

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 : Case No. 10-2586-EL-SSO  
Standard Service Offer :  
Electric Generation :  
Supply, Accounting :  
Modifications, and Tariffs:  
for Generation Service. :

- - -

PROCEEDINGS

before Ms. Katie Stenman and Ms. Christine M.T.  
Pirik, Hearing Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-A,  
Columbus, Ohio, called at 9:00 a.m. on Tuesday,  
January 11, 2011.

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VOLUME I

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24 Health Council and Eagle Energy, LLC.

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17 On behalf of Wal-Mart Stores East, LP and  
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Ms. Erin C. Miller  
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On behalf of Ohio Power Company and  
Columbus Southern Power Company.

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1 Tuesday Morning Session,

2 January 11, 2011.

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4 EXAMINER PIRIK: This is the continuation  
5 of the hearing in In the Matter of the Application of  
6 Duke Energy-Ohio, Inc. for Approval of a Market Rate  
7 Offer to Conduct a Competitive Bidding Process for  
8 Standard Service Offer Electric Generation Supply,  
9 Accounting Modifications, and Tariffs for Generation  
10 Service. Case Number 10-2586-EL-SSO.

11 My name is Christine Pirik and with me is  
12 Examiner Stenman. We are attorney examiners with the  
13 Public Utilities Commission and we have been assigned  
14 to hear this case.

15 Prior to doing some procedural matters we  
16 will take appearances on behalf of the parties. On  
17 behalf of the company.

18 MS. SPILLER: Good morning, your Honor.  
19 Thank you. Amy Spiller along with my colleagues,  
20 Rocco D'Ascenzo and Elizabeth Watts on behalf of Duke  
21 Energy-Ohio, business address 139 East Main Street,  
22 Cincinnati, Ohio 45202.

23 EXAMINER PIRIK: Thank you.

24 You'll start.

25 MR. PETRICOFF: Thank you, your Honor.



1 On behalf of Constellation Commodities Group,  
2 Constellation NewEnergy, and the Retail Energy  
3 Suppliers Group, M. Howard Petricoff of the law firm  
4 of Vorys, Sater, Seymour & Pease.

5 I would also like to enter the appearance  
6 of Lija Kaleps-Clark also from Vorys, Sater, Seymour  
7 & Pease, 52 East Gay Street, Columbus, Ohio.

8 MR. DORTCH: Good morning, your Honor.  
9 On behalf of Duke Energy Retail Sales, LLC, Michael  
10 D. Dortch, Kravitz, Brown & Dortch, LLC, 65 East  
11 State Street, Suite 200, Columbus, Ohio.

12 EXAMINER PIRIK: Thank you.

13 MR. CHAMBERLAIN: Good morning, your  
14 Honors. I'm Rick Chamberlain representing Wal-Mart  
15 Stores East, LP and Sam's East, Inc. I would also  
16 enter the appearance of my co-counsel Mr. Kevin  
17 Osterkamp, please.

18 MR. REISINGER: Good morning, your Honor.  
19 On behalf of the Ohio Environmental Counsel, William  
20 Reisinger and Nolan Moser, 1207 Grandview Avenue,  
21 Suite 201, Columbus, Ohio, 43212.

22 MR. BOEHM: Good morning, your Honor. On  
23 behalf of the Ohio Energy Group, David Boehm and  
24 Michael Kurtz of the law firm of Boehm, Kurtz &  
25 Lowry, 36 East Seventh Street, Cincinnati, Ohio,

1 45202.

2 MR. HAYDEN: Good morning, your Honor.  
3 On behalf of FirstEnergy Solutions, Mark Hayden, and  
4 with me today is Grant Garber from the law firm of  
5 Jones Day. I would also like to enter the appearance  
6 of David Kutik from the law firm of Jones Day.

7 MS. HOTZ: On behalf of the residential  
8 customers of Duke Energy-Ohio, the Ohio Consumers'  
9 Counsel, Janine Migden-Ostrander, by Rick Reese, Jody  
10 Kyler, and Ann Hotz, 10 West Broad Street, Columbus,  
11 Ohio, 43215. Thank you.

12 MS. MOONEY: On behalf of Ohio Partners  
13 for Affordable Energy, David C. Rinebolt and Colleen  
14 L. Mooney, 231 West Lima Street, Findlay, Ohio.

15 MR. YURICK: Good morning, your Honors.  
16 On behalf of the Kroger Company I'm Mark Yurick from  
17 the law firm of Chester, Willcox & Saxbe, 65 East  
18 State Street, Suite 1000. I'd also like to enter the  
19 appearance of John Bentine and Matt White of our same  
20 law firm. Thanks.

21 MR. OLIKER: Good morning, your Honors.  
22 On behalf of the Industrial Energy Users-Ohio, my  
23 name is Joseph Olikier from the law firm of McNees,  
24 Wallace & Nurick, LLC. I would like to also enter  
25 the appearance of Sam Randazzo at the law firm of

1 McNeese, Wallace & Nurick, 21 East State Street,  
2 Columbus, Ohio, 43215. Thank you.

3 EXAMINER PIRIK: Thank you.

4 MR. JONES: Good morning, your Honors.  
5 On behalf of the staff of the Public Utilities  
6 Commission of Ohio, Ohio Attorney General Michael  
7 DeWine, Assistant Attorneys General Steve Beeler and  
8 John Jones, 180 East Broad Street, Columbus, Ohio,  
9 43215.

10 MR. HART: On behalf of the Greater  
11 Cincinnati Health Counsel and Eagle Energy, LLC,  
12 Douglas E. Hart.

13 MR. ROYER: Thank you, your Honor, Barth  
14 Royer, Bell & Royer Co., LPA, 33 South Grant Avenue,  
15 Columbus, Ohio, on behalf of Dominion Retail, Inc.

16 EXAMINER PIRIK: Are there others on this  
17 side of the room who wish to make an appearance?

18 Mr. O'Brien.

19 MR. O'BRIEN: Thank you, your Honors. On  
20 behalf of the City of Cincinnati, Thomas J. O'Brien,  
21 Bricker & Eckler, LLP, 100 South Third Street,  
22 Columbus, Ohio, 43215. Thank you.

23 MR. WARNOCK: On behalf of the Ohio  
24 Manufacturers Association, Matt Warnock of the law  
25 firm of Bricker & Eckler, LLP, 100 South Third

1 Street, Columbus, Ohio, and Kevin Schmidt of the Ohio  
2 Manufacturers Association, 33 North High Street,  
3 Suite 600, Columbus, Ohio.

4 EXAMINER PIRIK: Thank you.

5 MR. MONTGOMERY: Your Honor, on behalf of  
6 Ohio Advanced Energy, I am Chris Montgomery of the  
7 law firm Bricker & Eckler, LLP, 100 South Third  
8 Street, Columbus, Ohio, 43215, and would also like to  
9 enter the appearance of Terrence O'Donnell of Ohio  
10 Advanced Energy, also at Bricker & Eckler. Thank  
11 you.

12 MS. VOGEL: On behalf of AEP Retail  
13 Energy Partners, LLC, Anne Vogel, 1 Riverside Plaza,  
14 Columbus, Ohio 43215.

15 MS. MILLER: Good morning, your Honor.  
16 On behalf of Ohio Power Company and Columbus Southern  
17 Power, Erin Miller. I'd also like to enter the  
18 appearance of Matthew Satterwhite, 1 Riverside Plaza,  
19 Columbus, Ohio, 43215.

20 EXAMINER PIRIK: Thank you.

21 Are there any other appearances?

22 (No response.)

23 EXAMINER PIRIK: Hearing none, we'll  
24 proceed with some procedural matters.

25 Ms. Spiller.

1 MS. SPILLER: Thank you, your Honor. I  
2 will start first with the oral motion that Duke  
3 Energy-Ohio made last week, January 4, at the call  
4 and continue of this case, that motion being, one, to  
5 allow Keith Trent to adopt the testimony of Jim  
6 Rogers.

7 EXAMINER PIRIK: Are there any  
8 objections?

9 (No response.)

10 EXAMINER PIRIK: Hearing none, your  
11 motion will be granted and Mr. Trent will be able to  
12 adopt Mr. Rogers' testimony.

13 MS. SPILLER: Thank you, your Honor.

14 The other motion that we have is a motion  
15 regarding the notice of publication for this hearing.  
16 Consistent with the Bench's direction we published  
17 the legal notice in the Cincinnati Inquirer  
18 understanding that the rules require the notification  
19 to be published 14 days prior to the hearing, that  
20 would have been December 20, 2010.

21 Consistent with the proof of publication  
22 as well as the original newspaper notification that  
23 we have, that circulation was made on December  
24 22nd. We are asking that that delay be deemed  
25 insignificant, if you will, and that the publication

1 be found to be substantially in compliance.

2 EXAMINER PIRIK: Thank you. Are you  
3 going to mark those as an exhibit at this time or are  
4 you going to do that at a later time?

5 MS. SPILLER: Your Honor, the thought was  
6 because the legal notice that we have submitted in  
7 our application is Attachment I to the application  
8 which will be marked as Exhibit 1, that this would  
9 simply be Attachment I.1 to what will be marked as  
10 Exhibit 1. But to your discretion, we can certainly  
11 mark it separately or we can mark it as part of  
12 Exhibit 1.

13 EXAMINER PIRIK: I'm really asking about  
14 the proof of publication versus the actual notice  
15 itself. I think the proof of publication itself  
16 needs to be marked as an exhibit.

17 MS. SPILLER: Certainly, your Honor, and  
18 we will mark that as Duke Energy-Ohio Exhibit 1 to  
19 this proceeding. And that proof of publication was  
20 filed on January 6th, 2011, in the docket of this  
21 proceeding.

22 EXAMINER PIRIK: Are there any objections  
23 to considering this proof of publication in  
24 substantial compliance with the Commission's  
25 directive?

1 (No response.)

2 EXAMINER PIRIK: Hearing none, your  
3 motion will be granted.

4 And are there any objections to the  
5 admission of Duke Exhibit 1?

6 (No response.)

7 EXAMINER PIRIK: Hearing none, Duke  
8 Exhibit 1 shall be admitted into the record.

9 MS. SPILLER: Thank you, your Honor.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER PIRIK: Go off the record for a  
12 minute.

13 (Discussion off the record.)

14 EXAMINER PIRIK: Go back on the record.

15 There is one pending motion I believe by  
16 IEU-Ohio with regard to a motion to dismiss and there  
17 has been responses on the record. I just want to  
18 note for the record that what we will do with this  
19 motion is that we will submit it to the Commission  
20 for consideration with the total of this record that  
21 we are preparing over the next week and a half and  
22 they will take that motion under consideration and  
23 make a ruling appropriate with their consideration.

24 Are there any other procedural matters  
25 that we need to go forward with before we start with

1 the first witness?

2 (No response.)

3 EXAMINER PIRIK: If not, Ms. Spiller,  
4 would you like to call your first witness?

5 MS. SPILLER: Thank you, your Honor.  
6 Duke Energy-Ohio would call as its first witness in  
7 this proceeding Julia S. Janson.

8 EXAMINER PIRIK: Please raise your right  
9 hand.

10 (Witness sworn.)

11 - - -

12 JULIA S. JANSON

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

15 DIRECT EXAMINATION

16 By Ms. Spiller

17 Q. Good morning, Ms. Janson. Can you please  
18 state your name for the record, please?

19 A. Julia S. Janson.

20 Q. And your business address?

21 A. 139 East Fourth Street, Cincinnati.

22 Q. By whom are you employed, and in what  
23 capacity, please?

24 A. Employed by Duke Energy Business Services  
25 as the president of Duke Energy-Ohio and Duke



1 Energy-Kentucky.

2 Q. Thank you.

3 MS. SPILLER: Your Honor, may I approach?

4 EXAMINER PIRIK: Yes.

5 Q. Ms. Janson, I'm handing you what has been  
6 marked as Duke Energy-Ohio Exhibit 2 to this  
7 proceeding. Can you identify that, please, for the  
8 record?

9 A. I can, yes. That is my direct testimony  
10 on behalf of Duke Energy-Ohio.

11 Q. And is that testimony, ma'am, that was  
12 filed in this proceeding on November 15, 2010?

13 A. It is.

14 Q. Do you have any changes or corrections to  
15 your direct testimony this morning?

16 A. I do not.

17 Q. And if I were to ask you the questions  
18 that are set forth in Duke Energy-Ohio Exhibit 2, if  
19 I were to ask you those questions today, would your  
20 answers be the same as reflected in your direct  
21 testimony?

22 A. They would be.

23 MS. SPILLER: Your Honor, we would offer  
24 Ms. Janson for cross-examination.

25 EXAMINER PIRIK: Thank you.

1 MR. BOEHM: Your Honor, if I may, please.  
2 I'm not sure how you want to handle this. We have  
3 motions to strike portions of Ms. Janson's testimony.  
4 I don't know whether you want to take that at the  
5 beginning before she's cross-examined by all parties  
6 or whether you want us to wait until our turn for  
7 cross comes along.

8 EXAMINER PIRIK: No; we would take those  
9 at the beginning.

10 MR. BOEHM: Okay.

11 EXAMINER PIRIK: You may proceed.

12 MR. BOEHM: Yes, your Honor. I guess  
13 because the motion to dismiss has been deferred, and  
14 I don't criticize that decision at all, but one of  
15 the questions overriding this case is its legality --  
16 the compliance of the filing with Ohio law, as you  
17 may know, particularly with respect to the length of  
18 time that the MRO was proposed.

19 And so I think during the course of this  
20 case we're going to continue to run into that  
21 question about whether or not somebody's testimony  
22 represents a legal opinion, and we are prepared, as  
23 I'm sure the Court probably is, to give some latitude  
24 to that; however, we think that with respect to  
25 questions of what the legislative intent was behind

1 this, that perhaps that goes too far.

2 Consistent with that we have a number of  
3 passages that we would move to strike because they  
4 consist of comment by the company about what the  
5 legislative -- what the intent of the legislature was  
6 in passing 221.

7 So with your indulgence I would go to  
8 first page 12 of Ms. Janson's testimony and, as you  
9 can see, beginning on line 5 she starts talking about  
10 the act, et cetera, and what it means, but then on  
11 line 14 the witness says "Based on these  
12 observations, it appears that the legislature was  
13 deliberately striking a balance that would mitigate,  
14 although not eliminate, extreme price volatility for  
15 customers while, at the same time, allowing the  
16 utility to recover its costs to serve within a  
17 competitive environment."

18 We think that is a comment on the intent  
19 of the legislature, clearly.

20 EXAMINER PIRIK: Just to be clear, what  
21 are you -- what lines specifically are you  
22 requesting?

23 MR. BOEHM: Yes, specifically, your  
24 Honor, line 14 beginning with the word "Based" down  
25 to line 17, ending with the word "environment."

1           Would your Honor like me to go through  
2 all these first?

3           EXAMINER PIRIK: Yes.

4           MR. BOEHM: Okay. On page 14 of the  
5 witness's testimony the witness states "Thus, under  
6 any comparison" -- I'm sorry, on line 10, "The  
7 market, under the legislature's view, will then  
8 provide transparency to all parties. Thus, any  
9 comparison between an ESP-based price and an  
10 auction-based price is, after the market has been  
11 reached, contrary to legislative intent."

12           I'm sorry, also -- I'm going backwards  
13 here and I apologize. On page 13 beginning line  
14 21 -- I'm sorry, beginning on line 11, beginning with  
15 the word "At." "At that point, the intent of the  
16 statute would have been realized and the blending  
17 should terminate."

18           We would move that these statements be  
19 stricken, your Honor. We think this goes beyond  
20 simply even interpreting or reading the language of  
21 the statute, but providing something that is not, I  
22 think, even called for under Ohio law, and that's  
23 legislative intent.

24           We also believe that the witness has no  
25 capacity or ability to provide us with what the

1 intent of the legislature was.

2 EXAMINER PIRIK: Are there any other  
3 motions to strike?

4 (No response.)

5 EXAMINER PIRIK: Ms. Spiller.

6 MS. SPILLER: Thank you, your Honor. In  
7 response to the comments from Mr. Boehm, I would  
8 concur that there has been a fair amount of opinion  
9 offered with regard to the interpretation of the  
10 relevant provisions of Senate Bill 221 around the  
11 blending requirement and, indeed, other witnesses in  
12 this case, including Stephen Baron on behalf of the  
13 OEG, who opine about those statutory requirements.

14 I would argue that Ms. Janson's testimony  
15 is no different from that of individuals who in their  
16 experience can read a statute and offer their  
17 interpretation of what that statute says.

18 Ms. Janson, I would further submit, is  
19 qualified in another respect in that she is by  
20 training an attorney, certainly able to read the  
21 statute, and I think all of -- a fundamental piece of  
22 this case will be that of the interpretation of the  
23 statute relevant to that is the legislative intent  
24 behind that interpretation.

25 Ms. Janson, although admittedly not

1 offering an opinion as an attorney today, she is here  
2 in her capacity as the president of Duke Energy-Ohio,  
3 is offering her opinion as to what those statutory  
4 provisions provide.

5 I think it is for the Commission to allow  
6 her testimony and place whatever credibility it would  
7 deem relevant on the testimony that she has  
8 submitted.

9 EXAMINER PIRIK: Mr. Boehm.

10 MR. BOEHM: If I may address that, your  
11 Honor. I think, as we said in our opening statement,  
12 and I agree with Ms. Spiller, we're all going to end  
13 up here and our witnesses are going to end up here  
14 trying to interpret the statute.

15 It is another thing to say in  
16 interpreting the statutes "Here's what the  
17 legislature meant. Here's what the legislature  
18 intended." I think that goes too far.

19 We can argue about what the plain  
20 language of something means, but to inject in that a  
21 view into the mind of the legislature I think goes  
22 too far.

23 EXAMINER PIRIK: With regard to the  
24 motions to dismiss on page 12, page 13, and page 14,  
25 those motions will be denied with the clarification

1 stated on the record with regard to her  
2 qualifications, and she will be available for  
3 cross-examination with regard to those items.

4 Are there any other motions before we  
5 proceed with Ms. Janson?

6 MR. OLIKER: Your Honor, I don't have a  
7 motion but I wanted to try to clarify the witness  
8 order, I'm sorry, not the witness order, the order of  
9 cross because IEU-Ohio intends to touch on  
10 confidential documents.

11 EXAMINER PIRIK: Thank you. I appreciate  
12 you pointing that out because what we will do with  
13 that is we will go through all of the  
14 cross-examination on the open record, everything that  
15 you can possibly ask on the open record that does not  
16 touch on confidential information. At the conclusion  
17 after -- staff will be the last to cross-examine.

18 When staff is completed with their  
19 cross-examination, we will have to ask the room to be  
20 cleared of anyone who has not signed a  
21 confidentiality agreement. And then we will take  
22 that hopefully small portion of cross-examination on  
23 the confidential information.

24 We need to get everything we can on the  
25 open record. So I think with that clarification

1     that's how we'll handle it.

2             Actually, I think what we'll do, we will  
3     do all of the open record both cross-examination and  
4     direct, and it would be easier then to clear the room  
5     and -- recross and redirect, and then clear the room  
6     and do the cross, redirect and recross on just the  
7     confidential portion. That way it's all in one  
8     group.

9             MR. OLIKER: Thank you, your Honor.

10            EXAMINER PIRIK: With that also, since  
11     staff is conveniently on this side of the room we  
12     will begin cross-examination over here with  
13     Mr. Petricoff.

14            MR. PETRICOFF: Thank you, your Honor.  
15     The Retail Energy Suppliers Association and  
16     Constellation have no questions.

17            EXAMINER PIRIK: Mr. Dortch.

18            MR. DORTCH: Duke Energy Retail Sales has  
19     no questions.

20            EXAMINER PIRIK: Thank you.

21            Mr. Chamberlain.

22            MR. CHAMBERLAIN: No questions, your  
23     Honor.

24            EXAMINER PIRIK: Mr. Reisinger?

25            MR. REISINGER: No questions, your Honor.



1 EXAMINER PIRIK: Mr. Boehm?

2 MR. BOEHM: Just a few.

3 EXAMINER PIRIK: Thank you.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Boehm:

7 Q. Good morning, Ms. Janson.

8 A. Good morning, Mr. Boehm.

9 Q. Do you have it pretty much in mind the  
10 provisions that I cited to the Attorney Examiner with  
11 respect to your testimony and the question of  
12 legislative intent? Do you remember those or should  
13 we go by them one by one?

14 A. I remember those.

15 Q. Okay. Let me ask you, Ms. Janson, with  
16 respect to the intent of the legislature, how did you  
17 derive that intent? Did any of the legislators tell  
18 you what was intended by this statute?

19 A. No, sir. It was through the reading of  
20 the statute.

21 Q. So your statement of legislative intent  
22 was purely inferred from the language itself.

23 A. Correct.

24 Q. On page 15 you speak about the transfer  
25 of the generation assets. Do you see that?

1           A.     At line 6?

2           Q.     Well, let me start with line 3 on page  
3     15. And I'm referring to provisions after that. It  
4     is an integral part of this filing, is it not, that  
5     Duke be allowed to transfer its generating assets; am  
6     I correct?

7           A.     I would agree that it's an integral part  
8     of our business strategy going forward.

9           Q.     And do I understand, I see on line 17  
10    that you plan to transfer these assets to an  
11    affiliate.

12          A.     That would be our intended plan.

13          Q.     And the affiliate would be -- does that  
14    affiliate exist now? That corporate shell?

15          A.     We will be detailing all of that in a  
16    separate application that we would make before the  
17    Commission in the coming months.

18          Q.     But as this testimony was written did  
19    Duke have anything particularly in mind about who  
20    would be the recipient of these generating assets?

21          A.     Only that it would be an affiliate.

22          Q.     Okay. Now, Duke has an affiliate right  
23    now that markets power; does it not?

24          A.     It does; Duke Energy Retail.

25          Q.     Does that affiliate own any generating

1 assets?

2 A. It does not, to my knowledge.

3 Q. Is there anything that is currently in  
4 mind with respect to the generating assets about what  
5 the price for the assets would be?

6 A. No, sir.

7 MR. BOEHM: Those are all the questions I  
8 have, your Honor, thank you.

9 EXAMINER PIRIK: Thank you.

10 Mr. Hayden.

11 MR. HAYDEN: FirstEnergy Solutions has no  
12 questions.

13 MS. HOTZ: OCC has a few questions.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Hotz:

17 Q. Good morning.

18 A. Good morning.

19 Q. Mr. Wathen identified you during a  
20 deposition as one of the group of architects that had  
21 a say into the design of the current SSO application  
22 which is an MRO; is that correct?

23 A. Correct.

24 EXAMINER STENMAN: Ms. Hotz, can you  
25 speak up a little bit? With the air it's really

1     difficult to hear you.

2                     MS. HOTZ:   Okay.

3                     Q.    On pages 8 through 10 you identify  
4     numerous positive aspects to the MRO, correct?

5                     A.    Correct.

6                     Q.    Would you say that Duke filed an MRO  
7     rather than an ESP because it believed that an MRO is  
8     preferable to an ESP?

9                     A.    I believe that Duke feels that the MRO  
10    under the statutory options available to it, an MRO  
11    would be preferable for customers and our business as  
12    opposed to an ESP under what exists in the  
13    legislature.

14                    Q.    Do you agree with Mr. Rogers' original  
15    testimony, now Mr. Trent's testimony, that the ESP  
16    has made it, quote, impossible for the company to  
17    appropriately serve the interests of its customers  
18    and its investors, end quote?

19                    A.    I would agree that there have been  
20    challenges and I see those forward-looking as well,  
21    the challenges. I believe the MRO is in the best  
22    interest of the company and our customers for several  
23    reasons.

24                    I believe it assists with the  
25    continuation of the development of a competitive

1 generation market in the state of Ohio. I believe it  
2 will allow for us to make business decisions on a  
3 longer term basis around our assets and with respect  
4 to our customers with some degree of clarity.

5 And I would agree that there are some, as  
6 we've termed, asymmetrical issues with the ESP that  
7 we see that would be cured within an MRO and those  
8 are, in particular, what we do not believe to be  
9 adequate compensation for the provision for the POLR  
10 obligation and then that capped up side that the  
11 company would have with respect to the significantly  
12 excessive earnings test under the ESP, so for those  
13 and other reasons I would agree that we believe the  
14 MRO to be preferable.

15 Q. Do you agree that the expected results  
16 under the MRO would be more favorable in the  
17 aggregate as compared to the ESP?

18 MS. SPILLER: I'm going to object, your  
19 Honor. I think that is injecting a legal  
20 determination that is not applicable in this case,  
21 the in-the-aggregate test is not a criteria with  
22 regard to your decision of whether to approve the  
23 MRO.

24 EXAMINER PIRIK: I'll allow the question.

25 MS. HOTZ: Thank you.

1           A.    Can you ask it again, please?

2           MS. HOTZ:  Could you repeat it, please.

3           (Record read.)

4           A.    It's my understanding, subject to  
5 correction, that the test is that an ESP be more  
6 favorable in the aggregate than an MRO.  In this  
7 instance what we're asking is for approval of an MRO  
8 so, again, my understanding, the in-the-aggregate  
9 test wouldn't apply because the MRO is what the test  
10 is held up to compare to.

11          Q.    I'm just asking you in your opinion.  I'm  
12 not asking you with regard to a test, a legal test.

13          A.    Okay.  Well, I think it's a difficult  
14 question because I don't -- I have no terms of an ESP  
15 to which to compare the MRO to.

16          Q.    Well, how about the terms of the last  
17 ESP.

18          A.    And?

19          Q.    That you're in right now.  How would that  
20 compare in the aggregate to the MRO that you've  
21 proposed?

22          A.    On what basis?

23          Q.    On the expected results.

24          A.    Results?

25          Q.    Of the --

1           A.    The competitive bid process?

2           Q.    Of the competitive bid compared to the  
3    ESP.

4           A.    I think as our proposal outlines, in the  
5    early years from a pricing perspective, the pricing  
6    would be more favorable for customers because of the  
7    blend process that would blend our existing ESP,  
8    which the price today is higher than market at  
9    90 percent and 10 percent market price, and so that  
10   would result in a more favorable price in years 1 and  
11   2.

12          Q.    How about in the later years?

13          A.    Do you have a forecast?  You know, I  
14   think, as we propose, at year 3 to be at a hundred  
15   percent market, and you certainly want to ask these  
16   questions of Mr. Rose, our expert, but his testimony  
17   says we believe that our ESP price and market prices  
18   would converge at about year 3.

19                So that would be the time where the blend  
20   would no longer be necessary and then forward-looking  
21   it would depend on a forward price curve, but we  
22   would certainly be honoring what we believe to be our  
23   customers' preference to participate in a competitive  
24   market as well as the legislature's intent and there  
25   forward after year 3 we would go through the

1 competitive bid process with the staggered  
2 procurement which should result in some price  
3 mitigation and an open, fair, and transparent process  
4 to arrive at generation prices for our customers.

5 Q. Thank you.

6 MS. HOTZ: That's all I have.

7 EXAMINER PIRIK: Ms. Mooney.

8 MS. MOONEY: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Ms. Mooney:

12 Q. On page 8 of your testimony you refer to  
13 the switching levels among customer classes. I  
14 specifically wanted to ask you about the residential  
15 load switching which was 29 percent or 26 percent of  
16 residential accounts.

17 Do you know what of that amount is from  
18 aggregation groups and what amount is individual  
19 residential customer switching?

20 A. I do not, but I would expect Witness  
21 Jones would be the appropriate party to ask.

22 Q. On page 12 of your testimony, and this  
23 was the sentence that Mr. Boehm tried to strike but  
24 was unsuccessful, you say "...it appears that the  
25 legislature was deliberately striking a balance that



1 would mitigate, although not eliminate, extreme price  
2 volatility for customers...." So I wanted to ask you  
3 about that extreme price volatility.

4 It's your testimony that the legislature  
5 did not intend to eliminate extreme price volatility?

6 A. Well, I think you're reading that maybe a  
7 little more narrowly than I was intending. I think  
8 what we saw in the first quarter of 2009 with the  
9 precipitous decline in commodity prices, we saw  
10 prices decline quite significantly, and I think one  
11 thing that has become apparent to us is that  
12 competition has arrived and is here to stay and our  
13 customers have, again, evidenced their desire to  
14 participate in that market.

15 And I think what I meant generally is  
16 that because of the way the statute is drafted with  
17 respect to the blending provision, it didn't speak to  
18 only a time when market prices are higher than  
19 existing ESP prices thereby blending in the direction  
20 where prices would increase over time for customers,  
21 but rather it was silent to at where the market  
22 prices are vis-a-vis the SSO price, and so the point  
23 was that the attempt there was to mitigate but not  
24 eliminate the price volatility.

25 Q. What would you say is extreme price

1     volatility in electric generation?

2             A.     I think that would be in the eyes of the  
3     particular customer.

4             Q.     What is the basis of your statements that  
5     in the case of residential customers, that they have  
6     a desire to participate in the competitive market?

7             A.     I think if you look at our load and the  
8     amount of our load that has switched, it is evidence  
9     of the fact that our customers have embraced their  
10    right and desire to switch.

11            Q.     But you don't know how many individual  
12    residential customers have switched.

13            A.     I do not know that number specifically.

14            Q.     Now, under your application the plan is  
15    that 10 percent of the company's SSO load would be  
16    acquired through an auction in year 1, 20 percent in  
17    year 2, and then 100 percent thereafter; is that  
18    correct?

19            A.     Correct.

20            Q.     Would that plan lead to price volatility?

21            A.     You know, again, and the reason I pause  
22    is that you're asking me to assume, you know, some  
23    forward price facts that aren't necessarily in  
24    evidence.

