

FILE

MC GINNIS & ASSOCIATES, INC.  
614-431-1344 COLUMBUS, OHIO 800-498-2451

Page 1

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

2 - - -

3 In the Matter of the Application) Case No.  
4 of Duke Energy Ohio for Approval) 08-920-EL-SSO  
5 of an Electric Security Plan. )

6

7 In the Matter of the Application) Case No.  
8 of Duke Energy Ohio for Approval) 08-921-EL-AAM  
9 to Amend Accounting Methods. )

10

11 In the Matter of the Application) Case No.  
12 of Duke Energy Ohio for Approval) 08-922-EL-UNC  
13 of a Certificate of Public )

14 Convenience and Necessity to )  
15 Establish an Unavoidable )  
16 Capacity Charge. )

17

18 In the Matter of the Application) Case No.  
19 of Duke Energy Ohio for Approval) 08-923-EL-ATA  
20 to Amend its Tariffs. )

21

22 DEPOSITION OF WILSON GONZALEZ

23 FRIDAY, NOVEMBER 7, 2008

24 1:05 O'CLOCK P.M.

25

WWW.MCGINNISCOURTREPORTERS.COM

PUCO

2008 NOV 10 AM 8:56

RECEIVED - BOOKING DIV

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business  
Technician                      Date Processed 11-10-08

1 Deposition of Wilson Gonzalez, a witness  
2 herein, called by Duke Energy Ohio for examination  
3 under the statute, taken before us, Deborah J.  
4 Holmberg, Registered Merit Reporter and Notary  
5 Public in and for the State of Ohio, and Linda D.  
6 Riffle, Registered Diplomate Reporter, Certified  
7 Realtime Reporter and Notary Public in and for the  
8 State of Ohio, pursuant to notice and stipulations  
9 of counsel hereinafter set forth, at the offices  
10 of Duke Energy Corporation, 155 East Broad Street,  
11 21st Floor, Columbus, Ohio, on Friday, November 7,  
12 2008, beginning at 1:05 o'clock a.m. and  
13 concluding on the same day.

14 - - -

1 APPEARANCES:

2

3 ON BEHALF OF DUKE ENERGY OHIO, INC.:

4 Amy B. Spiller, Esq.

5 Associate General Counsel

6 Duke Energy Corporation

7 Room 2500, ATII/139 East Fourth Street

8 P.O. Box 960

9 Cincinnati, Ohio 45201-0960

10 (513) 419-1810 Fax: (513) 419-1846

11 Amy.Spiller@duke-energy.com

12

13 Paul A. Colbert, Esq.

14 Associate General Counsel

15 Duke Energy Corporation

16 155 East Broad Street - 21st Floor

17 Columbus, Ohio 43215

18 (614) 221-7551 Fax: (614) 221-7556

19 paul.colbert@duke-energy.com

20

21

22

23

24

25

1 APPEARANCES (continued):

2

3 ON BEHALF OF DUKE ENERGY OHIO, INC.:

4 Catherine E. Heigel, Esq.

5 Assistant General Counsel

6 Law Department

7 Duke Energy Corporation

8 526 South Church Street

9 Charlotte, North Carolina 28202

10 (704) 382-8123 Fax: (704) 382-5690

11 ceheigel@duke-energy.com

12

13 ON BEHALF OF THE RESIDENTIAL CONSUMERS OF DUKE  
14 ENERGY OHIO, INC.:

15 Janine Migden-Ostrander, Esq.

16 Ohio Consumers' Counsel

17 By: Ann M. Hotz, Esq.

18 Michael E. Idzkowski, Esq.

19 Assistant Consumers' Counsel

20 Office of The Ohio Consumers' Counsel

21 10 West Broad Street - Suite 1800

22 Columbus, Ohio 43215

23 (614) 466-8574 Fax: (614) 466-9475

24 hotz@occ.state.oh.us

25 idzkowski@occ.state.oh.us

1 APPEARANCES (continued):

2

3 ON BEHALF OF THE KROGER COMPANY:

4 Mark S. Yurick, Esq.

5 Chester, Willcox & Saxbe, LLP

6 65 East State Street - Suite 1000

7 Columbus, Ohio 43215-4213

8 (614) 334-6172 Fax: (614) 221-4012

9 myurick@cwsllaw.com

10

11 ALSO PRESENT:

12 Paul G. Smith

13 Tammy Turkenton (via telephone)

14

- - -

15

16

17

18

19

20

21

22

23

24

25

S T I P U L A T I O N S

- - -

It is stipulated by and among counsel for the respective parties herein that the deposition of Wilson Gonzalez, a witness herein, called by Duke Energy Ohio for examination under the statute, may be taken at this time and reduced to writing in stenotype by the Notaries, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notaries is waived; that the witness may sign the transcript of his deposition before a Notary other than the Notaries taking his deposition; said deposition to have the same force and effect as though the witness had signed the transcript of his deposition before the Notaries taking it.

- - -

I N D E X

- - -

WITNESS

PAGE

Wilson Gonzalez

Examination by Ms. Spiller

8

- - -

EXHIBITS

MARKED

Duke Exhibit No. 1 -

21

Notice to Take Deposition of

Wilson Gonzalez

Duke Exhibit No. 2 -

25

Stipulation and Recommendation

Duke Exhibit No. 3 -

30

Direct Testimony of Wilson Gonzalez

Duke Exhibit No. 4 -

90

Second Supplemental Testimony of

Paul G. Smith

- - -

1 WILSON GONZALEZ

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

5 EXAMINATION

6 BY MS. SPILLER:

7 Q. Mr. Gonzalez, we've met earlier. My name  
8 is Amy Spiller and I, along with my colleagues,  
9 Paul Colbert and Catherine Heigel, represent Duke  
10 Energy Ohio in connection with its application for  
11 an electric security plan.

12 Sir, have you ever given your deposition  
13 before?

14 A. Yes, I have.

15 Q. How many times, please?

16 A. Three or four.

17 Q. And did any of the testimony that you  
18 previously offered in deposition concern  
19 governmental aggregation?

20 A. Not specific to governmental aggregation.

21 Q. From your past experience in depositions,  
22 sir, you understand the basic format of what will  
23 happen this afternoon, correct?

24 A. You'll ask me questions and I'll answer  
25 them.



1 Q. Yes, sir. And if at any time I ask you a  
2 question that you don't understand, please let me  
3 know and I will rephrase that question for you.

4 I don't anticipate that we will be here  
5 very long, sir, but if throughout the deposition  
6 you should need a break, please let me know and I  
7 will accommodate; my only caveat being that if  
8 there is a question pending, I would ask that you  
9 would answer the question before we take a break,  
10 okay?

11 A. Yes.

12 Q. And that --

13 A. Okay.

14 Q. The other -- The final cautionary note  
15 that I would make, Mr. Gonzalez, is I would ask  
16 that you use verbal responses instead of such  
17 terms of art that we have, such as "uh-huh" or  
18 "huh-uh", or nods of the head, so that we have a  
19 clear transcript of your testimony this afternoon.

20 And with that, can you state your name  
21 for the record, please?

22 A. Wilson Gonzalez.

23 Q. And what is your business address?

24 A. 10 West Broad Street, Columbus, Ohio  
25 43215.

1 Q. And by whom are you employed, sir?

2 A. By the Office of the Ohio Consumers'  
3 Counsel.

4 Q. And in what capacity are you employed?

5 A. I'm -- I'm in the Analytical Department.

6 Q. And what is your specific title, please?

7 A. Principal Policy Analyst -- Regulatory  
8 Analyst. Principal Regulatory Analyst, I believe,  
9 to the best of my recollection.

10 Q. How long have you worked for the Office  
11 of the Consumers' Counsel or the OCC?

12 A. I would say about four-and-a-half years.

13 Q. And aside from the current position that  
14 you hold as a Principal Regulatory Analyst, what  
15 other positions have you held with the OCC?

16 A. I think I came in as a Senior Regulatory  
17 Analyst.

18 Q. And can you explain for me, please, what  
19 your job duties are as a Principal Regulatory  
20 Analyst?

21 A. I -- I support from an analytical point  
22 of view the work of the office, so support case  
23 teams responding to filings, regulatory work.

24 Q. And having reviewed your testimony that  
25 you filed in connection with AEP and FirstEnergy's

1 applications for ESPs, it appears that your -- a  
2 large area of your professional experience with  
3 the OCC concerns demand-side management. Is that  
4 an accurate statement?

5 A. I would say a lot of my work is in  
6 demand-side management, but not -- it's not  
7 limited to that.

8 Q. Sir, in the testimony that you filed in  
9 connection with Duke Energy Ohio's application for  
10 an ESP, you mentioned having participated in teams  
11 that addressed municipal aggregation and retail  
12 competition in Ohio, correct?

13 A. Yes.

14 Q. Can you tell me what the purpose of those  
15 teams were, please?

16 A. It varies. There are case teams that  
17 deal with industries; so we have an electric  
18 industry team, we have a natural gas industry  
19 team, meets -- can meet as many -- as many as  
20 twice a week, once with management, once without.  
21 And we discuss cases that are ongoing in those --  
22 in both those industries.

23 I'm also the head of the resource  
24 planning team, so to the extent that issues come  
25 up in that particular team. That meets less

1 frequently, probably once a month.

2 And then case teams, you know, there are  
3 specific case teams that deal with, instead of the  
4 whole industry, deal with a specific subject. So,  
5 for example, in -- there would be a Duke ESP case  
6 team.

7 Q. But specific to the issue of governmental  
8 aggregation, have you participated in teams on  
9 that narrow issue on the electric side?

10 A. I have been involved in cases where  
11 governmental aggregation was an issue in the case,  
12 yes.

13 Q. Okay. How many times, please?

14 A. I'm not sure specifically, but my  
15 impression is every FirstEnergy case I have been  
16 involved in has -- has had that dimension in it,  
17 the RCP, you know, the rent certainty plan, the  
18 RSPs, to the extent that the RSPs -- to the rate  
19 certainty plan.

20 Q. And what was your specific level of  
21 involvement with respect to the issue of  
22 governmental aggregation on these teams?

23 A. I provided economic -- I looked at -- I  
24 looked at it from an economic analytical point of  
25 view.

1 Q. And what were the economic analytical  
2 issues that you were reviewing?

3 A. Well, the economics of a particular --  
4 what are the key variables, such as bypassability  
5 of rates or -- and/or shopping credits, any other  
6 types of barriers to entry, perhaps. The  
7 economies are very interesting.

8 For example, if there's some kind of  
9 logistic issue, a billing problem between -- you  
10 know, getting information from the company, you  
11 know, any of those types of -- or any other  
12 financial requirements imposed by the company that  
13 may be unfairly -- you know, provide an unfair  
14 advantage, I think that would -- those are the  
15 kind of things I would try to bring up.

16 Q. And so that I am clear on your testimony,  
17 the economics that you would review with respect  
18 to governmental aggregation include the  
19 bypassability of rates, correct?

20 A. The bypassability of -- of a rider, for  
21 example.

22 Q. Okay. Shopping credits?

23 A. Correct.

24 Q. Logistical issues?

25 A. Yes.

1 Q. Such as billing?

2 A. Yeah. For example, if you -- if a  
3 governmental aggregator wanted to have a certain  
4 type of offer, be it a percentage, you know,  
5 percentage off the bill, or a fixed rate, or  
6 whatever, that the company could accommodate that  
7 type of request. And if not, whether it was a  
8 legitimate response to why they couldn't  
9 accommodate it. Those kind of things.

10 It's very important in economics that --  
11 you know, one of the key things to assuring  
12 competition is that you minimize, eliminate  
13 barriers to entry, to the extent -- that's what  
14 defines the competitive paradigm.

15 Q. So you would -- Would you classify a  
16 logistical issue such as billing a barrier to  
17 entry to governmental aggregation?

18 A. Could be.

19 Q. Getting information from the company is  
20 another issue that you said you reviewed on this  
21 team. Could that focus on governmental  
22 aggregation?

23 A. Yeah, to see if you can -- you know,  
24 whether the information was forthcoming so that  
25 you can prepare your database so that you can

1 enter into an aggregation, yes.

2 Q. And then you mentioned, sir, financial  
3 requirements imposed by the company, which I am  
4 assuming is the public utility.

