials, the Ohio School Board Association, and the Buckeye Association of School Administrators.

Boehm, Kurtz & Lowry
By Mr. Michael Kurtz
and Mr. David Boehm
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

On behalf of Ohio Energy Group.

McDermott, Will & Emery, LLP
By Ms. Grace C. Wung
600 Thirteenth Street, N.W.
Washington, DC 20005

On behalf of The Commercial Group.

Bricker & Eckler, LLP
Mr. E. Brett Breitschwerdt
100 South Third Street
Columbus, Ohio 43215

and

Bricker & Eckler, LLP
By Mr. Glenn S. Krassen
1375 East Ninth Street, Suite 1500
Cleveland, Ohio 44114

On behalf of Northeast Ohio Public Energy Council and the Ohio Schools Council.

APPEARANCES: (Continued)

Mr. Robert J. Triozzi
Cleveland City Hall
601 Lakeside Avenue, Room 206
Cleveland, Ohio 44114

and

Schottenstein, Zox & Dunn Co., LPA
By Mr. Gregory H. Dunn,
Mr. Christopher L. Miller,
and Mr. Andre T. Porter
250 West Street
Columbus, Ohio 43215

On behalf of the City of Cleveland and Association of Independent Colleges and Universities of Ohio.

Bailey Cavalieri, LLC
By Mr. Dane Stinson
10 West Broad Street, Suite 2100
Columbus, Ohio 43215

On behalf of FPL Energy Power Marketing, Inc., and Gexa Energy Holdings, LLC.

Bell & Royer Co., LPA
By Mr. Langdon D. Bell
33 South Grant Avenue
Columbus, Ohio 43215

On behalf of Ohio Manufacturers Association.

Bell & Royer Co., LPA
By Mr. Barth E. Royer

33 South Grant Avenue
Columbus, Ohio 43215

On behalf of Dominion Retail and the Ohio
Environmental Council.

Ohio Hospital Association
By Mr. Richard L. Sites
155 East Broad Street, 15th Floor
Columbus, Ohio 43215

On behalf of Ohio Hospital Association.

ARMSTRONG & OKEY, INC., Columbus, Ohio (614) 224-9481

APPEARANCES: (Continued)

Citizen Power
By Mr. Theodore S. Robinson
2121 Murray Avenue
Pittsburgh, Pennsylvania 15217

On behalf of Citizen Power.

City of Toledo
By Ms. Leslie A. Kovacik
420 Madison Avenue, Suite 100
Toledo, Ohio 43604-1219

and

Lucas County Assistant Prosecuting Attorney
By Mr. Lance Keiffer
2nd Floor
711 Adams
Toledo, Ohio 43624

On behalf of Northeast Ohio Aggregation
Coalition.

Mr. Craig I. Smith
2824 Coventry Road
Cleveland, Ohio 44120

On behalf of Material Science
Corporation.

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Tuesday Morning Session,
October 21, 2008.
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EXAMINER PRICE: Let's go on the record. Good morning. This is our fifth day of hearing in Case No. 08-935-EL-SSO.

Do we have any preliminary matters before we take our first witness, Mr. McNamee?

MR. McNAMEE: We do have one preliminary matter, your Honor.

I would like to extend a sort of group apology on behalf of all the lawyers who aren't here who are in the middle of settlement discussions in the Duke case while I'm standing here, actually, and I think all lawyers who would otherwise be in this hearing room are downstairs, and they asked me to, you know, tender their apologies for not coming.

It's not that they don't want to be here, but they are kept away, and I've made arrangements to let them know when their cross-examination will come up so they will be able to show up timely and not delay this hearing and still proceed with the Duke settlement talks.

EXAMINER PRICE: I understand everybody's dilemma. With this new law we are all being pulled in many directions at once, so no apology is necessary.

MR. McNAMEE: Well, thank you.

EXAMINER PRICE: I believe at this time we are going to interrupt our cross-examination of our previous witness to take Mr. Woolridge; is that correct?

MS. ROBERTS: The OCC would call Dr. Woolridge to the stand.

(Witness sworn.)

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

THE WITNESS: My name is the initial J. Randall Woolridge. That's spelled W-O-O-L-R-I-D-G-E. My business address is 120 Haymaker, single word, State College, Pennsylvania.

EXAMINER PRICE: Thank you.

Ms. Roberts, you may proceed.

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J. RANDALL WOOLRIDGE

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

DIRECT EXAMINATION

By Ms. Roberts:

Q. Dr. Woolridge, by whom are you regularly employed?

A. I'm employed by the Pennsylvania State University.

Q. And on whose behalf are you appearing today?

A. On behalf of the Office of Consumers' Counsel.

Q. Are you the same Dr. Woolridge that caused to be filed in this case prefiled direct testimony on October 29 of this year?

A. Yeah. I believe that's September 29.

Q. September 29, thank you.

A. Yes.

MS. ROBERTS: All right. I've asked to be marked as an Exhibit 4 OCC for identification the direct prefiled testimony of Dr. Woolridge.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Was this testimony prepared by you or under your direct supervision and control?

A. Yes.

Q. Do you have a copy --

A. Yes.

Q. -- with you?

Do you have any corrections, additions, or changes to your testimony?

A. There are a couple of corrections --

Q. What would they be?

A. -- in the testimony of OCC Exhibit 4.

To begin with, beginning on page 2 and throughout the testimony in the header the E was left off my last name. So my name is spelled with an E at the end.

Q. All right.

A. Secondly, on page 7, line 12.

Q. Yes.

A. Asset turnover is defined as revenues divided by total assets, not net fixed assets, so asset turnover is revenues divided by total assets.

Q. Are there others?

A. Page 8, line 7, the reference should be to Table 2, not Table 1 there.

And to others, on page 12, line 14, there is somehow a 7 got -- it should be an M for methodologies.

And finally, page 14, line 16, the FERC number should be 150 basis points, not 200 basis points.

MS. ROBERTS: All right. I will prepare an errata sheet for Dr. Woolridge's testimony, and I would ask that Exhibit 4A be reserved for that.

EXAMINER PRICE: We will do that, thank you.

MS. ROBERTS: Thank you.

Q. If you were asked the same questions today as in your direct testimony, would your answers be the same?

A. Yes.

MS. ROBERTS: I would move for the admission of Exhibit 4 for identification.

EXAMINER PRICE: Thank you. We will defer the ruling on the admission of Exhibit 4 until after cross-examination.

Dr. Woolridge, welcome to Columbus the

week Ohio State plays Penn State. Good timing on your part.

THE WITNESS: I was hoping the hearing would have been on Saturday morning actually.

EXAMINER PRICE: You should have reserved Friday, had you go last on Friday.

MS. ROBERTS: Dr. Woolridge is available for cross-examination.

EXAMINER PRICE: Mr. Porter.

MR. PORTER: No questions.

EXAMINER PRICE: Ms. McAlister.

MS. McALISTER: No questions.

EXAMINER PRICE: Mr. Smith.

MR. SMITH: No questions.

EXAMINER PRICE: Mr. Breitschwerdt.

MR. BREITSCHWERDT: No questions.

EXAMINER PRICE: Mr. Stinson.

MR. STINSON: No questions.

EXAMINER PRICE: From Mr. Lavanga.

MR. LAVANGA: No questions.

EXAMINER PRICE: Mr. Korkosz.

MR. KORKOSZ: I do have some.

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CROSS-EXAMINATION

By Mr. Korkosz:

Q. Good morning, Dr. Woolridge.

A. Good morning.

Q. I don't know if we can keep this going until Saturday to accommodate the game, but let's see what happens.

A. Okay.

Q. You've testified previously before this Commission on behalf of OCC, have you not?
A. Yes.
Q. And much of the testimony that's listed in your Appendix A is actually on behalf of state consumer advocate agencies, is it not?
A. Yes, primarily. Occasionally an industrial leader but mostly -- an occasional staff but mostly on consumer advocates, yes.
Q. You have never testified on behalf of an investor-owned utility, have you?
A. No.
Q. Now, some of that testimony has been on the subject of the appropriate rate of return on equity to be allowed in a rate case, correct?
A. Yes.
Q. Would you agree with me that when rate of return on equity is allowed by a regulatory commission, there is an expectation by that

commission that the utility involved will actually
have an opportunity to earn return?

A. Yes.

Q. Now, moving to the significantly
excessive earnings test that is the subject of your
testimony here, you will agree with me that the first

time this Commission will have to actually apply that test will be in 2010 with respect to the earnings of a utility in 2009, correct?

A. Yes.

Q. And it's your recommendation, I assume, that your methodology should be adopted by the Commission but that we wouldn't necessarily use the data and the other numbers that are in your testimony, correct?

A. That is correct.

Q. At that time it would be appropriate to use 2009 data, correct?

A. Yes.

Q. And that means that as we move and examine that later period and data, that the numbers that appear in -- well, the companies that appear -- the number of companies that appears in your tables 1 and 2 may be different?

A. Definitely. They are very likely to be vastly different.

Q. And that's true also of the data that appears in your Exhibits J -- get the order straight, JRW-2 and JRW-3, correct?

A. Yes. I mean, the assignment as I take it is to create a methodology which then would be applied at some point in the future to 2009 earnings.

Q. All right. Let's look at that methodology, and it starts on pages 4 and 5, as you outline seven steps. Do you have that, sir?

A. Yes.

Q. Now, on page 5 you start with Step I by selecting a proxy group of what you consider to be relatively pure electric utility companies, correct?

A. Yes.

Q. And to that -- that group you -- which is the universe of all electric companies that are followed by the AUS Utility Reports, you apply a series of four screens that you list on pages 5 and 6 of your testimony in order to get to your proxy group, right?

A. Yes, yes.

Q. And the four screens are the first -- the percent of regulated electric revenues being at least 75 percent, the second being an investment grade bond rating, the third being total revenues less than $10 billion, and the fourth being a three-year history of dividend payments, correct?

A. Yes.

Q. And the selection of those factors is a reflection of judgment on your part, correct?

A. Yes.

Q. Now, the third of those factors was the requirement the total revenues not exceed $10 billion.

A. Yes.

Q. And the reason you apply that particular criterion is because you want to eliminate extremely large companies from the proxy group, correct?

A. Yes.

Q. And that would have the affect of eliminating companies like FirstEnergy, Duke, and The Southern Company.

A. Yes.

Q. And with respect to those -- those four screens, do I understand correctly that you relied on the AUS Utility Reports for the data against which to apply them?

A. Yes.

Q. And with respect to the fourth being the dividend history, you relied on Value Line?

A. Yes.

Q. And that data reflects currency as of September, 2008.

A. Yes.

Q. Now, the -- as we move into the

subsequent Step II of your testimony, you select four more risk indicators to go into the methodology, correct?

A. Yes.

Q. And those are reflected on page 7 of your testimony, right?

A. Yes.

Q. And you apply those indicators against the Value Line database to produce the list of companies that appears on your -- JRW Exhibit JRW-2, correct?

A. Yes. I mean, I established a range for -- well, Beta set turnover common equity ratio from the 16 utilities that met the first set of screens, so what I did to meet the test of similar business and financial risk, I established a range for these variables and then applied the range to see what companies in this database of 7,000 companies met this range.

Q. And the selection of those indicators was a reflection of your judgment, correct?

A. Of the -- I'm sorry, indicators on 7?

Q. Yes.

A. Yes. The ranges were determined by the group of companies.

Q. Now, let's take a look at your Exhibit JRW-3. The first three steps, I, II, and III, of your methodology compounds to the panels A, B, and C on your Exhibit 3, correct?

A. I'm sorry. Which step?

Q. I jumped around a bit but the --

A. Exhibit 3 has the companies, that's the 64 companies for which survived the screens.

Q. Right.

A. For business risk and financial risk, the three screens on Beta asset turnover, and common equity ratio, met the ranges of the electric utilities I had as a proxy group.

Q. That falls out from your methodology.

A. Yes.

Q. All right. Now, excuse me, I'm going to need my cheaters.

Looking at the top in your panel A over on the left-hand side, you have several columns, the first being "Equity/Total," the ratio of equity against total capital is the first column of data, correct?

A. Yes. That's usually called the common equity ratio.

Q. All right. And then you have got "ROE," which is return on equity, right?

A. Yes.

Q. The "Income Tax Rate"?

A. Yes.

Q. Right? And all -- the data for all three of those columns comes from the May, 2008, Value Line, correct?

A. The Value Line Investment Analyzer, yes.

Q. And, incidentally, the Beta values that -- that you extracted, they came from the Value Line Investment Analyzer as well, did they not?

A. Yes.

Q. Now, moving to the fourth column, "Tax Multiplier," that's a calculated number, correct?

A. Yes, just based on the tax rate.

Q. And then finally the -- the final column of the group on the left side is "Cost of Debt," and that comes from the September, 2008, Bloomburg Group?

A. That comes from Bloomburg, yes.

Q. Now, the averages that you have at the bottom for each of those columns simply reflects a simple average of the numbers in the column above each of those averages, correct?

A. Yes. Yeah. To make these other calculations I just used the average of this comparison group.

Q. All right. And "average" is the same thing as a "mean," correct?

A. Yes.

Q. And for the ROE column you have also calculated a standard deviation, again, based on the numbers that appear in the column above it, correct?

A. Yes.

Q. Okay. Over on the right-hand side of panel A you have a value for pretax ROE of the comparable companies, correct?

A. Yes.

Q. And that's 17.04 percent, right?

A. Yes.

Q. And that number is calculated from the values in the "Averages" row over on the left-hand side, right?

A. Well, I have 17 --

Q. I perhaps misspoke. I did intend to say

17.04.

A. 06.

Q. 06?

A. 06 is what I see, yeah.

Q. I'm going to have to replace these.

In any event, that pretax ROE figure is

the product of the average ROE times the tax multiplier, correct?

A. Yes.

Q. And the other values that you have under the comparable company index values are also calculated from the values in the average row?

A. Yeah. I just used the averages for the group of 64 companies.

Q. Okay. Moving to panel B, which is about two-thirds of the way down the page, which is the Ohio Utilities Benchmark ROEs, this refers to the metrics for the three FirstEnergy Ohio operating companies, correct?

A. Yes.

Q. You show cost of debt for each of those companies as being 6.77 percent, right?

A. Yes.

Q. Now, the footnote tells us that's a cost of debt for FirstEnergy.

A. I didn't have access -- I mean, I could have estimated debt cost rate from the financial statements for the three companies. I didn't have access to a -- a calculation or cost to debt.

That cost to debt comes from Bloomburg. It's Bloomburg's cost of debt estimate for

FirstEnergy.

And, again, this is a methodology. I would suspect that in 2010, as you apply this, that that would probably be the cost of debt of the individual companies.

So what I've had to do here is use the cost of debt for FirstEnergy because I didn't have access to the companies' cost of debt.

Q. You would agree that it would be more appropriate to use the individual cost to debt of the three companies.

A. I believe so, yes. Again, this was more of a methodology with the understanding it's going to be applied at some point in the future.

Q. All right. Now, the values for the equity -- the equity ratio and the tax rate that you show in panel B, those come from the bottom two panels that appear on that page that are not labeled with an index letter, correct?

A. Yes.

Q. And the source for that data you indicate is Mergant Online.

A. Yes.

Q. Just for the record, can you tell us what "Mergant" is?

A. Mergant is a database. They provide -- and actually they just take these financial statements from the companies' 10Ks statements, and this was from -- taken from their December 31, 2007, 10K.
Q. All right. Now, you are aware, aren't you, that Pennsylvania Power Company is a wholly-owned subsidiary of Ohio Edison Company?
A. Yes.
Q. And do you agree that -- you would agree that this Commission, for this Commission's Application of the significantly excess earnings test, we should remove the impact of Penn Power's Pennsylvania operations from the calculation?
MS. ROBERTS: Objection, your Honor. That requires a legal conclusion.
EXAMINER PRICE: Overruled.
MR. KORKOSZ: I'm sorry?
MS. ROBERTS: I said that requires a

legal conclusion.

EXAMINER PRICE: Overruled.

A. I believe it should be, yes.

Q. And going back to the Merchant data that you relied on that I think you told me reflects what's reported in the reports to the Securities and

Exchange Commission?

A. I believe so. I've pulled just their overall financial statements. I didn't pull it from their 10K but this would come from their 10Ks.

Q. And that data, those reports would not have excluded the impact of the Penn Power operations, would it?

A. No. Again, what I have done is presented methodology such adjustments would be -- I mean, I would agree that I think Penn Power should be pulled out of this for both the capitalization standpoint and earnings standpoint.

Q. All right. Turn to page 12 of your testimony. And in particular I direct your attention to the sentence that begins on line 20.

A. Yes.

Q. And I want to focus in particular on the middle clause in that sentence that's separated off by the double hyphens.

A. Yes.

Q. "Without making adjustments to reflect extraordinary items," and I want to make sure your -- your reference to "adjustments" in that context is to the -- is adjustments to data dealing with the comparable companies as distinguished from adjustments made to the Ohio utilities that are under consideration, correct?

A. Yes. The earnings figures that I've used come from Value Line.

Q. All right.

A. And the Value Line takes out the extraordinary items, asset sales, that sort of thing. So there's two types of earnings.

There's what we call gap earnings which will include all those things and there's nongap earnings which exclude those things.

Value Line excludes asset sales and that sort of thing, so they call those extraordinary items, and they take those out of the -- out of the earnings figures.

Q. All right. I want to move to your discussion of the thresholds. You use two approaches to determine a possible threshold for significantly excessive earnings, correct?

A. Yes.

Q. The first you propose using the FERC 150 basis points adder in the transmission proceedings as a measure for what you consider to be significantly excessive earnings under your Threshold ROE I, right?

A. Yes.

Q. Now, you've not personally participated in any of the FERC proceedings involving either the derivation of that incentive adder nor its application to a given company, right?

A. No.

Q. And you are not aware of anything in any of the FERC orders dealing with that incentive adder that suggests that the -- that amount of incentive is an appropriate measure to use in determination of the significantly excessive earnings, right?

A. Well, there's two things there. One is obviously this is an administrative decision about what an appropriate adder is for investment risk. I mean, I've seen it applied, discussed.

I mean, I think initially I saw Warren Buffet talking about it as an incentive for investment and that sort of thing.

And so, first of all, it is, you know, an administrative standard as an adder to ROE. Second of all obviously gets back to one of the issues here, is how do we define significantly excessive earnings.

So I've tried to balance the data with an administrative standard and determine what I think the appropriate adder is to determine significant excessive earnings. There's two parts to that.

EXAMINER PRICE: Dr. Woolridge, I'm sorry. I'm sorry, Mr. Korkosz, I just have a question briefly.

Are you aware of the FERC finding that 150 basis points represents significantly excessive earnings? Has FERC made that finding?

THE WITNESS: They have not made that finding. I mean, they haven't called that a standard for excessive earnings. It is an adder to induce investment, and they have other inducements they have.

EXAMINER PRICE: But they have never actually said this represents excessive earnings or significant earnings.

THE WITNESS: No, they have not.

EXAMINER PRICE: Thank you. Thank you.

MR. KORKOSZ: You Honor, I was going to move to strike the entirety of Dr. Woolridge's answer as not responsive to the question I asked.

EXAMINER PRICE: Can I have -- I'm sorry I interrupted you there.

Can we have the question and answer back.

(Record read.)

EXAMINER PRICE: Motion to strike will be granted.

Mr. Korkosz.

Q. (By Mr. Korkosz) Mr. Woolridge, your
second threshold ROE, which you refer to as Threshold
ROE II, reflects the statistics -- a statistical
measure, correct?

A. Yes.

Q. And as your threshold increment for this
approach, you use one standard deviation from the
mean of returns on equity from your comparable
companies, right?

A. Yes.

Q. And your decision to use one standard
deviation rather than some other multiple of standard
deviation is a matter of your judgment?

A. Yes. And it has to be because there's no
definition of what significantly excessive earnings
is and there's no definition of whether this is
purely a statistical concept to begin with.

Q. And you don't consider the difference between use of one standard deviation and 1.28 standard deviations as Dr. Vilbert uses to be a huge difference, do you?

A. Well, it's not a huge difference, but the way Dr. Vilbert applies it, if you look at his data, I mean, you look, he has 50 or so electric utilities in his data set, and the way he applies it, he finds only 1 out of 50 have excessive earnings and that's Exelon.

Exelon in his sample has an ROE of 26 percent. 26 percent is probably two and a half times what the current authorized return is for electric utilities, and so it just is an indication of his approach and his statistics he applies that it seems to me that it's very limiting in terms of virtually you are never going to find utilities with excessive earnings.

Q. Now, your ultimate recommendation for the threshold is to take an average of your two approaches, right?

A. Yes.

Q. And you tell us on page 12 that this -- this approach, meaning the averaging, provides a balance by -- by which you mean an equal weighting of the two thresholds.

A. Yes. And it gets back to part of the problem is without a better definition it's an interpretation of what is significantly excessive earnings.

Q. And the selection of equal weighting that is just taking a simple average of the two is a

judgment call on your part as well, right?
A. Yes.
Q. Now, you will agree with me there is a distinction between a company's earnings being excessive as compared with their being excessively significant, won't you?
A. I would in terms of interpretation, yes.
Q. And in your view, simply being higher than a return earned by comparable companies may be an excessive return, but to be significantly excessive the earnings would have to be above your threshold?
A. They would -- yes.
MR. KORKOSZ: I have nothing further.
EXAMINER PRICE: Staff.
MR. JONES: No questions, your Honor.
MS. ROBERTS: I have no follow-up questions, your Honor.
EXAMINER PRICE: I have a couple.

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EXAMINATION

By Examiner Price:

Q. Dr. Woolridge, you seem to be familiar with Dr. Vilbert's testimony. You reviewed his testimony before?

A. Yes.

Q. You've also reviewed Senate Bill 221; is that correct?

A. Yes.

Q. And Dr. Vilbert's testimony explains why he included companies other than electric utilities referenced in the language of the statute that the statute says comparable companies including electric utilities, and I think that Dr. Vilbert reads implicitly including but not limited to.

Can you explain why you only selected electric utilities in your comparable companies?

A. I have a two-step process. I mean, Dr. Vilbert and I both used the results for public companies including public utilities and that is -- that is -- you know, the list I have of companies, it's in Exhibit JRW-2 and again in JRW-3, it includes both public utilities and nonpublic utilities.

What I have done in my step to develop

this group of public companies, I -- you know, the Bill talks about similar business and financial risks as elect -- as the public utilities, so what I've done is it's common when you do, like, return on equity testimony, you find a proxy group of companies, in other words, similar companies similar to the company you are estimating a cost of equity for.

And what I've done in Step I is I've said let's find primarily electric utilities and that's what I find in table 1.

And then I say, okay, these are supposed to be a comparable business and financial risk. So I use three measures of risk, primarily Beta, which is a measure of investment risk, the relative volatility of the risk; asset turnover because asset turn -- you know, the utilities have a high degree of capital intensity; and, number three, common equity, so that relates to their business risk on the left-hand side of the balance sheet.

Q. I would like to interrupt you. As Mr. Kutik has pointed out, we should allow the witnesses to fully respond, but I think you are going down a pathway more than I asked, so I will try to narrow my question.

Page 4 of your testimony you indicate
that steps for your test is to identify a proxy group
of electric utility companies, referencing the
language of the statute that says comparable
companies including electric utilities.

Can you explain why you included within

this proxy group only electric utilities?

A. I have not. Step IV I screen the database and get the companies I use that include both electric utilities and other public companies.

Q. Okay. Thank you.

A. So I just screen the database, and if you look at my group of companies I use in Exhibit JRW-2, it includes both utilities and nonutilities. So for that test that I actually performed I, much like Dr. Vilbert, I use public companies and utilities.

Q. Okay. The other issue I have in your screen, the second part of your screen is -- I'm sorry. In your Step I - Proxy Group Selection, you identify companies with total revenue less than $10 billion.

A. Yes.

Q. Mr. Korkosz asked you whether or not that would include FirstEnergy, and you said that would not.

A. Yes. And the reason I did that was
because the utilities in question, the three
utilities, all have revenues which are less than $3
billion, so I was trying to identify smaller electric
utilities, not huge electric utilities, so each of
the ones in question individually don't have.

Q. Each of the operating companies in question?

A. Yes.

Q. Each have less than $10 billion?

A. Toledo, Ohio, and Cleveland, none of them have total revenues of more than 3 billion, so they are smaller electric utilities.

EXAMINER PRICE: Thank you, that's all I have.

MS. ROBERTS: May I?

EXAMINER PRICE: Yes.

MS. ROBERTS: Thank you. How did you use --

EXAMINER PRICE: I'm sorry, I thought you were asking if you could move to admit the --

MS. ROBERTS: Oh, I have already moved to admit Exhibit 4 into evidence and I will provide Exhibit 4A.

EXAMINER PRICE: You may not ask

questions following me, thank you.

Any objections to admission of Exhibit 4?

MR. KORKOSZ: No objection.

EXAMINER PRICE: It will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: 4A we will deal with

when we actually have a 4A, so thank you. Let's go off the record.

(Discussion off the record.)

(Recess taken.)

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

Mr. Hussing, thank you for being patient and allowing us to take Mr. Woolridge out of turn.

I believe we left off with Mr. Breitschwerdt who generously allowed a couple of other attorneys to go before him.

MR. BREITSCHWERDT: That's correct. Thank you, your Honor.

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GREGORY F. HUSSING

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

CROSS-EXAMINATION

By Mr. Breitschwerdt:

Q. Good morning, Mr. Hussing.

A. Good morning.

Q. Do you have your testimony with you
again?

A. Yes, I do.

Q. If you could turn to page 5 of your

testimony, please, the sentence starting on line 9 and going through line 12, the end of that sentence, and this is where you are speaking of the second major consideration that you used in designing the proposed rate design is to incorporate the gradualism principle. The objective was to mitigate significant customer impacts, do you see that?

A. Yes.

Q. Okay. Would you agree with me that you are responsible for the riders within the electric security plan that are intended to use this gradualism principle to mitigate significant customer impacts?

A. I am responsible for the economic development rider.

Q. Okay. What other riders in the electric security plan are intended to implement the gradualism principle to mitigate significant customer impacts?

A. Well, the other one would be the phase-in credit that the company offered --

Q. And those --

A. -- of the generation ride.

Q. I'm sorry. Those are the only two?

A. I'm responsible for the economic

development rider. I know the phase-in rider is another method by which the generation is -- there was an offset to the generation price.

Q. And that would be Mr. Warvell who is responsible for that?

A. Yes.

Q. Okay. Thank you.

Do you recall during your deposition you had a conversation with Mr. Petricoff where you explain the concepts of gradualism generally?

A. Generally, yes.

Q. Okay. Thank you.

Would you agree that companies did not use specific criteria in applying gradualism principles to mitigate significant customer impacts?

A. I would -- I used a process. I didn't have any red line test that I had when I was mitigating the rates, but I had a process by which I mitigated the rights where I looked at the customers that we were going to -- that were going to have to pay for the gradualism and then the amount of money that we were going to utilize then to mitigate the rate impact so I would -- I would say I had a process.

Q. If the Commission were trying to

understand the process that you used, does the Application set forth this process or any of the criteria you used in this process?

A. The Application does not. I believe that was your question.

Q. That was.

And just to follow up my understanding from your answer earlier, you did not use any specific threshold percentages to designate an increase across all customer classes above -- above that increased gradualism would be used to mitigate increases; is that correct?

A. No, I didn't have a percentage but I tried to mitigate the largest increases of the customer classes.

Q. Okay. And when you say "customer classes," you are referring to the eight standard rate schedules that the company has proposed in the distribution case, Case No. 07-551-EL-AIR?

A. Subject to check that that number's correct, yes, yes.

Q. Thank you.

So you did not specifically assess whether it would be reasonable to apply gradualism to public school districts as an individual customer class; is that correct?

A. I didn't -- I did not look at -- I looked at class basis, so I didn't look at schools. Schools would have been in the -- typically the schools are in the general service secondary and the general service primary classes, so I mitigated -- looked at the increases from a class perspective and didn't look at schools from a subclass perspective.

Q. So as a subclass, you did not specifically review schools in applying the gradualism principle; is that correct?

A. No, I didn't look at schools from a subclass perspective. I looked at the impact of the ESP plan from a typical bill perspective, but I didn't utilize -- didn't do any analysis on schools as a totality as a subclass.

Q. And the electric security plan does not apply the rate design principle of gradualism to public school districts as an individual customer class; is that correct?

A. It would be correct to say that the economic development rider does not provide a credit specifically to a -- to a school. It provides economic development on a class basis, on the rate schedule basis, for example, a credit to the street or traffic lighting as a class.

