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1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO
2 In the Matter of the :
3 Application of Ohio Edison: :
4 Company, The Cleveland :
5 Electric Illuminating :
6 Company, and The Toledo :
7 Edison Company for :
8 Authority to Establish a : Case No. 08-935-EL-SSO
9 Standard Service Offer :
10 Pursuant to RC §4928.143 :
11 in the Form of an :
12 Electric Security Plan. :
13
14 In the Matter of the :
15 Application of Ohio Edison: :
16 Company, The Cleveland : Case No. 09-21-EL-ATA
17 Electric Illuminating : 09-22-EL-AEM
18 Company and The Toledo : 09-23-EL-AAM
19 Edison Company for :
20 Approval of Rider FUEL and:
21 Related Accounting :
22 Authority. :

13 PROCEEDINGS

14 before Ms. Christine Pirik and Mr. Gregory Price,
15 Attorney Examiners, at the Public Utilities
16 Commission of Ohio, 180 East Broad Street, Room 11-C,
17 Columbus, Ohio, called at 10:00 a.m. on Wednesday,
18 February 25, 2009.

20 VOLUME XIII

22 ARMSTRONG & OKEY, INC.
23 222 East Town Street, 2nd Floor
24 Columbus, Ohio 43215
25 (614) 224-9481 - (800) 223-9481
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1 APPEARANCES:

2 FirstEnergy Corp.

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By Mr. Arthur E. Korkosz

Mr. Mark A. Hayden

Ms. Ebony L. Miller

Mr. James W. Burk

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Akron, Ohio 44308

Jones Day

By Mr. David A. Kutik

North Point

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Columbus, Ohio 43215

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By Mr. James Lang

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On behalf of the Applicants.

Janine L. Migden-Ostrander,

Ohio Consumers' Counsel

By Mr. Jeffrey Small

Ms. Jacqueline Roberts

Mr. Terry L. Etter

Assistant Consumers' Counsel

10 West Broad Street, 18th Floor

Columbus, Ohio 43215

On behalf of the Residential Consumers of
the FirstEnergy Companies.

McNees, Wallace & Nurick, LLC

By Ms. Lisa McAlister

Mr. Samuel C. Randazzo

Fifth Third Center, Suite 1700

21 East State Street

Columbus, Ohio 43215-4228

On behalf of the Industrial Energy
Users-Ohio.

APPEARANCES: (Continued)

Chester, Willcox & Saxbe, LLP

By Mr. John Bentine

Mr. Mark S. Yurick

Mr. Matthew S. White

65 East State Street, Suite 1000

Columbus, Ohio 43215

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On behalf of The Kroger Company.

Brickfield, Burchette, Ritts & Stone, PC
By Mr. Michael K. Lavanga
Mr. Garrett A. Stone
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8th Floor, West Tower
Washington, DC 2007-5201

On behalf of the Nucor Steel Marion, Inc.

Vorys, Sater, Seymour and Pease, LLP
By Mr. Howard Petricoff
Ms. Betsy Elder
52 East Gay Street
Columbus, Ohio 43216-1008

On behalf of Constellation NewEnergy,
Inc., Constellation Energy Commodity
Group, Direct Energy Services, and
Integrus Energy Services, Ohio
Association of School Business Officials,
the Ohio School Board Association, and
the Buckeye Association of School
Administrators.

Boehm, Kurtz & Lowry
By Mr. Michael Kurtz
Mr. David Boehm
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Cincinnati, Ohio 45202

On behalf of Ohio Energy Group.

APPEARANCES: (Continued)

Bricker & Eckler, LLP
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100 South Third Street
Columbus, Ohio 43215

and

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

On behalf of Northeast Ohio Public Energy

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Council and the Ohio Schools Council.

Schottenstein, Zox & Dunn Co., LPA
By Mr. Christopher L. Miller
Mr. Andre T. Porter
250 West Street
Columbus, Ohio 43215

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

Bailey Cavaleri, LLC
By Mr. Dane Stinson
10 West Broad Street, Suite 2100
Columbus, Ohio 43215

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

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

On behalf of Material Science
Corporation.

