

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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3
4 In the Matter of the :
5 Report of Duke Energy :
6 Ohio, Inc. concerning :
7 its Energy Efficiency : Case No. 09-1999-EL-POR
8 and Peak-Demand :
9 Reduction Programs and :
10 Portfolio Plan. :

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12 PROCEEDINGS

13 before Ms. Christine Pirik and Ms. Katie Stenman,
14 Hearing Examiner, at the Public Utilities Commission
15 of Ohio, 180 East Broad Street, Room 11-C, Columbus,
16 Ohio, called at 10:00 a.m. on Thursday, June 3, 2010.

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On behalf of the ELPC.

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On behalf of the OEC.

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Thursday Morning Session,

June 3, 2010.

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EXAMINER PIRIK: We'll go on the record.

This case is in the Matter of the Report of Duke Energy Ohio, Inc. concerning its Energy Efficiency and Peak-Demand Reduction Programs and Portfolio Plan, Case No. 09-1999-EL-POR.

My name is Christine Pirik and with me is Katie Stenman, and we are the Attorney Examiners who have been assigned to hear this case.

At this time I'll take appearances on behalf of the parties.

On behalf of the company?

MS. WATTS: Thank you, your Honor. On behalf of Duke Energy Ohio, Amy Spiller and Elizabeth Watts. We are at 139 East Fourth Street, Cincinnati, Ohio, Atrium II, 25th floor. Thank you.

EXAMINER PIRIK: On behalf of OCC.

MR. ETTER: Thank you, your Honor. For Janine L. Migden-Ostrander, the Ohio Consumers' Counsel, this is the Office of Ohio Consumers' Counsel, my name is Terry Etter, I am an Assistant Consumers' Counsel, and our address is 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, and we are

here on behalf of the residential utility customers
of Duke Energy.

EXAMINER PIRIK: We'll just go around the
table.

MR. DOUGHERTY: On behalf of Ohio
Environmental Council, Trent Dougherty, as well as
Attorneys Megan DeLisi, William Reisinger, and Nolan
Moser, 1207 Grandview Avenue, Suite 201, Columbus,
Ohio 43212.

MR. HEINTZ: Thank you, your Honor. On
behalf of the Environmental Law & Policy Center,
Michael E. Heinz, also at 1207 Grandview Avenue,
Columbus, Ohio 43212.

MR. McNAMEE: On behalf of the staff of
the Public Utilities Commission of Ohio, Richard
Cordray, Attorney General of the State of Ohio, Duane
W. Lucky, Chief of Public Utilities Section, William
L. Wright, and I am Thomas W. McNamee, Assistant
Attorneys General, our address is 180 East Broad
Street, Columbus, Ohio.

MR. RINEBOLT: On behalf of Ohio Partners
for Affordable Energy, David C. Rinebolt and Colleen
L. Mooney, P.O. Box 1793, Findlay, Ohio.

EXAMINER PIRIK: Thank you.

Before proceeding with the first witness

1 we have three pending motions. The first pending
2 motion is a motion filed by Ohio Partners for
3 Affordable Energy on March 19, it's a motion to
4 strike the Duke Energy Ohio's combined memorandum in
5 response and memorandum in support. That motion is
6 granted.

7 Let the record reflect that there was no
8 memorandum contra filed to that motion.

9 The second motion is Duke Energy's motion
10 to strike the testimony of Wilson Gonzalez, or in the
11 alternative for an opportunity to file rebuttal
12 testimony. That motion was filed on May 3rd.

13 There was a memorandum contra filed on
14 May 10 by the Office of Consumers' Counsel. That
15 motion to strike is denied.

16 With regard to the request to file
17 rebuttal testimony and ultimately surrebuttal as was
18 requested by OCC, we will consider the request for
19 rebuttal testimony at the conclusion of the initial
20 cases in this situation.

21 The final motion that we have before us
22 is a motion filed on June 1, 2010, it's a motion to
23 strike the objections filed by OCC, the National
24 Resource Defense Counsel, Ohio Partners for
25 Affordable Energy, and the Ohio Environmental

1 Council, and a motion to exclude evidence or in the
2 alternative to file rebuttal testimony.

3 Since time has not been allowed to run
4 yet for memorandum contras I will allow the parties
5 that are the subject of that motion to respond.

6 Is there any of the parties who had the
7 request to strike their objection that would like to
8 respond?

9 Mr. Etter?

10 MR. ETTER: Well, your Honor, thank you.
11 Having very little time to actually read this since
12 we didn't get this till almost 5:00 o'clock on
13 Tuesday, just going through it briefly I noticed that
14 they incorporated most of the arguments from the
15 motion to strike that you just denied.

16 And as far as the objections, the company
17 has had ample opportunity up to now to file such a
18 motion. They wait until the last minute before the
19 hearing in order to do so.

20 They did have the opportunity or they did
21 have the response actually that you've just stricken,
22 but they present no real reason other than what was
23 presented in the motion to strike Mr. Gonzalez's
24 testimony for striking those portions of the
25 objections.

1 And the objections are what they are,
2 they are objections. And so the company is able to
3 respond to those on brief as well.

4 And same for the motion to exclude any
5 evidence, the matter's already stipulated to. The
6 crux of the argument there is that we are trying to
7 relitigate the stipulation in the ESP case. That's
8 not the matter.

9 As we mentioned in our memorandum contra,
10 we are not trying to relitigate the stipulation,
11 we're trying to enforce the stipulation. And so we
12 believe that the motion should be denied.

13 EXAMINER PIRIK: Any other responses?

14 Mr. Dougherty?

15 MR. DOUGHERTY: Yes, as this motion
16 pertains to Ohio Environment Council, we believe that
17 the issues raised in this motion deal with two issues
18 that we believe are specific to other parties. The
19 issues of DR-SAW as well as cost recovery.

20 The issues that Ohio Environment Council
21 had submitted in its objections, and again those are
22 just objections relating to the long-term forecasting
23 as well as the ability of program funding
24 flexibility.

25 Issues that were addressed were part of

1 the stipulation, however, as those who were here
2 during other POR cases, POR cases are not the pro
3 forma exercises. These issues dealing with issues of
4 long-term forecasting and most especially program
5 flexibility are able to be litigated, which those are
6 the issues we will focus on litigating at this
7 hearing as well as in post-hearing briefs.

8 I feel, and agree with OCC, that both the
9 motion to strike as well as the motion in limine
10 should be denied.

11 EXAMINER PIRIK: Mr. Rinebolt?

12 MR. RINEBOLT: Your Honor, I think our
13 position would be -- our position is that the
14 4901-1-399 energy efficiency rule should not really
15 be treated as an empty shell. The purpose of this
16 hearing is laid out in '04.

17 We are to -- the company was -- filed
18 portfolio plan with supporting documentation, and the
19 purpose of the hearing is to review those programs.
20 As a part of our proceedings along this way, with
21 other utilities, we have looked at cost recovery and
22 those issues have been part of those dockets.

23 I would also note that Duke committed to
24 follow the rules in their 08-920 stip. Those rules
25 came after that stipulation and I think customers

1 generally deserve an opportunity to review this
2 portfolio, particularly when it's not reaching its
3 targets.

4 This is in a sense an issue of first
5 impression in that the rules require active
6 collaboration both formally and informally and this
7 proceeding it's a formal component of that
8 collaboration.

9 EXAMINER PIRIK: Does Duke have a reply?

10 MS. WATTS: We do, your Honor.

11 The company is being placed in a very
12 precarious predicament here by the parties and what
13 we've been doing is trying to get a handle on how the
14 docket is to proceed.

15 We believe that none of the issues with
16 respect to energy efficiency that were stipulated to
17 in the ESP case are appropriate for consideration in
18 this docket.

19 Additionally, we did not file for cost
20 recovery in this docket so we don't believe any of
21 the issues relative to cost recovery should be heard
22 in this docket.

23 Because of those particularly difficult
24 issues, we filed the motions that we did in order to
25 try and circumvent continuing legal debate between

1 the parties about what is appropriate and what isn't.

2 Quite frankly, we feel that the parties
3 are proceeding in bad faith here since all of them
4 were signatory to the ESP stipulation. And so we
5 move to strike those portions of the objections that
6 are relevant to the ESP case because they don't
7 belong in this hearing. And we feel that that's an
8 appropriate way to proceed.

9 EXAMINER PIRIK: Thank you.

10 MR. ETTER: If I may respond just
11 briefly, your Honor.

12 EXAMINER PIRIK: No, I don't need any
13 further response, but thank you.

14 Having heard everyone's arguments, the
15 motion to strike and the motion to exclude evidence
16 are both denied.

17 I believe we'll move forward then.

18 I would also note on the record I don't
19 know if everyone will be here for the duration but we
20 do want the comments marked as exhibits on behalf of
21 each of the parties.

22 So at some point in time we will be
23 looking for that probably after Duke's presentation
24 of their case.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)

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THEODORE E. SCHULTZ

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

DIRECT EXAMINATION

By Ms. Watts:

Q. Sir, would you state your name please?

A. Theodore Schultz.

Q. Mr. Schultz, could you tell us where
you're employed?

A. Employed by Duke Energy as vice president
of Engineering Efficiency and Smart Grid Strategy and
Information.

Q. Do you have before you what has been
marked as Duke Energy Exhibits 1 and 2? Not on your
copy, right?

A. Doesn't say that on my copy, so help me.
Yes. Yes, I do.

Q. Could you describe please what those are?

A. Yes, the first document is my direct
testimony in the ESP case, and the second document is
the supplemental testimony in that case.

Q. And were those testimonies also filed in
this instant case?

A. Yes, they were.

1 Q. And if I were to ask you the questions
2 contained in that testimony, would your answers be
3 the same?

4 A. Yes, they would.

5 Q. Do you have any additions or corrections?

6 A. I do not.

7 MS. WATTS: Mr. Schultz is available for
8 cross-examination.

9 EXAMINER PIRIK: Thank you.

10 Mr. Etter?

11 MR. ETTER: Thank you.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Etter:

15 Q. Good morning, Mr. Schultz.

16 A. Morning.

17 Q. In your direct testimony for each of the
18 Save-A-Watt programs listed in the application, like
19 turning to the application, there's the statement
20 that program costs are not explicitly recovered from
21 customers. How are those program costs recovered?

22 A. Program costs would save -- with
23 Save-A-Watt we actually don't get explicit recovery
24 of program costs. Save-A-Watt would pay the
25 percentage of avoided costs which is a revenue

1 stream. From that revenue we're responsible for the
2 program costs.

3 Q. And is that through rider DR-SAW?

4 A. Yes, it is.

5 Q. What are the components of that rider,
6 rider DR-SAW?

7 A. I actually did not -- I'm not the witness
8 for the rider. So I really can't speak to the
9 individual components.

10 Q. And who is the witness for the rider?

11 A. The witness for the rider in the ESP case
12 would have been Paul Smith.

13 Q. But you do mention the rider DR-SAW in
14 your testimony, do you not? You discuss it fairly at
15 length?

16 A. I mention the rider, that's correct.

17 Q. So do you know whether lost generation
18 revenues are part of rider DR-SAW?

19 A. Lost revenue are a part of rider SAW.

20 Q. And that was part of the stipulation in
21 the ESP case, correct?

22 A. Yes; lost margins were part of the
23 stipulation.

24 Q. And are you familiar with that
25 stipulation?

1 A. I am.

2 Q. Do you have a copy of it with you today?

3 A. I do.

4 Q. Great. Save us all time.

5 If you'll turn then to page 37, paragraph
6 32, doesn't it say there that Duke shall conform to
7 the Commission's ESP rules set forth in Case No.
8 08-777 and 08-888?

9 A. Yes, it does.

10 Q. And are you familiar with the rules that
11 were adopted in those two cases?

12 A. Generally, yes. As modifications that's
13 a general yes.

14 MR. ETTER: May I approach the witness?

15 EXAMINER PIRIK: Yes.

16 Q. The document I've handed you is one of
17 the rules that was adopted in 08-888 case, and this
18 is 4901:1-39-07, and it's labeled "Recovery
19 Mechanism"; is that correct?

20 A. Yes, it is.

21 Q. And the effective date on that particular
22 rule was December 10, 2009, which is about a year
23 after the stipulation, correct?

24 A. Yes, that's about a year after the
25 stipulation was approved.

1 Q. So this rule wasn't effective at the time
2 the stipulation was entered into and approved by the
3 Commission?

4 A. That's correct.

5 Q. Now, the first part of section A of the
6 rule, if you'll read it, says that "An electric
7 utility may submit a request for recovery of approved
8 rate adjustment mechanism at the time the utility
9 files its proposed program portfolio."

10 Duke did not file such a request with the
11 application, did they?

12 A. No, we did not, since we already had one
13 in place.

14 Q. And the application was filed on
15 December 29, 2009, about 19 days after the rule
16 became effective; is that correct?

17 A. Say that again.

18 Q. The application I believe in this case
19 was filed on December 29, 2009?

20 A. Correct.

21 Q. And that's about 19 days after the rule
22 became effective.

23 A. That's correct.

24 Q. To the best of your knowledge does Duke
25 plan to file such a request in the near future for a

1 recovery mechanism regarding portfolio plan?

2 A. To the best of my knowledge a filing
3 would be after the current agreement expires in three
4 years, which would be 2012. For the calendar year
5 2012.

6 Q. And to the best of your knowledge is
7 there any plan for annual reconciliation rider
8 DR-SAW?

9 A. I believe the reconciliation is addressed
10 in the stipulation agreement. That reconciliation
11 process is subject to a true-up at the end of the
12 third year, which would be in year 4, per the
13 agreement.

14 Q. Now, the last sentence of section A of
15 the rule I just handed you says that "Any such
16 recovery shall be subject to annual reconciliation
17 after issuance of the Commission verification report
18 issued pursuant to this chapter." Correct?

19 A. Yes, it does.

20 Q. And if you'll look at section A, and on
21 the third line, beginning the third and fourth lines,
22 there are listed several costs that may be collected
23 under the rate adjustment mechanism and those costs,
24 they're costs due to electric utility peak-demand
25 reduction, demand response, energy efficiency program

1 costs, appropriate lost distribution revenues, and
2 shared savings, correct?