Q. Okay. If you could turn to page 12 of your testimony, Mr. Hussing. Starting on page 12 and through 13 to the top of page 14, you discuss the nondistribution uncollectible rider.

Do you see that?

A. Yes.

Q. And the uncollectible expenses discussed in this section of your testimony, these uncollectible expenses are generation-related expenses; is that correct?

A. Yes. They are generation-related or nondistribution related.

Q. So in addition to generation, that would include?

A. Things that are in a nondistribution, small portion of transmission, for example.

Q. Small portion, so could you give a percentage or an allocation of what -- of the extent of these are generation related?

A. The vast majority of that would be generation, you know, I don't have the exact number but it -- the vast majority would be generation related.

Q. That's fair.

And this rider will only recover the uncollectibles of customers taking standard service offer service, correct?

A. Yes. The uncollectible expense from the operating companies.

Q. So as proposed, rider NDU would be charged to NOPEC's customers even if they are taking service from a third-party supplier?

A. Yes. It would -- it would be collected from all customers shopping -- shopping and nonshopping.

Q. And are you generally familiar with NOPEC as an organization?

A. Yes.

Q. And what's your understanding of NOPEC's purpose as an organization?

MR. KUTIK: Objection.

EXAMINER PRICE: Sustained.

Q. Are you aware that NOPEC has served as

many as 450,000 customers in the Ohio Edison and
CEI's territories to date?

MR. KUTIK: Same objection.

MR. BREITSCHWERDT: I can ask if he is aware, your Honor.

EXAMINER PRICE: Overruled.

MR. KUTIK: What's the relevance of his awareness?

EXAMINER PRICE: Overruled. I am sure he will make the relevance clear to us in time. Overruled.

MR. BREITSCHWERDT: Thank you.

MR. KUTIK: Hopefully not too much time.

EXAMINER PRICE: I agree.

Mr. Hussing, you can answer.

THE WITNESS: Can you read --

Q. (By Mr. Breitschwerdt) Certainly, I can repeat the question.

Are you aware NOPEC has served as many as 450,000 customer in the Ohio Edison and Cleveland Electric Illuminating service territories?

A. Can you clarify what you mean by "served"?

Q. Served as the large scale governmental aggregator to these customers.

A. I'm not aware of the exact number of customers that they have served.

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

A. By the definition of an aggregator --

that would comprise multiple groups of customers, so in the context of multiple groups of customers that would serve residential commercial customers. I don't know the extent or the split of who they would serve.

Q. Okay. Let's take it as a hypothetical then that NOPEC serves -- or serves 450,000 commercial and residential customers. Are you with me so far using this hypothetical?

A. Yes.

Q. Okay. Would you agree that there would be uncollectible expenses associated with serving these 450,000 customers?

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: Well, the question is unclear. Uncollectible to whom? They are all still distribution customers.

ATTORNEY EXAMINER: Please rephrase your

question.

Q. Mr. Hussing, would there be uncollectible expenses that would be recovered under the nondistribution uncollectible rider for these 450,000 customers if they were taking standard service offer service?

A. The uncollectible -- the nondistribution uncollectible rider would collect an uncollectible expense from all customers which would include then those 450,000 customers.

Q. Okay. And taking this hypothetical would there be generation-related uncollectible expenses associated with serving 450,000 commercial and residential customers?

A. There would be -- can you restate that one more time?

MR. BREITSCHWERDT: Could you read it back, please.

(Record read.)

A. There would be a component of uncollectible expense of serving customers so, yes, that would be an uncollectible expense.

Q. And would you agree with me that residential/commercial customers normally account for the majority of the companies' uncollectible expenses?

A. I don't know the exact breakout, so I don't have a -- I don't have a study that says exactly what the breakout of the uncollectible expense is.

Q. Do you have the information speaking in generalities? I understand that you can't give me an exact percentage but could you give me a general estimation based on your experience?

A. Yeah. I don't know.

Q. Would you agree with me that whether NOPEC's customers' load is served by the companies' service or third-party supplier would not have an impact on the amount of uncollectible expenses that would -- NOPEC -- that will result from NOPEC's customers?

A. Can we have the -- can you reread that question? I'm sorry, I just -- the train there.

Q. I can start over. That's fine.

Would the amount of uncollectible expenses resulting from these 450,000 customers change if they are standard service offer customers or if they are served by third-party supplier?

Would it matter who is serving -- who is providing the generation to the amount of uncollectibles that potentially would occur?

A. Yes, yes, in that the -- in -- when you look at from a residential perspective PIPP customers, for example, if a customer was a PIPP customer and they -- or went on a PIPP program, then the PIPP customer's uncollectible expense then becomes part of the universal service process and the -- and the amount of uncollectible would go down because it's being recovered through -- from the state process.

Q. Can you respond to the same question excluding PIPP customers for this class of 450,000 customers?

A. Can you restate the full question then?

Q. Right. Excluding PIPP customers, would there be any difference between a governmental aggregation like NOPEC, the amount of uncollectibles from their -- that would result from their customers class of 450,000 -- are you following me so far -- if they take standard service offer or third-party generation supply?

MR. KUTIK: Are we talking nondistribution-related uncollectibles?

Q. That's right, as the nondistribution uncollectible rider we were discussing would be recovered.

A. 450,000 customers that we are talking about, I just want to be clear the parameters of the hypothetical. Could you tell me what the parameters of the hypothetical are again? I just want to make sure I give you the proper answer.

Q. Sure, they are residential and commercial and they are within a governmental aggregation and they are trying -- and they are either being served by the standard service offer for generation or a -- third-party supplier of generation.

And the question is does that have any relevance to the amount of uncollectibles that either the companies can expect now excluding the PIPP customers that you responded to in your first answer or that would result from third-party supply of generation?

A. If the -- if the customers are served by -- if the customers are served by the government aggregation, then there would not be an uncollectible expense associated with the utility for nondistribution.

Q. To clarify your answer, would that customer load still experience nondistribution uncollectibles regardless of whether they are served

by the companies' standard service offer or
third-party generation?

A. There would be an uncollectible expense,
yes.

Q. And you have no reason to believe this
would not be an equal uncollectible expense based on

whether it was standard service offer service or third-party generation supply?

A. I don't know what it would be. I don't know the amount, whether it could be higher or lower.

Q. Based on the exact same group of customers.

A. Yes.

Q. Continuing this hypothetical, if NOPEC decided to take third-party generation, you would agree that NOPEC or its designated CRES supplier would be responsible for all the uncollectible of NOPEC's hypothetical 450,000 customers if they shopped for third-party generation supply?

A. Can you restate the question?

MR. BREITSCHWERDT: Could you read that back, please.

(Record read.)

A. Yes, they would have some portion of uncollectible expense.

Q. And the remainder of the companies' customers on SSO service would not be obligated for those uncollectible expenses, correct?

A. Yes.

Q. But this class of 450,000 customers that took third-party generation would still be responsible through rider NDU for the generation-related uncollectibles of the companies' SSO customers, correct?

A. Yes. The NDU is trying to collect the social costs that the companies have providing default service so, yes, the answer is yes.

MR. BREITSCHWERDT: Your Honor, I would like to strike the remainder of his answer after "yes." It was a simple "yes" or "no" question.

EXAMINER PRICE: Motion to strike will be granted.

Q. Would you agree with me rider NDU would obligate this hypothetical 450,000 customers to pay twice for uncollectible expenses if they make the decision to take third-party generation supply?

A. No. I think we are talking two separate costs. We are talking uncollectible expense from the utility that's asking to share a cost, a social cost, and an uncollectible cost associated with what the supplier may -- may deem, but I think it's two -- I look at it as two separate costs.

Q. But they would still be paying generation uncollectibles for the utility, for the utility's SSO customers and generation-related uncollectibles that are associated with the third-party supplier?

A. Yes.
Q. And would you agree that this disincentivizes large scale aggregation to shop because shopping will result in these customers paying both the generation-related uncollectibles they would be paying through rider NDU and generation-related uncollectibles that they would pay to the third-party supplier?
MR. KUTIK: Objection.
EXAMINER PRICE: Grounds?
MR. KUTIK: Beyond the scope of his testimony, no foundation laid that he has any experience or study in what governmental aggregator is incentivized to do or not to do.
EXAMINER PRICE: Mr. Breitschwerdt, response?
MR. BREITSCHWERDT: Your Honor, he just has explained that this is an additional cost that customers taking third-party service will have to

pay, so it seems like a fairly logical connection
that he can say that this additional
generation-related expense would be a disincentive to
third party -- or to governmental aggregation
customers, or any other customer for that matter, to
be paying twice for uncollectible expenses.

EXAMINER PRICE: We are going to allow the question.

A. I don't know if it's disincentive or not. I don't know.

Q. Okay. Well, let's take this hypothetical.

Hypothetically instead of NDU rider GEN -- you are familiar with rider GEN, correct?

A. Yes.

Q. 7.5 cents in 2009, 8.0 cents in 2010, 8.5 cents in 2011, so hypothetically if rider GEN was not bypassable, so if a governmental aggregation customer, or any customer for that matter, decided to shop, they would be responsible for paying rider GEN as well as the generation cost for the third-party supplier.

Do you understand the hypothetical?

A. The generation is bypassable is what you are saying. Yes, I understand what you are saying.

Q. So in this instance, similar to how rider
NDU is constructed, they would be paying twice; both for generation of the utility and the generation of the third-party supplier under the hypothetical.

A. They are -- under this situation under
the rider NDU the shopping customer would be paying

the supplier's generation cost or expense and the customer would also be paying for a nondistribution uncollectible expense.

Q. Okay, but taking my hypothetical, would that be a disincentive if they had to pay 7.5 cents, 8.0, or 8.5 cents, depending on the year, for the customer to take third-party supply?

MR. KUTIK: I renew my objection, your Honor.

EXAMINER PRICE: I am not even sure if I understand the hypothetical, so I would like you to repeat the hypothetical.

MR. BREITSCHWERDT: Sure. They are both generated-related expenses, one is uncollectible where a very small subset of customers are not able to repay the generation that they are taking, so that would be the 7.5 cents.

I'm essentially changing the rider NDU so instead it's rider GEN where the entire amount of

generation would be required to be paid by a customer
if they take third-party supply back to the company,
and all I'm seeking is to answer whether in that
situation it would be a disincentive to take
third-party supply.

MR. KUTIK: In addition to my scope and

foundation arguments there is an even further relevance argument here because that's nowhere even close to anything that's been proposed in this case.

EXAMINER PRICE: Sustained.

Q. (By Mr. Breitschwerdt) If you could turn to page 11 of your testimony, please, lines 12 through 14. You had a discussion with counsel for Ohio Consumers' Counsel and then discussion with the Bench yesterday about the delta revenue recovery rider about 3:30 so 500 questions or so ago, so I don't know if you recall.

But what I want to follow up on is in your discussion you said that -- in your testimony you say because the companies are stand alone distribution utility companies, limited resources, they cannot absorb the costs of discounts from Commission-approved tariffs that reflect discounts associated with generation service.

Do you see that?

A. That's correct.

Q. And you said that the companies -- let me know if I mischaracterize this, but the companies should receive full recovery under this rider based on the fact that they are no longer an integrated utility and they no longer own generation resources;

is that correct?

A. My context of my answer is that the distribution operating companies' revenue is distribution revenue. That's their source of revenue is distribution revenue.

Q. So 100 percent of their revenue is distribution revenue for three EDUs?

A. Yes. They don't own any generation.

Q. Okay. So I think there is a logical assumption that I just wanted to clarify here so that's -- you are stating that 100 percent of the generation revenues proposed in the electric security plan will be passed through to FirstEnergy Solutions under the potential contract that's going to be developed; is that an accurate statement or can we agree to --

A. Can you say it one more time, please?

Q. Sure. You are saying there is no generation revenues going to the EDUs, correct?

A. Generation would be collected -- revenues would be collected from customers and generation then is an expense. It makes no money on generation.

Q. Company makes no money on generation. So the 7.5, 8.0, and 8.5 cents, those revenues that are generated from all the customers, that will be passed through -- 100 percent will be passed through to whoever the supplier is under the contract that the EDUs negotiated generation supply?

A. I don't know the context of the contract. I just know that the generation revenues collected from customers and that revenue is to pay for generation service.

Q. Okay. But in your discussion of that delta revenue recovery rider, you are saying the companies are not receiving any revenue from generation, therefore, they should not contribute to the payment of the delta revenue -- repayment of delta revenue?

A. My example is the easier one to understand. Total bill is the total bill portion that is generation, and the distribution revenue is a very small percent, the companies' collected distribution revenue.

That's what it keeps and uses for

operations and makes for investment and the rest of
those are expenses that the company has to incur to
pay for generation, transmission. They are all
expenses that need to be paid.
Q. So would you agree with me if a
percentage of the generation revenues under whatever

contract EDUs negotiate with FirstEnergy Solutions or whatever generation supplier, if -- if a portion of the generation revenues were then retained by the EDUs under this contract, would it be reasonable for the companies to contract some portion of those revenues to pay some percentage of delta revenue recovery?

A. I don't know. I don't know if that's a hypothetical. I am not part of that process.

Q. Well, I understand that. But can you -- can you say today that there will be no percentage of generation revenues that will be retained by the EDUs and not passed through to your generation supplier FirstEnergy Solutions?

A. I don't know.

Q. Okay.

EXAMINER PRICE: If you don't know, how can you make the statements in your testimony?

MR. BREITSCHWERDT: That's the question I was trying to get to.

EXAMINER PRICE: If you don't know whether the companies will or will not retain any portion of the generation revenues, how can you make these statements in your testimony "the company has a limited ability to absorb lost revenues"?

THE WITNESS: My testimony is representing an understanding they would not retain any -- any generation -- any revenues.

EXAMINER PRICE: So assuming the hypothetical posed by Mr. Breitschwerdt that if they did retain some percentage, would that change your testimony?

THE WITNESS: I'm thinking it through.

EXAMINER PRICE: Fair enough.

THE WITNESS: Yeah, the companies would have some portion of revenue that would support delta revenue.

EXAMINER PRICE: Thank you.

Q. (By Mr. Breitschwerdt) You were also a witness in the distribution case that we discussed earlier, Case No. 07-551-EL-AIR, correct?

A. Yes.

Q. Didn't you take the position in that case for the purposes of the cost of service study all

delta revenues associated with special contracts
would be designated as distribution-related revenue,
if you recall?

A. Can you say that one more time, please?

Q. Sure. In Case No. 07-551, which is the
distribution case, didn't you as a witness take the

position that for the purpose of the cost of service study that was completed, all delta revenue associated with special contracts would be designated as distribution-related revenue?

A. No. I -- I didn't say -- the delta revenues associated in the distribution case there -- the revenues associated with the distribution case were distribution revenues. So when we -- the distribution case dealt with distribution revenues. It didn't deal with generation-related items.

MR. BREITSCHWERDT: Okay. That's all I have. Thank you, Mr. Hussing.

EXAMINER PRICE: Mr. Stinson.

MR. STINSON: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Stinson:

Q. Mr. Hussing, my name is Dane Stinson, I representing FPL Energy Power Marketing, Inc. and

Gexa Energy Holdings, Inc?

I have a few questions for you concerning the distribution uncollectible rider, and just to clarify it for myself, I want to go back over just a few things more in broad and general terms.

I believe you state it's correct that the

NDU recovers nondistribution, uncollectible expenses related to standard service offer?

A. Yes.

Q. And would you agree that -- also that CRES providers have nondistribution uncollectible accounts as well?

A. Yes.

Q. And I believe in your testimony you stated that customers who took service from a CRES provider would pay that -- pay for those nondistribution uncollectibles through their rates?

A. Yes.

Q. And that those -- that those shopping customers would pay the NDU rider and for the uncollectible accounts of the CRES provider?

A. They would pay for a portion of the utilities' uncollectible expense, yes.

Q. Well, the CRES uncollectibles expense?

A. Yes.

Q. Do standard service offer customers pay
for the CRES uncollectible expense?

A. In the way I look at it is the -- the
utility customer's uncollectible expenses is affected
by the shopping customers in the fact that the
payment posting process fulfills that once a CRES

supplier drops a customer, then the utilities still through the payment process -- payment proceed process pay for the uncollectible expense of that supplier first so until that -- until the utilities' uncollectible expenses have been reduced because the companies are still paying the uncollectibles of the shopping customer first.

MR. STINSON: Your Honor, I move to strike as unresponsive to my question.

EXAMINER PRICE: I thought it was quite responsive. Overruled.

Q. The question is yes or no, do SSO customers pay for CRES bad debt expenses?

A. The answer would be all customers pay because of the utilities' uncollectible expenses aren't being reduced as fast because the shopped customers are being paid through the payment posting process first.

Q. Can a creditworthy customer default on its -- on a debt, a customer who has paid your deposit for service?

A. Can you further give me an example?

Q. Let's say that the customer applies to you for service. That customer pays a deposit. The application for service is accepted. The customer

loses his job, does not pay.
Is that a possibility, does not pay his bill?
A. Yes.
Q. Is that also a possibility for a CRES provider customer?
A. That he pays a deposit to the company?
Q. That he pays a deposit to the CRES provider.
A. That's a possibility.
Q. And in addition, do you agree then that collecting a security deposit is a protection to the distribution company against uncollectible accounts?
A. Yes, that's why we are reducing the uncollectible expense by the customer deposits.
Q. Are there any other regulatory protections that would protect against incurring bad debt?
A. Can you say that question again?

Q. Are there any other regulatory
protections that would protect against the utility
incurring bad debt?

A. There's the PIPP program where customers
that can't pay their bills and if they are, you know,
under the certain percent income, then they can be

moved to the PIPP program and that tends -- that would reduce the companies' uncollectibles, yes.

Q. What about third-party guarantors?

A. I don't know.

Q. Are there provisions for third party -- I'm sorry, did you finish your answer?

A. I don't know about third-party guarantors.

Q. Do you know if there is provision for third-party guarantors in FirstEnergy's tariffs?

A. I don't know. I know a customer can make a deposit.

Q. In your testimony on page 12, at line 18, you testify as to shutoff moratoria.

A. Yes.

Q. Can you explain what that is?

A. During a period of time the Commission can order the utilities not to disconnect.

Q. And if during that period a customer

defaults on his bill, what happens?

A. The customer still retains service and just creates an arrears.

Q. And is there a deferred payment plan that's entered into or could be entered into?

A. The customer -- that is one of the

options, to have a deferred payment plan, yes.

Q. And those arrearages are not written off as bad debt at that point? They are still collectible?

A. There is arrears that still pends if the customer doesn't pay under the payment plan.

Q. You mentioned as well the PIPP program, and are there income criteria for being a part of the PIPP program?

A. Yes.

Q. Do you know what those are?

A. Not specifically. It's around 150 percent or so of the poverty level.

Q. And would you agree that the PIPP program is to protect at-risk customers?

A. Yes.

Q. And are you also aware that the pre-PIPP arrearages are recovered 100 percent to the universal service fund?

A. Yes.

MR. STINSON: Nothing further, your Honor.

EXAMINER PRICE: Thank you.

Mr. Lavanga.

MR. LAVANGA: Thank you.

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CROSS-EXAMINATION

By Mr. Lavanga:

Q. Good morning, Mr. Hussing. My name is Mike Lavanga. I'm an attorney for Nucor Steel Marion. I just had a couple of follow-up questions on your application of the gradualism principle.

Now, is it correct that gradualism considers the relative rate increases among the various customer classes?

A. Yes.

Q. Okay. So you would agree that you apply gradualism on an interclass basis?

A. Yes, I looked at the largest increases of the schedules.

Q. Okay. Would you agree that gradualism should also apply on an intraclass basis?

A. It could. I looked at it from a class basis.

Q. But it could be looked at on an intraclass basis customer by customer or rate schedule?

A. Gradualism could be many forms.

Q. Okay. And when you did your analysis, you took the eight new customer classes that are --

that you are proposing to create in this proceeding, correct, based on the distribution case?

A. Yes, I looked at those -- those schedules.

Q. And what you did is you mapped all the customers on the current rate schedules over to those eight new proposed classes and then you did your analysis, correct?

A. Yes, that was the result.

Q. Okay. You didn't do any analysis or gradualism analysis looking at the existing rate schedules?

A. No.

Q. Okay. Mr. Hussing, do you have the Application up there?

A. Yes, I do.

Q. Can you go to your rate impacts schedules.

A. Which company are you going to refer to?

Q. I'm going to be looking at Ohio Edison on all of these questions, and the first page I'm looking at is rate impacts page No. 1, Schedule 1A, page 1 of 15.

A. Yes.

MR. KUTIK: I'm sorry, may I have the

page number again?

MR. LAVANGA: Rate impacts page 1.

Q. For rate class GT do you know how many current rate schedules are included in that customer class?

A. For Ohio Edison there's probably three classes, three current rate schedules, 21, 23, and 28.

Q. What were they? I'm sorry, Mr. Hussing, what were those again?

A. Rate 21, rate 23, and rate 28.

Q. Is it fair to say that those rate schedules produce widely varying prices per kilowatt hour today?

A. And your definition of "widely," they would produce a different number.

Q. Okay. A different number per customer.

A. Per customer, per schedule.

Q. Do you know what the range of prices

under those schedules paid by customers today is?

A. I do not.

Q. Would you agree that the GT class is generally made up of your industrial customers who use the larger amounts of electricity?

A. As a general reference.

Q. And would you agree these customers are highly sensitive based on their size to -- to electricity costs?

A. I don't know the full aspect of how -- what component of electricity is their total -- total business.

Q. Let's go back to this line 5, class GT. If you go over to column I, you will see a 19.63 percent increase for the rate G and T or class G and T -- class GT?

A. Yes.

Q. And this is after you made the rider EDR adjustments?

A. That is correct.

Q. And would you agree that this increases almost four times the total company increase of 5.23 percent in 2009?

A. Yes.

Q. Can you explain how you derive the

current and average rate for Ohio Edison class GT in
column E?

A. Yes. That's the average rate for the
test year of the companies' distribution -- or the
test year, so 12 months ending February, 2008, then
adjusted for the increases that customers would have

exceeded, which would have been transmission and
fuel.
Q. And this average would reflect a combination of what both firm and interruptible customers pay?
A. Yes.
Q. Okay. And this number is about -- for the current average rate it's about 6 cents?
A. Yes.
Q. Would you agree that customers on some of these existing rate schedules that are subsumed under class GT are paying much less than 6 cents?
A. Yes. That's an average number, so some customers pay higher and some customers pay lower.
Q. Okay. Would you agree that some customers in this class are going to see rate increases in the first year in excess of 40 percent?
A. That's a possibility.
Q. Does this class GT include rate 29?

A. Yes.

Q. Okay.

A. I think that's basically a subcomponent of a rate.

Q. Which rate is it a sub --

A. It's either a subset of rate 28 -- or I

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think it is a subset of rate 28 but, yes.

Q. Okay. Would you agree that customers currently on rate 29 are likely to see increases approaching 50 percent in 2009?

A. I didn't do a subsequent customer -- specific customer analysis, so it's a possibility.

Q. But you don't know? It's a possibility?

A. It's a possibility.

Q. Okay. Let's move on to the rate impacts for 2010. And I have a page reference. I think it's rate impact page 46. Are you there?

A. Yes.

Q. Okay. And this shows an additional increase in 2010 for class GT customers of Ohio Edison of 5.33 percent over what the rates would be in effect for 2009; is that correct?

A. Yes, for GT.

Q. Okay. Let's go one more to rate impacts page 91, which is the rate impacts for Ohio Edison customers in the year 2011. Are you there?

A. Yes.

Q. Okay. And this shows an additional increase over 2010 in the year 2000 -- 2011 of 7.2 percent for class GT customers?

A. Yes.

Q. So looking at the three years in total and assuming the ESP stays in effect for all three years, Ohio Edison rate class GT customers are looking at an increase from an average of about 6 cents under the current rates to an average of a little over 8 cents per kilowatt hour in 2011; is that correct?

A. Yes.

Q. Okay. And you would agree this is an average rate increase of about 35 percent?

A. Subject to check, yes.

Q. And it's an average, so individual customers would see -- or could see rate increases in excess of that number?

A. That's a possibility.

Q. Mr. Hussing, I just have one or two quick questions about rider EDR. I don't think we need to go through and look at the schedules, but my question is, is the intent of the company to have rider EDR in effect for all three years of the ESP?

A. Yes.

Q. Okay. And are the credits and charges under the schedule intended to remain the same those three years?

A. Yes, that is the intention.

Q. Okay. And actually I do have one more question on your dynamic peak pricing, if you could go back to your testimony on page 17.

Are you there, Mr. Hussing?

A. Yes.

Q. Okay. You say here that the -- that the on-peak hours for your dynamic peak pricing program are going to be 11:00 to 5:00 p.m. during the weekdays?

A. Yes.

Q. What was the basis for that, for setting that peak time period?

A. Two bases; one, it's the peak time that customers -- the company experiences load -- or that is the reason it's -- that's the peak times -- the company experiences its peak load.

Q. And are those on-peak hours the same throughout the year or is it just the summer?

A. Well, there are -- they are a summer

peaking utility.

MR. LAVANGA: Okay. That's all I have.
Thanks Mr. Hussing.

EXAMINER PRICE: Mr. Keiffer, I cannot recall if you had an opportunity to cross yesterday in changing of order here, new seats.

MR. KEIFFER: I did not, but we have no questions for this witness. Thank you.

EXAMINER PRICE: Thank you.

Staff?

MR. JONES: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Jones:

Q. Good morning, Mr. Hussing.

A. Good morning.

Q. My name is John Jones, and I represent the staff in this proceeding. I just have a few questions for you.

First of all, I just wanted to touch -- I know a lot of questions have been asked about the nondistribution uncollectible rider covering your testimony on pages 12 and 13. And it's your testimony that the CRES suppliers had a much better opportunity to manage their costs because they can

establish their own credit rules to minimize
uncollectible accounts.

Is that your position?

A. Yes.

Q. Okay. And then in the contrast you
describe as to the companies not being in the same

position as CRES in terms of managing their costs in that regard?

A. Yes. The companies are obligated to serve as the default provider and are subject to the Commission's connection and reconnection policies.

Q. But this -- this goes to generation-related service, correct, for this -- for this collection?

I mean, these are customers who shop and then take generation service from a third-party supplier and you want them to pay this rate even though they are receiving service from another supplier; is that correct?

A. Yes. We are -- would like to -- the company is proposing that all customers share in that expense.

Q. Okay. And so that's with the assumption or recognition that a lot of those customers who would be shopping and receiving service from a third-party supplier, there would be many of those customers who would not have an arrearage with the companies; is that correct, that would be caught up in paying that rate?

A. This is -- can you restate your question?

Q. Yes. I mean, as to all the customers

that shop and receive service from a third-party supplier, not all those customers would be -- would have -- you are looking at uncollectible amounts from different accounts but not all those customers -- I mean, I don't even know if you know what percentage that would be estimated to be but not all customers would be -- would have some type of an arrearage the companies would be looking to collect on; is that correct?

A. Yes.

Q. Okay. And I'm trying to understand your testimony for support of this rider a little bit better.

Now, in terms of your statement -- citing state policy, Commission rules, there's nothing that spells out that, you know, in this context for this rider that the company would be entitled to the collection for -- from shopping customers who receive service from third-party suppliers to receive -- to have to pay this rate; is that correct?

I mean, this is your -- you're kind of proposing this as to your interpretation of the Commission rules and state policy; is that accurate?

MR. BELL: May I have that question read back.

MR. JONES: I know it was a long, convoluted question.

EXAMINER PRICE: Let's read the question back.

(Record read.)

MR. KUTIK: And, your Honor, if I could ask a clarification, it's the last phrase is the question?

EXAMINER PRICE: I heard two questions in there actually.

MR. KUTIK: That's why I am asking.

EXAMINER PRICE: Mr. Jones, why don't -- I believe you asked two questions. Why don't you break them apart and rephrase them to two separate questions.

MR. JONES: Okay. Your Honor.

Q. (By Mr. Jones) Mr. Hussing, first of all, where you are citing state policy, what -- exactly what are you citing there? You are making a general reference. I need to have more specific reference.

A. Citing the policy of the state to protect at-risk customers.

Q. And it's Commission rules that you are referring to?

A. The connection and reconnection rules of the Commission.

Q. Okay. And you're saying -- it's your testimony that this rider should be unavoidable for -- even for shopping customers because you are saying this is the fairest way to deal with the implementation of the state policy and the Commission rules?

A. Yes.

Q. Fairest way in what regard? I mean, how would you support that?

A. The company as a -- as the default supplier has an uncollectible expense. That uncollectible expense -- the amount of that uncollectible expense is -- is impacted or is relative to the Commission's rules on disconnection and reconnection policy on what they can and can't do.

