

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

\_\_\_\_\_

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

— — —

## PROCEEDINGS

before Ms. Christine Pirik and Mr. Gregory Price,  
Attorney Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-C,  
Columbus, Ohio, called at 9:00 a.m. on Friday,  
October 24, 2008.

\_\_\_\_\_

## VOLUME VII

— — —

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

— — —

## 1 APPEARANCES:

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

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

9 Jones Day  
By Mr. Mark A. Whitt  
10 325 John H. McConnell Boulevard  
Suite 600  
11 Columbus, Ohio 43215

12 Calfee, Halter & Griswold, LLP  
By Ms. Laura McBride,  
13 Mr. James Lang  
and Mr. Trevor Alexander  
14 1400 KeyBank Center  
800 Superior Lane  
15 Cleveland, Ohio 44114

16 On behalf of the Applicants.

17 Janine L. Migden-Ostrander,  
Ohio Consumers' Counsel  
18 By Mr. Jeffrey Small,  
Ms. Jacqueline Roberts,  
19 Mr. Richard Reese,  
and Mr. Greg Poulos  
20 Assistant Consumers' Counsel  
10 West Broad Street, 18th Floor  
21 Columbus, Ohio 43215

22 On behalf of the Residential Consumers of  
the FirstEnergy Companies.  
23  
24  
25

1 APPEARANCES: (Continued)

2 McNees, Wallace & Nurick, LLC  
3 By Ms. Lisa McAlister  
4 and Samuel C. Randazzo  
5 Fifth Third Center, Suite 1700  
6 21 East State Street  
7 Columbus, Ohio 43215-4228

8 On behalf of the Industrial Energy  
9 Users-Ohio.

10 Chester, Willcox & Saxbe, LLP  
11 By Mr. John Bentine,  
12 Mr. Mark S. Yurick,  
13 and Mr. Matthew S. White  
14 65 East State Street, Suite 1000  
15 Columbus, Ohio 43215

16 On behalf of The Kroger Company.

17 Brickfield, Burchette, Ritts & Stone, PC  
18 By Mr. Michael K. Lavanga,  
19 and Mr. Garrett A. Stone  
20 1025 Thomas Jefferson Street N.W.  
21 8th Floor, West Tower  
22 Washington, DC 2007-5201

23 On behalf of the Nucor Steel Marion, Inc.

24 Ohio Partners for Affordable Energy  
25 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.

25

1 APPEARANCES: (Continued)

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

5 On behalf of Constellation NewEnergy,  
6 Inc., Constellation Energy Commodity  
7 Group, Direct Energy Services, and  
8 Integrays Energy Services, Ohio  
9 Association of School Business Officials,  
10 the Ohio School Board Association, and  
11 the Buckeye Association of School  
12 Administrators.

13 Boehm, Kurtz & Lowry  
14 By Mr. Michael Kurtz  
15 and Mr. David Boehm  
16 36 East Seventh Street, Suite 1510  
17 Cincinnati, Ohio 45202

18 On behalf of Ohio Energy Group.

19 McDermott, Will & Emery, LLP  
20 By Ms. Grace C. Wung  
21 600 Thirteenth Street, N.W.  
22 Washington, DC 20005

23 On behalf of The Commercial Group.

24 Bricker & Eckler, LLP  
25 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.

25

1 APPEARANCES: (Continued)

2 Mr. Robert J. Triozzi  
3 Cleveland City Hall  
4 601 Lakeside Avenue, Room 206  
5 Cleveland, Ohio 44114

6 and

7 Schottenstein, Zox & Dunn Co., LPA  
8 By Mr. Gregory H. Dunn,  
9 Mr. Christopher L. Miller,  
10 and Mr. Andre T. Porter  
11 250 West Street  
12 Columbus, Ohio 43215

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

16 Bailey Cavalieri, LLC  
17 By Mr. Dane Stinson  
18 10 West Broad Street, Suite 2100  
19 Columbus, Ohio 43215

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

22 Bell & Royer Co., LPA  
23 By Mr. Langdon D. Bell  
24 33 South Grant Avenue  
25 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.

1 APPEARANCES: (Continued)

2 Citizen Power  
3 By Mr. Theodore S. Robinson  
4 2121 Murray Avenue  
5 Pittsburgh, Pennsylvania 15217

6 On behalf of Citizen Power.

7 Lucas County Assistant Prosecuting Attorney  
8 By Mr. Lance Keiffer  
9 2nd Floor  
10 711 Adams  
11 Toledo, Ohio 43624

12 and

13 City of Toledo  
14 By Ms. Leslie A. Kovacik  
15 420 Madison Avenue, Suite 100  
16 Toledo, Ohio 43064-1219

17 On behalf of Northeast Ohio Aggregation  
18 Coalition.

19 Mr. Craig I. Smith  
20 2824 Coventry Road  
21 Cleveland, Ohio 44120

22 On behalf of Material Science  
23 Corporation.

24

25

- - -

## 1 INDEX

2 - - -

## 3 WITNESS PAGE

4	David M. Blank	
	Cross-Examination by Mr. Wright	13
5	Examination by Examiner Price	22
	Cross-Examination by Mr. Breitschwerdt	25
6	Cross-Examination by Mr. Stinson	49
	Cross-Examination by Mr. Rinebolt	67
7	Examination by Examiner Price	76
	Redirect Examination by Mr. Korkosz	80
8	Recross-Examination by Ms. McAlister	88
	Recross-Examination by Mr. Smith	89
9	Recross-Examination by Mr. Petricoff	91
	Recross-Examination by Mr. Yurick	94

10

	John T. Courtney	
11	Direct Examination by Mr. Dunn	104
	Cross-Examination by Mr. Kutick	108
12	Redirect Examination by Mr. Dunn	128
	Cross-Examination by Mr. Rinebolt	129
13	Cross-Examination by Mr. Smith	130
	Examination by Examiner Price	131

14

	Barbara R. Alexander	
15	Direct Examination by Mr. Rinebolt	134
	Cross-Examination by Mr. Bell	137
16	Cross-Examination by Mr. Whitt	141
	Redirect Examination by Mr. Rinebolt	156

17

18	Teresa L. Ringenbach	
	Direct Examination by Mr. Petricoff	162
19	Cross-Examination by Mr. Kutick	163
	Redirect Examination by Mr. Petricoff	190
20	Cross-Examination by Mr. Stinson	195
	Recross-Examination by Mr. Kutick	196
21	Examination by Examiner Price	202

22	Charles W. King	
	Direct Examination by Mr. Kurtz	206
23	Cross-Examination by Mr. Korkosz	207

24 - - -

25

## 1 INDEX

2 - - -

3 Stuart M. Siegfried  
 Direct Examination by Mr. Wright 234

4

5 Gregory C. Scheck  
 Direct Examination by Mr. Wright 238  
 6 Cross-Examination by Mr. Poulos 240  
 Cross-Examination by Ms. McAlister 254  
 7 Cross-Examination by Mr. Kurtz 266  
 Cross-Examination by Mr. Lang 268

8

9 Duane A. Roberts  
 Direct Examination by Mr. Wright 281  
 10 Cross-Examination by Mr. Reese 285  
 Cross-Examination by Ms. Miller 288  
 11 Examination by Examiner Price 317

12 - - -

## 13 INDEX

14 - - -

15 NOPEC/NOAC EXHIBITS IDFD ADMTD

16 5 - ORC 4928.20 24 --

17 - - -

18 OHIO SCHOOLS COUNCIL EXHIBITS IDFD ADMTD

19 2 - Rate Impacts 44 103

20 - - -

21 COMPETITIVE SUPPLIERS EXHIBITS IDFD ADMTD

22 3 - Direct Testimony of Ms. Ringenbach 161 204  
 3A - Errata Sheet for Ms. Ringenbach 161 204

23

24 - - -

25



## 1 INDEX

2 - - -

## 3 COMPANY EXHIBITS IDFD ADMTD

4	1 - Direct Testimony of Mr. Blank	V-193	101
	1A - Alternate Attachment 1	V-195	101
5	1B - Adjustment to Attachment 1	V-195	101
	9 - Application	--	102
6	10 - Errata Sheet	--	102
	11 - Newspaper Notices	102	102
7	15 - October 27, 2005 Letter	175	204
	16 - Opinion and Order	184	204

8 - - -

## 9 OEG EXHIBITS IDFD ADMTD

10	3 - Direct Testimony of Mr. King	206	233
----	----------------------------------	-----	-----

11 - - -

## 12 OCC EXHIBITS IDFD ADMTD

13	4A - Errata Sheet for Mr. Woolridge	103	104
	11 - Technical Conferences List	242	280

14

15 - - -

## 16 CITY OF CLEVELAND EXHIBITS IDFD ADMTD

17	1 - Direct Testimony of Mr. Courtney	105	133
----	--------------------------------------	-----	-----

18 - - -

## 19 OPAA EXHIBITS IDFD ADMTD

20	1 - Direct Testimony of Ms. Alexander	134	160
----	---------------------------------------	-----	-----

21 - - -

22

23

24

25

1 INDEX

2 - - -

3 STAFF EXHIBITS IDFD ADMTD

4 1 - Direct Testimony of Mr. Siegfried 235 237

2 - Direct Testimony of Mr. Scheck 238 280

5 3 - Direct Testimony of Mr. Roberts 242 321

6 - - -

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Friday Morning Session,  
2 October 24, 2008.

3 - - -

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

6 Good morning. This is our seventh day of  
7 hearing in Case No. 08-935-EL-SSO.

8 We will continue our testimony of  
9 Mr. Blank at this time.

10 Mr. Blank, I remind you you are still  
11 under oath.

12 THE WITNESS: Yes, sir.

13 EXAMINER PRICE: I'm sorry, Mr. Wright  
14 has a preliminary.

15 MR. WRIGHT: I'm sorry, your Honor, two  
16 things.

17 I have discussed with counsel who have  
18 not yet crossed Mr. Blank and made the request to go  
19 out of order. I have a settlement meeting that I  
20 need to get to. I have very brief cross-examination  
21 for Mr. Blank. They have graciously agreed to that.

22 And the other -- so I would be going  
23 first then this morning.

24 The other matter, your Honor is -- can  
25 people hear me? With respect to the withdrawal or

1 modification of testimony relative to your earlier  
2 directive regarding the AIR case, I would like to  
3 state what our understanding is, and if you concur, I  
4 think we are going to be prepared to take some action  
5 in that regard as well.

6           Regarding the pending AIR case 07-551,  
7 staff counsel has always understood that your  
8 directive is that any issue raised in that case will  
9 be decided based on the record that was compiled in  
10 that case and in the Commission's order to be issued  
11 in the AIR case.

12           Stated differently, the present case,  
13 08-935, will not be used to re-litigate issues that  
14 have already been the subject of hearing in the  
15 distribution case.

16           Is that a correct interpretation?

17           EXAMINER PRICE: That's a very fine  
18 summary of my ruling.

19           MR. WRIGHT: All right. With that said  
20 then, your Honor, the staff is prepared to withdraw  
21 the testimonies of witnesses Bossart and Baker. And  
22 we will memorialize that in a letter to the docket  
23 later today.

24           EXAMINER PRICE: Thank you.

25           Any objection to staff's action?

1                   Seeing none, thank you very much.

2                   Let's start with Mr. Blank and

3 Mr. Wright.

4                   MR. WRIGHT: Thank you.

5                                 - - -

6                                 DAVID M. BLANK

7 being previously duly sworn, as prescribed by law,

8 was examined and testified further as follows:

9                                 CROSS-EXAMINATION

10 By Mr. Wright:

11                 Q. Good morning, Mr. Blank, how are you?

12                 A. Good morning. Fine, thank you.

13                 Q. Just a few questions for you.

14                         Yesterday we discussed the short-term ESP

15 proposal, and as it's laid out in the companies'

16 Application, it's been labeled as a severable

17 proposal; is that correct?

18                 A. That's correct.

19                 Q. And that is an indication, I believe,

20 based on the testimony it can be decided on a

21 stand-alone basis; is that what "severable" means in

22 this context?

23                 A. That's correct, in accord with what we

24 have laid out in the Application.

25                 Q. In your Application, the companies

1 identify several reasons for proposing the short-term  
2 ESP, do they not?

3 A. I believe there is a primary one but,  
4 yes.

5 Q. I would like to direct your attention to  
6 page 35 of the Application --

7 A. Yes, sir.

8 Q. -- if that would help you.

9 Under Section 8 there it discusses  
10 actually three different reasons, does it not? No.  
11 1, the fact that the companies don't own any  
12 generation currently and do not have employees  
13 skilled in the purchase of wholesale power being two  
14 of those; is that correct?

15 A. Those are stated there, yes.

16 Q. And then the third one I assume would be  
17 the one that you referred to a moment ago as the  
18 primary objective, that being giving the Commission  
19 adequate time to make a decision given the aggressive  
20 time frame under SB-221; is that correct?

21 A. That is correct.

22 Q. Okay. Now, based on the reasons that are  
23 stated on page 35 in your Application and perhaps in  
24 your testimony as well, you believe that the  
25 short-term ESP represents a sensible option to

1 pursue?

2 A. Yes, sir.

3 Q. Okay?

4 A. Several sensible options, that's one of  
5 them.

6 Q. The -- you were asked several questions  
7 yesterday, I presume you recall these, about whether  
8 or not the long-term ESP proposal is -- is an  
9 all-or-nothing proposition, in other words, whether  
10 or not the Commission could I believe the word used  
11 was "tinker" with it. Do you recall that?

12 A. Yes, I recall that mostly.

13 Q. And I believe your response, to  
14 paraphrase, was essentially that if that occurred,  
15 the company would -- FirstEnergy would basically have  
16 to regroup and consider those changes to decide how  
17 to respond; is that accurate?

18 A. I don't know about the word "regroup,"  
19 but we would have to consider what the "tinkering"  
20 has done and whether that was an acceptable  
21 arrangement.

22 Q. In other words, any -- it's possible one  
23 or more changes could actually be agreed upon by the  
24 company -- agreed to by the company; is that correct?

25 A. You are asking me to negotiate from the

1 witness stand.

2 Q. I am not asking you to.

3 A. I don't believe I can do that.

4 Q. Is the proposal an all-or-nothing  
5 proposal?

6 A. As I said, just like with respect to the  
7 long-term ESP, we would have to see what the totality  
8 of the -- of the impact would be before a decision  
9 could be made about how to proceed.

10 Q. And I believe on the way you just  
11 answered the question I was talking to you about the  
12 long-term proposal. Would your answer be the same  
13 for the short-term as well?

14 A. Yes, sir.

15 Q. Okay. On page 9 of your testimony at --  
16 at line -- line 3, you discuss the AMI pilot program,  
17 do you see that? Page 9 of your testimony?

18 A. I was in the Application.

19 Q. I'm sorry, I may have misspoke.

20 A. It may have been my fault.

21 I see that.

22 Q. Okay. The \$1 million that the company  
23 has agreed to spend on the AMI pilot, just for  
24 clarification, that is not intended as a cap, is it?

25 A. It is a cap on the amount that the



1 company funds without -- without customer  
2 contribution, but if the total cost of the program is  
3 in excess of 1 million, that's not -- as long as the  
4 balance is paid for by customers, that's up to the  
5 process.

6 Q. And I believe you have actually proposed  
7 that anything over and above that would be recovered  
8 through one of the riders; is that correct?

9 A. That's correct.

10 Q. Okay. Now, I believe you testified  
11 yesterday, did you not, that the -- this pilot is  
12 basically it's a -- in the concept stage, if you  
13 will, and that the company will develop this in a  
14 collaborative setting; is that correct?

15 A. We are willing to develop this in a  
16 collaborative setting, yes. Mr. Hussing testified to  
17 the proposal that we have.

18 Q. Okay. Do you know -- and I'm  
19 referencing -- I don't think you need to turn to  
20 this, and you may if you like, but on page 24 of the  
21 Application it indicates that the company's  
22 recommending a small group of major stakeholders.

23 This is -- let me see if I can help you  
24 out, roughly.

25 A. I have the reference.

1           Q.    Okay.  Do you know who -- who would be  
2   within that major stakeholder as you use that term,  
3   universe?  Who are you referring to?

4           A.    We are referring to parties that would  
5   have a primary interest in and ability to participate  
6   in the design of such a program.

7           Q.    Okay.  So that wasn't intended to be an  
8   exclusionary term.  It's just a term that hasn't  
9   really yet been defined; is that fair?

10          A.    It hasn't been defined with any  
11   precision, but I think we also know from experience  
12   collaboratives with 300 people don't work very well,  
13   and we should limit it to a manageable limited number  
14   that know what's going on with the technology and  
15   those types of things.

16          Q.    I'll accept that.

17                   Turning to page 11 of your testimony,  
18   Mr. Blank.

19                   Bear with me for one second here.

20                   At line 10.

21          A.    Yes, sir.

22          Q.    There is a reference there to the billion  
23   dollar commitment for -- for capital investment on  
24   the energy delivery system.  We've had several  
25   questions about that.  And that is over a five-year

1 period.

2 Does that commitment -- well, strike  
3 that.

4 The commitment as the company has  
5 proposed it does not obligate the companies, either  
6 individually or in the aggregate, to spend any  
7 particular amount per year, does it?

8 A. That's correct.

9 Q. Do you know whether or not this  
10 commitment includes transmission-related expenses in  
11 the capital expenses as well?

12 A. I do not know.

13 Q. I missed a question, if I may jump back  
14 to the AMI pilot program for a moment, Mr. Blank, as  
15 proposed, do I understand that that program would  
16 apply only to residential customers, only be offered  
17 for residential customers?

18 A. The proposal is for individual  
19 residential customers, yes.

20 Q. Okay. Your testimony would not preclude  
21 the FirstEnergy companies from extending or doing a  
22 similar pilot program for commercial customers, would  
23 it, or does it?

24 A. I would agree, it does not preclude such  
25 a -- such a proposal, but I don't believe that there

1 would be shareholder funding for that one. That  
2 would be customer funded.

3 Q. Okay. Now, if I may, apologize for  
4 jumping back, I would like to go back to the \$1  
5 billion commitment on page 11.

6 Again, this being for capital investment  
7 on the energy delivery systems, do you know how that  
8 \$1 billion amount compares with total capital  
9 expenditures on behalf of each of the three operating  
10 companies made during the five-year period 2003 to  
11 2007 for all three of the companies?

12 A. Not with any precision.

13 Q. Would you agree with me, subject to  
14 check, that that total was approximately  
15 \$970 million?

16 A. You are obviously referring to some sort  
17 of a figure which you have gotten from somewhere.  
18 Can you tell me where you have gotten the figure?

19 Q. I believe I received that from -- from --  
20 in a data request from the company.

21 A. If so, I can accept it, subject to check.

22 Q. Okay.

23 MR. KORKOSZ: Do you have a reference so  
24 we can check it?

25 MR. WRIGHT: I have that. I will -- I

1 will get that for you.

2 Q. You were asked yesterday several  
3 questions about -- about the distribution rate case,  
4 and as the company has proposed -- part of the ESP  
5 they have proposed would include a proposed  
6 resolution of that -- issues in that case as well,  
7 correct?

8 A. Yes, sir.

9 Q. Am I correct that FirstEnergy is  
10 indifferent about whether the Commission issues an  
11 order in that case as opposed to when it issues an  
12 order in this case resolving those distribution  
13 issues?

14 A. That's not my understanding. We believe  
15 that the -- the distribution -- if the ESP is to be  
16 decided -- or if the Commission is to decide in favor  
17 of the ESP, we believe they should decide the  
18 distribution case at the same time as part -- as part  
19 of the process.

20 Q. As part of the --

21 A. As part of the ESP process.

22 Q. As part of the ESP process?

23 A. Yes, sir.

24 MR. WRIGHT: Okay. That's all the  
25 questions I have. Thank you.

- - -

EXAMINATION

By Examiner Price:

Q. I have two follow-up areas. It might not just be two questions.

Your proposed resolution of the distribution case which has been litigated and is pending before the Commission.

A. Yes, sir.

Q. That is part of your ESP, so if the Commission hands down a decision that does not follow your proposed resolution, then that is one of the areas where you would have to go back and decide whether any deviations from your plan are acceptable?

A. Yes, sir.

Q. The other area I had was in the Application it states that the operating companies don't have any employees with experience in generation; is that correct?

A. That's correct.

Q. But many employ -- many functions on behalf of the operating companies are taken care of by FirstEnergy Service Corporation; is that correct?

A. That's correct.

Q. Legal, accounting I am not even sure do

1     you work at FirstEnergy Services Corporation?

2             A.     Yes, I do.

3             Q.     Does FirstEnergy Service Corporation have  
4     any employees who are skilled in generation issues?

5             A.     You mean by generation issues the  
6     procurement of power in open markets or do you mean  
7     running power plants?

8             Q.     I mean exactly -- okay.  You're right,  
9     skilled in the purchase of wholesale power.

10            A.     There are a few individuals that I am  
11     aware of in the Services Corp. who have had  
12     experience in the past in those areas.

13                    I do not know whether their experience is  
14     up to date and I would suspect it is not because the  
15     ones I'm thinking about have been away from it a  
16     while and that's an area which is -- in very constant  
17     change and flux and dynamic action and the concern  
18     would be --

19            Q.     But within -- I'm sorry, I will let you  
20     finish your answer.

21            A.     The concern will be although they may  
22     understand some of the concepts, they may not be up  
23     to date in all the techniques and various  
24     arrangements that are in place today.

25            Q.     Within FirstEnergy as a whole what you

1 are saying is that the purchase of wholesale power is  
2 done by FirstEnergy Solutions, not by FirstEnergy  
3 Service Corporation employees?

4 A. That is correct.

5 EXAMINER PRICE: Thank you.

6 Mr. Breitschwerdt, at long last it is  
7 your turn.

8 MR. BREITSCHWERDT: At long last, your  
9 Honor.

10 Good morning, Mr. Blank.

11 Before I begin, your Honor, I would like  
12 to distribute to the witness a copy of and take  
13 administrative notice of a copy of Ohio Revised Code  
14 Section 4928.20.

15 EXAMINER PRICE: Are you going to mark --

16 MR. KORKOSZ: I missed the end of that.

17 MR. BREITSCHWERDT: 4928.20 of the Ohio  
18 Revised Code.

19 EXAMINER PRICE: Are you going to mark  
20 that as an exhibit?

21 MR. BREITSCHWERDT: I can, as NOPEC  
22 Exhibit 5.

23 EXAMINER PRICE: Okay.

24 MR. BREITSCHWERDT: Thank you, your  
25 Honor, so marked for identification.



1 EXAMINER PRICE: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 EXAMINER PRICE: Another Joint

4 NOPEC/NOAC.

5 MR. BREITSCHWERDT: It is, your Honor,

6 that's correct, it would be a Joint NOPEC/NOAC

7 Exhibit 5.

8 It is so marked, and we will take

9 administrative notice of it.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Breitschwerdt:

13 Q. Mr. Blank, have you had an opportunity to  
14 familiarize yourself?

15 A. Briefly.

16 Q. And you are familiar with this section of  
17 the Revised Code; is that correct?

18 A. As familiar as I can be.

19 Q. You cite it in your testimony.

20 A. Yes. But is this as amended by House  
21 Bill 562? Do you know?

22 Q. It was as amended by Senate Bill 221.

23 A. I believe there was a further amendment  
24 in House Bill 562.

25 Q. Well, this is current as of two days ago

1     so I believe that it's the current version.     So I  
2     believe it is the current version of the Revised Code  
3     section.

4                     So are you familiar that the provision  
5     Section I, J, and K of this code section were  
6     established in Senate Bill 221?

7             A.     Well, I believe they were established  
8     there, but I believe there were attempts in House  
9     Bill 562 as well.

10            Q.     Okay.  If you could turn to page 21  
11     generally through 23 of your -- in that section you  
12     discuss how the plan addresses governmental  
13     aggregation and then you -- on page 22 through 23 you  
14     discuss the affects of the plan, nonavoidable  
15     generation charges on large scale governmental  
16     aggregation groups.

17                     Do you see that?

18             A.     Yes, sir.

19            Q.     And on lines 17 through 19, that first  
20     sentence you say, "The overall affect of the Plan's  
21     nonavoidable generation charges is beneficial to  
22     customers served by large-scale governmental  
23     aggregation groups."

24             A.     Yes, I do.

25            Q.     And when we were discussing that during

1 your deposition, I asked you what analysis the  
2 companies had done. And do you recall that your  
3 response was that the extent of the analysis was  
4 based on management judgment?

5 A. I recall that, yes.

6 Q. So I guess since the extent of the  
7 analysis regarding the benefit to large-scale  
8 governmental aggregation groups was based on  
9 management judgment, I would like to explore with you  
10 your understanding of what the purpose of large-scale  
11 governmental aggregations are, essentially why do  
12 they exist and why do you -- let's start there.

13 A. Why do government -- large-scale  
14 government aggregation exist?

15 Q. Correct.

16 A. We -- that's a good question and I am not  
17 really sure I know why precisely they exist.

18 My recollection from the Senate Bill 3  
19 days was that there was a belief that if you combined  
20 residential customers together into -- in larger  
21 scale groups, you can reduce the administrative costs  
22 of marketers approaching customers on an individual  
23 basis in order to get a potentially better price  
24 for -- from third-party suppliers.

25 Q. So to I guess paraphrase or say it back

1 to you what I think you just said, it's based on your  
2 understanding from Senate Bill 3 and perhaps your  
3 past experience the governmental aggregations, their  
4 purpose is to obtain discounts on electricity for  
5 residential customers within their territories either  
6 through negotiations of third-party suppliers or  
7 potentially with the companies; is that a fair --

8 A. I said a better price than they would  
9 otherwise be able to get from third-party suppliers.  
10 In order to minimize the administrative costs on a  
11 per-customer basis that oftentimes the marketers were  
12 complaining about in the late 1990s.

13 Q. So the goal is to get better prices  
14 for --

15 A. A better price than otherwise would be  
16 available from third-party suppliers, that was my  
17 understanding.

18 Q. Okay. And so that -- okay. Thank you.

19 Would you agree with me that the details  
20 of the companies' proposed ESP plan impact the  
21 opportunities of large-scale governmental  
22 aggregation -- large-scale governmental aggregations  
23 to obtain this lower price for their customers  
24 through shopping for third-party supply?

25 A. Could I have that reread, please?

1 (Record read.)

2 A. I do not believe they impact government  
3 aggregation service any differently than they would  
4 impact any other third party-service.

5 Q. But they do impact the ability of  
6 governmental aggregations to obtain third-party  
7 supply.

8 A. Yes, and I'm really not sure whether that  
9 impacts positive or negative.

10 Q. So when you say "positive or negative,"  
11 it would be positive -- if they could obtain a lower  
12 price than they could otherwise obtain from the  
13 companies, wouldn't that be positive?

14 A. Well, as I see this -- this process that  
15 the companies' proposal in ESP effectively sets up a  
16 price to beat. And to the extent that a third-party  
17 supplier can beat the price -- can provide cost to --  
18 or power supply to lower price than that price to  
19 beat, those customers would be -- would be  
20 economically advantaged.

21 Q. What is --

22 A. As long as -- as long as that third-party  
23 supplier actually stayed in business for the duration  
24 of the term, which is not the experiences we've had.

25 Q. And that would be a decision that the

1 governmental aggregation would have to make on their  
2 own; is that correct?

3 Is that essentially a risk they would be  
4 taking in deciding whether to go with that  
5 third-party supplier?

6 A. I believe that's a risk they take on  
7 behalf of customers. I am not sure all customers  
8 are -- who are wrapped up in the government  
9 aggregation know about that risk.

10 Q. Okay.

11 A. In fact, I'm rather sure they don't know  
12 about that risk, based on personal experience.

13 Q. You mentioned a price to beat a minute  
14 ago. What is the price to beat a large-scale  
15 governmental aggregation would have to obtain from a  
16 third-party supplier to obtain a positive benefit for  
17 its customers competing with the electric security  
18 plan?

19 A. You would want the situation to  
20 understand the total cost of the -- of the electric  
21 supply to the customer under each of the two  
22 situations.

23 Q. So you don't know what the price to beat  
24 in a dollar value would be for large-scale  
25 governmental aggregation to obtain a third-party

1 supply that would provide positive benefit?

2 A. You would have to look at that on a  
3 customer-by-customer basis.

4 Q. I'm confused as to why that is. Why  
5 would that be the case?

6 A. Because different customers are served  
7 under different rate schedules and you would have to  
8 investigate the situation under each rate schedule.

9 Q. The aggregation as a whole looking at the  
10 total price the company is proposing an ESP and then  
11 all nonbypassable charges, you can't give me a dollar  
12 number that governmental aggregation going out and  
13 seeking third-party supplier would have to obtain to  
14 obtain positive benefits for the consumers within  
15 their territory?

16 A. To be able to answer that question on an  
17 overall basis, I would have to know which customers  
18 the government aggregator plans to serve and which  
19 customers it doesn't plan to serve.

20 I mean, I have noticed the government  
21 aggregators sometimes are pretty picky about what  
22 customers they plan to serve. They don't -- they  
23 don't serve all customers automatically. They  
24 exclude some.

25 EXAMINER PRICE: Exclude some how, by

1 rate schedule?

2 THE WITNESS: They exclude by rate  
3 schedule. They exclude them by credit. They exclude  
4 them by load shape.

5 In fact, I have had personal experience  
6 at being excluded by a large-scale government  
7 aggregator, thank you very much.

8 Q. I can't imagine the reason for that. I  
9 am sure your credit is quite good and there is no --  
10 associated with your accounts?

11 A. My credit was not part of the issue.

12 Q. All right. I think I'll move on.

13 Would you agree with me that the General  
14 Assembly in Senate Bill 221 determined that the  
15 Commission should or shall encourage and promote  
16 large-scale governmental aggregation?

17 A. I believe you are referring to a specific  
18 provision of the Revised Code. Could you refer me to  
19 that.

20 Q. That's correct, it's section K of  
21 4928.20.

22 A. I would agree that the Revised Code at  
23 Section K reads "The Commission shall adopt rules to  
24 encourage and promote large-scale governmental  
25 aggregation in this state."



1           Q.    Okay, and would you also agree with me  
2   that that is -- that that language is not included in  
3   the policies set forth in Section 4928.02?

4           A.    I don't recall that it's there but that  
5   language is -- can speak for itself.

6           Q.    Okay.  And I guess my point in asking  
7   that question is would you also agree that you -- you  
8   made the comment yesterday that -- in response to  
9   some questions from Ms. Fonner, perhaps it was  
10   Wednesday actually, that there was some balancing  
11   that needed to be done in the companies' Application  
12   and that it was essentially impossible to satisfy all  
13   of the policies set forth in 4928.02.

14                   Do you recall that?

15          A.    That's correct.  Those policies are  
16   sometimes internally they can conflict with each  
17   other and they conflict with other policies within  
18   the statute.

19          Q.    Okay.  But this -- this section in  
20   Section 4928.20 is not one of the policies set forth  
21   in Section .02, so the balancing does not need to  
22   occur to satisfy the requirements of Sections I, J,  
23   and K as set forth in the Revised Code; would you  
24   agree with that?

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

1 Q. Why is that?

2 A. For example, I'm just looking at item A  
3 on 4928.02 where the language says "ensure the  
4 availability to consumers of adequate reliable, safe,  
5 efficient, nondiscriminatory, and reasonably priced  
6 retail electric service," and how do you define  
7 retail priced electric service vis-a-vis the "shall  
8 adopt rules to encourage and promote large-scale  
9 government aggregation and to the extent that such  
10 encouragement and promotion could result potentially  
11 in higher priced retail electric service for others,  
12 I am not sure -- or I believe those two could be in  
13 conflict.

14 Q. So it's your testimony that the  
15 Commission, in complying with Sections 4928.20 I, J,  
16 and K as set forth in SB-221 and revised in House  
17 Bill 592 -- is that what your testimony was earlier?

18 There is some conflicting issues that the  
19 Commission may not fully be able to comply with these  
20 sections and should consider them to be policies that  
21 are more aspirational than --

22 A. There are conflicting objectives which  
23 need to be balanced as part of the whole -- as part  
24 of the Commission's decision-making process in my  
25 opinion.

1           Q.    Would you say that's fair to say for the  
2    electric security plan as well as a whole as set  
3    forth in Section 142 of 4928?

4           A.    There are conflicting provisions in 143  
5    with some of the provisions in the Section 02.

6           Q.    Would you agree there is conflicting  
7    provisions with 4928.20(I), (J), and (K)?

8           A.    We've tried to -- pardon me, could I have  
9    that reread.

10                   (Record read.)

11          A.    In conflict with the provisions in 02,  
12    yes.

13          Q.    But not in 143?

14          A.    And I think there could be with what's in  
15    143 as well, yes.

16          Q.    Okay.  If you could turn specifically to  
17    Section 4928.20(I).  You discuss this on page 21  
18    starting at line 20 of your testimony.  The companies  
19    have not proposed a specific mechanism or rider --

20          A.    Pardon me.  I did not get the testimony  
21    reference.

22          Q.    That's fine.  I can back up, it's page  
23    21, starting at line 20.  It's the section going on  
24    through page 2 of the next page -- or line 3 of the  
25    next page, it's accurate that the companies have not

1 proposed a specific mechanism or rider to implement  
2 this statutory provision within the electric security  
3 plan.

4 A. That is correct.

5 Q. Okay. Thank you.

6 I'd just like to talk through this  
7 provision with you briefly and just make sure that I  
8 understand what -- did the companies have a sense at  
9 this --

10 EXAMINER PRICE: Mr. Breitschwerdt,  
11 before you go on we have to do a balancing act in  
12 this proceeding because we have allowed people to  
13 testify as to what the statute says and how it  
14 applies to their electric security plan.

15 But having elicited from the witness that  
16 their electric security plan doesn't have any  
17 particular provisions related to I, we are no longer  
18 applying it to electric security.

19 It sounds like you are about -- I don't  
20 want to have a theoretical legal discussion. I want  
21 to talk about the statutes as it applies to their --  
22 to their plan and that testimony -- and given the  
23 nature of his testimony, that kind of  
24 cross-examination is fair, but once he's acknowledged  
25 they are not implementing this provision, I don't

1 want to have a theoretical discussion about what  
2 Senate Bill 221 does or doesn't do on the stand in  
3 your brief perfect opportunity for that, you know,  
4 you seem to be going down a path of a strictly legal  
5 discussion and one that's not tethered to their plan  
6 and I would like to keep that sort of discussion for  
7 the briefs rather than on the stand.

8 MR. BREITSCHWERDT: Well, your Honor, the  
9 companies have proposed a deferral that will be  
10 recovered and this language specifically discusses  
11 what portion of that deferral governmental  
12 aggregation customers will be required to pay. So  
13 I'm --

14 EXAMINER PRICE: He has already  
15 acknowledged they don't have any provisions in their  
16 tariffs that implement that provision.

17 MR. BREITSCHWERDT: Would it not be  
18 appropriate to --

19 EXAMINER PRICE: I think I have made my  
20 caution and, you know, you can just do your best to  
21 stay within the confines.

22 If you go ahead and ask your questions,  
23 but I am sure Mr. Korkosz will make any appropriate  
24 objections.

25 Again, I want to make sure we keep the

1 legal discussions tethered to the actual plan.

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

4 Q. (By Mr. Breitschwerdt) Mr. Blank, the  
5 companies intend to implement this provision; is that  
6 correct?

7 A. Assuming that it's necessary, yes, we do.

8 Q. Could you explain what you mean by  
9 "assuming it's necessary."

10 A. If there are, in fact, customers served  
11 by large-scale governmental regulators, then we will  
12 have to figure out how to implement this provision.

13 Q. And based on your intention to implement  
14 this provision, I just -- can you explain to me what  
15 you mean by the proportion -- what I understand the  
16 proportionate to the benefits language means?

17 MR. KORKOSZ: Objection. I think the  
18 preface of the question mischaracterized the  
19 witness's testimony.

20 EXAMINER PRICE: Please rephrase your  
21 question.

22 MR. BREITSCHWERDT: May I have my  
23 question reread so I can understand how to  
24 appropriately?

25 (Record read.)

1           Q.    Assuming that there are customers that  
2   will be served by governmental aggregations in that  
3   situation you would intend to implement this  
4   provision based on that situation, can you explain to  
5   me what the -- what your understanding of his  
6   proportionate to benefit language means?

7           A.    I think the proportionate is -- in my  
8   view relates to both time and energy consumption and  
9   dollars.

10                    You would have to determine whether or  
11   not the customers were being served by a third party  
12   under the government aggregation program and for what  
13   time period and proportionate to the benefits for the  
14   electric load centers within the jurisdiction of that  
15   government aggregation as a group receive.

16           Q.    And based on the next phrase "as  
17   determined by the Commission," did the companies  
18   contemplate there would be some sort of Commission  
19   proceeding or how do you understand "as determined by  
20   the Commission"?

21                    What are the companies confirming?

22           A.    I learned a long time ago, sir, that I  
23   couldn't just implement whatever rates I to  
24   implement. We had to make a filing with the Public  
25   Utilities Commission, and they determined what to do

1 with it at that point in time.

2 There may or may not be hearings as such.

3 I don't know in this situation what the arrangements  
4 Commission would undertake.

5 Q. But do you understand that the Commission  
6 staff would have an opportunity to review the  
7 proposed mechanism or rider that the companies  
8 propose?

9 A. I understand that we would make a filing  
10 with the Commission for a proposed tariff and the  
11 Commission would handle it from there.

12 Q. Do the companies intend to discuss the  
13 proposed tariff that they would file with  
14 governmental aggregation such as NOPEC or NOAC before  
15 seeking Commission review?

16 MR. KORKOSZ: Objection on the same  
17 ground.

18 MR. BREITSCHWERDT: For this entire line  
19 of questioning --

20 Q. -- I'm sorry, Mr. Blank, this is assuming  
21 governmental aggregations do exist post-January 1,  
22 2009, and are serving customers and based on that  
23 situation.

24 A. There's been no determination made  
25 whether or not we would consult with a governmental



1 aggregator prior to filing such a proposal.

2 Q. Okay. But in -- one more question along  
3 this line, the -- if -- could you refer to the last  
4 sentence of that section, please. And my  
5 understanding of this section is regardless of how  
6 Section I is implemented, the companies will still  
7 receive full recovery of any deferral that is  
8 proposed; is that your understanding as well?

9 A. That's my understanding, yes, sir.

10 Q. So it would be revenue neutral to the  
11 companies?

12 A. That's my understanding, yes, sir.

13 Q. Okay. Thank you.

14 Have you by any chance reviewed the  
15 testimony of Mr. Frye that was proposed -- or by  
16 NOPEC?

17 A. Only briefly.

18 Q. Do you have any understanding of the  
19 governmental aggregation generation credit that  
20 Mr. Frye's testimony proposes?

21 A. Not enough to testify about.

22 Q. Okay. Mr. Blank, at this time I would  
23 like to turn to a few questions on behalf of the Ohio  
24 Schools Council. Are you familiar with Ohio Schools  
25 Council?

1           A.    Yes, I am.

2           Q.    And you are aware that it's a council  
3 government established under the Revised Code?

4           A.    I have been advised that by the Ohio  
5 Schools Council staff members.

6           Q.    Okay. And you are aware that it sponsors  
7 electricity programs for school districts that are  
8 within its membership?

