

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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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. :

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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 Wednesday,
January 12, 2011.

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VOLUME II

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1 Tuesday Morning Session,

2 January 11, 2011.

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

12 Let's start with the appearance of the
13 parties beginning with the company and then we'll
14 just go around the table.

15 MS. SPILLER: Good morning, your Honors.
16 Amy Spiller, Rocco D'Ascenzo, and Elizabeth Watts on
17 behalf of Duke Energy-Ohio, 139 East Fourth Street,
18 Cincinnati, 45202.

19 MR. PETRICOFF: Thank you, your Honor.
20 On behalf of Constellation NewEnergy, Constellation
21 Commodities Group, and the Retail Energy Suppliers
22 Association, Howard Petricoff and Lija Kaleps-Clark
23 from the law firm of Vorys, Sater, Seymour & Pease,
24 52 East Gay Street, Columbus.

25 EXAMINER STENMAN: Thank you.

1 MR. REISINGER: Good morning, your Honor.
2 On behalf of the Ohio Environmental Council, William
3 Reisinger and Nolan Moser, 1207 Grandview Avenue,
4 Suite 201, Columbus, Ohio, 43212.

5 EXAMINER STENMAN: Thank you.

6 MR. HAYDEN: Good morning, your Honors.
7 On behalf of FirstEnergy Solutions, Mark Hayden, and
8 from the law firm of Jones Day, David Kutik and Grant
9 Garber.

10 MR. KURTZ: For the Ohio Energy Group,
11 Mike Kurtz, Boehm, Kurtz & Lowry, 1510 URS Center,
12 Cincinnati, Ohio.

13 EXAMINER STENMAN: Thank you.

14 MS. HOTZ: On behalf of the residential
15 customers of Duke Energy-Ohio, the Ohio Consumers'
16 Counsel, Janine Migden-Ostrander, by Ann Hotz, Rick
17 Reese, and Jody Kyler, 10 West Broad Street,
18 Columbus, Ohio 43215.

19 MS. MOONEY: On behalf of Ohio Partners
20 for Affordable Energy, Colleen L. Mooney, David C.
21 Rinebolt, 231 West Lima Street, Findlay, Ohio.

22 MR. YURICK: Good morning, your Honors.
23 On behalf of Kroger Company, Mark Yurick, the law
24 firm of Chester, Willcox & Saxbe, also entering
25 appearances on behalf of John Bentine and Matt White.

1 MR. OLIKER: On behalf of Industrial
2 Energy Users-Ohio, my name is Joseph Oliker, and I'm
3 also entering the appearance of Sam Randazzo, of the
4 law firm of McNees, Wallace & Nurick, 21 East State
5 Street, Columbus, Ohio, 43215.

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

11 MR. HART: On behalf of The Greater
12 Cincinnati Health Council and Eagle Energy, LLC,
13 Douglas L. Hart.

14 EXAMINER STENMAN: Thank you.

15 MR. MONTGOMERY: Good morning, your
16 Honors. On behalf of Ohio Advanced Energy, Chris
17 Montgomery and Terrence O'Donnell, the law firm of
18 Bricker & Eckler, 100 South Third Street, Columbus,
19 Ohio, 43215.

20 EXAMINER STENMAN: Thank you.

21 MR. MILLER: Good morning, your Honors.
22 On behalf of Columbus Southern Power and Ohio Power
23 Company, Erin Miller. I'd like to also enter the
24 appearance of Matt Satterwhite, 1 Riverside Plaza
25 Columbus, Ohio, 42215.

1 EXAMINER STENMAN: Thank you.

2 Is there anyone that we missed?

3 (No response.)

4 EXAMINER STENMAN: Okay. Moving on to
5 Ms. Spiller, you had an issue with regard to one of
6 the exhibits that was discussed yesterday?

7 MS. SPILLER: Yes, your Honor, thank you.
8 And if I may approach.

9 EXAMINER STENMAN: Yes.

10 MS. SPILLER: I will present what we will
11 offer as Exhibit B-1 in this proceeding. It is an
12 auction schedule that is attached, copies for
13 counsel, that is attached to Exhibit 3 -- strike
14 that.

15 Attachment B to Duke Energy-Ohio Exhibit
16 3, which is the application, is an auction schedule.
17 As filed that Attachment B shows various tranches as
18 well as schedules commencing 2011 through 2018. The
19 first year shows a term of 17 months running from
20 January 2012 through the end of May 2013. That was
21 the as-filed version of Attachment B.

22 What has been marked as Attachment B-1 to
23 this proceeding is a preliminary draft of the auction
24 schedule, one of the notable differences between this
25 document and the Attachment B as filed is that there

1 is an incorrect demarcation of the bar graph for the
2 first year.

3 Although the language reflects a contract
4 duration of 17 months and ten tranches, the bar graph
5 reflects a duration of January 2012 through May of
6 2013, which is not what the company is proposing. We
7 are not proposing that that first term actually be 29
8 months.

9 As a result of that bar graph extending
10 too far or into 2014, all of the bar graphs below
11 that, save the second year, have different tranche
12 sizes.

13 Mr. Lee yesterday was asked questions by
14 Ann Hotz, counsel for the OCC, regarding the amount
15 of load that would be auctioned off in year 3 of the
16 auction asking whether that would be 80 tranches.
17 Mr. Lee referred to what has been identified as
18 Attachment B-1 indicating that the auction load for
19 that year would be 90 tranches pursuant to what he
20 was referring to.

21 So we would simply, for clarity of the
22 record, and to align the witness testimony with the
23 exhibits, offer Exhibit B-1 and then certainly call
24 to the Bench and counsel's attention the differences
25 between what was as-filed and what was discussed

1 yesterday.

2 EXAMINER STENMAN: Just to be sure the
3 record is clear, Exhibit B that was filed with the
4 application is the correct version of this document?

5 MS. SPILLER: Yes, your Honor.

6 EXAMINER STENMAN: This is a prior draft.

7 MS. SPILLER: Yes, your Honor.

8 EXAMINER STENMAN: Okay. As long as
9 anyone with questions regarding B-1 has the
10 opportunity to re-call the witness if need be, I'm
11 assuming that he will be available if he is
12 re-called?

13 MS. SPILLER: We would certainly
14 reproduce Mr. Lee for further examination, my only
15 caveat is that I would need some advanced notice. He
16 is currently snowbound in DC on his way back to
17 Boston, so to the extent we need to arrange for
18 different travel to get him to Columbus, I would just
19 appreciate some notice to coordinate that with him.

20 EXAMINER STENMAN: Does anyone have any
21 plans to re-call Mr. Lee? No? Okay.

22 Moving on, we have some confidential
23 documents that we were discussing yesterday. Duke
24 has kindly provided the Bench with its proposed
25 redactions. Let's begin by going through the first

1 six documents that we were provided yesterday by IEU.

2 With respect to documents 1, 2 -- 1 and
3 2, the Bench agrees with Duke's proposed redactions.
4 With regard to document 3, we had some questions
5 regarding -- is there anyone in the room who hasn't
6 signed a confidentiality agreement?

7 MS. SPILLER: Your Honor, the only
8 outstanding party to have not -- the only party not
9 to have signed a confidentiality agreement is the
10 City of Cincinnati. I do not see Mr. O'Brien here or
11 anyone standing in his stead today.

12 EXAMINER STENMAN: Okay.

13 MS. SPILLER: I will say I don't know if
14 anyone else in the room is not otherwise associated
15 with the Commission staff or parties who would have
16 been bound to that confidentiality agreement.

17 EXAMINER STENMAN: Is there anyone
18 present who isn't associated with a party that has
19 signed a confidentiality agreement that isn't
20 associated with staff or OCC or anyone from the
21 public or the media?

22 (No response.)

23 EXAMINER STENMAN: Okay. Duke seeks to
24 protect a statement regarding assurances that
25 customers may not be negatively impacted to be

1 provided to the PUCO and also statements regarding
2 whether customers will be held harmless with respect
3 to the Indiana commission. We're a little unclear as
4 to why those statements need to be protected.

5 MS. SPILLER: Your Honor, I think those
6 statements are integral to the company's assessment
7 and internal evaluation what they deem as relevant
8 information to how they are evaluating business
9 decisions as well as the potential consequences, if
10 you will, of those business decisions. So I think
11 that information, if made public, unfairly discloses
12 the company's evaluation and assessment.

13 I think also it unfairly would publicize
14 the company's litigation positions, and as I
15 discussed yesterday, I think that would put the
16 company at a disadvantage vis-a-vis those entities
17 who may otherwise be engaged in that proceeding
18 and/or litigation with the company.

19 EXAMINER STENMAN: A large part of my
20 concern comes really from an inconsistency in the
21 redaction process in document No. 3, that you seek to
22 redact information regarding assurances to the PUCO
23 and also regarding assurances that would need to be
24 made to the Indiana commission, however, in document
25 1 there is an entire paragraph regarding regulatory

1 approvals in which Duke discusses what the PUCO, the
2 Kentucky PSC, and the FERC may want to see before
3 Duke is allowed to move from MISO to PJM, and also
4 the Indiana commission.

5 It's really the same sentence and it's
6 really the same information, in one area it's
7 proposed redacted and in another it is not, and in
8 different areas throughout the document it is not
9 proposed as a redaction.

10 MR. D'ASCENZO: If we could see it.

11 EXAMINER STENMAN: Would you like to
12 approach?

13 MS. SPILLER: Yes, please.

14 (Discussion off the record.)

15 EXAMINER STENMAN: Let's go back onto
16 record.

17 With respect to document 3, Duke has
18 agreed to comply with the Bench's wishes and make
19 public the statements we were discussing. With
20 respect to all the documents, I notice that 1 through
21 6 do not have a cover page attached, but it's my
22 understanding that IEU intends to utilize the cover
23 page in introducing these documents.

24 Is there anything on the cover page that
25 Duke would seek protective treatment of?

1 MS. SPILLER: The cover pages, your
2 Honor, just should be the discovery pages as well as
3 designation of that which was confidential and should
4 not provide any --

5 EXAMINER STENMAN: Do you have a copy of
6 the cover page on document 1 in front of you?

7 MR. D'ASCENZO: I do not.

8 EXAMINER STENMAN: Would you approach?

9 MS. SPILLER: Yes, please.

10 EXAMINER STENMAN: Let's go off the
11 record.

12 (Discussion off the record.)

13 EXAMINER STENMAN: Let's go back on the
14 record.

15 The cover pages will be redacted to
16 remove any reference to specific plant names.

17 Yesterday afternoon IEU provided the
18 Bench with a copy of three documents, document No.,
19 what the Bench will refer to as document 7 contains
20 graphs, I believe all the pages are graphs. Can the
21 company extrapolate on what is contained here?

22 MS. SPILLER: I'm sorry, your Honor?

23 EXAMINER STENMAN: In document 7, you
24 were provided three documents yesterday afternoon by
25 IEU.

1 MS. SPILLER: Right.

2 EXAMINER STENMAN: What are these graphs?

3 MR. D'ASCENZO: Those are discounted cash
4 flow analysis.

5 EXAMINER STENMAN: Okay. And why do
6 those need to be protected?

7 MR. D'ASCENZO: Because it's showing,
8 your Honor, future -- it's projections of the future
9 of the company in terms of revenues impacts, the
10 evaluation under various scenarios, and that's, if I
11 may, your Honor, those were drafts, they weren't the
12 final versions.

13 EXAMINER STENMAN: Okay. Those will be
14 protected.

15 With respect to document, we're entitling
16 it document 8, it has RTO charts, the company sought
17 to protect the last three charts. Can you elaborate
18 a little bit on why protective treatment is
19 necessary?

20 MR. D'ASCENZO: Let me pull that up, your
21 Honor. I believe it's the same reason, it's
22 showing -- those are charts that are showing
23 projections into the future. The first chart is
24 public, that's just a graph depicting a visual
25 representation of how the PJM market works.

1 The second chart is an analysis of two
2 price curves under different scenarios into the
3 future that the company considered, and, again, it
4 shows dollar values well into the future, it is the
5 basis of some of the other confidential analysis that
6 was performed.

7 EXAMINER STENMAN: And with respect to
8 the last two charts?

9 MR. D'ASCENZO: The third chart is an
10 aggregate of, it's the 10-year projection and 15-year
11 projection under those scenarios. Under two
12 scenarios, I should say, that the company evaluated.
13 And again with the last one, this is a net
14 present-value analysis of future potential revenues
15 into the future -- for several years into the future.

16 EXAMINER STENMAN: Okay. Those will be
17 granted protective treatment as well.

18 At this point let's go off the record and
19 let's have the company redact these and then we'll
20 mark them and grant the protective treatment.

21 MS. SPILLER: Thank you, your Honor.

22 MR. OLIKER: Excuse me, your Honor.

23 EXAMINER STENMAN: Yes.

24 MR. OLIKER: I'm sorry, would you clarify
25 which documents were labeled as 7, 8, and 9?

1 EXAMINER STENMAN: Sure.

2 MR. OLIKER: Sorry.

3 EXAMINER STENMAN: That's okay.

4 (Discussion off the record.)

5 EXAMINER STENMAN: Let's take a 15-minute
6 break. Give the company time to deal with those.

7 MS. SPILLER: Thank you, your Honor.

8 (Recess taken.)

9 EXAMINER STENMAN: Let's go back on the
10 record.

11 Ms. Watts or Ms. Spiller.

12 MS. SPILLER: Andrew Ritch will be
13 coming, your Honor.

14 EXAMINER STENMAN: Okay.

15 MS. WATTS: May I approach?

16 EXAMINER STENMAN: You may.

17 Please raise your right hand.

18 (Witness sworn.)

19 EXAMINER STENMAN: Thank you.

20 - - -

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24

25

1 ANDREW S. RITCH

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

4 DIRECT EXAMINATION

5 By Ms. Watts:

6 Q. Mr. Ritch, would you state your name for
7 the record, please?

8 A. Andrew S. Ritch.

9 Q. And by whom and how are you employed?

10 A. I'm employed by Duke Energy Business
11 Services as a director of renewable strategy
12 compliance.

13 Q. Thank you. And do you have before you --

14 MS. WATTS: First of all, I'd ask that
15 Mr. Ritch's testimony be marked as Duke Energy
16 Exhibit 9.

17 EXAMINER STENMAN: It will be so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. Do you have before you, Mr. Ritch, what
20 has been marked as Duke Energy Exhibit No. 9? Can
21 you tell me what that is?

22 A. This is my direct testimony on behalf of
23 Duke Energy-Ohio.

24 Q. Is that the testimony that was filed in
25 this case?

1 A. Yes, it was.

2 Q. And do you have any additions or
3 corrections to that testimony?

4 A. I do not.

5 Q. If I were to ask you the questions
6 contained in that testimony again today, would your
7 answers be the same?

8 A. Yes, they would.

9 MS. WATTS: Duke Energy-Ohio offers
10 Mr. Ritch for cross-examination.

11 EXAMINER STENMAN: Okay.
12 Ms. Kaleps-Clark, anything?

13 MS. CLARK: No questions.

14 EXAMINER STENMAN: Mr. Reisinger?

15 MR. REISINGER: Just a few questions,
16 your Honor.

17 EXAMINER STENMAN: Okay.

18 MR. REISINGER: I'm not sure if my
19 microphone is on.

20 EXAMINER STENMAN: Did you use the red
21 button on the very bottom?

22 That one's on now.

23 MR. REISINGER: Okay, is that on now?

24 EXAMINER STENMAN: Yes. You have to pull
25 it closer, though.

1 - - -

2 CROSS-EXAMINATION

3 By Mr. Reisinger:

4 Q. Good morning, Mr. Ritch. My name is Will
5 Reisinger, I represent the Ohio Environmental Council
6 in this case and I have just a couple of questions
7 for you about Duke's contracting strategy,
8 specifically regarding your solar contracting
9 strategy.

10 Just before we get started, just so I'm
11 clear, you are employed by Duke Energy Business
12 Services, but you are the person who is in charge of
13 ensuring that Duke Energy-Ohio complies with its
14 alternative energy benchmarks; is that correct?

15 A. That is correct.

16 Q. Okay. I'm looking at page 3, line 5 of
17 your testimony. When you're describing "AER
18 compliance," you're referring to alternative energy
19 resource benchmarks?

20 A. That's correct.

21 Q. So that includes renewable energy
22 benchmarks and solar energy benchmarks --

23 A. Yes.

24 Q. -- correct? Okay.

25 So you're the person at Duke Energy-Ohio

1 who is in charge of ensuring that the company
2 complies with the solar energy benchmarks.

3 A. Yes.

4 Q. Okay. Let me ask you to turn to page 4
5 of your testimony, lines 11 through 15 where you are
6 describing the company's 2009 alternative energy
7 compliance report, Case No. 10-511-EL-ACP. Do you
8 see where I'm referring to?

9 A. I do.

10 Q. Did you help the company prepare that
11 filing?

12 A. I did.

13 Q. Okay. I'm going to read from lines 11
14 through 15 where you state "This report also
15 demonstrates that Duke Energy-Ohio's methods of
16 procuring RECs have been successful in obtaining the
17 requisite quantities of RECs, even in certain
18 categories such as the in-state (Ohio-based) solar
19 category, which has been the most challenging
20 component of the AER requirements to meet to date."
21 Do you see that sentence?

22 A. I do.

23 Q. Do you think that sentence is an accurate
24 characterization of the report?

25 A. I do. I think that we demonstrated

1 compliance with the regulations subject to certain
2 findings from the Commission.

3 Q. Can you describe those certain
4 contingencies?

5 A. Yes. The two contingencies I mentioned
6 were first and foremost approval of an adjusted
7 baseline calculation that we had used for our 2009
8 compliance, as well as the approval to substitute 80
9 solar renewable energy certificates generated within
10 the state of Pennsylvania for a same size shortfall
11 within the state of Ohio.

12 Q. So just that I'm clear, Duke Energy-Ohio
13 is not able to meet its in-state solar energy
14 requirement and that's why you're asking the
15 Commission to certify 80 out-of-state RECs.

16 A. I think I'd rephrase the question, as we
17 feel that we were able to meet our in-state
18 requirement subject to a finding of the Commission
19 that the 80 Pennsylvania RECs could indeed be
20 admitted for compliance in Ohio.

21 Q. Okay. So you have met your in-state
22 requirement contingent upon the Commission allowing
23 you to use out-of-state RECs.

24 A. We've met our in-state requirement
25 contingent upon the Commission's approval for the

1 substitution of said RECs.

2 Q. Okay. And you also in this document, you
3 also make an alternative request in the event that
4 the Commission doesn't certify those 80 out-of-state
5 RECs, you asked for a force majeure determination, a
6 waiver of your solar energy benchmarks for 2009?

7 A. That's correct.

8 Q. Okay. And is it correct that this force
9 majeure determination, this filing has not been ruled
10 upon yet by the Commission?

11 A. That's correct.

12 Q. Are you aware that one of the
13 requirements for a force majeure determination is for
14 the applicant to demonstrate that it has pursued all
15 reasonable compliance efforts including efforts to
16 long-term contracts?

17 A. I'm not aware of that specific part of
18 the force majeure definition.

19 Q. Okay.

20 MR. REISINGER: Your Honor, may I
21 approach the witness?

22 EXAMINER STENMAN: You may.

23 Q. Mr. Ritch, I just gave you a copy of Ohio
24 Administrative Code 4901:1-40-06, which is the force
25 majeure section, and if you look at (A)(1), this rule

1 says that the utility shall demonstrate before
2 getting a force majeure determination, the utility
3 shall demonstrate that it pursued all reasonable
4 compliance options including, but not limited to,
5 renewable energy credits, solicitations, REC banking,
6 and long-term contracts. Do you see that language?

7 A. I do.

8 Q. Okay. So would you agree that under Ohio
9 law at least reasonable compliance efforts include
10 looking at long-term contracts?

11 A. The reading to me said that we would
12 consider long-term contracts, and we indeed have
13 considered long-term contracts. We just don't feel
14 that that's a prudent risk for the company to take on
15 behalf of its shareholders.

16 Q. Okay. So this rule which is -- which
17 amplifies the statute, 4928.64, this rule at least
18 indicates that long-term contracts, efforts to secure
19 long-term contracts, efforts to look at long-term
20 contracts is part of a reasonable compliance
21 strategy, correct?

22 A. Yes.

23 Q. Let me move on to your discussion of
24 long-term versus short-term solar REC contracts. You
25 say in your testimony in a couple places that Duke

1 has primarily relied on short-term REC contract
2 purchases to meet its benchmark obligations; is that
3 correct?

4 A. That's correct.

5 Q. But on page 3, lines 17 through 20 you
6 also say that you are going to be supplementing your
7 short-term REC contract purchases with 15-year
8 commitments, and you say that we'll discuss that
9 rationale for the company's contracting strategy
10 further in your testimony.

11 I want to talk about that rationale for
12 the 15-year contracts in a minute, but just so I'm
13 clear, the 15-year contracts that you're referring
14 to, those are just referring to the residential REC
15 purchase program?

16 A. That's correct, the residential SREC
17 purchased tariff.

18 Q. Is it fair to say that the volume of
19 SRECs that will come from that residential REC
20 purchase program will be relatively small?

21 A. Whether it's fair to say is difficult for
22 me to determine, but it would be my personal opinion
23 that the volume of SRECs from that specific program
24 will be modest at best.

25 Q. Okay. Do you have any idea, a ballpark

1 percentage of what percentage of your solar benchmark
2 compliance will come from the residential REC
3 purchases?

4 A. It's extremely difficult to venture a
5 guess there, but if I were to, I'd say it would be a
6 fraction of a percent.

7 Q. A fraction of a percent of your
8 compliance with the solar energy benchmark.

9 A. Correct.

10 Q. Okay. Thank you.

11 A. Just to give you some additional
12 information on that, the program has been running for
13 several months and we've received five inquiries
14 about it thus far.

