

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

2 - - -

3 In the Matter of the :
4 Application of Duke :
5 Energy Ohio for Approval :
6 of a Market Rate Offer to :
7 Conduct a Competitive :
8 Bidding Process for : Case No. 10-2586-EL-SSO
9 Standard Service Offer :
10 Electric Generation :
11 Supply, Accounting :
12 Modifications, and Tariffs:
13 for Generation Service. :
14 - - -

10 PROCEEDINGS

11 before Ms. Katie Stenman and Ms. Christine M.T.
12 Pirik, Hearing Examiners, at the Public Utilities
13 Commission of Ohio, 180 East Broad Street, Room 11-A,
14 Columbus, Ohio, called at 9:00 a.m. on Wednesday,
15 January 12, 2011.
16 - - -

17 VOLUME II - CONFIDENTIAL EXCERPTS

18 - - -

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(CONFIDENTIAL PORTION.)

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

1 We're in the confidential portion of the
2 transcript. I would again just ask Duke to look
3 around the room and make sure that it believes
4 everyone in the room is a party to a protective
5 agreement.

6 MS. SPILLER: Your Honor, I will admit
7 that I do not have the benefit of having met everyone
8 in the room; simply would ask for their
9 representation. We do have confidentiality
10 agreements from all parties with the exception of the
11 City of Cincinnati. Mr. O'Brien is not here, nor has
12 his -- has a colleague of his identified themselves,
13 so I'm assuming everyone else is affiliated with the
14 parties that have signed confidentiality agreements
15 or Commission staff.

16 EXAMINER STENMAN: Okay. Mr. Olier, you
17 may continue.

18 MR. OLIER: Your Honor, would you like
19 me to distribute the unredacted versions, and how
20 many copies? Would you also need copies yourselves?

21 EXAMINER STENMAN: We have copies.

22 MR. OLIER: So one to the court reporter
23 and one to the witness?

24 EXAMINER STENMAN: Yes.

25 Whenever you're ready.

1 Q. (By Mr. Olikar) Ms. Janson, can you
2 summarize why Duke Energy-Ohio decided to accelerate
3 the time line to exit the Midwest ISO?

4 A. My understanding was that a big
5 consideration in the acceleration of the effective
6 date of the move to PJM from MISO was to further
7 align with the expiration of our electric security
8 plan to provide, again, further clarity and
9 convenience with respect to our move.

10 As I've earlier stated, it's certainly my
11 obligation as the president of Duke Energy-Ohio to
12 assure that our customers have access to a safe,
13 reliable, and affordably priced generation, and in
14 that regard I thought that alignment made sense with
15 respect to the move that we lined those things up
16 from a date perspective.

17 Q. Could you please look at page 3 of 4 of
18 the document that has been marked as IEU-Ohio Exhibit
19 4. There's a bullet point that states, quote,
20 "Provides the opportunity for [REDACTED]
21 [REDACTED] to legacy coal assets in PJM market." What are
22 the legacy coal assets?

23 MS. SPILLER: I'm going to object, your
24 Honor, to the relevance, and also this is so far
25 afield of the scope of Ms. Janson's direct testimony.

1 EXAMINER STENMAN: It will be overruled.
2 She can answer if she knows.

3 A. I'm sorry, can you repoint me to the
4 reference?

5 Q. Page 3 of 4.

6 A. Page 3 of 4.

7 Q. At the top.

8 A. I would have you ask Mr. Whitlock.

9 Q. Do you know --

10 A. Again, legacy coal assets are within his
11 area of responsibility.

12 Q. Okay. Did Duke Energy-Ohio perform any
13 studies to estimate the prices for generation
14 capacity at PJM with and without Duke Energy-Ohio as
15 a member of PJM?

16 MS. SPILLER: I'm going to again, your
17 Honor, if I may object. This case is not about the
18 decision to realign. The Commission is not in a
19 position to reevaluate that decision, it's a FERC
20 jurisdictional decision. There's been no indication
21 that this line of questioning has any bearing
22 whatsoever on the issues for a determination in this
23 proceeding.

24 MR. OLIKER: Well, I think there are
25 several reasons why it's relevant and one of the

1 issues I'm getting at here is the regulated utility
2 appears to be making decisions to benefit generation
3 assets and that is a major problem with corporate
4 separation, and I'm having difficulty finding that
5 the regulated utility president doesn't even know why
6 they are making this recommendation.

7 A. I think I've outlined many of the --

8 EXAMINER STENMAN: Ms. Janson.

9 THE WITNESS: Sorry.

10 EXAMINER STENMAN: I'm sorry, but you
11 have to wait.

12 MR. OLIKER: And, your Honors, I would
13 also add that the issue of reliable and affordable
14 energy prices may be affected if, in fact, PJM
15 capacity prices are raised by moving from one RTO to
16 the other.

17 EXAMINER STENMAN: The objection will be
18 overruled.

19 Mr. Olikier.

20 MR. OLIKER: I believe there's a question
21 pending, your Honor.

22 (Record read.)

