

FILE

09-872/873-EL-FAC

193

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Fuel :  
Adjustment Clauses For :  
Columbus Southern Power : Case No. 09-872-EL-FAC  
Company and Ohio Power : Case No. 09-873-EL-FAC  
Company. :

CONFIDENTIAL PROCEEDINGS

before Mr. Jeffrey Jones and Ms. Greta See, Attorney  
Examiners, at the Public Utilities Commission of  
Ohio, 180 East Broad Street, Room 11-A, Columbus,  
Ohio, called at 10:00 a.m., on Tuesday, August 24,  
2010.

VOLUME II

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

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## 1 APPEARANCES:

2 American Electric Power  
3 By Mr. Steven T. Nourse  
4 Mr. Matthew J. Satterwhite  
5 Ms. Julie L. Atchison  
6 One Riverside Plaza  
7 Columbus, Ohio 43215-2373

8 On behalf of the Companies.

9 Janine L. Migden-Ostrander  
10 By Mr. Michael E. Idzkowski  
11 And Mr. Gregory J. Poulos  
12 10 West Broad Street, Suite 1800  
13 Columbus, Ohio 43215-3485

14 On behalf of the Residential  
15 Consumers of the Companies.

16 McNeese, Wallace & Nurick  
17 By Mr. Samuel C. Randazzo  
18 Mr. Joseph M. Clark  
19 Ms. Lisa McAlister  
20 Fifth Third Center, Suite 1700  
21 21 East State Street  
22 Columbus, Ohio 43215

23 On behalf of the Industrial Energy  
24 Users of Ohio.

25 Richard Cordray, Ohio Attorney General  
William Wright, Section Chief Deputy  
Public Utilities Section  
Mr. Thomas W. McNamee  
and Mr. Werner L. Margard III  
180 East Broad Street, 9th Floor  
Columbus, Ohio 43215-3793

On behalf of the Staff of the Public  
Utilities Commission.

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## EXHIBITS

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## OCC EXHIBITS

IDFD ADMTD

1 - Prefiled Testimony of  
Daniel J. Duann, PhD - Confidential

199 226

- Prefiled Testimony of  
Daniel J. Duann, PhD - Public

199 226

## IEU EXHIBITS

IDFD ADMTD

1 - Prefiled Testimony of  
J. Edward Hess - Confidential

228 258

1A- Prefiled Testimony of  
J. Edward Hess - Public

228 258

## COMPANY REBUTTAL EXHIBITS

IDFD ADMTD

5 - Prefiled Rebuttal Testimony of  
Timothy M. Dooley - Confidential

260 261

- Prefiled Rebuttal Testimony of  
Timothy M. Dooley - Public

260 261

6 - Prefiled Rebuttal Testimony of  
Jason T. Rusk - Confidential

262 274

6A- Prefiled Rebuttal Testimony of  
Jason T. Rusk - Public

262 274

7 - Prefiled Rebuttal Testimony of  
Jason T. Rusk - Confidential

275 297

7A- Prefiled Rebuttal Testimony of  
Jason T. Rusk - Public

275 297

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Tuesday Morning Session,

August 24, 2010.

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EXAMINER JONES: Let's go back on the record. We had a brief discussion off the record regarding rebuttal, and I think we will still have to reserve the determination of when that rebuttal will actually take place or be introduced after the cross-examination of the witnesses this morning. So that will be discussed at a later time.

Are there any other preliminary matters that need to come before the Bench before we begin?

If not, I believe we agreed yesterday, Mr. Idzkowski, that you'd present your witness first.

MR. IDZKOWSKI: Yes, your Honor, thank you. On behalf of the residential customers of the companies, the Ohio Consumers' Counsel would call Dr. Daniel Duann.

(Witness sworn.)

EXAMINER JONES: Thank you.

MR. IDZKOWSKI: I believe the court reporter has a copy of Dr. Duann's confidential and redacted testimony and I believe the attorney examiner does also. If anyone needs a copy, of the parties, I could provide that.

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DANIEL J. DUANN, PHD

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

DIRECT EXAMINATION

By Mr. Idzkowski:

Q. Dr. Duann, please state your name and  
business address for the record.

A. Yes. Daniel J. Duann, 10 West Broad  
Street, Suite 1800, Columbus, Ohio, 43215.

Q. And, Dr. Duann, for the purposes of this  
proceeding, by whom are you employed and in what  
capacity?

A. I'm senior regulatory analyst with the  
Office of the Ohio Consumers' Counsel.

MR. IDZKOWSKI: And, your Honor, at this  
time OCC would have marked as OCC Exhibit Nos. 1 and  
1A, the confidential and redacted or public versions  
of the direct testimony of Dr. Duann, testimony and  
exhibits that is. We have that marked with the  
Commission in this proceeding and it has been filed  
with the Commission August 16th, 2010.

EXAMINER JONES: Thank you. The  
documents shall be so marked.

MR. IDZKOWSKI: Thank you.

(EXHIBITS MARKED FOR IDENTIFICATION.)

Q. (Mr. Idzkowski) Dr. Duann, do you have your testimony or what has now been marked as Exhibits 1 and 1A in front of you?

A. Yes.

Q. And could you identify the documents in front of you, please?

A. Yes. I have a copy of the direct testimony and exhibit I prepared in this proceeding on behalf of the Office of the Ohio Consumers' Counsel.

Q. Dr. Duann, do you have any additions, corrections, or deletions that you would wish to make to your testimony at this time?

A. No.

Q. Dr. Duann, if I were to ask you the questions posed in the written testimony that you've submitted today, would answers be the same?

A. Yes.

MR. IDZKOWSKI: Your Honor, at this point I would offer Dr. Duann up for cross-examination.

EXAMINER JONES: Thank you, Mr. Idzkowski.

Mr. Clark, do you have any questions for this witness?

1 MR. CLARK: No questions, your Honor.

2 EXAMINER JONES: Staff have any questions  
3 for this witness?

4 MR. MARGARD: No, your Honor.

5 EXAMINER JONES: Mr. Nourse.

6 MR. NOURSE: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Nourse:

10 Q. Good morning, Dr. Duann.

11 A. Good morning.

12 Q. Let me start with a couple questions  
13 about your background, sir. You are not an  
14 accountant?

15 A. I am not a CPA.

16 Q. And are you an expert in coal procurement  
17 or fuel procurement?

18 A. No.

19 Q. Are you an expert in property valuation?

20 A. Can you be more specific? What do you  
21 mean by "expert in property evaluation"? I mean,  
22 there's a lot of properties and --

23 Q. Valuation of real and personal property.

24 A. No.

25 Q. The coal procurement contracts and



1 settlement agreements you discuss in your testimony,  
2 did you review any of those coal procurement  
3 agreements?

4 A. I did not review the actual contracts. I  
5 review those -- the major terms of those contract  
6 reported in the audit report.

7 Q. So your knowledge about the agreements is  
8 limited to what you read in the audit report,  
9 correct?

10 A. I have some general knowledge about the  
11 coal and energy market, and then I also review those  
12 in the audit report, yes.

13 Q. I'm asking about the specific agreements  
14 in question or that are being discussed in this case  
15 and discussed in your testimony. Is it accurate to  
16 say that the extent of your knowledge about those  
17 agreements is strictly from reading the audit report?

18 A. No.

19 Q. What else did you review to get more  
20 information about those specific agreements?

21 A. I have discussed this with our OCC  
22 internal staff. I have discussed this with the  
23 auditors.

24 Q. Okay. But have your staff reviewed the  
25 actual agreements?

1           A.    I don't know whether they review it or  
2 not.

3           Q.    Okay. Let me ask you to turn to page 8  
4 of your testimony.

5                   Let me ask you a general question before  
6 you get to that. Is it your understanding of the  
7 audit report and the auditor's opinions and  
8 recommendations in this case that the auditor is  
9 recommending that value that was exchanged for these  
10 agreements being discussed outside the period of the  
11 audit be applied to reduce Ohio Power's current  
12 underrecovery of FAC costs?

13           THE WITNESS: Can I have the question  
14 read back, please?

15           Q.    Let me try to rephrase it. Dr. Duann, is  
16 it your understanding that the auditor in this case  
17 is recommending a reduction of the underrecovery for  
18 the FAC costs of Ohio Power?

19           A.    I believe the auditor recognize this  
20 mismatch of cost and benefit associated with this  
21 2007 and 2008 contract renegotiation. The auditor  
22 also recognize, because of this renegotiation, there  
23 has been substantial cost increase to Ohio Power's  
24 customer in 2009, and I believe she recommend in this  
25 report, say that the PUCO should review how to

1 provide some regulatory remedy so that these costs  
2 and benefit can be matched.

3 Q. Okay. So it's fair to say that the  
4 auditor raised these issues but didn't recommend any  
5 reduction of the underrecovery by Ohio Power FAC  
6 costs?

7 A. The auditor did not advise a specific  
8 number saying that amount should be reduced from the  
9 fuel cost deferral balance.

10 Q. And she didn't recommend that any  
11 reduction of the underrecovery occur; is that your  
12 understanding?

13 A. No, that's not my understanding.

14 Q. Okay. Now, if you were wrong about that  
15 understanding, would that change your opinion in your  
16 testimony?

17 A. Sure.

18 Q. Okay. Now, let me ask you, on page 8 of  
19 your testimony you're making a statement here about  
20 this, what I'll call, the January 2008 settlement  
21 agreement. You understand what I'm referring to when  
22 I say that?

23 A. Yes.

24 Q. Okay. And on lines 12 to 14 you're  
25 stating, if I'm reading it correctly, that this

1 January 2008 settlement agreement is "largely the  
2 result of a contract dispute that arose from the  
3 volatile and quickly escalating market price of coal  
4 since the middle of 2007." Do you see that?

5 A. Yes.

6 Q. So is it your understanding that the  
7 January 2008 settlement agreement came about as a  
8 result of market -- escalating market price for coal?

9 A. I think I used the word "largely the  
10 result of contract dispute that arose from the  
11 volatile and quickly escalating market price of coal  
12 since the middle of 2007."

13 Q. Right. And I used the word that was --  
14 that's how it came about, but we're using the same  
15 concept. I'm asking you whether it's your  
16 understanding that that 2008, January 2008 settlement  
17 agreement came as a result of the escalating coal  
18 prices in 2007.

19 A. My understanding is this contract dispute  
20 that related to this -- is related to the safety  
21 regulation that the coal supplier claimed that  
22 increased their cost and so they want to sort of like  
23 buy out or renegotiate. But I would put in the  
24 context at that time when this issue is dispute,  
25 contract dispute occur, it's also a time when this

1 very significant increase in the price of coal and  
2 there's a sign of volatility in the coal market.

3 Q. Okay. Now, where did your understanding  
4 about the cost increase driving the settlement, where  
5 did that come from?

6 A. I talked to our OCC staff. I talked to  
7 the auditors.

8 Q. But you don't mention that here in your  
9 testimony, do you?

10 A. It's not in my testimony, yes.

11 Q. Okay. Now, Dr. Duann, your testimony  
12 does not opine regarding the prudence of AEPSC's  
13 decision to enter into the January 2008 settlement  
14 agreement; is that correct?

15 A. I did not conclude whether this agreement  
16 is prudent or imprudent.

17 Q. Now, do you know what's -- what's your  
18 understanding of the steps or the process for  
19 conducting a prudence review? Are you familiar with  
20 that?

21 A. Yes.

22 Q. What's your understanding?

23 A. I think a prudency is sort of a, has a  
24 legal connotation, and in my understanding is when we  
25 do a prudency review, we probably want to determine

1 whether any particular management decision made at  
2 that time was based on reasonably obtainable  
3 information, was based on what reasonable person will  
4 do, and also based on whether that decision has  
5 cost -- consider the interests of all stakeholders.

6 Q. But you didn't go through that process  
7 for the agreements that you're referencing in your  
8 testimony, correct?

9 A. I already say that in my testimony.

10 Q. Yes. And that's why we're discussing it  
11 today.

12 A. I did not conclude it's imprudent, but I  
13 did not conclude it's prudent either.

14 Q. Okay. Let me ask you to turn to page 14,  
15 and carrying over from page 13 to the top of 14  
16 you're discussing this coal reserve asset and at the  
17 top of 14 you say, "I am not proposing any specific  
18 option. This decision is best left for AEP to make."  
19 Do you see that?

20 A. Yes.

21 Q. So when you're talking about specific  
22 options, you're referring to what to do with the  
23 asset?

24 A. Yes.

25 Q. Okay. And it's your opinion that that

1 is -- what to do with the asset and when to do it is  
2 a decision for AEP to make?

3 A. Yes.

4 Q. Let me ask you about AEP-Ohio's ESP  
5 cases. Are you familiar with those?

6 A. I have some familiarity with them, yes.

7 Q. Did OCC agree with the Commission's  
8 decision regarding the establishment of a fuel  
9 adjustment clause for AEP-Ohio?

10 A. You are referring whether to establish a  
11 fuel adjustment clause itself, or you're referring  
12 all the different component of that FAC?

13 Q. The latter.

14 A. We have many issues regarding the  
15 Commission's decision regarding FAC.

16 Q. Okay. And one of those recommendations  
17 that OCC made in the ESP case was to offset the FAC  
18 recovery with off-system sales margins; is that  
19 correct?

