

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 : Case No. 10-388-EL-SSO
Authority to Establish :
a Standard Service Offer :
Pursuant to Section :
4928.143, Revised Code, in:
the Form of an Electric :
Security Plan. :

— — —

PROCEEDINGS

before Mr. Gregory Price and Ms. Kimberly Bojko,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 8:30 a.m. on Friday, April
23, 2010.

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VOLUME IV

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1 Friday Morning Session,

2 April 23, 2010.

3 - - -

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

5 Good morning. The Public Utilities Commission has
6 set for hearing at this time and this place Case No.
7 10-388-EL-SSO, being in the Matter of the Application
8 of Ohio Edison Company, The Cleveland Electric
9 Illuminating Company, and The Toledo Edison Company
10 for Authority to Establish a Standard Service Offer
11 Pursuant to Section 4928.143, Revised Code, in the
12 Form of an Electric Security Plan.

13 My name is Gregory Price, with me is
14 Kimberly Bojko. We are the attorney examiners
15 assigned to preside over today's hearing. This is
16 our fourth day of hearing in this proceeding.

17 Yesterday when we recessed, Mr. Gonzalez
18 was still under cross-examination by FirstEnergy,
19 therefore, we will resume at this spot.

20 Mr. Gonzalez, I'd like to remind you that
21 you are still under oath.

22 THE WITNESS: Yes.

23 EXAMINER PRICE: Mr. Lang.

24 MR. LANG: Thank you, your Honor.

25 - - -

1 WILSON GONZALEZ

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

4 CROSS-EXAMINATION (Continued)

5 By Mr. Lang:

6 Q. Good morning again, Mr. Gonzalez.

7 A. Good morning.

8 Q. I'd like to start by reference to page 34
9 of your testimony which discusses MISO exits and PJM
10 integration fees. With regard to those, the MISO
11 exit fees and PJM integration fees, the FERC order
12 said that cost recovery with respect to those was not
13 ripe, correct?

14 A. That's correct.

15 Q. And the FERC order said that the
16 appropriate time to raise any concerns concerning
17 those would be when ATSI files its proposed
18 transmission rights, correct?

19 A. I believe that's right.

20 Q. You are aware that absent the ESP
21 FirstEnergy has stated that it intends to pass
22 through these charges to retail customers, correct?

23 A. That's correct.

24 Q. Your opinion is that in the future there
25 is a good chance that ATSI will make a filing to

1 recover these costs in its transmission rates and
2 your opinion is that FERC would deny that recovery,
3 correct?

4 A. That's correct.

5 Q. However, you cannot be certain that FERC
6 will deny recovery of these costs, correct?

7 A. I rely on that same statement that I
8 relied on yesterday concerning the RTEP charges.

9 Q. The question is, you cannot be certain
10 that FERC will deny recovery of these costs.

11 A. No, I'm assigning a zero probability as
12 we discussed yesterday.

13 Q. So you are certain.

14 A. No. No. I'm saying -- I'm applying --
15 based on the language I have a high certainty that
16 it's going to, you know, in my testimony that it's
17 going to occur based on relying on that same
18 paragraph 113 of the FERC.

19 Q. So you're using -- your analysis is a
20 zero value for that.

21 A. That's correct.

22 Q. Zero value means that you're certain that
23 those fees will not be included in ATSI's
24 transmission charges and passed through to
25 residential customers? Correct? That's what that

1 represents. You are certain of that, correct?

2 A. Yeah, the same way the company analysis
3 is certain that it's going to be recovered. You
4 assigned a 1, a probability of 1 to it occurring in
5 Mr. Ridmann's testimony.

6 MR. LANG: Your Honors, I would actually
7 move to strike after the "yes," but it's at your
8 disposal.

9 EXAMINER PRICE: The stipulation doesn't
10 envision a 100 percent probability. That may be
11 FirstEnergy's position absent the stipulation, but
12 the stipulation represents a probability somewhere
13 between zero and 100 percent because FirstEnergy is
14 foregoing a part of these fees; is that not correct?
15 Actually, they're foregoing all of the bid fee.

16 THE WITNESS: Yes, but that's the quid
17 pro quo of the stipulation, so if you were comparing
18 it to an MRO, it's really assigned -- I'm assigning a
19 zero probability, they're showing the full amount so
20 they're assigning the probability of 1. That's the
21 value of that.

22 EXAMINER PRICE: Okay.

23 THE WITNESS: Thank you.

24 EXAMINER BOJKO: Well, would the issue
25 still exist if we were in an MRO situation?

1 THE WITNESS: The issue being?

2 EXAMINER BOJKO: Whether these fees would
3 be able to be passed through to customers.

4 THE WITNESS: That would still be an
5 issue, yes.

6 Q. (By Mr. Lang) That would be an issue in
7 the future, you would anticipate there would be
8 litigation at FERC, and your opinion is the result of
9 that litigation is that FERC would deny those fees.

10 A. Yes.

11 EXAMINER PRICE: Mr. Gonzalez, don't you
12 believe that FirstEnergy would appeal any such
13 denial?

14 THE WITNESS: There's a chance of that,
15 yes.

16 EXAMINER PRICE: There's a chance of
17 that? A pretty high probability of that, don't you
18 believe?

19 THE WITNESS: We're talking
20 probabilities, I would say a high probability.

21 EXAMINER PRICE: And so you're also
22 assigning a zero percent probability that FERC will
23 be reversed on appeal by the United States Court of
24 Appeals. Absolute zero.

25 THE WITNESS: I think that follows, yes.

1 EXAMINER PRICE: Thank you.

2 Q. (By Mr. Lang) I want to move forward,
3 Mr. Gonzalez, in your testimony to page 38. First I
4 want to ask at line 7 you reference, you say "The
5 figures are \$31.5 million in 2013," and I'll just
6 stop there at this point. At the end of that
7 sentence you have a cite to the direct testimony of
8 George Fitzpatrick from the energy efficiency and
9 peak demand reduction case. Is that figure of
10 31.5 million in Mr. Fitzpatrick's testimony?

11 A. No. I believe that's in my Schedule 2.

12 Q. Have you located the reference,
13 Mr. Gonzalez?

14 A. Yes. It should reference back to my
15 Schedule WG-2. I'm looking at the dates and the
16 numbers are somewhat off so that -- so if you look at
17 my Schedule WG-1 for 2012 where it says "28," okay,
18 those are the budgets. I'm sorry, I was confused, I
19 thought those were lost revenue numbers but those are
20 the budget numbers that appear in Mr. Fitzpatrick's
21 testimony. I'm sorry, filing in the portfolio case.

22 Q. Do you have a copy of that GLF-3 exhibit
23 that you cite? Do you have that with you?

24 A. I do not.

25 Q. Let me just show this to you.

1 MR. LANG: I'm not going to mark it as an
2 exhibit.

3 EXAMINER PRICE: Thank you.

4 Q. Mr. Gonzalez, is that the GLF-3 that you
5 reference in your testimony?

6 A. I believe it is, yes.

7 Q. And you're citing in your testimony
8 figures from 2013 and 2014 from that exhibit. That
9 exhibit as filed in the energy efficiency and peak
10 demand reduction portfolio plan case has columns for
11 2010, 2011, and 2012, but no 2013 or 2014, correct?

12 A. Yes, I see the excerpt you've taken out
13 only goes through 2012.

14 Q. Are you saying that I haven't given you
15 the complete GLF-3? I'm quite willing to represent
16 that I've given you the complete GLF-3.

17 A. Not having the full exhibit here I
18 don't -- I don't --

19 Q. So your belief is that something may be
20 missing?

21 A. Could be, yes.

22 EXAMINER BOJKO: Mr. Gonzalez, it says
23 page 1 of 3 and there are three pages.

24 THE WITNESS: Yes, your Honor, I just, I
25 don't recall if there was an -- all right, the

1 witness went out further years in his exhibit -- in
2 that particular --

3 EXAMINER PRICE: But the portfolio
4 proceeding was, in fact, for program years 2010,
5 2011, and 2012. That was the purpose of the
6 proceeding. Is that not true?

7 THE WITNESS: That's correct. But I
8 believe his analysis went further.

9 EXAMINER BOJKO: In his testimony?
10 Because you cite to this exhibit.

11 THE WITNESS: Yes, I believe so. That's
12 where I got the numbers but I don't have the exhibit
13 with me.

14 EXAMINER BOJKO: You believe you got it
15 from his exhibit or testimony? I just don't
16 understand. This appears to be the exhibit that
17 you're citing to, counsel has just represented to you
18 that he provided the entire exhibit to you, it's
19 labeled "Page 1 of 3" and there are three pages.

20 Counsel, do you have his entire testimony
21 with you?

22 MR. LANG: I do. I don't believe I have
23 a clean copy. I have the copy I used at hearing,
24 that's actually where -- I think I do have all his
25 exhibits to his testimony. But they're all

1 through -- as Hearing Examiner Price mentioned,
2 they're all 2010 through 2012.

3 EXAMINER PRICE: Please proceed,
4 Mr. Lang.

5 MR. LANG: All right.

6 Q. (By Mr. Lang) Let me ask you,
7 Mr. Gonzalez, about another calculation that you
8 performed, see if we can gain some clarity on that
9 one, and it's at line 2 of that page 38, you say you
10 "estimate the Company would recover a cumulative
11 \$113.4 million in lost revenues over six years," and
12 that calculation, that would be the calculation that
13 is your WG-2; is that correct?

14 A. That's correct.

15 Q. And is that the schedule we have
16 referenced previously that was done with
17 Mr. Sullivan?

18 A. That's correct.

19 Q. And now that schedule as compared to
20 Mr. Sullivan's schedule, his only goes through 2014,
21 you carried yours out through 2017, correct?

22 A. That's correct.

23 Q. And you determined that in 2015, 2016,
24 2017 lost revenue recovery would be slightly more
25 than \$23 million in each of those years, correct?

1 A. That's correct.

2 Q. And your lost revenue number for 2014,
3 which also is slightly more than \$23 million, that is
4 a calculation for all of 2014. So it's not part of
5 2014, it's all of 2014, correct?

6 A. It's the part from the programs that
7 would start during the new ESP as opposed to the
8 bottom line that takes into account --

9 Q. Not a question.

10 A. Okay.

11 Q. You answered my question. Thank you.
12 Do you have the stipulation in front of
13 you?

14 A. Yes, I do.

15 Q. Would you turn, please, to page 24 of the
16 stipulation. In particular the paragraph that starts
17 with the number 3, it's paragraph E-3 of the
18 stipulation, and this is the paragraph that you're
19 discussing in your testimony referencing lost
20 distribution revenue recovery, correct?

21 A. Yes, it is.

22 Q. And it's your reading of this provision
23 that it authorizes companies to recover lost
24 distribution revenues through 20 -- through the end
25 of 2017, correct?

1 A. That's not my reading of this.

2 Q. We just referenced your schedule which
3 shows as a cost of ESP the companies recovering lost
4 distribution revenues through 2017.

5 A. That's correct.

6 Q. Correct. So you must believe that the
7 ESP authorizes distribution cost recovery through
8 2017, correct?

9 A. No. This is --

10 Q. So you don't believe that.

11 A. I'm modeling -- there's ambiguity at the
12 end of that particular paragraph. It says it's going
13 to be resolved after -- those lost revenues incurred
14 during the new ESP the company's going to recover
15 three years and then there's going to be -- it's
16 leftover, it's going to be divided.

17 So what I did was I added three years
18 based on the information I had that the last ESP they
19 agreed to six years of lost revenues. So it's just a
20 modeling exercise. That's the best information I
21 had. We know it's not zero because if it was zero,
22 it would be -- it would have terminated. They would
23 have said three years and that's it. So we know that
24 that's going to be an issue going forward.

25 Q. So you took language from the first ESP

1 that authorized recovery over six years, correct?

2 A. I made that my expectation in lieu of not
3 having any other information.

4 Q. So you inserted that language from the
5 last ESP into this ESP and determined that this ESP
6 would recover -- would authorize recovery for a
7 six-year period and then you modeled that six-year
8 period.

9 MR. SMALL: Objection.

10 Q. Is that correct?

11 MR. SMALL: Objection.

12 EXAMINER PRICE: Grounds?

13 MR. SMALL: Mischaracterizes the
14 witness's testimony. He hasn't --

15 EXAMINER PRICE: Overruled.

16 A. I did not take language from the old
17 settlement. I read the old settlement, I saw what
18 the company had settled on in balance of that
19 particular settlement and trying to model the
20 difference between an MRO and ESP, I thought that
21 would be a good proxy given that it's open-ended.

22 Q. Page 24 of the stipulation, paragraph 3,
23 it starts with the words "During the term of this
24 ESP." Mr. Gonzalez, what is the term of the ESP?

25 A. Three years.

1 EXAMINER PRICE: Can you give the precise
2 dates, Mr. Gonzalez, so the record is more clear?

3 THE WITNESS: Yes, the three years
4 starting 2012 -- I guess June 2011 through May 31st,
5 2014.

6 EXAMINER PRICE: Thank you.

7 Q. Mr. Gonzalez, the cost -- if I were to
8 determine from your schedule 2, which was shared by
9 Mr. Sullivan, the cost of the ESP using your -- the
10 cost of distribution revenue recovery from your
11 calculations and I wanted to do that through May 31,
12 2014, and this is, as you noted earlier, what you
13 estimate to be lost revenue recovery related to
14 programs initiated during this ESP period, that would
15 be approximately 6.8 million in 2012, approximately
16 4.5 million in 2013. Are you following me so far?

17 A. It's 14, that number is 14.

18 Q. I'm sorry, 14, approximately
19 14.5 million. Did I say it right that time?

20 A. Yes, you did.

21 Q. And I'm describing so far the numbers
22 that you've estimated for 2012 and 2013, correct?

23 A. Yes. The one clarification I would make
24 is this is only for residential and so I just looked
25 at the residential class on that table.

1 Q. And then for 2014 through May 31, 2014,
2 Mr. Sullivan in his testimony says he estimates that
3 at \$9.53 million, do you have any reason to disagree
4 with his estimate of \$9.53 million since you're using
5 the same schedule?

6 A. Do you have his testimony? I'm trying
7 to --

8 EXAMINER PRICE: Mr. Small, can you
9 provide Mr. Sullivan's testimony to Mr. Gonzalez,
10 please?

11 MR. SMALL: I think I can.

12 EXAMINER PRICE: No, he has it, thank
13 you.

14 MR. SMALL: I'm sorry?

15 EXAMINER BOJKO: He has it.

16 Q. (By Mr. Lang) I'm referencing the bottom
17 of page 3 of his testimony.

18 A. Yes.

19 Q. So using your numbers you estimate lost
20 revenue recovery from residential customers related
21 to energy efficiency programs of approximately
22 31 million, I believe it's \$30.81 million through
23 May 31, 2014, correct?

24 A. I believe it's more. It would be the
25 6 million you mentioned earlier, the 14.5 million,

1 and the 23 million. So I believe that's...

2 Q. Now, the 23 million, where is that coming
3 from?

4 A. From the same table.

5 Q. For which year?

6 A. 2014.

7 Q. But we're only doing through May 31,
8 2014.

9 A. I understand. So the --

10 Q. So that would be the --

11 A. The 9.53 as addressed in Mr. Sullivan's
12 testimony.

13 Q. So that would be the 9.53, for 2012 it
14 would be the 6 -- slightly under 6.8 million, for
15 2013 it would be the 14.48 million. So whatever
16 those three numbers add up to, the 2012 number, the
17 2013 number, and then the 9.53 million for 2014, that
18 would be the number. Whatever that adds up to,
19 correct?

20 A. Yes.

21 Q. All right. And then if I wanted to
22 compare that estimate through May 31, 2014, to your
23 estimate, I would compare that number to your
24 estimate of 113.4 million which is your calculation
25 through the end of 2017, correct?