9           A.    Yes, sir.

10          Q.    And I would like to discuss with you or  
11 ask you a few questions about the history of Ohio  
12 Schools Council to understand the discount that  
13 they've received in the past and the rate increases  
14 that they are expected to receive -- to be impacted  
15 by going forward.

16                You are familiar with the Energy for  
17 Education programs?

18          A.    Generally.

19          Q.    Were you involved in negotiating or  
20 collaborating with the Ohio Schools Council in  
21 developing those programs in the past?

22          A.    I have been.

23          Q.    And in the past they've included both a  
24 base rate discount and an additional discount  
25 obtained by Ohio Schools Council causing municipal

1 bonds to be issued to prepay the companies for  
2 electricity; is that a fair characterization of your  
3 understanding?

4 A. I believe that's a fair characterization.

5 Q. The original Energy for Education  
6 Program, we will call it EFE 1. Do you recall that  
7 program?

8 A. Yes, sir.

9 Q. And it was, this first program, comprised  
10 of approximately 60 school districts in the  
11 Cleveland -- CEI territory?

12 A. I'll accept that, subject to check. I  
13 don't have recollection of precise numbers at this  
14 point.

15 Q. And the term was from 1998 through  
16 December of 2004, approximately, do you recall?

17 A. I'll accept that, subject to check.

18 Q. That's fine.

19 And the Energy for Education 2 Program  
20 was the second program that included 249 public  
21 school districts in all three of the service  
22 territories of the companies?

23 A. That is my understanding.

24 Q. And are you -- it's also your  
25 understanding that is all but five of the school

1 districts within the companies' service territories?

2 A. I understood it was by far the vast  
3 majority of the school districts, but I don't know  
4 how many it may have excluded.

5 MR. BREITSCHWERDT: Okay. Thank you,  
6 your Honor, at this time I would -- may I approach?

7 EXAMINER PRICE: You may.

8 MR. BREITSCHWERDT: -- mark for  
9 identification a supplemental discovery response from  
10 the companies as Ohio Schools Council Exhibit 2.  
11 This information was -- it's a 10-page document  
12 listing the rate impacts of the electric security  
13 plan on public school districts.

14 The names of these school districts were  
15 confidential, and so they have been redacted from the  
16 record upon discussions with companies.

17 EXAMINER PRICE: It will be so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 EXAMINER PRICE: Mr. Korkosz, this has  
20 been marked confidential. Is FirstEnergy satisfied  
21 with the redacting of these names? Does that suffice  
22 for the confidentiality purposes?

23 MR. KORKOSZ: From our standpoint we do  
24 not have a problem with that, your Honor.

25 EXAMINER PRICE: Okay.

1           Q.    (By Mr. Breitschwerdt) Now, Mr. Blank,  
2   are you generally familiar with the spreadsheet that  
3   I've handed out to you?

4           A.    Yes, I am.

5           Q.    And the first page is an overview of  
6   the -- both the dollar and percentage rate increases  
7   that school districts within the three service  
8   territories will be impacted by starting January 1,  
9   2009?

10                   Is that a fair characterization?

11           A.    Those are the summaries within each of  
12   the -- for each of the companies. Of course, the  
13   details on the subsequent pages, and you will, of  
14   course, note there are a number of school districts  
15   that actually get reductions in the -- from this  
16   proposal.

17           Q.    But there are also some that have  
18   substantial increases, for example, if you turn to  
19   CEI page 1 of 2, which the second page in this  
20   package, I would note about halfway down the page  
21   there is one that has a 24.1 percent increase,  
22   another that has a 33 percent increase; is that  
23   correct?

24           A.    That is correct.

25           Q.    Thank you.

1                   And so while there are some decreases,  
2   there are also some substantial increases; is that  
3   fair to say?

4           A.    There are increases and decreases, yes.

5           Q.    And it -- and if you could turn back to  
6   the initial summary page, the Toledo Edison grand  
7   total would result -- excuse me, if you will allow me  
8   one moment.

9                   I'm sorry.  You can strike that.  I just  
10   wanted to clarify.

11                   These spreadsheets were developed at your  
12   direction; is that correct?

13           A.    Yes, that is correct.  Mr. Hussing was  
14   the one who did the direction of this, but I had  
15   asked him to prepare this document.

16           Q.    Thank you.

17                   And this document shows -- turning back  
18   to the summary page that there will be a -- that the  
19   increase in dollars from the current bill for the  
20   Toledo Edison territories would be approximately 12  
21   million to approximately \$14 million or an increase  
22   of 16.3 percent, correct?

23           A.    That's what the number says and, of  
24   course, you need to read the note at the bottom that  
25   a substantial proportion of that increase occurs

1     because the benefits associated with this funding  
2     program that you described are no longer available  
3     because the Schools Council cannot get the funding  
4     for it any longer and, hence, there are no savings to  
5     be redistributed to school districts.

6                 EXAMINER PRICE:   Mr. Blank, can you  
7     explain why the Schools can no longer get the --  
8     Council can no longer get the funding for this?

9                 THE WITNESS:   As I understand it, your  
10    Honor, the current financial situation has made the  
11    cost of bond insurance for a non -- for tax-exempt  
12    bonds so high that it means that the -- whatever  
13    savings in interest rate they may be able to get in  
14    comparison to the companies' foregone cost of money,  
15    that there are no savings from -- from being able to  
16    place these -- such funds.

17                That -- and that discount -- pardon me.

18                That interest bond, interest insurance,  
19    and also the administrative fees associated with  
20    placing the securitization arrangement in today's  
21    marketplace.

22                EXAMINER PRICE:   That's a result of the  
23    recent credit crunch?

24                THE WITNESS:   That is my understanding,  
25    yes.

1 EXAMINER PRICE: Thank you.

2 Mr. Breitschwerdt.

3 Q. (By Mr. Breitschwerdt) The discount you  
4 are referring to, part of that was a prepayment of  
5 that bond prepayment discount you were just referring  
6 to and there is also an additional discount that's  
7 broken down.

8 A. That's correct. The note at the bottom  
9 of the page identifies that the bond -- bond program  
10 was worth about 4.2 percent of the overall discount.

11 Q. But the --

12 A. Of the overall difference in the rates,  
13 so of that -- of the 11 percent for total that would  
14 be about 4 percent for the bond -- the bond program  
15 and 7 percent otherwise. For Ohio Edison it would be  
16 close to zero otherwise after you take out the  
17 bond -- the bond program.

18 Q. Although that may be the case, I mean,  
19 that is the discount the schools have previously  
20 received they will no longer receive going forward?

21 A. That is correct, and if the schools  
22 believe they can make a case to get a reasonable  
23 arrangements approved by the Public Utilities  
24 Commission, I would strongly encourage that they  
25 consider that.



1           Q.    Fair enough.  Just moving through the  
2   spreadsheet quickly, for CEI the increase will go  
3   from 25 to 30 million and the 19.8 percent; is that  
4   correct, 19.8 percent increase?

5           A.    That is correct.

6           Q.    And then you just mentioned the 4.5  
7   increase for Ohio Edison.

8           A.    I did.

9                   MR. BREITSCHWERDT:  All right.  That's  
10  all the questions I have.  Thank you, Mr. Blank.

11                   EXAMINER PRICE:  Mr. Blank, the Energy  
12  for Education 2 Program extends to all three  
13  operating companies?

14                   THE WITNESS:  Yes, it did.

15                   EXAMINER PRICE:  It did?

16                   THE WITNESS:  Yes.  I do not believe that  
17  the one large district participated in it and there  
18  were several other very small districts that did not  
19  participate in it.

20                   EXAMINER PRICE:  Mr. Stinson.

21                   MR. STINSON:  Thank you, your Honor.

22                                   - - -

23                                   CROSS-EXAMINATION

24   By Mr. Stinson:

25           Q.    Mr. Blank, my name is Dane Stinson.  I

1 represent FPL Energy Marketing and Gexa Energy  
2 Holding.

3 A. Good morning.

4 Q. Good morning.

5 I wanted to follow-up just a bit on the  
6 proportionate benefits language that you were  
7 discussing with Mr. Breitschwerdt involving  
8 4928.20(I).

9 From your interpretation of that language  
10 is it my understanding that the proportionate benefit  
11 language captures customers who had taken service --  
12 taken SSO service and subsequently migrated to  
13 governmental aggregation service?

14 The benefit being the benefit they  
15 receive from the generation phase-in while under SSO  
16 service?

17 A. That would be a primary factor, yes.

18 Q. And it's my understanding that  
19 FirstEnergy has no mechanisms in place yet to track  
20 those benefits or to calculate the amount of the  
21 deferral?

22 A. I do believe we have mechanisms in place  
23 to track whether or not a customer is being served by  
24 a government aggregator and whether a customer is  
25 being served by a third-party supplier. But we

1 haven't sorted all that out in terms of how to put it  
2 in the tariff for the compliance with this section of  
3 the code at this point in time.

4 Q. And as far as that tracking would work,  
5 is that on a customer-per-customer basis then?

6 A. Yes, it is.

7 Q. Such that the benefit that a customer  
8 would receive, that same customer would pay the  
9 deferral in relation to that benefit?

10 A. The tracking program today, as I  
11 understand it, identifies, as I said, whether or not  
12 a customer is served by a government aggregator,  
13 whether or not it is served by a third-party  
14 supplier, how many kilowatt hours the customer uses  
15 on a monthly basis, what the customer is charged.

16 And with all that information I think we  
17 would be able to figure out how much of the deferral  
18 arrangement or deferral the customer would have  
19 benefited from. And that would be the basis for  
20 determining -- the primary basis for determining the  
21 proportionate arrangement.

22 Q. Yeah, I guess my question goes more to  
23 the fact whether the customer would be responsible  
24 for paying the amount of the initial phase-in through  
25 the deferral or whether that deferral -- whether that

1 phase-in and deferral would be aggregated in some  
2 manner such that all the governmental aggregation  
3 customers would pay for that benefit?

4 A. I don't think we have made that  
5 determination about what the statute requires at this  
6 point.

7 Q. Okay. So if, say, five customers left  
8 the SSO service and went to governmental aggregation  
9 services, you have not made a determination as to  
10 whether all governmental aggregation customers would  
11 incur a deferral to pay for that benefit of those  
12 five customers who switched?

13 A. That is correct, because one of the  
14 issues in a customer-by-customer basis, customers  
15 happen to move on a regular basis and that has to be  
16 taken into account about how we figure out how to  
17 incorporate this language.

18 Q. I'm a little bit confused by your answer.  
19 Is my hypothetical to you correct?

20 MR. STINSON: Or maybe we could have the  
21 answer reread, please.

22 (Record read.)

23 Q. So you're testifying that determination  
24 has not been made.

25 A. That is correct.

1           Q.    In addition, let's assume a large-scale  
2 governmental aggregation customer never took SSO  
3 service during ESP, would that customer -- would that  
4 customer be required to pay the SSO deferral after  
5 the three-year period if he left the governmental  
6 aggregation?

7           MR. KORKOSZ:  Objection, your Honor.

8           EXAMINER PRICE:  Grounds?

9           MR. KORKOSZ:  Based on your observation  
10 earlier with respect to certain aspects dealt with by  
11 Subsection I not being a part of this plan.  I think  
12 we are getting far afield, and I suppose the  
13 technical grounds would be relevance.

14          EXAMINER PRICE:  Can I have the question  
15 back again.

16          (Record read.)

17          EXAMINER PRICE:  We will give Mr. Stinson  
18 a little bit of leeway but let's not go too far from  
19 what's actually proposed.

20          A.    That's one of the things we haven't  
21 figured out yet, Mr. Stinson.

22          Q.    4928.20(I) excepts customers of  
23 large-scale governmental aggregations from paying the  
24 deferral; is that correct, because they receive no  
25 benefit?

1                   Let me withdraw that and restate the  
2 question.

3                   At any time that a large-scale  
4 governmental aggregation customer would take SSO  
5 service, would that customer be required to pay the  
6 SSO deferral?

7           A.    I'm not comprehending the question  
8 because of you don't pay the deferral. The deferral  
9 is a credit and you -- there's a recovery process for  
10 the accumulated deferrals which is separate from the  
11 contemporaneous Application of the credit amount, and  
12 I'm misunderstanding precisely what you are asking  
13 me.

14           Q.   Well, there is going to be an amount --  
15 the SSO customers are going to receive the phase-in  
16 credit to their bills, correct?

17           A.   Yes.

18           Q.   And at some point customers are going to  
19 be charged the DGC, correct?

20           A.   Yes. With respect to the first part they  
21 are only going to receive the credit to the bill if,  
22 in fact, they are taking the SSO service from the  
23 utility.

24           Q.   Right. I understand that. So the  
25 question being if, say, in 2001 if this government --

1 the governmental aggregation customer took  
2 governmental aggregation service in 2009 through 2011  
3 and then became an SSO customer, would that  
4 governmental aggregation -- former aggregation  
5 customer be required to pay the DGC?

6 A. You are talking precisely to the details  
7 that we have not completely worked out yet.

8 Q. Okay. Now, would you agree that an SSO  
9 customer receives a benefit from the GPIC, the  
10 generation phase-in credit?

11 A. Yes.

12 Q. And that benefit would be the decreased  
13 generation rate, would it not?

14 A. It's the reduced current bill, yes, sir.

15 Q. And a large-scale government --  
16 governmental aggregation customer who does not take  
17 SSO service would not benefit from the generation  
18 phase-in credit?

19 A. I don't agree with that.

20 Q. Why not?

21 A. Because I think that the lower current  
22 bill that the SSO customer has to pay provides a  
23 basis for even a reduced a bill for third-party  
24 service for the customers.

25 Q. But the governmental -- the large-scale

1 governmental aggregation customer would not receive  
2 the same generation credit?

3 A. That customer does not receive the credit  
4 directly but I think it receives the benefit of the  
5 credit indirectly.

6 Q. And that indirect benefit is?

7 A. If there is a lower price to beat as a  
8 result of it on a current basis.

9 Q. And have you considered how the  
10 generation phase-in credit affects large-scale  
11 governmental aggregation?

12 A. Yes, we think it's beneficial to the  
13 customers of the large scale aggregation.

14 Q. And how is that?

15 A. Because it results in a lower priced  
16 directly if they were -- if they are served -- those  
17 customers are served under the utility ESP or SSO  
18 product or alternatively it indirectly benefits them  
19 because there is -- they will pay a lower price to a  
20 government supplier, to a third party -- a supplier  
21 to a government aggregator.

22 Q. Let me give you a hypothetical,  
23 Mr. Blank, and let's assume that a consumer wants to  
24 buy -- needs to buy a new shirt. And the customer  
25 goes to a shopping mall and say goes to Sears and



1 Penney's and at each store finds the same brand of  
2 shirt and that shirt costs \$50 at each store.  
3 However, Sears discounts their shirt \$5.

4 Which of those shirts would you believe  
5 that the customers would be more likely to buy; the  
6 shirt from Sears or the shirt from Penney's?

7 A. In the very limited example you give I  
8 would presume that if they are identical products,  
9 the customer would want to purchase the one that has  
10 a lower price.

11 And if I may amend that, assuming that  
12 the transaction costs in getting to the stores and  
13 things like that were relatively negligible.

14 Q. It's the same mall.

15 A. There's still time involved.

16 Q. Everything else being equal, the stores  
17 are beside each other.

18 Thanks. That's it.

19 On page 22 at line 17.

20 A. Yes, sir.

21 Q. You talk about "The overall affect of the  
22 Plan's nonavoidable generation charges is beneficial  
23 to customers served by large-scale aggregation  
24 groups."

25 Now, by "overall" what do you mean?

1           A.    The total affect.

2           Q.    And that would include the generation  
3 provisions and nongeneration provisions?

4           A.    That is correct.

5           Q.    It would include, am I not correct, the  
6 commitments that you've made in the plan, say, for  
7 infrastructure improvements, environmental issues, et  
8 cetera?

9           A.    Yes, sir.

10          Q.    Have you considered how -- you said you  
11 considered how the customers of large-scale  
12 governmental aggregation groups benefit. Have you  
13 considered how large-scale governmental aggregations  
14 benefit from the ESP?

15          A.    I have been much more concerned about  
16 customers than the aggregation entity by itself. I  
17 didn't read the statute to suggest that the entity  
18 itself was the object of any encouragement or  
19 promotion but rather the benefits that it brings to  
20 customers, if any.

21          Q.    Does the ESP promote or encourage  
22 large-scale governmental aggregation?

23          A.    I believe that it is completely  
24 nondiscriminatory to large-scale governmental  
25 aggregation to start out with.

1           And then it does have provisions which do  
2   specifically benefit government aggregators, and  
3   particularly we were talking about that previously in  
4   terms of the deferral provisions in the relief from  
5   the recovery of the deferrals.

6           Q.   And the purchase of the shirt  
7   hypothetical?

8           A.   No.  It was before that discussion.

9           Q.   Are there any other benefits that the ESP  
10   provides a large-scale governmental aggregation?

11          A.   Well, I believe that the plan also  
12   addresses the Application of standby charges.  And  
13   the plan incorporates the provisions of the code  
14   relative to standby charges and, in fact, we have  
15   extended those benefits to all customers.

16          Q.   To nongovernmental aggregation customers.

17          A.   That's correct.  We thought that was an  
18   important nondiscriminatory aspect of the plan.

19          Q.   That's not a benefit to large-scale  
20   governmental aggregation?

21          A.   I think it is.  It is a benefit to others  
22   as well.

23          Q.   There is two different things there,  
24   there is the code that requires the -- that permits  
25   the election of a large-scale governmental

1 aggregation unit to waive those standby charges, and  
2 then what you are saying extend beyond large-scale  
3 governmental aggregation customers to all customers,  
4 correct?

5 A. But the provision of the arrangements to  
6 benefit the customers of large-scale government  
7 aggregation is -- is a promotion and encouragement of  
8 that government aggregation and the fact that we have  
9 extended it to others is a good thing for others.

10 Q. And it's statutory that you provide that  
11 benefit to large-scale governmental aggregation  
12 customers.

13 A. Yes, sir.

14 Q. Let's talk a little bit about the minimum  
15 default service charge.

16 A. Yes, sir.

17 Q. Did you consider its affect on  
18 large-scale governmental aggregations?

19 A. We consider its affect on the customers  
20 of large-scale government aggregation.

21 Q. But not the large-scale governmental  
22 aggregation.

23 A. Well, I'm trying to distinguish between  
24 the customers and the several individuals that are --  
25 and the corporate structure that is the large-scale

1 government aggregation.

2 Q. Let's go back to the same or similar  
3 hypothetical about going to the shopping mall and  
4 buying that shirt and having a brand out there that's  
5 identical at Sears and Penney's costing the same  
6 thing, \$50.

7 Let's say Sears has a shirt for \$50, it  
8 is not on sale yet, no discount, and Penney's has the  
9 same shirt for \$50.

10 The customer has a choice obviously to  
11 buy either one but it determines that -- or finds out  
12 or discovers if it buys the shirt from Penney's, it  
13 has to pay an extra \$5, an extra 10 percent.

14 Under those circumstances which shirt  
15 would the customer be more likely to purchase?

16 A. All else equal again.

17 Q. All else equal.

18 A. With respect to the other matters which  
19 we were speaking about, the customer would want to  
20 pay the lower amount.

21 Q. Considering that that customer would want  
22 to pay the lower amount -- strike that.

23 Have you considered then how the MDS  
24 promotes and encourages large-scale governmental  
25 aggregation?

1           A.    No.  I believe that the MDS is beneficial  
2   to the customers of large scale aggregation because  
3   it allows the company to provide this plan in its  
4   totality, which I believe overall provides benefits  
5   to customers of those -- of those aggregation groups.  
6   So I think that's providing benefit to large scale  
7   aggregation.

8                   EXAMINER PRICE:  To the customers.

9           A.    That's correct.

10          Q.    Let's assume again that the Commission  
11   were to approve an ESP.  And let's say that one  
12   component of that ESP prevented customers from  
13   shopping.  What would -- what effect would that have  
14   on governmental aggregation?

15          A.    I don't believe there are any components  
16   which -- of the plan which prevent customers from  
17   shopping.

18          Q.    I am not talking about this plan.  I am  
19   talking about any ESP.  And that the Commission  
20   approved the plan or modified a plan that would  
21   prevent customers from shopping.

22          A.    So you are suggesting that the ESP would  
23   have a rule that says the customer can't shop?

24          Q.    At the most extreme.  What effect would  
25   that have on governmental aggregation?

1           A.    I think that depends upon the rest of the  
2 terms of the plan.

3           Q.    If customers couldn't shop, could  
4 governmental aggregation -- governmental aggregators  
5 serve those customers?

6           A.    They may serve them with products other  
7 than electricity.

8           Q.    But not with electricity.

9           A.    What I'm thinking about, Mr. Stinson, is  
10 to the extent that -- I'm having difficulty with your  
11 term "prevent," because prevent is -- is tied up with  
12 are suppliers willing to provide a price which is  
13 beneficial to customers.

14                   And the existence of provisions in the  
15 plan which allow the plan to be adopted but doesn't  
16 preclude shopping, that gets tied up with our  
17 supplier's ability to provide a better price overall.  
18 But that's not a "prevent" type of idea.

19           Q.    Not even going to that kind of detail.  
20 My question is if customers can shop, do governmental  
21 aggregations survive?

22                   MR. KORKOSZ:  Objection, speculation.  
23 Calls for speculation.

24                   EXAMINER PRICE:  Actually I think he is  
25 posing a fairly simple hypothetical and is being

1     tortured way beyond the simplicity, so overruled.

2             A.     I don't know whether they survive or not  
3     because the one -- the government aggregation groups  
4     I'm familiar with are pretty broad in their scope.

5             Q.     If customers can shop -- if the  
6     governmental aggregation provides -- is limited to  
7     electric service and ESP would prevent a customer  
8     from shopping for electric service, would that  
9     governmental aggregation entity survives as an  
10    electricity providing governmental aggregation?

11            A.     I don't know.

12            Q.     Why don't you know?

13            A.     Because I don't know all the rest of the  
14    arrangement that government aggregator might have  
15    from others.

16            Q.     I'm going back to Mr. Price's statement  
17    this is a fairly simple hypothetical, the  
18    governmental aggregation cannot provide electric  
19    service and customers can't shop for it.

20                    If the customers -- if the governmental  
21    aggregation can't provide electric service to a  
22    customer, what can the governmental aggregation unit  
23    do?

24            A.     Maybe it has no services to offer.

25            Q.     Thank you.



1 MR. STINSON: Just a minute, your Honor.

2 Q. Mr. Blank, the ESP you've proposed also  
3 provides for a capacity cost adjustment rider,  
4 correct?

5 A. Yes, sir.

6 Q. And were you present during Mr. Garvin's  
7 testimony on behalf of FPL Power Marketing?

8 A. No, sir.

9 Q. Did you read his testimony?

10 A. A long time ago.

11 Q. Are you aware of what he is proposing  
12 with respect to a capacity cost recovery rider?

13 A. I don't recall.

14 Q. What he is proposing is that FirstEnergy  
15 would obtain the MISO planning reserve requirements  
16 for all customers, all capacity, and that FirstEnergy  
17 would then be able to recover the costs for that  
18 capacity in a nonbypassable charge.

19 MR. KORKOSZ: I object.

20 EXAMINER PRICE: Grounds.

21 MR. KORKOSZ: Counsel is attempting to  
22 get in Mr. Garvin's testimony into a question which  
23 the witness has already indicated he is not -- he is  
24 not familiar with that basis.

25 EXAMINER PRICE: He can answer if he

1 understands the question.

2 THE WITNESS: May I have it reread,  
3 please.

4 (Record read.)

5 EXAMINER PRICE: However, I don't hear a  
6 question there. Maybe you didn't get a chance to ask  
7 the actual question.

8 MR. STINSON: We have to read it back  
9 again.

10 (Record read.)

11 Q. Do you recall that in his testimony,  
12 Mr. Blank?

13 A. Vaguely.

14 Q. My question is whether you know of any  
15 regulatory impediment for the Commission to accept  
16 Mr. Garvin's proposal.

17 A. I don't know whether there are  
18 impediments or not.

19 MR. STINSON: No further questions, your  
20 Honor.

21 EXAMINER PRICE: Thank you.

22 Let's go off the record for one minute.

23 (Discussion off the record.)

24 EXAMINER PRICE: Mr. Rinebolt.

25 - - -

1 CROSS-EXAMINATION

2 By Mr. Rinebolt:

3 Q. Good morning, Mr. Blank.

4 A. Good morning, Mr. Rinebolt.

5 Q. As you know, I represent one of the  
6 fastest growing industries in your service territory,  
7 those that serve the poor. And the spirit of my  
8 questions go along with our mission.

9 You say -- turn to page 4 of your  
10 testimony, if you would. And on lines 13 through 15,  
11 you indicate that "...most importantly the ESP  
12 promotes the availability of" -- "to consumers of  
13 adequate, reliable, safe, efficient,  
14 nondiscriminatory and reasonably priced retail  
15 electric service...."

16 Is that correct?

17 A. That's what it says, yes.

18 Q. All right. Now, are you aware,  
19 Mr. Blank, that it was your intention with that  
20 language to indicate compliance with the state policy  
21 goals of Section 4928.02?

22 A. Yes. We believe that ESP does, in fact,  
23 comply with that policy.

24 Q. Would you accept, subject to check, that  
25 Subsection A of that provision of the code requires

1     that there -- that -- calls for ensuring the  
2     availability to consumers of adequate, reliable,  
3     safe, efficient, nondiscriminatory, and reasonably  
4     priced electric service?

5             A.     That's what the statute -- that's the  
6     words the statute uses, yes.

7             Q.     Is "promoting" the same thing as  
8     "ensuring"?

9             A.     In this situation I believe they mean  
10    very similar things.

11            Q.     All righty. Down further on page 4, you  
12    indicate that additional state policy is also  
13    advanced by "the development of performance standards  
14    and targets for service quality"; that's on pages 18  
15    and 19.

16            A.     Lines 18, 19.

17            Q.     Lines 18, 19.

18            A.     Yes, sir, I see that.

19            Q.     What does the development of standards  
20    and targets have to do with providing reliable  
21    service?

22            A.     I believe that as you establish such  
23    targets, you establish indicia of quality parameters.

24            Q.     Is the company meeting its current  
25    reliability targets, if you know, Mr. Blank?

1           A.    I believe that the company is meeting a  
2   number of the reliability -- or some of the companies  
3   are meeting their targets and some of the companies  
4   are making strides toward meeting those targets.

5           Q.    All righty.  Thank you very much.

6                   Can we turn to page 12, please.

7                   EXAMINER PRICE:  Of his testimony?

8                   MR. RINEBOLT:  Of his testimony.

9           Q.    You indicate on lines 9 through 11 the  
10  percentage increases in customer rates through 2011.  
11  What are the actual increases in rates without the  
12  deferrals?

13          A.    Well, the deferrals are increases that  
14  take place later and they are to a large extent  
15  offset by the removal of other charges at a later  
16  time.

17          Q.    But they are -- they are calculated based  
18  on the price you charge in 2009; is that not correct?

19          A.    The values are -- lines 10 and 11 are the  
20  amount that customers pay on a current basis.

21          Q.    Right.

22          A.    The deferral impact is associated with --  
23  you are talking about takes place -- takes place in  
24  11 and then in 12 and, of course, in 12, the  
25  distribution service improvement rider -- delivery

1 service improvement rider is completed, and that  
2 approximately offsets the deferral charge.

3 Q. That was not my question, Mr. Blank, and  
4 I appreciate that -- that insight, but in 2010, you  
5 indicate a 4.01 percent increase in charges. Could  
6 you please tell me what that percentage increase  
7 would be if there was no deferral.

8 A. Well, that's not the plan so I don't -- I  
9 don't know that there is a different number.

10 Q. Do you know how much the deferral will  
11 be, or can you project what that would be?

12 A. I know approximately what the deferral  
13 would be.

14 Q. Okay.

15 A. The deferral is in the neighborhood of  
16 it's more than 10 percent of the 8 cents per kilowatt  
17 hour rate.

18 So if -- if the plan were to charge the  
19 full rate, which that is not the plan, you would add  
20 approximately eight-tenths of a cent to the price at  
21 that point in time and whatever the calculation would  
22 be it would be.

23 Q. All righty. I'll accept that.

24 What is the advantage of this phase-in to  
25 customers?

1           A.    The advantage of phase-in to the  
2 customer?

3           Q.    What's the advantage of it to customers?

4           A.    Is to provide customers with a lower  
5 current rate than would otherwise be available in  
6 going to a market rate option and so spread out some  
7 of this cost change over a much longer period of time  
8 in very favorable financing rates.

9           Q.    Well, let's see if this is analogous then  
10 to cause you to come to financing rates. So what you  
11 are essentially suggesting here is that customers  
12 will pay a part of your rate increase in '10 and '11  
13 and they will put the balance of it on a credit card  
14 at an interest rate and pay that off over 10 years.  
15 Is that a good way of describing this plan?

16          A.    I disagree with the analogy to the credit  
17 card because the interest rates are very, very much  
18 lower than credit card interest rates. And it is not  
19 and -- it is not a charge to the individual customer.  
20 It's a charge to the totality of the customers as a  
21 group.

22          Q.    Have you calculated what the cost of the  
23 carrying charge will be on those deferrals?

24          A.    Yes, we have, and I think that's been  
25 introduced in evidence and I would like to compare

1     that to the cost of the company of that carrying  
2     charge.

3                 My understanding is that carrying charge  
4     is -- the cost to the customers is approximately  
5     \$500 million. The cost to the company of providing  
6     that is in the neighborhood of \$625 million which is  
7     a -- about a 25 percent increase over the cost that  
8     customers actually will be paying.

9                 Q.     Mr. Blank, how can the cost to the  
10    company be higher than the cost to customers if the  
11    customers are paying you carrying charges? Are you  
12    charging carrying charges that are lower than your  
13    cost of money?

14                A.     Yes, sir.

15                Q.     And that's based on your projections of  
16    what the cost of money will be?

17                A.     That's based upon the cost of money as  
18    determined by the staff in the most recent rate case  
19    deliberations which are currently being reviewed by  
20    the Commission compared to the expected cost to debt.

21                Q.     Now, when -- when were those carrying  
22    costs set? What were the date -- are you talking  
23    about the proposed level that was in your recent  
24    rate -- base rates Application, or are you talking  
25    about the interest rate that was set in 1996 and 1990



1 in the previous rate case?

2 A. I'm talking about the most recent  
3 calculations and the most recent staff testimony, not  
4 the 1996 calculations.

5 EXAMINER PRICE: Mr. Blank, the number  
6 you are talking about is the midpoint of the range  
7 recommended -- final recommendation of the staff in  
8 07-551.

9 THE WITNESS: That's correct, in  
10 comparison to the expected cost to debt, yes, sir.

11 EXAMINER PRICE: Thank you.

12 Q. One last question for you, Mr. Blank.

13 On page 15 you provide an example of  
14 dynamic pricing. And if you would accept, subject to  
15 check, that, for example, the proposed tariff for  
16 Toledo Edison for dynamic pricing would be 12.45  
17 cents per kilowatt hour from 11:00 to 5:00 Monday  
18 through Friday at 6.1 -- excuse me. Let me withdraw  
19 that.

20 Would you accept, subject to check, that  
21 the Toledo Edison tariffs for dynamic pricing  
22 indicate a charge of 23.32 cents per kilowatt hour  
23 for on-peak and -- and the 6.19 cents in off-peak  
24 hours?

25 We are reading from -- I'm quoting Volume

1 II-B, page 393.

2 A. I'll accept that's -- that sounds about  
3 right. I haven't -- I -- I don't have the reference  
4 particularly in front of me. I am not sure I need  
5 it.

6 Q. Yeah, trust me to quote it correctly.

7 A. I always trust you, Mr. Rinebolt.

8 Q. Thank you very much, Mr. Blank.

9 Where did you come up with those numbers?  
10 Why is 23 cents the right number for an on-peak price  
11 in a dynamic pricing scheme?

12 A. We've learned from time-of-day rates  
13 currently as well as in the -- in Ohio as well as in  
14 other jurisdictions that a modest on-peak compared to  
15 off-peak price really does nothing to incent  
16 customers to move conception of electricity away from  
17 peak periods.

18 In reviewing the literature which  
19 Mr. Hussing has been doing at my request, we've  
20 learned that you really have to have a fairly  
21 substantial multiple between the on-peak and off-peak  
22 prices to even begin to have any -- any impact on  
23 customer movement of electricity from on peak to off  
24 peak.

25 I would cite experience which we have in

1 New Jersey along the shore where -- where  
2 restaurants, for example, which are commercial  
3 customers, not residential customers, leave their  
4 doors wide open in the middle of the summer and  
5 introduction of big price differences do nothing to  
6 cause them to close their doors.

7           And these are the types of behavioral  
8 characteristics which we think we need to overcome in  
9 order to permit economic installation of control  
10 devices that customers could use to make it  
11 worthwhile for them to shift away from the use, for  
12 example, of air conditioning in the summertime.

13           Q. Well, I appreciate your anecdotal  
14 examples, but you still didn't answer my question,  
15 Mr. Blank.

16           Where did you come up with 23 cents? Did  
17 you do a study to determine that that's the trigger,  
18 that that's the right economic point that will cause  
19 customers to reduce usage?

20           A. We have done a lot of studies,  
21 Mr. Rinebolt. The studies incorporate reviewing  
22 experience of pricing in other jurisdictions, our own  
23 pricing, and attempting to -- for time-of-day rates  
24 and attempting to come up with a value that is -- is  
25 a broader difference than what we have had in the

1 past.

2 This is consistent with some of the plans  
3 in other jurisdictions, as I understand it, where  
4 there has been some amount of movement and at the  
5 same time it is not so high that it just completely  
6 deprives customers of the ability to use on-peak  
7 power.

8 Q. But there is -- based on the way you've  
9 structured it, there is no cost basis for this  
10 charge. You aren't projecting forward-peak prices  
11 and setting a charge to reflect those prices, are  
12 you? You are just attempting to incent a demand  
13 reduction with a price?

14 A. Well, some days the on-peak price of  
15 energy really is this high and even higher. On  
16 average it is not or has not been, I think I should  
17 say.

18 MR. RINEBOLT: Thank you very much,  
19 Mr. Blank. I appreciate your time.

20 EXAMINER PRICE: I'll try to be brief.

21 - - -

22 EXAMINATION

23 By Examiner Price:

24 Q. Turning back to the schools -- Ohio  
25 Schools Council Exhibit 2, I think I asked you the

1 wrong question earlier.

2 Noting the significant difference in the  
3 overall increase between Toledo Edison and CEI and  
4 Ohio Edison, is it the case that Toledo Edison and  
5 CEI had a separate schools rate which is being  
6 eliminated in the new tariffs and that is -- causes a  
7 lot of the differential in the increase between those  
8 utilities and Toledo Edison?

9 A. I would agree with you, your Honor, but  
10 would note that was also part of the distribution  
11 case and was dealt with in the distribution case.

12 Q. I understand that, I'm trying to make  
13 sure the record is clear.

14 A. Yes, sir.

15 Q. The fuel cost adjustment rider, is it the  
16 companies' intent that the Commission staff would be  
17 able to review on a periodic basis the adjustments  
18 made under that rider and make recommendations to the  
19 Commission regarding whether or not these  
20 adjustments -- the costs of the company were  
21 prudently incurred?

22 A. I don't know why not, your Honor.

23 Q. Okay. Is the same thing true for the FTE  
24 rider?

25 A. I thought that was the fuel cost rider.

1           Q.    No.  I was talking about fuel cost  
2   adjustment rider, FCA, and, now, I'm turning my  
3   question to fuel transportation surcharge and  
4   environmental control rider, FTE.  There are lots of  
5   riders in this case.

6           A.    I get confused by the rider titles, your  
7   Honor, I apologize.

8                   Yes, I do not know why we would not fully  
9   participate in and cooperate within Ohio.

10          Q.    How about the capacity cost adjustment  
11   rider?

12          A.    Same answer.

13          Q.    On the other hand there are two other  
14   riders, one is the MDS rider, that's not in any sense  
15   a cost-based rider; is that correct?  That's a rider,  
16   my understanding, the company, using management  
17   judgment, simply set it at 1 cent.

18          A.    Management judgment based upon the costs  
19   and risks associated with providing the plan but  
20   there is not an accounting schedule to be audited.

21          Q.    Exactly, and the same thing is true for  
22   the standby rider, I forget, SBC.

23          A.    That's correct.

24          Q.    Okay.  Now, the distribution service  
25   improvement rider is the one that was not clear to

1 me. Is it the companies' intent that the staff would  
2 be able to audit and make recommendations to the  
3 Commission regarding whether the costs recovered  
4 under the DSI rider were prudently incurred?

5 A. There again, I think the testimony was  
6 that there is not an accounting schedule which adds  
7 up to the two-tenths of a cent charge so what -- I  
8 don't know what there would be to audit.

9 Certainly the staff is free to audit what  
10 the company is doing on a current basis with respect  
11 to its distribution service expenditures.

12 Q. But the DSI rider as proposed is a flat  
13 .22 cents per kilowatt hour?

14 A. That's correct, in the aggregate, yes.

15 Q. And that is just a revenue stream coming  
16 into the company, there is no associated costs that's  
17 intended to recover. There are goals Mr. Schneider  
18 discussed but there is no actual --

19 A. There is not a one-to-one correspondence  
20 but there certainly are costs that are -- is intended  
21 to recover, and I believe that we've talked about  
22 that in my testimony as well as Mr. Schneider's.

23 EXAMINER PRICE: That was brief. That's  
24 all I have.

25 Redirect?

1 MR. KORKOSZ: May we take a brief recess?

2 EXAMINER PRICE: Yeah, let's take 10  
3 minutes.

4 MR. KORKOSZ: Thank you.

5 (Recess taken.)

6 EXAMINER PRICE: Back on the record.

7 Mr. Korkosz.

8 MR. KORKOSZ: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Korkosz:

12 Q. Mr. Blank, do you remember a couple of  
13 days ago you were being examined by Ms. Fonner and  
14 this was on the subject of your reliance on the  
15 numbers from Dr. Jones and Mr. Graves and at one  
16 point you disagreed with her characterization that  
17 you exclusively relied on their -- their market  
18 numbers because you are aware of other arrangements  
19 which would tend to confirm -- confirm their numbers.

20 Do you recall that discussion?

21 A. Yes, sir.

22 Q. Tell me what other arrangements you had  
23 in mind.

24 A. In particular I was -- I was thinking  
25 about the results of the Pennsylvania Power & Light



1 POLR procurements arrangements that have taken place  
2 in this year.

3 In particular Pennsylvania Power & Light  
4 has gone out for in the neighborhood of 850 megawatts  
5 of POLR procurement, that's about 500 megawatts each  
6 time both in March of 2008 and again on October 1,  
7 2008, and over that -- between those two times the  
8 winning bids in those RFP arrangements actually went  
9 up even though the round-the-clock wholesale energy  
10 price for forwards for the relevant time at that time  
11 went down.

