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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service.	)))))))	**Case No. 10-2586-EL-SSO**

NOTICE OF FILING DEPOSITIONS

Pursuant to Rule 4901-1-21(N), Ohio Administrative Code, FirstEnergy Solutions Corp. ("Solutions") hereby provides notice that it is filing with the Commission, concurrently with this Notice, the transcripts of the depositions of James Northrup and Don Wathen, Jr., both of which were taken on December 13, 2010. Also attached is an errata sheet for the transcript of the deposition of Stephen Baron, which was taken on December 23, 2010 and which was filed with the Commission on January 7, 2011.

Dated: January 10, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Filing Depositions was sent to the following by e-mail this 10th day of January, 2011.

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An Attorney for FirstEnergy Solutions Corp.

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF DUKE ENERGY OHIO FOR APPROVAL OF A MARKET RATE OFFER TO CONDUCT A COMPETITIVE BIDDING PROCESS FOR STANDARD SERVICE OFFER ELECTRIC GENERATION SUPPLY ACCOUNTING MODIFICATIONS, AND TARIFFS FOR GENERATION SERVICE.

CASE NO. 10-2586-EL-SSO

DEPOSITION OF:	JAMES S. NORTHRUP
DATE:	December 13, 2010
TIME:	3:41 p.m.
LOCATION:	Duke Energy 526 South Church Street Charlotte, North Carolina
TAKEN BY:	Counsel for the
REPORTED BY:	Carolyn M. Beam Court Reporter

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(INDEX AT REAR OF TRANSCRIPT)

JAMES S. NORTHRUP
being first duly sworn, testified as follows:

EXAMINATION

BY MR. KUTIK:
Q. What is your name?
A. James S. Northrup.
Q. Mr. Northrup, my name is David Kutik. I represent FirstEnergy Solutions. Have you ever been deposed before?
A. Yes.
Q. And how long ago were you last deposed?
A. Approximately three to four years ago.
Q. Okay. Let me go through some brief rules of the deposition. First, you need to answer my questions with words and refrain from answering my questions with gestures or with phrases like uh-huh or huh-uh because those don't translate well to the record. Will you do that for me, please?
A. Yes.
Q. Second, because we are having this discussion transcribed, it's helpful if you wait to answer my question until after I've finished with it. And I will try to wait until you finish with your answer before I ask my next question. Will you do that as well?

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A. Yes.
Q. And finally, since you've just taken an oath to tell the truth, if you answer my questions I can only assume that you've answered (sic) them. And so, if you don't understand my question, will you tell me that and we'll work together to try and communicate?
A. Yes, I will.
Q. All right. Very good. I understand, sir, that you are a registered professional engineer in the state of North Carolina?
A. Correct.
Q. Is that status in effect today?
A. Yes.
Q. Are you registered or have you been registered as a professional engineer in any other state?
A. No.
Q. I understand that you have a bachelor of science degree in civil engineering from Queens University. Where is that?
A. That is incorrect. I need to further describe that. I have a bachelor of science in civil engineering from North Carolina State University in Raleigh, North Carolina.

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Additionally, I have a masters of business administration from Queens University in Charlotte, North Carolina.
Q. When did you get your bachelor of science in civil engineering?
A. 1979.
Q. When did you get your MBA?
A. Approximately 2003, 2004 timeframe.
Q. Was your employment with Duke Power Company the first job you had after your graduation from undergraduate school?
A. Yes.
Q. What job did you have?
A. Initially, at Duke, I was a commercial distribution engineer in Greensboro, North Carolina.
Q. What does it mean to be a commercial distribution engineer?
A. Commercial engineer, coordinated the installation of transmission and distribution facilities to serve new or existing customers on our distribution and transmission lines.
Q. So did you design lines or facilitate the construction of -- of such facilities?
A. Yes, to both of those questions.

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Q. How long were you a commercial distribution engineer?
A. Approximately three to four years.
Q. Then what did you do?
A. Then I was transferred back to Charlotte and became a customer marketing engineer.
Q. And what were your responsibilities in that position?
A. Customer marketing. We developed new, innovative programs to more represent the customers' energy needs and new innovations, such as load management, demand side management and rate implementation.
Q. How long were you in that job?
A. Approximately three to four years.
Q. Then what did you do?
A. After that, I joined the generation system planning group in 1994 and coordinated the development of integrated resource plans for state regulatory agencies.
Q. And when you say integrated resource plans, what does that mean?
A. An integrated resource plan is a plan that's developed by the regulated utility that tries to approximate, from a least-cost

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perspective, what the most cost-effective generation projects need to be built to meet future customer demands over the next 1 to 15 years.
Q. So is the plan basically how a company can meet its projected load over the next period of time that you just mentioned?
A. Correct.
Q. And how long were you in that job?
A. Approximately four to five years.
Q. Which takes us to almost 2000?
A. Correct.
Q. And what -- what happened then?
A. I was promoted to the director of the power generation group.
Q. And it's power generation group of what company?
A. Of Duke Energy Carolinas.
Q. What were your responsibilities in that job?
A. In that job, I led business case development and asset strategies for the implementation of fossil and hydrogeneration. Basically to help coordinate capital budgeting and investment in generation facilities.
Q. And am I correct that you had that job

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until 2003?
A. Correct.
Q. Then what happened?
A. At that time, I was promoted to director of system in power planning, to guide investments for generation assets and maintain system reliability.
Q. What does that mean?
A. That means that I look at overall budget and investment upgrades to all of our generation facilities to ensure reliable operation.
Q. Was that also for Duke Energy Carolina?
A. Correct.
Q. And Duke Energy Carolina operates in what state, which states?
A. North Carolina, South Carolina.
Q. And do any of those states have deregulated retail generation?
A. No, they do not.
Q. And I understand that you moved to a different job in 2006, correct?
A. Correct.
Q. What was that job?
A. I was promoted to director of project analysis and special projects, where I worked in

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integrated resource planning, new generation investment, and maintaining system reliability.
Q. And for what company are you currently employed?
A. I'm sorry, could you repeat that?
Q. Yes. For what company are you currently employed?
A. Duke Energy Corporation.
Q. Is this the first time that you were employed by Duke Energy Corporation, since the job you took in 2006?
A. Yeah, I believe it was. That was when the merger took place, correct.
Q. Okay. And is this job that you have discussed, in 2006, the job you currently have?
A. Correct.
Q. Now, in your testimony, you say that -- on page one, you say that you're employed by Duke Energy Business Services, Inc.
A. That's correct.
Q. Is that the same thing as Duke Energy Corp.?
A. Yes, that's a subsidiary of Duke Energy Corp.
Q. So, are you employed by Duke Energy

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Corp. or Duke Energy Business Services, Inc.?
A. Duke Energy -- Duke Energy Business Services is a -- just a small part of Duke Energy Corporation. So formally, I'm an employee of Duke Energy Corporation. As -- as part of the DEBS, Business Services.
Q. Right. So, the title or responsibility you have resides in Duke Energy Business Services, Inc., but you're formally employed by Duke Energy Corp.; is that correct?
A. Correct.
Q. And with respect to your current responsibilities, are you focussed on any particular geographic area?
A. I cover the -- I cover both the Midwest and the Carolinas operations of our company.
Q. The Midwest would include Ohio?
A. Correct.
Q. Is Ohio the only state in which Duke operates that has retail -- a deregulated retail generation?
A. Correct. Electric.
Q. Yes. In your prior jobs, or currently, are you involved at all in any of Duke's or any of Duke's affiliates risk management activities?

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A. I'd have to ask you to be more specific. Risk management activities can cover a wide spectrum of activities. And I feel like, that I've been involved in risk management activities throughout my entire career, to a certain extent.
Q. Okay. Have you been involved in risk management activities, as far as it's concerned Duke's commercial relationships or contracts?
A. I'm going to have to ask you, again, to be a little bit more specific on that question.
Q. Okay. Have you ever participated in drafting or negotiating any power contract in which Duke was one of the counterparties?
A. In my current jobs and past jobs, I have not had the responsibility of the negotiating terms on commercial purchase power contracts.
Q. Have you ever had that responsibility?
A. Not, not direct negotiations, no, I have not.
Q. Have you had any responsibilities for setting credit requirements for companies that do business with any Duke affiliate?
A. Could you repeat that?
Q. Sure. Have you ever had any responsibility for setting credit requirements for

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those companies dealing with any Duke affiliate?
A. During the development of Duke Energy Ohio's market rate option, I worked with fellow employees to consider the application of credit requirements for this current filing.
Q. So, it would be fair to say that, before the current project, that is this case, in the application for this case, you had not worked to set credit requirements for an entity dealing with any Duke affiliate?
A. I have not set those. To be clear, I have not set those specific requirements, but I have worked in various different contracts, where I was party to discussions on credit requirements for multitudes of contracts. But I was not the single point to set those credit requirements.
Q. And were you involved with setting or dealing with credit requirements, for entities dealing with Duke, for selling power?
A. I have been involved in discussions and participated in discussions involving credit limits, credit amounts on energy purchases.
Q. When?
A. Over the last two to three years, I have been actively involved in purchase power

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contracts for renewable energy. That includes both the purchase of energy, renewable energy, and their credits. And so, therefore, have been in discussions on credit considerations associated with those contracts.
Q. Any other type of power contract that you've been involved in, so that you understand or have had discussions about credit requirements?
A. At this time, I don't recollect any other opportunities at this time.
Q. Okay. Well, is there anything that you could review that would refresh your recollection?
A. There is nothing here that I have that I could review. I would have to just consider that a little bit, at greater length.
Q. Okay. So sitting here today, you can't tell me anything else, correct?
A. Not at this time.
Q. Have you ever participated, in any way, as part of any Duke affiliate, in a competitive bidding process to supply POLR, P-O-L-O-R -- P-L -- P-O-L-R load?
A. I'm sorry, could you repeat that?
Q. Sure. Have you ever participated, on behalf of any Duke affiliate, in a competitive

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bidding process to supply P-O-L-R load?
A. No.
Q. Is this case the first case where you were involved in considering competitive bidding processes for such load?
A. As far as, specifically, POLR requirements or any kind of request for proposal solicitation?
Q. Well, I'm strictly talking about POLR.
A. And I guess your -- could you define POLR for me to make sure we're in agreement?
Q. Well, how do you understand the term POLR to mean, sir?
A. Well, I was just responding to -- well, I was thinking of POLR as provider of last resort. Is that your terminology?
Q. Is that -- is that what you understand the word -- the term POLR to mean?
A. Well, it was your question, so I'm trying to understand your definition.
Q. Well, I'm just trying to understand your understanding, sir. You answered the question as to what POLR is and you've made, you've given some words and I want to understand, is that -- is that your understanding of what POLR means?

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MS. WATTS: David, I'm going to object at this point. I think you sort of need to start back at the beginning. I'm lost as well as the witness is lost.
BY MR. KUTIK:
Q. Well, you know, with due respect, Elizabeth, it doesn't matter whether you're lost. So my question still stands: Do you understand the word -- the term POLR, P-O-L-R, to mean provider of last resort?
A. Do I understand POLR? I have often heard P-O-L-R described as provider of last resort. And so that is the most common occurrence of those -- of those abbreviations.
Q. Okay. Do you believe that standard -- standard service offer, that's involved in this case, is different from POLR?
A. I would not necessarily equate standard service offer with a POLR responsibility, as I understand it.
Q. Okay. What's the difference?
A. Standard service offer is our solicitation to secure un-switched customer load via an auction, via proposed auction, as a market rate option.

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Q. Okay.
A. Provided --
Q. Have you ever --
A. Go ahead.
Q. Go ahead.
A. No, I'm through.
Q. Okay. Have you ever participated on behalf of any Duke Energy entity, on behalf of an auction, for non-switching load?
A. No, I have not, in the past. With the -- with the exception of this exercise that we're talking about today.
Q. This case is the first case that you were involved in such activities?
A. For an auction, that would be correct.
Q. And have you participated in any auction, on behalf of the Duke entity, for any type of power supply?
A. I have not previously participated in any auction.
Q. Now, in this case, part of your testimony is the sponsor for the master SSO supply agreement, correct?
A. Correct.
Q. Are you the author of that agreement?

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A. There were many authors of that agreement.
Q. Would you consider yourself the principal drafter of the agreement?
A. I was one of the participants of many authors with that. But I would not call myself the principal.
Q. Was there someone that you could identify as the principal drafter?
A. No.
Q. Can you tell me who was involved in drafting the master supply agreement?
A. To my knowledge, it would be multiple drafters inclusive of Kate Moriarty, Amy Spiller, probably the entire legal staff, as well as extensive consultations with multiple subject matter experts in each -- and in several different areas associated with credit, RTO operations, those entities.
Q. Who did you consult with, with respect to credit?
MS. WATTS: David, objection to the extent that any answer he may have is related to discussions with counsel. If -- if he's --
BY MR. KUTIK:

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Q. Can you -- can you answer my question, sir?
MS. WATTS: If any of the discussions involved counsel, I'm going to direct him not to answer. But if they were outside the presence of counsel, that would be different, of course.
BY MR. KUTIK:
Q. Can you tell me who from credit had input, with respect to the master supply agreement?
A. I worked with two individuals, Louis Camp.
Q. How do you -- will you spell his name, please?
A. C-A-M-P.
Q. Anyone else?
A. John Freund.
Q. And the spelling of that name?
A. F-R-E-U-N-D.
Q. Anyone else?
A. No.
Q. Do you know Mr. Camp's title?
A. I do not -- I do not know his specific title.
Q. Do you know Mr. Freund's title or position?

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A. Mr. Freund is a senior consulting engineer that works on my staff.
Q. And does Mr. Camp work on your staff?
A. No, he does not.
Q. Where does he work?
A. Again, I don't know specifically the name of his group, but have worked with Mr. Camp over the past several years on a multitude of different credit issues relating to this and other purchase power agreements.
Q. Is there a specific credit area or department?
A. I know there is an area that focuses on that -- those credit responsibilities. But, again, I do not know the name of that department.
Q. Is that a department that Mr. Camp works in?
A. Correct.
Q. What was your role in the drafting of the master supply agreement?
A. My role was to participate in a multitude of discussions and discuss various -- and discuss various aspects of the proposed MSA and bring about any -- and again, participate in discussions and develop resolutions on issues that

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may have been in several different areas of the MSA.
Q. Did you have any decision-making authority, as to the type of provisions that would be in or out of the agreement?
A. I'm not sure I understand your definition of decision-making authority.
Q. That term has no meaning to you?
A. I'm trying to understand how you would be using it.
Q. Well, when you hear the phrase decision-making authority, what -- what do you take it to mean?
A. Someone that has been given the responsibility to make the ultimate decision on a particular issue.
Q. Using that definition, did you have decision-making authority, with respect to provisions that would be in or out of the supply agreement?
A. No, not necessarily.
Q. Well, you said not necessarily. Were there -- was there anything that you had decision-making authority on, with respect to what would be in or out of the contract?