15 Q. Okay. Thank you.

16 I want to talk about the rationale for
17 the 15-year contracts that you alluded to on page 3
18 with regard to the residential REC purchases, at
19 least would you agree that one rationale is that
20 long-term contracts will provide customers with
21 certainty, it will allow them the certainty to invest
22 in solar projects, for example?

23 A. I would certainly agree with that.

24 Q. And without that assurance of a long-term
25 revenue stream they might not -- might not be able to

1 get financing or they might not be willing to take
2 that risk to make that initial investment.

3 A. Well, I think absent the ability for
4 utilities within the state of Ohio to enter into
5 long-term contracts with developers of renewable
6 projects it's highly unlikely that we'll be able to
7 generate the RECs requisite for compliance in the
8 state.

9 Q. Well, I was asking just about the
10 residential REC program. Would you agree that one
11 rationale for entering into 15-year contracts with
12 residential customers is to give them the assurance
13 that they might need to invest in these projects?

14 A. Yes, I think that's a fair statement.

15 Q. So isn't it a basic economic truth that
16 an individual is more likely to make that investment
17 if he is confident that he is going to get a return
18 on that investment in the future?

19 A. Yes, not only because he's confident he's
20 going to get the return, but it derisks the project
21 for said investor as well.

22 Q. Okay. How does that basic economic truth
23 that applies to residential customers, why is that
24 different for commercial installers, commercial
25 developers?

1 A. The derisking of the project, is that
2 what you're referring to?

3 Q. Yes.

4 A. It is no different.

5 Q. So commercial developers of solar
6 projects would be more likely to make investments if
7 they were confident that they would be able to recoup
8 their expenses through a long-term contract?

9 A. Yes.

10 Q. Okay. On page 6 starting with line 4 of
11 your testimony you outline some of the risks to
12 support Duke's policy on relying on short-term
13 contracts versus long-term contracts, including the
14 uncertainty of cost recovery and the potential for
15 customers switching; is that correct?

16 A. Uh-huh.

17 Q. With regard to cost recovery, you also
18 say on page 9, line 23 that "...the MRO will persist
19 indefinitely...." Doesn't that alleviate some of the
20 uncertainty that you referenced on page 6?

21 A. I feel it would, yes.

22 Q. Okay. And with regard to the risk of
23 customers switching that you discuss on page 6, are
24 you aware that Duke's long-term forecast report
25 assumes that you're going to win back a lot of these

1 switching customers?

2 A. I am.

3 Q. I just have a couple more questions here.
4 Your solar energy benchmark is going to increase each
5 year. 2009 was .004 percent of retail sales and that
6 number is going to rise to .5 percent of retail sales
7 by 2024; is that correct?

8 A. That is correct.

9 Q. And the company doesn't have any
10 immediate plans to build or own solar generation; is
11 that correct?

12 A. We do not.

13 Q. Okay. So for at least the foreseeable
14 future Duke is going to be relying primarily on REC
15 purchases to meet its benchmarks; is that correct?

16 A. That is correct, yes.

17 Q. Okay. Just in conclusion, your
18 alternative energy filing, I mean it showed that Duke
19 did not meet its 2009 benchmark.

20 MS. WATTS: Objection.

21 EXAMINER STENMAN: Basis?

22 MS. WATTS: I don't believe that's what
23 the witness testified to.

24 MR. REISINGER: I thought we covered that
25 the filing was, it was a force majeure request and it

1 was also a request to modify the benchmark.

2 EXAMINER STENMAN: It was a question. He
3 can answer the question.

4 A. Could you repeat the question, please?

5 Q. Sure. We discussed earlier that your
6 alternative energy filing indicates that Duke was not
7 able to meet its solar energy benchmark without some
8 modifications from the Commission, correct?

9 A. We feel that we did meet our 2009 solar
10 energy benchmark subject to certain findings from the
11 Commission.

12 Q. Okay. And as this benchmark rises each
13 year and considering the fact that you're not going
14 to be building or owning generation in the near
15 future, you're going to have to find a lot more SRECs
16 in the coming years; is that correct?

17 A. That is correct.

18 MR. REISINGER: Thank you, Mr. Ritch. I
19 have no further questions, your Honor.

20 EXAMINER STENMAN: Mr. Garber.

21 MR. GARBER: No questions.

22 EXAMINER STENMAN: Ms. Hotz?

23 MS. HOTZ: No, thank you.

24 EXAMINER STENMAN: Ms. Mooney.

25 MS. MOONEY: No questions.

1 EXAMINER STENMAN: Mr. Yurick.

2 MR. YURICK: No questions, your Honor.

3 EXAMINER STENMAN: Mr. Olikar?

4 MR. OLICKER: No questions, your Honor.

5 EXAMINER STENMAN: Mr. Hart?

6 MR. HART: Just a couple.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Hart:

10 Q. Mr. Ritch, your for alternative energy
11 going forward is essentially the same as it has been
12 under the ESP?

13 A. That is correct.

14 Q. And if we were here in an ESP proceeding,
15 I take it you would still have the same strategy.

16 A. That's correct.

17 EXAMINER STENMAN: Are you finished?

18 MR. HART: Yes.

19 EXAMINER PIRIK: Mr. Montgomery.

20 MR. MONTGOMERY: I have just a few. Can
21 I step up to the table?

22 EXAMINER STENMAN: That would be best. I
23 think we have some empty seats here that you could at
24 least utilize temporarily.

25 - - -

CROSS-EXAMINATION

By Mr. Montgomery:

Q. Just following up on -- sorry, I'm Chris Montgomery, I'm here on behalf of Ohio Advanced Energy, and I'm just following up on some of the questions you received already about your contracting strategy.

On page 4 of your testimony starting on line 22 you note that one primary reason for the effectiveness of, and I'm paraphrasing here, Duke's strategy regarding Ohio's renewable energy benchmarks through short-term REC purchases is the flexibility and responsiveness that this affords.

Can you describe some of the risks associated with short-term REC purchases going forward as the renewable requirements increase?

A. Well, the risk is I think primarily that the requisite number of credits would just not be available in the marketplace.

Q. Thank you.

On page 6 of your testimony starting on line 6 you note that "With respect to risk, we consider many factors including any cost recovery risks and the uncertainty of the availability and cost of RECs in future periods as compared to the

1 present."

2 If the company was assured cost recovery,
3 would Duke Energy-Ohio be willing to enter into
4 longer term contracts to meet the state's renewable
5 requirements?

6 A. Yes, we would.

7 Q. Could you elaborate on that answer, just
8 some of the benefits of being assured cost recovery?

9 A. Elaborate from the company's perspective?

10 Q. That's correct.

11 A. As to why that would be a benefit to the
12 company?

13 Q. That's correct.

14 A. Well, it would just give us certainty
15 that we're going to recover the costs of the entire
16 contract for the entire term of the contract and,
17 therefore, we're not risking the ability of our
18 shareholders to recover those costs.

19 Q. In your testimony you described the risks
20 associated with entering into long-term contracts.
21 Are there any benefits to entering into long-term
22 contracts, and if so, what are they?

23 A. Well, the primary benefit, it would
24 just -- it would streamline and ease our ability to
25 comply by entering into these long-term contracts

1 over, you know, we've defined long-term in my
2 testimony here and I think from others as 15 years or
3 greater.

4 Again, on a nonbypassable basis we think
5 that would be, you know, a great incentive not only
6 for developers to develop projects within the state
7 of Ohio, but also it would speed and streamline our
8 ability to meet the ever-increasing renewable energy
9 credit targets within Senate Bill 221.

10 Q. Directing you to page 7 of your testimony
11 starting on line 20, you describe the company's
12 current implementation of a residential solar REC
13 purchase program under which the company commits to
14 purchase solar RECs from residential customers for a
15 term of 15 years. Has the company considered a
16 longer term REC purchase program for nonsolar,
17 nonresidential projects?

18 A. No, we have not.

19 Q. And because that's the case, why hasn't
20 the company considered that?

21 A. Just because solar tends to be, of the
22 four renewable categories, in-state solar,
23 out-of-state solar, in-state renewables, out-of-state
24 renewables, solar is the perineal for us just due to
25 shortage in the marketplace.

1 Q. On page 8 of your testimony starting on
2 line 23 and going on to page 9 you note that Duke
3 will continue to favor shorter term REC contracts for
4 the reasons you noted previously, "...but we
5 recognize that it may be necessary to supplement this
6 tactic with longer term transactions to adequately
7 assure that the compliance targets are met."

8 Under what circumstances would it be
9 necessary for Duke to supplement its current
10 renewable compliance program for the contracts?

11 A. With assured cost recovery of said
12 contracts for the term of said contracts.

13 Q. Okay. Staying on page 9 of your
14 testimony, starting on line 6, you note that "As
15 compliance obligations grow through time we recognize
16 that multiple tactics will be needed, and that there
17 could very well be a need to introduce into our
18 strategy the issuance of periodic RFPs for RECs,
19 which could result in less administrative burden and
20 could reach additional sellers of RECs."

21 Has the company considered into entering
22 into bundled contracts for both RECs and electricity?

23 A. Bundled contracts are typically more
24 problematic for us just because we don't have an
25 immediate need for the electricity portion of the

1 bundle. But, you know, as the testimony mentions,
2 down the road that may be something that we need to
3 consider as our compliance obligations grow through
4 the years.

5 Q. Okay. So that is something that the
6 company could consider going forward as the
7 compliance targets increase.

8 A. It could, but again, the caveat is
9 whether or not the power side of the equation is
10 actually needed. In most cases it's not.

11 Q. Just one last question here. On page 10
12 of your testimony starting on line 19, you note how
13 Duke's current REC purchase strategy is supportive of
14 state policy as articulated in Ohio Revised Code
15 4928.02.

16 Is it your view that the company's
17 current strategy provides sufficient incentive to
18 renewable energy developers to develop renewable
19 capacity necessary to help the state reach its
20 renewable energy goals?

21 A. I think that the ability to enter into
22 long-term contracts would provide much greater
23 assurance to developers of these types of projects to
24 begin to look at projects to be sited in the state of
25 Ohio to create jobs in areas of economic development.

1 MR. MONTGOMERY: I have nothing further.

2 Thank you.

3 EXAMINER STENMAN: Thank you.

4 Ms. Miller.

5 MS. MILLER: I have no questions, your
6 Honor.

7 EXAMINER STENMAN: Mr. Jones?

8 MR. JONES: Yes, thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Jones:

12 Q. I just have one or two questions,
13 Mr. Ritch. You're saying if the Commission were to
14 grant the MRO for Duke here, would the company not
15 have any plans for construction of renewable
16 facilities to assure compliance with the alternative
17 energy requirements?

18 A. No; we may. I mean, the issue with the
19 MRO is that we have the ability to flex our prices
20 according to the market over time. So that, in
21 theory, could give us the ability to reduce customer
22 switching. So if we have greater -- if we have a
23 greater understanding of what our load will be over
24 time, then we could have an enhanced ability to
25 consider long-term contracts.

1 Q. So that has been under consideration and
2 there may be plans for that in the future?

3 A. No, it hasn't been under consideration to
4 date. It's strictly theory at this point.

5 Q. Okay. I'd like to direct your attention
6 to your testimony on page 10, lines 9 through 11,
7 particularly on 11 where you talk about -- let me
8 back up.

9 Let me start at line 9, you said "As
10 described in testimony of Company witness William Don
11 Wathen, Jr., upon the effective date of the MRO, Duke
12 Energy-Ohio will begin recovering costs for
13 purchasing RECs and for any other costs....." Could
14 you please tell us what kinds of other costs you
15 would have in mind in that statement?

16 A. It would be the purchase price of the
17 RECs and the administrative costs associated with
18 doing so.

19 MR. JONES: That's all I have. Thank
20 you.

21 EXAMINER STENMAN: Any redirect?

22 MS. WATTS: Yes, your Honor, thank you.

23 - - -

24

25

REDIRECT EXAMINATION

By Ms. Watts:

Q. Mr. Ritch, do you recall some discussion with Mr. Reisinger about the benefits of customers of longer term contracts?

A. I do.

Q. And the fact that those longer term contracts will reduce risks for those customers and, therefore, incentivize construction?

A. I do.

Q. Can you explain why the company has been hesitant to date to enter into long-term contracts?

A. Simply because of the uncertainty over its ability to recover the cost of those contracts over a long period of time due to customer switching.

Q. And with respect to the company's inability to recover those costs, would you describe how the rider mechanism works when customers are switching away and the costs -- I'd like you to explain how the costs increase for each customer.

A. Sure. In general what happens, as customers switch away, that leaves a smaller base of remaining customers, so the costs heaped upon those remaining customers increases and increases, and that further accelerates the switching. So I think

1 that's, you know, one thing that you consider with
2 the whole issue of bypassability is what that does to
3 your remaining base of customers.

4 Q. Thank you.

5 MS. WATTS: I have nothing further.

6 EXAMINER STENMAN: Does anyone have any
7 recross?

8 MR. HART: I do, please.

9 EXAMINER STENMAN: Okay.

10 - - -

11 RECROSS-EXAMINATION

12 By Mr. Hart:

13 Q. This switching issue, you said that's
14 your real concern about long-term contracts, so if
15 you could solve switching, you could enter into more
16 long-term contracts?

17 A. If we had certainty of load over a long
18 period of time, we could.

19 Q. And is it fair to say the reason you have
20 a lot of switching is that Duke's rates are above
21 market right now?

22 A. That's correct.

23 Q. Is it possible for Duke to proceed with
24 an ESP case with lower rates and solve the switching
25 that way as well?

1 A. For lack of a better term, I don't think
2 that's a question specifically in my wheelhouse, but
3 in theory to have -- the important part is the
4 ability to flex your prices for the market.

5 Q. So if you had the ability to do that
6 under an ESP case, that would solve the same problem
7 that you would solve through an MRO?

8 A. It may.

9 MR. HART: Thank you.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Olikar:

13 Q. Now, do CRES providers currently have an
14 obligation to satisfy portfolio requirements?

15 A. They do.

16 Q. And are they guaranteed the ability to
17 recover those costs?

18 A. No, they're not.

19 Q. Okay.

20 MR. OLIKER: No further questions.

21 EXAMINER STENMAN: Any recross from
22 anyone else?

23 (No response.)

24 EXAMINER STENMAN: Okay, thank you,
25 Mr. Ritch.

1 MS. WATTS: Your Honor, I do have one
2 more, if I may, one more redirect question.

3 EXAMINER STENMAN: We're done. Thank
4 you.

5 THE WITNESS: Thank you.

6 MS. WATTS: We would ask that Duke Energy
7 Exhibit No. 9 be admitted into evidence, please.

8 EXAMINER STENMAN: Any objections to the
9 admission of Duke Energy Exhibit 9?

10 (No response.)

11 EXAMINER STENMAN: Duke Exhibit 9 will be
12 admitted.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 EXAMINER STENMAN: How would the company
15 like to proceed?

16 MS. SPILLER: Actually, your Honor, may
17 we go off the record for a moment?

18 EXAMINER STENMAN: Let's go off the
19 record.

20 (Discussion off the record.)

21 EXAMINER STENMAN: Let's go back on the
22 record.

23 MS. WATTS: May I approach, your Honor?

24 EXAMINER STENMAN: You may.

25 Please raise your right hand.

1 (Witness sworn.)

2 EXAMINER STENMAN: Thank you.

3 MS. WATTS: Your Honor, may we have
4 marked Mr. Stevie's testimony as Duke Energy Exhibit
5 10, please?

6 EXAMINER STENMAN: It will be so marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 - - -

9 RICHARD G. STEVIE

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

12 DIRECT EXAMINATION

13 By Ms. Watts:

14 Q. Dr. Stevie, do you have before you what's
15 been marked as Duke Energy-Ohio Exhibit 10?

16 A. Yes.

17 Q. And would you state your name for the
18 record, please?

19 A. My name is Richard Stevie.

20 Q. And by whom and in what capacity are you
21 employed?

22 A. Employed by Duke Energy Business Services
23 as chief economist.

24 Q. Would you describe what Duke Energy
25 Exhibit 10 is, please?

1 A. This is my direct testimony in this
2 proceeding concerning the energy efficiency -- the
3 linkage of energy efficiency to the MRO application.

4 Q. And if I were to ask you the questions
5 contained in that testimony again today, would your
6 responses be the same?

7 A. Yes.

8 MS. WATTS: Mr. Stevie is available for
9 cross-examination.

10 EXAMINER STENMAN: Thank you.

11 Ms. Kelaps-Clark, any cross?

12 MS. CLARK: No questions, your Honor.

13 EXAMINER STENMAN: Mr. Reisinger?

14 MR. REISINGER: No questions, your Honor.

15 EXAMINER STENMAN: Mr. Garber?

16 MR. GARBER: No questions, your honor.

17 EXAMINER STENMAN: Ms. Hotz?

18 MS. HOTZ: No.

19 EXAMINER STENMAN: Ms. Mooney?

20 MS. MOONEY: Yes, I have a few questions.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. Mooney:

24 Q. Mr. Stevie, you testify on page 5 about
25 some of the company's portfolio plan under case

1 09-1999-EL-POR; is that correct?

2 A. Yes.

3 Q. And you say it was essentially a refiling
4 of the same programs previously approved by the
5 Commission in the ESP?

6 A. Yes.

7 Q. Do you have information about how the
8 programs that were approved in the 09-1999 docket
9 ended up meeting their goals?

10 A. I provided that for 2009 on my Exhibit
11 RGS-2, Attachment RGS-2, and that was also provided
12 in our status report for 2009. Our 2010 report is
13 due to be filed March 15th of this year.

14 Q. Would you agree with me that the company
15 has not met its goals for the, especially for the
16 residential programs that were included in the POR?

17 A. No. We met the requirements of the
18 Commission -- the SB 221 requirements.

19 Q. Okay. Let me ask it this way, then, has
20 Duke refunded to customers money collected under
21 Rider DR -- DSMR?

22 A. In what context?

23 Q. Duke was required to refund 4,346,091 of
24 overrecovery to residential customers because it
25 failed to spend funds collected through rider DS --

1 MS. WATTS: Objection, your Honor. If
2 Colleen's offering testimony from something that she
3 can give to the witness to look at, then perhaps he
4 can respond to this question, but I don't know what
5 she's referring to right now.

6 EXAMINER STENMAN: Do you have a copy of
7 what you're referring to?

8 MS. MOONEY: I'm referring to a recovery
9 of money collected from Rider DSMR for the period
10 from July 2007 to June 2008.

11 EXAMINER STENMAN: Have we established
12 that the witness knows --

13 MS. MOONEY: Well, that's what I asked
14 him.

15 EXAMINER STENMAN: Okay. Go ahead.

16 Q. (By Ms. Mooney) Do you know about that
17 refund?

18 A. What exactly is the question?

19 Q. Are you aware that Duke refunded
20 \$4,346,091 in overrecovery to residential customers
21 because it failed to spend funds collected through
22 Rider DSMR for energy efficiency programs between
23 June 2007 and June 2008?

24 A. This sounds like it is a rate issue
25 that -- I'm familiar with the reconciliations that

1 were filed with the Commission and were subsequently,
2 as I recall, approved, and the -- as far as I know
3 there was an adjustment made to the Save-A-Watt, the
4 rider to account for those changes.

5 Q. And there was a second refund for the
6 period July through December 2009 for 3,243,694. Are
7 you aware of that refund?

8 A. Is this for the period July to December
9 '08?

10 Q. I have '09. July to December of '09.

11 A. That doesn't make any sense to me.

12 MS. WATTS: Again, your Honor, I would
13 object because there's no foundation for this and
14 Dr. Stevie's at a disadvantage not having any idea
15 what Ms. Mooney is referring to.

16 EXAMINER STENMAN: I would agree, at this
17 point he doesn't seem to know what you're referring
18 to.

19 MS. MOONEY: Okay.

20 Q. Okay, Mr. Stevie, then let me ask you
21 about the -- are you aware of the Commission's
22 opinion and order in 09-1999-EL-POR that was issued
23 December 15th, 2010?

24 A. Is this the decision in the POR case?

25 Q. Yes.

1 A. I have read through that.

2 Q. So you are aware of the Commission's
3 opinion and order in that case.

4 A. Yes, I am.

5 Q. Okay. Are you aware that the Commission
6 ordered Duke to immediately remove recovery of any
7 lost generation revenues from Rider DRSR in that
8 opinion and order?

9 A. I'm aware that the Commission ruled that
10 the generation portion of lost margins should be
11 removed.

12 Q. But the Commission's opinion and order
13 directed Duke to immediately remove recovery of any.
14 Are you aware of that? Of any lost generation --

15 MS. WATTS: Objection, your Honor, with
16 respect to relevancy here.

17 MS. MOONEY: Well, the relevance is he's
18 testifying about the company's compliance with --

19 EXAMINER STENMAN: It will be overruled.
20 Let's see where we're going.

21 THE WITNESS: Can I get the question read
22 back again, please?

23 (Record read.)

24 A. Yes, I'm aware of that. I think that's
25 what I said before.

1 Q. Pardon?

2 A. I think that's what I said.

3 Q. And were you aware that the Commission
4 had previously also ordered Duke to remove --

5 MS. WATTS: Objection; no foundation.

6 EXAMINER STENMAN: Overruled.

7 A. "Previously" when?

8 Q. Well, are you aware that this was not the
9 first time that -- the opinion and order in 09-1999
10 was not the first time the Commission issued an order
11 for you to remove the lost generation revenues from
12 the rider?

13 A. I'm not aware of that.

14 Q. Okay, that's fine.

15 MS. MOONEY: Your Honor, I think the best
16 way for me to handle this is, and I'm not sure this
17 is necessary for the Commission to take
18 administrative notice of its opinion and order in
19 09-1999-EL-POR that was issued December 15th, 2010.

