

- 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

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 Friday, January 14, 2011.

VOLUME IV

— — —

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
By Mr. Douglas E. Hart
22 441 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.

- - -

INDEX

- - -

WITNESSES

PAGE

Daniel L. Jones

Direct examination by Ms. Watts 724

Cross-examination by Mr. Reese 726

Cross-examination by Mr. Jones 728

Redirect examination by Ms. Watts 731

Recross-examination by Mr. Reese 735

Cross-examination by Mr. Olier 738

Cross-examination by Mr. Hart 740

R. Keith Trent

Direct examination by Ms. Spiller 745

Cross-examination by Mr. Kurtz 747

Cross-examination by Mr. Yurick 755

Cross-examination by Mr. Olier 762

Cross-examination by Mr. Hart 768

Redirect examination by Ms. Spiller 782

Recross-examination by Mr. Yurick 785

Recross-examination by Mr. Hart 790

Michael J. Swartz

Direct examination by Mr. Kutik 797

Cross-examination by Ms. Spiller 798

Redirect examination by Mr. Kutik 806

Louis D'Alessandris

Direct examination by Mr. Kutik 808

Cross-examination by Ms. Spiller 809

- - -

COMPANY EXHIBITS

ID'D

REC'D

18 - Direct Testimony of D. Jones 724 744

19 - Direct Testimony of J. Rogers 745 795

20 - Direct Testimony of B. Trent 745 795

- - -

INDEX (Continued)

- - -

IEU-OHIO EXHIBITS

ID'D

REC'D

12 - Duke Energy Answer and Motion
for Leave to Answer

765

795

- - -

FES EXHIBITS

ID'D

REC'D

1 - Direct Testimony of M. Swartz

796

807

2 - M. Swartz Errata Sheet

797

807

3 - Direct Testimony of
L. D'Alessandris

808

819

- - -

1 Friday Morning Session,
2 January 14, 2011.

3 - - -

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

6 This is the continuation of the hearing
7 in In the Matter of the Application of Duke
8 Energy-Ohio, Inc. for Approval of a Market Rate Offer
9 to Conduct a Competitive Bidding Process for a
10 Standard Service Offer Electric Generation Supply,
11 Accounting Modifications, and Tariffs for Generation
12 Service, Case No. 10-2586-EL-SSO.

13 As we did yesterday, let's just go around
14 the table and have the attorneys introduce themselves
15 and state their affiliations.

16 MR. PETRICOFF: Thank you, your Honor.
17 On behalf of Constellation NewEnergy, Constellation
18 Energy Commodities Group, and the Retail Energy
19 Suppliers Association, Howard Petricoff and Lija
20 Kaleps-Clark of the law firm of Vorys, Sater, Seymour
21 & Pease.

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

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

1 MS. WATTS: Good morning. On behalf of
2 Duke Energy-Ohio, Elizabeth Watts.

3 MR. HAYDEN: Good morning, your Honors.
4 On behalf of FirstEnergy Solutions, Mark Hayden, will
5 be joining me later today David Kutik and Grant
6 Garber from the law firm of Jones Day.

7 MR. KURTZ: Good morning. Mike Kurtz
8 from the Ohio Energy Group.

9 MS. KYLER: Jody Kyler for Ohio
10 Consumers' Counsel.

11 MR. REESE: Rick Reese from the Ohio
12 Consumers' Counsel.

13 MS. HOTZ: Ann Hotz, Ohio Consumers'
14 Counsel.

15 MR. YURICK: Mark Yurick on behalf of the
16 Kroger Company.

17 MR. OLIKER: On behalf of Industrial
18 Energy Users-Ohio, Joseph Oliker and also Sam
19 Randazzo.

20 MR. BEELER: Steve Beeler on behalf of
21 the staff of the Public Utilities Commission.

22 MR. JONES: On behalf of the Commission
23 staff, John Jones.

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

1 EXAMINER STENMAN: I believe we left off
2 yesterday with the company.

3 MS. WATTS: Good morning. Duke
4 Energy-Ohio would call Dan Jones to the stand,
5 please.

6 EXAMINER STENMAN: Would you raise your
7 right hand.

8 (Witness sworn.)

9 EXAMINER STENMAN: Thank you. Have a
10 seat.

11 MS. WATTS: Your Honor, may we have
12 Mr. Jones's testimony marked as Duke Energy-Ohio
13 Exhibit 18, please?

14 EXAMINER STENMAN: It will be so marked.
15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 - - -

17 DANIEL L. JONES
18 being first duly sworn, as prescribed by law, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 By Ms. Watts:

22 Q. Mr. Jones, would you state your name for
23 the record, please?

24 A. Yes. Daniel L. Jones.

25 Q. And, Mr. Jones, by whom are you employed?

1 A. I'm employed by Duke Energy-Ohio, Inc.

2 Q. And in what capacity, please?

3 A. I am the senior account manager of
4 Customer Choice.

5 Q. And do you have before you what's been
6 marked as Duke Energy-Ohio Exhibit 18?

7 A. I do.

8 Q. Would you identify that, please?

9 A. It's the direct testimony of Daniel L.
10 Jones on behalf of Duke Energy-Ohio, Inc.

11 Q. And is that testimony which you prepared
12 and caused to be filed in this case?

13 A. Yes, I did.

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

17 A. Yes, they would.

18 MS. WATTS: Duke Energy tenders Mr. Jones
19 for cross-examination.

20 EXAMINER STENMAN: Thank you.

21 Mr. Petricoff?

22 MR. PETRICOFF: No questions, your Honor.

23 EXAMINER STENMAN: Mr. Hayden?

24 MR. HAYDEN: No questions.

25 EXAMINER STENMAN: Mr. Kurtz?

1 MR. KURTZ: No questions, your Honor.

2 MR. REESE: Yes, your Honor, I have
3 several questions.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Reese:

7 Q. Good morning, Mr. Jones.

8 A. Good morning.

9 Q. I'm Rick Reese with the Ohio Consumers'
10 Counsel. They've flown me in from the Yukon to ask a
11 few questions today.

12 A. Good for you.

13 Q. Are you aware that Duke Energy-Ohio
14 intends to conduct an auction to supply a portion of
15 its SSO customer load?

16 A. I am aware of that.

17 Q. Okay. Witness Lee has agreed that Duke
18 Energy-Ohio or another Duke affiliate can participate
19 in the auction and that Duke Energy-Ohio will have
20 the final say regarding whether or not sanctions for
21 failure to comply with the bidding rules will be
22 applied to itself or any of the Duke Energy
23 affiliates.

24 Can you point to any provision in Duke's
25 corporate separation plan that guards against Duke

1 Energy-Ohio attempting to give an unfair advantage to
2 an affiliate by not administering sanctions to that
3 entity?

4 A. I cannot -- I'm not an attorney so I
5 cannot interpret the corporate separation plan for
6 the scenario that you've described.

7 Q. You can't interpret the corporate
8 separation plan?

9 A. Well, as far as saying whether it
10 violates the corporate separation plan or not, that's
11 a legal determination.

12 Q. Do you know of any witnesses for the
13 company, either that have testified prior to this or
14 are about to who could answer that question?

15 A. I can't tell you with any certainty who
16 could answer that question, but as I said, I'm not
17 directly involved in the auction process. I
18 facilitate and administer the gas and electric
19 customer choice programs for the company. And I'm
20 more involved on the retail side of things versus the
21 wholesale side.

22 Q. So just so I can understand, you're
23 sponsoring the exhibit with the corporate separation
24 plan attached but you're really not familiar with its
25 terms.

1 A. I'm sponsoring it from the standpoint
2 that it's something that's followed by my area very
3 closely, we live it every day, and the purpose of my
4 testimony is there's a requirement to be met by an
5 MRO filing to indicate that a corporate separation
6 plan does exist, and in my testimony it says whether
7 we've had waivers or not, the answer to that was no,
8 and, you know, what the future plans are for the
9 corporate separation plan are in terms of revision
10 and those were the major points requirements for the
11 MRO filing.

12 MR. REESE: No further questions.

13 EXAMINER STENMAN: Mr. Yurick?

14 MR. YURICK: I have no questions, thank
15 you, your Honor.

16 EXAMINER STENMAN: Mr. Oliker?

17 MR. OLIKER: Your Honor, on further
18 review we have no questions for the witness.

19 EXAMINER STENMAN: Mr. Hart?

20 MR. HART: No questions.

21 EXAMINER STENMAN: Mr. Jones?

22 MR. JONES: Thank you, your Honor.

23 - - -

24 CROSS-EXAMINATION

25 By Mr. Jones:

1 Q. Good morning, Mr. Jones.

2 A. Good morning.

3 Q. Duke has their most current corporate
4 separation plan as the second amended corporate
5 separation plan that's attached to your testimony.

6 A. That's correct.

7 Q. And that's pending Commission order in
8 that case?

9 A. It is.

10 Q. Does the company at this time anticipate
11 any amendments or revisions to that plan?

12 A. There are a couple of areas that we want
13 to just update and that would be for service
14 agreements, update the affiliates, and a little bit
15 more information about the corporate separation
16 training. And, you know, depending on what comes out
17 in the Commission order, we'll interpret that and
18 determine what other revisions need to be made to the
19 plan.

20 Q. Okay. Now, Duke, they can't -- Duke
21 cannot sell or transfer its generating assets without
22 prior Commission approval; is that correct?

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

24 Q. Duke cannot sell or transfer its legacy
25 assets unless they have prior Commission approval,

1 correct?

2 A. In my reading of, yeah, corporate
3 separation plan, that is what it says, it takes
4 Commission approval to transfer the assets.

5 Q. And with the sale or transfer of those
6 assets would the company intend, then, to revise or
7 amend its corporate separation plan?

8 A. I know that that particular area of the
9 plan would have to be revised. There's a section
10 that says "generation" in the back of the plan, I
11 think it's about page 51 or so, and, you know, that
12 indicates that we're -- we haven't transferred to an
13 EWG yet so I would think that area would have to be
14 revised, but once again, I think that would be a
15 legal determination as to, you know, what all needs
16 to be updated.

17 MR. JONES: That's all I have, thank you.

18 EXAMINER STENMAN: Mr. Jones, I just have
19 a question for you. Assuming that Duke either
20 retains its generation assets or sells them off to an
21 affiliated company, do you think there's a conflict
22 between the auction process where Duke has a desire
23 to sell its generation capacity at market and the
24 Commission's requirements that Duke provide effective
25 peak demand in reduction and energy efficiency

1 programs?

2 THE WITNESS: As I said, I'm not involved
3 in the wholesale area of the company, I'm involved in
4 the retail area so I don't think I'm qualified or the
5 expert to answer that question on behalf of Duke
6 Energy-Ohio.

7 EXAMINER STENMAN: Okay.

8 Redirect?

9 MS. WATTS: If I might have a moment,
10 your Honor.

11 EXAMINER STENMAN: Sure.

12 (Discussion off the record.)

13 - - -

14 REDIRECT EXAMINATION

15 By Ms. Watts:

16 Q. Mr. Jones, would you turn to your
17 testimony in this matter to Dan Jones Attachment 1,
18 page 37 of 56, please.

19 A. Okay, I am there.

20 Q. And before I ask you a question about
21 that would you describe what this attachment is?

22 A. Well, the particular section is a
23 description of any joint advertising and/or joint
24 marketing activities between the utility and
25 affiliate.

1 Q. And is that partial -- is that a part of
2 the amended corporate separation plan that you've
3 attached --

4 A. Yes, this is part of -- the entire plan
5 that's attached is the amended corporate separation
6 plan.

7 Q. And to be clear, what you just referred
8 to me isn't where I'm trying to direct your
9 attention, so perhaps we're on the wrong page here.

10 A. Okay.

11 Q. Would you look at page 37 of 56?

12 A. I'll look at the exhibit you handed me,
13 then.

14 Q. And, Mr. Jones, the page reference is at
15 the very top of the page as opposed to on the bottom.

16 A. Okay. The page that had "37" is actually
17 39 of the exhibit. Okay.

18 Q. All right. Do you now have page 37 of
19 56?

20 A. 37 of 56, I am there, thank you.

21 Q. And would you refer, please, to item No.
22 6 on that page and take a moment to refresh your
23 recollection about that.