25                    I mean, if you look at Mr. Rose's

1 testimony, we would expect that in year 3 our SSO  
2 price, which we have agreed to hold constant through  
3 that 29-month period, would converge with market  
4 prices. So it would not be our expectation that the  
5 prices would be volatile.

6 Following that period and certainly, I  
7 think, one could concede that there could be other  
8 things that could happen with respect to the prices,  
9 namely that the rebound occurs less quickly in terms  
10 of prices rebounding so that customers could share  
11 significantly in those benefits of reduced prices by  
12 allowing the company to get to market more quickly.

13 Q. But that's all based on conjecture,  
14 right? I mean, you don't know that.

15 A. Not for certain, I do not.

16 Q. Okay.

17 MS. MOONEY: That's all the questions I  
18 have.

19 EXAMINER PIRIK: Thank you.

20 Mr. Yurick?

21 MR. YURICK: I just have a couple, your  
22 Honors.

23 - - -  
24  
25

## CROSS-EXAMINATION

By Mr. Yurick:

Q. Good morning, Ms. Janson.

A. Good morning.

Q. I notice on page 1 of your testimony that you have a juris doctorate degree from the University of Cincinnati College of Law.

A. I do.

Q. That's a very fine institution.

A. Were we there together?

Q. I believe we were.

On page 9 of your testimony -- give me one second.

Here we go. It is page 9 and it's lines 16 through 18. You say "Under the current law, the company is effectively quasi-regulated and exposed to the risk of customers switching without adequate cost recovery for standing ready to serve all customers in its territory."

Do you see that, ma'am?

A. I do.

Q. So what you're saying is that the company's not being adequately compensated for its risk; is that correct?

A. I think what I'm saying is that we're not

1 adequately compensated for standing ready to serve  
2 our customers.

3 Q. And standing -- well, the risk there is  
4 that customers will switch and you're not being  
5 compensated for that, correct?

6 A. Not adequately.

7 Q. Okay. And in an MRO, as I understand it,  
8 the market actually quantifies the risk of customers  
9 switching; isn't that right?

10 A. Correct.

11 Q. And would you agree with me -- given the  
12 events of recent years you would agree with me, would  
13 you not, that the market can sometimes make  
14 catastrophic errors in valuing risk?

15 A. Can you point to a specific example you  
16 would like for me to --

17 Q. Say the collapse in the -- the financial  
18 collapse that happened during the last half of 2007.

19 A. And what's your question?

20 Q. That the market sometimes makes  
21 catastrophic errors in valuing risk.

22 A. I think we need to get to a definition of  
23 "catastrophic," but I'll concede that no market, as  
24 efficient as they are, is without -- could be held to  
25 a perfection standard.

1           Q.    That's a very good answer.  You must have  
2 really paid attention in law school.

3           MR. YURICK:  I have no further questions.

4           MS. SPILLER:  I move to strike the . . .

5           MR. YURICK:  Yeah, you can withdraw the  
6 gratuitous comment.

7           EXAMINER PIRIK:  Thank you.

8           Mr. Oliker.

9                         - - -

10                        CROSS-EXAMINATION

11   By Mr. Oliker:

12           Q.    Ms. Janson, in preparing your testimony  
13 and in preparation for cross what documents did you  
14 review today -- for today?

15           A.    What documents did I review today?  I  
16 didn't review any documents today.

17           Q.    What documents did you review in  
18 preparation for today?

19           A.    I reviewed my testimony, I reviewed the  
20 testimony of Messrs. Rogers and Trent, I reviewed the  
21 application, and I reviewed the statute.

22           Q.    Did you review any of Duke Energy-Ohio's  
23 responses to interrogatories or requests for  
24 production of documents?

25           A.    Not necessarily in preparation for my

1 testimony today, but I did review those at a prior  
2 time as well as the testimony of the other witnesses.

3 Q. Which ones did you review?

4 A. And I apologize, when I'm responding to  
5 your question in preparation for my testimony I think  
6 in the last week period of time things I did to  
7 prepare.

8 I don't recall specifically.

9 Q. Okay. Among the other Duke witnesses  
10 that have submitted testimony, are any of them under  
11 your direct supervision or indirect supervision?

12 A. Oh, my. My responsibilities in terms of  
13 supervision within the company are specifically in  
14 the areas of government and regulatory strategy,  
15 economic development, and community relations, and I  
16 am trying to -- I haven't thought of the witnesses in  
17 that way.

18 We work very much on a matrixed  
19 organizational structure so, for instance, Mr. Wathen  
20 in the Rates Department actually reports up through  
21 individuals in Charlotte and is not a direct report  
22 of mine, but without an opportunity to review the  
23 witness list, if we have a copy of the witness list,  
24 I could let you know if any of them are in my direct  
25 reporting chain.

1                   Certainly not the outside consultants.  
2       Certainly not Mr. Whitlock, who is a fine colleague  
3       but not a direct report. I don't believe that they  
4       are.

5           Q.     What about Ken Jennings?

6           A.     He is not.

7           Q.     Okay. As your testimony indicates,  
8       you're a member of the Ohio Bar; is that correct?

9           A.     I am.

10          Q.     And in preparing your testimony and  
11       preparing for cross did you review Section 4928 of  
12       the Ohio Revised Code?

13          A.     I did.

14          Q.     Okay. So I take it you are familiar with  
15       section 4928.142?

16          A.     I am.

17          Q.     On page 13 of your testimony beginning on  
18       line 13 you request the Commission to approve a  
19       competitive bidding process that has 10 percent blend  
20       in year 1, 20 percent in year 2, and a hundred  
21       percent in year 3. Based upon the statement of  
22       another Duke witness I'd like to ask you for  
23       clarification.

24                   In Duke Energy-Ohio's application the  
25       request for the Commission to approve the plan --



1 EXAMINER PIRIK: I think you need to slow  
2 down a little bit.

3 A. And the other, I'm sorry, the other Duke  
4 witness, I'm not --

5 Q. The other Duke witness I believe is Don  
6 Wathen, I believe. The question is --

7 A. I'm sorry, is this in his testimony?

8 Q. It's a question regarding your statements  
9 compared to his statements and I'm just trying to  
10 figure out what --

11 A. Statements in his testimony versus those  
12 in mine.

13 Q. Yes.

14 A. Okay.

15 Q. My question is, is the application a  
16 request for the Commission to approve 100 percent of  
17 market in year 3 or is it an application for approval  
18 of whatever blending period the Commission approves?

19 A. It is a request for approval of a hundred  
20 percent in year 3.

21 Q. Do you know why Duke Witness William Don  
22 Wathen, Jr. testifies that approving Rider GEN is  
23 conditional and Duke Energy-Ohio may implement riders  
24 for fuel, purchased power, and environmental cost if  
25 the Commission modifies the blend period?

1           A.    I would suggest you ask Witness Wathen,  
2    but one of the tenets of the application as we've  
3    offered through testimony is that the company would  
4    agree if we could get to a hundred percent market in  
5    year 3, we would agree to forego those four items  
6    that are listed in the statute for which we could  
7    modify the last ESP or SSO price.

8                    So you have the December '11 ESP price  
9    that would account for the largest part of that blend  
10   price in years 1 and 2, 90 and 80, and we would agree  
11   to forego those adjustments that we could make in  
12   order to keep that portion of the blend constant for  
13   customers in those first couple of years in exchange  
14   for our ability to be at market by the completion of  
15   the 29-month period.

16           Q.    Okay.  On page 4 and 5 of your testimony  
17   you indicate that Duke Energy-Ohio's generating  
18   assets are functionally separated from Duke  
19   Energy-Ohio's transmission and distribution business;  
20   is that correct?

21           A.    That's correct.

22           Q.    Can you provide me your explanation of  
23   what "functional separation" means?

24           A.    I can.  Both the financial responsibility  
25   and the business decision-making for those

1 organizations are housed within different executives.

2 I certainly would like for you to pursue  
3 with Witness Whitlock as the person who is  
4 responsible and then in turn his executive, Keith  
5 Trent, who has assumed the testimony of Mr. Rogers,  
6 as they have responsibility for the nonregulated  
7 generation assets in Ohio more about specifically how  
8 those decisions are made around the generation  
9 assets.

10 For my part, I see it as my first and  
11 utmost obligation to ensure that the customers of the  
12 regulated utility have available to them safe,  
13 reliable, and economically priced power and that we  
14 are able to transmit and distribute to them the same.

15 So, you know, in my mind the first thing  
16 that comes to mind, obviously, is my obligations with  
17 respect to our regulated customers.

18 Q. Okay. In your role as president of Duke  
19 Energy-Ohio do your responsibilities include the  
20 distribution business?

21 A. Not directly.

22 Q. And do your responsibilities include the  
23 transmission business?

24 A. Not directly.

25 Q. Do your responsibilities include the

1 generation business?

2 A. They do not. And let me explain a little  
3 bit as a regional president. When I say "not  
4 directly," for purposes of best practices, for other  
5 processes and procedures, again, we have a fair  
6 amount of what I will refer to as matrix reporting,  
7 and by that I mean the ultimate executive over our  
8 transmission and distribution business is someone who  
9 resides in Charlotte.

10 I will tell you on a day-to-day basis, on  
11 a working basis one of the other regional presidents  
12 has been quoted to say, and I did not, "It doesn't  
13 matter who reports to me as long as everyone acts  
14 like it," and I feel like that very much -- we have a  
15 very good working relationship.

16 If I have a customer complaint and it is  
17 around transmission or distribution, it works, I will  
18 tell you in most cases, flawlessly that those  
19 individuals that have direct responsibility for those  
20 areas are there to assist as if they directly  
21 reported to me. And certainly that is the messages  
22 that are delivered from Charlotte, that those people  
23 make themselves available to the regional company  
24 presidents, and any of our staff for that matter.

25 Q. Okay. You indicate that you are employed

1 by Duke Energy Business Services. Who do you report  
2 to?

3 A. I report to the chairman, president, and  
4 chief executive officer, Jim Rogers.

5 Q. And did you report to that person all  
6 throughout 2009 and 2010?

7 A. I did not.

8 Q. Who did you report to during that time?

9 A. I reported to James Turner, president of  
10 the franchise electric and gas business until on or  
11 about the 10th of December.

12 Q. Is it true that he is no longer employed  
13 by the company?

14 A. It is true.

15 MS. SPILLER: Object to the relevance.

16 EXAMINER PIRIK: Mr. Olikar.

17 MR. OLIKER: Your Honor, I'm trying to  
18 establish the corporate separation practices and the  
19 corporate structure of the corporation, and  
20 Ms. Janson was involved with and testifies to the  
21 move to PJM and I'm trying to lay a foundation for  
22 how that happened.

23 EXAMINER PIRIK: Objection overruled.

24 Would you like the question reread?

25 THE WITNESS: I would.

1 MR. OLIKER: Could you please read the  
2 question back?

3 (Record read.)

4 A. It is true.

5 Q. Can you explain the relationship between  
6 Duke Energy Business Services and Duke Energy-Ohio?

7 A. Duke Energy Business Services is a  
8 service company type subsidiary that employs many of  
9 our employees and also engages in contracting for  
10 services and holds title to things for ease of the  
11 company.

12 Q. Are any of Duke's affiliated companies  
13 subsidiaries to Duke Energy Business Services, LLC?

14 A. I do not know.

15 Q. Do you know who would know?

16 A. Perhaps Witness Jones would know.

17 Q. Since you are president of Duke  
18 Energy-Ohio I would like to ask you some additional  
19 questions about Duke's corporate structure and the  
20 relationship between some of the other affiliated  
21 companies.

22 What does Duke Energy Commercial  
23 Enterprise, Inc. do within Duke Energy corporate  
24 structure?

25 A. I would suggest you ask Witness Whitlock

1 that question.

2 Q. Do you know the answer?

3 A. I do not specifically.

4 Q. Okay. Do you know Donna T. Council?

5 A. I do.

6 Q. What is her job title and  
7 responsibilities? By whom is she employed?

8 A. I believe she is a vice president within  
9 our Treasury function, subject to check.

10 Q. And which --

11 A. Donna Council.

12 Q. -- company is she employed by?

13 A. I would assume Duke Energy Business  
14 Services.

15 Q. And do you know what her responsibilities  
16 include?

17 A. I do for the most part.

18 Q. Could you please clarify her  
19 responsibilities?

20 A. She is certainly the person who is  
21 responsible for our transaction review committee and  
22 the processes around that. I would suspect she also  
23 has some expanded responsibility around the Treasury  
24 function and certain of the financings.

25 The fact that you will find many of us

1 employed by Duke Energy Business Services I don't  
2 think goes to the point of corporate separation. I  
3 think we have a corporate separation plan on file  
4 that we all very much adhere to, we are trained on an  
5 annual basis as to communications we can have with  
6 individuals with certain responsibilities, and so I  
7 think that --

8 MR. OLIKER: I'd like to object since  
9 this response is beyond the question.

10 MS. SPILLER: Your Honor, I think the  
11 Witness is allowed to explain her answer.

12 EXAMINER PIRIK: I'll sustain the  
13 objection and strike the information. I don't think  
14 it was directly responsive to his question.

15 If you could rephrase the question and  
16 she can give her answer again, that would be  
17 appropriate.

18 Q. Could you please explain Donna Council's  
19 job responsibilities, please?

20 A. Donna Council has responsibility for  
21 organizing and I even believe she acts as secretary  
22 to the company's transaction review committee, and I  
23 believe she also has additional responsibilities  
24 within the Treasury function for financing and other  
25 matters.



1 Q. Do you know Lee E. Barrett?

2 A. I do know Lee Barrett.

3 Q. And what is his job title and  
4 responsibilities? By whom is he employed?

5 A. I know he is a vice president. He has  
6 responsibility for our regional transmission  
7 organization membership. I believe he directly  
8 reports to Mr. Whitlock, and I would assume he  
9 reports to Duke Energy -- or, he is employed by Duke  
10 Energy Business Services as a payroll company.

11 Q. Could you please clarify your testimony  
12 on pages 5 and 6. When you discuss Duke  
13 Energy-Ohio's current membership in the Midwest ISO  
14 as well as its planned membership in PJM, I'm not  
15 sure I correctly understand the question and answer  
16 that appears beginning on page 6, line 10.

17 Is it your testimony that PJM's market  
18 structure provides a better fit for Duke Energy's MRO  
19 than if Duke Energy remained in the Midwest ISO?

20 A. I think there are other witnesses who  
21 could probably more artfully and better respond to  
22 that question, including Messrs. Trent, Whitlock, and  
23 Jennings.

24 I will tell you from my perspective what  
25 was, again, of the utmost importance to me was that

1 Ohio customers would be neutral to benefited by a  
2 move from MISO to PJM. In addition, there are many  
3 more interconnection points within PJM than there are  
4 in MISO thereby, in my mind, leading to greater  
5 reliability, reduced congestion, so additional  
6 benefits for our customers. And as I thought about  
7 the move, those were the things that were certainly  
8 important to me.

9 The notion that all Ohio utilities would  
10 be in the same RTO receiving the same market signals  
11 and with available forward capacity information made  
12 PJM preferable.

13 The fact that our co-owners of our  
14 jointly-owned facilities are all PJM participants and  
15 that we would then be in PJM with them and, again,  
16 receiving the same signals, and I certainly would  
17 defer to Mr. Whitlock, but his decision to make  
18 capital investments and the like in conjunction with  
19 those co-owners would seemingly all be eased and much  
20 more convenient and beneficial to our customers by  
21 being a member of PJM versus MISO.

22 Q. Are you familiar with the transaction  
23 review committee?

24 A. I am familiar.

25 Q. Can you please describe what the

1 transaction review committee did?

2 MS. SPILLER: Your Honor, if I may. I  
3 understand that counsel is intending to attempt to  
4 lay a foundation for an alleged corporate separation  
5 violation, but I think we're getting somewhat far  
6 afield of the scope of Ms. Janson's direct testimony  
7 here.

8 EXAMINER PIRIK: Are you objecting?

9 MS. SPILLER: I am, your Honor.

10 EXAMINER PIRIK: Mr. Olikar.

11 MR. OLICKER: Your Honor, Ms. Janson  
12 testifies to the benefits of moving to PJM and the  
13 transaction review committee I believe will elaborate  
14 on that decision.

15 EXAMINER PIRIK: Objection overruled.

16 THE WITNESS: Can you ask the question  
17 again?

18 MR. OLICKER: Could you please reread the  
19 question.

20 (Record read.)

21 A. With respect to?

22 Q. What was the function of the transaction  
23 review committee?

24 A. The function of the transaction review  
25 committee is to vet those decisions within the

1 company that rise to their level of authority under  
2 our delegation of authority document.

3 So, for instance, if we were going to  
4 take a transaction to our board of directors for  
5 approval, in addition to going through various levels  
6 of approval at the site of the business where the  
7 transaction may have arrived, it goes through various  
8 levels of approval.

9 The transaction review committee is our  
10 highest internal level of approval chaired by our  
11 chairman, president, and chief executive officer,  
12 comprised of our senior-most officers in Charlotte  
13 who are our group executives and the direct reports  
14 to the -- otherwise the direct reports to the  
15 chairman.

16 Q. Perhaps I can rephrase the question.

17 Did the transaction review committee make  
18 the decision on whether to move from the Midwest ISO  
19 to PJM?

20 A. They did.

21 Q. Okay. Who participates on the  
22 transaction review committee and by which Duke entity  
23 are they employed?

24 A. The members of the transaction review  
25 committee, in addition to Jim Rogers, are I think

1 without exception all of our group executives.

2 Q. Could you please identify them?

3 A. Our group executive and chief legal  
4 officer Mark Manley, our group executive and chief  
5 financial officer Lynn Good, our group executive and  
6 head of our commercial businesses, Keith Trent, our  
7 group executive and chief generation and chief  
8 nuclear officer Dhia Jamil.

9 Q. And which Duke affiliate employs each of  
10 these individuals?

11 A. I would assume Duke Energy Business  
12 Services, potentially, with the exception of  
13 Mr. Rogers who may be employed by Duke Energy  
14 Corporation, but I am not positive.

15 Q. And did you participate in the  
16 transaction review committee?

17 A. Have I ever or do I? I would make a  
18 relevant presentation from my area of business to the  
19 transaction review committee upon occasion.

20 Q. Did you attend meetings for that  
21 committee?

22 A. Prior to this position I would have. In  
23 this position only if I have a particular  
24 presentation to make.

25 Q. And did you attend meetings when they

1 were making the addition to move from the Midwest ISO  
2 to PJM?

3 A. I did I believe telephonically perhaps on  
4 one occasion.

5 Q. And was that only when you were making  
6 presentations or was that on normal occasions as  
7 well?

8 A. In this capacity only when I would be  
9 making a presentation.

10 Q. Do you know when the transaction review  
11 committee decided to undertake the decision to move  
12 from the Midwest ISO to PJM?

13 A. I don't recollect the exact date, but I  
14 would say spring of 2010.

15 Q. Okay. Do you know who represented Duke  
16 Energy-Ohio on the transaction review committee in  
17 making that decision?

18 A. I apologize, I omitted Mr. Turner who was  
19 a group executive and head of our franchise electric  
20 and gas business who is also a member of the  
21 transaction review committee and would have been Duke  
22 Energy-Ohio's -- and it's interesting, you used the  
23 term "representative." I think this body is put  
24 together to vet the decisions and there aren't  
25 particular representatives.

1 I would have been the person who was  
2 representing the interest of Duke Energy-Ohio from a  
3 regulated utility perspective. Mr. Whitlock and I  
4 likely would have made those presentations jointly,  
5 and he would have been representing the commercial  
6 businesses or the nonreg generation business working  
7 together collaboratively to make those presentations.

8 Q. And do you know when Duke Energy-Ohio  
9 began to consider withdrawing from the Midwest ISO?

10 A. I would say summer of 2009.

11 Q. What caused Duke Energy-Ohio to consider  
12 withdrawing from the Midwest ISO?

13 MS. SPILLER: Your Honor, I'm going to  
14 object to the relevance as to why Duke Energy-Ohio  
15 may have made the decision to realign. I don't think  
16 that is an issue in this case whatsoever.

17 EXAMINER PIRIK: Mr. Olikier.

18 MR. OLIER: Your Honor, as I stated  
19 previously, her testimony describes the benefits of  
20 realigning to PJM and I'm trying to elaborate on that  
21 and understand their reasoning.

22 EXAMINER PIRIK: Objection overruled.

23 A. I'm sorry.

24 Q. Could you please repeat the question?

25 (Record read.)

1           A.     Again, I would point you to Witness  
2 Whitlock and Witness Jennings for a probably crisper  
3 recitation of those reasons. It's certainly my  
4 understanding that evaluation of something as  
5 important as our regional transmission organization  
6 membership is evaluated regularly. I don't know how  
7 regularly, but certainly that is something that that  
8 organization would look at from time to time.

9           I would tell you likely, in addition, the  
10 announcement of FirstEnergy's move from MISO to PJM  
11 would have interested the group to look into the  
12 reasons for FE's announcement and conduct an  
13 evaluation, which is not outside the normal course of  
14 our business.

15          Q.     Did you participate in the decision  
16 process that led to Duke Energy-Ohio to withdraw  
17 officially from the Midwest ISO?

18          A.     Depending on how you define the word  
19 "participation," yes.

20          Q.     Could you clarify your role in that  
21 process?

22          A.     We certainly met and had discussions  
23 about the move. I would tell you Mr. Whitlock and I  
24 will have, at times, robust discussions in terms of  
25 the particular areas of the business that we



1 represent, and when there are tensions, we have a  
2 very open environment in which to discuss and work  
3 those through.

4 So I participated in meetings, reviewed  
5 certain documents, and went before the TRC with  
6 Mr. Whitlock jointly to make that recommendation.

7 Q. Did employees under your supervision  
8 conduct studies or analyses that were relied upon or  
9 considered by Duke Energy-Ohio's decision to exit the  
10 Midwest ISO?

11 A. No.

12 Q. But are you aware that employees did  
13 conduct studies and analyses that were relied upon to  
14 make that decision?

15 A. I am aware.

16 Q. Do you know which employees performed  
17 these studies?

18 A. Not specifically, but I believe they were  
19 under the supervision of Mr. Barrett.

20 Q. Can you identify which studies or  
21 analyses were completed?

22 A. Do you have a document for me to --

23 Q. Those documents are confidential and  
24 we'll discuss them at a later time, but I'm just  
25 wondering if you could identify them if they are

1 presented to you.

2 A. I could.

3 Q. And can you identify when these studies  
4 were completed?

5 A. Again, I would venture to say late,  
6 late-winter/early-spring of this year.

7 Q. Okay. Do you mean 2010?

8 A. I do.

9 Q. Thank you.

10 Is it correct that the process to  
11 evaluate Duke Energy-Ohio withdrawing from the  
12 Midwest ISO took many months?

13 A. That's correct.

14 Q. Are you familiar with the term  
15 "pseudotime"?

16 A. Anecdotally, yes.

17 Q. Can you provide a brief explanation of  
18 what that means?

19 MS. SPILLER: Your Honor, I'm going to  
20 object to the relevance.

21 EXAMINER PIRIK: Mr. Olikier.

22 MR. OLICKER: I'm just trying to lay a  
23 foundation for a topic I'm going to touch on later.

24 MS. SPILLER: Your Honor, now we're  
25 getting into the technical aspects of a migration

1 from the Midwest ISO to PJM. This has gone beyond  
2 understanding the decision to realign as reflected in  
3 Ms. Janson's testimony and I would simply renew my  
4 objection that we are incredibly far afield of the  
5 scope of her direct testimony at this point.

6 EXAMINER PIRIK: I understand your  
7 objection, and it is difficult knowing that there are  
8 confidential items that you're going to be crossing  
9 on and you're trying to do as much as you can in the  
10 open record, and I do appreciate that so I am going  
11 to allow you some latitude and I will overrule the  
12 objection.

13 MR. OLIKER: Thank you, your Honor.

14 THE WITNESS: May I have the question  
15 again?

16 (Record read.)

17 A. I would tell you that I am not  
18 technically capable of giving you an excellent  
19 definition of "pseudotime" and I would refer you to  
20 another witness, either Witness Jennings or Witness  
21 Whitlock.

22 Q. Are those individuals in the room today?

23 A. They are.

24 Q. Thank you.

25 MR. OLIKER: I have no further questions

1 at this time, your Honor.

2 EXAMINER PIRIK: Mr. Hart.

3 MR. HART: Yes, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Hart:

7 Q. It's kind of awkward being behind you  
8 here.

9 A. At least I can hear you.

10 Q. Hopefully. Before I start would you  
11 agree that the interpretation of the statute 4928.142  
12 is a question of law?

13 A. I would.

14 Q. And your interpretation is based on  
15 reading this statute?

16 A. Correct.

17 Q. And do you have any specialized knowledge  
18 that allows you to define the intent of that statute  
19 more than some other attorney or commissioner who  
20 would read the law?

21 A. Not than another attorney or a  
22 commissioner, no.

23 Q. In your testimony you talk about going to  
24 full market in year 3. Are you familiar with the  
25 provision of the statute that talks about the first

1 five years being staged through the blending process?

2 A. I am.

3 Q. And you're familiar with the language  
4 that says beginning in year 2 the Commission can  
5 alter the percentages specified in part (D).

6 A. Prospectively.

7 Q. And --

8 A. So the Commission, in my humble reading  
9 of the statute, the Commission would have the  
10 discretion to alter beginning as early as year 3,  
11 which is what we propose.

12 Q. Okay. Let's back up a minute. Year 2  
13 under your proposal would be the year 2013; is that  
14 correct?

15 A. Well, as we define it in our proposal,  
16 the first year of the blending would last for a  
17 period of 17 months so that we could align with the  
18 PJM auction process for the benefit of customers and  
19 competitive suppliers.

20 So the first year would last through May  
21 31st of 2013, and year 2 would be the 12 months  
22 following that, so the first two years would be a  
23 29-month period, year 3 beginning directly  
24 thereafter.

25 Q. My question to you is does year 2 begin

1 in calendar year 2013? That's correct, isn't it?

2 A. Sometime -- yes, June 1.

3 Q. That's in 2013, correct?

4 A. I just wanted to be clear.

5 Q. All right. Can you tell me what words in  
6 the statute you're relying upon to ask the Commission  
7 to alter that blending percentage today?

8 A. We are relying upon the Commission's  
9 discretion as it is spelled out in the statute to  
10 alter prospectively the blend in order to mitigate a  
11 significant or abrupt impact on the price.

12 Q. Well, I'm not asking you about the word  
13 "perspective," I'm asking you about the word  
14 beginning this year 2, those words. How do you --  
15 what words in the statute do you find that allows the  
16 Commission to make that alteration prior to year 2?

17 A. Would it be appropriate to ask for a copy  
18 of the --

19 MS. SPILLER: Certainly.

20 MR. HART: Sure.

21 MS. SPILLER: May I approach, your Honor?

22 EXAMINER PIRIK: Yes.

23 MS. SPILLER: Thank you.

24 THE WITNESS: May I have the question  
25 again?

1 (Record read.)

2 A. I don't think I said that the Commission  
3 can make that decision before year 2.

4 Q. Well, your application asked for the  
5 Commission to alter the percentages upon the initial  
6 implementation of the plan, doesn't it?

7 A. Our application suggests that the  
8 Commission make the decision that the blend would be  
9 altered prospectively beginning in year 3 that we  
10 define as the June 1, 2013, period.

11 Q. All right. Let me ask you about the word  
12 "prospectively." Is there something in the statute  
13 that says "prospectively" means you have to wait a  
14 year before the change occurs?

15 A. I think I'm giving the, as you would in  
16 any statutory construction, giving the word  
17 "prospectively" its ordinary meaning to say in the  
18 future.

19 Q. Let's say in the future, June 1st,  
20 2013, the Commission decides we should alter the  
21 percentages. Could it do that immediately the next  
22 day?

23 A. I think the statute specifically speaks  
24 to that.

25 Q. Is that prospective?

1                   You have to answer verbally.

2                   A.    Oh, can you give me the example again?

3                   Q.    June 1, 2013, the Commission decides we  
4   made a mistake, we need to change these percentages  
5   going forward. Could that be effective the very next  
6   day? Would that be prospective?

7                   A.    You know, the issue I see with that is  
8   that in our application the company agrees, again,  
9   and I've discussed earlier the company agrees that it  
10   wouldn't exercise its right to adjust the December  
11   2011 SSO price which, again, is the most significant  
12   portion of the blend in years 1 and 2, should the  
13   Commission allow us to be at a hundred percent market  
14   in year 3, that we deem that June 1, 2013 date.

15                   So it would seem to me we would be  
16   relying upon the Commission's word that -- in its  
17   order that it would make that decision now and, if  
18   you would, not retrade that with a day's notice upon  
19   that period.

20                   Q.    Well, is it your testimony that there  
21   would have to be a year lag between the alteration of  
22   the percentage and the actual change? You're  
23   proposing year 3 be when the change occurs, correct?

24                   A.    Correct.

25                   Q.    Why does it have to wait a year?



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

2           Q.    If it can alter prospectively beginning  
3   in year 2, why would the change have to wait until  
4   year 3?

5           A.    Because the earlier part of the statute  
6   says that no more than 20 percent in year 2, and then  
7   beginning in year 2 the Commission has the discretion  
8   in subsection (E) there to alter prospectively, and  
9   we would have secured through auction the necessary  
10   portion of the load that would be supplied by the  
11   market, it would seem that there would need to be a  
12   period for us to react and it's my interpretation  
13   that that would be in year 3.

14          Q.    Let me ask you about the adjustments.  
15   You've suggested the company would forego adjustments  
16   during the blending period, correct?

