

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Ms. Katie Stenman and Ms. Christine M.T.
 Pirik, Hearing Examiners, at the Public Utilities
 Commission of Ohio, 180 East Broad Street, Room 11-A,
 Columbus, Ohio, called at 9:00 a.m. on Thursday,
 January 13, 2011.

- - -

VOLUME III

- - -

ARMSTRONG & OKEY, INC.
 222 East Town Street, 2nd Floor
 Columbus, Ohio 43215
 (614) 224-9481 - (800) 223-9481
 Fax - (614) 224-5724

- - -

1 APPEARANCES:

2 Ms. Amy B. Spiller
3 Associate General Counsel
4 Duke Energy Corporation
5 and Ms. Elizabeth H. Watts
6 Assistant General Counsel
7 Room 2500, ATII
8 139 East Fourth Street
9 Cincinnati, Ohio 45201-0960

Mr. Rocco O. D'Ascenzo
Senior Counsel
Duke Energy Business Services, Inc.
139 East Fourth Street
Cincinnati, Ohio 43201-0960

On behalf of Duke Energy-Ohio.

Kravitz, Brown & Dortch, LLC
By Mr. Michael D. Dortch
65 East State Street, Suite 200
Columbus, Ohio 43215

On behalf of Duke Energy Retail Services.
Vorys, Sater, Seymour & Pease, LLP
By Mr. M. Howard Petricoff
Mr. Stephen M. Howard
Ms. Lija Kaleps-Clark
52 East Gay Street
Columbus, Ohio 43216-1008

On behalf of Constellation NewEnergy,
Constellation Commodities Group, and the
Retail Energy Suppliers Association.

Mr. Mark A. Hayden
FirstEnergy
76 South Main Street
Akron, Ohio 44308
Jones Day
By Mr. Grant W. Garber
Mr. David A. Kutik
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114

On behalf of FirstEnergy Solutions Corp.

1 APPEARANCES (Continued):

2 McNeese, Wallace & Nurick, LLC
3 By Mr. Samuel C. Randazzo
4 Mr. Joseph E. Olier
5 Fifth Third Center, Suite 1700
6 21 East State Street
7 Columbus, Ohio 43215-4288

8 On behalf of Industrial Energy Users of
9 Ohio.

10 Janine L. Migden-Ostrander
11 Ohio Consumers' Counsel
12 By ms. Ann M. Hotz
13 Ms. Jody M. Kyler
14 Mr. Richard C. Reese
15 Assistant Consumers' Counsel
16 10 West Broad Street, Suite 1800
17 Columbus, Ohio 43215-3485

18 On behalf of the residential customers
19 of Duke Energy-Ohio.

20 Ms. Colleen L. Mooney
21 Mr. David C. Rinebolt
22 231 West Lima Street
23 Findlay, Ohio 45839-1793

24 On behalf of Ohio Partners for Affordable
25 Energy.

Chester, Willcox & Saxbe, LLP
By Mr. John W. Bentine
Mr. Mark S. Yurick
65 East State Street, Suite 1000
Columbus, Ohio 43215-4213

On behalf of Kroger Company.

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

On behalf of Ohio Energy Group, Inc.

1 APPEARANCES (Continued):

2 Mike DeWine, Ohio Attorney General
Public Utilities Section
3 By Mr. John H. Jones
Mr. Steven Logan Beeler
4 Assistant Attorneys General
180 East Broad Street, 6th Floor
5 Columbus, Ohio 43215-3793

6 On behalf of the staff of the Public
Utilities Commission of Ohio.

7 Bricker & Eckler, LLP
8 By Mr. Christopher M. Montgomery
Mr. Terrence O'Donnell
9 100 South Third Street
Columbus, Ohio 43215-4291

10 On behalf of Ohio Advanced Energy.

11 Bricker & Eckler, LLP
12 By Mr. Thomas J. O'Brien
100 South Third Street
13 Columbus, Ohio 43215

14 On behalf of the City of Cincinnati.

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

17 Mr. Kevin Schmidt
18 33 North High Street
Columbus, Ohio 43215

19 On behalf of Ohio Manufacturers
20 Association.

21 Law Office of Douglas E. Hart
22 By Mr. Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, Ohio 45202

23 On behalf of the Greater Cincinnati
24 Health Council and Eagle Energy, LLC.
25

1 APPEARANCES (continued):

2 Mr. Will Reisinger
3 Mr. Nolan Moser
4 1207 Grandview Avenue, Suite 201
5 Columbus, Ohio 43212

6 On behalf of the Ohio Environmental
7 Council.

8 Behrens, Taylor, Wheeler & Chamberlain
9 By Mr. Rick D. Chamberlain
10 Six Northeast 63rd Street, Suite 400
11 Santa Fe North Building
12 Oklahoma City, Oklahoma 73105

13 Roetzel & Andress
14 By Mr. Kevin J. Osterkamp
15 155 East Broad Street, 12th Floor
16 Columbus, Ohio 43215

17 On behalf of Wal-Mart Stores East, LP and
18 Sam's East, Inc.

19 Bell & Royer Co., LPA
20 By Mr. Barth E. Royer
21 33 South Grant Avenue
22 Columbus, Ohio 43215-3900

23 On behalf of Dominion Retail, Inc.

24 Ms. Anne M. Vogel
25 American Electric Power
1 Riverside Plaza
Columbus, Ohio 43215

On behalf of AEP Retail Energy Partners,
LLC.

Ms. Erin C. Miller
Mr. Matthew J. Satterwhite
American Electric Power
1 Riverside Plaza
Columbus, Ohio 43215

On behalf of Ohio Power Company and
Columbus Southern Power Company.

- - -

1	INDEX	
2	WITNESSES	PAGE
3	Kenneth J. Jennings	
	Redirect examination by Mr. D'Ascenzo	484
4	Recross-examination by Ms. Kyler	505
	Recross-examination by Mr. Yurick	511
5	Recross-examination by Mr. Olikier	518
	Recross-examination by Mr. Jones	520
6	Further recross by Mr. Olikier	529
	Further redirect by Mr. D'Ascenzo	542
7	Further recross by Mr. Olikier	546
8	Brian D. Savoy	
	Direct examination by Mr. D'Ascenzo	552
9	Cross-examination by Mr. Olikier	554
	Redirect examination by Mr. D'Ascenzo	556
10	Jeffrey R. Bailey	
11	Direct examination by Mr. D'Ascenzo	558
	Cross-examination by Ms. Hotz	561
12	Cross-examination by Mr. Yurick	564
	Cross-examination by Mr. Hayden	574
13	Cross-examination by Mr. Hart	576
	Cross-examination by Mr. Beeler	578
14	Redirect examination by Mr. D'Ascenzo	579
	Recross-examination by Mr. Yurick	583
15	William D. Wathen, Jr.	
16	Direct examination by Mr. D'Ascenzo	586
	Cross-examination by Mr. Petricoff	589
17	Cross-examination by Mr. Chamberlain	605
	Cross-examination by Mr. Kutik	612
18	Cross-examination by Mr. Boehm	617
	Cross-examination by Ms. Hotz	643
19	Cross-examination by Mr. Yurick	650
	Cross-examination by Mr. Olikier	651
20	Cross-examination by Mr. Hart	653
	Cross-examination by Mr. Beeler	679
21	James E. Ziolkowski	
22	Direct examination by Mr. D'Ascenzo	688
	Cross-examination by Mr. Hayden	692
23	Cross-examination by Ms. Hotz	693
	Cross-examination by Mr. Yurick	695
24	Cross-examination by Mr. Hart	699
	Cross-examination by Mr. Royer	702
25	Redirect examination by Mr. D'Ascenzo	708

INDEX (Continued)

- - -

COMPANY EXHIBITS	ID'D	REC'D
8 - IEU-SUPP-POD-03-005(o) (Public Version)	451	549
8A - IEU-SUPP-POD-03-005(o) (Confidential Version)	451	549
9 - IEU-SUPP-POD-03-005(s) (Public Version)	451	549
9A - IEU-SUPP-POD-03-005(s) (Confidential Version)	459	549
12 - Direct Testimony of K. Jennings	432	547
13 - Regional Generation Outlet Study	486	548
14 - Direct Testimony of B. Savoy	552	557
15 - Direct Testimony of J. Bailey	558	585
16 - Direct Testimony of W. Wathen	586	688
17 - Direct Testimony of J. Ziolkowski	672	713

- - -

FES EXHIBITS	ID'D	REC'D
4 - Third Set of Interrogatories	692	713

- - -

1 Thursday Morning Session,

2 January 13, 2011.

3 - - -

4 EXAMINER PIRIK: This is a continuation
5 of the hearing in Case No. 10-2586-EL-SSO. I'm not
6 going to ask specifically for appearances but I think
7 it is helpful if we go around the room and we know
8 what attorneys are in the room. So if you could just
9 stand and state your name and the affiliation that
10 you are with, we don't need the address again. But I
11 think for the record for today's record that's how we
12 will do it.

13 And we will just start with Ms. Clark and
14 then we'll continue around.

15 MR. CLARK: Lija Kelaps-Clark appearing
16 on behalf of Constellation Energy Commodities Group,
17 Constellation NewEnergy, and Retail Energy Suppliers
18 Group.

19 MR. DORTCH: Duke Energy Retail Sales,
20 LLC, by Michael Dortch.

21 MR. D'ASCENZO: Rocco D'Ascenzo, on
22 behalf of Duke Energy-Ohio.

23 MS. SPILLER: Good morning, your Honors.
24 Amy Spiller on behalf of Duke Energy-Ohio.

25 MS. WATTS: Good morning. Elizabeth

1 Watts on behalf of Duke Energy-Ohio.

2 MR. CHAMBERLAIN: Rick Chamberlain for
3 Wal-Mart Stores East, LP and Sam's East, Inc.

4 MR. HAYDEN: Good morning, your Honors.
5 Mark Hayden on behalf of FirstEnergy Solutions.

6 MR. BOEHM: Good morning, your Honor.
7 David Boehm for the Ohio Energy Group.

8 MS. KYLER: Good morning. Jody Kyler
9 from OCC.

10 MS. HOTZ: Ann Hotz from OCC.

11 MS. MOONEY: Colleen Mooney, Ohio
12 Partners for Affordable Energy.

13 MR. YURICK: Mark Yurick on behalf of the
14 Kroger Company.

15 MR. OLIKER: On behalf of Industrial
16 Energy Users-Ohio, Joseph Olikier and also Sam
17 Randazzo.

18 MR. BEELER: Steve Beeler on behalf of
19 staff.

20 MR. JONES: John Jones on behalf of
21 Commission staff.

22 MR. HART: Doug Hart on behalf of Greater
23 Cincinnati Health Council and Eagle Energy.

24 EXAMINER PIRIK: Thank you. I believe
25 that's all. If there's anyone else.

1 I believe we were at redirect in the open
2 record with Mr. Jennings; is that correct?

3 MR. D'ASCENZO: That is, your Honor.

4 EXAMINER PIRIK: Mr. D'Ascenzo.

5 MR. D'ASCENZO: Thank you.

6 - - -

7 KENNETH J. JENNINGS
8 being first duly sworn, as prescribed by law, was
9 examined and testified as follows:

10 REDIRECT EXAMINATION

11 By Mr. D'Ascenzo:

12 Q. Good morning, Mr. Jennings.

13 A. Good morning.

14 Q. I'm going to ask you a few questions
15 based upon the cross-examination that occurred
16 yesterday.

17 Mr. Jennings, do you recall a
18 conversation with counsel for Ohio Energy Group
19 regarding Duke Energy-Ohio's obligation for Midwest
20 ISO transmission expansion projects?

21 A. I do.

22 Q. And in particular do you recall if that
23 conversation involved what Duke Energy-Ohio would be
24 obligated for once it withdraws from Midwest ISO and
25 realigns with PJM?

1 A. I do.

2 Q. And do you also recall talking about Duke
3 Energy-Ohio's participation in the Midwest ISO with
4 respect to those transmission expansion costs?

5 A. I do.

6 Q. Mr. Jennings, do you know if Duke
7 Energy-Ohio were to not realign and would have
8 decided to stay in Midwest ISO, whether or not the
9 company would continue to be obligated to pay those
10 Midwest ISO transmission expansion costs?

11 A. They would.

12 Q. And can you quantify for us what those
13 costs are?

14 A. Based on the estimates from the Regional
15 Generation Outlet Study, coined RGOS study that was
16 produced by the Midwest ISO, the expected allocation
17 or the expected construction costs in the Midwest ISO
18 is going to be somewhere between 12 and 15 billion
19 dollars.

20 Given Duke Energy-Ohio's approximately
21 5-1/2 percent load ratio share in the Midwest ISO, I
22 would say that -- I would say that their allocation
23 would be something on the order of 110 to 125 million
24 dollars a year in MTEP costs.

25 Q. You mentioned the RGOS report, and I'm

1 going to use the acronym. Do you know what "RGOS"
2 stands for?

3 A. Yeah, it's what I said before, it's the
4 Regional Generation Outlet Study.

5 Q. Are you familiar with that document?

6 A. Yes, I am.

7 Q. Have you reviewed that document?

8 A. I've done a cursory review of the
9 document.

10 MR. D'ASCENZO: Your Honor, may I
11 approach?

12 EXAMINER PIRIK: Yes.

13 MR. D'ASCENZO: Your Honor, I would like
14 to mark this as Duke Energy-Ohio Exhibit 13.

15 EXAMINER PIRIK: The document is so
16 marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 EXAMINER PIRIK: Can we just go off the
19 record for a minute.

20 (Discussion off the record.)

21 EXAMINER PIRIK: Go back on the record.
22 Go ahead.

23 MR. D'ASCENZO: Thank you.

24 Q. Mr. Jennings, do you recognize the
25 document that was handed to you marked as Duke

1 Energy-Ohio Exhibit 13?

2 A. I do.

3 Q. Could you explain what that document is?

4 A. This was a study that was conducted by
5 the Midwest ISO, it was a collaborative effort with
6 members, MISO members, and MISO staff in order to
7 examine the transmission requirements necessary in
8 order to make renewable generation developed in the
9 western side of the RTO or ISO deliverable to the
10 load pockets.

11 Q. And is this the RGOS study that you
12 referred to a few moments ago?

13 A. Yes, it is.

14 Q. Yesterday I believe you mentioned in your
15 discussions with counsel for Ohio Energy Group that
16 this was a publicly available document. Is this
17 document available on Midwest ISO's website?

18 A. Yes, it is.

19 Q. Now, a little bit ago you quantified some
20 numbers for us. Can you quickly just point to where
21 in this report those numbers can be found?

22 A. On page 12 of 148, there are three rows
23 there with subrows, transmission, generation, and
24 total. Within the transmission section they identify
25 total expected costs associated with three variations

1 of transmission plans, one being the native voltage,
2 the second one being a 760 kV solution, and the third
3 one being a native DC circuit solution, each with
4 different estimates of costs.

5 Within the native voltage the expected
6 transmission requirements in order to make the
7 renewables deliverable is about \$13.8 billion needed
8 in MISO and just under \$2 billion needed in PJM. The
9 765 kV solution is about \$15 billion in needed
10 upgrades in MISO and about \$4 billion in needed
11 upgrades in the PJM. And under the DC circuit
12 solution it's about just under 13 billion in needed
13 upgrades for the Midwest ISO and around \$2 billion
14 needed in PJM.

15 Q. Mr. Jennings, in your opinion, based upon
16 your knowledge of PJM and Midwest ISO and having
17 reviewed this report, is it fair to say that based
18 upon those numbers the expected transmission
19 expansion costs for Midwest ISO are greater than
20 those of PJM by Midwest ISO's own analysis?

21 A. Yes.

22 Q. Mr. Jennings, do you know whether Duke
23 Energy-Ohio provided this document in the course of
24 discovery?

25 A. Yes, they did.

1 Q. Thank you, Mr. Jennings, do you recall
2 questions by counsel for Kroger regarding benefits of
3 Duke Energy-Ohio's realignment in respect to your
4 direct testimony?

5 A. Yes, I do.

6 Q. Now, Mr. Jennings, are you familiar with
7 the PJM market?

8 A. Yes, I am.

9 Q. And you testified to the operation of
10 PJM's market yesterday; is that a fair assessment of
11 your testimony?

12 A. Yes.

13 Q. Based upon your knowledge and experience
14 with the PJM market and also your knowledge of Duke
15 Energy-Ohio's business operations, do you believe
16 that there are benefits to Duke Energy-Ohio
17 realigning with PJM?

18 A. I do.

19 MR. YURICK: Objection, foundation.

20 EXAMINER PIRIK: Excuse me, Mr. Yurick?

21 MR. YURICK: The objection is foundation.

22 EXAMINER PIRIK: Foundation?

23 MR. YURICK: Yeah, there's no foundation
24 laid for him to answer that question.

25 EXAMINER PIRIK: Could I see the question

1 again.

2 Objection sustained.

3 MR. D'ASCENZO: Your Honor, I didn't get
4 to respond.

5 EXAMINER PIRIK: You can have an
6 opportunity to lay a foundation now.

7 MR. D'ASCENZO: Okay.

8 Q. (By Mr. D'Ascenzo) Mr. Jennings, how long
9 have you been involved with the PJM markets?

10 A. Since April of 2006.

11 Q. And can you describe what your
12 participation in the PJM markets is?

13 A. I participate in all of the PJM
14 stakeholder committees, task forces, working groups,
15 including the PJM planning committee, the PJM
16 transmission expansion and advisory committee, the
17 PJM regional transmission expansion planning
18 committee, the PJM members committee, the PJM market
19 implementation committee, the PJM markets and
20 reliability committee, and numerous other working
21 groups and task forces.

22 Q. What is the extent of your participation
23 in the numerous committees you just mentioned?

24 A. As a voting member for Duke Energy-Ohio.

25 Q. And can you explain what that means?

1 A. I am the PJM stakeholder representative
2 for Duke Energy Corporation and Duke Energy-Ohio.

3 Q. And in your role as a voting member what
4 are your responsibilities?

5 A. I participate in the committees in order
6 to develop market and reliability solutions with
7 other member utilities. I cover PJM policy
8 initiatives and changes. I cover Federal Energy and
9 Regulatory Commission policy decision, orders in
10 cases with regard to PJM. I regularly attend
11 meetings at PJM and interact with the PJM management
12 and staff.

13 Q. And in that capacity are you representing
14 the business of Duke Energy Corporation and Duke
15 Energy-Ohio?

16 A. Yes.

17 Q. And are you advocating on behalf of the
18 operation of Duke Energy-Ohio and Duke Energy
19 Corporation in PJM?

20 A. Yes, I do.

21 Q. So would you say you are familiar with
22 the operation of Duke Energy-Ohio and Duke Energy
23 Corporation with respect to PJM?

24 A. I am.

25 Q. And are you familiar with how Duke

1 Energy-Ohio will operate once it is a transmission
2 owning member in PJM?

3 A. Yes.

4 Q. Can you briefly describe your experience
5 with respect to the Midwest ISO?

6 A. Prior to my current position I was the
7 manager of business analysis for Cinergy Corporation,
8 and at the time that the Midwest ISO was
9 transitioning to its day-two markets I worked in a
10 regulatory cost accounting organization where I
11 developed methodologies for reporting RTO costs or
12 Midwest ISO costs, allocating day-ahead and realtime
13 energy purchases and sales, allocating Midwest ISO
14 administrative costs.

15 I worked with each of the states in
16 coming up with allocation tools in order to allocate
17 the ISO costs.

18 Q. Mr. Jennings, going back to your
19 knowledge of the PJM market, are you familiar with
20 the demand response opportunities available in the
21 PJM market?

22 A. Yes, I am.

23 Q. And based upon your knowledge of the
24 operations of Duke Energy-Ohio, are you familiar with
25 the load ratio share that Duke Energy-Ohio has with

1 respect to transmission in Midwest ISO and PJM?

2 A. Yes, I am. Right now as a member of the
3 Midwest ISO Duke Energy-Ohio is approximately
4 5.6 percent of the total Midwest ISO load. So when
5 the Midwest ISO allocates any costs in a load ratio
6 share fashion, the Duke Energy-Ohio load zone would
7 get approximately 5., I think it's 5.6 percent of the
8 total cost.

9 In PJM Duke Energy-Ohio will be
10 approximately 3-1/2 percent, so actually Duke
11 Energy-Ohio's share of costs in PJM would be
12 significantly less than their share in the Midwest
13 ISO.

14 Q. And are you familiar how Midwest ISO and
15 PJM calculate their network transmission service
16 rates?

17 A. I'm familiar with the process.

18 Q. Can you --

19 A. They're similar. The two processes are
20 essentially the same.

21 Q. Can you explain that, please?

22 A. Each transmission owner in the ISO and
23 the RTO have revenue requirements. Those revenue
24 requirements are filed at FERC and become part of the
25 ISO and the RTO tariff. The ISO and the RTO then

1 recover those costs from transmission customers
2 within each zone.

3 Q. And do you know if there will be
4 differences in the costs, in the revenue
5 requirements, between -- for Duke Energy-Ohio between
6 Midwest ISO and PJM?

7 A. Yes.

8 Q. Can you --

9 A. Currently in the Midwest ISO the Duke
10 Energy midwest transmission system is comprised of
11 their companies: Duke Energy-Indiana, Duke
12 Energy-Ohio, and Duke Energy-Kentucky. When Duke
13 Energy-Ohio realigns into PJM, that transmission
14 system will essentially be bifurcated.

15 The costs associated with the
16 transmission rates of the two companies, Duke
17 Energy-Kentucky and Duke Energy-Ohio, is expected to
18 be significantly less for Duke Energy-Ohio customers
19 than it is today as the -- with the aggregate
20 companies, the three aggregate companies.

21 I think our expected savings for
22 customers under the realignment of the new
23 transmission, all things being equal would be around
24 \$7 million, I believe.

25 Q. Mr. Jennings, based upon your knowledge

1 of the PJM markets and the Midwest ISO markets and
2 what you just described with respect to load ratio
3 shares and the calculation of the network
4 transmission service charges under the FERC formulas,
5 do you believe that there is a benefit to having a
6 reduction in transmission costs in PJM as part of the
7 realignment?

8 MR. YURICK: I'm going to object again,
9 and maybe I can kind of expound on the reasons for my
10 objection.

11 EXAMINER PIRIK: Could you use a
12 microphone? I want to be sure counsel can hear.

13 MR. YURICK: I want to restate my
14 objection and if I could be permitted to expand on
15 the basis. This witness sponsored testimony on pages
16 8 and 9 where he went into four benefits that he felt
17 that Duke would realize from moving to -- from MISO
18 to PJM, and I asked him at that time did he perform
19 any independent calculations in order to verify those
20 things, and those are not the kind of opinions that
21 you can just, I think, render based on your general
22 knowledge without making some actual calculation and
23 trying to cost it out and figure out are people going
24 to save money versus are they not going to save
25 money.

1 And I think this kind of line of
2 questioning and this attempt to rehabilitate this
3 witness is not appropriate. And if the witness had
4 performed calculations or if -- I was even willing to
5 give him the benefit of the doubt if he had looked
6 at, you know, memos, e-mails, if he could remember
7 specific conversations with specific people, that
8 might even form a basis for it. But just based on
9 his general knowledge of MISO and PJM and the
10 operations of Duke Energy-Ohio I don't think
11 qualifies him to opine that there is specifically a
12 benefit.

13 He may think that. I may think that.
14 You know, but without being -- without doing a
15 reasonably thorough calculation of what the specific
16 costs are versus the specific benefits, I don't think
17 this witness is qualified to opine and that's why I
18 don't think there's an appropriate foundation laid
19 for him to offer expert opinion testimony on this
20 issue.

21 EXAMINER PIRIK: Mr. D'Ascenzo.

22 MR. D'ASCENZO: If I may, the benefits
23 that Mr. Yurick was objecting to in Mr. Jennings'
24 testimony were based upon his conversations with
25 other people. What Mr. Jennings is talking about

1 right now are the benefits that he sees based upon
2 his knowledge, the calculations he performed, his
3 experience in PJM.

4 Mr. Jennings testified to the difference
5 in the load ratio shares, he just testified to the
6 similarities in the FERC formulas for the network
7 transmission service rates, and that based upon his
8 expertise in PJM and understanding and expertise of
9 how those rates are calculated in Midwest ISO, that
10 there's a reduction in costs.

11 I am merely asking if he believes a
12 reduction in cost is a benefit based upon his
13 experience and knowledge of the PJM market versus the
14 Midwest ISO market. That's not the same as the
15 benefits that were struck from his testimony
16 yesterday. All of this was brought up yesterday
17 during cross-examination by counsel for OEG and other
18 attorneys for other parties.

19 EXAMINER PIRIK: I do see a difference in
20 the questioning. I will, however, allow you some
21 leeway when it comes to recross.

22 MR. YURICK: Thank you.

23 EXAMINER PIRIK: Thank you. So I will
24 overrule the objection and you can continue.

25 MR. D'ASCENZO: Thank you, your Honor.

1 Q. (By Mr. D'Ascenzo) I believe there's a
2 question pending, Mr. Jennings.

3 A. I would think the reduction in
4 transmission rates for Ohio customers would be a
5 benefit to them.

6 EXAMINER PIRIK: Go off the record.

7 (Off the record.)

8 EXAMINER PIRIK: We're ready whenever you
9 are, Mr. D'Ascenzo.

10 MR. D'ASCENZO: Thank you, your Honor.

11 Q. Mr. Jennings, can you briefly describe
12 the demand response programs offered in PJM?

13 A. Well, essentially PJM has a demand
14 response program that is integrated into their RPM
15 capacity market such that customers and loads can
16 actually participate in the capacity market as a
17 demand response resource and essentially displace
18 generation in the process.

19 Customers that have the ability to
20 respond, whether in an emergency or in any common
21 conditions, can displace generation. PJM also allows
22 demand response resources to participate in energy
23 markets, ancillary service markets.

24 A lot of the penetration of these demand
25 response resources has been stimulated through the

1 incentives created by the RPM capacity market. Prior
2 to the RPM capacity market approximate -- well, back
3 to the first capacity auction that started for the
4 2007-2008 delivery year, approximately 700 megawatts
5 of demand response offered into that auction; zero in
6 energy efficiency resources offered in.

7 Since then, in the last auction, for the
8 '13-'14 delivery year, 12,500 megawatts of demand
9 response offered into that auction and approximately
10 700 megawatts of energy efficiency offered into that
11 auction. The difference between energy efficiency
12 and demand response is that energy efficiency is a
13 permanent reduction to load.

14 These are process enhancements or actual
15 technologies that allow loads to permanently reduce
16 their load basically reducing the need for generation
17 going forward. These resources for doing so get
18 payments through the capacity market.

