BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO
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In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanisms.	Case Nos. 09-1947-EL-POR 09-1948-EL-POR 09-1949-EL-POR
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Initial Benchmark Reports.	Case Nos. 09-1942-EL-EEC 09-1943-EL-EEC 09-1944-EL-EEC
In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	Case Nos. 09-580-EL-EEC 09-581-EL-EEC 09-582-EL-EEC

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PROCEEDINGS

before Mr. Gregory Price and Ms. Kimberly Bojko, Hearing Examiners, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-A, Columbus, Ohio, called at 10:00 a.m. on Tuesday, March 2, 2010.

VOLUME II

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Wednesday Morning Session,
March 3, 2010.

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EXAMINER PRICE: Let's go on the record.

Good morning. The Public Utilities Commission has set for hearing at this time and this place Case Numbers 09-1947-EL-POR, et al. This is the hearing for FirstEnergy's energy efficiency and peak demand reduction program portfolio proceeding.

My name is Gregory Price, with me is Kimberly Bojko, we're the Attorney Examiners assigned to preside over today's hearing.

We'll dispense from taking appearances from the parties.

Do we have any preliminary issues we need to address before we take our first witness?

Seeing none.

(Witness sworn.)

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

THE WITNESS: George L. Fitzpatrick, business address is 898 Veterans Highway, Suite 430, that's in Hauppauge, H-a-u-p-p-a-u-g-e, New York, 11780.

EXAMINER PRICE: Thank you.

Mrs. Kolich.

MS. KOLICH: Thank you, your Honor. I have a document entitled Direct Testimony of George L. Fitzpatrick in this proceeding that I would like to mark for identification as Company Exhibit 4.

EXAMINER PRICE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. KOLICH: I also have another document that is going to be passed out to counsel that was also the document I referenced yesterday, it's an errata sheet for the CEI, OE, and TE energy efficiency and peak demand reduction program portfolio and initial benchmark report, I would like that to be marked as Company Exhibit 9 for identification.

EXAMINER PRICE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

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GEORGE L. FITZPATRICK

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

DIRECT EXAMINATION

By Ms. Kolich:

Q. Mr. Fitzpatrick, do you have a copy of your direct testimony with you?

A. I do.
Q. And this testimony is comprised of testimony and related exhibits; is that correct?
A. Yes, it is.
Q. Do you have any corrections to your testimony?
A. No.
Q. The exhibits attached to your testimony, were they prepared by you or under your direct supervision?
A. Yes, they were.
Q. Do you have any corrections to those exhibits?
A. No, I do not.
Q. Your testimony also incorporates by reference the company's three portfolio plans; is that correct?
A. Yes.
Q. Those plans have already been premarked as Company Exhibit 6 for the Ohio Edison plan, Company Exhibit 7 for the CEI plan, and Company Exhibit 8 for the Toledo Edison plan. Do you have any corrections to any of these three exhibits?
A. Yes, we have some errata for those three plans.

Q. And what would those changes be?

A. Okay. There are -- we have I guess errata items for the three plans. The first one is for the CEI plan, it's basically "Table 2 should reference Total FirstEnergy Ohio SB 221 benchmarks for the period 2009 to 2012." And the "Filing values reflected CE values. The "Update shows total FirstEnergy Benchmarks. Corresponding OE and TE tables were not affected." That's the first one.

The second one is for CEI plan again, and it's the "Table 4 should reference Cleveland Electric SB 221 Benchmarks for the Period '09 through '12. Initial Filing values reflected OE values. Update now shows CE Benchmarks."

No. 3 affects all plans, it's pages 5 and 6 in the documents, and Table 5 shows number of customer values and they've been updated, and the replacement pages are included with updated values as part of the document that I have.

Q. And the document you have is Company Exhibit 9 for identification?

A. Yes, it is.

Okay. No. 4, all the plans. It basically starts on page 27 for OE and CI, and 26 for

TE, and it's "Section 3.1.4 references should be updated from EDC Table 4 to EDC Table 5."

No. 5 affects the CEI plan which affects pages 160 through 162, Appendix C-3, pages 9 and 10. The "Column headings for Total Budget should read 2010 through 2012. All but Mercantile Self-Direct state 2010 through 2013. Corresponding OE and TE tables are not affected."

The next change affects the CEI plan, page 145, Appendix C-3, page 17, and it's "Table 7E, the TRC values not displayed for interruptible demand reduction for 2011 and '12. The value should read: 2011 - .43, and 2012 - .77. The corresponding OE and TE tables are not affected."

And finally, all the plans will be affected by this change, pages 143 to 146 for CEI and TE plans, and 144 through 147 for the OE plan, Appendix C-3, pages 13 through 18. "Table A through F: Program costs and benefits column headings show measure as ($000). The ($000) measure should be struck."

Q. And attached cover sheet of -- the summary sheet of Company Exhibit 9 are several pages, are these pages to replace the pages currently in the three plans?

A. Yes.

Q. With these corrections made if I were to ask you the same questions that are included in your direct testimony today, would your answers included in your new direct testimony be the same?

A. Yes, they would.

MS. KOLICH: Your Honor, the witness is available for cross.

EXAMINER PRICE: Thank you.

OCC?

MR. POULOS: Yes, your Honor, thank you.

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CROSS-EXAMINATION

By Mr. Poulos:

Q. Good morning, Mr. Fitzpatrick.

A. Good morning.

Q. I'd like to start with looking at your testimony, Company Exhibit 4 and page 3 of your testimony, about the purpose of line 20.

MS. KOLICH: Excuse me, before you get started. Can you use a microphone?

MR. POULOS: Okay.

EXAMINER PRICE: Thank you.

Let's go off the record.

(Off the record.)

EXAMINER PRICE: Back on the record.

Q. (By Mr. Poulos) Let me start over again. Morning, Mr. Fitzpatrick.

A. Good morning.

Q. I want to start with your testimony, page 3, line 20, regarding the purpose of your testimony.

A. Yes.

Q. And it states on line 20 part of the purpose of your testimony is to summarize and sponsor the energy efficiency peak demand reduction plans. Do you see that?

A. Yes, I do.

Q. When you refer to "sponsor," isn't it true that in your opinion your job is to bring the plans in as exhibits to your testimony and offer those plans to the Commission for their review?

A. And also to sponsor it in terms of any questions that the parties may have.

Q. Isn't it true that all of the Black & Veatch work that is done for FirstEnergy on this project was done under your direction? Correct?

A. That's correct.

Q. And that you have the ultimate say for Black & Veatch in this project and what is incorporated in these plans.

A. That's correct.

Q. And isn't it true that the work that you do and the comments you make in these, in your testimony, is similar for all the plans, all three plans?

A. Yes.

Q. And just to talk a little bit about the limitations of your testimony, it is your understanding that Mr. Ouellette is sponsoring the cost recovery mechanism for the plan, correct?

A. Yes.

Q. And you are not testifying on that subject, correct?

A. No.

Q. Also you understand that Mr. Ouellette is sponsoring testimony on the companies' shared savings mechanism, correct?

A. Yeah.

Q. And that you are not testifying on that subject either, correct?

A. No.

Q. Isn't it true that you have also worked for FirstEnergy's Pennsylvania utilities on their energy efficiency and demand response matters?

A. Yes.

Q. And that you also sponsored testimony in their filing in front of the Pennsylvania Commission, correct?
A. Yes.
Q. And that was in 2009, correct?
A. Yes.
Q. Approximately July?
A. Yes.
Q. And in Pennsylvania they did have a CFL program as part of their proposal, correct?
A. As part of the plans, yes.
Q. As part of the FirstEnergy plans.
A. Correct.
Q. The design of the CFL program in Pennsylvania is different than the design in the original plan proposed in Ohio, correct?
A. Yes.
Q. And just to clarify, you started working in Ohio on the plan for FirstEnergy in late-summer; is that correct?
A. Yes.
Q. And that was after the initial CFL program in Ohio by FirstEnergy was launched?
A. Yes.
Q. Or was to launch.

A. I'm sorry, could you repeat that?
Q. Sure. You started working in Ohio in late-summer and that was after the initial CFL plan was filed by FirstEnergy, correct?
A. I believe that's true.
Q. And isn't it true that Black & Veatch did not have any involvement in the development of that initial CFL program?
A. That's true.
Q. Now, there is a -- you are familiar with a redesigned CFL program, correct?
A. Yes.
Q. And you were involved in the redesigning of that plan, correct?
A. We viewed that design as a combination of FirstEnergy and the collaborative, the work of that group.
Q. And when you say "FirstEnergy and the collaborative," you're including Black & Veatch as well?
A. We basically took that program from FirstEnergy and the collaborative and we put that program into the plan.
Q. Could you describe for me how the redesigned plan differs from the Pennsylvania CFL

plan?

MS. KOLICH: Objection.

EXAMINER PRICE: Grounds?

MS. KOLICH: I think counsel misspoke. I don't believe you want him to compare the entire plan in Pennsylvania with the entire plan in Ohio.

MR. POULOS: I do not. CFL plan. The redesigned CFL plan. Thank you.

EXAMINER PRICE: Thank you.

A. The best way to characterize the difference between the Pennsylvania CFL program and the Ohio CFL program iterations is that in Ohio the design of the program was much more active or aggressive because of the targets that needed to be hit in the time frame required by Commission order and SB 221.

The Pennsylvania plan -- the Pennsylvania CFL program design was more passive in nature, requiring customers to initiate contact via internet or phone, but I think that it's certainly two significantly different circumstances on which those designs developed.

Q. I'm going to move over to a different subject for a moment.

EXAMINER PRICE: Mr. Poulos, before you

do, there's one question I want to clarify.

You were not involved in the redesign of the CFL program; is that correct?

THE WITNESS: No, sir.

EXAMINER PRICE: It was simply translating that redesigned program into the plan.

THE WITNESS: That's correct.

EXAMINER PRICE: Thank you very much.

Thank you, Mr. Poulos.

Q. (By Mr. Poulos) I want you to look at the application. Do you have that in front of you?

A. No, I do not.

EXAMINER PRICE: If FirstEnergy's counsel could provide the witness copy of the application.

MR. POULOS: Your Honor, may I go off the record for a second?

EXAMINER PRICE: You may.

(Discussion off the record.)

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

The witness has been provided a copy of the application and I believe that FirstEnergy's agreed that we will mark the application at this time just for reference purposes as Company Exhibit 10.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER PRICE: Mr. Poulos.

MR. POULOS: Thank you, your Honor.

Q. (By Mr. Poulos) Mr. Fitzpatrick, looking at Company Exhibit 10, the application, can I have you turn to page 7 and the paragraph numbered 19. Let know when you're there, please.

A. I'm just reading it.

Okay.

Q. This paragraph 19 on page 7 is a request by the company for a waiver to the extent the customer sectors utilized in the plans conflict with the Commission's forthcoming order approving the portfolio plan template in Case No. 09-714. Do you see that?

A. Yes.

Q. And the request for waiver relates to the seven classifications that are proposed in the Commission's order. Is that your understanding?

A. Yes.

Q. And the template case, and the template you're referring to in 09-714, relates to a proposed template for energy efficiency and peak demand reduction plans. Is that your understanding?

A. The template to report them by customer class. Yes.

Q. And you are familiar with that Case No. 09-714; is that correct?

A. Yes.

Q. And in that proposal, in that docket, the staff proposes to organize into the seven classes that we just mentioned, right?

A. Yes.

Q. And those seven classes are residential programs, residential low-income programs, small enterprise programs, mercantile self-directed programs, mercantile utility programs, government nonprofit programs, and transmission and distribution programs; is that your recollection?

A. Yes.

Q. And that draft template proposes the seven customer classifications as opposed to the traditional residential, commercial, and industrial classifications; is that correct?

A. Traditional?

Q. Well, the ones that are used now in tariffs. Is that correct?

A. Yes, there are more classifications.

Q. And it's your opinion that the use of these seven classifications is reasonable, correct?

A. To the extent that the company can

provide the information with its accounting and billing systems, yes.

MR. POULOS: Your Honor, may I approach the witness?

EXAMINER PRICE: You may.

MR. POULOS: Your Honor, I'd like to have the document I just handed Mr. Fitzpatrick, which is his deposition, marked as OCC Exhibit 10.

EXAMINER PRICE: So marked.

MR. POULOS: Thank you.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Fitzpatrick, do you recall being deposed by OCC on February 12th?

A. Yes.

Q. I'll have you turn to page 38, lines 3 through 10. And starting on line 3, the question was: "I'm not sure, can't recall your answer, but -- from a little bit ago, but did you say that it is your opinion these classifications are reasonable that are provided on this page?"

And your answer there was: "Oh, yes, they are."

Correct? Did I read that correctly?

A. You did read that correctly, yes. I was just looking -- that's what the deposition says, yes.

Q. And there's no qualification of the "yes," is there?

A. No.

Q. And isn't it also true, Mr. Fitzpatrick, that you find that the splitting out of the data into seven classifications is to ensure that the plans have recognized and to the extent they recognized the different classes of customers?

A. Yes. That we are providing treatment plan, you know, programmatic treatment to the seven classes, yes.

Q. I'm going to have you turn to the CEI Appendix B-1.

EXAMINER PRICE: Can I have that reference again, please?

MR. POULOS: Sorry?

EXAMINER PRICE: Can I have that reference again, please?

MR. POULOS: CEI plan, which is 7, Appendix B-1, which is page 167.

EXAMINER PRICE: Thank you.

Q. Sorry, it's 168.

A. Appendix C?

Q. Appendix B. Appendix B. It's page 168 --

A. On 168?

Q. I'm sorry, 167 is marked on the bottom, page 168 is not marked on the bottom. Instead it says "page 1 of 3."

A. Oh. Because 168 is further back.

EXAMINER PRICE: There's a different 168.

MR. POULOS: Sorry.

A. Okay.

Q. So are we all on Appendix B-1?

A. B-1, Program Cost Detail Support.

Q. I'll have you flip to the next page which talks about the detailed budget year 1. Do you see the page I'm referring to?

A. Yes, I do.

Q. This states on the bottom right corner "page 1 of 3", correct?

A. Yes, it does.

Q. And this Appendix B-1, if you look at the next page, it's B-2, and the next page is B-3, and these correlate or correspond to budget years. So Appendix B-1 would be for years 2010, B-2 which would be for 2011, and B-3 would be for 2012?

A. Yes.

Q. And this, as I said, was for The Cleveland Illuminating Company, correct?

A. That's correct.

Q. There's also a very similar one for Toledo Edison and Ohio Edison.

A. Yes. In format, yes.

Q. And this is a document that Black & Veatch put together, correct?

A. Yes, it is.

Q. And looking at the, just the top third of the document on Appendix B-1, do you see that?

A. Yes.

Q. These costs, as it states in the heading, are "FirstEnergy Prefiled," correct?

A. Yes.

Q. And these costs listed under this category as costs under the utility program and labor cost category are some costs that are from 2009, carryover costs; would you agree with that?

A. You used the word "sunk" costs.

Q. Some, s-o-m-e.

A. Oh, I'm sorry. Could you repeat that again, I'm sorry?

Q. Sure. The costs that are listed for that top third under the "Utility Program/Labor Costs," those are costs that were incurred in 2009; is that correct?

A. I believe so, yes.
Q. And that would also be true for the, way over on the right on that page, the incentive rebate for equipment; that $2,877,460, those were 2009 costs?
A. I think, you know, I'm not sure about this. I think some of this might have been 2009, some of it might be 2010. Because this is really the first year of our budget. So I have to check that for you.
Q. Whether it's 2009 or 2010 costs in this top third, these are all going to be incorporated into that first year budget that will be passed on, the costs that will be passed on to customers, correct?
A. Yes, the 2010 budget. Yes.
Q. Now, the labor or the utility program/labor category is a catchall category for both program and labor costs; is that correct?
A. Yes, it is.
Q. And the reason this information was put in the catchall category is that the information was provided from FirstEnergy to Black & Veatch, correct?
A. It was.
Q. And those figures were developed and

submitted to you by FirstEnergy personnel.

A. Correct.

Q. So it's true that you personally did not obtain those costs, those figures.

A. We did not obtain?

Q. You're not the person who determined what the accurate figure would be, correct?

A. We did not generate those numbers, no.

Q. Thank you.

And you did not personally review these costs; is that correct?

A. My staff and I looked at the costs, yes, I mean, we did look at them. I don't recall -- we didn't see anything that we thought was, you know, any outlier events in those costs, but I don't recall the details of that.

Q. Isn't it true you didn't look at the specific costs, you just looked at the numbers to see if they were reasonable?

A. We didn't drill into the individual elements of the costs. I think we looked at some of these costs concerning what appropriate, you know, whether they were an appropriate bandwidth.

Q. And moving down for a second, since I'm on this page, to the second and third categories, the second or the middle part of the page, those figures there are Black & Veatch generated numbers, correct?

A. That's correct.

Q. And they're projections, correct?

A. Yes, they are.

Q. And it's your opinion that those projections are a reasonable expectation of what the costs will be.

A. Yes.

Q. And that would be the, going to page 2, Appendix B-2, now, Appendix B-2 looking at the middle grouping, the new EE plan programs, that would be the same for those, those are all projected numbers, correct?

A. Yes.

Q. And the ones on the top column, the FirstEnergy energy prefiled programs, those are all costs that were generated by FirstEnergy and submitted to Black & Veatch, correct?

A. Yes.

Q. And they're just a -- Black & Veatch simply divided the costs up between years 1, 2, and for some cases 3 as well.

A. Could you repeat that question, please?

Q. Sure. Let me go over an example for you first.

MR. POULOS: Your Honor, may I approach the witness?

EXAMINER PRICE: You may.

MR. POULOS: Your Honor, may I have this document marked as OCC Exhibit 11.

EXAMINER PRICE: You may.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Fitzpatrick, OCC Exhibit 11 is from your deposition; do you see that on the bottom right corner?

A. Yes, I do.

Q. And it's marked in the top "OCC Set 1-RPD 10 Attachment 3, page 4 of 7."

A. Correct.

Q. And you recognize this document, correct?

A. I do.

Q. Was this a document that was created by Black & Veatch?

A. We created the response, yes.

Q. And this was a response to a set of discovery questions sent to the company, correct?

A. Right.

Q. Now, could you describe what this document identifies?

A. Well, it basically shows for the residential and the residential low-income classes, it shows the number of bulbs projected to go to each of the operating companies, and it shows the 2010 and '11 costs, and it shows that for residential and residential low-income customers.

Q. And looking at CE in the middle column on the top part --

A. Yes.

Q. -- that has a number for 2010 of $1,910,235?

A. Yes.

Q. For 2010, a similar number, correct?

A. Yes.

Q. And those numbers were taken and put into Appendix B-1 and B-2 under the CFL program, correct?

A. Yes.

Q. You also have a residential low-income figure for 2010 for CE, for Cleveland Electric Illuminating, correct?

A. Yes.

Q. And that number was specifically put in the Appendix B-1 that we were looking at, correct?

A. Yes.

Q. And that's $824,838?

A. Yes.

Q. And we went over this in deposition, I don't know if you checked it but it was subject to check, I had you add up -- we talked about how these numbers add up.

If you add up the residential category and the costs for 2010 and 2011, would you agree with me that that number is $10,691,402, and that certainly could be subject to check?

A. Subject to check, yes.

Q. And then if you look at the residential low-income, those figures there for 2010 on the bottom, those add up to $2,472,000 -- excuse me, strike that -- $2,472,046, subject to check; is that correct?

A. Subject to check, yes.

Q. And that total is $13,163,448, subject to check.

A. Sounds about right to me, yes.

Q. And I will certainly provide those figures to be checked.

Now, looking back at B-1 and B-2 -- I'm sorry, strike that.

A few more questions for you, Mr. Fitzpatrick. You are obviously familiar with

Ohio's statutory energy efficiency benchmarks, correct?

A. Yes.

Q. You would agree with me that these goals, these energy efficiency benchmarks that have been established in amended Senate Bill 221 are laudable, correct?

A. I think I make a comment to that effect in my testimony, yes.

Q. And why do you refer to these goals as "laudable"?

A. I think they're reasonable goals. I think they're goals that are important for the state to reach. I think that it's a good thing to promote energy efficiency, cost-effective energy efficiency.

Q. And the time frames are laudable, the time frames for meeting those goals, because they're incremental goals, correct?

A. They're incremental goals, I think given where the Commission is right now with their January 7th order concerning the 2009, of course, which went by without, you know, getting any programs -- getting additional traction for new programs I think going forward that they're laudable.

Q. And isn't it true that it's your opinion that the companies are responsible for meeting those goals for the good of their customers and the good of Ohio in general, correct?