A. Let me rephrase it this way: I -- I have expertise in several areas. And I would share that expertise with a group during discussions, and to help try to bring about resolution and knowledge on making informed decisions in developing the MSA.
Q. Let me go back to my question, which is: Do you have decision-making authority, with respect to what provision would be included or not included in the supply agreement?
A. As I defined ultimate -- decision-making authority, I defined it as having the ultimate authority to make those decisions. And at that time, I said, I did not believe I had the ultimate decision authority on making decisions throughout the MSA.
Q. Was there someone who did have that authority?
A. Not to my knowledge.
Q. Okay. Were you part of the group that would make recommendations as to what would be included in or excluded from the agreement?
A. Yes.
Q. And would it be fair to say that you felt comfortable, with respect to areas within your particular area of expertise or experience, to make

recommendations as to things that should be in or out of the contract?
A. Yes.
Q. And that you would rely on others' recommendations, with respect to their areas of expertise or experience?
A. Yes.
Q. And may I take it, then, that the way that it was determined as to what would be in or out of the contract, would be a matter of consensus with this discussion group that you may have been part of?
A. Yes.
Q. Now, would it be fair to say that, with respect to the credit provisions in the contract, or the supply agreement, that you relied upon the recommendation of Mr. Camp and Mr. Freund?
A. Mr. Camp and Mr. Freund gave valuable insight in their area of expertise on credit considerations in the MSA, specifically and more pointedly, Mr. Camp.
Q. And would it be fair to say that you relied upon Mr. Camp's views in forming your own thoughts as to what should be included or excluded with respect to the credit provisions of the

contract?
A. Yes.
Q. In your participation in -- well, I'm going to back up.
Would it be fair to say that you participated in the development of the master supply agreement?
A. Yes.
Q. And in your participation in that activity, did you personally study the competitive bidding processes that were undertaken by any other companies?
A. Yes.
Q. What other company or companies did you review?
A. The FirstEnergy solicitation.
Q. Any others?
A. No.
Q. Are you aware of whether there are auctions of wholesale supply that take place in any other state?
A. When I was reviewing Mr. -- Charles River Associate's credentials, I noticed that they referred to several auctions that had taken place in other states. So based on that, I'm assuming

other auctions have taken place.
Q. But in terms of where other of these types of auctions have taken place, you -- the only source of information that you could think of, sitting here, would be from Mr. Lee's testimony or resumé?
A. That, in combination of discussions with Mr. Lee about his past experiences and Charles River.
Q. But you have not personally studied the competitive bidding processes used in those other states, correct?
A. Correct.
Q. Now, have you -- in your work for this case, and particularly your work in developing, as part of a group, the master supply agreement, did you look at the master supply agreement for any other company or companies?
A. No.
Q. I'm sorry. I take it then that you've never reviewed the master supply agreement for the FirstEnergy Ohio utilities?
Q. Well, when we are talking about other, I thought you were talking about other than FirstEnergy so --

Q. That's a fair point. I guess what I meant was other than Duke.
A. Okay. Well --
Q. But let me ask -- let me ask you the question again:
In looking at or trying to develop the master supply agreement and your activities in that, did you look at any other companies', that is outside of Duke, master supply agreement?
A. I looked at, extensively, the FirstEnergy filings. And I don't specifically remember, but I would not be surprised if the master supply agreement was not contained in those vast number of filings associated with FirstEnergy that I reviewed.
Q. Do you have a recollection of reviewing the master supply agreement for the FirstEnergy Ohio utilities?
A. Again, I reviewed a wide extensive amounts of the FirstEnergy filings and, although, I don't specifically recollect the master supply agreement at this time, I would not be surprised that -- I would not be surprised at all if the master supply wasn't part of the filings that I extensively reviewed.

Q. Would it be fair to say that you think that you might have, but you don't specifically recall?
A. That's correct.
Q. Do you know whether others, within the group that you were working with to develop the master supply agreement, reviewed the FirstEnergy Ohio utilities master supply agreement?
A. I cannot speak for what they did or did not review.
Q. So that -- that didn't come up as a matter of discussions, that you heard about?
A. Again, I did not -- I cannot remember whether they did or did not review those documents. I'm not sure -- I'm not sure if it came up.
Q. Okay. So, for example, you don't know whether the FirstEnergy master supply agreement was used as the template to draw your contract?
A. Could you repeat that?
MR. KUTIK: Sure, can you read it, please, Carrie?
(The Court Reporter read the question commencing on page 28, line 16 and concluding on page 28, line 18.)
THE WITNESS: I feel that probably all

of the filings that FirstEnergy had supplied and pursued during their development of their auction was used as reference material to help us develop our documentation as well. I'm not sure if it was the template, as you referred to, but I certainly believe that all the information from FirstEnergy's filings were used to help increase our knowledge on certain issues, and each issue was weighed and considered in our own filing.
Q. So is it -- is it the case that, although you think that the FirstEnergy contract was certainly referred to, you can't say, one way or another, whether it was actually the template?
A. Correct.
Q. Now, am I correct that you have -- you have at least some familiarities with the competitive bidding processes that were used by the FirstEnergy Ohio utilities?
A. Yes.
Q. And you said that you reviewed the filings, correct?
A. The -- yes, I have reviewed associative filings, as part of increasing my knowledge base about descending clock auctions and methodologies associated with auctions previously used in Ohio.

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Q. And when we say filings, are you -- are you just talking about the material that was filed by the FirstEnergy companies or are you talking about other things?
A. Primarily the filings supplied by FirstEnergy to support their auctions.
Q. Did you review -- so as part of that, did you review the testimony that the -- the FirstEnergy companies filed?
A. Yes, I also reviewed testimony.
Q. Did you review the testimony filed on behalf of any other parties in the FirstEnergy cases?
A. Could you clarify that?
Q. Sure. You said that you were -- you reviewed the FirstEnergy filing, correct?
A. Correct.
Q. And I assume that they were filings in particular cases, correct?
A. Correct.
Q. And so we can be clear, can you tell me what cases you reviewed filings for?
A. The filings for their most recent competitive bidding process and their auctions.
Q. Okay. Now, were you aware that there

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was testimony submitted in support of that filing?
A. Yes.
Q. And are you aware of whether there was testimony that was submitted in opposition?
A. I'm not aware of the opposition. Excuse me, I have not reviewed any kind of opposition testimony.
Q. Okay. So it's fair to say that -- that your recollection is that, if there's any testimony, it was filed -- it was basically testimony filed on behalf of the FirstEnergy companies?
A. Correct.
Q. Now, have you reviewed the results of any competitive bid process that the FirstEnergy companies engaged in?
A. I have reviewed the results only as -- as extensively published in trade journals, such as Megawatt Daily, identifying the results of particular auctions.
Q. Okay. So would you be familiar with the winning bidders in those auctions?
A. I think in the Megawatt Daily, some winning bidders were named.
Q. Do you recall who they were?

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A. I believe -- I don't remember the specific name of these winning bidders. So I -- I don't really recollect, specifically, who the winning bidders were or what level of success they were or were not.
Q. Do you recall how many parties were successful in bidding?
A. Not specifically.
Q. Okay. Do you have any recollection at all in that regard?
A. Not specifically.
Q. When you say not specifically, do you have a general recollection?
A. My general recollection was that, subject to check, that FirstEnergy Solutions perhaps, or some name similar to that, was a winner of some number of auction tranches. But other than that, I don't really remember.
Q. So you don't remember the names of any other bidders or how many other successful bidders there might have been?
A. Correct.
Q. Were you able to, from your study of the FirstEnergy filings, able to come to a conclusion as to whether you believed that the

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FirstEnergy competitive bidding process was successful?
A. I believe it was successful, given that they were able to secure sufficient suppliers to meet their requirements.
Q. Okay. Now, are you aware of whether there have been more than one competitive bidding processes that have been undertaken by the FirstEnergy companies?
A. I think, subject to check, I think there have been at least two.
Q. And did you study both of those?
A. Well, recognizing that I knew it was more than one, I think that I had some information associated with both of them. But I don't remember specifically one auction versus the other, but rather, just in general, what they incorporate and that they were successful in securing the appropriate number of bidders.
Q. Well, for example, you said that you reviewed the FirstEnergy filing. And I'm trying to understand whether you reviewed the filings, with respect to one case or more than one case?
A. Right.
Q. So what's the answer to the question.

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Did you review filings in more than one case?
A. The filings that I studied, I don't specifically remember which auction it was tied to, as I was primarily trying to -- yeah, the filings that I studied, I don't specifically remember which auction they were associated with.
Q. And was it fair to say that you don't know whether you looked at more than one case's filings?
A. That's -- that would be true as well.
Q. Now, did you play any role in determining the requirements for credit, under the master supply agreement?
A. I did not specifically -- could you -- could you rephrase that one more time, please?
MR. KUTIK: Sure. Carrie, could you read it, please.
(The Court Reporter read the question commencing on page 34, line 11 and concluding on page 34, line 13.)
THE WITNESS: Any role in the credit. I participated in discussions about credit requirements. So, by definition, I played a role in developing those credit requirements.
Q. And with respect to credit

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requirements, is it fair to say that what we're generally talking about is Article 5 of the agreement, and attachments that are referred to in that Article?
A. Let me flip to the MSA, Article 5. Right, Article 5 of the MSA, Attachment F involves creditworthiness, aspects of the MSA, correct.
Q. And was there -- was there a person who you would consider to be the principal drafter of this portion of the contract?
A. The person that I knew was most intimately familiar with this specific portion of the MSA was Louis Camp.
MR. KUTIK: Carrie, could you read that answer, please?
(The Court Reporter read the answer commencing on page 35, line 11 and concluding on page 35, line 13.)
BY MR. KUTIK:
Q. So would he be considered, in your view, the principal drafter of this?
A. I'm not sure of the definition of a principal drafter.
Q. Well, he would be the person that would be most familiar with the subject area, correct, in

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your group?
A. Of the people that I interfaced with, Mr. Camp was the most involved in this particular area.
Q. All right. And Mr. Camp was giving you his thoughts and giving the rest of the group his thoughts as to what this part of the contract should look like; fair to say?
A. Correct.
Q. Did you make any independent determination as to the reasonableness or appropriateness of the provisions in this -- in this part of the contract, or did you simply rely on Mr. Camp's judgement?
A. There were several discussions about this entire section, of which there were probably several contributors. So it was not an exclusive reliance upon Mr. Camp's expertise.
Q. But did you come to an independent judgement as to the reasonableness and appropriateness of this, or did you rely on the judgement of others, including Mr. Camp?
A. Well, I think that, first of all, in my judgement, this appears to be fair and equitable. But I used the extensive knowledge of multitudes of

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people or several different people to help me establish or develop that understanding.
Q. But you did come to an independent judgement, based upon what you were being advised by others?
A. Yes.
Q. Now, would it be fair to say that, in determining credit requirements in a contract such as this, one of the factors to consider would be the need to make sure that Duke has sufficient security, in case of default of a counterpart?
A. Correct.
Q. Would it be also correct to say that another factor considered would be whether the credit requirements imposed additional costs on potential counterparts?
A. I'm sorry, could you repeat that.
Q. Sure. Is one of the other or another factor to consider is whether the credit requirements imposed additional costs on potential counterparts?
A. I believe the -- I think that the costs that these credit requirements may apply to, bidders was a consideration.
Q. Okay. And would it be correct to say

that, you know, one of the things that you need to consider is whether these additional costs might preclude participation in bidding?
A. I think that would be a consideration.
Q. And would it also be fair to say that another factor to consider would be whether these credit requirements impose additional costs that might increase potential bid prices?
A. I think that imposing credit requirements -- I think that I would agree that imposing credit requirements may perhaps impact bidders' cost. But in the same respect, in absence of those credit requirements, they may also impute costs as well.
Q. Well, would you expect that one strategy that a potential bidder might employ, if these credit requirements imposed a cost on that bidder, would be to include those costs in the bid price?
A. I can't really speak for what a supplier's considerations are in developing a bid. I have not worked actively with a supplier to develop those costs.
Q. So, in terms of how bidders, potential bidders, might react to these credit requirements,

you don't have specific knowledge, experience or expertise to comment on that; fair to say?
A. As I said, I have not worked with a bidder to develop these costs. So I don't have firsthand knowledge on what costs, if any, may be imposed on a bidder, as a result of these requirements.
MR. KUTIK: I'm not sure you answered my question. Carrie, could you answer -- could you repeat it? Mr. Northrup, could you answer it?
(The Court Reporter read the question commencing on page 38, line 24 and concluding on page 39, line 2.)
THE WITNESS: The question is, you know -- you really make some summary -- makes a series of assumptions about what it may or may not do to imposing costs on specific bidders. And I would propose that the impacts to these -- some of these credit requirements, perhaps, might impact bidders many different ways.
And so, therefore, I'm just not sure I can simplify a response in saying it does or it doesn't. I mean, there's -- there's a wide assortment of bidders out there, so I'm just not sure I can say that I know everybody's particular

circumstances or what it may or may not do to their bid.
Q. No, sir, I asked you about a specific -- specific scenario. And you said to me that you couldn't speculate; isn't that right?
A. I'm sorry, we're going to have to go back over this again.
Q. Sure. And let me try -- let me try to simplify it for you. We talked about a specific scenario which is, a bidder who, in response to these credit requirements, incurred additional costs, might, as one strategy, include those costs in that bidder's bid prices, and you envision that as a potential strategy?
A. Okay. So to make sure I clearly understand, you're saying if, in a particular scenario, that these credit costs did impose costs to bidders, that a bidder may incorporate these costs in his bid, is that what you're tendering?
Q. I'm asking you if you would think that would be one potential scenario in strategy?
A. It could be a potential scenario, among many other scenarios.
Q. And would it be fair to say that, in terms of how bidders would react, either

specifically or generally, it's not your area of expertise to be able to opine as to how bidders would react in any particular case, correct?
A. I -- I would not try to assume or -- knowledge of what a bidder may or may not do with a particular bid and associated credit costs.
Q. Because that's not really been your area, you haven't had experience in that area, correct?
A. No, it's just that I've been exposed to many RFP's before and that I've just found that there's a wide range of bidders and capabilities in the marketplace. And so I think that that could take many forms of one scenario you identified. But I just --
Q. Can you tell me what experience you've have had in auctions for power?
MS. WATTS: Objection.
THE WITNESS: Again, this is the first auction that I have been involved in on purchase power agreements.
BY MR. KUTIK:
Q. And you --
A. But -- yeah, this is the first auction I've provided -- I've been associated with.

Q. And have you -- and it -- and it's fair to say that there's only one or two competitive bids for, in terms of an auction, for power that you've studied, namely the FirstEnergy competitive bids or auctions?
A. Correct, on auctions, correct.
Q. Now, are -- are you familiar with the phrase, investment grade, as it deals with credit ratings or --
A. I've heard --
Q. -- or -- go ahead.
A. Yes, I have heard the term.
Q. And putting it in terms of a Standard and Poor's rating or Moody's rating, what would you define credit investment grade to be?
A. Investment grade is defined as a certain level of quality bonds by a particular rating, either by S&P or Moody's.
Q. And can you give me the specific letters or -- or numbers that would consist -- would be -- would comprise investment grade?
A. I don't have that information at my hand.
Q. Do you have that -- do you have that information in your office?

A. I'm sure I do.
Q. How far is your office from where you are sitting right now?
A. It's on a different floor of this building.
Q. How long would it take you to get it?
A. Fifteen minutes, 20 minutes, 30 minutes. Fifteen to a half an hour.
Q. Let's put that question aside, we'll come back to it.
Do you know how -- let me refer you to the table that's on page 19 of Attachment F.
A. Do you have a page number?
Q. Nineteen.
A. Oh, page 19. Yes.
Q. Do you see that table at the top?
A. Yes.
Q. And you see there is a display of ratings from S&P and from Moody's, correct?
A. Yes.
Q. Do you know whether each one of those would qualify for an investment grade rating?
A. Well, I certainly believe probably the top two tiers would qualify as investment grade.
Q. Do you know if any others do?

A. I'm probably pretty sure that the -- below BBB-minus does not qualify for investment grade.
Q. Okay. How about BBB-minus?
A. I'm not sure about that.
Q. So would it be fair to say that you're fairly confident that BBB for Standard and Poor's and above would constitute investment grade, and below that, you're not sure?
A. Well, just for that particular category, in S&P BBB-minus, I'm not a hundred percent certain.
Q. So, again, let's make sure we're clear.
You believe that BBB and above would be investment grade. You also believe that below BBB-minus would not be investment grade, but you're not sure about whether BBB-minus is investment grade; fair to say?
A. Correct.
Q. Now, is there a reason why the company, as Duke, did not want to offer credit below BBB-minus for Standard and Poor's?
A. Is there a reason, is that --
Q. Yes.
A. -- what's your question?

Q. Yes.
A. Yes, I'm sure there's a reason.
Q. What's the reason?
A. I believe that the subject matter experts did not believe that below BBBB -- BBB-minus warranted a maximum independent credit threshold.
Q. Okay. Do you have any personal belief as to whether BBB -- below BBB-minus should not receive credit?
A. No, I don't have any personal belief.
Q. Would it be fair to say that, with respect to whether folks believe BBB-minus, you're relying entirely on other folks within Duke?
A. That's correct.
Q. Now, I believe you testified earlier that, as you sit here today, in terms of your study of the FirstEnergy Ohio utilities within the bidding processes, that you could only recall one winning bidder, correct?
A. In referring to some of the public news articles that I read about, the successful bidders, I remember there were multiple bidders that won. But of those that won, I can't remember anything, other than the one that I mentioned, by name,

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specifically.
Q. So, you were aware that there were multiple winners, but you can only remember, as we sit here today, one?
A. That would be correct.
Q. Now, would it be fair to say that you did not, in your study of the FirstEnergy bidding processes, review the credit ratings or the debt ratings of the companies that won the FirstEnergy competitive bidding process?
A. I personally did not review their credit ratings.
Q. Do you know whether anyone in your group did? And from your group, I'm talking about the group that worked on this contract.
A. I don't have knowledge whether they did or did not review their credit ratings.
Q. So you don't know?
A. I do not know.
Q. Do you know whether anyone within the company or within your group considered this credit requirement, in terms of whether particular bidders would participate or would not participate?
A. I was not involved in those discussions.