3 A. That's correct.

4 Q. Lost generation revenues are not included
5 there, correct?

6 A. I do not see lost generation revenues
7 there.

8 Q. So Duke plans to continue collecting lost
9 generation revenues through 2012, even though the
10 rule there requires an annual reconciliation and does
11 not allow lost generation revenues, correct? Or does
12 not specify lost generation revenues.

13 A. Does not specify lost generation
14 revenues, that's correct.

15 Q. Are you aware of how much Duke estimates
16 that it will collect in lost generation revenues from
17 customers during the three-year ESP period?

18 A. Generally, but Dr. Stevie will be the one
19 to address those numbers in more detail.

20 Q. Now, if you'll turn to Duke's application
21 on page 9 --

22 MS. WATTS: Mr. Etter, I don't believe he
23 has that before him.

24 A. I don't have the application. The
25 application -- maybe I do.

1 EXAMINER PIRIK: Just for clarification,
2 the application has not been marked as an exhibit
3 yet. So should we mark that as an exhibit at this
4 time so we're referring to an actual exhibit?

5 MS. WATTS: Yes, thank you, your Honor.
6 We can call it Duke Energy 3 because that would be
7 logical.

8 EXAMINER PIRIK: In light of the fact
9 that your application itself had appendices that
10 actually had the testimony of the witnesses attached
11 to it, are you marking those appendices also or are
12 you just marking the -- are you going to mark it in
13 total and then mark their testimony separate also?

14 MS. WATTS: I guess it makes sense to
15 mark the application with the appendices as Duke
16 Energy Exhibit 3 and then we also ask to submit the
17 testimony again.

18 EXAMINER PIRIK: As a separate exhibit?

19 MS. WATTS: Yes.

20 MR. ETTER: That's fine. And just note
21 the date that was filed and you won't need to provide
22 a copy to the court reporter at that point.

23 MS. WATTS: Thank you.

24 EXAMINER PIRIK: So Duke Energy Exhibit 3
25 will be the application filed on December 29, 2009

1 including A, B, and C appendices; is that correct?

2 MS. WATTS: That's correct.

3 EXAMINER PIRIK: It will be so marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 THE WITNESS: And I do have the
6 application.

7 Q. (By Mr. Etter) Great. Actually let's
8 look at page 10, and this is one of the programs that
9 is listed there as Residential Energy Assessments.

10 A. Yes.

11 Q. And under B on page 10 it shows kilowatt
12 and kilowatt hour savings predicted for that
13 particular program, correct?

14 A. That's correct.

15 Q. And it does that for each of the programs
16 listed in the application, correct?

17 A. Yes, it does.

18 Q. Can Duke offer the capacity of these
19 savings or the capacity that's saved here on the
20 wholesale market?

21 A. Typically the wholesale market here does
22 not have a capacity market like PJM where you could
23 actually take a definitive item to the market. So
24 that does not exist in MISO.

25 Q. Is it possible to engage in -- for Duke

1 to engage in bilateral trades serving that capacity?

2 A. I would say Duke can engage in bilateral
3 trades on capacity. I doubt that they get to these
4 levels. So in aggregate Duke could do something on
5 bilateral trade capacity. I don't believe these
6 individual items are of the size and quality that
7 would necessarily do that.

8 Q. Thank you.

9 Now, if you'll turn to page 15 of your
10 testimony, your direct testimony.

11 A. 15 of my direct testimony.

12 Q. On line 19, beginning on line 19 you
13 discuss the coupons and discounts that would be
14 offered under the Energy Star Products Program. And
15 that includes coupons and discounts for compact
16 fluorescent lighting, correct?

17 A. That's correct.

18 Q. Was that approved in the ESP case?

19 A. Yes, it was.

20 Q. Have there been any changes to the
21 compact fluorescent lighting or CFL program since the
22 ESP case was approved?

23 A. We made some changes to the variables on
24 the program which in the ESP case we also got
25 approval for flexibility with our programs. So

1 everything that we did was in line with the
2 flexibility of those program parameters. We did not
3 change the core essence of the program itself.

4 Q. What were the changes that were made
5 there?

6 A. The changes were primarily using
7 different distribution channels and mechanisms to
8 restructure the costs given, again, trying to get the
9 other customer groups on. So it was a way to get the
10 other customer groups that exist within the
11 territory. Like mentors, for example.

12 Q. And are these changes noted anywhere in
13 the application in this case?

14 A. No, those changes wouldn't be noted in
15 the application because, again, it's the same program
16 that within the flexibility parameters that we
17 received in the ESP case were within compliance.

18 Q. Have there been any other changes to the
19 portfolio plan made since the ESP case approval?

20 A. In this application we did introduce a
21 brand new program called the Home Energy Comparison
22 Report. So that is new.

23 There may have been -- there may have
24 been some small tweaks on how we go to market.
25 Typically we're going to do that on a normal basis.

1 Again, the market's been pretty tough.

2 For our programs customers have to
3 actually spend money. So with the economy where it
4 is, it's been a very difficult market for energy
5 efficiency because customers have to put money
6 forward.

7 So in our programs we are trying to
8 adjust and make accommodations to try to increase the
9 programs. So it's a pretty common process for us to
10 make tweaks in how you go to market. You learn from
11 the market.

12 Q. And have any of these tweaks been listed
13 or described in the application?

14 A. No, again, within the flexibility
15 parameters that we put forth. Now, we did on the CFL
16 program, we did go through those changes with the
17 parameters processes with the Commission staff, we
18 did review those with everybody including the OCC.

19 Q. Now, at the top of page 16 you mention
20 the energy efficiency education program for schools.
21 Are you familiar with that program?

22 A. I am.

23 Q. And if you turn to page 16 of the
24 application, that program is described there. And
25 there the company states it expects to save

1 approximately 15.6 kilowatt hours -- 15.6 million
2 kilowatt hours this year and about 23.4 million next
3 year; is that right?

4 A. That's correct.

5 Q. How does the company plan to verify these
6 savings?

7 A. We have, again, laid out evaluation
8 measurement verification plans in Dr. Stevie's
9 original testimony and those will be executed
10 according to that plan.

11 Q. Should I ask Dr. Stevie about that
12 program?

13 A. Details of the measurement verification
14 would be most appropriate for Dr. Stevie.

15 MR. ETTER: That's all the questions I
16 have. Thank you.

17 EXAMINER PIRIK: Mr. Dougherty.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Dougherty:

21 Q. Good morning, Mr. Schultz.

22 A. Good morning.

23 Q. I've got a few questions dealing with
24 your direct testimony. If you could turn to page 10
25 of your direct testimony, page 10 at line 7. Line 7

1 you're asked if there are any other differences
2 between Save-A-Watt and any other efficiency
3 approaches. You see that?

4 A. Yes.

5 Q. And your response at lines 9 through 15
6 is that the Save-A-Watt approach would "provide the
7 company with say flexibility to quickly adjust
8 product and service offerings, incentives, and
9 marketing focus as consumer needs, markets, and
10 technologies change," correct?

11 A. That's correct.

12 Q. And that's also the flexibilities or
13 tweak that you just referred to specifically with the
14 CFL program? Is that the flexibility you were
15 speaking of earlier where Mr. Etter had asked you a
16 question earlier?

17 A. Yes, that is flexibility --

18 Q. That would be flexibility?

19 A. That's correct.

20 EXAMINER PIRIK: I just want to be sure
21 that you can't ask a question and answer at the same
22 time. You need to wait until the question's done
23 because I don't think she can type two people at one
24 time.

25 MR. DOUGHERTY: Sorry.

1 Q. And further down on page 10 you also say
2 that when you're elaborating on the flexibility of
3 the Save-A-Watt programs, line 21 you state that
4 "participation and spending levels by program will
5 not be unduly restricted by preestablished limits";
6 is that correct?

7 A. Yes.

8 Q. And these preestablished limits are those
9 that have been, well, part of this application --
10 part of this application, most appropriately as Duke
11 has contended part of the ESP process is the same --
12 excuse me.

13 MS. WATTS: Objection. Could you perhaps
14 restate that?

15 Q. Yes. Those preestablished limits are the
16 maximum limits in the portfolio.

17 A. The preestablished limits and pending
18 levels are not. We filed a plan of a portfolio on
19 what to do. There aren't preestablished limits and
20 spending levels.

21 So this is -- that's why it's different
22 from traditional programs. Traditional programs
23 you'd have a certain participation level and certain
24 amount of dollars spent. And if I could, I'll give
25 you an example of a real life case that happened in

1 the state next door.

2 We filed a program that had a set
3 spending limit that was very successful and it was
4 fully subscribed within a month. So the way the
5 rules worked in the traditional programs, we closed
6 the doors on that particular program like any good
7 company.

8 When business is going well, you shut
9 your doors down, you go back for approval, and a year
10 later we got additional money to open the program
11 back up again. That's a predefined limit.

12 So we're trying to avoid that so if the
13 market you're having something that's going well, you
14 can adjust and morph with the market. Same thing
15 with something not going well, you have to make
16 tweaks and actually try to respond.

17 Q. Thank you.

18 Under this flexibility approach that you
19 described, would that provide the opportunity for
20 Duke to essentially de-fund one program in their
21 portfolio and shift that funding to another program,
22 essentially zero fund one program in this flexibility
23 approach to another program? Or programs.

24 A. Yes. It would allow Duke to do two
25 things: One, to shift funds between programs if one

1 wasn't working out and end up not being
2 cost-effective, then by definition I don't think it
3 would be good for consumers for us to continue those
4 programs going forward but we'd have to come back for
5 approval to get the program out but we would not
6 continue a spending level on an unsuccessful program.

7 Secondly, Duke can spend more as opposed
8 to shifting. If you have something that's going
9 really well, you could increase funding in that
10 particular area.

11 Q. When you say not good for consumers, who
12 decides -- who within Duke, or without, determines
13 what is good for consumers during the -- in this
14 flexibility approach?

15 A. Well, I believe the Commission has made
16 those decisions accepting the ESP plan based on
17 cost-effectiveness of programs. So to the extent
18 that those programs ended up not being cost-effective
19 as planned, they approved it based on
20 cost-effectiveness. So they decided what was good.

21 So for us if it ends up not doing what
22 it's supposed to do and meeting criteria around
23 cost-effectiveness, then we would look at that as
24 prudence on our part and managing that program
25 effectively relative to the plan.

1 Q. So these changes as your testimony speaks
2 to will not be -- your contention it will not need to
3 be approved by the Commission. That it's your
4 contention that they have already been approved by
5 the Commission.

6 A. Two things there I guess: One, the ESP
7 has been approved with the programs by the Commission
8 back in the original ESP process. So yes, they have
9 been approved for three years under those terms.

10 Q. You said the flexibility you're
11 essentially de-funding one program that flexibility
12 has already been -- from what I understand from your
13 answer is that your ability to de-fund a program has
14 essentially been approved by the Commission; is that
15 correct? Is that your understanding? Excuse me.

16 A. My understanding is, yes, that is
17 approved as part of the ESP case.

18 Q. Would your ability to exercise this
19 flexibility in any program, whether it's moved one
20 dollar or all dollars to another program, be
21 presented to the collaborative, the Duke Energy
22 efficiency collaborative?

23 A. We do an annual update with the
24 collaborative, so, yes, it would go to the
25 collaborative just as the CFL program went to the

1 collaborative on the changes that were there. And
2 then we do an annual update on the status, which
3 again will update the status of all the programs.
4 And that goes to the collaborative.

5 Q. And at what time does that go to the
6 collaborative; before the flexibility is exercised,
7 after the flexibility's exercised? Somewhere in
8 between?

9 A. In the CFL case it went before it was
10 exercised.

11 Q. And does the collaborative or any -- in
12 that situation with the CFL as an example, did the
13 collaborative or any members of the collaborative
14 have the ability to veto or have actually some say
15 and determination whether the amounts or portions of
16 the amounts that were shifted flexibility was -- did
17 any members of the collaborative have, as I said, a
18 veto power or any direct say in the amounts or
19 whether the flexibility is actually exercised?

20 A. As a general rule the collaborative does
21 not have veto power. We are looking for the
22 collaborative for feedback and we take that feedback
23 very seriously and have for a long time on our
24 programs. We take that feedback from the
25 collaborative in developing our programs initially

1 and any modifications to the programs.

2 MR. DOUGHERTY: No further questions.

3 EXAMINER PIRIK: Mr. Heinz?

4 MR. HEINTZ: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Heintz:

8 Q. Good morning, Mr. Schultz.

9 A. Morning.

10 Q. My name is Michael Hines. I'm an
11 attorney with Environmental Law & Policy Center. I'd
12 like to take a few minutes and clarify some of your
13 answers from Mr. Dougherty's line of questioning.

14 It's my understanding looking at page 12
15 of your testimony that there are four changes -- if
16 Duke were to implement four changes to their program
17 portfolio you would need Commission approval; is that
18 correct?

19 A. That's correct.

20 Q. And these four changes, actually three
21 plus any combination thereof is the fourth, are the
22 only four limits that Duke is subject to obtaining
23 Commission approval before implementing; is that
24 correct?

25 A. That's correct.

1 Q. And just to clarify from one of
2 Mr. Dougherty's questions, when reallocating funds
3 between programs, the company has the ultimate
4 discretion as to what that level of funding shift is;
5 is that correct?

6 A. Yes. In the ESP what we put forward is a
7 portfolio of programs for approval. So the shifting
8 within programs, correct, would be the company's
9 discretion.

10 Q. And how do you define shifting within
11 programs?

12 A. Exactly what you just described: If you
13 were to move funding from one program to another,
14 based on what you're seeing in the market, something
15 that's going well or something that's not going well,
16 that would be shifting funds between programs.

17 Q. Okay. Now I want to turn to one of the
18 application appendices and I believe it's Appendix A.
19 It is the Ohio Market Potential Study for Demand Side
20 Management Programs Final Report. I believe it is
21 the first appendix following the filed application.