23 A. I am not aware.

24 Q. (By Mr. Olikier) I believe some of those
25 studies may be included in the exhibits that have

1 already been discussed. Would you be able to explain
2 who would know about those studies?

3 A. Mr. Jennings or Mr. Whitlock.

4 Q. Thank you.

5 Turning back to page 2 of 4 of the
6 document marked as IEU-Ohio Exhibit 4, the last
7 bullet point on that slide indicates that June 1,
8 2012, transfer results in [REDACTED] and [REDACTED]
9 [REDACTED]. To make the record clear, is the [REDACTED]
10 [REDACTED]

11 A. Yes.

12 Q. To make the record clear, what does
13 "ATDCF" stand for?

14 MS. SPILLER: I'm going to again object
15 to the relevance.

16 EXAMINER STENMAN: Overruled.

17 A. I do not know. Discounted cash flows?
18 The A and the T.

19 Q. Thank you.

20 Would Mr. Whitlock know the answer to
21 this question?

22 A. He would.

23 Q. Okay. And do you know what EBITDA means?

24 A. I do.

25 Q. Could you please describe it?

1 A. Earnings before interest, taxes,
2 depreciation, amortization.

3 Q. Thank you.

4 Do you know if the economic analysis
5 benefits to Duke Energy-Ohio reflect net benefits?
6 In other words, are the estimated benefits net
7 against any of the costs that Duke Energy-Ohio
8 expects to incur as a result of moving to PJM?

9 A. [REDACTED]

10 Q. What are the costs associated with moving
11 to PJM?

12 MS. SPILLER: Your Honor, if I may, this
13 case is not about the issue of cost recovery
14 associated with the realignment from Duke Energy-Ohio
15 from Midwest ISO to PJM. Now we have moved beyond
16 alleged and unsubstantiated corporate separation
17 violations to cost recovery that is not even within
18 the parameters of this proceeding.

19 EXAMINER STENMAN: Ms. Spiller, at this
20 time the Bench disagrees with you and you've made a
21 continuing number of objections to this line of
22 questioning, which the Bench has allowed. Would you
23 like to make a standing objection at this time?

24 MS. SPILLER: Your Honor, I would be
25 happy to make a standing objection if that would help

1 to clarify the record. Succinctly this case is about
2 whether Duke Energy-Ohio's filing for which it is
3 seeking approval of a market rate offer complies with
4 five statutory requirements as well as the
5 Commission's rule requirements pertinent to the MRO
6 filing.

7 With regard to corporate separation, the
8 Commission's rule requirements require that Duke
9 Energy-Ohio demonstrate that it have a corporate
10 separation plan, that it is in compliance with that
11 corporate separation plan, it is further to identify
12 whether any changes or amendments to that corporate
13 separation plan are intended, whether there are any
14 existing or anticipated waivers to the corporate
15 separation plan.

16 With regard to RTO membership, the filing
17 requirements, the statutory requirements pursuant to
18 which this application will be reviewed are whether
19 Duke Energy-Ohio belongs to an independent RTO, a
20 FERC approved regional transmission organization,
21 whether that RTO has an independent market monitor
22 function.

23 The fact that Duke Energy-Ohio is
24 realigning to PJM is relevant insofar as it
25 demonstrates our current and anticipated membership

1 in a FERC approved independent RTO. The PJM has an
2 independent market monitor. That realignment is also
3 relevant in respect of our competitive bidding plan
4 and how the suppliers, the perspective participants
5 in that plan can prepare.

6 Why we decided to move, the underpinnings
7 for that decision, the costs associated with that
8 decision are well outside the scope of this
9 proceeding. We have identified particular riders,
10 but as is clear from the testimony submitted in
11 support of this application, we are not asking this
12 Commission to render a decision as to what specific
13 FERC approved costs and what retail rates may be
14 imposed upon customers upon the approval of this MRO.

15 EXAMINER STENMAN: Thank you,
16 Ms. Spiller.

17 MR. JONES: Your Honors, if I may speak
18 on behalf of staff, Ms. Spiller, there are costs
19 associated here with the transfer from MISO to PJM,
20 and the company's asking to collect those costs
21 through riders BTR, so I mean, if they're saying
22 that, you know, they're willing to remove those costs
23 from those riders, saying it's not an issue in this
24 case, but as it stands right now it is an issue in
25 this case that the Commission has to review as to

1 what those costs are reasonable for the impact to
2 customers, ratepayers.

3 So it's a big component of this case, and
4 we disagree with Ms. Spiller's characterization.

5 MR. OLIKER: I would also like to add if
6 you look at the FirstEnergy case, corporate
7 separation was a key aspect of that and we're trying
8 to further determine the facts here and the reasoning
9 why [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 EXAMINER STENMAN: At this point,
13 Ms. Spiller, the objection will be noted for the
14 record, but the Bench finds this line of questioning
15 permissible and, Mr. Olikier, you may continue.

16 MR. OLIKER: I believe we still have a
17 pending question, your Honor.

18 EXAMINER STENMAN: Could you read that
19 back?

20 (Record read.)

