

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

PROCEEDINGS

before Ms. Christine Pirik and Mr. Gregory Price,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-C,
Columbus, Ohio, called at 9:00 a.m. on Tuesday,
October 28, 2008.

— — —

VOLUME IX

— — —

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

— — —

1 APPEARANCES:

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

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

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

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

16 On behalf of the Applicants.

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

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

1 APPEARANCES: (Continued)

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

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

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

16 On behalf of The Kroger Company.

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

23 On behalf of the Nucor Steel Marion, Inc.

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

On behalf of the Ohio Partners for
Affordable Energy.

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

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

25

1 APPEARANCES: (Continued)

2 Vorys, Sater, Seymour and Pease, LLP
3 By Mr. Howard Petricoff
4 Mr. Stephen M. Howard
5 and Ms. Betsy Elders
6 52 East Gay Street
7 Columbus, Ohio

8 On behalf of Constellation NewEnergy,
9 Inc., Constellation Energy Commodity
10 Group, Direct Energy Services, and
11 Integrys Energy Services, Ohio
12 Association of School Business Officials,
13 the Ohio School Board Association, and
14 the Buckeye Association of School
15 Administrators.

16 Boehm, Kurtz & Lowry
17 By Mr. Michael Kurtz
18 and Mr. David Boehm
19 36 East Seventh Street, Suite 1510
20 Cincinnati, Ohio 45202

21 On behalf of Ohio Energy Group.

22 McDermott, Will & Emery, LLP
23 By Ms. Grace C. Wung
24 600 Thirteenth Street, N.W.
25 Washington, DC 20005

On behalf of The Commercial Group.

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

and

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

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

25

1 APPEARANCES: (Continued)

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

6 and

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

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

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

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

22 Bell & Royer Co., LPA
23 By Mr. Langdon D. Bell
24 33 South Grant Avenue
25 Columbus, Ohio 43215

On behalf of Ohio Manufacturers
Association.

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

On behalf of Dominion Retail and the Ohio
Environmental Council.

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

On behalf of Ohio Hospital Association.

1 APPEARANCES: (Continued)

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

6 On behalf of Citizen Power.

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

12 and

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

17 On behalf of Northeast Ohio Aggregation
18 Coalition.

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

22 On behalf of Material Science
23 Corporation.

24 Mr. Henry Eckhart
25 50 West Broad Street, Suite 2117
Columbus, Ohio 43215

On behalf of Natural Resources Defense
Council.

Mr. Nolan Moser
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212

On behalf of the Ohio Environmental
Council.

25

1 APPEARANCES: (Continued)

2 Tucker, Ellis & West, LLP
3 By Mr. Eric D. Weldele
4 and Mr. Nicholas C. York
5 1225 Huntington Center
6 41 South High Street
7 Columbus, Ohio 43215

8 On behalf of the Council of Smaller
9 Enterprises.

10 - - -

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 INDEX

2 - - -

3 WITNESS PAGE

4 Randy Gunn
 Direct Examination by Mr. Royer 11
 5 Cross-Examination by Ms. McAlister 14
 Cross-Examination by Mr. Lang 21
 6 Redirect Examination by Mr. Royer 29

7 Wilson Gonzalez
 Direct Examination by Mr. Poulos 31
 8 Cross-Examination by Mr. Hayden 37

9 David W. Cleaver
 Direct Examination by Mr. Reese 51
 10 Cross-Examination by Ms. Miller 60
 Redirect Examination by Mr. Mr. Reese 82
 11 Recross-Examination by Ms. Miller 89
 Examination by Examiner Price 89

12 Richard Cahaan
 13 Direct Examination by Mr. McNamee 93
 Cross-Examination by Mr. Bell 96
 14 Cross-Examination by Ms. Roberts 150
 Cross-Examination by Mr. Stinson 161
 15 Cross-Examination by Mr. Boehm 164
 Cross-Examination by Mr. Korkosz 174

16 L'Nard E. Tufts
 17 Direct Examination by Mr. McNamee 177
 Cross-Examination by Mr. Small 180
 18 Cross-Examination by Mr. Korkosz 185

19 Tamara Turkenton
 Direct Examination by Mr. McNamee 191
 20 Cross-Examination by Mr. Stinson 194
 Cross-Examination by Mr. Kutik 205

21 Daniel R. Johnson
 22 Direct Examination by Mr. McNamee 214

23 - - -

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

- - -

OAC EXHIBITS

IDFD ADMTD

1 - Direct Testimony of Mr. Gunn	10	30
----------------------------------	----	----

- - -

OCC EXHIBITS

IDFD ADMTD

1 - Direct Testimony of Mr. Gonzalez	31	50
1A - Corrections of Mr. Gonzalez	32	50
2 - Direct Testimony of Mr. Cleaver	51	91
2A - Corrections of Mr. Cleaver	51	91

- - -

STAFF EXHIBITS

IDFD ADMTD

6 - Direct Testimony of Mr. Cahaan	94	176
7 - Direct Testimony of Mr. Tufts	178	190
7A - Updated Schedules of Mr. Tufts	178	190
8 - Direct Testimony of Ms. Turkenton	192	213
9 - Direct Testimony of Mr. Johnson	215	--
9A - Third Revised Exhibit 1	215	--
9B - Third Revised Exhibit 2	215	--
9C - Excerpt from Price Matrix and Reconciliation Mechanism and Associated Tariff Riders	224	--

1 Tuesday Morning Session,
2 October 28, 2008.

3 - - -

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

5 Good morning. This is our 9th day of hearing in
6 Case No. 08-935-EL-SSO. Our first witness today is
7 from the Ohio Environmental Council.

8 Mr. Royer.

9 MR. ROYER: Thank you, your Honor, the
10 Ohio Environmental Council calls Randy Gunn.

11 (Witness sworn.)

12 EXAMINER PIRIK: Please state your name
13 and business address for the record.

14 THE WITNESS: Randy Gunn, Summit Blue
15 Consulting, 150 North Michigan Avenue, Suite 2700,
16 Chicago, Illinois 60601.

17 EXAMINER PIRIK: Mr. Royer.

18 MR. ROYER: Thank you, your Honor. I'd
19 like to have marked for identification as OAC Exhibit
20 1 the direct testimony of Randy Gunn which was filed
21 in this docket on September 29th, 2008.

22 EXAMINER PIRIK: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. ROYER: Thank you.

25 - - -

1 RANDY GUNN

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

4 DIRECT EXAMINATION

5 By Mr. Royer:

6 Q. Mr. Gunn, do you have before you a copy
7 of the document that's been marked OAC Exhibit 1?

8 A. I do.

9 Q. And can you identify that document?

10 A. It's a document that was prepared under
11 my supervision with my testimony in this case.

12 Q. And do you have any corrections or
13 additions to that document at this time?

14 A. No, I do not.

15 Q. If I were to ask you the questions
16 contained in this document, would your answers
17 thereto be the same as set forth in the document?

18 A. Yes.

19 MR. ROYER: Thank you. The witness is
20 available for cross-examination.

21 EXAMINER PRICE: Consumers' Counsel?

22 MR. SMALL: No questions.

23 MS. McALISTER: Your Honor, excuse me,

24 I --

25 EXAMINER PRICE: I'm sorry,

1 Ms. McAlister. Please proceed.

2 Can you please grab the microphone from
3 Mr. Royer.

4 MS. McALISTER: Thank you. Starting at
5 page 11, line 8, with the question "Is it industry
6 practice," all the way through page 16, line 7, up to
7 the question "What is your conclusion in this
8 regard?" And the reason is that Mr. Gunn
9 specifically states that he's not suggesting that the
10 Commission should require the FirstEnergy companies
11 to model its programs after one of the plans that's
12 described in his testimony, but it's just presenting
13 the plans for illustration, and also SB-221 doesn't
14 include the requirements for evaluation, measurement,
15 verification as the other states described by
16 Mr. Gunn, so if he's not recommending that the
17 standards be used, I fail to see the relevance.

18 EXAMINER PRICE: Mr. Royer.

19 MR. ROYER: Well, if your Honor please,
20 the point of Mr. Gunn's testimony is that the ESP
21 filed by FirstEnergy which purports to show -- which
22 they purport to support by showing benefits over and
23 above -- the aggregate over and above the MRO
24 approach, includes benefits associated with the
25 commitment to provide the \$5 million annually for

1 incentives for customers to engage in energy
2 efficiency measures. Without knowing what's
3 involved, there's no way this Commission can judge
4 whether that is, in fact, a benefit, and if -- over
5 and above the MRO.

6 And what this testimony shows is that in
7 other states in order to constitute an effective
8 energy efficiency program there are certain standards
9 that must be met. While Mr. Gunn doesn't say those
10 standards should be applied here, they are certainly
11 standards of the type that the company should have
12 considered in presenting its ESP.

13 EXAMINER PRICE: Would you like to speak
14 to the -- anyone else want to speak to the motion?

15 Ms. McAlister, do you want to respond to
16 Mr. Royer?

17 MS. McALISTER: I think the legislation
18 has spoken on what the standards should be and
19 they're not the same as those identified by Mr. Gunn
20 and, again, I don't think they're relevant. If the
21 legislature had wanted to include those standards,
22 they could have reviewed those at the time of their
23 enacting the legislation.

24 MR. ROYER: Well, if your Honor please,
25 the Commission rules are where the standards or these

1 types of standards are located. Those are under
2 consideration.

3 EXAMINER PRICE: Mr. Royer, you're about
4 to win.

5 MR. ROYER: Okay, I take that all back.

6 EXAMINER PRICE: I'm going to deny the
7 motion to strike. IEU can argue its relevance and
8 the weight the Commission should give the testimony
9 in its brief. Thank you.

10 Consumers' Counsel?

11 MR. SMALL: No questions.

12 EXAMINER PRICE: Ms. McAlister.

13 MS. McALISTER: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. McAlister:

17 Q. Good morning, Mr. Gunn, my name is Lisa
18 McAlister. I'm here on behalf of Industrial Energy
19 Users-Ohio. If I could direct your attention to page
20 20 of your testimony.

21 A. Yes.

22 Q. On page 20 and continuing over to 21 you
23 discuss the proposed rules under consideration in
24 Case No. 08-888-EL-ORD. Do you agree that those
25 rules address, among other things, the requirements

1 governing the commitments by mercantile customers
2 towards the electric distribution utility's energy
3 efficiency and peak demand reduction obligations?

4 A. I believe so, yes.

5 Q. And I'd like to get a better
6 understanding of what your recommendations on page 21
7 through 23 are, and I believe there you recommend
8 that the Commission should adopt several standards
9 governing the commitments by mercantile customers
10 towards an electric distribution utility's energy
11 efficiency and peak demand reduction obligations.
12 Are you recommending that the Commission adopt these
13 standards as part of the order in this case, or are
14 you recommending that the Commission adopt the
15 standards as part of the rules that it has to
16 promulgate?

17 A. Both.

18 Q. If the Commission adopts the standards in
19 FirstEnergy's proceeding, would it be your
20 recommendation that the Commission adopt the same
21 standards in other electric security plan cases for
22 other Ohio distribution utilities?

23 A. It would, yes.

24 Q. Are you aware of whether the Ohio
25 Environmental Council filed comments or reply

1 comments in the Commission ordered -- or, I'm sorry,
2 in the Commission case regarding the rules that we
3 discussed earlier, Case No. 08-888-EL-ORD?

4 A. Yes, I believe they did.

5 Q. Were you or anyone else at Summit Blue
6 Consulting involved in the preparation of those
7 comments?

8 A. Yes, I was.

9 Q. And the comments that are filed by the
10 Ohio Environmental Council, they don't suggest the
11 requirements such as the \$10,000 avoided cost
12 threshold that you propose be incorporated into this
13 case, do they?

14 A. That's true.

15 Q. So you would agree that the
16 recommendations suggested by the Ohio Environmental
17 Council in this case are different from what you
18 recommended in Case No. 08-888-EL-ORD.

19 A. Yes, that's right.

20 Q. Are you familiar with the stipulation and
21 recommendation that was filed in Duke Energy-Ohio's
22 case, their ESP case yesterday?

23 A. I am not.

24 Q. You recommend that only projects with an
25 avoided cost threshold of \$10,000 or higher be

1 eligible for the exemption that's available under
2 SB-221; is that correct?

3 A. Yes, that's right.

4 Q. And just so the record's clear, can you
5 explain how the \$10,000 avoided contribution would be
6 measured?

7 A. Based on the customer's avoided cost of
8 paying into the fund for energy efficiency programs.

9 Q. Okay. Could you clarify whether you mean
10 that if the customer files for a waiver, their
11 liability is \$10,000, up to \$10,000?

12 A. What I mean is that if they would have --
13 had paid \$10,000 or more to contribute to the funding
14 for energy efficiency programs in the state, that's
15 the threshold I'm recommending.

16 Q. Okay. And you state that you arrived at
17 the \$10,000 number because you believe that's high
18 enough to support spending on independent
19 verification but not so high that it violates the
20 intent of SB-221; is that correct?

21 A. That's correct.

22 Q. So you reviewed SB-221?

23 A. Yes, I did.

24 Q. So just to clarify, it's your opinion
25 that that \$10,000 minimum avoided contribution

1 doesn't violate Section 4928.66(A)(2)(c), and let me
2 describe it for you because I'm sure you probably
3 don't recognize the reference.

4 A. I don't have the act memorized, no.

5 Q. Sure. It says that -- it specifically
6 prescribes the measurement of compliance with the
7 statutory benchmarks shall be measured by including
8 the effects of all demand response programs for
9 mercantile customers of the subject electric
10 distribution utility and all such mercantile
11 customers-sited energy efficiency peak demand
12 reduction programs.

13 A. Your question is, exactly?

14 Q. The question is despite that section
15 including all demand response programs your
16 recommendation is that there be a \$10,000 minimum
17 avoided contribution, but you believe that that still
18 complies with the intent of that section?

19 A. Yes, in order to be administratively
20 practicable that's our recommendation.

21 Q. Okay. And the same would be true meaning
22 that your opinion that a \$10,000 minimum avoided
23 contribution also complies with the section that says
24 that -- the section I just referenced should be
25 applied to include facilitating efforts by a

1 mercantile customer, group of those customers to
2 offer customer-sited and demand response programs?

3 A. Would you please repeat the question?

4 MS. McALISTER: Can we have it read back,
5 please.

6 (Record read.)

7 A. Not necessarily, no. If customers
8 grouped together, the standard could be different
9 than customers applying individually.

10 Q. What's your recommendation for if
11 customers group together?

12 MR. ROYER: I object. There's not enough
13 in that question. How many customers?

14 EXAMINER PRICE: Overruled. He's the one
15 who suggested there may be a different standard.
16 She's just following up.

17 A. I don't have a specific recommendation at
18 this time.

19 EXAMINER PRICE: Would it be higher or
20 lower?

21 THE WITNESS: Higher most likely.

22 EXAMINER PRICE: Okay.

23 Q. Okay. Mr. Gunn, do you have an opinion
24 on whether the legislature had the option to include
25 a specific threshold such as the \$10,000 avoided cost

1 that you propose?

2 A. Well, the legislature certainly had that
3 option. I would say in most places those sort of
4 details are left to the administrative rulemaking to
5 address those sort of detailed questions.

6 Q. But you didn't recommend that that same
7 threshold be included in the Commission's rules,
8 right?

9 A. That's true, right.

10 MS. McALISTER: I have no further
11 questions, your Honor.

12 Thank you, Mr. Gunn

13 EXAMINER PRICE: Thank you.

14 Mr. Sites.

15 MR. SITES: No questions, your Honor.

16 EXAMINER PRICE: Mr. Porter.

17 MR. PORTER: No questions, your Honor.

18 EXAMINER PRICE: Ms. Elder.

19 MS. ELDER: No questions, your Honor.

20 EXAMINER PRICE: Mr. Bell.

21 MR. BELL: Well, everyone knows I don't
22 engage in friendly cross-examination, I want to avoid
23 even the appearance of engaging in friendly cross, as
24 a result, I have no questions.

25 EXAMINER PRICE: Mr. Breitschwerdt.

1 MR. BREITSCHWERDT: I have no questions,
2 your Honor.

3 MR. BOEHM: No questions, your Honor.

4 EXAMINER PRICE: Mr. Lavanga.

5 MR. LAVANGA: No questions, your Honor.

6 EXAMINER PRICE: Mr. Yurick.

7 MR. YURICK: No questions, your Honor.

8 EXAMINER PRICE: Mr. Lang.

9 MR. LANG: Yes, your Honor, thank you.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Lang:

13 Q. Good morning, Mr. Gunn, nice to talk to
14 you again. You're a principal of Summit Blue. I
15 wanted to ask, as described in your testimony, am I
16 correct that Summit Blue provides consulting
17 expertise in the preparation of energy efficiency and
18 demand-side management or DSM program studies to both
19 utilities and on occasion to public utility
20 commissions?

21 A. That's true.

22 Q. And one example is the plan that you
23 discuss in your testimony with regard to the, it's
24 the Tucson Electric Power Company, correct?

25 A. Yes, that's true.

1 Q. And then I think it's on page 2 of your
2 testimony you have several other examples of energy
3 efficiency regulatory proceedings in which you
4 have -- you personally have participated on behalf of
5 Summit Blue, correct?

6 A. Yes, that's true.

7 Q. Now, with regard to all of the DSM
8 regulatory plans that you reference in your testimony
9 that are filed in different regulatory proceedings
10 across the United States, are you aware of any of
11 those plans being filed as part of a standard service
12 offer or electric security plan type process as the
13 type that we have here today?

14 A. Not exactly that type. I would say,
15 however, that in some jurisdictions energy efficiency
16 program plans are filed as part of integrated
17 resource plan proceedings which are not exactly the
18 same as this, but somewhat similar to this sort of
19 proceeding.

20 Q. So what you've seen in your experience is
21 either with respect to integrated resource planning
22 proceedings or, more specifically, with energy
23 efficiency or DSM proceedings where the utility is
24 satisfying the statutory requirements or rule
25 requirements, that's where these plans are filed and

1 those are the cases in which you participated,
2 correct?

3 A. Yes, that's true.

4 Q. And I think you mentioned earlier you've
5 reviewed the draft rules of the Commission that are
6 addressing energy efficiency and DSM filings by the
7 utilities, correct?

8 A. Yes, that's true.

9 Q. Now, the DSM filings and the plans that
10 Summit Blue helps prepare in state regulatory
11 proceedings, are those similar to the benchmark
12 reporting that's set forth in the Commission's draft
13 rules on energy efficiency?

14 A. Could you be more specific?

15 Q. I'll break that up a little. The energy
16 efficiency rules that are in draft form currently
17 from the Commission requires a benchmark, an energy
18 efficiency benchmark report to be filed by the
19 utilities on April 15th. Are you familiar with
20 that provision?

21 A. Yes. Yes.

22 Q. Are the DSM programs or plans that Summit
23 Blue and you have assisted in drafting, are those
24 similar to the benchmark report that is set forth to
25 be required of utilities that's in those draft rules?

1 A. Generally familiar -- or generally
2 similar, not specific, you know, not exactly similar
3 obviously, but generally similar.

4 Q. And to the extent that there is energy
5 efficiency in DSM program detail that you say is
6 lacking in your testimony -- that's lacking in the
7 company's electric security plan, is it fair to say
8 that you would assume that that detail would appear
9 in that benchmark report that would be filed by the
10 companies pursuant to those rules in the spring of
11 next year?

12 A. I can't speculate about what the
13 companies' intentions are in that regard.

14 Q. Are you familiar with the demand-side
15 management and energy efficiency programs that the
16 FirstEnergy utilities have been operating in Ohio?

17 A. Generally, but not specifically.

18 Q. And in your testimony specifically you
19 are not offering an opinion as to whether the
20 electric security plan in the aggregate proposed by
21 the companies is more favorable than the expected
22 results of a market rate option, correct?

23 A. That's correct.

24 Q. Your opinion is that a plan that includes
25 energy efficiency provisions would be more favorable

1 than a plan that does not include energy efficiency
2 provisions, correct?

3 A. Yes, that's true.

4 Q. And so the focus of your testimony is
5 whether the provisions, the energy efficiency
6 provisions that are set forth in the electric
7 security plan by themselves would allow the utilities
8 to achieve the energy efficiency targets which are
9 set forth in the Ohio Revised Code, correct?

10 A. Yes, that's generally correct.

11 Q. Now, a good piece of your testimony is a
12 discussion of what you referred to as a DSM
13 benchmarking analysis. Now, that analysis that you
14 described starting at page 5 of your testimony, the
15 data that you use to put that analysis together is
16 all -- is all from publicly filed documents; is that
17 correct?

18 A. Yes, that's true.

19 Q. And could you explain how you -- can you
20 explain where these documents come from and how you
21 get a handle on those?

22 A. We used the utilities' annual reports to
23 their regulators summarizing the results of their DSM
24 programs, and we also used Energy Information
25 Administration on utilities' sales to customers in

1 order to calculate percentages of savings achieved by
2 utilities through their DSM program and spending as
3 presented in their overall utility revenues.

4 Q. And the regulatory reports that are filed
5 by each of the utilities, am I correct that because
6 those reports are filed in different states and with
7 different requirements, the reporting of the energy
8 efficiency benefits is not consistent from report to
9 report?

10 A. That is not exactly consistent, but it's
11 somewhat consistent.

12 Q. In fact there's -- less than 5 of the 20
13 utilities that you reference in your benchmark study
14 actually report their numbers in a manner that allows
15 you to tell exactly how the utilities are calculating
16 their DSM savings, correct?

17 A. I don't know about the number five off
18 the top of my head, but only a small number of
19 utilities provide exhaustive detail in their reports
20 about how they calculate the savings, that's
21 generally true.

22 Q. And none of the 20 utilities that you
23 include in your report at the time of the reporting
24 was in the position of starting off a series of DSM
25 programs -- was in a position of starting up a new

1 set of DSM programs; is that correct?

2 A. That's true, they had all been operating
3 programs for a number of years.

4 Q. Now, the conclusion that you draw from
5 your analysis is that increases in spending as a
6 percentage of the utilities' revenues correlates
7 fairly strongly with increases in energy savings as a
8 percentage of sales.

9 A. Yes, that's true.

10 Q. I got that right.

11 And it's also true from your analysis
12 that the impact of spending can vary substantially
13 from program to program.

14 A. Yes, that's true.

15 Q. Now, your estimate is that the
16 FirstEnergy utilities in order to achieve the
17 .3 percent goal that's in the Ohio Revised Code for
18 2009 would need to spend \$28 million minimum on
19 energy efficiency programs to achieve that goal.

20 A. That's true.

21 Q. And so if 28 million is the minimum, then
22 I believe we discussed at your deposition the maximum
23 that you would estimate would be approximately
24 \$63 million, correct?

25 A. Yes, that's true.

1 Q. And that would be spending for -- the
2 spending for the 2009 period, correct?

3 A. Yes, that's true.

4 Q. And then for 2010 and 2011, for those
5 targets as those targets increase, then you would
6 expect that spending would also have to increase to
7 satisfy the increased targets, correct?

8 A. Yes, that's true.

9 Q. But at this time you have not estimated
10 what that amount might have to be in 2010 and 2011,
11 correct?

12 A. We didn't, but we specified that the
13 savings would be about 0.5 percent of the utility's
14 revenues.

15 MR. LANG: No further questions, your
16 Honors.

17 EXAMINER PRICE: Thank you.

18 Mr. Jones.

19 MR. JONES: No questions, your Honor.

20 EXAMINER PRICE: Redirect.

21 Mr. Royer.

22 MR. ROYER: Thank you, your Honor.

23 - - -

24

25

1 REDIRECT EXAMINATION

2 By Mr. Royer:

3 Q. Mr. Gunn, Mr. Lang asked you a question
4 as to whether the effect of whether an ESP with
5 energy efficiency was better than an ESP without
6 energy efficiency. Do you recall that?

7 A. Yes, I do.

8 Q. Does that answer speak in any way to
9 whether the particular energy efficiency program is
10 reasonable or may be effective?

11 A. Yes, I would say it does.

12 MR. ROYER: That's all I have.

13 EXAMINER PRICE: Consumers' Counsel.

14 MR. SMALL: No questions.

15 EXAMINER PRICE: Ms. McAlister.

16 MS. McALISTER: No, your Honor.

17 EXAMINER PRICE: Mr. Sites.

18 MR. SITES: No questions.

19 EXAMINER PRICE: Mr. Porter.

20 MR. PORTER: No questions.

21 EXAMINER PRICE: Ms. Elder.

22 MS. ELDER: No questions.

23 EXAMINER PRICE: Mr. Bell.

24 MR. BELL: No.

25 EXAMINER PRICE: Mr. Boehm.

1 MR. BOEHM: No.

2 EXAMINER PRICE: Mr. Lavanga.

3 MR. LAVANGA: No.

4 EXAMINER PRICE: Mr. Yurick.

5 MR. YURICK: No questions, your Honor.

6 EXAMINER PRICE: Mr. Lang.

7 MR. LANG: No, your Honor.

8 EXAMINER PRICE: Thank you. You're

9 excused.

10 Mr. Royer.

11 MR. ROYER: Thank you, your Honor, I'd
12 like to move OAC Exhibit 1 into evidence.

13 EXAMINER PRICE: Any objection to the
14 admission of OAC Exhibit 1?

15 Being none that document will be
16 admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER PRICE: Consumers' Counsel.

19 MR. SMALL: Yes, your Honor, the
20 Consumers' Counsel calls Mr. Wilson Gonzalez.

21 (Witness sworn.)

22 EXAMINER PRICE: Please be seated and
23 state your name and business address for the record,
24 and I'll remind you if you could try to keep your
25 voice up and speak into the microphone so everybody

1 can hear you.