A. I think that the companies have the expertise, have the infrastructure to do a good job at it. But I think that the costs for those programs have to be borne by the folks that are going to benefit by -- the classes that will benefit from those programs.

So I don't think it's a social responsibility, rather I think it's one -- it makes sense for the utilities to be involved, but I think that the costs need to be recovered, you know, by the company going forward and also in the past.

Q. I want to turn your attention now to your testimony. Looking at the bottom of page 5.

MS. KOLICH: Is there a specific line item or line number?

MR. POULOS: There is. I'm looking at the last question, line 16, I'm sorry. I thought he was waiting to get there.

A. I'm sorry. I'm there.

Q. Okay. And looking at the last question on page 5 of your testimony, "Why are the plans designed to exceed statutory goals?" Do you see that?

A. There are a number of reasons that we designed the plans to ramp up quickly. You'll recall that we have a number of fast-track programs which were recommended in the collaborative that FirstEnergy reviewed, and I think those fast-track programs, the acceleration of those programs that could generate the most savings, the quickest, are important to do.

We have a situation where we're not annualizing our savings so that we need to as much -- get as much traction with programs in the early stages as possible so that we can make our 2010, '11, and '12 goals, because it is a three-year plan.

Q. Thank you. And you are stating here that these plans as you've designed them were designed to overachieve the statutory benchmarks for energy efficiency, correct?

A. They were designed to overachieve, to attempt to overachieve the goals that are stated in the reports in the short-term and ultimately come close to those goal levels by 2012.

So we wanted to try to get a head start on it so that we could get more traction and then ultimate lately we would scale down over time so we would meet the goals at the end of the day, the cumulative goals, by 2012.

Q. Based on your answer it sounds like part of the reason to design a program to overachieve is an incentive to get started early so you can make sure you're comfortably meeting the goals for future years, correct?

A. Generally I think that's true.

MR. POULOS: Your Honor, if I can have one moment, I think I'm just about done.

EXAMINER PRICE: If I could follow up while Mr. Poulos is working.

Given that you need to design to overachieve in order to meet your goals, would it be reasonable once you've hit a statutory goal for any given year to just pack up and go home at that point?

THE WITNESS: First of all, the reality of implementation of programs of this scale --

EXAMINER PRICE: First of all, I asked you a "yes" or "no" question, so you can answer "yes" or "no" and then you can explain.

THE WITNESS: Oh, okay. No.

EXAMINER PRICE: And explain why.

THE WITNESS: Thank you. I think that -- thank you for that opportunity.

I think that, you know, if we get to the end of the year you just need to keep gaining traction until you can take a look at where you stand in terms of how well you did for the calendar year.

And I think that once you find, for example, once you find when the EM and V results come in in the first couple of months of let's say 2011 for 2010, at that point in time you might make one or more mid-course corrections to either ramp up certain activities or ramp down certain program activities depending upon the success of individual programs, the success of participation, and what our goals are.

So I think that you would need to have some lag time to make sure that we're getting the traction we think, because EM and V results are not instantaneous, we have to kind of measure that after the fact. We have to close the books on the year, if you will.

EXAMINER PRICE: Thank you very much.

Thank you, Mr. Poulos

MR. POULOS: Thank you, your Honor.

Q. (By Mr. Poulos) Mr. Fitzpatrick, earlier I asked you some questions about the CFL plan, the redesigned CFL plan in Ohio, how does it differ from the Pennsylvania CFL plan -- the CFL program. Do you recall those?

A. Excuse me, Mr. Poulos, are you talking about the one that was approved by the Commission on September 23rd or a subsequent iteration? There are two of them, aren't there?

Q. The CFL program that was included in the December 15th application, so I refer to that as the "redesigned program."

A. Okay.

Q. Does that distinction make --

A. I understand, thank you.

Q. Okay. And part of your answer regarding the redesigned CFL program in Ohio that was included in the December 15th filing and the Pennsylvania plan, you stated that there's a difference in those plans because the Pennsylvania is a more passive attempt to meet their benchmarks; is that partially at least a fair characterization?

A. Well, I wouldn't characterize it as a "passive attempt." I don't like the way that sounds. I think there are a number of ways to launch a program, a number of different programs.

In this particular case we had, in Ohio, you all have had in Ohio aggressive targets, aggressive goals, the need to get traction on that program quickly and, therefore, I think an aggressive approach is a good idea.

In Pennsylvania we took a different approach because we had, in our estimation, more time to achieve those goals so we went about it a different way.

Q. You would agree with me in Pennsylvania you also had a short time to reach energy efficiency goals, correct?

A. Well, we had an ambitious time schedule, but I think in this particular case the time schedule is even more ambitious.

MR. POULOS: Your Honor, I have no further questions at this time, thank you.

EXAMINER PRICE: Thank you.

At this time I think NRDC's counsel would probably like to make an appearance on the record in this proceeding.

MR. ECKHART: Yes, your Honor, Henry W. Eckhart, 50 West Broad Street, Columbus, Ohio, I represent the Natural Resources Defense Council.

EXAMINER PRICE: Thank you very much.

Mr. Sites, cross?

MR. SITES: Thank you, your Honor, no questions.

EXAMINER PRICE: Mr. O'Brien.

MR. O'BRIEN: Yes, your Honor, just a few questions.

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CROSS-EXAMINATION

By Mr. O'Brien:

Q. Good morning, Mr. Fitzpatrick.

A. Good morning.

Q. Just a couple of questions for you. Could you please turn to page 12 of your testimony.

A. Excuse me, sir, I didn't -- I didn't get your name, I'm sorry.

Q. I'm sorry, I'm Tom O'Brien. I'm representing the Ohio Hospital Association and the Ohio Manufacturers Association in this case.

A. Thank you.

Q. Page 12 of your testimony, are you there yet?

A. Yes, I am.

Q. In the answer on this page you use a couple of terms and I just want to try and get some clarity about what you mean by those terms on the record.

On line 9, continuing on to line 10, you use the term "marginal cost" in the context of the avoided supply costs that will be used in the total resource cost test.

Can I ask you what you mean by "marginal cost" in that context?

A. Basically the marginal cost would be the incremental cost of avoided supply.

Q. Is that --

A. As opposed to the embedded.

Q. Is that short-run marginal costs? Is it long-run marginal costs?

A. Well, depending upon the test, this is a discussion you can use short-run marginal costs, depending on the time frame of the measure being looked at, or long-run marginal costs.

Q. Where do we look to determine those values?

A. Where do we look?

Q. Yes. Where would you go to find that value in applying the TRC?

A. That information was provided to us by FirstEnergy and it would generally be provided by a utility client.

Q. Okay. Then further on down on line 10 you use the term "monetary cost" in the context of the demand-side measures.

A. Yes.

Q. What do you mean by "monetary cost"?

A. As opposed to nonquantifiable costs or nonquantifiable costs and benefits. We look at the monetary costs, ones that you can assign a dollar amount.

Q. Direct costs?

A. This particular case you can have direct costs, you can have direct installation costs, you can have direct fixture costs, equipment costs, labor costs, depending on the measure. Depending on the program design.

Q. And what kind of considerations go into, you know, how you add particular costs to what goes into the monetary cost for the purposes of applying the TRC?

A. All right. If you look at -- monetary costs would be, for example, program overhead costs, program installation costs which could be, you know, materials and labor depending on the program, and incremental measure costs, if you're going to look at what the customer paid or what the utility pays.

Q. Okay. Depending on the program, what considerations would go into determining whether you would look at labor costs versus ignoring those costs?

A. Well, there's a good case in point in this proceeding that has to do with commercial lighting retrofit from T-12s -- the T-12 fixture to a T-8 fixture, for example.

If the program we designed is a retrofit program and, therefore, based upon our analysis, we would look at the measured costs, the equipment costs and the installation and labor to install. If you had a new installation, you might not include installation costs if it was a new equipment program or a new construction program.

Q. In your opinion should that consideration apply to any retrofit for equipment regardless of the particular installation?

A. This is where it's a case-by-case basis. For example, take a T-12 fixture, the base case action would be to replace the bulbs in the T-12 with high-output bulbs which are lower wattage, and a maintenance man could do that.

If you go beyond that to the alternative case, the more efficient case, then you would look at the labor to do that, you know, that retrofit, taking the fixture out, replacing the fixture, disposing of the old one, removing it, taking the bulbs out, taking the ballasts out, the old magnetic ballasts out, okay. So it's different on a case-by-case basis.

Q. Well, in the example that you just gave, are you suggesting there is no cost associated with the maintenance man's labor that would be required for that project?

A. That's a great question. And I will explain the answer to this. A maintenance man's job, generally speaking, is to go through a building and replace fluorescent bulbs. So to the extent that a maintenance man does it anyway, you have a maintenance man on staff and you might not include that cost. You might not. There are places -- it varies depending on where you are.

But my sense is that the maintenance man would do that work as a normal course of his business and his cost, his labor, is fixed, he works in the building every day.

If you do a lighting retrofit for this floor, for example, you have to move in new fixtures, T-8 fixtures, move the bulbs in separately, remove all the T-12s, if they were T-12s, put in the new ones. That installation labor is incremental, that's not something a maintenance man would do.

A maintenance man is part of the package of the building in that case.

Q. So it would be your opinion that to the extent the cost of that maintenance man's labor is essentially sunk, you wouldn't count it in the calculation.

A. No, I wouldn't say it's sunk. I would say it's associated with a base case activity, not the high efficiency case activity for that particular measure.

MR. O'BRIEN: Thank you, I think that's all the questions I have, your Honor.

THE WITNESS: Thank you.

EXAMINER PRICE: Mr. Smith.

MR. SMITH: Yes, sir.

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CROSS-EXAMINATION

By Mr. Smith:

Q. Good morning. My name is Craig Smith, I represent Material Sciences Corporation.

A. Good morning.

Q. Your counsel identified Exhibits 6, 7, and 8 as the plans for Ohio Edison, CEI, and Toledo Edison, do you recall that?

A. Yes, I do.

Q. Are you sponsoring those plans today?
A. I'm sponsoring those plans as part of my testimony, I'm here to describe those plans and answer questions on those plans.
Q. And you're sponsoring in total those plans including discussion language used in the plans?
A. I'm sorry, I don't understand the question.
Q. You're also sponsoring Exhibit 4 which is your prefiled testimony.
A. Yes.
Q. Okay. Now, the plans were dated December 15, 2009, correct?
A. Yes.
Q. And in preparing the plans were those plans written under your control or under the company's control?
A. Under my control, under Black & Veatch's control, and I was the responsible -- was the partner in charge for this engagement.
Q. All right. And it's customary for a work product of this type to allow the companies to review it for accuracy and input?
A. They certainly are entitled to review it

and did review it and were quite helpful, actually in the process. But all decisions on this report, you know, were made by the Black & Veatch folks. But we certainly took in the valuable input of the FirstEnergy people.

Q. What parts of the plan concerns narrative did your firm review it for accuracy and for truthfulness?

A. To the best of my knowledge, everything in those reports is true and accurate.

Q. Well, for Exhibit 8 which is the Toledo Edison plan, at page 25, if you could take a look at --

A. Exhibit 8?

Q. Exhibit 8 which is Toledo Edison's.

A. I don't -- I have to get that.

You said page 25?

Q. Yes.

A. Okay.

Q. Item 3, the discussion about interruptible rate tariff for C/I customers. Do you see that language?

A. Yes, I do.

Q. Is it true that the companies provided you with this language?

A. The company did provide this language, yes. And to our -- we discussed it with the company and we believed it was true and correct.

Q. Do you know when the company provided the language to you?

A. I couldn't tell you the exact date. I really don't remember. These plans, we were working on these right up till the last second. I'm not sure when we got these.

Q. Would you not agree it's more than likely a half second change rather than something put in this report in August of 2009, for example?

A. I don't understand the question, I'm sorry.

Q. All right. I'm asking you can you tell me at least a month you think this language was inserted into the plans?

A. I can't, no. I can't recall.

Q. Was this language inserted into the plans after you prepared your tables --

MS. KOLICH: Objection.

Q. -- that you're sponsoring to --

MS. KOLICH: This question's been asked several times.

MR. SMITH: No, this is a different one,

your Honor.

MS. KOLICH: The question that's been asked is whether or not he recalls when this information was inserted into the plans. He has said on several occasions that he does not recall, so asking him more questions about when it was inserted is asked and answered.

EXAMINER PRICE: I'm going to overrule the objection. I think Mr. Smith is asking a question about sequence and perhaps the witness will recall, perhaps he will not.

You can answer the question.

MR. SMITH: Thank you.

Q. Let me specifically refer you to your Exhibit FE-GLF-1 attached to your testimony.

A. Okay, I'm there.

MR. SMITH: May I have a moment?

EXAMINER PRICE: Yes.

Q. I want to rereference you to Exhibit FE-GLF-3 which concerns Toledo Edison, and there were attached to your exhibits these exhibits in sequence for the companies and I'm asking you to focus on the Toledo Edison part of the exhibits. Do you have those in front of you?

A. I'm on Exhibit FE-GLF-3.

Q. For Toledo Edison?
A. I'm sorry?
Q. For Toledo Edison.
A. Page 3 of 3.
Q. Yes.
A. Yes, sir.
Q. Okay. Do you recall when these exhibits were prepared?
A. These were prepared in December.
Q. After you inserted the language shown on page 25 of the report?
A. I don't recall.
Q. Would it make a difference in your conclusions whether the language in your report on page 25 was inserted after you prepared these exhibits?
A. The paragraph you referred to on page 25 of the plan discusses the fact that this issue is currently the subject of litigation and, therefore, it is not known whether the request for proposal process will be incorporated into the 2011 as currently contemplated.
I believe that's still the case.
Q. Does not page 25, the language starts out with the reference that the riders ELR and OLR are

expected by the companies to end May 31st, 2011?

A. Yes.

Q. And is it not the intent as expressed in this language that the RFP process would begin after the company's expected ending of riders OLR/ELR?

A. Yes.

Q. And does not this language refer to uncertainty whether those -- whether the RFP process actually will go in effect as planned?

A. Yes.

Q. Would it not, if you turn to Exhibit FE-GLF-2, page 3 of 3, would it not affect the information shown on that exhibit if the RFP process riders did not go into effect?

A. What specifically on GLF-3, page 3 of 3, are you referring to?

Q. Mercantile utility line, the energy and demand savings for years 2009 through 2012.

A. There are no energy and demand savings on that exhibit.

Q. Well, maybe we're looking at a different exhibit. I'm looking at page 3 of 3 --

A. Exhibit GLF-3.

Q. 2.

A. Oh, I'm sorry. I thought we were on 3.

I'm sorry.

MS. KOLICH: I'm sorry, could you give me which line you're referring to on that exhibit?

MR. SMITH: The "Mercantile Utility" line.

A. You can see that on that line you have the kilowatts saved at 85,857 for program year 2010, they drop down to 16,174 in 2011, and then go up slightly to 21,004 in 2012. There's a significant change in the amount of peak demand reduction that's expected from this particular program due to the uncertainty.

Q. What program did you refer to in your answer?

A. Mercantile -- you're talking about the, I'm sorry, you're talking about the interruptible, is that what we're talking about now?

Q. We are.

A. Okay.

Q. Let me ask it this way, why did the kW saved go down in 2011 when compared to 2010?

A. My recollection was that there was one customer that was -- that is included in 2010, a large customer that was removed from the savings calculation or projection of 2011.

Q. Is it your testimony that it does not matter to your numbers shown on this exhibit whether or not the RFP process begins in 2011 or never begins?

A. I think we've scaled back what we expect from this program. We'll get some kind of impact from it, but I don't think we're expecting the kind of impact we would get. Should we get the RFP process, I think we will be able to achieve and use that program going forward and overachieve our goals in kilowatt reductions.

Q. What would happen to the numbers shown on this exhibit if the RFP process never goes into effect?

A. I don't know.

MR. SMITH: Nothing further, thank you.

EXAMINER PRICE: Thank you.

Mr. Eckhart.

MR. ECKHART: No questions, your Honor.

EXAMINER PRICE: Mr. Heintz?

MR. HEINTZ: Some questions, your Honor.

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CROSS-EXAMINATION

By Mr. Heintz:

Q. Good morning, Mr. Fitzpatrick.

A. Good morning.

Q. My name is Michael Heintz, I am an attorney with the Environmental Law and Policy Center. Some clarification questions and some new questions, I think.

I'd like to keep your attention on the Exhibit FE-GLF-2, page 3 of 3 that you were just discussing.

A. Okay.

Q. Looking to about three/fourths of the way down there's a line that reads "Portfolio Plan Total - Cumulative Projected Savings."

A. We're on, I'm sorry?

Q. We're on FE-GLF-2, page 3 of 3.

A. Okay.

Q. About three/fourths of the way down, the left column, "Portfolio Plan Total - Cumulative Projected Savings."

A. Right.

Q. Now, earlier you were talking with Mr. Poulos about a lack of traction on new programs in 2009. Do you remember that?

A. Right.

Q. And by that I gather you mean that no new programs were launched in 2009?

A. Right.

Q. Looking to program year 2009, MWh saved where it reads "29,234."

A. Right.

Q. Is that projection, sitting here today, still correct?

A. To the best of my knowledge that projection is correct as of December 15th.

Q. Okay. Sitting here today, do you believe that number is correct?

A. There was additional mercantile savings that were applied for at the end of the year which would increase that number.

Q. If those -- and I see further up the page there is a line for mercantile self-direct, 24,864, those are the applications that have been applied for?

A. No, I think after December 15th there were additional savings applied for. I think that number is more like 350,000 now.

Q. Okay. Up from 24,000.

A. That's right.

Q. And those are applications that have been applied for.
A. Yes.
Q. Not granted.
A. Correct.
Q. And if those applications are not granted, that number will then go down.
A. You mean the 350,000?
Q. Whatever the projected savings are.
A. I think we've -- I think that there have been 20,000 megawatt-hours already approved by the Commission.
Q. Okay. Thank you. I just wanted to clarify that.
A. Okay.
EXAMINER PRICE: Excuse me, I just have a clarifying question.
Your exhibits across all three companies routinely are largely identical, but I notice that Exhibit FE-GLF-2, that you don't have the columns for program year 2009 for Ohio Edison Company and for CEI, but you do have them for Toledo. Can you explain why you dropped them in Ohio Edison and CEI?
THE WITNESS: You're on what, GLF-2?
EXAMINER PRICE: GLF-2.

THE WITNESS: We had savings in Toledo Edison that we accounted for.

EXAMINER PRICE: Okay. But there were no savings in Ohio Edison -- then one can infer there were no savings in Ohio Edison and CEI for program year 2009.

THE WITNESS: No -- yes, that's correct.

EXAMINER PRICE: Okay. Thank you very much.

Sorry.

MR. HEINTZ: Thank you.

Q. (By Mr. Heintz) Mr. Fitzpatrick, I'd like to discuss for a few minutes the solid-state lighting technologies that are discussed in the plan. And as I understand it, a light emitting diode or an LED technology is a form of solid-state lighting technology; is that correct?

A. Yes.

Q. The plans as submitted include solid-state lighting technology as a program; is that correct?

A. They do.

Q. And, in fact, in the three plans three solid-state lighting technologies have been provided.

A. That's correct.

Q. Are you aware of additional solid-state lighting technologies that are on the market today?

A. Yes, I am.

Q. Are you familiar with those technologies?

A. Yes, I am.

Q. Would the inclusion of additional solid-state lighting technologies assist the companies in achieving their energy efficiency benchmarks?

A. In our opinion, not in the three-year time frame. We looked at LED streetlighting, for example, which holds great promise, FirstEnergy as a matter of fact has one pilot in place already, it's West Akron Campus, with 15 fixtures, and is going to put another 15 fixtures in. So we're looking at that lighting type.

We believe for the three-year plan horizon a much better choice was high-pressure sodium. High-pressure sodium basically doesn't quite have the life that LED is supposed to have. We don't know whether or not it will achieve the life. But high-pressure sodium, the differential in kilowatt consumption is less than 1 percent annually for streetlighting.

I mean ultimately I think that could be a good technology but probably, you know, we've got to get the price down, the price is over two times, two or three times what HPS is right now, and also we don't know about reliability yet, we don't have enough data.

I think that, you know, Mr. Crandall made a comment in his deposition about LEDs, and I agree, I think looking at these LEDs is an important thing and we are, actually the company is doing it. As a matter of fact, I saw those LEDs over a year ago at the West Akron Campus, so they've been there quite a while.

So I think that in the future beyond 2012 LEDs are something to look at, but right now high-pressure sodium is the best bet.