17          A.    The first 29 months.

18          Q.    You're talking about adjustments for  
19   purchased power, fuel, environmental, correct?

20          A.    As outlined there in Subsection D, 1  
21   through 4.

22          Q.    Those adjustments can be both positive  
23   and negative, can't they?

24          A.    They could be.

25          Q.    So if your costs were to go down in the

1 future, adjustments actually might cause the SSO  
2 price to reduce.

3 A. That's correct. Although we believe  
4 there is some benefit to customers and other market  
5 participants to some clarity and certainty.

6 Q. Well, let me ask you this, the company  
7 can forego an increase, correct, because that would  
8 mean more revenue to the company. You agree that  
9 they could do that, right?

10 A. I agree.

11 Q. What gives the company the right to  
12 forego the opportunity of customers to have the price  
13 reduced because of changes in costs?

14 A. I think that's simply part of the  
15 proposal we outline in the application.

16 Q. Well, is there something in the law that  
17 allows the company to take away customers' rights to  
18 seek a price decrease?

19 A. Not in this particular statute, no.

20 Q. Is it Duke's proposal to ask the  
21 Commission to take away that right of all customers  
22 for the first two years?

23 A. In exchange for allowing customers to be  
24 at market at a time where they would likely stand to  
25 be, at worst, neutral, or perhaps benefited by the

1 exposure to a hundred percent market price in year 3.

2 Q. Would you agree that the wholesale market  
3 for electric power has been quite volatile for the  
4 last five years?

5 A. I would.

6 Q. And that if we went back to 2008 when the  
7 company's current ESP plan was being proposed, market  
8 prices were substantially higher than the ESP price,  
9 correct?

10 A. I would agree with that.

11 Q. And since 2009 the market prices have  
12 dramatically fallen so they're now below the ESP  
13 price.

14 A. That's correct.

15 Q. And it's your prediction that within two  
16 years or three years the prices are going to be back  
17 up at least to where Duke's price is now, correct?

18 A. I do not make that prediction. I would  
19 suggest you ask Witness Rose, but that is certainly  
20 as we've submitted.

21 Q. But your testimony relies on that  
22 projection as to why year 3 is the time to stop  
23 blending.

24 A. Correct.

25 Q. So you would agree that the market price

1 has been volatile in the past, correct?

2 A. I would.

3 Q. Is there anything about the company's  
4 proposal that's going to stop the overall market from  
5 being volatile in the future?

6 A. I don't know that there's an easy answer  
7 to that. There's nothing about the company's  
8 application that would have any impact on the  
9 volatility of market prices for power. The two are  
10 wholly unrelated.

11 Q. Now, would you agree that during the  
12 company's ESP period the Duke SSO price has been  
13 stable?

14 A. Well, it has been, because within the  
15 construct of the ESP we have not had any ability to  
16 flex that price. In fact, as part of our application  
17 as I understand it in the ESP that was approved in  
18 December of 2008, we suggested an electronic bulletin  
19 board process and that was not something that grew  
20 legs, if you will, in terms of our ability to put  
21 that in place. So we found ourselves with an  
22 inflexible pricing mechanism.

23 Q. Well, however it got there, it's been  
24 stable, correct?

25 A. It has been stable.

1 Q. So we've got a straight line pretty much  
2 for Duke's price --

3 A. For the ESP period.

4 Q. And you have a curve that's fluctuating  
5 up and down for the market price, correct?

6 A. Correct.

7 Q. And occasionally those lines cross,  
8 right?

9 A. Not in the ESP period.

10 Q. They crossed once, didn't they? We  
11 started with the market price above Duke's price and  
12 it's currently below it, right?

13 A. Yes. Correct.

14 Q. So they crossed, right? And Mr. Rose is  
15 projecting they're going to cross again sometime in  
16 2014, correct?

17 A. Correct.

18 Q. And you're suggesting that the next time  
19 those lines cross we should stop blending; is that  
20 right?

21 A. I'm not suggesting that that's my opinion  
22 that we should stop. I would tell you that the need  
23 to blend would be dubious at best, there would be no  
24 need to continue to blend when those two lines  
25 converge.

1           Q.    And under Duke's proposal, once those  
2   lines converge, Duke's price will acquire whatever  
3   volatility the market price has, correct?

4           A.    Well, I think that would be mitigated by  
5   the staggered auction procurement process that's  
6   outlined in the testimony of Mr. Lee and, again, the  
7   legislature's intent and certainly one of the tenets  
8   of the Commission, in addition to protecting  
9   customers in the financial stability of utilities, is  
10  competition, and I think we are simply focused on  
11  that true north that is a competitive generation  
12  environment.

13               And I think what the precipitous decline  
14  in market prices in early-2009 taught us is that  
15  competition has arrived in the state of Ohio and this  
16  quasi-regulated ESP construct did not allow us to  
17  make longer term decisions and to be nimble enough to  
18  react to those changes in prices.

19               And again, that generation in terms of  
20  decision-making, you know, and I would have you have  
21  this discussion with Messrs. Whitlock and Trent, but  
22  we have not found the ESP construct to be terribly  
23  workable in this environment.

24           Q.    Well, my question wasn't whether you  
25  liked it or not. The question was you're proposing

1 that in year 3 the company adopt whatever volatility  
2 is on the market, correct?

3 A. Correct.

4 Q. So we're going to jump off of --

5 A. Mitigated by the open, fair, and  
6 transparent bid process that we've outlined.

7 Q. So you're going to jump off of the steady  
8 line of the ESP price and adopt the curve of market  
9 price, whatever that ends up being.

10 A. Correct.

11 MS. SPILLER: I'm going to object to the  
12 extent I think that question misinterprets the  
13 answers that Ms. Janson has given twice now.

14 EXAMINER PIRIK: Objection overruled.

15 Q. Let me ask you, on page 8 of your  
16 testimony at the top you talk about the number of  
17 CRES providers. Would it be fair to say on January 1  
18 of 2009 there was very little switching?

19 A. It would be.

20 Q. And that's because the market price was  
21 higher than Duke's price?

22 A. Leading up to that period I don't -- I  
23 don't know the prices on that date specifically.

24 Q. Would you agree that the increase in the  
25 number and activity of CRES providers has been due to

1 the market price decline?

2 A. I would agree.

3 Q. Is it also true that that period of  
4 competition has occurred while Duke was in MISO?

5 A. I would agree Duke is currently in MISO.

6 Q. And these CRES providers that you talk  
7 about, the 13 active ones, are all MISO participants?

8 A. I do not know if all of the CRES  
9 providers are participants in MISO.

10 Q. How many of those 13 are PJM market  
11 participants?

12 A. I do not know the answer to that.

13 Q. What is the economic impact on a CRES  
14 provider who operates through MISO of the switch to  
15 PJM?

16 A. Again, I would ask you that there are  
17 better witnesses to ask these questions, specifically  
18 Mr. Jennings, but it's my understanding that the PJM  
19 RTO better serves for the competitive generation  
20 market and for CRES providers. Again, that  
21 understanding is anecdotal at best, not technically  
22 based.

23 Q. Do you know how many of those 13 CRES  
24 providers will continue to participate after you  
25 switch to PJM?



1           A.    I do not.

2           Q.    I want to ask you about a question and  
3 answer on page 24.

4           MS. SPILLER:  I'm sorry, Doug?

5           MR. HART:  Twenty-four.

6           MS. SPILLER:  Thank you.

7           Q.    On line 16 you say "Duke's rate  
8 structure," well, let me back up a second.

9           "...it also ensures, in its rate  
10 structure, that no generation-related costs will be  
11 recovered through distribution or transmission  
12 rates."

13                Is it also true that there will be no  
14 distribution or transmission -- strike that.

15                Are there any riders that Duke is  
16 proposing that recover generation costs from  
17 customers who switch to another provider?

18           A.    I would ask that you refer those  
19 questions to specifically Witness Wathen or Witness  
20 Zoilkowski.  And can you ask me again the specific  
21 purpose of the rider?

22                I only do so because they certainly have  
23 more technical expertise and a better working  
24 knowledge of both the riders that are in existence  
25 under our current ESP and the riders that we would

1 propose under our proposed MRO and, thus, I think  
2 that conversation would be more fruitful with them.

3 Q. Let me just ask you from a big policy  
4 standpoint. Is Duke committing in this case that it  
5 will not recover any generation costs from customers  
6 who do not buy generation service from it?

7 A. I think the only two -- there are only  
8 two riders that would apply under the company's MRO  
9 proposal, one of those, it's my understanding, that  
10 would be for ESP type adjustments and would only be  
11 in place for a short period of time, the other rider  
12 I recall specifically recovering for network  
13 integration, or NITS, which, quite frankly, from a  
14 technical perspective I am not entirely conversant  
15 with recovery under that particular rider.

16 Q. Other than those two it's your view that  
17 there are no recoveries of generation costs from  
18 distribution customers?

19 A. To my knowledge.

20 MR. HART: That's all I have, thank you.

21 EXAMINER PIRIK: Mr. O'Brien?

22 MR. O'BRIEN: No questions, your Honor.

23 EXAMINER PIRIK: Mr. Warnock?

24 MR. WARNOCK: No questions, your Honor.

25 EXAMINER PIRIK: Mr. Montgomery?

1 MR. MONTGOMERY: No questions, your  
2 Honor.

3 EXAMINER PIRIK: Ms. Vogel?

4 MS. VOGEL: No questions, your Honor.

5 EXAMINER PIRIK: Ms. Miller?

6 MS. MILLER: No questions, your Honor.

7 EXAMINER PIRIK: Redirect, or, I'm sorry,  
8 staff. I said you'd be last and then I almost  
9 forgot. Mr. Jones.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Jones:

13 Q. Good morning, Ms. Janson.

14 A. Good morning.

15 Q. My name is John Jones, I am a member of  
16 the staff, I'll have some questions for you.

17 A. Nice to meet you.

18 Q. Same here.

19 Do you still have a copy of RC 4928.142  
20 in front of you?

21 A. I do.

22 Q. Okay. And your testimony alludes to your  
23 observations and the appearances that it was the  
24 legislative intent to give the Commission discretion  
25 to make alterations in year 3 or have a three-year

1 blend beginning at the time from the inception of the  
2 application; is that your testimony?

3 A. Can you repeat the question?

4 Q. Yes. You testified in your prefiled  
5 testimony about the legislative intent of RC  
6 4928.142; is that correct?

7 A. Correct.

8 Q. Your testimony from your observations,  
9 and you're a lawyer, right?

10 A. I am.

11 Q. Okay.

12 A. Recovering.

13 Q. Recovering, okay.

14 You're saying that initially a utility  
15 doesn't have to have a five-year blend, it can have  
16 something less than a five-year blend going right out  
17 of the gate from the date of the order from the  
18 Commission?

19 A. Yes.

20 Q. Okay. I want to refer you to 4928.142(D)  
21 and if you would look with me, please, to three lines  
22 down in (D) in the middle there it starts with "That  
23 a portion." Do you see that?

24 A. I do.

25 Q. Okay. It says "...that a portion of that

1 utility's standard service offer load for the first  
2 five years of the market rate offer be competitively  
3 bid under division (A) of this section as follows,"  
4 and then it gives the percentages, right, as to what  
5 those five years would show or would be?

6 A. Uh-huh.

7 Q. Is that correct?

8 A. Yes.

9 Q. Okay. And then if you would refer, then,  
10 to division (E) of 4928.142. Do you see that?

11 A. That's where we were.

12 Q. Division (E).

13 A. Oh, (E), as in "egg"?

14 Q. Yes.

15 A. Yes.

16 Q. And there it says "Beginning in the  
17 second year of a blended price under division (D)."  
18 It's referring to the five years that is outlined in  
19 division (D); is that correct?

20 A. Correct.

21 Q. Okay. The Commission may alter  
22 prospectively.

23 A. In the future.

24 Q. In the future. In year 2.

25 A. Beginning in the second year the

1 Commission may alter prospectively.

2 Q. So you don't interpret that to mean that  
3 there's a five-year blending period already in place  
4 for your MRO; is that correct?

5 A. I believe that the Commission could  
6 exercise its discretion to alter prospectively  
7 beginning in year 3.

8 Q. Alter five years to three years? Alter  
9 now? You're asking the Commission to alter today  
10 that five years.

11 A. We are, primarily to, again, as I stated  
12 earlier, my true north is for the benefit of the  
13 customers and it seems to us that, as Mr. Rose's  
14 testimony outlines, that once those prices converge,  
15 there is no longer a need to continue the blend and  
16 that customers would thereby intersect with market  
17 prices, but potentially, depending on what view of  
18 forward curves you look at, it would enable customers  
19 to inure a benefit in terms of prices, and I don't  
20 know about you, but I think that's significant.

21 Q. Ms. Janson, my question is are you asking  
22 the Commission to alter the five years today?

23 A. We are.

24 Q. Okay.

25 A. Upon an order which I don't think we

1 would get today. Hopefully by February 21st.

2 Q. And do you see the language also there  
3 that's right below, in the middle of that paragraph  
4 of (E), it says "Any such alteration shall be made  
5 not more often than annually"?

6 Do you see that language?

7 A. I do.

8 Q. And does that not mean that the  
9 Commission can alter that annually, those proportions  
10 beginning in year 2? They could do it in year 3 too,  
11 couldn't they?

12 A. You know, the issue I'm struggling with  
13 here is the statute is relatively new, as we know,  
14 passed in the middle of 2008, and, you know, unlike  
15 many statutes that have had -- been tested, tested in  
16 courts, to my knowledge the MRO statute is yet  
17 somewhat untested. So, I mean, we could exercise our  
18 debate here on statutory construction for, I'm sure,  
19 days.

20 I think our application stands on its own  
21 in terms of what, you know, we believe the Commission  
22 has discretion to do, but if you've ever been in a  
23 room of more than one lawyer, and I would say this  
24 room has significantly more than that number, I think  
25 we could exercise this activity for days if not weeks

1 to come in terms of how this statute can be read.

2 Q. Well, according to that language,  
3 Ms. Janson, according to that language I just read  
4 you the Commission can alter again in year 3, can  
5 they not?

6 A. You're making the -- take me back to the  
7 base case.

8 Q. Okay. Let's read the language together  
9 again. "Any such alteration shall be made not more  
10 often than annually."

11 A. And the discretion begins beginning in  
12 the second year prospectively, it's my reading, that  
13 that would apply then to the third year of the  
14 blending because it would seem to me counter to  
15 common sense and the way that we would propose to  
16 satisfy through the competitive bid process, satisfy  
17 our load obligation that that could apply the next  
18 day, as was suggested earlier.

19 It would seem to me that that would apply  
20 for the coming procurement and bid process. So it's  
21 a rational reading.

22 Q. So you agree with me, then, in year 3 the  
23 Commission could alter those proportions again.

24 A. But once we --

25 Q. And change the duration.



1           A.    Once we would be at a hundred percent, we  
2    would have already procured on behalf of our  
3    customers the load to serve them so I don't -- I  
4    don't believe that it would -- it would be something  
5    that the Commission would want to do to, I mean how  
6    can you develop a competitive market if you can  
7    unwind, you know, I don't know that you can unwind,  
8    an auction? It would seem to me once you're at a  
9    hundred percent market, you're at a hundred percent  
10   market from there and following.

11           MR. JONES: Your Honor, that response was  
12   not responsive to my question. I'll ask to have  
13   Ms. Janson directed to answer my question.

14           MS. SPILLER: Your Honor, if I may, I  
15   believe the question had to be with whether or not --

16           EXAMINER PIRIK: Excuse me. Could you  
17   reread the question?

18           (Record read.)

19           A.    I think I'll have to agree to disagree  
20   with that, if I'm only permitted to have a one-word  
21   answer.

22           Q.    You're saying no.

23           A.    I'm saying they would not.

24           Q.    They would not have the discretion?

25           A.    I'm saying they would not exercise it if

1 they had it.

2 Q. No. I'm asking you would they have the  
3 discretion in year 3 to make that alteration?

4 A. I would not sit here and presume to tell  
5 the Commission they have or do not have discretion.  
6 I just will not do that.

7 Q. But you're saying the Commission has  
8 discretion today to alter the five years; is that  
9 correct?

10 A. Prospectively. I'm telling you at the  
11 time where you get to a hundred percent market things  
12 would have to happen in advance of that. Things like  
13 running the auction, staggered procurement. There  
14 are counterparties here, there are commercial  
15 entities that would be bidding their load into the  
16 auction and I think it would be, you know, it would  
17 be counter to the tenets of the legislature and the  
18 Commission to go, oh, oh, oh, hold on guys, we didn't  
19 really mean to run an auction, you have to step back,  
20 the Commission wants to turn this thing back. That  
21 is not the development of a competitive generation  
22 market.

23 Q. Ms. Janson, I'm not asking for your  
24 opinion. I'm asking for the legislative intent as to  
25 what you gave testimony to.

1           A.     And we talked. I was not -- I did not  
2 speak with members of the legislature, I was not in  
3 this position in 2008, and I, frankly, have not  
4 reviewed in detail any legislative intent behind the  
5 statute.

6           Q.     So you're not competent to give testimony  
7 on the --

8           A.     No, I would not agree with that.

9           EXAMINER PIRIK: Ms. Janson, is it  
10 possible that you could read this sentence of the  
11 statute to say what Mr. Jones is asking you?

12          THE WITNESS: And what is he asking me  
13 specifically?

14          EXAMINER PIRIK: Mr. Jones, could you  
15 rephrase your question again.

16          MR. JONES: Yes.

17          Q.     Ms. Janson, again, for the third time  
18 I'll read this, "Any such alteration shall be made  
19 not more often than annually," and that is in  
20 4928.142(E). The Commission has the discretion to  
21 make an alteration in year 3; isn't that correct?  
22 According to the legislative intent of that statute.

23          A.     Correct. Not more often than annually,  
24 correct.

25          Q.     Thank you.

1           And that also includes year 3, in year 3  
2   the Commission has the discretion to alter those  
3   proportions that are provided in the blending period;  
4   isn't that correct?

5           A.    That's correct.

6           MR. JONES: Your Honor, can the record  
7   reflect the witness did answer that in the  
8   affirmative saying "that's correct"?

9           EXAMINER PIRIK: Yes. Yes, the record  
10  reflects that, thank you.

11          MR. JONES: Thank you.

12          Q.    Ms. Janson, I want to refer to your  
13  testimony now on page 6.

14          A.    May I quickly add to my response?

15          MR. JONES: Your Honor, I have no other  
16  questions.

17          EXAMINER PIRIK: On redirect your counsel  
18  may be able to ask you that question.

19          THE WITNESS: Okay.

20          EXAMINER PIRIK: Mr. Jones, do you know  
21  how much more you have? This might be a good time to  
22  take about ten minutes so the witness can take a  
23  break.

24          MR. JONES: Sure, I just have a little  
25  bit more, but either way I'm fine.

1 EXAMINER PIRIK: Since we're going to  
2 break at about a quarter till 1 anyway, why don't we  
3 take a ten-minute break until a quarter after now and  
4 then we'll come back.

5 (Recess taken.)

6 EXAMINER PIRIK: We'll go back on the  
7 record.

8 Mr. Jones.

9 MR. JONES: Thank you, your Honor.

10 Q. Ms. Janson, I just have a few other  
11 questions to cover with you. First I want to refer  
12 to your testimony on page 6.

13 EXAMINER PIRIK: Ms. Mooney, can you pass  
14 the microphone over to -- oh, no. Mr. Jones, you  
15 have one. You need to talk into it also.

16 Q. Ms. Janson, I need you to refer to your  
17 testimony on page 6 where you testify about the FERC  
18 proceedings in regards to the application being filed  
19 with the Federal Energy Regulatory Commission and you  
20 provide the docket number and so forth requesting  
21 approval to move your legacy generation load into  
22 PJM. Do you see that?

23 A. I do, at lines 1 through 3.

24 Q. Yes. Yes. And further you discuss there  
25 the filing for approval the fixed resource

1 requirements, so the FRR plan. Do you see that as  
2 well?

3 A. I do.

4 Q. And I wanted to ask you did the FERC  
5 approve the FRR plan on October 21st, 2010?

6 A. I believe that's correct.

7 Q. I just wanted to clarify that.

8 A. I would have you cover that with Witness  
9 Jennings as well.

10 Q. Okay. You further testify there in that  
11 paragraph the company expects this realignment to be  
12 completed by January 1st, 2012. Do you see that?

13 A. Yes.

14 Q. I want to ask you, what is your  
15 expectation that realignment's going to be approved?  
16 What's the basis for that expectation?

17 A. Again, I don't directly supervise the  
18 folks who are responsible for the RTO alignment area,  
19 nor am I a FERC attorney, but anecdotally I  
20 understand that we are hopeful to receive approval  
21 and that we would be in a position to effect that  
22 realignment by the end of 2011.

23 Q. There's, Ms. Janson, there's no certainty  
24 that that realignment will be approved; is that  
25 correct?

1           A.    I would agree, no certainty, but a high  
2 degree of confidence that it will be.

3           Q.    And what's that based on?

4           A.    The information that's been shared with  
5 me by our FERC attorneys and our folks who have the  
6 RTO organization as part of their responsibility  
7 based on prior case law and other migrations.

8           Q.    Ms. Janson, would you agree there's still  
9 several more steps to go through for that realignment  
10 process to continue through?

11          A.    There are additional, but I wouldn't -- I  
12 don't think there are several. There are additional  
13 steps, yes.

14          Q.    Do you know how many steps?

15          A.    Not specifically.

16          Q.    Now, Ms. Janson, I want to refer your  
17 attention to your testimony on page 13. There at the  
18 beginning of line 9 you testify that "And as it will  
19 be confirmed by other witnesses, the prices blending  
20 during transition to market are expected to converge  
21 in year 3 of the company's MRO." Again, what's the  
22 basis for the expectation for the convergence?

23          A.    I think we're relying on the testimony of  
24 Witness Rose.

25          Q.    Is that the only witness?

1           A.     Witness Northrup may have information to  
2     share in that regard.

3           Q.     And to your knowledge is there a  
4     certainty that they are going to converge?

5           A.     I don't think with the market prices for  
6     power there can ever be definitive certainty.

7           Q.     And by making that statement, expected to  
8     converge, are you suggesting that once they converge  
9     they're going to remain at that level and stay flat  
10    at that level into the future?

11          A.     That's certainly not what I said.  A  
12    convergence is the prices come together.

13          Q.     Right.  And how long will they stay  
14    together?

15          A.     I can't answer that.

16          Q.     I'm just asking you to describe your  
17    testimony.  When you were saying "expected to  
18    converge," I see it that they're crossing one  
19    another.  Are they going to stay at that  
20    intersection?  I mean, can you elaborate on that?

21          A.     I cannot.

22          Q.     And, Ms. Janson, the last area I want to  
23    cover here is page 15, the transfer of generating  
24    assets.  If the Commission were to approve your MRO  
25    application, when would the company then be filing



1 its applications to transfer its generating assets?

2 A. In the coming months.

3 Q. I take it that would be two or three  
4 months after the order?

5 A. That would be fair.

6 Q. And by making that application there  
7 wouldn't be any certainty that the Commission would  
8 approve that application; is that correct?

9 A. Well, I think in making any application  
10 you hope that the Commission would look at the facts  
11 and the matter in evidence and see that it's  
12 certainly part of the, again, the plan to further the  
13 development of a competitive market. Certainly once  
14 the time that the blend has come to a hundred percent  
15 market there's no need for the generation to continue  
16 to be owned within Duke Energy-Ohio.

17 Q. But the Commission would have to find  
18 that it's just, reasonable, and in the public  
19 interest to approve that, wouldn't they?

20 A. And we feel certain they will find so.

21 Q. I believe you testified that the  
22 application that you envision being filed will be  
23 asking the Commission to transfer your assets to an  
24 affiliate; is that correct?

25 A. That's correct.

1           Q.    Why an affiliate as to someone who's not  
2 affiliated with the company?

3           A.    Well, I think to assume that we would  
4 transfer to someone not affiliated with the company  
5 would assume that we have, you know, a willing  
6 purchaser who wishes to purchase those assets on  
7 terms to which we've agreed, and there are no such  
8 facts in evidence.

9                        So the notion of transferring it to an  
10 affiliate is more, one, around being able to, again,  
11 as I've earlier stated, operate our business in a way  
12 where we can make long-term decisions around capital  
13 requirements, around operation of that generation,  
14 that generation being in a separate company, then  
15 those decisions could be made with respect to whether  
16 or not that generation is interested in participating  
17 in the Duke Energy-Ohio auction.

18                      The thing that I've struggled with today,  
19 there is no, you know, nefarious intent on behalf of  
20 the company. What we want to do here is run our  
21 business in a logical and rational way and be able to  
22 make long-term decisions for the benefit of our  
23 customers with some longer term certainty than a  
24 three-year ESP provides. And the transfer of our  
25 generation and the approval of the MRO would allow us

1 to do that in a way that doesn't, you know,  
2 consistently whipsaw us into sort of short three-year  
3 periods of time.

4 Q. And at such time if the company were to  
5 transfer its assets, would a new corporate separation  
6 plan then be filed with the Commission?

7 A. I think we would have to take that under  
8 review as to whether or not the existing corporate  
9 separation plan at that time appropriately addresses  
10 all of the issues that may need to be addressed based  
11 on the transfer of the generation.

12 MR. JONES: I have no further questions,  
13 thank you.

14 EXAMINER PIRIK: Thank you.

15 Redirect, Ms. Spiller.

16 MS. SPILLER: Thank you, your Honor.

17 - - -

18 REDIRECT EXAMINATION

19 By Ms. Spiller:

20 Q. Ms. Janson, I would like to draw your  
21 attention, if I may, to the questions asked by  
22 Mr. Olikier regarding the TRC, or transaction review  
23 committee.

24 A. Yes.

25 Q. Is that committee the final

1 decision-maker of business propositions that are  
2 presented to it?

3 A. It actually is not. I think it serves at  
4 the behest of the chairman, president, and CEO who is  
5 the ultimate decision-maker under our delegation of  
6 authority. That committee was put together, and  
7 again, I think I alluded to its membership, so that  
8 issues, decisions of significance, could be vetted by  
9 the entire senior team and thereby making a  
10 recommendation and having things considered to Jim,  
11 then, who ultimately makes the decision.

12 Q. So with regard to the realignment from  
13 the Midwest ISO to PJM, did the TRC make a  
14 recommendation to Mr. Rogers?

15 A. Duke Energy-Ohio made a recommendation to  
16 the transaction review committee and that was  
17 Mr. Whitlock and I made the recommendation to the  
18 transaction review committee. They, in turn, made a  
19 recommendation to Mr. Rogers that he approve the  
20 transfer.

21 Q. You were asked both by Ms. Mooney and  
22 Mr. Hart about market prices, I believe one of the  
23 characterizations had to do with stepping off into  
24 volatile market prices. Can you tell me, ma'am, how  
25 the company's competitive bidding process as detailed

1 in its application protects customers against market  
2 pricing volatility?

3 A. You know, I think I tried a couple of  
4 times and maybe I wasn't clear enough, and I would  
5 also direct questions to the company's Witness Lee  
6 who was very integral in putting together our  
7 competitive bid process. But at its core it provides  
8 for a descending clock auction open to all bidders,  
9 all qualified bidders, much like the FE auctions that  
10 the Commission has approved would run, and with the  
11 staggered procurement tranches as I've also alluded  
12 to we believe that that process would serve to  
13 mitigate that price volatility to which you referred.

14 Q. Thank you.

15 And, ma'am, do you still have the  
16 relevant sections of Senate Bill 221 in front of you?

17 A. I do.

18 Q. And if I could turn your attention,  
19 please, to sections (D) as in David and (E) as in  
20 echo.

21 A. Yes.

22 Q. You were asked questions from Mr. Jones  
23 about section (E) and the alteration of the blend.  
24 Is there anything in section (E) as you read it that  
25 prevents the Commission from making a decision today

1 to alter the blend in year 3?

2 A. There is not.

3 Q. And, ma'am, with regard to -- strike  
4 that.

5 As a albeit recovering attorney are you  
6 familiar with the rules of statutory construction?

7 A. I am.

8 Q. And is one of those rules that every word  
9 in the statute should be given meaning?

10 A. Correct.

11 Q. With regard to the Commission's ability  
12 to blend, there was language that was not read by  
13 Mr. Jones, specifically "notwithstanding any other  
14 requirement of this section." Do you see that  
15 language?

16 A. Is that in section (E)?

17 Q. Yes, ma'am. the first sentence; do you  
18 see that?

19 A. (E) as in egg or (D) as in dog?

20 Q. Egg.

21 A. Yes.

22 Q. So does this mean, Ms. Janson, that  
23 although section (D) as in David speaks of a  
24 five-year blend, that the Commission can alter that  
25 blend?

1           A.     That's the way I read it.

2           Q.     And how would you define  
3     "notwithstanding" as used in that provision?

4           A.     As we discussed in the statutory  
5     construction, to give that word its meaning  
6     notwithstanding any other requirement in the section.  
7     So that would give, beginning in the second year of  
8     the blended price under division (D) and  
9     notwithstanding any requirement of section (E).

10          Q.     If I could keep your focus, please, on  
11     section (E) as in echo, the last sentence of that  
12     section, please. You were asked about whether the  
13     Commission could change the blend once the company is  
14     fully at market. Can you please tell me what you  
15     interpret this last section or, I'm sorry, this last  
16     sentence of section (E) to mean?

17          A.     I can. And perhaps I wasn't clear enough  
18     in my response, but within that final sentence it  
19     states that the alteration shall be limited to an  
20     alteration affecting the prospective portions used  
21     during the blending period and shall not affect any  
22     blending proportion previously approved.