2 Please state your name and address for
3 the record.

4 THE WITNESS: Yes, my name is Wilson
5 Gonzalez.

6 MR. POULOS: Your Honor, OCC moves for
7 his prepared testimony to be marked as OCC Exhibit
8 1A.

9 EXAMINER PRICE: So marked, that will be
10 1A.

11 MR. POULOS: Thank you, sorry, 1.

12 EXAMINER PRICE: It will be marked as
13 Exhibit 1.

14 MR. POULOS: Excuse me.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 - - -

17 WILSON GONZALEZ

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

20 DIRECT EXAMINATION

21 By Mr. Poulos:

22 Q. Mr. Gonzalez, would you please state your
23 full name and business address for the record.

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

1 Q. By whom are you regularly employed?

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

4 Q. Are you the Wilson Gonzalez whose
5 prepared testimony was filed on September 29th, 2008,
6 in this case?

7 A. Yes.

8 Q. And on whose behalf did you prepare the
9 testimony?

10 A. On behalf of the Office of the Ohio
11 Consumers' Counsel.

12 Q. Do you have your prepared testimony with
13 you on the stand?

14 A. Yes, I do.

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

17 A. Yes, I do.

18 MR. POULOS: Your Honor, this is what
19 Consumers' Counsel would like to have marked as OCC
20 Exhibit 1A.

21 EXAMINER PRICE: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. POULOS: May I approach, your Honor?

24 EXAMINER PRICE: You may.

25 Q. Mr. Gonzalez, could you please describe

1 what's been marked as OCC Exhibit 1A.

2 A. Yes. In Exhibit 1A I make a number of
3 corrections to my testimony. On page 6 I state the
4 "2007" should be replaced by "2008."

5 Page 7 there's a misspelling.

6 Page 34 I make a correction on the
7 footnote 52.

8 On pages 34 through 35 I make a spelling
9 correction.

10 Q. Mr. Gonzalez, if I asked you today the
11 same questions found in your prepared testimony as
12 modified by your corrections in OCC Exhibit 1A, would
13 your answers be the same?

14 A. Yes, they would.

15 MR. POULOS: Your Honor, the OCC moves
16 for the admission of Exhibits OCC Exhibits 1 and 1A
17 and tenders the witness for cross-examination.

18 EXAMINER PRICE: Thank you. We'll defer
19 ruling on your motion until after cross-examination.

20 Ohio Environmental Council?

21 MR. HAYDEN: Your Honor, I have motions
22 to strike.

23 EXAMINER PRICE: Oh.

24 MR. HAYDEN: Page 27 starting at line 13,
25 Section IX which is labeled "Distribution Rates,"

1 this section through the end of Mr. Gonzalez's
2 testimony is strictly related to the distribution
3 rate case. My motion to strike is based on the
4 Bench's ruling regarding those issues.

5 MR. POULOS: Your Honor, may I reply?

6 EXAMINER PRICE: Just one second. It's a
7 large motion, I'm getting the scope of it here.

8 Mr. Poulos.

9 MR. POULOS: Your Honor, the testimony of
10 Mr. Gonzales that's labeled starting on page 27, line
11 13, "Distribution Rates," relates to the comparison
12 between the ESP and the alternative, and on the stand
13 when crossed by Ohio Consumers' Counsel Mr. Blank
14 stated that the -- that in the comparison stated the
15 rate case came out worse for FE than the rate case,
16 that the ESP would be less favorable, so this is
17 looking at a comparison of the two.

18 EXAMINER PRICE: Mr. Hayden.

19 MR. HAYDEN: Your Honor, I would note
20 that in the pages that I've cited there's no
21 reference to anything that Mr. Blank has said either
22 in his testimony or on cross. I would also note that
23 on every single page that I've cited there are
24 several references to the pending distribution rate
25 case. These are very specific issues in those cases,

1 and in some cases Mr. Gonzales is citing to testimony
2 from other witnesses, staff witness Tufts, staff
3 witness Fortney, and OCC witness Cleaver regarding
4 these very specific distribution rate case issues.

5 MR. POULOS: Your Honor, if I may very
6 briefly, there is footnotes to the Application itself
7 and there are numerous mentions to, for example,
8 riders which are part of the ESP application which
9 compares it to the distribution case.

10 EXAMINER PRICE: Mr. Hayden, I think your
11 motion is overly broad. I think that there are
12 certainly some specific issues that you could raise,
13 but you're asking to generally chop out, I don't
14 know, five pages, eight pages of his testimony. I
15 think it's overly broad, and so your motion will be
16 denied.

17 If you have more specific motions, I
18 would entertain those.

19 MR. HAYDEN: At this time, your Honor, I
20 do not.

21 EXAMINER PRICE: Thank you.

22 Ohio Environmental Council, have you made
23 an appearance?

24 MR. MOSER: No. I need to formally make
25 an appearance, I'm Nolan Moser appearing for the Ohio

1 Environmental Council.

2 EXAMINER PRICE: Do you have any
3 questions?

4 MR. MOSER: We have no questions.

5 EXAMINER PRICE: Mr. Sites.

6 MR. SITES: No questions, your Honor.

7 EXAMINER PRICE: Mr. Porter?

8 MR. PORTER: No questions, your Honor.

9 EXAMINER PRICE: Ms. McAlister.

10 MS. McALISTER: No questions, your Honor.

11 EXAMINER PRICE: Mr. Bell.

12 MR. BELL: No questions.

13 EXAMINER PRICE: Mr. Breitschwerdt.

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

16 EXAMINER PRICE: Mr. Boehm.

17 MR. BOEHM: No questions, your Honor.

18 EXAMINER PRICE: Mr. Lavanga.

19 MR. LAVANGA: No, thank you, your Honor.

20 EXAMINER PRICE: Mr. Yurick.

21 MR. YURICK: No, thank you.

22 EXAMINER PRICE: Mr. Hayden.

23 MR. HAYDEN: Yes, your Honor, thank you.

24 - - -

25

1 CROSS-EXAMINATION

2 By Mr. Hayden:

3 Q. Good morning, Mr. Gonzalez.

4 A. Good morning, Mr. Hayden.

5 Q. If we could start on page 20 of your
6 testimony.

7 MR. POULOS: I'm sorry, Mark, what page
8 was that?

9 MR. HAYDEN: Page 20.

10 Q. And actually following through from 20 to
11 21 you're talking about integrated resource planning
12 here, and on page 21 there at the top you cite to
13 several provisions of the Ohio Administrative Code.
14 Do you see that?

15 A. Yes, I do.

16 Q. Have you reviewed those proposed rules?

17 A. Yes, I have.

18 Q. And, in fact, the basis for your belief
19 that an integrated resource planning process applies
20 to the company is your interpretation and reading of
21 those rules; is that correct?

22 A. Yes, in specific one of the definition --
23 new definitions of those rules is integrated resource
24 planning.

25 Q. Okay. Have you reviewed the various

1 statutory provisions that are contained in those
2 rules?

3 A. Are you referring to Senate Bill 221?

4 Q. Yes, I am.

5 A. Yes, I have a general understanding of
6 that.

7 Q. Okay. More specifically, have you
8 reviewed Section 4928.143(B)(2)(b) and (c)? Those
9 are the sections that deal specifically with
10 integrated resource planning, have you reviewed those
11 sections?

12 A. I don't have them in front of me, but I'm
13 sure I've read them.

14 EXAMINER PRICE: Mr. Gonzalez, can you
15 move the microphone to the other side by your water
16 bottle, it will probably pick you up better as you
17 talk to Mr. Hayden.

18 Q. I'm sorry, was your answer you think you
19 have reviewed them?

20 A. Generally I've reviewed them, yes.

21 Q. Okay. Now, back on page 20 of your
22 testimony, again you're talking about integrated
23 resource planning and on line 20 you refer to a
24 "demonstration that such sources are least cost." Do
25 you see that?

1 A. Yes.

2 Q. And that belief or that conclusion is
3 also based upon your review and understanding of
4 those rules that we've discussed so far; is that
5 correct?

6 A. Based on the proposed rules by the staff,
7 yes.

8 Q. Can you turn -- let's turn to a different
9 topic, page 7 of your testimony. You're talking
10 about DSM here, and more specifically on line 19 you
11 make reference to "annual ratepayer contribution is
12 approximately \$44 million." Do you see that?

13 A. Yes.

14 Q. And you recommend that the company
15 recover those costs incurred for the DSM program as
16 they pertain to this \$44 million.

17 A. As long as they're prudently incurred,
18 yes.

19 Q. Okay. Now, if we could talk about your
20 recommendations on the AMI pilot which occur on or
21 about page 15 in your testimony. Now, as you
22 understand it, Mr. Gonzalez, there's no specific
23 requirement in Senate Bill 221 for an AMI program; is
24 that correct?

25 A. While there's no specific recommendation

1 for an AMI pilot, there is language in section
2 4928.02(D) that it's the policy of the state to
3 encourage advanced metering infrastructure.

4 Q. Okay. And you're not aware of any other
5 companies that are offering an AMI program and
6 funding that through shareholder contributions, are
7 you?

8 A. I heard earlier that the Duke settlement
9 was filed with the Commission, so I believe one of
10 the provisions of that settlement has a study -- a
11 rate -- the object of that provision would be that
12 Duke would undertake such a study.

13 Q. And is that through -- are you aware if
14 that's through shareholder contributions?

15 A. No.

16 Q. Now, on page 22 of your testimony you
17 talk about your disagreement with the elimination of
18 demand charges.

19 A. That's correct.

20 Q. And you haven't performed any study or
21 analysis regarding your recommendation on elimination
22 of demand charges; is that correct?

23 A. While I haven't performed any specific
24 studies, I think there's a lot of literature having
25 gone to many conferences and being involved in work

1 groups and discussions, it's pretty prevalent in the
2 literature that without some form of demand charge,
3 some form of -- some form of rate design that
4 disciplines the use of the, be it a demand charge, be
5 it a realtime price, you'll end up having a meatier
6 system where the customer signal will not discipline
7 demand.

8 Q. But, again, you haven't performed any
9 study or any independent analysis to show that,
10 correct?

11 A. No, I have not.

12 Q. Now, on page 24 of your testimony you
13 talk about the interruptible programs, and more
14 specifically on lines 4 and 5 you conclude that "they
15 do not suffice to overcome that lack of a more
16 granular demand signal." Do you see that?

17 A. Yes.

18 Q. And, again, my question is the same,
19 Mr. Gonzalez, you have not performed any study or
20 independent analysis to support that conclusion,
21 correct?

22 A. Again, I haven't done any specific
23 analysis, but, for example, on the interruptible
24 rates the customers have the right to buy through, so
25 for the customers that buy through those demand

1 reductions don't get placed and I think that was a
2 concern of staff witness Scheck that, you know, you
3 should only count interruptible customers when they
4 actually interrupt.

5 Q. Now, let's switch topics to talk about
6 delta revenues here a little bit, Mr. Gonzalez. On
7 page 26, line 20, I think we've been through this
8 before, but you talk about "the reasonable
9 expectations of parties, including the companies."
10 Do you see that?

11 A. Yes, I do.

12 Q. You would agree that you don't have any
13 personal knowledge regarding the expectations of the
14 company or the customers with regard to these
15 contracts, correct?

16 A. That's correct, and I would just say that
17 the operative word was "reasonable" there based on a
18 history of delta revenues and special contracts.

19 Q. Now, on the bottom of that page you have
20 a footnote citing to the CEI rate case, Case No.
21 95-299. Do you see that?

22 A. Yes, I do.

23 Q. And you cite to that case for the
24 proposition that the company should not recover delta
25 revenues or, if it does, it should only recover

1 50 percent of delta revenues; is that correct?

2 A. I would say that -- I'm citing it because
3 it's the Commission's discretion in the past to
4 determine what amount of delta revenue, whether it's
5 zero or whether it's 100 percent or whether it's
6 50 percent.

7 Q. But you are citing that case to support
8 that conclusion.

9 A. That's correct.

10 Q. Okay. Now, it's your understanding, is
11 it not, that CEI -- existing CEI contracts were
12 reviewed and approved by the Commission?

13 A. That's correct.

14 Q. And, in fact, it's your understanding
15 that staff conducted a comprehensive analysis of all
16 special contracts before they were recommended for
17 approval by the Commission.

18 A. My reading of the opinion and order
19 suggests such.

20 Q. Okay. And it's your understanding that
21 contracts going forward will also be reviewed and
22 approved by the Commission; is that correct?

23 A. Yes. That's my understanding.

24 Q. Now, Mr. Gonzalez, do you think it's
25 appropriate that a distribution utility incur a loss

1 in the provision of generation service to customers?

2 A. Generally speaking the distribution
3 utility has a right to recover its approved costs.

4 Q. Is that a "no"?

5 A. Generally speaking, no. I think in this
6 particular circumstance, I think there's a -- I think
7 it's a little more complex.

8 Q. You think it's more complex.

9 A. Yes.

10 Q. But you don't think it's appropriate for
11 a distribution utility to incur a loss in providing
12 generation service to customers.

13 MR. POULOS: Objection, your Honor.

14 Asked and answered.

15 EXAMINER PRICE: He hasn't answered it
16 directly yet. Overruled.

17 A. I think in general if the costs incurred
18 are prudent and appropriate, they -- and part of a
19 distribution case or whatever the case, I would say
20 yes, I think in the case of delta revenue, as I
21 stated, there may be instances where the utility
22 may -- the distribution utility may lose some money
23 on the delta contracts but may make it up through
24 either increased distribution revenue or secondary
25 and tertiary economic development benefits from that

1 type of a contract or that type of a special
2 arrangement with a manufacturer.

3 Q. So you believe it's appropriate that the
4 utility recover or net the loss of profits and
5 generation service, recover that through distribution
6 service.

7 A. The tertiary benefits could be gotten by
8 the distribution company, so it -- so I disagree with
9 your characterization.

10 Q. I'm not sure I understood your answer,
11 Mr. Gonzalez. Do you think it's appropriate for the
12 distribution utility to recover the losses it incurs
13 in providing generation service through any profits
14 it may make in the provision of distribution service?

15 A. In the case of delta revenue, yes.

16 Q. So you think it's appropriate that the
17 utility earn a lower rate of return than that
18 authorized by the Commission to recover the losses of
19 providing generation service.

20 A. That's not what I'm saying. What I'm
21 saying is if you have a case where you provide let's
22 say a discount, a hypothetical, a discount on the
23 generation of 10 percent and because of that company
24 coming into the service territory, attracting an
25 industrial customer who's going to create -- have

1 direct benefits for the company, both generation and
2 on the distribution side, then that company brings in
3 suppliers and those suppliers also increase the
4 revenue stream, and then all the employment impacts,
5 you know, if the employees now go out and have higher
6 incomes and buy plasma TVs, your revenue's going to
7 go up and I think those are the kind of global issues
8 you have to look at when you're, you know -- I would
9 recommend that the Commission look at when they're
10 looking at a contract, a special arrangements
11 contract.

12 Q. Given that answer then, Mr. Gonzalez, you
13 would agree with me then it's appropriate for the
14 utility to then earn a profit on the provision of
15 generation service to special contract customers as
16 well.

17 THE WITNESS: Can you restate that?

18 MR. HAYDEN: Can you reread it, please?

19 (Record read.)

20 A. I think FirstEnergy's a distribution
21 company because it's purchasing the power is my
22 understanding.

23 Q. That's not my question, Mr. Gonzalez.

24 A. Yes. I would say no. I would give you a
25 no answer.

1 Q. So you don't think it's appropriate for
2 the company to earn a profit on the provision of
3 generation service to special contract customers, but
4 it's okay to take a loss on that same service?

5 A. I don't think the distribution company
6 should.

7 Q. I'm sorry?

8 A. I don't believe the distribution -- are
9 you talking about FirstEnergy as a total company, or
10 are you talking about FirstEnergy as a distribution
11 company?

12 Q. I'm talking about the distribution
13 utilities.

14 A. Okay. My answer is no.

15 Q. To which part of my question?

16 A. To the part of the question whether the
17 distribution company should earn a profit from
18 generation services.

19 Q. They should not earn a profit, but it's
20 okay for them to take a loss.

21 A. You're assuming they're going to take a
22 loss, and I'm saying that --

23 Q. I'm just asking you if it's appropriate
24 or not. I'm not assuming anything.

25 A. My answer presupposes that you have a

1 definite determination that there's a loss in the
2 more global sense.

3 Q. I'm really asking a very simple question.
4 I'm not assuming anything or presupposing anything.

5 A. So can you restate your question?

6 Q. Sure. I believe you just testified that
7 it's not appropriate for the utility to earn a profit
8 on the provision of generation service to special
9 contract customers; did you not?

10 A. Yes.

11 Q. Now, given that answer do you believe
12 it's appropriate then that the distribution utility
13 incur a loss in providing generation service to
14 special contract customers, a financial loss?

15 A. Again, I would say generally no, but in
16 the case of delta revenues and to the extent that the
17 legislation has made -- includes special
18 arrangements, although it's a permissive kind of
19 thing, the Commission may allow special arrangements,
20 I think the legislation allows the Commission to have
21 a mechanism where the company may not get the full
22 delta revenues.

23 Q. Can you point me to which section in the
24 legislation you're referring to?

25 A. I'm looking at 4905-31, Section E where

1 it says "In the case of the schedule arrangement
2 concerning public utility electric light companies
3 such other financial device may -- may -- include a
4 device to recover costs." So my impression is that
5 the mechanism here, the "may," has to be approved by
6 the Commission and in approving that the Commission
7 can determine the amount of delta revenue recovery.

8 MR. HAYDEN: I have no further questions,
9 your Honor.

10 EXAMINER PRICE: Thank you.

11 Staff?

12 MR. JONES: No questions, your Honor.

13 EXAMINER PRICE: Mr. Poulos, redirect?

14 MR. POULOS: May we take a moment, your
15 Honor?

16 EXAMINER PRICE: You may.

17 (Discussion off the record.)

18 MR. POULOS: Your Honor, OCC does not
19 have any redirect, and we offer OCC Exhibits 1 and 1A
20 at this time.

21 EXAMINER PRICE: Thank you, Mr. Gonzalez,
22 you're excused.

23 THE WITNESS: Thank you.

24 EXAMINER PRICE: Any objections to the
25 admission of OCC Exhibits 1 and 1A?

1 MR. HAYDEN: Subject to my motion to
2 strike, no.

3 EXAMINER PRICE: Your motion to strike
4 will still be denied, the exhibits will be admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER PRICE: Let's take a break until
7 10:30.

8 (Recess taken.)

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

11 Mr. Reese.

12 MR. REESE: Thank you, your Honor. OCC
13 calls David Cleaver to the stand.

14 (Witness sworn.)

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

17 THE WITNESS: My name is David Cleaver, I
18 work for the Ohio Consumers' Counsel located at 10
19 West Broad Street, Columbus, Ohio 43215.

20 EXAMINER PRICE: Mr. Reese.

21 MR. REESE: Your Honor, for
22 identification purposes OCC would like Mr. Cleaver's
23 direct testimony marked as Exhibit 2 and his
24 corrections sheet marked as Exhibit 2A, OCC Exhibit 2
25 and 2A.

1 EXAMINER PRICE: So marked.

2 (EXHIBITS MARKED FOR IDENTIFICATION.)

3 - - -

4 DAVID W. CLEAVER

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

7 DIRECT EXAMINATION

8 By Mr. Reese:

9 Q. Mr. Cleaver, are you the same David
10 Cleaver whose prepared testimony was filed on October
11 15th, 2008, in this case?

12 A. I think the date was September 29th.

13 Q. You filed another --

14 A. Okay.

15 Q. -- corrected version.

16 A. Yes.

17 Q. Thank you. On whose behalf do you
18 appear?

19 A. The Office of Ohio Consumers' Counsel.

20 Q. Do you have your prepared testimony with
21 you on the stand?

22 A. I do.

23 Q. Did you prepare the testimony or have it
24 prepared under your supervision?

25 A. I did.

1 Q. Besides the corrections contained in OCC
2 Exhibit 2A do you have any other corrections to your
3 prepared testimony?

4 A. No.

5 Q. Mr. Cleaver, if I ask you today the same
6 questions found in your prepared testimony as
7 modified by your corrections, would your answers be
8 the same?

9 A. Yes, they would.

10 MR. REESE: Your Honor, OCC moves for
11 admission of OCC Exhibits 2 and 2A and tenders the
12 witness for cross-examination.

13 EXAMINER PRICE: Thank you. OEC.

14 MR. MOSER: No questions, your Honor.

15 MS. MILLER: Your Honor, before we begin.

16 EXAMINER PRICE: I'm sorry, I do that
17 every time.

18 MS. MILLER: I do have a few motions to
19 strike.

20 EXAMINER PRICE: Thank you. Let's take
21 the first one.

22 MS. MILLER: Your Honor, these motions to
23 strike are contingent on the Bench's ruling regarding
24 the distribution case, and as you said, your Honor,
25 during this case there would be some gray areas, but

1 it's my belief that with Mr. Cleaver's testimony that
2 these issues are very black and white.

3 My first one is on page 6, starting at
4 line 21 and moving on to page 7, that entire page,
5 your Honor. It is very clear when Mr. Cleaver says
6 what were OCC's recommendations in the distribution
7 case, and then he sets forth relisting them, and also
8 setting forth the page numbers that he provided in
9 his testimony whereby he set forth those same
10 recommendations, that that is clearly -- that has
11 clearly been addressed in our distribution case.

12 EXAMINER PRICE: Mr. Reese.

13 MR. REESE: Your Honor, OCC took pains to
14 accommodate the Bench's earlier rulings regarding the
15 UMS report which was noted in particular.

16 Mr. Cleaver modified his testimony, deleted footnote
17 1 on page 9 which was originally Attachment DWC-1 to
18 his testimony which was the UMS report.

19 Further, the corrections deleting
20 questions and answers 13 and 14 and related footnotes
21 we believe dealt with the Bench's concerns.

22 In addition, your Honor, I would note
23 that the companies' Application was supported by the
24 testimony of Mr. Schneider. Mr. Schneider in turn
25 supported, if you will, Attachment E to the

1 Application, specifically Attachment E addresses
2 4928.143(B)(2)(h) regarding electric security plans
3 and the contents of any distribution reliability
4 component.

5 We believe Mr. Cleaver's testimony on
6 page 6 and elsewhere as we deal with the various
7 motions to strike are relevant to that, specifically,
8 your Honor, 4928.143(B)(2)(h) states in pertinent
9 part "As part of its determination as to whether to
10 allow an electric distribution utility's electric
11 security plan, inclusion of any provision described
12 in (B)(2)(h) of this section, the Commission shall
13 examine the reliability of the electric distribution
14 utility's distribution system and ensure that
15 customers of the distribution utility's expectations
16 are aligned and that the electric distribution
17 utility is placing sufficient emphasis on and
18 dedicating sufficient resources to the reliability of
19 its distribution system."

20 Your Honor, we believe that this is what
21 this portion of -- OCC believes this is what this
22 portion of Mr. Cleaver's testimony goes to and,
23 again, we note that we have already removed the
24 portions dealing with UMS.

25 EXAMINER PRICE: I very much appreciate

1 the pains OCC has gone through to address the Bench's
2 prior ruling, but could you just address the specific
3 issue that Ms. Miller raised that with respect to
4 this particular motion to strike he's simply
5 repeating what he recommended in the distribution
6 rate case.

7 MR. REESE: Your Honor, depending on --
8 the cases are intertwined in this respect. These
9 issues do need to be considered within the context of
10 the ESP as well, and Mr. Schneider's testimony did
11 not cover that in any depth but we believe we needed
12 to. This has been brought up in the distribution
13 rate case, that's true, but we don't think the issues
14 can be considered in a vacuum, your Honor, because we
15 believe the law requires the company to address these
16 issues.

17 EXAMINER PRICE: Ms. Miller.

18 MS. MILLER: Your Honor, Mr. Reese's
19 argument is stating what I believe is what the Bench
20 specifically sought not to do, to re-litigate the
21 distribution rate case. The Commission has the
22 distribution rate case before it and that entire
23 record without cutting and pasting pieces of it in
24 the electric security plan and they can consider that
25 at that time.

1 EXAMINER PRICE: As I had ruled before,
2 what can be ruled upon within the distribution rate
3 case will be ruled upon within the distribution rate
4 case. OCC's recommendations will stand or fall
5 within that case. The motion to strike will be
6 granted.

7 MS. MILLER: Your Honor, my next motion
8 to strike is set forth on page 11, that entire page,
9 lines 1 through 22, onto page 12, 1 through 23, onto
10 page 13, 1 through 21, onto page 14, 1 through 22,
11 and although that seems like a large portion of the
12 testimony, again, your Honor, beginning on page --

13 EXAMINER PRICE: Could I have those
14 again, please, beginning page --

15 MS. MILLER: To simplify it it's page 11
16 through the top of page 15 through line 15.

17 EXAMINER PRICE: Simplified is always
18 easier for me. Go ahead.

19 MS. MILLER: Beginning on page 11, your
20 Honor, at the very beginning it says FirstEnergy has
21 not addressed the service quality issues raised by
22 OCC in the distribution rate case. OCC concedes that
23 these issues were already raised in the distribution
24 case. Moreover, OCC has a question and answer on
25 whether they've changed their position for purposes

1 of this case, and they state that, no, they haven't,
2 your Honor. And so the OCC's recommendations and
3 their position is already fully set forth in that
4 distribution case.

5 Onto page 12, again, set forth the
6 recommendations, indicate that they have not changed
7 their position.

8 Onto page 13, again, indicating their
9 recommendations, setting forth that they have not
10 changed their position.

11 Onto page 14, again, the recommendations,
12 they have not changed their position, your Honor.

13 Those issues have fully been set forth in
14 the distribution case. OCC has not changed their
15 position in connection with this case and there's no
16 need to re-litigate those issues here.

17 EXAMINER PRICE: Mr. Reese.

18 MR. REESE: Your Honor, again, OCC
19 believes that the issues raised in Mr. Cleaver's
20 testimony on pages 11 through 14 go to the adequacy
21 of the ESP application. Some of the issues are the
22 same, and if they're not addressed, the ESP
23 application falls under the law and we believe under
24 the Commission's adopted rules which are currently in
25 the rehearing phase.

1 The adequacy of their distribution
2 reliability system and their programs, OCC believes,
3 are part and parcel of the adequacy of the
4 distribution system reliability portion of the
5 application, and I believe that's been contemplated
6 by the adoption -- the rules adopted by the
7 Commission.

8 EXAMINER PRICE: Having previously stated
9 everything that OCC has raised in this particular
10 motion will be decided within the distribution rate
11 case, the motion to strike will be granted.

12 MS. MILLER: Thank you, your Honor.

13 MR. SMALL: Where did that start and
14 where did that end?

15 EXAMINER PRICE: Page 11, line 1, through
16 page 15, line 7. Is that correct, Ms. Miller?

17 MR. REESE: Your Honor, if I might,
18 certainly this last portion of Mr. Cleaver's answer
19 on page 14 that "states the policy of the state" and
20 references Senate Bill 221 and carries over to line 7
21 of page 15 shouldn't be stricken.