20 A. Yeah, my recollection is I believe OCC  
21 does take -- does -- I mean, did take the position  
22 that there should be an offset of the margin of  
23 off-system sales.

24 Q. The Commission did not accept that  
25 recommendation in the ESP case, correct?

1 A. Correct.

2 Q. Now, did OCC also oppose using the  
3 weighted average carrying costs in connection with  
4 the fuel deferrals that were set up in the ESP cases?

5 A. Yes, OCC opposed that. Yes.

6 Q. Okay. But there again, the Commission  
7 did not accept OCC's position in the ESP cases on  
8 that point, correct?

9 A. That's correct.

10 Q. And did the OCC propose in the ESP case  
11 to use an FAC baseline of 2008 actual fuel costs?

12 A. I believe OCC proposed that.

13 Q. And is it your understanding the  
14 Commission did not adopt that approach in setting up  
15 the FAC baseline?

16 A. No, the Commission did not adopt that.

17 MR. IDZKOWSKI: Your Honor, I'm going to  
18 object to this line of questioning. He's raising  
19 several issues in another case related to this but  
20 apart and separate from this case, in I think an  
21 attempt to demonstrate that the OCC's positions  
22 haven't been adopted, I think that's been well  
23 established in several cases in the past. We don't  
24 need to go through this with any more than, I think  
25 we're up to three examples of this in this case.



1           So if we could perhaps get back to the  
2 point of this case.

3           MR. NOURSE: Yeah, your Honor, I was just  
4 about to move on, so we can short-circuit that.

5           EXAMINER JONES: Let's please move on.  
6 Objection overruled.

7           Q. Dr. Duann, let me ask you about the, you  
8 mentioned earlier that you're not an expert on  
9 valuation of property, and in your testimony you  
10 reference the value of the coal reserve asset that  
11 we've been discussing in this case, and you reference  
12 the value of [REDACTED] million in your testimony, correct?

13          A. Correct.

14          Q. Now, that valuation, that number that  
15 you're including in your testimony, that's based  
16 purely on the reference to that number in the audit  
17 report; is that correct?

18          A. No.

19          Q. Okay. You indicated earlier that you  
20 didn't review the actual [REDACTED] report; isn't that  
21 correct?

22          A. No, I didn't say that.

23          Q. Have you reviewed the [REDACTED] report?

24          A. No.

25          Q. Okay. Very good. So you're not a

1 property expert. You didn't review the [REDACTED] report.  
2 It's not based on just the audit report. Where did  
3 you come up with [REDACTED] million?

4 A. Well, I think on page 15 in my testimony  
5 I say, very clearly say, that "Based on my review of  
6 the Management and the Financial Audit Report, I  
7 conclude that \$[REDACTED] million is a fair and a reasonable  
8 estimate of the net present value of the [REDACTED]  
9 Reserve."

10 And I base this statement based on my  
11 review of the audit report, and I also did some  
12 independent analysis, and I still agree -- I still  
13 believe this is a reasonable number.

14 Q. Can you show me in the audit report where  
15 this number was mentioned? Let me know if it's a  
16 page other than 2-21.

17 A. Yes, 2-21, that's the place when I refer  
18 to we using -- that's the place where the auditor  
19 mentioned this evaluation of the plant.

20 Q. Again, page 14 and 15 of your testimony,  
21 you say, "Based on my review of the Audit Report,"  
22 you're referring to this sentence on page 2-21?

23 A. Yes. And also the, you know, the whole  
24 discussion.

25 Q. That is the whole discussion of the

1 \$ [REDACTED] million value, isn't it?

2 A. No. There's a footnote explains that  
3 this, explains, say, you know, how many tons of clean  
4 recoverable coal there is, what's the quality of that  
5 coal, and, you know, how -- when that report was  
6 produced. So there's not just one sentence. That's  
7 what I see.

8 Q. That's fine. I'm asking you about the  
9 \$ [REDACTED] million value. That's the focus of my question.

10 So in your testimony, again, when you're  
11 saying based on the M/P Audit Report, you're really  
12 referring to that sentence regarding [REDACTED] million.

13 A. Once again, I would say I refer to all  
14 related discussion and to that sentence.

15 Q. Is it your understanding that the auditor  
16 in this case undertook an independent valuation of  
17 the property?

18 A. I don't quite understand what you mean by  
19 "independent evaluation of the property."

20 Q. Is it your understanding that the auditor  
21 is merely referencing this [REDACTED] report in the  
22 statement, or did she undertake some additional  
23 independent activity to support the value of  
24 [REDACTED] million?

25 A. I don't know exact what the auditor did,

1 but I suppose when auditor review in any document or  
2 any report, mining report, feasibility study,  
3 valuation, I believe any auditor will exercise his or  
4 her independent analysis.

5 Q. Were you present during Ms. Medine's  
6 testimony yesterday?

7 A. Yes.

8 Q. Okay. Let me ask you about your  
9 recommendation, Dr. Duann. As I understand your  
10 recommendation, you're suggesting that Ohio Power  
11 should flow through the valuation of the property  
12 that's currently on their books, flow that through to  
13 ratepayers, and then establish a regulatory asset for  
14 using the \$ [REDACTED] million value; is that accurate?

15 A. I believe I made an additional  
16 recommendation regarding the carrying charge or the  
17 length -- the length of the time where this regulator  
18 can probably accrue carrying charge. I made other  
19 recommendation.

20 Q. Correct. And I was just summarizing the  
21 main point here so we can talk about that.  
22 Understanding that the details are reflected in your  
23 testimony, you're recommending that this reg asset --  
24 I want to call it a reg asset, that's usually what  
25 we -- for short, but that is your main

1 recommendation, flow through the value on the books,  
2 establish a reg asset for [REDACTED] million, correct? Am I  
3 understanding that correctly?

4 A. Yes.

5 Q. Okay. So when the asset under your  
6 recommendation is sold, what would happen to the --  
7 let's just say for sake of argument it was sold for  
8 [REDACTED] million. What would happen with the [REDACTED] million?

9 A. The \$[REDACTED] million were used to offset  
10 regulatory asset.

11 Q. Okay. And so what about the original  
12 value? Is the [REDACTED] million that's currently on the  
13 books, you'd basically be saying that would be  
14 written off by the company; is that true?

15 A. I don't know whether the company need to  
16 write off that asset or not.

17 Q. Could the company have a reg asset for  
18 [REDACTED] million and retain the additionally recorded  
19 [REDACTED] million at the same time?

20 A. I don't know, but I think those  
21 \$[REDACTED] million cost the -- the [REDACTED], all of those, I  
22 think [REDACTED], they are already recorded as earning for  
23 AEP-Ohio or Ohio Power in the 2008. So I don't know  
24 how they are going to deal with that.

25 Q. Okay, you haven't thought about that.

1 A. No.

2 Q. Okay. So then with the -- under your  
3 example we're discussing here, if the asset were sold  
4 for [REDACTED] million, you say the regulatory asset would  
5 be written down so -- is that because there's a  
6 regular liability for the same amount?

7 A. No; because you already use this  
8 \$ [REDACTED] million to pay back the regulatory asset.

9 Q. So a hundred percent of the proceeds  
10 would go back through the FAC under your proposal?

11 A. No. I think the FAC will be reduced  
12 immediately right now for -- or whenever they approve  
13 it, the order, that it will be reduced immediately.

14 Q. And what was your proposed carrying  
15 charge on that reg asset?

16 A. Would be for the two year -- or for at  
17 the most, two-year period where the carrying charge  
18 can be accrued for at least particularly regulatory  
19 asset. My recommendation, you should use the long  
20 term -- use the cost of long term at the time of CSP  
21 or Ohio Power.

22 Q. Let's talk about another scenario where  
23 the asset is sold and it was sold at a loss. Let's  
24 say we got \$ [REDACTED] million, okay? What would be done  
25 with the \$ [REDACTED] million shortfall? Would that be

1 recovered from FAC ratepayers?

2 A. No.

3 Q. Under your proposal what would happen?

4 A. The company has to take the loss.

5 Q. Now, is it your understanding that the  
6 entire cost associated with the January 2008  
7 settlement agreement was paid by FAC ratepayers  
8 already?

9 THE WITNESS: Can you repeat the  
10 question, please?

11 Q. Well, your theory on why the [REDACTED] under  
12 your example should go -- flow through to FAC  
13 ratepayers is that the customers are paying for the  
14 cost of the settlement agreement; is that correct?

15 A. My understanding is because of this  
16 contract renegotiation the customer of Ohio Power  
17 will pay a higher cost for fuel -- for coal in 2009  
18 and 2010 and possibly 2011 and 2012, so when you say,  
19 you know, up to now or, you know, I cannot answer  
20 that. You know, it just has to be more specific.

21 Q. Yeah.

22 A. But my point is the customer have paid  
23 and will pay the added cost of --

24 Q. I understand that.

25 A. Regarding whether it's a hundred percent,

1 I was, you know, my recommendation should be it flows  
2 through the FAC, and whether the FAC, my  
3 understanding for the FAC, there is the deduction of  
4 a fuel expense for off-system sales. So, you know,  
5 you just do whatever the FAC will do, but up to now,  
6 the customer are paying for these costs.

7 Q. Now, have you checked to see that even  
8 with the \$ gain recorded in 2008, whether Ohio  
9 Power experienced a net under or overrecovery of  
10 fuel?

11 A. I cannot answer the question because I  
12 don't understand the question.

13 Q. Did Ohio Power experience a gain or loss,  
14 an overrecovery or underrecovery for fuel costs in  
15 2008?

16 A. 2008?

17 Q. Yeah.

18 A. 2008 there's no fuel recovery mechanism.

19 Q. Thank you.

20 MR. NOURSE: That's all the questions I  
21 have, your Honor.

22 Thank you, Dr. Duann.

23 THE WITNESS: Thank you.

24 EXAMINER JONES: Thank you. Any  
25 redirect, Mr. Idzkowski?



1 MR. IDZKOWSKI: Yes, your Honor.

2 EXAMINER JONES: You may proceed.

3 MR. IDZKOWSKI: Thank you.

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. Idzkowski:

7 Q. Dr. Duann, you were asked a question on  
8 cross regarding your view that the 2007-2008 contract  
9 renegotiations were in part, at least, brought about  
10 by the price of coal as the price of the coal to AEP  
11 versus the market. Do you recall that question?

12 A. Yes.

13 Q. And you said that your information for  
14 that came from the audit report.

15 A. You are referring at the beginning of the  
16 cross-examination --

17 Q. Yes.

18 A. -- and we talk about why there's  
19 renegotiation of the contract, of the 1992 contract  
20 between [REDACTED] and AEP-Ohio?

21 Q. Exactly.

22 A. Yes, I remember this same question in  
23 that area.

24 Q. Can you look at page 2-20 of the audit  
25 report, the paragraph that begins "By mid-2007."

1 A. Yes.

2 Q. Is that a source of the information you  
3 got for your analysis of the contract buyout?

4 A. Yeah. That's part of it, yes.

5 Q. All right. You were asked another  
6 question, what's the rest of -- you said that's a  
7 part of it.

8 A. Well, I also look at the whole, you know,  
9 the whole, the several pages discussed about the  
10 [REDACTED] contract buyout.

11 Q. Okay. You were asked a question on cross  
12 about, to do with the asset, the coal reserve --

13 A. Yes.

14 Q. And you responded your decision or the  
15 decision -- well, your testimony says the decision  
16 what to do with that is AEP's, correct?

17 A. Yes, I believe that's part of my  
18 testimony.

19 Q. But do you take a position in your  
20 testimony as to when the company should do something  
21 about the value of this asset?

22 A. My position is irrespective of when or --  
23 when the company made the decision, my proposal is  
24 there should be a limit on the carrying charge, on  
25 period of time where this asset can have carrying

1 charge, and my recommendation is the earliest of the  
2 three date, and that's in my testimony.

3 Q. What are those dates or events?

4 A. The event is the earliest of when the  
5 company disposed of the reserve or two years from the  
6 Commission issuing an order, or January 1st, 2013.

7 Q. You were asked a question on cross,  
8 Dr. Duann, regarding the value of the [REDACTED]  
9 and how you reached, what was the extent of your  
10 analysis of determining the value of the [REDACTED]  
11 [REDACTED]. Did you do any of your own analysis  
12 regarding the [REDACTED] based on the facts in  
13 this case?

14 A. Yes. As I mention in my response, you  
15 know, I look at the audit report and I conclude this  
16 [REDACTED] million is a fair and reasonable estimate, and I  
17 also did my own analysis. My own analysis, I took  
18 two approach. The first is I think the key factor  
19 here is [REDACTED] million tons of coal there, so there must  
20 be some value to that.

21 So in order to assess this value, I look  
22 at the, you know, other coal company, how much they  
23 can earn from this [REDACTED] million tons of coal, and I  
24 look the 2009 annual report of [REDACTED], and [REDACTED]  
25 the [REDACTED], you know, and

1 last year, actually, for the last three years each  
2 year it produce about [REDACTED] million tons of coal and  
3 has a net income about \$ [REDACTED] million, you know, on  
4 average. I think in 2007 it has a very bad year for  
5 them, but even then, [REDACTED]  
6 [REDACTED]. They made about \$ [REDACTED] million and in 2008  
7 more.