5 A. Yes, correct.

6 Q. And what sorts of financial requirements  
7 imposed by the public utility would you have  
8 reviewed?

9 A. Well, for example, I would think -- I  
10 know there was a case in '03 where the company  
11 wanted the aggregator to post a financial  
12 security, whereas the PUC ruled in its Order and  
13 Opinion that it sufficed if it was supplied --  
14 provided a financial security in case of default  
15 or -- or whatever, so....

16 Q. And you said, "the company". Which  
17 company is that, please?

18 A. In that particular case, I believe it was  
19 the Indian Hill case and Duke Energy Ohio,  
20 Cinergy.

21 Q. The teams on which you were involved  
22 where governmental aggregation was one of the  
23 issues, did any of those teams -- or, did your  
24 participation in any of those teams include your  
25 filing testimony in connection with a proceeding

1 before the PUCO?

2 A. It did not. But if I recall, nobody in  
3 our office for the cases that I was involved in  
4 filed testimony on that particular issue. It  
5 was -- There was either some kind of settlement  
6 or....

7 Q. Okay. In connection with the teams on  
8 which you've participated in which governmental  
9 aggregation is an issue, did the cases at all  
10 concern whether a residential customer of the  
11 governmental aggregator could avoid certain costs  
12 and charges in exchange for the risk of paying a  
13 higher price upon returning to the public utility?

14 A. I believe those were -- those were  
15 issues. Those are --

16 Q. That specific --

17 A. -- very likely issues in cases. You  
18 always -- You're always discussing bypassability  
19 and shopping credits because that's what makes the  
20 bulk of the economics for the governmental  
21 aggregators.

22 Q. And understanding that you may be  
23 discussing those issues, did these other  
24 situations involve the exchange which was  
25 returning to the public utility at a higher price?



1           A.    I believe the conditions of return are  
2           also always on the table and it's always a  
3           tradeoff.

4           Q.    Okay.

5           A.    So yes, those were issues that were --  
6           those are the key issues when you talk about  
7           governmental aggregation that come into play.

8           Q.    What specific cases do you recall,  
9           Mr. Gonzalez, in which the issue concerned  
10          residential customers of a governmental aggregator  
11          avoiding certain riders in exchange for the risk  
12          of returning to the public utility at a higher  
13          price?

14          A.    I don't know if I could specifically, you  
15          know, cite a case or something. I believe in the  
16          RCP plan that was one of the big discussions, was,  
17          you know, the shopping credit that was -- that  
18          NOPEC was trying to negotiate. And since it was  
19          a -- it was a negotiated settlement, those were  
20          issues that were discussed, I guess, in confidence  
21          in the negotiated proceeding. And I think NOAC  
22          might have been involved in some of those also.

23          Q.    And this is within FirstEnergy's service  
24          territory?

25          A.    Correct.

1 Q. Are you aware of any arrangements --  
2 Strike that.

3 Are you aware of any situations in which  
4 residential customers of governmental aggregators  
5 in Ohio can avoid certain charges in exchange for  
6 the risk of returning to the public utility at a  
7 higher price?

8 A. I would say I can't recall any.

9 Q. Can you tell me about your educational  
10 background, please?

11 A. Yes. I am an economist by trade; ABD,  
12 all but dissertation.

13 Q. And where did you do your -- From what  
14 college did you graduate?

15 A. I graduated from Yale and from the  
16 University of Massachusetts.

17 Q. And before joining the OCC about four  
18 years ago, can you tell me a little bit about your  
19 professional background?

20 A. Yes. I've worked -- I was a research  
21 scientist in a -- did a lot of economic work in  
22 accident causation, a lot of work for the National  
23 Highway Traffic Safety Administration. I worked  
24 with the Connecticut Energy Office about seven  
25 years. I worked for Columbia Gas for about five

1 years. I worked for AEP about, I want to say,  
2 seven years or so.

3 Q. And your professional background is set  
4 forth in the testimony that you filed in this  
5 matter, correct?

6 A. Yeah, for the most part.

7 Q. The highlights.

8 A. For the most part, yes.

9 Q. Okay. And you've testified before the  
10 PUCO previously, correct?

11 A. That's correct.

12 Q. How many times, sir, have you testified  
13 as a live witness before the PUCO?

14 A. Meaning that I was cross-examined?

15 Q. Yes, sir.

16 A. Five or six times.

17 Q. Did any of those matters concern the  
18 issue of governmental aggregation?

19 A. While none of the matters dealt  
20 specifically with governmental aggregation, they  
21 dealt with economics. I dealt with market  
22 barriers in those instances, and I dealt with  
23 cost/benefit analysis, financial -- economic  
24 feasibility studies.

25 So in terms of while my testimony was not

1 specific to governmental aggregation in those --  
2 in those cases that I cited, we -- I did use --  
3 look at those or look at it from the lens of an  
4 economist and economic analysis.

5 And I did look at barriers in the case of  
6 DSM, it might be a market barrier that exists and  
7 so on.

8 Q. You have provided in your testimony that  
9 you filed in this case a list of other matters in  
10 which you have prefiled testimony, correct?

11 A. Yes, I think one of my questions deals  
12 with that.

13 Q. In any of those instances in which you  
14 submitted prefiled testimony, did you -- did your  
15 testimony address the issue of governmental  
16 aggregation?

17 A. Again, none of my testimony was specific  
18 to governmental aggregation, but it dealt with  
19 economic issues, it dealt with market barriers, it  
20 dealt with, for example, market barriers in the  
21 FirstEnergy case against distributive generation.  
22 And it was a -- those types of issues.

23 So from an economic point of view, as an  
24 economist, I can look -- and being in the industry  
25 over 20 years, I have seen a lot of cases, a lot

1 of issues, a lot of areas. And as an economist,  
2 you're trained to look at it a certain way and to  
3 provide that -- you know, provide insight looking  
4 at it through the economic lens.

5 Q. What did you do to prepare for today's  
6 deposition?

7 A. I read Mr. Smith's testimony, I read the  
8 Stipulation, and I read my testimony.

9 Q. Did you meet with your counsel?

10 A. Did I meet --

11 MS. HOTZ: Objection. Privileged.

12 MS. SPILLER: I'm just asking whether  
13 there was a meeting; I'm not asking for the  
14 contents of the discussions.

15 THE WITNESS: Yes, I did.

16 BY MS. SPILLER:

17 Q. Did you discuss your deposition with  
18 anyone else --

19 MS. HOTZ: Object.

20 BY MS. SPILLER:

21 Q. -- other than counsel?

22 A. No, I believe that it was counsel.

23 -- --

24 Thereupon, Duke Exhibit No. 1 was marked  
25 for purposes of identification.

1

- - -

2 BY MS. SPILLER:

3 Q. Sir, I'll hand you what has been marked  
4 as Exhibit 1 to your deposition. I represent to  
5 you that this is a copy of the Notice to take your  
6 deposition that was filed with the Public  
7 Utilities Commission on November 5, 2008.

8 Have you seen this document before?

9 A. No, I haven't. I haven't.

10 Q. If you would turn to the second page of  
11 Exhibit 1, sir, the last paragraph, there is a  
12 request for you, the witness, to bring any and all  
13 documents upon -- that you would have reviewed in  
14 connection with this particular case, as well as  
15 documents that are referenced or otherwise cited  
16 in your testimony.

17 Were you aware of that request?

18 A. Since I didn't read the -- this document,  
19 I was not aware of the full request.

20 Q. So would it be fair for me to conclude  
21 that you don't have any documents that are  
22 responsive to this Exhibit 1 in your possession  
23 today?

24 A. I think I have -- Looking at my  
25 testimony, I believe there 's only one document

1 that -- that I don't have in my possession. I  
2 just basically in my testimony cite the  
3 Stipulation, cite the testimony of Staff, and of  
4 the Company, and Senate Bill 220 -- Amended Senate  
5 Bill 221.

6 MS. HOTZ: Which document is it that you  
7 don't have?

8 THE WITNESS: I forgot to bring the  
9 economic -- the forecast, the Blue Chip Financial  
10 Forecast.

11 MS. HOTZ: We can get that to you.

12 BY MS. SPILLER:

13 Q. Okay. And what is -- You're flipping  
14 through some documents there which will not be  
15 evident from the -- on the transcript. What do  
16 you have in front of you, sir?

17 A. I have my direct testimony and I have the  
18 Stipulation.

19 Q. Okay. And you have indicated that you  
20 have also reviewed testimony from Tammy Turkenton  
21 from the Staff?

22 A. That's correct.

23 Q. And then you made reference to a study  
24 that is a footnote in your testimony, correct?

25 A. That's correct.

1 Q. That's a document that you don't have  
2 with you here today?

3 A. That's correct.

4 Q. You've also, I believe, sir, indicated  
5 that you reviewed portions of Senate Bill 221.

6 A. I've looked at -- Yeah.

7 Q. They are cited in your testimony --

8 A. Correct.

9 Q. -- so is it fair to say you've looked at  
10 them?

11 A. Yes.

12 Q. Okay. You were present for the  
13 deposition of Paul Smith that was taken earlier  
14 this morning, correct?

15 A. Yes, I was.

16 Q. Did any of the testimony rendered by  
17 Mr. Smith cause you to alter or revise the  
18 opinions that are set forth in your testimony?

19 A. I don't believe so.

20 Q. And when I say, "your testimony", is it  
21 your testimony that was prefiled in connection  
22 with this matter, correct?

23 A. Correct.

24 Q. Okay.

25

- - -



1           Thereupon, Duke's Exhibit No. 2 was  
2           marked for purposes of identification.

3                               - - -

4       BY MS. SPILLER:

5           Q.     Sir, I hand you what will be marked as  
6           Exhibit 2 to your deposition. And that's a copy  
7           of the Stipulation and Recommendation, as well as  
8           some addendum pages that were filed.

9                     If you would just want to flip through  
10          and confirm that that is the Stipulation and  
11          Recommendation that you reviewed relative to  
12          preparing for this deposition and your testimony,  
13          please.

14          A.     Yes, it is.

15          Q.     Mr. Gonzalez, what level of  
16          participation, if any, did you have in the  
17          discussions that culminated in that Stipulation  
18          identified as Exhibit 2?

19          A.     I participated in a -- in a number of  
20          negotiating sessions, but by all means not all.

21                     MS. HOTZ: Objection. This is going  
22          into -- going into negotiation conversations which  
23          are not admissible.

24                     MS. SPILLER: I'm simply asking for his  
25          level of participation; I'm not asking for at

1 this --

2 MS. HOTZ: I still object to that.

3 MS. SPILLER: That's fine. That's noted.

4 BY MS. SPILLER:

5 Q. Mr. Gonzalez, were you present during  
6 settlement conferences that were conducted --  
7 Strike that.

8 You were not present at every settlement  
9 conference that was -- that was conducted on a  
10 roughly weekly basis at the PUCO's offices,  
11 correct?

12 A. That's correct. In fact, I participated  
13 towards the end.

14 Q. Okay. Were you present when there were  
15 any discussions regarding the issue of  
16 governmental aggregation?

17 MS. HOTZ: Objection.

18 BY MS. SPILLER:

19 Q. You can answer. Go ahead.

20 A. Yes. Yes, I -- There was discussions on  
21 that, you know.

22 Q. Okay.

23 A. We went in and out of the room and so I  
24 caught bits and pieces of it.

25 Q. Mr. Gonzalez, you don't have any reason

1 to dispute that the Stipulation identified as  
2 Exhibit 2 to your deposition was the result of  
3 serious bargaining between the parties, do you?

4 MS. HOTZ: Objection.

5 THE WITNESS: I would say all for the --  
6 all -- except for the issue that we carved out, I  
7 think there was serious bargaining going on.

8 BY MS. SPILLER:

9 Q. Okay. And with your caveat, except for  
10 the footnote that OCC has carved out, you have no  
11 reason to dispute that the Stipulation as a whole  
12 benefits Duke Energy's ratepayers, correct?

13 A. I say given the issue we carved out, I  
14 would -- I would say that we could -- that we  
15 could get a better -- a better settlement and  
16 stipulation if it was modified to include our --  
17 our recommendations.

18 Q. Sir, let me reask the question.

19 But for the issue -- the narrow issue  
20 that the OCC carved out, you have no reason to  
21 dispute that the stipulation as a whole benefits  
22 Duke Energy's ratepayers, correct?

23 MS. HOTZ: Objection.

24 THE WITNESS: You know, the Stipulation  
25 is a -- is a compromise amongst all parties. And,

1 again, I would say that given the issue of why  
2 we're here today, I would think our  
3 recommendations would make it a better  
4 stipulation.

