

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :  
Application of Ohio Edison:  
Company, The Cleveland :  
Electric Illuminating :  
Company, and The Toledo : Case No. 10-176-EL-ATA  
Edison Company for :  
Approval of a New Rider :  
and Revision of an :  
Existing Rider. :

- - -

PROCEEDINGS

before Mr. Gregory Price and Ms. Mandy Willey,  
Attorney Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-A,  
Columbus, Ohio, called at 10 a.m. on Wednesday,  
February 16, 2011.

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VOLUME I

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21 Illuminating Company, and The Toledo  
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On behalf of the Ohio Manufacturers  
Association.

1 APPEARANCES: (Continued)

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6 Bricker & Eckler, LLP  
7 By Mr. Thomas J. O'Brien  
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9 Columbus, Ohio 43215

10 On behalf of the Ohio Hospital  
11 Association.

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1 Wednesday Morning Session,

2 February 16, 2011.

3 - - -

4 EXAMINER WILLEY: The Public Utilities  
5 Commission of Ohio has called for hearing at this  
6 time and place Case No. 10-176-EL-ATA, being In the  
7 Matter of the Application of Ohio Edison Company, The  
8 Cleveland Electric Illuminating Company, and The  
9 Toledo Edison Company For Approval of a New Rider and  
10 Revision of an Existing Rider.

11 My name is Mandy Willey and with me is  
12 Gregory Price and we are the attorney examiners  
13 assigned by the Commission to hear this case.

14 I would like to begin by taking  
15 appearances of the parties. On behalf of the  
16 companies.

17 MR. BURK: On behalf of the companies  
18 James W. Burk, Carrie Dunn, 76 South Main Street,  
19 Akron, Ohio 44308. Also appearing on behalf of the  
20 companies are David Kutik and Jeff Saks of the Jones  
21 Day law firm, North Point, 901 Lakeside Avenue,  
22 Cleveland, Ohio 44114. And also appearing on behalf  
23 of the companies is Grant Garber, also of the Jones  
24 Day law firm, and his business address is 325 John H.  
25 McConnell, Columbus, Ohio 43215.

1 EXAMINER WILLEY: On behalf of OCC.

2 MR. SMALL: Thank you, your Honor. On  
3 behalf of the residential customers of the  
4 FirstEnergy electric distribution utilities, Janine  
5 Migden-Ostrander, Consumers' Counsel, I'm Jeffrey L.  
6 Small, counsel of record.

7 Also Maureen Grady and Chris Allwein,  
8 Assistant Consumers' Counsel, Office of the Ohio  
9 Consumers' Counsel, 10 West Broad Street, Columbus,  
10 Ohio 43215.

11 EXAMINER WILLEY: On behalf of the CKAP  
12 parties.

13 MR. CORCORAN: Thank you. On behalf Sue  
14 Steigerwald, CKAP, and Bob Schmitt Homes, Inc., I'm  
15 Kevin Corcoran, 8501 Woodbridge Court, North  
16 Ridgeville, Ohio 44039.

17 EXAMINER WILLEY: On behalf of  
18 Constellation.

19 MS. KALEPS-CLARK: Thank you, I would  
20 like to enter the appearance of Lija Kaleps-Clark, M.  
21 Howard Petricoff, Vorys, Sater, Seymour and Pease, 52  
22 East Gay Street, Columbus, Ohio 43216. I would like  
23 to note that we will not be attending the entire  
24 hearing, and we don't have any witnesses or any  
25 cross-examination, but we would like to reserve the

1 right to enter any post-hearing reply briefs or  
2 briefs.

3 MS. MOONEY: On behalf of the Ohio  
4 Partners for Affordable Energy, I'm Colleen Mooney  
5 and David C. Rinebolt, 231 West Lima Street, Findlay,  
6 Ohio.

7 MR. O'BRIEN: On behalf of the Ohio  
8 Manufacturers Association, Thomas J. O'Brien. I'm  
9 with the law firm of Bricker & Eckler, LLP, 100 South  
10 Third Street, Columbus Ohio 43215. I would also like  
11 to enter the appearance of Richard L. Sites of the  
12 Ohio Hospital Association, 150 East Broad Street,  
13 Columbus, Ohio 43215, and Thomas J. O'Brien of the  
14 law firm of Bricker & Eckler also appearing on behalf  
15 of the Ohio Hospital Association.

16 MR. ELISAR: Scott Elisar appearing on  
17 behalf of the Industrial Energy Users of Ohio, McNees  
18 Wallace & Nurick, 21 East State Street, 17th Floor  
19 Columbus, Ohio 43215. Also entering on behalf of the  
20 Industrial Energy Users is Sam Randazzo with McNees  
21 Wallace & Nurick.

22 MR. JONES: On behalf of the Public  
23 Utilities Commission staff, Attorney General Mike  
24 DeWine, Assistant Attorneys General Tom Lindgren,  
25 Vern Margard, John Jones, 180 East Broad Street,

1 Columbus Ohio 43215.

2 EXAMINER PRICE: Okay. Thank you.

3 Before we take our first witness we have  
4 a number of preliminary matters. There is a pending  
5 motion for interlocutory appeal filed by FirstEnergy  
6 on December 27, 2010. Memoranda contra to the  
7 interlocutory appeal was filed by OCC and the CKAP  
8 parties on January 3, 2011. At this time  
9 certification will be denied. The attorney examiners  
10 find they do not present a new or novel question of  
11 law or policy and there was no demonstration of undue  
12 prejudice or expense.

13 In addition, we had a discovery  
14 conference last month at which OCC provided for in  
15 camera review a number of documents. At this time  
16 the Bench would like to return the copies of those  
17 documents to Ms. Grady who will acknowledge receipt  
18 on the record.

19 MS. GRADY: Thank you, your Honor.

20 EXAMINER PRICE: Thank you.

21 Mr. Kutik, any further matters?

22 MR. KUTIK: Yes, your Honor. Your Honor,  
23 at this time the companies would like to present  
24 several motions to strike relating to the public  
25 hearing testimony in this case. And we'll do it in

1 two phases.

2 First, your Honor, I will address the  
3 issue of the testimony of certain parties who were  
4 either -- or certain witnesses who were either a  
5 founder, leaders, or members of CKAP. I will then  
6 yield the floor to Mr. Saks who will address other  
7 objections that we have on other evidentiary grounds.

8 I will then be prepared to address, your  
9 Honor, the companies' position on certain documents  
10 that were moved as exhibits into the record at the  
11 public hearing -- public hearings in this case.

12 Your Honor, perhaps it would be helpful  
13 with respect to our motions with respect to public  
14 hearings to provide the Bench with a copy of the  
15 transcripts and Mr. Saks is --

16 EXAMINER PRICE: Certainly would be.

17 MR. KUTIK: -- doing that now.

18 EXAMINER PRICE: Thank you.

19 MR. KUTIK: Your Honor, I would also like  
20 to provide the Bench with a copy of the deposition of  
21 Ms. Steigerwald.

22 EXAMINER PRICE: I have mine.  
23 Ms. Willey, do you need a copy of the deposition?

24 EXAMINER WILLEY: I do.

25 MR. KUTIK: There were two volumes.

1 EXAMINER PRICE: You're correct, I only  
2 have the first volume.

3 MR. KUTIK: Your Honor, as Attorney  
4 Examiner Phillips-Gary put it at not one but two  
5 public hearings, the public hearings were not for the  
6 testimony by the companies, by the staff of the  
7 Commission, or by any intervenors. He said that both  
8 at the Maumee hearing on page 5 and at the Sandusky  
9 hearing also on page 5.

10 There is a fundamental due process aspect  
11 to our motion. And that is if CKAP wanted as they do  
12 to be part of this case as an Intervenor, then they  
13 should be subject to discovery and to the evidentiary  
14 rules and to the proceedings set forth by the  
15 Commission for an evidentiary hearing.

16 Certainly the Bench is well aware the  
17 companies were unaware of any members of CKAP  
18 certainly before January and certainly before they  
19 were ordered to provide us with information about  
20 that and certainly before we were able to take the  
21 deposition of Ms. Steigerwald with respect to that.

22 So at the hearings the companies  
23 certainly were not in a position to make any  
24 objections with respect to the fact that some  
25 witnesses were founders, leaders, or members of CKAP.

1           And so CKAP has specifically moved in  
2       this case for the opportunity to present live  
3       testimony at this case in this proceeding today,  
4       tomorrow, the next day and whatever and not have it  
5       prefiled. Certainly we should have had the  
6       opportunity to know who those witnesses were and to  
7       be able to take discovery of those witnesses.

8           Subsequently what we have determined,  
9       your Honor, and found in our discovery is that  
10      certain people who testified at the hearings were a  
11      founder or leaders or members of CKAP and I would  
12      like to go through those witnesses at this time.

13           EXAMINER PRICE: You are going to break  
14      out founders by category?

15           MR. KUTIK: Yes.

16           EXAMINER PRICE: Thank you.

17           MR. KUTIK: The founder, your Honor, one  
18      of the founders along with Ms. Steigerwald of CKAP, a  
19      gentleman named Richard Jordan, and Ms. Steigerwald  
20      makes that admission in her deposition at page 37,  
21      line 15 to page 38, line 2.

22           Mr. Jordan testified in the Kirtland  
23      public hearing and his testimony is at line 9 -- page  
24      94, line 1 to page 102, line 12, so we would move to  
25      exclude Mr. Jordan's testimony on the grounds he is a

1 founder of CKAP, and if he wanted to testify, he  
2 should have testified in this hearing and been  
3 subject to discovery and cross-examination in this  
4 proceeding.

5 There are 11 other people, your Honor,  
6 that have been identified by Mr. Steigerwald as  
7 leaders of CKAP. And those -- and those  
8 individuals -- and those -- that identification of  
9 these parties that I will identify to you in a  
10 moment.

11 It appears at Ms. Steigerwald's  
12 deposition at pages 41 and 42 and then pages 201 to  
13 211. And those individuals are as follows: At the  
14 Maumee hearing Michael Roetter, R-O-E-T-T-E-R,  
15 testified starting at page 12, line 5, to page 19,  
16 line 21. At the North Ridgeville public hearing  
17 there were four witnesses who were identified as  
18 leaders of CKAP and they are Edward Bueche,  
19 B-U-E-C-H-E, who testified at line -- at page 77,  
20 line 17, to page 85, line 2; Linda Jankura,  
21 J-A-N-K-U-R-A, who testified at page 35, line 24, to  
22 page 46, line 1; Rita Lockhart, L-O-C-K-H-A-R-T, who  
23 testified at page 26, line 24, to page 35, line 20;  
24 and Charles Negeju, N-E-G-E-J-U, at page 34, line 10,  
25 to page 138, line 10.



1           At the Strongsville hearing there were  
2 six individuals identified as leaders of CKAP by  
3 Ms. Steigerwald. These individuals are as follows:  
4 John Carney, C-A-R-N-E-Y, who testified at page 55,  
5 line 11, to page 69, line 16; Michael Carney who  
6 testified at page 66, line 23, to page 69, line 16;  
7 William Imblum, I-M-B-L-U-M, who testified at page  
8 186, line 25, to page 191, line 3; Jim Jankura, same  
9 spelling as Linda, page 13, line 21, to page 20, line  
10 25; Ed Oliverous, O-L-I-V-E-R-O-U-S, who testified at  
11 page 178, line 11 to page 182, line 9; and finally  
12 Bill Sass, S-A-S-S, who testified at page 108, line  
13 3; to page 114, line 25. Those are the leaders of  
14 CKAP who testified.

15           There were also 33 individuals who are  
16 identified by Ms. Steigerwald as -- as members of  
17 CKAP who testified at the various hearings. At the  
18 Strongsville hearing there were 14 such persons. And  
19 they were as follows: Donald Blankenship who  
20 testified at line 118 -- excuse me, page 118, line  
21 16, to page 123, line 22; William Bruton,  
22 B-R-U-T-O-N, who testified at line 27 -- page 27,  
23 line 23, to page 34, line 20; Roseann Cyngier,  
24 C-Y-N-G-I-E-R, who testified at page 150, line 17, to  
25 page 157, line 3; Gary Damert, D-A-M-E-R-T, who

1 testified at line -- page 77 line 7, to page 90, line  
2 9; Caroline Dragics, D-R-A-G-I-C-S, she testified at  
3 page 171, line 14, to page 178, line 5; Dennis Kolar,  
4 K-O-L-A-R, who testified at page 144, line 17, to  
5 page 150, line 12; and Linda Kranak, K-R-A-N-A-K, who  
6 testified at page 162, line 23, to page 164, line 25;  
7 Brock Landers who testified at page 23, line 12, to  
8 page 27, line 19. Tim LaSalva, L-A-S-A-L-V-A, who  
9 testified at page 52, line 21, to page 55, line 7;  
10 Thomas Logan who testified at page 124, line 3, to  
11 page 127, line 2; Michael Nemann, N-E-M-A-N-N, who  
12 testified at page 69, line 20, to page 77, line 3;  
13 Carol Nussel, N-U-S-S-E-L, who testified at page 38,  
14 line 13, page 42, line 18. Paul Ruic, R-O --  
15 R-U-I-C, who testified at page 206, line 13, to page  
16 210, line 6; Bill Vassel, V-A-S-S-E-L, who testified  
17 at page 35, line 6, to page 38, line 8.