1 A. Yes.

2 Q. And the difference between those two
3 numbers would be in the ballpark somewhere around
4 \$80 million, correct?

5 A. Yes.

6 Q. Now, you do recommend -- we're back to
7 page 38 of your testimony at the bottom of that page.
8 You reference and you say "ORC" but this is actually
9 the Administrative Code Section of 4901:1-39-07.
10 You're familiar with that provision, correct?

11 A. Yeah, I stand corrected.

12 Q. And that provision includes -- that
13 relates to the energy efficiency and peak demand
14 reduction program filings that are made by the
15 electric utilities, correct?

16 A. Yes, the cost recovery section.

17 Q. And that allows the utilities to apply to
18 the Commission for cost recovery including recovery
19 of lost distribution revenues, correct?

20 A. That's correct.

21 Q. And you're familiar, I'm sure, that the
22 existing 09-1947 case is a case where the company has
23 made that application seeking recovery for the period
24 of the portfolio plan which is 2010 through 2012,
25 correct?

1 A. Yes, I believe so.

2 Q. And your recommendation here is that the
3 companies should, in their next portfolio plan filing
4 for the years 2013 through 2015, should include in
5 that filing methodology for recovering lost
6 distribution revenues -- let me just stop there.
7 Should include a methodology for recovering lost
8 distribution revenues, correct?

9 A. I would say I'm recommending a
10 distribution -- a decoupling mechanism but not at the
11 end of this existing ESP. My recommendation was to
12 take it out of this particular ESP and bring it to
13 the POR case.

14 Q. Well, you referred to a more appropriate
15 venue and that would be the 2013-2015 program
16 portfolio plan, correct?

17 A. Could be that venue, but it could be
18 another venue that transpires earlier.

19 Q. On the next page, Mr. Gonzalez, line 11,
20 where you state that you "conservatively modeled a
21 six-year lost revenue recovery versus a distribution
22 rate case and a revenue decoupling mechanism with
23 annual deviations at a positive" and you corrected
24 that to say ".5 percent." Now, the first part of
25 that, the "six-year lost revenue recovery," that

1 would be what we've just recently discussed, that
2 would be your --

3 A. That's correct.

4 Q. -- Exhibit 2, okay. And the second part
5 of that, the modeling of "a revenue decoupling
6 mechanism with annual deviations at a positive
7 .5 percent," where would I find that?

8 A. That's in the corrected -- the handouts I
9 made yesterday. That table you have right before
10 you, yes.

11 Q. And that would be the, at the top of that
12 it says "Workpaper for corrected Schedule WG-1."?

13 A. That's right.

14 Q. That was not a schedule that was included
15 in the testimony you filed on April 15th, but you
16 have provided it after that time, correct?

17 A. Yes, I inadvertently left it out of the
18 first one.

19 Q. And this model is, in the same way that
20 your six-year lost revenue recovery was residential
21 only --

22 A. Correct.

23 Q. -- this is also residential only.

24 A. That's correct.

25 Q. The use of the annual deviation of

1 .5 percent, did you determine to use that number
2 based on your review of this article that you cite in
3 footnote 59?

4 A. No; partly on that article and partly on
5 experience I've had in other, you know, my review of
6 other states over time.

7 Q. So you've been involved in many other
8 revenue decoupling cases in other states?

9 A. And in Ohio also.

10 Q. And in Ohio?

11 A. Correct.

12 Q. For electric utilities?

13 A. In Ohio it's gas utilities.

14 Q. And were the gas utilities using this
15 rate adjustment mechanism or fixed rate variable?

16 A. The gas companies were using a modified
17 version of a revenue decoupling so it wasn't a
18 straight fixed variable; no, it wasn't.

19 Q. In the first few words of footnote 59 it
20 says "The 5 percent revenue requirement." Was that
21 another number that's corrected in your -- as part of
22 your corrections?

23 A. Yes.

24 Q. This workpaper for corrected Schedule
25 WG-1, it doesn't have dates on it. It says first

1 period, second period, third period. Can you tell me
2 what is the first period?

3 A. It followed -- if you look, I'm sorry,
4 the first period is 2012.

5 Q. So it's -- you did this annually
6 January 1st, 2012, through December 31st, 2012?

7 A. It carries over, yes, from my -- it's
8 consistent with the way I calculated the companies'
9 loss revenues that we talked about earlier.

10 Q. I just wanted to make sure that it's
11 not -- you're not following the June 1 --

12 A. No.

13 Q. -- 2011; you start January 1, 2012.

14 A. That's correct.

15 Q. Okay. I'm going to move on again.
16 Around page 40 of your testimony you describe the AMI
17 provisions that are in the stipulation.

18 A. That's correct.

19 Q. And you believe that this program will
20 serve approximately 40,000 customers, correct?

21 A. I think that's what I recollect, yes.

22 Q. Do you know what percentage of the
23 customer base that is?

24 A. Is it the customer base of CEI where the
25 program's going to take place or is it of all the

1 utilities?

2 Q. CEI is fine.

3 A. I don't have that number.

4 Q. Now, in your Schedule WG-1, comparing ESP
5 and MRO costs and benefits, you make an adjustment in
6 your MRO portion, you describe it as "Smart Grid Cost
7 Discounted 10 percent by Operational Savings."

8 A. That's correct.

9 Q. Can you just take me through that
10 calculation?

11 A. Yeah. If you look at my -- the cost of
12 AMI smart grid in the ESP case, I just take
13 10 percent, I discount that value by 10 percent, so
14 I'm saying it's cheaper in the MRO case.

15 EXAMINER PRICE: Excuse me. Can you
16 explain that again, please?

17 THE WITNESS: Yes. I took what the
18 company was going to spend, you know, if the company
19 got 72 -- if the program is \$72 million approximately
20 in expenditures in Ohio and half of it is going to be
21 matched by the federal government grant they were
22 awarded, so I took that money and spread it out over
23 the years of the settlement and then my proposition
24 is, my assumption is that without this settlement
25 when the -- there's a separate case where there is

1 being litigated.

2 EXAMINER PRICE: I know.

3 A. So my assumption is that that would be --
4 in that particular case with more I guess information
5 we'd be able to arrive at some kind of adjustment to
6 the cost based on the benefits of the smart grid. It
7 would be a small adjustment because it's not a full
8 deployment, it's just deployed to a number of
9 customers.

10 EXAMINER BOJKO: But where did the
11 10 percent come from?

12 THE WITNESS: It was an estimate. I
13 state in my testimony and I give an example that
14 usually these operational savings, revenue
15 enhancements, and so on run in the 50 to 60 percent
16 range, and I believe if you look at the '07 I believe
17 646 case where the companies had to file the McKensey
18 study reports with a base case including those types
19 of operational savings I believe for AEP it was about
20 50, 56 percent of the initial investment cost is
21 recovered through operational cost savings. You
22 know, less meter readers, the meters are more
23 accurate so you get a bump up in revenue.

24 EXAMINER BOJKO: So the 10 percent is
25 just your judgment.

1 THE WITNESS: Yes. I would say it ranges
2 anywhere from 50, I've seen it as high as 80 percent,
3 but given that this is a limited pilot and it's a
4 small area, I made a 10 percent adjustment, yes.

5 EXAMINER BOJKO: So you went from 50 to
6 80 percent to 10?

7 THE WITNESS: No. No. I just -- I think
8 the range is that range, but I went -- I just took
9 10.

10 Q. (By Mr. Lang) Because the 50 -- what
11 you've seen in other proceedings references a
12 50 percent savings or 80 percent savings, those
13 aren't pilot programs for, you know, one utility of
14 this type, so you determined that some lower
15 percentage of savings would be appropriate, correct?

16 A. That's correct.

17 Q. And you determined based on your judgment
18 that 10 percent would be reasonable.

19 A. Yes.

20 Q. And again, we don't know sitting here
21 whether there is 10 percent savings to be derived
22 from this program because it's a pilot program and
23 because it's only CEI and so operational savings
24 across -- you wouldn't see operational savings across
25 the three companies, correct?

1 A. No, you wouldn't, but it being
2 concentrated on CEI, there's a greater chance that
3 you would have some operational savings versus 40,000
4 over the three companies.

5 Q. And that's based on your judgment from
6 reviewing these other proceedings involving other AMI
7 provisions, correct?

8 A. Yes. AMI smart grid, yes.

9 Q. I'm sorry; smart grid.

10 Several provisions of your testimony were
11 addressed in the MRO proceeding and because the
12 testimony from that proceeding can be relied on here,
13 I'm sure it will make everyone happy by not going
14 over all of that. I just had one question on one of
15 these issues for you.

16 On page 46 of your testimony, and you're
17 citing to -- you have a footnote 70 OCC MRO Exhibit
18 2. Is that your testimony from that case that you're
19 citing or another OCC witness?

20 MR. SMALL: I'm sorry, counsel, could you
21 direct me to where you're looking?

22 MR. LANG: Sure. It page 46, footnote
23 70.

24 MR. SMALL: Thank you.

25 A. Yes, that was an OCC exhibit from our

1 expert witness in that case.

2 Q. So which witness was that? He's just not
3 identified in the footnote, I wanted to make that
4 clear.

5 A. I believe it was Mr. Wallach.

6 Q. And then starting on line 10 going down
7 you reference Mr. Wilson's testimony concerning the
8 period between when you have a CBP auction and when
9 the start of the delivery period is, correct?

10 A. That's correct.

11 Q. And am I correct that your opinion and
12 your preference is that for a June 1, 2011, delivery,
13 you would prefer an auction in March of -- March of
14 2011, so approximately three months before the
15 delivery period?

16 A. That would be the shortest period before
17 having it. It could be March, it could be February.

18 Q. So your recommendation is not that it
19 should be three months before the auction.

20 A. My recommendation is that it should be
21 later than the proposed date of I believe July 2010
22 in your Exhibit A.

23 Q. Do you still have your deposition
24 transcript in front of you?

25 A. Yes.

1 Q. Could I ask you to turn to page 146. I
2 want to direct you to line 11 of that page. I asked
3 you the question "So for the June 1, 2011, delivery,
4 you would recommend an auction in March or April of
5 2011." And you respond "I would think three months.
6 I would say three months before the auction would be
7 my recommendation."

8 Did I read that correctly?

9 A. You've read it correctly, yes.

10 Q. Have you discussed with any suppliers
11 whether March 2011 would make sense to them?

12 A. I believe, being part of the MRO case, I
13 believe witness -- one of CEI's witnesses, Witness
14 Fayne, mentioned three months would be the period
15 that they would consider -- it would be the shortest
16 period that they would consider.

17 Q. Witness Fayne said three months between
18 announcement of an auction and when the CBP takes
19 place, that three months would be a reasonable
20 period. Is that your memory, or is your memory of
21 the record different? I'm just -- the record's part
22 of this case, we can go back and look at it, I just
23 want to confirm what you recall.

24 A. Yes, I recall -- yes, my recollection was
25 that it was the actual auction.

1 Q. Now, my question to you is whether you
2 had discussed with any supplier whether March 2011
3 would make sense. Putting aside what you believe you
4 heard from Mr. Fayne, have you had any discussions of
5 that type?

6 A. No, not directly with this -- concerning
7 this particular MRO.

8 Q. Are you familiar with how PJM allocates
9 ARR rights?

10 A. I can't remember.

11 Q. Have you, with regard to PJM, heard the
12 term "ARR rights"?

13 A. Yes.

14 Q. In 2011 do you know when PJM will be
15 allocating ARR rights to suppliers?

16 A. I don't recall the exact date, no.

17 Q. Would you accept that it will be in
18 February of 2011?

19 A. Subject to check, yes.

20 Q. If a CBP takes place in March of 2011,
21 suppliers would have to be bidding in that
22 competitive bidding process after the allocation of
23 ARR rights in February and so they wouldn't be in a
24 position to hedge with regard to the auction,
25 correct?

1 A. That sounds correct.

2 Q. My last topic. Renewable energy credits.
3 Way back on page 52 of your testimony you reference
4 here the utilities' RFP for renewable energy credits
5 conducted last year. You referenced that that RFP
6 process had little success, is your statement. Can
7 you tell me how many RFPs the utilities conducted in
8 2009?

9 A. You're talking of the FE --

10 Q. Yes.

11 A. -- utilities? I believe there were two.

12 Q. What portion of the RECs to satisfy the
13 nonsolar benchmarks came from the RFPs?

14 A. I don't recall that number.

15 Q. Do you know whether with regard to the
16 nonsolar renewal requirements for the FirstEnergy
17 utilities, whether as a result of the RFPs they were
18 short the RECs required to meet the benchmarks?

19 A. I don't recall. My focus was more on the
20 in-states only.

21 Q. So when you refer to the RECs RFP last
22 year having little success, your testimony is limited
23 to solar RECs; is that correct?

24 A. Yes, and that's -- the footnote cites the
25 solar numbers.

1 Q. So let's talk about solar. You would
2 agree that the utilities do not have to obtain RECs
3 separately as proposed in the ESP, but they can
4 include the renewable requirements as part of the CBP
5 auction product, correct?

6 A. That's correct.

7 Q. So the utilities could decide for the
8 next MRO or ESP in 2014 that renewable resources
9 would be a requirement of that next auction product,
10 correct?

11 A. That's correct.

12 Q. And the utilities in 2014 could have much
13 different standard service offer requirements
14 depending on how many customers are shopping,
15 correct?

16 A. That's right.

17 Q. If the utilities were to enter into a
18 long-term contract with a solar developer this year,
19 in 2010, would that generate RECs for 2010?

20 A. If their facilities were in production,
21 yes.

22 Q. If the facilities were in production. So
23 it's your position that -- I'm a little confused by
24 that response. I believe your testimony is that
25 renewable energy developers need an up-front

1 guaranteed stream of revenue to obtain bank financing
2 for new projects, so without that long-term contract
3 those projects aren't going to be in development,
4 correct? That's your testimony.

5 A. Yes. But I believe your question was
6 that -- that I was responding to is I believe it
7 dealt with that specification.

8 Q. So you are -- are you or are you not
9 assuming that there are solar projects in development
10 in 2010 that are commenced without the support of a
11 long-term contract?

12 A. I believe there's some projects that are,
13 small-scale projects that are taking place, but for
14 the larger projects and the commercial projects I
15 believe, or even the utility-scale type projects, you
16 would need a long-term contract to garner financing.

17 Q. And for those types of projects, the
18 development period is at the shortest probably 12
19 months, but a decent estimate would be 12 to 18
20 months of a development period, correct?

21 A. It depends on the size of the amount of
22 megawatts you're trying to acquire and, you know,
23 obviously there's -- I believe there's ample supply
24 of PV cells available. So I don't see any supply
25 bottlenecks, it's more financing issues.

1 Q. I have to ask, have you recently analyzed
2 supply bottlenecks of PV solar panels?

3 A. I follow the market and there's -- there
4 was a big, I would say sort of glut on in the market
5 after the program -- the feed-in tariff in Spain was
6 exhausted so there was a lot of production to meet
7 that, that was later flowed on to the rest of the
8 world market and prices stabilized and came down.
9 Actually came down.

10 Q. So did that -- I'm not sure of the right
11 word. Did that drastically reduce the price of PV
12 solar panels in the world market, to your
13 understanding?

14 A. I would say reduce. I wouldn't say
15 drastically, but it did reduce it, yes.

16 Q. Can you provide a -- can you estimate a
17 percentage of price reduction over the last year?

18 A. I would say I believe the numbers I've
19 looked at in terms of installed peak watt, I would
20 say probably anywhere from 5 to 15 percent.

21 MR. LANG: Your Honors, I'm done.

22 EXAMINER PRICE: I have a follow-up
23 question on the solar.

24 - - -

25

EXAMINATION

By Examiner Price:

Q. Your recommendation is that FirstEnergy companies enter into long-term contracts with solar developers to buy 10 to 15 years of SRECs; is that correct?

A. That's correct.

Q. Is OCC willing to guarantee the operating companies full recovery of those contracts irrespective of whether there's shopping or any use of those contracts?