8 So I calculated the average per pound, I  
9 think the [REDACTED] derive about \$ [REDACTED], so if you times  
10 that [REDACTED] million tons, you come to \$ [REDACTED] million, and  
11 I compare that with the [REDACTED] million that mentioned in  
12 the audit report, you know, I do not think that  
13 [REDACTED] million is not a fair and a reasonable estimate.

14 I took an additional analysis is when we  
15 are talking about two party enter into a contract.  
16 You know, I think they will always look at how much  
17 they can get and how much they have to give, and in a  
18 case of [REDACTED] and AEP-Ohio when they negotiated the  
19 2008 contract buyout, I believe, you know, by my own  
20 analysis, I believe the [REDACTED] probably can save  
21 about \$ [REDACTED] million versus the original contract,  
22 because the original contract would have to continue  
23 to supply coal for 2009, 2010, 2011, 2012 at the  
24 below \$ [REDACTED] contract price. So but right now they can  
25 get out of that contract so that has some value to

1 the company.

2 And the auditor indicated that in 2009  
3 alone, AEP's Ohio customer probably pay [REDACTED] million  
4 more because of this contract negotiation. So I  
5 estimate that the value to the [REDACTED] is about \$ [REDACTED]  
6 million and the [REDACTED] pay about \$30 million to AEP,  
7 so I think the rest they paid in the reserve. So in  
8 that sense that's probably a value that [REDACTED] put  
9 in that asset.

10 Q. You were asked a question on cross about  
11 your recommendation to pass through the value of this  
12 coal reserve to be a credit to the FAC deferrals, and  
13 you were asked a couple of follow-up questions about  
14 what would happen to the [REDACTED] million and what about  
15 would the company have to write off the  
16 \$ [REDACTED] million asset. Regarding that \$ [REDACTED] million,  
17 asset, has that already been credited to the company  
18 in 2008?

19 A. Yes.

20 Q. To what account; do you know?

21 A. I don't remember exactly, but I believe  
22 it's probably credit to their saving in fuel cost,  
23 but it does affect the, you know, it does affect the  
24 earning of AEP in 2008.

25 Q. You were asked a question regarding the

1 same asset, and they posed a question what if they  
2 sold it at a loss, say at [REDACTED] million, and the  
3 company had to take a loss. Why should the company  
4 take the loss if they sell it for less than they  
5 bargained?

6 A. Because they already collect -- they  
7 already record the \$ [REDACTED] million and treated as  
8 earning.

9 Q. You were asked a question regarding the  
10 flow-through to customers as a credit to FAC  
11 deferrals. Why would this be your recommendation?

12 A. Yes. I believe the, you know, AEP  
13 counsel also asked some questions, and my basic -- my  
14 starting point or when I look at this issue is  
15 irrespective whether this coal contract negotiation  
16 are prudent or imprudent, there's a certain cost  
17 associated with it and there are certain benefit that  
18 are associated.

19 And I think in this particular instance  
20 the [REDACTED] 2008 settlement agreement, I think only a  
21 very small part of those benefit flows through to  
22 customer and -- but all the costs are passed through  
23 to the customer. You know, for example, like the  
24 promissory, I think the customer he -- the value to  
25 the Ohio customer is zero. There's no value to that

1 because the company doesn't pass anything. And for  
2 the \$ million they get, the company get only about  
3 million pass through.

4 And I, you know, on the other hand I  
5 think I probably also want to get the credit to the  
6 company because I think by doing so, the company  
7 essentially acknowledge that in spite of this  
8 contract done in 2008, but they are affecting the  
9 costs, the fuel costs to Ohio's customer in 2009 so  
10 they should pass through.

11 And I believe the company's Witness  
12 Dooley and the company's Witness Rusk acknowledged  
13 that, so I think I should give company credit on  
14 that. But that also, you know, that also undermines  
15 the company's arguments saying we should not look at  
16 anything beyond this audit period.

17 And the question right now is, you know,  
18 you only pass a very small portion of it, and you  
19 should pass all these costs, all this benefit to  
20 customers because the customer, you know, are asked  
21 to absorb all the increased cost so I think that's  
22 only fair.

23 MR. NOURSE: Your Honor, could I  
24 interject? I mean, this has become a rambling  
25 dissertation of Dr. Duann's testimony. It's gone

1 beyond the cross-examination I did. It appears their  
2 redirect is going to be longer than the cross. I  
3 object to this restatement of his testimony in the  
4 record.

5 EXAMINER JONES: Mr. Idzkowski.

6 MR. IDZKOWSKI: I think that's all the  
7 questions that we have, your Honor.

8 MR. NOURSE: Okay.

9 EXAMINER JONES: Thank you.

10 Mr. Clark, any further cross?

11 MR. CLARK: No, thank you, your Honor.

12 EXAMINER JONES: Staff?

13 MR. MARGARD: No, your Honor.

14 EXAMINER JONES: Mr. Nourse, any further  
15 cross?

16 MR. NOURSE: Yeah.

17 - - -

18 RECROSS-EXAMINATION

19 By Mr. Nourse:

20 Q. Dr. Duann, with respect to the valuation  
21 of the coal reserve property, what's your  
22 understanding of the capital investment that's  
23 required to develop the property? Do you have one?

24 A. I cannot answer because I don't  
25 understand the question. That question is pretty



1 vague to me. When you say "understanding,"  
2 understanding of what? I just cannot answer that.

3 Q. Do you have an understanding of what the  
4 capital investment would be to develop the coal  
5 mining property?

6 A. I understand that when you develop a  
7 mining property, it's a long process. You have to go  
8 through the permitting and you have to invest capital  
9 on that. Yes, I understand that.

10 Q. You don't have any opinion or knowledge  
11 of the projected capital investment for this  
12 particular property?

13 A. No.

14 Q. Or the time line it would take to reach  
15 full production?

16 A. I have no independent knowledge, but I  
17 believe yesterday's cross somebody mentioned it.

18 MR. NOURSE: Okay. I don't have any  
19 further questions. Thank you, your Honor.

20 EXAMINER JONES: Thank you.

21 Thank you, Dr. Duann.

22 Mr. Idzkowski, are you going to move the  
23 admission of OCC Exhibits 1 and 1A?

24 MR. IDZKOWSKI: Yes, your Honor. At this  
25 time OCC moves his testimony presented as Exhibits 1

1 and 1A be moved into evidence.

2 EXAMINER JONES: Any objections?

3 MR. NOURSE: No, your Honor.

4 EXAMINER JONES: Hearing none, both  
5 documents shall be admitted.

6 MR. IDZKOWSKI: Thank you, your Honor.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 EXAMINER JONES: Do you have anything  
9 further, Mr. Idzkowski?

10 MR. IDZKOWSKI: No, your Honor.

11 EXAMINER JONES: Thank you.

12 Mr. Clark, I promised you a short break  
13 at this time so you could confer about rebuttal and  
14 so forth, so why don't we take a 10-minute break at  
15 this time.

16 MR. CLARK: Thank you, your Honor.

17 (Recess taken.)

18 EXAMINER JONES: Let's go back on the  
19 record.

20 Mr. Clark, you may call your witness.

21 MR. CLARK: Thank you, your Honor. IEU  
22 Ohio calls J. Edward Hess.

23 EXAMINER JONES: Would you raise your  
24 right hand?

25 (Witness sworn.)

1 EXAMINER JONES: Thank you. Please be  
2 seated.

3  
4 J. EDWARD HESS

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

7 DIRECT EXAMINATION

8 By Mr. Clark:

9 Q. Mr. Hess, would you please state your  
10 full name for the record?

11 A. My name is John Edward Hess.

12 Q. And by whom are you employed?

13 A. I'm employed by McNees, Wallace & Nurick.

14 Q. And, Mr. Hess, did you prepare the  
15 testimony filed on October 16th, 2010, in this  
16 proceeding?

17 A. Did you say August?

18 Q. Yes.

19 A. Yes, I did.

20 MR. CLARK: Your Honor, at this time I'd  
21 like to have marked as IEU-Ohio Exhibit 1 the  
22 confidential version of the direct testimony of  
23 J. Edward Hess, as Exhibit 1A the redacted version of  
24 the direct testimony of J. Edward Hess.

25 EXAMINER JONES: It shall be -- I'm

1 sorry.

2 MR. CLARK: I've laid copies on the Bench  
3 as well and given them to the court reporter. I  
4 believe all the parties should have copies.

5 EXAMINER JONES: Thank you. The  
6 documents shall be so marked.

7 (EXHIBITS MARKED FOR IDENTIFICATION.)

8 Q. Mr. Hess, do you have a copy of what has  
9 been marked IEU Exhibit 1 and 1A with you today?

10 A. Yes, I do.

11 Q. And do you have any additional  
12 corrections or additions to make to what has been  
13 marked as IEU-Ohio Exhibits 1 and 1A?

14 A. I do not.

15 Q. If I were to ask you the same questions  
16 today as those in IEU-Ohio Exhibits 1 and 1A, would  
17 your answers today be the same as those in the  
18 document?

19 A. Yes.

20 Q. And are those answers true and correct to  
21 the best of your knowledge and belief?

22 A. Yes, they are.

23 MR. CLARK: Your Honor, I'd move for the  
24 admission of IEU-Ohio Exhibits 1 and 1A into the  
25 record, subject to cross-examination, and Mr. Hess is

1 available for cross.

2 EXAMINER JONES: Thank you, Mr. Clark.

3 Mr. Idzkowski, any questions?

4 MR. IDZKOWSKI: Yes, your Honor, thank  
5 you.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Idzkowski:

9 Q. Regarding the 2007-2008 renegotiation of  
10 the contract between -- coal procurement contract  
11 between AEP and a coal supplier, did you have  
12 discussions with AEP regarding that contract buyout,  
13 Mr. Hess?

14 A. We had discussions with AEP. I don't  
15 know that it was as specific as that contract buyout.

16 Q. At the time of that buyout was the AEP  
17 contract price with its coal supplier significantly  
18 below the market price?

19 A. I believe that that's what's reported in  
20 the audit report.

21 Q. Is that your understanding?

22 A. I think that's correct.

23 Q. Do you know why the delivered price in  
24 2007 was not sufficient compensation for the coal  
25 producer?

1 A. I don't know the answer to that.

2 Q. Can you look at your testimony at page 4,  
3 please. Do you have that in front of you?

4 A. I do. I have that.

5 Q. Okay. You state on page 4, line 4, that  
6 the negotiations resulted in an early termination of  
7 the contract and Ohio Power purchasing  
8 million tons of coal, and that the auditor  
9 determined that the buyout caused the customers to  
10 pay about \$ million more for coal during the audit  
11 period of 2009 than they would have if Ohio Power had  
12 continued to receive coal at the price agreed to by  
13 the coal supplier.

14 A. Yes.

15 Q. Okay. Do you agree or disagree with the  
16 auditor's findings, that the renegotiation of the  
17 contract affected the price in 2009?

18 A. I have no reason to disagree with it.

19 Q. Did that renegotiation of the contract  
20 continue to affect customers in 2010?

21 A. I don't know the answer to that.

22 Q. The 1992 contract between this coal  
23 supplier and AEP terminated by agreement when?

24 A. 12/31/08.

25 Q. And the existing price had been what?

1 A. I'm sorry, would you repeat that? I just  
2 didn't hear it.

3 Q. Yes. The existing price prior to its  
4 termination of that contract had been what?

5 A. I don't know the answer to that.

6 Q. Do you know what the new price of coal to  
7 AEP was in 2009?

8 A. I don't know the answer to that.

9 Q. You state on page 4 that the value of the  
10 coal reserve property obtained in this renegotiation  
11 in 2007 and 2008 could be as much as [REDACTED] million. Do  
12 you see that at line 13?

13 A. Yes.

14 Q. Do any facts in this case give any  
15 indication that the value could be more or less than  
16 [REDACTED] million?

17 A. Yeah. The two [REDACTED] reports value it at  
18 amounts larger and smaller than \$ [REDACTED] million.

19 Q. And what is the -- what [REDACTED] reports are  
20 you referring to? Do you know the years of those?  
21 Would they be the 2007 and 2009 [REDACTED] reports, to your  
22 understanding?

23 A. Yes.

24 Q. And the 2009 [REDACTED] report, do you know the  
25 value that that report indicated could be the value

1 of the -- or the range of values of the coal reserve  
2 property?

3 A. I think it was from [REDACTED] million to  
4 [REDACTED]-some million. I don't have the report in front  
5 of me.

6 Q. Based on the existence of that report and  
7 your 30 years of experience with the PUCO, including  
8 your work as the chief of the Accounting  
9 and Electricity Division, is it reasonable to  
10 maintain from an accounting and finance perspective  
11 that the value of the [REDACTED] is [REDACTED] million?

12 A. That it's [REDACTED] million at a minimum?

13 Q. That the value is [REDACTED] million.

14 A. You know, I've recommended in my  
15 testimony I think the valuation of the [REDACTED]  
16 needs further investigation.

17 Q. Based on that same report and your  
18 experience at the PUCO, is it reasonable for  
19 customers to receive more of the realized value of  
20 these contract renegotiations than they have thus  
21 far?

22 MR. NOURSE: Your Honor, I object. It's  
23 friendly cross. He's trying to get him to go further  
24 than he went in his testimony to support OCC's  
25 position.



1 MR. IDZKOWSKI: Your Honor, I'm trying to  
2 determine exactly what his position is based on, you  
3 know, of his testimony. I'm trying to clarify his  
4 testimony.

