

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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3 In the Matter of the :  
Application of Columbus :  
4 Southern Power Company for:  
Approval of its Electric :  
5 Security Plan; an : Case No. 08-917-EL-SSO  
Amendment to its Corporate:  
6 Separation Plan; and the :  
Sale or Transfer of :  
7 Certain Generating Assets.:

:  
8 In the Matter of the :  
Application of Ohio Power :  
9 Company for Approval of :  
its Electric Security : Case No. 08-918-EL-SSO  
10 Plan; and an Amendment to :  
its Corporate Separation :  
11 Plan. :

12 - - -

13 PROCEEDINGS

14 before Ms. Kimberly W. Bojko and Ms. Greta See,  
15 Hearing Examiners, at the Public Utilities Commission  
16 of Ohio, 180 East Broad Street, Room 11-C, Columbus,  
17 Ohio, called at 9:00 a.m. on Tuesday, November 18,  
18 2008.

19 - - -

20 VOLUME II

21 - - -

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1 Tuesday Morning Session,

2 November 18, 2008.

3 - - -

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

6 Good morning. This is a continuation of  
7 case numbers 08-917-EL-SSO and 08-918-EL-SSO being in  
8 the matters of the applications of Columbus Southern  
9 Power Company and Ohio Power Company for approval of  
10 electric security plans and other related matters.

11 At this time we'll take abbreviated  
12 appearances just to determine who is in the room for  
13 today's hearing. Please just state your name and the  
14 party that you represent.

15 Start with the company, please.

16 MR. RESNIK: Marvin Resnik, Steve Nourse,  
17 Dan Conway for the companies.

18 EXAMINER BOJKO: Thank you.

19 Mr. Smalz.

20 MR. SMALZ: Michael R. Smalz and Joseph

21 E. Maskovyak for the Appalachian People's Action

22 Coalition.

23 MR. O'BRIEN: Rick Sites and Tom O'Brien

24 for the Ohio Hospital Association.

25 MR. MARGARD: Werner Margard, John Jones,

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1 Tom Lindgren, assistant attorneys general, on behalf  
2 of the staff.

3 MR. PETRICOFF: Howard Petricoff on  
4 behalf of Integrys Energy, Constellation NewEnergy,  
5 Constellation Energy Commodity Group, the Ohio School  
6 Business Association, EnerNoc and Powerline.

7 MS. GRADY: Yes. Maureen Grady, Jackie  
8 Roberts, and Mike Idzkowski on behalf of Consumers'  
9 Counsel.

10 EXAMINER BOJKO: Mr. Randazzo.

11 MR. RANDAZZO: Yes. Sam Randazzo, Lisa  
12 McAlister and Joe Clark on behalf of the Industrial  
13 Energy Users of Ohio.

14 MS. WUNG: Good morning. Grace Wung from  
15 the Commercial Group.

16 MR. BOEHM: David Boehm and Mike Kurtz on  
17 behalf of the Ohio Energy Group.

18 MR. BELL: Langdon Bell on behalf of the  
19 Ohio Manufacturers Association.

20 EXAMINER BOJKO: Do we have any other

21 intervening parties? Seeing none, Mr. Baker is a

22 continuation. He is still on the stand.

23 And, Mr. Baker, you are still under oath.

24 THE WITNESS: Yes, I understand that.

25 EXAMINER BOJKO: Please proceed. We left

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1 off with OCC.

2 MS. ROBERTS: Thank you.

3 - - -

4 J. CRAIG BAKER

5 having been previously duly sworn, as prescribed by

6 law, was examined and testified as follows:

7 CROSS-EXAMINATION

8 By Ms. Roberts:

9 Q. Good morning, Mr. Baker.

10 A. Good morning.

11 Q. Mr. Baker, you testified earlier that

12 you're familiar with Bill 221.

13 A. I have some familiarity with it, yes.

14 Q. Do you agree that in deciding the issues

15 regarding the 1/1/09 plan the Commission should

16 follow the law in Senate Bill 221?

17 A. I believe the Commission will need to

18 follow the law and they'll also need to interpret the

19 law.

20 Q. Your proposed interim rates include  
21 reconciliation, is that correct, the interim plan?

22 A. If you're discussing V.E --

23 Q. Yes.

24 A. -- it is a reconciliation. We don't have  
25 a proposal for interim rates.

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1 Q. And do you see any provision in 4928.141  
2 for reconciled rates?

3 A. I believe that I testified yesterday that  
4 we believe that's an acceptable provision under the  
5 ESP section which is a not-limiting provision.

6 Q. Although under 141 do you agree that's  
7 the section that controls what rates will be in  
8 effect should the Commission not enter an order  
9 approving a permanent ESP plan?

10 A. Not being a lawyer I'm not sure I can  
11 answer that directly, but I will say that we are not  
12 proposing to change the rates on 1/1/09. What we are  
13 saying as part of our ESP plan, that if it's  
14 approved, whatever is ultimately approved be  
15 retroactive to January 1 and that's the provision in  
16 the ESP.

17 Q. Regarding the increase in POLR charge  
18 that you propose, do you find any provisions for that  
19 in 4928.141?

20 MR. RESNIK: Excuse me, your Honor. I  
21 want to object. Mr. Baker has said that the  
22 company's proposal is for section V.E and there is no  
23 increase in the POLR charge in that context.  
24 Mr. Hess has made a proposal, and I believe that the  
25 state of the record is that the company has indicated

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1 suggested changes but its basic proposal, besides the  
2 meeting 150 days, Mr. Baker said the second  
3 alternative is V.E, so I think it mischaracterizes  
4 the witness's testimony.

5 Q. Let me be clear in the second --

6 EXAMINER BOJKO: Hold on, there's a  
7 pending motion.

8 MS. ROBERTS: I'm sorry.

9 EXAMINER BOJKO: The objection's  
10 sustained. Please rephrase your question.

11 Q. Then in the company's second alternative  
12 proposal which is not V.E, are you clear on what  
13 proposal that is I'm referencing? The proposal in  
14 response to Mr. Hess's testimony.

15 A. Let me go back. We talked yesterday in  
16 my view we have two proposals and one modification.  
17 First proposal is that the Commission be able to get  
18 their order out in 150 days. The second one is in  
19 the event they are unable, this is what we believe

20 should be done. If the Commission finds it legal to  
21 put in interim rates that are consistent with what  
22 Mr. Hess believes ought to be done, I have just  
23 proposed some other modifications.

24 Q. The other modifications you have proposed  
25 include increasing the POLR rate; is that correct?

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1       A. Yes.

2       Q. And have you seen anywhere in section 141  
3 that there is a provision for a change in the POLR  
4 rate?

5       A. I have not seen any provision in 141 that  
6 deals with POLR.

7       Q. All right. And you have testified that  
8 the increase in the POLR rate that you're proposing  
9 in response to Mr. Hess's testimony would be half the  
10 POLR rate that you have proposed in the ESP filing;  
11 is that correct?

12      A. That is correct.

13           MR. RESNIK: Your Honor, can I have that  
14 question and answer read back, please?

15           (Record read.)

16           EXAMINER BOJKO: Please continue.

17           MR. RESNIK: Thank you.

18           MS. ROBERTS: Thank you.

19      A. Now let me just make a point there, and

20 that is that that is to be -- that is a proposal to  
21 modify Mr. Hess's proposal and it would still be, in  
22 our view, trued up to equal whatever the Commission  
23 approved as far as POLR. That is just some form of  
24 an interim rate plan.

25 Q. On page 8 of your testimony, lines 7

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1 through 9, what percentage increase at 1/1/09 would  
2 be POLR rates receive for CSP and OP for this  
3 recommendation?

4 A. I have not done that calculation.

5 THE WITNESS: I'm sorry, could I have the  
6 question read back?

7 (Record read.)

8 A. I stand by my answer.

9 Q. All right. Did you testify yesterday  
10 that the proposed POLR rates for CSP were .60793  
11 cents?

12 A. No, I don't believe I did.

13 Q. Are the proposed POLR rates for the  
14 permanent ESP .60793 cents?

15 A. What I have in front of me, I don't have  
16 how it breaks down by customer class. I just  
17 testified yesterday to the total dollar impact of our  
18 proposed POLR addition in the year 2009.

19 Q. Do you have the application with you?

20 A. I don't have it here on the stand, no.

21 Q. I'm going to provide it to you if you

22 give me one minute.

23 A. All right.

24 MS. ROBERTS: May I approach, your Honor?

25 EXAMINER BOJKO: You may.

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1 Q. This is the company's application,  
2 Mr. Baker, page 8. If you see at the top it  
3 identifies the proposed POLR charges.

4 A. Could you let me just have a second to  
5 read it?

6 Q. Sure.

7 A. And then I will be ready to answer your  
8 question.

9 EXAMINER BOJKO: Ms. Roberts, could you  
10 please speak up as well. You said page 8 of the  
11 application?

12 MS. ROBERTS: Yes. Yes, top of page 8.

13 A. Yes, I'm ready to answer your question  
14 now.

15 Q. So do you see in the application the  
16 identification of the proposed POLR charges at the  
17 top of the page?

18 A. Yes, I do.

19 Q. And what is the proposed residential POLR

20 charge for CSP?

21 A. .0060793 dollars per kWh.

22 Q. And for residential proposed for OP what

23 is the rate?

24 A. .0024910 dollars per kWh.

25 Q. Thank you.

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1 Do you know what the current POLR rate is  
2 for residential?

3 A. I believe it's about 1/10 of a cent per  
4 kWh.

5 Q. So about what percentage increase would  
6 you see from your proposed POLR charges of .1/10 of a  
7 percent, for example for CSP, to .6 cents?

8 MR. RESNIK: Your Honor, I'm going to  
9 object. The question at this point of the hearing is  
10 not the ultimately proposed POLR rates of the  
11 company. Mr. Baker's testimony at page 8 says that  
12 the company's suggestion is that the POLR charge  
13 should be increased to reflect half of the increase.  
14 So that is the point that's before the Bench this  
15 morning.

16 MS. ROBERTS: I agree that's the point  
17 before the Bench, and to get to what percentage  
18 increase, half the increase is you have to walk  
19 through this process. So Mr. Baker doesn't know off

20 the top of his head what half --

21 EXAMINER BOJKO: Overruled for now.

22 Q. So about what percentage increase would

23 you estimate CSP will see for its residential POLR

24 charge if it goes from about -- from about 1 mil to

25 6/10 of a cent?

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1       A. I haven't calculated that number. If you  
2 want to give me a calculator and ask me to calculate  
3 it, I certainly will, but --

4       Q. All right.

5       A. -- it seems to me it's --

6       MR. RANDAZZO: I object. It's math, and  
7 it's taking time and resources to explore  
8 mathematically what we all ought to be able to  
9 make --

10       MS. ROBERTS: That's true, but the  
11 magnitude of the increase in this case which is --

12       EXAMINER BOJKO: If the witness doesn't  
13 know, he doesn't know. You can make the point in  
14 your brief.

15       MS. ROBERTS: All right.

16       EXAMINER BOJKO: Let's move on.

17       Q. (By Ms. Roberts) Would you accept,  
18 subject to check, that the increase is about  
19 650 percent?

20       A. I will say once again that I haven't  
21   calculated the number. If you would like me to  
22   accept that subject to check, I will.

23       Q. What shopping risk does AEP have now?

24       A. AEP has the risk that the customer, when  
25   it becomes economically attractive for them, they

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1 will leave the company and take advantage of market  
2 rates.

3 Q. And is that occurring in Columbus  
4 Southern Power/Ohio Power now?

5 A. Yes.

6 Q. And what percentage of your load is  
7 shopping?

8 A. Very small right now, but the difference  
9 between the market rate today and the tariff rates  
10 today have not made it economically attractive  
11 generally. That doesn't forecast what the future  
12 will hold, and that's the -- what the proposal that  
13 we put in deals with. It looks at the risk of future  
14 shopping as a way to calculate the POLR.

15 Q. And the basis of your filing is,  
16 Mr. Baker, that the ESP rate you proposed is more  
17 favorable than the market rate?

18 A. We have to take a point in time, and when  
19 our analysis is that the ESP in the aggregate is more

20 beneficial than the market rate option for customers,  
21 that doesn't mean that over the period of January 1,  
22 2009, and December 31st, 2011, that that will  
23 always be the case. We don't know what that is, and  
24 that is inherently built into the modeling we used in  
25 developing the POLR charge.

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1 Q. But now the ESP is more favorable based  
2 on your application than the market rate; is that  
3 correct?

4 A. We believe that to be the case today.

5 Q. And were the market rate to be more  
6 favorable than the ESP rate at some point in the  
7 future, it's your position, isn't it, that then a  
8 POLR rate would be appropriate?

9 MR. RESNIK: Your Honor.

10 Q. Then there would be more shopping risk  
11 for customers.

12 MR. RESNIK: Your Honor, I'm going to  
13 object because I think counsel's leaving out some key  
14 words from the statute, and that has to do with  
15 whether the ESP in the aggregate is more favorable  
16 than the market rate offer.

17 EXAMINER BOJKO: Counselor, let her ask  
18 her question the way she wants to ask her question,  
19 but -- so your objection is overruled.

20           But I will say that please keep on track

21   that we're talking about the interim plan and we're

22   not --

23           MS. ROBERTS: Yes.

24           EXAMINER BOJKO: -- not talking about the

25   long-term ESP at this point.

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1 MS. ROBERTS: Yes. I'm still discussing  
2 with this witness the amendment proposed to  
3 Mr. Hess's testimony and whether there's any basis to  
4 believe that on a short-term.

5 EXAMINER BOJKO: Please continue.

6 Q. (By Ms. Roberts) Do you think there's any  
7 likelihood in the next couple months that market  
8 conditions will change sufficiently that the MRO will  
9 become more favorable than the ESP?

10 A. I don't know.

11 Q. Do you think it's possible?

12 A. Yes. I think anything's possible.

13 Q. Do you think it's probable?

14 A. That -- I think there's a probability. I  
15 think the probability is not great, but I would note  
16 that that's what's built in and why our POLR charge  
17 is lower than it would be for other companies if they  
18 took the same approach that we did.

19 Q. All right. Similarly with the fuel

20 adjustment clause that you have asked to be included  
21 in your response to Mr. Hess's testimony, you do not  
22 see, do you, in section 141 any specific language  
23 that would permit a fuel clause to be implemented if  
24 there's not a final order and a permanent ESP by  
25 1/1/09?

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1       A. I don't recollect any specific reference  
2 to fuel, but as I testified yesterday, I believe that  
3 it was the intent of the General Assembly, at least  
4 in my view, that people who do not have fuel clauses  
5 be able to implement them on 1/1/09. We are in a  
6 situation where there is a risk that the Commission  
7 is unable to put out its order by 1/1/09 and I think  
8 this reflects the will of the General Assembly, at  
9 least in my view.

10       Q. Wouldn't the will of the General Assembly  
11 be reflected in the language that it enacts?

12       MR. RANDAZZO: I object. It's  
13 argumentative.

14       MR. RESNIK: I object.

15       EXAMINER BOJKO: Sustained.

16       Q. Where would you look to determine the  
17 will of the General Assembly?

18       MR. RANDAZZO: I object.

19       EXAMINER BOJKO: Sustained.

20 Q. Yesterday there was some discussion about  
21 your testimony, rebuttal testimony, page 6, the  
22 sentence ending in line 16 that discusses  
23 confiscation. Do you recall that?

24 A. Yes, I do.

25 Q. And is it -- I want to understand your

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1 position. Is your position that when a company does  
2 not recover dollars it spends on behalf of customers,  
3 confiscation occurs?

4 A. Yes, that's my view. I was not making a  
5 constitutional argument. I was making an argument  
6 about our expense and not being able to cover the  
7 costs of those expenses.

8 Q. All right. Mr. Baker, you agree that  
9 SB 221 requires ESP rates to be effective 1/1/09; is  
10 that correct?

11 A. My interpretation of Bill 221 would be  
12 that the Commission needs to act within 150 days of a  
13 filing by the company, and in the case of AEP that  
14 would mean that we would make it in time to put the  
15 rates in effect on 1/1/09 or, as we've talked about,  
16 12/30/08, the last billing cycle -- or, the first day  
17 of the -- the last day -- the first day of the first  
18 billing cycle in January.

19 Q. Did you review Mr. Hamrock's cover letter

20 filed with the company's application in this case?

21 A. Yes, I did.

22 MS. ROBERTS: May I approach the witness?

23 EXAMINER BOJKO: Yes, you may.

24 Q. Do you recognize this document?

25 A. Yes. This appears to be the cover letter

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1 signed by Mr. Hamrock that accompanied our filing.

2 Q. And in the executive summary attached to  
3 that filing, the first page of the executive summary,  
4 the first sentence, do you agree with Mr. Hamrock's  
5 statement?

6 A. I believe it's consistent with the answer  
7 I just gave you in regards to the 150 days and the  
8 time of our filing.

9 Q. And what does the statement say?

10 A. The statement says: "Bill 221 requires  
11 electric distribution utilities to file an ESP to  
12 establish standard service offer pricing beginning  
13 January 1, 2009."

14 Q. Thank you.

15 Your proposal, Mr. Baker, would be to  
16 implement rates effective bills rendered  
17 12/30/08 with the first January billing cycle.

18 A. I believe it's 12/30.

19 Q. Okay. And that would be either for the

20 permanent ESP or the 1/1/09 plan. If we were to get  
21 an order in the permanent ESP, you would implement on  
22 12/30/08, or if you received an interim order for an  
23 interim rate, you would implement on 12/30/08.

24 A. Again, we have to remember the options  
25 here that have been talked about. Under AEP's

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1 proposal, if we had a final ESP order, we would in  
2 fact implement the rates. If we didn't have a final  
3 ESP order and the Commission -- and -- we would leave  
4 the rates the way they are and have it subject to a  
5 trueup.

6 If the Commission were to order us to put  
7 some alternative rate plans in place, we, of course,  
8 would follow the Commission's orders.

9 Q. If any rates are increased with the  
10 company's first billing cycle 12/30/08, isn't it  
11 accurate to say that customers will be paying for  
12 those increased rates as far back as 30 days before  
13 that billing date?

14 A. The method of billing on a billing cycle,  
15 I believe -- this is not something I do on a regular  
16 basis -- in any case always -- for the first month  
17 will deal with the usage in the previous month.

18 Q. So that the effective date for either the  
19 final ESP or the 1/1/09 plan would not be really with

20 bills due 12/30 but it would be with service rendered

21 sometime earlier than that.

22 THE WITNESS: I'm sorry, could I have the

23 question reread?

24 (Record read.)

25 A. No. I understand your characterization,

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1 but it would be for bills rendered on that date.

2 Q. And that would include service rendered  
3 in December, for example.

4 A. I believe that anytime you implement  
5 rates, that's the way it works.

6 Q. But if rates were implemented on a  
7 service-rendered basis 1/1/09, then customers would  
8 not pay the increased rate until 1/1/09, would they?

9 A. If the Commission were to so order,  
10 that's the way it would be dealt with.

11 Q. Okay.

12 EXAMINER BOJKO: Mr. Baker, aren't your  
13 current rates in effect until 12/31/08?

14 THE WITNESS: Yes.

15 EXAMINER BOJKO: Wouldn't you have to  
16 file an application to revise those tariffs on file  
17 since they have an end date of December 2008?

18 THE WITNESS: Yes.

19 EXAMINER BOJKO: Thank you.

20       Q. (By Ms. Roberts) But even if you filed  
21 those revised tariffs, if you implemented the rates  
22 on the bills-rendered basis, they still would cover a  
23 period of time in '08 before 1/1/09, service used in  
24 '08 prior to the 1/1/09 effective date.

25       MR. RANDAZZO: Object.

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1       A. I believe I've answered that question at  
2 least three times.

3       Q. Okay. If the increases in a 1/1/09 plan  
4 are implemented through a rider -- I'm sorry.

5           When you discuss sufficient headroom for  
6 Mr. Hess on page 9 for a 4 percent increase in  
7 addition to the Monongahela-related fuel costs, do  
8 you mean that rates for CSP at 1/1/09 would increase  
9 4 percent and also increase for the Monongahela  
10 adjustment?

11       A. That is my understanding of Mr. Hess's  
12 proposal.

13       Q. When you discuss the trueup or the  
14 make-whole provision, Mr. Baker, would the company's  
15 rates as of 12/31/08 continue on 1/1/09 until the new  
16 rates become effective from a permanent ESP order?

17           MR. RESNIK: Your Honor, I'm going to  
18 object to OCC asking any questions about the  
19 reconciliation provision suggested by the company. I

20 don't care how they're characterizing it today, but  
21 in their motion for an extension it clearly said that  
22 that plan of the companies was reasonable and  
23 acceptable.

24           It didn't say only if we get the 60-day  
25 extension. It didn't say: But if we only get two

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1 weeks or 15 days, then all bets are off. And I don't  
2 think that they should be allowed to cross-examine on  
3 something that they represented to the Commission  
4 that they accept. And I object.

5 MS. ROBERTS: May I respond?

6 EXAMINER BOJKO: Sure.

7 MS. ROBERTS: Mr. Resnik can characterize  
8 OCC's pleadings any way he wants. The pleadings as  
9 we characterized them were a quid pro quo, a 60-day  
10 extension in exchange for the company being able to  
11 implement its section V.E plan. Those issues can be  
12 argued outside this hearing.

13 It's clear from the prefiled rebuttal  
14 testimony of Ms. Hixon that the company is taking a  
15 different position on this and, therefore, is not --

16 EXAMINER BOJKO: The company or OCC?

17 MS. ROBERTS: I'm sorry?

18 EXAMINER BOJKO: The company or OCC?

19 MS. ROBERTS: OCC. OCC is taking a

20 position different from the reconciliation and for  
21 the reasons previously stated.

22 EXAMINER SEE: Can you read OCC's  
23 question back, please?

24 (Record read.)

25 EXAMINER SEE: Thank you.

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1           EXAMINER BOJKO: I think the objection's  
2 overruled. I think you can make those arguments in  
3 your brief and the pleadings that are filed, so you  
4 can make that point in your brief.

5           Please continue.

6           Q. (By Ms. Roberts) Do you want me to ask  
7 the question again?

8           A. No. I believe I can answer it. Under  
9 the AEP trueup plan there would not be a modification  
10 in rates on 12/30/08 unless there was an order from  
11 the Commission on the ESP.

12          Q. Okay. Would those rates include on  
13 1/1/09, include the regulatory asset charge rider?

14          MR. RANDAZZO: I object.

15          EXAMINER BOJKO: Grounds?

16          MR. RANDAZZO: It's not in his proposal,  
17 any three of them.

18          MS. ROBERTS: I'm trying to clarify what  
19 his proposal is.

20 EXAMINER BOJKO: Can you read the

21 question again, Maria, please?

22 (Record read.)

23 EXAMINER BOJKO: I guess I'm not sure

24 what rates you're talking about. Could you clarify

25 your question?

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1 MS. ROBERTS: I had just asked whether in  
2 Mr. Baker's make-whole proposal the company rates as  
3 of 12/31/08 would continue on 1/1/09 until there was  
4 a new final permanent ESP rate, and he said yes. And  
5 I asked -- my next question was: Would those rates  
6 that continue as of 12/31/08 include the regulatory  
7 asset charge rider.

8 EXAMINER BOJKO: He can answer if he  
9 knows.

10 A. I haven't gotten to that detail of that  
11 specific event because of our hope that the  
12 Commission will act by the -- on the ESP in the 150  
13 days.

14 EXAMINER BOJKO: Would Mr. Roush be the  
15 appropriate witness that would be able to answer  
16 that, and, in fact, did he answer that question  
17 yesterday?

18 MR. RESNIK: I believe he did, your  
19 Honor.

20 EXAMINER BOJKO: Please continue. Please

21 continue.

22 MS. ROBERTS: Thank you.

23 Q. Under your section V.E proposal,

24 Mr. Baker, what generation rate do you intend to

25 charge Ormet at 1/1/09?

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1       A. I don't know. That's why I'm hoping for  
2 an order in 150 days, because the contract ends.

3       Q. So you don't have a provision under your  
4 V.E proposal for how Ormet would be handled if  
5 there's not an order.

6       MR. BELL: Object.

7       EXAMINER BOJKO: Grounds?

8       MR. BELL: The witness's proposal is the  
9 witness's proposal. The current rates continue.

10       EXAMINER BOJKO: He can answer if he  
11 knows.

12       A. I think I answered it. I don't know what  
13 the Commission's going to tell us to do with Ormet  
14 effective the first billing cycle of January.

15       Q. I'd like to end with one other line of  
16 questioning, Mr. Baker, regarding questions you were  
17 asked about what provisions would govern customers  
18 that are in PJM's demand response proposals that came  
19 out of your discussion with Mr. Petricoff yesterday.

20 Do you recall the testimony?

21 A. Yes, I do recall the line of questioning.

22 Q. And I wanted to clarify something I

23 thought I heard you say. Did you say in your

24 testimony yesterday that you objected to retail

25 customers in regulated states participating in the

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1 wholesale market?

2 A. I said I objected to them participating  
3 in demand response programs in RTOs when they were  
4 purchasing power from the company at regulated rates.

5 Q. Is Ohio -- do you consider Ohio to be a  
6 regulated state?

7 A. I believe we are here because the -- we  
8 are trying to determine what rate the Commission will  
9 approve under Bill 221, so I believe it is a form of  
10 regulation.

11 Q. So under your definition of a form of  
12 regulation, is there any state in the country that  
13 has EDUs that aren't regulated?

14 A. I have -- I think there are a number of  
15 states in the country which have rates based on  
16 market-based rates, and I don't consider Ohio under  
17 Bill 221 to have market-based rates.

18 Q. And you don't consider the current SSO  
19 rate to be a market proxy rate?

20       A. That isn't what I said. I was talking  
21 about Senate Bill 221 and the future, not the past.  
22 The Commission has stated that they believe that the  
23 SSO rates are a proxy for market-based rates.

24       Q. Do you provide service in Illinois?

25       A. No.

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1 Q. Indiana?

2 A. Yes.

3 Q. Does Indiana permit its retail customers  
4 to participate in wholesale demand response markets?

5 A. Indiana looks at it on a  
6 customer-by-customer basis.

7 Q. And have they approved customers --  
8 retail customers participating in the PJM demand  
9 response programs?

10 A. They have through formal processes.

11 Q. And what other states where AEP conducts  
12 business have allowed participation, retail customers  
13 to participate in PJM demand response programs?

14 MR. RESNIK: Your Honor, I'm going to  
15 object. We're just taking a poll of states. Ohio  
16 does what Ohio is supposed to do. If OCC in their  
17 brief wants to indicate what's going on in other  
18 states, they can do that. I don't think it's  
19 relevant to the proceeding here. The PJM portion is

20 not covered in Mr. Baker's testimony. He did respond  
21 to Mr. Wolfe and it's in the context of Mr. Wolfe's  
22 testimony, but I don't think we need to start polling  
23 around to see what every state is doing.

24 EXAMINER BOJKO: I hope we're not going  
25 to go through the 50 states.

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1 MS. ROBERTS: No, we're not.

2 EXAMINER BOJKO: You can ask because he  
3 opened the door on direct, which was semi  
4 surrebuttal, but you have a short leash here. Let's  
5 get moving.

6 Q. (By Ms. Roberts) Let me ask what may be a  
7 much simpler question and more efficient question.  
8 Are there any states where AEP has retail customers,  
9 are there any of those states that have prevented  
10 across the board AEP's retail customers from  
11 participating in wholesale or RTO demand response  
12 programs?

13 THE WITNESS: Could I have the question  
14 read back?

15 (Record read.)

16 A. Yes.

17 Q. And what are those states?

18 A. Kentucky.

19 Q. Kentucky permits no retail customers to

20 participate in any PJM demand response programs?

21 MR. BELL: Objection; asked and answered.

22 EXAMINER BOJKO: Sustained.

23 Q. Are any regulatory provisions required to

24 implement that? Does it require an application? Or

25 is it just a decision by the commission?

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1       A. It was in an order from the commission.

2       Q. It was in an order from the commission,  
3 okay. If customers have to evaluate the risk of  
4 participating in a PJM demand response program in the  
5 near future, as you have testified yesterday, the  
6 risk being AEP has announced that it is against  
7 retail customers participating in these programs  
8 versus the customers -- benefits they would receive  
9 if they participated in the programs, if they weigh  
10 those risks and decide to participate in the  
11 programs, how would that be handled in the event that  
12 the Commission -- if you know. I'm just trying to  
13 get some guidance here. What would happen if those  
14 customers -- if the Commission were to issue an order  
15 saying that retail customers couldn't participate?

16       MR. RANDAZZO: I object.

17       EXAMINER BOJKO: Sustained. It was asked  
18 and answered yesterday.

19       MS. ROBERTS: Okay. Okay.

20 Q. Is it your position on the participation  
21 of retail customers in demand response programs one  
22 that would create a monopoly in Ohio for demand  
23 response services for AEP?

24 MR. RANDAZZO: I object.

25 EXAMINER BOJKO: Grounds?

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1           MR. RANDAZZO: Bill 221 clearly gives the  
2 customer the opportunity to commit resources and the  
3 predicate for the question is an illegal predicate.  
4 I object.

5           MS. ROBERTS: No, it's not if you look at  
6 the FERC law about it. That's why I'm trying to  
7 establish the facts.

8           EXAMINER BOJKO: Whoa, whoa. You argue  
9 to the Bench, not to counsel.

10          MS. ROBERTS: Sorry.

11          EXAMINER BOJKO: And we do not testify.  
12 You may reask your question --

13          MS. ROBERTS: All right.

14          EXAMINER BOJKO: -- again, please.

15          MS. ROBERTS: Would you read the question  
16 back, please?

17          (Record read.)

18          EXAMINER BOJKO: The witness may answer  
19 if he knows.

20 A. No.

21 Q. Why would that be?

22 A. Because our proposal is not to preclude

23 retail customers from participating. It's only if

24 they choose to buy from the company at tariff. If

25 they choose to go to market for their power supply,

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1 we are not in any way opposed to them participating  
2 in demand response.

3 Q. If they buy at tariff and your proposal  
4 is accepted by the Commission, then wouldn't Columbus  
5 Southern and Ohio Power be the one that would  
6 actually bid into the RTO or the PJM demand response  
7 program?

8 THE WITNESS: I'm sorry, could I have it  
9 read back, please?

10 (Record read.)

11 A. I don't know how to answer that question.

12 Q. Maybe I could ask it better. Do you want  
13 me to try and ask it better?

14 A. You certainly can try.

15 Q. You testified yesterday that there were  
16 500 megawatts in your service territory that  
17 participated in the PJM demand response program.

18 A. I did not make that claim.

19 Q. Okay. Did you accept that subject to

20 check?

21 A. I don't believe it was asked subject to

22 check. I believe I was told -- I was asked a

23 question about if there were 500 megawatts of demand

24 response, would that not be close to the same impact

25 as a medium-sized baseload power plant, and we had a

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1 dialogue about that.

2 Q. All right. Let's assume hypothetically  
3 that there are 500 megawatts participating in the PJM  
4 demand response program and that those customers are  
5 buying from the AEP tariff. If the Commission  
6 precludes that, as you've requested, couldn't you  
7 take that 500-megawatt load and then bid it in as a  
8 company to the PJM demand response program?

9 MR. RESNIK: Your Honor, I'm going to  
10 object. I don't see how that question pertains to  
11 this interim period that we're talking about.

12 EXAMINER BOJKO: Well, I'm confused  
13 because I'm not sure who's requested what. I think  
14 we need a little foundation.

15 Mr. Baker, is it in your -- I know your  
16 first preference is that we issue an order in 150  
17 days. Your second preference is to continue the  
18 rates subject to trueup. Your third proposal is to  
19 modify Mr. Hess's proposal if Mr. Hess's proposal is

20 implemented.

21 In any of those proposals do you talk at

22 all about the demand response program on the interim

23 level?

24 THE WITNESS: No. What I was trying -- I

25 did yesterday, your Honor, and what I tried to do

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1 yesterday was talk about what I think will happen  
2 during the period of January 1 through when the  
3 Commission comes up with an order, which I would hope  
4 would be in parallel. But if it's later, we  
5 indicated that customers who are presently signed up  
6 in PJM, we would expect them to continue, and any  
7 order that comes out was not to impact the planning  
8 year during which we think this interim period could  
9 exist.

10           What we talked about was what would  
11 happen if the Commission were not to put an order out  
12 post March 2nd, and that's what we're dealing with.

13           EXAMINER BOJKO: Ms. Roberts, let's focus  
14 your questions on that period of time, which is what  
15 Mr. Petricoff and Mr. Baker discussed yesterday with  
16 regards to Mr. Wolfe's testimony.

17           MS. ROBERTS: I just have one other  
18 question, or two other questions, actually.

19           Q. (By Ms. Roberts) Do you know who Joe

20 Bowring is?

21 A. Yes.

22 Q. Who is he?

23 A. He as the market monitor for PJM.

24 Q. Would you be surprised to know that

25 Mr. Bowring stated that your proposal to limit retail

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1 customers from PJM demand response programs is

2 anticompetitive?