18 At the Maumee hearing there was one  
19 individual who was identified by Ms. Steigerwald in  
20 her deposition as a member, and by the way, these  
21 members were identified in Ms. Steigerwald's  
22 deposition at pages 197 to 211. At the Maumee  
23 hearing the individual who testified who was a member  
24 of CKAP was James Ehlinger, E-H-L-I-N-G-E-R, who  
25 testified at page 22, line 15, to page 29, line 17.

1           At the North Ridgeville hearing there  
2       were six individuals who were identified members of  
3       CKAP, Teryl Bishop. Mr. Bishop testified at page  
4       115, line 18 to page 119, line 12; Eileen Campo,  
5       C-A-M-P-O, page 99, line 5, to page 108, line 17;  
6       Fred Hickok, H-I-C-K-O-K, who testified at page 119,  
7       line 12 -- 21 to page 120, line 25; Franz Jager,  
8       J-A-G-E-R, who testified at page 70, line 12, to page  
9       77, line 13; Brenda Coscar, C-O-S-C-A-R, who  
10      testified at page 130, line 8, to page 134, line 4;  
11      Shirley Yunkers, Y-U-N-K-E-R-S, who testified at page  
12      124, line 5, to page 129, line 18.

13           At the Kirtland hearing there were 12  
14      individuals identified as members of CKAP, Candace  
15      Arcaro, A-R-C-A-R-O, who testified at page 108, line  
16      14, to page 115, line 1; Eileen Fisco, F-I-S-C-O, who  
17      testified at page 115, line 7, to page 117, line 8;  
18      Thomas Garvey who testified at page 24, line 1 to  
19      page 25, line 19; Richard Gift who testified at page  
20      130, line 4, to page 136, line 10; Kim Kossick,  
21      K-O-S-S-I-C-K, who testified at page 34, line 4, to  
22      page 36, line 12; Brian Kurz, K-U-R-Z, who testified  
23      at page 143, line 3, to page 147, line 23; Steve  
24      Martony, M-A-R-T-O-N-Y, who testified at page 165,  
25      line 10, to page 168, line 12; James McMeecham,

1 M-c-M-E-E-C-H-A-N, who testified at page 105, line  
2 12, to page 108, line 8; Michael Payne, P-A-Y-N-E,  
3 who testified at page 85, line 15, and page 89, line  
4 24; Patricia Rickettson, R-I-C-K-E-T-T-S-O-N, who  
5 testified at page 168, line 15, to page 172, line 17;  
6 Dee Reilly who testified at page 137, line 20, to  
7 page 142, line 9; R.G. Wardlaw who testified at page  
8 148, line 19, page 158, line 21.

9 Your Honor, those are the individuals who  
10 testified and were at the public hearing who are  
11 members of the CKAP, and for the reasons stated we  
12 move to restrict the testimony of those witnesses.

13 EXAMINER PRICE: Mr. Kutik, if you recall  
14 at our discovery conferences, CKAP withheld or sought  
15 to withhold communications between CKAP members who  
16 they identified as part of their control group or  
17 leadership team of the individuals you identified as  
18 founders or leaders. Did CKAP seek to withhold any  
19 communications in discovery as part of their control  
20 group of those specific individuals?

21 MR. KUTIK: Your Honor, in terms of the  
22 materials that we received, and now I am going from  
23 memory, so I'll just go to ones I am fairly certain  
24 of, we received e-mail communications between  
25 Ms. Steigerwald and at least the following people

1 Mr. Jordan --

2 EXAMINER PRICE: I mentioned the one --  
3 never mind because we can do it by process of  
4 elimination. Thank you.

5 MR. KUTIK: Or I can just say yes and sit  
6 down, or I can go through the ones.

7 EXAMINER PRICE: I am interested in ones  
8 they withheld on the basis they were control --  
9 communications within their control group.

10 MR. KUTIK: Well, your Honor, I guess at  
11 this point, since I did not receive a privileged log,  
12 I don't know which ones I haven't seen. I can tell  
13 you which ones they made objections to which were  
14 overruled and we saw.

15 EXAMINER PRICE: Okay.

16 MR. KUTIK: And that's what I was  
17 proceeding to do.

18 EXAMINER PRICE: That's okay. Let's go  
19 ahead and take CKAP's response. This is a fairly  
20 discrete issue, there is no reason we can't take  
21 CKAP's response and then move on to Mr. Saks's  
22 issues.

23 MR. KUTIK: Yes. That was our intention.

24 EXAMINER PRICE: Okay. Mr. Corcoran.

25 MR. CORCORAN: Well, you know, your

1 Honor, at the beginning of this we had a discussion  
2 who was going to testify and who wasn't going to  
3 testify and who the attorney examiners would like to  
4 see testify at public hearings or not.

5 And we had a discussion about the named  
6 parties, specifically Sue Steigerwald, Joan  
7 Heginbotham, Bob Schmitt Homes, and CKAP being  
8 represented by Sue Steigerwald as being withheld as  
9 people that weren't going to testify at those public  
10 hearings, and we followed that completely.

11 They did not -- none of those people  
12 testified and we were going to have them testify, you  
13 know, here at this hearing. The other people --  
14 there is different reasons as to why somebody was  
15 considered to be a leader in CKAP. You know, some of  
16 those reasons are not very significant to some of  
17 their testimony that they gave, and the company had  
18 plenty of opportunity to ask them at the hearings  
19 whether they were a member of CKAP or whether they  
20 were a leader of CKAP.

21 EXAMINER PRICE: Just so the record is  
22 clear, you've established an attorney/client  
23 relationship with everybody that Mr. Kutik named; is  
24 that correct?

25 MR. CORCORAN: Yes, that's correct.

1 EXAMINER PRICE: Okay.

2 MR. CORCORAN: As members of CKAP, yes.

3 EXAMINER PRICE: I understand.

4 Does any other party care to make an  
5 argument on this issue?

6 MR. SMALL: Yes, your Honor. I'll just  
7 emphasize the last point that Mr. Corcoran made which  
8 is FirstEnergy is representing that they had no  
9 ability until after the local public hearings to  
10 determine the association by these individuals with  
11 CKAP. That's not true. These witnesses were all  
12 available for cross-examination.

13 The Bench made it clear in each local  
14 public hearing that these parties were subject to  
15 cross-examination. Limited cross-examination was  
16 conducted including by me.

17 FirstEnergy had that opportunity and did  
18 not avail themselves of it for the most part. There  
19 was limited cross-examination by FirstEnergy so  
20 they -- FirstEnergy had an opportunity to explore  
21 this matter and make these objections at the local  
22 public hearings.

23 MR. KUTIK: Your Honor, may I respond?

24 EXAMINER PRICE: You may.

25 MR. KUTIK: May I approach?

1 EXAMINER PRICE: You may.

2 MR. KUTIK: Your Honor, I would like to  
3 show you two exhibits which we will mark ultimately  
4 in this case as Company Exhibit 23 and Company  
5 Exhibit 16. And they were marked respectively in  
6 Ms. Steigerwald's deposition as Exhibits I believe 31  
7 and 24.

8 What you'll see, your Honor, in Exhibit  
9 31 or what has been marked in Ms. Steigerwald's  
10 deposition as Exhibit 31 is an e-mail communication  
11 from the Public Utilities Commission to  
12 Ms. Steigerwald warning her about attempting to  
13 contact the Commission and otherwise act as a  
14 citizen, so to speak, and telling her since she had  
15 been identified as a party in this case through her  
16 motion to intervene, she had to participate in the  
17 more formal means.

18 I asked her about that in her deposition  
19 at pages 312 to 313. In her deposition she said that  
20 she then set about to warn people not to identify  
21 themselves as members of CKAP because then they would  
22 get similar letters or similar warnings and would  
23 have to participate in the proceedings in a formal  
24 way.

25 Now, the document that was Exhibit 24 in



1 Ms. Steigerwald's deposition which we have marked  
2 Companies' Exhibit 16 is an e-mail that she sent,  
3 Ms. Steigerwald sent, to her CKAP friends, that is,  
4 the members of CKAP and towards the end -- by the way  
5 this is the memo that we attached in one of our prior  
6 motions where Ms. Steigerwald is coaching individuals  
7 on what to say in the public hearings.

8 Towards the end of this document she  
9 indicates that, this is now in the last page, CKAP's  
10 motion to intervene in the all electric case was  
11 officially approved PUCO this week. This means CKAP  
12 represented by our attorney Kevin Corcoran are  
13 official parties to the case. Since my name is  
14 specified in the motion to intervene and Kevin is the  
15 attorney, neither one of us is permitted to testify  
16 at the local hearings.

17 In other words, they knew by the status  
18 of their intervention that it was in their interest  
19 not to identify themselves as members of CKAP.  
20 Certainly even if we had the opportunity and asked  
21 individuals whether they were members of CKAP, the  
22 fact that they were parties should have allowed us to  
23 bring them down here to cross-examine them after we  
24 had an opportunity for discovery. We didn't have  
25 that opportunity. For that reason we move to strike.

1 EXAMINER PRICE: Thank you.

2 MR. CORCORAN: Your Honor --

3 EXAMINER PRICE: I think we can move on.  
4 We are going to defer ruling on this question until  
5 we have had a chance to think it over.

6 MR. KUTIK: Your Honor, Mr. Saks will  
7 address our other motions.

8 EXAMINER PRICE: Mr. Saks.

9 MR. SAKS: Your Honor, we have several  
10 motions related to the testimony at the public  
11 hearings. What I've attempted to do is to divide  
12 them into discrete categories where possible. And  
13 there are two such categories of testimony.

14 The first one is testimony where various  
15 witnesses of the public hearing as homeowners  
16 testified about the value of their homes declining or  
17 that their homes would not be sellable. This  
18 testimony is objectionable because it's improper  
19 expert testimony and it's also lacking foundation.

20 As a predicate matter, these witnesses,  
21 the basis for their knowledge appears to be from  
22 Ms. Steigerwald who on several different occasions  
23 sent e-mails to members of CKAP in which she  
24 instructed them about home value being an issue and  
25 telling them in various forms either in sending

1 complaints via e-mail to the Commission or in giving  
2 public hearing testimony, essentially instructing  
3 them to say their home values would be reduced, their  
4 homes would not be sellable, including a number that  
5 she -- that she generated which was offered  
6 repeatedly at these hearings, if you recall, home  
7 values declining by 30 percent or more.

8 Ms. Steigerwald testified at her  
9 deposition that she has no expertise when it comes to  
10 property valuation and, therefore, we would submit  
11 that there is absolutely no basis for this testimony  
12 coming in. I'll direct you to pages 228, lines 6  
13 through 9, of Ms. Steigerwald's deposition where she  
14 made that concession.

15 I am prepared now to run through by  
16 witness where this testimony appears in the record,  
17 if I may.

18 EXAMINER PRICE: You may.

19 MR. SAKS: At the Sandusky --

20 EXAMINER PRICE: Before -- let me take a  
21 step back. How many witnesses are you talking about?

22 MR. SAKS: I apologize. Somehow I have  
23 gotten out of sorts here.

24 Upwards of 35, I would say.

25 EXAMINER PRICE: Okay. Please proceed.

1 If it was 435, I might have thought of a different  
2 way to do this, but 35 is fine.

3 MR. SAKS: Roger Kenny -- I'm sorry, I am  
4 starting at the Sandusky hearing, date order.

5 Roger Kenny, page 18, lines 19 through  
6 23; John Kempton, page 21, line 13, through page 22,  
7 line 8; Sue McCartney, page 24, lines 12 through 15;  
8 Jude Febert, page 33, line 12 through 17; Cora Neal,  
9 page 44, lines 1 through 3; Andrew Cosis, C-O-S-I-S,  
10 page 83, lines 11 through 13; Rosa Marie Ridey,  
11 R-I-D-E-Y, page 90, line 20, through page 91, line 4;  
12 Dick Barns, page 96, line 23, through page 97, line  
13 3; Sue Daugherty, D-A-U-G-H-E-R-T-Y, page 115, line  
14 17, through page 116, line 3.

15 At the Strongsville hearing Tim Randall,  
16 page 8, line 21 through 25; Dennis Kucinich, page 11,  
17 line 10 through 21; Jim Jankura, page 17, line 24,  
18 through page 18, line 14; Brock Landers, page 26,  
19 line 24, through page 27, line 6; William Bruton,  
20 page 30, line 7 through 21; Carol Nussel, page 40,  
21 line 20, through page 41, line 3; Reaz Ansri,  
22 A-N-S-R-I, page 45, line 13, through page 46, line 1;  
23 Gerald Grissom, G-R-I-S-S-O-M, page 52, line 7  
24 through 12; Tim LaSalva, page 54, line 14 through 20;  
25 Gary Damert, page 86, line 3 through 15; Matt Patten,

1 P-A-T-T-E-N, page 95, line 5 through 12; Thomas  
2 Patten, page 102, line 7, through 104, line 2; Bill  
3 Sass, page 112, line 20, through page 113, line 4,  
4 and also page 113, line 23, through page 114, line 9;  
5 Diana Saul, page 116, line 11 through 13; Donald  
6 Blankenship, page 121, line 13 through 18; Dale  
7 Findlay, page 143, line 2 through 21; Roseann  
8 Cyngier, page 155, line 21, through page 156, line 3;  
9 Paul Marnechesk, M-A-R-N-E-C-H-E-S-K, page 161, line  
10 21, through page 162, line 2; Linda Kranak, 164, line  
11 16 through 20; Joe Hayes, Jr., 169, line 11, through  
12 page 170, line 12; Caroline Dragics, page 173, line  
13 20, through page 174, line 14; Ed Oliverous, page  
14 179, line 20, through page 180, line 8; William  
15 Imblum, page 188, lines 1 through 7.