5 BY MS. SPILLER:

6 Q. Again, sir, I understand the issue that's  
7 been carved out. So if we could exclude that  
8 issue for a moment.

9 MS. HOTZ: This is beyond the scope of  
10 his testimony.

11 MS. SPILLER: Ann, with all due respect,  
12 he certainly is raising some issues in his  
13 deposi- -- or, in his testimony that I think  
14 address the Stipulation and the results of the  
15 Stipulation --

16 MS. HOTZ: The only --

17 MS. SPILLER: -- and, indeed, advocating  
18 for different outcomes.

19 MS. HOTZ: The only thing that this  
20 Stipulation addresses is the footnote.

21 BY MS. SPILLER:

22 Q. Okay. Mr. Gonzalez, let's be perfectly  
23 clear, then. The only reason for which you will  
24 render any testimony in connection with Duke  
25 Energy's application for an ESP is the limited

1 issue identified as Footnote 11 in the Stipulation  
2 and Recommendation identified as Exhibit 2 to your  
3 deposition, correct?

4 A. I would agree with that statement.

5 Q. You have no other opinions regarding any  
6 other matter set forth in Duke Energy's  
7 application for an ESP, correct?

8 A. I may have personal opinions, but what I  
9 put in my testimony is dealing with the  
10 Footnote 11.

11 Q. And you have no opinions regarding the  
12 content of the Stipulation and Recommendation,  
13 other than that which has been identified as  
14 Footnote 11, correct?

15 MS. HOTZ: Objection. His personal  
16 opinions are not a topic of this --

17 MS. SPILLER: I'm not asking him for a  
18 personal opinion. He's here as a professional on  
19 behalf of the OCC as your witness.

20 THE WITNESS: I'm speaking directly to  
21 that footnote.

22 BY MS. SPILLER:

23 Q. Yes, sir. Thank you.

24

25

- - -

1           Thereupon, Duke's Exhibit No. 3 was  
2           marked for purposes of identification.

3                               - - -

4   BY MS. SPILLER:

5           Q.   Sir, I will hand you what has been marked  
6           as Exhibit 3 to your deposition. If you could  
7           simply review this and confirm that it is a true  
8           and accurate copy of your testimony that was filed  
9           in Docketing with the PUCO, please.

10          A.   Yes, it is.

11          Q.   And on the cover page, it indicates that  
12          this was filed just two days ago; November 5,  
13          2008?

14          A.   Yes, that's correct.

15          Q.   And because this testimony was finalized  
16          and filed just two days ago, would I be correct in  
17          assuming that you don't have any changes or  
18          revisions to this document?

19          A.   I don't have any revisions, but it's not  
20          because I didn't have enough time to make  
21          revisions.

22          Q.   Pardon me?

23          A.   I don't have revisions, but it wasn't  
24          because I didn't have time to make revisions.

25          Q.   So, in other words, what's set forth in

1 Exhibit 3 to your deposition is a comprehensive  
2 collection of your opinions and your testimony,  
3 correct?

4 A. It's -- My testimony is my -- is my  
5 testimony in this case.

6 Q. And you do not anticipate offering any  
7 other opinions at the November 10 hearing that are  
8 not contained in this exhibit, correct?

9 A. Within the bounds of my testimony and the  
10 issues I'm addressing, I mean, that's going to be  
11 the scope.

12 Q. Sir, you mentioned in your testimony that  
13 you reviewed Duke Energy's application for  
14 purposes of creating your prefiled testimony. Can  
15 you share with me, please, what about the  
16 application was relevant to the issue of  
17 governmental aggregation? And particularly  
18 Footnote 11 of the Stipulation that the OCC has  
19 carved out.

20 A. The application contained information on  
21 riders that are under discussion, so I think in  
22 that respect.

23 Q. And that is Rider SRA-SRT, correct?

24 A. That's -- That's correct.

25 Q. Anything else about the application, sir,

1 relevant to your testimony?

2 A. I would say the application gives me a  
3 good idea of what the company's filing was in the  
4 ESP. It talks about the riders like we talked  
5 about. Talks about, for example, their active  
6 management system, which was an issue that was  
7 brought up this morning.

8 It talks about they had an integrated  
9 resource plan. That gives us an idea of what  
10 the -- resources the company has, what supplies,  
11 what kind of planning process they have. So it  
12 gives a lot of information on this particular case  
13 that could be useful.

14 Q. But, in fact, was -- other than  
15 information on Rider SRA-SRT, was anything else  
16 about the application relevant to the preparation  
17 of your testimony in this case?

18 A. I would say generally, as I just said,  
19 you know, understanding the supply and demand  
20 conditions of the company or resources, I would  
21 say that it helped. Yeah, it helps, yeah, build  
22 an understanding of the company's filing.

23 Q. Okay.

24 A. There are a lot of interrelated parts.  
25 As an economist, you know, a butterfly somewhere



1 can have an impact somewhere else, so....

2 Q. And from your prior testimony that you've  
3 given this afternoon, only the prefiled testimony  
4 of Paul Smith and Tammy Turkenton were relevant to  
5 the preparation of your prefiled testimony,  
6 correct?

7 A. To my knowledge, I must admit, I haven't  
8 read the other testimony filed in -- in the  
9 Stipulation portion of the case.

10 Q. Okay. Sir, you've mentioned a few times  
11 now that you are an economist. You are not also  
12 an attorney, correct?

13 A. No, I'm not.

14 Q. And your position at the OCC is not  
15 one -- is not one in which you render legal  
16 opinions or conclusions, correct?

17 A. That's correct.

18 Q. And, sir, without waiving any objections  
19 that Duke Energy may have to your testimony, you  
20 have offered several legal conclusions in your  
21 testimony, correct?

22 MS. HOTZ: Objection.

23 THE WITNESS: Under advice of counsel --  
24 Under -- I was careful to reference each statement  
25 dealing with statute as being informed by OCC

1 counsel.

2 BY MS. SPILLER:

3 Q. I just want to ask you about those  
4 opinions, sir. And if we could turn to Page 6 of  
5 your deposition -- oh, I'm sorry, testimony --  
6 Page 6 of your testimony, which is Exhibit 3.

7 Beginning on Line 5 on Page 6, you  
8 offer -- you testify regarding the statutory  
9 policy of the State of Ohio, and you conclude that  
10 "...it would be discriminatory to offer only  
11 credits and rider bypassability to non-residential  
12 customers," correct?

13 MS. HOTZ: Objection. That's not what it  
14 says. On Line -- Looking on Line 5, it says, "OCC  
15 counsel has confirmed my understanding that the  
16 policy of Ohio...."

17 MS. SPILLER: "The policy of Ohio", I  
18 understand that. But let me state the question  
19 over again.

20 MS. HOTZ: Okay.

21 BY MS. SPILLER:

22 Q. Mr. Gonzalez, beginning on Line 5, Page 6  
23 of your testimony, you do -- of your testimony,  
24 you do set forth testimony regarding the statutory  
25 policy of the State of Ohio, correct?

1           A.    Under advice of counsel or after  
2           discussing with counsel, yes.

3           Q.    And you further provide, on Line 8 on  
4           Page 6 of your testimony, that it would be  
5           discriminatory to offer credits and rider  
6           bypassability to -- only to nonresidential  
7           customers, correct?

8           A.    That's my opinion, yes, based on the  
9           reading.

10          Q.    In rendering your interpretation of Ohio  
11          law, you did consult with your counsel, correct?

12          A.    Yes.

13          Q.    Is this opinion your opinion, or your  
14          counsel's opinion, sir?

15          A.    Well, after a discussion with my counsel,  
16          it's in my testimony, so I believe it's the  
17          case -- that to be the case.

18          Q.    Well, sir, I know it's in your testimony.  
19          But I'm trying to get an understanding of your  
20          independent opinions, not those that may have been  
21          influenced or shaped by your counsel.

22          A.    I would say it's -- when I see the word  
23          "discriminatory" and I see two different off- --  
24          or, two different conditions, I would interpret --  
25          you know, I would -- my opinion would be that it

1 would -- it appears discriminatory.

2 Q. Discriminatory in violation of the code  
3 section cited on Line 6 of your testimony, Revised  
4 Code Section 4928.02(A)?

5 A. I believe by not giving customers the  
6 option of governmental aggregation without the  
7 shopping credit and bypassing the rider appears to  
8 me to close an opportunity for residential  
9 customers. It's not clear to me what compelling  
10 reason there is for that. So I would -- I would  
11 say on that basis, you know, the -- I would see it  
12 as a discriminatory type practice.

13 Q. How does Revised Code Section 4928.02  
14 define discriminatory service?

15 A. I don't -- I don't have it before me. My  
16 impression -- I don't -- I don't have it before me  
17 and I would just be speculating if I said -- you  
18 know, there's a difference in providing retail  
19 service if it's not cost based or if it's not --  
20 you know, there are certain conditions that you  
21 can have different rates for different customers  
22 or different service options for different  
23 customers, but there should be some compelling  
24 reason, either a cost-of-service study, you know,  
25 some cost-based kind of measure. There might be

1 some public policy influences on top of that,  
2 but....

3 Q. So you would --

4 A. So, for example, when I look at that, if  
5 my neighbor was paying -- getting the same service  
6 as me, electric service, same rate, same load  
7 shape, everything, if he was paying a lower rate  
8 than me with no compelling reason, I would think  
9 that would be a case where there was a  
10 discriminatory -- I would be in a discriminatory  
11 situation.

12 Q. And in your hypothetical, both you and  
13 your neighbor are residential customers --

14 A. Correct.

15 Q. -- correct?

16 A. Yes.

17 Q. And I believe, sir, you just acknowledged  
18 that it is, in fact, nondiscriminatory to provide  
19 different rates to different customers, correct?

20 MS. HOTZ: Objection.

21 MS. SPILLER: Ann, I'm simply restating  
22 his testimony.

23 THE WITNESS: Can you please repeat that  
24 last question?

25 (Question read back as requested.)

1 THE WITNESS: I gave a hypothetical and  
2 in my hypothetical it wasn't. And when I  
3 discussed this topic, I acknowledged that if -- it  
4 doesn't necessarily have to be. Just because you  
5 have different rates for different customers,  
6 that, in and of itself, is not a sufficient  
7 condition to say it's discriminatory.

8 BY MS. SPILLER:

9 Q. Okay. Let me just back up.

10 Would you agree, sir, that it is  
11 nondiscriminatory to have different rates for  
12 different customers in Ohio?

13 A. Not that -- I'm saying not necessarily,  
14 but I can't tell you -- You can have cases where  
15 there might be different rates for different  
16 customers where it may be discriminatory, and --  
17 and there may be cases --

18 Q. And conversely --

19 A. Correct.

20 Q. -- it may not be discriminatory?

21 A. That's correct.

22 Q. Sir, I'm just trying to get an  
23 understanding of your understanding of what it  
24 means to provide discriminatory service under the  
25 statutory section that you cited in your

1 testimony.

2 MS. HOTZ: Objection. I think -- I don't  
3 think that he's taking discriminatory from the  
4 statutory section. I think he's taking it from  
5 his own personal opinion.

6 MS. SPILLER: No, he's taking it -- And I  
7 appreciate your trying to help Mr. Gonzalez here.

8 BY MS. SPILLER:

9 Q. But, Mr. Gonzalez, did you understand my  
10 question?

11 A. Yeah, I -- I think I -- you know, I gave  
12 you my perspective and my opinion on what I think  
13 discriminatory would mean, my reading of  
14 discriminatory, my nonlegal reading of  
15 discriminatory.

16 Q. Let me try this another way. Sir, is it  
17 your opinion that providing only rider  
18 bypassability and shopping credits to  
19 nonresidential customers is discriminatory?

20 A. I would, within the context of the  
21 Stipulation that we are talking about, and given  
22 that it's being offered to one customer class and  
23 not another customer class without what I believe  
24 is a compelling reason, I would say under those --  
25 under that description, yes.

1 Q. What is the basis for your opinion? I'm  
2 not interested in what your counsel may have  
3 indicated; I'm interested in your opinion. What  
4 is the basis for that opinion, sir?

5 A. The basis is that, again, I don't see any  
6 compelling reason why you could offer it to one  
7 class of customers and not to a residential  
8 aggregation class of customers.

9 Q. What would constitute a compelling  
10 reason, in your opinion, to offer different rates  
11 to different customer classes?