24 A. Okay.

25 Q. In response to some questions by

1 Mr. Reese you indicated that you weren't sure in the
2 corporate separation plan there was a reference to
3 what protections would exist if the company were to
4 allow its affiliate to participate in the competitive
5 bid process; isn't that correct?

6 A. I did.

7 Q. Does this help you recall where that
8 would be in the corporate separation plan?

9 A. Yes, it does.

10 Q. And could you describe how this would
11 allow -- what about this provision would protect
12 consumers against any subsidies, inappropriate
13 subsidies?

14 A. Well, basically the rule is that the, you
15 know, Duke Energy-Ohio shall avoid anticompetitive
16 subsidies flowing from the noncompetitive retail
17 electric service to a competitive retail electric
18 service, so in other words the distribution company
19 remains the distribution company and the generation
20 side of the business is strictly for generation.

21 Q. And so Mr. Reese also asked you about
22 sanctions that might be imposed, I believe. Would
23 the imposition of sanctions or the withholding of
24 sanctions constitute an improper subsidy that would
25 be prohibited under the terms of this provision?

1 A. As far as -- you're indicating -- let me
2 understand the question here. You're indicating that
3 the noncompetitive side of the company is --

4 Q. Let me clarify my question because I
5 don't think I phrased it very well.

6 A. Okay.

7 Q. Let's look at the hypothetical situation
8 where the company has a competitive bid procurement
9 and participating in that competitive bid is Duke
10 Energy-Ohio as well as Duke Energy Retail. And let's
11 further assume that Duke Energy Retail has conducted
12 itself in such a way as to be subject to sanctions
13 under the terms of the competitive bid rules.

14 Are you with me so far?

15 A. Okay.

16 Q. If Duke Energy-Ohio were not to impose
17 those sanctions on its affiliate, would that be a
18 violation of its corporate separation rules?

19 A. In my humble businessperson opinion I
20 would say yes. You know, I would go to my attorney
21 and report that because that's what I'm required to
22 do by my training if I'm ever aware of anything that
23 looks like a violation.

24 Q. And would you otherwise anticipate that
25 Duke Energy-Ohio would consistently comply with all

1 corporate separation rules in the conduct of its
2 competitive bid process?

3 A. Absolutely. That's what this plan is all
4 about. The training that all of our employees take
5 with regard to corporate separation, it has to remain
6 separated.

7 MS. WATTS: Thank you. I have nothing
8 further.

9 EXAMINER STENMAN: Recross?

10 MR. REESE: Yes, your Honor, I have a
11 question.

12 - - -

13 RECROSS-EXAMINATION

14 By Mr. Reese:

15 Q. Ms. Watts just referenced -- gave you a
16 hypothetical concerning separations issues and
17 sanctions. Is there anything in the material on page
18 37 of 56 that references sanctions?

19 A. Well, the purpose of this is that, in
20 Ms. Watts' example, Duke Energy Retail cannot gain a
21 competitive advantage from any actions of Duke
22 Energy-Ohio, so I would think in general you can't be
23 doing something different for the affiliate than what
24 you're doing for all the other suppliers in the
25 program.

1 Q. So which specific provision there would
2 prevent Duke Energy-Ohio from giving unfair advantage
3 by not administering sanctions?

4 A. Well, as I said, I don't think it's
5 specifically addressed, but as I read it the intent
6 is there not to provide a competitive advantage, not
7 to mix noncompetitive and competitive services.

8 Q. So it's really not addressed in the
9 corporate separation plan.

10 MS. WATTS: Objection. That's not what
11 the witness testified.

12 EXAMINER STENMAN: Objection overruled.

13 THE WITNESS: Could you repeat the
14 question, please?

15 (Record read.)

16 A. You know, there's 56 pages here in this
17 corporate separation plan and not that I have all
18 those in my head, and I think to truly answer, you
19 know, I'd have to really study it more closely.

20 Q. Well, Mr. Jones, you sponsored the
21 corporate separation plan, so you must be fairly
22 familiar with it.

23 A. I'm familiar with its intent. As I say,
24 on the retail side of things my area has to follow it
25 on a daily basis. And as I said, the purpose that

1 this is even in this case is just the reasons that I
2 mentioned before.

3 Q. So at this point you can't provide me any
4 direction as to specifically where anything regarding
5 sanctions and their proper use or administration of
6 sanctions, you can't provide me any specificity with
7 the location --

8 THE REPORTER: I'm sorry, I couldn't hear
9 you.

10 MR. REESE: Let me say it in English.

11 Q. You can't point to any specific provision
12 regarding sanctions.

13 A. I can't point to any specific provision
14 regarding sanctions, but I believe there's areas
15 within this corporate separation plan in several
16 places that indicate you can't be mixing the
17 noncompetitive side with the competitive side. In
18 other words, the regulated side of the company cannot
19 provide a competitive advantage for the nonreg side.

20 MR. REESE: No further questions.

21 MR. YURICK: Nothing, your Honor, thank
22 you.

23 MR. OLIKER: I have one question, your
24 Honor.

25 - - -

CROSS-EXAMINATION

By Mr. Oliker:

Q. Good morning, Mr. Jones.

A. Good morning.

Q. Based upon your understanding of Ohio's corporate separation requirements, do you believe it is appropriate for the generation side of Duke's business and Duke's shareholders to enjoy the financial benefits of the move to PJM and for Duke Energy-Ohio's distribution customers to be responsible for the costs of the Midwest ISO exit fees, PJM integration costs, and duplicative transmission costs?

MS. WATTS: And, your Honor, I object to this question, it's way beyond the scope of the direct and cross we've just had.

MR. OLIKER: Your Honor, he's testifying about the intent of the corporate separation plan, he's talking about providing competitive advantage, it's directly relevant to the line of redirect.

EXAMINER STENMAN: The objection will be overruled.

THE WITNESS: Could you repeat the question, please?

(Record read.)

1 MS. WATTS: And, your Honor, one
2 additional objection to the question assumes facts
3 not in evidence. If Mr. Olikier wants to state it as
4 a hypothetical, we can go with it that way.

5 MR. OLIKER: I would put forward that the
6 facts are in the evidence and if you look at IEU-Ohio
7 Exhibits 1 through 6, 8, 9, and 10, that seems to be
8 the company's position and -- but we would settle for
9 a hypothetical answer as well.

10 EXAMINER STENMAN: The objection will be
11 overruled. You can answer the question.

12 A. Okay, from my perspective my answer would
13 be maybe and maybe not, and in order to get an
14 interpretation I would go to my legal area of the
15 company to find out, you know, what violates
16 corporate separation and what doesn't. I'm not here
17 to interpret the corporate separation plan.

18 Q. (By Mr. Olikier) Could you give a "yes" or
19 "no" answer, please?

20 A. My yes would be yes, I would go to my
21 Legal department.

22 MR. OLIKER: That's fine, your Honor. No
23 further questions.

24 EXAMINER STENMAN: Thank you.

25 MR. HART: Just a couple.

1 - - -

2 CROSS-EXAMINATION

3 By Mr. Hart:

4 Q. Mr. Jones.

5 A. Yes.

6 Q. The paragraph that Ms. Watts pointed you
7 to, paragraph 6 on page 37 of 56.

8 A. Yes.

9 Q. Does that address your transactions
10 between Duke Energy-Ohio generation business and Duke
11 Energy Retail?

12 A. My understanding of this is that the
13 noncompetitive retail electric service is the
14 distribution company, Duke Energy-Ohio, Inc. I am
15 not certain about whether you're talking about --
16 because you're talking about other subsidiaries of
17 the company that are nonregulated subsidiaries,
18 generation is and also Duke Energy Retail is.

19 Q. Right, that's the point of my question.
20 You're saying the distribution business is subject to
21 this, it cannot give the competitive advantage to the
22 affiliate that's nonregulated.

23 A. Correct.

24 Q. Is there anything else where in the
25 corporate separation plan that governs transactions

1 between Duke Energy-Ohio generation business and
2 nonregulated affiliates?

3 A. That's something I'm not involved in on a
4 daily basis, but our corporate separation plan does
5 contain the service agreements among various entities
6 at Duke Energy Corp., it may or may not be covered in
7 there but I'm not prepared to speak to that.

8 Q. Okay. One final thing. On page 11 of
9 your testimony you address briefly this Rider SCR
10 which the company proposes become nonbypassable under
11 certain conditions. Could you reconcile for me
12 making that rider nonbypassable with paragraph 6 on
13 page 37 of 56 that prohibits subsidies between
14 distribution and generation?

15 MS. WATTS: I'm sorry, I wasn't able to
16 hear that whole question, I wonder if we could have
17 it read back.

18 EXAMINER STENMAN: Can you read it back.

19 EXAMINER PIRIK: I think we need to use
20 microphones, Mr. Hart.

21 (Record read.)

22 MS. WATTS: Your Honor, I object, first
23 of all, because the question is way beyond the scope
24 of the direct examination, and secondly, I don't
25 think I could understand the question, I don't know

1 if the witness can or not.

2 EXAMINER STENMAN: Are you able to answer
3 the question?

4 THE WITNESS: To a certain degree I can
5 answer the question, yes.

6 EXAMINER STENMAN: Objection's overruled.

7 A. Let me gather my thoughts together again.
8 Repeat the question, if you would.

9 Q. (By Mr. Hart) I'll try to. You've
10 interpreted paragraph 6 on this page 37 of 56 as
11 precluding the regulated side of the business from
12 subsidizing the unregulated side of the business.
13 I'm just asking how you reconcile that approach with
14 the proposal that Rider SCR become nonbypassable
15 under certain conditions.

16 A. Well, first of all, I'm not the expert in
17 that area, that would be someone from our Rates area
18 that that question could have been asked of in
19 previous days here at the hearing.

20 My general understanding, business
21 understanding of this, is that Duke Energy-Ohio, Inc.
22 is the provider of last resort so there are expenses
23 associated with being the provider of last resort and
24 if all else fails, Duke Energy-Ohio, Inc. has to find
25 that generation, you know, to keep the lights on.

1 So from that perspective it is my
2 understanding that there are certain nonbypassable
3 riders that allow for that, you know, provider of
4 last resort responsibility.

5 Q. You understand that the costs that would
6 go into Rider SCR are costs that arise from the
7 generation business. That they would be collected
8 from distribution customers that don't take
9 generation service. Do you understand that?

10 A. Okay.

11 Q. Could you answer with that fact in mind?

12 MS. WATTS: Your Honor, I object to that
13 statement as an incorrect description of the rider.

14 EXAMINER STENMAN: It will be overruled.
15 The witness is free to correct.

16 A. As far as Rider SCR, you know, I've seen
17 it in the others' testimonies. I haven't been
18 directly involved in it, so, you know, what
19 methodologies are being used to allocate the costs,
20 whether they be for a rider that's nonbypassable or
21 bypassable, I haven't been involved in the
22 methodology and calculations of how those costs get
23 allocated.

24 MR. HART: That's all. Thank you.

25 EXAMINER STENMAN: Anything from staff?

1 MR. JONES: Nothing, your Honor.

2 EXAMINER STENMAN: Thank you, Mr. Jones.

3 THE WITNESS: Okay. Thank you.

4 MS. WATTS: Your Honor, we would move for
5 admission of Duke Energy-Ohio Exhibit 18.

6 EXAMINER STENMAN: Any objections?

7 (No response.)

8 EXAMINER STENMAN: Duke Energy-Ohio
9 Exhibit 18 will be admitted.

10 MS. WATTS: Thank you.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 EXAMINER STENMAN: You can call your next
13 witness.

14 MS. SPILLER: Thank you, your Honor.
15 Duke Energy-Ohio would call as its final witness in
16 this proceeding, Mr. Keith Trent.

17 EXAMINER STENMAN: Mr. Trent, please
18 raise your right hand.

19 (Witness sworn.)

20 EXAMINER STENMAN: Thank you.

21 MS. SPILLER: Your Honor, I would ask
22 that Duke Energy-Ohio Exhibit No. 19 be reflected to
23 be the direct testimony of James E. Rogers filed in
24 this proceeding, and also, your Honor, that Duke
25 Energy-Ohio Exhibit 20 be reflected as the direct

1 testimony of B. Keith Trent in this proceeding.