22 EXAMINER PRICE: I understand what you're
23 saying, Mr. Reese, the problem I'm having is the
24 actual question was has OCC changed its position. So
25 if there was a way to modify the question to save it

1 I would, but I don't see how I could do that.

2 MS. MILLER: Your Honor, actually my
3 motion to strike carried through to page 15, line 15.

4 EXAMINER PRICE: Oh, line 15.

5 THE WITNESS: I'm sorry? What line?

6 MS. MILLER: Line 15.

7 EXAMINER PRICE: Actually, Ms. Miller,
8 I'm going to terminate it at line 7. I think the
9 next question is perfectly appropriate, they're
10 asking if anything's changed and according to them
11 nothing has changed.

12 MS. MILLER: Okay.

13 MR. REESE: Ms. Miller, are you done with
14 your cross?

15 MS. MILLER: I have not begun my cross,
16 but one more motion to strike, your Honor, on page
17 39, lines 9 through 10. The OCC has already set
18 forth --

19 EXAMINER PRICE: I think we covered this.
20 The motion to strike will be granted as to lines 9
21 and 10.

22 MS. MILLER: That concludes my motions to
23 strike, your Honor, thank you.

24 EXAMINER PRICE: Thank you.

25 Ohio Environmental Council.

1 MR. MOSER: No questions, your Honor.

2 EXAMINER PRICE: Mr. Sites.

3 MR. SITES: No questions, your Honor.

4 EXAMINER PRICE: Mr. Dunn.

5 MR. DUNN: No questions, your Honor.

6 EXAMINER PRICE: Ms. Elder.

7 MS. ELDER: No questions, your Honor.

8 EXAMINER PRICE: Mr. Bell.

9 MR. BELL: No questions, your Honor.

10 EXAMINER PRICE: Mr. Breitschwerdt.

11 MR. BREITSCHWERDT: No questions, your
12 Honor.

13 EXAMINER PRICE: Mr. Boehm.

14 MR. BOEHM: No questions.

15 EXAMINER PRICE: Mr. Lavanga.

16 MR. LAVANGA: No questions.

17 EXAMINER PRICE: Mr. Yurick.

18 MR. YURICK: No questions, your Honor.

19 EXAMINER PRICE: Miss Miller.

20 MS. MILLER: Yes, I do have a few
21 questions, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Miller:

25 Q. Mr. Cleaver, good morning. How are you

1 today?

2 A. Good morning.

3 Q. Now, you have not worked directly for an
4 electric utility for the past 12 to 13 years,
5 correct?

6 A. That's correct.

7 Q. In fact, the past 12 years of your work
8 experience before being retained by the OCC, is it
9 fair to say that you worked in a non-utility public
10 sector working for the city of Cleveland and the
11 state of Ohio?

12 A. The city of Columbus and the state of
13 Ohio.

14 Q. Sorry. But in a non-utility sector?

15 A. That's correct.

16 Q. And according to your testimony on page
17 4, your work for the city of Columbus and the state
18 of Ohio also involved the reliability of electrical
19 distribution systems; is that correct?

20 A. That's correct.

21 Q. However, your work pertaining to the
22 reliability of electric distribution systems was to
23 ensure compliance with the National Electric Code and
24 the Ohio Building Code; is that correct?

25 A. That's accurate.

1 Q. And I highlight the National Electric
2 Code and the Ohio Building Code because isn't it
3 correct that that is not what governs a utility's
4 distribution system?

5 A. That's correct.

6 Q. And isn't it also correct that a
7 utility's distribution system is governed by the
8 National Electric Safety Code?

9 A. I believe that's true in this state, yes.

10 Q. On page 4 in your response to question 7
11 you set forth examples of your experience relating to
12 reliability-related matters for the city of Columbus
13 and the state of Ohio, correct?

14 A. Yes.

15 Q. And is it fair to say that that was
16 limited to assessing, for reliability purposes, that
17 was limited to assessing whether or not an emergency
18 power backup was required?

19 A. No, that's not fair to say.

20 Q. However, when you assessed reliability,
21 you didn't measure -- strike that.

22 In your assessment and evaluation of a
23 company's reliability it didn't matter how high or
24 low SAIDI was before you made a determination that a
25 facility would need an emergency power backup,

1 correct? It was based on the facility, not with what
2 the reliability was, correct?

3 A. First of all, I wouldn't be evaluating in
4 that context where I'm looking at emergency power
5 systems, I'm not evaluating the companies, and I'm
6 talking about a customer, not FirstEnergy, not a
7 utility, but my customers would be commercial
8 customers or industrial customers.

9 I would be evaluating the electrical
10 service reliability that would be serving that
11 customer.

12 Q. Is it correct that no matter the high or
13 low of the reliability you could still assess that
14 some sort of a second source of emergency power would
15 be required?

16 A. That's a possibility, yes.

17 Q. And isn't it fair to say that the Ohio
18 Building Code doesn't set forth the minimum or a
19 maximum SAIDI?

20 A. That's correct.

21 Q. Turning to page 8 of your testimony, you
22 state that your testimony on behalf of the OCC
23 presents the results of your evaluation of the
24 reliability-related policies and practices that are
25 applied to the companies' distribution systems. Do

1 you see that at the top starting on lines 4 going to
2 line 8?

3 A. Yes.

4 Q. However, is it fair to say that you did
5 not read all of the companies' reliability-related
6 policies and practices?

7 A. I read information provided in
8 interrogatories which included vegetation management
9 policies and practices, overhead inspection program,
10 I also reviewed other discovery from intervenors and
11 OCC's, but to answer your question directly I have
12 not read or I'm not aware of other -- restate that.

13 I am not sure I have read all the
14 policies and practices of FirstEnergy.

15 Q. In fact, isn't it fair to say that at the
16 time you drafted your testimony you only read two of
17 them?

18 MR. REESE: Objection, your Honor.
19 That's vague.

20 EXAMINER PRICE: Perhaps you can rephrase
21 the question.

22 Q. At the time you drafted your testimony,
23 how many practices and policies of the companies
24 pertaining to reliability-related matters did you
25 read?

1 A. I believe I just answered your question
2 partially in my previous response. I'm sure I've
3 read your vegetation management manual and your
4 overhead line inspection manual. Those are the two
5 that come to mind.

6 EXAMINER PRICE: So your answer is two.

7 THE WITNESS: Yes.

8 Q. And you state that those are the two that
9 come to mind, but isn't it correct that those are the
10 only two you read?

11 A. There may be others, but I don't recall
12 others at the time, no.

13 Q. Okay. Is it correct that the two that
14 you mentioned, you didn't actually read the entire
15 policy or practice even, you just read parts of it,
16 correct?

17 A. I read sufficient amounts of both of
18 those manuals to get a feel for the types of
19 activities that FirstEnergy performs to the point
20 where I was satisfied in what I had read.

21 Q. Are you aware that each of those
22 practices are about three to four pages long?

23 EXAMINER PRICE: You need to verbalize
24 your answer.

25 A. Perhaps I am remembering some other

1 policies and practices. I do remember looking at
2 distribution standards and designs. I do remember
3 basically text that described your vegetation
4 management program and the same thing for your
5 inspection programs.

6 MS. MILLER: Your Honor, may I approach
7 the witness?

8 EXAMINER PRICE: You may.

9 MS. MILLER: I'm handing the witness a
10 copy of his deposition taken on October 9th.

11 Q. Mr. Cleaver, can you please turn to page
12 63 of your deposition.

13 A. Yes.

14 Q. Line 18, "Can you list the policies you
15 reviewed?"

16 Line 20, "Do I have them with me."

17 Line 21: "No, can you just list what
18 they were? I didn't hear it in your list of things
19 you reviewed at the beginning."

20 Line 24: "I received copies of your
21 vegetation management program and your circuit
22 inspection program filed I think under 27."

23 3, "Were those the only ones?"

24 4, "Those are the two that I actually
25 read through, at least portions of them. I might

1 have received some others. I don't recall all the
2 company sent to be honest."

3 Line 8: "Now, the ones you just
4 mentioned, the vegetation management and the circuit
5 inspection program, you say you read portions of
6 them? You didn't read the entire practice?"

7 Line 12: "Just portions."

8 Does that correctly reflect your
9 testimony at your deposition?

10 A. I think it probably does, yes.

11 Q. Thank you.

12 Moving on to your analysis and
13 recommendations, and I believe that starts over on
14 page 18, you criticize the company's DSI rider
15 because it's not cost based, correct?

16 A. Could you explain what you mean by "cost
17 based"?

18 Q. You don't know what the term "cost based"
19 means?

20 A. I don't know what you mean.

21 Q. Can you turn to page 80 of your
22 deposition, please?

23 A. I'm there.

24 Q. Line 11. "Is it fair to say that your
25 response to question 29 is again a criticism that the

1 DSI rider is not cost based?"

2 You response: "It's an observation that
3 no programs or cost data or specific cost information
4 or other information was offered in the testimony or
5 discovery to justify needs."

6 18: "So it's not a criticism; it's just
7 an observation?"

8 20: "I think it is a criticism in that
9 no cost justification was part of FirstEnergy's
10 justification for the needs."

11 "So the answer to my question was yes."

12 Your answer: "Yes."

13 Did I read your testimony correctly?

14 A. That's correct.

15 Q. Would you agree that the companies have
16 distribution lines and transformers that are 30, 40,
17 and even 60 years old?

18 A. I have no knowledge of that, no.

19 Q. Could you turn to your deposition at page
20 18? Let me know when you're there.

21 A. Okay.

22 Q. Line 5: "I am fairly confident that you
23 have distribution lines and transformers out there
24 that are 30, 40, or 50 or maybe even 60 years old."

25 Did I read your testimony correctly?

1 A. You read the deposition correctly. You
2 had me --

3 Q. Thank you.

4 MR. REESE: Objection, your Honor. Can
5 the witness finish his answer?

6 MS. MILLER: Your Honor, if the witness
7 would like to clarify his testimony, he will be able
8 to do that on redirect.

9 EXAMINER PRICE: Well, we have been very
10 diligent about allowing witnesses to correct their
11 answers, if you have a motion to strike following
12 that, then we'll entertain that at that time.
13 Objection sustained. Please finish your answer.

14 THE WITNESS: I believe my deposition was
15 based on my general knowledge that infrastructure is
16 aging, that's a well chronicled phenomena that's in
17 the industry. So when I was saying I was fairly
18 confident that there's probably -- probably --
19 facilities out there in that age group, you know,
20 that's a probability. But do I know that you do?
21 No, I do not know it for a fact. I can't know that
22 because I haven't seen those transformers or studied
23 it in that kind of depth.

24 MS. MILLER: Your Honor, I would like to
25 now move to strike Mr. Cleaver's testimony after the

1 answer he provided that that was his testimony at the
2 deposition.

3 EXAMINER PRICE: Could I have back the
4 answer, please.

5 (Record read.)

6 EXAMINER PRICE: Your objection is it's
7 nonresponsive, grounds for your objection?

8 MS. MILLER: That's correct, your Honor.

9 EXAMINER PRICE: Mr. Reese.

10 MR. REESE: So that's her objection that
11 it's nonresponsive? Oh. Your Honor, she read from
12 the deposition and his answer in the deposition. He
13 was asked on the stand by Ms. Miller about whether he
14 had knowledge of the fact that they had
15 transformers -- that the FirstEnergy companies had
16 transformers X numbers of years old. She then went
17 to his transcript on page 18 and clearly
18 Mr. Cleaver's answer in his deposition was that he is
19 fairly confident that you have distribution lines, he
20 also said they are made to last a long time so
21 reliability is key to how you design, et cetera.

22 It's a very generic answer that he's
23 fairly confident. I think that's how he just
24 answered.

25 MS. MILLER: Your Honor.

1 EXAMINER PRICE: Miss Miller.

2 You might be winning this, you don't want
3 to. . .

4 All issues you raised are certainly
5 proper on redirect, but her motion to strike will be
6 granted.

7 MS. MILLER: Thank you, your Honor, for
8 stopping me.

9 Q. (By Ms. Miller) In the companies'
10 Application they cite aging infrastructure as a
11 challenge for the companies. Wouldn't you agree that
12 that is a legitimate concern for the companies?

13 A. I would agree.

14 Q. Wouldn't you also agree that the
15 companies challenge pertaining to their aging work
16 force is a concern that needs to be addressed?

17 A. I would agree.

18 Q. Turning to page -- back to page 15 of
19 your testimony, are you there?

20 A. Yes.

21 Q. In your question and response at 20 you
22 reference service quality issues arising in the
23 company -- actually, yeah, arising in the companies'
24 distribution case. Do you see that?

25 A. Yes.

1 Q. Are you just referring --

2 MR. REESE: I'm sorry, excuse me. Can
3 you direct me to where you are right now?

4 MS. MILLER: Yes. Page 15, the Q and A
5 at 20.

6 EXAMINER PRICE: Question and answer 20,
7 not line 20.

8 MS. MILLER: Yes, question and answer 20.

9 MR. REESE: Okay.

10 Q. (By Ms. Miller) You reference service
11 quality issues arising from the distribution case; is
12 that correct?

13 A. Yes.

14 Q. Are you referring to the fact that
15 certain companies didn't meet their targets?

16 A. That's one of the issues, yes.

17 Q. I guess when you say service quality
18 issues, aren't you just referring to the fact that
19 certain companies didn't meet their targets?

20 A. Again, that was probably the major issue,
21 but just one of the issues raised in the distribution
22 case.

23 Q. Turning to page 19.

24 A. Yes.

25 Q. You state that "Electric utility

1 customers" --

2 MR. REESE: Excuse me.

3 Q. On lines 16 and 17 you state that
4 "Electric utility customers should not have to pay
5 'extra' for an acceptable level of reliable service."
6 Do you see that?

7 A. Yes.

8 Q. When you say "extra," you're referring to
9 the mere existence of the DSI rider, aren't you?

10 A. Yes, I am.

11 Q. And then you go on to talk about an
12 acceptable level of reliable service. Do you see
13 that?

14 A. What line, please?

15 Q. Still here at lines 16 and 17.

16 A. Yes.

17 Q. Would you agree that although a SAIDI of
18 400 or 300 would be high, irrespective of the
19 utility, that once a SAIDI got down under 300 that
20 SAIDI level could be acceptable and appropriate?

21 A. Again, the context of SAIDI can be
22 acceptable if you're -- I would preface my answer on
23 if it were a SAIDI that was determined through the
24 process defined in the ESSS rules, Rule 10, and that
25 was a target that was proposed by the company and

1 accepted by the Commission as an appropriate target,
2 I would say the answer to your question would be yes.

3 Q. However, the company's DSI rider would
4 not incent the company for achieving a SAIDI target
5 just under 300 but rather that represents the penalty
6 range under the companies' proposal, correct?

7 A. I understand the proposed penalty would
8 not kick in till the companies' SAIDI was in excess
9 of 135.

10 Q. So what I just said was correct.

11 A. That's true.

12 Q. Are you aware that the companies have
13 proposed an incentive for SAIDI less than 90 minutes?

14 A. Yes, I am.

15 Q. Wouldn't you agree that a SAIDI of 80 to
16 89 minutes for the companies is exemplary?

17 A. I think it may be.

18 EXAMINER PRICE: Mr. Cleaver, I don't
19 understand your answer when you say it may be.

20 THE WITNESS: Well, your Honor, as far as
21 how I believe that the target should be set, I don't
22 believe that this should be set in a setting of the
23 ESP proceeding. I think there's a well-defined
24 process in the ESSS rules that allow the company and
25 the staff to propose targets, appropriate targets,

1 that are individualized for the company.

2 So just to say that, just pick any
3 number, I don't think I can say honestly that it's
4 appropriate or not just based on that number.

5 EXAMINER PRICE: I thought she asked
6 whether it was exemplary.

7 THE WITNESS: And I said I think it may
8 be.

9 EXAMINER PRICE: I understand, it's the
10 "may be" part that's bothering me. It's either
11 exemplary or not. I don't understand why it would be
12 perhaps exemplary.

13 THE WITNESS: Okay. Could you tell me
14 which company you're talking about or what your
15 target is?

16 EXAMINER PRICE: It's my question.

17 THE WITNESS: I'm sorry.

18 EXAMINER PRICE: But, Ms. Miller, which
19 companies were you talking about?

20 MS. MILLER: I'm referring to each of the
21 operating -- Ohio operating companies of FirstEnergy.

22 EXAMINER PRICE: Referring to each of the
23 Ohio operating companies of FirstEnergy.

24 THE WITNESS: In the case of Toledo
25 Edison I would not consider them exemplary, they are

1 consistently around and below a hundred.

2 EXAMINER PRICE: You would not consider
3 that exemplary.

4 THE WITNESS: No, just based on
5 historical performance. Again, I think the proper
6 forum is the ESSS rules to determine what's
7 appropriate.

8 EXAMINER PRICE: I'm not interested in
9 the forum, I'm interested in my question.

10 THE WITNESS: Okay. I would say just
11 based on historical performance for Toledo Edison, I
12 would say no.

13 EXAMINER PRICE: How about Ohio Edison?

14 THE WITNESS: Based on their target and
15 recent historical performance alone, I would say yes.

16 EXAMINER PRICE: CEI?

17 THE WITNESS: Yes.

18 EXAMINER PRICE: Thank you.

19 Q. (By Ms. Miller) Mr. Cleaver, do you
20 believe that a SAIDI of 80 would be exemplary for
21 Toledo Edison?

22 A. Again, based on the two factors alone
23 that I prefaced my previous answer to, just their
24 recent history and their current target, just looking
25 at those two things alone, I would say yes.

1 Q. And wouldn't you agree that a SAIDI of 80
2 is exemplary irrespective of the utility?

3 MR. REESE: Your Honor, I object. I
4 think this has been asked and answered.

5 EXAMINER PRICE: Overruled.

6 THE WITNESS: Please state that again.

7 (Record read.)

8 A. No, I would not.

9 Q. Could you turn to page 88 of your
10 deposition, please?

11 EXAMINER PRICE: Can I have the reference
12 again, please?

13 MS. MILLER: Page 88.

14 EXAMINER PRICE: 88. Thank you.

15 Q. Now, during this part of your deposition
16 we were speaking of SAIDI targets or performance that
17 would be either high or low irrespective of a
18 utility; is that correct?

19 A. Again, what was the reference? I'm
20 sorry, I'm looking at the wrong place.

21 Q. Actually, let me strike that
22 characterization of the deposition and let me just
23 repeat that.

24 If you can turn to page 88.

25 A. 88, okay.

1 Q. Let's start at line 18.

2 A. Yes.

3 Q. "What is an exemplary SAIDI?"

4 Answer -- well, you asked to repeat the
5 question. Line 20: "What is an exemplary SAIDI?"

6 Answer: "Oh, exemplary SAIDI. That
7 would again be dependent upon the company, the
8 individual company."

9 Line 23: "Very specific for Ohio -- for
10 FirstEnergy operating companies, what would an
11 exemplary SAIDI be?"

12 "Again, on the low end exemplary I would
13 say 80."

14 Is that your testimony?

15 A. Yes.

16 Q. Can you turn to page 30 of your
17 testimony?

18 A. I'm there.

19 Q. On lines 10 through 23 you reference some
20 proactive and innovative approaches to solve rear lot
21 issues. Do you see that?

22 A. Yes.

23 Q. Are you aware of how many customer outage
24 minutes would be reduced by using each of your
25 approaches?

1 A. No, I am not.

2 Q. One of your approaches is to replace wood
3 poles for steel poles; is that correct?

4 A. That's an example, yes.

5 Q. Are you aware of the cost to replace wood
6 poles for steel poles?

7 A. No, I'm not.

8 Q. When was the last time you purchased a
9 steel pole for -- in the context of your utility
10 experience?

11 A. That would have been when I last worked
12 for an electric utility, 1980 -- actually, 1995 I
13 think is when I last worked for AEP.

14 Q. If you could turn to page 37 of your
15 testimony.

16 A. Okay, I'm there.

17 Q. Lines 2 to 3 you state that "The
18 companies' committed 84.7 million for five years or
19 approximately \$424 million of the \$1 billion capital
20 commitment." Do you see that?

21 A. Yes, I do.

22 Q. Are you aware that the \$84.7 million is
23 not a distribution-only number?

24 A. I am now, yes.

25 Q. So you are now aware that 84. -- I guess

1 with your awareness now your statements on lines 2 to
2 3, the 424 million of the 1 billion, would be
3 incorrect, true?

4 A. I believe the 84.7 million is a number
5 that was actually referenced back in the distribution
6 case for CEI as a result of the UMS report. I mean,
7 that's the source.

8 Q. Okay. But if the \$1 billion is a
9 distribution-only number and the \$84.7 million is
10 not, wouldn't you agree that 84.7 million does not
11 represent 424 million of the \$1 billion?

12 A. I would agree that you would have to --
13 to look at distribution only you would have to factor
14 out the transmission portion, yes.

15 Q. Thus, you don't know what portion of the
16 \$1 billion that -- I guess strike that.

17 So getting back to my question,
18 \$424 million does not represent -- for CEI does not
19 represent \$424 million of the \$1 billion capital
20 spent; is that correct? Do you want me to try that
21 one more time? You state that \$84.7 million
22 represents \$424 million of the \$1 billion capital
23 spent, correct?

24 A. That's correct.

25 Q. However, you now know that \$84.7 million

1 is not just the distribution number, correct?

2 A. That's right.

3 Q. And you are aware that the \$1 billion is
4 a distribution number, correct?

5 THE WITNESS: Bear with me, your Honor,
6 I'm looking for a data request.

7 EXAMINER PRICE: Well, perhaps counsel
8 could ask --

9 MS. MILLER: I can rephrase it.

10 THE WITNESS: Would you, please?

11 Q. If \$1 billion represents the
12 distribution-only number and \$84.7 million does not,
13 then 84.7 million is not approximately \$424 million
14 of the \$1 billion commitment; is that correct?

15 A. Assuming the \$1 million was a
16 distribution-only which is really what I was looking
17 for --

18 Q. Right.

19 A. I thought it was inferred it was, I would
20 agree, yes.

21 MS. MILLER: No further questions, your
22 Honor.

23 EXAMINER PRICE: Thank you.

24 Mr. Wright?

25 MR. WRIGHT: No questions.

1 EXAMINER PRICE: Mr. Reese, redirect?

2 MR. REESE: Your Honor, we need five
3 minutes.

4 EXAMINER PRICE: Certainly. Let's go off
5 the record.

6 (Recess taken.)

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

9 Mr. Reese.

10 MR. REESE: Thank you, your Honor.

11 - - -

12 REDIRECT EXAMINATION

13 By Mr. Reese:

14 Q. Mr. Cleaver, you were asked at some
15 length by counsel for FirstEnergy regarding what
16 documents, policies, procedures, et cetera, that you
17 had reviewed in preparing your testimony. Could I
18 direct your attention to page -- I believe you talked
19 about some vegetation management plans and several
20 documents you reviewed.

21 A. Yes.

22 Q. Call your attention to your testimony on
23 page 9, answer 12 from 1 to 14. Can you tell me --
24 give me some examples of documents and analyses that
25 you reviewed in preparation for your testimony and

1 recommendations in this case?

2 A. Yes. In preparing my testimony and doing
3 my analysis I reviewed of course the companies'
4 Application --

5 Q. Excuse me, I think we've got a dead mike.

6 EXAMINER PRICE: Always happens after the
7 break.

8 A. Can you hear me now? Okay.

9 Yes, I reviewed numerous documents that
10 were sent to the OCC and other intervenors that
11 included discovery which covered the companies'
12 annual Rule 10 reports, Rule 11 which is circuit
13 analysis, Rule 27 which included the vegetation
14 management, and the line inspection that I was
15 talking about. Some of those documents were
16 literally hundreds of pages long and so I reviewed
17 quite a few documents through discovery and other
18 intervenors' discovery that was submitted by the
19 companies.

20 Q. Thank you.

21 Mr. Cleaver, you were asked several
22 questions by counsel for FirstEnergy and by the Bench
23 regarding targets and what exemplary targets may or
24 may not look like.

25 A. Yes.

1 Q. Isn't it true that the Commission's ESSS
2 require that targets be set with historical -- take
3 into consideration the historical geographical
4 concerns and other details before targets are set for
5 SAIDI, CAIDI, SAIFI, et cetera?

6 A. Yes, that's true, and in addition to
7 that, I'm reading from Rule 10, performance targets
8 should reflect historical system performance, system
9 design, service area geography, and other relevant
10 factors. So all those factors need to be
11 incorporated in determining whether something is
12 appropriate --

13 Q. Or exemplary, correct?

14 A. Yes.

15 Q. Thank you.

16 Mr. Cleaver, you were asked some
17 questions about this \$84.7 million that I think first
18 appeared as a recommendation in the UMS report.
19 Counsel for FirstEnergy referenced the 84.7 million
20 regarding whether you knew if that was distribution,
21 transmission related. Do you remember that?

22 A. Yes, I do.

23 Q. Could I call your attention to Attachment
24 DWC-2 to your testimony?

25 A. Yes.

1 Q. Specifically, and this was actually
2 initially a response to PUCO data request No. 4,
3 question 3, and the accompanying answer which I
4 believe is, let's see, there's page 1 of 14 the
5 question is posed, and the response is provided on
6 page 7 of 14.

7 Mr. Cleaver, could you read the question
8 and the response?

9 A. The question by staff was: "Please
10 describe the relationship between rider DSI and CSI's
11 [sic] commitment to maintain its capital spending
12 including transmission, at a minimum level of
13 84.7 million, for at least five years based on the
14 long-term recommendations on page 32 of the UMS
15 report, include any indications for the other two
16 operating -- implications, I'm sorry, for the other
17 two operating companies."

18 The answer in part is: "The 84.7 million
19 capital spend is" --

20 Q. Excuse me, can I interrupt just a second?
21 This is a response from FirstEnergy, correct?

22 A. Yes, that's correct.

23 Q. Thank you.

24 A. Data request question 3, the
25 \$84.7 million capital spend is based on a long-term

1 recommendation of CEI's consultant report. As part
2 of the companies' ESP, the companies have submitted
3 84.7 million spending level for CEI for the next five
4 years. In total the companies have committed to make
5 capital investments in their distribution systems in
6 the aggregate of at least \$1 billion which includes
7 the 84.7 million in the CEI program. The implication
8 for the other two operating companies will be to
9 share in some portion the aggregate amount of
10 \$1 billion.