22 EXAMINER PIRIK: I think that's Appendix
23 C, right?

24 MR. HEINTZ: It is not marked so I'm not
25 entirely sure which appendix it is.

1 EXAMINER PIRIK: I do not have a tab that
2 says Appendix C.

3 MS. WATTS: That would be correct.

4 EXAMINER PIRIK: I believe as attached to
5 the application Duke 3, Mr. Schultz's direct and
6 supplemental are Appendix A. And Appendix B is
7 Mr. Stevie's testimony, and then Appendix C is the
8 study.

9 MR. HEINTZ: Thank you.

10 Q. (By Mr. Heintz) If I could turn your
11 attention please to page 103.

12 A. Okay.

13 Q. And there's a sub-heading on page 103
14 that reads "Expected Program Costs"? Do you see
15 that?

16 A. I do.

17 Q. And near the bottom of the page there are
18 three bullet points.

19 A. Yes.

20 Q. And it reads "We recommend that
21 flexibility include the following:" And the third
22 bullet point reads "Shift up to 25 percent of total
23 budget among approved programs at anytime within a
24 program year"; is that correct?

25 A. Yes.

1 Q. Is it correct that the 25 percent
2 referenced here is for the full three-year portfolio
3 budget?

4 A. Reading that line "Shift up to 25 percent
5 of total budget among approved programs at any time
6 within a program year."

7 Q. Uh-huh.

8 A. Sounds to me like it's within a program
9 year's funding.

10 Q. Okay. So it is shift up to 25 percent of
11 an individual program's budget in a single year?

12 A. That's the way I read what's here.

13 Q. So to take your example of the CFL
14 program, the way you read this is if the CFL program
15 were to not function at expectation and you wanted to
16 move program funds away from CFLs, the company could
17 only move up to 25 percent of that program budget
18 away from the program in a given year.

19 A. That is the way I interpret their
20 recommendation here.

21 Q. And to be clear, this is Duke's
22 recommendation.

23 A. It is not. This is the market potential
24 study. Dr. Stevie can go into detail on the market
25 potential study and the purpose of a market potential

1 study.

2 Q. Okay.

3 A. This is not Duke's position, this is the
4 market potential study done by a third party.

5 Q. I understand. And Duke's position then
6 is, as you discussed with Mr. Dougherty, that but for
7 the four limits in your testimony, Duke has the
8 flexibility to reallocate program funds as it deems
9 appropriate.

10 A. Correct.

11 Q. Up to and including completely de-funding
12 an individual program if it falls within Duke's
13 parameters of performance.

14 A. If we were going to completely de-fund
15 the program, it says removal of a program from the
16 portfolio would require Commission approval.

17 Q. Sure. But you could de-fund a program
18 without removing it from the portfolio, couldn't you?

19 A. Technically you could de-fund a program.

20 Q. Almost like an unfunded mandate from
21 Congress; there's something out there but there's no
22 money for it.

23 A. Technically, yes.

24 Q. And that de-funding could occur without
25 Commission approval?

1 A. That's correct.

2 Q. And that de-funding could occur before
3 obtaining collaborative input.

4 A. Technically it could, that is correct.

5 Q. Okay.

6 A. Again, one of the drivers on flexibility
7 while we're focusing on funding is actually changes
8 in channel, the CFL was -- change in channeling
9 wasn't a funding discussion.

10 Q. I understand. CFL was a bad example for
11 shifting program funds away, I understand that, but
12 that goal was on the table.

13 Where in the application are the
14 guidelines Duke will use as it considers funding
15 reallocation? You said -- let me rephrase that.

16 You said earlier that the flexibility is
17 tied to performance of the program and if the program
18 is underperforming, Duke has the flexibility to tweak
19 that program; is that correct?

20 A. We have the ability to make changes to
21 that program as outlined in my testimony.

22 Q. Where in your testimony are the factors
23 for other triggers that Duke would consider to
24 determine if a program needs tweaked?

25 A. Let me read through the specifics. They

1 start on page 10. Come back to that in a second.

2 I would say they're generally stated on
3 page 10. Starting with line 9, "Past experience has
4 shown traditional energy efficiency approaches do not
5 provide the need for flexibility to quickly adjust
6 product and service offerings, incentives, and
7 marketing focus as consumer needs, market, and
8 technologies change."

9 So under the criteria it has to do with
10 understanding of customers and markets and what's
11 going on in the marketplace.

12 EXAMINER PIRIK: I just want to be clear,
13 we're talking about Duke Exhibit 1, correct? Page
14 10?

15 MR. HEINTZ: We are, thank you.

16 A. And the other criteria is all
17 cost-effective energy efficiency which is a criteria
18 that we adhere to. So to the extent that something
19 is not cost-effective, then we have to take
20 appropriate adjustments.

21 So it's cost-effectiveness and then
22 really reading the market, consumer needs, what's
23 going on in the marketplace.

24 MR. HEINTZ: Thank you, Mr. Schultz.

25 I have no further questions.

1 EXAMINER PIRIK: Mr. Rinebolt?

2 MR. RINEBOLT: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Rinebolt:

6 Q. Good morning, Mr. Schultz. Let me know
7 if you have any problems hearing me, but that's
8 usually not a problem.

9 Let's talk about the collaborative. Both
10 the application and the various testimony goes on
11 about how wonderful the collaborative is.

12 And I understand from your testimony that
13 it started in 1993; is that correct?

14 A. I believe that's correct. It was '93 or
15 '97. Dr. Stevie has been there since day one, so.

16 Q. Good for him.

17 How were the original members of the
18 collaborative chosen?

19 A. I would ask you to ask that to
20 Dr. Stevie. I was not there when it was formulated.
21 I was not even with Duke when it was formulated.

22 Q. How did the current members of the
23 collaborative come to be on the collaborative?

24 A. The current members of the collaborative,
25 we really took the collaborative that already existed

1 and that collaborative stayed in place and I believe
2 actually NRDC came on board in the collaborative in
3 this last round. I don't know if anybody else came
4 on board but Dr. Stevie would be able to address
5 that.

6 Q. And is there any particular process for
7 coming aboard? Is it just by being a party in a case
8 that involves the portfolio, or is there some other
9 process by which an entity becomes a part of the
10 collaborative?

11 A. Again, Dr. Steve could address that
12 better than myself.

13 Q. Thank you.

14 How often does the collaborative meet,
15 are you aware of that?

16 A. If you'd ask that of Dr. Stevie. Again,
17 it's -- there's a Smart Grid collaborative going on
18 now also. So I'm not sure which is which.

19 Q. I completely understand. I'm on ten
20 collaboratives, so it is hard to keep them straight.

21 The programs that are the basis of your
22 DSM portfolio, many of them were initially approved
23 in a stipulation in Case 06-91 back in 2006; is that
24 correct?

25 A. Correct, many of the programs were

1 initially approved in the 2006.

2 Q. Were those programs developed by the
3 collaborative or with input from the collaborative?

4 A. I believe they were. But Dr. Stevie
5 could speak more specifically to the role of the
6 collaborative.

7 Q. If you know, do any of those programs
8 predate the 2006 stipulation? Are there any of these
9 programs that have a much longer history of
10 existence?

11 A. I do not know specifics relative to Ohio
12 and those programs.

13 Q. Let's talk about the flexibility issue
14 for just a moment. You indicate that you want to
15 react to changes in the marketplace when it comes
16 to -- and you want that kind of flexibility.

17 How quickly can you change a program?
18 How long did it take to change your CFL program?

19 A. The CFL program probably took about, I
20 would guess about three months. And that was more to
21 get through the collaborative process and work
22 through that. The actual physical changes to the
23 channels happened pretty quickly. Can happen very
24 quickly.

25 Q. You indicated in response to Mr.

1 Dougherty's question that the changes in the CFL
2 program weren't presented to the collaborative until
3 after they'd been implemented; is that correct?

4 A. I don't believe so. I believe -- I mean
5 what I said was that they were presented to the
6 collaborative before it was implemented.

7 Q. Oh, before. Okay, I misunderstood you.

8 A. Yes.

9 Q. Now, you indicated the other reason you
10 want to be able to shift dollars is that you want to
11 be able to put them into more cost-effective
12 programs, correct?

13 A. What I said, if a program was not -- no
14 longer cost-effective, that we would look to shift
15 dollars if it was no longer cost-effective.

16 Q. Okay. If a program ceases to be cost
17 effective, what is the impact on that in terms of
18 profits to the company under the Save-A-Watt concept?

19 A. Under the Save-A-Watt concept if it was
20 not cost-effective, then it is a negative
21 contribution to the company, as are some programs
22 that are cost-effective also.

23 Q. So basically if under the Save-A-Watt you
24 don't collect the actual cost of the program, that's
25 kind of irrelevant to Save-A-Watt calculations; am I

1 correct?

2 A. That is correct. We get paid on the
3 results.

4 Q. So if a program isn't producing the
5 results that you projected, and so those kilowatts
6 are costing you more dollars, then you would want to
7 be able to shift the money over to a program where
8 you're yielding kilowatts of savings at a lower price
9 per kilowatt. Is that a reasonable assumption?

10 A. I think what we committed to in the ESP
11 filing and in this was to pursue all cost-effective
12 energy efficiency programs. To the extent a program
13 is not cost-effective, then it's by definition not
14 good for anybody. It's less than the avoided cost.

15 The cost of the program is more than the
16 avoided cost, meaning it's a negative
17 cost-effectiveness, you'd be better off building
18 plants.

19 Q. If a program has a negative
20 cost-effectiveness, what's the impact on customers?
21 Why do they care if they're not paying for it?

22 A. In the Save-A-Watt model customers would
23 not care as much.

24 Q. Would they care at all? Doesn't affect
25 their pocketbook.

1 A. If the only thing a customer cares about
2 is their pocketbook, then that statement may be
3 correct. But if they did care about environmental
4 benefit and energy savings, that statement would be
5 incorrect.

6 Q. But you're still responsible as a company
7 for achieving the benchmarks, for achieving the
8 savings targets, regardless of whether you have to
9 take -- it costs you more than you collect through
10 the rider, you're still responsible, arguably.

11 A. We are responsible for hitting the
12 targets.

13 Q. Now, if you shift money to more
14 cost-effective programs, does that reduce the costs
15 to ratepayers? Do ratepayers save any money?

16 A. In the Save-A-Watt model we're paid on
17 results only.

18 Q. So if those results cost you less, it's
19 greater profits for Duke and no benefit to the
20 customers; is that a fair characterization?

21 A. The programs produce more benefit for --
22 if the program produced more benefit for the same
23 cost, then yes, it would be positive for Duke Energy.
24 That's how the model works. You're paid on the
25 results that you achieve.

1 Q. All right. Thank you.

2 And let's talk about the performance of
3 your programs and the results, if we could for a
4 moment.

5 MR. RINEBOLT: Your Honor, if I may, I'd
6 request that you take administrative notice of the
7 application filed in Case No. 08-1227-EL-UNC, which
8 is a case involving the recovery of costs lost margin
9 performance incentives for Duke Energy's Demand Side
10 Management Programs. And also the Commission's
11 opinion and order in that case.

12 EXAMINER PIRIK: And what's the date of
13 the opinion and order?

14 MR. RINEBOLT: The date of the opinion
15 and order is -- there's no date. Hang on just a
16 second.

17 No, Renee signed it, she didn't put a
18 date on it.

19 Filed on December 2, 2009.

20 EXAMINER PIRIK: And just to make the
21 record clear, what -- so you asked for administrative
22 notice of the application in the case and the
23 Commission's order.

24 MR. RINEBOLT: And the Commission's
25 order.

1 EXAMINER PIRIK: And what's the date of
2 the application?

3 MR. RINEBOLT: The application was filed
4 on November 17, 2008.

5 EXAMINER PIRIK: And what's your argument
6 in favor of the administrative notice?

7 MR. RINEBOLT: The opinion and order
8 aptly sums up the performance of Duke's programs
9 between 2006 and 2008. And these are the same
10 programs that are in existence today and the programs
11 that we're considering as a part of this portfolio
12 filing.

13 EXAMINER PIRIK: Ms. Watts?

14 MS. WATTS: Your Honor, first of all, we
15 don't take issue with the administrative notice part
16 of this because obviously you can take administrative
17 notice of your own Commission entries and orders and
18 so forth.

19 But what's happening here is Mr. Rinebolt
20 is attempting to bootstrap cost information into this
21 case wherein we did not seek cost recovery. So first
22 of all it's improper for that reason.

23 Secondly, the 08-1227 case predates the
24 ESP case and predates this case by a lot. And a lot
25 has changed to the landscape since this so I think

1 it's totally irrelevant to what we're discussing
2 here.

3 MR. RINEBOLT: Your Honor, if I may,
4 while we have had a discussion about
5 cost-effectiveness and cost recovery issues, that's
6 not the point of this section of my questioning.

7 We have a portfolio of programs, they've
8 been in place since 2006, their performance has been
9 reviewed since 2006 through a series of Commission
10 proceedings, and we would simply like to put on the
11 record evidence associated with whether these
12 programs are performed and met their targets or
13 whether they have not.

14 We're not interested in discussing per se
15 cost recovery at this point. We're talking about the
16 efficacy of the program portfolio that they have.

17 Because as your order and as the
18 Commission rules called for, we were to file
19 objections on the program portfolio and recommend
20 changes. Attempting to lay the groundwork for
21 suggesting changes to the programs.

22 EXAMINER PIRIK: Your request for
23 administrative notice of those two documents will be
24 granted.

25 MR. RINEBOLT: Thank you, your Honor.

1 May I approach?

2 EXAMINER PIRIK: Yes.

3 MS. SPILLER: Do you have copies of the
4 application as well?

5 MR. RINEBOLT: I do not have copies of
6 the application but I won't be referring to it. The
7 numbers that the Commission quotes originally comes
8 from your application, which is why I referenced it.

9 Q. (By Mr. Rinebolt) Mr. Schultz the case --

10 MS. WATTS: Your Honor, may I be heard
11 one more time on this topic? Because Mr. Rinebolt
12 made a representation based on Mr. Rinebolt does not
13 have a copy of the application for us to review, he
14 indicates he only offered it into evidence because
15 the numbers from the application are referred to in
16 the Commission's decision.