21 A. I can certainly talk about the costs, I'd
22 like to also talk about the benefits if I might.
23 Costs from the move from MISO to PJM would obviously
24 include exit fees from MISO, MTEP, and RTEP in terms
25 of the move to PJM.

1 As I outlined in my testimony yesterday I
2 very much believe there are benefits to Ohio
3 customers in terms of the move and would like to be
4 allowed to restate those for the record.

5 Certainly one of the things that I looked
6 at in terms of evaluating this move was that
7 customers would be neutral to benefited in terms of
8 the move. I've talked about the enhanced number of
9 interconnections with Dayton and AEP as opposed to
10 those interconnections thereby improving reliability.

11 I've talked about reduced congestion for
12 our customers. And I've also talked about many of
13 the decisions around the generating stations that
14 could be enhanced by virtue of membership in
15 Pennsylvania only.

16 The further development of a competitive
17 market in Ohio seems to be one of the tenets that
18 both the Commission and the legislature intended and
19 we very certainly believe that the move from MISO to
20 PJM will further enhance development of that
21 competitive market.

22 Q. Ms. Janson, is it correct that performing
23 its internal analyses Duke Energy-Ohio assumed it
24 would [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 A. I think what you need to understand is
3 that in terms of performing these analyses they were
4 based on [REDACTED]

5 [REDACTED]

6 [REDACTED] I would tell you for purposes of the white
7 papers we put together for the transaction review
8 committee, those were directional in nature and were
9 intended for their review of the transaction.

10 MR. OLIKER: Can you please direct the
11 witness to answer the question, your Honor.

12 MS. SPILLER: Your Honor, I believe that
13 she did answer the question, she's certainly
14 permitted to explain her answer.

15 MR. OLIKER: It was a "yes" or "no"
16 question, your Honor.

17 EXAMINER STENMAN: Let's have the
18 question read back.

19 (Record read.)

20 EXAMINER STENMAN: Ms. Janson, would you
21 answer the question?

22 A. I would respond that that would certainly
23 be one of the scenarios that would have been
24 considered, among a number.

25 Q. Sorry to bounce around, but does Duke

1 Energy-Ohio pseudo-tie any of its generation from one
2 entity to the other?

3 A. I would refer that question to
4 Mr. Jennings.

5 Q. Mr. Jennings or Mr. Whitlock, which one?

6 A. Mr. Jennings.

7 Q. Okay. What is Duke Energy-Ohio's market
8 area peak load?

9 A. I do not know the answer.

10 Q. Would you agree that Duke Energy-Ohio is
11 currently approximately [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 A. I think that would be a fairly accurate
15 approximation.

16 Q. Was the decision to have Duke Energy-Ohio
17 move from the Midwest ISO to PJM based upon Duke
18 Energy-Ohio's [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 A. Not solely, no.

22 Q. But was that a factor?

23 A. Yes.

24 Q. What are the benefits to customers on the
25 regulated side of Duke Energy-Ohio's business that

1 you believe exist to support your decision to
2 recommend Duke Energy-Ohio exit the Midwest ISO and
3 join PJM?

4 A. I think I've outlined those several
5 times. I'd be happy to do so again. I think those
6 benefits include, you know, possible benefits to be
7 obtained economically from the move, again, we've
8 talked about interconnections and enhanced
9 reliability. Reduced congestion, having Duke
10 Energy-Ohio in the same market as the other Ohio
11 utilities thereby benefiting competition, allowing
12 CRES providers some transparency.

13 I think all together it is a better
14 market for Duke Energy-Ohio customers and I don't
15 know if you have any view toward MISO's expected
16 expansion plans, but they are very frightening to me
17 on behalf of Duke Energy-Ohio that billions of
18 dollars could be spent to bring renewables in from
19 the west into this market for which Duke Energy-Ohio
20 customers would be ultimately responsible.

21 I would much rather see Duke Energy-Ohio
22 regulated customers in a market that is fraught with
23 demand response, energy efficiency, commercial
24 practices, and an ability to have a long-term view of
25 this market so that we can make good, solid business

1 decisions around the generation and around the supply
2 of our customers.

3 Q. Do you have any studies or reports that
4 you've relied upon to quantify these benefits?

5 A. Certainly the studies that were put
6 together in terms of supporting our recommendation to
7 the transaction review committee.

8 Q. Were any of those studies performed at
9 your direction or by employees directly in your
10 supervision?

11 A. No.

12 MR. OLIKER: I have no further questions,
13 your Honor.

14 EXAMINER STENMAN: Thank you.

15 Redirect?

16 MS. SPILLER: Your Honor, may we have a
17 moment, please?

18 EXAMINER STENMAN: You may.

19 MS. SPILLER: Thank you.

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

22 (Discussion off the record.)