APPEARANCES: (Continued)

Richard Cordray, Ohio Attorney General
Duane Luckey, Section Chief
Public Utilities Section
By Mr. John Jones
Mr. Thomas McNamee
Mr. William Wright
Assistant Attorneys General
180 East Broad Street
Columbus, Ohio 43215

On behalf of the Staff of the Public
Utilities Commission.

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1 wednesday Morning Session,
2 February 25, 2009.

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4 EXAMINER PIRIK: We'll go on the record.
5 In the matter of the application of Ohio Edison
6 Company, the Cleveland Electric Illuminating Company,
7 and the Toledo Edison Company for authority to
8 establish a standard service offer pursuant to
9 Section 4928.143 of the Revised Code in the form of
10 an electric security plan, Case No. 08-935-EL-SSO,
11 and Case Nos. 09-21-EL-ATA, 09-22-EL-AEM, and
12 09-23-EL-AAM, being in the matter of the application
13 of Ohio Edison Company, the Cleveland Electric
14 Illuminating Company, and the Toledo Edison Company
15 for approval of rider fuel and related accounting
16 authority.

17 My name is Christine Pirik. Alongside me
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18 is Gregory Price. We are the attorney-examiners
19 assigned to hear this case by the Commission.

20 At this time we will take appearances on
21 behalf of the parties. On behalf of FirstEnergy.
22 Mr. Korkosz on behalf of the company applicants, your
23 Honors, I enter the appearances of James W. Burk,
24 Arthur E. Korkosz, Mark A. Hayden, Ebony L. Miller,
25 FirstEnergy Service Company, as well as the

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1 additional appearances of James F. Lang, Calfee,
2 Halter and Griswold, and David A. Kutik, Jones Day.

3 EXAMINER PIRIK: We will just proceed
4 around the table. On behalf of staff.

5 MR. JONES: Good morning, your Honor. On
6 behalf of the staff of the Public Utilities
7 Commission of Ohio, Richard Cordray, Ohio Attorney
8 General, Duane Luckey, Section Chief, William Wright,
9 Thomas McNamee, and John Jones, Assistant Attorneys
10 General, 180 East Broad Street, Columbus, Ohio.

11 MR. KURTZ: Your Honor, for the Ohio
12 Energy Group, Mike Kurtz and Dave Boehm, Boehm, Kurtz
13 & Lowry, 1510 URS Center, Cincinnati, Ohio.

14 MR. BREITSCHWERDT: Good morning, your
15 Honor. On behalf of the Northeast Ohio Public Energy
16 Council, Brett Breitschwerdt and Glenn Krassen,
17 Bricker & Eckler, LLP, 100 South Third Street,
18 Columbus, Ohio 43215.

19 MR. STINSON: On behalf of FPL Energy
20 Power Marketing, Gexa Energy Holdings and Gexa Energy

21 Ohio, Dane Stinson, Bailey Cavalieri, LLC, 10 West
22 Broad Street, suite 2100, Columbus, Ohio 43215.
23 MR. SMALL: On behalf of the residential
24 customers of the FirstEnergy Distribution Companies,
25 Janine Migden-Ostrander, Consumers' Counsel, Jeffrey

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1 L. Small, counsel of record, Jacqueline Lake Roberts,
2 Terry L. Etter, Assistant Consumers' Counsel, Office
3 of the Ohio Consumers' Counsel, 10 West Broad Street,
4 suite 1800, Columbus, Ohio 43215.

5 EXAMINER PIRIK: Where do we go from
6 here?

7 MR. MILLER: On behalf of the City of
8 Cleveland, Chris Miller, Andre Porter, Schottenstein,
9 Zox & Dunn, 250 West Street, Columbus, Ohio 43215.

10 MS. PORTER: Also on behalf of the
11 Association of Independent Colleges and Universities
12 of Ohio, Andre Porter and Chris Miller, law firm of
13 Schottenstein, Zox & Dunn, 250 West Street, Columbus,
14 Ohio.

15 MR. SMITH: On behalf of Material
16 Sciences Corporation, Craig I. Smith, attorney at
17 law, 2824 Coventry Road, Cleveland, Ohio 44120.

18 MS. MCALISTER: On behalf of the
19 Industrial Energy Users-Ohio, McNeese, Wallace &
20 Nurick, by Lisa McAlister and Samuel C. Randazzo, 21
21 East State Street, Columbus, Ohio 43215.

