

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

PROCEEDINGS

before Ms. Christine Pirik and Mr. Gregory Price,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-C,
Columbus, Ohio, called at 9:00 a.m. on Monday,
October 27, 2008.

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VOLUME VIII

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1 Monday Morning Session,
2 October 27, 2008.

3 - - -

4 EXAMINER PIRIK: We will go on the
5 record. Mr. Weldele.

6 MR. WELDELE: Your Honor, the parties
7 have previously agreed to waive the cross-examination
8 of Steve Millard CSE would like to have Mr. Millard's
9 testimony marked as CSE Exhibit 1 and entered into
10 the record.

11 EXAMINER PIRIK: The document will be
12 marked as CSE Exhibit 1.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 EXAMINER PIRIK: Are there any objections
15 to the admission of this exhibit?

16 MR. BURK: No objection, your Honor.

17 EXAMINER PIRIK: Hearing none, CSE
18 Exhibit 1 will be admitted into the record.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER PIRIK: Mr. Lavanga, is your
21 witness the first witness for today?

22 MR. LAVANGA: I believe so, your Honor.
23 Your Honor, Nucor calls Dr. Dennis Goins.

24 And, your Honor, I would just like to
25 state for the record that consistent with the ruling

1 of the Bench on the distribution case and the issues
2 that are being addressed in the distribution case, we
3 are going to remove portions of Dr. Goins' testimony
4 addressing the 60-minute demand measurement, which is
5 an issue that was litigated and addressed in the
6 distribution case.

7 We do have an errata here that includes
8 that -- those changes and a couple of additional
9 changes, and we plan to introduce that as -- or mark
10 it as an exhibit momentarily.

11 EXAMINER PIRIK: Okay. Do you want to
12 hand that out?

13 MR. LAVANGA: Yes.

14 (Witness sworn.)

15 MR. LAVANGA: Nucor would like to mark as
16 Nucor Exhibit 3 which is the prefiled direct
17 testimony of Dr. Goins.

18 EXAMINER PIRIK: The document will be so
19 marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MR. LAVANGA: Nucor would also like to
22 mark Nucor Exhibit No. 3 which is the errata.

23 EXAMINER PIRIK: Do you mean 3A?

24 MR. LAVANGA: 3A is fine.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

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2

DENNIS W. GOINS

3

being first duly sworn, as prescribed by law, was

4

examined and testified as follows:

5

DIRECT EXAMINATION

6

By Mr. Lavanga:

7

Q. Dr. Goins, do you have before you what

8

has been marked as Nucor Exhibit 3?

9

A. I do.

10

Q. And is that your prefiled direct

11

testimony in this proceeding?

12

A. It is.

13

Q. Do you also have before you what has been

14

marked Nucor Exhibit 3A?

15

A. I do.

16

Q. And is that the errata to your direct

17

testimony?

18

A. It is.

19

Q. Would you please walk through these

20

changes.

21

A. Yes. There are seven changes beginning

22

at page 7, line 10, the phrase "time-of-rate options"

23

should be changed to "time-of-day rate options."

24

At page 7, line 14, the word

25

"FirstEnergy's" should be changed to "FirstEnergy."

1 At page 8, lines 25 through 27, those
2 lines should be deleted.

3 At page 9, lines 12 to 14, the sentence
4 in those lines should be changed to read as follows:
5 "For example, increases will approach or exceed
6 50 percent for some transmission customers, like
7 Nucor, served under interruptible rates."

8 At page 30, lines 18 and 19, the sentence
9 in those lines should be changed to read: "I have
10 comments regarding FirstEnergy's proposed rider MDS."

11 At page 30, lines 21 through 26, those
12 lines should be deleted.

13 And at page 31, lines 4 through 26, those
14 lines should be deleted.

15 Q. Dr. Goins, aside from the changes you
16 just described in your errata, do you have any other
17 changes to your testimony?

18 A. No.

19 Q. If I were to ask you the same questions
20 this morning as the questions contained in the
21 testimony subject to the errata, would your answers
22 be the same?

23 A. They would.

24 MR. LAVANGA: Your Honor, the witness is
25 available for cross-examination.

1 EXAMINER PIRIK: Thank you.

2 Mr. Small.

3 MR. SMALL: No questions.

4 EXAMINER PIRIK: Mr. Bell.

5 MR. BELL: No questions.

6 EXAMINER PIRIK: Mr. Weldele.

7 MR. WELDELE: No questions, your Honor.

8 EXAMINER PIRIK: Mr. Breitschwerdt.

9 MR. BREITSCHWERDT: No questions, your
10 Honor.

11 EXAMINER PIRIK: Mr. Boehm.

12 MR. BOEHM: No questions.

13 EXAMINER PIRIK: Mr. Kutik.

14 MR. KUTIK: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Kutik:

18 Q. Good morning.

19 A. Good morning.

20 Q. Doctor, would it be fair to say any
21 studies, analyses you have done would be reflected in
22 your testimony?

23 A. Yes, in general they would in one way or
24 another.

25 Q. Okay. And to the extent that you have

1 relied on the studies or analyses of others, those
2 have been cited or discussed in your testimony,
3 correct?

4 A. I have cited those that at the time I
5 prepared the testimony were relied on. Since that
6 time I have identified other studies that have, in
7 fact, supported conclusions that I made in my
8 testimony, but I have not cited those in the
9 testimony.

10 Q. Those do not appear in your testimony.

11 A. They do not.

12 Q. And for your work in this matter, would
13 it be correct to say that you've become thoroughly
14 familiar with the terms and conditions, the energy
15 usage, the load patterns of Nucor Steel Marion?

16 A. No.

17 Q. Well, let's talk about what you do know
18 then.

19 Would it be correct to say that Nucor
20 Steel is an arc furnace?

21 A. It does have an arc furnace load.

22 Q. Okay. And as an arc furnace load, would
23 it be fair to say that can be somewhat variable?

24 A. Yes.

25 Q. And you haven't done an analysis of

1 Nucor's load, correct?

2 A. In what sense?

3 Q. Well, you haven't done an analysis of
4 Nucor's load factor, correct?

5 A. That's correct.

6 Q. But you are generally aware of what --
7 Nucor's load factor is somewhat in the neighborhood
8 of 65 to 75 percent?

9 A. I'm aware for steel minimills of which
10 Nucor is an example in this case, those minimills
11 generally have load factors on the order of 65 to 75
12 percent. They can deviate but that's just a
13 reference point.

14 Q. You don't know what Nucor's load factor
15 is?

16 A. No, I do not.

17 Q. So would it be fair to say you don't know
18 whether Nu -- whether Nucor's load factor is better
19 or worse than the average industrial customer for the
20 FirstEnergy companies?

21 A. I do not.

22 Q. Now --

23 A. It's very difficult in particular for
24 when you say the average industrial customer to
25 classify Nucor as an average industrial customer. It

1 is an interruptible -- we are talking about an
2 interruptible load.

3 The vast majority of the load that is
4 served by FirstEnergy is a firm load. You are, in
5 essence, talking about two different types of loads,
6 in essence, two different types of customers.

7 Q. All right. Well, do you know how Nucor's
8 load factor compares to the average industrial
9 interruptible customers for the companies?

10 A. No, I made no comparisons with other
11 interruptible customers.

12 Q. All right. Now, would it be correct to
13 say you don't know if Nucor uses a majority of its
14 energy during on-peak versus off-peak periods?

15 A. As I said, I have made no analysis of
16 this load factor, so I don't know whether its energy
17 usage is most prevalent whether at peak or off-peak
18 periods. I also don't know what definition you are
19 using for "peak" and "off-peak" periods.

20 EXAMINER PIRIK: I'm sorry, we forgot to
21 turn on the microphone. Is it on? I don't think so.
22 You have to turn it around in the back and there's a
23 switch.

24 MR. KUTIK: This is a test, Dr. Goins.

25 THE WITNESS: Well, I have failed.

1 MR. KUTIK: You are absolved since the
2 batteries don't work.

3 THE WITNESS: Oh, the blue light comes
4 on. Thank you.

5 EXAMINER PIRIK: I'm sorry.

6 MR. KUTIK: May I proceed?

7 EXAMINER PIRIK: Yes.

8 Q. (By Mr. Kutik) Is it true that Nucor
9 service is provided under a tariff?

10 A. The bulk of the service is my
11 understanding is made under rider 29, the existing
12 rider 29.

13 Q. That's a tariff?

14 A. Yes.

15 Q. And have you reviewed the terms of that
16 tariff?

17 A. I looked at it when I initially started
18 this case. I haven't reviewed it in the last few
19 weeks.

20 Q. Okay. Would it be fair to say that that
21 tariff has conditions for interruptible service?

22 A. Yes, it does by interruptible.

23 Q. And the company has the right to
24 interrupt both for emergency reasons and for economic
25 reasons, correct?

1 A. Under the existing rider 29, yes.

2 Q. Dr. Goins, if you could just keep your
3 voice up just a tad, I would appreciate it.

4 And with respect to the companies' right
5 to interrupt for economic reasons, there is no timing
6 on that, correct?

7 A. There is no limit to the number and hours
8 of interruptions that could be called for economic
9 purposes.

10 Q. All right. Now, before Nucor was on the
11 tariff, this particular tariff, do you know what the
12 terms of service for Nucor were?

13 A. No.

14 Q. Do you know, for example, whether Nucor
15 was receiving service under a special contract?

16 A. I do not know.

17 Q. Are you aware of the circumstances under
18 which rider 29 was created?

19 A. No.

20 Q. Do you know whether rider 29 was the
21 basis of negotiations between parties or a
22 cost-of-service study?

23 A. I have no idea.

24 Q. And, Dr. Goins, I want to ask you a
25 question that was asked of one of FirstEnergy's

1 witnesses in this case that I asked Dr. Baron, and
2 that is would you agree that reasonable people may
3 disagree about what constitutes reasonable rate
4 design?

5 A. Well, yes, except I generally try to
6 consider my rate designs more reasonable than others.

7 Q. And you are no different -- you are no
8 different than anybody else who holds an opinion and
9 thinks it's reasonable, correct?

10 A. Probably not.

11 Q. Now, cost of service has traditionally
12 been one consideration that has been taken into
13 account by regulatory commissions in setting rates,
14 correct?

15 A. That's correct. In the past 25 years
16 it's probably been the dominant factor.

17 Q. But there are a host of other factors
18 that regulatory commissions take into account,
19 correct?

20 A. Yes.

21 Q. One of those being concept of gradualism.

22 A. That's correct.

23 Q. Another being rate stability.

24 A. That's correct.

25 Q. Now, did you testify in the companies'

1 distribution case?

2 A. I did.

3 Q. And were you aware that in the
4 distribution case the company made an effort to
5 consolidate a number of tariffs?

6 A. Yes, I was generally aware of that.

7 Q. And the companies were trying to provide
8 some uniformity or attain some uniformity across the
9 three companies, correct?

10 A. I recall that was one of the stated
11 reasons. I don't know if that was the primary
12 reason.

13 Q. And that reason in and of itself is not
14 an illegitimate or unreasonable reason, correct?

15 A. Well, again, it depends on the context of
16 which it is applied. It could be applied in an
17 unreasonable manner, therefore, it becomes
18 unreasonable.

19 I have made no judgment as to whether the
20 proposed consolidation was reasonable in and of
21 itself with the three companies.

22 Q. The goal of consolidation is not an
23 unreasonable one, correct?

24 A. Again, it depends on the circumstances in
25 which consolidation is applied. There is fairly

1 standard and uniform loads across groups, across
2 companies. And historical circumstances have
3 generally been the same for customers across
4 companies.

5 Then consolidation can't see general --
6 proceed generally in a reasonable manner without
7 impacting or affecting particular customers too
8 severely. But, again, it depends totally on the
9 circumstances that exist.

10 Q. So, Doctor, are you unwilling to say that
11 attempting to achieve uniformity across the three
12 companies is a legitimate goal for the companies to
13 attempt?

14 A. No. I mean, you can attempt to achieve
15 it, but whether that is reasonable in its application
16 is what I am saying, it may or may not be reasonable.

17 Q. So you don't disagree with the goal; you
18 may disagree with its application; fair to say?

19 A. Fair to say, as a business objective the
20 rate manager can certainly have as a goal for the
21 company to consolidate rates.

22 Q. And one of the reasons behind that goal
23 would be to try to treat similarly-situated customers
24 similarly, correct?

25 A. That could be one reason, yes.

1 Q. Now, would you agree with me that many of
2 the elements that currently exist in the companies'
3 rate design were created several years ago?

4 A. Yes.

5 Q. And they were created in times when the
6 three companies each owned their own generation and
7 operated their own transmission, correct?

8 A. Yes.

9 Q. And today the generation and transmission
10 function is essentially uniform across the three
11 companies, correct?

12 A. Well, I am not sure about uniform as the
13 best. They are essentially purchasers of energy.

14 Q. Now, with respect to the companies' cost
15 of service for generation service, would you agree
16 with me that their cost is what they pay to their
17 generation supplier, in this case FES?

18 A. Well, yes, their supply cost is whatever
19 is reflected in the payments they make under a
20 contract.

21 Q. And because the companies have no
22 generation units or generation plants, they have no
23 fixed costs with respect to generation service,
24 correct?

25 A. Well, it may or may not be true. Again,

1 there is no contract for the ESP going forward
2 between FirstEnergy and FirstEnergy Solutions. So we
3 don't know what that contract will look like.

4 It could be that, for example, the
5 contracts were negotiated as a cost-of-service
6 contract. It could be that there would be fixed
7 obligations for generation.

8 Within the ESP Application itself there
9 are designated generation units that are identified
10 as units that will, in fact, supply the energy that's
11 delivered to FirstEnergy. And it's totally related
12 to how the cost of those units are reflected in the
13 contract between FirstEnergy and FirstEnergy
14 Solutions that will determine the answer to your
15 question.

16 Q. But those fixed costs would be fixed
17 costs of FES, not the companies, correct?

18 A. No, they would be fixed costs of
19 FirstEnergy if they were, in fact, collected in the
20 contract between FirstEnergy and FirstEnergy
21 Solutions.

22 Q. And if the charges that FirstEnergy
23 Services charges to the companies are on an energy
24 basis, the companies would have no fixed costs,
25 correct?

1 A. Well, again, it depends on if the energy
2 is on a take-or-pay basis that is, in fact, a fixed
3 charge, it's just priced on a volumetric basis.

4 Simply because you have a volumetric
5 price in a contract between a supplier and a buyer
6 doesn't mean that there aren't fixed costs underlying
7 it.

8 Q. So you are unwilling to concede that even
9 if the companies buy power solely on an energy basis,
10 they have no fixed costs; is that correct?

11 A. Oh, I have testified in cases --

12 Q. Is that correct, Doctor?

13 A. I have testified in cases several times
14 that, in fact, simply pricing on the basis of
15 volumetric rates don't absolve a company of fixed
16 cost obligations, and therefore, those fixed costs
17 can be reflected in retail rates.

18 Q. Is the answer to my question yes?

19 A. No, not answering that in terms of
20 whether there are fixed cost obligations because we
21 don't know.

22 MR. KUTIK: Your Honor, I believe I am
23 entitled to an answer to the question. Could the
24 witness be directed to answer the question.

25 EXAMINER PIRIK: Please answer again.

1 THE WITNESS: I can't answer it yes or no
2 to that question.

3 MR. KUTIK: Could you read the question,
4 please, Karen.

5 Because I believe, your Honor, it is able
6 to be answered on a yes or no basis.

7 (Record read.)

8 MR. KUTIK: And I believe your Honor,
9 that can be answered yes or no.

10 A. There are two negatives involved in the
11 question and am I unwilling to concede -- I guess,
12 given the context of your question I am unwilling to
13 concede.

14 Q. That's what I thought you said and that's
15 why I wanted the clarification to your answer, thank
16 you, sir.

17 Now, you are not aware of any cost of
18 service with respect to -- excuse me. You are not
19 aware of any cost-of-service study with respect to
20 the generation service that may be provided by
21 FirstEnergy Solutions, correct?

22 A. That's correct. To my knowledge there
23 has not been one done.

24 Q. Right. Now, you are aware that it's been
25 proposed that the FirstEnergy services contract be a

1 full requirements contract, correct?

2 A. Yes.

3 Q. And that the companies are currently
4 receiving generation service from FirstEnergy
5 Solutions under a full service wholesale requirements
6 contract, correct?

7 A. That's my understanding.

8 Q. And you are not aware of any full
9 requirements wholesale contract in a deregulated
10 jurisdiction where costs are assigned to customers on
11 a cost-of-service basis, correct?

12 A. I can't identify one currently. But,
13 again, that depends on even in a deregulated
14 jurisdiction whether FERC -- the Federal Energy
15 Regulatory Commission or FERC, has regulatory
16 authority over those transactions between suppliers
17 and buyers.

18 And it depends totally on whether a
19 company has, for example, market-based pricing
20 authority or whether FERC would require a full
21 cost-of-service contract. I don't know what would be
22 required by FERC.

23 MR. KUTIK: Your Honor, I move to strike
24 everything after the first sentence. All I asked was
25 whether he could identify -- if he was not aware of

1 any other jurisdiction and then he started a
2 discussion about what could or couldn't do.

3 MR. LAVANGA: Your Honor, he was merely
4 explaining his answer.

5 EXAMINER PIRIK: I'll deny the motion.

6 Q. Now, you refer to Dr. Jones' analysis to
7 support your view that higher load factor customers
8 cost less to serve, correct?

9 A. What I said in my testimony was that
10 Dr. Jones' analysis implicated there were, in fact,
11 class-specific cost differentials for generation
12 service.

13 Q. And that higher load factors service cost
14 less to receive.

15 A. According to his analysis, right.

16 Q. And specifically what we are talking
17 about in Dr. Jones' testimony is Exhibits 3, 4, and
18 5?

19 A. Correct. I think those are the numbers.
20 They are exhibits in his testimony.

21 Q. And on those exhibits he has something
22 called load-weighted costs. Do you remember that?

23 A. If you showed it to me, I could tell you.
24 I remember he went from capacity to load shaping to a
25 final net cost.

1 MR. KUTIK: Your Honor, may I approach
2 the witness?

3 EXAMINER PIRIK: Yes.

4 Q. I will show you, Dr. Goins, my
5 highlighted version so hopefully you won't take too
6 much from that or laugh too hard at what I have
7 highlighted.

8 MR. KUTIK: Counsel, do you need to see
9 this?

10 MR. LAVANGA: I would like to see it,
11 please.

12 This is Jones' testimony?

13 MR. KUTIK: Yes.

14 Q. Doctor, let me show you Exhibit 5,
15 Exhibit 4 is on the other side of the page, Exhibit
16 3.

17 And my question to you is that he had
18 come up with something called --

19 MR. LAVANGA: Your Honor, I'm sorry, I
20 can't hear the question.

21 EXAMINER PIRIK: They can't hear you.

22 Q. He had come up with something called
23 load-weighted costs, correct?

24 A. Yes. It is highlighted in a column in
25 Exhibit 3 that is not shown on Exhibit 5, I don't

1 think. I don't think it's shown on Exhibit 5 but it
2 is shown on Exhibit 3. It is not shown on Exhibit 4
3 or 5.

4 Q. And is the load-weighted costs that are
5 shown on Exhibit 3 one of the things that you relied
6 upon for your conclusion?

7 A. No. I looked at the capacity cost
8 calculations that are primarily shown on 4 and --
9 Exhibits 4 and 5.

10 Q. Thank you.

11 A. I looked at and reviewed his entire
12 testimony and all of his exhibits, but when you
13 say -- I don't mean to hold them. When you say that
14 "I relied on it," I relied on his entire testimony.

15 Q. But you specifically cited Exhibits 3, 4,
16 and 5, correct?

17 A. Yes. Because that's where he essentially
18 summarizes the analysis that he did.

19 Q. Now, it's correct to say, is it not, that
20 the companies' proposals include seasonal adjusted
21 rates, correct?

22 A. They do.

23 Q. And would it be fair to say you haven't
24 done any kind of study or analysis to determine
25 whether those seasonal adjustments are sufficient to

1 account for any differences in the cost-to-serve
2 customer classes based upon load cost differences?

3 A. Well, we -- the answer is if I have done
4 any specific analysis on that issue, I looked at
5 Dr. Jones' analysis and recognize the fact that the
6 company had proposed seasonal rates.

7 Underlying issue is what constituted the
8 development of Dr. Jones' assessment of whether he,
9 in fact, prior to developing this capacity cost by
10 class had -- had identified seasonal cost
11 differentials within it. And that I don't know.