3 MR. RESNIK: Your Honor.

4 MR. RANDAZZO: I object.

5 MR. RESNIK: Whoever this is and I don't

6 know him, he's not here. We're not going to start

7 putting in --

8 EXAMINER BOJKO: Sustained. That's

9 hearsay.

10 MS. ROBERTS: I just asked if he would be

11 surprised to know that. I wasn't offering --

12 EXAMINER BOJKO: Objection is sustained.

13 Move on.

14 MS. ROBERTS: Thank you. I have no other

15 questions.

16 EXAMINER BOJKO: Mr. Bell, I think we are

17 left with you now. Please proceed.

18 MR. BELL: Thank you.

19 As a preliminary matter for the benefit

20 of the Bench, yesterday I made a motion to strike for  
21 the purpose of avoiding extensive testimony on the  
22 issue of the law, and I recognize and appreciate, I  
23 honestly do, the Bench's reluctance to rule from the  
24 Bench on such a substantial issue, and I moved the  
25 Bench to certify and the Bench declined and said go

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1 ahead and file.

2 I am not going to file such a motion, and  
3 I feel as though there's no purpose in pursuing such  
4 a motion given the briefing schedule of the Bench on  
5 this issue by February 2 -- or, excuse me, by  
6 December 2.

7 I believe that the Commission will  
8 appropriately respond and make a determination on  
9 that legal issue before 12/31/08. I'm not waiving my  
10 legal argument by not filing a formal motion to  
11 certify the interlocutory appeal.

12 EXAMINER BOJKO: We would never assume  
13 such a thing and we appreciate that you have  
14 confidence that we can do our jobs.

15 MR. BELL: Thank you.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Bell:

19 Q. Good morning, Mr. Baker.

20       A.   Good morning, Mr. Bell.

21       Q.   Mr. Baker, based upon your background and  
22   experience, as articulated in your direct testimony,  
23   not in your rebuttal testimony because your rebuttal  
24   testimony lacks that background and experience  
25   description, and I'm referencing your direct

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1 testimony on unnumbered page 1, lines 22 through 27,  
2 you as senior vice president of American Electric  
3 Power Service Corporation are the most senior officer  
4 of that corporation appearing in this proceeding; are  
5 you not?

6 A. For the service corporation, yes.

7 Q. Thank you. And in that capacity you are  
8 responsible for formulating and advocating the  
9 company's regulatory policies before the regulatory  
10 authorities in 11 states, including the state of  
11 Ohio; is that correct?

12 A. That is correct.

13 Q. Thank you. Would you agree, Mr. Baker,  
14 that when a company proposes rate increases in the  
15 order of magnitude of 50 percent, that that engenders  
16 or arouses rather strong feelings on the part of some  
17 customers? It's natural.

18 A. I think that's often the case.

19 Q. Thank you.

20       A. I don't know that it is always the case.

21       Q. Now, pursuing the line that the Bench

22 just reiterated, could we put off for the time being

23 any discussion relative to the terms and conditions

24 or effect of whatever ESP might ultimately be ordered

25 and deal specifically with what happens on 1/1/09, as

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1 your testimony addresses? Are we on the same path,

2 Mr. Baker?

3 A. I believe we are.

4 Q. Thank you. And I'd like to walk down

5 that path with you, Mr. Baker, because while we've

6 not met before, your background and experience is

7 impressive, and I believe you're knowledgeable and

8 very capable in performing your responsibilities for

9 the corporation.

10 You agree, Mr. Baker, that in traveling

11 down that path as to what the Commission should do or

12 might do to establish rates on 1/1/09, that

13 reasonable individuals may have different opinions?

14 A. I would expect that there would be

15 different interpretations of what should happen on

16 1/1/09 in the event there is not an ESP order on, and

17 that is clearly shown by the fact that we have a

18 number of testimonies as to what should happen.

19 Q. Thank you, Mr. Baker.

20           Mr. Baker, do you believe it is  
21 appropriate for the Commission in evaluating which of  
22 the alternative proposals for the 1/1/09 rates are  
23 the most appropriate for the Commission to consider,  
24 that the Commission review various scenarios as to  
25 what might happen under those alternative proposals

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1 such as yours, Mr. Hess's, Mr. Baron's?

2 THE WITNESS: I'm sorry, could I have the  
3 question read back?

4 (Record read.)

5 Q. Shortening that question if it's  
6 difficult, would it be appropriate in your expert  
7 opinion, your knowledgeable opinion, that the  
8 Commission evaluate those alternative proposals based  
9 upon the results those proposals produce?

10 A. First of all, my experience, which I  
11 appreciate the compliments, has taught me that I  
12 don't recommend how commissions deal with a problem  
13 like this. I put proposals in front of them, and  
14 they in their wisdom will determine how to do it.

15 The outcomes in my view are really how  
16 they should evaluate the ESP, and I know we're not  
17 talking about that, but I'm going to take you down  
18 that path just a bit, and that should be done based  
19 on a comparison to the MRO.

20 EXAMINER BOJKO: Just a minute, Mr. Bell.

21 Mr. Baker, I think your microphone may

22 need a battery change. Let's go off the record for a

23 moment.

24 (Off the record.)

25 EXAMINER BOJKO: Please proceed. Let's

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1 go back on the record.

2 Q. (By Mr. Bell) I appreciate your  
3 reservation, Mr. Baker, but given my predicate and  
4 the instructions of the Bench to put off for the time  
5 being, for purposes of this proceeding today, maybe  
6 tomorrow we can consider what the ESP is, but right  
7 now let's put the ESP off to the side.

8 Would you indulge me in that pursuit?

9 A. Yes.

10 Q. Thank you. Given the limited scope of  
11 these hearings yesterday and today, would you agree,  
12 notwithstanding your reservation, that it might be  
13 appropriate for the Commission to consider the end  
14 result produced by each of the alternative proposals  
15 advanced for the rates to take effect on 1/1/09, for  
16 the Commission to evaluate the results produced by  
17 those proposals?

18 A. I believe that's one thing the Commission  
19 may choose to look at. I'm not -- as, again, I

20 stated earlier, my advice is just single.

21 Q. I appreciate that and thank you. That's

22 a fair response, Mr. Baker. I'm coming from the

23 position that I think all of us want to be

24 constructive in helping the Commission make the

25 correct decision, the right decision, whatever that

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1 decision might be. Would you accept that  
2 characterization of at least your and my  
3 participation in this proceeding?

4 MR. RESNIK: Your Honor, I'll object.

5 EXAMINER BOJKO: Sustained. I think we  
6 all know why we're here, Mr. Bell.

7 MR. BELL: All right. Thank you.

8 Q. Would you agree, Mr. Baker, that the  
9 position that you are espousing with respect to the  
10 rates that should be effective come 1/1/09 is not the  
11 product of a Commission-crafted ESP plan?

12 THE WITNESS: Could I have that read  
13 back, please?

14 (Record read.)

15 A. I'm confused, Mr. Bell, because I thought  
16 that what you suggested was that I should not be  
17 talking about the ESP plan.

18 Q. That's correct.

19 A. But you want to talk about the interim

20 plan.

21 Q. That's correct.

22 A. And if that's the case, I don't know how

23 to answer that question.

24 Q. All right. Would you agree, Mr. Baker,

25 that your proposal with respect to the rates that you

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1 are recommending become effective 1/1/09 has nothing

2 to do with the ultimate RSP plan to be --

3 EXAMINER BOJKO: ESP.

4 Q. -- ESP plan to be adopted by the

5 Commission?

6 MR. BELL: Thank you, your Honor.

7 A. I believe that I've made our position

8 clear, and if I haven't, what we have proposed is

9 that there would not be a change in rates without an

10 ESP approval and that there would be a trueup to

11 January 1 or December 30 in the event -- or, when the

12 order was finally issued.

13 Q. I appreciate that as being the position

14 of the company. My question was not directed toward

15 the Commission's adoption of the company's ultimate

16 ESP plan, but the Commission -- strike that. I'll

17 rephrase.

18 Would you agree, Mr. Baker, that if, in

19 fact, the Commission is, through no fault of its own,

20 unable to issue an order establishing an ESP plan to

21 become effective 1/1/09, that it is incumbent upon

22 the Commission to at least rule as a matter of law as

23 to what rates will become effective on 1/1/09?

24 MR. RESNIK: Your Honor, I will object as

25 to what is incumbent on the Commission. If he wants

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1 to ask what the company's preference is, that would  
2 be an acceptable question as far as I'm concerned.

3 EXAMINER BOJKO: I think it asks for a  
4 legal opinion so I'm going to sustain the objection.

5 I think you can rephrase.

6 MR. BELL: All right.

7 Q. Would you agree, Mr. Baker, that with  
8 respect to the company's proposal --

9 A. Mr. Bell, I have trouble hearing you when  
10 you turn your back to me.

11 Q. Oh, I apologize. I apologize.

12 EXAMINER BOJKO: Just so we're clear, are  
13 you talking about the company's section V.E proposal  
14 or Mr. Baker's proposed changes to Mr. Hess's  
15 proposal?

16 MR. BELL: Both.

17 Q. Mr. Baker, with respect to your V.E  
18 proposal, which is your preferred interim --

19 A. That's No. 2, Mr. Bell. The first is we

20 get an order out. Thank you.

21 Q. We put that off to the side for purposes

22 of all of my examination.

23 A. I'm sorry. If I --

24 Q. Remember?

25 A. If I failed, I apologize.

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1       Q. Okay. Would you agree that the end  
2 result produced by your recommendation as respects  
3 what rates take effect on 1/1/09 is identical to the  
4 results produced under the OMA's argument as a matter  
5 of law, that come 1/10/89 --

6       A. Mr. Bell, I'm sorry, you keep turning  
7 away from me, and when you do, I can't pick it up.

8       Q. I'm sorry. I've never heard anyone say  
9 they couldn't hear me regardless of which direction  
10 I'm facing, but I appreciate that.

11       EXAMINER BOJKO: Could you reread the  
12 question?

13       (Record read.)

14       Q. -- concurrent rates remain in effect?

15       THE REPORTER: Did you say "concurrent"?

16       MR. BELL: The current rates as of 12/31,  
17 which were the rates that were in effect upon the  
18 enactment of Bill 221.

19       MR. RESNIK: Your Honor, I object. It's

20 an inaccurate -- that is an inaccurate

21 representation.

22 MR. BELL: If it's inaccurate, the

23 witness can respond, Mr. Resnik.

24 EXAMINER BOJKO: Your responses need to

25 go to the Bench.

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1           Mr. Baker, if you can respond to the  
2 question, respond. If you can't, say you can't.

3           THE WITNESS: Can I have the question  
4 read back, please?

5           (Record read.)

6           A. I'm not sure I have seen any testimony  
7 from OMA in regards to what happens in the event  
8 there isn't an order out by 1/1/09. I have heard  
9 you, Mr. Bell, I believe say that if it didn't, you  
10 thought the law would require rates to stay in place.

11           I think the difference is that we have  
12 proposed a trueup proposal in V.E for what happens  
13 after the Commission actually puts out an order.

14           Q. That's downstream, and I'll address that  
15 later in our discourse this morning, Mr. Baker.

16           You said there's been no testimony beyond  
17 my assertion. Did you read the rebuttal testimony of  
18 OCC Witness Hixon?

19           EXAMINER BOJKO: Whoa, whoa, whoa.

20 That's not what he said. He said he never saw any  
21 OMA testimony, so let's not mischaracterize. You  
22 asked about OMA. You didn't ask other rebuttal  
23 witnesses.

24 MR. BELL: The Bench is entirely correct,  
25 and I apologize.

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1 EXAMINER BOJKO: Please rephrase.

2 MR. BELL: Thank you.

3 Q. Would you agree that the results produced  
4 come 1/1/09 under the company's proposal are  
5 identical to the results produced under OCC Witness  
6 Hixon's rebuttal testimony proposal? Yes or no?

7 A. If Ms. Hixon's proposal is that the  
8 current rates would stay in place, I think we agree.

9 Q. Thank you.

10 Now, where disagreement may exist is to  
11 be determined downstream at some point in time that  
12 the Commission would ultimately issue an order on the  
13 ESP; is that correct?

14 MR. RESNIK: Your Honor, if I can object,  
15 Mr. Bell is trying to just conveniently forget about  
16 the reconciliation. The rate that would go into  
17 effect at, in our view, 12/30/2008, would have built  
18 into that rate the reconciliation obligation, so I  
19 think he mischaracterizes what rate would be in

20 effect at that time.

21 EXAMINER BOJKO: I thought he was getting

22 to that in this question.

23 MR. BELL: Yes.

24 EXAMINER BOJKO: So please continue,

25 Mr. Bell.

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1       Q. With respect to that reconciliation, you  
2 were in the hearing room yesterday when I made the  
3 argument on the reconciliation. Is it the company's  
4 position, contrary to what one might read in V.E,  
5 that the reconciliation works in both directions,  
6 that if the interim rates generate more revenues than  
7 that which are authorized in the ultimate ESP order,  
8 that there be a refund as well in the other  
9 direction; where the difference, if it flows to the  
10 benefit for the company, results in the company being  
11 granted that difference?

12       A. I think we've got to parse that out a  
13 little, Mr. Bell. If you are talking about the  
14 company's proposal that rates stay in place, then I  
15 don't believe it goes the other way because of my  
16 interpretation of Bill 221 which would not provide  
17 for a reduction in current rates. I think they deal  
18 with that if they feel there is a need -- if there is  
19 a need for reduction in current rates through the

20 significant earnings test. I don't believe,

21 therefore, it would go to the negative.

22 In the event that the interim rates

23 produce something as an increase to the current

24 rates, not the provision that AEP has proposed in its

25 what I call trueup or proposal, in that case it would

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1 go either way.

2 Q. So with respect to your interim proposal,  
3 you are suggesting that the company would accept it  
4 going either way, your reconciliation adjustment.

5 A. Obviously, I'm not communicating well.

6 EXAMINER BOJKO: Let's use the words V.E  
7 or Mr. Hess's proposal because that's where the  
8 confusion is.

9 MR. BELL: All right.

10 THE WITNESS: Thank you, your Honor.

11 In the case of V.E I would not believe it  
12 goes both ways as you described it. In the case of  
13 Mr. Hess's proposal, I believe it goes both ways.

14 Q. Thank you.

15 A. Down to the level of the current rates.

16 Q. And your position with respect to not  
17 going both ways under V.E is based upon your  
18 interpretation of SB 221, fair?

19 A. That's fair.

20 Q. Okay. Now, with respect to your V.E  
21 proposal as reflected in the first four pages of your  
22 refiled rebuttal testimony, you acknowledge, do you  
23 not, that it may be impossible for the Commission to  
24 issue an order approving an ESP plan by December  
25 31st or, in your case, December 30th, the

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1 beginning of the billing cycle; do you not?

2 A. Do I believe it's impossible?

3 Q. You recognize it may be impossible.

4 A. The word "impossible" is one that I have  
5 a lot of difficulty accepting.

6 Q. Okay.

7 A. I think they will be stretched and  
8 stressed in order to meet that date.

9 Q. Fair enough. To the extent that all of  
10 us would like to see an ESP plan approved by December  
11 30th, it would be inconsistent for us to say we're  
12 hoping for the impossible.

13 Does not your interim proposal recognize  
14 all the difficulties inherent in the Commission  
15 deciding this substantial issue of balancing the  
16 interests of the consumers with respect to their  
17 desire for low rates as well as the need for electric  
18 security, that is, the electric utility shall be  
19 provided sufficient revenues to raise capital to

20 build plants required to meet the future needs of

21 customers?

22 THE WITNESS: Could I have that question

23 read back, please?

24 Q. I'll simplify it.

25 A. Thank you.

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1       Q. Would you agree that the balancing of the  
2 interests in an ESP plan is a weighty undertaking for  
3 the Commission?

4       A. I think anytime a commission has to look  
5 at a new way to regulate utilities, which I believe  
6 Bill 221 provides, it is a difficult task to  
7 understand exactly what the legislature was  
8 intending. Obviously, that's the case because we're  
9 all spending -- we're going to spend a lot of time  
10 over the next couple of weeks talking about it.

11      Q. Have you finished, Mr. Baker?

12      A. Sure.

13      Q. Thank you. I think we're walking down  
14 the same path.

15           Is that decision made even more difficult  
16 given the perfectly perilous waters upon which the  
17 Commission is embarking given the current economy and  
18 the impact of the Commission's decision upon the  
19 economy of the state of Ohio?

20 MR. RESNIK: Your Honor, I object.

21 EXAMINER BOJKO: Sustained.

22 Q. In any event, Mr. Baker, your plan

23 recognizes, does it not, that it might reasonably

24 take the Commission a considerable amount of time to

25 issue an order on an ESP plan as reflected in the

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1 provisions of your V.E?

2       A. I would say that we wanted to deal with  
3 the possibility. We have to think through the timing  
4 here, and it's outlined in my testimony. When we  
5 made this filing, we didn't know that we would be  
6 going No. 3 in the order. We also didn't know that  
7 there would be a delay in the procedural schedule.  
8 At the time we filed, we just wanted to put in a  
9 provision that in the event the Commission was not  
10 able to act within the 150 days, that we'd have a way  
11 of dealing with it.

12       It became more obvious as outlined in my  
13 testimony that that was a greater probability as a  
14 result of the things that I've laid out.

15       Q. And in response thereto, the company's  
16 proposed -- the company's proposal provides and  
17 indeed advocates that the Commission have as much as  
18 one year to issue a final ESP plan, does it not, to  
19 the extent -- if I may finish the question,

20 Mr. Baker -- to the extent the time period is not  
21 delineated within V.E but it is inferred to the  
22 extent that you state if the Commission doesn't issue  
23 a final ESP until perhaps the end of 2009, that there  
24 be a final, quote, reconciliation in the first  
25 quarter of 2010?

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1           EXAMINER BOJKO: Does anybody know whose  
2 phone that is?

3           MR. PETRICOFF: I think that it's --

4           MR. BOEHM: I've been looking all over  
5 for that.

6           EXAMINER BOJKO: Let's go off the record  
7 a minute.

8           (Discussion off the record.)

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

11          Could you reread Mr. Bell's last  
12 question, please?

13          (Record read.)

14          MR. RESNIK: I'm going to object.  
15 Whatever Mr. Bell infers from it is in his mind, and  
16 to ask this witness to talk about what Mr. Bell is  
17 inferring from the application I think is  
18 inappropriate.

19          EXAMINER BOJKO: Mr. Baker, you may

20 answer with regard to what the intent was behind your

21 proposal or what you believe.

22 THE WITNESS: All right, your Honor. I

23 appreciate that clarification.

24 It was not in any way our intent to

25 suggest that the Commission should wait a year before

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1 making an ESP. The provision that Mr. Bell is  
2 talking about was really to deal with the fact that  
3 whatever the trueup that's put in place in 2009 will  
4 probably not create the precise set of revenues that  
5 we are trying to make up for the period from  
6 1/1/09 to when the ESP rates go in place and that you  
7 would use the first quarter of '10 for what I'll call  
8 a second trueup to make sure that either the pluses  
9 or minuses associated with a trueup, if there were  
10 one, get dealt with.

11 Q. (By Mr. Bell) That's fair enough,  
12 Mr. Baker.

13 Mr. Baker, I'd like to pursue for a short  
14 time a line of inquiry originated by Mr. Randazzo.  
15 Would you agree that irrespective of what rates are  
16 provided for, whether by law or by order of the  
17 Commission, come 1/1/09, that when the Commission  
18 ultimately issues its ESP order sometime in 2009,  
19 that the company will have the option of rejecting

20 the Commission's ESP plan? Yes or no?

21 THE WITNESS: Can I have that one read

22 back, please?

23 (Record read.)

24 A. No. Let me clarify that. I believe my

25 understanding of the bill is that if the Commission

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1 approves our ESP without modification, I don't  
2 believe we have a choice. I believe it's only if  
3 they modify it or reject it.

4 Q. If the Commission modifies or rejects it  
5 in any way, shape, or form, would you agree that the  
6 company has the option of rejecting it?

7 A. Yes.

8 Q. And if the company rejects it, the  
9 company has, as an alternative, the filing of a new  
10 ESP, does it not?

11 A. It has that option, as well as the option  
12 to go to a MRO.

13 Q. That's fair. Thank you, Mr. Baker.

14 Now, under the company's proposal,  
15 interim plan with this reconciliation feature that  
16 you propose, and I won't say an interim ESP but what  
17 you propose to address the interim until an order is  
18 issued, if the Commission were to issue an order for  
19 an ESP plan without a reconciliation provision that

20 you have recommended, are you in a position to state

21 whether or not you would accept or reject that ESP

22 plan as a result of that plan omitting a

23 reconciliation provision?

24 MR. RESNIK: I'm sorry, your Honor, could

25 I have the question read back, please?

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1 EXAMINER BOJKO: Yes.

2 (Record read.)

3 MR. RESNIK: Thank you.

4 A. No, Mr. Bell, we are not in a position  
5 today to make that because we consider the ESP a  
6 package in total. So when a plan -- when an approved  
7 order comes out, and working off of your hypothesis  
8 that it is modified in some way, for example, the  
9 trueup proposal or V.E is not there, we would have to  
10 evaluate the total order in determining whether to  
11 reject it.

12 Q. Fair enough, Mr. Baker. I appreciate  
13 that response.

14 Now, let's take Mr. Hess's proposal. As  
15 opposed to the company's proposal which would  
16 continue current rates until such point in time as  
17 the Commission issues a final order, Mr. Hess would  
18 provide the company with substantial increases in  
19 rates effective 1/1/09; would it not?

20 MR. RESNIK: And I object to the use of

21 the word "substantial."

22 MR. BELL: I think we went through my

23 examination, Mr. Hess went through the --

24 EXAMINER BOJKO: Overruled. Mr. Baker

25 can answer. If he doesn't know what a word means, he

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1 can ask.

2 Mr. Baker.

3 A. I would answer that Mr. Hess's proposal

4 would involve increases. I would not accept the word

5 "substantial," in my view, relative to what's going

6 on in other states surrounding us.

7 Q. We could argue over the word

8 "substantial." I appreciate the fairness of that

9 response.

10 MR. BELL: Thank you, Mr. Resnik.

11 Q. In any event, in the interim the company

12 would be collecting revenues which it would not

13 otherwise collect if the Commission was to accept

14 your interim proposal, correct?

15 A. If the Commission were to order us to

16 increase rates subject to Mr. Hess's proposal, we

17 would be increasing our rates over what they are

18 today.

19 Q. Now, going back to my initial line of

20 inquiry with respect to testing the results of the  
21 alternative proposal, would you agree, Mr. Baker,  
22 that if the Commission accepted Mr. Hess's proposal  
23 and in the final analysis issued an order that  
24 provided for an ESP plan that was unacceptable to the  
25 company, that the company would be better off, by

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1 reason of collecting Mr. Hess's largess, if you will,  
2 that it would have been had the Commission accepted  
3 the company's proposal and modified that proposal in  
4 its ultimate ESP plan to such an extent that the  
5 company would reject that ESP plan? Do you follow  
6 the question, Mr. Baker? Or do you want me to break  
7 it down?

8 MR. RANDAZZO: I object. Whether broken  
9 down or not, it's -- there are layers of assumptions  
10 embedded in the question.

11 EXAMINER BOJKO: Sustained. I didn't  
12 fully appreciate or understand the question either,  
13 and I didn't understand what you said, Mr. Hess's  
14 something, so could you maybe rephrase.

15 MR. BELL: Certainly, your Honor, and I  
16 apologize, and I'll try to simplify it.

17 Q. Let us assume for purposes of this  
18 discussion of scenarios, Mr. Baker, that the ultimate  
19 ESP plan to be ordered by the Commission whenever an

20 order comes out, sometime in 2009, is unacceptable to

21 the company. Would you accept that as a premise?

22 A. Okay.

23 Q. Thank you. You're a good witness.

24 A. Thank you.

25 Q. Would you agree, Mr. Baker, that in that

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1 event -- the company would be better off under  
2 Mr. Hess's interim proposal than under the company's  
3 interim proposal to the extent that under Mr. Hess's  
4 proposal it would have the benefit of an interim  
5 increase in revenues not found under the company's  
6 own proposal?

7 I think that's very simple and logical  
8 and reasonable.

9 EXAMINER BOJKO: Okay. Just ask your  
10 question. Let the witness answer.

11 MR. BELL: Thank you.

12 EXAMINER BOJKO: Mr. Baker, can you  
13 answer?

14 A. I think if what you're asking, Mr. Bell,  
15 is would we have increased revenues for the company  
16 in the event that Mr. Hess's proposal was put in  
17 place for the period that it was put in place over  
18 what we would have received under our proposal with a  
19 trueup and we reject it for that period. I would say

20 that our revenues would be in fact higher.

21 When you say wouldn't the company be

22 better off, I'm looking at a broader picture than an

23 interim period.

24 Q. Thank you, Mr. Baker. You just

25 demonstrated you are a good witness with that

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1 response. I appreciate it.

2 In any event, your revenues would be  
3 higher.

4 A. For the hopefully short period, yes.

5 Q. Notwithstanding the fact that the end  
6 result, that is, the company's rejection of the  
7 Commission ordered ESP and the requirement that it go  
8 back to square one in formulating a new proposal ESP,  
9 alternatively going to an MRO on a going-forward  
10 basis at that point in time, monetarily the company  
11 would be better off under Mr. Hess's proposal than  
12 under your proposal, correct?

13 MR. RANDAZZO: I object.

14 MR. RESNIK: Your Honor, the witness just  
15 answered that question.

16 EXAMINER BOJKO: Sustained. It was asked  
17 and answered.

18 Q. Notwithstanding the fact that you would  
19 have greater revenues under Mr. Hess's proposal, you

20 still prefer your own proposal over that of  
21 Mr. Hess's, correct, as I think established through  
22 cross-examination of Mr. Kurtz and other inquiring  
23 counsel?

24 A. I stand behind AEP's filing.

25 Q. Thank you. And that is not withstanding

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1 the fact that Mr. Hess's proposal would provide you  
2 with delta revenue recovery associated with the Ormet  
3 load, which is not included in either the interim  
4 proposal that you are advancing or the ESP plan that  
5 you are proposing, correct?

6 A. We have not proposed an interim plan, but  
7 Ormet is not -- delta revenues for Ormet is not  
8 included in our ESP.

9 Q. Are delta revenues included in your  
10 interim rates, a recovery of delta revenues  
11 associated with Ormet included in your interim rates?

12 A. If the question is are delta revenues  
13 included -- for Ormet included in our rates today,  
14 they are not today, but they could be in the event  
15 that we blow through the regulatory liability that we  
16 had which was using -- we were using to offset that.

17 Q. You would acknowledge, do you not,  
18 Mr. Baker, that the recovery of the delta revenues  
19 associated with the Ormet load are not included in

20 your own -- the company's own advocated ESP?

21 A. I think I answered that. You took me

22 down a little further path, which is, is there any

23 way they could be in rates, and I was just trying to

24 clarify that situation. I said it was not in our

25 proposal.

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1       Q.   Okay. Thank you, Mr. Baker. You've been  
2   a gentleman and very helpful in developing the record  
3   in this case.

4       EXAMINER BOJKO: At this time before  
5   staff we're going to take a ten-minute recess.

6       (Recess taken.)

7       EXAMINER BOJKO: Let's go back on the  
8   record. I'd just like to note for the record that  
9   Mr. Yurick did make an appearance. Would you like to  
10   state who you're here representing since you weren't  
11   here yesterday, Mr. Yurick?

12       MR. YURICK: Yes. Thank you, your Honor.  
13   It's Mark Yurick Y-u-r-i-c-k, and I'm here on behalf  
14   of the Kroger Company. I'm with the law firm of  
15   Chester, Willcox & Saxbe, 65 East State Street,  
16   Columbus.

17       EXAMINER BOJKO: Now, we have staff I  
18   believe. Do you have any questions?

19       MR. JONES: Your Honor, I reviewed

20 everything. Staff has no questions.

21 EXAMINER BOJKO: Okay. Redirect,

22 Mr. Resnik?

23 MR. RESNIK: Thank you, your Honor.

24 - - -

25

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1           REDIRECT EXAMINATION

2   By Mr. Resnik:

3       Q.   Mr. Baker, let's start from the most  
4   recent. I think you were asked a question by  
5   Mr. Bell whether you would agree that reasonable  
6   people may have different opinions concerning  
7   solutions to this 1/1/09 situation.

8       A.   I believe that's the way I answered it.

9       Q.   And by that answer did you mean to  
10   suggest that those different opinions were themselves  
11   necessarily reasonable?

12      A.   No. I was just talking about the people,  
13   not their proposals, as being reasonable.

14      Q.   Thank you.

15           I think you were also asked a question by  
16   Mr. Baker concerning the modification you were  
17   suggesting to Mr. Hess's proposal, and that was a  
18   modification concerning the POLR charge; do you  
19   recall those questions?

20       A.   Yes.

21       Q.   And I think the question that was asked  
22 of you was whether the company was proposing to  
23 implement what we propose as a modification to  
24 Mr. Hess's proposal, to implement one half of its  
25 proposed POLR charge. Do you recall that?

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1       A. Yes.

2       Q. And I guess I'd ask you to explain  
3 whether the modification that you have suggested in  
4 your testimony is to implement one half of the POLR  
5 charge or one half of the proposed increase in the  
6 POLR charge.

7       A. Certainly. The current POLR charge is  
8 already in rates, so what we would be proposing would  
9 be one half of the increment, the additional POLR,  
10 that comes about as calculated in our filing.

11      Q. Thank you. And do you recall questions  
12 from yesterday regarding portions of your testimony  
13 concerning, again, a modification to Mr. Hess's  
14 proposal but that would involve implementation of the  
15 company's proposed FAC provision?

16      A. Yes.

17      Q. And how does your suggested modification  
18 concerning the FAC provision fit with Mr. Hess's  
19 overall proposal that he's making here and in the ESP

20 case generally that there not be any deferral of FAC

21 costs?

22 A. If the Commission were to go forward with

23 a Mr. Hess-type proposal and accepted the

24 modification that we had put into testimony, which

25 was to implement an active FAC, we would want the

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1 Commission to recognize the customer protection  
2 aspect of the 15 percent cap we have in our ESP,  
3 which is an approximate 15 percent, that you would  
4 not increase rates by the full amount of the FAC but  
5 you would try to limit the total increase to its  
6 approximate 15 percent, and that you would use the  
7 fuel clause as your deferral mechanism to defer any  
8 dollars that exceeded the approximate 15 percent as  
9 opposed to putting the full amount into rates  
10 immediately.

11 Q. Thank you.

12 Finally, yesterday you were asked some  
13 questions by Mr. Smalz concerning your views on the  
14 bearing on this issue that returns that have been  
15 earned by Columbus Southern and Ohio Power, and I was  
16 wondering if you could elaborate on that issue.

17 A. Certainly. When we had the discussion,  
18 first of all, I indicated that the numbers that were  
19 being talked about were Columbus & Southern numbers

20 and those numbers were historical numbers, and I  
21 believe the numbers that were bantered around earlier  
22 in the day were 2007 numbers taken from things like  
23 FERC Form 1s.

24 In the case of Columbus & Southern the  
25 earnings that had been achieved for the period in

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1 '7 and '8 mainly really come about from the  
2 acquisition of three generating units. These are  
3 gas-fired units that the company took the risk on and  
4 the shareholders took the risk on because we expected  
5 we'd be taking those units to market.

6         The effects of the pool, the AEP power  
7 pool, created those earnings on a historical basis.  
8 I think you also then need to look at not the  
9 historical basis but the future basis, and we had  
10 filed some earnings pro formas as part of this case,  
11 and if one were to look at those, they'd see that the  
12 combined companies, which is the way we would propose  
13 to look at the earnings, are below 10 percent in year  
14 2009, and in the case of Columbus & Southern, it  
15 would be 11.2 percent, as we reported it in those  
16 earnings pro formas.

17         But I think also important to keep in  
18 mind is that there is the significantly excessive  
19 earnings test, so whatever that rate is will be

20 determined through this process and trueup -- not the  
21 trueup process, but the determination process that  
22 will happen next year, and, in fact, if the numbers  
23 are considered to be significantly excessive, then  
24 the significantly excessive amount would be rebated  
25 to customers.

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1 MR. RESNIK: Thank you very much. That's  
2 all I have, your Honor.

3 EXAMINER BOJKO: Thank you.

4 Mr. Petricoff, or start with Mr. Smalz.

5 Recross?

6 MR. SMALZ: No questions, your Honor.

7 EXAMINER BOJKO: Mr. Petricoff?

8 MR. PETRICOFF: No questions, your Honor.

9 EXAMINER BOJKO: OCC?

10 MS. ROBERTS: I think I might like to  
11 clarify the record that Ms. Roberts asked the  
12 question, not Mr. Baker.

13 MR. RESNIK: I apologize for that.

14 EXAMINER BOJKO: Mr. Randazzo?

15 MR. RANDAZZO: Yeah, just one question.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Randazzo:

19 Q. Mr. Baker, the response that you gave

- 20 about the effect of the excess earnings test on
- 21 whatever rate of return might be realized by Columbus
- 22 Southern or Ohio Power, do you have a view on whether
- 23 or not the earnings of those two operating companies
- 24 should be considered in the aggregate?
- 25 A. We have proposed that they be looked at

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1 in the aggregate, Mr. Randazzo.