22 MS. ELDER: On behalf of Constellation
23 NewEnergy, Integrys Energy Services, and

24 Constellation Energy Commodities Group, Howard
25 Petricoff and Betsy Elder, Vorys, Sater, Seymour &

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1 Pease, 52 East Gay Street, Columbus, Ohio.

2 MR. LAVANGA: Good morning, your Honor.
3 On behalf of Nucor Steel Marion, Michael K. Lavanga
4 and Garrett A. Stone of the law firm Brickfield,
5 Burchette, Ritts & Stone, 1025 Thomas Jefferson
6 Street, Washington, DC, zip code 20007.

7 EXAMINER PIRIK: Yes.

8 MR. WHITE: On behalf of the Kroger
9 Company, John Bentine, Mark Yurick, and Matt White,
10 65 East State Street, Columbus, Ohio 43215.

11 EXAMINER PIRIK: Are there any other
12 appearances that we need to take at this time?

13 (No response.)

14 EXAMINER PIRIK: We have a couple
15 procedural matters regarding a motion for admission
16 to practice before the Commission as well as a couple
17 of motions to intervene, and in considering motions
18 to intervene in these cases the examiners would like
19 to offer that we believe that these two cases should
20 be consolidated and we would throw that out to the
21 parties and ask for any comments that anyone may
22 have.

23 MR. KORKOSZ: On behalf of the
24 applicants, we would concur in the belief that the
25 cases should be consolidated.

1 EXAMINER PIRIK: Mr. Small.

2 MR. SMALL: The OCC does not object to
3 administrative notice being taken of the record in
4 08-935; however, we do think it is inappropriate to
5 consolidate the cases, so as far as the record is
6 concerned, we don't have any objections, but a
7 consolidation we don't agree to.

8 EXAMINER PRICE: What's your basis,
9 Mr. Small?

10 MR. SMALL: It's not clear that there can
11 be a continuation under the provisions of Senate Bill
12 221 of 08-935, and that is the basis of the
13 objection. However, taking administrative notice of
14 the record in that case is another matter.

15 EXAMINER PRICE: May I ask, can you
16 expand on what you're saying about it's not clear it
17 can be a continuation of 08-935?

18 MR. SMALL: There was a filing in the
19 08-935, there was a proceeding, there was a
20 Commission order, there was withdrawal of the
21 application, but I believe the 08-935 came to a halt
22 at that particular point in time.

23 And I don't know -- OCC does not agree
24 that it is permissible to just continue on the case
25 under the provisions of Senate Bill 221.

1 EXAMINER PRICE: But 221 at
2 4928.143(C)(2)(a) does state if the Commission
3 modifies and approves an application under division
4 (C)(1) of the section, the utility -- the electric
5 distribution utility may withdraw the application,
6 thereby terminating it, and may file a new standard
7 service offer under this section or a standard
8 service offer under section 4928.142 of the Revised
9 Code.

10 Is that not what FirstEnergy is doing in
11 this case?

12 MR. SMALL: Perhaps we have started a new
13 case, and that is exactly my point.

14 EXAMINER PIRIK: But is that a procedural
15 issue that really the Bench and the Commission should
16 consider? I mean, does it -- why is that relevant to
17 the case number?

18 MR. SMALL: Well, we're not talking about
19 case numbers. We're talking about whether the cases
20 are consolidated or not.

21 I don't know, I don't want to make a big
22 deal out of case numbers, but right now I think the
23 case number and the case are the same thing, which is
24 it's an entire record and it started with an
25 application by the company, and I'm arguing that it

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1 was terminated with the withdrawal of -- that case
2 was terminated with --

3 EXAMINER PRICE: If we did what you said

4 and simply took administrative notice of 08-935, that
5 entire record would then be fair game in this
6 proceeding even if we were using a different case
7 number; would it not?

8 MR. SMALL: I didn't say that my argument
9 wasn't a fine one, I just am making that -- I'm
10 making the OCC's fine distinction between the two.