Thus, the -- it's a social policy protecting at-risk customers. Those Commission rules

are there to protect customers to keep them -- keep
them from being disconnected through their moratoria
and the -- and the programs and the amount of time
that the company can disconnect a customer, so the
uncollectible expense of the customer -- of the
company, so this is -- I think this is a social cost

that should be borne by all customers.

Q. But then your -- you are stating that the CRES suppliers would also have policies that go to uncollectibles as well, so a customer could potentially be paying double expenses for uncollectibles; is that correct?

A. They are two distinct things. The CRES uncollectibles aren't borne from a -- from a state policy of protecting at-risk customers. They are borne out of their own financial aspect.

Q. All right. I just have one other area that dealt with the AMI pilot program and the estimates that you have provided -- have you had an opportunity to read staff witness Gary Scheck's testimony in regards to the AMI pilot program proposed by the companies?

A. Yes, but it's been some time so.

Q. He said that the estimates would be more as to 250 to 350 dollars for the advanced metering and installation at the end point as opposed to what your figures reveal.

Why is there such a spread there between what Mr. Scheck is saying and what you are saying?

MR. KUTIK: Objection. Calls for speculation as to where Mr. Scheck's figures came from.

EXAMINER PRICE: Sustain.

MR. JONES: I will rephrase that, your Honor.

Q. Mr. Hussing, the numbers you are providing, aren't they high estimates for that -- for that installation for the cost of those meters?

A. My estimates come from our meter department. So my meter department is telling me those are the estimates. I think it's very difficult to -- to determine whether one cost is better than the other until you have seen what's all in the package. So it's difficult to say.

Q. Okay. Fair enough.

And also that the companies are willing to have an investment here up to a million dollars into this program and that anything over that amount then would be recovered through the DSM energy deficiency rider; is that correct?

A. Yes.

EXAMINER PRICE: Wouldn't it be better to have an AMI rider that would be better to follow those costs and separate out independently from the other costs from energy efficiency? Wouldn't that be more efficient for tracking costs?

THE WITNESS: As per the Application, the company has suggested that if it goes forward with a -- you know, from an AMI computation perspective, then that would be a way of separating out, you know, a large AMI cost.

Here the company is proposing a million dollars to not collect from customers, so there's really no -- no extra costs in the demand-side management efficiency rider, but if it were to expand the program, I believe it's prudent to keep it there because it is a demand-side management program.

MR. JONES: Okay. That's all I have. Thank you.

EXAMINER PRICE: Before we move on to redirect, I have a few questions.

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EXAMINATION

By Examiner Price:

Q. Turning to your testimony regarding the delta revenue recovery rider, page 12, lines 5 through 7. In the initial amounts this was the $79 million that we referenced -- you mentioned yesterday; is that correct?

A. Yes.

Q. And what's the origin of those amounts?

A. The origin of those amounts are the CEI contracts that extend into 2009 and the -- that's the difference between their -- the rate that they would be paying under the ESP tariffs and the terms and conditions of their contract.

Q. When were these contracts extended through 2009?

MR. KUTIK: I'm sorry.

Q. When were the contracts extended through 2009? What time was the extension made?

MR. KUTIK: Your Honor, that assumes there was an extension.

EXAMINER PRICE: It does indeed.

Q. Do you know if there was an extension in these contracts to 2009?

A. I know these contracts end in 2010.

Q. Do you know they end in 2010? Do you know when these contracts were signed?

A. No, I don't.

Q. Do you know if these contracts were
extended as part of the RCP stipulation?

A. Yes, I am aware there was a provision in
the RSP for contracts.

Q. To be extended.

A. I don't know the exact language.

Q. Okay. Are you aware of any provision in the RCP that would allow the companies to receive recovery of delta revenue as a result of that extension?

A. I am not aware of the terms -- all the terms and conditions of the RCP plan.

Q. If you are not aware of the provision allowing the company to receive delta -- to receive recovery of the delta revenues, why is this in your Application?

A. Can you restate your question? I'm sorry.

EXAMINER PRICE: Can you read that again.

(Record read.)

A. It's part of the ESP Application?

Q. Yes.

A. I would think if you -- that question is more directed to Mr. Blank because he's supporting the Application.

EXAMINER PRICE: Okay. Thank you. I will hold that question for Mr. Blank as I will some of the others.

Redirect?

MR. KUTIK: May I have a few minutes, your Honor?

EXAMINER PRICE: You certainly may.

Let's go off the record.

(Discussion off the record.)

EXAMINER PRICE: Go back on the record.

Mr. Kutik.

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REDIRECT EXAMINATION

By Mr. Kutik:

Q. Mr. Hussing, you were asked a lot of questions about rider NDU and the delta revenue recovery and a number of other subjects. I would like to ask you about a couple of those.

With respect to the delta revenue recovery rider, you were asked some questions by Mr. Poulos whether you had done any studies or analysis about the affect on the company.

You also had answered one of the questions from the Bench using an example where the total bill to large customers is 5 percent or so distribution revenue, and the total discount that would go to that customer under a special arrangement was 5 percent or more.

If you have that type of situation, do you have to do a financial analysis or study to determine whether having those type of arrangements on a continuing basis would affect the financial viability of the company?

A. No, you wouldn't.

Q. You were asked some questions this morning from the Bench about whether if a portion of the bill that the companies retained was generation, whether the company should share part of the delta revenue.

With respect to that question and with respect to the generation portion of the revenue that would possibly be retained by the company under the Attorney Examiner's hypothetical, did you make any assumption about whether that portion was profit or whether it was earmarked for expenses?

A. The --

MR. POULOS: Objection. It's a leading question.

EXAMINER PRICE: Overruled.

A. When I answered my question, I assumed it was profit.

Q. Now, you also were asked some questions about the economic development rider, and I want to make sure that one aspect of some of your answers is clear on the record.

Do all customers have to pay any charges that might arise from the EDR rider?

A. As stated in the tariff, the GS and GP customers pay the charge.

Q. Regarding some questions from counsel for NOPEC and the Ohio Schools Council, you indicated that prior to doing your rate mitigation process that you talked about, you did not specifically look at schools and the affect on schools; is that correct?

A. That is correct.

Q. Have you done so since?

A. Subsequently the average increase for the energy for education schools is -- is approximately around 7, 7 percent less -- without their prepayment.

EXAMINER PRICE: I'm sorry, can you clarify what you mean by "without their prepayment"?

THE WITNESS: The schools program allows for the schools to prepay their bill so there is some benefit to utilities.

So if you look at it, their energy for

education discount without a prepayment it's around 7 percent. Because if they were to do another prepayment, then there's another financial piece involved.

EXAMINER PRICE: I don't want to get too far beyond the questions your counsel asked, but there is no -- as we have heard repeatedly in public hearings, there is no proposal for a new prepayment program, is there?

THE WITNESS: No, there is no -- there is no proposal.

EXAMINER PRICE: Okay.

Q. (By Mr. Kutik) Mr. Hussing, you were asked some questions late in the day yesterday from counsel for Constellation and others involving a hypothetical under the EDR or delta revenue riders and whether customers could shop and somehow receive a slightly lower credit still.

Do you remember that line of questions?

A. Yes. It was late in the day, yes.

Q. Have you given further thought to that hypothetical?

A. Yes, I have.

Q. And have you prepared an exhibit to explain your further thoughts on that hypothetical?

A. Yes. I would like to explain it. I
think it's easier when you look at it on paper.

MR. KUTIK: May I approach, your Honor?

EXAMINER PRICE: You may.

MR. KUTIK: Your Honor, we would like to
have marked for identification Company Exhibit 12.

EXAMINER PRICE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Mr. Kutik) Mr. Hussing, could you explain what Company Exhibit 12 shows.

A. Company Exhibit 12 kind of shows -- or shows the scenario that Mr. Petricoff was stating in his hypothetical. And it's my understanding that what he was portraying in the hypothetical about where a customer under a reasonable arrangements would be granted a -- in this example a 2 cent discount and that's what I'm looking at as Scenario 1 where the overall price is 8 cents and reasonable arrangement discount would be 2 cents and net customer price is 6 cents and that was the intent, to get the customer to a net price of 6 cents.

In Scenario 2 this is a sin -- the hypothetical we went over yesterday is where the CRES provider would provide a -- you know, try to get the customer to the same 6 cents and then the reasonable arrangement discount would only have to be 1.95 cents and the offer -- price offered by the CRES supplier would be 7.9, thus, making the amount that would be made up by other customers a lower number.

And the Scenario 3 is the one I thought of here as the impact to customers, the possibilities are if the -- in an arrangement where the CRES provider then drops that customer and that customer then comes back at the market rate instead of the SSO rate, then that customer would come back at a higher rate than the SSO rate.

And in order to get the customer to the same 6 cent value, now the reasonable arrangement discount would have to be 4 cents, so it doesn't work in all situations.

Q. And under Scenario 3 is it -- do all customers benefit?

A. If all customers had to make up for the 4 cents, all customers would not benefit.

Q. No further questions.

A. They would be paying a higher charge.

MR. KUTIK: I have no further questions.

EXAMINER PRICE: Mr. Poulos.

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

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RECROSS-EXAMINATION

By Mr. Poulos:

Q. Very briefly, Mr. Hussing, are you aware of any policies in place for the companies to follow while negotiating unique arrangements?

MR. KUTIK: Objection, beyond the scope.

EXAMINER PRICE: Sustained.

MR. POULOS: Your Honor, this witness in re -- in redirect was talking about the 5 percent and there was no need to look at it or review it.

Obviously there are certain circumstances there are -- there's no need to review whether there's a contract -- or whether there is a delta revenue concern about profits, so I'm looking at if there is a policy of when they look at it or when they don't look at it.

EXAMINER PRICE: You need -- acknowledging the fact that I have already ruled but if I'm going to reconsider, you are going to have to explain a little bit better because I did not understand your explanation.

MR. POULOS: Mr. Hussing went through -- his own redirect went through an explanation of why he can look at his hypothetical when it was a 5 percent discount and not have to review whether there

was concern about the delta revenue and if the
company could take on that -- take on that expense.

EXAMINER PRICE: Mr. Kutik.

MR. KUTIK: His question about -- well,
let's have the question read because I don't think
the question has anything to do with that topic.

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

(Record read.)

EXAMINER PRICE: I'm sorry, Mr. Poulos, my ruling -- the objection is still sustained. Maybe you can rephrase in a way that ties maybe a little better back to the scope of redirect.

Q. (By Mr. Poulos) Mr. Hussing, you were asked on redirect --

EXAMINER PRICE: Thank you, Mr. Small.

Q. Mr. Hussing, on redirect you were asked questions about your hypothetical on delta revenues. Do you recall that?

A. Yes.

Q. And that hypothetical related to a situation where the companies were reviewing a 5 percent discount on rates, do you recall that?

A. Yes.

Q. And was it not your answer that the

company wouldn't have to review a -- those kinds of scenarios because it was obviously a loss of -- the company couldn't afford a loss of delta revenues in those situations?

A. I think the question was along the lines did I need to do studies to see that there is no

distribution revenue left to support it.
Q. Okay. So there was no studies that you needed to do to support it.
A. It was a simple math.
Q. Okay. Is there any policies and procedures in place of when you do not need to do a study regarding the loss of delta revenue?
A. I'm unaware of any policies.
Q. Any procedures in place about when you don't need to do an analysis of the losses of delta revenues?
A. I was referring to the hypothetical presented and if the hypothetical presented is it's -- that is the delta revenue is -- is the way past the distribution portion of the bill, there would be no need to do a study.
Q. So there is no policies or no procedures in place either; is that correct?
A. I was answering your question related to

the hypothetical.

Q. Yes. And my question is, is there any procedures that would address the hypothetical about the companies' ability to make that determination?

A. I don't know of a policy.

Q. Are you aware of anyone who would -- of who would make the determination of when a study would have to be done for the -- to determine if the loss of the delta revenue would affect the company?

A. Can you restate your question?

MR. POULOS: Could you have read it back, please.

(Record read.)

A. No, I do not.

MR. POULOS: I have no further questions.

EXAMINER PRICE: Thank you.

Mr. Bell?

MR. BELL: Yes, I have a number of questions of Mr. Hussing.

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RECROSS-EXAMINATION

By Mr. Bell:

Q. Good morning again, Mr. Hussing.

Directing your attention to Exhibit 12, Company Exhibit 12, it reflects your additional thought over the evening?

A. Yes.

Q. Would you agree that this exhibit has a number of assumptions implicit in the numerical values represented on the exhibit?

A. Yes.

Q. And those -- and the basis of those numerical values are what?

A. Just an illustration of -- of a credit and a relational change from a standard service offer price to a -- to a -- a market price. They are not representing of an actual number.

Q. For instance, 1 is not representative of the overall price including generation -- yeah, of first -- of the operating companies; is that correct?

A. Yeah. These numbers don't represent any -- any example number in the companies' ESP filing.

Q. And that's true with respect to the second scenario; is that correct?

A. That is correct.

Q. And with respect to the third scenario which reflects your thought, would you agree that reflects only your perspective -- or should I say the companies' -- the Applicant's perspective?

A. It's a -- it's an illustration of a possibility that could happen. It's my perspective.

Q. Looking at that third scenario, is not that third scenario entirely dependent upon a CRES supplier's ability to secure a customer from the operating companies?

A. The scenario represents the possibility of a customer coming back to the market rate.

Q. Without playing games, Mr. Hussing --

MR. KUTIK: Well, I object to that.

EXAMINER PRICE: Sustained.

Q. For a customer to abandon the service, the customer has to formerly had to have been a customer of the operating companies, correct?

A. Can you restate your question?

Q. Well, the third scenario it says CRES supplier abandons customers, returns to SSO service. Does not that assume in the first place that the company had to have at some point in time picked the service of the CRES supplier in order for that customer to "abandon the CRES supplier?"

A. Yes. This assumes the CRES supplier drops -- drops the customer.

Q. And that assumes a competitive level playing field as between FES and a CRES; is that

correct?

A. It has nothing to do about a playing field. It has everything to do with a possibility of what could happen if -- this is to illustrate a customer if the CRES supplier dropped the customer.

Q. Going back to the perspective aspect of this exhibit, with respect to the nondistribution uncollectible rider, does not that rider assume, if you will, or is it not based upon the presumption that the CRES supplier, in fact, serves no at-risk population?

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: Beyond the scope.

EXAMINER PRICE: Sustained.

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

EXAMINER PRICE: Mr. Boehm.

MR. BOEHM: No questions.

EXAMINER PRICE: Ms. McAlister.

MS. McALISTER: No questions.

EXAMINER PRICE: Mr. Petricoff.

MR. PETRICOFF: Shouldn't take more than 20 minutes. By the way I do -- I do appreciate everyone's indulgence in letting me finish so I could go to the other hearing today.

MR. KUTIK: Can mr. Petricoff have a microphone?

EXAMINER PRICE: Yes.

MR. PETRICOFF: Okay, can you hear now?

MR. KUTIK: Thank you.

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RECROSS-EXAMINATION

By Mr. Petricoff:

Q. I would like, Mr. Hussing, to direct your attention to Exhibit 12. The -- I would like to add another line that you have -- another row going across.

The first one is the overall price, and I assume that's the overall price that -- for energy that's being charged to the retail customer in your exhibit?

A. Are you -- are you recreating a scenario now?

Q. I'm creating my scenario now to set up -- I want to start with the rows you have, the first row you have is overall price and that's a price for energy that the customer will have when they are supplied by the -- under the standard service?

A. Yeah. You can refer to total bill.

Q. Well, let's talk about energy because my

examples yesterday were just energy and this is to
respond to my examples, correct?

A. Yes.

Q. And then the next is the -- the
reasonable arrangement discount and for illustrative
purposes you have chosen 2 cents.

A. Yes.

Q. And then I want to add a row underneath that and that would be because the company is going to be made revenue neutral under the -- under the delta rider. There is going to have to be a delta revenue ride there that the other customers pay to make up for the 2 cents; isn't that correct?

A. That is correct.

Q. Okay. And for illustrative purposes let's assume that's a mill, a mill per kilowatt hour.

Q. And so the -- and will customers who are -- just out of interest, are customers who are going to receive the discount, would they also have to pay the delta revenue rider?

A. All customers would pay the delta revenue rider.

Q. Okay. So in that case our net price would be 6.1 cents, correct?

A. So in Scenario 1 you are adding -- you are adding a 6.1?

Q. No, no, I'm adding -- you just told me everyone, even those who have the special arrangement, are going to have to pay the delta revenue rider.

A. That is correct.

Q. So if I add the delta revenue rider, then basically the cost for energy is going to be 6.1 cents, correct?

A. The cost -- yes, the cost. The number here, the net price we are looking here is 6.1.

Q. And this is net price to the customers.

A. Yes.

Q. Now, let's go over to my Scenario 2 now, I think you told me yesterday that the only way you could get the reasonable arrangement discount is if you took your power from the standard service offer, correct?

A. Yes.

Q. And, right now, that means it's coming from the companies' affiliate FES, correct?

A. That's the assumption.

Q. Right. Okay. Now, if the -- let's -- we will take your example first so if it was 7.95 was the offer that was out in the CRES community that the customer could get and the reasonable arrangement you say would now be reduced to 1.95 so that it equals out, in that case though wouldn't the delta revenue be reduced because now there's going to be less money that has to be made up?

A. Yes.

Q. So let's assume this is the only customer out there, to make -- to make the math easy. So, now, our delta revenue goes to zero and so the net price then will be a total of 6 cents.

Wouldn't you agree with me that the customer is better off under that scenario than they are under the Application where they are not allowed to shop?

A. I'm agreeing that the -- that the two scenarios will -- will balance to each other and that the customer would be paying in my example here this was a net total so I was taking that into consideration already, Mr. Petricoff, so the -- when I looked at your scenarios, that's where I'm seeing the 1.95 would be recovered from all customers. It would be less recovery needed from all customers, so I'm agreeing there, yes.

Q. And you would agree if there is -- that the customer base will consider it a benefit if they have to pay a lower delta revenue rider.

A. Yes.

Q. Okay. Now, let's take one more example. Let's assume that, in fact -- that, in fact, it wasn't $7.95 but that prices had fallen precipitously and now you could buy GEN for 7 cents.

And the Application, that came in at 7 cents and asked that the reasonable arrangement discount not be made penny for penny, but let's just say that it was still 1.95 cents as you had in your example.

Under that situation would the customer who is getting the reasonable arrangement have a substantially more attractive price?

A. You are saying the CRES provider would lower their price to the customer?

Q. No. Let's say the offer from the CRES provider is 7 cents and in the Application that's made for the reasonable arrangement discounts, in light of the fact it's a lower rate they don't ask for penny for penny, they just ask for less, in this case we will use your example 1.95 cents.

And my question to you then at that point -- and I might as well finish my example.

And then in terms of the delta rider

revenue, remember, this is the only customer out there so this goes to zero, would be the total the customer would be paying in that example?

A. You've got a lot of requirements in there, Mr. Petricoff, so difficult for me to say. If I could put it into what I think I heard you say was just relate it back to the example that we are working with.

If the intent is to get -- where my scenarios I was looking at here was intending to get the customer to a certain price, they needed to get to a certain price, 6 cents.

So in order to get to 6 cents, you needed to, you know, provide -- share the discount, the 2 cent discount between the CRES provider and the reasonable arrangements.

In your example of what I heard, you were lowering the overall price the 7.95, thus, in order to get to the 6 cents, you would have less of a reasonable arrangements number.

Q. I'm just giving you the example that, let's say, for example -- in No. 2 instead of assuming that the price from the CRES is 7.95 -- 7.5 cents that it's only 7 cents, and that in the Application to the Commission that we continue that asking for reasonable arrangement discount of 1.95 cents. And then, once again, since that -- we are assuming that the delta revenue is reduced to zero.

At that point what would the customer be paying for energy?

A. Isn't it 7 minus 1.95?

Q. That's correct. Okay, and you would agree with me that that is substantially less than what they would have if they were not allowed to shop?

A. That's a lower number.

Q. Okay. In my example yesterday did I indicate any examples in which a customer would come back in violation of their obligation to stay out?

A. No, but I thought I heard in your context of our discussion about saying about the overall possibilities.

Q. So the answer is no?

A. The answer is no.

Q. Okay. And this was just an additional point that you wanted to make on the subject? That was sort of outside the scope of my question?

A. I would have to reread our entire conversation, but I thought this was in the scope of our conversation.

MR. PETRICOFF: Well, your Honor, I have no further questions for this witness. Thank you.

EXAMINER PRICE: Thank you.

Mr. Smith.

MR. SMITH: No questions.

EXAMINER PRICE: Mr. Breitschwerdt.

MR. KRASSEN: I will ask some questions, your Honor.

MR. KUTIK: I will object to that, your Honor.

MR. KRASSEN: On behalf of the Ohio Schools Council.

EXAMINER PRICE: Mr. Breitschwerdt has been asking the questions on this witness. It's not appropriate to change counsel in midstream. You are going to have to explain why this would be appropriate. Mr. Kutik's objection is well taken.

MR. KRASSEN: The reason, your Honor, is that on the redirect, counsel for the company started to inquire as to specific rate issues dealing with the Ohio Schools Council and potential increases as a result of the ESP plan which was a subject that -- that we were going to cover with Mr. Blank. And the preparation that was done relates to that.

We can certainly go through the same

discussion with Mr. Blank, it just might be
appropriate to ask the questions now that that issue
was specifically raised on redirect.

MR. KUTIK: Your Honor, Mr. Breitschwerdt
asked questions about schools and the affected
schools, so if he would to ask those questions at

that time, he could, and obviously he is prepared to ask questions about the schools, so for Mr. Krassen to jump in to save the day at this point is too late.

EXAMINER PRICE: Mr. Kutik's objection is well taken. Mr. Breitschwerdt's witness, Mr. Breitschwerdt needs to ask the questions.

MR. BREITSCHWERDT: If you will allow me a moment, your Honor, I think I can accommodate that.

EXAMINER PRICE: Highly confident you can ask those questions.

MR. BREITSCHWERDT: Thank you, your Honor.

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RECROSS-EXAMINATION

By Mr. Breitschwerdt:

Q. Good morning -- or good morning still, Mr. Hussing.

EXAMINER PIRIK: Could we pass the microphone down?

EXAMINER PRICE: One of the two.

Q. During redirect your counsel asked you a few questions about some analysis that was completed after the ESP Application was -- after the date the ESP Application was filed; is that correct?

A. Yes.

Q. And who completed that analysis for the companies?

A. That was completed by -- by my group of analysts.

Q. And who is responsible for that analysis being completed?

A. That was done under my direction.

Q. And who asked you to complete that analysis?

A. It was done for settlement purposes.

Q. Was there a specific individual at the company that requested that you complete that analysis?

A. Mr. Blank.

Q. And earlier you stated that the percent increase that would occur was 7 percent; is that correct?

A. Yes.

Q. And that would be for the prepayment

discount that the schools currently have negotiated with the companies, correct?

A. Without the prepayment.

Q. And you also stated that there was benefit to the companies that have prepayment discount; is that correct?

A. The prepayment process the way I understand it is the securitization or so -- there is an amount of money that is provided to the company as a prepayment for the schools. So the company has an amount of money that it can do something with.

Q. Based on the analysis that you completed for the year 2009, would you agree with me that the overall increase to rates including the prepayment discount would be around 11 percent?

A. That is correct.

Q. And would you agree with me that increase would increase -- or that increase in rates would be higher in the year 2010 than 11 percent?

A. What do you mean "would be higher"?

Q. From the current 2008 rates.

A. So saying going from the 2008 rate to 2011 rate the -- you are comparing '8 to '10.

Q. I'm sorry, correct, compare '8 to '10 and then we can compare '8 to '11.

A. The increase would be higher, greater than 11 percent. I don't know the exact number.

Q. Would it be greater than 11 percent in '11?

A. Yes. It would be greater than 11 percent.

Q. And in all cases that is greater than the overall rate increase that has been requested by the companies in their ESP Application; is that correct?

A. Are you referring to the system average rate? It would be yes.

MR. BREITSCHWERDT: Okay. I believe that's all questions I have, your Honor.

EXAMINER PRICE: Thank you.

MR. BREITSCHWERDT: Fortunately Mr. Krassen didn't have to come in and save the day.

MR. KUTIK: I agree.

EXAMINER PRICE: Not at all.

Mr. Keiffer.

MR. KEIFFER: I have no questions, your Honor.

EXAMINER PRICE: Mr. Stinson.

MR. STINSON: No questions.

EXAMINER PRICE: Mr. Lavanga.

MR. LAVANGA: No questions.

EXAMINER PRICE: Mr. Yurick.

MR. YURICK: I just have one on your Company Exhibit 12, in the --

EXAMINER PIRIK: Can you please pass the microphone down?

MR. YURICK: Sorry.

EXAMINER PIRIK: That's okay.

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RECROSS-EXAMINATION

By Mr. Yurick:

Q. This is really just more by way of clarification. The second line down, reasonable arrangement discount, the first two numbers, 2 and 1.95, have parentheses around them, and then the third number has a minus sign in front it. Do those signify the same thing?

A. Yes, they do.

Q. There is no significance to the fact you used parens in the first two columns and a negative sign in the third column?

A. No significance.

MR. YURICK: That's all I have. Thanks.

EXAMINER PRICE: Mr. Porter.

MR. PORTER: No questions, your Honor.

EXAMINER PRICE: Hospitals?

MR. SITES: No questions, your Honor.

EXAMINER PRICE: Staff.

MR. JONES: No questions, your Honor.

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EXAMINATION

By Examiner Price:

Q. Turning to your new exhibit and using as a hypothetical, Mr. Petricoff's hypothetical, the market has experienced a sustained dip in the overall price of 7 cents; the reasonable arrangement is down about 1 cent per kilowatt hour.

A. Okay.

Q. Let's assume the CRES supplier doesn't abandon itself until month 30 into the three-year ESP.

A. Okay?

Q. Won't the customer still come out ahead?

A. The customer would have a lower price.

Q. No, I mean, all customers, the whole entire customer base.

A. Yes.

Q. So your scenario 3 is highly dependent upon when the CRES supplier might be abandoned?

A. Yes, it was just pointing out a
possibility.

EXAMINER PRICE: I understand. Thank
you.

Mr. Kutik.

MR. KUTIK: Your Honor, at this time the

companies would move for the admission of Company Exhibit 4 and Company Exhibit 12.

EXAMINER PRICE: Any objection to admission of Company Exhibit 4 and 12?

Seeing none, those exhibits will be admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Mr. Bell, your exhibit, would you like that admitted at this time?

MR. BELL: Yes, I would.

EXAMINER PRICE: Any objection to admission of Ohio Manufacturers' Exhibit 1?

MR. KUTIK: No objection.

EXAMINER PRICE: No objections. That will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

EXAMINER PRICE: Back on the record.

Mr. Stinson.

(Witness sworn.)

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

THE WITNESS: My name is Robert Garvin. My business address is 800 Universe Boulevard, Juno

Beach, Florida 33418.

EXAMINER PRICE: Mr. Stinson.

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ROBERT M. GARVIN

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

DIRECT EXAMINATION

By Mr. Stinson:

Q. Mr. Garvin, do you have what has been marked FPLE Exhibit 1?

A. Correct.

Q. And could you identify that for me?

A. It's a copy of my 22 pages of prefiled testimony with one attachment.

Q. And was that the testimony prepared by you or under your direction, supervision?

A. Yes, it was prepared by me or at my direction.

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

A. Yes, I have four of them. One on page 9, line 21. Before "consumers," insert "SSO."

My second change is on page 11, line 19. Insert "residential" before "customers" in that sentence.

My third change is on page 13, lines 13 and 14, the language starting with after "the proposed Power Supply rider -- or Reservation PSR," delete that and insert "standby charge" with "SBC" in parens.

And then in the following line, line 15, delete "PSR" and insert "SBC."

Q. Mr. Garvin, if I were to ask you the same questions today, would your answers as revised be the same?

A. Yes.

MR. STINSON: I tender the witness for cross-examination, your Honor.

EXAMINER PRICE: Mr. Small?

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CROSS-EXAMINATION

By Mr. Small:

Q. Just barely good morning, Mr. Garvin. Jeff Small, Office of the Ohio Consumers' Council. I have just a couple of questions for you.

If you could turn to page 13 of your testimony.

A. I'm there.

Q. On question and answer 16 you appear to be addressing, among other things, the relationship between the -- you have just corrected it to say the SBC charge and the MDS charge; is that correct?