12 Q. So, again, you have done no study or
13 analysis, correct?

14 A. No, that's not correct. I told you --

15 Q. Can you show me where in your testimony
16 that's shown?

17 A. I just told you --

18 Q. Where -- show me in your testimony.

19 MR. LAVANGA: Can he finish his answer,
20 please?

21 A. You asked me a question about the --
22 whether the seasonal cost differentials would reflect
23 essentially a class-specific cost differential or how
24 far it would go, and the answer that I am trying to
25 give you is I don't know not only because of the fact

1 that there has been no analysis by anyone,
2 FirstEnergy or anyone else that I know of, that's
3 demonstrated that.

4 Q. I didn't ask whether FirstEnergy did. I
5 asked if you did it.

6 A. The answer is no.

7 Q. Thank you.

8 And would your answers be the same with
9 respect to the optional time-of-use proposals that
10 the companies have? You have done no analysis or
11 study to see if that accounts for the differences,
12 Doctor, or any differences in the cost to serve high
13 load factor customers?

14 A. No. My guess it wouldn't though.

15 Q. But you haven't done any study or
16 analysis, correct?

17 A. Other than just by inference, I don't --
18 I doubt that it would.

19 Q. Just using your expert judgment, correct?

20 A. I think that it's more than that. I
21 mean, I am relying on my expert judgment on what I
22 think in terms of having 30 years of knowledge about
23 how companies design rates.

24 I don't think FirstEnergy, based on my
25 assessment of testimony regarding rate design,

1 specifically looked at that issue and wasn't
2 certainly highlighted in any testimony.

3 Q. Again, you haven't done any study or
4 analysis on that, have you?

5 A. Other than the fact of looking at the
6 companies' testimony regarding the issue, the company
7 didn't say anything about it, didn't highlight it,
8 didn't show any information about it.

9 Q. And, again, you didn't do any study
10 orientation analysis; can I have an answer to that
11 question?

12 A. That is an analysis dis --

13 EXAMINER PIRIK: Your -- no. Did you do
14 a study?

15 THE WITNESS: An empirical study, if
16 that's what you are asking.

17 Q. Yes.

18 A. That isn't the question you have asked.

19 Q. Yes, I did.

20 Let me have you turn to page 9 of your
21 testimony. You have a table there, correct?

22 A. I do.

23 Q. And that's a table from the companies'
24 schedules, correct?

25 A. It is Schedule 1A.

1 Q. And this shows the proposed rate
2 increases by customer class, correct?

3 A. Yes, according to I think Mr. Hussing.

4 Q. And you are familiar with how this table
5 is derived, correct?

6 A. Generally, yes.

7 Q. Okay. And it was derived from the basis
8 of the difference in the revenues that each of these
9 classes contributed before and after the proposed
10 rates, correct?

11 A. Yes.

12 Q. And would you agree with me that to the
13 extent that current revenues include special
14 discounts and special contracts, that that would be
15 reflected in Table 1?

16 A. To some degree, yes.

17 Q. Thank you.

18 Now, you suggest that the companies use
19 the rate allocation factors that the companies had
20 proposed as part of a 2007 competitive bid process
21 case, correct?

22 A. I recommended that in terms of arriving
23 at class specific generation costs that the class
24 allocation factors that were developed in the CBP
25 case be used, yes.

1 Q. And you are aware of how those allocation
2 factors were derived, correct?

3 A. Yes.

4 Q. And those allocation factors, similar to
5 the table we have just looked at, were based upon
6 revenue contribution for each customer class,
7 correct?

8 A. Yes.

9 Q. And to the extent that those revenues
10 reflected special contracts and discounts from
11 tariffs with respect to those contracts, that would
12 be reflected in those rate allocation factors,
13 correct?

14 A. I assume so. Based on how the company
15 described it, it didn't.

16 Q. Now, I want to turn your attention to
17 your discussion about interruptible riders.

18 Now, as I think we have discussed
19 earlier, you are aware that the company has
20 interruptible tariffs, correct?

21 A. Existing?

22 Q. Yes.

23 A. Yes.

24 Q. And you are aware that those tariffs
25 include provisions for both emergency interruption

1 and economic interruption, correct?

2 A. Yes.

3 Q. And, again, you are aware that those
4 tariffs have no limitation with respect to the time
5 in which the company or how long the company can
6 invoke the economic interruption provisions, correct?

7 A. Yes.

8 Q. Now, are the terms of service -- the
9 terms and conditions of service under proposed rider
10 ELR the same as they are for proposed rider OLR?
11 They are not, are they?

12 A. No. In terms -- well, again, it depends
13 on your definition of "terms of service," but in
14 terms they are two different riders for two different
15 conditions.

16 Q. Correct. The rider ELR includes both
17 economic and emergency interruption, correct?

18 A. That's correct.

19 Q. Where rider OLR just has emergency
20 interruption, correct?

21 A. That's right.

22 Q. Now, customers that are eligible for
23 rider ELR get a credit of \$1.95, correct?

24 A. Yes.

25 Q. And they are also eligible for another

1 credit, are they not?

2 A. Yes.

3 Q. And that's a credit that comes in under
4 the economic development rider of \$6.05, correct?

5 A. The rider EDR, yes.

6 Q. Now, the OLR rider, for customers
7 eligible for -- on the OLR rider, they only get a
8 credit of 195, correct?

9 A. The way the rider is currently proposed,
10 yes.

11 Q. All right. So it would be fair to say
12 that customers that are eligible for rider ELR get
13 more credit, so to speak, than customers eligible for
14 OLR, correct?

15 A. Yes.

16 Q. Now, you agree -- or would you agree that
17 the realizable curtailable load, RCL, that is to be
18 used in calculating the credit for interruption
19 should reflect the value or the amount of the load
20 that may be potentially interrupted, correct?

21 A. Yes, in general one should try to derive
22 a credit or credits on that basis.

23 Q. Okay. Now, for emergency interruptions
24 would you agree with me that those usually occur
25 somewhere around the system peak?

1 A. They can occur at any time.

2 Q. But would they usually occur around the
3 system peak?

4 A. I have done no analysis. But I am just
5 saying that when a tariff says we can interrupt you
6 for emergency purposes at any time during the year,
7 it means any time, peak, off peak.

8 Q. So you haven't studied when emergencies
9 have been invoked by FirstEnergy.

10 A. No. I've looked at -- at MISO looking at
11 days in which there were emergency conditions or
12 situations. Just to get a feel generally they occur
13 in the summer, sometimes they occur when their
14 transmission constraints are loaded with restraints.
15 They could occur for a variety of reasons. There is
16 no limitation actually in terms of how an emergency
17 interruption is imposed.

18 Q. Well, how many times last year in 2007
19 was an emergency declared in the FirstEnergy service
20 territory; do you know?

21 A. No.

22 Q. Same question for 2006.

23 A. No.

24 Q. Same question for 2007.

25 A. No.

1 Q. So you don't know how many times
2 emergencies were interrupted. And you don't know
3 whether -- when those -- when those emergencies were
4 called what that -- what the system load was in
5 relation to the peak; fair to say?

6 A. Well, actually I answered incorrectly. I
7 think in 2006 there were interruptions called,
8 emergency interruptions called during the summer.
9 They were during the day hours, and I think also in
10 2007 there was at least one that was called.

11 Q. So now you know there was one in 2007,
12 maybe more than one in 2006; is that your testimony
13 now?

14 A. At least.

15 Q. And you are not aware of what the system
16 load was at the time of those emergencies compared to
17 the system peak; fair to say?

18 A. That's correct.

19 Q. Now, you would agree with me, would you
20 not, that customer -- a customer's peak may not be
21 coincident with the system peak?

22 A. That's correct.

23 Q. And it would be fair to say that a
24 customer's peak may not be coincident with other
25 customers' peaks, correct?

1 A. That's correct.

2 Q. And would you agree with me that even if
3 we added up all the customers' peaks, that wouldn't
4 equal the system peak, correct?

5 A. It almost never does.

6 Q. Would it be correct to say you have not
7 done any study to see what customers' peak or
8 customers' loads were relative to the system peaks,
9 in other words, what were customer loads when the
10 system was at its peak?

11 A. No, I haven't.

12 Q. Now, I want to ask you a hypothetical
13 question.

14 If there was a customer who used more --
15 who -- who was an interruptible customer and who had
16 to buy through under the economic interruption
17 provisions many, many times during the year, and if
18 that customer used more power during the periods of
19 economic buy-through than during other periods of
20 time between, say, 12:00 and 6:00, 12:00 p.m. and
21 6:00 p.m, nonholiday weekdays, would you conclude
22 that that customer was indifferent to changes in
23 price in terms of that customer's energy usage?

24 A. Would I conclude they were indifferent to
25 changes?

1 Q. Yes.

2 A. I wouldn't make that conclusion at all.

3 Q. Okay. And so if a customer used more
4 power during economic buy-through than other times on
5 peak period, you couldn't conclude that customer is
6 indifferent to the cost of energy?

7 A. No. I mean, the circumstances are
8 customer specific. The customer has some value of
9 energy that's anticipated. Whether it's residential,
10 commercial, or industrial, if there is buy-through
11 for the industrial customer, the industrial customer
12 has to weigh the costs of the buy-through versus the
13 cost of loss of production.

14 Q. So it may be that the cost of lost
15 production is more valuable than the increase of cost
16 of power, correct?

17 A. Yes.

18 Q. All right. And so a customer may be more
19 concerned about getting product out the door than
20 what the cost would be?

21 A. Yes.

22 Q. Now, you believe that the companies'
23 proposed method of calculating the RCL provides an
24 incentive for customers to use on peak, correct?

25 A. Yes.

1 Q. And the incentive is that if they use on
2 peak where they increase their on-peak usage, that
3 that would drive the average demand up, correct, and
4 there they would get a bigger credit?

5 A. Yes, it would drive their RCL base
6 higher. Therefore, the value of the credit -- the
7 total value would go up.

8 Q. Okay. Let's turn to what I understand
9 your proposal is which is to use the billing
10 demand --

11 A. Yes.

12 Q. -- as the method to calculate the RCL,
13 correct?

14 A. Yes.

15 Q. Wouldn't there also be an incentive for a
16 customer to increase its peak demand?

17 A. Possibly.

18 Q. Now, you refer to the way in which
19 transportation is billed, correct, it's billed on a
20 billing-demand basis?

21 A. Transportation?

22 Q. Transmission, excuse me.

23 A. Oh, yes.

24 Q. Sorry. And you would agree with me there
25 are differences in how transmission and capacity are

1 planned, correct?

2 A. Yes.

3 Q. Transmission capacity can't consider --
4 that it cannot consider interruptible load, correct?

5 A. It depends.

6 Q. All right. So you believe the planning
7 standards affect in MISO allow consideration for
8 interruptible loads?

9 A. I am not speaking of what MISO's
10 standards are. The idea of considering interruptible
11 loads as a component in transmission planning is a
12 viable concept. It's recognized not by just me but
13 by other people that studied the issue as well.

14 In particular, for example, all the lower
15 system bases interruptible load can be invoked to
16 keep the transmission up, the system up, just as it
17 could a generator.

18 Q. I believe I asked you if that was the
19 standard within MISO, what you just said.

20 A. And I said I don't know what MISO's
21 standard is.

22 Q. Thank you.

23 A. It's evolving.

24 Q. Is it also true that interruptible
25 customers can convert to firm customers --

1 interruptible customers can convert to be firm
2 customers, firm load customers, within a year or two?

3 A. Under what situation; the ESP?

4 Q. No. Are you aware of whether they can
5 convert in that time period?

6 A. Again, we are talking about going to a
7 new set of rates January 1.

8 Q. Are you aware of whether they can convert
9 in that time period, sir?

10 A. I think they can.

11 Q. Can transmission facilities be planned
12 and built in that time frame, a year or two?

13 A. Generally not.

14 Q. Now, would it be correct to say that the
15 amount of the credit for economic interruption should
16 reflect the perceived risk of the incremental cost to
17 the customer?

18 A. That's one component.

19 Q. Would that potentially be measured by the
20 difference between the SSO and the LMP?

21 A. It may. But there's a lot of other
22 factors that have to be addressed in terms of how a
23 customer assesses the risk, as you stated.

24 Q. Well, is one way to look at the value of
25 the credit to use historical LMPs?

1 A. Generally not because a customer is not
2 going to be paying based on an LMP that occurred a
3 year ago or two years ago.

4 The customer is going to look at the
5 potential expected cost of buy-throughs versus the
6 savings that can be achieved with the net present
7 value of those, and whether, in fact, based on the
8 expectations of when economic interruptions will be
9 invoked, how often, how long, and what the
10 buy-through prices will be, whether it's economically
11 attractive to be subjected to those interruptions.

12 Q. But in setting what would be an
13 appropriate value for the credit that a customer
14 should receive for economic interruption, would one
15 basis be to look at historical value?

16 A. That's not what I said in my testimony so
17 I don't know.

18 Q. Is your answer no?

19 A. I tried -- I just answered you in terms
20 of looking backwards at historical LMPs the customer
21 would not be looking at that, so if I wanted to
22 develop an economic interruption that would sell to
23 customers, I doubt I would be looking at a historical
24 basis.

25 Q. So your answer is no?

1 A. Yeah, if the question is designed to say
2 would this be an effective rate that customers would
3 be attracted to, I would say if it were based on
4 historical LMPs, they wouldn't.

5 Q. They would not?

6 A. Probably not.

7 Q. So, again, the answer to my question is
8 no, correct?

9 A. In that context.

10 Q. Yes. Now, you proposed a credit amount
11 or a range of credit for economic interruption,
12 correct?

13 A. Not a range, I proposed a credit.

14 Q. Okay. What's -- and your number is in
15 what range?

16 A. It is \$2.60.

17 Q. Okay.

18 A. KW.

19 Q. And we can agree \$2.60 is less than
20 \$6.05, can we not?

21 A. Yes.

22 Q. And in terms of trying to come up with an
23 amount of the credit for emergency interruption, that
24 would be -- what we are trying to do is find the
25 perceived value of the avoided capacity, correct?

1 A. Yes, for the -- yes.

2 Q. And you propose using the long-term
3 marginal cost of capacity, correct?

4 A. Of a peaking turbine.

5 Q. Pardon me?

6 A. Of a peaking turbine specifically.

7 Q. Would another way of describing what you
8 propose to be the cost of new entry?

9 A. Pardon me?

10 Q. The cost of new entry?

11 A. I'm not sure I know what you are talking
12 about.

13 Q. Did you ever hear of CONE, C-O-N-E,
14 before?

15 A. Yes, but I'm trying to figure out in
16 terms of the question.

17 Q. I am asking you whether what you suggest
18 is another version of the cost of new entry?

19 A. Not necessarily.

20 Q. It can be?

21 A. It could be.

22 Q. All right.

23 A. But the general premise recognized by
24 most analysts in looking at the value of
25 interruptible in particular for emergency conditions

1 is the cost of displaced capacity viewed on a
2 long-term basis. There's numerous studies, current
3 studies, that support that view.

4 Q. Now, the companies' proposed using a
5 market value for that, correct?

6 A. That's what the companies' testimony
7 indicated --

8 Q. All right.

9 A. -- the value of \$1.95 was based on.

10 Q. And the -- there is a market of sorts for
11 capacity in MISO, something called DNR, correct?

12 A. There is no market for capacity in MISO.

13 Q. Well, you can buy and sell capacity in
14 the form of DNR, correct?

15 A. You can buy under bilateral contracts
16 with parties but in terms of those will be DNRs,
17 that's the term you want to use, but there is no
18 capacity market in MISO.

19 Q. Let's make sure you answer my last
20 question because I am not sure you did. So let me
21 break it down.

22 DNR is a -- is a measure of capacity,
23 correct?

24 A. DNR meaning -- let's make sure we are on
25 the same wavelength. Designated resource network.

1 Q. Yes.

2 A. Okay. That context, yes.

3 Q. All right. And entities can buy and sell
4 DNR within MISO, correct?

5 A. Yes.

6 Q. And they can do that through bilateral
7 transactions, correct?

8 A. Yes.

9 Q. And when you say that there isn't --
10 there isn't a market for MISO, is it because there
11 isn't, for example, like an option like they have for
12 RPM and PJM?

13 A. That's true. Any description of MISO
14 will say there is no capacity market for MISO.

15 Q. Now, do you know whether -- or would it
16 be correct to say that \$1.95 is a fair market value
17 for DNR today?

18 A. I have no idea. In terms of since the
19 transactions are between two -- willing buyers and
20 sellers, they may or may not choose to disclose that.

21 Q. Okay.

22 A. We don't even know in this case exactly
23 what \$1.95 is related to.

24 Q. Isn't the definition of a market price a
25 price that a willing seller is willing to sell and a

1 willing buyer is willing to buy; isn't that a classic
2 definition?

3 A. If the market -- in the market, probably
4 not.

5 Q. Now, are there plans for generation plant
6 construction within MISO?

7 A. By MISO itself?

8 Q. Within MISO.

9 A. MISO, I am sure there are companies
10 that -- around within the footprint of -- MISO has a
11 big footprint. There has to be some plans for
12 companies somewhere down the line to add capacity.

13 Q. My question is do you know of any?

14 A. No. I haven't made a study of it.

15 Q. Now, would it be correct to say that
16 generators can recover their fixed costs not only
17 through capacity or demand charges but also through
18 energy sales and charges, correct?

19 A. Yes.

20 Q. In fact, that's what you said earlier
21 with respect to the contract -- potential contract
22 between FES and the companies, correct?

23 A. That's correct.

24 Q. Now, with respect to your proposal about
25 a time limit on economic interruptions, you -- would

1 it be fair to say that in the companies' 2007
2 proposal there was a time limit of a thousand hours?

3 A. Yes.

4 Q. And are you aware of what the credit was
5 for economic interruption that was proposed in the
6 2007 proposal?

7 A. Not specifically.

8 Q. All right. So would you be unaware of
9 whether that credit was lower than the credit that's
10 been proposed here?

11 A. I just said I couldn't tell you. The
12 only thing the 2.60 was a number that came from
13 FirstEnergy I think in its reply comments as I noted
14 in my testimony in that CBP case.

15 Q. Now, you've studied, have you not, the
16 companies' capability for time-of-use metering?

17 A. The companies' capabilities?

18 Q. Yes.

19 A. No.

20 Q. So -- well, would it be fair to say with
21 respect to time-of-use metering you have to have more
22 than just your standard meter?

23 A. Yes, I am assuming. Otherwise the
24 company wouldn't have proposed time-of-day rates.

25 Q. Okay. And are you aware of whether for

1 smaller customers or what we will call non-large
2 customers whether the company has interval meters?

3 A. Interval meters?

4 Q. Yes.

5 A. My guess is they don't.

6 Q. And would it be your proposal that if new
7 metering had to be installed that customers would
8 have to -- those costs could be recovered by
9 customers either individually or collectively
10 depending on the merits of the program?

11 A. How the costs were recovered would depend
12 on not only the merits of the program, how it was
13 designed, and the distribution of benefits among
14 customers. There would be a lot of factors one would
15 look at.

16 Q. I still have a few more questions,
17 Doctor.

18 With respect to the minimum default
19 service charge, you agree in principle, do you not,
20 that it would be appropriate to recover the type of
21 costs or the type of charges that the companies
22 purport to want to recover through that charge,
23 correct?

24 A. Only if they have actually occurred, only
25 if they were prudently incurred, only if they could

1 not be negotiated away through the FES contract.

2 Q. Okay. And isn't it true that -- well, I
3 will back up.

4 You testified, did you not, in the MRO
5 case, correct?

6 A. I did.

7 Q. And you've looked at the MRO, correct?

8 A. Yes.

9 Q. And you've looked at the ESP, correct?

10 A. Yes.

11 Q. And would it be correct to say that
12 looking just at the MRO as proposed and then looking
13 at the ESP as proposed, the rate options in the ESP
14 are preferable in your opinion?

15 A. If we focus only on the rate design and
16 we ignore any of the improvements that I think should
17 be made both to the rates in the MRO and the ones
18 that were filed in the ESP, simply compare the ESP
19 rates as filed versus the MRO rates as filed, simply
20 from the point of view of rate design, the ESP rates
21 are superior.

22 MR. KUTIK: May I have one moment, your
23 Honor?

24 EXAMINER PIRIK: Yes.

25 MR. KUTIK: I have no further questions.

1 Thank you, Dr. Goins.

2 EXAMINER PIRIK: Mr. Jones.

3 MR. JONES: No questions, your Honor.

4 MR. LAVANGA: Your Honor, may I have a
5 few minutes with the witness?

6 EXAMINER PIRIK: Yes. We will wait a
7 couple of minutes.

8 (Discussion off the record.)