20 EXAMINER STENMAN: Administrative notice
21 will be taken.

22 MS. MOONEY: Okay. That's all I have.
23 Thank you.

24 EXAMINER STENMAN: Any questions,
25 Mr. Yurick?

1 MR. YURICK: I have no questions, thank
2 you, your Honor.

3 EXAMINER STENMAN: Mr. Olikier?

4 MR. OLICKER: No questions, your Honor.

5 EXAMINER STENMAN: Mr. Hart?

6 MR. HART: No.

7 EXAMINER STENMAN: Mr. Montgomery?

8 MR. MONTGOMERY: No questions.

9 EXAMINER STENMAN: Ms. Miller.

10 MS. MILLER: No questions, your Honor.

11 EXAMINER STENMAN: Mr. Jones?

12 MR. JONES: No questions, your Honor.

13 EXAMINER STENMAN: Redirect?

14 MS. WATTS: Yes, your Honor, just one
15 question.

16 - - -

17 REDIRECT EXAMINATION

18 By Ms. Watts:

19 Q. Dr. Stevie, with respect to generation of
20 lost revenues, in your opinion is there any
21 relationship between that particular issue and
22 compliance with the EE mandates in this case?

23 A. No, there's no relationship.

24 Q. And could you elaborate on that a bit,
25 please?

1 A. Well, under the MRO application we're
2 trying to show that the application and the
3 compliance with Senate Bill 221, that the compliance
4 with Senate Bill 221 will not be affected by that
5 application. It has no relationship at all to
6 recovery of lost margins in any shape or sense,
7 that's an entirely different issue associated with
8 cost recovery for energy efficiency. That's an
9 entirely different proceeding in my view.

10 Q. Thank you.

11 And with respect to compliance, is it
12 correct that the company met its targets for the
13 first reporting year?

14 A. That's correct.

15 Q. And intends to continue to meet those
16 targets out over time?

17 A. It will certainly make every effort to do
18 that subject to the cost-effectiveness of the
19 programs.

20 MS. WATTS: Thank you. Nothing further.

21 EXAMINER STENMAN: Any recross?

22 (No response.)

23 EXAMINER STENMAN: Thank you, Mr. Stevie.

24 MS. WATTS: Your Honor, we'd like to move
25 Exhibit Duke Energy-Ohio 10 into evidence, please.

1 EXAMINER STENMAN: Any objections?

2 (No response.)

3 EXAMINER STENMAN: Duke 10 will be
4 admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 EXAMINER STENMAN: Let's go off the
7 record.

8 (Discussion off the record.)

9 EXAMINER STENMAN: Let's take a 20-minute
10 break. So we'll come back at 11:20.

11 (Recess taken.)

12 EXAMINER STENMAN: Let's go back on the
13 record.

14 MS. SPILLER: Thank you, your Honor. At
15 this time Duke Energy-Ohio will re-call to the stand
16 Julia S. Janson, please.

17 EXAMINER STENMAN: Since it's been
18 probably about 24 hours, let me just swear you in
19 again. Would you raise your right hand?

20 (Witness sworn.)

21 EXAMINER STENMAN: Thank you. I believe
22 we were with Mr. Olier for cross.

23 MS. SPILLER: Your Honor, if I may before
24 we get started, oh, she's got a microphone, okay, I
25 couldn't see it behind the computer monitor.

1 THE WITNESS: Is this okay? Can you hear
2 me?

3 MS. SPILLER: I can.

4 MR. OLIKER: Your Honor, at this time I'd
5 like to mark some of the exhibits that we previously
6 discussed.

7 EXAMINER STENMAN: Okay.

8 MR. OLIKER: I would like to start with
9 the PowerPoint presentation previously identified as
10 document No. 4. I would like to identify that and
11 mark for identification as Exhibit 4 IEU-Ohio.

12 EXAMINER STENMAN: Why don't we just
13 start with number 1 for clarity of the record so we
14 can go in order.

15 THE WITNESS: May I?

16 EXAMINER STENMAN: Yes.

17 MR. OLIKER: I apologize.

18 EXAMINER STENMAN: That's okay.

19 MR. OLIKER: I would like to mark for
20 identification the document previously called
21 document 1, the February version of the transaction
22 review White Paper, I would like to mark that for
23 identification as IEU-Ohio Exhibit 1.

24 EXAMINER STENMAN: It will be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. OLIKER: I'm sorry, I'm going to wait
2 for him to pass out the copies.

3 EXAMINER STENMAN: That's okay. And then
4 you'll be marking the redacted version as 1A?

5 MR. OLIKER: Yes, the redacted version of
6 that document be marked as IEU-Ohio Exhibit 1A.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. OLIKER: Next I'd like to mark for
9 identification the document previously identified by
10 the Commission as document 2, it is the final
11 transaction review White Paper, I would like to mark
12 that document for identification as IEU-Ohio Exhibit
13 2.

14 EXAMINER STENMAN: Is that the White
15 Paper dated May 7th?

16 MR. OLIKER: Yes it is.

17 EXAMINER STENMAN: Okay, it will be
18 marked as IEU Exhibit 2.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. OLIKER: And I would like to mark for
21 identification the redacted version as IEU-Ohio
22 Exhibit 2A.

23 EXAMINER STENMAN: It will be so marked.

24 (EXHIBITS MARKED FOR IDENTIFICATION.)

25 MR. OLIKER: Your Honor, I would like to

1 mark for identification the document previously
2 identified by the Commission as document 3 also known
3 as the appendix to the White Paper. I would like to
4 mark that document for identification as IEU-Ohio
5 Exhibit 3.

6 EXAMINER STENMAN: It will be so marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. OLIKER: And I would also like to
9 mark for identification the redacted version of that
10 document as IEU-Ohio Exhibit 3A.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. OLIKER: Your Honor, I would like to
13 mark for identification the document previously
14 identified by the Commission as document 4, the
15 PowerPoint presentation, I would like to mark that
16 document for identification as IEU-Ohio Exhibit 4.

17 EXAMINER STENMAN: It will be so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. OLIKER: And I would like to mark for
20 identification the redacted version as IEU-Ohio
21 Exhibit 4A.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. OLIKER: I apologize, your Honor, I'm
24 trying to make sure we have sufficient copies for
25 every one.

1 EXAMINER STENMAN: Take your time.

2 MR. OLIKER: Your Honor, I'd like to mark
3 for identification the document previously identified
4 by the Commission as document 5, the assumptions
5 document, I'd like to mark that document for
6 identification as IEU-Ohio Exhibit 5.

7 EXAMINER STENMAN: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. OLIKER: And I'd like to mark for
10 identification the redacted version of that document
11 as IEU-Ohio Exhibit 5A.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MR. OLIKER: Your Honor, I'd like to mark
14 for identification the document previously identified
15 by the Commission as document 6, the e-mail, I'd like
16 to mark that document for identification as IEU-Ohio
17 Exhibit 6.

18 EXAMINER STENMAN: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. OLIKER: I'd like to mark for
21 identification the redacted version as IEU-Ohio
22 Exhibit 6A.

23 EXAMINER STENMAN: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 EXAMINER STENMAN: Does that conclude the

1 marking of the exhibits?

2 MR. OLIKER: Yes, it does, your Honor.

3 EXAMINER STENMAN: Ms. Spiller, it's my
4 understanding you wanted to make a motion with regard
5 to IEU Exhibits 1 through 6?

6 MS. SPILLER: Your Honor, I will make now
7 a motion concerning the confidential nature of
8 information contained within those documents,
9 reserving the right to make further objections as to
10 the admissibility of the documents into evidence in
11 this case.

12 The first objection, Duke Energy-Ohio
13 would move for a protective order deeming certain
14 information contained within these documents as
15 privileged, proprietary, trade secret information.

16 Based upon conversations with the Bench
17 we have redacted information that Duke Energy-Ohio
18 submits satisfies the criteria of business
19 proprietary and trade secret information, the public
20 disclosure of which would work unfair competitive
21 advantages to Duke Energy-Ohio both in the
22 marketplace and in its interaction with customers,
23 governmental, other regulatory bodies, with whom it
24 interacts and to whose jurisdiction it is subject.

25 So we would again move that those

1 documents that have collectively been identified this
2 morning as IEU-Ohio Exhibits 1A, 2A, 3A, 4A, and 5A,
3 that they be afforded confidential -- I'm sorry, and
4 6A.

5 EXAMINER PIRIK: Actually the numbers are
6 1 through 6 that are the confidential documents, 1A
7 through 6A are the redacted versions.

8 MS. SPILLER: Yes, your Honor, thank you
9 very much. So the documents that have been marked as
10 unredacted in fact be deemed business proprietary
11 confidential and subject to seal and the record
12 treated as such.

13 EXAMINER STENMAN: The documents that
14 have been marked as IEU Exhibits 1, 2, 3, 4, 5, and 6
15 will be granted protective treatment pursuant to rule
16 4901-1-24(F) of the Ohio Administrative Code which
17 provides the protective order shall automatically
18 expire after 18 months and requires any party wishing
19 to extend a protective order to file an appropriate
20 motion at least 45 days in advance of the expiration
21 date.

22 If Duke wishes to extend this
23 confidentiality treatment it should file an
24 appropriate motion at least 45 days in advance. If
25 no such motion to extend confidential treatment is

1 filed, the Commission may release this information
2 without any prior notice to Duke.

3 MS. SPILLER: Thank you, your Honor.

4 MR. OLIKER: Your Honor, can I have a
5 clarification? We're not -- sorry.

6 EXAMINER STENMAN: Go ahead.

7 MR. OLIKER: I'm just trying to make sure
8 we're not also discussing attorney-client privilege,
9 work product, or any of those issues in this hearing
10 analysis now because I believe we already had that
11 discussion around the time of the motion to compel.

12 EXAMINER STENMAN: I don't believe we are
13 discussing those issues. The Bench has reviewed the
14 confidential versions and also the redacted versions
15 and we believe that anything that has been redacted
16 is the appropriate subject of protective treatment.

17 MR. OLIKER: Thank you, your Honor.

18 EXAMINER STENMAN: Mr. Oliker, you can
19 proceed.

20 - - -

21 JULIA S. JANSON

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

24 CROSS-EXAMINATION

25 By Mr. Oliker:

1 Q. Good morning, Ms. Janson.

2 A. Good morning.

3 Q. I'm going to try to keep my questions
4 along a logical track and if at any point I don't
5 make sense to you, I apologize, please ask for a
6 clarification, but due to the restrictions of the
7 confidential and open portion it may seem like the
8 questions may not make sense. So I apologize for
9 that, and please ask me at any time to clarify a
10 question if there's a problem.

11 A. I will.

12 EXAMINER STENMAN: And let me just remind
13 the parties that we are in an open portion of the
14 transcript.

15 MS. SPILLER: Thank you, your Honor.

16 Q. Ms. Janson, earlier you indicated that
17 you authored presentations and --

18 EXAMINER STENMAN: Can you move the
19 microphone a little closer, thank you.

20 Q. Earlier you indicated that you authored
21 presentations and made recommendations to the
22 transaction review committee.

23 A. I believe what I indicated was that I
24 collaborated on presentations that were presented to
25 the transaction review committee, yes.

1 Q. Okay.

2 EXAMINER STENMAN: Are both of these
3 microphones working? You both need to make an effort
4 to speak into them. Is there a blue light on there?

5 THE WITNESS: There is not a blue light.

6 EXAMINER STENMAN: Let me see what's
7 going on, let's go off the record for a moment.

8 (Off the record.)

9 EXAMINER STENMAN: Back on the record.

10 MR. OLIKER: Your Honor, do I need to
11 give the witness another copy of the document?

12 EXAMINER STENMAN: She has copies of the
13 redacted version provided to her. When we get to the
14 confidential portion of the transcript you'll need to
15 provide her copies of the unredacted.

16 MR. OLIKER: Thank you.

17 Q. (By Mr. Oliker) Ms. Janson could you
18 please look at the document that has been marked for
19 identification as IEU-Ohio Exhibit 4, the PowerPoint
20 presentation.

21 EXAMINER STENMAN: Are we at 4 or 4A?

22 MR. OLIKER: 4A, your Honor, thank you.

23 EXAMINER STENMAN: Thank you.

24 MS. SPILLER: Your Honor, if I may
25 interject, the documents that Ms. Janson has do not

1 have the "A" designation, they are the redacted
2 copies.

3 EXAMINER STENMAN: Okay. Mr. Olikar, can
4 you retrieve those from the witness and just quickly
5 mark them so that we're clear.

6 Q. Ms. Janson, are you at document No. 4A?

7 A. I do.

8 Q. Did you coauthor that document?

9 A. I did.

10 Q. Is that document one of several documents
11 that the transaction review committee relied upon
12 when it made its decision to exit the Midwest ISO?

13 A. As I believe I mentioned in my testimony
14 yesterday, it was not the transaction review
15 committee that ultimately made that decision, it was
16 based upon a recommendation from the transaction
17 review committee to our chairman, president, and
18 chief executive officer, Jim Rogers.

19 Q. Was that document one of the documents
20 the transaction review committee relied upon when
21 they made that recommendation?

22 A. Yes, I believe so.

23 Q. Are you familiar with the other documents
24 that the transaction review committee relied upon to
25 make the recommendation?

1 A. Can you be more specific about the
2 documents? I will tell you that the transaction
3 review committee will typically receive both
4 documents from the recommending sponsors or
5 presenters as well as documents from other parts of
6 the organization, so without specificity I couldn't
7 know what documents they would have received with
8 reference to this.

9 Q. Perhaps I can clarify. The PowerPoint
10 presentation marked as IEU-Ohio Exhibit 4, that is a
11 summary of several other documents; is that correct?

12 A. Exhibit 4A?

13 Q. That's correct.

14 A. I think it would be -- I don't know that
15 it was supplemental, but it was certainly part of the
16 package that they would have received in
17 contemplation of our presentation.

18 Q. Can you identify which documents you
19 relied upon when you coauthored that presentation?

20 A. I cannot.

21 Q. Are you familiar with the transaction
22 review committee White Paper?

23 A. I'm certainly familiar with the White
24 Paper process, yes.

25 Q. If you could look at the document marked

1 for identification as IEU-Ohio Exhibit 2A; do you
2 recognize that document?

3 A. I do.

4 Q. Did you rely upon that document when you
5 authored the PowerPoint presentation?

6 A. Coauthored, yes.

7 Q. And is it safe to say that you relied on
8 that document when you made the recommendation to the
9 transaction review committee?

10 A. Which is "that document," the White
11 Paper?

12 Q. The White Paper marked as IEU-Ohio
13 Exhibit 2A.

14 A. That in addition to any other documents I
15 may have reviewed in conversations and meetings in
16 which I would have taken part.

17 Q. Are you also familiar with the appendix
18 to the White Paper marked IEU-Ohio Exhibit 3A?

19 A. I am.

20 Q. And did you rely on that document when
21 you made a recommendation to the transaction review
22 committee?

23 A. Again, that would have been one of any
24 number of documents and conversations I would have
25 relied upon.

1 Q. Okay. And you're also familiar probably
2 with IEU-Ohio Exhibit 4A. Actually, I apologize.
3 IEU-Ohio Exhibit 5A, known as the assumptions
4 document. Do you recognize that document?

5 A. I do.

6 Q. And did you rely on that document when
7 you made a recommendation to that committee regarding
8 the withdrawal of the Midwest ISO to PJM?

9 MS. SPILLER: Your Honor, I'm going to
10 object to this line of questioning insofar as the
11 internal decision-making process regarding the
12 business decision is not relevant to the issues.

13 EXAMINER STENMAN: Can you use your
14 microphone.

15 MS. SPILLER: I'm sorry, your Honor. I'd
16 just note an objection to relevance. The internal
17 business -- the internal decision-making process of
18 Duke Energy-Ohio is not relevant to any of the issues
19 in this case.

20 MR. OLIKER: I believe that the witness
21 has already stated that there are benefits to moving
22 to PJM and we're trying to figure out what those
23 benefits are and what facts they relied upon in
24 making the recommendation to move to PJM.

25 EXAMINER STENMAN: The objection will be

1 overruled at this time.

2 MS. SPILLER: Thank you, your Honor.

3 Q. Going back to the document that has been
4 marked as IEU-Ohio Exhibit 2A, are there earlier
5 versions of that document?

6 A. Yes.

7 Q. Would the document marked as IEU-Ohio
8 Exhibit 1A be one of those versions?

9 A. Yes. And if I might, again, we had the
10 discussion yesterday about the role of the
11 transaction review committee in terms of vetting
12 those cross-functional company issues and making
13 recommendations to Mr. Rogers.

14 We will, from time to time, pursue that
15 body multiple times with any given transaction or
16 matter we ask them to review to bring either updated
17 information, updated assumptions, or if something in
18 the external market, for instance, would change. So
19 that wouldn't be unc customary for there to be more
20 than one draft that we would present to the TRC.

21 MR. OLKER: Your Honor, I object to that
22 the answer exceeds the scope of the question.

23 MS. SPILLER: Your Honor, I think the
24 witness is certainly permitted to --

25 EXAMINER STENMAN: Just a moment.

1 MS. SPILLER: I'm sorry.

2 EXAMINER STENMAN: The objection will be
3 overruled.

4 Ms. Janson, if you could just try to
5 answer the questions as they're asked.

6 Q. (By Mr. Olikier) I'm sorry to bounce
7 around here, but I'd like to go back to the document
8 marked as IEU-Ohio Exhibit 4A, the PowerPoint
9 presentation. Mr. Whitlock, who is also a witness
10 for the company in this proceeding, he's also listed
11 as -- I'm sorry, he's listed as a coauthor of the
12 document; is that correct?

13 A. He was a copresenter with me, yes.

14 Q. In his testimony Mr. Whitlock states that
15 he is employed by Duke Energy Business Services, LLC
16 as president, midwest commercial generation. Who
17 does Mr. Whitlock report to?

18 A. Mr. Whitlock reports to Mr. Trent, who's
19 also a witness in this case, as group executive and
20 president of our commercial business. He's also a
21 member of the transaction review committee.

22 Q. So Mr. Whitlock is not in your
23 supervision?

24 A. That is correct. He is a peer.

25 Q. To be clear for the record, several of

1 these documents mention TRC several times. What does
2 "TRC" mean?

3 MS. SPILLER: Objection. Asked and
4 answered. I think this was covered in depth
5 yesterday.

6 EXAMINER STENMAN: It will be overruled.

7 A. The TRC is the transaction review
8 committee.

9 Q. And what does "DEO" mean?

10 A. Duke Energy-Ohio.

11 Q. And what does "DEK" mean?

12 A. Duke Energy-Kentucky.

13 Q. Okay. On page 2 of 4 of the PowerPoint
14 presentation IEU Exhibit 4, the second sub-bullet --

15 A. I'm sorry, does the --

16 Q. 4A. I apologize.

17 A. 4A, but the pages aren't numbered so does
18 the cover page, is it page 1?

19 Q. Look in the top right corner. Oh, at the
20 top.

21 A. Okay. I'm sorry. Page 2 of 4 you say?

22 Q. That's right.

23 A. Uh-huh.

24 Q. The second bullet under "TRC Action
25 Requested" indicates that the TRC previously approved

1 the transfer effective June 1, 2014. On what date
2 did the TRC approve the plan to exit the midwest ISO?

3 MS. SPILLER: Objection as to relevance.

4 EXAMINER STENMAN: Overruled.

5 A. I do not recollect the exact date but I
6 will tell you it was in the spring.

7 Q. Which year?

8 A. Of this year, but I believe those words
9 meant an effective date of the transfer, not the
10 effective date of the TRC decision.

11 Q. Do you mean 2010?

12 A. That's the year we're in. Uh-huh.

13 MS. SPILLER: No. 2011.

14 A. Oh, I'm sorry. 2010. My goodness, yes.
15 2010.

16 Q. Thank you.

17 A. I apologize, I've lost a month here.

18 Q. Did Duke Energy-Ohio ever communicate to
19 the Midwest ISO that it intended to leave to PJM, did
20 they ever communicate a June 1, 2014 exit date?

21 A. I am not -- I don't know specifically. I
22 think you should ask either Witness Whitlock or
23 Witness Trent.

24 Q. Aren't you responsible for the regulated
25 utility, Ms. Janson?

1 MS. SPILLER: Objection; asked and
2 answered yesterday.

3 EXAMINER STENMAN: Overruled.

4 A. I am, but the communication with MISO
5 would have taken place at Mr. Trent's level, and
6 without a document to review, I'm not certain that
7 MISO was specifically notified. I know they were
8 notified that we intended to transfer, but your
9 specific question about whether we intended to
10 transfer on that date, I am not a hundred percent
11 positive.

12 MR. OLIKER: I apologize if this throws
13 off our exhibit count, but at this point I'd like to
14 mark for identification IEU-Ohio Exhibit 7, a letter
15 to Midwest ISO by Ms. Janson telling them of the
16 withdrawal from PJM.

17 EXAMINER STENMAN: This will be marked as
18 IEU Exhibit 7.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. Ms. Janson, do you recognize that
21 document?

22 A. I do.

23 Q. Can you describe what it is?

24 A. It is a letter from me to Mr. Bear,
25 notifying MISO of DEO and DEK's intent to withdraw

1 from MISO effective December 31st, 2011.

2 Q. Are there any earlier versions of that
3 document?

4 MS. SPILLER: Objection to the relevance.

5 MR. OLIKER: I'm trying to determine if
6 it was ever communicated that they were going to be
7 leaving the Midwest ISO to join PJM and when that may
8 have occurred.

9 MS. SPILLER: Again, your Honor, I'm
10 going to object to the relevance. The critical issue
11 in this case regarding RTO membership is whether Duke
12 Energy-Ohio belongs to an independent RTO membership.

13 MR. OLIKER: There are additional issues
14 associated with RTO membership.

15 EXAMINER STENMAN: The objection will be
16 overruled.

17 MR. OLIKER: Thank you.

18 A. I do not believe so.

19 Q. (By Mr. Oliker) Thank you.

20 Going back to IEU-Ohio Exhibit 4A, on
21 numbered page 2 of 4 the document that has been
22 marked as, I'm sorry, the TRC is being requested to
23 approve the transfer from the Midwest ISO to PJM on
24 June 1, 2012. Did the transaction review committee
25 provide that approval, and if yes, on what date?