17 I think that's an odd way to bootstrap
18 evidence into a case and I'd like to object again to
19 the admission of that particular piece of evidence.

20 EXAMINER PIRIK: You're taking issue with
21 whether or not the Commission's summary of the
22 application is accurate or their reference to the
23 numbers that are set forth in the application?

24 Because I think the application, since
25 we've taken administrative notice that the

1 application as well will speak for itself, and to the
2 extent there needs to be some reconciliation of the
3 numbers, if he goes farther beyond that into details
4 of the programs that are not part of the Commission
5 order, then obviously we're going to need to have the
6 application.

7 But I think we're going to go forward and
8 see where he goes with this then. If there's a
9 problem there, the application's taken notice of.

10 MR. RINEBOLT: Thank you, your Honor.

11 Q. (By Mr. Rinebolt) Mr. Schultz, could you
12 turn to page 3 of the Commission's opinion and order?
13 And I direct your attention to the paragraph in the
14 middle under Roman number II, the summary of the
15 applications.

16 Down in the fourth line from the bottom
17 there's an indication of Duke's projected program
18 costs and lost revenue. Could you tell me what those
19 figures are?

20 MS. WATTS: Your Honor, I'm going to
21 object to this line of questioning because there's
22 been no foundation laid and Mr. Schultz does not have
23 any history with this particular document so it's
24 unclear to me he knows the answers to any of these
25 questions.

1 MR. RINEBOLT: Your Honor, the witness is
2 supporting the programs that are a part of the
3 company's portfolio. I'm walking through here --
4 what we're seeking to show is that the program costs
5 and lost revenues have never come close to the
6 projections that the company provided.

7 And that indicates that the programs are
8 not functioning correctly, they're not achieving
9 their goals. And customers should not be stuck with
10 paying for a portfolio of programs that don't meet
11 their goals.

12 EXAMINER PIRIK: I understand your
13 argument but I think the request for some foundation
14 with regard to this specific witness is appropriate.
15 I mean I understand we've taken administrative notice
16 of documents filed with the Commission, but this
17 witness still needs to be tied somehow to this
18 information.

19 MR. RINEBOLT: Very well. Thank you,
20 your Honor. I'll lay a better foundation.

21 Q. (By Mr. Rinebolt) Mr. Schultz, let me see
22 if these programs -- let's look at your residential
23 customer programs which are part of the application
24 and which your testimony supports.

25 Could you describe for me please the

1 Residential Energy Assessment Program?

2 A. Can you direct me to?

3 Q. I'm on your application at page 5. And
4 there's simply a listing of these programs. Farther
5 into the application there's a discussion of the
6 programs individually. Let me find that page and
7 I'll be happy to move you through it on those.

8 They are discussed between -- at page 8
9 and 9, and beginning at the bottom of page 9 we're
10 going to look at the Residential Energy Assessment
11 Program and it rolls over to page 10.

12 A. And your question again, sir?

13 Q. Can you describe to me the general nature
14 of the Residential Energy Assessment Program?

15 A. Yes, it's on page 9 of the application.

16 Q. All right.

17 A. Program assists residential customers in
18 assessing their energy usage, it provides
19 recommendations for improvement.

20 Q. All right. Now, on page 10 you indicate
21 or there is a section that provides the estimated
22 savings associated with these programs in terms of
23 kilowatts, kilowatt hours, and the number of
24 participants. And you projected 27,994 participants
25 in 2010, correct?

1 A. Correct.

2 Q. How many participants have you had in the
3 program in the first quarter of 2010?

4 A. I do not have that number handy by
5 program. I don't actually run the programs for Duke
6 so I wouldn't have that off the top of my head.

7 Q. All right. Would you happen to know
8 whether the programs met their targets in 2009?
9 Whether that program, residential energy assessments,
10 met its target in 2009?

11 A. I do not have that off the top of my
12 head. I can tell you that our programs are -- we are
13 on target to hit the benchmark numbers.

14 Q. Right, but that's a different issue,
15 Mr. Schultz. I'm asking about the Residential Energy
16 Assessment Program. I want to see if you believe
17 it's meeting its individual targets.

18 A. I cannot speak to that individual
19 program.

20 MR. RINEBOLT: May I approach, your
21 Honor?

22 EXAMINER PIRIK: Yes.

23 MR. RINEBOLT: Handing the witness a copy
24 of the company's application in Case 10-317-EL-EEC in
25 the matter of the annual energy efficiency portfolio

1 status report of Duke Energy, Inc.

2 Q. I'll just turn you to the page.

3 MS. WATTS: What was that again?

4 MR. RINEBOLT: It's Case No. 10-317, your
5 application in the matter of the annual energy
6 efficiency portfolio status report.

7 MS. WATTS: I would again object, this is
8 yet a separate docket that has nothing to do with
9 this docket and he's trying to bootstrap it into this
10 docket. We aren't prepared to address these issues
11 today because this is not what this hearing is about.

12 MR. RINEBOLT: Your Honor, if I may
13 respond, this issue is about their portfolio
14 programs. This document contains the data on the
15 number of participants in the program. It's on
16 page -- they're not numbered -- 8, the chart.

17 EXAMINER PIRIK: Mr. Rinebolt, are you
18 asking that we take administrative notice of this or
19 are you still in the mode of laying your foundation,
20 is that the purpose of going down this track?

21 MR. RINEBOLT: Well, I asked the witness
22 if he knew how many people had participated during
23 the first part of 2010 compared to the projections
24 that are laid out in their application. He didn't
25 know.

1 I asked him how many participants there
2 were in 2009, did they meet their targets, and he
3 didn't know. This has the numbers.

4 MS. WATTS: This witness, Mr. Rinebolt --

5 EXAMINER PIRIK: Just a minute.

6 So between -- if we're going to refer to
7 this then you're going to ask us to take
8 administrative notice of it.

9 MR. RINEBOLT: So requested, your Honor.

10 EXAMINER PIRIK: That will be an issue
11 we'll need to address. I'm trying to figure out if
12 you've moved on to another line of questioning or
13 whether you're still trying to lay some foundation to
14 your previous questioning under your previous request
15 for administrative notice.

16 MR. RINEBOLT: In a sense I'm doing both.
17 I just backtracked and decided to go -- opted to lay
18 the foundation program by program.

19 The witness is sponsoring these programs,
20 his testimony supports them, trying to determine
21 whether the programs are doing what they're supposed
22 to do and so the most recent numbers working
23 backwards were contained in this filing by the
24 company.

25 EXAMINER PIRIK: So it serves two

1 purposes, this is a road you were going to go down
2 and --

3 MR. RINEBOLT: I was going to go down
4 this road anyway.

5 MS. WATTS: Your Honor, these are new
6 rules that we're attempting to apply to here. And
7 according to our reading of the rules, the Commission
8 set up separate proceedings for each part of this
9 process.

10 In some instances it's my understanding
11 that the companies have combined those proceedings,
12 but in our case we did what we thought was the
13 appropriate things to do, which is we filed in
14 separate cases with separate issues.

15 Mr. Schultz is not here to testify to
16 matters contained within this document, and in fact
17 Mr. Rinebolt's efforts to refresh his recollection
18 are being done improperly anyway, and I just think
19 this is totally improper and should not be permitted.

20 EXAMINER PIRIK: Are you arguing that the
21 information with regard to the numbers of
22 participants in this specific program that's being
23 presented in this case is irrelevant?

24 MS. WATTS: Yes, because what we filed
25 was our portfolio of programs for approval. Any cost

1 information relative to those programs is dealt with
2 in a separate docket, so long as we understood, and
3 not relevant in today's hearing. All of the cost
4 information is in fact in this docket.

5 MR. RINEBOLT: Your Honor, if I may,
6 we -- I'm not asking about cost of the program here.
7 And in fact the company has contended the cost
8 recovery is not an issue in this proceeding. What I
9 am asking about is whether the program is successful,
10 whether it's achieving the goals that the company
11 indicated it should achieve.

12 I mean the purpose of this docket is to
13 review the portfolio. I'm simply trying to review
14 the portfolio where there are long-time preexisting
15 programs.

16 EXAMINER PIRIK: Ms. Watts, I understand
17 that obviously we're not litigating the 10-317
18 docket, but can you explain for the record what the
19 purpose of that docket is? You say it has the cost
20 information? Is that the docket wherein the
21 company's asking for approval of a rider cost?

22 MS. WATTS: If you'll permit me one
23 moment, your Honor, because I haven't looked at this
24 lately.

25 (Off the record.)

1 MS. WATTS: Your Honor, my understanding
2 of this docket is that it's to demonstrate how the
3 company is seeking to comply with the energy
4 efficiency and peak demand reduction benchmarks that
5 are mandated by the rules.

6 And again, a separate issue separate and
7 apart from what we're here today for, which is just
8 to seek approval of actually a portfolio of programs
9 that have been in place since January of 2009 and
10 which were all stipulated and approved in the ESP
11 case. And in fact stipulated to by Mr. Rinebolt.

12 EXAMINER PIRIK: I understand that that's
13 the company's argument with respect to the breadth of
14 this docket. However, I do not see a problem with
15 going down and actually noting that the participant
16 numbers are in the application submitted in 10-317
17 and taking administrative notice of that case and
18 allowing Mr. Rinebolt to go forward. I think that is
19 relevant for this case.

20 Mr. Rinebolt, you may proceed.

21 MR. RINEBOLT: Actually if I may, your
22 Honor, in the interest of judicial efficiency if we
23 can, if I get approval from the Bench to take
24 administrative notice of the two documents that I
25 already requested of 10-317 and of the stipulation

1 and recommendation in case 09-283-EL-UNC, which is
2 the second cost recovery case on the 2006 portfolio,
3 which also covers all these programs, which also has
4 all the data, then I can drop this line of
5 questioning completely and I'll just cite these on
6 brief.

7 EXAMINER PIRIK: Let me ask first of all,
8 we already have the dates in the record of the
9 08-1227. You mentioned two documents in 10-317. I
10 need actual --

11 MR. RINEBOLT: There's actually one
12 docket in 10-317.

13 EXAMINER PIRIK: I don't see a date on
14 this.

15 MR. RINEBOLT: The status report was
16 filed on March 15, 2010. And it's quite lengthy.

17 EXAMINER PIRIK: And then the document in
18 09-283 that you're requesting administrative notice
19 of?

20 MR. RINEBOLT: And that was filed on
21 February 25, 2010. And it is a stipulation and it is
22 a signatory.

23 EXAMINER PIRIK: Ms. Watts?

24 MS. WATTS: Your Honor, Mr. Rinebolt is
25 attempting here to get substantive information into

1 the record with absolutely no foundation and no
2 witness. It's just entirely improper and should not
3 be condoned and I would not agree to admit any of
4 this into the record.

5 MR. RINEBOLT: Your Honor, this
6 information is generated by the company. It is
7 information that tells you how many people were
8 projected to participate in the program, how many
9 people actually participated. How much energy and
10 capacity was projected to be saved by the programs
11 and how much was actually saved.

12 I don't have a witness that has access to
13 these numbers. I only have Duke's numbers that I can
14 rely on. And these programs in our view prove the
15 efficacy of the programs in the portfolio that the
16 witness is sponsoring. That's why we want to be able
17 to cite to them in brief.

18 We believe a number of these programs are
19 not doing what they were intended to do nor meeting
20 their targets, and as a result, we believe the
21 portfolio should be modified in order to achieve the
22 goals of saving customers energy.

23 MS. WATTS: Your Honor, Mr. Rinebolt did
24 no discovery in this case and provided no witness
25 today. Having evidence put into the record by asking

1 the Court to take administrative notice of documents
2 which no one can lay a foundation for is entirely
3 improper.

4 MR. RINEBOLT: And my only response is
5 that the numbers in these documents were generated by
6 the utility. They're part of either their filings.

7 EXAMINER PIRIK: The Bench does not have
8 a problem with taking administrative notice of these
9 documents. If the purpose of these documents are for
10 you to utilize them on brief, they're Commission
11 documents, they're Commission orders, they've been
12 docketed here, you can use them on brief without us
13 taking administrative notice of them, in fact.

14 But with regard to this witness if you
15 have questions of this witness on these documents,
16 you need to lay a foundation and I'm going to give
17 you a little bit of time to lay that foundation
18 without going back and start asking questions on
19 other issues.

20 If you don't lay a foundation for these
21 documents with this witness, then we're going to move
22 on. And we're not going to discuss these figures any
23 further, and the extent that they're included in the
24 brief will be items that you'll include in the brief.
25 But if you intend on questioning on these figure,

1 this witness has to be tied to them.

2 MR. RINEBOLT: Thank you, your Honor.
3 And I think the ability to cite to them on brief is
4 adequate and we'll not take anybody's time up
5 unnecessarily.

6 EXAMINER PIRIK: Okay.

7 Q. (By Mr. Rinebolt) One last series of
8 questions, Mr. Schultz. If you're the appropriate
9 person to discuss this with, I have a series of
10 questions about the low-income programs operated by
11 the companies.

12 Are you the proper witness to handle a
13 discussion of the low-income programs or should I
14 discuss that with Mr. Stevie?

15 A. Depends on what the questions are, I'd
16 say.

17 Q. All right. Well, then we'll check and
18 see which one is appropriate.

19 Could you describe to me the general
20 approach of your low-income assistance program? And
21 I can give you the page that it's on.

22 A. It's on page 14?

23 Q. Right, in the application.

24 A. In the application?

25 Q. Yes.

1 A. Essentially the essence of the program is
2 to assist low-income customers through several
3 measures. The measures are individual items within a
4 program, the implementation of those items.

5 Q. So you do light bulbs with this program?
6 You replace light bulbs?

7 A. Replace light bulbs, that is correct.

8 Q. Freezers?

9 A. We have a -- we have had a refrigerator
10 replacement program in the past. I believe that's
11 still there.

12 Q. Do you replace or upgrade air
13 conditioning for low-income customers?

14 A. I do not believe we replace air
15 conditioners as a low-income program but we do have a
16 residential program that would provide an incentive
17 for an air conditioner upgrade.