9 EXAMINER PIRIK: We will go back on the
10 record.

11 Mr. Lavanga.

12 MR. LAVANGA: Your Honor, I just have a
13 couple of questions on redirect.

14 - - -

15 REDIRECT EXAMINATION

16 By Mr. Lavanga:

17 Q. Dr. Goins, you received several questions
18 from Mr. Kutik about the use of DNR as a value for
19 capacity interruptions.

20 Is it appropriate to use a DNR value as
21 representative of what credit should be for capacity
22 interruptions?

23 A. No, it's not. It's not a reasonable nor
24 is it an accurate reflection of the value of
25 interruptible load, in particular with respect to

1 emergency interruptions, and it's far below, for
2 example, the load of interruptible credits offered by
3 other companies within the MISO footprint. It's
4 dramatically lower.

5 Q. Do you have an idea of what some of those
6 prices are?

7 A. The value for credits within MISO, the
8 MISO footprint itself, the ones -- analyses I've seen
9 indicates the credits range from about \$2 up to \$12,
10 the average being around 5 to 6. But, again, those
11 are -- that's just for the legacy programs that exist
12 within the MISO footprint.

13 Again, they are significantly greater
14 than -- take value, the value based on DNR, the one
15 shot DNR value that we have from FirstEnergy in this
16 case.

17 Q. Now, Dr. Goins, you also received some
18 questions about the differentials in Dr. Jones'
19 analysis of the capacity costs by customer class.
20 Does that accurately reflect the differentials
21 between -- between classes?

22 A. No, it doesn't. Dr. Jones' testimony
23 indicates itself, I think, those differentials are
24 probably understated. Dr. Jones' analysis also
25 assumes that the differentials were derived based on

1 competitive bids that don't exist in this case.

2 What we have in this case is a proposed
3 contract between FirstEnergy Solutions to -- two
4 operating companies within FirstEnergy systems, and
5 it is not a competitive bid case.

6 Dr. Jones also assumed factors such as
7 risk factors for migration, for example, heavily
8 diluted the class-specific cost differentials.

9 Within ESP proposals we have in this case
10 there are a number of nonbypassable charges that in
11 and of itself probably significantly reduced the
12 likelihood of migration to third-party suppliers.

13 Those factors alone indicate that the
14 Jones' analysis was probably understated in my
15 opinion. But additionally the analysis also is
16 contrary to what FirstEnergy said less than a year
17 ago in the CBP case when it proposed itself in a
18 competitive bid situation class-specific cost
19 differentials that are identical to those I proposed
20 in this case.

21 Q. Okay. Dr. Goins, finally, in terms of
22 valuing an interruptible and emergency interruptible
23 credit, is it necessary to assume that a customer's
24 maximum demand will always be in the peak period when
25 the emergency conditions are most likely to occur?

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

3 (Record read.)

4 A. The answer is no, it's not. The -- in
5 valuing in particular an emergency interruptible
6 credit, the prospective to look at is the long-term
7 voided cost. The perspective is not a short-term
8 cost, not a snapshot market price.

9 The reason being that -- that the
10 conditions of being able to interrupt for any
11 condition called by the utility at any time is
12 premised upon the fact that the utility did not
13 acquire or bill the capacity to serve that load, that
14 interruptible load.

15 And that interruptible load, including
16 the reserve component that would have been necessary
17 to serve the interruptible load, once it becomes
18 interrupted is gone forever.

19 The capacity doesn't -- cost doesn't
20 simply disappear when you take a snapshot, for
21 example.

22 In other words, if I have a system that's
23 10,000 megawatts and I have to bill 15 percent
24 reserves, then I have to acquire a bill of 11,500
25 megawatts of capacity.

1 If I, in fact, have 1,000 megawatts of
2 interruptible load on a planning basis and there is
3 15 percent reserve savings associated with that, I'm
4 going to have to acquire something on the order of 11
5 to 12 hundred megawatts of capacity to do that or
6 well over 1,000 megawatts less than what I normally
7 would have.

8 And once I have avoided those -- the
9 purchase or acquisition of that capacity, that's a
10 void.

11 And that's what I am saying, you value
12 the emergency capacity credit in particular on a
13 long-term perspective, which almost all analysts do
14 in looking at avoiding the cost of the capacities.

15 It doesn't market whether the capacity is
16 going to be built next year or the year after. There
17 is a long-term avoided cost of capacity in any
18 utility market and it is the -- once those capacity
19 costs have been avoided by the market system itself,
20 then it doesn't matter, again, whether a customer's
21 load is actually online or not online during a
22 particular period in terms of the long-term avoided
23 capacity that's saved by having that interruptible
24 load.

25 Whether a customer's online or not online

1 at a particular hour, particular day, or a particular
2 month may be consequential in determining the
3 operating capacity value of that interruptible load.
4 But from a planning capacity, planning reserve point
5 of view, it has no impact.

6 Q. I actually do have one more question.

7 Dr. Goins, you got a question concerning
8 whether the on-peak and off-peak nature of certain
9 loads would make up for the difference in capacity
10 costs between classes.

11 Do you recall that?

12 A. Yes.

13 Q. Is that -- is it likely that would
14 happen?

15 A. I tried to say in my answer to the
16 question that my expectation without doing number
17 crunching is it would not, again, for most of the
18 factors which I tried to eliminate.

19 And in the back of my mind there is
20 always the thought that the differentials even
21 applied, for example, to Jones' analysis are
22 significantly less than what the company thought was
23 reasonable in the CBP case less than a year ago.

24 MR. LAVANGA: That's all I have, your
25 Honor. Thank you.

1 EXAMINER PIRIK: Thank you.

2 Mr. Small.

3 MR. SMALL: No questions.

4 EXAMINER PIRIK: Mr. Bell.

5 MR. BELL: No questions.

6 EXAMINER PIRIK: Ms. McAlister.

7 MS. McALISTER: No questions, your Honor.

8 EXAMINER PIRIK: Mr. Weldele.

9 MR. WELDELE: No questions.

10 EXAMINER PIRIK: Mr. Breitschwerdt.

11 MR. BREITSCHWERDT: No questions, your

12 Honor.

13 EXAMINER PRICE: Mr. Boehm.

14 MR. BOEHM: No questions, your Honor.

15 MR. KUTIK: May I have one moment?

16 EXAMINER PIRIK: Yes.

17 MR. KUTIK: No questions, your Honor.

18 EXAMINER PRICE: Mr. Jones.

19 MR. JONES: No questions, your Honor.

20 EXAMINER PIRIK: Thank you, Mr. Goins.

21 Mr. Lavanga, with regard to the exhibit?

22 MR. LAVANGA: Your Honor, I move to admit

23 at this time Nucor Exhibit No. 3 and Nucor Exhibit

24 No. 3A.

25 EXAMINER PIRIK: Thank you.

1 Are there any objections?

2 MR. KUTIK: No objection.

3 EXAMINER PIRIK: Hearing none, Nucor
4 Exhibits 3 and 3A shall be admitted into the record.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER PIRIK: Mr. Breitschwerdt.

7 MR. BREITSCHWERDT: Your Honor, at this
8 time Ohio Schools Council calls Dr. David Cottrell.

9 Your Honor, at this time we would also
10 mark for identification Ohio Schools Council Exhibit
11 1 and Exhibit 1A.

12 (EXHIBITS MARKED FOR IDENTIFICATION.)

13 (Witness sworn.)

14 - - -

15 DAVID COTTRELL

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

18 DIRECT EXAMINATION

19 By Mr. Breitschwerdt:

20 Q. Dr. Cottrell, do you have before you the
21 exhibits I just referred to, Exhibits 1 and 1A?

22 A. I do.

23 Q. Can you tell me what those documents are,
24 please?

25 A. Document 1 is my testimony. Document

1 1A -- or Exhibit 1A is the errata.

2 Q. And they were prepared by you or under
3 your direction and control?

4 A. That is correct.

5 Q. Are there any deletions or corrections to
6 Exhibit 1 that you would like to address?

7 A. I would like to direct you to Exhibit 1A,
8 the errata, and go through the corrections of my
9 testimony.

10 First, on page 3, lines 17 through 19,
11 the sentence should be deleted as it refers to Case
12 No. 07-551-EL-AIR.

13 Lines on page 3, 19 through 21, this
14 sentence should be revised as follows "The companies'
15 proposed rate increase will result in severe
16 increases in electric cost for public school
17 customers in a manner incongruous with the usage's
18 characteristics."

19 Then on page 4, lines 12 through 13, this
20 sentence should be deleted, again, as it refers to
21 Case No. 07-551-E L-AIR.

22 Then on page 6, lines 5 through 9, the
23 sentence on lines 5 through 9 should be deleted along
24 with the first clause of the sentence that starts on
25 page 1, the next sentence should now read "School

1 districts will be confronted with drastic combined
2 distribution increases on January 1, 2009."

3 Referring then again to page 6, line 18,
4 through page 9, line 25, this whole section should be
5 deleted as it reference to Ohio Schools Council's
6 involvement in Case No. 07-551-EL-AIR.

7 Referring to page 12, line 16, this line
8 should be revised to state "The proposed ESP and the
9 expiration of energy -- of the energy."

10 Again on page -- page 12, line 21, the
11 phrase "including the proposed resolution of case
12 07-551" should be deleted from this sentence.

13 And on page 13, lines 8 through 10, this
14 sentence should be deleted as it references, again,
15 to Case No. 07-551-EL-AIR.

16 Q. Dr. Cottrell, are there any other
17 corrections that you deemed it appropriate to make
18 and could you provide an explanation of why?

19 A. Yes, there are. Okay. On page 12, lines
20 11 through 13, should be corrected to read "The
21 schools have requested specific information from the
22 companies as to the amount of the increase proposed
23 in the ESP as applied specifically to the schools and
24 recently we received such information."

25 MR. BREITSCHWERDT: And, your Honor, to

1 clarify Ohio Schools Council Exhibit 2, at the time
2 testimony was filed we had not yet received such
3 information, but it has since been received and put
4 into the record.

5 EXAMINER PIRIK: Okay. Thank you.

6 Q. Dr. Cottrell, if I were to ask you the
7 same questions within your testimony today subject to
8 the errata that we just discussed, would your answers
9 be the same?

10 A. Yes, sir.

11 MR. BREITSCHWERDT: At this time, your
12 Honor, Dr. Cottrell is available for
13 cross-examination.

14 EXAMINER PIRIK: Thank you.

15 Mr. Small.

16 MR. SMALL: No questions.

17 EXAMINER PIRIK: Mr. Bell.

18 MR. BELL: Just a couple.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Bell:

22 Q. Dr. Cottrell, have you had an opportunity
23 to review Ohio Schools Council's Exhibit No. 2
24 referenced by counsel?

25 A. Yes, I have.

1 Q. Is it not, in fact -- does not that, in
2 fact, demonstrate that some school districts will
3 receive increases as much as 71 percent?

4 A. Yes, I think the exact number is 77
5 percent.

6 MR. BELL: Thank you.

7 EXAMINER PIRIK: Ms. McAlister.

8 MS. McALISTER: No questions, your Honor.

9 EXAMINER PIRIK: Mr. Weldele.

10 MR. WELDELE: No questions.

11 EXAMINER PIRIK: Mr. Stinson.

12 MR. STINSON: No questions, your Honor.

13 EXAMINER PIRIK: Mr. Boehm.

14 MR. BOEHM: No questions, your Honor.

15 EXAMINER PIRIK: Mr. Lavanga.

16 MR. LAVANGA: No questions, your Honor.

17 EXAMINER PIRIK: Ms. Miller.

18 MS. MILLER: Just a few, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Ms. Miller:

22 Q. Good morning, Mr. Cottrell, how are you?

23 A. Good morning, how are you?

24 Q. First, turning to page 3 of your
25 testimony, on line 13, you reference 254 public

1 school districts. However, is it fair to say that
2 your testimony really speaks to the 249 school
3 districts represented by Ohio Schools Council?

4 A. That is correct.

5 Q. In your testimony you speak about the
6 budgeting and financial challenges that face the
7 schools. However, isn't it fair to say that those
8 budget and financial challenges confront the schools
9 irrespective of the companies' electric security
10 plan?

11 A. That would be true.

12 Q. And you don't review the budgets of the
13 schools, do you?

14 A. I do not.

15 Q. Are you aware of the proportion of
16 increases from an electric increase as opposed to
17 increases the schools face from other operating
18 expenses?

19 A. Well, without talking about the specific
20 categories, I couldn't answer that, but the schools
21 are facing increases in all levels in all phases of
22 their budget.

23 Q. And if you turn to page 11 of your
24 testimony, on line 2 you state that the companies
25 have received over \$350 million of cash.

1 Do you see that?

2 A. Yes.

3 Q. And that \$350 million represents payments
4 for electric service, correct?

5 A. That is correct. It's a prepayment,
6 which the company received in advance.

7 Q. And on line 4 you indicate the companies
8 have benefited from the prepaid payment plan as well.

9 Do you see that?

10 A. Yes.

11 Q. But that's just your opinion, in fact,
12 the companies didn't benefit at all, correct?

13 A. The companies did receive the money ahead
14 of time. They did deliver service. Whether or not
15 they actually benefited from that, I don't have
16 direct specific knowledge, but it would be difficult
17 not to.

18 Q. And on page 2, you reference other
19 programs that Ohio Schools Councils has on behalf of
20 the schools.

21 A. Yes.

22 Q. Is it fair to say that the Ohio Schools
23 Council have had prepayments with other companies as
24 well, like, for example, gas?

25 A. We have.

1 Q. And none of those programs currently
2 exist today, do they?

3 A. That is true.

4 Q. And it's not your testimony the schools
5 represented by the Ohio Schools Council are entitled
6 to a prepayment plan, is it?

7 A. No, it is not my testimony.

8 Q. Turning the page to 12 of your testimony,
9 on line 22 to line 25, you indicate that "the
10 Commission should condition any approval of
11 FirstEnergy's ESP proposal in this case on the
12 Companies' offering the public school districts
13 within their service territories an Energy for
14 Education III program...."

15 Do you see that?

16 A. Yes.

17 Q. You are not suggesting by your testimony
18 that the Commission should order the companies to
19 enter into a prepayment program with the bond finance
20 transaction, are you?

21 A. That is our recommendation to the -- to
22 the Commission, that there be an Energy for Education
23 III program.

24 Q. So is it your testimony that you are or
25 you are not recommending that the Commission order

1 the companies to?

2 A. Well, not to order the companies to. We
3 are concerned about the drastic increase of the
4 rating upon the impact of the school districts and we
5 are interested in mitigating that to the greatest
6 extent possible because of the drastic increase.

7 Q. So you would like one, but you are not
8 recommending that the Commission order the companies
9 to enter one?

10 A. No, we are not.

11 Q. In fact, do you know what the -- a bond
12 rating on such a transaction would be?

13 A. Currently the market is not very
14 favorable for such a transaction as a prepayment bond
15 issue as we have done in education for -- Energy for
16 Education I and II.

17 Q. And a number of places in your testimony
18 you reference devastating and negative impacts of the
19 companies' substantial increases, and on page 13 you
20 indicate that I guess starting on page 12 from the
21 schools' perspective ESP proposed in this Application
22 including the substantial distribution generation and
23 potentially other rate increases will not be more
24 favorable in the aggregate than a market rate offer.

25 Does that represent your testimony?

1 A. That does.

2 Q. However, you didn't review the companies'
3 electric security plan before filing your testimony,
4 did you?

5 A. I did not.

6 MS. MILLER: No further questions, your
7 Honor.

8 EXAMINER PIRIK: Thank you.

9 Mr. Jones.

10 MR. JONES: No questions, your Honor.

11 EXAMINER PIRIK: Mr. Breitschwerdt.

12 MR. BREITSCHWERDT: No redirect, your
13 Honor.

14 EXAMINER PIRIK: Thank you very much.

15 MR. BREITSCHWERDT: Your Honor, I would
16 move the admission of Ohio Schools Council 1 and
17 Exhibit 1A.

18 EXAMINER PIRIK: Are there any
19 objections, Ms. Miller?

20 MS. MILLER: No, your Honor.

21 EXAMINER PIRIK: Hearing no objections,
22 Exhibits 1 and 1A for the Ohio Schools Council will
23 be admitted into the record.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 EXAMINER PIRIK: Ms. McAlister.

1 MS. McALISTER: Thank you, your Honor.

2 At this time IEU-Ohio calls Kevin Murray.

3 (Witness sworn.)

4 - - -

5 KEVIN M. MURRAY

6 being first duly sworn, as prescribed by law, was

7 examined and testified as follows:

8 DIRECT EXAMINATION

9 By Ms. McAlister:

10 Q. Mr. Murray, would you please state your

11 full name for the record.

12 A. My name is Kevin M. Murray.

13 Q. And by whom are you employed?

14 A. McNees, Wallace & Nurick, LLC.

15 Q. Mr. Murray, did you prepare the testimony

16 that was prefiled on September 29 in this proceeding?

17 A. Yes, I did.

18 MS. McALISTER: Your Honor, at this time

19 I would like to have marked as IEU-Ohio Exhibit 1 the

20 direct testimony of Kevin McMurray.

21 EXAMINER PIRIK: The document will be so

22 marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Do you have a copy of what has been

25 marked as IEU-Ohio Exhibit 1 today?

1 A. Yes, I do.

2 Q. Do you have any corrections to make to
3 what has been marked as IEU-Ohio Exhibit 1?

4 A. Yes, I do. On page 5 of your -- of my
5 testimony, line 2, the word "will" at the very end of
6 that sentence has a random question mark that needs
7 to be stricken. And the word "will" itself is in
8 bold font; it should just be normal font.

9 Q. And subject to that correction if I were
10 to ask you the same questions today as those that are
11 in IEU-Ohio Exhibit 1, would your answers be the
12 same?

13 A. Yes, they would.

14 Q. And are they true and correct to the best
15 of your knowledge?

16 A. Yes.

17 MS. McALISTER: Your Honor, at this time
18 I move for admission of IEU-Ohio Exhibit 1 subject to
19 cross-examination, and Mr. Murray is available for
20 cross.

21 EXAMINER PIRIK: Thank you.

22 Mr. Small.

23 MR. SMALL: No questions.

24 EXAMINER PIRIK: Mr. Bell.

25 MR. BELL: Just a couple.

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CROSS-EXAMINATION

By Mr. Bell:

Q. Mr. Murray, turning to page 3 of your prefiled testimony, you list five considerations or five issues that your testimony addresses, do you not?

A. Yes.

Q. Does that represent the prioritization of IEC has to the importance of those issues to IEC as a party in this case?

A. I believe you referenced IEC.

Q. I'm sorry, IEU, IEU-Ohio.

A. No, it does not reflect a priority issue.

Q. Could you turn to page 5 of your testimony, the question No. 12 and the answer thereto.

In the response to the question 12 are you recommending the Commission -- or are you recommending that we start charging all nonresidential customers the DS2 charge immediately?

A. No, I am not. I am simply pointing out that as the Application was filed by the company, the actual rate under the DS2 -- DSD2 rider initially is zero. So if you were looking to point to the

1 avoidability of that rider as an incentive, it
2 provides no economic incentive because the charge
3 doesn't exist.

4 Q. On page 9 of your prefiled testimony,
5 question 17, you describe the manner in which the
6 company proposes to recover the ESP revenues, do you
7 not?

8 A. I describe how the generation charges are
9 designed.

10 Q. Would you agree that those charges could
11 be recovered on any number of a bases?

12 A. Yes.

13 Q. For instance, it could be recovered in a
14 customer charge, could it not?

15 A. In theory there is a variety of ways you
16 could recover a revenue requirement.

17 Q. Including the customer charge?

18 A. That would be one option.

19 Q. Would a customer charge provide greater
20 stability and predictability for the company as to
21 the recovery of its generation?

22 A. All other things being equal, yes. It
23 would --

24 Q. Thank you. And would you agree that
25 recovering those revenues on a kilowatt-hour basis

1 exposes the company to the greatest risk that it will
2 not recover the generation cost as between a customer
3 demand in a kWH recovery mechanism?

4 A. Between those three options, kilowatt
5 hour based charge has the greatest volatility
6 associated with it because customer usage can change,
7 so in that context it would tend to have placed more
8 of the revenue requirement at risk.

9 EXAMINER PIRIK: Mr. Murray, can you pull
10 the microphone.

11 THE WITNESS: Sure.

12 Q. Specifically as between those three
13 bases, that would pose the greatest risk to the
14 company, would it not, of both overrecovery and
15 underrecovery?

16 A. In my judgment it is the highest risk of
17 the three alternatives.

18 Q. Now, at the time this filing was made,
19 did the company face the risks that are currently
20 perceived by the market?