23 EXAMINER STENMAN: Let's go back on the
24 record.

25 Ms. Spiller.

1 MS. SPILLER: Thank you, your Honor.

2 - - -

3 REDIRECT EXAMINATION

4 By Ms. Spiller:

5 Q. Ms. Janson, do you recall a question from
6 Mr. Olier regarding an assumption related to [REDACTED]
7 [REDACTED] that was contained within the materials
8 presented to the TRC?

9 A. I do.

10 Q. And would you describe that as a
11 conservative assumption, ma'am?

12 A. I would.

13 Q. "Conservative" meaning worst-case
14 scenario?

15 A. Correct. It would certainly be our
16 practice in terms of making recommendations to the
17 TRC that we provide the, you know, the worst case, if
18 you will, so in the event that any of these things
19 come to pass, the TRC would have a good understanding
20 of their analysis of the transaction.

21 Q. Ms. Janson, what is Duke Energy-Ohio
22 seeking in connection with this application with
23 respect to transmission-related riders?

24 A. In connection with this proceeding Duke
25 Energy-Ohio is seeking the establishment of a rider,

1 Rider BTR, that would provide the mechanism by which
2 we could recover FERC related -- FERC approved
3 transmission costs. Duke Energy-Ohio is not
4 specifically requesting any costs to be put in that
5 rider at this time, that would be requested in a
6 later proceeding before the Commission.

7 MS. SPILLER: Thank you.

8 Your Honor, nothing further.

9 EXAMINER STENMAN: Any recross?

10 MR. OLIKER: Just one question, your
11 Honor.

12 EXAMINER STENMAN: Okay.

13 - - -

14 RECROSS-EXAMINATION

15 By Mr. Oliker:

16 Q. Going back to the [REDACTED]
17 [REDACTED], when the transaction review
18 committee made their decision, they assumed that
19 there was still value in the transaction even if
20 [REDACTED]; is that correct?

21 A. Can you restate the question, please?

22 Q. Even under a worst-case scenario the
23 transaction review committee still thought the
24 transaction had value exiting the Midwest ISO and
25 joining PJM.

1 A. Correct.

2 MR. OLIKER: Thank you. No further
3 questions, your Honor.

4 EXAMINER STENMAN: Anyone else?

5 MR. HART: Just one.

6 EXAMINER STENMAN: Yes.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Hart:

10 Q. I just want to clarify the time line.

11 I'm looking at Exhibit 6 which is the e-mail --

12 MS. SPILLER: Your Honor, I think a time
13 line question is beyond the scope of redirect
14 examination.

15 MR. HART: I think the questions were
16 vague as to which approval and when, and there were
17 two, so I'm just trying to clarify that it happened
18 twice.

19 MS. SPILLER: I would --

20 EXAMINER STENMAN: Go ahead, Mr. Hart.

21 Overruled.

22 Q. (By Mr. Hart) Exhibit 6 is the e-mail and
23 I understand this saying that the TRC had approved
24 this transaction in February with respect to a 2014
25 date, correct?

1 A. As I've stated several times, the TRC's
2 role is to make a recommendation to Mr. Rogers and it
3 wouldn't be unc customary for us to make presentations
4 to them at any number of times as we felt like
5 information needed to update -- needed to be updated,
6 so Mr. Whitlock and I presented to the transaction
7 review committee, yes, on a couple dates last year,
8 2010, in February and in May.

9 Q. Okay. And the February presentation was
10 the White Paper that's been marked as Exhibit 2?

11 A. The materials provided to the transaction
12 review committee in advance of our February
13 discussion would have included the white paper.

14 Q. I'm just trying to verify which version.
15 Was it Exhibit No. 1 -- I'm sorry, Exhibit 1 the
16 February version?

17 A. I only have the redacted copy of that but
18 I believe that --

19 Q. Do you recognize that as the February
20 version?

21 A. I do.

22 Q. Okay.

23 A. Yeah.

24 Q. So Exhibit 1 goes with February and then
25 is it correct that Exhibit 2 goes with the May

1 approval?

2 A. Yes.

3 Q. Okay.

4 MR. HART: That's all I wanted to
5 clarify. Thank you.

6 EXAMINER STENMAN: Anyone else?

7 (No response.)

8 EXAMINER STENMAN: Thank you, Ms. Janson.

9 (OPEN RECORD.)

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(CONFIDENTIAL PORTION.)

EXAMINER STENMAN: Again, I would ask
Duke to just look around the room and see if there's
anyone that they don't believe should be here.

MS. SPILLER: I think, your Honor, we're
fine. Thank you.

EXAMINER STENMAN: Mr. Olier.

- - -

1 RECROSS-EXAMINATION

2 By Mr. Olikar

3 Q. Going back to the pseudo-tying issue,
4 after Duke Energy-Ohio moves to PJM, why is it
5 necessary for [REDACTED]

6 [REDACTED]?

7 A. [REDACTED] -- I
8 don't know exactly why.9 Q. Do you think, if that was the case, that
10 it had to be [REDACTED]11 [REDACTED]
12 A. No. I think my answer to Ms. Spiller's
13 question was that if you [REDACTED]14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 Q. Okay, moving on. Do you have unredacted
20 versions of the documents that we previously
21 discussed, IEU-Ohio Exhibits 1 through 7?