A. I believe we would entertain, you know, that provision.

Q. Entertain?

A. Yes.

Q. Do you think it would be fair if OCC -- if FirstEnergy did as OCC asked, for OCC to support guaranteed cost recovery for those SRECs irrespective of the amount of shopping?

A. I believe we could arrive at something where they're not harmed for entertaining the long-term contracts.

Q. Would you propose it be done as a rider on a nonbypassable basis so shopping would be irrelevant?

1 MR. RANDAZZO: Your Honor, if I might,
2 are the questions directed to what the residential
3 customers --

4 EXAMINER PRICE: Residential customers,
5 thank you, Mr. Randazzo.

6 Q. Residential customers, Mr. Gonzalez.
7 This would solve your chicken and egg problem, would
8 it not?

9 A. It would. My concern is that the solar
10 requirement is now funded by all customers.

11 Q. How about if we just assumed the
12 residential share of the SRECs, just the SRECs for
13 the residential load?

14 A. I'm having trouble understanding the
15 residential load because usually -- right now the
16 requirement is just a requirement. It's not broken
17 up by class.

18 Q. I understand that, but it's all based
19 upon -- ultimately it's based upon the load, isn't
20 it? You could break it up by class, couldn't you?

21 A. Yes, you could.

22 Q. So hypothetically you could determine the
23 SRECs that are required to serve the residential
24 load; is that not true?

25 A. You could do that.

1 Q. And so OCC would support recovery on a
2 nonbypassable basis of those SRECs.

3 A. The concern I have is if we developed a
4 market because of long-term contracts and that has
5 the impact of increasing supply and lowering the
6 price, then other customer classes are benefiting.

7 Q. If you only entered into a long-term
8 contract to obtain the RECs that are attributable to
9 the residential load, I'm not sure why that would
10 necessarily increase supply.

11 That's fine.

12 EXAMINER BOJKO: Well, I mean either
13 you're asking us to force long-term contracts or
14 you're not. I mean, which is it? You can't tell us
15 that you want us to force long-term contracts but,
16 oh, if the market gets better and it improves later,
17 then we're going to say that the purchases were
18 imprudent because now the price of the RECs are a lot
19 lower. I mean, you can't have it both ways.

20 THE WITNESS: No.

21 EXAMINER BOJKO: Which is it? Which do
22 you want?

23 THE WITNESS: No. We would want, yeah,
24 the -- forcing, as you say, of long-term contracts
25 and we'd be willing to make utilities, you know, we

1 would hold them harmless for those commitments they
2 make. I was just saying that once you enter into
3 those commitments there's a greater likelihood that
4 you'll get more solar RECs in the market and that has
5 an impact on the price that's beneficial that's in
6 the public interest.

7 EXAMINER BOJKO: And isn't that a risk
8 that you would have to assume if you enter into any
9 long-term contract, that the market could improve and
10 the prices could be lower?

11 THE WITNESS: Yes, but this is a supply
12 issue, so --

13 EXAMINER BOJKO: Isn't everything a
14 supply issue? Isn't the whole world a supply and
15 demand issue?

16 THE WITNESS: Yes.

17 EXAMINER BOJKO: I mean, coal purchases
18 are a supply and demand issue.

19 THE WITNESS: Yes, but this is a new
20 technology, an area, an infant industry in Ohio, it
21 needs pump priming.

22 EXAMINER BOJKO: So now you're against
23 long-term contracts. Wait until the market gets a
24 little more robust.

25 THE WITNESS: No, no, I'm actually, pump

1 priming means, in an infant industry type argument,
2 in economics you want to provide incentives to kind
3 of grease the wheels and get going.

4 EXAMINER PRICE: Your concern is if only
5 residential customers were funding these long-term
6 contracts and other commercial and industrial
7 customers would be free riders on the market
8 development that the residential customers would be
9 underwriting.

10 THE WITNESS: Correct.

11 EXAMINER BOJKO: Mr. Gonzalez, is it your
12 understanding that other "electric services
13 companies" are the words that the statute uses, is it
14 your understanding that those companies such as other
15 marketers, suppliers, have to also meet these
16 requirements?

17 THE WITNESS: That's correct.

18 EXAMINER BOJKO: And is the Consumers'
19 Counsel willing or are you asking that those
20 suppliers also enter into long-term contracts?

21 THE WITNESS: No.

22 EXAMINER BOJKO: Thank you.

23 Q. (By Examiner Price) If the Commission
24 modified the stipulation and required FirstEnergy to
25 enter into 10 to 15 year long-term contracts, would

1 OCC support the stipulation?

2 A. That question is beyond my purview, pay
3 rate, or whatever.

4 EXAMINER PRICE: Fair enough.

5 Mr. Porter.

6 MR. PORTER: Yes, a few questions.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Porter:

10 Q. Good morning, Mr. Gonzalez.

11 A. Good morning, Mr. Porter.

12 Q. My name is Andre Porter and I represent
13 the Association of Independent Colleges and
14 Universities of Ohio. I'll refer to the association
15 as the AICUO throughout this cross-examination.

16 Can you hear me, Mr. Gonzalez?

17 A. Yes, I hear you much better now.

18 Q. You can hear me now, great.

19 You have your testimony, correct?

20 A. Yes.

21 Q. Okay. Quickly, in your testimony at page
22 16, footnote 14, you cite to an Ohio statute
23 4928.01(A)(19), correct?

24 A. That's correct.

25 Q. Okay. You agree that the Commission is

1 required to follow applicable Ohio statutes.

2 A. Yes, I believe that.

3 Q. And these statutes are Ohio law. Is that
4 your understanding?

5 A. Yes.

6 Q. Correct?

7 A. Yes.

8 Q. You agree that the Commission is required
9 to follow applicable Ohio Administrative Code rules,
10 correct?

11 A. I believe a rule has a lower, you know,
12 could be waived by the Commission whereas the
13 statute, I don't believe they could waive a statute.

14 Q. But the Commission's required to follow
15 rules, correct?

16 MR. SMALL: Objection; mischaracterizes
17 the witness's testimony.

18 EXAMINER PRICE: He didn't characterize
19 anything, he asked him a question. Overruled.

20 THE WITNESS: Can you read back that
21 question, please.

22 (Record read.)

23 A. Yes, they promulgate the rules so they
24 can follow them, yes.

25 Q. I'm sorry, so the answer is "yes"?

1 A. Yes, subject to my answer prior, they
2 have a right to waive those.

3 Q. Okay. You agree that the Commission has
4 the ability to issue orders such as the order that's
5 going to be issued following these hearings.

6 A. There will be an order that will be filed
7 as part of this hearing, yes.

8 Q. So yes, you agree that the Commission may
9 issue orders. This is -- a simple "yes" or "no" is
10 appropriate.

11 A. Yes.

12 Q. And you agree that the statutes and rules
13 that we -- that are applicable to the Commission, you
14 agree that the orders are issued to follow those
15 statutes and rules.

16 A. I believe -- I believe they are, and if
17 some, not statute but a rule is being compromised, I
18 would expect there would be some notice of a waiver
19 of that particular rule in the order.

20 Q. Let's talk about principles and
21 practices. On page 8, line 3, of your testimony in
22 response to a question beginning at line 1, the
23 question is "What criteria does the Commission
24 usually rely upon for" I believe you mean
25 considering, there may be a typo there, "whether to

1 adopt stipulations?" And your response is "Typically
2 the Commission will adopt a Stipulation only if it
3 meets all of the three criteria," and at line 7 you
4 state "The settlement package does not violate any
5 important regulatory principles or practices."

6 Did I read that correctly?

7 A. Yes, you did.

8 Q. Are the principles and practices that you
9 refer to in this response different than the statutes
10 and rules that we just discussed?

11 A. It's not limited. It's not limited to
12 the statutes and rules we discussed.

13 Q. Okay. So what are the principles and
14 practices?

15 A. The principles and practices would be
16 principles in case law that has transpired over a
17 particular issue that's being discussed in the case.

18 Q. Are the principles based upon law?

19 A. Can you rephrase the question?

20 Q. Are the principles based upon laws that
21 are applicable to the Commission?

22 A. I would think that they could be. It
23 wouldn't be limited to the law.

24 Q. So if they're not based upon law, what
25 would they be based upon?

1 A. A Commission's -- it can be a
2 Commission's handling of certain issues in a case
3 that the law may not have specificity, sufficient
4 specificity and the Commission would make a
5 determination and set some type of case principles
6 that it would follow.

7 Q. Okay. Which has more weight here at the
8 Commission, a statute or a principle?

9 MR. SMALL: Objection. Calls for
10 speculation.

11 EXAMINER PRICE: Please rephrase your
12 question.

13 Q. Okay. Is the -- should the Commission
14 apply a statute before it applies a principle?

15 A. I make no recommendation on any ordering
16 of principles versus statute. I think they should all
17 included in the development -- they all are part of
18 what makes up a principle, a regulatory principle.

19 MR. PORTER: I'm sorry, could you reread
20 my question?

21 EXAMINER BOJKO: Mr. Gonzalez, I thought
22 you told us just a few minutes ago that a statute
23 held more weight than a rule and the Commission could
24 waive its rules.

25 THE WITNESS: That's correct.

1 EXAMINER BOJKO: So now are you telling
2 me that a statute doesn't hold more weight than a
3 principle?

4 THE WITNESS: I was saying that I wasn't
5 ordering -- I had in the earlier statement said with
6 respect to a statute is -- carries more weight than a
7 rule.

8 EXAMINER BOJKO: So wouldn't a statute
9 also carry more weight than a principle?

10 THE WITNESS: I would believe so, yes.

11 EXAMINER BOJKO: I'm sorry, did you still
12 need the answer read back?

13 MR. PORTER: No, I think we're fine.

14 Q. (By Mr. Porter) Just one final question
15 on this line. So, Mr. Gonzalez, is the Commission
16 required to follow a principle?

17 A. I believe the Commission has discretion
18 not to follow a principle.

19 Q. Okay. On page 5 of your testimony,
20 Mr. Gonzalez, at line 4, you state that "A number of
21 provisions in the Stipulation violate important
22 regulatory principles and practices." Did I read
23 that correctly?

24 A. Can you direct me specifically to the
25 line?

1 Q. Okay. Page 5.

2 A. Yes.

3 Q. Line 4.

4 A. Oh, I'm sorry.

5 Q. Are you there?

6 A. Yes.

7 Q. Okay. There's a sentence that says "A
8 number of provisions in the Stipulation violate
9 important regulatory principles and practices." Did
10 I read that correctly?

11 A. Yes, you did.

12 Q. Okay. Also on page 13, line 21; are you
13 there?

14 A. Yes.

15 Q. The sentence says "Yes. The Stipulation
16 seeks Commission approval on a number of matters that
17 are against the PUCO's principles and practices, many
18 of which stem from the basic framework under which
19 the Commission operates, including rules promulgated
20 by the Commission." Did I read that correctly?

21 A. Yes, you did.

22 Q. Okay. Let's talk briefly about
23 mercantile customers. What principle or practice
24 establishes what customers the Commission may treat
25 as mercantile customers?

1 A. The mercantile customer, that's a
2 statutory definition.

3 Q. So is there a principle or practice that
4 the Commission's required to apply?

5 A. I believe the practice would be of
6 adhering to the statute.

7 Q. Okay. Let me be clear. Earlier we
8 talked about the difference between principles and
9 statutes and we also talked about the difference
10 between practices and we also discussed rules, and I
11 believe you -- I believe that your testimony was that
12 there's a difference between principles and statutes,
13 and I'm asking you to tell me what principle, let's
14 handle principle first, what principle is the
15 Commission required to apply to determine what
16 customers qualify as mercantile customers.

17 MR. SMALL: Objection. Mischaracterizes
18 the witness's testimony.

19 MR. PORTER: I can reask the question.

20 EXAMINER PRICE: Thank you.

21 Q. What principle is the Commission required
22 to apply in order to determine which customers
23 qualify as mercantile customers?

24 A. I'm -- I don't know a particular
25 principle.

1 Q. Okay. So is there a statute that the
2 Commission's required to apply to determine what
3 customers qualify as mercantile customers?

4 A. I would think it's the statute that's
5 referenced in the footnote.

6 Q. This is a footnote that you cite on page
7 16 at footnote 14, correct?

8 A. That's correct.

9 Q. Do you have that statute with you?

10 A. No, I don't.

11 Q. Do you recall what it says about
12 mercantile customers?

13 A. Yes, it defines it as 750,000 million kWh
14 a year or a part of a national account.

15 MR. RANDAZZO: Could I have the answer
16 read back, please?

17 EXAMINER PRICE: Yes, please.

18 (Record read.)

19 A. And it's commercial. It says a
20 commercial account greater than 750,000 million kWh a
21 year or a part of a national account.

22 Q. Do you recall if the statute discusses
23 the types of customers who qualified to be mercantile
24 customers?

25 A. No. I don't recall.

1 Q. Okay.

2 A. But a national account has, I mean,
3 there's an understanding that a national account
4 means that they have -- that a company may have
5 operations in different states.

6 Q. So it's your testimony that in order to
7 be a mercantile customer you have to have 750
8 kilowatt-hour usage; is that an annual requirement?
9 A monthly requirement?

10 A. Annual requirement.

11 Q. Annual?

12 A. Yes.

13 Q. And in addition to that 750
14 kilowatt-hours you have to have a national account?

15 A. No.

16 Q. Okay.

17 A. No, it's 750 -- 750,000 kWh a year
18 commercial customer, you qualify. However, if you
19 have less than that in one particular -- but you
20 have, you know, a hundred McDonald's, you can -- part
21 of a national account, you could count the -- you
22 could aggregate.

23 EXAMINER PRICE: And your testimony is to
24 be a national account you have to be in more than one
25 state.

1 THE WITNESS: That's right, I would think
2 so.

3 EXAMINER PRICE: Is there a lower bound?
4 Is it 100? Two? If you have a McDonald's in
5 Youngstown and a McDonald's in Pittsburgh, are you a
6 national account?

7 THE WITNESS: I just understand that you
8 would have to be in different states. I don't know
9 if there's a threshold. Like when I --

10 EXAMINER PRICE: So you don't know of a
11 lower bound threshold. Your opinion of national
12 account is it has to be in more than one state.

13 THE WITNESS: I believe that's --
14 that's -- yeah, that's what my testimony or what I'm
15 saying. Obviously, if you had these two, the
16 situation you talk about, if they are not -- okay.
17 Strike my answer, this last.

18 EXAMINER PRICE: I'm sorry, strike which
19 portion of your answer?

20 THE WITNESS: What I just started.

21 EXAMINER PRICE: I didn't have a question
22 anyway.

23 MR. PORTER: Your Honor, could I approach
24 the witness?

25 EXAMINER PRICE: You may.

1 Q. (By Mr. Porter) Mr. Gonzalez, I've just
2 handed you a document, do you recognize that
3 document?

4 A. Yes, I do.

5 Q. What is the document?

6 A. It's the definitions at 4928.01.

7 Q. Could you read for me the top of page 1
8 beginning at RC4928.01?

9 A. I don't know exactly where you're
10 referring to.

11 Q. I'm asking you to read the first page, on
12 the first page of the document that I handed you,
13 read the title of the document.

14 A. "Baldwin's Ohio Revised Code Annotated
15 Currentness." Is that what you wanted me to read?

16 Q. Yeah. Please continue.

17 A. "Title XL" -- I guess "XLIX Public
18 Utilities, Chapter 4928. Competitive Electric Retail
19 Service, General Provisions."

20 Q. And the next line?

21 A. I stated earlier, "492.01 Definitions."

22 EXAMINER BOJKO: 4928.01, you mean?

23 THE WITNESS: That's correct. I stand
24 corrected.

25 Q. The last word you said was "4928.01

1 Definitions," correct?

2 A. Yes.

3 Q. Okay. Did you review this statute in
4 preparation of your testimony?

5 A. I believe I did.

6 Q. Would you refer to the third page, page 3
7 of that document, Mr. Gonzalez, and read for me,
8 please, No. 19 on that page.