1 A. Can you restate your question, please?

2 EXAMINER PIRIK: Mr. Olikar, can you pull
3 the microphone closer?

4 MR. OLIKER: Sure.

5 Q. Could you tell me if the transaction
6 review committee approved the June 1, 2012 exit date
7 from the Midwest ISO and when they provided that
8 approval?

9 A. Yes, I believe that they did, and that
10 would have been the May 2010 date we discussed
11 earlier.

12 Q. Do you know when in May?

13 A. The exact day? On or about the 7th, I
14 believe.

15 Q. Okay. And did the June 1, 2012, exit
16 date later change?

17 A. Can you expound upon your question?

18 Q. The transaction review committee, you
19 stated, approved a June 1, 2012, exit date. I'm
20 wondering if that date later changed.

21 MS. SPILLER: Again, object to the
22 relevance.

23 EXAMINER STENMAN: It will be overruled.

24 A. I think you'll need to check with another
25 witness on that, please.

1 Q. Could you please read the letter that you
2 drafted to the Midwest ISO?

3 A. Yes, and it has an effective January 1,
4 2012 date.

5 Q. So the date did change.

6 A. Yes.

7 Q. Do you know when in May Duke Energy-Ohio
8 provided this information to the Midwest ISO?

9 MS. SPILLER: I'm going to object to the
10 extent Exhibit 7 speaks for itself in terms of the
11 date of the letter.

12 EXAMINER STENMAN: Your objection will be
13 overruled.

14 You can answer the question.

15 A. May 20th, 2010.

16 Q. Did they provide that information to the
17 Midwest ISO informally rather than the letter you
18 sent previous to that date?

19 A. I do not know.

20 Q. I think perhaps an exhibit can provide
21 additional information on when the approval happened.
22 If you look at IEU-Ohio Exhibit 6A, the e-mail. Are
23 you familiar with this document or were you aware of
24 its existence?

25 A. I was not copied on this correspondence,

1 but I do know as a matter of course Ms. Council would
2 typically inform Mr. Rogers if he wasn't present for
3 a transaction review committee of the outcome of the
4 meeting and request his approval under our delegation
5 of authority, and that appears to be what this is.

6 Q. And would you consider Mr. Rogers'
7 response there the approval to make the exit from the
8 Midwest ISO to PJM?

9 A. Yes.

10 Q. And the information, I believe you
11 previously stated this, about exiting from the
12 Midwest ISO, that was communicated via the letter
13 that you authorized known as IEU-Ohio Exhibit 7?

14 MS. SPILLER: Objection; asked and
15 answered.

16 EXAMINER STENMAN: It will be overruled.

17 THE WITNESS: I'm sorry, can you ask the
18 question again?

19 MR. OLIKER: Can you please repeat the
20 question?

21 (Record read.)

22 A. Yes.

23 Q. Are you aware of whether at any time Duke
24 Energy-Ohio made its exit from the Midwest ISO
25 conditional on the occurrence of events or changes to

1 market structure?

2 A. Can you restate the question?

3 Q. Are you aware if Duke Energy-Ohio told
4 the Midwest ISO that they will leave for PJM unless
5 certain events happen?

6 A. Can you specify "events"?

7 Q. Perhaps a change in market structure or
8 manner of assessing capacity.

9 A. I did not have that conversation with
10 MISO.

11 Q. Thank you.

12 And are you aware of MISO offering any
13 concessions or commitments regarding changes to
14 market structure or other commitments?

15 MS. SPILLER: I will again object to the
16 relevance to this line of questioning.

17 A. I am aware that many of the --

18 EXAMINER STENMAN: Well, Mr. Oliker, do
19 you have a response?

20 MR. OLIKER: Well, for one, the
21 application has MISO or PJM listed as the possible
22 RTO in which the competitive bidding process will
23 take place, and the interactions with the RTO and the
24 market monitor are very important for conditions of
25 that competitive bidding process.

1 EXAMINER STENMAN: The objection will be
2 overruled.

3 MS. SPILLER: Your Honor, may I be heard
4 only to the extent that Mr. Oliker misstates the
5 application? The application identifies that we are
6 currently in the Midwest ISO but in the process of
7 realigning.

8 EXAMINER STENMAN: The application speaks
9 for itself, the way counsel depicts the application
10 is irrelevant to the Commission's consideration.

11 Do you need the question read back?

12 THE WITNESS: I do.

13 (Record read.)

14 A. I am aware that for many of the reasons
15 the decision was made, and some of those strategic
16 considerations were outlined in my testimony
17 yesterday, for many of the reasons that the company
18 made the decision to move to PJM we have been
19 communicating with MISO our concern about its ability
20 to be as effective in a competitive retail generation
21 market as Ohio for quite some time.

22 And I do also understand that at the, you
23 know, final hour, if you will, Mr. Bear had written
24 communications with Mr. Trent where in a last-ditch
25 attempt I would call it, to not have us move from

1 MISO to PJM certain, you call them concessions, I
2 would say offers were made to try and make MISO as
3 favorable as PJM would be in certain regards. And
4 those communications were not had by me either in
5 writing or verbally.

6 Q. Could you identify who had those
7 communications besides Mr. Trent?

8 A. No, I cannot.

9 Q. Are you aware of a March 22nd, 2010,
10 meeting between Mr. Trent and the Midwest ISO?

11 A. I was aware of the existence of a meeting
12 between Mr. Trent and MISO. The exact date you'll
13 have to forgive me.

14 Q. And do you --

15 EXAMINER STENMAN: Mr. Olikier, you've got
16 to speak up, even with the microphone.

17 MR. OLIER: I apologize.

18 Q. When did you become aware of that
19 meeting?

20 MS. SPILLER: Objection to relevance.

21 EXAMINER STENMAN: Overruled.

22 A. I do not recall. I would assume I knew
23 of its occurrence on or -- on or before.

24 Q. And you don't know who else attended that
25 meeting with Mr. Trent?

1 A. I do not.

2 Q. Okay. Were you invited to participate in
3 that meeting?

4 A. I do not recall.

5 MR. OLIKER: I'm sorry, I'm trying not to
6 ask any of the confidential questions.

7 EXAMINER STENMAN: Take your time.

8 Q. I'm sorry to jump around, Ms. Janson, but
9 do you know Duke-Ohio's ownership of generation
10 resources in the Midwest ISO market area? Could you
11 explain the generation resources?

12 A. You would like me to go through the
13 units? The generating units that are owned by Duke
14 Energy-Ohio?

15 Q. Do you know their megawatt ownership?

16 A. Roughly 4,000. Those are not, and I
17 previously stated in testimony those are not under my
18 control. You may want to ask Mr. Whitlock too.

19 Q. Okay. And does Duke Energy-Ohio also own
20 approximately 3,000 megawatts of gas-fired generation
21 assets in PJM?

22 A. It does.

23 Q. Were these gas-fired assets acquired as a
24 result of the merger between Duke and Cinergy?

25 MS. SPILLER: Objection to relevance.

1 EXAMINER STENMAN: Overruled.

2 A. Yes.

3 Q. In evaluating its RTO options did Duke
4 Energy-Ohio consider a scenario in which the Duke
5 Energy-Ohio and Duke Energy-Kentucky transmission
6 assets would remain in the Midwest ISO but Duke
7 Energy-Ohio generating assets were pseudo-tied to
8 PJM?

9 MS. SPILLER: I'm going to object, again
10 object to the relevance.

11 EXAMINER STENMAN: It will be overruled.

12 A. As I expressed in testimony yesterday, it
13 was not customary for Duke Energy-Ohio to review its
14 RTO membership, and I would assume as part of that
15 regular review any number of assumptions would have
16 been considered and that may have been a
17 consideration. Again, not under my supervision.

18 MR. OLKER: I believe the remainder of
19 my questions are confidential, your Honor.

20 EXAMINER STENMAN: Okay. Let's go off
21 the record for a moment.

22 (Discussion off the record.)

23 (CONFIDENTIAL PORTION.)

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(OPEN RECORD.)

MS. SPILLER: Your Honor, just a point of procedure, if I may. We had marked Ms. Janson's direct testimony as Duke Energy-Ohio Exhibit 2 for this proceeding yesterday. With her examination having concluded we would move for the admission of her direct testimony into evidence.

EXAMINER STENMAN: Any objections?

(No response.)

EXAMINER STENMAN: Duke Exhibit 2 will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MS. SPILLER: Thank you, your Honor.

MR. OLIKER: Your Honor, at this time I'd like to move the IEU-Ohio Exhibits 1 through 8 into the record. 7. I'm sorry, I apologize.

EXAMINER STENMAN: 1 through 7 and then

1 1A through 6A also?

2 MR. OLIKER: Yes, and 1A through 6A.

3 EXAMINER STENMAN: Any objections?

4 MS. SPILLER: Your Honor, yes. Duke
5 Energy-Ohio would have objection to the introduction
6 into evidence of all of those exhibits.

7 EXAMINER STENMAN: Okay.

8 MS. SPILLER: Is the Court's discretion
9 as to whether we go one by one or in total?

10 EXAMINER STENMAN: Let's go one by one.

11 Ms. Janson, you're excused.

12 THE WITNESS: Thank you.

13 EXAMINER STENMAN: Let's start with
14 Exhibit 1, and I assume you're going to have the same
15 objections to the confidential and redacted versions;
16 is that correct?

17 MS. SPILLER: Yes, your Honor, we will.

18 EXAMINER STENMAN: Okay.

19 MS. SPILLER: As I discussed on a prior
20 objection to the line of questioning of Ms. Janson
21 today, document Exhibit -- or, IEU Exhibit 1 and 1A
22 contain information that is irrelevant to this
23 proceeding.

24 There has been a suggestion of a
25 purported corporate separation violation, there has

1 been no testimony elicited from this witness to
2 support that allegation, nor does this document touch
3 upon such an allegation. There's no anticipated
4 testimony in this record from IEU to further that
5 allegation, and again, the basis for the decision,
6 the thought process behind the TRC's recommendation
7 to James Rogers is immaterial to the relevant issues
8 in this decision.

9 I would further note that this document
10 goes beyond Ohio proceedings and touches upon issues
11 pending in Kentucky as well as in -- this one extends
12 both to Kentucky and to Indiana. Regulatory
13 treatment decisions involving Duke Energy-Kentucky
14 and Duke Energy Indiana are clearly outside of the
15 scope of this proceeding.

16 EXAMINER STENMAN: Would you like to
17 respond?

18 MR. OLIKER: Yes. Well, first of all,
19 the witness's testimony describes the benefits of
20 moving to PJM. And these documents provide the
21 actual reasons why the company thinks there are
22 benefits in moving to PJM. And they're the documents
23 they relied upon. And the record would be incomplete
24 if they are not entered into the record.

25 I believe a foundation has been laid for

1 the corporate separation violations and the fact that
2 the generation side is even involved in the decision
3 for the regulated utility to change RTOs raises
4 concerns in itself.

5 And these documents demonstrate that that
6 decision was made to enhance generation assets. And
7 as the witness showed, she was barely even involved
8 in that decision. I think that the record is
9 incomplete without these documents. And also I
10 believe that they touch on the policy of the State of
11 Ohio in 4928.02 regarding reasonably priced electric
12 service and these documents contain issues regarding
13 capacity pricing in PJM and demonstrate the influence
14 they may have on the competitive bidding process.

15 And I believe that the documents also
16 contain portions where they quantify the benefits to
17 customers netted against the cost to the utility and
18 Duke Energy-Ohio is seeking recovery of Midwest ISO
19 exit fees and duplicative transmission costs. I
20 believe that those are key components of this
21 proceeding.

22 MS. SPILLER: Your Honor, a couple of
23 clarifications I think are noteworthy. First, the
24 transactions that occur at the RTO level are
25 wholesale prices. Any capacity prices here would be

1 at the retail level.

2 And both Mr. Oliker and Mr. Jones suggest
3 that Duke Energy-Ohio is seeking specific dollar
4 amount cost recovery in the context of this
5 proceeding, but even staff's own witness says that
6 they do not believe we are asking for such cost
7 recovery in this proceeding.

8 As Mr. Wathen has testified through his
9 direct testimony, we are asking for the establishment
10 of the riders for FERC approved costs, those dollar
11 amounts, as Ms. Janson has just testified, have not
12 yet even been established.

13 EXAMINER STENMAN: At this point the
14 objection will be overruled and Exhibits 1 and 1A
15 will be admitted.

16 Are there objections to Exhibits 2
17 through 7 and 2A through 6A?

18 MS. SPILLER: Your Honor, our objections
19 would be the same insofar as Exhibits 2A through 6A
20 are concerned. With respect to Exhibit 7, again, I
21 think that the objection here is not that focused
22 upon relevance.

23 EXAMINER STENMAN: Exhibits 2 through 7
24 will be admitted as well as Exhibit 2A through 6A.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 EXAMINER STENMAN: Is there anything else
2 with regard to this witness?

3 (No response.)

4 EXAMINER STENMAN: Before we break for
5 lunch just a word about the confidential portion of
6 the transcript. I know last night I think we all
7 received a copy of the daily transcript somewhere
8 around 9 o'clock, what we would like to do is have
9 the parties examine the confidential portion of the
10 transcript. It doesn't appear that everything that
11 went on in the confidential portion of the transcript
12 was actually confidential, and then be prepared on
13 Friday morning to discuss what the company feels
14 should be redacted and also if any of the parties
15 have any thoughts on what needs to be redacted and
16 what does not so that we can file as much as we
17 possibly can in the open record. We'll deal with
18 that Friday morning.

19 The confidential portion of the
20 transcript I believe will be sent only to Duke and
21 IEU and it will be Duke's responsibility to
22 disseminate it to any parties who are parties to a
23 protective agreement or confidentiality agreement.

24 MS. SPILLER: And I'm assuming that just
25 an e-mail transmission is acceptable for that

1 purpose, your Honor?

2 EXAMINER STENMAN: Yes.

3 At this point we will break for lunch and
4 we will come back at 10 till 2.

5 (At 12:51 p.m. a lunch recess was taken
6 until 1:50 p.m.)

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1 Wednesday Afternoon Session,
2 January 12, 2011.

3 - - -

4 EXAMINER STENMAN: Let's go back on the
5 record.

6 Is Duke ready to call its next witness?

7 MS. SPILLER: We are, your Honor, thank
8 you. Duke Energy-Ohio would call to the stand
9 Mr. Charles Whitlock, please.

10 EXAMINER STENMAN: Please raise your
11 right hand.

12 (Witness sworn.)

13 EXAMINER STENMAN: Thank you. Have a
14 seat.

15 MS. SPILLER: Your Honor, may I approach
16 the witness, please?

17 EXAMINER STENMAN: You may.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 - - -

20 CHARLES R. WHITLOCK
21 being first duly sworn, as prescribed by law, was
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 By Ms. Spiller:

25 Q. Mr. Whitlock, can you identify yourself

1 for the record, please?

2 A. My name is Charles R. Whitlock.

3 Q. And what is your business address?

4 A. 139 East Fourth Street, Cincinnati, Ohio.

5 Q. By whom are you employed, sir, and in
6 what capacity?

7 A. I'm the president of Midwest Commercial
8 Generation, employed by Duke Energy Business
9 Services.

10 Q. And, sir, do you have in front of you a
11 document that has been marked as Duke Energy-Ohio
12 Exhibit 11 to this proceeding?

13 A. I do.

14 Q. And what is that document, please?

15 A. It's my direct testimony filed on behalf
16 of Duke Energy-Ohio on November 15th, 2010.

17 Q. And was that direct testimony, sir, that
18 was filed in the context of this proceeding?

19 A. Yes.

20 Q. Do you have any changes or corrections to
21 your direct testimony?

22 A. I do not.

23 Q. Mr. Whitlock, if I were to ask you today
24 the questions that are set forth in your direct
25 testimony that has been marked as Duke Energy-Ohio

1 Exhibit 11, would your answers be the same as
2 reflected in that document?

3 A. They would.

4 MS. SPILLER: Your Honor, the witness is
5 available for cross-examination.

6 EXAMINER STENMAN: Thank you.

7 Ms. Kaleps-Clark?

8 MS. CLARK: No questions, your Honor.

9 EXAMINER STENMAN: Mr. Dortch?

10 MR. DORTCH: No questions, your Honor

11 EXAMINER STENMAN: Mr. Garber?

12 MR. GARBER: No questions.

13 EXAMINER STENMAN: Mr. Kurtz?

14 MR. KURTZ: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Kurtz:

18 Q. Just very quickly, good afternoon,
19 Mr. Whitlock. You testify about the potential future
20 transfer of the legacy generation assets; is that
21 correct?

22 A. That's part of my testimony, yes.

23 Q. Okay. What are you asking the Commission
24 to do about the transfer of the legacy generation
25 assets in this case?

1 A. We are not asking for the Commission to
2 rule on the transfer of the assets in this case.

3 Q. So your testimony on that issue is merely
4 informative because you're not asking for a specific
5 Commission ruling?

6 A. That's correct.

7 Q. Okay.

8 MR. KURTZ: Thank you, your Honor. No
9 further questions.

10 EXAMINER STENMAN: Thank you.

11 Ms. Hotz?

12 MS. HOTZ: Yes.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Hotz:

16 Q. Good afternoon. You consider the legacy
17 assets as you define them in your testimony to be
18 unregulated assets, correct?

19 A. Yes.

20 EXAMINER STENMAN: Ms. Hotz, can you use
21 the microphone?

22 MS. HOTZ: I don't think it works, we
23 tried to turn it on once before. I'll speak up.

24 EXAMINER STENMAN: It sounds like it
25 works.

1 MS. HOTZ: Oh, yeah, it does, okay.

2 Q. (By Ms. Hotz) Do you want me to do it
3 again?

4 You consider the legacy assets as you
5 define them in your testimony to be unregulated
6 assets, correct?

7 A. That's correct.

8 Q. Why do you consider those assets to be
9 unregulated as opposed to regulated?

10 A. Because we've operated the units really
11 since Senate Bill 3 or 2001 as functionally separate
12 from the distribution company.

13 Q. You are president of both the Midwest
14 Commercial Generation and Duke Energy Retail,
15 correct?

16 A. I am.

17 Q. What is Duke Energy Retail?

18 A. Duke Energy Retail Sales is a CRES
19 provider in the state of Ohio, and then we're also
20 certified in various distribution companies so we're
21 competitive retail electric supplier in the state of
22 Ohio and Pennsylvania.

23 Q. Midwest Commercial Generation and Duke
24 Energy Retail engage in bilateral contracts, do they
25 not?

1 A. I don't believe that Midwest Commercial
2 Generation has any contracts with Duke Energy Retail
3 Sales.

4 Q. Okay. Sixty percent of Duke's
5 distribution shopping customers purchase power from a
6 Duke affiliate; is that correct?

7 A. Could you repeat the question? I'm
8 sorry.

9 Q. Sixty percent of Duke's distribution
10 shopping customers purchase power from a Duke
11 affiliate; is that correct?

12 A. Duke affiliate? A Duke Energy -- a Duke
13 affiliate? I'm struggling with the "Duke affiliate."

14 Q. Well, an affiliate of Duke Energy-Ohio.

15 A. Is Duke Energy-Ohio itself an affiliate?
16 It's not in itself so it would be less than
17 60 percent.

18 Q. So do shopping customers purchase
19 generation from Duke Energy-Ohio?

20 A. I would say shopping customers, meaning
21 customers that switched?

22 Q. Yes.

23 A. They do not.

24 Q. Okay. So I guess maybe that would
25 clarify it. Sixty percent of Duke's distribution

1 customers who have switched purchase power from a
2 Duke affiliate, correct?

3 A. Duke Energy Retail Sales; that's correct.

4 Q. Okay.

5 MS. HOTZ: Thank you. That's all I have.

6 EXAMINER STENMAN: Mr. Yurick?

7 MR. YURICK: No questions, thank you,
8 your Honor.

9 EXAMINER STENMAN: Mr. Olikar.

10 MR. OLICKER: I have both confidential and
11 nonconfidential questions, but I will try to start
12 with the open record.

13 EXAMINER STENMAN: Yes.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Olikar:

17 Q. Mr. Whitlock, your testimony indicates
18 that you're president of Midwest Commercial
19 Generation. Who do you report to?

20 A. I report to Keith Trent.

21 Q. In what Duke corporate entity is Keith
22 Trent employed by?

23 A. I believe he's a Duke Energy Business
24 Service employee.

25 Q. In preparing your testimony and

1 preparation for cross-examination today which
2 documents did you review?

3 A. I reviewed my direct testimony, I think I
4 reviewed my deposition that was taken. I read Jim
5 Rogers' testimony. I read Ms. Janson's testimony. I
6 had a cursory review of Mr. Jennings' testimony, and
7 I reviewed some of the documents that you were
8 questioning Ms. Janson on in response to the IEU's
9 interrogatories.

10 Q. So you reviewed the IEU request for
11 production of documents in the interrogatories; is
12 that correct? And also the documents that we put in
13 the record today?

14 A. I reviewed some of those documents.

15 Q. Thank you.

16 Do you know which ones specifically?

17 A. If you put them in front of me, I can
18 tell you which ones. I don't know the best way to
19 tell you which ones specifically I reviewed and
20 didn't.

21 Q. Okay. Well, we'll come back to that.

22 A. Okay.

23 Q. On page 4 of your testimony you indicate
24 that Duke Energy-Ohio's generating assets are
25 functionally separated from Duke Energy-Ohio's

1 transmission and distribution basis; is that correct?

2 A. Yes.

3 Q. Can you provide an explanation of what
4 "functional separation" means?

5 A. Yes, functional separation as opposed to
6 a structural separation. Structural separation would
7 be generation that would be owned by another entity.
8 Functional separation, they would be owned by the
9 same utility, the same entity, but you would have
10 controls around access to certain information, you
11 would have some controls around facilities, you would
12 have, you know, about where people can come and go on
13 the floor, so you would have geographical or inside
14 of the building separation. But most of it's about
15 access to information.