22 A. I do not. At least I don't think I do.

23 Q. Particularly Exhibit 4. I think you
24 might have that one.

25 A. I do have Exhibit 4.

1 Q. Okay. On numbered page 3 of 4 of the
2 document, numbered IEU-Ohio Exhibit 4, there's a
3 bullet point that states, quote, Provides the
4 opportunity for [REDACTED] to legacy
5 coal assets in PJM market, close quotation. What are
6 the legacy coal assets?

7 A. The legacy coal assets are enumerated in
8 my testimony, let me find that, attachment CRW-1 of
9 1.

10 Q. And does this [REDACTED] that's
11 mentioned on the slide indicate that Duke Energy-Ohio
12 believes [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 A. Could you repeat the question? I'm
16 sorry.

17 MR. OLIKER: Could you repeat it, please?

18 (Record read.)

19 A. No.

20 Q. What does that slide mean to you, then?

21 A. The entirety of the slide or the --

22 Q. No; that portion.

23 A. It says that PJM has a structured forward
24 capacity market, MISO has month-ahead compliance, and
25 assumes that DE-Ohio is in an auction format rather

1 than after the current ESP.

2 Q. I'm referring to the quotation that I
3 read to you.

4 A. Provides the opportunity for [REDACTED]
5 [REDACTED] to legacy coal assets in PJM?

6 Q. Correct. What does that mean to you?

7 A. I think that's in response to why I
8 accelerated the date.

9 Q. What does the [REDACTED]
10 mean? Could you quantify that?

11 A. Did I quantify?

12 Q. Could you please describe the meaning of
13 that?

14 A. [REDACTED]
15 again, if you look at some of the strategic things
16 that we talked about in other documents that I think
17 have been introduced in testimony, and I'm referring
18 to the white papers and then some of the appendices
19 to the white paper talk about the ability of us to

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED].

24 So some of the [REDACTED]

25 [REDACTED] is associated with the -- [REDACTED]

1 is associated with those types of things.

2 Q. Did Duke Energy-Ohio perform any studies
3 or estimates of the prices for generation capacity in
4 PJM with and without Duke Energy-Ohio as a member of
5 PJM?

6 A. We did.

7 Q. What were the results of those studies?

8 A. I'd tell you that there were various and
9 sundry results because I think when you talk about --
10 when you talk about the move of DE-Ohio, it requires
11 a lot of conjecture about [REDACTED]
12 and, for example, you know, in the TRC white paper we
13 used an estimate of [REDACTED]
14 [REDACTED], and I'll give you an idea about the
15 complexity of trying to answer the question that you
16 asked.

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 There's also, I think, a significant
24 benefit for customers by moving to PJM in the areas
25 of demand response. If you look at PJM's footprint,

1 they have probably in the area of [REDACTED] percent, I'm
2 going to -- I think I'm answering your question -- [REDACTED]
3 percent demand response. So if you take Duke
4 Energy-Ohio's and Duke Energy-Kentucky's load
5 obligation of approximately [REDACTED] megawatts, and you
6 back off [REDACTED] percent and say that we get a similar
7 proportion of demand response and energy efficiency
8 that's been in PJM's footprint, that of the [REDACTED],
9 and again, subject to Mr. Hart's math, right,
10 [REDACTED] percent of [REDACTED] megawatts, that that [REDACTED]
11 [REDACTED] that was referred to in the
12 TRC paper [REDACTED].

13 So we did various analysis that showed no
14 short position. A [REDACTED]
15 [REDACTED] was one of the scenarios, but you could
16 actually [REDACTED]
17 [REDACTED].

18 Q. I think [REDACTED] percent times [REDACTED] is [REDACTED].

19 A. Right. Plus [REDACTED], which is
20 approximately [REDACTED] was the point that I was
21 trying to make. Did I say it was [REDACTED]? You're right,
22 though, [REDACTED] percent of [REDACTED].

23 Q. Now turning to slide 2 of 4 of IEU-Ohio
24 Exhibit 4, the last bullet point in that slide
25 indicates that a June 1, 2012, transfer results in

1 [REDACTED] and [REDACTED].

2 A. Did you say page 2 of 4? I'm sorry, I
3 went to page 4 of 4.

4 Q. Page 2 of 4.

5 A. I'm sorry.

6 Q. The last bullet.

7 A. Yes.

8 Q. I slightly touched on this with
9 Ms. Janson, but her answers were incomplete. Can you
10 please clarify for the record that [REDACTED] stands for
11 [REDACTED] after [REDACTED]?

12 A. It does.

13 Q. And would you please explain what ATDCF
14 means?

15 A. It's the after tax discounted cash flows.

16 Q. And what does EBITDA mean?

17 A. It means earnings before interest, tax,
18 depreciation, and amortization.

19 Q. Going back to the pseudo-tying, does Duke
20 Energy-Ohio presently pseudo-tie any of its
21 generation from one balancing authority or market
22 area or another?

