

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Ohio Edison:
Company, The Cleveland :
Electric Illuminating :
Company, and The Toledo :
Edison Company for : Case No. 10-388-EL-SSO
Authority to Establish :
a Standard Service Offer :
Pursuant to Section :
4928.143, Revised Code, in:
the Form of an Electric :
Security Plan. :

- - -

PROCEEDINGS

before Mr. Gregory Price, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-A, Columbus, Ohio, called at 9 a.m.
on Thursday, July 29, 2010.

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

APPEARANCES:

FirstEnergy Companies
By Mr. Arthur Korkosz,
Mr. Mark A. Hayden,
Ms. Ebony L. Miller,
and Mr. James W. Burk
76 South Main Street
Akron, Ohio 44308

Jones Day
By Mr. David A. Kutik
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

On behalf of the Applicants.

Porter, Wright, Morris & Arthur
By Mr. Daniel R. Conway
and Mr. Eric B. Gallon
41 South High Street, 30th Floor
Columbus, Ohio 43215

On behalf of FirstEnergy Solutions.

McNees, Wallace & Nurick
By Mr. Samuel C. Randazzo,
and Ms. Lisa McAlister
Fifth Third Center, Suite 1700
21 East State Street
Columbus, Ohio 43215

On behalf of the Industrial Energy
Users of Ohio and the City of Akron.

Bricker & Eckler, LLP
By Mr. Matthew W. Warnock
100 South Third Street
Columbus, Ohio 43215-4291

and

Bricker & Eckler, LLP
By Mr. Glenn S. Krassen
1001 Lakeside Avenue, Suite 1350
Cleveland, Ohio 44114

On behalf of Northeast Ohio Public Energy
Council and Ohio Schools Council.

APPEARANCES: (Continued)

Chester, Willcox & Saxbe, LLP
By Mr. John Bentine,
Mr. Mark Yurick,
and Mr. Matthew S. White
65 East State Street, Suite 1000
Columbus, Ohio 43215

On behalf of the Kroger Company.

Mr. Craig Smith
2824 Coventry Road
Cleveland, Ohio 44120

On behalf of Materials Science
Corporation.

Janine L. Migden-Ostrander,
Ohio Consumers' Counsel
By Mr. Jeffrey L. Small,
and Mr. Gregory J. Poulos
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

On behalf of the Residential
Consumers of the Ohio Edison Company, The
Cleveland Electric Illuminating Company,
and The Toledo Edison Company.

Richard Cordray,
Ohio Attorney General
Duane W. Luckey,
Senior Deputy Attorney General
Public Utilities Section
By Mr. Thomas W. McNamee
Assistant Attorney General
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793

On behalf of the Staff of the Public
Utilities Commission.

- - -

APPEARANCES: (Continued)

Ohio Partners for Affordable Energy
By Ms. Colleen L. Mooney
and Mr. David C. Rinebolt
231 West Lima Street
Findlay, Ohio 45839-1793

On behalf of the Ohio Partners for
Affordable Energy.

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

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

Tucker, Ellis & West, LLP
By Mr. Eric D. Weldele
1225 Huntington Center
41 South High Street
Columbus, Ohio 43215

On behalf of the Council of Smaller
Enterprises.

Boehm, Kurtz & Lowry
By Mr. David Boehm
and Mr. Michael Kurtz
36 East Seventh Street
Suite 1510
Cincinnati, Ohio 45202-4454

On behalf of the Ohio Energy Group.

Environmental Law and Policy Center
By Mr. Michael D. Heintz
1207 Grandview Avenue
Columbus, Ohio 43212

On behalf of the Environmental Law and
Policy Center.

- - -

1 APPEARANCES: (Continued)

2 Mr. Lance M. Keiffer,
3 Assistant Prosecuting Attorney
4 700 Adams Street, Suite 250
5 Toledo, Ohio 43604

6 On behalf of Northwest Ohio Aggregation
7 Coalition.

8 - - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

- - -

JOINT EXHIBITS

IDFD ADMTD

3 Second Supplemental Stipulation

11 12

3A Signature page to the Second
Supplemental Stipulation

11 12

- - -

COMPANY EXHIBITS

IDFD ADMTD

12 Supplemental Testimony of
William R. Ridmann

12 14

- - -

OCC EXHIBITS

IDFD ADMTD

8 Supplemental Testimony of
Wilson Gonzalez

15 19

9 Direct Testimony of
Jonathan Wallach

19 26

- - -

Thursday Morning Session,
July 29, 2010.

