

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 Wednesday,
October 29, 2008.

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VOLUME X

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1 Wednesday Morning Session,
2 October 29, 2008.

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4 EXAMINER PRICE: Let's go on the record.
5 Good morning. This is our tenth day of hearing for
6 Case No. 08-935-EL-SSO.

7 At the conclusion of yesterday's hearing
8 staff had tendered its witness Johnson for
9 cross-examination.

10 Mr. Small.

11 MR. SMALL: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Small:

15 Q. Good morning, Mr. Johnson.

16 A. Good morning.

17 Q. Jeff Small, OCC, I have a few questions
18 for you today. Start out with would you please turn
19 to page 4 of your testimony. And I direct your
20 attention to line 15 where you use the words "closer
21 parallel." Do you see that?

22 A. Yes, I do.

23 Q. Is it your testimony that there is less
24 need for adjustments using various datasets by using
25 the FirstEnergy auction experience for 2004?

1 A. I think that's a fair statement.

2 Q. And would you repeat the response? I
3 think we had an interruption.

4 A. Repeat the question then, please.

5 (Record read.)

6 A. Yes, I believe that's the case.

7 Q. On page -- pages 10 -- 10 through 12 of
8 your testimony, 10 through 12, you list a number of
9 factors, all tend towards reducing prices from your
10 market prices, correct?

11 A. Correct.

12 Q. And I noticed in your background
13 experience that you -- you've had various assignments
14 at the -- well, at the Public Utilities Commission
15 having to do with following MISO markets. Would you
16 agree that development of the MISO wholesale market
17 between 2004 and 2008 is another factor that would
18 tend to push down wholesale market prices in an
19 auction if it was held in 2008?

20 A. I'm not sure that that would play a major
21 factor. There are some factors that could press in
22 that direction. The one that I can think of would be
23 that there is more experience today with the
24 operation of LMP markets in MISO so that potential
25 bidders or potential responders to an RFP might have

1 a better sense of how those markets are operating,
2 but I am not so sure that -- that that presses down
3 either because prices could be higher or lower than
4 they were in the MISO than in 2004.

5 Q. Well, my question really doesn't go to
6 what the price -- actual prices are but that the
7 market itself is more organized than before. Is that
8 a factor that would press down on prices?

9 A. Certainly the market is better developed
10 in the following sense, that in December of 2008, the
11 so-called day 2 LMP markets were yet to be
12 implemented. They were to be implemented the spring
13 following that, spring of 2005, which they were. And
14 it took some time to shake those markets out, if you
15 will, for the operators, the dispatch operators, to
16 try various permutations and combinations to
17 understand how they could operate the system and what
18 limits might obtain and so, yes, I think the MISO
19 markets are better developed and in -- I don't want
20 to quibble about -- about terminology, but I'll use
21 yours, better organized.

22 Q. Okay. On page 2 of your testimony you
23 state that you've led teams in tracking retail and
24 wholesale market development; is that correct?

25 A. Yes.

1 Q. Going on to page 4, line 3, you mention
2 price quotes from the Intercontinental Exchange for
3 July 15, 2008. Do you remember that testimony?

4 A. Page 4.

5 Q. Line 3.

6 A. Yes.

7 Q. Are you generally familiar with trends in
8 the wholesale markets and prices quoted in published
9 sources?

10 A. I do track -- I receive a daily
11 publication with those prices. I don't check them
12 every single day, but I maintain an awareness over a
13 period of time, yes.

14 Q. And the 2004 auction which is the primary
15 concern of your testimony, that's the 2004 auction
16 for FirstEnergy, was the auction for firm or non-firm
17 service?

18 A. Firm.

19 Q. And can you describe the difference
20 between firm and non-firm service?

21 A. Firm service is a contractual obligation
22 to provide power regardless -- at the terms and
23 prices negotiated regardless of what happens.

24 Q. And that regardless -- firm service I am
25 talking about now.

1 A. Yes.

2 Q. That would also include the -- a
3 component for the capacity that's needed including
4 any reserves to provide the energy; is that correct?

5 A. I'm not quite following your meaning.

6 Q. Well, you answered that firm service is
7 service regardless, and I am asking whether the
8 regardless is there's an obligation to have the
9 necessary capacity including any reserves that might
10 be required; that is one of the requirements of firm
11 service, correct?

12 A. Clearly one would have to have need --
13 access to capacity in order to deliver energy, so I
14 think the answer to your question is yes.

15 EXAMINER PRICE: Mr. Small, before you
16 leave page 4 I had a question for the witness. It
17 goes back a couple of answers ago.

18 Mr. Johnson, you indicate on page 4 that
19 you had done your calculations on price quotes from
20 July 15, 2008; is that correct?

21 THE WITNESS: Yes.

22 EXAMINER PRICE: And it's also my
23 understanding from your answers that one of your job
24 duties is to follow the markets.

25 THE WITNESS: Yes.

1 EXAMINER PRICE: So you have been
2 following the market since July 15, 2008.

3 THE WITNESS: I have.

4 EXAMINER PRICE: Is it fair to say as we
5 have seen so much other testimony the markets have
6 trended down since that time?

7 THE WITNESS: It is fair to say that.

8 EXAMINER PRICE: Were you here for
9 Mr. Fortney's testimony?

10 THE WITNESS: Unfortunately, no.

11 EXAMINER PRICE: Oh, that's too bad
12 because you would have had some familiarity with the
13 questions I'm about to ask.

14 Do you have a recommendation based upon
15 your following the markets for the price that the
16 Commission should consider for the short-term ESP?

17 THE WITNESS: Yes, I do.

18 EXAMINER PRICE: And what would that be?

19 THE WITNESS: I would recommend 6.75
20 cents on the following basis: The FirstEnergy
21 auction price to retail consumers was \$5.10. The
22 company's offer that was accepted in lieu of the
23 auction was \$46. That is 21 percent below the
24 auction price to retail consumers. FirstEnergy's
25 average price over the three years of this proposal

1 as proposed by FirstEnergy is 85.21. 67.50 is
2 21 percent below that.

3 EXAMINER PRICE: Do you have -- okay.
4 That raises a different question. Do you have
5 recommendations for the base generation rates for
6 FirstEnergy's -- for the three years' commissions?

7 THE WITNESS: No.

8 EXAMINER PRICE: So you have a short-term
9 ESP but not for the longer term.

10 THE WITNESS: That is correct.

11 EXAMINER PRICE: Do you have a
12 recommendation for the MDS rider?

13 THE WITNESS: No.

14 EXAMINER PRICE: Okay. See, going last
15 you get in the position of being the clean-up person.

16 Sorry, Mr. Small. Please proceed.

17 MR. SMALL: If I may for a moment, I want
18 to consider what the answer is.

19 EXAMINER PRICE: And, Mr. Johnson, just
20 to clarify that's all based on the market trending
21 down; is that correct?

22 THE WITNESS: Yes, that's correct.

23 MR. SMALL: I do have a question about
24 that.

25 THE WITNESS: May I go back?

1 EXAMINER PRICE: Yes.

2 THE WITNESS: There certainly is a strong
3 element that goes into that judgment but there also
4 is a weighing of -- a balance of interest. Certainly
5 I could have recommended 21 percent off the price
6 that I have calculated, or I could have recognized in
7 my testimony that I believe the price -- the market
8 price I've projected is in the high range and
9 subtracted from that. But given this is a four-month
10 period, I think the balance of factors that the
11 market has gone down and there -- there could be
12 lower prices but there certainly could -- it
13 certainly could be argued there could be higher
14 prices. I think it strikes a balance. It's a
15 judgment call.

16 EXAMINER PRICE: One other witness, I
17 believe OEG's witness, had recommended that the
18 Commission simply order FirstEnergy to purchase on
19 the day-ahead market. Do you think your price is
20 superior to what the risk the Commission -- or
21 FirstEnergy may encounter by simply purchasing on the
22 day-ahead market?

23 THE WITNESS: I have no idea. Just as
24 yesterday's stock market went up by 900 points the
25 day-ahead market could be just as volatile.

1 EXAMINER PRICE: Thank you.

2 Q. (By Mr. Small) I would like to turn my
3 attention to your exhibits but, first, would you turn
4 to pages 5 through 6 of your testimony. And I want
5 to ask a question -- I will have a few questions
6 concerning your data sources, and then we can go on
7 to your tables.

8 A. Pages 5 and 6.

9 Q. Yes. On page 5, lines 17 through 19.

10 A. Yes.

11 Q. You provide an explanation of the
12 information used for the round-the-clock price for
13 the 2006-2008 period. Do you see that?

14 A. Yes.

15 Q. And you state that the forward -- the
16 price is based -- in your calculations is based on
17 forward prices as of December 8, 2004, correct? At
18 the very end.

19 A. I'm thinking.

20 Yes, that's correct.

21 Q. Okay. Now, we've received a number of
22 adjustments to your -- to your tables, and in the
23 originally filed documents with your testimony the
24 figure \$39.06 was used. And then your first errata
25 had \$39.92. It was filed on October 24. And then we

1 had \$39.74 in your second errata filed on October 27.

2 A. Yes.

3 Q. Now, we have \$39.24 in your third errata
4 that was handed out on October 28. Could you please
5 explain why the numbers keep changing based on your
6 definition of your data sources?

7 A. Those numbers changed because there were
8 some operational errors in the spreadsheet
9 calculations. In one case part of a column was left
10 missing. And in the other case an incorrect column
11 was used. And so each -- each time I had to correct
12 that.

13 Q. Okay. But there hasn't been any
14 conceptual change then. These are just computational
15 corrections; is that correct?

16 A. That is correct.

17 Q. Okay. On page 6, lines 5 through 6, I
18 want to deal with this delicately because you changed
19 this portion of your testimony on the stand
20 yesterday. And I'm looking at lines 5 through 7 on
21 page 6. You crossed out the number 36, correct, on
22 line 5?

23 A. Yes.

24 Q. I guess I find your change -- and I will
25 read what I have from your changes yesterday, but I

1 find it somewhat confusing. On line 6 "As of the
2 last day of each month in the years 2006, 2007, and
3 in 2008 through September 9 as published by Platts
4 Energy Trader." Do I have your testimony correct?

5 A. I think so, but I would like to hear that
6 one more time.

7 Q. "As of the last day of each month in the
8 years 2006, 2007, and in 2008 through September 9 as
9 published in Platts Energy Trader."

10 A. Yes, that's correct.

11 Q. I guess I'm a little bit confused since
12 September 9 is not at the end of the month. Did you
13 use -- did you use the last trading date in August,
14 or did you use some date in September?

15 A. I used the last trading date in August.
16 The analysis was performed before the end of the last
17 date in September, and so I used as many data points
18 as I could. It so happened that the last data point
19 then was September 9, so it's not quite accurate to
20 say the last day in each month.

21 Q. So you used September 9 and not
22 August 29; is that what you are saying?

23 A. I used both.

24 Q. So you used September 9 for the September
25 figure.

1 A. Yes, it was a -- a week of average there
2 as opposed to a month.

3 Q. Okay.

4 EXAMINER PRICE: Mr. Johnson.

5 THE WITNESS: Yes.

6 EXAMINER PRICE: Based upon my
7 calculations in my head, so it's probably inaccurate,
8 that would mean you had 33 observations; is that
9 correct?

10 THE WITNESS: I think that rings true.

11 Q. Would you please turn to your Third
12 Revised Exhibit 1, Staff 9A. Do you have that?

13 A. Yes.

14 Q. Okay. I'm going to run through some of
15 the calculations here. You show an additional \$7.50
16 for transmission and ancillary services, and I'm
17 looking on the line that says "Transmission &
18 Ancillary Services." Do you see that?