2 Q. And the excess earnings test that you  
3 were referring to, is that the excess earnings test  
4 as attached to the ESP?

5 A. In the one that I was describing, it was  
6 the one for the ESP.

7 Q. Yeah. Is it your understanding that  
8 there's an excess earnings test that's attached to  
9 the MRO?

10 A. There is a excess earnings provision, and  
11 I think test may be a fair way to look at it, but in  
12 the case of the MRO, as I understand it, it is a  
13 forward-looking earnings approach that you would set  
14 rates on, and in an ESP it's -- for a period that is  
15 shorter than four years it is a look back.

16 Q. And with regard to the 15 percent  
17 limitation on the increases that may occur under the  
18 proposal of Mr. Hess or your modification to  
19 Mr. Hess's proposal, you're suggesting that the

20 fuel -- that the 15 percent cap operate under the  
21 scenario where you're modifying Mr. Hess's proposal?  
22 A. If the Commission were to adopt  
23 Mr. Hess's proposal with our modification, we would  
24 still think it would be appropriate for the  
25 15 percent cap. I'm calling for the approximate

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1 approach that is outlined if our ESP be used there as  
2 well.

3 Q. And that, I understood the rest of that,  
4 you would be using the fuel adjustment mechanism to  
5 defer anything that's above the 15 percent.

6 A. That you would defer the fuel dollars as  
7 the way to get you down to the 15 percent.

8 Q. I guess I'm confused because I thought  
9 that your amendment to Mr. Hess's alternative would  
10 include a reconciliation mechanism.

11 A. It would include a reconciliation, that's  
12 correct.

13 Q. So wouldn't you be reconciling to  
14 whatever is ultimately allowed in the ESP if an ESP  
15 is approved?

16 A. Yes. But the idea would be that this  
17 would be put in place during the period of the first  
18 billing -- the first day of the billing cycle until  
19 an order, but that's the way -- that's what we would

20 want to be in place. And then you would go with

21 whatever the Commission came out with.

22 Q. What I'm struggling with, Mr. Baker, and

23 let me just -- maybe it's my lack of understanding of

24 your answer, but I thought with the reconciliation

25 mechanism that you were truing up to whatever the

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1 Commission approved in the final ESP. So all you're  
2 really -- and let me get to the punchline here. All  
3 you're really suggesting is that your amendment to  
4 Mr. Hess would include a 15 percent limitation,  
5 aren't you? Isn't that the net effect of your --

6 A. It is, Mr. Randazzo, but I think -- the  
7 only clarification I would make to that is assume for  
8 a minute with me that the Commission approves our ESP  
9 as filed. We would be going back looking at that  
10 retroactively saying that 15 percent cap was there on  
11 day one, in other words, the first day of the billing  
12 cycle, and you would just true up to that. It  
13 wouldn't be you would collect that money in a fashion  
14 that would ignore the 15 percent cap for the trueup  
15 period.

16 Q. Okay. I think I understand.

17 MR. RANDAZZO: Thank you very much.

18 MR. BOEHM: No questions, your Honor.

19 EXAMINER BOJKO: Mr. Bell?

20 MR. BELL: Yes, I have a few questions.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Bell:

24 Q. Mr. Randazzo's understanding perhaps is a

25 little better than mine because I have the same

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1 problem, and I'd like to pursue Mr. Randazzo's --

2 MR. RANDAZZO: Do you want me to answer  
3 this?

4 MR. BELL: Either one of you can.

5 Q. Mr. Baker, the reconciliation adjustment  
6 proposed in the company's 1/1/09 rate proposal is  
7 total reconciliation, is it not, of the dollars  
8 authorized -- ultimately to be authorized versus the  
9 dollars provided in the interim?

10 A. Yes.

11 Q. Now, here's where I'm confused. You have  
12 proposed with respect to Mr. Hess's proposal that  
13 there be a fuel adjustment cost recovery for the  
14 reasons mentioned in your testimony, and that for all  
15 intents and purposes that recovery not be, quote,  
16 capped in absolute terms but that the end period  
17 increase be limited to 15 percent and the amount in  
18 excess of that 15 percent simply be deferred for the  
19 recovery in a different period, correct?

20       A.   Yes.

21       Q.   Aren't you then at odds by suggesting  
22   that you would have a total reconciliation of the  
23   total dollars under the company's proposal reflecting  
24   the difference between the total dollars authorized  
25   in whatever ESP is ultimately authorized and the

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1 dollars provided for in your 1/1/09 rates? Correct?

2 THE WITNESS: I'm sorry, could I have

3 that question read back?

4 (Record read.)

5 A. I don't think I'm in conflict.

6 Q. Okay.

7 A. What I'm trying to get across is it is

8 first a simple concept. It always gets complicated,

9 obviously, when you go down into the details, and the

10 simple concept is that unlike Mr. Hess's proposal for

11 the ESP, as I understand, it would be that there is

12 no deferral of fuel dollars, and we are proposing as

13 part of our ESP that we would defer those fuel

14 dollars.

15 So the question, when you get down into

16 details -- and I'll try to simplify this, and we

17 haven't done all the math associated with this --

18 would be that for the interim trueup you would try

19 to -- you would try to mimic, assuming the Commission

20 approves our ESP, you would try to mimic what would  
21 have happened if it had been in place on 1/1 or  
22 12/30/08, and for the period you would look at that  
23 and you say how many dollars if that was in place  
24 would we defer for recovery in the 2012 period  
25 afterwards and how much needs to be dealt with,

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1 because using that 15 percent cap compared to not  
2 changing rates we would have had a dollar value that  
3 now needed to be recovered between the time the rates  
4 are put in place and the end of the year.

5 That's the best way I can say it in  
6 simple terms.

7 Q. It's not a simple concept, you'll agree,  
8 although you've done a good job, Mr. Baker.

9 A. It's a simple concept. It's complicated  
10 when you get down to the math.

11 Q. Okay. In any event, under Mr. Hess's  
12 proposal when the ultimate -- strike that.

13 Under the company's proposal there is an  
14 absolute cap of 15 percent on the increases over the  
15 period of the company's ESP plan, correct?

16 A. Let me make a couple modifications to  
17 what you've just said. First of all, it's an  
18 approximate cap or approximate --

19 Q. Accepted.

20       A. -- stopping point. The second is there  
21   are two factors that are not included in that, and  
22   that is transmission and future requirements.

23       Q. Which is outside the scope of this  
24   proceeding.

25       A. It is part of our ESP that those would be

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1 built into it.

2           There also is the case that in the first  
3 year, if, in fact, there is a period -- and it was  
4 discussed by Mr. Roush yesterday -- that the what  
5 I'll call that trueup to the 15 percent cap that we  
6 were talking about for the period, let's just pick  
7 dates and let's just assume it's January  
8 1st through January 15th, when that gets added to  
9 the company's proposal, you could exceed the  
10 15 percent for that part of the trueup.

11       Q. Okay. So that in either event, under the  
12 company's proposal or under Mr. Hess's proposal, the  
13 customers could be subject to an increase in excess  
14 of 15 percent for year one.

15       A. Yes.

16       MR. BELL: Thank you. No further  
17 questions.

18       EXAMINER BOJKO: Mr. Yurick?

19       MR. YURICK: No questions. Thank you,

20 your Honor.

21 THE WITNESS: I'm sorry, I'd just like to

22 clarify that. Not if you look at the total year, but

23 if you look at any point in time.

24 EXAMINER BOJKO: Okay. Thank you,

25 Mr. Baker.

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1 THE WITNESS: Thank you, your Honor.

2 EXAMINER BOJKO: You may step down.

3 MR. RESNIK: Your Honor, I'd move for the  
4 admission of Companies' Exhibit 2.

5 EXAMINER BOJKO: Which is Mr. Baker's  
6 rebuttal testimony?

7 MR. RESNIK: Yes.

8 EXAMINER BOJKO: Any objection to the  
9 admission of Companies' Exhibit 2?

10 Hearing none, it will be admitted.

11 MR. RESNIK: Thank you.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER BOJKO: Let's go off the record,  
14 sorry, Mr. Petricoff.

15 MR. PETRICOFF: Yes, I move for the  
16 admission of Constellation Exhibit No. 1.

17 EXAMINER BOJKO: Which is the OCC  
18 testimony before the legislature?

19 MR. PETRICOFF: Yes.

20           EXAMINER BOJKO: Any objection to the  
21 admission?

22           MR. RESNIK: Yes, your Honor. There is  
23 quite a bit of material in that document and I think  
24 that Mr. Petricoff just referred to maybe one page,  
25 as I recall. I don't have a problem with the portion

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1 that was discussed in the hearing, but I do object to  
2 just putting in the entire piece of testimony.

3 EXAMINER BOJKO: Mr. Randazzo.

4 MR. RANDAZZO: I guess I'm wondering what  
5 the purpose of the -- is it for the truth of the  
6 matter as contained in the document? It's actually  
7 Consumers' Counsel testimony from the Senate hearing,  
8 as I understand it.

9 MR. PETRICOFF: Right. Basically,  
10 Mr. Baker testified that that's where he got the  
11 numbers, and I have no objection to Mr. Resnik's  
12 suggestion that we limit it to Attachment A, which is  
13 where the testimony was, but I think it's important  
14 for it.

15 EXAMINER BOJKO: Actually, I thought  
16 Mr. Baker said he didn't get the testimony from here.

17 MR. RANDAZZO: That's my recollection.

18 MR. PETRICOFF: Well, he said he  
19 remembered there was another chart that he had seen,

20 but he did recognize the testimony, and I think it  
21 works for impeachment because there's a difference  
22 between what's in that testimony, particularly in  
23 what's bypassable, and what the testimony is from  
24 Mr. Baker on cross-examination.

25 EXAMINER BOJKO: Our recollection is that

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1 he was referencing a graph, and actually he actually  
2 didn't agree with some of the positions stated in  
3 here with regard to bypassability, so we will take  
4 administrative notice of Attachment A as to what you  
5 were cross-examining him on but we're not going to  
6 admit it as an exhibit.

7 MR. PETRICOFF: Thank you, your Honor.

8 In that case could I also ask that you take  
9 administrative notice of the provider of last resort  
10 charges for Duke Energy-Ohio and the three  
11 FirstEnergy companies.

12 EXAMINER BOJKO: That's all in Attachment  
13 A, is that correct?

14 MR. PETRICOFF: I'm sorry, what?

15 EXAMINER BOJKO: That's on Attachment A.

16 MR. PETRICOFF: They're referred to on  
17 Attachment A.

18 EXAMINER BOJKO: We're going to take  
19 administrative notice of Attachment A so that would

20 include those.

21 MR. PETRICOFF: Well, your Honor, in

22 that -- well, that's fine, your Honor. I'll accept

23 that.

24 EXAMINER BOJKO: Now let's go off the

25 record.

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1 (Discussion off the record.)

2 EXAMINER SEE: Go back on the record.

3 MR. BOEHM: Your Honor, on behalf of the  
4 Ohio Energy Group we'd like to call Stephen J. Baron.

5 EXAMINER SEE: Mr. Baron.

6 (Witness sworn.)

7 EXAMINER SEE: Thank you, please have a  
8 seat.

9 - - -

10 STEPHEN J. BARON

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

13 DIRECT EXAMINATION

14 By Mr. Boehm:

15 Q. Mr. Baron, will you state your name and  
16 spell your last name for the court reporter?

17 A. My name is Stephen Baron and the last  
18 name is B-a-r-o-n.

19 Q. Mr. Baron, do you have in front of you a

20 document entitled Rebuttal Testimony of Stephen J.

21 Baron?

22 A. Yes, I do.

23 Q. And was this document prepared by you or

24 under your direction and supervision?

25 A. Yes, it was.

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1 Q. Do you have any changes or additions to  
2 this document?

3 A. No, not to my knowledge.

4 Q. Okay. If I would ask you the questions  
5 contained herein at this time would your answers be  
6 the same?

7 A. Yes, they would.

8 Q. And are those answers true and correct to  
9 the best of your information and belief?

10 A. Yes.

11 MR. BOEHM: Your Honor, I tender the  
12 witness for cross-examination. Oh, I'm sorry.

13 EXAMINER SEE: Would you like this to  
14 be --

15 MR. BOEHM: Yeah, let's make this OEG  
16 Exhibit 1.

17 EXAMINER SEE: The exhibit will be so  
18 marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 EXAMINER SEE: Okay. What's the batting

21 order?

22 Mr. Resnik, did you indicate that you

23 would be cross-examining Mr. --

24 MR. RESNIK: I did.

25 EXAMINER SEE: Okay.

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1 MR. RESNIK: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Resnik:

5 Q. Good morning, Mr. Baron.

6 A. Good morning.

7 Q. I'd like to first refer you to page 2 of  
8 your testimony and lines 13 and 14. You have a  
9 phrase in that sentence that says the rate plans  
10 currently if effect will continue. Do you see that?

11 A. Yes.

12 Q. And what do you mean by the term "rate  
13 plans"?

14 MR. RANDAZZO: I object.

15 EXAMINER SEE: What's the grounds,  
16 Mr. Randazzo?

17 MR. RANDAZZO: That's a statutorily  
18 defined term, your Honor.

19 MR. RESNIK: I guess that's the point,

20 I'm just trying to find out if that's the way he's

21 using it or some other way.

22 MR. RANDAZZO: I'll withdraw the

23 objection. Thank you.

24 EXAMINER SEE: Okay.

25 A. My use of the words, phrase "rate plans"

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1 is based on my understanding and talking to counsel  
2 as to the requirements of the current rates basically  
3 and I think it's consistent, as I understood  
4 Mr. Baker's testimony, with his description which is  
5 the current RSP rates that are in effect.

6 Q. Under your proposal what rate would  
7 you -- well, let's back up a moment.

8 You are supporting the company's section  
9 V.E proposal; is that correct?

10 A. I think with regard to the concept that  
11 if a permanent ESP is not in effect on January 1,  
12 then the current rates should go into effect subject  
13 to a trueup, and to that extent I think it appears to  
14 be consistent, to my surprise, with the company's  
15 position.

16 Q. Okay. And I'm curious whether in that  
17 context you have a recommendation or a thought on the  
18 rate to be charged to Ormet.

19 A. I do not have any specific

20 recommendation. I'm aware that the provisions of the  
21 Commission's order authorizing the current Ormet rate  
22 expire in 2008, and I don't have a position on --  
23 other than that consistent with the current rates I  
24 guess it would be the current rates, but I'm not  
25 making a specific recommendation on that.

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1       Q. And when you refer to "current rates,"  
2 are you including in that the current ability of the  
3 company to recover the delta between whatever rate is  
4 being charged to Ormet and an administratively  
5 determined market rate?

6       A. My understanding -- the answer is that my  
7 understanding is that the current provisions of the  
8 order establishing the Ormet contract, and recovery  
9 of the difference between market and price charged to  
10 Ormet would continue, but it's my understanding based  
11 on actually Mr. Baker's testimony today that that  
12 difference is being recovered through the  
13 amortization of the regulatory liability.

14      Q. And is there opportunity for further  
15 recovery, as you understand the currently approved  
16 Ormet situation?

17      A. For the period through 2008 it's my  
18 understanding that if the current regulatory  
19 liability is no longer in existence to provide for

20 that delta revenue, then the 4 percent additional  
21 generation increase can be used, though the current  
22 rate that all ratepayers are paying does not reflect  
23 any delta revenues in that 4 percent provision, as I  
24 understand it.

25 Q. And when you refer to the 4 percent

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1 provision, is it your understanding that in reality  
2 it is an average 4 percent each year?

3 A. That is my understanding. And as to the  
4 existing provisions of the company's RSP, is that  
5 what you're referring --

6 Q. Yes, it is.

7 A. That's my understanding, yes.

8 Q. And so looking, for instance, at the Ohio  
9 Power Company half of the service that's provided to  
10 Ormet, to the extent that Ohio Power Company has, to  
11 use the term Mr. Baker used in his rebuttal  
12 testimony, has headroom to put in more than 4 percent  
13 of an increase if the rate stabilization plan that is  
14 inherent in the -- at least as the company would  
15 argue is inherent in the current standard service  
16 offer has headroom for more than just 4 percent,  
17 would that, as you understand the Ormet arrangement,  
18 provide for recovery by the company of the delta  
19 between whatever rate is paid by Ormet and market?

20       A. That's my understanding with regard to  
21 2008. With regard to rates that might be in effect  
22 on 1/1/09, I think it's my understanding that it  
23 would be the current rates which, as my, again,  
24 further understanding that do not include any  
25 additional increases due to delta revenues.

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1           At the same time, my recommendation is  
2   that there be a trueup to the ultimate approved ESP  
3   rates, and so, in effect, the end result is that it's  
4   the final approved ESP rates that would determine the  
5   amount that customers pay even beginning 1/1/09.

6       Q.   And that's the beauty of the  
7   reconciliation concept.

8       A.   That's -- yeah, that's a provision of the  
9   reconciliation. That's the end effect of the  
10   reconciliation.

11      Q.   Okay. And on page -- while we're talking  
12   about reconciliation, page 11 of your testimony,  
13   lines 10 through 13, you're referring there again to  
14   the trueup proposal; is that correct?

15      A.   Well, in that -- I am referring to a  
16   trueup, and I'm simply stating on line 10 that it's  
17   my understanding that the staff's proposal would not  
18   include a trueup.

19      Q.   Okay. Do you believe the trueup is an

20 appropriate component of whatever rates might be put  
21 into effect on an interim basis?

22 MS. ROBERTS: Your Honor, I object to  
23 this line of questioning. It's nothing more than  
24 friendly cross.

25 MR. RESNIK: Well, Mr. Baron's testimony

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1 certainly is not entirely friendly.

2 MS. ROBERTS: Well, the reconciliation  
3 portion, your Honor, is friendly cross.

4 EXAMINER SEE: Overruled.

5 MR. RESNIK: I'm sorry?

6 EXAMINER SEE: Go ahead.

7 MR. RESNIK: Thank you.

8 Q. (By Mr. Resnik) Mr. Baron, if you could  
9 answer the question.

10 A. Could you repeat the question?

11 MR. RESNIK: Could I have it read back,  
12 please?

13 (Record read.)

14 A. Yes, that's my recommendation, that as  
15 part of the overall ESP plan, if the final rates of  
16 the ESP cannot be put into effect on January 1, my  
17 recommendation is that there be a trueup to  
18 ultimately -- to be the ultimately approved ESP  
19 rates.

20 Q. And I'm just trying to determine why

21 that's your recommendation.

22 A. Well, my understanding -- my

23 understanding is that the object in this case

24 ultimately, I'm talking about the entire case, is to

25 come up with a just and reasonable ESP rate, and my

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1 thought process is that if it's just and reasonable  
2 on April 1, it would be just and reasonable on  
3 January 1, and if only because of a matter of timing  
4 could not be put into place, that would be an  
5 equitable result.

6 Q. Also looking at page 3 of your testimony,  
7 lines 14 and 15, you state that it's important for  
8 both utilities and consumers to know the rates  
9 they'll be charged for generation beginning in 2009.  
10 Do you see that?

11 A. Yes.

12 Q. Why is it important?

13 MR. RANDAZZO: Your Honor, I will object.  
14 The answers of the witness indicate that he is not  
15 rebutting the company's proposal at this point. He's  
16 rebutting the positions that have been expressed by  
17 Mr. Hess, and this witness is not adverse to the  
18 company with regard to section V.E of the  
19 application.

20 MR. BELL: I wholeheartedly join

21 Mr. Randazzo. This is nothing but friendly

22 cross-examination.

23 MR. RESNIK: If I -- if I may, your

24 Honor, we also have Mr. Hess's proposal before the

25 Commission which is, as Mr. Baker indicated, sort of

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1 the third step down of where the company's preference  
2 is, and so I think that this question also applies to  
3 Mr. Hess's proposal.

4 EXAMINER SEE: I'm going to allow it, but  
5 continue to keep your focus on the V.E plan --

6 MR. BELL: I'm sorry, is the Bench's mic  
7 on? I can't hear a thing.

8 EXAMINER SEE: I'm sorry. I need to  
9 speak up. Can you hear me now, Mr. Bell?

10 MR. BELL: Yes, I can. You were facing  
11 Mr. Resnik at the time, and I couldn't hear a thing.

12 EXAMINER SEE: I understand that. I  
13 think Mr. Baker also had that issue. I'm going to  
14 allow it. I'm going to direct Mr. Resnik to focus on  
15 the V.E plan and the staff proposal.

16 Mr. Baron, go ahead and answer the  
17 question.

18 THE WITNESS: Yes, your Honor.

19 First let me just make sure it's clear

20 that that sentence that you referenced is basically  
21 talking about the first sentence, which is agreeing  
22 with Mr. Hess that there need -- that there's a real  
23 possibility that under -- that the final ESP rates  
24 may not be effective January 1. And so, in effect,  
25 I'm agreeing with the general concept that customers,

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1 that there needs to be some level of certainty for  
2 the customers and the company or the companies as to  
3 what the rates will be on January 1.

4 I think that's self-evident

5 Q. Okay. Thank you. Let's turn to page 7  
6 of your testimony. Actually, I'm sorry, let's go to  
7 page 9, lines 12 and 13. You say that: "The ESP  
8 portion of SB 221 authorizes rate increases only for  
9 prudently incurred costs." Do you see that?

10 A. Yes.

11 Q. What is your basis for that statement?

12 A. It's, and I was referring to -- well, let  
13 me get out my copy of the Act.

14 I was referring to section  
15 4928.143(B)(2)(a), which starts with the words  
16 "Automatic recovery of the following costs," and then  
17 goes on to say "provided the cost is prudently  
18 incurred."

19 Q. All right. Do you recognize that there

20 are a number of other provisions that are under  
21 4928.143(B)(2) besides just "(a)" that goes from  
22 "(b)" through "(i)"?

23 A. Yes. I was referring to the costs that  
24 are covered by (2)(a).

25 Q. Okay, so not the entire ESP, but those

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1 pieces that are in "(a)."

2 A. Yes. Except I believe, you know, my  
3 view -- and this is my nonlegal opinion -- in reading  
4 SB 221 that the intent was to establish rates that  
5 are reasonable, and under that standard I would  
6 characterize all the provisions of the company's ESP  
7 or place under the prudent standard all of the  
8 provisions of the ESP rates, that in order for the  
9 ESP -- in order for Ohio consumers to have reasonable  
10 rates, all of the provisions of the ESP rate plan  
11 need to be reasonable, and I would equate that with  
12 prudence.

13 Q. So what if all of the components, in your  
14 view, are prudent but in the aggregate turn out to be  
15 less favorable to customers than the market rate  
16 offer?

17 A. Well, my understanding is that that is  
18 one of the tests of an ESP, is that it has to be  
19 better or lower cost than an MRO.

20 Q. More favorable.

21 A. That's one of the tests that is required

22 under the statute.

23 Q. That's how you would interpret the phrase

24 "more favorable" in the aggregation, is lower cost?

25 A. Yes. That's certainly one of the

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1 principal tests, and I think certainly the company  
2 appears to believe that based on Mr. Baker's Exhibit  
3 2. And when I say "appears to believe" it, I mean  
4 that that's a requirement that has to be established.

5 Q. Well, we'll let Mr. Baker's testimony  
6 speak for itself, then.

7 EXAMINER SEE: Mr. Resnik, I'm going to  
8 need you to speak a little louder.

9 MR. RESNIK: I'm sorry, I'll try. One  
10 moment.

11 Q. On page 10 of your testimony, line 19,  
12 you have a parenthetical that says "(assuming that  
13 AEP would otherwise have provided the power as an  
14 off-system sale)." Do you see that?

15 A. Yes. Just give me a second. Let me read  
16 the entire sentence.

17 Q. Sure.

18 A. Yes. Okay, I've read it.

19 Q. And what is the importance of that

20 assumption in this portion of your testimony?

21 A. Well, first of all, this portion of my

22 testimony is discussing staff's proposal to allow the

23 delta revenues on the Ormet and Monongahela Power

24 sales, and the statement here refers to the fact that

25 by allowing the companies to recover the delta

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1 revenues from full market, the assumption is that AEP  
2 would have had to go out and buy market-based power  
3 to serve those customers, and that's equivalent to  
4 saying that AEP can provide those sales at market  
5 prices.

6         And the assumption is that they're going  
7 to fully compensate AEP shareholders for the loss,  
8 the potential loss -- this was the underlying  
9 premise, as I understand it -- of the delta revenues.  
10 And yet had AEP not made those sales to --  
11 market-based sales to Ormet and Monongahela Power  
12 loads, it would have gone into the AEP system, and  
13 the loss margins would have then actually benefited  
14 ratepayers in many states, not necessarily -- they  
15 certainly wouldn't have all gone to the shareholders.  
16 That's the purpose of that statement.

17         Q. Okay. So if one of these two  
18 transactions, either the Ormet or the Mon  
19 Power-related transaction, if either one of those did

20 not result in additional off-system sales being made,  
21 then this portion of your testimony would not be  
22 applicable.

23 A. Well, I'm not sure I fully -- let me see  
24 if I understand your question. Is your question -- I  
25 think your question, at least as I understand it,

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1 that had AEP not served Ormet, the assumption is --  
2 that I'm making is that therefore AEP would have had  
3 additional energy available to make off-system sales  
4 at market, and those market sales would have  
5 generated margins. All of those margins would not  
6 have gone to the benefit of AEP shareholders. That's  
7 what I'm saying.

8 So if you're trying to then step back and  
9 say okay, we're making the sales to Ormet, what did  
10 we lose? The answer is AEP shareholders did not lose  
11 100 percent of the potential off-system sales margins  
12 from having made it at market. That's what I'm  
13 saying to you.

14 Q. But your testimony, this portion of your  
15 prefiled testimony is not just limited to Ormet; it's  
16 also discussing Monongahela Power, isn't it?

17 A. Yes. The same would apply.

18 Q. But do you know whether the arrangement  
19 that was approved by the Commission in the context of

20 the Monongahela Power situation resulted in Columbus

21 Southern having additional off-system sales?

22 A. My understanding is that Columbus

23 Southern issued an RFP to actually acquire the load.

24 Now, I don't know whether AEP participated in that,

25 effectively if something came out of the market

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1 because someone provided it, whether it was AEP or  
2 someone else. That by definition, in my view,  
3 created some opportunity for sales. I haven't gone  
4 back and done an accounting to see if -- I don't know  
5 whether it could be done.

6 Q. But Columbus Southern did not have  
7 additional power available to it to make sales as a  
8 result of acquiring the former Monongahela Power  
9 service territory, did it?

10 A. That's correct. But AEP in its entirety  
11 would have.

12 Q. Why do you say that? Columbus Southern  
13 wound up, as I think you've indicated, making a  
14 purchase in the market and that cost is passed along  
15 to all of its customers. Its available capacity is  
16 the same as it was before it acquired the Mon Power  
17 service obligation, isn't it?

18 MS. ROBERTS: I object, your Honor. This  
19 sounds like Mr. Resnik's testifying instead of asking

20 questions.

21 MR. RESNIK: I'm repeating what this

22 witness has testified that his understanding is, that

23 Columbus Southern Power went out to the market for

24 the power, and I'm just trying to figure out how that

25 resulted in Columbus Southern having additional

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1 off-system sales.

2 EXAMINER SEE: Okay.

3 Go ahead, Mr. Baron.

4 A. My understanding is that AEP makes  
5 off-system sales, a substantial amount of off-system  
6 sales, and to the extent that this provision, this  
7 delta revenue provision is effectively compensating  
8 the shareholders for those -- for the delta revenues,  
9 I think I view it as the equivalent of compensating  
10 the shareholders for the lost opportunity of making  
11 sales.

12 I accept the fact that CSP issued an RFP  
13 to obtain the power, but I think that AEP in the  
14 aggregate certainly had the opportunity to make sales  
15 to provide that source of power, whether they did it  
16 directly or indirectly.

17 Q. But the acquisition -- tell me your view  
18 on this. Did the acquisition of the Mon Power --  
19 former Mon Power service territory load, did that

20 result in Columbus Southern having more power

21 available to make off-system sales?

22 A. Columbus Southern, it's my understanding,

23 they're a short company so they themselves would not

24 have had that opportunity.

25 Q. AEP as a AEP East system, what changed in

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1 the acquisition by Columbus Southern of the former  
2 Mon Power service territory load, which, as you've  
3 indicated, was met through a market acquisition?  
4 What in that context provided additional system sales  
5 opportunities for AEP?

6 A. Well, AEP effectively could provide  
7 energy into the market to supply that load, as I  
8 said, whether it was directly meeting the RFP or  
9 displacing some other lost opportunity because some  
10 other supplier bid the Mon Power load.

11 Q. And you don't know if, for instance, if  
12 AEP bid on the CSP RFP.

13 A. No. And, again as I just answered,  
14 whether it was -- it would be by direct service or  
15 displacement because some other supplier, I don't  
16 know, but it seems logical that that would be an  
17 opportunity.

18 Q. It may have been an opportunity, but you  
19 don't know whether either because the Commission

20 didn't want AEP to or AEP decided not to bid on it,

21 you just don't know.

22 A. Yes. But again, I think my answer was it

23 doesn't really matter conceptually whether AEP served

24 the load through responding to the RFP or simply AEP

25 had more opportunities for other sales because some

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1 other suppliers served the load and was, therefore,

2 serving that load.

3 Q. Now, the transfer of the Mon Power

4 service load over to Columbus Southern did not create

5 additional demand in the overall market, did it?

6 A. No. I would agree with that.

7 Q. So where is it that AEP is getting this

8 opportunity to make more off-system sales because the

9 Mon Power load has shifted to Columbus Southern?

10 A. Well, I haven't done -- I don't know

11 the -- I haven't done any specific analysis on that

12 so I don't know whether the power flowed, there was

13 any particular benefit or not. I don't know.

14 Q. You don't know, okay.

15 Now, your more general concern is that

16 these provisions that were put into the Ormet

17 arrangement and into the Mon Power arrangement may

18 have overstated the cost implications to the AEP

19 system because of the way the pool works; is that

20 correct?

21 A. I'm not sure I understand the premise of  
22 your question. What are you specifically referring  
23 to?

24 Q. Well, as I understand your testimony,  
25 you're saying that the Commission was trying to, in

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1 the context of Ormet and in the context of Mon Power,  
2 the Commission was trying to compensate Columbus  
3 Southern in one case, Mon Power, and both companies  
4 in the context of Ormet, trying to compensate them  
5 for 100 percent of lost opportunity cost, I suppose,  
6 and in fact you're saying that's not the real impact  
7 on the AEP system.

8 A. Well, yes, I think that's correct.  
9 Because of the fact that AEP has to share off-system  
10 sales margins with ratepayers, the shareholders are  
11 not at loss for 100 percent of any reduction in those  
12 margins.

13 Q. Okay. And in making that argument aren't  
14 you really quarreling with the original Commission  
15 orders that approved the Ormet arrangement and  
16 ordered the Mon Power arrangement?

17 A. I think the answer is I'm not quarreling  
18 with it; I'm simply commenting that given the staff's  
19 proposal to allow the continuation of the delta

20 revenues beyond 2008 has the effect, in my view, of  
21 increasing and to be, beyond a reasonable amount,  
22 increasing the profits, the earnings of the two  
23 companies.

24           And so I'm not quarreling with the  
25 Commission's decisions on either Mon Power or Ormet,

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1 I am simply pointing out that this aspect of it, the  
2 one that I'm referring to that you're asking me  
3 about, has the potential to add to additional  
4 earnings of the shareholders on top of the earnings  
5 that I referenced already that CSP and Ohio Power are  
6 earning, at least for the last 12 months.

7 Q. As I understand it, the criticism that  
8 you have for Mr. Hess's proposal is that it carries  
9 on a Commission determination from earlier  
10 proceedings, the Mon Power and the Ormet proceedings,  
11 that you think are inappropriate initially and,  
12 therefore, they would be inappropriate if carried on.

13 A. No, I don't think that's what I'm saying.  
14 What I'm saying is that there is no need to include  
15 those provisions in any 1/1/09 interim rates. And  
16 I'm simply pointing out that in addition to the fact  
17 that the company has substantial earnings based on  
18 the last 12 months for CSP and Ohio Power, this is  
19 another aspect of the -- or implication of the

20 staff's plan.

21 Even under the company's own ESP the

22 company is not asking for a continuation of delta

23 revenues beyond December 31, 2008. The Commission's

24 original orders in both Mon Power and Ormet did not

25 contemplate any continuation of delta revenues beyond

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1 12/31/2008. I'm not testifying that there should be  
2 some refund for those delta revenues today or in  
3 prior years. I'm simply saying starting in 2009  
4 those provisions, those delta revenues for Mon Power  
5 and Ormet should not be included in any interim  
6 rates.