16 Q. And what is the relationship between Duke
17 Energy Commercial Enterprise, Inc. and Duke
18 Energy-Ohio?

19 A. Duke Energy, the DECEs is an affiliation
20 of Duke Energy-Ohio.

21 Q. And how do they operate with each other?

22 A. As an affiliate.

23 Q. What are the roles of each business,
24 would you say?

25 A. You're going to have to help me. You're

1 going to have to provide a little more clarity.

2 Q. What services do they provide in
3 particular?

4 A. Does who? Does Duke Energy-Ohio provide
5 for DECEs?

6 Q. Does Duke Energy Commercial Enterprise,
7 Inc. provide for Duke Energy-Ohio?

8 A. I don't know that I'm aware of any
9 particular services that they provide.

10 Q. What is the relationship between Duke
11 Energy Commercial Enterprise, Inc. and Duke Energy
12 Business Services, LLC?

13 A. I'm not sure I know.

14 Q. Okay. And does Duke Energy Commercial
15 Enterprise, Inc., have any subsidiaries?

16 A. I believe so.

17 Q. Can you identify them, please?

18 MS. SPILLER: I'm going to object to the
19 relevance, your Honor.

20 EXAMINER STENMAN: Overruled.

21 A. I think I want to say that Duke Energy
22 Retail Sales is a subsidiary of DECEs, but I'm not
23 entirely sure.

24 Q. Okay. And I'm not sure I understood your
25 answer regarding what Duke Energy Commercial

1 Enterprise, Inc. does. What is the function of that
2 company?

3 A. I think I asked you a follow-up question
4 and you asked me about services and I told you I
5 wasn't aware of services that DECEs provided to Duke
6 Energy-Ohio.

7 Q. What does Duke Energy Commercial
8 Enterprise, Inc. do?

9 A. I don't know exactly.

10 Q. Isn't that the company you work for?

11 A. No, I work for Duke Energy Business
12 Services.

13 Q. Okay. And did you participate in the
14 transaction review committee?

15 A. I've made various presentations to the
16 transaction review committee, if that what's what you
17 mean by "participate," then I did participate.

18 Q. And did you author presentations and
19 studies?

20 A. I'm struggling with the word "author" but
21 I don't want to parse words. Like, I didn't write
22 the PowerPoint presentation or the White Paper, but I
23 think it was under my direction.

24 Q. Okay. So safe to say that you
25 participated in the decision process that the

1 transaction review committee undertook?

2 A. I think that's -- that I -- could you
3 repeat the question, please?

4 (Record read.)

5 A. That's fair. Yes.

6 Q. I think you touched on this, but you said
7 employees under your supervision drafted studies and
8 analyses that were relied upon by the transaction
9 review committee?

10 A. Are you referring to a specific
11 transaction review committee?

12 Q. The one that undertook the analysis on
13 whether to exit the Midwest ISO and join PJM.

14 A. And the answer is yes, people did prepare
15 analysis that supported that document.

16 Q. Were those people under your supervision?

17 A. Yes.

18 Q. And would you be able to identify which
19 employees and what studies or analyses that they
20 created?

21 A. Yeah, I would say Leo -- I can tell
22 you -- I could tell you which employees, which
23 employees but I don't know I can create the nexus
24 between the specific analysis.

25 And I should also say the TRC

1 presentation that you're referring to, that was led
2 by a group outside of my authority. It was led by
3 Scott Henry and Lee Barrett and Ken Jennings were the
4 ones that provided some of the analysis that was
5 presented to the TRC and the various papers that you
6 talked about already.

7 So those two gentlemen prepared some of
8 the analysis but other analysis was prepared by other
9 individuals. And in fact led by Scott Henry.

10 Q. And who does he work for?

11 A. I believe Scott Henry works for, I know
12 that he works in Jim Turner's organization, but I
13 don't know specifically who he reports to. I
14 apologize for that.

15 Q. If you look at the documents in front of
16 you I believe, IEU-Ohio Exhibit 1 through 6, are you
17 familiar with those documents? I think you might
18 have alluded to --

19 A. Can I say I believe I'm familiar or do
20 you want me to go through each one and make sure that
21 I'm familiar? Do you want to do it one at a time?

22 Q. Yeah, I'd like to make sure one at a
23 time.

24 A. One at a time?

25 Q. We'll start with IEU Exhibit 4, please.

1 IEU Exhibit 4.

2 MS. SPILLER: And, your Honor, if I may
3 just for purposes of the record --

4 MR. OLIKER: 4A, I apologize.

5 MS. SPILLER: -- the documents that
6 Mr. Whitlock has in front of him have two
7 designations on them, the original just being 1
8 through 6 consistent with the original identification
9 of these documents. There is further notation that
10 says "redacted equals 1A, redacted 2A, redacted 3A,"
11 so he does, in fact, have in front of him the
12 redacted documents. I just wanted to note that there
13 were the two markings on them.

14 EXAMINER STENMAN: Okay. It will be so
15 noted. And he does not have an unredacted copy in
16 front of him; is that correct?

17 MS. SPILLER: They are redacted.

18 Q. (By Mr. Oliker) Starting with IEU Exhibit
19 4A. Are you familiar with that document?

20 A. I am.

21 Q. Did you coauthor that document?

22 A. Again, if authorship is -- I did not type
23 the document in the PowerPoint but it was prepared
24 under, partially under my direction.

25 Q. Would you be able to identify which

1 portions of that document were done under -- by
2 either yourself or somebody under your supervision?

3 A. Just for clarity in my head, are you
4 talking about the words that are written down or
5 the --

6 Q. Various bullet points.

7 A. I might be able to.

8 Q. Could you try, please?

9 A. You want to go bullet point by bullet
10 point? I don't know who prepared bullet point 1 that
11 says "TRC Action Requested." I don't know.

12 I don't know who wrote bullet point No. 2
13 or the sub-bullet under 1.

14 Q. Would you know if it was somebody under
15 your direction even if you didn't know their exact
16 name?

17 A. No.

18 Q. Okay.

19 A. Sub-bullet No. 2 under the main bullet,
20 again, not sure. It's hard with the redacted version
21 to say on No. 2, the bullet point No. 2.

22 MR. OLKER: Perhaps we can put this part
23 off until we get to the confidential portion of the
24 hearing so that we can have a full discussion of this
25 matter.

1 EXAMINER STENMAN: You can do that, or if
2 you're just trying to determine whether he authored
3 the document, you can certainly discuss who authored
4 portions of the document with the witness using the
5 confidential document as long as he's careful with
6 what he refers to, if you provide that to him.

7 MR. OLIKER: Okay. If that's okay.

8 Q. Please continue, Mr. Whitlock.

9 A. Am I allowed to ask a clarifying
10 question?

11 Q. You are, just don't mention any
12 confidential information.

13 A. I won't. I'm just curious, are you
14 looking for who authored it like who wrote this
15 section or who -- what exactly are we trying to -- I
16 don't understand the question fully.

17 Q. If you know who authored that section,
18 what affiliate or division they work for, that would
19 be helpful.

20 A. And "authoring" means what?

21 Q. Who was responsible for making that
22 recommendation or those facts, doing those studies.
23 Who would have -- who had responsibility for making
24 that portion of the document.

25 A. Okay. That helps. So you want to start,

1 let's start back at the top. I would say that the
2 "TRC Action Requested" was done by the lead person
3 that was responsible for the analysis, Scott Henry.
4 And I would say that it's probably safe to assume
5 that -- well, let's not make any assumptions here.
6 So Scott Henry I would say on 1.

7 The second bullet point I would say,
8 again, Scott Henry: The "TRC previously approved the
9 transfer," I mean, I think that's just, again, I
10 don't know.

11 "June 1, 2014, transfer resulted in,"
12 that again I would say Lee Barrett and Ken Jennings.
13 I want to put the redacted version in front of me so
14 I am careful to follow your admonishment.

15 Under the "What has changed?" section, I
16 would say that's likely to have been someone in the
17 Legal department but I'm not sure.

18 The next one I think would be, again, Lee
19 Barrett and Ken Jennings.

20 The third bullet would be the same two
21 gentlemen.

22 The fourth bullet would be the same two
23 gentlemen.

24 The final bullet would be Scott Henry and
25 the team. It might be helpful to add that a decision

1 that impacts -- has a large impact across the
2 businesses, specific segments of the business, if it
3 has distribution impacts, transmission impacts,
4 generation impacts, impacts in Duke Energy-Kentucky,
5 impacts in Duke Energy-Ohio, impacts in FERC.

6 So something as expansive as the decision
7 that we're talking about here is going to have a
8 variety of subject matter experts that are going to
9 do the process before it goes to the TRC. So the
10 question's a little bit difficult to answer, but I
11 think that that's probably as fair a characterization
12 of this as I can give you.

13 Q. Can we continue with the rest of the
14 document, though, Mr. Whitlock to page 2.

15 A. I'm here as long as you want me.

16 Q. I think you were on page 2. Can we go to
17 page 3, please?

18 A. Sure.

19 Q. How about we just do the major bullet
20 points, I don't think we have to worry as much about
21 the subheadings.

22 A. Okay. I would say that Scott Henry. I
23 would say Scott Henry on the, I'm just talking about
24 the three main bullets, Scott Henry.

25 The third bullet is probably Lee Barrett

1 and Ken Jennings, although those are a matter of
2 public record so you may have it.

3 Page 4, I would say that these bullets
4 are all the -- Scott Henry and the team.

5 Q. Moving on to the next document titled IEU
6 Exhibit 2, do you recognize that document? 2A, I
7 apologize.

8 A. Give me a second.

9 I do.

10 Q. And was that document authored at your
11 direction or by yourself?

12 A. It was. Again, I would tell you that
13 this analysis was done -- there were portions of this
14 that were done at my direction, but again, it was --
15 this analysis was conducted by Scott Henry and a team
16 of cross-functional people. So there are portions,
17 again, that I think that you could say were under my
18 direction.

19 Q. Okay. And could you please turn to IEU
20 Exhibit 3A. Do you recognize that document?

21 A. I do.

22 Q. Could you also please clarify if that
23 document was authored by people under your direction
24 or yourself?

25 A. Again, I would say that portions of this

1 document were drafted by -- were drafted or had input
2 from people on my team.

3 Q. Okay.

4 A. And, you know, there are sections that
5 obviously didn't have my team's input but it was part
6 of that multifaceted kind of approach.

7 Q. Could you please turn to IEU-Ohio Exhibit
8 5. A, I apologize again, 5A.

9 A. All I have are As except for I have a 4
10 non-A.

11 Q. Do you recognize that document, IEU-Ohio
12 Exhibit 5A?

13 A. I do.

14 Q. And was that document created under your
15 direction or by yourself?

16 A. Again, I don't know exactly the author
17 but it looks to me like it was, again, conducted by a
18 variety of different people.

19 Q. Some of them were under your supervision?

20 A. Yes.

21 Q. Now I'd ask you to turn to IEU-Ohio
22 Exhibit 6A which is an e-mail, and I believe you were
23 one of the recipients of that e-mail. Do you
24 recognize that document?

25 A. I do.

1 Q. Now, after that e-mail was sent is it not
2 true that Duke Energy-Ohio sent formal notice to the
3 Midwest ISO on May 20th that it would be
4 withdrawing and joining PJM?

5 A. I think we gave notice to MISO of our
6 intention to withdraw prior to that date, but I'm not
7 sure.

8 Q. Did you participate in the March
9 22nd meeting, 2010 meeting with Keith Trent,
10 Messrs. Bear and Dowling at the Midwest ISO?

11 A. I did.

12 Q. Who initiated that meeting?

13 A. I believe it was John Bear and Richard
14 requested the meeting.

15 Q. Do you know when the meeting was
16 initiated?

17 MS. SPILLER: I'm going to object to the
18 relevance.

19 EXAMINER STENMAN: Overruled.

20 A. I'm not sure I know. You can probably
21 ask John Bear the reason why.

22 Q. Do you know when it was initiated?

23 A. Oh, when? No idea.

24 Q. What was the purpose of the March 22nd,
25 2010, meeting?

1 A. I think Richard Dowling and John Bear,
2 they had had FE basically make a decision to move
3 from PJM, I think that we had filed -- I think that
4 we had given them, I believe, again, subject to
5 confirmation, that we had informal discussions with
6 them or given them notice as required by the RTO that
7 we might be departing, and they wanted to understand
8 the reasons for the departure and to discuss with us
9 there were things that -- to discuss the reasons why
10 we might depart.

11 Q. To clarify, when was the first time that
12 you informally or formally gave notice to the Midwest
13 ISO that you were going to withdraw or considering
14 withdrawing?

15 A. Yeah, sitting here right now, I would
16 say, again, the decision to be -- which RTO you're
17 going to be in has really big implications for a
18 variety of different parts of your business so I
19 think that we evaluate that thing on a recurring
20 basis.

21 So I don't know when we would give
22 informal notice, but I think that, you know, if
23 MISO's running their business and they understand the
24 voluntary membership of an RTO, that there's probably
25 discussions about changes to the transmission owners'

1 agreement, changes to the market design that happen
2 in committee meetings probably frequently. So I
3 don't know that I can fully answer your question.

4 Q. Did you indicate that you would change
5 RTOs unless certain changes happened?

6 A. No, sir.

7 Q. At the March 22nd, 2010, meeting did
8 the Midwest ISO offer concessions or commitments in
9 order to convince Duke Energy-Ohio to remain in MISO?

10 A. No. Again, it's my characterization
11 that, you know, the Midwest ISO was trying to
12 understand some of the decisions and why we might
13 make the decision to move from MISO to PJM. And it
14 was really exploratory in nature on their part to try
15 to get inside of the decision-making at Duke about
16 why that decision might be made.

17 EXAMINER STENMAN: Okay, off the record
18 for a second.

19 (Discussion off the record.)

20 EXAMINER STENMAN: Let's go back on the
21 record.

22 Q. Why were you at the March 22nd, 2010,
23 meeting given that you were on the generation side of
24 the business?

25 A. I think it's reasonable to expect that,

1 again, RTO membership has implications on generation,
2 so I think it was reasonable for me as the owner of
3 the P&L to be at the meeting.

4 Q. And was there anybody from the
5 distribution business there?

6 A. Yeah, Jim Turner was scheduled to be at
7 the meeting and then I think at the last minute he
8 was unable to attend the meeting. I think it was the
9 desire that we -- we tried to establish with, again,
10 myself, my boss, Keith Trent, and then Jim Turner,
11 and I can't recall the reason why Jim was not
12 available for the meeting, but it was scheduled and I
13 think it was on short notice from, from memory, on
14 short notice he was not able to attend the meeting
15 and we went on with the meeting. So it was the
16 intent to have somebody there certainly from
17 distribution.

18 And I think the reason I was there,
19 honestly, is because I think there -- the workings of
20 an RTO are more familiar to me than others in the
21 company.

22 Q. And did the Midwest ISO offer concessions
23 or commitments at that meeting?

24 MS. SPILLER: Objection; asked and
25 answered.

1 EXAMINER STENMAN: Overruled.

2 A. Again, I think that -- my memory of the
3 meeting was that they were exploring the decisions
4 and I don't remember any concessions being offered by
5 MISO or, you know, John Bear exhibited in the meeting
6 to stay in MISO.

7 Q. But they were aware that you planned on
8 withdrawing at that point.

9 A. I believe so.

10 Q. Could you clarify the name that you
11 mentioned, was it John Bear and who?

12 A. Jim Torgerson, I think that's -- I hope
13 that's right.

14 Q. I was under the impression that
15 Mr. Dowling was at the meeting?

16 A. Oh, that's right, I'm sorry. Richard,
17 Richard Dowling, that's right, I apologize.

18 Q. So are you sure you remember?

19 A. Now I'm sure. I wasn't sure before. I
20 was mistaken before.

21 Q. And at that meeting what was Duke
22 Energy -- Duke's response to the changes that the
23 Midwest ISO may have talked about?

24 A. Again, go ahead, ask your question, I'm
25 sorry.

1 Q. No; go ahead, you can answer.

2 A. I don't know that I know the question.

3 Q. What did you take away from that meeting
4 as their position?

5 A. I don't know that I took away anything
6 that was their position. I think, again, that they
7 were trying to understand why we might make the
8 decision to move and they were really trying to
9 understand that.

10 Q. And did the Midwest ISO offer concessions
11 at any point, or commitments?

12 A. I think that there's a letter that's, I
13 believe it's a matter of public record now that was
14 authored from John Bear to my boss Keith Trent, that
15 outlined some changes that MISO either prospectively
16 may make -- I love that word "prospectively" -- that
17 they might make in the future or that they were
18 contemplated in some areas, but I wouldn't
19 characterize them as concessions.

20 Q. Do you know what pseudo-tying is?

21 A. I think I have a better than a layman's
22 understanding of what pseudo-tying is but probably
23 not an electrical engineer understanding of
24 pseudo-tying.

25 Q. Could you describe why a utility would

1 pseudo-tie one generating asset to a balancing
2 authority or market area?

3 A. Why they might? Because they want to
4 move an asset that geographically sits in one
5 balancing authority to another balancing authority
6 electrically.

7 Q. Could you explain what "pseudo-tying" is
8 again for the record? I'm sorry, I don't think I got
9 a description.

10 A. That's fine. Yeah, again, here's how I
11 think about pseudo-tying, and I'll use a specific
12 example. At Stuart Station, which is one of the
13 legacy assets that we -- that Duke Energy-Ohio owns
14 that's operated by DP&L, that physically sits inside
15 of PJM's RTO. We pseudo-tie that unit to make it
16 look electrically like it's connected to MISO.

17 Q. When you pseudo-tie an asset from one
18 market to another, do you get to participate in the
19 control area of that market for, for example,
20 capacity pricing?

21 A. Is your question does our share of Stuart
22 Station look and appear and qualify as a resource
23 inside of MISO?

24 Q. Yes.

25 A. The answer is yes.

1 MR. OLIKER: I don't think I have any
2 more public questions, your Honor.

3 EXAMINER STENMAN: Mr. Hart?

4 MR. HART: Yes, thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Hart:

8 Q. Mr. Whitlock, I'm back here.

9 A. Hi.

10 Q. A little awkward being behind you.

11 A. That's all right.

12 Q. I want to understand a little better what
13 Midwest Commercial Generation is. Is that a business
14 unit within Duke Energy Business Services?

15 A. I would define Midwest Commercial
16 Generation as kind of an organization of people
17 loosely. It's not incorporated. It's not an LL, you
18 know, it's not an LLC, it's more of an organizational
19 structure.

20 Q. An organization that you manage.

21 A. Yes.

22 Q. That includes Duke Energy-Ohio generation
23 assets?

24 A. When you -- the business that I manage?

25 Q. Yeah.

1 A. Absolutely, the Duke Energy-Ohio assets.

2 Q. I assume by "midwest" it also includes
3 the Indiana and Kentucky assets.

4 A. It does not include Indiana nor does it
5 include Kentucky.

6 Q. So it's just Duke Energy-Ohio?

7 A. Midwest Commercial Generation has things
8 not related to the assets in it but it also has --
9 like Duke Energy Retail Sales, I would say is in
10 Midwest Commercial Generation, the organization. All
11 right?

12 Q. Okay.

13 A. Does that help?

14 Q. So the only generation assets that are in
15 Midwest Commercial Generation are the Ohio assets.
16 The Duke Energy-Ohio assets.

17 A. Yeah, the reason I struggle with that is
18 that there's Ohio Valley Electric Cooperative which
19 is a long-term PPA that sits inside of there --

20 Q. Okay.

21 A. -- that's not DE-Ohio. That's not a
22 DE-Ohio asset.

23 Q. Are all of the DE-Ohio assets within MCG?

24 A. I believe, yes.

25 Q. Okay.

1 A. Generation assets.

2 Q. You're also the president of Duke Energy
3 Retail which is a CRES provider.

4 A. I am. And it is.

5 Q. Now, there's been testimony in this case
6 that Duke Energy-Ohio has lost approximately
7 60 percent of its load to CRES providers, correct?

8 A. That's correct.

9 Q. And am I correct that of that 60 percent
10 approximately 60 percent is served by Duke Retail?

11 A. That's correct.

12 Q. Okay. So if my math's correct, that
13 means approximately 24 percent of the total load is
14 served by independent companies not affiliated with
15 Duke.

16 A. I'll trust your math.

17 Q. Well, 60 times 60 is 36, right?

18 A. Yes.

19 Q. And then Duke's 24.

20 A. Correct.

21 Q. So if we just look at native load,
22 76 percent is served by either Duke-Ohio or Duke
23 Retail.

24 A. Correct.

25 Q. Am I correct that Duke Retail does have

1 bilateral supply agreements with Duke Energy-Ohio?

2 A. I'm sorry, repeat the question.

3 Q. Duke Retail does have bilateral supply
4 agreements with Duke Energy-Ohio.

5 A. That's correct.

6 Q. And earlier when you said that it didn't
7 have any with Midwest Commercial Generation, that's
8 because Midwest Commercial Generation is a legal
9 entity.

10 A. That's correct.

11 Q. So of the 60 percent of the 60 percent
12 that's Duke Retail, how much of that power is
13 obtained from Duke Energy-Ohio?

14 MS. SPILLER: Objection. Excuse me,
15 Mr. Whitlock, I'm just objecting to the relevance.

16 MR. HART: It's relevant to whether it is
17 a fully functional market, your Honor, because that's
18 the basis of the entire case is the assertion that
19 there is.

20 EXAMINER STENMAN: The objection will be
21 overruled.

22 THE WITNESS: Could somebody repeat the
23 question?

24 Q. I'll state it again, hopefully I'll get
25 it the same.

1 Of the 60 percent of the 60 percent
2 that's supplied to the public by Duke Retail, how
3 much of that power does it obtain from Duke
4 Energy-Ohio?