11 EXAMINER PRICE: Okay.

12 EXAMINER PIRIK: Does the company have
13 any response?

14 MR. KORKOSZ: I would only, well, we
15 don't think that there is a difficulty in the
16 consolidation, obviously, but as a practical matter I
17 think given the nature of the interjoining aspects of
18 the stipulation and recommendation that has been
19 adopted by parties in the case, that there's -- that
20 they have become intertwined and it makes sense to
21 have consolidation as a practical matter.

22 EXAMINER PIRIK: And I think that's
23 really where the Bench was coming from, from a
24 practical perspective administrative notice versus
25 consolidating the cases, in this situation, given

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1 that we are going to hearing and what we are moving
2 forward on, we at this time find that the two cases
3 should be consolidated and move forward, well,
4 actually there's four case numbers on here, so all
5 four cases should be consolidated at this point in
6 time for consideration of the matters before us.

7 In light of that, we do have a motion to
8 intervene by Integrys in the 09-21, et al. cases.
9 Because the cases have been consolidated it's not
10 necessary for us to rule on that. Those who are
11 intervenors in the 935 case will likewise be
12 intervenors in the 09-21, et al. case.

13 We do have -- there was one
14 clarification, Mr. Stinson, with regard to FPL that I
15 just wanted to be sure. Intervention was granted to
16 NextEra and that group of individual companies within
17 the 09-21, et al. cases, however, in the 08-935 case,
18 NextEra at that point in time was not one of those
19 member companies, as I understand it. I think the
20 consolidation clarifies that whole issue, but I
21 wanted to be sure that --

22 MR. STINSON: Yeah, we would ask that the
23 intervention in 09-21 be applicable as well to 935.
24 The intervenor would be NextEra, FPL Energy Power
25 Marketing, Gexa Energy Holdings, and Gexa Energy Ohio

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1 since Gexa Energy Ohio is newly formed and was
2 certified during the process in 935.

3 EXAMINER PIRIK: I think that clarifies
4 the record then.

5 MR. STINSON: Thank you very much.

6 EXAMINER PIRIK: We do have one motion to
7 intervene also in the 08-935 case that was filed on
8 behalf of FirstEnergy Solutions, and I do understand
9 that there was a memorandum contra filed this morning

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10 on behalf of NextEra and NOPEC.
11 First, before proceeding with that,
12 before proceeding with the motion to intervene, I'd
13 like to entertain the motion for admission of Morgan
14 E. Parke to practice before the Commission.

15 Are there any objections to -- I did not
16 see anything filed and I just want to be sure on the
17 record, are there any objections to admitting him to
18 practice before the Commission before we consider --

19 MR. STINSON: Subject to granting the
20 motion to intervene.

21 EXAMINER PIRIK: I just don't want to
22 inappropriately consider a motion to intervene by
23 someone who's not yet admitted. So we will, with
24 that note, we will admit him to practice before the
25 Commission, Morgan E. Parke.

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1 Now with regard to the motion to
2 intervene. With regard to the motion to intervene of
3 FirstEnergy Solutions, is FirstEnergy Solutions
4 represented today in this? I did not see --

5 EXAMINER PRICE: No appearance.

6 MR. STINSON: I did not hear an
7 appearance, your Honor.

8 MR. KORKOSZ: There was no appearance,
9 your Honor. If I may, at the time that I entered the
10 appearance on behalf of the applicants I think there
11 was a reference generally to FirstEnergy, and I would
12 like to make the record absolutely clear that the

13 appearance that I entered on behalf of the applicant
14 companies was intended to refer to Ohio Edison
15 Company, Cleveland Electric Illuminating Company, and
16 the Toledo Edison Company only.

17 EXAMINER PRICE: Thank you.

18 EXAMINER PIRIK: That being said, I mean,
19 there were memorandum contra it seems.

20 MR. SMALL: Your Honor --

21 EXAMINER PIRIK: Go ahead. Mr. Small.

22 MR. SMALL: I realize the OCC didn't file
23 a pleading, but I will state that the OCC supports
24 the memo contra and the statement that FirstEnergy
25 Solutions has given absolutely no reason for its

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1 absence by the filing date for the interventions.
2 Has given no excuse for its tardiness.