9 A. "'mercantile customer' means a commercial
10 or industrial customer if the electricity consumed is
11 for nonresidential use and a customer consumes more
12 than 700 hundred thousand kilowatt hours per year or
13 is part of a national account involving multiple
14 facilities in one or more states."

15 Q. Did you --

16 EXAMINER PRICE: Can we go off the record
17 one minute?

18 (Discussion off the record.)

19 EXAMINER PRICE: Go back on the record.

20 Q. Mr. Gonzalez, do you agree that the
21 Commission must apply the statutory definition that
22 you just read when determining what customers qualify
23 as mercantile customers for the purposes of Chapter
24 4928 of the Revised Code?

25 A. Yes.

1 Q. Is there any additional principle or
2 practice that must be applied?

3 A. No. I don't believe so.

4 Q. So based upon the statutory definition
5 that you just read, you agree that a mercantile
6 customer may be commercial, correct?

7 A. Yes, nonresidential.

8 Q. So a mercantile customer may be
9 commercial, may it also be -- excuse me, strike that
10 question.

11 Do you agree that a mercantile customer
12 could also be an industrial customer? Correct?

13 A. Yes.

14 Q. Do you agree that residential customers
15 do not qualify under this definition?

16 A. That's correct.

17 Q. Under this statute what is a commercial
18 customer?

19 A. A commercial customer is a customer that
20 takes electric service from a commercial tariff.

21 Q. Under the statute what is an industrial
22 customer?

23 A. I would say it's the customer that takes
24 electric service under the industrial tariff.

25 Q. And a residential customer?

1 A. Would be a customer that takes service
2 from the appropriate -- electric from the appropriate
3 residential tariffs.

4 Q. Okay. So a commercial customer, for
5 example, would qualify to be a mercantile customer as
6 long as that commercial customer used more than
7 700,000 kilowatt-hours per year --

8 A. That's correct.

9 Q. -- correct? And that commercial customer
10 would also need to use those 700,000 kilowatt-hours
11 for nonresidential purposes, correct?

12 A. That's correct.

13 Q. Would that be everything that a
14 commercial customer would be required to do in order
15 to be a mercantile customer?

16 A. My understanding is that that would
17 suffice, that particular example you cited would
18 suffice to meet the requirement.

19 Q. The same for an industrial customer?

20 A. That's correct.

21 Q. Thank you.

22 Let's talk about colleges and
23 universities. On page 4 of your testimony at line
24 number -- I'm sorry, beginning at line No. 5 in
25 response to a question that says "What documents have

1 you reviewed in the preparation of your testimony?"

2 You summarized your response beginning at line No.

3 11. Do you have anything that you'd like to add to
4 this response?

5 A. I believe I have reviewed the statute,
6 but -- the statute. To the extent that the
7 definition was not contained in the application.

8 Q. Okay. Mr. Gonzalez, do you consider
9 yourself to be an expert regarding college or
10 university operations?

11 A. No; I spent a lot of time in college, but
12 no.

13 Q. Did you conduct studies or any analysis
14 regarding the operations of colleges or universities
15 in preparation for your testimony?

16 A. No, I didn't.

17 Q. Did you review maps or other descriptions
18 of college or university campuses?

19 A. No, I didn't.

20 Q. Did you speak to any college or
21 university official or representative in preparation
22 for your testimony?

23 A. No, I did not.

24 Q. Did you visit any AICUO member college or
25 university in preparation for your testimony?

1 A. Not in preparation for my testimony.

2 Q. You have visited AICUO colleges or
3 universities?

4 A. I wouldn't know.

5 Q. I think you testified earlier that you
6 spent a lot of time on college campuses, in fact, you
7 have a few degrees from colleges; is that correct?

8 A. Yes.

9 Q. Which colleges?

10 A. Yale University and I also went to the
11 University of Massachusetts.

12 Q. In order to attain the degrees that you
13 have from those campuses did you spend any time on
14 the actual physical campus of either of those
15 colleges?

16 A. Yes. The concept of mail order wasn't
17 available at that time.

18 Q. So you didn't receive an on-line degree,
19 then.

20 A. That's right.

21 Q. That's good.

22 Let's talk about the two campuses that
23 you actually have been on. Yale, for example, does
24 it have multiple facilities?

25 A. Yes, it does.

1 Q. Multiple buildings, correct?

2 A. Yes.

3 Q. Could it also have several parking lots,
4 one or more parking lots?

5 A. Yes.

6 Q. Might it also have a gymnasium or a
7 library?

8 A. Yes.

9 Q. Who do you think is responsible for
10 operating the facilities on that campus?

11 MR. SMALL: Objection.

12 EXAMINER PRICE: Grounds?

13 MR. SMALL: He stated that he doesn't
14 know about the operations of colleges and
15 universities and I think it's fairly ridiculous to
16 ask for expert testimony apparently from this witness
17 on the operations of colleges and universities.

18 EXAMINER PRICE: I think he can answer if
19 he knows. I don't think it's ridiculous at all.
20 Overruled.

21 Q. Would you like to have the question read
22 back?

23 A. Yes, please.

24 (Record read.)

25 A. Probably physical plant, whoever runs the

1 physical plants at that university.

2 Q. Would the physical plant personnel report
3 to any other individual, potentially a president or a
4 vice president?

5 A. Could be.

6 Q. For electricity provided on that college
7 campus who would be the actual electricity customer?

8 A. Depends how -- what type of arrangements,
9 what service the university is taking from the
10 utility's tariffs.

11 Q. Let's talk about an academic building,
12 for example. An academic building is located on a
13 college campus such as Yale or any other college
14 campus and electricity is provided in that academic
15 building. Who's the electricity customer?

16 A. Presumably the university.

17 Q. Okay. And your answer -- let's go
18 quickly to page No. 16, please. At line No. 9 the
19 sentence reads "This description does not fit an
20 academic campus." Did I read that correctly?

21 A. Yes, you did.

22 Q. Mr. Gonzalez, what is an academic campus?

23 A. It's either a college or a university. A
24 college or a university.

25 MR. PORTER: Could I have the answer read

1 back?

2 EXAMINER PRICE: You can. Please.

3 (Record read.)

4 Q. Mr. Gonzalez, do you mean to describe the
5 physical campus of a college or university?

6 A. I would say the physical campus plus what
7 goes on in that physical campus.

8 EXAMINER PRICE: You need to raise your
9 voice, Mr. Gonzalez, you're kind of dropping off a
10 little bit today.

11 Q. What do you mean by what goes on on the
12 physical campus?

13 A. Well, a college is not just buildings,
14 you know, in the abstract with nobody in them. You
15 have professors, you have learning going on, so on.

16 Q. So an academic campus is more than just
17 the physical campus?

18 A. Yes.

19 Q. So an academic campus -- I'm sorry,
20 strike that question.

21 Would you agree that an academic campus
22 includes students on a campus?

23 A. Yes, I would think so.

24 Q. Does it include the buildings?

25 A. Yes.

1 Q. Okay. What's an academic campus used
2 for?

3 A. Learning, I would say. That's the
4 primary goal of an academic -- that's the mission of
5 it.

6 Q. Is there a geographic boundary that you
7 can describe that surrounds an academic campus?

8 A. You mean if they're in a particular state
9 or not?

10 Q. No, I mean is there a geographic boundary
11 to an academic campus?

12 A. I would say prior to the internet or
13 on-line -- on-line learning there may have been. I
14 think now that definition is a little more clouded
15 because you can have a physical campus but then to
16 the extent that it has a relationship through the
17 internet, to other sources, the geographical
18 boundaries get blurred.

19 Q. Okay. So for an academic campus that is
20 located within one city that has several buildings
21 and several other facilities in one city or one
22 location that may be surrounded by, let's say, four
23 streets, would that be an academic campus?

24 A. It could be, if that's the size of the --
25 if it's a small college.

1 Q. Okay. Is the neighborhood surrounding an
2 academic campus included within the academic campus?

3 A. I would think I would limit it to the
4 university properties.

5 Q. Okay. So the houses that may be owned by
6 individuals or entities other than the university are
7 not included within the definition -- within your
8 definition of academic campus.

9 A. There might be a straight definition of
10 that included.

11 MR. PORTER: I'm sorry, could you read
12 that back?

13 (Record read.)

14 Q. Okay. Businesses located near colleges
15 or universities, are they included within the
16 academic campus?

17 A. They wouldn't be considered part of the
18 university property, but they could be considered, if
19 you use a less strict definition of "campus," you
20 know, that Burger King is on -- within the perimeter
21 of the college infrastructure.

22 Q. So a Burger King, as you just used as an
23 example, located near a college or university, would
24 that Burger King be a utility customer separate and
25 apart from the college or university?

1 A. Yes.

2 Q. So the college or university having its
3 buildings and parking lots and classrooms and maybe a
4 gymnasium and other facilities would be the
5 utility -- would be a utility customer.

6 A. That's correct.

7 Q. Mr. Gonzalez, on page 16 beginning at
8 line No. 4, after you quote language that I believe
9 you extrapolated from the stipulation you state that
10 "This language is very troublesome from a regulatory
11 standpoint, providing an unprincipled manner in which
12 the Stipulation would have the Commission treat a
13 statute." Did I read that correctly?

14 A. Yes.

15 Q. What is the principle that must be
16 applied in this -- what is the principle that you're
17 referring to in this particular sentence?

18 A. The principle is that you wouldn't want
19 to rewrite a statute in a settlement document.

20 Q. So you were actually referring to a
21 statute rather than a principle.

22 A. I would think that it would be more
23 policy or principle to define -- redefine a statute
24 through a settlement document.

25 Q. The question is you say that "This

1 language is very troublesome from a regulatory
2 standpoint, providing an unprincipled manner in which
3 the Stipulation would have the Commission treat a
4 statute." Are you referring to a "principle" in that
5 sentence?

6 MR. SMALL: Objection. Asked and
7 answered.

8 EXAMINER PRICE: Sustained.

9 Q. Mr. Gonzalez, tell me how the statutory
10 definition of mercantile customer would be applied in
11 an "unprincipled manner" as you referred to in the
12 sentence that I just read.

13 A. If it added to the definition of a
14 statute for the purpose of including or modifying --
15 or including in this particular case an entity that
16 the statute may not cover.

17 Q. Okay. So treating a college or a
18 university with its buildings and parking lots and
19 facilities and gymnasiums and libraries on one campus
20 at one location would be applying the statute in an
21 "unprincipled manner"?

22 A. Not if they use 750,000 or more
23 kilowatt-hours a year.

24 MR. PORTER: No further questions, your
25 Honor.

EXAMINATION

By Examiner Bojko:

Q. Mr. Gonzalez, can you turn to page 5, I want to take you back to some of your beginning testimony. I'm a little confused or concerned about some items you say and I just want to clarify for the record.

On line 3 you talk about that a process "did not constitute serious bargaining among capable, knowledgeable parties." Are you suggesting that the bargaining wasn't serious or the parties are not capable and knowledgeable parties?

A. I believe that -- I would say to have serious negotiations you have to have information, you know, free flow of information.

Q. And I guess what I have a concern with throughout your testimony, and this is what I'm going to try to flesh out a little bit here, is who are you speaking on behalf of, OCC or all the people that signed the stipulation?

(Discussion off the record.)

EXAMINER BOJKO: No, he's saying this wasn't serious bargaining, I want to know who he's talking about.

Q. You're saying they need to have

1 information, do you have any idea what kind of
2 information those parties that signed the stipulation
3 had or didn't have?

4 A. I don't know because the negotiations
5 took place one-on-one for the most part.

6 Q. I thought I heard you say over yesterday
7 that there were six meetings that you attended
8 personally and that there were several others that
9 you were then briefed upon after that; isn't that
10 right?

11 A. That's correct.

12 Q. Okay. So --

13 MR. RANDAZZO: Your Honors, I hate to
14 interfere, I do have some questions on cross, I don't
15 know whether you have questions that you want to take
16 up right now or you're doing your thing that usually
17 comes after everybody, but I wanted to at least alert
18 the Bench that --

19 EXAMINER BOJKO: Let's go off the record
20 for a second.

21 (Discussion off the record.)

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

24 Q. I had asked you, Mr. Gonzalez, just there
25 were -- you mentioned six meetings that you attended

1 and that you had been briefed on several others, so
2 there were multiple, multiple meetings; is that
3 right, with all the parties?

4 A. I believe that I can recall two meetings
5 with all the parties discussed, those were the early
6 meetings, the December meetings.

7 Q. So you're saying there were no other
8 meetings since December and the document was filed
9 March 24th?

10 A. No. No. I'm saying, I thought your
11 question was specifically meetings where all the
12 parties attended and discussed the settlement.

13 Q. Okay. Well, then let me ask you that
14 question. Are you suggesting that there were no
15 group, multiple-party meetings after December?

16 A. I'm saying where all the parties got
17 together to discuss the document, I don't recall. I
18 thought the strategy was or the -- what happened at
19 the meetings were after the second meeting, we all
20 convened, and this is in December, and then the idea
21 was we wouldn't discuss as a group the elements, the
22 utility would work with the different -- what turned
23 out to be the different parties in the case.

24 So, for example, they came and talked to
25 us, the utility.

1 Q. Let's back up a minute. So your
2 assumption, you want this Commission to believe that
3 there were no multiple-party meetings after December.

4 A. There may have been multiple-party
5 meetings, but I was talking about meetings where
6 everybody, all the parties were invited to attend.

7 EXAMINER PRICE: Okay. So to be more
8 specific to her question, your testimony is that
9 after December there were no settlement conferences
10 where all the parties were invited.

11 THE WITNESS: I would say that there
12 were --

13 EXAMINER PRICE: No, that's a "yes" or
14 "no" question. I'll let you explain after that.

15 THE WITNESS: Okay, I would say no, there
16 perhaps was a -- there could have been a meeting.

17 Q. (By Examiner Bojko) There could have been
18 a meeting?

19 A. Yes.

20 Q. You don't remember.

21 A. I don't remember. But I -- yeah, there
22 may have been a meeting.

23 Q. Okay. So I guess it's your statement
24 that it did not constitute serious bargaining because
25 you can't remember whether there were any multiple

1 meetings after December; is that why you came to that
2 conclusion?

3 A. No. I would on my experience in Ohio
4 where we've had settlements where everybody convenes
5 and has, you know, numerous meetings with all the
6 parties at hand. Whereas this one had a different --
7 there was like I mentioned in my testimony, it kind
8 of started, stopped, and then resumed.

9 EXAMINER PRICE: I guess I want to ask
10 you about that truncated.

11 THE WITNESS: Yes.

12 EXAMINER PRICE: It's your testimony
13 there were settlement meetings in December.

14 THE WITNESS: That's correct.

15 EXAMINER PRICE: And then they resumed
16 again in late-February.

17 THE WITNESS: That's correct.

18 EXAMINER PRICE: And you don't believe
19 that that was adequate time to prepare for settlement
20 between December and February. Did anything stop you
21 from obtaining more information or evaluating your
22 settlement proposals or evaluating settlement
23 proposals that were being made between December and
24 February?

25 THE WITNESS: I would say we were

1 litigating an MRO case, so from a time perspective.

2 EXAMINER PRICE: The MRO case hearings
3 ended December 23rd. Trust me, it burns in my
4 memory.

5 THE WITNESS: Yes.

6 MR. LANG: I remember well.

7 THE WITNESS: Yes, but there was no
8 other, as my e-mail stated, the next called meeting
9 of the group was --

10 EXAMINER PRICE: But we're talking about
11 information in time to evaluate settlement positions.
12 You chose not to seek any additional information, you
13 chose not to do anything further towards settlement
14 until February; was that your decision, OCC's
15 decision?

16 THE WITNESS: I'm trying to recall if --
17 it wasn't clear whether a settlement was going to be
18 pursued after the, you know, after the second -- when
19 the meetings stopped.