19 Q. And is that available directly to
20 customers?

21 A. Yes. Direct participation is possible in
22 PJM.

23 Q. Does the Midwest ISO have a similar
24 construct?

25 A. I would say that they have something

1 similar. It is not as robust, nor do they have near
2 the penetration. Emergency load response is not a
3 new response thing or a new resource necessarily.
4 The level of participation that we see in PJM I think
5 is new. But emergency load responses has always
6 been, you know, part of the utility paradigm.

7 Energy efficiency is new, and the Midwest
8 ISO does not currently have a construct that incents
9 energy efficiency resources. PJM continues to
10 develop and evolve the demand response market. They
11 recently added new products to the demand response
12 program and they're currently working on a new
13 product that will be called "price responsive
14 demand."

15 As part of the price responsive demand,
16 PJM is currently proposing that rather than that
17 being offered as a resource like a generator
18 competing with generation, it would actually be an
19 elimination of load from the load forecast and the
20 demand side of the equation in the capacity markets.

21 Q. Thank you, Mr. Jennings.

22 So based upon your response and your
23 knowledge of the PJM market do you believe that there
24 are greater opportunities for participation in demand
25 response and energy efficiency for customers in PJM?

1 A. Yes.

2 Q. Than in Midwest ISO?

3 A. Yes, there's much more, much more
4 opportunity for customers in demand response and
5 energy efficiency in PJM.

6 Q. Thank you, Mr. Jennings.

7 Moving on, do you recall a conversation
8 with counsel for Industrial Energy Users-Ohio related
9 to what I believe -- hold on one second -- what was
10 marked as their document 10A? Do you have that in
11 front of you, document 10A?

12 A. I do.

13 Q. Now, for clarity of the record,
14 Mr. Jennings, did you draft document 10A?

15 A. No, I did not.

16 Q. And had you reviewed document 10A prior
17 to taking the stand yesterday?

18 A. No, I did not.

19 Q. If you would turn to page 1 of 7 of
20 document 10A, Mr. Jennings.

21 A. Okay, I'm there.

22 Q. Looking at the very bottom of the page
23 where it says "Project Business Team" --

24 A. Yes.

25 Q. -- your name is listed there.

1 A. Yes.

2 Q. Do you know why your name is listed
3 there?

4 A. Well, it says the project business team
5 so I'm presuming that the TRC scrub team identified
6 those three names on the list as contacts to provide
7 information to them as they gathered and validated
8 data and information.

9 Q. Were the three names listed below under
10 Project Business Team the only individuals involved
11 in the analysis in the consideration to realign RTO
12 membership for Duke Energy-Ohio?

13 A. Absolutely not, there were other -- there
14 were other project team members from the transmission
15 organization, and actually the effort was led by a
16 member of the transmission organization, a person
17 named Scott Henry, who reported within -- up to a
18 person who actually reported directly to Mr. Turner
19 at the time who led the Franchise Electric and Gas
20 organization who is also the same person that
21 Ms. Janson reports to.

22 Another member of the team, actually a
23 coleader with Scott Henry, was Mr. Jim Gainer who is
24 our Federal Energy Regulatory Commission policy vice
25 president, and he also reported to a person who

1 reported to Mr. Turner in the Franchise Electric and
2 Gas organization.

3 Q. And do you know if Ms. Janson was
4 involved in the process?

5 A. Yes, she was.

6 Q. And do you know if Mr. Whitlock was
7 involved in the process?

8 A. Yes.

9 Q. So is it fair to say it was individuals
10 from a number of cross sections of the company that
11 were involved in looking at this realignment?

12 A. Yes, it was.

13 Q. Mr. Jennings, looking at page 1 of 7
14 there's sort of a grid with a bunch of names to it.
15 Do you see that?

16 A. Yes.

17 Q. I'm looking at the very last row there,
18 the first column. Do you see the letters "FE&G"?

19 A. Yes.

20 Q. Do you know what that stands for?

21 A. Franchise Electric and Gas.

22 Q. And do you know what Franchise Electric
23 and Gas is?

24 A. Yes. It's the regulated business for
25 Duke Energy Corporation.

1 Q. And do you know if Duke Energy-Ohio is
2 part of FE&G?

3 A. Yes, it is.

4 Q. Is all of Duke Energy-Ohio part of FE&G?

5 A. I would say no.

6 Q. And what part is not part of FE&G?

7 A. The generation business is not.

8 Q. Do you know what part is -- what part of
9 Duke Energy-Ohio is considered FE&G?

10 A. The transmission business and the -- the
11 utility itself is part of FE&G.

12 Q. Thank you, Mr. Jennings.

13 Mr. Jennings, do you recall yesterday a
14 conversation with counsel for staff regarding
15 estimates the company has performed for PJM's RTEP?

16 A. Yes.

17 Q. Do you know whether Duke Energy-Ohio
18 provided that information during discovery?

19 A. We did.

20 MR. D'ASCENZO: No further questions,
21 your Honor.

22 EXAMINER PIRIK: Thank you.

23 Any recross? Ms. Kyler.

24 - - -

25 RECROSS-EXAMINATION

1 By Ms. Kyler:

2 Q. Mr. Jennings, is there any certainty that
3 the projects included in this RGOS are going to be
4 included in the future MTEP plans, or the MTEPs?

5 A. I think there is some certainty. I think
6 that these MVP projects that MISO is currently
7 bringing forward are a part of that, so there's
8 certainly that. And I think that approximately 1/3
9 of the number is already in the MTEP process for
10 approval.

11 Q. Okay. So you participate in the PJM
12 transmission expansion advisory committee?

13 A. It's actually -- the transmission -- yes,
14 I do. The TEAC.

15 Q. And that's the one responsible for coming
16 up with the PJM RTEPs?

17 A. They bring forth project solutions, yes.

18
19 Q. So you understand that the RTEPs are
20 subject to a lot of vetting through the stakeholder
21 process.

22 A. I do.

23 Q. And that the stakeholder process for each
24 project could be a long time, correct?

25 A. What is "a long time"?

1 Q. I'll say at least a year for stakeholders
2 to consider each project included in the RTEP.

3 A. I don't know. I think that that's
4 possible, but not necessarily certain.

5 Q. In the stakeholder process other parties
6 can object to the inclusion of transmission projects
7 in these MTEP or RTEP plans, correct?

8 A. Yes.

9 Q. And other parties can submit less costly
10 solutions to any transmission projects or
11 transmission problems that have required the need for
12 these projects?

13 A. I would agree that that is a very active
14 process in PJM. I think it's -- I'll just say it's a
15 very active process in PJM. There are alternative
16 solutions.

17 Q. And projects can enter and be excluded
18 from these transmission plans on an annual basis,
19 correct?

20 A. I see that in PJM quite a bit. I don't
21 see it in MISO very often.

22 Q. Do you participate in the MISO
23 transmission planning meetings?

24 A. No, I don't.

25 Q. So you won't be participating in the

1 vetting of the RGOS projects, correct?

2 A. No, I won't.

3 Q. And you haven't participated in the past
4 in any of the MISO transmission planning processes?

5 A. Personally, no. My colleague, Walt
6 Yeager, who reports to the same supervisor, he does.

7 Q. So you're not Duke's subject-matter
8 expert on MISO matters, correct?

9 A. No.

10 Q. It's also true that the inclusion of
11 projects in an MTEP or RTEP plan is contingent on
12 future plans in PJM or Southwest Power Pool or other
13 neighboring transmission grids, correct?

14 A. Can you repeat that question?

15 Q. Isn't it true that the inclusion of
16 transmission projects in one RTO's transmission plan
17 are at least somewhat contingent on the plans in
18 neighboring RTOs?

19 A. Yes, I would agree.

20 Q. So some of the projects that are included
21 in this RGOS report may not be necessary depending on
22 what projects are built in PJM or Southwest Power
23 Pool, correct?

24 A. It's -- I suppose it's possible, although
25 the study does include an examination of what's

1 needed in the surrounding areas. Of the solutions
2 that are proposed, as I stated earlier, MISO has
3 identified projects that will be needed in PJM as
4 well, and so I would assume that there is a
5 coordination between the two RTOs.

6 Q. But even in PJM, their transmission plans
7 can change on an annual basis at least, correct?

8 A. Yes, they have.

9 Q. And you've seen --

10 A. One thing that does happen, though, when
11 they do change, it's not that -- it's typically not
12 that a solution is completely eliminated, but a
13 solution can be redesigned.

14 Q. And could be a less costly solution,
15 correct?

16 A. Yes.

17 Q. And the construction of these projects
18 are also contingent on state siting approvals and
19 rights-of-way approvals, correct?

20 A. Yes.

21 Q. So the actual construction of these
22 projects are fairly uncertain, correct?

23 A. No, I would not say that they're fairly
24 uncertain.

25 Q. Is it true -- are you aware of the

1 partially Google sponsored offshore transmission
2 system being built off the east coast or planning to
3 be built off the east coast in PJM?

4 A. I'm not that familiar with the Google
5 project.

6 Q. So are you aware that that project could
7 cost approximately \$5 billion?

8 A. No. I did not see that yet.

9 Q. I want to move on to the PJM demand
10 response programs. Are you aware that PJM recently
11 proposed to limit the participation of its
12 traditional demand response product in its capacity
13 market?

14 A. I would not say that it's been limited.
15 What has been limited is certain products, products
16 that have limited -- it's not actually, they have
17 limited the product that is only limited in its
18 participation, and I guess what I'm saying is, is
19 that I think what PJM has called the 10 by 6, ten
20 calls for six hours, the participation of the 10 by 6
21 will be limited. They've actually expanded the
22 ability for that to participate by coming up with
23 other products such as the Some or Only and the
24 Unlimited.

25 Q. But that's still subject to FERC

1 approval, correct?

2 A. Yes. The unlimited will not be limited
3 at all in its penetration, though, it will be treated
4 just like a generator.

5 Q. If the limited project -- or if PJM's
6 proposed limit on its traditional demand response
7 product is approved by FERC, wouldn't that mean that
8 the traditional demand response resources would
9 participate at lower levels than they have
10 historically participated in in past PJM capacity
11 auctions?

12 A. No. I don't think so. I think that the
13 resources that are the best to respond, typically
14 industrial processes, industrial manufacturing
15 facilities, seem to be a good fit for this program.
16 Those processes I don't think are limited by this at
17 all.

18 Q. But in past PJM RPMs hasn't the
19 traditional demand response product participated at
20 about 6 percent of the peak load in at least one of
21 the past RPMs?

22 A. I believe that's where we're at right now
23 is 6 percent.

24 Q. And PJM's proposal would limit that
25 participation to approximately 4 percent, correct?

1 A. For the --

2 Q. Traditional product.

3 A. -- traditional product it would.

4 MS. KYLER: Thank you. No further
5 questions.

6 EXAMINER PIRIK: Ms. Mooney?

7 MS. MOONEY: No.

8 EXAMINER PIRIK: Mr. Yurick?

9 MR. YURICK: I did have a few, your
10 Honor, thank you.

11 - - -

12 RECROSS-EXAMINATION

13 By Mr. Yurick:

14 Q. Mr. Jennings, you submitted direct expert
15 testimony in this case; is that correct?

16 A. Yes.

17 Q. And that testimony was prefiled, right?

18 A. Yes.

19 Q. And if you look on page 3 of your
20 testimony, lines 1 through 4, you say --

21 A. I don't have my testimony yet.

22 Q. I'm sorry.

23 A. I no longer have a copy of my testimony
24 here for some reason.

25 MR. D'ASCENZO: Your Honor, may I

1 approach?

2 EXAMINER PIRIK: Yes.

3 A. What page, sir?

4 Q. Page 3, sir.

5 A. Okay.

6 Q. Lines 1 through 4. You say "The purpose
7 of my testimony is to discuss regional transmission
8 organization issues related to Duke Energy-Ohio's
9 proposal for a market rate offer, or MRO, for its
10 competitive retail electric service," and you also
11 discuss Duke Energy-Ohio's future RTO participation
12 status, correct?

13 A. I'm not exactly sure what you just said
14 but it doesn't sound like what I said in lines 1
15 through 4.

16 Q. Page 3.

17 MR. HART: It's on the back of the second
18 sheet.

19 A. Oh, okay.

20 MR. YURICK: Could the court reporter
21 read back my question, please?

22 (Record read.)

23 A. That's what I identify as the purpose of
24 my testimony.

25 Q. How long would you say it took you to

1 prepare your prefiled testimony?

2 A. I don't know, probably eight hours.

3 Q. So a substantial amount of time, right?

4 A. Yes.

5 Q. Did you have help in preparing your
6 prefiled testimony? Did you go over it with anybody?

7 A. Yes.

8 Q. Who did you go over it with?

9 A. My attorney.

10 Q. And you, both you and your attorney, you
11 spent some time reviewing your prefiled testimony,
12 going over that and making certain that it was
13 correct.

14 MR. D'ASCENZO: I'm going to object, your
15 Honor. Attorney-client privilege.

16 MR. YURICK: I'm not asking for the
17 substance of any conversations. I'm just asking for
18 him to indicate generally what they did.

19 EXAMINER PIRIK: With that in mind,
20 objection overruled.

21 A. Can you repeat the question again?

22 MR. YURICK: Could the court reporter
23 please read back the question.

24 (Record read.)

25 A. Yes.

1 Q. And in that testimony originally you had
2 mentioned four specific reasons that a change from
3 MISO to PJM was beneficial for Duke Energy-Ohio,
4 correct?

5 A. Yes.

6 Q. And then today under cross-examination by
7 your counsel you mentioned, I believe, two other
8 reasons that you felt the move from MISO to PJM was
9 beneficial, I believe. Is that right?

10 A. I think there were three reasons.

11 Q. Okay. Well, I'll give you an
12 opportunity. The ones that I had were transmission
13 savings of roughly \$7 million. Is that one of the
14 reasons?

15 A. Yes.

16 Q. And the other reason that I had was that
17 there were increased opportunities for demand
18 response and energy efficiency; is that correct?

19 A. That's the second. Yeah, that's correct.

20 Q. Was there another one that I had missed?

21 A. The difference in the load ratio of the
22 transmission provider, the Midwest ISO, in the
23 Midwest ISO Duke Energy-Ohio would be approximately
24 5-1/2, 5.6 percent, and in PJM it would be about
25 3-1/2 percent.

1 Q. And these load ratio calculations, you
2 did those yourself?

3 A. Yes.

4 Q. And when did you do those?

5 A. Probably early-2010.

6 Q. So was that before you submitted your
7 prefiled testimony or after?

8 A. Before.

9 Q. And you didn't mention those calculations
10 in your prefiled testimony, correct?

11 A. I did not.

12 Q. And the calculation for transmission
13 savings of roughly \$7 million, did you make that
14 calculation?

15 A. Yes.

16 Q. And when did you make that calculation?

17 A. It was early-2010.

18 Q. Was that before you submitted your
19 prefiled testimony?

20 A. Yes, it was.

21 Q. And the demand response energy efficiency
22 that, your evaluation of opportunities available in
23 PJM versus MISO, your knowledge of those
24 opportunities was acquired when?

25 A. Over the last three, four years.

1 Q. So you had some knowledge of these
2 matters prior to submitting your prefiled direct
3 testimony; is that correct?

4 A. Yes.

5 Q. And yet you would agree with me, sir,
6 that you mentioned none of those three reasons in
7 your prefiled direct testimony, correct?

8 A. I would disagree.

9 Q. Sir -- okay. I'm going to ask you a
10 "yes" or "no" question. The four reasons that you
11 mentioned that were stricken, they did not include
12 those three reasons, correct?

13 A. No. I mean, I disagree.

14 Q. Okay. Could you explain that?

15 A. I go -- I do talk about demand response
16 in my prefiled testimony.

17 Q. Where?

18 A. On page 17, question, "What potential
19 benefits will Duke Energy-Ohio's customers realize as
20 a result of PJM's capacity construct?"

21 "Based upon my experience with the PJM
22 capacity market, the first and most transparent
23 benefit is the incentive for diverse variety of
24 resources that can be utilized in RPM. Since the
25 implementation of RPM, PJM has seen an increase of

1 over 1600 percent in the area of load modifying
2 resources. This includes demand response and energy
3 efficiency projects. Energy efficiency projects are
4 projects that are permanent decreases in load. The
5 availability of such programs serves to enhance the
6 Company's ability to advance some of the State's
7 policy goals established in RC 4928.02."

8 Q. Okay. So you didn't -- I think I have a
9 dead battery. I'm sorry.

10 EXAMINER PIRIK: Could we give him that
11 one? I think that one will work better, hopefully.

12 Q. Okay. So you say there, then, demand
13 response and energy efficiency projects are included
14 in this 1600 percent of load modifying resources,
15 correct?

16 A. Yes, I do.

17 Q. Okay. But you don't say anything about
18 the rather specific transmission savings of
19 \$7 million in your testimony, correct?

20 A. I did not.

21 Q. And you didn't say anything about the
22 rather specific load ratios of 5.6 percent and 3.5
23 percent, that's not mentioned in your direct
24 testimony, correct?

25 A. No, but those numbers were provided in

1 exhibits as -- in discovery.

2 Q. But they're not in your direct testimony
3 which was --

4 A. They are not in my direct testimony.

5 Q. -- my question.

6 MR. YURICK: If I could have just one
7 minute to go over my notes.

8 I don't think I have any further
9 questions at this point. Thank you very much.

10 EXAMINER PIRIK: Okay. I think we're
11 going to take a break until 20 after.

12 (Recess taken.)

13 EXAMINER PIRIK: We'll go back on the
14 record. Mr. Olier.

15 - - -

16 RECROSS-EXAMINATION

17 By Mr. Olier:

18 Q. Hello, Mr. Jennings.

19 A. Hello.

20 Q. I just have a few questions. Isn't it
21 true that load ratio isn't necessarily dispositive?

22 A. Excuse me?

23 Q. Let me rephrase that. Isn't it true that
24 5 percent of 30 million is a lower number than
25 3 percent of a hundred million?

1 A. I would say your math is correct.

2 MR. OLIKER: I have no further questions,
3 your Honor. Oh, sorry, one more, I apologize.

4 Q. Would you please look at page 8 at the
5 bottom of it, of Company Exhibit 13. I believe the
6 line is the third line from the bottom starting with
7 "While." Could you read that, please?

8 A. I haven't found the location yet.

9 Page 8 of 148?

10 Q. That's correct. The third line from the
11 bottom starting with "While"?

12 A. "While none of the overlay scenarios -
13 Native Voltage, 765 kV, Native Voltage with DC - has
14 emerged as the definitive renewable energy
15 transmission solution, it is important to note all
16 selected Candidate MVPs are compatible with all three
17 transmission plans."

18 MR. OLIKER: No further questions, your
19 Honor.

20 EXAMINER PIRIK: Mr. Hart.

21 MR. HART: No questions.

22 EXAMINER PIRIK: Mr. Montgomery?

23 MR. MONTGOMERY: No questions.

24 EXAMINER PIRIK: Mr. Jones?

25 MR. JONES: Thank you, your Honor.

1 - - -

2 RECROSS-EXAMINATION

3 By Mr. Jones:

4 Q. Mr. Jennings, you were testifying about
5 the benefits and I wanted to have you explain the PJM
6 capacity market. Could you explain that?

7 A. Yes. PJM has a capacity construct called
8 the reliability pricing model, it is a three-year
9 forward capacity auction in which capacity suppliers
10 offer into the auction. It utilizes four primary
11 types of resources, one being generation, demand
12 response, energy efficiency, and transmission upgrade
13 solutions.

14 The price that is paid to suppliers is at
15 the intersection of the supply curve and the demand
16 curve. Supply offers are typically mitigated to
17 cost, and that is scrutinized and monitored by the
18 PJM independent market monitor.

19 Q. Okay. Is the demand response energy
20 efficiency built into the capacity market for PJM?

21 A. What do you mean by "built in"?

22 Q. Is it part of that market?

23 A. Demand response and energy efficiency are
24 supply resources in the market.

25 Q. Okay. Now, in comparison could you

1 please explain the MISO version of the capacity
2 market, the voluntary market?

3 A. The voluntary capacity market?

4 Q. Yes.

5 A. It's monthly. It's voluntary. I mean,
6 it tends to -- it's a less-robust solution. There's
7 very little participation. I'm not exactly sure how
8 far you want to go with that.

9 Q. Okay. That's fine.

10 Now, in assessing what you're saying are
11 benefits here, what is the expected revenues that
12 Duke is expected to get being in the PJM capacity
13 market?

14 MR. D'ASCENZO: I'm going to object, your
15 Honor, this gets into confidential information. It's
16 also outside the scope of Mr. Jennings' direct
17 testimony.

18 MR. JONES: Your Honor, I think it goes
19 to the basis of the company trying to portray that
20 there's benefits here to ratepayers for, you know,
21 for this realignment and I think it's an important
22 subject to get on the record.

23 EXAMINER PIRIK: I'm going to overrule
24 the objection, but it may be an answer that we need
25 to cover because I believe we're going to have a

1 confidential section of Mr. Jennings' testimony. So
2 can we hold off on that specific question until that
3 time so that that amount, if he knows it -- do you
4 know the answer, Mr. Jennings?

5 THE WITNESS: No, not off the top of my
6 head.

7 EXAMINER PIRIK: But you can further
8 question in the closed record.

9 MR. JONES: Thank you, your Honor.

10 Q. (By Mr. Jones) Mr. Jennings, how are you
11 able to assess the benefits if you don't know what
12 that anticipated or anticipate what those revenues
13 would show in that market, that capacity market in
14 PJM? I mean, isn't that part of what you would be
15 looking at for realignment?

16 A. I think what I was trying to identify as
17 a benefit in my direct testimony was that customers
18 could benefit from capacity markets as well, and one
19 of the primary benefits here is, is the connection of
20 demand response with cost causation, in my mind.

21 What tends to happen with a program like
22 RPM and the participation of demand response is
23 customers that can respond and actually are willing
24 to do not have the benefits socialized to all
25 customers. They actually realize those benefits.

1 They became offsets to their capacity costs. And
2 these were significant incentives for industrial
3 customers as well as anyone else that's willing to
4 participate in an energy efficiency or a demand
5 response program.

6 Q. Mr. Jennings, the company is expecting to
7 realize more revenues being in the PJM capacity
8 market than the MISO capacity market; isn't that
9 true?

10 A. I would say that there are a number of
11 scenarios that could occur. There are risks
12 associated with making that presumption. There is a
13 possibility that the company could make additional
14 revenue by moving, but there are alternative
15 scenarios that have been examined as well.

16 Q. Possibility or probability?

17 A. Possibility.

18 Q. A good possibility?

19 A. A good possibility of what?

20 Q. Of having higher revenues in the PJM
21 capacity market.

22 A. That's a subjective analysis. I don't
23 have a confidence interval on what the outcome will
24 be.

25 Q. Okay. Mr. Jennings, are you aware of any

1 transmission projects that are pending or proposed in
2 PJM not included in RTEP?

3 A. I don't know of any particular projects
4 off the top of my head at the moment, but there are,
5 yeah, there are some projects that are -- I mean,
6 they discuss every month or every other month they
7 discuss, you know, what the system looks like and
8 what may be needed, you know, five to ten years out.

9 Q. And those projects could add billions to
10 what the utilities having ownership of transmission
11 in PJM would be responsible for?

12 A. I would not characterize it like that,
13 mainly because the current RTEP plan has a fairly
14 robust analysis of the backbone necessities of PJM.
15 They've identified approximately \$6 billion in
16 projects over the next five to seven years, one of
17 which will be done June 1st of next year, the TrAIL
18 project, the Trans-Allegheny Line. Other projects
19 are proposed but haven't started, such as the
20 Mid-Atlantic Potomac project, that's called the MAPP
21 project. The PATH project. But these backbone
22 projects have been identified as resolving most of
23 the -- most of the transmission needs for the next
24 five to ten years.

25 I think that the RGOS study produced by

1 MISO identifies possibly an additional \$2 billion
2 that would layer onto that. So I guess, you know, in
3 my answer I would say that the expected costs of
4 expansion in PJM is probably 7 to 9 billion dollars
5 versus the expected development in MISO of 12 to
6 15 billion dollars.

7 Q. You're talking looking forward?

8 A. I'm talking both -- yeah, I'm talking
9 looking forward of what is documented publicly. PJM
10 has a public plan and I've actually layered on what
11 MISO has identified as PJM needs. PJM hasn't even
12 accepted the numbers that Midwest ISO has imposed
13 through their RGOS project.

14 Q. But there may be other projects you're
15 not aware of too, right? Like the docket I asked you
16 about yesterday.

17 A. Yes. I don't recall the docket you asked
18 me about -- oh, what docket did you ask me about
19 yesterday?

20 MR. JONES: If I could have a second.

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

23 (Discussion off the record.)

24 Q. Mr. Jennings, I want to get back to you
25 with that docket, it was EL11 regarding the Atlantic

1 Grid Operations.

2 A. May I see the document?

3 MR. JONES: May I approach, your Honor?

4 EXAMINER PIRIK: Yes.

5 A. Thank you.

6 I did not see this. It was filed
7 December 20th, 2010. It has not been discussed in
8 the PJM stakeholder processes that I'm aware of.

9 Q. So you're not aware of that project; is
10 that correct?

11 A. As far as I know, it was never brought
12 forth in any of the PJM expansion committees or
13 planning processes.

14 Q. And that's a 5 billion-dollar project,
15 correct?

16 A. I don't know. I didn't read this. I
17 don't know how much it is, but having not been
18 brought forth to PJM yet, I'm not sure that it's been
19 included in the expansion plan and I'm not exactly
20 sure how it could be imposed without being included
21 in the plan.

22 Q. All right. Mr. Jennings, you had
23 testified about Duke's share in the MISO market being
24 5.6 percent and then when you talked about PJM and
25 Duke's share there being 3.5 percent, and then you

1 gave a number for the 5.6 percent, the 110 to
2 125 million. Is that how much Duke would have to pay
3 through MTEP to leave the MISO?

4 A. No. No. That was an estimate of the
5 revenue requirement if Duke stayed. And that was,
6 that estimate was more than two times the estimate of
7 the charges that Duke would experience in PJM.

8 Q. And when you testify that there would be
9 \$7 million savings in transmission costs, what was
10 that based on?

11 A. That was based on an analysis that was
12 conducted to estimate what the change would be under
13 the new transmission rates, all things being equal.
14 And basically that's a bifurcation of the existing
15 transmission system.

16 Q. And when did you make that analysis?

17 A. That was done probably in January of
18 2010. January-February 2010.

19 Q. And can you break down that a bit more
20 specific as to how you arrived at \$7 million?

21 A. No, I don't have the analysis with me.

22 Q. And that \$7 million is something you
23 didn't provide in your prefiled direct testimony,
24 correct?

25 A. I did not.

1 Q. Why not?

2 A. I'm not sure that -- it didn't seem
3 relevant at the time.

4 Q. Why is it relevant now?

5 A. Well, it seems like it would be important
6 to customers. But that was provided in discovery,
7 though, I believe. It's a component of the
8 discovery.