5 A. I would say that it obtains all of the
6 power from MISO. Duke Energy-Ohio will enter into
7 hedges on a forward basis to hedge the commodity risk
8 with various entities, but all the power is procured
9 from MISO.

10 Q. How much of it is subject to these
11 bilateral agreements?

12 A. I don't know how to do this because I'm
13 afraid that answering the question prejudices a
14 commodity position that Duke Energy Retail Sales
15 might have that I don't know that I want to answer.

16 Q. Are you saying it's confidential?

17 A. I would say that it's confidential. I
18 mean, I don't know that other parties would want to
19 tell how much of their sales position has been hedged
20 in the market. I'd prefer to, I guess what I'm
21 saying is I'd prefer, if I have to answer the
22 question, I'd prefer to answer it --

23 MR. DORTCH: Your Honor, for the record
24 on behalf of Duke Energy Retail Sales we'll object on
25 the basis that the answer will be proprietary and

1 confidential and ask that it be -- ask that the
2 question again be asked, if at all, during the sealed
3 portion of this area.

4 EXAMINER STENMAN: It will be taken up
5 during the confidential portion.

6 MR. HART: Okay, that's fine.

7 Q. (By Mr. Hart) Now, you've testified that
8 Midwest Commercial Generation's functionally separate
9 from Duke Energy-Ohio. If Duke Energy-Ohio were to
10 actually divest those generation assets to a
11 different affiliate, what would be different about
12 the separation than currently exists in this
13 functional separation?

14 A. Again, I would think that -- I tried to
15 lay up the difference between functional separation
16 and structural separation, so structural separation
17 if we moved to an affiliate it would not be owned by
18 DEO. It would be owned by a separate entity.

19 Q. Is that the only difference between
20 what's today and what an actual transfer would
21 entail.

22 A. No, again, I think the transfer would,
23 the transfer of moving the assets outside of DE-Ohio
24 would break a paradigm, this regulatory-like paradigm
25 that exists in the state of Ohio and it would allow

1 the generation, it would allow customers to make
2 decisions about price whether through a competitive
3 retail electric supplier or whether through an
4 auction determined standard service offer price
5 unencumbered by the generation, and it would allow
6 the owner of the generation to manage that generation
7 to the market with clarity for a longer period of
8 time than might be offered under -- than is offered
9 under a three-year ESP.

10 So I think there are other things that
11 happen by virtue of the fact that they sit in an
12 unaffiliate as opposed to in DE-Ohio.

13 Q. Let's explore a couple of those.

14 A. Sure.

15 Q. Because as I understand your testimony,
16 one of the reasons Duke Energy-Ohio wants to transfer
17 those assets is so that those assets aren't
18 encumbered by the risk of shoppers returning to Duke
19 Energy-Ohio; is that fair?

20 A. That's a piece.

21 Q. Okay. So currently you have to stand
22 ready to serve all of the customers in case they
23 return and so you can't hedge those assets long term
24 somewhere else.

25 A. Well, I think that the switching

1 introduces a problem than the temporary problem that
2 you just referred to.

3 Q. So switching risk is --

4 A. Can I answer the question?

5 Q. Sure, go ahead.

6 A. Now I forgot the question.

7 (Record read.)

8 A. Yeah. So the switching piece, right,
9 inside of a defined window of time, I'll call it the
10 existing ESP, when customers switch away, the hedge
11 goes away, right? We're relying as part of the --
12 when you connect the generation to the load, you're
13 relying for that load to provide the hedge for the
14 generation.

15 Q. Okay.

16 A. And when the customer switches away, that
17 hedge goes away, and then you're left with hedging
18 that at a different price. And it creates
19 uncertainty and volatility in the earnings stream of
20 the generation asset.

21 Q. So you can sell the capacity that's not
22 used for the switching customer but not at your
23 retail rate.

24 A. But, no, it's -- again, the generation
25 would get sold at a wholesale rate but it wouldn't --

1 so we've connected our generation through the ESP to
2 a, I'll call it a retail rate and it might be a
3 wholesale rate, but it's a retail rate. When that
4 customer switches away, I'm left with selling that
5 generation into a wholesale market at a different
6 margin than I had with the retail customer.

7 Q. Okay. And after the transfer of these
8 assets to a different affiliate, that other affiliate
9 would have that same problem, wouldn't it?

10 A. No.

11 Q. Wouldn't they also be selling the assets
12 in the open market?

13 A. They would sell their assets into -- we
14 would sell our assets into a bilateral market that
15 has firm liquidated damages and that thing doesn't go
16 away, right? That customer does not switch away.
17 And if they do switch away, we take lawyers and go
18 after those people to get our money.

19 Q. But the rate that you would get would not
20 be at Duke Energy-Ohio retail rates, it would be at
21 the wholesale market rate.

22 A. It would be at a -- so go back to the
23 question, right, just so it's clear. We would sell
24 our generation in a wholesale market and assume when
25 we set the ESP rate that it was approximated the

1 wholesale market with some retail ladders that Judah
2 Rose talked about but that's the underpinning of that
3 transaction.

4 That price when that goes away, if I sold
5 it in the wholesale market, those customers do not go
6 away. They stay there. So it is different. That
7 customer doesn't switch.

8 Q. But the rate that that customer pays is
9 the same rate you would get today for the load that
10 is freed by the switching customer.

11 A. Is your question that the -- I'm
12 struggling with the question.

13 Q. Today when a customer switches away, the
14 capacity that's freed up by that you can sell on the
15 wholesale market.

16 A. Correct.

17 Q. And if you have no load to serve because
18 the generation assets have been transferred, you're
19 going to sell all that load to the wholesale market.

20 A. Correct.

21 Q. The rates that you get at the wholesale
22 market are going to be the same in both scenarios.

23 A. Today they would be the same, right. I
24 mean, historically they wouldn't have been the same.
25 There's a difference in the price I guess.

1 Q. Okay. Now, I kind of got sidetracked
2 there. One of the reasons that Duke Energy wants
3 to -- Duke Energy-Ohio wants to transfer the assets
4 is so that the assets don't have to be on standby for
5 customers that would return; is that fair?

6 THE WITNESS: I'm sorry, would you repeat
7 the question or could you read it? I don't know who
8 should repeat it.

9 MR. HART: I'll let her repeat it because
10 I don't think I can.

11 (Record read.)

12 A. I think that's fair. I would add that
13 that's not the only reason.

14 Q. Okay. But that risk is that you may have
15 to serve additional load that can come back to you
16 unexpectedly so you have to have a way to deal with
17 that.

18 A. Well, again, I think under the
19 contemplation of the MRO and what happens in
20 FirstEnergy's service territories is that that
21 standard service offer is borne by the auction
22 participants.

23 Q. I'm talking about today.

24 A. Right, either prospectively, right,
25 right.

1 Q. Today.

2 A. The question was about why do we want to
3 separate the generation.

4 Q. Right.

5 A. And so the generation absolutely right
6 now is -- provides that standby service, if you will.
7 We're not paid for it, but we provide it.

8 Q. Right. So you have to be prepared for
9 that in case it happens because you're legally
10 responsible for supplying that load.

11 A. That's true.

12 Q. Now, you're familiar in the proposed
13 auction process that Duke's proposing to essentially
14 sell slices of the company load, correct?

15 A. I am.

16 Q. And that tranche or slice of the total
17 load carries with it that exact same risk, doesn't
18 it?

19 A. The risk of?

20 Q. Of shopping customers returning.

21 A. Customers switching and reswitching?

22 Q. Yes.

23 A. It should because I think that the
24 auction participants would price that as one of the
25 things that they would want to be compensated for.

1 And so let me -- can I add something to that?

2 Q. Sure. Go ahead.

3 A. So instead of having the generation of
4 Duke Energy-Ohio be the provider of last resort, it's
5 my feeling that the market has the ability, the
6 capability to do that, and a lot of my testimony is
7 spent around the time saying if you can run a
8 competitive auction as other states do and we've done
9 successfully inside of FirstEnergy service territory,
10 that the nexus of generation and load that you do not
11 need to rely on the generation, and in fact, relying
12 on the generation ends up costing customers more.

13 That they can get a better deal in the
14 market than relying on the generation, the backstop
15 of the generation of Duke Energy-Ohio or any other
16 utility, but instead let the market price that and
17 that results in a better deal for customers.

18 Q. Let me get back to my question, which was
19 the auction participants, what they're being asked to
20 bid on is to supply a percentage of Duke's native
21 load subject to the risk of shopping.

22 A. That's correct.

23 Q. And if they were to buy in today, they
24 might actually only be supplying 40 percent of the
25 actual wired load.

1 A. If they were to buy a slice of system
2 today what would their POLR obligation, what would be
3 the --

4 Q. What would they actually be supplying?

5 A. It would be the standard service offer
6 which is the 40 percent.

7 Q. Forty percent, but they're legally
8 obligated to supply a hundred percent if those other
9 60 come back.

10 A. That's my reading of it.

11 Q. So they need to price that risk into
12 their bid when they participate in an auction.

13 A. I would say that it would be prudent to
14 do that. I don't know that all do, but --

15 Q. Okay. That's the exact risk that Duke is
16 trying to shed by transferring the assets.

17 A. When you say "shed," what do you mean?

18 Q. The risk of having to supply shopping
19 customers who return.

20 A. No, I would say that Duke Energy-Ohio,
21 again, taken the nexus of the generation, we think
22 that the market provides a better opportunity to
23 price that POLR obligation than Duke Energy-Ohio
24 specific generating assets. That the market works
25 better than whatever we call it, quasi regulation.

1 Q. Okay. Let's talk about that a little
2 bit. Go back prior to the ESP case which is in place
3 now when Duke was under rate of return I guess.

4 A. How far back are we going because prior
5 to this ESP there was a --

6 Q. The electric --

7 EXAMINER STENMAN: Mr. Hart, could you
8 speak up?

9 MR. HART: Sure, I'm sorry.

10 Q. Let me just start over. Prior to the ESP
11 case how did Duke Energy-Ohio's retail rates compare
12 to the other major Ohio utilities?

13 MS. SPILLER: I would object to the
14 relevance.

15 EXAMINER STENMAN: Overruled. You can
16 answer.

17 A. I said I don't know.

18 Q. You don't know, okay. So you don't know
19 whether Duke's rates were low in the state or high?

20 A. So are you -- can you tell me the time
21 frame you're talking about, that might help.

22 Q. 2007, 2008.

23 A. Yeah. I would say in the -- close to the
24 middle.

25 Q. Okay.

1 A. Middlish.

2 Q. Where do they stand today?

3 A. I think they're high.

4 Q. Okay. And were you a participant in the
5 ESP case in 2008?

6 A. I don't remember.

7 Q. Okay. You understand the ESP, how the
8 prices got set in the ESP case?

9 A. Loosely I do, sure.

10 Q. Do you recall that there's a theoretical
11 construct of what a competitive price would be in
12 Duke's rates compared to that?

13 MS. SPILLER: Your Honor, I'm going to
14 object to this line of questioning, I think this is
15 well outside the issues in this proceeding.

16 MR. HART: Your Honor, this goes to
17 whether the auction is going to result in competitive
18 prices or not.

19 MS. SPILLER: I'm sorry?

20 MR. HART: It goes to whether the auction
21 will result in the best competitive prices or not.

22 MS. SPILLER: I don't think that's the
23 standard for review with regard to the MRO. So
24 again, and I further think that this is well beyond
25 the scope of this witness's testimony in this

1 proceeding.

2 EXAMINER STENMAN: The objection will be
3 overruled. He can answer if he knows.

4 A. So maybe I can cut to the chase and
5 answer your question about whether or not the
6 competitive markets provide a -- that an auction
7 provides a competitive price. I would refer you to
8 my testimony on Attachment CRW-2, page 1 of 2 and 2
9 of 2.

10 Q. That was not the immediate question,
11 Mr. Whitlock.

12 A. I was just responding to what I thought
13 the, again, the objection and the overruled -- what
14 you were trying to get at, so I was trying to answer
15 that question, that it did work. It worked in FE's
16 service territory and if you look, the chairman of
17 the PUCO thought very highly of the results that were
18 determined in that auction.

19 MR. HART: Could I have the actual
20 question read back?

21 (Record read.)

22 A. Are you saying that, are you referring to
23 the test that's --

24 Q. Yes.

25 A. -- more favorable in the aggregate, yeah,

1 I take issue with the word "theoretical." I think
2 it's a real determination of what we think the market
3 is. And people put on testimony and I believe that
4 Duke Energy-Ohio put on testimony much like Judah
5 Rose's in this case that it wasn't just theoretical,
6 it was something more than theoretical.

7 Q. Okay. And those rates were established
8 independent of Duke's actual cost of generation,
9 correct?

10 A. There was no -- wow. I would say that's
11 true.

12 Q. Okay. So fair to say those rates more
13 than cover Duke's cost of generation assuming it's
14 got load?

15 A. I don't think that's a fair
16 characterization.

17 Q. They don't cover costs?

18 A. I don't know that they have to cover
19 costs. Are you talking about at the specific time if
20 we don't have any switching would it cover our costs?

21 Q. Yes.

22 A. Yes.

23 Q. Let me ask you about Exhibit, I think
24 it's about 1.

25 MR. HART: Is this the amended schedule,

1 B-1, Amy?

2 MS. SPILLER: There is not an -- I don't
3 know that it's fair, Mr. Hart, to call it an "amended
4 schedule." There was the schedule as submitted and
5 filed which is B, B.1 was what I would call a
6 clerical error and inadvertently shown to Mr. Lee
7 yesterday.

8 MR. HART: I guess I want to use whatever
9 the current proposal is in the case.

10 EXAMINER STENMAN: And that would be B
11 that was filed in the application, correct?

12 MS. SPILLER: That would be B, yes.

13 MR. HART: What percentage did that show
14 for the auction in 2013, is it 90 or 80?

15 MS. SPILLER: It's 80.

16 MR. HART: Okay.

17 Q. (By Mr. Hart) I want to ask you are you
18 familiar with the proposed timing of the auctions?

19 A. Honestly, I haven't spent a lot of time
20 looking at the schedule yet, but if you --

21 Q. Well, let me show you my copy of,
22 actually it shows the 20 percent on it.

23 MR. HART: It's the one you handed out
24 this morning, so if you want to get him the correct
25 one.

1 MS. SPILLER: Are you asking me to give
2 the witness the correct one?

3 MR. HART: Yeah.

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

5 EXAMINER STENMAN: You may.

6 MS. SPILLER: Thank you.

7 MR. HART: I just want to make sure, see,
8 this one has 90. This is the actual filing, okay,
9 thank you.

10 Q. (By Mr. Hart) Mr. Whitlock, what I want
11 to ask you about is the proposed auction to occur in
12 2013 at which time the proposed 80 percent of Duke's
13 load to be the subject of that auction. It says the
14 number of tranches to procure, is that the same as
15 80 percent? I believe. Does it say "80"?

16 A. It says "80 tranches," yeah.

17 Q. I believe so.

18 A. All right.

19 Q. Would Duke Energy-Ohio propose to
20 transfer its generation assets before or after that
21 auction occurs?

22 A. I think the testimony is that we're going
23 to, as soon as we get done with the, as soon as Duke
24 Energy-Ohio is done with the MRO proceeding that we
25 will seek in short order the transfer of the

1 generation.

2 Q. Well, what I'm getting at is my
3 understanding is the auction is proposed to occur in
4 2013, but the actual delivery pursuant to that
5 auction would not begin until June of 2014. So I'm
6 trying to get where in that sequence of events would
7 the actual transfer of assets occur, before or after
8 the auction?

9 A. Again, it's my testimony that when a
10 hundred percent of the load has been auctioned, that
11 that's when -- on or before that time we would seek
12 to move the assets to a subsidiary.

13 Q. So would Duke Energy-Ohio still have the
14 assets at the time of the auction where 80 percent of
15 the load would be bid in?

16 A. I think I would tell you that on or
17 before that time. You're asking me to speculate on
18 when the transfer would actually happen, and I think
19 it's on or before the hundred percent, so I don't
20 know that I can answer your question.

21 Q. You don't know at this point.

22 A. I don't.

23 Q. Okay. Do you know whether Duke
24 Energy-Ohio or the affiliate to whom the assets are
25 transferred would be a participant in the auction?

1 A. I don't know, but I can tell you that
2 whether it's Duke Energy-Ohio or the company that
3 gets the assets transferred to it or another entity,
4 we would -- I would support participating in Duke
5 Energy-Ohio's competitive auction, if that's your
6 question.

7 Q. Okay. Are you generally familiar with
8 how that auction runs?

9 A. It hasn't ran yet.

10 Q. How it's proposed to run?

11 A. I'm assuming that it's -- the details of
12 that, the details of the auction will not develop
13 under -- that was developed by other -- another part
14 of the organization.

15 Q. I wasn't asking if you did it. I'm just
16 asking if you know how it works.

17 A. I'm trying to answer your question. So
18 I'm going to make the assumption that it works like
19 FE's auction did in the material aspects.

20 Q. Okay.

21 A. And then I would say yes, I am familiar
22 with that.

23 Q. And are you familiar with the concept
24 that the bidding goes in rounds, well, let me just
25 stop there, that the bidding would occur in

1 individual rounds?

2 A. I am.

3 Q. And if a particular round is
4 oversubscribed, then the auctioneer lowers the price
5 and a new round commences.

6 MS. SPILLER: Your Honor, I'm sorry, but
7 Mr. Whitlock has testified that he's not familiar
8 with the details of this auction. He tendered an
9 assumption, Mr. Hart has not even confirmed that that
10 assumption is in fact accurate, and now this witness
11 is testifying and I think it's -- he's treading on
12 speculation and conjecture, and if Mr. Hart perhaps
13 has the documents to assist in this cross-exam.

14 EXAMINER STENMAN: Well, the witness has
15 answered the question so Mr. Hart may continue, and
16 if the witness knows, he can continue to answer the
17 questions. The objection's overruled.

18 MR. HART: Could I have the question
19 again?

20 (Record read.)

21 MR. HART: Thank you.

22 Q. Let me ask you a new question. Did you
23 understand that the --

24 EXAMINER STENMAN: Can you speak up.

25 MR. HART: Sure.

1 Q. Do you understand that once a round
2 occurs that is not fully subscribed, that the auction
3 comes to an end?

4 A. Yes.

5 Q. And if the 2013 auction as proposed were
6 to occur, then there would be three different
7 products offered each of which would be, what, 26 or
8 27 percent of the total load? Maybe that print's too
9 small to see.

10 A. No, I got new glasses, I should be able
11 to.

12 Q. It's a third of 80, correct?

13 A. Yeah, that's what it looks like to me.

14 Q. Which mathematically is 26 and 2/3.
15 Would you agree that each of those products then
16 would have to have bidders bid on all of the
17 available tranches in order for the auction to
18 continue?

19 A. Repeat the question. I'm sorry.

20 Q. If the auction in 2013 were to go forward
21 as proposed, for the auction to continue into another
22 round each of those product definitions would have to
23 have full subscription, meaning either 26 or 27
24 tranches, bid upon.

25 A. I believe that's true.

1 Q. So if there's not enough non-Duke
2 generation bidding to fill one of those tranches, the
3 auction would stop.

4 A. I don't know why you have to characterize
5 it as "non-Duke." Just saying if --

6 Q. Well, let me rephrase that. You
7 understand that --

8 A. If you're saying there's not enough
9 people in the auction? If the auction is not fully
10 subscribed, that the auction is going to end.

11 Q. Correct.

12 A. Again, that's my understanding of the way
13 it would work. Right, if there aren't enough auction
14 participants, I think there are rules around the
15 competitive bid that say, again, loosely, if there
16 aren't four competitive bidders, and there are
17 requirements about how much of that can be the
18 distribution utility that's winning that auction,
19 that it wouldn't be approved. Is that your question?

20 Q. Right. But let's assume you have a few
21 rounds and the tranches are fully subscribed. There
22 will be a point at which it's no longer fully
23 subscribed.

24 A. Correct.

25 Q. If there are not 26 or 27 tranches bid

1 upon by someone other than Duke, couldn't effectively
2 Duke stop the auction by not bidding on that tranche?

3 A. Could Duke. You're talking about Duke as
4 a market participant.

5 Q. Yes.

6 A. Could I -- any market participant can
7 withdraw their offer into the auction and it would
8 stop the auction.

9 Q. Yes.

10 A. I think that that's true -- I believe
11 that's true of any auction participant.

12 Q. And if Duke were to withdraw and there
13 weren't 26 or 27 other tranches bid upon by
14 independent parties, that would stop the bidding at
15 that round.

16 A. I would say, again, if that happened in
17 any auction, whether it was me, whether it was Duke
18 Energy-Ohio or JRM or AEP or FirstEnergy, if that
19 tranche level goes below the subscription, the
20 auction stops.

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

22 EXAMINER STENMAN: Mr. Montgomery.

23 MR. MONTGOMERY: I have no questions.

24 EXAMINER STENMAN: Ms. Miller.

25 MS. MILLER: No questions, your Honor.

1 EXAMINER STENMAN: And just for the
2 record, there are seats up here at the table if you
3 would like to join us.

4 Mr. Jones.

5 MR. JONES: No questions, your Honor.

6 EXAMINER STENMAN: Let's take a
7 five-minute break at this point and come back at 3:15
8 and we'll go with redirect.

9 MS. SPILLER: Thank you, your Honor.

10 (Recess taken.)

11 EXAMINER STENMAN: Let's go back on the
12 record. Ms. Spiller.

13 MS. SPILLER: Thank you, your Honor.

14 - - -

15 REDIRECT EXAMINATION

16 By Ms. Spiller:

17 Q. Mr. Whitlock, do you recall the questions
18 from Mr. Oliker regarding pseudo-tying?

19 A. I do.

20 Q. And, Mr. Whitlock, is the Stuart station
21 a designated network resource in MISO?

22 A. It is.

23 Q. And can you move the legacy Duke
24 Energy-Ohio assets that are designated network
25 resources in MISO to PJM yet leave the load behind?