19 A. I do.

20 Q. Are you aware that Dr. Jones testified
21 that he multiplied the \$7.50 by a margin so that it
22 was multiplied by a value of greater than 1 in his
23 work?

24 A. I was not aware of that.

25 Q. And are you aware that Mr. Blank

1 testified that he removed more than \$7.50 from Mr. --
2 Dr. Jones' work and Mr. Graves' work in preparing his
3 Attachment 1 to his testimony?

4 A. Unfortunately I didn't hear all of
5 Mr. Blank's testimony. I will indicate, however,
6 that this Third Revised Exhibit 1 does reflect
7 Mr. Blank's Revised Exhibits -- well, Third Revised
8 Exhibit 2.

9 Q. That isn't the question.

10 A. Okay.

11 Q. We'll get there. And I'll just ask the
12 question, even though the \$7.50 is on your table
13 Third Revised Exhibit 1, it actually isn't used --
14 that number is actually not used in the carryover to
15 your calculation of Revised Exhibit 2; is that
16 correct? I mean, you are showing it for comparison
17 purposes on Exhibit 1. But the numbers are not
18 actually used in calculating the number that's
19 carried over to Exhibit 2.

20 A. I do believe that is correct, subject to
21 check.

22 Q. It sounds like you wanted to answer that
23 question, so I asked it.

24 But back to the \$7.50, you were not aware
25 that numbers larger than that were being used by the

1 companies' witnesses and Mr. Blank; is that correct?

2 A. That is correct.

3 Q. So if I'm correct as far as
4 representation of their testimony, the numbers that
5 you do present on the Third Revised Exhibit 1, the
6 7.50 would be larger, and your ratios would be --
7 subsequently would be larger as well, your inflation
8 factors would be larger by some amount.

9 A. Yes, that's true. The inflation factors
10 that I attribute to the companies, the resulting
11 market rate of merit there, the apples-to-apples
12 prices.

13 Q. Right. Both of your inflation factors
14 that you say -- you have in parentheses ratios and
15 your inflation factor prices, those would both be
16 higher, correct?

17 A. Yeah, uh-huh.

18 Q. Okay. Now, I would like to work through
19 your calculation on Third Revised Exhibit 1 for the
20 purposes of obtaining the numbers that you then use
21 in Third Revised Exhibit 2. And let's use for
22 illustrative purposes the 2009 column, all right?

23 A. Okay.

24 Q. So I'm starting with the \$82.46 which is
25 the -- the auction reference price for 2009. Do you

1 see that?

2 A. Yes.

3 Q. Okay. Now, that number is calculated by
4 taking \$5.10 which is in the column labeled 2006-2008
5 divided by 39.25 which is in that same column and
6 multiplying it by 55.71 which is in the column for
7 2009; is that the correct calculation?

8 A. Yes.

9 Q. And if we did that same calculation for
10 2010 and 2011, we would just substitute -- for 55.71
11 we would use 54.85 which is in column for 2010, and
12 2011 we would use \$53.94; is that correct?

13 A. That's correct.

14 Q. Okay. Now, we are going to come back
15 there, but if you could keep your finger at that
16 point and go back to footnote 3 of your testimony.

17 A. Yes.

18 Q. Now, what you have in footnote 3 at least
19 partly defines the product that was being auctioned
20 off in 2004, correct?

21 A. Yes.

22 Q. The 2004 auction product described in
23 footnote 3 of your testimony states that includes
24 ancillary and transmission service, correct?

25 A. Yes.

1 Q. Okay. And to be precise ancillary
2 services and firm transmission service, correct?

3 A. Yes.

4 Q. Okay. Now, let's go back to your table,
5 Third Revised Exhibit No. 1. And on the line "Apples
6 to Apples" you show -- we've used this number already
7 \$5.10. Do you have that in the "Apples to Apples"
8 row, correct?

9 A. Yes, sir.

10 Q. And corresponding to that definition of
11 the product in footnote 3, that \$5.10 has
12 transmission and ancillary services contained in it;
13 is that correct?

14 A. That's my interpretation.

15 Q. And that's why it's being compared with
16 numbers of 84 right next to it, 84.18, 86.45, and
17 89.73, all those numbers even though there may be
18 some questions about the 7.50 transmission but all
19 those numbers were intended to by you when you
20 created this table to include transmission and
21 ancillary services, correct?

22 A. Yes, indeed.

23 Q. So the apples to apples is a comparison
24 of energy and -- which contains transmission and
25 ancillary services within those numbers, correct?

1 A. Correct.

2 Q. For everything on that note, that's the
3 comparison you are doing.

4 A. Yes.

5 Q. Now, when you do the calculation, and we
6 just ran through it, it's 58.10 -- I am doing 2009
7 again -- 58.10 divided by 39.25 and multiplying that
8 by 55.71 so in that calculation we are using -- we
9 are using the \$58.10 which has transmission and
10 ancillary services in it. The result of 82.46 also
11 is intended to have transmission and ancillary
12 services in it; is that correct?

13 A. I'm sorry, the last part again.

14 Q. We are using the number 58.10 which you
15 have said has transmission and ancillary services in
16 it --

17 A. Yes.

18 Q. -- in the calculation so the result of
19 82.46, that should also have transmission and
20 ancillary services in it, correct?

21 A. Yes.

22 Q. Okay. Now, let's go on to your Third
23 Revised Exhibit No. 2. And on that exhibit -- do you
24 have that?

25 A. I have it.

1 Q. Okay. On that exhibit you start with the
2 auction reference price taken from the Third Revised
3 Exhibit 1, correct?

4 A. Correct.

5 Q. And that includes the number we just
6 talked about, we ran through, the number 82.46 for
7 2009. It has transmission and ancillary services in
8 it, and it appears at the top in the column 2009 on
9 the Third Revised Exhibit 2, correct?

10 A. It does.

11 Q. And then you carried over the other
12 prices for 2010 and 2011, correct?

13 A. Yes.

14 Q. Do you have Blank Alternate Attachment 1
15 with you on the stand?

16 A. I do.

17 Q. You do, okay. That is what you are
18 referring to later on in the second box at the
19 bottom. It says "Blank Alternate Attachment 1."
20 That's what you are referring to there, right?

21 A. I'm -- my eyes are swimming over this sea
22 of numbers. Could you point me exactly where you are
23 talking about?

24 Q. I will start over again.

25 A. Yeah.

1 Q. We are on Third Revised Exhibit 2. And
2 there are two boxes at the top and at the bottom.

3 A. Yes, indeed, yes.

4 Q. And there's two sets of -- two columns of
5 numbers.

6 A. Yes.

7 Q. And the first one is labeled "Blank Alt
8 Att 1."

9 A. Yes, I'm with you.

10 Q. That's a reference to Mr. Blank's
11 alternate attachment which has been labeled
12 FirstEnergy Exhibit 1A.

13 A. Yes, it is.

14 Q. Okay. Now, if you could look at that
15 FirstEnergy Exhibit 1A that I just mentioned, if you
16 could go up to --

17 A. We are looking at what?

18 Q. We are looking at Blank Alternate
19 Attachment 1.

20 A. Okay.

21 Q. For purposes of this proceeding it's
22 FirstEnergy Exhibit 1A.

23 A. Oh, okay, all right, fine.

24 Q. Okay. Now, if we go up to the top --

25 A. Yes.

1 Q. -- where it says "Consultant Market
2 Rates," do you see that box?

3 A. I do.

4 Q. That box says as an explanation of the
5 numbers therein "(less Transmission)." Do you see
6 that?

7 A. I do.

8 Q. So do you understand that to mean that
9 the prices that are in that box have the transmission
10 removed from the Jones' and Graves' market prices?

11 A. Yes, indeed.

12 Q. And those same less transmission rates
13 that are in the box on the top right are carried over
14 to the consultant market rates that are at the second
15 to the bottom boxes on that table, correct?

16 A. Are you still on Mr. Blank's Alternate
17 Attachment 1?

18 Q. I certainly are -- am.

19 A. All right.

20 Q. If you could see there is a large box in
21 the middle that says "ESP" on it.

22 A. Yeah.

23 Q. And then below that there is a large box
24 that says "Consultant Market Rates." Do you see
25 that?

1 A. Yes.

2 Q. Okay. So in that box "Consultant Market
3 Rates" --

4 A. Yes.

5 Q. -- Mr. Blank has carried over the numbers
6 from the Jones' and Graves' less transmission and
7 used them in that box "Consultant Market Rates,"
8 correct?

9 A. Correct.

10 Q. And that's -- that's important because
11 that's what you are -- you are doing some revisions
12 for your Third Revised Exhibit No. 2 based on that;
13 is that correct?

14 A. Yes.

15 Q. Okay. So we have prices less
16 transmission being used in the "Consultant Market
17 Rate" box, correct?

18 A. It would appear so.

19 Q. So the comparisons that are being made in
20 Mr. Blank's tables which you have used in your
21 testimony or revised make a comparison between the
22 ESP and the consultant market rates based on
23 generation prices without transmission and ancillary
24 services contained in them; is that correct?

25 A. Yes.

1 MR. SMALL: If I may at this time, your
2 Honor, I would like to have OCC Exhibit 12 marked.

3 EXAMINER PRICE: You may.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. SMALL: Approach?

6 EXAMINER PRICE: You may.

7 Q. Mr. Johnson, you have what's been marked
8 as OCC exhibit 12?

9 A. I have it.

10 Q. Okay. Now, what OCC Exhibit 12 shows --
11 well, let's just run through how the calculations are
12 performed.

13 EXAMINER PRICE: Mr. Small, I would like
14 to give the witness an opportunity to review this
15 document before you start asking him questions.

16 MR. SMALL: I think it might be easier to
17 review after I describe what it is, and then maybe we
18 could give him a chance to look at the numbers.

19 EXAMINER PRICE: That would be fine.

20 Thank you.

21 Q. Because I'm familiar with it and you are
22 not, let's just show how it's put together. At the
23 top -- and I'm the portion that's -- discusses
24 Exhibit 1, the "Auction Reference Prices" for 2009,
25 2010, and 2011 are the numbers you show on both your

1 Exhibit 1 and Exhibit 2. Do you see that?

2 A. Yes.

3 Q. And then the second line there is
4 "Transmission and Ancillary Services" and just for
5 illustrative purposes I used the \$7.50 which is shown
6 on your -- your Third Revised Exhibit No. 1 for
7 transmission and ancillary services. Do you see
8 that?

9 A. Yes.

10 Q. And then the third row at the top there
11 is simply the taking the \$7.50 away from the auction
12 reference prices. Do you see that?

13 A. Yes.

14 Q. So that's the information at the top.
15 And then the auction reference prices less
16 transmission and ancillary where I use \$7.50 as an
17 example, that number which for 2009 is 74.96 is then
18 carried over into the second set of numbers which it
19 says auction reference price, but the 74.96 does not
20 have transmission and ancillary services contained in
21 it. Do you see that?

22 A. I understand.

23 Q. Okay. And then the rest of the -- the
24 rest of the table just carries through the
25 calculations -- or I represent to you that it carries

1 through your calculations except that it uses 74.96
2 instead of 82.46 and so forth and so on.

3 A. I understand the idea.

4 Q. Okay. At this time I think we do have an
5 understanding of the table, and if you would like to
6 review the numbers, we could either take a break or
7 you can just review them on the stand.

8 A. I would like to take some time to review
9 them.

10 MR. SMALL: Could we take a short break?

11 EXAMINER PRICE: Yes. Mr. Johnson, in
12 particular it would be helpful if you would verify
13 the numbers Mr. Small has represented are carryover
14 from your tables are accurate to the best of your
15 understanding.