9 MR. JONES: That's all I have, your
10 Honor. Thank you.

11 EXAMINER PIRIK: Thank you.

12 Now I believe we have cross that will be
13 on the closed record for confidential information, so
14 at this point in time I guess I'm looking around the
15 room to be sure that only attorneys and parties that
16 have signed confidential agreements, as well as
17 staff, are in the room. We'll go into the closed
18 session.

19 (CONFIDENTIAL PORTION.)

20

21

22

23

24

25

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

(OPEN RECORD.)

EXAMINER PIRIK: Thank you, Mr. Jennings.

THE WITNESS: Thank you.

MR. D'ASCENZO: Your Honor, I would like to move into evidence what has been marked as Duke Energy-Ohio Exhibit 12, the direct testimony of Kenneth Jennings, and Duke Energy-Ohio Exhibit 13, the midwest regional generation outlet study.

EXAMINER PIRIK: Objections with regard to Exhibit 12?

(No response.)

EXAMINER PIRIK: Hearing none, Exhibit 12 will be admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

THE EXAMINER: Objections with regard to

1 Exhibit 13.

2 (No response.)

3 EXAMINER PIRIK: Hearing none, Duke
4 Exhibit 13 shall be admitted into the record.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 EXAMINER PIRIK: Mr. Olikier.

7 MR. OLIER: IEU-Ohio would move to put
8 Exhibits 8, 9, and 9, or I suppose would be 8A, 9A,
9 and 10A into the record.

10 EXAMINER PIRIK: Okay, well first -- and
11 11.

12 MR. OLIER: And also 11, yes, thank you,
13 your Honor.

14 EXAMINER PIRIK: Okay. Are there any
15 objections to Exhibits 8, 9, 10, 8A, 9A, and 10A?

16 MR. D'ASCENZO: Yes, your Honor. Would
17 you like to deal with them separately or all
18 together?

19 EXAMINER PIRIK: You have different
20 arguments for different exhibits?

21 MR. D'ASCENZO: For No. 10 and 10A I do.

22 EXAMINER PIRIK: So let's do 8, 8A, and 9
23 and 9A, if those are the same arguments.

24 MR. D'ASCENZO: Certainly, your Honor.
25 For Exhibits No. 8A and 9A, the same objections as

1 yesterday, on the grounds of relevancy to this
2 proceeding, beyond the scope.

3 Duke Energy-Ohio is not seeking to
4 recover specific costs in this proceeding. So this
5 information is irrelevant. Moreover, Duke
6 Energy-Ohio is not seeking Commission approval to
7 realign its RTO membership in this proceeding so,
8 again, it's beyond the scope of this proceeding and
9 irrelevant.

10 EXAMINER PIRIK: Mr. Olikier.

11 MR. OLICKER: Your Honor, for the same
12 reasons I mentioned yesterday, RTO alignment is
13 something that the witness testifies to, the benefits
14 of going to PJM, and I would also mention that rider
15 BTR is a part of this proceeding and Duke is looking
16 for a rubber stamp to collect any costs approved by
17 FERC. That's all.

18 EXAMINER PIRIK: Any other comments?

19 Your objections are noted on the record
20 with regard to Exhibits 8 and 8A and 9 and 9A,
21 however, they will be admitted into the record.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 EXAMINER PIRIK: Now with regard to 10
24 and 10A?

25 MR. D'ASCENZO: Certainly, your Honor.

1 First I would like to echo the objections I just gave
2 with respect to 8, 9, 8A and 9A, but also with
3 respect to No. 10 the witness testified yesterday and
4 today that he did not prepare this document nor did
5 he review it, and in fact he did not see this
6 document until it was handed to him when he took the
7 witness stand.

8 Although his name was listed at the
9 bottom of this document, as he described it was
10 merely as a result of him being a point of contact
11 for the people that did draft this document, so
12 Mr. Jennings has no firsthand knowledge of this
13 document, having never seen it before.

14 Similarly, Mr. Whitlock testified to the
15 same thing yesterday, that he never viewed this
16 document, he never saw the document until he
17 approached the witness stand, so there's no
18 foundation to bring this document into evidence by
19 either of the witnesses that were cross-examined
20 based on this document yesterday.

21 EXAMINER PIRIK: Mr. Olikar.

22 MR. OLICKER: Well, I would point out that
23 this document illustrates Mr. Jennings' involvement
24 and his role in the decision to move from the Midwest
25 ISO to PJM. He also identified facts that were

1 relied upon in making this document and that he was
2 responsible for. I think that's it.

3 EXAMINER PIRIK: Your objections are note
4 for the record, but we will admit the documents,
5 however, they will be given the appropriate weight by
6 the Commission based upon the testimony given by the
7 witness.

8 MR. D'ASCENZO: Thank you, your Honor.

9 EXAMINER PIRIK: With regard to Exhibit
10 11, are there any objections with regard to Exhibit
11 11?

12 (No response.)

13 EXAMINER PIRIK: Hearing none, Exhibit 11
14 shall be admitted into the record.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER PIRIK: Would you like to call
17 your next witness?

18 MR. D'ASCENZO: Yes, your Honor. For its
19 next witness Duke Energy-Ohio would call Brian Savoy.

20 EXAMINER PIRIK: Mr. Savoy, please raise
21 your right hand.

22 (Witness sworn.)

23 EXAMINER PIRIK: Thank you. You may be
24 seated.

25 MR. D'ASCENZO: Your Honor, for purposes

1 of identification I'd like to mark the direct
2 testimony of Brian D. Savoy as Duke Energy-Ohio
3 Exhibit 14.

4 EXAMINER PIRIK: The document will be so
5 marked.

6 MR. D'ASCENZO: Thank you, your Honor.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. D'ASCENZO: May I approach, please?

9 EXAMINER PIRIK: Yes.

10 - - -

11 BRIAN D. SAVOY

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

14 DIRECT EXAMINATION

15 By Mr. D'Ascenzo:

16 Q. Mr. Savoy, would you please state your
17 name for the record?

18 A. Brian D. Savoy.

19 Q. And would you please provide your
20 business address, please?

21 A. 526 South Church Street, Charlotte, North
22 Carolina.

23 Q. And by whom are you employed, and in what
24 capacity?

25 A. Duke Energy Business Services, LLC, and

1 I'm the general manager of Corporate Financial
2 Planning.

3 Q. Mr. Savoy, do you have in front of you
4 what has been marked as Duke Energy-Ohio Exhibit 14?

5 A. Yes.

6 Q. Could you please identify that document?

7 A. Direct testimony of Brian D. Savoy on
8 behalf of Duke Energy-Ohio, Inc.

9 Q. And is that the direct testimony you
10 filed in this proceeding?

11 A. Yes.

12 Q. Do you have any changes, corrections, or
13 additions to that testimony today?

14 A. No.

15 Q. If you were asked those same questions,
16 would your responses be the same?

17 A. Yes.

18 Q. And do you adopt that document as your
19 direct testimony for purposes of this proceeding?

20 A. Yes.

21 MR. D'ASCENZO: Your Honor, the witness
22 is available for cross-examination.

23 EXAMINER PIRIK: Thank you.

24 Mr. Petricoff?

25 MR. PETRICOFF: Yes, your Honor. No

1 questions.

2 EXAMINER PIRIK: Mr. Chamberlain?

3 MR. CHAMBERLAIN: No questions.

4 MR. HAYDEN: No questions.

5 MR. BOEHM: No questions, your Honor.

6 MS. HOTZ: No questions.

7 MS. MOONEY: No questions.

8 MR. YURICK: Nothing, your Honor.

9 EXAMINER PIRIK: Mr. Olikar.

10 MR. OLIKER: Just a few, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Olikar:

14 Q. Mr. Savoy, are you aware that recent
15 federal legislation was passed to extend certain tax
16 benefits for 2011 and 2012 that had been previously
17 set to expire as of December 31st, 2010?

18 A. Yes.

19 Q. Is the bill number HR 4853?

20 MR. D'ASCENZO: I'm going to object, your
21 Honor, on grounds of relevancy.

22 EXAMINER PIRIK: Mr. Olikar.

23 MR. OLIKER: I'm trying to determine if
24 these benefits are reflected in the MRO application.

25 EXAMINER PIRIK: Objection overruled.

1 A. I'm not familiar with the number you
2 mentioned.

3 Q. Okay. Do you know if Duke Energy-Ohio
4 will be affected by the extension of these tax
5 benefits?

6 MR. D'ASCENZO: Objection, your Honor.
7 There's no foundation. We don't know what benefits
8 he's even talking about.

9 EXAMINER PIRIK: Mr. Olikier, would you
10 like to lay some foundation.

11 MR. OLIKER: Of course.

12 Q. Did the bill that we just mentioned have
13 certain tax benefits?

14 A. I'm not familiar with the bill number.

15 Q. I know you're not aware of the number,
16 but you are aware that recent legislation has passed
17 that extended tax benefits.

18 A. Yes.

19 Q. Okay. And do you know if Duke
20 Energy-Ohio will be affected by the extension of
21 these benefits?

22 A. There will be some effect to Duke
23 Energy-Ohio.

24 MR. OLIKER: No further questions, your
25 Honor.

1 EXAMINER PIRIK: Mr. Hart?

2 MR. HART: No questions.

3 EXAMINER PIRIK: Mr. Montgomery?

4 MR. MONTGOMERY: No.

5 EXAMINER PIRIK: Mr. Jones?

6 MR. JONES: No questions, your Honor.

7 EXAMINER PIRIK: Any redirect?

8 MR. D'ASCENZO: Yes, your Honor.

9 - - -

10 REDIRECT EXAMINATION

11 By Mr. D'Ascenzo:

12 Q. Mr. Savoy, counsel for IEU was just
13 asking you about tax benefits. Can you please
14 describe what tax benefits you specifically were
15 referring to?

16 A. The tax benefits that would impact Duke
17 Energy-Ohio, to my knowledge, relate to extension of
18 bonus depreciation for capital expenditures, those
19 tax benefits are largely accelerated cash taxes as
20 you get to accelerate tax depreciation.

21 MR. D'ASCENZO: No further questions.

22 EXAMINER PIRIK: Any recross?

23 MR. OLIKER: No questions, your Honor.

24 EXAMINER PIRIK: Thank you, Mr. Savoy.

25 THE WITNESS: Thank you.

1 EXAMINER PIRIK: With regard to Duke
2 Exhibit 14?

3 MR. D'ASCENZO: Yes, your Honor. At this
4 time Duke Energy-Ohio would like to move into
5 evidence what has been marked as Duke Energy-Ohio
6 Exhibit 14.

7 EXAMINER PIRIK: Are there any
8 objections?

9 (No response.)

10 EXAMINER PIRIK: Hearing none, Duke
11 Exhibit 14 shall be admitted into the record.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER PIRIK: Would you like to call
14 your next witness?

15 MR. D'ASCENZO: For its next witness Duke
16 Energy-Ohio would call Jeff Bailey.

17 EXAMINER PIRIK: Please raise your right
18 hand.

19 (Witness sworn.)

20 EXAMINER PIRIK: Thank you. Please be
21 seated.

22 MR. D'ASCENZO: I'm sorry, your Honor, if
23 we could just have a moment to get our file together.

24 EXAMINER PIRIK: Yes.

25 MR. D'ASCENZO: Thank you, your Honor.

1 May I approach?

2 EXAMINER PIRIK: Yes.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 - - -

5 JEFFREY R. BAILEY

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

8 DIRECT EXAMINATION

9 By Mr. D'Ascenzo

10 Q. Mr. Bailey, would you please state your
11 name for the record?

12 A. My name is Jeffrey R. Bailey.

13 Q. Would you please state your business
14 address?

15 A. My business address is 1000 East Main
16 Street, Plainfield, Indiana, 46168.

17 Q. And by whom are you employed, and in what
18 capacity?

19 A. I'm employed by Duke Energy Business
20 Services, LLC as its director of Pricing and
21 Analysis.

22 Q. Mr. Bailey, in front of you you have
23 three documents, we'll go through them one at a time.
24 The first one has been marked as Duke Energy-Ohio
25 Exhibit 15. Do you recognize that document?

1 A. Yes, I do. This is the direct testimony
2 filed in this case.

3 Q. And you also should have in front of you
4 what was marked previously as Duke Energy-Ohio
5 Exhibit 6. Do you recognize that document?

6 A. Yes, I do. These are workpapers also
7 filed in this -- my workpapers also filed in this
8 case.

9 Q. And you should also have in front of you
10 what was marked earlier in this proceeding as Duke
11 Energy-Ohio Exhibit 5. Do you recognize that?

12 A. Yes, I do.

13 Q. And what is that?

14 A. These are supplemental workpapers that
15 were also filed.

16 Q. Mr. Bailey, was your testimony, Exhibit
17 15, prepared by you and under your control?

18 A. Yes, it was.

19 Q. Were the workpapers that you sponsor as a
20 part of Duke Energy-Ohio Exhibit 5, were those
21 prepared by you and under your direction and control?

22 A. Yes, they were.

23 Q. And the workpapers that are contained in
24 Duke Energy-Ohio Exhibit 6 that you provided, were
25 they prepared under your direction and control?

1 A. Yes, they were.

2 Q. Do you have any changes to either your
3 testimony or either of the sets of workpapers?

4 A. No, I do not.

5 Q. With respect to your testimony, if you
6 were asked those same questions today, would your
7 responses be the same?

8 A. Yes, they would.

9 Q. And do you hereby adopt your testimony as
10 well as those workpapers as part of your direct
11 testimony in this proceeding?

12 A. I do.

13 MR. D'ASCENZO: Thank you, your Honor.
14 The witness is available for cross.

15 EXAMINER PIRIK: Thank you.

16 Mr. Petricoff?

17 MR. PETRICOFF: No questions, your Honor.

18 EXAMINER PIRIK: Mr. Chamberlain?

19 MR. CHAMBERLAIN: No questions.

20 EXAMINER PIRIK: Mr. Hayden?

21 MR. HAYDEN: No questions.

22 EXAMINER PIRIK: Mr. Boehm?

23 MR. BOEHM: No questions, your Honor,
24 thank you.

25 EXAMINER PIRIK: Ms. Hotz?

1 MS. HOTZ: Yes. Thank you.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Hotz:

5 Q. Good morning.

6 A. Good morning.

7 Q. You are an expert for Duke in the area of
8 rate design, correct?

9 EXAMINER PIRIK: I think we need the
10 microphone.

11 MS. HOTZ: Okay. Here, I can try to talk
12 loud.

13 EXAMINER PIRIK: No; I think we need the
14 microphone.

15 MS. HOTZ: Okay.

16 EXAMINER PIRIK: When you really get into
17 it, I think it goes down a little bit.

18 MS. HOTZ: Oh, there. It works.

19 Q. (By Ms. Hotz) You are an expert for Duke
20 in the area of rate design, correct?

21 A. That's correct.

22 Q. Demand charges are means of discouraging
23 customers from using large amounts of power at peak,
24 correct?

25 A. Perhaps. In order for that to really be

1 the case those charges have to be time
2 differentiated. Generally they're not time
3 differentiated.

4 Q. So, but demand charges are a means of
5 discouraging customers from using large amounts of
6 power at one time, correct?

7 A. Yes, I would agree with that.

8 Q. In your position you engage in
9 negotiations with large customers in Indiana to
10 arrive at special contracts with them, correct?

11 A. That's correct.

12 Q. Large customers who use a lot of power at
13 peak typically pay more in special contracts than
14 large customers who do not, everything else being
15 equal, correct?

16 MR. D'ASCENZO: I'm going to object to
17 the relevancy.

18 MS. HOTZ: There's an issue in this case
19 regarding rate design and demand charges and this is
20 directly related to demand charges.

21 MR. D'ASCENZO: Issues --

22 EXAMINER PIRIK: Objection overruled.

23 MR. D'ASCENZO: Issues in Indiana are
24 irrelevant.

25 EXAMINER PIRIK: Objection overruled.

1 MR. D'ASCENZO: Thank you, your Honor.

2 EXAMINER PIRIK: Thank you.

3 THE WITNESS: Could you repeat the
4 question, please?

5 MS. HOTZ: Could you repeat the question?

6 (Record read.)

7 A. As a general premise I would agree with
8 that, however, we generally enter into special
9 contracts with customers when they have something
10 special to offer that's generally a higher degree of
11 interruptibility than most customers would be
12 accustomed to or able to withstand.

13 Q. So you generally do not enter into
14 special contracts with customers who use a lot of
15 power at peak; is that right?

16 A. Well, they wouldn't want us to based on
17 your premise, they would pay more than the standard
18 tariff so that would be a nonstarter for virtually
19 any customer.

20 Q. After coming up with a bid price in
21 allocating costs among the customer classes, Duke
22 estimates a capacity component; is that correct?

23 A. Yes, we do.

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

25 EXAMINER PIRIK: Ms. Mooney?

1 MS. MOONEY: No questions.

2 EXAMINER PIRIK: Mr. Yurick?

3 MR. YURICK: I just have a couple.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Yurick:

7 Q. Good morning, Mr. Bailey.

8 A. Good morning.

9 Q. Mr. Bailey, turning to your prefiled
10 testimony, page 4, this is the question on lines 6
11 and 7 and the answer on lines 8 and I guess I'm going
12 to go through 15. You talk there about capacity
13 related costs associated with CBP.

14 A. Yes.

15 Q. And you say that those will be allocated
16 to rate classes based on the average of their
17 coinciding peaks, correct?

18 A. Yes.

19 Q. And that the "...capacity costs will then
20 be converted to energy charges based on the
21 applicable kilowatt-hour sales level for each class
22 and further adjusted for commercial activity taxes,"
23 right?

24 A. That's correct.

25 Q. And then you further say "Energy charges

1 will be calculated for each class based upon the
2 remaining non-capacity CBP price adjusted for losses
3 and commercial activity taxes"; is that right?

4 A. That's correct.

5 Q. And would you agree with me that
6 currently -- well, let me put it this way, are you
7 currently familiar with the way that Duke calculates
8 its ESP generation rate? Current rates.

9 A. I'm generally familiar with it, yes.

10 Q. And would you agree with me that
11 currently a significant portion of Duke's ESP
12 generation rate is comprised of demand charges for
13 those rate schedules that are billed on a demand
14 basis?

15 A. Yes, I would.

16 Q. And would you agree with me that the bid
17 price component of the proposed MRO is based solely
18 on a kilowatt-hour basis, which is a significant
19 change?

20 A. Yes, I would.

21 Q. And would you also agree that the Duke
22 proposal will substantially transform your rate
23 design, Duke's rate design, and will impact customer
24 rates within each demand billed rate schedule?

25 A. Yes, that is correct.

1 MR. D'ASCENZO: Objection, your Honor.
2 Multiple questions there.

3 EXAMINER PIRIK: If the witness has a
4 difficult time understanding, he can ask for it to be
5 separated out.

6 MR. YURICK: Okay. So, could you read
7 the last question back?

8 (Record read.)

9 A. That would be yes to both questions.

10 Q. Okay. And would you agree with me that
11 higher load factors within each demand billed rate
12 schedule will generally see their rates negatively
13 impacted?

14 A. I wouldn't necessarily say "negatively
15 impacted" but they would certainly lose their
16 advantage relative to the lower load factor
17 customers.

18 Q. When I say "negatively impacted," I mean
19 they're not going to go down; is that right? The
20 rates aren't going to be substantially helped by this
21 approach if they happen to be high-load factor
22 customers.

23 A. Well, ultimately what happens will depend
24 upon what the auction prices are, but again, they're
25 going to lose their advantage that's historically

1 been there relative to the lower load factor
2 customers within the group.

3 Q. So the lower load factor customers will
4 be advantaged more by this rate design than they have
5 been historically?

6 A. Yes, I would say that's true.

7 Q. And is there any principle reason for
8 that approach?

9 A. The reason that we took this approach is
10 that we were trying to match the input cost from the
11 successful bidders in the auction process, which will
12 be on a dollar-per-kilowatt-hour basis, and match
13 that with our ability to collect those costs, and so
14 that would also be on a dollar-per-kilowatt-hour
15 basis, so there was a bit of a matching principle we
16 were trying to apply there.

17 Q. Okay. So you wanted to match basically
18 the charges with sort of the way that you're going to
19 structure the bid, correct?

20 A. That's correct. Otherwise that creates
21 some risk. Not only for us, but for our customers as
22 well.

23 Q. But you don't have to do it that way and
24 you're not -- you're not purchasing -- you're not
25 purchasing capacity charges through a bid, right?

1 A. That's correct, at our level that's
2 correct.

3 Q. And there's no cost based reason for the
4 switch. In other words, high-load factor customers
5 aren't becoming more expensive to serve and low-load
6 customers are no less expensive to serve than they
7 are currently.

8 A. That, again, depends upon how you want to
9 match the input costs relative to the structure of
10 the rate.

11 Q. Well, I'm saying comparing the cost to
12 serve high-load factor customers currently and the
13 cost to serve low load factors currently, even under
14 your bid approach there's no substantial change in
15 the costs to serve those customers.

16 A. Again, if you try to match the cost,
17 again, the input and costs are now on a
18 dollar-per-kilowatt-hour basis for every
19 kilowatt-hour of high-load factor customer used we
20 will incur that cost.

21 Q. I'm not articulating this very well and I
22 do apologize. I'm not surprised that I'm failing,
23 but . . .

24 Currently you bill some customers on a
25 demand charge basis, correct?

1 A. That's correct.

2 Q. And you're changing that approach,
3 correct?

4 A. We're changing that approach.

5 Q. And you're changing that approach so that
6 the, as you say, the input of the bid price matches,
7 correct?

8 A. That's correct.

9 Q. Okay. But assume I'm a demand based
10 customer and I'm a high-load factor customer, okay,
11 assume that for a hypothetical, okay?

12 A. Very well.

13 Q. The approach that you take in the bid
14 doesn't make it more expensive to serve me, correct?

15 A. Well again, let me draw a very clear line
16 between the historical design of those rates which is
17 based on our generating capacity versus now going out
18 to the market and relying on a completely different
19 mechanism. They're not the same. So I can't answer
20 affirmatively your question.

21 Q. Why can't you answer affirmatively my
22 question?

23 A. Well, you're saying that they're the
24 same. I'm saying they're not the same.

25 Q. You're saying that it becomes more

1 expensive to serve high-load factor customers under
2 your bid approach?

3 A. No. I'm saying that the matching of
4 costs on a kilowatt-hour basis, for every
5 kilowatt-hour a high-load factor customer takes we
6 will incur that cost from the successful bidder.

7 Q. Well, but presumably, under your current
8 approach, you match your costs and your -- your costs
9 to serve also, don't you?

10 A. Yes, but all in an entirely different
11 labeling from what we'll be doing in a successful
12 MRO.

13 Q. And I understand you're taking a
14 different approach, correct?

15 A. Yes.

16 Q. But that doesn't change the costs to
17 serve, right? I don't understand why it would.

18 A. I don't understand why it wouldn't.
19 Again, the whole source of the cost is different. We
20 were collecting under the traditional structure our
21 historical embedded cost, now we go to a market which
22 is supplying energy in a fundamentally different
23 structure.

24 Q. Well, I'm talking about capacity right
25 now. I'm talking about, I'm a demand based customer,

1 okay, I'm charged on a demand basis, right?

2 A. Okay.

3 Q. Currently. And you go out and you get
4 demand, you can't do that through a kilowatt-hour
5 charge, right? I mean you can convert it but you
6 can't get capacity on a kilowatt-hour basis, right?

7 A. Well, again, the structure that we're
8 contemplating does just that.

9 Q. Come on now, you can't -- you can't
10 really -- that's not the way that you do that, right?

11 MR. D'ASCENZO: Objection.

12 Argumentative. The witness has answered the
13 question.

14 EXAMINER PIRIK: I don't believe the
15 witness has answered the question.

16 Go ahead, Mr. Yurick.

17 A. If you're suggesting that we can't --

18 Q. I'm just asking questions.

19 A. Okay.

20 Q. But my question is, is you currently have
21 demand based customers, correct?

22 A. Correct.

23 Q. And under the approach that you want to
24 take you're not going to have demand based customers,
25 right?

1 A. That was the plan, yes.

2 Q. Okay. What I'm saying is that just
3 because you're approaching it differently, it doesn't
4 change the cost to serve those customers. It just
5 doesn't. I mean, it's a different approach, but the
6 cost to serve them would be the same.

7 A. I can't accept your testimony.

8 Q. It's a question. It's a question, but I
9 appreciate the levity, it's nice to have somebody
10 banter back and forth with me instead of just me out
11 there flapping, so I do appreciate that.

12 But it doesn't, I mean there's no magic
13 that increases the cost to serve a demand based
14 customer just because you want to take a different
15 approach to calculating your charges, right?

16 A. Look, I'm trying to answer this as best
17 as I can, but there's a fundamentally different
18 mechanism from where we are today relative to where
19 we're going. Now, if you're asking me could we still
20 have demand charges? The answer is yes.

21 Q. Thank you.

22 MR. YURICK: No further questions.

23 EXAMINER PIRIK: I think we'll take our
24 break now. I told them that they would have an hour
25 and 20 minutes so we will give them an hour and 20

1 minutes and we'll come back and start promptly at ten
2 after 1.

3 (At 11:48 a.m. a lunch recess was taken
4 until 1:10 p.m.)

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

1 Thursday Afternoon Session,
2 January 13, 2011.

3 - - -

4 EXAMINER PIRIK: We'll go back on the
5 record and I'll call on Mr. Hayden. I think that's
6 where we were. We weren't in the middle of anybody.
7 I think we were ready to move on, weren't we? We'll
8 go back to Mr. Hayden.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Hayden:

12 Q. Good afternoon, Mr. Bailey.

13 A. Good afternoon.

14 Q. If you could turn, please, to page 9 of
15 your testimony.

16 A. I'm there.

17 Q. Okay. And I'm looking at the bottom,
18 footnote 3, it says "Duke Energy-Ohio has estimated
19 the annualized CBP price to be .055 per kilowatt-hour
20 and .0455 representing the energy-related portion of
21 the price." Do you see that?

22 A. Yes, I do.

23 Q. Now, you believe those estimates to be
24 reasonable estimates for the energy and capacity
25 piece of the generation-related component, do you

1 not?

2 A. Yes, I do.

3 Q. And what is the source for that
4 information?

5 A. The source for the .055 per kilowatt-hour
6 is essentially what was the clearing price for the
7 FirstEnergy auction. So we thought that was recent
8 enough in time to use as a reasonable total price.
9 The .0455-cent per kilowatt-hour, that number can be
10 found in my attachment JRB-1 where we derive the
11 overall seasonal factors which you can see at the
12 bottom of the column that says "Average price per
13 kilowatt-hour." That's about 3/4 across the page,
14 that bottom number, 45.5287 we used a .455, excuse
15 me, .0455 as a representative of energy cost.