18 Q. Do you perform comprehensive shell
19 insulation on electrically heated homes under this
20 program?

21 A. For low-income there's a fine line
22 between the government sort of LIHEAP programs, the
23 current weatherization programs and our program, and
24 to be -- I'm not sure where the line gets drawn.

25 I don't believe -- I'm not sure whether

1 we do for all electric homes comprehensive shell
2 improvements.

3 Q. You mentioned the weatherization program
4 and the LIHEAP program. Do your low-income programs
5 coordinate with the weatherization assistance
6 program?

7 A. We try very hard to.

8 Q. Do you use any vendors, any contractors
9 who deliver the Home Weatherization Assistance
10 Program as it's known in Ohio?

11 A. I'm not a hundred percent sure but I
12 believe the answer would be yes to that. But I'm not
13 sure who the -- all the contractors are on the
14 weatherization program. I know who ours are.

15 Q. Would you say most of the units are done
16 by contractors who also run the HWAP program? The
17 Home Weatherization Assistance Program.

18 A. I'm not sure.

19 Q. You wouldn't know how many jobs are what
20 we in the trade called combos, combination programs
21 using your funding and weatherization funding?

22 A. I would not.

23 (Interruption.)

24 EXAMINER PIRIK: We'll take a ten-minute
25 recess.

1 (Recess taken.)

2 EXAMINER PIRIK: We'll go back on the
3 record.

4 Mr. Rinebolt?

5 MR. RINEBOLT: Thank you so much, your
6 Honor.

7 Q. We are at almost the bottom of page 15,
8 Mr. Schultz. Now, you indicate as part of the
9 application that your projected program costs for
10 your low-income program are \$965,000 roughly for 2010
11 and about \$30,000 more for 2011, correct?

12 A. Yes.

13 Q. Now I want to turn, if I could, to your
14 market potential study.

15 MS. WATTS: He gave it back to me.

16 Q. And I'd like you to go to page 102.
17 There's a chart at the top of the page.

18 A. Yes.

19 Q. Now, the budget recommendations of your
20 consultant who prepared the budget, the market
21 potential study, if I'm correct here he recommends a
22 budget for low and moderate income weatherization of
23 roughly 1.8 million in year 1, 2.2 million in year 2,
24 and it climbs on up.

25 Could you explain to me why despite your

1 consultant's recommendations the company has instead
2 chosen to fund low-income assistance programs at a
3 million dollars? Which is about 55 percent?

4 MS. WATTS: Your Honor, I think the
5 question mischaracterizes the testimony in this case
6 in that the budget for low-income was set in the ESP
7 case and is not relevant to what Mr. Schultz is
8 testifying today.

9 EXAMINER PIRIK: Mr. Rinebolt?

10 MR. RINEBOLT: Well, the market potential
11 study was finished after the SSO case, which approved
12 these programs. And as Mr. Schultz has indicated, he
13 wants flexibility to be able to transfer money among
14 programs that have been approved.

15 I'm simply trying to understand why the
16 company hasn't come to the collaborative and proposed
17 to remove money into the low-income program based on
18 the recommendations of the market consultant.

19 EXAMINER PIRIK: Objection overruled.

20 A. Scanning through this I think one of the
21 things that would have to be done is just to
22 normalize what's in the market potential study with
23 the information that we've got in our report.

24 This may be a combination of all programs
25 available for efficiency in the market potential

1 study. I don't know that it's limited to just Duke
2 Energy's program.

3 Q. Well, the program is -- it's headed
4 "Residential Low and Moderate Income Weatherization."
5 I think if you move to prior pages, the program
6 scripts indicates that the low-income component would
7 go to 150 percent of the poverty line and the
8 moderate income would go to 80 percent of median
9 which is slightly above the current eligibility limit
10 for the weatherization assistance program which is
11 200, that's what your program is.

12 So there might be a slightly larger
13 universe of eligible applicants under the scenario
14 that your consultant charted. So, let me rephrase my
15 initial question.

16 Since you're coming into a part of this
17 application and asking for approval of new programs
18 as well as confirming the flexibility that you have,
19 can you explain to me why the company chose not to
20 increase funding for low-income assistance programs
21 in light of your consultant's recommendations?

22 A. Yes. Again, we go back through
23 consultant recommendations and those programs. I
24 think in the low-income area, again, I'm not an
25 expert, we have folks who are dedicated to the

1 low-income portfolio. Low-income is -- there's a lot
2 of sorting out right now with the government grants
3 around the weatherization program, programs that did
4 exist, the new government programs, and our programs.

5 So a lot of that's just sorting out of
6 overall low-income programs and who's doing what and
7 what knowledge are going towards what programs. So I
8 don't know that that's all been sorted out at this
9 point, but there was an influx of a lot of dollars
10 that came into the weatherization program around
11 low-income that needs to be sorted out relative to
12 the programs.

13 Q. I appreciate that, Mr. Schultz, I'm
14 fairly familiar with that.

15 Did any of that money go to the
16 contractors who run your low-income programs?

17 MS. WATTS: Objection. "Any of that"
18 what?

19 Q. Any of the stimulus funding for the Home
20 Weatherization Assistance Program, if I am correct
21 that is what you were referring to.

22 A. Yes, that's what I'm referring to. I
23 don't know that it went to our programs, I think the
24 question is which programs were addressing which
25 customers doing what measures.

1 Q. I have one last couple of questions for
2 you.

3 Your direct testimony speaks extensively
4 about the Save-A-Watt program and how it works so
5 well and why it's a new -- brand new approach to
6 funding energy efficiency programs.

7 Do you believe that the Save-A-Watt
8 program is better for customers than other approaches
9 to funding energy efficiency programs, such as lost
10 revenue and program cost recovery?

11 A. Absolutely.

12 Q. And is it superior for customers?

13 A. Absolutely. Take your example of if you
14 have a program that doesn't perform, customers don't
15 pay. So if we don't hit our thresholds, if you
16 remember there's a series of caps, so that perceived
17 large earnings are subject to us actually hitting our
18 targets and actually producing results for customers.

19 So to the extent that the program doesn't
20 produce results, customers don't pay. So if you were
21 to get lost margins in program costs, whether you got
22 results or not, customers pay.

23 So Save-A-Watt is only paid based on
24 results that are achieved and there's a cap so it's
25 also subject to performance.

1 So to the extent that our portfolio
2 doesn't hit the targets as outlined, then the company
3 makes less money, if any money at all. So I think
4 it's far superior from a consumer point of view.

5 Q. So would you say that a metric that could
6 be used to describe the advantages of Save-A-Watt
7 would be that it tends to save customers more money?

8 A. I would say that Save-A-Watt pays for
9 results as opposed to paying for cost whether you get
10 results or not.

11 Q. All right.

12 MR. RINEBOLT: May I approach, your
13 Honor?

14 EXAMINER PIRIK: Yes.

15 MR. RINEBOLT: I'd like to request that
16 this document "Empirical Assessment of Shareholder
17 Incentive Mechanisms Designs Under Aggressive Savings
18 Goals: Case Study of a Kansas 'Super-Utility'" by
19 Lawrence Berkeley Lab be designated as OPAE
20 Exhibit 1.

21 EXAMINER PIRIK: The document will be so
22 marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Mr. Schultz, if you could turn to page 14
25 of the report. This is a report and analysis for

1 options of funding energy efficiency programs in a
2 mythical large utility in Kansas.

3 Now, if you look at the chart, across the
4 top line it shows a variety of options for funding
5 energy efficiency programs. And it includes
6 Save-A-Watt Ohio; is that correct?

7 A. It includes -- has Save-A-Watt Ohio
8 listed on the chart. So included in some form of it.

9 Q. I guess what I'm most interested in is
10 the third line down where it says -- notes ratepayer
11 percentage of net resource benefits.

12 Now this indicates, this study indicates
13 that 60 percent -- 67 percent of the net resource
14 benefits from the energy efficiency inure to the
15 ratepayers. In other words, they get the value of
16 67 percent of the savings.

17 Does that number seem appropriate to you
18 based on your review and sponsoring Save-A-Watt?

19 EXAMINER PIRIK: Ms. Watts?

20 MS. WATTS: Your Honor, first of all,
21 Save-A-Watt is again not an issue in this docket.
22 And Save-A-Watt was stipulated to by Mr. Rinebolt in
23 the ESP case. And Save-A-Watt is not up for cost
24 analysis until 2012.

25 Secondly, this particular document is not

1 a document that's attached to Mr. Schultz's
2 testimony, and there's been no foundation laid with
3 respect to this document, and again, Mr. Rinebolt's
4 seeking to put information into the record
5 improperly.

6 MR. RINEBOLT: Your Honor, I laid a
7 foundation by asking the witness about testimony,
8 written testimony that was submitted in this docket,
9 that discussed Save-A-Watt, what the advantages of
10 Save-A-Watt were, and he articulated I believe that
11 the advantages of Save-A-Watt were the customers pay
12 for the most cost-effective programs and they, the
13 customers don't pay for the programs, the company is
14 at risk for the program costs.

15 And so he said that it's really a
16 basically a new generation of funding energy
17 efficiency programs.

18 What I'm seeking to do through the
19 introduction of this evidence is essentially try to
20 discover if the savings that inure to customers was a
21 part of the calculation in determining that this
22 program was or that Save-A-Watt was such a wonderful
23 approach to take.

24 Now, addressing Ms. Watts' first issue,
25 based on the rulings by your Honors in the very

1 motions earlier, my sense is that Save-A-Watt is
2 still an issue that's on the table. And I simply
3 just want to establish something in the record that
4 relates to how the benefits of the Save-A-Watt
5 funding approach inure to ratepayers.

6 EXAMINER PIRIK: With regard -- I'm
7 viewing your objection in two parts. The first part
8 with regard to whether or not Save-A-Watt is or is
9 not part of this, and with regard to that and the
10 questioning on Save-A-Watt your objection's
11 overruled.

12 With regard to the second part of your
13 request, which I believe goes more to the foundation
14 with this particular document in front of this
15 particular witness, I'm going to turn to Mr. Rinebolt
16 and say you have not established that this witness is
17 even aware of what this document is or any foundation
18 for this document.

19 So you need to go down that road again
20 with this witness if you intend on referring to this
21 document. So to that extent your motion is
22 sustained. But I will give you an opportunity to try
23 to lay a foundation for this.

24 MR. RINEBOLT: Thank very much, your
25 Honor.

1 MS. WATTS: May I ask a point of
2 clarification? If we are to understand that
3 Save-A-Watt is now part of this docket, does this
4 include the cost-benefit related to Save-A-Watt? Are
5 we going to include costs in the docket as well? Is
6 all of that open for discussion?

7 EXAMINER PIRIK: By the fact that at the
8 beginning of the hearing we denied the motions to
9 strike and we denied both motions to strike with
10 regard to objections and with regard to
11 Mr. Gonzalez's testimony, we are allowing that
12 information into the record.

13 But I do understand that you have a
14 continuing objection that is on the record with
15 regard to the breadth of this case. You can continue
16 to make those objections if you wish but we are
17 allowing information with regard to those items into
18 the record.

19 MS. WATTS: Thank you.

20 Q. (By Mr. Rinebolt) Mr. Schultz, have you
21 looked at any analyses of the impact of Save-A-Watt
22 on customers in terms of the dollars they spend
23 versus the dollars that as a group they save as a
24 result of the programs?

25 What's the split, basically, between what

1 goes to the company and what goes to the customers,
2 if you know?

3 A. Let me -- you're assuming a -- you're
4 asking if this was done in a -- if I applied our
5 model into a shared savings model?

6 Q. No. Let me clarify. By way of an
7 example I think this will work.

8 Say that customers pay a thousand dollars
9 to Duke as a result of the Save-A-Watt rider and that
10 rider funds cost-effective programs which deliver
11 energy savings to your customers and help you achieve
12 your benchmarks.

13 Now, out of that thousand dollars that
14 the customers pay, what percentage of that thousand
15 dollars will the customers see in savings? Will they
16 achieve savings that will offset the \$1,000 that they
17 paid the company under the Save-A-Watt model?

18 A. It really depends on the portfolio of
19 programs, that's the end result. So if they spent --
20 if they paid a thousand dollars and the programs are
21 cost-effective, then by definition customers are
22 making more than -- getting more benefit than what
23 they paid.

24 Q. But you testified earlier that the more
25 cost-effective programs are, the more revenue from

1 the rider inure to the profit of the company because
2 you're getting kilowatt savings less expensively but
3 that doesn't reduce the rider; is that correct?

4 A. Again, the portfolio, if you look at a
5 portfolio of programs you may have some programs that
6 are cost-effective which means the avoided cost is
7 greater than the program costs, and they may be just
8 a little bit cost-effective. The company doesn't
9 make any money on those programs.

10 There may be some programs that the
11 avoided cost is much higher than the cost of the
12 program and the company makes money on those
13 programs. You combine those together, would give you
14 the portfolio in the overall performance of the
15 portfolio relative to where the customer benefit
16 falls out.

17 Q. But you don't have any idea how much out
18 of every dollar customers pay ultimately comes back
19 to customers in the form of energy savings.

20 A. Well, we've looked at some comparisons on
21 what they would call a net benefit. Our numbers
22 would suggest it's -- again, I don't remember Ohio
23 off the top of my head because I cover five states,
24 but it's in the portfolio as a whole it's greater
25 than 80 percent of the net benefit going to

1 customers.

2 Q. Of the net benefit. And what do you mean
3 by "net benefit"?

4 A. It would be the avoided costs less the
5 program costs.

6 Q. Less the program costs.

7 MR. RINEBOLT: Thank you, Mr. Schultz,
8 I'll withdraw my . . .

9 EXAMINER PIRIK: You don't have anything
10 further, Mr. Rinebolt?

11 MR. RINEBOLT: I have nothing further,
12 thank you, your Honor.

13 EXAMINER PIRIK: Mr. McNamee?

14 MR. MCNAMEE: No questions, thank you,
15 your Honor.

16 EXAMINER PIRIK: Ms. Watts, redirect?

17 MS. WATTS: Your Honor, if we may have
18 two minutes.

19 (Off the record.)