7 EXAMINER BOJKO: Mr. Baron -- excuse me,  
8 Mr. Resnik.

9 Mr. Baron, I think you were present  
10 yesterday when Mr. Roush testified, and I think  
11 Mr. Baker also testified to it, that the PAR rider  
12 would continue under the company's V.E proposal.

13 You're not suggesting that that not  
14 occur, that their existing rates would be lowered  
15 somehow to remove that or just the PAR rider be  
16 removed, are you?

17 THE WITNESS: No, your Honor. Under the  
18 V.E proposal or even under the proposal that I'm  
19 recommending where current rates go into effect

20 January 1, whatever riders, including the PAR, that  
21 are in effect today would continue, and so I was  
22 really referring -- I was referring to the company's  
23 proposed ESP. The final ESP does not include those  
24 delta revenue provisions.

25 EXAMINER BOJKO: Thank you for that

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1 clarification.

2 Q. (By Mr. Resnik) Are you aware that the  
3 company's ESP proposal includes making market  
4 purchases to be flowed through its FAC recovery  
5 provision?

6 A. In the ESP, yes. And OEG Witness Kollen  
7 has opposed that.

8 Q. And do you recall if in Mr. Baker's  
9 testimony he indicates that one of the reasons for  
10 that is because of the acquisition of the obligation  
11 to serve the Ormet and Mon Power loads?

12 A. I just don't recall that. I'd have to  
13 review his testimony.

14 Q. Do you believe that the Commission's --  
15 the portion of the Commission's resolution in both  
16 the Mon Power and the Ormet arrangements, that  
17 portion that provided for the recovery by the company  
18 of the delta between the rate being paid and the  
19 market price, do you believe that that was

20 reasonable?

21 A. In other words, the original orders?

22 Q. Yes.

23 A. I don't have an opinion on that. I've

24 read the orders. I wasn't in those proceedings, and

25 I just haven't done enough research to know at the

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1 time all of the factors that might have been before

2 the Commission.

3 Q. And in particular do you know if, and I

4 believe this is right, at the Ormet proceeding

5 whether the Ohio Energy Group agreed in a Stipulation

6 to that recovery?

7 MR. BOEHM: Objection, your Honor. This

8 has gone pretty far afield. The witness has

9 testified he accepts the order; he accepts the

10 results. It doesn't matter whether we agreed to it

11 or didn't agree to it.

12 EXAMINER SEE: Mr. Randazzo?

13 MR. RANDAZZO: Your Honor, to the extent

14 that there is any question about what parties agreed

15 to in a Stipulation, it would be an improper question

16 by the face of the Stipulation.

17 MR. RESNIK: I'll withdraw the question.

18 EXAMINER SEE: Thank you.

19 Q. (By Mr. Resnik) Just one other matter, I

20 think you had indicated that the Commission orders,  
21 both the Ormet and Mon Power situation, at least as  
22 you understand them, did not contemplate going beyond  
23 the end of 2008; is that correct?

24 A. That's my understanding reading the  
25 orders.

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1       Q. And at the time that those orders would  
2 have been issued, was the law such that at the end of  
3 the rate stabilization plans that the companies would  
4 be able to go to market rates?

5       MR. BOEHM: Objection, your Honor. The  
6 witness isn't a lawyer.

7       EXAMINER SEE: I'm sorry, say again.

8       MR. BOEHM: The witness isn't a lawyer.  
9 I concede, counsel, and we've been doing it  
10 repeatedly here, we've been interpreting 221, but  
11 talking about what the state of the law was back  
12 then, I think it's beyond the witness's competence.

13       MR. RESNIK: Well, if it's -- go ahead.

14       EXAMINER SEE: Mr. Randazzo.

15       MR. RANDAZZO: Well, I've got questions  
16 about 221 as well, and, unfortunately, the witness  
17 does interpret 221.

18       EXAMINER SEE: And to the extent that the  
19 witness has an opinion, he can ask the question.

20 Q. (By Mr. Resnik) Do you recall the

21 question?

22 A. You were asking me about the RSP rates.

23 Q. Whether when the -- at the time that the

24 Ormet and Mon Power decisions were issued by the

25 Commission, whether under the existing law then at

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1 the end of the rate stabilization periods the  
2 companies would have been able to go to market-based  
3 pricing.

4 MR. BOEHM: Your Honor, I would renew my  
5 objection. We're not talking about 221 now.  
6 Counsel's clearly asking him to go back beyond 221  
7 and interpret the law at the time of the RSP. I  
8 don't think the witness has testified anything about  
9 that and I would suggest it's beyond his competence.

10 EXAMINER SEE: Your objection is so  
11 noted.

12 Please answer the question if you can,  
13 Mr. Baron.

14 A. I don't know. I read -- I was in the  
15 cases. It's my general recollection that the intent  
16 was that the utilities in Ohio would ultimately move  
17 to market rates. I don't remember all of the  
18 provisions at the time.

19 Q. I gather, though, you have looked at and

20 you assert some familiarity with Senate Bill 221.

21 A. I have looked at it, yes.

22 Q. Do you have some idea what inspired that

23 law to be passed?

24 MR. BOEHM: Your Honor, objection. I was

25 a part -- I was a part and I still don't know what

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1 inspired it. I would argue that it's irrelevant,

2 your Honor.

3 MR. RESNIK: Well, let me rephrase it.

4 Q. What change did Senate Bill 221 make to

5 the way regulations were going to be set had not

6 Senate Bill 221 been passed?

7 A. It's my understanding that at the end of

8 2008, absent some other provisions, there would still

9 be standard service offer rates and market-based

10 rates if customers went to the market.

11 MR. RESNIK: That's all I have. Thank

12 you, Mr. Baron.

13 EXAMINER SEE: Let's go off the record

14 for a moment.

15 (Discussion off the record.)

16 EXAMINER SEE: Let's go back on the

17 record.

18 Mr. Smalz?

19 MR. SMALZ: Thank you, your Honor.

20                   - - -

21                   CROSS-EXAMINATION

22 By Mr. Smalz:

23       Q. I guess it's afternoon. Good afternoon,

24 Mr. Baron.

25       A. Good afternoon.

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1 Q. Turning to your summary of your

2 conclusions on pages --

3 EXAMINER SEE: Mr. Smalz, I'm going to

4 need you to speak up or use the mic.

5 MR. SMALZ: Is this fine?

6 EXAMINER BOJKO: I don't think it's on.

7 EXAMINER SEE: No difference.

8 It's on now.

9 Q. Mr. Baron, with reference to the summary

10 of your conclusions on pages 1 and 2 of your

11 testimony, you basically endorse the company's

12 proposal with regard to interim rates. Can you point

13 to any legal authority or legal basis in Senate Bill

14 21 for the reconciliation or trueup component of the

15 company's proposal?

16 MR. RANDAZZO: Before the witness

17 answers, I thought Mr. Smalz may have said Senate

18 Bill 21. I think he meant Senate Bill 221.

19 MR. SMALZ: That would be Senate Bill

20 221.

21 MR. RANDAZZO: Thank you.

22 A. Well, first, as is obvious, I'm not

23 offering legal testimony, and so I can answer your

24 questions based on my understanding, discussions with

25 counsel, my review of the provisions. And there's

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1 nothing in Senate Bill 221 that talks about  
2 reconciliation, at least with regard to an interim  
3 rate or a rate that may go into effect when no other  
4 rate -- if an ESP hasn't been approved.

5 My recommendation in this regard to do a  
6 trueup or a reconciliation to the final approved ESP  
7 rates is in the context that the Commission would, in  
8 fact, issue an order in this case and that  
9 effectively that becomes part of the overall ESP.

10 So the ESP has -- I mean that's my  
11 understanding of how it would work, but beyond that I  
12 can't site to any provision on interim rates  
13 regarding reconciliation.

14 Q. Thank you, Mr. Baron.

15 Turn to page 4 of your testimony, your  
16 first answer on that page, now, you're apparently  
17 recommending certain modifications to Mr. Hess's  
18 proposal if his proposal is adopted; however, you are  
19 in no way endorsing Mr. Hess's proposal, are you?

20       A. That's correct. And I might add that if  
21 it were, my recommendation would be that it be  
22 subject to a reconciliation.

23       MR. SMALZ: That's all I have, your  
24 Honor.

25       EXAMINER SEE: Mr. Petricoff?

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1 MR. PETRICOFF: Nothing, your Honor.

2 EXAMINER SEE: Ms. Roberts?

3 MS. ROBERTS: Nothing, your Honor.

4 EXAMINER SEE: Mr. Randazzo.

5 MR. RANDAZZO: I do. Thank you, your  
6 Honor.

7 CROSS-EXAMINATION

8 By Mr. Randazzo:

9 Q. Mr. Baron, you used the word "margin" a  
10 couple of times in your testimony. Can you tell me  
11 what you mean by margin?

12 A. If it's in -- if you're asking with  
13 respect to off-system sales, it's -- I think that's  
14 the reference I used --

15 Q. Yes.

16 A. -- margin would be the difference between  
17 the sales price or the revenue received and the  
18 actual cost of the energy produced.

19 Q. If you know, does AEP publish the margin

20 for off-system sales on a periodic basis?

21 A. For all of the AEP system or those sales

22 that go through the inner system agreements that are

23 among the companies?

24 Q. Either one.

25 A. I don't know whether the company

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1 publishes them, though I have been in a number of  
2 rate proceedings in states, Kentucky, Virginia, West  
3 Virginia, where those margins are actually presented  
4 in part of the overall revenue requirement  
5 consideration.

6 MR. RANDAZZO: May I approach the  
7 witness, your Honor?

8 EXAMINER SEE: Yes.

9 Q. Mr. Baron, I'm going to hand you what I  
10 believe to be a copy of the third quarter earnings  
11 release presentation of AEP and ask you to look at  
12 page 11 of the attachments and ask you if that  
13 refreshes your recollection with regard to whether or  
14 not the AEP companies publish gross margin numbers as  
15 you've defined them for off-system sales.

16 MR. BOEHM: Do you have any other copies?

17 MR. RANDAZZO: I do not.

18 MR. BOEHM: If I may, your Honor.

19 EXAMINER SEE: Go right ahead.

20       A. Based on the document, the earnings  
21 document that you've given me, it appears that the  
22 company does present the margins per megawatt-hour  
23 for various portions of its system and then the  
24 overall utility gross margin.

25       Q. Yes. And, in fact, don't they break out

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1 the margins associated with the sales by the Ohio

2 companies?

3 A. Yes, they do.

4 Q. And on a relative basis are the margins

5 from off-system sales higher or lower than the

6 margins associated with sales from the Ohio

7 companies?

8 A. It looks --

9 MR. RESNIK: Your Honor, I'm going to

10 object. I don't see what the relevance is, and

11 particularly in the context of this interim portion

12 of the hearing.

13 EXAMINER SEE: Would you like to respond,

14 Mr. Randazzo?

15 MR. RANDAZZO: This witness talks about

16 the appropriateness or inappropriateness of dealing

17 with the Ormet delta revenue recovery, and the

18 purpose of this line is to demonstrate the margins

19 associated with off-system sales is actually lower

20 than the margin associated with sales made by the  
21 Ohio companies.

22 EXAMINER SEE: I'm going to allow it.

23 A. For 2008 I guess these are financial  
24 results for third quarter '08 versus third quarter  
25 '07, so third quarter '08 the margins for the Ohio

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1 companies were \$43.90 per megawatt-hour, and  
2 \$577 million, which is about 25 percent of the total  
3 AEP East and West margins.

4 Q. And the margin associated with the  
5 off-system sales --

6 MR. RANDAZZO: I'm sorry, could I have  
7 the answer read back, maybe I --

8 A. Okay. I was referring to the total  
9 margins that are reported in the earnings document.

10 Q. Right. And my question was whether or  
11 not on a relative basis the margins from the sales by  
12 the Ohio companies was greater than the margins for  
13 the sales -- off-system sales as reported.

14 A. You're talking about the total -- I'm not  
15 sure I follow what you mean. Are you speaking of the  
16 Ohio companies' numbers compared to the ranges for  
17 the other companies for the system?

18 Q. Right.

19 A. Well, they're higher, substantially

20 higher.

21 Q. Right. Now, as I understood your  
22 testimony, you're actually supporting the  
23 company's -- section V.E of the company's  
24 application; is that correct?

25 A. Yes, that we are recommending that

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1 effectively 1/1/09 the final approved ESP rates be  
2 the basis for setting rates, and to the extent that  
3 those aren't actually in effect, whatever -- the  
4 current rates just be trued up for that on a rate  
5 class by rate class basis.

6 Q. And that position is one that you take in  
7 your testimony based upon your discussions with  
8 counsel regarding the meaning of Senate Bill 221; is  
9 that correct?

10 A. I wouldn't go that far. That was the  
11 recommendation that we made to come up with a  
12 reasonable proposal. I wouldn't -- I'm not sitting  
13 here, nor do I believe I state it in my testimony  
14 anywhere, that that is my interpretation or OEG's  
15 interpretation of the statute.

16 But it's my understanding that if the  
17 Commission issues an order in this interim case, it  
18 effectively becomes part of the overall ESP and that  
19 would be the governing provision.

20 Q. But you are recommending a trueup  
21 regardless of whose interim or alternative rate  
22 suggestion might be adopted by the Commission.

23 A. Yes. And of course -- yes, that's  
24 correct.

25 Q. And was that recommendation formed in

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1 conjunction with your conversations with counsel  
2 regarding the meaning of Senate Bill 221?

3       A. Well, again, no. That was the -- I'm not  
4 offering legal testimony on my interpretation and  
5 certainly not offering OEG's legal opinions as to  
6 Senate Bill 221. My recommendation for a trueup,  
7 again, is that the ultimate objective is to implement  
8 an ESP on 1/1/09. If because of timing that cannot  
9 be done, then the best alternative would be to put  
10 into place the existing rates and then by -- through  
11 financial means true it up so that the ESP, final  
12 approved ESP rates would effectively become in force  
13 on January 1.

14       My reasoning was that that was a  
15 reasonable, appropriate approach to implementing the  
16 ESP as a whole. I was not offering testimony per se  
17 on any specific requirement of Senate Bill 221,  
18 though my understanding is that it is -- if it's part  
19 of the overall ESP proposal, then it would be

20 appropriate or reasonable.

21 Q. Now, do you understand that if the

22 Commission ultimately issues a decision dealing with

23 the ESP proposal in its entirety and that decision is

24 not acceptable to AEP, that AEP has the ability to

25 withdraw and terminate the ESP proposal and to

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1 proceed with the market rate option?

2 A. Yes, that's my understanding.

3 Q. And in that event what would you true up  
4 to?

5 A. In that event I don't think there would  
6 be a trueup. I think the existing rates would just  
7 have been in effect during that period. Again,  
8 that's my nonlegal understanding of how it would  
9 work. I suspect that based on listening to the  
10 testimony for the last two days there is some  
11 uncertainty on that.

12 Q. Now, you describe on page 5 of your  
13 rebuttal testimony your understanding of the current  
14 rate plans that have been in effect for both Columbus  
15 & Southern and Ohio Power, and that's beginning at  
16 line 4 through 12 I believe. Is that correct?

17 A. Yes.

18 Q. And you talk about the increases that  
19 were authorized in those rate plans, correct?

20       A.   Yes.

21       Q.   And am I correct that all of the  
22   increases that were specified for years 2006, 2007,  
23   and 2008 have now been implemented pursuant to  
24   Commission orders?

25       A.   That's my understanding, yes.

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1       Q. And if we were to go on July 31st in to  
2 look at the tariffs that are presently in effect for  
3 Columbus Southern and Ohio Power, we would be able to  
4 identify the rate consequences of those Commission  
5 authorizations; is that correct?

6       A. I would assume so, yes, that those  
7 increases would be identifiable.

8       Q. All right. Now, as I also understand  
9 your testimony, you would take whatever was currently  
10 in place as of July 31st, 2008, and add incremental  
11 increases based upon your alternative to the  
12 alternate recommended by Mr. Hess; is that correct?

13      A. Well, I think my testimony is that in the  
14 event that the Commission decides to adopt the  
15 staff's proposal, my recommendation -- which, first  
16 of all, does not include any trueup -- my  
17 recommendation is to remove the increases for --  
18 associated with delta revenues for Mon Power and  
19 Ormet.

20           Now, with respect to what is the staff  
21   proposal without those, it's my understanding that it  
22   would be the current rates, I guess the rates on July  
23   31st, but it would not include the CSP, the  
24   expiring CSP RTC or regulatory asset.  
25       Q.   I'm trying to get to your recommendation.

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1       A. My recommendation --

2       Q. Yeah.

3       A. My recommendation is to put into place  
4 the rates as of the end of the year on an interim  
5 basis and true it up.

6       Q. I thought that you were recommending that  
7 the rates that are currently in place be adjusted by  
8 the 7 and 11 percent for Columbus & Southern and Ohio  
9 Power respectively.

10      A. No. No. My recommendation is that if  
11 the Commission were to adopt the staff  
12 recommendation, which is a 7 percent and 11 percent  
13 for CSP and Ohio Power generation increase, that it  
14 not adopt the provisions associated with delta  
15 revenues for Mon Power and Ormet.

16           I'm not recommending that the staff  
17 proposal be adopted.

18      Q. Okay. Thank you.

19           Now, let's talk about Ormet for a second.

20 You understand that the current arrangement with

21 Ormet is scheduled to terminate on 12/31/08.

22 A. Yes.

23 Q. In your dialogue with your counsel

24 regarding Senate Bill 221, did you become aware that

25 there are other mechanisms by which special contracts

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1 can be established pursuant to Ohio law?

2 A. I'm aware of that, yes.

3 Q. Yeah. And are you aware that those other  
4 mechanisms include a means by which the utility that  
5 enters into the special contract has an opportunity  
6 to request and obtain what is otherwise known as  
7 delta revenue, which is the difference between the  
8 contract rate and the otherwise applicable rate?

9 A. Yes, I'm aware of that.

10 Q. Now, on page 9 of your testimony and in a  
11 similar vein on page 11, you indicate that -- you  
12 indicate that if there are excess earnings, that  
13 pursuant to the excess earnings test that there would  
14 be a refund to customers of the amount that's  
15 substantially excessive. Have I correctly understood  
16 your testimony?

17 A. Yes. That's my understanding, and I  
18 believe that's discussed in the -- for that issue in  
19 Mr. Kollen's testimony. But yes, that's my

20 understanding.

21 Q. If you know, in the event that the

22 Commission were to make an adjustment and direct a

23 refund of any substantially excessive earnings, would

24 the companies have the ability to terminate the ESP?

25 A. I don't know.

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1       Q. And so by that answer is it fair to say  
2 that you have not factored in the opportunity for the  
3 company to terminate in conjunction with preparing  
4 your testimony if there is such an opportunity?

5       A. I have not considered that factor, and  
6 just to -- I think my answer is the same, but was  
7 your question terminate -- subsequently terminate the  
8 ESP after the Commission made an adjustment?

9       Q. Yes.

10      A. And I just don't recall that -- I haven't  
11 reviewed that provision.

12      Q. Okay. Now, just one clarification, last  
13 question I hope. On page 2 of your testimony at line  
14 14 specifically you use the words "rate plans." Were  
15 you aware in preparing your testimony that the term  
16 "rate plan" has a specific statutory definition?

17      A. I believe that I have -- I may have, in  
18 my review of Senate Bill 221, I may have seen that.  
19 I cannot remember now.

20 Q. And --

21 A. I believe the concept here was that it  
22 would encompass all of the provisions of the rates,  
23 including riders and other provisions.

24 Q. Okay.

25 MR. RANDAZZO: That's all I have, thank

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1 you very much.

2 Thank you, Mr. Baron.

3 THE WITNESS: Thank you.

4 EXAMINER BOJKO: Mr. Boehm, did I not put

5 the mic on mute? I think I owe Mr. Boehm an apology

6 because it's Mr. Bell's glasses I hear clicking.

7 Thank you.

8 MR. BOEHM: Thank you, your Honor. Your

9 apology is accepted.

10 MR. BELL: I apologize.

11 EXAMINER SEE: Mr. Bell.

12 MR. BELL: Thank you.

13 Mr. Randazzo stole most of my thunder.

14 MR. RANDAZZO: I apologize to the room.

15 THE WITNESS: Am I fortunate because of

16 that?

17 MR. RANDAZZO: We missed a great show.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Bell:

21 Q. Do you recall Mr. Randazzo showing you  
22 the third quarter earnings presentation of American  
23 Electric Power and you reviewed it, did you not, on  
24 the stand?

25 A. Yes.

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1 Q. That was presented in part by the  
2 chairman and chief executive officer of American  
3 Electric Power, Mr. Michael Morris, at an EEI  
4 financial gathering last week Tuesday, was it not?

5 A. I don't recall the specifics. I am aware  
6 that the company released its earnings.

7 Q. I take it you did not listen, then, to  
8 Mr. Morris's webcast.

9 A. I did not.

10 Q. Does the third quarter report to which  
11 Mr. Randazzo made reference indicate that there was  
12 an increase in the market in the margin from Ohio  
13 Power sales between the years 2007 and 2008 for the  
14 third quarter and does it explain the basis for that  
15 increase in margin, if you know?

16 Could you show --

17 MR. RESNIK: Your Honor, I'll object to  
18 the question. I just don't think it's relevant.

19 EXAMINER SEE: Would you like to respond,

20 Mr. Bell?

21 MR. BELL: Yes, I would. Mr. Resnik

22 inquired of the witness and mentioned the margin with

23 respect to off-system sales. Mr. Randazzo proceeded,

24 and I respectfully submit that I should similarly be

25 able to pursue it.

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1 MR. RANDAZZO: If I may, I did not

2 specifically ask about Ohio Power.

3 MR. BELL: The Ohio companies, excuse me.

4 MR. RANDAZZO: Thank you.

5 MR. BELL: I appreciate the correction,

6 Mr. Randazzo. I mean the Ohio companies.

7 EXAMINER SEE: Okay. I will allow it.

8 Answer the question to the extent that

9 you can, Mr. Baron.

10 Q. (By Mr. Bell) Mr. Baron, does that third

11 quarter report indicate that the increase in margin

12 in the off-system sales of the Ohio companies flow

13 from a reduction in the native load of those Ohio

14 companies resulting in those companies' ability to

15 increase its off-system sales to AEP's western

16 footprint?

17 A. I haven't done enough review to really

18 know the answer to that. I have seen some of the

19 earnings reports. I've read -- reviewed some of the

20 financial data, but I just -- I haven't gotten into

21 that detail on their third quarter results to know.

22 Q. And I believe in response to a question

23 by Mr. Smalz you did acknowledge, did you not, that

24 Senate Bill 221 -- even though you aren't a lawyer,

25 you've offered opinions on it -- Senate Bill 221 does

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1 not make a reference to a trueup in the context of

2 even an ESP, let alone a, quote, interim plan.

3 A. I certainly -- it's my understanding that

4 with regard to rates, effectively default rates,

5 rates that would go into effect if the Commission had

6 not issued an order in the ESP, that there's no

7 discussion of reconciliation. I think that's the

8 first section, .141, and there's no discussion of

9 reconciliation in that. That, as I indicated in my

10 answer, that was not the basis for my recommendation.

11 Q. Would you agree, Mr. Baron, in response

12 to a question by Mr. Randazzo that the specific

13 statutory definition of a rate plan contained in

14 Senate Bill 221 does not mention anything or allude

15 to trueup or reconciliation?

16 A. I don't recall seeing those words in

17 Senate Bill 221, but I am not offering testimony

18 on -- I'd have to go through and read it again to

19 make sure that that was true, but I don't have a

20 recollection of any specific provisions.

21 Q. Do you have a copy of Senate Bill 221

22 with you?

23 A. I do.

24 Q. I direct your reference to Revised Code

25 4928.01(A)(33). Would you agree that that section

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1 defines "rate plan" as used in the context of Senate

2 Bill 221?

3 A. Just give me a moment, please.

4 Q. Take your time.

5 A. What was the paragraph or the number that

6 you referenced?

7 Q. 4928.01(A)(33).

8 A. Thirty-three, okay.

9 Q. Have you reviewed that?

10 A. I've read it, and it basically says it's

11 the standard service offer rates that were in effect

12 on the effective date of the amendment.

13 Q. You do agree, do you not --

14 MR. RESNIK: Your Honor, excuse me, was

15 he reading from --

16 EXAMINER SEE: I'm sorry, just a second.

17 MR. RESNIK: Is Mr. Baron reading from

18 the statute, because I don't see the word "rates" in

19 there.

20 EXAMINER SEE: Mr. Baron.

21 THE WITNESS: I was reading standard

22 service offer.

23 MR. RESNIK: That's what I thought.

24 THE WITNESS: I think that's what I said

25 when I read it.

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1 MR. RESNIK: Could we have the answer

2 read back, please?

3 (Record read.)

4 MR. BELL: Thank you, Mr. Resnik.

5 Q. (By Mr. Bell) Would you agree, Mr. Baron,

6 that the word "rates" is not contained in that?

7 A. Yes. I inserted that. It's not in

8 there.

9 Q. And would you agree that that section, in

10 effect, statutorily defines the word or the term

11 "rate plan"?

12 MR. RANDAZZO: I object.

13 MR. BOEHM: Your Honor, we're down to how

14 well the witness can read. He can read very well,

15 notwithstanding an occasional mistake, but I don't

16 think it adds to the record to do this.

17 EXAMINER SEE: I would agree that the

18 statute speaks for itself, not in any relation to

19 Mr. Baron's ability to read.

20 Q. Mr. Baron, following another line of  
21 Mr. Randazzo, apparently I'm playing tag man here,  
22 you indicate, did you not, in your response to  
23 Mr. Resnik indicate that -- and I think you used the  
24 term "beauty" either in the question or the answer,  
25 and I think it was the question, not the answer, that

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1 the beauty of the, quote, reconciliation is that the

2 ESP covers Ormet. Do you recall that?

3 A. I remember some discussion of that. I

4 don't believe I agreed with Mr. Resnik on that

5 characterization.

6 Q. Would you agree that your proposal to

7 adopt the AEP's interim is premised upon that interim

8 incorporating Ormet to the extent that the interim

9 becomes part of the ESP?

10 MR. RANDAZZO: May I -- are we talking

11 about V.E of the application?

12 MR. BELL: Yes.

13 MR. RANDAZZO: Thank you.

14 A. Well, I'm not 100 percent certain that I

15 understand, but let me see if I can try to answer it.

16 The company's ESP does not include any

17 special provision for Ormet. There's no -- there are

18 no provisions for delta revenues for Ormet or Mon

19 Power in the company's ESP.

20           With regard to the V.E proposal, the  
21   interim rates would reflect the rates at the end of  
22   the year, which would include whatever riders are  
23   currently being recovered from customers, including  
24   PAR rider, I guess, for Mon Power. It's my  
25   understanding that there is nothing for Ormet in that

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1 regard.

2           So I don't know if that answers your  
3 question. Maybe I'm not understanding it fully.

4       Q. Well, would you agree that your  
5 recommendations with respect to the rates to take  
6 effect 1/1/09 are not subject to adoption, if you  
7 will, if, in fact, the premise upon which your  
8 recommendation is made does not hold? And that  
9 premise is that the order that's issued on the  
10 1/1/09 rates becomes, quote -- your language --  
11 becomes part of the ESP, end quote.

12       A. Well, that's my understanding. Again,  
13 I'm not offering legal testimony as to what elements  
14 need to be in a particular order or not to have it  
15 comply with Senate Bill 221. That is my -- I guess  
16 from the standpoint of regulatory policy, that is my  
17 understanding of how the entire process would work.

18       Q. Well, I'm not trying to argue with you,  
19 Mr. Baron. All I'm trying to do is establish that

20 that is a fundamental premise upon which you were  
21 basing your recommendation as to the rates to take  
22 place 1/1/09. Yes or no?  
23 A. I think that, again, I give the same  
24 answer that I'm not -- I can't offer legal testimony  
25 as to what is required in Senate Bill 221. It is my

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1 understanding from a regulatory policy standpoint  
2 that the interim rate provision, including the  
3 trueup, would be part of the overall ESP. And  
4 obviously if it was not legal, then my recommendation  
5 couldn't be effective.

6 Q. Mr. Baron, I'm not trying to argue with  
7 you at all, sir. Let me pose, if you will, a  
8 hypothetical to you that would reject that premise  
9 and see if you agree with the potentiality of that  
10 event, not that you necessarily agree with its  
11 occurrence.

12 Would you agree, Mr. Baron, that if the  
13 Commission between now and the end of the year simply  
14 issued an order, not crafting an ESP plan but simply  
15 stating or making the determination that under  
16 section 4928.01(A)(33) that we've just described,  
17 that the company was by law mandated to continue the  
18 existing rates for standard service offer, would you  
19 agree that such an order would not become a, quote,

20 part of the ESP plan?

21 A. I don't know from a legal standpoint.

22 Q. Thank you, Mr. Baron.

23 MR. BELL: No further questions.

24 EXAMINER SEE: Mr. Yurick?

25 - - -

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1 CROSS-EXAMINATION

2 By Mr. Yurick:

3 Q. Is it Dr. or Mr. Baron? I'm sorry.

4 A. It's Mister.

5 Q. Mister, okay. Mr. Baron, I just had

6 essentially one clarifying question. My

7 understanding is your proposal is that rates continue

8 and then be a trueup mechanism; is that right?

9 A. Yes.

10 Q. Would the trueup mechanism include a

11 component for fuel cost recovery?

12 A. If the Commission approved, in other

13 words, if the final ESP included fuel costs, which I

14 presume they would, then that would be part of the

15 target that would be used to true up the interim

16 rates, and so to the extent that the final ESP

17 includes fuel and a fuel clause, then that would set

18 a revenue target and that would be compared then to

19 the revenues that were collected, and I would

20 recommend on a class-by-class basis it be tried up

21 during the interim period.

22 Q. I thought that's what you meant, but I

23 didn't see it specifically in your testimony.

24 A. Yeah. And you're correct, I did not get

25 into that detail, but that would be my

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1 recommendation.

2 MR. YURICK: I appreciate the

3 clarification. I have no further questions.

4 EXAMINER SEE: Mr. Margard?

5 MR. MARGARD: No thank you, your Honor.

6 EXAMINER SEE: Mr. Boehm?

7 MR. BOEHM: Could I have a few minutes to

8 consult with the witness?

9 EXAMINER SEE: Yes.

10 MR. BOEHM: Can we go off the record for

11 a minute?

12 EXAMINER SEE: We're off the record.

13 (Discussion off the record.)

14 EXAMINER SEE: Let's go back on the

15 record.

16 Rebuttal?

17 MR. BOEHM: Your Honor, we have no

18 redirect.

19 EXAMINER SEE: With that and the amount

20 of time we're likely to use on Mr. Baron's direct,  
21 we'll take an hour lunch break and return at 20 to  
22 2:00.

23 (At 12:40 p.m. a lunch recess was taken  
24 until 1:40 p.m.)

25 - - -

ARMSTRONG & OKEY, INC., Columbus, Ohio (614) 224-9481



1 Tuesday Afternoon Session,

2 November 18, 2008.

3 - - -

4 EXAMINER SEE: Mr. Boehm.

5 MR. BOEHM: Thank you, your Honor.

6 - - -

7 DIRECT EXAMINATION

8 By Mr. Boehm:

9 Q. Mr. Baron, do you have in front of you a  
10 document entitled Direct Testimony of Stephen J.  
11 Baron?

12 A. Yes, I do.

13 Q. And was that document prepared by you or  
14 under your supervision?

15 A. Yes, it was.

16 Q. And if I were to ask you -- first of all,  
17 do you have any changes in that document?

18 A. None to my knowledge, no.

19 Q. Okay. And if I were to ask you the

20 questions contained therein, would your answers be

21 the same today?

22 A. Yes, they would.

23 MR. BOEHM: If we could mark this

24 document as OEG Exhibit No. 2.

25 EXAMINER SEE: The document will be so

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1 marked.

2 MR. BOEHM: Thank you.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. BOEHM: Then I submit Mr. Baron for

5 cross-examination.

6 EXAMINER SEE: Mr. Yurick.

7 MR. YURICK: I have no questions at this

8 time. Thank you, your Honor.

9 EXAMINER SEE: Mr. Randazzo.

10 MR. RANDAZZO: No questions.

11 EXAMINER SEE: Ms. Roberts or Ms. Grady?

12 MS. ROBERTS: No questions.

13 EXAMINER SEE: Mr. O'Brien.

14 MR. O'BRIEN: No questions, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Smalz:

18 Q. Mr. Baron, turning to page 12 of your

19 testimony, your first full answer you state: "The

20 Companies' POLR charge should be waived for ESP  
21 customers who either: A) Agree to forego their right  
22 to shop during the three year term of the ESP OR b)  
23 Agree not to take service under the ESP and, in the  
24 event of a return to POLR service, agree to waive  
25 their right to take service under the ESP and accept

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1 market based rates."