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Q. So, again, you don't know?
A. Correct.
Q. Now, the credit requirements, would it be fair to say, in terms of the chart that appears on page 19 and the chart that appears on page 22, referred to two ratings agencies, correct, or ratings services?
A. Correct.
Q. Are you aware of other rating services, other than Moody's and Standard and Poor's?
A. Am I aware of others, other than S&P and Moody's?
Q. Yes.
A. I'm not aware of any others, other than S&P and Moody's. But I would -- it would not surprise me at all if there were others. I think I have heard, in passing --
Q. So, sitting --
A. -- mention other rating agencies.
Q. So, sitting here today, you couldn't name me another rating service?
A. I could -- I could tender some guesses but...
Q. Well, I asked you, can you tell me the names of any rating services. Can you or can't

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you?
A. I said I'm familiar with past names, perhaps, but I'm not sure -- there's been a lot of instability in the financial markets. But I'm not -- I know that these are the two most prevalent agencies often discussed.
Q. Can you give me the name of any rating service currently operating, other than Standard and Poor's and Moody's?
A. Not certain -- not for certain, I couldn't. I have some other names in my head, but I'm not sure if -- I would have to do some research to make sure that they are still currently commercially available rating agencies.
Q. So sitting here today, you cannot give me the name of any other rating service?
A. I have heard of rating services, such as Fitch and perhaps, A.M. Best or other things. But I am not sure if they are in the bond rating or other areas of ratings. So I would have to do some -- I would have to do some additional research to make sure that they were in credit rating associations.
Q. So again, sitting here today, you can't say for sure that you can give me the name of any

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currently operating rating service, other than Standard and Poor's and Moody's?
A. Not for sure. But again, I shared some other instances where I was familiar with other agencies. But I would have to do some additional research to confirm that.
Q. Now, you said that one of the names was Fitch or Fitch's, correct?
A. Correct.
Q. And is it the case that you don't know whether that company currently operates to provide ratings?
A. Again, I would have to research that to make sure that that was an ongoing, commercially viable credit rating agency today or not.
Q. Do you know whether Fitch -- or can you tell me whether Fitch was considered as a potential rating service to be included in the credit requirements that we see on pages 19 and 22 of -- of the agreement?
A. I was not involved in any discussions associated with Fitch.
Q. So, as far as you know, you weren't -- you didn't have any discussions involving Fitch. So it would be fair to say you don't know whether

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anybody else did?
A. Correct.
Q. You mentioned another company. What was that other company?
A. A.M. Best, but I think they deal primarily with insurance.
Q. And that would be -- would your answer be the same regarding -- you had no discussions with those about -- with others about A.M. Best and you don't know whether others had discussions about A.M. Best and including if they rated those ratings in this contract?
A. Correct.
Q. Now, what's set out in these two tables that we looked at are the amount of credit that Duke would provide or Duke would allow, correct? On an unsecured -- on an unsecured basis.
A. That's correct. Those are -- that's correct.
Q. So, for example, if a company had a rating below triple-B-minus, that company would be required to produce some security, correct?
A. Correct.
Q. And under the contract, it sets out the forms of that type of security, correct?

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A. Correct.
Q. One form is cash?
A. Is that a question?
Q. Correct?
A. Yes.
Q. Yes.
A. Yes.
Q. And one form is a letter of credit, correct?
A. Correct.
Q. And were there any other forms of security that were discussed by your group?
A. Not that I'm aware of.
Q. Are you aware of something called first mortgage bonds?
A. I'm not intimately aware with first mortgage bonds.
Q. Do you know whether those are sometimes provided as a form of security?
A. I'm not sure. I do not know. I do not know.
Q. Can you give me a definition of what a first mortgage bond is?
A. Not at this time, no.
Q. Would it be fair to say that you can't

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give me a reason as to why Duke did not consider including first mortgage bonds as a potential form of security?
A. I was not personally involved in any discussions associated with first mortgage bonds.
Q. So again, you can't tell me the reason why it might have been excluded, correct?
MS. WATTS: Objection.
THE WITNESS: I was not involved in any discussions on first mortgage bonds.
BY MR. KUTIK:
Q. So, if -- if a decision was made to exclude first mortgage bonds as a type of acceptable security, you can't give me the reason for that, correct?
A. Correct. I was not involved in any discussions on first mortgage bonds.
MR. KUTIK: Just let me take one moment, please.
BY MR. KUTIK:
Q. Mr. Northrup, are you there?
A. Yes.
Q. Do you know whether your group -- and again, this is a group that was involved in drawing up a contract, made any analysis of the impact of

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the credit provisions in the contract on bidder participation, or on potential bidder participation?
A. I am not personally aware of any type of analysis of that nature.
Q. Do you know whether your group did any analysis of the impact of the credit provisions on the potential SSO price?
A. I am not aware of any analysis, as you stated.
MR. KUKIT: That's all the questions that I have at this time. I'm sure there are other folks, either in this room or on the call that may have questions for you. May I suggest that I'll just call out the names of the parties that have indicated that they are on the phone, and then we'll ask Mr. Hart, who is also here in the room with me, if he has any questions. So the first party that I have is Constellation.
MR. PETRICOFF: Yes. Thank you. We have no questions at the time.
MR. KUTIK: Next, OPAE. Are they on -- still on the phone?
**IEU?
Staff?

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MR. JONES: No questions, David. Thank you.
MR: KUTIK: OEG?
MR. KURTZ: David, no questions.
MR. KUTIK: OCC.
EXAMINATION
BY MS. HOTZ:
Q. Yes, we have some questions. Thank you. Good afternoon, Mr. Northrup.
A. Hello.
Q. This is Ann Hotz and I work for the Ohio Consumers' Counsel. If I ask you some questions -- if I ask you any question that you don't understand, please let me know and I'll reword it, okay?
A. Okay.
Q. On page three of your testimony, you indicate that the SSO supply will include reserve margin requirements. How much of a reserve margin?
A. Those reserve margin requirements would be whatever is stipulated by the associated regional transmission organization that deals with capacity adequacy. And in this particular case, we'd be talking about any requirements that PJM may require.

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Q. Do you know what the current requirement is?
A. I think it's roughly 15 percent, something like that, 15.2 or something like that. It's updated --
Q. How often --
A. Go ahead.
Q. How often does that change?
A. That's where I was going. I think it does change from time to time, depending on the reliability of generation in its region. So I think that may change or modify from time to time.
Q. Okay. On page three, you also say that the CB -- the CBP plan is based upon staggered procurements. How many procurements and in what time period?
A. Staggered procurements refers to annual auction held each year so that -- that's what it refers to.
Q. So it's only annually?
A. Annual -- yeah, annually reoccurring.
Q. Okay. And they will -- how long will each of the procurements be -- you know, how long will the requirement to provide power extend for each of these?

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A. Well --
Q. Will it always be one year?
A. No, ma'am. It varies depending on which auction you're talking about. Auction one would be 17 months in duration; second auction would be two years in duration. Rolling into the third year auction, it would be a multitude of one-year, two-year and three-years products.
Q. Okay. Good. Thanks. Is Charles River Associates International currently employed by Duke Energy Ohio or Duke Energy Business Services, Inc., for any other purposes?
A. I'm not aware of any other ongoing contracts that Charles River may have, but that doesn't preclude there may be something there. But -- so I'm not aware of that, if they are or aren't.
Q. Okay. When did -- when did Duke retain Charles River Associates for this CBP?
A. During 2010.
Q. Can you tell us more specifically when that was?
A. I do not know the exact date of the contract execution with Charles River. I know it was probably -- it was earlier -- the earlier part of this year.

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Q. Okay.
A. I believe, but again, I was not -- I wasn't involved in the specific project execution, nor the specific date. My involvement with them began more towards the earlier part of this year.
Q. So you weren't involved in the hiring of them?
A. No, I was not.
Q. When did you first start dealing with Charles River Associates?
A. Right around the start of the summer. Start to -- start to the middle of the summer.
Q. On page four, you talk about there being a single product offered in the first two years. What do you mean with the term "a single product"?
A. The single product is the 17-month duration contract that I previously referred to for our first auction.
Q. Okay. So then what you're -- what you're referring to is the length of the -- of the product; is that what you mean?
A. Correct.
Q. Okay. And then -- and then, for the second auction, you will offer a first year -- a

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one-year and a two-year; is that right?
A. I'm sorry, did you say the second year or the first year?
Q. The second year.
A. The second year would be -- the second year would be a single product offering of 24-months in duration.
Q. Okay. And so the third year, you're going to offer one-, two-, and three-year products; is that correct?
A. Correct.
Q. Okay. You stated that Duke wants to align its auctions with the PJM calendar. What is the PJM calendar?
A. The PJM reliability pricing model calendar that takes place during the calendar period May through June of each year, whereby capacity is -- capacity prices are developed for the next three years.
Q. And then sometimes -- so capacity prices are developed for the next three years. And if you do it every year, that would mean that you revised those, right?
A. I'm not sure what you --
Q. Sometimes --

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A. I'm not sure what you mean by do it. I mean each year the capacity auction is held. And so those prices are developed three years out each rolling year.
Q. Oh, I see what you're saying. So you're talking about -- you're talking about auctions that involve one-, two- and three-years products; is that right?
A. No.
Q. Or is that not right?
A. No, no, that's not correct.
Q. Okay.
A. The PJM capacity reliability pricing model develops insight or guidance in the marketplace that capacity providers understand that their product will be priced for the next year and then for the following year and then for the following year. Or three incremental years, going forward from that date. So, it would give insight to a capacity provider, on an understanding of what his revenue flow might be, associated with his capacity product that he might offer in the market for the next three years.
Q. So it's not a definite -- it's not a definite price, then? It may change? At least

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you're implying that in your answer --
A. Well --
Q. -- is that right?
A. -- each year is priced independently.
Q. Okay. On page eight of your testimony, you state that energy delivered to the PJM Duke Energy load zone generating sources located within contiguous regional transmission organizations outside of PJM, such as from my source, the New York power pool, are also acceptable. What is the justification for the exclusions of non-RTO resources from the auction?
A. I don't think it excludes non-RTOs. I guess the point would be is that any -- subject to check. I believe any kind of assets that could show to be deliverable to the Duke Energy Ohio load zone, in that it has firm transmission, would be an acceptable product.
Q. Okay. On page seven of your testimony, you state that: Regardless of the length of time to which a supplier commits, each successful supplier will provide full requirements SSO supply. Does this mean that suppliers can commit to whatever length of time suppliers want to?
A. Well, as we just discussed, Duke is

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going to offer, in the lines above that, one-, two- and three-year contract durations.
Q. And so that's the only length of time they can choose?
A. In that particular auction term. Although we talked about -- in that particular three-year auction, that would be correct. Duke would offer either one-, two-, or three-year contract durations.
Q. Okay. On page nine, you make -- you refer to a phrase that says exclude capacity from the product definition. When you said that the company does not find it beneficial, the full phrase is, is that the company does not find it beneficial to exclude capacity from the product definition. And you -- you made that phrase on page nine. I'm wondering if you can clarify that, please?
A. Yeah, the product is comprehensive energy capacity and ancillary services as well. So that would be the total product to meet an SSO load tranche. So the capacity would be an instrumental part of that service being provided.
Q. So, why did you find it necessary to -- to make a statement about the capacity?

A. Just to make it clear to bidders.
Q. Is -- are there some auctions where they don't have -- they don't include capacity?
A. I am not sure. But just to clarify that, since, you know, some RTOs have their own independent capacity auctions, this is just helping bidders to understand that they will be responsible to include capacity in their proposed bids. Additionally --
Q. Okay. I see.
A. Yeah.
Q. I see. Will SSO bidders be required to buy capacity from Duke?
A. SSO suppliers will be required to buy capacity from Duke during the term of the fix resource requirement proposal that FERC has approved, which would be the first 29 months, from January through -- I think it's May of 2014, first 29 months, during which the FERC fix resource requirements contract exist.
Q. So for what reason are they required to buy the capacity?
A. Well, the -- the understanding of that was that, as we migrate from MISO to PJM, Duke's generation resources were not incorporated in the

comprehensive PJM auctions. So, as you move these load requirements and the generation resources over to PJM, then those auctions would have already taken place. So there needed to be some sort of instrument or vehicle that would speak to the absence of those Duke Energy generation resources in the PJM market.
So the fix resource requirement understanding or agreement was developed such that the -- all the capacity for the first 29 months, beginning January 1 of 2012, could have a direct tie to those generation requirements until which time that the Duke Energy generations could participate fully in the PJM RPM markets going forward. So that's this intermediate period in which those generation resources would be able to participate in the PJM auctions and therefore would not need a direct tie after that point to any SSO bids.
Q. Are you familiar with the -- with the rider SCR?
A. I'm sorry, could you say that again? I'm not sure I heard you exactly.
Q. Are you familiar with Duke's rider SCR --

A. S --
Q. -- in the application --
A. Sam, Credit, Ralph?
Q. Yeah, that's what I mean. You said that you reviewed FirstEnergy's application. Do you know if FirstEnergy had a rider like the SCR that's intended to recover losses associated with supplier default?
A. I'm not familiar with whether FirstEnergy has or does not have that rider.
Q. Okay. Did you review the testimony of Wallack, Wilson and Fein in the FirstEnergy application or in the case, the filings, the testimony? They were filed by other parties.
A. I'm sorry, could you repeat that?
Q. Did you review the testimony of Wallack, Wilson and Fein that were filed by other parties in the FE case?
Q. Wallack, Wilson?
A. And Fein. I guess that's how you pronounce his name.
MR. VERRETT: F-E-I-N.
UNIDENTIFIED SPEAKER: They're three different people.
THE WITNESS: And were they an

intervener or...
BY MS. HOTZ:
Q. Yes, they were interveners.
A. No, I did not review that testimony.
Q. In the course of designing the auction, how did your review of the opinion and order in FE case 10-388-EL-SSO affect your design of the auction?
A. I'm sorry, I don't have a copy of that.
Q. Did you ever read the opinion and order in -- in the FirstEnergy case 10-388-EL-SSO?
A. At this time, I can't remember whether I did or did not review the order in particular. So I don't remember any specifics about that specific -- if you ask me about any specific finding or something, I might be able to allude to that. But I don't remember any specifics associated with that finding.
Q. What is your understanding as to what risks the bidders will assume in your auction, in your proposed auction?
A. Could you help me understand? Are you talking -- which risks are you talking about? I mean --
Q. Well, when you -- when you think about

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the design of your auction and you think about how it's going to play out and the responsibilities that everyone has based on the -- the agreement, what risks do you see that bidders will assume --
A. Okay.
Q. -- that you won't have to?
A. Certainly, first and foremost, price risk. I think there is also supply risk, whether that will increase or decrease. There is always market risk. And that will vary widely from bidder to bidder, depending on what resources they have or don't have at their -- in their portfolio. So those would be three primary risks that I could see.
Q. What analysis has Duke undertaken to -- in regard to the risk premium that will be charged for each of these risks?
A. I have not been involved in developing any analysis to try to predict any kind of risk premium for bidders.
Q. What is a descending price clock auction?
A. A descending clock auction is an auction methodology whereby bidders respond to proposed prices by nominating the number of

tranches that they would offer up at a particular price. And then, as each of these rounds is oversubscribed, the auction manager would drop those prices within a certain defined time period, whereby bidders would continue to reduce the number of supply tranches that they were willing to participate in until some sort of equilibrium is reached with bidders in the company, whereby the required number of the tranches that the utility offers up exactly meets the amount or supply that bidders would offer, in an attempt to utilize the marketplace to develop the lowest prices available to serve those energy tranches.
Q. Has Duke conducted a cost/benefit analysis to identify potentially cost-effective -- and this would be from an SSO customer's perspective -- alternatives for mitigating the risk that bidders face, either through auction redesign or other measures?
A. I'm not exactly sure I understand your question. Could you rephrase that one more time so I could give you a better answer?
Q. Well, I guess the best way to say it would be to say, has Duke conducted any kind of cost/benefit analysis that would identify how an

auction could be designed to -- to best serve an SSO customer?
A. I am not aware of a specific cost/benefit analysis that was performed. I do believe that Duke has held several, several discussions with our auction manager to discuss different aspects of auctions, to try to ensure that we receive the most cost effective bids in the marketplace.
Q. Would that be with Witness Lee?
A. That would be with Witness Lee, as well as others at Charles River Associates.
Q. Okay. What is your understanding regarding the risks that Duke SSO customers will assume?
A. Could you repeat that, please?
Q. When you -- when you think about the auction design, what risks do you see, from that design, that Duke's standard service offer customers will assume?
A. And I assume you're talking about customers rather than bidders.
Q. Right.
A. Okay. I don't see any additional risks that SSO customers would be exposed to.