Q. Okay. And I appreciate that answer, there will be a couple of things that I want to go back and revisit with you in that answer.

A. Sure.

Q. You mentioned first the pilot program at the West Akron Campus for the streetlighting.

A. Correct.

Q. Where in the plans is that pilot program described?

A. It's not in the plans because it doesn't generate any significant savings. It was a pilot undertaken by the company.

Q. So the company is in the process of accumulating data for future use.

A. Yes. I think the company is, A, in the process of accumulating data, they're putting another pilot in probably later this year on LED lights, and also induction lighting. And we also are looking at data across the country.

I mean, there is some data about LEDs, but I don't think it's risen to the level yet where we can say, yeah, let's put this in the arsenal of energy efficiency measures.

It certainly does not have the economics or the dramatic improvement in measured life or measured cost to -- as a matter of fact, the measured costs are higher for LEDs. It doesn't really warrant to be put in at this point in time.

But it certainly warrants to be looked at and continue to be looked at over the next three to five years to see if prices do come down and reliability meets the expectation.

Q. Thank you.

Turning to another topic that you discussed with regards to labor costs used in the model. I understand that you included, for example, in the lighting, C&I lighting program, you include labor costs in your modeling.

Did you also include the labor savings that would result from the retrofits in your modeling process?

A. No, we did not.

Q. Okay. Thank you.

MR. HEINTZ: Thank you, your Honor, I have nothing further.

EXAMINER PRICE: Thank you.

Mr. Reisinger?

MR. REISINGER: Yes, your Honor, I have just a couple questions.

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CROSS-EXAMINATION

By Mr. Reisinger:

Q. Mr. Fitzpatrick, my name is Will Reisinger. I represent the Ohio Environmental Council in this case.

A. Good morning.

Q. I believe in response to OCC's line of questioning you said that the goals of Senate Bill 221 are laudable; is that correct?

A. I think they are, yes.

Q. Okay. And do you also believe that the energy savings envisioned by that statute are laudable?

A. I think they're -- are we talking about the short-term or are we talking about the long-term savings to 2025?

Q. Yes.

A. The 2025 savings levels --

Q. Excuse me. Let me -- if you could answer maybe, if it would help, the short-term savings are laudable through 2012?

A. I think they're aggressive.

MR. REISINGER: I have no further questions.

EXAMINER PRICE: Thank you.

Mr. Lavanga.

MR. LAVANGA: Yes, your Honor, just a couple questions.

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CROSS-EXAMINATION

By Mr. Lavanga:

Q. Good morning, Mr. Fitzpatrick.

A. Good morning.

Q. My name is Mike Lavanga. I'm an attorney for Nucor Steel Marion. I have just a couple questions.

To start out with, would you agree with me that many of the programs in the FirstEnergy portfolio plan provide both peak demand reduction and energy efficiency benefits?

A. Yes.

Q. Okay. And you're responsible for performing the total resource cost test on all of the FirstEnergy's proposed programs, correct?

A. That's correct.

Q. Okay. And you performed a TRC on the company's and industrial interruptible program which includes FirstEnergy's current required ELR interruptible rate; is that correct?

A. I believe so, yes.

Q. Now, in performing the TRC did you take into account any avoid -- in performing the TRC on the interruptible rate did you take into account any avoided energy benefits associated with FirstEnergy's ability to call economic interruptions under ELR?

A. I don't recall, I'll have to check that.

Q. Okay. And did you take into account any reliability benefits associated with interruptible lates, interruptible load?

A. Again, I'll have to if I could provide it to you; I don't recall that, no.

Q. You don't recall, okay.

Do you know whether you took into account any economic development benefits associated with rider ELR?

A. No.

Q. You didn't.

A. Did not. No.

Q. Would you agree with me generally, then, that the TRC doesn't encompass all the benefits that an interruptible rate can provide?

A. I think that the -- I think there are other benefits that may not be easily quantified. I do think that, you know, we looked at the costs, we looked at the appropriate avoided costs for that analysis, but there may be other benefits that could be included if we could quantify them.

Q. Okay. I want you to turn briefly to Company Exhibit 6 which is the Ohio Edison plan. And if you could turn to page 143. Are you there, Mr. Fitzpatrick?

A. 143, Ohio Edison plan.

Q. Yes. Around the middle of the page there is a paragraph marked "B" that describes how your team developed forecasted capacity prices. Do you see that?

A. I do.

Q. Can you explain to me how you developed those avoided capacity prices?

A. These avoided capacity prices were developed by FirstEnergy and provided for our team -- to our team.

Q. Do you know who at FirstEnergy provided you with those?

A. I don't know the name of the person that did it, no. But I think it was provided, if I'm not mistaken, maybe from the unregulated side so it's confidential information. Some of it was confidential.

So we used -- we took proxies I think, we looked at other studies we had done for other companies and we basically used a proxy but we also used the ELR and OLR rates that we put into that as avoided costs.

Q. So is it correct that you have no personal knowledge of how the market prices were developed? They were just given to you.

A. We received information from FirstEnergy, but we also compared that with other work we had done for other companies.

EXAMINER PRICE: I'd like you to clarify. When you say you received those information from FirstEnergy, did you receive that information from the FirstEnergy utilities?

THE WITNESS: Yes.

EXAMINER PRICE: From the utilities.

THE WITNESS: You know, if I -- can we take a break perhaps and I can check this out?

EXAMINER PRICE: No. No. I don't think so.

THE WITNESS: We received some information from the regulated side -- from the unregulated companies. But I want to make sure I --

EXAMINER PRICE: But you received other information from --

THE WITNESS: Well, we had other information we had from other studies that we had done for companies. Marginal cost studies.

EXAMINER PRICE: Okay.

Q. (By Mr. Lavanga) And you don't know who in particular developed these market prices, where they came from?

A. Well, the 2010 avoided costs came from what the company expected to pay in 2010. The 2011, we used other information available that we projected.

Q. What other information?

A. We have done avoided cost studies, Black & Veatch has done avoided cost studies for other companies, and we looked at a mix of those kinds of studies and we also looked at what rates were -- what avoided costs would be appropriate given the ELR and OLR rates.

Q. I'm not talking about ELR/OLR here, I'm talking about just generally the avoided capacity costs you used to develop the TRC analysis for all the programs.

A. I will have to get back to you on that. I don't have that -- I do not want to misspeak.

Q. But, again, these were -- the information on the avoided costs, they were -- they're market prices and they were provided to you by FirstEnergy.

A. Yes.

Q. And you've reviewed them, but you don't know any detail about how they were developed.

A. No.

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

EXAMINER PRICE: Thank you.

Mr. Clark?

MR. CLARK: No questions, your Honor.

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

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

Mr. Lindgren.

MR. LINDGREN: Yes, thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Lindgren:

Q. Mr. Fitzpatrick, my name is Tom Lindgren and I am representing the staff of the Commission.

A. Good morning.

Q. Good morning.

You were previously asked a question regarding the sources used in conducting your total resource cost analysis, and you mentioned using other sources for developing your avoided costs. Can you explain what those other sources were?

A. We have performed analyses, marginal cost analyses, avoided cost analyses, for the utilities in the northeast and the midwest, some of which I would say is confidential pending filing of the cases, and they're for electric utilities, and we looked at those costs as a benchmark to assess a reasonableness of the costs that we have.

Q. Thank you.

Did you use only one set of avoided cost estimates?

A. No. We used a -- we had a base and a high case.

Q. So you had two sets?

A. Yes.

Q. Thank you.

MR. LINDGREN: Thank you. No further questions.

EXAMINER PRICE: Redirect?

MS. KOLICH: I need some time to --

EXAMINER PRICE: Approximately how long?

MS. KOLICH: Probably about 15 minutes.

EXAMINER PRICE: 15 minutes will be just fine. Let's reconvene at 11:50.

(Recess taken.)

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

Redirect, Ms. Kolich?

MS. KOLICH: Yes, thank you, your Honor.

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REDIRECT EXAMINATION

By Ms. Kolich:

Q. Mr. Fitzpatrick, counsel for OCC asked you several questions regarding the Pennsylvania versus the Ohio CFL programs. Do you recall that?

A. I do.

Q. And he also asked you some questions about Appendix B as in "boy." Do you recall that?

A. Yes.

Q. And specifically he was asking you questions about the first group of programs, the FirstEnergy prefiled programs. Do you recall that?

A. Yes.

Q. And when you were responding, you indicated that you didn't look at the details of the numbers, but you looked at the reasonableness of the numbers. Is that correct?

A. That's correct.

Q. Could you explain a little bit how you looked at the reasonableness of those numbers?

A. I think we compared the program costs between, for example, what was in Ohio versus what we had designed in Pennsylvania. I know that the, for example, the CFL program in Pennsylvania was more expensive than the Ohio numbers that we had.

Q. Okay. Counsel for OCC also asked you about the goals in Pennsylvania versus Ohio. Do you recall that conversation?

A. Yes.

Q. I believe, I don't remember the exact term you used, but the impression was that Ohio's were a little more aggressive than Pennsylvania?

A. Yes.

Q. Is that a fair characterization?

A. That is.

Q. What leads you to that conclusion?

A. Well, the Pennsylvania -- the first hurdle was in 2011, and secondly the Ohio goals required prorated savings as opposed to the Pennsylvania goals are annualized savings, which makes a significant difference.

EXAMINER PRICE: Can you explain for my benefit why it makes such a significant difference? When the fire trucks have passed by.

THE WITNESS: Let's take, for example, the CFL program. If you start installing CFLs or distributing CFLs in January and you distribute, say, a hundred a month across 2010, at the end of the year in Pennsylvania the company would get credit for 1,200 CFLs towards its goal.

Not so in Ohio, because if in January you get 11 months' credit, February you get 10 months' credit, 9 months and so on. So whatever you install -- for example, if you install bulbs in November and December of 2010, you'll get two months in one month credit.

So the energy savings are significantly impacted by that, the timing of those towards the annual goals.

EXAMINER PRICE: Which approach better reflects the actual energy savings that would be gained?

THE WITNESS: The annualized approach I think is a cost-effective way to look at the long-term savings.

EXAMINER PRICE: Thank you, but that's not my question. My question is which approach for the year of installation better reflects the actual energy savings?

THE WITNESS: Well, the prorated goals would reflect the actual energy savings in that year.

EXAMINER PRICE: Thank you.

THE WITNESS: But it's a much more costly way to do it.

EXAMINER PRICE: I understand.

Thank you.

Q. (By Ms. Kolich) Counsel for MSC asked you several questions about your Exhibit FE-GLF-2, page 3 of 3, regarding Toledo Edison Company. Do you recall that?

A. Yes.

Q. And specifically he was focusing on the line item "Mercantile Utility." Do you recall that?

A. Yes.

Q. Now, with regard to the program year 2011, what assumptions were made in determining the numbers included on that line item for that year with regard to the ELR/OLR interruptible program?

A. The ELR/OLR interruptible program is projected to stop in May of 2011.

Q. Also, on GLF-3, page 3 of 3, Mr. Heintz asked you some questions specifically regarding the mercantile self-direct and the number 24,864. Do you recall that?

A. Yes.

Q. When you were responding, you indicated there were approximately 350,000 megawatt hours included in additional programs filed. Do you recall that?

A. Yes, I do.

Q. Was that specific to Toledo Edison, just for clarification on the record, or was that in total for the three companies?

A. It was across the three companies.

Q. Okay. Now, the Attorney Examiner asked you about your exhibit that included 2009 results in GLF-2 for Toledo Edison.

A. Right.

Q. But not for GLF-2 for the other two companies. Do you recall that?

A. Yes.

Q. I believe you indicated that there was only savings for Toledo Edison but not Ohio Edison and CEI.

A. I misspoke. We should have removed 2009 from the Toledo Edison exhibit, GLF-2, page 3 of 3. There were savings for the other two companies as well that were removed.

EXAMINER PRICE: Can I ask a follow-up?

THE WITNESS: Sure.

EXAMINER PRICE: Are the savings in GLF-2, page 3 of 3, for 2009 for Toledo Edison, are they accurate?

THE WITNESS: Yes, sir.

EXAMINER PRICE: Thank you.

MS. KOLICH: I hope so.
THE WITNESS: As of December 15th, they are. Yes, sir.
EXAMINER PRICE: Thank you.
Q. (By Ms. Kolich) There was quite a few questions about labor costs with regard to the C&I lighting retrofit program. Do you recall those conversations?
A. Yes.
Q. In your expert opinion do you believe the calculation made by Black & Veatch in the plans is correct?
A. Yes, I do. I think that reviewing the literature and reviewing practices of other companies would indicate that's an appropriate way to approach this by including installation costs.
However, I will say that you could also compute a TRC with different levels of installation costs, for example, there are alternate ways of doing the analysis which would increase the TRC.
Q. Okay, thank you.
Now, Mr. Lavanga asked you some questions about the TRC calculations regarding the ELR/OLR. Do you recall that?
A. I do.

Q. In your opinion is a TRC calculation appropriate?

A. Not for this particular case because I think that this is a rate and I think that the rate is -- if the rate's cost justified, I probably wouldn't rely on the TRC. There are other tests that you might look at the rate impact measure, for example, or the utility cost test, for example, that might be more appropriate.

MS. KOLICH: I'm waiting on that one piece of information, your Honor.

EXAMINER PRICE: You don't have to keep asking questions, we can just go off the record.

MS. KOLICH: Can we go off the record?

EXAMINER PRICE: Yes.

(Off the record.)

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

MS. KOLICH: That's all I have, your Honor.

EXAMINER PRICE: I have a couple of questions.

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EXAMINATION

By Examiner Price:

Q. Just to be clear, referring back again to Exhibits FE-GLF-2, notwithstanding the waiver of the 2009 benchmark given to the FirstEnergy companies recently by the Commission, your plan will hit the -- your plan is designed to hit the cumulative benchmark for 2009 and 2010; is that correct?

A. At the end of 2010, yes, sir.

Q. At the end of 2010.

A. Correct.

Q. Okay. I'm turning to your testimony on page 8. When you say each plan, as filed, will meet or exceed the targets established by Senate Bill 221 for the period January 1st, 2010, through December 31st, 2012, that's conditioned upon one of two procedural things happening: One was an accelerated procedural schedule for this proceeding, or two would be Commission approval of the fast-track programs; is that correct?

A. That's correct.

Q. And if neither of those two things happen, then your programs are not designed to hit the 2010 benchmarks; is that correct?

A. I have to -- I can't give you a "yes" or "no," I just have to give you an explanation.

Q. Sure.

A. If the fast-track programs are approved in the time frame that we've identified, then that's one condition that will definitely help us get there. The second thing is we're planning the remainder of the programs would launch somewhere around July 1.

Q. Okay.

A. So if those two targets are hit, the programs that we've designed and the rollouts we've designed, the participation levels that we've gotten from survey work that we have done on Ohio customers for the three operating companies indicate that we would meet the 2010 benchmark.

Q. And I don't know if you were aware, but we heard testimony yesterday that roughly 50 percent of the 2010 benchmark for all three companies will be achieved by historic mercantile savings; is that correct?

A. That's my understanding.

Q. I have one more about the scope of your testimony. You are not testifying, it's my understanding, about the shared savings component.

A. That's correct.

Q. So you're not recommending one way or the other approval of the shared savings component. You have no recommendation on that.

A. I know that the company witness did consult me about it.

Q. Okay. And you're not providing any support one way or the other for the 15 percent level that the company witness testified for.

A. Well, I certainly did speak to the witness about it and from my recollection, my experience, the 15 percent was a reasonable number.

Q. Okay. Well, then let's take two hypotheticals.

A. Okay.

Q. Imagine, all other things being equal, you had two public utilities, the first public owns utility generation, the second public utility purchases all their generation in the wholesale market. Do you believe that those two public utilities have an equal incentive to exceed the statutory benchmarks?

A. Equal incentive in terms of earning an incentive return?

Q. An equal incentive in terms of, yeah, earnings -- we'll go with that for now.

A. I think that they would have equal

incentive. If they're getting incentive return, I think they would have equal incentive, especially if it's on EE&PDR costs.

Q. I guess that's not where I was going with that.

Do you believe that you would need to give them -- that the Commission would need to give those two public utilities, all other things being equal, an equal incentive to exceed the statutory benchmarks?

A. In my opinion, yes, given that it's based on programmatic endeavors, yes.

Q. And you believe that's the case even though a utility that owns generation will not just be giving up distribution sales, but will be giving up actual commodity sales.

A. The commodity sales are basically they're recovering their costs to serve. The difference is --

Q. That assumes that they're pricing on their cost of service though, doesn't it?

A. Well, I'm talking hypothetically, I think.

Q. It's my hypothetical so let's assume that they're not priced on a cost-of-service basis.

A. I don't think I can answer the question.

Q. Okay.

EXAMINER PRICE: Thank you.

THE WITNESS: Sure.

EXAMINER PRICE: You're excused. Thank you very much.

THE WITNESS: Thank you.

EXAMINER PRICE: Ms. Kolich.

MS. KOLICH: Does anybody want to --

EXAMINER PRICE: Oh, my goodness, we didn't do redirect.

MS. KOLICH: I did redirect.

EXAMINER PRICE: We didn't do recross my mistake, I was so excited for my questions.

MS. KOLICH: I'll be happy to --

EXAMINER PRICE: Mr. Poulos.

MR. POULOS: No questions, your Honor.

EXAMINER PRICE: Mr. Sites.

MR. SITES: No questions.

EXAMINER PRICE: Mr. O'Brien.

MR. O'BRIEN: Your Honor, just one or two.

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RECROSS-EXAMINATION

By Mr. O'Brien:

Q. Mr. Fitzpatrick, the decision to either add or omit a labor component into the cost figures is still a matter of professional judgment; is that correct?

A. I think it's the correct approach, but I do know there are alternative cost-effectiveness analyses that would modify -- that could modify that labor component. So I think there's a range of TRCs that would be reasonable.

Q. And, as reflected in the lighting programs included in FirstEnergy's portfolio, not all of the lighting programs do include labor costs.

A. It would depend on the circumstance, yes.

MR. O'BRIEN: Thank you.

EXAMINER PRICE: Mr. Smith.

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RECROSS-EXAMINATION

By Mr. Smith:

Q. On redirect your counsel asked about the assumed ending date of the ELR riders. Do you remember that?

A. Yes, I do.

Q. And you testified it would be May 2011,

correct?
A. To the best of my knowledge, yes.
Q. And turning to the Exhibit GLF-2, page 3 of 3, for Toledo Edison --
A. Yes.
Q. -- looking at the "Mercantile Utility" line for program year 2010, what did you assume for the ELR rider effectiveness for that year?
A. In terms of impact?
Q. In terms of whether or not it was in effect during the entire year.
A. We assumed it was in effect.
Q. And did that result in the kW saved of 85,857 kWs?
A. Yes.
Q. Now, in 2011 you assumed the ELR required would be in effect for five months?
A. Yes.
Q. And you produced a savings of kW of 16,174, correct?
A. Yes.
Q. Would that all be attributed to the ELR rider?
A. Yes. You have a portion of year of this, we have a total of a hundred hours obligation, so we

took a component of that.

Q. So what happened --

A. Excuse me, I'm sorry. And there's one other customer I think we assumed would not participate.

Q. What accounts for the 16,174 kW saved in the remaining part of 2011?

A. Well, you would achieve that -- you have to look at the top 100 load hours, so to the extent you have a hundred load hours, the top 100 load hours, any of those in the first five months, they would be included in that analysis.

Q. Am I correct the total amount of savings for 2011 still resulted from the ELR being in effect for the first five months of 2011?

A. That's our assumption.

Q. What's your assumption for 2012?

A. We have assumptions on interruptible, but we do have -- you can see a big difference from 2010, '11, to '12, and that has to do with one particular customer, a large customer, not being part of this.

Q. In the remainder of 2011, did you assume any other program would replace the ELR rider?

A. We are still uncertain as to whether the interruptible rate will be approved, so we did not.

Q. Would that be the same answer for 2012 also?

A. To the best of my knowledge, yes. I don't recall the exact detail, but yes.

MR. SMITH: Thank you.

EXAMINER PRICE: Mr. Eckhart?

MR. ECKHART: No questions, your Honor.

EXAMINER PRICE: Mr. Heintz?

MR. HEINTZ: No questions, your Honor.

EXAMINER PRICE: Mr. Reisinger?

MR. REISINGER: No questions, your Honor.

EXAMINER PRICE: Mr. Lavanga?

MR. LAVANGA: No questions, your Honor.

EXAMINER PRICE: Mr. Clark?

MR. CLARK: No questions, your Honor.