16 Let's go off the record.

17 (Recess taken.)

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

20 Mr. Small.

21 MR. SMALL: Thank you, your Honor.

22 Q. (By Mr. Small) Mr. Johnson, we have had a
23 break giving you an opportunity to look over OCC
24 Exhibit 12. Would you agree -- do you agree that
25 with the exception -- understanding that OCC Exhibit

1 12 uses the -- deducts the \$7.50 for transmission and
2 ancillary service, that otherwise OCC Exhibit 12
3 carries out the calculations that you carry out in
4 your Third Revised Exhibit No. 2?

5 A. It does carry those calculations out. It
6 does not recognize the extent of adjustments that
7 must be made to my Third Revised Exhibit 1. If you
8 will notice on my Third Revised Exhibit 1, there is a
9 row entitled "Capacity Adjustment." In order for the
10 adjustment to properly adjust my Third Revised
11 Exhibit 1, the parallel exercise to what you have
12 shown me for the \$7.50 transmission component must
13 also be done for the capacity adjustment component.

14 Q. Let's follow through on OCC Exhibit 12
15 because I think we've done the calculations, but I
16 just want to follow through on how the -- how the
17 table is completed. On your Third Revised Exhibit
18 No. 2 you take the sum of the 2009, 2010, 2011 total
19 revenues discounted and that's what you show as
20 approximately \$2.3 million, correct?

21 A. That's correct.

22 Q. And according to OCC Exhibit 12 when we
23 carry out the calculations, I understand you have a
24 qualification but that number in OCC Exhibit 12 is
25 \$1.2 billion shown on some discounted revenue column,

1 correct -- row?

2 A. Yes.

3 Q. Okay. So just carrying out the example,
4 just the calculations, we ended up -- we end with
5 cost to customers \$663 million and change, correct?

6 A. Yes.

7 Q. Okay. I think the essence of your other
8 comment when we returned to Third Revised Exhibit No.
9 1 is that when we use 58.10, we have transmission and
10 ancillary services in there, correct?

11 A. Correct.

12 Q. And we have some -- some other bundle of
13 things having to do with generation service, correct?

14 A. Correct.

15 Q. The numbers that you mentioned, the 5.89,
16 5.93 and 5.96, do you see those? Those are the
17 numbers you just referred to --

18 A. Yes.

19 Q. -- for the capacity adjustment, those
20 numbers are not used in doing your calculations in
21 arriving at the auction reference prices, correct?

22 A. Correct.

23 Q. So the numbers that are carried over to
24 your third exhibit, Third Revised Exhibit No. 2,
25 don't involve the capacity adjustment -- I'm sorry,

1 do not include the calculations that are carried over
2 do not include those -- did not use those numbers?

3 A. Carried over in Exhibit 2?

4 Q. Yes, the numbers that you used -- let's
5 use 2009 as an example again. The numbers that you
6 used in order to come up with the 82.46 which is
7 transferred to the Exhibit 2 are 58.10, 39.25, and
8 55.71, correct?

9 A. 58.10.

10 Q. 58.10, 39.25, and 55.71, those are the
11 numbers you use in --

12 A. Yes, that's correct.

13 Q. Okay. Now, in OCC Exhibit 12 there's an
14 adjustment for \$7.50 just as an example of -- I'm
15 using --

16 A. This piece of paper I have?

17 Q. That's correct.

18 A. Okay.

19 Q. Uses the \$7.50 as an example from your --
20 just taking your number.

21 A. Yes.

22 Q. And we determine that Mr. Blank's table
23 which you adjust --

24 A. Yes.

25 Q. -- was using numbers less transmission,

1 correct?

2 A. Correct.

3 Q. And that's the reason why we need to make
4 that adjustment, correct?

5 A. Correct.

6 Q. Is there an adjustment in Mr. Blank's
7 Attachment 1 -- or his Alternate Attachment 1 where
8 he makes the capacity adjustment to Mr. Jones' or
9 Mr. Graves' -- Dr. Jones' or Mr. Graves' numbers?

10 A. Not that I can see. It would appear to
11 me that capacity costs are included in Jones' and
12 Graves' estimates and his average of same.

13 Q. The reason why we had to make the
14 adjustment from going from your numbers to
15 Mr. Blank's numbers is because he made that
16 adjustment for transmission. He took it out of the
17 Jones' and Graves' numbers.

18 A. Yes. However, you may recall in my
19 testimony I have argued that there was no such
20 capacity charge when the auction occurred in 2004.
21 The MISO has now implemented rules that require such
22 a capacity charge.

23 Q. Are you saying that there is some problem
24 with Mr. Blank's table that he hasn't made an
25 adjustment for capacity charges in making the

1 comparison between ESP and the consultant's market
2 rate?

3 A. No. They are both contemporaneous. They
4 are contemporaneous estimates, and they both include
5 a capacity component. The 2004 auction is in the
6 past at a time when there was no capacity requirement
7 and, therefore, no separately stated capacity charge.

8 Q. And you've just stated separately stated.
9 Earlier in -- in the cross-examination you recognize
10 that that -- it was for firm service, and it did
11 recognize capacity charges; is that correct?

12 A. I would like to modify that to this
13 degree, yes, before the requirement by MISO that
14 capacity be explicitly procured and paid for as a
15 separate piece, one might assume that capacity was
16 included in the LMP prices and bilateral transactions
17 that occurred during, let's say, the December, 2004,
18 time frame.

19 It's my view that now requiring a
20 separately paid for and stated category of costs
21 changes the pricing structure. I have made no study
22 of this, but I don't believe that where that change
23 has occurred, for example, in PJM, that the energy
24 prices have gone down commensurately with the amount
25 of money that would be separately paid for a capacity

1 charge.

2 My belief is the price simply goes up by
3 that much. And it's as a result of a rule that MISO
4 passed. I believe we are paying a capacity charge
5 more now in MISO than we used to pay without that
6 capacity charge requirement. It's -- I understand
7 what you are saying in theory, Mr. Small, but I
8 believe in practice the prices just increased by the
9 amount of the capacity charge. And it's only fair to
10 reflect that as a difference.

11 Q. Is it fair to say there are a number of
12 factors that go into the pricing of electricity?

13 A. Yes.

14 Q. And is it fair to say that just by
15 looking at the prices it's hard to tell whether it
16 went up for -- explicitly because of this factor or
17 that factor?

18 A. Well, that's why it's pretty tough to
19 make a study of.

20 Q. And you have made no study.

21 A. That's correct. It is my belief having
22 observed these markets that the price will do nothing
23 but reflect more total charge given that a capacity
24 charge has been laid on.

25 Q. And isn't that just a repudiation of your

1 previous statement that --

2 A. To the extent that it is, I've retracted
3 and modified my previous statement.

4 Q. But I am not sure I accept modified.
5 Aren't you saying it goes up by 100 percent of what
6 the MISO requirement is, not some portion of it, but
7 it just doesn't recognize which would mean that the
8 capacity charges were not in the firm service at all?
9 That was your previous testimony, that -- that the
10 capacity charges were recognized in the firm prices.
11 I guess I am asking is it 0 percent or 100 percent or
12 is it maybe some -- in your view is it somewhere
13 between 0 and 100 percent being recognized in the
14 firm price?

15 A. In my view it -- it is 100 percent.

16 Q. 100 percent which way?

17 A. Increase when you add a capacity charge
18 to the price. It is my belief that energy prices
19 given the -- the manner in which they are formed the
20 folks who bid into those markets to form those prices
21 do not sit back and say, ah, gee, now, I have a
22 capacity payment. I can back off my energy bid. I
23 don't believe they do that. I believe they bid the
24 same way whether they get a capacity payment or not.
25 I think they sit back and say, ah, now, I'm getting

1 more revenue because I'm getting a capacity payment.

2 Q. And you have conducted no study and
3 that's your opinion --

4 A. That's my opinion.

5 Q. -- from looking at prices.

6 A. Yes.

7 Q. Let's stay with your Third Revised
8 Exhibit No. 2. Just to round things out your Third
9 Revised Exhibit No. 2 and OCC Exhibit 12 both repeat
10 the distribution numbers that are shown in
11 Mr. Blank's Attachment 1, correct? That's the
12 \$137 million in 2009, \$150 million in 2010, and \$151
13 million in 2011?

14 A. Yes, yes, that's correct.

15 Q. And there's no representation by your use
16 of those numbers in the exhibits that the staff
17 agrees with those numbers either in the distribution
18 rate case or in the current ESP proceeding; is that
19 correct?

20 A. No representation.

21 Q. You just used that in order to complete
22 Mr. Blank's comparison.

23 A. That's correct.

24 Q. Now, your calculations -- and we have
25 been running through the summary of it in Exhibits 1

1 and 2 -- they are based on Dr. Jones' round-the-clock
2 figures; is that correct?

3 A. Yes.

4 Q. And those figures are based on July 15,
5 2008, correct?

6 A. Correct.

7 Q. And you've recognized I believe in
8 response to Attorney Examiner Price's questions that
9 you do recognize those prices have declined?

10 A. Yes.

11 Q. And have you reviewed the testimony of
12 OEG witnesses Baron and Kollen?

13 A. Briefly.

14 Q. You do realize that they updated their
15 tables to show -- reflect the numbers to recognize
16 decrease in prices from July 15 to sometime in
17 October of 2008?

18 A. Yes.

19 Q. And with the number of revisions that
20 you've had to your tables, why didn't you reflect the
21 reduction in prices from July 15 to a more current
22 basis in your testimony?

23 A. I felt that it was a fairer -- strike the
24 word fairer. I thought it was a better way to
25 proceed so that the Commission could understand the

1 difference between the company's calculation of a
2 market price and my own calculation of a market
3 price, that they would be on the same basis and,
4 therefore, directly comparable one to the other.
5 That doesn't mean the Commission shouldn't recognize
6 that the market conditions have changed. It
7 simply -- it was an attempt to give them a
8 straight-up comparison based on the same date
9 forwards.

10 MR. SMALL: I have no further questions.

11 Thank you.

12 EXAMINER PRICE: Before we turn to our
13 next witness I have two questions regarding OCC 12.
14 Mr. Johnson, it's my understanding that your
15 testimony is you are going to make the adjustment for
16 transmission and ancillary services, remove that from
17 the price. You have to add back in the capacity
18 adjustments; is that correct?

19 THE WITNESS: I could certainly do that.

20 EXAMINER PRICE: No, no, I'm saying --

21 THE WITNESS: Yes.

22 EXAMINER PRICE: That is correct.

23 THE WITNESS: That is correct.

24 EXAMINER PRICE: My next question is is
25 the method that OCC has suggested here reflected in

1 OCC 12, if you added back in the capacity, is that
2 the best number, or is the best number the number
3 that you provided initially in your opinion?

4 THE WITNESS: Your Honor, I am not quite
5 with you.

6 EXAMINER PRICE: If we did as you
7 suggested and added the capacity adjustment back in.

8 THE WITNESS: Yes.

9 EXAMINER PRICE: Is that a more
10 appropriate number than OCC has come up with than
11 what -- with the adjustment we just discussed than
12 what you originally reflect, or is your original work
13 still the better work, the better number?

14 THE WITNESS: Reflecting both the
15 change -- adjustment for transmission and the
16 adjustment for capacity would beat any of the other
17 numbers.

18 EXAMINER PRICE: Thank you.

19 Mr. Dunn.

20 MR. DUNN: No questions.

21 EXAMINER PRICE: Mr. Bell.

22 MR. BELL: Thank you, your Honor.

23 - - -

24

25

1 CROSS-EXAMINATION

2 By Mr. Bell:

3 Q. Mr. Johnson, I too have some difficulty
4 given the iterations in your testimony and exhibits
5 through all of the errata.