A. Yeah. I struck "power supply reservation rider" and inserted "standby charge."

Q. But this question and answer is in response to the relationship between the MDS charge that's been proposed and the SBC charge that's been proposed, correct?

A. Right.

Q. And in particular on line 15 you -- you referred to the SBC as mitigated the risk. In that part of your testimony you are referring to mitigation of the risk that that's also claimed by the company for the MDS charge, correct?

A. It mitigates the risk of returning customers.

Q. So if we go back to page 6 of your testimony where you list five factors of barriers to competition, is it fair to say without the -- due to

your discussion on page 13 that you also consider it
would be helpful for competition if the SBC charge
was not there as well?

A. Not there and I don't believe that's what
I've said.

Q. Well, I am not asking you that. I am

saying since your -- seem to be representing that the SBC charge and the MDS charge serve the same purpose. I'm just asking the question if the SBC charge was eliminated, wouldn't that be pro-competitive?

MR. STINSON: Could I have the question, please. Reread the question.

I did this as a housekeeping so I guess I'm sort of -- reread the question, please, again.

(Record read.)

A. I don't have an opinion on that.

Q. Okay. Could you please turn to page 7 of your testimony. And on lines 5 and 6 you have a recommendation that the MDS charge, minimum default service rider charge be eliminated.

Do you see that?

A. Correct.

Q. Now, is it your testimony that the MDS charge does not provide a level playing field between the CRES supplier and the standard service offer?

Isn't that your testimony?

A. Yes.

Q. But it doesn't create a -- there's no lack of level playing field between two CRES suppliers. The problem is between the CRES supplier and the standard service offer; is that correct?

A. Yes.
Q. Okay. Just as a matter of clarification on that same page, page 7, line 15, you use the word "FirstEnergy."
When you are referring to FirstEnergy, and this is a matter of clarification, you are referring to the FirstEnergy EDUs that are the applicants in this case?
A. Yes.
Q. On page 14 of your testimony, line 6, you mention a prorated portion of revenues, and this I believe is a reference to the MDS charges again?
A. Right.
Q. Wouldn't this portion have to be the complete MDS charge or MDS revenues? I don't think I understand what "prorated portion" means in your testimony.
MR. STINSON: I think there's two questions there. Could you clarify?

Q. Mr. Garvin, in order for -- I'm trying to compare what's on line 6, on page 14, and what's on line 21 of your testimony where you recommend on line 21 --

A. Yeah. I think what -- I put -- that was anal -- our position is we would like the MDS eliminated.

In the alternative if the Public Utilities Commission of Ohio finds in its order that they are going to allow this charge and then support it, then what is in the earlier part of this page is designed to be an alternative where, you know, a prorated portion of the revenue is collected to be available to all competitive suppliers serving a large scale government aggregation to mitigate any costs that are incurred due to the shop risk that we all have.

Q. I think I'm with you so far.

The real question that I was trying to get at, what would be the basis for the prorated -- I don't see anything in your testimony that would form the basis of how one would do this calculation.

A. I didn't do any calculation. That was just an alternative that I put in my testimony.

Q. But your basic position is stated on line

21, which is it should be eliminated.

A. Yes.

MR. SMALL: Thank you. No further questions.

EXAMINER PRICE: Mr. Bell.

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CROSS-EXAMINATION

By Mr. Bell:

Q. Turn to page 6 of your prefiled testimony. You there list the barriers that you are concerned about, do you not?

A. Yes, sir.

Q. No. 12, providing the phase-in generation rate credit solely for SSO customers during the term of the ESP.

Is the underlying basis or rationale upon which you perceive that to be a barrier, is that these EUDs as regulated utilities have the opportunity to defer cost recognition that you as a nonregulated entity cannot defer the recognition of?

A. Yes.

Q. With respect to number 2, I would like to explore for the moment the underlying rationale for that perceived barrier.

Is the rationale for that perceived

barrier based upon the revenue resources available to CEI, Toledo Edison, and Ohio Edison based upon the number of customers and the revenue generated, i.e., they have a bigger revenue generation base than does a CRES from which to fund their competitive efforts?

MR. KUTIK: Could I have the question

read, please?

(Record read.)

Q. Let me restate it and perhaps I can simplify it a little.

Is that perceived barrier premised upon the fact that CEI, Toledo Edison, and Ohio Edison, by reason of their being regulated utilities, have a standard service offer base upon which to rely for funding their competitive efforts?

A. No. It was based on the lack -- lack of information, we -- we didn't feel there was any justification for the claimed costs they seek to recover in this rider.

Q. So it's not the existence of having standard service offers by the companies where you do not have those standard service offers as a base for funding a competitive effort.

Do you understand the question or what I'm trying to get to?

A. Not really. You asked me for why we --
why FPL Energy and people I'm testifying on have
objects on PMI, view it as a barrier.
Well, the first thing, we didn't see any
justification on the evidence. The second thing,
it's an additional cost that we would incur that

makes it more difficult for us to provide service to customers here.

Q. You have to take it out of your pocket, whereas CEI, Toledo Edison, and Ohio Edison can take it out of their customers' pocket? Is that your point?

A. That is a cost that we would incur.

Q. And it's a cost that CEI, Toledo Edison, and Ohio Edison would not incur because it's a cost directly assigned to their customers, is it not, under their proposal?

A. Under their proposal.

Q. Is your response to my question yes?

A. Yes.

Q. Going to No. 3, the basis upon 3 and 5 is the nontransparency of the proposed charge; is that correct?

A. Correct.

Q. How does the nontransparency of those items directly impact your ability to compete?

A. Well, I think my testimony examines that question. I mean, are you asking for additional statements than what I have provided in my statement?

Q. Is the noncompetitive nature of the nontransparency limited to the discussion within your testimony?

A. Yeah. My testimony speaks for itself.

Q. All right. And No. 4, with respect to the imposing a nonbypassable nondistribution uncollectible rider.

A. Yes, sir.

Q. Is the perception of that item being a barrier based upon the premise for, for instance, that you as a CRES supplier proposing to serve 400, 500,000 customers in Northern Ohio are serving no at-risk customers?

A. I don't have an opinion on that.

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

EXAMINER PRICE: Mr. Boehm?

MR. BOEHM: No questions, your Honor. Thank you.

EXAMINER PRICE: Ms. McAlister.

MS. McALISTER: No questions, your Honor.

EXAMINER PRICE: Mr. Petricoff.

MR. PETRICOFF: No questions, your Honor.

EXAMINER PRICE: Mr. Smith.

MR. SMITH: No questions.

EXAMINER PRICE: NOPEC.

MR. BREITSCHWERDT: No questions, your Honor.

EXAMINER PRICE: Mr. Lavanga.
MR. LAVANGA: No questions, your Honor.
EXAMINER PRICE: Mr. Yurick.
MR. YURICK: Thank you. No questions, your Honor.
EXAMINER PRICE: Mr. Keiffer.
MR. KEIFFER: No questions.
EXAMINER PRICE: Hospitals.
MR. SITES: No questions.
EXAMINER PRICE: Mr. Porter.
MR. PORTER: No questions, Your Honors.
EXAMINER PRICE: Mr. Kutik or Mr. Burk, I mean. Mr. Burk.
MR. KUTIK: No, I will.
EXAMINER PRICE: I'm sorry. Excuse me, Mr. Kutik.

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CROSS-EXAMINATION

By Mr. Kutik:

Q. Good afternoon.

A. Good afternoon.

Q. The FPL affiliate that provides CRES service is an entity known as Gexa, G-E-X-A?

A. Yes, sir.

Q. And it provides CRES service in Texas, Illinois, Pennsylvania, and perhaps a few other states, correct?

A. Yeah, and I think I wrote that -- do you want me to list the states?

Q. No. A "yes" is good enough.

A. Well, I can complete it, yes.

Q. Thank you.

Now, with respect to Gexa, would it be correct to say that your only responsibilities thus far have been to deal with a few legislative matters in the state of Texas arising from -- in the aftermath of Hurricane Ike?

A. Yes.

Q. And you have no role in or knowledge of how Gexa sets its retail prices, correct?

A. Yes, sir.

Q. And/or -- or similarly you have no knowledge as to what Gexa charges or what its retail prices or rates are today, correct?

A. No.

Q. You have no knowledge of that?

A. No.

Q. What I said is correct?

A. Yes.

Q. Thank you.

A. I'm trying to be responsive.
Q. I appreciate that very much.
Now, FPL also has a vertically integrated utility that it was an affiliate, correct?
A. Yes, Florida Power & Light.
Q. Thank you, Florida Power & Light.
It operates in a traditional regulated electric market, correct?
A. Yes, they do.
Q. Now, you've had no discussions with other potential CRES suppliers about their business plans in the state of Ohio, correct?
A. I have not.
Q. And you similarly haven't had any discussions with other CRES suppliers about their -- their cost structures and how they go about setting retail prices, correct?
A. No, I have not.
Q. And you would agree with me that

different companies that may look at providing CRES service in Ohio may have different competitive strategies than whatever strategy FPL might be looking at?

A. Gexa?

Q. Gexa.

A. Yes.

Q. Now, you've attached, have you not, to your testimony, I believe as Attachment 1, a letter of intent, correct?

A. Yes.

Q. And you had no role in the negotiation or drafting of that letter of intent, correct?

A. With NOPEC?

Q. Yes.

A. No.

Q. And, in fact, it would be correct to say your only knowledge with respect to negotiations came from others that work in your PMI affiliate?

A. I provided advice to PMI on this.

Q. And they told you anything -- anything you know about those negotiations came from those people in your PMI affiliate, correct?

A. Correct.

Q. Now, please turn to that exhibit, your attachment. On page 3 of the exhibit.

A. I am here -- I'm there.

Q. Line -- or paragraph A in about the fifth line down there is a phrase "...notwithstanding price levels that have been or will be discussed...."

Correct?

A. Yes.

Q. And you have no direct knowledge as to what those are, correct?

A. No.

Q. And, in fact, you have no direct knowledge as to the meaning of these terms at all other than reading the terms yourself, correct?

A. Correct.

MR. KUTIK: Your Honor, at this time we have a motion to strike.

EXAMINER PRICE: Okay.

MR. KUTIK: We move to strike in the testimony -- prepared testimony, page 4, lines 11 through 20, along with Garvin Attachment A.

EXAMINER PRICE: Page 4, lines 11 through 20.

MR. KUTIK: Yes.

EXAMINER PRICE: And the grounds?

MR. KUTIK: His opinions -- has no

personal knowledge of those documents.

EXAMINER PRICE: Mr. Stinson.

MR. STINSON: Your Honor, it doesn't matter whether he has personal knowledge of the document. The document speaks for itself for the intent it's offered.

EXAMINER PRICE: We are going to allow the document to stay and the motion be denied. You can make your arguments with respect to the weight the Commission should give this particular section of testimony in your brief.

MR. KUTIK: Very well.

Q. (By Mr. Kutik) Now -- now, if this letter of intent becomes a full-blown contract, FPL or GEXA or one of the Gexa affiliates will be paid a fee, correct?

A. Explain what you mean by "fee."

Q. Well, will there be just a plain sale of power or will there be other fees or revenues going -- other sources of revenue going to Gexa from NOPEC?

A. There will be compensation. Whether it's called a fee, I don't know how it would be structured in terms of the specific arrangement.

EXAMINER PRICE: The witness needs to

lift his voice a little bit and speak into the microphone so everybody can hear you.

A. Yeah, I keep moving this thing around. Can you hear me now?

Q. And will Gexa be paying NOPEC a fee?

MR. STINSON: I'm going to object, your

Honor. I think that's getting into competitive issues about the structure of the NOPEC and FPLE arrangement.

MR. KUTIK: Well, that may well be, your Honor, but it's relevant.

EXAMINER PRICE: It is relevant, I'm just questioning are you arguing that this is confidential and we need to clear the room of any matters that have not entered into a confidentiality agreement?

MR. STINSON: There is no confidentiality agreement.

MR. KUTIK: The only question I asked I think about paying NOPEC a fee. I believe that can be answered yes or no without breaching any type of confidentiality or being competitively valuable in any way.

EXAMINER PRICE: True enough, I think it depends upon what your follow-up will be, but let's cross that bridge when we come to it.

Objection overruled.

THE WITNESS: Can you restate your question?

MR. KUTIK: Sure. Can you read it, please.

(Record read.)

THE WITNESS: I don't know whether they will be paying Gexa or PMI but there will be compensation.

Q. (By Mr. Kutik) Okay. And do you know the --

A. We will be compensated for our services, whether you call it a fee arrangement --

Q. That is not my question. It is money going the other way. Will Gexa or PMI or whatever FPL affiliate is involved be paying NOPEC a fee?

MR. STINSON: Objection, your Honor, I think it has already been established the witness is not involved in the negotiations. He has already indicated he doesn't know what the arrangements are going to be.

MR. KUTIK: Well, if the letter of intent is going to stay in, I'm allowed to ask these questions, your Honor.

EXAMINER PRICE: Objection is overruled.

Please answer the question.

THE WITNESS: Can you reread the question, please.

(Record read.)

A. I don't know.

Q. Does Gexa pay fees to other government

aggregators where they provide CRES services?
A. I don't know.
Q. Are you familiar with the proposed or the potential rates or prices that PMI or Gexa has discussed with NOPEC?
MR. STINSON: I'm going to object. He can answer with respect to whether he knows.
MR. KUTIK: That's all I have asked.
EXAMINER PRICE: Overruled.
A. I don't know.
Q. Do you know whether there have been those discussions?
A. I don't know.
Q. Let me refer you, sir, to page 3, paragraph A, again, in the letter of intent. About eight lines down -- are you there, sir?
A. Just a minute. "Materially in excess"?
Q. Yes.
A. Yes.

Q. It talks about a price discount, starting on the prior line, "...a price discount materially in excess of 5 percent is strongly preferred by NOPEC."

Do you know what the discount is from?

A. No, I do not.

Q. Now, do you have any familiarity with the arrangements that NOPEC has with any of its government entities, any political subdivisions within the NOPEC area?

A. What their relationship is with their 126 members?

Q. Yes.

A. No. Just -- not particularly. I know they aggregate their power, that's all.

Q. You don't know whether these other entities are what's called opt in or opt out?

A. I do not know.

Q. Would that be a matter of any concern to Gexa, PMI, FPL?

A. What would be a concern?

Q. Whether they were opt in or opt out.

A. Of what?

Q. Do you know what I'm talking about?

A. As members of NOPEC?

Q. No.

A. Or as --

Q. Do you know what I mean when I say "opt in or opt out" with respect to government aggregation rider service?

A. Yes, yeah.

Q. That's what I am talking about.

A. Yeah.

Q. And my question to you, sir, is is it a matter of interest or a factor that -- or a fact that FBL, Gexa, PMI would want to know about NOPEC?

A. That is a risk.

Q. Something you would want to know.

A. Someone doing the deal would want to know that.

Q. Now, do you believe that customers would benefit in a hypothetical situation where the customers would be paying a lower price but NOPEC would go out of business?

MR. STINSON: Could you reread the question.

THE WITNESS: Repeat the question.

(Record read.)

MR. STINSON: I'm going to object, your Honor. I think that that's more foundation. I don't understand the question.

EXAMINER PRICE: Sustained.

Q. Now, you believe that the companies should be able to -- or should be required to provide a cost justification for the ESP, correct?

A. Yes.

Q. And you believe the statute requires

that, correct?

A. The statute requires that there be a cost and that it be justified, yes.

Q. And you believe that the Commission should not allow the ESP unless the company can show it's cost based, correct?

A. There has to be a cost.

Q. Can you answer my question? Is the answer to my question yes?

A. Restate the question, please.

MR. KUTIK: Could you read it, please, Karen.

(Record read.)

A. The Commission is required to follow the statute. The statute says you can approve an ESP if it's determined in the aggregate to be superior than the MRO.

Q. Isn't it true you believe that per the statute the Commission is not allowed to approve the

ESP unless it's cost based?

A. It has to be justified by cost.

Q. Isn't it true that I have just stated what your belief is?

MR. STINSON: Objection, your Honor. I believe that's argumentative. He's answered the question.

EXAMINER PRICE: No, he hasn't.

Please answer the question. What was it, what is your definition of cost base?

Q. Sir, do you remember your deposition?

A. Yes.

Q. Do you have a copy?

A. I can get -- do you have it? I'd be more than happy --

MR. KUTIK: May I approach the witness, your Honor?

EXAMINER PRICE: You may.

MR. STINSON: I might like to see what you are going --

MR. KUTIK: You have to have a copy because I don't have extra copies.

Q. Remember I took your deposition, sir?

A. Yes. On the 10th.

Q. And could you turn to page 11 of your deposition.

A. Sure.

Q. And isn't it true, starting at line 14, that I asked you this question and you gave this answer:

Question: "Okay. Is it your

ARMSTRONG & OKEY, INC., Columbus, Ohio (614) 224-9481

understanding of the statute that is that the Commission with respect to an ESP is only allowed to approve the ESP if the rates in the ESP are cost based?"

And you had asked to repeat the question and I asked Karen to read it again, and your answer was, "Yes, that's my general understanding."

Do you remember giving that testimony, sir?

A. Yes, I do.

Q. Okay. And isn't it true that you don't know whether the Commission, in looking at an ESP, has to do anything in terms of looking at an MRO?

A. Restate the question. Reread that question, please.

(Record read.)

A. I did not look at the MRO.

Q. That's not my question. The question, sir, isn't it true as far as -- your view of the statute is that under the statute the Commission, in looking at the ESP, you don't know whether it should consider anything about an MRO; fair to say?

A. You are asking that today?

Q. Isn't that your understanding what the statute says?

A. This statute as I understand the Commission can approve --

Q. Is that your understanding of the statute?

MR. STINSON: Excuse me, let him finish the answer.

Q. Fair enough, go ahead, Mr. Garvin.

A. The statute requires the Commission, in deciding whether or not to approve the ESP, to approve -- they can approve it if they deem in the aggregate or whatever, I don't have the exact language, it's superior to the MRO.

Q. Sir, would you please look at your deposition?

A. Sure. I am.

Q. Page 12. Did you give this testimony in answer to my question, line 13, "Do you know whether in looking at an ESP, whether in looking at an ESP the Commission should consider anything about a potential MRO?"

Answer: "I don't know."

Do you remember that?

A. Yes.

Q. Now, you suggest, do you not, in your testimony that the Commission should adopt rules with respect to credits and deferrals similar to what the Maryland Commission did regarding Baltimore Gas & Electric, correct?

A. Yes.

Q. And in preparation for your testimony you reviewed the fact sheet that you attached to your testimony as well as the order that came out of one of the BG&E cases, correct?

A. Right.

Q. And in that -- in that situation there was a transition from traditionally regulated rates to a market, an open market, so to speak, a deregulated market.

A. Yes.

Q. I'm sorry, what was your answer?

A. Yes.

Q. Thank you.

And as part of that transition period, the Maryland Commission offered customers an option -- an option to market-based rates to take a credit something lower than the market-based rates but then have to pay for deferral, correct?

A. Right.

Q. You need to speak up.

A. Yes. Sorry, I apologize. Yes.

Q. I just want to make sure the court reporter hears you.
Now, that phase-in as far as you know was -- was available to all customers, correct, all BG&E's customers?
A. Yeah, I've reviewed the order and I clarified all residential customers.
Q. All residential customers whether they were taking what's called in Maryland SOS service?
A. Yeah.
Q. Or alternate supplier, everyone -- every one of the residential customers could get a credit.
A. Yes.
Q. Correct?
And would it also be fair to say that as far as you know, the deferral would be paid by all customers in BG&E's service territory?
A. Yes.
Q. Okay. Now, in the Maryland situation is

it correct to say that what -- the deferral that we are talking about was a deferral of a generation charge, correct?

A. That's my understanding, yes.

Q. And that deferral was going to be part of a distribution charge or a distribution rate,

correct?

A. Yes. And I think -- I think the order and I think the fact sheet talk about all electric distribution customers.

Q. Okay. And certainly since you've proposed that here you are not aware of any prohibition under Ohio law that would prohibit having a generation charge or generation cost included in distribution charge, correct?

A. Could you reread the question, I just want....

(Record read.)

A. Paid by whom?

Q. By anyone. Whether it's the customer of the EDU or CRES or anybody.

A. That a generation charge can be what?

Q. That a deferral which represents a deferral of a generation charge can be included in distribution rates, you are not aware of any

prohibition in the state of Ohio on that issue, are
you?

MR. STINSON: I'm going to object. He is not testifying as an attorney, your Honor.

MR. KUTIK: I'm just asking whether he is aware.

EXAMINER PRICE: Overruled.
A. I don't have an opinion on that.
Q. So you are not aware.
A. I am not aware.
Q. Thank you.
Now, I want to talk to you a little bit about the minimum default service charge.
A. Sure.
Q. In response to questions from Mr. Bell who is not here now --
MR. BELL: Yes, I am.
MR. KUTIK: I'm sorry.
Q. -- you termed the minimum distribution -- the minimum default service charge a cost; is that correct?
A. I believe -- I believe I said that, yes.
Q. Yes, okay.
A. The rider.
Q. Yes. And it would be fair to say that

it's a cost because it forces a CRES provider to charge a lower price than otherwise would be the case, correct?

MR. STINSON: Could you reread that, please.

(Record read.)

A. I don't know that. It could require us to charge a higher price.

Q. All right. So because --

A. Because it's an additional cost.

Q. That's what I'm trying to understand, how it's an additional cost. Is it an additional cost because it requires you to charge a lower price than you otherwise would?

A. In terms of our ultimate pricing? I can't give you that answer. It's an additional cost that we have to bear that goes into our overall cost we would develop for a customer.

MR. KUTIK: Your Honor, I don't believe he has answered the question.

A. I'll try.

Q. Let me put the question to you again.

A. Sure.

Q. You believe that the MDS is a cost to a CRES provider because it would require a CRES provider to charge a lower price than it would in the absence of the minimum default service charge?

A. I don't understand your question.

Q. What about my question don't you understand, sir?

A. The second part of it where you are

saying would the -- would the imposition of the MDS charge on us require us to charge a lower cost to consumers. And then you said something else and you lost me on the second part.

Q. Well, certainly you're not booking any expense on your books, are you, on an MDS charge, correct?

A. No, but you are asking us to pay it.

Q. Is that correct?

A. I don't know how -- when you say "book an expense," that's an accounting term.

Q. Right. You have never heard that phrase before?

A. No, I have, but your --

Q. Is this an expense that you believe that the company -- the CRES provider will have to incur?

A. Yeah. As your companies have proposed it, yes.

Q. All right. Isn't it true the minimum

default service charge would be a charge that's
collected by the EDU?

A. The mechanics, yes, you would collect it.

Q. All right. And retained by the EDU,
correct?

A. Yes.

Q. Money never goes to the CRES provider, right?
A. Right. It's a cost we pay to you.
Q. All right. And it's a cost we pay to me --
A. I mean, the operating, the applicants here.
Q. Right, well, it's a cost you pay to the EDU, you are the FirstEnergy operating companies, because it requires you to get a lower price, correct?
A. The second point I don't understand.
Q. Now, with respect to the minimum default service charge, you believe that part of the rationale expressed by the company was that it was to pay the company for costs or risks associated with -- when customers -- shopping customers return, correct?
A. When shopping customers return?
Q. Let me restate the question.

A. Yeah.

Q. Isn't it true that you believe that one of the purposes of the MDS that has been expressed by the companies is to compensate the companies for the cost associated with unanticipated load when shopping customers return?

A. That is what I put in my testimony because I did not -- that's how I construed it because I don't understand what "unanticipated load" means, so when I was preparing my testimony, I construed it as the risk of returning customers.

Q. All right. And you took that from Mr. Warvell's testimony, correct?

A. Yes.

Q. Do you have Mr. Warvell's testimony before you?

A. Not in front of me. I just paraphrased it in my testimony.

MR. KUTIK: May I approach, your Honor?

EXAMINER PRICE: You may.

Q. Mr. Garvin, I would like to show you what's been admitted into this case as Company Exhibit 5, the testimony of Kevin T. Warvell, and I would like you to, if you could --

EXAMINER PRICE: Would you show it to

Mr. Stinson.

MR. STINSON: If he gives me a cite.

MR. KUTIK: We are going to look at page 11.

Q. Could you turn to page 11, please.

A. Sure.

Q. Are you there, sir?

A. Yes, I am.

Q. Okay. And let me direct you to line 11.
"If fewer customers shop than anticipated, the Companies may find themselves short generation and be forced to go into the market to acquire power to serve the unanticipated load."

Correct?

A. Yes, sir.

Q. That's what you were referring to in your testimony, correct?

A. Can I take a minute to review my testimony?

Q. Please.

A. Yes.

Q. And isn't it true that what Mr. Warvell is talking about is if for some reason the companies have overestimated the amount of shopping and customers never leave; wouldn't that be fair to say?

A. Yes, yes.

Q. And that's the risk he is talking about, right?

A. That is the risk he is discussing here, correct.

Q. That's the only thing he says on page 11,

which is the only page you cite from his testimony about unanticipated load, correct?
A. I also say it on the next page in response to question 16, lines 12 to 13, I say that as well. That was my construction.
Q. Yeah. My point is in terms of how Mr. Warvell talked about the MDS charge and unanticipated load, the only reference to that is the reference you have just read, correct?
A. Correct.
Q. Now, you recognize, do you not, there is something called a shopping risk?
A. Yes.
Q. And you believe that both EDUs and CRES suppliers have shopping risks, correct?
A. Yes.
Q. And you also believe that with respect to shopping risk, there are two risks; there is the risks of customers leaving and there is the risks

associated with customers returning, correct?

A. Correct.

Q. And you also understand, do you not, that the risk of customers leaving is different than the risk of customers returning, correct?

A. Yes.

Q. And with respect to the risk of customers leaving there are two risks, are there not?

A. There is a risk a customer could leave.

Q. Well, let me talk specifically about what those risks are.

One risk, would it be fair to say, is that the supplier would have committed a certain amount of power at a certain price and that power may not be needed to provide the POLR supply and so the supplier then must sell that power in the open marketplace at a price that's lower than the contract price, correct?

A. As you have described it, yes, that's a risk.

Q. That's one of the risks associated with customers leaving, correct?

A. Well, that's the risk of a bad forecast.

Q. Well, that's not my question.

A. You said --

Q. That's not my question.

A. Could I complete my -- I mean, you asked.

EXAMINER PRICE: Please go ahead and complete your answer.

A. As I understood what you asked me, you were describing if there is a situation where you have additional capacity and you don't have as many customers as you anticipated, that you would somehow -- and you bought at a higher price, that is a risk that you've taken and you've incurred in your situation, I guess you've incurred a loss.

Q. Is the answer to my question yes?

A. To what question?

MR. KUTIK: Could you read my question, please, Karen.

(Record read.)

A. Yes.

Q. Thank you.

Now, would it also be true that with respect to a supplier that's going to provide POLR service there is also a risk of what we might call an opportunity cost risk?

A. Explain what you mean by "opportunity cost risk."

Q. You have opportunity, the term

"opportunity cost," right?

A. I've heard it in a variety of different ways.

Q. I am to make sure you understand what that term means, right?

A. Yeah, but as you apply it here what do you mean?

Q. Well, I am about to tell you, sir.

A. Okay.

Q. There is -- there is an opportunity cost, is there not, with a committing to supplies a certain load and having the market go up and then not being able to sell at the market price because you have already committed at a lower contract price, correct?

A. Yes.

Q. Now -- now, it's correct to say, is it not, that you are not familiar with the different types of contracts that Gexa offers in terms of express CRES services, correct?

A. Correct.

Q. And you don't know if there are fixed prices -- price contracts available, price contracts or other terms and conditions that are in those contracts; fair to say?

A. Yes.

Q. All right. And so you don't know whether Gexa requires any penalties for customers leaving or whether they have any minimum stay provisions in any of their contracts, correct?

A. Correct.

Q. Now, with the risk to customers

returning, okay? That includes the risk of having to procure additional supplies at market or trying to anticipate with hedges and things like that, correct?

A. When the customer comes back to --

Q. Yes.

A. Yes.

Q. And would it be fair to say you don't know whether nonPOLR suppliers have a risk of returning customers?

A. Correct.

Q. Now, in this case you understand that the companies are proposing a rider NDU to collect uncollectibles, not distribution uncollectible, right?

A. Yes.

Q. And you understand, do you not, these would not be the uncollectibles of a CRES provider, correct?

A. Yes. As you have proposed it, yes.

Q. Right. And you have not reviewed, have you, the rules of the Commission with respect to credit and collection practices?