EXAMINER PRICE: Mr. Lindgren?

MR. LINDGREN: No questions.

EXAMINER PRICE: Ms. Kolich?

MS. KOLICH: No questions.

EXAMINER PRICE: Exhibits?

MS. KOLICH: Yes, at this time, your Honor I would like to move into evidence Company's Exhibits 6, 7, 8, and 9.

EXAMINER PRICE: Any objection to the admission of Company Exhibits 6, 7, 8, and 9? Did.

You say 4 also?

MS. KOLICH: I'm sorry, no, I didn't. And also it would be nice if Mr. Fitzpatrick's testimony got admitted as well.

EXAMINER PRICE: Any objection to the admission of Company's Exhibit 4 as well as 6, 7, 8, and 9?

Seeing none, those exhibits will be admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Mr. Poulos.

MR. POULOS: Thank you, your Honor. Your Honor, we ask to move into evidence OCC Exhibit 11, the CFL program costs.

EXAMINER PRICE: Any objection to the admission of OCC Exhibit 11?

Seeing none, Mr. Poulos, at the break I'd like another copy of OCC 10 and OCC 11 for my colleague.

(EXHIBITS ADMITTED INTO EVIDENCE.)

MR. POULOS: Thank you.

EXAMINER PRICE: At this time we are going to take a slightly extended lunch break, as I indicated while we were off the record -- you're excused.

THE WITNESS: Thank you.

EXAMINER PRICE: -- we will reconvene five minutes after the conclusion of the Commission meeting at 1:30, which I anticipate will be 1:50. We'll see you then, thank you.

(Lunch recess taken at 12:15 p.m.)

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Wednesday Afternoon Session,
March 3, 2010.

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EXAMINER BOJKO: Let's go on the record.

I believe that our next witness, NRDC, would you like to call your witness?

MR. ECKHART: Yes, your Honor.

Mr. Dylan Sullivan, please, will take the stand. Your Honor, I've provided the court reporter with a copy of his testimony and ask that it be marked as NRDC Exhibit 1.

EXAMINER BOJKO: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER BOJKO: Mr. Sullivan, can you please raise your right hand?

(Witness sworn.)

EXAMINER BOJKO: Please be seated.

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DYLAN SULLIVAN

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

DIRECT EXAMINATION

By Mr. Eckhart:

Q. Would you state your name, please?

A. Dylan Emmanuel Sullivan.

Q. Who are you employed by?
A. The Natural Resources Defense Council.
Q. Do you have before you what's been marked as NRDC Exhibit 1, being your direct testimony?
A. Yes, I have my direct testimony in front of me.
Q. And do you have any modifications/changes to make to that testimony?
A. I do, I have two changes I would like to make.
Q. What's that?
A. If you turn to page 6, question 14, "Have other shared savings mechanisms," should read "Have other existing or proposed shared savings mechanisms."
Q. And other than that?
A. And the next question, question 15, "Does AEP's shared savings mechanism," should read "Does AEP's stipulated shared savings mechanism."
Q. Do those changes make any difference in the content or answers that you've provided in that testimony?
A. No, they don't.
Q. Other than that, is the testimony that you've provided in NRDC Exhibit 1 true to the best of

your knowledge and belief?

A. Yes, it is.

MR. ECKHART: Your Honor, I submit Mr. Sullivan for cross-examination.

EXAMINER BOJKO: Thank you.

Mr. Clark.

MR. CLARK: No questions, your Honor.

EXAMINER BOJKO: Mr. Lavanga?

MR. LAVANGA: No questions, your Honor.

EXAMINER BOJKO: Mr. Reisinger.

MR. REISINGER: No questions, your Honor.

EXAMINER BOJKO: Mr. Heintz?

MR. HEINTZ: No questions, your Honor.

EXAMINER BOJKO: Mr. Smith?

MR. SMITH: No questions.

EXAMINER BOJKO: Mr. O'Brien.

MR. O'BRIEN: No questions, your Honor.

EXAMINER BOJKO: Mr. Allwein?

MR. ALLWEIN: No questions, your Honor.

EXAMINER BOJKO: Company.

MS. KOLICH: Yes, your Honor, I have a few questions.

EXAMINER BOJKO: I'm sorry.

MR. REILLY: My name is Steve Reilly, I'm here on behalf of the staff of the Public Utilities

Commission, and we have no questions.

EXAMINER BOJKO: You have no questions. Please proceed, Ms. Kolich.

MS. KOLICH: Thank you.

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CROSS-EXAMINATION

By Ms. Kolich:

Q. Good afternoon, Mr. Sullivan. My name is Kathy Kolich, and I'm an attorney for the companies and I'm going to be asking you some questions this afternoon. If at any time you don't understand one of my questions, feel free to ask me to rephrase, I'll be happy to do so, otherwise I'll assume you understood my question.

A. Good afternoon.

Q. You're aware that the companies propose a shared savings mechanism in its plans, correct?

A. Yes.

Q. And basically the shared savings will be calculated, as you indicate in answer 8 on page 3 of your testimony, by multiplying the net benefits by 15 percent; is that correct?

A. I also say that the net benefits are calculated by using the utility cost test.

Q. With that correction, have I

characterized it correctly?

A. Yes.

Q. Let's talk first about the 15 percent, you think that it is an acceptable -- the 15 percent is an acceptable level, don't you?

A. I stated in my deposition that in the AEP stipulation we determined that 15 percent was a reasonable number.

Q. And you're referring to page 24 of your deposition; is that correct?

A. Yes. So I could -- if I can correct myself.

Q. Sure.

A. I just said that I said in my deposition that the AEP 15 percent was reasonable, but actually in my deposition I said I don't really take a position on if 15 percent is reasonable or not.

15 percent is what NRDC stipulated to in the AEP program portfolio plan case. And then going off quote, of course, I don't think we would have signed anything that we don't consider reasonable.

Q. Okay. And if I can direct you to the next line in that transcript of your deposition on page 24, you go on to say "I would also note that, well, I don't know in the application, but 15 percent on a national level is generous, but I think it's -- I think it's acceptable." Is that correct?

MR. ECKHART: You're asking him if that's what it says?

MS. KOLICH: Yes, I am.

A. Well, yes, that is what it says.

Q. Thank you.

Now, talking the net benefits aspect of the calculation, you recommended that a TRC test be used rather than -- total resource cost test, TRC test -- be used rather than a utility cost test, the UCT; is that correct?

A. For the purposes of calculating net benefits, that's correct.

Q. Okay. Now, in your testimony on answer 18 found on page 8 --

A. Just a moment.

Q. Sure.

A. I'm sorry, are we talking testimony or deposition?

Q. Testimony.

A. Question 18?

Q. Yes.

A. Yes.

Q. The reason you prefer the TRC over the

UCT test is because otherwise the company would be encouraged to lower incentives; is that correct?

A. That's correct. One reason that -- well, it's not fully correct. One reason why it makes sense to use the total resource cost test as opposed to the utility cost test is that it doesn't have that problem that I indicated.

Q. Let's clear the record. Which problem is that?

A. I said that the problem that I am mentioning right now.

Q. To encourage lower incentives?

A. To encourage lower incentives, that is not the only reason the TRC is preferable to the utility cost test. The reason I give for that is in the first sentence of that answer to question 18.

Q. Okay. Now, you would agree with me that incentives need to be at a level that the market wants, wouldn't you?

A. Yes, that's correct.

Q. Because if those incentives are too low, participation levels will diminish; is that correct?

A. A program isn't designed -- a program's success isn't only a function of the incentives that are provided, program design also comes into play, but in general if incentives were lowered substantially, you would expect to see lower performance.

Q. Participation, is that the same thing?

A. Yes.

Q. And if there's less participation, it makes it more difficult for the companies to meet their statutory benchmarks; isn't that right?

A. Yes, that's right.

Q. Now, are you aware -- strike that.

Do you know if utilities are subject to penalties if they fail to meet their statutory benchmarks?

A. Utilities are subject to penalties provided that the reason they do not meet the benchmark is not for -- is for a reason beyond their control.

Q. Okay. Now, are you familiar with the ESP stipulation that was approved by the Commission in 08-935-EL-SSO involving the companies?

A. Yes, I am.

Q. And the NRDC signed that stipulation, didn't they?

A. Yes, we signed that stipulation. We had a footnote disagreeing with the collection of lost revenues for effectively six years, but we did sign that stipulation.

Q. And by signing the stipulation the NRDC agreed to lost revenue recovery for programs implemented in 2009, 2010, and 2011; isn't that right?

A. That is what I say in my testimony, yes.

Q. In your testimony on page 13, just to clear something up, it's in answer 30, about three, four lines up from the end of answer 30 you talk about how might lost revenue collection restore revenue to the company that was, therefore, lost, and you talk about this example that in an abnormally warm summer, for example, in the appliance recycling program, that might happen. Do you see that?

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

(Discussion off the record.)

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

Could you please read that last question again?

(Record read.)

A. Yes, I do see that.

Q. Now, the opposite would occur in an

abnormally cool summer, wouldn't it?

A. The point here is that there are a lot of things that could happen to affect the company's recovery of its fixed costs, and one of the problems with lost revenue recovery is it just isolates one of those things which is the verified energy savings of energy efficiency programs.

So it could be that an abnormally cool summer has the opposite effect of the one that I describe in my testimony, but it could also be that normal load growth has similar effect to what I was talking about of a hot summer.

So there are a lot of different factors at play here that affect a utility's recovery of its fixed costs.

MS. KOLICH: Your Honor, I would move to strike that response, it has nothing to do with the question I asked, which was a very simple "yes" or "no" question.

MR. ECKHART: Your Honor, there are no simple "yes" or "no" questions in this field. He's entitled to explain his answer and that's what he was doing.

MS. KOLICH: The question wasn't what the point was he was trying to make. I just asked if the opposite would occur if it was a cool summer.

EXAMINER BOJKO: Thank you. The motion to strike is granted.

Can you reask your question, Ms. Kolich?

MS. KOLICH: Sure.

Q. (By Ms. Kolich) In your example you talk about a warm summer. The opposite effect would happen if the summer was abnormally cool; isn't that correct?

A. Yes.

Q. Let's move on to revenue decoupling. I'm going to be only talking about electric utilities. I understand there are slightly different answers for gas utilities, so let's just stick with electric utilities for now.

Revenue decoupling for electric utilities in Ohio is not required; is that correct?

A. I think there are differences of opinions about whether Commission proceedings on regulatory decoupling are required, and one of the reasons people might think that it is required is because of language that was in the stimulus bill, the American Recovery and Reinvestment Act. But I think nowhere in Ohio law does it require electric utilities to implement revenue decoupling.

Q. And no electric utility in Ohio has a revenue decoupling mechanism in place today, do they?
A. No, they do not.
Q. In fact, no electric utility in Ohio has even proposed a revenue decoupling mechanism as of today, have they?
A. They have not.
Q. And there are no regulations in place that would provide guidance as to how revenue decoupling would occur in Ohio, are there?
A. Just a moment, Kathy.
Q. Sure.
A. In my deposition I said that Ohio law or Ohio Revised Code Section 4928.66, Section (D), mentions revenue decoupling, and to my knowledge that -- the paragraph about revenue decoupling in the law is the only thing, quote/unquote, on the books in Ohio about revenue decoupling.
Q. Okay. So back to my question, though, there are no regulations in place that would provide guidance as to how to apply that provision that you're referring to in the law; is that correct?
A. I think the law contains a bit of guidance, and I talk about this in my deposition because I indicated I did not have the law in front

of me.

MS. KOLICH: Could I have my question reread, please?

(Record read.)

Q. I'm not talking about guidance in the law, I'm talking about regulations that would provide guidance. Are you aware of any?

A. No.

Q. Are you aware of any Commission orders or directives that require electric utilities to decouple?

A. No.

Q. Now, in your testimony in answer 33, page 14, you define revenue decoupling; is that right?

A. Yes, I do.

Q. Now, this definition isn't based on Ohio law, is it?

A. It isn't, but I believe that it corresponds to the guidance that I mentioned earlier that is in Ohio law. But it is chiefly not based on Ohio law, it's based on what the field recognizes revenue decoupling to be.

Q. "The field"? What do you mean by "the field"?

A. I mean the energy efficiency community.

Q. But not the legislators in Ohio.

A. As I mentioned earlier, I think the legislators in Ohio provided a bit of guidance in the law about what revenue decoupling is.

Q. Now, you believe that revenue decoupling should be decided in this proceeding, don't you?

A. I believe it could happen in this proceeding. The Commission could also decide to end lost revenue recovery for incremental energy savings created in 2012 and put forth some sort of process to develop a revenue decoupling mechanism that could be put in place in 2012.

Q. Would you turn to page 52 of your deposition, please.

Are you there?

A. Yes, I am.

Q. Specifically line 1, the question reads "So, am I hearing you say we should address how revenue decoupling in 2012 should be done in FirstEnergy's plan in this case? Is that your position?"

Your answer on line 5 was what?

MR. ECKHART: Are you just asking him to read the answer?

MS. KOLICH: Let me rephrase the

question.

Q. Line 5 reads "Yes"; is that correct?

A. Line 5 reads "yes," but line 12 on the earlier page reads "Well, I said it could be either."

Q. Okay. So after you said that and I asked for clarification, that came based on the question I just read to you and your response; is that correct?

A. Yes.

Q. Now, in your testimony on page 2 in answer 5 -- and you don't need to go there if you remember -- you mention a Michigan Public Service order adopting a revenue decoupling pilot. Do you recall that?

A. I'm sorry, what page of my testimony?

Q. Page 2, answer 5.

A. I think the question is actually on a different page.

Q. All I'm asking is do you reference a Michigan Public Service order adopting a revenue decoupling pilot mechanism in your testimony?

A. Yes, I indicated that I consulted the orders.

Q. Okay. But you're not proposing that Ohio adopt the Michigan decoupling model, are you?

A. No; I mention those orders because I

thought that they had presented a good model for the Commission to use if they did decide to implement a revenue decoupling mechanism.

MS. KOLICH: Could I have the answer reread, please?

(Record read.)

Q. I'm a bit confused. Are you or are you not recommending that the Commission follow the Michigan model if it chooses to implement revenue decoupling?

A. I'm saying it's a good model but that the Commission shouldn't, you know, merely take everything in the orders and apply it to Ohio.

Q. So your answer is "no" -- or, your answer is "yes," you're not recommending the Michigan model.

A. Yes, that's correct.

Q. In fact, in your testimony you did not propose any specific decoupling methodology, did you?

A. I proposed that the Commission adopt a revenue decoupling model that meets the definition I gave in my answer to question 33. I also said that it should apply to the RS rate class.

Q. And you also take no position on whether there should be a uniform decoupling model in Ohio; is that correct?

A. That's correct.

Q. Let's shift gears into the C&I lighting for a few minutes. I think it begins on page 16 of your testimony in answer 38. You take issue with the company's TRC calculation for the C&I lighting; is that correct?

A. Yes, I did.

Q. Okay. Is it your position that the TRC results should be greater than 1 for that C&I lighting retrofit that you're referring to as the .66?

A. I wouldn't describe my position as saying the number should be any other number. In my testimony I talk about the analytical approach that I think the company should use in determining the cost-effectiveness of commercial lighting.

Q. And you don't promote any specific result because you did not run a TRC test, did you?

A. I did not.

Q. And most of your discussion about this program, this lighting program, revolves around the inclusion of labor costs; is that correct?

A. It's not so much the fact that labor costs are included, is how they are included.

Q. And what's your understanding of how

they're included?

A. My understanding is that the full labor cost of the transition from a T-8 to a T-12 lighting system is included in the costs that go into the cost-effectiveness calculation.

Q. And just so we're clear on which program we're talking about, this program involves the replacement T-12s to T-8s; is that correct?

A. The program involves, I believe, a suite of commercial lighting technologies, but this is one of the main measures embedded in that program.

Q. The T-12s to T-8s?

A. Yes.

Q. Okay. Let's focus on that, because isn't that the one that's causing the overall TRC for that lighting suite to be lower than you otherwise think it should?

A. Yes. The cost-effectiveness of that measure is dragging down the program in the portfolio.

Q. Now, you don't know the details involved in retrofitting T-12s with T-8s, do you?

A. No, and I didn't need to know all the details in order to write my testimony.

Q. Nor do you know the amount of labor

necessary to make such a retrofit, do you?
A. No, and I didn't need to know that to write my testimony.
Q. And you don't know the voltage for one of the fixtures that would have to be replaced in this program, do you?
A. No, and I did not need to know that to write my testimony.
Q. And you also don't know whether an electrician would be necessary to perform the work involving this retrofit, do you?
A. No, and I did not need to know that to write my testimony.
Q. And even if an electrician is necessary, you don't know the average cost of an electrician in Ohio, do you?
A. No, and I did not need to know that to write my testimony.
Q. And you also don't know how long it takes to retrofit one of these fixtures, do you?
A. No, and I did not need to know that to write my testimony.
Q. Would it be safe to say that retrofitting T-12s to T-8s is not within your area of expertise?
MR. ECKHART: Your Honor, could I have

the question read back, please?

EXAMINER BOJKO: You may.

THE WITNESS: I'm forming my response.

MR. ECKHART: Are you ready?

THE WITNESS: I'll be ready in a moment.

MR. ECKHART: I'm not ready, I want to hear the question read back.

(Record read.)

A. So the physical details of how one goes about retrofitting a T-12 to a T-8 is not my area of expertise, but the cost-effectiveness methodology that is used to describe such an investment is something that I believe I can comment on.

Q. So the answer to my question is "yes," you're not -- it's not within your level of -- area of expertise?

MR. ECKHART: Object, your Honor, he gave his answer, and that's not his answer.

EXAMINER BOJKO: Sustained.

Q. Let's move on to joint programs. I think it begins on question and answer 42 on page 17.

A. I'm there.

Q. In your answer, first line, you talk about a joint program without Btu conversion. Do you see that?

A. Yes, I do.
Q. Now, a direct program would involve the companies joining with a gas company to create a program that they offered together; is that right?
A. Yes, that's correct.
Q. Now, you don't know of any joint program like the one you're contemplating here between an electric-only and a gas-only utility, do you?
A. I know of a program being developed in Illinois. I don't know any other program like this nationally.
Q. So as of today there are absolutely no programs anywhere in the country that you're aware of that offer a joint program that you're contemplating here; is that correct?
A. I would have to check, but the Illinois program might be running on a pilot basis.
Q. That would be the only one?
A. To my knowledge, yes.
Q. And do you know if that Illinois program is identical to the one you're contemplating here?
A. It's not identical. It uses the same general principles.
Q. Okay. Did you run a TRC calculation on this program that you're contemplating in your

testimony?

A. No, I did not.

Q. So it stands to reason, then, that if you would incorporate a program like this, you wouldn't know the overall impact it would have on the portfolio TRC either, would you?

A. No. I think the details of the program design could be something that we talk about in the collaborative.

Q. So you're not recommending that the Commission reject the portfolio plan because this program is not included; is that correct?

A. If the Commission makes modifications to the plan, I think that this is a good modification to make.

Q. But if they don't make this change, are you recommending the Commission not approve the plan?

A. I don't recommend that in my testimony.

MS. KOLICH: That's all I have, your Honor.

EXAMINER BOJKO: Any redirect?

MR. ECKHART: Your Honor, could I have a few minutes to talk to my client?

EXAMINER BOJKO: Sure. Let's take a recess. Will five minutes be sufficient, Mr. Eckhart?

MR. ECKHART: Yeah. I may have one question.

EXAMINER BOJKO: Looks like we might need a few more than five, it's :41, :50, we'll give you nine minutes.

MR. ECKHART: That's plenty. We'll be back, thank you.

(Recess taken.)

EXAMINER BOJKO: Do you have any redirect, Mr. Eckhart?

MR. ECKHART: Yes, your Honor, briefly.

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REDIRECT EXAMINATION

By Mr. Eckhart:

Q. Mr. Sullivan, what is it in the Ohio law that leads you to refer to revenue decoupling in this case?

A. Ohio Revised Code Section 4928.66(D) reads, and I'm quoting, "The Commission may establish rules regarding the content of an application by an electric distribution utility for Commission approval of a revenue decoupling mechanism under this division. Such an application shall not be considered an application to increase rates and may be included as part of a proposal to establish, continue, or expand energy efficiency, or conservation programs."

And then there's more to that paragraph including --

Q. Are you quoting or getting ready to quote?

A. Just a moment. I'm quoting here, "The Commission by order may approve an application under this division if it determines both that the revenue decoupling mechanism provides for the recovery of revenue that otherwise may be foregone by the utility as a result of or in connection with the implementation by the electric distribution utility of any energy efficiency or energy conservation programs and reasonably aligns the interests of the utility and of its customers in favor of those programs." End quote.