- - -

EXAMINER PRICE: Let's go on the record.
Good morning. The Public Utilities Commission has
set for hearing at this time and this place Case
No. 10-388-EL-SSO in the Matter of the Application of
Ohio Edison Company, The Cleveland Electric
Illuminating, and The Toledo Edison Company for
Authority to Establish a Standard Service Offer
Pursuant to Section 4928.143, Revised Code, in the
Form of an Electric Security Plan.

My name is Gregory Price. I'm the
Attorney Examiner assigned to preside over today's
hearing. Let's begin by taking abbreviated
appearances since it's been a while since we have
been reconvened just to identify who is in the room.

Mr. Burk.

MR. BURK: On behalf of the companies,
your Honor, James W. Burk, Art Korkosz, Mark A.
Hayden, and Ebony L. Miller and also from the Jones
Day law firm David A. Kutik.

EXAMINER PRICE: Thank you.

Mr. McNamee.

MR. MCNAMEE: For the staff I'm Thomas

McNamee.

MR. RANDAZZO: On behalf of the Industrial Energy Users of Ohio, I would like to enter the appearance of the firm McNees, Wallace & Nurick at the address previously stated. We are also representing the City of Akron in this proceeding based upon prior information provided in the record as well.

MR. PORTER: On behalf of the Association of Independent Colleges and Universities of Ohio, Andre Porter and -- law firm of Schottenstein, Zox & Dunn, I'm Andre Porter, thank you.

EXAMINER PRICE: Mr. Krassen.

MR. KRASSEN: On behalf of NOPEC and Ohio Schools Council, the law firm of Bricker & Eckler, Glenn S. Krassen and Matthew W. Warnock. I would note a new address for the Cleveland office which is 1001 Lakeside Avenue, Suite 1350, Cleveland, Ohio 44114.

I would also like to enter an appearance for Mr. Lance Keiffer with NOAC who due to medical reasons was unable to be here today.

MR. SMITH: On behalf of Materials Science Corporation, Craig I. Smith, Attorney at Law, 2824 Coventry Road, Cleveland, Ohio 44120.

1 MR. WHITE: Your Honor, on behalf of the
2 Kroger Company, the law firm of Chester, Willcox &
3 Saxbe, John Bentine, Mark Yurick, and Matthew White.

4 MR. WELDELE: Your Honor, on behalf of
5 the Council of Smaller Enterprises, Eric Weldele,
6 Tucker, Ellis & West.

7 MR. GALLON: Your Honor, on behalf of
8 FirstEnergy Solutions Corp., Eric Gallon with the law
9 firm Porter, Wright, Morris & Arthur.

10 MR. SMALL: On behalf of the FirstEnergy
11 customers of the FirstEnergy EDUs, Jeff Small, Office
12 of the Ohio Consumers' Counsel.

13 EXAMINER PRICE: Ms. Mooney.

14 MS. MOONEY: On behalf of the Ohio
15 Partners for Affordable Energy, David Rinebolt and
16 Colleen Mooney, 231 West Lima Street, Findlay, Ohio.

17 MR. HEINTZ: Good morning. On behalf of
18 the Environmental Law and Policy Center, Michael E.
19 Heintz.

20 EXAMINER PRICE: Mr. Boehm.

21 MR. BOEHM: Good morning, your Honor. On
22 behalf of the Ohio Energy Group, law firm of Boehm,
23 Kurtz & Lowry, I'm David Boehm. Thank you.