16 At the Maumee hearing there was one  
17 witness Michael Roetter, page 17, lines 10 through 20  
18 and also lines 21 through 24.

19 At the North Ridgeville hearing, David  
20 Kos, K-O-S, page 19, line 25 through page 20, line  
21 15; Linda Jankura, page 43, line 15 through 20; Hazel  
22 Ferry, F-E-R-R-Y, page 68, line 2 through 7; Rita  
23 Lockhart, page 34, line 4 through 21; Franz Jager,  
24 page 73, line 5, through page 74, line 12; Edward  
25 Bueche, page 83, line 11, through 84, line 12; Mark

1 Lammon, L-A-M-M-O-N, page 87, line 1 through 10;  
2 Leonard School, 91, 10 through 15; Eileen Campo, page  
3 103, line 17, through 104, line 2 and also 107, line  
4 4 through 5; Mark Griffiths, G-R-I-F-F-I-T-H-S, page  
5 122, line 4 through 8; Carl Silky, page 142, line 20  
6 through page 143, line 1; and also 143, line 15  
7 through 20; Dennis Boose, B-O-O-S-E, page 155, line  
8 18, through page 157, line 9; David Urig, U-R-I-G,  
9 page 159, line 2 through 7.

10 Finally Kirtland public hearing, Lorain  
11 Fende, F-E-N-D-E, page 13, line 2 through 8; Mark  
12 Schneider, S-C-H-N-E-I-D-E-R, page 19, line 22,  
13 through page 20, line 3, and page 20, line 14 through  
14 23; Tom Garvey, page 24, line 24, through page 25,  
15 line 6; Tim Kossick, page 35, line 13 through 17; Tim  
16 Grendell, page 80, line 14, through page 81 line 11;  
17 Candace Arcaro, page 111, line 21, through page 112,  
18 line 1; Eileen Fisco, page 116, lines 2 through 5,  
19 Tom Walter Meyer, page 129, lines 1 through 4;  
20 Richard Gift, page 133, lines 1 through 11, and also  
21 page 136, lines 35; Ryan Kurz, page 144, lines 2  
22 through 6, and finally Caitlin Abraham, page 183,  
23 lines 2 through 4.

24 EXAMINER PRICE: Thank you. And your  
25 second group.

1           MR. SAKS: Also second group we put  
2 together in one group was testimony made by various  
3 witnesses about First Energy's financial condition  
4 and the financial impact of FirstEnergy of these  
5 rates. That testimony is without foundation and  
6 irrelevant.

7           From the Sandusky hearing Jude Febert,  
8 page 31, line 3, through page 32, line 8. At the  
9 Strongsville hearing Dennis Kucinich, page 10, line  
10 24, through page 11, line 9; William Bruton, page 32,  
11 line 15, through page 33, line 25; Louis Viksoni,  
12 V-I-K-S-O-N-I, page 47, line 14, through page 48,  
13 line 8; Gary Damert, page 82, line 5, through page  
14 84, line 17; Thomas Logan, page 126, lines 11 through  
15 19.

16           At the Maumee hearing James Ehlinger,  
17 page 25, line 22, through page 26, line 7. At the  
18 North Ridgeville hearing Matt Lundy, page 24, line  
19 21, through page 25, line 16; Thomas Sweeney, page  
20 54, lines 12 through 13, and page 57, lines 14  
21 through 18; Edward Bueche, page 81, line 4 through  
22 page 82, line 8.

23           At the Kirtland hearing Annie Klosinski,  
24 K-L-O-S-I-N-S-K-I, page 27, line 10, through page 28,  
25 line 23, page 30, line 5 through page 31, line 32;

1 Tim Grendell, page 68, line 18, through page 63, line  
2 22, and also page 78, line 13, through page 79, line  
3 17, and also page 80, line 10 through 13. The last  
4 witness in this regard is Richard Gift, page 134,  
5 lines 8 through 18.

6 EXAMINER PRICE: Thank you.

7 MR. SAKS: There are some additional  
8 objections that we have that would be in the nature  
9 of about I would say 30 or so that didn't fall into  
10 any one discrete category, if I may, your Honor.

11 EXAMINER PRICE: You may.

12 MR. SAKS: At the Sandusky public hearing  
13 Marcy Kaptur, K-A-P-T-U-R, testified at pages 9,  
14 lines 3 through 23, she made an analogy about a  
15 "Peanuts" cartoon and gave testimony about promises  
16 that were supposedly made by FirstEnergy to its  
17 customers. This testimony has no foundation and is  
18 hearsay.

19 Also in Ms. Kaptur's testimony, page 11,  
20 line 7, through page 12, line 25, she provided  
21 testimony about FirstEnergy's acquisition of  
22 Allegheny Power and FirstEnergy's annual revenues,  
23 which is irrelevant.

24 Also at Sandusky, Jude Febert at page 27,  
25 line 4 through 9, provided testimony that electric



1 homes would not have been built or sold without the  
2 discounted rate. There is no foundation for that and  
3 it's improper expert testimony from Ms. Febert.

4 Cora Neal testified at the Sandusky  
5 hearing page 44, line 13, through page 45, line 18,  
6 in which she read into the record from her neighbor  
7 Bob Biggs who is a retired builder. That's hearsay.  
8 Also at pages 45, line 19, through 49, line 4,  
9 Ms. Neal read into the record another letter from  
10 another neighbor Deborah Lincolnbach, which is  
11 hearsay.

12 Excuse me, your Honor. The last  
13 objection related to Sandusky is Robert K. Brown,  
14 page 93, line 6, through page 94, line 5, who  
15 provided calculations comparing the cost of gas and  
16 electricity, which we submit which is without  
17 foundation and is improper testimony.

18 Mr. Burk has noted we would like to  
19 inquire of the Bench how you would like us to proceed  
20 or if you would like me to proceed in this manner  
21 with these objections because they do cover various  
22 diverse topics.

23 EXAMINER PRICE: I think this is -- this  
24 is a good way for you to make your record and  
25 we'll -- I think it's best to continue proceeding

1 this way. After you've run through your objections  
2 then we'll allow the other parties to respond if they  
3 wish, and then we'll move from there.

4 MR. SAKS: At the Strongsville hearing  
5 William Bruton, page 28, lines 12 through 16,  
6 provided testimony about FirstEnergy making promises  
7 to builders that discounted rates would be permanent.  
8 That's without foundation.

9 Bill Vassel, page 37, line 14, through  
10 page 38, line 8, provided testimony about a CNN  
11 report on a problem with white ash in Beaver,  
12 Pennsylvania. There is no foundation. It's hearsay  
13 and it's also irrelevant.

14 Carol Nussel, page 39, lines 5 through 7,  
15 provided testimony about a deal or arrangement made  
16 between FirstEnergy and builders, no foundation.

17 Louis Viksoni, page 48, lines 19 through  
18 23, provided testimony about the substance of a Plain  
19 Dealer newspaper article, which is hearsay. John  
20 Carney, page 60, line 15, through page 61, line 23,  
21 provided testimony that in his opinion electric rates  
22 were the reason for the lack of sales of  
23 condominiums. That is improper expert testimony and  
24 lacks foundation.

25 Michael Carney, page 68, line 14 through

1 21, testified that in his opinion electric rates were  
2 the reasons for vacancy in apartments and his  
3 testimony about the impact on the business of  
4 downtown Cleveland. No foundation and improper  
5 expert testimony.

6 Diana Saul, page 117, line 10, through  
7 page 118, line 4, provided testimony on a statement  
8 made to her by a potential homebuyer about interest  
9 in an all electric home, hearsay.

10 Eugene Moore, page 133, line 22, through  
11 page 137, line 5, provided testimony in which he  
12 related a story about his meter being replaced and  
13 his general view or suspicion that First Energy had  
14 done something wrong in that regard. That's  
15 irrelevant.

16 Dennis Kolar, page 146, line 15 through  
17 19, he testified about what he was told by a realtor  
18 and neighbors about their electric bills. That is  
19 hearsay.

20 Roseann Cyngier, page 151, line 25  
21 through 152, line 10, she testified about what one of  
22 her customers told her about electric bills and what  
23 the customers said First Energy allegedly said to the  
24 customer. That is hearsay.

25 Caroline Dragics, page 74, line 21,

1 through page 175, line 21, she provided testimony  
2 about statements from a Plain Dealer online newspaper  
3 article as well as blogger comments to that newspaper  
4 article. That is hearsay.

5 Wendy Bauer, page 185, line 5 through 13,  
6 provided testimony about FirstEnergy having a  
7 supposed special arrangement with the Cleveland  
8 Clinic. That lacks foundation and that is also  
9 irrelevant.

10 Done Keen, page 197, line 20, through  
11 page 203, line 24, provided testimony that I think  
12 best can be summed up in his view is wrongdoings in  
13 society and what's wrong with society today. That is  
14 irrelevant.

15 At the Maumee hearing Michael Roetter,  
16 page 15, lines 14 through 18, testified about  
17 statements from a Toledo Blade article regarding  
18 rates. That is hearsay. James Ehlinger, page 268  
19 through 15, provided testimony about calculations  
20 about a comparison of electric heat and natural gas.  
21 Improper expert testimony and lacking foundation.

22 John Haley, page 35, line 15, through  
23 page 36, line 2, he provided testimony about the  
24 electric company preserving its rolling capacity to  
25 avoid having to build extra additional power plants

1 but lacks foundation.

2 Joe Morgan, page 46, line 1, through page  
3 47, line 4, provided testimony about a letter from  
4 the Ottawa County Residential Electric Government  
5 Aggregation Program. That is hearsay.

6 At the North Ridgeville hearing David  
7 Kos, page 20, line 16, through page 21, line 6,  
8 provided testimony about the financial impact on Avon  
9 lake related to the rates. Improper expert testimony  
10 and lacks foundation.

11 Matt Lundy, page 23, line 16, through  
12 page 24, line 17, he provided testimony of what other  
13 consumers said at other public hearings. That is  
14 hearsay. Rita Lockhart, page 34, line 4 through  
15 21 -- I'm sorry, provided her testimony earlier.  
16 That has to do with home value.

17 Linda Jankura, page 41, line 5, through  
18 page 42, line 17, she provided testimony about  
19 government required disclosures for other types of  
20 businesses. That is irrelevant. Page 44, line 12  
21 through 18, she provided testimony that a contract  
22 existed. That lacks foundation.

23 Edward Bueche, page 84, line 7 through  
24 15, he provided testimony about FirstEnergy's  
25 supposed guarantee. It lacks foundation. Mark

1 Lammon, page 87, line 21, through page 88 through 24,  
2 he testified about the impact on Ohio economy because  
3 young professionals will not live in Ohio's cities  
4 absent the electric discounted rate. That's improper  
5 expert testimony and without foundation.

6 Leonard Skulini, page 94, line 13,  
7 through page 95, line 15, he provided some general  
8 criticism of FirstEnergy including the restructuring  
9 of FirstEnergy Solutions and its relationship to the  
10 Cleveland Clinic. Lacks foundation and also is  
11 irrelevant.

12 Eileen Campo, page 105, line 22, through  
13 page 106, line 7, she provided testimony about the  
14 Commission taking five months to decide the OCC's  
15 request to investigate FirstEnergy's marketing  
16 practices but only taking four hours to grant  
17 FirstEnergy's motion for continuance. That testimony  
18 lacks foundation and also is not relevant.

19 Teryl Bishop, page 118, line 3 through 6,  
20 testified that no rates were ever eliminated without  
21 grandfathering customers. There is no foundation for  
22 that testimony. Page 118, line 3 through 14,  
23 Mr. Bishop also testified that all Ohio Edison  
24 residential marketing divisions had to periodically  
25 check with grandfathered customers to see if a better

1 rate was available to them. That testimony also is  
2 without foundation.

3 Mark Griffiths, page 121, line 22,  
4 through page 122, line 3, he testified that gas lines  
5 were not installed in his neighborhood, the reason  
6 being the promise of a permanently discounted heating  
7 rate. That lacks foundation.

8 Brenda Kosavar, page 130, 19 through page  
9 130, line 4, she read a statement from another  
10 individual into the record. That is hearsay. Carl  
11 Silski, page 143, line 15 through line 20, testified  
12 about the unsaleability of other people's homes.