21 A. I can't speak to the company.

22 Q. Well, let's assume -- let us make two
23 assumptions. Let us assume at the time this ESP was
24 proposed the company anticipated an increase in
25 sales.

1 Would not that assumption with a kWH
2 recovery provide for the overrecovery of the revenues
3 anticipated?

4 A. If you design a -- if you design rates to
5 recover a revenue requirement based upon an
6 assumption level of kilowatt-hour sales and
7 subsequently thereafter the kilowatt-hour sales
8 increase, you are going to recover a greater amount
9 of revenue.

10 Q. And the converse would also be true,
11 would it not?

12 A. Yes, it would.

13 Q. If, in fact, that assumption proved
14 erroneous and there was a decrease in revenue sales,
15 would not that provide instability in the companies'
16 recovery of its anticipated revenues?

17 A. It would produce lower revenues.

18 Q. The company then with -- in making that
19 assumption if that assumption is incorrect, that is,
20 that the revenues are kWH sales do not increase, but
21 they, in fact, decrease, would that essentially
22 provide for instability of the company making -- or
23 receiving its projected revenues?

24 A. It's going to result in the company
25 receiving lower revenues than what they assumed under

1 your scenario.

2 Q. From a stability standpoint would the
3 current rate design then effectively reduce the
4 companies' risk of not receiving its anticipated
5 revenues?

6 THE WITNESS: Could I have the question
7 reread.

8 MR. BELL: May the reporter read back the
9 question.

10 (Record read.)

11 THE WITNESS: One more time, please.

12 Q. Let me restate it.

13 As opposed to going on a kilowatt hour
14 based recovery of the generation revenues
15 anticipated, if the company were to go on the current
16 basis by which those revenues are recovered, would
17 not that enhance the -- or reduce the risk to the
18 company?

19 A. Can you identify what you mean by
20 "current basis"? I am assuming demand-based charges?

21 Q. Yes.

22 A. Demand-based charges would tend to reduce
23 the volatility of achieving the predicted level of
24 revenues.

25 Q. Would it -- is it not in both the

1 companies' interest and all of its customer's
2 interest to avoid volatility in rates reflective of
3 volatility of risk?

4 A. I can't speak to what the companies'
5 interests are in that context. From a customer's
6 perspective customers like predictability in rates,
7 and I think you can get predictability in rates
8 through either kilowatt-hour or demand-based charges.

9 Q. Doesn't -- doesn't the company in
10 selecting the manner in which it will recover its
11 anticipated revenues, be it market based or cost
12 based, if the company makes -- strike that.

13 Does not the company have the ability to
14 manage its risk via the manner in which it proposes
15 to recover its expected revenues whether those
16 revenues are based upon cost or market?

17 A. The company has some ability to manage
18 its risk.

19 Q. And similarly speaking, does the company
20 have the ability to increase its risk via the
21 collection method it adopts?

22 A. The company has the ability to manage its
23 risk either increasing or decreasing.

24 Q. If the company increases its risk,
25 intentionally increases its risk, should the company

1 be compensated for that increased risk in the rates
2 to be charged its customers?

3 A. I don't think I have an opinion on that
4 one.

5 MR. BELL: No further questions.

6 EXAMINER PIRIK: Thank you.

7 Mr. Weldele.

8 MR. WELDELE: No questions, your Honor.

9 EXAMINER PIRIK: Mr. Stinson.

10 MR. STINSON: No questions, your Honor.

11 EXAMINER PIRIK: Mr. Lavanga -- I'm
12 sorry.

13 Mr. Breitschwerdt.

14 MR. BREITSCHWERDT: No questions, your
15 Honor.

16 EXAMINER PIRIK: Mr. Boehm.

17 MR. BOEHM: No questions.

18 EXAMINER PIRIK: Mr. Lavanga.

19 MR. LAVANGA: No questions.

20 EXAMINER PIRIK: Mr. Kutik.

21 MR. KUTIK: Yes.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Kutik:

25 Q. Good morning.

1 A. Good morning.

2 Q. Mr. Murray, you recognize, do you not,
3 that the companies or their generation supplier faced
4 a POLR responsibility, that's P-O-L-R responsibility,
5 correct?

6 A. Yes, I believe that responsibility lies
7 with the distribution company.

8 EXAMINER PIRIK: Mr. Murray, I am still
9 having a hard time.

10 THE WITNESS: I will try to speak up.

11 Q. And would you agree with me with that
12 responsibility comes some financial risks?

13 A. There may be.

14 Q. Shopping risk is one of those risks,
15 correct?

16 A. It can be.

17 Q. And shopping risk involves the financial
18 risks that are associated with customers leaving,
19 correct?

20 A. Perhaps.

21 Q. Okay. There's also an opportunity cost
22 involved in POLR supply, correct?

23 A. There may be. We need to define
24 "opportunity costs."

25 Q. Well, whether a POLR supplier commits a

1 certain amount of supply it foregoes the opportunity
2 to sell it at a potentially higher market price?

3 A. That's one scenario.

4 Q. And that would be an opportunity cost,
5 correct?

6 A. It's an opportunity cost if, in fact,
7 subsequent to making that commitment market prices
8 turn out to be higher.

9 Q. Now, with respect to the shopping risk,
10 the risk associated with customers leaving or the
11 opportunity costs we talked about, the companies, as
12 with any risk, attempt to hedge that risk, correct?

13 A. They may.

14 Q. And with some hedging strategies there
15 are costs associated with those, correct?

16 A. There can be.

17 Q. Now, with respect to the standby charge,
18 that may be perceived as a value to customers,
19 correct?

20 A. To some customers.

21 Q. And provides the customers with the
22 option of coming back to the company at a standard
23 offer -- standard service offer, correct?

24 A. Correct.

25 Q. And the reasonableness of the value of

1 the standby charge should be gauged against the value
2 the customers might place on that charge, correct?

3 A. That's one way to evaluate it.

4 Q. But you've done no analysis on that,
5 correct?

6 A. No.

7 Q. What I said was correct.

8 A. Correct.

9 Q. Now, I want to talk to you about RTO
10 costs which is the subject of part of your testimony.

11 Would it be fair to say that the gist of
12 your recommendations regarding RTO costs is that the
13 Commission needs to look at and audit those costs.

14 A. That's part of it.

15 Q. And the companies currently provide the
16 Commission, do they not, with information on
17 transmission and ancillary service costs?

18 A. As part of the companies' current
19 transmission and ancillary services rider through the
20 process by which those riders are updated, the
21 company makes information filing comprising
22 supporting data behind those rates.

23 Q. And IEU-Ohio gets some of that
24 information too, correct?

25 A. Yes.

1 Q. In fact, the companies made a filing
2 recently as of the week before last?

3 A. I believe so. I have been rather busy
4 with other things.

5 Q. On what?

6 Now, the companies are assessed certain
7 MISO administrative costs, correct?

8 A. Correct.

9 Q. And those costs are largely an outgrowth
10 of the MISO budgeting process, correct?

11 A. Correct.

12 Q. Let me turn to rate design.

13 Is one of your concerns that larger
14 customers get relatively larger increases under the
15 companies' proposed rate design?

16 A. That actually wasn't specifically a
17 factor in my recommendation.

18 Q. Okay. Well, would you agree with respect
19 to the companies' rate proposal in this case it is --
20 it somewhat follows on the proposals that the company
21 made -- the companies made in the distribution case?

22 And specifically the companies in the
23 distribution case had proposed a consolidation of
24 tariffs which is carried forward in this case,
25 correct?

1 A. I agree.

2 Q. Now, would it be fair to say that your
3 principle issue with respect to the rate design is
4 the need for a demand charge?

5 A. My issue was that the rate design ought
6 to provide pricing signals to the customer that
7 encourage them to manage their demand.

8 Q. Including a demand charge?

9 A. Yes, that's one way.

10 Q. Now, the proposal does include a demand
11 charge, does it not, for the companies?

12 A. Which proposal?

13 Q. Well, the ESP, does that include a demand
14 charge?

15 A. Not for the generation portion of the
16 rates.

17 Q. Okay. Is there a demand charge in the
18 economic development rider?

19 A. I have to look at the rider.

20 Q. So you don't know.

21 A. Not without reviewing the rider.

22 Q. Now, you said that you believe that
23 customers need to be sent a price signal that
24 demand -- managing demand is important, correct?

25 A. Correct.

1 Q. Now, the demand charge that you have
2 proposed is \$14, correct?

3 A. Correct.

4 Q. And that's based upon an Ohio Edison
5 first block, correct?

6 A. That was the relative basis for selecting
7 the number.

8 Q. And that -- that tariff or -- was -- or
9 actually dates back to 1995, correct?

10 A. Correct.

11 Q. And that's not based on a cost-of-service
12 study.

13 A. No.

14 Q. So the signal that's being sent with the
15 \$14 is not that this is the cost that a customer can
16 avoid by not using that portion of demand, correct?

17 A. It is a rate --

18 THE WITNESS: Could I have the question
19 reread.

20 (Record read.)

21 A. No, I disagree. As I have proposed it,
22 with a \$14 demand charge if a customer reduced their
23 demand charge per kW, if the customer reduced its
24 demand, it would avoid \$14 per kW.

25 Q. But it is not the avoided cost for the

1 company, correct?

2 A. No, it is not tied to necessarily the
3 company's avoided cost.

4 Q. Now, would it be fair to say without the
5 demand charges the amount of generation required to
6 serve customers may increase?

7 A. Yes.

8 Q. It wouldn't necessarily increase the
9 amount of energy that customer's used, correct?

10 A. No. Correct, I agree with you.

11 Q. Now, would it be fair to say that you
12 believe that the shape of the load, the companies'
13 load or the customers' loads, would change and the
14 amount of the peak would increase, correct, without a
15 demand charge?

16 A. Yes.

17 Q. Now, you testified in the MRO case, did
18 you not?

19 A. Yes.

20 Q. And I assume that you read the testimony
21 of the various witnesses in that case, correct?

22 A. I've skimmed through it.

23 Q. Are you aware of the rebuttal testimony
24 of Mr. Ridmann?

25 A. Where he's filed it I don't know that

1 I've read it though.

2 Q. Are you aware of his testimony with
3 respect to the affect of eliminating demand charges
4 on load shapes of customers for Jersey Central?

5 A. I don't believe I have reviewed his
6 testimony.

7 Q. So you're not aware that at least with
8 respect to Jersey Central eliminating demand charges
9 had no affect of load shaping?

10 MS. McALISTER: Objection, your Honor.
11 Mr. Murray has already indicated he hasn't reviewed
12 Mr. Ridmann's testimony.

13 EXAMINER PIRIK: Mr. Kutik, he has
14 indicated that, but I think he can still answer this
15 question.

16 A. I haven't reviewed his testimony.

17 Q. Now, would it be correct to say your view
18 is that the demand charge need not be cost based as
19 long as rates are designed to recover the revenue
20 that the companies seek to obtain through ESP?

21 A. What I've tried to indicate in this
22 context we don't have cost-based rates in this
23 proceeding. So we are, at the end of the day, trying
24 to recover a revenue requirement, whatever that may
25 be.

1 And then so you can -- in the context of
2 recovering that revenue requirement we are not tied
3 to a cost-of-service study per se, so we have a lot
4 of leeway in terms of how we do the divvy up between
5 the demand energy customer charges.

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

7 A. As I explained it.

8 Q. Yes.

9 A. Yes.

10 Q. Now, so if there was a demand charge,
11 there would have to be a subsequent reduction in the
12 energy charge, correct?

13 A. If the demand charge didn't recover the
14 full revenue requirement.

15 Q. Now, would you be in favor of a demand
16 charge that made energy charges less than the
17 marginal cost of fuel?

18 A. No.

19 Q. Do you know whether -- if you had demand
20 charges in excess of \$8 whether that would -- that
21 would produce or result in energy charges that were
22 less than the marginal cost of coal?

23 A. I don't know that the cost of coal is
24 relevant because the actual cost of generation --

25 Q. Well, I'm sorry, sir, I don't need you to

1 discuss the relevance of my question. I would just
2 like you to answer my question.

3 MR. KUTIK: So if the court reporter
4 could read the question and you could answer it, sir.

5 (Record read.)

6 A. I don't believe your question provides
7 enough information to answer it because it doesn't
8 define the revenue requirement.

9 Q. So you couldn't say whether that would
10 happen?

11 A. Your question hasn't provided enough
12 information to answer the question.

13 Q. Okay. Now, if there was a demand charge
14 would you be in favor of a reconciliation mechanism?

15 A. What type of reconciliation mechanism?

16 Q. Remember -- you said earlier, did you
17 not, that based on what we are looking at is, in
18 effect, a revenue requirement, correct?

19 A. Yes.

20 Q. And you talked to Mr. Lang about, you
21 know, whether kW charges or demand -- generator
22 charges or kW charges would cause
23 overrecovery/underrecovery, that type of thing,
24 correct?

25 MR. BELL: Excuse me, I don't believe

1 there is a Mr. Lang in this proceeding.

2 MR. KUTIK: Actually there is, but I am
3 actually referring to Mr. Bell.

4 Q. Go ahead.

5 MR. BELL: Thank you.

6 A. Is there a question pending?

7 Q. Yes. I was in the middle of a question.

8 And the question was would you be in favor of a
9 reconciliation mechanism between the revenues
10 recovered by the companies and the cost that they pay
11 or the revenue expectation that the companies had in
12 the ESP?

13 A. I think you could approach that either
14 way. You could have a reconciliation mechanism. I
15 don't think there is anything that compels you to
16 have a reconciliation mechanism.

17 Q. So you are basically agnostic on
18 reconciliation mechanism?

19 A. It's one of the factors you have to take
20 into account when looking into the overall
21 reasonableness of the proposal.

22 Q. So I am not sure I got an answer to where
23 you stand on reconciliation; for or again?

24 A. Agnostic.

25 Q. Okay. Okay. Now, your view is you want

1 to take -- you want customers who want to take
2 service under the interruptible riders to receive
3 credit for -- well, I will back up.

4 Is it your view that customers who want
5 to take service under interruptible riders receive
6 credit for the load or energy that may be
7 interrupted? Do you think that's a reasonable
8 approach to interruptible riders?

9 THE WITNESS: Could you reread the
10 question.

11 (Record read.)

12 A. I don't believe my testimony addressed
13 that.

14 Q. No. I am asking you is that a view of
15 yours? Do you agree with that?

16 A. That's one option that you could use to
17 design interruptible rates.

18 Q. Now, you believe that -- do you believe
19 that ELR or customers that may participate in an ELR
20 rider should be able to participate in other
21 interruptible programs?

22 A. You are going to have to help me here.
23 Is the ELR the economic load response?

24 Q. Yes. Well, the ELR rider is the rider
25 that's available to the existing customers July 31

1 that were interruptible.

2 A. My testimony is I think they should be
3 able to participate in other options that may exist,
4 for example, through the Midwest ISO.

5 Having said that, I think as a practical
6 observation there may not be very many opportunities
7 for them to participate.

8 Q. Would your answer be the same with
9 respect to customers that may participate under the
10 proposed OLR riders, that you believe that those
11 customers should be able to participate in other
12 interruption programs?

13 A. Yes.

14 Q. Now, I think you just said that MISO
15 really doesn't have, from a practical standpoint, an
16 economic interruption program, correct?

17 A. As a practical standpoint, yes.

18 Q. MISO does have an emergency interruptible
19 program, correct?

20 A. Correct.

21 Q. And is it the case that MISO does not
22 allow customers who participate in their emergency
23 interruptible program to participate in other
24 emergency interruptible programs?

25 A. I don't know that that is correct.

1 Q. So you don't know one way or the other?

2 A. I believe that MISO would allow, for
3 example, a customer participating under FirstEnergy's
4 emergency interruptible proposal as proposed could
5 also participate under MISO's Schedule 30, which is
6 their emergency option.

7 Q. So it's your view you can participate
8 under MISO and, for example, the OLR or ELR programs
9 that FirstEnergy has proposed?

10 A. If you are consistent and meet the price
11 requirements as they are defined.

12 Q. Now, with respect to the OLR customers or
13 the customers that would participate potentially in
14 program -- the program under the OLR rider, those
15 customers could also participate in special contracts
16 that call for economic interruption, correct?

17 A. I didn't see that in the companies'
18 Application, but I was here when Mr. Warvell
19 testified, and I believe he testified that that was
20 the companies' intent.

21 Q. Okay. And so if that was the companies'
22 intent, that would be okay for you?

23 A. I would not object to it.

24 MR. KUTIK: Your Honor, may I have one
25 minute, please?

1 I have no further questions, thank you.

2 EXAMINER PIRIK: Mr. Jones.

3 MR. JONES: No questions.

4 EXAMINER PIRIK: Thank you.

5 Ms. McAlister.

6 MS. McALISTER: May we have just one

7 moment?

8 EXAMINER PIRIK: Yes.

9 MS. McALISTER: Thank you, your Honor.

10 We have no redirect.

11 EXAMINER PIRIK: Thank you.

12 MS. McALISTER: At this time I would like

13 to move for the admission of IEU-Ohio Exhibit 1.

14 EXAMINER PIRIK: Are there any

15 objections?

16 MR. KUTIK: No objection.

17 EXAMINER PIRIK: Hearing none, IEU

18 Exhibit 1 will be admitted into the record.

19 Thank you very much, Mr. Murray.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 MS. McALISTER: Your Honor, at this time

22 I would also like to mark as IEU-Ohio Exhibit 2 the

23 prefiled direct testimony of Joseph J. Bowser, and I

24 would also like to mark as IEU-Ohio Exhibit 2A the

25 errata sheet to Mr. Bowser's testimony. And it's my

1 understanding that there is no cross-examination for
2 Mr. Bowser, so at this time I would like to go ahead
3 and move for the admission of those two exhibits.

4 EXAMINER PIRIK: Are there any objections
5 to admitting IEU Exhibits 2 and 2A into the record?

6 MR. BURK: No objection, your Honor.

7 EXAMINER PIRIK: Hearing none, they will
8 be admitted.

9 (EXHIBITS MARKED AND ADMITTED INTO
10 EVIDENCE.)

11 EXAMINER PIRIK: I believe our next
12 witness, Mr. Eckhart.

13 MR. ECKHART: Dylan Sullivan is next.

14 (Discussion off the record.)

15 EXAMINER PIRIK: Go back on the record.

16 Mr. Eckhart.

17 MR. ECKHART: Yes, Henry W. Eckhart, 50
18 West Broad Street, Columbus, Ohio, representing the
19 Natural Resources Defense Council, and I would like
20 to call as our witness Mr. Dylan Sullivan.

21 (Witness sworn.)

22 - - -

23

24

25

1 DYLAN SULLIVAN

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

4 DIRECT EXAMINATION

5 By Mr. Eckhart:

6 Q. Mr. Sullivan, would you state your name,
7 please.

8 A. Dylan Sullivan.

9 Q. And your address?

10 A. It's 101 North Wacker Drive, Suite 609,
11 Chicago, Illinois 60606.

12 Q. And you are testifying here on behalf of?

13 A. The Natural Resources Defense Council.

14 MR. ECKHART: Your Honor, I would like to
15 have his prefiled direct testimony marked as the NRDC
16 Exhibit 1.

17 EXAMINER PIRIK: The document will be so
18 marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. Mr. Sullivan, do you have any corrections
21 or modifications to your testimony that you would
22 like to make at this time?

23 A. Yes, I have two corrections to the
24 testimony.

25 Q. And what is that?

1 A. Okay. Page 5, line 21. The phrase
2 "lacks experience" should be "has limited
3 experience."

4 Q. And anything else?

5 A. Yes, page 13, line 1. After the end of
6 the word "territory," there should be a footnote that
7 is the same as Footnote 7 on the previous page.

8 Q. Insert an asterisk there and Footnote
9 FN7.

10 A. Yeah.

11 Q. I note in your testimony you frequently
12 refer to Senate Bill 221. Did you mean something
13 else?

14 A. I mean, Substitute Senate Bill 221.

15 Q. Substitute Senate Bill 221.

16 A. Sorry about that.

17 Q. And I understand that the attorneys for
18 the company took your deposition by telephone; is
19 that correct?

20 A. They did, and I have one correction to
21 make to that deposition.

22 Q. And what is that?

23 A. Page 9, line 17 of the deposition, delete
24 "and lost revenues."

25 Q. Delete "and lost revenues," is that what

1 you said?

2 A. Uh-huh.

3 Q. And leave the rest of it the same?

4 A. Yes.

5 Q. Other than that your testimony, prefiled
6 testimony as you have heard it marked here is NRDC
7 Exhibit 1, is that your testimony and you believe it
8 to be true as of this time?