20 Q. (By Examiner Bojko) Okay. I just want to
21 clarify for the record. You're not sitting here
22 today saying that you believe that the parties that
23 signed the stipulation are not capable and
24 knowledgeable parties. You're not saying that.
25 That's not what was meant by this statement, right?

1 A. I'm not saying they're not capable
2 parties, but I do mention that, you know, given the
3 meetings that took place and broke off and given -- I
4 believe I have an argument also related to --

5 Q. Try to answer my questions. I'm just
6 trying to get some answers to clarify the record.

7 So you're saying that they're not
8 knowledgeable because they didn't have what you
9 deemed to be enough information; is that right? Is
10 that what I just gathered? You just told me they
11 weren't capable or they were not not capable. You
12 just think they were not knowledgeable because they
13 didn't have all the information and I think that's
14 what I guess you alluded to again throughout this
15 testimony. I mean, is that what you're trying to
16 tell me now?

17 These are pretty simple questions,
18 Mr. Gonzalez. I'm just trying to ask you why -- you
19 made some pretty drastic statements in here and your
20 accusations about what other parties knew or didn't
21 know. Can you just tell me, I mean is that your
22 claim that other people didn't have enough
23 information to know what they were doing?

24 A. No. Other parties may have been meeting
25 with the companies.

1 Q. Okay. So on page 10, on lines 9 through
2 11, when you, again, you refer to signatories, you're
3 not speaking solely on behalf of OCC in these
4 comments and that's why I'm asking the questions is
5 because it sounds to me like you're speaking for
6 others. And in this statement you're telling me
7 that -- you said that information was not available
8 to the signatories. Do you know what information
9 they did or didn't have?

10 A. I would say to the extent my testimony
11 said -- I probably can't speak for the other
12 signatory parties.

13 Q. And then on that same page on line 16 you
14 talk about "The lack of any ability to compel
15 FirstEnergy to provide information." You're not
16 suggesting, because I believe one of your witnesses
17 said earlier that you do not have outstanding
18 discovery -- let's just clarify that. Do you have
19 any outstanding discovery?

20 A. I believe we don't have outstanding
21 discovery, but given the hearing schedule we took our
22 best shot and any discovery we would have asked for
23 after it wouldn't have come into play with respect to
24 writing testimony.

25 Q. Okay. And you're not suggesting by

1 saying that the Consumers' Counsel lacks ability to
2 compel FirstEnergy to provide information. You
3 understand that there is a discovery process and that
4 if the company or any party doesn't respond, that you
5 have the right to ask the Commission to force them to
6 respond, right?

7 A. I understand that. My reference was
8 prior to the filing of the stipulation, during the
9 negotiation process.

10 Q. So you're saying from December to
11 February you received absolutely zero information.

12 A. No, I'm not saying that. What I'm
13 saying, we asked for information that was not
14 provided or it was at the discretion of the company
15 during that time, during the formulation of the
16 settlement.

17 Q. And again, you're speaking just on behalf
18 of OCC because you have no idea what other
19 information other people may or may not have sought
20 from the company.

21 A. I believe that's a good characterization.

22 Q. Okay. And then if we turn to page 11,
23 you make another broad assertion that the
24 stipulation's not favorable to the public. Again
25 that's just OCC's opinion, right? That's not the --

1 you're not trying to say that the other 13 or 14, 15
2 parties that signed the stipulation I guess, you're
3 not saying that those parties don't believe that it's
4 in the public interest, are you?

5 A. No; I'm not saying that.

6 Q. And if you look at page 11 again, down on
7 lines 16 to 18 you said that the "signatory parties
8 were not focused on the overall impact of the
9 proposed ESP on residential customers and on public
10 policy in general." You're not saying, again, that
11 every other person that signed this does not care
12 about public policy, are you?

13 A. I'm speaking on behalf of OCC.

14 Q. All right. When you say that signatory
15 parties were not focused on residential customers or
16 the public policy, was the staff a party to these --
17 they're a signatory party, right?

18 A. That's correct.

19 Q. And it's your understanding that staff
20 has the responsibility to implement public policy on
21 behalf of the Commission, right?

22 A. Yes.

23 Q. And to your knowledge doesn't staff have
24 the obligation to represent all classes of customers
25 in the state of Ohio?

1 A. I believe they have to take into account
2 the settlement, they -- for not just customers but
3 also the company.

4 Q. Okay. So again, when you say "signatory
5 parties were not focused," that's just OCC's opinion.
6 You have no idea what those parties were focused on
7 including staff who you've just told me has an
8 obligation to look out for the parties and all the
9 customers of Ohio, right?

10 A. My characterization is based on the total
11 package and the costs that are being --

12 Q. Mr. Gonzalez, that wasn't my question. I
13 asked you if you knew what those parties that signed
14 that stipulation were focused on when they signed
15 that stipulation or any negotiations or any part of
16 this proceeding. Do you know what they were thinking
17 or what they were focused on?

18 A. I didn't have firsthand knowledge.

19 Q. And by this paragraph when you say
20 that -- let's assume for a moment that OCC and,
21 again, I know there was some discussion about whether
22 other parties that signed such as OP&A and now I've
23 pointed out staff, whether they represent residential
24 interests or any part of residential interests, but
25 let's assume for the moment that just OCC represents

1 residential interests.

2 Are you saying that there could never,
3 ever be a settlement that OCC doesn't sign?

4 EXAMINER PRICE: Approved by the
5 Commission.

6 Q. Yeah, that should be approved by the
7 Commission, I should say.

8 A. Okay, thanks for that.

9 Are you asking me whether we believe we
10 have veto power on that kind of --

11 Q. That's my next question, absolutely. Do
12 you think that there's a settlement out there that
13 can be approved without OCC's signature on it?

14 A. Yes, there's been many settlements that
15 have been approved without our signature.

16 Q. And then one more clarifying. If you
17 look at page 22 and your discussion -- your footnote
18 28, you talk about that giving any kind of credit to
19 just domestic automakers is somehow discriminatory.
20 Is that your testimony?

21 A. To the extent that it is.

22 Q. Okay. To the extent that it is. That's
23 my question. Are you suggesting that this should be
24 extended to all automakers, foreign automakers, just
25 not domestic automakers, every automaker, do you

1 think this provision should be extended?

2 A. Yes. I think it should be available to
3 all.

4 EXAMINER PRICE: Please speak up.

5 A. It should be available to all.

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

8 (Recess taken.)

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

11 Mr. Settineri, any cross?

12 MR. SETTINERI: No cross, your Honor.

13 EXAMINER BOJKO: FES?

14 MR. HEINTZ: He stepped out.

15 EXAMINER PRICE: Mr. White?

16 MR. WHITE: No cross, your Honor.

17 EXAMINER PRICE: Mr. Randazzo?

18 MR. RANDAZZO: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Randazzo:

22 Q. Mr. Gonzalez, you understand that
23 transmission owners that operate facilities in Ohio
24 have an obligation to be a member of a regional
25 transmission entity.

1 A. Do they have an obligation to be --

2 Q. Yes. Do you have an understanding with
3 regard to whether or not there is an obligation,
4 statutory obligation imposed by the state of Ohio,
5 that owners or operators of transmission facilities
6 need to be a member of a regional transmission
7 entity?

8 A. I don't know.

9 Q. Does the Office of Consumers' Counsel --
10 strike that.

11 Has the Office of Consumers' Counsel
12 objected to ATSI joining PJM? If you know.

13 A. I don't know.

14 EXAMINER PRICE: You don't know?

15 THE WITNESS: I know there's the
16 proceeding and it was -- I know we were in
17 discussions about concerns, but I wasn't part of that
18 case team so I don't know what the filing -- you
19 know, the specifics of the filing in the Ohio case
20 are.

21 Q. Have you ever heard of the filed rate
22 doctrine?

23 A. Yes, I have.

24 Q. And essentially what that doctrine says,
25 correct me if I'm wrong, is that a state regulatory

1 authority may not block recovery of costs that have
2 been approved by the Federal Energy Regulatory
3 Commission; is that correct?

4 A. That's correct.

5 Q. Has there been litigation in the state of
6 Ohio regarding the filed rate doctrine?

7 A. I don't know.

8 Q. Are you familiar with the federal court
9 case involving Monongahela Power?

10 A. I don't recall.

11 Q. You have said during the course of your
12 testimony that there's really very little experience
13 with transmission owners exiting and entering RTOs.
14 Are you familiar with the regional transmission
15 organization that was called The Alliance?

16 A. I believe it was one of the early RTOs,
17 but I don't know much more than that.

18 Q. Do you recall that both FirstEnergy and
19 American Electric Power were members of the Alliance?
20 If you know.

21 A. I'll accept that, subject to check. I
22 don't remember.

23 Q. I didn't ask you to accept anything
24 subject to check. I asked you if you were aware.

25 A. No.

1 Q. Do you know whether this regulatory
2 authority dealt with the question of whether costs
3 related to The Alliance RTO were subject to recovery
4 even after FirstEnergy and American Electric Power
5 exited The Alliance?

6 A. No.

7 Q. Now there's been some testimony, I think
8 Mr. Sullivan, indicating that is a coalition between
9 environmental organizations and I believe the Office
10 of Consumers' Counsel. Is that your understanding?

11 THE WITNESS: Can you repeat the
12 question, please?

13 EXAMINER PRICE: Please.

14 (Record read.)

15 A. Yes. Are you referring to OCEA?

16 Q. OCEA?

17 A. Yes.

18 Q. Yes. Is that -- what's that stand for,
19 Mr. Gonzalez?

20 A. Ohio Consumers and Environmental --
21 Consumers and --

22 Q. Use the acronym.

23 A. Yeah, use the acronym.

24 Q. And did the Office of Consumers'
25 Counsel -- who are the members of that coalition?

1 A. As it pertains to this case or -- because
2 the membership changes depending on the cases.

3 Q. As it pertains to this case.

4 A. I believe it's -- my recollection is it's
5 the National Resources Defense Council, the Ohio
6 Environmental Council, the ELPC, Mr. Heintz's group,
7 Citizens Power, the Housing -- the Cleveland Housing
8 group, I guess Joe Meissner's group, and, again, it
9 may include NOAC and NOPEC.

10 Q. Would I be correct, sir, that within that
11 coalition as you described it there's an ongoing
12 effort to coordinate positions between the parties?

13 A. I know we discussed the issues and tried
14 to get an understanding of what the different
15 parties' positions are on the issues.

16 Q. Is there an understanding among members
17 of the coalition that one member of the coalition
18 will not sign a settlement without discussing it with
19 other members of the coalition?

20 A. I don't know if that's a formal rule, but
21 I think that's a general courtesy we extend each
22 other.

23 Q. So before the Office of Consumers'
24 Counsel, in its representation capacity on behalf of
25 residential customers, would act in the interest of

1 residential customers, it would discuss its
2 intentions with parties representing environmental
3 groups, correct?

4 A. I believe we would extend that courtesy,
5 yes.

6 Q. Have you encouraged -- has the Office of
7 Consumers' Counsel encouraged parties that are in
8 this proceeding to not execute the settlement?

9 A. I believe there's been meetings with the
10 members of OCEA. I haven't been -- I haven't
11 attended the meetings because I've been writing
12 testimony and been involved in other cases, so I
13 would not know firsthand.

14 Q. Okay. I'd like you to turn to page 13 of
15 your testimony.

16 EXAMINER PRICE: Mr. Randazzo, I have one
17 question to follow up.

18 MR. RANDAZZO: Sure.

19 EXAMINER PRICE: Membership in OCEA, is
20 it exclusively decided solely by the existing
21 members? Can anybody join OCEA and be part of this
22 coalition?

23 THE WITNESS: I don't think, for example,
24 FirstEnergy could join.

25 EXAMINER PRICE: Well, obviously ELPC

1 recently joined.

2 THE WITNESS: That's correct.

3 EXAMINER PRICE: How do you decide who
4 can join and who can't? Is it solely if you agree to
5 be part of this, we will not settle individually
6 unless we settle jointly?

7 THE WITNESS: I don't think that follows.
8 I think we've -- I believe we had cases where not
9 all -- that's why the OCEA membership who are the
10 OCEA group changes within different cases before the
11 Commission.

12 EXAMINER PRICE: So it's open to all
13 except FirstEnergy.

14 THE WITNESS: I would say it's open to
15 consumer groups and it's open to environmental
16 groups. I would say generally.

17 EXAMINER PRICE: Okay. OPAE is not a
18 member.

19 THE WITNESS: For this particular -- in
20 this particular proceeding, no.

21 EXAMINER PRICE: Thank you, Mr. Randazzo.

22 Q. (By Mr. Randazzo) Mr. Gonzalez, do you
23 have page 13 of your testimony?

24 A. Yes, I do.

25 Q. And I'd like you to focus for a minute on

1 the answer which is designated as Answer 14. There,
2 as you've discussed with Examiner Bojko and others,
3 you offer the opinion that the settlement "is not a
4 result of serious bargaining among capable,
5 knowledgeable parties," correct?

6 A. That's correct.

7 Q. And through the questions and answers
8 that Examiner Bojko asked you you explained the basis
9 for that opinion, correct?

10 A. Yes. That and what's contained in my
11 testimony.

12 Q. Do you have any understanding of the
13 implications of alleging the lawyer representing
14 clients is neither knowledgeable or capable of
15 engaging in serious negotiations?

16 MR. SMALL: Objection. Mischaracterizes
17 the witness's testimony. I believe he said in
18 response to Ms. Bojko's questions that he wasn't
19 questioning the capability of these individuals.

20 EXAMINER PRICE: Would you care to
21 rephrase, Mr. Randazzo?

22 MR. RANDAZZO: No, I don't think so, your
23 Honor.

24 EXAMINER PRICE: I'm going to sustain the
25 objection to the extent that the question includes

1 "capable." I will ask Mr. Randazzo if he cares to
2 rephrase as to "knowledgeable" because I believe the
3 witness did indicate that the parties were not -- did
4 not have sufficient knowledge.

5 MR. RANDAZZO: I will consider that a
6 friendly motion, your Honor, and amend the question
7 accordingly.

8 Q. (By Mr. Randazzo) Mr. Gonzalez, do you
9 have any understanding about the implications of
10 alleging that attorneys representing clients in a
11 case are not knowledgeable enough to engage in
12 serious settlement negotiations?

13 A. My testimony speaks to the knowledge of
14 this particular case, not whether somebody has
15 knowledge about electricity matters. It's in this
16 particular case based on information that was
17 provided.

18 Q. Regardless of whether it's in general or
19 in a particular case, Mr. Gonzalez, do you have any
20 understanding of the implications? Do you know what
21 malpractice is?

22 A. Yes.

23 Q. What is it?

24 A. It's when a customer that a lawyer's
25 representing feels they haven't gotten good

1 representation and they can...

2 Q. And to the extent that somebody is
3 publicly alleging, particularly an office of a state
4 is alleging that parties to a proceeding are
5 represented by attorneys that have inadequate
6 knowledge to enter into serious settlement
7 negotiations, do you think it might expose people to
8 malpractice claims?

9 MR. SMALL: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. SMALL: Relevance. I think we're
12 well off the area of the three criteria.

13 EXAMINER PRICE: Mr. Randazzo.

14 MR. RANDAZZO: Your Honor, I quite
15 frankly thought we reached a low mark some time ago
16 in advocacy position before this Commission. This is
17 the first time that I'm aware of that a party, and in
18 this case an office of the state, has taken the
19 position that parties who have presented a settlement
20 to the Commission have been represented by people
21 that do not have adequate knowledge to enter into
22 serious settlement negotiations.

23 I think it's false, but the claim is
24 there and I'm entitled to pursue it.

25 EXAMINER PRICE: Mr. Gonzalez, do you

1 believe that the signatory parties to the
2 stipulation, the signatory parties, did not have
3 adequate knowledge to enter into serious bargaining
4 and to sign the stipulation?