12 For example, in March, 2008, the price  
13 for residential service for the winning bids was  
14 \$108.80 per megawatt hour at the same time that the  
15 round-the-clock wholesale energy price at the PJM  
16 West Hub for forwards for 2010 were \$72.24.

17 In October the winning bid for the POLR  
18 supply for residential was \$112.51 while the  
19 round-the-clock wholesale energy forwards for 2010  
20 for the contemporaneous period were \$67.92.

21 So although there was a 6 percent  
22 reduction in the wholesale energy price, there was a  
23 3.4 percent increase in the -- in the price for the  
24 POLR service and there was similar values for the  
25 general service arrangements that took place at the

1 same time.

2           This in my opinion was caused by a number  
3 of factors, the first being that the CAIR rules, the  
4 Clean Air Interstate Rules, were overturned by the  
5 District Court in -- for D.C. sometime this summer,  
6 and there's a strong belief that those -- those CAIR  
7 rules will be reinstated and, hence, impact the price  
8 of service and such orders have been issued by the  
9 District Court very recently that tend to indicate  
10 they are very seriously considering such  
11 reinstatement.

12           The second big issue, of course, is the  
13 credit markets as has been testified to in this  
14 proceeding by witnesses, counsel, and others over the  
15 last several days.

16           MR. PETRICOFF: Your Honor, I move to  
17 strike. This is rebuttal testimony without giving  
18 the other intervenors an opportunity to testify -- if  
19 the question was yes, I looked at the POLR -- at the  
20 PPL or whatever the company was at auction, that  
21 would be fine, but this whole testimony of what the  
22 numbers were and where they are, just come out of the  
23 blue and does not give us an -- an ample opportunity  
24 to refute this. This ought to be in rebuttal.

25           MR. SMITH: Your Honor, I also move to

1 strike. It's not responsive to the question and,  
2 furthermore, anything after July 31, 2008, when ESP  
3 was filed would have nothing to do with Jones' and  
4 Graves' analysis and this is only supplemental  
5 testimony that he could have presented on direct.

6 MR. KORKOSZ: Well, in the first place an  
7 objection based on nonresponsiveness would belong to  
8 me, not to Mr. Smith, since I asked the question.

9 MR. SMITH: I have a right to object to  
10 the fact the witness did not respond to the question  
11 asked.

12 EXAMINER PRICE: Let's allow Mr. Korkosz  
13 to finish his statement here.

14 MR. KORKOSZ: All right. During  
15 Ms. Fonner's examination, Mr. Blank was asked if he  
16 relied exclusively on the testimony of Dr. Jones and  
17 Mr. Graves.

18 He responded, and this is page 242 of the  
19 transcript of whatever day that was, "I will not  
20 agree with the word 'exclusively' because I have  
21 evaluated what they've" -- "what they've done and I  
22 keep somewhat tabs on the electricity markets and I  
23 am aware of other arguments which would tend to  
24 confirm the numbers they have."

25 I asked him what arrangements -- what

1 other arrangements he had in mind when he made that  
2 statement, and I believe his answer was, one, fully  
3 responsive to that question and the predicate for his  
4 making those statements was laid in response to  
5 Ms. Fonner's question.

6 EXAMINER PRICE: Motion to strike is  
7 denied.

8 Please continue.

9 Q. (By Mr. Korkosz) Mr. Blank, do you recall  
10 yesterday afternoon when you were being examined by  
11 Mr. Yurick that you had a discussion with him  
12 regarding the impact of the -- the ESP prices on  
13 certain large customers?

14 You made the statement that you would  
15 suspect customers who were impacted by the affects of  
16 the ESP in any large measures would have understood  
17 what the impacts would be and would have taken steps  
18 to deal with those impacts.

19 Do you recall that?

20 A. Yes, sir.

21 Q. What steps did you have in mind?

22 A. Well, for example, in addition to  
23 modifying the potential to modify their operations,  
24 particularly to take advantage of on-peak and  
25 off-peak prices, certainly the customer could seek

1 third-party supplier arrangements from CRES  
2 providers.

3 And in any event, they could certainly  
4 seek special contracts under the reasonable  
5 arrangement riders provided for in the statute --  
6 reasonable arrangement provisions provided in the  
7 statute.

8 Q. Late in the day yesterday you were being  
9 questioned by Mr. Lavanga of Nucor regarding the  
10 operation of rider GEN, G-E-N, under the short-term  
11 ESP.

12 Do you recall that?

13 A. Yes, sir.

14 Q. Again that -- it was late in the day, and  
15 I am not sure the record is entirely clear. Could  
16 you give us a brief summary of the -- of your  
17 understanding of the operation of rider GEN as it  
18 would be under the short-term ESP?

19 A. Yes. I apologize for the confusion  
20 yesterday afternoon.

21 There are two riders that under the  
22 companies' filing come into play. They are rider GEN  
23 and then the phase-in rider, GPI. Rider GEN deals  
24 with the gross generation charge before the deferral,  
25 and GPI is the phase-in rider which reduces the rider

1 GEN amount.

2 Under the short-term ESP rider GEN would  
3 be developed, the values in rider GEN, by taking the  
4 rider GEN rates for the ESP for the long term ESP for  
5 2009, multiplying them by the factor of 7.75, divided  
6 by 7.50, which would then give you the higher values  
7 for the rider GEN under the short-term ESP.

8 The same concept applies for rider GPI  
9 where you would take the rider GPI rates filed for  
10 the long-term ESP for 2009, multiply them by the  
11 ratio of one divided by .75. By making these  
12 adjustments you develop seasonal rates and  
13 time-of-use rates for the short-term ESP, and as a  
14 result, the amount the customers would pay on a  
15 current basis under the short-term ESP are the same  
16 as they would be under the long-term ESP for these  
17 particular arrangements.

18 Q. Thank you.

19 Finally, Mr. Blank, also late yesterday  
20 afternoon under examination by Mr. Lavanga there was  
21 a discussion of the operation of rider EDR under the  
22 short-term ESP.

23 Do you recall that?

24 A. Yes, sir.

25 Q. Could you clear up for the record how

1 that rider would -- what -- how that would -- how  
2 that rider would be treated under the short-term ESP?

3 A. Yes. And this is particularly in  
4 reference to section 8D of the Application starting  
5 at page 36, and in particular -- in particular  
6 starting on the fourth line on page 37 there we state  
7 "The rate design for implementing short-term ESP  
8 generation rates shall be the rate design proposed in  
9 the filed tariffs associated with the long-term ESP.  
10 In addition, the following provisions of the longer  
11 term ESP will not be applicable and are withdrawn for  
12 the term of the short-term ESP," and then we list a  
13 number of provisions including provision "A.4.i  
14 (regarding the economic development rider)."

15 When I reviewed this overnight, it  
16 appears that we inadvertently failed to remove this  
17 particular item from that listing on page 37 on the  
18 errata sheet we filed several weeks ago with the ESP.  
19 That is Section "A.4.(i regarding the economic  
20 development rider)" would be in effect during the  
21 duration of any short-term ESP.

22 There's one further clarification  
23 associated with that. Should the short-term ESP be  
24 replaced by the market rate option, any further  
25 reconciliation positive or negative to -- necessary

1 to achieve the revenue neutral character of this  
2 rider needs to be maintained until such neutrality is  
3 obtained, and as a result, the Commission and parties  
4 should consider the ESP Application to reflect this  
5 adjustment.

6 MR. KORKOSZ: Thank you, Mr. Blank. I  
7 have nothing further.

8 EXAMINER PRICE: Ms. Roberts.

9 MS. ROBERTS: No further questions, your  
10 Honor.

11 EXAMINER PRICE: Mr. Bell.

12 MR. KUTIK: No questions.

13 EXAMINER PRICE: Mr. White.

14 MR. WHITE: No questions.

15 EXAMINER PRICE: Mr. Rinebolt.

16 MR. RINEBOLT: No questions, your Honor.

17 EXAMINER PRICE: Ms. McAlister.

18 MS. McALISTER: Actually just one, your  
19 Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. McAlister:

23 Q. Mr. Blank, in a response to question  
24 rider GEN and the deferral, I am not sure what it's  
25 called now, it appeared you were reading from a



1 document, and I might have missed it, but I am not  
2 sure if you made a reference to what you were looking  
3 at.

4 A. I was reading from notes that I prepared  
5 for myself because I'm incapable of reading my own  
6 handwriting.

7 MS. McALISTER: Thank you, no further  
8 questions.

9 EXAMINER PRICE: Mr. Dunn.

10 MR. DUNN: No questions.

11 EXAMINER PRICE: Mr. Porter.

12 MR. PORTER: No questions, your Honor.

13 EXAMINER PRICE: Mr. Smith.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Smith:

17 Q. Well, as far as your first question  
18 response, whatever analysis -- further analysis you  
19 did of Dr. Jones' or Mr. Graves' generation rates are  
20 reflected in your Alternative Attachment No. 1; would  
21 that be correct?

22 A. That's correct.

23 Q. Okay. As far as the short-term  
24 generation rates for the ESP, short-term ESP, once  
25 you do all these calculations are those rates higher

1 or lower than the proposed ESP rates, or the same?

2 Do you want me to repeat it?

3 A. Yes, please.

4 Q. Okay. You went through a --

5 A. Could you use a microphone, Mr. Smith? I  
6 can barely hear you.

7 Q. Sorry. Can you hear me now?

8 A. Yes, I can.

9 Q. You did a mathematical calculation from  
10 your notes on the generation rates during the  
11 short-term ESP, correct?

12 A. Yes.

13 Q. Okay. Having done those calculations are  
14 those rates higher or lower than proposed for the  
15 ESP?

16 A. The generation rates by themselves, the  
17 rider generates are higher in the short-term ESP than  
18 they are in the long-term ESP by on average a quarter  
19 of a cent per kilowatt hour.

20 Q. And what about the generation phase-in?  
21 Did that change at all from what you proposed in the  
22 ESP?

23 A. The generation phase-in rider values are  
24 also higher in the short-term than they are in the  
25 long term such that when you apply the two together,

1     you get a -- arrive at the same net value between the  
2     long-term ESP and the short-term ESP, that being the  
3     amount customers pay currently.

4                     MR. SMITH: Thank you. Nothing further.

5                     EXAMINER PRICE: Mr. Breitschwerdt.

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

8                     EXAMINER PRICE: Mr. Petricoff.

9                     MR. PETRICOFF: Yes, your Honor.

10                    - - -

11                    RE CROSS-EXAMINATION

12     By Mr. Petricoff:

13                    Q. Thank you, Mr. Blank.

14                    Mr. Blank, in your -- in your redirect  
15     response you indicated that you had -- you were  
16     giving the results from an auction that had taken  
17     place recently.

18                    A. It was an RFP, a request for proposal,  
19     conducted under the auspices of the Public Utilities  
20     Commission in Pennsylvania.

21                    Q. And the name of that company was?

22                    A. Pennsylvania Power & Light Company.

23                    Q. And are the terms of that RFP identical  
24     with the terms of the MRO you filed with this  
25     Commission in Docket 08-936?

1           A.    I do not believe they are identical in  
2 all respects, but overall they are very similar.

3           Q.    But there are differences.

4           A.    There are differences.

5           Q.    And what regional transmission  
6 organizations does Penn Power belong to?

7           A.    This is --

8                   MR. KORKOSZ:  Objection.  And I was a  
9 little quick on the trigger.  I will inquire when  
10 Mr. Petricoff said Penn Power, whether he intended to  
11 say Penn Power or PP&L.

12                   MR. PETRICOFF:  I may have misunderstood  
13 the acronym.

14           Q.    What is the -- what is the name of the  
15 utility that had the RFP?

16           A.    This is Pennsylvania Power & Light  
17 Company, which served eastern Pennsylvania,  
18 headquartered in Allentown.

19           Q.    They call that Penn Power?

20           A.    PP&L.

21                   MR. PETRICOFF:  PP&L.  Thank you,  
22 Mr. Korkosz.

23           Q.    What RTO did you -- well, we have got to  
24 keep the record clean here.

25                   What RTO does PP&L belong to?

1           A.    PP&L belongs to the PJM interconnection.

2           Q.    Okay.

3           A.    And I would agree there are basis  
4 differences between this interconnection. And MISO,  
5 as we've taken those basis differences into account,  
6 that the October values, in fact, translate to values  
7 which are greater than the numbers which we have in  
8 the short-term -- or the long -- in the ESP  
9 generally.

10                   MR. PETRICOFF: I move to strike the  
11 portion where he assumed that the next question was  
12 going to be a basis comparison.

13                   EXAMINER PRICE: Everything in his  
14 response will be stricken after I believe the word  
15 "interconnection."

16           Q.    Are the LMP prices higher in FirstEnergy  
17 than in PP&L throughout most of the 8,760 hours of  
18 the year?

19           A.    Generally the PJM prices are higher than  
20 they are for the MISO area, and that difference, when  
21 reflected back, we still get a higher price for the  
22 PP&L adjustment relative to the MISO area.

23           Q.    So the answer is yes, the prices are  
24 higher?

25           A.    Pardon me.

1 Q. Your pocket is ringing.

2 A. Pardon me. Sorry.

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

5 EXAMINER PRICE: Mr. Kurtz.

6 MR. KURTZ: No questions.

7 EXAMINER PRICE: Mr. Stinson.

8 MR. STINSON: No questions, your Honor.

9 EXAMINER PRICE: Mr. Yurick.

10 MR. YURICK: I just have a couple, your  
11 Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Yurick:

15 Q. Sorry, Mr. Blank. I have been brief,  
16 have I not?

17 A. You certainly have.

18 MR. YURICK: Did the court reporter get  
19 that I have been brief? Thank you.

20 A. Thankfully.

21 Q. Okay. You testified on redirect when  
22 Mr. Korkosz asked you a question that there were  
23 certain things that customers could do to reduce the  
24 impact of the rate proposal in your ESP; is that  
25 correct?

1           A.    Yes, sir.

2           Q.    One of the things you testified about was  
3 seeking a reasonable arrangement, right?

4           A.    That's correct.

5           Q.    Are you familiar with your rider RAR,  
6 your reasonable arrangement rider?

7           A.    Yes, but I'm thinking not just about RAR,  
8 I'm thinking about unique arrangement --

9           Q.    Just stick with my question for just a  
10 second.

11          A.    I'm generally familiar with that, but I  
12 don't have it in front of me.

13          Q.    Okay. Do you have Schedule 3A in front  
14 of you?

15          A.    No.

16          Q.    Okay. Let me just ask you if you are  
17 generally familiar with it.

18                For reasonable arrangement riders, are  
19 retail customers eligible for a reasonable  
20 arrangement rider, the CEI reasonable arrangement  
21 rider? Are retail customers eligible for that?

22          A.    I would have to look at the language, Mr.  
23 Yurick, I don't recall.

24                EXAMINER PRICE: Mr. Yurick, just so the  
25 record is clear, when you say "retail customers," do

1     you -- you mean customers that are retail  
2     enterprise; is that correct?

3                     MR. YURICK: Thank you very much.

4             Q.     Retail source, retail operations.

5             A.     You are thinking of the word  
6     "mercantile"?

7             Q.     No. Actually let me do it this way, I'm  
8     referring to Schedule 3A, page 141 of 190. I will  
9     give it to you.

10            A.     Okay.

11                    MR. KUTIK: We can provide it.

12                    EXAMINER PRICE: Thank you, Mr. Burk.

13                    MR. YURICK: Thank you very much,  
14     Mr. Burk. I appreciate that.

15            A.     141 of -- is that the page?

16            Q.     141 of 190, yes.

17            A.     Yes, sir.

18                    MR. YURICK: And, I apologize, I really  
19     hadn't planned on asking him, Mr. Blank, questions  
20     about this, but Mr. Korkosz brought it up so.

21            Q.     If you look at that Schedule 3A, page 141  
22     of 190, under Qualification, New or Expanding  
23     Facilities, Subsection A, it says "Eligible projects  
24     much" -- "must be for nonretail purposes."

25                    Do you see that?



1           A.    That's correct.

2           Q.    So a customer engaging in retail  
3 operations isn't eligible for this rider; isn't that  
4 right?

5           A.    That's correct.  I believe these are the  
6 staff's rules which were someplace in the process of  
7 being adopted or not.

8           Q.    I understand that, but I think you get my  
9 point is at least under this rider that's not an  
10 option for a customer engaged in retail purposes,  
11 correct?

12          A.    Not under this option, but they may have  
13 an option under other unique arrangements.

14          Q.    I am sure you will have a chance to clear  
15 that up, sir.  Stick with my question, if you would,  
16 please.

17                For this particular rider, granted, it's  
18 just this particular rider, if a customer is involved  
19 in retail operations, this is not available to them.

20          A.    This particular arrangement would  
21 preclude retail.

22          Q.    Okay.  And you testified under recross  
23 that there are several things customers could do to  
24 lessen the impact of a particular -- of your ESP  
25 proposal on them as a customer; is that right?

1           A.    That's correct.

2           Q.    But some of your customers, I mean you  
3 would agree, would you not, they have to use a  
4 certain amount of electricity; isn't that right?

5                   No matter how efficient you are if  
6 your -- if you need to refrigerate food, you have to  
7 use electricity for that.

8           A.    I would agree that you need to use  
9 electricity for that, but I also believe that there  
10 are many different arrangements that you can make to  
11 provide for better insulation or more efficient  
12 competitors or all sorts of different mechanical or  
13 similar arrangements to reduce your reliance on  
14 electricity.

15          Q.    But you would agree, would you not, there  
16 are certain things that the company could do also in  
17 their ESP plan to reduce the impact of particular  
18 customers; isn't that right?

19          A.    I would agree but only to the extent to  
20 reflect that as long as the cost doesn't change, we  
21 have got to collect that differential which would  
22 benefit one customer from some other customer or  
23 customer group.

24          Q.    Well, and I think you said earlier that  
25 there's nothing in the statute that would prevent you

1 from presenting an ESP where you figured up -- I  
2 think I used revenue requirements yesterday which was  
3 the wrong term, but you figured out how much money  
4 you would make on the market, how much money you  
5 needed to make not using the technical term revenue  
6 requirements, adding, say, if it was a 5-1/2 percent  
7 rate increase you could just take your existing rate  
8 schedules, add 5-1/2 percent to them across the board  
9 and you could have structured the ESP that way.

10 A. I'm not going to agree to making money on  
11 the generation process, Mr. Yurick.

12 Q. How much money you need --

13 A. But in terms of the overall revenue you  
14 could just apply a flat percentage increase to all  
15 usage.

16 Q. That's a much better term, "overall  
17 revenue"?

18 A. We didn't do it that way.

19 Q. But there is nothing in the statute that  
20 would prevent you from doing it that way?

21 A. I believe there is nothing in the  
22 statute, although I think there would be other  
23 adverse consequences.

24 Q. But one of the -- there may be adverse  
25 consequences, but there could be benefit

1 consequences, like reducing the impact of the ESP on  
2 particular customers, correct?

3 A. That could happen.

4 Q. Because everybody would just get a 5-1/2  
5 percent increase, correct?

6 A. If you do that type of situation I think  
7 you move away from the cost -- the cost base  
8 structure of what we are trying to -- what we are  
9 trying to implement.

10 Q. So your ESP is based on a cost based  
11 structure?

12 A. The cost structure of our ESP -- or the  
13 rate structure of the ESP is based upon the  
14 incurrence of cost, yes.

15 In particular I'm believing -- I'm  
16 thinking about the generation rates and how the  
17 generation rates will be -- generation will be  
18 procured on a dollars per megawatt hour basis and it  
19 is that price that is being flowed through to  
20 customers which doesn't have a demand component,  
21 doesn't have a capacity component, doesn't have a  
22 customer charge component, it's a kilowatt hour  
23 basis.

24 MR. YURICK: I don't think I have any  
25 further questions at this point. Thank you very

1 much, Mr. Blank, I appreciate your patience.

2 EXAMINER PRICE: Thank you.

3 Mr. Weldele.

4 MR. WELDELE: No questions, your Honor.

5 EXAMINER PRICE: Mr. Jones.

6 MR. JONES: No questions, your Honor.

7 EXAMINER PRICE: Thank you.

8 Mr. Blank, you are excused.

9 THE WITNESS: Thank you.

10 EXAMINER PRICE: At long last.

11 Mr. Korkosz.

12 MR. KORKOSZ: Your Honor, please, at this  
13 time I offer into evidence Companies Exhibit 1, 1A,  
14 and 1B, which were the exhibits identified at the  
15 beginning of Mr. Blank's examination.

16 EXAMINER PRICE: Any objections to the  
17 admission of Company Exhibits 1, 1A, and 1B?

18 Seeing none, those will be admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 MR. KORKOSZ: And since Mr. Blank was the  
21 last witness of the company in its prima facia case,  
22 I at this point offer the following exhibits which  
23 have been preidentified on the record: Exhibits 9A  
24 through 9F which is the Application and accompanying  
25 terms in the filing; Company Exhibit 10, which was

1 the errata sheet noted by several witnesses; and  
2 finally Companies Exhibit 11, which was the newspaper  
3 notices and proofs of publication.

4 EXAMINER PRICE: Any objection to the  
5 admission of Company Exhibits 9A through F, Company  
6 Exhibits 10, Company Exhibit 11?

7 Seeing none, those will be admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 MR. KORKOSZ: Thank you, your Honor.

10 EXAMINER PRICE: Mr. Petricoff.

11 MR. PETRICOFF: Yes, your Honor. During  
12 the cross-examination of Mr. Blank there was an  
13 exhibit marked Competitive Suppliers Exhibit No. 6,  
14 and I move for the admission.

15 EXAMINER PRICE: Any objection to --

16 MR. KORKOSZ: No objection.

17 EXAMINER PRICE: That exhibit will be  
18 admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER PRICE: Mr. Breitschwerdt.

21 MR. BREITSCHWERDT: Thank you, your  
22 Honor. During the examination of Mr. Blank there was  
23 NOPEC/NOAC Joint Exhibit No. 5 which was the  
24 administrative notice taken of the statute, assuming  
25 that's appropriate, and Ohio Schools Council Exhibit

1 2, and I would request that Ohio Schools Council be  
2 admitted and administrative notice be taken of Code  
3 Section 4928.02.

4 EXAMINER PRICE: I have already taken  
5 NOAC/NOPEC Exhibit 5. Any objection to the admission  
6 Ohio Schools Council Exhibit 2?

7 MR. KORKOSZ: No objection, your Honor.

8 EXAMINER PRICE: That exhibit will be  
9 admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 MR. BREITSCHWERDT: Thank you, your  
12 Honor.

13 EXAMINER PRICE: Thank you.

14 MS. ROBERTS: Your Honor, as a  
15 housekeeping matter, I have Exhibit 4A.

16 EXAMINER PRICE: Great.

17 MS. ROBERTS: That was the errata to  
18 Dr. Woolridge's testimony. I have served it on all  
19 the parties and have hard copy for the Bench. And  
20 done anyone else need a copy?

21 EXAMINER PRICE: Any objection to OCC  
22 Exhibit 4A?

23 MR. KORKOSZ: No objection.

24 EXAMINER PRICE: That exhibit will be  
25 admitted.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 MS. ROBERTS: Thank you, your Honor.

3 EXAMINER PRICE: Any other matters before  
4 we take Mr. Courtney?

5 Mr. Dunn.

6 MR. DUNN: Thank you, your Honor.

7 The City of Cleveland calls John Courtney  
8 to the stand.

9 (Witness sworn.)

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

12 THE WITNESS: My name is John Courtney.  
13 My business address is 1016 North Blanchard Street,  
14 Findlay, Ohio 45840.

15 EXAMINER PRICE: Please proceed,  
16 Mr. Dunn.

17 MR. DUNN: Thank you, your Honor.

18 - - -

19 JOHN COURTNEY

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

22 DIRECT EXAMINATION

23 By Mr. Dunn:

24 Q. Mr. Courtney, do you have before you your  
25 direct testimony which has been marked as City of



1 Cleveland Exhibit 1?

2 A. Yes, I do.

3 Q. And was that document prepared by you or  
4 at your direction?

5 A. Yes, it was.

6 Q. Do you have any corrections or additions  
7 to that document?

8 A. Yes, I have one correction to make to my  
9 direct testimony.

10 Q. Could you tell us what that correction  
11 is.

12 A. That correction would be on page 7, line  
13 14, the figure there 25 percent was incorrect and  
14 should have been 50 percent.

15 Q. Thank you.

16 And if I were to ask you the same  
17 questions that are in your direct testimony, would  
18 your answers be the same?

19 A. Yes, they would.

20 MR. DUNN: I submit Mr. Courtney  
21 available for cross-examination.

22 EXAMINER PRICE: Thank you.

23 MR. KUTIK: Your Honor, at this time I  
24 have motions to strike. Your Honor, the companies'  
25 first motion to strike is directed to page 7, lines 6

1 through 18.

2 The question asks "Do you have any  
3 concerns with regards to riders CRT?"

4 There is no rider CRT in this case,  
5 therefore, the question and answer are irrelevant.

6 EXAMINER PRICE: Mr. Dunn.

7 MR. DUNN: Your Honor, he has transposed  
8 the -- the letters. May I ask him for an additional  
9 errata?

10 EXAMINER PRICE: You may.

11 Q. (By Mr. Dunn) Addressing line 6, what --  
12 you see there in line 6, "Do you have any other  
13 concerns with rider CRT?" What did you mean to say  
14 there?

15 A. Actually the reference on line 6 of page  
16 7 should be to the delta revenue recovery rider, the  
17 DR rider. Not the CRT.

18 Q. And do you wish to correct your testimony  
19 on the -- on the exhibit?

20 A. Yes, I wish to make that correction on  
21 line 6 of page 7.

22 MR. DUNN: Thank you.

23 MR. KUTIK: Your Honor, to maybe move  
24 this along is the witness also prepared to make the  
25 same correction with respect to page 6, line 17?

1 EXAMINER PRICE: Mr. Courtney, on page 6,  
2 line 17, did you intend to that to be rider DRR?

3 THE WITNESS: Yes, I did, your Honor.

4 MR. KUTIK: That obviates our second  
5 motion, your Honor. May I proceed?

6 EXAMINER PRICE: Yes.

7 MR. KUTIK: I guess the parties --

8 EXAMINER PRICE: You don't have any  
9 further motions?

10 MR. KUTIK: No further motion at this  
11 time.

12 EXAMINER PRICE: Thank you.

13 Ms. Roberts?

14 MS. ROBERTS: No questions.

15 EXAMINER PRICE: Mr. Bell.

16 MR. BELL: No questions.

17 EXAMINER PRICE: Mr. White?

18 MR. WHITE: No questions.

19 EXAMINER PRICE: Mr. Rinebolt.

20 MR. RINEBOLT: No questions, your Honor.

21 EXAMINER PRICE: Mr. Weldele.

22 MR. WELDELE: No questions, your Honor.

23 EXAMINER PRICE: Ms. McAlister.

24 MS. McALISTER: No questions, your Honor.

25 EXAMINER PRICE: Mr. Porter.

1 MR. PORTER: It's my witness. No

2 questions, your Honor. I'm with Mr. Dunn.

3 EXAMINER PRICE: I know that.

4 MR. PORTER: I'm his assistant today so.

5 EXAMINER PRICE: Mr. Smith.

6 MR. SMITH: No questions.

7 EXAMINER PRICE: Mr. Breitschwerdt.

8 MR. BREITSCHWERDT: No questions, your

9 Honor.

10 EXAMINER PRICE: Mr. Kurtz.

11 MR. KURTZ: No questions.

12 EXAMINER PRICE: Mr. Stinson.

13 MR. STINSON: No questions.

14 EXAMINER PRICE: Mr. Petricoff.

15 MR. PETRICOFF: No questions.

16 EXAMINER PRICE: Mr. Kutik.

17 MR. KUTIK: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Kutik:

21 Q. Mr. Courtney, do you recommend that the  
22 companies' Application for ESP be denied?

23 A. No, I have not made that recommendation  
24 in my testimony.

25 Q. So it's only -- it's your -- you're

1 recommending that the ESP be granted except with  
2 respect to the items that you have discussed in your  
3 testimony; fair to say?

4 A. No, that's not fair to say. I am not  
5 taking any position with regard to items other than  
6 what I have testified in my direct testimony.

7 Q. So you have no opinion as to whether ESP  
8 should be granted.

9 A. No, I do not.

10 Q. Now, you agree with me, do you not, that  
11 the ESP Application in terms of the Commission's  
12 review, the Commission does not -- the Commission can  
13 grant the ESP even if it's not cost based, correct?

14 A. Well, I believe there are a number of  
15 items within Senate Bill 221 or particularly Section  
16 4828.143 of the code that require cost justification  
17 for some components of the ESP.

18 Q. But the overall application that the  
19 Commission looks at the burden of proof on the  
20 company has nothing to do with cost basis, does?

21 A. Again, I believe there are portions of  
22 the filing that of the ESP that do require cost  
23 basis.

24 EXAMINER PRICE: Mr. Courtney, if you  
25 could listen carefully to his question and simply

1 address his question, I am sure if there is  
2 additional information which you would like to bring  
3 to the record, your counsel will ask you on redirect.

4 MR. KUTIK: Your Honor, may I have the  
5 question read and put to the witness again, please.

6 EXAMINER PRICE: Certainly.

7 (Record read.)

8 A. Well, again, as I understand  
9 4928.143(C)(1), the Commission is -- or shall approve  
10 or modify and approve an application filed under this  
11 section but, again, I am not sure the Commission  
12 cannot take into consideration cost and modified --  
13 in determining modifications.

14 Q. The ultimate burden of proof is simply --  
15 I guess it's not so simply, whether --

16 EXAMINER PRICE: Mr. Kutik.

17 Q. -- whether the ESP in the aggregate is  
18 more beneficial or favorable to customers than the  
19 expected results of an MRO, correct?

20 A. Well, the ESP filed or ESP as modified by  
21 the Commission?

22 Q. The ESP as filed.

23 A. No, I wouldn't agree with that.

24 Q. So you believe that the ESP has to be  
25 cost based; fair to say?

1           A.    As I indicated briefly, I believe there  
2   are portions of the ESP that are to be reviewed based  
3   on cost, yes.

4           Q.    And there are other portions of the ESP  
5   that should not be based on cost or cannot be based  
6   on cost?

7           A.    I am not sure 4928.143 limits the  
8   Commission from considering costs on all matters.

9           Q.    So far as you are concerned, the  
10   Commission should look at every item of the ESP to  
11   see whether it's cost based?

12          A.    That's not my testimony.

13          Q.    So the Commission can look at other items  
14   that may not be cost based and still approve them,  
15   correct?

16          A.    That would be the Commission's privilege  
17   to do so if they would choose to.

18          Q.    The Commission could do that, correct?

19          A.    Again, the Commission, as I understand,  
20   is still in the process of setting the rules.

21          Q.    Can the Commission do that, sir?  Can the  
22   Commission do that?

23               MR. DUNN:  Could you let him answer?

24               MR. KUTIK:  Unfortunately, he is not  
25   answering.

1 EXAMINER PRICE: Both of you are correct.

2 Mr. Kutik will allow the witness to finish his answer  
3 and the witness will attempt to answer the questions  
4 being asked and not the question that he wishes to  
5 have been asked.

6 It may be helpful if you put the  
7 microphone on the other side so you are looking at  
8 Mr. Kutik and closer to you. Right there.

9 Q. (By Mr. Kutik) Do you need the question  
10 again, sir?

11 A. Please.

12 (Record read.)

13 Q. That is determine or approve items of an  
14 ESP that are not cost based.

15 A. Well, again, I am not certain what all of  
16 the Commission's rules are going to be. I would  
17 assume the Commission can make that determination as  
18 to whether they would base all their decisions on  
19 cost or some not on cost.

20 Q. Under the statute?

21 A. I don't think the statute requires them  
22 to exclude costs in their evaluation or to include  
23 costs in certain evaluations.

24 Q. So under the statute the Commission could  
25 look at items under the ESP that are not cost based



1 and approve them, correct?

2 A. Again, I am not sure specifically what  
3 the -- if the statute allows that, but if the  
4 Commission sets its rules to allow that, I would  
5 assume.

6 Q. Nothing in the statute prohibits that?

7 A. To my knowledge, no.

8 Q. Now, would it be correct to say there are  
9 certain risks that are involved in POLR supply?

10 A. POLR supply, I assume you are meaning  
11 provider of last resort?

12 Q. Yes. P-O-L-R.

13 A. Well, certainly there are risks  
14 associated with having to maintain capacity for  
15 serving customers that, you know, you don't know for  
16 sure whether you are going to have that load, you  
17 have that same risk with potential new load, new  
18 growth system as well.

19 Q. So the risk that you talk about part of  
20 that or part of your answer the risk might be termed  
21 shopping risk, correct?

22 A. To the extent there is the possibility of  
23 customers choosing to buy through shopping  
24 alternative.

25 Q. Mr. Courtney, you need to speak up, I'm

1     having trouble hearing you, and I understand the  
2     court reporter is as well.

3                 I think I heard your last answer. Could  
4     you repeat your last answer.

5                 MR. KUTIK: If your Honor, please, could  
6     the report reporter read the answer that Mr. Courtney  
7     can finish?

8                 (Record read.)

9                 EXAMINER PRICE: Can you finish?

10                Q. That's all she got. Can you repeat it?  
11     Do you know the question again?

12                A. Let's repeat the question again.

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

14                (Record read.)

15                A. I believe I was saying that there is an  
16     alternative if that's available to the customers and  
17     so there could be risk associated with that, yes.

18                Q. And we would call that shopping risk.

19                A. You may refer to that as shopping risk,  
20     yes.

21                Q. You have heard that term before.

22                A. Yes.

23                Q. Now, one of the risks associated with  
24     that shopping risk is the fact that a POLR supplier  
25     would commit a certain amount of power that would not

1 be used to fulfill the POLR obligation and then would  
2 have to sell that power on the open market at prices  
3 that were below the contract price, correct?

4 A. Well, it could be required to sell at a  
5 lower price or they could actually sell it at a  
6 higher price.

7 Q. The risks is that it would be lower,  
8 correct?

9 A. Well, again, there's -- you know, it's  
10 referred to there as a risk but it could be either  
11 way.

12 Q. Okay. Now, if customers are shopping, is  
13 it more likely that market prices would be low  
14 relative to the utility rates?

15 A. You are referring to whose utility rates?  
16 I am not sure what you mean by "utility rates."

17 Q. The rates from which the customers shop.

18 A. Again, I'm not exactly clear what you are  
19 meaning. The customers would pay a lower rate than  
20 what they would pay as the SSO generation rate.

21 Q. Yes.

22 A. Is that what we are referring to?

23 Q. Yes.

24 A. Well, you would expect that if customers  
25 are purchasing from alternative suppliers, you would

1     like to do so because they would get a lower price.

2             Q.     Okay.  And if they were getting a lower  
3     price, it would be likely that, in your view at  
4     least, that market prices were lower, correct?

5             A.     Well, it would be likely they were able  
6     to obtain a supply that would be lower than the SSO  
7     generation rate at that time.

8             Q.     Including potentially market -- markets  
9     being lower, correct?

10            A.     Well, it could.  There is a lot of things  
11     in effect.  What price is for a particular customer  
12     that can affect what they pay in the marketplace.

13            Q.     So that it may well be that if market  
14     prices are going lower, retail rates might not be  
15     going lower, correct?

16            A.     What do you mean by "retail rates"?

17            Q.     The rates that are being offered to  
18     customers.

19            A.     Could I have that question again?

20            Q.     Let me put it to you a different way.

21                    Would you agree with me that simply  
22     because wholesale market prices are going down,  
23     retail rates may not go down?

24            A.     That's a possibility, yes.

25            Q.     Okay.  Now, there's also a possibility or

1 a risk associated with POLR supply in terms of an  
2 opportunity cost.

3 And by that I mean a supplier has  
4 committed the supply at a particular price and  
5 foregoes the opportunity to sell it at a potentially  
6 higher market price, correct?

7 A. Well, there's always that possibility  
8 that the market could go up or down at a point in  
9 time in which you make your commitment to a supply.

10 Q. And that's a risks as well?

11 A. That's a risk.

12 Q. There are dollar values associated with  
13 both the shopping risk and what I call this  
14 opportunity cost risk, correct?

15 A. Well, there could be a quantitative value  
16 for that, yes.

17 Q. Now, there's also a risk for POLR  
18 supplier regarding returning customers, correct?

19 A. Well, there's the possibility that the  
20 customers could return and the supplier would have to  
21 then, you know, use surplus capacity to serve that or  
22 obtain new capacity to serve that.

23 Q. And that's a risk that POLR supplier's  
24 face, correct?

25 A. Well, it, again, depends on the market

1 situation whether that's a risk or not.

2 Q. All right. But it can be a risk,  
3 correct?

4 A. It can be, yes.

5 Q. And prudent planning on the part of a  
6 POLR supplier would have to consider that risk,  
7 correct?

8 A. I would think they would take that into  
9 consideration in their planning.

10 Q. And one of things they could do is buy  
11 things like forwards, correct?

12 A. Could you describe what you mean by  
13 "forwards"?

14 Q. Well, they could buy forward contracts  
15 and call options, correct?

16 A. Certainly.

17 Q. And they can hedge and do things like  
18 that.

19 A. Correct.

20 Q. And those options and those hedges, those  
21 have costs associated with them, correct?

22 A. At least the options that I'm familiar  
23 with in the wholesale market do carry a call price  
24 basically for the right to make a call on that option  
25 for the future, yes.

1 Q. So the answer to my question is yes?

2 A. Yes.

3 Q. Now, with respect to the minimum default  
4 service charge and the standby charge, you don't have  
5 an opinion as to whether they cover the same risks or  
6 not, correct?

7 A. Well, I am not sure whether they cover  
8 the same risk because I didn't see anything in the  
9 companies' filing that substantiated the costs  
10 associated with those charges, so I don't know if  
11 there is any duplication in those numbers for the  
12 same types of costs. So I couldn't form an opinion.

13 Q. Thank you.

14 Now, you're a consultant, correct?

15 A. Yes.

16 Q. And you are a consultant in the energy  
17 area?

18 A. Yes.

19 Q. And would it be correct to say that a  
20 majority of your clients are publicly owned municipal  
21 utilities?

22 A. That's correct.

23 Q. And you probably have more than 50 of  
24 those types of clients?

25 A. Yes, I do.

1           Q.    And would it be correct to say that you  
2   are aware that municipalities, particularly like City  
3   of Cleveland, the entity in which you are here  
4   today -- you are here representing today, engage in  
5   economic development activities?

6           MR. DUNN:  Your Honor, I'm going to  
7   object on relevancy.  I am not sure where -- where  
8   this is going with economic development.

9           EXAMINER PRICE:  Overruled.

10          A.    Well, I am aware of clients that I have  
11   that have -- that are involved in economic  
12   development activities, yes.

13          Q.    Well, are you aware, for example that,  
14   the City of Cleveland has an economic development  
15   department?

16          A.    I assume that they do.  I don't work for  
17   Cleveland.  I don't do any consulting work other than  
18   the work I have done in this case for Cleveland, so I  
19   am not familiar with what they have in the way of  
20   economic development.