3 MR. STINSON: I would just state, your
4 Honor, as reflected on the memorandum contra, that
5 the law is clear that a motion to intervene must be
6 filed at least five days prior to the scheduled
7 hearing date. The scheduled hearing date in 935 was
8 October 16th, well over four months ago.

9 Intervention can be granted at this point
10 only upon the finding of an extraordinary
11 circumstance, and FirstEnergy Solutions simply has
12 not shown any extraordinary circumstance to intervene
13 at this late date.

14 EXAMINER PRICE: I mean, isn't the case
15 we have an amended application and, was it not the

16 case that in our first go-round we were actually
17 pretty lenient with the intervention deadline. We
18 had more than one intervention motion after the
19 deadline, and I think that we let everybody in at
20 that point.

21 MR. STINSON: Well, I respectfully
22 disagree, your Honor, that a period of
23 four-and-a-half months have elapsed. The amended
24 application, actually the negotiation of a
25 stipulation is hardly anything extraordinary that

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1 would warrant FirstEnergy Solution Corporation's
2 intervention at this late date.

3 They had notice July 31st as to the
4 issues in this case, and in the MRO proceeding, they
5 had notice of the MRO proceeding commencing September
6 16th, the ESP proceeding commencing October 16th.
7 They slept on their rights.

8 There's simply no good cause or no
9 extraordinary circumstance for them to permit them to
10 be contributing at this point.

11 EXAMINER PIRIK: Are there any other
12 comments with regard to the motion to intervene?

13 MR. KORKOSZ: If your Honor please, I
14 would just make the observation that the memorandum
15 contra and the joining was made this morning, that
16 under the Commission's procedural rules the
17 opportunity for a reply brief would still be
18 available to FirstEnergy Solutions and the time in

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19 which to file that has not yet run.
20 MR. STINSON: I would only comment that
21 had FirstEnergy solutions bothered to appear today,
22 they could have had their reply.
23 EXAMINER PIRIK: The Bench is going to
24 have to take this under advisement given the timing
25 and the hearing and whatnot.

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1 we have a couple other procedural things
2 that we're going to move forward with, but we will
3 take the arguments and upon completion of these other
4 housekeeping matters we will take a break to actually
5 consider and then we'll come back and rule on this.

6 At this point in time I believe that
7 takes care of all of the motions to intervene with
8 clarification as far as parties go.

9 MR. SMITH: May I specifically ask, did
10 you grant Material sciences Corporation's motion to
11 intervene?

12 EXAMINER PIRIK: I believe you were
13 granted the motion to intervene in the --

14 MR. SMITH: In the entry?

15 EXAMINER PIRIK: -- in the entry. Let me
16 check.

17 Yes, you are one of those parties. But
18 now that we're consolidated, you will be party to the
19 case in any event since you're already party to 935.

20 MR. STINSON: Just a point of
21 clarification, your Honor. Some of us may not be

22 staying throughout the proceeding and if there is
23 additional argument on those motions, would we be
24 given notification? Or do you have an idea as to
25 when you might be ruling on those?

20

1 EXAMINER PIRIK: We'll rule this morning.

2 EXAMINER PRICE: Before we take our first
3 witness.

4 EXAMINER PIRIK: Right.

5 MR. STINSON: Okay.

6 EXAMINER PIRIK: We will rule so that we
7 will know who's in and who is not.

8 MR. STINSON: Thank you.

9 EXAMINER PIRIK: With regard to the other
10 housekeeping matters, we've determined that we are
11 going to proceed with the transcript number, with the
12 next transcript number where we stopped in 08-935 so
13 that the records will be clear as to what transcript
14 we're referring to.

15 The company will be filing what
16 transcripts we have available by 9 a.m. on Friday for
17 the benefit of the parties, and they will make sure
18 that any confidential portion of the record is
19 likewise made available to all the parties by 9 a.m.
20 on Friday.

21 we have discussed the marking of
22 exhibits. We will begin marking exhibits by all the
23 parties beginning at the number 100, and any
24 confidential version of documents will be designated

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25 with an "A" after it, so it will be like 100A.

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1 I believe housekeepingwise that's all we
2 have on our plate. Are there any other housekeeping
3 matters?

4 MR. KORKOSZ: I have one additional one,
5 your Honor. There was a directive to have
6 publication of notice of these proceedings published
7 in newspapers of general circulation.