Q. Any additional, when compared to what?
A. Well, I don't believe that customers will be exposed to any material high risk -- or high risks associated with this MRO option.
Q. As compared to what?
A. Status quo.
Q. Okay. Do you think that the auction design will affect Dukes's shopping customers in any way?
A. I think that the results of the auction would certainly be a consideration that -- that shopping customers may consider. So I think the results of the auction would be considered in part of a decision-making process for shopping customers.
Q. How volatile do you think wholesale electric prices are?
A. Over the last several years, they -- well, all commodities have certain volatility characteristics associated with them, depending on what's going on in the general marketplace.
Q. Uh-huh.
A. So, again, all commodities, such as energy marketplaces, are exposed to different economic conditions that prevail and operational

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conditions. So I guess the question would be, you know, volatile as compared to what?

Q. Well, that's what I mean. Do you think it's more volatile than other commodities or do you think it's less volatile?

A. If you could maybe, perhaps -- I mean, other commodities is a pretty wide subject. Do you have a particular commodity in mind that you'd like me to compare it to?

Q. No, just generally. Just taking the -- just taking the average of all the other commodities.

A. Gosh, that's a tough question. All commodities is a very wide range, in question, indeed. So I'm not sure there is such a thing as an average commodity.

Q. Okay. So you --

A. For example, gold. Gold has been somewhat volatile over the last year. So certainly, it would not be near as volatile as gold has been over the last several years. But in comparison to something less volatile, it might be more volatile.

Q. So you don't see electric as the electric -- the electric commodity, as a

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particularly volatile commodity, you just -- or as a particularly non or stable commodity, one way or the other; is that right?

A. No, I wouldn't say that. I say all commodities bear certain volatility characteristics, depending on what's going on in the marketplace. And so, certainly, specific occurrences could occur that could make them more or less volatile than they had been historically. So I would not venture to say a particular commodity is or is not volatile; it really depends on the prevailing economic conditions that are occurring.

Q. So, you don't think that there are any commodities that are more volatile than other commodities?

A. No, I do think there are some commodities more volatile than others. But I would not -- I would not place energy markets as, perhaps, in the most volatile commodities that exist.

Q. And you wouldn't place it in the most stable commodities that exist either, right?

A. That would be correct.

Q. Okay. Have you conducted an historical

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analysis or has Duke conducted an historical analysis regarding the most optimum time of year to purchase power?

A. I am not aware of a study that defines the most optimal time of year for an auction.

Q. Did you consider starting or holding the auction during any other month, besides June?

A. During the development of this MRO, there were -- there were conversations with the auction manager on what we collectively felt might be the most appropriate times to implement these auctions. So we considered several different issues and considerations in coming up with what we finally agreed would be the most -- would be an appropriate time, which would be following the PJM reliability model clearing of capacity pricing, A; and B, sufficient enough time, prior to the beginning of the contract period, to give bidders adequate time to prepare their resource portfolios to provide that energy and capacity.

Q. So was this a recommendation that Charles River Associates gave you, really?

A. I would not say it was a particular recommendation, but certainly, we discussed several different options. And as -- in conclusion, both

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Charles River and Duke believed that the June date certainly would meet all the needs and requirements. And there was no thought that June wouldn't be an appropriate time to go forward with an auction.

Q. Did you identify any cons to that time?

A. Not really, no.

Q. Did you identify any other times that had pros that you were thinking about?

A. No. Because what we did was we -- no, we did not. No other -- based on the way we created the pricing for this auction, with the seasonal allocation factor, there was no belief that one month was better or worse than another month.

Q. Did Duke evaluate the risk of having one auction per year versus two auctions per year?

A. We -- Duke held discussions on if we thought that one auction per year was sufficient to meet all of our needs. And we felt like that an annual auction with multiple products, be it one, two, and three years, would be sufficiently met by holding just one auction per year.

Q. What do you mean by sufficient?

A. Sufficient would be defined as meeting

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what the available load tranches offered in that auction would be. For example, in the first auction offering ten tranches that we felt like we could secure all ten tranches in that auction contract time.

Q. Did Duke ever consider soliciting sequential 12-month contracts rather than a single multi-year contract?

A. We did consider sequential one-year contracts but -- we did consider that. But we felt like multiple products of one- and two- and three-year durations would mitigate a lot of risks. And perhaps, if there were any volatile -- it would dampen any volatility, if any existed, in the energy marketplaces.

Q. Does Duke have a process that it will use for incorporating lessons from earlier auctions into later auctions or changes in the market over time into future auction designs?

A. We did not specifically discuss that, but I think that it is reasonable for one to believe that, in successive auctions, that we should always take lessons learned in each auction and apply them, as appropriate, in future auctions. That would just be a normal standard of business

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that -- of continuous improvement, that should be applied to all projects.

Q. Will you have -- will you include a process for getting feedback from other parties, such as bidders and customers, et cetera?

A. I don't know of a -- I don't know if we've specifically outlined that or asked for that at the present time, but I certainly think that would be an interesting idea.

Q. Have you evaluated the risk of bidding out 80 percent of the SSO load in one auction versus multiple auctions?

A. We had discussions about years at which there might be a significant number of the tranches bid out in any one year, although we felt comfortable that offering a multitude of different product links would mitigate that risk, to a certain extent, so that bidders that were more comfortable with one-year contract durations, as opposed to two- or three-year contract durations, could independently select and choose what they felt both aligned with their resource portfolios and their associated risk profiles for their companies.

MS. HOTZ: Okay. Well, that's all we

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have. Thank you.

MR. KUTIK: Mr. Hart is last.

EXAMINATION

BY MR. HART:

Q. Thank you. Mr. Northrup, my name is Doug Hart, I have just a few questions for you. Can you hear me?

A. Yes, I can.

Q. Okay.

MS. WATTS: Mr. Hart?

MR. HART: Yes.

MS. WATTS: Would you disclose to the witness who your client is, please?

BY MR. HART:

Q. I have two clients in this case. One's the Greater Cincinnati Health Council and the other is Eagle Energy. I wanted to ask you about, essentially, the product that's being auctioned and how that's priced. As I understand it, bidders are committing to all the components, energy, capacity, transmission, et cetera, necessary to deliver power to the Duke zone; is that correct?

A. Correct.

Q. Is that all that's expressed in a single price term?

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A. Correct.

Q. And what is the unit, I guess, that people are bidding on?

A. A one percent tranche of unswitched load of SSO load.

Q. Well, maybe I didn't ask that well enough. What I mean was, is it kilowatt hours that they're --

A. Oh, yeah.

Q. Kilowatt hour?

A. Yes.

Q. I guess I don't understand the comment on page nine. You said each supplier will have to obtain capacity for Duke. And I think you indicated, in an earlier answer, that would be the first 29 months. What capacity are bidders going to have to buy from Duke?

A. All the capacity associated with the one percent tranche will be secured directly from Duke.

Q. I'm not sure exactly what you mean by capacity. The generation capacity is being supplied by the -- by the bidder. What capacity is Duke offering?

A. Okay. Duke will be responsible to

supply all the capacity for all the unswitched load during this 29-month period, as opposed to the bidders going directly to PJM and securing capacity, unspecified capacity, from any bidder in the RPM auction. And actually, it's rather seamless to the bidder, whether they buy it from PGM or Duke. So from the bidder's perspective, that's sort of irrelevant.
Q. Well, are you speaking of generation capacity or transmission capacity?
A. Generation capacity.
Q. What if the bidder has their only generation assets that they're using to supply that capacity?
A. During the initial 29-month period, as I understand it, during the initial 29-month period associated with the fix resource requirement filed with FERC, then that capacity needs to be secured from Duke.
Q. And how -- how does Duke secure the capacity then?
A. Well, the Duke Energy generation that is being transferred from MISO to PJM will be capacity resource.
Q. Oh, I take it the bidders are going to

have to compensate Duke for Duke's generation capacity, even if they're not using that capacity?
A. Well, I'm not -- by definition, since you will have to secure it with the approved FERC FRI filing, which stipulates that that capacity needs to be secured from Duke, by definition, that will be the capacity assigned to your specified SSO tranche. Now, whatever the bidder would like to do with other capacity that he may or may not have, he certainly could do anything he'd like to with that other capacity and sell it to any marketplace at any other time.
Q. And how is the price of Duke's capacity established?
A. The capacity aligns with the base residual auction that is already cleared in the PJM marketplace. It's already stated and already publicly identified in the marketplace.
Q. I take it, then, whatever cost to secure that capacity is incurred by the bidder, they have to wrap into their price, which is priced back to Duke?
A. Correct.
Q. On page seven of your testimony, at the bottom, you talk about the date that you make

available to bidders. And on line 19, you say you will provide folks with total retail load and the SSO load. What's the different between those two terms?
A. Retail load are all wires, connected customers. SSO load would be those -- that load that has not switched, or unswitched load.
Q. Okay. So, the fundamental question here is the load that's being bid here is a slice of the SSO or the total retail?
A. It's a slice of the SSO load.
Q. Is that -- is it dependant on the number of shoppers?
A. It certainly is impacted by that, correct.
Q. Well, as I understand it, currently about 65 percent of Duke load has shopped. Is that -- is that what you believe?
A. I have heard 60 to -- yeah, I have heard the number 60 percent.
Q. Well, let's use 60. Does that mean, then, the SSO load -- SSO load is 40 percent of the total wired load?
A. Correct. As it -- as it stands today, yeah.

Q. Okay. So the first auction, then, would be for four percent of the total system load; is that right?
A. It would be ten percent of the unswitched load.
Q. And if that's 40 percent, then it would be four percent --
A. Right.
Q. -- of the total load?
A. Of the total load, correct.
Q. Okay. And at what point in time is that SSO load determined for the May auction?
A. Well, that -- that amount of load, in theory, would continue to change each day, shoppers made different choices. So it could be, you know, it could vary at any one point in time.
Q. Well, I understand that. But I understood that the bidders are only bidding on a slice of the SSO load, right?
A. That's right. And that load -- that load may rise and fall. Again, it's ten percent of the unswitched load. So if that load -- if that unswitched load either increases or decreases, the commensurate volume associated with that would increase and decrease as well.

Q. So, that's another one of the risks the bidder takes on, is they don't necessarily know what load they are committing to?

A. There would be some volumetric risk, correct.

Q. And with 60 percent shopping, that's a fairly wide risk, correct, if the shopping went away, right?

A. There would be volumetric risk.

Q. I want to ask you about the auction process. You talked a little bit about the descending price clock auction. As I understand it, from the company's description, the auctioneer will post a price and then bidders respond with the number of tranches they would supply at that price; is that correct?

A. Correct.

Q. And as long as the tranches were oversubscribed, you would decrease the price by some increment and then do another round of bidding, right?

A. Correct.

Q. And you keep doing that until you no longer can subscribe all the tranches?

A. Well, you do that until you reach some

sort of equilibrium between the amount you need and the offered tranches, yeah.

Q. Well, let me give you an example. The first auction, you're proposing to auction ten tranches. If you get commitments for 12 tranches at a given price, I take it that means you'd go down to the next increment?

A. I'm sorry, I -- I couldn't hear the last phrase of that.

Q. If you -- if you got 12 commitments at a given price, I take it you would then go another round of bidding at a lower incremental price?

A. Correct.

Q. And let's say you get to a price where you only get five subscribers at that level, is that when the auction stops?

A. Well, there are some end-of-round contingencies to ensure that you have secured all ten of those tranches, so that there is some lookback type realms, such that the auction manager would see in the prior round how many were subscribed at a price higher. And so this end-of-round type methodology would ensure that you don't stop just at five tranches that you've, again, fully subscribed all ten tranches at some

appropriately cleared price.

Q. Right. As I understand it, the company's proposal is to roll back to the --

A. Right.

Q. -- last price that was fully subscribed?

A. Correct, roll back, that's right. And there's several different techniques on the rollback, especially with the complication of if you have multiple products or just one product.

Q. Let's just make it simple and just talk about one product for a moment here. If you had a single product, ten tranches, you had 12 commitments, and you go to the next round and only get five, does that mean the price result of that auction is the price that got 12 commitments?

A. Well, I'd like -- there's a complete description of that in our filing. But as I understand it, that would be the case. The auction manager certainly is much more versed in these auction particulars than I am. But as I understand it, that's roughly the way it works.

Q. On two scenarios, one, if you roll back to the tranche that had 12 commitments, how would Duke determine which ten of the 12 to use in its

contracting?

A. I think there's -- again, that's spoken and given some, actually, some examples in here. But I think there's some random number generators in here that allow different bidders to have random numbers, so the random number allows these bidders to be independently selected and offered additional tranches in this oversubscription case that you just discussed.

Q. I guess I'm not sure what you mean by additional tranches.

A. Well, we talked about -- we talked about, in the prior round, there was 12 tranches offered. And in the subsequent round, there were ten -- five tranches offered. So, obviously, if you roll back to the previous price, one would argue that you would have to accept all 12. Well, that's not the case. I think there's some random number selection in there about, you know, of the rollback, who is allowed to participate in those rollbacks, just so that you equal your ten -- your required ten tranches.

Q. Okay. So is your answer the -- the random selection, ten of the 12?

A. Subject to check. I guess I'd want to

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revisit that. But as I understand it, I think that's the case it is. And that would be, again, there is an example, under the bidding rules, Attachment C. And there is a description of that process in the appendix.

Q. Now, let me ask you a different question: If you have five commitments at the lower price, does Duke give consideration to accepting those five and then supplementing them with five of the 12 who committed at the higher price?

A. Again, I think the best person to reflect these specific questions would be to the auction manager that's done this time and time again.

Q. Okay. Would you agree, though, that accepting five at the lower price and five at the higher price would result in a lower overall auction price than going back to the higher price that had 12 subscriptions?

A. I think it's possible that it may, in that case that you laid it out, I think that that's a possibility, yes.

MR. HART: That's all I have. Thank you.

MR. KUTIK: Does anyone else have any other questions?

Mr. Northrup, let -- this is David Kutik. Let me advise you, as you probably know, that, as part of the deposition process, you have the right to review the deposition. You also have the opportunity to waive that right. This is the part of the deposition where you have to indicate whether you wish to read the deposition or waive that right.

MS. WATTS: We'll read, David, please.

MR. KUTIK: All right. Thank you very much.

(The witness, after having been advised of his right to read and sign this transcript, does not waive that right.)

(The deposition was concluded at 5:56 p.m.)

CERTIFICATE OF REPORTER

I, Carolyn M. Beam, Court Reporter, and Notary Public for the State of North Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 17th day of December, 2010, at Charlotte, Mecklenburg County, North Carolina.

Carolyn M. Beam
Court Reporter
My Commission expires
August 26, 2012

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REQUESTED INFORMATION INDEX
(No Information Requested)

EXHIBITS
(No Exhibits Proffered)

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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service. : Case No. 10-2586-EL-SSO

- - -

DEPOSITION

of William Don Wathen, Jr., taken before me, Maria DiPaolo Jones, a Notary Public in and for the State of Ohio, at the offices of Jones Day, 325 John H. McConnell Boulevard, Suite 600, Columbus, Ohio, on Monday, December 13, 2010, at 1:11 p.m.

- - -

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ALSO PRESENT:

Mr. Mack Thompson.

- - -

Monday Afternoon Session,
December 13, 2010.

- - -

STIPULATIONS

It is stipulated by and among counsel for the respective parties that the deposition of William Don Wathen, Jr., a witness called by the intervenors under the applicable Rules of Civil Procedure, may be reduced to writing in stenotypy by the Notary, whose notes thereafter may be transcribed out of the presence of the witness; and that proof of the official character and qualification of the Notary is waived.

- - -

WILLIAM DON WATHEN, JR.
being by me first duly sworn, as hereinafter certified, deposes and says as follows:

EXAMINATION

By Mr. Kutik:
Q. What is your name?
A. William Don Wathen, Jr., W-a-t-h-e-n.
Q. And, Mr. Wathen, have you ever had your deposition taken before?
A. Yes.
Q. So I assume that you understand the general rules of a deposition.
A. General rules.
Q. Okay. Let me review a couple of those for you. As you know, the court reporter is taking down what we say, so it would be helpful for all of us if you answer my questions with words and refrain from using gestures or phrases like "uh-huh" and "huh-uh" because those don't come out on the record very well. Will you do that for me?
A. I'm a Kentuckian so I can't say "nope" won't come out once in a while, but I'll try.
Q. "Nope" is okay. I think we can figure that one out.