20 EXAMINER PIRIK: Ms. Watts?

21 MS. WATTS: Thank you, your Honor. Just
22 one quick question.

23 - - -

24

25

REDIRECT EXAMINATION

By Ms. Watts:

Q. Mr. Schultz, if you would turn to the stipulation that I believe Mr. Rinebolt was asking you questions about in the 08-920 case. Do you have that up there? It's the stipulation in the ESP case.

A. Yes, the stipulation and recommendation.

Q. Yes. Would you turn please to page 37, paragraph 32?

A. Yes.

Q. Do you agree with me that the paragraph that you were directed to read previously indicates that Duke Energy would conform to the ESP rules?

A. Yes.

Q. And so at least one reasonable understanding of that paragraph would be that we agree to conform to any ESP rules even though there are two dockets mentioned thereof?

A. That's correct. Says we will conform to the ESP rules.

MS. WATTS: Thank you. I have nothing further.

EXAMINER PIRIK: Mr. Etter?

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RECROSS-EXAMINATION

By Mr. Etter:

Q. Mr. Schultz, you're not an attorney, are you?

A. I am not.

Q. So you were giving that view based on a non-legal opinion; is that right?

A. I was giving it based on what I'm reading in this document.

MR. ETTER: No further questions.

EXAMINER PIRIK: Mr. Dougherty?

MR. DOUGHERTY: No questions.

EXAMINER PIRIK: Mr. Heintz?

MR. HEINTZ: No questions, your Honor.

EXAMINER PIRIK: Mr. Rinebolt?

MR. RINEBOLT: No questions, your Honor.

EXAMINER PIRIK: Mr. McNamee?

MR. MCNAMEE: No, thank you.

EXAMINER PIRIK: Thank very much, you're excused.

Ms. Watts, with regard to the pending exhibits?

MS. WATTS: Yes.

EXAMINER PIRIK: Would you like to?

MS. WATTS: We would like to move Duke

1 Energy Exhibits 1 and 2 into evidence please.

2 EXAMINER PIRIK: Are there any objections
3 to Duke Exhibits 1 and 2?

4 Hearing none, Duke Exhibits 1 and 2 shall
5 be admitted into the record.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 MS. WATTS: And, your Honor, just to keep
8 things neat and tidy, we could also move Duke Energy
9 Exhibit 3, which is the application in this case,
10 just so we don't lose track.

11 EXAMINER PIRIK: That's fine.

12 Any objection?

13 Hearing none, Duke 3 will be admitted
14 into the record.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER PIRIK: Mr. Stevie?

17 (Witness sworn.)

18 - - -

19 RICHARD G. STEVIE

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

22 DIRECT EXAMINATION

23 By Ms. Watts:

24 Q. Sir, would you state your name for the
25 record please?

1 A. My name is Richard G. Stevie.

2 Q. By whom are you employed?

3 A. I'm employed by Duke Energy Business
4 Services.

5 Q. Mr. Stevie, do you have before you what's
6 been marked as Duke Energy Exhibits 4 and 5?

7 A. Yes.

8 Q. And could you identify what those are
9 please?

10 A. Exhibit 4 is my direct testimony in the
11 ESP proceeding, and Exhibit 5 is my supplemental
12 testimony in the same proceeding.

13 Q. And those testimonies were also filed in
14 this docket for this case, correct?

15 A. Yes.

16 Q. Do you have any additions or corrections
17 to those exhibits?

18 A. No, I do not.

19 Q. If I were to ask you the information
20 contained therein today, would your answers be the
21 same?

22 A. Yes.

23 MS. WATTS: Mr. Stevie is available for
24 cross-examination.

25 EXAMINER PIRIK: Mr. Etter?

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CROSS-EXAMINATION

By Mr. Etter:

Q. Good afternoon, Mr. Stevie. You were present this morning for the cross-examination of Mr. Schultz, correct?

A. Yes.

Q. And during that cross-examination I had asked him about an estimate of how much Duke will collect in lost generation revenues from customers during the ESP period, and I believe he deferred that question to you, so I will ask you that question.

Do you know how much Duke estimates that it will collect in lost generation revenues from customers during the three-year ESP period?

A. I think I responded to that in answer to a data request, and just to be clear about one thing is that in the settlement agreement in that case we had a three-year moratorium or three-year time limit on the recovery of lost revenues net fuel. Actually net fuel and variable O&M.

So it was a three-year period. So maybe if you could ask your question again, I'll try to put it in that context.

Q. Okay. Well, in response to the discovery

1 that you just mentioned, what was the estimate that
2 you gave in that discovery response?

3 A. What we had for total lost margin revenue
4 in encompassing that three year -- including that
5 three-year effect for the total portfolio was in the
6 neighborhood of \$45 million.

7 Q. And was that lost generation and
8 distribution or just generation?

9 A. That was the total.

10 Q. How much of that was lost generation
11 revenue?

12 A. It's -- this is an estimate because of
13 the way the rates are designed. But let's see, it
14 looks like that the total that would have been
15 distribution lost margins would have been just about
16 11 million.

17 Q. So generation would be about 34 million;
18 is that correct?

19 A. Based on this calculation. Again, it's
20 an estimate.

21 Q. Right.

22 A. It's not exact. And it would be
23 dependent upon what actually occurs during the course
24 of the rollouts and the implementation of the
25 programs.

1 Q. And this morning with Mr. Schultz we
2 discussed the rule that states that an electric
3 utility may submit a request for recovery of improved
4 mechanism regarding revenues and cost rather during
5 ESP period and that shall be subject to annual
6 reconciliation.

7 Does Duke intend to -- and I asked this
8 of Mr. Schultz this morning and I'll ask this of you.
9 To the best of your knowledge does Duke intend to
10 file such a rider, a recovery mechanism during the
11 three-year ESP program?

12 A. I have -- I really don't know the answer
13 to that. I know that there was a plan for -- coming
14 out of the original stipulation that there was a plan
15 to have a complete kind of look back over the
16 three-year period from 2009 through 2011, and that
17 adjustments would be needed to be made to the rider.

18 If my memory's correct on this,
19 adjustments might be needed to be made to the rider
20 over time depending on what's happening with the
21 progress of the programs.

22 Q. But to the best of your knowledge Duke
23 does not intend to file such a rider, say, this year?

24 A. Well, the current rider is in effect.

25 Q. Okay.

1 A. So again, to the extent that the company
2 would need to make a change to the rider to increase
3 it as a result of the progress in the programs.

4 Q. Now, I also asked Mr. Schultz regarding
5 the energy efficiency education program for schools,
6 and I believe that that is mentioned -- discussed in
7 an attachment to your testimony. If I can refer you
8 to Supplemental Attachment RGS-6. And page 3 of that
9 supplement where it says page 3 of 5.

10 A. Yes.

11 Q. And in the second paragraph there or
12 there's a large heading actually that says "Education
13 Sector Program," and where it discusses the energy
14 efficiency education program for schools, correct?

15 A. Yes.

16 Q. And in that attachment or in this
17 paragraph approximately the seventh line down or
18 sixth line down -- seventh line down a sentence that
19 starts "An engineering-based estimation of kWh
20 savings will be performed, with information from
21 surveys of teachers and students about energy
22 efficiency actions taken, retention of information,
23 and program satisfaction."

24 Do you see that?

25 A. Yes.

1 Q. Is that how the company plans to verify
2 its savings for this program?

3 A. Well, let me make clear one thing is that
4 the company is not the one conducting the impact
5 evaluation. It's actually being conducted by an
6 independent third party, Tech Market Works. And
7 they're the ones that are actually implementing that
8 analysis. So the company will utilize that
9 information going forward in any changes that need to
10 be made to the program.

11 Q. But is this the only study that will be
12 done as far as you know to verify the savings of this
13 program?

14 A. That will be up to the third-party
15 evaluator.

16 Q. And that program is for third and fourth
17 grade students, correct?

18 A. That would be a question for Mr. Schultz.

19 Q. Well, if we can go back to the
20 application just a moment. On page 16 of the
21 application under F, it says "The program is offered
22 to schools served by Duke Energy Ohio and is
23 currently available for third and fourth grade
24 classes," does it not?

25 A. That's what it says.

1 Q. So apparently the sole verification for
2 savings for this program will be based on the energy
3 use of third and fourth grade students and their
4 teachers; is that right?

5 MS. WATTS: Objection; asked and
6 answered.

7 EXAMINER PIRIK: Objection overruled.

8 A. I think the evaluation is as is reflected
9 in my testimony.

10 MR. ETTER: Thank you. I have no more
11 questions.

12 EXAMINER PIRIK: Mr. Dougherty?

13 MR. DOUGHERTY: No questions.

14 MR. HEINTZ: No questions.

15 EXAMINER PIRIK: Mr. Rinebolt?

16 MR. RINEBOLT: Yes, couple, your Honor,
17 thank you.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Rinebolt:

21 Q. Good afternoon, Mr. Stevie?

22 A. Good afternoon, Mr. Rinebolt.

23 Q. In your application it's my understanding
24 that you indicate that the TRC test result for your
25 low-income program is about 2.5. Correct that, 2.19,

1 and I'll give you the page.

2 A. That's what's shown on my Supplement
3 Attachment 3.

4 Q. Okay.

5 A. And it's the same as the utility cost
6 test result.

7 Q. Right. Now, the question I have for you
8 is when I was reviewing your market potential study
9 report, and I'm looking here at -- on page 100 at the
10 top, your consultant talks about TRC values for other
11 low-income assistance programs. And it appears as
12 though those are in the .41 to .63 range for a couple
13 California programs.

14 Do you see that right at the end of that
15 first paragraph on page 100?

16 A. Yes, I do see that.

17 Q. Could you explain to me what makes your
18 program so much more cost-effective that it is
19 evaluated at a 2.19 TRC while the programs in
20 California are significantly lower?

21 A. I'm not familiar with the programs in
22 California. I do know that the cost of living is a
23 lot higher there and so the cost to implement
24 programs could be a lot higher. I believe their
25 avoided costs are probably higher.

1 But to try to sort all that out is a
2 pretty difficult task. It's not something we have
3 undertaken.

4 I do know that our low-income program to
5 the extent that this is working off of past memory,
6 has benefited from input from external consultants
7 who are experts in the low-income area that helped
8 redesign the program to make it more cost-effective.

9 Q. When was that redesign, if you can
10 remember?

11 A. I do not remember.

12 Q. I know you're using Tech Market Works as
13 your M&V contractor; is that correct?

14 A. Correct.

15 Q. Have they done any infield evaluations of
16 your low-income assistance program?

17 A. That I do not know.

18 Q. Have you in fact done any infield
19 evaluations of the programs that were part of the
20 2006 portfolio and are still in place today?

21 A. Well, the 2006 portfolio is different
22 from what we have today. There are quite a number of
23 differences. I don't think you could really compare
24 them. Some of the programs did transfer over but I
25 really don't think it's appropriate to compare them.

1 Q. Well, we could go through them program by
2 program.

3 A. Well, for example, there was never a
4 residential assessment program.

5 Q. Okay. Of the programs that did exist in
6 2006, do you have any infield evaluations that look
7 at actual billing data and determine
8 cost-effectiveness there or do your M&V contractors
9 depend on engineering estimates for the savings?

10 A. Well, to some extent I hate to bring this
11 up, but in our status report filing we did file all
12 our measurement verification reports as they existed
13 at that time.

14 Q. Okay. How did you determine what the
15 baseline is for the savings resulting from prepaid
16 meters?

17 A. I did not. That would have been put
18 together by the consultants that helped us with the
19 preparation of the filing. Or the program manager
20 associated with that program.

21 Q. So you don't have any direct knowledge of
22 that.

23 A. No, I don't.

24 Q. Let's shift to Save-A-Watt real quickly.
25 When the company collects its Save-A-Watt rider do

1 you know what percentage of that revenue is above
2 the -- what percentage of that revenue exceeds the
3 cost of the measures?

4 A. No, I do not.

5 Q. Let's talk about that rider for a second.
6 Now, obviously if you don't meet your targets for
7 avoided capacity, you will have overcollected under
8 that rider, and I understand there's a provision in
9 the stipulation for a true-up in year 4; is that
10 correct? Is that how it works?

11 A. That's my understanding of how it works.

12 Q. All right, so in the docket that you just
13 referred to with the various reports, the 10-317
14 docket which is your annual report, that indicates
15 that basically you reached I believe 82 percent of
16 your goals in 2009. Do you accept that, subject to
17 check?

18 A. No, I will not.

19 Q. You will not?

20 A. I saw that in your comments and I, for
21 the life of me I have no idea where those numbers
22 came from.

23 Q. Well, I'll take care of that on brief.

24 Hypothetically, if your programs met
25 82 percent of their goals in terms of avoided

1 capacity costs, would that mean that the 20 percent
2 would come back to consumers through the true-up
3 process?

4 A. I'm not sure I understand your question.

5 Q. Well, you're collecting a rider based on
6 projected savings, that's based on projections of
7 what your programs will yield in avoided costs; is
8 that correct? Is that how Save-A-Watt works?

9 A. Right; there's a projection and then the
10 programs role out and then we come back and look at
11 the results and see how that forecast matched up with
12 what actually happened.

13 Q. And if in fact you don't avoid as many
14 costs as you said you would, then part of that
15 revenue from the riders will flow back to customers
16 through the true-up.

17 A. That's right. And to the extent that we
18 underrecover, then there will be additional charges
19 to recover. And in fact, I do know that in some of
20 our programs I've been asked this question, are we
21 allowed to overspend because we're running past --
22 we're running up on their budget for 2010 right now.
23 So we could be over -- undercollecting in this
24 process.

25 Q. But that calculation is made on a

1 portfolio basis.

2 A. That's correct.

3 MR. RINEBOLT: Very well. Thank you very
4 much, Doctor.

5 EXAMINER PIRIK: Mr. McNamee?

6 MR. McNAMEE: No questions, thank you.

7 EXAMINER PIRIK: Ms. Watts?

8 MS. WATTS: If I could have just one
9 moment.

10 (Off the record.)