16 Q. And that was the -- I'm sorry.

17 A. Those representative the L and P energy
18 costs over a four-year time period.

19 Q. And the FirstEnergy auction you're
20 referring to is the one that took place in October of
21 2010?

22 A. Yes, I believe that's correct.

23 MR. HAYDEN: I have no further questions.

24 EXAMINER PIRIK: Thank you.

25 Mr. Olikier?

1 MR OLIKER: No questions, your Honor.

2 EXAMINER PIRIK: Mr. Hart?

3 MR. HART: Just a little bit, thank you.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Hart:

7 Q. Mr. Bailey, as I understand your
8 testimony it's intended to convert the results of the
9 auction price into customer rates; is that correct?

10 A. That's correct.

11 Q. And that would go into a rider called
12 MRO?

13 A. Ultimately two riders, MRO would be the
14 component that reflects the bid prices and then
15 there's another rider that would still have the whole
16 ESP portion Rider GEN.

17 Q. But your testimony really deals with
18 Rider MRO, not GEN?

19 A. It combines the two. It's an ultimate
20 combination of those two things that create the final
21 rate that applies to the customer.

22 Q. And Rider GEN is the current ESP rate
23 with some of the --

24 A. Yes.

25 Q. -- existing riders folded into it?

1 A. Yes, that's correct.

2 Q. And you're not changing the structure of
3 Rider GEN, are you?

4 A. No. That structure remains the same,
5 just as we go through the transitional period we
6 start with 90 percent, 80 percent, so.

7 Q. And your current rate structure, am I
8 correct that you allocate capacity among the customer
9 classes using the 12 CP method?

10 A. We use the 4 CP method.

11 Q. In the current rate structure?

12 A. I'm sorry, I didn't hear the "current"
13 part, but the current rate structure I do believe
14 that the last time we had a rate case prior to
15 unbundling it was a 12 CP methodology.

16 Q. So Rider GEN will be based on 12 CP.

17 A. That would be the ultimate end result.
18 Again, we're not changing anything, we're using those
19 existing structures.

20 Q. Okay. And you did calculations in this
21 case for Rider MRO using the 12 CP method, correct?

22 A. Yes, we looked at both the 12 CP and the
23 4 CP.

24 Q. And the 12 CP method did pass test C of
25 the FERC test.

1 A. Yes, it did.

2 MR. HART: Thank you.

3 EXAMINER PIRIK: Mr. Montgomery?

4 MR. MONTGOMERY: No questions, your
5 Honor.

6 EXAMINER PIRIK: I know, Mr. O'Brien, I
7 know you all didn't make an appearance this morning
8 as far as being here today, but do either of you have
9 questions?

10 MR. WARNOCK: No, your Honor.

11 EXAMINER PIRIK: No questions, okay.

12 Mr. Jones?

13 MR. BEELER: I have a couple questions.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Beeler:

17 Q. Mr. Bailey, go to page 9 in your
18 testimony, lines just 1 and 2 where it says "The
19 company remains committed to time-differentiated
20 pricing and intends to continue to pursue various
21 pricing initiatives through the collaborative
22 process."

23 A. Yes.

24 EXAMINER PIRIK: Mr. Yurick, could you
25 give Mr. Beeler the microphone, please?

1 MR. YURICK: Sorry, your Honor.

2 (Discussion off the record.)

3 Q. All right. On page 1 where it says "The
4 company remains committed to time-differentiated
5 pricing and intends to continue to pursue various
6 pricing initiatives through the collaborative
7 process," can you tell me what the current level of
8 customer participation in those initiatives are?

9 A. I can't give you precise numbers, but
10 participation has been relatively small.

11 Q. Do you have an estimated number?

12 A. It's in the two-digit size numbers.

13 Q. Okay.

14 MR. BEELER: That's all my questions.

15 EXAMINER PIRIK: That's it?

16 Mr. D'Ascenzo.

17 MR. D'ASCENZO: Thank you, your Honor,
18 just a couple of questions.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. D'Ascenzo:

22 Q. Mr. Bailey, do you remember the
23 discussion you had before we broke for lunch with
24 Mr. Yurick about the change in the company's rate
25 structure no longer including a demand component for

1 the generation rates?

2 A. Yes, I recall that.

3 Q. Is that going to be an immediate change?

4 A. No, it's not an immediate change. It
5 would follow whatever the transition period happens
6 to be.

7 Q. So over the course of the blend?

8 A. Yes, that's correct.

9 Q. And do you know whether Duke
10 Energy-Ohio's distribution and transmission rates
11 would continue to have demand components?

12 A. For those that have demand components,
13 those would remain post transition.

14 Q. Mr. Bailey, do you know if the Ohio
15 Commission has approved a similar -- a rate structure
16 similar to what Duke Energy-Ohio is proposing with
17 respect to its competitive bid in the past?

18 A. Yes. My understanding is that
19 FirstEnergy's proposal follows that same general
20 approach.

21 Q. Earlier this afternoon you said that it
22 would be possible for Duke Energy-Ohio to design its
23 rates to include a demand component; do you recall
24 that?

25 A. Yes, I do.

1 Q. How would such a design impact the amount
2 that Duke Energy-Ohio would collect from customers
3 versus having to pay to winning bidders? Would there
4 be an impact?

5 A. There would be. The issue for us would
6 be that we are incurring costs based on a
7 dollar-per-kilowatt-hour basis. Our recovery
8 mechanism would then recover from that being on a
9 dollar-per-kilowatt basis. So that mismatch has the
10 potential to create some over- or undercollections.

11 Q. And does Duke Energy-Ohio have a
12 mechanism that it's proposing as part of this case
13 that would be able to true up that mismatch that you
14 described?

15 A. Yes, we do, that's Rider SCR.

16 Q. And if Duke Energy-Ohio were required to
17 establish a rate structure as part of its -- the MRO
18 component of the blending period, would Duke
19 Energy-Ohio, in your opinion, need to be able to
20 include that mismatch in that Rider SCR?

21 A. Yes, absolutely. That would be a
22 critical component.

23 Q. Mr. Bailey, do you recall counsel for
24 Eagle Energy asking you about the 12 CP methodology?

25 A. Yes, I do.

1 Q. Can you briefly describe what that is?

2 A. The 12 CP methodology is the sum of the
3 12 monthly coincident peaks. And then percentages
4 based on the sum of those amounts are used to derive
5 the allocation factors for each class.

6 Q. And in that case Duke Energy-Ohio is
7 proposing a 4 CP methodology.

8 A. That's correct.

9 Q. Could you briefly describe what that is
10 for the record?

11 A. Well, in this particular case the 4 CP
12 methodology is the four summer coincident peaks.
13 Those are summed up and those are averaged over that
14 time period to arrive at the allocation factors for
15 each class.

16 Q. And you said in response to counsel for
17 Eagle Energy's question what Duke Energy-Ohio's
18 current rate structure is based on. I believe you
19 said 12 CP; is that correct?

20 A. Yes, that's correct.

21 Q. When was that established?

22 A. That would have been approximately 2000
23 when the unbundling initially took place. That would
24 have been I think the last time that mechanism would
25 have been used.

1 Q. And in the year 2000 do you know when the
2 company's last full -- prior to 2000 do you know when
3 Duke Energy-Ohio's last full rate case was that
4 included generation, transmission, and distribution?

5 A. I'm sorry, I don't recall precisely.

6 MR. D'ASCENZO: No further questions.

7 EXAMINER PIRIK: Thank you.

8 With regard to recross, do you have any
9 recross? Mr. Yurick?

10 MR. YURICK: I have just a couple.

11 - - -

12 RECROSS-EXAMINATION

13 By Mr. Yurick:

14 Q. Mr. Bailey, I just want to make sure I
15 understand what you said in your conversation with
16 your lawyer a minute ago. You said that rate
17 schedules that are billed on a demand basis will
18 continue to be billed on a demand basis; is that
19 correct?

20 A. His question was related to the
21 distribution component.

22 Q. So as far as generation goes, that's not
23 the case.

24 A. On our proposal that would be correct.

25 Q. Under your proposal would demand-based

1 rate classes still be charged demand-based rates for
2 the transition period?

3 A. Yes, they would.

4 Q. It wouldn't be until you went to full
5 market that there would be this, I think you called
6 it a conversion from a capacity charge to an energy
7 charge.

8 A. That's correct. Again, this would follow
9 the transition period, for example, the first period
10 of the transition 90 percent of the ESP rates would
11 be used and that would include the demand charges,
12 and so.

13 Q. But again, you don't really have to do it
14 that way, correct? You could still have demand-based
15 charges if you wanted.

16 A. We could.

17 Q. Okay.

18 MR. YURICK: Thank you.

19 EXAMINER PIRIK: Thank you.

20 Mr. Olikier?

21 MR. OLICKER: No questions.

22 EXAMINER PIRIK: Mr. Beeler?

23 Thank you very much.

24 MR. D'ASCENZO: Your Honor, at this time
25 Duke Energy-Ohio would like to move into evidence its

1 Exhibit No. 15. Also, your Honor, I believe Exhibit
2 5 and 6 were not moved into evidence earlier because
3 they included workpapers for Mr. Bailey, so at this
4 time we would also like to move Exhibit 5 and 6 into
5 evidence.

6 EXAMINER PIRIK: I think we did admit
7 those documents, but just to be safe, to be sure the
8 record's clear since your notes show that they were
9 not, first of all, is there any objection to Duke
10 Exhibit 15?

11 (No response.)

12 EXAMINER PIRIK: Hearing none, Duke
13 Exhibit 15 will be admitted into the record.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER PIRIK: And with regard to Duke
16 Exhibit 5 and 6, are there any objections?

17 (No response.)

18 EXAMINER PIRIK: 5 and 6 will be admitted
19 into the record if they have not already been.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER PIRIK: Thank you.

22 MR. D'ASCENZO: Thank you, your Honor.

23 EXAMINER PIRIK: Would you like to call
24 your next witness?

25 MR. D'ASCENZO: Certainly. For our next

1 witness Duke Energy would call William Don Wathen,
2 Jr.

3 EXAMINER PIRIK: Please raise your right
4 hand.

5 (Witness sworn.)

6 EXAMINER PIRIK: Thank you.

7 MR. D'ASCENZO: Your Honor, for purposes
8 of identification Duke Energy-Ohio would like to mark
9 the direct testimony of William Don Wathen, Jr. as
10 Duke Energy-Ohio Exhibit 16.

11 EXAMINER PIRIK: The document will be so
12 marked.

13 MR. D'ASCENZO: Thank you, your Honor.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. D'ASCENZO: May I approach?

16 EXAMINER PIRIK: Yes.

17 - - -

18 WILLIAM DON WATHEN, JR.
19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. D'Ascenzo:

23 Q. Good afternoon, Mr. Wathen.

24 A. Good afternoon.

25 Q. Would you please state your name for the

1 record?

2 A. My name is William Don Wathen, Jr.

3 W-a-t-h-e-n.

4 Q. And would you please state your business
5 address?

6 A. I believe it's 139 East Fourth Street,
7 Cincinnati, Ohio, 45202.

8 Q. And by whom are you employed, and in what
9 capacity?

10 A. My employer is Duke Energy Business
11 Services, I'm the vice president, general manager of
12 Rates for Ohio and Kentucky.

13 Q. Mr. Wathen, do you have in front of you
14 what was just marked as Duke Energy-Ohio Exhibit 16?

15 A. I do.

16 Q. Do you recognize that document?

17 A. I do.

18 Q. Would you please identify that document?

19 A. It is my direct testimony in this case.

20 Q. Was that document prepared by you and
21 under your direction and control?

22 A. It was.

23 Q. Do you have any changes or corrections to
24 that testimony?

25 A. I have a couple of changes, typographical

1 type changes.

2 Q. Would you please walk us through those?

3 A. On page 2, line 11, between the words
4 "federal" and "matters" I'd like to insert the word
5 "rate."

6 Q. I'm sorry, would you say that again?

7 A. I'd like to insert the word "rate"
8 between "federal" and "matters."

9 And then on page 5, line 10, the
10 reference should read "4928" instead of "4938."

11 And on page 25, lines 5 through 12, it's
12 probably more a formatting issue, but that's a
13 continuation of a quote. It looks like it's a direct
14 statement, but it's a continuation of a quote, the
15 same reference as the lines above it.

16 MR. BOEHM: I'm sorry, Mr. Wathen, can
17 you do that again for me, please?

18 THE WITNESS: I just wanted to clarify
19 that on lines 5 through 12 on page 25 is a
20 continuation of an excerpt from a Staff Report, and
21 it didn't appear that way in the text.

22 MR. BOEHM: Thank you.

23 Q. So, Mr. Wathen, are you suggesting merely
24 a formatting error, that that should be, it looks
25 like single spaced and indented along with the lines

1 above it?

2 A. It would have helped, yes.

3 Q. Are there any further corrections?

4 A. Not that I know of.

5 Q. With those corrections and changes, if
6 you were asked the same questions here today would
7 your responses be the same?

8 A. Yes.

9 Q. Do you hereby adopt this testimony as
10 your direct testimony --

11 A. I do.

12 Q. -- for this proceeding?

13 MR. D'ASCENZO: Thank you.

14 Your Honor, the witness is available for
15 cross-examination.

16 EXAMINER PIRIK: Mr. Petricoff?

17 MR. PETRICOFF: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Petricoff:

21 Q. Good afternoon, Mr. Wathen. A couple of
22 just housekeeping items with you I'd like to bring
23 up. If you would, turn to page 9 of your testimony.
24 And I'd direct your attention to line 11. In the
25 center there you are talking about the blending and

1 you talk about the first two years. Do you see where
2 I'm referring?

3 A. I see it, yes.

4 Q. Those are calendar years 2011 and, I'm
5 sorry, 2012 and 2013?

6 A. In our view we're asking the Commission
7 to make the year 1 17 months so it would be calendar
8 '12, calendar '13, and through May of '14.

9 Q. So when you're talking about the first
10 two years, you're taking out a period through 2014?

11 A. I'm sorry, in this case I'm talking about
12 '12 and '13, yes, right.

13 Q. Thank you. Well, you've now -- we've now
14 clarified it.

15 A. Right.

16 Q. That was the purpose for the question.

17 Now let's turn over to page 10 and talk
18 about 2014 as it's referenced on page 5.

19 A. On page 5?

20 Q. I'm sorry, page 10, line 5.

21 A. Okay.

22 Q. That's calendar year 2014, correct?

23 A. Yes, I believe Judah's testimony is on
24 calendar years.

25 Q. And wouldn't you agree with me that

1 Mr. Rose's testimony for 2014, his projection
2 actually shows the market rate, the expected market
3 rate to be below the ESP rate?

4 A. I can't remember exactly, I mean if you
5 can show me the testimony, I can tell you, but if
6 you'll take it off the top of my head, I think it was
7 just below the market -- our ESP price that we had
8 projected without any rate increases, right.

9 Q. If you would, I'd like you to turn to,
10 let's see, to page 16. I want to direct your
11 attention to lines 9 through 15. And here you
12 indicate that if, in fact, the blending period was
13 extended beyond the third year by the Commission,
14 that Duke Energy-Ohio would, in that case, charge for
15 the ESP portion, or, I'm sorry, the legacy generation
16 portion both for fuel and environmental expenses; is
17 that a correct summary?

18 A. I would probably characterize it
19 differently. I think the recommendation we had is
20 that if we were willing to freeze the rates for 29
21 months without adjustments to fuel and purchased
22 power and environmental reagents, or environmental
23 costs generally, if the Commission decided to extend
24 the blending period, that we would impose the -- we
25 would impose a tracker to track fuel costs,

1 environmental and purchased power costs as permitted
2 under 142(D), those costs could be higher or lower,
3 so that's not necessarily a charge to the generation
4 rate, it could be a credit.

5 Q. Okay. Well, let's go back. And would
6 those adjustments begin with calendar year 2011?

7 A. Not for 2011.

8 Q. Assuming that the Commission came back
9 with an order that said we're going to have a
10 five-year blend, would the company then want to
11 charge changes in fuel and environmental costs for
12 2012?

13 A. My expectation is if the order comes out
14 between now and 2012, we'll know whether we are
15 permitted to have the 29-month blend. If we don't
16 get the 29-month blend, then we will implement the
17 Rider FPP-EIR beginning 1/1/2012. So the rider is
18 still in the ESP period so we wouldn't implement
19 anything then.

20 Q. So it's correct that your testimony on
21 lines 9 through 15 indicate that if the Commission
22 does not approve the three-year blending plan that's
23 in the application, at that point the company would
24 anticipate that it would have, it would maintain fuel
25 and environmental adjustments starting in 2012.

1 A. That's correct.

2 Q. Does the company have any estimates as to
3 what the fuel or environmental adjustments would look
4 like for 2012?

5 A. We have not estimated those costs.

6 Q. The same would be true for the years
7 after 2013, 2014?

8 A. Not knowing what the model, regulatory
9 model is past 2011, we have no estimates of any year
10 beyond 2012 -- 2011.

11 Q. Now, if you would, I'd like you to turn
12 to page 17 of your testimony and I want to ask you
13 some questions about the testimony between lines 5
14 and 7. Now, if the company was to impose a charge
15 for fuel and environmental costs, and you're
16 proposing here a Rider EIR, would that apply to
17 shopping customers as well as standard service offer
18 customers?

19 A. Rider, the proposal to implement Rider
20 FPP and EIR would be bypassable so only nonshopping
21 customers would incur those costs.

22 Q. Okay. If you would, turn to page 20 of
23 your testimony, and on lines 3 and 4 you make
24 reference to the FirstEnergy I guess I'll call it
25 SCR-type rider. Do you see where I'm referring?

1 A. I do.

2 Q. Are you familiar with how the FirstEnergy
3 SCR-type rider operates?

4 A. I was more familiar with it five months
5 ago, but I'm generally familiar with it, yeah.

6 Q. Okay. In FirstEnergy, when the company
7 goes to measure whether or not the SCR-type expenses
8 exceed 5 percent of generation, does it have to show
9 two consecutive quarters in which the SCR-type rider
10 exceeded 5 percent in order to request a change to
11 nonbypassable?

12 A. That sounds familiar. I believe that's
13 right.

14 Q. Okay. Is Duke proposing the same type of
15 mechanism?

16 A. We have not, but that's something we can
17 negotiate.

18 Q. Similarly, FirstEnergy would have to
19 apply to the Commission and get approval. Does Duke
20 anticipate that if these events occur, that they
21 would apply to the Commission for approval to convert
22 the SCR rider from a bypassable to nonbypassable?

23 A. Well, my understanding is the rules,
24 under the Ohio Administrative Code, 4901:1-35-11, we
25 have quarterly filings for virtually every cost

1 recovery item we have. The SCR would be no
2 exception, and the Commission would have an
3 opportunity to review those costs at that time.

4 Q. I'm looking strictly for the mechanics of
5 it. Is it Duke's anticipation that before the tariff
6 SCR would become bypassable, they would make a
7 request to the Commission and the Commission would
8 approve it? It wouldn't just suddenly occur because
9 two quarters' calculations have indicated we've
10 exceeded the 5 percent.

11 A. Well, I can describe how I would expect
12 it to work. Do you want me to try it that way?

13 Q. Let's try it that way.

14 A. I would expect that every quarter,
15 whether it's a month or two months ahead of the
16 applicable date, we would make an application and the
17 Commission -- if we wanted to try to make it
18 nonbypassable we would show, try to demonstrate the
19 threshold in that and the Commission would either
20 approve or disapprove that or we would litigate the
21 nonbypassable nature of that cost based on the facts
22 that we have at the time.

23 Q. So you're anticipating submitting to the
24 Commission and having approval before the rider would
25 become nonbypassable.

1 A. That's what I would expect, yes.

2 Q. If you would, turn to page 22 of your
3 testimony. I want to ask you some questions about
4 the transmission riders. First, could you describe
5 for us what "Network Integrated Transmission Service"
6 is?

7 A. I can probably describe better the
8 revenue requirement calculation than the true nature
9 of the electrical flow that runs in the network
10 service, and I'll give you a layperson's view of the
11 network service.

12 It's basically if you're interconnected
13 with a transmission system, it's -- if you're a
14 network service customer, that network that you are
15 using, the transmission system, to follow your load,
16 and you can take as much or little load and it just
17 kind of is there to serve.

18 Unlike point to point where you would
19 designate a unit to run this many megawatts from
20 point A to point B, network service is just there at
21 your needs.

22 Q. And if you're a customer, is there any
23 difference in the charge, whether you are a retail
24 customer who is shopping or a retail customer who's
25 taking standard service, in the amount of the, and

1 we'll call it NITS for the network integrated charge,
2 for the amount of the network integrated charge or
3 NITS that you would have to pay?

4 A. Can I clarify the question? You're
5 asking me if a customer sees a difference in the
6 NITS, whether they shop or not?

7 Q. No. I'm asking is the fee -- well,
8 actually, let's go back a step.

9 You had indicated before that you were
10 very familiar with the way that the NITS are charged.
11 Explain how the NITS are charged.

12 A. Well, we have a Rider TCR now that we use
13 to essentially pass through a rate that is developed
14 as part of our participation in MISO under their
15 Attachment O. It's a formula rate that derives a
16 revenue requirement for the three midwestern Duke
17 Energy companies, Ohio, Indiana, and Kentucky.

18 We calculate an overall revenue
19 requirement. We allocate the revenue requirement
20 between Ohio and the other utilities based on load
21 ratio share, and that result gets divvied up into the
22 rate classes based on our coincident peaks, and then
23 we allocate those costs to each customer class and
24 design a rate. That's how it's recovered now.

25 As we speak it's a bypassable charge;

1 however, CRES providers or anyone else will pay us
2 the rate separately so we -- we will collect all of
3 our revenue requirements currently and maybe we would
4 get some from retail customers and some from CRES
5 providers.

6 Q. Is there any difference in the amount
7 that the retail customer would pay for the -- would
8 pay Duke under standard service for the NITS as
9 opposed to what the NITS charges to the CRES would be
10 for the same service to that customer?

11 A. No. The rate's independent of whether
12 they're shopping or not.

13 Q. And under the MRO proposal at this point,
14 the NITS would be charged to the retail customer
15 directly and would not be charged to the CRES for a
16 shopping customer.

17 A. That's correct.

18 Q. Now, currently we have the midwest
19 transmission expansion plan charges, the MTEPs. How
20 are the MTEPs charged?

21 A. We use the same mechanism to flow through
22 any MTEP charges net of any credits through the TCR
23 rider.

24 Q. And would a CRES customer pay the MTEPs
25 for their retail customers to either MISO or to Duke?

1 A. I believe so. I'm not certain that's the
2 way it works, but I believe that the MTEP charges are
3 kind of built into the NITS rate. In the formula
4 they calculate the revenue requirement that we use,
5 which calculates TCR and, therefore, I think the CRES
6 providers would be paying Duke Energy-Ohio as well
7 for the MTEP component of the NITS rate.

8 Q. So your understanding now is that you
9 believe that the MTEPs charge is part of the NITS
10 charge?

11 A. Well, I believe that, and, you know, to
12 someone like Ken Jennings or Walt Yeager, he
13 mentioned earlier would be a better person to ask,
14 but I believe it's schedule 26 or something like that
15 of the mini schedules that MISO has and it flows
16 through our rider that way. It probably isn't
17 included in NITS. I think we have a separate
18 component in the rate for that.

19 Q. Now, if the MRO plan is approved by the
20 Commission, would the -- let me take that back. Let
21 me start another way.

22 The MTEPs are just a MISO charge; is that
23 correct?

24 A. The MTEP is a charge --

25 Q. Is a MISO charge.

1 A. That's an approved FERC charge that's
2 built for MISO, yes, right.

3 Q. And so when the transfer is completed, I
4 won't say "if," but when the transfer is completed
5 and Duke goes to MISO, would a CRES provider who has
6 a customer in the Duke service territory be paying an
7 MTEPs charge anymore?

8 A. I lost you when you said we're going to
9 MISO.

10 Q. When Duke Energy-Ohio --

11 A. Right.

12 Q. -- integrates with the PJM system --

13 A. There you go. Yeah.

14 Q. Okay. Would a CRES provider who is
15 serving a retail customer in the Duke Energy-Ohio
16 service territory, would they be paying MTEPs
17 anymore?

18 A. Well, as we propose in our filing with
19 Rider BTR, to the extent that the Federal Energy
20 Regulatory Commission approves MTEP charges to be
21 collected from customers, then it would flow through
22 the Rider BTR, a nonbypassable charge, and then CRES
23 providers would not be paying for it themselves but
24 all customers would pay for it.

25 Q. Okay. And of course there is the

1 companion to the MTEPs in PJM called the RTEPs; is
2 that correct?

3 A. That's right. RTEP would be the same
4 way, it would also flow through the BTR rider to the
5 extent it was approved.

6 Q. So basically all the MTEPs and all the
7 RTEP charges that would flow for service to a retail
8 customer, whether they shop or they don't shop, is
9 going to get picked up in the new base transmission
10 rate and charged directly to the retail customer.

11 A. That's our proposal.

12 Q. And I take it that Duke would make all
13 the necessary arrangements with PJM so that CRES
14 load-serving entities would not be charged either
15 NITS or RTEP type charges?

16 A. Certainly we would endeavor to do so, my
17 expectation is that the CRES providers would remind
18 us that we didn't, so . . .

19 Q. I think we'll stipulate to that.

20 Okay. If you would, turn to page 15 of
21 your testimony. On page 15 you have a table, table
22 3, that has the existing riders that are being
23 eliminated. Do you see that?

24 A. I see it.

25 Q. I want to go with you briefly down the

1 list of the kinds of charges that are in each of
2 these riders. The first is the PTC-FPP, is it fair
3 to say that that rider primarily picks up changes in
4 fuel and purchased power costs?

5 A. After the ESP was initiated, the FPP is
6 not an incremental charge anymore, it picks up all
7 fuel and purchased power costs, it picks up renewable
8 energy credits, we include environmental reagent
9 costs, and we include emission allowance costs. And
10 there are certain MISO charges that come through too
11 and I think there's congestion costs and losses that
12 come through.

13 Q. So these are all generation-related
14 costs.

15 A. They are.

16 Q. Let's go down, the SRA-SRT, describe the
17 major cost components in that rider.

18 A. The major cost component as we speak, for
19 2011 we have \$750,000 worth of purchased capacity
20 costs that are flowing through that rider and about
21 \$1.2 million of reconciliation from prior periods.