2 EXAMINER STENMAN: They'll be so marked.

3 (EXHIBITS MARKED FOR IDENTIFICATION.)

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

5 EXAMINER STENMAN: You may.

6 MS. SPILLER: Thank you.

7 - - -

8 B. KEITH TRENT

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

11 DIRECT EXAMINATION

12 By Ms. Spiller:

13 Q. Good morning, Mr. Trent.

14 A. Good morning.

15 Q. Could you introduce yourself and state
16 your name for the record, please.

17 A. Yes, my name is Keith Trent.

18 Q. And what is your business address, sir?

19 A. 526 South Church, Charlotte, North
20 Carolina.

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

23 A. Employed by Duke Energy Business
24 Services, and I am a group executive and president of
25 the commercial businesses.

1 Q. Mr. Trent, do you have in front of you
2 two documents, the first of which has been labeled
3 Duke Energy-Ohio Exhibit No. 19?

4 A. Yes.

5 Q. And could you identify that for the
6 record, please?

7 A. That is the direct testimony of James E.
8 Rogers.

9 Q. And do you also have in front of you,
10 sir, a document that has been identified as Duke
11 Energy-Ohio Exhibit 20 to this proceeding?

12 A. Yes.

13 Q. And could you identify that for the
14 record, please.

15 A. Yes, that's the direct testimony of B.
16 Keith Trent.

17 Q. And, Mr. Trent, through Exhibit 20 do you
18 adopt the direct testimony of Mr. Jim Rogers?

19 A. Yes, I do.

20 Q. And with regard to Exhibits 19 and 20,
21 sir, do you have any changes to either of those
22 direct testimonies?

23 A. No, I do not.

24 Q. And if you were asked the questions
25 today, sir, that are set forth in Exhibits 19 and 20,

1 would your answers be the same today as set forth in
2 those direct testimonies?

3 A. Yes, they would be.

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

6 EXAMINER STENMAN: Thank you.

7 Mr. Petricoff?

8 MR. PETRICOFF: No questions, your Honor.

9 EXAMINER STENMAN: Mr. Kurtz?

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Kurtz:

13 Q. Good morning, Mr. Trent.

14 A. Good morning.

15 Q. Very quickly, Mr. Rogers testified that
16 he thought that reregulation would be a superior form
17 of regulation versus an ESP or an MRO. Did I
18 accurately paraphrase that?

19 A. Yes, I think so.

20 Q. Why is that, in your opinion?

21 A. Well, in the environment that we're in
22 today we're really in no man's land in that we're not
23 operating as a fully merchant operation and we're
24 subjected to really unlimited downside in the way we
25 operate today, but we do have to stand ready to serve

1 such that if customers switch away from us today
2 because market prices are lower, but then if market
3 prices go up above our standard service offer rate
4 they can switch back to us, not at the market rate
5 but at the ESP rate.

6 That asymmetry is I guess compounded by
7 the SEET or the earnings test that's in place and so
8 we're in a no man's land right now and what we've
9 tried to do is to evaluate what are the options.

10 One is an MRO, one is reregulation, and
11 as you probably know, our company as a whole is more
12 regulated and dominated by regulated businesses, when
13 I say "dominated," 75 percent of our businesses are
14 regulated, it fits well with our shareholder value
15 proposition and in general we think that that's a
16 good system not only for shareholders, but also for
17 customers because it provides more certainty and
18 enables very efficient investment of capital in that
19 we can get access to capital more cheaply, which I
20 think is better for customers as well.

21 So I think the sort of overall certainty
22 and the lower cost of being able to do business we
23 think is good for customers and good for our
24 shareholders.

25 Q. Since this testimony was filed there was

1 the announcement of the merger with Progress.

2 A. Right.

3 Q. Does the merger with Progress make your
4 position on a reregulation more or less -- more or
5 less compelling?

6 A. You know, I'm not sure if it makes it
7 more or less compelling. It certainly doesn't reduce
8 the view that reregulation would be better. If the
9 merger with Progress is closed, the percentage will
10 go from 75/25 mix to about an 85/15 mix so we'll
11 become even more regulated. But I would say it
12 doesn't necessarily impact the view here.

13 Q. This always puzzled me about the Rogers
14 testimony and now your testimony, you say that you
15 would prefer reregulation, but since you can't have
16 it you're going to do the exact polar opposite and go
17 to an MRO complete deregulation. Wasn't there an ESP
18 alternative that was sort of closer to reregulation
19 or more of a middle ground?

20 A. Actually, we think the middle ground is
21 the worst place to be for the reasons I've said, and
22 we were not comfortable that we could get to a place
23 in an ESP that would effectively take us out of the
24 middle ground, because as far as we could tell that
25 middle ground would always have an asymmetrical risk

1 concept in it that really was not a viable business
2 model from our standpoint.

3 So as we looked at it we said, you know,
4 reregulation is something that would make sense to us
5 and we would support. We don't think that we can get
6 that under the current structure, so the best that we
7 can do, we think right now, is to get into a more
8 pure market situation where at least the risks -- we
9 get out of this asymmetrical risk situation we're in
10 now.

11 Q. Didn't the first year of your ESP work
12 okay?

13 A. You know, the first year of the ESP the
14 pricing began, you know, to drop at that point and so
15 we started seeing switching. The financial impacts
16 weren't as significant the first year, but clearly we
17 started seeing the impacts of that switching.

18 Q. What type of return on equity is Duke
19 Energy-Ohio going to experience for 2010 as a result
20 of all the switching and everything else that has
21 happened, with the appropriate adjustments for the
22 acquisition premium on Duke, et cetera, taking that
23 into account?

24 MS. SPILLER: I'm just going to object to
25 the extent our significantly excessive earnings for

1 2010 are not an issue in this proceeding.

2 MR. KURTZ: And I'm not trying to make
3 them, I just want to understand the financial
4 implications of reregulation versus MRO versus ESP.

5 EXAMINER STENMAN: The objection will be
6 overruled.

7 A. To be honest, I don't know what the ROEs
8 are in '10 yet. You know, we haven't closed the
9 books yet. I haven't seen the final earnings numbers
10 and I haven't seen the runs on that, so I really
11 don't have an answer for you in '10.

12 Q. What were they for the first nine months?
13 Any idea?

14 A. I wasn't calculating ROEs in nine months.
15 I tried to take a snapshot at more on an annualized
16 basis, so I just don't know.

17 Q. If you could redo your ESP and knowing
18 what you know now about the precipitous decline in
19 market pricing, what would you have done differently?

20 MS. SPILLER: Objection, your Honor.

21 EXAMINER STENMAN: Basis?

22 MS. SPILLER: Well, what we would have
23 redone in an ESP that was approved by this Commission
24 on December 17, 2008, is not relevant to the
25 application before this Commission for approval of an

1 MRO effective January 1, 2012.

2 MR. KURTZ: Let me restate it a little
3 bit.

4 Q. How could you have adjusted your current
5 ESP to make it more like the reregulation that you
6 testify to?

7 A. You know, I'm not certain that we could,
8 and I'm not going to profess to be deep in the
9 details of ESP architecture, so I'm probably not the
10 best witness to talk about this, but I'm not sure
11 that we could.

12 You know, clearly the more nonbypassable
13 sort of charges that are incorporated into an ESP the
14 more you get a reduced risk for us. But as I
15 appreciate it, there are limitations in that regard
16 and so I'm not sure that there are any mechanisms
17 that would really get us comfortable as I appreciate
18 it under the ESP.

19 Q. If the Commission approved your
20 application and you essentially went to a hundred
21 percent market for your SSO load, the hundred percent
22 auction and everyone would have a right to shop after
23 two years and I guess five months. If market prices
24 stay really low like where they are right now and
25 your environmental costs continue to go up, market

1 prices stay low because natural gas stays low, the L
2 and P clearing price stays low, wouldn't that -- your
3 costs go up for environmental or fuel or other
4 things, wouldn't that put you in a bad situation
5 where you're --

6 A. There's certainly responsibilities that
7 under, you know, just a pure market based system that
8 your returns in a given year time period could be
9 lower than under other structures.

10 The difference, though, is this: If you
11 look historically for folks in the merchant business,
12 some years are very, very good and then some years
13 are not as good, and those, you know, those peaks
14 help to justify the valleys, if you will, in terms of
15 returns.

16 Also, you're in a position to evaluate
17 risk on a longer term basis with more, I guess more
18 of a pure business model so you also have flexibility
19 in terms of how you want to manage that investment
20 and, you know, whether you want to, for example, take
21 some money off the bed, if you will, or not.

22 And so it's in part more about a
23 long-term view and it's in part about flexibility to
24 be able to deal with your assets in an efficient way.

25 Q. If your application is granted, do you

1 expect to build any new baseload plants in Ohio that
2 would be owned by -- well, just new baseload plants
3 in Ohio?

4 A. You know, it will depend on market
5 conditions. What I would tell you is that we're
6 finding it's very difficult to build new plants in
7 nonregulated jurisdictions absent the availability of
8 long-term power purchase agreements to backstop
9 those. I really don't see much being built at all in
10 Ohio today, and I think that's in part because of the
11 uncertainty that exists here in the regulatory
12 environment.

13 And so difficult to say what we would or
14 wouldn't do and we would have to understand, you
15 know, what the market looks like going forward, but
16 it is difficult to build here. We are building, in
17 our other jurisdictions, as I said, where we have
18 regulated jurisdictions. We're also building
19 renewables across the United States and those are in
20 nonregulated jurisdictions but they're typically
21 backed by long-term power purchase agreements.

22 So it depends on what the market's
23 willing to do and what's available to us.

24 MR. KURTZ: Thank you, Mr. Trent.

25 Thank you, your Honors.

1 EXAMINER STENMAN: Mr. Hayden, did you
2 have any questions for this witness?

3 MR. HAYDEN: I'm sorry. I do not.

4 EXAMINER STENMAN: OCC?

5 MS. HOTZ: No.

6 EXAMINER STENMAN: Mr. Yurick?

7 MR. YURICK: I do have a few, your Honor,
8 if I might.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Yurick:

12 Q. Good morning, sir.

13 A. Good morning.

14 Q. How are you? A little cold here in Ohio,
15 hopefully the weather is a little better where you
16 are.

17 A. I think it's about the same but I think
18 I've brought a cold with me, unfortunately.

19 Q. Well, take that back when you leave,
20 okay?

21 A. Okay, I'll do that.

22 Q. Sir, you refer to the current regulatory
23 environment as a "no man's land"; is that right?

24 A. Yes.

25 Q. Okay. And in your position are you

1 familiar with Duke's financial position generally?

2 A. That's a pretty broad question.

3 Q. Well, you can answer it broadly.

4 A. At a high level I am. I'm certainly not
5 the CFO, so . . .

6 Q. I understand. But are you generally
7 familiar with the financial condition of Duke
8 Energy-Ohio at least if they were distressed or if
9 they were about to file for, say, bankruptcy or
10 something of that nature, you'd know about it, right?

11 A. I would hope so.

12 Q. So that's a "yes"?

13 A. Yes.

14 Q. And are you generally familiar with the
15 position of Duke Energy-Ohio's competitors here in
16 Ohio?

17 A. At a much, much higher level.

18 Q. Let me ask you this: If one of those
19 utilities were in financial distress or was not
20 making an adequate return on its assets to the point
21 where it was going to file bankruptcy or go under,
22 you'd probably know about that, wouldn't you?

23 A. I don't know if I would or wouldn't.

24 Q. Okay. Let me ask you this: Do you know
25 at this point whether any Ohio utilities are in

1 financial distress or about to file bankruptcy? Do
2 you have any knowledge that that's going to occur?

3 MS. SPILLER: Objection, your Honor.
4 This is well outside the scope of Mr. Trent's direct
5 examination.

6 MR. YURICK: He's testified that the
7 current regulatory regime in Ohio is a no man's land
8 and I just want to explore the wilderness, your
9 Honor.