2 My question is, does your recommendation  
3 include residential customers; will they have the  
4 right to opt out as well?

5 A. Yes. The recommendation is for all  
6 customers. And as long as -- certainly we would  
7 anticipate that were this proposal to be adopted, and  
8 particularly for smaller customers, the companies  
9 would have to provide some enhanced level of  
10 educational material to inform the customers of what  
11 the rights are and what the consequences of those  
12 decisions will be, in particular, if they are  
13 shopping and should return to standard offer service  
14 at market rates instead of the ESP rate.

15 Q. I see.

16 MR. SMALZ: Thank you. That's all I  
17 have.

18 EXAMINER SEE: Counsel on behalf of  
19 Constellation?

- 20 MS. ELDER: Right, no questions.
- 21 EXAMINER SEE: And your name is, ma'am?
- 22 MS. ELDER: Betsy Elder.
- 23 EXAMINER SEE: Thank you, Ms. Elder.
- 24 On behalf of the company?
- 25 MR. NOURSE: Yes, your Honor. Thank you.

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1                   - - -

2                   CROSS-EXAMINATION

3   By Mr. Nourse:

4       Q.   Good afternoon, Mr. Baron.

5       A.   Good afternoon.

6       Q.   Let me ask you first about your position  
7   on the market purchases, the slice of system proposal  
8   by the companies, and looking at page 6 of your  
9   testimony you're stating the opinion that the cost of  
10   market purchases is significantly higher than the  
11   average fuel and purchased power costs for the  
12   companies, for one, and secondly, that their higher  
13   cost of the market purchases are higher than the pool  
14   power -- pool purchases; is that correct?

15      A.   Yes.

16      Q.   And then you proceed to -- following you  
17   set forth a table, table 1 and table 2, page 8. That  
18   table merely reflects the AEP pool purchase  
19   comparison; is that correct?

20       A.   Yes.  Basically the table shows what the  
21   increases under the company's ESP would be as filed  
22   without the deferral, and then in the -- those are  
23   the two data columns.  And then the second two  
24   columns for each company show the same thing except  
25   the market purchases in this year have been replaced

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1 with -- repriced at the pool purchase price.

2 Q. And specifically in that for purposes of  
3 that table you used \$26.15 per megawatt-hour for  
4 Columbus Southern Power in table 1; is that correct?

5 A. Yes.

6 Q. And \$21.74 per megawatt-hour for Ohio  
7 Power in table 2.

8 A. Yes.

9 Q. Now, does it reflect what you think would  
10 happen in reality if the market purchases are not  
11 permitted as part of the plan?

12 A. Well, it's -- it is the measure of the  
13 impact in the case of -- in each case I've used the  
14 calculations done by the company, Mr. Nelson, as to  
15 what expected 2009 pool purchase rates would be, and  
16 to the extent that absent market purchases there is  
17 energy available from the AEP pool and based on  
18 Mr. Nelson's analysis, at least on using the set of  
19 assumptions he used, he projected the rates that you

20 just recited. That would be -- to the extent that  
21 was the cheapest source of replacement power for  
22 those market purchases, yes, that would be a measure  
23 of the impact.

24 I can't tell you, obviously no one knows  
25 for sure what will happen. It depends on relative

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1 fuel prices, obviously. If some other situation  
2 arose, it may be -- it could be less expensive than  
3 that.

4 Q. Okay.

5 A. Certainly market fuel prices are probably  
6 lower now than they were when Mr. Nelson did his  
7 analysis.

8 Q. Okay. But you say you relied on  
9 Mr. Nelson's analysis. All you're really saying  
10 there is that he provided you, through discovery,  
11 with these energy rates for the pool.

12 A. Yes. These were taken from his exhibits.

13 Q. Okay. But he didn't do the analysis of  
14 this comparison and what would be -- what would occur  
15 if the market purchases were not allowed. That's not  
16 something you got through discovery from the company.

17 A. Yes, you're correct. That is correct. I  
18 made the assumption for this present -- for this  
19 purpose to show the relative impact of the market

20 price assumptions in the company's plan, what the  
21 rate increases would be if pool rates -- pool  
22 purchase rates were used in lieu of the market prices  
23 estimated by the companies.  
24 Q. Okay. But these -- first of all, these  
25 are energy rates, correct?

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1       A. Yes.

2       Q. So it doesn't reflect the true impact, if  
3 you will, if the companies relied on the pool for  
4 100 percent of the power that would otherwise have  
5 been obtained from the market purchases; is that  
6 correct?

7       A. I'm not -- are you referring to the --  
8 are you asking me whether there would be additional  
9 equalization or some other cost, capacity  
10 equalization costs that might be incurred were the  
11 company to rely on these? Is that what you're asking  
12 me?

13      Q. Well, I'm asking you what it reflects,  
14 but that's my next question. It doesn't reflect any  
15 capacity charges that might occur if the power were  
16 obtained through the pool.

17      A. I don't -- I did not add anything for  
18 that. I don't know that that would actually -- those  
19 costs would actually be incurred. If these are

20 nonfirm pool energy purchases, I don't know that  
21 there would be any requirement for additional  
22 capacity equalization payments or, likewise, if the  
23 company -- under the company's assumption about  
24 market purchases of energy, whether -- I don't know  
25 whether that somehow resulted in some avoidance of

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1 otherwise applicable pool capacity charges.

2 I did not include any impact from  
3 increased equalization. I have no basis to assume  
4 that there would be any. I don't have any reason to  
5 believe that there would be any.

6 EXAMINER SEE: Mr. Nourse, I'm sorry.

7 Did you complete your answer, Mr. Baron?

8 THE WITNESS: Yes, your Honor.

9 EXAMINER SEE: Mr. Nourse, could you  
10 speak up or use the mic, please?

11 MR. NOURSE: Yeah. Is the mic not on?

12 Is that better?

13 EXAMINER SEE: Yes.

14 Q. So, Mr. Baron, you're saying you did not  
15 include any effect of capacity equalization charges  
16 under the pool in this illustration in table 1 and  
17 table 2.

18 A. That is correct.

19 Q. Okay.

20       A. I repriced the energy purchases that were  
21 assumed in the company's analysis for the 5, 10  
22 and -- well, in this case for 2009, 5 percent energy,  
23 I repriced that at pool energy. I don't know that --  
24 I don't believe that there would be any requirement  
25 for additional capacity equalization purchases.

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1       Q. Okay. But you didn't -- you mentioned  
2 the analysis done by Mr. Nelson earlier. Is it your  
3 understanding of the analysis presented by the  
4 company that they did a dispatch of the system, a  
5 simulation or modeling dispatch including these  
6 market purchases when they came up with their costs  
7 and presented Mr. Nelson's testimony?

8       A. Yes. I would agree with that. And,  
9 therefore, the presentation that he made for  
10 estimated 2009 reflects the resources that were  
11 assumed in his -- in the dispatch analysis.

12      Q. And again, simply -- you didn't do that,  
13 you didn't do any kind of redispatch, you didn't do  
14 any analysis of whether the capacity equalization  
15 impact should be reflected in your illustration.

16      A. That's correct. That's correct. And to  
17 the -- and as a result, I mean, I said exactly what  
18 we did, which was to use the presented pool --  
19 average pool rates, purchased rates, from 2009. To

20 the extent that those may be different in a  
21 redispatch, I acknowledge that. I don't think,  
22 however, that we're talking about a material  
23 difference when we're comparing \$88 market prices to  
24 \$26 pool rates.

25 Q. Okay. But you didn't do that.

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1       A. I acknowledge there could be some  
2 difference but we're not talking about going to \$88.

3       Q. Okay. Well, you didn't do the analysis,  
4 and you don't know what the impact would be. That's  
5 fair, right?

6       A. That's correct. I think the thing to  
7 draw, the conclusion to draw is that the company's  
8 proposal for market purchases results in a  
9 substantial increase in otherwise applicable fuel  
10 rates.

11      Q. Okay.

12      A. I hadn't calculated exactly what that  
13 would be, but I believe these results in table 1 and  
14 table 2 are indicative of the penalty that customers  
15 would pay as a result of that decision by the  
16 company.

17      Q. Okay. So by penalty you just referred to  
18 in your answer, again, are you just saying that the  
19 market purchases, all else being equal, would be more

- 20 expensive than pool power or the company's own
- 21 average cost? That's your bottom-line conclusion?
- 22 A. Yes.
- 23 Q. Okay. And is it your understanding that
- 24 under an electric service -- electric security plan
- 25 that least cost is the mandatory strict standard that

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1 would apply to evaluating components such as the  
2 company's market purchase proposal?

3 A. Well, yes, I believe so. And  
4 particularly I think I went through -- well, there's  
5 a provision in SB 221 which is section  
6 4928.143(B)(2)(a) that says: Automatic recovery of  
7 any of the following costs of the electric  
8 distribution utility, provided the cost is prudently  
9 incurred.

10 Specifically in the area that you and I  
11 are talking about now, we're talking about fuel  
12 adjustment costs, which I think are directly  
13 addressed by this subsection, and that means they  
14 have to be prudently incurred, and to me that means  
15 least cost.

16 Q. Well, that's your understanding. I'm not  
17 going to get into a legal debate with you. But let  
18 me just ask you if the standard were to be this  
19 proposal, the market purchases were to be judged by

20 the standard of being more favorable in the aggregate  
21 with the whole ESP proposal together as compared to  
22 the expected results under a market rate option  
23 currently, would your opinion change?

24 A. Well, you're asking me to assume that the  
25 only criterion is whether the ESP is less than the

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1 MRO, but the company can charge anything it wants in  
2 the ESP, no matter whether it's reasonable or not, as  
3 long as it's less than the MRO.

4         If that is the standard that the SB 221  
5 requires, then are you -- assuming that, does it  
6 matter that market purchases result in higher costs?  
7 And if that's the standard, I guess it almost follows  
8 by definition that if being reasonable and having  
9 lower cost is not the standard, then the company  
10 would not have to meet -- have those lower costs.

11       Q. And again, we don't need to debate, you  
12 know, the legalities, but I asked you to assume that,  
13 so that's fair.

14       Now, specifically you say by definition  
15 that would be the result. Is it your understanding  
16 under the market rate option as found in Senate Bill  
17 221 that -- what is your understanding of year one,  
18 for example, and the market rate option relative to  
19 the market price of power versus nonmarket price?

20       A. Well, I'm guessing that what you're  
21 asking me is the provision in the MRO that it would  
22 include 10 percent market purchases in the  
23 calculation.

24       Q. Right.

25       A. In the MRO.

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1       Q. But again, if you used that comparison to  
2 judge the company's proposal on market purchases,  
3 would you agree that it falls below that standard?

4       A. I don't know. I haven't done that  
5 recalculation. I believe Mr. Kollen may address that  
6 to some extent in his testimony. But it doesn't  
7 necessarily follow that if the -- because the MRO  
8 says you need to use 10 percent market purchases, and  
9 the company's ESP includes 5, that all else being  
10 equal, everything else is equal in the two. I don't  
11 think that that follows, so I can't answer your  
12 question.

13      Q. Okay. And you haven't done that  
14 comparison at all.

15      A. I haven't done any -- for the purpose of  
16 my testimony, no.

17      Q. Thank you.

18           I want to switch gears now and talk about  
19 your discussion of the POLR charge proposal of the

20 companies starting on page 10 of your testimony.

21 Now, as a general matter -- and actually

22 I just said page 10, but you do refer earlier to this

23 concept in your summary, the bottom of page 4. Are

24 you agreeing that the POLR charge is conceptually

25 correct but you're not agreeing to the computational

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1 correctness of the way the company valued POLR

2 charge?

3 A. Yes; in the sense that I certainly accept

4 the concept of a POLR charge and that there are

5 risks. As I said, I haven't done -- I'm not really

6 addressing per se the -- and certainly the level of

7 the company's POLR computation, I've looked at how it

8 was done, but I haven't -- I'm not offering testimony

9 on its reasonableness.

10 Q. And is there another OEG witness that

11 offers testimony on that point?

12 A. Not to my knowledge, not on the level of

13 the charge itself, the calculation of the option

14 premium.

15 Q. So is it fair to say that OEG's position

16 is that the POLR charge proposed by the companies is

17 conceptually correct, but OEG offers no opinion as to

18 the computational or valuation of the POLR charge?

19 A. Well, notwithstanding my testimony with

20 regard to its applicability and so forth to customers  
21 that do not want to purchase the option, I -- OEG and  
22 I agree that the concept of a POLR charge to  
23 recognize some measure of risk is not unreasonable.  
24 I'm not endorsing the company's computation of that,  
25 as I said in the testimony.

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1       Q. Okay. And you offer as your  
2 recommendation on this point two options,  
3 essentially, for -- we can call them waiver A and  
4 waiver B options that you discuss on page 12.

5       A. Yes.

6       Q. Let me ask you, regarding waiver A,  
7 option waiver A, this idea that a customer would  
8 agree to forego their right to shop during the  
9 three-year term of the ESP, when do you see that  
10 waiver occurring under your recommendation?

11      A. In order for the concept to have some  
12 effect, customers would have to opt in or opt out or  
13 basically agree to these waiver provisions prior to  
14 the start of the ESP.

15      Q. Okay. So would that necessitate a  
16 Commission decision prior to the end of the year?

17      A. Obviously, my expectation is that the  
18 Commission likely may not decide the ESP by the end  
19 of the year, although I don't know, so it would

20 simply be that the customers would have to have the  
21 option to elect these provisions prior to the start  
22 of the ESP.

23 Now, as a practical matter, if there's a  
24 delay in the ESP as, you know, may occur and rates  
25 have to go into effect, I think customers should be

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1 given a reasonable opportunity to elect these  
2 waivers, and I guess -- I haven't really considered  
3 an interim period, but I guess during an interim  
4 period the customer, there would have to be some  
5 decision made as to whether a customer would pay the  
6 charge.

7 But they should certainly for a  
8 three-year period, a customer should have a  
9 reasonable period of time to make this election.  
10 It's just simply not fair to make a customer pay for  
11 an option that the customer doesn't really want it.

12 Q. Well, we can get to the fairness maybe in  
13 a second, but I just asked you in terms of your  
14 recommendation mechanically when you think that would  
15 occur, and whether in order for that to occur, the  
16 Commission would have to decide the case by the end  
17 of the year.

18 A. And I think I answered no, I don't think  
19 that's the case. I think that there would have to

20 be -- as a general matter if the timing were perfect  
21 and the Commission made its decision prior to the  
22 start of the ESP and there was a 30-day period where  
23 customers could be notified of their rights to elect  
24 in or out, or opt in or out of the POLR option, that  
25 would be ideal.

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1           If that -- simply because that may not be  
2 possible, it doesn't seem to me to moot this  
3 recommendation.

4       Q. Well, let me ask you, because I thought  
5 you agreed that POLR charge conceptually was  
6 appropriate for compensating the company for the risk  
7 it would undertake in agreeing to provide the  
8 standard service offer rates contained in the SSO; is  
9 that correct?

10      A. Yes. Conceptually I agree.

11      Q. And doesn't that -- doesn't the company  
12 jump off that bridge as soon as the ESP starts, not  
13 knowing how many people might subsequently take up  
14 waiver option A?

15      A. I think that to the extent that -- well,  
16 I guess at this point we don't even know if there's  
17 going to be an ESP, so I don't know that the company  
18 has actually taken that risk already. Once the  
19 Commission makes a decision and the company adopts --

20 agrees to the ESP and whatever the legal  
21 ramifications are, then I would agree that the  
22 company at that point does incur some -- begin to  
23 incur some risk.

24 But I still think it is reasonable to  
25 offer customers an opportunity to opt in or opt out

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1 of the POLR charge, and if that means that there has  
2 to be some -- because of timing problems there has to  
3 be some interim POLR charge to cover that short  
4 period of time from the time the Commission approves  
5 the order until the customers can make that election,  
6 then I would think that would be the reasonable  
7 remedy rather than just throw out the baby with the  
8 bath water.

9 Q. But you would agree when you made this  
10 recommendation for option A, your concept was to make  
11 the waiver prior to the beginning of the ESP period.

12 A. Yes. As I indicated to you, in an ideal  
13 situation that would be how it would function.

14 Q. Now, you know, do you think -- is it your  
15 understanding of Senate Bill 221 that the General  
16 Assembly has given Ohio customers the right to shop  
17 for generation service?

18 A. Yes, I do.

19 Q. And is it appropriate in your opinion

20 then, that the utility, one of the players or actors  
21 in that market, would go to customers and ask them to  
22 waive their I'll call it statutory right to shop?  
23 A. I think for the limited period of a  
24 three-year term ESP, to the extent that the company  
25 has calculated a cost to stand by for the events that

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1 I've discussed in my testimony, I think that  
2 Mr. Baker discusses in his testimony in proposing the  
3 POLR charge, I think given those factors, I think  
4 it's reasonable that customers who intend to take  
5 standard offer service during the whole three-year  
6 term and not cause the company to incur any cost,  
7 that Mr. Baker has identified shouldn't have to pay  
8 the cost.

9 If the customer is willing to forego  
10 that -- his right to shop and, therefore, the company  
11 saves money via -- based on Mr. Baker's calculation,  
12 it seems like a win-win situation.

13 Q. And if you were advising one of those  
14 customers making that waiver option A election on  
15 your recommendation, what would they be considering  
16 in making that election?

17 A. Well, one thing they'd be considering  
18 would be a reasonable projection of what the ESP's  
19 going to cost relative to market prices.

20 Q. Projected market prices.

21 A. And I'm not talking about the -- excuse

22 me. I'm not talking about the MRO, but I'm talking

23 about pure market prices.

24 Q. Their projection of market prices.

25 A. Yes.

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1       Q. Right. And that's essentially the same  
2 kind of analysis that is involved conceptually with  
3 the company's Black-Scholes option modeling to put a  
4 risk price on the risk of the market price going  
5 below the SSO price; is it not?

6       A. Conceptually, yes, I would agree with  
7 that.

8       Q. And absent such a waiver it's the  
9 electric distribution utility's provider of last  
10 resort responsibility to provide that default  
11 standard service offer, correct?

12       MR. BOEHM: Excuse me, your Honor, might  
13 I inquire? Counsel says absent that waiver. The  
14 testimony speaks of two different waivers. Is he  
15 talking about waiving the right to go shopping or  
16 waiving the right not to go -- or waiving the  
17 right -- waiving the right to go shopping or not to  
18 go shopping?

19       MR. NOURSE: We're still on option A.

20 MR. BOEHM: Okay. Waiving the right to  
21 go shopping then, that's what you mean by "waiver."

22 MR. NOURSE: Yes.

23 THE WITNESS: Could you repeat your  
24 question again?

25 Q. Well, absent waiver option A being

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1 adopted or implemented, it is the electric  
2 distribution utility under Senate Bill 221 that has  
3 the provider of last resort responsibility to be  
4 there and to offer default standard service offer; is  
5 that correct?

6 A. Yes.

7 Q. Okay. Let me ask you then about option  
8 B, agree not to take service under the ESP in the  
9 event of return to POLR service, agree to waive the  
10 right to take service under the ESP and accept  
11 market-based rates. That's option B, right?

12 A. Yes.

13 Q. So again, what would be the timing of  
14 this waiver under B?

15 A. Well, again, the waiver would require  
16 customers -- be similar to the types of notice or  
17 decision-making on the part of the customer prior to  
18 the start of the ESP, that the customer agrees that  
19 the customer is not going to take ESP service for

20 one, in the first instance, and then further agrees  
21 that if they should subsequently return to standard  
22 service offer, POLR rates, that those POLR rates be  
23 market based as opposed to the approved standard  
24 service offer, in this case the ESP rates.

25 Q. So again, to agree not to take service

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1 under the ESP, that would have to occur prior to the

2 ESP beginning, correct?

3 A. Yes, as a general matter I think that's

4 correct. And, of course, in that case customers

5 would -- would reveal that choice by immediately

6 shopping and not taking any service under the ESP, I

7 would assume.

8 Q. Okay. And if that occurs and the

9 provider, the CRES provider that they choose to go

10 to, defaults six months into the plan, isn't that

11 customer going to come back to AEP-Ohio?

12 A. Presumably. I'll accept for the purposes

13 of your question that the customer would come back to

14 POLR service to AEP.

15 Q. Okay. And you're saying they would,

16 under option B, they would be served at market rates.

17 A. Yes.

18 Q. Whenever that happens.

19 A. Yes.

20       Q.   Okay.  And let me ask you under either  
21   option, if market rates are substantially different  
22   than expectations during the ESP, in your experience  
23   do you think it would be clear that the customers  
24   would be strictly held to their waivers?

25       A.   Well, the assumption -- I think it's a

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1 reasonable assumption that a customer would agree --  
2 would effectively sign an agreement that they  
3 acknowledge and take the responsibility for that  
4 result. It's a -- it's like an industrial  
5 interruptible customer that receives interruptible  
6 credits and then fails to interrupt. They pay a big  
7 penalty. That's via agreement and contract in the  
8 tariff.

9 Q. That might be the expectation, but  
10 wouldn't it also be an expectation or in your  
11 experience that those customers might try to get, you  
12 know, the Commission or the legislature or some other  
13 government officials to intervene, especially if they  
14 can make a claim that it's, you know, a matter of  
15 economic development or viability of their business  
16 enterprise?

17 A. I don't know. Obviously, anybody could  
18 make a claim and file a lawsuit or file a complaint  
19 with the Commission; I agree with that. But the

20 intent here is to come up with a clear agreement  
21 between the company and the customer as to what the  
22 rights and obligations are and responsibilities.  
23 And in this particular provision the  
24 responsibility would be that the customer  
25 acknowledges that if they should return, in the event

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1 that, for whatever reason, that they would return at  
2 market-based rates, and they're getting -- and in  
3 exchange for that the customer would not pay the POLR  
4 charge. The customer would have to make that  
5 evaluation, is the risk-reward calculus favorable.

6 Q. They would make that evaluation, but if  
7 they were wrong, flat-out wrong, market prices  
8 changed significantly from what the expectations  
9 were, are you saying that we should just accept their  
10 promise now to either not shop under option A or  
11 to -- that they promise they'll come back at market  
12 rates no matter what happens, just accept their  
13 promise at this point?

14 A. Well, I think the -- basically the tariff  
15 and the agreement would result in that. In other  
16 words, if a customer came back, AEP would start  
17 sending bills at market rates, whatever -- at some  
18 term in market rate, whether it's the PJM day-ahead  
19 LMP or what have you, and I guess, you know, my

20 understanding is AEP hasn't been shy about sending

21 electric bills.

22 Q. Well, Mr. Baron, your experience with

23 Senate Bill 3, Senate Bill 221, and competition in

24 general, have you been aware of any such promises

25 being broken?

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1           MR. BOEHM: Your Honor, excuse me. I  
2 object here. The question is if somebody breaches a  
3 contract, and that's what Mr. Baron has been talking  
4 about, somebody signed a contract which is a waiver,  
5 what happens then, and I'm not sure that that's  
6 relevant to this proceeding.

7           What happens if the Commission doesn't  
8 enforce their own tariffs? You know, I don't know  
9 that this witness is competent to testify.

10          MR. NOURSE: Your Honor, I'm just  
11 exploring. His recommendation here is to do  
12 something similar, in my opinion, that's been done in  
13 the past. I'm asking in his experience whether  
14 that's occurred or not and how it bears on his  
15 recommendation.

16          EXAMINER SEE: And I'm going to allow the  
17 witness to answer the question.

18          A. I'm not familiar with, at least I don't  
19 recall specific instances. It's possible that, you

20 know, I have seen them in various cases.

21 MR. NOURSE: Thank you, Mr. Baron, that's

22 all I had.

23 EXAMINER BOJKO: Off the record.

24 (Discussion off the record.)

25 EXAMINER BOJKO: I'm sorry, are you

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1 saying you have seen in various cases where there's  
2 been a default or a broken promise, I think  
3 Mr. Nourse called it?

4 THE WITNESS: No, your Honor. What I was  
5 really trying to say was I can't recall instances  
6 that meet the criteria, that I thought I understood  
7 from the question, but I've been in quite a few cases  
8 over the last years and it's possible that I have  
9 come across it. I just don't recall it. That's what  
10 I was trying to say.

11 EXAMINER BOJKO: Were you finished,  
12 Mr. Nourse?

13 EXAMINER SEE: I believe he was.

14 MR. NOURSE: Yes, your Honor.

15 - - -

16 EXAMINATION

17 By Examiner Bojko:

18 Q. Mr. Baron, you were going down a line of  
19 questioning with Mr. Nourse, and you focused on the

20 table attached to your testimony with regard to

21 market prices and corporate prices. Could you look

22 at page 6 of your testimony, line 16. I just want to

23 make sure I'm clear whose assumptions are whose.

24 On line 16 you talk about the assumed

25 market price of \$88.15. Is that assumed by whom, the

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1 company?

2 A. Yes, your Honor. That was the market  
3 price that was assumed in the company's fuel  
4 calculations. It probably was adjusted for losses,  
5 meaning if that's a -- if this number is a retail  
6 number, it was brought down, but effectively that's  
7 the number that was included in the company's  
8 projections for 2009 in Mr. Nelson's fuel cost.

9 Q. And similarly you said that Mr. Nelson  
10 made the pool purchased cost estimate of the \$26.15.

11 A. Yes.

12 EXAMINER BOJKO: Thank you.

13 EXAMINER SEE: Let's go off the record  
14 for just a second.

15 (Discussion off the record.)

16 EXAMINER SEE: Let's go back on the  
17 record.

18 Mr. Bell, do you have questions for this  
19 witness?

20 MR. BELL: I have no questions for this

21 witness, your Honor. Thank you.

22 EXAMINER SEE: Mr. Margard or Mr. Jones.

23 MR. MARGARD: No questions. Thank you.

24 MR. BOEHM: I can't believe our luck

25 either. If that's it, I don't believe we have any

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1 recross.

2 EXAMINER BOJKO: They wanted him to make  
3 the 3 o'clock flight.

4 MR. BOEHM: I appreciate that very much,  
5 I'm sure Mr. Baron does, too.

6 I was reminded by counsel to move the  
7 admission of our exhibits, and I will do that. I'd  
8 like to move the admission of OEG Exhibits No. 1 and  
9 2.

10 EXAMINER SEE: Are there any objections  
11 to the admission of those exhibits?

12 Hearing none, OEG Exhibits 1 and 2 are  
13 being admitted into the record.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 EXAMINER SEE: Thank you, Mr. Baron.

16 THE WITNESS: Thank you, your Honor.

17 MR. BOEHM: And I would like to thank the  
18 Bench and everybody for their kind indulgence.

19 EXAMINER BOJKO: Let's go off the record.

20 (Discussion off the record.)

21 (Witness sworn.)

22 EXAMINER SEE: Thank you. You may have a

23 seat.

24 Ms. Roberts.

25 - - -

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1 J. RANDALL WOOLRIDGE, PhD

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

3 examined and testified as follows:

4 DIRECT EXAMINATION

5 By Ms. Roberts:

6 Q. Dr. Woolridge, would you please state

7 your full name for the record?

8 A. My name is initial J. Randall Woolridge,

9 W-o-o-l-r-i-d-g-e.

10 Q. And on whose behalf are you appearing in

11 this proceeding?

12 A. On behalf of OCC.

13 Q. And do you have before you your prefiled

14 direct testimony that I would be asking be marked as

15 Exhibit OCC-2?

16 A. Yes.

17 EXAMINER SEE: The exhibit is so marked.

18 MS. ROBERTS: Mark it, your Honor, mark

19 it as OCC Exhibit 2.

20 EXAMINER SEE: The exhibit is so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Is this your direct prefiled testimony in  
23 this proceeding?

24 A. Yes.

25 Q. Do you have any corrections to make to

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1 this testimony?

2 A. No.

3 Q. Was it prepared by you or under your  
4 direct supervision and control?

5 A. Yes.

6 Q. Is it true and accurate to the best of  
7 your knowledge, information, and belief?

8 A. Yes.

9 Q. If you were asked these questions today,  
10 would you adopt the answers in your prefiled  
11 testimony?

12 A. Yes.

13 MS. ROBERTS: The witness is available  
14 for cross. Thank you.

15 EXAMINER SEE: Mr. Conway.

16 MR. CONWAY: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Conway:

20 Q. Dr. Woolridge, my name's Dan Conway. I'm  
21 a lawyer for the AEP-Ohio companies. I have a few  
22 questions for you. If you have a hard time hearing  
23 me or understanding the question, please let me know.

24 A. Okay.

25 EXAMINER SEE: I need you to speak up,

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1 Mr. Conway.

2 MR. BELL: Excuse me, Mr. Conway, but we  
3 can't hear over here.

4 MR. CONWAY: Can you hear me now?

5 MR. BELL: I still don't think the mic's  
6 on.

7 MR. MASKOVYAK: Yeah, it's on.

8 MR. CONWAY: Mr. Bell, if you can't hear  
9 me, would you please let me know also?

10 MR. BELL: I certainly will, Mr. Conway.

11 Q. (By Mr. Conway) Dr. Woolridge, at page 3  
12 of your testimony you state at, I think it's lines 5  
13 through 7, that: "SB 221 asks whether the earnings  
14 are in excess of those for the same period for  
15 publicly traded companies, including public  
16 utilities." Do you see that?

17 A. Yes.

18 Q. At that point in your testimony you're  
19 talking about the earnings of the electric

20 distribution utility that's the subject of the  
21 comparison with the other publicly traded companies?  
22 A. Yes.  
23 Q. And would you agree with me that the --  
24 the comparison that the statute calls for is a  
25 comparison between the electric distribution utility

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1 and other publicly traded companies?

2 A. Yes.

3 Q. And the comparison is between the earned

4 return on equity of the subject EDU and the earned

5 equity returns of those publicly traded companies.

6 A. Yes.

7 Q. And the statutory test does not simply

8 compare the EDU's earnings to the earnings of the

9 publicly traded companies.

10 A. No.

11 Q. It's an ROE-to-ROE comparison.

12 A. As I understand it, yes.

13 Q. And actually the comparison is not only

14 an ROE-to-ROE comparison between the EDU and the

15 other publicly traded companies, but it's a

16 comparison that seeks to find publicly traded

17 companies that face comparable business and financial

18 risk to the EDU.

19 A. Yes.

20       Q.   Okay.  And the publicly traded companies  
21   from which the comparable risk firms are drawn, it  
22   includes public utilities but it's not restricted to  
23   public utilities; is that right?

24       A.   Yes.

25       Q.   And, in fact, the statute does not

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1 exclude at the outset any publicly traded companies  
2 from being a candidate as a comparable risk firm to  
3 the EDU.

4 A. Yes.

5 Q. And would you agree that the statute does  
6 not specify that in order to be of comparable risk to  
7 the EDU, the publicly traded company must actually  
8 come from a capital-intensive service industry?

9 A. No. It doesn't specifically identify how  
10 to measure business risk.

11 Q. And instead the criterion that the  
12 statute uses for comparing a selection group is a  
13 criterion as we just discussed, I think, that they,  
14 the comparable group companies, that they face  
15 comparable business and financial risks to the EDU.

16 A. Yes. Those are not defined.

17 Q. And that would apply to all the publicly  
18 traded companies, whether they're a utility or  
19 nonutility; is that correct?

20       A.  Yes.

21       Q.  You indicate in your testimony that  
22  presumably the nonutility companies would come from  
23  capital-intensive service industries.  Do you recall  
24  that?

25       A.  Yes.

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1 Q. But the statutory test doesn't actually  
2 exclude nonutility companies that don't come from a  
3 capital-intensive service industry, does it?

4 A. No. But again, it doesn't define  
5 business or financial risk either.

6 Q. I want to ask you a few questions about  
7 your construction of the comparable risk group of  
8 firms. The first step, as I understand it, in your  
9 methodology is to identify a proxy group of electric  
10 utilities.

11 A. Yes.

12 Q. And the proxy group of electric utilities  
13 that you have composed, it doesn't include CSP,  
14 that's Columbus Southern Power, OPCo, that's Ohio  
15 Power, or AEP, does it?

16 A. No.

17 Q. Would you agree that the proxy group, its  
18 purpose is to provide a proxy or substitute for CSP  
19 and OPCo?

20       A. It's to -- the use of the proxy group is  
21 to define some parameters for the business and  
22 financial risk indicators that I use.

23       Q. And those business and financial risk  
24 indicators that you use, they're supposed to be a  
25 proxy for those of CSP and OPCo; is that right?

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1       A. Yes.

2       Q. And then you use that proxy group of  
3 electric utilities, and you develop your ranges of  
4 business and financial risk indicators, and then you  
5 apply them to the larger group of companies.

6       A. Yes.

7       Q. And I'd like you to assume just for the  
8 moment that for whatever reason the proxy group that  
9 you composed, in the end it turns out that it wasn't  
10 a good match from a business and financial risk with  
11 OPCo and CSP.

12           And the question I have for you is, would  
13 you agree in that event that the comparable group of  
14 firms that you end up selecting would likewise not be  
15 a good match from financial or business risk  
16 standpoint?