22 Q. All right.

23 A. For the same cost.

24 Q. And this is generation capacity, correct?

25 A. That's correct.

1 Q. Let's go down to the next one, SRA-CD.
2 What are the major cost components in that rider?

3 A. The major cost components of that rider
4 are somewhat undefined. It was a stipulated rate
5 that came from the last ESP to compensate Duke
6 Energy-Ohio for the risks associated with customers
7 switching and having to be standing ready to serve.

8 We committed our capacity for the
9 duration of the ESP in exchange for that rider.

10 Q. And so those are generation capacity type
11 charges.

12 A. I would characterize them as
13 generation-related charges, yes.

14 Q. And finally the PTC-AAC, what's in that
15 rider, the cost components in that rider?

16 A. The AAC is an incremental rider. We
17 include the cost of environmental compliance, and
18 I'll add to that in a minute, environmental
19 compliance, Homeland Security, and changes in taxes
20 associated with generation.

21 The costs that are included for
22 environmental include a return of and on capital
23 investment and typically, just because of the timing,
24 we do it at a May 31 date in a given year and it
25 includes O&M for environmental, property taxes which

1 are zero because we don't have any property taxes on
2 environmental, and I may be missing one, but those
3 are the broad categories.

4 We calculate a revenue requirement based
5 on the current investment in the environmental,
6 compare that to what the investment was at
7 12/31/2000, and the difference is the value of the
8 Rider AAC revenue requirement for environmental. And
9 then for Homeland Security everything's incremental
10 because that didn't start until 2002.

11 And then for income taxes, we flow
12 through things like the production tax credit that
13 was imposed about four, five years ago, the
14 commercial activities tax changed, we flow through
15 that. Those are the kinds of things that are in the
16 AAC.

17 Q. And once again, those would be generation
18 type charges.

19 A. They're all generation charges.

20 Q. Okay. One last question. Going back to
21 the SRA-CD, is that the -- where we had costs
22 associated with Beckjord? Beckjord power plant?

23 A. We used the revenue from the CD to
24 amortize the costs that we were able to defer for
25 Beckjord. The Beckjord amortization is about

1 \$17 million a year. If nobody switched or waived the
2 SRA-CD, we would get about \$50 million a year in
3 revenue. So it's not a one-for-one match, but the
4 amortization of Beckjord is done in the CD.

5 MR. PETRICOFF: Those are all the
6 questions that I have. Thank you very much.

7 EXAMINER PIRIK: Thank you.

8 Mr. Chamberlain?

9 MR. CHAMBERLAIN: Yes.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Chamberlain:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. I'd like to follow up on your discussion
16 regarding Rider EIR, and I believe that begins at
17 page 16 of your testimony.

18 A. Sixteen?

19 Q. Sixteen.

20 A. Can you point me to a line? I'm not
21 seeing it on 16.

22 Q. Well, I haven't mentioned a line yet, but
23 as I understood your testimony just now, you
24 indicated that Rider EIR will be implemented only if
25 the Commission does not accept the proposed

1 three-year blending period; is that correct?

2 A. That's our proposal.

3 Q. Okay. And now at line 13 on page 16 you
4 indicate there that the company may implement two
5 trackers. Could you clarify for me what you mean by
6 the word "may"?

7 A. If the company -- if the Commission
8 doesn't allow us the 29 month blending period, then
9 we will implement the tracker.

10 Q. Okay. I was confused. To me "may" sort
11 of implies that you may not. But that's not your
12 testimony?

13 A. That's not our proposal, no.

14 Q. Thank you.

15 Now, at page 16 also, lines 15 through
16 17, you define "incremental" as costs that "...exceed
17 the amount included in the frozen Rider GEN rates."
18 Do you see that testimony?

19 A. I do.

20 Q. And again, I'm just trying to clarify
21 your testimony. You just testified, I think, that
22 the company's proposing to freeze Rider GEN rates
23 only if the three year blending period is approved?

24 A. That's correct. The 29 month blending
25 period, but okay.

1 Q. Okay. I'm unclear if the three-year
2 period -- strike that.

3 If the three-year period is not approved,
4 will the Rider GEN rates be frozen or not?

5 A. The Rider GEN rate itself will be frozen.
6 It won't move.

7 Q. Right.

8 A. We will have two new riders, Rider IEU
9 and FPP that would be added to Rider GEN to calculate
10 a bill and they would reflect the incremental costs
11 you're talking about here.

12 Q. Thank you.

13 Now, if Rider EIR is implemented, will it
14 be bypassable?

15 A. As I indicated to Mr. Petricoff, it will
16 be -- both riders will be bypassable. All generation
17 riders will be bypassable under our proposal except
18 the conditional avoidability of SCR and, as I'm
19 proposing, Rider RECON. Everything else is
20 bypassable.

21 Q. Okay. And let's talk about Rider SCR and
22 I believe that begins at page 18 of your testimony.
23 And your testimony is, I believe, that Rider SCR is a
24 trueup mechanism, is it not?

25 A. It is a trueup mechanism.

1 Q. And it reconciles revenues recovered from
2 SSO customers with the costs paid by the company to
3 generation bidders?

4 A. To the generation suppliers, right. The
5 winning bidders, yeah.

6 Q. But Rider SCR also includes other costs
7 as well, does it not?

8 A. It does.

9 Q. And in fact it includes costs incurred as
10 a result of supplier defaults; is that correct?

11 A. That's our proposal, yes.

12 Q. Okay. So under this rider the company
13 would be receiving from SSO customers certain costs
14 that are incurred in acquiring SSO load generation;
15 do you need me to repeat that?

16 A. Please.

17 Q. So Rider SCR is recovering from SSO
18 customers certain costs incurred by the company in
19 serving those SSO customers; is that correct?

20 A. Among other things, yes.

21 Q. Okay. Recovering the costs from the cost
22 causers; is that correct?

23 A. That's a fair characterization, yeah.

24 Q. Okay. And is Rider SCR bypassable?

25 A. Conditionally bypassable.

1 Q. And what do you mean by "conditionally"?

2 A. Our proposal, as I think I explained in
3 my testimony, is if the dollar value of the balance
4 of Rider SCR exceeds 5 percent of the total
5 generation revenues, and by that I mean the sum of
6 all the, quote/unquote, generation-related riders
7 including MRO, Rider GEN, et cetera, if that exceeds
8 5 percent, then we would make -- attempt to make it
9 anyway, subject to Commission approval,
10 nonbypassable.

11 Q. But the customers who have chosen to take
12 service from competitors, they've not caused the
13 company to incur the costs of acquiring that SSO
14 load, have they?

15 A. Not necessarily. But we don't know for
16 sure when they -- if they incurred the cost before
17 they switched or not.

18 Q. So you don't know?

19 A. You can't know. I mean, you may provide
20 service to a customer in May and he switches in June
21 and the cost was incurred in May that you can't
22 recover, so it's really difficult to say.

23 Q. So it's entirely possible that a new
24 customer may come on and pay costs that they've not
25 caused the company to incur?

1 A. That's just -- it's a mirror image,
2 that's true.

3 Q. Okay.

4 A. However, they are getting the benefit of
5 the SSO supply, so . . .

6 Q. If they're a non-SSO customer?

7 A. If they're a non-SSO customer and come
8 back, which is your example --

9 Q. No, that wasn't my example. If they're a
10 non-SSO customer and the costs of acquiring SSO load
11 is imposed on them.

12 A. A non-SSO customer, let's just say a
13 customer never comes back after 1/1/12, they are
14 unlikely to see the SCR charge unless there's a
15 threshold met of this 5 percent threshold, and even
16 then it's an ephemeral charge, it won't last very
17 long.

18 Q. But it is a charge nonetheless.

19 A. That's true.

20 Q. Now let's talk about Rider RECON. And I
21 believe that begins at page 27 of your testimony.
22 And you indicate that that's a new rider; is that
23 correct?

24 A. That is a new rider.

25 Q. Okay. And the riders, I believe you

1 testified just a moment ago, the riders being
2 eliminated, zeroed out, are generation-related
3 riders; did I understand that correctly?

4 A. The riders identified in the discussion I
5 had with Mr. Petricoff are all generation-related
6 riders, yes.

7 Q. Okay. And those riders are currently
8 bypassable; are they not?

9 A. Rider FPP and Rider AAC are
10 unconditionally bypassable. Rider SCR-CD is
11 bypassable only by C&I customers, commercial and
12 industrial customers who agree to come back only at a
13 premium to our SSO price.

14 Rider SRA-SRT is bypassable under the
15 same conditions for C&I customers and it's also
16 bypassable by certain customers in residential
17 aggregation programs who waive the right to come back
18 at the SSO price.

19 Q. But as I understand the company's
20 proposal, Rider RECON would not be bypassable by
21 competitively supplied customers; is that correct?

22 A. Our proposal is that Rider RECON be
23 nonbypassable.

24 MR. CHAMBERLAIN: Thank you, that's all I
25 have.

1 THE EXAMINER: Thank you.

2 Mr. Kutik.

3 MR. KUTIK: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Kutik

7 Q. Mr. Wathen, if all of Duke Energy-Ohio's
8 POLR load, instead of being partially procured
9 through an MRO was completely procured through an MRO
10 at the start of what you propose your MRO to be, is
11 it your belief that the resulting price would be on
12 the order of at least 30 percent below your present
13 price to compare?

14 A. Well, our price to compare at the moment
15 is -- we expect it to be around \$73, again, based on
16 the latest FE auction which should be comparable to
17 ours, it would be in the range of 55 to 60, I don't
18 know the math, but it's whatever that delta is would
19 be the difference.

20 Q. You referenced the FE --

21 A. On average, right.

22 Q. Yes. You referenced the FE competitive
23 bidding process, so it's your belief that looking at
24 the results of that process would be a fair proxy for
25 what you think at least the first Duke competitive

1 bidding process might result.

2 A. Well, the bid -- auction itself is very
3 much mirrored after FE's auction. The starting
4 point's a little different. I mean, we have a
5 different customer mix, we have different load
6 shapes, we have different switching rates. To the
7 extent bidders factor that in, their result may be
8 different than 55, I don't know the answer but it's a
9 proxy, so . . .

10 Q. But your belief, though, is that it would
11 be reasonable to use the results of let's say the
12 most recent FirstEnergy competitive bidding process
13 to determine what might happen in a Duke competitive
14 bidding process, correct?

15 A. Correction. I would characterize it
16 differently. I would say if someone asked me what we
17 could expect in an auction right now, I would say
18 probably somewhere in the range of 55 to 60, because
19 that's what FE got. Our loads aren't that different.

20 Q. Let me ask you a couple of questions
21 about Rider RECON. Is it correct to understand the
22 purpose of Rider RECON is to recover any remaining
23 balances that may exist with respect to Riders
24 PTC-FPP, and Rider SRA-SRT?

25 A. I would say yes, except to qualify it by

1 saying to pass through any overrecovery.

2 Q. Fair. Now, with respect to the costs
3 that are currently covered under those two riders,
4 those costs, as I think you agreed with Mr. Petricoff
5 in discussing table 3 on page 15 of your testimony,
6 are generation-related costs, correct?

7 A. That's correct.

8 Q. And on a going-forward basis with respect
9 to those costs and the recovery of those costs that
10 are currently recovered through those two riders,
11 Duke is proposing that the recovery of those costs be
12 bypassable, correct?

13 A. The recovery of the EIR and FPP --

14 Q. No.

15 A. -- and Rider GEN?

16 Q. No, the recovery of the costs that are
17 currently recovered, the same type of costs that are
18 currently recovered in Riders PTC-FPP, and SRA-SRT.

19 A. I'm sorry, I lost you. What was your
20 question again to start with?

21 Q. Let's try it this way.

22 A. Please.

23 Q. Looking at table 3 on page 15 --

24 A. Okay.

25 Q. -- those show, basically, what we might

1 call the conversion of costs that are being covered
2 under one rider or four riders to the recovery of
3 those costs under, going forward, Rider GEN, correct?

4 A. That's correct, yeah.

5 Q. Is it fair to say that the costs that are
6 being -- or Rider GEN would be a bypassable rider?

7 A. That's correct. I think what you're
8 trying to say, all four of these riders are going to
9 be rolled into Rider GEN and it will be
10 unconditionally bypassable, right.

11 Q. Now, with respect to Rider PTC-FPP there
12 is no current number within Duke that has estimated
13 what that balance will be, that rider balance will
14 be, at the end of 2001, correct?

15 A. It's an impossible number to estimate.

16 Q. 2011, excuse me. Correct?

17 A. It's an impossible number to estimate,
18 and I can explain why.

19 Q. Well, no, I just want you to say "yes" or
20 "no." Is that correct?

21 A. It's impossible to estimate so no, we
22 can't estimate it.

23 Q. You would agree with me that the
24 quarterly balance for that rider has been highly
25 variable.

1 A. It has been quite variable over the last
2 few months, over the last few quarters, yes.

3 Q. It's been as high as plus 40 million and
4 as low as minus 25 million.

5 A. That sounds about right.

6 Q. Now, would it be correct to say that one
7 of the rationales that you have provided or at least
8 you have provided in discovery with respect to why
9 Rider RECON should be nonbypassable is that you
10 wanted to make sure that if all the customers
11 shopped, there would be some way to recover all of
12 the balance, correct?

13 A. That's one of the reasons, yes.

14 Q. And you would agree with me, would you
15 not, that that rationale might apply to any rider?

16 A. Well --

17 Q. Or any costs that might be recovered
18 through a rider.

19 A. A bypassable rider, yes. But I would
20 like to clarify again, it's not necessarily a
21 recovery, it could be a credit, right.

22 MR. KUTIK: I have no further questions,
23 thank you.

24 EXAMINER PIRIK: Mr. Boehm.

25 MR. BOEHM: Thank you, your Honor.

1 - - -

2 CROSS-EXAMINATION

3 By Mr. Boehm:

4 Q. Mr. Wathen, I'd like to take you to the
5 company's reading of 4928.142. You've provided some
6 sort of interpretation like virtually every other
7 witness in this case; isn't that right?

8 A. I have a reading of 142(D).

9 Q. Right.

10 A. Yes.

11 Q. And we'll both agree you're not a lawyer,
12 but everybody else is doing it so you're interpreting
13 it too, right?

14 A. I've been called worse.

15 Q. Okay. I'm happy to hear that's not the
16 worst that you've been called.

17 Let's go, then, to page 2 of your
18 testimony.

19 A. I'm sorry, 2?

20 Q. Page 4, please.

21 A. 4.

22 Q. And I will call your attention in
23 particular to lines 33 through 39, and with respect
24 to those lines, 33 through 39, those are essentially,
25 as I understand it, Mr. Wathen, the statutory

1 justification that the company has cited as
2 authorizing its ability to or right, if you will, to
3 provide for a blending period of, it was two years
4 and out, right?

5 A. Twenty-nine months and out.

6 Q. Twenty-nine months and out.

7 A. Yes.

8 Q. And my memory from our deposition,
9 Mr. Wathen, or your deposition is that, well, I'm
10 sorry. Let me just read it briefly.

11 It says, and please follow with me,
12 "Beginning in the second year of a blended price
13 under division (D) of this section and not
14 withstanding any other requirement of this section,
15 the Commission may alter prospectively the
16 proportions specified in that division to mitigate
17 any effect of an abrupt or significant change in the
18 electric distribution utility's standard service
19 offer price that would otherwise result in general or
20 with respect to any rate group or rate schedule but
21 for such alteration."

22 Did I read that correctly?

23 A. You read it correctly.

24 Q. Is it true, Mr. Wathen, that that is
25 generally the relevant language concerning the

1 ability, if any, to mitigate or change the blending
2 period for the company?

3 A. I think the entire section is the
4 relevant language here.

5 Q. Fair enough. Fair enough.

6 In your deposition, as I recall,
7 Mr. Wathen, we discussed, and I hope that my memory
8 is correct in that you conceded that with respect to
9 protection of customers --

10 MR. D'ASCENZO: I'm going to object to
11 this form of question, your Honor. It's an improper
12 use of the witness's deposition. He's looking to --
13 Mr. Boehm is looking to use what Mr. Wathen may or
14 may not have said in a deposition as testimony and
15 that, frankly, is just an improper use of the
16 deposition.

17 If Mr. Boehm would like to ask Mr. Wathen
18 his opinion based upon his testimony to see if his
19 response has changed for some reason, then that is a
20 fair use of the deposition. But as what Mr. Boehm is
21 trying to do here, that's an improper use of the
22 deposition.

23 EXAMINER PIRIK: I would just reword the
24 question, please.

25 MR. BOEHM: Yes, your Honor, I think we

1 can get by this pretty quickly.

2 Q. (By Mr. Boehm) Mr. Wathen, is it your
3 belief that one of the purposes of this section with
4 respect to ratepayers is to provide ratepayers a
5 protection against an abrupt or significant change in
6 the company's standard service offer in the event
7 that the market portion of the blending rate is
8 significantly higher than the company's standard
9 service offer?

10 Isn't it true that one of the purposes of
11 the act might be then that in the event that the
12 Commission ordered a blending and the market rate
13 portion of that blending were unexpectedly high, then
14 that the Commission might consider to extend and
15 blend the period -- the rates over a longer period of
16 time? One of the reasons.

17 MR. D'ASCENZO: I'm going to object as to
18 form. The question posed is very vague and I'm not
19 even sure I understood what was being asked.

20 MR. BOEHM: I'm sorry you didn't follow
21 it. Let me try it again.

22 Q. Let's assume the situation -- let's
23 assume a situation contrary to the existing, as I
24 understand, situation where the market price of power
25 is significantly higher than the standard service

1 offer, all right? Can we do that?

2 A. You want me to assume the market price is
3 higher than the existing ESP.

4 Q. Right.

5 A. All right.

6 Q. And this condition actually occurs two or
7 three years into the MRO plan; the market price is
8 significantly higher than the standard service offer.
9 Okay?

10 A. You're saying that -- I guess knowing
11 what we're doing in the MRO I probably need to ask
12 you for some more parameters if I may.

13 Q. Okay. Let's try a different tact
14 altogether. Explain to me how you think this
15 language allows you, allows the company to shorten
16 the blending period.

17 A. Well, I believe the Commission has the
18 discretion using this language to accept our
19 recommendation to use a 29 month blending period.
20 The only two issues I see in the language is the
21 10 percent in year 1 and the up to 20 percent in year
22 2.

23 We are proposing a 20 percent blend to
24 maximize the lower market price in year 2 and then we
25 believe the Commission has the freedom, after year 3,

1 beginning in year 3 anyway, to adjust the blend.

2 Q. And what about, Mr. Wathen, the language
3 that says "...may alter prospectively the proportions
4 specified in that division to mitigate any effect of
5 an abrupt or significant change in the electric
6 distribution utility's standard service offer
7 price...."? Does that language mean anything?

8 A. It does mean something to me. If the
9 Commission believes that the market price is \$55 a
10 megawatt-hour, the Commission may choose to send us
11 to a hundred percent blend and maximize the benefit
12 to all customers.

13 Q. Isn't that an absolute condition
14 precedent to the Commission's authority to mitigate
15 the blending period?

16 A. Not necessarily.

17 Q. That they must find that there's an
18 abrupt or significant change in the electric utility
19 company's standard service offer price?

20 THE WITNESS: Would you reread the
21 question, please?

22 (Record read.)

23 A. They need to find that there's a
24 significant or abrupt change, that -- neither one of
25 those words has been defined by the Commission to my

1 knowledge.

2 Q. And in making your proposal for Duke how
3 do you interpret "abrupt or significant change"?

4 A. Well, the literal meaning of "abrupt" is
5 an unforeseen change. I believe the auction price as
6 we've advised will eliminate any unforeseen change,
7 will have at least three years of visibility into the
8 future on any new market.

9 We also have a blending proposal for the
10 auction that staggers it in a manner that will smooth
11 out the prices, so I can't foresee how we'd have an
12 abrupt change to satisfy any definition in my mind.

13 "Significant" can mean a significant
14 change like the market prices and our ESP price
15 converge, which the Commission may deem to be meeting
16 the objectives that the state has established to
17 promote customer choice 10, 12 years ago.

18 Q. So do you see any significant change,
19 then?

20 A. I view significant the fact that the ESP
21 price and the market price will converge and we will
22 have a situation where the markets are in equilibrium
23 and we won't have to adjust anymore. Further
24 adjusting is introducing arbitrary elements to a
25 market that don't belong.

1 Q. Mr. Wathen, is it also a fair reading of
2 the language or is it a fair reading of this language
3 to say that it is a condition precedent of the
4 Commission's ability and right to mitigate change,
5 and we'll get into mitigate change, that it must find
6 an abrupt or significant change in the price that
7 would otherwise result?

8 A. I thought we just covered that, but
9 abrupt really can't happen in our model.

10 Q. So abrupt change is not a factor here.
11 You just said it wouldn't be.

12 A. I don't -- in the model we have planned
13 there's nothing that would meet the definition of
14 "abrupt."

15 Q. So there isn't any abrupt change.

16 MR. KUTIK: Your Honor, can he finish?

17 MR. BOEHM: Excuse me, I'm sorry.

18 MR. KUTIK: Can he finish his question?

19 MR. BOEHM: Excuse me.

20 A. I think I'm done.

21 Q. Okay. You're telling me then,
22 Mr. Wathen, instead of identifying an abrupt or
23 significant change which would trigger the
24 Commission's right to mitigate, you're saying there
25 isn't any abrupt or significant change, right?

1 A. I think there is a significant change.

2 Q. But there's no abrupt change?

3 A. I don't think the model we have can allow
4 an abrupt change.

5 Q. Okay. But you're talking about a plan
6 that avoids abrupt changes. You're not talking about
7 a -- a finding of an abrupt change as a rationale to
8 mitigate the plan, right?

9 A. I am not suggesting that the Commission
10 would use the "abrupt" word in this statute to affect
11 our blending period.

12 Q. Now let's get down to "change." What do
13 you think a "change" means?

14 A. What do I think a "change" means.

15 Q. Yeah, an abrupt or significant change.

16 A. A change means something different than
17 it was before.

18 Q. Okay. Would you tell me what the
19 significant change is that you rely on to justify the
20 company's shortening the blending period?

21 A. I can repeat what I said earlier, the
22 significant change we see is the convergence of the
23 market prices, number one, the fact that the prices
24 are lower now, and the probability if anything that
25 they'll be lower when we go to a hundred percent

1 blend.

2 And we do believe that the Commission and
3 the state would find it meaningful and significant
4 that market prices -- that the company is operating
5 in a purely market environment without any
6 impediments, any arbitrary elements of an ESP, for
7 example.

8 Q. But isn't it true, Mr. Wathen, that what
9 you're saying is once we get rid of the blending
10 period and go right to market, that's a change?

11 A. Well, that's a change in the model. It's
12 not a change in the price necessarily.

13 Q. So what you're saying, essentially, is
14 once we stop the blending period, we don't need the
15 blending period anymore, right?

16 A. That's my view.

17 Q. Okay. And that's your interpretation of
18 the statute.

19 A. It is.

20 Q. Now, tell me, Mr. Wathen, under existing
21 circumstances what does the company do with power
22 that it would otherwise sell to its native customers
23 except for the fact that they've gone shopping? Do
24 they shut down the power plants?

25 A. What do we do with our power when someone

1 leaves?

2 Q. Yeah.

3 A. Well, nothing really happens to the power
4 plants, whether they stay or go. All of our power is
5 sold to MISO right now.

6 Q. Right. Okay. So you sell the power to
7 MISO. It isn't that you're not selling any power at
8 all, right?

9 A. We're selling all of our power to MISO.

10 Q. Okay. So in some cases, with respect to
11 what's going on right now in your native customers,
12 you're selling to the nonshoppers, you're selling
13 them power at the SSO rate, right?

14 A. For nonshoppers they get charged the SSO
15 rate which is a combination of a few riders, yes.

16 Q. And with the rest of your power you're
17 selling that at market prices essentially, right?

18 A. Well, as I said, all of our power gets
19 sold to the market. What we charge customers is
20 really an accounting -- it's an accounting that we do
21 after the fact, right.

22 Q. How will it help the company, then, if it
23 is able to sell all of its power at market prices?
24 What advantage will that give it over the existing
25 service?

1 A. Well, Mr. Whitlock's probably a better
2 person to ask this because they're his plants, but in
3 many discussions I've had with him and my knowledge
4 of it he can sell his power knowing that he has a
5 dedicated load, he can commit his power to two, five,
6 ten years if he wants to and have absolute certainty
7 of what kind of revenue he's going to get.

8 Q. And that's the advantage.

9 A. That's a significant advantage.

10 Q. Okay. That's not a price advantage,
11 though.

12 A. It could be. Don't know.

13 Q. Maybe, maybe not.

14 A. Maybe, maybe not.

15 Q. Is it your interpretation of this statute
16 that I just referred to before, Mr. Wathen, that this
17 statute was meant to protect the utility company as
18 well as utility ratepayers?

19 A. That's my belief, yes.

20 Q. Would you tell me how that interpretation
21 goes? In what respect does it protect the company as
22 well as the ratepayer.

23 A. Are you specifically talking about (E),
24 (D), or all of it?

25 Q. I'm specifically talking about (E), I'm

1 specifically talking about paragraph or lines 33
2 through 39 which, as I understand, is the primary
3 justification for the company's idea that they can
4 call for a blending period of 29 months.

5 A. Well, as we speak, the fact that we can't
6 blend the first two years any more than 10 and
7 20 percent, which is limited by the law, protects us
8 because we don't have to -- we wouldn't have to bid
9 out a hundred percent of our load. We have priced it
10 higher than the market as we speak. And to the
11 extent customers do stay, and as we speak we have
12 about 37 percent of our load has stayed, we get a
13 higher margin from those customers and it does
14 protect our earnings a little.

15 Q. So as I understand it, you're saying the
16 fact that you can blend and that you blend 10 to
17 20 percent, that protects the company, right?

18 A. Well, "protect" is a little bit loose. I
19 would say it helps to protect. It certainly doesn't
20 totally protect us but it mitigates, how's that?

21 Q. Okay. Now, let's assume that the plan
22 would go into years 3, 4, and 5 and that the
23 percentages for those years would be 30, 40, and
24 50 percent. Are you with me?

25 A. I am.

1 Q. Okay. Would that also protect the
2 company?

3 A. It depends.

4 Q. Depends on what?

5 A. It depends on switching, where the market
6 prices are, and where our ESP price is.

7 Q. Okay. Tell me how those effect it, your
8 answer.

9 A. If a hundred percent of our load is gone
10 for whatever reason, it does nothing to protect us.

11 Q. Does it harm you?

12 A. It depends on where the market prices
13 are. If market prices are higher than we would get
14 in the ESP, it would be helpful because we would
15 probably get more money in the market, right. If
16 market prices are lower, and customers have stayed,
17 there's kind of a happy medium there somewhere on the
18 level of switching and the price you can get in the
19 market, but we would have some revenue from customers
20 who stayed and we would probably get some revenue
21 from the market.