10 EXAMINER STENMAN: The objection will be
11 overruled.

12 MR. YURICK: Thank you.

13 A. Can you repeat the question?

14 MR. YURICK: Could the court reporter
15 please read the question back?

16 (Record read.)

17 A. I don't have any knowledge of that.

18 Q. Okay. Do you think you would have
19 knowledge of that in your position if that were a
20 condition that was going to occur?

21 A. Not necessarily.

22 Q. Let me ask you specifically, do you know
23 whether AEP made money with their ESP plan?

24 MS. SPILLER: Your Honor, again,
25 objection.

1 EXAMINER STENMAN: Overruled.

2 A. I have not studied AEP's financials, I
3 have not heard that they didn't make money and I have
4 heard that their returns have been reported as being
5 good.

6 Q. "Good" meaning, in the opinion of some,
7 maybe the Ohio Commission, even significantly
8 excessive?

9 A. I haven't studied any actions with
10 respect to AEP that come out of the Ohio Commission.

11 Q. Okay. But you would agree with the
12 general statement that it is possible for a utility
13 to make money in Ohio's current regulatory regime.

14 A. What I would say is historically that is
15 the case --

16 Q. I'm sorry, sir. Really this is my -- I
17 don't mean to cut you off. You can explain your
18 question but if you would answer the question "yes"
19 or "no" first and then go ahead and explain. I don't
20 mean to be impolite.

21 A. I don't think that's a "yes" or "no"
22 question, to be honest with you. What I was going to
23 say was --

24 Q. Hang on one second.

25 MR. YURICK: Could the court reporter

1 read the question back, please?

2 MS. SPILLER: Mark, the witness is
3 entitled to --

4 EXAMINER STENMAN: Ms. Spiller, do you
5 have an objection?

6 MS. SPILLER: I do have an objection in
7 that Mr. Trent is certainly entitled to answer the
8 question and if he can't answer it with a "yes" or
9 "no" then he can so describe that to Mr. Yurick.

10 EXAMINER STENMAN: Let's read the
11 question back. Let's start again.

12 (Record read.)

13 MR. YURICK: And I do not mean to cut the
14 witness's answer off, I just would like him to answer
15 does he agree with that statement generally "yes" or
16 "no."

17 EXAMINER STENMAN: Please answer the
18 question, you'll have an opportunity on redirect to
19 ask additional questions.

20 A. Could you clarify in terms of whether
21 we're looking historically or in the future?

22 Q. (By Mr. Yurick) Historically.

23 A. Historically I think that certainly I can
24 speak on behalf of Duke's experience here, and we
25 have been able to make a profit here historically.

1 Q. So Duke Energy-Ohio has made a profit
2 here in Ohio, correct?

3 A. Historically.

4 Q. Historically. And, in fact, Duke, the
5 parent company, is also doing fairly well, aren't
6 they?

7 A. Hard to define "fairly well." I mean,
8 we're pleased with the results that we saw this year
9 so far. I haven't seen the final numbers.

10 Q. For example, though, Duke, your parent
11 company, did make or has made an offer to buy
12 Progress Energy for a substantial amount of money;
13 isn't that correct?

14 A. No, not a substantial amount of money.
15 It's a share transaction where new shares will be
16 issued.

17 Q. And those shares have value, correct?

18 MS. SPILLER: Your Honor, I'm sorry,
19 we've gone beyond the hinterland here in Ohio to now
20 corporate structures in Charlotte which are well
21 beyond the scope of the direct testimony in this
22 case.

23 MR. YURICK: I apologize. My
24 understanding of this witness's testimony is that now
25 and into the future it's going to be very difficult

1 for a company to make money under Ohio's current
2 regulatory no man's land, and I think I should be
3 able to demonstrate for the record that both North
4 Carolina and Duke Energy the parent are doing fairly
5 well.

6 EXAMINER STENMAN: The objection will be
7 overruled.

8 THE WITNESS: And I'm sorry, I can't
9 remember the question now.

10 MR. YURICK: I'm not sure I can either.
11 Could I get a little help.

12 (Record read.)

13 A. Yeah, and I was just trying to
14 distinguish within between a cash deal because
15 sometimes deals are cash deals and typically when I
16 think of money, I think of cash. But I mean yeah,
17 these shares, new shares will be issued I think at an
18 exchange ratio of 2.6125.

19 Q. And do you have any idea what a ballpark
20 figure for the amount of the offer would be?

21 A. In terms of just the equity piece, I
22 think it's in the range of \$13 billion.

23 Q. 13 billion with a "B".

24 A. Yes. And that's in shares, just the
25 market cap value of progress is in that same range,

1 very low premium deal, so it's consistent with what
2 the market is kind of valuing them at.

3 MR. YURICK: I appreciate your candor and
4 your answers and I have no further questions of this
5 witness at this time. Thank you very much, sir.

6 EXAMINER STENMAN: Mr. Oliker?

7 MR. OLIKER: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Oliker:

11 Q. Good morning, Mr. Trent.

12 A. Good morning.

13 Q. In preparing your testimony and
14 preparation for cross-examination today what
15 documents did you review?

16 A. I looked at the testimony of Mr. Rogers
17 and my testimony. I also looked very briefly at some
18 TRC-related documents, I think all of which have
19 already been marked as exhibits as I appreciate it.
20 And I looked very briefly at a couple of letters
21 between me and John Bear.

22 Q. Okay. So I assume you also looked at the
23 Duke Energy-Ohio responses to interrogatories and
24 requests for production of documents in this
25 proceeding?

1 A. No, I did not.

2 Q. Okay. I believe you have some documents
3 in front of you right now, IEU-Ohio Exhibits 1
4 through 5. I believe they're 1 through 5A, actually.

5 A. Okay.

6 Q. Are you familiar with those documents?
7 You just mentioned them a moment ago.

8 A. Well, I didn't mention all of them, I
9 said some of the documents. Let me see.

10 I'm familiar with 1A and 2A. 3A I've
11 seen. I can't recall whether I have seen this before
12 this proceeding. I may or may not have. 4A I am
13 familiar with. 5A I believe I've seen, yes.

14 Q. So, Mr. Trent, are these the documents,
15 the transaction review committee relied upon to
16 support its recommendations to exit the Midwest ISO
17 and join PJM?

18 A. Certainly the White Papers and the
19 PowerPoint are things that the TRC had in front of
20 them and looked at, you know, I wouldn't say that we
21 relied on every aspect of what's in there but this is
22 information that was presented to us during the
23 review.

24 Q. Are there any other documents that you
25 relied upon in making that decision to exit the

1 Midwest ISO?

2 A. Not documents that I remember.

3 Q. Would you agree that the business case to
4 evaluate whether to exit the Midwest ISO and join PJM
5 was an integrated analysis that evaluated EBITDA and
6 after tax discounted cash flow on a total company
7 basis rather than discrete business units?

8 MS. SPILLER: I'm sorry, can I have that
9 question read back, I couldn't hear it.

10 (Record read.)

11 MS. SPILLER: Thank you.

12 Q. And to clarify, "EBITDA" means earnings
13 before tax, depreciation, and amortization.

14 A. Yeah. I didn't view this as -- here's
15 how I viewed it being presented to us. We had a
16 joint presentation from the Transmission and
17 Distribution function and from the Generation
18 function presenting to us together a series of issues
19 relating to different topics including benefits to
20 the customers, including design features of the
21 markets, and also giving us a potential scenario in
22 terms of financial impacts that are included in the
23 White Paper.

24 So it was much broader than I interpret
25 your question.

1 Q. But you did review the total company
2 impact; is that correct?

3 A. We reviewed what was in the White Paper.

4 Q. Moving on. Is it correct that Duke
5 Energy-Ohio requested approval from the Federal
6 Energy Regulatory Commission to withdraw from the
7 Midwest ISO in Docket No. ER10-1562-000?

8 A. You know, I can't remember the docket
9 number but I'll take your word for it. But we did
10 make a filing at FERC.

11 Q. Are you aware that in the course of the
12 pleadings that were filed at FERC some correspondence
13 between the Midwest ISO and Duke was included?

14 A. I think that I was aware of that, yes.

15 MR. OLIKER: Your Honors, I'd like to
16 mark for identification as IEU-Ohio Exhibit 12 the
17 Duke Energy answer and motion for leave answer that
18 Duke filed, and Duke Energy-Kentucky filed on August
19 10th, 2010 to the Federal Energy Regulatory
20 Commission.

21 EXAMINER STENMAN: It will be so marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Mr. Trent?

24 A. Yes.

25 Q. Is IEU-Ohio Exhibit 12 a complete and

1 accurate copy of Duke Energy's answered motion for
2 leave to answer that Duke Energy-Ohio and Duke
3 Energy-Kentucky filed on August 10th, 2010, at the
4 Federal Energy Regulatory Commission?

5 A. It appears to be. I was not directly
6 involved with the process of this and I don't know
7 that I've ever reviewed the filing that was actually
8 made, but it appears to be.

9 Q. Could you please turn to Attachment A in
10 that document.

11 A. Sure. Okay.

12 Q. Is the letter from John Bear dated May 4,
13 2010, that was included in IEU-Ohio Exhibit 12 a
14 complete and accurate copy of the letter you received
15 from John Bear?

16 A. Yes, it appears to be.

17 Q. And if you look at Attachment B in that
18 exhibit, is the letter dated May 14, 2010, a complete
19 and accurate copy of the letter that was sent to
20 Mr. Bear in response to his May 4th, 2010, letter?

21 A. Yes.

22 Q. Did you have any further communications
23 with Mr. Bear after the May 4th letter other than
24 your letter in response?

25 A. I do not recall having any further

1 conversations with him.

2 Q. Did Mr. Bear make any further
3 communications to you after the May 4th letter?

4 A. I do not believe so.

5 Q. Are you familiar with Ohio's corporate
6 separation requirements for electric utilities?

7 A. At a very high level, but not in any
8 detail, no.

9 Q. Are you familiar with Duke Energy-Ohio's
10 corporate separation plan that's been approved by the
11 PUCO?

12 A. Again, I'm aware that one exists. I'm
13 aware that is a significant amount of training and
14 emphasis on making that sure that it is complied
15 with. But I don't have knowledge of its details.

16 Q. Are you familiar with Duke Energy-Ohio's
17 pending corporate separation plan?

18 A. Again, I would say the same thing. I'm
19 aware of the fact that there were reviews of that
20 going on but I'm not aware of the specific details.

21 Q. How did you become familiar with the
22 corporate separation plans?

23 A. Just at a high level understanding that
24 there was a plan in existence. I can't recall how I
25 first became aware that there was one.

1 Q. And have you received any formal training
2 on Duke Energy-Ohio's corporate separation
3 requirements under Ohio law?

4 A. You know, I believe that I have. I can't
5 recall specifically. I get a lot of training in
6 terms of, you know, FERC and state codes of conduct
7 and standards of conduct and making sure that we are
8 complying with all state and federal laws. As I sit
9 here today I can't tell you specifically, but I
10 expect that I have.

11 Q. Can you give me a ballpark time of the
12 last time you had training?

13 A. I can't.

14 MR. OLIKER: I have no further questions,
15 your Honor.

16 EXAMINER STENMAN: Mr. Hart?

17 MR. HART: Yes, thank you.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Hart:

21 Q. Mr. Trent, could you explain a little
22 about what businesses you manage, you said I believe
23 you're in charge of the commercial businesses.

24 A. Sure. They fall -- there are five
25 pockets. One is the midwest generation business, one

1 is our international business which is primarily in
2 Latin America and primarily there and Brazil and
3 Peru. One is our renewables business which is
4 focused right now on wind and solar.

5 We also have what we call an on site
6 business where we're building generation, building
7 and/or operating generation inside the fence of
8 customers for customers. And then we also have a
9 small telecom business.

10 EXAMINER STENMAN: Just a second.
11 Mr. Trent, is your microphone on?

12 THE WITNESS: I don't know.

13 EXAMINER STENMAN: Here, why don't you
14 pass it over. There you go.

15 THE WITNESS: Thanks.

16 EXAMINER STENMAN: Thank you.

17 THE WITNESS: It is now.

18 Q. One of the businesses you mentioned was
19 midwest generation. As I understand it that's a
20 component of Duke Energy-Ohio?