A. No.

Q. And you don't know whether the Commission has rules relating to credit and collection that deal

with or apply to CRES providers, correct?
A. No.
Q. What I said was correct?
A. Yes, what you said was correct.
Q. Thank you, sir.
And it's also true that you don't know whether the same rules with respect to credit and collection practices apply to CRES suppliers and EDUs; fair to say?
A. Right. I examined it just as a cost issue for us looking to do business in Ohio.
Q. So you don't know -- you don't know the answer to that question?
A. No.
Q. Now, you are familiar with the term planning reserves, correct?
A. Yes.
Q. And you don't know what the planning reserve requirements are in Ohio?

A. I have been informed it's roughly 13.5 percent but it varies throughout the country.

Q. And you were informed by counsel?

A. No, one of -- someone on PMI's team.

Q. All right. That's not an issue that you deal with on a day-to-day basis, knowing what the planning reserves are?

A. No. PMI deals with that.

Q. That's not your area.

A. That is not my area.

Q. And if FPL was or Gexa was able to obtain the right and was successful in coming into the state of Ohio to provide CRES service, it would be a requirement, would it not, to have planning reserves? And meet those planning reserve requirements, correct?

A. That's my understanding, yes.

Q. And your proposal here is to have FirstEnergy provide those planning requirements -- planning reserve requirements, correct?

A. Yeah. We propose that in my testimony as part of -- you had proposed a capacity adjustment rider what I had put in my testimony what we as a company are seeking is a capacity cost recovery rider for the first three years of this -- the applicants would procure capacity for all customers.

Q. So they would not only procure planning reserve capacity, that is FirstEnergy would procure all capacity under your proposal; is that correct?

A. System wide.

Q. And are you aware of any other --

anywhere in any ISO or any RTO where a -- a utility or utility affiliates play a capacity reserve management role along the lines that you have just --

A. Not to my knowledge.

Q. Now, you mentioned I believe with Mr. Lang that one of the things that you would like to see is the FirstEnergy Solution's transportation fuel transportation charges, correct?

A. Read it again or restate it.

Q. Let me go at it different way.

A. You are switching subjects.

Q. I am. I am switching subjects and I apologize if you were confused by that but it seems like you are up to speed right now.

A. Yes, sir.

Q. Okay. And in terms of your commentary, your testimony with respect to few -- the fuel transportation surcharge, you would want to see FirstEnergy Solutions' fuel transportation costs,

correct?

A. Yes.

Q. And is it -- do you know whether Gexa's or whatever affiliate Gexa gets its power from, let's -- that whether their fuel transportation surcharge information is public knowledge?

A. I don't know.
Q. Okay. Do you think maybe it's confidential?
A. I don't have an opinion.
Q. Do you think maybe it's competitively valuable?
A. Perhaps.
Q. And would it be fair to say that although you don't know how Gexa sets its prices, you believe that it was -- it's important for Gexa to know the FES fuel transportation surcharge in order to set its prices, that is Gexa's prices, correct?
A. Yes, that's important for us but it's also important for the customer.
Q. But it's important for you, correct?
A. Yes.
Q. And it's important -- it's important certainly to Gexa because you have a concern that if you didn't know the price to beat, so to speak, that

you may set your price too low, correct?

A. That is a risk.

MR. KUTIK: No further questions.

EXAMINER PRICE: Staff?

MR. WRIGHT: We have no questions.

EXAMINER PRICE: Mr. Stinson.

MR. STINSON: Could I have a few minutes, your Honor?

EXAMINER PRICE: Yes, you may.

Let's go off the record.

(Discussion off the record.)

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

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REDIRECT EXAMINATION

By Mr. Stinson:

Q. Back on the record, Mr. Garvin, just a few questions on redirect.

Do you recall your conversations with Mr. Kutik about the cost of the MDS and who incurs that cost?

A. Yes.

Q. Could you clarify that?

A. Yeah. When I said pejoratively we, the cost for the MDS that you had asked me questions about is costs that will ultimately be borne by the customer, not by Gexa or PMI.

Q. And what does that increased cost do for the customer in terms of its decision to shop?

A. It increases the cost to them to go to an alternative provider.

Q. You also had a conversation with Mr. Kutik about the fuel transportation surcharge, and I believe you indicated that it could be a concern if the price were not transparent in relation to whether FPLE's prices were set too low. Are there any other concerns?

A. Yeah, the other consideration is for the customer. We think for that charge there needs to be greater transparency so they can make a decision and we can make a decision to enter the market based on that cost of generating. Counsel also made that point.

MR. STINSON: Nothing further.

EXAMINER PRICE: Mr. Small?

MR. SMALL: No questions, Your Honors.

EXAMINER PRICE: Mr. Bell?

MR. BELL: No questions.

EXAMINER PRICE: Mr. Boehm.

MR. BOEHM: No questions.

EXAMINER PRICE: Ms. McAlister.

MS. McALISTER: No questions.

EXAMINER PRICE: Mr. Petricoff.

MR. PETRICOFF: No questions, your Honors.

EXAMINER PRICE: Mr. Smith.

MR. SMITH: No questions.

EXAMINER PRICE: Mr. Breitschwerdt.

MR. BREITSCHWERDT: No questions.

EXAMINER PRICE: Mr. Keiffer.

MR. KEIFFER: No questions.

EXAMINER PRICE: Mr. Lavanga.

MR. LAVANGA: No questions.

EXAMINER PRICE: Mr. Yurick.

MR. YURICK: No questions, your Honor.

EXAMINER PRICE: Hospitals?

MR. SITES: No questions, your Honor.

EXAMINER PRICE: Mr. Kutik.

MR. KUTIK: Yes, your Honor.

- - -

RECROSS-EXAMINATION

By Mr. Kutik:

Q. So the MDS charge is not a cost to a CRES supplier, correct?

A. It is a cost to the CRES supplier

customers.

Q. It is not a cost to the CRES supplier, correct?

EXAMINER PRICE: I think he is asking you a yes or no question.

A. Correct.

Q. Are you aware of whether the company has proposed that the Commission should be able to review any fuel transportation surcharges that may be sought to -- to be collected under the riders at issue in this case?

A. No.

MR. KUTIK: No further questions.

EXAMINER PRICE: Staff?

MR. WRIGHT: No questions.

EXAMINER PRICE: Thank you, you are excused.

THE WITNESS: Thank you.

MR. STINSON: At this time I would move to the admission of FPLE Exhibit 1.

EXAMINER PRICE: Any objections to FPLE?

MR. KUTIK: Your Honor, we move our motions to strike.

EXAMINER PRICE: We will note your renewal of your motion to strike. It is still denied.

The exhibit will be admitted at this time.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

(At 1:05 p.m. a lunch recess was taken until 2:15 p.m.)

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Wednesday Afternoon Session,
October 22, 2008.
- - -

EXAMINER PIRIK: We will go back on the record.

I believe our next witness is a joint witness. Who will be the lead counsel?

MS. KOVACIK: My name is Leslie Kovacik. I am representing NOAC and Mr. Frye is a jointly sponsored between --

EXAMINER PIRIK: Could you find a microphone? I believe it's over there.

MR. SMALL: This one is dead.

EXAMINER PIRIK: Let's go off the record.

(Discussion off the record.)

EXAMINER PIRIK: Okay.

MS. KOVACIK: Thank you, your Honor. Again, my name is Leslie Kovacik, representing NOAC, and Mr. Frye is a jointly sponsored witness of both

NOAC and NOPEC so we would respectfully request -- reserve the right of each party to object if deemed appropriate to each party.

EXAMINER PIRIK: However, there will be one counsel that will actually be doing direct and redirect?

MS. KOVACIK: Yes.

MR. KUTIK: Your Honor, I would object to double-teaming on objections. They don't have adverse witness -- adverse interests with respect to this witness.

MS. KOVACIK: I wouldn't call that double-teaming, your Honor, but NOAC does not represent NOPEC. NOPEC does not represent NOAC. We do have separately defined interests in this matter.

EXAMINER PIRIK: This is purely yourself and Mr. Krassen who will be sitting at the table, and Mr. Krassen, I understand you also represent other clients in this matter?

MR. KRASSEN: Yes, your Honor. There will only be one counsel conducting the direct and redirect. And NOPEC and NOAC are merely reserving the right to object as to matters that relate to NOAC or NOPEC and there's not going to be any double objections here.

EXAMINER PIRIK: I'm going -- I'm going to allow it at this time. I'm going to say I'm going to allow it but if there comes a point where there becomes a difficulty, then we will deal with it at that point in time but, you know, I do understand every party at the table has the right to object to any question that is being asked at any given time, and that's the only reason I'm allowing this at this point in time.

But there can only be one individual that's doing direct and one individual that's doing redirect and, you know, we will just take it as it goes.

MS. KOVACIK: Thank you.

EXAMINER PIRIK: Mr. Kutik.

MR. KUTIK: Can we go off the record, your Honor?

EXAMINER PIRIK: Sure.

(Discussion off the record.)

EXAMINER PIRIK: We will go on the record.

MS. KOVACIK: Thank you.

Can we swear the witness?

EXAMINER PIRIK: Did you already call the witness on record?

MS. KOVACIK: I'm sorry, I'm calling Mark Frye to the stand.

EXAMINER PIRIK: Thank you. And you are going to need to speak closer to the microphone.

(Witness sworn.)

- - -

MARK FRYE

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

DIRECT EXAMINATION

By Ms. Kovacik:

Q. Can you state and spell your name for the record?

A. Mark Frye, F-R-Y-E.

Q. And your business address?

A. 241 North Superior Street, Toledo, Ohio.

Q. And who are you employed by?

A. Palmer Energy Company.

Q. And on whose behalf are you testifying today?

A. As I understand it, I'm joint witness for NOPEC and NOAC.

Q. Okay. Do you have before you a document entitled NOAC/NOPEC Joint Exhibit No. 1?

A. I do.

Q. And can you identify that for the record?

A. That's the testimony that was prefiled in this particular case.

Q. Do you have any corrections, additions, or deletions to your prefiled testimony?

A. I do.

Q. And how many?
A. I have two. One -- one correction and one omission that I need to add.
Q. Okay. What's the page number of your first correction?
A. My correction is on page 2, line 6. The address for my office is downtown -- Toledo recently changed zip codes for downtown Toledo, that should be 43064, not 43264.
Q. Thank you.
A. And on page 3, line 6, I inadvertently left out one of the counties that NOPEC represents. That would be Lorain County. That's it.
Q. Excuse me. Thank you.
If I asked you the questions that are in your prefiled testimony today, would your answers be the same?
A. Yes, they would.
MS. KOVACIK: At this point I would

tender this witness for cross-examination.

EXAMINER PIRIK: And you are going to have to speak closer to the microphone because I think even with the microphone I'm having a hard time and Karen is having a hard time hearing you.

MS. KOVACIK: Okay.

EXAMINER PIRIK: Mr. Small.

MR. SMALL: Thank you, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Small:

Q. Mr. Frye, Jeff Small, OCC?

A. Mr. Small, how are you today?

Q. Just fine.

Would you please turn to page 9 of your testimony, and around lines 7 and 8.

Is that me or somebody else? If it's me, let's try that, around lines 7 and 8, you discuss your concept of a GAGC.

Do you see that?

A. Yes, sir, I do.

Q. For the purposes of your testimony would it also be sufficient to simply eliminate the deferrals that were proposed by the FirstEnergy companies in this case?

A. That would be another way to -- that would be another way to eliminate the competitive barrier.

Q. And that is the purpose of this portion of your testimony, correct?

A. The purpose of this -- of this portion of the testimony is just merely suggesting that by the creation of the GAGC, or governmental aggregation generation credit, it would eliminate many of the concerns and barriers that I mention in my testimony.

Q. And it would also eliminate the barrier you are talking about to do away with the deferrals entirely, correct?

A. Yes, it would.

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

EXAMINER PIRIK: Mr. Bell.

MR. BELL: No questions.

EXAMINER PIRIK: Mr. Boehm.

MR. BOEHM: No questions.

EXAMINER PIRIK: Ms. McAlister.

MS. McALISTER: No questions.

EXAMINER PIRIK: Mr. Smith.

MR. SMITH: No questions.

EXAMINER PIRIK: Mr. Stinson.

MR. STINSON: No questions, your Honor.

EXAMINER PIRIK: Mr. Lavanga.

MR. LAVANGA: No questions.

EXAMINER PIRIK: Mr. Yurick.

MR. YURICK: No questions.

EXAMINER PIRIK: Mr. Dunn.

MR. DUNN: No questions, your Honor.
EXAMINER PIRIK: Mr. Kutik.
MR. KUTIK: Yes, your Honor.
- - -
CROSS-EXAMINATION
By Mr. Kutik:
Q. Good afternoon, Mr. Frye.
A. Mr. Kutik, how are you this afternoon?
Q. Fine, thank you.
Your company is Palmer Energy, correct?
A. Yes.
EXAMINER PIRIK: Mr. Kutik, I am not sure the microphone is on. You know what, the battery is gone.
Q. The clients of Palmer Energy do not include any industrial -- investor-owned utilities, any municipal utilities, or any rural or other cooperative -- electric cooperatives, correct?
A. Not at this time, no.

Q. And your last experience being directly
employed for a utility was about 20 plus years ago
when you worked for a company called UGI, correct?

A. Correct.

Q. And in your work for Palmer Energy you've
worked for one electric company that is direct energy

or electric supplier that is direct energy, and you supplied testimony that was unrelated to anything about wholesale prices, wholesale contract prices, correct?

A. Correct.

Q. Now, you would agree with me, would you not, that the Commission in looking at an ESP must determine whether ESP in its overall structure is more beneficial to customers than the outcome of a potential MRO, correct?

A. That's -- that's my understanding of the statute.

Q. And you have no opinion on that, correct?

A. No, I don't have an opinion on that. That's my understanding of the statute.

Q. Right. Now, if an ESP were to be granted, do you believe that the Commission would have to make a judgment that the ESP rates were lower than market-based rates?

A. Could you define what you mean,
Mr. Kutik, when you say "ESP rates"?
Q. The rates that are in the ESP.
A. Are we talking about all the various
components including the distribution increase
requests and so forth as part of the package of the

ESP?

Q. Yes.

A. Not necessarily.

Q. Excluding the distribution portions what would your answer be?

A. Not necessarily.

Q. Okay. So there could be a situation where the Commission could see that ESP rates were higher than market-based rates and yet still appropriately approve it under the statute, correct?

A. My understanding of the statute is that the Commission, in evaluating the ESP in total, can -- is permitted or can approve ESP if they believe it is less than the results from a market rate or an MRO offer.

Q. But that's not my question. My question is the Commission could approve appropriately under your view an ESP where the rates were higher than market-based rates, correct?

A. Yes, I believe they can.

Q. All right. Now, if you had a situation where the Commission made a determination that the ESP provided for rates that were less than market-based rates and they approved that ESP, you would believe that that would be anticompetitive,

correct?

A. Please define what you mean by "anticompetitive." To who, sir?

Q. Wouldn't you -- would you accept the definition that says that anticompetitive means that it would be a hindrance to competition?

A. Yes, I would accept that definition.

Q. Now, using that definition can you answer my previous question?

A. Yes. I think if they approved pricing below market rates that that would be anticompetitive.

Q. Thank you.

Now, for at least some of the FirstEnergy operating customers you believe that if we were to go from current rates to market-based rates, those customers would experience an increase, correct?

A. On various rate classes, yes.

Q. And you are aware of a concept in terms of rate design called gradualism, correct?

A. Generally, yes.

Q. And would it be fair to say you are not familiar with gradualism enough to know whether it is a well-recognized principle of rate design?

A. That's a fair statement.

Q. Now, you have -- do you understand in this case that the operating companies have -- have proposed a phase-in of rates of sorts, correct?

A. Of generation rates, yes, I understand that.

Q. And there is a rider GPI which affects that phase-in, correct?

A. That would implement that phase-in if approved by the Commission, yes.

Q. And there's also proposed a deferral to collect that phase-in, correct?

A. Yes. There's a proposal called EGC which would collect the deferral for the companies.

Q. Now, that -- that phase-in, would you agree with me, would be consistent with the concept of gradualism?

A. Not necessarily.

Q. Okay. Is it correct to say that -- well, back up.

You've read SB-221, correct?

A. Yes, sir, I have.

Q. And would it be correct to say that the statute allows for phase-in of EDU rates, correct?

A. Yes, I believe that's correct.

Q. And it allows for the non -- actually it requires if there are going to be such phase-ins allowed the nonbypassable charge to collect those phase-ins, correct?

A. I don't recall that section of SB-221 specifically saying "nonbypassable," sir.

Q. So you're not aware there is any provision in SB-221 that requires that any phase-in, if it's to be collected, would be nonbypassable; fair to say?

A. I'm not aware of anything in SB-221, that's correct.

Q. Now, the companies -- well, back up.

Are you aware that the statute has a provision in it with -- with respect to the bypassability of a phase-in with respect to government aggregation customers?

A. I don't recall the statute mentioning anything about that.

Q. Okay. Are you aware of any provision in

the statute which requires the nonbypassability of
deferrals to collect phase-ins?

A. Could you repeat that question, please,
ma'am.

(Record read.)

A. No, I am not.

Q. Are you aware of any provisions in the statute which direct how deferrals of phase-ins or deferrals of charges can be bypassable or nonbypassable with regard to the customers of government aggregations?

A. No, I am not.

Q. Now, you believe, do you not, that all customers shopping or nonshopping, should get some type of credit, correct?

A. If there is going to be a deferral or a credit on people's bills, yes, I believe that that should be available for large scale governmental aggregators, as I mentioned in my testimony.

Q. Okay. And you also believe that all customers should be then required to pay a deferral to collect that phase-in or credit, correct?

A. Could you rephrase your question? I am not sure I'm understanding what you are saying.

Q. Well, you are aware in the companies' proposal, are you not, there is a phase-in and then there is a deferral or phase-in with a credit, correct?

A. Correct.

Q. And then there is a deferral and ultimate recovery of that credit, correct?

A. Correct.
Q. And all I am asking is are you proposing a similar thing with respect to nonshopping customers, that there -- that the nonshopping customers get a credit and that the nonshopping customers pay a deferral?
A. I believe what I've said -- stated in my testimony is GAGC customers, by getting a -- GAGC credit would similarly pay the same charge, the EGC charge, the deferral collection charge, in 2011 through 2013 or whatever it would be.
Q. So all customers, whether they be shopping or nonshopping, would get a credit and would also pay the deferral, the DGC.
A. That's not what I said. I said large scale governmental aggregation customers would receive the GAGC in my testimony, and by receiving that benefit in that credit they would not be available -- they would not receive any proportional

benefit going forward, therefore, they would not afford any of the DGC charges beginning in 2011.

Q. So all nongovernment -- all government aggregation customers would get a credit and would pay a deferral?

A. Yes, sir.

Q. Under your proposal.

A. Under my proposal.

Q. Now, would it be the case that under your proposal that the companies would recover the deferral, they would collect the deferral?

A. Yes.

Q. And so, in fact, can we agree under your proposal it would be the companies that would be in effect financing the deferral for the government aggregation customers, large scale government aggregation customers that you referred to earlier?

A. Yes.

Q. And is it the case that when you envision that the companies would collect a certain amount from the -- these government aggregation customers and then pay the CRES supplier the amount -- the full amount of the contract price, that is the credit -- or the price without the credit and then the credit on top of that?

A. No.

Q. Now, the deferral or the -- back up.

The credit that a government aggregation customer would get would be a credit on the CRES provider's service?

A. No. It would be a credit on the bill, presuming, of course, that the CRES chose to move the power through the companies' collection process, as most every governmental aggregation, as far as I know, does at this point.

Q. It wouldn't be a credit to the distribution service, would it?

A. It would be a credit on the bill. I would envision it would be a separate line item on the bill, you know, GAGC credit or something along those lines.

Q. And in effect would be a credit on the CRES provider's service.

A. Would be a credit on the customer's bills similar to presumably what -- the way the bill would be designed under the companies' Application, which is a deferral of future revenues. It may or may not have separate line items.

Q. I have asked you this question now twice and I am not sure you've answered it.

A. Okay.

Q. My question to you is would this credit be a credit against the CRES supplier's service?

A. It would be a credit on the customer's bill. It wouldn't necessarily be a credit on the CRES supplier's service. It would discount that by the same amount, if that's what you are looking for.

Q. Well, it's not a discount off of the distribution service, is it?

A. No, sir.

Q. All right. So the only thing that's left, it would be a credit off of the generation service, correct?

A. The way you have characterized the question, yes.

Q. All right. And if that was the question, the credit you are talking about with respect to government aggregation customers would be a credit off of the CRES service, correct?

A. It would be off the generation service supplied by the CRES.

Q. Okay. So that it would not be a credit or a phase-in of the electric distribution utility, correct?

A. It would be a phase-in of generation

charges.

Q. And not the electric distribution utility, correct?

A. It's my -- it's my understanding that the power supply from the electric distribution utility would come from FirstEnergy Solutions.

Q. We are talking about --

A. I am not sure what the difference is between them and somebody else.

Q. We are talking about government aggregation clients, right?

A. Yes, sir.

Q. Or customers -- those customers under this narrow -- at least as I understood what we were talking about would be receiving service or generation service from somebody other than FirstEnergy Solutions, correct?

A. Potentially.

Q. All right. And if that's the case under your proposal, the phase-in or the credit would not be a phase-in or credit of an electric distribution utility; fair to say?

A. No, I don't think so.

Q. All right. You said it would be a phase-in or credit to generation service, correct?

A. If you were going to account for it, that's how I would tend to want to account for it on a bill, yes.

Q. Okay. And if the -- if the customer in a government aggregation was receiving generation service from a CRES supplier, it would be a credit

off of the CRES supplier, correct?
    A. It would be off -- credit off the CRES supplier's generation charges.
    Q. Right, and it would not be a credit or a phase-in of the EDU, correct?
    A. Correct.
    Q. Now, are you aware of anything in SB-221 that would allow the credit and the deferral that you suggest in your testimony?
    A. I am not aware of anything that would allow it or disallow it.
    Q. Okay. You don't know anything that specifically authorizes it or discusses it; fair to say?
    A. Fair to say.
    Q. Okay. Now, you are aware, are you not, of Revised Code Section 4928.20.I, J, and K?
    A. My recollection is that's the section that talks about governmental aggregation.

Q. And are you aware that those sections
were amended by SB-221?

A. Yes, I am aware of that.

Q. Do you know whether those sections have
been appended since the enactment of SB-221?

A. Not that I am aware.

Q. Are you aware of any state or is it true that you are not aware of any state that has done anything like what you have proposed with respect to credits and deferrals with regard to a government aggregation program?

A. I am not aware of it.

Q. Now, are you a member of the board of NOPEC?

A. No, sir.

Q. Are you an employee of NOPEC?

A. No, sir.

Q. Are you on the board -- are you an officer of NOPEC?

A. No, sir.

Q. Would it be correct to say that you've had nothing to do with the drafting or negotiation of a letter of intent between FPL or one of its affiliates and NOPEC?

A. That's a fair statement.

MR. KUTIK: Your Honor, at this time I have a motion to strike. And our motion is directed, your Honor, to the witness's testimony, page 21, line 24, to page 22, line 2.

EXAMINER PIRIK: You were moving a little faster than I.

MR. KUTIK: Let me repeat, your Honor.

Are you at page 21?

EXAMINER PIRIK: Yes, I am.

MR. KUTIK: Thank you.

We are moving to strike, your Honor, page 21, starting at line 24, continuing through page 22 -- excuse me, page 23, line 2.

EXAMINER PIRIK: Go ahead with your grounds.

MR. KUTIK: Grounds are, your Honor, this witness has no personal knowledge or no connection whatsoever with this to be able to testify about it competently.

MS. KOVACIK: I don't know that personal knowledge is required. Mr. Frye read the document and provided his opinions as to the content of that document no different than he has regarding the applicant's Application.

MR. KUTIK: Well, he is testifying about

the facts of the document. If you are testifying about facts, you have to testify with respect to personal knowledge. He has no knowledge with respect to the permanent knowledge, therefore, he is incompetent.

EXAMINER PIRIK: Do you have anything

further?

MS. KOVACIK: Your Honor, the LOI has been introduced into the record, same as applicant's Application is part of this record. Mr. Frye is perfectly capable of reading it and providing -- answering questions with regard to cross to it.

MR. KUTIK: That provides further grounds, it's cumulative and that rehabilitates that.

EXAMINER PIRIK: I'm going to grant the motion to strike.

MR. KUTIK: Mr. Frye --

MR. BOEHM: Excuse me, your Honor, could we go over that again exactly what is being stricken now?

EXAMINER PIRIK: Certainly. My understanding is it's page 21, beginning at line 24, through line 2, on page 23; is that correct?

MR. KUTIK: Yes, your Honor.

MR. BOEHM: Thank you.

MR. KRASSEN: Your Honor, if I may make a statement to clarify. You are striking all the way to page -- to line 2, on page 23, including the question on page 22 that starts at line 23?

EXAMINER PIRIK: That was what the motion was, and I didn't hear any suggestion that we should sever any part of this.

MR. KRASSEN: May I make the suggestion that we sever that out because that is not an interpretation of the -- of the LOI, if that indeed is the basis of the motion to strike but rather this is a projection of the potential savings that could occur from the LOI, which I think is quite relevant to the record in this case.

MR. KUTIK: Well, it's based upon -- that testimony was based upon testimony that is stricken.

EXAMINER PIRIK: My ruling stands.

Q. (By Mr. Kutik) Mr. Frye, are you privy to business arrangements that NOPEC has with the political subdivisions within its territory?

A. No.

Q. So you don't know, for example, whether NOPEC receives any fees from these political subdivisions?

A. No, I do not.

Q. You've never heard that?

A. No, I have never heard that.

Q. Same question with respect to NOAC, do you know whether NOAC receives any fees from any governmental subdivisions or political subdivisions in the service territory?

A. No.

Q. And you've never heard that either?

A. No.

Q. Now, would it be correct to say that since you are unaware and were not involved in any negotiations with respect to the letter of intent, you have no knowledge with respect to any potential contract between FPL or any of its affiliates and NOPEC?

MR. KRASSEN: Your Honor, I'm going to object to that question because Mr. Kutik has filed a motion to strike all of the information regarding the LOI, he is now trying to get back into that subject. So I think it's going to be beyond the scope of his testimony at this point in time.

MR. KUTIK: I will withdraw the question.

Q. Now, with respect to NOPEC, do you know how many jurisdictions within NOPEC are opt-out jurisdictions?

A. It's my understanding they all are.

Q. Okay. Now, would it be fair to say you recognize that the companies' proposed minimum default service charge is not an automatic adjustment clause?

A. That's fair to say.

Q. And you believe that for the Commission to approve that minimum default service charge, the company should show that it's cost based, correct?

A. I believe any charge that the companies are asking $1.7 billion from consumers should have some justification according to cost, yes.

Q. Okay. And you can't show me anything in SB-221 that supports that duty, correct?

A. No, I cannot.

Q. Now, you are familiar, are you not, with some of the policies that are in SB-221?

A. Generally.

Q. Okay. One of those policies is helping at-risk populations?

A. I recall that, yes.

Q. And by at-risk populations we can include, among other -- other potential groups, persons with low incomes?

A. Yes.

Q. And you would agree with me that programs that ease the burden on low income individuals would further or promote that particular policy, correct?

A. Based on my recollection of the statute, yes.

Q. And programs that would include, for

example, some type of subsidy that favors low income
individuals would also further that policy, correct?
A. Now, you are getting to the point where I don't have SB-221 in front of me, sir, so it's a little difficult for me to testify as to that level of specificity.
Q. All right. Well, do you have your deposition before you?
A. No, I do not.
Q. Okay.
MR. KUTIK: Your Honor, may I approach?
EXAMINER PIRIK: Yes.
Q. Mr. Frye, let me hand you a copy of your deposition that was taken on October 10 of this year.
You remember that, do you not?
A. I do.
Q. Please refer to page 38.
A. Okay. I'm there.
Q. Now, actually I might want to have you

look at your testimony starting on page 36, and it would be correct to say that page 36, one of the things we are talking about in your deposition at line 14, for example, is the policy to protect at-risk populations, correct?

A. Yes. I see that.

Q. Now, turning to page 38, starting at line 1, it would be correct to say you testified as follows:

Question: "Would a rate design that perhaps has intraclass subsidies that I guess favor low income further those policies or that policies?"

Answer: "Yes."

You gave that testimony, correct?

A. Yes, I did.

Q. Now, it's true that you are not familiar, are you, with the credit and collection rules of the PUCO?

A. That's correct.

Q. And you have a general understanding of it, nevertheless, those rules do not apply to CRES suppliers, correct?

A. Correct.

Q. And you also have an understanding that there are different credit and collection rules for

EDUs than for CRES suppliers, correct?