6 A. You have my apology.

7 Q. Let's go back to your original focus.
8 Your testimony in effect creates a hypothetical
9 marketplace, does it not?

10 A. That's correct.

11 Q. And in that vein your testimony parallels
12 that of the companies in also creating a hypothetical
13 market price, does it not?

14 A. That's correct too.

15 Q. And as evidenced in your testimony in the
16 creation of your hypothetical, you rely upon an
17 auction conducted in 2004; is that correct?

18 A. Yes.

19 Q. And was that a real auction, or was that
20 a hypothetical auction?

21 I don't think it's a laughing matter.

22 A. It's not clearly a laughing matter. I'm
23 going to answer you in the literal sense. I met with
24 the auction folks who conducted the auction. I met
25 with the consultants who helped us. I sat in the

1 room while the auction was conducted. An auction was
2 conducted.

3 Q. Thank you. Now, with respect to your
4 testimony you attempt to construct, if you will, a
5 current auction, do you not?

6 A. Yes.

7 Q. And in constructing the current auction,
8 you start out with the 2004 auction which assumedly
9 reflects the condition then existing in the market,
10 correct?

11 A. That's right.

12 Q. Are the conditions that exist today the
13 same as the conditions that existed in 2004,
14 Mr. Johnson?

15 A. No.

16 Q. Now, with respect to the adjustments that
17 you make, did you not find fault in the parameters of
18 the 2004 auction as it was conducted which faults you
19 attempt to correct in the adjustments you make in
20 your filed testimony?

21 A. Some modification to the form of your
22 question. I identify the faults, certain faults,
23 that I believe are attached to the 2004 auction. I
24 don't correct them in any quantitative sense but
25 recognize them as forcing the estimate that I made to

1 be in the upper range of probability where the price
2 might land. In other words, if you corrected those
3 problems with the 2004 auction, you would likely get
4 a better price relative to the forward
5 round-the-clock price.

6 Q. That's your conclusion.

7 A. Yes.

8 Q. Now, with respect to that auction as
9 stated on page 8 of your prefiled testimony, the 2004
10 auction product was specified to be delivered to the
11 customer's meter; is that correct?

12 A. Yes.

13 Q. And would that product include all of the
14 elements of the product being delivered? Yes or no.

15 A. All of the elements, such as, for
16 example?

17 Q. Well, if it was a firm product being
18 delivered, would not that at the meter product
19 include a capacity elements as well as energy
20 elements? And I am not using the word cost. I
21 refuse -- refuse to use the word cost in this
22 proceeding because this is not a cost-based
23 ratemaking case.

24 Do you want the answer read back?

25 A. No. Certainly there had to have been

1 some capacity to produce the energy that would have
2 been delivered had the auction been accepted and
3 those winning bidders been the providers.

4 Q. Is your answer to my question, "Yes,
5 Mr. Bell"?

6 A. Restate the question, please. Reread the
7 question.

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

10 (Record read.)

11 A. My answer is no, not necessarily.

12 Q. Do you know?

13 A. I believe the auction product was for
14 delivered energy.

15 Q. Was that delivered firm energy?

16 A. Yes.

17 Q. Thank you. And does the delivery of firm
18 energy include a capacity element by definition,
19 Mr. Johnson?

20 A. I do not know the answer to that.

21 Q. Now, with respect to the ability of one
22 to place any credence on that 2004 auction, is not
23 one of the other adjustments you made to that 2004
24 auction, Mr. Johnson, the inclusion of FirstEnergy as
25 a bidder in that auction?

1 A. Yes, that's correct.

2 Q. And FirstEnergy was not a bidder in the
3 2004 auction, was it?

4 A. No.

5 Q. Why do you believe that FirstEnergy had
6 to be included as a bidder in the 2004 auction for
7 the Commission to be able to place any credence in
8 the 2004 market price resulting from the auction?

9 A. Well, I can think of two reasons offhand.
10 One is that the Federal Energy Regulatory Commission
11 generally recommends that a true competitive
12 procurement include all bidders that can bid which
13 would have been the -- including FirstEnergy folks.
14 And my own conclusion is that they simply withheld
15 their ability to bid into the auction and didn't bid.
16 It was -- there was no reason they could not have
17 bid. They gave reasons why they didn't bid but there
18 was no reason why they could not have bid.

19 Q. In any event the hypothetical that you
20 construct here reflects changes in the bidding
21 process, in the bidders, and in the time frame in the
22 markets.

23 A. Yes.

24 Q. And those are all changes that you make
25 in your analysis for the appropriateness of the

1 market price today based upon your beliefs; is that
2 correct, as suggested in the discussion with
3 Mr. Small if you believe the capacity adjustment had
4 to be made? You made no study that it had to -- no
5 empirical study relative to the necessity of that
6 adjustment or the magnitude of the adjustment?

7 A. That's correct.

8 Q. You just mentioned in response to my
9 question a moment ago that this Commission in the
10 exercise of its judgment should look perhaps to the
11 FERC; is that correct, because the FERC contemplates
12 a larger number of bidders in your response to my
13 last question?

14 A. I certainly didn't want to speak on
15 behalf of the Commission.

16 Q. Well, speaking on behalf of the staff
17 would you believe that the Commission might look to
18 FERC as a basis for determining a benchmark for
19 excessive earnings?

20 A. A benchmark for excess --

21 Q. A benchmark from which one might
22 ascertain whether excessive earnings might be
23 generated.

24 MR. McNAMEE: Objection.

25 EXAMINER PRICE: Grounds, Mr. McNamee?

1 MR. McNAMEE: I don't think it has
2 anything to do with Mr. Johnson's testimony.

3 EXAMINER PRICE: Mr. Bell, response?

4 MR. BELL: I will withdraw the question,
5 your Honor.

6 EXAMINER PRICE: Thank you.

7 Q. Now, you like the company's projection,
8 do you not?

9 A. Yes.

10 Q. Or attempt to make a projection, a
11 forecast?

12 A. Yes.

13 Q. Using your crystal ball with all of the
14 assumptions you made; is that correct?

15 A. That's correct.

16 Q. Thank you. Now, you indicated that you
17 paid little attention to Mr. Kollen's testimony, did
18 you not?

19 A. Little, yeah, that's correct.

20 Q. And you had access to Mr. Kollen's
21 testimony in the interim between the date that you
22 filed your testimony on October 6 and the time that
23 you made your presentation today on October 28?

24 A. Yes, I had access to many things that I
25 didn't pay attention to.

1 Q. And would you agree that one could -- as
2 opposed to creating a hypothetical for the
3 measurement of projected market prices, one could
4 actually use the actual market prices as reflected in
5 the futures relied upon by Mr. Kollen and set forth
6 specifically in his Exhibit LK-6 which is Ohio Energy
7 Group Exhibit 2A?

8 A. I'll accept that.

9 Q. And Mr. Kollen did a net present value
10 analysis based upon those actual, real, fixed, and
11 measurable forwards, did he not?

12 A. I'll accept that he did.

13 Q. But you paid no attention to that, did
14 you?

15 A. I did indeed pay attention to it.

16 Q. Little attention.

17 A. Not to Mr. Kollen's calculations but I
18 did pay attention to the market trends and conducted
19 my own assessment of what the updated prices -- how
20 they would impact my own analysis.

21 Q. You made a recommendation, I believe, in
22 response perhaps to the question of the Bench, not in
23 your prepared testimony because your prepared
24 testimony does not respond, does it, to an interim or
25 temporary ESP? Your prefiled testimony does not

1 address the subject --

2 A. It does not.

3 Q. However, in response to the Bench's
4 inquiry as to what you would believe to be an
5 appropriate temporary or interim ESP, did you not
6 adopt, in fact, the company's proposal? 6.75 cents
7 as I recall your testimony, is that not correct,
8 Mr. Johnson?

9 A. That's not precisely the company's
10 proposal. Well, actually I am not sure whether
11 that's their interim proposal. I know that to be
12 their 2009 rate after having deferred some of the
13 rate.

14 Q. With respect to the deferrals, did you
15 attempt in your analysis in making this
16 recommendation, although it wasn't addressed in your
17 initial testimony, Mr. Johnson, what the value of
18 those deferrals would be for the four months?

19 MR. McNAMEE: Objection.

20 EXAMINER PRICE: Grounds, Mr. McNamee?

21 MR. McNAMEE: It mischaracterizes the
22 witness's prior testimony. He did not recommend any
23 deferrals, I don't believe.

24 EXAMINER PRICE: Sustained.

25 MR. BELL: That's precisely the basis of

1 the inquiry.

2 Q. What value is -- not recognizing the
3 deferrals during a four-month period, what value is
4 that to the customer? If we are trying to strike a
5 balance between the interest of the customer and the
6 interest of the company, did you measure the value of
7 the deferral during the short-term period?

8 A. No.

9 Q. Okay. And the staff -- and the staff
10 is -- does your recommendation include recognition or
11 non-recognition of the deferral during that
12 four-month period?

13 A. Do you mean by that question do I account
14 for the deferrals and the value of the deferrals?

15 Q. Yes.

16 A. I do not.

17 Q. So from your perspective you are simply
18 recommending a 6.75-cent interim rate; is that
19 correct?

20 A. Yes.

21 Q. Is not your recommendation at odds with
22 Mr. Fortney's?

23 A. I do not know.

24 Q. Oh, you don't compare. Well, let's take
25 Mr. Fortney's testimony, Mr. Johnson, and see the

1 consistency in the testimony of your testimony with
2 Mr. Fortney.

3 EXAMINER PRICE: Let's be clear on one
4 issue here, Mr. Johnson, when I asked you if you had
5 a recommendation, I asked you to take into account
6 changes in the market since the filing of staff
7 testimony; is that not correct?

8 THE WITNESS: I'll stipulate to that.

9 EXAMINER PRICE: Okay.

10 MR. BELL: I'm sorry. I was looking for
11 Mr. Fortney's, and I didn't hear the exchange between
12 the Bench and the witness.

13 EXAMINER PRICE: What I asked the witness
14 was whether my original question had taken into
15 account changes in the market that occurred recently.

16 MR. BELL: Okay. Thank you.

17 Q. (By Mr. Bell) Does not Mr. Fortney in his
18 prefiled testimony recommend effectively -- not
19 effectively but specifically recommend maintaining
20 the current rates including the RTC charges plus a
21 2-1/2 percent surcharge on total bill and maintain
22 the current -- extend the current contracts for CEI?

23 A. I don't have that before me, and I don't
24 recall that specifically, but I will accept that
25 that's what he testified.

1 Q. Would you accept, subject to check, that
2 the 2-1/2 percent surcharge that Mr. Fortney
3 recommends is effectively giving the company an
4 amount of revenues equivalent to what the staff's
5 recommendation was in the rate distribution case?

6 A. I don't know.

7 MR. McNAMEE: Objection.

8 A. I was not involved in that case.

9 Q. Well, Mr. Fortney --

10 ATTORNEY EXAMINER: Wait a second. There
11 is a pending objection so let's allow Mr. McNamee to
12 state his grounds before we move on here.

13 MR. McNAMEE: The witness, I'm sure, does
14 not know the answer and has no ability to check the
15 answer that I am aware of at all.

16 MR. BELL: Mr. McNamee's awareness has
17 nothing to do with the witness, and with respect to
18 his ability to check it, it is in the record of a
19 preceding hearing that this witness could have
20 examined to identify whether or not this
21 recommendation --

22 EXAMINER PRICE: Mr. Bell, this witness
23 just indicated he was not involved in the
24 distribution rate case at all.

25 MR. BELL: Okay.

1 Q. (By Mr. Bell) Would it be a correct
2 statement then, Mr. Johnson, you don't know whether
3 or not your interim recommendation is in conflict
4 with Mr. Fortney's?