5 EXAMINER JONES: The objection's  
6 sustained.

7 Q. You testify at page 7, if you can look at  
8 that, please.

9 A. I have that.

10 Q. Okay. You testify that the AEPSC's  
11 accounting violates the ratemaking principle, that it  
12 fails to align costs recoverable through rates with  
13 the benefits associated with such costs.

14 Based on your why -- I want to ask why,  
15 you know, do you base this opinion on your experience  
16 with the PUCO?

17 A. Yes.

18 Q. Based on that experience specifically,  
19 how does it violate ratemaking principles?

20 A. I don't believe it properly matches the  
21 true cost of service with the service provided.

22 Q. And based on your experience with the  
23 PUCO, is that a tenet of the PUCO's regulatory  
24 policy?

25 A. Yes.

1 Q. On page 8 and 9, can you look at that,  
2 please?

3 A. I have page 8.

4 Q. Okay. It's hard to look at both at the  
5 same time, isn't it? I said 8 to 9 because you  
6 recommend that the total value of the cash buyout,  
7 the total value of this coal reserve, and the value  
8 of the note receivable be utilized to reduce the Ohio  
9 Power deferred expense. Do you see that?

10 A. Yes.

11 Q. Okay. If the Commission were to follow  
12 your recommendation, would this require the company  
13 to have to restate its past earnings?

14 A. It would depend on how they would decide  
15 to account for it. I'm not making an accounting  
16 recommendation. If they did decide to account for it  
17 and had to account for it as a correction, that might  
18 require a restatement of retained earnings.

19 Q. In your opinion should the Commission  
20 order Ohio Power to reappraise the property with the  
21 coal reserve?

22 A. In my opinion, I'm suggesting that the  
23 Commission continue to study the valuation of the

24 [REDACTED]

25 Q. I'm going to ask you now about the

1 contract support provided to a coal supplier. It's  
2 on page 2-22 of the audit report. Do you have that  
3 audit report?

4 A. I do have it, yes.

5 Q. I'll be referring to that for the next  
6 few questions.

7 A. I have that.

8 Q. Okay. Thank you. Regarding this  
9 contract support, at the time that that contract  
10 support took place, was AEP's contract price with  
11 this company significantly below market?

12 MR. CLARK: Your Honor, I'm sorry, I'm  
13 going to object. Mr. Hess's testimony does not  
14 address this particular contract support. It's  
15 beyond the scope of his testimony.

16 EXAMINER JONES: Mr. Idzkowski, any  
17 response?

18 MR. IDZKOWSKI: I'll withdraw that  
19 question.

20 EXAMINER JONES: Thank you.

21 MR. IDZKOWSKI: May I have that, Maria?  
22 May I have that read back, please, that last  
23 objection.

24 (Record read.)

25 Q. Can you look at the audit report. I may

1 have miscited the page of the audit report, Mr. Hess.  
2 Can you look at page 2-24, please.

3 A. I have that.

4 Q. All right. Does your testimony address  
5 that contract support?

6 A. Yes, it does.

7 Q. All right. So at the time of this  
8 contract support, was AEP's contract price with this  
9 supplier significantly below the market price of  
10 coal, to your recollection?

11 A. Yeah, I don't remember it. I don't  
12 remember whether it was or not.

13 Q. Can you look at page 2-24 of the audit  
14 report, please.

15 A. It's the page I've been on.

16 Q. Yes, okay. So the audit report states on  
17 that page in the -- at the second line of the  
18 paragraph under the -- starting under the first main  
19 heading regarding this contract support, the second  
20 sentence starts "During this period." Do you see  
21 that?

22 A. Yes.

23 Q. "Coal prices had increased sharply and  
24 coal suppliers with legacy contracts were suffering  
25 as the higher prices had led to significant

1 production cost increases." Do you know why higher  
2 prices lead to production cost increases?

3 A. I don't know the answer to that.

4 Q. And your understanding of this contract  
5 support was obtained how? Did you discuss it with  
6 the EVA auditor?

7 A. We did, yes.

8 Q. Did you talk with representatives of AEP?

9 A. Again, our discussion with the  
10 representatives of AEP I don't believe was this  
11 specific.

12 Q. Okay. Did you conduct discovery in this  
13 case?

14 A. Yes, we did.

15 Q. And in those discussions and discovery,  
16 were rising costs for the coal producer ever  
17 mentioned as a factor that was raised in those  
18 discussions that could -- a factor that contributed  
19 to bringing about this contract support?

20 MR. NOURSE: Objection, it's asking for  
21 hearsay information.

22 Q. Is it your understanding that the issue  
23 of rising costs was a factor that contributed to  
24 bringing about this contract support?

25 A. Again, my knowledge would have been

1 limited to what's written in here. I don't even  
2 remember having a discussion about that with the  
3 auditor either.

4 Q. All right.

5 MR. IDZKOWSKI: That's all the questions  
6 that I have, your Honor.

7 EXAMINER JONES: Thank you.

8 Staff.

9 MR. MARGARD: No, thank you, your Honor.

10 EXAMINER JONES: Mr. Nourse.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Nourse:

14 Q. Good morning, Mr. Hess.

15 A. Good morning, Mr. Nourse.

16 Q. Let me ask you, you were involved in the  
17 Electric Security Plan cases of AEP-Ohio, correct?

18 A. Yes, I was.

19 Q. At that time you worked for the staff.

20 A. Yes, sir, I did.

21 Q. And you testified in those cases on  
22 behalf of the staff in the ESP cases?

23 A. Are you asking me if I did? Yes, I did.

24 Q. Yes, there was a question mark at the end  
25 of that.

1 A. Okay. I didn't see it.

2 Q. Sorry.

3 Now, regarding the FAC baseline, you're  
4 familiar with that concept from that case. It  
5 addressed it in the decision in that case as well.

6 A. Yes, sir.

7 Q. Regarding the FAC baseline, what was  
8 staff's position on that?

9 A. I believe that Mr. Cahaan testified to  
10 using 2007 as an estimate of what 2008 would be.

11 Q. An escalated 2007, correct? 3 and  
12 7 percent?

13 MR. CLARK: Objection, your Honor. I  
14 don't see how testimony from the RSP case or the ESP  
15 case on behalf of staff is relevant at this  
16 particular juncture of this case.

17 EXAMINER JONES: I tend to agree with  
18 you, Mr. Clark. Objection sustained.

19 MR. CLARK: Thank you.

20 Q. Okay. Let me back up with some  
21 foundation, then. Your recommendation in this case  
22 is to reduce the underrecovery for Ohio Power's FAC  
23 costs; is that correct?

24 A. One my recommendations as an option is to  
25 reduce the deferral, yes.

1 Q. And the deferral plan for Ohio Power and  
2 Columbus Southern was established in the ESP cases;  
3 is that correct?

4 A. That's correct.

5 Q. And is it your understanding that at that  
6 time it was known by staff and the Commission that  
7 adopting the deferral plan would create a significant  
8 underrecovery for the companies' FAC costs?

9 MR. CLARK: Objection, your Honor.  
10 Again, relevance.

11 EXAMINER JONES: Mr. Nourse.

12 MR. NOURSE: Your Honor, I'm tying it  
13 directly into the recommendation in this case and  
14 matters that were decided in the ESP case and  
15 Mr. Hess's involvement in that. I think I'm entitled  
16 to explore that.

17 MR. CLARK: Your Honor, regardless of the  
18 parties' positions in the ESP case, the Commission  
19 made a decision, and I think it's fair. We know what  
20 the decision is, regardless of what the parties'  
21 positions were, there is a decision and it's out  
22 there. It's irrelevant to explore what the positions  
23 were at the time.

24 MR. NOURSE: Your Honor, I'm not -- I'm  
25 exploring how the FAC baseline works and how it



1 relates to this case. That's the whole point of my  
2 questioning.

3 EXAMINER JONES: I'm going to allow the  
4 question.

5 MR. CLARK: Your Honor, may I also make  
6 an objection to evidence not in the record or -- it  
7 assumes facts not in evidence as to whether the  
8 Commission knew it would create an underrecovery.

9 MR. NOURSE: Why don't we try a new  
10 question and see how we have --

11 EXAMINER JONES: Are you withdrawing the  
12 last question then, Mr. Nourse?

13 MR. NOURSE: I'll try a new question now  
14 that we have the nexus cleared up.

15 EXAMINER JONES: Thank you.

16 Q. (By Mr. Nourse) So, Mr. Hess, again, one  
17 of your recommendations here is to reduce the  
18 underrecovery that exists for Ohio Power; is that  
19 correct?

20 A. Well, yeah. The result of one of my  
21 recommendations would be to do that, yes.

22 Q. Yeah. And part of the discussion of this  
23 whole issue relates to the statements in the audit  
24 report, correct, that some of these contracts being  
25 discussed happen to be -- the impact of those happen

1 to be about half of the underrecovery? Do you recall  
2 that in audit report?

3 A. Are you asking me if I remember in I  
4 think it's the second section of the audit report  
5 that they said something about half the impact of the  
6 deferrals?

7 Q. Yes.

8 A. Yes.

9 Q. And again, I'm trying to overly tie it in  
10 and be clear about why we're talking about this at  
11 this point in time. Okay. And again, based on your  
12 understanding, you personally, not the Commission, do  
13 you believe the current underrecovery for Ohio Power  
14 is different or substantially different than what was  
15 anticipated at the time the ESP was adopted?

16 MR. CLARK: Objection, your Honor, again,  
17 assuming facts in evidence -- not in evidence in this  
18 case.

19 MR. NOURSE: Your Honor, I asked him his  
20 personal understanding.

21 I'm not sure what you're referring to.

22 MR. CLARK: It's also irrelevant, your  
23 Honor. Again, I don't know why we're -- how it can  
24 be relevant to this particular FAC audit review  
25 proceeding.

1 MR. NOURSE: Your Honor, we just went  
2 through this. This is the first FAC proceeding under  
3 the new mechanism and the FAC baseline was a key part  
4 of transitioning back into the FAC.

5 EXAMINER JONES: I'm going to sustain the  
6 objection.

7 MR. NOURSE: Can I ask you to explain the  
8 ruling, your Honor, so I can make sure and try to  
9 abide by it.

10 EXAMINER JONES: I believe asking this  
11 witness questions about what the Commission  
12 understood about what the effect of the underrecovery  
13 would be is not relevant to this proceeding.

14 MR. NOURSE: I didn't ask him a question  
15 about what the Commission understood. I asked him  
16 his personal --

17 EXAMINER JONES: And I sustained the  
18 objection.

19 MR. NOURSE: I'm trying to understand so  
20 I can go forward, your Honor, because there was  
21 several questions throughout this record about  
22 recommendations in the ESP case and the impact on the  
23 FAC baseline and the underrecovery; those were all  
24 allowed. So I'd like to discuss that general topic  
25 with Mr. Hess as well. I'm not sure why it's being

1 cut off at this point.

2 EXAMINER SEE: Mr. Nourse, after some  
3 discussion at the Bench, we've concluded that while  
4 you can explore the effect of the scope of Mr. Hess's  
5 recommendation to the FAC, it's largely irrelevant  
6 what the Commission thought the deferrals would be or  
7 what Mr. Hess thought it would be a year down the  
8 line.

9 MR. NOURSE: Okay. I think I understand.

10 EXAMINER SEE: Okay.

11 MR. NOURSE: May I proceed?

12 EXAMINER SEE: Yes, please do.

13 Q. (By Mr. Nourse) I think I can brief most  
14 of this and I don't want to delay further with all  
15 these objections.

16 Let's move on, Mr. Hess. Let me ask you,  
17 first of all, with regard to your background, you're  
18 not presenting yourself as a coal procurement expert  
19 in this case, correct?

20 A. That's correct.

21 Q. And you're not -- you didn't conduct a  
22 prudence review of any of these coal procurement  
23 agreements we've been discussing in this case, did  
24 you?

25 A. I did not.

1 Q. Okay. Now, let me discuss page 7 of your  
2 testimony. Well, let me get one more question before  
3 that.

4 These references you have in your  
5 testimony, quite a few of them to the audit report  
6 and you're stating things from the audit report,  
7 either quoting or your understanding what's been  
8 stated. In those references you're not attempting  
9 to -- it's not your intention to modify any of the  
10 audit report statements or findings or the testimony  
11 that the auditor gave about those findings in this  
12 proceeding, correct?

13 A. That's correct.

14 Q. Okay. Now, page 7, you state that your  
15 view is that "AEPSC's accounting violates the  
16 ratemaking principle that aligns the costs  
17 recoverable through rates with the benefits  
18 associated with such costs."

19 Okay, and this is referring to the  
20 2008 -- the January 2008 settlement agreement that's  
21 been discussed throughout this proceeding; is that  
22 accurate?

23 A. I think that's the code term that's been  
24 used for this, yeah, that's correct.

25 Q. But that's what you're referencing here

1 about AEP's accounting; is that true?

2 A. Yes.

3 Q. When you say in that statement I just  
4 quoted that the accounting violates ratemaking  
5 principles, are you suggesting that AEP should have  
6 accounted for these agreements differently than it  
7 did at the time?

8 A. I'm not sure I'm making an issue either  
9 with the GAAP accounting or the FERC compliance  
10 accounting. It is a ratemaking recommendation.

11 Q. So you're -- yes. As we sit here today  
12 you're not questioning or disputing the way the  
13 companies did their accounting for these agreements;  
14 is that true?