A. Could you please specify, CRES suppliers that are collecting through the companies or externally?

Q. Let me refer you back to your deposition.

Can you go to page 38.

A. I'm there.

Q. Okay. And would it be fair to say starting at page -- excuse me, line 20, you testified as follows:

Question: "Do you know whether there are any rules related to credit and collection that apply to competitive retail electric service supply?"

Answer: "No, I don't."

Question: "Would it be fair to say to the best of your understanding that there are certain credit and collection rules that apply between competitive retail electric service suppliers on the one hand and EDUs on the other hand?"

Answer: "Yes, my general understanding is there would be."

Do you remember giving that testimony?

A. I remember giving the testimony, but you are referring there, Mr. Kutik, to PUCO rules in line 20, you missed that in your statement.

Q. All right. But you did give that testimony, correct?

A. Yes, I did.

Q. Now, you are aware, are you not, that there is a PIPP rider?

A. I am aware of it, yes.

Q. And you are aware that the PIPP rider
includes generation and transmissions?
A. Yes.
Q. And you are aware that the PIPP rider is
to recover the difference between what PIPP customers
pay and what PIPP customers are billed, correct?
A. What their actual charges would be versus
what they pay.
Q. It would be fair to say you have no
opinion on the bypassable or nonbypassability of the
PIPP rider?
A. I have no opinion.
MR. KUTIK: Can I have one minute, your
Honor?
I have no further questions. Thank you
Mr. Frye.
EXAMINER PIRIK: Mr. Wright.
MR. WRIGHT: No questions.
EXAMINER PIRIK: Redirect?

MS. KOVACIK: Can we have one minute?

Thank you.

EXAMINER PIRIK: Ms. NOAC.

MS. KOVACIK: I have one question. There we go. One question.

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REDIRECT EXAMINATION

By Ms. Kovacik:

Q. Earlier, Mr. Frye, do you recall being asked about your GAGC credit, and I believe you were asked under your proposal would the companies be expected to finance that, and I believe you said yes, correct?

A. Correct.

Q. Isn't it true, however, though in your proposal that the companies would be able to collect interest on those credit amounts and then charge those to the customers beginning in 2011?

A. Yes, it is.

MS. KOVACIK: Thank you, I have nothing further.

EXAMINER PIRIK: Thank you.

MS. KOVACIK: At this time --

EXAMINER PIRIK: We have to cross. Just a minute.

Mr. Small.

MR. SMALL: No questions, your Honor.

EXAMINER PIRIK: Mr. Bell.

MR. BELL: No questions.

EXAMINER PIRIK: Mr. Boehm.

MR. BOEHM: No questions.

EXAMINER PIRIK: Ms. McAlister.

MS. McALISTER: No questions.

EXAMINER PIRIK: Ms. Fonner.

MS. FONNER: No questions.

EXAMINER PIRIK: Mr. Smith.

MR. SMITH: No questions, your Honor.

EXAMINER PIRIK: Mr. Stinson.

MR. STINSON: No questions.

EXAMINER PIRIK: Mr. Lavanga.

MR. LAVANGA: No questions.

EXAMINER PIRIK: Mr. Yurick.

MR. YURICK: No questions, thank you, your Honor.

EXAMINER PIRIK: Mr. Kutik.

MR. KUTIK: No questions, your Honor.

EXAMINER PIRIK: Mr. Wright.

MR. WRIGHT: No questions.

EXAMINER PIRIK: Mr. Porter.

MR. PORTER: No question.

MS. KOVACIK: At this time I move that NOAC/NOPEC Joint Exhibit No. 1 as appended introduced into evidence.

MR. KUTIK: We have no objection, subject to the motion to strike.

EXAMINER PIRIK: Thank you.

Are there any other objections?
Hearing none, NOPEC/NOAC Exhibit 1 shall be admitted into the record.
(EXHIBIT ADMITTED INTO EVIDENCE.)
MR. KUTIK: Subject to the strike.
EXAMINER PIRIK: Yes, subject to the motion to strike, which I granted.
Thank you very much, Mr. Frye.
THE WITNESS: Thank you.
EXAMINER PIRIK: We will go off the record.
(Discussion off the record.)
EXAMINER PIRIK: We will go back on the record.
Mr. Korkosz.
MR. KORKOSZ: We call Mr. Blank.
(Witness sworn.)
EXAMINER PIRIK: Please be seated.
- - -

DAVID M. BLANK

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

DIRECT EXAMINATION

By Mr. Korkosz:

Q. Please give us your name and business

address.
A. My name is David Blank. My business address is 76 South Main Street, Akron, Ohio 44308.
Q. Excuse me.
By whom are you employed and in what capacity, Mr. Blank?
A. I'm employed by FirstEnergy Service Corporation and I'm in the rates regulatory affairs department of the corporation.
Q. Do you have before you what has been premarked as the direct testimony of David M. Blank, and identified for this record as Company Exhibit 1?
A. Yes, I do.
Q. And, Mr. Blank, are you aware of a document that's been identified on this record as Company Exhibit 10, a list of errata that was previously submitted to all the parties?
A. Yes, I'm.
Q. And do you adopt those portions of

Company Exhibit 10, the errata, that are associated with your name?

A. Yes, I do.

Q. Beyond what is on Company Exhibit 10, do you have any additional corrections to your testimony?

A. Yes.

Q. Tell us what they are, please.

A. Start on page 9 of my direct testimony. At the top of that page in line 1, we should remove the words "three year." So the phrase would say "96 million over the plan period."

On page 13, on line 17, at the end of the line, before the word "matters," we should insert the words "distribution-related." So it should say "of these distribution-related matters."

On page 21, line 20, the beginning of the line, the statute reference is incorrect. It should be 4928.20.I, not 29.

And on page 22, line 4, similar correction to the statute, it should be 4928 not 4929.

Q. Are those the extent of corrections?

A. Those are the corrections. We have one addition.

MR. KORKOSZ: If your Honor, please, I would ask to have marked respectively two documents, one being identified as Alternate Attachment 1 and second document styled David M. Blank Direct Testimony Adjustment Corresponding to Alternate Attachment 1.

I ask that those be marked for identification as Company Exhibit 1A and 1B respectively.

EXAMINER PIRIK: The documents will be so marked.

(EXHIBITS MARKED FOR IDENTIFICATION.)

Q. Mr. Blank, do you have before you what's been marked and distributed to the parties as Company -- identified as Company Exhibits 1A and 1B?

A. Yes, I do. But I don't know which one was A and which one was B, unfortunately.

Q. 1A is the document that is styled in the upper right corner Alternate Attachment 1.

A. Thank you.

Q. The other one would be 1B.

A. Appreciate that.

Q. Do you have those documents before you?

A. I have those, I do.

Q. And these were prepared by you or under your direction?

A. That is correct.

Q. Would you explain one by one what they are, please?

A. Yes. Let's turn first to Exhibit 1A, that being the Alternate Attachment 1. In this document we first corrected Mr. Jones' market price for 2010 to reflect the information he related on the witness stand earlier this week, and you will see at the -- in the box entitled "Consultant Market Rates" on the top of the first page of Exhibit Alternate Attachment 1 there is a shaded area under -- under the word Jones it says 87.88.

That reflects Mr. Jones' correction. That value carries through it to the model assumptions on the left where the new average of the Jones and Graves consultant rates is now 84.88.

In addition, in the remainder of the document in addition to doing the computations associated with the correction Mr. Jones identified, we are accepting for purposes of identifying the value, the position certain other witnesses have taken regarding the treatment of transmission related costs in the evaluation of what the present value would be.

And in particular under the boxed area
called "ESP," we have shaded an area called
"Incremental Transmission," and this value -- or the
values in this line add potential revenues to the ESP
plan to reflect the transmission values that I
believe Mr. Schnitzer and Mr. Kollen have identified

in their testimonies, which in their opinion would occur in the -- in the comparison between ESP and the -- and the MRO.

That information then is carried through to the determination at the bottom of the page what the net present value Ohio summary material is where you will see that the total Ohio value is now 1,008,300,000. And the values for CEI, Ohio Edison, and Toledo Edison are shown there as well.

In this alternate approach, as I said, we're accepting for the purposes of identifying a value what the impact of those would be. I'm continuing to testify to Attachment 1 in addition.

Q. Mr. Blank, you've explained some -- with some reference to the first page of that document. Could you tell us what the other three pages are, briefly?

A. Yes, I will.

The other three pages contain the similar

calculations for each of the three operating
companies separately, such when you add those
three -- when you add the relative numbers from each
of the three pages together, we should get the values
obtained on the first page of the Alternate
Attachment.

Q. Other than with respect to the first item
you mentioned being the -- the correction contributable to Mr. Jones' testimony -- Dr. Jones' testimony on the stand, is it your intention that Companies' Exhibit 1A replaces any portion of your testimony?

A. No, it is not such an intention. Rather this is an alternate way to view the value assuming that the -- assuming we accept the position of the other witnesses. I am not taking a position whether that's appropriate to accept those or not.

Q. All right. Tell us what Companies' Exhibit 1B is then, please.

A. Exhibit 1B identifies modification to the testimony with the page and line numbers shown. If we were speaking to Alternate Attachment 1 rather than Attachment 1 and just for trying to get clarity into the document, we are attempting to identify if we were talking about Alternate Attachment 1 these are the numerical changes which we would be making to the testimony.

Q. And, again, this should not be treated as an errata or substitution, but merely as an explanation to assist in the understanding of Alternate Attachment 1, correct?

A. That is correct.

Q. Subject to the errata and corrections that you've made, Mr. Blank, if I were to ask you today the questions contained in Companies' Exhibit No. 1, would your answers be the same?

A. Yes, sir.

MR. KORKOSZ: Mr. Blank is available.

EXAMINER PIRIK: Thank you.

Mr. Small.

MR. SMALL: Thank you, your Honor.

And as a preliminary matter, some of the changes that were just gone over, in particular the portion having to do with incremental transmission does affect my cross-examination considerably, and I am not sure I entirely understand it and this may cause some difficulty as far as my cross-examination not knowing what the support of it is.

I would like to conduct this without requesting the return of Mr. Blank so that I can cross-examine him at a later time, but I would ask for a little bit of leeway to investigate this area because I'm unfamiliar with what he has done as far as these changes.

EXAMINER PIRIK: I think that would be appropriate, I mean, for you to have some leeway.

MR. SMALL: I will do my best. Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Small:

Q. Good afternoon, Mr. Blank. Jeff Small, OCC.

A. Good afternoon.

Q. I have a few questions for you, and as I mentioned to the Hearing Examiner, we will be exploring your Attachment 1 and apparently your attachment or your FirstEnergy Exhibit 1A.

MR. BELL: Your Honor, if I may address the issue that Mr. Small raised with the Bench, may I be permitted a very brief voir dire of the witness? I run into the same problem as does Mr. Small.

The Bench had an order out with respect to filing prefiled testimony. We've gotten that. We've had an opportunity to digest it.

Handing this out after Mr. Blank takes the stand is a little short-fused from the standpoint of intervenors and their addressing whatever the changes are as identified by Mr. Blank.

I would like to simply inquire as to when these changes were identified, made, and when they were reduced to these exhibits to inquire as to -- to determine this information was just -- just developed and not available a week ago to avoid the situation that Mr. Small is in now and the rest of us are.

EXAMINER PIRIK: Mr. Korkosz.

MR. KORKOSZ: If I understand what Mr. Bell has just said, the purpose of what apparently would be some sort of voir dire as to the basis for and how Companies' Exhibit 1A came into being, I have no objection.

EXAMINER PIRIK: Thank you.

You may proceed, Mr. Bell.

MR. BELL: Thank you, your Honor. I'm not suggesting or insinuating, I just want to satisfy a potential issue, nothing more, nothing else.

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VOIR DIRE

By Mr. Bell:

Q. Mr. Blank, what gave rise to your

development of the -- to your address of this issue
on incremental transportation?

A. Over the past week or so I've been asking
my staff to tell me about the testimony of
Mr. Schnitzer and Mr. Kollen that I have read so I
can attempt to understand what they are -- what they

are telling me.

And we finally decided at about, oh, I think it was 9:00 or 9:30 last night that we ought to, at least for fairness, put their positions into our calculations.

I've gotten very divergent views on their -- on their testimony over that period of time and I did not conclude what I should be doing relative to this until very late last night. These exhibits were prepared sometime this morning.

Q. So that the matters which you address arose upon the filing of Mr. Kollen's and Mr. Schnitzer's testimony at the time that was filed?

A. They arose at that time, I believe, or they arose when Mr. Schnitzer and Mr. Kollen identified them and probably sometime before they submitted their testimony. And --

Q. You began --

A. I began -- or I began a process to try to

understand what was going on and I didn't conclude
that until preparation for the appearance today.

Q. So while you became aware of the issue raised by Messrs. Kollen and Schnitzer, it's only in the last week that you attempted to evaluate the issues raised?

MR. KORKOSZ: Objection.

Q. And your evaluation concluded last night with your conclusions which are reflected in these exhibits?

MR. KORKOSZ: Objection. Mischaracterization of the witness's testimony.

EXAMINER PIRIK: I will allow the witness to answer.

A. I became aware that there was an issue upon the reading of Mr. Schnitzer's and Mr. Kollen's testimony the day after it was submitted to the Commission.

I believe it was submitted late in the afternoon and I probably read it the next morning and I asked my staff members who had already started working on this to say let's figure out what this is all about, and we had continuing discussion about it but it came up again and again and finally concluded last night that we should -- it was appropriate to put something on the record.

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

EXAMINER PIRIK: Thank you, Mr. Bell.

Ms. Fonner.

MS. FONNER: Before we go further, your

Honor, if I might suggest in addition to latitude
with Mr. -- conducting cross-examination of
Mr. Blank, given this, I would like latitude for
Constellation regarding their inquiry in terms of
Mr. Schnitzer to be allowed to put forth essentially
supplemental testimony, because we are getting new
evidence from after the fact of the trial and we have
the opportunity to take that tomorrow.

I don't presume to speak for Mr. Kollen's
counsel, but certainly I would want Mr. Schnitzer to
have the opportunity to look at this and inquire so
that he may respond appropriately.

EXAMINER PIRIK: You're saying provide
supplemental testimony at the time that you submit
the direct at that point in time on the stand?

MS. FONNER: Yes, your Honor. Done
verbally.

EXAMINER PIRIK: Right, right.

MS. FONNER: Yes, your Honor.

EXAMINER PIRIK: Is there any response to the company with regard to supplemental testimony on this issue?

MR. KORKOSZ: I am not sure necessarily what it's going to be. As I understand Mr. Blank's explanation, he simply it appears to have accepted for purposes of illustration the positions outlined by, among others, Mr. Schnitzer and that that's -- that's reflective of this exhibit. I am not sure what beyond that would be required in supplemental testimony.

EXAMINER PIRIK: I think at this point I'm going to allow latitude with regard to cross-examination by all of the intervenors. I have no problem with that.

We'll consider supplemental testimony, but I think we are going to have to wait and see exactly what it is you would be proposing tomorrow. I can't speak to whether or not it would be appropriate or wouldn't. Obviously it would be subject to objections by other parties.

MS. FONNER: Certainly, and I am not suggesting we necessarily will, just as Mr. Blank has relied on his staff for the three weeks in evaluating this, we have our own experts we need to rely on with respect to this matter.

EXAMINER PIRIK: That sounds appropriate. So we will cross that bridge when we come to it.

Mr. Boehm.

MR. BOEHM: Simply, your Honor, hopefully we can have Mr. Kollen say anything that he deems appropriate about this while he is on the stand tomorrow.

EXAMINER PIRIK: We'll handle his supplement as well at that point in time when we actually see what, if anything, either witness would have to add.

MR. BOEHM: All right.

EXAMINER PIRIK: Okay. Is there anything further preliminary before we move on with Mr. Small?

Mr. Small.

MR. SMALL: Thank you, your Honor.

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CONTINUED CROSS-EXAMINATION

By Mr. Small:

Q. Again, I would ask you to keep the exhibit Attachment 1 and the revised Attachment 1 or the Alternate I think you called it. I will be dealing entirely off of page 1 of 4 so I won't be dealing with the company detail behind that.

Mr. Blank, could you please turn to page 9 of your testimony.

A. Yes, sir.

Q. On lines 1 and 2, you discuss the plan period, and this is the area where you made a correction on the stand, correct?

A. That's correct.

Q. You crossed out "three year" but you left in "plan period," correct?

A. Yes.

Q. Do you have the Application with you on the stand?

A. Yes, I do.

Q. Would you turn to page 32 of the Application. And in particular I'm interested in the very beginning of paragraphs D and E.

Both of them appear to discuss the period, the word "period" is in D; the word -- the word "term" is in E, period of the plan and term of the plan as three years.

A. That's correct. This is a three-year plan. And perhaps just to speed this up, the $96 million is a --

Q. That's not the question. There is no question pending. There is no question pending. You

have to answer my questions, okay?
A. I did.
Q. Not make up your own.
So the plan period is three years,
correct?
A. That's correct.

Q. So when you talk at the top of page 9 about $96 million over the plan period, if when I read your testimony, should I -- this seems contradictory to the Application that we just read or the paragraphs.

Should we read your testimony to talk about a three-year period or is your testimony talking about a different period?

A. Well, perhaps, Mr. Small, I should -- have been still inartful in my language on page 9, and what I'm meaning to say there are $96 million of benefits accruing to customers that happen to accrue over a five-year period of time.

Just -- and I'm counting those in my calculations on the present values just like I'm counting other matters that emanate from beyond the three-year period which are associated with the period of the plan.

Q. Essentially when we read in your

testimony about the plan period, we should be -- at least for purposes of your testimony, we should be thinking about the evaluation of the plan whatever years it affects, not the particular three years; is that correct?

A. The plan is a three-year plan, but the present value calculation takes into account matters which extend beyond the three years that are associated with -- that emanate from the plan, for example, the recovery of the deferrals.

Q. Maybe -- I don't want to prolong this but maybe it's just semantics.

You have the words like, on page 9, "plan period" in your testimony. You are not referring at any time when you use this terminology to three -- the three-year plan period, right?

A. I'm referring to the period of time over which we are calculating the benefits.

Q. And that's the way we should read your testimony, not the way the Application has defined the plan period?

A. I've tried to identify the distinction between the calculation period and the plan period being three years.

Q. Okay. On page 9, lines 6 through 9.

There's a discussion of annual amounts of -- and I
quote "up to $5 million annually," and that's for
energy efficiency and demand-side management
activities, correct?
A. That is correct.
Q. Now, turning to Attachment 1, okay, it

doesn't appear to have been changed in your -- in your alternate. Looking at the line that says "Energy Efficiency and DSM," do you see that in the ESP box?

A. Yes, I do.

Q. And that is listed at $10 million per year for 2009, 2010, and 2011, correct?

A. Yes, it is.

Q. Why is there $5 million -- up to $5 million listed on page 9 but $10 million in your tables?

A. Because also in that line on energy efficiency and DSM we have also included the values associated with item No. 3 on page 9.

Q. Okay. So the --

A. Perhaps the caption could be changed.

Q. Now, for the amounts you state on page 9 that are carried over into the amounts on -- shown on your Attachment 1, you are showing the maximum

amount, not the actual amounts that would be spent;
is that correct?

A. I'm showing both the maximum amounts and the expected amounts based upon our prior history with these types of clauses.

Q. So you are saying that the words on page

9 of up to whatever the amount is, $5 million and so forth, should be understood that the company expects to pay exactly $5 million per year?

A. Yes.

Q. Okay. On lines 14 through 15 -- I'm sorry, it extends beyond that. 14 through 20, I'm still on page 9, there is a discussion of environmental remediation.

Do you see that?

A. Yes, I do.

Q. And where in the Application and in supporting material including the testimony in this case can we find greater detail about the environmental remediation that's referred to at that point in your testimony?

A. If you will give me a moment, please.

If we turn to page 17 of the Application in item M. That is the area where we discuss the ongoing commitment relating to environmental

remediation and reclamation of existing retired
generation plants under manufactured gas plant sites.

Q. Is the section you just referred to in
the Application on page 17 and the carryover two
lines on page 18, is that the extent of the
documentation of those remediation commitments?

A. There may have been some discovery associated with -- with that, Mr. Small. I really don't know, but I don't know that there is other material. If there is, I am sure someone will correct me.

Q. Okay. Back to the amounts that you show on page 9. I understand -- is it my understanding that the "up to" language that's used for the dollar amounts, that the company does not permit carryover from one year to the next if we were in a situation where the money wasn't spent in a year?

A. I would have to check the discovery to see if we responded to that question because I don't know the answer to that question right now.

Q. Your response is you don't know.

A. With the caveat that we may have responded to that in discovery, and if we did, I will report back to you we did and what the answers were, but I'll have to check.

Q. Okay. If you could go to page 12 of your testimony. And on lines 10 and 11 you show certain percentage increases in rates, correct?

A. That is correct.

Q. Now, first of all, those -- those percentage changes are in the total -- total rates not in the generation portion, correct?

A. That is correct.

Q. And those numbers don't include any consideration or adjustment for the items that you mention on the top of page 8 of your testimony, correct?

A. By the items on the top of page 8, are you referring to the very limited exceptions?

Q. Yes, lines 1 through 8.

A. That is correct. And that's because we don't know what those values would be.

Q. Okay. Would you please --

A. Or whether there would be a non-zero value at all.

Q. Would you please turn to your Attachment 1. It doesn't make any difference which version for this question.

A. Yes, sir.

Q. And you show a value of $68.18, it's in the ESP box, and it's at the end of a title that says "Generation increase over 2008 rate of 68.8."

Do you see that?

A. Yes, I do.

Q. That is the aggregate price for all retail customers of the three utilities, correct, for

2008?
A. That is the aggregate price for all three utilities for generation-related components and RTC. RTC meaning the regulatory transition charge.
Q. It includes RTC.
A. That's correct.
Q. And those are for retail customers then.
A. That is correct.
Q. There's no separate charge under that aggregate rate. That's the aggregate rate for 2008. There is no separate charge for uncollectibles, correct?
A. There's not a separate charge in that for uncollectibles, that's correct.
Q. And that would pertain to all the operating companies and then when we add up all the zeros, it still comes to zero for -- there would be no separate charge for the company as an aggregate.
A. We have not populated the uncollectible

rider for purposes of this because it would be the
same value as it would be under the consultant and
market rates under our MRO plan so there is no
difference between the two.

Q. That wasn't the question. Just simply
asking what the present circumstances are for the

2008 and there is no separate uncollectible charge for any company, correct?

A. That is correct.

Q. So the percentage increases on page 12 that I referred to earlier don't include increases from -- going from generation charges that don't have separate uncollectible charges to generation charges under the proposal that have separate uncollectible charges, correct?

THE WITNESS: Could you reread that, please.

(Record read.)

A. That is correct.

Q. Is the revenue currently -- I'm back to the $68.18 charge that's in your table Attachment 1. Is the revenue currently received as a result of that level of charges paid entirely to FirstEnergy Solutions?

A. I don't believe so.

Q. Are you familiar with the level of charges that FirstEnergy Solutions is permitted to charge its Ohio operating companies according to the FERC settlement agreement?

A. I'm familiar there is such a process.

Q. And is it your understanding then the charge is lower, the 68.18 rate that's shown on your Attachment 1?

A. I don't know that answer.

Q. If the -- if the Federal Energy Regulatory Commission considers the rates developed in a contract -- contract that's been referred to -- the assumed contract that's been referred to in this proceeding, if the FERC considers the rates in such a contract to be too high for the 2009/2011 period, is there anything in the plan that would lower the rate or return money to customers?

A. Give me a moment while I review pieces of the plan.

EXAMINER PIRIK: That's fine.

A. I can't find the provision that I'm thinking about in the plan, Mr. Small, but we do know that we have to file a -- or enter into an agreement with FES and such agreement has to pass muster at the FERC.

I don't believe that the remedy of FERC failing to agree to the plan is to reduce the rates to customers. I believe that would constitute a rejection of the plan but there, again, I would have to do more study to verify that presumption.

Q. I was up -- I understood your response until you said "constitute a rejection of the plan." Who did you have in mind? Rejection by whom?

A. The FirstEnergy utilities.

Q. The Ohio utilities.

Are you -- I guess I still don't understand. Are you saying that if FERC does not approve the rate that's in the contract between the operating companies and FirstEnergy Solutions, that that would constitute rejection of the plan somehow or the First -- FirstEnergy operating companies --

A. I believe the management of FirstEnergy has the right under the plan to reject the manner under such a condition, and I said constitute a rejection, they have the right to reject.

Q. So if FERC took such an action, the FirstEnergy operating companies, the three EDUs, would at least have the right in your opinion to reject the plan?

A. Well, perhaps -- perhaps, Mr. Small, you are looking at language that I can't find at the moment.

Q. I am not looking at any language. I am asking you what the plan is.

A. Well, I'm trying to recall. I looked through the material, and I couldn't find what I was looking for, so perhaps I'm unable to answer that question to your satisfaction at this point.

Q. Let's return to Attachment 1 again, page 1 of 4.

Your comparison distribution rates are held at the same level in your comparison between ESP and the market rates with the exception of the $25 million deferral recovery for CEI, correct?

A. Not quite.

Q. All right. Let's walk through your table a little bit. Let's see if we can understand your response a little bit better.

ESP box, Attachment 1, page 1 of 4, we have distribution rates in the ESP box 2009 $137 million, 2010 is $150 million, and 2011 is $151 million.

Do you see those numbers?

A. Yes, I do.

Q. And then down in the Consultant Market

Rates box we see those same three numbers, correct?

A. That's correct.

Q. And also we find -- so we have the same three numbers being used, and in the ESP box there's a line -- a row that's labeled "Deferral Recovery CEI Distribution, $25 million," do you see that?

A. Yes, I do.
Q. And that's not in the consultant market rates, correct?
A. That's correct.
Q. So that is a difference between the two plans; is that correct?
A. That's correct.
Q. Now, I asked whether there was any differences other than that $25 million, and you said that -- that there were.
A. Yes.
Q. Could you identify those?
A. Yes. In the ESP, the second line, the distribution --
Q. I'm sorry, I think we've lost his microphone.
A. In the ESP category -- is that on?
Q. Yes, we can hear you. Thank you.
A. In the second line that -- the text, the

printed text says "distribution improvement rider," my errata corrected that to "delivery service improvement rider."

There is a stream of revenues, distribution-related revenues there as well. And that is the difference between the ESP and the consultant market rates.

Q. Okay. I think maybe we misunderstood one another but that's the difference you were referring to, correct?

A. Yes, it is.

Q. Okay, but the assumption and -- let's go back.

The combination of the numbers for distribution rates which we've -- I think we've established are the same between the scenarios plus the amounts for the $25 million CEI distribution deferral, those two amounts, and I'm taking out the DSI amounts now, but just the line on distribution rates and the CEI distribution deferral, those are the matters that are identified in the Application as being the resolution of the matters in the distribution rate case, correct?

A. There is several more as well. And what I'm looking at is on page 20 in item D, this is of the Application, there are four other areas which -- which the companies identify as being deemed to have been resolved pursuant to the ESP Application.

Q. I don't want -- I hope this doesn't get too complicated, but what I'm looking for are numbers in your table. Is there anything that you just identified that create numbers in your tables?

For instance, what you just identified established a rate of return for the company but that's implicit in the distribution rate numbers that you gave me, correct?

A. Yes. And it's also implicit in the discount rate on the -- in the numbers in the table. It's implicit in some of the carrying charge calculations, those types of matters.

So I'm having difficulty agreeing with you on "there aren't any other numbers than what you identified."

Q. I'm simply trying to find the numbers to identify the distribution case -- let me -- let me -- maybe this will help.

The distribution service improvement rider that you identified as being distribution related and different between ESP and the con -- and the market and going the market alternative, that is

a matter that was first brought up in the ESP case,
correct?
A. Yes.
Q. It was not -- it was not at issue, was
never brought up by the company in the distribution
case, correct?

A. That's correct.

Q. So I'm just simply addressing those issues that were in the distribution rate case, not the DSI rider we established which was introduced in this case.

For those matters that are -- were in the distribution rate case and are also in your tables here, they are the same between the ESP box and the market with the exception was the $25 million deferral for CEI.

A. The line identified as distribution rates in each of the ESP and the consultant market rates are what you state them to be. The other items were not part of the distribution rate case.

But there are other items on page -- on item 12 which I referred to earlier which don't directly impact the value or the numbers in the distribution rate line.

Q. Great. I simply want to define these set of numbers that I'm going to discuss next in my questions, and it's defined by those things that are related to the distribution rate case.