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Also, if you would wait until I finish my question before you answer, and I'll try to wait till you finish your answers before I ask my next question. It's hard if both of us are talking over one another for the court reporter to take everything down. Can you do that for me as well?
A. I'll try.
Q. And finally, if you answer my questions, I can only assume that you understood them. So if you don't understand any of the questions that I ask you or anybody else asks you later today, will you please tell me that and we'll try to work with one another so we can communicate? Will you do that for me?
A. I will.
Q. Mr. Wathen, how long have you been working for a Duke entity?
A. Since June of 1998.
Q. What did you do starting in 1998?
A. When I started with the company, I was working in the Financial Forecasting group doing long-term forecasts, and in 1999 I was promoted to the manager of that group.
Q. Had you had forecasting experience before

that in your work for Duke in 1998?
A. Not identical to what I was doing, but I've done financial forecasts before.
Q. Well, let's go back to your degrees. You have a bachelor degree in business and chemical engineering, correct?
A. That's correct.
Q. Are those two degrees or are they one degree?
A. Two degrees.
Q. All right. When did you get those degrees?
A. The business degree was in May of '85, and the chemical engineering was in May of '86.
Q. Okay.
MR. KUTIK: Let's go off the record for a second.
(Discussion off the record.)
Q. And that was from the University of Kentucky?
A. That's right.
Q. You ultimately also received a master's in business administration too, correct?
A. I did.

Q. And that was from the University of Kentucky?
A. It was.
Q. When was that?
A. My degree was in December of '88.
Q. Did you work while you were getting your MBA?
A. I had an internship at Ashland Chemical in Dublin, Ohio.
Q. And upon graduation with your master's what did you do next?
A. My first job was in planning analysis at Kentucky Utilities.
Q. How long did you have that job?
A. Oh, seven or eight months, something like that.
Q. Then what?
A. Then I got a job at the Indiana Utility Regulatory Commission as a senior engineer in the Water and Sewer department.
Q. How long did you work there?
A. Two years.
Q. That takes us up to about 1990?
A. '92.

Q. Okay.
A. Give or take. Two-and-a-half years.
Q. And then in 1992 what happened?
A. I started working for a consulting company called SV as in Victor, B as in Bob, K, SVBK Consulting Group.
Q. What type of consulting did you do?
A. Just general utility consulting, rates, production planning. Mostly rate related work.
Q. Did you work or consult mostly for water and sewer companies?
A. No. Most of my time was spent working on behalf of the city of New Orleans in their regulation of Entergy New Orleans.
Q. So the city of New Orleans was your client and you were working on various proceedings involving Entergy?
A. That's right.
Q. Or various Entergy companies?
A. Mostly Entergy New Orleans.
Q. How long were you with SVBK?
A. From August of '92 to the time I got the job at Cinergy, now Duke, in 1998.
Q. At any time have you been a licensed or

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registered professional engineer?
A. I got engineering training, but I never got the PE certification.
Q. Did you ever take any of the part test to be a PE?
A. I did.
Q. And where was that?
A. I took it in Indianapolis and I took it in Orlando.
Q. When you worked for SVBK, what office were you with?
A. I started off in Indianapolis, left there to go to Denver, left there to go to Orlando, left there to go to New Orleans, left there to go back to Orlando, left there to go to Charlotte.
Q. Now, you said you worked, or in 1999 you became the manager in, is it the Forecasting department?
A. Yeah. It was called the Financial Forecasting department.
Q. What kind of forecasts would your department work on?
A. We generally did five-year consolidated forecasts for what was then the Cinergy Corporation

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and all its subsidiaries.
Q. And are five-year forecasts still part of the way that Duke does business today?
A. Yes, it is.
Q. In your current responsibilities do you have any role in the preparation or review of those forecasts?
A. I review the forecast insofar as it relates to expectations on rate case planning, regulatory matters such as this. We provide advice, we review some of the assumptions in their forecast to give a rates perspective on the forecast.
Q. Do you know whether Duke's current forecasts, what they include with respect to Duke-Ohio -- Duke Energy-Ohio and the result of this case?
MR. D'ASCENZO: Objection. Go ahead and answer.
A. I know the forecast included in our filing assumes that we have the MRO and we -- for the purpose of not knowing, because we don't know what the switching assumptions are, we assumed there was no switching, so that's the underlying fundamentals of our forecast.

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Q. Did you assume going forward that all other things would remain constant as of the end of 2011?
A. No. I don't know the details, but as far as I know that is not the case.
Q. Do you know or are you familiar with any forecasts or the thinking behind any of the forecasts relating to the fuel purchase costs that make up that forecast?
A. Do I know the details of the forecast?
Q. Yes.
A. I know the basis for it. It was -- a production cost model was run for the upcoming year using the parameters that we typically use.
Q. So with respect to fuel purchase costs, how far out have those been projected?
A. Not past '11.
Q. Well, if your forecasts include a five-year forecast, what assumptions are made with respect to fuel purchase costs past 2011?
A. I wouldn't know. I don't look past '11 because our ESP goes to '11, and I don't know what the Commercial group did in their assumptions for past '11.

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Q. If you had to ask anyone within the company, who would you ask to understand that question or to answer that question?
A. There's an individual who's not a witness in the case, but Mark Krabbe is who I would go to. K-r-a-b-b-e.
Q. That's Mark?
A. Uh-huh.
Q. And how do you pronounce his last name?
A. "Crabby."
Q. And what does Mr. Krabbe do?
A. He's, I don't know if he's director or manager of the Forecasting for the commercial -- Midwest Commercial group. I think something like that. I'm sure I tortured his title, but it's in there somewhere.
Q. But forecasts do exist with respect to fuel purchased costs going out five years; fair to say?
A. Sure. Yeah.
Q. Now, how long were you manager of the Financial Forecast department?
A. I was from -- I was manager probably around May of '99 and I had that title until I came

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into Rates in August of '03.
Q. And at that time you became Director of Rates?
A. Originally, I was Manager of Revenue Requirements, and then after the merger they changed the title to Director.
Q. Did your responsibilities change when you became Director of Rates? In other words, were your responsibilities as Manager of Revenue Requirements and Director of Rates different?
A. No.
Q. Who did you report to as Manager of Revenue Requirements?
A. When I started in the Rate department, my supervisor was Jack Steffen, and after the merger it was Paul Smith.
Q. What title did Mr. Steffen have?
A. Steffen was Vice President of Rates and Regulatory Services, something like that.
Q. And Mr. Smith?
A. Same title.
Q. Were there other managers that reported to Mr. Steffen?
A. Yes.

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Q. Who were they?
A. There was -- when I first started in the department, there was a fellow named Don Rottinghaus and another fellow named Jim Lafeld, L-a-f-e-l-d.
Q. Anyone else?
A. It's been awhile. There were other managers in Indiana that reported to him, at the time it was I think Steve Farmer, Kent Freeman, Jeff Bailey.
Q. And Mr. -- is it Rottinghaus?
A. Rottinghaus.
Q. What title did he have?
A. Man, old stuff. It was something like Manager of Rate Services.
Q. Mr. Lafeld, what was his title?
A. I don't even remember.
Q. Do you remember the title of any of the other managers that you named --
A. Well --
Q. -- Mr. Farmer, Mr. Freeman, Mr. Bailey?
A. Bailey would have been Manager of Rate Design; Farmer would have been a manager of Revenue Requirements; and Freeman would have been something, I don't know his exact title, but he was responsible

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for cost of service.
Q. When you were Manager of Revenue Requirements, did you have a particular geographical area that you were responsible for?
A. Ohio and Kentucky.
Q. And is it fair to say that then Mr. Freeman had the same responsibilities for other geographic areas?
A. Kent Freeman was a cost-of-service fellow and he went through -- he provided that service for all the jurisdictions. Same for Jeff Bailey with his rate design.
Q. Okay. In your responsibilities either as Manager of Revenue Requirements or Director of Rates did you have any responsibilities for designing rates?
A. No. Well, some. I proposed riders that had some rate design aspects of it, yeah.
Q. Is it the case that your experience for Duke has been limited to Ohio and Kentucky?
A. I think for Duke exclusively related to Ohio and Kentucky, yes.
Q. Does Kentucky have deregulated retail generation?

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A. No.
Q. Now, in your current -- you moved to your current position in 2000?
A. My current title?
Q. Yes.
A. That was last December. A year ago.
Q. 2009?
A. Yes.
Q. Okay. Sorry. I misspoke. And you're currently General Manager, Vice President of Rates for Ohio and Kentucky.
A. That's right.
Q. Now, you said in your testimony that one of the things that you're responsible for is, quote, "all state and federal matters," end quote. What does that mean?
A. It's all related to ratemaking, regulatory matters that effect our rate design, our rate -- revenue requirement stuff. We do rate cases for gas, electric in both states; the transmission in terms of the -- it's a formula rate that's regulated by the FERC; and then the generation aspects of the ESP, RSP, MDP, all those prior versions of our deregulation in Ohio.

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Q. So would it be fair to say that you're primarily responsible for coordinating the company's efforts in filings before the state commissions and before FERC?
A. In part I'm responsible for coordinating, obviously Legal is heavily involved in that as well, yeah.
Q. Now, is it part of your role in your current position as General Manager and Vice President of Rates to be involved in formulating the company's response to developing state policy or state legislation?
A. I would say we have an advisory role in that. We certainly contribute in discussions about areas of interest for state policy, right, and federal.
Q. But there are other people within the Duke organization that are more centrally involved in formulating the policy and then expressing that policy to the decision-makers.
A. Absolutely.
Q. To the extent it deals with matters of rates, you would be involved on a consulting basis; fair to say?

A. That's fair to say.
Q. Now, did you have any involvement in the company's efforts relating to Senate Bill 221?
A. I did not.
Q. And so we're clear, you never testified in any hearings before, let's say the General Assembly on Senate Bill 221.
A. I would remember that.
Q. And the answer is "no" you --
A. The answer is "no."
Q. Okay. Did you attend any of the hearings --
A. I did not.
Q. -- for the General Assembly?
A. I did not.
Q. Did you ever speak with any member of the General Assembly in an effort to discuss Duke's views on issues that ultimately were considered as part of Senate Bill 221?
A. I did not.
Q. I assume, sir, that you were involved in the decision on behalf of the company to submit an application for an MRO.
A. I was.

Q. Would you consider yourself to be the chief architect of the MRO application?
A. Probably not the chief architect. Part of the group of architects I would say.
Q. All right. Is there anyone within the company that you would consider to have been the chief architect of the application?
A. I wouldn't characterize a single person as the chief architect, no.
Q. Was there someone who was in charge of the effort?
A. I mean, the president of Duke Energy-Ohio and the head of the Commercial group had a say, along with the executive management, but as far as the effort goes, it was a collective effort.
Q. And you were one of those folks that was part of that collective effort?
A. I was.
Q. I assume that you're familiar with the company's reasons to file an MRO.
A. Quite.
Q. And would it be fair to say that one of the reasons to file an MRO was the increase in shopping in Duke's territory?

A. I'm not sure I'd characterize it that way. I would say the amount of shopping that we had certainly gave us some enlightenment on where the future was going.
Q. Okay. So the amount of shopping had nothing to do with Duke's decision to file an MRO?
A. I wouldn't say that. I would say that, again, it's not exclusively a reason. It certainly is a factor.
Q. And, sir, I didn't mean to say it was the reason. I said "one of the reasons."
A. One, yeah, it's one reason.
Q. Okay. Did the company, to your knowledge, ever give any consideration to filing an ESP with a competitive bidding process?
MR. D'ASCENZO: Objection. You're getting into some confidential and privileged information here.
Q. Can you answer my question, sir?
MR. D'ASCENZO: I don't think we have confidentiality agreements with everybody in the room.
MR. KUTIK: Well, we have one, correct? Okay.

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MR. D'ASCENZO: Well, and also we're teetering dangerously close to attorney-client privilege here.

MR. KUTIK: Well, all I asked, and I think it can get a "yes" or "no" without divulging privileged or confidential information, is did the company consider an ESP with a competitive bidding process.

Q. Can you answer that question, sir?

A. Sure. We considered everything.

Q. Okay. Are you aware of other companies in Ohio that had an ESP with a competitive bidding process?

A. I am.

Q. And what company or companies have that?

A. To my knowledge, the only company that has that form of, I'll call it an ESP, is FirstEnergy.

Q. Okay. Well, is what FirstEnergy currently does to come up with their standard service offer something other than an ESP?

A. The standard service offer is -- the standard service offer itself is a competitive bid which would mirror an MRO, so it's -- the ESP is a

little broader definition I guess, but it's still a competitive bid.

Q. Okay. But the company did file and get approval of an ESP, correct, or the companies did file?

A. Well, right, they filed an ESP in 10-388 and got approval of that.

Q. Okay. Have you done any work to study -- well, back up.

Are you aware of whether the FirstEnergy utilities in Ohio, I'll just call them "the FirstEnergy companies," have gone through a competitive bidding process to provide POLR service to their customers?

A. To my knowledge, they've gone through at least two.

Q. Have you studied those competitive bidding processes?

A. I have not studied the details of the competitive bid process, no.

Q. Did you do any review of the FirstEnergy companies' documentation to -- in terms of protocols, bidding rules, master supply agreement, that type of thing?

A. I did not personally.

Q. Are you aware of the number of successful participants in the FirstEnergy companies' competitive bidding processes?

A. Not specifically aware. I can't remember the exact number. I'm sure I've seen it, but I can't remember.

Q. Okay. Have you spoken with anyone at Duke Retail about any experiences that they may have had vis-a-vis the FirstEnergy companies' competitive bidding processes?

A. I have not.

Q. Are you one of the individuals within the company that's going to be involved in Duke's efforts to spin off its generation facilities?

A. I'm sure I'll be part of the team. I don't know who all would be or who the mastermind would be.

Q. Or the chief architect?

A. Or the chief architect.

Q. In terms of your involvement in the process so far have you been involved in discussions regarding the potential timing of that transfer?

A. As part of our MRO planning, yes, it's

come up.

Q. And am I correct to say that under Duke's current ESP Duke has committed to maintain ownership of those facilities at least through the end of 2011?

A. I don't remember the ownership statement being there, but I remember the capacity being dedicated through the end of '11, right.

Q. Fair enough. Thank you.

Are you familiar with the facilities that Duke intends to transfer?

A. Generally.

Q. Can the generation from those facilities be bid into a competitive bidding process for Duke's POLR load?

A. To my knowledge, they can.

Q. They can?

A. Uh-huh.

Q. Are you aware of the amount of shopping that's occurring within the Duke Energy-Ohio service territory?

A. Approximately.

Q. Can you tell me what -- can you describe it for me?

A. Right now roughly 65 percent of our

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energy load is being served by parties other than Duke Energy-Ohio.
Q. And with respect to the nonresidential load, can you quantify that for me in terms of shopping?
A. I can't give you the exact number but it's around 80 percent I would say.
Q. And for residential load?
A. Somewhere in the high 20s.
Q. Do you know of that high 20s how much of that represents governmental aggregation?
A. I don't know.
Q. Is there someone who's testifying in this case that would know that?
A. Dan Jones is the witness on the aggregation, he might be someone you can ask. We can certainly give you a discovery response in that; I think there's one outstanding anyway.
Q. Now, sir, in your testimony you quote from Ohio Revised Code section 4929.142(D) and (E), correct?
A. No. 4928.142(D) and (E).
Q. Thank you. So you have quoted from those statutes, correct?