5 THE WITNESS: My testimony is that they
6 didn't.

7 EXAMINER PRICE: Pardon me?

8 THE WITNESS: No, they didn't.

9 EXAMINER PRICE: Objection's overruled.
10 Proceed, Mr. Randazzo.

11 MR. SMALL: I'm sorry, your Honor. The
12 objection was to the probing into the consequences
13 outside the boundaries of this case, not that his
14 testimony doesn't contain this.

15 EXAMINER PRICE: I understand what your
16 objection was and your objection's been overruled.

17 MR. SMALL: Okay.

18 EXAMINER PRICE: Please proceed,
19 Mr. Randazzo.

20 MR. RANDAZZO: If counsel wishes to
21 withdraw the testimony, I'm ready to let go of this.
22 But I'm not going to let go of it otherwise.

23 EXAMINER PRICE: Please proceed,
24 Mr. Randazzo.

25 MR. RANDAZZO: I don't recall whether

1 there's a question pending.

2 EXAMINER PRICE: Actually, the problem is
3 that I asked a follow-up question in terms of -- to
4 respond to the objection so if the reporter would go
5 back and read the immediately preceding question to
6 my question. Then we'll consider that to be pending.

7 (Record read.)

8 EXAMINER PRICE: Please proceed,
9 Mr. Randazzo.

10 MR. RANDAZZO: All right.

11 Q. (By Mr. Randazzo) Sitting here today
12 under oath, Mr. Gonzalez, do you believe that the
13 lawyers who represented the signatory parties to the
14 settlement that's been submitted to this Commission
15 had adequate knowledge to enter into serious
16 settlement negotiations?

17 A. I stated in my testimony that that's not
18 the case and part of the reason is the asymmetrical
19 relationship between the parties and the company.
20 I.e., the company can reject an MRO -- I'm sorry, an
21 ESP. So they hold an asymmetrical bargaining
22 position.

23 Q. The asymmetrical bargaining position that
24 you describe is a function of a statutory provision,
25 correct?

1 A. That's correct.

2 Q. It has nothing to do with the knowledge
3 of the people that are involved in settlement
4 negotiations, does it?

5 A. To the extent that it provides one party
6 an advantage in providing information, it may have.

7 Q. Do you think that I knew that during the
8 course of the settlement negotiations?

9 MR. SMALL: Objection. Calls for
10 speculation.

11 EXAMINER PRICE: Sustained.

12 Q. All right.

13 EXAMINER PRICE: Mr. Randazzo, if I can
14 follow up.

15 You indicate that we can't have serious
16 and collective bargaining because of the provision in
17 4928.143 that allows FirstEnergy to reject any
18 stipulation or any ESP ordered by the Commission; is
19 that correct?

20 THE WITNESS: I'm saying that's part of
21 it.

22 EXAMINER PRICE: That's part of it.

23 THE WITNESS: Correct.

24 EXAMINER PRICE: Did that particular
25 provision change sometime after OCC signed the

1 electric security plan stipulation that's current
2 today and the one that was proposed in this
3 proceeding?

4 THE WITNESS: I believe it hasn't.

5 EXAMINER PRICE: So you believe that
6 there was not an asymmetrical position at the time
7 the stipulation was signed in 08-935-EL-SSO but there
8 is an asymmetrical relationship in this proceeding.

9 THE WITNESS: I would believe they
10 existed at both.

11 EXAMINER PRICE: So when OCC signed
12 08-935-EL-SSO, it was not serious -- the OCC was not
13 engaged in serious bargaining among capable and
14 knowledgeable parties because of the asymmetrical
15 relationship; is that correct?

16 THE WITNESS: I believe it hampered that
17 negotiation.

18 EXAMINER PRICE: But obviously it could
19 be overcome.

20 THE WITNESS: In that particular case
21 given the circumstances it was overcome.

22 EXAMINER PRICE: Don't you think the
23 circumstances in that case are much more difficult
24 than the circumstances in this case? You understand
25 that at that time FirstEnergy was procuring power on

1 the market without an ESP or an MRO; is that correct?

2 THE WITNESS: Yes.

3 EXAMINER PRICE: And in this case,
4 FirstEnergy filed a year before the expiration of
5 their MRO; is that right?

6 THE WITNESS: In this case.

7 EXAMINER PRICE: Yes.

8 THE WITNESS: Yes.

9 EXAMINER PRICE: So which do you think is
10 more adverse circumstances, a situation where a
11 filing is made more than a year before the expiration
12 of the standard service offer or a filing where there
13 is no standard service offer and the company is
14 procuring on the open market?

15 MR. SMALL: If I might, your Honor, what
16 proceeding are we talking about? There are two
17 proceedings, the MRO and the ESP.

18 EXAMINER PRICE: I'm referring, when I
19 say procuring on the open market, to FirstEnergy's
20 procurement in January of 2009. When I'm saying this
21 current proceeding, I'm talking about this case -- I
22 believe it was still filed a year before the
23 expiration of the SSO.

24 MR. SMALL: I'm sorry, the case here
25 referring to --

1 EXAMINER PRICE: The case we're in today,
2 Jeff.

3 MR. SMALL: The ESP.

4 EXAMINER PRICE: Yes.

5 MR. SMALL: It was filed in March.

6 EXAMINER PRICE: Yes, March of 2010, and
7 the ESP expires in May of 2011.

8 MR. SMALL: I'm just trying to follow
9 along. Are you talking about filing this case, I
10 didn't know whether it was the MRO, the ESP, or
11 you're combining the two.

12 EXAMINER PRICE: I apologize, I was
13 referring to the ESP.

14 With that clarification, which
15 circumstances did you think were adverse?

16 THE WITNESS: I would say in terms with
17 the specific issue of providing SSO service -- I
18 don't know.

19 EXAMINER PRICE: Okay. Thank you,
20 Mr. Randazzo.

21 Q. (By Mr. Randazzo) Mr. Gonzalez, I'd like
22 to talk about the quality of the opportunity that has
23 been presented over time to raise issues and focus on
24 the opportunity that the Office of Consumers' Counsel
25 has had throughout the pending MRO proceeding as well

1 as this proceeding, the current proposed ESP
2 proceeding. I'd like to use an example and if
3 Mr. Porter will forgive me, in your -- or not -- in
4 your testimony you focus on a provision in the
5 settlement dealing with independent colleges,
6 correct?

7 A. That's correct.

8 Q. Now, was there testimony in the MRO
9 proceeding regarding the concerns of independent
10 colleges relative to the definition of mercantile
11 customers?

12 A. I don't know. I wasn't focusing in on
13 that part of the proceeding -- that part of the case.

14 Q. You don't remember whether the former
15 chairman of this commission, Tom Chema.

16 EXAMINER PRICE: Esteemed former
17 chairman.

18 Q. Esteemed, highly dignified, highly
19 regarded, much loved, and in good standing filed
20 testimony dealing with the precise question of how
21 the independent colleges should be classified
22 relative to the definition of mercantile customers;
23 you don't recall that.

24 A. I don't recall. I wasn't -- if he -- I
25 wasn't -- I didn't attend that particular hearing

1 date. I was just concentrating on the topics I was
2 going to -- I had written testimony on.

3 Q. In the MRO proceeding did the Office of
4 Consumers' Counsel raise any concerns about
5 classifying the independent colleges as mercantile
6 customers?

7 A. Again, I don't know.

8 Q. You testified in the proceeding, right?

9 A. Yes, I did.

10 Q. You didn't raise it, did you?

11 A. No. I've said I haven't raised it, no.
12 But I don't know whether my counsel raised it in
13 brief or --

14 Q. I'm sorry?

15 A. I'm not aware if it was raised, you know,
16 I didn't attend all the hearings so I don't know if
17 there was a concern expressed by either -- by my
18 counsel in the proceedings.

19 Q. Is the Office of Consumers' Counsel
20 participating in the portfolio case, the portfolio
21 requirements proceeding, related to Columbus &
22 Southern and Ohio Power?

23 A. I believe we are, yes.

24 Q. And as part of that proceeding, am I
25 correct that there's been a settlement entered into?

1 A. Can you cite the case number? Do you
2 know?

3 Q. No, I can't.

4 A. Okay. I believe so.

5 Q. And do you know whether or not in that
6 settlement the Office of Consumers' Counsel has
7 agreed to the provision for recovery of lost
8 distribution revenues?

9 A. Yes, it has.

10 Q. And do you know who's protesting the
11 recovery of lost distribution revenues in that
12 proceeding?

13 A. No, I don't.

14 Q. Would you accept, subject to check, that
15 it's the Industrial Energy Users of Ohio?

16 A. Subject to check, yes.

17 Q. So to the extent that there is a
18 suggestion in the record in this proceeding that only
19 the residential customers care about lost
20 distribution revenue recovery, the experience before
21 this Commission based upon actual positions taken is
22 inconsistent with that, right?

23 MR. SMALL: Objection. There's no such
24 testimony.

25 MR. RANDAZZO: Testimony of Mr. Sullivan.

1 EXAMINER PRICE: Overruled.

2 A. I think before I answer that my
3 understanding is that FirstEnergy's rates are
4 basically distribution rates voltage related whereas
5 in AEP --

6 Q. Please answer the --

7 A. -- they're volumetric.

8 Q. Please answer the question and then
9 you're entitled to explain. So you've explained, you
10 still haven't answered the question.

11 A. Yes.

12 MR. RANDAZZO: Could I have the question
13 and answer read back, please?

14 EXAMINER PRICE: Please.

15 (Record read.)

16 Q. Now, with regard to a portion of your
17 testimony dealing with solar RECs, are you aware of
18 the process in Ohio by which RECs are created?

19 A. Yes, generally so.

20 Q. So before you can get a REC, an Ohio REC,
21 would I be correct that you'd have to have a solar
22 facility certified by the Public Utilities Commission
23 of Ohio?

24 A. That's correct.

25 Q. Are you aware of a provision in Senate

1 Bill 221 and more specifically the ESP statute,
2 Section 4928.143, that permits the establishment of a
3 nonbypassable charge for a new generation plant?

4 A. Yes, generally I do.

5 Q. Am I correct, sir --

6 A. A utility new generation plant, right?

7 Q. So it would be possible for, in the
8 context of an ESP, it would be possible for a utility
9 to come in and request a nonbypassable charge for a
10 solar generator, correct?

11 A. I believe that's correct if they -- if
12 they commit the electricity to Ohio customers.

13 Q. And more specifically, isn't it true that
14 they would have to dedicate the facility to Ohio
15 customers for the life of the facility?

16 A. I believe that's the case.

17 Q. All right. Now, if the Commission were
18 to adopt your recommendations to require the
19 distribution utilities in this proceeding to enter
20 into long-term solar REC arrangements, my
21 understanding is that those arrangements would be
22 with developers; is that correct?

23 A. It could be with developers, yes.

24 Q. Well, who else would it be with?

25 A. I think the generic term of "developer"

1 would encompass those.

2 Q. Would those developers be required to --
3 that receive the benefit of a 10 or 15 year long-term
4 contract, would they be required to dedicate the RECs
5 in your proposal for the benefit of retail customers?

6 A. I believe that would be a contractual
7 provision. If you --

8 Q. I'm not talking about the contract now,
9 I'm talking about your recommendation. In your
10 recommendation would the solar developers be required
11 to dedicate the RECs for the benefit of Ohio retail
12 customers?

13 A. Again, I don't believe so, but I think
14 that would be a contractual arrangement. The utility
15 would be purchasing --

16 Q. No, I don't want --

17 A. -- RECs to meet the solar requirement in
18 Ohio.

19 Q. Mr. Gonzalez, I don't want to talk about
20 contractual arrangements that may come after the
21 Commission adopts your recommendation. I want to
22 understand how your recommendation works.

23 Are you recommending that as part of this
24 requirement that the solar developers would be
25 obligated to dedicate the RECs produced by these

1 solar facilities to the benefit of Ohio retail
2 customers?

3 A. Not outside of a contractual arrangement.

4 Q. I'd like to touch on one final area. I
5 think you discuss in your testimony that the auction
6 process for establishing the default generation
7 supply price that is contained in the settlement
8 that's presented for the Commission's consideration
9 in this case is essentially the same auction process
10 that was used for purposes of the last ESP; is that
11 correct?

12 A. The last ESP?

13 Q. Yes. The ESP that's currently in effect.

14 A. I think the difference has to be to the
15 extent that -- my answer would be the same except
16 that it -- there's a bidding process at PJM, you
17 know, the capacity market at PJM. So it's a
18 different RTO.

19 Q. A different RTO but same competitive
20 bidding process structure between the two, the
21 current ESP and the one that's in the settlement.

22 A. Yes, except for the, like I said, you got
23 to -- you didn't have to procure capacity in the
24 prior one.

25 Q. Okay. Different regional transmission

1 organizations between the two periods, but other than
2 that it's structural the competitive bidding process
3 is essentially the same.

4 A. I would say.

5 Q. Right?

6 A. I would say basically, yes.

7 Q. All right. Now, in the course of your
8 testimony you've expressed some views about the
9 opportunity to do better than 6 percent discount for
10 the PIPP customers. Do you recall that?

11 A. That's right.

12 Q. And yesterday as I recall your testimony
13 you indicated that because of the relatively low
14 natural gas prices, the depressed condition of the
15 economy, and the relatively low level of capacity
16 market -- or, capacity prices in the wholesale
17 electric market, that you thought there was an
18 opportunity to have a competitive bidding process
19 that would provide incremental benefit over and above
20 the 6 percent discount to the PIPP customers; is that
21 correct?

22 A. I said that's a possibility, yes.

23 Q. And those same factors, in other words,
24 relatively low natural gas prices, relatively low
25 capacity prices, and the depressed condition of the

1 market would also cause you to believe that moving
2 forward with a competitive bidding process sooner as
3 opposed to later would be a benefit to customers at
4 large, correct?

5 A. Can you define the time period of
6 "sooner"?

7 Q. Same time period that you were talking
8 about for purposes of your forecast that a
9 competitive bidding process for the PIPP customers
10 would produce incremental benefit over and above the
11 6 percent discount, guaranteed 6 percent discount.

12 A. I believe there's an opportunity for low
13 prices beyond one or two-year periods from what, you
14 know, my estimates are, you know, given the, like I
15 said, Shell gas coming in.

16 Q. So in large, in general, it would be a
17 good time from the perspective of customers to
18 procure generation supply through a competitive
19 bidding process, right?

20 A. That's correct. That's why we support
21 the MRO.

22 Q. Okay. And the MRO has a competitive
23 bidding process in it, correct?

24 A. That's correct.

25 Q. All right. Now, did OCC regard the

1 competitive bidding process results associated with
2 the current ESP for the FirstEnergy electric
3 distribution utilities to have been successful?

4 A. I believe OCC and the general press was
5 that it tested the market and the market bore
6 positive results, yes.

7 Q. In fact, the Office of Consumers' Counsel
8 issued a press release after the competitive bidding
9 process results were announced claiming that the
10 auction process was successful; isn't that correct?

11 A. Yes, it was especially when compared to
12 the prior company ESP offering.

13 MR. RANDAZZO: That's all I have.

14 EXAMINER PRICE: Thank you.

15 Mr. Lavanga?

16 MR. LAVANGA: No questions, your Honor.

17 EXAMINER PRICE: Mr. Small, redirect?

18 MR. McNAMEE: One second.

19 EXAMINER PRICE: I'm sorry.

20 MR. McNAMEE: I only have one thing,
21 won't take long.

22 EXAMINER PRICE: Mr. McNamee, cross.

23 - - -
24
25

CROSS-EXAMINATION

By Mr. McNamee:

Q. Mr. Gonzalez, look at page 10 of your testimony, lines 16 through 17, you refer to a "lack of any ability to compel FirstEnergy to provide information." Do you see that?

A. That's correct, yes.

Q. Are you aware that the staff of the Public Utilities Commission has a statutory right to obtain any information it wants from a regulated company at any time regardless of whether there is a case pending or not? Are you aware?