12 A. I would think one is -- is cost, would be  
13 costs. Traditional cost may be one reason.

14 Q. Anything else?

15 A. Public policy sometimes.

16 Q. Okay. Anything else?

17 A. Logistics could be one.

18 Q. In what way, please?

19 A. You might -- It might be better to do --  
20 have a certain rate, but logistically your  
21 information systems may not be able to accommodate  
22 it or it costs more to -- to be able to offer that  
23 rate logistically than it's worth. Things like  
24 that.

25 Q. Anything else that would, in your



1 opinion, be a compelling reason?

2 A. It's a very broad question. I would say  
3 any -- and any other reason that comes up. I  
4 mean, I can't give you all the reasons. I just  
5 gave you some -- some reasons. I'm sure there are  
6 others that may come up.

7 Q. Well, sir, again, I'm interested in your  
8 opinion.

9 A. Uh-huh.

10 Q. And you are the one who identified  
11 compelling reasons as supporting the charging of  
12 different rates to different customer classes,  
13 residential versus nonresidential, for example.  
14 And so I'm, again, just trying to gain an  
15 understanding of what you would consider to be a  
16 compelling reason to charge those different rates.

17 MS. HOTZ: Objection. He identified  
18 several, and then said there are many, many more  
19 that he does not know about or that he can't think  
20 of at this time. He answered the question.

21 MS. SPILLER: Ann, I would like to  
22 confirm and exhaust his knowledge so that Monday  
23 morning there isn't another list of all of these  
24 other compelling reasons that he thought of. The  
25 witness was the one who brought up the compelling

1 reasons.

2 I'm certainly allowed to explore with him  
3 what he believes, not what someone else may  
4 believe between now and Monday morning, but what  
5 he believes is a compelling reason to support the  
6 charging of different rates. For him to simply  
7 throw out there could be others, I don't think, is  
8 necessarily responsive. I want to know exactly  
9 what it is that he believes supports -- or,  
10 justifies -- or, would be considered a compelling  
11 reason.

12 MS. HOTZ: As long as you understand that  
13 he's already told you he can't think of every one  
14 of them, you can go ahead and give --

15 BY MS. SPILLER:

16 Q. Well, Mr. Gonzalez, in your opinion, are  
17 there -- do you know of any other matters, other  
18 than what you've just identified, that would  
19 constitute a compelling reason to charge different  
20 rates?

21 A. I can contemplate you could have an  
22 emergency situation where you might need customers  
23 to -- you know, extraordinary circumstances where  
24 you might need customers to interrupt and you --  
25 and, therefore, you would offer a different rate

1 for that. There could be an emergency -- you  
2 know, a national security emergency that you  
3 would -- you would have to alter, you know, rates  
4 and offer different customers different rates.

5 But I think the first reason I gave was  
6 probably one of the strongest reasons among  
7 different rate classes would be cost based. There  
8 also is the risk issue in rates.

9 Q. The risk of perhaps having to pay a  
10 higher price?

11 A. Risk in all its dimensions. It could be  
12 the risk of higher price, the risk that the  
13 customer is going to -- you know, the risk that an  
14 industrial customer who gets a discount is going  
15 to be around, you know, after he collects -- you  
16 know, risk is a -- is an issue that you would look  
17 at.

18 Q. And when you identify cost, what would  
19 fall within the cost bucket, in your opinion?

20 A. It would be comprehensive. It would --  
21 whatever -- whatever costs enter any particular  
22 equation.

23 Q. Fuel costs, would that --

24 A. I mean, in terms of the rate?

25 Q. Yes, sir. When you --

1 A. Utilities rate, yes, fuel costs.

2 Q. Ancillary service?

3 A. Yes.

4 Q. Load factor?

5 A. Yes.

6 Q. Anything else fall within the category of  
7 cost?

8 A. There's a whole -- There are a lot of  
9 riders, so there are obviously a lot of cost  
10 buckets, a lot of information you have. You have  
11 costs for delivery, costs for transmission, costs  
12 for generation. Those are broad categories and  
13 within each one of those categories you have  
14 costs. Costs to deliver service. You have an  
15 accounting office. You have a legal office. You  
16 have an engineering office. You have a customer  
17 service office. So a lot of costs.

18 Q. Sir, on Page 6 at approximately Line 19  
19 of your testimony, you again refer to the  
20 statutory policy of the State of Ohio and conclude  
21 that governmental aggregation for residential  
22 customers would be encouraged and promoted if  
23 credits and rider bypassability were offered to  
24 them; correct?

25 A. I believe the first part of your -- I

1 agree with the first part of your statement, that  
2 it's the policy of the State to promote retail  
3 competition in the case of aggregation to adopt  
4 rules -- or, has asked the PUCO to adopt rules to  
5 encourage and promote it, yes.

6 Q. And that's what your counsel told you;  
7 correct?

8 A. That's -- I discussed it with counsel.  
9 Reading it in the rules, it's pretty clear. At  
10 least what I've stated now, it's pretty clear.

11 Q. Well, sir, I'm not interested in  
12 discussing that at the moment, but help me  
13 understand how the second part of my question was  
14 not consistent with your testimony.

15 MS. HOTZ: Could you read the question  
16 again, please?

17 MS. SPILLER: Sure. Go ahead. Can you  
18 read it back?

19 MS. HOTZ: Listen, Wilson.

20 THE WITNESS: Okay.

21 (Question read back as requested.)

22 THE WITNESS: I think I wanted the  
23 sentence before that; right?

24 BY MS. SPILLER:

25 Q. Sure. Let me -- Let me -- I'll just

1 restate the question for you, sir.

2 On Page 6, approximately Line 17 --  
3 beginning on Line 17 of your testimony, you again  
4 refer to the statutory policy of the State of Ohio  
5 and conclude that governmental aggregation for  
6 residential customers would be encouraged and  
7 promoted if credits and rider bypassability were  
8 offered to them; correct?

9 A. What sentence are you reading?

10 MS. HOTZ: Yes. Objection.

11 THE WITNESS: That's not my -- That's not  
12 my --

13 MS. HOTZ: Yeah. It's not exactly what's  
14 there.

15 BY MS. SPILLER:

16 Q. I'm paraphrasing, sir. I'll read  
17 verbatim what you said.

18 A. Okay.

19 Q. Beginning on Line 19 -- you can correct  
20 me if I read it wrong. "In this regard, it would  
21 encourage and promote such aggregation for  
22 residential consumers if Duke made available to  
23 them the credits and rider bypassability that are  
24 proposed in the Stipulation solely for  
25 nonresidential customers."

1 Did I read that correctly?

2 A. Yes, you did.

3 Q. Is that your testimony?

4 A. Yes. My testimony is that if  
5 bypassability and a shopping credit were offered,  
6 a residential aggregation, that would encourage  
7 residential aggregation -- governmental  
8 aggregation.

9 Q. What about the risk of coming back to  
10 Duke Energy at a higher price, would that also  
11 promote and encourage governmental aggregation, in  
12 your opinion?

13 A. I would say that every case you would  
14 have to evaluate the risk, that particular risk.  
15 And then the customer or the municipality would  
16 have to make an assessment, make an informed  
17 choice, and move forward with that choice.

18 Q. Well, I'd like to talk about this case  
19 and the governmental aggregation that the OCC has  
20 carved out.

21 A. Okay.

22 Q. Do you believe that exposing residential  
23 customers to the risk of returning to Duke Energy  
24 at a higher price than the ESP-SSO price would  
25 promote and encourage governmental aggregation?

1           A.    I would say that if -- if those  
2           conditions were met and governmental aggregation  
3           took place, and during the three-year ESP period  
4           customers were able to get a lower rate, I would  
5           say at the end of that -- at the end of that  
6           particular period, I think that would be  
7           beneficial and that would promote governmental  
8           aggregation because customers got a discount.

9           Q.    But, sir, my question is: Do you believe  
10          that exposing residential customers to the risk of  
11          returning to Duke Energy at a higher SSO price  
12          would promote and encourage governmental  
13          aggregation?

14          A.    I would say that allowing, you know,  
15          governmental aggregation, and that provides  
16          benefits to customers, would support -- would  
17          support governmental aggregation once the  
18          appropriate risks were -- were weighed and  
19          customers made an informed decision.

20          Q.    What are the risks exposed to residential  
21          customers in connection with governmental  
22          aggregation under the scenario that the OCC is  
23          advocating in this case?

24          A.    Well, I think the risk -- and I address  
25          it in my testimony -- is that they'll come back at



1 a higher rate if something were to -- if they were  
2 to leave the aggregation.

3 Q. And you would agree with me that for a  
4 residential customer that is a significant risk?

5 A. It's a risk, but, you know, it depends on  
6 what they come back at. We're saying they come  
7 back at the market rate. If the market rate,  
8 because of the way the economy is going, is not,  
9 you know, within the three-year ESP period, it may  
10 not be a significant risk.

11 Q. We'll get to the new proposal that you've  
12 offered in your testimony in a minute, but you  
13 would agree that exposing residential customers to  
14 come back to Duke Energy at a higher price is a  
15 risk?

16 A. I would say it's a risk that the -- that  
17 the residential customer will have to make an  
18 assessment, along with the governmental  
19 aggregation, and it may not be a significant risk,  
20 given the economic situations and the existence of  
21 the MISO market and so on.

22 Q. And in exchange for this risk,  
23 residential customers of governmental aggregation  
24 would avoid what under your -- OCC's proposal?

25 A. Did you say "aggravation"?

1 Q. "Aggregation".

2 A. Oh, aggregation. I'm sorry.

3 Can you repeat the question?

4 Q. Sure.

5 A. You threw me off when you say  
6 "aggravation".

7 Q. In exchange for assuming this risk or  
8 exposing themselves to the risk of paying a higher  
9 price, what is the benefit to residential  
10 customers within the context of governmental  
11 aggregation?

12 A. Well, the benefits that -- the potential  
13 benefits are governmental aggregation because of  
14 their being able to eliminate a lot of -- or,  
15 reduce customer acquisition costs, they could land  
16 on an agreement with a supplier at a lower cost,  
17 so a lower cost per kWh than the incoming utility;  
18 in this case, Duke. So that would be -- that  
19 could be a benefit for customers.

20 And also the governmental aggregation, I  
21 think, probably because of the acquisition cost  
22 could actually -- you know, there's some argument  
23 that they could actually provide a more  
24 competitive price than a CRES provider, because a  
25 CRES provider has to go individually after

1 customers has a higher acquisition cost.

2 So to the extent that the acquisition  
3 costs are lower, the customer -- the government  
4 aggregation can offer a lower price.

5 Q. So it's your opinion that a governmental  
6 aggregator would be able to secure a reliable  
7 source of service at a -- at a cost lower than  
8 Duke Energy's proposed ESP-SSO price?

9 A. That could be a possibility, yes.

10 Q. Have you performed any analysis, any  
11 economical -- any economic analysis on that  
12 possibility?

13 A. Well, I'm familiar with Duke's pricing  
14 and I know what's been going on in the -- in the  
15 markets, you know. There's -- Prices have come  
16 down since July at the Cinergy hub, so there's a  
17 possibility.

18 Q. Sir, again, did you perform any analytics  
19 on this particular possibility that you've just  
20 described; that being the possibility of a  
21 governmental aggregator being able to secure a  
22 reliable source of service at a price lower than  
23 Duke Energy's ESP-SSO price?

24 A. I've looked at -- If -- If -- The  
25 conditions we're recommending, if you bypass

1 Rider SRA-SRT and you offer the six percent  
2 little g shopping credit, I estimate, you know,  
3 that might be worth anywhere from 30 to 40 bucks  
4 per customer. That might be within the threshold  
5 of a governmental aggregation to -- to -- to  
6 make -- make an arrangement.

7 So on that end, I'm assuming 1,000  
8 kilowatt hours per average customer used times 12  
9 times, I think it was, 1.4, 0014 cents, you know,  
10 kilowatt-hour for the -- for the shopping  
11 credit -- or, for the rider.

12 Q. So the numeric figures that you just  
13 identified, 30- to \$40, how did you arrive at  
14 those, please?

15 A. I made an estimate of the SR- -- The  
16 rider -- In your application, you have a cost for  
17 the Rider SRA. I multiplied that by 1,000 average  
18 annual [sic] use, multiplied it by -- I'm sorry --  
19 you know, monthly use times 12. I got about \$17,  
20 I think is what the -- the SRT-SRA rider is, and  
21 then if you -- I know Paul said it was almost  
22 equivalent this morning, the price of the  
23 little g, so that's how I arrived at the number.