9 A. Yes.

10 Q. And the testimony in your deposition with
11 the one correction you make, you stand by that and
12 that's true as of the taking of the deposition?

13 A. Yes.

14 MR. ECKHART: Your Honor, I have no
15 further questions. Submit for cross-examination.

16 EXAMINER PIRIK: Thank you.

17 Mr. Small.

18 MR. SMALL: No questions.

19 EXAMINER PIRIK: Mr. Bell.

20 MR. BELL: No questions.

21 EXAMINER PIRIK: Ms. McAlister.

22 MS. McALISTER: No questions, your Honor.

23 EXAMINER PIRIK: Mr. Stinson.

24 MR. STINSON: No questions, your Honor.

25 EXAMINER PIRIK: Mr. Breitschwerdt.

1 MR. BREITSCHWERDT: No questions.

2 EXAMINER PIRIK: Mr. Boehm.

3 MR. BOEHM: No questions.

4 EXAMINER PIRIK: Mr. Lavanga.

5 MR. LAVANGA: No questions, your Honor.

6 EXAMINER PIRIK: Mr. Lang.

7 MR. LANG: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Lang:

11 Q. Hello again, I am Jim Lang. We spoke in
12 the deposition.

13 Just for background, you graduated from
14 Stanford in June of this year, 2008; is that correct?

15 A. Yes.

16 Q. You have been employed by NRDC as an
17 associate energy advocate since September 3 of this
18 year, correct?

19 A. I spoke about it in the deposition and
20 what I said there was correct, I think.

21 Q. So you have been employed as an associate
22 energy advocate since September 3, 2008.

23 A. Yes, that's correct.

24 Q. Other than your work experience with NRDC
25 you have no prior work experience relating to energy

1 efficiency or demand management, correct?

2 A. That's correct.

3 Q. And your title of associate energy
4 advocate, does that mean that you are employed by
5 NRDC, as your title says, to advocate on behalf of
6 NRDC for particular issues that are a concern of
7 NRDC?

8 A. You could say that, but perhaps there
9 should also be a "/analyst" at the end of that
10 because I do do analysis to support the advocacy.

11 Q. Now, in your testimony you are not
12 offering an opinion as to whether the electric
13 security plan proposed by the companies is more
14 favorable in the aggregate than the expected results
15 of an MRO, correct?

16 A. Uh-huh.

17 Q. You have to give a verbal answer.

18 A. Yes.

19 Q. In your testimony you focused on the
20 companies' proposals for energy efficiency and demand
21 management programs as to the extent that they are
22 set forth in the electric security plan.

23 A. Yes.

24 Q. And your opinion of the proposed plan is
25 based on your review of what has been set forth in

1 the electric security plan, correct?

2 A. Yes.

3 Q. But in the -- in the review that you
4 conducted and in the analysis that you performed, you
5 do not know for how long the companies have been
6 operating energy efficiency programs, correct?

7 A. Yeah. I think that's addressed in my
8 testimony.

9 Q. The deposition that we had several weeks
10 ago is not part of this record, so we will actually
11 be revisiting some of those issues just so everyone
12 else can hear it, if that's all right.

13 A. That's fine.

14 Q. So -- so you do not know how long the
15 companies have been operating energy efficiency
16 programs, correct?

17 A. That's correct.

18 Q. And in your testimony, particularly on
19 page 5 where you refer to the companies' recent
20 experience with energy efficiency and demand
21 management programs, that recent experience for you
22 that you have looked at, that's the 2005 to the 2008
23 time frame, correct?

24 A. That's correct.

25 Q. Is it fair to say that generally the

1 prevalence of utility-operated energy efficiency
2 programs is directly related to statewide energy
3 efficiency mandates?

4 A. That's generally true.

5 Q. In your testimony you give an opinion as
6 to the -- the companies' desire or willingness to
7 develop a comprehensive range of energy efficiency in
8 demand management programs.

9 Am I correct that your opinion -- am I
10 correct that that opinion is based on your review of
11 the electric security plan that's been submitted by
12 the companies?

13 A. Yes.

14 Q. And so, for example, you did not review
15 the energy efficiency programs that the companies
16 have been operating going back prior to 2005.

17 A. Well, no, I did. I looked into the home
18 energy -- the Energy Star for homes program and I
19 acknowledge the existence of a load control program
20 in my testimony and I think my deposition.

21 And also on page 5 of my testimony I
22 reference programs at the company that are large --
23 including the New Jersey and Pennsylvania operating
24 companies operating in their service territories.

25 Q. But to the extent you have looked at

1 those, you looked at those in the 2005 to 2008 time
2 frame and not prior year operations; is that correct?

3 A. That's correct.

4 Q. With regard to the DSE rider charge
5 that's in the electric security plan, is it your
6 opinion that large industrial customers are the class
7 most likely to avoid that charge?

8 A. Yes, and I think that's -- that's
9 addressed in the rules or the draft rules.

10 Q. And one reason why that would be the case
11 is because large industrial customers would have a
12 better -- would have better knowledge than the
13 utility of where efficiency lie -- efficiency lies
14 within the operations?

15 A. Yes, I said that in my deposition.

16 Q. And another reason could be the savings
17 opportunities for large industrial customers could be
18 quite large depending on the facility, correct?

19 A. That's correct.

20 Q. Your opinion as stated in the testimony
21 is that a key factor in having utility-managed energy
22 efficiency programs as opposed to third-party managed
23 efficiency programs is the requirement of having a
24 willing utility partner in implementing those
25 programs, correct?

1 A. Could you repeat the question.

2 (Record read.)

3 A. That's correct.

4 Q. And in one of the examples you give of
5 a -- a utility-managed program that is supported by
6 NRDC are the programs in Illinois, correct?

7 A. That's correct.

8 Q. And we had discussed in your deposition
9 that NR -- NRDC's determination that Illinois
10 utilities were willing partners in the
11 utility-operated programs was because the utilities
12 in Illinois helped -- either helped pass the energy
13 efficiency standards in Illinois or at least
14 supported the legislation in Illinois, correct?

15 A. Yes, but I could also probably add to
16 that and that would be that especially in the case of
17 ComEd they put forth a plan for energy efficiency and
18 then hired an outside party to come into the company
19 and implement that plan, somebody who is recognized
20 in the field.

21 Q. In the case of the FirstEnergy utilities
22 you do not know whether FirstEnergy utilities
23 supported the energy efficiency standards that was in
24 Senate Bill 221, correct?

25 A. It's my understanding that the efficiency

1 provisions were kind of added in maybe not the dead
2 of the night but in -- in a similar fashion to that,
3 and so I'm not sure that FirstEnergy took a position
4 for or against.

5 Q. From -- from where do you draw your
6 understanding about the dead-of-the-night addition of
7 the energy efficiency standards in Senate Bill 221?

8 A. Conversations with people in Ohio.

9 Q. Is that -- would that be with your
10 counsel or other people in Ohio?

11 A. Others out there.

12 Q. I want to ask you about the energy
13 efficiency model that you propose in your testimony.

14 As you recommend -- and the energy
15 efficiency model is a model that you recommend the
16 Public Utilities of Ohio consider for purposes of the
17 FirstEnergy utilities' territory, correct?

18 A. Yes.

19 Q. And this -- this model that you propose
20 would be funded from revenues gained through the DSE
21 rider, correct?

22 A. Yes.

23 Q. And as you propose it, the Commission
24 would set the funding amount of the rider charged to
25 fund the efficiency utility?

1 A. That's correct.

2 Q. And you recommend that the Commission
3 would conduct or should conduct an annual review to
4 update the DSE rider amount, correct?

5 A. Yes, and the amount would be updated to
6 reflect the larger quantity of energy efficiency
7 resource acquisition that's required at the time.

8 Q. So the -- so the amount of funding
9 through the rider would be based on what's necessary
10 to -- to meet the -- the energy efficiency and demand
11 management goals that are in state law, correct?

12 A. Yes.

13 Q. With regard to the responsibility for
14 meeting those goals, you suggest that the -- that
15 that responsibility could be assumed by the
16 efficiency utility but doesn't necessarily have to
17 be; is that correct?

18 A. Yes. My opinion is that that would be
19 handled contractually between FirstEnergy and the
20 efficiency utility.

21 Q. So the contract between FirstEnergy and
22 the efficiency utility would state one way or the
23 other whether the responsibility for obtaining the
24 energy efficiency targets in state law would stay
25 with the utility or would be assumed by the -- by

1 the -- by the efficiency utility, correct?

2 A. I want to be careful here because I'm
3 pretty sure by law the responsibility is the
4 utilities' but what we are talking about is the
5 financial responsibility for undercompliance.

6 Q. Okay. And with respect to the financial
7 responsibility for undercompliance, your
8 recommendation is that a surety or some other form of
9 insurance be employed to pay penalties that would be
10 assessed by the Commission or could be assessed by
11 the Commission under state law.

12 A. That's -- I say that in my deposition
13 but, again, that's a contractual issue that that
14 would be -- that would be handled in the contract.

15 Q. Okay. And -- and so the -- if a surety
16 mechanism were employed, the contract would -- the
17 contract would provide for funding or payment or
18 whatever that surety cost would be; is that correct?

19 A. Say that again.

20 Q. Would the -- if a surety mechanism were
21 employed, would the contract between the utility
22 FirstEnergy utilities and efficiency utilities
23 provide for how the costs of that surety would be
24 paid?

25 A. Yes.

1 Q. And regardless of whether it's the
2 FirstEnergy utilities or the efficiency utility that
3 is responsible for that cost, your recommendation is
4 that the costs of that surety would be paid out of
5 the DSE rider as one of many administrative costs,
6 correct?

7 A. Yes. But I think this -- it would also
8 depend on what -- what kind of organization ends up
9 getting the contract to be the efficiency utility. I
10 mean, if they are an existing organization and they
11 have financial strength, then there might be less use
12 for surety so.

13 Q. But the concept with the efficiency
14 utility is that the -- that the efficiency utility
15 assumes by contract the responsibility for meeting
16 the statutory targets, correct?

17 A. Yes.

18 Q. Now, at page 9 of your testimony, line
19 26, starting at line 25, you refer to the energy
20 efficiency program funding that would be between
21 \$32.5 million and \$49.8 million in 2009.

22 This is a range of what it would cost to
23 implement the energy efficiency savings required by
24 Ohio law in 2009 if Ohio is -- if Ohio were the same
25 as Vermont, correct?

1 A. Yes, sir.

2 Q. Because you are using -- you are using
3 what's been spent in Vermont to obtain Vermont's
4 targets and simply based on the -- what's being spent
5 in Vermont transferring that over to Ohio and saying
6 if Ohio is the same as Vermont, this is where you
7 will end up.

8 A. Yes. I mentioned in my deposition that's
9 a very rough estimate.

10 Q. Now, is it fair to say that because the
11 Vermont program is a more mature program than what we
12 have in Ohio, it -- that in Ohio we may have I think
13 what you would refer to as "low hanging fruit" that
14 are not in Vermont?

15 A. Yes.

16 Q. And what you mean by -- what is meant by
17 "low hanging fruit" in this context?

18 A. In this context "low hanging fruit" would
19 be low cost energy efficiency opportunities. We were
20 talking earlier about industrial customers and, you
21 know, I think Ohio has a much larger industrial base
22 than Vermont does, so that could provide low hanging
23 fruit.

24 Q. Okay. With respect to AMI programs,
25 would you agree that different types of dynamic

1 pricing programs could have different results?

2 A. Yes.

3 Q. And you make reference in your testimony
4 to the Smart Grid study that's proposed by the
5 companies.

6 Am I correct that you are not opposed to
7 the Smart Grid study that's included as part of the
8 electric security plan?

9 A. You're talking about Smart Grid study,
10 not the AMI pilot?

11 Q. Correct, correct.

12 A. Yes.

13 Q. You have three attachments to your
14 testimony.

15 A. Uh-huh.

16 Q. The first one, Attachment 1, I believe
17 you reference on page 6 of your testimony. And it is
18 a -- as you've stated it's a paper from 2005.

19 You were not involved in the preparation
20 of the paper that's -- that you reference as
21 Attachment 1, correct?

22 A. That's correct.

23 Q. And the Efficiency Vermont program that's
24 discussed in the attachment, you do not have personal
25 knowledge of that program that is discussed in that

1 document, correct?

2 A. I've talked with I think Blair Hamilton,
3 the author of the paper, I have spoken with him about
4 the efficiency of Vermont.

5 Q. Were you involved in the implementation
6 of any of the matters that are discussed in the
7 document?

8 A. No.

9 Q. With regard to the second attachment,
10 which you reference at page 7 of your testimony at
11 lines 7 through 10, in this particular document you
12 were not involved in the preparation of that paper.

13 A. That's correct, but, again, I did speak
14 with people at Efficiency Vermont.

15 Q. And that paper again is about Efficiency
16 Vermont, so again, you did not have personal
17 knowledge of the program that is described in that
18 document, correct?

19 A. That's correct.

20 Q. And the third attachment to your
21 testimony it looks like you start to describe at the
22 bottom of page 11, page 11 on to page 12, is
23 Attachment 3, this is a -- again, dates back to 2005
24 and, again, you were not involved in the preparation
25 of this document that is Attachment 3, correct?

1 A. That's correct. But, again, I do work
2 with people at the Center for Neighborhood
3 Technology, the people who did this Smart Grid study
4 that's referenced.

5 Q. So your understanding of what was
6 referenced comes from discussions -- discussions from
7 other people that you -- that work at NRDC or
8 elsewhere; is that correct?

9 A. Could you repeat that.

10 (Record read.)

11 A. Do you mean the documents referenced?

12 Q. What's the -- the pricing plan that's
13 discussed in Attachment 3.

14 A. Yes.

15 Q. And you are not aware whether the pricing
16 program that's discussed in Attachment 3 is
17 continuing today in Illinois.

18 A. Yeah, I am not aware of that.

19 Q. And you have not -- you have not
20 personally been involved at any time in the pricing
21 program that's discussed in Attachment 3, correct?

22 A. That's correct.

23 MR. LANG: Your Honors, at this time with
24 regard to Attachment 1 and 2 and Attachment 3 I move
25 to strike on the basis Mr. Sullivan does not have

1 personal knowledge of those documents.

2 He was not involved in the programs as I
3 believe he -- he described earlier as an analyst for
4 NRDC he has obtained these documents from different
5 sources and attached them to his testimony, but I do
6 not believe they are proper exhibits to his testimony
7 because they are not based on his personal knowledge
8 or his involvement in what is discussed in those
9 programs.

10 EXAMINER PIRIK: Mr. Eckhart.

11 MR. ECKHART: Yes, your Honor. I don't
12 believe there is any representation he personally
13 drafted these documents. He's offering them as
14 something he believes would help the Commission in
15 its decision.

16 He will and has testified that he
17 believes that the proposals, the information
18 contained in these documents is reliable and of
19 benefit to the Commission, so we stand by the offer
20 of these exhibits along with his testimony.

21 EXAMINER PIRIK: Do you have anything
22 further, Mr. Lang?

23 MR. LANG: Otherwise what I said before,
24 your Honor, in addition to lack of personal knowledge
25 he did describe that what knowledge he does have

1 comes from hearsay that he has gained from others so,
2 again, I do not believe that they are appropriate.

3 EXAMINER PIRIK: Mr. Eckhart, the Bench
4 tends to agree that these documents were not created
5 by the witness, are provided by third parties.

6 Do you have anything further that, you
7 know, before I make the ruling that supports keeping
8 these documents in the record?

9 MR. ECKHART: Well, not anything new. He
10 doesn't represent that he did this. He represents
11 that he believes these things are of value in
12 supporting his testimony, explaining his testimony,
13 and a value to the Commission. That's the purpose of
14 having them. There is no representation that he drew
15 up these documents.

16 EXAMINER PIRIK: Well, given the fact
17 they were created by third parties and the witness
18 was not involved in their creation, the motion to
19 strike will be granted for Attachments 1, 2, and 3.

20 MR. LANG: Thank you, your Honor.

21 I have no further questions.

22 EXAMINER PIRIK: Thank you.

23 Mr. Jones

24 MR. JONES: No questions, your Honor.

25 EXAMINER PIRIK: Mr. Eckhart.

1 MR. ECKHART: Your Honor, at this time I
2 have no further questions.

3 I would offer the NRDC Exhibit 1 and
4 proffer the Attachments 1, 2, and 3. We have a right
5 to proffer them even if you ruled they are not
6 admissible.

7 EXAMINER PIRIK: I understand that,
8 Mr. Eckhart.

9 Do you have anything in response to that,
10 Mr. Lang?

11 MR. LANG: No objection to the exhibit
12 subject to the -- your ruling on the motion to
13 strike.

14 EXAMINER PIRIK: Thank you.

15 Are there any objections to the admission
16 of NRDC Exhibit 1?

17 With that exception the document will be
18 admitted into the record.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER PIRIK: Thank you, Mr. Sullivan.

21 MR. ECKHART: I assume the proffer is
22 accepted.

23 EXAMINER PIRIK: Yes.

24 MR. ECKHART: Thank you.

25 EXAMINER PIRIK: Can we go off the

1 record?

2 (Discussion off the record.)

3 EXAMINER PIRIK: We will go back on the
4 record.

5 Mr. Jones.

6 MR. JONES: Thank you, your Honor.

7 Staff would call Joe Buckley to the
8 stand.

9 (Witness sworn.)

10 EXAMINER PIRIK: Mr. Jones.

11 MR. JONES: Thank you, your Honor.

12 - - -

13 JOSEPH P. BUCKLEY

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

16 DIRECT EXAMINATION

17 By Mr. Jones:

18 Q. Could you please state your name for the
19 record, please?

20 A. Joseph P. Buckley.

21 Q. And who are you employed with?

22 A. The Public Utilities Commission of Ohio.

23 Q. And what is your title?

24 A. Utilities Specialist 3.

25 Q. And have you had an opportunity to review

1 the Application in this case for FirstEnergy?

2 A. Yes.

3 Q. And have you prepared testimony for this
4 case?

5 A. I have.

6 Q. Your Honor, at this time I would like to
7 have marked prefiled testimony of Joseph P. Buckley
8 as Staff Exhibit 4.

9 EXAMINER PIRIK: The document will be so
10 marked.

11 MR. JONES: Thank you, your Honor.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Mr. Buckley, could you please identify
14 Exhibit 4 for the record, please?

15 A. It's my prefiled testimony.

16 Q. Was this testimony prepared by you or at
17 your direction?

18 A. It was.

19 Q. Do you have any changes or additions to
20 make to Staff Exhibit 4?

21 A. Not at this time.

22 Q. If I were to ask you the same questions
23 contained in Staff Exhibit 4, prefiled testimony,
24 would your answers be the same?

25 A. They would.

1 Q. And to your belief and knowledge is your
2 testimony accurate?

3 A. Yes, it is.

4 MR. JONES: Your Honor, at this time I
5 would offer Mr. Buckley for cross-examination.

6 EXAMINER PIRIK: Thank you.

7 Mr. Small.

8 MR. SMALL: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Small:

12 Q. Mr. Buckley, Jeff Small, OCC.

13 Would you please turn to page 4 of your
14 testimony. And at this point there's a discussion
15 about a corporate separation plan in your testimony,
16 correct?

17 A. Correct.

18 Q. And did you submit similar testimony in
19 the MRO case related to FirstEnergy?

20 A. I did.

21 Q. In that case you might recognize some of
22 my questions. Would you expect the filing of the
23 FirstEnergy's corporate separation plan to be filed
24 at the Commission?

25 A. Yes.

1 Q. And would you expect such a corporate
2 separation plan to be subject to comments by
3 interested parties?

4 A. I would.

5 Q. And would you expect such a filing to
6 result in a hearing if the Commission determined that
7 that was necessary?

8 A. Yes, that would be up to the Commission
9 to determine.

10 Q. So in summary, it's your expectation that
11 there would be an opportunity for interested parties
12 to look at the Application by the company and comment
13 upon it and make the recommendations to the
14 Commission?

15 A. Yes.

16 Q. Would you turn back to page 3 of your
17 testimony, and the question and answer 6.

18 A. Yes.

19 Q. Here there is a discussion of the -- of
20 the pending rules. Are you familiar with the
21 progress of the rulemaking that you reference in
22 lines 14 and 15 on page 3?

23 A. Generally, yes.

24 Q. And those rules have been adopted by the
25 Commission and are -- have not been submitted to

1 JCARR yet? Is that the progress on the rules?

2 A. I'm not sure about whether they have been
3 submitted to JCARR or not, to be honest.

4 Q. Okay. But they are more than just
5 proposed by the staff? There is actually an order
6 out by the Commission, correct?