22 I mean, there's definitely a threshold
23 where the market price is going to be so low that
24 nobody will stay and we can't sell it in the market
25 any better than that and it hurts us, so . . .

1 Q. Tell me what scenario you envision the
2 company has envisioned which has caused them to want
3 to shorten the period.

4 A. I think, well, I can go back, this is the
5 third time I'll try it, but the scenario we
6 envisioned is the market price will converge with the
7 ESP price in year 3. The ESP price being frozen from
8 2011. And in that scenario -- that's the reason we
9 believe that year 3 is the appropriate year to
10 auction off a hundred percent of our load.

11 Q. How does that harm the company that the
12 prices converge?

13 A. It doesn't harm the company.

14 Q. So when you point to this statute and you
15 say it also operates to protect the company, you're
16 not giving me any example where it protected it,
17 right?

18 A. Well, if the market --

19 Q. If it -- I'm sorry, go ahead.

20 A. If the market price goes to 80 and the
21 ESP price stays at 73, for example, it harms the
22 company insofar as we would be foregoing an
23 opportunity to get more revenue in the market.

24 Q. Oh. Let me ask you another question,
25 Mr. Wathen. Has the company -- all this while the

1 company's been losing load because the market price
2 is lower than the company's SSO, has the company been
3 assuming that they don't have the ability to lower
4 their prices?

5 A. We were advised very clearly in a meeting
6 to implement what we had in mind in the last ESP
7 which was called an electronic bulletin board, and by
8 virtually every party in the room we were advised we
9 did not have the opportunity to lower our price in
10 the ESP.

11 Q. You're saying your interpretation was
12 that people didn't want you to lower your price to
13 compete with the marketplace?

14 A. I think there was a very visceral
15 response to the notion that we would selectively
16 lower our price to compete.

17 Q. This was a response from whom, may I ask?

18 A. I'm sorry?

19 Q. Whom was it?

20 A. I can't hear you very well.

21 Q. Who was it that said they didn't want you
22 to lower your price?

23 A. I think it was pretty much a unanimous
24 sentiment in the room and I can't tell you who all
25 was there, staff, OCC, a number of the --

1 Q. How about marketers?

2 A. The marketers were there, yes. Not
3 surprisingly, they weren't happy with that idea
4 either.

5 Q. I wasn't in the room, was I?

6 A. It's been awhile. I don't remember.

7 Q. Okay. Mr. Wathen, you have gone through
8 your testimony, and I'll try to do this in a general
9 way unless counsel objects, but my understanding is
10 you're sort of the lead person in this testimony and
11 you essentially say here's provision such and such of
12 the law relating to this and here's how we've
13 complied, right?

14 A. I guess I'm not entirely sure what you
15 mean by that.

16 Q. Okay.

17 A. I wouldn't say that I'm the lead person
18 in the case, no.

19 Q. Okay. Let me ask you this, do you feel
20 that the company's testimony, yours and other
21 people's testimony in the case, has essentially
22 identified all the statutory requirements and said
23 why you comply with it?

24 A. Well, in my view there's only really one
25 paragraph in the statutes that dictate whether or not

1 we can get the MRO and in my view we've complied with
2 it. The staff's comments suggested as much as, save
3 one item, that I think I dispute.

4 Q. Let me ask you this, the company has
5 provided in this case, as I understand it,
6 projections of the blending of market prices for the
7 SSO for what, 29 months?

8 A. That's correct.

9 Q. I am going to read you, and I'll be happy
10 to show it to you or if counsel wants to show it to
11 you, a provision of the Ohio Administrative Code
12 being 4901:1-35-03 -- you know how these things go
13 on -- (B)(1)(j). I'll let everybody kind of catch up
14 with that.

15 MR. HART: (2)(j).

16 MR. BOEHM: I'm sorry, (2)(j).

17 MR. KUTIK: I'm sorry, does the witness
18 have that before him?

19 EXAMINER PIRIK: Can we take a break at
20 this point in time and can you get the witness a copy
21 of that?

22 MR. BOEHM: That would probably be
23 better.

24 (Recess taken.)

25 EXAMINER PIRIK: We'll go back on the

1 record.

2 Mr. Boehm.

3 MR. BOEHM: I'm not quite sure where I
4 was or where I want to be I suppose is that the
5 witness would be taking a look at 4901:1-35-03(B)(2),
6 small j.

7 Q. And to bring us back where I think we
8 were, Mr. Wathen, well let me first call your
9 attention to the first sentence of that provision
10 which says "The first application for a market rate
11 offer for an electric utility that as of July 31st,
12 2008, directly owned in whole or in part operating an
13 electric generation facilities that have been used or
14 useful in this state shall include a description of
15 the electric utility's proposed blending of the CBP
16 rates for the first five years of the market rate
17 offer pursuant to division (D) of section 4928.142 of
18 the Revised Code."

19 Did your filing, did the company's filing
20 of this case contain a description of the utility's
21 blending of the CBP rates for the first five years?

22 A. It did.

23 Q. And where are those?

24 A. In Jeff Bailey's testimony, I think we
25 suggested what the blending proposal would be for the

1 first three years. The years 4 and 5 our proposal
2 describes the CBP price, I mean the electric
3 utility's blending price as the market price.

4 Q. Describes it as the market price.

5 A. Yes.

6 Q. And that's because you propose not to do
7 five years, just to do three years, right?

8 A. We are proposing to blend for three
9 years. And years 4 and 5 would be the market. So
10 for the five-year period it's asking us to describe
11 we've complied with the rules.

12 Q. You show the proposed -- according to the
13 company, then, after the 29 months when there isn't
14 any blending, that you're blending, right?

15 A. After 29 months the blending is 100
16 percent market.

17 Q. It's not blending, is it?

18 A. It's 100 percent market, yes.

19 Q. Right. It's the blending of nothing with
20 the market, right?

21 A. Essentially.

22 Q. And that's the company's reason for not
23 submitting the five years.

24 A. That's our proposed blending is 10, 20, a
25 hundred, a hundred, and a hundred.

1 Q. And this, again, goes back to the
2 company's reasoning that once you stop blending,
3 there isn't any reason to blend, right?

4 A. Well, once we stop -- once we've reached
5 a hundred percent, the blending is essentially over.

6 Q. Doesn't that suggest to you that the
7 statute doesn't contemplate a blending period of less
8 than five years?

9 A. This?

10 Q. Yes.

11 A. This is not a statute.

12 Q. I'm sorry, the rule.

13 A. The rule says we have five years that
14 we're going to show the description of the blending
15 period. I don't think it talks about the mandate for
16 five years at all, so . . .

17 Q. Let's move off of statutory
18 interpretation for a moment, then, and go to page 11
19 of your testimony, Mr. Wathen.

20 A. Am I done with this for the time being?

21 Q. I'm sorry?

22 A. Am I --

23 Q. Yes. And you start off on page 5 of page
24 11 saying that, in answer to the question "Is this
25 blending proposal consistent with the statutory

1 requirements for an MRO?" "Yes. Not only is it
2 consistent with the MRO rules, it is consistent with
3 the goals of Senate Bill 221 as it finally achieves
4 an objective established by the Ohio legislators when
5 Senate Bill 3 was passed in 1999, promising Ohio
6 consumers unfettered full choice for their electric
7 generation service." Do you see that?

8 A. I see it.

9 Q. Okay. Under Senate Bill 3 isn't it true,
10 Mr. Wathen, that it initially proposed that after the
11 year 2005 all of the utilities in the state would be
12 selling power at the market price, essentially they
13 would be out of the market, right? Or out of the
14 merchant business.

15 A. Well, there were exceptions in there
16 depending on where you were relative to load, and I
17 want to say that one of the utilities had a period
18 that extended slightly beyond that, I can't remember
19 exactly, but generally after '05 all utilities would
20 be in a fully competitive market.

21 Q. And as a matter of fact what the law
22 provided was that the utility companies were to
23 divest themselves of their generating assets, didn't
24 it?

25 A. My recollection of Senate Bill 3 was when

1 it was passed it was mandatory to sell the assets,
2 yes.

3 Q. And as a matter of fact, utility
4 companies like Duke, which was then Cinergy, the
5 reason they still own their generating assets is they
6 asked for an exemption for that or at least temporary
7 exemption from that provision; isn't that correct?

8 A. I don't remember. I wasn't involved in
9 rates at all then.

10 Q. Would you say that Senate Bill 3, then,
11 was essentially a statute that called, granted it did
12 a lot of other things, but it essentially envisioned
13 by that 2005 utility companies would not own
14 generating assets, they would be wires company, and
15 the electric generation would be at market?

16 A. I characterize it as the law statutorily
17 required those circumstances to be there in -- after
18 2005, right.

19 Q. Okay. Would you say that Senate Bill 221
20 essentially was passed to advance that objection?

21 A. Well, Senate Bill 221, I believe, also
22 refers to some of the policy objectives of the state
23 in 4928.02 which is open, fair, and transparent
24 market, and I believe the only way you can achieve
25 that is a fully competitive market.

1 Q. Okay. Does Senate Bill 221 require a
2 utility to divest itself of its generating assets?

3 A. To my knowledge, there's no mandatory
4 requirement to sell assets in 221.

5 Q. Doesn't it, in fact, require the utility
6 to come and ask the Commission's approval before it
7 divest itself of its generating assets?

8 A. I honestly can't point to a particular
9 place in 221 but I do know that I've seen
10 interpretations of that that said that we had to seek
11 approval, yes.

12 Q. Okay. In Senate Bill 3, was it possible
13 after 2005 for a company to continue to own
14 generating assets and to sell it at some sort of a
15 cost-based rate? Was it possible under Senate Bill
16 3?

17 A. Are you asking me what the market
18 structure possibilities were after '05?

19 Q. Yeah, okay.

20 A. That right?

21 Q. Yes.

22 A. Considering we really didn't -- it was
23 kind of the wild, wild west in '05. We kind of, I
24 think every utility ended up with a completely
25 different model. At the time FE had already sold

1 their assets, we had ours, DPL had theirs, AEP had
2 theirs, and I would characterize the models we ended
3 up with as widely divergent, inconsistent, and not
4 reflective at all of what they had in mind at the
5 beginning of Senate Bill 3.

6 Q. Would it be fair to say, in your mind,
7 Mr. Wathen, that Senate Bill 221 represented a
8 retrenchment or retreat from the SB 3 objective of
9 going to -- of everyone going to market?

10 A. If they hadn't included the ability to
11 propose an MRO, I would agree with you, but the
12 Senate Bill 221 offers utilities the option of taking
13 their load to market.

14 Q. But not taking it immediately to market
15 like Senate Bill 3 did, right?

16 A. It leaves some discretion to the
17 Commission, yes.

18 Q. So your answer to me is since it opened
19 the possibility to an MRO -- because it opened the
20 possibility to an MRO, then it doesn't represent a
21 retreat from Senate Bill 3's objective to put
22 everybody at market.

23 A. I'll characterize it this way, it is a
24 lot different than Senate Bill 3 where it had a
25 visible end in mind in Senate Bill 3, we don't have

1 that necessarily in 221. The little period of the
2 wild, wild west I talked about is quite different
3 than either scenario, so I'm not entirely sure how
4 you compare the MRO and what the state had in mind
5 because it does give us both paths and I suspect if
6 they wanted to fully retrench this they would have
7 said ESP only or they would have laid out the path
8 for reregulation.

9 Q. Let me just close out and I want to make
10 sure, Mr. Wathen, I want to go back to a point, I
11 want to beat this, but I want to make sure that I
12 understand your answer with respect to the provisions
13 of 4928.142 and the lines that are identified as
14 lines 33 and 37 on page 4 of your testimony. Let me
15 just ask two short questions to see if I can make
16 sure that I understand your testimony.

17 Is it your testimony that the company,
18 utility company, does not need to show either an
19 abrupt or significant change in the electric
20 distribution utility standard service offer price in
21 order to justify a shortening of the blending period
22 to 29 months? Do they have to show that or not, one
23 or the other?

24 A. I believe that we have to show that
25 because that's the law, but again, I think "abrupt"

1 is moot because of our plan. And the significant
2 event that we're asking the Commission to find is
3 that we expect market prices to be either about our
4 ESP price in 2014.

5 Q. Is that, in your mind, a significant
6 change or a significant expectation?

7 A. It's a significant event.

8 Q. But the event that I heard you describe
9 was an expectation; isn't that right?

10 A. It is an expectation, just like the
11 expectation of an abrupt change.

12 Q. And in your mind an event is the same as
13 an expectation.

14 A. Well, not necessarily.

15 Q. Okay.

16 MR. BOEHM: I have no further questions,
17 your Honor.

18 Thank you, Mr. Wathen.

19 EXAMINER PIRIK: Thank you.

20 MS. HOTZ: Yes, I do.

21 EXAMINER PIRIK: Ms. Hotz.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Hotz:

25 Q. Good afternoon, Mr. Wathen.

1 A. Hello.

2 Q. In this case the company is only
3 proposing to modify the manner in which it recovers
4 its transmission revenue requirement, correct?

5 A. That's essentially correct, yes.

6 Q. The company is not seeking PUCO approval
7 to recover its transmission or transmission-related
8 costs in this proceeding, correct?

9 A. We are. We have a network service of
10 revenue requirement and we have certain other revenue
11 requirements, but they're unknown at this time. But
12 we do seek approval of the costs, that they would be
13 flowed through the BTR and the RTO riders, yes.

14 Q. Is Duke Energy-Ohio seeking a
15 determination from the PUCO in this proceeding that
16 the costs of MISO exit fees, MISO and PJM
17 transmission expansion projects, and PJM integration
18 fees that Duke seeks to include in Rider BTR were
19 prudently incurred?

20 A. We are not asking for a finding of
21 prudence from the Commission in this case, no.

22 Q. Okay. Could you turn to page 25 of your
23 testimony, lines 23 to 25.

24 A. I'm sorry, 25? Page 25?

25 Q. Page 25, lines 23 to 25.

1 A. Okay.

2 Q. And beginning with the word
3 "consequently," could you please read that sentence
4 there?

5 A. "...consequently, the company is
6 exercising its rights, as fully supported by the
7 Staff's comments in FirstEnergy's ESP case, to
8 recover all costs billed to the Company under
9 FERC-approved tariffs."

10 Q. But you do not mean in this case, do you?

11 A. Well, we are asking for the Commission to
12 approve the Rider BTR and RTO and both -- the riders
13 that would be approved would recover costs that FERC
14 approves and are rightfully recoverable from retail
15 customers as, again, supported by the staff in the FE
16 case, so . . .

17 Q. Now, on page 26, line 14 you talk
18 about -- you state "The RTO Rider and Rider BTR will
19 be trued-up annually around June of each year
20 consistent with the current filing schedule for Rider
21 TCR and the filing will continue to be consistent
22 with Ohio Administrative Code chapter 4901:1-36." So
23 you intend to seek recovery under that chapter?

24 A. I believe that that chapter outlines the
25 manner which we would file for transmission cost

1 recovery.

2 Q. In fact, it does provide for a prudence
3 review, doesn't it, under Revised Code -- or, under
4 Ohio Administrative Code' 4901:1-363 C?

5 A. I suppose it does, but, again, 4928.05 in
6 the RC also says FERC-approved costs are
7 automatically passed through to customers.

8 Q. Where does it say that?

9 A. 4928.05 in the Revised Code. Part 2.

10 Q. But consistent with 4901:1-36-03(C), the
11 Commission can, can order a prudence review on
12 FERC-approved costs.

13 A. They can order a prudence review, and I'm
14 not a lawyer, but I would think the statute
15 supersedes the Administrative Code.

16 Q. And what was that statute again?

17 A. 4928.05.

18 Q. Okay, thank you. I'm not done yet.

19 You were one of a group of architects
20 that designed the MRO, correct?

21 A. "Architect" may be overstating it, but
22 yes, I was part of the group.

23 Q. Did Duke file an application for an MRO
24 because it believed that an MRO would be superior to
25 an ESP?

1 A. In our view, the MRO was superior for all
2 stakeholders, than an ESP.

3 Q. In fact, that's where the future is
4 going. You believe that's where the future is going,
5 correct?

6 A. If I had total insight in the future, I
7 probably wouldn't be sitting here. But our
8 expectation of the future is the MRO will be superior
9 to the ESP.

10 Q. And you also believe that it achieves
11 finally an objective the state has had for ten years,
12 12 years, that the market would adjust in Ohio,
13 correct?

14 A. That the market would adjust in Ohio?

15 Q. Yes.

16 A. That's not what I said.

17 Q. Well, what did you say?

18 A. I said that, and I can read my testimony,
19 but I'll paraphrase it, in our view finally getting
20 to the market, which in our view, in our proposal is
21 29 months from now, or 29 months from the end of
22 2011, we'll be at a hundred percent market and that
23 achieves the objectives the state laid out when it
24 passed Senate Bill 3 in 1999 to have unfettered
25 retail choice for all customers.

1 Q. The current rates being paid by the SSO
2 customers are not blended, correct?

3 A. We don't auction our load off so there's
4 no blend, yes.

5 Q. And one reason why they're not blended is
6 they're 100 percent ESP rates; is that correct?

7 A. Our rates through the end of '11 are
8 based on an ESP, yes.

9 Q. So when a customer pays a rate that is
10 100 percent one type of rate, it is not blended,
11 correct?

12 A. We have nothing to blend at the moment.
13 There's no market price out there.

14 Q. But I'm just asking you just as a general
15 proposition that when a customer pays a rate that is
16 100 percent one type of rate, it is not blended; is
17 that correct?

18 A. It is either -- it is 100 percent of one
19 rate, yes.

20 Q. And it's not blended then.

21 A. There's nothing blended in it, yes.

22 Q. Okay. Are you familiar with the part of
23 Revised Code 4928.142(D)(4) that states "In making
24 any adjustment to the most recent standard service
25 offer price on the basis of cost described in

1 division (D) of this section, the Commission shall
2 include the benefits that may become available to the
3 electric distribution utility as a result of, or in
4 connection with, the costs included in the adjustment
5 included, but not limited to, the utility's receipt
6 of emission credits or its receipt of tax benefits,
7 or of other benefits, and, accordingly, the
8 Commission may impose such conditions on the
9 adjustment to ensure that any such benefits are
10 properly aligned with the associated costs
11 responsibility"?

12 How does Duke's proposed MRO plan provide
13 for the inclusion of such benefits?

14 A. Well, your first question, was I familiar
15 with this thing, and I guess I'm familiar with it,
16 it's in my testimony.

17 Q. Okay.

18 A. Your second question is the way we would
19 include it is to the extent the Commission takes our
20 blending period beyond 29 months, we would propose
21 Riders FPP and EIR, and, to the extent any of those
22 benefits you described by reading 4928.142(D), to the
23 extent any benefits are derived from that and to the
24 extent they're allocable to SSO customers, they would
25 flow through those riders.

1 Q. Okay. Thank you.

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

3 EXAMINER PIRIK: Mr. Yurick?

4 MR. YURICK: I just have a couple.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Yurick:

8 Q. Mr. Wathen, good afternoon. According to
9 your testimony you're employed by Duke Energy
10 Business Services as general manager and vice
11 president of rates, Ohio and Kentucky; is that
12 correct?

13 A. That's correct.

14 Q. And in that position are you generally
15 familiar with Duke Energy-Ohio and its affiliated
16 companies?

17 A. I'm generally familiar, yes.

18 Q. And Duke Energy-Ohio is an electric
19 distribution utility, correct?

20 A. Among other things.

21 Q. And as of July 31st, 2008, Duke
22 Energy-Ohio did directly own in whole or in part
23 operating electric generation facilities that had
24 been used and useful in Ohio, correct?

25 A. I think Mr. Whitlock's testimony

1 identifies that, yes.

2 MR. YURICK: I have no further questions,
3 thank you.

4 EXAMINER PIRIK: Mr. Olikar.

5 MR. OLIKAR: Just a few questions, your
6 Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Olikar:

10 Q. Getting back to a previous question about
11 the offset of benefits. Was it your testimony you
12 would flow, something like tax benefits through Rider
13 EIR and the purchased power rider?

14 A. I think the provision that Ms. Hotz was
15 alluding to was 4928.142(D) allows us to adjust our
16 SSO price for fuel, purchased power, environmental
17 costs, and it would include any benefits of emission
18 allowances provided to us, and then there is a
19 provision for taxes, and insofar as this is limited
20 to those items, I would assume those tax changes are
21 attributable to those items.

22 So to the -- to the extent there are any
23 tax benefits, which, you know, we don't know that
24 yet, they would flow through that rider.

25 Q. Okay. I'd like to talk a little bit more

1 about the riders. Has the Federal Energy Regulatory
2 Commission approved a network integration
3 transmission service rate or revenue requirement at
4 this point regarding your migration to PJM?

5 A. We do not have a pending application for
6 the NITS rate in PJM.

7 Q. Assuming that you file an application and
8 it is approved, will the company seek PUCO approval
9 to recover any of the specific rate or revenue
10 requirement that is approved?

11 A. Well, as I mentioned earlier, I would
12 expect that sometime before the end of the year or
13 the beginning of the MRO period we would have to file
14 an update to our existing TCR or we'd have to file a
15 proposed BTR to start the process and then
16 subsequently every June we would update it for
17 changes in that rate.

18 As Ms. Hotz alluded to, the statutes
19 provide that we must come in and make annual
20 applications for transmission cost recovery and I
21 would expect at that time the Commission would have
22 their chance to opine on the frequency of those
23 costs.

24 MR. OLIKER: I have no further questions,
25 your Honor.?

1 EXAMINER PIRIK: Thank you.

2 Mr. Hart?

3 MR. HART: Yes, ma'am.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Hart:

7 Q. Mr. Wathen, I want to take you back to
8 the current ESP case. Am I correct that for most
9 customer classes that case had a built-in 2 percent
10 rate increase from year to year?

11 A. I want to confess that I don't remember
12 all the details but I can tell you what I remember.

13 Q. Sure.

14 A. For residential customers the rate, well,
15 we did a few things to the base generation rate. We
16 took out fuel, first of all, we added the RTC that
17 was going to expire for residential got added to the
18 BG rate and it was escalated by 2 percent over what
19 was then we called the little "g" rate. That
20 2 percent escalation happened in '8 to '9, '9 to '10,
21 it won't happen this year.

22 Q. For residential.

23 A. For residential.

24 Q. For business customers too right?

25 A. For business customers it was actually a

1 I believe it was a 4 percent increase from '08 to '09
2 and then from '9 to '10, and then there was
3 another -- on the generation rate alone, not the
4 overall rate.

5 I think overall it worked out to be about
6 a 2 percent overall increase, but on the generation
7 rate alone it was 4 percent over, '9 over '8 and '10
8 over '9, and then from '10 to '11, again, that was a
9 4 percent increase was added, but the 4 percent was
10 added to '10 and then we added the RTC rate that
11 expires for nonresidential customers after '10, that
12 was added to the generation rate. So essentially it
13 went from a nonbypassable charge to a bypassable
14 charge for C&I customers.

15 Q. And I think you said then the overall
16 impact of all those changes was approximately
17 2 percent from year to year?

18 A. That's approximately the change, yeah.

19 Q. Okay.

20 A. If I remember. Jim Ziolkowski who
21 follows me can probably give you more details on the
22 subject.

23 Q. I'm just trying to get a general sense of
24 that. Do you consider that a reasonable change in
25 rates from year to year, correct?

1 A. It's not unreasonable, yeah. It's
2 probably inflation based.

3 Q. And you wouldn't consider that an abrupt
4 or significant change in rates, would you?

5 A. I wouldn't characterize it as abrupt or
6 significant, not that I know what either one of those
7 words means in the context of rates.

8 Q. Okay. You've referred to Mr. Rose's
9 testimony as to how Duke has projected convergence of
10 prices, correct?

11 A. Yeah, in my testimony I refer to Mr. Rose
12 as one of the reasons we would propose to end the
13 blending period, yes.

14 Q. I want to ask you to look at a chart in
15 his testimony, and if you don't mind I can just hand
16 him my copy for convenience. This is Mr. Rose's
17 testimony on page 44. Are you familiar with that
18 chart which is labeled V, Roman Numeral V?

19 A. I'm generally familiar, yes.

20 MR. D'ASCENZO: I'm sorry, Mr. Hart, what
21 page was that?

22 MR. HART: Page 44.

23 MR. D'ASCENZO: May I approach the
24 witness, your Honor?

25 EXAMINER PIRIK: Yes.

1 MR. D'ASCENZO: Thank you.

2 MR. HART: He doesn't trust me, thinks
3 I'm giving you a fake version.

4 THE WITNESS: I don't see any whiteout on
5 there.

6 MR. HART: If you want to give him your
7 copy, that's fine.

8 MR. D'ASCENZO: I want to make sure I'm
9 looking at the same thing as you are.

10 Thank you.

11 Q. (By Mr. Hart) I'll give that back.

12 A. I think I left off that I'm generally
13 familiar.

14 Q. Okay. Wait till he gets back.

15 Am I correct, Mr. Wathen, that Mr. Rose's
16 Exhibit Roman Numeral V shows his calculation of what
17 your proposed blending would look like based on his
18 price projections for market prices?

19 A. That's correct.

20 Q. And the column that says "Legacy ESP
21 Price" is the price that you're currently charging
22 that you would propose to freeze for the first 29
23 months.

24 A. It's not necessarily our current price.
25 It's the price we expect to be in existence at the

1 end of '11.

2 Q. Okay. What you project to be in
3 existence at the beginning of your MRO.

4 A. That's correct.

5 Q. And then the second column shows the
6 blending percentages that you propose to use,
7 correct?

8 A. That's correct.

9 Q. So it would be 10 percent the first year,
10 20 percent the second year, and a hundred percent
11 market the third year. is that right?

12 A. That's correct.

13 Q. And then the next column, Retail Market
14 Price, do you understand that to be what Mr. Rose
15 projects as the market price based on his analysis of
16 futures?

17 A. That's Mr. Rose's estimate of the retail
18 market price that he's projecting based on a few
19 factors including the wholesale market price.

20 Q. And your conclusion that the wholesale
21 and the -- or the market price and the SSO price are
22 going to converge is based on his projection of 7.17
23 in year 2014?

24 A. Well, they don't exactly converge.

25 Q. They come close.

1 A. They come to an approximation, right.

2 Q. Within .17.

3 A. Yes.

4 Q. And then the column out two more columns
5 to the right that says "MRO," that's the resulting
6 price that you would actually propose to charge if
7 this ended up being what the market rates were.

8 A. What's characterized here as the MRO is
9 the blended price.

10 Q. So it would be 719 in year 1, 714 in year
11 2, and 717 in year 3.

12 A. That's correct.

13 Q. And that 717 is based on a hundred
14 percent market.

15 A. That's correct.

16 Q. Okay. Now, in your testimony on page 9,
17 keep that available for me, top of page 9 you have a
18 chart and you say below that "Absent any other
19 factors, the Company would follow the blending
20 schedule shown above...." And am I correct that that
21 is the recommended blending schedule that's in
22 4928.142(D)?