17       A. Well, I guess the presumption is, I mean,  
18 I think it is an appropriate group of companies.

19       Q. I understand that.

20       A. So I think the way you develop proxy  
21 groups, it's consistent with how others construct  
22 proxy groups as well, whether you're an investment  
23 banking firm, consultants, and that sort of thing.  
24 So I guess I would say no, I disagree with the  
25 presumption behind your question.

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1           But if as it turns out the proxy group  
2 was incorrect for some reason, then it may or may  
3 not, it depends on the other risk program test, it  
4 may or may not provide an indication of a proxy group  
5 for this company.

6       Q. But if all the risk parameters you use  
7 are the ones you developed for that proxy group, and  
8 if you concede for me for a moment a presumption that  
9 the end result of that exercise was a group that was  
10 not reflective of the risks of the subject, then that  
11 seems to me -- and I'm just asking you to concur with  
12 me -- that the logic of it is that then the selection  
13 of the comparable group based on that flawed proxy  
14 group would likewise be flawed.

15       A. It could be, yes.

16       EXAMINER SEE: Mr. Conway, speak up,  
17 please.

18       Q. How do you tell whether or that the proxy  
19 group of electric utilities is, in fact, appropriate?

20       A. Well, I mean, I lay out the parameters  
21 here. I mean, in any type of business valuation  
22 exercise, cost of capital exercise, it's common to  
23 use a proxy group. The number one factor usually is  
24 the line of industry, which in this case is the  
25 electric utility business. On top of that, you have

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1 other issues that can come into it, including size

2 and that sort of thing.

3 So in putting together this proxy group

4 what I did was used some fairly general parameters of

5 what a proxy group would consist of, electric utility

6 companies. I put a size parameter in terms of their

7 \$10 billion in terms of revenues. I have included a

8 proxy parameter for their bond rating and the payment

9 of dividends. So those are the parameters I put

10 together to typify a -- put together a proxy group.

11 The number one factor is obviously the

12 line of business group.

13 Q. That's what I was thinking as you were

14 talking, is that it all comes back to, in the first

15 instance, the primary screener that you use is other

16 electric utilities; isn't that right?

17 A. Yes.

18 Q. And then you identify three business and

19 financial risk indicators that you then evaluate to

20 identify ranges for those indicators that you then  
21 use to apply to the broader population and select a  
22 comparable group; is that accurate?

23 A. Yes.

24 Q. I believe in your testimony you mentioned  
25 four indicators, but would you agree with me that

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1 really the three indicators that you used to do the  
2 screening by the development of ranges for your risk  
3 indicators are the beta and the turnover, the asset  
4 turnover ratio, and the common equity ratio?

5 A. Yes.

6 Q. With regard to the beta, did you use  
7 Value Line betas?

8 A. Yes.

9 Q. And those Value Line betas, they're  
10 levered betas?

11 A. They are levered betas.

12 Q. And as a result they reflect both  
13 business risk and financial risk, correct?

14 A. Yes. They reflect what -- we usually say  
15 investor risk, which includes both of those.

16 Q. And the statute that we're trying to  
17 implement here refers to business and financial risk,  
18 does it not?

19 A. And a beta would reflect both of those,

20 correct.

21 Q. The levered beta reflects both, correct?

22 A. Yes.

23 Q. And as a result they impact the impact of

24 the firm's debt on its overall riskiness, correct?

25 A. Yes.

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1 Q. And so the levered betas that you use  
2 reflect a mix of business and financial risks for the  
3 firm.

4 A. Yes.

5 Q. Would you agree that a firm's unlevered  
6 beta, on the other hand, captures business risk as  
7 opposed to business and financial risk?

8 A. Yes. But I think you have to remember  
9 betas are measured with a lot of error. They're  
10 based off of historic returns. Risk can change over  
11 time, so one caveat would say no matter how, you  
12 know, beta is measured with risk, and as a result  
13 it's, you know, it's not a perfect measure of risk,  
14 whether you're talking about business or investment  
15 risk, whether it's levered or unlevered.

16 Q. But assuming that the lack of perfection,  
17 the unlevered beta, to whatever degree it imperfectly  
18 measures risk, it's measuring business risk as  
19 opposed to business and financial risk, correct?

20       A. It is a measure of business risk with the  
21 caveat that it's measured with a lot of variable  
22 changes over time.

23       Q. If a firm faces -- I want to ask you a  
24 few questions about the nature of the unlevered  
25 beta's ability to measure business risk. If a firm

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1 faces a business risk from, say, variability in its  
2 revenues that it earns, that would be reflected in  
3 the unlevered beta.

4 A. Yes, it can be, depending on how it's  
5 measured, what time period, that sort of thing. You  
6 have to remember this is measured usually over a  
7 five-year time period. A lot of changes occur over  
8 five years. These are not steady. These are just  
9 estimates. It's an imperfect measure of risk.

10 Q. It's an imperfect world that we live in  
11 in a lot of ways, is it not?

12 A. Yes. And it's an imperfect measure.

13 Q. Perfection is a hard standard to achieve  
14 for anyone in any endeavor, correct?

15 A. Yes.

16 Q. If the firm faces risk as a result of how  
17 capital intensive its business is, that would also be  
18 reflected in the unlevered beta, wouldn't it?

19 A. Yes.

20 Q. Or if it faces regulatory risk like an  
21 electric utility might or a telephone company might,  
22 that would be reflected in the unlevered beta also,  
23 wouldn't it?

24 A. Yes.

25 Q. Now, in the proxy group of electric

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1 utilities that you have constructed to develop your  
2 indicators of risk and the ranges for those  
3 indicators, Dr. Woolridge, neither CSP's nor OPCo's  
4 asset turnover ratio is among the ones that you use  
5 to compose your proxy group rates for that ratio,  
6 right?

7 A. No; because again I'm using a group of  
8 publicly held companies, and so I'm constructing a  
9 proxy group from publicly held utilities. Obviously,  
10 CSP and OPCo are not publicly held.

11 Q. And you did not use AEP's asset turnover  
12 ratio in the construction of your proxy group either,  
13 did you?

14 A. No, I didn't.

15 Q. Neither Columbus Southern's nor OPCo's  
16 common equity ratio is among the ones that you used  
17 to calculate your proxy group rates for that ratio  
18 either.

19 A. No. I mean, a proxy group are publicly

20 held companies, and so I used the numbers for  
21 publicly held companies as a way of screening the  
22 larger database.

23 Q. And AEP's asset turnover ratio and its  
24 common equity ratio, they weren't used to calculate  
25 your proxy group ranges for those risk indicators,

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1 were they?

2 A. No.

3 Q. If I forgot to cover this point, AEP's  
4 beta is not used to compose a range for that risk  
5 measure in your proxy group, is it?

6 A. No, it is not.

7 EXAMINER SEE: Speak up, Mr. Conway.

8 MR. CONWAY: Thank you, your Honor. I'll  
9 try.

10 EXAMINER SEE: Slide the mic closer.

11 Q. Let me ask you a few questions about your  
12 asset turnover ratio, Dr. Woolridge. What is the  
13 ratio based on?

14 A. Net fixed assets. Revenues divided by  
15 net fixed assets.

16 Q. And the revenues, that's an annual  
17 measure of revenues?

18 A. Yes.

19 Q. And the fixed assets, you said net fixed

20 assets, does that mean that it's book value minus

21 depreciation?

22 A. Yes.

23 Q. And that ratio provides a measure of the

24 firm's capital intensity?

25 A. Yes.

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1       Q. And would you agree that the asset  
2 turnover ratio doesn't reflect all aspects of the  
3 firm's business risk?

4       A. No. But I think the public utility  
5 business is generally -- if there's one factor that  
6 gets much attention, it's a very capital intensive  
7 business.

8       Q. So the asset turnover ratio, while not a  
9 comprehensive measure for electric utilities in your  
10 view, it represents a very significant measure of  
11 their business risk.

12      A. It is certainly a measure of risk I think  
13 from the perspective of being such a capital  
14 intensive industry.

15      Q. Now, AEP ended up being selected as one  
16 of the firms in your comparable group of 64 firms; is  
17 that right?

18      A. Yes.

19      Q. And that meant that AEP's beta fell

20 within the screening range for beta that you  
21 developed for purposes of identifying your comparable  
22 group.

23 A. Yes.

24 Q. And AEP's asset turnover ratio also fell  
25 within your screening range for that risk indicator.

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1       A.   Yes.

2       Q.   And AEP's common equity ratio fell within  
3   the range for that risk indicator.

4       A.   Yes.

5       Q.   And so would you agree that that  
6   indicates that the business and financial risks that  
7   CSP and OPCo face are comparable to those that AEP  
8   faces?

9       A.   Well, it's reflective of the bigger  
10   enterprise in terms of I start with the electric  
11   utility group and find a broader group of companies  
12   which includes electric utilities, and it fits within  
13   that range.

14      Q.   "It" being AEP.

15      A.   Yes.

16      Q.   And that means that AEP, because it fits  
17   within that comparable group, is to some extent a  
18   comparable firm riskwise to CSP and OPCo.

19      A.   Well, certainly CSP and OPCo's risks are

20 reflected in the risk of AEP.

21 Q. A couple questions about the proxy group

22 and the comparable group, Dr. Woolridge. The members

23 of your proxy group of electric utilities in your

24 approach, they don't change as the electric

25 distribution utility you're looking at changes, from

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1 my understanding. Let me give you an example.

2 In table 1 of your testimony, which I  
3 think is at page 6, you list the 16 firms that  
4 compose the proxy group of electric utilities, and my  
5 understanding is that you conducted this exercise for  
6 purposes of the FirstEnergy companies' ESP, and my  
7 understanding is that the proxy group of 16 electric  
8 utilities you have in your table 1 for this case is  
9 the same group of 16 electric utilities that you had  
10 in your proxy group for the FirstEnergy case.

11 A. Yes.

12 Q. And you also looked at the Cincinnati  
13 Gas & Electric utility or Duke Ohio in connection  
14 with an ESP case in Ohio, correct?

15 A. Yes.

16 Q. And my understanding is that like table 1  
17 in our case and your testimony in our case, table 1  
18 in the Duke-Ohio case has as its members the same 16  
19 electric utilities.

20       A.   Yes.

21       Q.   And if you look at your business and  
22   financial risk indicators in table 2, the ranges that  
23   you developed based on that proxy group, I suppose  
24   inevitably then the table 2 results for the AEP  
25   companies ends up being the same as the table 2 for

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1 the FirstEnergy and the Duke companies.

2 A. Yes.

3 Q. And then as a result of the comparable --

4 excuse me. As a result of the proxy group of

5 electric utilities being the same from case to case

6 and as a consequence of the financial indicator --

7 risk indicator ranges being the same from case to

8 case, you end up with the same 64 firms in the

9 comparable group for each of the three cases; is that

10 right?

11 A. Yes.

12 Q. I have a few questions about the ranges

13 of the business and financial risk indicators that

14 you've developed, Dr. Woolridge. The beta range is

15 .6 to 1.05, right?

16 A. Yes.

17 Q. And that equates to a range whose high

18 end, the 1.05 is about 75 percent higher than the low

19 end, .6, right?

20 A. Yes.

21 Q. And then the range for the asset turnover

22 ratio, it's on the low end. It's .336 or about

23 34 percent; is that right?

24 A. Yes.

25 Q. And then on the high end it's about

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1 1.118, which is about 112 percent.

2 A. Yes.

3 Q. And so the range for that ratio from the  
4 high end to the low end, the high end's about triple  
5 the low end; is that right?

6 A. Yes.

7 Q. And with regard to the common equity  
8 ratio, that range is .31 or 31 percent to .64 or  
9 64 percent, correct?

10 A. Yes.

11 Q. And that's a range that goes from the  
12 high end to the low end, it's about double; is that  
13 right?

14 A. Yes.

15 Q. Wouldn't you conclude that in developing  
16 ranges for your risk indicators that are this wide,  
17 that the conclusion that you're -- couldn't you reach  
18 the conclusion that your results, these ranges of  
19 risk indicators, are going to lead to a screen for

20 your comparable companies that is not precise?

21 A. No.

22 Q. Don't such large ranges in your financial

23 and business risk indicators call into question for

24 you whether you've established screening criteria

25 that don't lead to a good match for CSP's and OPCo's

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1 risk characteristics?

2 A. No.

3 Q. Dr. Woolridge, you propose two approaches  
4 to estimating premiums to add to the benchmark ROE to  
5 establish threshold ROEs for the significantly  
6 excessive earnings test. Your first premium or adder  
7 is 150 basis points, and that's based on the FERC's  
8 adder for transmission investments. That equates to  
9 1-1/2 percent, right?

10 A. 150 basis points, yes.

11 Q. Now, the FERC also awards a 50 basis  
12 point adder to the authorized return for transmission  
13 investments if the utility is a member of an RTO?

14 A. Yes.

15 Q. A regional transmission organization.

16 A. Yes.

17 Q. And is it your understanding that the  
18 AEP-Ohio companies are members of PJM, which is an  
19 RTO?

20 A. Yes.

21 Q. So CSP and OPCo would get the 50 basis  
22 point adder, right?

23 A. Yes. I mean it's specifically for being  
24 a member of that -- of the regional transmission  
25 organization. It's not for the -- it's separated out

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1 as opposed to the investment risk associated with  
2 transmission investments.

3 Q. But it is related to the ROEs for  
4 companies --

5 A. Yes.

6 Q. If they don't belong to the PJM RTO, they  
7 don't get the 50 basis point adder for that, right?

8 A. Yes. But it's not as part of the  
9 incentive for the investor.

10 Q. It's an incentive to join PJM?

11 A. Yes; but not for the investor.

12 Q. And once you're in PJM, PJM wants to  
13 incent transmission investments for its member  
14 utilities, does it not?

15 A. Yes. But they separate the two.

16 Q. Let me ask you for a comparison. Let's  
17 compare an electric utility that's within the PJM  
18 footprint. It doesn't belong in PJM, and it goes to  
19 FERC for an ROE authorization. Would you agree that

20 that utility for a new transmission investment would  
21 get an authorized ROE that's going to be 200 basis  
22 points less than if it joined PJM?

23 A. It's going to be 50 basis points less.

24 Q. New transmission investment that would  
25 qualify for the 150 basis point ROE adder.

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1       A. Yes.

2       Q. Okay. Your second adder approach is to  
3 use the one standard deviation of the ROEs from the  
4 comparable risk companies group, right?

5       A. Yes.

6       Q. That calculation was 4.52 percent as one  
7 standard deviation and thus the adder.

8       A. Yes.

9       Q. And you propose that the threshold for  
10 the excessive earnings -- the significantly excessive  
11 earnings test should be benchmark ROE for the utility  
12 plus a premium which is the average of the FERC  
13 incentive adder and the one standard deviation adder,  
14 right?

15      A. Yes.

16      Q. And so that leads to an adder which is  
17 452 basis points corresponding to the one standard  
18 deviation adder and then 150 basis points that  
19 corresponds to the FERC incentive adder, right?

20       A.   Yes.

21       Q.   If we were to -- if we were to add the

22 other 50 basis points FERC gives you for being a

23 member of the PJM RTO and we did the same

24 calculations that you've made adding the two

25 approaches, but instead of for the one approach using

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1 150 basis points using the full 200 basis points,  
2 would you agree that the result of your averaging of  
3 those two approaches would increase the average by 25  
4 basis points?

5 A. Yes.

6 Q. With regard to the incentive return for  
7 transmission investments that FERC allows, is that an  
8 earnings cap?

9 A. Is that an earnings cap? No.

10 Q. So if the utility gets the 150 basis  
11 point incentive award for new transmission investment  
12 and the 50 basis point adder for being an RTO adder  
13 and then it earns more than the authorized return on  
14 equity, the base ROE plus the 50 plus the 150 basis  
15 points, it doesn't have to refund additional earnings  
16 that it makes above that.

17 A. No.

18 Q. And has FERC ever said that a utility  
19 which earns more on its transmission investment than

20 the return FERC used to set rates for the

21 investment --

22 MS. ROBERTS: Your Honor, I've tried to

23 be very patient with this line of questions, but how

24 FERC treats this is completely irrelevant to the

25 construct in Dr. Woolridge's testimony of why he uses

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1 the 150 basis point adder. And I think we've gone

2 way far afield. And objection, relevancy.

3 EXAMINER SEE: Would you like to respond,

4 Mr. Conway?

5 MR. CONWAY: Your Honor, if I might, I do

6 think it's very important because on the one hand we

7 are constructing a measure for which earnings that

8 exceed it are then refunded to customers, and on the

9 other hand we have a benchmark which when earnings

10 are made that exceed it doesn't lead to a refund.

11 So I think it calls into question the

12 comparability or the usefulness of the FERC incentive

13 adder as a measure of what ought to be regarded as a

14 threshold over which earnings are refunded -- over

15 which -- beyond which earnings are refunded, so I

16 think it's very relevant.

17 MR. BELL: May I have Mr. Conway's

18 response read back? I didn't catch it all, your

19 Honor.

20 EXAMINER SEE: Okay.

21 (Record read.)

22 MR. CONWAY: Let me just sum it up. I

23 think we have an example of an apples to oranges

24 comparison being offered to us by the witness, and

25 I'm trying to point it out.

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1 MS. ROBERTS: May I, your Honor? Based  
2 on Mr. Conway's argument, there would be nothing to  
3 use in Ohio to determine a significantly excessive  
4 earnings test because only Ohio has that statute.  
5 FERC doesn't. It's not an act. Only Ohio. So we're  
6 trying to construct what's an appropriate proxy  
7 measure to use. And for that reason it is apples to  
8 oranges and we shouldn't be proceeding into these  
9 areas anymore.

10 EXAMINER SEE: And you can make that  
11 argument in your brief.

12 Mr. Woolridge, answer the question,  
13 please.

14 THE WITNESS: Can I please have the  
15 question again. I've kind of missed it here.

16 (Record read.)

17 A. No, not that I know.

18 Q. I want to go back to a statement you made  
19 at the -- near the outset of your testimony,

20 Dr. Woolridge at page 3, lines, I think it's 7 to 8,  
21 you indicate there that: "A comparable group of  
22 companies must be developed to establish a  
23 distribution of returns on common equity." Do you  
24 see that?

25 A. Yes.

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1 EXAMINER SEE: What line is that,

2 Mr. Conway?

3 MR. CONWAY: Line 7 to 8 on page 3.

4 Q. And you're talking about in that case, I  
5 believe, the group of 64 comparable risk firms; is  
6 that right?

7 A. Yes.

8 Q. And there's a mean return on equity for  
9 that group, right?

10 A. Yes.

11 Q. And that's simply the arithmetic average  
12 of all the individual ROEs of the group -- of the  
13 members of the group.

14 A. Yes.

15 Q. But the mean ROE is a statistic, right?

16 A. Yes.

17 Q. It's not the ROE of that group.

18 A. It's the average.

19 Q. And it gives you -- the mean ROE, it

20 gives you some information about -- it describes in

21 one aspect the ROEs of the members of the group.

22 A. It's one measure of central tendency.

23 Q. And when you -- strike that.

24 The standard deviation for the group is

25 defined at least in part by reference to that mean;

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1 is it not?

2 A. Yes.

3 Q. Is it fair to say that the mean ROE,  
4 together with the standard deviation about that mean  
5 provides a description of how the ROEs of the group  
6 are distributed?

7 A. It provides one, yeah, a measure of the  
8 central tendency and dispersion of the distribution.

9 Q. The two statistics, they're linked pretty  
10 tightly, are they not?

11 A. I don't understand your question.

12 Q. Let me see if I can rephrase it. The two  
13 statistics are related, are they?

14 A. Well, the two statistics are measures or,  
15 you know, the one is to measure central tendency.  
16 The other is to measure dispersion.

17 Q. And every group has a mean and every  
18 group has a one standard deviation variance about the  
19 mean, right?

20       A.   Yes.

21       Q.   Your second threshold return on equity  
22   adder that you discuss, the one standard deviation  
23   based adder, that equates to an adder of 452 basis  
24   points.

25       A.   Yes.

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1       Q. And it corresponds to, in a statistical  
2 sense, to a 67 percent confidence interval, the  
3 standard deviation aspect of it.

4       A. Well, we go one standard deviation above  
5 the mean, right?

6       Q. Right.

7       A. So you're going to be, in terms of a  
8 one-tailed test, one standard deviation above the  
9 mean. So you're about the 84th, 85th percentile  
10 with that measure if it's a standard normal  
11 distribution.

12      Q. And we're assuming that we have a  
13 standard, normal distribution here.

14      A. That's -- presumably that's the general  
15 notion.

16      Q. And when you say it's -- when you  
17 describe your approach as identifying a threshold  
18 that's at the 85th percentile, what you're saying is  
19 that 15 percent of the observations of the whole

20 group fall above the high side of the one standard

21 deviation variance, right?

22 A. Yes.

23 Q. And then another 15 percent would fall

24 below the one standard deviation range below the

25 mean.

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1       A. Yes.

2       Q. Right. And if you were looking at it as  
3 a two-tailed test, would you agree that the 15 or  
4 16 percent on the high side and the 15 or 16 on the  
5 low side would correspond to a confidence interval or  
6 a total range of observations within the plus or  
7 minus one standard deviation of 67 percent  
8 approximately?

9       A. Yes. If you're using it as from the  
10 standpoint of a two-tailed test.

11      Q. Okay. And if you were to convert your  
12 301 basis point adder final recommendation for the  
13 threshold, if you were to convert that into a  
14 corresponding standard deviation about the mean of  
15 this group, would you agree that that would amount to  
16 about a  $2/3$  standard deviation variance about the  
17 mean?

18      A. That sounds about right.

19      Q. 300 basis points is  $2/3$  of 450, right?

20       A.   Yes.

21       Q.   And what is the percentile that you would

22   associate with a variance of  $2/3$  of a standard

23   deviation that would be the corresponding or the, you

24   know, the similar percentile that you provided us

25   with regard to your one standard deviation measure,

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1 the 85th percentile? What would it be?

2 A. I don't know.

3 Q. Would it be --

4 A. I don't understand your question.

5 Q. Okay. Let me see if I can rephrase it.

6 If I have a  $2/3$  standard deviation variance about the  
7 mean, what percentage of the total observations fall  
8 above that threshold?

9 A. So it's going to be roughly 67 percent.

10 And that's, again -- you know what we're really  
11 getting back to --

12 Q. Percentile or percent?

13 A. Percent. Percentile.

14 Q. Percentile.

15 A. Yeah.

16 Q. Okay.

17 A. What we're really getting back to is how  
18 we define "significantly excessive."

19 Q. That's right.

20       A. Clearly I don't go with a purely  
21 statistical approach, as Dr. Makhija does. I have  
22 used it more from the concept of a, okay, an  
23 administrative standard and a statistical standard.  
24 I have not defined it purely in statistical terms.

25       Q. I understand that. I just have a few

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1 more questions along this line, but as I understand  
2 what you just said, if we are to use a 2/3 standard  
3 deviation variance about the mean, that would  
4 correspond to a distribution that would have  
5 approximately 33 percent of the total observations  
6 above the 2/3 standard deviation threshold. Is that  
7 what you said?

8 A. Yes.

9 Q. Okay. And would you agree with me,  
10 Dr. Woolridge, that what we're looking for here in  
11 this test is circumstances ultimately when the return  
12 on equity earned by the electric distribution utility  
13 exceeds the threshold that we set?

14 A. Yes. And part of the problem that I  
15 highlight in my testimony is with the data you get a  
16 lot of outliers. So you can have standard deviations  
17 that are -- you know, all your assumptions are on the  
18 presumption of a normal distribution, and you have a  
19 lot of outliers in the data, and as a result that's

20 going to push up the standard deviation, and as I  
21 explain in my testimony, that's one reason why I use  
22 an administrative standard and a standard deviation,  
23 I do not use a purely statistical test.

24 Q. I understand.

25 A. And so the only way this is true under

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1 your hypothesis is if it has a standard deviation, I  
2 mean a standard normal distribution. You don't have  
3 any outliers and that sort of thing. But anybody who  
4 deals with data knows it's very common to have just  
5 outliers which are going to press up your standard  
6 deviation.

7 Q. When you came up with your  
8 85th percentile static, did you assume that the  
9 group of 64 had an approximately normal distribution?

10 A. I did, but with the caveat which I  
11 mention in my testimony is you tend to have outliers  
12 with the data. I mean, Dr. Makhija's sample had huge  
13 outliers, and as a result he had very large standard  
14 deviations. And so -- but we use different measures  
15 of earnings, return on equity.

16 Q. Right. Now let's be clear. I'm talking  
17 about your 64 firm comparable group. Your mean  
18 static, your variance about the mean, your  
19 distribution, the distribution of your group, not

20 Dr. Makhija's, okay?

21 A. Yes.

22 Q. And getting back to the point that I was

23 driving towards, as I understand your testimony,

24 roughly 33 out of the hundred if there were a hundred

25 observations, 33 percent of the observations in your

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1 group you would expect to fall above the 2/3 standard  
2 deviation threshold.

3 A. Yes. If you have a standard normal  
4 distribution, you don't have outliers, all the things  
5 that I -- all the caveats I discuss in my testimony.

6 Q. And would you agree with me that the  
7 exercise ultimately that we're going to be engaged in  
8 is finding instances when the firm's ROE, the subject  
9 firm's ROE, exceeds the threshold for significantly  
10 excessive earnings?

11 A. Yes.

12 Q. And we're not interested in the path of  
13 the ROE examples that fall below the mean because  
14 obviously those are not going to exceed -- they're  
15 not even going to exceed the mean let alone the  
16 threshold, right?

17 A. Yes.

18 Q. Okay. What percentage of the half of the  
19 ROE observations that lie above the mean, assuming a

20 normal distribution, would fall above a 2/3 standard

21 deviation range?

22 A. 33 percent.

23 Q. 33 out of 50 or 33 out of a hundred?

24 A. Out of a hundred.

25 MS. ROBERTS: Objection, your Honor;

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1 asked and answered about four times.

2 EXAMINER SEE: Wait, wait. I'm sorry.

3 What was that Ms. Roberts?

4 MS. ROBERTS: Asked and answered at least  
5 four times.

6 MR. CONWAY: Actually, it hasn't been,  
7 your Honor, and I have one or two more questions  
8 along this line which I would like to get to.

9 EXAMINER SEE: Go on to your next  
10 question, Mr. Conway.

11 Q. Looking at just the 50 observations or  
12 the 50 percent of the 64 observations that lie above  
13 the mean, what percentage of that group would the  
14 33 percent that lie above the threshold represent?

15 A. Well, it would be -- represent 33 out of  
16 50.

17 Q. Okay.

18 A. I'm sorry. I didn't understand your  
19 question.

20 Q. And that would be roughly 66 percent of  
21 that group?

22 A. Yes.

23 Q. Okay. You state at page 15, so if you  
24 could turn to page 15, at lines 7 through 10 that:  
25 You were advised by counsel the law specifically

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1 requires exclusive consideration of the revenues,  
2 expenses, or earnings of Ohio utilities and not those  
3 of their affiliates or parent company. Do you see  
4 that?

5 A. Yes.

6 Q. That advice did not prevent you from  
7 including the AEP data in your comparable group, did  
8 it?

9 A. No. I mean, of the comparable group that  
10 was the comparable group of public companies. That's  
11 where AEP came in.

12 Q. So it's okay to put AEP data in there.

13 A. Well, it was viewed as being one of the  
14 comparable public companies.

15 Q. I mean, is the reason that you don't --  
16 you can include it there but maybe not somewhere else  
17 is that the equity ratio and the ROE, the income tax  
18 rate, cost of debt information that you look at, it  
19 doesn't involve revenues, expenses, or earnings.

20       A. No. It's because it met the screening  
21 criteria I had for public companies, which was based  
22 off of the screens I developed from the public --  
23 from my public utility group.

24       Q. But, Dr. Woolridge, isn't it true that  
25 the AEP data then feeds into the average ROE that you

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1 developed from the 64 comparable firms?

2 A. Yes, it does. And that's because it met  
3 the criteria for public -- the screening I did for  
4 public companies.

5 Q. So then isn't it true -- well, is it not  
6 true or what's the reason for being able to include  
7 the AEP-Ohio data in that calculation but perhaps not  
8 in some other calculation that you refer to in your  
9 testimony on page 15?

10 A. It's because in this case I'm trying to  
11 find a group of public companies as other witnesses  
12 have. As it turns out, based on the screening  
13 criteria, AEP fell within those screening criteria.  
14 So as a result the data that I used for AEP is  
15 because it met the screening criteria for public  
16 companies.

17 Q. And then --

18 A. If it had not met those criteria, it  
19 wouldn't have been in that group.

20 Q. Well, thank the heavens that it did end  
21 up in the group. We'd be surprised if Columbus  
22 Southern's and Ohio Power's parent wasn't among those  
23 comparable firms, wouldn't we?

24 MS. ROBERTS: Objection, your Honor. I  
25 think Mr. Conway's testifying.

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1 EXAMINER SEE: Go to the next question,

2 Mr. Conway.

3 Q. Dr. Woolridge, with regard to the equity

4 ratios for your proxy group, did those statistics

5 include or exclude preferred equity amounts of those

6 firms?

7 A. I believe they're defined as being common

8 equity ratios so that would be common stock.

9 Q. So you excluded preferred equity?

10 A. Yes.

11 Q. And is the same true with regard to the

12 comparable risk group of firms that you selected?

13 A. Yes.

14 Q. Getting back, Dr. Woolridge, to the line

15 of questions about the similarity or identity of your

16 proxy group firms and your comparable group firms

17 from case to case, the conclusion one draws from that

18 is that your one proxy group, it's a good fit for all

19 EDUs in Ohio; is that right?

20       A. Well, it's a group that fits the criteria

21   that I set in the state of Ohio, yes.

22       Q. And your comparable group that you

23   developed, it's just uniformly the right group for

24   each electric utility in Ohio.

25       A. In this case I believe it is. Part of

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1 what I worked on was a consistent methodology.

2 Q. And would it be true that if you went

3 anywhere in the United States and performed the same

4 analysis in the way that you've done for this case,

5 you'd come up with the same group of 16 electric

6 utilities to compose your proxy group and the same 64

7 firms that would compose your comparable group?

8 A. Not necessarily.

9 Q. How possibly could you come up with a

10 different result?

11 A. Well, you could come up with a different

12 result, obviously, if you're dealing with

13 predominantly large utilities --

14 Q. So the size of the utility, if you vary

15 the size --

16 EXAMINER SEE: Mr. Conway, let him finish

17 his answer.

18 A. If you change the size, you can vary the

19 comparable group.

20 Q. Okay. So let's -- and your screening

21 criterion for size was what?

22 A. 10 billion in revenue.

23 Q. And so if we were to go around the

24 country and we used that same screening mechanism or

25 we used -- if we applied that criterion in any other

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1 example around the country that you might focus on,  
2 assuming that the subject utility met that criterion,  
3 the results would be the same with regard to the  
4 proxy group and the comparable firms?

5 A. I'm sorry, yeah. There's a couple of  
6 criteria. Obviously, the size is one criterion. The  
7 percent of revenue from -- a regulated electric --  
8 revenue is another criterion. The investment grade  
9 bond rating is a criterion. Those are the three  
10 primary factors and dividends, that they pay a  
11 dividend. Those are the four primary criterion that  
12 I used.

13 I mean, you can change your criteria and  
14 you could have a different group. It probably is not  
15 going to change a whole lot. In my opinion just with  
16 my experience in dealing with groups like this, it's  
17 not going to change a whole lot. If you lower the  
18 percent of regulated electric revenue, you're going  
19 to add some utilities. Their business and financial

20 risk indicators may still fall within that range. So

21 can you change those criteria and the group may

22 change; it may not change.

23 MR. CONWAY: No further questions, your

24 Honor.

25 EXAMINER SEE: Mr. Smalz?

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1                   - - -

2                   CROSS-EXAMINATION

3   By Mr. Smalz:

4       Q.   Good afternoon, Mr. Woolridge. I just  
5   have three or four clarifying questions, and please  
6   forgive me if these questions seem too basic, but I  
7   just want to make sure I understand your testimony  
8   and your recommendations.

9           Turning to table 3, at the top of page 13  
10   of your testimony regarding threshold ROE for CSP and  
11   OPC, you state or provide a threshold ROE for CSP of  
12   14.90 percent and a 15.30 percent for OPC.

13          Now, are you recommending that this  
14   threshold ROE apply during each year of the  
15   three-year ESP, to all three years not just the first  
16   year?

17       A.   I mean, what I've done here, and I think  
18   all the witnesses who have done this are providing a  
19   methodology which will be applied in the future to

20 previous ROEs. So this is -- these are thresholds  
21 I've developed based off of last year's data. I'm  
22 recommending a particular methodology to use which is  
23 indicative of the results we would see if we were  
24 using last year's data.  
25 Q. I see. So the methodology would be

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1 applied to each year of the ESP and could have

2 different results.

3 A. Yes.

4 Q. I see. Turning to the top of page 18 of

5 your testimony, you mention two terms, capital

6 intensity and fixed asset turnover ratios. Is fixed

7 asset turnover ratio a measure of capital intensity?