23                 So when I stated that once we would be at  
24     a hundred percent market the Commission, from just a  
25     rational basis, would not, you know, attempt to

1 unwind any competitive bid process that has gone on  
2 before, it seems that this could be read that they  
3 would not -- they shall not affect any blending  
4 proportion previously approved.

5 Q. And is Duke Energy-Ohio through its  
6 application asking the Commission to make alterations  
7 to the blend more often than annually?

8 A. We are not.

9 MS. SPILLER: Nothing further, your  
10 Honor. Thank you.

11 EXAMINER PIRIK: Thank you.

12 Rather than go around and mention  
13 everyone's name I'm going to take a scan of parties  
14 to see whether there is any recross for the  
15 nonconfidential portion.

16 Hearing none, we'll go off the record for  
17 a moment.

18 (Discussion off the record.)

19 EXAMINER PIRIK: We'll go back on the  
20 record.

21 Mr. Oliker.

22 MR. OLICKER: We feel that we have an  
23 obligation to bring a matter to your attention.  
24 During discovery Duke inadvertently disclosed some  
25 confidential documents to the general public. To be



1 clear, we're not suggesting that we think the hearing  
2 should not be closed, but we feel we have an  
3 obligation to bring it to your attention.

4 EXAMINER PIRIK: Ms. Spiller.

5 MS. SPILLER: Your Honor, I will say that  
6 there was an inadvertent transmission. It was then  
7 identified to all counsel in this proceeding that  
8 there was an inadvertent disclosure consistent with  
9 what I will describe are rules of ethics. As members  
10 in good standing of the legal community we asked the  
11 attorneys to treat that information as confidential.  
12 The disclosure was not at all intended to waive any  
13 confidences associated with that document.

14 I think this is somewhat akin to what is  
15 allowed under the rules of civil procedure and  
16 evidence as administered from our federal courts that  
17 if there is an inadvertent disclosure, the timely  
18 notification of that disclosure would not otherwise  
19 remove the label of confidential and privileged from  
20 that information.

21 EXAMINER PIRIK: Let me make sure I'm  
22 clear on this. Mr. Olikier, the information that you  
23 are requesting cross-examination of was inadvertently  
24 disclosed to all of the parties.

25 MR. OLIKER: Much of it was in various

1 forms. Certain drafts of things that I'm going to  
2 discuss were disclosed.

3 EXAMINER PIRIK: To all of the parties.

4 MR. OLIKER: To all the parties.

5 MS. SPILLER: To attorneys, your Honor, I  
6 believe.

7 EXAMINER PIRIK: To attorneys.

8 MS. SPILLER: Yes, ma'am.

9 EXAMINER PIRIK: And, Ms. Spiller, are  
10 you saying that some of these attorneys have not  
11 entered into confidentiality agreements with the  
12 company, or you're saying, I mean, that they should  
13 be treating this as confidential due to the  
14 inadvertent requirement in the rules is what you're  
15 saying?

16 MS. SPILLER: Correct. And we do have  
17 confidentiality agreements that were signed I believe  
18 by most of the parties, by counsel for most of the  
19 parties. I do not yet see that we have a  
20 confidentiality agreement from Wal-Mart and Sam's.

21 EXAMINER PIRIK: Okay. Can we see a copy  
22 of the information that you wish to cross-examine on  
23 because, just to clarify the record, even though the  
24 company is alleging confidentiality and the parties  
25 are respecting that at this point in time, the Bench

1 will determine what should and shouldn't be on the  
2 open record and make a ruling accordingly. So after  
3 we review the information -- are you aware of  
4 specifically the information?

5 MS. SPILLER: No, we are not, your Honor.

6 EXAMINER PIRIK: So we'll need to give  
7 Duke a copy of it also.

8 MR. OLIKER: Your Honor, may I approach?

9 EXAMINER PIRIK: Well, you can give it to  
10 the witness, but the Bench needs it and specifically  
11 counsel for the company needs it.

12 MR. OLIKER: That's not a complete copy,  
13 but the cover sheet there I believe lists the  
14 documents that were disclosed. But that document  
15 there is the document that I'm going to discuss.

16 EXAMINER STENMAN: So this is all that  
17 would be in the record?

18 EXAMINER PIRIK: Do you have another copy  
19 of it?

20 MR. OLIKER: I'm sorry, your Honor.

21 This is the same document.

22 EXAMINER PIRIK: So does this document in  
23 total contain the information which you wish to  
24 cross-examine on that is alleged confidential by the  
25 company?

1 MR. OLIKER: I also intend to discuss a  
2 finalized version of that document.

3 EXAMINER PIRIK: So do you have a copy of  
4 that also?

5 MR. OLIKER: I do as well.

6 EXAMINER PIRIK: Ms. Spiller, I would ask  
7 that the company take a moment to look at this  
8 document keeping in mind that our consideration of  
9 this document will be very limited to only those  
10 items, numbers, names, whatnot, that needs  
11 consideration as proprietary.

12 Just briefly looking at it I do not  
13 believe that all of the numbers and all of the words  
14 that are on these pages warrant confidentiality, so I  
15 need the company to look at it and determine what  
16 specifically on these documents you're asking to be  
17 kept confidential.

18 MS. SPILLER: Thank you, your Honor.

19 EXAMINER PIRIK: Ms. Janson, if you need  
20 to help, I don't know if -- I don't know who needs to  
21 help you with this.

22 THE WITNESS: I'm not --

23 MS. SPILLER: Your Honor, are you  
24 proposing we simply take a brief recess here? This  
25 is the first we've heard of the intent to

1 cross-examine a witness with particular documents.

2 EXAMINER PIRIK: Yes, we're going to  
3 physically stay in the room for the next ten minutes  
4 and look them over and see whether we're able to  
5 ascertain specifically what you're going to be  
6 requesting. So if you can go through that, we'll see  
7 where we can go with it.

8 MS. SPILLER: Thank you, your Honor.

9 EXAMINER PIRIK: So we're on break and  
10 off the record.

11 (Off the record.)

12 EXAMINER PIRIK: Go back on the record.  
13 While we were in recess we labeled six documents for  
14 consideration by the Bench with regard to the request  
15 that all or portions of these documents be kept  
16 confidential by the company. Document No. 1 is a  
17 February draft of a white paper. Document No. 2 is a  
18 May 7th, 2010, draft of a white paper. Document 3  
19 is a redacted appendix to the white paper. Document  
20 No. 4 is a PowerPoint presentation. Document No. 5  
21 we will label "Assumption." And document No. 6 is an  
22 e-mail.

23 Having labeled the documents, if you  
24 could, when you're making your arguments, just  
25 specifically designate which, by number, document

1 you're talking about, the record will be able to  
2 clearly indicate which one it is.

3 Ms. Spiller.

4 MS. SPILLER: Thank you, your Honor. I  
5 would simply like the record to reflect that in  
6 providing discovery in this case Duke Energy-Ohio did  
7 produce confidential proprietary information pursuant  
8 to confidentiality agreements entered into with  
9 counsel for the various parties.

10 It is my understanding that counsel are  
11 not challenging the confidential designation of the  
12 documents, however, the Bench has asked us to review  
13 documents to ascertain if there are portions of those  
14 documents that perhaps may not merit that  
15 confidential label.

16 I would like to first turn to what has  
17 been marked as document No. 1, a transaction review  
18 committee white paper. Just going through the  
19 document, the first paragraph is the proposed  
20 transactions summary which details the -- as, if you  
21 will, to the TRC, we would acknowledge that this is  
22 public information.

23 I'm going to skip the next paragraph, if  
24 I may, and jump down to the bullet pointed  
25 information, Other Strategic Benefits. That

1 information has been set forth in the public  
2 testimony filed in this proceeding and thus Duke  
3 Energy-Ohio will not suggest that that information is  
4 confidential.

5           However, for the balance of this document  
6 it is Duke Energy-Ohio's position that all of the  
7 remaining content which has not been made public  
8 through this filing or otherwise is, in fact,  
9 business proprietary and trade secret information.

10           I think, most importantly, this document  
11 contains a summary of how the company analyzes and  
12 views its business. It is very forward-looking. The  
13 assumptions that are included in this document  
14 include assumptions around the pricing, for example,  
15 capacity pricing.

16           With the information that is contained  
17 within this document it would not be a difficult  
18 proposition for a competitor of Duke Energy-Ohio to,  
19 in fact, ascertain our proprietary business modeling,  
20 the analysis, and the relevant assumptions that the  
21 company incorporates into that analysis in making  
22 their strategic business decisions.

23           In short, your Honor, if this information  
24 is produced, we believe that it would work an unfair  
25 competitive advantage to Duke Energy-Ohio. I would

1 say that the company also took caution to label this  
2 document internally as confidential. That's  
3 significant to the Ohio statutory definition of trade  
4 secret in that this is not information that was  
5 disseminated loosely within the company.

6 I think, your Honor, there is information  
7 in this document that also addresses future costs  
8 that may be incurred by the company. Those costs  
9 have yet to be incurred, will be the subject of  
10 negotiations, and I think to publicly disclose the  
11 company's assumptions around those prospective  
12 negotiations puts it in a compromised position, that  
13 is, the entities with whom the party is interacting  
14 for purposes of negotiation and/or dispute resolution  
15 would have an insight into how we view the particular  
16 issues at hand and I think vis-a-vis those  
17 counterparties Duke Energy-Ohio would be severely  
18 disadvantaged.

19 EXAMINER PIRIK: Ms. Spiller, could I ask  
20 you to look at footnote 3, for example.

21 MS. SPILLER: Yes.

22 EXAMINER PIRIK: Could you please read  
23 that on the record for me?

24 MS. SPILLER: "Assumes Beckjord Units 1  
25 through 3 are retired and Fayette" --



1 EXAMINER PIRIK: I'm sorry. Wait. Are  
2 we on document 1?

3 MS. SPILLER: No. I'm sorry. I think I  
4 jumped to document 2.

5 "DEO currently has a three-year electric  
6 security plan (ESP) expiring on 12/31/11. Upon  
7 expiration, DEO, with PUCO approval, could enter into  
8 a new ESP, a market rate option, or some hybrid  
9 similar to FE."

10 EXAMINER PIRIK: Could you please explain  
11 to me why that footnote is proprietary and  
12 confidential and subject to trade secret protection?

13 MS. SPILLER: I think, your Honor,  
14 although the two SSO options under Senate Bill 221  
15 are either an MRO or an ESP, and we have seen from  
16 past experience that the Commission has approved a  
17 hybrid which is the MRO structured within the ESP,  
18 that overall and taken as a whole this information  
19 gives insight into the company's business strategies  
20 and how they will, in fact -- what they deem as  
21 relevant.

22 EXAMINER PIRIK: This footnote, you are  
23 arguing that this footnote gives insight and it is --

24 MS. SPILLER: I think it's reflective of,  
25 and I don't know, and perhaps we want to parse out

1 footnote versus the text, but when you're looking at  
2 the customer impacts in the section to which that  
3 footnote applies, again, this is how the company is  
4 viewing and making their internal strategic decisions  
5 regarding their rate plans.

6 EXAMINER PIRIK: Ms. Spiller, I do  
7 understand the argument that you're making. I do  
8 understand the concern that you have. I want to look  
9 at this document and I want to be able to separate  
10 out those items that are truly a strategy piece and  
11 those items that are not.

12 The difficulty is that we are the Public  
13 Utilities Commission, we are a public agency. We  
14 have an obligation to have on the open record every  
15 word that is not confidential and is not a trade  
16 secret.

17 This footnote is just an example of a  
18 piece of this document that is just not confidential  
19 and is not subject to trade secret protection and  
20 could, in fact, be in the open record. It doesn't  
21 really talk to the substance of the document, which  
22 is why I noted that.

23 So my concern is, is that -- and we've  
24 gone through this in other proceedings and it has  
25 been very painful, I know we've done this together,

1 so I'm trying to figure out a way that we can go  
2 through these documents and actually have  
3 legitimately on the open record everything that we  
4 possibly can that is not subject to trade secret.

5 Another example that I want to point out  
6 is on page 4 of 5, I understand that the actual line  
7 bars may be of concern to the company, but the actual  
8 chart itself and what it depicts, I don't see how  
9 that's a trade secret. I think it's a line chart.  
10 It's a graph that, you know, just has values on  
11 either side of it and other than the information in  
12 the center that gives it the substance that gives it  
13 some value to this document, I don't see how that is  
14 confidential.

15 And I do understand how painful this is.  
16 You know, it's as painful for us as it is for you  
17 all. But in order to process the case and in order  
18 to move forward with the case we somehow need to find  
19 a way to go through the documents and pull out the  
20 values and perhaps the sentences that give some, you  
21 know, have some value as a confidentiality/trade  
22 secret item. I'm not sure how to do that.

23 MS. SPILLER: Well, your Honor, and I  
24 appreciate the balance that you're hoping to strike  
25 and I will say we are making as expeditious a

1 decision as we can here, again, learning today that  
2 this was the first time that IEU had intended to  
3 utilize this information.

4           You know, I think the concern is this  
5 chart reflects our business plans into the next ten  
6 years and that information in and of itself could be  
7 utilized by our sophisticated counterparties to have  
8 an insight into our strategic business plans.

9           EXAMINER PIRIK: Are you saying that just  
10 the fact that they know that you've done a forecast  
11 into the next ten years, you don't want your  
12 counterparts to know you've done a forecast into the  
13 next ten years?

14           MS. SPILLER: I think when you couple  
15 that with the nonpublic information, it's certainly  
16 indicative of our business models and strategies.

17           EXAMINER PIRIK: I'm not arguing the bars  
18 that are within that chart. I'm arguing the  
19 construct of that chart. The line items that talk  
20 about what the values are.

21           MS. SPILLER: I mean, simply to leave the  
22 X and Y axis information, striking the graphs.

23           EXAMINER PIRIK: That's my point.

24           MS. SPILLER: Your Honor, I would then  
25 simply ask the Commission for additional time to go

1 through and make that detailed of a review.

2 EXAMINER PIRIK: And I want to give you  
3 that time. We've done this before in other  
4 proceedings and it hasn't been real fruitful without  
5 the Bench walking through sentence by sentence and  
6 line by line, so I'm a little concerned, so I'm  
7 trying to figure out the best way to do that.

8 I want to be sure you understand what the  
9 Bench's will is, I mean, what we're asking you to do,  
10 because the last thing I want to do is to put this  
11 whole document out on the open record because I do  
12 understand and I think you have valid concerns about  
13 some of the phrases and some of the words that are in  
14 this document. And we are very sympathetic to that  
15 and we want to be able to redact those and only have  
16 that in confidential.

17 That being said, I need to know that when  
18 we break, we which can break and see what we can  
19 accomplish over lunch, that if you have any questions  
20 about our directive at this point in time, now is the  
21 time to ask us.

22 I know we went through this in the  
23 portfolio case, or in the storm rider case where we  
24 took, you know, we went through page by page.

25 MS. SPILLER: Right.

1 EXAMINER PIRIK: And I'm pretty sure you  
2 understand what we're asking you to do.

3 MS. SPILLER: I understand.

4 EXAMINER PIRIK: I mean, I want you to  
5 look at every item in the document, and I know that  
6 that will take more time.

7 MS. SPILLER: Okay.

8 EXAMINER PIRIK: Perhaps we can see if we  
9 can accomplish that over lunch.

10 MS. SPILLER: Okay.

11 EXAMINER PIRIK: Can we go off the record  
12 for a minute.

13 (Discussion off the record.)

14 EXAMINER PIRIK: We'll go back on the  
15 record. We'll take our lunch break until after the  
16 Commission meeting or a quarter till 2.

17 (At 12:45 p.m. a lunch recess was taken  
18 until 1:45 p.m.)

19 - - -

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1 Tuesday Afternoon Session,  
2 January 11, 2011.

3 - - -

4 EXAMINER PIRIK: We'll go back on the  
5 record. Ms. Janson has kindly agreed to allow  
6 Mr. Rose, who needs to travel this evening, to take  
7 the stand and then we will reconvene with Ms. Janson  
8 at a later time. So at this time I'd turn to  
9 Ms. Spiller.

10 MS. SPILLER: Thank you, your Honor.

11 MS. WATTS: Your Honor, Duke Energy is  
12 presenting Judah Rose.

13 EXAMINER PIRIK: Mr. Rose, please raise  
14 your right hand.

15 (Witness sworn.)

16 EXAMINER PIRIK: Thank you.

17 - - -

18 JUDAH ROSE  
19 being first duly sworn, as prescribed by law, was  
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Ms. Watts:

23 Q. Good afternoon, Mr. Rose. Would you  
24 state your name and business address, please?

25 A. Yes. Judah Rose, ICF International, 9300

1 Lee Highway, Fairfax, Virginia, 22031.

2 Q. And, Mr. Rose, do you have with you a  
3 document that I handed you as you walked to the  
4 witness chair?

5 A. Yes, ma'am.

6 Q. And can you tell me what that document  
7 is?

8 A. It's the direct testimony of Judah Rose,  
9 November 15th, 2010.

10 Q. Is that the testimony that was filed in  
11 this case on November 15th, 2010?

12 A. Yes, ma'am.

13 Q. Do you have any changes to that  
14 testimony?

15 A. There were a few changes that were  
16 prefiled and --

17 MS. WATTS: Your Honor, may I approach?

18 EXAMINER PIRIK: Yes.

19 Q. Mr. Rose, do you have before you what  
20 is -- can you describe what you have before you?

21 A. Yes. I have a letter that contains a  
22 table, the third page in, that has changes to my  
23 testimony. There are four rows and they are numeric  
24 and labeling.

25 MS. WATTS: Your Honor, before I ask to



1 have this marked as an exhibit I would like to mark  
2 the application as an exhibit.

3 EXAMINER PIRIK: And what number?

4 MS. WATTS: Duke Energy Exhibit 3,  
5 please.

6 EXAMINER PIRIK: The document is so  
7 marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MS. WATTS: Since we're talking about  
10 marking, if we could mark Mr. Rose's direct testimony  
11 as Duke Energy Exhibit 4.

12 EXAMINER PIRIK: The document is so  
13 marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MS. WATTS: And I would ask that we are  
16 permitted to mark this errata, this notice of errata  
17 filed with the Commission on December 9 as Duke  
18 Energy Exhibit 5, please.

19 EXAMINER PIRIK: The document is so  
20 marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MS. WATTS: Your Honor, could we go off  
23 the record for a moment?

24 EXAMINER PIRIK: Yes.

25 (Discussion off the record.)

1 EXAMINER PIRIK: We'll go back on the  
2 record. We need to clarify that Duke Exhibit 5  
3 consists of, the first page is a document that was  
4 docketed on December 9th, 2010, and then pages 2  
5 through 11 is a document that was docketed on  
6 December 13th, 2010.

7 MS. WATTS: That's correct.

8 EXAMINER PIRIK: And together those 11  
9 pages comprise Duke Exhibit 5.

10 MS. WATTS: Correct. Thank you, your  
11 Honor, for that clarification.

12 Q. (By Ms. Watts) Mr. Rose, would you look  
13 at the document that has been marked as Duke Energy  
14 Exhibit 5, please. And would you refer to page 3 of  
15 that document.

16 A. Yes, ma'am.

17 Q. And I asked you earlier if you had any  
18 changes or corrections to your testimony. Are these  
19 the changes and/or corrections that need to be made  
20 to your testimony?

21 A. Yes, ma'am.

22 Q. Are there any additional changes and  
23 corrections?

24 A. No.

25 Q. And are there additional workpapers

1 that -- in this document that support your testimony?

2 A. Yes, ma'am.

3 Q. Could you indicate which pages comprise  
4 those workpapers?

5 A. Page 4, 5, 6, 7 through 11.

6 Q. Mr. Rose, if I were to ask you the  
7 questions contained in your testimony again today,  
8 would your responses be the same?

9 A. Yes, ma'am.

10 MS. WATTS: Duke Energy tenders Mr. Rose  
11 for cross-examination.

12 EXAMINER PIRIK: Mr. Petricoff.

13 MR. PETRICOFF: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Petricoff:

17 Q. Good afternoon, Mr. Rose.

18 A. Good afternoon.

19 Q. Welcome back to Ohio.

20 A. Thank you very much.

21 Q. If you would, I just have a few questions  
22 but I want to start with page 12 of your direct  
23 testimony. If you would look at the items between  
24 lines 19 and 23.

25 A. Okay.

1 Q. There you are discussing Rider SRA-CD.

2 A. Yes.

3 Q. And am I correct in describing this rider  
4 as a capacity charge that Duke charges against its  
5 customers to provide service under the standard  
6 service offer ESP plan?

7 A. Yes, subject to the fact that it's  
8 avoidable under certain circumstances.

9 Q. And is it bypassable by all customers?

10 A. Not under -- no, not completely.

11 Q. And is it true that residential customers  
12 have to pay the SRA-CD rider even if they are  
13 shopping?

14 A. Yes, I believe so. And there are  
15 additional witnesses that can further corroborate.

16 Q. And under your understanding, if this MRO  
17 was approved, would the Rider SRA-CD go away?

18 A. Yes, my understanding is that this rider  
19 would be going away.

20 Q. Now, you indicate on line -- do you want  
21 to stop there and fix the microphone?

22 A. Is it working?

23 EXAMINER PIRIK: Sometimes. Use this  
24 one.

25 Q. Okay. Just following up, so the Rider

1 SRA-CD would be eliminated if we went to the MRO.

2 Would there be another rider like it that would take  
3 its place?

4 A. No, I don't think typically there would  
5 be a rider that takes its place. Again, there may be  
6 witnesses that are better familiar with that  
7 particular detail, but I think the concept here is  
8 that there's a full requirement supply that's an  
9 outcome of the CBP, the competitive bidding process,  
10 and that's the focal point for obtaining the  
11 necessary capacity.

12 Q. And looking at line 21, at the moment the  
13 Rider SRA-CD is not part of the price to compare?

14 A. I'm sorry, where are you referring to?

15 Q. Line 21 on page 12.

16 A. Yes.

17 Q. Would the type of capacity charges that  
18 are now in the SRA-CD under the MRO simply just  
19 become part of the power charge, part of the energy  
20 charge?

21 A. My understanding of it is that, and I  
22 think the best way to think about it is, is that the  
23 entity that has the full requirements responsibility  
24 is responsible for covering the costs of the capacity  
25 charge that would come out of the PJM arrangements,

1 and so PJM and the winner of the auction would be  
2 taking a responsibility to make sure that there's  
3 enough capacity to ensure reliability. So that's my  
4 understanding of how it would work.

5 Q. Okay. So in that case should the MRO be  
6 approved, then basically the capacity charges which  
7 are now captured in Rider SRA-CD would be part of the  
8 price to compare.

9 A. Yes, in the sense, again, I think there  
10 are witnesses who perhaps are better suited to answer  
11 this, but my understanding of the arrangement is, is  
12 that there's a responsibility of whoever wins the  
13 auction for paying for whatever charges are  
14 associated with the capacity requirement, which is  
15 the main mechanism for achieving generation  
16 reliability.

17 Q. I want to switch you now to another  
18 subject. If you would, turn the page to page 13 of  
19 your direct testimony, and if you would focus on  
20 lines 2 and 3, and there you indicate that the price  
21 to compare has increased from January 2009 to  
22 May 2010 by some 40 percent. Do you see that  
23 language?

24 A. Yes, I do.

25 Q. Can you tell me during that 15-month

1 period what happened to the market price for energy?

2 A. I assume that you're referring to the  
3 wholesale electric energy price?

4 Q. That's correct.

5 A. The wholesale electric energy price  
6 decreased and I believe that that was one of the  
7 reasons why the PTC increased, because there was  
8 switching and there was also some hedges that had to  
9 be resolved and there were costs for resolving those  
10 hedges. So I think they were intimately related  
11 although they ended up moving into the opposite  
12 direction.

13 Q. Now, if you would, focus down to line 10  
14 and your chart Exhibit B.

15 A. Okay.

16 Q. Here on Exhibit B, and as described in  
17 lines 10 and 11, you show that the ESP would be  
18 frozen, at least these elements of it would be frozen  
19 for the years 2012 through 2014. Is that because --  
20 a part of the MRO application?

21 A. Yes, it's my understanding that that is  
22 an offer that the company has made as part of the MRO  
23 application.

24 Q. Let's assume that the MRO is rejected and  
25 the ESP continues. What would be your thoughts on

1 what these prices would look like, particularly the  
2 fuel and purchased power price for 2012, 2013, and  
3 2014?

4 A. First of all, the ESP is scheduled to  
5 expire, so you're asking me to make an assumption  
6 that all the terms and conditions of the current ESP  
7 are continued?

8 Q. That's correct.

9 A. I don't have an answer to how  
10 specifically the items would move. I think the way  
11 to think about it is, is that there are fuel and  
12 purchased power costs that will be determined in the  
13 future based on what happens in the fuel and the  
14 purchased power markets. The base generation rate  
15 will tend to be relatively stable. And I don't have  
16 an opinion on the other smaller charges.

17 Q. Well, if you would, turn to page 30 of  
18 your testimony and look at Exhibit L. And in Exhibit  
19 L starting with the years as shown on, I guess the  
20 years 2012, 2013, 2014, would you agree with me that  
21 at least the NYMEX is forecasting an increase in gas  
22 prices?

23 A. Yes. As of the time that the data was  
24 taken, yes, it is showing that.

25 Q. Okay. And when we talk about the NYMEX,



1 we are talking about what actual buyers and sellers  
2 have agreed to pay for gas for future time periods?

3 A. Yes. They're prospective transactions  
4 for future periods of time.

5 Q. Let's focus in on that word  
6 "prospective." Are they really prospective? Aren't  
7 these really transactions for delivery in these years  
8 at the strike price?

9 A. Well, I mean they're transactions entered  
10 in today or at the present time for future delivery,  
11 so I think of prospective as in the future.

12 Q. If in fact the merchants who are out  
13 there buying and selling in the NYMEX for these  
14 periods are correct in terms of gas prices, now let's  
15 go back to look at your chart B on page 13, would you  
16 expect the fuel and purchased power rider, PTC-FPP,  
17 to increase in those years?

18 A. Yes, in the sense of if that was the only  
19 thing that I knew and we're doing that all else being  
20 equal. But of course a very significant component of  
21 the fuel and purchased power would be coal, and so  
22 its trend is not necessarily linked to the NYMEX  
23 natural gas price.

24 So it would -- with that caveat, I think  
25 the answer is yes, but again, I would expect this

1 thing to be driven primarily by coal market  
2 conditions.

3 Q. First of all, have you looked at any coal  
4 prices for this period?

5 A. Yes.

6 Q. Are those coal prices, relative to  
7 today's price, staying the same or going up?

8 A. The current futures coal price is  
9 somewhat higher than the current spot price the last  
10 I checked, although not to the same degree as the gas  
11 price.

12 Q. If you could now, I want to switch  
13 subjects. Could you turn to page 28 of your  
14 testimony, and look at Exhibit K.

15 A. Okay.

16 Q. First question for you is on these  
17 capacity prices you have listed the source as RPM.  
18 Could you explain what "RPM" stands for?

19 A. Yes. The entity that is conducting the  
20 market for capacity is PJM, and the RPM refers to  
21 reliability pricing model, I believe, and is the  
22 current incarnation of the capacity market in PJM.

23 Q. In preparation for your testimony did the  
24 company indicate to you that they were going to use  
25 the RPM as the means of pricing capacity?

1           A.    No.  I think it was the reverse.  As I  
2 think I indicated to them that I needed to price  
3 capacity and I was going to use the RPM and that was  
4 because it was the most observable forward or  
5 prospective price that was available.

6           Q.    Did they indicate to you that that was an  
7 acceptable assumption for preparing your testimony?

8           A.    I don't remember them specifically  
9 communicating one way or the other, but I will say  
10 that in 2008 when I testified here, and again it's  
11 good to be back in Ohio, I also used the PJM prices  
12 at that time because of their forwardness,  
13 prospectiveness, and transparency.

14           MR. PETRICOFF:  Your Honor, at this time  
15 I have no further questions.

16           Mr. Rose, thank you very much.

17           THE WITNESS:  My pleasure.

18           MR. CHAMBERLAIN:  No questions.

19           EXAMINER PIRIK:  Mr. Boehm.

20           MR. BOEHM:  Thank you, your Honor.

21                   - - -

22                   CROSS-EXAMINATION

23           By Mr. Boehm:

24           Q.    Good morning, Mr. Rose.

25           A.    Good afternoon.

1           Q.    Good afternoon, yeah, I'm behind the  
2 times. I represent the Ohio Energy Group and I've  
3 got a few questions for you. Very little on math,  
4 mostly on policy.

5                As I understand your summary of your  
6 testimony, Mr. Rose, it is fundamentally that you  
7 project that there will be a convergence in about  
8 2014, right about the time that the current ESP  
9 expires in the, I guess you would call it the legacy  
10 ESP prices and the market prices; is that correct?

11           A.    Yeah, that's a fair characterization of  
12 an important part of my testimony.

13           Q.    And because of that convergence you  
14 conclude that it really doesn't -- the blending,  
15 depending on somebody's interpretation of what the  
16 relevant statute is, doesn't really matter because  
17 now the market price and the legacy price are the  
18 same; is that right?

19           A.    Well, my specific statement in my  
20 testimony is, is that if the conditions, that is the  
21 convergence, were to continue, the blending would  
22 have no effect. So I think I was pretty specific in  
23 that regard. And with respect to the implications of  
24 that, I think there are other witnesses that are  
25 perhaps better suited to deal with that.