21          Q.    I think you said you believe they do.

22          A.    I assume they do.

23          Q.    And you would assume they would do that  
24   and they would be spending tax dollars to do so,  
25   correct?  To engage in economic development



1 activities?

2 A. I am not sure, again, what source of  
3 revenues they would use to perform those functions.

4 MR. BELL: Objection, your Honor. What's  
5 the relevancy? We aren't talking about Cleveland  
6 Municipal Power, we are talking about the City of  
7 Cleveland with elected officials making the decision  
8 with respect to the use of public funds, not a  
9 private entity FirstEnergy.

10 EXAMINER PRICE: Mr. Bell, I believe that  
11 in short order Mr. Kutik is going to tie this to the  
12 witness' comments on the delta revenue recovery  
13 rider.

14 MR. KUTIK: Thank you, your Honor. You  
15 have seen the relevance of my questions.

16 EXAMINER PRICE: Overruled.

17 MR. KUTIK: I'm not sure where we are on  
18 the record. I believe I have asked a question.

19 (Record read.)

20 Q. (By Mr. Kutik) And the reason why the  
21 entities or municipalities engage in economic  
22 development activities is that attracting or  
23 retaining businesses is good for the overall  
24 community, correct?

25 MR. BELL: Objection.

1 EXAMINER PRICE: Grounds?

2 MR. BELL: What's the relevancy of  
3 someone else's actions by elected officials unless --  
4 unless Mr. Kutik is suggesting that the Commission is  
5 elected in the authorization or approval of economic  
6 development, and the Commission is not elected.

7 EXAMINER PRICE: Again, I believe in  
8 short order Mr. Kutik is going to make clear the  
9 relevancy of this line of questioning to this  
10 witness' testimony.

11 Overruled.

12 MR. KUTIK: Could I have the question  
13 again.

14 (Record read.)

15 A. Well, I don't know that I can say  
16 specifically why communities engage in economic  
17 development. They may do it for a number of  
18 different reasons, some of which may be what they  
19 perceive to be for, as you put it, the good of the  
20 community. But, again, I can't speak to specifically  
21 why a community engages in economic development.

22 Q. Well, isn't it true that that's the  
23 reason you speculated earlier when we spoke? That is  
24 the reason why municipalities do economic development  
25 is that attracting new businesses and retaining

1 existing businesses would be beneficial to the  
2 community as a whole?

3 MR. BELL: Objection.

4 EXAMINER PRICE: Overruled.

5 A. Again, that's my opinion. I can't speak  
6 to specifically why a specific community may do that  
7 but that would be my assumptions.

8 Q. Your view is that community after  
9 community after community engages in these activities  
10 because they view it as a social benefit, correct?

11 A. I would assume that they do.

12 Q. All right. Now, would it be correct to  
13 say -- moving on to a different topic -- would it be  
14 correct to say that you don't know if special  
15 contract customers under the ESP would pay a standby  
16 charge, correct?

17 A. Well, as I understand the filing, the  
18 standby charge is a part of the SSO generation  
19 charge, so I would assume that the customer, even  
20 though it's receiving a special contract or discount,  
21 would be paying that charge.

22 Again, I don't know exactly how the  
23 special contracts will be structured but I would  
24 assume that there would be some discount off of the  
25 tariff. If it's included in the tariff, they would

1 pay that charge.

2 Q. Well, again, do you know whether -- isn't  
3 it true that you don't know whether a customer who  
4 pays or takes service under a special contract would  
5 have to pay a standby charge?

6 A. Well, again, I don't know the specifics  
7 of what the contracts -- the special contract would  
8 read with regard to what that customer would be  
9 required to pay.

10 Q. You don't know?

11 A. I have not seen any of those documents,  
12 those special contracts.

13 Q. So again, you don't know.

14 A. No.

15 MR. KUTIK: Okay. Your Honor, I have a  
16 motion to strike at this time. My motion to strike  
17 is directed towards page 7, line 19, to page 8, line  
18 4.

19 The question asks "How would you propose  
20 that the Commission deal with proposed Standby  
21 Charge?"

22 And then it goes and starts talking about  
23 special contracts. And he just indicated he doesn't  
24 know whether special contract customers would have to  
25 pay a standby charge.

1 EXAMINER PRICE: Mr. Dunn?

2 MR. DUNN: Well, your Honor, all he has  
3 said is that he believes the Commission should  
4 establish a clear policy regarding -- and that they  
5 look at these contracts and set a cap.

6 So you don't know that the fact that he  
7 hasn't seen the specific contract matters.

8 MR. KUTIK: It's beyond that. He said he  
9 didn't know.

10 MS. ROBERTS: Your Honor, in point of  
11 fact, the witness said that it depends on what the  
12 contract says. None of us have seen the contracts  
13 that FE intends to engage in so none of us know  
14 whether those charges will be included.

15 MR. KUTIK: Well, unfortunately, that  
16 argument has nothing to do with what he's testified  
17 about either on the stand or in his prefiled  
18 testimony.

19 MS. ROBERTS: I think he just said that.

20 EXAMINER PRICE: Mr. Dunn.

21 MR. DUNN: I believe he has testified  
22 that he has not seen the contracts and they are not  
23 available or at least he hasn't seen them yet. We  
24 would have to see them to know.

25 EXAMINER PRICE: I honestly think his --

1 the answer is not responsive to the question asked,  
2 although Mr. Korkosz pointed out only the person  
3 asking the questions should get to make that  
4 objection. I respectfully disagree with Mr. Korkosz.

5 MR. KORKOSZ: I didn't think I won that  
6 one.

7 EXAMINER PRICE: But I do believe it is  
8 totally nonresponsive to the question that was posed.  
9 The question asked about a standby charge and then  
10 there is nothing in the answer related to a standby  
11 charge.

12 I don't think I can let him cure this  
13 one. I think he may have meant special contract in  
14 the question but I can't let him cure this one. This  
15 isn't just messing up the rider -- the rider letters,  
16 so the motion to strike will be granted.

17 MR. KUTIK: Thank you, your Honor.

18 Q. (By Mr. Kutik) Now, with respect to  
19 special contracts, Mr. Courtney, would it be fair to  
20 say that you are not familiar with the current  
21 process that the Commission uses in terms of its  
22 processing of those contracts, correct?

23 A. I have not been involved in any special  
24 contracts in recent time for any of FirstEnergy  
25 companies' customers.

1 Q. You need to speak up.

2 A. No, I am not familiar with those  
3 currently.

4 Q. Thank you.

5 And so you don't know what review, if  
6 any, the Commission undertakes with respect to  
7 special contracts; fair to say?

8 A. I am not familiar with the process today  
9 for dealing with special contracts, no.

10 Q. Including any review.

11 A. That's correct.

12 Q. Now, would you agree that subject to  
13 quality review and approval of special contracts,  
14 recovery of delta revenues arising from those  
15 contracts may be appropriately -- may be appropriate  
16 from other customers?

17 A. Could I have that question again?

18 (Record read.)

19 A. Subject to appropriate review?

20 Q. Yes.

21 A. Yes.

22 MR. KUTIK: No further questions, your  
23 Honor.

24 EXAMINER PRICE: Thank you.

25 Staff?

1 MR. JONES: No questions, your Honor.

2 EXAMINER PRICE: Mr. Dunn?

3 MR. DUNN: May we have a few minutes?

4 EXAMINER PRICE: You certainly may.

5 Let's go off the record.

6 (Discussion off the record.)

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

9 Mr. Dunn.

10 MR. DUNN: Thank you, your Honor.

11 - - -

12 REDIRECT EXAMINATION

13 By Mr. Dunn:

14 Q. Mr. Courtney, how would you propose that  
15 the Commission deal with special contracts?

16 A. Well, first of all, let me propose the  
17 Commission establish a clear policy with regard to  
18 review an approval of any future special contract?

19 That policy should give all the parties  
20 an opportunity to review the proposed special  
21 contract and present arguments opposing the special  
22 contracts and recovery of the delta revenues.

23 Secondly, I would propose that the  
24 Commission set a cap on the amount of delta revenue  
25 that could be recovered through the delta revenue



1 recovery rider. That cap should take into account  
2 the impact on retail customers that do not receive  
3 discount through special contract.

4 MR. DUNN: Thank you, Mr. Courtney.

5 That concludes --

6 EXAMINER PRICE: Redirect?

7 MR. DUNN: Redirect.

8 EXAMINER PRICE: Mr. Rinebolt, cross.

9 MR. RINEBOLT: Yes, I have two quick  
10 questions, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Rinebolt:

14 Q. Mr. Courtney, are you a lawyer?

15 A. No, I'm not.

16 Q. So are you -- did your testimony provide  
17 a legal opinion on whether the Commission has the  
18 statutory authority to establish ESP rates based on  
19 cost or based on other factors?

20 MR. KUTIK: Your Honor, we will stipulate  
21 he's not a lawyer and it's not a legal opinion.

22 MR. RINEBOLT: I'll accept the  
23 stipulation. Thank you, your Honor.

24 EXAMINER PRICE: Thank you. Are you  
25 done?

1 MR. RINEBOLT: I am.

2 EXAMINER PRICE: Ms. McAlister.

3 MS. McALISTER: No questions.

4 EXAMINER PRICE: Mr. Smith.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Smith:

8 Q. Mr. Courtney, in your response to your  
9 counsel on redirect about special contracts, you are  
10 aware of the Commission's authority to approve  
11 special contracts that are provided for by statute?

12 A. I'm aware that the Commission approves  
13 special contracts, yes.

14 Q. You are not aware of the statutory  
15 authority they have?

16 A. I don't have the special reference to  
17 that statutory authority here with me.

18 Q. Okay. Are you aware that the Commission  
19 is undertaking rulemaking to provide administrative  
20 procedures for approval of special arrangements with  
21 customers?

22 A. Well, I am aware that the Commission's  
23 undertaking rulemaking with regard to the ESP and the  
24 MRO process. I am not involved or fully aware of  
25 what's going on with regard to that process.

1 MR. SMITH: Thank you.

2 EXAMINER PRICE: Mr. Breitschwerdt.

3 MR. BREITSCHWERDT: No questions.

4 EXAMINER PRICE: Mr. Kurtz.

5 MR. KURTZ: No questions.

6 EXAMINER PRICE: Mr. Stinson.

7 MR. STINSON: No questions.

8 EXAMINER PRICE: Mr. Petricoff.

9 MR. PETRICOFF: No questions, your Honor.

10 EXAMINER PRICE: Mr. Bell.

11 MR. BELL: No questions, Your Honor.

12 EXAMINER PRICE: Mr. Sites?

13 MR. SITES: No questions, your Honor.

14 EXAMINER PRICE: Mr. Kutik.

15 MR. KUTIK: No questions, your Honor.

16 EXAMINER PRICE: I have two questions.

17 - - -

18 EXAMINATION

19 By Examiner Price:

20 Q. Mr. Courtney, would you support an MDS  
21 charge that was based upon the actual costs of the  
22 utility?

23 A. I wouldn't oppose it, an MDS charge that  
24 had some basis or cost basis. I guess I would have  
25 to see what the cost basis was before I could say I

1 could support it, but subject to review of it.

2 Q. Let me rephrase that.

3 Would you support a rider that was based  
4 upon actual and prudently incurred costs of  
5 customers -- utilities cost about regarding the risk  
6 of customers shopping?

7 A. If we were talking about a cost that is  
8 incurred by the supplier, yes. If we are talk --

9 Q. The utilities' actual prudently incurred  
10 costs.

11 A. Well, my answer would be that if it's  
12 only a number that's on a contract between the  
13 companies and FirstEnergy Solutions, I am not sure  
14 that justifies the cost.

15 Q. Prudently incurs?

16 A. Prudently incurred costs I wouldn't have  
17 a problem with.

18 Q. Irrelevant of the amount of the cost  
19 whether it was more or less?

20 A. If it was subject to adequate review and,  
21 you know, regulatory process, yes.

22 Q. And with respect to the standby service  
23 charge, would you support a rider which was based  
24 upon the utilities' prudently incurred actual costs  
25 of customers returning to the system?

1           A.    With the same caveats to the prior  
2 answer, yes.

3                   EXAMINER PRICE:  Thank you.  You are  
4 excused.

5                   Mr. Dunn.

6                   MR. DUNN:  Your Honor, at this time the  
7 City of Cleveland would move that the City of  
8 Cleveland Exhibit 1 be entered into evidence.

9                   EXAMINER PRICE:  Any objections to the  
10 admission of Cleveland Exhibit?

11                   MR. KUTIK:  Subject to the motion strike.

12                   EXAMINER PRICE:  Subject to the motions  
13 to strike, it will be admitted.

14                   (EXHIBITS ADMITTED INTO EVIDENCE.)

15                   Mr. Rinebolt.

16                   MR. RINEBOLT:  Ohio Partners for  
17 Affordable Manufacturers calls Ms. Barbara Alexander.

18                   We would request that Ms. Alexander's  
19 prefiled testimony be marked as OP&E Exhibit No. 1.

20                   EXAMINER PRICE:  It will be so marked.

21                   MR. RINEBOLT:  And I will note I will  
22 provide a copy for the court reporter after lunch.

23                   (Witness sworn.)

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

1                   THE WITNESS: Yes. My name is Barbara  
2 Alexander. My business address is 83 Wedgewood  
3 Drive, Winthrop, Maine 04364.

4                   EXAMINER PRICE: Mr. Rinebolt, please  
5 proceed.

6   - - -

7                   BARBARA R. ALEXANDER  
8 being first duly sworn, as prescribed by law, was  
9 examined and testified as follows:

10                                       DIRECT EXAMINATION

11 By Mr. Rinebolt:

12               Q. Ms. Alexander, by whom are you employed?

13               A. I'm and -- I'm a consultant. I have a  
14 contract with your office for this proceeding.

15               Q. Do you have a copy of what has been  
16 marked as OPAE Exhibit 1?

17               A. I do.

18               Q. And what is OPAE Exhibit 1?

19               A. This is my direct testimony filed on  
20 behalf of Ohio Partners for Affordable Energy, dated  
21 September 29, 2008.

22               Q. Was OPAE Exhibit 1 prepared by you or  
23 under your supervision?

24               A. It was.

25               Q. Do you have any changes to make to the

1 exhibit?

2 A. I do have three corrections. On page 7,  
3 line 4, in the sentence that starts "Nor has the  
4 companies provided any," I would strike the word  
5 "any" and substitute the word "sufficient."

6 On page 9, line 12, the word "recovery"  
7 should be stricken and the word "recovered,"  
8 R-E-C-O-V-E-R-E-D, should be substituted.

9 And on page 30, there is a reference in  
10 lines 12 and 14 to a "rider DIS." That should be  
11 corrected to refer to "DSI."

12 That's it.

13 Q. Ms. Alexander, if you were asked the same  
14 questions that are in your testimony, would you have  
15 the same answers today, subject to the corrections?

16 A. Yes.

17 MR. RINEBOLT: Ms. Alexander is now  
18 available for cross-examination.

19 EXAMINER PRICE: Ms. Roberts.

20 MS. ROBERTS: Thank you.

21 MR. WHITT: I'm sorry, your Honor, I have  
22 one motion to strike.

23 EXAMINER PRICE: I'm sorry.

24 MR. WHITE: Page 20, lines 1 through 12.

25 Question is, "Should FirstEnergy's proposal to decide

1 its pending distribution rate case in this context of  
2 the ESP be approved?"

3 I believe that subject matter is  
4 addressed in the Bench ruling on how the distribution  
5 issues would be resolved.

6 MS. ROBERTS: I'm sorry, I cannot hear,  
7 your Honor.

8 EXAMINER PRICE: Can you repeat that  
9 again, Mr. Whitt?

10 MR. WHITT: Yeah, page 20, lines 1  
11 through 12, the subject matter of the question  
12 pertains to a recommendation about how distribution  
13 issues should be resolved, and given the Bench's  
14 ruling, we don't feel the testimony is appropriate.

15 EXAMINER PRICE: Mr. Rinebolt rise in  
16 defense of his witness, please. He may do such a  
17 good job you don't feel the need to assist him.

18 MR. BELL: I am sure he will.

19 MR. RINEBOLT: Your Honor, I would note  
20 that the testimony was prepared prior to the time  
21 that the Bench ruled that the distribution case would  
22 be determined.

23 There are, however, elements of this  
24 proposal that include proposed changes to the  
25 structure of distribution rates which her testimony



1 refers to, and so I would request that the provision  
2 be retained with the understanding that it does not  
3 apply to matters that are affecting the distribution  
4 rate.

5 EXAMINER PRICE: Truthfully, I read this  
6 more in response to Mr. Blank's proposal that  
7 regarding parameters or assumptions that they had  
8 regarding the resolution of the distribution case, so  
9 I did not read it as infringing upon my previous  
10 ruling, so the motion to strike is denied.

11 EXAMINER PRICE: Ms. Roberts.

12 MS. ROBERTS: No questions, your Honor.

13 EXAMINER PRICE: Mr. Bell?

14 MR. BELL: Yes, I do.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Bell:

18 Q. Ms. Alexander, I enjoyed your testimony.

19 A. And you are, sir, please?

20 Q. I was just about to identify myself.

21 A. I'm sorry.

22 Q. My name is Langdon Bell and I represent  
23 the Ohio Manufacturers Association.

24 A. Yes, sir.

25 Q. With regard to that portion of your

1 testimony addressing the subject of integrated  
2 resource planning, would you agree that the value of  
3 integrated resource -- the purpose of integrated  
4 resource planning is to minimize forward cost  
5 exposure to customers?

6 A. Yes, I do not use the words "forward cost  
7 exposure." I use the words "long-term lease cost,"  
8 but I interpret your words to be the same and you are  
9 indicating it is, so the answer is yes.

10 Q. Your words are better than mine, and  
11 thank you.

12 And specifically those costs would be  
13 associated with the demand and energy costs in the  
14 context of an electric utility, would it not?

15 A. Yes, the generation supply including both  
16 energy and capacity.

17 Q. Would you agree, Ms. Alexander, that  
18 during a given period of economic depression which by  
19 definition forces a reduction or causes a reduction  
20 in energy conservation and a conservation of capital  
21 where that capital is not required, lessens the value  
22 during that term of integrated resource planning?

23 MR. WHITT: Your Honor, I'm going to  
24 object. I believe Mr. Bell's introduction indicated  
25 this is intending to be friendly cross, and I don't

1 believe that's permitted under Commission procedure.

2 EXAMINER PRICE: Friendly cross is not  
3 permitted but I have attempted to ameliorate that  
4 possibility by letting you go last so they are not  
5 rehabilitating their witnesses following your cross,  
6 so your objection is denied.

7 MR. BELL: I was referencing the style of  
8 her testimony.

9 Q. Did you understand the question?

10 A. May I -- may I state what I thought you  
11 were asking me and if I have stated this wrong,  
12 please.

13 You are asking me if the onset of a  
14 recession or a depression in the economy would have  
15 an impact on any assumptions done under an integrated  
16 resource plan if that plan was done before the  
17 recession or the depression was occurring?

18 Q. Precisely.

19 A. And the answer, of course, is yes.

20 Q. And would not the length of time that  
21 that re-- over which -- strike that.

22 And would not the period over which the  
23 value of integrated resource planning would be  
24 lessened would depend upon both the depth and the  
25 duration of that recession or indeed perhaps

1 depression?

2 A. Well, yes. You would -- that kind of  
3 event would require a am -- an amendment and  
4 updating, a redoing of assumptions, an amendment to  
5 the plan, yes.

6 MR. BELL: Thank you, Ms. Alexander.

7 EXAMINER PRICE: Mr. Sites.

8 MR. SITES: No questions, your Honor.

9 EXAMINER PRICE: Mr. White.

10 MR. WHITE: No questions.

11 EXAMINER PRICE: Mr. McAlister.

12 MS. McALISTER: No questions, your Honor.

13 EXAMINER PRICE: Mr. Porter.

14 MR. PORTER: No questions.

15 EXAMINER PRICE: Mr. Smith.

16 MR. SMITH: No questions.

17 EXAMINER PRICE: Mr. Breitschwerdt.

18 MR. BREITSCHWERDT: No questions, your

19 Honor.

20 EXAMINER PRICE: Mr. Kurtz.

21 MR. KURTZ: No questions.

22 EXAMINER PRICE: Mr. Stinson.

23 MR. STINSON: No questions.

24 EXAMINER PRICE: Mr. Petricoff.

25 MR. PETRICOFF: No questions.

1 EXAMINER PRICE: Mr. Whitt.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Whitt:

5 Q. Ms. Alexander, we enjoyed your testimony  
6 as well.

7 A. Well, thank you.

8 Q. I will have a few questions about it.

9 First, I want to talk about the riders  
10 that the company has proposed, and it's fair to say,  
11 is it not, you are by and large critical of the  
12 proposed riders?

13 A. I testified on several specific riders.  
14 And I'll be happy to answer any questions on those.  
15 But I also included a comment about the voluminous or  
16 so many riders the existence of which I did not  
17 individually evaluate or make individual  
18 recommendations about, but I did make a comment about  
19 the prolific nature of these riders that would be  
20 recouped from customers, yes.

21 Q. And you do not know which riders can be  
22 avoided by customers, correct?

23 A. I did not analyze each rider to make that  
24 determination, that's correct.

25 Q. And you didn't analyze each rider to

1 determine which rider's designed to recover costs  
2 deferred under previous plans authorized by the  
3 Commission, correct?

4 A. I saw that some were but I did not review  
5 them all in any detail for that purpose.

6 Q. With respect to rider DSI?

7 A. Yes.

8 Q. You would agree that the concept of a DSI  
9 rider may be appropriately explored in this  
10 proceeding, correct?

11 A. Yes, it's clearly acknowledged as a topic  
12 of an ESP plan under the statute and the Commission's  
13 rules.

14 Q. And you understand that as the companies  
15 have proposed the riders, if the companies were to  
16 exceed certain SAIDI targets, the rider would adjust  
17 upward to collect additional revenues.

18 And it would also work the other way,  
19 that if the companies didn't meet certain targets,  
20 there would be less revenues? That's generally how  
21 the rider is intend to do work, correct?

22 A. That is part of your proposal, yes.

23 Q. And could we call that a type of  
24 performance-based ratemaking?

25 A. In the narrow sense of effectuating this

1 distribution rider there is a performance feature  
2 associated with it, yes.

3 Q. Okay. And you are okay with the concept  
4 of the companies being penalized if they don't meet  
5 SAIDI -- SAIDI targets, correct?

6 A. Any -- any performance-based mechanism  
7 would include a penalty for the failure to achieve a  
8 particular standard, yes.

9 Q. And you would support in position of that  
10 penalty, correct?

11 A. As a theoretical matter, yes. As the one  
12 you proposed, no, but I understand, I hope we are  
13 talking the theory now, and that would be -- the  
14 answer would be, yes.

15 Q. Well, I'm talking about what the  
16 companies have proposed. As I understand it you  
17 are -- you would be supportive of a mechanism that  
18 penalized the company for not meeting SAIDI targets.

19 A. I am not in support of your proposed  
20 rider the basis for seeking this particular charge on  
21 customers nor have I agreed with the performance  
22 mechanism you have specifically proposed in this  
23 filing.

24 EXAMINER PRICE: I'm sorry, Mr. Whitt, I  
25 don't think that was responsive.

1 Can I have the last question back again.

2 If could you try another attempt to  
3 answer it.

4 (Record read.)

5 A. I do not support the particular mechanism  
6 proposed by the company in that regard in this  
7 filing.

8 Q. And the reason you don't support what the  
9 companies have proposed is because it includes a  
10 mechanism where the companies will get additional  
11 revenues if they exceeded targets?

12 A. That is not the only reason I'm opposing  
13 this particular mechanism.

14 Q. That is a reason. You would not support  
15 the companies collecting additional revenues if they  
16 exceeded targets.

17 A. That is one of the criticisms, I agree,  
18 that I laid out in my testimony, yes, sir.

19 Q. Right, but you didn't have any criticism  
20 of the feature of that rider that would impose a  
21 penalty?

22 A. Yes, I did, because I disagreed with the  
23 performance standard that you were proposing that  
24 would trigger any penalty in this case.

25 Q. Page 31, line 11, of your testimony.



1           A.    Page 31.

2           Q.    Yes.   Line 11, "The important signal that  
3   the commission should send to the utilities that  
4   failure to meet the targets (without any notion of a  
5   band that nearly sets the performance target to a  
6   lower level) will result in predetermined and  
7   automatic penalties in the amount that creates a  
8   meaningful incentive to the Company about the nature  
9   of its performance and its failure to keep the  
10  promises associated with the approval of a rider  
11  outside the normal context of a distribution rate  
12  case."

13                   Did I read that correctly?

14           A.    Yes, you did.

15           Q.    On page 10 of your testimony, beginning  
16  at line 3, you list a number of investments that the  
17  companies' proposed to make part of their  
18  Application, correct?

19           A.    Yes.   This paragraph is intended to be a  
20  summary, yes.

21           Q.    The 5 million per year for energy  
22  efficiency?

23           A.    Yes.

24           Q.    \$1 million for an AMI pilot?

25           A.    Yes.

1 Q. And 5 million for economic development  
2 annually?

3 A. Yes.

4 Q. And you state at line 10 that these costs  
5 are no doubt reflected in the proposed distribution  
6 rate increase, correct?

7 A. But that actual relationship is not  
8 explicitly stated, yes, sir.

9 Q. And if -- you have not reviewed the  
10 companies 07-551 distribution rate case, correct?

11 A. That is correct.

12 Q. And you don't know whether, in fact,  
13 these amounts are also reflected in the companies'  
14 distribution case?

15 A. That is correct.

16 Q. Now, it's your opinion, is it not, that  
17 the Commission's decision in this case should be  
18 based solely on a comparison of prices under the ESP  
19 with prices under the MRO, correct?

20 A. I don't believe I've testified on that  
21 matter.

22 Q. Well, let me refer you to your  
23 deposition. Do you have it with you?

24 A. Yes, I do.

25 MR. WHITT: I have some extra copies,

1 unfortunately, I think we are going to have to fight  
2 over them. I do have two for the Bench.

3 Q. Ms. Alexander, if you could refer to page  
4 34 of your deposition, and in particular line 17.

5 A. Hold on, please.

6 Yes, sir.

7 Q. The question asked in your deposition by  
8 Ms. Miller was at line 17, "Is it your opinion that  
9 the Commission should compare its determination to be  
10 solely to compare the price under the ESP with the  
11 price under the MRO?"

12 Answer: "Yes."

13 Did I read that correctly?

14 A. Yes, you did.

15 Q. And you have not prepared an analysis of  
16 the expected generation pricing for the years 2009  
17 through 2011 under an MRO competitive bidding  
18 process, correct?

19 A. No, I have not.

20 Q. And it's your belief, is it not, that an  
21 SSO must provide the lowest and most stable price  
22 possible?

23 A. For residential customers over the term  
24 of the plan, yes.

25 Q. And you believe that that objective could

1     only be accomplished through portfolio management,  
2     correct?

3             A.     Are we talking about the ESP or the MRO?

4             Q.     Well, right now, ESP.

5             A.     Very good. That objective can only be  
6     obtained by portfolio management, and I would like to  
7     be able to explain what that means in the context of  
8     ESP.

9             Q.     Well, your counsel will have the  
10    opportunity to ask you that.

11            A.     That's fine.

12            Q.     This idea of portfolio management you  
13    also testified to in the MRO proceeding, right?

14            A.     Right, for a different purpose.

15            Q.     And you recommend that the Commission  
16    require the FirstEnergy operating companies to submit  
17    any bilateral contract that they have with FES to the  
18    Commission, correct?

19            A.     Yes.

20            Q.     And you state in your testimony, page 17,  
21    beginning at line 19, "The resulting prices should be  
22    justified based on cost of service principle or  
23    prices for comparable contracts used by other  
24    utilities supplied or default service with affiliated  
25    entities in the nearby retail markets."

1 Correct?

2 A. Yes.

3 Q. Now, can we agree that different  
4 utilities would have different costs of service?

5 A. Yes.

6 Q. For example, AEP's costs could be  
7 different from Duke's, which could be different from  
8 Dayton Power & Light.

9 A. Yes.

10 Q. And you are not suggesting, are you, a  
11 bilateral contract entered into by one utility should  
12 establish a benchmark for other utilities?

13 A. No. I think we are talking about range  
14 of reasonableness in this analysis and not specific  
15 dollars and cents, as you suggested.

16 Q. Now, on page 24 of your testimony, line  
17 5. You state that Ohio's -- I'm sorry, are you  
18 there?

19 A. Yes, sir.

20 Q. "Ohio's strong low income weatherization  
21 and energy efficiency program should be strengthened  
22 by additional investments."

23 That's your testimony, correct?

24 A. Yes, sir.

25 Q. And you are also recommending that the

1 Commission, in fact, reject the companies' proposal  
2 to spend 25 million over five years on energy  
3 efficiency programs.

4 A. Yes, I suggested that the Commission  
5 reject it for the reasons I set forth in my  
6 testimony.

7 Q. There's discussion in your testimony  
8 about at-risk populations.

9 Do you recall that generally?

10 A. I mentioned the lack of any analysis by  
11 FirstEnergy of that concept, yes.

12 Q. Can we agree that the PIPP program  
13 administered by the Commission provides a level of  
14 protection to at-risk customers?

15 A. To those who are enrolled, yes.

16 Q. And your testimony, in addition to this  
17 concept of protecting of at-risk customers, discusses  
18 other aspects of policy set forth in Senate Bill 221,  
19 correct?

20 A. Yes.

21 Q. And it's your -- your belief that the  
22 companies have not adequately supported how the ESP  
23 complies with various state policies, correct?

24 A. Yes. As per the Commission's rules  
25 interpreting that statute which were issued in

1 September, yes, sir.

2 Q. Do you have a copy of the statute with  
3 you?

4 A. No. I have a copy of the Commission's  
5 rules with me, but I do not have the statute with me.

6 Q. Let me provide a copy for you.

7 MR. WHITT: May I approach?

8 EXAMINER PRICE: You may.

9 A. Yes, sir.

10 Q. And I want to direct your attention to on  
11 the version I gave it's page 32.

12 A. 32.

13 EXAMINER PRICE: Code, I have the code  
14 cite.

15 MR. WHITT: Yes, 4928.143.

16 Q. Ms. Alexander, you understand that  
17 Revised Code Section 4928.143 is the section of the  
18 statute that governs ESPs, correct?

19 A. I'll take your word for it. Yes.

20 Q. And do you have that section in front of  
21 you?

22 A. Yes, I do.

23 Q. Page 32? If we could look at  
24 4928.143(B), now, the prefatory language here again  
25 for the portion of the statute outlining what an ESP

1 must require and what it may require states, does it  
2 not, "Notwithstanding any other provision of Title 49  
3 of the Revised Code to the contrary," and then it  
4 lists some sections there, correct?

5 A. It does.

6 Q. And can we also agree that the state  
7 policy of Section 4928 is listed in section 02 of the  
8 statute?

9 I will get a page reference for you  
10 momentarily.

11 Page 16 of the version I handed you, at  
12 the very bottom.

13 A. 4928.02, yes.

14 Q. That's the section that lists the state  
15 policies, correct?

16 A. It does, indeed.

17 Q. And if we go back to page 32 on the  
18 handout, again, Section 4928.143(B) says  
19 "Notwithstanding any other provision of Title 49."

20 MR. RINEBOLT: Your Honor, I'm going to  
21 object, if I may. The witness is not on the stand in  
22 her capacity as a lawyer and as an interpreter of  
23 Ohio law.

24 If the counsel wants to make the argument  
25 that Section 143(B) renders 4928.02 unimportant in



1 determining the price of an ESP, he can do so in his  
2 brief.

3 EXAMINER PRICE: Mr. Whitt.

4 MR. WHITT: Well, the witness has opined  
5 that the companies' Application doesn't meet the  
6 state policies. I believe I'm entitled to inquire  
7 under her understanding of whether those policies  
8 even apply.

9 EXAMINER PRICE: Has she not so given  
10 that opinion?

11 MR. RINEBOLT: Yes, she has, your Honor.

12 EXAMINER PRICE: I think he is entitled  
13 to ask her questions about that. We've given  
14 everybody leeway about interpreting the statute, the  
15 objection is overruled.

16 MR. RINEBOLT: Thank you, your Honor.

17 MR. WHITE: For the record,  
18 Ms. Alexander, you are an attorney, correct?

19 THE WITNESS: I am. And I will -- may I  
20 say where the basis for my testimony comes from?

21 EXAMINER PRICE: I am sure Mr. Rinebolt  
22 will be happy to ask you that --

23 THE WITNESS: Okay, very good.

24 EXAMINER PRICE: -- on redirect.

25 Q. (By Mr. Whitt) Section 4928.02 is not

1 listed among the competition notice 4928.143(B), can  
2 we agree on that?

3 A. That paragraph may or may not include  
4 that provision. I simply --

5 Q. That wasn't my question. That 4928.02 is  
6 not listed in 4928.143(B).

7 A. I do not see it here, no.

8 Q. Okay. Can we agree then to the extent  
9 there is any conflict between the general state  
10 policy of 4928.02 that the specific requirements of  
11 4928.143 govern an ESP Application?

12 A. 4928.143 certainly does govern the ESP  
13 Application as interpreted and set forth by the  
14 Commission in its rules with respect to how this  
15 statute shall be implemented, and I have not nor  
16 could I provide you with an instantaneous  
17 determination of where in here in this entire section  
18 other references may be relevant to my concern, but I  
19 presume the Commission's rules interpreting this  
20 provision should carry the weight that should govern  
21 the Commission's actions under this section.

22 Q. Is that your opinion that we should look  
23 to the Commission rules and not the statute?

24 A. Obviously you should look at both. But  
25 the Commission's rules are clearly relevant.

1           Q.    Okay, and the statute is clearly relevant  
2 as well?

3           A.    Absolutely.

4           MR. WHITT:  Nothing further.

5           EXAMINER PRICE:  Ms. Alexander, the  
6 Commission's rules in effect today?

7           THE WITNESS:  Say it again.

8           EXAMINER PRICE:  Are the Commission's  
9 rules in effect today?

10          THE WITNESS:  I do not know.

11          EXAMINER PRICE:  Redirect.

12          MR. RINEBOLT:  Thank you, your Honor.

13          MR. JONES:  Your Honor, staff doesn't  
14 have any questions.

15          EXAMINER PRICE:  Oh, I'm sorry.  The last  
16 witness you weren't there so then you are just done  
17 for the day.

18          MR. RINEBOLT:  Could you give us just a  
19 couple of minutes, your Honor?

20          EXAMINER PRICE:  Certainly.

21          MR. RINEBOLT:  And it will be very brief.

22          EXAMINER PRICE:  Back on the record.

23          Mr. Rinebolt.

24          MR. RINEBOLT:  Thank you, your Honor.

25                               - - -

1 REDIRECT EXAMINATION

2 By Mr. Rinebolt:

3 Q. Ms. Alexander, counsel for FirstEnergy  
4 queried you about the issue of the cost of  
5 generation, the lowest, most stable cost in the  
6 context of the ESP based on some questioning during  
7 your deposition.

8 Could you explain to me what the nature  
9 of cost that you are referring to in your testimony  
10 and the discussion, to ensure we have clarity?

11 A. Yes. The price that should be compared  
12 between ESP and the MRO should reflect actual costs  
13 and the costs in the ESP should be a reflection of a  
14 bilateral contract, an actual contract, a specific  
15 set of prices and obligations and cost elements that  
16 can be reviewed by the Commission.

17 The prices and the cost in the MRO are a  
18 reflection of competitive -- competitively acquired  
19 contracts through the wholesale market bidding  
20 program that is the subject of the MRO proceeding, so  
21 while prices would be compared properly between the  
22 two, there are cost features that ought to be  
23 evaluated differently in the two different cases.

24 Q. And, Ms. Alexander, what -- if you could  
25 explain the basis of your testimony as to why the ESP

1 proposal forwarded by the company does not comply  
2 with state law.

3 A. It is my opinion that the filing does not  
4 provide us with sufficient details and analysis to  
5 determine whether the proposed price for generation  
6 supply service proposed by FirstEnergy is reasonable.

7 There is no analysis of the impact of  
8 these prices on residential customers, at-risk  
9 customer's ability to pay, and while it is  
10 appropriate to point to the various successful PIPP  
11 program in Ohio, it still only serves far less than  
12 those who are low income, elderly, and others who may  
13 have difficulties in paying their utility bill.

14 There was no bottoms-up analysis of what  
15 options that the company might consider other than  
16 the black box approach that is reflected in this  
17 filing.

18 Q. And just to follow-up there, you would --  
19 you would support the concept that at-risk customers  
20 could be much broader than low income customers with  
21 incomes under 150 percent of the poverty line?

22 A. That is without a doubt correct. And it  
23 certainly is much larger than those services by the  
24 current PIPP program.

25 Q. Ms. Alexander, counsel queried you about

1 your criticism of the 25 million proposed to be made  
2 available for low income, energy efficiency, and  
3 other purposes.

4 Now, initially as a threshold, now, those  
5 dollars, you referred to them in your testimony as  
6 probably coming from the distribution rate increase,  
7 but could those shareholder benefits also actually  
8 come from the revenues received as a result of the  
9 ESP proposal?

10 A. Yes. My point here was the lack of  
11 information provided as to what was being purchased  
12 with the 25 million, how that particular set of  
13 purchases would differ from what would be available  
14 through traditional or regulated rates and what  
15 alternatives had been evaluated, what programs would  
16 be supported.

17 What bill impacts this dollar amount  
18 would have and what impact it would have on the whole  
19 going forward portfolio of prices that were being  
20 charged to customers under this generation supply  
21 portion of the bill.

22 So it was the lack of information. It  
23 was the lack of understanding what we were getting  
24 and why that dollar amount was meaningful and what  
25 alternatives were being evaluated.

1 MR. RINEBOLT: Thank you very much.

2 I have no more questions, your Honor.

3 EXAMINER PRICE: Redirect, Ms. Roberts?

4 MS. ROBERTS: No, your Honor.

5 EXAMINER PRICE: Mr. Sites?

6 MR. SITES: No questions, your Honor.

7 EXAMINER PRICE: Mr. Bell.

8 MR. BELL: No, your Honor.

9 EXAMINER PRICE: Mr. White.

10 MR. WHITE: No questions.

11 EXAMINER PRICE: Ms. McAlister.

12 MS. McALISTER: No questions.

13 EXAMINER PRICE: Mr. Porter.

14 MR. PORTER: No questions.

15 EXAMINER PRICE: Mr. Smith.

16 MS. ROBERTS: No, your Honor.

17 EXAMINER PRICE: Mr. Sites.

18 MR. SITES: No questions.

19 EXAMINER PRICE: Mr. Petricoff.

20 MR. PETRICOFF: No questions.

21 EXAMINER PRICE: Mr. Whitt.

22 MR. WHITT: No.

23 EXAMINER PRICE: Mr. Jones.

24 MR. JONES: No.

25 EXAMINER PRICE: Thank you, ma'am, you're

1     excused.