24 Q. And when did you arrive at this number?

25 A. I did it at -- this morning before this

1 meeting. Before -- Before I -- Before I came,  
2 that was one of my to-dos, but I did -- I did that  
3 part. Actually, I had done more  
4 back-of-the-envelope kind of things, just to get  
5 an idea of what -- I had an idea of what the  
6 shopping credit is, what the threshold is to make  
7 governmental aggregation at least, you know,  
8 plausible, you know, for consideration.

9 So we basically -- Obviously, if there's  
10 not enough margin, then it's not going to take  
11 place. So we're trying to see, you know, what --  
12 what a governmental aggregation -- you know,  
13 what's the case for a governmental aggregation,  
14 and those are the kind of variables you look at.

15 Q. But those variables, the  
16 back-of-the-envelope calculations that you did  
17 this morning, were not done prior to your filing  
18 your testimony; correct?

19 A. These specific ones were done this  
20 morning, but I had thought about them when I had  
21 seen the numbers and I knew it was in that  
22 ballpark, you know. It's not very sophisticated,  
23 you know, mathematics. I mean, I had an idea.  
24 Today, I wanted to be sure that it was -- you  
25 know, that it was within the -- I knew it would be

1 over the 35-, \$40 range; I just wanted to get a  
2 more exact number.

3 Q. And, sir, so I can understand the basis  
4 for your opinions, your testimony that I read on  
5 Page 6 concerning the encouraging and promotion of  
6 aggregation for residential customers, that  
7 sentence, what is the basis -- what is your basis  
8 for that opinion?

9 A. I think we've just been discussing that  
10 right now.

11 Q. Okay. In the context of a possible  
12 scenario of a supplier securing service at less  
13 than Duke Energy's ESP price?

14 A. I would say the price offered in the  
15 aggregation should be less than Duke's price; or,  
16 if it's a fixed price, it should be less than what  
17 the expected Duke price is going to be over time.  
18 You have riders that change, you know, based on  
19 fuel costs and so on. So it depends.

20 MS. SPILLER: Can you read that answer  
21 back, please?

22 (Answer read back as requested.)

23 BY MS. SPILLER:

24 Q. Sir, I'm sorry, I'm hesitating because I  
25 don't know that that even answered my question.

1           Would you -- Is it your opinion that  
2 governmental aggregation would be encouraged and  
3 promoted if, in fact, a supplier could secure a  
4 reliable source of service at less than Duke  
5 Energy's ESP?

6           A.    I think in that case I would say -- I  
7 would say yes, but not limited to that case.

8           Q.    And what is the basis for your saying  
9 yes?

10          A.    Because if they could -- if they could  
11 secure a reliable source of power, cheaper than  
12 the Duke ESP total price, including all riders and  
13 so on and so forth, and they could offer that to  
14 their customers -- their customers, and with  
15 minimal administration costs, acquisition costs,  
16 i.e., marketing and so on, I think if the customer  
17 sees a savings at the end of the year, at the end  
18 of the three-year period, I think that's something  
19 that the customer should -- that would benefit  
20 customers and may lead to an aggregation of being  
21 successful coming forward.

22          Q.    But you've not done any -- any analytics  
23 or research on whether or not it is -- it is  
24 probable or likely that a supplier could even  
25 secure a reliable source of service at a price

1 less than Duke Energy's ESP price; correct?

2 A. I haven't done any specific analysis, but  
3 I'm aware of, you know, there's a -- the MISO  
4 market is a nonutility. You know, utilities are  
5 not the only players in the generation supply  
6 game, there's independent and there are other  
7 third parties. There's wholesale -- There are  
8 wholesale bids that take place across the country.  
9 In fact, FirstEnergy filed their MRO, which would  
10 have been a wholesale bid.

11 So there's a possibility for -- And, in  
12 fact, in the FirstEnergy MRO, there were a number  
13 of suppliers, marketers that were -- that were  
14 willing and able to supply and enter into a  
15 wholesale bidding type situation. So there's  
16 suppliers. That would lead me to believe that  
17 there's a supply. And FirstEnergy is a MISO -- is  
18 a member of MISO. So is Duke Energy.

19 Q. Mr. Gonzalez, how does governmental  
20 aggregation constrain Duke Energy from unreasonably  
21 increasing its rates?

22 A. Oh. That's the -- I think the -- that  
23 speaks to retail competition and -- and -- and I  
24 guess the idea is if the company's rates increase,  
25 you know, increase -- Let me strike that.



1           It speaks to competition. If there's  
2 competition in Duke's service territory at the  
3 retail level, which this would be, it would -- I  
4 think it would -- you know, it's something that  
5 Duke would have to consider when they're raising  
6 their rates.

7           It adds a little discipline, maybe puts  
8 some discipline into -- In all -- When you  
9 introduce competition into the market where there  
10 was no competition, that changes the dynamic of  
11 that particular market, and the parties in that  
12 market have to take competition into -- into  
13 account. If not, it's at their own peril. I  
14 mean, that's the competitive model. That's what  
15 that statement relates to.

16         Q. And the opinions that you've set forth on  
17 your -- in your testimony on Page 9, beginning on  
18 Line 6, again, sir, there's this blend between  
19 your opinions and your counsel's opinions. I'm  
20 trying to just get an understanding of your own  
21 opinions. It's your --

22         A. What line? What line are you directing  
23 me to?

24         Q. The paragraph that starts on Line 6.

25         A. I agree with the sentences on -- starting

1 at Line 6. I think that's my opinion. That's not  
2 my counsel's opinion.

3 Q. If you continue reading, sir, on -- on  
4 Line 9. And, again, without waiving any  
5 objections to testimony that, with all due  
6 respect, constitutes a legal conclusion, you're  
7 reiterating your counsel's interpretation of  
8 Ohio's Statutory law; correct?

9 A. This opinion was confirmed by my counsel,  
10 informed by my counsel, discussions with my  
11 counsel.

12 Q. So your testimony at that part simply  
13 restates your opinion -- or, your counsel's  
14 opinion?

15 A. No. I make two very important points  
16 there. I make the point that the potential for  
17 competition for this aggregation benefits  
18 customers in two ways. It could give them  
19 favorable rates below the incumbent utility, below  
20 the rates of the filed ESP, and also would --  
21 it -- I use the word "constraining". It's almost  
22 discipline. Discipline's the other competitive  
23 player in the market to -- to consider this  
24 competition when it -- when it looks to increase  
25 its rates.

1 Q. Mr. Gonzalez, are the costs to serve  
2 residential customers identical to the costs to  
3 serve nonresidential customers?

4 A. You know, generally speaking, no. That's  
5 why you usually have a cost-of-service study and  
6 you allocate costs and function of load factor, so  
7 on and so forth, so yeah.

8 Q. If we could turn to Page 10 of your  
9 testimony, beginning on Line 17.

10 So that there's not any dispute as to the  
11 nature of my question, I will simply read verbatim  
12 from your testimony.

13 You state, "OCC counsel has confirmed my  
14 understanding that utility-imposed barriers to  
15 large-scale governmental aggregation in the  
16 context of an ESP are disfavored under Amended  
17 Senate Bill 221."

18 Did I read that correctly, sir?

19 A. Yes, you did read it correctly.

20 Q. So, again, without waiving any objections  
21 to the legal opinions set forth in your testimony,  
22 this is an opinion that certainly reflects your  
23 counsel's opinion; correct?

24 A. You mean the issue of the barriers, you  
25 know, that's my opinion.

1 Q. It's also your counsel's opinion;  
2 correct?

3 A. It could be my counsel's. It probably is  
4 my counsel's understanding also.

5 Q. It is -- It is, right, Mr. Gonzalez?

6 A. But it's my -- The issue with the  
7 barriers that I've stated in terms of the two  
8 issues we've been discussing for the last hour or  
9 so, that's -- that's my reading as an economist  
10 looking at that.

11 Q. I understand that, but it also is your  
12 counsel's opinion; correct?

13 A. After talking with me, she -- After  
14 talking with me and the reasons that I exposed, I  
15 guess she was -- also came to that conclusion on  
16 those two issues.

17 Q. Otherwise, you would not have included it  
18 in your sworn testimony; correct?

19 A. I generally agree with what I wrote.

20 Q. Okay. That's all I was getting to, sir.

21 What utility-imposed barriers to  
22 large-scale governmental aggregation exist with  
23 respect to Duke Energy's proposed ESP?

24 A. I would say -- I would say that the two  
25 issues that we raised would be a start, and I

1 would say that there may be issues around billing  
2 that we talked about earlier.

3 Q. Okay. We've talked about several things,  
4 so what specific utility-imposed barriers?

5 A. I would say specifically in my testimony,  
6 the lack of a shopping credit and the lack of a  
7 bypassability of the SR- -- SRA-SRT rider. Also,  
8 there may be others. Like I mentioned earlier,  
9 logistic barriers.

10 If a -- If a -- For example, if a  
11 governmental aggregator wants to offer a discount  
12 off the SSO and your billing system can't  
13 accommodate that and your billing system hasn't  
14 accommodated it or put it on queue, you know,  
15 there might be an issue there.

16 Q. Is there an issue there, to your  
17 knowledge?

18 A. In some of the discussions that I've had  
19 with aggregators, I think that issue has come up.

20 Q. With what aggregators have you discussed  
21 the billing mechanics at Duke Energy?

22 A. I think we've talked to -- I think  
23 there's somebody from IEC.

24 Q. And who was that, please?

25 A. I believe it was Burns or something.

1 Burns. Mark Burns. Something like that.

2 But that's not -- You know, that's an  
3 issue that even from CRES providers, aggregation,  
4 that's always -- that's an issue, you know, the  
5 billing. That was part of the process trying to  
6 make -- trying to make sure that this, you know,  
7 retail choice could come about. You know, the  
8 whole billing, that was the whole area of  
9 discussion, how you assure that basically historic  
10 legacy systems, billing systems, can adapt to the  
11 choice regime.

12 Q. Who else have you talked with about  
13 billing issues that may present a logistic barrier  
14 to governmental aggregation specific to Duke  
15 Energy?

16 A. I don't think I've -- To Duke, I haven't,  
17 but I think I've been involved in discussions with  
18 the topic generally.

19 Q. Sir, I appreciate that, that information,  
20 but I'd really like to focus on utility-imposed  
21 barriers specific to Duke Energy.

22 A. That was my understanding, is that might  
23 be a barrier to Duke Energy's service territory.

24 Q. It might be. You don't -- Do you know  
25 whether or not it is?

1 A. I would say based on my discussion,  
2 there's an issue there, yes.

3 Q. So based upon what someone else told you;  
4 correct?

5 A. I would say based upon my discussions,  
6 yes.

7 Q. Do you have any personal knowledge as to  
8 the billing issue -- or, the billing mechanics at  
9 Duke Energy?

10 A. I do not, no.

11 Q. Okay. Mr. Gonzalez, are you personally  
12 aware of any circumstance in which Duke Energy has  
13 turned down a request from a CRES provider?

14 A. What kind of request? Can you be more  
15 specific?

16 Q. A billing request. These logistical  
17 billing issues that you've identified.

18 A. I would say that by discussions it  
19 appears that if Duke -- if Duke didn't say no, at  
20 least they may have put it on a queue that was  
21 never completed, you know, as something to do that  
22 was never completed, you know, wasn't done. I  
23 think it's still an existing issue. That's my  
24 understanding.

25 Q. And this is what Mr. Burns from IEC told

1 you?

2 A. I recall there might have been a  
3 discussion with him, yes.

4 Q. And when did this discussion occur?

5 A. I would say within the last couple of  
6 weeks.

7 Q. What is IEC?

8 A. I think the "C" stands for "Consultants".  
9 The "E", I believe, stands for "Energy". And the  
10 "I", I don't recall what the "I" stands for.

11 Q. What was the purpose of your discussion  
12 with Mr. Burns from IEC?

13 A. Obviously, they're consultants that have  
14 been involved in governmental aggregations, so had  
15 some insight as to governmental aggregations. I  
16 saw their website and followed up.