1           Q.    Okay.  Are you forecasting that after  
2   2014 they will remain the same?

3           A.    No.  I don't have a forecast beyond 2014,  
4   and the reason for that is that the main data source  
5   that I'm using here end in 2014, but with respect to  
6   energy and capacity.  I attempted to use information  
7   that was considered reliable with respect to data  
8   integrity, that is ICE, and to use forward or  
9   prospective information given the nature of the  
10  decisions that had to be made.

11          Q.    Isn't it, Mr. Rose, an important aspect  
12  of your proposition about when blending should end  
13  that, in fact, those -- that convergence of prices  
14  will continue after 2014?

15          A.    No.  You know, my understanding is that  
16  there's a phase-in period of time and that the  
17  phase-in is, as I understand it, is heavily  
18  influenced by the degree to which there is phasing to  
19  do.  That is if there's differences between what the  
20  regulated and the market price are and that  
21  thereafter there's no longer phasing, that's just the  
22  implementation of the division of the regulated  
23  market, so I wouldn't agree with that  
24  characterization.

25          Q.    Okay.  Let me put it to you this way,

1 Mr. Rose, let's assume that after 2004, let's assume  
2 first of all that there is a convergence as you  
3 forecast, but that after that convergence a market  
4 price continues to increase over the legacy price.  
5 And in fact, the increase is significant. Would you  
6 accept that --

7 A. As a hypothetical, yes.

8 Q. Okay. Do you see that as a reason why  
9 blending, that the Commission should continue to have  
10 jurisdiction over the blending of the price? Would  
11 that be a good reason why the Commission should  
12 continue --

13 MS. WATTS: Objection, your Honor. I  
14 believe the response to that calls for a legal  
15 understanding and I don't think Mr. Rose is an  
16 attorney.

17 EXAMINER PIRIK: Objection overruled.

18 THE WITNESS: Could I have the question  
19 repeated, please?

20 (Record read.)

21 A. I'm not sure if I'm the right witness for  
22 this. My understanding is once you go to a market at  
23 a hundred percent, you can't go back, and that that's  
24 consistent with the view that once the market is  
25 gone, there's some very significant structural

1 mechanisms that would require -- be very difficult to  
2 undo.

3           So I think once you get to a certain  
4 point and that's the hundred percent point, the  
5 Commission has jurisdiction on a number of matters,  
6 but I think -- I don't see it as being able to go  
7 back and undo the blending.

8           Q.    I guess what I'm saying to you, Mr. Rose,  
9 is isn't that a good reason why the Commission should  
10 not go to a hundred percent the third year?

11           A.    You know, that is a consideration that  
12 the Commission could have. I think the converse is  
13 also true, which is today market prices are lower,  
14 the general model of deregulation is, is that you  
15 have a market that's at a lower price than the  
16 regulated price and that you're going to get it, and  
17 it seems like that's an important consideration.

18                I think also the desire to end this  
19 in-between state of, you know, neither fish nor fowl  
20 and to allow entities to enter into the type of  
21 hedging and long-term arrangements that is consistent  
22 with the deregulated market seems also to be an  
23 imperative.

24                So there are a number of imperatives and  
25 I wouldn't conclude, therefore, that the Commission

1 should only give weight to that possibility.

2 Q. Let's go just for a moment and briefly  
3 touch upon that, Mr. Rose. Are you familiar with  
4 Senate Bill 3, the predecessor to Senate Bill 221?

5 A. I have some familiarity, yes.

6 Q. You didn't, in fact, maybe testify in  
7 that proceeding? I can't remember.

8 A. Yes. I have been testifying here on this  
9 matter on and off since 2003.

10 Q. There may be a gold watch in this for  
11 you.

12 Isn't your understanding that the Senate  
13 Bill 3 was a bill that was largely, if not wholly  
14 intended to take Ohio to a completely deregulated  
15 state?

16 A. That was my understanding, and I don't  
17 know if I would go with the word "completely," but  
18 the idea was to move to a deregulated competitive  
19 market.

20 Q. If that was so, what do you conclude that  
21 Senate Bill 221 is? Wouldn't that say to you that  
22 the legislators somehow began to compromise that  
23 goal? Wasn't Senate Bill 3 going to take us to  
24 market, if so, why -- if that's still the goal of the  
25 Commission and the law in Ohio, what was 221 all



1 about?

2 MS. WATTS: Objection as to the form of  
3 that question.

4 EXAMINER PIRIK: Sustained. Can you  
5 rephrase?

6 MR. BOEHM: I'll try it.

7 Q. Let's try it this way, Mr. Rose, your  
8 question or your answer a moment ago implied to me,  
9 and I may have misunderstood you, that you regarded  
10 Senate Bill 221 as a law whose goal at least  
11 partially was to take Ohio to market. Is that right  
12 or not?

13 A. I think that that's, you know, an overall  
14 statement, yes, I think that's the main thing that I  
15 would take from the bill.

16 Q. Okay. In respect of that supposed goal  
17 do you regard it, then, as a refinement of Senate  
18 Bill 3 or rejection of some concepts in Senate Bill  
19 3?

20 A. You know, the word "refinement" I think  
21 comes to mind, mid-course correction, you know, going  
22 to the moon and sort of adjusting the thrusters a  
23 little bit there.

24 Q. Okay.

25 A. And, you know, as you look at the market,

1 you know, rate offer, I see that as a structure to  
2 allow the company to communicate to the Commission  
3 that there is a certain amount of readiness as  
4 evidenced by switching, for example, to move in that  
5 direction.

6 Q. Did Senate Bill 3, for instance, anywhere  
7 contemplate the idea that a company could file for  
8 and a ratepayer could avail themselves of a legacy  
9 cost of service base rate past the fifth year of the  
10 act? Did Senate Bill 3 contain provisions that would  
11 allow a company to offer that past 2005?

12 A. That wasn't in my reading of the bill,  
13 but I think that the situation was, is that there was  
14 an RSP that the Commission had implemented and that  
15 had some of the elements that morphed into the ESP.  
16 I'm not a lawyer and you're asking me questions that  
17 I'm happy to pass to another witness.

18 But it does seem to me that the overall,  
19 it was never a situation in which there wasn't a  
20 transitional movement towards the market and we are  
21 closer today than we've ever been to making that  
22 happen.

23 Q. Let's kind of move on from there,  
24 Mr. Rose. Is it part of your business as a  
25 consultant to utility companies to conduct forecasts

1 of prices, market prices?

2 A. Yes.

3 Q. And you've done quite a few of those over  
4 the years?

5 A. Yes, sir.

6 Q. I wonder, Mr. Rose, did you do any  
7 forecasts which encompassed the pricing period, say,  
8 2007 and 2008?

9 A. Yes.

10 Q. And by that I mean these are forecasts  
11 that you made prior to 2007-2008. And did your  
12 forecast take into account the global recession and  
13 the effect of that on energy prices?

14 A. No, they didn't. And the current  
15 situation where we have the lower prices in the  
16 market right now is not something that I anticipated.  
17 It is something that could continue and the company  
18 arrangement would give people maximum access to low  
19 prices. This is exactly the scenario that was  
20 envisioned by many people when they were pushing  
21 deregulation.

22 MR. BOEHM: Your Honor, I would move to  
23 strike the last part of that answer as unresponsive.

24 EXAMINER PIRIK: Motion denied.

25 Q. Is it possible, Mr. Rose, after 2014 some

1 other event perhaps as global as what happened in  
2 2007, 2008, perhaps less so, will drastically affect  
3 the price of power?

4 A. Yes. It's -- the future is uncertain,  
5 but again, I would make the point that I did focus on  
6 price forecasts that were available that could be  
7 transacted today. And I think that's consistent with  
8 the fact that decisions have to be made today and --  
9 but with that caveat I would agree that there's  
10 uncertainty out there.

11 Q. I ask you, because you're not a lawyer,  
12 Mr. Rose, I ask you to accept for this next question  
13 the hypothetical that the Commission might find that  
14 certain provisions of Senate Bill 221 concerning  
15 blending that might be a part of a particular MRO,  
16 have as their goal the protection of consumers  
17 against sudden and unfavorable price increases  
18 perhaps even 10 years out after the filing of the  
19 MRO.

20 Please accept that, your attorney may  
21 argue with me on brief, but I ask you to accept that  
22 as a fundamental provision.

23 A. As the only provision or the --

24 Q. No, no, one of them, okay.

25 MS. WATTS: Mr. Boehm, do you mean a

1 hypothetical?

2 MR. BOEHM: As a hypothetical, yeah.  
3 Mr. Rose is not an attorney, I'm not asking him to  
4 accept that is the law.

5 Q. Assume that that's the case, would it  
6 serve that particular goal better if the Commission  
7 were to retain jurisdiction over blending past two or  
8 three years and, therefore, you wouldn't have a  
9 hundred percent blending in the third year, would  
10 that serve the purpose of that particular goal better  
11 than if, in fact, all blending ended three years out?

12 A. I'm trying to remember the hypothetical  
13 goal. The goal, if I can just restate it, you're  
14 saying -- can you restate the goal again? I  
15 understand it's fundamental but --

16 Q. I'm not sure I can.

17 MR. BOEHM: I'll ask the court reporter,  
18 your Honor, if --

19 EXAMINER PIRIK: Yes.

20 (Record read.)

21 A. I'd just make two comments on that. The  
22 first is, is that I think that if you accept that as  
23 a hypothetical, that you -- I think that could lead  
24 to that conclusion. The only thing I would sort of  
25 say is that you're giving up the opportunity to get

1 to the lower prices today.

2 I think the other is that you're  
3 interfering with the ability of the retail providers  
4 and the customers to be able to enter into long-term  
5 contracts by constantly having the start and stop,  
6 the uncertainty of the rules, you're not going to be  
7 able to get them in a position where they're going to  
8 be able to hedge themselves.

9 And so what you're doing is you're  
10 interfering, if you will, in the market hedge  
11 mechanisms that would achieve the same goal. With  
12 that caveat you could come to that conclusion but,  
13 again, I think you need to weight the fact that it  
14 is -- you're creating uncertainty by acting in the  
15 place of the market.

16 Q. Well, isn't it true, Mr. Rose, that now a  
17 great many customers are shopping that are not --  
18 they are not taking from Duke, they're not taking  
19 their ESP legacy price?

20 A. Yes. Approximately 60 percent of the  
21 load has switched already.

22 Q. And that opportunity will not change in  
23 the future, isn't that right, under the company's  
24 plan?

25 A. Yes, that is -- you can go to a CRES

1 provider.

2 Q. So the ability of a customer to enter  
3 into long-term contracts with marketers will continue  
4 under your proposal; isn't that right?

5 A. Yes, but if there's constantly changes in  
6 the rules that could create a situation that  
7 overrides the market, it's just making it more  
8 difficult for those entities to know what to do on  
9 either side of the transaction.

10 Q. But to make sure that we understand this,  
11 Mr. Rose, right now as a customer of Duke, any  
12 customer could go, to the extent they could find an  
13 offer, could enter into a long-term contract. Isn't  
14 that right?

15 A. They could. But I think it would have to  
16 be something they would have to consider that the  
17 rules could change down the road.

18 Q. But the fact that the blending would  
19 continue past three years or wouldn't continue past  
20 three years, that customer still has, to the extent  
21 that the market offers such a product, the ability to  
22 enter into a long-term contract with the provider,  
23 wouldn't they?

24 A. The right to contract exists by -- under  
25 all the proposals, but as I indicated, the existence

1 of a full market would facilitate the hedging, but  
2 the right to contract exists.

3 Q. Yes. But the fact is that there is an  
4 opportunity to go to the full market now and that  
5 opportunity would persist no matter how long the  
6 blending period took; isn't that true?

7 A. Du jour, but de facto if you end up with  
8 a situation in which the, you have a regulated offer  
9 that comes in at a well below market price, it's a  
10 very different situation than if you have a situation  
11 where people know they're going to market on a  
12 long-term basis.

13 Q. As I understand it, Mr. Rose, all you're  
14 telling me is yeah, they may enter into a long-term  
15 contract with that market provider, but it may occur  
16 that the company's price gets cheaper during that  
17 period; isn't that true?

18 A. No. What I'm saying, it's going to be  
19 more difficult to find counterparties willing to  
20 enter into long-term contracts in a situation in  
21 which there is a lot of uncertainty about what the  
22 structure of the marketplace is and what offers are  
23 coming from the regulated entity.

24 EXAMINER PIRIK: Mr. Boehm, it's 2:30 and  
25 we just need to take a ten-minute break.



1 MR. BOEHM: Yes, your Honor.

2 EXAMINER PIRIK: So we'll reconvene as  
3 soon as the Commission's meeting is over.

4 MR. BOEHM: Thank you.

5 EXAMINER PIRIK: Thank you.

6 (Recess taken.)

7 EXAMINER PIRIK: Mr. Boehm.

8 Q. (By Mr. Boehm) Mr. Rose, in fact I'm sure  
9 you're familiar with the market prices in states that  
10 do not have the sort of hybrid law that Ohio has but  
11 states that are either fully regulated or fully  
12 deregulated; are you not?

13 A. Yes, sir.

14 Q. Okay. And isn't it true that it's  
15 difficult just about anywhere you go as a consumer to  
16 get a truly long-term contract that is something  
17 past, say, three years?

18 A. There are some difficulties, but in my  
19 experience a lot of the difficulties are driven by  
20 uncertainty about regulation, so, for example,  
21 uncertainty about environmental regulations would be  
22 an example.

23 Of course there's greater clarity for the  
24 company as to whether it's fish or fowl, whether it's  
25 in a regulated or deregulated situation, and I think

1 that's an important consideration as well.

2 Q. I think I hear you, but I guess I was  
3 concentrating, Mr. Rose, on the motivation of a  
4 marketing company to offer a long-term price rather  
5 than the motivation of the power company.

6 Isn't it true that in the market  
7 generally, whether there's a, it's a regulated state  
8 or an unregulated state, or we'll call Ohio a hybrid  
9 state if you will, isn't it difficult to get products  
10 from marketers that go past three years?

11 A. In my experience most of the companies  
12 have origination groups that specialize in longer  
13 term contracts. Where I see the greatest difficulty  
14 in obtaining them, situations where there's  
15 significant regulatory uncertainty so, for example,  
16 they're switching market rules from zonal to nodal  
17 pricing or there are issues about the overall  
18 structure of the rules. So as a general matter most  
19 companies do have a specialized subdepartment that  
20 offers long-term contracts.

21 Q. Is it your testimony today, Mr. Rose,  
22 that it's more difficult to get long-term contracts  
23 for a consumer -- from a marketer for a consumer in  
24 Ohio than in some state where it's either wholly  
25 regulated or wholly deregulated?

1           A.    I think it's more difficult to consummate  
2   those contracts and I think that I was referring to  
3   the fact that the buyers themselves would be wanting  
4   to know what the rules of the road are going to be  
5   once the, for example, ESP ends. So I was thinking  
6   about sort of the ability to consummate that. But I  
7   think also for the provider there are also going to  
8   be concerns about what's going to happen in the  
9   marketplace.

10          Q.    Going back just briefly on the question  
11   of convergence of the market price with the, what  
12   you've termed ESP legacy price past -- and the time  
13   period past 2014. Would you agree with me that it is  
14   just as likely to believe that those prices will  
15   change after 2014 than those prices will remain the  
16   same?

17          A.    Are you referring to the market prices?

18          Q.    The market price relationship with the  
19   ESP legacy price.

20          A.    I think it's reasonable to expect that  
21   they would change over time but that you would be  
22   starting from a point of rough convergence.

23          Q.    And in fact, you seem to indicate that  
24   you think they will continue to go up after 2014,  
25   don't you?

1           A.    I think that the trends that are causing  
2   the prices to increase over time are trends that  
3   could cause the price to continue to increase. As I  
4   indicated in my testimony, the most recent  
5   developments tend to soften that conclusion with  
6   respect to the fact that the environmental  
7   regulations are more up in the air than they were  
8   when, you know, I was originally starting my  
9   testimony.

10           But it's certainly a possibility. I  
11   don't offer a forecast here because I've been trying  
12   to link the forecasts to the prospective nature of  
13   the decision that the Commission has to make.

14           Q.    Just moving on to that, and I think  
15   getting to the end of your cross-examination by me,  
16   you refer to, on page 7, line 17 I think. Wait a  
17   minute. Make it page 8 -- I'm sorry. I've lost my  
18   reference.

19           Somewhere in your testimony I think you  
20   make a reference to the idea that after 2014 prices  
21   will reflect costs of service. Do you remember that  
22   statement? And I'll try to find it for you.

23           A.    All right.

24           Q.    It's on page 8, lines 4 and 5. You make  
25   the assumption that prices will reflect the costs of

1 service.

2 A. Yes, I see that.

3 Q. Okay. Now, in a traditional regulatory  
4 environment when somebody says "costs of service," I  
5 refer to a construct that has a rate base, has items  
6 in the rate base, has certain expenses that may be  
7 passed along to customers, a rate of return perhaps  
8 on top of that. Is that what you mean when you use  
9 that term?

10 A. No. As described later in the testimony,  
11 the retail costs of service that I estimated are  
12 based on the, if you will, market or incremental  
13 costs of actually providing the service. It's not  
14 related at all to, for example, embedded costs.

15 Q. Okay.

16 A. Or allowed or earned rate of return.  
17 It's cost building blocks that would be necessary to  
18 make an offer on a retail basis.

19 Q. And so, for instance, in your use of the  
20 term "costs of service," you would include, for  
21 instance, the wholesale price of power; is that  
22 right?

23 A. Yes.

24 Q. Okay.

25 A. That's correct.

1 MR. BOEHM: Mr. Rose, I think that's all  
2 the questions I have. Thank you.

3 THE WITNESS: Thank you.

4 EXAMINER PIRIK: Mr. Hayden?

5 MR. HAYDEN: No questions, your Honor.

6 EXAMINER PIRIK: Ms. Hotz?

7 MS. HOTZ: I have one.

8 - - -

9 CROSS-EXAMINATION

10 By Ms. Hotz:

11 Q. Good afternoon, I'm Ann Hotz from OCC.

12 A. Good afternoon.

13 Q. You discussed the blending period with  
14 Mr. --

15 EXAMINER STENMAN: Could you use the  
16 microphone? I think we're having trouble hearing you  
17 in the back.

18 MS. HOTZ: I think I can talk loud  
19 enough. Can you hear me?

20 FROM THE FLOOR: No.

21 MS. HOTZ: No?

22 Q. You discussed the blending period with  
23 Mr. Boehm earlier. Once the SSO price is 100 percent  
24 competitively bid, you consider the blending period  
25 over, correct?

1 A. Yes, ma'am.

2 MS. HOTZ: Okay. Thank you. That's all  
3 I had.

4 EXAMINER PIRIK: Mr. Yurick?

5 MR. YURICK: Just a couple.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Yurick:

9 Q. Mr. Rose, good afternoon.

10 A. Good afternoon.

11 Q. I'm going to direct your attention to  
12 page 16, the question and answer that appears on --  
13 the question's line 8, the answer's on line 9.  
14 Actually it's just really -- sorry. Back up.

15 The answer's on line 9, really through  
16 11. You say, your answer is "After year 2, it is my  
17 understanding there's greater discretion about the  
18 share of the SSO that is based on the auction  
19 price...." Do you see that?

20 A. Yes, sir.

21 Q. You've already stated you're not a  
22 lawyer; is that right?

23 A. Yes, I am not a lawyer.

24 Q. And so your interpretation or your  
25 understanding isn't based on any kind of statutory

1 interpretation or anything of that sort.

2 A. It's just based on my experience in  
3 reading the statute, but --

4 Q. It's not based on any --

5 A. I am not a lawyer.

6 Q. It's not based on any expertise you have  
7 in statutory interpretation?

8 A. Except for the experience I have as a  
9 consultant in this area for almost 30 years.

10 Q. Okay.

11 MR. YURICK: No further questions.

12 EXAMINER PIRIK: Thank you.

13 Mr. Oliker?

14 MR. OLICKER: I have no questions, your  
15 Honor.

16 EXAMINER PIRIK: Mr. Hart?

17 MR. HART: Yes.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Hart:

21 Q. Let me just follow up on that question.  
22 You said in your testimony it's your understanding  
23 that starting in year 2 the Commission could go to a  
24 hundred percent market price. Where did you gain  
25 that understanding?



1           A.    You know, I reviewed the statute and I  
2 also had conversations with Duke staff.

3           Q.    Who from Duke told you that?

4           A.    I don't remember.

5           Q.    The next sentence says "...once an  
6 auction market share has been reached, it cannot be  
7 decreased." Where did you get that understanding?

8           A.    Again, the same answer, I read the  
9 statute and I believe that as was discussed earlier  
10 already today, one of the sections that I believe  
11 indicates there's sort of a no-go-back provision to  
12 avoid retroactive undoing of contracts which would  
13 be, in my nonlawyer understanding, something you  
14 would like to avoid given the overall legal deference  
15 to contracts.

16          Q.    Are you stating that applies when we go  
17 to a hundred percent market or does it apply for any  
18 blending percentage, that it can never change going  
19 forward?

20          A.    It's sort of like a less than or equal  
21 provision; once you get to X, you can't go less than  
22 X.

23          Q.    So if we're at a year where blending's at  
24 30 percent and there's something that happens to  
25 cause prices to go up, you're saying the Commission

1 can't prospectively ratchet that back down to  
2 20 percent?

3 A. Yes, that's my reading of the statute and  
4 it's consistent, this is parol evidence, but  
5 consistent with, as I indicated, the general legal  
6 deference to contracts.

7 Q. So your interpretation is that the  
8 Commission can only prospectively increase the  
9 percentage that's market based, it can never decrease  
10 it.

11 A. Once it's established a number it can't  
12 go back and lower the number, and as I indicated for  
13 the reasons mostly related to the language I read.

14 Q. Now, as I understand what you did in a  
15 rough sense is you took the wholesale forward prices  
16 from what data you had available and tried to add in  
17 other costs to get the full requirements service to  
18 project what a retail price would be, correct?

19 A. Yeah, I think that's a fair  
20 characterization.

21 Q. And the underlying data you start with  
22 only extends through May of 2014, that's as far into  
23 the future as you can see, correct?

24 A. Yes. The capacity price only extends to  
25 May 31st, 2014. The energy price extends through

1 the calendar year 2014.

2 Q. But you haven't attempted to project past  
3 May, have you?

4 A. In the -- I did and what I did for the  
5 capacity price, which I didn't have for the whole  
6 calendar year, I assumed that the capacity price that  
7 was prevailing in the previous period of time would  
8 continue.

9 Q. Okay. Am I correct that you've projected  
10 that based on that data sometime in calendar year  
11 2014 the market price will approximately equal Duke's  
12 ESP price?

13 A. Yes, the calendar year 2014 price would  
14 be within 2 percent approximately.

15 Q. And it's that conclusion, is it not, that  
16 has drawn Duke to propose a plan that would end  
17 blending in 2014?

18 A. As I understand it, it's a predicate to  
19 or input to that conclusion, not necessarily the only  
20 consideration that they had, but that was a piece of  
21 information that they considered.

22 Q. But I think you pointed out already here  
23 today that if the prices don't converge, then  
24 blending is relevant, correct?

25 A. Mathematically that -- your blending

1 procedure has an effect if there's a difference in  
2 the price. As to whether that's, you know, a  
3 relevant consideration, that's another issue.

4 Q. If prices do converge, blending's  
5 irrelevant because mathematically you get the same  
6 result both ways, correct?

7 A. Yes. And I think that the underlying  
8 concept of phasing in becomes no longer relevant.

9 Q. And so as long as prices continue to  
10 converge, there's really no reason to alter the  
11 blending percentages because you'll still get the  
12 same resulting price, correct?

13 A. Yes. If the two prices are the same, the  
14 weighted average of the two is the same.

15 Q. So if you're correct and we just followed  
16 the default pattern under the statute, went 10, 20,  
17 30, 40, 50, you get the same resulting prices in  
18 years 3, 4, and 5 as if we ended blending in year 3.

19 A. If you assume that the prices are equal,  
20 the market price and the ESP price, then that  
21 mathematic conclusion would occur. But you would  
22 lose other aspects of the arrangement so that the  
23 company wouldn't be necessarily warranting a flat ESP  
24 price, customers wouldn't have maximum access to the  
25 lower current prices, we would be in a continual

1 either fish or fowl situation with respect to the  
2 underlying rules in Ohio, et cetera.

3 So there are more considerations, but as  
4 a mathematical fact the weighted average of the two  
5 numbers that are equal is equal to those two numbers.

6 Q. The price trending that you've done in  
7 this case, am I correct, you've done that in other  
8 proceedings; haven't you?

9 A. Yes.

10 Q. And you've followed the same protocols of  
11 using wholesale forward prices and adding whatever  
12 data you could find to project a retail price,  
13 correct?

14 A. I have done that. I've done that here.

15 Q. In fact, you did that in case 08-920  
16 which is the ESP case.

17 A. That's correct.

18 Q. And that work was done in 2008 projecting  
19 prices for 2009, '10, and '11, correct?

20 A. Yes.

21 Q. And you did the exact same analysis using  
22 basically the same data sources.

23 A. Yes, very similar.

24 Q. And your conclusion in case 08-920 was  
25 that in 2011 the competitive market price option

1 would be higher than Duke's ESP price.

2 A. Yes, that was the conclusion.

3 Q. And as we sit here today it's exactly the  
4 opposite, isn't it?

5 A. Yes, and therefore if customers could  
6 have maximum access to the market, they would have  
7 maximum savings.

8 Q. But the projection that you made that  
9 prices, the competitive price would be higher was  
10 used by Duke to justify the ESP prices, wasn't it?

11 A. It was presented as a consideration and  
12 the only thing I would sort of say is, is that the  
13 Commission has to make a prospective decision and it  
14 has to -- and I think it needs to use prospective  
15 information, but it also has to recognize that there  
16 is uncertainties, and of course one of the  
17 consequences is if we have a repeat of the situation  
18 that we had in '08 when I testified, consumers would  
19 be better off.

20 Q. Let's get back to that. I mean, Duke, in  
21 the ESP case, Duke had to compare its price to what a  
22 hypothetical market price would be, correct?

23 A. Yes.

24 Q. And it had to show that the price it  
25 wanted to charge would be below what you would expect

1 the market price to be.

2 A. Yes. That's my recollection.

3 Q. So it was your projection work back in  
4 2008 that got Duke to the rates that it's at today,  
5 correct?

6 A. It was a contributing factor or at least  
7 an input.

8 Q. Now, in this case what we're talking  
9 about what future blending ought to be, would it be  
10 more accurate to guess today what's going to happen  
11 in 2014 or to wait until 2014 and adjust blending  
12 then? Which has a better chance of being correct?

13 A. Well, you know, this is sort of a chicken  
14 or the egg situation. The nature of a competitive  
15 market with the forward solicitations, the multiple  
16 contracts, you have to make prospective decisions. I  
17 think you're creating a strawman that is not  
18 implementable.

19 If you're asking me will we know the  
20 future in the future, you know, that answer is yes.  
21 But we'll still have -- the Commission will still  
22 have the decision to make and have prospective  
23 requirements at that time as well.

24 So you can't create a situation in which  
25 you are making a decision based on perfect

1 information.

2 Q. Well, your testimony today is that once  
3 the Commission approves a hundred percent blending,  
4 it cannot go back, correct?

5 A. Yes, that's my testimony.

6 Q. So is your testimony that the Commission  
7 approves a hundred percent blending in the order to  
8 occur in year 3, that it can never go back on that?

9 A. That's my understanding of the statute,  
10 yes.

11 Q. Okay. So you're asking the Commission to  
12 make an irrevocable decision now that blending will  
13 end in year 3 and that can't be reversed.

14 A. I'm asking it to -- I'm not asking, you  
15 know, I'm just saying that the company's proposal is  
16 to go to market, and I guess I would point out that  
17 having -- coming to Ohio on this issue I don't think  
18 it's precipitous given that we're now, you know, in  
19 2011, it's already 12 years that the company has been  
20 in transition towards a deregulated market. So I  
21 am -- I am sympathetic to the company's desire that  
22 this issue be resolved given the numerous  
23 difficulties of being fish or fowl.

24 MR. HART: That's all I have, thank you.

25 EXAMINER PIRIK: Mr. Montgomery?



1 MR. MONTGOMERY: I have no questions.

2 EXAMINER PIRIK: Mr. Jones?

3 MR. JONES: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Jones:

7 Q. Good afternoon, Mr. Rose.

8 A. Good afternoon.

9 Q. I have some questions for you. I want to  
10 take you to your testimony on page 16, line 9 where  
11 you talk about what your understanding is of the law.  
12 Where did you get that understanding from?

13 A. I had to -- I read the law, I talked to  
14 people about it, I had to interpret the statute in  
15 part of my 2008 testimony on excess return, and so  
16 I've been looking at the statute on and off.

17 Q. And the people you talked to, would that  
18 be the counsel of Duke Energy?

19 A. I don't remember exactly who I spoke to,  
20 but I do remember having conversations about the MRO.

21 Q. Okay. Did the company tell you that they  
22 wanted a transition to market prices three years  
23 before you did your forecast?

24 A. No.

25 Q. And can we agree that there is no

1     certainty in your forecast there being a convergence  
2     in three years?

3             A.     There's no -- yes, I think we can agree  
4     there's no ex post certainty about what's going to  
5     happen. I'm saying right now there's reasons for us  
6     to think the price would increase and on a  
7     contractual basis people can contract into a forward  
8     price stream that is upward sloping.

9             Q.     I want to take you to page 17 of your  
10    testimony, Mr. Rose. Line 5, 4 and 5. It says  
11    "...proposal also terminates at a point when both the  
12    ESP and the market price are expected to be very  
13    close." Could you define "close," as to what you  
14    mean there?