2                   MR. RINEBOLT:  Thank you to counsel to  
3     accommodate us on time, we appreciate it.

4                   EXAMINER PRICE:  Mr. Rinebolt.

5                   MR. RINEBOLT:  Your Honor, I request that  
6     OPAE Exhibit No. 1 be accepted into the record.

7                   EXAMINER PRICE:  Any objection to  
8     admission of OPAE Exhibit 1?

9                   Seeing none, it will be admitted.

10                  (EXHIBITS ADMITTED INTO EVIDENCE.)

11                  EXAMINER PRICE:  Mr. Petricoff.

12                  MR. PETRICOFF:  Yes, your Honor.  At this  
13     time we would like to call to the stand Teresa L.  
14     Ringenbach.

15                  (Witness sworn.)

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

18                  THE WITNESS:  My name is Teresa L.  
19     Ringenbach.  My business address is 2000 Auburn  
20     Drive, that's Beachwood, Ohio 44122.

21                  EXAMINER PRICE:  Thank you.

22                  Mr. Petricoff.

23                  MR. PETRICOFF:  Thank you, your Honor.

24                  Your Honor, at this time I would like to  
25     have Ms. Ringenbach's testimony marked as Competitive



1 Suppliers Exhibit No. 3.

2 EXAMINER PRICE: So marked.

3 MR. PETRICOFF: And then I would also

4 like to distribute and have marked exhibit

5 Competitive Suppliers Exhibit 3A, which is an errata

6 sheet.

7 EXAMINER PRICE: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 EXAMINER PRICE: Mr. Petricoff, I need a  
10 second.

11 MR. PETRICOFF: Absolutely, your Honor.

12 - - -

13 TERESA L. RINGENBACH

14 being first duly sworn, as prescribed by law, was

15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Petricoff:

18 Q. Ms. Ringenbach, do you have before you

19 what has been marked as Competitive Suppliers 3?

20 A. Yes.

21 Q. Was this prepared at your direction and

22 by you?

23 A. Yes.

24 Q. And are there any changes or corrections

25 that you would like to make to that testimony?

1 A. Outside of what's on the errata sheet?

2 Q. Yes, that were covered on the errata  
3 sheet.

4 A. I'm sorry.

5 Q. Let me make it easier. Let me ask the  
6 questions.

7 Specifically are there a number of  
8 changes to the testimony that you would like to make  
9 at this time?

10 A. Yes.

11 Q. Are they encompassed on the errata sheet  
12 that has been marked as Competitive Suppliers Exhibit  
13 3A?

14 A. Yes.

15 Q. With those changes if I were going to ask  
16 you the same questions that appear in Exhibit 3  
17 today, would your answers be the same?

18 A. Yes.

19 MR. PETRICOFF: Thank you, your Honor.  
20 The witness is available for cross.

21 EXAMINER PRICE: Thank you.

22 Ms. Robert?

23 MS. ROBERTS: No questions, your Honor.

24 EXAMINER PRICE: Mr. Sites.

25 MR. SITES: No questions, Your Honor.

1 EXAMINER PRICE: Mr. Bell.

2 MR. BELL: No questions, your Honor.

3 EXAMINER PRICE: Mr. White.

4 MR. WHITE: No questions.

5 EXAMINER PRICE: Ms. McAlister.

6 MS. McALISTER: No questions, your Honor.

7 EXAMINER PRICE: Mr. Porter.

8 MR. PORTER: No questions.

9 EXAMINER PRICE: Mr. Smith.

10 MR. SMITH: No questions.

11 EXAMINER PRICE: Mr. Breitschwerdt.

12 MR. BREITSCHWERDT: No questions, your

13 Honor.

14 EXAMINER PRICE: Mr. Kurtz.

15 MR. KURTZ: No questions.

16 EXAMINER PRICE: Mr. Stinson.

17 MR. STINSON: No questions, your Honor.

18 EXAMINER PRICE: Mr. Kutik.

19 MR. KUTIK: Yes, your Honor. Thank you.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Kutik:

23 Q. Good afternoon --

24 A. Hello.

25 Q. -- Ms. Ringenbach.

1                   You have worked for Integrys or WPS since  
2   2001?

3           A.    Yes.

4           Q.    And that time -- the time you came in  
5   2001, that's the first time you had worked in the  
6   energy industry, correct?

7           A.    Yes.

8           Q.    And since that time you have had  
9   responsibility, although they may have varied by what  
10  they specifically were, they related to Ohio,  
11  correct?

12          A.    Yes.

13          Q.    Did you work with a person by the name of  
14  Ann M. Farrell-Novak?

15          A.    Yes.

16          Q.    Was she like your boss?

17          A.    No, she was -- we worked together in  
18  different capacities.

19          Q.    Okay.  But you know who she was?

20          A.    Yes.

21          Q.    And she worked for WPS Energy?

22          A.    She still does.

23          Q.    Now, in terms of your work, more or less  
24  it's dealt with regulatory matters?

25          A.    Yes.

1           Q.    And in your work for this case in the  
2   preparation of your testimony, among the things you  
3   did was to familiarize yourself with filings that  
4   were made by either WPS or Integrys with the  
5   Commission, correct?

6           A.    Yes.

7           Q.    Now, Integrys includes -- or I guess I  
8   should say Integrys family of companies includes two  
9   utilities, correct?

10          A.    In Integrys Group is our parent company,  
11   yes.

12          Q.    Yes.  And you've never been involved in  
13   any of those utility operations, correct?

14          A.    Correct.

15          Q.    And you are not familiar with the risks  
16   or cost structures of providing POLR service, P-O-L-R  
17   service?

18          A.    In terms of those two utilities?

19          Q.    With respect to anything, anything with  
20   respect to POLR service.

21                   Let me give you my question again so it's  
22   clear.

23                   You are not familiar with the risks or  
24   cost structures of providing POLR service, correct?

25          A.    Well, I guess I am not sure how to answer

1     that because it depends on the states.  It depends on  
2     the utility.

3             Q.    Do you have your deposition handy?

4             A.    Yes.

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

6             EXAMINER PRICE:  You may.

7             Q.    Ms. Ringenbach, you remember I took your  
8     deposition?

9             A.    Yes.

10            Q.    And I would like to refer you to page 29  
11   of your deposition.  Starting at line 25, did you not  
12   provide the following testimony in your deposition,  
13   "So would it be fair to say that you are not familiar  
14   with the risks and cost structure of providing POLR  
15   service?"

16            Answer:  "As far as a utility is  
17   concerned."

18            "Yes."

19            No -- Answer, "No, I work for Integrys  
20   Energy Services.  We don't interact with other -- we  
21   don't interact with other than those regulatory  
22   proceedings."

23            Question:  "So, again, my question is you  
24   wouldn't be familiar with the risks and cost  
25   structures that go into making up POLR service,

1 correct?"

2 Answer: "Correct."

3 Is that your testimony in your  
4 deposition, ma'am?

5 A. That was my testimony in my deposition.

6 Q. Thank you.

7 Now you have criticisms, do you not, of  
8 certain charges and deferrals, because among other  
9 things you believe that they hinder shopping,  
10 correct?

11 A. Yes.

12 Q. And would it be fair to say that there's  
13 nothing in SB-221 that guarantees that shopping  
14 should occur, correct?

15 A. I think it would be fair to say that  
16 SB-221 allows customers choose another supplier for  
17 their generation.

18 Q. That's not my question.

19 My question is, is there any -- there's  
20 nothing in the statute that guarantees shopping,  
21 correct?

22 A. Correct.

23 Q. And, in fact, SB-221 specifically talks  
24 about how it may be permissible in the ESP to  
25 "limitations on shopping"? Correct?

1 A. Correct.

2 Q. SB-221 also includes a provision, does it  
3 not, about phase-in of EDU rates? And providing that  
4 deferrals of such costs should be nonbypassable? Are  
5 you aware of that?

6 A. I'm aware that they have phase-ins. As  
7 far as costs being bypassable in association --  
8 nonbypassable in association with that phase-in, I  
9 don't think the two are really --

10 Q. Are you familiar with Section 4928.144?

11 MR. PETRICOFF: Your Honor, if we are  
12 going to have cite to specific language, could we  
13 give the --

14 MR. KUTIK: I asked.

15 MR. PETRICOFF: -- could we give the  
16 witness a copy of the specific reference being  
17 referred to?

18 MR. KUTIK: First, I asked if she was  
19 familiar with it.

20 A. I'm familiar with SB-221. A specific  
21 section in that language without having it in front  
22 of me, no.

23 Q. Do you have the statute with you, ma'am?

24 A. No.

25 MR. KUTIK: Well, can we go off the



1 record, your Honor?

2 EXAMINER PRICE: Yes.

3 (Discussion off the record.)

4 MR. KUTIK: May I approach?

5 EXAMINER PRICE: Yes, you may approach.

6 Q. Let me hand you a copy of Senate Bill

7 221. Have I done that?

8 A. Yes.

9 Q. Could you turn to page 39.

10 MR. PETRICOFF: Could we have a parallel

11 section cite as well?

12 MR. KUTIK: Yes, I am talking about

13 section 4928.144.

14 Q. Are you there?

15 A. Yes.

16 Q. Would it be correct to say that section  
17 talks about if the Commission order includes such a  
18 phase-in, the order shall also -- shall -- also shall  
19 provide for certain creation of regulatory assets  
20 pursuant to generally accepted accounting principles  
21 by authorizing deferral of incurred costs equal to  
22 the amount not collected plus carrying charges on  
23 that amount. Further the order shall authorize the  
24 collection of those deferrals through a nonbypassable  
25 surcharge on any such rate or prices so established

1 for the electric distribution utility by the  
2 Commission."

3 Do you see that?

4 A. Yes.

5 Q. Are you familiar with that portion of the  
6 statute?

7 A. Yes.

8 Q. Now, you attribute the decline in  
9 shopping from 2005 to 2006, we are talking about  
10 shopping in the FirstEnergy service territory to the  
11 onset of the RSP and RCP of the FirstEnergy  
12 companies, correct?

13 A. Yes.

14 Q. Now, it's also correct that you did not  
15 do a review of wholesale prices since say, 2001,  
16 correct?

17 A. For this testimony, correct.

18 Q. And it's also true that you have a done  
19 no review of what FirstEnergy rates have been since  
20 that time, correct?

21 A. Other than looking at my residential  
22 bill, correct.

23 Q. So you have no basis because you didn't  
24 know what wholesale prices were in comparing the two,  
25 correct?

1           A.    My statement was based on our offers to  
2   our customers at the end of 2005, and at that time we  
3   were making pricing offers to customers based on a  
4   couple of things, and one of them was wholesale  
5   market and the other was some regulatory things that  
6   were occurring at that time, including RSP and RCP.

7           MR. KUTIK:   Your Honor, I move to strike  
8   as nonresponsive.

9           MR. PETRICOFF:   Your Honor, it was a very  
10  responsive question.

11           EXAMINER PRICE:   I'm afraid not,  
12  Mr. Petricoff.   The motion to strike is granted.

13           MR. KUTIK:   Could the question be read,  
14  your Honor?

15                   (Record read.)

16           Q.    That is retail rates and wholesale rates  
17  and FirstEnergy's rates, correct?

18           A.    I guess I'm confused by your question.  
19  Is your question how did I know that --

20           Q.    No, my question is my question.

21           A.    In 2005.

22           Q.    You have not reviewed wholesale rates,  
23  correct?

24           A.    Recently, no.

25           Q.    Since 2001.

1                   For purposes of your testimony, correct,  
2   that's what you said just now?

3           A.   Depends on -- if your question is have I  
4   reviewed what all the wholesale prices were since  
5   2001, no.  If your question is did I review current  
6   wholesale prices when looking at this testimony and  
7   writing it, no.  If your question is what did I base  
8   my statement --

9           Q.   That is not my question.

10          A.   There was no shopping after the end --

11          Q.   Ma'am, if you just listen to my questions  
12   and answer my questions as opposed to the statements  
13   up to make because you don't like the answers and  
14   questions I give you, I appreciate it.

15               MR. PETRICOFF:  Your Honor, I move to  
16   strike the lecture.

17               MR. BELL:  May I have that read back?

18               EXAMINER PRICE:  Okay.

19          A.   I understand --

20               EXAMINER PRICE:  Ma'am, you do need to  
21   listen very carefully to the questions that are being  
22   asked.

23               If you wish to state things that are not  
24   relevant to the question being asked, Mr. Petricoff  
25   will have an opportunity on redirect to ask those

1 questions.

2 Mr. Kutik, if you are having a problem  
3 with the witness, you should direct your concerns to  
4 the Bench.

5 MR. KUTIK: I will, your Honor.

6 EXAMINER PRICE: And I think I have been  
7 very diligent today about keeping people on task.

8 MR. KUTIK: You have, and I appreciate  
9 that, your Honor.

10 Q. (By Mr. Kutik) Now, did you not review  
11 wholesale prices since 2001 in preparation of your  
12 testimony, correct?

13 A. Correct.

14 Q. The only thing you know, you have been  
15 reviewing your bill as a CEI customer, correct?

16 A. Correct.

17 Q. And so in terms of comparing what C --  
18 what CEI's retail rates have been with wholesale  
19 rates, you have no basis to make that comparison,  
20 correct, because you haven't reviewed wholesale  
21 prices since 2001?

22 A. With wholesale prices.

23 Q. Now, wouldn't it also be true that you  
24 are generally aware that in the period from 2004 to  
25 2005 -- or actually 2006, wholesale prices generally

1     went up?

2             A.     Correct.

3             Q.     Now, it's also true, is it not, that  
4     during this time, that is going from 2005 to 2006,  
5     transmission costs and costs associated with MISO  
6     were going up, correct?

7             A.     That's correct.

8             Q.     Are you aware of an entity called Green  
9     Mountain Energy?

10            A.     Yes.

11            Q.     Are you aware that Green Mountain Energy  
12     left the CRES business in at least FirstEnergy's  
13     service territory in about 2000 -- at the end of  
14     2005?

15            A.     Yes.

16            Q.     And are you aware of the reasons why  
17     Green Mountain said they were leaving?

18            A.     The reasons why they -- yes.

19            Q.     All right. And did you ever -- did you  
20     read -- are you aware that they filed a letter with  
21     the Commission, that is this Commission, explaining  
22     the reasons why they were leaving the state?

23            A.     I probably was at that time. I couldn't  
24     tell you what was in it.

25                   MR. KUTIK: Your Honor, may I approach?

1 EXAMINER PRICE: You may.

2 MR. KUTIK: We would like to have marked  
3 as Company Exhibit 15.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Ms. Ringenbach, we have marked for  
6 identification as Company Exhibit 15 a letter dated  
7 October 27, 2005 from Dane Stinson to Renee Jenkins,  
8 Docketing Division of the PUCO, in re the matter of  
9 the Application of Green Mountain Energy Company for  
10 waivers.

11 Do you see that?

12 A. Yes.

13 Q. And was this the letter that you saw when  
14 Green Mountain announced reasons why it was leaving?

15 A. I probably read it at that time.

16 Q. And would you agree with me that one of  
17 the reasons Green Mountain said it was leaving was  
18 "as a result of certain regulatory events at the  
19 federal and RTO level"?

20 A. Yes.

21 Q. And they don't mention -- they don't  
22 mention, do they, level of shopping?

23 EXAMINER PRICE: Wait one moment, please.

24 You have an objection?

25 MR. PETRICOFF: I want to object, yes.

1 The fact that she says she may have seen this at some  
2 time in the past is not a proper foundation to go  
3 into the truth of the assertions that are in there.

4 EXAMINER PRICE: I don't believe he's  
5 going into the truth of the assertions.

6 MR. KUTIK: Not yet.

7 MR. PETRICOFF: Well, I may have to wait  
8 for the next question for my objection.

9 EXAMINER PRICE: I believe though he has  
10 laid a proper foundation for his questions thus far.

11 MR. KUTIK: Were we in the middle.

12 EXAMINER PRICE: You had asked a  
13 question, we were pending an answer.

14 Q. (By Mr. Kutik) Do you understand the  
15 question read, ma'am?

16 A. One more time, yeah.

17 (Record read.)

18 Q. Does this refresh your recollection about  
19 whether they were issues relating to federal  
20 regulatory or RTO matters that were increasing costs  
21 to CRES suppliers?

22 A. Yes.

23 Q. And that was the case, was it not?

24 A. There was MISO SECA charges and I believe  
25 that's what they are referencing in their letter.



1 Q. Now, would it also be true that at the  
2 end of 2005 -- well, I will back up.

3 Are you aware of something called MSG?

4 A. Yes.

5 Q. And what does MSG stand for?

6 A. I don't remember the acronym but it was  
7 low -- low price generation that was offered.

8 Q. Would it be correct to say that MSG ended  
9 at the end of 2005?

10 A. Yes.

11 Q. And you said that was low price  
12 generation that was available for purchase by CRES  
13 suppliers?

14 A. Well, yes.

15 Q. Now, would it be correct to say that you  
16 believe that it is appropriate for the companies to  
17 recover costs associated with companies -- with  
18 customers leaving?

19 A. Yes.

20 Q. And you also believe it's appropriate for  
21 the companies to recover the costs of customers  
22 returning, correct?

23 A. I agree.

24 Q. And you believe that the risk of  
25 customers leaving is the same as the risk of

1 customers returning, correct?

2 A. I believe the shopping risk is the same.

3 Q. So you believe, again, those two risks  
4 are the same, correct?

5 EXAMINER PRICE: You need to vocalize  
6 your --

7 THE WITNESS: Yes.

8 EXAMINER PRICE: Thank you.

9 Q. And you are aware that the SBC charge is  
10 not 1 cent per kilowatt as proposed by the companies,  
11 correct?

12 A. No, that's the MDS charge is --

13 Q. The SBC charge is not 1 cent, correct?

14 A. Correct.

15 Q. Now, you understand under the companies'  
16 proposal that if a shopping customer pay -- pays an  
17 SBC, it can, when it comes back, the customer can  
18 come back at the SSO, correct?

19 A. Correct.

20 Q. And if the customer doesn't pay the SBC  
21 and wants to come back, that customer will pay the  
22 higher of the SSO or 160 percent of what we will call  
23 the wholesale market price, correct?

24 A. Correct.

25 Q. Now, it's your view that if the customer

1 either pays the SBC charge or agrees to take the  
2 higher of the SSO or market price as they come back,  
3 there is no shopping risk to the company, correct?

4 A. If -- correct.

5 Q. Now, you cannot say either way -- you  
6 cannot say whether the companies' proposed charge  
7 with respect to the MDS or SBC is reasonable,  
8 correct? You have no opinion on that.

9 A. I have no opinion on that.

10 Q. Now, would it be fair to say that you've  
11 never tried to compare Integrys's CRES prices with  
12 wholesale prices that were pending at the time of  
13 those -- of those CRES prices, correct?

14 A. May I ask the question --

15 Q. Sure. What I want to know is have you  
16 ever tried to compare the CRES retail prices that  
17 Integrys was offering with the then-prevailing  
18 wholesale prices?

19 You have never tried to do that, correct?

20 A. No.

21 Q. And, in fact, would it be fair to say you  
22 don't even -- you don't know whether CRES prices have  
23 been lower or higher than the then-prevailing  
24 wholesale prices, correct?

25 A. Correct.

1           Q.    Now, I want you to refer to page 8 of  
2 your testimony.

3                   Are you there?

4           A.    Yes.

5           Q.    You cite a number of things on that page  
6 that you object to in ESP, correct?

7           A.    Yes.

8           Q.    And the things that are cited as bullet  
9 points are charges you believe that are included in  
10 the ESP as things that the companies want to charge  
11 or collect from customers, correct?

12          A.    Regardless of shopping, yes.

13          Q.    Now, one of those charges is something  
14 called the RTC?

15          A.    Yes.

16          Q.    What does RTC stand for?

17          A.    Regulatory transition charge.

18          Q.    Okay. Are you aware that the companies  
19 have proposed to waive RTC charges with respect to  
20 CEI customers and that RTC charges for other  
21 customers at the end of 2008?

22          A.    Correct, yes.

23          Q.    Now, there's also on this list is rider  
24 DFC, correct?

25          A.    Correct.

1           Q.    And you are aware that that's a rider to  
2 collect past costs, correct?

3           A.    Yes.

4           Q.    Not current costs.

5           A.    Yes.

6           Q.    And that would be the same with respect  
7 to rider DTC, again, it's to collect past costs, not  
8 current costs.

9           A.    Yes.

10          Q.    Now, you are familiar with PUCO  
11 requirements generally in your job to be responsible  
12 about regulatory matters with Integrys, correct?

13          A.    Yes.

14          Q.    And is it fair to say that there are no  
15 rules that say what a CRES supplier's credit policy  
16 should be?

17          A.    Are -- well specific to the credit  
18 policy, no.

19          Q.    Yes.

20          A.    There are certain requirements they have  
21 to follow.

22          Q.    I've asked you the question.

23          A.    Yes. They cannot tell us what our actual  
24 credit policy -- written credit policy is.

25          Q.    In fact, isn't it true you have never

1 even reviewed PUCO's credit and collection policies?

2 A. Yes.

3 Q. Or any orders establishing them?

4 A. Outside of payment priority, that's  
5 correct.

6 Q. Okay. And you are not aware of any  
7 policies discussed in those orders, correct?

8 A. Correct.

9 Q. Now, you are familiar with something  
10 called the USF charge?

11 A. The universal service fund, yes.

12 Q. Okay. And that charge includes charges  
13 for distribution, generation, and transmission, does  
14 it not?

15 A. Yes.

16 Q. And that charge is currently paid by all  
17 customers, is it not?

18 A. Correct.

19 Q. And that is what the Commission has  
20 ordered, correct?

21 A. Yes.

22 Q. And you think that's wrong, correct?

23 A. No.

24 Q. All right. So that work, okay, as far as  
25 you are concerned to continue that policy?

1           A.    It actually pays money back to certain  
2 low income customers.

3           Q.    So that would be okay.

4           A.    Yes.

5           Q.    All right.  Now, you've recommended at  
6 page 11, line 2, that FES should be forced to buy the  
7 CRES suppliers' receivables, correct?

8           A.    Yes.  Well, I recommended that either  
9 customers who shop avoid the uncollectible rider or  
10 that FirstEnergy purchase the receivables of  
11 suppliers.

12          Q.    Now, as we said earlier, Integrys used to  
13 be called WPS Energy, correct?

14          A.    Correct.

15          Q.    And because you have reviewed the filings  
16 with the Commission by Integrys or WPS Energy, I'm  
17 assuming you are aware of a case called WPS Energy  
18 and Green Mountain Energy versus FirstEnergy.

19          A.    That -- if you are referring to the case  
20 with the purchase of receivables at that time.

21          Q.    Yes.

22          A.    Yes, yes.

23               MR. KUTIK:  Your Honor, may I approach?

24               EXAMINER PRICE:  You may.

25               MR. KUTIK:  Your Honor, I'm handing the

1 witness a document, the Opinion and Order in the  
2 matter of the complaint of WPS Services Energy and  
3 Green Mountain Energy Company, Complainants versus  
4 FirstEnergy Corp. and others, Case No.  
5 02-1944-EL-CSS.

6 And I would ask that the Commission take  
7 that -- you take administrative notice of that  
8 opinion.

9 EXAMINER PRICE: We certainly will. Are  
10 you going to mark this or?

11 MR. KUTIK: Your Honor, it's an opinion.  
12 If you are taking administrative notice of it, I  
13 don't believe we need to mark it, but if it's your  
14 preference I mark it --

15 EXAMINER PRICE: I just think it would be  
16 easier for the record if it's marked.

17 MR. KUTIK: All right, your Honor, may we  
18 then have marked as Company Exhibit 16 the opinion  
19 that I have just identified?

20 EXAMINER PRICE: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. (By Mr. Kutik) Ms. Ringenbach, are you  
23 familiar with that opinion and order?

24 A. Yes.

25 Q. And was this the case you were referring



1 to earlier?

2 A. I'm sorry.

3 Q. You described a case and I want to know  
4 if this is the case you were describing.

5 A. The case that deals with purchase of  
6 receivables?

7 Q. Yes.

8 A. Yes, this is that case.

9 Q. And there was a complaint in that case  
10 filed on behalf of WPS and Green Mountain, correct?

11 A. That's correct.

12 Q. And the complaint alleged that  
13 FirstEnergy should have negotiated to implement a  
14 receivables purchase agreement, correct?

15 A. Correct.

16 Q. And that case ended in a stipulation, did  
17 it not?

18 A. That's correct.

19 Q. Or actually ended in an order which  
20 approved the stipulation, correct?

21 A. Correct.

22 Q. And the -- and the stipulation discussed  
23 a modification to the Commission's partial payment  
24 priority posting rulings, correct?

25 A. That is correct.

1           Q.    And current rules provided -- the  
2   then-current rules provided for the following posting  
3   priority, the EDU past due amounts, then the EDU  
4   current, then the CRES past due, and then the CRES  
5   current, correct?

6           A.    That is correct.

7           Q.    And when we are talking about partial  
8   payment priority, we are talking about what happens  
9   if a customer doesn't pay the full bill.

10          A.    That's correct.

11          Q.    How does -- how does the partial payment  
12   get allocated, that's what these rules are about.

13          A.    Exactly.

14          Q.    And as a result of the stipulation, the  
15   parties agreed to change the order to allow the CRES  
16   past due amounts to be the first to be paid, correct?

17          A.    That's correct.

18          Q.    In addition, the stipulation also said  
19   that where customers are dropped by CRES suppliers or  
20   the customer drops the CRES supplier, the CRES  
21   provider's past due amounts will remain on the bill  
22   for at least the billing cycles or until the customer  
23   is disconnected or terminated by FirstEnergy,  
24   whichever is first, correct?

25          A.    That's correct.

1 Q. Now, there was testimony in support of  
2 the stipulation, correct?

3 A. That's correct.

4 Q. And I want to refer you to page 6 of the  
5 opinion and order. And on page 6 of the opinion and  
6 order it starts to describe the testimony in that  
7 case, correct?

8 A. That's correct.

9 Q. Including the testimony of Ann M.  
10 Farrell-Novak, correct?

11 A. That's correct.

12 Q. Who testified on behalf of WPS, and in  
13 the second sentence of the second paragraph under  
14 "Testimony" it says "Further, she stated that the  
15 stipulation is superior to a purchase -- to a  
16 receivables purchase program --" excuse me, "between  
17 purchase of receivable program for a number of  
18 reasons," correct?

19 A. Correct.

20 Q. That's what she said.

21 A. Yes.

22 Q. Now, are you suggesting in your opinion,  
23 Ms. Ringenbach, that the Commission should now void  
24 the stipulation and order that was reached in Case  
25 No. 02-1944-EL-CSS?

1           A.    I'm suggesting in my testimony that  
2   forcing a CRES customer to pay uncollectible charges  
3   to the utility for a service they are not taking is  
4   inappropriate.

5           Q.    That's not my question.  Would you answer  
6   it, please, the question I put to you?

7           A.    Am I suggesting they void this answer?

8           Q.    Yes.

9           A.    No.

10          Q.    Okay.  Now, my last line of questions is  
11   now on a different topic.

12                    You are familiar with Mr. Fein from  
13   Constellation?

14          A.    Yes.

15          Q.    And you've had discussions with Mr. Fein,  
16   have you not, about ESP?

17          A.    We have a joint defense agreement, yes.

18          Q.    All right.  And now, I don't want you to  
19   talk about anything that was within the joint defense  
20   privilege, although I believe that it's not been  
21   established that there is one, but I don't want to  
22   get into a debate with Mr. Petricoff.

23                   EXAMINER PRICE:  I appreciate that.

24                   MR. KUTIK:  Because I think these  
25   questions answered without being anywhere near any

1 argument that these conversations are privileged.

2 Q. Now, in your conversation with Mr. Fein  
3 he did not share with you New Energy's business plans  
4 for Ohio, correct?

5 A. Correct.

6 Q. Nor did you share with him Integrys'  
7 business plans for the state of Ohio, correct?

8 A. That's correct.

9 Q. And you can't say -- would it be fair to  
10 say, that if ESP was approved, Integrys would not  
11 offer CRES service in Ohio; is that right?

12 A. You're right, I cannot say that.

13 MR. KUTIK: May I have one minute, your  
14 Honor?

15 EXAMINER PRICE: Yes.

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

18 EXAMINER PRICE: Mr. Jones.

19 MR. JONES: No questions.

20 EXAMINER PRICE: Mr. Petricoff?

21 MR. PETRICOFF: Can we have a minute or  
22 two?

23 EXAMINER PRICE: Why don't we take a  
24 seven-minute break until a quarter after.

25 (Recess taken.)

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

3 Mr. Petricoff.

4 MR. PETRICOFF: Thank you, your Honor.

5 - - -

6 REDIRECT EXAMINATION

7 By Mr. Petricoff:

8 Q. Ms. Ringenbach, if you could, could you  
9 please describe for me what is the issue that was  
10 settled in the case that Mr. Kutik pointed out to  
11 you, the opinion and order Mr. Kutik pointed out to  
12 you, 02-1944?

13 A. The issue that was settled at that time  
14 the way the payment priority was set up, customers  
15 who left to shop with a supplier, if they didn't pay  
16 their bill in full each month, they eventually  
17 accrued a large arrearage with our supplier because  
18 if they only paid a portion of their bill the first  
19 month, that portion went to their current utility  
20 charges.

21 The next month, even if they paid their  
22 bill in full, the amount of money that they paid, the  
23 majority of it or all of it, depending on their bill,  
24 would go to their past due and current utility  
25 charges.

1           So now you have two bills where we -- the  
2   supplier has not received any money, and this just  
3   became a snow balling and getting bigger and bigger  
4   each month for the customer.

5           So the issue that was resolved was that  
6   they are going -- they change the payment priority so  
7   CRES past due were paid first and then EDU past due.

8           So you didn't have these customers paying  
9   just a portion and CRES receiving no money each month  
10   and then eventually the customer would be dropped  
11   into collections.

12          Q.    Was the company at risk then for  
13   nonpayment of the generation portion of the bills at  
14   the time the stipulation was approved?

15          MR. KUTIK:  I'll object, your Honor, I am  
16   not sure what company we are talking about.

17          MR. PETRICOFF:  The companies.

18          EXAMINER PRICE:  The operating companies.

19          Q.    The operating companies.

20          A.    No, not for supplier.  For supplier  
21   customers they weren't at risk for any uncollectible  
22   for generation for customers that shopped.

23          Q.    But for standard -- who was at risk for  
24   nonpayment of standard service customers if the --  
25   for the generation portion of their bill?

1           A.    The utility.

2           Q.    Would that change under the Application  
3 in this case?

4           A.    No.  Well, the stipulation -- in the  
5 stipulation the utilities did not take any risk or  
6 take on any other risk among collections for supplier  
7 customers.

8                   Under the ESP proposal our customers are  
9 going to be paying for the risk of standard service  
10 offer customers even though they are with a supplier.

11          Q.    Will the company be -- under ESP will the  
12 company be at risk if the nondistribution  
13 uncollectible rider is approved as applied for?

14          A.    No.

15          Q.    Why is the non-utility -- I'm sorry  
16 nondistribution uncollectible rider unfair then to  
17 shopping customers?

18                   MR. KUTIK:  Objection.  Beyond the scope  
19 of cross.

20                   EXAMINER PRICE:  Sustained.

21          Q.    If -- if shopping customers did not have  
22 to pay -- I'm sorry.

23                   If the nondistribution uncollectible  
24 rider was bypassable, would there be any reason to  
25 change the stipulation in this case?



1           A.    No.

2           Q.    You were asked earlier about the -- your  
3 reasons for believing that the aggregation -- let me  
4 strike that.

5                   What is support for your belief that the  
6 RCP and the RSP caused a decrease in government  
7 aggregation in the FE operating companies?

8           A.    In 2005, we presented offers to three  
9 communities to continue and one would have been a new  
10 government aggregation program and there were factors  
11 that we looked at including price and including what  
12 was avoidable and was not avoidable in the RSP and  
13 the RCP.

14                   And as part of those negotiations, how a  
15 customer would actually save was part of that and  
16 eventually when we could not provide savings, our  
17 agreements with those communities just came to an  
18 end, so that's what led to the customers that we were  
19 serving no longer shopping.

20           Q.    Do the reasons that Green Mountain  
21 withdrew from the Ohio market have any impact on  
22 Integrys serving governmental aggregation load either  
23 in 2005 or today?

24           A.    The reasons that Green Mountain?

25           Q.    Withdrew from the Ohio market.

1           A.    Meaning the federal reference that they  
2   made?

3           Q.    Well, the items covered in Companies  
4   Exhibit 15.

5           A.    Green Mountain is referring to SECA  
6   charges and though we were subject to SECA charges,  
7   Green Mountain were far exceeding what we -- what we  
8   were asked to pay.  So is it the same reason, no.

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

11          EXAMINER PRICE:  Thank you.  
12   Ms. Roberts.

13          MS. ROBERTS:  No questions.

14          EXAMINER PRICE:  Mr. Bell.

15          MR. BELL:  No, your Honor.

16          EXAMINER PRICE:  Mr. White.

17          MR. WHITE:  No questions, your Honor.

18          EXAMINER PRICE:  Ms. McAlister.

19          MS. McALISTER:  No questions, your Honor.

20          EXAMINER PRICE:  Mr. Porter.

21          MR. PORTER:  No questions.

22          EXAMINER PRICE:  Mr. Kurtz.

23          MR. KURTZ:  No questions.

24          EXAMINER PRICE:  Mr. Stinson.

25          MR. STINSON:  I think I do have one, yes.

- - -

CROSS-EXAMINATION

By Mr. Stinson:

Q. Ms. Ringenbach, you were responding to the letter from Green Mountain to the Commission regarding the reasons for leaving. Are you aware of the filings in the rest of that Docket 05-1147-EL-UNC?

A. No.

Q. Are you aware of the filings in a related complaint case filed by NOPEC against Green Mountain around that same time frame?

A. I'm aware that NOPEC filed a complaint against Green Mountain for breaking their contract with them.

Q. Are you aware of any other reasons that Green Mountain gave for leaving Ohio?

A. Outside of the SECA charges?

Q. Yes.

A. Not off the top of my head, no.

MR. STINSON: Your Honor, at this point I would like for the Commission to take administrative notice of those dockets and the filings that are in there.

EXAMINER PRICE: As with Mr. Small, if

1     there are particular documents within that -- those  
2     dockets that you would like me to take administrative  
3     notice of, I will consider it, but we are not going  
4     to take administrative notice of two full Commission  
5     dockets. And you can come back later and we'll take  
6     a look at what you come up with.

7                     MR. STINSON: Okay. Thank you, your  
8     Honor.

9                     EXAMINER PRICE: Mr. Kutik?

10                    - - -

11                    RE CROSS-EXAMINATION

12     By Mr. Kutik:

13                    Q. Ms. Ringenbach, what communities did you  
14     have negotiations with at the end of 2005?

15                    A. At the end -- I don't know if I can say  
16     that, that's confidential.

17                    MR. KUTIK: If that's the case, your  
18     Honor, I move to strike that testimony.

19                    EXAMINER PRICE: Grounds?

20                    MR. KUTIK: If I am not allowed to  
21     cross-examine about it, she shouldn't be able to  
22     testify in part of their affirmative case.

23                    EXAMINER PRICE: Mr. Petricoff.

24                    MR. PETRICOFF: Your Honor, I'm a -- I  
25     didn't hear the full objection. Could I have the

1 objection read.

2 MR. KUTIK: There's been no objection. I  
3 asked what communities was she referring to in answer  
4 to your question. And she said she doesn't think she  
5 can talk about that, and if that's the case, I move  
6 to strike that testimony, the testimony in the  
7 redirect relating to and referring to the communities  
8 and the discussions with the communities and what  
9 happened with them.

10 THE WITNESS: Can I look at what our  
11 contracts with them said and whether or not I can  
12 disclose their names?

13 MR. PETRICOFF: No. The question is just  
14 for the -- just for the communities.

15 MR. KUTIK: So far the name of the  
16 communities.

17 MR. PETRICOFF: The names of --

18 MR. KUTIK: I intend to examine in detail  
19 about this, your Honor.

20 MR. PETRICOFF: We will go down this one  
21 step at a time.

22 Your Honor, may I advise my client here  
23 for a second?

24 EXAMINER PRICE: You may.

25 MR. KUTIK: And we should note there is

1 going to be a consultation off the record at this  
2 time.

3 MR. PETRICOFF: Actually, your Honor, I  
4 will put this on.

5 Ms. Ringenbach, if your concern is the  
6 joint defense agreement, I believe you are under no  
7 qualms and you may name the cities that you had  
8 negotiations, if you recall.

9 THE WITNESS: My concern is that we had  
10 signed contracts with those communities and there is  
11 confidentiality clauses.

12 MR. PETRICOFF: We will get to that when  
13 we get to the terms, but I think you can name the  
14 communities.

15 THE WITNESS: Okay. That would be the  
16 City of Cleveland, the City of Euclid, and the City  
17 of Cleveland Heights.

18 Q. (By Mr. Kutik) And did you offer prices  
19 to those communities?

20 MR. PETRICOFF: Objection. Now, your  
21 Honor, we will get to the part that --

22 EXAMINER PRICE: He just asked if they  
23 offered prices. I am sure there was a price in those  
24 contracts. The next question you will probably be  
25 more timely.

1 MR. PETRICOFF: Okay, may I remain  
2 standing, your Honor?

3 EXAMINER PRICE: Certainly.

4 THE WITNESS: Can I talk to a Howard for  
5 a moment because that's an awkward --

6 MR. PETRICOFF: Let's keep this on the  
7 record.

8 MR. KUTIK: I agree.

9 MR. PETRICOFF: The question was were  
10 there prices in the discussion, the discussion or the  
11 offers?

12 MR. KUTIK: Offers.

13 A. Did we make them a price offer?

14 Q. Yes.

15 A. No.

16 Q. Did they make price demands?

17 A. Did they make price demands?

18 Q. Yes.

19 A. I'm so uncomfortable -- I'm worried I'm  
20 going to give out confidential product information.

21 MR. PETRICOFF: We are not going --

22 EXAMINER PRICE: Mr. Petricoff, let me  
23 just get -- make sure everybody understands.

24 You need to answer his questions,  
25 Mr. Petricoff will make objections.

1 MR. PETRICOFF: Right.

2 EXAMINER PRICE: If you want to pause a  
3 second to see if he makes an objection, you may. But  
4 I am sure that Mr. Petricoff will make it clear he's  
5 making objections if he finds a question potentially  
6 objectionable. Now, you need answer the question.

7 THE WITNESS: Did they make price  
8 demands? I guess in terms of we negotiated back and  
9 forth on how the programs would be priced.

10 Q. (By Mr. Kutik) Okay, and what did you  
11 discuss in that regard?

12 MR. PETRICOFF: Okay, your Honor. Now, I  
13 think we've crossed the border, now we are getting  
14 into the negotiations.

15 It is fair to say that there were  
16 negotiations, it's fair to say what the cities were,  
17 but we have privileged information. We have real  
18 relevancy questions about negotiations because 2005  
19 on contracts with cities that have nothing to do with  
20 the ESP.

21 EXAMINER PRICE: Mr. Petricoff, she  
22 testified -- she's testifying as to the reason of the  
23 decline in shopping after 2005. Mr. Kutik has raised  
24 the question wasn't it just RTO and federal issues.