17 Q. Is it just IEC.com or is it the full name  
18 of that acronym spelled out?

19 A. You know, I'm not -- I'm not sure, but we  
20 can make that available if you're interested.

21 Q. That would be very helpful, sir.

22 MS. HOTZ: Yeah. Sure.

23 THE WITNESS: I would doubt -- IEC is too  
24 simple. Some bigger firm that's got that web  
25 address.



1 BY MS. SPILLER:

2 Q. Any other utility-imposed barriers  
3 specific to Duke Energy that you considered for  
4 purposes of rendering your testimony?

5 A. Like I mentioned earlier, that's the  
6 way -- the history of the Indian Hills case where  
7 Duke tried to impose an extra financial hurdle on  
8 the governmental aggregator, but the Commission in  
9 its decision and ruling in that case said that it  
10 would suffice that the supplier -- my  
11 understanding was that it would suffice that the  
12 supplier provide the security.

13 Q. But that -- that issue isn't present in  
14 the context of this ESP; correct?

15 A. I would believe that if -- given that the  
16 Commission has ruled on it and ruled in -- very  
17 specifically in their way, I guess it wouldn't be  
18 an issue going forward.

19 Q. Do you know if Duke Energy Ohio's tariffs  
20 permit CRES providers to customize Duke Energy  
21 Ohio's billing systems?

22 A. I wouldn't know specifically, but based  
23 on my discussions, I know that since you couldn't  
24 accommodate a discount off the SSO, that would be  
25 an example where they weren't able to accommodate.

1 I think, you know, utility billing systems are  
2 very -- We deal with utility billing systems, you  
3 know, trying to get this bit of information in a  
4 bill or that bit of information.

5 It's very -- It's very hard to get a  
6 change on a bill because of the space  
7 requirements, the -- you know, the information  
8 you're trying to portray, the accuracy. It's  
9 always a decision, you know, how much more  
10 information you're going to get, what kind of  
11 changes. So it's a change in a billing  
12 determinant to reflect on the bill, to me, it's  
13 always been portrayed as something that's not  
14 automatic, it's something that has to go through a  
15 lot of review and has to go through IT. There's  
16 usually dollars, you know, that follow IT, so....

17 Q. And is your opinion, again, sir, based on  
18 your conversation with Mr. Burns?

19 A. What I just said?

20 Q. Yes, sir.

21 A. No. That's just my, you know, general  
22 knowledge being at OCC and dealing with billing  
23 issues and actually how bills -- how a bill gets  
24 formatted.

25 Q. Sir, if you could turn to Page 11 of your

1 testimony, please. There you reference various  
2 provisions of Senate Bill 221 now codified in  
3 Section 4928 of the Revised Code.

4 The first provision that you refer to  
5 under the bullet point on Line 7 is RC 4928.20(I);  
6 correct?

7 A. That's correct.

8 Q. That provision speaks to phase-in prices;  
9 correct?

10 A. Just make sure that... What was your  
11 question again? I'm sorry.

12 Q. Sure. This particular subsection of  
13 4928.20 with its cross-reference to 4928.144 deals  
14 with phase-ins, correct, phase-ins of rates or  
15 prices?

16 You may need to similarly refer to  
17 Subpart 144. You'll note the cross-reference in  
18 there, sir.

19 A. Yes.

20 Q. What phase-in prices or rates exist under  
21 Duke Energy's proposed ESP?

22 A. I would say my recollection is that  
23 there's -- there's none because I'm sure our  
24 office would oppose them.

25 (Laughter.)

1 Q. The next provision that you reference is  
2 Subpart (J) of Revised Code Section 4928.20, which  
3 concerns, in part, standby service; correct?

4 A. Yes.

5 Q. What is standby service under Senate  
6 Bill 221, sir?

7 A. It has the meaning of provision (B)(2)(e)  
8 of Section 4928.143 of the Revised Code.

9 Q. Is that based upon those references that  
10 your attorney just pointed out for you, sir?

11 A. I was getting there on my reading of the  
12 statute.

13 Q. Do you know, Mr. Gonzalez, whether  
14 standby service is defined under Senate Bill 221?

15 A. Trying to find that reference.

16 Q. Oh, yes, sir.

17 THE WITNESS: You have it? Been very  
18 helpful, Paul.

19 MS. SPILLER: My trusted colleague can  
20 generally locate any word in a statute very  
21 quickly.

22 MR. COLBERT: Thank you.

23 MS. SPILLER: It's a skill.

24 THE WITNESS: So is this -- I was looking  
25 at (B)(2)(e) of Section 4928.143.

1 MR. COLBERT: That's it.

2 THE WITNESS: That's it.

3 (Recess taken.)

4 BY MS. SPILLER:

5 Q. Mr. Gonzalez, before we took the break, I  
6 had asked you to identify for me, please, where  
7 standby service is identified under Senate Bill --  
8 or, within Senate Bill 221. Have you been able to  
9 locate that definition while on break, sir?

10 A. Yes, I have.

11 Q. And where is it located, please?

12 A. It's on (B) (2) (d).

13 Q. Of what section, please?

14 A. Of Section 4928.143.

15 Q. And what is the definition of standby  
16 service contained within Subpart (B) (2) (d), as in  
17 dog, of 4928.143?

18 A. I would point out, first of all, that  
19 it's not a definition in the traditional sense  
20 where they define a term at the beginning of the  
21 statute, but it's my understanding it says it's  
22 condition or charges relating to the limitation on  
23 customer shopping for retail service. So, for  
24 example -- I'm sorry. That's what it says. So it  
25 speaks to bypassability, standby, backup,

1 supplemental power, default power.

2 Q. But what is standby service under Senate  
3 Bill 221 as you understand the word, sir, or term?

4 A. It's -- This is a long reference, but  
5 standby -- and, again, my understanding is  
6 standby, backup, supplemental, it's -- it's --  
7 it's if you bypass to choice the incumbent  
8 utility, if there's a charge for the utility  
9 having to provide -- provide contingency power,  
10 you can come back on.

11 Q. Does Duke Energy Ohio charge separately  
12 for standby service for residential customers?

13 A. No. My understanding, it's not for  
14 residential customers.

15 Q. So how then, sir, is -- is, within your  
16 testimony, Revised Code Section 4928.20(J),  
17 relevant to the issue of governmental aggregation  
18 in the context of Duke Energy's ESP?

19 A. I think it's relevant in the sense that  
20 the -- I believe the General Assembly was  
21 concerned of any standby -- you know, any  
22 standby-type charges that were placed on retail  
23 choice companies. And in a sense, while I would  
24 say there's no rate-defined, you know, standby, I  
25 think in the Stipulation there's no standby

1 charge, but I would -- I would expand my  
2 definition that the SR- -- the SRA-SRT could be --  
3 I think that was my understanding, could be looked  
4 at as a type of a standby charge because it's a  
5 charge for capacity responsibility that if  
6 you're -- if you're -- if you leave the system,  
7 you're still responsible to pay.

8 Q. And is that description of Rider SRA-SRT  
9 one that you arrived at based upon your own review  
10 of Duke Energy Ohio's application in this matter?

11 A. Based on Duke's application, based on the  
12 testimony of Mr. Smith where he talks about that  
13 particular rider.

14 Q. What is your -- More specifically,  
15 please, Mr. Gonzalez, what is your understanding  
16 of the purpose of Rider SRA-SRT?

17 A. It's the system reliability market  
18 capacity purchase charge.

19 Q. What does that mean to you, sir?

20 A. It means that it's a charge to -- it's a  
21 charge for the company to be able to provide  
22 market capacity sufficient to maintain system  
23 reliability. It's a generation charge.

24 Q. And under the Stipulation and  
25 Recommendation filed in this case, Mr. Gonzalez,

1 nonresidential customers could avoid charges under  
2 Rider SRA-SRT if they leave the Duke Energy system  
3 and agree not to return for the three-year term of  
4 the ESP; correct?

5 A. That's correct.

6 Q. And if, in fact, those nonresidential  
7 customers would return to the Duke Energy system,  
8 they would do so at a premium; correct?

9 A. At 115 percent.

10 Q. Okay. 115 percent of the ESP-SSO price;  
11 correct?

12 A. Correct.

13 Q. And you would like residential customers  
14 of governmental aggregators to have that same  
15 arrangement offered to them; correct?

16 A. I would like them to have a similar -- a  
17 similar offer made to them. The difference is my  
18 testimony speaks to the market price or giving  
19 them option of 115 as exists for nonresidential  
20 customers or the market price.

21 Q. Let me ask about that, because you start  
22 your -- your testimony -- In describing the  
23 purpose of your testimony, sir, you state on  
24 Page 3, beginning on Line 18, that you recommend  
25 that Duke's residential customers be allowed to



1 participate in governmental aggregation  
2 opportunities under similar conditions as those  
3 afforded to nonresidential customers; correct?

4 A. The operative word there is "similar".

5 Q. Okay.

6 A. I didn't say "identical". I said  
7 "similar". Similar speaks to the option of them  
8 coming back to a market price.

9 Q. And, in fact, what you want is to afford  
10 residential customers different options with  
11 respect to governmental aggregation; correct?

12 A. We want governmental aggregation to be a  
13 viable option for -- for residential customers.

14 Q. And in formulating this similar, although  
15 different option, you indicate on Page 12 of your  
16 testimony that your legal counsel advised you that  
17 the law provides for the Company purchasing power  
18 at the market price; correct? Line 21, Page 12 of  
19 your testimony, sir.

20 A. Again, I read the statute, and -- but I'm  
21 not a lawyer, so I discussed that -- my  
22 understanding of the statute, I discussed it with  
23 my attorney to some -- I'm not a lawyer and we  
24 came an understanding, yes.

25 Q. And, again, not waiving any objections

1 that we may have to the legal opinions set forth  
2 in your testimony, sir, what is -- what is the  
3 market price that you describe in your testimony?

4 A. It would be the price of the SSO had the  
5 Company gone to market on that particular -- at  
6 that particular period. It's a market price,  
7 whatever the -- Could be the price set by  
8 suppliers in the market. It could be set --  
9 Probably the price set by the Cinergy MISO hub.  
10 It could be a proxy or something. You know, the  
11 price -- It would be informed by that. It would  
12 be informed by whatever the market conditions are.

13 Q. On any given day?

14 A. Yeah. You would have -- Yeah, could be  
15 daily. It could be a contract. You know,  
16 somebody comes back on that -- on that particular  
17 day, they need service for a period of time, you  
18 would make arrangements, maybe contract for  
19 that -- for the period of time.

20 Q. Okay. And with respect to the similar,  
21 although different options available to  
22 residential and nonresidential customers insofar  
23 as governmental aggregation is concerned, if you  
24 could refer, please, Mr. Gonzalez, to Paragraph 20  
25 of the Stipulation, which is Exhibit 2 to your

1 deposition, that begins on Page 31.

2 A. I'm there.

3 Q. This provision that we have discussed,  
4 sir, governmental aggregators in exchange for  
5 avoiding the charges of Rider SRA-SRT, receiving a  
6 shopping credit and providing the commitment not  
7 to return to Duke Energy for the three-year term  
8 of the ESP, that -- that option is discussed in  
9 Paragraph 20; correct?

10 A. It's discussed in Paragraph 20, but with  
11 reference to Paragraph 18.

12 Q. Okay. And in exchange for a rider,  
13 bypassability, the shopping credit and the  
14 commitment not to return, nonresidential customers  
15 have assumed the risk of coming back to Duke  
16 Energy in less than three years at 115 percent of  
17 the ESP-SSO price; correct?

18 A. That's correct, subject to Paragraph 18.

19 Q. Okay. And this particular part of  
20 Paragraph 20, which would include Subparts a, b  
21 and c, the OCC agrees with; correct?

22 A. We don't agree with the 115 percent of  
23 the market price necessarily.

24 Q. With respect to nonresidential customers.

25 A. This provision was a provision that was

1 negotiated by nonresidential customers. I don't  
2 have an opinion, necessarily, about this  
3 provision, I just have an opinion in my testimony  
4 is that the option wasn't made available to  
5 residential customers, but this was something that  
6 my impression is was negotiated with that class,  
7 with the members of that class.

8 Q. And certainly recognizing Footnote 11 and  
9 the issues reserved by the OCC, the OCC is a  
10 signatory to this Stipulation and Recommendation;  
11 correct?

12 A. We are signatories subject to Footnote  
13 11, which we carved out the issues.

14 Q. Understood. And that concerns -- Strike  
15 that.

16 Paragraph 21 of the Stipulation, sir,  
17 speaks to residential customers, including those  
18 of governmental aggregation; correct?