15            A.     You know, as I indicated, the  
16    difference -- the convergence, I estimated there's a  
17    difference of 2 percent in the price so I consider  
18    that close. And, you know, I don't have a very, I  
19    don't have a closed forum solution, but to me it's a  
20    very close convergence.

21                   MR. JONES: That's all I have, thank you.

22                   EXAMINER PIRIK: Thank you.

23                   Before redirect I just have a couple of  
24    questions, I think I'll ask them at this time.

25                   I think you mentioned that, well, I'm not

1       sure. Are there data sources that are available that  
2       you could have utilized that would have projected  
3       beyond 2014?

4               THE WITNESS: Well, I think the answer is  
5       no, but let me just be as precise as possible. I did  
6       take a look at a number of data sources, the one I  
7       used, ICE, the ICE data source, goes through 2014. I  
8       looked at another data source that went for even a  
9       shorter period of time.

10              And so in terms of having a publicly  
11       available source that's considered by the Commission  
12       to be reliable in terms of the integrity of the data,  
13       I didn't find another option.

14              The other data sources that would be  
15       available would be things like forecasts, but in  
16       terms of having something that's transactable today I  
17       wasn't aware of another source that met the criteria  
18       of being considered reliable and going out past 2014.

19              EXAMINER PIRIK: Okay. Ms. Watts?

20              MS. WATTS: Your Honor, would it be  
21       appropriate to break for the Commission hearing and  
22       then we could do redirect afterwards?

23              EXAMINER PIRIK: We can do that except we  
24       don't know if they're actually going to start at  
25       3 o'clock. We'll check before we actually do that.

1       Meanwhile, you can begin your discussions.

2                   MS. WATTS:   Okay.

3                   EXAMINER PIRIK:   I mean, do you need to  
4       confer with your witness, is that what you were  
5       thinking?

6                   MS. WATTS:   I would like to do that, yes.

7                   EXAMINER PIRIK:   Why don't you confer.

8                   (Discussion off the record.)

9                   EXAMINER PIRIK:   I think we'll go back on  
10       the record and do redirect.

11                   Mr. Boehm isn't here.   Did you see him  
12       out there, Mr. Hayden?

13                   MR. HAYDEN:   I did not see him.

14                   EXAMINER PIRIK:   We'll go back on the  
15       record.

16                   Ms. Watts.

17                   MS. WATTS:   Thank you, your Honor.

18                   A point of housekeeping here, volume 5 to  
19       the company's application contains the workpapers of  
20       various witnesses and I'd like to ask, I believe we  
21       marked that as Duke Energy Exhibit 6 earlier.

22                   EXAMINER PIRIK:   Okay.

23                               - - -

24

25

## REDIRECT EXAMINATION

By Ms. Watts:

Q. Mr. Rose, do you have what's marked as Duke Energy Exhibit 6 in front of you?

A. I do.

Q. And could you describe for me the contents of tab A-1 in that document?

A. Yes. There are workpapers and exhibits from my testimony.

MS. WATTS: So, your Honor, those workpapers then would be Duke Energy Exhibit 6 tab A-1, is that how you would like to do it?

EXAMINER PIRIK: No, it's just this whole document is Duke Energy Exhibit 6.

MS. WATTS: Yes.

EXAMINER PIRIK: And Mr. Rose is sponsoring A-1 of that.

MS. WATTS: Correct.

EXAMINER PIRIK: So for citing purposes in briefs and whatnot that's how it will be cited, but you can continually refer to Exhibit 6 as its own exhibit.

MS. WATTS: Exhibit 6.

EXAMINER PIRIK: Yeah.

Q. (By Ms. Watts) Mr. Rose, those documents

1       comprise documents numbered 1 through 13 under tab A,  
2       correct?

3             A.     Yes, ma'am.

4             Q.     Mr. Rose, do you recall in response to  
5       some questions from Mr. Petricoff discussing RPM  
6       prices?

7             A.     Yes, ma'am.

8             Q.     And do you know if Duke Energy-Ohio's FRR  
9       plan as approved by the FERC also uses RPM capacity  
10      prices as it transitions into PJM?

11            A.     That's my recollection, yes, ma'am.

12            Q.     And also in response to some questions  
13      from Mr. Petricoff you testified about Rider SRA-CD.  
14      Do you recall that?

15            A.     Yes, ma'am.

16            Q.     And do you recall from earlier  
17      involvements in Duke Energy-Ohio cases that the  
18      required SRA-CD compensates Duke Energy-Ohio for  
19      risks associated with dedicating capacity to SSO  
20      customers?

21            A.     Yes, ma'am. That's my recollection.

22            Q.     And, Mr. Rose, in response to some  
23      questions from Mr. Hart you talked about prices  
24      converging, that is market prices and SSO prices; do  
25      you recall that line of questioning?

1           A.    Yes, ma'am.

2           Q.    Isn't it true that if they do not  
3 converge, at least one possible outcome would be that  
4 market prices remain lower than SSO prices?

5           A.    Yes, ma'am, and that's what caused me to  
6 refer to the fact that the proposal at a hundred  
7 percent gives maximum access for consumers to the low  
8 market prices.

9           Q.    Is it your understanding that the  
10 adjusted ESP price would mirror market prices in  
11 2014, '15, and '16?

12          A.    No.  You know, the company has proposed  
13 freezing those as part of the MRO proposal.  Future  
14 ESP arrangements have yet to be determined, but I  
15 don't believe there's reason to believe they should  
16 be treated other than the, at this point an uncertain  
17 variable and it wouldn't necessarily be equal to  
18 market conditions.

19               MS. WATTS:  Thank you, I have nothing  
20 further, your Honor.

21               EXAMINER PIRIK:  Thank you.  We'll poll  
22 to see if there's any recross.

23               (No response.)

24               EXAMINER PIRIK:  Seeing none, I believe  
25 that concludes this witness's testimony.  Thank you,

1 Mr. Rose.

2 THE WITNESS: You're welcome.

3 MS. WATTS: Your Honor, we would move  
4 into evidence Duke Energy-Ohio Exhibits 4, 5, and the  
5 workpapers that comprise tab A-1 of Duke Energy-Ohio  
6 Exhibit 6.

7 EXAMINER PIRIK: Are there any objections  
8 to admitting Exhibits 4, 5, and tab A-1 of Exhibit 6?

9 (No response.)

10 EXAMINER PIRIK: Hearing none, those  
11 documents shall be admitted into the record.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 EXAMINER PIRIK: Ms. Spiller.

14 MS. SPILLER: Your Honor, we will call to  
15 the stand Robert J. Lee.

16 EXAMINER PIRIK: Mr. Lee, please raise  
17 your right hand.

18 (Witness sworn.)

19 EXAMINER PIRIK: Thank you.

20 - - -

21

22

23

24

25



1 ROBERT J. LEE

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

4 DIRECT EXAMINATION

5 By Ms. Spiller:

6 Q. Mr. Lee, can you identify yourself for  
7 the record, please?

8 A. Sure. My name's Robert J. Lee, I'm a  
9 principal at Charles River Associates in Boston.

10 Q. And what is your position -- what is your  
11 specific position as a principal with Charles River  
12 Associates in Boston, please?

13 A. I'm a principal with the auctions and  
14 competitive bidding practice.

15 MS. SPILLER: Your Honor, may I approach  
16 the witness?

17 EXAMINER PIRIK: Yes.

18 MS. SPILLER: Thank you.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. I would like to hand you, sir, what has  
21 been marked as Duke Energy-Ohio Exhibit 7 to this  
22 proceeding. Sir, can you identify that for the  
23 record, please?

24 A. I can. This is my direct testimony that  
25 was filed on November 15th, 2010.

1 Q. And, Mr. Lee, do you have any changes or  
2 revisions to your direct testimony?

3 A. No, I don't.

4 Q. And, Mr. Lee, if I were to ask you today  
5 the questions as set forth in your direct testimony  
6 identified as Duke Energy-Ohio Exhibit 7, would your  
7 answers today be the same as those set forth in that  
8 document?

9 A. They would.

10 MS. SPILLER: Thank you, sir.

11 Your Honor, the witness is available for  
12 cross-examination.

13 EXAMINER PIRIK: Thank you.

14 Mr. Petricoff.

15 MR. PETRICOFF: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Petricoff:

19 Q. Good afternoon, Mr. Lee.

20 A. Good afternoon.

21 Q. I'm Howard Petricoff and I represent  
22 Constellation NewEnergy, Constellation Commodities  
23 Group, and the Retail Energy Suppliers Group.

24 I want to refer you to page 2, line 6 of  
25 your testimony and actually I think it may be line 8

1 of your testimony.

2 A. Okay.

3 Q. You talk about the fact that you were  
4 part of the CRA, Charles River Associates, auction  
5 management team for FirstEnergy. Can you tell me  
6 what you did for FirstEnergy?

7 A. Sure. As part of the auction manager  
8 team I took part in the qualification of bidders, I  
9 worked on drafting of bidding rules, I took part in  
10 the procurements on the day of the procurement, you  
11 know, managing staff, so on and so forth. And  
12 throughout the process I had meetings with  
13 FirstEnergy, staff from FirstEnergy about their  
14 expectations for the process and goals for the  
15 process.

16 EXAMINER PIRIK: Mr. Lee, can you move  
17 closer to the microphone or pull it towards you.

18 THE WITNESS: Sure.

19 EXAMINER PIRIK: Thank you.

20 THE WITNESS: Is this better?

21 EXAMINER PIRIK: I think so.

22 Q. Were your responsibilities and duties  
23 similar for Duke?

24 A. They were, yes.

25 Q. Are you familiar with the website

1 structure that FirstEnergy used for its competitive  
2 bid in Ohio?

3 A. Are you referring to the bidding website  
4 or the information website?

5 Q. The bidding information website. The  
6 website that a perspective bidder would go to to get  
7 information to prepare their bid.

8 A. Yes, I'm familiar with the information  
9 website.

10 Q. Is the information that was provided to  
11 FirstEnergy Solutions -- I'm sorry, FirstEnergy --  
12 sorry, Mark. Was the information that was provided  
13 to bidders in the FirstEnergy auction going to, is  
14 all that information or similar information going to  
15 be provided to bidders in the Duke auction?

16 A. My expectation is that similar  
17 information would be provided to bidders in the Duke  
18 Energy-Ohio auction, yes.

19 Q. Now, you said "expectation" there. Does  
20 that mean that the final list of the information  
21 that's going to be provided hasn't been completed  
22 yet?

23 A. I just mean that I haven't gone through  
24 the exact form of the data that would be provided. I  
25 don't know if the format's going to be identical

1     between the two, but similar information will be  
2     provided, yes.

3             Q.     Well, let's talk about some of the  
4     information that was provided in the FirstEnergy  
5     auction and then compare and contrast that to what  
6     you think is going to be provided for in the Duke  
7     website.

8                     Will there be historical hourly load data  
9     that's going to be provided?

10            A.     I expect that that will be available,  
11     yes.

12            Q.     And how about will that historic data be  
13     provided by class?

14            A.     I believe it will be, yes.

15            Q.     And then in the FirstEnergy website there  
16     was information concerning area and bulk load data.  
17     Are you familiar with that term, "area and bulk load  
18     data"?

19            A.     I'm not as familiar with what that data  
20     would mean. I'm familiar with the posting.

21            Q.     Can you tell me about the posting, then?

22            A.     Well, it's just the data is posted I  
23     believe in Excel on the information website and it  
24     shows -- it generally shows load by region within  
25     the, I think it's by FirstEnergy company region,

1 FirstEnergy utility region.

2 Q. And do you expect something similar for  
3 the Duke auction?

4 A. I would expect there to be some similar  
5 information, yes.

6 Q. How about historical customer switching  
7 records?

8 A. Yes, I would expect that would be  
9 available.

10 Q. And then was there information provided  
11 on governmental aggregation to the bidders?

12 A. I'm not sure if there was or not. I'd  
13 have to go back and check.

14 Q. How about information on the PIPP load,  
15 P-I-P-P?

16 A. I believe PIPP load is available to  
17 bidders in the FirstEnergy website.

18 Q. So is it fair to say at this time you are  
19 not aware of any information that was provided in  
20 general, leaving aside there may be differences in  
21 formats, but in general the same information that was  
22 going to be provided in the FirstEnergy auction will  
23 be provided in the Duke auction?

24 A. It would certainly be my intent to have  
25 the same type of information available to bidders in

1 the Duke Energy auction, yes.

2 Q. Now let's talk about the frequently asked  
3 questions. Is that an important feature to have in  
4 the informational website for bidders?

5 A. Yes, it is. It allows bidders to provide  
6 feedback and ask specific questions and, you know,  
7 make it known what their areas of interests might be.  
8 So yes, I do believe that's an important part of the  
9 information website.

10 Q. Is it also important to have that  
11 information on the frequently asked questions so that  
12 all bidders get the same answers?

13 A. Yes. I mean, when a bidder asks a  
14 question, if it's a question that would be of  
15 interest to all parties, we do make it available  
16 through the website.

17 There are times when a question might  
18 come in that is specific to a bidder and that is not  
19 made available to all bidders. But in general we  
20 want all bidders to be provided equal access to  
21 information and have the same information when they  
22 show up on the date of the auction, yes.

23 Q. What's the anticipated turnaround for the  
24 data between the time that the bidder asks the  
25 question and the time the answer is posted?

1           A.    We don't have a specific target. We try  
2   to get the information up in as timely of a manner as  
3   possible. But I think we want to also make sure the  
4   information is accurate to the extent possible.

5           You know, there are times when the  
6   questions that come in are technical in nature.  
7   There are times when the response may require, you  
8   know, some back and forth between various members of  
9   the organization. So it's hard to really commit to  
10  any specific number of days. As I said, I think we  
11  prefer that the information that is posted is  
12  accurate.

13          Q.    Is it a reasonable goal to have a two-day  
14  turnaround between question and answer?

15          A.    You know, we try to post -- I can answer  
16  this, we try to post the responses to the FAQs as  
17  fast as we can and try to process them as fast as we  
18  can. I haven't gone and done any analysis on how  
19  long it has taken to get responses to questions  
20  posted, but I do agree that we want to get them  
21  posted in as timely a manner as possible.

22          Q.    In FirstEnergy did the bid winners  
23  continue to get information after the bid was over?  
24  Was there a website where they could get information  
25  after the bid was over?



1           A.    Well, what type of information?

2           Q.    That would be information such as  
3 capacity forecasts, usage.

4           A.    The information on the FirstEnergy  
5 website, I think that's what you're referring to,  
6 right, FirstEnergy?

7           Q.    Yes.

8           A.    Is maintained and updated even after the  
9 solicitation is completed.

10          Q.    Is the same thing being contemplated for  
11 Duke?

12          A.    Yes. I think we view it -- we don't  
13 really view these as sort of discrete events, one  
14 auction versus another, it's a process, a continuing  
15 process. So the information website is a resource  
16 not only for bidders in the upcoming auction but for  
17 winners in the prior auction so they can understand  
18 their risk profile.

19          Q.    Now, the Duke auction is -- the tentative  
20 scheduling, according to the application, is for June  
21 of 2011. Will there be other wholesale auctions in  
22 the PJM service area around that time frame, second,  
23 third quarter of 2011?

24          A.    There may be. I'm not aware of them.

25          Q.    Is it common to have more than one

1 wholesale auction going on at the same or similar  
2 time?

3 A. That's happened in the past, yes.

4 Q. If there are several auctions going on at  
5 a time -- going on at the same time or a similar  
6 time, are bidding suppliers constrained in terms of  
7 how many auctions they can enter?

8 A. I don't think I could speak for the  
9 bidders.

10 Q. As a practical matter if someone's going  
11 to bid in the Duke auction, won't they have to post a  
12 bidding bond?

13 A. They may, yes.

14 Q. Well, in the proposal that's before us in  
15 this MRO doesn't it anticipate there would be a  
16 bidding bond based on the number of tranches you were  
17 going to bid on?

18 A. They have to provide letters of credit,  
19 things like that, yeah.

20 Q. Okay. Assuming for our purposes now that  
21 when I say "bidding bond," it includes letter of  
22 credit, financial instruments, parent guarantees --

23 A. Sure.

24 Q. -- is that a, from a practical standpoint  
25 is that a real financial obligation on the part of

1 the bidder?

2 A. Yeah. I mean, it's an obligation and a  
3 consideration, certainly.

4 Q. Also wouldn't bidders have a finite  
5 amount of, for lack of a better term, talent,  
6 personnel who would have the expertise to be able to  
7 put together a bid?

8 A. You know, again, I can't really speak for  
9 bidders but I imagine that if there were multiple  
10 solicitations going on at the same time they would  
11 have to divide their time, certainly.

12 Q. If there were multiple bids going on,  
13 would it be an important factor as to what the credit  
14 terms were for if you were looking at two different  
15 auctions to go into?

16 A. Are you assuming that a bidder would have  
17 to choose to enter one versus another?

18 Q. That's correct.

19 A. It would be one of the factors that they  
20 would consider, I'm sure, yes.

21 Q. Is there a relationship between how  
22 stringent the credit terms are and the number of  
23 bidders that a utility could expect?

24 A. You know, I think what we try to do or  
25 we're trying to do in the process is set the credit

1 terms to safeguard ratepayer interest. We're not  
2 trying to use the credit terms to restrict the pool  
3 of bidders, but we're trying to make sure that  
4 ratepayer interests are protected.

5 Q. Is it fair to say that in choosing the  
6 credit terms it's a matter of balancing, making the  
7 auction more robust versus the risk of default?

8 A. Yeah. Yeah, I mean, I think that's fair.  
9 I mean, a lot of this is a balancing act between  
10 bidder interests and customer interest.

11 Q. Did CRA have any input into the credit  
12 terms that are being offered in the master supply  
13 agreement?

14 A. Only generally in the sense that, you  
15 know, again, we recommend that they -- that the  
16 credit terms be set to protect the company and  
17 protect ratepayers. They shouldn't be overly  
18 restrictive or unnecessarily restrictive.

19 Q. Have you had an opportunity to compare  
20 the credit terms that are being offered in the  
21 proffered master supply agreement for Duke with the  
22 one that was used for FirstEnergy?

23 A. I'm generally aware of it. I mean,  
24 haven't done a detailed analysis in the deference of  
25 credit terms or organized them over the number of

1 megawatt-hours or any of that, no.

2 Q. What's your general understanding having  
3 made the comparison?

4 A. You know, the megawatt size of the  
5 tranches for FirstEnergy's Ohio utilities are larger  
6 so the overall magnitude of the credit requirements I  
7 believe for FirstEnergy are larger, but on a relative  
8 basis I'm not really sure.

9 Q. How about the amount of unsecured credit  
10 that is provided to the bidders? Is it the same  
11 between Duke and FirstEnergy?

12 A. I don't believe it's the same, no.

13 Q. Okay. And what's the relationship?  
14 Which one has higher, more stringent requirements?

15 A. I believe Duke is more stringent.

16 Q. Okay. If you would, I'd like you to turn  
17 to page 15 of your testimony. I want to direct you  
18 to lines 13 to 19.

19 A. Okay.

20 Q. Are the three reasons that you present on  
21 lines 13 to 19 the only reasons that could be cited  
22 for the Commission to reject the results of the  
23 auction?

24 A. I think that's probably a legal  
25 conclusion, but these are the basic sort of

1 benchmarks for the process.

2 Q. Would the dollar amount per megawatt-hour  
3 be a reason that the Commission could reject the  
4 auction results?

5 A. I don't want to assume what the  
6 Commission could or could not do or what authority  
7 they have. I wouldn't view the clearing price --  
8 from my perspective, the clearing price shouldn't be  
9 the exclusive benchmark as to whether or not the  
10 results should be approved.

11 Q. You indicated that it shouldn't be the  
12 exclusive. Should it be a factor at all?

13 A. You know, from my perspective if the  
14 process is designed well and there is strong  
15 participation, then the clearing price is  
16 representative of market price, so no, I would not  
17 use that price if I were the one making the decision  
18 as to whether or not they should be approved.

19 Q. Are you familiar with the term "reserve  
20 price"?

21 A. I am, yes.

22 Q. What's a reserve price?

23 A. A reserve price is a price at which, in  
24 this case Duke Energy-Ohio will -- it's the maximum  
25 price at which they would be willing to buy tranches

1 in the market.

2 Q. Is Duke planning on using a reserve price  
3 in this auction?

4 A. Every clock auction has a reserve price,  
5 the only question is whether or not the reserve price  
6 is different than the starting price.

7 Q. In your understanding, will their  
8 starting price and reserve price for the Duke auction  
9 be the same?

10 A. I believe --

11 MS. SPILLER: Objection, your Honor. If  
12 I may, I would submit that that is, one, an  
13 irrelevant question, but two, I think it is a  
14 question that undermines the intent and functioning  
15 of the reservation price, and to share the  
16 reservation price as it compares to the starting  
17 price defeats the purpose of the reservation price.  
18 So for Mr. Lee to offer opinion as to where that  
19 reservation price would be set relative to the  
20 starting price negates the starting price.

21 EXAMINER PIRIK: Perhaps you can ask  
22 those questions on redirect.

23 MS. SPILLER: Okay.

24 EXAMINER PIRIK: At this point we're on  
25 cross.

1 Mr. Petricoff.

2 MR. PETRICOFF: Thank you.

3 Q. I'm not asking for the dollar amount.  
4 I'm just asking what the relationship will be between  
5 the reserve price and the starting price.

6 A. I think in the bidding rules it says  
7 there is a reservation price at the auction and the  
8 reservation price may or may not be lower than the  
9 starting price.

10 Q. If the reservation price is lower than  
11 the starting price and the reservation price isn't  
12 revealed, is it possible, then, that a bidder could  
13 post the bond, go through the auction, win the  
14 auction, and then be told that they will not get the  
15 tranche?

16 A. Well, in that case I wouldn't say the  
17 bidder won the auction, I would say the auction did  
18 not clear. So in that sense no. No, I don't think  
19 that's a fair way to describe the situation.

20 Q. Would you advise having a secret reserve  
21 price, secret in that the bidders wouldn't know it,  
22 the secret reserve price after the bidding starts?

23 A. You know, there are reasons to have a  
24 reservation price in an auction and some of it is  
25 around protecting bidder, or, I'm sorry, protecting



1 ratepayer interests. Some of it is to ensure that  
2 bidders in the auction are revealing their best and  
3 final valuation for the products offered.

4 So creating some uncertainty around the  
5 reservation price in and of itself can be beneficial  
6 to the auction process.

7 EXAMINER PIRIK: We need to take our  
8 break now.

9 MR. PETRICOFF: Okay.

10 EXAMINER PIRIK: We'll reconvene in ten  
11 minutes.

12 (Recess taken.)

13 EXAMINER PIRIK: We'll go back on the  
14 record. I believe we were with Mr. Petricoff.

15 MR. PETRICOFF: Yes, thank you, your  
16 Honor.

17 Q. (By Mr. Petricoff) Good afternoon,  
18 Mr. Lee.

19 A. Good afternoon.

20 Q. When we broke, we were addressing the  
21 issue of the reserve price.

22 A. Yes.

23 Q. And you indicated a theory that supported  
24 the use of reserve price. You also have theories or  
25 counterbalancing thoughts on why you shouldn't use a

1 reserve price?

2 A. You know, all these things is a balancing  
3 act between bidder interests and discovering the  
4 market price. You know, I think bidders would  
5 prefer, all else equal, you know, full knowledge.

6 Q. So it may discourage some bidders if  
7 there was a reserve price.

8 A. I don't know if I'd go so far as to say  
9 it might discourage them. I think that, as I said,  
10 all else equal they would prefer to know what the  
11 reserve price is.

12 Q. What would happen if we went through the  
13 auction and there was a clearing price, a price that  
14 cleared the auction, not that it was accepted but  
15 that cleared the auction, and you had the requisite  
16 number of bidders and you met all of the other items  
17 that you have listed in your testimony on page 15  
18 from 13 to 18, what would happen at that point?  
19 Would Duke then start all over and rebid the auction?

20 A. No, there's a couple of -- if you're  
21 simply just asking me what happens if the reserve  
22 price has gone badly.

23 Q. Yes.

24 A. There's two options, one is we could  
25 reduce the tranche target so the reserve price, for

1 the reserve price not to be met, that means there has  
2 to be insufficient willingness to supply at the  
3 announced prices and that announced price has to be  
4 greater than the reserve price.

5 What we would do in the case where there  
6 is willingness to supply but not at a price  
7 sufficient to meet the reserve is we'd reduce the  
8 tranche target, create excess eligibility by reducing  
9 the tranche target, and then continuing the auction.

10 Q. But if you reduced the tranche size,  
11 aren't you going to have some piece of the load that  
12 isn't going to be contracted?

13 A. If there is unsupplied tranches in the  
14 auction after the auction closes, we would execute  
15 the contingency plan that's outlined in the bidding  
16 rules.

17 MR. PETRICOFF: Your Honor, may I just  
18 have a minute here to look at my notes.

19 Q. Have you been associated with or worked  
20 on competitive bid auctions that did not have a  
21 reserve price?

22 A. I have, yes.

23 MR. PETRICOFF: I have no further  
24 questions. Thank you very much, Mr. Lee.

25 THE WITNESS: You're welcome.

1 EXAMINER PIRIK: Mr. Chamberlain?

2 MR. CHAMBERLAIN: No questions.

3 EXAMINER PIRIK: Mr. Hayden?

4 MR. HAYDEN: Your Honor, as fun as it may  
5 be, I think I'm going to pass.

6 EXAMINER PIRIK: Ms. Hotz?

7 MS. HOTZ: Yes, I have questions.

8 - - -

9 CROSS-EXAMINATION

10 By Ms. Hotz:

11 Q. Good afternoon, Mr. Lee.

12 A. Good afternoon.

13 Q. I'm Ann Hotz and I work for the OCC.

14 You proposed to do one auction each year;  
15 is that correct?

16 A. That's correct.

17 Q. As part of the process for designing the  
18 proposed auction did you or anyone at Duke perform a  
19 quantitative assessment of the risk associated of  
20 having one auction versus multiple auctions in a  
21 year?

22 A. We did not do a quantitative assessment.  
23 We did consider alternative schedules, some of those  
24 alternative schedules included more than one  
25 solicitation in a year. There are pros and cons, and

1 we determined that we wanted to go with one auction  
2 per year.

3 Q. As proposed in application -- or  
4 Attachment B to the application, will 80 percent of  
5 the SS load be bid in one auction in 2013?

6 A. Can I see the attachment?

7 MS. HOTZ: Your Honor, may I approach?

8 EXAMINER PIRIK: Yes.

9 When you're referring to the application,  
10 you're referring to Duke Exhibit 3?

11 MS. HOTZ: Yes. I'm sorry, yes.

12 A. Can you ask the question again?

13 MS. HOTZ: Could you please read it.

14 (Record read.)

15 A. I don't believe it's 80 percent.

16 Q. How much is it, then?

17 A. As I read it, it's 30 tranches are  
18 procured along each of the 1, 2, and 3 year terms for  
19 a total of 90 tranches.

20 Q. Is that 90 percent of the SS load, then?

21 A. Each tranche is 1 percent of SSO load,  
22 yes.

23 Q. So that would be 90 percent.

24 As part of the process for designing the  
25 proposed auction did you or anyone at Duke perform a

1 quantitative assessment of the risks associated with  
2 bidding 90 percent of the SSO load in one auction  
3 versus multiple auctions?

4 A. Again, we didn't do a quantitative  
5 assessment but we did consider alternative schedules  
6 and there's any number of pros and cons to those  
7 alternative schedules.

8 I'd also like to just point out that for  
9 the FirstEnergy solicitation, we've done a  
10 FirstEnergy solicitation where we procured a hundred  
11 percent of load in a single day.

12 Q. Is it your opinion that all things else  
13 being equal having multiple auctions per year, having  
14 a single auction per year would provide some degree  
15 of risk mitigation?

16 A. Not in all cases, no.

17 Q. What are the pros of multiple auctions in  
18 one year?

19 A. Well, having multiple auctions or  
20 multiple dates for the solicitations means that, you  
21 know, in the event that there's a bidder who for  
22 whatever reason is unable to participate in one  
23 event, they may be able to participate in another, in  
24 the other event in the year. So, you know, it may  
25 make the process more accessible in some cases.

1           You know, I think some people have  
2       hypothesized that there's, that bidders are  
3       significantly influenced by short-term market  
4       conditions. I don't know that that's really the  
5       case.

6           I think these are sophisticated bidders  
7       who understand short-term versus long-term  
8       fundamental market conditions, but there are  
9       certainly people who would hypothesize that multiple  
10      solicitations would insulate the process from some of  
11      that risk.

12          Q.     Can Duke Energy-Ohio or any other Duke  
13      Energy affiliates bid in the auction?

14          A.     They can, yes.

15          Q.     Could you please refer to Attachment C to  
16      the application or Exhibit 3 which is titled Bidding  
17      Rules for Duke Energy-Ohio, Inc.'s Competitive  
18      Bidding Process Auctions, and then could you please  
19      look at section 11.5. This section discusses  
20      sanctions for failure to comply with the auction  
21      rules, correct?

22          A.     That's correct.

23          Q.     Does the last line of this section state,  
24      quote, The imposition of such sanctions will be at  
25      the discretion of Duke Energy-Ohio, end quote?

1           A.     That's correct.

2           Q.     So does this mean as proposed Duke  
3     Energy-Ohio will have the final say regarding whether  
4     or not sanctions for failure to comply with the  
5     bidding rules will be applied to either itself or to  
6     any Duke Energy affiliate?