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A. I have.
Q. Now, in terms of my understanding of your background, you're not a lawyer, correct?
A. I'm not a lawyer.
Q. Is it part of your job as director, excuse me, as General Manager and Vice President of Rates to interpret statutes?
A. Sure.
Q. And since that's part of your job I assume that you're well aware and familiar with the general rules of statutory construction.
A. Not especially.
Q. Okay. Are you aware of any of the rules of statutory construction?
A. I'm not a lawyer, so I don't know.
Q. Is the answer "no," you're not aware?
A. I don't know.
Q. Can I take it, sir, then, that you're not aware of any rule that says that when you're interpreting a statute, each word should be given a meaning?
A. I would assume every word in the law would be given meaning.
Q. So you would say that it would be

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reasonable in interpreting a statute to make sure that your interpretation gives every word a meaning, correct?
A. I try to take meaning from every word in the statute, yes.
Q. Would it also be a reasonable rule, as far as you're concerned, that if a word did not have a -- was not defined elsewhere and did not have some technical meaning, that the word would have the ordinary dictionary definition meaning?
A. I assume you're asserting something legally, and I'll take your word for it.
Q. I just asked you do you think that's a reasonable rule of construction?
A. Seems reasonable to me.
Q. Now, in section 4928.142(D) and (E), both of those have the word "year" in it, correct?
A. They speak to the years, right.
Q. They actually use the word "year," correct?
A. That's correct.
Q. And is it fair to say that when one normally thinks of a year, one thinks of a 12-month period? Correct?

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A. Generally.
Q. Okay. Are you aware of anything in section 4928.142(D) or (E) which gives support for the interpretation of the word "year" to mean something other than a 12-month period?
A. I'm not aware of anything specifically.
Q. Are you aware of anything in chapter 4928 which would support an interpretation of the word "year" to mean something other than a 12-month period?
A. Not specifically, no.
Q. Are you aware of anything in the Ohio Revised Code that would support an interpretation of the word "year" to mean something other than a 12-month period?
A. Not specifically, no.
Q. Okay. You can't point to anything sitting here today, correct?
A. I can't point to anything in the statutes or the Revised Code, no.
Q. And my final question in this area is you also cannot point to anything in the Ohio Administrative Code which would support interpreting the word "year" to mean anything other than a

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12-month period, correct?
A. Not specifically, no.
Q. You can't tell me anything, can you?
A. I think that's what I meant, not specifically, no.
Q. Well, when you said "not specifically," I don't know if you mean "well, generally I can."
A. I can't. I can't specifically point to anything in the code, the administrative rules, or anything like that.
Q. Thank you.
Now, sir, let me refer you to section 4928.142(E) which appears on page 4 of your testimony.
A. (E)?
Q. Yes, (E) as in Edward.
A. Okay.
Q. Now, section or division (E) of section, I'll call it "142" provides the basis to alter the schedule of transitioning to market that is provided in 142(D), correct?
A. It affords the Commission the opportunity to adjust the planning period, right.
Q. There's a phrase that starts in your

testimony at page 4 on line 36 and the phrase is "to mitigate any effect of an abrupt or significant change in the electric distribution utility's standard service offer price that would otherwise result in general or with respect to any rate group or rate schedule but for such alteration." Do you see that?
A. I do.
Q. What does that mean?
A. Well, I believe they had it in mind to ensure that there would not be a rate shock from one year to another as a result of the blending.
Q. Okay. Is that a requirement to be able to vary from the schedule that's set forth in 142(D)?
A. Seems to be.
Q. Is there anything in your testimony or in the testimony of anyone else or in the application in general which makes a showing that the schedule that the company proposes satisfies that test, that phrase that we just discussed?
A. I don't think there's anything specifically. I think generally we believe the market prices will, and the way the bid process is working will tend to result in relatively stable

year-to-year prices and won't result in an abrupt change in price from year to year.
Q. Okay. But you can't point me to anything specifically.
A. Not specifically, no.
Q. Is it the case that right now if all of the POLR load were up for bid in, say, 2012, that you believe that the SSO price would be lower than the one you propose?
A. If all of our POLR load went to the market?
Q. Yes.
A. We would have an abrupt change in our price, yes.
Q. That wasn't my question. Would it be lower?
A. It would be abruptly lower, yes.
Q. Okay. Now, you believe that under section, again what I'm calling 142 and division (E) of that, that the Commission can begin altering the schedule that's set out in 142(D) in year 3, correct?
A. I think, being not a lawyer, I mean, it's pretty black-letter that they have the right to do that, yes.

Q. But your belief is they can do that beginning in year 3.
A. It says "prospectively." Beginning in year 2 they can do it prospectively, which means beginning in year 3 to me.
Q. Okay. So when you see the phrase "beginning in the second year," what does that mean?
A. It says "beginning in the second year." In, say, 2013 in our case, somewhere in 2013 they can alter prospectively which to me says 2014 or farther they can adjust out.
Q. So what you're saying is that in year 2 they can begin thinking about changing it?
A. Well, you indicated earlier I should read the literal meaning of the words, and if it was to change it in year 2, it would say "beginning in year 2 the price can change." It didn't say that. It says they can look prospectively beginning in year 2.
Q. So now can you answer my question which is so that beginning in year 2 they can start thinking about changing?
A. That's what the rule says.
Q. Okay. Under your proposal isn't it a fact that there actually -- that the Commission would

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begin thinking about changing in year zero?
A. Well, we have a lot of reasons why we're asking for this, the blend to market, but yeah, I mean, the proposal we're offering is for them to consider it now, right.
Q. So basically you're asking for the Commission to consider now a prospective change that would affect first year 3, correct?
A. Essentially, yeah.
Q. Now, is it fair to say that if Duke had an ESP with a competitive bidding process similar to what the FirstEnergy operating companies had, that that competitive bidding process and the blending process would not be subject to the requirements of 142?
A. My understanding is 142 is limited to the MRO.
Q. So is the answer to my question "yes"?
A. It's "yes."
Q. Earlier I asked you whether if Duke's total POLR load was up for bid in 2012, whether the SSO price would be lower than the price that you propose, and I believe you answered yes, it would be, correct?

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A. Yes, that's correct.
Q. And you also say it would be abrupt, correct?
A. That's correct.
Q. What's your definition of "abrupt"?
A. Well, our average price right now is in the high 70s for a price to compare. If we just got a bid for the coming year of $55 a megawatt-hour, I would consider a 30, 40 percent drop in price abrupt. I'm sure anybody would consider a 30 to 40 percent increase abrupt.
Q. Okay. So that based on the FirstEnergy experience you would expect that potentially the price may be 30 percent lower than the one you would propose.
A. That's -- if we assume that the latest auction is indicative of what we would get, yes.
Q. Okay. Do you have any reason to believe that that experience would not be indicative of what the Duke company might experience?
A. Well, assuming the competitive bid process we're proposing is the same that we would end up using, then no, I would expect a similar result.
Q. Have you done any review of what you

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expect the potential impact would be of your MRO on customers?
A. In what respect? In bill comparisons?
Q. That's a good start.
A. We have witnesses in the case that are providing that information.
Q. Have you done that?
A. I have not.
Q. Okay. And so as far as the potential impact on customers, you couldn't really talk about that.
A. Generally, but not specifically.
Q. Generally what can you say about the impact?
A. Well, if we're assuming that in the first year our blend is 90 percent SSO and 10 percent bid and I use $55 as my price, what we show in the case is $73 as our SSO price, then it would be 90 percent of 73 and 10 percent of 55 and whatever that number is is the average.
Q. Okay. Have you made any calculations or looked at any calculations of the potential impact of your MRO in any year after the first year?
A. Well, same logic, 20 percent in year 2

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times 55, 56 dollars, 80 percent times 73 gets you a number. In year 3 we're assuming fully market, so we would say it's going to be north of 56 or right around 56, thereabouts. So I don't think there's a number for that year yet.
Q. So as far as your impacts for the first couple years you're using, or you think it would be reasonable to use the competitive bid prices that were garnered through the most recent FirstEnergy CBP.
A. For average impacts, yes.
Q. Let me ask you a few questions about Rider RECON. Is it correct to say that that rider is proposed to be in effect for only one year?
A. That's right, yeah.
Q. And when we say "year," are we talking about 12 months?
A. I think in my testimony I talked about -- I said "12 months," I didn't say "year."
Q. Okay. So it's 12 months.
A. Yeah, I think I said "12 months." But yeah, a year.
Q. And the purpose of that rider is to basically reconcile the balances of two other riders

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currently in effect?
A. That's correct.
Q. One of those riders is a rider for fuel costs and procurement power costs?
A. It's a fuel, purchased power, and environmental -- emission allowances, environmental reagent costs, and then renewable energy credits are in that rider right now.
Q. And all those costs are generation related?
A. Yes.
Q. That rider is currently bypassable?
A. It is.
Q. What is your projection for what that balance will be at the beginning of the MRO proposed by Duke?
A. We haven't done the analysis. It's a function of switching, and there's just no way to predict that number.
Q. So there is absolutely no number within Duke to make that estimation; is that what you're saying?
A. Not to my knowledge.
Q. All right. Do you know whether it would

be positive or negative?
A. Again, without knowing the number, I can't tell you whether it's positive or negative.
Q. In recent quarters has it been positive or negative?
A. It has been positive and negative.
Q. And can you give me the potential swings or the swings in recent quarters?
A. Not off the top of my head. It's probably, I think for the nonresidential recently it's been $2 million of an undercollection that we are collecting from customers, and residential's probably a $2 million overcollection right now.
Q. Has it ever been more than $2 million one way or the other?
A. It has.
Q. What's the highest it's been?
A. At the end of, around May of '09, I'm sorry, around, yeah, probably around the second quarter of '09 it was around $70 million.
Q. So it swung as much as 70 million and it's gone down as low as 1 million.
A. Well, I say "70." The balance of the underrecovery was that much. One period it was -- it

was 30 in Q1 and 40 in Q2, and the sum was 70 by the end of Q2, and that's the max it's been.
Q. Okay.
A. It's been as low as minus 25.
Q. So it's been as high as plus 40 and as low as minus 25.
A. Right.
Q. And that's for what class of customers?
A. That's an aggregate. I can't tell you the numbers by group.
Q. Okay. The other rider balance that's proposed to be made up within Rider RECON is a rider relating to system reliability tracker; is that correct?
A. That's correct.
Q. And can you tell us what kind of costs go into that?
A. When we made -- we've had this rider around since '04 or '5 and it's -- if nobody switched, we don't have enough generation to serve our load, so we buy capacity to make sure there's enough capacity if people return. So it's essentially capacity costs we buy in the market from MISO or whoever, you know, third-party transactions

that cover capacity.
Q. So since it's capacity related would it also be fair to say it's a generation related cost?
A. It is.
Q. Now, my understanding is that that rider, which we'll just call Rider SRT -- is that fair?
A. That's fine.
Q. -- is partially bypassable, correct?
A. It's conditionally bypassable to nonresidential customers and some residential customers.
Q. Okay. And with respect to nonresidential customers, you said it's conditionally bypassable?
A. That's correct.
Q. It's bypassable on what conditions?
A. On the condition that the customer has to agree not to come back to our SSO service until the end of the ESP or they'll have to pay the SSO price plus 115 percent -- or, plus a 15 percent penalty.
Q. And with respect to the residential customers it's partially, well, it's bypassable to customers participating in government aggregation?
A. It's conditionally bypassable for customers in aggregation, right.

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Q. On the same conditions as the other --
A. Same conditions.
Q. -- as the other customers.
A. That's right, yeah.
Q. One of the things that you -- well, I'll back up.
You provide an interrogatory answer regarding Rider RECON and I'll, I don't have a copy of it so let me just read it to you. It says -- the request was, and this is in the first set from FirstEnergy Solutions, interrogatory No. 1, it says "Explain why you propose that Rider RECON," and then it spells out what RECON is, "be nonbypassable as opposed to bypassable," correct?
A. Sounds familiar.
Q. Okay. Let me show you my copy. And you were the individual who was responsible for that answer.
A. I was.
Q. Okay. And would it be fair to say that one of the rationales is that you wanted to make sure that if all customers shopped, you were able to recover some of the costs that you're trying to recover through that rider, correct?

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A. Either recover or get back, right.
Q. And would it be fair to say that that rationale might apply to any rider?
A. Sure.
MR. KUTIK: May I have a second.
(Off the record.)
Q. Mr. Wathen, is there any witness in this case, to your knowledge, that can speak to the fuel and purchased power costs and the projection for those costs?
A. With respect to what?
Q. Well, with respect to projecting those costs throughout the period of the proposed MRO or any part of that MRO period.
A. I mean, Chuck Whitlock might be able to tell you some general concepts about how our fuel contracts are done, but again, the person that does the forecasting is Mark Krabbe.
Q. So --
A. He's not in the case.
Q. Would it be fair to say, then, that there's no one in this case that you know of that can testify about the company's projections out five years for fuel purchased power costs?

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A. There's no one in the case that can specifically talk about the projections underlying our five-year forecast for fuel.
Q. Now, you said that you were aware of the most recent FirstEnergy companies' competitive bidding process and the resulting price from that process, correct?
A. I know the ballpark numbers for the resulting price.
Q. Okay. And you're aware that there's been more than one competitive bidding process involving the FirstEnergy operating companies, correct?
A. I know there was one other. I don't know if there was any more than that.
Q. Are you aware of what the resulting price was of the previous competitive bidding process?
A. I am, but they're not apples-and-apples prices.
Q. Well, was it higher or lower than the more recent CBP?
A. Again, they had included components in the first one that they didn't include in the second one so -- but the price including those components was higher than the current price.

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Q. Would it be fair to say, sir, that -- well, I'll back up.
When you were developing your testimony and particularly your interpretation of section 4928.142(D) and (E), did you rely on counsel for that interpretation?
A. In part, sure.
Q. Okay. And in part you came up with your own interpretation.
A. I'd say it was a collective interpretation. I mean, we met in teams for months leading up to the filing and we all kind of digested that particular statute many, many times, right.
Q. Okay. Now, you testified in your materials about a convergence of the SSO price, the current SSO price, and market price, correct?
A. I testified to the implication of it. I didn't testify so much to when it converges.
Q. But you're aware of other witnesses who present or intend to present that testimony.
A. I am, of course.
Q. And the general idea is at some point out in the future the current SSO price and market prices will converge, correct?

A. Well, the testimony that was provided by Judah Rose was that the SSO price that we're proposing which is, again, a frozen price, will converge in 2014, yes.
Q. Did that fact play any role in your interpretation of section 142?
A. I can't think of any particular relationship there, no.
Q. Okay. Now, are you familiar with the company's current plans with respect to how long they expect it will take to transfer the generation assets out of Duke Energy-Ohio?
A. We've had a number of discussions. I don't know if we've settled on a time line, but I know it's going to take a while.
Q. And when you say "take a while," can you give me a range of how long?
A. I've heard anywhere from 12 to 15 months to get all the approvals necessary.
Q. And that's on the short end?
A. I think that was a reasonable estimate.
Q. Okay. Are there longer estimates or estimates as to the outside time period it would take?

A. That's the latest I heard.
Q. Twelve to 15?
A. Uh-huh, yes.
Q. Have you heard it being done in any shorter period than that?
A. Well, I haven't, but remember we've been kind of working toward this end before, so we've got a lot of work done already on that plan.
Q. Okay. Did the amount of time that Duke thinks that it will take to transfer its generation assets play any role in the interpretation you've come up with with respect to section 142, particularly 142(E)?
A. No.
MR. KUTIK: Mr. Wathen, that is all the questions I have at this time. I understand that there are other counsel present here who may have questions for you, and I may have questions after they have questions, so I will, as they say down in the great state of Texas, I will pass the witness.