5 A. I do not know.

6 Q. Thank you. And by the way you were not
7 proffered by the staff to address an interim
8 recommendation or a short-term ESP in this case, were
9 you? Yours was a gratuitous response to a legitimate
10 inquiry by the Bench?

11 EXAMINER PRICE: Certainly an
12 unobjectionable inquiry.

13 A. Am I supposed to answer that?

14 Q. Yes.

15 A. Would you repeat the question?

16 Q. Would you agree that you were not the
17 designated hitter, if you will, staff hitter to
18 address the issue of an interim ESP?

19 A. I'll agree with that.

20 Q. And as a result, your response to the
21 legitimate inquiry of the Bench is a gratuitous
22 response from you personally, correct?

23 A. Well, I am not sure what the connotation
24 of gratuitous is. I simply answered the question.

25 Q. And that was your personal opinion. You

1 are not representing that to be the opinion of the
2 staff?

3 A. I simply answered the question I was
4 asked.

5 Q. Well, let me ask you this, is the
6 position that you just articulated in response to the
7 Bench the current position of the staff, or is it
8 your personal position?

9 A. Well, I know it's my position.

10 Q. Can you answer the question?

11 A. And I believe it is the position of the
12 staff at this current time.

13 Q. You believe; you don't know.

14 A. I don't but let's just leave it it's my
15 own position. How about that?

16 Q. Thank you. We'll leave it.

17 And that's based upon your beliefs just
18 as the capacity adder is based upon your beliefs
19 without any empirical examination or analysis; is
20 that correct?

21 EXAMINER PRICE: Mr. Bell, that's
22 argumentative.

23 MR. BELL: I agree, your Honor. I will
24 withdraw the question.

25 EXAMINER PRICE: Thank you.

1 Q. Would you turn to page 10 of your
2 testimony, Mr. Johnson.

3 A. Yes.

4 Q. Do you see the question and answer to --
5 in the middle of the page, question 15?

6 A. I do.

7 Q. And do you not there opine, Mr. Johnson,
8 that if an auction were to be held today, it would be
9 more likely than not that the market price you derive
10 in your hypothetical would be greater than -- excuse
11 me, would be less than the market price your
12 hypothetical constructs?

13 A. I think I mean to say that if the same
14 auction were held today with the corrections that I
15 have suggested were at fault with the prior auction,
16 that a lower price relative to the forward prices and
17 round-the-clock price, a lower price, a final
18 clearing price would obtain.

19 Q. You believe, or are you recommending,
20 Mr. Johnson, that the Commission, and that is each
21 one of the five Commissioners, should make an
22 independent assessment of what current market
23 conditions are? And by current market conditions, I
24 mean the market conditions that exist on the date the
25 Commission is called upon to issue an order in this

1 case.

2 MR. McNAMEE: Objection.

3 EXAMINER PRICE: Grounds, Mr. McNamee?

4 MR. McNAMEE: I think the question is
5 asking for some sort of legal conclusion about how
6 the Commission comes to vote, I think, on which the
7 witness would have no possible opinion.

8 EXAMINER PRICE: Actually I took the
9 meaning he should put his mind in the head of the
10 Commissioners which was similarly objectionable.
11 Your objection is sustained.

12 Q. In your judgment would it be appropriate
13 in establishing either an interim ESP or a long-term
14 ESP for the Commission to determine the
15 appropriateness -- appropriate time frame of both the
16 interim and the permanent?

17 A. Say again, please.

18 Q. Okay. That was a complex question. I
19 will try to simplify it. With respect to
20 establishing an ESP Senate Bill 221 does not define
21 the time frame to be covered in that ESP plan.

22 A. You are talking about the term of the --
23 of these --

24 Q. Yeah.

25 A. Time frame term, okay, all right. I

1 thought you meant should they wait until 2015.

2 Q. I apologize. That's my fault, the
3 fuzziness in the question. Thank you for
4 correcting -- suggesting the appropriate correction.
5 The duration of the ESP.

6 A. Do I think the Commission should do that?

7 Q. I'm stating effectively have you in your
8 analysis made any inquiry into the appropriateness of
9 the time period, the duration of any ESP to be
10 established in this case?

11 A. I have not.

12 Q. You have simply accepted the company's
13 proposed ESP time frame plan.

14 A. Well, certainly I know there is a
15 short-term plan also proffered.

16 Q. Well, I am talking about the long term.

17 A. The long term, no, I have not given that
18 much thought.

19 Q. You haven't given that much thought.
20 Isn't the objective with respect to the current
21 proceeding to establish stable revenues over an
22 extended period of time and to levelize, if you will,
23 fluctuations in the market conditions over an
24 extended period of time?

25 MR. McNAMEE: Objection.

1 EXAMINER PRICE: Sustained.

2 MR. BELL: Is the bench waiting for the
3 basis of the objection or a response?

4 ATTORNEY EXAMINER: This is clearly
5 beyond the scope of his testimony.

6 Q. In any event the response to question No.
7 15 reflects, does it not, that your market price --
8 your hypothetical market price may be too high?

9 A. Yes.

10 Q. Thank you. And you do not assess or
11 evaluate the extent to which your hypothetical may be
12 too high, correct?

13 A. Correct.

14 Q. By the way you are aware, are you not,
15 that the futures of electricity, the very subject we
16 are talking about now, firm electricity covered in
17 Mr. Kollen's attachments covered the precise time
18 period of the company's proposed ESP plan, the
19 duration of the company's ESP plan, does it not?

20 A. Again, I haven't reviewed that document,
21 but I have made my own calculations using forwards
22 that do cover that precise time period.

23 Q. Mr. Kollen -- excuse me, Mr. Johnson,
24 with respect to the current market condition, would
25 you agree that there's general acceptance that we --

1 this country is now headed toward, if not in, a
2 recession, economic recession?

3 A. It certainly is being talked about widely
4 in the news, and I would accept that as the truth.

5 Q. And with respect to that recession, would
6 you agree that it's certainly accepted it is not
7 isolated to CEI's service territory or to the state
8 of Ohio but indeed it appears to be widening to be a
9 worldwide recession?

10 MR. McNAMEE: Objection.

11 EXAMINER PRICE: Grounds?

12 MR. McNAMEE: I don't know how this
13 relates to the issue that the witness is speaking to.
14 We are not interested in the state of the world.

15 EXAMINER PRICE: Mr. Bell.

16 MR. BELL: It certainly does. It goes to
17 the depth, the breadth, and the duration of the
18 market conditions that will exist in the state of
19 Ohio over the duration of the company's proposed
20 two-year ESP.

21 EXAMINER PRICE: Although I'm interested
22 in the events in the world at large, I think the
23 purpose of Mr. Johnson's testimony is related to
24 electric markets, so if you could focus on those,
25 that would be helpful.

1 Q. (By Mr. Bell) Do you believe,
2 Mr. Johnson, that with respect to mitigation of the
3 impacts the company's proposed ESP plan both interim
4 and for the two-year period the Commission should
5 consider its impact upon the economy in the state of
6 Ohio?

7 MR. McNAMEE: Objection.

8 EXAMINER PRICE: Grounds?

9 MR. McNAMEE: Outside the scope of his
10 testimony. He's speaking to what an auction would --
11 what the result of an auction would be if an auction
12 were held today.

13 MR. BELL: No, I am not. I am not going
14 to market-based rate. I'm going toward the
15 Commission's establishment of a rate that is not
16 market based.

17 EXAMINER PRICE: I believe Mr. McNamee
18 was referring to the witness's testimony. Sustained.

19 Mr. Bell, I understand I somewhat treated
20 Mr. Johnson as the clean-up witness since he is my
21 last opportunity but acknowledge I probably went
22 beyond the scope of his testimony and if we could try
23 to focus on his testimony, that would be helpful.

24 MR. BELL: Thank you, your Honor.

25 EXAMINER PRICE: He is not a clean-up

1 witness, however, I treated him.

2 Q. Your testimony does not in any way,
3 shape, or form address the issues of pricing
4 capability or mitigation, does it, which the company
5 asserts is the polster in its ESP case?

6 A. I do not address those factors in any
7 way.

8 MR. BELL: Thank you. No further
9 questions.

10 EXAMINER PRICE: Mr. Randazzo.

11 MR. RANDAZZO: No questions.

12 ATTORNEY EXAMINER: Ms. Elder.

13 MS. ELDER: No questions.

14 EXAMINER PRICE: Mr. Breitschwerdt.

15 MR. BREITSCHWERDT: Just very briefly.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Breitschwerdt:

19 Q. Good afternoon, Mr. Johnson. My name is
20 Brett Breitschwerdt. A few questions that I have for
21 NOPEC and Ohio Schools Council.

22 EXAMINER PIRIK: Mr. Bell, could you pass
23 the microphone to Mr. Breitschwerdt.

24 Q. I just want to make sure I understand
25 what your proposal is in response to Examiner Price's

1 questions about short-term ESP. In response you said
2 6.75 cents per kilowatt hour would be the price that
3 you would propose; is that correct?

4 A. Yes.

5 Q. And you would propose to essentially
6 insert that into the company's proposal; is that your
7 proposal?

8 Okay. Let me explain to you what the
9 company's proposal is. I want to understand what
10 your proposal is. The average base generation rate
11 of 7.75 cents per kilowatt hour with 1 cent being
12 deferred so customers would be charged 6.75 cents per
13 kilowatt hour. What you are proposing is that
14 customers be charged just 6.75 cents per kilowatt
15 hour.

16 A. I do not address any of the other aspects
17 of the ESP proposal. His honor asked me what -- a
18 question what I thought the generation rate should be
19 for the period of a short-term plan. And I said
20 6.75. That's the extent of my meaning.

21 Q. So you are not agreeing with any other
22 provisions within the company's short-term ESP?

23 A. No.

24 MR. BREITSCHWERDT: All right. Thank
25 you.

1 That's all I have, your Honor.

2 EXAMINER PRICE: Mr. Yurick.

3 MR. YURICK: No questions, your Honor.

4 ATTORNEY EXAMINER: Mr. Lavanga.

5 MR. LAVANGA: No questions, your Honor.

6 EXAMINER PRICE: Mr. Hayden.

7 MR. HAYDEN: Yes, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Hayden:

11 Q. Good morning, Mr. Johnson.

12 A. Good morning.

13 Q. Before we get started I have several
14 clarifying questions based upon questions from the
15 Bench and the other parties.

16 First, if you could turn to page 12 of
17 your testimony, please.

18 A. Yes.

19 Q. If you go down to line 22, you'll see the
20 words "the net benefits." Do you see that?

21 A. I do.

22 Q. Okay. Now, as I understand it, in your
23 original prefiled testimony those words were "the net
24 benefits."

25 A. That's correct.

1 Q. In subsequent filed provisions you use
2 the words "cost to consumers"; is that correct?

3 A. That is correct.

4 Q. And just to clarify, when you made your
5 changes yesterday, that should read the net benefits;
6 is that correct?

7 A. That's correct. I might add that it
8 also -- the analysis that I did is adjusted to
9 account for Mr. Blank's adjustments.

10 Q. Okay. Thank you. And if you could turn
11 to page 7, please. And specifically I'm looking at
12 footnote 3.

13 A. Yes.

14 Q. You had got some questions from Mr. Small
15 regarding the line there "SSO supply" and below that
16 "ancillary services and firm transmission service."
17 Do you recall that line of questioning?