So we can agree that those are the distribution rates, that's a line, plus the $25 million distribution deferral, correct?

A. Yes, but now I'm confused again, because the $25 million distribution deferral was not part of the distribution rate case.

Q. Okay. Let's go at it again. I'm trying to compare those things that were in the -- that are at least on the topic of the distribution rate case.

The DSI topic was never brought up in that case, correct?

A. Correct.

Q. But the $25 million, although it wasn't raised in that case, is being presented as being a resolution of that case, correct?

A. That is an additional deferral that was not dealt with as part of the distribution rate case.

Q. But in your Application --

EXAMINER PIRIK: Mr. Blank, could you pull your microphone a little closer.

Thank you.

Q. In your Application though it's

considered to be a resolution of that distribution rate case, correct?

A. We state it to be, yes.

Q. Now, regarding those two matters, regarding the distribution matters that would be taken up in the distribution rate case, if the rates turned out lower in a separately decided distribution case, the ESP plan depicted on your Attachment 1 would be less favorable.

In other words, the comparison between the ESP and the market option would be less favorable than it is in your present attachment, correct?

THE WITNESS: Could I have that reread, please, just the front end of it.

(Record read.)

A. If you were asking whether in an MRO arrangement the Commission would decide the distribution rate case to be less than $150 million on an annualized basis, I would agree with your assertion.

Q. That's very close to what I was saying. I just want to have a qualification to make sure you are actually agreeing with my proposition.

If the Commission came up with something less than a -- $150 million less than what was put into the plan by the company, which is both the line on distribution rates and the $25 million. In your answer I don't think you had included the $25 million.

A. I believe the $25 million additional deferral is different and separate and apart from the

150 million.

Q. Okay. But that's not the question.
If -- I am saying if the Commission in a separately decided distribution case comes up with rates that gives the company less revenue than the amounts shown on the line that says distribution rates and plus the amount shown for the CEI distribution deferral, okay, the Commission gives the company less than those amounts of revenue, ESP is going to be less favorable compared to your Attachment 1.

The only difference between that and what you just said had to do with the CEI $25 million.

A. I think I'm confused as to how you are combining these differently than I'm combining them.

What I'm hearing you say, Mr. Small, is in the ESP the companies are permitted to recover the $150 million on an annualized basis and the additional CEI distribution deferral of $25 million.
And in the consultant market rate evaluation the

distribution rates line would be something less than
the $150 million annualized.
    And I think you are then asking if the
consultant market rate been -- put it the other way,
ESP would then be less favorable than what we have
shown it to be. I would agree with you in that

situation.

Q. Okay. Now, I think we are going to need both Attachment 1s. Your rates -- please refer to Attachment 1 and the portion labeled "Consultant Market Rates."

Do you see that?

A. Yes.

Q. And you changed one of those numbers in that box under Jones for 2010, correct?

A. Yes.

Q. And that had to do with Mr. Jones' testimony on the stand the other day?

A. Yes, it did.

Q. And then your -- the rates that you actually show there were obtained by averaging the rates calculated by Dr. Jones and Mr. Graves, correct?

A. Yes, and deducting a transmission amount.

Q. But that is the meaning -- I'm simply trying to get from the consultant market rates at the top of the table to the assumptions for the consultant market rates, and what you just did was average, and I'm now on FirstEnergy 1-A.

You averaged 81.69 and 83.45 for 2009 and came up with the rate 82.57 which is under the

consultant market rates, correct?
A. Yes.
Q. Now, the top box in both your Attachment 1 and your Alternate Attachment 1 have a parenthetical that says "less transmission," correct?
A. Yes.
Q. And it's in that component, the less transmission, that you made your changes to go to the Alternate Attachment 1, correct?
A. I put the change into the ESP calculation, not into the market rate calculation.
Q. I see. But it was at that transmission component of the Jones' and Graves' number that caused the change that you now show on Alternate Attachment 1 as incremental transmission, correct?
A. That is -- that concept is the course of the change, yes.
Q. And I'm familiar -- off the top of my head I'm -- I think I'm familiar with the Kollen

adjustment that has to do with line losses, correct?

A. I believe it's distribution line losses, yes.

Q. Distribution line losses.

And here's part of my difficulty. I'm less familiar with the Schnitzer adjustments. Could you summarize or give the source of Mr. Schnitzer's claimed adjustment to your numbers?

A. Only from his testimony, and I don't have a specific reference to his testimony.

Q. That's fine. Your understanding.

A. That's my understanding is he's identified an area also related to losses and whether or not we've computed the correct amount of losses in -- in the calculation.

Q. And you don't know what the source of that correction is?

A. I could find it, but I don't have it with me.

MR. SMALL: Your Honor, could we take a moment and let the witness look that over? It's fairly important to my cross-examination and these are the numbers that changed before, before I had a chance to cross-examine Mr. Blank.

I have a -- some cross-examination but

I'm not sure whether it's in the right area because I
don't know what it is that's been changed.
I think he could quickly look up
Mr. Schnitzer's testimony and at least identify in a
summary fashion what the source of this change is.
EXAMINER PIRIK: Why don't we -- we will

take a break, a ten-minute break at this point anyway and have some time to look that up.

(Recess taken.)

EXAMINER PIRIK: We will go back on the record.

Mr. Small.

MR. SMALL: Yes, your Honor. During the short break I've had a chance to review Mr. Schnitzer's testimony on the relevant portion, and I hope I can cut this a little bit short.

Q. (By Mr. Small) Mr. Blank, you have had an opportunity to examine Mr. Schnitzer's testimony; is that correct?

A. Yes.

Q. And do you have that with you on the stand?

A. Yes, I do.

Q. And I'm turning to page 18, and I don't want to get too deeply into this because

Mr. Schnitzer is going to take the stand, but I want to make sure I understand your tables.

I'm looking on lines 17 and 18, on page 18 of Mr. Schnitzer's testimony, and the question says, "How do we know that marginal transmission losses and net congestion expense are included in the

MRO estimates?"

So my question for you is, is the nature of the change that you showed in addition to the portion for line losses, is it because Mr. Schnitzer claims marginal transmission losses and are included in the MRO, therefore, to do an apples-to-apples comparison it should also be put into ESP. Is that the essence of your change?

A. Without the reference of the apples-to-apples comparison, we are using the values that Mr. Schnitzer has identified for this item in order to demonstrate the impact of his -- his analysis on the outcome of the evaluation.

Q. And as you understand it, his analysis was that certain amount -- certain amounts were in the MRO, correct?

A. Yes, but that doesn't mean I agree with his evaluation.

Q. I understand that caveat, but for your evaluation of his claims, I am not asking you to agree with him, but for your evaluation of his claims, he claims that there was something in the MRO and so for -- to evaluate that claim you put a dollar value into the ESP, add it back into ESP, correct?

A. That is correct.

Q. Now, just to make sure we understand incremental transmission, because that is a term that Mr. Schnitzer uses as well, but when you say -- on your line for Alternate Attachment 1 when you say incremental transmission and show numbers there, you intend by that line and those numbers to represent the line loss criticism that Mr. Kollen has and both of Mr. Schnitzer's adjustments, that's what you are trying to evaluate in that line, correct?

A. I don't understand which both of Mr. Schnitzer's adjustments you mean. You mean --

Q. Back to page 18 of his testimony, marginal transmission losses and net congestion expenses also included in the MRO estimates. I think those are two things.

A. Yes. We have included both of those items and Mr. Kollen's item in the $1.87 per megawatt hour.

Q. All right. Thank you. Now, in your

testimony, page 18, you show a table which is market rates from testimony of Dr. Jones and Mr. Graves, correct?

A. Yes, with the note that's net of transmission costs.

Q. Yes. But those are the same numbers that appeared in your Attachment 1, correct? Attachment 1 Consultant Market Rates at the top -- top of the attachment?

A. Yes, with the additions or corrections from the items from Exhibit 1B.

Q. Meaning that the table on page 18 of your testimony, 2010 for Dr. Jones should be corrected to 87 -- 87.88, correct?

A. Yes. That would be the modification we have there.

Q. Okay. Now, I don't want this to be confusing, so I am not going to make any reference to the Kollen or Schnitzer adjustment.

I just want to know your original analysis, and we don't have to deal with the Exhibit 1A for purposes of my questions.

Did you -- when you were backing out the transmission from the Jones' and Graves' figure, did you back out $7.50 megawatt hours shown on page 14 of

Jones' testimony?

A. I need to refer just a minute.

My understanding is we removed $7.50 from Mr. Jones' values, and we removed $7.64 from Mr. Graves' values and to which a risk premium was added as well. The values that they used in their --

in their work.

Q. Could you explain that last comment. Yes you will recall both Mr. Jones and Mr. Graves had a risk premium value in their market rates, and when you remove the transmission dollar amount, you need to remove the risk premium associated with that transmission as well.

And, for example, as I understand it, Mr. Jones had a risk premium -- excuse me, a risk premium in 2009 as 17 percent, and as a result, we removed $7.50 and in addition 17 percent more than that, so the total transmission component removed including the risk premium was $87.08 and other values for other years and other values for Mr. Graves.

Q. Okay. That moved pretty fast but I think I caught some of the more important points. You removed -- let's just talk about Dr. Graves' numbers, not Mr. -- Dr. Jones for the moment, not Mr. Graves.

You mentioned a 17 percent, did you use
the word "premium"?

A. Risk premium I believe they called it.

Q. You multiplied the $7.50 by 1.17,
correct?

A. Yes.

Q. Do you know what the numbers were for
2010, 2011?
A. Yes. For 2010 the risk premium was
29 percent. So when you multiply 129 percent times
7.50, you get $9.68.
Similarly for 2011, the risk premium was
40 percent. So the multiplication would be
140 percent of $7.50 to get $10.50. And those were
the values that were removed from Mr. Jones' numbers.
Q. Could you give me the figures that were
removed from Mr. Graves' calculations?
A. Yes. They are the -- they are the same
between the Cinergy calculation and the PJM West
calculation. You start at $7.64, and in each year
for each of those two cases the risk premium was
15.96 percent, so as you multiply the 15.96 percent
times the 7.64, you get a dollar amount to remove of
$88.06. And that's for each of the three years.
MR. SMALL: Thank you, Mr. Blank, that's

all of my questions.

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

MR. DUNN: No questions, your Honor.

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

MR. SITES: No questions, your Honor.

EXAMINER PIRIK: Mr. Bell.

MR. BELL: I've consented to allow Constellation and one other wanted to go in advance of my cross.

EXAMINER PIRIK: Thank you.

Ms. Fonner.

MR. BELL: Tagalong here wants to follow Constellation.

MR. BOEHM: No, tagalong is going to go first.

Do you want to go or not?

MS. FONNER: Sure.

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CROSS-EXAMINATION

By Ms. Fonner:

Q. Good afternoon, Mr. Blank.

A. Good afternoon.

Q. At page 4 of your testimony, line 11, you speak about Section 4928.02 of the Ohio Revised Code and certain policies in that code.

Do you see that?

A. Yes, I do.

Q. And would you agree that that section of the Revised Code speaks about other policies for

Ohio?

A. There's a long list, not all of which are consistent.

Q. And some of those include ensuring diversity of electricity supply and suppliers?

A. Yes.

Q. Recognizing the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment?

A. Yes.

Q. Ensuring effective competition in the provision of a retail electric service by avoiding anticompetitive subsidies?

A. Yes. Flowing from a noncompetitive retail electric service to a competitive retail electric service.

Q. And would you agree that there are benefits of retail customer choice for the electricity industry in Ohio?

A. I need to answer that question in theory and in practice.

Q. Okay. Well, would you agree that there was a benefit of customer choice in the fact that it lets customer shop for their electric generation supplier?

A. I have to -- I have an "in theory and in practice" response to that.

In theory I would agree that with more suppliers you get a better price for the consumer. However, our history, our practice has been over the last several years --

Q. I am not asking about that --

MR. KORKOSZ: May the witness be permitted to finish his answer?

EXAMINER PIRIK: Go ahead, Mr. Blank. Could you pull the microphone closer.

A. Our practice or the practice we have had, the history we have had over the last several years is that shopping has resulted in customers having to pay an awful lot more money overall than the amount of money they ever possibly would have saved by shopping.

Q. Would you agree that retail competition

gives customers the opportunity to choose a CRES
based on what is important to them, to that customer?

A. Yes.

MS. FONNER: If I may approach, your
Honor?

EXAMINER PIRIK: Yes.

A. Ms. Fonner, here is an extra one.

Q. I'm sorry, I gave you two. Thank you.

EXAMINER PIRIK: Can I have another one also?

MS. FONNER: And I would like this marked for identification. I confess that I do not know where Mr. Petricoff may have left off in the numbering.

EXAMINER PIRIK: Is this being put on the Competitive Suppliers exhibits?

MS. FONNER: Yes, your Honor.

EXAMINER PIRIK: We are at Exhibit No. 6.

MR. KORKOSZ: 6, your Honor?

EXAMINER PIRIK: 6.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. And, Mr. Blank, do you recognize what I have given you as a screen print of what is taken from the FirstEnergy website?

A. Ms. Fonner, one of the benefits of age is you no longer see small print.

Q. That would be the benefit of the second page.

A. I repeat my concern. You don't know that I ask my staff to make sure I get everything in size 12 font because I can't see this very well. If I squint well enough, I do see that there are references to FirstEnergy at the bottom of the -- at the bottom of the second page. And I will accept, subject to check, that these are from our website.

Q. And from the second page at the bottom right-hand corner you see the date of 10-16-2008, sir?

A. I see that.

Q. And the language on this page does not distinguish between a theoretical or practical benefit from choice, does it, sir?

A. The language on this page does not, that's correct.

Q. Thank you.

Does FirstEnergy believe that the terms and conditions of the ESP will ensure effective retail competition?

A. Well, I believe that's one of the conflicting points I was trying to point out of these

various policy matters in that if I turn to Section
4928.143, I believe it's (B)(2)(d), there's another
specific item relating to the potential in an
electric service or electric security -- electric --
an ESP where terms, conditions, or charges related to
the limitations on customer shopping for retail

electric generation service with a list of items.

MS. FONNER: Your Honor, I'm going to have to ask that --

MR. KORKOSZ: May the witness --

MS. FONNER: -- Mr. Blank actually responds to my question, which was not whether or not this may be consistent with other policy objectives of the Revised Code but rather what FirstEnergy believes its ESP plan will do with respect to retail competition.

It has nothing to do with policy objectives that may be included in other parts of the Revised Code.

EXAMINER PIRIK: I believe he is trying to answer the question.

You may continue, Mr. Blank. Do you need to have your memory refreshed? Just the beginning of your answer?

THE WITNESS: If you could read the

answer, that would be good.

(Record read.)

THE WITNESS: And then it goes on to say would be the affect of stabilizing or providing certainty regarding retail electric service.

We are trying to make sure that we can --

we can perform relative to that function as well as going back to 4928.02 in item A to ensure availability to consumers of adequate, reliable, safe, nondiscriminatory. And reasonably priced retail electric service.

We are looking at those items as -- as very important items in our ESP. That doesn't say that we don't have opportunities to shop. We certainly do in the ESP but I would say that those -- those items have to be taken all together and you can't have one item without considering the others.

Q. So you believe that customers will have a meaningful opportunity to shop under the ESP; is that your position?

A. I certainly believe there are circumstances under which customers have a very strong opportunity to shop, yes.

Q. But not all customers.

A. I believe some customers are benefited more than other customers in terms of their rate relative to a market rate because of the gradualism items we have in the tariff, so not all customers is a result of that.

Q. And are there any specific rates, riders, or terms and conditions of the ESP that you may --

that you believe may be an impediment to customers exercising retail choice?

A. I don't believe so.

Q. Now, on page 4, line 20 of your testimony, you acknowledge that in order to adopt ESP over MRO, the ESP must be more favorable in the aggregate; is that correct?

A. Yes, although the rest of the line is important as well about as compared to the expected results that would otherwise apply under a market rate.

Q. Correct. And I think we've established, but I want to be clear, that in providing that comparison from a quantitative basis you've relied exclusively on the testimony of Dr. Jones and Mr. Graves; is that correct?

A. I will not agree with the word "exclusively" because I have evaluated what they've -- what they've done and I keep somewhat tabs on the electricity markets and I am aware of other arrangements which would tend to confirm the numbers which they have.

Q. You have not conducted your own independent analysis, have you?

A. I've conducted an analysis to the extent

I believe there is confirming evidence for what they are raising.

Q. But the quantitative projections that you make are a simple average between the numbers provided by Dr. Jones and Mr. Graves, correct?

A. I'm using their numbers because what I've looked at confirms what they have and I'm using an average of their two approaches.

Q. And just to be clear, on the Attachment A, the Alternative Attachment one that you had previously distributed, with respect to the incremental transmission line that's added.

A. Yes.

Q. Can you explain for us what these values represent in terms of the methodology? By that I mean did you simply take numbers from Mr. Schnitzer and Mr. Kollen's testimony and add them or how did you arrive at the numbers that now appear on page 1?

A. Well, what I did is if I can refer you to

page 20 of Mr. Schnitzer's testimony, in the question
and answer question on line 2 and on line 4, he
identifies in that paragraph these estimated
approximately $80 million of annual total net losses
in congestion expense.

Based on Mr. Warvell's Schedule K and, in fact, we have gone back to the Schedule K and we've taken the numbers from Schedule K, which are $89 million for net losses, negative 5 million for congestion expenses, to determine a rate for 2009 of $1.47, to that would -- I believe we add 34 cents that Mr. Kollen comes up with, although I am sure there is some adjustment to that to get to the $1.87 which we have in the incremental transmission line.

That's per megawatt hour. Similar numbers were used for 2010 and '11.

Q. Okay, so the same methodology was used throughout.

A. That was the attempt.

Q. Turning now to some of the qualitative factors that you mentioned in the ESP, Mr. Small spoke with you -- I'm sorry, it's like nails on a chalkboard.

Mr. Small spoke with you about to a certain extent, I just want to touch on them a bit more on page 9, and you indicated to Mr. Small that it was the expectation that the companies would be spending that amount.

Is there a distinction in your mind, Mr. Blank, between an expectation and a commitment by the companies to spend that amount?

A. Well, yes, I think there is. The commitment is an up-to commitment. The expectation is what we've done in the past with respect to this language, which is to fulfill -- to fulfill the commitment to the maximum.

Q. I'm sorry, I didn't quite understand the last part of what you said, "to fulfill the commitment to the maximum."

A. Up to -- to the number identified in the up-to calculation, so in this case it would be spend at a level of $5 million a year for each of these items.

Q. But there is a possibility that, in fact, you could be spending less than $5 million per year, for example, for the energy efficiency and demand response, just as an example?

A. By up to there is always a possibility but when I -- when I talked to Mr. Alexander about his up-to language, he said, no, we are going to spend the money which we've identified there. We are going to spend at the maximum level.

Q. And ultimately it will be management's decision in terms of how much of that money is spent, correct?

A. That's correct. But I was reporting to you what I have learned when I asked what "up to" meant.

Q. And it will be management's -- management's decision in terms of how to spend that money, however much it is?

A. I believe in items Nos. 2 and 3 on page 9, yes, that is up to management's discretion, but in item 1 we have agreed to participate in the collaborative process relating to that amount.

Q. Thank you for that clarity. Which there is no such collaborative process with respect to items 2 and 3.

A. That's correct.

Q. And program costs may be different from year to year; would you agree with that?

A. I don't know what you mean by "program costs."

Q. Well, for energy efficiency and demand-side management activities, it would take some planning to get those particular programs off the ground?

A. Yes.

Q. And at this point there is no identification of programs, correct?

A. Let me say it this way, the longer I'm sitting here, the longer it's going to take to get the programs done.

Q. Is that a no, you don't have any programs established?

A. We are working on the programs. There is nothing -- there is no document called "here is the program."

Q. And there are no technical requirements at this point?

A. I think there are technical requirements.

Q. You had indicated in your deposition that nothing has been done for the energy efficiency and demand response beyond the conceptual level; isn't that true?

A. By technical requirements, I was meaning the references in the statute about the percentages which need to be achieved.

Q. But in terms of how you get that, the actual technology behind that, that has not been achieved?

A. We are still studying what technology arrangements are appropriate to use to minimize the cost to customers to achieve the requirements.

Q. Now, turning to page 10, you list on one of the bullets beginning at line 15 as customers having a green option, for example.

Do you see that?

A. Yes.

Q. And examples are available in the marketplace currently from competitive suppliers as well?

A. Yes. But this -- this program which we have which is existing today is an easy way for customers to get these at a very low cost and a competitively low cost, actually.

Q. So it's not a new benefit of the ESP plan?

A. It's a benefit that ends at the end of this year, and we would be restarted under the ESP plan.

Q. And with respect to capital investment, the billion dollars that you are talking about on page 11, line 10, just for clarification, is the inclusion of that here to suggest that without the

ESP, FirstEnergy would not make that capital investment?

A. The intention here is to make a commitment over the next five years to the level of expenditure which commitment does not otherwise exist. That doesn't say what we were going to spend because we don't -- we don't necessarily know what we are going to spend.

Mr. Schneider said he has budgets but the commitment is to, in fact, to make sure there is this level of capital over this period of time regardless of what happens.

Q. And with respect to the Smart Grid study at page 12, again, without the ESP are you suggesting that FirstEnergy would not conduct such a study?

A. Did you mean page 12?

Q. No, page 11, line 12.

A. Thank you.

Well, Mr. Schneider would have to know the details about that one.

Q. Turning now to page 26, lines 9 through 12, I want to find out what that language means.

Are you suggesting that if the Commission, for example, rejected the companies' rider MDS, that FE would withdraw its ESP plan?

A. I'm suggesting that that is a very high likelihood, yes.

Q. Would that be the case with rider SBC?

A. I haven't asked that question of anyone who might be responsible for making that decision so I don't know the answer.

Q. With respect to the rider collecting --
I'm sorry, let me rephrase.
With respect to the generation-related uncollectibles rider would that hold true?
A. Well, I think you are asking me to make selective changes without knowing what the totality of what the suggestion would be.
If the Commission were to say we will accept ESP but only if you do X, Y, and Z, obviously the management has to know the totality of X, Y, and Z before it can make a decision.
I think that anything which is service over all economics of the plan is going to be very, very problematic for the company to accept.
Q. And that would be true for the proposal for the generation deferrals as well.
A. That's part of the whole package that you would have to consider.
MS. FONNER: Okay. Thank you, I have

nothing further.

EXAMINER PIRIK: Mr. Boehm.

MR. BOEHM: Yes, thank you.

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CROSS-EXAMINATION

By Mr. Boehm:

Q. Good afternoon, Mr. Blank.

A. Good afternoon.

Q. I have a relatively short number of questions but let me start off this way with this overall question, Mr. Blank, would you regard the companies' ESP plan as a least cost plan?

A. Least cost with respect to what?

Q. The least cost furnishing of power given the fact that the power would be purchased at market prices and, of course, that is what it is. Would you regard the plan and other aspects of being the least cost?

A. I haven't thought about the plan relative to least costs. I thought about the plan relative to more favorable in the aggregate compared to the expected results of a market rate option which is the standard.

Q. Okay. But is not necessarily least cost?

A. I don't know that.

Q. Okay. Let's put it this way, as far as you know, when it was being designed, it wasn't being designed with that in mind?

A. The idea on the plan was to follow the statute which -- and the standard in the statute which I identified to you.

Q. So is your answer -- the answer, Mr. Blank, is no, that wasn't one of your goals to be least cost?

A. I can't say that it was or that it wasn't.

Q. Okay. Let's move on.

I want to take up some questions sort of preliminarily, Mr. Blank, that I think were punted to you by Mr. -- I am sure you expected these -- were punted to you by Mr. Hussing and they were questions that came from the Bench and they had to do with the delta revenue on the CEI contracts.

Were you in the room when that came up?

A. You are talking about the questions I believe this morning?

Q. Were they this morning? Yeah, they were this morning, yeah.

MR. KORKOSZ: It seems so long ago.

Q. This is all running together.

A. I think so, but for clarity you better restate the question.

Q. This morning, okay.

And maybe we can get into it and the

questions that I understood that were being addressed to Mr. Hussing and to which he punted to you had to do with whether or not there were delta revenue recoveries associated with the CEI contracts I guess back when they were made, how the RCP extensions of those affected that and the companies' desire to have delta revenues with the CEI contracts now.

Do you remember those?

A. I remember a much more precise set of questions than that, Mr. Boehm.

Q. Okay. Well, do you remember the general subject matter was punted over to you?

A. Yes, I do.

Q. Let me start in with my own questions then.

Isn't it true, Mr. Blank, there are quite a number of special contracts that were entered into by large industry with respect to, well, I guess Toledo Edison, Ohio Edison, and CEI over the years?

A. Yes, but more with respect to Toledo Edison, and then with respect to CEI, and much fewer for Ohio Edison.

Q. Right. And these contracts had various purposes, some of the purposes work as economic development contracts to either -- to either lure in or retain businesses; isn't that true? That was one of the purposes of some of the contracts?

A. Regarding the "lure in," I can only think of one.

Q. Okay.

A. And that's what is now the Lewis Research Center or Glen Research Center in Cleveland which was "lured in" in 1939 or 1940.

Q. Okay.

A. So although I don't really remember that one. But these are the stories I'm understood to believe and the documents I have read which came about because CEI was willing to offer interruptible rates at that time and others were not.

Q. Okay. And so some of the -- then most of the contracts -- let's put it this way, rather than luring people in, they were basically load-retention contracts?

A. They have all sorts of purposes.

Retention is one of them. Recognizing special electrical consumption requirements of individual customers is another one.

Q. Yeah. And in that respect there were interruptible -- interruptible contracts and provisions of various shapes and sizes; isn't that right?

A. More or less.

Q. Yeah, okay. And some of those contracts were entered into prior to 1996, were they not?

A. Yes, they were.

Q. Okay. And some of the contracts were entered into after 1996.

A. There might be a very small after 1996.

Q. Okay. And the significance of 1996 is that that's the time that the last order came out in a generation rate case affecting CEI; isn't that true?

A. The last overall rate case for CEI was in April of -- the order was in April of 1996, I believe.

Q. '6.

A. But it wasn't limited to a generation rate case.

Q. Okay, okay. But it did -- that was the last time your generation rates were set by a rate case; isn't that right, as opposed to RSP, ETP, et cetera?

A. Well, it seems to me that the ETP case set the generation rates as a residual in, I suppose, the year 2000.

Q. Okay. Agreed.
In any event, all of these contracts are on file with the Commission, are they not?
A. That's my understanding, yes.
Q. And all of them were approved by the Commission.
A. All of the ones that had to be approved by the Commission were approved by the Commission.
Q. Were approved by the Commission?
A. There are some so-called section 34 contracts with government agencies that did not have to be approved and we did not seek approval.
Q. Okay. And with respect to the contracts that were entered into prior to 1996, most if not all of those contracts reflect in the Commission order whether or not the Commission was allowing CEI to recover delta revenue on those contracts; isn't that true?
A. To answer that question very precisely, I

would have to go back and reread all those orders, so
I'm going to have to answer on the witness stand
today from my memory, and my memory is the Commission
in some cases approved the totality of the recovery
of the so-called delta revenue, and in other cases it
approved part of the recovery of the delta revenue.

Q. And you don't recall any of the cases not approving any delta revenue?

A. Not for contracts prior to the 19 -- those contracts which were entered into in 1996.

Q. Okay.

A. Or changes to contracts entered into in 1996 or later.

Q. So and we can all look this up and brief it as we see fit, but at least in some of the contracts in your testimony only 50 percent of the delta revenue -- the delta revenue was allowed to be recovered by the Commission; isn't that true?

A. You know, Mr. Boehm, I did review the two -- the 1996 arrangements and that's kind of a strange situation, and so your question is really not particularly capable of a yes or no answer.

In that situation the -- there was a stipulation which settled the whole process and, of course, in that year CEI and for that matter Toledo

Edison asked for a lower amount of revenue
requirements than it could have shown -- pardon me, a
lower amount of revenue than the revenue requirements
did show.

So it's difficult to really state what's
in and what's out of the rates as a result of that.

The stipulation was, in fact, approved by the Commission but not by all parties, so the Commission went through an exercise to determine whether the stipulation was appropriate.

And it did so by evaluating all the various items up to evaluating in a rate case, and I do believe that delta revenue idea was included in that, and I don't recall, unfortunately, what that delta revenue piece was.

I apologize for the long answer, but I am not sure that your question is really susceptible to an answer.

Q. Isn't it true that the Commission decisions in a number of those contracts says specifically that the company will get 50 percent of the delta revenue but that's all?