8 The company has undertaken to make that
9 happen, but I do not yet have back the various tear
10 sheets and proofs of publication. I would request
11 that there be the opportunity for us to file as a
12 late-filed exhibit those proofs of the publication of
13 notice.

14 EXAMINER PIRIK: I believe that -- are
15 there any comments with regard to that or objection
16 to that designation?

17 At some point we will need to mark it as
18 a late-filed exhibit number.

19 MR. KORKOSZ: Surely.

20 EXAMINER PIRIK: And then you will
21 proceed to file it and provide it to the court
22 reporter at that point also.

23 MR. KORKOSZ: Very well.

24 EXAMINER PIRIK: Okay.

25 MR. SMALL: I have one other housekeeping

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1 matter, and I apologize for not bringing it up first
2 thing this morning when we were dealing with
3 housekeeping matters.

4 I have received requests from at least
5 one counsel for the distribution of OCC's
6 confidential draft, or the confidential prefiled
7 testimony which we would like to give to parties for
8 their use in the hearing; however, we have only
9 distributed it thus far to the company and to
10 Commission representatives, and OEG.

11 The problem is that we're not in control
12 of the protective agreement so we would like an
13 instruction to give it to some or all the parties
14 requesting it so that we're not in any violation of
15 the protective agreements or any other protection of
16 the documents.

17 EXAMINER PIRIK: Mr. Korkosz.

18 MR. KORKOSZ: I would reiterate that the
19 parties with whom we have a protective agreement, in
20 addition to the -- of the intervenors, in addition to
21 OCC include IEU, Kroger, OEG, and Nucor, so
22 distribution to those parties would be acceptable and
23 limited to that distribution.

24 MR. SMALL: That solves part of the
25 problem because we can certainly give it to those

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1 parties and we appreciate the representation on the
2 record, and we will give it to those parties if we

3 haven't already.

4 MR. WRIGHT: We don't have it.

5 MR. SMALL: Well, you were served with a
6 copy.

7 MR. WRIGHT: Of the confidential?

8 MR. SMALL: Yes, but that's all right, we
9 have an additional copy for you.

10 However, I anticipate that there may be
11 somebody in the room, counsel, who hasn't signed the
12 protective agreement who feels that they're also
13 entitled to full participation in the hearing, so --

14 EXAMINER PRICE: This will be the time
15 for that person to speak up.

16 MR. SMALL: That's right.

17 MR. SMITH: I can firmly say that
18 Material Sciences will not ask for a confidential
19 copy.

20 MR. SMALL: I just don't want to be in
21 the position of being told that I've withheld
22 testimony, and I just wanted to bring it up to make
23 sure that we've given it to every party that wants
24 one.

25 EXAMINER PIRIK: Well, that's noted on

1 the record. Those individuals that have signed
2 protective agreements may receive a copy of the
3 testimony, and if there are issues from other
4 parties, then they will need to bring that forward
5 and actually work with the company to try to resolve

6 whatever issue they may have at this point. OCC
7 should not have to bear that burden of trying to
8 figure out how to resolve that problem.

9 MR. KORKOSZ: I guess perhaps as one
10 other preliminary matter, and I was going to address
11 this initially, but I would ask with respect to the
12 stipulation and recommendation that has been filed in
13 the dockets of these cases, I would ask that it be
14 identified for this record as Joint Exhibit 1, since
15 it may well be referred to in the course of
16 testimony.

17 MR. SMALL: Would that be Joint Exhibit
18 100?

19 MR. KORKOSZ: Joint Exhibit 100, excuse
20 me.

21 MR. SMALL: Get off to a good start.

22 EXAMINER PIRIK: Why don't we go ahead
23 and mark the proofs of publication as late-filed
24 Exhibit 101.

25 MR. KORKOSZ: Sure.

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1 EXAMINER PIRIK: Is that --

2 MR. KORKOSZ: Why don't we make that 100.
3 It will be Companies' Exhibit 100.

4 EXAMINER PIRIK: So we will mark the
5 stipulation as -- the stipulation that was filed on
6 February 19th, 2009, I believe --

7 MR. KORKOSZ: I believe that's right.

8 EXAMINER PIRIK: -- as Joint Exhibit 100

9 and the late-filed proof of publication as Companies'
10 Exhibit 100.