18 A. Yes.

19 Q. Now, you understand this language to be
20 taken from the supplier master agreement, don't you?

21 A. Yes.

22 Q. And so these are the obligations of a
23 supplier in the 2004 auction; is that correct?

24 A. That's correct.

25 Q. Can we turn our attention now to OCC

1 Exhibit 12, please. And I apologize if you have
2 answered this question already because I don't mean
3 to be redundant. There was a suggestion that the
4 \$7.50 for transmission and ancillary service should
5 be taken out.

6 A. Yes.

7 Q. And you have testified just for my own
8 clarification that in light of that adjustment a
9 capacity adjustment should be made.

10 A. Yes.

11 Q. Added back into the top line of 82.46,
12 81.19, and 79.84; is that correct?

13 A. Yes.

14 Q. And what should be added back in are the
15 numbers from Third -- your Third Revised Exhibit 1
16 for the line for capacity adjustment; is that
17 correct?

18 A. That's right.

19 Q. Now, is it fair to say that your analysis
20 is based on Mr. Blank's analysis that was filed in
21 his testimony and is filed by the companies as the
22 starting place for what you did in your testimony?

23 A. I am not quite sure what you mean.

24 Q. Well, if you go to your Third Revised
25 Exhibit 1, there is a line "Average Projected Market

1 Prices" and then in parentheses you have "Blank."

2 I assume that to be Mr. Blank.

3 A. Yes, sure.

4 Q. So is it fair to say the starting point
5 for your analysis is where Mr. Blank started in his
6 prefiled testimony?

7 A. I'm not sure it's a starting point, but
8 it's certainly one of the points along the way.

9 Q. Okay. Now, your net present value
10 analysis, does that reflect all the pluses and
11 minuses that are contained in the ESP as filed by the
12 companies?

13 A. Yes. Well, let me explain. I simply
14 tried to track the approach taken by Mr. Blank in --
15 in calculating the net present value and either
16 benefit or cost.

17 Q. So you assumed what Mr. Blank filed in
18 his testimony, and then you did your analysis on top
19 of that?

20 A. I assumed his methodology. I don't know
21 and don't have -- have not made any position as to
22 whether it's correct or incorrect, but I certainly
23 used it.

24 Q. Okay. Now, if we could go back to your
25 testimony regarding a question from the Bench on

1 short-term ESP?

2 A. Yes.

3 Q. That is a generation -- 6.75 is a
4 generation rate only.

5 A. Right.

6 Q. And are you suggesting that the companies
7 continue what they are charging today as in
8 transmission, distribution, and RTC?

9 A. I have no opinion on those items
10 whatsoever.

11 Q. You have no opinion on whether RTC
12 charges would continue pursuant to Mr. Fortney's
13 suggestion?

14 A. No.

15 Q. Do you have any opinion on what
16 distribution rates would be?

17 A. No.

18 Q. If we could go to page 3 of your
19 testimony. Now, on line 8 you use the term "market
20 price test." Do you see that?

21 A. Yes.

22 Q. And as I understand, you use that term
23 throughout your testimony. Now, when comparing the
24 ESP to the MRO, do you understand the appropriate
25 comparison to be between the ESP and a market price

1 or between the ESP and the expected results of the
2 MRO?

3 A. I'm not -- I am not sure I get the
4 difference. Would you state that again, please?

5 Q. Sure. I'm referring to your terminology
6 here on page 3, line 8.

7 A. Oh, go ahead.

8 Q. So the question again is when comparing
9 an ESP to an MRO, is it your understanding that the
10 appropriate comparison would be an ESP versus a
11 market price, or would it be an ESP versus the
12 expected results in the MRO?

13 A. I am not quite sure I see the difference
14 between the expected results of an MRO and the market
15 price.

16 Q. So you see no distinction between what a
17 market price might be as defined by a forward and
18 what a supplier would be willing to provide as part
19 of an MRO?

20 A. Clearly what I refer to as my market
21 price test is a simulation of what I think the
22 supplier might provide energy for.

23 Q. So the relevant basis is what a supplier
24 or bidder would provide in an MRO process?

25 A. Well, clearly one cannot know that in

1 advance. So if we had the ability to foresee what a
2 market supplier would indeed actually supply as a
3 result of a competitive procurement, we would use
4 those numbers.

5 Q. Okay. Can we turn to page 4 of your
6 testimony, please. Now, I'm looking at -- starting
7 at line 16 you indicate "A similar procurement today
8 should result in a similar clearing price, except
9 that the clearing price level should reflect a 2008
10 price environment instead of a 2004 price
11 environment." Do you see that?

12 A. Yes, I do.

13 Q. You would agree with me that what we are
14 really looking at today are prices -- the basis of
15 the comparison would be prices for 2009, '10, and '11
16 and not 2008?

17 A. Oh, I clearly understand that. Perhaps
18 it might have been better had I said forward price
19 environment.

20 Q. Okay. Now, on the very next sentence
21 there you indicate "The difference in price
22 environments between 2004 and 2008 is captured in the
23 different forward prices that were offered in 2004
24 and 2008." Do you see that? That spills over onto
25 page 5.

1 A. Yes. I'm going to read it here.

2 Q. Okay.

3 A. Yes, I see that.

4 Q. Okay. Now, is it your testimony that the
5 difference in forward prices between 2004 and 2008
6 reflects the differing risk parameters that potential
7 suppliers would have to account for today that they
8 did not have to account for in 2004?

9 A. The forward price reflects certain risk
10 parameters, certainly not all the risk parameters
11 that have been discussed by others in this case. I
12 believe they do incorporate a locational component.
13 Forward prices are locational in nature, and by the
14 way all of my prices are at the Cinergy hub,
15 therefore, they incorporate supply and demand
16 conditions at that location and the likelihood of
17 a -- of congestion affecting those prices.

18 Q. But you would agree that they do not
19 incorporate all the potential risk parameters -- the
20 differences in risk parameters between 2004 and 2008?

21 A. No, they do not.

22 Q. In fact, your analysis assumes that the
23 ratio between the SSO supply price and the forward
24 energy strip in 2004 is the same as the ratio between
25 that price and the forward energy strip in 2008; is

1 that correct?

2 A. That is correct.

3 Q. Okay. Have you considered changes in
4 risk since 2004?

5 A. I have not done any specific analysis of
6 any individual risk not incorporated in the forward
7 price. No study. I do believe that, for example,
8 shopping risk is the same today as it was in December
9 of '04, shopping risk meaning that customers can
10 leave for a competitive supplier or they can leave
11 the competitive supplier to come back.

12 It's roughly the same number of
13 customers, maybe there is a few more today, and there
14 are roughly the same number of large aggregators as
15 there were in '04.

16 And so my assessment would be that
17 shopping risk would be the same. It's for the same
18 customers who might shop and the same major
19 aggregators who would be in place, so I did make that
20 consideration.

21 Q. Would you agree that the -- there are
22 other risks excluding shopping risks and your opinion
23 on that, you would agree, there are other risks in
24 2008 that are greater than they were in 2004?

25 A. Such as?

1 Q. For example, price volatility risk.

2 A. In my assessment of this situation, price
3 volatility risk applies really only to the component
4 of load shaping. If one can hedge forward major
5 blocks of power, volatility does not affect that.
6 It's the vast majority of the procurement. The
7 remainder of the procurement is the buying and
8 selling of smaller pieces of pipe that are needed --
9 those sales and buys are needed to shape the load to
10 follow the load.

11 And the extent to which volatility is
12 greater today than it was in '05, yes, that would
13 apply to those type situations. I have not made a
14 study of whether prices are more volatile today.

15 Q. You would agree if there were an increase
16 in price volatility risk, there would be a greater
17 risk premium?

18 A. Slightly.

19 Q. Now, you would agree that forward prices
20 in commodity markets reflect investors' then
21 prevailing beliefs about what the future value of
22 that commodity would be in the future?

23 A. Yes.

24 Q. And you would agree that those beliefs
25 change over time.

1 A. Sure.

2 Q. And so you would also agree that power
3 markets are forward looking.

4 A. Yes.

5 Q. Now, just so I'm clear the source of your
6 off-peak numbers you used for your analysis.

7 A. Yes.

8 Q. Were those day-ahead LMPs, or were those
9 observed daily trades? Do you recall?

10 A. The proxy that I formed?

11 Q. Yes.

12 A. They were -- I believe they were
13 day-ahead LMPs, that is, monthly averages of
14 day-ahead off-peak LMPs.

15 Q. Okay. Let's turn to page 6 of your
16 testimony.

17 A. Yes.

18 Q. Now, on lines 9 through 12 you talk about
19 on-peak forwards are not available for 2008 in that
20 entire sentence, do you see that?

21 A. Yes.

22 Q. Your testimony indicates that you used
23 annual strip quotes from December 8, 2004.

24 A. Yes.

25 Q. And those were from page 4 of the Platts

1 Energy Trader down there in your footnote.

2 A. Correct.

3 Q. And that data is significant because that
4 was the day the auction actually took place.

5 A. Correct.

6 Q. And so it was your intention to use
7 forward prices for December 8 which was the date of
8 the auction.

9 A. That would have reflected the market's
10 valuation of future prices for electricity.

11 Q. I'm sorry. And that would be the
12 information available to suppliers on the day of the
13 auction.

14 A. Yes.

15 MR. HAYDEN: Okay. Your Honor, if I
16 could have marked for identification Company Exhibit
17 17.

18 EXAMINER PRICE: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. HAYDEN: This is a three-page
21 document, the first page of which is a portion of
22 Mr. Johnson's workpapers. The second and third pages
23 are page 4 of the Platts Energy Trader which he
24 states in his testimony.

25 Q. Now, Mr. Johnson, the first page is a --

1 one of your workpapers. Can you identify this
2 document as one of your workpapers?

3 A. Yes.

4 Q. So you are familiar with the information
5 on it.

6 A. Yes.

7 Q. And the next page, page 2, is page 4 of
8 the Platts Energy Trader dated -- publication date of
9 Wednesday, December 8, 2004.

10 A. Yes.

11 Q. You are familiar with that document as
12 well.

13 A. Yes.

14 Q. And the third page is again the Platts
15 Energy Trader, Thursday, December 9, 2004, and you
16 are familiar with that document as well.

17 A. I'm certainly generally with it. I don't
18 know that I looked at this particular document. I'll
19 accept that I'm familiar with it.

20 Q. You are familiar with Platts Energy
21 Trader.

22 A. Yeah.

23 Q. Okay. Now, on the first page -- excuse
24 me. And you understand the Platts information to be
25 a market compilation of information.

1 A. Yes.

2 Q. Now, on the first page on the left-hand
3 side under 2006 you see an "on price" which I assume
4 to be an on-peak price of 48.50.

5 A. Yes.

6 Q. And for 2007 48.50?

7 A. Yes.

8 Q. And for 2008 that is 47.50.

9 A. Right.

10 Q. And those are the -- that's the
11 information that you used to derive your Term RTC of
12 39.25.

13 A. Yes.

14 Q. And RTC being a round-the-clock price.

15 A. Right.

16 Q. Now, that 39.25 feeds into your Third
17 Revised Exhibit 1 which is the round-the-clock price
18 term of auction 2006 through 2008; is that correct?

19 A. Yes.

20 Q. Okay. Now, if you go to the second page,
21 Mr. Johnson, you'll see -- and, again, this is the
22 publication date Wednesday, December 8, 2004. If you
23 go to the bottom, you'll see that these are forward
24 prices for December 7, correct?

25 A. Yes.

1 Q. So those would be the prices the day
2 before the auction.

3 A. Yes.

4 Q. And below that you'll see a row marked
5 "Cinergy, into."

6 A. Yes.

7 Q. And if you look all the way to the right,
8 you will see calendar '05, '06, and '07 prices of
9 48.50, 48.50, and 47.50 respectively, correct?