21 A. It, from a corporate structure
22 standpoint, falls under Duke Energy-Ohio, yes.

23 Q. Do you have any responsibility for Duke
24 Energy-Ohio outside of the generation business?

25 A. No.

1 Q. Okay. Do you also have responsibility
2 for Duke Energy Retail Sales?

3 A. That is under the umbrella, yes.

4 Q. Okay. And both midwest generation and
5 Duke Energy Retail are managed by Mr. Whitlock; is
6 that correct?

7 A. Correct.

8 Q. He reports directly to you?

9 A. He does.

10 Q. Are you familiar with the ESP case that
11 Duke filed in 2008?

12 A. Generally familiar, yes.

13 Q. And do you understand how the pricing was
14 established under that plan?

15 A. You know, only at a very, very high
16 level.

17 Q. Tell me the extent of your understanding,
18 then. What was that high level?

19 A. My understanding is that there was --
20 there were submissions that addressed pricing and
21 that based on that an ESP price was established.

22 Q. Okay. Are you familiar with the concept
23 that the pricing was no longer cost based?

24 A. My understanding under the ESP is that
25 the price should be in the aggregate better than the

1 MRO. Is that -- does that help or not?

2 Q. I think we're talking about two different
3 things.

4 A. Okay.

5 Q. You understand in a rate of return regime
6 that Mr. Rogers' testimony addresses is that
7 generation rates would actually be based on costs.

8 A. Correct. No; I understand that, and I
9 understand that ESP doesn't have that cost.

10 Q. In the ESP it's based on market
11 principles, correct?

12 A. Market principles as I appreciate it
13 modified by the statutory regime that's been
14 established within the MRO.

15 Q. Okay. If we go back to 2008, fair to say
16 that Duke Energy-Ohio was not experiencing very much
17 competition for generation service in Ohio?

18 A. Did you say in 2008 --

19 Q. Yes.

20 A. -- or prior to?

21 I cannot remember how much load had
22 switched by 2008. I just can't remember
23 specifically. It's certainly not anywhere near what
24 we're experiencing today.

25 Q. If there was any, it was fairly minor; is

1 that fair?

2 A. I don't know.

3 Q. How about prior to 2008?

4 A. You know, prior to 2008 I don't have
5 great knowledge either but I know that there have
6 been various swings along the way where there's been
7 more switching at certain times and less switching at
8 other times, and, you know, I think at times
9 switching approached, as I appreciate it, in the
10 20 percent kind of range which, as I appreciate it,
11 is sort of a mark that has been recognized as a level
12 at which competition is ongoing and effective.

13 Q. Okay. But you understand that in the ESP
14 case Duke's rates were set based on a theoretical
15 competitive price that was presented by expert
16 testimony.

17 A. My understanding is that the price was
18 set based on expert testimony.

19 Q. Okay. And at that time Duke's ESP price
20 was below market, correct?

21 A. At the time that it was set?

22 Q. Yes.

23 A. I'm not sure.

24 Q. Okay. Today the market has dropped so
25 that the market price is below Duke's price, correct?

1 A. That is correct.

2 Q. So when you talk about this customer
3 option, you're saying that the customer can select
4 Duke's ESP service or they can go to a market
5 provider, correct?

6 A. That's correct.

7 Q. And when the market price was above
8 Duke's ESP price, that customer option was
9 underwater, right?

10 A. Yeah, at that given point in time the
11 option would have been, yes.

12 Q. Kind of like a stock option if the strike
13 price is higher than the market price, there's no
14 reason to exercise the option.

15 A. Yeah, the difference is in a stock
16 situation someone's paying for the option, and I
17 don't think that anyone's paying for the option here.

18 Q. Are there not components of the ESP price
19 to compensate Duke for standby capacity?

20 A. You know, not that are fair in our
21 opinion, no.

22 Q. So Duke accepted an unfair deal in the
23 ESP case?

24 MS. SPILLER: Objection.

25 A. You know the ESP case --

1 EXAMINER STENMAN: Hold on.

2 THE WITNESS: I'm sorry.

3 EXAMINER STENMAN: Do you have an
4 objection?

5 MS. SPILLER: I do have an objection. I
6 think we're getting well beyond into, now we're
7 talking about the terms of an ESP, to borrow from
8 Mr. Jones's commentary yesterday, that were part of a
9 stipulated recommendation or a stipulated settlement
10 that was approved by this Commission. The assumption
11 that there was one concession taken out of context
12 regarding prices doesn't give credence to the other
13 elements of that stipulation, so I think this is an
14 improper characterization of the ESP and all of its
15 pricing components.

16 EXAMINER STENMAN: Mr. Hart.

17 MR. HART: I'm just exploring the
18 background of Duke's position in this case that the
19 terms of the ESP are no longer viable for it.

20 EXAMINER STENMAN: The objection will be
21 overruled.

22 A. Okay. I apologize. Could you read that
23 last question?

24 Q. Let me just rephrase it.

25 A. Okay.

1 Q. Is it your testimony that Duke accepted
2 what it felt was an unfair deal in the ESP case?

3 A. You know, at the time I think that Duke
4 was comfortable with the overarching package. There
5 were certainly, I would think, components of that
6 package that we didn't like and there were components
7 of the package that we did like, but from an
8 overarching standpoint we felt that that was a
9 reasonable thing for us to do at the time.

10 You know, the market and the environment,
11 though, has changed dramatically since then and we're
12 in a really different place now.

13 Q. Okay. Let's talk about that. Now the
14 market price is below the ESP price, correct?

15 A. Yes.

16 Q. And so the customer option is now in the
17 money.

18 A. Yes.

19 Q. Okay. And many customers have opted to
20 switch to alternative suppliers, correct?

21 A. They have, yes.

22 Q. And one of those alternative suppliers is
23 Duke Retail, isn't it?

24 A. Correct.

25 Q. Okay. And I think -- let me ask, have

1 you been present for any of the prior sessions of
2 this hearing?

3 A. Yes, I have been present for portions.

4 Q. When were you here?

5 A. Did we start on Tuesday or Monday?

6 Q. It seems like a long time but it was only
7 Tuesday.

8 A. Tuesday. I was here Tuesday and
9 Wednesday, I think most of the time, and then I was
10 not here yesterday.

11 Q. So you were here when Mr. Whitlock
12 testified.

13 A. Yes, I was.

14 Q. Okay. You understand that approximately
15 60 percent of Duke's load has moved to alternative
16 suppliers?

17 A. Correct.

18 Q. And of that 60 percent about 60 percent
19 of them are served by Duke Retail?

20 A. Correct.

21 Q. Okay. Now, when those customers shift,
22 when that load shifted from Duke Energy-Ohio, is it
23 fair to say Duke Energy-Ohio continued to produce
24 power and sell that to market?

25 A. Yes, our generation plants continued to

1 run.

2 Q. And you were able to sell that at
3 prevailing market prices?

4 A. Yes.

5 Q. And in this case where you're seeking to
6 go to a market rate offer, are those the same
7 prevailing prices that Duke would sell its power at?

8 A. You mean are they the same today.

9 Q. Not necessarily the same numbers, but the
10 same process establishes what those prices are?

11 A. They could be. I mean, you know, if you
12 have -- if you're able to go fully to market, you can
13 choose to sell, you know, on the market, I suppose
14 you could also potentially enter into some long-term
15 bilateral contracts that might have a different type
16 of market price, it's to be market based but it might
17 be a bit different.

18 But certainly on a go-forward base you
19 would be serving -- generating and selling your power
20 on the market.

21 Q. Okay. So the fact that the customer has
22 an option to switch has not impaired Duke
23 Energy-Ohio's ability to sell its power at market,
24 has it?

25 A. Well, it has impaired our ability to act

1 as a true market participant for the reasons I've
2 already said. First of all, you know, we got this
3 ability to switch, which is good for customers, but
4 we have the standby obligation so if the market
5 changes and the price goes above market, above -- if
6 the market price goes above our ESP and they switch
7 back to us, not at market but at the ESP, so we have
8 this standby obligation.

9 If we're fully market, we would not have
10 this standby obligation and we would be able to take
11 advantage of those upward market swings as well as
12 the downward market swings.

13 When I said "no man's land," what I'm
14 talking about is that today you're subjected to the
15 down sides of the market, but you really don't have
16 full ability to take advantage of the up sides of the
17 market, and that feels like no man's land to me.

18 Q. And the reason you don't have an up side
19 is because of the SEET test?

20 A. Well, a combination. One, the SEET test,
21 and then two, the fact that customers can switch back
22 and you're required to serve at this ESP price as
23 opposed to at the market price.

24 Q. Okay. Now, in the proposed auction
25 process is it true that bidders who participate in

1 that process are also going to take on the obligation
2 to serve customers who have switched away from Duke?

3 A. I think that's correct, yes.

4 Q. So that same standby requirement is
5 present for anyone who wants to participate.

6 A. Yes, and they're going to determine how
7 much of that they want, right, whereas today we don't
8 really have an opportunity to determine how much of
9 that we want.

10 Q. Well, when you say how much of that they
11 want, they can select the number of tranches they bid
12 on.

13 A. Correct.

14 Q. But with each tranche comes that return
15 risk, doesn't?

16 A. Yeah, and so they can decide if they want
17 one tranche or if they want a lot more tranches.

18 Q. But if they pick one tranche currently
19 there's a risk that 2-1/2 times the current load
20 would come back to them.

21 A. Yeah, I'll have to do the math. I think
22 you and Mr. Whitlock were doing the math on this
23 before and I would trust his math probably more than
24 my own.

25 Q. Well, let's briefly repeat that. You're

1 currently serving 40 percent of wired load, correct?

2 A. Right.

3 Q. So if all the load came back and you had
4 a hundred percent, that's 2-1/2 times today's load.

5 A. Correct.

6 Q. So all the bidders in the auction are
7 taking on that risk that the load would return to
8 them.

9 A. I think you're right. I only give that
10 caveat in that, you know, I haven't studied the
11 auction parameters that deeply, but I don't have any
12 reason to disagree with your math there.

13 Q. Okay. And one way that Duke corporate
14 has responded to the change in the market price is to
15 have Duke Retail go out and market to Duke
16 Energy-Ohio's customers, correct?

17 A. Yes.

18 Q. And Duke Energy Retail is free to sell at
19 prevailing market price even if it includes Duke
20 Energy-Ohio's ESP price.

21 A. If the market -- yeah. They're free to
22 sell at market you're saying?

23 Q. Yes.

24 A. Yes.

25 Q. Okay. They don't have any regulatory

1 boundaries as to the prices they can charge.

2 A. Not that I'm aware of.

3 Q. Okay. Were you here for
4 Mr. Whitlock's -- you were here for Mr. Whitlock's
5 testimony.

6 A. I was.

7 Q. Are you familiar with how much of Duke
8 Energy-Ohio's -- strike that -- Duke Energy Retail
9 generation service is obtained through bilateral
10 agreements with Duke Energy-Ohio?

11 A. I'm not.

12 Q. You've not discussed that with
13 Mr. Whitlock?

14 A. I don't believe so.

15 Q. Okay.

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

17 EXAMINER STENMAN: Mr. Jones, Mr. Beeler?

18 MR. JONES: No questions, your Honor.

19 EXAMINER STENMAN: At this point let's
20 take a about 15-minute break and we'll come back with
21 redirect.

22 MS. SPILLER: Thank you, your Honor.

23 (Recess taken.)

24 EXAMINER JONES: Redirect?

25 MS. SPILLER: Thank you, your Honor.

1 Just briefly.

2 - - -

3 REDIRECT EXAMINATION

4 By Ms. Spiller

5 Q. Mr. Trent, both Mr. Kurtz and Mr. Yurick
6 were asking you questions about financial
7 circumstances, profitability of companies here in
8 Ohio. Focusing first on Duke Energy-Ohio, are you
9 comfortable in a going-forward position or
10 forward-looking with regard to Duke Energy-Ohio's
11 earnings and earnings profile?

12 A. No, we are not. As we look forward,
13 especially in the '12 through '14 time range, the
14 returns that we're projecting are well below what we
15 would expect from a regulated rate of return. And in
16 a market such as this where you have the risks that
17 you have, we would expect to be earning several
18 hundred basis points above a regulated return, and
19 that's not what we're seeing for this business.