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EXAMINATION

By Ms. Hotz:
Q. Good afternoon, Mr. Wathen. I'm Ann Hotz

from OCC. If you have any trouble understanding my questions, please let me know and I'll reword them.
You participate in FPP SRT cases, don't you?
A. I do.
Q. What's happened to the market price of coal in the past three years?
A. I don't -- that's not my area so I don't know.
Q. Don't you remember from those cases?
A. My job responsibility doesn't involve purchasing coal, so I don't know any reasons for market prices of coal.
Q. So you don't remember from those cases what happened.
A. Can you enlighten me? I'm not entirely sure what you're talking about.
Q. Well, I mean, has Duke had to pay more and more for coal in the past few years than they have in the years before that?
A. If I can expand a little bit and try to help, if you remember, in the ESP settlement in 2008 we hedged our coal position in October of '08 pursuant to the settlement we reached in 2008. Our

price of coal has not changed in those three years from that time. The prices were pretty much locked in at that time, so there hasn't been volatility to us in the price of coal.
Q. Okay. So Duke as an entity has not seen a change in the price of coal that they've purchased in the past three years.
A. The amount of coal we purchased dedicated to native load or SSO load --
Q. Oh, okay.
A. -- has not changed, right.
Q. What about non-SSO load?
A. I'm not responsible for that area so I couldn't tell you.
Q. You don't know.
How about the market price of purchased power in the last three years?
A. The description of the coal I gave you earlier about what we hedged in '08 applies to purchased power, coal, and emission allowances. All those components of our FPP were hedged in '08, and the underlying price in aggregate doesn't change for that three-year period, essentially.
Q. So you don't know what's happened to the

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market price of purchased power over the past three years other than that.
A. I know generally, of course, because of the FPP auction, that market prices are substantially lower than they were in '08.
Q. Okay. What has happened to the market price of emission allowances in the past three years?
A. They have dropped substantially as well.
Q. What is year 1 of the market rate offer?
A. What we're proposing is, notwithstanding the definition of a 12-month period, is a 17-month period beginning January 1 of 2012 running through May 31 of 2013.
Q. So that's 18 months?
A. Seventeen months.
Q. Seventeen months. So what is the relevance of year 1 of the market rate offer?
A. I'm not sure what you mean by that. The relevance of the 17 months?
Q. Yeah. Why is it that you have this 17-month period that you call year 1?
A. I believe some other witnesses have discussed the rationale for using 17 months. It mostly has to do with syncing up with the PJM

auction. Again, this mirrors an FE proposal that's been accepted by the Commission.
Q. It mirrors what?
A. If mirrors -- I think FE went to 5 months, but they use something other than the 12-month period for one of those periods. I know it wasn't an MRO, but it was essentially the same thing.
Q. When will Duke hold the auction for the power to be provided in year 1?
A. Again, you've got other witnesses that describe this in much more detail than me, but I believe we're proposing June 1 of 2011.
Q. How did you come to the decision to hold the auction in that month?
A. I'm going to have to pass on that one to the witness that addresses that. I think Jim --
Q. Who's that?
A. I think Jim Northrup maybe.
Q. Who?
A. Jim Northrup or Bob Lee.
Q. Jim Northrup?
A. Yeah.
Q. On page 9 of your testimony you state "Furthermore, the fact remains that customers have

the right to choose alternative suppliers and, as the Company has experienced in its ESP, customers do exercise that right." What do you mean by that?
A. Customers -- we have, no matter whether we're an MRO or an ESP, we have a standard service offer which presents customers with a price to compare. Insofar as our price to compare is substantially higher than the market, customers have left and taken alternative options. As I mentioned to other counsel this morning, or this afternoon, about 2/3 of our customers have exercised that right.
Q. Didn't you say 20 percent of the residential customers?
A. More like the high 20s. Something like 27, 28 percent.
Q. And what percentage of those are being served by your affiliate?
MR. D'ASCENZO: Objection. It's irrelevant.
Q. Do you know the answer?
A. I don't know.
Q. For how many years does Senate Bill 221 state that the blending period must be?
A. Again, it gives flexibility after year 2,

but somewhere between two and ten years is what the rule says.
Q. Can you point to the language in it that shows me where it has to be between two and ten years?
A. Well, again, in 4928.142(D) it says -- or (E), rather, it says the Commission can prospectively beginning in year 2 adjust the blending percentages. It doesn't say what that --
Q. Blending percentages?
A. Could be zero to a hundred percent, right.
Q. So it could be 99.9 percent.
A. That's what Commission --
Q. As long as it's 1 percent.
A. That's what Commissioner Schriber believes; it can be 1 percent.
Q. Commissioner Schriber said this?
A. Yes.
Q. In public?
A. I think he said it in public.
Q. When did he say this?
A. I honestly couldn't tell you. I've read a lot of transcripts lately, so I can't remember.

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Q. Huh. That's interesting to know.
A. It's the -- Mike Kurtz and the OEG feels the same way. They believe it can be 10 percent for ten years.
Q. So this is the basis for your belief that it can be as many years as the Commission wants it to be. They can always make it 99.9 percent.
MR. D'ASCENZO: Objection. Is that a question?
MS. HOTZ: Yes.
Q. I said is this the basis for your belief that the Commission can make it as long as they want?
A. My basis for my belief is in the statute, it says they can go -- they can adjust the percentage beginning in year 2 prospectively, which means to me year 3.
Q. In year 10 --
A. And then it says somewhere in the statute, I can't remember where it was, it says ten years.
Q. So the intent of using the word "proportion" is also to be able to change the number of years. Is that the intent of that statute, do you believe?

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A. I don't know what you're talking about there.
Q. Huh. Okay.
The company is willing to forego the adjustment of the ESP component during the two-year blending period, correct?
A. That's correct.
Q. Why is the company willing to do that?
A. We think it would simplify the process. It would keep the SSO price a little more fair, transparent. It would relieve the Commission of having to deal with the quarterly filings. We don't expect there to be material changes in purchased power and EA costs, any of that stuff. Our environmental tracker, we don't have any major environmental projects in that two-year period, so we don't expect the environmental tracker to be much different so . . .
Q. So you expect environmental costs to go up after the two years?
A. I think there's pretty much universal belief that at some point in the future, whether it's two years or ten years, that environmental costs are going to go up.

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Q. So also don't you say in your testimony that if Duke has to extend its blending period to five years, Duke proposes that adjustments begin again the fourth and fifth years?
A. That's what we propose, yes.
Q. Okay. And the fourth and fifth years is when Mr. Rose has predicted that market prices will begin to become even with the SSO price; is that correct?
A. I don't have Judah's testimony in front of me.
Q. This is on page 10.
A. Of my testimony?
Q. Of your testimony, yes.
A. I don't know if it was the third year or fourth year, but I know the prices are expected to converge in that period; 2014.
Q. And the adjustment that Duke would propose for those later two years would only occur with Rider GEN if costs went up; is that correct?
A. We wouldn't adjust Rider GEN at all. We would impose a Rider EIR, environmental investment recovery rider, and reintroduce the FPP.
Q. Right, and they would adjust only if the

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costs go up, according to your testimony, correct?
A. I don't think that's what my testimony said. I thought I said if the blending period extends beyond that period, we would implement those riders; we may.
Q. Okay. This has to do with Rider GEN.
A. What page?
Q. Page 16. It says "Incremental." It's on line 15. Do you see where it says "Incremental"?
A. I see.
Q. "'Incremental,' in this case, would mean the extent to which the then current cost would exceed the amount incurred in the frozen Rider GEN rates." So that's what it means, correct? Only if it goes up. Only if the costs go up.
A. That wasn't the intention. It was poorly stated. If we adjusted the rider, it would go up or down, right.
Q. Could Rider SCR ever be negative?
A. Sure.
Q. How would that work?
A. It really is a function of the proportion of customers switching among the rate classes. I mean, really the idea is that we're going to true up

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the difference between what we collect from revenues under the Rider MRO and what we owed the supplier, and that could be positive or negative.
Q. Would Duke ever credit customers with interest in that case?
A. As long as the interest was balanced. If we could accrue interest on underrecovery, we would give interest on overrecovery.
Q. In your testimony at page 24, lines 3 through 7, you state that Duke Energy-Ohio would recover its transmission expansion planning costs through Rider BTR; is that correct?
A. I'm sorry, what line was it again?
Q. Three through 7.
A. Yes, that's correct.
Q. If you would not collect those costs through Rider BTR, would you use some other mechanism?
A. I'm sorry, what's your --
Q. Well, so are you going to collect all those costs through BTR; is that what the plan is?
A. To the extent FERC approves those costs for recovery, they would be recovered in the BTR, yes.

Q. So no other mechanism. You wouldn't use any other mechanism.
A. We're not proposing any other mechanism.
Q. Okay. Does Duke intend to seek recovery of the exit fees imposed by the Midwest ISO?
A. To the extent FERC approves those rates for recovery, we will.
Q. And so that recovery would be sought through the Rider BTR.
A. Yes.
Q. Does Duke intend to seek recovery for PJM entrance fees?
A. Again, to the extent that FERC approves those rates for recovery, we would seek those in the Rider BTR.
Q. Okay. What individual line item cost components would be included in Rider RTO?
A. I can't give you a detailed list off the top of my head. If you look in the appendix in the master supply agreement, there's a detailed list --
Q. In the what?
A. In the master supply, standard service supply agreement, the SSO agreement. I think it's Attachment B to our application. There's an

extensive list of a sample PJM invoice excluding these costs that we just talked about that are in Rider BTR, any of the costs allocated to DE-Ohio for its SSO load would be passed on through the Rider RTO.
Q. In your testimony at page 24 lines 8 through 25 and page 25 lines 1 through 12 you discuss recoverability of transmission expansion planning costs as well as RTO entrance and exit fees. Have you reviewed the comments filed by the Public Utilities Commission of Ohio in the Federal Energy Regulatory Commission docket ER10-1562?
A. I have not.
Q. You haven't?
A. No.
Q. So do you know anything about that, about the comments?
A. If I haven't read them, I don't know much about them, no.
Q. Okay. What is Duke's rationale for seeking recovery of costs stemming from Duke's decision to withdraw from the MISO?
A. I outlined the entire argument for why we should get those costs in my testimony. I think the

staff did a much better job than I did of explaining why we should put those costs in recovery. That's essentially FERC-approved costs, and as they outline in the statute RC 4928.05, I mean, it's a federal approved rate that should be passed along to retail customers.
Q. So the staff has somewhere stated that you should recover these costs?
A. It's in the testimony that you just provided to me on page 24 beginning at line 19 through --
Q. Your testimony?
A. In my testimony I excerpted comments from the staff in its reply brief, in the brief on April 30th, 2010, posthearing brief in the FE case.
Q. Oh, in the FE case.
A. Right.
Q. Oh, okay.
Duke-Kentucky recently made a commitment not to seek recovery of MISO exit fees or overlapping MISO and PJM transmission expansion costs in its application to the Public Service Commission of Ohio. What will be the impact of Duke-Kentucky's commitment on rates regulated by the PUCO?

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MR. D'ASCENZO: Objection.
THE WITNESS: Can you read it back, first?
(Record read.)
MR. D'ASCENZO: Duke Energy-Kentucky didn't make any application for --
MS. HOTZ: He can still answer.
MR. D'ASCENZO: Duke Energy-Kentucky didn't make any application to the Public Utilities Commission of Ohio.
MS. HOTZ: No; that's not what the question was.
A. Yes, it was.
Q. Duke-Kentucky, Inc. recently made a commitment not to seek recovery of MISO exit fees, okay, in its application to the Public Service Commission of Ohio. What effect do you think that commitment will have -- on the Public Utilities Commission of Ohio?
(Discussion off the record.)
Q. Okay, in Kentucky. What effect do you think that commitment of rates will have on the public utilities -- on the Public Service Commission of Kentucky?

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A. It's probably a lot to ask, but can you start from the beginning?
Q. All right. Duke-Kentucky recently made a commitment not to seek recovery of MISO exit fees or overlapping MISO and PJM transmission expansion costs in its application to the Public Service Commission of Kentucky. What will be the impact of Duke-Kentucky's commitments on rates regulated by the Public Utilities Commission of Kentucky?
MS. KYLER: Ohio.
MR. THOMPSON: Of Ohio. The last one is Ohio.
A. I actually think I know what you're asking this time. There will be no impact.
Q. There will be no impact.
MR. D'ASCENZO: Just for the record, the question was will the commitments made in Kentucky have any impact on Ohio?
MS. HOTZ: That's what I said the first time.
MR. KUTIK: No, it wasn't.
MS. HOTZ: That's what I thought I said.
MR. D'ASCENZO: Thank you.
And, Mr. Wathen, would you please restate

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your answer given that clarification on the question?
A. The filing we made in Kentucky will have no impact on Ohio.
Q. What is Duke Energy-Ohio's rationale for not making the same commitment in Ohio?
MR. D'ASCENZO: Objection. It's irrelevant. Business decisions made in Kentucky have no bearing on what's currently pending in Ohio.
Q. You have to answer.
A. I'm sorry?
Q. You have to answer.
A. The commitment, I mean the commitment we made in Kentucky was an independent decision, independent of Ohio. I mean, there was no nexus whatsoever. You know, we can do our business in Kentucky independent of Ohio and the reasons for things we do in Kentucky have no relevance to Ohio, so . . .
MS. HOTZ: Okay. That's all I have. Thanks.
MS. SPILLER: Matt, anything?
MR. WHITE: No questions.
MR. JONES: No questions.
MR. BOEHM: Just a few, Don.

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EXAMINATION

By Mr. Boehm:
Q. I think I heard you cite two impeccable sources for one of your opinions regarding the length of the MRO, one was Mike Kurtz, the other was Alan Schriber, I think the other one was OEG, okay? I'm trying to -- I'm not sure I fully understood what those authorities were cited for, Don. What were you maintaining that they had said that was authority for your opinion on how long the MRO could be extended?
A. Well, I do know for a fact that the OEG has suggested in briefs, and I believe it was an AEP case, that the extent of the proportionate blend and the duration of the blend can extend for as long as ten years. The reason I brought it up is because they're -- I'm trying to just convey that there are, at least a number of other parties believe there is flexibility in that blending percentage other than what's specifically stated in the statute.
Q. Is it your understanding, Mr. Wathen, that with respect to the language, the triggering language about abrupt or significant changes, that that blending -- that that language is triggered either by an abrupt or significant change of prices

going up and prices going down? Is it either or both?
A. It doesn't distinguish, so I would say it's both.
Q. Would you agree with me that the Legislature, in providing for a increase in the years of blending prices on the occurrence of a significant change, might have had it in mind to protect ratepayers against a significant increase in the market price and, therefore, extend the blending period? Would that be one reason why they would have put this language in?
MR. D'ASCENZO: I'm going to object as it calls for speculation. You're asking Mr. Wathen to sort of divide what the General Assembly had in mind, and I don't know that any of us knows what our legislators are thinking at some points.
A. I would like to think that the Legislature had some balance of interests in mind. I mean, that blend can work both ways. I mean, we're above market right now, so the blend would help us. So I think they had both in mind.
Q. Can you give me the rationale, if you will, that might have existed in the Legislature's

mind in providing for an extension of the blending period where the market price was lower than the SSO price? What would the theory be?
A. To the extent they're trying to protect the company, I mean, again, customers aren't the only stakeholders involved. It's shareholders, customers, and the government.
Q. So the theory would be that if, in fact, the market price was above, I'm sorry, was below the SSO price, the company could be protected up to ten years?
A. I believe that the Legislature is usually pretty specific in what they have in mind. If they had it in mind it would only work one way, they would have probably said so. So if it was only intended to protect customers, it would probably have said so.
Q. Okay. With respect to this interpretation of how it works, how was this abrupt change language, how was that going to be a part of the proposal of Duke in this case that the blending would be over in two years? What if at the end of two years there was an abrupt and significant change in prices so that the market price was far above the SSO price, would that, under Duke's proposal in that

case, would that language kick in so that the blending might be extended for, say, ten years?
A. Well, remember part of our filing is anticipating that we would spin off the assets as well. So if we don't have any assets, then we are exclusively going to have to buy from the market. So the price we take from the market is going to be what it's going to be at that point.
Q. Okay.
A. And I don't know how you can blend that point no matter what the price is, up or down, without either taking money from customers or shareholders.
Q. So, and I was unclear on this point, Mr. Wathen, that the divestiture of the generating assets was that much of an integral part of this filing. So you are definitely going to get rid of the assets within two years, right? That's part of the plan.
A. Our expectation is to get rid of them in two years. We have not included a filing for the disposition of those assets in this filing.
Q. Let's assume for whatever reason your expectations aren't met and you still have the assets

after two years, okay, and there's an abrupt and significant change in prices so that the market price is higher than the SSO price. In Duke's version of this filing could the blending period be extended for up to ten years?
A. That's up to the Commission.
Q. There is nothing in Duke's filing that would prohibit that, that would provide otherwise?
A. If we don't have the assets, then we have to buy from the market. So if the assets aren't there, then we have to buy from the market. But our application doesn't prohibit the extension of the blend. The fact that I included provisions in my testimony for the possibility of an environmental tracker and a fuel tracker on the chance the Commission may extend it beyond two years is evidence that we think the Commission could do that.
Q. You think that the Commission would -- could extend it till ten years?
A. Yeah. Not would, but could, right.
Q. Okay.
A. At least five. They certainly could go five.
Q. But not ten?

A. Well, I mean, five's the standard, and then there's exceptions, in my mind, for two and then there's exceptions for beyond five, all right? There's two exceptions.
Q. The exceptions were to take it down to two and to make it go to ten.
A. Right.
Q. You were talking about also, I don't know how much we want to get into this, but you have testimony in this case by another witness, by Judah Rose, who makes forecasts, who made a forecast essentially that two years out the company's SSO price and the market price would cross; is that right?
A. I believe Judah's testimony is that in 2014 it will cross, right.
Q. I'm sorry, 2014?
A. Yeah.
Q. And how integral a part of the filing is that idea that that's going to happen?
A. If market prices do converge, then we will have gotten to a point where market prices and the SSO price are equal.
Q. Right.