10 A. Yes.

11 Q. And that is -- in fact, that matches the
12 information you used in your analysis.

13 A. That's right.

14 Q. Okay. Now, if you turn to the third
15 page, this is a publication date of Thursday,
16 December 9, 2004.

17 A. Yes.

18 Q. And this actually shows the forward
19 prices for December 8 which were -- which was on the
20 day of the auction.

21 A. Uh-huh.

22 Q. And so that would be the information
23 available to bidders on the day of the auction.

24 A. Well, arguably no. Bidders would not be
25 prepared for the start of an auction in the morning

1 using a publication they had received that morning.

2 They would have to have at least a day to incorporate
3 those prices.

4 Q. Well, I understand that this information
5 was published in Platts on December 9.

6 A. Yeah.

7 Q. But you would agree that the December 8
8 forwards would be available through different sources
9 on December 8.

10 A. I'm not sure of that fact.

11 Q. Okay. The December 8 forwards box down
12 below, the row marked "Cinergy, into," the
13 information there for 2005, 2006, and 2007, those
14 prices are \$48, 48.25, and 47.25, respectively.

15 A. Yes.

16 Q. Now, if that information was available to
17 bidders on the day of the auction, that would be the
18 appropriate price to use.

19 A. Yes.

20 Q. Okay. Now, if we go back to your
21 testimony, page 6, lines 4 through 7, I understand
22 that sentence to now read "The proxy was the simple
23 average of observations of monthly average day-ahead
24 off-peak prices as of the last day of each month in
25 the years 2006, 2007, and in 2008 through September 9

1 as published in Platts Energy Trader"; is that
2 correct?

3 A. That's a good -- yes.

4 Q. Now, you would agree with me
5 incorporating historical averages does not take into
6 account market expectations of future value, correct?

7 A. That's correct.

8 Q. And you would agree with me that the
9 forward prices pertain to a product that is delivered
10 further out into the future, for example, two or
11 three years?

12 A. That's correct.

13 Q. And that in contrast day-ahead prices are
14 for products that are delivered on or about that day.

15 A. Yes.

16 Q. And so it's what the buyers and sellers
17 believe the product is worth on the next day.

18 A. Correct.

19 Q. And so you would agree that the forward
20 price products are a much different product than
21 day-ahead products.

22 A. Yes.

23 Q. Now, if we can go back to your Third
24 Revised Exhibit 1, please.

25 A. May I --

1 Q. Sure.

2 A. -- amplify this last question that you
3 had? Yes, forward products are different from
4 day-ahead products. The unavailability of those
5 forward prices caused in my view the bidders to have
6 greater uncertainty about what the future might be
7 resulting in them likely attaching yet a larger
8 premium to their bids.

9 And so really it is another factor that
10 supports the proposition that an auction today when
11 the off-peak forward prices are available would be
12 lower compared to the round-the-clock price.

13 Q. Okay. Thank you for that clarification.

14 Again, if we could go back to your Third
15 Revised Exhibit 1.

16 A. Third Revised. You know, I'm having
17 trouble finding that thing. When I left the room, I
18 might have.

19 MR. McNAMEE: I have one.

20 EXAMINER PRICE: Thank you, Mr. McNamee.

21 A. I think when I left the room, I might
22 have taken it. Hang on. Hang on. Yeah, this is it.
23 I do have it.

24 Q. Can you go down to the row that is marked
25 "Relationship Ratios."

1 A. Yes.

2 Q. Now, you have 1.48 for 2006 through 2008.

3 A. That refers to the auction.

4 Q. Correct. And for 2009, 1.51; 2010, 1.58;
5 and 2011, 1.66. Are those based on load weighted on-
6 and off-peak prices?

7 A. Yes.

8 Q. Okay. Let's go to page 10 of your
9 testimony. Now, pursuant to your testimony here and
10 also as I understand you had some examination on this
11 issue earlier when you say that actual auction
12 results today would likely be lower, just so I'm
13 clear you did not study or analyze to support that
14 conclusion; is that correct?

15 A. I am not sure how one could do a study or
16 an analysis about that.

17 Q. Is that a yes?

18 A. That's a yes.

19 MR. HAYDEN: Okay. Your Honor, I have no
20 further questions.

21 EXAMINER PRICE: Thank you.

22 Mr. McNamee, redirect?

23 MR. McNAMEE: Let me discuss with the
24 witness.

25 Go off the record for just a moment?

1 EXAMINER PRICE: Yes.

2 (Discussion off the record.)

3 (At 11:31 a.m., a lunch recess was taken
4 until 1:00 p.m.)

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1 Wednesday Afternoon Session,
2 October 29, 2008.

3 - - -

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

5 Mr. McNamee.

6 MR. McNAMEE: Thank you, your Honor.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. McNamee:

10 Q. Mr. Johnson, do you have in front of you
11 OCC Exhibit 12?

12 A. Yes.

13 Q. Okay. Could you describe OCC Exhibit 12
14 for me, please.

15 A. It's information on price update
16 adjustments.

17 Q. Yeah. Do you believe that is an effort
18 to reflect one of the corrections that was talked
19 about in your cross-examination?

20 A. Yes, absolutely.

21 Q. Okay. In your view is it appropriate to
22 make that correction in isolation?

23 A. No. There are two corrections that need
24 to be made. This particular correction on the OCC
25 exhibit subtracts out transmission to reflect

1 Mr. Blank's revised exhibit.

2 The other correction that needs to be
3 made is to add back in the capacity that is included
4 in those prices on Mr. Blank's exhibit thus
5 conforming these auction reference prices to include
6 the components they need to include.

7 Q. Okay. In your view would it be proper to
8 use either your -- the calculations as reflected in
9 9A and 9B or the calculation that is reflected in OCC
10 12?

11 A. No.

12 Q. Okay. And why not?

13 A. They do not include all of the -- all of
14 the proper elements comprising the product being
15 priced.

16 Q. By any chance have you prepared a
17 document that does include those things?

18 A. By gosh, I have. It's entitled "Fourth
19 Revised Exhibit No. 1."

20 MR. McNAMEE: Your Honor, I would ask to
21 have marked at this time Staff Exhibit No. 9D.

22 EXAMINER PRICE: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. McNAMEE: Yeah, two-page document
25 titled "Fourth Revised Exhibit" 1 on the first page,

1 "Fourth Revised Exhibit 2 on the second page."

2 Q. Mr. Johnson, do you have in front of you
3 what's been marked for identification as Staff
4 Exhibit 9D?

5 A. 9D.

6 Q. Good. What is that?

7 A. That is a revised version of my Third
8 Revised Exhibit 1 and a revised version of my Third
9 Revised Exhibit 2 revised to include the proper
10 components so that the product being priced has got
11 all the right stuff in it.

12 Q. Okay. And which two corrections are made
13 explicitly?

14 A. I subtract out transmission and ancillary
15 services and add in the capacity adjustment that
16 originally -- originally I had taken those out and
17 put them back in. I did the opposite.

18 Q. Okay. Now, so do you believe that the --
19 the information contained in what's been marked for
20 identification as Staff Exhibit 9D reflects the
21 correct result of the analytical approach that you
22 recommend in your testimony?

23 A. Yes, I believe it does.

24 MR. McNAMEE: That would complete my
25 redirect examination.

1 EXAMINER PRICE: Thank you.

2 Mr. Small.

3 MR. SMALL: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Small:

7 Q. Mr. Johnson, I assume you have got your
8 latest exhibits, your Fourth Revised Exhibits 1 and 2
9 in front of you?

10 A. Yeah, I call it the latest and greatest.

11 Q. Let's run through the numbers a little
12 bit. Refer to the auction reference prices at the
13 bottom.

14 A. Yes.

15 Q. And, again, I will use for illustrative
16 purposes the 2009 column. In that column you have a
17 new number of \$80.35 at the bottom.

18 A. Yes.

19 Q. And that number is arrived at by taking
20 58.10 dividing by \$39.25 which is a ratio of 1.48.

21 A. Yes.

22 Q. And multiplying that by 55.71 which is in
23 the 2009 column.

24 A. Yes, yes.

25 Q. And then adding \$5.09 for capacity

1 adjustment and subtracting \$7.50; is that correct?

2 A. That is right.

3 Q. So the -- and the motivation behind
4 adjusting for the -- doing the transmission
5 subtraction was to prepare these numbers -- the
6 ultimate number, 80.85, for use with Fourth Revised
7 Exhibit No. 2, correct?

8 A. Yes.

9 Q. And that's because you have borrowed the
10 method of -- or adjusted figures but adopted the
11 method of Mr. Blank, and Mr. Blank's comparison
12 between the ESP and the alternative is done
13 subtracting out transmission and ancillary services,
14 correct?

15 A. Yes.

16 Q. So the figures that you have got in the
17 auction reference prices are not really the same as
18 they were before, those are now auction reference
19 prices less transmission, correct, less transmission
20 and ancillary services?

21 A. Yes.

22 Q. They are not directly comparable to the
23 concept you were trying to get at in the Third
24 Revised Exhibit 1. These are less transmission now;
25 before they were not.

1 A. No. But they are more directly
2 comparable to the numbers Mr. Blank uses.

3 Q. Okay. And then you use the auction
4 reference prices which I think we understand now are
5 less transmission and ancillary services, and you use
6 that in your Fourth Revised Exhibit 2, correct?

7 A. Yes.

8 Q. Okay. Now, on Fourth Revised Exhibit 1
9 we've lost those comparisons Apples to Apples that
10 you presented on the Third Revised Exhibit, correct?

11 A. Yes. I thought they were going to just
12 be confusing because they weren't used as anything in
13 Exhibit 2 and didn't particularly show anything
14 useful.

15 Q. And the motivation for making the
16 capacity adjustments, and we said there is -- there
17 are two adjustments, one for transmission and
18 ancillary services and the other for capacity. The
19 motivation behind your change to include capacity
20 adjustments in your -- capacity adjustment in your
21 numbers has nothing to do with the fact Mr. Blank
22 changed a figure in Mr. -- Dr. Jones' and Mr. Graves'
23 evaluation? It has nothing to do with the use of his
24 table, correct? There's no capacity adjustment by
25 Mr. Blank.

1 A. No.

2 Q. Okay. And the motivation -- the only
3 purpose is served by having the capacity charge
4 amount -- okay. The only purpose served by making
5 the capacity charge adjustments is your decision
6 apparently on the stand that there were -- there were
7 capacity charges that were absent from your numbers
8 in the Third Revised Exhibit 1; is that correct?

9 A. Try that one again, please, Mr. Small.

10 Q. All right. I'll take it back one step.
11 The motivation for making the transmission and
12 ancillary services charge adjustment was that it was
13 pointed out to you that Mr. Blank -- Mr. Blank's
14 tables excluded transmission and ancillary services,
15 correct?

16 A. Yeah, right.

17 Q. But there was no adjustment made by
18 Mr. Blank for the capacity charges. That was not the
19 motivation for you --

20 A. That's correct, that's correct. I had
21 made an adjustment. I subtracted out capacity in my
22 Revised Third -- Third Revised.

23 Q. The motivation for your changing the
24 capacity -- making capacity adjustment in your most
25 recent numbers is that you've decided now that there

1 are -- that there was a difference between 2004 and
2 2008 where 2008 has an explicit capacity charge,
3 whereas, the firm prices that were quoted in 2004 you
4 now believe did not include the capacity charge
5 component; is that correct?

6 A. They did not include, that's correct.

7 Q. And I'm a little bit confused by this,
8 but it seemed to me that the last time you were asked
9 that question by Mr. Bell, whether it included the
10 capacity charge or not, your response was "I don't
11 know." Was that your response to Mr. Bell's question
12 about whether the firm prices included a capacity
13 charge?