A. I can't point to a specific --

Q. You don't know?

A. I don't know.

MR. McNAMEE: Thank you. That's all.

EXAMINER PRICE: Thank you.

Mr. Small, redirect?

MR. SMALL: Could I have a few moments?

EXAMINER PRICE: You may. Let's go off the record.

(Off the record.)

EXAMINER PRICE: Back on the record.

Mr. Small, redirect.

- - -

REDIRECT EXAMINATION

By Mr. Small:

Q. Mr. Gonzalez, do you recall being asked during cross-examination questions regarding your testimony regarding the treatment of PIPP load?

A. Yes.

Q. And what is the primary basis for your testimony regarding a favorable price that could be achieved relative to the provisions of the stipulation?

A. I would have two reasons, one is it appears there's a desire for FirstEnergy Solutions to have that load so there's an interest in that. Plus we have the success of how the market was tested in Ohio and how it performed.

Q. Do you recall questions regarding the status of various transmission projects under PJM's footprint?

A. Yes, I do.

Q. And what is your preferred source of information regarding a project whose status is perhaps questioned as far as timing is concerned?

A. I believe the best data to make a judgment on transmission would be -- expansion would be the PJM RTEP report which I believe comes out in

1 June.

2 Q. So you expect a report in June of 2010?

3 A. 2010, yes.

4 Q. Mr. Randazzo asked a few questions
5 regarding --

6 EXAMINER PRICE: One second, Mr. Small.

7 You're saying the report's coming out in
8 June of 2010?

9 THE WITNESS: That's correct.

10 EXAMINER PRICE: And so you would expect
11 the Commission would not rule in this proceeding
12 until June of 2010?

13 THE WITNESS: That's not what I'm saying.
14 I'm just saying that's when the report --

15 EXAMINER PRICE: You're saying the best
16 data is a report that's not available.

17 THE WITNESS: It will be available, I
18 believe, within the 275 day --

19 EXAMINER PRICE: It's not available at
20 the time of the evidentiary hearing, is it?

21 THE WITNESS: No, it's not at all.

22 EXAMINER PRICE: Thank you.

23 Q. (By Mr. Small) You were asked a few
24 questions regarding distribution lost revenues in
25 various cases. Do you have anything to add to your

1 responses?

2 MR. RANDAZZO: Well, I object to the form
3 of the question.

4 EXAMINER PRICE: Sustained. I think you
5 have to do more than just say do you want to talk
6 about distribution lost revenues.

7 MR. RANDAZZO: Thank you.

8 Q. Mr. Gonzalez, do you recall being asked
9 by Mr. Randazzo questions regarding distribution lost
10 revenues?

11 A. Yes, I do.

12 Q. And do you recall him bringing up the
13 topic of settlement that OCC may have entered into
14 with regard to AEP and the distribution lost revenue?

15 A. Yes, I do.

16 Q. And are there any distinctions between
17 the AEP situation and the one proposed in this case?

18 A. Yes, there are.

19 Q. What are those distinctions?

20 A. The distinctions between the FirstEnergy
21 and the AEP is that -- first of all, generally the
22 lost revenue issue is a case-by-case issue because it
23 takes different forms, and I think in AEP I believe
24 the provision is for a three-year vintage year lost
25 revenue that has a cutoff date after that, as opposed

1 to the lost revenue settlement proposed in the
2 stipulation which has no end date, and so you think
3 there are differences, and we treat the lost revenue
4 issue on a case-by-case basis within the Ohio
5 Consumers' Counsel. And we support other cases, the
6 decoupling-type mechanism.

7 Q. You were also asked some questions
8 concerning or asked to make a comparison between the
9 bidding process proposed by FirstEnergy in this ESP
10 and the bidding process that took place with regard
11 to the existing ESP. Did you recall that?

12 A. Yes, I do.

13 Q. And you mentioned the differences between
14 the two of switching to the different RTO. Are there
15 any other differences between the two auction
16 processes that are important?

17 A. Yes, I believe that the timing issues are
18 also different, having an auction in July versus the
19 earlier -- the earlier ESP. So different months,
20 different -- longer term, different terms of the
21 tranche, the different bidding schedules.

22 EXAMINER PRICE: Do you think the
23 different bidding schedules is a feature or a bug?
24 Do you think that it's --

25 MR. SMALL: I can't hear you.

1 EXAMINER PRICE: I'm sorry. Do you think
2 that the different bidding products offered under the
3 proposed ESP is superior to or not to what was done
4 as proposed under the MRO? The MRO were all two-year
5 contracts on a rolling going-forward basis, this is a
6 different package, do you think this is a better set
7 of products or a worse set of products? I know
8 they're different.

9 THE WITNESS: My response is that they
10 were different. I believe we had recommendations on
11 both types of products and to the extent that there
12 was uncertainty we wanted to get a first auction for
13 a single-year product, work out all the kinks,
14 especially with respect to the transfer from the
15 RTOs, and then have your staggered product.

16 EXAMINER PRICE: So you believe your
17 recommendations in the MRO were superior to either
18 what was proposed in the MRO or proposed in this
19 case.

20 THE WITNESS: Right.

21 EXAMINER PRICE: But leaving that
22 question aside do you believe that what's proposed in
23 the -- if you had to choose between what's proposed
24 in the MRO and what was proposed in the ESP, what is
25 the superior group of products?

1 THE WITNESS: You're saying proposed by
2 OCC?

3 EXAMINER PRICE: No, proposed by
4 FirstEnergy.

5 THE WITNESS: Oh, by FirstEnergy.

6 EXAMINER PRICE: The question originally
7 was how is the ESP different from the MRO. You said
8 the package of products in the CBP is different. So
9 between those two which is superior in your judgment?

10 THE WITNESS: I believe not having a July
11 auction, so to the extent that the first one --

12 EXAMINER PRICE: I understand you've got
13 concerns about a peak-month auction. I'm not asking
14 that. I'm just asking about the structure of the
15 products that are being offered.

16 THE WITNESS: Between the MRO and --

17 EXAMINER PRICE: And the ESP.

18 THE WITNESS: -- original and the ESP
19 here.

20 EXAMINER PRICE: Yeah.

21 THE WITNESS: And not timing.

22 EXAMINER PRICE: And not timing, no. If
23 it all comes down to timing --

24 THE WITNESS: Yes.

25 EXAMINER PRICE: If the structure of the

1 products is irrelevant, that's fine.

2 THE WITNESS: When you say "structure of
3 the product," you mean the number of tranches that
4 are taken or the staggering of the --

5 EXAMINER PRICE: The staggering, the
6 number of tranches, the length of the product to be
7 bid. It's different in here from the MRO. If you're
8 saying it doesn't make any difference, neither is
9 superior to the other, that's fine.

10 THE WITNESS: No, it does make a
11 difference in terms of the structure, and I believe
12 the earlier MRO we liked the staggering feature but
13 we didn't like it until the uncertainty of the switch
14 had been --

15 EXAMINER PRICE: I'm just asking you to
16 pick between the two. You keep getting back to what
17 you wanted in the MRO. The Commission may ultimately
18 rule that you're right and that that's what should be
19 done, I'm just asking -- Mr. Small asked you the
20 differences between the CBPs in the ESP and the MRO,
21 and you said one was timing, you didn't like it being
22 in the peak month. And you said also the products
23 are different.

24 So all I'm asking you is whether one is
25 superior to the other or they're different but it

1 doesn't matter because neither are superior.

2 THE WITNESS: I don't know.

3 EXAMINER PRICE: You don't know.

4 THE WITNESS: I don't know between the
5 two on that specific one.

6 EXAMINER PRICE: So you have no opinion
7 between the two on that issue, you have no opinion
8 between the product makeup. I mean, I'm interpreting
9 "I don't know" as no opinion.

10 THE WITNESS: Yes.

11 EXAMINER PRICE: Thank you.

12 I'm sorry, Mr. Small.

13 MR. SMALL: That concludes my redirect.

14 EXAMINER PRICE: I have one quick
15 question on the MRO differences and then we'll take
16 recross.

17 - - -

18 FURTHER EXAMINATION

19 By Examiner Price:

20 Q. In the proposed ESP there is an
21 80 percent load cap. Do you understand that?

22 A. Yes.

23 Q. Do you believe that the 80 percent load
24 cap is an improvement over what was proposed in the
25 MRO which had no load cap?

1 A. I would say I believe an 80 percent load
2 cap would be an improvement.

3 Q. Do you think 80 percent is sufficient?

4 A. I know other states have different
5 thresholds, but --

6 Q. I'm asking your expert opinion.

7 A. No. I don't have an opinion on the size
8 of the load cap, just that a load cap is preferable
9 to no load cap.

10 Q. So on this issue at least the proposed
11 ESP is superior to the MRO.

12 A. On that particular issue.

13 EXAMINER PRICE: Yeah. Thank you.

14 Who's here?

15 Mr. Heintz?

16 MR. HEINTZ: No questions, your Honor.

17 EXAMINER PRICE: Direct Energy?

18 MR. AUSTIN: No questions.

19 EXAMINER PRICE: Mr. Dougherty, are you
20 making an appearance for OEC?

21 MR. DOUGHERTY: Yes, I am.

22 EXAMINER PRICE: Recross?

23 MR. DOUGHERTY: No questions.

24 EXAMINER PRICE: Mr. Warnock?

25 MR. WARNOCK: No questions.

1 EXAMINER PRICE: Mr. Warnock on behalf of
2 Schools?

3 MR. WARNOCK: No questions.

4 EXAMINER PRICE: Mr. White?

5 MR. WHITE: No questions, your Honor.

6 EXAMINER PRICE: FES?

7 MR. GALLON: No questions, your Honor.

8 EXAMINER PRICE: Mr. Settineri?

9 MR. SETTINERI: No questions, your Honor.

10 EXAMINER PRICE: Mr. Lang?

11 - - -

12 RECROSS-EXAMINATION

13 By Mr. Lang:

14 Q. Just one question, Mr. Gonzalez. Are you
15 aware that PP&O is holding an auction in July of
16 2010, this year, for a 17-month and 20-month product
17 starting for delivery in January 2012; is that
18 something you're aware of?

19 A. PP&O being a company in Pennsylvania?

20 Q. Pennsylvania, yes.

21 A. No, I'm not aware of that.

22 Q. So obviously that would not be something
23 you took into consideration in your determination of
24 July being a bad month for an auction or a month in
25 which auctions do not occur, correct?

1 A. I didn't take that particular case into
2 account, no.

3 MR. LANG: No further questions.

4 EXAMINER PRICE: Thank you.

5 Mr. Porter?

6 MR. PORTER: No questions, your Honor.

7 EXAMINER PRICE: Mr. Randazzo?

8 MR. RANDAZZO: None for anybody.

9 EXAMINER PRICE: Mr. Lavanga?

10 MR. LAVANGA: No questions, your Honor.

11 EXAMINER PRICE: I just have a couple
12 more things I'd like to get straightened out.

13 - - -

14 FURTHER EXAMINATION

15 By Examiner Price:

16 Q. Do you have your testimony with you?

17 A. Yes, I do.

18 Q. Silly question.

19 You had raised some issues about the
20 ability to obtain information regarding the
21 stipulation, and -- is that right?

22 A. Are you referring to during the
23 negotiation period?

24 Q. During negotiations.

25 A. Oh, yes.

1 Q. Throughout this whole process.

2 A. Yes.

3 Q. Okay.

4 A. Well, I consider it two, you know,
5 negotiation periods and then information gathering
6 after that's been filed.

7 Q. Isn't it true that the proceeding today
8 is how will electricity, it's hard, how will
9 electricity generation be priced at the end of this
10 current ESP?

11 A. That's what this case is about.

12 Q. Right. And that's what the MRO case was
13 about.

14 A. That's correct. Both of them, yes.

15 Q. Which form of standard service offer
16 should be in effect after May 31st, 2011; is that
17 right?

18 A. Yes.

19 Q. If you could turn to your testimony, page
20 6, you have a very nice summary of the provisions in
21 the stipulation. Now, the first one is a discussion
22 about the CBP.

23 A. Yes.

24 Q. You had a full and fair opportunity
25 beginning in the MRO proceeding to discovery

1 regarding provisions of the CBP; is that right?

2 A. We had discovery rights in the MRO case
3 to query the CBP, yes.

4 Q. And likewise the ELR/OLR riders in
5 provision 2 were a topic of much discussion in the
6 MRO, hence Mr. Lavanga's presence as I always like to
7 point out.

8 A. Yes, I recall that.

9 Q. Is that correct? So there was plenty of
10 opportunity to obtain information regarding that
11 provision in the CBP -- or, since the filing of the
12 MRO.

13 A. I believe regarding the interruptible
14 rates, I'm aware the company filed a different
15 mechanism which was the auction and there was
16 testimony presented by Mr. Lavanga's customer and
17 other customers concerning those, yes.

18 Q. Mr. Baron on behalf of OEG.

19 A. Yes.

20 Q. But the OCC had an opportunity to do
21 discovery, obtain any information related to that
22 issue; is that correct? Nothing precluded you
23 from --

24 A. Yes.

25 Q. Right. Right. Okay.

1 The third issue is a mechanism for
2 procuring RECs for renewable energy compliance.

3 A. Correct.

4 Q. Have you not had an opportunity in this
5 proceeding or any of the other ACP proceedings before
6 the Commission to obtain information regarding this
7 topic?

8 A. After it was filed, no.

9 Q. Even before in the ACP proceedings, we
10 have got lots of pending ACP proceedings, don't we?
11 The solar cases.

12 A. Yeah, you're talking about when the
13 companies file for waiver --

14 Q. Right.

15 A. We've commented.

16 Q. So you've had an opportunity in those
17 proceedings to obtain information for -- about the
18 company's process for procuring RECs, right? You
19 filed comments, you must have had based it on
20 something.

21 A. Yes, we did file comments.

22 Q. Okay. Now, I understand that Rider DCR
23 is a relatively new provision and so that's an issue
24 that I believe you would say you've not had enough
25 opportunity to obtain information on; is that

1 correct?

2 A. Yes.

3 Q. Fifth on the list.

4 Next there's a provision related to the
5 significantly earned -- excessive earnings test.
6 There's presently a Commission proceeding regarding
7 the SEE test.

8 A. That's right.

9 Q. We've had comments, we've had oral
10 arguments, so you've had an opportunity to obtain
11 information regarding the SEE test, haven't you?

12 A. I wasn't privy and I haven't participated
13 in that case, but the other case -- we understand
14 there's a case that's open and I would think we would
15 recommend a decision on CBP take place at that
16 particular time.

17 Q. I understand. 7 and 8 regard some
18 funding proposals which are consistent with the
19 previous ESP. Have you not had an opportunity to
20 obtain sufficient information regarding 7 and 8 on
21 your list?

22 A. 7 is just a dollar amount, I believe that
23 the company witness when he was queried about that
24 did mention it's a certain amount that will probably
25 be used in the way the company believes and given

1 that it's shareholder dollars I thought they would
2 make a commitment to --

3 Q. And 8 refers to the Community Connections
4 weatherization program which to my recollection
5 stretches all the way back at least to the
6 distribution rate case in 07-551; is that correct?

7 A. That's right.

8 Q. 9 is smart grid cost recovery provisions,
9 there's a pending proceeding on smart grid. You've
10 had an opportunity to obtain information regarding
11 smart grid, have you not?

12 A. We have filed discovery in that
13 particular case.

14 Q. Okay.

15 A. And we...

16 Q. 10 is settlement of issues related to
17 corporate separation; that case has been pending for
18 months and you intervened some time ago so you've had
19 an opportunity to file discovery in that case, have
20 you not? It's an '09 case. It's an '09 case with a
21 three-digit case number so filed in the early part of
22 '09; is that right?

23 A. I believe there's a case.

24 Q. The ATSI transition to PJM, that's an
25 instance that's been pending since this fall.

1 There's presently a currently open Commission
2 proceeding, we've had comments, you've had an
3 opportunity to gain information on that topic; isn't
4 that correct?