A. And I believe that achieves finally an objective the state had for 10 years, 12 years, that the market would adjust in Ohio. If it's lower than that, it would go to full market, then all the better for customers, they'll have a hundred percent market price at a price lower than our SSO price. So in that manner --
Q. If it's higher than that?
A. It it's higher than that, then we're at a price where the market and the SSO price have at least converged and to go to a blend at any point means you're deferring the inevitable when the market and the SSO price have to come back at least after ten years, and there will definitely be an abrupt change then.
Q. In the ordinary course of your business does Mr. Rose do forecasts for you?
A. I honestly don't know if he does any forecasting for our company or not. He's an independent consultant and does independent forecasts.
Q. But surely your company makes forecasts about where your price is versus the market price as an ongoing project, right?

A. Of course. Yeah.
Q. And you follow your long-term -- What do you call them? -- resource plan, and that requires forecasting, right?
A. There would be a price forecast in that model as well, yes.
Q. Does Mr. Rose do that for you?
A. I don't know. I'm certain that we get some of that stuff, some of the price forecast data from outside sources. I don't know how much, if any, ICF gives us, which is Judah Rose's employer.
Q. Do you also have an in-house expert that does that sort of thing?
A. We have a team, Jim Northrup is part of -- who you'll talk to later is part of the team that does that.
MR. BOEHM: That's all I have. Thank you.

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EXAMINATION

By Mr. Hart:
Q. I have just a little bit as well. I'll kind of follow up on the statute first, then I have a couple other topics.

Do you agree I guess the default plan under part 142(D) would be for the first five years to blend in 10 percent increments each year?
A. Well, I think the default plan is, it says "up to 20 percent," but I think you can assume that they meant 20.
Q. So it would be 10, 20, 30, 40, 50.
A. Right.
Q. Correct?
A. That's correct.
Q. And Duke's proposal is to go 10, 20, 100.
A. That's essentially correct, yes.
Q. And by those percentages, I mean the percentage of the bid.
A. That's correct.
Q. Now, am I correct you're relying on 142(E) to vary from that default pattern? In other words, instead of going to 30 percent in year 3 you would go to 100 percent, you're relying on section (E)?
A. In part. Again, in part I'm relying on the fact that we expect to be exclusively an LDC company in 2014 and the only source of power as an LDC would be the market.

Q. Okay. But even, setting aside who owns the assets, you're relying on that statutory section, 142(E), for the ability to vary from 30 percent maximum in year 3.
A. No. I think if we are -- if we file for and get approval to spin our assets off before May 31, '14, which is the end of year 2 in our case, then there can be no blending beyond that point. So 142(E) doesn't apply in that case.
Q. Assuming you're granted permission to sell the assets without dealing with this in your blending plan, correct?
A. Well, if we sell the assets, I mean, the blending doesn't come into play at all.
Q. Well, wouldn't you agree that one of the factors the Commission would consider in deciding whether it will allow you to sell your assets would be how you plan to fulfill the term of the MRO?
A. I would assume they would want to know that we had a competitive bid process or some other mechanism to acquire power, yeah.
Q. And so unless you included the sale of the assets as part of this MRO plan, can you point me to what other statutory authority there is to vary

from a 30 percent maximum blend in year 3?
A. If we don't sell the assets, then the only thing I'm relying on is the provision in 142(E).
Q. Okay. Now, you were asked a while ago about this phrase "to mitigate the effect of abrupt or significant change," and I think you used the term "rate shock." Would you agree that's intended to prevent the rates from changing dramatically in the short-term?
A. My definition of "rate shock" would be a dramatic shift in rates from one period to another.
Q. Okay. And under the default plan the maximum change that can occur in any one year is 10 percent of the difference between your SSO price and the market price.
A. I've got to do math. Say that again.
Q. The maximum change that could happen in a given year is 10 percent of the difference between your SSO price and whatever the market price happens to be.
A. Assuming the SSO price is frozen.
Q. Yes.
A. Then yes.
Q. And if you were to go to a hundred

percent market rate price, the maximum change that could occur in the rate would be the full difference between SSO price and market price.
A. Somewhat. The way we've designed the bid would be a third of the load in three-year increments, so it would be blended out. It would smooth out the impact of the market price.
Q. It would be smoothing somewhat, but at least by year 5 you would be at full market price?
A. It would be a version of full market price depending on that three-year blend.
Q. All right. Can you explain to me how going from a 30 percent blend to a hundred percent market mitigates rate shock?
A. I believe that the smoothing that we have would probably mitigate rate shock. We have had tremendous rate shock from period to period in our ESP because of the ability to trap fuel, and there would be no impact of that for most quarters. From quarter to quarter customers would have a certainty in their rate and the impact of changing from one year to the next should be mitigated as far as only 1/3 of the load would be brought in at the market price every year.

Q. Okay. So your bidding plan has somewhat mitigated rate shock by allocating the tranches to different time periods.
A. That's correct.
Q. Okay. But you would still be at a hundred percent market rate price commencing in year 3 because some of those tranches would have been bid in year 3.
A. Let me try a different way. I think if you compare our price today to the price in 2015, there could be quite a bit of difference. If I compare the comprise from 2014 to 2015 to 2016, I wouldn't expect a significant change in rate from period to period.
Q. Getting back to the General Assembly's concept here in section (E), would you agree that the way to protect against abrupt change is to slow down the change as opposed to accelerate the change?
A. Sure, if that's -- if you --
Q. And that's exactly what you've done in your bidding plans by slowing down the change as opposed to accelerating it.
A. If we bid out 100 percent of our load every year and it's changed over every year, that

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would be an acceleration, yes.

Q. Sort of a related question. I'm trying to understand exactly what load you're going to bid. When you say "the SSO load," does that mean the nonshoppers?

A. No. Again, you might want to talk to Jim Northrup or Bob Lee, but the idea is to bid out a slice of system so you're bidding out an aggregate share of the 20 million megawatt-hours of load we have.

Q. When you say "slice of system," you mean distribution system as opposed to who you're supplying generation to?

A. The slice of our distribution load, right.

Q. So -- well, let's use some numbers. You said earlier that 65 percent of your load has already shopped or is shopping right now. When you say you're going to auction 10 percent of system, you mean 10 percent of everyone, or 10 percent of the 35 percent who remain with Duke generation supply?

A. Tranching numbers -- our total load is 20 million megawatt-hours. We're going to auction off 2 million megawatt-hours in year 1.

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Q. Okay.

A. The actual load that is served by the supplier is going to be a function of how many tranches they win and the number of customers who don't switch.

Q. That's kind of where I'm headed to is you're going to auction the same amount of aggregate load regardless of how many people are switching at the time.

A. That's correct.

Q. But then that supply will only be used for supplying the nonshopping customers.

A. That's correct.

Q. So if you go through the auction process, you have other generation suppliers who bid and are the winners in that, they may only be supplying roughly a third of the capacity that they've committed to supply because of the shopping percentage.

A. Is that a question?

Q. Yes.

A. That's correct.

MR. HART: Okay. I think that's all I have. Thank you.

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MR. KUTIK: I have a few questions to follow up.

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FURTHER EXAMINATION

By Mr. Kutik:

Q. In 142(E) the thing that the Commission needs to focus on is the potential change in the standard service offer price, correct?

A. That's the only price, right --

Q. Yeah.

A. -- that we're talking about.

Q. It's not the market price. It's the standard service offer price, correct?

A. Right. Well, the market price is fundamental in part now to the standard service offer price, but yeah.

Q. Okay. Now, in terms of some questions that you answered from Mr. Boehm, you said that if the market price went down and -- you would read the statute as preventing the Commission from accelerating the amount of the POLR load that could be out for bid to protect the company. Is that a fair summary of your testimony?

A. That's fair.

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Q. How would the company be protected in that way?

A. Well, I guess the best example I can think of is when FirstEnergy went from $80 a megawatt-hour to 61.50. If they had mitigated some of that transition in prices, they would have probably kept some of their load at a much higher margin. If we lost -- if we're at $73 now and the Commission takes us a hundred percent to $55 a megawatt-hour, then we'd lose the margin on any customers who haven't switched.

MR. KUTIK: May I have his answer read, please?

(Record read.)

Q. And the 61.50 is what?

A. That was FirstEnergy's original I think back in May of '09 when they first bid out the --

Q. I'm sorry?

A. When they first bid out their load, they auctioned off their SSO load in May of '09, I think they got a price of 61.50.

Q. And the subsequent price they received was what?

A. Again, not apples-and-apples, but it was

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$55, around that range, plus or minus a dollar.
Q. So the statute you believe was intended to protect the company from falling market prices by allowing the company to keep the margins that they would otherwise be entitled to without an MRO?
A. Again, I hope to think the Legislature had some symmetry in mind.
Q. Is the answer to my question "yes"?
A. Yes.
Q. I would like now to explore the question that your counsel objected to earlier on the grounds of confidentiality. So I'm more than glad at this point to exclude from the room those folks who have not signed protective agreements so that we can explore that.
MS. SPILLER: What's the question?
MR. KUTIK: The question is the consideration of a ESP with a competitive bidding process.
MS. SPILLER: I think the objection though, David, goes beyond confidentiality into attorney-client privilege.
MR. KUTIK: Well, then that's what I want to put on the record, that you would not allow the

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witness to answer any question about the company's consideration of a competitive bidding -- an ESP competitive bidding process other than "It was considered." And the reason you're not going to allow him to testify is on the basis of attorney-client privilege. Is that what you're saying?
MR. D'ASCENZO: Yes, attorney-client privilege, also relevancy. That's not what's before the Commission.
MR. KUTIK: Well, as you know, I can inquire of things that you might think are irrelevant, but if you're going to instruct the witness not to answer on the basis of privilege, I want to make sure that's on the record.
MR. D'ASCENZO: Yes.
MR. KUTIK: Okay. Very good.
All right. Does anyone else have any questions?
MS. HOTZ: I have one question.

FURTHER EXAMINATION
By Ms. Hotz:
Q. You were talking earlier in the question

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just before, you were saying that you believe the statute is intended to protect the utility, correct?
A. No. I think I said I think the statute was intended to protect all stakeholders, the utility and the customers.
Q. All stakeholders.
A. Yeah.
Q. Okay. And you said the reason why you thought this, and maybe I didn't catch it right, but I think what you said was the reason why you thought -- that the situation in which you think that utilities would need to be protected would be when the market rate would be so much lower than the SSO that you would lose the margin on your standard service offer customers; is that right?
A. I think that would be an abrupt change in our earnings, yes.
Q. Now, how would the statute -- are you talking about the length of time? Is that the protection you're talking about, the length of the time of the blending process?
A. No.
Q. Oh; no. Okay. What were you referring to?

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A. The blending itself.
Q. The blending itself.
A. Yes.
Q. So you think that the percentage of blending, not the period of time, the proportionate blending is what would be used to protect the utility; is that right?
A. That's right.
Q. Okay. But not the length of time of the blending.
A. Well, the length is important too.
Q. And how would they protect the utility through the length of time?
A. Well, if we had $55 power for the next ten years and our prices went to 80 or 90 dollars and we were able to retain some load, I mean, we would hope the Commission would consider the fact that blending works both ways because we wouldn't be able to -- if we had to give our -- create our SSO price at a hundred percent of the market at $55, then we would lose any margin on that, on what our underlying costs are.
Q. Well, would shortening of the blending period ever be able to protect you?

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A. It would help us get free of some of the regulatory constraints we have and, as Mr. Boehm alluded to in our meeting earlier, once we're at full market, we don't have to commit our assets to native load anymore.
Q. So under what circumstances would you be in a situation where the difference between market and the SSO would be -- could be helped through a shortening of the blended period? I still don't understand that.
A. The difference between the market and the SSO. Where would -- let me try to rephrase it. You're asking when would the shortening of the blending period help the difference between the market and the SSO price?
Q. Help the utility when there's a huge difference in the price of the market and the SSO.
A. Well, obviously, if the market price is higher, it's going to help the utility because they'll get to achieve market prices sooner.
Q. Okay.
A. If it's lower, then we can get our assets freed up sooner.
Q. Okay. But in this circumstance the

market's lower.
A. At the moment the market is lower.
Q. Yeah. Okay.
MS. HOTZ: All right. That's all I have.
MR. KUTIK: No one else has any questions at this time?
(No response.)
MR. KUTIK: Mr. Wathen, as you know, as part of the deposition process you have the right to review and correct the transcription errors, if any, in the transcript, you also have the ability to waive that right, and you need to indicate on the transcript now whether you wish to read the transcript or waive the right.
THE WITNESS: I'll read it.
MR. KUTIK: Okay.
(The deposition concluded at 2:56 p.m.)
- - -

State of ________________ :
: SS:
County of ________________ :

I, William Don Wathen, Jr., do hereby certify that I have read the foregoing transcript of my deposition given on Monday, December 13, 2010; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

____
William Don Wathen, Jr.

I do hereby certify that the foregoing transcript of the deposition of William Don Wathen, Jr. was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on the _______ day of __________________, 20___.

____
Notary Public

My commission expires _______________, _______.
- - -

CERTIFICATE

State of Ohio :
: SS:
County of Franklin :

I, Maria DiPaolo Jones, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named William Don Wathen, Jr. was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 15th day of December, 2010.

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

My commission expires June 19, 2011.
(MDJ-3664)
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ARMSTRONG & OKEY, INC.
Registered Professional Reporters
222 East Town Street, 2nd Floor, Columbus, Ohio 43215
614/224-9481

December 15, 2010

Mr. William Don Wathen, Jr.
c/o Mr. Rocco O. D'Ascenzo
Duke Energy Business Services, Inc.
139 East Fourth Street
Cincinnati, Ohio 45201-0960

Re: Deposition of William Don Wathen, Jr.

Dear Mr. Wathen:

Enclosed is the transcript of your deposition taken on December 13, 2010, for examination pursuant to 4901-1-21(K) of the Ohio Rules of Practice before the Public Utilities Commission of Ohio.

The rule requires that your deposition be read by or to you. Any changes in form or substance which you desire to make shall be entered by me with a statement of the reasons given for making them.

If your deposition is not signed within 10 days of its submission to you, I am required to sign it and state the fact of the refusal to sign with the reason, if any, given therefor; and the deposition may then be used as though signed, unless on a motion to suppress the Commission holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. By copy of this letter I am advising the attorneys in the case of the submission of your deposition.

Please have your deposition signed in the presence of a Notary Public and return the signature page and errata sheet to me by certified mail. Thank you for your promptness in this matter.

Sincerely,

ARMSTRONG & OKEY, INC.

cc: Mr. Boehm / Mr. Hart / Ms. Hotz / Mr. Jones / Mr. Kutik / Mr. White

(MDJ-3664)

State of ________________ :
: SS:
County of ________________ :

I, William Don Wathen, Jr., do hereby certify that I have read the foregoing transcript of my deposition given on Monday, December 13, 2010; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

____
William Don Wathen, Jr.

I do hereby certify that the foregoing transcript of the deposition of William Don Wathen, Jr. was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on the ________ day of ____________________, 20___.

____
Notary Public

My commission expires ________________, ________.

- - -

CERTIFICATE

State of Ohio :
: SS:
County of Franklin :

I, Maria DiPaolo Jones, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named William Don Wathen, Jr. was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 15th day of December, 2010.

Maria DiPaolo Jones

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

My commission expires June 19, 2011.

(MDJ-3664)

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Corrections to Baron Deposition Transcript of December 23, 2010

Case No. 10-2586-EL-SSO

Page – Line #	Corrections (Phrase in " " should read as Phrase in *Italics*)
p-10, L-18	"electric gas" ----- *electric and gas*
p-22, L-15	"30-plus experience" ---- *30-plus years experience*
p-33, L-6	"to provide -- protect an" ----- *to provide – provide an*
p-46, L-10	"market prices convert in" ----- *market prices converge in*
p-46, L-12	"state that Mr. Rose's" ----- *state that if Mr. Rose's*
p-59, L-4	"determined adjusted reasonable" ----- *determined a just and reasonable*
p-69, L-14	"market base rates" ----- *market based rates*
p-69, L-15	"Intergy's" ----- *Entergy's*
p-69, L-17	"market base rates" ----- *market based rates*
p-111, L-24	"if it were to offer" ----- *if it were to alter*

Signed: Stephen J. Baron

Stephen J. Baron

January 4, 2011