13 Finally at the Kirtland hearing, Lorain  
14 Fendy, page 11, line 10 through page 12, line 17, she  
15 testified about what constituents supposedly told  
16 her. That is hearsay. Page 14, line 13 through 24,  
17 Ms. Fende also testified about the Perry Nuclear  
18 Power Plant and First Energy's light bulb program.  
19 That is both lacking foundation and irrelevant.

20 Chester Karchefsky, K-A-R-C-H-E-F-S-K-Y,  
21 page 41, line 2 through 25, he provided testimony  
22 that in his opinion the all electric rate customers  
23 were not subsidized by the standard rate customers.  
24 That lacks foundation.

25 There are several items of testimony of

1 Tim Grendell, page 65, line 16, through page 66, line  
2 25, he provided testimony about statements made by  
3 Teryl Bishop. That is hearsay. Page 72, line 13  
4 through 23, he provided testimony about statements in  
5 a letter made by Apple Heating, and Apple Heating  
6 supposedly was told by others. That is hearsay.  
7 Page 74, line 25, through page 75, line 25, provided  
8 testimony about statements from his constituents  
9 about their economic situations. That is hearsay.  
10 Page 76, line 1 through 18, he provided testimony  
11 about a letter from an entity calls The Schipper  
12 Group about commercial customers' concerns. That is  
13 hearsay.

14 Page 78, line 6 through 17, provided  
15 testimony about statements about promises made to  
16 customers and incentives given to builders. That is  
17 both hearsay and lacks foundation.

18 The entirety of the testimony of Richard  
19 Jordan, which I realize has been moved to be stricken  
20 on other grounds, page 95, line 1 through page 102,  
21 line 4, also is objectionable the entirety of his  
22 testimony is introducing 75 documents spanning 50  
23 years of marketing materials that were obtained from  
24 the Plain Dealer archives.

25 And as far as the exhibits themselves,



1 Mr. Kutik will address those, but as far as the  
2 substance of his testimony into the record, the  
3 newspaper articles are hearsay and there is lacking  
4 authentication.

5 Candace Arcaro, page 11 line 12 through  
6 17, she testified about the cost of converting to a  
7 gas furnace. There is no foundation. Brian Kurz,  
8 page 147, line 4 through 14, also provided testimony  
9 in this case, it was the estimate for converting an  
10 entire subdivision to gas heat. There is no  
11 foundation and would be improper expert testimony.

12 Last is H.G. Wardlaw, page 152, line 20,  
13 through page 153, line 2, he provided testimony about  
14 statements that were made by the president of the  
15 Meadowwood Association about bills paid by others.  
16 That is double hearsay.

17 And last, page 154, line 7, through page  
18 157, line 7, also Mr. Wardlaw's testimony provided a  
19 summary of a column in the Plain Dealer called "Road  
20 Rant," which is hearsay.

21 Thank you, your Honor.

22 EXAMINER PRICE: Thank you. At this time  
23 we will take arguments in opposition to the motion to  
24 strike with respect to the testimony regarding home  
25 values. And then we'll go on to the other areas.

1 MR. CORCORAN: Would you like me to  
2 start, your Honor?

3 EXAMINER PRICE: That would be fine.

4 MR. CORCORAN: Okay. As I'm sure you're  
5 aware, landowners have always been allowed to testify  
6 as to their values. Specifically owners of property  
7 and officers of business have been presumed to have  
8 special knowledge about matters such as the value of  
9 their property and they are qualified to provide a  
10 lay opinion on those subjects.

11 There is many cases that support that.  
12 If you would like me to read them all, I can do that.  
13 First one would be Shane versus Shane 891 F2d 976,  
14 982 (1st Circuit 1989); Allied Systems, Limited  
15 versus Teamsters Transport, Local 604 304 F3d, 785,  
16 792, (8th Circuit 2002).

17 Malloy versus Monahan, 73 F3d, 1012 1016  
18 (10th Circuit 1996), Loughridge,  
19 L-O-U-G-H-R-I-R-I-D-G-E, versus Chiles, C-H-I-L-E-S,  
20 Power Supply Company, Inc., 431 F3d, 1268, 1281 (10th  
21 Circuit 2005); Robinson versus Watts Detective  
22 Agency, Inc., 685, F2d, 729 1st (Circuit 1982); South  
23 Central Livestock Dealers versus Securities State  
24 Bank, 614 F2d, 1056, 1061 (5th Circuit 1980); In re  
25 Petrella, P-E-T-R-E-L-L-A, 230 BR 829, 834, Note 5,

1 (Bankr. North Northern District of Ohio 199)9.

2 Rule 701 talks about opinion testimony of  
3 lay witnesses, and if the witness is not testifying  
4 as an expert, the witness's testimony in form of  
5 opinions is limited to those opinions or inferences  
6 which they are based on the perception of the witness  
7 that are helpful to a clear understanding of the  
8 witness's testimony or determination of a fact in  
9 issue, not based on scientific or technical knowledge  
10 within the scope of Rule 702.

11 These people that testified at these  
12 hearings were living in neighborhoods where their  
13 neighbors were going through these issues. They were  
14 well aware of what was happening around them. And  
15 they had plenty of knowledge to testify on them. The  
16 basis of land values whether or not it's been  
17 repeated multiple times or not really has no  
18 significance.

19 EXAMINER PRICE: Thank you.

20 Any other opposition to the motion to  
21 strike?

22 Mr. Small?

23 MR. SMALL: Yes, your Honor. I'm sorry.  
24 Here we go. Your Honor, first of all, the type of  
25 motions made by FirstEnergy essentially would destroy

1 the concept of local public hearings as they are held  
2 not only in this case but in other cases including  
3 cases where statutes require the holding of local  
4 public hearings in locations near the -- where the  
5 service is provided.

6 EXAMINER PRICE: Mr. Small, you need to  
7 speak -- kind of line up the microphone because you  
8 keep cutting in and out.

9 MR. SMALL: I'm sorry.

10 EXAMINER PRICE: Let's go off the record.

11 (Discussion off the record.)

12 MR. SMALL: Sorry, your Honor, I have  
13 lost a little bit of my voice. I don't think this is  
14 working.

15 MR. KUTIK: It is.

16 MR. SMALL: In addition to destroying the  
17 concept of local public hearings, determinations were  
18 made at the local public hearings that rulings on  
19 certain documents would be finally -- the documents  
20 presented by the witnesses would be determined in  
21 Columbus at this hearing.

22 However, that was -- there was nothing  
23 about striking the testimony or determining whether  
24 the testimony would be admitted at the -- in the  
25 Columbus hearings as far as the testimony itself, so

1 with regard to anything other than the documents  
2 presented by these witnesses --

3 EXAMINER PRICE: Do you have some  
4 authority for the idea they had to make their motion  
5 to strike at the public hearing and not now? It's  
6 not timely somehow?

7 MR. SMALL: Well, not timely in the sense  
8 that that is -- that is the manner in which the Bench  
9 in local public hearings that I attended former  
10 Chairman Schriber conducted the hearings, yes. That  
11 it was only the documents that would be dealt with.

12 EXAMINER PRICE: I don't think we ever  
13 talked about whether motions to strike had to be  
14 filed at the -- or made at the time of the hearing or  
15 not at all. I think you are expanding the scope of  
16 what I recall that we ruled upon. Can you point to  
17 in the transcript that says motions to strike need to  
18 be made now or not at all?

19 In all fairness they at the public  
20 hearings don't have any opportunity to do prior  
21 discovery. They don't necessarily know what a  
22 witness is going to say and certainly they should  
23 have an opportunity to review what the witness said  
24 and make the arguments that they care to make,  
25 shouldn't they?

1 MR. SMALL: They certainly had an  
2 opportunity -- I will go back to my previous argument  
3 which was they certainly had an opportunity to  
4 inquire and I'll make this -- I know that we are only  
5 on the first item at which has to do with property  
6 values, but there have been a lot of declarations  
7 about what -- characterizing the testimony.

8 It's difficult and I made this -- the OCC  
9 made this point in its motion to quash the subpoena  
10 earlier in this proceeding that the opportunity --  
11 the best opportunity to examine these matters on  
12 what -- how to properly characterize it, the  
13 testimony, for instance, was it hearsay or wasn't it  
14 hearsay or so forth, is examination of the witness  
15 who is available at the time and not to come back --

16 EXAMINER PRICE: If a witness reads a  
17 newspaper article into the record. You're -- what  
18 further examination needs to be made? It's either  
19 hearsay or it's not. Whether it comes in or not we  
20 can talk about but that's clearly hearsay.

21 MR. SMALL: I am just saying there were  
22 plenty of opportunities despite the fact that the  
23 FirstEnergy and the OCC as well as other parties  
24 didn't know what these --

25 EXAMINER PRICE: I understand, but I

1 would like you to try to hone your arguments as  
2 Mr. Corcoran did as to authority that's relevant to  
3 what's going on here and let's not talk about  
4 sweeping generalizations about how this might impact  
5 public hearings. But if you could just address the  
6 issues that FirstEnergy raised and whether you have  
7 any authority in opposition to their issues, I would  
8 appreciate it.

9 MR. SMALL: I think they did have an  
10 opportunity to inquire of these witnesses and make  
11 their objections known on the record.

12 EXAMINER PRICE: I understand. So my  
13 question is since they had that opportunity are you  
14 arguing that they waived their ability to make a  
15 motion to strike now?

16 MR. SMALL: Yes.

17 EXAMINER PRICE: And what would your  
18 basis for that be?

19 MR. SMALL: Well, if you could give me  
20 just a moment. I think I do have material on that  
21 subject matter.

22 EXAMINER PRICE: Take your time.

23 MR. SMALL: Okay. Strongsville  
24 transcript at 92, starting on line 8 -- I'm sorry,  
25 Strongsville exhibit -- transcript at 92 -- I'm

1     sorry, 91 and 92, starting at line 10 of page 91, at  
2     the time PUCO Chairman Schriber, what I would like to  
3     reiterate is if you choose not to testify or you are  
4     tired and you choose not to hang around but you  
5     have -- but you have testimony, you could do one of  
6     two things, you could hand the testimony to Shana, it  
7     will be on the record. I emphasize it will be on the  
8     record. And the alternative if you don't have  
9     anything written but you would like to make a  
10    statement or you would like to have a statement on  
11    the record, I emphasize have a statement on the  
12    record, but you don't want to hang around to wait to  
13    make that statement, you have got over 30 people  
14    waiting at least so far, then mail your testimony --  
15    mail the letter, mail your thoughts to the Public  
16    Utilities Commission at 180 East Broad Street, it's  
17    on the literature, in Columbus. You can put it to my  
18    attention. I'll make sure it's gets on the docket as  
19    part of the record. I emphasize as part of the  
20    record.

21                 So you've got choices, you can obviously  
22    come up here and testify. You are more than welcome  
23    or if you have written testimony, give it to Shana,  
24    which I believe is the PUCO's representative, again  
25    back into the transcript, or you can write whatever



1 you wish, write what your thoughts are, send them to  
2 me at the Commission and they will be docketed, okay?

3 EXAMINER PRICE: And where does Mr. --  
4 Dr. Schriber indicate that FirstEnergy needs to make  
5 motions to strike now or they will waive that  
6 opportunity?

7 MR. SMALL: The point I am making, your  
8 Honor, is Chairman Schriber, who was presiding  
9 officer at the local public hearing, is making a  
10 determination that these things would be on the  
11 record.

12 So, again, if there are objections, I  
13 believe Mr. Corcoran has addressed most of the  
14 concern, but if there are objections, certainly the  
15 PUCO has an opportunity or has the authority to admit  
16 this into the record and Dr. -- and former Chairman  
17 Schriber presiding over these --

18 EXAMINER PRICE: You can call him  
19 "Chairman Schriber," that's fine.

20 MR. SMALL: All right. Chairman Schriber  
21 presiding over the proceedings made that  
22 determination is my argument.

23 EXAMINER PRICE: Okay. Thank you.

24 MR. SAKS: May I respond, your Honor?

25 EXAMINER PRICE: You may.

1           MR. SAKS: Relating to the arguments made  
2 by Mr. Small, if they want the testimony to be sworn  
3 testimony and admitted, it should be subject to the  
4 same rules. And just because of the statements by  
5 Chairman Schriber being part of the docket, that is  
6 not the same thing as it being sworn testimony to  
7 which FirstEnergy has the right to object.

8           Regarding the argument advanced by  
9 Mr. Corcoran, I would note, first of all, all of the  
10 authority he cited was federal case law and not Ohio  
11 case law. But moreover even accepting the concept  
12 advanced in those cases, the concept of the owner is  
13 that the owner is perceived to have some knowledge  
14 about his or her property and, therefore, is  
15 permitted to give layperson testimony on it.

16           In this case as Mr. Kutik's motion  
17 mentioned and as I will reiterate, noting in Company  
18 Exhibit 16 which is Steigerwald 24, the testimony  
19 particularly about valuation is not a matter of a  
20 homeowner going out, investigating the value of their  
21 property, and then providing layperson testimony  
22 about that.

23           But what the testimony uniformly shows is  
24 part of an e-mail blitz, Ms. Steigerwald sent  
25 e-mails, a number of them, to her CKAP members in

1 which she told them say your home values have gone  
2 down by 30 or 40 percent. Say that you will not be  
3 able to sell your homes.