23 A. The table above the line you referred to
24 is the essentially graphical representation of the
25 default blending schedule in 4928.142.

1 Q. So --

2 A. The recommended blending we have is on a
3 different --

4 Q. Right. But absent your proposal to
5 deviate from that schedule, year 3 would be a 70/30
6 blend; is that right?

7 A. That's correct.

8 Q. If we turn back to Mr. Rose's chart, if
9 we took the legacy price of 734 and the retail price
10 of 717 and blended those at a 70/30 rate, am I
11 correct we would end up with an MRO price of 722?

12 A. If you ignore every other factor that
13 would come into play, yeah.

14 Q. Any other factor being what?

15 A. Being that if we extend the blending
16 schedules we would have riders FPP and IER that may
17 affect that price.

18 Q. Let me come back to that, we'll follow
19 that path in a minute but just bear with me. If we
20 didn't adjust the ESP price, am I correct the blended
21 price in 2014 using 70/30 would be 722?

22 A. Can I do some math real quick?

23 Q. Sure, I'll help you.

24 A. I'll do it.

25 Q. Okay.

1 A. Yeah, 722.

2 Q. Okay. And if we compare the 722 price to
3 the previous year's price using the 80/20, it would
4 be an increase from 714 to 722, correct?

5 A. That's correct.

6 Q. .08.

7 A. Yeah, it would be .08 cents per
8 kilowatt-hour.

9 Q. Which is about 1.1 percent over the prior
10 year?

11 A. I'm going to trust you on that one, yeah.

12 Q. Well, 1 percent of 7 is .07, right?

13 A. (Witness nods head.)

14 Q. .08 is a tick above that, all right.

15 About half of what the overall rate
16 increases have been for the last two years,
17 percentagewise.

18 A. No, the overall rate increases for the
19 last two years have been more or less than the
20 numbers you identified earlier, and there are other
21 things going on in our rates than just the -- project
22 the schedule changes in BG.

23 Q. Okay.

24 A. We've had changes in Rider AEC, FPP, a
25 number of other riders.

1 Q. Okay. Let's go down that path now. You
2 said that those things might alter if we didn't
3 follow the 29-year blending.

4 A. Twenty-nine month I hope you meant to
5 say.

6 Q. Twenty-nine month?

7 A. Yeah.

8 Q. Yeah.

9 A. Not 29 years.

10 Q. I apologize if that's what I said.

11 A. Dave's getting excited over here.

12 Q. I believe you just told Mr. Boehm that it
13 would be impossible, you told somebody here today
14 it's impossible to predict what the FPP rider would
15 look like in the first quarter of 2012 today.

16 A. I did not say that.

17 Q. Okay. What did you say?

18 A. I said it's impossible to predict what
19 the FPP underrecovery or overrecovery would be today.

20 Q. Are you able to predict what the rider
21 would be today?

22 A. We have projected in our case 297 would
23 be the rider for the fuel rider.

24 Q. What is, is that the amount that you're
25 including in this 734 base rate?

1 A. It is.

2 Q. What I really wanted to ask you then is
3 what will the change in that rider be from quarter to
4 quarter going forward starting 2012?

5 A. And that part you probably heard right, I
6 have no idea.

7 Q. Okay.

8 A. We have not forecasted the forecast
9 beyond 2011.

10 Q. So if you were to implement Rider FPP or
11 whatever its new name is going to be and the
12 environmental rider in the future, you have no way of
13 knowing what your ESP price will be in 2013 or 2014,
14 do you?

15 A. If I implement -- if I implement the
16 riders?

17 Q. Yes.

18 A. I have no way of knowing with absolute
19 certainty, no.

20 Q. Okay. So we know that if Mr. Rose is
21 correct and we blend it at the statutory rate,
22 without an adjustment the price increase would be
23 around 1.1 percent in year 3. We don't know what it
24 would be if you implement those riders.

25 A. I don't know would it be positive or

1 negative.

2 Q. So you don't know whether the market
3 price and your ESP price would even converge, do you?

4 A. I don't.

5 Q. Okay.

6 A. Well, we have a general idea because the
7 market price for the next two years are fairly
8 certain already. So we can speculate with some
9 certainty in the next two years.

10 Q. You could speculate with some certainty?

11 A. Yes.

12 Q. What degree of --

13 A. It's an oxymoron I guess.

14 Q. What degree could you --

15 A. Well the market proprietary for the FE
16 auction pretty much tells you what the market price
17 is for the next two years.

18 Q. Okay. So would you then say with
19 reasonable speculation that the prices would be the
20 same even with the rider changes?

21 A. Well, as we speak nothing suggests that
22 there's going to be a wild shift in market prices in
23 year 3.

24 Q. Okay. So with or without the adjustments
25 Mr. Rose's analysis would be about the same?

1 A. Well, I didn't say the fuel prices
2 wouldn't change. I think depending on how we hedge
3 the fuel and what kind of situation we come up with
4 for hedging purchased power and how environmental
5 allowances come through, that that could change a
6 little bit. But assuming that we did freeze the
7 price, then his analysis is pretty accurate.

8 Q. Okay. Let's go on to another subject.
9 On page 12 of your testimony, I'm going to paraphrase
10 for a moment, but I think you basically draw the
11 conclusion that once Duke transfers its generation
12 assets, that blending has to end; is that what you're
13 basically saying there?

14 A. That's essentially correct.

15 Q. Okay. You agree, don't you, that before
16 you can transfer those generation assets you have to
17 seek Commission approval?

18 A. I think I covered that ground with
19 Mr. Boehm, but yes.

20 Q. So if the Commission didn't want blending
21 to end, it could do one of two things, it could
22 either say don't transfer the assets, or it could
23 require you to enter into a purchased power agreement
24 as a condition of doing so.

25 A. Would you say that again, please?

1 Q. Well, let me take them one at a time.
2 One, it could say no, you can't transfer your assets
3 because we want blending to continue. It could do
4 that, right?

5 A. I hope that's not the reason they
6 disallow the transfer of the assets. I mean, there's
7 any number of reasons they may disallow the assets
8 which generally are going to be, in our view, not
9 reasonable, but, you know, I think for the sole
10 reason blending the price doesn't seem likely that
11 they could keep us from spinning our assets off for
12 the sole reason of blending the price.

13 Q. Let me take the opposite scenario. Let's
14 assume that the Commission would approve the transfer
15 of your generation assets before blending ends.
16 Could it not condition that transfer of assets upon
17 Duke Energy-Ohio entering into a purchased power
18 agreement with the transferee of those assets?

19 A. Sure.

20 Q. So essentially you could both transfer
21 the assets and have blending.

22 A. We could. I guess, I think a rate that
23 we would pursue in a purchased power agreement
24 between the utility and the generator would, we'd
25 have to approve that from FERC, first of all, and I

1 think it would be a market-based rate which, again,
2 would mean the blending period is moot. Because
3 you're market and market.

4 Q. Assuming you were required to use the
5 market rate in that purchased power agreement?

6 A. I don't know how the Commission could
7 require you to have a purchased power agreement that
8 was below the market or above the market for that
9 matter. It had to be approved by the FERC.

10 Q. So the answer might be to not transfer
11 the assets.

12 A. I have little insight into the
13 Commission's mind these days, but assuming they would
14 oppose a transfer, it could be for any number of
15 reasons.

16 Q. Okay. Let's move on, I want to go back
17 to the issue of adjustments for just a moment. On
18 page 16 of your testimony, I think this is where you
19 say if you cannot get the 29-month blending period
20 you would implement these riders, and on line 15 and
21 16 you say "'Incremental,' in this case, would mean
22 the extent to which the then current cost would
23 exceed the amount included in the frozen Rider GEN
24 rates." Isn't it also true that those riders'
25 incremental change could be the amounts by which --

1 let me rephrase that.

2 The amount could go down as well, it
3 could not only exceed it, it could be below.

4 A. There's nothing in my definition of
5 "incremental" that means it's one direction. It
6 could be positive or negative.

7 Q. Well, I interpret "exceeding" as meaning
8 positive.

9 A. Well, it's probably poorly worded. But
10 the rate could be up or down.

11 Q. Okay. So if you were to implement those
12 riders, they could go both ways.

13 A. Absolutely.

14 Q. Now, when you propose in this case to
15 freeze the price for the 29 months, are you
16 suggesting that the Commission should give away its
17 power under 4928.142(D) to make negative adjustments
18 to the ESP rate?

19 A. I guess I would characterize it a little
20 differently, I would ask the Commission to let us
21 bear the burden of risk for the chances that the
22 price would go up and we would -- to the extent they
23 went down, then we would get the benefit, but I think
24 the general direction, the inflationary direction is
25 go up so I think on the whole the company would be

1 taking more risks than the customer would.

2 Q. Let me rephrase it a different way.
3 You're saying the company would forego adjustments,
4 in other words, you would forego the ability to raise
5 the rate.

6 A. We would forego the ability to raise the
7 rate and in exchange for, essentially in exchange for
8 the customers foregoing their right to get a lower
9 rate.

10 Q. Okay. And so you're wanting the customer
11 group and the Commission to give up the right to seek
12 lower rates in exchange for you giving up the right
13 to seek higher rates.

14 A. I'm asking the -- essentially I'm asking
15 the Commission to make a bet with me that prices are
16 going up.

17 Q. Okay. And you've got inside information
18 at Duke as to what you think those costs are going to
19 be over the next 29 months, don't you?

20 A. I have not exercised any insight into the
21 forecasted price of fuel.

22 Q. I thought you said Duke had a good idea
23 of what it was going to be, a reasonable speculation
24 as to what it would be.

25 A. I'm just generally using, I mean, any one

1 of us in the room could speculate the prices are
2 probably going to go up by inflation.

3 Q. And you're betting they're not going to
4 go up by making that offer, aren't you?

5 A. No, this -- I'm trying to be fair, I'm
6 trying to say that we are taking the responsibility
7 for wearing the risks that they go up.

8 Q. Okay. Let's change topics again. Let's
9 go on to transmission riders. As I understand your
10 current tariffs, you have a rider TCR that recovers
11 transmission costs?

12 A. Rider TCR is the transmission cost
13 recovery rider, yes.

14 Q. Is that the only rider currently that
15 recovers transmission costs?

16 A. As I said earlier, there are some MISO
17 costs that come through the fuel tracker for
18 congestion and losses.

19 Q. But it's the only one that's explicitly
20 labeled "transmission."

21 A. That's correct.

22 Q. And as I understand, you're proposing to
23 create a second rider that you would call, I don't
24 know what it's called, it's Rider BTR?

25 A. Actually, we're proposing to create two

1 new riders and eliminate one and one of the new
2 riders is BTR.

3 Q. And you're going to rename TCR rider RTO.

4 A. I would characterize it as I'm
5 transforming Rider TCR or I'm eliminating TCR and I'm
6 creating RTO.

7 Q. Okay.

8 MR. HART: I guess I'm going to ask the
9 company if you could provide Mr. Wathen with the
10 proposed tariff sheets that are in the application.
11 I think it's -- looking specifically at Sheet 5710
12 and 89 if you could use the redline versions.

13 MR. D'ASCENZO: Your Honor, can I please
14 approach the witness?

15 EXAMINER PIRIK: Yes.

16 A. 57 and 89?

17 Q. Yes, 57.10 I believe it is. It's these
18 two riders, the BTR and RTO.

19 (Discussion off the record.)

20 Q. Do you have those available now?

21 A. I do.

22 Q. Before we look at language I want to kind
23 of ask general concepts.

24 EXAMINER PIRIK: Mr. Hart, I want to be
25 sure that the record is clear exactly what we're

1 looking at.

2 MR. HART: Sure.

3 EXAMINER PIRIK: I mean, I believe the
4 proposed tariffs in the redline versions are part of
5 an item that's not yet marked as an exhibit.

6 MR. HART: I think they're part of the
7 application.

8 EXAMINER PIRIK: No; they're part of
9 Mr. Ziolkowski's testimony and has not been marked as
10 an exhibit yet and, you know, I understand that he
11 will be the next witness and I just, it would be
12 helpful if we could mark it as an exhibit at this
13 time and then at least in the record it will be clear
14 what we're referring to.

15 MR. HART: I apologize for that.

16 EXAMINER PIRIK: That's fine, I just want
17 to be sure it's clear.

18 MR. D'ASCENZO: Certainly, your Honor.

19 EXAMINER PIRIK: I believe the next
20 number is 17.

21 MR. D'ASCENZO: Thank you. So for
22 purposes of identification Duke Energy-Ohio would
23 request to mark the direct testimony of James E.
24 Ziolkowski as Duke Energy-Ohio Exhibit 17.

25 EXAMINER PIRIK: It will be so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 EXAMINER PIRIK: So then you're referring
3 to his testimony, I believe it's Attachment 2,
4 page --

5 MR. HART: There's a sheet that's labeled
6 57.2, it says it cancels and supersedes sheet 37.9
7 and it's entitled "Rider RTO."

8 EXAMINER PIRIK: Correct. And it is
9 Attachment 2 to Exhibit 17.

10 MR. HART: Yes.

11 EXAMINER PIRIK: And then have page
12 numbers at the top. Is that on page 86?

13 MR. HART: What I have is actually a
14 document that was e-mailed around by the company so I
15 don't have a page number on it.

16 EXAMINER PIRIK: It's page 86.

17 THE WITNESS: Eighty-six and 136.

18 EXAMINER PIRIK: And 136, okay.

19 I'm sorry, you may proceed with your
20 questioning, I just wanted to make sure the record
21 was clear where you were.

22 MR. HART: The other document we have in
23 front of us is original sheet 89 which is titled
24 "Electric Distribution Utility Rider BTR" which is
25 also part of that same exhibit.

1 EXAMINER PIRIK: Mr. Wathen, what page is
2 that on?

3 THE WITNESS: 136.

4 EXAMINER PIRIK: 136. You can proceed.

5 MR. HART: Thank you.

6 Q. (By Mr. Hart) If you could take a look
7 first at what's entitled now "Rider RTO," am I
8 correct this is a redline from the existing Rider
9 TCR?

10 A. I think that's right, yeah.

11 Q. Okay. So Rider TCR is going away but
12 you're borrowing heavily from its language for the
13 new Rider RTO.

14 A. That's fair.

15 Q. Now, could you just say generally what
16 kind of transmission costs are going to be placed in
17 Rider RTO and which ones are going to go into Rider
18 BTR?

19 A. There's a, I mean assuming we're in PJM,
20 there's a long list of charges that come with PJM by
21 line number and, I mean, the best I can characterize
22 them would be ancillary service charges, various
23 administrative fees, revenue sufficiency guarantee
24 charges.

25 Essentially it's the cost that would vary

1 with load as opposed to the base transmission rider
2 which is a cost that is independent of the energy
3 that goes through.

4 Q. Okay. Is the BTR where the NITS charges
5 will go?

6 A. That's correct.

7 Q. Is that primarily what it's composed of?

8 A. I wouldn't character -- I mean, it
9 depends on what the magnitude of the other charges
10 would be but that's one of the components.

11 Q. Okay. Now, there's been a lot of
12 testimony in this case about MISO exit fees and MISO
13 expansion project costs. If those were to be
14 approved, would they appear in one or the other of
15 these riders?

16 A. Yeah, again, we mirrored a little bit of
17 FE language here and I would characterize it though
18 as the nonmarket based charges, and they are
19 independent of load so those charges would flow
20 through the BTR as well.

21 Q. Okay. Now, it's my understanding from
22 other witnesses that the magnitude and liability for
23 MISO exit fees and MTEP charges is still uncertain;
24 is that correct?

25 A. That's my understanding too.

1 Q. And how will those ever get resolved?
2 How will they come to a resolution?

3 A. Well, you -- I'm not the expert on MISO
4 or RTOs, but my understanding is that we will go
5 through a process of negotiating with MISO for both
6 the exit fee and the MTEP midwest transmission
7 expansion planning cost before our departure and the
8 magnitude, the form, and duration of any payments we
9 would make to those costs would be established
10 hopefully through negotiation but it could go to
11 litigation.

12 Q. In what form would they be litigated?

13 A. I have no idea, probably at FERC first.

14 Q. Okay. Let's assume those charges are
15 resolved by negotiation. Would they then appear in a
16 MISO tariff somewhere?

17 A. I don't know if they would be in a
18 tariff. I honestly don't know that. But they would
19 be billed to us.

20 Q. Okay. So they may or may not appear in a
21 tariff?

22 A. I don't know the tariff well enough to
23 tell you whether there's a place in the tariff for
24 those charges but I know they would be able to be
25 billed to us.

1 Q. Is it feasible that Duke and MISO could
2 settle on those charges independent of a MISO tariff?

3 A. I'm not, again, I'm not the expert on the
4 MISO tariff. Anything's possible.

5 Q. Okay. Well, turn to the PJM side. I
6 understand there will be some integration costs in
7 order to make your network accessible to PJM.

8 A. I believe there will be integration costs
9 incurred by PJM and on our side as well.

10 Q. Okay. And that's what's called the NITS
11 charge?

12 A. No.

13 Q. What are those charges?

14 A. NITS?

15 Q. No, the ones to integrate your network
16 with PJM.

17 A. I think they've been characterized as
18 entrance fees sometimes by some of the parties in the
19 case, but we call them integration fees.

20 Q. And those would be in BTR as well?

21 A. Yes.

22 Q. Would those be in a tariff with PJM?

23 A. I don't know.

24 Q. Okay. So let's get back to NITS charges.
25 Who's imposing NITS charges?

1 A. Now?

2 Q. Yes.

3 A. Well, again, I'm not the MISO expert, but
4 we file -- there is an Attachment O in the MISO's
5 transmission and energy markets tariff that
6 establishes the manner in which the network service
7 charges are calculated. I believe that, and I'm, you
8 know, the layperson, but I believe that those charges
9 are billed by MISO to network service customers and
10 those, to the extent they are -- they're already
11 covered by MISO, they're passed back to DE-Ohio.

12 Q. Okay. And that's what you would put in
13 Rider BTR.

14 A. The Rider BTR that we would put would be
15 the rate that is being billed from Attachment O.

16 Q. Okay.

17 A. Well, I take that back. In BTR it would
18 be the PJM version of that which is Attachment H.

19 Q. Okay. Now, rider RTO is load-based
20 charges?

21 A. As I said, generally I would characterize
22 those charges as charges incurred from PJM that would
23 fluctuate with load, and by "load" I mean
24 kilowatt-hours.

25 Q. And RTO charges would be bypassable.

1 A. Yes.

2 Q. And BTR charges would not be bypassable.

3 A. That's correct.

4 Q. Okay. Let's look at the exhibit you have
5 in front of you, Rider RTO. I want to refer you to
6 the language that is being stricken under the
7 category of charge. Tell me if I'm reading this
8 correctly. Originally you said "The transmission
9 cost recovery tracker charges which are detailed
10 below are to recover transmission costs approved by
11 the Public Utilities Commission of Ohio and the
12 Federal Energy Regulatory Commission." Is that what
13 it originally said?

14 A. That's what, I don't have the original
15 tariff but assuming this is a redline of the original
16 tariff, I guess that's what it said.

17 Q. And the new language is going to say, if
18 approved, would say "Rider RTO charges include only
19 those costs charged to or imposed upon Duke
20 Energy-Ohio by FERC approved regional transmission
21 organizations under approved tariffs." Is that
22 what's proposed?

23 A. That is.

24 Q. So the proposal is to no longer have PUCO
25 approval over these transmission charges?

1 A. I mean, as I described earlier, I think
2 4928.05 of the Revised Code suggests that the
3 Commission will pass through any costs that are
4 approved by the FERC for recovery to retail
5 customers.

6 Q. So if the Commission were to approve this
7 tariff page, it would confirm that it had no
8 authority over FERC approved charges.

9 A. I think the statute confirms that.

10 Q. But this tariff would double confirm it,
11 right?

12 A. Sure.

13 Q. Okay.

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

15 EXAMINER PIRIK: Mr. Royer, I know you
16 just walked in.

17 MR. ROYER: No questions, thank you, your
18 Honor.

19 EXAMINER PIRIK: Mr. Jones? Mr. Beeler?

20 MR. BEELER: Just a couple.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Beeler:

24 Q. I'm going to go to some questions about
25 Rider RECON, I believe it's on page, well, at least

1 what we were talking about earlier, page 27 of your
2 testimony.

3 A. One second here.

4 Q. No problem.

5 A. Okay.

6 Q. I think you had some questions from
7 Mr. Petricoff that the current Rider PTC-FPP and
8 Rider SRA-SRT were generation related; is that
9 correct?

10 A. That's correct.

11 Q. There was also some I guess following up
12 on some questions from Mr. Chamberlain and Mr. Kutik
13 that rider PTC-FPP is bypassable and Rider SRA-SRT is
14 conditionally bypassable; is that correct?

15 A. That's correct.

16 Q. So can you just tell me, then, why Rider
17 RECON is, you're proposing it to be not bypassable?

18 A. Well, I think I described that already.
19 We, in discovery in my testimony, that there is
20 always the potential that all customers switch and we
21 have no opportunity to collect or refund any under-
22 or overrecovery that nets out of those two riders and
23 we just wanted to be sure that we had an opportunity
24 to not be left hanging the bag or to be held on
25 customer money there was a balance of over- or

1 underrecovery.

2 We don't know the model for after 2011,
3 we don't know if we have any customers, so Rider
4 RECON as a nonbypassable charge ensures that
5 customers and shareholders are made whole.

6 Q. Is that all?

7 A. That's all.

8 MR. BEELER: That's all I have, your
9 Honor.

10 EXAMINER PIRIK: Thank you.

11 Mr. Wathen, I just want to clear
12 something up because I think in response to some
13 questions you had stated that 4928.05 states that the
14 Commission does not have authority, or maybe you
15 didn't say it like that but it kind of inferred that
16 the Commission didn't have authority.

17 I just want to be sure that as a
18 nonattorney what you're really saying is that the
19 statute speaks for itself and would be interpreted
20 appropriately as whatever the statute states.

21 THE WITNESS: I think the best way to
22 respond to that question is if you review on page,
23 beginning on page 24 of my testimony, staff provided
24 a brief or comments I think in the FE ESP case and
25 they identified 4928.05 as the reason why they

1 believed the costs that we've identified in this case
2 are absolutely recoverable once approved by FERC.

3 EXAMINER PIRIK: And I think that's an
4 appropriate answer but the statute speaks for itself
5 and it's interpreted accordingly, and you're not
6 really saying that the Commission doesn't have a
7 certain level of authority that the statute is
8 speaking for itself.

9 THE WITNESS: I would never say that the
10 Commission can't exercise its authority because I
11 know that they do.

12 EXAMINER PIRIK: Whatever that statute
13 says is what it says, okay.

14 THE WITNESS: Yes.

15 EXAMINER PIRIK: All right, that's all
16 I'm asking.

17 MR. JONES: Your Honor, I actually for
18 that question on page 24 and the answer Mr. Wathen
19 provides beginning on line 10 and continuing over to
20 page 25 and ending on line 12, I'm going to make a
21 motion to strike that testimony because I think it's
22 misleading in the fact that, you know, that was a
23 stipulation in an ESP case. This is an MRO case and,
24 you know, that was to support that stipulation for
25 that argument.

1 Staff's position in this case is the
2 mechanism or the placeholder for collecting those
3 costs should be common in another proceeding separate
4 from the MRO. It has no business being in the MRO
5 proceeding, okay?

6 And of course this hasn't even been
7 addressed by FERC yet and they have not identified
8 the cost, so these are open issues. Of course the
9 Commission has the ability to make comments to FERC
10 when there is a filing at the FERC as to identifying
11 those costs as to whether, you know, providing
12 comments as to whether those costs should be
13 collected or how much those costs should be
14 collected, so those are all open issues and for, you
15 know, the company to suggest that staff doesn't --
16 staff has an opinion that these costs are
17 recoverable, we don't even know what the costs are,
18 it hasn't even been addressed by FERC and I think
19 it's misleading for the record. And I ask that it be
20 stricken because of those points, your Honor.

21 EXAMINER PIRIK: Thank you, Mr. Jones.

22 MR. D'ASCENZO: First, your Honor, if I
23 may, Mr. Wathen's testimony is referring to a
24 publicly filed document that states staff's opinion.
25 That opinion was in a publicly filed brief that staff

1 submitted. The fact that that was stated in an MRO
2 case or an ESP case or whatever other case is
3 completely irrelevant.

4 Staff's language here speaks directly to
5 their interpretation of the statute, 4928.05. That
6 statute applies in an ESP or an MRO. It's an
7 independent statute that has nothing to do with
8 whether you're an ESP or an MRO. So I think staff's
9 interpretation of that in any respect is relevant and
10 Mr. Wathen's quoting of this is merely a quote. This
11 is what staff has said as its interpretation of that
12 statute.

13 The statute speaks for itself in terms of
14 what is includable in a rider for FERC approved
15 costs. Staff has spoken to this in its brief, that
16 brief was filed before this Commission, and
17 Mr. Wathen has every right to review those documents
18 and base his opinion on what staff has said.

19 As far as Mr. Jones's saying that it
20 misconstrues, you know, certainly he can brief that
21 issue if he would like to in this case. But as far
22 as striking this from Mr. Wathen's testimony, it's,
23 like I said, this is a document that staff filed
24 interpreting -- stating its interpretation of how
25 FERC approved costs are recoverable under Ohio law.

1 EXAMINER PIRIK: I do want --

2 MR. JONES: Your Honor, if I may address
3 his arguments.

4 EXAMINER PIRIK: Okay, I'll listen. It
5 appears OCC also would like to say something. If you
6 would like to say something before Mr. Jones, I'll
7 allow Mr. Jones to close.

8 MS. HOTZ: Yeah, this is something, what
9 was quoted the here is something that the company can
10 use in its brief. It's more appropriate in a brief
11 than it is in testimony.

12 MR. KUTIK: Your Honor, if I could be
13 heard on that.

14 EXAMINER PIRIK: Certainly, Mr. Kutik.

15 MR. KUTIK: All these arguments are
16 arguments that would be better made in brief.
17 There's no evidentiary rule that something is, quote,
18 misleading and therefore should be excluded, if they
19 think it's misleading then they should have put
20 testimony on and certainly can brief it or
21 cross-examine him on it.

22 EXAMINER PIRIK: Mr. Jones.

23 MR. JONES: It's not relevant, your
24 Honor, besides being misleading and the fact is we
25 don't know, for this other case, the 1038 case, the

1 ESP case, I'm not even sure if there was, maybe there
2 was a FERC order at that point.

3 There's no such FERC order in this case.
4 We don't know, like I said, that's premature here to
5 say that staff or the Commission would, you know,
6 bypass what all those costs are. And I'm just saying
7 that from that standpoint that it's not relevant.
8 It's not relevant to this proceeding because we don't
9 even know what those costs are.