15 A. Only to the extent that flowing that  
16 through it was inconsistent with proper ratemaking  
17 principles.

18 Q. Right, that's your opinion as we sit here  
19 today looking back on those agreements. You'd like  
20 to -- you'd like to change the accounting based on a  
21 Commission order; is that fair?

22 A. I don't understand the question.

23 Q. Well, you said you're not challenging the  
24 accounting or you're not disputing the accounting  
25 that was done at the time in connection with these

1 agreements.

2 MR. CLARK: Objection, your Honor. Is  
3 there a question somewhere in here?

4 MR. NOURSE: I'm backing up to explain it  
5 again.

6 Q. Is that correct, sir?

7 A. Yeah, only to the extent that it was  
8 inconsistent with proper ratemaking principles.

9 Q. So you are suggesting that the company  
10 should have done different accounting at the time?

11 A. They can account for it however they want  
12 to.

13 Q. But are you suggesting the company should  
14 have done different accounting at the time of these  
15 agreements?

16 A. I'm saying that they did have an option  
17 to account for it as a regulatory liability, yeah.  
18 They could have requested an application for an  
19 accounting modification with the Commission to  
20 account for it as a regulatory liability and then  
21 have flowed that through properly to the FAC  
22 customers.

23 Q. And you think that procedure that you  
24 just outlined would have been appropriate in light of  
25 the fact that the companies weren't operating under a

1 fuel clause at the time?

2 A. Yes.

3 Q. Would you characterize the companies at  
4 that time, in 2007 and 2008, as being cost-regulated  
5 for fuel costs?

6 A. Mr. Nourse, that's actually a bigger  
7 question than I think you intend it to be. If I  
8 remember, the statute at the time said it had to be a  
9 market-based rate.

10 Q. Yeah. And I'm --

11 A. We did, I mean, the math of the  
12 calculation did carry the frozen 2001 rates through  
13 with percentage increases.

14 Q. I'm focused on accounting, I mean, I'm  
15 trying to ask you about accounting.

16 A. Okay.

17 Q. And what I'm asking is from an accounting  
18 perspective in order to create regulatory assets is  
19 it your understanding that the company would have to  
20 be cost regulated?

21 A. I believe that's one of the four criteria  
22 under FASB 71, yes.

23 Q. And is it your opinion that the companies  
24 were cost-regulated relative to fuel at that time?

25 A. Well, it was still a vertically



1 integrated utility company, and the last time the  
2 rates had been adjusted, they were cost-based.

3 Q. Is the answer yes, then?

4 MR. CLARK: Objection, your Honor. I'm  
5 not following how this is relevant yet.

6 EXAMINER JONES: Overruled.

7 MR. NOURSE: Can you read the question  
8 before his answer?

9 (Record read.)

10 MR. CLARK: Objection, your Honor. Can  
11 he restate the question?

12 EXAMINER JONES: Pardon?

13 MR. CLARK: I'm sorry, could I have him  
14 restate the question? I'm not sure I understand what  
15 the full question being asked was. It was kind of  
16 cut up into two parts.

17 MR. NOURSE: Let's back up and do it  
18 again, your Honor.

19 Q. (By Mr. Nourse) Is it your understanding,  
20 Mr. Hess, from an accounting standpoint in order to  
21 create a regulatory asset that the company needs to  
22 be cost regulated for the service?

23 MR. IDZKOWSKI: I'm sorry, your Honor.  
24 I'm having trouble hearing Mr. Nourse down at this  
25 end. I don't know if we're using microphones down

1 there. We weren't down here.

2 MR. NOURSE: Well, I can speak up.

3 That's fine.

4 Q. The question is, Mr. Hess, is it your  
5 understanding from an accounting standpoint that in  
6 order to create a regulatory asset, the company has  
7 to be cost regulated?

8 A. Yes.

9 Q. And at the time these settlement  
10 agreements were entered into, were the companies cost  
11 regulated for fuel?

12 A. Certainly the distribution companies were  
13 cost regulated and they were the ones who provided  
14 the standard service offer.

15 Q. And your statement applies to fuel costs?

16 A. They were providing the standard service  
17 offer.

18 Q. Is it your opinion then, Mr. Hess, that  
19 the companies could have a regulatory asset without  
20 Commission approval at that time based on these  
21 agreements?

22 A. Mr. Nourse, I don't know the answer to  
23 that. Again, my testimony doesn't speak to how the  
24 company could have accounted for this or should have  
25 accounted for it during 2008. My recommendation is a

1 ratemaking policy or recommendation.

2 Q. So your recommendation is not an  
3 accounting recommendation?

4 A. It is not.

5 Q. And it's not based on accounting?

6 A. My study was based upon accounting. My  
7 recommendation is to the rates that the company is  
8 requesting.

9 Q. And again, that's a prospective  
10 ratemaking recommendation; is that what you're  
11 saying?

12 A. I don't understand the question.

13 Q. Well, I'm trying to clarify what you just  
14 said. Your recommendation is or is not based on  
15 accounting principles?

16 A. My recommendation is based upon  
17 regulatory principles.

18 Q. So it's not based on accounting; is that  
19 correct?

20 A. It's not based upon accounting  
21 principles, correct.

22 Q. And were you able to answer my question  
23 as to whether the companies could have created a  
24 regulatory asset without a Commission order in  
25 2007-2008 relating to these settlement agreements?

1 A. Without a Commission order, no, they  
2 could not have.

3 Q. Okay. Now, let me ask you for purposes  
4 of this question just to assume that the companies  
5 had an active FAC clause throughout. In other words,  
6 it would have been continuous and not disappear  
7 during the early 2000 years like it did. Do you  
8 understand my parameter there? We have a  
9 continuous --

10 A. Well, it didn't disappear. It was  
11 rebundled into the generation rate. It was  
12 recovered.

13 MR. CLARK: Objection. I'll object. It  
14 calls for speculation.

15 MR. NOURSE: Fair enough. Fair enough.  
16 I'm asking him a hypothetical question.

17 EXAMINER JONES: That's the way I  
18 understood the question, was as a hypothetical.

19 Q. So if there had been a continuous FAC or  
20 EFC fuel clause, do you think the accounting for  
21 these agreements and the ratemaking treatment would  
22 have been -- what do you think it would have been  
23 under that example?

24 A. Are we specific to the [REDACTED] and  
25 the \$ [REDACTED] million?

1 Q. Yeah, let's start there.

2 A. Well, I mean the way it was accounted  
3 for, it was used as a contra expense to account 501  
4 so it probably would have flowed through that  
5 recovery mechanism.

6 Q. During that period in 2008 it would have  
7 flowed through.

8 A. I don't know the answer to that. You  
9 know, the argument could have been that it did affect  
10 the contract termination which started in 2009, and a  
11 similar recommendation to what I just made could have  
12 been made.

13 Q. Had the companies been operating under an  
14 FAC at that time?

15 A. Yes.

16 Q. Okay. Now, Mr. Hess, you discuss this  
17 January 2008 settlement agreement we've been talking  
18 about. You also make a recommendation regarding  
19 another contract support agreement that's referenced  
20 on page 2-24 of the audit report. Are you with me so  
21 far?

22 A. Could you let me get to 2-24? I just  
23 want to be sure I'm at the right one.

24 Q. Sure.

25 A. I have that one. Yes, that's correct.

1 Q. Now, in your view I gather you're viewing  
2 those two examples as examples where the cost and the  
3 benefit, if you will, are occurring in two different  
4 periods in time; is that true?

5 A. The cost and the benefits were accounted  
6 for in two different periods, yes.

7 Q. Yeah. And that's what you called the  
8 mismatch I believe --

9 A. Yes.

10 Q. -- is that true? Now, did you examine  
11 other examples where additional costs were incurred  
12 during the period in which the companies were  
13 operating outside of an FAC, such as the contract  
14 support that's discussed on pages 2-22 and 2 --  
15 through 2-24 of the audit report?

16 MR. CLARK: Objection, your Honor, beyond  
17 the scope. Mr. Hess's testimony does not discuss  
18 that particular contract support that Mr. Nourse  
19 references. There's no discussion of it at all.

20 MR. NOURSE: Your Honor, that's the whole  
21 point of my question. I'm asking him whether he  
22 considered any of those types of costs.

23 EXAMINER JONES: Mr. Nourse, I'm going to  
24 allow the question, but let's don't spend time on a  
25 lot of things that are not in his testimony.

1 MR. NOURSE: Well, I really had the one  
2 question, but we'll see what he says, see if I can  
3 move on.

4 MR. CLARK: Can we have the question  
5 reread, your Honor?

6 EXAMINER JONES: Yes, the question may be  
7 reread.

8 (Record read.)

9 A. Yes, we did. And in that instance felt  
10 that the FAC customer had paid its fair share of the  
11 costs, the total costs of that contract.

12 Q. Mr. Hess, let me ask you to turn to page  
13 5 of your testimony. And you're referring to,  
14 starting on lines -- it's question and answer 10.  
15 You're referring to a note receivable that Ohio Power  
16 received. Do you see that?

17 A. Yes, I have that.

18 Q. Okay. Now, with respect to that note  
19 receivable, that related to an additional settlement  
20 agreement that occurred in November of 2008; is that  
21 your understanding?

22 A. Yes, sir.

23 Q. And that payment, is it your  
24 understanding that that payment was brought about as  
25 an enforcement matter under the '92 contract for a

1 shortfall in delivery that occurred during 2008?

2 A. Yes.

3 Q. Okay. That payment, that settlement  
4 related to coal that was to be delivered in 2008,  
5 correct?

6 A. Yeah, I think our assumption was it was  
7 to be delivered in the latter part of 2008.

8 Q. Would it be fair to presume that Ohio  
9 Power would need to go purchase the shortfall coal  
10 somewhere else on the market?

11 A. Yeah, that was our assumption. We  
12 assumed it would have been booked to account 151 and  
13 part of that cost would have remained in effect at  
14 12/31/08 and burnt in 2009.

15 Q. So you assume that Ohio Power waited  
16 until after they signed the settlement agreement to  
17 go replace any of the shortfall tons that had  
18 occurred throughout the year in 2008?

19 A. I didn't make the assumption that it was  
20 afterwards. Again, the assumption in this issue was  
21 the shortfall occurred at the end of the year 2008  
22 and would have been booked to account 151, which  
23 would have had a value remaining at 12/31/08 of which  
24 a portion of that value would have been burnt in  
25 2009.



1 Q. But that was an assumption. You didn't  
2 really have knowledge of that.

3 A. Absolutely correct. Yeah. We got this  
4 data request I think three days before, the response  
5 to this data request three days before the testimony  
6 was due.

7 Q. Do you have any knowledge about how much  
8 spot coal Ohio Power did actually purchase in 2008?

9 A. I don't have an answer to that, no.

10 MR. NOURSE: That's all the questions I  
11 have. Thank you, Mr. Hess.

12 THE WITNESS: Thank you.

13 EXAMINER JONES: Mr. Clark, redirect?

14 MR. CLARK: May I have just a moment,  
15 your Honor?

16 EXAMINER JONES: Yes, you may.

17 MR. CLARK: No, thank you, your Honor.

18 EXAMINER JONES: Thank you. Mr. Hess, I  
19 believe you may step down.

20 THE WITNESS: Thank you.

21 EXAMINER JONES: I believe that you have  
22 marked, we've marked, and you did move the admission  
23 of Ed Hess testimony Exhibit 1 and 1A, the  
24 confidential and public versions. Is there any  
25 objection to the admission of those two documents?

1 MR. NOURSE: No.

2 EXAMINER JONES: Hearing none, both  
3 documents shall be admitted.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 EXAMINER JONES: Mr. Clark, do you have  
6 any further witnesses?

7 MR. CLARK: No, your Honor.

8 EXAMINER JONES: Let's go off the record  
9 for a second.

10 (Discussion off the record.)

11 EXAMINER JONES: Let's go back on the  
12 record. We had a discussion off the record about  
13 rebuttal. I think we are going to come back after  
14 lunch break and do a rebuttal. We are going to take  
15 a two-hour lunch break and reconvene at 2:30.

16 MR. CLARK: Thank you.

17 MR. NOURSE: Thank you, your Honor.

18 (At 12:20 p.m. a lunch recess was taken  
19 until 2:30 p.m.)

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Tuesday Afternoon Session,  
August 24, 2010.

- - -

EXAMINER JONES: Let's go back on the  
record. At this time, unless there are any issues  
that need to come before the Bench's attention, we  
will proceed with the rebuttal witnesses of the  
company.

Mr. Nourse, are you prepared to proceed?

MR. NOURSE: Mr. Satterwhite.

MR. SATTERWHITE: Thank you, your Honor.  
The company's first rebuttal witness will be Timothy  
M. Dooley.

EXAMINER JONES: Mr. Dooley, I remind you  
you're still under oath.

THE WITNESS: Yes, your Honor.

- - -

TIMOTHY M. DOOLEY  
having been previously sworn, as prescribed by law,  
was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Satterwhite:

Q. Mr. Dooley, did you prepare rebuttal  
testimony filed in this case on August 23rd, 2010?

A. Yes.

1 MR. SATTERWHITE: At this time, your  
2 Honor, I'd like to mark that rebuttal testimony as  
3 Company Exhibit No. 5.

4 EXAMINER JONES: It shall be so marked.

5 (EXHIBITS MARKED FOR IDENTIFICATION.)