Q. How does that implication or language from the statute relate to the revenue decoupling mechanism that you propose in your testimony?

A. I think that the way it relates most directly is at the end of that part of the statute where it says a decoupling mechanism has to reasonably align the interests of the utility and of its customers in favor of those programs, and in my opinion I think that revenue decoupling is the mechanism that reasonably aligns those interests because lost revenue recovery, as I talk about in my testimony, is going to begin to be very costly. It's going to, well it has the potential to rival program costs in 2012 and 2013.

I also think that the talk in the law about aligning the interests of the utility and its customers precludes a straight fixed variable rate design on the electric side because it's -- the high fixed charge does decouple a utility's sales of electricity from its ability to recover its fixed costs for distribution service, but it does this by raising the fixed charge which diminishes customers' incentives to conserve and it also --

EXAMINER PRICE: Excuse me, but if the fixed charge is recovering fixed costs, then isn't it eliminating a false signal? If you're keeping volumetric prices high but you're ultimately still going to have to recover a fixed cost, isn't that giving people a false conservation signal? Doesn't that lead to inefficiencies?

That's two questions, sorry about that.

THE WITNESS: So I guess by implication,

yes, but if you go -- essentially what you're saying is that people are not using enough electricity right now and that they should be using more.

EXAMINER PRICE: No, I'm saying that if you give people the idea that if they reduce their consumption, they won't have to pay those charges but it's a fixed cost, they're ultimately -- they're getting a false signal because ultimately they'll get recovered that fixed cost; isn't that right?

THE WITNESS: You'll have to ask me the question again.

EXAMINER PRICE: Aren't you sending a false signal by indicating to customers if they reduce their consumption, they won't have to pay for their share of the fixed costs when the distribution costs are fixed? By charging a volumetric rate.

THE WITNESS: I guess I disagree that it's a false signal, and I think --

EXAMINER PRICE: Is it a fixed cost? Distribution costs are fixed, are they not?

THE WITNESS: Distribution costs are fixed.

EXAMINER PRICE: For the most part.

THE WITNESS: In the short-term. You know, over the long-term they might not be.

EXAMINER PRICE: But if you use a revenue decoupling and a customer reduced his consumption in reaction to that, they're going to have to still pay for those fixed costs later in an adjustment to the bill, aren't they?

THE WITNESS: I'm sorry, can you repeat that question? Sorry.

EXAMINER PRICE: Can you read the question back, please?

(Record read.)

THE WITNESS: Yes, but those costs, you know, would be reallocated at the next case or they --

EXAMINER PRICE: So they're not avoiding those costs by reducing their consumption, the costs will simply be reallocated.

THE WITNESS: Well, I guess the hope is, and what we have seen in other jurisdictions is, that the effect of saving energy, the value of the energy saved washes out that effect that you're talking about.

EXAMINER PRICE: Okay. Thank you.

Thank you, Mr. Eckhart.

Q. (By Mr. Eckhart) Mr. Sullivan, do you recall the questions that company counsel asked regarding your testimony on page 13, specifically question 30 and answer 30? Do you see that?

A. Yes.

Q. You referred to maybe one factor there, do you think that there are other factors that play in on this -- the effect of this --

A. Yes.

Q. Okay, I'll stop. Go ahead.

A. So I mention the effect of weather here as an example, but of course other things can happen that effect -- other things can happen and will happen that will affect the utility's recovery of its fixed cost for distribution service and, of course, economic growth is one of those factors.

And my point here in 30 was that one of the problems with lost revenue recovery is that it kind of isolates the impact of the energy efficiency program savings and doesn't look at other factors that might be happening -- that might be happening to influence the utility's recovery of its fixed cost for distribution service.

Q. Other than economic factors are you -- can you think of any others right now?

A. Technological change, for one.

Q. Well, all right. Moving on, nationally do you know of other shared savings mechanisms that differ from what the company in this case is proposing?

A. Yes. So I think in my deposition I mentioned other shared savings programs, I talked about Arizona and California and Colorado and Oklahoma.

MS. KOLICH: Excuse me, your Honor. I do believe -- well, I'll object first. Objection. I do believe that question is not within the scope of my cross. And if it is within my scope, I would like a reference, please.

MR. ECKHART: Am I supposed to read the transcript?

EXAMINER BOJKO: Can you reread back the question, please?

(Record read.)

MR. ECKHART: Your Honor, she asked numerous questions about what he knew about the rest of the world and now we're just focusing on what he knows about this one issue nationally. He does, on behalf of the Natural Resources Defense Council, deal with and observe what's going on nationally. All this asked is for him to provide that information to the Commission on this record.

EXAMINER BOJKO: Ms. Kolich.

MS. KOLICH: I would like to take a look at the transcript, then, because I do not recall asking anything about nationally how are things developed for shared savings. We talked specifically about this shared savings program or the proposal in this case.

EXAMINER BOJKO: Objection overruled. The door was opened.

Q. (By Mr. Eckhart) Mr. Sullivan, you may answer.

A. Okay. So shared savings models nationally, of course, don't always take 15 percent of net benefits to be the company's incentives. In my deposition I mentioned Arizona and I said I didn't have it right in front of me, but Arizona's is less. I actually looked at it; Arizona's is 10 percent net of benefits.

California's mechanism tops out at 12 percent. Colorado's also stops at 12 percent. So the decision of what level of shared savings is appropriate is made differently in each service territory.

I think that one thing that's important to not overlook is that one of the big differences between other states and Ohio, and this is important because the shared savings mechanism is definitely -- is a model that was developed in other states and is being imported to Ohio -- other states don't have as broad a definition of what counts as energy savings as Ohio does.

The other states that have shared savings mechanisms don't apply shared savings to, for example, transmission and distribution infrastructure improvements that reduce line losses or mercantile self-directed projects.

And so when you move such a mechanism to Ohio and just include all the energy savings in it, you're essentially importing a model from other jurisdictions and applying it to Ohio without taking into account the Ohio-specific circumstances of how energy savings are calculated here.

MR. ECKHART: That's all. I have no further questions.

EXAMINER BOJKO: Thank you.

Do we have recross from any of the intervening parties?

Ms. Kolich?

MS. KOLICH: One minute, please.

EXAMINER BOJKO: Yes.

MS. KOLICH: Yes, your Honor, thank you.

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RECROSS-EXAMINATION

By Ms. Kolich:

Q. Mr. Sullivan, you do mention economic growth was another factor in your example. I assume that in an economic downturn the result would be the opposite as well; is that right?

A. What result?

Q. Well, let's go back to your testimony on 13, question 30, where you talk about there might being lost revenue collection to the company that was never lost, and I believe you said one of the factors that would result in that occurring is economic growth.

Is it true that in an economic downturn that result would be the opposite?

A. Yes, that is true, but the decoupling mechanism that I propose is only applied to the RS rate class, and it's my understanding that the biggest -- the biggest effect of the downturn in energy sales has been in the industrial class, not the residential.

MS. KOLICH: That's all have, your Honor.

EXAMINER PRICE: I have a question about

shared savings, and I apologize if you answered a similar question while I was absent.

The other jurisdictions that you mentioned that had percentages, I think you said Arizona had other percentages, a couple other states. Had the utilities in those jurisdictions divested themselves of their generation assets?

THE WITNESS: California utilities are mostly divested. I can't answer for the other states.

EXAMINER PRICE: Thank you.

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EXAMINATION

By Examiner Bojko:

Q. Mr. Sullivan, on page 17 of your testimony you stated a criticism of the company's program, specifically you stated that they assumed the full labor cost for each installation of the lighting program. And Ms. Kolich went through a series of questions with you of did you know the cost of this; do you recall that discussion?

A. I do.

Q. How can you make that criticism without knowing the underlying details in the cost of what they considered or didn't consider whether they did their TRC or the utility cost test?

A. Okay. Well, I think the critical question when you're looking at the cost of these programs, and this happens throughout energy efficiency, is you have to look at the counter-factual, what would have happened had this program not been in place. And that's something that we have to do as we measure the impacts of energy efficiency programs. It's something that we also have to do as we talk about the cost-effectiveness.

So the way I put together my results are, you know, my recommendation here was asked myself and, you know, talked to a couple people in the industry of what is the counter-factual when a customer decides to change a T-12 lighting system to a T-8 lighting system, which is what we're talking about in the utility's plan.

And so in order to, you know, answer that question I don't need to know how much an electrician costs in Ohio or, you know, the exact details of how much it costs to do that.

I think what's important is, as I mention in my testimony, customers are going to be replacing a lighting system that has already exhausted a portion of its useful life. So let's say its useful life is 16 years, the lighting system might be 12 years old, and so in 4 years they would have to replace the lighting system anyway.

And if it's a T-12 lighting system and the ballast is getting ready to go out, you can't even buy old magnetic ballasts anymore or they're not manufactured anymore because the Department of Energy has outlawed that.

And so a customer, you know, even if nothing were to happen with the program at all, in four years would have to replace the ballast and replace the bulbs for their fixture.

And so I think that what I was doing in my answer is talking about what, you know, what would have happened had this investment not been made, and I don't think I need to know every detail about what the costs of the labor are in order to answer that question.

The important thing is that the -- I think it makes sense to acknowledge that even in the absence of a commercial lighting program by the companies, they would have had to expend labor costs to perform maintenance and to deal with this lighting fixture as it ages. And the company's methodology, in my understanding, did not do that.

Q. So your criticism is just that they should have assumed that some labor would have had to have occurred anyway, and that's why you didn't need to delve into the details of what those labor costs may or may not have been at the time because they could have occurred under either scenario.

A. Yeah; I'm not really disputing the absolute number of the labor costs, I'm disputing how it is applied in the cost-effectiveness calculation.

EXAMINER BOJKO: Okay.

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EXAMINATION

By Examiner Price:

Q. Just a couple, back to your observation that you felt like straight fixed variable rate design did not properly align customers' interests, and not to belabor this too much, but do you believe the straight fixed variable better aligns customer interests -- straight fixed variable rate design would better align customer interests than the status quo today? Is straight fixed variable better than no decoupling at all?

A. That's hard for me to answer at this moment. I mean, I would have to see what the, I guess what the fixed charge would be and how that would impact, you know, customers' incentives.

Q. Okay. Assume for the sake of argument that the costs to serve each individual resident are roughly equal on the distribution side.

A. Okay.

Q. That's a factual decision the Commission would have to look at down the line. If you're a higher use customer using more than average, you are subsidizing other users, are you not?

A. Uh-huh.

Q. And so if you continue with a revenue decoupling, you would continue to subsidize those lower use customers, wouldn't you?

A. If you keep the same rate design you're using, then yes.

Q. And the revenue decoupling?

A. Yes.

Q. So those customers' interests, the higher use customers, their interests are certainly better aligned with the utility's in the straight fixed variable, are they not?

A. Well, in my reading of the law you're not trying to align all interests, what you're trying to align is the customer interest toward energy efficiency.

So of course, I mean there are trade-offs here. You know, if you have an economically very simple, straightforward rate design, it might not have the best impact on customer incentives to conserve.

I think straight fixed variable design goes, you know, very far in one direction on that, on that continuum.

EXAMINER PRICE: Okay. Thank you.

EXAMINER BOJKO: Thank you. You may step down.

MR. ECKHART: Yes, your Honor.

EXAMINER BOJKO: Mr. Eckhart.

MR. ECKHART: I would like to offer at this time NRDC Exhibit 1.

EXAMINER BOJKO: Any opposition to the admission of Mr. Sullivan's testimony, which has been previously marked as NRDC Exhibit 1?

Hearing none, it will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER BOJKO: OCC, would you like to call your witness?

MR. POULOS: Yes, your Honor. OCC calls Daniel Sawmiller.

EXAMINER PRICE: Mr. Sawmiller, raise

your right hand, please.

(witness sworn.)

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

THE WITNESS: My name's Daniel J. Sawmiller, the Ohio Consumers' Counsel, 10 West Broad, Columbus, Ohio 43215.

EXAMINER PRICE: Mr. Poulos, please proceed.

MR. POULOS: Thank you, your Honor.

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DANIEL J. SAWMILLER

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

DIRECT EXAMINATION

By Mr. Poulos:

Q. Mr. Sawmiller, by whom are you regularly employed?

A. I'm employed by the Office of the Consumers' Counsel.

Q. And are you the Mr. Sawmiller whose prepared testimony was filed on February 17th, 2010, in this case?

A. Yes, I am.

Q. On whose behalf do you appear today?

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

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

A. Yes, I do.

Q. And did you prepare the testimony or have it prepared at your direction?

A. Yes, I did.

Q. Do you have any changes or corrections to your prepared testimony?

A. Yes, I have one.

Q. What is that change?

A. That change can be found on page 14, the first word on line 13, "Auspicious" should read "Inauspicious" and that's the only change I have.

Q. If I asked you today the same questions found in your prepared testimony as modified by your one correction, would your answers be the same?

A. Yes, they would.

MR. POULOS: Your Honor, the OCC moves admission of OCC Exhibit 12.

EXAMINER PRICE: Don't you think we ought to mark it first?

MR. POULOS: We didn't mark it?

EXAMINER PRICE: No.

MR. POULOS: Your Honor, may I have this document marked as OCC Exhibit 12.

EXAMINER PRICE: You may.

MR. POULOS: Thank you, your Honor.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. POULOS: Your Honor, OCC moves for the admission of OCC Exhibit 12 and tenders the witness for cross-examination.

EXAMINER PRICE: We'll defer ruling on the motion for admission until after cross-examination.

Mr. Sites?

MR. SITES: No questions, your Honor.

EXAMINER PRICE: Mr. O'Brien?

MR. O'BRIEN: No questions, your Honor.

EXAMINER PRICE: Mr. Smith?

MR. SMITH: No questions.

EXAMINER PRICE: Mr. Eckhart?

MR. ECKHART: No questions, your Honor.

EXAMINER PRICE: Mr. Heintz?

MR. HEINTZ: No questions, your Honor.

EXAMINER PRICE: Mr. Reisinger?

MR. REISINGER: No questions, your Honor.

EXAMINER PRICE: Mr. Lavanga?

MR. LAVANGA: No questions, your Honor.

EXAMINER PRICE: Mr. Clark?

MR. CLARK: Just a couple.

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CROSS-EXAMINATION

By Mr. Clark:

Q. Mr. Sawmiller, my name is Joe Clark, I'm counsel for IEU Ohio, and I just -- I'll start again.

Mr. Sullivan, my name is Joe Clark, I'm counsel for IEU-Ohio and I just have a clarification question on your testimony --

A. Sure.

Q. -- regarding required DSE-2. Now, as proposed by the companies' rider DSE-2 will compensate FirstEnergy for the costs associated with meeting its rider -- DSE-2 is how the companies will be compensated for meeting the energy -- its programs to meet the energy efficiency and peak demand reduction benchmarks, correct?

A. I believe that's correct, yes.

Q. And the companies under the rider in their proposal -- in their application would segregate and recover those costs from customer classes or rate schedules depending upon the programs that are geared towards those customer classes or rate schedules, correct?

A. Yes, that's how I understand it.
Q. And I --
EXAMINER PRICE: Mr. Sawmiller, if you could just speak up.
THE WITNESS: I apologize.
EXAMINER PRICE: That's okay.
Q. Just to be clear, in your testimony today you're not suggesting that the company should modify that segregated allocation recovery, correct?
A. No, I've not made that recommendation.
MR. CLARK: That's all I have, your Honor.
EXAMINER PRICE: Thank you.
FirstEnergy?
MS. MILLER: Yes, your Honor.

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CROSS-EXAMINATION

By Ms. Miller:
Q. My name is Ebony Miller, good afternoon, Mr. Sawmiller.
A. Good afternoon.
Q. If I ask you a question, if you don't understand me, just let me know, or the mic goes out, but I'm a pretty loud talker so you should be able to hear me.

You began your employment with OCC in July of 2007, correct?

A. Yes, that's correct.

Q. And is it fair to say that the only other relevant energy efficiency experience that you may have had prior to joining the OCC is through maybe some coursework that you had at Bowling Green when you were obtaining your bachelor's degree?

A. Yes, I would say that's correct.

Q. The words "energy efficiency" or "peak demand" were never mentioned during the course of that course experience, correct?

A. That coursework was extended over about seven years, so I can't be certain, but nothing specific that I recall, no.

Q. In your opinion is it important that energy efficiency programs deliver high net benefits to customers?

A. Yes.

Q. And in your opinion high net benefits would be savings customers would -- would be saving customers more money through the avoided capacity energy cost than what was paid to implement the parameters and develop the programs, correct?

A. Close. It's the avoided capacity costs and the avoided energy costs used to implement the program or that were avoided by the program.

Q. But you don't know how to calculate the cost of avoiding new generating capacity, do you?

A. Well, avoiding new generating capacity would typically be calculated based on the price of a new peaker plant, but the specific calculations used or how that's determined what that cost is, I'm not aware of how that's calculated.

Q. Turning to page 10, line 22 of your testimony.

Are you there?

A. Yes.

Q. Is it fair to say that you take issue with the company's use of the word "preliminary"?

A. When referencing the discussions between FirstEnergy companies and Dominion East Ohio and the collaborative members of East, yes, I would take issue with the word "preliminary" for those discussions.

Q. But you're not aware of whether OCC supported this program, are you?

A. OCC did support the program, I believe OCC recommended the program in the Dominion East Ohio collaborative, however, this program was not yet finished for ultimate approval of the design, but the idea of a joint gas and electric program is something that OCC supports, yes.

Q. So OCC supported the idea of the program, but they didn't support the program design?

A. There was no final design filed that was asked for support, so I don't think it ever got quite to that stage. But we were actively working with both collaboratives to try to develop a final program design that we could support.

Q. So it's fair to say the program wasn't in any sort of final form and additional work needed to be done?

A. I would say it was nearing a final form. There were still a few outstanding issues with the design of the program, but it was not -- it was never completed.

Q. At the stage that the program was in, you said it was nearing final form, was OCC comfortable and prepared to sign off at that point, subject to a couple tweaks?

A. There were more than tweaks, I would say there was an issue with converting gas Btus into a kilowatt savings number for the purposes of meeting the energy efficiency benchmarks in Senate Bill 221, and there was still an outstanding issue about how the service territories in FirstEnergy overlap with Dominion East Ohio and how we would address customers that don't fall into that overlapping territory.

Some of those were just, you know, some details that still needed to be worked out and discussions were taking place.

Q. You didn't run a TRC or analysis on the program, did you?

A. No, I didn't. And in my testimony I recommend that the program go back to the collaborative to continue to be evaluated for its cost-effectiveness.

Q. So you don't know if the program is cost-effective or not.

MR. POULOS: Objection, your Honor. This witness has said that this has not been a finalized program.

EXAMINER PRICE: I don't understand your objection, Mr. Poulos.

MR. POULOS: Speculation.

EXAMINER PRICE: Overruled. You may answer. Not you may answer, you have to answer.

THE WITNESS: Thank you.

A. No, I don't think that a

cost-effectiveness test was run on this program so I don't know if it was cost-effective or not. And again, I mentioned earlier, we didn't have the final design which means we didn't have all the costs, so it would be difficult to run a cost-effectiveness test without the cost information.

Q. In a couple places in your testimony you expressed concern that the collaborative has not met recently; is that fair to say?

A. Can you show me my testimony you're referring to?

Q. Do you not think you said that in your testimony?

MR. POULOS: Objection, your Honor, argumentative.

EXAMINER PRICE: It would be helpful if you would point out the references for the witness and for the Bench.

Q. Page 10, lines 13 through 16. "Unfortunately the collaborative has not met since that meeting other than for settlement discussions." Do you see that?

A. Yes, I see that.

Q. And then again on page 11, line 17.

A. Yes, I see that.

Q. So it's fair to say?

THE WITNESS: Could I have the question repeated? I apologize I've lost the --

EXAMINER PRICE: We're three questions back.

(Record read.)

A. Yes, I would say that's fair.

Q. Did you see an e-mail from the companies requesting feedback for agenda items for the next collaborative meeting?

A. I did. I recall that e-mail specifically stating that nothing that's involved in this portfolio plan could be presented for collaborative discussion until after this case, and I'll say the majority or all of the work that we've done with FirstEnergy related to programs are in some ways included in this plan, so any recommendations for further collaborative work were clearly denied up front, as this plan was in front of the Commission.

MS. MILLER: I believe it was a "yes" or "no" question. Could I strike the witness's response? It was did he receive an e-mail.

EXAMINER PRICE: Let's have the question and answer back again.