10 They said they identified it, they have
11 not identified them. They haven't even filed the
12 application to FERC to get the costs approved. So
13 they may have in the other case, they haven't
14 demonstrated that so I say it's premature, it's not
15 relevant and should be struck. Thank you.

16 EXAMINER PIRIK: Thank you, Mr. Jones,
17 and I do appreciate you clarifying for the record
18 what this information within Mr. Wathen's testimony
19 states. I think it is appropriate that if there is
20 an objection to especially the phraseology or how
21 it's actually stated, and if it's inaccurate as far
22 as staff's concerned then it would be appropriate for
23 staff to clarify that on brief so there is some
24 reflection of that information, although you have
25 stated that on the record.

1 I'm going to deny the motion to strike at
2 this point. You know, the Commission speaks for
3 itself through its orders and, you know, staff has
4 opinions and offers opinions and it would be
5 appropriate for staff to clarify what that opinion
6 was, but the Commission speaks for itself and as far
7 as 4928.05, the Commission will interpret that
8 statute according to what their opinion of that
9 statute is. So I appreciate any clarification that
10 everyone's put on the record.

11 It's time for redirect, I believe.

12 MR. D'ASCENZO: May we take a few
13 minutes?

14 EXAMINER PIRIK: I'm thinking if we take
15 a ten-minute break, then I think that would be
16 appropriate.

17 (Recess taken.)

18 EXAMINER PIRIK: Mr. D'Ascenzo.

19 MR. D'ASCENZO: No further questions,
20 your Honor.

21 EXAMINER PIRIK: Well, thank you,
22 Mr. Wathen.

23 With regard to Company Exhibit 16?

24 MR. D'ASCENZO: Yes, your Honor. At this
25 time Duke Energy-Ohio would like to move into

1 evidence Duke Energy-Ohio Exhibit 16.

2 EXAMINER PIRIK: Are there any
3 objections?

4 (No response.)

5 EXAMINER PIRIK: Hearing none, Duke
6 Exhibit 16 shall be admitted into the record.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 EXAMINER PIRIK: Would you like to call
9 your next witness?

10 MR. D'ASCENZO: Yes, your Honor, for its
11 next witness Duke Energy-Ohio would like to call
12 James E. Ziolkowski.

13 EXAMINER PIRIK: Please raise your right
14 hand.

15 (Witness sworn.)

16 EXAMINER PIRIK: Thank you.

17 MR. D'ASCENZO: Your Honor, may I
18 approach?

19 EXAMINER PIRIK: Yes.

20 - - -

21 JAMES E. ZOILKOWSKI

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

24 DIRECT EXAMINATION

25 By Mr. D'Ascenzo:

1 Q. Good afternoon, Mr. Ziolkowski.

2 A. Good afternoon.

3 Q. Would you please state your name for the
4 record?

5 A. James E. Ziolkowski.

6 Q. Would you please state your business
7 address?

8 A. 139 East Fourth Street, Cincinnati, Ohio,
9 45202.

10 Q. By whom are you employed, and in what
11 capacity?

12 A. I'm employed by Duke Energy Business
13 Services as a rates manager.

14 Q. Mr. Ziolkowski, do you have before you
15 what has previously been marked as Duke Energy-Ohio
16 Exhibit 17?

17 A. Yes.

18 Q. Could you please identify that document?

19 A. This is the direct testimony of James E.
20 Ziolkowski on behalf of Duke Energy-Ohio, Inc.

21 Q. Mr. Ziolkowski, was that document
22 prepared by you and under your direction and control?

23 A. Yes.

24 Q. Do you have any changes to that document?

25 A. Yes.

1 Q. Would you please walk us through that?

2 A. Yes. Rider -- proposed Rider EIR in
3 attachments JEZ-1 and JEZ-2 state that they apply to
4 all jurisdictional retail customers, and I want to
5 add an additional verbiage that says "Except for
6 those customers taking generation service from a
7 certified retail electric services provider." In
8 other words, Rider EIR.

9 EXAMINER PIRIK: Mr. D'Ascenzo, we need
10 the exact page numbers so we can put the exact
11 changes on those pages.

12 MR. D'ASCENZO: Certainly.

13 Q. Could you please walk us through that,
14 Mr. Ziolkowski?

15 A. In Attachment JEZ-1, page 209 of 227,
16 under the Applicability section I would like to add,
17 after the period --

18 EXAMINER PIRIK: Just a minute. Let's
19 get there. I'm not there. Okay.

20 I'm sorry. Go ahead.

21 A. Replace the period with a comma and add
22 the words "except for those customers taking
23 generation service from a CRES."

24 EXAMINER PIRIK: Okay.

25 A. On Attachment JEZ-2, page 142 of 152, I

1 want to make an identical change in the Applicability
2 section, specifically replace the period with a comma
3 and add the words "except for those customers taking
4 generation service from a CRES."

5 EXAMINER PIRIK: Okay.

6 Q. Mr. Ziolkowski, can you just briefly
7 explain why you're making that change?

8 A. Those changes apply to our proposed Rider
9 EIR. And Rider EIR is intended to be avoidable by
10 shoppers, that language inadvertently did not get
11 included in this tariff and so I wanted to correct
12 the record on that.

13 Q. Do you have any further changes to your
14 testimony or the attachments?

15 A. No.

16 Q. With those changes do you hereby adopt
17 your testimony as well as the attachments as your
18 direct testimony for this proceeding?

19 A. Yes.

20 MR. D'ASCENZO: Your Honor, the witness
21 is available for cross.

22 EXAMINER PIRIK: Thank you.

23 Ms. Clark?

24 MS. CLARK: No questions, your Honor.

25 EXAMINER PIRIK: Mr. Hayden?

1 MR. HAYDEN: I do, your Honor. If I
2 could have marked for identification FES Exhibit 4
3 which would be the FES third set of interrogatories.

4 EXAMINER PIRIK: The document will be so
5 marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Hayden:

10 Q. Mr. Ziolkowski, do you have before you
11 what has been marked FES Exhibit 4 which are
12 interrogatory responses to FES third set of
13 interrogatories with the responses of which you
14 sponsored?

15 A. Yes, I do. The copy that I have isn't
16 marked as, with a 4 on it, but I do have these --

17 Q. Okay.

18 A. -- responses.

19 Q. And are these the discovery responses by
20 which you provided a response or a response was
21 provided under your direction?

22 A. Yes.

23 Q. If you could take a moment -- are you
24 familiar with all those questions and responses?

25 A. I'm generally familiar as I thumb through

1 this. It looks like I prepared all these responses.

2 Q. Okay. Are those responses true and
3 accurate to the best of your knowledge?

4 A. Yes.

5 MR. HAYDEN: Your Honor, at this point I
6 would just move for the admission of FES Exhibit 4,
7 please.

8 EXAMINER PIRIK: I would rather wait
9 until the conclusion of redirect --

10 MR. HAYDEN: Absolutely.

11 EXAMINER PIRIK: -- to enter into
12 motions. I don't know if there will be any redirect,
13 but I think that would be more appropriate.

14 MR. HAYDEN: Okay. I have no further
15 questions.

16 MR. BOEHM: No questions, your Honor.

17 MS. HOTZ: Yeah, I'd like to ask a few
18 questions.

19 - - -

20 CROSS-EXAMINATION

21 By Ms. Hotz:

22 Q. Good afternoon. Does Rider EIR replace a
23 rider that is currently in effect right now?

24 A. Rider EIR, the best equivalent to Rider
25 EIR would be the current Rider PTC-AAC in that Rider

1 EIR will recover some environmental related costs.

2 Q. How is Rider EIR different from rider --
3 what did you call it, rider --

4 A. PTC-AAC.

5 Q. How is that different?

6 A. Well, Rider AAC currently recovers mainly
7 environmental costs but also some Homeland Security
8 costs and incremental tax changes. Rider EIR will
9 also do the same, however, the company has proposed
10 that Rider EIR will be set at zero during the
11 blending period if the 29-month blending period is
12 approved.

13 Q. Does the company -- does the company
14 expect any tax changes in future years that you know
15 of?

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

17 Q. Did the company file a request with the
18 State Tax Commission for a reduction in property
19 taxes?

20 MR. D'ASCENZO: Objection, your Honor.
21 Irrelevant.

22 MS. HOTZ: It's relevant to this rider
23 and the fact that they are not requesting adjustments
24 to tax changes as they did under AAC.

25 EXAMINER PIRIK: I'll overrule the

1 objection.

2 A. I'm not familiar with any tax issues that
3 pertain to this rider.

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

5 EXAMINER PIRIK: Thank you.

6 Mr. Yurick?

7 MR. YURICK: Just a few.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Yurick:

11 Q. Good afternoon, sir. How are you?

12 A. I'm good, thanks.

13 Q. Good. I wanted to direct your attention
14 to page 7 of your direct testimony. It's the
15 question that starts on line 10 and 11, and the
16 answer that starts on line 12 and actually goes over
17 to the next page, a long answer, page 8, lines 1
18 through 14.

19 A. Okay.

20 Q. And you say there that high-load factor
21 customers currently pay lower average rates under the
22 ESP rate structure than high-load factor customer,
23 correct? I'm sorry, high-load factor customers pay
24 lower average rates than low-load customers; is that
25 correct?

1 A. That statement is true for customers that
2 are on demand rates. For Duke Energy-Ohio it's our
3 rates DS, DP, and TS, on average a high-load factor
4 customer, that is if you take a total of their demand
5 charges and energy charges and divide by the kWh on
6 average they pay a lower average cents per kWh than a
7 low-load factor customer does, it's just due to the
8 nature off-peak demand and energy charges into one
9 bill calculation.

10 Q. Even with the bid process that you hope
11 to get into in the MRO, you could continue to bill
12 customers in that manner, couldn't you?

13 A. As Mr. Bailey testified, we could do so.
14 But for the reasons outlined by Mr. Bailey --

15 Q. I just asked you really if you could do
16 so, so, if you want to get into some kind of, you
17 know, explanation or whatever, your lawyer gets to
18 ask you other questions. I appreciate your patience
19 with me. I have enough trouble doing this as it is,
20 so if I get off track, it's Katie bar the door, all
21 right.

22 See what you did now. If I could just
23 have a second.

24 So you're going to continue to do that at
25 least during the blending period. You're going to

1 have customers billed on a demand basis, correct?

2 A. That is correct. It --

3 Q. Ah, ah.

4 A. There's a little more to that answer.

5 Q. Okay. Well I mean you can get into that
6 with your lawyer but I just want to know you're
7 planning on doing that during the blending period,
8 okay?

9 So during that period high-load factor
10 customers will continue to have lower per
11 kilowatt-hour rates than low-load factor customers,
12 during the blending period.

13 A. That's correct.

14 Q. And as I understand Mr. Bailey's
15 testimony, you really don't get into it in your
16 testimony that I can see, the reason that you're
17 going to a straight kilowatt-hour billing converting
18 a demand charge into some approximation of an energy
19 charge is to match your throughput, as it were; is
20 that right?

21 A. That's a major reason.

22 Q. A "major reason" suggests that there is
23 more than one reason.

24 A. Well, there's no precedent that I'm aware
25 of for converting a market-based rate into a demand

1 rate, certified electric retail suppliers, all of
2 them in the Duke-Ohio territory that I'm aware of
3 serve their industrial customers on a per kWh basis
4 not on a demand, on a per kW and per kDA and kWh,
5 it's all on a per kWh basis. Another press font that
6 are that and this process seems to work is that
7 FirstEnergy tariff also converts their market-based
8 rates into per kWh charges and not on -- to demand
9 charges.

10 Q. But I thought Duke was an innovator in
11 the industry.

12 MR. D'ASCENZO: Objection, your Honor.

13 EXAMINER PIRIK: Objection sustained.

14 Q. Although you're not aware of any
15 precedent necessarily, you do admit, as Mr. Bailey
16 did, that you could do that, correct?

17 A. Correct.

18 Q. And that would lessen the rate impact,
19 the abrupt change in the way that demand -- customers
20 that are charged on a demand basis would see in their
21 rates; is that correct?

22 A. That's correct.

23 MR. YURICK: I have no further questions.
24 Thank you for your indulgence, it's a little late in
25 the afternoon, your Honors. Appreciate that.

1 EXAMINER PIRIK: Mr. Olikar?

2 MR. OLIKER: No questions, your Honor.

3 EXAMINER PIRIK: Mr. Hart?

4 MR. HART: I do, I'm trying to find the
5 right page reference. Here we go.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Hart:

9 Q. Mr. Ziolkowski, if you would look at
10 JEZ-2, page 127 of 152, it will end up being page
11 128, but the document starts on 127. Do you have
12 that there?

13 A. Yes.

14 Q. Okay. Am I correct that this is the
15 tariff language the company proposes for Rider SCR
16 which is that service or supplier cost
17 reconciliation?

18 A. That's correct.

19 Q. And this is the rider for which you
20 propose a circuit breaker that if the costs exceed
21 5 percent of base rates that you would seek to
22 recover that from shopping customers as well?

23 A. Correct.

24 Q. Okay. Were you here for Mr. Wathen's
25 testimony?

1 A. Yes.

2 Q. As I understood Mr. Wathen, he
3 contemplated a process where Duke would seek approval
4 from the Commission to make that a nonbypassable
5 rider. I'm looking for the language in the tariff
6 that says it would do that.

7 A. The language is not currently in the
8 tariff, however, the company would, I'm sure would be
9 amenable to inserting that language.

10 Q. So as it's currently written it would be
11 automatic that if the costs exceeded 5 percent, it
12 would automatically be nonbypassable; is that the way
13 it's written now?

14 A. Well, the tariff does not refer to
15 seeking Commission approval, therefore, it probably
16 would be a legal issue as to what could be done
17 automatically or not.

18 Q. But the way it's written right now in
19 this section on Avoidability, it says if the SCR
20 deferral balance is greater than 5 percent, than this
21 will apply to all customers including those who go to
22 a CRES.

23 A. This tariff language is just draft
24 language and we would, I'm sure, be willing to change
25 the language in this tariff to conform with what you

1 discussed with Mr. Wathen --

2 Q. Okay.

3 A. -- and request Commission approval.

4 Q. Let me ask you now just to turn to page
5 86 of 152. Is this the proposal for Rider RT0?

6 A. Yes.

7 Q. Okay. Am I correct that the company has
8 deleted language that would say these costs had to be
9 approved both by this Commission and FERC and
10 inserted language that would only require FERC
11 approval?

12 A. This is a redline version and that
13 language was deleted as you described.

14 Q. Finally if you would turn to page 136 of
15 152. Are you there?

16 A. Yes.

17 Q. This is Rider BTR?

18 A. Yes.

19 Q. And this is a brand-new section, isn't
20 it?

21 A. Yes.

22 Q. And this language only requires FERC
23 approval and not the Ohio Commission's approval,
24 correct?

25 A. There are no -- there's no reference in

1 this tariff to Ohio Commission approval.

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

3 EXAMINER PIRIK: Mr. Royer?

4 MR. ROYER: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Royer:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Would you turn to page 11 of your
11 testimony. Are you with me?

12 A. Yes.

13 Q. You're discussing this proposed Rider UE
14 GEN?

15 A. Yes.

16 Q. And as proposed by the company this would
17 effectively extend the current bad debt rider that
18 covers only the wire portion of the bill to also
19 cover generation for SSO customers; is that right?

20 A. That's correct.

21 Q. And are you familiar with the
22 uncollectible expense rider on the gas side of Duke's
23 business?

24 A. I'm generally familiar with it, yes.

25 Q. And am I correct that rider covers all

1 distribution -- or, covers both distribution and
2 commodity costs and applies to -- applies to all
3 customers including competitively supplied gas
4 customers?

5 A. From memory I believe that's correct,
6 that applies to all customers.

7 Q. Can you tell me why the electric rider
8 is, the current electric rider is different?

9 A. I'm trying to think of the reason for
10 that. When I put my testimony together, the basis of
11 my testimony or the purpose of me testifying is to
12 compile all of the various riders and tariff
13 components into one document and testify to the
14 tariff in its entirety. And one of the -- and
15 probably Don Wathen is a better witness to answer to
16 address that question.

17 Q. Since I can't go back in time, back to
18 the future, can you suggest any rationale as a, given
19 your role with respect to rates generally, can you
20 give me any rationale why the gas and electric side
21 should be different in this regard?

22 A. I don't have an answer for you right now.

23 Q. Nothing comes to mind readily, correct?

24 A. No.

25 Q. Me neither.

1 So am I correct, then, that the concept
2 here by making Rider UE GEN applicable only to SSO
3 customers is that it is assumed, then, that the CRES
4 suppliers will bear the risk of bad debt associated
5 with service to their customers?

6 A. I'm not an expert in the area of
7 purchasing of receivables, but I believe that this is
8 related to the area of the Duke-Ohio purchasing
9 receivables from the CRES suppliers.

10 Q. And Duke-Ohio currently does purchase
11 receivables from CRES suppliers, don't they?

12 A. I believe they do.

13 Q. And in that arrangement the purchase of
14 receivables prices gives discounts to reflect
15 undercollection, does it not?

16 A. I believe it is, I'm not an expert on
17 that area, but I believe it is.

18 Q. And if the Duke -- and if Rider UE GEN
19 was to be extended to all generation service, then
20 there would no longer be any rationale for including
21 the discount factor of some allowance for
22 undercollection, would there?

23 A. Well, the details that go into the
24 calculation of Rider UE GEN are, in my opinion,
25 beyond the scope of what I wanted to testify about,

1 but it does seem that extending this uncollectible
2 rider would affect accounts receivables discount
3 factors, in my opinion.

4 Q. There wouldn't be any need for one if
5 they were being collected -- if they were being
6 collected through this rider, correct?

7 A. That's probably correct.

8 Q. Okay. And then just one other question.
9 If you drop down to the next question and answer, and
10 I, again, you're probably going to tell me I should
11 have asked a previous witness this question, but with
12 respect to the NITS costs, typically what do those
13 costs supply?

14 A. Could you be more specific?

15 Q. Well, I understand from your testimony
16 that these are, as I understand it, costs billed to
17 the company under -- through FERC tariffs, correct?

18 A. Yes.

19 Q. And what specifically is this charge for?

20 A. Well, this is truly a case where
21 witnesses Jennings and Wathen could better explain
22 that, but my understanding of this is that these are
23 charges for overall being connected to the
24 transmission system and utilizing the transmission
25 system. However, the NITS costs are not easily

1 allocable to based on specific kWh. It's overall
2 benefits from being connected.

3 Q. So as things currently stand, though,
4 CRES suppliers are subject to these charges as well,
5 correct?

6 A. It's my understanding.

7 Q. And I'm really asking this because I'm
8 trying to understand what the proposal is here, by
9 making these -- by recovering these costs from all
10 customers regardless of shopping status, is there
11 some prospect that these charges are being
12 recovered -- these charges be being paid twice, once
13 by the CRES provider and once by Duke?

14 A. I believe that Don Wathen testified that
15 there's no intent to double-recover these charges,
16 and Don also mentioned that if the CRESSs had any
17 inkling that they were being double-charged, they
18 would let the company know immediately, so there's no
19 intent to do so.

20 Q. So the concept is that now in theory the
21 CRES provider has to get reimbursed for these charges
22 from its customers, but the concept is that if it's
23 approved going forward, that actually those costs
24 will be picked up by Duke; is that right?

25 A. That's right, and then under that

1 scenario the CRES providers could charge their retail
2 customers a lower amount because they wouldn't have
3 to get involved with these NITS charges.

4 Q. Are the NITS charges part of the price to
5 compare published by Duke?

6 A. Yes, they are, but people do need to
7 remember that the TCR, it's currently Rider TCR,
8 those charges are transmission related, but since
9 they're avoidable, they implicitly become part of our
10 price to compare.

11 Q. For purposes of the price to compare are
12 those charges, are those charges estimated for the
13 next quarter or whatever basis you're using for the
14 published price to compare?

15 A. When Duke-Ohio puts out price to compare
16 numbers, we use the actual tariff rates that are in
17 effect at that time that we publish those numbers.

18 Q. So it's not an estimate, it's the actual
19 rate that will apply during the period.

20 A. That's correct.

21 MR. ROYER: Thank you. That's all I
22 have.

23 EXAMINER PIRIK: Mr. Jones? Mr. Beeler?

24 MR. BEELER: No questions.

25 EXAMINER PIRIK: Redirect?

1 MR. D'ASCENZO: If I could just have two
2 minutes with the witness. Thank you.

3 (Recess taken.)

4 EXAMINER PIRIK: Go back on the record.
5 Redirect?

6 MR. D'ASCENZO: Yes, your Honor, just a
7 couple of questions.

8 - - -

9 REDIRECT EXAMINATION

10 By Mr. D'Ascenzo:

11 Q. Mr. Ziolkowski, do you remember your
12 conversation with Mr. Royer about Rider UE GEN?

13 A. Yes.

14 Q. And as it's -- what is your understanding
15 of Rider UE GEN as proposed in this case?

16 A. Rider UE GEN would be bypassable so it
17 would only apply to customers taking service under
18 our SSO. And it would recover uncollectibles,
19 generation-related uncollectibles.

20 Q. And Mr. Royer suggested to you -- let me
21 strike that, your Honor.

22 In your discussion with Mr. Royer, did
23 you recall that it was in regard to the purchase of
24 accounts receivables that Duke Energy currently has
25 with competitive retail electric service providers?

1 A. Yes.

2 Q. And Mr. Royer suggested to you that Duke
3 Energy-Ohio, if it were to include bad debt
4 associated with competitive retail electric service
5 providers, that Duke Energy-Ohio purchases the
6 receivables in that rider, that it would eliminate
7 the need to purchase the receivables at a discount.

8 A. Yes.

9 Q. If Duke Energy-Ohio were to undertake
10 such a change to its Rider UE GEN whereby it would
11 include the receivables from CRES providers that it
12 purchases at a zero percent discount, would the
13 bypassability of that rider need to be changed?

14 A. Under that scenario if we purchased the
15 receivables from CRES providers at a zero percent
16 discount, then we would make the Rider UE GEN
17 nonbypassable. It would apply to all retail -- all
18 distribution customers.

19 Q. If that rider were to remain
20 nonbypassable under that circumstance, do you know
21 whether that would cause standard service offer
22 customers to subsidize shopping customers?

23 A. Are you referring to the circumstance
24 where we purchase receivables at zero discount?

25 Q. Yes.

1 A. But keep the rider bypassable?

2 Q. Yes.

3 A. In that case, in my opinion, the standard
4 service offer customers would be subsidizing the
5 shopping customers. They would be paying more.

6 Q. Do you know if Duke Energy-Ohio would be
7 agreeable to a situation where it had a nonbypassable
8 uncollectible rider that included CRES receivables
9 and the company would purchase those receivables at a
10 zero percent discount?

11 A. Well, as was alluded to earlier, we do
12 that basically on the gas side right now with our gas
13 uncollectible rider. We have a zero percent
14 discount, it's nonbypassable and applies to all
15 customers, and if the rider were set up similar to
16 the gas rider, that would be acceptable to the
17 company.

18 Q. Do you know whether, if the company were
19 to undertake such a change to the Rider UE GEN, if
20 the company would need to adjust the period in which
21 it pays CRES providers for the receivables?

22 A. Well, Ideally that would be set up
23 similar to what's gone on the gas where there would
24 be some delay, you know, some period of time, a
25 couple weeks or something before payment instead of

1 immediate payment because the discount rates are not
2 only for uncollectibles, but they also reflect the
3 time value of money, too.

4 MR. D'ASCENZO: No further questions.

5 EXAMINER PIRIK: Is there any recross?

6 Mr. Royer.

7 - - -

8 RECROSS-EXAMINATION

9 By Mr. Royer:

10 Q. With respect to the conversation you were
11 just having, the reason there's a -- the reason
12 that -- let me start over.

13 On the gas side there is neither carrying
14 costs or an allowance for uncollectibles in
15 connection with the purchase of receivables, correct?
16 There's no discount at all, correct?

17 A. There's no discount is my understanding.

18 Q. And that's because -- that's my
19 understanding.

20 And that's because on the gas side the
21 payments are made, payment for the receivables are
22 made to the CRES supplier on the, I believe on the
23 20th of the following month; is that correct?

24 A. That's my understanding.

25 Q. Currently on the electric side the, I

1 guess it's not by tariff but by the model agreement
2 and by the contracts that follow the model agreement
3 that was approved some years ago the CRES provider
4 or -- the CRES provider gets paid basically on a
5 bill-it-and-pay-it basis; is that correct?

6 A. That's my understanding.

7 Q. But specifically with respect to the
8 uncollectible amount, lag, the carrying charge is
9 supposed to finance that lag. The carrying cost
10 component of the discount factor is supposed to
11 finance that lag, correct?

12 A. That's my understanding, yes.

13 Q. Really doesn't have anything to do with
14 the uncollectible piece, right?

15 A. Correct.

16 MR. ROYER: Okay. That's all I have.

17 EXAMINER PIRIK: Any other recross?

18 (No response.)

19 EXAMINER PIRIK: Hearing none, thank you
20 very much.

21 Now we have two exhibits, I believe, we
22 need to consider. FirstEnergy?

23 MR. HAYDEN: Yes, your Honor, FES would
24 move for the admission of FES Exhibit 4.

25 EXAMINER PIRIK: Is there any objection?

1 (No response.)

2 EXAMINER PIRIK: Hearing none, FES

3 Exhibit 4 shall be admitted into the report.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 EXAMINER PIRIK: And the company?

6 MR. D'ASCENZO: Yes, your Honor, thank
7 you. At this time Duke Energy-Ohio requests to move
8 into evidence Duke Energy-Ohio Exhibit 17, Direct
9 Testimony of James E. Ziolkowski.

10 EXAMINER PIRIK: Are there any
11 objections?

12 (No response.)

13 EXAMINER PIRIK: Hearing none, Duke
14 Exhibit 17 shall be admitted into the record.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER PIRIK: We will adjourn for
17 today and reconvene tomorrow at 9 a.m.

18 (The hearing adjourned at 5:00 p.m.)

19 - - -

20

21

22

23

24

25

1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Thursday, January 13, 2011,
5 and carefully compared with my original stenographic
6 notes.

7
8 Maria DiPaolo Jones, Registered
9 Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

10 My commission expires June 19, 2011.

11 (MDJ-3676)

12 - - -
13
14
15
16
17
18
19
20
21
22
23
24
25

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/14/2011 8:14:02 AM

in

Case No(s). 10-2586-EL-SSO

Summary: Transcript Transcript of Duke Energy for Approval of a Market Rate Offer Hearing held on 1/13/11 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.