8 A. Yes.

9 Q. And is it true that the lower the fixed

10 asset turnover ratio is, then that's a higher capital

11 intensity?

12 A. Well, it's defined as revenues divided by

13 fixed assets, so the lower that number is, the higher

14 degree of capital intensity.

15 Q. I see. Thank you.

16 Turning to A28, answer 28, you refer to

17 capital structure adjustments and indicate that you

18 made specific capital structure adjustments. Could

19 you explain in laymen's terms, if possible, what

20 capital structure adjustments you made?

21 A. Well, SB 221 specifically references

22 adjustments for capital structure, so what I have

23 done in my table Exhibit JRW-4 provided for

24 adjustments relative to the capital structures of

25 Columbus Southern and Ohio Power relative to the

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1 results for the group of 64 companies. And it simply  
2 specified -- so there's an adjustment there starting  
3 with pretax return on capital and making adjustments  
4 using the individual tax rates and debt cost rates.

5 MR. SMALZ: Thank you, Mr. Woolridge.

6 That's all I have.

7 EXAMINER SEE: Mr. O'Brien.

8 MR. O'BRIEN: No questions, your Honor.

9 EXAMINER SEE: Mr. Petricoff?

10 MR. PETRICOFF: No questions, your Honor.

11 EXAMINER SEE: Mr. Randazzo?

12 MR. RANDAZZO: Yes.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Randazzo:

16 Q. Good afternoon. You begin your testimony  
17 on page 1 by indicating that the Office of Consumers'  
18 Counsel asked you to recommend a methodology, and I  
19 believe in response to a question from Mr. Smalz,

20 it's my understanding that you are recommending a

21 methodology and not specific percentage return

22 thresholds that be applied; is that correct?

23 A. No. And what I've done is recommend a

24 methodology and applied it using last year's numbers.

25 Q. Right. So if an ESP goes into effect

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1   sometime a year from now, there would be a need to  
2   apply your methodology if that's the one that's  
3   adopted by the Commission and determined anew what  
4   the excess, significantly excess earnings threshold  
5   might be, correct?

6       A.   Yes.

7       Q.   Now, did you review the application that  
8   was submitted by the Ohio companies of AEP in this  
9   proceeding?

10      A.   I've submitted -- I've reviewed the  
11   relevant testimonies to this issue. I haven't  
12   developed -- I haven't reviewed all the different  
13   testimonies, no.

14      Q.   And my question to you is -- maybe I'm  
15   missing something, but I didn't see anything in the  
16   application that conditioned the proposed ESP upon a  
17   certain excess earnings methodology. Did you see  
18   anything?

19      A.   No. I mean, I -- no, I didn't review the

20 entire application.

21 Q. So why are we talking about excess

22 earnings at this phase of the case, significantly

23 excessive earnings?

24 A. I reviewed the testimony relevant to this

25 issue put forth by AEP and responded to that and had

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1 obviously previously provided testimony in two  
2 previous cases.

3 Q. Okay. But to get, again, there's nothing  
4 as far as you know that's in the ESP application  
5 that's submitted by the Ohio companies of AEP that  
6 says that it's conditioned upon the Commission  
7 finding a certain significantly excessive earnings  
8 methodology.

9 A. I don't know.

10 Q. You don't know?

11 A. No, I don't.

12 Q. Would you agree, sir, as a general  
13 proposition that the methodology that the Commission  
14 might apply to determine significantly excessive  
15 earnings should be a standard methodology that would  
16 apply to all the Ohio distribution utilities?

17 A. As I understand it, that's the issue.

18 MR. RANDAZZO: That's all I have. Thank  
19 you.

20 EXAMINER SEE: Mr. Boehm?

21 MR. BOEHM: No cross, your Honor.

22 EXAMINER SEE: Mr. Bell, do you have

23 cross for this witness?

24 MR. BELL: Yes, I do.

25 - - -

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1 CROSS-EXAMINATION

2 By Mr. Bell:

3 Q. Just a few questions picking up on the  
4 line pursued by Mr. Randazzo. Is it correct, then,  
5 Mr. Woolridge, that you have submitted a SEE test in  
6 this proceeding only to counter the test submitted by  
7 American Electric Power's operating companies and not  
8 because of any independent determination made by you  
9 that such a test was necessary to be established in  
10 this proceeding?

11 A. No. I provided this testimony in  
12 response to a request from the Office of Consumers'  
13 Counsel to provide a methodology for SEE and to  
14 review the testimony of the company in this case.

15 Q. So that I'm clear, your submission of  
16 this SEE methodology in this case was in response to  
17 a request by the Office of Consumers' Counsel and not  
18 because of any independent determination made by you  
19 that such a test was necessary to be established in

20 these proceedings.

21 A. No. I mean, only from the standpoint of

22 reviewing that -- those relevant portions of the

23 SB 221. Other than that, no.

24 MR. BELL: Thank you, that's all I have.

25 EXAMINER SEE: Mr. Yurick?

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1           MR. YURICK: No questions. Thank you,  
2 your Honor.

3           EXAMINER SEE: Let's go off the record  
4 for a second.

5           (Discussion off the record.)

6           (Recess taken.)

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

9           Mr. Margard, do you have any cross for  
10 the witness?

11          MR. MARGARD: Thank you, your Honor, I do  
12 not.

13          EXAMINER SEE: Thank you.

14          Ms. Roberts.

15          MS. ROBERTS: Thank you.

16                   - - -

17           REDIRECT EXAMINATION

18 By Ms. Roberts:

19          Q. Dr. Woolridge, if SB 221 requires an

20 evaluation of publicly traded companies including  
21 utilities, why did you use electric utilities as your  
22 first screen?

23 A. I think most people recognize that the  
24 primary driver of risk for a business is the industry  
25 it's in, and so obviously the elements of this

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1 industry would be reflective in the financial numbers  
2 in that segment.

3 Q. And in your analysis why did you use --  
4 why didn't you use CSP and OP?

5 A. Well, the two companies themselves are  
6 not publicly traded. Obviously, their parent  
7 company, AEP, is.

8 Q. All right. And do you recall the  
9 questions about your risk screens beta, asset  
10 turnover, common equity ratio, and the wide  
11 variations in those screens?

12 A. Yes.

13 Q. Are those -- do you believe those screens  
14 to be appropriate, and do you believe that the wide  
15 variation, to use Mr. Conway's characterization, is  
16 appropriate?

17 A. Well, yes. I mean, obviously in my  
18 testimony I explain why I used those screens to  
19 represent investment risk with beta, business and

20 financial risks with asset turnover and with the  
21 common equity ratio, and there is some variability in  
22 terms of like beta goes from .6 to 1.05, asset  
23 turnover from .33 to 1.11, and common equity ratio  
24 from .31 to .64, but still, I mean that may seem to  
25 be a lot of variability but when you apply those

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1 three screens, it's 7,000 companies. You go from  
2 7,000 companies to 64, so it shows that even though  
3 that may seem like a wide range, it's still -- it  
4 cuts your sample from 7,000 to 64 that have similar  
5 business and financial risk indicators as determined  
6 by those ranges on those screens.

7 MS. ROBERTS: Thank you, Dr. Woolridge.

8 I have no other questions.

9 EXAMINER SEE: Thank you, Dr. Woolridge.

10 MS. ROBERTS: I would like to move

11 Exhibit OCC-2 into evidence.

12 EXAMINER SEE: Okay. Mr. Conway.

13 MS. ROBERTS: How could you have

14 questions after that?

15 MR. CONWAY: I may not, but I just want

16 to take a second to think and would appreciate the

17 opportunity if I had any questions.

18 MS. ROBERTS: Sorry.

19 EXAMINER SEE: I'm going to give you the

20 opportunity.

21 MR. CONWAY: I know.

22 - - -

23 RECROSS-EXAMINATION

24 By Mr. Conway:

25 Q. Dr. Woolridge, when were you hired by

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1 OCC?

2 MS. ROBERTS: I'm sorry, I object.

3 That's beyond the scope of his direct and re --

4 beyond the scope of his redirect.

5 MR. CONWAY: You know, your Honor, if you

6 would just indulge me for one question, there were

7 some questions from Mr. Bell which were in the nature

8 of friendly cross about implying that Dr. Woolridge

9 is a relative latecomer, not a latecomer, but he

10 wasn't engaged and accepted as -- there was the

11 implication by Mr. Bell in his cross-examination that

12 Dr. Woolridge was hired simply to rebut what

13 Dr. Makhija has to say.

14 And so my question, that was friendly

15 cross, and I didn't object to it at the time, but it

16 was friendly cross and I think the record should be

17 corrected that Dr. Woolridge was hired well before he

18 would have been hired to be a rebuttal witness.

19 MS. ROBERTS: Your Honor, if I may,

20 Mr. Conway might not object to friendly cross of

21 Mr. Bell, if that's what it was, but these questions

22 are beyond the scope of my redirect and I object.

23 MR. CONWAY: I think it --

24 MR. BELL: May I be heard, your Honor?

25 EXAMINER SEE: Okay, Mr. Bell.

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1           MR. BELL: My questions were anything but  
2 friendly cross of this witness. My cross-examination  
3 of this witness was directed toward challenging his  
4 very inclusion of SEE in this case. It wasn't  
5 friendly cross, and I agree, it's far, far beyond any  
6 contact with the redirect.

7           EXAMINER SEE: And the objection is  
8 sustained.

9           MR. CONWAY: No further questions, your  
10 Honor.

11          MS. ROBERTS: Your Honor, in that case I  
12 would move admission of OCC Exhibit 2 into evidence.

13          EXAMINER SEE: Any objections to the  
14 admission of OCC Exhibit 2?

15          MR. RANDAZZO: Your Honor, I would object  
16 at this point. I'm not sure that the subject is  
17 relevant to the proceeding. I mean, it's not an  
18 issue that's been raised by the ESP application of  
19 AEP, and I would have raised this earlier, but I knew

20 we were trying to accommodate the witness's schedule.

21 I don't see how the issue, any of the

22 testimony related to excess earnings is relevant to

23 the ESP application that's before the Commission.

24 EXAMINER SEE: Ms. Roberts.

25 MS. ROBERTS: Thank you, your Honor,

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1 Dr. Woolridge's testimony was offered in response to  
2 Dr. Makhija's testimony in the company's case in  
3 chief.

4 MR. BOEHM: Your Honor, if I may also  
5 address this because our witnesses of course do also  
6 address the question of significant excessive  
7 earnings. We also are filing as rebuttal, although I  
8 might add that early on in discussions among the  
9 party and with the staff, the question was should  
10 testimony about significantly -- SEE be introduced in  
11 this case because some company said we need to know  
12 what the SEE is because our accountants need to know  
13 how to book things.

14 You know, whether that's so or not, the  
15 company has submitted the testimony and we've  
16 submitted testimony in rebuttal.

17 EXAMINER SEE: Thank you.

18 MR. RANDAZZO: I understand the testimony  
19 has been prefiled. It has not been submitted. My

20 objection goes to the testimony based upon it being  
21 relevant to any issues that have been raised by the  
22 application.

23 EXAMINER SEE: And I'm going to find that  
24 it -- and I find that the testimony as to the SEE  
25 test is relevant to the case, and if there are no

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1 further objections to the admission of OCC Exhibit 2,  
2 it shall be so admitted into the record.

3 Thank you.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER SEE: Thank you, Dr. Woolridge.

6 THE WITNESS: Thank you.

7 EXAMINER SEE: Let's go off the record  
8 for a second.

9 (Recess taken.)

10 EXAMINER SEE: Let's go on the record so  
11 we can address Ms. Hixon's rebuttal testimony on the  
12 1/1/09 plan.

13 Ms. Roberts.

14 MS. ROBERTS: Thank you, your Honor. I  
15 would ask that Ms. Hixon's rebuttal testimony be  
16 marked as Exhibit 3 for identification.

17 EXAMINER SEE: The exhibit is so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 - - -

20                   BETH E. HIXON

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

22   examined and testified as follows:

23                   DIRECT EXAMINATION

24   By Ms. Roberts:

25         Q.   Would you state your full name for the

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1 record, please?

2 A. My name is Beth E. Hixon.

3 Q. And on whose behalf are you appearing  
4 here today?

5 A. On behalf of the Office of the Ohio  
6 Consumers' Counsel.

7 Q. Do you have before you a document that's  
8 been marked Exhibit 3 for identification?

9 A. Yes.

10 Q. Can you tell us what that is?

11 A. It's a copy of my rebuttal testimony  
12 filed on November 14th.

13 Q. Was it prepared by you or under your  
14 direct supervision and control?

15 A. Yes.

16 Q. Do you have any changes to your  
17 testimony?

18 A. I have one correction. On page 8, line  
19 3, I believe that I have reversed the numbers of the

20 case listed. It should read case number

21 05-765-EL-UNC.

22 Q. Do you have any other additions or

23 corrections to your testimony?

24 A. No, I do not.

25 Q. Is this testimony with this change true

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1 and accurate to the best of your knowledge,

2 information, and belief?

3 A. Yes.

4 Q. And if you were asked these questions

5 today, would your answers be as shown in Exhibit 3?

6 A. Yes.

7 MS. ROBERTS: The witness is available

8 for cross-examination.

9 EXAMINER BOJKO: Ms. Hixon, I don't think

10 your microphone is on.

11 EXAMINER SEE: Who for the company is

12 crossing Ms. Hixon?

13 MR. RESNIK: Your Honor, I'm going to,

14 but I would ask that given the positions we've been

15 hearing from other parties and given Ms. Hixon's

16 testimony, we would ask to conduct cross-examination

17 at the end.

18 EXAMINER SEE: Any volunteers?

19 Mr. Yurick?

20 MR. YURICK: I have no questions, your

21 Honor.

22 EXAMINER SEE: Mr. Bell.

23 MR. BELL: No, ma'am, I don't want to be

24 accused of friendly cross.

25 EXAMINER SEE: Mr. Boehm.

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1 MR. BOEHM: No cross.

2 EXAMINER SEE: Mr. Randazzo.

3 MR. RANDAZZO: Just a couple very  
4 unfriendly questions.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Randazzo:

8 Q. On page 3 of your testimony, Ms. Hixon,  
9 you at line 16, you indicate that your -- it's the  
10 standard service offer tariff rates that were in  
11 effect on July 31st, 2008, that you describe as the  
12 reference for the balance of your testimony. Would I  
13 be correct that you're relying there on the  
14 definition of rate plan that appears in Senate Bill  
15 221?

16 A. Yes. As I explain further in my  
17 testimony, I think if you turn to page 6 I give more  
18 detail, but I do mean that.

19 Q. Okay. Now, as I understand your

20 testimony, you're suggesting that the line extension  
21 policy that was in place on July 31st, 2007, not be  
22 continued; is that correct?

23 A. My testimony is in rebuttal to Mr. Hess's  
24 phrase of saying leave the line extension policy in  
25 place, and I explain what I believe Mr. Hess said,

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1 and I disagree with him.

2 Q. Well, if we were to, as I believe your  
3 rebuttal testimony says, use the standard service  
4 offer that was -- and tariff rates that were in place  
5 on July 31st of 2008, would you agree that the line  
6 extension policy that was in place on that same day,  
7 July 31st, 2008, would be part of the tariffs that  
8 were in effect at that point in time?

9 A. The first part of your question referred  
10 to the standard service offer and tariffs, and I  
11 believe my testimony makes a distinction of saying  
12 it's the tariffs which contain the standard service  
13 offer, and at page 10 I indicate that that standard  
14 service offer would not include line extension  
15 because line extension is really a distribution  
16 matter. I agree with Mr. Hess from his testimony  
17 there.

18 That being said, if you simply said the  
19 tariffs and not the standard service offer tariffs,

20 what you said would be correct.

21 Q. Okay. You understand that there needs to  
22 be a line extension policy of some sort in place  
23 beginning January 1, 2009, right?

24 A. I understand that something has to exist.

25 What I was doing with my rebuttal testimony was

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1 attempting to rebut a statement that was really not  
2 clear about those details.

3 As you note in my testimony, I point out  
4 that as part of what's in the tariffs related to line  
5 extension is an expiration of some charges. I took  
6 Mr. Hess's testimony to mean that rather than  
7 expiring, that those charges were continued, and I  
8 wanted to point that out.

9 Q. Okay. And you see no conflict between  
10 what you pointed out regarding, I take it, what you  
11 pointed out regarding the line extension policy and  
12 what you've recommended otherwise, that the standard  
13 service offer tariffs in effect on July 31st, 2008,  
14 form the basis of what will be in effect on January  
15 1, 2009.

16 A. I believe your question at the beginning  
17 asked if I saw a conflict.

18 Q. Right.

19 A. I really see them as two separate items

20 that need to be dealt with differently.

21 MR. RANDAZZO: That's all I have.

22 Thank you.

23 EXAMINER SEE: Mr. Petricoff?

24 - - -

25

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1 CROSS-EXAMINATION

2 By Mr. Petricoff:

3 Q. Yes. I just want to follow up on  
4 Mr. Randazzo's questions. If the Commission was  
5 following your advice in the interim period, and a  
6 customer needed a line extension, what would they be  
7 charged for? Would they be charged what's in the  
8 current tariff? What's in the company's proposed  
9 tariff? Well, let's leave it at that. What would  
10 they be charged?

11 A. I'm having to interpret what Mr. Hess's  
12 "leave the line extension policy" means.

13 Q. Let me withdraw the question.

14 A. Sure.

15 Q. Let me break it up right now. Isn't it  
16 true that right now some customers pay a monthly fee  
17 that's associated with a line extension?

18 A. That is correct.

19 Q. And it is your testimony that those fees

20 should come to an end December 31st, 2008.

21 A. Yes.

22 Q. Okay. And my question to you is that,

23 okay, on January 1st, 2009, what is your

24 recommendation to the Commission on how line

25 extensions should be charged?

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1       A. I have no recommendation as to what  
2   should be done to replace that charge if it expires.  
3   I think that that is something that should be dealt  
4   with in a distribution rate case, if there's some  
5   other proceeding in which some action needs to be  
6   taken by the company.

7       But I have made no recommendation. I've  
8   simply pointed out it's not part of the standard  
9   service offer that's in the tariffs. It's a  
10  distribution matter.

11       MR. PETRICOFF: I have no further  
12  questions. Thank you.

13       EXAMINER SEE: Mr. O'Brien?

14       MR. O'BRIEN: No questions, your Honor.

15       EXAMINER SEE: Mr. Smalz?

16       MR. SMALZ: I have no questions, your  
17  Honor.

18       EXAMINER SEE: Mr. Margard.

19       MR. MARGARD: Thank you, your Honor.

20                   - - -

21                   CROSS-EXAMINATION

22 By Mr. Margard:

23       Q. Are there other distribution tariffs that

24 you think are not part of the standard service offer

25 in the company's tariffs?

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1       A. Yes.

2       Q. Can you identify some of those for us?

3       A. For example, the distribution rate  
4 itself.

5       Q. Okay. Any others?

6       A. Give me a moment. I just want to see --

7       Q. Sure.

8       A. -- what I have in some notes on the  
9 company's different rates.

10           I think that's primarily what could be  
11 defined as distribution rates. There might be some  
12 riders that apply only to distribution rates and,  
13 therefore, I would consider those to be distribution.

14       Q. Let me ask you to turn to page 6 of your  
15 testimony, beginning at line 9. Your testimony there  
16 states: "It is my understanding, based on the advice  
17 of counsel, that the standard service offer in effect  
18 on July 31st, 2008 (the effective date of Senate  
19 Bill 221) is the utility's rates in tariffs in effect

20 on that date."

21 That's what your testimony says, correct?

22 A. Yes.

23 Q. That's only some of the utility's rates,

24 though.

25 A. I was referring to the standard service

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1 offer tariffs. The standard service offer in the  
2 tariff.

3 Q. So when we read this, we're supposed to  
4 read this as utility's rates in standard service  
5 tariffs?

6 A. Yes. I just did not repeat the words.

7 Q. What is the purpose of the RTC rider?

8 A. This company I think has what's called a  
9 regulatory asset charge, but I think we're referring  
10 to it as an RTC rider as well here. My understanding  
11 is that it was designed to recover regulatory  
12 transition costs.

13 Q. Do you know whether those costs have been  
14 fully recovered by the companies?

15 A. No, I do not.

16 Q. If they have been, would it, in your  
17 opinion, be appropriate to continue the rider?

18 A. For the purposes of my testimony in  
19 evaluating what rates should be in effect at 1/1/09,

20 I made the determination by interpreting this  
21 particular case in light of Senate Bill 221 that  
22 those -- that that rate needed to stay in effect. I  
23 don't believe that the regulatory transition charge  
24 for this company was tied to recovery of costs but to  
25 an actual date.

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1       Q. I just want to be clear, though, that  
2    though tied to a date, if in fact continuing with the  
3    rider would recover costs that have otherwise been  
4    fully recovered by the company, you would nonetheless  
5    support continuation of that rider.

6       A. For the limited purposes of determining  
7    what the rate should be, if there is no order by the  
8    Commission at 1/1/09, as I have read the law and  
9    based on advice of counsel, that's the interpretation  
10   that I have to conclude.

11       It would be similar to the power  
12   acquisition rider which would continue but the  
13   company may very well have recovered those costs.  
14   And, of course, as I said in my testimony in regards  
15   the RTC, our hope is that it will be for a very  
16   limited period of time.

17       Q. Thank you.

18       Let me ask you to turn to page 4 of your  
19   testimony.

20       A.   Yes, I have that.

21       Q.   And line 7. Your reference there is "No  
22 full additional 4 percent increase of generation

23 rates for both companies."

24       A.   Yes.

25       Q.   Is it your position that some portion of

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1 the 4 percent increase in generation rates for these  
2 companies is appropriate?

3 A. No. The terminology that I have there is  
4 directly from Mr. Hess's testimony where he  
5 recommended, I think, a full additional 4 percent  
6 increase, and I was only attempting to provide  
7 similar language of what I disagreed with.

8 Q. And if I asked you then to turn to page 8  
9 and 9 of your testimony, the last two words on page 8  
10 and the response continuing on page 9, I just want to  
11 make sure I understand exactly what your position is  
12 regarding the 4 percent additional increase in  
13 generation rates.

14 A. Okay.

15 Q. Is it your position that none of that  
16 additional 4 percent should be authorized for these  
17 companies under any circumstances?

18 A. Yes; for the purposes of determining what  
19 rates would be at 1/1/09 if there's no order.

20 MR. MARGARD: That's all I have.

21 Thank you, your Honor.

22 EXAMINER SEE: Mr. Resnik.

23 MR. RESNIK: Thank you, your Honor.

24 - - -

25

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1 CROSS-EXAMINATION

2 By Mr. Resnik:

3 Q. Ms. Hixon, I can almost say good evening.

4 A. Good evening.

5 MS. ROBERTS: Could we give Mr. Resnik a  
6 mic?

7 EXAMINER SEE: I'm sorry, say that again  
8 Ms. Roberts.

9 MS. ROBERTS: I just asked if we could  
10 give him a mic.

11 EXAMINER BOJKO: Your light's flashing,  
12 Mr. Resnik, so I take it that battery is dead.

13 EXAMINER SEE: Or about to be.

14 MR. RESNIK: I will speak loudly and  
15 we'll -- anyone who can't hear me, just ask, I'll  
16 repeat.

17 Don't think I'm hollering.

18 MS. GRADY: We've been having trouble. I  
19 have not been able to hear you all day.

20 MR. RESNIK: Well, then I'll take another

21 microphone.

22 MS. GRADY: Thank you.

23 Q. (By Mr. Resnik) Ms. Hixon, would you take

24 a look at page 6 of your testimony, please? You

25 mentioned a correction, and I'm wondering if there

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1 isn't one other. You have a sentence beginning at  
2 line 3 and on to line 4 where you quote staff's  
3 recommendation. If I remember correctly, Mr. Hess  
4 dropped a word out of his testimony that I think you  
5 still have in yours. Should there be another  
6 correction to your testimony?

7 A. Well, at the time of my preparing the  
8 testimony I wasn't aware that he had dropped that  
9 word.

10 Q. I understand.

11 A. So I'd be happy to remove that for the  
12 purposes of accuracy.

13 Q. And the word you're removing is the word  
14 "stabilization"?

15 A. That's correct.

16 Q. Okay. You were asked some questions in  
17 earlier cross-examination about the line extension  
18 and the fact that it's, as you've said, contemplated  
19 to be expiring at the end of 2008, and then there

20 were other questions about whether there were other  
21 distribution rates that you viewed as not being part  
22 of the standard service offer. Do you recall that?

23 A. Yes.

24 MR. RESNIK: If I may, your Honor, if I  
25 could approach the witness.

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1 EXAMINER SEE: Yes.

2 MS. ROBERTS: May you approach me first?

3 MR. RESNIK: Sure. This is Mr. Roush's

4 Exhibit DMR-9 and in particular page 35 of 285.

5 EXAMINER SEE: I'm sorry, what page was

6 that, Mr. Resnik?

7 MR. RESNIK: Thirty-five of 285.

8 EXAMINER BOJKO: Ms. Roberts, do you not

9 have Mr. Roush's exhibit?

10 MS. ROBERTS: I do not have this one with

11 me.

12 EXAMINER BOJKO: We have an extra copy

13 down here.

14 MS. ROBERTS: Oh, that would be great.

15 MR. RESNIK: Thank you.

16 Q. (By Mr. Resnik) Ms. Hixon, I'll represent

17 to you that this is one of Mr. Roush's exhibits in

18 this proceeding and is a redlined version of the

19 company's current tariff to show proposed changes.

20 And I assume that you are familiar with the typical  
21 redline format of striking out existing language and  
22 underlining new language.

23 A. Yes.

24 Q. And so just looking at schedule RR for  
25 residential service, and the first paragraph that

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1 talks about the schedule should remain in effect, can  
2 you tell us based on your understanding of the  
3 redline process when this particular schedule is set  
4 to expire?

5 A. The sentence reads, without the proposal,  
6 "The schedule shall remain in effect through the last  
7 billing cycle in December 2008."

8 Q. And this schedule not only covers  
9 generation charges but also distribution charges; is  
10 that right?

11 A. That's what's listed, yes.

12 Q. And so is it your understanding that  
13 since this schedule says it expires in December 2008,  
14 that the company would not have any distribution  
15 rates to charge its residential customers?

16 A. This particular tariff has that language.  
17 Whether or not the company would replace it with  
18 something else, I don't know.

19 Q. If nothing else replaces it, is it your

20 understanding that the company would not have any  
21 authority to charge any distribution rates to its  
22 residential customers?

23 A. It wouldn't have authority to charge  
24 under this schedule, no.

25 Q. Is that a part of your proposal in this

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1 proceeding, that the company's distribution rate  
2 should be zeroed out at the end of the year?

3 A. No, it is not.

4 Q. And why is that?

5 A. Because my proposal deals with what  
6 should the standard service offer rates and tariffs  
7 be at 1/1/09.

8 Q. But your proposal on the line extension  
9 charge, if it were to be carried through to all  
10 distribution charges, those would just all be  
11 eliminated at the end of the year. Is that the  
12 consequence or the rational extension of your  
13 proposal on line extension charges?

14 A. No, I don't think so. I think what I  
15 point out is, first of all, that the line extension  
16 policy and the charges associated with it should  
17 be -- not be dealt with in this particular  
18 proceeding. My understanding is that the line  
19 extension -- the term "line extension policy" is

20 difficult. I'm assuming that it means everything  
21 that's encompassed within the tariffs. Parts of  
22 that, like the surcharge, that I point out to the  
23 Commission would expire are the issues that I'm  
24 dealing with.

25 Q. You testify that you are the assistant

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1 director of analytical services at OCC; is that

2 correct?

3 A. Yes.

4 Q. And to whom do you report?

5 A. I report to the director of analytical

6 services.

7 Q. And that is who?

8 A. Mr. Aster Adams.

9 Q. And are there other assistant directors

10 of analytical services?

11 A. No.

12 Q. So you're, when it comes to analytical

13 services, you're second-in-command.

14 A. I'm the assistant director of analytical

15 services.

16 Q. Is that different than being

17 second-in-command of those subjects?

18 A. Probably not.

19 Q. Okay. And as assistant director of

20 analytical services, what are your responsibilities?

21 A. As I describe in my testimony, I

22 perform -- well, at page 2, lines 4 through 11 and in

23 addition to that, certain administrative

24 responsibilities delegated to me or requested by the

25 director.

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1       Q. Now, you also say that you're the chair  
2 of OCC's cross-functional internal electric team.  
3 Could you tell me what that is?

4       A. Cross-functional in terms of perhaps the  
5 word cross-departmental. It's a group within OCC  
6 that consists of people from different departments  
7 that come together to share information, discuss  
8 issues, present information to management, receive  
9 information from management about electric.

10      Q. And in either your capacity as the  
11 assistant director of analytical services or as chair  
12 of OCC's cross-functional internal electric team, is  
13 it your or one of your responsibilities to make sure  
14 that OCC takes consistent positions from one case to  
15 the next and even within a particular case?

16      THE WITNESS: Could I have the question  
17 read, please?

18      (Record read.)

19      A. To the extent that I have been assigned

20 to a particular project and to particular areas or

21 positions, yes.

22 Q. But as assistant director of analytical

23 services, you don't have any general authority over

24 the positions being taken by OCC in cases that you

25 are not directly involved in.

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1       A. No, I do not.

2       Q. And you have no responsibilities in that  
3 regard as chair of the cross-functional internal  
4 electric team.

5       A. I do not have that authority, no.

6       Q. Who has authority within OCC to make sure  
7 that the positions that are being taken from one case  
8 to the next or within a particular case are  
9 consistent positions?

10      A. Well, as I indicated, to the extent that  
11 I'm on a particular case or on a particular issue,  
12 that would be part of my responsibility. To the  
13 extent it's something other than that, it would be  
14 those that are assigned to those cases as well as the  
15 management.

16      Q. The management?

17      A. Of OCC.

18      Q. Assistant director of analytical  
19 services is not part of management?

20 A. It would be people higher up than I.

21 Q. Maybe you can just tell me the structure.

22 A. It would be the directors and the

23 Consumers' Counsel.

24 Q. Now, prior to your putting together

25 rebuttal testimony in this proceeding, did you have

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1 any responsibilities for the AEP-Ohio ESP

2 proceedings?

3 A. Yes.

4 Q. And what were those responsibilities?

5 A. I served as a member of the internal OCC

6 team on analytical and was assigned to look at

7 specific areas that we had retained consultants for.

8 Q. So you had some input on some of the

9 issues that OCC is taking in this proceeding.

10 A. Yes.

11 Q. And could you describe the extent of that

12 input?

13 A. I would have discussions with the legal

14 staff in terms of areas that we would pursue,

15 positions the consultants might take.

16 Q. And when you talk about positions that

17 OCC would pursue, would those be substantive

18 positions on various issues in the proceeding?

19 A. I hope that they would be substantive,

20 yes.

21 Q. Are you familiar with the concept of

22 formula rate-making?

23 MS. ROBERTS: Your Honor, I've tried to

24 be very patient with this line of cross-examination,

25 but it is clearly not relevant to Ms. Hixon's

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1 testimony, so I object on that basis.

2 EXAMINER SEE: Do you care to respond,  
3 Mr. Resnik?

4 MR. RESNIK: Particularly on the last  
5 question, or just in general?

6 EXAMINER SEE: The objection.

7 MS. ROBERTS: On the line of questions.

8 MR. RESNIK: Sure. I'm getting to the  
9 point that OCC has changed its position in this  
10 proceeding on the question of whether there should be  
11 a reconciliation. Ms. Hixon's been offered up as the  
12 witness who can testify on that, and I am surprised  
13 that I'm getting an objection.

14 EXAMINER SEE: And your objection is  
15 overruled.

16 MR. RESNIK: I think there was a question  
17 pending about formula rates.

18 Q. Are you familiar with what those are, the  
19 concept?

20       A. While I may have heard the term, I would

21 need to know what your definition of it is.

22 Different people may call it different things. I'm

23 really not sure what you mean.

24       Q. Well, what is your understanding of the

25 formula rate?

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1       A. I'm assuming that a formula rate is one  
2   that is done through a methodology or a calculation,  
3   but it's not clear to me.

4       Q. Okay. Would a formula rate, would that  
5   term be applicable to, say, the Monongahela Power  
6   company's situation where the Commission approved  
7   recovery of the differential between what was  
8   collected from Columbus Southern Power's customers on  
9   one hand and the market rate as that may be  
10   determined going forward?

11      A. I've never heard it called that, no.

12      Q. Well, it may not have been called that.  
13   I'm asking you whether you believe that that could be  
14   characterized as a formula rate.

15      A. Since I'm not sure what you mean by  
16   formula rate, I would hesitate to say "yes" that  
17   could be. I just don't know.

18      Q. Well, we have some rates that are very  
19   specific, X cents per kWh for whatever, right?

20 That's not a rate that fluctuates from time to time

21 absent a rate case. That's a set rate.