20 Q. More specifically with regard to
21 Mr. Yurick's line of questioning, he was asking you
22 to compare and contrast the Ohio electric
23 distribution utilities. Do you know, sir, the
24 percentage of switching that the other distribution
25 utilities experience in their respective territories?

1 A. No, I do not.

2 Q. Do you know, sir, whether any of the Ohio
3 distribution utilities perhaps have large fuel
4 deferrals?

5 A. I do not know.

6 Q. Do you know, sir, the extent of the
7 nonbypassable charges that those other distribution
8 utilities may have?

9 A. I do not know.

10 Q. Mr. Trent, do you still have in front of
11 you the IEU exhibit which is Duke Energy's answer and
12 motion for relief to answer that was filed at the
13 FERC?

14 A. Yes.

15 Q. With regard to what was Attachment B to
16 that filing, that is the letter that you sent to John
17 Bear of the Midwest ISO, correct?

18 A. Yes.

19 Q. And on the date that you sent that
20 letter, Mr. Trent, had Jim Rogers approved the
21 recommendation from the transaction review committee
22 for Duke Energy-Ohio to withdraw from the Midwest
23 ISO?

24 A. He had not in writing approved, but he
25 had indicated to me that he was comfortable with the

1 decision to transfer.

2 Q. And Mr. Hart was asking you, sir, about
3 Duke Energy-Ohio's generation business and the fact
4 that it has the ability today to sell generation at
5 the market. Do you recall his questions?

6 A. Yes.

7 Q. And although Duke Energy-Ohio may have
8 the ability to sell its generation into the market
9 today, are there any constraints with that ability?

10 A. Yes. In the situation we are today we do
11 not have the flexibility or ability to consider and
12 enter into long-term contracts which is something we
13 definitely would want to consider and have the
14 opportunity to do, and in fact in other parts of our
15 nonregulated business we do enter into long-term
16 contracts as part of our business strategy.

17 MS. SPILLER: Thank you, sir.

18 No further questions, your Honor.

19 EXAMINER STENMAN: Recross?

20 MR. HAYDEN: No thank you.

21 MR. KURTZ: No, your Honor.

22 MR. YURICK: I just have a couple.

23 EXAMINER STENMAN: Sure.

24 - - -

1 RECROSS-EXAMINATION

2 By Mr. Yurick:

3 Q. Good morning, again.

4 A. Yes.

5 Q. You just testified on redirect that you
6 expect that Duke Energy-Ohio should make profits or a
7 rate of return several hundred basis points above a
8 regulated rate, correct?

9 A. Yes.

10 Q. Are you familiar with other distribution
11 units within Duke Energy, the parent?12 A. Yes, generally. Well, the rest of our
13 companies are actually integrated, so we don't
14 operate as distribution units. They're integrated,
15 vertically integrated utilities.

16 Q. Okay. So --

17 A. Other than the businesses that are in my
18 shop, but my commercial businesses don't have
19 distribution businesses.20 Q. Okay. Are you familiar generally with
21 the rates of return of other distribution companies
22 in, I think you said you weren't necessarily familiar
23 with rates of return for other distribution companies
24 in Ohio, correct?

25 A. Yes. But if I could clarify, when I was

1 talking about unacceptable returns, I'm talking about
2 on the generation assets. I don't know if that helps
3 you or not.

4 Q. Okay. It helps me look dumb, but --

5 A. That was not the intention.

6 Q. Well, it's not hard.

7 Okay, so let me ask it this way, okay, on
8 the generation side, I guess you said that your other
9 businesses are integrated so you don't really have
10 generation arms; is that right?

11 A. I do have other generation arms on the
12 commercial side. I don't have distribution.

13 Q. So you have -- how many other generation
14 businesses do you have?

15 A. Primarily two. I've got the renewables
16 business which is wind and solar, about a thousand
17 megawatts of wind and approximately 20 megawatts of
18 solar, and then we've got an international business
19 that has got 4,000 megawatts.

20 Q. And are those concentrated in a region or
21 are those nationwide or, what's the geographic area
22 where the generation assets are?

23 A. The international are in seven countries
24 but the bulk of the generation is in Brazil and Peru.

25 Q. Any nonrenewable generation in the United

1 States?

2 A. Midwest generation.

3 Q. Okay. And where does that operate?

4 A. The midwest generation operates primarily
5 here in Ohio.

6 Q. Okay. And the renewable arm, is that
7 geographically centered also or not?

8 A. No, it's not geographically centered.
9 It's probably focused more in the west but we also
10 have generation in the east.

11 Q. Okay. Are you familiar with the rates of
12 return of other electric generation companies in
13 Ohio?

14 A. Not specifically, no.

15 Q. Are you familiar with the rates of return
16 of generation companies in other states?

17 A. Well, certainly the generation that I've
18 referenced.

19 Q. Okay.

20 A. And I would say that what state you're in
21 doesn't dictate what kind of return that you expect.
22 And I would say that's across our industry. What
23 returns expectations are driven by more are risk
24 profiles.

25 Q. But isn't a state regulatory regime part

1 of your risk profile?

2 A. Sure.

3 Q. Okay. So it does have an impact,
4 wouldn't you agree?

5 A. It has an impact.

6 Q. And I guess what I'm -- if I could just
7 have a second.

8 Let me ask it this way: What rates of
9 return are you currently realizing on your renewables
10 business?

11 A. I'd feel more comfortable giving you a
12 range because this is competitive information, but I
13 think I can give you a range.

14 First of all, I would say to you that the
15 return on equity unlevered is several hundred basis
16 points above a regulated rate of return, and with
17 regulated rate of returns I'm comparing with what we
18 have in our regulated returns which range from 10-1/2
19 to 11-1/2 percent. So several hundred basis points
20 above that, and on a levered basis they actually get
21 into the mid to high teens, and those returns are
22 returns we expect, even though we have long-term 20
23 to 25-year power purchase agreements backstopping
24 those with very strong creditworthy customers.

25 Q. But just so we're clear, in terms of

1 your -- when you say your other regulated returns,
2 those are returns on combined companies, not
3 generation only.

4 A. They're vertically integrated companies,
5 correct.

6 Q. So you don't have another company in the
7 Duke portfolio of companies that is exactly like the
8 midwest generation.

9 A. No. I've got companies that have
10 actually lower risk profiles that I'm requiring them
11 to earn even more.

12 Q. I understand you want to explain your
13 answer, but you don't have -- you don't have any
14 specific generation companies to compare Ohio's
15 returns against.

16 A. I think that I do. I mean, I think all
17 of the other companies that are generation companies
18 I compare against the Ohio generation.

19 Q. So you're comparing the renewables
20 business against Ohio generation?

21 A. Absolutely. What I compare is relative
22 risk to expected returns. And I look at the
23 renewables business on that basis, I look at the
24 midwest GEN on that basis as well.

25 Q. And these other, the vertically

1 integrated companies, you look at that too?

2 A. The vertically integrated companies are
3 simply, I guess a mark that you look at in terms of
4 typically those are viewed as the lowest risk profile
5 in our company. And so --

6 Q. Why do you say they're the lowest risk
7 profile in your company?

8 A. Well, because you're not really exposed
9 to merchant risk and market risk. It's a regulated
10 monopoly.

11 MR. YURICK: I don't think I have any
12 further questions of this witness at this point.
13 Thanks.

14 EXAMINER STENMAN: Thank you.

15 MR. OLIKER: No further questions, your
16 Honor.

17 MR. HART: Just a few.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Hart:

21 Q. Mr. Trent, your counsel asked you about
22 your ability to enter into long-term contracts. If
23 in the context we're talking here are you talking
24 about long-term contracts to sell power?

25 A. Yes.

1 Q. Correct me if I'm wrong, but a long-term
2 contract would fix the pricing for some period of
3 time?

4 A. It could fix it. You could be, you know,
5 have some sort of indexing or other floating
6 parameters.

7 Q. Okay. Now, it's true that Duke
8 Energy-Ohio's not prohibited from entering into
9 long-term contracts, only if it does so it's at the
10 risk of having to supply power to returning
11 customers.

12 A. What I would say is it pretty much binds
13 our hands because of the risk associated with doing
14 that, and I would tell you it effectively takes away
15 that option for us in the way that we view the
16 business.

17 Q. Because if you sell your capacity to some
18 other party, you have to acquire capacity to supply
19 those customers if they come back.

20 A. Capacity and energy from my perspective
21 in terms of what I'm thinking about. Maybe in the
22 scenario I have customers coming back, maybe that's
23 correct.

24 Q. Is it your view that the competitive
25 market prices are bottomed out right now?

1 A. I hope so. I don't know. What I would
2 tell you is that gas prices have I think primarily
3 been the driver for power prices and certain of the
4 shale gas phenomenon has driven gas prices very, very
5 low, and my sense is that the cost of production for
6 shale gas is such that you would not expect gas
7 prices to drop too much from where they have been in
8 the last several months or last couple years I would
9 say.

10 Q. Isn't one of the fundamental premises of
11 this case is that Duke predicts an up market over the
12 next few years?

13 A. There's certainly been testimony that,
14 from Mr. Rose, that you could see a convergence of
15 the market price to our ESP price, I think he's also
16 said that there's a plausible scenario where the
17 market prices could remain below the ESP price out in
18 the 2014 time frame. But under either of the
19 scenarios you are seeing some trend toward an upward
20 movement in price.

21 Q. Is it fair to say that a long-term
22 contract in the market doesn't make a lot of sense if
23 it's not tied to market price?

24 A. Well, I mean a long-term contract very
25 much can make sense. I mean, you know, you can set

1 different parameters of the pricing. I mean, the
2 near-term pricing, you can set different near-term
3 and long-term, you can do some sort of averaging.
4 You can have all kind of contracting constructs and
5 so long-term contracts still can make sense in these
6 pricing environments.

7 Q. Yes, but you wouldn't want to do it at
8 current prices.

9 A. I don't think you'd lock in current
10 prices for a long term.

11 Q. Okay. And just one final question. What
12 Duke really wants out of this case is the opportunity
13 to sell power at prices that end up being higher than
14 its current ESP price, correct?

15 A. I think what Duke wants to do in this
16 case is to get out of what I described as this no
17 man's land where we can go to a fully merchant
18 position and in that position we can have the
19 flexibility to operate as a merchant operator,
20 including making decisions about the level of
21 investment.

22 Q. The scenario where market prices rise
23 above Duke's ESP price, Duke wants the opportunity to
24 sell at those market prices if that happens, correct?

25 A. You would want the opportunity to benefit

1 from upward movements in price knowing that you are
2 exposed to potential downward movements in price.

3 Q. And as you discussed earlier, as long as
4 the market price is less than Duke's ESP price, Duke
5 is still free to sell at market prices.

6 A. I would say not on a long-term basis
7 we're effectively not, no.

8 Q. But what you cannot do is sell before the
9 ESP price.

10 A. Today?

11 Q. Correct. Under --

12 A. Under ESP?

13 Q. Yes.

14 A. That's my understanding.

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

16 EXAMINER STENMAN: Anything from staff?

17 MR. JONES: No questions, your Honor.

18 EXAMINER STENMAN: Thank you, Mr. Trent.

19 THE WITNESS: Thank you.

20 MS. SPILLER: Your Honor, Duke
21 Energy-Ohio would move for admission into evidence
22 Duke Energy-Ohio Exhibit No. 19, which is the direct
23 testimony of James E. Rogers filed on November 15,
24 2010, as well as Exhibit No. 20, the direct testimony
25 of B. Keith Trent filed in this proceeding on January

1 4, 2011.

2 EXAMINER STENMAN: Any objections to the
3 admission of Duke 19 or 20?

4 (No response.)

5 EXAMINER STENMAN: They'll be admitted.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 MS. SPILLER: Thank you, your Honor.

8 MR. OLIKER: IEU-Ohio would move to admit
9 IEU-Ohio Exhibit 12 into evidence.

10 EXAMINER STENMAN: Any objections?

11 MS. SPILLER: No, your Honor.

12 EXAMINER STENMAN: IEU 12 will also be
13 admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER STENMAN: Does this complete
16 your direct case?