(Record read.)

EXAMINER PRICE: I think that was sufficiently answered, that his answer was responsive, however, I will say that if you ask "yes" or "no" questions, I will require a "yes" or "no" answer.

MS. MILLER: Thank you.

Q. Was the joint program that we just discussed part of the portfolio plan that the companies have filed?

A. No. The plan stated that that joint program was not included, as discussions were preliminary.

Q. And you said that you did receive an e-mail requesting agenda items, correct? You did receive the e-mail?

A. I did receive an e-mail that asked for agenda items but, like I said, it did also mention not to ask for agenda items for anything that would be included in this.

Q. Did you submit to the company an agenda item requesting discussion of the joint program we just discussed, since it's not in the plan?

A. The plan includes a comprehensive residential retrofit program which is very similar to the joint program just without the gas company, and given that a comprehensive residential retrofit program was included, that would preclude being able to discuss a joint program because it's so closely aligned to what's in this plan.

EXAMINER PRICE: I'm not going to wait for Ms. Miller on that. I promised her I'd give her "yes" or "no" answers and I gave you a lot of slack earlier, but even from my position that was not responsive. Please answer the question.

THE WITNESS: Can I have the question again, please?

MS. MILLER: Could I have the question reread?

(Record read.)

EXAMINER PRICE: "Yes" or "no," Mr. Sawmiller?

A. I did not following that e-mail, no.

Q. (By Ms. Miller) In fact, you didn't respond recommending any agenda items, did you?

A. I did request that we resume discussions on the joint home performance program in a collaborative meeting, but I did not respond with an additional request after the e-mail was sent for the joint program or for any other program. My focus was also on the plan.

Q. So to be clear, after the e-mail was sent, you did not respond providing any agenda items, correct?

A. I don't recall the date that that e-mail was sent. I don't know if I can answer that accurately.

Q. If I showed you a copy of the e-mail, would that refresh your memory?

A. It may.

MS. MILLER: May I approach, your Honor?

EXAMINER PRICE: You may.

Are you having this marked at this time, Ms. Miller?

MS. MILLER: No, not at this time, your Honor.

Q. Is this the e-mail we just discussed that was sent -- let me back up.

Do you have before you an e-mail that was sent on January 27th, 2010?

A. Yes, I do.

Q. Are you familiar with this document?

A. Yes, I am.

Q. And did you receive a copy of this e-mail sent on January 27th, 2010?

A. Yes, I did.

Q. And at the bottom, the last paragraph, is this the paragraph that we discussed asking for agenda items?

A. Yes.

Q. After receiving this e-mail did you submit any agenda item?

A. No. This was just a matter of days before my testimony was due and less than, you know, just, you know, not that long ago, so no, I had not since then requested a collaborative meeting. I've been focused on the plan in front of us.

MS. MILLER: Your Honor, motion to strike everything after "no."

EXAMINER PRICE: Granted.

MS. MILLER: No further questions.

EXAMINER PRICE: Thank you.

Mr. Reilly?

MR. REILLY: No questions, your Honor.

EXAMINER PRICE: Redirect, Mr. Poulos?

MR. POULOS: If I may take a moment, your Honor.

EXAMINER PRICE: You may.

MR. POULOS: Thank you.

EXAMINER PRICE: Let's go off the record.

(Off the record.)

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

Mr. Poulos.

MR. POULOS: Thank you, your Honor. Just very briefly.

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REDIRECT EXAMINATION

By Mr. Poulos:

Q. Mr. Sullivan, you were asked questions about an e-mail on cross-examination. Do you recall that?

A. Yes, I do.

Q. That was dealing with putting items on the agenda for a collaborative meeting.

A. Yes, I recall that discussion.

Q. And the statement that you did not put anything on -- request anything for the agenda on the collaborative meeting; is that right?

A. Yes.

Q. Why didn't you request anything to be put on the agenda for a collaborative meeting?

A. After the joint home performance program discussion had been abandoned, I did ask again in November at a collaborative meeting to revisit the program design, and that request was denied.

And further, in the December 10th collaborative meeting a company representative mentioned again that that program would not be going forward.

So when the agenda request came out, given the little amount of time left to still prepare for this case, and the fact that the request had been denied twice, I didn't see -- I didn't anticipate any benefit in making that request again.

Q. Mr. Sawmiller, where did you get the understanding that items that were part of the three-year program portfolio plan could not be discussed in a collaborative meeting?

A. That's something that was mentioned to the collaborative members from FirstEnergy counsel in meetings saying that collaborative meetings are now becoming settlement discussions, and also it states in the e-mail that now that this three-year plan is a litigated case, it will not be on the agendas for future collaborative meetings.

MR. POULOS: I have no further questions, thank you.

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EXAMINATION

By Examiner Price:

Q. Do you think that's unreasonable, that now that a case has gone to litigation, it would no longer be the subject of collaborative meetings?

A. No, I do not think that's unreasonable. I think that -- I don't see that it would be a reasonable request for me to make of this joint home performance program to go on an agenda since this e-mail was provided. You know --

Q. Won't there be a portfolio plan in the future?

A. There will, but I think that the 30 days between when this email was sent and today would not have provided sufficient time to develop remainder of that plan, and that's something that I would like to pursue in the future and I will be making that request in the future.

I just didn't see this as the most opportune time to make that request, adding to that the fact that the request had been denied multiple times, I just didn't see a lot of benefit replying to this at this time. But I think it's definitely reasonable that litigated items should not be discussed in the collaborative right now.

Q. Do you think it's not unreasonable -- do you think it was unreasonable for the collaborative efforts to slow down as litigation commenced because parties had to prepare for litigation on this case?

Just like you said you had a narrow period of time to focus on your testimony in this case, isn't that true for all the parties in the collaborative who were also parties to this case?

A. Somewhat. I'll say, you know, some of the other utilities we have continued to meet and discuss and reach resolutions after things had been filed, although a case is pending, we've been able to reach resolution on issues, and that's something that could have been done. I don't know that I'll really comment on whether or not it's reasonable, but I think it could have been done, yes.

EXAMINER PRICE: Okay. Thank you.

Mr. Sites?

MR. SITES: No questions, your Honor.

EXAMINER PRICE: Mr. O'Brien?

MR. O'BRIEN: No, your Honor.

EXAMINER PRICE: Mr. Smith?

MR. SMITH: No questions, your Honor.

EXAMINER PRICE: Mr. Heintz?

MR. HEINTZ: No questions, your Honor.

EXAMINER PRICE: Mr. Reisinger?

MR. REISINGER: No questions, your Honor.

EXAMINER PRICE: Mr. Lavanga?

MR. LAVANGA: No questions, your Honor.

EXAMINER PRICE: Mr. Clark?

MR. CLARK: No questions, your Honor.

EXAMINER PRICE: Ms. Miller?

MS. MILLER: Just a few more questions, your Honor.

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RECROSS-EXAMINATION

By Ms. Miller:

Q. Is it your testimony there was no program that was not included in the plan that could have been discussed at a future collaborative meeting?

A. No.

Q. "No," there was no other program to discuss?

MR. POULOS: Objection, beyond -- your Honor, beyond the scope of cross or the scope of redirect.

EXAMINER PRICE: We'll give her a little bit of leeway.

A. I answered "no" to your question, I think, if we could have it reread.

EXAMINER PRICE: Let's have the last question back, please.

THE WITNESS: Thank you.

(Record read.)

EXAMINER PRICE: So the pending question there is no other program to discuss.

A. My answer to that was "no," that there -- I am sure there are a multitude of programs that could be discussed. I think that what's included in this plan is by no means a comprehensive plan that will never be expanded upon or changed in any way.

I did not recommend any programs since this e-mail was sent to me, no. But that doesn't mean that there's not other programs out there that the collaborative couldn't discuss at some point in the future, if that's what you're asking.

MS. MILLER: No further questions.

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FURTHER EXAMINATION

By Examiner Price:

Q. Mr. Sawmiller, my impression from your testimony is that you are not in favor of a shared savings provision at this time for FirstEnergy; is that correct?

A. No, that wouldn't be correct.

Q. That would not be correct?
A. No, it would not.
Q. What sort of shared savings proposal would you support?
A. I've made a recommendation in my testimony, if you'll give me a moment to turn to that page.

Starting on page 6, in question and answer 6, I describe the concept of shared savings being a performance-based, and I'm quoting, "a performance-based mechanism developed to reward a utility for developing and implementing new cost-effective energy efficiency programs that deliver high net benefit to customers."

And I propose a shared savings mechanism that would reach these goals.

I would add to that that the plan as proposed coupled with the shared savings mechanism as I propose, it would indeed -- the effect that you asked the question of, it would not reward the utility for exceeding the benchmark.

There would have to be changes made to that portfolio, and the shared savings mechanism with the parameters that I'm proposing would provide incentive to make those changes and provide the retirement benefits to customers.

EXAMINER BOJKO: But what factually are those parameters? I mean are you referring to the question and answer on page 9, question 10?

You said that the company should become eligible only when exceeding the benchmarks using utility directed customer programs? I mean, are those the parameters?

I guess I was looking for yes -- when you answered "yes" to Mr. Price that you were going to tell me percentage, a number.

THE WITNESS: Sure, I can answer that. The parameters are a few. One is customer directed, that customers actually have the ability to get from the program themselves, and one of the other things I mentioned here is that would not include transmission and distribution programs towards the shared savings and that would not include mercantile opt-out programs to count towards the shared savings that would be rewarded to a utility. So those are the parameters --

EXAMINER BOJKO: I'm sorry, the first one you talked about, the customer participation, that would be not be -- the customer-sited is not to be counted?

THE WITNESS: It would be counted. A program that's actually delivered to a customer, me as a customer, I have an opportunity to participate in this program, incents me to do the energy efficiency, those will be counted.

But the utility programs such as transmission and distribution project that's taken on to improve reliability or to accommodate load growth would not be given a shared savings incentive or reward.

Q. (By Examiner Price) So you would exclude them from calculating when the utility had exceeded the benchmark; is that right?

A. For purposes of shared savings, yes.

Q. I understand that, for purposes of shared savings.

A. Yes.

Q. And you would exclude mercantile customers' programs for purposes of -- for shared savings purposes when they exceed a benchmark; is that right?

A. That's correct.

EXAMINER BOJKO: And you say customer-site on page 2 and you mean to insert the word "mercantile" customer-sited. Are those the type of programs?

THE WITNESS: Can you tell me where?

EXAMINER BOJKO: Line 19 on page 9. I thought I heard you answer reverse to my question earlier about customer-sited programs, so is there a distinction, do you mean "mercantile"?

THE WITNESS: Let me make sure we're talking about the same things here. What I'm talking about is customer-directed programs, the utility is offering a program to their customer, the customer partakes in that program, and because of that program being offered to them, they saved energy. The utility would get a portion of that saved cost to be collected under the shared savings incentive.

Q. (By Examiner Price) And why would you exclude mercantile customers then, because they initiated the program entirely on their own?

A. That's correct. In many cases they opt out of the rider and things and it's not something that the utility incented.

Q. Okay. Do you have a recommended level of incentive, do you think -- assuming the Commission were to adopt your recommendations and exclude T and D, exclude mercantile customer, do you think the 15 percent incentive proposed by FirstEnergy in

Mr. Ouellette's testimony is reasonable?

A. Can you give me just a moment? I'd like to reread what the proposal was to be sure.

I think 15 percent could be seen as reasonable if the recommendations that I make were to be adopted. Yes, I think that's within the scope.

One thing that I would add is there's no -- there's no cap on that 15 percent number and other mechanisms in Ohio do include a cap on that 15 percent. So, you know, there are some other things there I suppose that would affect what that 15 percent number would be.

I didn't make a recommendation in my testimony as to whether 15 percent was accurate. I do feel there's a lot of moving parts that make that number either reasonable or unreasonable.

EXAMINER PRICE: Okay.

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EXAMINATION

By Examiner Bojko:

Q. Let's switch to your testimony on page 13 that talks a little bit about the infamous CFL program. I'm a little confused and maybe you can walk me through exactly what your position or Consumers' Counsel's position is with regard to the different stages of this program.

Because you talk about the -- you talk about in the beginning that you were disappointed that this program didn't get off and that the utility requested an extension, and I guess what I read in your testimony is that you're talking about an extension of, let's just be clear here, November 30th to December 15th. That's the 15- or 16-day extension that you were referencing; is that right?

A. Yeah, I think there's more to that than that, if you would like me to explain now, or if you want to continue your questioning.

Q. By all means, go ahead.

A. The order that sent the CFL back to the collaborative for redesign asked for the redesign to be filed November 30th. The members of the residential subcommittee met, you know, I know six times in person and more times by phone only in the month of November to redesign this program, and the distribution aspects of this program were agreed upon at the end of November.

And that program could have been filed at the end of November for approval, and the program has not changed in any way since the end of November until when it was added to this plan or even as it stands today.

Adding this program to this plan had the effect of including it in the process prescribed for this portfolio plan which included the mandatory hearing. I think that that program could have been implemented and rolled out with the remaining cost issues left for further debate later.

I didn't see the need to delay that program and roll it into the portfolio. It could have been filed, in my opinion, the same as it was originally filed outside the portfolio.

Q. Okay. Well, now you've raised a lot of issues. So let's talk about, okay, you said you thought it could be filed November 30th when the Commission directed and you thought it could be done without a hearing. So in what time period did you think -- did you think Commission approval was necessary?

A. Yes, I believe so.

Q. Okay. So in what time period from November, the filing was supposed to occur November 30th, to when did you think the approval should have been had?

A. I wouldn't want to speculate on the amount of time that it would take, but I think that the fact that the program would have been filed with the collaborative's consensus and recommendation on the new design of that program and the amount of scrutiny that was being placed on that program, it may have moved, you know, I think it definitely would have moved quicker than what this portfolio proceeding has moved.

But I don't know that it would have been, you know, a week or two weeks or what the case, but I think the approval of the recommendation or the approval of the collaborative may have helped that to move quicker.

Q. Okay. We need to talk about a couple things separately. First, I want to focus on the cost for just a minute. You talk about this $30,000 in warehouse costs and that that's a problem, then I think you're terming this "sunk costs," is it fair that's the characterization you use is the warehouse cost of keeping the light bulbs in because of the old failed program is a sunk cost?

A. I can go with that, yes. That's fine.

Q. Well, I mean, I think that's what you call it. I have more questions if you want to go through it, I mean, question and answer 16 you use the word "sunk" costs, and I want make sure you're talking about the old program.

And I mean, that's what I'm trying to figure out, your testimony, I couldn't understand, is -- I mean, if the Commission would have approved this, if FirstEnergy would have filed, and I'm not sure -- this isn't another question, I'm not sure what you wanted them to file on November 30th, but if they would have filed something on November 30th, then the Commission would have approved it and so the costs between November 30th or wherever you go back to, the warehouse, you don't have a starting date of these warehouse costs, but that starting date of the costs to when Commission approval was, do you believe that those warehouse costs and any other sunk costs, you specifically lay out the warehouse costs, do you believe that those costs would have been able to be recovered in the new revised CFL program?

A. I'm sorry, it's very confusing. I think I know where you're going.

Q. The point I'm trying to ask you is you're disputing the time of the company rolling and delaying the CFL program into the portfolio filing. If they had not, that there would have still been a time period from November 30th or November 4th, when the Commission ordered them to revise the plan, to when approval would have been gotten.

You stated that you thought approval would have been necessary. So are you disputing all costs from the revised program or are you just disputing the warehouse costs that are extra because the company chose not to file on November 30th but instead rolled into this portfolio plan?

A. The latter.

Q. Okay. So then if it's your position that the company could recover those costs from the old plan, all the other costs from the old plan but for the delayed costs, I mean, that's what I'm trying to get at.

A. No, okay.

Q. Because you mentioned 30,000 then you throw out a 120,000 number.

A. Sure.

Q. And then if we look at question and answer 16 and question and answer 17, you're talking about sunk costs and --

A. I think I confused you when you asked me to use the term "sunk." The warehousing I don't see as necessarily a sunk cost as I would define it. The sunk cost is a cost that was spent and there's no benefit coming from those costs but we can't get those costs back.

We are paying warehousing costs to store these bulbs, but -- it's $30,000 a month, but we're storing the bulbs. We have also numbers for marketing costs and management costs that are already expended and there's no benefit showing for those costs and that's what I'm coining as "sunk costs."

So there's a little bit of a difference there. I am using to develop the warehousing cost number from the date November 30th, where the Commission had originally asked for filing to be made, until April 1st, which is the fast track -- the request for the fast track of this program that was included in this plan, so that's where the $120,000 came from.

Q. Okay. So what if the Commission, even if they filed on November 30th, what if the Commission would not have approved this till April 1st, or say the Commission doesn't approve it now till July, I mean, does the company not include those in the recovery of the CFL costs?

A. I think that filing it on November 30th as planned provided an opportunity for earlier approval and it would have had the collaborative support which also makes it more likely that it would have an earlier approval.

However, part of my reasoning for this is that the collaborative was not consulted when determining whether or not to make this request for a delay, and it kind of undermines and diminishes the purpose of the collaborative, which is to reach consensus and to discuss these programs as a group.

And to make that decision alone and then to charge customers $30,000 a month for that decision that was not discussed with the collaborative, to me seems unreasonable.

Q. Okay. But you think it is reasonable to include the costs if they would have filed on November 30th, but it was the Commission who did not approve the costs or approve the program until April or June or July. Then in your mind it would have been reasonable because they followed the time line for filing.

A. Well, yeah, I would say at that point that's something that was outside the collaborative's control and, yeah, I would not be in a position to say that it was unreasonable to recover those costs because of the timing delay at the Commission, that's right.

Q. Now I want to talk about --

EXAMINER PRICE: One second, I have a follow-up real fast, I'm sorry.

Q. This is a follow-up, you used the words to formulate your basis of whether it should have been or you believed that it would have been able to be approved earlier because of the collaborative, and I guess I would ask you in what form did you expect the November 30th filing, because the old program, you know, there was a letter and a statement that consensus in the collaborative had been made and, obviously, we all know how that turned out, that consensus was clearly not reached because then we had more proceedings and, you know, oral arguments and everything at the Commission.

So what form did you expect the November 30th filing to actually have?

A. You know, I'm not exactly sure how to answer that, but I do also agree with there being a concern to show the Commission with clarity that there is indeed consensus within the collaborative, and at the time had that filing been made, I think that's something that OCC would have tried to ensure that our position was very clear, and if the collaborative did indeed reach consensus, that it was clear in that filing.

What that form would have been or where that would have been, I don't know if it's something I would have been involved with creating or whatever, but I think it would have needed to have been clear at that point.

EXAMINER PRICE: When you say the collaborative had a consensus at the end of November, does that include issues related to costs?

THE WITNESS: No, it does not. I was speaking about distribution of the program.

EXAMINER PRICE: Did that include issues related to lost distribution revenues?

THE WITNESS: No, it did not.

EXAMINER PRICE: So you would have asked the Commission to approve this program on or about -- sometime after November 30th without having a consensus on cost or lost distribution revenues or even answers to those questions; is that correct?

THE WITNESS: Yes, the cost for the program I would have requested been delayed probably to this proceeding.

Q. (By Examiner Bojko) Okay. Well, was it your understanding from the collaborative that FirstEnergy would have implemented the programs without assurance of cost recovery or lost revenue recovery?

A. Yes. And that was the case --

Q. Wait. "Yes" what? "Yes," what, that you thought that FirstEnergy would start the program without the cost determination?

A. I don't think it would have been unreasonable to do that. That's happened in other utilities in Ohio.

Q. Was that discussed in the collaborative?

A. I'm sure it was discussed. I can't recall details of what was discussed.

EXAMINER PRICE: I've got a more specific issue just as to marketing.

EXAMINER BOJKO: I have more too, I meant on that.

EXAMINER PRICE: At page 15, line 13 through 15, you state the plan approved by the Commission included a $1.8 million expense for marketing the program, however, FirstEnergy only spent a mere 427,000 of the $1.8 million allocated for marketing.

You're aware, having followed this very carefully, that the Commission approved the program September 23rd, 2009, and the Office of

Consumers' Counsel asked for rehearing 15 days later on October 8th, 2009.

And so you feel they should have spent more of the $1.8 million in that 15-day period?

THE WITNESS: Yes, the $1.8 million number that I reference here is a number that was estimated to be needed to effectively premarket and educate customers on this program.

EXAMINER BOJKO: Wait, "this program" meaning the old program.

EXAMINER PRICE: The original CFL program.

THE WITNESS: That's correct.

EXAMINER PRICE: So you anticipated they would spend $1.8 million in 15 days.