1 A. I think you'd have flickering light bulbs
2 and a huge reliability problem if you were to do
3 that.

4 Q. And why is that, sir?

5 A. Because of the proximity of that
6 generation to the load I think.

7 Q. And what is --

8 A. Can I add something to that?

9 Q. Sure.

10 A. And I think you would see the load that
11 would be cleared in the market that was in
12 different -- that was in MISO, and you would have the
13 generation cleared by PJM.

14 Q. And what is a designated network resource
15 in MISO?

16 A. It's a designated network resource. It's
17 requirements, right? You have a must-offer
18 obligation of energy. When you're at DNR, you get
19 auction revenue rights, congestion hedges of being a
20 result of a DNR, so there are a variety of things as
21 a result of that.

22 Q. So you were asked by Mr. Hart about Duke
23 Energy-Ohio's competitive bid -- competitive bidding
24 process plan. Have you reviewed what Duke
25 Energy-Ohio has proposed in this plan, sir?

1 A. I have not. Again, I made the assumption
2 that it was close to what FE did.

3 Q. Were you involved in developing that plan
4 on behalf of Duke Energy-Ohio?

5 A. I was not.

6 Q. From your experience, in the FirstEnergy
7 distribution utility companies' prior load auctions
8 in Ohio, do you know whether the Commission will
9 approve the auction results?

10 A. What will they approve?

11 Q. Did they approve the FirstEnergy auction
12 results, to your knowledge?

13 A. They did.

14 Q. Would you expect that same circumstance
15 to occur with respect to any competitive bidding
16 process or auction implemented by Duke Energy-Ohio
17 under its MRO?

18 A. Most likely.

19 Q. Thank you.

20 MS. SPILLER: Nothing further.

21 EXAMINER STENMAN: Any recross?

22 MS. CLARK: No.

23 MR. DORTCH: No your Honor.

24 MR. GARBER: No.

25 MR. KURTZ: No, your Honor.

1 MS. HOTZ: No.

2 MR. OLIKER: Your Honor, I have some
3 questions that would touch on the confidential
4 section that would touch on some of the things that
5 Ms. Spiller mentioned.

6 EXAMINER STENMAN: So we need to go into
7 the confidential portion for that?

8 MR. OLIKER: Where I can address that,
9 yes.

10 EXAMINER STENMAN: Mr. Hart, any recross?

11 MR. HART: No, other than the
12 confidential issues.

13 EXAMINER STENMAN: Mr. Jones, anything?

14 MR. JONES: No, your Honor.

15 EXAMINER STENMAN: Let's, again, go into
16 a confidential portion of the transcript.

17 (CONFIDENTIAL PORTION.)
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(OPEN RECORD.)

MS. SPILLER: Your Honor, if we are still on the record, I would move for the admission of Duke Energy-Ohio Exhibit No. 11 which is the direct testimony of Charles Whitlock in this proceeding.

EXAMINER STENMAN: Any objections to the admission of Duke 11?

(No response.)

EXAMINER STENMAN: Hearing none, it will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER STENMAN: Ms. Spiller, you may call your next witness.

MR. D'ASCENZO: For its next witness Duke Energy-Ohio calls Kenneth J. Jennings.

1 EXAMINER STENMAN: Please raise your
2 right hand.

3 (Witness sworn.)

4 EXAMINER STENMAN: Thank you.

5 MR. D'ASCENZO: Your Honor, for purposes
6 of marking exhibits I would like to mark the direct
7 testimony of Kenneth Jennings as Duke Energy-Ohio
8 Exhibit 12.

9 EXAMINER STENMAN: It will be so marked.
10 I believe the witness needs a copy of his testimony.

11 MR. D'ASCENZO: Yes, may I approach?

12 EXAMINER STENMAN: Yes, you may.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 - - -

15 KENNETH J. JENNINGS

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

18 DIRECT EXAMINATION

19 By Mr. D'Ascenzo:

20 Q. Hello, Mr. Jennings.

21 A. Hello.

22 Q. Would you please state your name for the
23 record?

24 A. My name is Kenneth J. Jennings.

25 Q. And what is your business address?

1 A. 139 East Fourth Street, Cincinnati, Ohio,
2 45202.

3 Q. And by whom are you employed and in what
4 capacity?

5 A. I am employed by Duke Energy Commercial
6 Enterprises. My position is director of market
7 policy and RTO services.

8 Q. Mr. Jennings, do you have in front of you
9 what was just marked as Duke Energy-Ohio Exhibit 12?

10 A. Yes, I do.

11 Q. And could you please identify that
12 document?

13 A. Direct testimony of Kenneth J. Jennings
14 on behalf of Duke Energy-Ohio, Incorporated.

15 Q. Mr. Jennings, was that document prepared
16 by you?

17 A. Yes, it was.

18 Q. Do you have any changes, corrections, or
19 additions to that testimony?

20 A. No, I don't.

21 Q. If you were asked those same questions
22 today, would your answers be the same?

23 A. Yes, they would.

24 Q. And do you adopt that document as your
25 direct testimony for this proceeding?

1 A. Yes, I do.

2 MR. D'ASCENZO: Your Honor, the witness
3 is available for cross-examination.

4 EXAMINER STENMAN: Any cross,
5 Ms. Kelaps-Clark?

6 MS. CLARK: No questions, thank you.

7 EXAMINER STENMAN: Mr. Dortch?

8 MR. DORTCH: No, your Honor.

9 EXAMINER STENMAN: Mr. Chamberlain?

10 MR. CHAMBERLAIN: No questions.

11 EXAMINER STENMAN: Mr. Garber.

12 MR. GARBER: No questions.

13 EXAMINER STENMAN: Mr. Kurtz.

14 MR. KURTZ: Very quickly.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Kurtz:

18 Q. When did Duke join MISO or Cinergy, the
19 predecessor?

20 A. I don't recall exactly. Officially I
21 want to say that it would have probably been around
22 2001 when they first started MISO day one.

23 Q. Under the MTEP, Midwest ISO Transmission
24 Expansion Plan, Duke Energy-Ohio is responsible for
25 its member load ratio share of the large transmission

1 projects approved by MISO during the time that Duke
2 was a member; is that correct? When I say large,
3 what they're called now, multivalued projects or the
4 extra high voltage projects; is that correct?

5 A. I think I would say that the obligation
6 there is somewhat contingent, so I would say that I
7 don't agree 100 percent with you, no.

8 Q. What's it contingent on?

9 A. I think further litigation and possibly
10 negotiation.

11 Q. Well, under the MISO MTEP tariff as it
12 exists you're responsible for your help load ratio
13 share of the projects that were approved while the
14 utility was a member; isn't that correct?

15 A. Can you repeat that question one more
16 time?

17 Q. Under the MISO tariffs, Duke the utility
18 is responsible for its member load ratio share of the
19 MTEP projects that were approved while it was a
20 member.

21 A. I don't know that that's the exact
22 wording of the tariff and so I think that's, what you
23 just stated was an interpretation of the tariff.

24 Q. What part do you disagree with?

25 A. That Duke Energy-Ohio would be obligated

1 to pay for all of the transmission expansion costs
2 that were approved while it was a member.

3 Q. Isn't that what the tariff says?

4 A. I think there are other words that talk
5 about things of the nature of usage, costs incurred,
6 so I don't think it's as simple as you summarized it,
7 no.

8 Q. When you calculated the cost that Duke
9 would incur for MTEP when it transfers out of PJM,
10 how did you make that calculation?

11 A. Are we talking about confidential now or
12 is this --

13 Q. Let me clarify.

14 A. -- this is public.

15 Q. I didn't ask for the dollar amount. The
16 dollar amount is in various of these IEU exhibits,
17 but without disclosing the dollar amount how did you
18 calculate the amount?

19 A. I would say that you take the capital
20 expenditure that MISO has summarized, let me say that
21 this is one way that we looked at it, there's a
22 couple of ways to look at it, correct? One way to
23 look at it was to take the number of projects and
24 summarize the capital expenditures and take the load
25 ratio share.

1 Another way to look at it was to, well, I
2 think that pretty much summarizes it, there are
3 other --

4 Q. Let's look it the way you just described.

5 A. All right.

6 Q. Under that way Duke would be responsible
7 for a transmission -- extra high voltage transmission
8 project type that, for example, these wind projects
9 that connect the wind farms in North Dakota, the big
10 high voltage multibillion dollar projects, Duke would
11 be responsible for its member load ratio share of
12 those transmission projects for the life of the
13 transmission projects, 40, 50 years, even after you
14 moved to PJM under that interpretation; isn't that
15 the way it works?

16 A. I think the multi -- the multivalue
17 projects, I think what you've described is typical of
18 the RECB projects, the reliability projects that have
19 been conducted. I would say that it's typical of
20 some of the other types of projects. I think the
21 multivalue projects are a different scenario and I
22 think that they're under different premise and may
23 have different set of circumstances to define what
24 the allocation should be and what the obligation is.

25 Q. Let's assume that Duke Energy-Ohio is

1 responsible for its member load ratio share of these
2 MTEP projects that were approved while it was a
3 member. Just make that assumption. Are you with me?

4 A. I think so.

5 Q. Okay. Now you move to PJM. What value
6 would the ratepayers receive from the fact that Duke
7 is now a member of PJM but is required to pay for
8 MISO transmission projects for the life of the -- for
9 the 40, 50-year life of those transmission projects?
10 What value would consumers get from the --

11 A. Are you asking me what value is the
12 consumer getting if Duke Energy-Ohio moves to PJM
13 while they have an assumed obligation?

14 Q. No. If there is an assumed obligation,
15 if there is an obligation for MTEP, what value would
16 Ohio consumers get from Duke being in PJM yet paying
17 for MISO high voltage transmission projects? Are
18 there any reliability benefits? What value would
19 consumers get for having to foot that bill?

20 A. If I assume that Duke Energy-Ohio
21 customers were going to have to pay for that anyway,
22 and all options were exhausted, the value that
23 customers would receive is they would probably
24 receive the benefits of greater deliverability of the
25 wind from the west to the east.

1 Q. Of course they wouldn't have any
2 entitlement to the wind generation, would they?

3 A. I'm not exactly sure. I'm not an expert
4 in renewable energy credits and such, but it's
5 certainly -- the markets are extremely connected from
6 an energy perspective. L and P's tend to track
7 energy prices, tend to track similarly between the
8 two markets, so to the extent that there's an
9 excessive supply of wind in the -- in MISO and there
10 is exports from MISO into PJM, then there would be a
11 realization of low cost renewable electricity.

12 I think there are other benefits of
13 moving to PJM with regard to the MVP projects,
14 though, as well.

15 Q. Let me state the obvious. Once you move
16 to PJM, you're responsible on a going-forward basis
17 for the PJM equivalent of MTEP which is RTEP; isn't
18 that correct?

19 A. Yes. I mean, both markets have expansion
20 plans and both of them have processes for
21 transmission expansion for multiple reasons, whether
22 they be reliability or economic reasons. Both
23 markets have that. Let me finish, please.

24 With regard to RTEP, right now the
25 expectation of RTEP projects is significantly less

1 than the expectation of MISO projects in general.
2 The MTEP mechanism is expected to exceed RTEP by as
3 much as I think 10 to 12 billion dollars. I think if
4 you were to examine that and look at what the
5 expectations of RTEP expenses in PJM would be versus
6 MTEP expenses in MISO, I mean, I think you're looking
7 at a reliability requirement -- or, a revenue
8 requirement in MISO that would be more than two times
9 that of the revenue requirement in PJM for expansion
10 projects.

11 Q. Just to be clear, when Duke goes to PJM,
12 Duke and therefore its customers who use transmission
13 will be responsible for the PJM expansion plans and
14 also, if Duke is on the hook under this
15 interpretation for the MTEP projects approved while
16 it was a member, then your proposal is that consumers
17 would pay the PJM expansion plans plus the MISO
18 expansion plans.

19 A. I disagree because, first of all, I don't
20 believe that we are obligated to the entire amount
21 that is currently approved. And secondly, the
22 ambitious transmission expansion plan of MISO has
23 only started. We've only seen first blush of it. I
24 mean, the next step is probably another
25 5 billion-dollar expansion and then beyond that there

1 may be another \$10 billion to come. And I think
2 Mr. Whitlock mentioned earlier RGOS report, that's an
3 acronym for the regional generation outlet study and
4 talks about what MISO's plant is for expansion to
5 deliver into the eastern part of the RTO and
6 Mr. Whitlock didn't recall who wrote it but actually
7 MISO wrote it. So it's certainly not biased in any
8 way by any other analysts or consultants.

9 Q. In fact on Appendix C --

10 A. What my point was that if I was on the
11 hook for everything that they've approved today, it's
12 probably a billion dollars or something on that
13 order.

14 Q. Your member load ratio share of a billion
15 dollars?

16 A. Yeah, but it's less than the \$20 billion
17 we're going to be on the hook for if we stay in high,
18 so.

19 Q. I interrupted you. Is it the rate base
20 amount that Duke Energy would be on the hook would be
21 a billion dollars or would it be your member load
22 ratio --

23 A. No, no, no, that's what their projections
24 are approved for, I believe. It's about that.

25 Q. But your member load ratio share of a

1 billion dollars.

2 A. The load ratio share in MISO is currently
3 about 5.6 percent for Duke Energy-Ohio, and another
4 benefit of moving to PJM is, is that our load ratio
5 to PJM is only about 3 percent.

6 Q. Now, you won't officially move to PJM
7 until January 1, 2012; is that correct?

8 A. That's correct.

9 Q. Okay. Now, MISO has all through 2011 to
10 approve additional MTEP or multivalued projects.

11 A. That's correct.

12 Q. Okay. Have they accelerated their
13 approval process? What's right now on the schedule
14 to be subject to MISO board approval?

15 A. I don't recall the schedule.

16 Q. Haven't they accelerated their projects
17 to get those things approved while Duke is a member
18 so you'll be on the hook for more?

19 A. I won't make assumptions about what
20 MISO's intents are.

21 Q. Is there a number in the public record as
22 to what you assume -- instead of being on the hook
23 for a 40-year revenue requirement of your share of
24 these MTEPs, you said you're going to buy out of that
25 obligation at some price; is that fair?

1 A. I suppose.

2 Q. Okay.

3 A. I'm not sure.

4 Q. Is there a public number in this record
5 as to what you assume your buyout costs will be? I
6 know we have some confidential information, is there
7 anything in the public record?

8 A. I don't think so. To the best of my
9 knowledge, I don't think so.

10 MR. KURTZ: Thank you, your Honor. No
11 further questions.

12 EXAMINER STENMAN: Ms. Hotz?

13 MS. KYLER: I have a few.

14 EXAMINER STENMAN: Okay.

15 - - -

16 CROSS-EXAMINATION

17 By Ms. Kyler:

18 Q. So you're familiar with the RGOS study
19 that Mr. Whitlock mentioned, correct?

20 A. Yes I am.

21 Q. Do you know for certain those RGOS
22 projects will be included in the 2011 MTEP?

23 A. I'm not sure which projects you're
24 talking about.

25 Q. I'm talking about these wind projects

1 that you're talking about, transmission projects to
2 bring wind in from the Great Plains. Do you know for
3 certain that those projects will be in the 2011 MTEP?

4 A. I do not know that for 2011. To clarify,
5 the RGOS project is a view of the entire plan for, I
6 would say for the next seven or eight years so I
7 don't think it's the plan for the next MTEP I guess
8 is what I'm saying.

9 EXAMINER STENMAN: Let me stop you both
10 for a second. What is the RGOS project just for
11 clarity of the record?

12 THE WITNESS: I did clarify it earlier,
13 but I'll do it again. It's the regional generation
14 outlet study.

15 EXAMINER STENMAN: Thank you.

16 Q. So this is the study about wind projects
17 that may be coming onto MISO's system that if Duke
18 stayed in MISO, the consumers would be responsible
19 for, correct?

20 A. I think that's pretty accurate.

21 Q. And you said you don't know for certain
22 that the projects included in this RGOS study would
23 be included in the 2011 MTEP, correct?

24 A. I would say that some will, some won't.

25 Q. And Duke should not be financially

1 responsible for RGOS study projects that are approved
2 for the 2012 MTEP and beyond, correct?

3 A. Repeat the question one more time. I'm
4 sorry.

5 Q. Okay. If projects from the RGOS study,
6 the transmission projects included in the RGOS study,
7 are approved to be a part of the MTEP after January
8 1st, 2012, Duke would not be responsible for those
9 projects, correct, or for the cost of those projects?

10 A. I think every one would agree that
11 there's little interpretation that would imply that,
12 that we would be on the hook for that.

13 MS. KYLER: That's all. No further
14 questions.

15 EXAMINER STENMAN: Thank you.

16 Mr. Yurick?

17 MR. YURICK: I just had a couple.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Yurick:

21 Q. Good afternoon, Mr. Jennings. I want to
22 direct your attention to pages 7 and 8 of your
23 testimony. The question is starting on line 8 of
24 page 7, "Please briefly explain why Duke Energy-Ohio
25 realigned its RTO membership." Do you see that?

1 A. Yes, sir.

2 Q. And you identify four basic reasons; is
3 that right?

4 A. Yes, sir.

5 Q. The first one is that it benefits joint
6 owners because there's one set of market signals
7 governing dispatch and one set of inputs to allow for
8 resource planning, and that's on lines 15 through 17.
9 Do you see that?

10 A. Yes, sir.

11 Q. And then second you say that "...with the
12 recent decision of FirstEnergy," this is starting on
13 lines 21 through 23, they're allowing FirstEnergy,
14 the recent decision of FirstEnergy Ohio electric
15 distribution allows them to realign their RTO
16 membership. Do you see that?

17 A. Yes, sir.

18 Q. Okay. You say that that eliminates a
19 seam in Ohio, correct?

20 A. Yes, sir.

21 Q. And you say that Duke Energy-Ohio's
22 realignment should be of assistance to the Public
23 Utilities Commission. Do you see that?

24 A. What line was that again?

25 Q. 5 and 6 on page 8. I'm sorry.

1 A. Okay. Yes, sir.

2 Q. And then the third reason is that the,
3 this is on lines 11 through 13, "...PJM's
4 forward-looking capacity market provides a useful
5 tool for utilities and suppliers in determining
6 pricing going forward and offers a measure of
7 predictability for resource planning." That's reason
8 3, correct?

9 A. Yes.

10 Q. And reason 4 is that, this is on lines 1
11 and 17, "The PJM market is a better fit for
12 competitive retail electric markets for the reasons I
13 already described, and those below regarding
14 membership of other utilities and forward-looking
15 working capacity markets with prices determined
16 through transparent auctions." That's the fourth
17 reason, correct?

18 A. Yes.

19 Q. Who determined those four reasons? Was
20 that you?

21 A. No. I would not -- I probably was not
22 the author of those principles.

23 Q. Okay. Well, who did author those
24 principles?

25 A. I would say that it was Julie Janson and

1 Chuck Whitlock in collaboration.

2 Q. And how did Julie Janson and Chuck
3 Whitlock communicate these four reasons to you?

4 A. I don't recall. I know that they've been
5 guiding principles for me.

6 Q. Was there a memo, do you think?

7 A. I think it was more of a discussion of
8 what the benefits are, the collaborative discussion
9 of what the benefits would be.

10 Q. Did you make an independent determination
11 of whether those four criteria or those four reasons
12 were true on your own?

13 A. No.

14 MR. YURICK: At this point I would move
15 to strike the question and answer beginning on line 8
16 of page 7 and ending with line 22 on page 8 because
17 the witness doesn't have independent knowledge and
18 didn't make those determinations by himself.
19 Additionally, they're likely hearsay although we
20 don't know because the witness doesn't remember, you
21 know, how he got that information and he made no
22 independent calculations to deny or confirm those
23 basically the conclusions.

24 MR. D'ASCENZO: Your Honor, the witness
25 did testify that it was through discussions in a

1 collaborative process. We've had a lot of testimony
2 today about the strategic reasons why Duke
3 Energy-Ohio has made its determination. The
4 information that Mr. Jennings articulated in his
5 reasonings has also been testified to by both
6 Ms. Janson, Mr. Whitlock, as well as articulated in
7 documents that were described throughout.

8 If Mr. Yurick would care to ask
9 Mr. Jennings' opinion on whether or not he believes
10 that these are true, which he hasn't done, perhaps
11 the proper foundation could be laid.

12 MR. YURICK: Well, I don't think it's up
13 for me to lay a foundation for this witness's opinion
14 but I think I did do a fairly good job of laying a
15 foundation for the fact that this witness has no
16 independent knowledge and made no independent expert
17 analysis of whether these four reasons have any basis
18 in fact or not. He was simply, he thinks he may have
19 been present in a room when some people were talking
20 about them and that's not enough to sponsor
21 testimony, respectfully.

22 EXAMINER STENMAN: At this point the
23 Bench agrees with Mr. Yurick and would grant the
24 motion to strike.

25 MR. YURICK: Thank you very much, your

1 Honor.

2 I have no further questions. Thank you.

3 EXAMINER STENMAN: Mr. Oliker.

4 MR. OLICKER: I do have some confidential
5 questions to ask, but I'll try to put those off. I
6 think we'll probably have to go through those
7 documents at a later time.

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

10 (Discussion off the record.)

11 EXAMINER STENMAN: Let's take a
12 ten-minute break.

13 (Recess taken.)

14 EXAMINER STENMAN: Let's go back on the
15 record.

16 Mr. Oliker.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Oliker:

20 Q. Mr. Jennings, I wanted to --

21 EXAMINER STENMAN: Can I actually have
22 you mark these first if we're going to talk about
23 them?

24 MR. OLICKER: Sure. Of course. Do you
25 want me to mark them for identification in the

1 record, your Honor?