5 A. I believe we're party to that case.

6 Q. Next is the proposed merger with
7 Allegheny Energy, this is a fairly new issue, so do
8 you believe you've not had an adequate opportunity to
9 obtain information regarding the Allegheny Energy
10 merger with FirstEnergy?

11 A. I don't know, I haven't been involved in
12 that.

13 Q. Next is funding for energy efficiency
14 administrators, which has been a case of some note
15 before the Commission since last fall. I think we've
16 had three or four entries on rehearing in that case
17 so that issue is something you've had an opportunity
18 to obtain information on for many months.

19 A. We did intervene in that case.

20 Q. Yes. And then finally on your list is
21 recovery of utility energy efficiency program lost
22 distribution revenues. Do you feel you've not had an
23 opportunity to obtain sufficient information with
24 respect to that issue?

25 A. I would say on that particular issue that

came up at the end of the --

Q. So in your testimony when you say that you've not had the ability to obtain sufficient information, it's not all the topics of the stipulation, it's one topic; is that correct?

A. The other thing is that this was not an extensive list. I think there were other elements in this and I just didn't -- these are --

Q. This is the highlights.

A. Yeah, the major elements.

Q. These were the issues that you thought were important.

A. I just wanted to qualify that.

Q. Yeah, I understand it's a big step. But these were issues you thought are important, important enough to highlight; is that right?

A. Yeah, these were the major issues.

Q. Okay. There's been a suggestion, I guess I'm having trouble understanding it so I'll ask you, there's been a suggestion that it is not good policy to globally settle in one case other open Commission proceedings so I will ask you since you're testifying on violation of important regulatory principles and practices.

Do you believe it is a violation per se

1 of an important regulatory principle or practice to
2 globally resolve multiple cases in one proceeding?

3 A. Let me just refresh myself.

4 As it applies to this particular
5 proceeding, I believe so.

6 Q. Why?

7 A. Because there are a lot of -- these cases
8 are in other -- have been argued and have -- the
9 information has been developed and the case record
10 has been developed in some of these cases and I
11 believe that would be a better venue to make a
12 decision.

13 Q. But that's a fairly common practice
14 before this Commission, isn't it?

15 A. To put cases --

16 Q. To agree in one case to resolve another
17 case.

18 A. It's happened in the past, yes.

19 Q. It happened in the resolution of 08-935,
20 if I remember correctly, I believe Nucor had filed a
21 complaint against FirstEnergy and in the stipulation
22 in 08-935 that was ultimately adopted by the
23 Commission, the parties agreed that case should be
24 dismissed. Is that correct?

25 A. Yes, I believe that's correct.

1 Q. OCC signed that stipulation.

2 A. Yes, we did. But --

3 Q. Are you aware --

4 A. I'm sorry.

5 Q. Are you aware of the Columbia EXM
6 proceeding? I noticed you did not testify in that.

7 A. No.

8 Q. Are you aware of that at all?

9 A. No, I don't believe I have close
10 knowledge.

11 Q. Would it surprise you to learn in the
12 Columbia EXM proceeding OCC agreed to not oppose the
13 stipulation in Columbia's GCR in 08-221-GA-GCR?

14 A. It wouldn't surprise me, I would say
15 it's -- case specific, it would be settlement
16 specific.

17 Q. Well, but you're saying this is an
18 important regulatory principle or practice and I'm
19 trying to define when it's a problem and when it's
20 not. How am I supposed to evaluate on a case-by-case
21 basis? If you're saying it can be a problem, I need
22 some criteria as to when it's a problem.

23 A. I would say from a policy perspective
24 when it's a problem would be, for example, we have
25 existing law to take care of a rate case which has a

1 lot of, you know, requirements for the law to
2 process.

3 Q. So we have to follow the statutory
4 procedure requirements.

5 A. No; I'm saying that would be a
6 consideration.

7 Q. Okay.

8 A. In terms of as opposed to being able to
9 through a settlement circumvent perhaps all the
10 requirements and I think that also applies to a
11 reasonable arrangement or an economic
12 development-type procedure.

13 Q. That's your opinion.

14 A. Yes. Yes.

15 Q. So what other criteria would you say a
16 global settlement shouldn't resolve other outstanding
17 cases? You're saying it should follow the statutory
18 processes.

19 A. I think that would be, yeah, a preference
20 in the different cases.

21 Q. And what else? Follow the law is a good
22 one, I think everybody would agree with that.
23 Commonality of parties would be important, wouldn't
24 it?

25 A. Yes. You're saying that if those cases

1 are being settled, you should have the people who
2 participated or had an interest in those cases --

3 Q. But there could be exceptions to that,
4 couldn't there? I mean it wouldn't be an absolute
5 bar, would it?

6 A. I would say it's a strong bar.

7 Q. A strong bar, okay.

8 You testified before me in Case No.
9 07-1080-GA-AIR, did you not, Vectren's rate case? In
10 Vectren energy Delivery's most recent base rate
11 distribution case you testified before me.

12 A. Is that the DEO?

13 Q. VEDO.

14 A. VETO.

15 Q. VEDO, Vectren Energy Delivery Ohio's most
16 recent base rate case, you filed testimony in that
17 proceeding.

18 A. Yes, I did.

19 Q. Yes. That proceeding was resolved by a
20 stipulation, was it not?

21 A. I believe parts of it was. I think
22 certainly --

23 Q. There was a -- a couple issues were not.

24 A. Yes.

25 Q. That's exactly right. And the signatory

1 parties to that proceeding were Vectren, OP&A, staff,
2 and OCC. Is that correct?

3 A. Yes. I believe that's correct.

4 Q. That's correct. And one of the cases --
5 one of the provisions is item 6 in the Commission's
6 opinion and order, the signatory parties agree that
7 the sales reconciliation Rider A proposed by the
8 company -- no, I'm sorry. Issue C. Strike that last
9 part.

10 Here it is, I'm sorry. Item 12. "The
11 Stipulation resolves all contested issues raised in
12 Case Nos. 07-1080-GA-AIR, which was that case, as
13 well as, and I'm skipping a case number, Case No.
14 05-144-GA-UNC.

15 Now, would it surprise you to learn that
16 this global settlement which resolves 05-144-GA-UNC
17 did not have all the parties from 05-144-GA-UNC on
18 the stipulation?

19 A. I wouldn't know. I don't know.

20 Q. You don't know.

21 A. No.

22 Q. You're not aware that Mr. Meissner's
23 group was not on the stipulation, but OCC agreed to
24 resolve 05-144-GA-UNC.

25 A. If that's what you -- what happened, then

1 subject to check, yes.

2 Q. Okay. I have one last area. You've done
3 a number of scenarios comparing the DCRA with a
4 distribution rate case.

5 A. That's correct.

6 Q. In one of those scenarios you have a
7 distribution rate case of zero that the Commission --
8 FirstEnergy would have filed a distribution rate case
9 and the Commission would ultimately end up with a
10 zero rate increase; is that correct?

11 A. That's right.

12 Q. Now, on a probabilities basis, what do
13 you think is the likelihood that FirstEnergy would go
14 through the expense and time of preparing a base rate
15 case and end up, with all the factors taken into
16 consideration, that you would end up with a zero
17 dollar rate increase? Assuming the Commission
18 follows the law to the letter.

19 A. I would say it would probably be a lower
20 probability.

21 Q. A lower probability?

22 A. The OCC, and I believe in the last FE
23 rate case, we did ask for a rate decrease as I
24 recall, so -- but with respect to the Commission, I
25 would say it would have a lower probability.

1 Q. And even if that were so, FirstEnergy
2 would still be entitled to the recovery of their rate
3 case expense, would they not? From ratepayers. Rate
4 case expenses are fully recoverable from ratepayers,
5 aren't they?

6 A. I believe they're allowed to recover a
7 reasonable amount of --

8 Q. Do you know what the rate case expenses
9 were for 07-551-EL-AIR?

10 A. I don't recall, I didn't work on that
11 part of the costs.

12 Q. Would you be surprised if the Staff
13 Report estimate was approximately \$447,000 per
14 company?

15 A. I would not be surprised.

16 Q. So if FirstEnergy filed a rate case with
17 a zero rate of return, the ratepayers would still be
18 out \$1.4 million; is that right?

19 A. They would be out that amount of money,
20 but they wouldn't be out if the rate increase was
21 given.

22 Q. Okay. You also use a discount of their
23 proposed rate by 60 percent, a 60 percent --

24 A. Yes.

25 Q. I guess that's a 40 percent discount.

1 How did you come up with that number?

2 A. As I state in my testimony, we looked at
3 the last rate case --

4 Q. Can you show me in your testimony?

5 A. Yes. I believe it's on page 19. Wrong
6 page. Yes, it's page 25.

7 Q. Okay. And so how did you come up with
8 60 percent?

9 A. I saw what the last -- what the
10 Commission order was in the 05-551 case -- 07-551
11 case, they had 40 percent, approximately 40 percent
12 and a certain amount of that was even because of
13 exigent circumstances and then we looked at two other
14 recent rate cases which --

15 Q. Which cases were those?

16 A. Those are the two Duke electric
17 distribution cases, and we -- I believe the values
18 there were in the 65 percent range. You know, what
19 they asked for and what the agreement was.

20 Q. So you used a sample size of three.

21 A. No. I'm starting.

22 Q. Okay. I'm sorry.

23 A. That's the most recent Ohio experience,
24 but I've been involved in rate cases in different
25 jurisdictions in different states and of all the --

1 Q. Well, let's talk about most recent Ohio.
2 You used a sample size of three; is that right?

3 A. I used that information along with other
4 information that I've had being in the industry.

5 Q. Did you look at the Vectren rate case
6 that we just discussed you testified in?

7 A. I looked at the electric cases.

8 Q. We've had -- isn't it true we've had in
9 the last two years four major gas distribution rate
10 cases?

11 A. Yes.

12 Q. Vectren, Duke, Columbia, Dominion, all of
13 them in '07 came in for rate cases; is that right?

14 A. Yes.

15 Q. You did not look at those.

16 A. No. I was trying to confine myself to
17 the electric experience.

18 Q. Okay. One last question. Let's assume
19 for the sake of argument in the RTEP and exit fee
20 cases, let's assume for the sake of argument that you
21 assigned a probability of zero that FirstEnergy
22 ultimately would get to recover those costs.

23 A. That's correct.

24 Q. Let's assume the probability was
25 50 percent. If the probability was 50 percent that

1 FirstEnergy would ultimately get to approve those
2 costs, what's the proper settlement value for those
3 proceedings?

4 A. Based on your hypothetical it would be
5 half of what they're claiming.

6 Q. And they're claiming about \$450 million;
7 is that right?

8 A. Yes.

9 Q. So the proper settlement value would be
10 \$225 million.

11 A. If it had a 50 percent ability, yes.

12 Q. Okay. So if we were to assume that
13 number instead of the RTEP number you gave of zero,
14 if you were to assume \$225 million, would the ESP in
15 the aggregate be more favorable than the MRO?

16 A. When you discount that money over time on
17 a net-present-value basis I believe it, in my first
18 scenario it would be very close, in my second
19 scenario and third scenario you would have to
20 overcome more.

21 Q. But your third scenario is the
22 distribution rate case filed where the Commission
23 simply says no, you get nothing. And your second
24 scenario is the 60 percent figure we estimated
25 earlier; is that right?

1 A. The second scenario, the difference with
2 the second scenario is we went up to the rate cap.
3 So the easiest hurdle for the company would be the
4 first scenario. The second scenario is we're
5 assuming they go up to the cost cap in terms of the
6 DCR expenditures. And the third scenario is --

7 Q. But if it's a 50 percent probability,
8 then it's a much closer question.

9 A. On the first case, yes.

10 Q. And if the Commission were to determine
11 it's less than a 50 percent probability, then the
12 scales tip more towards the ESP; is that right?

13 A. I believe that's a major driver in the
14 analysis, yes.

15 EXAMINER PRICE: Okay. Thank you, you're
16 excused.

17 THE WITNESS: Thank you.

18 EXAMINER PRICE: Mr. Small.

19 MR. SMALL: OCC moves for the admission
20 of OCC Exhibits 2 and 2A.

21 EXAMINER PRICE: Any objections to the
22 admission of OCC Exhibits 2 and 2A subject to the
23 motions to strike that have been granted?

24 MR. RANDAZZO: Yes, your Honor.

25 EXAMINER PRICE: Mr. Randazzo.

1 MR. RANDAZZO: Your Honor, I think
2 through the course of cross-examination this witness
3 has demonstrated a fundamental lack of knowledge not
4 only with regard to Ohio law that he relies upon, but
5 the subject matter of his testimony. It is --
6 there's a fundamental tenet of evidence that requires
7 it to be useful for purposes of resolving issues in
8 the case, and I believe this testimony lacks any
9 probative value based upon the answers that this
10 witness has given throughout this hearing.

11 In addition to that, I'm mindful in
12 making this motion that I have little chance of
13 succeeding, but think it is important to note, that
14 we have a pattern here that involves the filing of
15 testimony and the issuing of press releases on behalf
16 of the Office of Consumers' Counsel that make broad
17 claims and accusations that rely significantly on
18 testimony that the Office of Consumers' Counsel files
19 in this proceeding or any proceeding for that matter.

20 And to the extent that this testimony
21 stays in, I think the Commission risks further
22 degradation in the integrity of the process that is
23 associated with Public Utilities Commission of Ohio
24 proceedings.

25 I do not recall a proceeding in my almost

1 40 years of practice before this Commission in which
2 a party has alleged that other parties lack
3 knowledgeable and capable representatives to engage
4 in serious settlement negotiations.

5 I personally was offended by that
6 language and I want to say that as a matter of public
7 record, and I think that for the purposes of
8 protecting not only the integrity of this proceeding
9 but improving the integrity of the Office of
10 Consumers' Counsel that Mr. Small ought to withdraw
11 this testimony on his own motion.

12 I object.

13 EXAMINER PRICE: Mr. Small, would you
14 care to respond?

15 MR. SMALL: I suggest that Mr. Randazzo
16 and IEU take these matters up on brief which is a
17 normal way of doing it and there's no voir dire
18 offered of this witness and throughout he has shown
19 knowledge of the subject matters to which he's
20 testified. I renew my motion to admit OCC Exhibits 2
21 and 2A.

22 EXAMINER PRICE: Any other parties care
23 to join with Mr. Randazzo?

24 Well, I will say that I believe that
25 there are plenty of issues that parties can raise in

1 their briefs regarding the weight of this evidence,
2 but I am not going to as an evidentiary matter
3 exclude it. They'll be admitted.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 EXAMINER PRICE: Mr. Lang.

6 MR. LANG: Your Honor, the companies move
7 Exhibits 9, 10, and 11.

8 EXAMINER PRICE: Any objection to the
9 admission of Company Exhibits 9, 10, and 11?

10 Seeing none, they'll be admitted.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 EXAMINER PRICE: I don't believe that
13 we've missed any other exhibits. We did admit the
14 proofs of publication yesterday.

15 As we discussed previously off the
16 record, and I think was in our entry, briefs are due
17 in one week. We would appreciate it if the parties
18 could file them by 4 o'clock. We would also
19 appreciate if the parties could e-mail the examiners
20 copies of their briefs as it is likely that we will
21 be in the office the next day.

22 MR. RANDAZZO: Do you have a format
23 preference for the electronic version?

24 EXAMINER PRICE: No, we do not.

25 After the briefs are submitted, this case

1 will be submitted to the Commission on the record.

2 We are adjourned. Thank you all.

3 (Thereupon, the hearing was concluded at
4 12:33 p.m.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Friday, April 23, 2010, and
5 carefully compared with my original stenographic
6 notes.

7
8 Maria DiPaolo Jones, Registered
9 Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

10 My commission expires June 19, 2011.

11 (MDJ-3552)

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Summary: Transcript Transcript of FirstEnergy hearing Volume IV held on 04/23/10.
electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones,
Maria DiPaolo Mrs.