24 EXAMINER PRICE: Is that everybody?

25 Mr. Burk.

1 MR. BURK: As a preliminary matter, your
2 Honor, and as discussed off the record, the companies
3 have reached an agreement with the Office of
4 Consumers' Counsel regarding testimony today and that
5 agreement is that the companies will waive cross of
6 OCC's Witnesses Gonzalez and Wallach, and OCC has
7 agreed to waive cross of the companies' Witness
8 Ridman subject to motions to strike that each party
9 has -- may engage in.

10 We'll also stipulate to the admission
11 into the record of those three testimonies along with
12 the Second Supplemental Stipulation previously filed
13 in this case and -- which will be marked as Joint
14 Exhibit 3 and also along with the revised signature,
15 page 2 of that stipulation, that will be marked as
16 Joint Exhibit 3A.

17 And then we've also agreed to waive
18 brief -- any post-hearing briefing related to this
19 Second Supplemental Stipulation.

20 EXAMINER PRICE: Thank you.

21 Mr. Small, is that consistent with your
22 understanding of the agreement?

23 MR. SMALL: Yes, it is. I will just add
24 that the -- the testimony according to this agreement
25 would be put into the record subject to the Bench's

1 rulings on any motions to strike without the
2 appearance of witnesses, and the OCC will be
3 presenting one small typographical correction to
4 Mr. Gonzalez's testimony.

5 MR. BURK: And I would concur with
6 Mr. Small's comments.

7 EXAMINER PRICE: Excellent. Does any
8 party object to this arrangement for today's hearing?

9 MR. McNAMEE: No objection.

10 EXAMINER PRICE: Seeing no objections, we
11 will proceed in that manner.

12 Let's start, Mr. Burk, with marking and
13 admitting the Second Supplemental Stipulation and
14 revised page.

15 MR. KUTIK: Your Honor, at this time we
16 formally offer the Second Supplemental Stipulation
17 which has been marked as Joint Exhibit 3.

18 EXAMINER PRICE: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. KUTIK: A document which is the
21 signature page which has been marked as Joint Exhibit
22 3A.

23 EXAMINER PRICE: Also be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. KUTIK: And the supplemental

1 testimony of William R. Ridmann which has been marked
2 as Company Exhibit 12.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 EXAMINER PRICE: Okay. Any objections at
5 this time to the admission of Joint Exhibit 3 and
6 Joint Exhibit 3A?

7 Seeing none, those will be admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 EXAMINER PRICE: Do we have any motions
10 to strike with respect to Company Exhibit 12?

11 MR. SMALL: Yes, your Honor.

12 EXAMINER PRICE: Please proceed.

13 MR. SMALL: I'm on what's been marked as
14 Company Exhibit 12, page 5, line 21, the question
15 beginning on line 21 and extending through page 6,
16 the end of line 16.

17 EXAMINER PRICE: Grounds, please?

18 MR. SMALL: The entry dated July 23,
19 2010, states that a hearing should be held regarding
20 the Second Supplemental Stipulation, paragraph 4 of
21 the entry. The indicated portions of Mr. Ridmann's
22 testimony do not address the Second Supplemental
23 Stipulation. There is no mention of the competitive
24 bidding procedure in the Second Supplemental
25 Stipulation.

1 In addition, Mr. Ridmann is not qualified
2 as an expert to opine on the subject matter of
3 competitive auctions. From Mr. Ridmann's direct
4 testimony, FirstEnergy Exhibit 4 in this case, states
5 that he is a Vice President of Rates and Regulatory
6 Affairs, page 1, line 3, of that testimony. He is an
7 electrical engineer, page 1, line 8, of that
8 testimony. He has held various positions in rates,
9 marketing, and regulatory affairs, page 1, lines 10
10 through 22 of his testimony. He oversees regulatory
11 strategy and rate design, page 2, lines 3 through 12
12 of his testimony.

13 Mr. Ridmann has testified in this case on
14 everything except for the competitive bidding
15 procedure. In fact, his testimony has basically
16 presented the present value comparison between the
17 MRO and the ESP which assumes that the competitive
18 bidding process is the same between the two and,
19 therefore, never addresses it.

20 Those are the two bases on which OCC
21 objects to the testimony.

22 EXAMINER PRICE: If I were to grant this
23 motion to strike, would you not offer Mr. Wallach's
24 testimony that also referred to the process?