2 EXAMINER STENMAN: Yes.

3 MR. OLKER: Your Honor, IEU Ohio would
4 like to mark for identification the document
5 previously referred to as document 7, an Excel
6 spreadsheet as IEU-Ohio Exhibit No. 8 and we would
7 also like to mark for identification a redacted
8 version as Exhibit 8A.

9 EXAMINER STENMAN: It will be so marked.

10 (EXHIBITS MARKED FOR IDENTIFICATION.)

11 MR. OLKER: And IEU-Ohio would also like
12 to mark for identification an Excel spreadsheet --

13 EXAMINER STENMAN: One second.

14 (Discussion off the record.)

15 EXAMINER STENMAN: Let's go back on the
16 record. We've marked 8 and 8A the document formerly
17 referred to as 7.

18 Mr. Olier, you can continue.

19 MR. OLKER: I would like to mark for
20 identification a graph for RTO clearing price as
21 IEU-Ohio Exhibit 9, and I would like for
22 identification the redacted version as Exhibit 9A.

23 EXAMINER STENMAN: It will be so marked.

24 (EXHIBITS MARKED FOR IDENTIFICATION.)

25 MR. OLKER: I would like to mark for

1 identification the TRC scrub review guidelines as
2 IEU-Ohio Exhibit 10, and I'd like to mark the
3 redacted version as IEU-Ohio Exhibit 10A.

4 EXAMINER STENMAN: They will be so
5 marked.

6 (EXHIBITS MARKED FOR IDENTIFICATION.)

7 EXAMINER STENMAN: Mr. D'Ascenzo, would
8 you like to make a motion with respect to these
9 documents?

10 MR. D'ASCENZO: Yes, your Honor, for the
11 reasons that were talked about earlier today Duke
12 Energy-Ohio would move respectfully move that these
13 documents be treated as confidential, proprietary,
14 trade secret information. Duke Energy-Ohio, these
15 documents show forward-looking forecasts with respect
16 to views to capacity prices, potential revenues under
17 various scenarios, and also internal analysis that
18 was performed and assumptions including risks.

19 This is all proprietary information, the
20 release of which would put Duke Energy-Ohio at a
21 competitive disadvantage. It's also information that
22 is not disseminated internally except for employees
23 who have a need to know for a business reason. So
24 with that, we respectfully request that the documents
25 that are labeled as IEU-Ohio Exhibit 8, 9, and 10 be

1 given confidential treatment.

2 EXAMINER STENMAN: As with the documents
3 previously discussed today, IEU Exhibits 8, 9, and 10
4 will be granted protective treatment pursuant to rule
5 4901-1-24 section F of the Ohio Administrative Code
6 which provides the protective order shall
7 automatically expire after 18 months and requires any
8 party wishing to extend a protective order to file an
9 appropriate motion at least 45 days in advance of the
10 expiration date. If Duke wishes to extend this
11 confidential treatment it should do so by filing a
12 motion 45 days in advance. If no such motion to
13 extend the confidential treatment is filed, the
14 Commission may release this information without prior
15 notice to Duke.

16 Mr. Oliker.

17 Q. (By Mr. Oliker) Mr. Jennings, the Federal
18 Energy Regulatory Commission required Duke to make a
19 compliance filing requiring its out of time FRR
20 claim; is that correct?

21 A. As I understand what FERC's order said
22 was, first of all, their order was with regards to
23 both the application to realign in PJM as well as the
24 out of time FRR.

25 Q. Okay.

1 A. And so yeah, there were compliance
2 requirements in the order.

3 Q. And you're familiar with what they are
4 requesting you to file, and has that filing occurred?

5 A. Yes, sir.

6 MR. OLIKER: Can I please approach for a
7 second?

8 EXAMINER STENMAN: You may.

9 MR. OLIKER: We intended to put this in
10 as an exhibit but we had a problem with our computer,
11 I hope we can take administrative notice, I'm sorry,
12 I only have one copy for the two of you because we
13 need to give one to the court reporter.

14 EXAMINER STENMAN: There's no reason that
15 this can't be put in as an exhibit if you provide
16 copies at a later time.

17 MR. OLIKER: Thank you, your Honor.

18 Q. Mr. Jennings, would you please turn to
19 page 11.

20 EXAMINER STENMAN: Would you like to mark
21 it?

22 MR. OLIKER: Absolutely. At this time I
23 would like to mark for identification as IEU-Ohio
24 Exhibit 11 the FERC filing in docket number ER
25 10-2254.

1 EXAMINER STENMAN: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Mr. Jennings, can you please read the
4 last sentence that begins on page 11, continues onto
5 page 12?

6 A. "Specifically, for load that is not opted
7 out the Participating LSE must pay DEO an amount
8 equal to its daily unforced capacity obligation in
9 megawatts multiplied by the PJM Final Zonal Capacity
10 Price for unforced capacity in the constrained
11 region."

12 Q. Has FERC accepted this filing?

13 A. Have they accepted the compliance filing?

14 Q. The compliance filing, yes.

15 A. To my understanding it was accepted on
16 December 27th.

17 Q. Okay. Thank you.

18 Mr. Jennings, I'm trying to confirm for
19 my understanding your testimony. In the company's
20 application on page 21 there's a sentence that
21 states, quote, but as a member of either the Midwest
22 ISO or PJM, both of which are FERC approved RTOs, the
23 company has met the statutory obligation with respect
24 to RTO membership.

25 The application also refers to your

1 testimony in RTO matters, although you discuss both
2 the Midwest ISO and PJM in your testimony, your
3 testimony is not as explicit as the company's
4 application.

5 Is it your testimony that regardless of
6 whether the company's a member of PJM or Midwest ISO
7 on January 1, 2012, the requirements for an MRO as
8 they relate to RTO membership are satisfied?

9 EXAMINER STENMAN: Mr. Olikier, what page
10 are you referencing?

11 MR. OLIKER: I believe it's on page 21.

12 EXAMINER STENMAN: Of?

13 MR. OLIKER: Of the application.

14 EXAMINER STENMAN: Of the application.
15 Thank you. I apologize.

16 A. Do I have the application?

17 Q. Perhaps you can answer it without the
18 application.

19 A. I'd rather not. I'd rather see it.

20 MR. D'ASCENZO: Your Honor, may I
21 approach?

22 EXAMINER STENMAN: You may.

23 MR. D'ASCENZO: Thank you.

24 A. Can you tell me what line or what part of
25 the page you were quoting from again?

1 Q. I think it starts on the second line of
2 page 21. Maybe the first line, actually.

3 A. And could I hear the question again?

4 (Record read.)

5 A. I think yes, to the best of my knowledge,
6 the requirements with regard to RTO membership would
7 be accomplished.

8 Q. Okay. Your testimony indicates that
9 you're employed by Duke Energy Commercial Enterprise,
10 Inc. What does Duke Energy Commercial Enterprise,
11 Inc. do within the Duke Energy corporate structure?

12 A. It's very much a, like the Duke Energy
13 Business Services, it acts as a service organization
14 within the company and that's really all I know.

15 Q. Does it have any subsidiaries?

16 A. Not that I'm aware of. I wouldn't know,
17 though.

18 Q. And what is the relationship between Duke
19 Energy Commercial Enterprise, Inc., and Duke Energy
20 Business Services, LLC?

21 A. To be quite honest, I don't know. The
22 only way I would know that I'm an employee of Duke
23 Energy Commercial Enterprise is the fact that I can
24 look and see it somewhere.

25 Q. Mr. Jennings, were you involved in the

1 preparation or review of any studies or analyses that
2 were relied upon in Duke Energy-Ohio's exit from the
3 Midwest ISO?

4 A. I participated in certain analytic
5 functions.

6 Q. Did you prepare any studies?

7 A. I gathered information and compiled it
8 into workable formats.

9 Q. Which studies or analyses did you
10 prepare?

11 A. I worked on the discounted cash flow
12 models.

13 Q. And when did you perform those studies?

14 A. They were ongoing. I would say that
15 those analyses probably started late-2009/early-2010.

16 Q. And do you know what the transaction
17 review committee is?

18 A. Yeah, I know what it is.

19 Q. Did you participate at its meetings?

20 A. No, I did not.

21 Q. Did you attend any of its meetings?

22 A. No, I did not.

23 Q. But you did prepare documents or studies
24 that were relied upon at those meetings.

25 A. I'm not so certain that I prepared

1 documents that were relied upon in those meetings. I
2 prepared the documents that may have supported
3 documents that were relied upon at those meetings.

4 Q. But you were -- but the documents in your
5 control were later, as they were passed along, and
6 then they created assumptions that were relied upon.

7 A. Can you say that one more time? I'm
8 sorry.

9 Q. The studies or analyses that you
10 performed would have been the foundation for certain
11 assumptions that were relied upon in later documents.

12 A. Some of it was, yeah. I wouldn't say a
13 hundred percent of it was, but I would say some of it
14 was.

15 MR. OLKER: At this time I think I'm --
16 I'm sorry, my apologies.

17 Q. Could you please look at, I believe it's
18 document No. 10, IEU-Ohio Exhibit 10, the TRC scrub,
19 maybe 10 A for purposes of the public hearing.

20 A. Can you --

21 Q. Are you familiar with --

22 A. I think I have the document but I'm not
23 exactly sure which one you're referring to.

24 Q. It's called the TRC Scrub Review
25 Guidelines.

1 A. I see that.

2 Q. Do you recognize this document?

3 A. Not particularly, no.

4 Q. Is that your name on the bottom of the
5 document?

6 A. Yes, it is.

7 Q. Can you identify the individuals that are
8 listed on page 1 of that document?

9 A. When you say "identify," what do you want
10 me to do?

11 Q. Could you give their job title,
12 responsibilities, and who they work for?

13 A. All of them?

14 Q. As many as you know, please.

15 A. Okay, I was going to say not all of them
16 I cannot. John Gatto, he's the manager of credit
17 risk. Swati Daji is the chief risk officer. Bob
18 Bolubasz is a risk manager.

19 Q. Do you know which Duke entity they work
20 for?

21 A. No. I don't. Not off the top of my
22 head.

23 Q. Okay. Continue, please.

24 A. Gwen Pate is vice president of
25 accounting. Bryan Buckler is general manager of

1 accounting; I'm not exactly sure, he's in accounting.
2 Tom Heath is in accounting. Cooper Monroe is in tax.
3 Kodwo is in the Legal department and is an attorney.
4 Kate Moriarty FRR is in the Legal department as an
5 attorney. Mark Krabbe is director or managing
6 director of finance. Lisa Cullen is a Finance
7 Manager. Those are the ones that I'm most familiar
8 with.

9 Q. What about Walt Yaeger on the project
10 business team?

11 A. Walt Yaeger is my colleague that covers
12 the MISO markets.

13 Q. What was the project business team and
14 what was the project business team requested to
15 complete?

16 A. I would say that this project team was
17 intended to be points of contact to gather
18 information.

19 Q. Regarding what?

20 A. Regarding what? The TRC scrub team
21 compiled this report and they gathered information
22 with regard to this particular project and the people
23 that were on the business team were the points of
24 contact that they would call.

25 Q. And was this project the exit from

1 Midwest ISO to join PJM.

2 A. For them the project is whatever they
3 called it in this document, and like I said, I
4 haven't seen the document before, but . . .

5 Q. So you weren't even aware of this
6 document's existence?

7 A. Not really, no. I wasn't.

8 Q. Do you have any idea why your name was
9 listed on the document?

10 A. I'm presuming because I was the point of
11 contact that they used when they needed information.
12 I was one of the -- I should say I was one of the
13 points of contact when they needed information or
14 they needed whatever.

15 Q. And was the project business team
16 designed to assist with the analysis of exiting the
17 Midwest ISO to join PJM.

18 A. Say that again, I'm sorry.

19 Q. Was the project business team, one of its
20 jobs, was it to analyze exiting the Midwest ISO to
21 join PJM?

22 A. Well, let me say this, it's not their
23 primary function. That group that's identified there
24 is basically our market policy and RTO team and
25 that's it. That's what that team does.

1 Q. Is that one of its functions?

2 A. It was one of the -- I would say that it
3 functioned to help justify that project, provided
4 input where needed. And I shouldn't even say
5 justified. It provided independent information about
6 the move, about the realignment.

7 Q. Would you identify which information you
8 would have provided that's in this document?

9 A. In which, in the TRC scrub document? Is
10 there a particular page that you could point me at
11 that --

12 Q. Just in general. I'm wondering which
13 information you would have been in charge of
14 gathering.

15 MR. D'ASCENZO: Your Honor, are we in the
16 confidential under seal portion of --

17 EXAMINER STENMAN: We are not. We are in
18 the public version.

19 MR. D'ASCENZO: Okay.

20 Q. I do believe you have the redacted
21 version in front of you.

22 A. I do.

23 Q. Okay.

24 A. I mean, as I look through this I see one
25 time MISO exit fee, we would have -- that project,

1 what's it called? The project business team would
2 have provided an input for that. The MISO
3 transmission expansion, that team would have provided
4 estimates for that. Given that it's redacted I'm not
5 exactly sure what else might have been provided.

6 Q. Okay. Would it be correct to
7 characterize the employees that are listed in that
8 document as a group of employees to assemble the data
9 that is necessary to evaluate whether Duke
10 Energy-Ohio should withdraw from the Midwest ISO?

11 A. No, I wouldn't characterize them like
12 that at all.

13 Q. How would you characterize them?

14 A. I would say that in some ways they were
15 charged with identifying risks that may not have been
16 identified already. They may have -- they were
17 probably expected to validate certain assumptions and
18 principles, that's kind of what I kind of see their
19 function as being.

20 Q. Do you know who the TRC scrub team
21 reported to?

22 A. No, I don't.

23 MR. OLIKER: I think that's all we have
24 on the public record, your Honor.

25 EXAMINER STENMAN: Mr. Hart?

1 MR. HART: No questions.

2 EXAMINER STENMAN: Mr. Beeler?

3 MR. BEELER: Yeah, I think we do have
4 some, Mr. Jones stepped out with Mr. Strom.

5 EXAMINER STENMAN: Do you need just a
6 moment?

7 MR. BEELER: I think so.

8 (Discussion off the record.)

9 EXAMINER STENMAN: All right, let's go
10 back onto record.

11 Mr. Jones, do you have questions?

12 MR. JONES: Yes I do, your Honor. Thank
13 you.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Jones:

17 Q. Hi, Mr. Jennings.

18 A. Hello, Mr. Jones.

19 Q. Mr. Jennings, first I want to direct your
20 attention to page 16 of your testimony. I don't know
21 if you've corrected this or not, and I apologize if
22 you've already done this, but there are some words
23 here on line 8, must be a few extra words there, it
24 says, begins with "...the benefit of knowing the PJM
25 capacity prices for the precise term as the as each

1 and MRO period."

2 Do you have some extra words there?

3 A. Yeah, I noticed that yesterday as a
4 matter of fact, and I apologize for that.

5 Q. And what do we need to cross out here?

6 A. Let me read through it again real quick.

7 I think what it was meant to say was
8 "...bidders in Duke Energy-Ohio's future MRO auctions
9 would have the benefit of knowing the PJM capacity
10 prices for the precise term of each MRO period."

11 Q. Okay. So we're striking out "as the as"
12 and in place of that putting "of."

13 A. Yes.

14 Q. Great.

15 On page 10 of your testimony, line 15.

16 A. I'm there.

17 Q. Okay. It says Duke Energy-Ohio signed a
18 PJM reliability assurance agreement. Has that been
19 signed as of this date, do you know?

20 A. I'm not sure.

21 Q. I want to refer you to page 9, line 8 --
22 I'll wait till you get there.

23 A. Okay.

24 Q. Where you talk about the MISO exit fee.

25 A. Yes, sir.

1 Q. Okay. Is that just a projection at this
2 point or is there an actual fee that you're aware of,
3 that the company's aware of, that would have to be
4 paid for that exit from MISO?

5 MR. D'ASCENZO: I'm going to object to
6 form, your Honor, simply that releasing of a number
7 delves into confidential information, information
8 that has been granted confidential protection. To
9 the extent the witness can answer the question
10 without divulging numbers, I will withdraw the
11 objection.

12 MR. JONES: I didn't ask for a number
13 yet.

14 EXAMINER STENMAN: Please do answer
15 without divulging confidential information.
16 Mr. Jones can delve into that in the confidential
17 transcript if necessary.

18 A. I'm sorry, I -- can you re --

19 Q. Is there an actual number for that cost?

20 A. I don't think -- no, I would say no,
21 there's not an actual number yet. Not a number
22 certain.

23 Q. And this is something that is pending
24 with FERC at this point for getting that approved for
25 the cost to be recovered?

1 A. For the exit fee?

2 Q. Yes.

3 A. I don't think that it's currently pending
4 with FERC, no.

5 Q. Okay.

6 A. When you say "pending," what do you mean?

7 Q. I mean you're going to seek approval from
8 FERC for the approval of these costs for recovering
9 them, for the exit fees and the entrance fees into
10 PJM.

11 A. I'm not exactly sure how that would work.
12 My understanding is, is that similar to LG&E, there
13 would be an exit filing made with FERC. And then
14 whether that gets approved or not -- then FERC could
15 possibly approve that. It would be a process that
16 would occur after the exit.

17 Q. Okay. And there would be a separate
18 filing, then, for the entrance fee into PJM?

19 A. I'm not sure that there is a fee called
20 an entrance fee.

21 Q. Okay. There's nothing, there's no
22 entrance fee, to your knowledge, into PJM other than
23 I know you talked about the expansion costs going
24 into PJM, but there's no other costs to go into PJM
25 besides the expansion of the RTEP?

1 A. There are integration -- there's an
2 integration cost.

3 Q. Okay. And would there be an application
4 for recovery of that cost?

5 A. I'm not sure about recovery or, I'm not
6 even sure that there would be a filing for
7 integration costs.

8 Q. I want to ask you if you're familiar with
9 a filing at FERC, a docket involving MISO involving
10 their long-term transmission rights, docket number
11 ER11-2059. Are you familiar with that filing in that
12 docket?

13 A. I'm only vaguely familiar with it.

14 Q. Okay. And do you know whether or not
15 that filing would have a potential to increase costs
16 on Duke for PJM integration?

17 A. I don't think so.

18 Q. Okay. Still regarding the issue of the
19 transmission expansion fees in PJM, are you aware of
20 the Atlantic Grid Operations petition for declaratory
21 ruling requesting recovery of transmission expansion
22 off the east coast of PJM, which is docket number
23 EL11-13? Do you have any knowledge or familiarity
24 with that?

25 A. No, I'm not familiar with that docket at

1 all.

2 Q. Mr. Jennings, as far as when FirstEnergy
3 did their realignment from MISO to PJM and they
4 held -- opened up a separate docket and invited
5 public comment to address the impact of the RTO
6 realignment upon interested stakeholders, are you
7 familiar with that docket, that docket number or case
8 number 09-778-EL-UNC here at the Commission that
9 involved FirstEnergy?

10 A. Somewhat, yes.

11 Q. Okay. Would you agree with me,
12 Mr. Jennings, that a similar docket should be opened,
13 if there's realignment here for this case and the MRO
14 is approved, that there should also be a separate
15 docket opened up before the Commission to have public
16 comment, opportunity for public comment to address
17 the impact of that RTO realignment in this case?

18 A. I'm not sure I can answer that. One, I
19 don't really have a personal view; two, the only
20 discussions I've had about that have been with my
21 attorney and I don't think it would be proper for me
22 to just repeat what my attorney told me.

23 Q. So you don't have a position on that
24 either way at this point?

25 A. Yeah, I'd prefer not to take a position

1 on that.

2 Q. Okay. I wanted to ask you, Mr. Jennings,
3 about the MTEP expansion planned fees for MISO. How
4 long will that continue, for Duke to be responsible
5 for those costs?

6 A. I'm not sure exactly how that will work.
7 I'm sure it could work in a variety of ways. It
8 could work over time, it could be a one-time payment,
9 so I think that's all subject to negotiation and
10 settlement.

11 Q. If there is no one-time payment, do you
12 know how long the duration would be?

13 A. No, I have no clue about what the banding
14 could be on timing for payment.

15 Q. Do you know the dollar figure involved
16 with the MTEP?

17 A. I don't know a specific number. We've
18 provided estimates, but I wouldn't say that I know
19 the number, no.

20 Q. Who did you provide estimates to?

21 A. Well, my group provided them through our
22 evaluation process. I think some of those documents
23 were made available.

24 Q. And how about for RTEP, do you have a
25 number for that?

1 A. What do you mean by "a number"?

2 Q. Well, as to what the cost is going to be.

3 A. There are, I mean, RTEP I think I view as
4 being an ongoing cost --

5 Q. Right.

6 A. -- of doing business, so it's not one
7 number.

8 Q. Right. It's an annual number, right?

9 A. It's an annual number.

10 Q. Do you know what that is?

11 A. We have estimates of that as well.

12 Q. Okay. And that information as to what
13 the cost would be from the MTEP and the annual number
14 for the RTEP, that's confidential information as far
15 as you know?

16 A. I think it is.

17 Q. And as far as you know is it in any
18 document in the confidential portion of this docket,
19 of this hearing today, information, as far as
20 information that IEU has provided in the --

21 A. No, I'm not aware of that.

22 MR. JONES: Your Honor, if I could just
23 have a second.

24 EXAMINER STENMAN: Yes.

25 Let's go off the record for a second.

1 (Discussion off the record.)

2 EXAMINER STENMAN: Let's go back on the
3 record. Any further questions from staff?

4 MR. JONES: No further questions, your
5 Honor, thank you.

6 EXAMINER STENMAN: Thank you. At this
7 time we'll adjourn for the day and we'll reconvene
8 tomorrow morning at 9 o'clock.

9 (The hearing adjourned at 5:48 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, January 12, 2011, and carefully compared with my original stenographic notes.

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

My commission expires June 19, 2011.

(MDJ-3775)

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Case No(s). 10-2586-EL-SSO

Summary: Transcript Transcript of Duke Energy Ohio for Approval of a Market Rate Offer hearing held on 01/12/11. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.