6 Q. Do you have what's been marked as Company  
7 Exhibit No. 5 in front of you?

8 A. I do.

9 Q. And this was prepared by you?

10 A. Yes.

11 MR. SATTERWHITE: Just for sake of  
12 marking it, your Honor, we'll do the same as we did  
13 before. The confidential version will be Exhibit No.  
14 5 and 5A will be the public redacted version.

15 EXAMINER JONES: Thank you.

16 Q. Mr. Dooley, if I were to ask you all of  
17 these same questions today, would your answers be the  
18 same?

19 A. Yes, they would.

20 Q. Do you have any changes to anything  
21 within this testimony?

22 A. No.

23 MR. SATTERWHITE: I now offer the witness  
24 for cross-examination.

25 EXAMINER JONES: Thank you,

1 Mr. Satterwhite.

2 Mr. Idzkowski, do you have questions for  
3 this witness?

4 MR. IDZKOWSKI: Thank you, your Honor.  
5 We do not.

6 EXAMINER JONES: Thank you.  
7 IEU-Ohio have any questions?

8 MR. CLARK: No questions for this  
9 witness, your Honor.

10 EXAMINER JONES: Thank you.  
11 Staff?

12 MR. MARGARD: No questions, your Honor,  
13 thank you.

14 EXAMINER JONES: Thank you, Mr. Dooley.  
15 You may step down.

16 MR. SATTERWHITE: I will move for  
17 admission, before you can do it for me, of Exhibit 5  
18 and 5A of the company.

19 EXAMINER JONES: Objections to admission  
20 of Company Exhibits 5 and 5A?

21 Hearing none the document shall be  
22 admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 MR. SATTERWHITE: Thank you.

25 EXAMINER JONES: Next witness.

1 MR. NOURSE: Thank you, your Honor. The  
2 companies call Jason T. Rusk back to the stand.

3 EXAMINER JONES: Mr. Rusk, I'll remind  
4 you also you're still under oath.

5 THE WITNESS: Thank you, sir.

6 - - -

7 JASON T. RUSK  
8 having been previously sworn, as prescribed by law,  
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Nourse:

12 Q. Mr. Rusk, did you file, cause to be  
13 filed, rebuttal testimony in these cases on  
14 August 23rd?

15 A. Yes.

16 Q. And that was a public version and a  
17 confidential version of rebuttal testimony?

18 A. Yes.

19 MR. NOURSE: Your Honor, I'd like to mark  
20 those exhibits as Companies' Exhibit No. 6 for the  
21 confidential rebuttal and Exhibit 6A for the public  
22 version.

23 EXAMINER JONES: The documents shall be  
24 so marked.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)

1 Q. Mr. Rusk, did you prepare this testimony  
2 or cause it to be prepared under your direction?

3 A. I did.

4 Q. Do you have any corrections, additions,  
5 or changes you'd like to make to the written  
6 testimony?

7 A. The only issue that might be questionable  
8 was after this was filed the date of the signing of  
9 the settlement agreement may have been  
10 January 2nd instead of January 1st. So there's a  
11 couple instances where it's referred to in here as  
12 January 1, and I could go through each individual one  
13 or if everybody just recognizes that it was January 2  
14 instead of January 1.

15 Q. Okay. Thank you.

16 A. That's the only thing I can think of.

17 Q. With that correction, those corrections,  
18 if I were to ask you all the same questions under  
19 oath today, would your answers be the same as in the  
20 written version?

21 A. Yes, they would.

22 MR. NOURSE: Thank you, your Honor. I'd  
23 like to offer Mr. Rusk for cross-examination.

24 EXAMINER JONES: Thank you, Mr. Nourse.

25 Just so the document is clear, I believe

1 there's two places in your testimony, Mr. Rusk, if  
2 you could take a quick look at them. I'm sorry,  
3 there's three places.

4 THE WITNESS: I see one on page 2, line  
5 13 and on line 24. I believe on page 3, line 22.

6 EXAMINER JONES: All right. Page 4 line  
7 24?

8 THE WITNESS: Yeah, page 4, 23, 24,  
9 whatever. I believe that's it, your Honor.

10 EXAMINER JONES: I believe that's it  
11 also. Okay, thank you.

12 Mr. Idzkowski, any questions for this  
13 witness?

14 MR. IDZKOWSKI: Yes, your Honor, thank  
15 you.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Idzkowski:

19 Q. Mr. Rusk, you testify in this rebuttal  
20 testimony -- do you have a copy of that in front of  
21 you?

22 A. I do, sir.

23 Q. Can you look at page 2 of that, please.

24 A. Yes.

25 Q. Strike that. Can you look at page 4,



1 please, where you're discussing the valuation of the  
2 coal reserve.

3 A. Yes.

4 Q. You were in the hearing yesterday when  
5 the auditor testified about two valuations of this  
6 reserve, correct, one in 2007 and one in April of  
7 2009?

8 A. There are two reports, one is a valuation  
9 report; the other one's a feasibility report. Is  
10 that what you're referring to?

11 Q. Yes. Do you recall that testimony?

12 A. Yes, I do.

13 Q. And do you have a copy of the audit  
14 report there with you, too?

15 A. I do.

16 MR. IDZKOWSKI: And, your Honor, his  
17 microphone, I don't know if anyone else is perceiving  
18 this, but it's intermittently breaking up.

19 EXAMINER JONES: It is. Maybe if you  
20 move the microphone closer to you.

21 THE WITNESS: Would this be better?

22 MR. IDZKOWSKI: I think it is so far.

23 THE WITNESS: Okay.

24 Q. Do you have a copy of the audit report  
25 there?

1 A. I do.

2 Q. And at page 2-21, that's discussing the  
3 two different values of the [REDACTED] reports, correct?

4 A. Is there a specific part of the page?

5 Q. Yes. I'll refer you to the last sentence  
6 in the large paragraph on 2-21.

7 A. Yes, I see that.

8 Q. It says, "Using [REDACTED] forecast, the  
9 value of the reserve on a net present value basis  
10 using an [REDACTED] percent discount rate would be  
11 \$[REDACTED] million." Do you see that?

12 A. I see that statement is there, yes.

13 Q. So we have two [REDACTED] -- well, first, in  
14 2007 AEP hired [REDACTED] Company to do a mine report, a  
15 mine assessment, correct?

16 A. That is correct.

17 Q. And then in 2009 they hired [REDACTED] again  
18 and had them do a report entitled "[REDACTED]"

19 [REDACTED]  
20 [REDACTED], "same company, two different  
21 valuations, correct?

22 A. Same company, two different studies, yes.

23 Q. And you were here yesterday when the  
24 auditor testified that she had reviewed the [REDACTED]  
25 report and that the value that was in that 2009

1 report was between [REDACTED] million and [REDACTED] million,  
2 correct?

3 A. There's an assessment to which the  
4 auditor is speaking to and that is using -- when this  
5 particular price -- or I should say this number is  
6 derived, it's using [REDACTED] forward pricing curve  
7 assumptions in that feasibility study, yes.

8 THE WITNESS: Technical change here.  
9 Excuse me, did you hear that sir?

10 MR. IDZKOWSKI: I think I did. Thank  
11 you, Mr. Rusk. Thank you.

12 Q. So we can call it a feasibility study or  
13 refer to it by any name, but the fact is the reserve  
14 was valued in 2009 by the [REDACTED] Company, the same  
15 company that did the valuation in 2007, at [REDACTED] to  
16 [REDACTED] million, correct?

17 A. Under a series of appropriate, or I  
18 should say, their particular series of assumptions  
19 there was -- yes.

20 Q. Thank you. That's all the questions I  
21 have for -- I'm sorry, maybe -- strike that. I have  
22 another, just another couple.

23 On page 2, can you look at your testimony  
24 there.

25 A. Yes, sir.

1 Q. And, Mr. Rusk, you were referring --  
2 you're referring here starting on line 16, the  
3 question which begins on page 9, and this is in  
4 regard to the 2008 shortfall negotiation. Do you see  
5 that?

6 A. You're on line 15-16, is that what you're  
7 talking about?

8 Q. Yeah, going down to your answer starting  
9 on line 21, sir.

10 A. Yes. Well, are you on page 2?

11 Q. I'm sorry, 3. I'm sorry.

12 A. Okay.

13 Q. You'll never find it on 2.

14 A. Okay. Yes, I'm on page 3, lines 8  
15 through 12. Is that --

16 Q. Yes.

17 A. Okay.

18 Q. Do you see where you're discussing this  
19 2008 shortfall negotiation?

20 A. Yes, sir.

21 Q. Okay. And this is in reference also to,  
22 correct me if I'm wrong, [REDACTED] tons of  
23 underdelivery in 2008?

24 A. This is in regard to a shortfall in  
25 deliveries in 2008 of [REDACTED] tons.

1 Q. Thank you. And who, my question is, who  
2 contacted who about the -- regarding this nondelivery  
3 under the contract? Who initiated the contact in  
4 this regard in this matter?

5 A. Let me maybe explain this and that would  
6 possibly add some clarity to the question or the  
7 answer that you're seeking. Throughout the course of  
8 the year in 2008, the counterparty had been missing  
9 shipments and failing to deliver their quantity, so  
10 throughout the year they had a shortfall in their  
11 deliveries.

12 Around November it was, since the  
13 contract was coming to a termination at the end of  
14 the year, it was becoming obvious that they were not  
15 going to be able to make those shipments in the year,  
16 and that was the year we were very short on  
17 deliveries and inventories were stressed and we did  
18 need the coal, so it was negotiated that the  
19 [REDACTED]-ton amount that they could not deliver by the  
20 end of the year, was projected to the end of the year  
21 at that point, would then be subject to this  
22 particular settlement.

23 Q. Do you know who contacted who, though?

24 A. As I say, since they were short  
25 throughout the course of the year, there was dialogue

1 between the two parties, so it's hard to say which  
2 actually initiated the ultimate negotiation.

3 Q. Is it possible that AEP recognized that  
4 by that last quarter of 2008 they could do without  
5 the coal for the remainder of 2008?

6 A. No. I don't think that that's  
7 necessarily the situation. We were very strained in  
8 2008 as far as deliveries. And inventories were  
9 extremely low through the course of that year.

10 Q. Was it because -- the shortfall, the  
11 result of this company saying they couldn't deliver  
12 the coal?

13 A. I don't know exactly what each individual  
14 shipment shortfall would have been. The rationale  
15 behind -- my guess is that they were probably having  
16 to do with trains that were missed, and there's  
17 probably a great deal of finger-pointing to the  
18 railroad and to the mine not being, you know, having  
19 the production available and so on, that's typically  
20 how these occur.

21 Q. Did you testify a moment ago that AEP  
22 didn't need the coal?

23 A. No; I said that we were short on coal in  
24 2008.

25 Q. Thank you.

1           A.   And to my knowledge we were not long on  
2 coal in 2008.

3           Q.   All right. Thank you for clarifying  
4 that.

5                   Did AEP look into whether any replacement  
6 coal was available?

7           A.   It had been making purchases of  
8 replacement coal throughout the year for not only  
9 this supplier, but others as well, and for whatever  
10 short that we had -- open position that we had going  
11 into the 2008 year.

12           Q.   So did AEP purchase replacement coal to  
13 replace this underdelivery of [REDACTED] tons?

14           A.   It purchased not only coal to replace the  
15 [REDACTED] shortfall here, but other shortfalls as well.

16           Q.   And was that coal that was purchased as  
17 replacement coal, those [REDACTED] tons, was that coal  
18 burned and accounted for in 2008 or 2009?

19           A.   I would assume that the level of our  
20 inventories being so low, that the majority of this  
21 coal was -- whatever replacement coal was purchased  
22 was probably consumed during 2008. Certainly there's  
23 an inventory level, and I hope you understand that  
24 the concept, that we don't have any color coding for  
25 the coal that comes in so we don't know exactly which

1 lump of coal is burned in what year, but it's --  
2 certainly if inventory's not very big, then you would  
3 assume that the majority of this would have been  
4 consumed in the course of the year.

5 Q. So that's your assumption. But is it  
6 possible that part of this [REDACTED] tons was burned in  
7 2009? Is that a possibility?

8 A. To the extent that whatever was purchased  
9 and placed into inventory in 2008 survived, you know,  
10 the pile and was consumed in 2009, that is correct.

11 Q. What time of year is most of the coal  
12 burned for generation? Is more burned at certain  
13 periods of the year than others?

14 A. The load for the company is seasonal in  
15 certain respects, but then there are a number of  
16 plants that burn fairly regularly throughout the  
17 year. The only thing that would modify that might be  
18 if there were an outage at a facility or something  
19 which would impact its ability to consume coal. But  
20 for the most part, you're going to see heavy  
21 consumption periods in the winter months and heavy  
22 consumption in the summer months when it's hot, such  
23 as what we just experienced in July and August.

24 MR. IDZKOWSKI: That's all the questions  
25 I have. Thank you, Mr. Rusk.



1 EXAMINER JONES: Thank you.

2 Mr. Clark?

3 MR. CLARK: Just a moment, your Honor.

4 EXAMINER JONES: Sure.

5 MR. CLARK: I'm ready, your Honor. Thank  
6 you for the time.

7 EXAMINER JONES: Okay. Go ahead.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Clark:

11 Q. Mr. Rusk, I want to ask you regarding the  
12 accounting for fuel inventory. Do you use a first  
13 in/last out or last in/last out method of determining  
14 the cost of fuel that is burned from inventory?