25 MR. SMALL: We will address any

1 FirstEnergy objection on those grounds but --

2 EXAMINER PRICE: I don't think I would be
3 waiting for them to make the objection. It was a
4 question from the Bench.

5 MR. SMALL: I recognize the Bench's
6 connection between the two of them.

7 EXAMINER PRICE: It is -- I issued the
8 entry scheduling the hearing, and it is certainly
9 within my authority to allow a more expanded hearing
10 than I potentially put in the entry. So we are going
11 to go ahead and deny your motion to strike with
12 respect to the question of Mr. Ridmann's expertise.

13 You know, I note that the statement just
14 is indicating that the July hearing -- July auction,
15 and today is July 29, can't possibly go forward and a
16 new date needs to be rescheduled. So your motion to
17 strike is denied.

18 MR. SMALL: I have no further motions to
19 strike, your Honor.

20 EXAMINER PRICE: Any objection to the
21 admission of Mr. Ridmann's testimony subject to the
22 denial of a motion to strike?

23 Seeing none it will be admitted.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 EXAMINER PRICE: Mr. Small.

1 MR. SMALL: Thank you, your Honor. The
2 OCC would like to move into the record the
3 supplemental testimony of Wilson Gonzalez. We would
4 like that marked as OCC Exhibit 8.

5 EXAMINER PRICE: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. SMALL: I think it's been marked ESP
8 Exhibit 8 for clarity.

9 EXAMINER PRICE: Well, we are just going
10 to refer to it as OCC Exhibit 8 because that's the
11 way we have been doing it.

12 MR. SMALL: Pursuant to the agreement
13 previously stated I point out that on page 8, line 8,
14 of Mr. Gonzalez's testimony there's a slight
15 typographical error. The word "defined" in the
16 middle of the sentence should be redefined. In other
17 words, the letters D-E should be inserted between re
18 and fined.

19 EXAMINER PRICE: Anybody object to the
20 correction of "refined" to "redefined"?

21 Seeing none, we will make that
22 correction.

23 MR. SMALL: With that, your Honor, the
24 OCC moves for admission of OCC Exhibit 8 subject to
25 any motions to strike that would be offered by the

1 company or other parties.

2 EXAMINER PRICE: Do we have any motions
3 to strike any portions or all of Exhibit 8?

4 MR. KUTIK: Yes, your Honor, we do have
5 some --

6 EXAMINER PRICE: Mr. Kutik.

7 MR. KUTIK: -- motions. Essentially we
8 have two motions, but they are both on the same
9 theme. The order for this hearing directed the
10 parties opposing the Stipulation or Second
11 Supplemental Stipulation to direct their testimony on
12 the opposition to the Second Supplemental
13 Stipulation. So that topics that could have been
14 discussed with respect to the initial Stipulation or
15 the Supplemental Stipulation shouldn't be heard or
16 shouldn't be part of his testimony; in other words,
17 OCC shouldn't get a second bite of the apple of
18 something they could have addressed earlier.

19 In that vein, your Honor, our first
20 motion to strike deals with question and answer No. 7
21 on page 5 which starts at line 8 and continues
22 through line 16. Your Honor, this deals with an
23 issue that is wholly unaddressed by the Second
24 Supplemental Stipulation.

25 EXAMINER PRICE: Mr. Small.

1 MR. SMALL: Yes, your Honor. As the
2 Bench knows, this case, the ESP case, 10-388 is
3 largely defined by a Stipulation that was filed at
4 the beginning of the case. That is essentially the
5 companies' application. With every refined or
6 changed stipulation essentially the company files a
7 new application, changes its application.

8 The OCC has not taken the steps of going
9 back to discovery which might be appropriate for
10 new -- new applications but in this instance
11 Mr. Gonzalez addressed a topic that had been changed
12 within the application. He does not address
13 something that is not in the Stipulation, that is,
14 the subject matter that is not in the Stipulation.
15 He addressed something that is essentially a change
16 in the application on the subject matter of how to
17 obtain RECs going forward.