7           A.     That is correct, yes.

8           Q.     How can you mitigate the possibility of  
9     Duke Energy-Ohio favoring itself or its affiliates  
10    with respect to the decision to impose sanctions?

11          A.     Well, we have -- you can set up rules and  
12    guidelines for the imposition of such sanctions and I  
13    think, you know, there are guidelines in place for  
14    those things.

15          Q.     In this proposal there are?

16          A.     Well, I'm referring to things like in the  
17    SSO master agreement in terms of sacrificing  
18    collateral, all those types of situations, yes.

19          Q.     How can parties even know whether or not  
20    sanctions have been fairly imposed?

21          A.     I don't think other parties -- are you  
22    talking about other bidders in the process?

23          Q.     Yes.

24          A.     Those type of things? I don't know that  
25    other bidders would be made aware of those



1 situations.

2 Q. So no one would know really whether or  
3 not Duke was fairly imposing sanctions on itself or  
4 its affiliates; is that correct?

5 A. I suppose that's correct, yeah.

6 Q. Prior to the filing of this case as part  
7 of the process for designing the proposed auction did  
8 CRA or Duke hold any meetings with stakeholders to  
9 discuss the design?

10 A. Not that I'm aware of, no.

11 Q. In Attachment C, and that would be of the  
12 Duke application, Exhibit 3, does the first sentence  
13 of the last paragraph of page 1 say "These bidding  
14 rules may be modified from time to time by the  
15 auction manager"?

16 A. They do. The rules do state that, yes.

17 Q. Does the last sentence of that paragraph  
18 say "Such modifications will be carried out in  
19 consultation with Duke Energy-Ohio, but without prior  
20 consent from the Public Utilities Commission of Ohio  
21 or any past, current, or potential bidder, and will  
22 be posted to the information website"?

23 A. That is correct, yes.

24 Q. Does Attachment B of the application show  
25 proposed auctions through at least 2018?

1           A.    Attachment B?

2           Q.    Yes.

3           A.    Yes, they do.

4           Q.    With respect to the auctions that are  
5 proposed through 2018 does Duke's filing include a  
6 process for obtaining PUCO review and approval of  
7 modifications to the auctions that CRA may wish to  
8 make?

9           A.    Not that I'm aware of.

10          Q.    With respect to the auctions proposed  
11 through 2018, does Duke's filing define a process for  
12 obtaining input from stakeholders regarding ways to  
13 incorporate the impact of market changes or lessons  
14 learned from past auctions?

15          A.    Well, you know, I think there isn't an  
16 official process but after each auction we conduct,  
17 not only for Duke Energy-Ohio, but we also do it for  
18 FirstEnergy and clients in other industries, we  
19 always sort of review and discuss what we thought  
20 worked well, what did not work well. And there have  
21 been changes to the process and the flow of  
22 information.

23                In addition, because of the FAQ process  
24 bidders can send us comments. We've received  
25 comments through the information website. We've

1 received comments via e-mail. Bidders have called us  
2 to voice their opinions and make suggestions. But I  
3 wouldn't say there's a formal collaborative process.

4 Q. So it's more informal with the company?

5 A. That's correct, yes.

6 Q. Between you and the company?

7 A. I'd say it's between the company and  
8 bidders and any interested party. As I said, they  
9 have input through the FAQ process at the information  
10 website, our contact information is included in the  
11 bidding rules, including my phone number.

12 Q. Is there any way that another type of  
13 stakeholder could give suggestions if they don't have  
14 access to the website?

15 A. It's a public website so anybody has  
16 access to it. And in addition my contact information  
17 is in this filing so everybody has my contact  
18 information available to them.

19 MS. HOTZ: That's all we have. Thank  
20 you.

21 THE WITNESS: You're welcome.

22 EXAMINER PIRIK: Mr. Boehm, did you have  
23 questions?

24 MR. BOEHM: Oh, thank you, your Honor. I  
25 apologize, I was -- no, I don't have any questions.

1 EXAMINER PIRIK: Mr. White?

2 MR. WHITE: No questions, your Honor.

3 EXAMINER PIRIK: Mr. Olikar?

4 MR. OLICKER: No questions, your Honor.

5 EXAMINER PIRIK: Mr. Hart?

6 MR. HART: No.

7 EXAMINER PIRIK: Mr. Montgomery?

8 MR. MONTGOMERY: No questions.

9 EXAMINER PIRIK: Mr. Jones?

10 MR. JONES: Thank you.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Jones:

14 Q. Good afternoon, Mr. Lee.

15 A. Good afternoon.

16 Q. I want to ask you, I want to refer you to  
17 your testimony on page 13, lines 16 and 17, where you  
18 say that the bidding format is simultaneous in that  
19 multiple products and/or multiple tranches are bid on  
20 simultaneously. Do you see that?

21 A. I do, yes.

22 Q. Okay. That's not applicable to the first  
23 auction; is that correct?

24 A. The first auction there is only one  
25 product so this is a general statement about the

1 process that we're outlining. As I said earlier, I  
2 don't think we view this as a, you know, in discrete  
3 auctions. We view it as sort of an ongoing process.

4 Q. So this is down the road a bit?

5 A. Yes, it is.

6 Q. Okay. I want to refer your attention  
7 then to your testimony on pages 19 and 20. And there  
8 on lines 19 through 21 and over on page 20, lines 1  
9 and 2, it begins with the question "Are changes to  
10 the CBP possible?" And then your response being  
11 there from lines 20, 21.

12 And on page 20 you state that "While a  
13 proposed CBP contains necessary elements that result  
14 in a competitive process and meets applicable  
15 statutory and regulatory requirements, changes may be  
16 considered as such changes further promote successful  
17 CBP solicitations in accordance with such regulatory  
18 requirements." Do you see that?

19 A. I do, yes.

20 Q. Okay. And who would be determining that  
21 those changes should be made in the future?

22 A. Well, I think as I just said, at the end  
23 of each auction, you know, there is kind of an  
24 informal review process, we discuss what's worked,  
25 what hasn't worked, we anticipate conducting bidder

1 information sessions where bidders can voice  
2 questions or concerns, and there is also the FAQ  
3 process and, as I said, bidders have contacted me  
4 directly in the past related to other auctions.

5 So I think we would use all those bits of  
6 information and try to make changes that make the  
7 process better for everybody.

8 Q. And the Commission has a role in making  
9 those determinations?

10 A. You know, I think that we're not  
11 envisioning, you know, in this Q/A I'm not  
12 envisioning major changes to the fundamentals of the  
13 process. You know, we want the process to be  
14 flexible enough that we don't have to come back to  
15 the Commission for minor changes to the process and  
16 that's kind of what we're envisioning here, but I  
17 don't think I could be exhaustive in terms of what  
18 would be covered in this Q/A.

19 Q. Would it be your testimony, your  
20 understanding that the Commission had ongoing  
21 oversight of the process itself after the blending  
22 period?

23 A. I believe the Commission does have  
24 oversight over the process, yes.

25 Q. And they would also be deciding what

1 changes would be made?

2 A. You know, I don't know how that, exactly  
3 how -- I don't know if there's necessarily a  
4 framework for that exactly to get their specific  
5 approval. What I'm talking about in this Q/A, as I  
6 said, are minor changes to the process.

7 And we do want to have some flexibility  
8 in the process that we don't have to come back for  
9 formal hearings with the Commission over small  
10 changes.

11 Q. Can you -- I'm sorry, go ahead.

12 A. I'm sorry. That's fine.

13 Q. Can you give us examples of minor  
14 changes?

15 A. Well, I think, you know, for example  
16 between, one thing that might be an example is we  
17 changed how the FAQ process for FirstEnergy as an  
18 example, the FAQ process evolved over time to try to  
19 make it a little bit more efficient. That to me is a  
20 change to the process that wasn't something that we  
21 sought specific Commission approval on.

22 Q. I want to refer your attention to your  
23 testimony on page 24, lines 9 through 11. There on  
24 line 9 the question is "Were load caps considered for  
25 the auctions?"

1                   And your response then on lines 10 and  
2     11, "Yes, but as load caps can function to deter  
3     participants or procure robust competitive bidding,  
4     they were not incorporated into the company's CBP  
5     plan." Do you see that?

6                   A.     I do, yes.

7                   Q.     And can you provide specific examples  
8     where load caps have proven detrimental to the  
9     auction process?

10                  A.     Sure. I mean first I think fundamentally  
11     adding any constraints to a process will serve to  
12     raise ratepayer costs. You know, if you think about  
13     the load cap, if you institute a load cap either as a  
14     binding constraint or it's a nonbinding constraint,  
15     right, a nonbinding constraint meaning that absent  
16     the load cap the bidders actually reduce their bids  
17     such that nobody would have exceeded the load cap,  
18     you know, so if you're not, if you wouldn't violate  
19     this hypothetical load cap then there's no sense in  
20     having a load cap.

21                  If you're in the alternative situation  
22     where the load cap does bind, then by definition  
23     suppliers that would have been willing to supply  
24     tranches to Duke Energy-Ohio at a lower cost are  
25     prevented from doing so. So by definition, you know,



1 any kind of artificial constraint like that is going  
2 to serve to raise costs.

3 Q. You gave me a hypothetical as an answer.  
4 Do you have actual examples?

5 A. Again, all I can say is that any time a  
6 load cap would bind by, you know, by definition it  
7 has to mean that suppliers who would have been  
8 willing to serve at a lower price are prevented from  
9 doing so in favor of the other candidate bidders.

10 Q. But can you cite me to a particular  
11 auction that took place that had a load cap that --

12 A. Well, you know --

13 Q. -- had that result?

14 A. To the extent that you have a load cap,  
15 it's generally implemented through a restriction on  
16 eligibility, so in essence no bidder would be able to  
17 bid above their load cap.

18 So there is no auction where we can  
19 conduct an auction with a load cap and then,  
20 immediately following the auction, conduct an  
21 identical auction without the load cap and compare  
22 the difference.

23 But I can tell you with certainty that a  
24 load cap can only serve to raise some buyer costs, or  
25 raise costs to the ratepayers rather.

1           Q.    But you have no particular example of  
2   that in some other case.

3           A.    Again for the reason I just cited, you  
4   can't conduct an auction with a load cap and then  
5   follow up immediately with the same identical auction  
6   without a load cap.  You have to make that decision  
7   in advance, so there's no way to cite an example that  
8   you're asking me to.

9           MR. JONES:  That's all I have, thank you.

10          THE WITNESS:  You're welcome.

11          MS. SPILLER:  Your Honor, if we may have  
12   a moment, please.

13          EXAMINER PIRIK:  Yes.

14          MS. SPILLER:  Thank you.

15          EXAMINER PIRIK:  Ms. Spiller.

16          MS. SPILLER:  Thank you, your Honor.

17                               - - -

18                               REDIRECT EXAMINATION

19   By Ms. Spiller:

20           Q.    Mr. Lee, you were asked about the  
21   reservation price and noted that it affords some  
22   protection to ratepayers.  Can you tell me how it  
23   does so, sir?

24           A.    Sure.  Reservation price creates some  
25   uncertainty amongst bidders in terms of how they bid,

1     so absent a reservation price a bidder may approach  
2     the process, they may view, as you get closer and  
3     closer to the auction concluding, they may start to  
4     strategically reduce their bid quantities in order to  
5     bring the auction to a close at an artificially  
6     higher price.

7             With a reservation price there's some  
8     uncertainty there and bringing the auction to a close  
9     artificially there's some risk there for bidders. So  
10    in that sense the reservation price is designed and  
11    used to ensure the bidders are expressing their  
12    lowest -- the true lowest price at which they're  
13    willing to supply tranches, and in that sense it is  
14    there as a safeguard for ratepayers.

15            Q.    Thank you.

16            Mr. Petricoff was asking you questions  
17    contrasting and comparing, if you will, the  
18    FirstEnergy distribution utility's process to that of  
19    Duke Energy-Ohio's proposed process. Some questions  
20    from counsel about the credit requirements between  
21    the two companies.

22            Do the credit requirements function to  
23    strike a balance between soliciting bidder  
24    participation and protecting customers in the event  
25    of supplier default?

1           A.    That's why they're there, yes, and that's  
2   when Mr. Petricoff asked me what input I had and CRA  
3   had on the process I said that, you know, we  
4   suggested that they be set in accordance with, you  
5   know, in accordance with the risk essentially that  
6   Duke Energy-Ohio is taking on by entering into these  
7   contracts. So it's there to protect not only Duke  
8   Energy-Ohio but also Duke Energy-Ohio ratepayers.

9           Q.    So is one of the purposes of the credit  
10  requirements to address or give consideration to the  
11  utility company's risk tolerance?

12          A.    It is, yes.

13          Q.    And do you know how Duke Energy-Ohio's  
14  risk tolerance compares to that of the FirstEnergy  
15  electric distribution companies?

16          A.    No, I don't.

17          Q.    Ms. Hotz was asking you questions, and  
18  sir, I believe you still have in front of you Exhibit  
19  3, the application as well as the attachments. Do  
20  you have that, sir?

21          A.    I do, yes.

22          Q.    Specifically Attachment C to Exhibit 3  
23  which are the bidding rules section 11.5 which is on  
24  page 30. Do you have that reference, sir?

25          A.    I do, yes.

1           Q.    And the questions from Ms. Hotz focused  
2           on whether a supplier would know whether Duke Energy  
3           Ohio sanctioned itself or how it may have sanctioned  
4           itself or an affiliate. Do you recall that line of  
5           questioning?

6           A.    I do, yes.

7           Q.    Mr. Lee, your experience in this  
8           particular proceeding as well as that involving the  
9           FirstEnergy electric distribution companies, are you  
10          aware that the Commission rules require or allow the  
11          Commission to retain a consultant?

12          A.    Yes, and the experience has been with the  
13          FirstEnergy Ohio utilities that they have retained a  
14          consultant to monitor the process and is kept  
15          involved in the process throughout qualification  
16          right through execution of the contracts.

17          Q.    So would that consultant, sir, based upon  
18          your experience, provide review and/or comment on  
19          relevant -- other relevant criteria as directed by  
20          the Commission?

21          A.    I would expect so, yes.

22          Q.    Do you, sir, believe that the imposition  
23          of sanctions would be found to be a relevant criteria  
24          by the Commission?

25          A.    I certainly think it would. I mean, I

1 think in the case where sanctions are required I  
2 believe Duke Energy-Ohio would inform not only CRA  
3 but the Commission and the Commission's consultant as  
4 well.

5 Q. Mr. Lee, do you know whether Duke Energy  
6 Ohio operates pursuant to a corporate separation  
7 plan?

8 A. It's my understanding that they do, yes.

9 Q. Would you expect, sir, that corporate  
10 separation plan to guard against Duke Energy-Ohio  
11 attempting to give an unfair advantage to an  
12 affiliate by not administering sanctions to that  
13 entity?

14 A. I would expect the separation plan to  
15 cover that but I don't know exactly how it does it.

16 Q. And again, Mr. Lee, your experience with  
17 the development of this competitive bidding process  
18 as well as prior competitive bidding processes, do  
19 you know, sir, whether stakeholder input is a  
20 requirement to approval of the market rate offer?

21 A. I don't believe stakeholder input is  
22 required, no.

23 MS. SPILLER: Thank you, sir, I don't  
24 have any further questions.

25 EXAMINER PIRIK: Thank you. I will poll

1 for recross.

2 Mr. Petricoff.

3 MR. PETRICOFF: Thank you, your Honor.

4 - - -

5 RECROSS-EXAMINATION

6 By Mr. Petricoff:

7 Q. Good afternoon, Mr. Lee.

8 On redirect your indicated that you  
9 understood that there was a different risk tolerance  
10 between the utilities.

11 A. I said that I would expect the utilities  
12 to have different risk tolerances, risk protocols and  
13 so on and so forth.

14 Q. Is Duke Energy Ohio at any financial risk  
15 if there is a default under the structure of the MRO  
16 as it's filed?

17 A. Well, they're protected by the -- they're  
18 protected by the collateral requirements.

19 Q. And in addition to their collateral  
20 requirements even if those prove to be insufficient,  
21 wouldn't, under the proposed, I think it's the SCR  
22 rider that any additional expenditures that were made  
23 for power because of a default would be passed on to  
24 the customers?

25 A. I believe that's true, yes.

1           Q.    I also want to ask you a question about  
2    what happens if, in fact, the reserve price is  
3    exercised.  Isn't it possible that if the reserve  
4    price was exercised and Duke then went to one of the  
5    contingency plans, that it's possible that they could  
6    end up with an ultimate weighted average cost of  
7    power being higher than if they had accepted the  
8    reserve price -- accepted the bid that had closed but  
9    was above the reserve price?

10           A.   I mean, I guess it's theoretically  
11   possible but we haven't, for Duke Energy-Ohio there's  
12   been no discussions around what the starting price  
13   for the auctions would be, what the reservation  
14   prices would be.

15                   When we set the starting of reservation  
16   prices things like current market conditions are  
17   taken into consideration.  But I can't say with  
18   certainty in the hypothetical that you've set up that  
19   it wouldn't be the case that the contingency plan  
20   could result in a higher price than this hypothetical  
21   auction.

22           Q.    In the auctions that you have been  
23   involved with in which there was a reserve price  
24   other than the beginning, the opening price, a  
25   reserve price that was lower than the opening price,



1 has the reserve price ever been exercised?

2 A. I have been involved with auctions where  
3 the reservation price has come into play, yes.

4 Q. Within the last five years?

5 A. Yes.

6 MR. PETRICOFF: I have no further  
7 questions. Thank you.

8 EXAMINER PIRIK: Anyone else for recross?

9 Ms. Hotz.

10 - - -

11 RECROSS-EXAMINATION

12 By Ms. Hotz:

13 Q. Yes, have you ever read Duke  
14 Energy-Ohio's corporate separation plan?

15 A. I haven't read it in its entirety, no.

16 Q. Do you know during the FirstEnergy  
17 auction process, did the independent consultant that  
18 the Public Utilities Commission hired, do you know if  
19 they inquired into the sanctions that were -- that  
20 may have been imposed by FirstEnergy?

21 MS. SPILLER: I'm going to object, your  
22 Honor, I think that assumes facts not in evidence in  
23 this case. There's been no foundation whatsoever as  
24 to the performance or administration of sanctions in  
25 the FE competitive bid process and I don't believe

1       there would be a witness here to solicit that.

2               EXAMINER PIRIK:   Ms. Hotz.

3               MS. HOTZ:   Your Honor, this witness was  
4       talking about -- was answering a question regarding  
5       the FirstEnergy auction process with regard to a  
6       consultant that was hired, and I'm just asking if he  
7       knows --

8               Q.     Do you know if there were any sanctions  
9       that --

10              EXAMINER PIRIK:   Ms. Hotz, I haven't  
11       ruled on the objection yet.

12              MS. HOTZ:   Sorry.

13              EXAMINER PIRIK:   I'm still listening to  
14       your argument.

15              MS. HOTZ:   I can do a foundation if you'd  
16       like me to.

17              EXAMINER PIRIK:   That would be fine.

18              MS. HOTZ:   Okay.

19              Q.     (By Ms. Hotz) Do you know if any  
20       penalties were imposed in the FirstEnergy auction  
21       process?

22              A.     None that I'm aware of, no.

23              Q.     If they had been imposed, would you be  
24       aware of it?

25              A.     I believe so, yes.

1           Q.    Okay.  Do you know for certain that the  
2 consultant that was hired by the Public Utilities  
3 Commission of Ohio, do you know for certain that they  
4 would have been informed of these -- of sanctions had  
5 they been imposed?

6           A.    I believe they would be, yes.

7           Q.    What makes you believe that?

8           A.    My familiarity with the process,  
9 experience with other issues that have arisen, the  
10 Commission's consultant is kept aware of, you know,  
11 any issues that might arise, any potential  
12 irregularities, and I imagine that a situation where  
13 something like sanctions are being imposed on a  
14 bidder, I can't imagine that would happen without the  
15 Commission's consultant's knowledge.

16           MS. HOTZ:  Okay.  Thank you.  That's all  
17 I have.

18           EXAMINER PIRIK:  Thank you.

19           Any other recross?

20           (No response.)

21           EXAMINER PIRIK:  Hearing none, thank you  
22 very much, Mr. Lee.

23           MS. SPILLER:  Your Honor, if I may, just  
24 a housekeeping matter if we could move into evidence  
25 the direct testimony of Robert J. Lee that has been

1 marked as Exhibit 7 in this proceeding.

2 EXAMINER PIRIK: Are there any  
3 objections?

4 (No response.)

5 EXAMINER PIRIK: Hearing none, Duke  
6 Exhibit 7 shall be admitted into the record.

7 MS. SPILLER: Thank you.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER PIRIK: Would you like to call  
10 your next witness?

11 MS. WATTS: Yes, your Honor, Duke Energy  
12 would call James Northrup, please.

13 EXAMINER PIRIK: Please raise your right  
14 hand.

15 (Witness sworn.)

16 MS. WATTS: May I approach, your Honor?

17 EXAMINER PIRIK: Yes.

18 - - -

19 JAMES S. NORTHRUP

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

22 DIRECT EXAMINATION

23 By Ms. Watts:

24 Q. Mr. Northrup, would you state your name  
25 and your business address, please?

1           A.    My name is James Northrup, and my office  
2           is at 526 South Church Street, Charlotte, North  
3           Carolina, 28202.

4           Q.    Mr. Northrup, by whom are you employed  
5           and in what capacity?

6           A.    I'm employed by Duke Energy Business  
7           Services and I am presently the director of project  
8           analysis and special projects.

9           Q.    Do you have -- first of all, do you have  
10          before you a document which actually should be marked  
11          as Duke Energy-Ohio Exhibit 8 but we have not yet  
12          marked it?

13               EXAMINER PIRIK:   And what document would  
14          that be?

15               MS. WATTS:   This would be the direct  
16          testimony of James Northrup.

17               EXAMINER PIRIK:   The document will be so  
18          marked.

19               (EXHIBIT MARKED FOR IDENTIFICATION.)

20           A.    Yes, I do.

21           Q.    Do you also have before you a document  
22          that is presently marked as Duke Energy-Ohio Exhibit  
23          F-1?   Attachment F-1?

24           A.    Yes, I do.

25           Q.    Would you describe, please, what Duke

1 Energy-Ohio Exhibit 8 is first?

2 A. 8 is my filed direct testimony on  
3 November 15th, 2010.

4 Q. And would you then describe Attachment  
5 F-1, please?

6 A. Sure, that is the master standard service  
7 offer supply agreement.

8 Q. Let's start with your testimony first.

9 EXAMINER PIRIK: I just want to clarify  
10 the record. Attachment F-1 is really part of Duke  
11 Exhibit 3, Attachment F-1.

12 MS. WATTS: That is correct. Thank you  
13 for that clarification.

14 Q. With respect to your testimony, Mr.  
15 Northrup, do you have any additions or corrections to  
16 that testimony?

17 A. Yes, I do.

18 Q. Would you tell us what those are, please?

19 A. Sure. On page 1, lines 11 and 12,  
20 specifically starting on line 12, would say "having  
21 received a Bachelor of Science in Civil Engineering  
22 from North Carolina State University, and have  
23 received a Master's of Business Administration from  
24 Queens University." That's the end of the changes on  
25 page 1.

1 Q. Do you have any additional changes?

2 A. Yes. On page 8, beginning on line 8 the  
3 end of line 8 should read "deliver energy to PJM Duke  
4 Energy-Ohio Load Zone," insert "Ohio."

5 Also on line 10 beginning words, insert  
6 "Ohio" at "Duke Energy-Ohio Load Zone."

7 On line 11 it would also insert the word  
8 "Ohio" after "PJM Duke Energy-Ohio Load Zone." And  
9 then finally on line 13, also insert the word "Ohio"  
10 after "PJM Duke Energy-Ohio Load Zone." That  
11 completes the adjustments to the direct testimony.

12 Q. Thank you, sir. And would you now turn  
13 your attention to Duke Energy Exhibit 3, Attachment  
14 F-1.

15 A. Okay.

16 Q. Would you describe what that is, please.

17 A. This is the supply agreement, master  
18 supply agreement for all SSO contractual language to  
19 follow, and I have made adjustments in this master  
20 supply agreement.

21 Q. And does that master supply agreement now  
22 constitute Duke Energy's proposed master supply  
23 agreement for purposes of the competitive bid process  
24 that is proposed in this case?

25 A. It does.

1 MR. KUTIK: Your Honor, can I just  
2 inquire to make sure we're in the right document?

3 EXAMINER PIRIK: Yes.

4 MR. KUTIK: The document circulated, yes,  
5 was entitled F-1 is that the document before the  
6 witness now?

7 MS. WATTS: That's correct.

8 EXAMINER PIRIK: Let me ask a question,  
9 there were two documents circulated yesterday, one  
10 was redlined, one was a clean version with the  
11 language in it. Which is the document we have  
12 entitled Attachment F-1; is it the redline version or  
13 the clean version?

14 MS. WATTS: We would be proposing the  
15 clean version but we provided the redline version to  
16 assist counsel in understanding what changes were  
17 made to that document from the previous version.

18 EXAMINER PIRIK: So what --

19 MS. WATTS: The clean version is the one  
20 we would ask be marked and intend to offer into  
21 evidence.

22 EXAMINER PIRIK: Okay. Do you have a  
23 copy?

24 (Discussion off the record.)

25 EXAMINER PIRIK: We will go back on the



1 record.

2 I just want to be sure that the record is  
3 clear. Duke Exhibit 3 is the application. Attached  
4 to the application is Attachment F, which was the  
5 master service agreement standard service offer  
6 agreement that was submitted with the application.

7 What you're asking us to do, we are going  
8 to mark as Attachment F-1 the clean, unredlined  
9 version of the revised master standard service offer  
10 supply agreement, and we're marking as Attachment F-2  
11 the redlined revised attachment to Attachment F which  
12 is the master standard service offer supply agreement  
13 redlined.

14 MS. WATTS: Thank you, your Honor.

15 EXAMINER PIRIK: Is that correct, are we  
16 all on the same page?

17 MS. WATTS: I think we're all on the same  
18 page now.

19 MR. KUTIK: Just for clarity, your Honor,  
20 F-2 if you turn to it, it is entitled Revised  
21 Attachment F-1, the only difference is you have to  
22 understand that it's redlined.

23 EXAMINER PIRIK: Correct. And with the  
24 court reporter we crossed out the 1 and made it a 2.

25 MR. KUTIK: Thank you.

1 EXAMINER PIRIK: So we need to, and we  
2 put at the top "redlined," and on the other version  
3 we put "clean." So the clean version is F-1 and the  
4 redlined version is F-2.

5 If we are all equally confused, as long  
6 as we try to refer to the same one or whatever we're  
7 actually referring to and the correct page numbers, I  
8 think we'll be okay.

9 Is the witness okay with those markings?

10 THE WITNESS: I think the witness is.

11 EXAMINER PIRIK: Thank you.

12 Q. (By Ms. Watts) Mr. Northrup, in addition  
13 to the changes or considering the changes that you've  
14 made to your testimony if I were to ask the questions  
15 contained in that testimony again today would your  
16 responses be the same?

17 A. Yes, they would.

18 MS. WATTS: Duke Energy offers Mr.  
19 Northrup for cross-examination.

20 EXAMINER PIRIK: Thank you.

21 Mr. Petricoff.

22 MR. PETRICOFF: Thank you, your Honor.

23 - - -

24

25

## CROSS-EXAMINATION

By Mr. Petricoff:

Q. Good afternoon, Mr. Northrup. A couple of just preliminary questions I'd like to get out of the way. If you have your testimony in front of you, first if you would turn to page 2, lines 12 and 13. You indicate there that you had worked on the Duke Energy-Ohio resource plan and long-term forecast in 2010.

A. Correct.

Q. From your work on the long-term forecast plan are you aware of the capacity needs of the Duke Energy-Ohio service territory?

A. Yes, roughly.

Q. Is the legacy capacity which Duke Energy-Ohio owns sufficient to meet the capacity or does Duke under the ESP plan have to buy additional capacity in the market?

A. Well, the long-term forecast or integrated resource plan that I refer to makes assumptions that the load forecast going forward includes all wires-connected customers. It doesn't make a clear distinction between switched and unswitched customers as customers can switch back, so the integrated resource plan was written and

1 developed and analyzed from the perspective of all  
2 wires-connected customers.

3 From that perspective the existing legacy  
4 assets, generating assets, are insufficient to meet  
5 all the needs of all wires-connected customers.

6 Q. And if you would, I'd like to draw your  
7 attention to page 3 of your testimony, lines 14 and  
8 15. And there you indicate that the first auction  
9 would be conducted in June of 2011.

10 As a practical matter, in order to  
11 complete an auction in June of 2011, is there a date  
12 that the company's looking for that it must have  
13 approval from the Commission in order to meet the  
14 June 2011 date?

15 A. We would be looking for approval, we  
16 would be looking for approval that all our rules and  
17 bidding policies and everything is consistent with  
18 the expectation of the Commission and also from that  
19 perspective, yes.

20 Q. Do you have, if you will, a drop-dead  
21 date that you have to have authority from the  
22 Commission in order to conduct the auction on 2011 in  
23 accordance with the terms that have been filed?

24 A. I'm not sure we conducted a drop-dead  
25 date of which we would have to have this for this

1 June '11 date, no, we haven't.

2 Q. Fair to say that you would at least need  
3 two to three months?

4 A. Two to three months of what?

5 Q. Have the order from the Commission  
6 authorizing the auction two or three months before  
7 you conduct the auction?