22 A. I can agree with that statement.

23 Q. Okay. Then we have other rates that

24 might be based on whatever the cost of providing that

25 service is over time. Maybe for premium service you

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1 don't know how those charges are going to fluctuate,  
2 and so the utility is allowed to charge what its cost  
3 is, say for construction at a particular time.

4 A. I understand that.

5 Q. Okay. And then there's a third category  
6 of rates where the Commission sets out a formula for  
7 how the rate is going to change. It's not a set  
8 rate. It's not necessarily based on cost. It's a  
9 formula such as we're going to take the mathematic  
10 difference between the rate charged Columbus Southern  
11 customers, Columbus Southern Power customers, and the  
12 market price at different times. That would be, in  
13 my mind, a formula, and I'm asking whether you would  
14 agree with that characterization.

15 A. I can agree that the description that you  
16 just gave is based on a formula that changes over  
17 time versus one that's set, yes.

18 Q. Okay. Thank you.

19 Now, in your testimony at page 3, line 5,

20 you indicate that you reviewed certain documents and  
21 Opinion and Orders from other proceedings. What  
22 Opinion and Orders did you review for preparing your  
23 rebuttal testimony?

24 A. I reviewed parts of the Commission's  
25 order in 04-169-EL-UNC, which I think we generally

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1 refer to as the RSP case. I reviewed portions of the  
2 July 11th, 2007, order in case FirstEnergy  
3 07-548-EL-ATA. I reviewed portions of the  
4 Commission's 2006 order related to Ormet; I believe  
5 it's 05-1057. And I reviewed portions of the  
6 Commission's 2005 order in the Monongahela Power CSP  
7 service territory case, 05-765, generally the cases I  
8 referred to in my testimony.

9 Q. And when you say reviewed certain  
10 documents, would those be documents that would --  
11 besides the Opinion and Order, those were documents  
12 that were also in these dockets?

13 A. Yes.

14 Q. Any other documents that you can think  
15 of?

16 A. I can't think of any other documents from  
17 other proceedings.

18 Q. Thank you.

19 Now, on page 3, line 16 you refer to

20 keeping in effect standard service offer tariff rates

21 that were in effect on July 31, 2008. Do you see

22 that?

23 A. At line 16, yes.

24 Q. Yes. And are you familiar with the rate

25 structure that Columbus Southern Power has for its

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1 residential customers?

2 A. Would that be the tariff you just showed  
3 me earlier?

4 Q. Not that particular tariff but, generally  
5 speaking, that there is a summer residential rate and  
6 a winter residential rate.

7 A. Yes.

8 Q. And which of those rates would have been  
9 in effect on July 31st, 2008?

10 A. The rate that would have been in effect  
11 July 31st, 2008, the tariffed rate, would have been  
12 the two of them.

13 Q. They were both in effect?

14 A. The tariff was in effect.

15 Q. So which rate would you say should be  
16 effective on the beginning of 2009 or December  
17 30th, 2008, for Columbus Southern residential  
18 customers, the summer rate or the winter rate?

19 A. For Columbus Southern Power, according to

20 the tariff, that would fall in the winter.

21 Q. And why is it that you're not using the  
22 rate that was in effect July 31, 2008?

23 A. Because I'm using the rates that are in  
24 the tariffs that were in effect, and that tariff was  
25 in effect.

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1 Q. So it's not the rate that was in effect,  
2 but you look at the tariff that was in effect on July  
3 31, 2008.

4 A. Yes.

5 Q. Okay. Are you taking any position at  
6 this point in your rebuttal testimony concerning the  
7 company's statutory obligation -- well, strike that.

8 Are you generally familiar with Senate  
9 Bill 221?

10 A. Yes.

11 Q. Do you agree that the company has, under  
12 that statute, certain obligations to meet in 2009  
13 concerning energy efficiency, peak demand reduction,  
14 and renewable generation?

15 A. Generally I'm aware of those, yes.

16 Q. And in your recommendation of just  
17 keeping everything the way it is, do you have any  
18 recommendation to make concerning the company's  
19 existing statutory obligation with respect to those

20 items, energy efficiency, peak demand reduction, and

21 renewable generation?

22 A. No, I do not.

23 Q. Would you agree that if the Commission's

24 order did not meet the statutory deadline and, in

25 fact, was delayed a month or two months, or whatever

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1 the delay is, and if it could be shown that that  
2 delay caused the company to not be able to meet the  
3 statutory obligations, would it be OCC's position  
4 that the company should be excused from that  
5 noncompliance in 2009?

6 MS. ROBERTS: Objection, your Honor.  
7 That calls for a legal conclusion.

8 MR. RESNIK: I'm asking what she would  
9 recommend is OCC's position.

10 EXAMINER SEE: I recognize that Ms. Hixon  
11 is not an attorney. She can answer.

12 MS. ROBERTS: Then I would offer another  
13 objection that OCC speaks through its brief in terms  
14 of what its positions are based on the evidence  
15 offered by its witnesses.

16 EXAMINER BOJKO: Based on what?

17 MS. ROBERTS: The evidence offered by its  
18 witnesses.

19 EXAMINER SEE: Okay.

20 MS. ROBERTS: In other words, Ms. Hixon

21 could give her opinion but not the OCC's opinion.

22 EXAMINER SEE: Okay.

23 Q. (By Mr. Resnik) If you have an opinion.

24 A. Could I either have the question reread

25 or restated, please, so I can recollect.

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1 EXAMINER SEE: It will be reread.

2 (Record read.)

3 A. I do not have a position on that.

4 Q. Is that an issue that as the assistant

5 director of analytical services you would be involved

6 in developing a position?

7 A. Probably not.

8 Q. Okay. As part of your testimony here

9 today, do you have a position regarding the price

10 that you believe Ormet should continue to pay if

11 there is not an order issued within the 150-day time

12 period?

13 A. No. Based on what I have reviewed and

14 what I have heard today, I do not have an opinion on

15 that.

16 Q. Well, do you think that as part of making

17 a recommendation to the Commission as to the fact

18 that rates should be frozen for the company, even if

19 the -- if an order is not issued within the 150-day

20 period, that it would be important to address the  
21 price that would be associated with a load of over  
22 500 megawatts?

23 MS. ROBERTS: Objection, your Honor.  
24 He's mischaracterized the witness's testimony.

25 EXAMINER SEE: I'm sorry.

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1 MR. RESNIK: I don't think I did.

2 EXAMINER SEE: Read the question back to  
3 me, please.

4 (Record read.)

5 MS. ROBERTS: Your Honor, she never  
6 characterized whether it should be frozen.

7 MR. RESNIK: I'll rephrase the question,  
8 then.

9 Q. (By Mr. Resnik) In the context of your  
10 recommendation which affects prices for generation  
11 service in the event that the Commission does not  
12 issue an order within 150 days, do you think it would  
13 be important to address the price that would be  
14 charged for a load that is over 500 megawatts?

15 A. I don't think that the size of the load  
16 really determines, for me, what my recommendation is.  
17 My recommendation is that the standard service offer  
18 rates that are in the tariff at July 31st, 2008,  
19 should continue. The load, the type of customer,

20 would be up to where that customer falls, what

21 appropriate rate schedule.

22 Q. And what if the customer currently is

23 served under a special contract? Is that something

24 that you think needs to be addressed as part of your

25 recommendation?

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1       A. Assuming that the special contract ends  
2   at 12/31/08.

3       Q. Let's assume that.

4       A. No. That would be up to the company to  
5   determine whether or not they were going to serve  
6   them under their standard service offer or attempt a  
7   special contract.

8       Q. Just up to the company?

9       A. If they wish to retain that customer,  
10   yes.

11      Q. That -- well, never mind.

12           Are you familiar with the history as to  
13   how we wound up with Ormet as a customer again?

14      A. As I described in my testimony, I'm  
15   generally familiar with it having reviewed that  
16   order.

17      Q. Now, on page 12, line 1 of your  
18   testimony, you recommend that there be no  
19   reconciliation of the standard service offer rates

20 that you suggest should stay in place till the rates  
21 that are ultimately approved by the Commission in the  
22 ESP case; is that right?

23 A. Yes. That's what it says.

24 Q. And are you aware that OCC has spoken to  
25 that issue in pleadings before this Commission?

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1       A. I'm aware that, as has been discussed by  
2 counsel in these proceedings, a statement was made in  
3 a previous motion regarding the reconciliation but  
4 not regarding the recommendation that I'm making.

5       MR. RESNIK: Could I have that answer  
6 read back.

7       (Record read.)

8       Q. Believe me, I understand that  
9 distinction. Let me ask you a question. Are you  
10 aware that the company filed a motion in this  
11 proceeding to have the Commission implement section  
12 V.E of its application?

13      A. Yes.

14      Q. And are you generally aware of Commission  
15 practices and procedure that there was an opportunity  
16 for parties who opposed that to file memoranda in  
17 opposition?

18      A. I'm not aware of the specifics, but the  
19 general practice, yes.

20 Q. Okay. And if you will accept for the  
21 moment that the procedural order in this case  
22 provided time limits for parties to respond to  
23 motions, and that the time passed after we filed this  
24 motion and only one party opposed it, and that party  
25 was not OCC, let me ask you as someone who has been

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1 involved in utility regulation since I think 1982,  
2 what conclusion you would draw from the fact that a  
3 motion was filed and OCC did not oppose it?

4 MS. ROBERTS: Objection, your Honor. It  
5 calls for a legal conclusion.

6 MR. RESNIK: Your Honor, I'm asking, for  
7 one thing. Let me tell you something, this witness  
8 was referred to by Ms. Grady as the witness that I  
9 could certainly ask about these questions on the  
10 stand. Now she's on the stand. I want to ask these  
11 questions.

12 She has been involved in public utility  
13 regulation since 1982, and she is the assistant  
14 director of analytical services. If she doesn't know  
15 the implication or at least what it means to her when  
16 a party doesn't oppose a motion, then I am  
17 dumbfounded.

18 MS. ROBERTS: Your Honor, Ms. Grady did  
19 say that, and Ms. Hixon can answer questions of

20 Mr. Resnik to the extent she's asked relevant  
21 questions that don't call for legal conclusions and,  
22 you know, the other ground rules of evidence and  
23 cross-examination. She's being asked for a legal  
24 conclusion.

25 MR. RESNIK: I'm not asking for a legal

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1 conclusion.

2 Q. As a layperson, what conclusion would you  
3 draw from the fact that we filed a motion to put this  
4 provision, this V.E into place, and OCC did not  
5 oppose it?

6 EXAMINER SEE: Yes, Ms. Roberts, you had  
7 an objection.

8 I think you need to rephrase your  
9 question. We've already concluded that Ms. Hixon is  
10 not an attorney, not an attorney for OCC, so rephrase  
11 your question.

12 MR. RESNIK: And I may have jumped the  
13 gun, your Honor. I think the one I just asked was  
14 rephrased. I asked her to address it as a layperson.

15 So if we could have that last question  
16 asked, I think it does the trick.

17 EXAMINER SEE: Go for it again. Try it  
18 again for me.

19 MR. RESNIK: Okay.

20       Q. Ms. Hixon, as a layperson what conclusion  
21   would you draw from the fact that the company filed a  
22   motion to have its section V.E put into effect and  
23   OCC did not file anything in opposition to that  
24   motion?

25       A. As a layperson, they chose not to file

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1 anything.

2 Q. But what would you draw from that, that  
3 they chose not to file anything?

4 MS. ROBERTS: Objection.

5 MR. BELL: Objection. I'm sorry, calls  
6 for speculation.

7 EXAMINER SEE: I'm sorry, Ms. Roberts?

8 MS. ROBERTS: I said objection, your  
9 Honor, asked and answered.

10 EXAMINER SEE: Mr. Bell?

11 MR. BELL: I was going to object on the  
12 basis it calls for speculation. I don't know what  
13 that adds to this record.

14 MR. RESNIK: Well, it adds plenty to the  
15 record. We've got a party that as far as I'm  
16 concerned has changed their position after they got  
17 an extension. It wasn't the full extension they  
18 wanted, but they got one.

19 Now we're two weeks late and this hearing

20 isn't going to be completed until God knows when and  
21 OCC is withdrawing its support for what our proposal  
22 was.

23 EXAMINER BOJKO: Mr. Resnik, please argue  
24 to the Bench, not to --

25 MR. RESNIK: I'm sorry, your Honor.

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1 EXAMINER BOJKO: -- opposing counsel.

2 MR. RESNIK: I apologize.

3 EXAMINER BOJKO: You can ask the witness

4 her opinion about her position or if she was involved

5 in making the position. You cannot ask her what

6 legal strategy was involved and whether someone did

7 or did not file a motion or a memo contra. Ask her

8 her position.

9 MR. RESNIK: May I approach the witness?

10 EXAMINER SEE: Yes.

11 MR. RESNIK: I have a copy of the joint

12 motion for continuance of the hearing. I just have

13 one copy, if that's all right.

14 Q. (By Mr. Resnik) Ms. Hixon, I would ask

15 you to take a look. You can look at the whole thing

16 if you want. Take whatever time you think you need,

17 but in particular I am going to refer you to page 6

18 of your testimony -- excuse me, of this motion, and

19 the paragraph that appears there.

20 MS. ROBERTS: Your Honor, I am willing to  
21 stipulate that OCC took a different position -- took  
22 a position in its memorandum in support when it asked  
23 for a continuance, as the document speaks for itself,  
24 that what that says says something different than  
25 what Ms. Hixon testifies to, and the basis of that

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1 and what it means or why those positions were taken  
2 is outside the scope of her testimony.

3 EXAMINER SEE: I'm sorry, were you  
4 waiting to respond, Mr. Resnik?

5 MR. RESNIK: No. I think actually I got  
6 the response from Ms. Roberts that I was looking for.  
7 She has stipulated that the position taken -- being  
8 taken here by Ms. Hixon is different from the  
9 position that was in the motion for continuance.

10 MS. ROBERTS: I don't believe that's  
11 exactly what I said, your Honor.

12 MR. RESNIK: Can I have her comment read  
13 back, please?

14 EXAMINER SEE: Yes.

15 (Record read.)

16 MR. RESNIK: Given that agreement, I  
17 would ask that portion of Ms. Hixon's testimony  
18 recommending there be no reconciliation of the  
19 company's rates once an order is issued be stricken.

20 As I understand what was just read back, OCC has  
21 changed its position from what was contained in its  
22 motion for an extension of time. It got its  
23 extension of time. I don't think it should be  
24 allowed to change its position at this point.

25 EXAMINER SEE: Ms. Roberts.

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1           MS. ROBERTS: I don't know how to respond  
2 to that, your Honor. OCC asked for a 60-day  
3 extension of time, and if it were granted, the 60-day  
4 extension of time, the brief speaks for itself, OCC  
5 was willing to accommodate AEP in its V.E proposal.

6           OCC did not receive a 60-day extension of  
7 time, and I certainly know of no law or precedent or  
8 procedural rule that requires us to not be able to  
9 evaluate different situations and take a position  
10 based on the facts that are appropriate for that  
11 situation, which is exactly what Ms. Hixon's done in  
12 her testimony.

13          MR. RESNIK: Your Honor.

14          EXAMINER SEE: Just a second.

15          MR. RESNIK: Sure.

16          EXAMINER SEE: I'm sorry, Mr. Resnik,  
17 what were you about to say?

18          MR. RESNIK: I was about to ask the Bench  
19 if you would be so kind as to ask Ms. Roberts where

20 in the motion it says "but if we don't get our 60-day

21 extension, we're not in favor and we don't think this

22 proposal of AEP is reasonable."

23 EXAMINER BOJKO: Mr. Resnik, instead of

24 arguing with counsel, how about you just ask the

25 witness some questions and maybe we can get to what

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1 you want to hear.

2 MR. RESNIK: Well, your Honor, I'm trying  
3 to.

4 Q. (By Mr. Resnik) Ms. Hixon, you have that  
5 document in front of you.

6 A. Yes.

7 Q. Can you find where in that document it  
8 says that the OCC's position that AEP's proposal of  
9 section V.E is reasonable and should be acceptable to  
10 all parties but only if we get the full extension  
11 that we've asked for? And take your time. Look  
12 through it from front page to the last.

13 MS. ROBERTS: Your Honor, the document  
14 speaks for itself, and it's on file with the  
15 Commission. This is an issue for briefing.

16 EXAMINER SEE: Is there a question  
17 pending for the witness?

18 MR. RESNIK: There is. I asked her --

19 EXAMINER SEE: Let's hear it again.

20 (Record read.)

21 EXAMINER SEE: Your objection is

22 sustained, Ms. Roberts.

23 Q. Let me ask another question. There was

24 some cross-examination today of Mr. Baker about when

25 rates should become effective. Were you here for

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1 that when Ms. Roberts was asking those questions?

2 A. Yes.

3 MR. RESNIK: If I may, your Honor, and I  
4 only have one copy of this one, this is the company's  
5 motion asking for approval of section V.E.

6 EXAMINER SEE: What date was that filed?

7 MR. RESNIK: Filed on September 24th,  
8 and I just want to show it to the witness as a matter  
9 of reference because it includes language from our  
10 application.

11 EXAMINER SEE: Okay. Do you have a copy?

12 MS. ROBERTS: I'm sorry?

13 EXAMINER SEE: Do you have a copy?

14 MS. ROBERTS: I'm familiar with it, your  
15 Honor.

16 Q. (By Mr. Resnik) Ms. Hixon, again, feel  
17 free to read the entire document or any portion you  
18 want. In particular what I'm referring you to is the  
19 bottom of page 1, the quotes from the application and

20 goes on on the second page to complete that  
21 quotation. And it talks about the length of time  
22 between the end of the December 2008 billing period  
23 or billing month and the effective date of the new  
24 ESP rates. Do you see that?  
25 A. Yes.

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1       Q. And so you understand that's what was in  
2 the company's application in the context of section  
3 V.E was to have rates change at the end of the  
4 December billing month.

5       A. Yes. That's what it says.

6       Q. Okay. And so going back to the joint  
7 motion that was filed by OCC and others for an  
8 extension of time, still on page 6, when OCC stated  
9 that the company's proposal is reasonable and should  
10 be acceptable to all parties, is it your  
11 understanding that that also included the concept of  
12 changing the rates at the end of the December 2008  
13 billing month?

14       MS. ROBERTS: Your Honor, is he asking  
15 for her to repeat what the pleading says? I'm  
16 confused. Is there a question or, I mean, the  
17 pleading speaks for itself.

18       MR. RESNIK: Of course there's a  
19 question. There is a question pending.

20 EXAMINER SEE: Read the question back.

21 (Record read.)

22 EXAMINER SEE: Go ahead, Ms. Hixon.

23 A. As I read the document on page 5 at the

24 bottom, the discussion under B quotes the company's

25 application and says "the following plan." Then on

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1 page 6 it again refers to this is similar to the  
2 plans proposed by Duke and that was proposed by  
3 FirstEnergy, this approach. I'm taking the plan  
4 that's described and the plan here and the approach  
5 to all mean the same thing in this document.

6 Q. And so your understanding would be that  
7 OCC's language was also referring to the concept of  
8 new rates becoming effective after the end of this  
9 December 2008 billing month.

10 A. From reading this document, yes.

11 Q. Okay. And is it your understanding,  
12 either through discussions that your team has had  
13 back at OCC or based on Ms. Roberts'  
14 cross-examination of Mr. Baker today, that, in fact,  
15 OCC is not suggesting that new rates should take  
16 effect at the beginning of the January 2009 billing  
17 period?

18 MS. ROBERTS: Your Honor, I would say  
19 that that requires a legal conclusion also. What the

20 effect of the statute SB 221, which says rates will  
21 be effective 1/1/09, is determined by the  
22 interpretation of the statute, and Ms. Hixon is not  
23 here as an attorney interpreting the statute.

24 EXAMINER SEE: Your objection is  
25 overruled.

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1 Answer the question to the extent you

2 can, Ms. Hixon.

3 A. If I could just have a moment, please.

4 Q. Sure.

5 A. If you look at my testimony on page 3,

6 line 13 --

7 Q. Give me one moment, please. It sort of

8 got buried under some papers here. I've got it.

9 What page?

10 A. Page 3, line 13. I indicate:

11 "Specifically, for the period between the end of the

12 Companies' December 2008 billing month and the

13 effective date of approved ESP rates," and then I

14 give my recommendation. That's my position.

15 Q. As I understand what's in your testimony,

16 though, it is talking about what should happen in

17 this interim period. And were you here when

18 Ms. Roberts was cross-examining Mr. Baker?

19 A. Yes.

20       Q. And did you hear her ask questions which  
21 now she says they're asking for legal conclusions,  
22 but she asked questions of Mr. Baker as to when the  
23 rates under the Commission-approved ESP could go into  
24 service?

25       A. I was here. I don't remember those exact

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1 words. I know that Mr. Baker was here to testify

2 about the 1/1/09 proposal.

3 Q. So as far as OCC's position, if you

4 know --

5 MS. ROBERTS: Objection, your Honor. She

6 may give her personal opinion, I thought we just went

7 through this, but not OCC's position.

8 EXAMINER SEE: Okay.

9 MR. RESNIK: Your Honor, we need

10 Ms. Migden here if that's the only person who can

11 give --

12 MS. ROBERTS: It is, your Honor --

13 EXAMINER SEE: Just a minute. Your

14 objection is overruled. Ms. Hixon is here to testify

15 on behalf of OCC.

16 I need you to give your opinion,

17 Ms. Hixon. Answer the question.

18 THE WITNESS: Could I please have the

19 question repeated or read. I'm just not sure where

20 we are.

21 EXAMINER SEE: Say that again. You want

22 the question read back?

23 THE WITNESS: Could I have the question

24 read back?

25 EXAMINER SEE: Sure.

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1 THE WITNESS: Thank you.

2 (Record read.)

3 Q. Let me continue. Is it OCC's position  
4 that when the Commission does issue its order on the  
5 company's ESP proposal, that the rates -- let's  
6 assume for the moment that it meets its 150-day  
7 statutory requirement -- that the rates would be  
8 effective on a bills-rendered basis with the  
9 beginning of the January 2009 billing cycle?

10 A. While my testimony specifically speaks to  
11 what would happen if there is no order, I see no  
12 reason that it would be any different if there was an  
13 order.

14 Q. Okay. Now, let me, just to sort of wrap  
15 up this particular line of cross-examination, you  
16 have the motion that OCC filed. Let me provide you  
17 with a copy of the company's response to that motion.

18 MS. ROBERTS: Thank you.

19 Q. And particularly ask you to look at page

20 3. There is -- actually, I handwrote in there a  
21 bracket, and I was wondering if you could read into  
22 the record the words that are bracketed there  
23 starting with the sentence "If the start of the  
24 hearing is delayed."

25 MS. ROBERTS: Your Honor, I don't

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1 understand why the witness is being asked to read  
2 information into the record that's in a document  
3 docketed with the Public Utilities Commission. If he  
4 wants to ask her a question about it, I understand  
5 that.

6 EXAMINER SEE: Go ahead. You can ask her  
7 a question about this.

8 Q. Okay. Based on the language that is  
9 bracketed here -- and you can take a look at it or  
10 any other portion of this document -- is it your view  
11 that the company indicated that if there was going to  
12 be a delay beyond December 28th, 2008, in the  
13 issuance of the Commission order, that the Commission  
14 should permit AEP-Ohio to implement its section V.E  
15 proposal?

16 A. Yes. It says: If the Commission should  
17 make clear that it's delayed beyond December 28th,  
18 2008, it, which I assume is the Commission -- you're  
19 asking the Commission to permit AEP to implement a

20 surcharge.

21 Q. And, finally, let's take a look at the

22 joint reply that was filed in response to the

23 AEP-Ohio companies' memorandum contra, and in

24 particular ask you to take a look at page 5 of that

25 document. Did I give you a copy?

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1 A. Yes.

2 Q. This was filed on September 5th.

3 A. I have page 5.

4 Q. And looking at the conclusion, would you  
5 agree that OCC indicated that AEP-Ohio would not be  
6 harmed if the 150-day statutory goal is not met as  
7 long as the trueup proposal that's in section V.E was  
8 adopted?

9 A. The second sentence under the conclusion  
10 reads: "If AEP's trueup proposal is adopted, AEP  
11 will not be harmed if the 150-day statutory goal is  
12 not met."

13 Q. Right. And it goes on to say that the  
14 AEP companies would be in the same position that they  
15 would have been in if an order were issued within the  
16 150-day period, correct?

17 A. Yes. Generally that's what it says.

18 Q. So let me ask you, having reviewed at  
19 least these portions, and, as I say, if you want to

20 review other portions, are you left with the  
21 impression -- I'm not asking you a legal  
22 conclusion -- but are you left with the impression  
23 that as part of the motion for an extension of time  
24 in this proceeding that OCC indicated that the  
25 company's section V.E proposal was reasonable, should

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1 be acceptable to all parties, and that if their  
2 motion were granted, which in the alternative it was  
3 for a 60-day period or a shorter period, that the  
4 company would be -- would not be harmed? Is that the  
5 general impression you would get from these  
6 pleadings?

7 THE WITNESS: Could I have the question  
8 read, please?

9 (Record read.)

10 A. Well, going back to the joint motion for  
11 continuance of the hearing and extension of time,  
12 section B that you first referred me to discusses the  
13 company's plan, and the indication on the next page  
14 is that that plan is reasonable, and then there's  
15 also a notation that OCC's not conceding any  
16 arguments regarding lawfulness or reasonableness of  
17 the ESP or the RSP, including any issues on appeal.

18 I'm not sure as a nonlawyer what that  
19 phrase would or would not include.

20           Then there's a statement that says: With  
21 a need to extend the instant proceeding beyond  
22 January 1st, 2009.

23           Then in regards to 60 days or shorter,  
24 I'm afraid that my reading of these documents cannot  
25 eliminate my knowledge that my counsel tells me it

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1 was tied to 60 days.

2 Q. Is the position that you're taking that  
3 there should not be a reconciliation, is that based  
4 on the advice of counsel, or based on your individual  
5 opinion as to what would be appropriate if the  
6 Commission is unable to meet its statutory obligation  
7 to issue an order within the 150 days?

8 A. It's my opinion of the circumstances in  
9 this particular case as they apply to the law under  
10 Senate Bill 221 as I've been advised by counsel.

11 Q. So it's a combination?

12 A. It absolutely is a combination.

13 Q. And I don't want to get into the advice  
14 your counsel gave you, so just let me ask you the  
15 portion that was -- to the extent your opinion, but  
16 to the conclusion you reached, did you give  
17 consideration to the fact that the law also requires  
18 that an order issue within 150 days of the filing of  
19 the application, that being December 28th of 2008?

20       A. Well, yes. I have an understanding that  
21 the law requires that and this is -- if that for some  
22 reason is not met. So yes, I considered that.

23       Q. Do you have some idea based on the  
24 testimony that OCC has filed in the company's ESP  
25 case how much in the way of what I'll call

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1 disallowance would be represented if all of OCC's

2 positions were accepted?

3 A. No. I've not accumulated or considered

4 that.

5 Q. Do you have any idea that if the granting

6 of the two-week extension, with all other things

7 being equal, just pushes an order out two weeks later

8 than would otherwise have been, what that would cost

9 the company in the way of revenues?

10 MS. ROBERTS: Objection, your Honor.

11 Speculation.

12 MR. RESNIK: She either has an idea or

13 she doesn't.

14 MS. ROBERTS: But the speculation is that

15 pushing -- excuse me, your Honor. The speculation is

16 that the granting of the continuance made it

17 impossible to issue an order within 150 days and

18 therefore because of that the company would incur --

19 would lose money. It's speculation on speculation.

20 EXAMINER SEE: Your objection is

21 sustained.

22 Q. In the request for an extension of the

23 procedural schedule when OCC filed that, do you know

24 if any consideration was given to whether there would

25 be a revenue impact on the company, and if so, to

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1 what extent there would be a revenue impact?

2 A. No, I do not know.

3 Q. Just one other matter, and perhaps you

4 know this and perhaps you don't, but the original

5 motion I see was filed by OCC, Ohio Partners for

6 Affordable Energy, the Ohio Environmental Council,

7 and the Sierra Club of Ohio. And the joint reply

8 that was filed on September 5th was just filed by

9 OCC and the Ohio Environmental Council. Do you have

10 any idea why that is?

11 A. No, I do not.

12 MR. RESNIK: Ms. Hixon, I have no other

13 questions for you.

14 EXAMINER SEE: Ms. Roberts.

15 MS. ROBERTS: I have no redirect, your

16 Honor.

17 EXAMINER SEE: I'm sorry, I couldn't hear

18 you. Ms. Roberts, say that again more me.

19 MS. ROBERTS: I said I have no redirect,

20 your Honor.

21 EXAMINER SEE: Ms. Hixon, is your

22 position taken in your testimony today in fact

23 different from the position taken by OCC in the joint

24 motion for a continuance?

25 THE WITNESS: In regards to the

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1 reconciliation?

2 EXAMINER SEE: Yes.

3 THE WITNESS: In regards to the

4 reconciliation the position is different. I think

5 the distinction could be made as my counsel has made

6 it. As I understand it, and as my counsel has said,

7 the 60 days was what was asked for, and that the

8 reconciliation was something that OCC was willing to

9 accept if the 60 days were granted, which, as the

10 motion said, would effectively cause an order to be

11 after the 150 days.

12 EXAMINER BOJKO: Is the 60 days anywhere

13 in Senate Bill 221?

14 THE WITNESS: No.

15 EXAMINER BOJKO: But the position that

16 you're taking today is your understanding of Senate

17 Bill 221.

18 THE WITNESS: Yes.

19 EXAMINER SEE: Thank you, Ms. Hixon.

20 MS. ROBERTS: Your Honors, I would move

21 OCC Exhibit 3 into evidence.

22 MR. RESNIK: And I would object, your

23 Honor. Ms. Roberts has indicated this witness does

24 not speak for OCC. Given her own statement, I don't

25 think the testimony has any value in the record.

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1 EXAMINER SEE: Ms. Roberts.

2 MS. ROBERTS: Your Honor, the Consumers'  
3 Counsel speaks for herself, and we speak through our  
4 briefs. The Consumers' Counsel speaks through its  
5 briefs, and we offer witnesses to put on evidence to  
6 provide testimony, to argue in the briefs, and  
7 clearly Ms. Hixon's opinions are opinions that OCC  
8 has sponsored and should be allowed into the record.  
9 Clearly relevant.

10 EXAMINER BOJKO: Well, I'm sorry,  
11 Ms. Hixon. Is your position taken in your testimony  
12 the position of the Ohio Consumers' Counsel or not?

13 THE WITNESS: Yes, I'm presenting the  
14 position of the Ohio Consumers' Counsel on this issue  
15 in this case.

16 EXAMINER BOJKO: And so we're clear, the  
17 Consumers' Counsel, Ms. Janine Migden-Ostrander.

18 THE WITNESS: I'm employed by that office  
19 to present the position of the office.

20 EXAMINER BOJKO: With that, your

21 objection to the testimony is overruled.

22 And are there any other objections to the

23 admission of OCC Exhibit 3?

24 MR. RESNIK: I would just have a limited

25 objection to the portion of the testimony where

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1 Ms. Hixon testifies that there should be no  
2 reconciliation. As far as I'm concerned, it is a  
3 clear contradiction with the position that they  
4 presented to the Commission when they wanted the  
5 extension.

6 EXAMINER SEE: Your objection is so  
7 noted. You can argue that on brief.

8 Are there any other objections to the  
9 admission of OCC Exhibit 3?

10 Hearing none, OCC Exhibit 3 is admitted  
11 into the record.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER SEE: Let's go off the record  
14 for a minute.

15 (Discussion off the record.)

16 EXAMINER SEE: Let's go back on the  
17 record.

18 MR. RESNIK: Your Honors, when the  
19 original time schedule was set for the hearing as far

20 as what the hearing days would consist of and that  
21 sort of thing, it was before we saw the rebuttal  
22 testimony and the positions that everybody was  
23 taking. I think at least it was also before the fact  
24 that we're going to take a little bit over two days  
25 just to go through all of that.

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1           Given the fact that there is such a  
2 strident position that perhaps the rates shouldn't  
3 change at all, the company is becoming increasingly  
4 concerned about the ability to meet the 150-day time  
5 period.

6           What I would like to request is a  
7 reconsideration of the time set for the hearing for  
8 the day after Thanksgiving, and if need be, for  
9 weekends if it is possible to get this case done and  
10 briefed and decided by the Commission within the  
11 December 28th time frame.

12          EXAMINER SEE: Okay. We'll discuss that  
13 issue first thing tomorrow.

14          MR. RESNIK: Thank you.

15          EXAMINER SEE: If there are no other  
16 matters at this point the hearing is adjourned until  
17 9 a.m. tomorrow.

18          (The hearing concluded at 5:42 p.m.)

19                   - - -

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CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Tuesday, November 18,  
2008, and carefully compared with my original  
stenographic notes.

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Maria DiPaolo Jones, Registered  
Diplomate Reporter, CRR and Notary  
Public in and for the State of  
Ohio.

(3299-MDJ)

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