A. I would have to look at them again. I do not remember.

Q. Okay. Let's go on to the contracts after

1996.

Isn't it true that with respect to the contracts after 1996, the company got no delta revenue because it didn't have any rate case in which it could spread that delta revenue or recover it?

A. I would agree that since rates haven't been determined since 1996 with the exception of the reductions in -- in the ETP cases, the voluntary reductions associated with the mergers and the subsequent cost base increases for fuel and transmission, that if there were a delta revenue associated with the contract, there's been no opportunity to seek recovery of that since that point.

Q. And so presumably the company asked for -- asked for approval of that contract knowing that it wouldn't get any delta revenue.

A. I disagree.

Q. Tell me why the company might expect that it would get delta revenue from those contracts.

A. Well, at the time that the contracts were entered in the last round of contracts of any substantive -- substance magnitude was in 1996, and in 1996, we were very much into the -- into the revenue requirements traditional ratemaking approach that preceded Senate Bill 3 in ratemaking.

And the whole concept there was we can wait a few years until we get to the next -- the next rate case and we'll seek the delta revenue at that point in time.

We believe that entering into these

contracts is to the benefit of the totality of the service territory and, yes, we can take a short-term hit on it for a brief period of time, given that there are potential profits out of the generating business, but all that changed.

Q. In any event -- in any event, Mr. Blank, in -- about what, 2003, RSP cases came along, didn't they?

A. I think they were filed at the end of '3 or beginning of '4, yes.

Q. And as part of the stipulation in the RSP cases, all of those contracts were extended past their original date, were they not?

A. Yes, they were.

Q. Okay. And that was part of a complex, multifaceted agreement among the parties to settle the case; isn't that right?

A. Yes, the contracts were extended in general to the end of the RTC collection period.

Q. Right, right. And did -- did FirstEnergy
seek or did it obtain delta revenue recovery from
those contracts at that point in time?

A. The settlement arrangements that were --
the company proffered and as modified were agreed to
by the Commission contained economic arrangements

which was sufficient to compensate the company for the totality of the electric service, including the continued application of the -- these contracts of which you speak.

Q. There was nothing in any of those agreements that provided that CEI got delta revenue with respect to either the C -- or CEI contracts or any of the other contracts?

A. My recollection and, of course, we can all check the docket, is that the stipulations and the opinions adopting the stipulations are completely silent about the recovery or nonrecovery of delta revenue.

Q. Oh, I agree with you there.

Now, subsequently, those contracts were extended when -- when the companies filed the RCP case, right?

A. The contracts were extended but with the same type of answers that we have already had relative to the RSP.

Q. And the CEI contracts were extended to 2010?

A. CEI contracts were extended until the end of 2010, which was, again, to the end of the RTC charges.

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Q. So they were all extended to 2010 and none of the agreements that had anything to do with extending them mentioned delta revenue; is that correct?

A. That's correct.

Q. Okay.

A. Either the recovery nor the nonrecovery.

Q. And why is it now that FirstEnergy believes that it should get delta revenue on those CEI contracts?

A. Well, it is pretty straightforward, Mr. Boehm. The law changed and in particular the law allows precisely for the recovery of those contracts in our opinion. And I will refer you to Section 4905.31, paragraph E.

Q. And what does that say, Mr. Blank?

A. Where it says in the newly added language to that -- to that section, in the case of a schedule or arrangement concerning a public utility electric light company, such other financial device may include a device to recover costs incurred in conjunction with an economic development and job retention program of the utility within its within its certified territory including recovery of revenue foregone as a result of any such program."

Q. And you think that applies to contracts that were entered into prior to -- or around 1996.

A. It says in conjunction with any economic development and job retention program of the utility within a certified territory, so I think the answer is yes.

Q. How far do you think then FirstEnergy could go back and get delta revenue on the contracts?

A. I don't think we have to face that issue because I don't think we have a specified number of contracts that we know about at this point which are all extended, as you said, under the rate certainty plan.

Q. All right. But you believe it goes back at least to 1996?

A. As I said, I don't think we have to reach that question, so I don't think I need to opine on that. I think it's irrelevant.

Q. And you don't think that in any of the

extensions of those contracts the Commission's
original order in approving those contracts
concerning the receipt or nonreceipt of delta
revenues is relevant?

A. I am reading the law as it says right now
that says we can include a device to recover costs in

conjunction with such -- these such programs, and that I think that supercedes anything that happened.

Q. Okay, we will agree to argue that.

With respect to your testimony then, Mr. Blank, and particularly with respect to the MDS rider, the MDS rider is, as I understand, the $10 rider on shoppers in the ESP plan that would be assessed whether or not there were -- well, even if they went shopping and that rider purpose is to protect the company against the risk that exactly that, the people will go shopping; isn't that right?

A. We state in the page on page 14, paragraph H, "this change is designed to compensate costs and risks associated with committing to obtain adequate generation resources to supply the entire retail load of customers in their service territories. Recognition of the risks and costs of customers switching to retail generation service provided by alternative generation suppliers at any time and in any amounts consistent with the terms of any existing ESP or applicable Commission rules."

I believe that is the purpose.

Q. And if the customer or group of customers agreed in advance they wouldn't switch, that they would stay with the company for three years, what would the risk be then that would be protected by that $10?

A. We are offering the plan to the totality of the customer base and it's been offered since end of July and we're -- we're dealing with the costs and risk since that point.

Q. And if a group of customers agreed that they would relieve you of those risks, you would want to get paid for them anyway?

A. No. Mr. Boehm, just because a customer says they are relieving us of a risk doesn't mean that location is actually relieving us of any risk.

For example, I can think of customers that move businesses that are bought by other businesses who -- which are going to claim I had nothing to do with the people -- with whatever agreements the people in it before me made, wanted, we are going to have to supply those customers.

Q. And you have this staff of fine attorneys here and you know think could draft around that?

A. I think the equally fine attorneys on the other side are going to find ways to get around that language.

Q. So you don't think that there could be drafted a -- a solid enforceable agreement by customers that says when we are leaving, we are leaving. We won't be back for three years. And if we do come back in three years, we'll pay whatever the incremental costs are of your serving us.

You don't think that -- that your legal department could come up with an enforcement agreement like that?

A. I believe there would be great difficulty in that being enforced in the ultimate extreme.

Q. The ultimate extreme would be?

A. I think that clever attorneys can figure out ways to weasel out of these types of contracts.

Q. Mr. Blank, is that kind of true of all your contracts? I mean, I am sure your company is built on a mountain of contracts and who decides which ones the clever attorneys can weasel out and which ones they can't?

A. I'll agree that the company is built on a mountain of contracts, but I think I'm going to stop there.

Q. Okay. The ESP as constructed assumes that all of the risks that we were -- a lot of the risks we are talking about, including this POLR risk of people who go shopping, all of those risks are embedded in the wholesale price of power that will be charged by the supplier; isn't that right?

A. By the "supplier" you mean?

Q. Presumably FES, although there isn't a contract, and presumably -- well, let me ask you, has anybody chosen FES yet to be your supplier?

A. My understanding from the management is that FES has agreed to serve the electric service required under the ESP, under the terms of this ESP.

There is nothing, a written document memorializing all the terms and conditions associated with that yet, but there is an agreement to the terms of the ESP.

Q. And presumably there was some clever attorneys that could weasel out of it anyway, right? Huh?

In any event, the way this is set up, FES is -- will assume load-shaping risks, load-shaping costs?

A. That's my understanding.

Q. Okay. They will assume the customer
shopping risk, right?

A. Subject to the terms of the ESP in its
entirety.

Q. Okay. Essentially you are buying retail
generation service from your supplier, right?

A. And the commitment they are going to continue to do that for the three-year period until if the Commission decides otherwise at the end of -- for 2011.

Q. Is that the only way it could be done? Have you explored alternative ways?

A. I didn't think there was a necessity to. We were trying to design, as I said, a program which would be more favorable in the aggregate than MRO.

Q. And not necessarily the least cost?

A. The least cost was -- was or was not part of the consideration. I don't know that.

Q. Okay. So you didn't consider how it would work if, for instance, FirstEnergy or whoever the supplier was just supplied 100 percent load factor wholesale blocks of power and then maybe you could get some short-term power from somebody else and essentially have the load shaping and the POLR risks, et cetera, in the hands of the regulated utilities.

A. Well, in order to do that, as you speak, that establishes a brand new department of -- of people who are expert in how to deal with all the things of which you spoke.

That's not something which you want me to do and you may not want yourself to do. You actually want people who know how to run that business to do it.

And the management didn't think it was worth while to set up that huge cost structure for what could be a brief period of time.

Q. And all the people that used to do this for FirstEnergy, are they with FES now? Is that it?

A. FES or elsewhere, they may not work for our company any longer.

Q. Could they happen to be with the service company, some of them?

A. I believe there are one or two or three or four individuals who had some role in procurement arrangements who used to work at FES who now work at the service company, but you are asking them to do something different than their present job and they would have to regain all the expertise presumably they lost with time.

Q. In any event, one consequence of setting
up an arrangement just as I described and as has been
described in the testimony of Mr. Baron and I think
Mr. Kollen, one consequence is the magnitude of the
premium for these various risks and the costs for
load shaping, et cetera, those would all be

jurisdictional to the Ohio Public Utilities Commission, would they not?
A. I am not sure quite what you meant by that.
Q. Well, let's look at a contrast. If, in fact, FirstEnergy entered into a contract with FirstEnergy Services, as you describe in your plan, the risks, et cetera, and the costs that you call retail costs, I suppose, those are embedded in a wholesale rate, are they not?
THE WITNESS: Could I have that reread, please.
(Record read.)
A. What type of a contract are you talking about EDUs entering into with FES?
Q. Exactly the one you are proposing in this case.
A. The ESP.
Q. Yes.

A. The contract will embody the risk which we've identified and provided compensation for in the -- in the ESP.

Q. The rate that you pay to FirstEnergy services will be -- for example, will include the $10 risk premium that you want against shopping; am I right?

A. Yes, sir.

Q. Okay. Load shaping costs, et cetera, right?

A. The rates they will pay will be the rates that are identified in the ES -- in the ESP.

Q. Right. Those will be -- in the wholesale rates, right?

A. Those risks would be in the wholesale rate -- would be in the wholesale rates, yes.

Q. Well, let me give you an example, Mr. Blank, what I am talking about.

If, in fact, this contract was approved and a subsequent Commission -- Public Utilities Commission next year decided that those shopping risks had gone away, could it -- could it take the $10 a megawatt risk hour premium embedded in that wholesale rate, could it lower it?

A. I believe if a subsequent Commission

would change the terms of an approved ESP, that gives the company to withdraw from ESP remaining and go immediately to market.

Q. Well, in fact, it would be a FERC-approved rate, wouldn't it, and the Commission wouldn't have any jurisdiction to do that?

A. Maybe I misunderstood your first question. Could I go back to the first question?

Q. I am not sure which one was the first. The first one was a long time ago.

A. You're right. The penultimate question.

Q. Penultimate.

A. The second question.

MR. BOEHM: Your Honor, can I ask the last two questions be read? I think they are relatively short.

EXAMINER PIRIK: Can you find those, Karen.

(Record read.)

A. I misanswered the question. You are correct, I was answering the question as if the Commission would change the penny per kilowatt hour MDS charge --

Q. Okay.

A. -- on a retail basis, and you were

referring to the FERC contract.

This Commission doesn't have jurisdiction to change the FERC contract.

Q. Right. And so -- and so if, in fact, the contract was approved as the company proposed, then presumably the wholesale power contract would also be taken to FERC.

And let's assume that's approved, all of this is out of the hands of the Public Utilities Commission now, right, it's all part of the FERC-approved contract?

A. The arrangements between the utilities and FES are out of the hands of the Public Utilities Commission, yes.

Q. And in the alternative that I proposed where the company would buy a wholesale block of power and the company would do the load shaping and the company would assess whatever risk premiums it thought it could justify, et cetera, then it would be in the hands of the PUCO, wouldn't it?

A. Any wholesale contract would not be in the hands of the PUCO.

Q. No. The wholesale contract --

A. The whole process you are speaking about adds to the capital requirements of the company

enormously and that's another reason why it would be
very, very difficult to do what you are suggesting.

Q. Well, that wasn't part of the question, Mr. Blank. The question had to do with the jurisdiction of the various bodies, okay?

And the fact is when the companies

constructed this thing, a lot of the costs associated with that power are not in the jurisdiction of the PUCO any more, they are in the jurisdiction of FERC, and in the proposal that Mr. Baron and Mr. Kollen put down that I've been outlining, those costs would still be under the jurisdiction of the PUCO; isn't that true?

A. If that were -- if that were the plan, I don't know where the jurisdiction would lie. That isn't the plan.

Q. Okay.

A. And that isn't the plan the companies would accept.

Q. You wouldn't accept that?

A. That's correct.

Q. And you didn't consider that?

A. I believe it was considered, but it's not going to be accepted.

MR. BOEHM: No further questions, your

Honor. Thank you.

Thank you, Mr. Blank.

EXAMINER PIRIK: Mr. Bell.

MR. BELL: Thank you.

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CROSS-EXAMINATION

By Mr. Bell:

Q. I'll start off with my last question first, Mr. Blank.

On page 1, line 11, you indicate you've been with FirstEnergy and its predecessors for almost 40 years, correct?

A. Yes, sir.

Q. Why aren't you entitled to the title of senior vice president then in line 4 as opposed to just vice president?

A. I think that question is better directed to somebody else.

Q. Mr. Alexander.

A. There would be a number of people. I am sure there is a long list of reasons why that's not appropriate.

Q. Is it not correct, Mr. Blank, that you are the only FirstEnergy witness tendered in this proceeding that takes responsibility for the entirety of the plan as outlined in the Application?

A. I believe that's true.

Q. And is it not correct, Mr. Blank, that you were responsible for identifying the revenue requirement requested of this Commission in the ESP?

A. Did you mean for the distribution case, Mr. Bell?

Q. I'm talking about the ESP. With respect to the ESP and the revenue consequences embodied within that plan you are responsible.

A. I think that's a different question than the one you asked first.

Q. Answer the last question then.

A. Because I'm having trouble with the idea of revenue requirements with respect to ESP.

Q. Well, that's a slip --

A. Okay.

Q. -- going back to cost of service and authorized revenues. With respect to the revenue entitlement that the company seeks via it's ESP, you are the only witness tendered by FirstEnergy in this proceeding to justify on the basis of whatever rationale those revenue entitlements, are you not?

A. I won't agree to the word "entitlements."

Q. Revenue construct?

A. Maybe just revenues, I would agree with the word just "revenues" without the adjectives and modifiers.

Q. That's fine. I am not trying to be tricky with words, Mr. Blank.

Is it correct then that your focus is on
revenues?
A. My focus is on demonstrating the
qualities of the ESP in comparison to an MRO.
Q. Including the revenues that the company
expects to receive under the ESP.
A. As -- that's part of the process.
Q. Is there any other witness in this case
that addresses the revenue entitlements of the
company?
MR. KORKOSZ: Objection.
Q. Or the revenue construct?
A. Lots of the witnesses testify to
different parts of the revenues. I would agree that
I'm the one who attempted to put it all together into
demonstrating whether the ESP is favorable
compared -- in the aggregate compared to the MRO.
Q. And would you agree that with respect to
that construct from a strategic standpoint, the

company has employed the concept of averaging and you have employed the concept of averaging with respect to your perceived revenues under the ESP?

A. Unless if you have something specific you are thinking about, I am not sure I can respond to that question. I think about an average as a result of --

Q. Well, I have got a number of things I can refer to. Let's take your Alternate Attachment 1, page 1 of 4, your Blank Company Exhibit 1A.

Do you not, in fact -- I don't think I need it.

EXAMINER PIRIK: I was going to say why don't we turn it off.

Q. In your construct of revenues do you not, in fact, average the results derived by Drs. Jones and Graves as respect their quantification of risk?

A. I do -- I do that averaging to do the arithmetic and as I said, I've done my own evaluation of whether those are appropriate values or not and I've concluded that they are.

Q. Well, for instance, in your averaging do you not eliminate, for instance, the conflict that exists between Jones and Graves as shown on Alternate Attachment 1, page 1 of 4, wherein Dr. Jones and

Dr. Graves have an estimated generation price differential of 1.74 and that differential jumps -- that's in 2009, jumps to a differential in 2011 of $13. Is that not reflected in your exhibit?

A. If you take the difference between Dr. Jones' values and Mr. Graves' values, I would agree those are the differences that you would come up with, subject to -- subject to the arithmetic check.

Q. And would you not also accept, subject to check, that your averaging, Mr. Blank, in fact, eliminates the differential in the movement of those costs or risks over time, that is to say, Mr. Graves assumes a greater risk in 2009 and that risk decreases in 2010, in 2011 compared to Dr. Jones' estimations for those over that three-year period? They are diametrically opposed, are they not?

A. I don't believe they are diametrically opposed.

Q. But they did go in different directions.

A. They are different sets of numbers, I would agree with that.

Q. And your averaging eliminates all that perceived confusion that might be generated from two experts going in two different directions --

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

Q. -- through your averaging.

Now, with respect to your exhibit Alternate Attachment 1 or Attachment 1, would you agree that with respect to the deferrals represented thereon that your exhibit does not say or indicate how those deferrals will be recovered from whom, in what amounts, and on what basis in any year of the 27-year deferral period shown thereon?

And by 27-year deferral period shown thereon, I'm referencing the difference between 2008, the current year, and the outlier year shown on the far right column of 2035.

A. Mr. Bell, there were lots of questions in there.

Q. Do you want me to break them down?

A. I will do my best.

Q. Thank you.

A. Let's start with the so-called 27 years.

There is one small part of the deferral process which the recovery of which is extended for 25 years.

That going to 2035, that being the CEI distribution value that I spent time with Mr. Small talking about. That's a fairly small number, it's

$1.7 million per year which I believe runs out for a number more -- a number more years that really isn't determinative very much in that arithmetic.

Q. While we are on that --

MR. KORKOSZ: Complete your point.

Q. All right, I can go back to it and give us some more of your direct and I will pick up cross when you're done.

EXAMINER PIRIK: Go ahead, Mr. Blank, and finish your answer.

A. Thank you. Now I have to regain my train of thought.

With regard to the CEI distribution deferral and the rest of the deferrals, although I do not specify on this page or on any of these four or the other four pages in Attachment 1 from whom those deferrals are recovered.

I do believe we have that identified in the rate design detail which was testified to by either Mr. Warvell or by Mr. Wagner or by Mr. Hussing, I don't recall which witness sponsored that particular -- those particular schedules.

Q. Are you suggesting, Mr. Blank, that the recovery of the deferrals in these out years, and I am not just referring to the components that you've

referenced, I'm referring to the deferral recovery of
generation phase-in, the 10-year phase-in which
doesn't go out the full 27 years, let's focus on that
for a moment.

Does your Attachment 1 indicate the
impact and the outlier years beyond the three years

shown what impact that will have upon customers of each of the three companies?

A. Yes.

Q. Does it show what the impact will be upon each of the tariff rate schedules of each of the three companies?

A. When I suggested in my year earlier answer this doesn't identify what goes on in the tariff rates schedules, that's identified I believe the methodology for recovering that in the rest -- other parts of this case.

Q. The methodology. You don't have tariff rate schedules for 2010 and 2011, do you, as part of this case?

A. We do not have tariff rate schedules -- or we do, I think, for 2010 and '11 I believe.

Q. Are you sure about that?

A. I'll have to verify.

Q. Your statement that this is a

take-it-or-leave-it proposition presented to the Public Utilities Commission is premised upon Senate Bill -- your interpretation of Senate Bill 221, is it not?

A. Well, I won't accept the take-it-or-leave-it characterization because I don't know what's going to happen -- in a lot of circumstances --

Q. Is it your testimony then --

MR. KORKOSZ: Have you finished your answer, Mr. Blank?

MR. BELL: I'm sorry, I thought he did.

A. And the ESP was developed in conformance with Senate Bill 221.

Q. Have you finished now?

A. I would be happy to be finished now, Mr. Bell.

Q. It's your testimony, then, I take it, Mr. Blank, that you are not, in fact, saying this is a take-it-or-leave-it proposition as far as the Commission -- that the Commission may indeed alter the plan, but then the company reserves the right to react one way or another to the modification for changes in the proposed plan.

A. I don't want to give a miss --

misunderstanding, Mr. Bell.

First, I am not going to negotiate this plan from the witness stand because I have no authority to do such.

But I do recognize that the Commission could say change the X to a Y and present an alternate plan to the company.

In that case the company is going to have to think about what it's going to do and I don't know the result of any particular items with respect -- with the exception of those which are going to the heart of the economics of the plan.

Q. And I believe you reference that in response to a question by counsel -- counsel for Constellation, did you not, or perhaps it was Mr. Boehm?

A. It was Ms. Fonner.

Q. That the Commission may, indeed, choose to alter or tweak some aspect of the plan but they better not touch with the revenues because the revenues have an economic consequence and if the Commission touches the revenues, then in all probability you'll withdraw the plan.

A. I didn't say the revenues, Mr. Bell. I said the economics of the plan, and, again, I can't negotiate the plan from the witness stand and I am not going to try to do that.

Q. And you hold no position with FirstEnergy, the holding company; is that correct?

A. That's correct.

Q. You report to Mr. Clark, do you not?

A. That is correct.

Q. Would you agree that Mr. Clark was appointed executive vice president, strategic planning and operations, for FirstEnergy, the holding company, as reflected in FirstEnergy's news release captured on the FirstEnergy Corp.'s website in a news release issued February 19?

A. I understand that Mr. Clark's title is executive vice president. I do not know which of the -- which he is executive vice president. If you are reading from a company news release, I will accept it. I don't know what you are reading from though.

MR. BELL: May I?

EXAMINER PIRIK: Yes.

Q. And would you agree, Mr. Blank, that as referenced in that newsletter --

EXAMINER PIRIK: Could you show Mr. Blank the document, Mr. Bell?

MR. BELL: Pardon, I thought I showed it to --

Q. Would you accept that is a FirstEnergy news release as I have identified it and as shown to your counsel?

A. I'll accept this is a FirstEnergy news release but I'm not going to understand who -- which companies we are talking about here.

Q. Well, it's a news release that was also captured in FirstEnergy's consolidated report to the investment community, and by that I'm referencing FirstEnergy, the holding company, not the service company, not the generation company, not CEI, not Toledo Edison, and not Ohio Edison.

EXAMINER PIRIK: Why don't we give him a moment to look at it.

A. I don't believe, Mr. Bell, this document identifies which corporate entity of FirstEnergy Mr. Clark has become executive vice president of.

Q. And you don't know what your boss' title is then?

A. Yes, I do. Yes, I do, he is executive vice president.

Q. Of what?

A. Strategic planning and operation.

Q. For what corporation?

A. That's the part I don't know but I can certainly find out, if that's important to you, and we will report back.

Q. Would you agree this news release, and I quote, indicates Mr. Clark, your boss' area of responsibility includes strategic planning, business development, business performance, rates and regulatory affairs, information technology, supply chain, and security?

A. Yes, sir.

Q. Do you know what is referenced by "supply chain and security"?

A. Yes, sir.

Q. And what is that?

A. In the old days when you and I would have started working we would have called it purchasing.

Q. Procurement?

A. Supply chain. Maybe you would have called it procurement. I would have called it purchasing.

And security is what it says, it's making sure that the company, people, and facilities are secure from whatever threats there might be. Physical threats in that case.

Q. You highlight on page 2 of your testimony beginning on line 12, your function in this case stating "In particular, I address the Companies' proposed Electric Security Plan ("ESP" or "Plan") and explain the advantages to customers under the plan...." do you not?

A. Yes, sir.

Q. You are describing the advantages as perceived by the company, are you not?

A. Yes, but I think that many people would perceive them the same way that the company perceives them.

Q. Such as counsel sitting around this table that's -- has been and will be cross-examining all of --

A. I suspect that a number of counsel around this table are going to see a lot of advantages in this plan.

Q. We'll wait for the briefs.

Now, with respect to your updated exhibit, the Alternate, did the adjustment that you made alter, in fact, both the net present value of the consultant market rates, that is Jones and Graves, as well as the ESP net present value?

A. The ESP was an evaluation was adjusted

for each of the three years of 2009, '10, and '11,
not thereafter. And the valuation for the consultant
market rates was evaluated or was sponsored for 2010
only.

Q. Would you agree that the change reflected
on this exhibit for the ESP was much greater than the

change reflected in the consultant market rate, both?

A. Yes.

Q. And as demonstrated at the bottom of your Alternate Attachment, page 1 of 4, the adjustments that you made reflect a change in the net present value not only in 2010, but in 2009 and 2011, does it not?

A. Yes. Let me respond it changes the present -- the nominal dollars in those years which each of which impacts the net present value number, I think is a more accurate way to say it.

Q. Now, with respect to your earlier discussion with Mr. Boehm, which I enjoyed immensely, is it your position that you don't know who paid for the credits given to the CEI customers from the time the ETP and SCP rates took affect going forward?

A. I failed to understand that question, Mr. Bell, I'm sorry.

Q. Well, you indicated that you were not --

you didn't have a rate case so you couldn't identify
whether specifically they were a line item recovered
in a given rate case, and as a result, I think you
debated with Mr. Boehm as to whether ratepayers were
paying them, i.e,. a delta recovery or whether the
shareholders were absorbing those credit costs.

A. By "credit costs" --

Q. The cost of those credits.

A. You mean the delta revenues from the so-called CEI contracts?

Q. Yes.

A. You can't identify a particular source but I think by the time you get to the RSP and the RCP you can identify, and perhaps even for the so-called ETP case in -- which took affect in 2001, the totality of the economics were sufficient for the company to believe that they were getting an adequate revenue for the totality of the power supply being provided to customers.

Q. Throughout that period did the company have difficulty in securing capital either debt or equity capital?

A. Which period are you talking about?

Q. I'm talking about 1996 going forward to today.

A. I would suggest that the company has not
had problems securing capital and has recently been
successful in securing a new bond issue for I believe
Ohio Edison.

Q. And as indicated by, I believe,
Mr. Alexander, the companies' liquidity position is

very good, is it not, today?

A. The companies' liquidity position is as we stated in the press releases to which you are referring or I believe you are referring.

Q. Yes, I'm referring to your press releases which says, relatively speaking, you have very little debt renewals coming up in the next few years, do you not?

A. I don't know the details of the financial arrangements which were identified in the press release. I do know in general what it said but I don't know the details of it like I did when I was treasurer of Centerior a long time ago.

Q. Do you know what the affect of the increased revenues that you are focusing in supporting as part of this ESP will have upon the earned return of FirstEnergy in 2009?

A. Are you referring to the utility companies?

Q. Yes -- no, I'm referring to FirstEnergy
as the holding company.
A. I can answer that with respect to the
utilities but I do not know the answer with respect
to the holding company.
Q. Are you aware of other news releases

issued by Tony Alexander relative to the expected increase in earnings of the company on a going-forward basis?

A. I know we give what's called earnings guidance from time to time.

Q. In fact --

A. I didn't think we went beyond the end of 2008 for guidance.

Q. In fact, Mr. Blank, wasn't the investment community disappointed that the Board of Directors of FirstEnergy holding company did not increase the dividend after the last meeting of the Board of Directors which increase was expected by the investment community? Or don't you read any of the investor relation press releases of the company?

MR. KORKOSZ: Objection. Calls for speculation. It's argumentative as well.

MR. BELL: I will rephrase the question.

Q. Are you aware of recent press releases

that the company has relative to its earnings
expectations?

A. I haven't seen a press release since I have been down here, Mr. Bell. So I don't know which one you might be referring to. And perhaps it would be better for me to look at what you are referring to so I can agree or disagree with it.

Q. Now, as part of your responsibility in supporting this overall plan, I take it you are also responsible for mitigation efforts that the company is proposing; is that correct?

A. Which mitigation efforts are you speaking about?

Q. Oh, let's take the GEN rate. Let's take the GEN rate.

EXAMINER PIRIK: Mr. Bell --

A. The generation rider.

EXAMINER PIRIK: -- before you start going down a different line, how much longer do you think you have on cross?

MR. BELL: I'll try to shorten it up.

EXAMINER PIRIK: No, I'm wondering how long you have. I am not asking you to shorten it.

MR. BELL: I think I can get done in another 15 minutes.

EXAMINER PIRIK: Another 15 minutes.

Can we go off the record?

(Discussion off the record.)

EXAMINER PIRIK: We will go back on the record and we will adjourn for this evening and reconvene tomorrow morning.

(The hearing adjourned at 5:59 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 Wednesday, October 22, 2008, and carefully compared with my original stenographic notes.

____
Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5002)