17 MS. SPILLER: Yes, your Honor, it does,
18 thank you.

19 EXAMINER STENMAN: Thank you.

20 FirstEnergy, are your witnesses
21 available?

22 MR. KUTIK: Yes, your Honor, they are.

23 EXAMINER STENMAN: You may call your
24 first witness.

25 MR. KUTIK: May we go off the record

1 first?

2 EXAMINER STENMAN: Sure.

3 (Discussion off the record.)

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

6 MR. KUTIK: Your Honor, FirstEnergy
7 Solutions for its first witness calls Michael J.
8 Swartz.

9 EXAMINER STENMAN: Mr. Swartz, please
10 raise your right hand.

11 (Witness sworn.)

12 EXAMINER STENMAN: Thank you.

13 MR. KUTIK: Your Honor, at this time
14 FirstEnergy Solutions would like to mark as
15 FirstEnergy Solutions Exhibit 1 the document entitled
16 Direct Testimony of Michael J. Swartz on behalf of
17 FirstEnergy Solutions, Corp.

18 EXAMINER STENMAN: It will be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. KUTIK: Your Honor, at this time we'd
21 also like to mark as FirstEnergy Solutions Exhibit 2
22 direct testimony of Michael J. Swartz, Case No.
23 10-2586-EL-SS errata sheet.

24 EXAMINER STENMAN: That will also be
25 marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. KUTIK: May I proceed, your Honor?

3 EXAMINER STENMAN: You may.

4 - - -

5 MICHAEL J. SWARTZ

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

8 DIRECT EXAMINATION

9 By Mr. Kutik:

10 Q. Please introduce yourself.

11 A. Michael Swartz. I'm the corporate credit
12 risk manager employed by FirstEnergy Service Company.

13 Q. Mr. Swartz, do you have before you what's
14 been marked for identification as FirstEnergy
15 Solutions Exhibit 1?

16 A. I do.

17 Q. What is that, please?

18 A. My direct testimony.

19 Q. Do you also have before you what's been
20 marked for identification as FirstEnergy Solutions
21 Exhibit 2?

22 A. I do.

23 Q. What is that?

24 A. The errata sheet.

25 Q. Do you have any additions or corrections

1 to make to your testimony that's displayed in Exhibit
2 1 other than the errata or the changes that are
3 marked in Exhibit 2?

4 A. I do.

5 Q. Please tell us what changes you have.

6 A. On page 1 of my direct testimony, line
7 21, there should be a quotation mark after "S&P."

8 Q. Do you have any further changes?

9 A. I do not.

10 Q. If I asked you the questions that appear
11 in Exhibit 1 as modified by any changes that may be
12 in Exhibit 2, would your answers be the same as
13 appear in Exhibit 1 as modified by Exhibit 2?

14 A. Yes, they would.

15 MR. KUTIK: I have no further questions.

16 EXAMINER STENMAN: Thank you.

17 Cross, Mr. Petricoff?

18 MR. PETRICOFF: No questions, your Honor.

19 EXAMINER STENMAN: Ms. Spiller?

20 MS. SPILLER: Yes, thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. Spiller:

24 Q. Good morning, Mr. Swartz.

25 A. Good morning.

1 Q. You do not offer any testimony in this
2 proceeding in opposition to Duke Energy-Ohio's
3 proposed market rate offer, correct?

4 A. My testimony outlines four areas around
5 the credit provisions that I seek modification, three
6 of which modifications to Witness Northrup's
7 testimony were made, so on three of those I do agree
8 with his revised testimony now.

9 Q. So you are not disputing that the
10 competitive bidding process plans as a whole and as
11 proposed by Duke Energy-Ohio in this filing is not
12 open, fair, and transparent, are you?

13 A. No.

14 Q. And, sir, you are not offering any
15 opinion in this case with regard to Duke
16 Energy-Ohio's ability to recover FERC approved costs,
17 are you, sir?

18 A. No.

19 Q. Mr. Swartz, you are not disputing through
20 your testimony that PJM Interconnection, LLC is an
21 independent regional transmission organization
22 approved by the FERC, are you, sir?

23 A. No.

24 Q. And you are not offering an opinion as to
25 whether the blending period to which Duke Energy-Ohio

1 is subject under its proposed market rate offer
2 complies with the law, are you, sir?

3 A. No.

4 Q. With regard to your testimony, you've
5 indicated, Mr. Swartz, that you are the manager for
6 corporate credit risk for the FirstEnergy Solutions
7 company or FirstEnergy Corporation?

8 A. I'm employed by FirstEnergy Service
9 Company.

10 Q. And in that capacity you assist
11 FirstEnergy's business teams in striking the right
12 balance in mitigating the credit risk of its
13 counterparties, I believe you said at competitive and
14 reasonable cost, correct?

15 A. Yes.

16 Q. And in that instance, sir, are you
17 rendering service and guidance on behalf of the
18 regulated utilities within FirstEnergy?

19 A. Yes.

20 Q. Would you agree with me, sir, that it's
21 reasonable for a regulated utility, in considering
22 the credit requirements of its counterparties, to
23 also consider whether its ratepayers would be exposed
24 to additional cost?

25 A. Yes.

1 Q. And in fact, sir, the FirstEnergy
2 companies would have done that in compiling the
3 master service agreement that they utilized as part
4 of their competitive bidding process, correct?

5 A. Yes, that's correct.

6 Q. With regard to Duke Energy-Ohio's
7 proposed master service agreement, you're aware that
8 a supplier can post collateral in the form of cash or
9 a letter of credit, correct?

10 A. Yes.

11 Q. And I believe, sir, it's your
12 recommendation that Duke Energy-Ohio also incorporate
13 into its master service agreement the ability of a
14 supplier to post first mortgage bonds as a form of
15 collateral, correct?

16 A. Yes, that's correct.

17 Q. In the FirstEnergy master service
18 agreement first mortgage bonds did not function as a
19 primary or first form of collateral, did they, sir?

20 A. No, they did not.

21 Q. And, in fact, they were surplus margin
22 over margin of I believe \$400 million?

23 A. Yes, that's correct.

24 Q. And so, sir, would that mean that the
25 first mortgage bond would be a secondary form of

1 collateral under the FirstEnergy master service
2 agreement applicable only after a certain monetary
3 amount was triggered?

4 A. Yes, that's correct.

5 Q. Are you recommending, sir, a similar
6 provision here within Duke Energy-Ohio's master
7 service agreement?

8 A. I'm not opposed to having a limit.

9 Q. So you would not be opposed that if the
10 Commission were to accept your recommendation, they
11 would modify that to make the first mortgage bond a
12 secondary form of collateral?

13 A. Yes.

14 Q. If Duke Energy-Ohio had to call upon a
15 first mortgage bond because of supplier default,
16 would it have to initiate a foreclosure proceeding on
17 that bond?

18 A. Not necessarily. Like any bond, it can
19 be redeemed or it can be sold.

20 Q. Is there the potential, though, for
21 foreclosure proceeding?

22 A. In an extreme circumstance, yes.

23 Q. If there's not such a circumstance, sir,
24 Duke Energy-Ohio would have to call upon cash.

25 A. That's correct.

1 Q. And there's also not such a circumstance
2 of a foreclosure proceeding if Duke Energy-Ohio would
3 have to call upon a letter of credit that was posted
4 as collateral, correct?

5 A. Yes, that's correct.

6 Q. So there are additional costs unique to a
7 letter of -- I'm sorry, additional costs unique to a
8 first mortgage bond that are not applicable with
9 regard to collateral in the form of cash or a letter
10 of credit, correct?

11 A. Yes. All forms of collateral have some
12 form of cost.

13 Q. Is it fair to say, sir, that the costs
14 attributed to a first mortgage bond, was that one of
15 the considerations with the FirstEnergy companies in
16 having that as a second form of -- a secondary form
17 of collateral?

18 A. Yeah, but the primary benefit of having
19 the first mortgage bond is it offers a supplier some
20 flexibility and optionality in the collateral that it
21 can provide. Given the recent credit crisis I think
22 we're all aware of, the capital markets were
23 sometimes difficult for suppliers to be able to get
24 letters of credit or cash or even issue bonds, and
25 the market currently, still credit is tight.

1 So what this offers suppliers is another
2 form where they can fully utilize their assets to use
3 those as a form of collateral with minimal cost with
4 the exception being doing evaluation of the assets
5 that the bonds would be issued against.

6 Q. But the utility company, Duke
7 Energy-Ohio, is exposed to costs unique to calling
8 upon a first mortgage bond if the supplier should
9 default, correct?

10 A. Possibly. In an extreme circumstance,
11 yes.

12 Q. And with regard to the utility company's
13 exposure to that cost, would you find it reasonable,
14 sir, for the company to establish a rider through
15 which to recover supplier default costs related to
16 the competitive bidding process?

17 A. Yes.

18 Q. And, in fact, sir, the FirstEnergy
19 distribution utility companies currently have a
20 similar rider approved by this Commission in the form
21 of I believe it's their rider GCR? A generation --

22 A. I believe that's correct.

23 Q. Do you know, sir, whether Duke
24 Energy-Ohio is proposing a similar rider in this
25 proceeding?

1 A. I believe they are.

2 Q. And you have no opposition to such a
3 rider, do you, sir?

4 A. I do not.

5 Q. If the Commission, Mr. Swartz, does not
6 accept your recommendation to include a first
7 mortgage bond as a form of collateral, in Duke
8 Energy-Ohio's master service agreement, are you still
9 of the opinion that that master service agreement as
10 revised through Attachment F.1 to Exhibit 3 of the
11 company's filing should be approved by the
12 Commission?

13 A. Yes.

14 MS. SPILLER: Thank you, sir. Nothing
15 further.

16 EXAMINER STENMAN: Mr. Kurtz?

17 MR. KURTZ: No questions, your Honor.

18 EXAMINER STENMAN: OCC?

19 MS. HOTZ: No.

20 EXAMINER STENMAN: Mr. Yurick?

21 MR. YURICK: Nothing, thank you, your
22 Honor.

23 EXAMINER STENMAN: Mr. Olier?

24 MR. OLIER: No questions, your Honor.

25 EXAMINER STENMAN: Mr. Hart?

1 MR. HART: Nothing.

2 MR. JONES: No questions, your Honor.

3 EXAMINER STENMAN: Redirect?

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. Kutik:

7 Q. Mr. Swartz, you mentioned the phrase
8 several times "extreme circumstances." Could you
9 describe what you mean by that?

10 A. With regard to the first mortgage bond
11 and going through a foreclosure process, first there
12 would be need to be an event of default and then at
13 that point the bond would need to be redeemed or
14 sold.

15 In the event that it was redeemed, the
16 interests of the supplier posting the first mortgage
17 bond has a strong vested interest to find other ways
18 to compensate for that default because the first
19 mortgage bonds are pledged against their assets.
20 We're in the business of supplying power, so as those
21 assets become encumbered, that's not good for the
22 power supplier.

23 Q. Does a company that would post a first
24 mortgage bond as security have an additional
25 incentive not to default over other types of -- as

1 opposed to posting other types of collateral?

2 A. Absolutely. I would say even more so.

3 MR. KUTIK: No further questions.

4 EXAMINER STENMAN: Recross?

5 MS. SPILLER: No, your Honor.

6 EXAMINER STENMAN: Thank you, Mr. Swartz.

7 THE WITNESS: Thank you.

8 MR. KUTIK: Your Honor, FirstEnergy
9 Solutions moves for the admission of Exhibits 1 and
10 2.

11 EXAMINER STENMAN: Any objections?

12 MS. SPILLER: No, your Honor.

13 EXAMINER STENMAN: FirstEnergy Exhibits 1
14 and 2 will be admitted.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 MR. KUTIK: Your Honor, for our next
17 witness we call Louis D'Alessandris.

18 EXAMINER STENMAN: Please raise your
19 right hand.

20 (Witness sworn.)