25 MR. KUTIK: And other things.



1                   EXAMINER PRICE: And she has testified  
2 no, it was not just that.

3                   I don't see how on relevance this is not  
4 appropriate. This is her line of responses.

5                   MR. KUTIK: And my offer, your Honor, is  
6 I will stop the questions if counsel will agree to  
7 strike that portion of her redirect.

8                   EXAMINER PRICE: The other possibility is  
9 that we go out of public section and do this under  
10 seal.

11                  MR. KUTIK: Your Honor, I know I'm going  
12 to share this information with my -- my client, I  
13 have to do that to be able to prepare potential  
14 rebuttal.

15                  EXAMINER PRICE: I understand.

16                  Is there a confidentiality agreement  
17 pending between the parties that I am not aware of?

18                  MR. KUTIK: No, there is not.

19                  MR. PETRICOFF: I'm sorry. Your Honor,  
20 we will not object to the motion to strike.

21                  EXAMINER PRICE: Okay.

22                  MR. KUTIK: So, your Honor, I move to  
23 strike that portion of Ms. Ringenbach's testimony on  
24 redirect relating to her discussions with the  
25 communities and what happened with respect to them.

1 EXAMINER PRICE: Any objections to the  
2 motion to strike?

3 Hearing none, motion is granted.

4 MR. KUTIK: No further questions.

5 Excuse me, I do have another question --  
6 I have no further questions. Thank you.

7 EXAMINER PRICE: I have one -- I'm sorry.

8 MR. JONES: No questions, your Honor.

9 EXAMINER PRICE: I have one issue because  
10 I'm responsible for the record in this case for the  
11 Commission.

12 - - -

13 EXAMINATION

14 By Examiner Price:

15 Q. Ms. Ringenbach, you testified as to the  
16 issues which were involved in 02-1944-EL-CSS; is that  
17 correct?

18 A. Yes.

19 Q. And you testified the issues related to  
20 the payment priority; is that correct? Issues used  
21 in that proceeding?

22 A. Yes. How they affected customers, yes.

23 Q. Can you please turn to page 2 of the  
24 opinion and order marked as Company Exhibit 16.

25 MR. KUTIK: I am sorry, you said page 2?

1 EXAMINER PRICE: Page 2.

2 Q. First paragraph, can you read the second  
3 sentence of the first paragraph, please?

4 A. "Complaint alleges among other specific  
5 items that FirstEnergy has violated the Commission's  
6 September 13, 2001 Opinion and Order in the matter  
7 established of electronic data exchange standards and  
8 uniform business practices for the electric utility  
9 industry Cases No. 00-8134-EDI by failing to  
10 negotiate the implement of receivables purchase  
11 agreement."

12 Q. So the allegations to the complaint are  
13 different from what your recollection was.

14 A. But I believe we asked -- we asked for  
15 the purchase of receivable agreement because -- as a  
16 result of the issues we were having with sending  
17 customers to collections so.

18 Q. But the remedy you asked for was a  
19 purchase and receive --

20 A. Correct, yes.

21 EXAMINER PRICE: Thank you. You are  
22 excused.

23 Mr. Petricoff.

24 MR. PETRICOFF: Yes, your Honor, at this  
25 time we move for admission of Exhibits 3 and 3A.

1 EXAMINER PRICE: Any objection?

2 MR. KUTIK: No objection.

3 EXAMINER PRICE: Seeing none, those  
4 exhibits will be admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 MR. KUTIK: Your Honor, the companies  
7 move for the admission of Company Exhibit 15 and 16,  
8 unless you just want to take administrative notice of  
9 16.

10 EXAMINER PRICE: I'm simply taking  
11 administrative notice of Company Exhibit 16.

12 Any objection to admission of Company  
13 Exhibit 15?

14 Seeing none, that exhibit will be  
15 admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER PRICE: We will now break for  
18 lunch until 2:30.

19 Thank you all.

20 (At 1:35 lunch recess was taken until  
21 2:30 p.m.)

22 - - -

23

24

25

1 Friday Afternoon Session.

2 October 24, 2008.

3 - - -

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

6 Mr. Kurtz, your next witness.

7 MR. KURTZ: Your Honor, we call Charles  
8 W. King.

9 (Witness sworn.)

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

12 THE WITNESS: My name is Charles W. King.  
13 My business address is Suite 300, 1111 14th Street,  
14 N.W., Washington, D.C. 20005.

15 EXAMINER PRICE: Mr. Kurtz.

16 MR. KURTZ: Thank you.

17 - - -

18 CHARLES W. KING

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

21 DIRECT EXAMINATION

22 By Mr. Kurtz:

23 Q. Good afternoon, Mr. King.

24 Do you have in front of you a document  
25 titled the Direct Testimony and Exhibits of Charles

1 W. King?

2 A. Yes, I do.

3 MR. KURTZ: Your Honor, I asked this be  
4 marked as OEG Exhibit 3.

5 EXAMINER PRICE: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. Mr. King, this document consists of 10  
8 pages of direct testimony, six schedules, and your  
9 credentials; is that correct?

10 A. That's correct.

11 Q. Was this document prepared by you or  
12 under your direct supervision?

13 A. Yes, it was.

14 Q. Do you have any corrections or additions  
15 you'd like to make at this time?

16 A. No, I don't.

17 Q. If I were to ask you the same questions  
18 as those contained herein, would your answers be the  
19 same?

20 A. Yes, they would.

21 MR. KURTZ: Your Honor, I turn Mr. King  
22 for cross-examination.

23 EXAMINER PRICE: Thank you.

24 Mr. Small.

25 MR. SMALL: No questions.

1 EXAMINER PRICE: Mr. Bell.

2 MR. BELL: No questions.

3 EXAMINER PRICE: Mr. White?

4 MR. WHITE: No questions, Your Honor.

5 EXAMINER PRICE: Mr. Porter.

6 MR. PORTER: No questions.

7 EXAMINER PRICE: NOPEC.

8 MR. BREITSCHWERDT: No, no questions,

9 your Honor.

10 EXAMINER PRICE: Mr. Korkosz.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Korkosz:

14 Q. Good afternoon, Mr. King.

15 Could you turn to page 4 of your

16 testimony, please.

17 A. I have it.

18 Q. Down at the bottom of that page you -- on

19 line 26 you refer to the FirstEnergy companies, by

20 which you mean the Ohio distribution utilities Toledo

21 Edison, Ohio Edison, and Cleveland Electric

22 Illuminating, and beginning on page -- excuse me,

23 line 28, you say "All of their rates and the

24 consequent earnings are subject to rate regulation by

25 the Public Utilities Commission of Ohio."

1 Do you have that?

2 A. That's correct.

3 Q. Now, you were here this morning, weren't  
4 you, when I went into near hysteria when  
5 Mr. Petricoff mentioned Penn Power?

6 A. Yes.

7 Q. All right. You testified in  
8 Pennsylvania -- in Pennsylvania Electric cases, have  
9 you not?

10 A. Yes, I have.

11 Q. Are you familiar with a company known as  
12 Pennsylvania Power Company?

13 A. I know there is such a company. I am not  
14 familiar with it.

15 Q. Would you be sufficiently familiar to be  
16 aware that it is retail electric distribution company  
17 whose rates are regulated by the Public Utilities  
18 Commission -- Pennsylvania Public Utilities  
19 Commission?

20 A. Yes.

21 Q. All right. And are you also sufficiently  
22 familiar to know that it was a wholly-owned  
23 subsidiary of Ohio Edison Company?

24 A. I didn't know that. I knew it was  
25 under -- under FirstEnergy, but I didn't know it was



1 a subsidiary of Ohio Ed.

2 Q. Assume that to be the fact, if you would,  
3 for purposes of the question.

4 A. All right.

5 Q. If that be the case, would you believe  
6 that it would be appropriate to -- to exclude the  
7 earnings and utility operations of Penn Power from  
8 the significantly excessive earnings test as applied  
9 to Ohio Edison?

10 A. I guess I assume that the Ohio Edison  
11 results that I've examined were -- or that we would  
12 be examining were Ohio jurisdiction revenues and  
13 expenses and rate base.

14 Q. That's what we should apply --

15 A. That's correct. That's what you would  
16 apply.

17 Q. All right. To the extent that you draw  
18 on information that is reported to the Securities and  
19 Exchange Commission for purposes of 10K reports --  
20 10Q reports and the like, that ratemaking exclusion,  
21 if I may call it that, isn't necessarily reflected in  
22 those financial reports?

23 A. I just don't know.

24 Q. All right.

25 A. Possibly the case.

1 Q. Fair enough.

2 Now, in your methodology you look at two  
3 sets of comparable groups; you use utilities and then  
4 you have another group of nonutilities, correct?

5 A. That's correct.

6 Q. Now, with respect to the utility group,  
7 you started by taking publicly traded companies that  
8 Value Line classifies as electric utilities, right?

9 A. That's correct.

10 Q. And you went to the 10Ks of those  
11 companies?

12 A. Not the -- yes, the 10Ks, that's correct.

13 Q. 10Ks and that's --

14 A. 2007 10Ks.

15 Q. And for the record, a financial reporting  
16 done with the Security and Exchange Commission,  
17 correct?

18 A. That's correct.

19 Q. And you attempted to break down the  
20 revenues of that group of companies into three  
21 categories; regulated electric, regulated gas, and  
22 unregulated revenues, correct?

23 A. That's correct.

24 Q. All right. And to the extent that there  
25 wasn't an exact -- that exact breakdown reflected in

1 a 10K for any given company, for example, where there  
2 wasn't a breakdown between gas and electric revenues,  
3 in that case you assume all of the regulated revenues  
4 were electric revenues, correct?

5 A. That's correct. Because Value Line had  
6 classified that company as an electric utility.

7 Q. Okay. And that group of companies is  
8 listed on --

9 A. I believe it's schedule --

10 Q. Help me out.

11 A. Schedule 2 and 3 have those companies.

12 Q. They are listed on Schedule 2, right?

13 A. Yes.

14 Q. And taking 1, for example, No. 18 is MGE  
15 Energy, right?

16 A. Oh, I'm sorry, 18 on -- yes.

17 Q. I'm looking at Schedule 2.

18 A. Right, right, that stands only for  
19 Madison Gas & Electric.

20 Q. You are anticipating me.

21 It is -- technically it is the holding  
22 company that owns the -- the utility that is Madison  
23 Gas & Electric, correct?

24 A. That's correct.

25 Q. And that's a regulated utility that

1 provides both retail electric and gas distribution  
2 service in Wisconsin, right?

3 A. That's my understanding.

4 Q. All right. And of course, that is a  
5 combination electric and gas company.

6 A. That's true.

7 Q. And this is an example, I guess if we  
8 look at your Schedule 1 where apparently you couldn't  
9 break down the distinction between gas and electric  
10 revenues because there's zero revenues attributed to  
11 gas.

12 A. That's right, and you know, I  
13 acknowledged that's a weakness of this table but  
14 there is nothing I can do about it without having  
15 data.

16 Q. All right. In any event, it is an  
17 assumption that you make that is contrary to fact in  
18 at least that instance?

19 A. In that case, so the thing focusing on is  
20 whether the revenues are regulated as opposed to  
21 unregulated. Even there some estimation had to be --  
22 had to be made in certain cases.

23 Q. All right. Turn to page 5 of your  
24 testimony, if you will. And on line 16 -- well, this  
25 is an area in which you make a further screening of

1 your group of those utility companies on the  
2 criterion of more than 20 percent unregulated  
3 operations, right?

4 A. That's correct.

5 Q. All right. And that use of 20 percent,  
6 that's a judgment call on your part?

7 A. That's a judgment call. It could have  
8 been 15, it could have been 25.

9 Q. Well, actually, would you agree that that  
10 cutoff would be in the range of 15 to 30 percent?

11 A. It could be, yes.

12 Q. Now, still talking about the utility  
13 group and your process with respect to those  
14 companies, on your Schedule 2 you provide the various  
15 data for each of those companies, the amount of  
16 common equity, pretax income, income tax, post tax  
17 income, and then finally a return on equity for each  
18 of those companies, right?

19 A. That's correct.

20 Q. And then down at the bottom of that you  
21 provide an average of the returns on equity, right?

22 A. Yes.

23 Q. And that's a simple average?

24 A. It's a mean, right, simple average.

25 Q. It's a mean.

1                   Now, in your analysis of the utility  
2 group, which is what we are talking about here on  
3 Schedule 2, right?

4           A.    Yes.

5           Q.    You made no attempt to analyze  
6 differences in capital structure or debt leverage as  
7 among these companies, correct?

8           A.    Well, I do later in the -- in the  
9 conversion of the returns here to the returns  
10 appropriate for the three FirstEnergy companies, but  
11 I do not make that adjustment -- I do not do a  
12 company-by-company analysis, no.

13          Q.    You did not make that analysis?

14          A.    No, I worked off of averages for the  
15 entire 36 companies.

16          Q.    All right. Turning to the ninth utility  
17 group, which is the second group of companies. You  
18 started with the I guess it's 5,587 companies in the  
19 Value Line data file, right?

20          A.    That's correct.

21          Q.    And you began your screening by  
22 eliminating electric and gas and water utilities,  
23 right?

24          A.    Well, let me get the numbers right, I  
25 began with 5,688 companies and I screened out the

1 utilities.

2 Q. All right.

3 A. That got me to 5,587.

4 Q. I stand corrected. The utilities that  
5 you screened out were electric, gas, and water  
6 utilities, right?

7 A. That's correct.

8 Q. And in the utility group we were talking  
9 about a moment ago, that was just what were  
10 classified as electric utilities.

11 A. That's correct.

12 Q. So -- and I am not sure what significance  
13 it will have, water utilities aren't picked up in  
14 either group, right?

15 A. There are only five water utilities and  
16 there are 20 or 30 gas utilities, maybe not even that  
17 many. I don't think it would have changed the  
18 results very much.

19 Q. All right. You then apply the screen for  
20 capital intensity, correct?

21 A. Correct.

22 Q. And then following that screen you  
23 screened out what you characterize as being small  
24 companies, meaning that they have less than \$1  
25 billion of gross plan, right?

1           A.    Right.

2           Q.    And the rationale you used for that  
3 particular screen in your view, the small companies  
4 have a somewhat greater risk than larger companies?

5           A.    That is correct, I needed to make them  
6 comparable to FirstEnergy.

7           Q.    Now, on page 6, line 17, in your  
8 reference to FirstEnergy, you state "FirstEnergy  
9 which has over \$25 billion in gross plant."

10                  Do you have that reference?

11           A.    Yes.

12           Q.    And the reference to FirstEnergy there is  
13 not any of the operating companies but the -- the  
14 parent FirstEnergy Corp., correct?

15           A.    That's true, that's true. That's the  
16 entity that raises the capital for subsidiaries.

17           Q.    All right. And you would expect that the  
18 gross plant of each of the Ohio utilities would be  
19 considerably less than that 25 billion?

20           A.    Oh, yes.

21           Q.    Now, you tell us on page 7 that you  
22 consider the nonutilities, that is the nonutility  
23 group, to be more risky than the FirstEnergy Ohio  
24 utilities, so you begin to make a risk adjustment at  
25 that point in your testimony, right?



1           A.    That's correct, yes.

2           Q.    Start that process, you adjust what you  
3 consider to be the higher risk of the nonutility  
4 group as compared with the utility group, right?

5           A.    That's correct.

6           Q.    And to make that adjustment you are  
7 relying on CAPM methodology, right?

8           A.    That's correct.

9           Q.    And for the record CAPM stands for  
10 capital asset pricing model, correct?

11          A.    That's correct.

12          Q.    And that's a methodology that's probably  
13 familiar to many regulatory commissions and it's  
14 often used by witnesses such as yourself to testify  
15 on subjects about the appropriate return on equity to  
16 be allowed in a rate case, right?

17          A.    Yes.

18          Q.    Now, in simple terms, under CAPM you  
19 determine a required return of a company by starting  
20 with a risk free rate and adding to it the product of  
21 Beta times the market risk premium, correct?

22          A.    That's correct.

23          Q.    And the last part of that calculation,  
24 which is Beta, Beta times the market risk premium,  
25 that -- that kind of a calculation is shown on your

1 Schedule 5, is it not?

2 A. That's correct.

3 Q. Let's -- let's talk about Beta first. On  
4 your Schedule 4 you talk -- you show a Beta for each  
5 of your nonutility companies, correct?

6 A. Yes. It's the last column.

7 Q. All right. And in your testimony you  
8 define Beta as a measure of the covariance of each  
9 stock with that of the overall stock market, correct?

10 A. That's correct.

11 Q. Would you agree with me that there are as  
12 many estimates for a given company as there are  
13 analysts making the measurement?

14 A. That's correct.

15 Q. In fact, you've testified to that before  
16 the Missouri Public Service Commission in prefiled  
17 testimony in case ER-2007-0002 in the case of Union  
18 Electric Company, right?

19 A. That's correct.

20 Q. And similarly you have made that  
21 statement in testimony before the Maryland Public  
22 Service Commission.

23 A. That's correct.

24 Q. In the Delmarva case, right?

25 A. And several other cases since then.

1 Q. PepCo as well. I believe BG&E --

2 A. Lately Washington Gas.

3 Q. Now, back to your testimony here, you use  
4 Value Line as the source of your Betas, rights?

5 A. Yeah, because that's the standard source  
6 used by all company utility witnesses.

7 Q. To clear up a couple of things, if you  
8 turn to page 7, please.

9 A. I have it.

10 Q. I'm going to suggest that there may be a  
11 typo here, but if you compare on line 16 with line  
12 30, you have an average Beta for your nonutility  
13 group shown on line 16 of 1.08 and on line 30 you  
14 have a reference 1.09. Should those be the same.  
15 Should it be 08, 1.08.

16 A. It has to do I think with the rounding  
17 process. The actual number is somewhere between 1.08  
18 and 1.09.

19 Q. Okay. Help me out then, if you would,  
20 when you refer on page 8 -- well, let's do this. You  
21 are taking the difference between your 1.08 Beta for  
22 the nonutility group and subtracting from it the .9 1  
23 Beta for utility group to get your .17, correct?

24 A. That's right. And apply the .17 to the 7  
25 percentage point market risk premium.

1 Q. You do that on your Schedule 5.

2 A. That's correct.

3 Q. Would you compare on your page 8 at the  
4 top you have a reference to 115 basis points and on  
5 your Schedule 5 I don't see that number. I do see  
6 1.17 percent.

7 A. I'm sorry, 1.17, I'm afraid what happened  
8 is within -- through some iterations in preparing the  
9 exhibits and they didn't always get reflected into  
10 the testimony. I think that's what's happened.

11 Q. In any event, these are reflective  
12 numbers of 2007, correct?

13 A. These are all 2007 numbers and they are  
14 just illustrative of the numbers you'd get when this  
15 methodology would first be applied, which is in 2010  
16 to 2009 data.

17 Q. All right.

18 A. Which will look a great deal differently  
19 from what you see here.

20 Q. Sure. Now let's look at your Schedule 5,  
21 if we could for a moment. If I understand this  
22 correctly, in your column A, we already discussed  
23 this, you take a difference between the Beta the  
24 average Beta for your nonutilities and electric  
25 utilities, correct?

1           A.    That's correct.

2           Q.    That difference shown on line -- row No.  
3   3, right?

4           A.    Row No. 3, column A.

5           Q.    And then column B has your risk premium  
6   of 7 percent, right?

7           A.    Yes.

8           Q.    And the product of those is shown in  
9   column C, your adjustment to nonutilities, right?

10          A.    That's correct.

11          Q.    And just as I did this by hand as I  
12   multiplied those two together, I got 119 basis  
13   points, is that probably just a rounding item?

14          A.    It could be.  What's wrong is what I'm  
15   showing these numbers in limited number of decimal  
16   points.  In fact, the computer is doing them with the  
17   full run of decimal points, which is why some of  
18   these numbers superficially don't add up.

19          Q.    All right.  Over in column D, that's the  
20   rate of return for -- the average rate of return for  
21   the nonutility, right?

22          A.    That's drawn from the Schedule 4.

23          Q.    And ultimately adjust that for -- for the  
24   risk differential that you found, you subtract the  
25   1.17 from that 14.14, right?

1           A.    Yes, right.

2           Q.    To arrive at the value that's in your  
3 column A?

4           A.    Yes.

5           Q.    Now, we talked about Beta.  The other  
6 component that you rely on in your CAPM analysis is  
7 the risk premium, right?

8           A.    Yes.

9           Q.    That's sometimes referred to as a market  
10 risk premium, is it not?

11          A.    That's true, it's premium of overall  
12 market for stocks compared to the risk free rate of  
13 long-term treasury bonds.

14          Q.    In your testimony you tell us there are  
15 many measures of risk premium but go on to tell us  
16 that there is a consensus that measured over very  
17 long periods of time that risk premium is around 7  
18 percent.

19          A.    That's right.  This comes from Ibbotson &  
20 Associates, who purport to do monthly calculations of  
21 returns of both stocks and bonds, and the series goes  
22 back, I believe, to 1926, and over that entire period  
23 it's approximately 7 percent.

24          Q.    You are helping me out here, Mr. King.

25                Now, you did a CAPM in your -- in the

1 Delmarva Maryland case we spoke about a minute ago?

2 A. I suspect I did, yes.

3 Q. And you would have, in doing that CAPM  
4 you would have necessarily determined that a Beta  
5 did -- a value for Beta and the value for the risk  
6 premium, correct?

7 A. Yes.

8 Q. In fact in that case you did not rely on  
9 the Ibbotson value of 7 percent but you used a market  
10 risk premium of 4.59 percent.

11 A. That was I believe calculated from Value  
12 Line's estimate of what appreciation would be over  
13 the coming five to ten years for the entire market.

14 Q. All right. In any event, you did not  
15 rely on the Ibbotson Associates as you do here?

16 A. No, and I discuss that in that testimony  
17 the reason for not doing so.

18 Q. And just to wind this up, in the Missouri  
19 testimony you did a similar CAPM calculation and  
20 there you used market risk premium 5.9 percent.

21 A. Probably.

22 Q. Just as you look at Schedule 5 as just a  
23 matter of mathematics, if what is in column B, that  
24 risk premium is reduced from 7 percent to some lower  
25 number, just as a matter of mathematics the value in

1 column E will be driven higher, will it not?

2 A. The higher the volume in column C will be  
3 lower, yes.

4 Q. Would you agree with the state that CAPM  
5 results can be made to conform to the preferences of  
6 any analysis simply through the judicial selection of  
7 different inputs?

8 A. That's a brilliant statement.

9 Q. I couldn't agree more.

10 All right. We are getting close to the  
11 end here.

12 On page 8 of your testimony, line 19, as  
13 you ultimately are going through to make a  
14 determination of the overall cost of capital, you  
15 attribute a debt -- you distribute a debt cost both  
16 to the comparables groups as well as to the Ohio  
17 utilities of 7.17 percent, correct?

18 A. Yes. There is no way I can calculate for  
19 those large number of companies the cost of debt.  
20 Now, I could do a calculation, but it would be a pure  
21 comparison of interest charges to debt, and that  
22 tends to understate the cost to debt.

23 Because you have to also include the debt  
24 floatation costs which usually are amortized in a  
25 separate line item.



1           Q.    The 7.17 percent as I understand it is a  
2 value reported by the Federal Reserve?

3           A.    It's the yield on Moody's BAA of bonds,  
4 corporate bonds.

5           Q.    And that will vary day to day.

6           A.    It does, yes.

7           Q.    And that would mean that at the -- a  
8 market as opposed to a book measure?

9           A.    It is indeed.

10          Q.    All right. Let's turn over to page 9  
11 where you begin talking about the increment that  
12 represents significantly excessive earnings.

13                You are proposing to use the FERC adders  
14 that are developed in transmission proceedings as an  
15 incentive to use as the measure of the -- what is  
16 significantly excessive earnings here in application  
17 of the Ohio statute, correct?

18          A.    That's the number I use but I emphasize  
19 it's largely up to the Commission's judgment and  
20 that --

21          Q.    This Commission's judgment?

22          A.    This Commission's judgment, not FERC's.  
23 I'm using FERC as sort of plug number and I don't  
24 think that it needs to be 200 basis points, it could  
25 be less, it could be more depending on the

1 circumstances.

2 Q. You will agree there is certainly nothing  
3 in the FERC opinions that would -- that discuss  
4 FERC's designation of an incentive adder that  
5 suggests that it's appropriate for use here?

6 A. No. The only point being that if FERC  
7 believes that this incentive adder is sufficient to  
8 draw -- invest into allegedly risky transmission  
9 investment, that it's just that any more than 200  
10 basis points is excessive for that purpose.

11 Q. Any increment more?

12 A. Any increment more and also they don't  
13 offer the 200 in any case. They usually offer  
14 something less, that is FERC does.

15 Q. Now, you don't see a distinction between  
16 whether a company's earnings are excessive as  
17 compared with being significantly excessive, do you?

18 A. No. I think that significantly excessive  
19 is just a combined adjective.

20 Q. You have referred to it as a matter of  
21 semantics?

22 A. A matter of semantics, right.

23 Q. On page 10, line 7, this is actually in  
24 the question, that you have a reference to the  
25 utilities' witnesses, and for the clarity of the

1 record that is utilities, plural apostrophe,  
2 witnesses, correct?

3 A. That's correct. All three of them make  
4 the same suggestion.

5 Q. And by the "all three," you mean each of  
6 the Applicants in the three Ohio ESP cases meaning --

7 A. That's correct.

8 Q. -- not only FirstEnergy, but AEP and Duke  
9 as well.

10 A. That's correct.

11 Q. And it's correct that each of those  
12 witnesses offers a threshold that reflects a  
13 statistical confidence measure.

14 A. That's correct.

15 Q. Now, would you agree with me there could  
16 be some statistical confidence level that would be an  
17 appropriate measure by which to determine if a  
18 company has significantly excessive earnings.

19 A. No. I don't think use of statistical  
20 confidence limits is desirable and one of the reasons  
21 is it hardwires the definition of "significantly  
22 excessive."

23 And I think the Commission needs to have  
24 some flexibility in that regard. Right now, the use  
25 of statistical confidence levels, whether they be 90

1 or 95 percent, whether they be one tail or two tail,  
2 has the affect of yielding a very, very high number  
3 as the threshold for excessive, but that's 19 --  
4 that's 2007 numbers.

5 And this will first be applied in 2009.  
6 And in 2009 I predict that the average return that  
7 you get out of the certain -- my sample of nine  
8 utilities will not be 14.14 percent. It's going to  
9 be something much, much lower because we are  
10 coming -- moving into a severe recession.

11 If you use a confidence interval, you  
12 have prescribed what that -- almost mathematically  
13 you prescribe what that limit will be, and if we have  
14 a severe recession, that limit could be ruinous to  
15 the utilities.

16 It could be so low as to give that  
17 inadequate earnings if that's established as the  
18 hardwired definition of significantly excessive  
19 earnings, and for that reason I leave it loose, I  
20 leave it up to the judgment of the Commission as to  
21 what defines significantly excessive over the  
22 baseline number.

23 Q. You are suggesting that you ought to wait  
24 until 2010 whether we find the prospect of getting  
25 excessively significant earnings?

1           A.    I think you wait until 2010 until you  
2   define significantly excessive over a baseline.  The  
3   value of my methodology is establishing the baseline.

4                   My methodology does not propose to  
5   establish a hardwired fixed margin over that baseline  
6   which establishes significantly excessive.

7                   I'll give you a specific example.  
8   Suppose we had a situation where the utility number  
9   is just what it is here, a little over 10 percent,  
10  but the average nonutility is on the order of 4 or 5  
11  or maybe zero, which is quite possible if we have  
12  severe enough recession.

13           Q.    Now --

14                   MR. KURTZ:  Your Honor.

15                   Were you finished?

16                   THE WITNESS:  No.  I was going to say if  
17  you did that and follow my methodology through, the  
18  baseline number will be in the range of 5 or 6  
19  percent and your 90 percent confidence interval could  
20  be only at about 10 to 11 percent.  That's not  
21  significantly excessive.

22           Q.    Finished now?

23           A.    Yes, I'm finished now.

24           Q.    Okay.  The statistical competent level  
25  that has been proposed in this case and by the other

1 utilities' witnesses that you talk about in your  
2 testimony is dependent on a determination of some  
3 multiple of the standard deviation, is it not?

4 A. That's correct.

5 Q. All right, and would the standard  
6 deviation a measure of a dispersion around a mean?

7 A. That's correct.

8 Q. And that standard deviation is going to  
9 vary with how widely the sample varies around the  
10 mean, not necessarily the value of the mean itself,  
11 correct?

12 A. Well, the size of the standard deviation  
13 will depend on how much variation there is from the  
14 mean. The final number that gives you the threshold  
15 is dependent upon the mean. The lower the mean, the  
16 lower that standard -- that top number is likely to  
17 be. Not necessarily, but it's likely to be.

18 Q. Now, we started this whole venture off of  
19 with my inquiry about whether you -- whether in your  
20 view you thought there could be some statistical  
21 confidence level that would be an appropriate measure  
22 by which to determine if the company has  
23 significantly excessive earnings, and I believe your  
24 answer to me was no. Do I recall correctly?

25 A. Yes. I do not recommend the use of

1 statistical competency statements.

2 Q. Mr. King, do you recall I took your  
3 deposition on October 8?

4 A. Yes, I do.

5 Q. Do you happen to have a copy of the  
6 transcript?

7 A. No, I do not.

8 MR. KORKOSZ: May I approach, your Honor?

9 EXAMINER PRICE: You may.

10 MR. KORKOSZ: One to Mr. Kurtz.

11 MR. KURTZ: Thank you.

12 Q. Now, this deposition was taken October 8,  
13 right?

14 A. Yes.

15 Q. That's before -- obviously before you  
16 were here and were talking to Mr. Bell this morning,  
17 right?

18 I want you to turn to page 40 of the  
19 deposition, if you would, please.

20 A. I have it.

21 Q. And I direct your attention to the  
22 question beginning on line 21.

23 Do you have that, sir?

24 A. Yes.

25 Q. Question: "Is it your view that there's

1 no significant confidence level that would be  
2 sufficient by which to determine if a company has  
3 significantly excessive earnings"?

4 Answer: "Oh, there possibly could be."

5 Did I read that correctly?

6 A. You read it but you didn't read the whole  
7 answer. The rest of it says "I would rather not use  
8 statistical confidence levels, particularly since you  
9 are dealing in this case with unregulated companies  
10 with such a wide dispersion of earned returns. You  
11 can see that from my schedule 4."

12 Q. The portion that I read I did read  
13 correctly, did I not?

14 A. You did.

15 MR. KORKOSZ: I have no further  
16 questions.

17 EXAMINER PRICE: Mr. Jones.

18 MR. JONES: No questions, your Honor.

19 EXAMINER PRICE: Redirect?

20 MR. KURTZ: No redirect, your Honor.

21 EXAMINER PRICE: Thank you, you are  
22 excused.

23 Mr. Kurtz.

24 MR. KURTZ: Oh, your Honor, I move the  
25 admission of OEG Exhibit 3.



1 EXAMINER PRICE: Any objections to  
2 admission of OEG Exhibit 3?

3 Hearing none, the exhibit will be  
4 admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 EXAMINER PRICE: Mr. McNamee.

7 MR. McNAMEE: Yes, your Honor, I have  
8 wanted to note that I have an errata to the prefiled  
9 testimony of Daniel Johnson I wanted to hand out to  
10 the parties here.

11 EXAMINER PRICE: Now would be an  
12 appropriate time.

13 Let's go off the record.

14 (Discussion off the record.)

15 EXAMINER PRICE: Back on the record.

16 Mr. Wright.

17 MR. WRIGHT: Yes.

18 EXAMINER PRICE: Call your next witness.

19 MR. WRIGHT: We are ready to call a  
20 witness, we would call Mr. Siegfried to the stand.

21 EXAMINER PRICE: Mr. Siegfried.

22 (Witness sworn.)

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

25 THE WITNESS: My name is Stuart Siegfried

1 Siegfried, last name is S-I-E-G-F-R-I-E-D. Business  
2 address is 180 East Broad Street, Columbus, Ohio  
3 43215.

4 EXAMINER PRICE: Please proceed.

5 MR. WRIGHT: Are you ready to proceed?

6 Thank you, your Honor.

7 - - -

8 STUART M. SIEGFRIED

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

11 DIRECT EXAMINATION

12 By Mr. Wright:

13 Q. Good afternoon, Mr. Siegfried.

14 A. Good afternoon.

15 Q. By whom are you employed?

16 A. Public Utilities Commission of Ohio.

17 Q. Have you -- and what's your title?

18 A. Utilities Specialist 2.

19 EXAMINER PRICE: Mr. Siegfried, if you  
20 could make sure you are speaking into the microphone  
21 so everybody can hear.

22 Q. Mr. Siegfried, have you prepared  
23 testimony for this case?

24 A. Yes, I have.

25 MR. WRIGHT: Your Honor, at this time I

1 would like to have marked as Staff Exhibit 1 the  
2 prefiled testimony of Stuart M. Siegfried.

3 EXAMINER PRICE: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. WRIGHT: Thank you.

6 Q. Mr. Siegfried, do you have in front of  
7 you what we have just had marked as Staff Exhibit 1?

8 A. Yes, I do.

9 Q. Could you please identify that for the  
10 record.

11 A. This is my prefiled testimony in this  
12 proceeding.

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

15 A. Yes, I'm afraid I have one small  
16 correction on page 5, line 3, there's a reference  
17 there that says "4828.64(C)(3)," it should read  
18 4828.642.

19 Q. Would that complete your changes?

20 A. Yes, sir.

21 Q. Mr. Siegfried, if I were to ask you the  
22 same questions today that are contained within your  
23 prefiled testimony, would your answers be the same?

24 A. Yes, they would.

25 MR. WRIGHT: Thank you, your Honor. The

1 witness is available for cross-examination.

2 EXAMINER PRICE: Consumers' Counsel.

3 MR. POULOS: Your Honor, the Consumers'  
4 Counsel does not have any cross at this time.

5 EXAMINER PRICE: Mr. Bell.

6 MR. BELL: OMA has no questions, thank  
7 you.

8 EXAMINER PRICE: Mr. White.

9 MR. WHITE: No questions.

10 EXAMINER PRICE: Mr. Rinebolt.

11 MR. RINEBOLT: No questions, your Honor.

12 EXAMINER PRICE: Mr. Kurtz.

13 MR. KURTZ: No questions, your Honor.

14 EXAMINER PRICE: Ms. McAlister.

15 MS. McALISTER: No questions, your Honor.

16 EXAMINER PRICE: Mr. Porter.

17 MR. PORTER: No questions, your Honor.

18 EXAMINER PRICE: Mr. Breitschwerdt.

19 MR. BREITSCHWERDT: No questions, your  
20 Honor.

21 EXAMINER PRICE: Mr. Petricoff.

22 MR. PETRICOFF: No questions, your Honor.

23 EXAMINER PRICE: Mr. Lang.

24 MR. LANG: No questions, your Honor.

25 EXAMINER PRICE: Well, I certainly don't

1 have any.

2 MR. WRIGHT: Gee, I feel obligated to ask  
3 him something now.

4 EXAMINER PRICE: Thank you, Mr.  
5 Siegfried, you're excused.

6 Mr. Wright.

7 MR. WRIGHT: Thank you. At this time we  
8 would move the admission of Staff Exhibit 1.

9 EXAMINER PRICE: Any objections to  
10 admission of Staff Exhibit 1?

11 Hearing none, it will be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER PRICE: Next witness,  
14 Mr. Wright.

15 MR. JONES: Your Honor, we would call  
16 Greg Scheck to the stand.

17 EXAMINER PRICE: Mr. Jones, I sorry.

18 (Witness sworn.)

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

21 THE WITNESS: My name is Gregory C.  
22 Scheck, and I'm commission staff, and my business  
23 address is 180 East Broad Street, Columbus, Ohio  
24 43215.

25 EXAMINER PRICE: Mr. Scheck, I'm going to

1 ask you to please project and lift your voice up so  
2 everybody in the room can hear you.

3 EXAMINER PRICE: Mr. Jones.

4 MR. JONES: Thank you, your Honor.

5 - - -

6 GREGORY C. SCHECK

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

9 DIRECT EXAMINATION

10 By Mr. Jones:

11 Q. Mr. Scheck, what's your -- who are you  
12 employed by?

13 A. Public Utilities Commission of Ohio.

14 Q. And what is your title?

15 A. Utilities Specialist.

16 Q. And have you prepared testimony for this  
17 case?

18 A. Yes, I have.

19 MR. JONES: Your Honor, at this time I  
20 would like to have marked the prefiled testimony of  
21 Gregory C. Scheck as Staff Exhibit 2.

22 EXAMINER PRICE: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Mr. Scheck, could you please identify  
25 Staff Exhibit 2 for the record, please.

1           A.    Staff Exhibit 2 is my prefiled testimony  
2   in this case.

3           Q.    And was this prepared by you or at your  
4   direction?

5           A.    Yes, it was.

6           Q.    And do you have any corrections or  
7   additions to make to Staff Exhibit 2?

8           A.    Yes, I do.  I have one minor correction.

9           Q.    And what page would that be on?

10          A.    That correction is on page 12, line No.  
11   4, and it's in the sentence that actually starts in  
12   the middle of line No. 3.  "This would suggest that  
13   the Companies need to immediately begin," and the  
14   word should be "preliminary" rather than  
15   "preliminarily."  Just drop out the IL in that end of  
16   that word and it should be "preliminary cost  
17   effectiveness test of the many other energy  
18   efficiency measures/programs for an aggressive  
19   deployment schedule starting early in calendar year  
20   2009."

21                   EXAMINER PRICE:  Mr. Scheck, you are  
22   going to have to try to project.  Pull the microphone  
23   closer.

24          Q.    Mr. Scheck, do you have any other  
25   corrections or additions to make to your testimony?

1           A.    No, I do not.

2           Q.    Mr. Scheck, if I were to ask you the same  
3   questions provided and the changes that you have made  
4   here today, would your answers be the same?

5           A.    Yes, they would.

6                   MR. JONES:  Your Honor, with that I would  
7   offer him for cross-examination.

8                   EXAMINER PRICE:  Thank you.

9                   Mr. Poulos.

10                  MR. POULOS:  Thank you, your Honor.

11                                 - - -

12                                 CROSS-EXAMINATION

13   By Mr. Poulos:

14           Q.    Good afternoon, Mr. Scheck.  My name is  
15   Greg Poulos, from the Ohio Consumers' Counsel, and I  
16   have a couple of questions for you based on your  
17   prefiled testimony.

18                   In preparation for testifying in this  
19   case you reviewed the companies' proposal -- proposed  
20   residential AMI program, correct?

21           A.    Yes, I did.

22           Q.    I want to get a sense of your background.  
23   In evaluating the AMI programs currently are you  
24   reviewing any proposed AMI programs by other electric  
25   distribution utilities in Ohio?