8 A. Not necessarily. I think we're going to  
9 go forward and do our -- we're doing our due  
10 diligence working with our auction manager making  
11 sure all the preparation is ready to go. And so I  
12 think, again, I don't have a definitive date.  
13 Obviously if it, you know, depending on what the  
14 final outcome of that is we certainly would adjust at  
15 that point.

16 And if in the event that something were  
17 to occur that our auction manager might recommend  
18 that might not support that June date, then we would  
19 make adjustments as such.

20 Q. Speaking of the auction manager, was it  
21 the auction manager's recommendation that you have a  
22 reserve price, or was that a term that was put in the  
23 bidding rules by the company?

24 A. During the process of developing the  
25 competitive bidding process we had extensive

1 discussions with our auction manager looking at  
2 lessons learned from previous auctions, specifically  
3 FE, and we talked about at length the pros and cons  
4 of different issues such as reservation fee, and at  
5 that point after considering both the pros and cons  
6 of that then we at this time wanted to reserve the  
7 right to place a reservation fee based on a lot of  
8 the discussions that Mr. Lee just testified to a few  
9 minutes ago.

10 Q. I want to turn your attention to page 6  
11 of your testimony. Actually, before that, let me  
12 make sure I understood the last answer. So this was  
13 a decision of the company to have a reserve price.

14 A. It was ultimately our decision based on  
15 some recommendations from our auction manager, yes.

16 Q. I want to turn your attention to page 6,  
17 lines 4 through 6. There's where you indicate that  
18 the company has got an FRR plan that's been approved  
19 by the Federal Energy Regulatory Commission. Are you  
20 familiar with the FRR plan?

21 A. I'm familiar with the interaction between  
22 the FRR and the competitive bidding process, but I  
23 have not specifically studied the FRR in detail.

24 Q. Well, do you know, for example, is the  
25 capacity price under the approved plan going to be

1 the PJM auction price as it -- I'm sorry, let me  
2 rephrase that.

3 Is it your understanding that the  
4 approved FRR plan for the year 2011 would be the  
5 auction price that's already taken place for PJM?

6 A. If you're asking would the capacity  
7 prices be the same for RPM, that would be my  
8 understanding, yes.

9 Q. And the same would be true for 2012?

10 A. Yes.

11 Q. And for 2013?

12 A. Yes.

13 Q. In that case if a CRES, competitive  
14 electric retail supplier, was going to use Duke  
15 capacity, the price for that capacity would be the  
16 RPM auction price?

17 A. Well, the bidder would, yes, use the  
18 clearing price from the RPM price for that specific  
19 year in his bid.

20 Q. I want to make sure that we're on the  
21 same page. We talked about the bidder, I'm now  
22 asking you in addition to the bidder wouldn't that  
23 also be true for a competitive retail electric  
24 supplier?

25 A. I'm sorry, I'm not dealing with the

1 competitive -- CRES provider, I'm talking about the  
2 SSO bidder and that's what I'm focused on.

3 Q. Okay. So the answer is that you don't  
4 know how it works for a CRES supplier?

5 A. I don't have any testimony associated  
6 with what a CRES supplier may or may not consider an  
7 appropriate capacity price.

8 Q. Thank you.

9 I now want to direct you to page 7 of  
10 your testimony and if you would focus on lines 17 to  
11 20, and then you have a list of the information  
12 that's going to be made available to perspective  
13 suppliers.

14 Is this list designed to be  
15 representative of the information or to be a list of  
16 only the information -- the information that will  
17 only be provided?

18 A. It is the list, it's the expectations  
19 that we intend to provide at this time.

20 Q. Okay. In looking at the list from 17 to  
21 20 I was unsure whether or not Duke was going to  
22 provide in its usage histories usage by class. Are  
23 you going to provide usage by class?

24 A. Mr. Lee discussed that in the prior  
25 questioning, and he referred to that it would be



1       supplied by class, we would be looking for his  
2       guidance on what would be effective information for  
3       potential bidders, so based on that testimony I'm  
4       assuming that we would do that.

5             Q.     And would that be true for the PIPP data  
6       as well?

7             A.     I heard that discussion. I'm not as  
8       familiar with PIPP data but, again, it would be  
9       consistent with what Mr. Lee had indicated.

10            Q.     How about, Mr. Lee indicated that the  
11       information was ongoing after the auction for the bid  
12       winners. Is that going to be the case with Duke as  
13       well?

14            A.     Yes, I think that would be a good  
15       practice to keep bidders, potential bidders informed  
16       as to future actions as well.

17            Q.     One of the items that FirstEnergy  
18       supplies on an ongoing basis to the winning bidders  
19       is a 10-day capacity forecast. Would that be  
20       included in this as well?

21            A.     I have not been in any discussions about  
22       a 10-day capacity forecast so at this point I'm not  
23       aware of that.

24            Q.     Is that something that the company could  
25       or would consider for later application?

1           A.   Possibly, but at this time I don't  
2   understand the relevance associated with that since  
3   we correlate with the RPM capacity market auction, so  
4   I'm just not -- I'd need further clarification and  
5   understanding on the benefits of such information to  
6   the bidders.

7           Q.   Do you anticipate having some type of  
8   collaborative meeting with the bid winners to take up  
9   issues like that?

10          A.   I think that we discussed, you know, in  
11   any ongoing process, you know, lessons learned are  
12   always an instrumental part of continuous  
13   improvement, so I think that there could be certainly  
14   practices where we receive formal requests and  
15   understand how we could further help in ongoing  
16   auctions. So I would not toss that -- I would not  
17   dissuade that at this point.

18          Q.   At this point I'd like to draw your  
19   attention to I guess what we're now referring to as  
20   Attachment F-2, I'd like to work off the redlined  
21   version, if you will. Do you have that handy?

22          A.   Yes, I do.

23          Q.   First question I have for you, this would  
24   be on page 9 of F-2 under the definition of  
25   "settlement amount," and in the redlined version can

1     you see that there has been language that has been  
2     taken out and there has been language that has been  
3     added? Do you see the sections that I'm referring  
4     to?

5             A.     Yes, I do.

6             Q.     Do you know, can you tell us offhand what  
7     is the purpose of the changes that are in the  
8     definition of settlement amount?

9             A.     Yes. That further delineates how the  
10    calculation would be in event of a default, and it  
11    talks about the relationship between the time of the  
12    default or early termination and the end of the  
13    original contract amount and how that settlement  
14    amount would be calculated to sort of true up that  
15    defaulting consideration from the SSO bidder.

16            Q.     In preparation for your testimony today  
17    did you have the opportunity to read the direct  
18    prepared testimony of Mr. Fein from Constellation?

19            A.     I believe I did.

20            Q.     Are you aware of the consideration that  
21    Mr. Fein has about the definition of settlement  
22    amount here in terms of the transaction being  
23    considered from a securities standpoint as a  
24    derivative?

25            A.     I don't recollect that discussion on

1 derivative considerations.

2 Q. Okay. Are you familiar with the argument  
3 he raised concerning notional quantity?

4 A. No, I'm not.

5 Q. If there were concerns that were raised  
6 by securities, a security council that the language  
7 in the settlement amount might trigger, might be  
8 considered a derivative and trigger accounting  
9 processes under FASB 133, would the company be  
10 willing to entertain changes that would prevent such  
11 a designation?

12 A. I can't say whether we would or would --  
13 we would certainly entertain, listen to such concerns  
14 and considerations, but I can't at this point suggest  
15 that, you know, we would agree with that or not at  
16 this point. But we certainly would listen and  
17 understand and try to do the best we could to answer  
18 any concerns associated with FASB 133.

19 Q. And in that regard what do you envision  
20 the process would be? Is that something that we  
21 could petition the company later, petition the  
22 Commission later if we wanted that type of change  
23 that was made?

24 A. Well, I think possibly that might be  
25 entered into when our, you know, as a FAQ of some

1 sort of concern there, a formal request, and an  
2 assessment of that at that point I think certainly  
3 would be a viable option.

4 Q. Is it fair to say that it is not the  
5 intent of the company to make the suppliers use  
6 market-to-market accounting as a requirement of being  
7 a supplier?

8 A. We really haven't addressed -- it's our  
9 intent to have participation from as many bidders as  
10 we can, so any element that introduces difficulty to  
11 bidders certainly if we can avoid it, I think that  
12 that would be helpful to our ratepayers and so we  
13 would encourage to look into that.

14 Q. Now if you would, I'd like you to take a  
15 look at page 22 of the redlined. Actually, maybe  
16 this might be easier, let's start with page 23. We  
17 have a chart and this has to do with the credit being  
18 made available to the bidders.

19 A. I'm there.

20 Q. Okay. Can you briefly describe the  
21 change that was made from the original master supply  
22 agreement and what we see now in this chart on page  
23 23 in the revised Attachment F?

24 A. Yes. This chart refers to credit  
25 considerations on the total exposure amount to SSO

1 bidders, and specifically that two areas of  
2 enhancement, one would be the addition of Fitch as  
3 qualified rating agency on bonds, and the other  
4 substantive change would be associated in looking at  
5 noninvestment grade BB type rated corporations to an  
6 inclusion of both a percentage of total net worth,  
7 tangible net worth, and a proposed credit limit cap  
8 associated with both, for example, in S&P, BB+ and BB  
9 as far as additional credit considerations for those  
10 noninvestment grades.

11 In prior, in our original filing that  
12 there was no considerations in noninvestment grade  
13 bond holdings from that perspective.

14 Q. I want to draw your attention, go back to  
15 22, with the language that has been added, the  
16 redline version where the language has been added.  
17 And if you would, could you explain to me briefly how  
18 the chart would operate if a supplier had different  
19 ratings, meaning the three rating companies?

20 A. Sure, and the first redline is talking  
21 about if there were two rating agencies and the  
22 ratings were split, the lower rating would be used.  
23 But in the situation where you have two rating  
24 agencies that has the highest common rating in  
25 common, then that common rating would be used.

1                   So, for example -- yeah.

2                   Q.    So if there were three ratings --

3                   A.    Yes.

4                   Q.    -- and two were high, one was a step  
5 lower, you would go with the higher one.

6                   A.    The two common ones, that would be  
7 correct.

8                   MR. PETRICOFF: Your Honor, I believe  
9 those are the only questions I have. Thank you very  
10 much.

11                  EXAMINER PIRIK: Mr. Chamberlain?

12                  MR. CHAMBERLAIN: No questions.

13                  EXAMINER PIRIK: Mr. Kutik?

14                  MR. KUTIK: No questions.

15                  EXAMINER PIRIK: Ms. Hotz?

16                  MS. HOTZ: Yes, I have questions, please.

17                                 - - -

18                                 CROSS-EXAMINATION

19                  By Ms. Hotz:

20                  Q.    Good afternoon.

21                  A.    Hi.

22                  Q.    Referring to your testimony on page 4,  
23 lines 15 through 18 --

24                  EXAMINER PIRIK: Ms. Hotz, again, can you  
25 speak up? They're having trouble hearing you in the

1 back.

2 MS. HOTZ: Okay, I'll just talk louder.

3 Q. Referring to your testimony on page 4,  
4 lines 15 through 18, you talk about going to  
5 100 percent auction in year 3, correct?

6 A. Correct.

7 Q. Why is Duke proposing a 29-month blending  
8 period rather than the minimum of five years as  
9 directed in the statute?

10 A. We believe that that would serve the  
11 interests of our customers in additional options and  
12 perhaps more aggressive pricing.

13 Q. On page 6, lines 1 through 3, you say  
14 that Duke is seeking certainty with the auction  
15 process. Why is certainty so important in this  
16 instance?

17 A. Well, we've had discussions about, and  
18 prior witnesses have talked about any time there's  
19 uncertainty, whether in our operations or bidder  
20 rules or whatever, that it's problematic in planning  
21 your system, problematic in understanding how to best  
22 serve your customers.

23 So any time that you can reduce  
24 uncertainty or reduce risk, we feel like from our  
25 company's perspective that we can better meet our



1 ratepayers' considerations and our shareholder  
2 considerations.

3 Q. Is the proposed MRO blending period  
4 consistent with the revised 2010 long-term forecast  
5 report that Duke just filed in October of 2010?

6 A. We talked about that a few minutes ago.

7 Q. Yes.

8 A. And if I could just refresh on that, the  
9 foundation or basis for the long-term forecast report  
10 or the integrated resource plan where we plan out  
11 future resources is not consistent with the current  
12 MRO in that the integrated resource plan makes  
13 considerations where all customers, all  
14 wires-connected customers would be served through the  
15 integrated resource plan.

16 And so, therefore, when we do a  
17 long-range planning exercise, ten years, what we do  
18 is we compare and contrast our legacy generating  
19 assets against all wires-connected customers' needs.

20 When there is a shortfall of energy or  
21 capacity in that particular case, the integrated  
22 resource plan's objective is to try to determine what  
23 is the most cost-effective way to serve those  
24 wires-connected customers.

25 So it might be a different assortment of

1 buying capacity and energy on the marketplace in  
2 short-term durations or, conversely, look at the  
3 consideration of building or setting up long-term  
4 bilateral contracts with building new generation  
5 sources or securing bilateral contracts for capacity  
6 and energy, as well as in addition to the long-term  
7 forecast report also makes considerations on SB 221  
8 on the alternative energy requirements associated  
9 with renewable energy and advance energy generation  
10 sources.

11 So it's a more holistic, our IRP, the  
12 integrated resource plan is a more holistic resource  
13 plan that assumes all wires-connected customers would  
14 need capacity and energy support.

15 Q. What if a supplier comes into the auction  
16 and brings a large amount of power that you had not  
17 expected, wouldn't your long-term forecast report be  
18 off?

19 A. It would. Again, though, the objective  
20 of the long-term forecast report was to look at, you  
21 know, what, as a provider of last resort what might  
22 be our requirements associated with that. I mean,  
23 there can be a myriad or there will be a myriad of  
24 forecasts associated with what the switching and the  
25 unswitching expectations might be over the long term.

1           So again, what we did on the long-term  
2     forecast report was make an assumption of given the  
3     assumption that what would our plans be given the  
4     fact that in some cases we may have all  
5     wires-connected customers as a supply obligation, so  
6     that was the primary foundation for that report.

7           So again, that is somewhat different than  
8     the premise associated with the MRO that looks at it  
9     from, again, offering tranches to supply side bidders  
10    to take advantage of open tranches that we might  
11    offer. So they very much are different foundations.

12          Q.    So when is the next time you have to file  
13    a long-term forecast report?

14          A.    I believe it's in the April time frame,  
15    subject to check.

16          Q.    Okay. So in three years you will  
17    probably have to file another long-term forecast  
18    report, right?

19          A.    I think we will have to file another  
20    long-term forecast report, yes.

21          Q.    So how will you -- how will you conduct  
22    your long-term forecast report once 100 percent of  
23    the load is auctioned? Will you do it the same way  
24    you did it this time?

25          A.    I do not think we would do it the same

1 way we did it this time.

2 Q. Do you know how you would do it?

3 MS. WATTS: Your Honor, I object to this  
4 line of questioning. I think we've gone way beyond  
5 the scope of Mr. Northrup's testimony in this case.

6 EXAMINER PIRIK: Ms. Hotz.

7 MS. HOTZ: He talks about how he filed  
8 the long-term forecast report in his testimony, and I  
9 think it is relevant because I think, you know, it's  
10 something that they have a responsibility to do and  
11 yet -- and they did, but it was inconsistent with  
12 their three-year plan to bid out the entire load.  
13 And it just doesn't make -- and I'm just wondering if  
14 their -- what their intentions are.

15 EXAMINER PIRIK: I'll overrule the  
16 objection and give you some time to further your  
17 questions.

18 THE WITNESS: Could you repeat that  
19 question?

20 (Record read.)

21 A. Today, no.

22 Q. You don't know how you would do it in  
23 three years.

24 A. Certainly it would be different than when  
25 it was done last time. I would have to make some

1       considerations on exactly what the approved MRO would  
2       have -- would be, what that blending period would be,  
3       so I certainly would take all of that into account  
4       and specifically design future resource needs around  
5       that prevailing finding from the Commission.

6               MS. HOTZ:   Okay.   Thank you.   That's all  
7       I have.

8               EXAMINER PIRIK:   Mr. White?

9               MR. WHITE:   No questions, your Honor.

10              EXAMINER PIRIK:   Mr. Olikar?

11              MR. OLIKER:   No questions, your Honor.

12              EXAMINER PIRIK:   Mr. Hart?

13              MR. HART:    Just a few.

14                               - - -

15                               CROSS-EXAMINATION

16       By Mr. Hart:

17              Q.   Mr. Northrup, I want to try to understand  
18       the slice of system situation.   Since the bidder has  
19       to provide capacity as a part of its bid, there's  
20       quite a bit of range that they may have to supply,  
21       correct, based on shopping?

22              A.   I think there could be a volumetric risk  
23       in the amount that they might have to bid, that would  
24       be correct.

25              Q.   So currently 40 percent of Duke's load's

1 on standard service so they could conceivably have to  
2 acquire two-and-a-half times that amount if all the  
3 shoppers came back.

4 A. That's possible, yes.

5 Q. Now, is the capacity determined by the  
6 actual customer load or is it based on the maximum  
7 possible?

8 A. It's the actual customer load.

9 Q. Okay. Is there some duration over which  
10 they have to acquire capacity?

11 A. It would be over the contract duration,  
12 whether it was like in the initial tranche would be a  
13 17-month period.

14 Q. Okay. So if at the beginning of a  
15 two-year contract, because you're planning on bidding  
16 a two-year contract, there's a certain level of  
17 shopping, if that changes during that two-year  
18 period, that supplier is still obligated to purchase  
19 the initial amount of capacity for that full two  
20 years?

21 A. The bid should include energy and  
22 capacity, yes, correct.

23 Q. So that bidder may end up over or under  
24 acquiring capacity because of the changes during that  
25 two years.

1           A.    I think that certainly that load  
2 requirement could change and so, therefore, the  
3 capacity needs would change with it as well.

4           Q.    So that's an additional risk of a bidder  
5 that wouldn't be present if they were bidding on a  
6 fixed amount of load, a fixed quantity of load.

7           A.    That would be correct.

8           Q.    Now I want to turn to page 8 of your  
9 testimony where you had all the directions to add the  
10 word "Ohio." I take it the Duke Energy-Ohio load  
11 zone is some reasonable area within PJM?

12          A.    Yes, it's a set of commercial pricing  
13 nodes that PJM will develop that identifies the Duke  
14 service territory.

15          Q.    I take it there's a comparable function  
16 within MISO, there was a Duke Energy zone within  
17 MISO?

18          A.    There would be a comparable Duke zone in  
19 MISO or Duke Energy-Ohio or Duke Energy in general in  
20 the midwest associated with MISO.

21          Q.    So when Duke switches RTOs, whoever wants  
22 to supply the Duke customer load, whether it's a CRES  
23 or a bidder in the SSO is going to have to deliver to  
24 the Duke zone.

25          A.    I think that would be correct.

1           Q.    Now, just stepping back a minute, one of  
2   the premises of the company's application here is  
3   that its market is fully competitive, correct?

4           A.    I believe the RTO would be a competitive  
5   marketplace.

6           Q.    And some of the evidence that's cited for  
7   that is the fact that 60 percent of the load has  
8   shopped to CRES suppliers.

9           A.    I think that makes it a competitive  
10  market.

11          Q.    And those CRES suppliers are currently  
12  delivering through MISO.

13          A.    Correct.

14          Q.    Now, when Duke switches to PJM, a  
15  supplier that's physically located on MISO is now  
16  going to have to cross two RTOs to get to the Duke  
17  zone, right?

18          A.    Are you assuming that the -- it depends  
19  on where the CRES resources are located.

20          Q.    I said a CRES resource that's on MISO.

21          A.    On MISO today?

22          Q.    Yes.

23          A.    That could be the case.

24          Q.    So they're going to incur additional  
25  transmission costs to get to the Duke Energy zone of



1 PJM.

2 A. Again, I'm not sure to what level those  
3 costs might be but it's a possibility.

4 Q. And one of the things that you have not  
5 done is to analyze how much of the CRES participation  
6 today in MISO is going to follow Duke into PJM.

7 A. I personally have not analyzed any  
8 current CRES contracts nor do I have access to any of  
9 that information.

10 Q. Do you know of any witness in this case  
11 that has analyzed that issue of whether the  
12 competition that's present in MISO will follow Duke  
13 into PJM?

14 A. I have not had any discussions on that  
15 specific subject.

16 MR. HART: Thank you, that's all I have.

17 EXAMINER PIRIK: Mr. Montgomery?

18 MR. MONTGOMERY: No questions, your  
19 Honor.

20 EXAMINER PIRIK: Mr. Boehm, I think I  
21 missed you?

22 MR. BOEHM: I'm sorry again, no  
23 questions, your Honor, thank you.

24 EXAMINER PIRIK: All right.

25 Redirect.

1 MR. JONES: Your Honor?

2 EXAMINER PIRIK: I always forget you,  
3 Mr. Jones, thank you for reminding me.

4 MR. JONES: Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Jones:

8 Q. Good afternoon, Mr. Northrup, I have a  
9 few questions for you.

10 MS. WATTS: Mr. Jones, if you wouldn't  
11 mind using the my microphone, we're having trouble  
12 hearing you down here.

13 Q. I would like to refer you to your  
14 testimony on page 4, lines 3 and 4, there where it  
15 begins "Specific Auction Manager activities include  
16 widely publicizing the auctions to prospective  
17 bidders...." How would you publicize that  
18 information?

19 A. Gosh, I think you should have asked the  
20 auction manager that, they have a vast amount of  
21 experience and that's specifically why we hired them.

22 Q. So you don't know.

23 A. No. I've seen -- no, I do not know.

24 Q. Okay. All right, I'll move on.

25 Same page here, lines 7 and 8 you state

1       there Duke Energy will provide the Commission with  
2       access to -- access to the Commission for the CBP  
3       process.

4             A.     Right.

5             Q.     What level of access are you talking  
6       about? Can you describe that?

7             A.     Access is pretty open-ended. Any time  
8       that you need -- a concern or question comes up I  
9       think that certainly we would be willing to meet with  
10      the Commission or their representatives in realtime  
11      to discuss any element that needs clarity.

12            Q.     And the Commission would have access to  
13      the auction site as well?

14            A.     Yes.

15            Q.     Okay. And what information would be  
16      provided to the Commission?

17            A.     You mean preauction? Postauction?

18            Q.     As to what you're referring to there in  
19      your testimony, you say "including data information,  
20      communications," what information would you include?

21            A.     I think certainly that would include all  
22      the information we shared with any of the bidders as  
23      far as, you know, historical load profiles, any  
24      information that has been questioned on our website  
25      as far as FAQs, any clarifications, ongoing

1 proceedings, any kind of concern or issues that come  
2 up, certainly we would be glad to share that.

3 Q. Okay. And where would that auction be?

4 A. I'm not sure. I haven't had discussions  
5 with the auction manager on where those specific  
6 locations would be.

7 Q. Okay. And the Commission controls the  
8 auction manager; is that correct?

9 A. I think the Commission has their own  
10 consultant as well involved to oversee and review the  
11 process, so I'm not sure I would agree with your  
12 characterization of "controls the auction manager."

13 Duke has hired the auction manager to  
14 do -- to be as an independent representative to have  
15 open, fair, and transparent process. So I certainly  
16 think that issues that would come up that would be  
17 proposed by the Commission would certainly be  
18 strongly considered by our independent auction  
19 manager.

20 Q. Well, can the Commission replace the  
21 auction manager?

22 A. I'm not sure. I'd have to refer that to  
23 our legal staff or whatever. I haven't had any  
24 discussions associated with that.

25 Q. Okay. Fair enough.

1 I'll move on here. Another question on  
2 the same page, 4, of your testimony, lines 13 and 14,  
3 "In the first year of the MRO, a 17-month contract  
4 for service will be offered." Why 17 months? What's  
5 the rationale for that?

6 A. Well, the rationale is that we felt like  
7 a minimum term of one year was certainly appropriate,  
8 but when we were going to commence our first contract  
9 year January of 2012, what we wanted to seek to do  
10 was to align that with the PJM auction for capacity.  
11 The reliability pricing auction.

12 So that what we did is we extended it  
13 through May of the following year so that all  
14 subsequent auctions would be aligned with the PJM  
15 capacity market auctions, thereby going into  
16 subsequent bid auctions that, whether it was one,  
17 two, or three years which we introduced later in year  
18 3 that the bidders would have complete insight into  
19 the clearing prices that resulted from the prior PJM  
20 capacity auction.

21 Q. Okay. Is that the only reason?

22 A. That is the reason, yes.

23 Q. That is the reason, okay.

24 MR. JONES: That's all I have. Thank  
25 you.

1 EXAMINER PIRIK: Thank you, Mr. Jones.

2 Now, redirect?

3 MS. WATTS: Yes, your Honor, thank you.  
4 recreation.

5 - - -

6 REDIRECT EXAMINATION

7 By Ms. Watts:

8 Q. Mr. Northrup, do you recall responding to  
9 some questions Ms. Hotz had with respect to the  
10 filing of the IRP?

11 A. Yes.

12 Q. Would it be your understanding if the  
13 company bids out a hundred percent of its load, that  
14 there's any real purpose in filing an IRP at that  
15 point?

16 A. I think it would be highly questionable  
17 since the IRP by definition is a long-term resource  
18 plan and if those resources are being a hundred  
19 percent met by bidders that we're under contract  
20 with, I think it's sort of undercut -- I think that  
21 it would sort of render long-term associations rather  
22 moot at that point --

23 Q. Thank you. And in response to some  
24 questions from Mr. Petricoff you indicated that, if  
25 I'm paraphrasing a bit here, that the company would

1     adjust depending on when the Commission's entry comes  
2     out, or its opinion and order in this case.

3             A.     Yes.

4             Q.     Based on the timing of that, whenever the  
5     Commission's opinion and order is issued, are there  
6     tasks or items that need to be accomplished between  
7     that, the end of the opinion and order, which would  
8     presumably give us the MRO in this case, and the  
9     auction that needs to occur?

10            A.     Well, I think it depends on perhaps how  
11     widely the Commission's opinion may vary from what  
12     our original plans are. But I think if it was  
13     somewhat consistent with our original plans, then I  
14     think that we'll continue to put due diligence  
15     together, bring up the website, interact with bidders  
16     and so I would hope that there would be minimal  
17     concerns associated with that.

18            Q.     And isn't it true that the bidders are  
19     required to submit applications to become part of  
20     that bid process?

21            A.     There would be a part 1 and part 2  
22     application process, yeah.

23            Q.     And that process would take some time,  
24     correct?

25            A.     Yes, it would.

1           Q.    And then there's mock auctions between  
2   the --

3           A.    They are to educate bidders, mock  
4   auctions, correct.

5           Q.    All of which would need to be  
6   accomplished between the time we have a Commission  
7   approval and the auction.

8           A.    That's correct.

9           Q.    Okay.  In response to some questions from  
10   Mr. Hart do you recall testimony of Ms. Janson this  
11   morning that there are 13 CRES providers active in  
12   Duke Energy-Ohio's territory?

13          A.    I heard that discussion, yes.

14          Q.    Mr. Hart asked about those CRES suppliers  
15   currently in MISO.  Do you recall that question?

16          A.    Yes, I do.

17          Q.    Do you know whether those same CRES  
18   providers are also active in PJM?

19          A.    I'm sorry, I do not.

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

22                EXAMINER PIRIK:  Do any of the  
23   intervenors have recross questions?

24                (No response.)

25                EXAMINER PIRIK:  Hearing none, thank you



1 very much, Mr. Northrup.

2 With regard to Duke Exhibit 8.

3 MS. WATTS: We would ask that be admitted  
4 into evidence, please.

5 EXAMINER PIRIK: Are there any objections  
6 to Duke Exhibit 8?

7 (No response.)

8 EXAMINER PIRIK: Hearing none, it will be  
9 admitted into the record.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER PIRIK: We have not had the  
12 application and the attachments moved per se into the  
13 record. I think the F-1 and the F-2 are the only  
14 supplements revisions to those attachments if I'm  
15 correct. Were you going to wait and move that at a  
16 later time? I just want to be sure of it.

17 MS. SPILLER: No, your Honor. I think  
18 with the testimony of the two witnesses that is  
19 relevant to the competitive bid process including the  
20 master supply agreement we are probably at a juncture  
21 now in the proceeding that we can move for the  
22 admission of Exhibit 3 into evidence.

23 EXAMINER PIRIK: Are there any objections  
24 to the admission of Exhibit 3, being the application,  
25 as well as F-1 and F-2?

1 (No response.)

2 EXAMINER PIRIK: Hearing none, it will be  
3 admitted into the record.

4 MS. SPILLER: Thank you, your Honor.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 EXAMINER PIRIK: Go off the record.

7 (Discussion off the record.)

8 EXAMINER PIRIK: We'll go back on the  
9 record. We will adjourn until 9 a.m. tomorrow  
10 morning.

11 (The hearing concluded at 5:26 p.m.)

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## 1 CERTIFICATE

2 I do hereby certify that the foregoing is a  
3 true and correct transcript of the proceedings taken  
4 by me in this matter on Tuesday, January 11, 2011,  
5 and carefully compared with my original stenographic  
6 notes.

7  
8 Maria DiPaolo Jones, Registered  
9 Diplomat Reporter and CRR and  
Notary Public in and for the  
State of Ohio.

10 My commission expires June 19, 2011.

11 (MDJ-3774)

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**1/12/2011 10:24:41 AM**

**in**

**Case No(s). 10-2586-EL-SSO**

Summary: Transcript Transcript of Duke Energy Ohio for Approval of a Market Rate Offer hearing held on 01/11/11. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.