4 This is not a matter of the homeowner  
5 having independent lay knowledge. It's a matter of  
6 the homeowner merely parroting what Ms. Steigerwald,  
7 who admittedly has no expertise on this matter, has  
8 told her to say.

9 EXAMINER PRICE: Mr. Saks, you don't have  
10 any evidence -- although these e-mails were sent to  
11 the homeowners, you don't have any evidence that  
12 these homeowners actually read them or didn't have  
13 that opinion already. Your point is just you feel  
14 they are being coached?

15 MR. SAKS: Yes, sir.

16 EXAMINER PRICE: Thank you.

17 MR. SAKS: Your Honor, the only other  
18 point I would like to make --

19 EXAMINER PRICE: I think we are done,  
20 Mr. Saks, because you will have an opportunity to  
21 argue this again later.

22 As to these 35 witnesses, the motion to  
23 strike will be denied. The Commission has long  
24 experience with properly assessing the weight of  
25 testimony received at public hearings, and

1 FirstEnergy will have an opportunity on their brief  
2 to argue before the Commission the weight that the  
3 Commission should give to this testimony.

4 Do we have any arguments with respect to  
5 in opposition to the motion to strike with respect to  
6 the FirstEnergy financials?

7 MR. SMALL: Your Honor, I repeat the same  
8 argument that I made before, that it's my opinion and  
9 from reading the -- maybe I can spare you this  
10 argument every time, but this in my -- from my  
11 reading of the transcript that this determination  
12 that these matters would be made part of the record  
13 was already made by the presiding officer at the  
14 local public hearing and this is the way the local  
15 public hearings proceeded and I might add without  
16 objection from FirstEnergy.

17 EXAMINER PRICE: Mr. Corcoran.

18 MR. CORCORAN: Nothing further.

19 EXAMINER PRICE: Mr. Saks.

20 MR. SAKS: Reiterate our same argument  
21 regarding Mr. Small's same argument.

22 EXAMINER PRICE: Consistent with our  
23 earlier ruling, the motion to strike with respect to  
24 the testimony regarding FirstEnergy financials will  
25 be denied. The Commission is perfectly capable of

1 assessing the proper weight to be given to this  
2 testimony when it makes its decision.

3 Next we have various objections related  
4 to, if I could summarize, relevance, foundation,  
5 hearsay, improper expert testimony, and questions  
6 regarding authentication.

7 Any objection to the motion to strike  
8 regarding those various areas? Beyond what you have  
9 already said, Mr. Small?

10 MR. SMALL: I'll make a record of making  
11 the same argument that this has already been  
12 determined, and the Bench should make the same  
13 determination about determining the weight of the  
14 evidence.

15 And also I would make -- you know, you  
16 have kind of lumped these things together but there  
17 may be some distinctions. For instance, to the  
18 extent we need to continue to argue, for instance,  
19 exploration of whether something was hearsay or not,  
20 there may be -- you may be able to determine that  
21 from the record but you may not because of the --

22 EXAMINER PRICE: Is there any instance  
23 you can point to where we could not make the  
24 determination based upon the transcript as it stands?

25 MR. SMALL: Not being familiar with the

1 transcripts line by line as presented by Mr. Saks,  
2 no, I don't.

3 EXAMINER PRICE: Do you need additional  
4 time?

5 MR. SMALL: All I am saying is that  
6 the -- there are instances where --

7 EXAMINER PRICE: I understand that,  
8 Mr. Small. But if you are going to make that  
9 argument, I want you to make it specifically. They  
10 very carefully went through a line-by-line summary of  
11 their specific objections and I think it's -- they're  
12 entitled to a specific we disagree that they can make  
13 the determination now, and if you are not prepared to  
14 do that, I am prepared to give you additional time.

15 MR. SMALL: I will rest on the argument  
16 that such objections should have been made at the  
17 local public hearings where we had the witnesses to  
18 examine, not only FirstEnergy but also other parties  
19 that cared to attend, but basically the argument is  
20 this determination has already been made by the  
21 presiding officer and that it should be done for the  
22 weight of the evidence.

23 EXAMINER PRICE: Thank you.

24 Mr. Corcoran.

25 MR. CORCORAN: Hearsay based on the fact

1 the company is deprived of the confrontation rights  
2 when discussing these matters and the company had the  
3 opportunity to --

4 EXAMINER PRICE: Not if it was hearsay,  
5 Mr. Corcoran. That's the point, if it was hearsay,  
6 then they didn't have a right, ability to confront  
7 that witness because that witness -- the person  
8 making the statement wasn't there. It was somebody  
9 related to them. That's the problem.

10 MR. CORCORAN: We could have addressed  
11 those issues at the hearing. They had the  
12 opportunity. In addition, going back to the argument  
13 that I made about Rule 701, you know, opinion  
14 testimony is permitted by lay witnesses.

15 EXAMINER PRICE: Thank you.

16 Mr. Saks.

17 MR. SAKS: Your Honor, as you noted, the  
18 problem with the hearsay is that it's an out-of-court  
19 statement and confrontation, there was nothing  
20 FirstEnergy could have done to ameliorate the  
21 hearsay.

22 It's very clear on the transcript when a  
23 witness is reading a letter from somebody else and  
24 the witness is reading into the record or making  
25 comments into the record about a newspaper article

1 written by somebody else, that is black letter  
2 hearsay. And we would submit that as to hearsay as  
3 well as the other objections, they are all clear on  
4 the record and they were not waived. Thank you.

5 EXAMINER PRICE: Thank you.

6 Consistent with our earlier decisions we  
7 are going to deny the motion to strike with respect  
8 to these other various objections, specifically  
9 relevance, foundation, hearsay, improper expert  
10 testimony, and authentication.

11 FirstEnergy is certainly able to argue  
12 before the Commission on their briefs regarding the  
13 weight that should be given to this testimony and the  
14 other parties should be prepared to make comparable  
15 arguments.

16 I would like to note, however, in denying  
17 the motion to strike I am not agreeing with OCC's  
18 contention that this is an improper motion to strike  
19 or that the comments made by the Chairman at the time  
20 somehow foreclosed the motion to strike.

21 Mr. Kutik, I believe you have got another  
22 motion to strike for us?

23 MR. KUTIK: Yes, your Honor. At this  
24 time actually our motion or comments are objections  
25 to the exhibits that were marked and I believe moved



1 at the public hearings. I believe we have a set of  
2 the objectionable exhibits that Mr. Garber can  
3 provide the Bench.

4 EXAMINER PRICE: Thank you. Well, just  
5 on the off chance this might shortcut some of this,  
6 why don't we ask OCC and CKAP, I am not sure CKAP  
7 moved for the admission of any of these, I believe  
8 OCC mostly moved.

9 MR. SMALL: I believe there was at least  
10 one.

11 EXAMINER PRICE: Are there any of these  
12 documents that you intend to withdraw your motion for  
13 admission, or are you going to renew those motions  
14 for submission anyways?

15 MR. SMALL: OCC's motions for the  
16 documents stand.

17 EXAMINER PRICE: Always hopeful we can  
18 get some things informally resolved.

19 Mr. Kutik.

20 MR. KUTIK: Your Honor, what I intend to  
21 do is to go through the exhibits with respect to the  
22 public hearing in date order of the public hearings  
23 starting with Sandusky.

24 Sandusky Exhibit A is a multi-page  
25 document which begins with a depiction of something

1 that says "Good Cents Construction Specifications."

2 Our motion is fairly narrow with respect  
3 to this one, your Honor, and that is it's directed  
4 actually to the document or the page that it's third  
5 from the end. And our objection simply is this is  
6 illegible, and therefore, is inappropriate for  
7 admission under Article IX of the Rules of Evidence.

8 MR. SMALL: Not entirely clear what  
9 document we are talking about, so.

10 MR. KUTIK: It's the third from the end.

11 MR. SMALL: Well, I have just been handed  
12 the documents. I have all the exhibits in a little  
13 different fashion here, so.

14 MR. KUTIK: I have given them to you in  
15 the order I am addressing them.

16 EXAMINER PRICE: I believe, Mr. Kutik,  
17 the top line says "Retro to October Read Date"? Is  
18 that the document you are talking about?

19 MR. KUTIK: Yes.

20 EXAMINER PRICE: Thank you.

21 MR. KUTIK: In handwriting, yes.

22 EXAMINER PRICE: Mr. Small, I am not  
23 asking for argument. I am just asking --

24 MR. SMALL: Yes, I am on that page.

25 EXAMINER PRICE: Okay. Thank you.

1                   On to your next one, Mr. Kutik.

2                   MR. KUTIK: So are we going to go exhibit  
3 by exhibit or?

4                   EXAMINER PRICE: We are going to go  
5 exhibit by exhibit. I suspect that we will probably  
6 defer ruling on this but let's make our record now  
7 and that will allow us time to consider your  
8 arguments.

9                   MR. KUTIK: Okay. Very good. Your  
10 Honor, our next objection --

11                  MR. SMALL: Your Honor, it might be a  
12 little bit difficult to -- if they are all -- if the  
13 objections are all on different bases, it might be  
14 difficult to address them all together. I would  
15 suggest maybe we should handle it document by  
16 document but.

17                  EXAMINER PRICE: I don't want to  
18 prejudice your ability to argue on these documents,  
19 so we'll go ahead and take your arguments on this  
20 document.

21                  MR. SMALL: I mean there may be some  
22 documents but, you know, to the extent that, you  
23 know, this is a readable document and you can read  
24 portions of it despite the fact that this appears to  
25 have been photocopied by the -- by the court reporter

1 and then perhaps taken off of docketing and  
2 reproduced again for your Honor today. I can still  
3 read part of this document.

4 And the other thing is I am not sure this  
5 isn't just a photocopying problem. We don't have the  
6 actual document that was handed to the court  
7 reporter.

8 EXAMINER PRICE: Well, you indicated you  
9 had brought all the exhibits separately. Do you have  
10 any more legible copy of this one?

11 MR. SMALL: No. My versions are prints  
12 from the PUCO's docketing information.

13 EXAMINER PRICE: So you do not have a  
14 more legible version of this document?

15 MR. SMALL: I have a version that's very  
16 similar to what was handed to me.

17 EXAMINER PRICE: With respect to your  
18 argument, it's partially legible, isn't it a document  
19 completeness problem? There might be something that  
20 is relevant and exculpatory to FirstEnergy that we  
21 can't read because it's not legible?

22 MR. SMALL: In order to make this  
23 determination at the very least we would have to have  
24 the actual document handled by the witness before us.

25 MR. KUTIK: Well, your Honor, that's the

1 very problem with -- that's pointed out by the Rules  
2 of Evidence with respect to use of copies. If there  
3 is a problem with respect to the copies that are  
4 being used, and there is no question that this is  
5 illegible, then the document should be excluded  
6 unless there is an original presented. There wasn't  
7 so it should be excluded.

8 MR. SMALL: That argument is about a  
9 problem that does not extend to whether the problem  
10 was created by the recording process of the -- of the  
11 forum. Mr. Kutik is taking a giant leap by assuming  
12 that the document that was handed to the PUCO was not  
13 legible.

14 MR. KUTIK: Your Honor, I don't have the  
15 burden of establishing the foundation of the  
16 propriety of the document. If the document that I  
17 have is illegible, if the document that Mr. Small has  
18 is illegible, then it shouldn't be used.

19 EXAMINER PRICE: Okay. Mr. Corcoran, any  
20 arguments regarding this that we haven't already  
21 heard?

22 MR. CORCORAN: Yeah. I don't have a  
23 problem reading this at all. It just seems to be the  
24 backside of this bled through on the photocopying but  
25 all the relevant information is there and readable.

1 EXAMINER PRICE: Okay. As I indicated  
2 earlier, I think we are most likely going to defer  
3 ruling on these on a case-by-case basis, so let's  
4 move on to the next one.

5 MR. KUTIK: Your Honor, our next document  
6 or next objection is directed to the Strongsville  
7 exhibits starting with Strongsville Exhibit 1.  
8 Strongsville Exhibit 1 is a fairly voluminous  
9 document which was presented by Mr. Carney, one of  
10 the CKAP leaders.

11 And our motion -- our objection  
12 specifically is directed to Exhibit D, and since  
13 these are not -- no pagination to this exhibit, I am  
14 at a loss to explain exactly what it is other than  
15 it's approximately by my copy about a quarter of the  
16 way in.

17 EXAMINER PRICE: You have helpfully  
18 paper-clipped it for the Bench, so we are there.

19 MR. KUTIK: Very good. It says "Exhibit  
20 D Downtown Cleveland Alliance Analysis of  
21 All-Electric Buildings."

22 MS. GRADY: Can we have a moment, your  
23 Honor, to find it? We don't have the paperclip on  
24 our submission.

25 MR. KUTIK: You do. On the version I

1 presented to you, you do.

2 MR. CORCORAN: Actually I don't have --

3 EXAMINER PRICE: Mr. Garber -- if you  
4 remove the binder clip, you might be able to find the  
5 paperclip.

6 MS. GRADY: I think I found it.

7 EXAMINER PRICE: Okay, thank you.

8 Mr. Kutik, please proceed.

9 MR. KUTIK: Yes, your Honor. This  
10 document purports to be an analysis of electric  
11 rates, payments, and so forth. This obviously is  
12 hearsay. It's from other folks. It's improper  
13 opinion testimony to the extent it intends to do some  
14 type of calculations that we're not privy to.