7 A. Correct.

8 Q. And those are the rules you are referring
9 to at this point in your testimony?

10 A. Correct.

11 Q. Now, with specific reference to (D)(1),
12 line 14, you refer to (D)(1) of a particular Rule
13 37-04, now, (D)(1) prohibits the release of
14 customer's information without an affiliate without
15 prior authorization from the customer, correct?

16 A. Correct.

17 Q. And do you consider that important to the
18 independence that you mention on line 19 of your
19 testimony?

20 A. In crafting this question one of the
21 things I was thinking about was whether a
22 cost/benefit analysis would be what we would expect
23 to see, and one of the big costs is anybody harmed in
24 having -- in granting this waiver.

25 And you have to kind of balance that as

1 to what the potential cost savings could be by
2 granting the waiver.

3 So we would like to look at whether --
4 what the waiver actually would be for in more detail
5 to see who is harmed -- I am not sure we have enough
6 information on what the waiver will be asking for at
7 this moment to know whether anybody will be
8 compromised or anything will be compromised. We are
9 still -- we would still seek more information before
10 we granted the waiver.

11 MR. SMALL: Your Honor, motion to strike,
12 the response is -- the answer is completely
13 unresponsive to my question of whether -- whether the
14 rule is important to the independence mentioned on
15 line 19 of his testimony.

16 EXAMINER PIRIK: I'll deny the request
17 but do you want to go further and respond to the
18 specific question with regard to the independence?

19 A. Until I know exactly what the waiver will
20 be requesting in more detail, I can't comment on your
21 question.

22 Q. Well, I think the question is pretty
23 simple.

24 MR. JONES: Your Honor, could we have the
25 question reread for the witness, please.

1 (Record read.)

2 A. I guess I am going to say I don't
3 understand the question.

4 Q. It's simply has the Commission passed an
5 unimportant rule as far as corporate separation for
6 the independence that you mentioned on 19?

7 A. No.

8 Q. Now, (D)(3) that you mention on line 14
9 prohibits the use of information by employees of
10 affiliates that is not available to competitors,
11 correct?

12 A. Correct.

13 Q. Do you consider that rule to be important
14 to the independence that you mentioned on line 19 of
15 your testimony?

16 A. Yes.

17 Q. Is it fair to say from your responses to
18 my questions so far that the staff has not made a
19 determination regarding Mr. Blank's suggestion that
20 there be a waiver to rules (D)(1) and (D)(3)?

21 A. We have not.

22 MR. SMALL: I have no further questions.
23 Thank you, your Honor.

24 EXAMINER PIRIK: Mr. Bell.

25 MR. BELL: No questions.

1 EXAMINER PIRIK: Ms. McAlister.

2 MS. McALISTER: No questions.

3 EXAMINER PIRIK: Ms. Elders.

4 MS. ELDERS: No questions.

5 EXAMINER PIRIK: Mr. Stinson.

6 MR. STINSON: No questions.

7 EXAMINER PIRIK: Mr. Breitschwerdt.

8 MR. BREITSCHWERDT: No questions.

9 EXAMINER PIRIK: Mr. Boehm.

10 MR. BOEHM: No questions.

11 EXAMINER PIRIK: Mr. Lavanga.

12 MR. LAVANGA: No questions.

13 EXAMINER PIRIK: Mr. Kutik.

14 MR. KUTIK: Yes, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Kutik:

18 Q. Mr. Buckley, in response to Mr. Small's
19 questions I think you said that your testimony in
20 this case is similar to the testimony that you filed
21 in the MRO case, correct?

22 A. Correct.

23 Q. And you remember giving testimony in the
24 MRO case, correct?

25 A. I do.

1 Q. Would it be fair to say in the MRO case
2 you testified in response to my question that you
3 were not recommending that the MRO Application
4 process be held up pending compliance with the
5 corporate separation plan rules?

6 Do you remember that?

7 A. Yes, I do.

8 Q. Is your position the same in this case
9 with respect to the ESP?

10 A. No.

11 MR. KUTIK: No further questions.

12 EXAMINER PIRIK: Mr. Jones.

13 MR. JONES: Your Honor, if I could have a
14 minute to confer.

15 EXAMINER PIRIK: Mr. Jones.

16 MR. JONES: Yes, your Honor, we have no
17 further questions.

18 EXAMINER PIRIK: Thank you.

19 Thank you, Mr. Buckley.

20 MR. JONES: At this time, your Honor, the
21 staff would move for the admission of Staff Exhibit 4
22 into evidence, please.

23 EXAMINER PIRIK: Are there any
24 objections?

25 MR. KUTIK: No.

1 EXAMINER PIRIK: Hearing none, Staff

2 Exhibit 4 shall be admitted into the record.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 EXAMINER PIRIK: Mr. Jones.

5 MR. JONES: Yes, your Honor, the staff
6 would call Bob Fortney to the stand.

7 Does the Bench need copies of his
8 testimony?

9 (Witness sworn.)

10 - - -

11 ROBERT B. FORTNEY

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

14 DIRECT EXAMINATION

15 By Mr. Jones:

16 Q. Could you please state your name for the
17 record, please?

18 A. Robert B. Fortney, F, as in Frank,
19 O-R-T-N-E-Y.

20 Q. And who are you employed with?

21 A. Public Utilities Commission of Ohio.

22 Q. And what is your title?

23 A. Public Utilities Administrator 3.

24 Q. And have you had an opportunity to review
25 the Application in this case for FirstEnergy?

1 many "be's" in that sentence. It should read "I
2 believe it would be better described." So the "be"
3 after "better" should be eliminated.

4 Q. Mr. Fortney, do you have any additions to
5 make to your testimony in regards to the ruling by
6 the Attorney Examiners in this case as to the rate
7 distribution case 07551-EL-AIR being made in this
8 proceeding as to the testimony you made in the
9 short-term ESP proposal in your testimony?

10 A. Depending on the timing of that ruling,
11 it could affect my testimony. Examiners Price and
12 Bojko will love me since I have been hassling them
13 for eight months to make a ruling.

14 EXAMINER PRICE: And we appreciate you
15 pointing that out on the record. It's a good thing
16 you brought two water bottles because you will be
17 here for a while.

18 THE WITNESS: If they had thoughts of
19 adopting my recommendation they would probably be
20 better off not making the -- writing the order and
21 issuing the order in the distribution case until
22 after they -- at the same time they issue the order
23 in the ESP case.

24 Q. Now, if I were to ask you -- given those
25 changes that you've made for the record and those

1 additions made to your testimony, if I were to ask
2 you the same questions today, would your answers be
3 the same?

4 A. Yes, they would.

5 Q. Okay. And to the best of your knowledge
6 and belief, is your testimony accurate?

7 A. Yes, it is.

8 MR. JONES: Your Honor, at this time I
9 would offer Mr. Fortney for cross-examination.

10 EXAMINER PIRIK: Thank you.

11 Mr. Small.

12 MR. SMALL: Thank you.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Small:

16 Q. Mr. Fortney, Jeff Small, OCC.

17 I would like to go directly to the
18 portion of your testimony that you just had a
19 discussion of on page 10 of your testimony, last
20 question and answer 16.

21 I think I caught the fact that you wanted
22 a distribution rate case decision but I am not sure I
23 caught the rest of it, so let's go through it.

24 You under -- your testimony was filed
25 after -- I'm sorry.

1 Before the Attorney Examiner's ruling
2 stating that there would be a decision on the
3 distribution rate case components in the distribution
4 rate case, correct?

5 A. That's correct.

6 Q. And you understood that that ruling was
7 that there would be a decision in place so the new
8 rates, distribution rates, could go into affect
9 January 1, 2009 in those instances where that would
10 be appropriate?

11 A. I'm not sure I have a thorough
12 understanding of that ruling. I was not present
13 then.

14 My understanding is that they promised to
15 issue an order in that case separate from the ESP
16 order. I don't know what their timing was.

17 Q. Okay. But the first rates that would
18 go -- the first change in rates that would go into
19 affect as a result of the distribution rate cases
20 would be January 1, 2009, correct?

21 Was I not clear about something?

22 A. There again, I don't know when the rates
23 would go into affect. I believe this would depend on
24 when their ruling was issued.

25 Q. Maybe I will restate that.

1 The first date where the company has
2 requested a change in the distribution rate for any
3 of the three companies would be January 1, 2009,
4 correct?

5 A. The distribution rate case Application
6 was to put rate -- distribution rates into affect
7 January 1, 2009.

8 Q. For at least two companies.

9 A. Yeah, with the exception of CEI.

10 Q. Okay. All right. Let's do this in
11 parts.

12 In the event that a Commission order was
13 issued in the distribution rate cases such that rates
14 could be changed where they were requested for
15 January 1, 2009, the order was issued in time for
16 that to take place, would you have a problem with
17 your recommendation on page 10 of using the actual
18 distribution rate case results as opposed to your
19 2-1/2 surcharge proposal?

20 A. The problem -- the timing problem comes
21 that if the order in that distribution case were
22 issued before 1-1-09 and that order did accept the
23 tariff structure that the company has proposed and
24 there has not been an order on the ESP case, you have
25 a mismatch of tariffs.

1 The distribution case goes to the A
2 tariffs, residential or general services, the street
3 lighting, and you still have multiple tariffs for the
4 generation portion.

5 So you have a -- you have a mismatch in
6 tariffs if the distribution case as approved prior to
7 the end of the year, and my -- some type -- my
8 recommendation is taken where you -- there is some
9 type of a surcharge.

10 Q. All right. If Senate -- what was the
11 date of -- approximately the date of the filing for
12 the distribution rate case?

13 A. I don't recall.

14 Q. It was well back in 2007, correct?

15 A. Yes.

16 Q. So at that time there was no Senate Bill
17 221, correct?

18 A. That's correct.

19 Q. And there was no such thing as an
20 electric security plan.

21 A. That's correct.

22 Q. So those filings contemplated a change in
23 distribution rates without -- in the absence of an
24 electric security plan, correct?

25 A. That's correct.

1 Q. So wouldn't that situation, if we've had
2 no electric security plan and no Senate Bill 221,
3 involve the same mismatch you are discussing that you
4 just discussed in your response to my question?

5 A. Well, I think there in the distribution
6 case we had some discussion on the record about what
7 the generation rates would be beginning 1-1-09 and I
8 think at that time I assumed that the legislature
9 would pass something and that this Commission would
10 rule on something, and so any mismatch would be taken
11 care of at that time.

12 Q. Are you saying that the staff's
13 recommendations in the distribution rate case were
14 predicated on certain changes being made in
15 generation even before Senate Bill 221 took place?

16 A. No, but during the distribution case
17 there were parties, Nucor being one of them, that
18 were concerned about what the distribution -- what
19 the generation rates would be beginning 1-1-09.

20 And so somewhere along the line someone
21 asked me a question on what I expected the generation
22 rates to look like in 1-1-09, and my response was
23 that I thought that there would be something come out
24 of the legislature and the Commission would have
25 resolved the generation rate issue by the end of '08.

1 Q. Is it impossible to put into -- into
2 affect the distribution rates getting in on January
3 1, 2009, according to the distribution rate case and
4 not have the change in rate structure proposed by
5 FirstEnergy in the ESP plan?

6 A. If the generation rate structure and the
7 distribution rate structure are different, it just
8 makes it much more difficult to do a short-term plan.

9 I believe that the companies' proposed
10 short-term plan does move those tariffs, generation
11 tariffs, into the same rate that are in the
12 distribution plan so, frankly speaking, their
13 proposal might be the easiest to administer if the
14 distribution rate case was decided before then.

15 Q. It would be possible though to have --
16 excuse me.

17 Separate set of distribution and
18 generation tariffs, and I mean different in the sense
19 of they are based on different rate schedules and
20 rate classes; that is physically possible, isn't it?

21 A. I am sure it's possible. I believe that
22 it would be kind of an administrative nightmare, but
23 I am sure it can be done.

24 Q. Are you familiar with the Dayton Power &
25 Light -- generally familiar with the Dayton Power &

1 Light tariff schedules?

2 MR. JONES: Objection, relevance, your
3 Honor.

4 EXAMINER PIRIK: Mr. Small.

5 MR. SMALL: I'll rephrase.

6 Q. Are you familiar with any companies
7 providing electric distribution service in the state
8 of Ohio that have separate generation and
9 distribution tariffs?

10 MR. JONES: Objection, relevance as to
11 what other companies are doing or have done.

12 MR. SMALL: There's a discussion here
13 about feasibility apparently as a obstacle that
14 Mr. Fortney believes there is to implementing the
15 solution, rate solution that I am suggesting.

16 EXAMINER PIRIK: Objection overruled.

17 A. Dayton Power & Light does have separate
18 distribution and generation schedules but they
19 have -- the tariffs are the same. They apply to the
20 same people, same customer groups.

21 Q. But it is possible to have different
22 separate generation and distribution tariffs.

23 A. Yes, it is.

24 Q. Now, there are -- that there's that
25 reference to the distribution rate case and others in

1 your testimony. In particular at the bottom of page
2 4 of your prefiled testimony. I understand from
3 question and answer 4 that you are the point person
4 for this particular case for the staff.

5 Does the staff take any position in this
6 particular case, in the electric security plan case,
7 that conflicts with its positions taken in 07-551,
8 the distribution rate case?

9 A. Not that I am aware of.

10 Q. Okay. Now, if could you turn to page 4
11 that I previously referenced. On line 19 you talk
12 about the companies' distribution rate case and the
13 issues there, and on line 20 you refer to recovery of
14 post date-certain deferrals.

15 Do you see that?

16 A. Yes.

17 Q. Was it the -- was there a dispute -- is
18 your understanding there was a dispute in the
19 distribution rate case concerning the treatment of
20 RCP, rate certainty plan distribution deferrals with
21 respect to the date-certain treatment of those
22 deferrals?

23 A. Yes.

24 Q. And the company asked for -- that the
25 date-certain concept not be applied in their RCP

1 distribution deferrals, correct?

2 MR. KUTIK: Your Honor, I object.

3 EXAMINER PIRIK: Grounds?

4 MR. KUTIK: The Bench's ruling about the
5 distribution issues in this case not being in this
6 case.

7 EXAMINER PIRIK: Mr. Small, can you
8 explain exactly how this is not part of that?

9 MR. SMALL: Yes, your Honor.
10 Mr. Fortney's testimony makes a statement here about
11 the division between what is and what is not in the
12 distribution rate case and I maintain that he is
13 incorrect about that and his response so far has
14 already indicated he is incorrect about that, that
15 the company made certain deferral issues an issue in
16 their distribution rate case and he states otherwise
17 in his testimony.

18 MR. KUTIK: That's not his testimony. He
19 was asking whether the staff is taking any different
20 positions and he said not that he is aware of.

21 MR. SMALL: No, we moved on to the next
22 set of questions. That was a discussion about --
23 that was a previous question.

24 Now, I am on to his testimony that states
25 on line 20 that "the recovery of post date-certain

1 deferral balances are not part of the distribution
2 case," which I maintain his response has already been
3 that the companies' position in the distribution case
4 was otherwise, so it was at issue in the distribution
5 rate case.

6 EXAMINER PIRIK: I think I am going to
7 allow the witness to clarify to the extent necessary.

8 THE WITNESS: In the companies'
9 distribution rate case Application they requested the
10 recovery of deferrals through December 31, 2008.

11 The staff's position was that they should
12 only -- as part of the distribution rate case those
13 deferrals should only be the deferrals that should be
14 recovered as a result of the distribution rate case
15 should have only been through the date certain, which
16 I forget what it was, March of 2007.

17 So there is -- remains based upon the
18 companies' Application in the distribution case and
19 the staff's recommendation which I am adapting as
20 part of -- as the resolution of the distribution rate
21 case there is still a gap from the date certain to
22 December 31, 2009 in the recovery of deferrals.

23 EXAMINER PRICE: Mr. Fortney, does the
24 staff -- in the rate case the staff actually
25 recommended five-twelfths of the distribution

1 controls; is that correct.

2 MR. SMALL: I'm sorry, your Honor, I
3 can't hear you.

4 EXAMINER PRICE: In the distribution rate
5 case the staff actually recommended recovery -- the
6 company be allowed to recover five-twelfths of those
7 distribution controls; is that correct?

8 THE WITNESS: I believe that's -- but
9 they also I believe in that case they also somewhat
10 adjusted the amount of the deferrals that the 12 --
11 that the whole would represent.

12 EXAMINER PRICE: In this case the
13 staff -- does the staff support the companies'
14 recovery of the balance of those distribution
15 deferrals?

16 THE WITNESS: If that's part of
17 Mr. Tuft's testimony and, yes, we recover -- we
18 recommend recovery of the balance of those deferrals
19 although adjusted for Mr. Tuft's adjustments and
20 leaving up in the air whether it be part of this case
21 or some other case.

22 EXAMINER PRICE: The company wants
23 recovery of these deferrals whether it occurred
24 through the distribution rate case or the
25 distribution rate case and the ESP case in

1 combination; is that not correct?

2 THE WITNESS: That's correct.

3 EXAMINER PRICE: And the staff has not
4 proposed to the -- opposed to the companies' recovery
5 of these deferrals whether it be or through the
6 distribution rate case or to the distribution rate in
7 the ESP case combined; is that not correct?

8 THE WITNESS: I think we are indifferent
9 as to where they recover the amount.

10 EXAMINER PRICE: Thank you.

11 EXAMINER PIRIK: Mr. Small.

12 Q. (By Mr. Small) I guess that leaves me
13 with a few things.

14 Is staff also indifferent to a situation
15 where the deferrals are recovered in a follow-up
16 distribution rate case as a third alternative?

17 A. I love -- I don't know if "indifferent"
18 is the proper word. We believe they are entitled to
19 the recovery of X number of dollars and I guess we
20 are indifferent as to when that is recovered. If it
21 was recovered later, there would be additional
22 carrying charges applied.

23 So I believe that staff's position that
24 the company should be indifferent as to when they
25 recover it but I suppose from the company's

1 perspective the sooner the better but, yeah, I don't
2 think the staff has a recommendation on where it
3 should be recovered.

4 Q. That was the staff recommendation in the
5 distribution rate case, correct, that those amounts
6 should be recovered in the next distribution rate
7 case?

8 A. Probably was.

9 EXAMINER PRICE: Mr. Fortney, if we were
10 to have a second distribution rate case, it wouldn't
11 be limited just to that one issue under Ohio law,
12 could it? It would be a full distribution rate case.

13 THE WITNESS: That's -- yeah, I would
14 assume.

15 EXAMINER PRICE: Involving all of the
16 issues that are generally discussed in a distribution
17 rate case. Would that not --

18 THE WITNESS: I would assume that could
19 be the companies' objection.

20 EXAMINER PRICE: Would that not result in
21 all of the distribution rate case expenses that would
22 typically be associated with a distribution rate
23 case?

24 THE WITNESS: Yes.

25 EXAMINER PRICE: Now, understanding that,

1 does the staff believe that the third option would be
2 an appropriate option for the Commission to
3 undertake? Or would the staff be indifferent to that
4 option?

5 THE WITNESS: I believe that the -- if it
6 were legally possible to resolve the deferral issue
7 in the ESP case, that was -- that is where staff
8 would prefer it to be resolved.

9 EXAMINER PRICE: Thank you.

10 Q. (By Mr. Small) All right, let's go back
11 to your testimony on page 4 and start as a wrap up.

12 Do I understand from your responses to
13 the Bench that your statement about under No. 2, the
14 recovery of post date-certain deferral balances are
15 not a part of the distribution case?

16 That was the -- that's the staff's
17 position, not that it wasn't part of the distribution
18 case but that's the statement of the staff's
19 position, correct?

20 A. There again --

21 MR. JONES: Your Honor, I have to object.

22 A. It's a statement of fact. The companies
23 have proposed resolutions to three significant
24 issues, one of them being the recovery of post
25 date-certain deferral balances might be a misquote

1 not a part of the distribution case. I probably
2 should have said that the staff has no recommendation
3 to be recovered in the distribution case.

4 MR. SMALL: Okay. I have no further
5 questions, your Honor.

6 EXAMINER PIRIK: Mr. Bell.

7 MR. BELL: Thank you.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Bell:

11 Q. Based upon your testimony on page 1, when
12 you state that you are the point person in this case,
13 does that mean you, like Mr. Blank, are in effect
14 supporting the entirety of the staff's position with
15 respect to this ESP Application?

16 A. Well, I am not sure there's a real good
17 definition of the point person. That was probably my
18 word but part of that is administrative but part of
19 that would be as you just described.

20 Q. That's what I was trying to explore, not
21 to give any particular significance to the word but
22 substantively under the purpose of your testimony.