11 (EXHIBITS MARKED FOR IDENTIFICATION.)

12 EXAMINER PIRIK: Any other housekeeping
13 matters? If not, we will take a break until, take a
14 15-minute break until 10 after 11:00 and we'll
15 reconvene at that time.

16 (Recess taken.)

17 EXAMINER PIRIK: We'll go back on the
18 record.

19 MR. MCNAMEE: Your Honors, at this point
20 the staff would like to note that there are ongoing
21 discussions between the staff, the company, and
22 various nonsignatory parties, and we believe it would
23 be expedient at this point to not put on a witness at
24 this point in time to allow those discussions to
25 proceed for a short period, an hour or so anyway.

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1 EXAMINER PIRIK: Well, I think that that
2 would be -- I mean, I think maybe what we can do is
3 just take a lunch break at the same time.

4 MR. MCNAMEE: Yes.

5 EXAMINER PIRIK: I'd rather take a longer
6 time than a shorter time, so why don't we just come
7 back at, say, 1:30, and we'll proceed from there.

8 MR. MCNAMEE: Thank you.

9 EXAMINER PIRIK: At that time we'll rule
10 on the FES motion.

11 (At 11:34 a.m. a lunch recess was taken
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12 until 1:30 p.m.)

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1 wednesday Afternoon Session,

2 February 25, 2009.

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4 EXAMINER PIRIK: We'll go back on the
5 record, and I understand we have a procedural matter
6 that we'll discuss, but before we discuss that I did
7 want to rule on the FES, we spent much time
8 contemplating the FES motion over lunch and whatnot.

9 we did receive a reply, I don't know if
10 everyone has seen the reply, but it's been submitted,
11 but after looking at everything and considering it we
12 think that it is reasonable to grant their motion to
13 intervene, and in light of the fact that the cases
14 are consolidated, they will be in both cases.

15 Now, with regard to the procedural issue,
16 Mr. McNamee.

17 MR. MCNAMEE: Yes, your Honor. As I
18 alluded to this morning when I suggested that we
19 break for a while to allow discussions to continue,
20 those discussions have continued and I'm informed
21 that an agreement in principal has been reached
22 amongst those individuals and they're in the process
23 of producing some language to be distributed
24 initially amongst the people who have been talking
25 and then immediately to the balance of the parties in

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1 the case in the form of an addendum to the
2 stipulation that has been docketed here.

3 If that is all successful, that would
4 result in a complete resolution of all the issues
5 between all the parties in all the various cases
6 consolidated here.

7 So that being the case, it would appear
8 to us that it would be expedient if we simply
9 continued this hearing until tomorrow at 1 o'clock to
10 allow time for the development and distribution of
11 this proposed language and hopefully resulting in a
12 resolution of all the issues here.

13 For the convenience of the parties, the
14 staff would commit to notifying everybody who's on
15 the service list of whether this is all going to work
16 or not, whether we need to proceed with a hearing
17 tomorrow or not, in the morning as soon as I know

18 something.

19 So I guess at this point we would move to
20 continue the hearing till tomorrow at 1 on that
21 basis.

22 EXAMINER PIRIK: We will continue the
23 hearing. We will reconvene at 1 o'clock tomorrow.

24 In addition, in light of the fact that we
25 are waiting to move forward pending the potential

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1 supplemental stipulation, I would note that testimony
2 for the March 11th hearing, which is the remainder
3 of the issues in this case, were due today, testimony
4 was due today; however, in light of our continuance
5 what we will do is we will extend the filing of that
6 testimony until tomorrow, February 26th, by the end
7 of the day tomorrow.

8 And if there's a need to adjust that time
9 frame or do something different, we will take that up
10 tomorrow at 1 o'clock.

11 Are there any other procedural matters
12 that we need to do on the record before we close?

13 MR. MCNAMEE: None.

14 EXAMINER PIRIK: We will adjourn for the
15 day.

16 (The hearing adjourned at 1:58 p.m.)

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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 Wednesday, February 25,
2009, and carefully compared with my original
stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter, CRR and
Notary Public in and for the
State of Ohio.

(MDJ-3351)

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