11 Q. Now, this response to staff's data
12 request that is included with your testimony provides
13 no differentiation between transmission and
14 distribution, does it?

15 A. I see none here.

16 Q. Thank you.

17 I have one other question. Early in your
18 cross FirstEnergy's counsel asked you some questions
19 about your employment with I believe the state and
20 the city. There was some discussion about you
21 reviewing compliance for the National Electric Safety
22 Code and other factors. When you reviewed
23 distribution systems for a customer, you still kept
24 in mind overall reliability; is that correct?

25 A. That's correct.

1 Q. You looked at compliance with the NESC,
2 you didn't look at SAIDI, but you had to review --

3 MS. MILLER: Objection, your Honor.

4 EXAMINER PRICE: Grounds?

5 MS. MILLER: Counsel's leading the
6 witness.

7 EXAMINER PRICE: Overruled.

8 Would you like us to reread the question?

9 MR. REESE: I'll try again.

10 Q. (By Mr. Reese) Mr. Cleaver, did you
11 review plans for these customers with overall
12 reliability in mind?

13 A. Yes, I did.

14 Q. And was the NESC just one of the factors
15 you looked at?

16 A. That's correct.

17 Q. Finally, do you know if electric
18 utilities are subject to the National Electric Safety
19 Code?

20 A. I do know that they are not.

21 MR. REESE: Thank you.

22 A. You say the National Electric Code or the
23 National Electric Safety Code?

24 Q. The National Electric Safety Code.

25 A. Yes, they are. They are, they sound so

1 much alike, I'm . . .

2 MR. REESE: Thank you. That's all I
3 have.

4 EXAMINER PRICE: OEC.

5 MR. MOSER: No questions, your Honor.

6 EXAMINER PRICE: Mr. Stinson.

7 MR. STINSON: No questions, your Honor.

8 EXAMINER PRICE: Mr. Dunn.

9 MR. DUNN: No questions, your Honor.

10 EXAMINER PRICE: Miss Elder.

11 MS. ELDER: No questions, your Honor.

12 EXAMINER PRICE: Mr. Bell.

13 MR. BELL: No questions, your Honor.

14 EXAMINER PRICE: Ms. McAlister.

15 MS. McALISTER: No questions, your Honor.

16 EXAMINER PRICE: Mr. Boehm.

17 MR. BOEHM: No questions, your Honor.

18 EXAMINER PRICE: Mr. Lavanga.

19 MR. LAVANGA: No questions, your Honor.

20 EXAMINER PRICE: Mr. Yurick.

21 MR. YURICK: No questions, thank you.

22 EXAMINER PRICE: Ms. Miller.

23 - - -

24

25

RECROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

By Ms. Miller:

Q. Mr. Cleaver, your counsel had you read a data request that mentioned \$84.7 million; is that correct?

A. Yes, they did.

Q. Are you aware of whether that data request was updated?

A. I am aware of one update.

Q. And you testified before that you now recognize the \$84.7 million is not distribution only, correct?

A. That is correct.

MS. MILLER: No further questions, your

Honor.

EXAMINER PRICE: Mr. McNamee.

MR. McNAMEE: No questions, your Honor.

- - -

EXAMINATION

By Examiner Price:

Q. Mr. Cleaver, I have one question.

Actually I have a series of questions. Do you have Mr. Schneider's testimony with you?

A. No, I do not.

EXAMINER PRICE: Mr. Reese, would you

1 give him a copy of Mr. Schneider's testimony, please,
2 and turn to page 9.

3 Mr. Cleaver, were you here for
4 Mr. Roberts' testimony?

5 A. Yes, I was.

6 Q. Then you'll find these questions very
7 familiar.

8 Could you turn to page 9, the question
9 begins at line 5.

10 A. Yes.

11 Q. Have you reviewed this portion of
12 Mr. Schneider's testimony before?

13 A. Yes, I have.

14 Q. Are you familiar with the IEEE study that
15 he is referring to in his answer?

16 A. Yes, I am.

17 Q. Have you reviewed that study?

18 A. Yes.

19 Q. Do you consider that study to be
20 authoritative and something the Commission should
21 rely upon?

22 A. I would have some reservations depending
23 on what the Commission would use it for.

24 Q. That's fine. Thank you very much.

25 A. Yeah.

1 EXAMINER PRICE: Mr. Reese, you have a
2 motion pending.

3 MR. REESE: Yes, your Honor, I would like
4 to move to have OCC Exhibits 2 and 2A admitted into
5 the record.

6 EXAMINER PRICE: Those exhibits will be
7 admitted at this time.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 MS. MILLER: Your Honor, just subject to
10 the motions to strike?

11 EXAMINER PRICE: Subject to the motions
12 to strike.

13 Thank you.

14 MR. McNAMEE: Your Honor, what was the
15 first section that was stricken? Do you remember
16 what the number was? I didn't write it down.

17 EXAMINER PRICE: The first section that
18 was stricken, I believe, and Ms. Miller can correct
19 me if I am incorrect, is page 6 beginning at line 21
20 and all the way through page 7, line 23. Is that
21 correct?

22 MS. MILLER: Let me get my cheat sheet.

23 Yes.

24 MR. McNAMEE: Thank you.

25 EXAMINER PRICE: Thank you.

1 MS. MILLER: Actually, your Honor, did
2 you say through line 23 on page 7?

3 EXAMINER PRICE: Page 7, line 23, yes.

4 MS. MILLER: Yes. Thank you.

5 EXAMINER PRICE: Thank you, Mr. Cleaver,
6 you're excused.

7 THE WITNESS: Thank you.

8 EXAMINER PRICE: I think at this time
9 although we had talked about taking Mr. Cahaan before
10 lunch we are here upon noon and in the off chance
11 Mr. Cahaan is long-winded I think we will take a
12 recess at this time. So let's reconvene at 1:15.
13 Thank you all.

14 (At 11:45 a.m. a lunch recess was taken
15 until 1:15 p.m.)

16 - - -

17

18

19

20

21

22

23

24

25

1 Tuesday Afternoon Session,
2 October 28, 2008.

3 - - -

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

6 Mr. McNamee.

7 MR. McNAMEE: Thank you. Staff would
8 call Richard Cahaan.

9 (Witness sworn.)

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

12 THE WITNESS: Richard Cahaan.

13 EXAMINER PRICE: Mr. McNamee, please
14 proceed.

15 - - -

16 RICHARD CAHAAN

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

19 DIRECT EXAMINATION

20 By Mr. McNamee:

21 Q. Mr. Cahaan, by whom are you employed?

22 A. By the Public Utilities Commission of
23 Ohio.

24 Q. In what capacity are you employed there?

25 A. Chief Economist, Capital Recovery and

1 Financial Analysis Division.

2 Q. What's your business address?

3 A. 180 East Broad Street, Columbus.

4 Q. Okay.

5 MR. McNAMEE: Your Honors, at this time I
6 would ask to have marked for identification as Staff
7 Exhibit 6 -- is it 6?

8 EXAMINER PRICE: 6.

9 MR. McNAMEE: 6, the multipage document
10 denominated prefiled testimony of Richard Cahaan
11 docketed on October 6th.

12 EXAMINER PRICE: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Cahaan, do you have before you what's
15 been marked for identification as Staff Exhibit 6?

16 A. I do.

17 Q. What is it?

18 A. It's my prefiled testimony docketed
19 October 6th.

20 Q. Was it prepared by you or under your
21 direction?

22 A. Oh, yes.

23 Q. Do you have any corrections to make to
24 that document here this afternoon?

25 A. No, I do not.

1 Q. Are the contents of that document true to
2 the best of your knowledge and belief?

3 A. Yes, they are.

4 Q. If I were to ask you the questions that
5 are contained therein again here this afternoon,
6 would your answers remain as they are presented --

7 A. Yes.

8 Q. -- in -- okay.

9 Do you adopt what's been marked for
10 identification as Staff Exhibit 6 as your direct
11 testimony in this case?

12 A. Yes.

13 MR. McNAMEE: With that, your Honors,
14 Mr. Cahaan is available for cross.

15 EXAMINER PRICE: Thank you.

16 Consumers' Counsel?

17 MR. BELL: There seems to be a preference
18 for me to lead off on cross-examination, it may
19 eliminate other intervenors' cross.

20 MS. ROBERTS: I do have questions.

21 EXAMINER PRICE: I'm saying you're not
22 passing, you're simply deferring to Mr. Bell.

23 MS. ROBERTS: Yes.

24 EXAMINER PRICE: If that will expedite
25 things --

1 MR. BELL: It will eliminate some of
2 their questioning, not all of them.

3 EXAMINER PRICE: If that will expedite
4 things, I'm agreeable.

5 MR. BELL: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Bell:

9 Q. Good afternoon, Mr. Cahaan.

10 A. Good afternoon, Mr. Bell.

11 Q. Mr. Cahaan, hopefully our dialogue will
12 reduce the number of questions of both intervenors
13 and the company. Would you agree, Mr. Cahaan, that
14 as testified to on page 26 of your testimony -- you
15 don't have to make a specific reference unless I
16 address it, you're familiar enough with your
17 testimony I think you'll see where I'm going. Would
18 you agree that the basis upon which you address the
19 significant excess earnings test embodied within
20 Senate Bill 221 is, as you have described on that
21 page, the exercise of logic?

22 THE WITNESS: I hate to start off so
23 early and ask for this to be read again, read back,
24 please.

25 (Record read.)

1 A. It was short, I thank you very much.

2 Q. I'll even shorten it, Mr. Cahaan, I'm
3 going to try to reduce the length of my questions.

4 Would you agree that the polster of your
5 analysis on what constitutes significantly excess
6 earnings is "logic" as you mention on page 26 of your
7 prefiled testimony?

8 A. The basis of this analysis is a logic
9 analysis, not a statistical analysis.

10 Q. And with respect to logic, would you
11 acknowledge that the revenues to be established by
12 the Commission in this proceeding are the total
13 revenues derived by the electric distribution
14 utilities from its customers -- from their customers?

15 A. The decision of the Commission in this
16 proceeding will have an important influence on the
17 total revenues derived by the EDU from its customers,
18 but given the nature of the market competition and
19 other things it won't be dispositively made.

20 Q. That's fair, Mr. Cahaan.

21 And would you agree that a large
22 component of the revenues to be established by the
23 Commission in this proceeding would be the GEN rate
24 component?

25 A. Assuming there is not a huge amount of

1 migration, then the generation rate component would
2 be an important part of the revenues.

3 Q. That's a fair response as well,
4 Mr. Cahaan.

5 Now, while you address in the opening of
6 your testimony that the SEE, the subject of SEE,
7 significant excessive earnings, constitutes the bulk
8 of your testimony, you do in your testimony venture
9 outside that area; do you not?

10 A. I have one other area I'm talking about
11 which is the area of deferrals.

12 Q. And that's addressed by you --

13 A. In the beginning.

14 Q. In the beginning of your testimony. Do
15 you not, however, in your prefiled testimony in the
16 discussion of your use of logic in evaluating what
17 constitutes SEE relate that measure to the measure by
18 which the Commission establishes the company's
19 initial revenue entitlement in the ESP? Can you
20 answer that "yes" or "no"?

21 A. No, I can't answer that "yes" or "no."

22 Q. Well, do you wish to qualify whatever
23 your answer is if it's maybe?

24 A. Well, can you rephrase the question in a
25 way I may understand it?

1 Q. I'll come back to it.

2 On page 2 of your testimony you state
3 "For those who are interested in the 'what' of my
4 testimony and not the 'why,' I will summarize the
5 staff recommendations contained in this testimony
6 right now." Mr. Cahaan, I'm not one of those
7 interested in what, I am interested in why, so this
8 is not "friendly cross-examination," I assure you.

9 Now, with respect to your first
10 recommendation, you are recommending against the
11 granting of generation deferrals; is that correct?

12 A. That is correct.

13 Q. And is that based upon your experience
14 over the last 25 years with the problems and
15 complexities created with the use of deferrals?

16 A. Yes. Staff has been engaged in many
17 cases in which deferrals have been granted and we
18 recognize there are sometimes reasons for it, but
19 whenever possible, there are more reasons against it.

20 Q. And have the deferrals requested in this
21 case posed greater problems and complexities as a
22 result of the deferrals being based upon future
23 expectations of cost and the deferral of those costs
24 as opposed to the deferral of fixed, known, and
25 measurable costs?

1 MR. KORKOSZ: I object and I ask to be
2 heard.

3 EXAMINER PRICE: Mr. Korkosz.

4 MR. KORKOSZ: Notwithstanding Mr. Bell's
5 disclaimer to the contrary, I submit this is friendly
6 cross and I recognize that, your Honor, the Bench has
7 addressed that grounds of objection earlier in this
8 case and I recognize that, as I understand the
9 Bench's ruling, that some latitude has been permitted
10 on the premise that other parties who may have true
11 adversity to the witness on this particular area
12 follow in their sequence of cross-examination and the
13 like.

14 I would suggest, though, that on that --
15 even on that premise there comes a point when the
16 toothpaste is out of the tube and can't be put back
17 and I would submit that we're perhaps there.

18 Mr. Bell's questions are not directed to
19 eliciting any testimony that develops an issue upon
20 which he has any adversity to the staff or the
21 position Mr. Cahaan's testimony takes.

22 What Mr. Bell is doing in lieu of having
23 his own witness is attempting to elicit direct expert
24 testimony for his own case from Mr. Cahaan and I
25 submit that's improper and flies in the face, among

1 other things, of this Commission's practices and
2 rules which require direct expert testimony be
3 reduced to writing and prefiled and presented in a
4 proper manner.

5 I submit that whatever latitude the Bench
6 has permitted, that we've gone far afield from that
7 and this is improper and I object.

8 EXAMINER PRICE: Mr. Bell.

9 MR. BELL: May I respond, your Honor?

10 EXAMINER PRICE: Yes, you can.

11 MR. BELL: Oh, quite to the contrary, I
12 think my cross-examination of Mr. Cahaan on a
13 going-forward basis will clearly illustrate and
14 demonstrate to the Bench that this is not friendly
15 cross-examination, that my clients are opposed to the
16 end result produced by Mr. Cahaan in his recommended
17 SEE test of 200 to 400 basis points, and this is the
18 beginning of the cross-examination directed towards
19 destroying that recommendation of Mr. Cahaan. This
20 is not friendly cross-examination.

21 MR. KORKOSZ: I heard these questions
22 going to the subject of deferrals.

23 EXAMINER PRICE: I agree. If you want to
24 move off of the deferral question, then we will
25 evaluate the questions regarding the significantly

1 excess earnings test as they are made.

2 MR. BELL: Thank you, your Honor.

3 EXAMINER PRICE: Thank you, Mr. Korkosz.

4 MR. KORKOSZ: Thank you.

5 Q. (By Mr. Bell) The second recommendation
6 which you made is you say "Staff recommends that the
7 matter of methodology for determining a 'comparable
8 group' be first examined in a technical conference,
9 which would then report back to the Commission." Is
10 that Staff's recommendation on the subject of SEE?

11 A. Yes.

12 Q. Now, in your SEE analysis do you at any
13 point in time refer back to the basis upon which the
14 Commission established the company's initial revenue
15 requirements in the ESP case, Mr. Cahaan?

16 A. I'm sorry, I'm not sure I understand.
17 The basis on which the Commission established the
18 initial revenue requirements in the ESP case? Are
19 you talking about for instance little "g" or what?

20 Q. Let me try to address it in this sense:
21 Would you agree, Mr. Cahaan, that with respect to
22 Dr. Jones' and Mr. Graves' recommendation with
23 respect to evaluating the cost of capital to the
24 company based upon their perception of risk, that
25 they use a -- develop a comparable group?

1 A. Excuse me, I'm not sure Mr. Jones and
2 Mr. Graves were -- the subject of their testimony, as
3 I remember it, was on the market price that could be
4 expected in that service territory. Dr. Vilbert was
5 the witness that developed the comparable group
6 analysis of the cost of capital or, rather, the
7 expected results thereof capital costs.

8 Q. We'll focus on Dr. Vilbert. You start
9 discussing the significant excess earnings issue on
10 page 4 of your testimony, do you not?

11 A. Yes.

12 Q. Now, the significant excess earnings
13 discussion that you engage in in your testimony is
14 based upon looking over one's shoulder, is it not, a
15 backward analysis?

16 A. Yes, it is.

17 Q. And as I understand your testimony, you
18 are rejecting a statistical analysis of -- what
19 constitutes excess earnings for that statistical
20 analysis lacks qualitative content?

21 A. I'm rejecting the idea that the
22 determination of significantly excessive, as opposed
23 to simply more than, that determination is not
24 suitable or meant to be a statistical analytical
25 determination.

1 The more than what is in the context of
2 this testimony and, as I understand it in terms of
3 the test to be applied, is more than the average or
4 the mean of the returns of some comparable group as
5 defined in SB-221.

6 Q. Because that comparable group does not
7 explain -- the use of a comparable group and a
8 statistical analysis does not identify whether or not
9 the excess earnings revealed thereby is the product
10 of chance or the product of the intention of the
11 company; is that correct?

12 A. Well, that's how it's been characterized.
13 I'm not so sure that that is an appropriate way of
14 even looking at it, whether chance is the defining
15 characteristic here.

16 Q. Well, in evaluating the SEE, the
17 appropriateness of the SEE method you applied two
18 tests as shown on page 4 of your testimony, do you
19 not? It's evaluating the methodology, number one.

20 A. There are two aspects of it. It's not
21 two tests. There's two aspects of this issue. One
22 aspect is what is an earned return, what is the
23 earned return of a comparable group of companies,
24 comparable in terms of risk and whatever other
25 characteristics are required in terms of looking at

1 the operating companies of FirstEnergy. That's one
2 question.

3 Second question is if the earned return
4 of FirstEnergy is -- FirstEnergy's operating
5 companies is greater than that comparable -- the
6 average of that comparable group, what does that
7 mean? So those are two separate questions.

8 Q. With respect first the methodology
9 question --

10 A. Well, they're both methodology questions
11 in a sense, but with respect to the first question.

12 Q. The first question. With respect to the
13 first question, you are rejecting a statistical
14 evaluation, are you not?

15 A. No, I'm not. No, I'm not. In fact,
16 we're not particularly disagreeing with the company's
17 proposal in terms of how to measure the earnings --
18 the earned returns of a group of comparable
19 companies. We're not endorsing it in the sense that,
20 you know, simply not -- lack of disagreement does not
21 necessarily imply the existence of agreement, but we
22 see nothing wrong with it. We have -- you know,
23 there are other methods that have been proposed, not
24 necessarily in this case, and we do have objections
25 to them, but we do not have an objection to

1 Dr. Vilbert's proposal in how to compute the
2 comparable earnings, the earnings of the comparable
3 group.

4 Q. Would you agree that Dr. Vilbert's
5 methodology does not require the use of informed
6 judgment?

7 A. In determining the comparable group?

8 Q. In determining whether or not excessive
9 earnings are produced, SEE.

10 A. Okay. I'm sorry, I need to keep
11 distinguishing between the two questions. The
12 question of what is the average of the earnings of
13 some comparable group which means the method of
14 determining what is a comparable group, and the
15 second question of what does significantly excessive
16 mean.

17 Q. Let's deal with the average. What
18 relevance is the average to the particular
19 circumstances, the particular risk faced by the
20 FirstEnergy operating companies?

21 A. That's the question. That is the big
22 question. What is the relevance of an average of
23 some group to the companies that belong to
24 FirstEnergy. That's the question that the
25 methodology is attempting to answer.

1 Q. When you say "Dr. Vilbert's methodology
2 has much to commend it" on line 17 of page 4, you are
3 not, in fact, recommending that Dr. Vilbert's
4 methodology be utilized in this case, are you?

5 A. As I said before -- the staff does not
6 find anything particularly objectionable to
7 Dr. Vilbert's methodology. It has certain features
8 that the staff actually likes very much. For
9 instance, it's not some kind of black box where some
10 numbers are thrown together and based upon a
11 statistic like beta all of a sudden we say everything
12 that has the same beta is comparable.

13 This one has a certain logic to it that
14 it's looking at electric utilities of a certain
15 nature and other companies of a certain nature, you
16 can go behind the selection process and look to see
17 whether that selection process makes sense. We like
18 that.

19 Q. To the extent that it makes sense. You
20 state "He basically uses selection criteria which are
21 intended to provide comparability with respect to
22 business risk elements, particularly with respect to
23 the scope of customer base and degree of capital
24 intensity." Do you see that statement?

25 A. Yes, I do.

1 Q. Have you made a determination of whether
2 or not the selection criteria that he has utilized
3 does, in fact, provide comparability with respect to
4 business risk elements, particularly with respect to,
5 one, the scope of the customer base, and two, the
6 degree of capital intensity?

7 A. We have not conducted any independent
8 verification of what Dr. Vilbert was doing.

9 Q. Thank you. And with respect to the
10 business risk that you specifically address in your
11 answer to the question on line 14 of page 4, do you
12 not focus the business risk on the revenue base from
13 which the company is reliant in meeting its overall
14 cost of capital?

15 A. You mean -- by "revenue base" you mean
16 customer base? The nature of the customers?

17 Q. All of the characteristics of the
18 customers that are being served including load
19 characteristics, including the rate design by which
20 the overall revenues are to be recovered over the
21 prospective period, the multitude of factors
22 associating the business risk.

23 A. That's what you mean by "revenue base."

24 Q. That's exactly what I mean by "revenue
25 base."

1 A. Can you plug that, again, back into your
2 question?

3 Q. Is that not what you reference when you
4 say scope of customer base? You're talking about
5 customer base from the standpoint of revenues, do you
6 not, in generating sufficient revenues to meet the
7 capital requirements of the company as measured in
8 your test by the companies' return on equity?

9 A. I doubt if Dr. Vilbert looked for
10 comparability in every -- in a huge number of details
11 such as rate design and different load shapes and
12 things like that. He's looking for what he considers
13 comparable companies in a broad sense and he's using
14 certain criteria that on examining what he proposed
15 seemed to the staff to be reasonable.

16 But the idea here is to find a group of
17 companies that are roughly -- have some degree of
18 business risk comparability. Exact fit will never
19 occur.

20 Q. I'll accept that, Mr. Cahaan.

21 Mr. Cahaan, in evaluating what
22 constitutes SEE, is it relevant for one employing
23 logic to determine what the ongoing capital
24 requirements of the enterprise are?

25 A. It I think is mandated by the statute

1 because the statute says --

2 Q. I don't care about the statute. I'm
3 talking about your logic. Ignore the statute for a
4 moment. That can be argued by counsel on brief.

5 A. Well, since my analysis was based heavily
6 upon my interpretation of the economic aspects of the
7 statute, I find it difficult to ignore it, sir.

8 Q. Okay, well, then answer the question as
9 you choose. I should have known I couldn't get you
10 to answer it the way I wanted you to, Mr. Cahaan.

11 A. In the -- well, the section we'll
12 probably refer to again and again, consideration
13 shall also be given to the capital requirements of
14 future committed investments in this state is part of
15 the requirement in the analysis of significant
16 excessive earnings.

17 Q. And in the determination of significantly
18 excessive earnings would your logic dictate to you
19 that an essential consideration would also be the
20 ability of the company to generate revenues from the
21 customer base that will permit the company to earn
22 its cost of capital on an ongoing basis? Would your
23 logic evaluation require you to consider that?

24 A. If I may mirror back the question as I
25 understand it, you're asking me if an analysis of

1 significant excessive earnings involves the question
2 of the utility's ability to actually collect revenues
3 that would, in fact, lead to significant excessive
4 earnings.

5 Q. Yes.

6 A. And the analysis would be backward
7 looking, but the question you're posing would have to
8 be forward looking from any given point in time so
9 that you're saying if the company earns significantly
10 excessive earnings, could it continue or would it go
11 into some death spiral, is that the question?

12 Q. No.

13 A. Oh.

14 Q. Answer the first question without all
15 your additives and making it more complex.

16 MR. BELL: Could I have the reporter read
17 back the first question and he can answer that and
18 then if he wants to go further, fine.

19 (Record read.)

20 Q. Now, can you answer that question?

21 A. Yes. No. I mean, I can answer the
22 question.

23 I view this, and this is probably a
24 semantic distinction here, that what you're asking is
25 that if -- I view the finding of significantly

1 excessive earnings to be one thing. What the
2 Commission does if it finds that there are
3 significantly excessive earnings is another thing.

4 So if the Commission were to find that,
5 yes, based upon whatever criteria is deemed to be
6 appropriate, that yes, the company has over this
7 period, 2009, for instance, earned an amount that
8 could be deemed as significantly excessive, then the
9 question is what to do about it.

10 The law does not say automatically
11 anything is done because consideration, for instance,
12 must be given to future capital requirements. So
13 consideration also, it would seem to me on an
14 absolutely logical basis, must be considered on the
15 result of what would happen if the Commission takes
16 an action.

17 You're in a sense asking -- I view you're
18 asking that the Commission should be cognizant of the
19 effects of its own actions.

20 Q. Precisely.

21 A. Yes.

22 Q. Turn to page 5. We're making progress.

23 A. I see from the expressions everybody's
24 got their quote for the brief already.

25 Q. The question appearing on line 4, page 5,

1 "Does SB-221 require comparability with respect to
2 financial risk, as well as business risk," and I
3 believe your response is "Yes."

4 A. Yes.

5 Q. Now, the manner in which Dr. Vilbert
6 adjusts for financial risk is to not use the
7 financial risk of the comparable companies; does he?

8 A. He adjusts his result for the difference
9 in the capital structures of the comparable companies
10 and what I'll call the target companies.

11 Q. To use your term on line 8, you say "He
12 then 'solves.'" Those are your quotes, not mine.

13 A. Yes.

14 Q. "'Solves' for the return on equity." Is
15 that a dictated input into the analysis?

16 A. You mean what I'll call a mechanical
17 input?

18 Q. Yes.

19 A. That given the data it's an arithmetic
20 process?

21 Q. Yes.

22 A. The way he does it, yes.

23 Q. Now, the definite advantage to the
24 process employed by Dr. Vilbert as you have addressed
25 on page 5 of your testimony is that it's a simple and

1 easily understood method?