23 Now, at the top of page 2 you quote the
24 statement of the companies in the inserted
25 single-spaced material, do you not?

1 A. It was a footnote in the Application,
2 yeah. I hope that that's a direct quote.

3 Q. That footnote flagged my interest as
4 well, Mr. Fortney. Let's explore that for a minute.

5 As you read that statement, particularly
6 the last sentence beginning with "It is presented on
7 behalf of all three Companies collectively and must
8 be --" and what I want to focus on is the "must be
9 accepted with respect to all of them."

10 Was it your interpretation that the
11 company is telling the Commission there it's a
12 take-it-or-leave-it proposition? I may not tinker or
13 touch anything that we have within our plan or we
14 have the right to reject it.

15 MR. JONES: Objection, your Honor. Calls
16 for speculation as to what the companies' intent was
17 with that statement in their footnote.

18 EXAMINER PIRIK: Objection overruled.

19 MR. BELL: I am asking this witness's
20 interpretation.

21 EXAMINER PIRIK: Overruled.

22 A. I think that last sentence is a little
23 different than what comes before it. The last
24 sentence is that it must be accepted for all three
25 operating companies. Which is a little bit different

1 than the first part of the statement which simply
2 says that it is presented as a whole and it --

3 Q. It's a take it or leave it.

4 A. That's how it's presented, yes.

5 Q. Thank you.

6 Now, would you agree with me,
7 Mr. Fortney, that this ESP proceeding involves what
8 might be described as a hybrid ratemaking?

9 A. Well, certainly not traditional cost of
10 service ratemaking and it's not simply market-based
11 ratemaking, so it's probably some kind of a hybrid.

12 Q. Thank you, Mr. Fortney.

13 Now, would you agree, Mr. Fortney, that
14 the staff's position in this case, at least as you
15 understand it and represent it to be as the staff's
16 point person provides benefits to the utility in this
17 quote "hybrid" proceeding that it could not derive in
18 a regular rate case proceeding as suggested in your
19 dialogue with Mr. Small?

20 A. Could I have the question reread, I
21 didn't get the first part of it.

22 EXAMINER PIRIK: Yes.

23 (Record read.)

24 A. It's different in that there is no
25 revenue requirement that they have to justify and

5 Q. Well, isn't that specifically illustrated
6 in the staff's change in its position from the
7 distribution case to this proceeding with respect to
8 post date-certain deferrals?

9 In that case you said no. In this case
10 you say yes. Does not that bestow onto this company
11 and this hybrid proceeding, if you will, a benefit
12 that it would not otherwise receive?

13 A. The particular example that you gave
14 would represent a benefit to them since in the
15 distribution case the staff recommended that they
16 give the deferrals after the date certain be
17 recovered in the next distribution case, and now it
18 is -- they have applied for it to be part of the ESP
19 case, that would be a benefit to them, yes.

20 Q. Well, it's more than just accelerating
21 the point in time at which those deferrals would be
22 recovered, is it not, Mr. Fortney?

23 A. I don't know what you are referring to.

24 Q. Well, let me be specific.

25 Obviously getting it now is better than

1 waiting until the next distribution case to get it.
2 That was the focus of your response to my question,
3 was it not?

4 A. Well, by waiting there could be carrying
5 charges and so the company would probably be revenue
6 indifferent at some point in time, but as I said
7 before, it's from the companies' point of view it's
8 probably better to get it sooner than later.

9 Q. And aren't there other incremental
10 benefits associated with the staff's recommendation
11 then just getting it sooner, for instance, under the
12 staff's current recommendation the companies' receipt
13 of those revenues on a going-forward basis isn't
14 subject to a prudent review or other determinations
15 by the staff as to whether or not those deferrals
16 were least cost or otherwise in the vested interest
17 of the company and the customers?

18 MR. JONES: Your Honor, I guess I am
19 going to have to object, this is a better question
20 for Mr. Tufts since he covers this issue of
21 deferrals.

22 EXAMINER PIRIK: I think to the extent
23 Mr. Fortney can answer the question, I will allow it.

24 A. Mr. Tufts has adjusted the amounts that
25 the company has requested for recovery so, yeah,

1 those -- to that degree those costs have been
2 audited.

3 Q. Based upon the information currently
4 available?

5 A. Yes.

6 Q. Not based upon more detailed information
7 covering the -- not based upon a more detailed
8 analysis of greater information or database in a
9 subsequent rate case?

10 A. Well, Mr. Tufts could answer that
11 question better than I because I don't know what
12 expenses were actual and what were forecasted.

13 Q. I am not dealing with numbers now. I am
14 dealing with concepts. Do you understand that,
15 Mr. Fortney?

16 I am not trying to measure the advantage
17 to the company or disadvantage to the company in
18 getting a recovery now as opposed to later.

19 A. The only benefit I see for auditing
20 purposes would be that we are done sometime after '09
21 and would be actual numbers rather than some mix of
22 actual and forecast.

23 Q. Would you agree that your recommendation
24 in this case and specifically with respect to the
25 short-term ESP is a hybrid proposal?

1 A. My recommendation is definitely a hybrid
2 proposal, yes.

3 Q. With respect to the ESP hybrid ratemaking
4 in which we are currently engaged, you believe it is
5 appropriate in fashioning this hybrid proposal that
6 at the time the decision is made on that proposal the
7 Commission should exercise its best judgment?

8 MR. JONES: Your Honor, I guess I need
9 clarification; are we talking short-term or long-term
10 hybrid proposal here?

11 EXAMINER PIRIK: Yes. Could you please
12 clarify.

13 Q. Let's start with the long term.

14 A. In deciding the ESP plan should the
15 Commission exercise their best judgment?

16 Q. Yes.

17 A. I hardly think that either the Examiners
18 or the Commission needs me to remind them to exercise
19 their best judgment, Mr. Bell.

20 Q. It's not a mathematical computation one
21 can throw into a computer such as statistical
22 development of what constitutes significantly excess
23 earnings.

24 Judgment must be exercised as far as the
25 plan -- ESP plan as well as what constitutes

1 significantly excess earnings?

2 That's a question. Do you want me to
3 break it down into the two parts that's evidenced in
4 that question?

5 A. Please.

6 Q. Okay. With respect to determining the
7 revenues -- overall revenues to which the company is
8 entitled, do you believe that Senate Bill 221 imposes
9 upon the Commission the obligation to exercise
10 "judgment"?

11 MR. JONES: Objection, that calls for a
12 legal opinion as to what the Commission would do.

13 MR. BELL: We've had every single witness
14 on the stand testify as to their interpretation of
15 Senate Bill 221, now staff counsel is seeking to deny
16 Mr. Fortney the opportunity to --

17 MR. JONES: Your Honor, he included the
18 Commission as to their interpretation of Senate Bill
19 221.

20 EXAMINER PIRIK: Mr. Bell, Mr. Bell.

21 MR. BELL: Yes, your Honor.

22 EXAMINER PIRIK: Please return to your
23 seat. I am going to overrule the objection but
24 please don't ask this witness to make any legal
25 interpretation.

1 Please rephrase the question.

2 Q. (By Mr. Bell) In the context of
3 exercising judgment as to the appropriate recovery
4 base for requested revenues in such a hybrid
5 proceeding as this, you believe that the Commission
6 should evaluate alternative scenarios that may exist
7 over the time period those revenues are being
8 collected?

9 A. That's not the question you asked me
10 originally but, yeah, I believe that the Examiners
11 and the Commission must look at all the facts that
12 have been presented in this case.

13 Q. If, for instance, exercising one's
14 judgment would lead to the conclusion that we are in
15 a recession and that a recession will likely exist
16 during the two-year time period over which an ESP is
17 in place before any change could be made to that ESP
18 based upon significant excess earnings, would that --
19 should that be considered?

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

22 EXAMINER PIRIK: Yes.

23 (Record read.)

24 MR. JONES: Objection, your Honor.

25 Again, it's not Mr. Fortney's judgment, it's the

1 Commission's judgment on the issue. It's the way he
2 phrased his question.

3 EXAMINER PIRIK: Could you rephrase the
4 question, please, Mr. Bell?

5 Q. In the exercise of one's judgment, that
6 one could be you or the Commission, should one test
7 the results to be produced over the time period those
8 results evidence themselves?

9 A. Well, once again, I do not believe that
10 the -- either the Examiners or the Commission needs
11 me to remind them what they need to consider in
12 determining this case. My recommendation and a buck
13 and a half will get you a cup of coffee down at
14 Zuppa's.

15 Q. Are you saying you can't answer the
16 question, Mr. Fortney?

17 A. If I was making the decision, I would
18 take everything that was on the record regarding --
19 and there is ample testimony and remarks by lawyers
20 that have indicated the economic crisis that we were
21 in and I have every faith in the Examiners and
22 Commission that we will determine everything
23 that's -- they will look at everything that's on the
24 record before they make their decision.

25 Q. In this hybrid proceeding, we don't look

1 at costs, do we? I think your testimony suggests
2 that.

3 A. We look at cost for some items but
4 overall the generation charge is not traditionally
5 cost based.

6 Q. All right. What we do look at is risk,
7 do we not?

8 If one were to look at the companies'
9 case, isn't the companies' case a magnification of
10 the risk that it faces from its perspective?

11 A. Certainly the Commission, in comparing
12 the ESP in the aggregate to some market rate option,
13 needs to consider the risks that are applicable to
14 each of the options.

15 Q. Risk to whom? Is it to any given party
16 or is it a risk -- strike that.

17 With respect to the Commission and the
18 question that's presented to it, when it says the
19 Commission is faced with the question is the ESP more
20 favorable than the MRO, more favorable to whom?

21 A. I believe Senate Bill 221 implies that it
22 would be more favorable to the customers of
23 FirstEnergy.

24 Q. That's the way I read it.

25 Then would you say that in evaluating the

1 individual components of each of those two -- each of
2 those alternatives in an MRO and ESP, that one should
3 focus upon making the ESP more favorable than the MRO
4 for its acceptance?

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

7 EXAMINER PIRIK: Yes.

8 (Record read.)

9 A. To the degree that it does not
10 financially harm the company, yes.

11 Q. Very good. I agree totally, and that's
12 where we get into the security of the ESP being the
13 middle initial, is it not?

14 A. I have no clue.

15 Q. You don't know what the legislature had
16 in mind in calling this an electric security plan?

17 A. I did not understand your question is
18 what I meant.

19 Q. What does ESP stand for?

20 A. Electric security plan.

21 Q. Now, do you know what "security" means
22 within the context of that title or caption?

23 A. Well, I think it -- I was confused when
24 they first came out with that acronym. It probably
25 has -- I think in those terms it just means

1 stabilization, being safe.

2 Securitization is a different term and
3 securitization is an option in the companies'
4 proposal, but I believe security is more related to
5 stabilization certainty.

6 Q. Would you agree, Mr. Fortney, that from
7 the standpoint of security that the focus is to
8 balance the interest of the customer with the company
9 in providing the customer the lowest possible rates
10 while at the same time permitting the utility to have
11 the necessary resources flowing from those rates to
12 assure that the utility meets its overall cost of
13 capital and is able to finance on a going-forward
14 basis those capital intensive assets or facilities
15 that are needed to provide electricity?

16 A. I am not sure Senate Bill 221 calls --
17 uses that language for the lowest possible rate.
18 But, yeah, that would be an optimal resolution.

19 Q. And is not the focus of the staff's
20 position in this case as reflected in your testimony
21 to make adjustments, if you will, to better balance
22 the risk in the cost -- risk and/or rewards between
23 the customer and the company?

24 A. And the staff has made recommendations
25 which I believe better balance those two interests.

1 Q. And going to the short-term nature with
2 respect to the long-term plan, correct, ESP?

3 A. Yes.

4 Q. Now, with respect to the short-term plan,
5 your recommendation -- your recommendation is found
6 on page 10, correct?

7 A. Yes. Question 16.

8 Q. Before we get to the temporary I would
9 like to go backtrack just one moment, if I might.

10 I explored with you a few moments ago the
11 Commission in the line of examining that I was on
12 followed your testimony on page 9 that the Commission
13 must -- I am looking now on lines 15 and 16, "...the
14 Commission must first determine which projections, if
15 any, are the most reasonable...."

16 Do you see that language?

17 A. Could you give me that reference again?

18 Q. Page 9, lines 15 and 16.

19 A. I see that reference.

20 Q. Okay. And that kind of follows my -- the
21 examination that I just conducted of you, that is,
22 the Commission has to determine what in their
23 judgment is the most likely scenario that will exist
24 at the time the rates proposed -- the revenues
25 proposed in this proceeding are to be recovered from

1 customers, correct?

2 A. I believe that the reference that you
3 gave me is applying specifically to the market rate,
4 what the market rate in the future would be.

5 Q. Thank you, thank you.

6 Would it be appropriate then in your
7 judgment, Mr. Fortney, for the Commission to consider
8 changes in the market rate by whatever measure
9 Cinergy hub or any other hub the market rate that
10 exists at the time the Commission issues its
11 decision; whether it's higher or lower than it is
12 now?

13 A. I believe it would be entirely reasonable
14 for them to do that, although as I have sat in here,
15 I have learned that the market rate is not
16 necessarily a one-for-one indicator of what an
17 auction rate would be.

18 Q. I agree, Mr. Fortney.

19 In any event, you think it would be
20 acceptable or even desirable for the Commission to,
21 in exercising its judgment, to consider the market
22 rate as it exists at the time the Commission makes
23 its decision?

24 A. I think that's probably the most
25 important decision they will have to make. That's

1 the only way they can compare ESP in the aggregate to
2 a market rate option.

3 Q. And is the market rate the subject to not
4 only the state of the economy at the time but the
5 expected duration of the economy as it then exists?

6 A. That's a better question for Mr. Johnson.
7 I am not the market rate expert.

8 Q. You are pointman and I do plan on
9 exploring this with Mr. Johnson, Mr. Fortney.

10 Does it also depend upon the breadth of
11 the market?

12 A. That's a better question for Mr. Johnson.

13 Q. We are getting into policy then, aren't
14 we?

15 A. We are getting into how a market rate
16 prediction in the future is calculated, and that's
17 Mr. Johnson's responsibility.

18 Q. Thank you.

19 Now moving on to page 10 I backed off of
20 a moment ago, you state that your recommendation is
21 to maintain the current rates including the RTC plus
22 2-1/2 percent surcharge on total bills with the
23 extension of the CEI contracts is the staff's
24 recommendation for an interim ESP plan, do you not?

25 A. It is what it is, yes.

1 Q. Mr. Fortney, you characterize that as a
2 rate stabilization extension rather than a short-term
3 or interim ESP.

4 Would you agree that in order to make
5 that recommendation within the context of an ESP
6 proceeding as we have discussed in our dialogue the
7 perceived purpose or intention behind an ESP that the
8 staff's recommendations will provide the company with
9 the necessary revenues needed to meet current cost
10 and to -- including its cost of capital such as to
11 provide it with the resources required as may be
12 required to invest in future plant requirements,
13 whatever those requirements may or may not be?

14 A. I do not know whether the 2-1/2 percent
15 would do that. My first sentence was I recommended
16 any short-term plan be fair to customers and
17 companies. I assumed when I put that recommendation
18 out there if the 2-1/2 percent was not sufficient,
19 that the company would tell me.

20 Q. My question went to the long-term with
21 respect to the short-term it's an interim or stopgap
22 measure as you perceive it; is that correct?

23 A. I thought that's what we were talking
24 about.

25 Q. And what's the time period of that

1 stopgap interim?

2 A. I forget, the first three months of '09,
3 maybe the first fourth months.

4 Q. First three months or first four months
5 of '09.

6 With the additional revenues that you are
7 proposing will provide the company, I take it
8 implicit in your recommendation is the conclusion
9 that those revenues will meet the companies' cash
10 flow requirements and the companies' revenue
11 requirements to -- to sustain its ability to acquire
12 capital during that short period to the extent
13 capital is required during that period; is that
14 correct?

15 A. I don't know the answer to that. No, I
16 did not assume that I threw this out as a strawman
17 proposal and I assumed that anything that was wrong
18 with it would -- would be explored in the hearing.

19 Q. Well, with respect to that exploration,
20 if you will, from a stopgap basis, would it not be
21 appropriate to consider such things as the companies'
22 liquidity as of this date or a date closer to that
23 short interim period to determine the need for
24 additional revenues to enhance the then-companies'
25 liquidity?

1 A. Could I have the question reread.

2 EXAMINER PIRIK: Yes.

3 (Record read.)

4 A. Sure, but I am probably not the person
5 that could do that.

6 Q. Ask Mr. Johnson.

7 A. Well, that's probably a question for
8 Mr. Hess who isn't testifying so.

9 Q. I understand why Mr. Hess --

10 A. Mr. Tuft might be able to answer that
11 question.

12 Q. In any event, in looking at the interim
13 plan, aren't we attempting to assess, if you will,
14 the companies' need for increased revenues and the
15 amount of increased revenue the company needs during
16 that interim?

17 A. You know, Mr. Bell, I think you are
18 right. My proposal was based -- the two words that I
19 have used are simple and easily administrated. I
20 think maybe for a three-month proposal that all of
21 those financial implications may not be all that
22 important as long as it doesn't put the company in
23 financial jeopardy.

24 Q. Well, if, for instance, the Commission
25 were, in the exercise of its judgment, to look at the

1 companies' current or then-liquidity position at the
2 time the judgment is made and find out that the
3 company is very liquid.

4 Unlike a lot of companies' testimonies,
5 residential and manufacturers throughout the state,
6 if the company is very liquid and has no immediate
7 need to access the capital markets, would that be
8 factors the Commission should consider in your
9 judgment as the pointman for the staff?

10 A. Once again, are we talking about the
11 short-term plan?

12 Q. Yes, the short-term plan.

13 A. My testimony?

14 Q. Yeah.

15 A. Yeah, those things should be considered.

16 MR. BELL: Thank you, Mr. Fortney.

17 That's all I have.

18 EXAMINER PIRIK: Ms. McAlister.

19 MS. McALISTER: No questions, your Honor.

20 EXAMINER PIRIK: Ms. Elders.

21 MS. ELDERS: No questions, your Honor.

22 EXAMINER PIRIK: Mr. Stinson.

23 MR. STINSON: Just a few questions, your
24 Honor.

25 - - -

1 CROSS-EXAMINATION

2 By Mr. Stinson:

3 Q. Mr. Fortney, again, as the pointman I
4 just want to ask you a few questions.

5 MR. KUTIK: Mr. Stinson have a
6 microphone?

7 EXAMINER PIRIK: Yes.

8 Q. Just a few questions, Mr. Fortney.

9 In evaluating the companies' ESP, did you
10 assess the plan's affect on large-scale governmental
11 aggregator or aggregation?

12 MR. JONES: Your Honor, just for
13 clarification, long-term or short-term ESP plan?

14 MR. STINSON: Long-term.

15 A. Oh, I love being up here first. That's a
16 better question for Mr. -- yes, I can answer the
17 question.

18 Sure, we did. I mean, we looked at
19 Senate Bill 221. We were writing rules regarding
20 government aggregation so, yes, we looked at the ESP
21 plan in terms of government aggregation.

22 Q. And what affect does the plan have on
23 long-term large scale -- I'm sorry, what affect does
24 it have on large scale government aggregation?

25 A. Depends on who you talk to.

1 Q. I am talking to --

2 A. I believe that Senate Bill 221 telling
3 the Commission to encourage aggregation and I think
4 that our recommendations in this proceeding and our
5 recommendations in the rules which have not gone out
6 yet do promote government aggregations. But
7 Ms. Turkenton is the better person to discuss how
8 they do that.

9 Q. So if I were to ask you how the
10 companies' ESP promote or encourage governmental
11 aggregation, you would defer to Ms. Turkenton?

12 A. Yes.

13 Q. And that would be with respect to the
14 generation phase-in credit?

15 A. Definitely on that topic with respect to
16 government aggregation, yes.

17 Q. And also with respect to the minimum
18 deferral service rider?

19 A. Which one is that? I'm sorry, minimum
20 default service rider, I'm sorry.

21 Q. The MDS.

22 A. Yes.

23 Q. You are making that very short for me,
24 Mr. Fortney.

25 A. Ms. Turkenton needs the experience.

indicating that Ms. Turkenton is the appropriate person to ask questions relating to the impact of the MDS on large-scale government generation or were you indicating that Ms. Turkenton is the appropriate person to ask questions regarding the structure and the amount of the MDS?

Ms. Turkenton makes any recommendations on the amount of the MDS. She talks about it in terms of minimum stay.

EXAMINER PRICE: Does the staff have a
 ion on the amount or structure of the MDS

THE WITNESS: I think the staff has no
 opinion on the amount. We believe that there
 is an amount that is appropriate. We don't know
 exactly what that amount would be and we
 leave it to the other parties to argue that.