15 Also have similar objections, your Honor,  
16 that follows on Exhibit E which are -- which is  
17 labeled "Electric Bills Bridgeview Apartments Unit  
18 230 (1427SF)." Again, we have some type of  
19 calculations, some type of display. This document is  
20 hearsay and improper opinion and expert testimony.

21 EXAMINER PRICE: Thank you.

22 Mr. Small or Mr. Corcoran?

23 MR. SMALL: A moment, if I may, your  
24 Honor. During the Strongsville hearing I did take  
25 occasion to cross-examine Mr. Carney and ask about

1 his personal knowledge about these matters, to which  
2 he testified that he had personal knowledge  
3 concerning the contents of whatever this is,  
4 Strongsville Exhibit --

5 EXAMINER PRICE: 1.

6 MR. SMALL: 1, and it's not obvious from  
7 the documents D and E that this is hearsay, that he  
8 doesn't have personal knowledge of the matters in  
9 these exhibits and, again, if upon questioning by the  
10 OCC whether the individual had personal knowledge  
11 concerning this, FirstEnergy should have done --  
12 performed its cross-examination at the Strongsville  
13 hearing.

14 EXAMINER PRICE: Doesn't this get back to  
15 the issues raised by Mr. Kutik, the first motion to  
16 strike regarding CKAP members and Mr. Carney is a  
17 CKAP member?

18 FirstEnergy had no opportunity to seek  
19 through discovery what documents Mr. Carney might put  
20 on, what statements he might make, and so you are  
21 asking them to be prepared to cross-examine on a  
22 30-second basis a rather voluminous document that may  
23 or may not contain information that he may or may not  
24 have personal knowledge of.

25 MR. CORCORAN: Your Honor.



1 EXAMINER PRICE: Mr. Corcoran.

2 MR. CORCORAN: He was not testifying as a  
3 member of CKAP in this capacity. He was testifying  
4 through his own personal knowledge of his own  
5 personal projects and nothing --

6 EXAMINER PRICE: I am not sure if I can  
7 understand the distinction between testifying as a  
8 member of CKAP and testifying as something else. I  
9 mean, all CKAP members are all testifying on their  
10 own personal situations, I think.

11 MR. CORCORAN: Right, and they were  
12 testifying as individuals. So whether or not they  
13 were CKAP members or not is irrelevant.

14 EXAMINER PRICE: I'm not following you  
15 why that's not relevant. Again, it's not even --  
16 Mr. Carney has not even been identified as a member  
17 of CKAP. I believe Mr. Kutik identified Mr. Carney  
18 as a leader of CKAP. And so my question is, is it  
19 fair to present FirstEnergy with a situation where  
20 they need to dispute a document that they have had no  
21 opportunity to conduct discovery upon?

22 Certainly if we were in a rate case, OCC  
23 would not be happy if FirstEnergy sent its employees  
24 to testify at public hearings regarding their rate  
25 schedules and the underlying information behind that

1 and sought to have it admitted. And evidentiary  
2 rules before this Commission need to work both ways.

3 MR. KUTIK: May I respond, your Honor?

4 EXAMINER PRICE: You may.

5 MR. KUTIK: Your Honor, may I approach?

6 EXAMINER PRICE: You may.

7 MR. KUTIK: Your Honor, I would like to  
8 provide the Bench with copies of 64 and 65 of the  
9 transcript of the Strongsville hearing where  
10 Mr. Small made his "examination" of Mr. Carney. The  
11 examination says nothing about personal knowledge.  
12 In fact, all it says is what are these documents  
13 essentially, and Mr. Carney says this is basically  
14 everything I pulled out of my files. That's not  
15 personal knowledge. That's not proper foundation.

16 EXAMINER PRICE: Mr. Small.

17 MR. SMALL: I would like to address  
18 your -- I would like to address your comment about  
19 the conducting local public hearings, which is if we  
20 took that approach suggested by FirstEnergy to the  
21 testimony of local public hearings, then, for  
22 instance, the OCC representing residential customers  
23 in rate cases or whatever proceeding we wouldn't  
24 have -- it would completely destroy the concept of --

25 EXAMINER PRICE: I think that's your

1 opinion, Mr. Small. I don't think that's necessarily  
2 the Commission's opinion. So why don't we try to  
3 narrow our arguments a little more specifically to  
4 this case.

5 I know you want to argue you represent  
6 all residential customers and so by analogy that  
7 would mean that no residential customers would be  
8 able to testify at a public hearing, and I think that  
9 is far more sweeping than the arguments that  
10 Mr. Kutik is making here.

11 And if you could respond to his argument  
12 regarding the questions you asked Mr. Carney at the  
13 public hearing.

14 MR. SMALL: I'm sorry, what page do we  
15 have it on? Mr. Kutik did not present me with the  
16 pages.

17 MR. KUTIK: 64 and 65.

18 MR. SMALL: Would you give me the pages?

19 MR. KUTIK: 64 and 65.

20 EXAMINER PRICE: Is it somewhere else in  
21 the transcript where you ask him about his personal  
22 knowledge?

23 MR. SMALL: I'm having a hard time  
24 following here. I don't have this as being Mr.  
25 Carney. Wrong hearing.

1 EXAMINER PRICE: Time presses, Mr. Small.

2 MR. SMALL: I'm sorry, your Honor.

3 EXAMINER PRICE: We are getting pressed  
4 for time.

5 MR. SMALL: 54 was the beginning of his  
6 testimony. I am trying to find his  
7 cross-examination. It appears to be on page 65.

8 EXAMINER PRICE: I call upon you on page  
9 64 at line 2.

10 MR. SMALL: As far as the hearsay, Mr. --  
11 the basis of the hearsay objection is the fear of  
12 unreliable testimony. This is a member of the  
13 public. He's combed -- he states at the bottom of  
14 page 64 he's combed his files, come up with the items  
15 that he presents and --

16 EXAMINER PRICE: But certainly you're not  
17 arguing it's not possible for his documents to  
18 contain documents prepared by other persons.

19 MR. SMALL: No.

20 EXAMINER PRICE: That's the basis of his  
21 argument.

22 MR. SMALL: I am making the argument for  
23 admission of it regardless of whether it's hearsay or  
24 not.

25 EXAMINER PRICE: So you withdraw your

1 previous comment that you asked for his knowledge.

2 MR. SMALL: To the extent it comes from  
3 his knowledge. That's the personal knowledge he  
4 acknowledges.

5 EXAMINER PRICE: Okay. Thank you.

6 Mr. Kutik, next document, please.

7 MR. KUTIK: Your Honor, briefly with  
8 respect to Strongsville Exhibit 2, this is a document  
9 obviously that would be further discussed in this  
10 case, is my understanding.

11 OCC provided us with copies of certain  
12 exhibits that they say they intend to introduce at  
13 this phase of the proceeding, so in reliance on that  
14 representation I'll defer my argument with respect to  
15 this document when and if OCC should seek to  
16 introduce a similar document as an exhibit in this  
17 case. I assume through the testimony of  
18 Mr. Andreatta who I understand is here.

19 EXAMINER PRICE: Thank you.

20 MR. KUTIK: Your Honor, at this point we  
21 would move to the exhibits at the North Ridgeville  
22 public hearing. And our first objection, your Honor,  
23 is with respect to Ms. Lockhart's Exhibit No. 1.  
24 This is Rita Lockhart. Basically this is supposedly  
25 presented to her by someone else. This isn't her

1 bills. Exhibit 1, North Ridgeville.

2 EXAMINER PRICE: I'm sorry. Somehow I  
3 got out of order.

4 MR. KUTIK: I'm sorry skipped the Maumee  
5 exhibits on reliance on what we had discussed  
6 earlier, that OCC wanted a chance to look at those  
7 exhibits.

8 EXAMINER PRICE: Oh, okay.

9 MR. KUTIK: I skipped the Maumee  
10 exhibits. I apologize.

11 EXAMINER PRICE: That's okay.

12 MR. KUTIK: So I am now addressing North  
13 Ridgeville Exhibit 1.

14 MS. GRADY: Is there some -- some of  
15 these have numbers on the top. Is that -- is there a  
16 number on the top of that one, because I can't find  
17 it.

18 MR. KUTIK: Actually it says PUCO 11 --  
19 it's stamped. Exhibit stamp is PUCO 11/22/10, and  
20 it's detailed statement of account with Ohio Edison  
21 logo at the top.

22 EXAMINER PRICE: I have it now. Thank  
23 you.

24 Please proceed, Mr. Kutik.

25 MR. KUTIK: Yes, your Honor, as I

1 indicated, Ms. Lockhart testified about this document  
2 and her testimony basically is this is something she  
3 was -- given to her by her neighbor so we --

4 EXAMINER PRICE: Thank you. I  
5 understand.

6 MR. KUTIK: -- on that basis --

7 EXAMINER PRICE: I understand.

8 Mr. Small. Mr. Corcoran.

9 MR. CORCORAN: According to the  
10 information on the right-hand side of the paper, this  
11 information came directly from FirstEnergy's call  
12 center.

13 EXAMINER PRICE: And so I'm not sure -- I  
14 am not completely grasping your point.

15 MR. CORCORAN: I'm arguing that it's an  
16 exception to hearsay.

17 EXAMINER PRICE: Okay. Mr. Kutik,  
18 respond to that?

19 MR. KUTIK: Yes. If the individual who  
20 received this document initially was the person who  
21 presented it, we could examine her on whether this  
22 was -- this, in fact, came from the call center as  
23 opposed to a document she created.

24 EXAMINER PRICE: Thank you. Let's move  
25 on to the next exhibit.

1           MR. KUTIK: Your Honor, the next exhibit  
2 we object to is North Ridgeville Exhibit No. 2,  
3 another document presented by Ms. Lockhart. This is  
4 an e-mail or appears to be an e-mail from someone  
5 named Brenda Wakeman to somebody named Dave. And  
6 this is -- we have at least one level of hearsay with  
7 respect to that.

8           It is further hearsay so we are at least  
9 a double, perhaps triple hearsay in that this  
10 apparently Ms. Wakeman purports to say what a seller  
11 is telling her. So on the fact that it is at least  
12 double hearsay, if not more levels of hearsay, we  
13 would object.

14           EXAMINER PRICE: Opposition?

15           MR. SMALL: It should go to the weight of  
16 the evidence, your Honor.

17           EXAMINER PRICE: Thank you.

18           Mr. Kutik.

19           MR. KUTIK: Your Honor, I will skip I  
20 think in your package there is North Ridgeville  
21 Exhibit 3 which appears to be some bills. We will  
22 skip that one if it's in your packet. Oh, it is not  
23 in the packet. Then our next we object to is North  
24 Ridgeville 7.

25           MR. SMALL: I'm sorry.



1 EXAMINER PRICE: 7.

2 MR. SMALL: North Ridgeville.

3 MR. KUTIK: 7. This document is a  
4 document that's a cover "The Neighborhood Builders  
5 Bob Schmitt Homes affordable custom designed homes."  
6 This is hearsay, your Honor.

7 EXAMINER PRICE: Mr. Corcoran.  
8 Mr. Small. Anybody have a response to this?

9 MR. SMALL: Well, I don't think we  
10 have -- because this is a document presented by a  
11 member of the public regarding a business brochure, I  
12 don't think we have a question regarding -- there  
13 shouldn't be a serious question about the accuracy of  
14 it, but the real question is what point was it that  
15 the witness was making by submitting this?

16 EXAMINER PRICE: Well, you marked and  
17 moved its admission. What is the relevance of this  
18 document to the terms in this case?

19 MR. SMALL: Well, relevance in my mind in  
20 moving it would be that --

21 EXAMINER PRICE: It shows that Bob  
22 Schmitt marketed all electric homes.

23 MR. SMALL: No, that's not the point. I  
24 believe I would use it for -- it's the type of  
25 housing and the situation that these people present

1 themselves.

2 For instance, to -- to the argument that  
3 all we need to do for all electric customers is to  
4 insulate their homes a little bit better or address  
5 it in that fashion, this document addresses the  
6 manner in which these homes were constructed and to  
7 argue against that these people have a durable stock  
8 which cannot be altered simply to take care of the  
9 matter that's been before us.

10 EXAMINER PRICE: Okay. Mr. Kutik,  
11 response?

12 MR. KUTIK: Your Honor, do you want me to  
13 respond to that or next exhibit?

14 EXAMINER PRICE: It's up to you.

15 MR. KUTIK: Well, I'll do both.

16 EXAMINER PRICE: Okay.

17 MR. KUTIK: With respect to this exhibit,  
18 your Honor, again, there is no foundation laid with  
19 respect to what it is. It's -- there is no  
20 foundation it is an exception to the hearsay rule in  
21 any way, shape, or form, and indeed it is also  
22 irrelevant that -- the fact that Bob Schmitt markets  
23 all electric homes is irrelevant to any issue in this  
24 case.