19 A. It discusses some of that, yes.

20 Q. And that provision, sir, provides that  
21 residential customers, including those of  
22 governmental aggregation, are not required to stay  
23 off of Duke Energy's system for any period of time  
24 and, in fact, can return without paying a premium  
25 over and above the ESP-SSO price; correct?

1           A.   That's what it says, but it's silent on  
2   the issue of nonbypassability or the shopping  
3   credit.

4           Q.   Okay. Mr. Gonzalez, you would agree that  
5   allowing residential customers of governmental  
6   aggregators to return to Duke Energy at any time  
7   during the ESP term and at the ESP-SSO price  
8   protects those residential customers from price  
9   uncertainty and volatility; correct?

10          A.   As opposed to what? As opposed to....

11               MS. HOTZ: Could you please clarify?

12               THE WITNESS: Yeah, clarify.

13   BY MS. SPILLER:

14          Q.   I'll read the question again.

15               Allowing residential customers to return  
16   to Duke -- Allowing residential customers of  
17   governmental aggregators to return to Duke Energy  
18   at any time during the ESP term and at the ESP-SSO  
19   price protects those residential customers from  
20   price uncertainty and volatility; correct?

21          A.   Protects them from price uncertainty....

22               MS. HOTZ: Could you read it again,  
23   please?

24               (Question read back as requested.)

25               THE WITNESS: Again, generally speaking,

1 it depends. If we're in a market where prices are  
2 going down, are decreasing, then it may be in the  
3 customer's -- you know, the customer may come back  
4 to an SSO that's -- Strike that.

5 BY MS. SPILLER:

6 Q. Let me see if I can ask another way.

7 Would you agree with me, Mr. Gonzalez,  
8 that allowing a residential customer of a  
9 governmental aggregator to return to Duke Energy  
10 during the -- at any time during the ESP term and  
11 at the ESP-SSO price is more beneficial than that  
12 residential customer returning at 115 percent of  
13 the ESP-SSO price?

14 A. If it's limited to that construct, it's  
15 probably true, but I would say that if that  
16 customer of the governmental aggregation was not  
17 able to be -- not able to benefit from the savings  
18 of the governmental -- for the period they were  
19 under the governmental aggregation, you know, that  
20 would play into the final determination of that.

21 Because, for example, let's say it's a  
22 three-year aggregation, you're on the aggregation  
23 two-and-a-half years, you come back the last six  
24 months to a rate -- SSO rate, whether it's higher  
25 or lower, you have to factor in how much they

1 saved over the prior months to make an evaluation  
2 of whether the customer was better off or not.

3 Q. And what sort of economic analytics did  
4 you -- did you actually perform under that  
5 scenario relative to this case?

6 A. I would say not as sophisticated. I  
7 looked at what I think might be some of the  
8 credits, you know, the -- the savings from both  
9 bypassability and the ride- -- the bypassability  
10 and the shopping credit. And then you weigh that  
11 against, you know, a potential savings on the  
12 supply end. And you have to calculate that over  
13 the years.

14 And when the person comes back, you --  
15 you have to -- you know, you have to assess the  
16 risk that they're going to come back at a rate  
17 that -- you know, at a market rate. That market  
18 rate may be higher than the SS- -- you know, it  
19 may be higher than the SSO-ESP rate, but it may be  
20 lower than the SSO-ESP rate.

21 Q. What would motivate a residential  
22 customer who is subject to a lower market rate,  
23 what would motivate that residential customer to  
24 come back and pay a higher SSO rate?

25 A. They may be upset with the company that's

1 providing service. They may have had problems  
2 when they call up, not having good customer  
3 service.

4 Q. Any other reason?

5 A. It could also be because -- It depends on  
6 what the aggregate -- It's a fixed rate. And if  
7 the fixed rate was originally lower than Duke's  
8 fixed rate, it would be hard to see why they would  
9 want to leave their aggregation.

10 Q. But we're talking market rate. That was  
11 the comparison --

12 A. So why -- what would compel them to come  
13 back to a market rate?

14 Q. What would compel them to leave a market  
15 rate that's lower --

16 A. To leave a rate that's lower than --

17 Q. -- than Duke's and come back to Duke's  
18 ESP-SSO price.

19 A. Their SSO price or the market-based SSO  
20 price?

21 Q. The market -- The market rate. Sir, I'm  
22 speaking of a governmental aggregator.

23 A. Okay.

24 Q. A residential customer of a governmental  
25 aggregator.



1           A.    Yeah. But you said coming back to the  
2 Duke ESP. You asked me coming back to the Duke  
3 ESP price. Are you talking about coming back at  
4 the -- at a market rate?

5           Q.    Coming back to Duke Energy's ESP-SSO  
6 price.

7           A.    There would be no motivation for that.

8           Q.    Okay. You mentioned the cost comparison,  
9 the bypassability of the rider, the shopping  
10 credit, and I believe you said earlier today that  
11 that was about 30- to \$40. Is that an annual  
12 number?

13          A.    Yes.

14          Q.    Okay. In contrast to that, you said,  
15 would be the savings on the supply end.

16          A.    Correct.

17          Q.    What are the savings on the supply end  
18 relative to Duke?

19          A.    If somebody could -- could come in with a  
20 rate that would be lower than Duke's rate with all  
21 its riders and the total rate.

22          Q.    But you don't -- You haven't done any  
23 analysis with respect --

24          A.    Like I said earlier, I'm familiar that  
25 all these ESP cases the utilities filed in July,

1 the prices that they used for the most part were,  
2 you know, "X" amount. And -- And since then,  
3 prices have gone down 8- to \$10 a megawatt-hour.  
4 So you would think that there's an opportunity  
5 for -- there may be an opportunity for a supplier  
6 or somebody to lock into the governmental  
7 aggregated or lock into a lower rate.

8 Q. And I appreciate, sir, that there may  
9 be -- there may be an opportunity and the  
10 possibility does exist. But my question  
11 specifically is whether or not you've performed  
12 any analysis or analytics on that issue, on  
13 determining the savings on the supply end, for  
14 sake of comparing, contrasting these numbers.

15 A. I would say if the market has decreased,  
16 like I said, 8- to \$10 a megawatt-hour and you can  
17 lock in a price and people are taking the new  
18 economic numbers into account, and, you know,  
19 decreasing economic activity and so on, that --  
20 that, you know, that might -- that, along with the  
21 shopping credit and the -- would be -- would make  
22 for a plausible, you know, government aggregation.

23 Q. Sir, again, I understand. But my  
24 question is specific --

25 A. So I've looked at -- You know, I mean, I

1 haven't run spreadsheets, if that's what you're  
2 asking me.

3 Q. That is what I'm asking.

4 A. No, but --

5 Q. The analysis behind your opinion --

6 A. The analysis is looking at the -- you  
7 know, what's happened in the market and looking at  
8 what I have mentioned already, the shopping credit  
9 and the -- the rider, and you put all those things  
10 together.

11 I think it's not my -- I'm not the  
12 governmental aggregator. I'm sure the  
13 governmental aggregator, or person, or the CRES  
14 provider, those are -- those are metrics they work  
15 with all the time.

16 I'm just saying as an economist, looking  
17 at this and looking at what kind of margin,  
18 headway you need to make something like this work,  
19 I think that given the market conditions, given  
20 the conditions looking forward with the economy  
21 and looking at the -- the amount of the rider and  
22 the shopping credit, that it's -- you know,  
23 it's -- I wouldn't -- I wouldn't discount a  
24 governmental aggregation taking place, you know,  
25 being viable. But I'm not a governmental

1 aggregator, so I'm -- you know, they have their  
2 own metrics on what it takes to -- to move  
3 forward.

4 Q. So unlike the back-of-the-envelope  
5 calculations that you did after Mr. Smith's  
6 testimony, you don't have any dollar amount  
7 attributable to the savings on the supply end,  
8 correct?

9 A. Just what I've read in testimony and  
10 stated now, which is, you know, 8- to \$10 a  
11 megawatt-hour decrease over what it was in July,  
12 over what the long-term expectations were in July.

13 Q. Mr. Gonzalez, you would agree with me  
14 that market prices can be uncertain and volatile,  
15 wouldn't you?

16 A. Market prices can be, that's correct.  
17 But for residential customers, if they're volatile  
18 going down, I -- that's something that we would  
19 like to ride that wave if we could.

20 MR. YURICK: I apologize. I have a 3:30  
21 that I have to get to.

22 MS. SPILLER: Thanks, Mark.

23 (Mr. Yurick exits the conference room.)

24 BY MS. SPILLER:

25 Q. Mr. Gonzalez, does allowing residential

1 customers of governmental aggregators to return to  
2 Duke Energy at any time during the term of the  
3 ESP, and at the ESP-SSO price, promote  
4 governmental aggregation?

5 A. Not if they can't bypass the rider or get  
6 the shopping credit.

7 Q. And expose themselves to paying 115  
8 percent of the ESP-SSO?

9 A. At the market rate.

10 Q. Okay. Well, let's talk about that for a  
11 minute.

12 A. Uh-huh.

13 Q. And, again, you really don't want the  
14 same options presented to residential and  
15 nonresidential; you want some differences for  
16 residential customers, correct?

17 A. We -- We would like them to be able to  
18 come back at the market rate or -- or give them  
19 the option of market rate or 115.

20 Q. And it is your opinion, based upon  
21 conversations with counsel, that they can be  
22 allowed to do that under the law?

23 A. It says, "Any such customer that returns  
24 to the utility for competitive retail service  
25 shall pay the market price of power incurred by

1 the utility to serve that customer...."

2 Q. Okay. And are you reading Subpart (J) --

3 A. Correct.

4 Q. -- of RC 4928.20?

5 A. Uh-huh. Yes.

6 Q. Okay.

7 A. Yes, I am.

8 Q. And within that provision, sir, there is  
9 certainly, unlike standby service, a bit more of a  
10 definition of market price, correct?

11 A. It says, "...market price shall include,  
12 but not be limited to, capacity and energy  
13 charges...", yes. It's fairly long.

14 Q. Okay. So market price includes capacity  
15 and energy charges, right?

16 A. Ancillary services...

17 Q. I'm sorry.

18 A. Yes.

19 Q. We've got Tammy on the phone, so we want  
20 to make sure she can hear.

21 A. Yes.

22 Q. If you would just delineate, please, or  
23 identify for the record what would constitute the  
24 market price.

25 A. According to Section (J), it's capacity,

1 energy, RTO charges, and all other costs incurred  
2 by the utility that are associated with procuring,  
3 administration, so on.

4 Q. Thank you.

5 Sir, based upon the definition of market  
6 price that you've just read, the capacity charges  
7 would also include Rider SRA-SRT, correct?

8 A. If that's the -- the capacity  
9 responsibility charge, I guess, consistent with  
10 the capacity purchase charge, then that's part of  
11 the costs of providing generation service.

12 Q. Mr. Gonzalez, do you know whether the  
13 capacity charges that are embedded within Duke  
14 Energy's generation prices are more or less than  
15 the market capacity charges?

16 A. I don't recall offhand.

17 Q. Would you agree with me, Mr. Gonzalez,  
18 that nonresidential and residential customers are  
19 not similarly situated when it comes to responding  
20 to increases in price?

21 A. What do you mean by "similarly situated"?

22 Q. Let me rephrase it, then.

23 Do you think a nonresidential customer is  
24 better able to respond to an increase in their  
25 electric costs than a residential customer?

1           A.    No, I don't believe so. I think if you  
2    have a -- if you have a manufacturer that's having  
3    a lot of outside competition, foreign competition,  
4    they may not be able to sustain any price increase  
5    before shutting down. So you can't make a general  
6    blanket statement like that.

7           MS. HOTZ: Could you read that answer  
8    back, please?

9           (Answer read back as requested.)

10   BY MS. SPILLER:

11           Q.    Would you agree, Mr. Gonzalez, that the  
12    predictability in the amount of generation needed  
13    to serve an electric utility system is desirable?

14           A.    Predictability... Could you rephrase  
15    that, please?

16           Q.    Predictability in the amount of  
17    generation needed to serve --

18           (Cell phone interruption.)

19           THE WITNESS: I'm sorry.

20           (Discussion held off the record.)