18 So that -- he's on the subject matter of
19 the revised application as submitted in the
20 companies' Stipulation -- Second Supplemental
21 Stipulation.

22 EXAMINER PRICE: We will give
23 Mr. Gonzalez a little leeway given the scope of the
24 hearing, and we will deny the motion to strike.

25 MR. KUTIK: Your Honor, our second motion

1 to strike really deals with two parts of the
2 testimony, but it deals with the same subject matter
3 and that is page 2, lines 8 and 9. And then over on
4 page 6, the question and answer No. 8 which starts at
5 line 1 of page 6 and continues through line 2 of page
6 7.

7 Your Honor, this deals with OCC's
8 complaints as to the DCR rider and the participation
9 in the DCR proceedings. That issue is unchanged by
10 the Second Supplemental Stipulation. It's an issue
11 that could have been and should have been addressed
12 in earlier proceedings and is not proper at this
13 time.

14 EXAMINER PRICE: Mr. Small.

15 MR. SMALL: It is true that the companies
16 tried to exclude the OCC from ongoing proceedings in
17 the past. However, what the company has done again
18 is changed its application through the Second
19 Supplemental Stipulation and changed the procedure
20 and the process of review that has been proposed in
21 this case. So, in essence, the OCC through this
22 document, the attempt is being made to exclude us
23 from a new procedure, and Mr. Gonzalez addressed that
24 new procedure which the OCC according to this
25 document would be excluded from, that is, the process

1 of commenting and raising objections to companies'
2 filings concerning the DCR.

3 EXAMINER PRICE: I think this is
4 sufficiently related to the change in the stipulation
5 that we are going to deny the motion to strike again.
6 Thank you.

7 Mr. Kutik.

8 MR. KUTIK: That's all of our motions,
9 your Honor.

10 EXAMINER PRICE: Thank you. Any
11 objections to the admission of Mr. Gonzalez's
12 testimony subject to the denial of the motion to
13 strike?

14 Seeing none, it will be admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER PRICE: Mr. Small.

17 MR. SMALL: Thank you, your Honor. The
18 OCC would also move for admission into the record OCC
19 Exhibit 9, the direct testimony of Jonathan Wallach.

20 EXAMINER PRICE: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. SMALL: There are no changes and
23 corrections and subject to the same provisions
24 concerning the agreement with the company.

25 EXAMINER PRICE: Do we have any motions

1 to strike any or all of OCC Exhibit 9?

2 MR. KUTIK: Yes, your Honor. We have
3 motions to strike. It's all basically one motion,
4 but it's kind of scattered throughout, so if you bear
5 with me, kind of take you through the words and
6 phrases and lines that we would like to have
7 stricken.

8 EXAMINER PRICE: Please proceed.

9 MR. KUTIK: These begin on page 7,
10 question and answer No. 10 starting on line 5 --

11 MR. SMALL: I'm sorry. I'm trying to
12 catch up with you. Page 7, line 9?

13 MR. KUTIK: Yes.

14 EXAMINER PRICE: 5.

15 MR. SMALL: Line 5.

16 MR. KUTIK: Strike -- we move to strike
17 the word "only" and then the words "auction per year,
18 and." On line 6, we move to strike the line starting
19 with the word "propose" through the word "annual" and
20 also the word "either." On line 7, we move to strike
21 the words -- words "or eleven months (for the 2011
22 and 2012)" and two words at the end of the line "for
23 the." On line 8, we move to strike the words
24 "contract procured" -- "contracts procured in those
25 auctions" and then proceeding onto the next sentence

on the same line the words "all of the." Moving down to line 10, we move to strike the words "all of the" in the sentence beginning with the word "procuring."

So that starting with the sentence that begins on line 4 the testimony would read if everything was granted "Specifically, I am concerned that the Companies propose to conduct one auction eight months for the" -- "(for the 2010 auction) in advance of the delivery date. Procuring market-priced supply at one time would expose ratepayers to the risk of adverse market-price movements at that time. Procuring SSO supply eight months in advance of delivery would expose bidders to substantial load and price uncertainty over that period: Bidders would likely reflect such uncertainty in their price bids."