THE WITNESS: The application at that time and the application that still exists in this plan now states that it's critical to do that in three to four weeks, and that --

EXAMINER BOJKO: I'm sorry, which application? You're talking about the fast-track application?

THE WITNESS: The plan that's in front of us now includes a sixth draft of this CFL program, and it talks in there about it's critical to premarket this program before it rolls out, which I don't think is even the case.

I think they plan to market and roll out the program again on the same time line not regarding the critical need to educate consumers properly on what the program is and the benefits that it provides to them.

In addition to the amount of time --

EXAMINER PRICE: What specifically do you think they didn't do in the 15 days that they had?

THE WITNESS: The customers were educated on an extensive CFL program that was going to be delivered to their door without any option to the customer. It disregarded any communication regarding the overwhelming benefits of energy efficiency as a whole, that a portfolio plan was in the making that would -- for customers who don't see the need or benefit or don't like the color or all the different things that they can complain about a CFL bulb, that other options are coming in the future.

So it kind of caused an uproar: Why am I getting this? As opposed to: This is part of the plan, this is just one of the first pieces of that plan.

EXAMINER PRICE: You don't think the cost to the consumers or at least the perceived cost to the consumers was part of what you characterize as an "uproar"?

THE WITNESS: Of course, that was part of it.

EXAMINER PRICE: And if FirstEnergy had gone ahead at the end of November, as you suggest, without having resolved cost recovery issues, you don't think the lack of answers to how much is this going to cost wouldn't have caused another, quote/unquote, uproar?

THE WITNESS: That's something that we did discuss in detail in the collaborative to try to determine how to avoid that, and part of that was to make mention to the portfolio plan and that the costs of this program were going to be costs included in part of a greater portfolio, and --

EXAMINER PRICE: Don't you think there's a certain amount of risk in that approach? A risk of consumer dissatisfaction with not having answers?

A. Sure.

Q. (By Examiner Bojko) Well, I guess I'm a little confused. Let's go back to the part of -- I'm stuck on the you believe the Commission would approve this quickly and thus these costs should be disallowed, because I read the joint application for fast track in this case and I read -- well, maybe you should tell, me what is your position on the fast-track program?

A. Well, specifically related to the CFL program I find it difficult to call it fast tracking a program that in all reality has been significantly delayed. So what are we fast tracking from when the Commission had originally asked for filing on the 30th? I see it more as a delayed program than a fast-track program.

Q. So are you opposed to even bifurcating this proceeding and somehow issuing a ruling on the fast-track programs earlier than the portfolio order would come out?

A. Somewhat. Like I said a moment ago --

EXAMINER PRICE: I'm sorry, I think that's a "yes" or "no" question.

Do you support -- do you recommend to the Commission that they approve the fast-track programs? Understanding that you don't like the characterization of "fast track," do you recommend that the Commission approve by mid-March the fast-track programs?

THE WITNESS: Not including the costs,

the outstanding costs that are at issue that I mention in my testimony. However, the distribution design of the program I think should go forward.

Q. But the filing was made including the cost recovery, and that's why I don't understand your statement that -- your basis that this could have been approved quickly with the company going forward without a guaranteed cost recovery. I mean, what is your basis that the --

A. I think there was a joint motion filed in this case in regards to these fast-track programs and that document itself is asking to roll out the program without guaranteed cost recovery or any cost issues handled, and that those issues would be handled now in this case, so I think it's the same situation there as it would have been in November.

Q. That's what you believe that motion says?

A. It does say that, yes.

MR. POULOS: Your Honor, OCC did file comments to the motion.

EXAMINER BOJKO: I know, that's why I'm trying to figure out based on the testimony provided for us what exactly your witness's testimony is with regard to everything that's been filed with CFLs. I know, I read.

THE WITNESS: I'm trying to be clear, I apologize. I'm trying to answer your questions here.

Q. You stated you believe that the motion did include a punting of the cost recovery, but didn't it really bifurcate the punting of the cost recovery? Didn't it really say we want to get cost recovery and if the Commission changes something about the program on a going-forward bases, you can change the program, but we still get cost recovery from everything that's been incurred?

A. I think what the joint motion said is that cost recovery would be done per the stipulation in the 935 case, and that was the ESP, and I think that's where some of the issue lied is what really is allowed per the language in 935 and what was not.

And the reason OCC didn't sign on to the motion is because it didn't make it absolutely clear that the cost issues were still remaining to be litigated, and I think that was the purpose of the motion. It just wasn't clear enough in the motion and that's why we filed our comments outside of that.

Q. That's my point. And you just told me it was clear in the motion that they were punting everything, and that's not what I got from OCC's response to the motion.

A. I suppose I misspoke. The discussions around that was everyone else assumed that that was clear in the motion, OCC did not, and so we did not sign on and we filed our comments instead.

But I think it is supposed to be clear by that motion that the costs -- that the program distribution design is approvable while the costs will be handled in this case.

Q. And including the sentence that says "Any modifications to the fast-track program found to be necessary by the Commission in its final order in this proceeding will be made on a prospective basis only with any such modifications having no effect on the recovery of reasonably incurred costs associated with the fast-track programs that have been committed to be spent or actually spent by the companies in reliance upon the granting of this motion"?

A. That's a lot that I don't have in front of me to comment on. But I think --

EXAMINER PRICE: We can read the question back.

THE WITNESS: We can rely on reasonable, you know, the costs have to be reasonable and the reasonableness was to be determined through this case.

Q. Okay. I'm still -- okay. Is it your position that the fast-track programs should or should not be approved by April 1st, or it was effective April 1st, so March 30?

A. I'd like to defer to our comments on that motion asking for approval of the fast-track programs.

Q. But I'm trying to understand your testimony in this case regarding cost recovery and what should or shouldn't be included in the cost recovery, and the difference between the initial and the revised CFL plan, and I'm trying to figure out the pieces of the puzzle and how they fit together, and that's why I'm trying to ask you the questions, to bring those pieces together.

I mean, you don't have a position of whether the fast-track program should be approved before March 30th?

A. I think they should be approved without being allowed to collect sunk management costs, sunk marketing costs, warehousing costs from December 1st to the approval date of the fast track. That would be my position on it.

Q. Okay. So any costs included, do you agree with the sentence I read to you that any reasonable costs incurred on a prospective basis would be -- that the Commission, if they made changes to that, that the company would still be able to recover those committed costs that have either -- been spent by the companies in reliance upon the granting of the motion; do you believe that they should get those costs?

A. Again, that's a lot. If you could put the sentence in front me to read, it would be helpful.

Q. Sure.

A. Thank you very much.

So you're starting on C.

Q. The highlighted part is C, yes, that's correct.

A. It's difficult for me to agree with this language. It doesn't seem to take into consideration the recommendations that I've made in my testimony regarding sunk costs and warehousing costs, so no, I would not agree with this here.

However, I would say that the quicker we can get these programs on the ground and out benefiting customers, the better. But there are still cost implications that are being debated, and this language here doesn't seem to me to take that into consideration.

Q. Thank you.

I mean, do you see my confusion?

A. No; I do.

Q. Okay.

A. The language in this was very tricky and confusing and that's why OCC decided to stay off, but I think the purpose of the motion and the discussions I participated in, most people felt that it was clear these costs were still to be litigated here. OCC took a different position.

Q. So let's talk about, then, the actual costs that are in your testimony, okay. You talk about the marketing costs and you've stated that these are marketing costs from the initial program in Pennsylvania.

Are you saying that none of the $1.8 million of the old program should be incorporated into the cost recovery of the new program?

A. No, the only costs from the old program that are being incorporated into the new program to my knowledge, is this roughly $427,000. And that's the money that was committed for marketing from the first program that is not providing benefit to the second or to the new program that I'm saying should be disallowed.

Q. I'm sorry, it was 427.

EXAMINER PRICE: One second. Can I follow up to that?

THE WITNESS: Sure.

EXAMINER PRICE: Your argument is that this money should be disallowed, the $427,000, because they did not spend enough of it. If they had spent the full 1.8 million, then you would support the recovery of that 1.8 million?

THE WITNESS: I don't think it's that easy, but I think that spending the 1.8 million would have had a much more likely -- likelihood of success for the program.

EXAMINER PRICE: So you --

THE WITNESS: And this may not have been --

EXAMINER PRICE: You think they should eat the marketing costs because of the uproar and the program failed.

THE WITNESS: I think that the marketing was, yeah, ineffective, insufficient, and resulted in a failing program and, therefore, the small amount here should not be collected.

EXAMINER PRICE: Had you reviewed the marketing materials beforehand?

THE WITNESS: I had asked multiple times for information to support the marketing cost and the management cost.

EXAMINER PRICE: That's not what I said. Did you review the marketing materials beforehand? You said they were ineffective. Had you reviewed the marketing materials beforehand?

THE WITNESS: I can't recall. I don't believe that I did, no.

Q. (By Examiner Bojko) Okay. So the 427,000 used for ineffective marketing of the last program should not be in the cost recovery of the new program?

A. Right. And that's what I'm calling a sunk cost.

Q. Okay. So should the company be allowed to start over, so to speak, on their marketing and all those marketing costs of the new program be included in the new program?

A. You're saying the estimate provided for the new program should be recovered for the new program.

Q. Yes.

A. I think it could be approved. I still think that those costs should be spent prudently and in a reasonable manner, and if they're not, then I think they should be subject to some sort of penalty or I don't know how that money gets recovered back to customers, but yeah, I think that --

Q. Okay. Now, let's go back to the warehouse again. Sorry.

A. Sure.

Q. You told me about your recommendation of the money from November 30th to whenever the Commission approves it. What is your recommendation for the warehousing costs for the light bulbs that were purchased and stored before the November 4th Commission -- would those warehouse costs be able to be recovered in the new program?

A. I don't know the current status of those costs. If those have been recovered since the first approval or how that's -- I don't know what the status is of the initial warehouses costs.

My testimony speaks to the warehouse costs from the day that the -- the requested delay, however, I would say now that those bulbs never really should have been purchased. The collaborative had not reached a consensus on that program, and had those bulbs never been purchased and had they followed what the original, the very original design was which was close to what we have now, those bulbs would have been put through retailers and just an incentive provided to the retailer to lower the cost. We never would have had physically 3.75 million bulbs sitting in a warehouse.

Q. You said something about those might have been recovered. Is there some recovery mechanism or approval of that recovery that you know of that happened?

A. I don't think so. I wouldn't want to -- I don't know what the -- how much money that is or where that's at.

Q. But to your knowledge the Commission didn't ultimately approve any recovery and the program was never started so there would have been no, I mean, the dollars haven't been collected from customers, right, for that first CFL program that you know of?

A. Not that I know of.

Q. Okay. So I guess, then, you've just highlighted a more important question. Are you really saying, because you make a distinction, as Mr. Price pointed to, that there's, you know, a marketing cost, the sunk costs that you call it, because there's also another sunk cost?

A. Management was also a sunk cost.

Q. The management costs, okay. So is really your point that none of the costs associated with the first CFL program should be approved because it was never approved by the collaborative? I mean, that's what I heard your last answer to just say.

A. No. There's a large number of costs, and I don't have that in front of me, that were spent on the first program. The costs that I'm recommending not be recovered are simply the costs that aren't contributing to the new program.

There was money spent on marketing materials, money spent to buy bulbs, different things like that that those bulbs are being used in the second program, some of those brochures and pamphlets are being used in the second program, and those costs I don't make a recommendation on here.

But it's the money that was spent that's not carrying forward to the new program that I'm saying customers should not be responsible for paying the company.

Q. Except you don't know about the warehouse costs or even if there were warehouse costs.

A. Well, there were warehouse costs. We've been told in the collaborative there are approximately $30,000 a month. I don't see it as being fair to customers to pay $30,000 a month in particular from the day that the company requested a delay.

I can't say how long it would have taken necessarily for approval to be granted on that program, but not knowing that, not wanting to speculate on that, I resorted to the day -- the November 30th original request for a filing made by the Commission until the April 1st fast-track date to give this number of $120,000.

Q. Okay. But any warehouse cost before the November 30th date that might have been needed to store the light bulbs, till the program actually started for distribution purposes, is okay to be included in the cost recovery?

A. I didn't make a recommendation on those costs in my testimony. I relied simply on when the Commission asked to refile the design.

Q. Okay, something else, you stated that there are certain items about the marketing approach that the Commission asked the company to provide, and I believe it's your testimony that they did not

provide that in the portfolio plan filing; is that accurate?
A. Do you have the spot in my testimony?
Q. Yes, page 16, lines 1 and 2.
A. Yes. The order that asked for the refiling of the CFL program on November 30th did include specific language asking for specific marketing materials. I did not see that in this plan.
It was agreed this program could be the portfolio plan, but I don't believe it was agreed that the specifics that the Commission had asked for were waived. I think they were still requiring those details, and I was unable to find those in this plan.
Q. So, I mean, is it your recommendation that the portfolio plan which includes the CFL provision is insufficient and thus it shouldn't be approved by this Commission?
A. It's difficult to answer. You know, I do want to see the FirstEnergy customers have energy efficiency programs made available to them, but it should be done appropriately. And, you know, I didn't make that recommendation in my testimony, but I can't say that I know what the -- exactly the marketing approach is going to be, and I didn't see

it in this plan.

I can say that we discussed in the collaborative quite a bit how this plan would be marketed and some of the concerns, like I mentioned earlier, was this plan would be marketed as a portfolio and not just as the CFLs, to let the customers know that even if CFLs aren't your way to save energy, there are other options for you.

EXAMINER PRICE: That's a good marketing approach?

THE WITNESS: Yeah, I think that's better than: Hey, we're going to come drop two bulbs off at your door.

EXAMINER PRICE: But earlier you testified that you thought that the company should have gone ahead and asked for approval with this on a stand-alone basis, they wouldn't be able to market this as part of a portfolio unless it was part of the portfolio.

THE WITNESS: Well, that was discussed in the collaborative as well, and I would respectfully disagree with that.

I think there's no reason that you couldn't roll the plan out today and mention in your marketing that this is the first phase of quite a bit that's coming your way, and although this may not be the best thing for you, we do have other options coming and here's what we're thinking.

There's a lot of different ways that you can do that. The fact that the program is rolling out alone does not isolate it from the rest of the energy efficiencies that the company is doing. So I would respectfully disagree with that assertion.

EXAMINER PRICE: Fair enough.

Q. (By Examiner Bojko) So I think what I'm hearing is if you put the cost issues aside, I think you said that there was a consensus in the collaborative -- and I'm taking that consensus in the collaborative to mean OCC; is that a correct assumption?

A. Yeah, let me clarify. I will say I don't want to speak for other parties and I will say that OCC is happy with the current distribution design of the redesigned CFL program, yes.

Q. So you support -- I understand you're not happy with the timing, but now it's part of the portfolio plan and OCC would support the CFL program that's included in the portfolio plan, setting aside costs, what the old costs and new costs and sunk costs are or whether they should or should not be recovered.

A. Right. If we're not talking about any of the costs and just the design of the program, I would say OCC is in support, yes. And that would have been my same answer November 30th. And that's where I see the concerns.

Here we are in March and that was at the end of November and there hasn't been -- that's a few months that customers have not been able to benefit from that program, and instead are paying warehousing costs to store those bulbs, that's the point I'm trying to make.

EXAMINER PRICE: Thank you, you're excused.

THE WITNESS: I'm holding my breath over here.

EXAMINER BOJKO: Thank you. Thank you for your time.

THE WITNESS: Yes.

MR. POULOS: Your Honor, at this time OCC would like to offer OCC Exhibit 12 into the record.

EXAMINER PRICE: Any objections to the admission of OCC Exhibit 12?

Seeing none, it will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

EXAMINER PRICE: Back on the record.

Mr. Reilly.

MR. REILLY: Your Honor, we would call Gregory Scheck.

Your Honor, I have given the court reporter and placed on the Bench copies of Mr. Scheck's prefiled testimony that was filed on February 23rd of this year.

EXAMINER PRICE: Thank you.

MR. REILLY: I trust that everybody else has copies. I have some additional copies if anybody else needs them. I trust everybody's got them.

(Witness sworn.)

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

THE WITNESS: My name is Gregory Scheck, and my business address is 180 East Broad Street, Columbus, Ohio 43215.

EXAMINER PRICE: Thank you.

Mr. Reilly, please proceed.

MR. REILLY: Thank you, your Honor.

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GREGORY SCHECK

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

DIRECT EXAMINATION

By Mr. Reilly:

Q. Mr. Scheck, can you tell us by whom you're employed?

A. I'm employed by the Public Utilities Commission of Ohio.

Q. Did you cause testimony to be filed in this matter on February 23rd of this year?

A. Yes, I did.

Q. Can you tell us how that testimony came into existence?

A. I put together my testimony prior to or on the date of February 23rd and it was filed by the general.

Q. Okay. Is that fair to say just that you created the testimony yourself?

A. Yes, I did.

Q. Do you have a copy with you on the stand?

A. Yes, I do.

Q. Do you have any modifications to that testimony?

A. Yes, I do.

Q. Could you tell us what those are?

A. Yes. They're basically grammatical, and I'll start with the cover page. There is a correction on the division -- State's Policy and Market Analysis Division. I actually worked in the newly formed Energy Efficiency and Renewables Division. So that is also carried over in my second response to what my current position is at the Commission.

I'm still the utilities specialist but it's in the Energy Efficiency and Renewables Division of what is now the Energy and Environment Department, rather than the Utilities Department. And that's my first correction.

Then there's a grammatical correction on question 6, in the answer and on line 21.

EXAMINER PRICE: Can I have the page number again, please?

THE WITNESS: I don't have a page number with mine, actually.

MR. REILLY: He said it's question 6.

THE WITNESS: The answer to question 6, I have line 21, I don't know if that's what everyone else has, it starts with yes, as I observed in DSM Ohio's and Duke Energy-Ohio's filing, and that should be "they" rather than thy, it should be "t-h-e-y," there was an "e" missing in that word.

And then there is a word missing on my question 8, I don't have the page but it's question No. 8, I have it on line 9 a couple pages later and there should be the word "have" inserted after "does staff," and it should be "have any recommendations." The word "have" should be included there.

And then throughout the document I put an apostrophe after "companies" and it really shouldn't be any apostrophes, and it shouldn't be in the possessive in the plural, where there's apostrophes after companies, the apostrophes should be stricken. That's basically my corrections to the testimony.

Q. Mr. Scheck, with the exception of the first correction you mentioned regarding the identity of the section you work for, do any of the corrections that you just mentioned affect the meaning of your answers or your questions or answers in any regard?

A. No, they do not.

Q. Mr. Scheck, with those changes if I were to ask you the questions that appear in Staff Exhibit No. 1, would your answers be the same as appear in Staff Exhibit No. 1?

A. Yes.

EXAMINER PRICE: Actually we haven't marked --

MR. REILLY: I would also request that we mark the document we've been discussing as Staff Exhibit No. 1.

EXAMINER PRICE: So marked.

MR. REILLY: I apologize, it just occurred to me.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. REILLY: And I would tender the witness for cross-examination.

EXAMINER PRICE: Thank you.

MS. KOLICH: Your Honor, can we off the record for one minute?

EXAMINER PRICE: Yes, please.

(Discussion off the record.)

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

Ms. Kolich.

MS. KOLICH: Thank you, your Honor. I would move that the line starting on line 23 of question 6, which I think is page 2 where it says "In addition, I have spoken to Dayton Power & Light Company personnel and they indicated that commercial lighting was a cost-effective program," I would move to strike that on the grounds that that's hearsay.

These calculations make quite a few assumptions and we have no way of crossing the Dayton Power & Light personnel, and this is being -- this statement is being offered for the truth of the matter asserted.

EXAMINER PRICE: Mr. Reilly.

MR. REILLY: Your Honor, it's often said and it is true that the Rules of Evidence are relaxed in administrative hearings. It is true that's hearsay. We don't quibble with that. But Mr. Scheck is here to be examined on that statement if counsel wished, therefore, there can be cross-examination on it.

As to Dayton Power & Light's basis, the statement, it seems to me that's a weight question really to be considered by the Bench after cross-examination.

EXAMINER PRICE: Well, relaxed or not, we're not that relaxed, the motion to strike will be granted.

MS. KOLICH: That's the only motion I have for striking.

EXAMINER PRICE: Thank you.

OCC, cross?

MR. ALLWEIN: Not at this time, your Honor.

EXAMINER PRICE: Mr. O'Brien?

MR. O'BRIEN: Yes, your Honor, just a couple of questions.

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CROSS-EXAMINATION

By Mr. O'Brien:

Q. Good afternoon, Mr. Scheck.

Just actually one question, depending on how you answer it. A little hedging there.