14 A. Which firm prices?

15 Q. The motivation for the question was the
16 firm prices that were in the 2004 auction prices.

17 A. I think I did say I didn't know.

18 Q. So implicit -- implicit because I didn't
19 hear a question and answer but implicit in your
20 numbers here is now you have made a decision that the
21 capacity charges were not in the firm prices; is that
22 correct?

23 A. Well, I think I explained this earlier by
24 saying that the Midwest ISO has changed the rules
25 between December of '04 and today. In December of

1 '04, they had no specifically -- they had no
2 requirement to identify and procure and pay for
3 capacity so that there was no such cost component
4 identified.

5 And I said that also that in -- I
6 believed that in the real world that when they added
7 that requirement, a new charge appeared that did not
8 diminish the auction price for energy. In fact, it
9 was an additive factor. Now, that may be good market
10 design or it may be poor market design, but I believe
11 that today a purchaser on the wholesale market pays
12 that capacity price in addition to whatever the
13 energy price was before, that is, over and above the
14 however you want to think of the prices in 2004, if
15 that same price were there today, they would pay that
16 price plus a capacity charge. That is to say, there
17 was no piece of this new charge embedded -- let me
18 take that back.

19 In practice the way the market operates
20 as a result of the MISO requirement is you pay the
21 full amount more for that capacity today and did not
22 pay that full amount before.

23 Q. Okay. Mr. Johnson, my question was quite
24 different than what you asked. You're right you did
25 respond essentially like that at least to one of the

1 questions earlier today, but rather than move to
2 strike your question I will just direct you to what I
3 actually asked which was is it implicit, just
4 implicit, in the numbers that you have the view you
5 just expressed? Did the numbers include that
6 implicit view that the capacity charges were not in
7 the firm prices in 2004?

8 A. I think that's a logical -- hang on. Let
9 me think here.

10 I think it is only logical to say that.

11 MR. SMALL: I have no further questions.

12 EXAMINER PRICE: Thank you.

13 Mr. Porter.

14 MR. PORTER: No questions.

15 EXAMINER PRICE: Mr. Sites.

16 MR. SITES: No questions, your Honor.

17 EXAMINER PRICE: Mr. Bell.

18 MR. BELL: Absolutely.

19 - - -

20 RECROSS-EXAMINATION

21 By Mr. Bell:

22 Q. Mr. Johnson, your effort to resuscitate
23 the credibility of your methodology with the fourth
24 revision to your exhibit, I would like to address
25 that subject. Do you recall my examination of you,

1 Mr. Johnson, with respect to the 2004 auction and
2 whether or not the prices submitted in that auction
3 reflected elements of capacity to the extent that the
4 auction was for firm kilowatt hours?

5 A. I take umbrage with your preamble to the
6 question that I am to resuscitate my credibility.

7 Q. Take umbrage. Would you answer the
8 question.

9 A. Would you repeat the question without the
10 preamble.

11 MR. McNAMEE: Objection. We are just
12 arguing here.

13 Q. With --

14 EXAMINER PRICE: Mr. Bell, please
15 rephrase your question.

16 MR. BELL: I will, thank you, your Honor.

17 EXAMINER PRICE: Mr. Johnson, Mr. McNamee
18 will make the objections.

19 THE WITNESS: I hope so.

20 EXAMINER PRICE: You answer the
21 questions.

22 Rephrase your question, Mr. Bell.

23 MR. BELL: Yes, your Honor.

24 Q. (By Mr. Bell) Do you remember our earlier
25 dialogue on your original cross-examination with

1 respect to your methodology?

2 A. Yes.

3 Q. And your perception that the 2004 bids,
4 if you will, did not include capacity?

5 A. Correct. As -- I won't say that.

6 Q. Now, with respect to whether it did or
7 did not, you do not know, do you, Mr. Johnson?

8 A. Well, I certainly can think of an example
9 where it did not.

10 Q. Can you think of an example where it
11 would?

12 A. I don't know. You will have to give me a
13 moment on that one. I began to answer your question.
14 And the example where it would not would be when a
15 supplier held a liquidated damages contract to serve
16 that load. I don't believe a liquidated contract --
17 damages contract has anything to do with capacity.
18 It would be at the supplier's risk as to whether the
19 underlying party performed.

20 Q. Would not your assumption that it did not
21 improve capacity necessarily result in the conclusion
22 that the prices bid at that time may or may not have
23 returned the bidders cost of capital?

24 A. There's a lot of twists. Please, if you
25 would, once more or read it back, please.

1 MR. BELL: Please.

2 (Record read.)

3 THE WITNESS: Would it be my assumption
4 that.

5 (Record read.)

6 A. I can't understand this question.

7 Q. Let me be more direct. With respect to
8 the provision of energy to a retail customer, do you
9 know the proportionality of the components? And I am
10 not getting into cost levels now. Do you know for
11 firm delivery of the kilowatt hour of energy to a
12 retail customer how much of that product
13 proportionally is related to generation versus pure
14 energy?

15 A. How much one costs versus the other?

16 Q. No, from a proportionality standpoint
17 with respect to the product being delivered.

18 A. Yes.

19 Q. And the product being delivered is to the
20 retail customer. Do you understand that?

21 A. Yes.

22 Q. Now, with respect to that product, do you
23 know the proportionality of that product as between
24 capacity and energy? Do you understand that
25 question, Mr. Johnson?

1 A. Well, I don't know what units to use.
2 When you talk about proportionality, it means
3 something divided by something. I don't have any
4 units here.

5 Q. Do you know what the proportionality of
6 the GEN rate is to the total revenue request in this
7 case?

8 A. No.

9 Q. Would you accept that the GEN rate in
10 this case constitutes the bulk of the dollars that
11 are being considered by the Commission in its
12 authorization of the ESP?

13 MR. McNAMEE: Object.

14 Q. Would you accept that, Mr. Johnson?

15 MR. McNAMEE: Objection.

16 ATTORNEY EXAMINER: Grounds, Mr. McNamee?

17 MR. McNAMEE: He says he doesn't know.

18 EXAMINER PRICE: You can answer the
19 question if you know.

20 A. I don't know.

21 Q. You are advising the Commission on
22 policy; is that correct?

23 A. I'm advising the Commission on certain
24 aspects of certain matters that will help them to
25 formulate policy.

1 Q. Thank you. And would you agree that the
2 mathematical adjustments that you have just made do
3 not alter in any way pro or con the validity of the
4 hypothetical that you have constructed for purposes
5 of the Commission's relying on it?

6 You look confused. I will restate the
7 question.

8 A. Yes. I wish you could keep them a little
9 simpler.

10 Q. Would you agree, Mr. Johnson, that the
11 corrections that you have made are mathematical
12 corrections?

13 A. Yes.

14 Q. In your Fourth --

15 A. Yes, I would agree to that.

16 Q. Fourth Revised Exhibits 1 and 2?

17 A. Yeah.

18 Q. And as a result, those changes do not add
19 from or detract from the legitimacy of the
20 methodology that you have advanced from the very
21 outset for determining the market price?

22 A. No, that's correct, I will agree with
23 that.

24 MR. BELL: Thank you. No further
25 questions.

1 EXAMINER PRICE: Ms. Elder.

2 MS. ELDER: No questions, your Honor.

3 EXAMINER PRICE: Mr. Breitschwerdt.

4 MR. BREITSCHWERDT: No questions.

5 EXAMINER PRICE: Mr. Yurick.

6 MR. YURICK: Nothing, your Honor.

7 EXAMINER PRICE: Mr. Lavanga.

8 MR. LAVANGA: No questions, your Honor.

9 EXAMINER PRICE: Mr. Hayden.

10 MR. HAYDEN: No questions.

11 MR. McNAMEE: Staff would move --

12 ATTORNEY EXAMINER: I am not done,

13 Mr. McNamee.

14 MR. McNAMEE: Sorry. Are you sure?

15 - - -

16 EXAMINATION

17 By Examiner Price:

18 Q. Mr. Johnson.

19 A. Yes, sir.

20 Q. Mr. Bell referred to your analysis or
21 your projections as a hypothetical; is that correct?

22 A. Yes.

23 Q. It's also fair to characterize it as a
24 projection?

25 A. Sure.

1 Q. And it's your understanding, is it, that
2 the only thing the Commission has to rely upon are
3 projections or hypotheticals because there is no
4 actual market rate option to determine at this time?

5 A. Not until those things happen do they
6 have any real facts to go by.

7 Q. Exactly. Mr. Bell also characterized
8 your basis for your analysis as your beliefs. Would
9 you also think it's not -- that wasn't a question.
10 That was just the set-up.

11 A. Don't worry. It wasn't my answer.

12 Q. Would you also characterize that as your
13 judgment?

14 A. Absolutely.

15 Q. And this was your best professional
16 judgment was preparing this analysis; is that
17 correct?

18 A. Yes, indeed.

19 Q. And the short-term ESP rate that I asked
20 you about earlier was your best professional judgment
21 as to the rate -- proper rate at this time?

22 A. Absolutely.

23 EXAMINER PRICE: Thank you. I'm done.

24 Mr. McNamee.

25 MR. McNAMEE: Staff would move for the

1 admission of Staff Exhibits 9, 9A, 9B, 9D. I don't
2 know if we have any need for 9C. That was the
3 two-page document that Mr. Small wanted to have
4 marked.

5 EXAMINER PRICE: We will take these one
6 at a time. Any objection to the admission of Staff
7 Exhibit 9?

8 Seeing none it will be admitted.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 EXAMINER PRICE: 9A?

11 Seeing none it will be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER PRICE: 9B?

14 Seeing none it will be admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER PRICE: And 9D?

17 Seeing none that document will be
18 admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER PRICE: Mr. Small.

21 MR. SMALL: Yes, thank you, your Honor.

22 OCC moves -- I'm going to move Staff Exhibit --
23 what's been labeled as Staff Exhibit 9C and OCC
24 Exhibit 12.

25 EXAMINER PRICE: Do you have any

1 objections to the admission of Staff Exhibit 9C?

2 Seeing none it will be admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER PRICE: Any objection to OCC
5 Exhibit 12?

6 MR. McNAMEE: I'm loathed to do it, but I
7 feel obligated to object. It seems to me that the
8 record shows that this is a mathematically correct
9 incomplete adjustment and that's all we have in the
10 record with regard to OCC Exhibit 12, so it would
11 seem to me that adding it to the record would create
12 confusion rather than clarity.

13 EXAMINER PRICE: Mr. Small.

14 MR. SMALL: Absolutely not. So much of
15 the questioning in this -- my examination was off the
16 exhibit. I don't know how you can have a record and
17 not include the exhibit over which we poured such
18 attention for such a long time.

19 EXAMINER PRICE: Well, it's unlikely I'm
20 ever going to rule with somebody who is loathed to
21 make an objection. The document will be admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 MR. HAYDEN: Your Honor, I would also
24 move for the admission of Company Exhibit 17.

25 EXAMINER PRICE: Any objection to the

1 admission of Company Exhibit 17?

2 It will be admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER PRICE: Mr. Johnson, you are
5 excused.

6 Okay. Do we have anything else that we
7 need to address today?

8 MR. McNAMEE: Nothing.

9 EXAMINER PRICE: We will start tomorrow
10 at 9 o'clock with witness Dr.?

11 MR. BURK: Dr. Vilbert.

12 EXAMINER PRICE: Vilbert, move on to
13 Mr. Warvell, and Mr. Blank time permitting.

14 We are off the record.

15 (The hearing was adjourned at 1:38 p.m.)

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CERTIFICATE

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I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Wednesday, October 29,
2008, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5006)

- - -

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