EXAMINER PRICE: How would you define appropriate?

THE WITNESS: Well, I don't think --
it's kind of like the POLR service. I
-- I don't think it's calculable.

EXAMINER PRICE: I didn't ask -- I didn't

1 ask if it was quantifiable. I was asking you to
2 describe what sorts of -- how you would come to an
3 amount that is appropriate.

4 THE WITNESS: I am not asking for the
5 calculation. I am asking --

6 MR. KUTIK: Well, your Honor, I believe
7 he was in the middle of the answer before you asked
8 your question.

9 EXAMINER PRICE: That is perfectly true
10 and you are correct that I did interrupt him,
11 although I will point out it is a staff member so I
12 have more leeway.

13 Why don't you go ahead and finish your
14 answer, Mr. Fortney.

15 THE WITNESS: It's kind of like the POLR
16 thing; we know it's there but we don't know how much.
17 I don't know how I would calculate it.

18 Ms. Turkenton may have, although I don't
19 believe that's part of her testimony, she may have
20 some thoughts on how she would calculate it, but
21 that's not -- is not part of her testimony.

22 EXAMINER PRICE: Thank you.

23 Thank you, Mr. Stinson.

24 Q. (By Mr. Stinson) Just to be sure with
25 respect to what Ms. Turkenton will be testifying to,

1 my question goes more to the affect of the generation
2 phase-in credit and the minimum default -- my
3 question is not so much at this point to the
4 calculation of the MDS but to its affect on
5 large-scale governmental aggregation and propensities
6 of a person to shop in effect or not.

7 A. Ms. Turkenton is intimately familiar with
8 those issues. She would be a much better witness to
9 ask.

10 Q. What about Mr. Cahaan with respect to the
11 phase-in, would he have any opinion on the affect of
12 the generation phase-in credit on large-scale
13 governmental aggregation or should that still be
14 directed to Ms. Turkenton? I know Mr. Cahaan has
15 made the recommendation that there should be no
16 phase-in.

17 A. Mr. Cahaan would give you an answer but I
18 don't know if he has considered that.

19 Q. In reviewing the Application as the
20 staff's point person, did you also consider
21 companies' capacity adjustment rider?

22 A. A staff member did, yes.

23 Q. And is there another staff member to
24 testify as to the affect of that?

25 A. Well, that's -- I guess part of the

1 problem in having staff testify rather than writing a
2 Staff Report is that I believe that Mr. Howard did
3 look at the Application in terms of the capacity
4 adjustment rider and found it to be reasonable so he
5 did not write testimony regarding it.

6 So I guess to that degree my answer would
7 be staff reviewed the rider and found it to be
8 reasonable.

9 Q. And did you, Mr. Fortney, read the
10 testimony of Robert Garvin on behalf of Florida --
11 I'm sorry, FPL Energy Power Marketing, Inc.?

12 A. No, I did not.

13 Q. Are you aware of his proposal concerning
14 the capacity cost rider?

15 A. No, I am not.

16 MR. STINSON: No further questions, your
17 Honor.

18 EXAMINER PIRIK: Thank you.

19 Could we go off the record for a minute.

20 (Discussion off the record.)

21 (Recess taken.)

22 EXAMINER PIRIK: We will go back on the
23 record.

24 Mr. Breitschwerdt.

25 - - -

1 CROSS-EXAMINATION

2 By Mr. Breitschwerdt:

3 Q. Good afternoon, Mr. Fortney. My name is
4 Brett Breitschwerdt. I just have a few questions for
5 you on behalf of NOPEC and the Ohio Schools Council.

6 I want to start off by just generally
7 discussing companies' compliance with the proposed
8 rules. You are familiar, are you not, with the
9 finding order of the Commission on September 17,
10 2008, in Case No. 08-07-77?

11 Would you accept, subject to check, that
12 that is the Commission's order -- Commission's order
13 on the rules relating to the electric security plan?

14 A. Is that the order that it has maybe four
15 things in that security plan that rules MRO rules,
16 the reasonable arrangement rules, and the corporate
17 separate rules? Is that what you are referring to?

18 MR. JONES: Your Honor, could he be
19 shown.

20 MR. BREITSCHWERDT: Certainly, I have a
21 copy I can show him.

22 A. I actually may have it.

23 Q. That's really the extent --

24 EXAMINER PIRIK: Could you just show it
25 to him?

1 MR. BREITSCHWERDT: I can, your Honor.

2 EXAMINER PIRIK: I think it might be the
3 same thing.

4 Q. And so did the Commission propose final
5 rules in this case the order we are referring to,
6 correct?

7 A. I am not entirely sure of the process but
8 it's my understanding that these rules initially were
9 issued for comment, reply comments, the Commission
10 revised them, and that these are the rules that are
11 sent over to JCARR for approval.

12 Q. Right, and apologize if I was unclear.

13 And just on page 37 of the companies'
14 Application they generally make a statement, if you
15 will allow me a minute I will read it to you.

16 That "To the extent determined necessary
17 by the Commission, the Companies will confirm this
18 Plan to any substantive requirements or rules adopted
19 by the Commission pursuant to RC 4928.143(A) or other
20 applicable Revised Code sections."

21 And these rules that we were just
22 referring to would be some of the rules that -- that
23 statement I just made was referring to; would you
24 agree with that?

25 A. I believe that these are the rules that

1 they are referring to in that.

2 Q. Correct.

3 A. Page 37.

4 Q. I'm sorry?

5 A. On page 37, the section you read, I
6 believe these are the rules they were referring to
7 there, yes.

8 Q. Okay. And does staff have any
9 expectation of the extent the company should comply
10 with the rules in 08-777 we were discussing?

11 MR. KUTIK: Objection. Those rules are
12 not yet final. They are subject to potentially
13 rehearing and they have not been approved by the
14 JCARR, therefore, may be subject to change.

15 MR. BREITSCHWERDT: Your Honor, I
16 understand that, but the companies have set forth in
17 their Application that they will confirm their ESP
18 Application to these rules and once they have been
19 adopted by the Commission, I am reading off the page,
20 and they have been adopted by the Commission, so
21 based on that statement, I am simply asking what
22 staff's expectation is with regard to compliance with
23 those rules.

24 EXAMINER PIRIK: As long as you are
25 asking him with regard to final rules, whatever that

1 term means, then I think that's appropriate for the
2 witness to respond to. But there is -- there is a
3 longer process involved.

4 MR. BREITSCHWERDT: Right. I understand
5 that.

6 A. Yeah, I believe that the Commission would
7 expect the company to apply -- to comply with any
8 rules as final or they may issue waiver requests for
9 exceptions which the Commission may grant.

10 Q. And similarly when you were talking
11 earlier with Mr. Stinson, you discuss the rules from
12 Senate Bill 221 that the Commission is to promulgate
13 rules to encourage and promote government
14 aggregation.

15 Do you recall that?

16 A. Yes.

17 Q. And would you similarly agree that the
18 companies' ESP Application should comply with those
19 rules that are to encourage and promote governmental
20 aggregation under 4928.20(K)?

21 A. I better have that reread, please.

22 EXAMINER PIRIK: That would be fine.

23 (Record read.)

24 A. What was the Senate Bill 221 reference
25 again; 4920?

1 Q. 28.20.

2 Strike the question I will proceed
3 without an answer. That's fine.

4 EXAMINER PIRIK: Okay.

5 Q. If you could turn to page 8 of your
6 testimony, Mr. Fortney.

7 A. Yes, sir.

8 Q. Question and answer 13 you discuss the
9 nondistribution uncollectibles rider being
10 nonbypassable, correct?

11 A. Correct.

12 Q. And it's your expectation that a
13 large-scale governmental aggregation if a shopping
14 third-party supplier would not pay that, correct?

15 A. That would be my recommendation.

16 Q. Right. And on page 3 of your testimony
17 you discuss, if you could turn there just briefly,
18 starting on lines 8 through 10, you make the
19 statement that there -- there is no perfect solution
20 in regulatory matters but there is an array of
21 solutions, many which fall into the range of
22 reasonableness.

23 Would you agree or does staff have any
24 opinion on a purchase of receivables program whereby
25 a CRES supplier serving large-scale governmental

1 aggregation, that that would be another approach that
2 would fall under this range of reasonableness?

3 A. I don't know a whole lot about that
4 topic. I understand that from a CRES provider's
5 point of view we would prefer that the companies
6 purchase their accounts receivable. I don't believe
7 that the company has in this case.

8 I know based upon the Friday's testimony
9 that there was a stipulation that that had to do with
10 a payment priority so, I forgot what your question is
11 but I don't know the answer that the purchase of
12 accounts receivable would be whatever you asked it.

13 Q. To rephrase my question, generally you
14 wouldn't exclude that from the range of
15 reasonableness --

16 A. No.

17 Q. -- that you are referring to? Okay.

18 Also on -- if you could turn to page 10,
19 please, where you discuss your short-term electric
20 security plan, or I guess more correctly,
21 characterize it your rate stabilization extension
22 plan.

23 Would this proposal include the
24 continuation of special contract discounts,
25 specifically Section 4904.34, special contracts?

1 A. It was not meant to be that broad. The
2 purpose was to extend the CEI contracts that were
3 being extended as part of the ESP plan. Contracts --
4 other contracts that have expired I guess I will not
5 be opposed to having them extended.

6 MR. BREITSCHWERDT: That's all I have.
7 Thank you, Mr. Fortney.

8 EXAMINER PIRIK: Thank you.

9 Mr. Boehm.

10 MR. BOEHM: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Boehm:

14 Q. Just very briefly, Mr. Fortney.

15 Can you go to page 9 in your testimony,
16 beginning on line 19, and you say "I suggest that
17 the" -- well I am sorry, let's start with line 9
18 down.

19 Essentially you say that Mr. Johnson has
20 indicated the three-year projection in market price
21 and essentially it's important to get that right.

22 Staff has made various recommendations,
23 et cetera, and then you say "I suggest that the
24 testimonies of the various staff witnesses, including
25 Mr. Johnson, are a good starting point in assisting

1 the Commission in making those determinations."

2 We will talk about "I believe that if the
3 Commission adopts the recommendations of Staff and
4 considers the benefits of the ESP, the Commission
5 would find that the companies' ESP, in the aggregate,
6 is the better plan for customers."

7 Do you see that?

8 A. Yes.

9 Q. Okay. Now, going back to Mr. Johnson's
10 testimony, one of the things that Mr. Johnson
11 testified, and I think you were referring to, is that
12 he finds that the companies' three-year projections
13 is too high; isn't that true?

14 A. Mr. -- we are referring to Mr. Johnson's
15 testimony?

16 Q. Right, yeah.

17 A. I believe that he found initially -- yes,
18 the companies' generation charges are higher than
19 what Mr. Johnson has projected.

20 Q. By about 12 percent.

21 A. I believe that was part of his testimony.

22 Q. And as far as you know, Mr. Johnson --
23 well, Mr. Johnson could not have had the October 10
24 update of those generation prices, of the base
25 generation prices that was provided by Mr. Kollen

1 because he filed his testimony in advance of that;
2 isn't that true?

3 A. My testimony was filed October 6. I
4 believe Mr. Johnson's was filed the same day or the
5 day after, so, no, he would not have had that.

6 Q. He would not have had that.

7 I guess my question to you is when you
8 say that in your testimony that "I suggest that the
9 testimonies of the various staff witnesses, including
10 Mr. Johnson, are a good starting point," et cetera,
11 "I believe that if the Commission adopts the
12 recommendations of Staff and considers the benefits
13 of the ESP, the Commission would find that the
14 companies' ESP, in the aggregate, is the better plan
15 for customers."

16 Can -- do I understand your testimony to
17 be then that the plan as filed by the companies' ESP
18 plan filed by the company is not in the aggregate
19 better for customers than the MRO?

20 A. I did not say that but I believe that
21 the -- it was so marginally close comparing the plan
22 with staff's mod -- recommended modifications that
23 without those modifications, that the plan as
24 proposed by the company was not better in the
25 aggregate than their MRO plan.

1 Q. And do you suppose, Mr. Fortney, that if
2 Mr. Johnson were to consider the further decline in
3 base market prices indicated by the exhibits of
4 Mr. Kollen as of October 10, that that margin that
5 you say was close before would be wider?

6 MR. JONES: I am going to have to object,
7 your Honor. Again, that's a better question for
8 Mr. Johnson who made that analysis, not Mr. Fortney.

9 EXAMINER PIRIK: I will allow the witness
10 to answer to the best of your knowledge if you are
11 able.

12 THE WITNESS: Since I went to witness
13 training school I'll -- I will reiterate my counsel's
14 argument that that's a better question for
15 Mr. Johnson.

16 EXAMINER PIRIK: Thank you, Mr. Jones.

17 THE WITNESS: It is a better question for
18 Mr. Johnson.

19 MR. BOEHM: I understand.

20 Thank you, I have no further questions.

21 EXAMINER PIRIK: Mr. Lavanga.

22 MR. LAVANGA: No questions, your Honor.
23 Thank you.

24 EXAMINER PIRIK: Mr. Kutik.

25 MR. KUTIK: Yes, your Honor, thank you.

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CROSS-EXAMINATION

1
2
3 By Mr. Kutik:

4 Q. Mr. Fortney, I think you said earlier
5 that you had heard at least that a change in market
6 price may not necessarily reflect a subsequent change
7 in retail prices, correct?

8 A. I've sat in several of the witnesses and
9 I believe I heard Mr. Blank make that statement and
10 in talking about not Penn Power but Pennsylvania
11 Power & Light.

12 Q. Mr. Korkosz appreciates that.

13 Do you have any reason to dispute what
14 Mr. Blank said?

15 A. I have no reason at all to dispute what
16 any of the market rate witnesses have said.

17 Q. If -- I understand that you believe that
18 it would be appropriate potentially to look at
19 updated market price figures, correct?

20 A. I think the Commission needs to do that
21 to make a ruling in this case, yes.

22 Q. Do you think it's also appropriate to
23 look at what -- what -- update other factors that may
24 go into setting retail prices?

25 A. To the degree that they are a record in

1 this case, yes. I mean, I think they have to look at
2 the record.

3 Q. Right. You just -- you realize market
4 prices are only one component of retail price, right?

5 A. Yes.

6 Q. And so you just don't update one thing,
7 if you are going to update something, you update
8 everything, correct?

9 A. I agree.

10 Q. Turning to your short-term proposal, your
11 proposal is to put a 2-1/2 percent surcharge over
12 current revenues -- on current revenues, correct, or
13 over current revenues?

14 A. That's correct.

15 Q. Now, is that based upon the anticipated
16 result of the distribution cases?

17 A. That number was in terms of percent
18 increase and in terms of dollars approximately the
19 number that would result if the companies maintain
20 their current rates, including the RTC, and the 2-1/2
21 percent surcharge on total bill would represent the
22 dollars that the staff recommended in the -- as a
23 revenue requirement in the distribution case.

24 Q. So that's where the 2-1/2 percent came
25 from.

1 A. Yes.

2 Q. Now, is it your understanding at this
3 point that if the Commission comes out with an order
4 in the distribution cases, that you would not propose
5 the 2-1/2 percent surcharge?

6 A. Well, as I went through with Mr. Small, I
7 think if the Commission comes out with the order in
8 the distribution case before 1-1-09, we have a
9 problem with my recommendation because you have
10 mismatched tariffs.

11 Q. So you would not recommend the Commission
12 adopt your suggestion?

13 A. Not that particular part, but I would
14 still recommend that they adopt something that's
15 simple and easily administrated.

16 Q. Now, if for some reason the Commission
17 doesn't enter an order on the distribution cases, how
18 would you propose the 2-1/2 percent surcharge be
19 levied just as a plain surcharge to every different
20 type of rate?

21 A. If the Commission does not come out with
22 an order?

23 Q. Yes.

24 A. There again, my recommendation that was
25 kind of a strawman but, yeah, I envisioned that there

1 would be a total bill and the -- there would be a
2 2-1/2 percent surcharge on the total bill.

3 Q. Okay. So whatever the demand charges
4 are, the energy charges, whatever the energy use
5 demand use all those things come up with a number and
6 on top of that you would have 2-1/2 percent?

7 A. Yes.

8 Q. That's your proposal?

9 A. Exactly, yes.

10 Q. Now, does your proposal include any
11 allowance for increases in, say, fuel costs?

12 A. It does not. There again, it's -- it's a
13 proposal for three months simple, easily
14 administrated, no adjustments, so no, it does not.

15 MR. KUTIK: No further questions. Thank
16 you, Mr. Fortney.

17 EXAMINER PIRIK: Mr. Jones.

18 MR. JONES: Your Honor, if I could have a
19 second to confer.

20 EXAMINER PIRIK: Yes.

21 (Discussion off the record.)

22 MR. JONES: Your Honor, staff has no
23 further questions.

24 EXAMINER PIRIK: Thank you.

25 EXAMINER PRICE: But I do.

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EXAMINATION

By Examiner Price:

Q. Mr. Fortney, I would like to see if we can clarify the record on this issue of the mismatch and the depending on the timing of the order in this case.

In this distribution rate case is it not the case the staff supported FirstEnergy's consolidation of their tariffs to the, I believe it's eight different tariff rates now?

A. Staff supported that, yes, is that what you asked?

Q. Yes.

A. Yes. Recommendation that that be accepted.

Q. Right. And in your testimony today I believe that you reiterate that recommendation with respect to the longer term ESP; is that correct?

A. With respect to the long-term ESP and the distribution case component we would recommend --

Q. Without the distribution case component you say on page 4, staff -- sorry Mr. Kutik, I interrupted him.

Page 4, line 10, you say "Staff has found

1 the applicants' proposed voltage-based classes are
2 reasonable."

3 A. Give me the reference one more time.

4 Q. Page 4, line 10, 10, line 10 extending
5 through line 12.

6 A. I'm reading staff -- "Staff has found the
7 applicants' proposed voltage-based classes are
8 reasonable," yes.

9 Q. So you support their rate design in the
10 long-term ESP?

11 A. Yes, we do, yes. I'm sorry.

12 Q. That's okay.

13 Do you have the companies' Application in
14 front of you?

15 A. Yes.

16 Q. Would you turn to page 37.

17 A. All right.

18 Q. Fourth line down, the Application states
19 that "The rate design for impleting short-term ESP
20 generation rates shall be the rate design proposed in
21 the filed tariffs associated with the long term ESP."

22 A. That's true, and that's in their --

23 Q. In the companies' --

24 A. They propose the short-term plan.

25 Q. Does the staff support the rate design in

1 the companies' short-term RSP?

2 A. Staff -- staff is in favor of the tariff
3 restructuring, and if you approve the distribution
4 case tariff restructuring before 1-1-09, then that
5 actually fits in better with their proposal
6 because -- short-term proposal, because they are
7 proposing that the tariffs fit that.

8 What I am saying is that in my proposal
9 if it doesn't include this sentence, so you would
10 have a mismatch if you approved the distribution
11 tariffs, you would have a mismatch between the
12 distribution tariffs and generation tariffs.

13 Q. So the staff is not recommending the rate
14 design contained in the companies short-term ESP; is
15 that correct?

16 A. That's correct.

17 Q. But staff does support the ultimate
18 transitioning in the long-term ESP?

19 A. Yes.

20 Q. Is that correct? Okay.

21 On page 8, the question 14, at line 18,
22 it's kind of a predicate sentence, it says
23 "...nowhere has there been a staff recommendation as
24 to the proposed average generation rate to be
25 recovered by the companies."

1 Is that a correct statement?

2 A. You read that correctly, yes.

3 Q. I didn't ask if I read it correctly. I
4 said is that a correct statement?

5 A. Yeah, that's a correct statement.

6 Q. The staff does not have a recommendation
7 as to the proposed average generation rate recovered
8 by the companies.

9 A. That's correct.

10 EXAMINER PRICE: Okay. That's all I
11 have. Thank you.

12 EXAMINER PIRIK: With regard to the Staff
13 Exhibit.

14 MR. JONES: As to Staff Exhibit 5, the
15 staff would move for admission of that exhibit into
16 evidence, please.

17 EXAMINER PIRIK: Are there any
18 objections?

19 MR. KUTIK: No objection.

20 EXAMINER PIRIK: Hearing none, Staff
21 Exhibit 5 shall be admitted into the record.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 EXAMINER PIRIK: Thank you, Mr. Fortney.

24 At this time we will be adjourned until
25 tomorrow morning at 9 a.m., and we are off the

1 record.

2 (The hearing was adjourned at 1:40 p.m.)

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CERTIFICATE

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I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Monday, October 27,
2008, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5005)

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