21 EXAMINER STENMAN: Thank you.

22 MR. KUTIK: Your Honor, at this time we
23 would like to have marked as FirstEnergy Solutions
24 Exhibit 3 a document entitled Direct Testimony of
25 Louis D'Alessandris on behalf of FirstEnergy

1 Solutions Corp.

2 EXAMINER STENMAN: It will be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 - - -

5 LOUIS D'ALESSANDRIS

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

8 DIRECT EXAMINATION

9 By Mr. Kutik:

10 Q. Good morning, sir. Please introduce
11 yourself.

12 A. My name is Lou D'Alessandris. I'm the
13 manager of Market Intelligence for FirstEnergy
14 Solutions, Corp.

15 Q. Sir, do you have in front of you what's
16 been marked for identification as FirstEnergy
17 Solutions Exhibit 3?

18 A. I do.

19 Q. What is that?

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

21 Q. Do you have any additions or corrections
22 to make to that testimony today?

23 A. I do not.

24 Q. If I asked you the questions that appear
25 in Exhibit 3, would your answers be the same as

1 appear in Exhibit 3?

2 A. Yes.

3 MR. KUTIK: No further questions.

4 EXAMINER STENMAN: Any cross?

5 MR. PETRICOFF: No, your Honor.

6 MS. SPILLER: Briefly, thank you, your
7 Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Ms. Spiller:

11 Q. Good morning, Mr. D'Alessandris.

12 A. Good morning.

13 Q. Sir, you do not oppose the market rate
14 structure that has been offered by Duke Energy-Ohio
15 in its filing, do you, sir?

16 A. I do not oppose the structure itself, I
17 do have three specific issues.

18 Q. Sure, and we'll get to those.

19 A. Okay.

20 Q. But you are not disputing that Duke
21 Energy-Ohio's proposed competitive bidding process
22 plan is open, fair, and transparent, correct?

23 A. Correct. Sorry, correct.

24 Q. And you are not offering an opinion in
25 this case with regard to Duke Energy-Ohio's ability

1 to recover FERC approved costs, correct?

2 A. Correct.

3 Q. Sir, I'd like to refer to your testimony
4 on page 6. The question that begins on line 1
5 concerns your proposal or recommendation to the
6 Commission that it utilize an eight-quarter average
7 for purposes of arriving at the FPP rate that would
8 be incorporated into the company's Rider GEN,
9 correct?

10 A. Correct.

11 Q. I'm just curious, sir, as to why you
12 selected eight quarters, or two years, versus the
13 full term of the company's ESP.

14 A. We felt that eight years was a reasonable
15 enough of an approximation of the term length excuse
16 me, eight years, eight quarters. Eight quarters may
17 not be the absolute correct answer, maybe it is six
18 quarters, maybe it is ten quarters, but the important
19 point we're trying to make is Rider FPP has been
20 highly volatile over the past several years and we're
21 looking for a way to mitigate that volatility and
22 come up with a value that's fair and reasonable to
23 all parties.

24 Q. What eight quarters would you recommend
25 be utilized?

1 A. The eight quarters prior to the plan
2 going into place, so it would be calendar year 2010
3 and calendar year 2011.

4 Q. Do you know how that eight-quarter
5 average would compare to the projected FPP rates that
6 Duke Energy has for its fourth quarter -- I'm sorry,
7 for December 2011?

8 A. I do not.

9 Q. Your proposal, sir, to utilize an
10 eight-quarter average, is that applicable only to the
11 extent Duke Energy-Ohio has a 29th blending period
12 after which it is fully at market after the MRO.

13 MR. KUTIK: Can I have the questioned
14 read, please.

15 EXAMINER STENMAN: Please read that back.

16 (Record read.)

17 A. That eight-quarter average would only
18 apply during the blending period. After that there
19 would be no need for it.

20 Q. Under the blending period if Duke
21 Energy-Ohio were to make adjustments for fuel and
22 purchased power, how would your proposal prevent what
23 you describe as volatility in the fuel prices?

24 THE WITNESS: I'm sorry, could you reread
25 the question, please?

1 (Record read.)

2 A. It wouldn't. Our only concern with the
3 way that Rider FPP is being treated in Rider GEN is
4 that that rate is frozen for 29 months. If it's
5 allowed to fluctuate up or down, we would be okay
6 with it. Our concern is simply that Duke is holding
7 the fuel rider that happens to be in place in the
8 fourth quarter of 2011 constant for 29 months.

9 There's no guarantee that that rider
10 wouldn't be unusually high or unusually low during
11 that period. If it's allowed to fluct- -- continue
12 to fluctuate up or down, we would be okay with that.

13 Q. If we could switch topics, sir, I'd like
14 to talk about the payment priority rules. You offer
15 testimony on that as well, correct?

16 A. Yes, I do.

17 Q. And you're aware, sir, that the payment
18 priority rules for electric accounts are not the same
19 as the Commission's payment priority rules for
20 natural gas accounts, correct?

21 A. Correct.

22 Q. Your recommendation as set forth in your
23 testimony is that Duke Energy-Ohio's current waiver
24 regarding payment priorities be revoked, correct?

25 A. Correct.

1 Q. And pursuant to that waiver, sir, just
2 for clarity in the record, Duke Energy-Ohio utilizes
3 one payment priority set of rules, that set of rules
4 being those derived from the gas side.

5 A. Correct.

6 Q. And you know that Duke Energy-Ohio is the
7 only distribution -- electric distribution utility
8 that also offers natural gas service, correct?

9 A. To the best of my understanding, yes.

10 Q. If Duke Energy-Ohio were to implement the
11 recommendation that you are proposing and operate
12 under two different sets of payment priorities, do
13 you know what it would have to do to reconcile its
14 billing systems?

15 A. No, I do not.

16 Q. You are aware, sir, that it would incur
17 some cost in accommodating your proposal, correct?

18 A. I would assume there would be costs,
19 correct.

20 Q. Well, you've reviewed the docket that the
21 company filed in 2003 when it first obtained this
22 waiver, correct?

23 A. Yes, I have.

24 Q. And in the company's application in that
25 case, Case No. 02-564, the company submitted that at

1 a minimum and on the conservative side it would incur
2 initial costs of \$5 million if it had to conform to
3 two different payment priority rules, correct?

4 A. I believe that's correct, yes.

5 Q. And you have no reason to dispute that
6 2003 estimate, do you, sir?

7 A. I do not.

8 Q. 2002.

9 And you have no reason to dispute, sir,
10 that Duke Energy-Ohio would incur significant costs
11 today to accommodate your proposal of utilizing two
12 different payment priority rules, correct?

13 A. Correct.

14 Q. If Duke Energy-Ohio were to incur
15 significant costs in modifying its billing systems to
16 accommodate for two different payment priority rules,
17 do you have an opinion on who should bear the expense
18 of that undertaking?

19 A. I have no opinion on that, no.

20 Q. You have offered an opinion, sir, that
21 Duke Energy-Ohio's current practice of conforming
22 just to the gas payment priority rules has diminished
23 retail competition in its service territory, correct?

24 A. Correct.

25 Q. And to be clear, the competition there

1 would be the retail competition on the electric side,
2 correct?

3 A. That's correct.

4 Q. Sir, is it your opinion that switching
5 percentages of 60 percent are not representative of a
6 developed competitive market?

7 A. Well, I can't comment on that. I can
8 only speak from FirstEnergy Solutions' experience,
9 and that being exposed to the partial payment
10 priority that is separate from the state law for
11 electric utilities means that we have to aggressively
12 credit-screen customers to ensure that we get paid.
13 As such, that limits our pool of customers that we
14 can go after and thereby would limit competition for
15 those customers.

16 Q. You further describe the other
17 limitation, if I may, as Duke's current purchase of
18 accounts receivable from alternative suppliers,
19 correct?

20 A. Correct.

21 Q. Are you familiar with how Duke
22 Energy-Ohio treats accounts receivable from
23 alternative suppliers on its gas side?

24 A. I am not, no.

25 Q. Sir, I would ask you to assume that Duke

1 Energy-Ohio witness Jim Ziolkowski testified
2 yesterday that with regard to natural gas accounts,
3 the company purchases the accounts from
4 competitive -- or, I'm sorry, alternative suppliers
5 at no discount, that it pays those suppliers on the
6 20th day of the day following the month in which
7 they're billed.

8 A. Okay.

9 Q. Would such a proposal further -- strike
10 that.

11 Would such a proposal as how Duke
12 Energy-Ohio treats alternative suppliers' accounts
13 receivable on the gas side, is that a workable
14 solution for you?

15 A. I believe so. We are in several other
16 electric markets, as shown in my Exhibit 2 of my
17 testimony, where there are zero percent discounts and
18 we do participate in all of those.

19 Q. And, sir, in that circumstance neither
20 Duke Energy-Ohio nor its ratepayers would be exposed
21 to incurring significant expense in revising billing
22 systems to accommodate two different payment priority
23 rules, correct?

24 A. Correct.

25 Q. You've just referenced the exhibit to

1 your testimony.

2 A. Yes.

3 Q. The Exhibit LMD-2. Is Duke Energy-Ohio
4 the only utility in Ohio that has a purchase of
5 accounts receivable for CRES providers?

6 A. Yes, they are.

7 Q. Going back to the circumstance that we
8 described with aligning the treatment of certified
9 supplier accounts receivable on the electric side
10 with that to how Duke Energy-Ohio handles accounts
11 receivable from suppliers on the gas side, would you,
12 sir, support the implementation of an uncollectible
13 expense rider for Duke Energy-Ohio?

14 THE WITNESS: I'm sorry, could you repeat
15 the question?

16 (Record read.)

17 Q. And I can be more specific.

18 A. Yes.

19 Q. An uncollectible expense rider to cover
20 those uncollectible costs associated with the
21 accounts receivable that the company has purchased
22 from competitive suppliers.

23 A. Yeah, we would not object to that.

24 Q. Would you agree with me, sir, that such a
25 rider would have to be nonbypassable?

1 A. Yes.

2 Q. And if the Commission does not accept the
3 recommendations as outlined in your direct testimony,
4 would you as the manager of Market Intelligence for
5 FirstEnergy Solutions still recommend that the
6 Commission approve Duke Energy-Ohio's market rate
7 offer?

8 THE WITNESS: I'm sorry, could you
9 restate the question, please, or could you reread it,
10 please?

11 (Record read.)

12 A. We certainly would like to see those
13 three issues changed prior to approval.

14 Q. But you still support the concept of the
15 market rate offer, correct?

16 A. The concept of the market rate offer,
17 yes, we do support that.

18 MS. SPILLER: Thank you. Nothing
19 further.

20 EXAMINER STENMAN: Mr. Kurtz?

21 MR. KURTZ: No questions, your Honor.

22 EXAMINER STENMAN: OCC.

23 MS. HOTZ: (Shakes head.)

24 EXAMINER STENMAN: Mr. Yurick?

25 MR. YURICK: No questions, thank you,

1 your Honor.

2 EXAMINER STENMAN: Mr. Oliker?

3 MR. OLIKER: No questions, your Honor.

4 EXAMINER STENMAN: Mr. Hart?

5 MR. HART: No questions.

6 EXAMINER STENMAN: Mr. Jones?

7 MR. JONES: No questions, your Honor.

8 EXAMINER STENMAN: Redirect?

9 MR. KUTIK: None, your Honor.

10 EXAMINER STENMAN: Thank you.

11 MR. KUTIK: At this time, your Honor, we
12 move for the admission of FirstEnergy Solutions
13 Exhibit 3.

14 EXAMINER STENMAN: Any objections?

15 (No response.)

16 EXAMINER STENMAN: FirstEnergy 3 will be
17 admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

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

21 (Discussion off the record.)

22 EXAMINER STENMAN: Go back on briefly.

23 We're adjourned for the day. We'll
24 reconvene on Tuesday at 9 a.m. Thank you.

25 (The hearing adjourned at 11:27 a.m.)

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Friday, January 14, 2011, and carefully compared with my original stenographic notes.

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

My commission expires June 19, 2011.

(MDJ-3777)

- - -

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/18/2011 10:13:02 AM

in

Case No(s). 10-2586-EL-SSO

Summary: Transcript Transcript of Duke Energy Ohio for Approval of a Market Rate Offer hearing held on 01/14/11. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.