23 A. We do.

24 Q. And which assets do you pseudo-tie?

25 A. Subject to correction, I believe we

1 pseudo-tie Stuart 1, 2, 3, 4, Killen, and Conesville.

2 Q. And what do you pseudo-tie them to?

3 A. To MISO.

4 Q. And why is it necessary to pseudo-tie
5 these assets?

6 A. Why is it necessary? Those assets are --
7 under the current ESP they're committed to the
8 customer, right, under the ESP, they're dedicated to
9 the customer, and it makes sense to have the load,
10 and the generation that's committed to that customer
11 in the same market as the load.

12 Q. In evaluating its RTO options did Duke
13 Energy-Ohio consider a scenario in which [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 A. So that would contemplate a scenario
18 where you said we're going to move all of the

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Q. Yes.

23 A. I don't know.

24 Q. In evaluating its RTO options did Duke
25 Energy-Ohio consider a scenario in which Duke

1 Energy-Ohio remained a member of the Midwest ISO but
2 the gas assets of PJM were pseudo-tied into the
3 Midwest ISO?

4 A. I don't know.

5 Q. Duke has proposed that it wants to go to
6 market --

7 A. Can I go back on that one? The first
8 question, again, I think that if we did do the math,
9 and I don't know that we did the math, I don't think
10 that that's a very logical assumption because of the
11 reason we just talked about. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Q. And are you an electrical engineer that
15 you would know that for sure?

16 A. I'm not an electrical engineer. But I'd
17 bet you dollars to green doughnuts that I'm right.

18 Q. Now, Duke has proposed that it wants to
19 go 100 percent to market after year 3. Isn't it
20 possible that at that time Duke's generation won't be
21 serving any of its load?

22 A. I think it would be, again, set-aside the
23 potential for Duke Energy-Ohio as a legal entity to
24 participate in the auction, I think that that's fair.

25 MR. OLIKER: No further questions, your

1 Honor.

2 EXAMINER STENMAN: Mr. Hart, you had --

3 MR. HART: Yes, just the one topic.

4 - - -

5 RECROSS-EXAMINATION

6 By Mr. Hart:

7 Q. How much of the shopping load that's gone
8 to Duke Retail is covered by [REDACTED]

9 [REDACTED]

10 A. We already tried that one and I told you
11 that I -- oh, under confidentiality.

12 EXAMINER STENMAN: Wait. Wait. Don't
13 answer that.

14 THE WITNESS: I'm not answering it till
15 somebody tells me to; how's that?

16 MR. DORTCH: May I consult with counsel
17 for DE-Ohio for a moment?

18 EXAMINER STENMAN: Sure.

19 MR. DORTCH: Thank you.

20 Your Honor, on behalf of Duke Energy
21 Retail -- there are questions being asked here that
22 asks for confidential and proprietary information
23 concerning Duke Energy Retail Sales. Duke Energy
24 Retail Sales has no confidentiality agreement with
25 anyone in this room. This is proprietary information

1 and we object. It's well beyond or at least seems
2 beyond the scope of the proceeding to me, but more
3 importantly this is proprietary information that
4 should not be revealed in an unprotected manner.

5 EXAMINER STENMAN: Do you have a
6 response, Mr. Hart?

7 MR. HART: Well, the response is that
8 fundamental to this proceeding is the claim that 60
9 percent of Duke Energy's load is gone to market and
10 if effectively that same load actually is being
11 served by Duke Energy-Ohio, that's not accurate. So
12 I think it's fair to ask how much of the load is
13 truly being served by Duke Energy-Ohio generation.

14 MR. DORTCH: And you're -- I'm sorry,
15 Mr. Hart. May I?

16 You're asking about hedging positions
17 that have been taken by the company. To the extent
18 that we're talking about, Duke Energy Retail Sales,
19 again, that is confidential proprietary information
20 belonging to that entity.

21 EXAMINER PIRIK: The issue is,
22 Mr. Dortch, you're absolutely right, there is no one
23 in this room who could remain in this room to hear
24 this answer with the exception of yourself, the
25 witness, and PUCO staff individuals and the court

1 reporter. I think Mr. Hart makes a good point, you
2 know, that there's a possibility if the information
3 is relevant, unfortunately, Mr. Hart, you don't have
4 a confidentiality agreement with Duke Retail so even
5 though you can ask the question, you can't hear the
6 response.

7 MR. HART: Well, I will certainly enter
8 into one if one were ever proffered to me, it's not
9 been. I guess the second issue I would put is that
10 Duke Energy-Ohio --

11 EXAMINER PIRIK: Mr. Hart, I wasn't
12 asking for an argument. I was making a point that
13 you don't have a confidentiality agreement with Duke
14 Retail, I'm not saying that you couldn't in the
15 future have a confidentiality agreement with them or
16 work with them to see whether or not you could or
17 other individuals could work with Duke Retail. If
18 there's any problem entering into that, then, you
19 know, you could bring that before us and we could see
20 what we could do.