25 EXAMINER PRICE: Thank you.

1 MR. KUTIK: Your Honor, our next exhibit  
2 that we object to is Exhibit No. 8 at the North  
3 Ridgeville hearing. Again, this is -- at least the  
4 first two pages of this are another brochure  
5 apparently from Bob Schmitt Homes and so we would  
6 object to the first two pages of this exhibit on the  
7 same grounds we object to Exhibit No. 7.

8 EXAMINER PRICE: Thank you. Let's go off  
9 the record for one minute.

10 (Discussion off the record.)

11 EXAMINER PRICE: Let's go back on the  
12 record.

13 Exhibit 9?

14 MR. KUTIK: Should I with respect to  
15 Exhibit 9? Your Honor, again, this is another  
16 document which is a Bob Schmitt -- apparently Bob  
17 Schmitt document not presented by Bob Schmitt, by an  
18 individual by the name of Leonard Cline.

19 Further, your Honor, it at least on the  
20 first page appears to be incomplete in that it ends  
21 with sent -- in the middle of a sentence, and we  
22 don't know what the rest of the sentence is.

23 I also would object on the grounds of  
24 relevance, particularly with respect to the second  
25 page with respect to I suppose the checklist, what

1 that's relevant to.

2 EXAMINER PRICE: Arguments and response?

3 MR. SMALL: Same argument, your Honor.

4 In particular there was considerable local public  
5 testimony regarding the -- whether individuals were  
6 in Bob Schmitt Homes and this document, a commercial  
7 document, reliability is not really subject to  
8 question as far as it being an authentic document,  
9 the type of homes that these individuals are living  
10 in which was the subject of extensive testimony at  
11 the local public hearings.

12 EXAMINER PRICE: Okay. Mr. Kutik.

13 MR. KUTIK: Your Honor, just to respond  
14 to that and to be clear, one of our objections with  
15 respect to this is hearsay. With respect to the idea  
16 that it's obviously authentic, well, that's the say  
17 so of counsel. We have nothing in the record to  
18 determine what it is or whether it's genuine, and we  
19 know it's incomplete.

20 EXAMINER PRICE: Thank you.

21 MR. KUTIK: Our next exhibit, your Honor,  
22 is Exhibit 12 -- excuse me, Exhibit 10. Again, this  
23 appears to be the document not with respect to  
24 FirstEnergy. Also appears to be a document that's  
25 from Bob Schmitt and, therefore, it's hearsay. It's

1 also irrelevant.

2 EXAMINER PRICE: It's also what?

3 MR. KUTIK: Irrelevant.

4 EXAMINER PRICE: Thank you.

5 Mr. Small.

6 MR. SMALL: If I could have a moment to  
7 review the document.

8 I'll just state with regard to all these  
9 documents of this nature individuals were invited --  
10 or invited by the Public Utilities Commission and  
11 entry --

12 EXAMINER PRICE: I understand that, but  
13 these are documents that are not -- as I -- unless I  
14 am incorrect, Mr. Kutik is only talking about  
15 documents that OCC or CKAP specifically moved the  
16 admission of.

17 So I understand that people brought a lot  
18 of things to these public hearings, but you thought  
19 this document relevant enough that you specifically  
20 moved its admission as opposed to any number of other  
21 documents that were brought to the public hearing so  
22 I don't think it's fair to put the onus, well, the  
23 PUCO invited people to just come and testify. OCC  
24 thought this was a particularly relevant document,  
25 that's why you moved its admission.

1 MR. SMALL: Well, this document documents  
2 the existence of the optional heating rate which is  
3 the part that is marked and highlighted.

4 EXAMINER PRICE: I don't think there is  
5 any question in this proceeding that there was an  
6 optional heating rate at one time.

7 Okay. Mr. Corcoran.

8 MR. CORCORAN: I don't have anything to  
9 say on that.

10 EXAMINER PRICE: Okay. Mr. Kutik.

11 MR. KUTIK: Your Honor, the next exhibit  
12 that we object to is Exhibit No. 11, which appears to  
13 be a comparison of gas and electric billing. This  
14 was a document that was testified -- presented by  
15 Ms. Campo. We do not have a basis to understand  
16 where these numbers come from. It's -- therefore,  
17 it's hearsay.

18 There is no foundation laid that any of  
19 this information falls within any exceptions to the  
20 hearsay rule. It's also improper expert opinion  
21 testimony.

22 EXAMINER PRICE: Mr. Small.

23 MR. SMALL: The OCC and nobody has  
24 maintained that this individual is testifying as an  
25 expert witness. However, the witness can and should

1 be permitted to testify concerning their  
2 understanding of the relationship between gas and  
3 electric heating.

4 It is the subject matter -- it is at  
5 least partially the subject matter of Mr. Ridmann's  
6 testimony. So as far as relevance is concerned in  
7 this individual, while not testifying as an expert,  
8 is testifying concerning their understanding  
9 concerning these relationships.

10 EXAMINER PRICE: Let's go back to the  
11 rule that Mr. Corcoran cited, Ohio Evidence Rule 701,  
12 I believe. Could you explain -- 701 states if the  
13 witness is not testifying as an expert, the witness  
14 testimony in the form of opinions or inferences is  
15 limited to those opinions or inferences which are,  
16 one, rationally based on the perception of the  
17 witness and, two, helpful to a clear understanding of  
18 the witness's testimony or the determination of a  
19 fact in issue.

20 Can you explain how this document is  
21 rationally based on the perception of the witness?  
22 We'll give you some leeway on number two.

23 MR. SMALL: Only to the extent that it  
24 appears to be based on observations from the  
25 witness's own electric situation.

1 EXAMINER PRICE: It even says on here  
2 data in boxes comes from OCC. That can't be based on  
3 her perceptions.

4 MR. SMALL: OCC simply asks for admission  
5 of these things and the Attorney Examiner has stated  
6 from the Bench let this -- to the extent people want  
7 to brief it and cite it.

8 EXAMINER PRICE: Okay. Fair enough.

9 Mr. Kutik.

10 MR. KUTIK: Well, if I could just respond  
11 to that, your Honor, the point of the rule is to say  
12 if there are things that are normally within the  
13 competence of a lay witness, they can testify about  
14 it. The car went fast. He was drunk as opposed to  
15 the Dominion rate was X.

16 And the fact that they want to compare  
17 this to Mr. Ridmann's testimony, Mr. Ridmann's  
18 testimony is subject to thorough cross-examination,  
19 thorough discovery, workpapers and so forth, shows  
20 the error of trying to admit this document.

21 EXAMINER PRICE: I understand.

22 MR. KUTIK: Our next objection, your  
23 Honor, is directed to North Ridgeville Exhibit 13,  
24 another series of Bob Schmitt Home documents, for the  
25 same basis we noted earlier, it's hearsay, it's



1 irrelevant.

2 EXAMINER PRICE: Response?

3 MR. SMALL: Is this just 13?

4 EXAMINER PRICE: I think we are just at  
5 13 now.

6 MR. KUTIK: Just to be clear, Exhibit  
7 13 --

8 EXAMINER PRICE: Four documents, four  
9 pages in Exhibit 13.

10 MR. KUTIK: Thank you, your Honor. I was  
11 just going to point that out.

12 EXAMINER PRICE: All four pages in  
13 Exhibit 13.

14 MR. KUTIK: I would also note, your  
15 Honor, the document appears to be incomplete as well.

16 EXAMINER PRICE: It does skip from page 1  
17 to page 5, and page 5 does to appear to be the end of  
18 the document.

19 MR. SMALL: Same argument.

20 EXAMINER PRICE: I will assume you are  
21 going to make the same argument. Just in order to  
22 expedite things if you have anything different as to  
23 any document while we go through this, I would  
24 appreciate it.

25 Mr. Kutik.

1 MR. KUTIK: Your Honor, the next  
2 objection is to North Ridgeville Exhibit 17. This  
3 is -- this appears to be a chart, one page,  
4 "Electricity" and then there is a hole punch "and  
5 Cost" and it says at the bottom by Chuck Nagy  
6 2/15/2010.

7 As with the earlier document that we  
8 discussed with respect to Ms. Campo, this is a  
9 document that contains hearsay, it is improper  
10 opinion testimony and, therefore, we would object to  
11 its admission.

12 EXAMINER PRICE: Thank you. Kirtland  
13 Exhibit 1.

14 MR. KUTIK: Yes, your Honor.

15 MR. SMALL: An identification of who  
16 Chuck Nagy is?

17 MR. KUTIK: I apologize, I can't hear  
18 you, Mr. Small.

19 EXAMINER PRICE: He asked if there is an  
20 identification as to who Chuck Nagy is.

21 MR. KUTIK: Mr. Nagy was a witness at the  
22 North Ridgeville hearing.

23 EXAMINER PRICE: And he has also been  
24 identified as a leader of CKAP.

25 MR. KUTIK: Yes, your Honor, he was.

1 EXAMINER PRICE: Let's go off the record.

2 (Discussion off the record.)

3 EXAMINER PRICE: Okay. Let's go back on  
4 the record.

5 Kirtland Exhibit 1.

6 MR. KUTIK: Yes, your Honor. This is  
7 another multi-page document and our basis, your  
8 Honor, with respect to this document is that certain  
9 documents within this document appear to be  
10 incomplete.

11 And specifically, your Honor, for  
12 example, five pages in there's a handwriting which  
13 presents additional authentication problems "FAQ on  
14 LGS." And it appears to be starting at question 27,  
15 so we don't know what the rest of the questions are.

16 There's also on the next page, which is  
17 "LGS Air Conditioner Plus Fact & Testimonial Sheet,"  
18 that's another one where it says at the bottom "see  
19 reverse side for customer comments," and we don't  
20 really have that document.

21 And then finally with respect to the  
22 completeness objections, your Honor, on the last page  
23 it indicates at the bottom of the page "over," and  
24 there's no over.

25 We would also object, your Honor, on the

1 basis of relevance. This is about a lead generation  
2 sales program, in other words an employee gets --  
3 gets another person to sign up to be an electric  
4 customer, they get some incentive. We think that's  
5 irrelevant.

6 EXAMINER PRICE: Thank you.

7 Response? Okay.

8 MR. SMALL: No additional argument, your  
9 Honor.

10 EXAMINER PRICE: Mr. Kutik, Kirtland 2.

11 MR. KUTIK: Yes, your Honor. This is one  
12 that has completeness issues. For example, the last  
13 two -- I'm sorry. The last two pages said this is  
14 one page of a numerous page internal report. The  
15 last two documents have that notation and so on that  
16 grounds we would object on the basis that it is  
17 incomplete. That's our objection.

18 EXAMINER PRICE: Thank you.

19 Response?

20 MR. SMALL: The company certainly at  
21 normal hearings would have an opportunity to ask for  
22 a complete document. The problem here is that we  
23 don't know whether the individual had these pages or  
24 not at the local public hearing. And had they been  
25 asked for a complete copy, that might have been --

1 they might or might not have been able to provide a  
2 complete copy of that for the record.

3 EXAMINER PRICE: But isn't that fatal to  
4 the document, Mr. Small? Let's assume for the sake  
5 of argument that on the last page it says rates are  
6 not guaranteed for all time, which I believe is one  
7 of the arguments that the intervenors have made, that  
8 these rates were promised for all time.

9 By not providing a complete copy of the  
10 document FirstEnergy is not able to rely upon that  
11 hypothetical exculpatory information.

12 MR. SMALL: I suggest that the reason why  
13 we have to -- no, I am not going to argue because we  
14 have to conjecture exactly what happened and this is  
15 the problem about doing the conjecturing in Columbus  
16 rather than the --

17 EXAMINER PRICE: But isn't that why the  
18 evidence rules say that you need to file complete  
19 documents? I mean, isn't that the underlying policy?

20 MR. SMALL: I would characterize the rule  
21 as saying that the party is entitled -- that the entire  
22 document is not necessary but the opposing side is  
23 entitled to that complete document.

24 EXAMINER PRICE: Okay. So, again,  
25 doesn't that make it fatal for this document because

1 you're willing to acknowledge they are entitled to  
2 see the complete document and they can't in this  
3 case?

4 MR. SMALL: Which they didn't ask for.

5 EXAMINER PRICE: Okay. Mr. Kutik,  
6 response?

7 MR. KUTIK: Your Honor, just to respond  
8 to that, we're not required to ask the questions to  
9 lay a proper foundation for a document. If the  
10 document is defective, we are not required to cure  
11 it. The party moving the document is required to do  
12 that.

13 If there is a question about the  
14 document, we have raised questions about the  
15 completeness of the document, then a copy of the  
16 document is inadmissible under Article IX of the  
17 Rules of Evidence.

18 EXAMINER PRICE: Thank you. Let's move  
19 on to the third exhibit.

20 MR. KUTIK: Yes, your Honor. This is  
21 another document that has completeness problems. On  
22 the third page, your Honor, there's a notation that  
23 says "Every testimonial has a backside like this one  
24 but only first one scanned to show as example. Each  
25 one gave specifics on customer's bill." So for that

1 reason, your Honor, we would object to the admission  
2 of this portion of this exhibit.

3 EXAMINER PRICE: Thank you.

4 Response?

5 MR. SMALL: The witness was simply trying  
6 to prevent the cumulative evidence on the same  
7 matter. That's the only purpose apparently served by  
8 the notation of the treatment of the document.