Moving on to question and answer 11 and starting in answer 11 on line 16 of page 7, we move to strike the words "per procurement cycle." We move also to strike all of lines 17 and 18. We further move to strike all of lines 20 and 21 so that the first paragraph of the answer No. 11 would read as follows if the motions to strike were granted: "I recommend that the Companies conduct two auctions in October 2010 and January 2011 to procure contracts

1 for June 2011 delivery."

2 Moving on to page 8 we -- and the
3 paragraph that begins on line 3 we move to strike the
4 phrase "per procurement cycle" which appears
5 beginning at the end of line 3 and moving over to
6 line 4 and at the end of line 6 moving over to line
7 7.

8 And, now, the rationale for our motions,
9 your Honor, is that while Mr. Ridmann did discuss the
10 need for revising the initial schedule the schedule
11 of the initial auctions under the ESP that has been
12 stipulated to, Mr. Ridmann did not address what would
13 happen in subsequent years. Mr. Wallach's complaint
14 that there should be two auctions as opposed to one
15 auction is a complaint that he has with the initial
16 stipulation and not with the Supplemental -- or
17 Second Supplemental Stipulation and, therefore, his
18 comments with respect to anything beyond the auctions
19 for 2011 are improper and beyond the scope of this
20 hearing.

21 EXAMINER PRICE: Mr. Small.

22 MR. SMALL: Your Honor, first of all,
23 I'll note that I recognize the connection between my
24 motion to strike Mr. Ridmann's testimony and the
25 present motion to strike Mr. Wallach's testimony.

1 It's true that this testimony is not on the subject
2 matter of the Second Supplemental Stipulation any
3 more than Mr. Ridmann's was. And I ask the Bench to
4 make a similar ruling and provide the additional
5 leeway for the extension of this hearing to address
6 those matters.

7 On the more specific argument that
8 Mr. Ridmann simply changes a date or eliminates a
9 date in July, his testimony does much more than this.
10 Up until this time in 09-906 the company proposed a
11 June, October, June, October, June, October cycle for
12 their -- for their auction.

13 In the 10-388 Stipulation, the original
14 March Stipulation, there was a July, October, then
15 July, July, in other words, the pattern repeats
16 itself. Mr. Ridmann does more than just say we
17 weren't -- aren't going to have a July auction, delay
18 it to October. He upsets the entire pattern of it.
19 Now, we have a pattern of October, July, July.

20 In fact, Mr. Wallach's testimony is in
21 some respects more similar to the companies' original
22 plan which is to have symmetry in this, and it is
23 important in designing auctions that they be planned
24 and that they be under regulatory control rather than
25 just simply faded by when stipulations are signed and

1 that is the reason why this testimony addresses what
2 Mr. Ridmann's testimony stated even though he's only
3 changed one date. He's also changed the entire
4 pattern of the CBP auction process that's been
5 proposed by the company.

6 EXAMINER PRICE: I think that this
7 particular motion to strike is well taken. He really
8 is addressing -- the only changes that Mr. Ridmann
9 proposed were for the first year of the auction
10 cycle. The other ones remained unchanged and that's
11 been the companies' position all along, so we are
12 going to grant this motion to strike.

13 MR. SMALL: Your Honor.

14 EXAMINER PRICE: Yes, sir.

15 MR. SMALL: With that in mind I think the
16 companies' striking was probably unnecessarily broad
17 even recognizing the Bench's ruling.

18 EXAMINER PRICE: Staying within the
19 spirit of my ruling what would you like to modify?

20 MR. SMALL: If I could have a moment, I
21 need -- I made some quick notes here. Page 7, lines
22 7 and 8, the motion to strike is unnecessarily broad
23 as far as deleting the words "for the contracts
24 procured in those auctions." If the Bench would make
25 the change to say "that an auction similar" but there

1 is no need to change the witness's thought here which
2 is for the contracts procured which is
3 unnecessarily -- unnecessary to strike.