Would you please turn to your answer to question 7? I would give you a page reference, but --

A. I got it.

Q. That first paragraph in your answer, the second sentence, "The assumption that the entire labor costs should be included is not reasonable in that many of the retrofit applications the customer would have less than the useful life remaining with their useful current lighting system," and I'm not quarreling with your statement there, but my question is, is there a Commission rule or a Commission document or any kind of document where we would go to obtain guidance on the reasonableness of that assumption?

A. There is no particular staff or Commission document related to that comment. It is just my general background knowledge, and also in looking and reviewing both the AEP and the Duke filings, that they did not use fully loaded labor costs.

Basically I'm repeating a former witness's answer to the same question, which is -- that would have been Dylan Sullivan from NRDC, is essentially customers would probably somewhere in the middle of their replacement life in terms of the remaining useful life left of the measure.

If typically a lighting system would last 16 years, probably on average the lighting system may be 8 years remaining life left just on the average. So that's the purpose of the assumption about the labor costs. But there is no particular spelling document that some certain number must be used.

Maybe at some later date there might be related to that if there is any specifications to a technical reference manual that's underway, but that has not been completed at the present time.

Q. Thank you. Follow-up question to that.

You mentioned that technical reference manual. To your knowledge, would the TRC that's currently under consideration answer this kind of an issue to your knowledge?

A. Could you repeat the question again?

Q. The technical reference manual that is under consideration in Docket 09-512, to your knowledge would it provide guidance on this type of assumption?

A. I'm not a hundred percent that it will, but it may.

MR. O'BRIEN: Thank you, no further questions.

EXAMINER PRICE: Thank you.

Mr. Smith?

MR. SMITH: No questions, your Honor.

EXAMINER PRICE: Mr. Heintz?

MR. HEINTZ: No questions, your Honor.

EXAMINER PRICE: Mr. Reisinger.

MR. REISINGER: No questions, your Honor.

EXAMINER PRICE: Mr. Lavanga?

MR. LAVANGA: No questions, your Honor.

EXAMINER PRICE: Mr. Clark?

MR. CLARK: Just a couple, your Honor.

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CROSS-EXAMINATION

By Mr. Clark:

Q. Mr. Scheck, I would like to direct you to unnumbered page 2 of your testimony, your answer to question 5, lines 10 to 17 on that page. There you say that, if I read it quickly, "The problem with the company's filing is that the company would like to proceed with the rollout of a small and large enterprise commercial and industrial lighting program and yet they are providing preliminary analysis that says this program is not cost-effective on a total resource basis. This would suggest that the companies should be purchasing the incremental cost of power for customers rather than pursuing energy efficiency in the commercial and industrial lighting category since most of the lighting categories do not pass the TRC test."

Did I read that correctly?

A. Yes, you did.

Q. And then on page 4 of your testimony in answer to question 8 you suggest that the company remodel their -- they come back with a range of assumptions about the lighting programs; is that correct?

A. Yes.

Q. So my question is if the companies change the assumptions and come back and determine that the C&I lighting projects still do not pass the TRC, you're still recommending that they do not do the C&I lighting projects and buy the power instead, correct?

A. Well, that depends. I mean, there may be certain measures that -- there's a number of measures that the company has in the lighting program itself, the C&I lighting program. Some of those will be -- probably most likely be cost-effective, others won't.

So the preference would be to proceed with the lighting program in the totality it passes the total resource cost test, but if it doesn't, then I think that brings it into question then the company should probably be investing C&I dollars into motors and probably the HVAC instead of lighting.

But again, that is contrary to my knowledge of the industry. Typically the low-lying -- low-hanging fruit is typically commercial lighting, so I would expect it to look or at least to have a range of assumptions in which in many cases would show that it would be cost-effective.

Q. And then my next question is going back to unnumbered page 4, your question, it would be the answer to question 7 and beginning at line 6 you state "The staff is concerned that the companies may rely solely on the mercantile self-directed projects to reach their annual benchmarks."

And my question is if the companies can use the mercantile self-directed projects to meet their new benchmarks on a least-cost basis, why do you have concerns with that it's least cost to use the mercantile projects?

A. I'm sorry, where was the question at?

Q. Sure. Looking at lines 6 through 8 there.

A. What question is this?

Q. Oh, I'm sorry, it would be the answer to question 7.

A. Question 7.

Q. And unnumbered page 4 of your testimony.

A. Right. Yes, go ahead.

Q. If I moved too quick for you there. You state on line 6 to 8 "The staff is concerned that the companies may rely solely on the mercantile self-directed projects to reach their annual benchmarks."

If the companies can use the mercantile self-directed projects to meet their benchmarks on a least cost basis, why do you have a concern with that?

A. Well, it has to do with the fact that the, I think the basic tenet of a law was to have companies actually introduce programs on a mass-market basis and there's nothing wrong with self-directed mercantile projects being done that are cost-effective and contribute to other goals.

I don't have any issue with that. It's just in the long-term historical self-directed probably will be exhausted at some point, and, therefore, you do want to have programs in place.

There's -- in that instance for other customers to participate because they're going to be other classes, or I should say other groups of customers in C&I classes that are going to have funds available to invest in energy efficiency, so you don't want to ignore the whole class so there should probably be a whole portfolio of measures for customers to select from that would fit into the mercantile definition.

So nothing -- on its face, there's nothing against the rule that says the company can't exceed its benchmarks and be able to take credit to the following year, so if the company on its own can meet the benchmarks just with self-directed, that's great.

But on the other hand, you want to make sure you have energy efficiency offered to all customers, so that's the reason for the statement is that you don't want a company to rely entirely on self-invested customer funds just to reach their goals. They need to have a broad set of measures for both the residential class as well as the small and large commercial class and governmental, and that's the reason for the statement.

Q. So you would agree with me that even if it costs more for the customers, you still shouldn't use the mercantile customer projects on their own if they can completely meet the benchmarks with the mercantile self-directed, even if it costs more.

A. Even if it costs more. That question is not that it costs more. That questions is does it cost less than the avoided generation costs for both capacity and energy. So long as there are C&I measures out there as well as residential that are lower than the avoided costs, then they should be investing in that.

So it's not a question of do they only do the self-direct mercantile because it's the lowest cost, and it may be the lowest cost for any of the companies. And that may be the case. But that's not where you stop.

The point at which you stop is when the avoided cost is equal to whatever the incremental investment is in energy efficiency.

Q. Mr. Scheck, there's nothing in Senate Bill 221 that limits how much mercantile customer projects can be applied towards benchmarks, correct?

A. Absolutely not. I wish they'd contribute all they can.

Q. And there's nothing in the rules that limits how much mercantile customer self-directed projects can count towards benchmarks.

A. Correct.

Q. So hypothetically speaking, if the utility could meet all of their benchmarks using the mercantile self-directed projects and it was the least cost basis of all the other projects, you would still recommend the utilities include in their portfolio programs and implement and make customers pay for those programs above and beyond the benchmarks just because they were lower than the avoided cost of capacity and energy?

A. Yes. From a total resource economic

decision, that should be a correct decision.

Q. Even if the utility could meet the benchmark, meet their entire benchmark using the mercantile self-directed, the minimums required by the law.

A. Yes.

Q. Okay.

MR. CLARK: That's all I have, your Honor.

EXAMINER PRICE: Ms. Kolich.

MS. KOLICH: Yes, thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Kolich:

Q. Good afternoon, Mr. Scheck. My name's Kathy Kolich, I'm counsel for the companies, I'll be asking you a few questions.

In response to question 6, I think's on unnumbered page 2, you refer to AEP's Potential Study Volume 2, DSM Potential Study Volume 2, and Duke Energy-Ohio's filing. Do you see that?

A. Yes, I do.

Q. Did you have any personal involvement in the development of either of those?

A. No, I did not.

Q. Are you familiar with all of the assumptions that either of these companies make in the development of these documents?

A. I am familiar with some of them but not all of them.

Q. And have you run a TRC test on the T-12 C&I program that you're discussing in your testimony?

A. Not at this time.

Q. It's actually in response to question 7 but it's above question 8, it might help you find it, the first line where you say "The only reasoning the Staff can think of" -- I'm sorry, let me try that again.

"The only reasoning the Staff can think as to why the Company used these type of assumptions in their commercial lighting analysis"; do you see that?

A. Yes, I do.

Q. Is the staff guessing as to the company's motivations with this statement?

A. I'd have to say "yes."

Q. And you are aware that the company is advocating that this lighting program go forward, is that true?

A. Yes. But qualifying that realizing that they put forward their preliminary analysis that it is not cost-effective by a fairly large measure.

Q. Is the staff recommending that that program not go forward?

A. No. Again, qualifying that I think the company needs to go back and, again, reevaluate the program with a range of assumptions using a Monte Carlo simulation or something like that where you can actually adjust the assumptions up and down to a low or high level and you can look at a whole probability of outcomes and look at that expected range and see what is the risk analysis associated with the company by proceeding forward.

Q. And you're making this suggestion based on -- strike that.

You're making this recommendation even though you did not perform a TRC test of your own.

A. It's not that I -- I didn't perform a TRC of this particular program on my own, but I have done many, many evaluations in the past when the Commission staff had software, we do not have it at the present time, but I do understand basically using prior called static analysis using DS Manager, DS Strategist. That we used to have, I'm aware that two of the companies currently use DSMore. We are in the process of probably acquiring DSMore, we do not have it at the present time. If I did have it, I'd be doing the very same thing.

Q. And the outcome from that software would depend on the assumptions used, right?

A. Right. That's, yeah, you would run a range of assumptions for like avoided cost, program cost, range of incentives, expected participation rates, ramp-up rates, discount rates, there's a whole range of assumptions you could put in there and look at different outcomes or expected outcomes that could happen.

Q. Do you know what the company used for each of those assumptions?

A. I do not know if they used a whole range of assumptions or not. I do know in hearing the cross with the company witness consultant that they did have a high base case and a high case I believe with the avoided cost, but other than that I did not see, at least in the sheets that I have, a whole range of assumptions related to, say, labor costs or the cost, incremental cost of efficiency or discount rates, I didn't see that in the particular filing.

Q. Okay. Turning your attention to your answer to question 10, starting on line 17, you state that "The Staff is concerned that the Company's proposing a request for bid for interruptible load post May 31st, 2011." Do you see that?

A. Yes, I do.

Q. You go on to express a concern as to how the companies are going to meet their annual peak load reduction targets for 2011 and beyond. I believe that starts on line 20. Do you see that?

A. Yes, I do.

Q. Now, you would agree with me that in the company's MRO proceeding the company has proposed an interruptible RFP, haven't they?

A. I'm not a hundred percent certain, but if that's what you're stating, I'll take that to be the fact.

Q. If the Commission approves that proposed program in the MRO proceeding, would that alleviate your concern that you're voicing here?

A. It would in part, however, I think having all options open might be a better way to go, meaning you could have the ELR and the OLR option, those riders continue and also do a request for bid for megawatts, if you will, and do those both to meet the goals.

Q. Actually, you just answered my next

question.

A. Oh.

Q. So if either the ELR or OLR is extended for the request -- the interruptible RFP is approved, that wouldn't alleviate your concerns that you're voicing here?

A. I think if both of those were continued, that would help -- that would certainly alleviate the concerns if you had both those options.

Q. Are you recommending that the company provide more clarity, as you indicate on line 23 of your testimony, prior to the Commission making its ruling in the MRO case?

A. That may help. Maybe the company doesn't know exactly how it's going to conduct the auction itself. That's part of it. It's kind of a generic statement, if I'm reading in the filing, but it didn't elaborate as how that's going to take place or what type of auction it would be.

Q. And you believe the company should clarify that in this case or the MRO case?

A. Either one.

MS. KOLICH: That's all I have, your Honor.

EXAMINER PRICE: Mr. Reilly, redirect?

MR. REILLY: Thank you, your Honor.
Just a few questions, Mr. Scheck.

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REDIRECT EXAMINATION

By Mr. Reilly:

Q. Let me ask you, Mr. Scheck, have you done anything of an investigation into the cost effectiveness of commercial and industrial lighting programs?

A. I have looked at a couple of filings here at the Commission. I did call a couple of consultants regarding the cost-effectiveness just nationally with a couple of well-known consultants in the industry and asked their opinion in the last couple of weeks, and the response I get was in general commercial and industrial lighting has been found to be cost-effective.

Q. All right.

MS. KOLICH: Objection. Move to strike the response as hearsay.

EXAMINER PRICE: Mr. Reilly.

MR. REILLY: Your Honor, Mr. Scheck just testified that he conducted -- the conclusions he drew after his own investigation. These are his conclusions, his investigation. It's not hearsay.

It's his conclusion.

EXAMINER PRICE: Can we have the answer read back, please?

(Record read.)

EXAMINER PRICE: Mr. Reilly, can you address why everything after "Commission" should not be stricken as hearsay, please?

MR. REILLY: Can you read it up to that point for me?

(Record read.)

MR. REILLY: I would suggest, your Honor, that we're talking about his investigation and the -- and what he considers to be an effective investigation. I can ask him the question did he draw any conclusions as a result of that investigation.

EXAMINER PRICE: Well, you can ask whatever questions you would like, but I'm going to the motion to strike everything after the word "Commission" will be stricken.

MR. REILLY: I apologize for the dual questions here, but I, frankly, am not sure what's cut out here.

Q. (By Mr. Reilly) But if I can just go back, did you conduct an investigation into the cost-effectiveness of commercial and industrial lighting?

A. Yes, I did.

Q. Did you draw any conclusions as a result of that investigation?

A. Based on my review of the two utilities filings here at the Commission, I determined that C&I lighting in general, or at least with those two utilities, that it is cost-effective.

Q. Thank you.

EXAMINER PRICE: Have you ever looked at any of the literature, any professional treaties or journals on this question?

THE WITNESS: In the past. I haven't looked recently, but over a period of 15, 20 years from what I've seen C&I lighting in general is cost-effective.

EXAMINER PRICE: Okay. But you can't cite any specific sources today.

THE WITNESS: No. I could find them. I could easily find some.

EXAMINER PRICE: I'm sorry, Mr. Reilly, did you say you were done?

MR. REILLY: If I can just have a moment, your Honor.

EXAMINER PRICE: Sure.

MR. REILLY: I am done, your Honor. Thank you.

EXAMINER PRICE: Thank you.

Mr. Poulos, recross?

MR. ALLWEIN: Not at this time, your Honor.

EXAMINER PRICE: Mr. O'Brien? Mr. Smith?

MR. SMITH: Recross on the cross, is that what you're asking?

EXAMINER PRICE: Right. Recross on the redirect.

MR. SMITH: No.

EXAMINER PRICE: Mr. Heintz?

MR. HEINTZ: No.

EXAMINER PRICE: Mr. Reisinger?

MR. REISINGER: No.

EXAMINER PRICE: Mr. Lavanga?

MR. LAVANGA: No, your Honor.

EXAMINER PRICE: Mr. Clark?

MR. CLARK: No, your Honor.

EXAMINER PRICE: Ms. Kolich?

MS. KOLICH: No, your Honor.

EXAMINER PRICE: Mr. Scheck, turning to your response to question 7 and it's actually the concerns you raise that companies may rely solely on the mercantile self-directed projects, I believe Mr. Clark asked you several questions about that. Do you have that in your testimony?

THE WITNESS: Yes.

EXAMINER PRICE: Okay. I'm handing you a copy of Ohio Environmental Council Exhibit 1, which has been admitted into evidence in this proceeding. Have you ever seen this before?

THE WITNESS: No, I haven't. But I'm looking at it.

EXAMINER PRICE: Well, take a few minutes to review it and tell me.

THE WITNESS: I see it.

EXAMINER PRICE: Okay. Does that exhibit alleviate your concern that the companies may rely solely on mercantile self-directed programs in the future?

THE WITNESS: Well, it looks like they drop off for certain, but that doesn't mean -- just because one submits me a document saying this is their expected numbers for mercantile direct, it doesn't mean that with a change in the program administrator agreement we could see several hundred self-directed mercantiles that could meet the company's goals.

So even though I have values and percentages here, it doesn't mean that the company could fall back on just self-directed mercantiles to meet the goals and then back off on investing in other mass-market programs. That is my --

EXAMINER PRICE: So the answer to my question would be no, it does not alleviate your concern.

THE WITNESS: No, it does not.

EXAMINER PRICE: Thank you. Okay.

EXAMINER BOJKO: Mr. Scheck, are you taking a position today with regard to any shared savings that may or may not be impacted by the mercantile-sited customer practices that you discussed?

THE WITNESS: Well, I don't think that a company should get shared savings for something they didn't initiate. Shared savings in general I think should be something in which the company caused energy efficiency and not from customers' out-of-pocket expense for energy efficiency.

EXAMINER PRICE: So you agree with Mr. Sawmiller's recommendation that any shared savings exclude the effect of mercantile-directed programs.

THE WITNESS: If I were to testify or comment to that, yes, I would agree with that statement.

EXAMINER PRICE: Do you have a position on shared savings at all?

THE WITNESS: No, other than the way I -- my thinking is probably a little different. Instead of just pulling a number out of the air and saying, you know, 15 percent is the right number, actually this is not a new concept, as someone asked before, this concept was around back in the mid-'90s, we actually had shared savings incentives at that time. And those shared savings incentives were basically at the time at the companies allowed rate of return.

So when I look at a statement like "shared savings" or a "profit incentive," I look at it as what's the alternative for the company. If they were to invest in, say, a supply alternative, what would be their rate of return?

Now, however, generation, if it's deregulated and they do not own any of it, that's a different animal altogether, but if they do own generation, generation may be spun off to some extent but it's in a separate profit entity, the company usually -- the risk associated with generation is higher than it would be for transmission and distribution.

But with that said, you would look at -- if they still own generation, you would probably look at the whole range of assets they have and look at the risks they have associated with all their assets and see, okay, what is it they're avoiding when they do energy efficiency depending on the project?

So shared savings to me should still be tied to some alternative investment or rate of return the company would make, so using a number of 15 percent, I'm not really locked into that number, but, you know, what's the alternative? The company's rate return on its other assets.

Because that's essentially what energy efficiency does, it avoids other investment in other assets that are supposedly more expensive.

So my view is, you know, something tied to the company's rate of return could have some sliding scale based on performance. I can understand some number 15 percent being picked out because the Commission may be wanting to promote energy efficiency at that time over other investments.

EXAMINER PRICE: There's a lot to unpack

in that response.

THE WITNESS: Yes.

EXAMINER PRICE: Just as a preliminary question back to Mr. Sawmiller, do you agree with Mr. Sawmiller's recommendation that transmission and distribution projects be excluded from the calculation of shared savings?

THE WITNESS: That depends on T and D investment. If the T and D investment was done primarily to gain energy efficiency, then I could see it being included. If it was for other purposes, like reliability or expansion, I think he talked about, then probably not. So if it is directly strictly or primarily for energy efficiency purposes, then I would say yes. But otherwise, no.

EXAMINER PRICE: Okay. Do the FirstEnergy operating companies, Ohio Edison, Cleveland Electric Illuminating Company, and The Toledo Edison Company, to the best of your knowledge, own any generating assets -- generation assets?

THE WITNESS: The operating companies?

EXAMINER PRICE: Yes.

THE WITNESS: No, they don't. At least that I know of.

EXAMINER PRICE: Earlier in your

testimony you seemed to distinguish between companies that do own generation assets from companies that do not own generation assets. So understanding that FirstEnergy does own generation assets, what would your recommendation be for shared savings?

THE WITNESS: No, I think we need to clarify this a little bit here. Just because the FirstEnergy operating companies do not own any assets doesn't mean that their behavior is not altered.

The FirstEnergy stock incorporates FirstEnergy Solutions which owns assets, so with that in mind, that means that the distribution company's thinking may be affected by what impacts are on generation.

So just because they supposedly don't own any generating assets, doesn't mean their behavior has changed. If they're totally divested, that's a different story.

EXAMINER PRICE: I don't have any further questions.

EXAMINER BOJKO: I don't either.

EXAMINER PRICE: You're excused, thank you.

Mr. Reilly.

MR. REILLY: We move the introduction of Staff Exhibit No. 1.

EXAMINER PRICE: Any objections?

That will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

EXAMINER PRICE: Let's go back on the record. This hearing is adjourned, we will commence again tomorrow at 9:00 o'clock. Thank you all.

Off the record.

(Thereupon, the hearing adjourned at 5:07 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, March 3, 2010, and carefully compared with my original stenographic notes.

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

My commission expires June 19, 2011.

(MDJ-3524)

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