21 There are certain circumstances where
22 there are items that are deemed highly confidential
23 and, for example, you know, perhaps a competitor
24 wouldn't be an appropriate entity to have that
25 information, and if that's an argument, then, you

1 know, Duke Retail can bring that up to us.

2 But at this point where we are right now
3 is that the, I think you've made the argument that it
4 may, in fact, be relevant information so I think we
5 need to ask the witness to answer, but he can't
6 answer with anyone in the room except staff and
7 Mr. Dortch. I think it's just a couple-word answer.
8 It's not a long answer, I don't think, it's just a
9 number, I think. Isn't it?

10 THE WITNESS: Can we make sure, can we
11 make sure the witness understands the question?

12 EXAMINER PIRIK: Well, and we can go back
13 to that, but assuming, yeah, maybe -- I don't know
14 where the question is, let's go back to the question
15 and then you can tell us how long of an answer it is.

16 THE WITNESS: I'll try.

17 (Record read.)

18 MR. DORTCH: And I'm sorry, I want to
19 have that question reread again slowly because I want
20 to write it down to make certain that I have it.

21 (Record read.)

22 (Discussion off the record.)

23 EXAMINER PIRIK: We'll go back on the
24 record.

25 (Record read.)

1 THE WITNESS: I don't know, and I can't
2 tell you easily.

3 EXAMINER PIRIK: Mr. Hart.

4 Q. (By Mr. Hart) Now, the next question.
5 Who would know?

6 A. I'm not sure.

7 Q. You're the president of Duke Retail,
8 right?

9 A. I am.

10 Q. And you're the head of Midwest Commercial
11 Generation.

12 A. I am.

13 Q. Who works for you that engages in these
14 [REDACTED]?

15 A. Brian Garnett, Don Hughes, Andy
16 Tuschung, Salil Pradhan.

17 Q. Do they report to you on the results of
18 their activities?

19 A. What activities?

20 Q. [REDACTED]

21 [REDACTED].

22 A. No, they don't specifically report to me
23 on that. No.

24 Q. [REDACTED]

25 [REDACTED]

1 A. [REDACTED] -- you're
2 talking about not --

3 Q. [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 A. Right.

7 Q. The people that you just mentioned, [REDACTED]
8 [REDACTED]

9 A. They're not the -- [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Q. Talking about the [REDACTED]
15 [REDACTED]

16 A. Yeah.

17 Q. [REDACTED]
18 [REDACTED]

19 A. Yes.

20 Q. [REDACTED]
21 [REDACTED]

22 A. [REDACTED]
23 [REDACTED]

24 Q. [REDACTED]
25 A. [REDACTED]

1 Q. [REDACTED]

2 [REDACTED]

3 A. [REDACTED]

4 Q. [REDACTED]

5 A. I don't know. I'm sure they are. I

6 mean, [REDACTED]

7 Q. Is there a -- let me ask you this

8 question: [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 MR. DORTCH: Objection. We're now

12 inquiring into [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 MS. SPILLER: I would further submit that

16 in the line of questioning, your Honor, was about a

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 EXAMINER PIRIK: Mr. Hart.

22 MR. HART: It's relevant for a couple of

23 reasons. One, he ought to know whether [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 EXAMINER PIRIK: Objection's overruled.

7 Do you want the question reread?

8 THE WITNESS: No; I'm fine.

9 EXAMINER PIRIK: Okay.

10 A. [REDACTED]

11 [REDACTED]

12 Q. And I take it you don't know [REDACTED]

13 [REDACTED]

14 A. Correct.

15 MR. HART: I don't think I can go any
16 further based on the foundation of this witness
17 claiming no knowledge. That's all I have.

18 EXAMINER PIRIK: Okay.

19 EXAMINER STENMAN: Ms. Spiller, any
20 redirect?

21 MS. SPILLER: Yes, your Honor, please.

22 - - -

23 FURTHER REDIRECT EXAMINATION

24 By Ms. Spiller:

25 Q. Mr. Whitlock, I would again call your

1 attention to the question that Mr. Olier asked you
2 during this conversation portion of the record
3 regarding pseudo-tying, his example had to do with

4 [REDACTED]

5 [REDACTED] Do you recall his hypothetical, sir?

6 A. I do.

7 Q. You mentioned that that created

8 [REDACTED]; is that correct?

9 A. Yes.

10 Q. Mr. Whitlock, do you think that [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 A. Yeah, if I understand the question right,
15 yeah, I would say absolutely. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 Q. And by extension, sir, would that have an

21 [REDACTED]

22 A. Absolutely. I would also add too, and I
23 think it's responsive to the question about [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 Julie mentioned in her testimony some of
3 the things about the interconnectivity of the
4 generating assets and the transmission system to PJM
5 as opposed to MISO, but there's a very robust and
6 beneficial market that customers are going to be able
7 to participate in around demand response. I think
8 the certainty of the capacity market inside of PJM
9 laid up against the lack of one inside of MISO
10 creates opportunities to develop a competitive
11 environment that will be emboldened and further
12 supported inside of PJM.