1           A.    Yes.  I'm currently reviewing two other  
2  ones.

3           Q.    And what are those?

4           A.    Duke Energy and AEP.

5           Q.    And the Duke Energy proposal, how many  
6  participants, if you know?

7           A.    That are proposed to receive an advance  
8  meter or?

9           Q.    Yes.

10          A.    I believe the total number is a little  
11  over 700,000 to the entire customer base.

12          Q.    And to the AEP, American Electric Power,  
13  was the other one?

14          A.    Their initial deployment, I believe, is  
15  110,000 customers.

16          Q.    In 2006, do you recall a series of  
17  technical conferences in response to the FERC policy  
18  enacted in 2005, the Federal Policy Act of 2005?

19               MR. JONES:  I would have to object, your  
20  Honor, as to relevance.

21               MR. POULOS:  Let me lay a little more  
22  foundation, your Honor.

23          Q.    Do you recall there being technical  
24  conferences dealing with smart metering and demand  
25  response?

1           A.    You are referring to the case, I believe  
2   it's 07-646.  I am not sure of the exact number but  
3   there were technical conferences.  I believe there  
4   was six -- six conferences starting in July of last  
5   year -- July of last year through December of last  
6   year.

7                   MR. POULOS:  May I refresh his  
8   recollection, your Honor?  May I approach the  
9   witness?

10                  EXAMINER PRICE:  You may.

11                  MR. POULOS:  Thank you.

12                  Your Honor, may I have this marked as OCC  
13   Exhibit No. 11.

14                  EXAMINER PRICE:  You may.

15                  (EXHIBIT MARKED FOR IDENTIFICATION.)

16           Q.    Mr. Scheck, looking at what's been marked  
17   as OCC Exhibit No. 11 for identification purposes do  
18   you recognize this?

19           A.    Yes, I do.

20           Q.    And what is this document?

21           A.    This document is a -- it's a document  
22   representing a number of technical conferences to  
23   respond to the Federal Energy Policy Act of 2005.

24           Q.    And this is a two-page document?

25           A.    Yes, it is.

1           Q.    Looking at the smart metering and demand  
2    response, exploring the current process, do you see  
3    that bid way down the first page?

4           A.    Yes, I do.

5           Q.    Were you a moderator for that?

6           A.    Yes, I was.

7           Q.    And looking at the bullet points at some  
8    of the speakers, do you recognize Mr. Brian White,  
9    second to the last?

10          A.    Yes, I do.

11          Q.    From Gulf Power?

12          A.    Yes.

13          Q.    Do you recall what he was speaking on?

14          A.    My best recollection he was talking about  
15    deploying an advanced meter metering system with  
16    dynamic rates to a pilot group of customers for Gulf  
17    Power as a beginning pilot.

18                I don't remember the exact size of the  
19    pilot.  I don't think it was real large, maybe 3,000  
20    customers or something along that magnitude.

21                Those customers were, if my recollection  
22    is correct, they were fairly large residential  
23    customers.  Their average consumption was probably  
24    double the average or even more than the average  
25    residential customer would be in Ohio.

1                   And they had deployed the advanced meters  
2   with dynamic rates and there was additional equipment  
3   for customer's control usage such as pool pumps and  
4   their central air condition and it was deemed to be  
5   quite successful as customers did respond to a high  
6   critical peak price.

7           Q.    Do you consider Mr. -- Mr. White an  
8   authority on the Gulf Power program?

9           A.    Yes, I would consider him an authority  
10   with respect to that program.  However, I would also  
11   point out that the equipment that was deployed to  
12   those customers was almost entirely subsidized by  
13   other customers.

14          Q.    Thank you.

15                   Do you happen to have Attachment F from  
16   the companies' testimony with you, the Application?

17          A.    Not in front of me.

18                   EXAMINER PRICE:  Mr. Jones, can you  
19   supply the witness?

20                   MR. POULOS:  I have one, your Honor.  Try  
21   to make it quick.

22          Q.    Mr. Scheck, do you recall seeing this  
23   Attachment A before?

24          A.    Yes, this is part of the companies'  
25   filing.

1           Q.    And you reviewed this as part of your  
2 testimony?

3           A.    Yes, I did.

4           Q.    I want to turn your attention to the last  
5 paragraph in this first page, this two-page document.  
6 And about midway through that paragraph it talks  
7 about following the last summer period.

8                   Do you see that?

9           A.    Yes.

10          Q.    "Following the last summer period during  
11 which it would be in place the companies will assess  
12 the results of the proposed AMI pilot program and  
13 consider the information provided as part of the  
14 collaborative to make a determination of whether such  
15 AMI implementation is cost effective and in the best  
16 interest of companies" -- "customers and the  
17 companies."

18                   Do you see that?

19          A.    Yes, I do.

20          Q.    This is discussing an evaluation at the  
21 end of the program, correct?

22          A.    Yes, as far as I believe with respect to  
23 the ESP period.

24          Q.    And the cost effectiveness of a larger  
25 program going forward, correct?

1           A.    Correct.

2           Q.    Now, Mr. Hussing testified earlier that  
3   the core reason for proposing the 500 customers in  
4   this program was to -- it was to keep the program  
5   within current infrastructure.

6                   Are you aware of that testimony?

7           A.    I was not here when he testified.  If  
8   that's what you are talking about orally, I did not  
9   listen to his oral exam.

10          Q.    Is it your understanding that part of the  
11   reason the company proposed the 500 customer program  
12   was to keep it within its current infrastructure?

13          A.    That's correct.  I don't think it  
14   requires any substantial changes to their billing  
15   system or communication system per se so.

16          Q.    Would you agree with me an important part  
17   of determining the cost effectiveness of a larger  
18   AMI program is evaluating the meter costs for a  
19   larger program?

20          A.    Could you rephrase your question?  I  
21   didn't understand it.

22          Q.    For example, the company in their  
23   proposal has \$500 per interval meter, correct?

24          A.    Correct.

25          Q.    As part of your testimony, you suggest

1     that it could be a lower value of 200 to 350, I  
2     believe?

3             A.     That is correct, and I've actually heard  
4     numbers lower than that but that is a range pretty  
5     much I've heard throughout the country those costs  
6     are lower than \$500 per meter.

7             Q.     And would you agree that the cost of an  
8     interval meter would go down if there is a higher  
9     volume of those that are purchased?

10            A.     Correct.

11            Q.     Would you agree it would be -- it would  
12     be easier to determine that if they were doing that  
13     now rather than later?

14            A.     Could you state the question again?

15            Q.     Sure.  If they were -- as part of this  
16     AMI pilot program, if they were looking to purchase a  
17     larger number of meters now, wouldn't it be easier to  
18     assess the long-term cost effectiveness of a full  
19     implementation of the program?

20            A.     I could only answer that question in this  
21     context:  The company, as I understand it, has not  
22     proposed to replace a lot of operational costs of the  
23     company if you did a full deployment.

24                    So even if the company were to deploy,  
25     say, 2,500 or 5,000 meters, it is not certain that

1 the company is attempting to reduce any -- any meter  
2 reading costs or other -- other costs associated with  
3 operational savings by deploying AMI.

4 Q. What if they get a larger program because  
5 there are more than 2,500 customers?

6 A. Correct, if you did a substantial  
7 program, then you would start looking at the sizable  
8 operational savings that would accompany an AMI role.

9 Q. And I can't do that in a program of this  
10 size, correct?

11 A. That is right.

12 Q. And would the same be for IT costs, that  
13 is, a program this size you couldn't determine the  
14 cost effectiveness of a full implementation of the  
15 program?

16 A. Probably not. Probably not.

17 Q. And the communication costs?

18 A. I believe these communication costs don't  
19 really impact any of the rest of the companies'  
20 communication systems. So I don't know if you can  
21 really tell.

22 This would be a small pilot so the cost  
23 per end point would be quite high relative to a  
24 larger pilot.

25 Q. Looking at the last part of that sentence



1 I was reading to you do you -- do you believe that  
2 companies are the appropriate party to be evaluating  
3 the best interests of their customers?

4 A. Can you restate the question again?

5 Q. Sure. Looking at the last item -- I will  
6 just read just the last part, "a determination of  
7 whether such AMI implementation is cost effective and  
8 in the best interests of customers and the  
9 companies," and my question to you is do you believe  
10 that the companies are the appropriate party to be  
11 evaluating the best interests of customers?

12 A. With respect to a distribution rollout  
13 like this it's still in the interest of the company  
14 to ensure that they are doing things at the lowest  
15 cost, I would believe.

16 That -- there is some concern maybe they  
17 wouldn't do that but I don't know of an independent  
18 third party is necessarily the right option to  
19 evaluate the particular size of this program since  
20 it's not that large.

21 Q. What about collaborative?

22 A. Well, collaborative could certainly come  
23 to bear in terms of many other issues, including  
24 increasing the size of the pilot.

25 Q. Moving on to a different area,

1 demand-side management part of your testimony, I will  
2 refer you to page 8, lines 5 through 10.

3 In your testimony you state that.  
4 According to Senate Bill 221, Section 4928.66, it is  
5 your understanding that the companies must achieve an  
6 energy savings improvement of at least three-tenths  
7 of 1 percent of the companies' total annual average  
8 normalized kilowatt hour sales in the preceding three  
9 years, correct?

10 A. Correct.

11 Q. And that would be starting in 2009,  
12 correct?

13 A. Yes.

14 Q. Do you believe the companies will be able  
15 to meet that benchmark?

16 A. I think it's too early to tell whether or  
17 not they can meet the benchmark. 2009 hasn't  
18 started. They are proposing to spend, I believe, \$5  
19 million a year of their own shareholder money towards  
20 that effort.

21 It doesn't state in their Application  
22 that they would stop at \$5 million. There would  
23 be -- I think there would be the possibility of  
24 acquiring -- or I should say the company would file  
25 for rate recovery beyond that amount to achieve that

1 goal.

2 Q. As part of your testimony, you make  
3 recommendations that the company start taking action  
4 now to meet that benchmark; is that correct?

5 A. Well, essential in the sense that I think  
6 the company should undertake preliminary cost  
7 effectiveness analysis of programs and do the market  
8 potential study or have a market potential study  
9 conducted to look at the potential the company can  
10 achieve for the next three years during the ESP  
11 period.

12 Q. Are you aware if the company that started  
13 that -- companies that started that market study?

14 A. No, I am not aware if they have started  
15 that.

16 Q. Would your opinion about the companies'  
17 ability to meet the benchmarks change if the  
18 companies did not start that market potential study  
19 until January, 2009?

20 A. It would probably lessen -- I would think  
21 lessen their likelihood of achieving the benchmark.  
22 I would say they wouldn't be able to reach the  
23 benchmark.

24 They might reach it less efficiently than  
25 if they did some preliminary cost effectiveness

1 testing of the various measures of the programs.

2 Q. Just to make sure I didn't -- I missed  
3 it, do you have an opinion about what the companies  
4 would need to do?

5 MR. JONES: Your Honor, I'm going to have  
6 to object to this line of questioning. I think it  
7 calls for speculation from the witness. He doesn't  
8 have a crystal ball here as to what's going to happen  
9 in the future.

10 MR. POULOS: Your Honor, he is evaluating  
11 the programs and he has evaluated what they have done  
12 and where they are going and that's part of his  
13 testimony.

14 EXAMINER PRICE: Overruled.

15 MR. JONES: Could we have the question  
16 repeated, please.

17 A. Well, I can answer this much, at least I  
18 will speak to there are two programs the company has  
19 now, and based on the performance and the costs  
20 related to those programs, I think they would have a  
21 difficult time reaching their targets for calendar  
22 year '09.

23 With that said though, I don't think that  
24 negates the fact the company couldn't reach those  
25 target levels suffice that it would make sufficient

1 investment and also at close oversight of the type of  
2 programs that it would need to do in order to reach  
3 the benchmarks.

4 Q. At that point if they are starting  
5 January of 2009, will it be more costly to meet the  
6 benchmarks in your opinion?

7 A. I didn't understand your question.

8 Q. If they -- if the companies wait until  
9 January, 2009, to get started on meeting those  
10 benchmarks, in your understanding would it cost more  
11 for them to meet those benchmarks?

12 MR. JONES: Your Honor, I would have to  
13 object, the same objection.

14 MR. POULOS: To his understanding, your  
15 Honor.

16 EXAMINER PRICE: I would rather you  
17 didn't characterize it the same objection because I  
18 was going to sustain it this time.

19 Sustained. I think asking about costs is  
20 beyond.

21 MR. POULOS: Thank you, your Honor.

22 Q. Mr. Scheck, are you -- have you -- are  
23 you aware of a -- the International Performance  
24 Measurement and Verification Protocol?

25 A. Not very well.

1 Q. You are aware of?

2 A. I am aware of it, but I don't know the  
3 details of it.

4 Q. What knowledge do you have of it?

5 A. Other than my supervisor Mr. Dan Johnson  
6 mentioned that to me as far as possibly part of the  
7 rulemaking, that's about my knowledge of it.

8 MR. POULOS: Your Honor, I have no  
9 further questions. Thank you.

10 Thank you, Mr. Scheck.

11 EXAMINER PRICE: Thank you.

12 Mr. Bell.

13 MR. BELL: No questions, thank you.

14 EXAMINER PRICE: Mr. White.

15 MR. WHITE: No questions.

16 EXAMINER PRICE: Mr. Rinebolt.

17 MR. RINEBOLT: No questions, your Honor.

18 EXAMINER PRICE: Ms. McAlister.

19 MS. McALISTER: I'm afraid I have got a  
20 few.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. McAlister:

24 Q. Good afternoon, Mr. Scheck. I'm Lisa

25 McAlister, here on behalf of Industrial Energy Users

1 - Ohio.

2                   You just spoke to Mr. Poulos a little bit  
3 about the benchmarks that you have, and starting at  
4 page 8 you have the discussion regarding energy  
5 efficiency and peak demands, reduction base lines; is  
6 that correct?

7           A.    Correct.

8           Q.    I would like to get a little better  
9 understanding of whether you are recommending  
10 specific benchmarks in your testimony or just a  
11 methodology to be used to set the benchmarks. So if  
12 you could please turn to Attachment 1.

13                   Are you there?

14           A.    Yes, I am.

15           Q.    Okay. And that lists the specific  
16 megawatt value for each of the operating companies to  
17 achieve in 2009; is that correct?

18           A.    Correct. Not taking into account other  
19 possible factors that can adjust that.

20           Q.    What do you mean by "other possible  
21 factors"?

22           A.    Well, the law spoke to a number of  
23 possibilities, such as economic growth, weather, and  
24 economic conditions I think change these numbers.

25           Q.    Okay. And Attachment 2 lists a specific

1 megawatt value for each of the operating companies to  
2 achieve in 2009; is that correct?

3 A. Yes.

4 Q. Okay. And in your written testimony at  
5 page 8 you describe the values that are shown in  
6 Attachments 1 and 2 that we just went over as  
7 estimates; is that correct?

8 A. Yes, in terms of estimates, I mean the  
9 actual numbers for '06 and '07 are provided in the  
10 companies' long-term forecast. They will deviate  
11 probably a little bit plus or minus from those  
12 depending on our adjustment factors.

13 I don't expect a huge deviation from  
14 those numbers but the '08 number is, again, I think a  
15 hybrid number of both actual and predicted.

16 Q. Okay. And maybe I just missed it. One  
17 of those factors could be weather normalization?

18 A. Yes.

19 Q. So what you are actually recommending is  
20 a methodology rather than a specific benchmark; is  
21 that correct?

22 A. Yeah, in a general sense it's a  
23 methodology. Obviously adjustment factors are not  
24 included in any of this.

25 Q. Okay. And other than the weather



1 normalization, what are all of the other adjustment  
2 factors?

3 A. Well, I think there was the economic  
4 growth was a specific one listed in one part of the  
5 bill and I think that was in 4966 -- 4928.66, and it  
6 talked about economic growth in paragraph A2A.

7 And then in the discussion in A2C there  
8 are additional adjustments for the baseline mentioned  
9 at the end of that paragraph relating to number of  
10 customers, sales, weather, peak demand, and other  
11 appropriate factors.

12 So there are a number of factors that can  
13 come into play with respect to adjusting these  
14 numbers.

15 Q. Okay, and if you know, is the electric  
16 distribution utility permitted to count  
17 customer-sited capabilities towards its energy  
18 efficiency and peak demand reduction benchmarks?

19 A. They are permitted to count them so long  
20 as they are permitted for integration to the  
21 distribution utilities. So that's the main criteria  
22 that are counted in that respect that they are  
23 actually something that will be -- or can be measured  
24 in terms of investment and also the actual savings  
25 produced.

1                   And I believe we were -- we are -- the  
2   staff is recommending that if a mercantile customer  
3   wanted an exemption, they would need to file an  
4   application at the Commission to receive such and  
5   exception from paying for the energy efficiency  
6   rider.

7               Q.    Okay.  To your knowledge is an electric  
8   distribution utility allowed to count existing  
9   customer-sited energy efficiency or peak demand  
10  reduction programs towards the benchmarks?

11               MR. JONES:  Your Honor, I'm going to have  
12  to object.  This is a pending rule, it has not been  
13  finalized yet, so I mean.

14               EXAMINER PRICE:  Isn't there a statutory  
15  provision to this effect as well?  Am I mistaken?

16               MS. McALISTER:  No, you are not mistaken.  
17  My question was going to the Commission rules.

18               EXAMINER PRICE:  Okay.  Thank you.

19               THE WITNESS:  Could you rephrase.

20               MR. JONES:  It's limited to the statute  
21  you said?

22               MS. McALISTER:  Just asked to his  
23  knowledge.

24               EXAMINER PRICE:  Your objection is  
25  overruled.

1                   THE WITNESS: Ms. McAlister, could you  
2 repeat your question again.

3                   MS. McALISTER: Could you have it read  
4 back, please.

5                   (Record read.)

6                   A. My best understanding is they can count  
7 existing customer-sited energy efficiency programs  
8 towards the benchmarks.

9                   However, they wouldn't get double credit  
10 in terms of the utility wouldn't get credit towards  
11 an advanced energy portfolio at the same time and get  
12 credit towards meeting energy efficiency and peak  
13 demand reduction goals.

14                  With that said, I believe the law speaks  
15 to the utility could get credit back to January 1 of  
16 1998 and going forward. However, obviously the  
17 baseline for energy efficiency moves up over time so  
18 investment made, say, in 1998 could not have the same  
19 value as investment made in this year, so you would  
20 have to look at the amount invested and when it was  
21 invested.

22                  Q. Okay. And in preparing your testimony  
23 did you perform any assessment of whether there might  
24 be existing customers side energy efficiency or peak  
25 demand reduction capability within FirstEnergy's

1 service area that could be counted towards the  
2 benchmark?

3 A. No, I did not look at any specific  
4 customer-sited energy efficiency.

5 Q. Okay. Let's go back a little bit to what  
6 you talked about as the recommended methodology to  
7 calculate EDUs' benchmarks. In Attachment 2 you took  
8 the actual energy sales for the years 2006 through  
9 2008 and averaged then to calculate your initial  
10 estimate; is that correct?

11 A. Yes, I did.

12 EXAMINER PRICE: Excuse me. You didn't  
13 use actual 2008, did you?

14 THE WITNESS: Not for 2008. 2008 has  
15 part actual/part predicted.

16 Q. Thank you.

17 Okay, you already stated then that that  
18 would need to be weather normalized. Is it possible  
19 that there may be existing customer-sited energy  
20 efficiency -- I'm sorry, I thought I lost my mic.

21 Let me start over.

22 Is it possible there may be existing  
23 customer-sited energy in place during those years  
24 that can be counted towards the benchmark?

25 A. Yes.

1           Q.    Okay.  Now, would you agree that if there  
2   is existing energy efficiency, the electric  
3   distribution utility sales would have been higher  
4   during those years but for the customer-sited  
5   measures?

6           A.    Correct.

7           Q.    Does your recommended methodology  
8   calculate the electric distribution utilities'  
9   benchmarks need to be adjusted to recognize energy  
10  efficiency measures?

11          A.    I'm not sure if I spoke to that or not in  
12  my testimony but, yes, they would have to -- these  
13  numbers would be adjusted based on customer-sited  
14  energy efficiency, certainly that -- the law speaks  
15  to reducing the baseline based on that customer-sited  
16  energy efficiency so that's where it would go to.

17          Q.    Okay.  Now, in Attachment 1 you took the  
18  actual peak demand for the years 2006 and through  
19  2008, recognizing your Honor, that 2008 was partial  
20  and averaged them to calculate your initial estimate;  
21  is that correct?

22          A.    Yes.

23          Q.    Okay, you stated this estimate also needs  
24  to be weather normalized.

25          A.    Yes, it would be.

1           Q.    And is it possible that there may be  
2   existing customer-sited peak reduction programs in  
3   place that could be counted towards the benchmark?

4           A.    Yes.

5           Q.    And would you agree that if there are  
6   existing peak demand reduction, then the EDUs would  
7   need to -- I'm sorry, the EDU peak demands would have  
8   been higher during those years but for those  
9   programs?

10          A.    That may or may not be in terms of peak  
11   demand reduction depending on if customers actually  
12   had reduced their load during the utility's peak  
13   demand, then, yes, but if they didn't, then that  
14   wouldn't count.

15          Q.    Fair enough.

16                And assuming that they did reduce their  
17   peak demand, does your methodology need to be  
18   adjusted to reflect that?

19          A.    I don't know if the methodology so much  
20   needs to reflect or just be an adjustment to the  
21   numbers in terms of it would be moved up or down  
22   based on what those numbers were.

23          Q.    Okay, I'm going to turn your attention to  
24   page 13 of your testimony.

25                In response to one of my questions

1 already you touched on this a little bit addressing  
2 your recommendation, and I thought I heard you say  
3 that it would need to be addressed on a case-by-case  
4 basis; is that correct?

5 A. Yes.

6 Q. Could you elaborate a little bit on how  
7 you envision that process happening?

8 A. Well, I would expect that the customer  
9 interested in having -- getting credit towards  
10 meeting these goals and filing for an exemption from  
11 the energy efficiency rider would approach the  
12 company and talk with the company about what it had  
13 invested in, the amounts, and an assessment of what  
14 the consumption would have been with respect to  
15 kilowatt hours and kW savings and present that to the  
16 utility.

17 They would also look that over as well to  
18 look at the amount of investment. Probably there  
19 would be an audit, I am not sure who would conduct  
20 the audit but there would be an audit to verify that  
21 those savings actually exist.

22 And then that would -- jointly the  
23 customer and the company would make a filing  
24 application for the Commission here to request an  
25 exemption from paying the energy efficiency rider or

1     there is the possibility of also receiving some kind  
2     of a reasonable arrangement with the company as  
3     compensation towards those energy efficiency  
4     investments that were made prior to the bill going  
5     into affect.

6             Q.     Okay.  Now, are you envisioning that that  
7     recommendation, that process that you just described,  
8     would be available to any customer that meets the  
9     statutory definition of a mercantile customer?

10            A.     With one caveat, the mercantile  
11     definition is 700,000 kilowatt hours a year.  And the  
12     main concern I think with the staff would be the  
13     volume of the applications we could receive.

14                    If it's in the thousands, it would be  
15     very difficult to handle such a thing.  So the number  
16     would need to be something manageable, I believe.

17                    So I am not throwing out the mercantile  
18     definition; it's just what is a reasonable number of  
19     applications the Commission could handle at a given  
20     time.

21             Q.     Okay.  You said you weren't going to  
22     throw out the mercantile definition?

23             A.     No.

24             Q.     Do you have any idea of how you would  
25     limit the number of applications so that it would be



1 down to a manageable number?

2 MR. JONES: Your Honor, this is all  
3 subject to the rulemaking process, so I mean the  
4 speculation on behalf of Mr. Scheck, plus like I  
5 said, the process has not been complete.

6 EXAMINER PRICE: Mr. Jones, I'm afraid  
7 you are bordering on providing the testimony to the  
8 witness there. I am not even sure what objection you  
9 are making.

10 MR. JONES: It calls for speculation,  
11 your Honor.

12 EXAMINER PRICE: Okay. I think that the  
13 witness can answer to the best of his knowledge given  
14 the staff proposed rules are out there, I believe. I  
15 believe he can answer to the best of his knowledge.

16 A. I'm not sure exactly what the rules  
17 address with respect to this, but I believe the  
18 definition still stands as a mercantile customer.

19 However, with that said, it is my  
20 understanding very small commercial establishments  
21 such as a McDonald's or a Burger King as a  
22 stand-alone could qualify. If every single one of  
23 those came in here and filed an application, I don't  
24 know what that number would be in FirstEnergy, but I  
25 imagine it could be thousands.

1 I don't know how we could deal with such  
2 a magnitude, so what a threshold level should be I am  
3 not really clear. However, I could see where a group  
4 of companies that have -- that are under one  
5 ownership such as a Kroger's or some combination of  
6 load at a certain threshold or single site threshold  
7 is some reasonable cutoff number. What that is, I am  
8 not real certain.

9 MS. McALISTER: All right, that's all the  
10 questions I have, thank you.

11 EXAMINER PRICE: Thank you.

12 Mr. Breitschwerdt

13 MR. BREITSCHWERDT: No questions, your  
14 Honor.

15 EXAMINER PRICE: Mr. Kurtz.

16 MR. KURTZ: Very briefly.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Kurtz:

20 Q. Good afternoon, Mr. Scheck.

21 Did your testimony touch on interruptible  
22 load?

23 A. Yes, I think I did speak to it in terms  
24 of Ms. McAlister's question about current customers  
25 that had wanted to commit their particular energy

1 efficiency for integration for both energy efficiency  
2 as well as peak demand reductions, and what I spoke  
3 to was that they would have to make a showing that  
4 they had actually reduced peak during the company's  
5 peak in order to get a credit.

6 Q. Are you aware that it's very common for  
7 interruptible customers to be able to buy through the  
8 interruption so they can maintain their plant or  
9 manufacturing plant going but pay a higher price to  
10 do so?

11 A. I am aware of some of those arrangements.

12 Q. You are not testifying in any way against  
13 buy-through provisions in interruptible contracts,  
14 are you?

15 A. Not at all, however, I will qualify that  
16 what I am saying is that the EDU that was served and  
17 delivered to customers, whether it comes from a third  
18 party or from the distribution companies' own  
19 contract with its affiliate, it needs to reach a  
20 reduction of 1 percent of peak demand relative to  
21 what occurred in the prior three years with the  
22 adjustments.

23 MR. KURTZ: Thank you, your Honor.

24 EXAMINER PRICE: Thank you.

25 Mr. Petricoff.

1 MR. PETRICOFF: No questions, your Honor.

2 EXAMINER PRICE: Company.

3 MR. LANG: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Lang:

7 Q. Good afternoon, Mr. Scheck. My name is  
8 Jim Lang, on behalf of the FirstEnergy Companies.

9 The first question I have for you is, I  
10 think, hoping it's just a matter of clarification on  
11 page 2 of your testimony.

12 There's two different places where you  
13 refer to the energy efficiency rider, first at lines  
14 8 and 9, and then again at line 21 when you refer to  
15 the energy efficiency rider in your testimony.

16 Are you referring to the demand-side  
17 management and energy efficiency rider or rider DSE  
18 that is in the companies' proposal?

19 A. Would you clarify what you mean by DSE?  
20 FirstEnergy's efficiency rider?

21 Q. There is -- there is one rider in the  
22 company's proposal which is called the demand-side  
23 management and energy efficiency rider which is short  
24 for DSE, and I'm trying to find out when you refer to  
25 the energy efficiency rider in your testimony, if

1     that's the testimony to which you are referring.

2             A.     I believe so.

3             Q.     Do you believe that dynamic peak pricing  
4     to be utilized in the AMI pilot will reduce demand  
5     during periods of high load on the system?

6             A.     I would say based on past pilot history  
7     from other pilots throughout the country, that is  
8     shown to be the case.

9                     However, the on-peak prices in those  
10    pilots were substantially higher than what the  
11    companies' proposal is for the critical price, I  
12    should say.

13            Q.     Are you offering an opinion or is staff  
14    offering an opinion as to what the on-peak pricing  
15    should be in the AMI pilot?

16            A.     No, not particularly, other than I am not  
17    in favor of what I call an artificial created price  
18    to stimulate behavior.

19            Q.     At pages 3 and 4 of your testimony you  
20    propose a separate rider or propose the creation of a  
21    separate rider to recover the incremental costs of  
22    the AMI pilot program over the amount of \$1 million.  
23    Do you remember that?

24            A.     Yes.

25            Q.     Would you agree that there may not be

1 incremental costs over the \$1 million?

2 A. It's possible but not likely.

3 Q. But not likely. And the -- but the bulk  
4 of the costs of this program will be absorbed by the  
5 company as part of the \$1 million that the company is  
6 submitting to; is that correct?

7 A. I think that's speculative in the sense  
8 that the Commission may request some number much  
9 higher than that.

10 Q. But at least to the extent of the \$1  
11 million to which the company is committing to, that  
12 will not be recovered through the rider, correct?

13 A. Correct.

14 MR. PETRICOFF: It's 4:00 o'clock, it's  
15 tee time.

16 Q. The issue that you identify in your  
17 testimony with regard to that prompts your suggestion  
18 of a separate AMI rider, another rider in this case,  
19 in addition to the other riders, if I were to boil  
20 that down to the underlying motivation, is the  
21 underlying motivation that staff wants to be able to  
22 track the cost and the benefits of the AMI pilot?

23 A. Correct.

24 Q. And so if the -- if the company is able  
25 to work with staff and maintain and track the costs

1 and benefits of the AMI pilot without the creation of  
2 a separate AMI rider, would that be satisfactory to  
3 staff?

4 A. I don't think so.

5 Q. So the tracking -- so the AMI rider  
6 creation in order to track costs and benefits is  
7 still necessary from the staff's point of view even  
8 if that tracking could be done separately from the  
9 creation of a new -- an additional AMI rider? Is  
10 that the staff's position?

11 A. Yes. I think fundamentally we are  
12 talking about two different types of investment here.  
13 One specifically goes to distribution utility  
14 investment meaning advanced meters and communications  
15 primarily.

16 Energy efficiency is really investment in  
17 the customer-sited equipment usually, and I think  
18 those are in two different buckets, if you will. And  
19 in order to evaluate the benefits and separate out  
20 the benefits related to AMI from the rest of them you  
21 also have -- if you do a large scale AMI smart grid,  
22 you would have a lot of other operational savings  
23 associated with doing that.

24 Energy efficiency doesn't produce these  
25 other utility operational savings so I look at them

1 as not in the same bucket. The only thing that I  
2 would think that would be in common is the aspect of  
3 customers responding to high prices also probably  
4 reduce their consumption both on peak and off peak.

5 And then when you deploy energy  
6 efficiency, they will do some of the same things, but  
7 they come from two different ends or driven from two  
8 different results, one was price driven, the other  
9 one is driven from technology improvement.

10 So I think keeping them separate is  
11 probably a better idea and then be able to separate  
12 out those benefits that relate to what they call the  
13 customer-sited benefits or side of the equation with  
14 respect to the demand response effects related to AMI  
15 is that would have to be looked at separate from  
16 those that are related directly to energy efficiency.

17 Q. Is it your understanding the benefits of  
18 the different programs will be tracked through the  
19 DSE rider?

20 A. Are you talking about with respect to the  
21 demand response energy efficiency? Those benefits  
22 you can track through that and not improve the  
23 benefits associated with -- from AMI.

24 Q. Page 9 of your testimony, lines 12  
25 through 13, you have a recommendation with regard to



1 a 65-degree day.

2 A. Yes, I do.

3 Q. If the company could provide evidence to  
4 the staff that a number other than 65 degrees is  
5 appropriate, would the staff agree to a departure  
6 from a 65-degree day?

7 A. Sure. As long as it can be statistically  
8 proven it's better than 65 degrees, yes.

9 Q. With regard to a collaborative which you  
10 discuss in your testimony for the energy efficiency  
11 programs, do you have an opinion on whether such a  
12 collaborative -- collaborative would affect the time  
13 it takes to develop and implement energy efficiency  
14 programs?

15 A. If your question is do I think that a  
16 collaborative will slow down the investment of the  
17 company to energy efficiency?

18 I am not really sure but I would say that  
19 the collaborative may provide better input for the  
20 company as far as what might be more effective for  
21 customers by hearing from various customer groups.  
22 So in one hand it may be a little lower; on the other  
23 hand it may be more cost effective.

24 Q. Okay. And I believe you were asked  
25 earlier about this, and I wanted to turn to this on

1 page 12 of your testimony. You do have a suggestion  
2 that the companies need to immediately begin cost  
3 effectiveness testing of programs, I believe you use  
4 the term with regard to the aggressive deployment of  
5 energy efficiency programs starting at 2009.

6 Just -- just to try to get an  
7 understanding or your understanding with the timing  
8 what would be -- do you expect that the collaborative  
9 you are suggesting should assist in that immediate  
10 testing an aggressive deployment or just -- how  
11 should that work?

12 A. No, not at all. I think the company  
13 should already be doing what I would consider a  
14 screen, if you will, of a lot of the energy  
15 efficiency measures and programs that they would have  
16 information about and start screening that analysis  
17 now.

18 And have that ready to deliver to the  
19 collaborative when they form it and then the  
20 collaborative can provide input above and beyond that  
21 or different from that based on the results the  
22 company would run and evaluate and see what those  
23 look like.

24 So I think the company should be going  
25 full speed ahead and doing that preliminary analysis

1 right now.

2 Q. So should the company wait to implement  
3 DSE and energy efficiency programs until the  
4 collaborative can give a thumbs up or a thumbs down  
5 on those program proposals?

6 A. Well, I think some of the measures --  
7 you'll find in the analysis that some of them are  
8 what I would consider the proverbial -- they're  
9 winners without almost question and those you can  
10 probably proceed ahead with them and probably a lot  
11 of those industrial programs with motors and things  
12 of that nature too, other programs that need to be  
13 more tailor-made specific say to deal with low income  
14 needs or residential customers, they may take a  
15 little more time to work out.

16 So I think it depends on the measure and  
17 what customer group is directed to, but I think you  
18 don't have to complete the whole analysis before  
19 meeting with the going forward.

20 But certainly the companies should have  
21 done analysis before proceeding with something and  
22 then when they meet, whenever they decide to form a  
23 collaborative, then they should be able to bring a  
24 full analysis or market potential study to that  
25 collaborative for them to look at and evaluate.

1           Q.    And with regard to the energy efficiency  
2   goals that are in state law that commence is starting  
3   in 2009 that you address in your testimony, will the  
4   collaborative or the members of the collaborative  
5   bear any responsibility for the obtainment of those  
6   requirements to the extent that the collaborative has  
7   input on the programs that are being selected,  
8   designed, and deployed?

9           A.    If you mean to say that the customers  
10  themselves are at risk, no, not in the sense of doing  
11  mass programs for the customers other than if they  
12  signed a contract with the company to perform or do  
13  something that's different.

14                But if the company is itself deploying  
15  measures to reach goals, I don't think they are at  
16  risk for that.  However, if there is a contractual  
17  arrangement with a customer of the company, that's a  
18  different thing.  However, the burden of proof is  
19  still on the EDU to reach the goals or the measures  
20  with respect to the law.

21           Q.    If the collaborative cannot reach  
22  consensus and programs be implemented, would you  
23  agree with me that the final call is the companies  
24  because it's the -- the companies that are on the  
25  line for obtaining or satisfying the goals that are

1 in state law?

2 A. Yes, with this qualification. If a  
3 decision is made just to go out and spend a lot of  
4 money, it's what I would call doesn't even pass a  
5 total resource cost test according to the California  
6 Standard Practice Manual, I think the recent version  
7 is 2002, and the company went ahead and spent a bunch  
8 of money that was not economically cost effective and  
9 said we are doing this because we need to reach the  
10 goals.

11 I think the other course of action a  
12 company should take would be to file an application  
13 to the Commission stating why it cannot meet its  
14 goals. So there is a provision in the bill that says  
15 the company's economic, I believe, regulatory, and  
16 technological reasons they cannot meet these goals,  
17 therefore, I think with that qualification there  
18 is -- there is -- mind you, still have the obligation  
19 to meet the goals with those measures that are cost  
20 effective.

21 So, yes, you should -- the burden would  
22 still be on you if there were measures and programs  
23 that were deemed to be cost effective and the  
24 collaborative told you not to do them and I think,  
25 yes, the burden would be on you to do that.

1           Q.    You also suggest in your testimony page  
2   14, line 22, if you could look at that reference, I  
3   had a -- I had a specific question, you have a  
4   reference there to 5 percent of the program costs.  
5   You're speaking here of a third-party evaluation of  
6   energy efficiency programs or efforts.

7                   And you suggest that the evaluation  
8   should not exceed more than 5 percent of the program  
9   costs.

10                  I want to get clarification as to the --  
11   against what you are measuring the 5 percent.  Is  
12   that against a particular project, against the  
13   program, against the companies' contribution to the  
14   program?  I'm just trying to figure out how you  
15   measure the 5 percent.

16           A.    Well, generally speaking it's measured  
17   against 5 percent of the utilities' expenditures  
18   toward the program, which would include the  
19   administrative costs as well as what other incentives  
20   it may provide.

21           Q.    Is it your understanding that all of the  
22   demand management and energy efficiency programs that  
23   the companies will seek to implement in 2009 are  
24   contained in the companies' electric security plan?

25           A.    I don't recall the companies submitting

1 programs with definition in there of ESP. They have  
2 two current programs to date, the home performance  
3 with Energy Star, and then there is a direct load  
4 control of residential air conditioners. Those are  
5 the two I am aware of. I didn't see any filing, any  
6 other measures or programs the company was deploying  
7 or ready to deploy.

8 Q. And under the draft rule for energy  
9 efficiency that are pending with the Commission, is  
10 there a schedule in those rules for submitting -- for  
11 the utilities to submit energy efficiency and demand  
12 management programs?

13 A. By "schedule" what do you mean?

14 Q. You know, a time schedule.

15 A. I am not aware of any time schedule. The  
16 only time schedule that I understand is that which  
17 the bill states you need to reach certain goals  
18 within -- within a calendar year for the next three  
19 years under the ESP and then there is goals beyond  
20 that for energy efficiency or peak demand response,  
21 and peak demand is until 2018, energy efficiency is  
22 until 2025.

23 Q. Under the draft rules will there be a  
24 review process of the utilities' programs, either  
25 review by the Commission or by Commission staff?

1           A.    They will be done in the context of an  
2 integrated resource plan.

3           MR. LANG:   No further questions.

4           EXAMINER PRICE:   Thank you.

5           Mr. Jones, redirect?

6           MR. JONES:   Your Honor, if I could have  
7 just have a second to confer.

8           EXAMINER PRICE:   Certainly.

9           MR. JONES:   Your Honor, nothing further.

10          EXAMINER PRICE:   Thank you.

11          Thank you, Mr. Scheck, you're excused.

12          MR. JONES:   Your Honor, with that staff  
13 would move for the admission of Staff Exhibit 2.

14          EXAMINER PRICE:   Objections to the  
15 admission of Staff Exhibit 2?

16          Seeing none, that will be admitted.

17          (EXHIBIT ADMITTED INTO EVIDENCE.)

18          MR. POULOS:   Your Honor, OCC offers OCC  
19 Exhibit 11.

20          EXAMINER PRICE:   Objection to the  
21 admission of OCC Exhibit 11?

22          MR. JONES:   No objection, your Honor.

23          EXAMINER PRICE:   Hearing none, that will  
24 be admitted.

25          (EXHIBIT ADMITTED INTO EVIDENCE.)