2 A. That's one advantage.

3 Q. Now, if the company were to screen for
4 both business and financial risk using comparables,
5 you're saying it would result in a small sample of
6 companies?

7 A. I'm saying that if you're screening for
8 two things, you're going to end up with a smaller
9 sample than screening for one thing.

10 Q. And by screening for one thing as
11 Dr. Vilbert did, he enlarged the sample, did he not?

12 A. Compared to screening for two things
13 simultaneously, yes.

14 Q. And enlarging the sample he enlarged, if
15 you will, the range by which excessive earnings can
16 be determined or would be determined.

17 A. You mean the range in terms of the
18 numbers of results or the range in terms of the
19 numbers of companies?

20 Q. The range in results.

21 A. And by that do you mean dispersion or
22 just simply the number? What I'm asking is are you
23 talking about variance here?

24 Q. I'm talking about variance in terms of
25 dispersion.

1 A. Not necessarily at all. I mean, more
2 companies does not necessarily mean the variance is
3 greater.

4 Q. Does it not enhance the likelihood that
5 the variance will be greater?

6 A. Statistically? Since that's -- I'm not
7 so sure that's correct.

8 Q. You're the statistician --

9 A. No, no, no, no, no, no, no. I was
10 careful to point that out that I was not the
11 statistician.

12 Q. Well, you indicate that the size of the
13 sample can be so large --

14 A. It's not the sample size at all that
15 bothers me. It's what's in it. If you put together
16 a criteria that's extremely broad, you'll end up with
17 household finance companies and electric utility
18 companies and waste disposal companies and maybe an
19 occasional dog management grooming firm or two. When
20 you make it really small, you end up with one company
21 which is the FirstEnergy company you're trying to
22 analyze.

23 Q. Are you effectively stating, Mr. Cahaan,
24 I'm not trying to put words in your mouth, that the
25 attractiveness of Dr. Vilbert's methodology, the

1 mechanical, mathematical, is in its -- producing a
2 quantitative result for consideration but not a
3 qualitative result for consideration by the
4 Commission?

5 A. Well, the whole purpose of any of this,
6 in looking at comparable groups to find out what are
7 their earned returns, is to get a quantitative
8 determination out of it. The part that I like about
9 Dr. Vilbert's approach is that it focuses on the
10 business risk which is the area which is, I think,
11 hardest to deal with and then it, as a secondary
12 measure, it corrects for the financial risk.

13 The financial risk part is easy, it can
14 be corrected for just by a calculation. The business
15 risk part cannot be corrected by any calculation
16 whatsoever.

17 Q. While we're on that subject, Mr. Cahaan,
18 I'm glad you raised that, from a business risk
19 standpoint would it be appropriate to cite the
20 business risk experience by an east coast utility
21 serving an entirely different market and load profile
22 with a perhaps entirely different customer base in
23 evaluating whether or not this company is enjoying
24 excess earnings at any point in time or not earning
25 its cost of capital?

1 A. There are no truly comparable, truly 100
2 percent comparable companies that exist --

3 Q. So one cannot --

4 A. -- so --

5 Q. So one cannot --

6 MR. McNAMEE: Object.

7 EXAMINER PRICE: Grounds?

8 MR. McNAMEE: He didn't finish his
9 answer.

10 EXAMINER PRICE: Please allow the witness
11 to finish his answer.

12 Q. I'm sorry, I apologize, Mr. Cahaan, I
13 really do, I didn't --

14 A. So the use of an east coast company that
15 doesn't have the same market or load characteristics
16 exactly as a FirstEnergy company, that diminishes its
17 usefulness but doesn't shove it out of the picture
18 because maybe that's the best there can be. Once
19 again, if you got rid of all the companies that don't
20 precisely match, say, CEI, you'll be left with CEI.
21 There's an exercise in judgment that goes into
22 determining what companies should be in and what
23 companies should be out.

24 Q. Thank you.

25 A. And criteria are used to help that

1 judgment along.

2 Q. And that judgment has to be made by the
3 Commission in determining the appropriateness of the
4 methodology employed by the various experts in this
5 case and their proffering to the Commission their
6 recommendations for establishing revenue requirements
7 and what might constitute an SEE test; is that
8 correct?

9 A. Of course.

10 Q. Thank you.

11 Now, you just commented about the sample
12 size relying upon -- in order to have true business
13 risk analogy you might get to the point where you're
14 only looking at the company whose risk you're
15 evaluating, correct?

16 A. Correct.

17 Q. Now, with respect to your question and
18 answer at the bottom of page 5, you address a similar
19 quandary, do you not, with respect to the question
20 "Does the staff agree that Dr. Vilbert's method of
21 selecting a comparable group and of calculating its
22 return on equity should be adopted as the methodology
23 to be used in the annual earnings test for the
24 FirstEnergy operating companies," do you answer that
25 question yes or no, or is it maybe? I have some

1 trouble.

2 A. We would prefer to have this question --
3 to see if we can have a solution to this issue
4 arrived at by some kind of technical conference which
5 would then present its solution to the Commission.

6 If the Commission had a strict up or down
7 choice right now based upon the record of this case
8 without such a technical conference, we have no
9 objection to adopting Dr. Vilbert's method. And
10 everybody can argue anything they want, but we happen
11 to think Dr. Vilbert's method has much to commend it.

12 But we think that this is the kind of
13 thing in which a technical conference held by any
14 interested party could reach probably an agreement as
15 to how this should be approached.

16 There's -- my personal feeling is that
17 one of the reasons that so many different methods are
18 being presented is not just because there's
19 disagreement in terms of how to calculate a
20 comparable group, but also differences of opinion as
21 to the significantly excessive criteria, and I think
22 if we took the significantly excessive business out
23 of the equation, that there might be a chance to
24 reach an agreement on a technical basis in how you
25 would go about determining a comparable group to find

1 out what the average of that comparable group is.

2 That's what we're trying to present here.

3 Q. You state "When it comes time to apply
4 the earnings tests, three different methodologies
5 will result in a chaotic situation -- or worse." Has
6 anyone recommended three different methodologies?
7 Have any of the intervenors recommended three
8 different methodologies be employed in the three
9 FE --

10 A. You misunderstood what I meant by this.
11 What I'm talking about here is we have three ESP --
12 at the time this was written we had three ESP
13 applications, Duke's, AEP's, and the FirstEnergy
14 operating companies, those are the three I meant.
15 And the problem would be to have a different
16 methodology for AEP than for FirstEnergy and that
17 could cause just a lot of confusion and extra work
18 and a lot of problems.

19 So it's not -- it's not at all three
20 different methodologies for the three operating
21 companies of FirstEnergy. That should be the same
22 methodology.

23 Q. Are you suggesting, Mr. Cahaan, that the
24 three companies, FirstEnergy, AEP, and Duke Ohio,
25 have presented three different methodologies?

1 A. Oh, yes.

2 Q. So it's the companies themselves that
3 have posed the problem that you're attempting to
4 address. I mean the utility companies, it wasn't the
5 intervenors.

6 A. Oh, I don't know about whether that's the
7 case because I don't know what the testimony is in
8 the other case, rather in the AEP case anyway. But
9 to answer your question, the company has -- the
10 different companies have proposed different
11 methodologies. I don't know what the intervenors
12 have done in terms of different methodologies, but
13 it's quite sufficient to create the problem that we
14 have three different methodologies proposed by three
15 different companies.

16 Q. And would it be logical, to use your
17 term, Mr. Cahaan, to assume that the individual
18 methodologies proffered by each of those three
19 companies were proffered for the purpose of
20 optimizing their revenue recovery under an SEE test?
21 Using logic. Self-interest. And I'm not criticizing
22 self-interest, it's just logical.

23 A. Using logic I would think that the total
24 methodology proposed by the company would certainly
25 be designed to further their interests. I also would

1 point out that I am distinguishing between the
2 methodology to determine the comparable group and the
3 methodology to determine the, quote, significantly
4 excessive part.

5 I think that on a logical basis it's
6 worthy to see these as two separate issues. I'm
7 suggesting that maybe, I'm not sure, maybe it really
8 doesn't matter that much what methodology is adopted
9 to find the average of some comparable group. But it
10 certainly does matter as to the methodology in terms
11 of finding significantly excessive earnings if you
12 use a statistical approach.

13 Q. From a logical standpoint in identifying
14 the approach for any one company or any group of
15 companies such as a common methodology for a group of
16 companies such as Duke, FirstEnergy, and AEP, would
17 logic suggest that an important consideration would
18 be an evaluation of whether or not each of the
19 individual companies were either long or short on
20 generation?

21 A. I haven't seen that put into any of the
22 proposed analyses.

23 Q. That wasn't the question.

24 MR. BELL: May I have the question read
25 back to --

1 EXAMINER PRICE: Had you finished your
2 answer, Mr. Cahaan?

3 THE WITNESS: Yes.

4 EXAMINER PRICE: Let's have the question
5 read back, then.

6 (Record read.)

7 A. Well, when I said I haven't seen it, I
8 was giving an answer that's similar to the logical
9 question you put forward earlier when you asked is it
10 not logical that companies would, in effect, be
11 advancing their interests. I haven't seen any of the
12 various proposals for determination of comparable
13 groups that utilizes the criteria of long or short
14 and so I have no reason to think that this is a
15 primary consideration that would occur to anybody
16 else because it hasn't occurred to anybody else.

17 Once again, this is a question of how
18 detailed and how comparable can a comparable group
19 be. The comparable groups that have been presented
20 are not restricted to electric utilities and for
21 people -- for rather companies that are not electric
22 utilities, the issue of long or short in generation
23 obviously doesn't apply at all.

24 Q. In applying the SEE -- in applying an SEE
25 test would the state of the credit markets at the

1 time the test is employed be a relevant, logical
2 consideration in determining whether or not the
3 company was then earning excessive earnings --
4 significantly excessive earnings?

5 A. On one hand there's almost nothing that
6 can be excluded as something that should be
7 considered in an analysis. On the other hand, I
8 don't know how that would be plugged into a
9 particular analytical method.

10 Q. Judgment.

11 A. Okay. Are you asking if there --

12 MR. McNAMEE: Is there a question?

13 MR. BELL: Yes, that's a question.

14 Q. Would judgment be a vehicle for plugging
15 that in?

16 A. Are you asking, in effect, whether the
17 exercise of a significantly excessive earnings test
18 should have a and does rely upon a judgmental
19 component?

20 Q. Yes.

21 A. Then the answer is yes.

22 Q. For instance, to illustrate that,
23 Mr. Cahaan, if we were to perform that exercise at
24 this point in time, October 28th, 2008, is it
25 entirely possible that the company today would be

1 earning excess -- significantly excess revenues? Do
2 you want me to provide an example for you,
3 Mr. Cahaan, or can you answer the question as
4 phrased?

5 A. The problem I'm having with the answer is
6 that the terms that I'm looking at, dealing with, are
7 contingent upon a year of the ESP having gone by, and
8 so you're asking me if a company right now is earning
9 significantly excessive -- has significantly
10 excessive earnings, if I were to apply a test whose
11 methodology has not been established to that company.

12 I don't know what "significantly
13 excessive earnings" means outside of the criteria and
14 the conditions laid forth in SB-221.

15 Q. Mr. Cahaan, let me put forth a scenario.
16 Let's assume that the revenue authorization
17 established by the Commission in a preceding period
18 were at a given level under conditions where the
19 economy was vibrant, credit was loose, and everyone
20 was happy, and the return was established at a given
21 level.

22 Then let us assume one year later a
23 tsunami hits the financial markets, the credit
24 markets, investor perception, customer perception to
25 the extent the customers retrench, if not go into a

1 bunker mentality with respect to their expenditures,
2 their willingness to expend at whatever price the
3 supplier is charging, would you agree that under
4 those conditions the threshold by definition of
5 excessive is lowered from what it would have been had
6 the test been employed in the prior period that I
7 just discussed?

8 A. Let me see if I understand what you're
9 posing as this hypothetical. If we were to return a
10 test today, we were to agree on a methodology and we
11 agree on the idea of significantly excessive, what
12 that means, we feed the data into the computer, we
13 push the buttons a certain way, out comes an average
14 result for the comparable group. We apply the
15 definition we've agreed upon on "significant" and we
16 do that today. That's one situation. We'll call
17 that situation A.

18 Now, situation B is a year from now
19 everything is in the tank, the comparable group
20 companies are now earning 2-1/2 percent instead of
21 12 percent, so when you push the buttons the same way
22 we did the last time, it comes out to a much lower
23 number, but you're suggesting that the company has
24 earned a number that's sort of in the range of what
25 would be reasonable a year earlier before everything

1 went into the tank. Have I got the question? Is
2 that the question I should say?

3 Q. Essentially so as reflected today by the
4 expected yields on a short-term treasury. Investors'
5 expectations on the short-term three-month treasuries
6 are less than 1 percent, last Friday they were .78,
7 were they not?

8 A. We don't want to spend a lot of time
9 going into why short-term treasuries are so low, do
10 we?

11 Q. That's just an illustration of the point
12 that I was attempting to bring out with you.

13 A. Well, I'm trying to clarify the point.

14 Q. The point you're --

15 A. You're saying that if we run an analysis
16 the same way next year that we would this year --

17 Q. The threshold would be reduced.

18 A. And I'm saying because the comparable
19 group, there are earnings that you would get from the
20 analysis when you push the buttons, that would be a
21 lower number, and if that's the question, the answer
22 is yes.

23 Q. Thank you.

24 Would another factor in your analysis or
25 your recommended analysis on excess earnings be to

1 identify the cause of the excess whether the excess
2 was by chance or, in fact, structured?

3 A. I don't want to use the word "chance"
4 because that puts it into a statistical sense and
5 that would confuse us. I do wish to show how your
6 question is very, very germane in terms of what the
7 law is demanding. And I'm not giving a legal
8 interpretation, I'm just reading the law which says
9 here in the section we're dealing with, Section F
10 with 143 -- well, with regard to the provisions that
11 are included in an electric security plan under this
12 section the Commission shall consider following the
13 end of each annual period of the plan -- that's the
14 clear part -- if any such adjustments resulted in
15 excessive earnings as measured by whether the earned
16 return on common equity of the electric distribution
17 utility is significantly in excess of the return on
18 common equity that was earned during the same period
19 by -- and then it goes on. That's the unclear part.

20 What you're asking is if any such
21 adjustments resulted, you're asking for that, the
22 meaning of that.

23 Q. Yes.

24 A. I have no idea.

25 Q. Look at the bottom of page 8 of your

1 prefiled testimony.

2 A. Page 8?

3 Q. Yes. By the way, you use a number of
4 analogies, legal analogies, in trying to make your
5 logical points, the logical points in your testimony,
6 do you not?

7 A. I do. I thought it would be refreshing.

8 Q. Let me try to be equally refreshing,
9 Mr. Cahaan, and let not the frivolity of the example
10 that I'm about to present to you lessen the
11 significance or the importance of the point that I'm
12 trying to make with that example.

13 When you state on line 18 at the bottom
14 of page 8 "Their basic methodology is to use earned
15 returns on equity of the peer group (or groups) to
16 form a confidence interval. If the earned return of
17 the EDU falls within that confidence interval, it is
18 considered to be the result of normal chance
19 deviations;" is that correct?

20 A. That's what I wrote.

21 Q. And "If it falls outside that confidence
22 interval (and is greater than the average of the
23 comparable group, of course) it is considered to be
24 'excessive'?"

25 A. That's what's on my testimony.

1 Q. Now, would an analogous situation for an
2 example be if there were a sexual exercise between a
3 man and a woman, one would have to do a statistical
4 analysis to determine whether it was consensual or
5 constituted the crime of rape, is that not the same
6 evaluation, the same logic that the company is
7 employing in its use of normal chance deviation?

8 MR. KORKOSZ: Object --

9 EXAMINER PRICE: Sustained.

10 MR. KORKOSZ: -- on any number of grounds
11 but I'll offer relevance.

12 EXAMINER PRICE: Sustained.

13 Q. Could you turn to page 10 of your
14 testimony? At the bottom of page 10 you go to the
15 second step in your analysis, do you not?

16 A. Yes.

17 Q. And that analysis consists of employing
18 certain tests of hypotheses that are advanced?

19 A. Yes.

20 Q. And there are effectively two hypotheses
21 that are advanced there, are there not, the
22 alternative and the --

23 A. No.

24 Q. -- default or --

25 A. Default, yes. There's -- what I'm

1 describing is that if one is advancing a hypothesis
2 which is the -- becomes the alternative hypothesis,
3 you're trying to make a point, then the negative of
4 that, the opposite of that, in effect, is the no
5 hypothesis.

6 Q. And do you engage in this exercise,
7 analytical exercise, to identify whom the staff
8 believes the burden of proof should be placed on in
9 identifying whether or not significant excess
10 earnings exists?

11 A. Well, I don't need to do an analytical
12 exercise to determine who bears the burden of proof.
13 I am looking at the implicit burden of proof
14 contained in the methods used by the witnesses who
15 are using a statistical analysis. And the implicit
16 burden of proof is, in effect, that it's upon other
17 people, not the company, people who are claiming
18 there's significantly excessive earnings when, in
19 fact, the law -- legislation is quite clear that the
20 burden of proof is upon the company to demonstrate
21 that it is not earning significantly excessive
22 earnings.

23 Q. Are you stating in your opinion, then,
24 that the companies' proposed ESP is not in compliance
25 with SB-221?

1 A. Oh, I can't do that.

2 MR. McNAMEE: Object.

3 MR. BELL: All right. I withdraw the
4 question.

5 Q. Do you have an opinion as to who, whether
6 it is the company or the customers that bear the
7 burden of proof in establishing the existence of
8 excess earnings and what is the measure of that
9 burden?

10 A. By excess earnings you mean significantly
11 excessive earnings.

12 Q. Yes.

13 A. I have -- excuse me. I have an opinion
14 in the sense that my economic analysis is based upon
15 reading the legislation on line 1146 which states
16 "The burden of proof for demonstrating that
17 significantly excessive earnings will" -- I'm sorry,
18 wrong line. Wrong page too.

19 1178, the wording of the two sections is
20 similar, 1178 of SB-221 says "The burden of proof for
21 demonstrating that significantly excessive earnings
22 did not occur shall be on the electric distribution
23 utility."

24 I am applying an economic interpretation
25 of that sentence into examination of the statistical

1 analysis that's being proposed and finding that the
2 statistical analysis that's proposed is, in effect,
3 backwards.

4 Q. You're stating, in effect, the
5 statistical analysis proffered by the company to this
6 Commission for its adoption and use in identifying
7 whether or not significantly excess earnings exist
8 places the burden not upon the company but upon the
9 customers.

10 A. In effect, that is what it does. I would
11 point out that the witness for the OCC also, in
12 effect, made the same mistake, in my opinion, that
13 this is almost a normal way of looking at it from the
14 point of view of somebody whose posed the question of
15 what is significantly excessive earnings.
16 Unfortunately, that's not the right question. It's
17 not what is significantly excessive earnings, the
18 demonstration is the opposite.

19 So they're answering -- I will give
20 everybody the benefit of the doubt of answering the
21 question properly, but they have the wrong question.

22 Q. Is it entirely possible that under the
23 companies' proposed ESP SEE testing methodology that
24 the company will have by its proffered test approved
25 preordained excess earnings?

1 A. You mean the opposite, don't you?

2 Preordained that it doesn't have excessive earnings.

3 Q. Yes.

4 A. The nature of the tests that are being
5 proposed, waving my hands with all other things being
6 equal understanding, definitely skews the results far
7 to the point of the finding that there's no problem
8 of excessive earnings.

9 Now, what the actual finding would be is
10 another question, but the methodology -- basically
11 the proposed methodology begs the question.

12 Q. Turning to page 13 of your prepared
13 testimony. You there discuss standards of proof.
14 We've just finished discussing upon whom the
15 companies' methodology places the burden of proof;
16 have we not?

17 A. Yes.

18 Q. Both this company's and AEP's witnesses
19 whom you reference on page 13, I apologize I'm not
20 sure I can pronounce the AEP witness's name,
21 Dr. Makjija, I apologize, I just can't pronounce it,
22 have imposed an extremely high confidence level,
23 i.e., an extremely high burden of proof upon the
24 customers to demonstrate the existence of SEE?

25 A. They're different levels, but they are

1 both high.

2 Q. When you say "No one, it seems, is
3 satisfied with a mere 'Preponderance of the
4 Evidence,' which might be akin to a confidence
5 interval of one standard deviation" as shown on the
6 last two lines at page 13, are you suggesting that
7 none of the intervenors would be satisfied with such
8 a lower threshold if, in fact, the burden is
9 improperly placed upon consumers to establish the
10 existence of excess earnings?

11 A. It's my understanding that OCC's witness
12 did propose a lower threshold that could be, in terms
13 of an analogy, a preponderance of the evidence. He
14 combined that with a, you know, with another method
15 of determining what significantly excessive means.

16 So to answer your question, I suppose the
17 answer is yes. If you're going to go about it the
18 wrong way, you should do it in a less wrong way.

19 Q. Thank you, that was my point precisely.

20 When referencing the last two lines on
21 page 13, when you said "No one, it seems," you didn't
22 mean that in absolute terms you were ignoring the
23 OCC's position in this case.

24 A. Well, this testimony is addressed --

25 Q. Before.

1 A. Before the OCC filed, yes.

2 Q. I'm just --

3 A. Yes, I was ignoring the OCC's position in
4 this case.

5 Q. Directing your attention to the top of
6 page 14, there you discuss the appropriate standard
7 to use; do you not?

8 A. Yes.

9 Q. And you discuss measurement problems; is
10 that correct?

11 A. Yes.

12 Q. And is the essence of your testimony
13 there that the predictability of human nature is much
14 more hazardous than the predictability of a physical
15 reaction in physics?

16 A. That wasn't the point I was driving at.

17 Q. That's what I interpreted. What were you
18 meaning here?

19 A. Simply the ability to measure some things
20 is much greater than the ability to measure other
21 things and if you don't -- if you have a large
22 measurement error problem, then having a high degree
23 of significance in your testing in a test acceptance
24 may be mis -- may be a bad idea and this is the way
25 through a scientific analysis it seems to work.

1 I'm simply pointing out that the idea of
2 a particular confidence interval is not etched in
3 stone, that it is to be decided in a way that is
4 appropriate to the conditions of the question being
5 asked.

6 Q. You spend considerable time in your
7 testimony and effort in defining and analyzing the
8 terms "significant" and "excess," on page 15 in
9 response to question 22 you address the term
10 "serious," do you not, as used in the question?

11 A. I'm addressing a statement made by
12 Dr. Vilbert in his testimony. I mean, the whole
13 point of my testimony in terms of the significantly
14 excessive question is trying to look at what these
15 two words mean, significantly or significant and the
16 word excessive.

17 Dr. Vilbert points out some ramifications
18 of certain ways of looking at these words and I'm
19 addressing his -- I'm addressing the point that he's
20 trying to make. And simply saying that he's trying
21 to make a point that is a logical point for a person
22 in his position, but there's counterpoints to be made
23 from people in the other position.

24 Q. Directing your attention to page 16,
25 question 24, would you agree that the test

1 recommended by the companies to identify the
2 existence of significantly excessive earnings,
3 whether the burden is placed upon the company or upon
4 the customers, as framed by the company does not
5 consider changes in business risks?

6 EXAMINER PRICE: Mr. Bell, Mr. Korkosz
7 has exercised considerable patience in the last few
8 minutes, but I'm not detecting anything hostile in
9 your questioning of this witness. As much as I'm
10 enjoying the colloquy, you just asked him a question
11 whether he agreed the company was wrong. That cannot
12 be characterized as anything other than friendly
13 cross and --

14 MR. BELL: Thank you, I'll move on to
15 another point, your Honor.

16 EXAMINER PRICE: Thank you.

17 MR. BELL: Thank you for the guidance.

18 Q. Directing your attention to page 34 of
19 your testimony, you state your opinion with respect
20 to the reasonable upper bound on excessive earnings.

21 MR. KORKOSZ: I'm sorry, did you say 34?

22 MR. BELL: Page 23, line 1.

23 A. 23, line 1, I see it.

24 Q. You then tender an opinion as to what
25 constitutes a reasonable upper bound. And you state

1 "As a 'sanity check.'" As a sanity check, you have
2 effectively employed the same underlying rationale as
3 employed by all of the intervenor witnesses, have you
4 not, in using a range to identify what constitutes
5 significantly excessive earnings, and if it exceeds
6 that, it passes what you identified as a reasonable
7 upper bound?

8 A. Well, I'm using what I call a sanity
9 check to try to find a point on the upper bound which
10 I then use.

11 Q. Is that something akin to a smell test?

12 A. Yes.

13 Q. And --

14 A. It depends how insane, whether it's
15 mildly smelling or really stinky.

16 Q. And your application of that test inures
17 justification of that test in its application to both
18 the upper range and the lower range; is that correct?

19 A. Well, that is what I'm characterizing as
20 a sanity check. If you looked at the upper range and
21 said, gee, I don't really know, I don't have a sense
22 of what makes sense in terms of establishing an upper
23 bound as something that's reasonable, maybe it would
24 be useful to look at the bottom, look at the range in
25 the negative sense and see if that gives information

1 as to what is significant in a negative sense.

2 In other words, if you had a test that
3 said the upper bound was, you know, some very high
4 number and does that make sense? Well, look at the
5 lower bound. If the lower bound, say, is negative
6 10 percent, then maybe that's significantly, you
7 know, that's really bad, that's not insignificant.

8 So that's what I mean, that I'm looking
9 at the lower bound to see if that gives me some idea
10 as to what "significant" would mean.

11 Q. And you arrive at the conclusion that
12 what might be appropriate is 350 to 400 basis points,
13 and that is based upon your experience, if you will,
14 over the last 25 years as to the difference between
15 the authorized returns on equity and the companies'
16 bond yields?

17 A. I think if you go back -- I have not done
18 a formal study of this, but if you go back and look
19 in something like, well, PUCO opinions and orders and
20 also in the Regulatory Research Associates of the
21 various awards given in terms of rate of return,
22 you're going to see, I think, if you compare them to
23 bond yields, something on that order, that 3-1/2 or
24 4 percent, that area is sort of -- is approximately
25 the area that a lot of the awards of rate of return,

1 return on equity, I should say, are granted in
2 comparison to the companies' own bonds, and to me
3 that seems to be not an exact, but a sort of a
4 principle that can be discerned from the existing
5 evidence.