15 A. I believe that what we use is weighted  
16 average cost accounting, but that, again, is probably  
17 a question for Witness Dooley.

18 MR. CLARK: Thank you.

19 EXAMINER JONES: Staff have any  
20 questions?

21 MR. MARGARD: No, your Honor. Thank you.

22 EXAMINER JONES: Any further redirect?

23 MR. NOURSE: I'm sorry, your Honor, are  
24 we done with this witness?

25 EXAMINER JONES: Do you have anything

1 further of this witness?

2 MR. NOURSE: No.

3 EXAMINER JONES: Okay. We are finished.  
4 Thank you, Mr. Rusk.

5 THE WITNESS: Thank you.

6 MR. NOURSE: And with that, your Honor,  
7 I'd move for admission of Companies' Exhibit No. 6  
8 and 6A.

9 EXAMINER JONES: Thank you, Mr. Nourse.  
10 Any objection to the admission of  
11 Companies' Exhibit 6 and 6A?

12 Hearing none, those two documents shall  
13 be admitted.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 EXAMINER JONES: Mr. Nourse, you may  
16 proceed.

17 MR. NOURSE: Thank you, your Honor.  
18 The companies call Philip J. Nelson back to the  
19 stand.

20 EXAMINER JONES: Mr. Nelson, I'll just  
21 remind you also that you're still under oath.

22 THE WITNESS: Yes, thank you.

23 And also thank you for accommodating my  
24 schedule.

25 - - -

PHILIP J. NELSON

having been previously sworn, as prescribed by law,  
was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Nourse:

Q. Mr. Nelson, did you cause to be filed  
written rebuttal testimony in these cases on  
August 23rd, 2010?

A. I did.

Q. And was there a confidential and a public  
version of that testimony?

A. Yes.

MR. NOURSE: Your Honor, I'd like to mark  
Companies' Exhibit 7 and 7A, 7A being the public  
version.

EXAMINER JONES: Those documents shall be  
so marked.

(EXHIBITS MARKED FOR IDENTIFICATION.)

Q. Mr. Nelson, do you have those exhibits in  
front of you?

A. Yes.

Q. And was this testimony prepared by you or  
under your direction?

A. It was.

Q. Do you have any changes, corrections, or

1 additions you'd like to add?

2 A. No, I don't.

3 Q. If I asked you all these questions under  
4 oath today, would your answers be the same?

5 A. They would.

6 MR. NOURSE: Your Honor, the witness is  
7 available for cross.

8 MR. CLARK: Your Honor, before we begin  
9 cross, would you prefer to take motions to strike  
10 before cross or before IEU has its own cross?

11 EXAMINER JONES: Let's take any motions  
12 to strike now.

13 MR. CLARK: Your Honor, IEU-Ohio makes a  
14 motion to strike the pages -- IEU moves to strike the  
15 rebuttal testimony of Philip J. Nelson page 1  
16 beginning with "January 2008 Settlement Agreement"  
17 through page 3 of that particular portion of the  
18 rebuttal testimony.

19 As you know, your Honor, the rebuttal  
20 testimony is limited to testimony that the party  
21 could not have presented as part of the direct case,  
22 and essentially this particular section of  
23 Mr. Nelson's rebuttal testimony just attempts to  
24 bolster or kind of resupport their case in chief.

25 And I can point you to the particular

1 pages, both of the witness's direct testimony as well  
2 as the direct testimony of Mr. Rusk, that pretty  
3 much, for all intents and purposes, defends the  
4 actions in the face of the audit recommendation. So  
5 the audit recommendation raised the issues and  
6 essentially we now believe it's not proper rebuttal.

7 MR. NOURSE: May I respond, your Honor?

8 EXAMINER JONES: Yes, you may.

9 MR. NOURSE: This section, your Honor,  
10 applies some of the reasoning, policy arguments, and  
11 testimony from Mr. Nelson's direct testimony in  
12 response to OCC Witness Duann, as stated on page 2,  
13 lines 4 and 5. The auditor did not make a  
14 recommendation as to any reduction of the companies'  
15 underrecovery. The two intervenor witnesses have,  
16 and that's referenced with Mr. Hess and Dr. Duann on  
17 line 13 as well, page 2.

18 This is a very short discussion that  
19 applies to the earlier testimony in response to  
20 Mr. Hess and Dr. Duann. I don't believe it could  
21 have possibly been presented originally in the direct  
22 testimony that was filed the same day as Dr. Duann  
23 and Mr. Hess's testimony was filed.

24 MR. CLARK: Your Honor, if I may, in  
25 question 2, the very beginning, he admits that he

1 already addressed the topics or issues that were  
2 brought up by Mr. Hess and Mr. Duann. "Do the issues  
3 you addressed in your direct testimony in connection  
4 with the audit recommendation No. 1 apply to IEU's  
5 and OCC's proposed treatment of 2008 Settlement  
6 Agreement proceeds?"

7 Look at page 2, line 10, "Yes, I have  
8 already discussed the serious flaws in reducing  
9 OPCo's 2009 deferred fuel balance."

10 MR. NOURSE: Yeah, your Honor, the -- I  
11 think that's a mischaracterization of the testimony.

12 MR. CLARK: Your Honor, it's a direct  
13 read from the testimony.

14 MR. NOURSE: Let me explain. When he  
15 said "apply," again, it's a new question, does what  
16 you said before apply in response to these  
17 recommendations you'd not seen when you wrote your  
18 direct testimony? That is, again, an attempt to be  
19 efficient and not repeat the second part he quoted;  
20 it was not fully quoted. The end of that says, will  
21 not be repeated -- we "will not repeat them here."

22 So again, the whole purpose of this was  
23 not to be redundant at all but to address incremental  
24 questions not raised in the audit report as to a  
25 party directly recommending reduction of the

1 underrecovery. I think it's proper rebuttal and very  
2 short and direct, to the point.

3 MR. CLARK: Your Honor, if I may respond?

4 EXAMINER JONES: Last word.

5 MR. CLARK: To Mr. Nourse's point, if you  
6 look at sentence one on page 2, it's the  
7 recommendation and will suggest the Commission  
8 review, and you have the conclusion. All it is is  
9 supporting the conclusion that the auditor raises the  
10 specter of in its report.

11 EXAMINER JONES: All right. Give me just  
12 a minute.

13 Mr. Clark, I acknowledge the arguments  
14 that you make in your motion to strike; however, I'm  
15 going to deny the motion. I will allow you to  
16 cross-examine on these statements in here.

17 MR. CLARK: Thank you, your Honor.

18 EXAMINER JONES: Any further motions to  
19 strike?

20 If not, Mr. Idzkowski, I believe we were  
21 back to you.

22 MR. IDZKOWSKI: Thank you, your Honor.

23 CROSS-EXAMINATION

24 By Mr. Idzkowski:

25 Q. Good afternoon, Mr. Nelson.

1 A. Good afternoon.

2 Q. I'd like to ask you about your statement  
3 in your testimony that OCC and IEU's position  
4 constitutes single-issue rate-making. Do you recall  
5 that statement?

6 A. Yes.

7 Q. Would you agree that Senate Bill 221  
8 provides for an electric distribution utility to  
9 submit as a separate matter from the main ESP case  
10 its fuel costs for review by the Commission in a  
11 separate and distinct case?

12 MR. NOURSE: Your Honor, I'm sorry, I'm  
13 going to object. I think that's a vague question.  
14 I'm not clear whether he's asking that you could  
15 establish a fuel clause outside of an ESP case under  
16 the law.

17 EXAMINER JONES: Can you rephrase it,  
18 Mr. Idzkowski?

19 MR. IDZKOWSKI: May I have the question  
20 read? I tried to -- I can, but I tried to be as  
21 succinct and as clear as possible.

22 Could I have the question read back,  
23 please, to see if the witness knows how to answer it?

24 (Record read.)

25 EXAMINER JONES: I'm going to allow the



1 witness to answer the question, if he can.

2 A. Yeah, I don't know how to answer that  
3 question. It's too broad. Can you be more specific?

4 Q. Well, would you agree -- maybe we can get  
5 back to it and maybe we can get to this point another  
6 way. Would you agree that this case is in large part  
7 about determining the proper amount of AEP's fuel  
8 costs that customers should be made to pay?

9 A. Yes.

10 Q. And would you agree that an investigation  
11 of the factors that contribute to that fuel cost is  
12 appropriate in this case?

13 A. Yes.

14 Q. And would you agree that AEP's fuel  
15 contracts and fuel contract negotiations have set the  
16 fuel costs that AEP is seeking to recover in this  
17 proceeding?

18 A. Yes. Contracts that extended into 2009  
19 set the fuel costs that should be reviewed in this  
20 proceeding.

21 Q. Thank you.

22 MR. IDZKOWSKI: I think that answers my  
23 question, your Honor. That's all the questions I  
24 have.

25 EXAMINER JONES: Thank you.

1 Mr. Clark?

2 MR. CLARK: Actually, Mr. Randazzo is  
3 going to handle cross of this witness.

4 EXAMINER JONES: Okay.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Randazzo:

8 Q. Good afternoon, Mr. Nelson.

9 A. Good afternoon.

10 Q. You work for the service company; is that  
11 correct?

12 A. That's correct.

13 Q. For AEP. Do you have any decision-making  
14 authority for Ohio Power?

15 A. Decision-making authority, no. I advise  
16 folks in Ohio Power.

17 Q. And who would you provide advice to at  
18 Ohio Power?

19 A. Various individuals, including Joseph  
20 Hamrock, Selwyn Dias, others.

21 Q. Mr. Hamrock is the president of Ohio  
22 Power?

23 A. Yes.

24 Q. And he would have decision-making  
25 authority with regard to any actions taken by Ohio

1 Power; is that correct?

2 A. Yes. I would think he would have  
3 decision-making authority.

4 Q. Are any of the witnesses that have  
5 testified on behalf of the utilities in this case  
6 people that have decision-making authority with  
7 regard to Ohio Power or Columbus & Southern?

8 A. Well, I think if you act as an agent for  
9 Ohio Power and Columbus Southern, then I would assume  
10 that they have some decision-making authority.

11 Q. And who that has testified thus far in  
12 this proceeding on behalf of Columbus Southern and  
13 Ohio Power has decision-making authority for either  
14 utility?

15 A. I would think that Mr. Rusk would in his  
16 role, he would act on behalf of the operating  
17 companies, in his role, in certain contractual  
18 matters.

19 Q. Again; as agent?

20 A. I'm not an attorney, so I don't know the  
21 circumstances there. I don't want to mislead.

22 Q. Who made the decision to accept the  
23 buyout arrangement with [REDACTED]?

24 A. I don't know.

25 Q. Do you know why they made the decision to

1 accept it?

2 A. No.

3 Q. Who made the decision to accept the  
4 arrangement with [REDACTED]?

5 A. I don't know.

6 Q. Do you know why they made the decision?

7 A. Well, not specifically.

8 Q. Thank you.

9 A. I mean, I would say that in general they  
10 made the decision because it was a good business  
11 decision. In all these instances I would --

12 Q. But you do not know --

13 A. Pretty sure they would --

14 Q. You do not know why the decision to make  
15 the [REDACTED] arrangement was made by the appropriate  
16 person at Ohio Power or Columbus & Southern, do you?

17 MR. NOURSE: Object.

18 Q. Your own personal knowledge.

19 MR. NOURSE: I object. I think that  
20 question is argumentative and it assumes that  
21 Mr. Nelson would be the only witness that's offered  
22 testimony in this proceeding that could answer that  
23 question when Mr. Rusk has been on the stand twice  
24 and indicated clearly his responsibility for fuel  
25 procurement decisions.

1 EXAMINER JONES: I'm going to overrule  
2 the objection. The witness can answer the question.

3 Do you need it read back?

4 THE WITNESS: Yes.

5 (Record read.)

6 A. Do I know why the person at Ohio Power or  
7 CSP made the decision? I don't know that they didn't  
8 make the decision. I don't know who in particular  
9 made the decision around these contracts.

10 Q. Okay.

11 A. Or negotiations.

12 Q. And as part of your responsibility in  
13 this case, did you attempt to inquire as to who made  
14 the decision to accept the [REDACTED] arrangement?

15 A. No, I don't believe I asked that  
16 question.

17 Q. Did you attempt to make inquiry as to who  
18 made the decision to accept the [REDACTED] arrangement?

19 A. No, I didn't ask particularly who made  
20 the final decision.

21 Q. Okay. Now, in your rebuttal testimony,  
22 am I correct that there's nothing in your rebuttal  
23 testimony that addresses anything that the auditor  
24 said? Is that correct?

25 Well, I didn't think that was a trick

1 question. I'll withdraw it and ask you this: In  
2 your testimony on page 1, at lines 18 through 23, am  
3 I correct there that you're describing the scope of  
4 your rebuttal testimony in those lines, lines 18  
5 through 23?

6 A. Yes, I'm describing the purpose of my  
7 testimony.

8 Q. Your rebuttal testimony.

9 A. My rebuttal testimony.

10 Q. Okay. Now, you spend a lot of time  
11 attempting to characterize positions of OCC and the  
12 Industrial Energy Users, or actually the witnesses  
13 that are testifying on behalf of those two entities,  
14 and I'd like to ask you a question to help me  
15 characterize your position.