4 MR. KUTIK: May I have a minute, your
5 Honor? So the change would be "that auction"?

6 MR. SMALL: "That auction," yes.

7 MR. KUTIK: We would accept that.

8 EXAMINER PRICE: Mr. Kutik has agreed to
9 modify his motion to strike there.

10 MR. SMALL: Page 7, line 17, there's no
11 need under the Bench's ruling to delete the two --
12 strike the words "October" and "January." "I
13 recommend that the Companies conduct two auctions in
14 October and January."

15 EXAMINER PRICE: Could you give me that
16 reference again, Mr. Small?

17 MR. SMALL: I'm on page 7, line 17. And
18 it would read "I recommend that the Companies conduct
19 two auctions in October and January."

20 MR. KUTIK: Well, your Honor, the way our
21 motion has been set forward with the idea of a --
22 that Mr. Wallach proposes an auction to be held in
23 October, 2010, and January, 2011, still remains in
24 that sentence.

25 EXAMINER PRICE: He's correct.

1 MR. KUTIK: The first full sentence would
2 read --

3 MR. SMALL: Because you are including the
4 first bullet point, is that the idea?

5 EXAMINER PRICE: Yes, yes. He's correct.
6 Okay. Subject to the modification.

7 MR. SMALL: I always hesitate to redo
8 somebody's testimony, but I believe that that gives
9 credit to the drafter's intent. He's not here, but
10 I'll speak for him.

11 EXAMINER PRICE: Well, he is your
12 witness. Subject to the modification that Mr. Kutik
13 agreed to the motion to strike will be granted.

14 Anything further?

15 MR. SMALL: With that, your Honor --

16 EXAMINER PRICE: I meant further motions
17 to strike.

18 MR. KUTIK: We have no further motions,
19 your Honor.

20 EXAMINER PRICE: Thank you. Any
21 objection to the admission of Mr. Wallach's
22 testimony, OCC Exhibit 9, subject to my granting the
23 motions to strike?

24 Seeing none, it will be admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 EXAMINER PRICE: Do we have any further
2 issues we need to address before we submit this case
3 on the record?

4 Let's go off the record for a minute.
5 (Discussion off the record.)

6 EXAMINER PRICE: Let's go on the record
7 then. One final issue, yesterday on July 28, Direct
8 Energy Service filed an objection to FirstEnergy's
9 Second Supplemental Stipulation.

10 I believe Mr. Burk wanted to speak to
11 that.

12 MR. BURK: Yeah. Per your suggestion,
13 your Honor, we won't be seeking to move to strike
14 that document, although that may be proper but Direct
15 Energy is not here today and we also will not be
16 seeking a formal written response to that but I would
17 like to note just a couple of things for the record.

18 First, in the filing it made the
19 suggestion they were not served with a draft Second
20 Supplemental Stipulation. That information is
21 incorrect. On July 15, Direct Energy both their
22 business person and their counsel of record were, in
23 fact, served along with all the other parties with a
24 draft of the Second Supplemental Stipulation.

25 And, secondly, not to belabor the point

1 but much of what's in there is not supported by any
2 record evidence, particularly their request on page 4
3 related to a purchase of receivables agreement.
4 There's no evidence in the record at all to support
5 that statement.

6 And with that I won't belabor the point
7 any further.

8 EXAMINER PRICE: Like anything else the
9 Commission will consider the extent to which the
10 statements are supported by record evidence in making
11 its determinations.

12 MR. BURK: Thank you.

13 EXAMINER PRICE: We are just going to
14 accept this then as an amendment to their brief, and
15 since they are not here to be party to the agreement
16 to waive briefs does anybody object to that?

17 Seeing none, we'll proceed in that
18 manner.

19 Anything further?

20 With that this case will be considered
21 submitted on the record to the Commission. Thank you
22 all. We're adjourned. Off the record.

23 (Thereupon, the hearing was concluded at
24 9:40 a.m.)

25 - - -

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, July 29,
2010, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5231)

- - -

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/13/2010 10:44:32 AM

in

Case No(s). 10-0388-EL-SSO

Summary: Transcript Transcript of First Energy hearing held on 07/29/10. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.