6 Q. Would you agree, Mr. Cahaan, that that
7 measure is proffered irrespective of the impact of
8 that measure upon those that are subject to it at the
9 time it is employed? That is to say, you're ignoring
10 whether or not that embodies predictability,
11 moderation, and stability of rates in employing that
12 measure.

13 MR. KORKOSZ: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. KORKOSZ: Friendly cross, I see no
16 adversity in that question.

17 MR. BELL: Quite to the contrary.

18 THE WITNESS: Oh, yeah.

19 EXAMINER PRICE: Overruled.

20 A. You're asking me if the -- what I
21 consider to be the reasonable upper bound, I should
22 say you're asking if I think that the upper bound of
23 what I consider to be reasonable could have negative
24 effects for some people, mainly people paying for
25 electric service. And you're not asking me by the

1 way about the lower bound, are you, just the upper
2 bound?

3 Q. Just the upper bound at the moment.

4 A. Have I considered that impact. I think
5 this is the same question you asked at the very
6 beginning of our discussion as to whether I've
7 considered the effect of the earnings test on the
8 customers, and I said basically that's not part of
9 the analysis that I have done, but the Commission
10 would of course consider that.

11 Q. And taking the other half of the
12 equation, Mr. Cahaan, looking at the objectives of
13 Senate Bill 221, let's assume we're on the downside
14 now, that the company needs substantial revenues,
15 does not the company have the opportunity under ESP
16 to file an emergency rate case to address its
17 underrecovery by 350 or 400 basis points?

18 A. For distribution service or for an ESP?

19 Q. For an ESP. We're out of cost of service
20 on an ESP, aren't we?

21 A. Well, we're not out of cost of service in
22 terms of distribution rates.

23 Q. Well, I haven't used cost of service
24 anywhere in the context of my examination and
25 intentionally so. I have attempted to focus on risk

1 because risk is what the company's focusing on as
2 they attempt to portray risk to their ultimate
3 objectives.

4 A. Well, if you're asking does the company
5 have a legal right to ask for -- to have an emergency
6 rate case under this legislation, which I think you
7 did put --

8 Q. Yes.

9 A. -- this legislation into play, I have no
10 idea.

11 Q. Isn't ESP hybrid? It's not cost of
12 service, is it?

13 A. Oh, it definitely is hybrid. It's like a
14 giraffapotomus.

15 Q. You're not opining as to whether or not
16 should the company's earnings fall 350 or 400 basis
17 points below its cost of capital or debt capital that
18 the company could come in and secure relief from the
19 Commission.

20 A. Once again, I'm not at all clear on how
21 that corresponds to an electric security plan.
22 Certainly, the provisions of the law that govern
23 distribution rates and EDUs hasn't been changed, it's
24 been augmented by a whole mess of provisions, but I
25 don't think the basic law has been changed with

1 respect to rate regulation of distribution.

2 Now, how this applies to the EDU as
3 providing generation under an ESP, I haven't the
4 foggiest idea.

5 Q. Well, if the Commission were to
6 establish, hypothetically, a short-term ESP, and I'm
7 not talking about an interim now, I'm talking about a
8 short-term ESP, if -- at the expiration of that ESP
9 the Commission would be again confronted with the
10 task of going with an ESP or going MRO, would it not,
11 or don't you have an opinion?

12 A. Is this a legal question?

13 Q. No.

14 A. Well, it's certainly not an economic
15 question.

16 Q. I take it you choose not to answer the
17 question.

18 EXAMINER PRICE: Mr. Cahaan, Mr. McNamee
19 will make the objections.

20 THE WITNESS: I'm sorry.

21 I don't know, sir.

22 Q. Now, with respect to the employment of
23 the test you express certain opinions as to how the
24 earned return on common equity of the electric
25 distribution utility should be calculated and how the

1 annual earnings test should be applied, do you not?

2 A. Yes.

3 Q. Now, with respect to the initial
4 authorization of revenues including the GEN revenue
5 authorization in the ESP, you look at total cost of
6 capital, do you not? You don't because you don't
7 address that, but the examination and determination
8 of the revenue authorization focuses on return on
9 total capital, does it not?

10 A. I really don't understand the question.

11 Q. The SEE focuses on return on equity, does
12 it not?

13 A. Yes. It focuses on the return on equity
14 of a group of comparable companies, companies of
15 comparable risk, whatever that means, as compared to
16 the return on equity of the EDU.

17 Q. You state on page 25 that "As Dr. Vilbert
18 emphasizes, the annual earnings test contains
19 asymmetric risk, in which the company faces a
20 situation of 'Heads you lose, tails you break even,'"
21 is that referencing -- who is the "you"?

22 A. The company.

23 Q. Is that the customer or the company?

24 A. That I believe applies to the company.

25 Q. Thank you. Now, when you get to the

1 adjustments requested by the company, excluding
2 off-system sales inures to the benefit of who in an
3 excess earnings test, the company or customers?

4 A. Are you asking -- do off-system sales
5 benefit the company or the customer, is that your
6 question?

7 Q. Is the exclusion of off-system sales to
8 the benefit of the company or to the benefit of its
9 customers in applying an SEE?

10 MR. KORKOSZ: Objection.

11 EXAMINER PRICE: Grounds?

12 MR. KORKOSZ: Relevance.

13 EXAMINER PRICE: Mr. Bell, is it not true
14 that Mr. Cahaan states off-system sales are not
15 present in the ESP case?

16 MR. BELL: Very well.

17 Q. Mr. Cahaan, one final question.
18 Mr. Cahaan, if, in fact, the revenue authorization in
19 this case, i.e., generation rate in terms of total
20 revenue, were to be set upon a cost of capital that
21 is likely to produce a return on equity that is
22 significantly excessive, in applying the subsequent
23 SEE test, would that result in volatility of rates
24 and earnings or potential volatility of rates and
25 earnings?

1 A. I believe you were in a sense asking that
2 if the standard service offer were set at a level --
3 that generated excessive earnings to the EDU such
4 that the EDU in fact did have to refund the
5 significantly excessive portion to the customers in
6 the subsequent period, then would that result in
7 volatility of rates, is that the question?

8 Q. That's the question.

9 A. The answer is not necessarily if the
10 rates are going to -- are programmed to go up, then
11 the refund may stop them from going up, and I don't
12 know if that would be considered to be volatility.

13 Q. It's a question of what happens to the
14 rates in the going forward period?

15 A. Isn't that what you meant? That's what I
16 understood that you meant, that if -- there would be
17 a refund is what I understand to be the key to your
18 question.

19 Q. Yes, there would be a refund, would there
20 not?

21 A. And so the refund would -- if rates were
22 flat, then the answer to your question would be yes,
23 it would increase the volatility. But since rates
24 are, in terms of this application, set to rise each
25 year, then I don't know if I would characterize that

1 as an increase in volume at this time.

2 Q. What if the expectation at the time the
3 excess earnings determination was made and refunds
4 were ordered -- the companies' risks were, in fact,
5 increasing on a going-forward basis, what would that
6 scenario produce with respect to customers' rates in
7 the year following the refund or in the period
8 following the refund?

9 A. I'm afraid I can't even mirror that
10 question back, I don't understand it.

11 Q. Well, if, in fact, the Commission
12 determined that there was excess earnings and ordered
13 a refund --

14 A. In year two, in 2010.

15 Q. -- in year two, that does not address the
16 then extant division of risk between the customers
17 and the company, does it?

18 A. Ordering the refund does not -- I don't
19 understand what you mean by the division of risk
20 between the customers and the company in terms of
21 what year or what do you mean even by the division of
22 risk here.

23 Q. Well, you measure risk over a given
24 period of time, do you not?

25 A. I don't think I understand the nature of

1 the question.

2 Q. Well, with respect to the ESP period, the
3 company has proposed effectively a two-year ESP plan
4 here, have they not?

5 A. Yes.

6 Q. And then in establishing, if you will,
7 the revenue authorization for the company in this
8 proceeding, should not one attempt to evaluate the
9 risk facing the company in the very near term as
10 opposed to the long term? The period over which the
11 rates are going to be collected and whether they
12 produce excessive earnings or deficient earnings.
13 It's a simple question.

14 A. Well, it's the word "risk" that bothers
15 me. If you're asking should the earnings of the
16 company be taken into account, the prospective future
17 earnings of the company be taken into account, then
18 my answer is I'm not so sure I know because the
19 law -- legislation does not discuss doing that for an
20 ESP that's under four years in duration.

21 On the other hand, I don't see how it
22 could possibly not be taken into account if it was so
23 obvious that this is going to result in a refund, I
24 can't imagine how that could be ignored. So I guess
25 the answer is both yes and no or neither.

1 MR. BELL: Thank you, Mr. Cahaan, your
2 testimony has proven to be very enjoyable.

3 THE WITNESS: Thank you, Mr. Bell.

4 EXAMINER PRICE: Ms. Roberts?

5 MR. McNAMEE: Your Honor, I think --

6 THE WITNESS: Well, if this is short --

7 MR. McNAMEE: Okay, I thought he needed a
8 break.

9 MS. ROBERTS: No break?

10 EXAMINER PRICE: No break.

11 MS. ROBERTS: Thank you.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Roberts:

15 Q. Good afternoon, Mr. Cahaan.

16 A. Good afternoon.

17 Q. In your testimony you've proposed a range
18 of 200 to 400 basis points to be added to a company's
19 return to determine at what point earnings become
20 excessive.

21 A. Yes.

22 Q. Did I characterize that properly?

23 A. That's good.

24 Q. Okay. You also discuss this on page 24
25 and 25 and note that there are certain considerations

1 that could change the -- where in the range excess
2 earnings occurs depending upon a company's specific
3 financial or accounting or rate provisions.

4 A. I discuss conditions that would lead to
5 higher in the range and lower in the range, yes.

6 Q. Thank you.

7 Are you aware that Dr. Woolridge, OCC's
8 witness, proposed an adder of 150 basis points?

9 A. I believe so, yes.

10 Q. All right. And while your range is
11 higher, you've qualified --

12 A. Let me back up a second here to that
13 last -- the 150 was one of the pieces of, I'll call
14 it evidence, as to what should be used to determine
15 significantly excessive. It's my impression he
16 averaged two things, he averaged that with something
17 else. I wasn't aware that he was proposing 150 by
18 itself.

19 Q. In the one test that he averaged, he
20 proposed the adder of 150 basis points --

21 A. Okay.

22 Q. -- as a measure of when earnings become
23 significantly excessive; do you recall that?

24 A. I'll accept that as what your witness did
25 if that's what you say he did.

1 Q. All right. I see that you've indicated
2 in your testimony on pages 24 and 25 that several of
3 the riders for the company may have -- could lower
4 where in that range significantly excessive earnings
5 occur so that then they would -- it would be
6 appropriate to argue for a lower threshold for that
7 company; is that correct?

8 A. I'm sorry, are you referring to a
9 specific place in my testimony?

10 Q. I believe it's page 24 at the bottom and
11 at the top of page 25. Yes, where you say on page
12 25, line 2 for example "Unavoidable charges, such as
13 POLR charges, also reduce risk" and also could reduce
14 where within that range the threshold should be set
15 for a company.

16 A. Yes. Yes, I am making an argument that
17 the, once again, certain considerations would argue
18 for a higher and certain considerations would argue
19 for a lower threshold, and I'm making the distinction
20 here between changing the range I'm recommending, I'm
21 saying within this range that I'm recommending,
22 certain things would be higher, may argue for higher,
23 and certain things would argue for lower.

24 Q. And you're aware, are you not, that the
25 company has filed for several nonbypassable riders in

1 this application that assures their collection of the
2 costs associated with those riders?

3 A. Yes.

4 Q. And that would -- would that fit your
5 definition of some of the greater financial issues
6 that could argue for a lower threshold within your
7 range?

8 A. Those would be arguments -- the existence
9 of nonbypassable charges would be valid arguments, in
10 my opinion, to argue for a lower threshold within a
11 range.

12 Q. And as we -- as was discussed earlier in
13 your cross-examination, FE has not filed in this case
14 for the recognition of off-system sales; is that
15 correct?

16 A. I am -- I don't know, but on the other
17 hand I don't know if that applies in this case since
18 the generation is not within the distribution
19 companies.

20 Q. To the extent that customers are paying
21 the reservation of generation and capacity and it's
22 not needed and sales are made into the market of that
23 generation and capacity, would the fact that that is
24 not credited back to the customers have any effect
25 whatsoever on where you think the point of

1 significantly excess earnings would fall within your
2 range?

3 A. What I've tried to do in my testimony is
4 give an idea, a flavor of some of the arguments that
5 could be made in terms of higher or lower within the
6 range. Frankly, I don't think I'm capable of nor
7 would it be particularly useful to go into every
8 possible situation that is embedded in the company's
9 application to have me say it's going to be higher or
10 lower. I think given the broad guidelines that I'm
11 putting forward it can be obvious that these
12 arguments could be made by anyone and can be made
13 without technical response from me.

14 Q. Regarding Dr. Woolridge's testimony, did
15 you understand his testimony to establish at what
16 point excess earnings become significantly excessive
17 earnings?

18 A. I thought that was at 200, that the
19 lower -- 200 basis points was his lower limit, but
20 I'm not sure of the -- without looking at his
21 testimony again I'm not sure. I moved through that
22 fairly fast.

23 Q. Without respect to what his specific
24 limits are you had said earlier in cross-examination,
25 had you not, that, quote, Dr. Vilbert and

1 Dr. Woolridge determined not -- the burden of proof
2 established in SB-221 on whether it were
3 significantly excess earnings, not what is
4 significant but what is not significant. Do you
5 recall that exchange?

6 A. You mean do I recall a piece of the --
7 part of the exchange I had with Mr. Bell?

8 Q. Yes.

9 A. With some difficulty at this point.

10 Q. You remember the --

11 A. But I know what I've written in my
12 testimony.

13 Q. Yes.

14 A. And what I was discussing in terms of
15 Dr. Woolridge was that he was using for one of his
16 tests the same kind of analysis that I'm arguing
17 against, and I did not mean --

18 Q. And that's a statistical analysis?

19 A. That's a statistical test, yes.

20 Q. But with respect to his -- the other test
21 that he uses, the adder test, that wouldn't be
22 accurate, would it?

23 A. That I was arguing against it?

24 Q. Yes.

25 A. I was not addressing it. I have utilized

1 something of the same nature in what I've discussed
2 myself and so -- but I was not specifically
3 addressing Dr. Woolridge's analysis.

4 Q. On page 15 of your testimony, Mr. Cahaan,
5 you discuss the issue of how you determined what
6 significantly excessive earnings are when compared to
7 earned return and the companies' return, that would
8 be the answer that commences with line 4 and ends on
9 line 15. Do you recall that?

10 A. I'm looking at it.

11 Q. What is your recommendation on how you
12 calculate significantly excessive earnings given
13 these considerations?

14 A. Your question does not -- is not really
15 being discussed in question and answer 22 on line --
16 22 on page 15, but the answer to the question you're
17 asking is how do you -- how do I view the calculation
18 of significantly excessive earnings. It's very
19 simple, somewhere between 200 and 400 basis points
20 above the earnings that are calculated from the
21 comparable group.

22 Q. The comparable group. And when that
23 range is applied to the EDU --

24 A. Let me be clear, I'm suggesting that a
25 point in that range be decided in this case.

1 Q. Yes, and when a point in that range is
2 decided and the Commission looks at both the peer
3 group average return and the EDU's return, how would
4 you calculate -- how would you recommend what
5 constitutes significantly excess earnings? Would it
6 be the difference between the peer group average at
7 that point in your range or would it be the
8 difference between the EDU earnings and that point in
9 your range?

10 A. It would, in a percentage basis now as
11 opposed to dollar basis it would be the difference
12 between the threshold of significantly excessive
13 earnings and the actual earnings that the company
14 did, in fact, earn as a return on equity in that time
15 period; that would be the calculation of the
16 percentage basis of significantly excessive earnings.

17 Once again, I have to stress what happens
18 next is also a judgment of the Commission as to what
19 to do about that.

20 Q. I understand. Thank you.

21 Are you aware that Dr. Vilbert used beta
22 as a method to screen comparable business risks among
23 utility and non-utility public companies?

24 A. I'm not familiar with -- I do not
25 remember the exact details of Dr. Vilbert's analysis

1 using beta. If he used it, he did not use it as a
2 primary screen, but as a secondary screen.

3 Q. What is your opinion of using beta to
4 screen for comparable business risk among utility and
5 non-utility companies as it relates to the
6 calculation of significantly excessive earnings or
7 the determination of significantly excessive
8 earnings?

9 A. I have not addressed that in this
10 testimony, at least not directly, but I think I may
11 have made some mention to that earlier.

12 I am not adverse to utilizing such things
13 as beta as secondary methods of refining an analysis
14 in view of risk, but to use it as the only or even
15 the first cut of analysis does bother me because it's
16 basically a black box number. It is what it is.
17 It's just a variance. And what does that mean?

18 So as a secondary -- basically I guess
19 what I'm saying is if you establish a comparable
20 group that has a certain degree of sense to it, it
21 makes intuitive sense. It has meaning to it, you can
22 understand what it is and you then utilize beta to
23 further refine it, that seems to be reasonable to me.

24 To do the opposite, though, you're
25 starting out with what I'll call the black box of the

1 beta.

2 Q. I have a couple of questions on the
3 deferral part of your testimony, Mr. Cahaan. And if
4 you turn to page 3, line 13, you indicate "That
5 deferrals present too many difficulties and
6 distortions." Do you see that?

7 A. Yes.

8 Q. What do you mean by difficulties and
9 distortions?

10 A. Well, I think that there will be a number
11 of other parties who are perfectly happy to talk
12 about distortions, particularly marketers, and as far
13 as difficulties, there is the problem that after the
14 period of the electric security plan when -- if there
15 is no further electric security plan and prices go to
16 market, then in addition to the market price people
17 will be paying some additional amounts that are
18 clobbered to them because of the deferrals. This is
19 the old Fram oil filter commercial, pay me now or pay
20 me later, and I think we've had bad experiences in
21 pay me later.

22 Q. I just want to make sure I understand
23 your testimony. So you see difficulties relating to
24 paying later and distortions relating to market
25 distortions.

1 A. Yes.

2 MR. KORKOSZ: Objection.

3 EXAMINER PRICE: Grounds?

4 MR. KORKOSZ: Friendly cross. There is
5 no adversity between their positions on this.

6 MS. ROBERTS: Your Honor, unlike any
7 other witnesses in this proceeding, we are not
8 allowed discovery, we are not allowed depositions,
9 Mr. Cahaan has made statements in his testimony that
10 cannot be determined independently of asking the
11 question about them. And it's -- I think the record
12 needs to be clear about what the distortions and the
13 difficulties are that he has testified to, and this
14 is, you know, without being able to ask a question
15 like this, it's a simple question so that we can
16 understand his testimony, the record cannot know what
17 that is.

18 EXAMINER PRICE: You didn't address
19 Mr. Korkosz's point, though, to what degree are you
20 hostile to this witness's testimony?

21 MS. ROBERTS: That was the only question
22 I had. I don't have any more questions.

23 EXAMINER PRICE: Well, then we'll give
24 you a little bit of leeway and allow that question.

25 MS. ROBERTS: Thank you.

1 EXAMINER PRICE: She's moving on after
2 that.

3 MR. KORKOSZ: In light of the fact that
4 the witness and I were simultaneously going on the
5 record, to the extent that there was an answer to
6 that question, may I ask that it be stricken.

7 EXAMINER PRICE: Overruled.

8 MS. ROBERTS: Thank you, I have no
9 further questions.

10 EXAMINER PRICE: Thank you. Mr. Stinson.

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

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Stinson:

16 Q. Just a few questions, Mr. Cahaan. Again,
17 with regard to the phase-in and deferral to clear
18 that up, on page 3 of your testimony, line 13 to 15,
19 you state the staff is not opposed to smoothing out
20 the rate shock problem by some kind of levelization
21 process. Has staff developed that some kind of
22 levelization process for review?

23 A. No, we have not. I just did not want
24 to -- I wanted to make a distinction between
25 deferrals that, in effect, go beyond the ESP period

1 versus doing something within the ESP period. We're
2 not adverse to doing something within it, we have no
3 proposal of our own.

4 Q. The next or lines 15 through 17 beginning
5 with "but," it says "We do not recommend a process
6 which extends the collection through an unavoidable
7 charge beyond the ESP period." Does that mean that
8 you could accept a process which makes the charge
9 unavoidable beyond the ESP period or, I'm sorry,
10 makes the charge avoidable beyond the ESP period?

11 A. I haven't given any thought to that. If
12 it's not something that makes a heck of a lot of
13 sense to have an unavoidable charge that was incurred
14 for benefits at one time and avoidable at another
15 time, it sort of reaks of death spiral but I really
16 don't have an answer to that because we haven't given
17 it consideration. It's not something that
18 immediately comes to mind as a good idea.

19 Q. Under the levelization process you
20 mention would that levelization process have the
21 result of reducing the generation rate in this ESP,
22 reduce it from market?

23 A. Reducing the generation rate for ESP
24 what?

25 Q. From market. From a market rate. I'm

1 trying to get what you're meaning by the levelization
2 process.

3 A. I'm simply saying that if there is a
4 proposal to have a standard service offer at -- let
5 me make an example, hypotheticals clarify it.
6 Suppose the standard service offer proposed was \$80 a
7 megawatt for three years, period, each year. It
8 might be worthwhile to tilt that and to change it so
9 that it's less severe in the first year so it's, what
10 do you know, 75, 80, 85, or something like that.

11 It might be worth changing the amounts
12 without changing the overall amount for the three
13 years.

14 This would create differences in
15 different years but the marketer, for instance, could
16 offer a three-year plan to customers that would match
17 the three-year thing that standard service offer was
18 proposing and, therefore, it would not have a
19 distortion.

20 So that's the kind of thing I'm talking
21 about here is adjusting for whatever reason the
22 amounts in the SSO for, you know, for certain policy
23 reasons that would be beneficial as long as you don't
24 go outside of the period.

25 Q. I understand. Thank you.

1 MR. STINSON: No further questions.

2 EXAMINER PRICE: Let's go off the record.

3 (Recess taken.)

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

6 Mr. Stinson, you were completed; is that
7 correct?

8 MR. STINSON: That's correct.

9 EXAMINER PRICE: Mr. Porter.

10 MR. PORTER: I have no questions, your
11 Honor.

12 EXAMINER PRICE: Ms. Elder.

13 MS. ELDER: No questions.

14 EXAMINER PRICE: Mr. Breitschwerdt.

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

17 EXAMINER PRICE: Mr. Boehm.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Boehm:

21 Q. Yes, I'll try to make this quick, I'm
22 aware of our time and the schedule, Mr. Cahaan. With
23 respect to your methodology, Mr. Cahaan --

24 A. Yes.

25 Q. -- and how your methodology would work,

1 you're proposing the methodology essentially as being
2 sort of universal as applying to all rate cases, is
3 that right, or all the ESP cases?

4 A. All the annual earnings test cases, yes.

5 Q. Are you aware of the fact, Mr. Cahaan,
6 that yesterday I believe there was a settlement filed
7 in the Duke Energy case?

8 A. Yes, I am.

9 Q. Okay.

10 A. And I don't mean to say that this in any
11 way contradicts the settlement.

12 Q. Okay. Concerning that fact, Mr. Cahaan,
13 would your methodology be at all inconsistent with
14 the earnings threshold that was agreed to by the
15 parties in the Duke case?

16 A. The nature of what I've proposed here is
17 to determine an earnings threshold that would be
18 considered to be fair and result in a fair solution
19 to both the company and to parties based upon what
20 the actual earnings of the company were.

21 If people can arrive at that same fair
22 solution with numbers that we sense are reasonable,
23 then I see no contradiction whatsoever.

24 Q. And so you don't believe that the
25 15 percent threshold, ROE threshold, agreed to in the

1 Duke case would be inconsistent with the results of
2 your methodology?

3 A. There's a lot of things that, I don't
4 know how to put it, slide that are to be determined
5 in this process, there is to be determined certainly
6 an earned returns of comparable companies, that's to
7 be determined. The idea of significantly excessive
8 is to be determined. The idea of what is counted as
9 the return, this has not been addressed, but this is
10 an important question, how do you compute an actual
11 earned return of a company, what's in and what's out,
12 what does, as the law puts it such adjustments, what
13 do these mean?

14 The combination of all these unknowns
15 that could vary within what I'll call reasonable
16 ranges is such that I don't have any problem with
17 seeing 15 percent as unreasonable.

18 Q. And in the same vein, Mr. Cahaan, the
19 conclusion of Mr. Vilbert about what the threshold
20 was I believe was 18.13, something like that,
21 percent; isn't that right?

22 A. I'm sorry, Mr. Vilbert's conclusion or
23 Gilbert? Who?

24 Q. Mr. Vilbert, the company's witness.

25 A. He didn't -- what he did was to show an

1 illustration.

2 Q. Okay.

3 A. He wasn't -- nobody was presenting
4 numbers that they were putting forward as this would
5 be the number to be adopted. He was using his
6 methodology on 2007 data to illustrate how it would
7 work if 2007 data was in 2009. So he was not
8 suggesting 18 percent per se.

9 Q. So that's your understanding, that that
10 wasn't his number.

11 A. Yes.

12 Q. Okay. And I understand, Mr. Cahaan, in
13 your testimony you discuss things that might vary
14 whether or not within the range that you recommend
15 which is I think 2 percent to, what, 3.5 or 4 percent
16 for premium on the peer group rate of return on
17 equity?

18 A. Yes.

19 Q. That one of the things you discuss is
20 whether or not the determination of the rate of
21 return of the company would be based upon a one-year
22 snapshot of that or whether it would be based on a
23 cumulative, say two or three year look; isn't that
24 right?

25 A. Yes. This has to deal with the

1 asymmetric risk that has been brought up as an
2 objection to having too low of a threshold.

3 Q. And I'm trying to find part of your
4 testimony, but I think, Mr. Cahaan, that in your
5 testimony you qualified your discussion of this with
6 the observation that you didn't know whether or not
7 looking at more than one year was consistent with the
8 law; isn't that right?

9 A. Correct.

10 Q. Okay. And the law that you're referring
11 to, let me read a provision to see if that's -- this
12 is what you were referring to, Mr. Cahaan, and I'm
13 reading here from 143(F), I believe.