11 - - -

12 REDIRECT EXAMINATION

13 By Ms. Watts:

14 Q. Dr. Stevie, Mr. Etter was asking you some
15 questions about calculations of lost generation
16 revenues.

17 A. Yes.

18 Q. Can you tell me what the result would be
19 if you were not -- if you do not add the generation
20 lost revenues into the calculation?

21 A. Well, the result is that in -- and this
22 goes against the what was agreed to in the
23 stipulation agreement, that we would get lost margin
24 recovery net of fuel and V&M for three years, but now
25 if that were to change and we were not to get the

1 generation lost revenues, and then if we were to
2 comply fully with the new Green Bills then we should
3 remove the three-year constraint on the recovery of
4 distribution revenues.

5 We should be allowed to recover those for
6 the lives of the measures. And I just think it's
7 inappropriate to retrade the lost margins at this
8 point.

9 MS. WATTS: I have nothing further, your
10 Honor.

11 EXAMINER PIRIK: Mr. Etter?

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Etter:

15 Q. Mr. Stevie, you are not an attorney, are
16 you?

17 A. No, I'm not.

18 Q. So your opinion is a lay opinion; is that
19 right? It's not a legal opinion, it's a lay opinion.

20 EXAMINER PIRIK: Mr. Etter, you need to
21 speak up. Because you're facing this way, I can
22 barely hear you.

23 Q. You're not giving a legal interpretation
24 here, it's a lay opinion.

25 A. I'm giving what I would view based upon

1 my 30 plus years experience in regulatory industry as
2 my regulatory opinion.

3 Q. As a non-attorney.

4 A. As a non-attorney, but it's also an
5 opinion of based upon looking at what was in the regs
6 and rules as opposed to what was in the stipulation.

7 MR. ETTER: No further questions.

8 EXAMINER PIRIK: Mr. Dougherty?

9 MR. DOUGHERTY: No questions, your Honor.

10 EXAMINER PIRIK: Mr. Rinebolt?

11 MR. RINEBOLT: No questions, your Honor.

12 EXAMINER PIRIK: Mr. McNamee?

13 MR. MCNAMEE: No, thank you.

14 EXAMINER PIRIK: Ms. Watts?

15 MS. WATTS: Nothing further, your Honor.

16 EXAMINER PIRIK: We'll take up the
17 exhibits.

18 MS. WATTS: We would ask to admit
19 Exhibits 4 and 5 into the record.

20 EXAMINER PIRIK: Are there any objections
21 to the admission of Duke Exhibits 4 and 5?

22 Hearing none, they will be admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER PIRIK: We'll take our lunch
25 break at this point in time and we'll be back here at

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1:45.

(Lunch recess taken.)

- - -

1 Thursday Afternoon Session,
2 June 3, 2010.

3 - - -

4 EXAMINER PIRIK: Ms. Watts, does that
5 conclude your initial case?

6 MS. WATTS: Yes, it does.

7 EXAMINER PIRIK: Mr. Etter?

8 MR. ETTER: Thank you, your Honor. We'd
9 like to call Wilson Gonzalez.

10 (Witness sworn.)

11 - - -

12 WILSON GONZALEZ
13 being first duly sworn, as prescribed by law, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Etter:

17 Q. Would you state your name please?

18 A. Wilson Gonzalez.

19 Q. And you are with the Office of the Ohio
20 Consumers' Counsel, correct?

21 A. Yes.

22 Q. What is your position there?

23 A. I'm senior energy policy advisor.

24 Q. What is the address of the Consumers'
25 Counsel?

1 A. 10 West Broad Street, Columbus, Ohio
2 43215.

3 Q. I've placed before you a document titled
4 "Direct Testimony of Wilson Gonzalez." Is this the
5 them same testimony that was filed on March 25th in
6 this proceeding?

7 A. That's correct.

8 Q. And was this testimony directed or
9 produced by you or at your direction?

10 A. Yes.

11 Q. If you were asked the same questions
12 today that are in this direct testimony would you
13 answer them the same?

14 A. Yes, I would.

15 MR. ETTER: We tender the witness for
16 cross-examination.

17 EXAMINER PIRIK: Did we mark the exhibit?

18 MR. ETTER: Can we mark the exhibit as
19 OCC 1.

20 EXAMINER PIRIK: The document is so
21 marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 EXAMINER PIRIK: Ms. Watts? Ms. Spiller?

24 MS. SPILLER: Thank you, your Honor.

25 - - -

CROSS-EXAMINATION

By Ms. Spiller:

Q. Mr. Gonzalez, you have no objection to the portfolio of energy efficiency programs identified by Duke Energy Ohio in its application filed in this case, correct?

A. My testimony doesn't speak to the portfolio.

Q. So it would be fair, sir, to say that you have no objection to portfolio of energy efficiency programs, correct?

A. I would say that's not something I'm commenting on in my testimony. I make no judgment.

Q. And to your knowledge, sir, the OCC is not presenting any witness to comment on the portfolio of energy efficiency programs filed by Duke Energy Ohio in this proceeding, correct?

A. No, not in this proceeding.

Q. Thank you, sir.

And, Mr. Gonzalez, you are not offering opinion on the portfolio of peak demand reduction program identified by Duke Energy Ohio in its application in this proceeding, correct?

A. It's not what I address in my testimony.

Q. And, sir, there is no other witness from

1 the OCC who will testify in this proceeding as to the
2 portfolio of peak demand reduction programs
3 identified by Duke Energy Ohio in this proceeding,
4 correct?

5 A. That's correct, subject to my surrebuttal
6 testimony.

7 Q. And, Mr. Gonzalez, the only issue on
8 which you are offering testimony in this proceeding
9 concerns Duke Energy Ohio's ability to recover lost
10 generation revenue under its Save-A-Watt program,
11 correct?

12 A. Yes.

13 Q. And, sir, resolution of that issue is a
14 legal function, correct?

15 A. I think resolution of that issue will be
16 a determination made by the Public Utilities
17 Commission of Ohio.

18 Q. And, sir, you are not an attorney, are
19 you?

20 A. No, I'm not.

21 Q. And you have not been qualified as an
22 expert witness on legal interpretation in a
23 regulatory proceeding, have you, sir?

24 A. No, I have not.

25 Q. Sir, you have not been qualified as an

1 expert witness on statutory construction in a
2 regulatory proceeding, correct?

3 A. No, I have not.

4 Q. Mr. Gonzalez, the portfolio of programs
5 that are identified in Duke Energy Ohio's application
6 in this proceeding are the Save-A-Watt programs,
7 correct?

8 A. I believe with certain modifications they
9 are.

10 Q. And the OCC agreed to the Save-A-Watt
11 programs during or within the context of Duke
12 Energy's Electric Security Plan, correct?

13 A. We signed onto the settlement.

14 Q. And that settlement, sir, addressed the
15 Save-A-Watt programs, correct?

16 A. Yes, it did.

17 Q. And, Mr. Gonzalez, given your position at
18 the OCC, you were aware of the programs included
19 within Duke Energy Ohio's Save-A-Watt program before
20 the Save-A-Watt title came to be, correct?

21 A. If you're referring to the 06-91 case,
22 yes.

23 Q. And at that time, sir, the programs were
24 known as the Demand Side Management Programs,
25 correct?

1 A. I believe they were, yes.

2 Q. And to a large extent the programs that
3 were demand side management have morphed into or
4 become the programs under Save-A-Watt, correct?

5 A. That's the expression I used in
6 deposition, yes.

7 Q. Mr. Gonzalez, under the Demand Side
8 Management Programs Duke Energy Ohio recovered lost
9 generation revenues, correct?

10 A. You're talking about the precursor on the
11 Save-A-Watt programs?

12 Q. Yes, sir.

13 A. Yes, the original settlement did allow
14 the utility to recover lost generation.

15 Q. And, Mr. Gonzalez, pursuant to the
16 stipulation that the OCC signed in Duke Energy Ohio's
17 Electric Security Plan case, you know that Duke
18 Energy Ohio is to make a true-up filing of the
19 Save-A-Watt programs in 2012, correct?

20 A. That's what's filed in the tariff.

21 Q. And also, sir, that was set forth in the
22 stipulation, correct?

23 A. I don't recall whether it was
24 specifically.

25 Q. Sir, would it help you to fresh your

1 recollection with a copy of the stipulation from the
2 ESP proceeding?

3 A. No. What would help me is if you gave me
4 a page number. Because I have it in front of me.

5 Q. Certainly. Page 19 of the stipulation,
6 sir. The paragraph is a carryover from page 18, it's
7 paragraph 13A. Top of page 19.

8 A. Yes, here's a reference to a true-up
9 occurring in the second quarter of 2012.

10 Q. And that true-up, Mr. Gonzalez, will
11 concern the programs operating from January 1, 2009
12 through December 31, 2011, correct?

13 A. Yes.

14 Q. Mr. Gonzalez, in forming your opinion in
15 this case concerning cost recovery, you relied upon
16 one Administrative Code rule, correct? That rule
17 being 4901:1-39-07. I believe, sir, you reference
18 that on page 5 of your testimony.

19 A. Yes. But I would say it goes beyond
20 that. I think I was part of the negotiations in the
21 08-920. I know what issues came before the group and
22 I was definitely one of the issues that came before
23 the group, so that would be another area.

24 Q. But let's talk for a moment about the
25 Administrative Code rules. You specifically

1 identified one Administrative Code rule within your
2 testimony, correct? Page 5, sir --

3 A. Thank you.

4 Q. -- of your testimony.

5 A. Yes, that's correct.

6 MS. SPILLER: Your Honor, may I approach
7 the witness?

8 EXAMINER PIRIK: Yes.

9 Q. Mr. Gonzalez, I'm handing you what your
10 attorney previously circulated this morning, and
11 actually you have a copy right there. The rule that
12 you referenced in your testimony which speaks to a
13 recovery mechanism, correct? That's the title of the
14 rule?

15 A. That's correct, that's the title of the
16 rule.

17 Q. And, sir, this rule begins with the
18 statement "With the filing of its proposed program
19 portfolio plan, the electric utility may submit a
20 request for recovery of an approved rate adjustment
21 mechanism," correct?

22 A. Yes.

23 Q. And, Mr. Gonzalez, Duke Energy Ohio is
24 not seeking recovery of an approved rate adjustment
25 mechanism in this proceeding, is it, sir?

1 A. It isn't, but if you continue in the rule
2 it says "Any such recovery shall be subject to annual
3 reconciliation after issuance of the commission
4 verification report issued pursuant to this chapter."

5 So an annual reconciliation is part of
6 this particular rule.

7 Q. But to the extent the company, the
8 utility company seeks such a rate mechanism within
9 the filing, correct?

10 THE WITNESS: Can you please reread that
11 last question?

12 (Record read.)

13 A. I think that's a determination for the
14 parties to brief and the Commission to make a
15 decision on.

16 Q. So an interpretation of this rule,
17 Mr. Gonzalez, is a legal function best left to our
18 Commissioners?

19 A. Based on the input of expert witnesses
20 such as myself.

21 Q. Mr. Gonzalez, can you identify where in
22 the application filed in this proceeding Duke Energy
23 Ohio requested an approved rate adjustment mechanism?

24 A. Well, it was clear from the testimony of
25 Mr. Schultz this morning, it was part of his

1 testimony that he talks about the Save-A-Watt. So it
2 was part of his testimony introduced by the company
3 in this case.

4 Q. And that is testimony, sir, that you saw
5 in the context of Duke Energy Ohio's ESP, correct?

6 A. That's correct.

7 Q. And that is testimony, sir, to which the
8 OCC consented when signing this stipulation in the
9 ESP proceeding, correct?

10 A. When we signed the settlement, and again
11 the settlement is a compromise from different
12 parties. We did sign the settlement but we were very
13 clear when dealing with this particular issue that we
14 were going to -- that we fashioned and crafted
15 paragraph 32 that deals with the three moves that
16 were being promulgated at that time by the
17 Commission.

18 Q. Mr. Gonzalez, let's talk about that for a
19 moment. You have the stipulation from the ESP case
20 in front of you, correct?

21 A. Yes.

22 Q. And the paragraph to which you refer is
23 on page 37, paragraph 32, correct?

24 A. That's correct.

25 Q. And it references the Commission's ESP

1 rules, correct?

2 A. It references Case No. 08-777-EL-ORD and
3 case 08-888-EL-ORD also which are the Green Rules.

4 Q. But it says, sir, the Commission's ESP
5 rules as set forth in those two dockets, correct?

6 A. Generally that's part of the statement
7 but I think if you read the statement in full, it's
8 the -- as a party to the case and subject to the
9 negotiations in this case, that reference was put
10 there to deal with this particular issue that we knew
11 the Commission wasn't going to come out with rules in
12 a manner that would allow us to litigate it in a
13 case.

14 So we couldn't carve it out as a separate
15 issue because it would have -- as has been stated
16 earlier, the hearing was almost a year after this
17 settlement. So the way we handled it was to include
18 this particular provision and I think the company --
19 that was the compromise of the collective group at
20 that particular time.

21 And I believe that the company knew it
22 was at risk for any cost recovery that was not
23 allowed under the new rules.

24 Q. Mr. Wilson, you don't know what the
25 company may have been thinking at that time, do you,

1 sir?

2 A. Except for what was expressly stated in
3 the particular negotiations. I don't know what was
4 in the company's head but I know this issue came up,
5 so.

6 Q. And, sir, is it your position that the
7 OCC intended to deal with lost generation revenues
8 through this generic provision in the stipulation as
9 opposed to specifically calling out that issue in
10 paragraph 13 which specifically addresses the
11 Save-A-Watt rider?

12 A. And again the reason I said that was
13 because of the timing. For example, we did carve out
14 an issue in that particular case but we knew that we
15 could -- everything was before us and it was right to
16 litigate that particular case, so -- that particular
17 issue in the case, so we did.

18 But this issue was awaiting the parallel
19 process that was going on with the Commission rules.
20 So we handled it a different way.