13 I would also mention that the
14 transmission expansion plans when you look at
15 publicly available data for both MISO and PJM, that
16 leaving the load in MISO is going to expose -- could
17 potentially expose load to significant obligations
18 related to the long-term transmission expansion plans
19 inside of MISO when you lay those up against
20 projections about what PJM's going to spend in that
21 area.

22 So I think there are other compelling
23 reasons and costs that would, in addition to the one
24 that you said, basically [REDACTED]
25 [REDACTED] but there are other

1 costs that customers would pay for if you [REDACTED]
2 [REDACTED] they're going to be
3 exposed to those costs.

4 Q. You were also asked a question, sir,
5 about the content of the White Paper documents and
6 the reference to a [REDACTED]. Is
7 that a numeric figure or estimate that was derived
8 with all else being equal, that is without
9 consideration to demand response, energy efficiency?

10 A. No. Yeah, absolutely. I mean, I tried
11 to -- there were probably a variety of different
12 scenarios that were made about the position of Duke
13 Energy-Ohio's, I'll call it their [REDACTED]
14 [REDACTED] -- if it were to move
15 into PJM and you just alluded to two of those things.

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 Q. Are any of the Duke Energy-Ohio legacy
22 generating assets committed to the -- committed to
23 Duke Energy Retail?

24 A. No. Duke Energy Retail Sales doesn't
25 have any generation and there's no nexus of Duke

1 Energy-Ohio's generation to DERS.

2 MS. SPILLER: One moment, please, your
3 Honor.

4 Q. Mr. Whitlock, you mentioned that there is
5 publicly available data regarding transmission
6 expansion projects. Do you know what that data is,
7 sir?

8 A. Ken Jennings would probably be better --
9 he could probably provide a more complete list and I
10 might get them backwards but I believe that MISO and,
11 I don't know who the author is of the study but it
12 was the RGOS study and I don't know if that, I don't
13 know who conducted the study but I've seen it and it
14 talks about transmission expansion and how those
15 costs potentially could be cured. There's some
16 scenarios in there. So that would be one.

17 And then I think you could also look on
18 MISO's, I believe on MISO's website there's
19 transmission expansion proposals and then PJM I would
20 say also has the same type of thing.

21 MS. SPILLER: Thank you. Nothing
22 further, your Honor.

23 EXAMINER STENMAN: Any recross?

24 - - -

25

1 FURTHER RECROSS-EXAMINATION

2 By Mr. Olikar:

3 Q. Mr. Whitlock, is it true that currently
4 in the application and the transfer to PJM Duke
5 Energy-Ohio plans on transferring more load than
6 generation to PJM?

7 A. I don't think that's true.

8 Q. Didn't you describe the [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 A. No, I think that that mischaracterizes
12 what my testimony was. I think that that was a
13 scenario, a potential scenario. I think there's a
14 potential scenario where [REDACTED]

15 [REDACTED], right. Two examples that I gave you,

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 Q. In the documents that were submitted to
20 the transaction review committee was that not a key
21 assumption?

22 A. I would say that it was an assumption.
23 There are a lot of assumptions in this document,
24 right.

25 Q. That was the assumption regarding the

1 [REDACTED] when they made the decision.

2 A. Let's do this, I mean, I think that
3 because I was in the room and -- the decision was
4 made by the TRC because of strategic reasons.

5 Q. That's not what I asked, Mr. Whitlock. I
6 asked what the document said regarding [REDACTED]

7 [REDACTED].

8 A. It assumed that there was [REDACTED]
9 [REDACTED].

10 Q. Thank you. I have no further questions.
11 One moment.

12 Looking at your testimony, I believe it's
13 one of the very last pages, Attachment CRW-1. Is
14 that the generation that you intend to transfer to
15 PJM?

16 A. Again, I don't see [REDACTED] on here,
17 but these would be the assets that were owned by
18 DE-Ohio that -- these are the legacy generating
19 assets. So your question is we would [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Q. [REDACTED], are these the
23 assets you plan to tie to PJM?

24 A. These are the legacy generation assets of
25 Ohio and they would move -- because these are, again,

1 these are connected to Duke Energy-Ohio's wires and
2 then [REDACTED]. Again, I would
3 say that [REDACTED].

4 Q. Is [REDACTED] -- okay.

5 MR. OLIKER: No further questions.

6 EXAMINER STENMAN: Anyone else?

7 (No response.)

8 EXAMINER STENMAN: Thank you,

9 Mr. Whitlock.

10 THE WITNESS: Thank you.

11 (OPEN RECORD.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct excerpt of the transcript of the
4 proceedings taken by me in this matter on Wednesday,
5 January 12, 2011, and carefully compared with my
6 original stenographic notes.

7 _____
8 Maria DiPaolo Jones, Registered
9 Diplomat Reporter and CRR and
10 Notary Public in and for the
11 State of Ohio.

12 My commission expires June 19, 2011.

13 (MDJ-3775)

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