14 A. Yes, 143(F).

15 Q. And it says "with regard to the
16 provisions that are included in the electric security
17 plan under this section, the Commission shall
18 consider, following the end of each annual period of
19 the plan, if any such adjustments resulted in
20 excessive earnings as measured by whether the earned
21 return on common equity of the electric distribution
22 company is significantly in excess of the return on
23 common equity that was earned during the same period
24 by publicly-traded companies."

25 A. I see that.

1 Q. Yes. And so the question in your mind,
2 as I understand it, Mr. Cahaan, is whether or not in
3 looking backward on -- and determining the -- whether
4 or not the rate of return was in excess or excessive,
5 whether that language requires you only to look at a
6 year or whether you can look at more years; is that
7 right?

8 A. That is right. The language -- as I
9 understand this, and I'm just trying to be a
10 reasonable person reading this language -- seems to
11 say that there will be a calculation done. Now, how
12 that calculation is done is a big -- an important
13 question, but there will be a calculation done.

14 After the calculation is done, then it
15 doesn't -- seems to me that it's not perfectly clear
16 what latitude is given to the Commission in
17 determining what to do with the results of that
18 calculation.

19 One thing they say very specifically is
20 to be done with the results of that calculation is
21 consideration given to capital requirements of
22 committed generation and stuff like that.

23 But it's not perfectly clear, as I read
24 this to myself anyway, as to whether this
25 specifically indicates what the Commission must do

1 if -- after it does its calculation. Can it take
2 into account other things? Can it look at the
3 situation and decide based upon the situation facing
4 the company and the economy and all the things
5 Mr. Bell was putting forward and all the possible
6 things other people would like to put forward and
7 look at all these things in determining what to do
8 after the calculation? That's what's not clear to me
9 anyway.

10 Q. Historically -- you've been around this
11 Commission for some time, since approximately the
12 dawn of time, right?

13 A. I am celebrating the sort of anniversary
14 of case 84-188 with what used to be one of the
15 FirstEnergy companies so certainly since then.

16 Q. Okay. And, Mr. Cahaan, in your
17 experience over the years with respect to, say, an
18 electric company, would the Commission's granting of
19 a rate of return on an equity in excess or of, say,
20 13 percent be unusually high?

21 A. There were some pretty high ones when
22 inflation was running very heavily in the 1980s.

23 Q. I remember them too, but in times like
24 these times traditionally would the Commission give a
25 rate of return of 13 percent?

1 A. Well, certainly I would not be
2 recommending a 13 percent rate of return on equity
3 under current conditions.

4 Q. Let me ask you another question which is
5 I've put to you a genuine puzzle --

6 A. But I want to qualify my answer by the
7 way.

8 Q. Yeah.

9 A. For a regulated utility.

10 Q. Okay.

11 A. This is not clear this is a situation --
12 this is the EDU but this is the EDU with respect to
13 certain other things that are happening, so if this
14 was a distribution case, I certainly would not be
15 recommending anything near 13 percent.

16 Q. Well -- I'm sorry, have you completed?

17 A. I'm done.

18 Q. Okay. And that's a wonderful segue to my
19 next question. Isn't it true, Mr. Cahaan, that we --
20 that at least the companies' position is that under
21 constitutional provisions they are entitled to
22 recover the entirety of any power that they buy on
23 the wholesale market as approved by the Federal
24 Energy Regulatory Commission, and that this
25 Commission has no jurisdiction over that?

1 The distribution cases in a sense is part of this,
2 although I understand it's been spun off separately.
3 This is more than a distribution -- this is not only
4 more than, this is different than a distribution
5 case.

6 Q. Well, in fact, it's quite a bit less than
7 a distribution case, is it? It's not a wholesale
8 power case, it's not a transmission case, and it's
9 not a distribution case, right? So what is it?

10 A. It's a giraffapotomus. I don't know. I
11 don't know what this is. This is an ESP under SB-221
12 and I don't have a lot of experience in how to
13 characterize this piece.

14 Q. But would you concede that whatever it
15 is, whatever this giraffapotomus is, is under the
16 jurisdiction of this Commission and is regulated to
17 that degree?

18 A. To the degree that -- I'm saying this
19 becomes a totality. To the degree the Commission has
20 jurisdiction is under the Commission's jurisdiction.

21 MR. BOEHM: I understand. It's been a
22 pleasure as usual, Mr. Cahaan, thank you.

23 THE WITNESS: As always.

24 EXAMINER PRICE: Mr. Lavanga.

25 MR. LAVANGA: No questions, your Honor.

1 EXAMINER PRICE: Mr. Yurick.

2 MR. YURICK: No questions, thank you.

3 EXAMINER PRICE: Mr. Korkosz.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Korkosz:

7 Q. Very briefly, Mr. Cahaan. Ms. Roberts
8 suggested in a question that Dr. Vilbert may have in
9 some way used beta somewhere in the course of his
10 methodology and I wasn't entirely clear in your
11 answer whether you were aware of whether he did or
12 not. My question to you is do you have any
13 recollection as you're testifying here today that
14 Dr. Vilbert in any way used beta in the course of his
15 methodology?

16 A. No, I do not. Actually, the question
17 kind of surprised me and I thought maybe I was wrong.
18 I don't remember him using beta, but when she
19 suggested he did, I sort of basically said that if he
20 did, then it wasn't a primary use of it. But I do
21 not know whether he used beta.

22 Q. Would you agree with me that his
23 testimony would speak for itself in that regard?

24 A. Most certainly.

25 Q. Just a question on clarifying something

1 in your testimony. If you could turn to page 6,
2 please, and in particular the sentence that begins on
3 line 14.

4 A. Yes.

5 Q. You refer in the course of that sentence
6 to "The screening parameter for size." Do you have
7 that?

8 A. Yes.

9 Q. What parameter do you have in mind there?

10 A. I don't have a particular parameter in
11 terms of Dr. Vilbert's method or any specific method.
12 I used this because it would be intuitively clear
13 that if one was saying, for instance, that I want
14 companies that are within 20 percent plus and minus
15 of the, what I'll call the target company, then the
16 difference in size of the target company would be
17 reflected in the different comparable groups because
18 the size would be different.

19 I'm making the distinction that you can
20 have the same methodology for a large number of very
21 different companies, you will get different results,
22 different comparable groups, but it is still the same
23 methodology.

24 Q. So your reference to a screening
25 parameter for size is illustrative in this sense.

1 A. Totally illustrative.

2 MR. KORKOSZ: Nothing further. Thank
3 you.

4 EXAMINER PRICE: Redirect?

5 MR. McNAMEE: Nothing, your Honor.

6 EXAMINER PRICE: Thank you.

7 MR. McNAMEE: I move for the admission of
8 Staff Exhibit 6.

9 EXAMINER PRICE: Mr. Cahaan, you're
10 excused.

11 Any objections to the admission of Staff
12 Exhibit 6?

13 Seeing none, it will be admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER PRICE: Staff, next witness.

16 MR. McNAMEE: Can we go off the record
17 for just a second.

18 EXAMINER PRICE: Yes.

19 (Discussion off the record.)

20 MR. McNAMEE: At this time the staff
21 would call L'Nard Tufts.

22 (Witness sworn.)

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

25 THE WITNESS: L'Nard E. Tufts.

1 EXAMINER PRICE: Mr. McNamee.

2 - - -

3 L'NARD E. TUFTS

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

6 DIRECT EXAMINATION

7 By Mr. McNamee:

8 Q. Mr. Tufts, could you move the microphone
9 a little closer so we can hear you.

10 A. Certainly. Can you hear me?

11 Q. There we go.

12 Mr. Tufts, by whom are you employed?

13 A. The Public Utilities Commission of Ohio.

14 Q. And in what capacity?

15 A. I am a utility supervisor in the
16 Accounting and Electricity Division.

17 Q. What is your business address?

18 A. 180 East Broad Street, Columbus, Ohio
19 43215.

20 MR. McNAMEE: At this time, your Honor,
21 the staff would ask to have marked for identification
22 a document filed in this case at some point --

23 EXAMINER PRICE: October 6th.

24 MR. McNAMEE: No, No. 7, prefiled
25 testimony of L'Nard Tufts marked for identification,

1 oh, yeah, October 6th, identified as Staff Exhibit 7.

2 EXAMINER PRICE: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. McNAMEE: And a multipage document
5 filed October 20th denominated Updated Schedules of
6 L'Nard Tufts denominated as Staff Exhibit 7A.

7 EXAMINER PRICE: Also so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. (By Mr. McNamee) Mr. Tufts, do you have
10 before you what's been marked for identification as
11 Staff Exhibits 7 and 7A?

12 A. I do.

13 Q. What are they?

14 A. My prepared testimony for this proceeding
15 as well as exhibits attached to that testimony.

16 Q. Were they prepared by you or under your
17 direction?

18 A. Yes.

19 Q. Okay. How do 7A and 7 relate to one
20 another?

21 A. 7A are the exhibits that quantifies the
22 calculation of certain distribution deferrals.

23 Q. Okay. And how is 7A intended to be --
24 schedules in 7A, are those intended to be substituted
25 for those schedules that are in 7?

1 A. That's correct.

2 Q. Okay. Do you have any corrections to be
3 made to your testimony at this point?

4 A. No, I do not.

5 Q. Okay. Are the contents of what's been
6 marked for identification as Staff Exhibits 7 and 7A
7 true to the best of your knowledge and belief?

8 A. Yes.

9 Q. Do you adopt the contents of what's been
10 marked for identification as Staff Exhibits 7 and 7A
11 as your direct testimony in this case?

12 A. I do.

13 MR. McNAMEE: The witness is available
14 for cross.

15 EXAMINER PRICE: Mr. Yurick.

16 MR. YURICK: No questions, thank you,
17 your Honor.

18 EXAMINER PRICE: Mr. Lavanga.

19 MR. LAVANGA: No questions, your Honor.

20 EXAMINER PRICE: Mr. Boehm.

21 MR. BOEHM: No questions, your Honor.

22 EXAMINER PRICE: Mr. Breitschwerdt.

23 MR. BREITSCHWERDT: No questions, your
24 Honor.

25 EXAMINER PRICE: Mr. Bell.

1 MR. BELL: No.

2 EXAMINER PRICE: Ms. Elder.

3 MS. ELDER: No questions.

4 EXAMINER PRICE: Mr. Porter.

5 MR. PORTER: No questions, your Honor.

6 EXAMINER PRICE: Mr. Stinson.

7 MR. STINSON: No questions, your Honor.

8 EXAMINER PRICE: Mr. Small.

9 MR. SMALL: Thank you.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Small:

13 Q. Mr. Tufts, Jeff Small, OCC. Would you
14 please turn your attention to page 3 of your
15 testimony.

16 A. Okay.

17 Q. And on line 2, your answer to question 7,
18 you refer to Case No. 07-551. Do you see that?

19 A. Yes.

20 Q. And that's the distribution rate case
21 that's pending for the FirstEnergy EDUs, correct?

22 A. That's correct.

23 Q. And you were involved in that case, you
24 gave testimony in that case, correct?

25 A. That's correct.

1 Q. Okay. Now, you refer to a
2 recommendation -- on line 2 you refer to a
3 recommendation in the distribution rate cases. The
4 recommendation of staff with regard to the deferrals
5 that are the subject of your testimony in the
6 distribution case was that the amounts only as of the
7 date certain in 07-551 should be recognized, correct?

8 A. In that proceeding, that's correct.

9 Q. And in that -- as the staff left it in
10 the distribution rate case, the remainder of any
11 deferrals would be the subject of a subsequent
12 distribution rate case, correct?

13 A. I believe that is correct.

14 Q. Now, going over to page 4 of your
15 testimony, question and answer 10, you state that you
16 don't state an opinion concerning recovery in this
17 particular proceeding; is that correct?

18 A. That's correct.

19 Q. So the essence of your testimony is to
20 present the numbers but not to make a recommendation
21 as far as the recovery of those amounts.

22 A. Yes.

23 Q. Let's turn back to page 3 of your
24 testimony, and in particular on line 10 you refer to
25 Mr. Castle's testimony.

1 A. Okay.

2 Q. And Mr. Castle was the individual who
3 testified concerning the calculation of certain
4 deferrals such as the RCP, distribution deferrals in
5 the distribution case, correct?

6 A. That's correct.

7 Q. And in creating the tables that are the
8 subject of your testimony did you use the same
9 methods of calculations as Mr. Castle used in his
10 testimony in that case?

11 A. Yes, I did.

12 Q. So any strengths that were in
13 Mr. Castle's calculations and any weaknesses that
14 were in Mr. Castle's calculations, they're all in
15 your calculations, correct?

16 A. Yeah, what I did was extended the
17 calculations from the distribution case to
18 December 31st of 2008.

19 Q. But your numbers would be completely
20 consistent with the methods and the calculations done
21 by Mr. Castle up to an earlier period, correct?

22 A. Yes.

23 Q. Your update, that is the substitute
24 tables that were marked as 7A, was it --

25 A. Yes.

1 Q. -- they continue to contain estimates; is
2 that correct?

3 A. Yes, they do.

4 Q. And what period of time do they contain
5 estimates for?

6 A. I have actual information through
7 September 2008 for the line extension calculation and
8 then there are projections for -- I'm sorry, through
9 August of 2008 I have actual information and
10 projections for September through September of 2008.
11 And I'd just like to double check the other
12 schedules.

13 I have actual information on the
14 distribution deferrals through the end of June 2008
15 and --

16 Q. I'm sorry, I didn't catch that.

17 A. I have actual information through
18 June 2008 and projected information from July through
19 December 2008.

20 Q. Did you cover all the deferrals that are
21 in your testimony?

22 A. Then there are the transition tax
23 deferrals, actual information through June 2008 and
24 projected for July through December.

25 Q. In the staff's recommendation in the

1 distribution rate cases 07-551 and the accompanying
2 cases was followed and those deferrals were presented
3 in a subsequent distribution case, those projections
4 that you just gave would be replaced by actual
5 values; is that correct?

6 A. Depending on the test period, that's
7 possible.

8 Q. Well, it wouldn't be practical to have a
9 distribution case this year, would it?

10 A. No.

11 Q. Okay. So -- and those projections only
12 run -- for these deferrals only run through the end
13 of 2008; is that correct?

14 A. That's correct.

15 Q. So practically speaking the follow-up
16 distribution rate case would have all the actual
17 data, correct?

18 A. Correct.

19 MR. SMALL: I have no further questions,
20 thank you.

21 EXAMINER PRICE: Thank you. FirstEnergy.

22 MR. KORKOSZ: Thank you, your Honor.

23 - - -

24

25

1 CROSS-EXAMINATION

2 By Mr. Korkosz:

3 Q. Good afternoon, Mr. Tufts.

4 A. Good afternoon.

5 Q. Following up on a line that Mr. Small
6 started with you, do I understand correctly that you
7 have, in extending the calculations past the date
8 certain from the rate case, that you've employed the
9 same methodology in those calculations that staff
10 used for the period up to date certain, correct?

11 A. That's correct.

12 Q. And without debating the merits of the
13 issue, would you agree with me that there were
14 certain disagreements between the staff and the
15 company over what is the appropriate methodology for
16 making those calculations?

17 A. Yes, there were differences.

18 Q. And to just identify a couple of them,
19 one of them was the issue of whether it was
20 appropriate to calculate interest on a net of
21 accumulated deferred income tax basis versus a gross
22 basis, correct?

23 A. That is correct.

24 Q. And staff favored the former of those,
25 correct?

1 A. That's correct.

2 Q. And that's what you've done in your
3 calculations here.

4 A. Yes.

5 Q. And that applies to the deferrals
6 associated with the RCP distribution as well as the
7 line extension and the transition tax, right?

8 A. Yes.

9 Q. Another issue upon which the staff and
10 the company disagreed in the rate case was with
11 respect to the RCP deferrals, what was characterized
12 as the lesser of the calculation arising in applying
13 the \$150 million cap in the aggregate versus looking
14 at the companies individually; do you recall that?

15 A. Yes, I do.

16 Q. And with respect to that issue as well
17 you've carried that methodology forward in your
18 calculations here.

19 A. Yes.

20 Q. And when I say "carry forward," that is
21 applying them to the post-date certain period, that's
22 what you understand me to mean.

23 A. Correct.

24 Q. Okay. And that's an issue, is it your
25 understanding, the appropriateness of the methodology

1 is an issue that should be decided by the Commission
2 in the context of its decision in the distribution
3 case?

4 A. Can I have that repeated, please?

5 Q. Let me try it a different way.

6 To the extent that that issue arose in
7 the distribution case for the accruals up to the date
8 certain, is it your understanding that the
9 appropriateness of the methodology used is going to
10 be decided in the Commission's distribution case
11 decision?

12 A. Yes.

13 Q. And that's with respect to both the net
14 of ADIT issue as well as your lesser-than issue,
15 correct?

16 A. That's correct.

17 Q. Assume hypothetically, if you would for a
18 moment, that in the Commission's distribution case
19 decision that the Commission adopts the companies'
20 rather than the staff's methodological approach for
21 those two issues. Assume that. On that assumption
22 would the staff be prepared to recommend that the
23 post-date certain accruals here be calculated in the
24 same way?

25 MR. SMALL: Objection, your Honor. He's

1 mischaracterized the state of the record in the
2 previous case.

3 EXAMINER PRICE: How so?

4 MR. SMALL: The companies' position is
5 that all of the deferrals be recognized and recovered
6 in that distribution case.

7 EXAMINER PRICE: I understand that, but
8 his hypothetical was just on the two issues. The
9 objection's overruled.

10 Q. Do you recall the question?

11 A. Can I have the question reread, please?

12 MR. KORKOSZ: Maria.

13 (Record read.)

14 Q. In the same way meaning consistent with
15 the Commission's decision.

16 A. Yes, the staff would -- once the
17 Commission made a decision one way or the other, the
18 staff recommendation would be consistent with the
19 Commission's decision.

20 Q. And if the Commission were to agree with
21 the company, would you agree that we could make the
22 required adjustments to the -- as a mechanical matter
23 to the schedules that you've submitted, that
24 accompany your testimony here?

25 A. Yes.

1 Q. And it wouldn't require additional data
2 on this record to be able to make those calculations.

3 A. No, I don't think so.

4 Q. Let's move to a different area, and this
5 is specifically with your calculation of the
6 post-date certain accruals to the RCP distribution
7 deferrals, okay?

8 A. Okay.

9 Q. Do I understand from your calculations
10 that you offset the deferred balances for that group
11 of deferrals for the Ohio Edison and the Toledo
12 Edison companies by what were a forecasted
13 overcollection of RTC collections? Is that a correct
14 statement?

15 A. Yes.

16 Q. Okay. And that was -- just for the
17 record, that was an approximately \$8 million with
18 respect -- overcollection with respect to Ohio Edison
19 and approximately \$24 million with respect to Toledo
20 Edison?

21 A. I do recall the Ohio Edison number. I'd
22 like to just double check the Toledo Edison number.
23 That's correct, 24 million.

24 Q. If it turns out that the actual RTC
25 collections for Ohio Edison and Toledo Edison turn

1 out to differ from those that were forecast, would it
2 be appropriate to true up the deferral calculation to
3 reflect the actuals?

4 A. I believe that it would.

5 MR. KORKOSZ: I have nothing further.

6 EXAMINER PRICE: Thank you.

7 Mr. McNamee?

8 MR. McNAMEE: If I might approach the
9 witness, I might have a question, but I doubt it.

10 EXAMINER PRICE: You may.

11 (Discussion off the record.)

12 MR. McNAMEE: Nothing further, your
13 Honor. The staff would move for the admission of
14 Staff Exhibits 7 and 7A.

15 EXAMINER PRICE: Thank you, Mr. Tufts.

16 Any objections to Staff Exhibits 7 and
17 7A?

18 MR. KORKOSZ: No objections.

19 EXAMINER PRICE: Hearing none, they will
20 be admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 EXAMINER PRICE: Mr. McNamee.

23 MR. McNAMEE: If we might go off the
24 record for just a moment.

25 EXAMINER PRICE: Yes, let's go off the

1 record.

2 (Discussion off the record.)

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

5 MR. McNAMEE: At this time staff would
6 call Tamara S. Turkenton.

7 (Witness sworn.)

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

10 THE WITNESS: Tamara Turkenton,
11 T-U-R-K-E-N-T-O-N.

12 EXAMINER PRICE: Mr. McNamee.

13 - - -

14 TAMARA TURKENTON

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

17 DIRECT EXAMINATION

18 By Mr. McNamee:

19 Q. Ms. Turkenton, by whom are you employed?

20 A. The Public Utilities Commission of Ohio.

21 Q. In what capacity are you employed there?

22 A. Public utilities administrator 2.

23 Q. What is your business address?

24 A. 180 East Broad Street, Columbus, Ohio

25 43215.

1 MR. McNAMEE: Your Honor, at this time
2 the staff would ask to have marked for identification
3 as Staff Exhibit 8 a multipage document entitled
4 prefiled testimony of Tamara S. Turkenton docketed in
5 this case on October 6th.

6 EXAMINER PRICE: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Ms. Turkenton, do you have before you
9 what's been marked for identification as Staff
10 Exhibit 8?

11 A. I do.

12 Q. What is that document?

13 A. That is my prefiled testimony in this
14 case.

15 Q. Is that prepared by you or under your
16 direction?

17 A. It was.

18 Q. Okay. Do you have any corrections that
19 need to be made to that document at this time?

20 A. I do not.

21 Q. Are the contents of what's been marked
22 for identification as Staff Exhibit 8 true to the
23 best of your knowledge and belief?

24 A. They are.

25 Q. If I were to ask you the questions

1 contained within there, within that document, would
2 your answers here today be as represented therein?

3 A. Yes, they would be.

4 Q. Do you adopt what's been marked for
5 identification as Staff Exhibit 8 as your direct
6 testimony in this case?

7 A. I do.

8 MR. McNAMEE: With that, the witness is
9 available for cross.

10 EXAMINER PRICE: Mr. White.

11 MR. WHITE: No questions, your Honor.

12 EXAMINER PRICE: Mr. Lavanga.

13 MR. LAVANGA: No questions, your Honor.

14 EXAMINER PRICE: Mr. Boehm.

15 MR. BOEHM: No questions, your Honor.

16 EXAMINER PRICE: Mr. Breitschwerdt.

17 MR. BREITSCHWERDT: No questions, your
18 Honor.

19 EXAMINER PRICE: Mr. Bell.

20 MR. BELL: No questions.

21 EXAMINER PRICE: Ms. Elder.

22 MS. ELDER: No questions, your Honor.

23 EXAMINER PRICE: Mr. Sites.

24 MR. SITES: No questions, your Honor.

25 EXAMINER PRICE: Mr. Stinson.

1 MR. STINSON: Yes, I have a few
2 questions.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Stinson:

6 Q. Ms. Turkenton, you made a recommendation
7 in your testimony that the fuel transportation
8 surcharge should be eliminated; is that correct?

9 A. That is correct.

10 Q. And your reason was because the charge
11 lacks support, specifically forecasting and analysis?

12 A. That's correct.

13 Q. Is staff currently aware of what the cost
14 or what the fuel transportation surcharge will be for
15 each of the years 2009, '10, and '11?

16 A. The only information I have is that the
17 company budgeted 30 million in terms of what the
18 actual transportation surcharges would be for 2009 to
19 2011, but that's just from company data requests.

20 Q. You have no idea what the actual costs
21 will be.

22 A. I do not.

23 Q. And did you request that information of
24 the company?

25 A. I requested analysis, supporting

1 documentation, any forecast that the company had in
2 regards to the fuel transportation surcharge, and the
3 data request response I got was that they budgeted
4 30 million. There was no specific forecast.

5 Q. You said the staff is not aware of what
6 the fuel transportation surcharge would be in any of
7 the years of the plan. Isn't it true that the
8 operating customers would not know what the fuel
9 transportation surcharge will be into those years as
10 well?

11 MR. KUTIK: Objection.

12 EXAMINER PRICE: Grounds?

13 MR. KUTIK: Friendly cross.

14 MR. STINSON: Your Honor, it's not
15 friendly.

16 MR. KUTIK: There's no adversity.

17 EXAMINER PRICE: It's not at all clear to
18 me that this is friendly cross so overruled.

19 MR. STINSON: Thank you.

20 Can I have the question and answer
21 reread, please.

22 (Record read.)

23 Q. The operating companies' customers would
24 not know what the fuel transportation surcharge would
25 be in each of those three years as well.

1 A. That's correct.

2 Q. Would you agree that if the fuel
3 transportation surcharge is known as of January 1,
4 2009, that it would assist customers in deciding
5 whether to shop?

6 A. If it was known, yes, that would assist
7 their decision as to whether to shop.

8 Q. And would the same be true for all
9 charges that have yet to be developed in the
10 application?

11 A. That's fair.

12 Q. You stated that you requested projections
13 and data from the company. If that data and
14 projections had been obtained, could staff have
15 developed a fuel transportation surcharge?

16 THE WITNESS: Could you reread the
17 question, please?

18 (Record read.)

19 A. I don't know that I could have developed
20 a fuel transportation surcharge if I would have
21 approved the fuel transportation surcharge. Is that
22 what you're asking?

23 Q. I believe I asked if staff could have
24 developed one first based upon historical data, the
25 projections to determine what a reasonable fuel

1 transportation surcharge would be.

2 A. If I would have had an analysis and/or a
3 forecast or something to support in the company's
4 application the fuel transportation surcharge, I
5 could have made a recommendation or a decision as to
6 whether I would allow the company to recover those
7 costs in excess of the baselines that the company
8 proposed in their application.

9 Q. Would your recommendation have led to the
10 implementation of a fuel transportation surcharge as
11 of January 1, 2009, for the customers to see?

12 A. It would really depend on the fuel
13 forecast for those transportation surcharges and,
14 again, the company has established baselines for
15 those fuel transportation surcharges of 30 million in
16 2009, 20 in 2010, and 10 million in 2011, so without
17 the forecast or any analysis and taking into account
18 those baselines, I can't make that -- any
19 recommendation here.

20 Q. Your alternative recommendation other
21 than disallowing the fuel transportation surcharge is
22 that the Commission conduct an annual prudency review
23 of those charges; is that correct?