16 If Ohio Power or Columbus & Southern did  
17 something in 2008 to increase the costs that they  
18 then push into the fuel adjustment clause in 2009,  
19 are you saying that the PUCO cannot do anything to  
20 adjust the 2009 costs if the adjustment depends on an  
21 examination of things that took place in 2008?

22 MR. NOURSE: I object, your Honor, to the  
23 characterization of pushing anything into 2009. I  
24 don't think there's any evidence in this record that  
25 supports that.

1 EXAMINER JONES: Objection overruled.

2 A. Yes, I don't believe that's my position  
3 with respect to pushing anything. I think what  
4 occurred is we booked the transactions according to  
5 the accounting requirements. Some costs in 2008 --  
6 related to 2008 contracts naturally fell into 2009.

7 Q. Okay:

8 A. Likewise, as far as payments made in  
9 2008, there were certain payments made that we  
10 absorbed because we didn't have a fuel clause and we  
11 didn't attempt to push those payments we made into  
12 2009 to recover. We honored the deal that was made  
13 in the ESP that our fuel clause began in 2009.

14 And as I said in my rebuttal testimony, I  
15 very much like to have had the fuel clause back in  
16 2008 because when you take all these transactions  
17 together and don't cherry-pick transactions, our fuel  
18 costs went up, our underrecovery balance would have  
19 been much larger than it is today if we had a fuel  
20 clause in 2008..

21 Q. Okay. Now I'd like you to answer my  
22 question.

23 A. I believe I did.

24 Q. No, you didn't. I want to understand  
25 whether or not you believe it's appropriate for the

1 Public Utilities Commission of Ohio to examine costs  
2 that AEP-Ohio has placed in the FAC for recovery in  
3 2009, even those arising from activities that  
4 occurred pre-2009. Do you think it's appropriate for  
5 the Commission to examine the eligibility of those  
6 costs and whether or not they're subject to recovery  
7 through the FAC? That's my question.

8 A. I think it is appropriate for the Public  
9 Utilities Commission to examine any costs that  
10 occurred in 2009 related to the FAC. That's what  
11 we're here for, is a review of 2009 costs.

12 Q. Right. And let me ask you another  
13 question. Are you saying that the PUCO cannot reduce  
14 the costs eligible for recovery through the 2009 FAC  
15 if the Commission determines that the costs are  
16 related to post-2009 fuel expense?

17 MR. NOURSE: Your Honor, I object. His  
18 prior question asked about appropriateness. This  
19 question is asking whether the Commission can or  
20 cannot do something. I think it's a legal  
21 conclusion.

22 EXAMINER JONES: Any response?

23 MR. RANDAZZO: I'll restate the question.

24 EXAMINER JONES: Thank you.

25 Q. Are you saying that the PUCO should not



1 reduce the costs eligible for recovery through the  
2 2009 FAC if the Commission determines that the costs  
3 are related to post-2009 fuel deliveries?

4 A. I'm not sure what the Commission can or  
5 can't do; however, I don't think there's any  
6 transactions or events in this audit period that  
7 would warrant that type of treatment.

8 Q. Well, would you answer my question now,  
9 sir.

10 A. I believe I did. I said the Commission  
11 could -- I said I don't know whether the Commission  
12 could or couldn't do anything beyond the audit  
13 period, but --

14 Q. Well, if there are costs of fuel for  
15 2013, for example, you think that they're  
16 appropriately trebable through the 2009 FAC?

17 A. I don't see how that's real relevant to  
18 2009.

19 Q. Did you review the responses to the  
20 interrogatories that AEP provided to IEU?

21 A. I reviewed some.

22 Q. Did you review Mr. Hess's testimony?

23 A. Yes, I read Mr. Hess's testimony.

24 Q. Did you review the interrogatory  
25 responses that AEP provided to IEU that were attached

1 to Mr. Hess's testimony?

2 A. Not in any detail.

3 Q. So you prepared rebuttal testimony to  
4 respond to Mr. Hess's testimony without reviewing in  
5 detail the attachments to Mr. Hess's testimony; is  
6 that correct?

7 A. Well, if they were data response, I  
8 probably wouldn't have rebutted our own data  
9 responses.

10 Q. Well, what portions of Mr. Hess's  
11 testimony did you not review?

12 A. I believe I read his full testimony.

13 Q. You believe you did?

14 A. Yes, I believe I did.

15 Q. Did you read the full testimony of  
16 Dr. Duann?

17 A. Yes. I think I did.

18 Q. And when did you do that?

19 A. At different times.

20 Q. And did you review all the data responses  
21 that Columbus & Southern or Ohio Power provided to  
22 OCC?

23 A. No, I didn't review them all. No.

24 Q. Now, earlier today during  
25 cross-examination of Mr. Hess by your counsel, I

1 believe you were here, correct?

2 A. Yes.

3 Q. In the hearing room.

4 A. I was.

5 Q. And you'll recall that there were some  
6 questions of Mr. Hess by your counsel that went to  
7 the issue of whether or not Ohio Power/Columbus &  
8 Southern could establish a regulatory asset or  
9 regulatory liability. Do you recall that line of  
10 questioning by your counsel?

11 A. Yes.

12 Q. Now, I took the thrust of the questions  
13 from your counsel as suggesting that because Columbus  
14 & Southern and Ohio Power are not rate regulated  
15 based on traditional cost of service, that it would  
16 not be possible for either utility to establish a  
17 deferred asset or deferred liability; is that the way  
18 you understood -- regulatory asset or regulatory  
19 liability. Is that the way you understood the  
20 questions?

21 MR. NOURSE: Your Honor, I object. This  
22 is not related to the rebuttal testimony, and  
23 Mr. Randazzo's taking statements and implications and  
24 arguments from cross-examination that I conducted. I  
25 don't think it's appropriate cross for this rebuttal

1 testimony.

2 MR. RANDAZZO: Well, with a little  
3 license, your Honor, given our efforts to try and  
4 accommodate the schedule, I will connect this up in  
5 my next question.

6 EXAMINER JONES: Please do, because right  
7 now I don't see how it's related to the rebuttal  
8 testimony.

9 MR. RANDAZZO: I will.  
10 Strike my question.

11 Q. (By Mr. Randazzo) Mr. Nelson, you talk  
12 about the deferred fuel balance that is presently  
13 being carried by Ohio Power, correct, in your rebuttal  
14 testimony.

15 A. My rebuttal testimony mentioned that the  
16 other witnesses, the other parties' witnesses are  
17 trying to reduce that deferred fuel balance.

18 Q. Yeah. And that deferred fuel balance is  
19 currently what, a regulatory asset?

20 A. It's a regulatory asset.

21 Q. Right. How did you accumulate that  
22 regulatory asset, sir, if you know?

23 A. The regulatory asset was begun January 1,  
24 2009, based on the fact we had a fuel clause at that  
25 time, and it compared the revenues received from

1 customers related to fuel to the expense of fuel paid  
2 by the company on a retail basis, and then deferred  
3 the difference.

4 Q. Now, prior to the establishment of the  
5 electric security plan for Ohio Power and Columbus &  
6 Southern, isn't it true that Columbus & Southern and  
7 Ohio Power established regulatory assets and  
8 regulatory liabilities in conjunction with  
9 arrangements related to the acquisition of  
10 Monongahela Power and the arrangement that allowed  
11 Ormet to return to the AEP-Ohio service territory?

12 MR. NOURSE: Your Honor, I object again.  
13 These prior pre-ESP deferrals, regulatory assets,  
14 were the subject of my cross-examination. They are  
15 not the subject of -- Mr. Nelson just explained the  
16 underrecovery that he's talking about in his  
17 testimony commenced with the ESP case.

18 MR. RANDAZZO: I'll withdraw the  
19 question. It's a matter of public record.

20 EXAMINER JONES: Thank you.

21 Q. You say on the bottom of page 2 that, or  
22 you assure us that Ohio Power would have been very  
23 desirous of having a fuel clause in 2008 on the  
24 bottom of page 2. Why?

25 A. Because Ohio had to absorb the increased

1 fuel costs that occurred in 2008 and reduced earnings  
2 pretty dramatically from 2007.

3 Q. And by the way, the earnings numbers that  
4 you show at the top of page 3, are those total  
5 company numbers?

6 A. They are.

7 Q. Yeah. And what was the return -- you do  
8 not include in your testimony the return on equity  
9 associated with the PUCO jurisdiction, do you?

10 A. No.

11 Q. And in Ohio Power's case, am I correct  
12 that Ohio Power has about over 8,000 megawatts of  
13 generating capacity?

14 A. That's right.

15 Q. And that the retail peak demand is on the  
16 order of 5,000 megawatts.

17 A. I would say that's in the ballpark.

18 Q. So in Ohio Power's case, a fair amount of  
19 its generating capacity is utilized to support sales  
20 to other AEP operating companies or off-system sales,  
21 correct?

22 A. That's correct.

23 Q. And the earned return on equity of Ohio  
24 Power in 2008 would be affected by the business  
25 conditions related to those two business segments,

1 correct?

2 A. Yes.

3 Q. Would it be correct, sir, that the  
4 existence of a fuel adjustment clause operates to  
5 transfer business and financial risk to customers,  
6 from the utility to the customers?

7 A. Provides protection from various changes  
8 in fuel, so yes, it does reduce some risk.

9 Q. For the utilities.

10 A. For the utilities.

11 Q. And conversely increases the risk for the  
12 customers, right?

13 A. I haven't really thought that one  
14 through, but it might be a good assumption, except in  
15 Ohio you have a unique situation where customers can  
16 switch, so you have some optionality to go elsewhere.

17 Q. Let's talk about that a little bit.  
18 During the electric security plan period, in other  
19 words, during 2009, '10, and '11, customers would  
20 have the ability to switch and avoid the FAC charge  
21 as a result, which is what I think you just said; is  
22 that correct?

23 A. Yes.

24 Q. Okay. Now, with regard to the  
25 accumulated deferrals on Ohio Power, am I also

1 correct that whatever the balance associated with  
2 that deferral is going into 2012, that deferred  
3 balance, according to a Commission's order, is going  
4 to be recovered through a nonbypassable charge that  
5 the customers will not be able to avoid? Correct?

6 A. That's correct. I believe Senate Bill  
7 221 also had that provision in there for a phase-in.

8 Q. That's correct. So to the extent that  
9 there are deferred balances going into 2012  
10 associated with the operation of the ESP order,  
11 customers will not be able to avoid those costs on a  
12 going-forward basis, right?

13 A. Yes, they won't be able to avoid the  
14 phase-in beginning in 2012.

15 Q. And ballpark, what's the accumulated  
16 deferred balance being carried by Ohio Power  
17 presently for deferred fuel?

18 A. I believe the last number I saw was about  
19 350 million. I'm not sure what the date of that was.

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

21 EXAMINER JONES: Thank you, Mr. Randazzo.

22 MR. RANDAZZO: Thank you, Mr. Nelson.

23 EXAMINER JONES: Staff have any  
24 questions?

25 MR. MARGARD: No, thank you, your Honor.



1 EXAMINER JONES: Mr. Nourse, are you  
2 going to have redirect?

3 MR. NOURSE: No, your Honor.

4 EXAMINER JONES: Thank you, Mr. Nelson.  
5 You may step down.

6 MR. NOURSE: Your Honor, I'd like to move  
7 for admission of Companies' Exhibit No. 7 and 7A.

8 EXAMINER JONES: Objections to the  
9 admission of Companies' 7 and 7A?

10 Hearing none, those two documents shall  
11 be admitted.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 EXAMINER JONES: Mr. Nourse, do you have  
14 any further witnesses?

15 MR. NOURSE: No, your Honor. Thank you.

16 EXAMINER JONES: Does that conclude the  
17 witnesses at this time?

18 MR. NOURSE: Yes.

19 MR. CLARK: Yes, your Honor.

20 EXAMINER JONES: Let's go off the record  
21 at this time.

22 (Discussion off the record.)

23 EXAMINER JONES: We had a discussion off  
24 the record about the briefing schedule, and I  
25 believe, please correct me if I'm wrong, but I

1 believe the parties have agreed to initial briefs  
2 being filed by 5:30 p.m. on September 23rd, filed in  
3 docketing with an electronic version submitted to all  
4 the parties, and reply briefs filed in docketing by  
5 5:30 on October 15, again with electronic service to  
6 all parties in the reply brief. Is that correct?

7 MR. CLARK: Yes, your Honor.

8 EXAMINER JONES: Is there anything  
9 further to come before us?

10 MR. IDZKOWSKI: Your Honor, yesterday OCC  
11 raised the issue of this Joint Exhibit No. 1, which  
12 was the stipulation was signed, and I just want to  
13 note for the record it was filed yesterday.

14 EXAMINER JONES: Thank you. I did see it  
15 in docketing, but thank you for making that clear,  
16 and it was made an exhibit yesterday.

17 MR. IDZKOWSKI: Yes.

18 EXAMINER JONES: Anything further?

19 MR. NOURSE: No, your Honor.

20 EXAMINER JONES: If not, we are  
21 adjourned. Thank you.

22 (The hearing concluded at 3:29 p.m.)

23 - - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, August 24, 2010, and carefully compared with my original stenographic notes.

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

My commission expires June 19, 2011.

(MDJ-353609)

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