1 EXAMINER PRICE: Mr. Wright.

2 MR. KURTZ: Are we on the record?

3 EXAMINER PRICE: We are on the record.

4 MR. KURTZ: Can we go off the record?

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

6 (Discussion off the record.)

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

9 MR. WRIGHT: Thank you, your Honor. At  
10 this time we would call Mr. Roberts to the stand.

11 (Witness sworn.)

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

14 THE WITNESS: Duane A. Roberts,  
15 D-U-A-N-E, A., R-O-B-E-R-T-S, 180 East Broad Street,  
16 Columbus, Ohio 43215.

17 - - -

18 DUANE A. ROBERTS

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

21 DIRECT EXAMINATION

22 By Mr. Wright:

23 Q. Mr. Roberts, you are employed by the  
24 Public Utilities Commission of Ohio; is that correct?

25 A. Correct.

1 Q. And what is your title?

2 A. Utilities specialist 3.

3 Q. Have you prepared testimony for this  
4 case?

5 A. Yes, I have.

6 MR. WRIGHT: Your Honor, at time we would  
7 like to have marked as Staff Exhibit No. 3 the  
8 prefiled testimony of Duane Roberts filed on October  
9 6.

10 EXAMINER PRICE: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. WRIGHT: Thank you.

13 Q. Mr. Roberts, do you have in front of you  
14 what we have just marked as Staff Exhibit 3?

15 A. Yes, I do.

16 Q. Would you identify that document, please.

17 A. It is my prefiled testimony.

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

20 A. No, I don't.

21 Q. If I were to ask you the same questions  
22 as appear in your testimony, would your answers today  
23 be the same?

24 A. Yes, they would.

25 MR. WRIGHT: Thank you. The witness is

1 available for cross-examination.

2 EXAMINER PRICE: Thank you, Mr. Wright.

3 Mr. Reese.

4 MS. MILLER: Your Honor, before we begin,  
5 the companies do have a motion to strike.

6 EXAMINER PRICE: Please proceed.

7 MS. MILLER: We actually have two motions  
8 to strike; one is on page 4, lines 21 and 22, onto  
9 page 5, lines 1 and 2. The reference is to UMS  
10 report is unnecessary, it references an uncontested  
11 issue in the companies' distribution case.

12 The reference here would just muddy this  
13 record, and the fact that UMS is not identified here  
14 as what it relates to, what the recommendations were,  
15 there's no foundation for UMS in this document but  
16 there is a full foundation in the distribution  
17 record.

18 EXAMINER PRICE: Mr. Wright.

19 MR. WRIGHT: Your Honor, I believe the  
20 reference that counsel seeks to strike should -- must  
21 be kept in context. In that regard they refer and  
22 attempt to amplify the \$1 billion commitment that the  
23 company has made in terms of capital spending over  
24 the next five years on its distribution system.

25 This testimony does not attempt to get

1 into with any specificity nor -- nor does it need to  
2 with respect to any of the UMS recommendations.  
3 That's not the intent or the purpose.

4 EXAMINER PRICE: Just for clarification  
5 where does your motion to strike begin, which  
6 language exactly?

7 MS. MILLER: It starts on page 4, line 21  
8 with "For CEI."

9 EXAMINER PRICE: "For CEI" and extends  
10 through?

11 MS. MILLER: Actually my second motion to  
12 strike would be lines 4 through 8 given the fact that  
13 even with the \$84.7 million it's out of context and  
14 in this document it doesn't even make clear that it's  
15 transmission and distribution and a reader could  
16 assume this is just a distribution-related amount.

17 EXAMINER PRICE: Okay. Mr. Wright.

18 MR. WRIGHT: That could be clarified very  
19 easily by a question to the witness.

20 EXAMINER PRICE: Actually we are going to  
21 go ahead and grant both motions to strike. I think  
22 this is getting into areas that were raised and fully  
23 litigated in the distribution rate case and are  
24 currently before the Commission.

25 MR. WRIGHT: We are beginning on line 21?

1 EXAMINER PRICE: 21, on page 4, and  
2 ending at line 8, on page 5.

3 MR. WRIGHT: I got you. Thank you.

4 EXAMINER PRICE: Thank you.

5 Sorry, Mr. Reese. Now, it's your turn.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Reese:

9 Q. Good afternoon, Mr. Roberts.

10 A. Good afternoon.

11 Q. Mr. Roberts, if we could go to page 5 of  
12 your testimony, beginning at line 10, there is a  
13 question and answer there regarding the use of SAIFI  
14 by the company -- or, I'm sorry, SAIDI, the use of  
15 SAIDI by the company to set its performance measure.

16 Do you see that question and answer?

17 A. Yes, I do.

18 Q. Now, your answer to the question that  
19 begins at line 10 seems to be that SAIDI is an  
20 inappropriate measure to use; is that correct?

21 A. In order to judge an accurate performance  
22 of the company, SAIDI would -- you could not  
23 determine whether frequency or duration was the  
24 culprit in poor performance or a factor of impacting  
25 that performance.

1           Q.    Okay.  Now, the company has also proposed  
2   that if the rider is approved, that the SAIDI for CEI  
3   be increased to 120 minutes; is that correct?

4           A.    The proposal states that when it -- it  
5   has further intention than just the 120 as a SAIDI  
6   factor.

7           Q.    Okay.  Now, in addition to the fact that  
8   you don't approve of the use of SAIDI as a  
9   performance measure, aren't targets normally proposed  
10  via a filing with the staff each year?

11                THE WITNESS:  Could I have that restated,  
12  please, reread.

13                (Record read.)

14           A.    The measurement against the targets, the  
15  companies' performance against those targets is  
16  reported each year.

17           Q.    Fair enough.

18                If the company wants to adjust its  
19  targets, it files a plan, does it not?

20           A.    Yes, it does.

21           Q.    And that's normally part of an annual  
22  filing that's made with the staff?

23           A.    Yes, made with the staff.

24           Q.    Got you.

25                If you know, does the staff have any

1 position on whether 120 minutes is an appropriate  
2 target for CEI for SAIDI?

3 A. Because of how SAIDI is -- is arrived,  
4 you can have a case and it's my opinion you can have  
5 a situation where a company could have an annual  
6 performance of 120 in SAIDI and still have poor  
7 performance.

8 And how that's done is you could have a  
9 60-minute SAIDI but a factor of 2 SAIFI, and the  
10 SAIFI being the 2 I would consider poor performance.

11 Q. Okay. Going to page 8 of your testimony.  
12 I'm looking at question and answer 13. And your  
13 answer beginning at line 2, "The reason behind  
14 excluding 'major storm' data from the system and  
15 circuit performance data is because these 'major  
16 storms' are of a magnitude that causes damage to the  
17 electric distribution utilities' equipment and  
18 facilities that is beyond system design."

19 Do you see that?

20 A. Yes, I do.

21 Q. Now, don't each of the electric  
22 utilities -- electric distribution utilities submit a  
23 definition that is company specific for what a major  
24 storm is?

25 A. Each company has its own definition

1 currently.

2 Q. And isn't that normally based on the  
3 number of customers affected and the length of time  
4 they are out of service as opposed to the nature of  
5 the event or storm itself?

6 A. That is correct.

7 MR. REESE: That's all I have.

8 EXAMINER PRICE: Thank you, Mr. Weldele.

9 MR. WELDELE: No questions, your Honor.

10 EXAMINER PRICE: Mr. White.

11 MR. WHITE: No questions.

12 EXAMINER PRICE: Ms. McAlister.

13 MS. McALISTER: No questions, your Honor.

14 EXAMINER PRICE: Mr. Breitschwerdt.

15 MR. BREITSCHWERDT: No questions, your

16 Honor.

17 EXAMINER PRICE: Mr. Petricoff.

18 MR. PETRICOFF: No questions, your Honor.

19 EXAMINER PRICE: Ms. Miller.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Miller:

23 Q. Good afternoon, Mr. Roberts, how are you  
24 this afternoon -- or evening?

25 A. Pretty good. How are you?



1           Q.    Good.  I'm Ebony Miller from the  
2   companies.

3                   It's your testimony that staff does not  
4   recommend that the Commission authorize the proposed  
5   DSI rider, correct?  I'll slow down.  It's your  
6   testimony staff does not recommend for the Commission  
7   to approve the companies' DSI rider?

8           A.    That is correct.

9           Q.    And staff's rationale the companies'  
10   Application did not include defined programs and  
11   associated cost and benefits to quantify the current  
12   spending or the spending of the DSI rider?

13          A.    Their proposal didn't contain any of  
14   those items and it really didn't -- it really didn't  
15   go -- it didn't support its costs associated with --  
16   with the plan.

17          Q.    Fair enough.

18                   And you state the company attempts to  
19   justify the needs for this rider by claiming it needs  
20   additional funding to train new employees to replace  
21   retirees and replace components of the aging  
22   distribution system, correct?

23                   I will refer you to your testimony on  
24   page 3 where you, on lines 11 through 14, you say  
25   "The company attempted to justify the need"; is that

1 correct?

2 A. Yes.

3 Q. Would you agree that an aging work force  
4 is a legitimate challenge facing the companies?

5 A. If you -- it depends on which operating  
6 companies within the FirstEnergy system that you are  
7 speaking of.

8 Certain of those operating companies have  
9 that issue or a magnitude of that issue more than the  
10 others. But you did -- that is not justified within  
11 the plan by the companies.

12 Q. So you have knowledge that certain  
13 operating companies have an aging work force, and  
14 other operating companies of the FirstEnergy  
15 companies do not; is that your testimony?

16 A. Well, you just struck something related  
17 to the UMS and that it was through that part of that  
18 initiative that I gained some of that knowledge. So  
19 if you want to introduce something here with UMS.

20 Q. So it's your testimony that you gained  
21 knowledge through perhaps the companies' distribution  
22 case that a certain company of maybe CEI has an aging  
23 work force, but you don't know either way about the  
24 other companies; is that your testimony?

25 A. Specifically to company individuals I'm

1 not totally familiar with that. There are some  
2 issues within Toledo Edison. They have had some  
3 underground line personnel that -- that had that  
4 issue, that they were aging, at least the trend was  
5 aging.

6 Q. So CEI and Toledo Edison is where you  
7 have knowledge?

8 A. Yes.

9 Q. Okay. You've read Mr. Schneider's  
10 testimony, haven't you?

11 A. Yes, I have.

12 Q. Do you have any reason to believe that  
13 the companies are not facing a disproportionate  
14 number of retirements?

15 A. I believe they -- I believe that that is  
16 an issue with the company.

17 Q. Okay. Do you have any reason to believe  
18 that overlap will not be necessary in the next three  
19 to five years to facilitate a transfer of knowledge?

20 A. I think what this leads to is day-to-day  
21 operations and possibly -- possibly a failure on the  
22 companies' part in past time when -- when they  
23 foreseen this facing the company that they didn't  
24 take the actions at that -- at that appropriate time.

25 EXAMINER PRICE: Mr. Roberts, you need to

1 make more of an effort to be responsive to  
2 Ms. Miller's question.

3 Let's have the question again, please.

4 (Record read.)

5 A. I believe there is a -- there is always  
6 an overlap when just, for instance, when new line  
7 personnel come in, there's a transition period of up  
8 to five years to prepare a line -- lineman to  
9 actually climb poles and complete work on electrical  
10 facilities and that's basically due more to the  
11 safety factor.

12 Q. Would you agree that if a  
13 disproportionate number of employees were eligible to  
14 retire within the next three to five years, the  
15 overlap that would be required would be more than  
16 what day-to-day operations would warrant?

17 MR. WRIGHT: I'm sorry, can I have the  
18 question again, please.

19 (Record read.)

20 MR. WRIGHT: Does the "if" in your  
21 question assume a hypothetical situation?

22 MS. MILLER: Yes, it does.

23 A. Well, if you are taking a hypothetical,  
24 currently -- currently it would be -- there possibly  
25 could be a hardship on the company to train -- to

1 transition these new employees into actually  
2 performing the duties that they would be hired to do.

3 Q. Do you believe that an aging  
4 infrastructure is a legitimate challenge facing the  
5 companies?

6 A. It's a challenge but it also -- it's  
7 currently a challenge but that challenge should  
8 have -- should have been planned for in previous  
9 years.

10 Q. Is it your testimony that you believe  
11 that the companies should have sought additional  
12 funding sooner?

13 A. I'm not -- I cannot speak to what the  
14 companies' current financial condition -- that's not  
15 my testimony nor my position to make that judgment.  
16 So I couldn't say whether they can afford this burden  
17 at the time nor could I have made that judgment in  
18 the past.

19 Q. And, I guess, setting aside what you  
20 believe the company should have done sooner, would  
21 you agree that an aging infrastructure is a challenge  
22 that the companies are confronted with today?

23 A. I believe the companies are challenged  
24 today leading to that challenge. I don't know  
25 factors that -- that caused them to let the system

1 get to this deterioration.

2 If you are going to use age, they should  
3 have planned previous to this time and addressed  
4 those factors at that time.

5 MS. MILLER: Could you read back the  
6 witness's answer.

7 MR. WRIGHT: Could we have the question  
8 with it, please.

9 (Record read.)

10 MS. MILLER: Your Honor, I would like to  
11 strike the witness's comments after his initial  
12 sentence that "the companies are challenged today."

13 EXAMINER PRICE: Granted, everything  
14 after the word "today" will be stricken.

15 MS. MILLER: Thank you.

16 MR. WRIGHT: No opportunity to respond to  
17 that objection, your Honor?

18 EXAMINER PRICE: It was so obvious I  
19 thought there was no need for you to respond.

20 MR. WRIGHT: Well, okay. I disagree. I  
21 think -- well, I will say no more.

22 EXAMINER PRICE: Your reservations about  
23 my ruling are noted. Thank you.

24 MR. WRIGHT: Thank you.

25 Q. (By Ms. Miller) Mr. Roberts, would you

1 agree special circumstances warrant special funding?

2 A. Certain circumstances -- I'll answer it  
3 not always because there's certain circumstances that  
4 companies can make changes in operations that don't  
5 actually have a cost associated with them.

6 Q. I'll move on.

7 Could you turn to page 3 of your  
8 testimony. At line 19, let me know when you are  
9 there.

10 Are you there? Okay.

11 You state "As part of its electric  
12 security plan, the distribution companies have  
13 included provisions regarding distribution  
14 infrastructure modernization and a plan providing for  
15 cost recovery."

16 Do you see that?

17 A. Yes, I do.

18 Q. Are you referring to the applicants in  
19 this proceeding?

20 A. The applicant, yes.

21 MS. MILLER: Your Honor, may I approach  
22 the witness?

23 EXAMINER PRICE: You may.

24 MS. MILLER: Handing the witness a copy  
25 of the companies' Application and the witness

1 Schneider's testimony.

2 Would you like to see the documents  
3 before?

4 EXAMINER PRICE: Mr. Wright, would you  
5 like to see those documents?

6 MS. MILLER: I'm sorry. Mr. Wright,  
7 would you like to see the document?

8 EXAMINER PRICE: Mr. Reese, would you  
9 like to see them too?

10 MS. MILLER: Sorry about that.

11 Q. (By Ms. Miller) Can you direct me to the  
12 reference in the companies' Application or witness  
13 Schneider's testimony that references modernization  
14 or cost recovery mechanism for the DSI rider?

15 A. I have got my copy marked so I can get to  
16 it quicker. Can I use that?

17 Q. Yes. I should have asked if you already  
18 had a copy.

19 A. As far as -- as far as modernization, I  
20 would -- the note on page 21 of their Application  
21 under section 3E, "the need to replace components of  
22 an aging distribution system and the importance of  
23 reliability in the emergence of new technology such  
24 as smart grid," I consider that an introduction to  
25 infrastructure modernization.



1           Q.    So when you state "infrastructure  
2 modernization," those are your words, those aren't  
3 the companies' words, correct?

4           A.    No.  That was my interpretation of what  
5 the company was trying to -- attempting to compose in  
6 their ESP filing.

7           Q.    And can you point to me the cost recovery  
8 mechanism that you gathered from the Application?

9           A.    Again, the mechanism would be an  
10 introduction to this DSI rider and that introduction  
11 is in that same section.

12          Q.    So, again, that's language you used that  
13 the Application of the companies' testimony does not  
14 use?

15          A.    As far as funding?

16          Q.    No, the words "modernization" and "cost  
17 recovery mechanisms," those are words you used; the  
18 companies' Application doesn't use those words,  
19 correct?

20          A.    I would have to say those were my words  
21 as far as my testimony, but they may be found  
22 somewhere within the Application.  Upon further  
23 inspection of this Application I may be able to find  
24 that, but I don't know if I have that luxury.

25          Q.    As a courtesy to your counsel, I will not

1 make you go through and find those words.

2 EXAMINER PRICE: Mr. Roberts, were you  
3 present for Mr. Blank's -- the end of Mr. Blank's  
4 testimony this morning?

5 THE WITNESS: No, I wasn't.

6 Q. And then going on to your -- in your  
7 response to question 7, you provide an example of a  
8 cost recovery mechanism that staff would support,  
9 correct?

10 MR. WRIGHT: I'm sorry, where are we in  
11 the testimony?

12 MS. MILLER: We are at the top of page 4.

13 MR. WRIGHT: Thank you.

14 Q. Lines 3 through 11, you provide an  
15 example of a cost recovery mechanism the staff puts  
16 forth, correct?

17 A. I give -- I give -- I wouldn't  
18 necessarily call it an example but I would -- an  
19 inclusion of components that a program would have to  
20 contain that staff would entertain.

21 Q. But it's your words that state that  
22 electric -- "electric distribution utility could  
23 submit that staff would support." On line 2 those  
24 are your words that staff would support this.

25 A. Yes.

1           Q.    Do you provide this example because it's  
2   your belief that the companies' DSI rider is a cost  
3   recovery mechanism?

4           A.    It's not -- in truth it's a revenue  
5   recovery mechanism.  It doesn't really specify what  
6   those revenues are targeted to offset or cover as far  
7   as costs are concerned.

8           Q.    So to answer my question, is it no?

9           A.    I would have to say no --

10           THE WITNESS:  Can I have that read back,  
11   please.

12                   (Record read.)

13           A.    As the company proposed, it's a revenue  
14   recovery mechanism so, therefore, I would have to say  
15   no.

16           MS. MILLER:  Your Honor, at this time I  
17   would like to do a motion to strike page -- on page  
18   3, lines 19 and 21, and on page 4, lines 1 through  
19   11, Mr. Roberts' language of "infrastructure  
20   modernization plan has statutory import" and his  
21   language as referring to a cost recovery rider has no  
22   direct link to the DSI rider per his own testimony.

23           EXAMINER PRICE:  Mr. Wright?

24           MR. WRIGHT:  Well, first of all, your  
25   Honor, I believe the motion to strike is tardy, that

1 all motions to strike, as your Honor has previously  
2 indicated, are to be made when the witness takes the  
3 stand.

4 And, secondly, I disagree, these are, in  
5 fact, Mr. Roberts' words in his characterization of  
6 what the Application states, and he has so stated.  
7 So we disagree with the objection altogether.

8 EXAMINER PRICE: I don't believe the  
9 motion was tardy because I do believe it was  
10 necessary for Ms. Miller to elicit the additional  
11 information on cross. On the other hand, I'm going  
12 to deny the motion to strike.

13 MR. WRIGHT: Thank you, I think.

14 Q. (By Ms. Miller) So is it your testimony  
15 the DSI rider does not have to be a cost recovery  
16 mechanism?

17 A. You can't answer that question unless --  
18 unless you know the DSI rider is associated with  
19 revenue recovery and the purpose of that, I believe,  
20 was to make the company more financially viable. I  
21 don't --

22 THE WITNESS: Can I have that question  
23 read?

24 (Record read.)

25 EXAMINER PRICE: I don't think that that

1 is a fair characterization of his testimony, so I am  
2 not going to allow the question.

3 Mr. Roberts, does the staff support the  
4 DSI rider?

5 THE WITNESS: No, it doesn't.

6 EXAMINER PRICE: Has your testimony  
7 included the type of rider that the staff would  
8 support, factors that the --

9 THE WITNESS: It provides the components  
10 of a rider that the company or a recovery mechanism  
11 that the company could propose for -- for cost  
12 recovery.

13 EXAMINER PRICE: That the staff may  
14 support.

15 THE WITNESS: The staff may support, yes.

16 EXAMINER PRICE: Thank you.

17 Q. (By Ms. Miller) I'll try this again.

18 On page 4, line 3, you state "In order  
19 for the staff to entertain such a cost recovery  
20 mechanism"; is that correct?

21 A. Yes, I do.

22 Q. Do you believe that the staff -- excuse  
23 me, do you believe that the Commission could approve  
24 a DSI rider if it was not a cost recovery mechanism?

25 MR. WRIGHT: Objection.

1 EXAMINER PRICE: Grounds?

2 MR. WRIGHT: I believe that's calling for  
3 a legal conclusion.

4 EXAMINER PRICE: Sustained.

5 Q. Do you believe staff would support a DSI  
6 rider that was not a cost recovery mechanism?

7 A. That was not a cost recovery mechanism?

8 Q. Correct.

9 A. I don't believe so.

10 Q. Turning to the question and answer on  
11 your question and answer 10, on page 5, going on to  
12 page 6, do you understand that the companies are not  
13 proposing to eliminate the reporting requirement for  
14 CAIDI and SAIFI?

15 A. The language included in your proposal  
16 does not mention those two indices, but the way that  
17 the proposal for the SAIDI changed to 120 for CEI, it  
18 looks like the intent was that was the only  
19 performance measurement that the company was going to  
20 be judged by staff.

21 Q. If the companies were to clarify that  
22 they were not proposing to eliminate the reporting  
23 requirement of CAIDI and SAIFI, would some of your  
24 concerns be eliminated in your response here to  
25 question and answer 10?

1           A.    Yes.  Some of those concerns would be  
2   eliminated as far as the response to that question.

3           Q.    In fact, that was your whole contention  
4   in question and answer 10 and that eliminates that  
5   entire concern, correct?

6           A.    Yes.

7           Q.    Thank you.

8                    Would you agree generally that  
9   improvements to SAIFI could adversely affect CAIDI  
10  and improvements to -- excuse me, strike that.  I  
11  will repeat that.

12                   Would you agree generally system  
13  improvements could generally improve SAIFI but  
14  adversely affect CAIDI and vice versa?

15          A.    Yes, I do.

16          Q.    Turning to the bottom of page 6, lines 21  
17  and 22, you state that "all of the electric  
18  distribution utilities in Ohio have circuits where 50  
19  percent or more of the premises are served by rear  
20  lot facilities."

21                   Do you see that?

22          A.    Yes, I do.

23          Q.    Isn't it fair to say that CEI's concern  
24  wasn't the fact that they have rear lot facilities  
25  but the magnitude?

1           A.    I believe that was in my response that  
2   companies in -- affects electric distribution  
3   utilities on a different magnitude.  And, therefore,  
4   that -- the rear lot -- the rear lot factor may -- I  
5   haven't done a thorough investigation of that --  
6   of -- of all the utilities to determine that it's  
7   only CEI that has that factor or has that issue as a  
8   higher magnitude.

9           Q.    And then at the bottom of page 8 you  
10  provide some examples of other exclusions that  
11  utilities seek, such as vehicle accidents,  
12  vehicle-caused outages.

13                   Do you see that?

14           A.    Yes, I do.

15           Q.    Isn't it fair to say your example  
16  references external events that affect the system and  
17  not something that pertains to the system design  
18  configuration itself?

19           A.    If you are talking the system design as  
20  what -- as including how a company would timely  
21  restore service, the restoration -- the timeliness of  
22  the restoration of an auto -- of an outage caused by  
23  a vehicle accident could -- could be a factor in  
24  impacting the company's performance.

25           Q.    And I guess just to be clear, rear lot --



1 a rear lot facility is something that's unique to the  
2 design and the configuration of the utility system,  
3 correct? I mean, that's the way the system is  
4 constructed, correct?

5 A. Yes.

6 Q. And a vehicle-caused outage is an event  
7 that occurs on one day that causes the outage and it  
8 has nothing to do with how the system is configured,  
9 correct?

10 A. Actually it could possibly be a factor  
11 and this is going -- stretching it, but I know that  
12 the placement of poles on and near roadways that --  
13 just that installation could, especially in an area  
14 where there is a large amount or a lot of quantity of  
15 vehicles traveling, that could -- could be another  
16 factor like rear lot where you have a higher -- a  
17 higher -- I lost the word -- higher possible  
18 occurrence of a possible outage related to an  
19 accident.

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

22 (Discussion off the record.)

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

25 MS. MILLER: The witness finished his

1 answer?

2 EXAMINER PRICE: I hope so.

3 Q. Are you aware what the reliability  
4 targets are for other utilities in Ohio?

5 A. Yes, I am.

6 Q. Isn't it correct that while Ohio Edison  
7 and Toledo Edison have a SAIDI of 120 and CEI  
8 currently has a SAIDI of 95, other investor-owned  
9 utilities here in Ohio have an approved SAIDI target  
10 as high as 163.1, 175, and 218.6?

11 MR. WRIGHT: Objection.

12 EXAMINER PRICE: Grounds?

13 MR. WRIGHT: Relevance. He's testifying  
14 about these particular companies and their  
15 circumstances and their targets.

16 EXAMINER PRICE: Ms. Miller.

17 MS. MILLER: Your Honor, CEI is seeking  
18 to revise its target 95 to 120, and I think it's  
19 completely appropriate to ask Mr. Roberts a line of  
20 questioning regarding reliability targets of other  
21 utilities to determine the appropriateness of the  
22 reliability target that CEI is seeking to change to.

23 MR. WRIGHT: Your Honor, these are  
24 company specific circumstances that would justify or  
25 not the change in CEI's SAIDI target. What other

1 utilities have or do has absolutely no bearing  
2 whatsoever on that.

3 EXAMINER PRICE: I don't agree.

4 Objection overruled.

5 Q. Would you like the question reread?

6 A. Yes.

7 MR. WRIGHT: Your Honor, I also would  
8 object the testimony that was placed in the record  
9 with the question itself. The witness can lay a  
10 foundation and go from there.

11 EXAMINER PRICE: Overruled.

12 (Record read.)

13 A. Did you say 175?

14 Q. The number is 163.5, 175, and 218.6.

15 A. I just have one clarification. The 175  
16 is actually 174.

17 Q. Rounding.

18 A. Other than that clarification you are  
19 correct.

20 Q. Wouldn't you agree that 95 is an  
21 appropriate -- excuse me, inappropriate target for  
22 CEI?

23 MR. WRIGHT: Your Honor, I'm going to  
24 object to that and here is the basis, that is the  
25 target that has been established for this company and

1 approved and until it's -- until it changes it is  
2 what it is.

3 EXAMINER PRICE: Ms. Miller.

4 MR. WRIGHT: It's approved target.

5 MS. MILLER: Your Honor --

6 EXAMINER PRICE: Let -- could you just  
7 rephrase? I think Mr. Wright is just having problems  
8 with the term "inappropriate target. " It is the set  
9 target. If you can just rephrase your question  
10 somewhat, I'm sure that will overcome his objection.

11 Q. Wouldn't you -- wouldn't you agree that  
12 95 is an excessively low target for CEI?

13 MR. WRIGHT: Same objection, your Honor,  
14 it -- and it's a target they proposed and was  
15 approved here.

16 MS. MILLER: Your Honor, we are here  
17 today to -- we are proposing a change to the CEI  
18 target.

19 EXAMINER PRICE: Your objection is  
20 overruled. The witness can answer the question.

21 A. Under the current conditions of the  
22 operating company they could -- they would have to  
23 have perfect conditions in order -- and I don't want  
24 to go back into UMS, but they would have to follow  
25 all of those recommendations and complete all of

1 those recommendations as well as have perfect or near  
2 perfect conditions in order for -- for the company to  
3 meet a SAIDI of 95.

4 Q. In your opinion is that possible?

5 A. Like I said, under perfect conditions.

6 EXAMINER PRICE: Mr. Roberts, is the  
7 staff opposed to FirstEnergy -- FirstEnergy's request  
8 to reset its SAIDI target to 120?

9 THE WITNESS: The issue with this --

10 EXAMINER PRICE: No, no, that was a yes  
11 or no. Yes -- you have to answer my yes or no  
12 questions yes or no.

13 Is the staff opposed to FirstEnergy  
14 resetting its target from 90 to 120?

15 THE WITNESS: Because they did not --

16 EXAMINER PRICE: Mr. Roberts, honestly,  
17 you have to answer my question yes or no.

18 Mr. Jones will have an opportunity on  
19 redirect to elicit any other information you would  
20 like to put in this record, but you are slowing the  
21 proceedings down.

22 Does the staff support or oppose or --

23 THE WITNESS: The staff opposes.

24 EXAMINER PRICE: Now, can you tell me why  
25 the staff opposes CEI's resetting its target from 90

1 to 120?

2 MR. JONES: Your Honor, I believe it's 95  
3 to 120.

4 EXAMINER PRICE: I'm sorry.

5 MS. MILLER: Yes.

6 EXAMINER PRICE: 95 to 120.

7 THE WITNESS: The reason that the staff  
8 has concerns about the resetting of that target to  
9 120 is their previous targets basically the 95 was  
10 arrived at as a product of a 1 factor of SAIFI times  
11 95 minutes of CAIDI which gives you a SAIDI of 95.

12 The company has not provided a  
13 calculation of those two factors that would -- and  
14 support with that to -- to even entertain moving that  
15 SAIDI factor to 120

16 EXAMINER PRICE: Ms. Miller.

17 Q. (By Ms. Miller) In response to a line of  
18 questioning from Mr. Reese and actually response to  
19 some questions just now from the Bench, it appears  
20 that you have a concern with how the math adds  
21 because SAIFI times CAIDI equals SAIDI and also you  
22 had an issue on whether the companies would be  
23 changing some of their other targets?

24 Setting aside the math, that if the  
25 companies changed their SAIDI and left their other

1 reliability targets the same because the math doesn't  
2 add up, is staff opposed to a SAIDI of 120 ignoring  
3 that the math doesn't add up?

4 MR. WRIGHT: Your Honor, I caught the  
5 tail end of the objection -- excuse me, I caught the  
6 tail end of your question coming back in the room and  
7 although it didn't have the "although the math  
8 doesn't add up" part to it, I think it's the same  
9 question. I believe the witness answered it.

10 EXAMINER PRICE: I don't believe so.

11 Overruled.

12 THE WITNESS: Can you repeat that  
13 question, please.

14 EXAMINER PRICE: Why don't we have  
15 counsel rephrase -- restate the question. I think we  
16 have kind of gone off the rails there.

17 Q. In response to some questions by  
18 Mr. Reese it seemed like you had some issues with  
19 whether the companies would be changing their other  
20 targets.

21 For the sake of argument and the  
22 companies aren't opposing the change to the other  
23 targets in response to questions from the Bench, you  
24 had indicated some mathematical issues that you have  
25 that SAIFI times CAIDI equals SAIDI. I wanted -- and

1 you had some issues with the math wouldn't add up.

2                   Setting aside the mathematical equation  
3 of how SAIDI is calculated, if the companies were to  
4 leave their other targets the same, their SAIDI and  
5 the SAIFI, do you believe -- would you be opposed to  
6 CEI restating -- resetting its SAIDI to 120?

7           A.    I would be opposed.

8           Q.    And is your objection because the -- you  
9 don't believe the companies have provided -- actually  
10 I will restate that.

11                   Can you explain why?

12           A.    Because they didn't provide rationale  
13 for -- adequate rationale for making that  
14 modification to one -- or that propose changing SAIDI  
15 to 120.

16           Q.    On page 9 you state that -- I will let  
17 you have a chance to get there.

18                   EXAMINER PRICE: I have one follow-up to  
19 that line and then hopefully we are moving past that.

20                   Do all companies, investor utilities in  
21 the state SAIDI targets, are they all the product of  
22 their CAIDI targets times their SAIFI targets?

23                   THE WITNESS: No, they aren't.

24                   EXAMINER PRICE: Thank you.

25           Q.    On page 9 you state that staff has always



1 considered the SAIFI, CAIDI, SAIDI, and ASAI  
2 performance targets to be minimum performance level.

3 Do you see that?

4 A. Yes, I do.

5 Q. Can you provide a time frame for  
6 "always"?

7 A. Well, they were -- when the targets were  
8 set by Ohio Administrative Code Section 4901:1-10-10  
9 that was approved in a '97 electric  
10 Commission-ordered case and that the title of those  
11 rules was "minimum Electric Service and Safety  
12 Standards."

13 Q. I don't want to interrupt you but just to  
14 shortcut it, do you have a date?

15 A. A date when they went into effect?

16 Q. When you use the word "always," a date --

17 A. A date of the date that would go back to  
18 when the rules and the targets were first established  
19 based on when the rules went into -- based on the  
20 time frame rules went into affect which was July 1 of  
21 1999.

22 Q. You are familiar with PUCO staff member  
23 Peter Baker, correct?

24 A. Yes.

25 Q. And Mr. Baker also works in the

1 reliability and service analysis division, correct?

2 A. Yes.

3 Q. In fact, he is the section chief of your  
4 department, correct?

5 A. Yes.

6 Q. Were you present at the companies'  
7 distribution rate case when Mr. Baker testified on  
8 behalf of the PUCO?

9 MR. WRIGHT: Objection.

10 EXAMINER PRICE: Grounds?

11 First of all, the question right now on  
12 the table --

13 MR. WRIGHT: Okay. Go ahead. Go ahead.

14 A. Was I present?

15 Q. Yes.

16 A. Yes, I was.

17 Q. Do you recall Mr. Baker testifying that  
18 based on his reading and interpretation of Rule 10  
19 that it does not appear that the language in the rule  
20 describes the targets of setting a minimum level?

21 A. I agree that that was his testimony.

22 Q. Can you turn to page 7, lines 17 through  
23 22, your testimony.

24 A. Yes.

25 Q. You state what the rules require, more

1 specifically you cite Ohio Administrative Code  
2 4901:1-10-10(B)(3) and 4901:1-10-11(B)(1); is that  
3 correct?

4 A. In that answer, yes.

5 Q. And you refer on line 20 -- actually I'll  
6 back up.

7 You say that "The rules require that  
8 performance data recommended to 'major storms' and  
9 outages caused by transmission facilities be excluded  
10 from the performance data uses to calculate and set  
11 minimum performance targets...."

12 Do you see that language?

13 A. Yes.

14 Q. You refer again to this minimum -- these  
15 minimum performance targets correct?

16 A. Yes.

17 MS. MILLER: Your Honor, may I approach  
18 the witness?

19 EXAMINER PRICE: You may.

20 MS. MILLER: Your Honor, I'm handing the  
21 witness Rule 10 and Rule 11.

22 EXAMINER PRICE: Do you have one for the  
23 Bench?

24 MS. MILLER: Sorry.

25 EXAMINER PRICE: Thank you.



1 Honor.

2 EXAMINER PRICE: Thank you.

3 Redirect.

4 MR. WRIGHT: Your Honor, may I have a few  
5 minutes short break, please?

6 EXAMINER PRICE: You may. Let's go off  
7 the record.

8 (Discussion off the record.)

9 EXAMINER PRICE: Back on the record.

10 Mr. Wright.

11 MR. WRIGHT: We have none, your Honor.

12 - - -

13 EXAMINATION

14 By Examiner Price:

15 Q. Mr. Roberts, I have one -- final hope to  
16 be final set of questions.

17 Do you have a copy of Mr. Schneider's  
18 testimony in front of you?

19 MR. SMALL: Excuse me, your Honor, you  
20 are asking questions.

21 EXAMINER PRICE: We are at the -- I am  
22 asking questions. There were no redirect, no  
23 recross.

24 MR. SMALL: I didn't catch that. Thank  
25 you, your Honor.

1 THE WITNESS: I had it. Here it is.

2 Q. (By Examiner Price) Could you turn to  
3 page 9, please.

4 Are you there?

5 A. Yes.

6 Q. At page 9 he references the Institute of  
7 Electrical and Electronics Engineers is the leading  
8 authority in the area of electric power.

9 Do you agree with that?

10 MR. WRIGHT: Your Honor, I'm sorry, could  
11 you give me the reference again, please.

12 EXAMINER PRICE: Page 9, Mr. Schneider's  
13 testimony.

14 A. Yes, I believe they are.

15 Q. He also references a 2006 study by IEEE.  
16 Are you familiar with that study?

17 A. Yes, I am. Not -- not every individual  
18 company that was entertained in that study.

19 Q. Just the study in general.

20 A. Yes.

21 Q. Are you familiar with the 2.5 Beta  
22 method?

23 A. Yes, I am.

24 Q. Do you think that is a legitimate method  
25 to rank utilities as against each other as they did

1 in the study, proper method?

2 A. I believe as it relates to -- as it  
3 relates to storms?

4 Q. I think as it relates to reliability  
5 performance.

6 A. That is a -- that is a way of comparing  
7 company to company.

8 Q. I know it's a way of comparing companies  
9 to companies, I am asking if you believe that it's a  
10 proper way to do it. Would you cite this study as  
11 authoritative?

12 A. It's just for comparison purposes. It's  
13 just a comparison of.

14 Q. I understand that. Maybe I will try this  
15 a different way.

16 Do you believe that the results of this  
17 study is something that the Commission should give  
18 weight to?

19 A. As -- as it relates to where the  
20 companies' performance and targets are set towards in  
21 what quartiles they fall.

22 Q. No. I am trying to ask what your opinion  
23 as the staff's expert witness is as to the degree of  
24 weight the Commission should put upon this study  
25 which FirstEnergy's witness has cited in his

1 testimony; great weight, no weight?

2 A. As it relates to this case?

3 Q. As it relates to this proceeding.

4 A. They could -- they could use -- they  
5 could use it as -- as a comparison to -- I don't know  
6 what you are -- I'm not into the rate setting or  
7 recovery setting or anything as far as performance of  
8 reliability performance. Yes, they could.

9 Q. This study is something that's  
10 appropriate for the Commission to give weight to.

11 A. Yes.

12 EXAMINER PRICE: Thank you. Thank you  
13 very much, you are excused.

14 MR. WRIGHT: Did I move Staff Exhibit 3?  
15 I am not sure.

16 EXAMINER PRICE: I don't believe you  
17 have.

18 MR. WRIGHT: Consider it done.

19 EXAMINER PRICE: Ms. Miller, any  
20 objections to admission of Staff Exhibit 3, subject  
21 to your motions to strike?

22 MS. MILLER: No objection, subject to my  
23 motions.

24 EXAMINER PRICE: The exhibit will be  
25 admitted.



1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER PRICE: We are done for this

3 evening. We will reconvene Monday at 9:00 o'clock.

4 (The hearing was adjourned at 5:30 p.m.)

5 - - -

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## CERTIFICATE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Friday, October 24,  
2008, and carefully compared with my original  
stenographic notes.

---

Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-5004)

- - -



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**11/7/2008 9:48:51 AM**

**in**

**Case No(s). 08-0935-EL-SSO**

Summary: Transcript First Energy Volume VII 10/24/08 electronically filed by Mrs. Jennifer D. Duffer on behalf of Armstrong & Okey, Inc.