24 A. What my recommendation -- my alternative
25 recommendation was, that if the Commission determined

1 that the fuel transportation surcharge part of the FT
2 rider, there's actually two parts of that rider, FTE,
3 they deemed that it was appropriate to implement that
4 rider, what I would want to have the ability to do as
5 staff is to look at the actual contracts for
6 transportation because there's a base amount for
7 contracted transportation and then there's usually a
8 fuel charge percentage in those contracts. So I
9 would want to make sure that we were able to do a
10 prudence review not only on the dollars and the costs
11 themselves, but to ensure that the base
12 transportation cost and the fuel surcharge cost were
13 appropriate.

14 Q. Would the conduct of an annual prudence
15 review assist in the transparency issue we were
16 talking about, that transparency issue being the
17 customers' ability to determine what that surcharge
18 is currently?

19 A. Yes, it would.

20 Q. And how would that prudence review in the
21 future permit a customer as of January 1, 2009, to
22 determine what those costs would be?

23 A. Well, the way the companies' applications
24 proposed, it would be a cents per kilowatt charge, so
25 basically they would, providing that they gave a

1 forecast or some type of analysis, there would be a
2 rate put into effect and then it would be trued up
3 based upon what the actual fuel transportation
4 surcharges were after staff did its prudency review.

5 Q. And you're saying that that per
6 kilowatt-hour charge would be effective January 1,
7 2009?

8 A. (Witness nods head.)

9 EXAMINER PRICE: I'm sorry. You have to
10 verbalize your answer.

11 A. Yes, that's correct. Subject, again, to
12 the baseline that the company has proposed.

13 Q. So you're stating, just to be clear, with
14 your prudence review, that prudence review would be
15 implemented before January 1, 2009, before the ESP
16 became effective; is that correct?

17 A. That's not correct.

18 Q. Then I didn't hear you correctly then.

19 A. The prudence review would be after the
20 fact. If the company -- the way the company's
21 application is proposed now is that they have
22 budgeted with no forecast 30 million in fuel
23 transportation for 2009. But the baseline, the risk
24 the company is willing to accept in terms of fuel
25 transportation surcharge is 30 million, so in 2009 if

1 we were to put a rider into effect, depending on if
2 they got an actual forecast between now and then,
3 there really wouldn't be too much of a rate to put
4 into effect because the company's willing to take the
5 risk of a fuel transportation surcharge in the first
6 part of the ESP plan.

7 Q. So, again, I'm a little bit confused. My
8 simple question is as of January 1, 2009, would the
9 customers know as a result of a prudency review what
10 the fuel transportation surcharge would be?

11 A. Not in terms of a prudency review.

12 Q. And that would be calculated subsequent
13 to January 1, 2009.

14 A. That's correct.

15 Q. You're proposing that the prudency review
16 be conducted annually?

17 A. Yes.

18 Q. So I would assume that would be later in
19 2009 that that review would be conducted or propose
20 to be conducted?

21 A. I would say actually it would probably
22 happen at the beginning of 2010 so that we could true
23 up 2009 actual costs.

24 Q. Would the development of an estimated or
25 projected fuel transportation surcharge resolve the

1 transparency issue?

2 A. I don't understand your question.

3 Q. From the companies' projections if the
4 company were to submit analyses or projections or
5 data as to what their fuel transportation costs had
6 been or are likely to be, and -- first, could an
7 estimate of those charges be developed?

8 A. Basically right now the company has
9 budgeted 30 million. Absent -- that's the only
10 analysis and/or forecast that staff has received. If
11 the company were to submit data and/or analysis
12 anything above the 30 million that they've decided to
13 take the risk for, then we would put a rate into
14 effect based on their forecast or their analysis
15 whether it's 35 million, 35 or 40, it would be the
16 delta between that and the baseline of 30. We would
17 put that rate into effect on a cents per
18 kilowatt-hour basis and then true it up the following
19 year based on actuals for that year.

20 Q. So your answer is if that information
21 were available, staff could make that -- staff could
22 develop that fuel transportation surcharge.

23 A. If it were available.

24 Q. Then the next question was would that
25 resolve the transparency issue we were talking about

1 with regard to customers knowing now what that fuel
2 transportation surcharge is.

3 A. Yes. Yes, it would.

4 Q. Thank you.

5 Were you present yesterday during
6 Mr. Fortney's testimony?

7 A. I was.

8 Q. And are you aware that Mr. Fortney then
9 deferred to you some questions I had about the
10 minimum default service rider?

11 A. I'm aware.

12 Q. And, first of all, I guess just to ask
13 you, is the minimum default service rider a
14 generation related charge?

15 A. Well, first, I will say that nothing in
16 my testimony supports any analysis by myself
17 regarding the minimum service default charge. So in
18 that regard generally the minimum service default
19 charge is a generation, to at least me personally is
20 a generated related charge for POLR service, yes.

21 Q. Thank you.

22 And is it your understanding too the
23 staff has made no recommendation as to that
24 surcharge's, or that charge's bypassability?

25 A. That is correct.

1 Q. In fact, staff has made no recommendation
2 about the MDS, is that true?

3 A. That is correct.

4 Q. My questions to Mr. Fortney were going to
5 what effect the MDS charge had on large scale
6 governmental aggregation and I think specifically
7 that was the area in which he said you would testify
8 or could testify. Do you have an opinion as to what
9 effect the MDS charge would have on large scale
10 governmental aggregation customers?

11 A. Again, I have no testimony that supports
12 the minimum service default charge. But to try to
13 answer your question, as the company has proposed,
14 it's a nonbypassable generation POLR type charge, so
15 in relation to governmental aggregation any
16 nonbypassable charge is probably going to inhibit
17 shopping, whether it's the minimum service default
18 charge or any other nonbypassable charge.

19 Q. Do you have an opinion as to what effect
20 the minimum default service charge would have on
21 large scale governmental aggregation?

22 MR. McNAMEE: Object.

23 EXAMINER PRICE: Grounds, Mr. McNamee?

24 MR. McNAMEE: Her testimony doesn't
25 address it, she's indicated that staff has no

1 position, there's nothing to be said in answer to the
2 question.

3 EXAMINER PRICE: Mr. Stinson.

4 MR. STINSON: Well, we've already gone
5 down this road, your Honor. Ms. Turkenton was
6 offered as the witness to governmental aggregation
7 issues yesterday. I was precluded from asking those
8 questions from the tie-up witness, the point man
9 yesterday. She's already answered the questions
10 about the MDS, and I think it's just a logical
11 extension of those questions.

12 EXAMINER PRICE: I agree that's outside
13 the scope of the testimony. Sustained.

14 THE WITNESS: Could you repeat the
15 question, please?

16 MR. KUTIK: The objection was sustained.

17 EXAMINER PRICE: Don't answer now.

18 THE WITNESS: Sorry, I thought you said
19 overruled.

20 MR. McNAMEE: It's late in the day.

21 THE WITNESS: Great.

22 MR. STINSON: Just a moment, your Honor.

23 EXAMINER PRICE: Certainly.

24 Q. (By Mr. Stinson) Ms. Turkenton, you
25 testified that the imposition of MDS would inhibit

1 customer shopping; is that correct?

2 A. As it relates to the minimum service
3 default charge being nonbypassable, any nonbypassable
4 charge would inhibit shopping, that was my testimony.

5 MR. STINSON: No further questions, your
6 Honor.

7 EXAMINER PRICE: Thank you. Consumers'
8 Counsel.

9 MS. ROBERTS: No questions, your Honor.

10 EXAMINER PRICE: Mr. Kutik.

11 MR. KUTIK: Yes, your Honor, thank you.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Kutik:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. With respect to the rider FCA, the fuel
18 cost adjustment, the company has provided staff, has
19 it not, data on fuel costs?

20 A. In terms of this proceeding?

21 Q. Yes.

22 A. No, they have not.

23 Q. Okay. How about in any other proceeding?

24 A. Staff has reviewed costs in terms of fuel
25 costs over a 2002-baseline for 2006, 2007, and 2008,

1 but no forecast has been provided for 2011.

2 Q. So the companies have provided staff with
3 historical fuel cost information; fair to say?

4 A. Yes.

5 Q. And do you have any reason to believe
6 that the companies have a fuel cost forecast to 2011?

7 A. As stated in discovery responses, the
8 company indicated in regards to rider FCA for the
9 2011 forecast that the forecast would be available in
10 December of '08.

11 Q. So you have no reason to believe that the
12 companies have one currently, correct?

13 A. I have no reason to believe that they
14 have one currently.

15 Q. Right. In other words, the companies
16 have given you whatever they have.

17 A. That's correct.

18 Q. Now, would you agree with me that fuel
19 costs, particularly in recent times, are volatile?

20 A. I would agree.

21 Q. And would you agree with me that given
22 that volatility a forecast out three years may not be
23 necessarily an accurate barometer of what those costs
24 will actually be?

25 A. That's correct.

1 Q. And would it be correct to say that in
2 the past, for example, in the RSP and RSCP cases the
3 Commission has approved either the recovery or
4 deferral of future fuel costs subject to Commission
5 review of those costs?

6 A. That's correct.

7 Q. And would you agree with me that
8 essentially that's what the company's asking for
9 here?

10 A. Yes.

11 Q. Now, turning to rider FTE, I think you
12 said that there were two parts of that rider, a T
13 part and an E part, correct?

14 A. And an FT and an E part, yes.

15 Q. Right, okay. With respect to the E part,
16 you don't have any objection to that, right?

17 A. I don't have any objection as outlined
18 with the restrictions in my testimony.

19 Q. Okay. Now, with respect to the fuel
20 transportation surcharges, it's fair to say, is it
21 not, that the companies have provided staff with
22 historical information and what budgeted information
23 they have going forward, correct?

24 A. The companies have only provided me a
25 number, simply a data request response that said they

1 budgeted 30 million. There was no physical analysis
2 and/or budget or documentation to even support the
3 30 million.

4 Q. Okay. But the companies have given you
5 the figures for past fuel transportation charges,
6 correct?

7 A. The way the fuel cost adjustments work
8 now it's on a delivered basis. The transportation
9 surcharge, they haven't been actually recovering that
10 charge to date. It's been just a delivered contract
11 price. The fuel surcharge part has not been
12 recovered by the companies thus far.

13 Q. Perhaps my question wasn't clear. The
14 companies have provided the staff with fuel
15 transportation surcharge information for 2006 and
16 2007; isn't that true?

17 A. I would say that the staff has reviewed
18 in its review of overall fuel costs invoices that
19 detail fuel transportation surcharges, yes.

20 Q. And, in fact, the companies responded to
21 a data request for 2006 and 2007 and provided what
22 those charges were, correct?

23 A. Not personally to me, but to someone -- I
24 have personally seen invoices with the fuel
25 transportation surcharge on it, so yes.

1 Q. All right. So with respect to, again,
2 historical information, at least for 2006 and 2007,
3 the companies have provided fuel transportation
4 surcharge data, correct?

5 A. Yes. To someone on the fuel staff, yes.

6 Q. Okay. And staff has always received from
7 the company at least the budgeted numbers for fuel
8 transportation surcharges, correct?

9 A. What time period are we talking about?

10 Q. Well, for 2009, '10, and '11.

11 A. Again, I received a number, there was no
12 analysis for the number but, yes, they budgeted
13 30 million.

14 Q. Now, you're aware, are you not, of the
15 purpose of a budget?

16 A. I am.

17 Q. All right. And that's to be used in the
18 operations of the companies, correct?

19 A. Yes.

20 Q. It's the number that the companies are
21 going to be relying upon for their operations in the
22 near term, correct?

23 A. Yes.

24 Q. Now, do you have any reason to believe
25 that the companies have a forecast other than what's

1 in their budget?

2 A. I would think if the companies had a
3 forecast, as I asked in a data request discovery,
4 that they would have provided it.

5 Q. Right. So would it be fair to say that
6 the companies have provided you with whatever they
7 had either with respect to a budget or a forecast for
8 fuel transportation data?

9 A. I can assume that.

10 Q. You can assume that.

11 A. I can assume that.

12 Q. Now, is it also correct to say that the
13 companies have not expressed any disagreement with
14 staff's desire to audit fuel transportation
15 surcharges in invoices, contracts, things like that?

16 A. I'm sorry, again, what time frame?

17 Q. On a going-forward basis.

18 A. I just set forth that I would like a
19 prudence review on those fuel transportation
20 surcharges. The company's not stated to me one way
21 or the other whether they would agree to a prudence
22 review, but I assume they would.

23 Q. So you're not aware of any objection
24 they --

25 A. I'm not aware of any objection.

1 Q. All right. Now, with respect to the
2 standby charge, you have some testimony on that, do
3 you not?

4 A. I do.

5 Q. And you agree, do you not, that it's fair
6 for the companies to be protected against the risk of
7 returning customers?

8 A. I agree.

9 Q. And would you agree with me that that
10 protection, so to speak, can take the form of either
11 some type of standby charge where, in return for
12 paying that, the customer would have the ability to
13 pay the SSO rate, or that they would pay, in the
14 absence of paying the standby charge the customer
15 would pay a market-based rate.

16 A. That's correct.

17 Q. And that would be fair in your view as
18 well, correct?

19 A. That is fair.

20 Q. Now, with respect to minimum stays, isn't
21 it true that the statute, that is SB-221, does speak
22 with respect to minimum stay in one instance,
23 correct?

24 A. That is correct.

25 Q. And that's with respect to if a

1 government aggregation waives the standby charge and
2 a customer returns, that that customer has to stay
3 for the remainder of the plan, correct?

4 A. That's what the statute says, yes.

5 Q. And your recommendation in your testimony
6 isn't contrary to what the statute says, correct?

7 A. In terms of governmental aggregation and
8 for those that do not pay the standby charge, yes,
9 that's correct.

10 Q. Now, with respect to nonbypassable
11 charges, would it be fair to say that the statute
12 allows certain nonbypassable charges?

13 A. Yes.

14 Q. Would it also be fair to say that there's
15 nothing in the statute which says an ESP must
16 encourage or promote large scale government
17 aggregation?

18 A. In terms of Senate Bill 221 you are
19 correct. There is nothing in the statute that says
20 that an ESP must encourage or promote large scale
21 government aggregation.

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

24 EXAMINER PRICE: Yes.

25 MR. KUTIK: No further questions, thank

1 you, Ms. Turkenton.

2 EXAMINER PRICE: Mr. McNamee?

3 MR. McNAMEE: If I might approach the
4 witness, I suspect I don't have any questions.

5 EXAMINER PRICE: You may.

6 (Discussion off the record.)

7 MR. McNAMEE: No redirect.

8 EXAMINER PRICE: Thank you. I have no
9 questions for you, you're excused.

10 THE WITNESS: Oh, come on.

11 EXAMINER PRICE: I don't want you to miss
12 your bus.

13 MR. McNAMEE: Staff would move for the
14 admission of Staff Exhibit 8.

15 EXAMINER PRICE: Any objections to Staff
16 Exhibit 8?

17 MR. KUTIK: No objections.

18 EXAMINER PRICE: It will be admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER PRICE: Mr. McNamee, call your
21 next witness.

22 MR. McNAMEE: The staff would call Dan R.
23 Johnson.

24 (Witness sworn.)

25 EXAMINER PRICE: Please be seated and

1 state your name for the record.

2 THE WITNESS: My name is Daniel R.
3 Johnson.

4 - - -

5 DANIEL R. JOHNSON

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

8 DIRECT EXAMINATION

9 By Mr. McNamee:

10 Q. Mr. Johnson, by whom are you employed?

11 A. The Public Utilities Commission of Ohio.

12 Q. In what capacity?

13 A. I am the Chief of the Market -- the
14 Policy and Market Analysis Division of the staff.

15 Q. What is your business address?

16 A. 180 East Broad Street, Columbus, Ohio
17 43215.

18 Q. Okay.

19 MR. McNAMEE: At this time, your Honors,
20 staff would ask to have marked for identification as
21 Staff Exhibit 9 a document entitled prefiled
22 testimony of Daniel R. Johnson filed in this docket
23 on October 6th.

24 EXAMINER PRICE: Do you have an extra
25 copy of that, Mr. McNamee --

1 MR. McNAMEE: I do.

2 EXAMINER PRICE: -- for the Bench? Thank
3 you.

4 MR. McNAMEE: I should note for the
5 record, your Honor, that there were two documents
6 that we docketed in the case, one errata and one
7 second errata to Mr. Johnson's testimony that we will
8 not be introducing those. Instead, I would ask to
9 have marked for identification as Staff Exhibit 9A a
10 single sheet that I distributed to the Bench and all
11 the parties sometime earlier this afternoon, a
12 document entitled Third Revised Exhibit 1, Auction
13 Reference Prices. It's 9A.

14 And also marked for identification as 9B
15 another single sheet, this one entitled Third Revised
16 Exhibit 2, Alternative Net Present Value of Benefits
17 Calculation.

18 EXAMINER PRICE: So marked.

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 Q. (By Mr. McNamee) Mr. Johnson, do you have
21 before you what's been marked for identification as
22 Staff Exhibits 9, 9A, and 9B?

23 A. I do.

24 Q. Could you tell us, please, what those
25 are.

1 A. 9A is, I presume I've got the numbers
2 correctly, is my direct testimony in this case.

3 Q. That's 9.

4 A. That's 9.

5 Okay, then 9A must be my Third Revised
6 Exhibit 1, and 9B is likely to be my third revised
7 Exhibit 2.

8 Q. How do 9A and 9B relate to 9, if at all?

9 A. They encompass the calculations that are
10 performed pursuant to the descriptions in the
11 testimony.

12 Q. Okay. Would it be fair to say that
13 what's been marked for identification as Exhibits 9A
14 and 9B would substitute for the attachments that you
15 have to Staff Exhibit 9?

16 A. Yes, absolutely.

17 Q. Good. Do you have any corrections that
18 you would need to make to any of these?

19 A. There are some further corrections that
20 need be made to the text of the testimony, and if you
21 so please, I'd go through page by page or however
22 you'd like to go about that.

23 Q. Page by page would be perfect.

24 A. Okay.

25 Q. And slowly, please. It's late in the

1 day.

2 A. First change I see is on page 3, line 14.
3 The number "12 percent" should be changed to
4 "5 percent."

5 Q. Okay. That was 5?

6 A. Five.

7 Q. Okay. And next?

8 A. On page 29 -- I mean on page 5, line
9 29 -- I don't think there are 29 pages here --
10 beginning on line 29 strike the words "most recent
11 two calendar years of hourly load data." And at the
12 end of that sentence strike the words "RTCP08
13 subscript 09, 10, 11." And substitute for "most
14 recent two calendar years of hourly load data" "the
15 load data provided by FirstEnergy in its auction data
16 room which is available to bidders in the 2004
17 auction."

18 Q. Could you do that again a little more
19 slowly perhaps?

20 A. Yes. Strike the words "most recent two
21 calendar years of hourly load data" and substitute
22 for those words "the load data provided to bidders
23 from the FirstEnergy 2004 auction data room." I'm
24 not sure those two were exactly alike, but they meant
25 the same thing.

1 MR. STINSON: Maybe the court reporter
2 could read that back.

3 (Record read.)

4 MR. BELL: There was a change in the
5 remainder of that sentence too, can we have that?

6 A. The further change which I gave the first
7 time but I'll give again now is to simply scratch the
8 words "and RTCP08 subscript 09, 10, 11."

9 MR. BELL: Thank you.

10 MR. SMALL: If I may, that's a tad bit
11 confusing, you've got the word "both" in line 30 and
12 then you're scratching out one thing so we only
13 have -- the sentence reads "both" and we only have
14 one thing?

15 THE WITNESS: No; you're correct,
16 Mr. Small, scratch the word "both" also in line 30.

17 Q. (By Mr. McNamee) Mr. Johnson.

18 A. Yes.

19 Q. Could you read the sentence as it should
20 read now with the corrections?

21 A. I'll give it a try because I don't have
22 all these words written here. "I used the load data
23 provided to bidders from the FirstEnergy 2004 auction
24 data room to load weight RTCP04 subscript 06-08."

25 Q. Do you have any other corrections?

1 A. Yes. On page 6, line 6, the meaning I
2 intend to change here is, let's see, let me read the
3 sentence and then I'll make the change. The change
4 will come in the word "2008."

5 "The proxy was the simple average of,"
6 scratch the word "36", the number "36," "was the
7 simple average of observations" --

8 MR. SMALL: I'm sorry, I've lost where we
9 were. I thought we were on page 6, line --

10 MR. BELL: 5.

11 THE WITNESS: Line 5.

12 MR. McNAMEE: We started on line 4
13 though.

14 THE WITNESS: I'm sorry, I started on
15 line 4. I started with the beginning of the sentence
16 so that I could make better sense of it.

17 MR. SMALL: I'm there now.

18 THE WITNESS: Okay. "The proxy was the
19 simple average of," scratch "36" -- "observations of
20 monthly average day-ahead off-peak prices as of the
21 last day of each month in the years 2006, 2007, and
22 2008 through September 9."

23 On page 7, line 9, the word "project"
24 should be "projected."

25 On page 9, line 5, "14 percent" should be

1 changed to "7 percent."

2 On that same page 9, line 17,
3 "12 percent" should be changed to "5 percent."

4 Moving to page 12, line 13, "12 percent"
5 should be changed to "5 percent."

6 Page 13, line 2, "29.8 million" should be
7 changed to "approximately 442 million," the number
8 "0.17" should be changed to "2.55."

9 That's it as far as I know.

10 Q. Okay. With those corrections that you've
11 noted in Staff Exhibit 9 and the substitutions
12 represented by Staff Exhibits 9A and 9B, would the
13 contents of these documents be true to the best of
14 your knowledge and belief?

15 A. Yes, sir.

16 Q. And they were prepared by you or under
17 your direction?

18 A. Yes.

19 Q. If I were to ask you the questions
20 contained in Staff Exhibit 9 here today, would your
21 answers be as represented therein with the
22 corrections and substitutions as you noted?

23 A. Yes indeed.

24 MR. MCNAMEE: With that, your Honor, the
25 witnessed is available for cross.

1 EXAMINER PRICE: Mr. Johnson, can you
2 explain to me the changes that were made in Staff 9A
3 and 9B from the previous versions?

4 THE WITNESS: Yes. There were four
5 changes made from the original direct testimony, two
6 are substantive changes, what I would call
7 substantive changes, two are simply operational or
8 mathematical errors that were caught along the way.

9 The first substantive change had to do
10 with the load data that was used to calculate a
11 round-the-clock price pertaining to the auction, the
12 2004 auction.

13 The original data I used was that load
14 data which I had requested as a data request from the
15 company and I believe it was '06, '07, and part of
16 '08 hourly load data. Clearly the bidders in the
17 auction could not have used that load data to
18 formulate their bids, so I corrected that anomaly by
19 going back to the original data that was available to
20 those bidders in the auction room.

21 That changed the load data insofar as
22 what percentage of hours may have been on-peak and
23 what percentage of hours may have been off-peak and,
24 therefore, affected the round-the-clock price.

25 The second substantive data, I would

1 note, I needed to -- the first time through I
2 happened to have missed footnote 6 on page 8. No,
3 let's see, footnote 6 on Attachment 1, page 2 of 3 of
4 Exhibit C of the price matrix and reconciliation
5 mechanism and associated tariff riders that was a
6 document in the data room of the auction.

7 That footnote and the paragraph to which
8 it refers indicates that while the product being
9 auctioned is a full requirements product including
10 distribution losses, the pricing for that product
11 would be grossed up for distribution losses and,
12 therefore, customers would be billed the auction
13 clearing price plus the percentage essentially of
14 distribution losses.

15 So the retail price would have been the
16 auction clearing price plus 6. some number here, I
17 have percent. Let me find that, please, if I can.

18 It's some 6.6 percent approximately, the
19 distribution losses of the first system. Ah, here it
20 is, in fact, it's right on Exhibit 1, 6.612 percent
21 distribution losses.

22 So those are the two substantive changes.
23 The only other changes were either computational or
24 operational errors in spreadsheets that were
25 overlooked at the time but were caught later.

1 EXAMINER PRICE: Thank you.

2 MR. SMALL: Your Honor, I have a request
3 and I've lost my microphone so --

4 EXAMINER PRICE: Mr. Stinson will return
5 your microphone.

6 MR. SMALL: The request has to do with
7 the material that Mr. Johnson appears to have on the
8 stand and seems to have been reading off of. I would
9 like that marked as an exhibit for the record. It
10 seems important to his changes and of course we've
11 got no opportunity to -- it's difficult to do this
12 cross-examination and I think it's important for the
13 record to know what the substance of this change is.

14 EXAMINER PRICE: Mr. McNamee?

15 MR. McNAMEE: I don't know what he's
16 reading from.

17 THE WITNESS: One of -- I have some
18 handwritten notes, but one of the things I read from
19 was the Exhibit C at the price matrix and
20 reconciliation mechanism that was a document taken
21 from the auction data room. I don't think I have any
22 other --

23 MR. SMALL: That's what I was referring
24 to.

25 MR. McNAMEE: I have no objection.

1 THE WITNESS: I have none -- actually I
2 have an extra copy of that.

3 EXAMINER PRICE: Let's go ahead and mark
4 that as Staff 9C.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 THE WITNESS: I have a title page and the
7 reference page.

8 MR. BOEHM: Your Honor, if I may, I throw
9 out a suggestion for your consideration and for
10 everyone's consideration, this seems to be a fairly
11 substantial change in testimony. It is a very late
12 hour, we've got to come back Thursday for the
13 rebuttal testimony of the companies' witnesses. Does
14 it make any sense to ask Mr. Johnson to come back
15 Thursday?

16 EXAMINER PRICE: Let's go off the record.

17 (Discussion off the record.)

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

20 In light of the suggestion that's been
21 made and the lateness of the hour and the newness of
22 the changes to the testimony we'll go ahead and
23 reconvene tomorrow at 9 o'clock and have the
24 cross-examination of Mr. Johnson at that time.

25 Thank you all.

(The hearing was adjourned at 4:53 p.m.)

- - -

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, October 28,
2008, and carefully compared with my original
stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter, CRR, and
Notary Public in and for the
State of Ohio.

(MDJ-3286)

- - -

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/11/2008 3:43:11 PM

in

Case No(s). 08-0935-EL-SSO

Summary: Transcript First Energy Volume IX 10/28/08 electronically filed by Mrs. Jennifer D. Duffer on behalf of Armstrong & Okey, Inc.