21           THE WITNESS: Can you ask -- I'm sorry.  
22    I apologize for that.

23   BY MS. SPILLER:

24           Q.    No, that's fine. Understood.

25           Would you agree with me, sir, that



1 predictability in the amount of generation needed  
2 to serve an electric utility system is desirable?

3 A. I think certainty in any aspect is  
4 desirable. It -- But there is analytical tools to  
5 deal with uncertainty, deal with -- You know,  
6 there's ways to manage risks and so on. So to the  
7 extent that there is uncertainty, that's something  
8 that the industry has taken into account and there  
9 are analytical tools to handle, grapple -- you can  
10 become -- you can handle the uncertainty that  
11 exists. So in and of itself, it's something, you  
12 know, risks that -- predictability and uncertainty  
13 can be managed. There are tools to manage that.

14 Q. Well, let me see if I can ask this  
15 another way.

16 Absent predictability in the amount of  
17 generation needed to serve a system, the rates  
18 that customers pay could be adversely affected,  
19 particularly if that supplier needs to go on the  
20 open market and acquire generation service,  
21 correct?

22 A. What I stated was that, you know, there  
23 are market mechanisms to deal with, you know,  
24 supply and pricing. And -- And if you want to  
25 take a position where you want to have less risks

1 and more predictability, you know, there are  
2 instruments to deal with that. If you want to  
3 take more risk and be -- they are subject -- you  
4 know, your preferences allow for differences or  
5 higher risk profile, you'll deal with it that way.  
6 It's up to -- You know, Duke is in the market, you  
7 know, buying and selling every day, so....

8 - - -

9 Thereupon, Duke Exhibit No. 4 was marked  
10 for purposes of identification.

11 - - -

12 BY MS. SPILLER:

13 Q. Mr. Gonzalez, I'll hand you what has been  
14 marked as Exhibit 4 to your deposition.

15 MS. SPILLER: Ann, you need a copy?

16 MS. HOTZ: I have one.

17 MS. SPILLER: Okay.

18 BY MS. SPILLER:

19 Q. I represent to you that this is a copy of  
20 the Second Supplemental Testimony of Paul Smith  
21 filed on behalf of Duke Energy Ohio.

22 Is this the testimony, sir, that you  
23 reviewed in connection with preparing your own  
24 testimony for this matter?

25 A. Yes.

1 I've read a lot of Paul's testimony this  
2 year.

3 Q. And I would ask you, sir, to turn to  
4 Page 13 of Mr. Smith's testimony, the testimony  
5 that begins on Line 9. And I will simply read it  
6 again. "Specifically, it was discussed that the  
7 benefit to residential consumers of avoiding Rider  
8 SRA-SRT and receiving the shopping credit would  
9 provide minimal financial benefit that does not --  
10 does not outweigh the risks of price volatility  
11 and system reliability that could occur should the  
12 residential consumer desire to return to DE-Ohio  
13 for supply service."

14 Did I read that correctly?

15 A. Where was it discussed? Are you talking  
16 about internal to Duke when you guys had a meeting  
17 or....

18 Q. Sir, this is in the context of the  
19 settlement discussions.

20 MS. HOTZ: Objection. This shouldn't be  
21 discussed at all. It's not admissible evidence.  
22 This is -- This was made in the -- in an act of  
23 compromise and it is not admissible.

24 MS. SPILLER: I certainly would respond,  
25 Ann, that Mr. Smith's testimony directly in

1 response to the particular issue carved out by the  
2 OCC for litigation is, indeed, relevant.

3 MR. IDZKOWSKI: It's not relevant. It's  
4 inadmissible.

5 MS. HOTZ: It's inadmissible evidence.  
6 It's confidential. And I really don't think that  
7 our witness should discuss it on the record, on  
8 the public record.

9 MS. SPILLER: Well, but for all intents  
10 and purposes, he has indicated that, in his  
11 opinion, these risks are not outweighed by the  
12 benefits. I mean, his opinion is contrary --

13 MS. HOTZ: He --

14 MS. SPILLER: -- to his testimony.

15 MR. IDZKOWSKI: That's --

16 MS. HOTZ: Contrary to whose testimony?

17 MS. SPILLER: To Mr. Smith's testimony.

18 MS. HOTZ: If you want to talk to  
19 Mr. Smith's -- If you want to discuss Mr. Smith's  
20 testimony with Wilson, you should discuss it  
21 outside the area of negotiations, outside of the  
22 context of what was negotiated and what was said  
23 in negotiations.

24 If you want to compare abstractly  
25 Mr. Smith's -- Mr. Smith's position on certain

1 items in his testimony with what Wilson believes,  
2 that's fine; but I don't want you asking him any  
3 questions in relationship to what was discussed in  
4 negotiations.

5 MS. SPILLER: Let's go off the record for  
6 a moment, please.

7 (Discussion held off the record.)

8 MS. SPILLER: We can go back on the  
9 record.

10 BY MS. SPILLER:

11 Q. Mr. Gonzalez, if we could advance to  
12 Line 17 of Mr. Smith's testimony. And, again,  
13 this is testimony that you've relied upon for  
14 purposes of fashioning your own testimony.

15 He indicates that "When a consumer  
16 communicates...."

17 A. I'm sorry, what page?

18 Q. Page 13, Line 17.

19 A. Okay.

20 Q. "When a consumer communicates their  
21 intent to stay off of the DE-Ohio system through a  
22 specific date, DE-Ohio is no longer obligated to  
23 maintain the capacity, or the commodities to  
24 supply energy, to the departing consumer."

25 Did I read that correctly, sir?

1 A. Yes, you did.

2 Q. Do you agree with that statement?

3 A. Yes.

4 Q. If we could continue on down that  
5 paragraph, but I'm going to start on Line 21.

6 Mr. Smith indicates that, "If the  
7 consumer subsequently returns before their  
8 commitment date, DE-Ohio is compelled to secure  
9 the capacity and commodities, often with very  
10 little advance notice."

11 Did I read that correctly, sir?

12 A. When you say, "consumer", that could be a  
13 nonresidential consumer also. It applies to  
14 nonresidential consumers also, that statement.

15 Q. Correct.

16 A. Well --

17 Q. But did I read the statement correctly?

18 A. You read it correctly. And what I'm  
19 saying is it would apply to nonresidential  
20 consumers that are in -- that are also -- that  
21 were a nonresidential consumer aggregation.

22 Q. I understand. But do you agree with that  
23 statement that I have read correctly?

24 A. There's another part of that where you  
25 say, "...often with little -- very little advance

1 notice." Those are -- Those are things that could  
2 be written into a contract, I would think, an  
3 aggregation contract that anybody wants to leave  
4 has to give Duke, you know, certain notice,  
5 60 days, 80 days, 90 days, whatever.

6 Q. Well --

7 A. So I don't agree with the very little  
8 notice, advance notice. I mean, that could be  
9 worked into the -- I mean, if you were going to  
10 construct the aggregation and one of the  
11 contingencies of the aggregation is that customers  
12 may leave, you know, first of all, some customers,  
13 they just opt out, so you lose -- but you would --  
14 you would build that into your -- your contract.  
15 You may have some different kind of notice  
16 provision.

17 Q. Are you aware, sir, of any public  
18 utility -- of Duke Energy Ohio having any  
19 contracts with governmental aggregators?

20 A. No. That's not -- My statement was if  
21 there was some kind of governmental aggregation  
22 contract that went through the whole process, that  
23 there could be conditions in that that would state  
24 when you're informing the customer, that if they  
25 want to leave, they have to give certain notice.

1 And then in that sense, it would relieve some of  
2 the burden on Duke -- on the Duke --

3 Q. But your --

4 A. -- company.

5 Q. -- answer, sir, assumes that there would  
6 be a contract between Duke Energy and the  
7 governmental aggregator, correct?

8 A. No, it would be the governmental  
9 aggregator, the customer, and the -- and the  
10 supplier. But the governmental aggregator could  
11 put a condition so that -- you know, it could put  
12 a condition so that the -- you know, to inform the  
13 customer that -- you know, the notice.

14 Q. Is there a -- Is there a statutory  
15 requirement for such a provision being included in  
16 a contract?

17 A. I'm not aware of any.

18 Q. Okay. And, sir, would you agree with me  
19 that, just generally speaking, the request for a  
20 particular requirement that is not mandatory or  
21 compelled by law may result in an increase in  
22 price?

23 A. Can you restate that?

24 Q. Sure. Sure.

25 Would you agree with me that the -- in



1 exchange -- that in exchange for securing a  
2 nonmandatory commitment, the contracting party may  
3 be compelled to pay a higher price?

4 A. That's a possibility, may. May not, but  
5 may.

6 Q. Mr. Gonzalez, you conclude your testimony  
7 by indicating -- by reserving the right to revise  
8 and/or supplement it pending, among other things,  
9 changes in financial data, correct?

10 A. Yes.

11 Q. And how will changes in the financial  
12 data filed in this case affect your opinions?

13 A. Well, for example, if Duke came back with  
14 a filing or an adjustment that said the SRT-SRA is  
15 now -- is double, then that would make my  
16 testimony even more compelling. Because then  
17 there's -- there's more of a chance -- everything  
18 else being equal, there's more of a chance for a  
19 governmental aggregation to take place.

20 Q. You mentioned, sir, your experience with  
21 governmental aggregation within FirstEnergy's  
22 service territory.

23 FirstEnergy, its operating companies have  
24 a fair amount of unavoidable charges, correct?

25 A. They have unavoidable charges.

1 Q. And has the existence of those  
2 unavoidable charges, in your opinion, hampered  
3 governmental aggregation within FirstEnergy's  
4 service territory?

5 A. I would say that that's been -- that  
6 that's been a very contentious area when  
7 negotiations have taken place.

8 Q. And, again, I don't want to get everyone  
9 all excited about negotiations.

10 In your opinion, has the existence of  
11 unavoidable charges hampered governmental  
12 aggregation within FirstEnergy's service  
13 territory?

14 A. I would answer that by saying that,  
15 everything else being equal, there are a lot of  
16 unavoidable charges, especially the generation  
17 charges, I would think that would hamper.

18 Q. Sir, you are aware that a large  
19 governmental aggregation arrangement has been  
20 entered into within FirstEnergy's territory with  
21 FPL, Florida Power & Light? Are you aware of  
22 that?

23 A. The extent of my knowledge is that there  
24 is a -- some understanding that, depending on  
25 what -- you know, depending what happens with the

1 FE case, there may be an agreement. I don't know  
2 whether that's been cemented and ready to go. I  
3 think it's all a function of what happens with  
4 the -- how the FirstEnergy ESP case gets resolved  
5 and the dis- -- I guess the ESP case gets  
6 resolved.

7 MS. SPILLER: Let's go off the record for  
8 a moment.

9 (Discussion held off the record.)

10 MS. SPILLER: We can go back on.  
11 I don't have any further questions.  
12 Thank you, sir.

13 THE WITNESS: Thank you.

14 MR. COLBERT: Thank you.

15 MS. HOTZ: No questions. Thanks.

16 MS. HEIGEL: Tammy? I'm sorry.

17 MR. SMITH: She doesn't get to ask.

18 MR. TURKENTON: I'm not an attorney.

19 Thanks.

20 (Signature not waived.)

21 - - -

22 (Thereupon, the deposition was concluded  
23 at 3:36 o'clock p.m. on Friday,  
24 November 7, 2008.)

25 - - -

A F F I D A V I T

- - -

STATE OF \_\_\_\_\_, )

) SS:

COUNTY OF \_\_\_\_\_, )

Wilson Gonzalez, having been duly placed  
under oath, deposes and says that:

I have read the transcript of my  
deposition taken on Friday, November 7, 2208, and  
made all necessary changes and/or corrections as  
noted on the attached correction sheet, if any.

\_\_\_\_\_  
Wilson Gonzalez

Placed under oath before me and  
subscribed in my presence this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_.

- - -

**MC GINNIS & ASSOCIATES, INC.**  
614-431-1344 COLUMBUS, OHIO 800-498-2451

C E R T I F I C A T E

State of Ohio, )  
 ) SS:  
County of Licking, )

I, Deborah J. Holmberg, Registered Merit Reporter and Notary Public in and for the State of Ohio, hereby certify that the foregoing is a true and accurate transcript of the deposition testimony, taken under oath on the date hereinbefore set forth, of Wilson Gonzalez.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which the deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action.

Deborah J. Holmberg,  
Registered Merit Reporter  
and Notary Public in and  
for the State of Ohio

My Commission Expires: October 7, 2011