21 Q. But again, Mr. Gonzalez, paragraph 32
22 refers to ESP rules, correct?

23 A. It also refers to the different -- two
24 different cases that were addressing two separate
25 rulemakings. For the purposes of my testimony the

1 08-888 case which Duke had -- which Duke was a party
2 to and submitted, had numerous opportunities to
3 submit comments on is also embedded in this
4 particular paragraph.

5 Q. Embedded, sir, but what it says is DE
6 Ohio shall conform to the Commission's ESP rules as
7 set forth in Case No. 08-777-EL-ORD and
8 08-888-EL-ORD, correct?

9 A. What you read verbatim is correct, yes.

10 Q. Okay, thank you.

11 Mr. Gonzalez, could you turn to page 22
12 of the ESP stipulation, please? There is a footnote
13 there identifying a particular position of the OCC
14 relative to that paragraph, correct?

15 A. Yes.

16 Q. And are you saying there, Mr. Gonzalez,
17 that that particular issue that the OCC expressly
18 reserved or expressly identified in ESP was not
19 contingent on resolution of the rules under --
20 resolution of the Green Rules?

21 A. My understanding was that that was
22 strictly part of the -- it was part of the statute,
23 so we knew what the statute said about penalties so
24 there was more clear definition of that particular
25 rule than cost recovery rules which came out of the

1 Commission rules.

2 Q. The subject matter however, sir, was
3 addressed within the Green Rules, correct?

4 MR. ETTER: I'm going to object as asked
5 and answered.

6 EXAMINER PIRIK: Overruled.

7 A. In a substantive sense I don't know if
8 the Green Rules -- I don't recall the Green Rules
9 only restated what was in the statute concerning
10 substantively.

11 I think in that particular case the
12 statute -- my recollection is that the statute on
13 penalties was taken from -- I'm sorry, the rules on
14 penalties were taken from the statute which was very
15 direct on what a penalty would be and what conditions
16 the utility could ask for waiver as opposed to the
17 cost recovery where the rules were clearly defined in
18 the ratemaking.

19 Q. Mr. Gonzalez, in your testimony to
20 support your opinion you rely upon settlements
21 entered into by other utility companies, correct?

22 A. I don't rely on that. I just -- it's
23 just a point of reference just to give some totality
24 and some breadth to the testimony that if you look at
25 I would say all the other utilities in Ohio granted

1 via settlement, none of them collect lost generation
2 revenues as part of their portfolio programs.

3 Q. And all of those other cases, sir, were
4 settlements that did not involve Duke Energy Ohio,
5 correct?

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

7 Q. And those settlements that did not
8 involve Duke Energy Ohio in cases in which Duke
9 Energy Ohio was not a party are not binding upon Duke
10 Energy Ohio, are they, sir?

11 A. No, they're not. And I understand that.

12 Q. And, Mr. Gonzalez, would you agree with
13 me that the settlements that were referenced or the
14 stipulations referenced beginning on page 8 of your
15 testimony were the culmination of trade-offs or
16 bargaining between the parties to those various
17 cases?

18 A. They were the product of bargaining
19 amongst the cases, and in particular my testimony is
20 an extension of the bargaining that was spelled out
21 in that paragraph 32 on that particular issue.

22 That was the resolution of that issue was
23 let's wait for the Commission rules to come out and
24 let's revisit and see if the company has to conform
25 to those rules. Or where the company has to conform

1 to those rules.

2 Q. Let's talk about that for a moment, sir.
3 The Green Rules -- strike that.

4 Is the OCC a participating member of Duke
5 Energy Ohio's community partnership?

6 A. The collaborative process?

7 Q. Yes, sir.

8 A. Yes, we are.

9 Q. And you have been a representative on
10 behalf of the OCC at those collaborative meetings,
11 correct?

12 A. I have attended for the most part, yes.

13 Q. And there's no requirement in the Green
14 Rules, Mr. Gonzalez, that Duke Energy Ohio continue
15 to operate a collaborative process, correct?

16 A. I know there's some collaborative
17 language in the settlement but it may be related to
18 the Smart Grid.

19 Q. But, sir, I'm sorry, my question was
20 whether the Green Rules required Duke Energy Ohio to
21 engage in a collaborative process.

22 A. I don't believe so.

23 Q. So under the OCC's argument Duke Energy
24 Ohio is not required under the Green Rules to
25 participate in a collaborative, so conforming the ESP

1 stipulation to the Green Rules means that Duke Energy
2 Ohio should discontinue the collaborative.

3 A. No, I don't think you could say that
4 because I think the rules are one thing but there's
5 Commission orders, opinions and orders, in the past
6 there's been settlement agreements that the company
7 has entered prior to the Green Rules even being
8 discussed.

9 My impression is somebody said this
10 morning the collaborative started in 1992 or
11 something. There's a long history of establishment
12 of that particular institution.

13 Q. But is there a requirement other than the
14 ESP stipulation addressing Duke Energy Ohio's
15 participation in a collaborative process?

16 A. Again, I'm not aware if there was a
17 preexisting opinion and order that set it up or set
18 up a preexisting settlement.

19 Q. As part of the give and take of the ESP
20 stipulation, Duke Energy Ohio agreed to earnings caps
21 relative to its Save-A-Watt program, correct?

22 A. Yes. On page 24 there's a list of a cap
23 on their return on investment in those programs, yes.

24 Q. And the Green Rules, Mr. Gonzalez, do not
25 place an earnings cap on a utility company's

1 investment in energy efficiency programs, correct?

2 A. No, they do not.

3 Q. So then conforming this stipulation to
4 the Green Rules as the OCC argues, Duke Energy Ohio
5 should eliminate those savings caps, correct?

6 MR. ETTER: Are you asking for a legal
7 opinion?

8 MS. SPILLER: He's offering opinion. No,
9 I'm asking for his opinion as a senior energy policy
10 advisor for the OCC.

11 A. I believe when this issue came up in
12 negotiations there was no -- there was a give and
13 take but it was something that was agreed upon by
14 both parties.

15 It wasn't an issue -- at the end of the
16 day it wasn't an issue that remained in contention.
17 We said if you perform and you exceed the benchmarks,
18 we're going to reward you for them because that's the
19 signal we want to give you.

20 Q. Within the compromise and give and take
21 of the settlement in the ESP case, Duke Energy Ohio
22 agreed to limit its recovery of lost distribution
23 revenues to a three-year period, correct?

24 A. Yes. And that was an extension of the
25 06-91 settlement. So Duke was consistent with that

1 position for a number of filings.

2 Q. And again, sir, no limitation within the
3 Green Rules that would limit a utility company's
4 recovery of lost distribution revenues to a
5 three-year period, correct?

6 A. There is none. That would be a
7 determination by the Commission.

8 Q. And under the OCC's position as reflected
9 in your testimony, conforming to the Green Rules Duke
10 Energy Ohio should not be restricted to a three-year
11 recovery period for lost distribution revenue,
12 correct?

13 A. I would say they're not restricted but
14 they're not -- it's not a given that they would get
15 one year or two years. That would be up for
16 determination.

17 MS. SPILLER: One moment please, your
18 Honor.

19 Nothing further, thank you.

20 EXAMINER PIRIK: Thank you.

21 MS. SPILLER: Thank you, Mr. Gonzalez.

22 EXAMINER PIRIK: Mr. Dougherty?

23 MR. DOUGHERTY: No questions.

24 EXAMINER PIRIK: Mr. Heinz?

25 MR. HEINTZ: No question, your Honor.

1 EXAMINER PIRIK: Mr. Rinebolt?

2 MR. RINEBOLT: Two quickly, if I may.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Rinebolt:

6 Q. Mr. Gonzalez, do you view the Green Rules
7 as a framework for developing and implementing energy
8 efficiency portfolios?

9 A. I think it gives direction to the
10 companies on how to proceed.

11 Q. But the companies in your view have broad
12 discretion in how they choose to implement the
13 statute and the rules and comply with the rules?

14 A. I think they have discretion. I think
15 there's certain areas that are broader than others
16 but I wouldn't say broad discretion over every part
17 of the rules.

18 Q. But say because the Green Rules, for
19 example, don't limit lost revenue recovery to three
20 years, there's no reason why the company couldn't
21 choose to go in that direction under the rules.

22 A. Yes.

23 MR. RINEBOLT: Thank you.

24 EXAMINER PIRIK: Is that all,
25 Mr. Rinebolt?

1 MR. RINEBOLT: That's all, thank you,
2 your Honor.

3 EXAMINER PIRIK: Mr. McNamee?

4 MR. McNAMEE: No questions, your Honor.

5 EXAMINER PIRIK: Mr. Etter?

6 MR. ETTER: No redirect.

7 EXAMINER PIRIK: Thank you, Mr. Gonzalez.

8 THE WITNESS: You're welcome.

9 EXAMINER PIRIK: With regard to OCC
10 Exhibit 1?

11 MR. ETTER: Yes, we move for the
12 admission of OCC Exhibit 1.

13 EXAMINER PIRIK: Are there any
14 objections?

15 MS. WATTS: No objections.

16 EXAMINER PIRIK: OCC Exhibit 1 shall be
17 admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER PIRIK: Mr. Etter, does that
20 complete your case?

21 MR. ETTER: It does.

22 EXAMINER PIRIK: I believe there are no
23 further witnesses to be heard. I understand that
24 there is an outstanding request for rebuttal
25 testimony. Do you need a moment to discuss that?

1 MS. WATTS: If we may, your Honor.

2 EXAMINER PIRIK: Let's go off the record.

3 (Off the record.)

4 EXAMINER PIRIK: We'll go back on the
5 record.

6 Does Duke have a proposal with regard to
7 the --

8 MS. WATTS: We will withdraw our request
9 for rebuttal, your Honor.

10 EXAMINER PIRIK: Is there anything else
11 other than a briefing schedule to come before us?

12 The comments, we need to mark comments
13 for exhibits.

14 MR. ETTER: The objections?

15 EXAMINER PIRIK: The objections, yes.

16 MR. RINEBOLT: Your Honor, if I may.

17 EXAMINER PIRIK: Let me go by the order
18 that I have. I would prefer to do that.

19 MR. RINEBOLT: That's fine.

20 EXAMINER PIRIK: I'll start with OCC and
21 Natural Resources Defense Council filed on March 1.

22 MR. ETTER: I think I have a copy of our
23 objections.

24 EXAMINER PIRIK: As long as it's already
25 been filed, you don't have to provide it to the court

1 reporter, you will just need to be the person to ask
2 me to mark it.

3 MR. ETTER: Okay, your Honor, we would
4 request that OCC's objections filed previously in
5 this docket be marked as OCC Exhibit 2.

6 EXAMINER PIRIK: Document is so marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 EXAMINER PIRIK: I will go and do all of
9 them. The next one I have are Ohio Environmental
10 Council and Ohio Environmental & Policy Center:

11 MR. HEINTZ: Your Honor, ask that those
12 objections previously submitted as stated by you be
13 marked as ELPC Exhibit 1.

14 EXAMINER PIRIK: The document will be so
15 marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 EXAMINER PIRIK: Now, Mr. Rinebolt.

18 MR. RINEBOLT: Your Honor, I request that
19 the objections filed by Ohio Partners for Affordable
20 Energy on March 1, 2010 be marked as OPAE Exhibit 1.

21 EXAMINER PIRIK: I think we're going to
22 need to mark it OPAE 2. I mean even though we marked
23 that other one and you withdrew it, keep the record
24 clear, we need to mark it as 2.

25 MR. RINEBOLT: Very well, OPAE 2.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 EXAMINER PIRIK: I believe that covers
3 all the comments to be filed.

4 MR. ETTER: Just to be clear, your Honor,
5 the objections filed by the Office of Consumers'
6 Counsel and the Natural Resources Defense Council.

7 EXAMINER PIRIK: Yes. I think I said
8 that, but that's okay. That clarifies the record,
9 thank you.

10 Are there any objections with regard to
11 these comments? Objections being admitted into the
12 record?

13 MR. McNAMEE: No objection from staff.

14 EXAMINER PIRIK: OCC Exhibit 2, ELPC
15 Exhibit 1, and OPAE Exhibit 2 shall be admitted into
16 the record.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 EXAMINER PIRIK: We'll go off the record.

19 (Off the record.)

20 EXAMINER PIRIK: Go back on the record.

21 Duke, with regard to your request for
22 rebuttal I think we need to memorialize your
23 decision.

24 MS. WATTS: Yes, thank you, your Honor.
25 We withdraw our request for rebuttal.

1 EXAMINER PIRIK: Thank you.

2 And now we have moved on, and off the
3 record we discussed a briefing schedule, and we
4 decided that the initial briefs in this case will be
5 due from the parties on July 9th, Friday, July 9,
6 and the reply briefs will be due on Friday, July 23.

7 Typically we do ask for electronic
8 service of those briefs especially the initial
9 briefs, so parties can begin reviewing them. By that
10 it means that the brief needs to be e-mailed to all
11 of the parties and it needs to be e-mailed to the
12 Attorney Examiners.

13 In addition we asked off the record and
14 we want to clarify on the record that the Attorney
15 Examiners would like each of the parties from their
16 perspective to provide a history of the demand side
17 management rider and a breakdown of the costs that
18 are provided in that rider and how the demand side
19 management rider was folded into the DR-SAW rider and
20 whether the generation costs in the DSM rider, how
21 those worked into the DR-SAW rider.

22 Are there any questions with regard to
23 those directives?

24 Hearing none and having nothing else to
25 come before us, we will close the hearing.

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MS. SPILLER: Thank you, your Honor.
MR. RINEBOLT: Thank you, your Honor.
(Hearing adjourned at 2:38 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, June 3, 2010, and carefully compared with my original stenographic notes.

Julieanna Hennebert, Registered Professional Reporter and RMR and Notary Public in and for the State of Ohio.

My commission expires February 19, 2013.

(JUL-1571)

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Summary: Transcript Transcript of Duke Energy Ohio hearing held on 06/03/10. Energy Efficiency and Peak-Demand electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Hennebert, Julieanna Mrs.