9 EXAMINER PRICE: Mr. Kutik.

10 MR. KUTIK: Your Honor, our next  
11 objection is directed to Kirtland Exhibit No. 4.  
12 This appears to be a number of different documents,  
13 some of which -- many of which are incomplete.

14 For example, it says at the beginning,  
15 the document is entitled "Fast Facts," and as you see  
16 at the bottom of the document, the bottom right, the  
17 document ends in the middle of the paragraph, and we  
18 don't know whether, for example, what appears on the  
19 next page is the continuation of that document.

20 With respect to the third page of this  
21 document, that also is a document that appears to end  
22 in the middle of a sentence. If we go to the third  
23 document from the end, a document which is labeled  
24 "1996 Illuminating Company Electric Space Heating  
25 Programs," you at the -- at the bottom right, it's

1 continued on the back and we don't have the back so  
2 on those grounds, your Honor, we object.

3 EXAMINER PRICE: Mr. Small.

4 MR. SMALL: No additional arguments.

5 EXAMINER PRICE: Thank you.

6 Mr. Kutik.

7 MR. KUTIK: Your Honor, our next  
8 objections go to Exhibits 5 through 15. And I  
9 believe, your Honor, each one of these exhibits is  
10 hearsay. They were exhibits that were offered via  
11 the testimony of Mr. Grendell and each one is either  
12 a document authored by Mr. Grendell or document  
13 received by the company from Mr. Grendell.

14 For example, Exhibit No. 5 is a letter  
15 from the PUCO to a Jim Davis. We would argue that  
16 that's hearsay. Exhibit No. 6 is an e-mail -- should  
17 I slow down, your Honor?

18 EXAMINER PRICE: No, you're fine.

19 MR. KUTIK: Is an e-mail from Sue -- from  
20 Teryl Bishop to Sue Steigerwald, again, that's not an  
21 e-mail that Mr. Grendell received or wrote. Exhibit  
22 5 is another document that Mr. Grendell hasn't  
23 testified that he received or where it came from.

24 Exhibit 8, again, is the Andreatta  
25 supposed letter, and I will withhold further comment



1 on that document. Exhibit 9 is a document that says  
2 "For service rendered on or after April 18, 1996," we  
3 will not argue that this is hearsay, your Honor, but  
4 we would argue that this is incomplete due to the  
5 fact that it refers to "bill computation on the back"  
6 and we don't have that back.

7 Exhibit 10 appears to be an e-mail from  
8 Paul Fisher to Mr. Grendell. This is obviously  
9 hearsay with respect to the statements made by  
10 Mr. Fisher. So we would object with respect to the  
11 first two documents.

12 There are also numerous handwriting on  
13 the other documents and so obviously since those  
14 aren't part of any objections or any document that  
15 was provided by the companies, we would object with  
16 respect to that -- that part of the document.

17 Finally we would object to the last two  
18 documents on this -- this exhibit as again being  
19 documents not from Mr. Grendell but apparently from  
20 Claridon Heating and Cooling to Paul Fisher, so these  
21 documents are certainly hearsay and, therefore, we  
22 will object with respect to 10.

23 11, your Honor, is -- excuse me. Exhibit  
24 11 is another letter from a Paul -- excuse me, Tom --  
25 Thomas Weise, W-E-I-S-E, of The Schipper,

1 S-C-H-I-P-P-E-R, Group to Mr. Grendell. That is  
2 hearsay. Exhibit 12 is a -- purports to be a letter  
3 from Concord Township to the PUCO. Again, that is  
4 also hearsay.

5 Exhibit 13 is a document from Bill,  
6 appears to be a letter from Bill Arcuri to Tim  
7 Grendell, and so we would object on the basis of  
8 hearsay with respect to that part of the document and  
9 with respect to the rest of the document, frankly,  
10 since obviously it is not a document Mr. Grendell  
11 received.

12 Exhibit 14 is a -- appears to be an  
13 e-mail from Dr. and Mrs. Richard Gift to a  
14 Ms. Gilbert. Certainly we don't know who Ms. Gilbert  
15 is. We don't know who Dr. and Mrs. Gift is,  
16 presented by Mr. Grendell, is clearly improper and  
17 hearsay.

18 And finally on the series, your Honor,  
19 there is Exhibit 15 which is a letter from Judy and  
20 Ron Neuger, N-E-U-G-E-R, to Mr. Grendell, but that  
21 also is hearsay.

22 EXAMINER PRICE: Thank you.

23 Any response?

24 MR. SMALL: Only with respect to some of  
25 these documents, for example, No. 5 which is a

1 business record, 7 which is a document out of the  
2 Cleveland Electric Illuminating Company. Other than  
3 that, no additional arguments, your Honor.

4 EXAMINER PRICE: Mr. Kutik, any response  
5 or move on to the next one?

6 MR. KUTIK: I'm sorry, I didn't hear the  
7 first document counsel referred to.

8 EXAMINER PRICE: 5. Contended it was a  
9 business record from the PUCO.

10 MR. KUTIK: Again, there is no foundation  
11 laid this is a business record, that this was a part  
12 of the regular records of the PUCO, that this was a  
13 document that was written by an individual authorized  
14 to make these type of statements for the duty to  
15 record information accurately and so forth.

16 I believe his other one was, Exhibit  
17 10 -- 7, excuse me, which we indicated there is no  
18 foundation laid with respect to how Mr. Grendell got  
19 this document.

20 We also believe, by the way, it's going  
21 to be the subject of other witness testimony in this  
22 case, so given the fact that it's going to be other  
23 witnesses', we would move if they want to present it  
24 for a proper witness, they can.

25 EXAMINER PRICE: Thank you. 17.

1 MR. KUTIK: Your Honor, this appears to  
2 be a compilation of documents, some of which are  
3 illegible and some of which are not documents that in  
4 any way, shape, or form come from FirstEnergy or  
5 FirstEnergy companies, so we would object essentially  
6 on those grounds.

7 Specifically walking through the document  
8 on the fifth page of the document which begins in the  
9 upper left-hand corner, "Flameless electric add-on  
10 heat and cool pump," parts of this document,  
11 particularly in the comments in the upper right-hand  
12 corner are illegible, so we will object on those  
13 grounds.

14 About three pages later there is a  
15 document that has in the upper right-hand corner the  
16 words "The heat bump is ideally suited for new  
17 homes." The document is illegible on the right-hand  
18 side of the page.

19 About 11 pages later within a brochure  
20 that is entitled the "Amazing Electric Heat Pump,"  
21 there is another document and it starts in the upper  
22 left-hand corner "How to get the most value from your  
23 new electric water heater."

24 Are you there, your Honor?

25 EXAMINER PRICE: Uh-huh.

1 MR. KUTIK: That document also is  
2 illegible toward the middle of the page.

3 11 pages later there is another document  
4 and this one is entitled "You and your electric  
5 service, Ohio Edison."

6 I apologize. We are on doc -- after that  
7 document, there is another document questions and  
8 answers and about three -- excuse me, five pages in  
9 from that document there is another document that  
10 says "You'll benefit these eight ways when you buy  
11 and build a total electric home with flameless  
12 electric heating." That document is also illegible  
13 on the right-hand corner of the document.

14 Are you there, your Honor?

15 EXAMINER PRICE: I think so.

16 MR. KUTIK: It's this document that I am  
17 holding up.

18 EXAMINER PRICE: Okay.

19 MR. SMALL: Your Honor, we don't --  
20 again, I will make the point we don't know the source  
21 of the problem as far as --

22 MR. KUTIK: Well, I am not finished with  
23 my objection.

24 MR. SMALL: I'm sorry.

25 MR. KUTIK: When I am finished, I will

1 sit down.

2 EXAMINER PRICE: Please proceed.

3 MR. KUTIK: About four pages after that,  
4 your Honor, in a document that says "The load  
5 management options, your choice, your control," and  
6 then four pages in in a document that starts in the  
7 upper right-hand corner "Types of load meters," and  
8 "pay monthly" on the right-hand side of the page,  
9 particularly parts of the -- I guess parts of the  
10 questions and then some parts of the answers  
11 apparently are illegible.

12 Then, your Honor, at the end of what I  
13 might call the either Ohio Edison or CEI documents  
14 there begins a series of documents that starts with  
15 at the heading, it says "RF Bob Schmitt." We would  
16 object on that document on the grounds of hearsay.

17 Following that, your Honor, there is a  
18 number of pages that are -- that purport to be gas  
19 versus electric cost comparisons. And so with  
20 respect to those, your Honor, we would object on the  
21 grounds that it's improper hearsay and it's improper  
22 expert testimony.

23 Following the large set of tables, if you  
24 are still following me, there is a smaller typeset of  
25 tables which began Appendix A, "Bob Schmitt Homes,

1 388 Home Electric Use Study." Again, we don't know  
2 where this document comes from and certainly no  
3 foundation has been laid for this document as well.  
4 So, therefore, it's hearsay.

5 Your Honor, following that document there  
6 begins, at least in my copy, a handwritten date  
7 stamped that says "Exhibit for Strongsville hearing  
8 10-27-10."

9 EXAMINER PRICE: Keep going, we'll catch  
10 up.

11 MR. KUTIK: I'm waiting for you.

12 Okay?

13 EXAMINER PRICE: Yes.

14 MR. KUTIK: There is a document following  
15 that which appears to be a document from The  
16 Illuminating Company which is two pages and then  
17 following that residential applications how  
18 geothermal heating and cooling works, and it then  
19 continues on for four pages and appears to be a  
20 copyright of something called "The Geothermal Heat  
21 Pump Consortium, Inc.," and we would argue and we  
22 object on the grounds that the document is hearsay.

23 Your Honor, following that document  
24 appears to be a series of other documents that may or  
25 may not be the company documents. It starts with

1 "Take charge of your electricity load management  
2 option."

3 We are not objecting to those six or  
4 seven documents but then we come to a document in  
5 here which is a receipt, purports to be a receipt  
6 from Bob Schmitt Homes apparently to Donald and Doris  
7 Truly, and then following that document there are  
8 another series of other documents. We would object  
9 on the grounds that that's hearsay as well.

10 And lastly, your Honor, last set of  
11 materials in this exhibit, and again, we are just  
12 going on what we have from the docket in this case,  
13 and we are assuming this has all been marked as one  
14 exhibit, it may or may not be, but following that is  
15 we have two statements from two individuals which we  
16 will not object to those two. I believe actually the  
17 one or both of those actually read their statements  
18 into the record.

19 But then follows some series of documents  
20 which appear to be documents that are from Bob  
21 Schmitt Homes for the other vendors and on that  
22 basis, your Honor, we'd argue -- we would object to  
23 the extent the documents are not FirstEnergy  
24 documents, documents of CEI, Toledo Edison, Ohio  
25 Edison, that they are hearsay. On those grounds,



1 your Honor, we would object to their admission.

2 EXAMINER PRICE: Did you get all that,  
3 Mr. Small?

4 MR. SMALL: I'll be -- I'll make limited  
5 additional comments, which is, first of all, there  
6 have been some objections to the companies' own  
7 documents, own business record documents.

8 And the other thing is that some of the  
9 points that I made earlier, which is if the source of  
10 the readability in some of these instances is the  
11 copying that was made as part of the transcript, then  
12 it's not the problem of the witness or the OCC that  
13 moved these.

14 In fact, we have much more legible or  
15 completely legible copies of these same documents  
16 which were provided to the FirstEnergy in discovery.  
17 We have it as Bates stamp 186 and beyond as far as  
18 our discovery where we provided Mr. Payne's documents  
19 as being a completely legible copy, and I have no  
20 reason to believe he didn't present the same material  
21 at the PUCO, at the hearing.

22 EXAMINER PRICE: So which version are you  
23 going to move for admission in the one that --

24 MR. SMALL: Well, I'm arguing that it's a  
25 photocopying problem that came with the court

1 reporter transmitting it and making it part of the  
2 record, that that's not a fault of the witness or the  
3 OCC and not a grounds for -- for objection as far as  
4 its admissibility. I can create -- I can provide the  
5 legible copies of those same documents and which were  
6 provided in discovery to FirstEnergy.

7 EXAMINER PRICE: Mr. Kutik.

8 MR. KUTIK: The fact that we received the  
9 document after the fact that may or may not be  
10 legible, I hardly dispute Mr. Small's  
11 characterization that they are completely legible  
12 because they are not is not the point. The point is  
13 based upon the document that's been filed is the  
14 document legible or not, and certainly the Bench can  
15 make that determination.

16 EXAMINER PRICE: Thank you. Move to the  
17 next exhibit.

18 MR. KUTIK: Yes, your Honor. Exhibit 21  
19 I believe, your Honor, is the next exhibit. Your  
20 Honor, this is a set of materials that apparently was  
21 presented by Mr. Jordan but I believe that this  
22 actually was not compiled by Mr. Jordan, but his  
23 testimony -- but it was compiled by Ms. Steigerwald,  
24 but in any event there are -- throughout this  
25 document there are copies of newspaper articles and

1 our objection, your Honor, is to the newspaper  
2 articles as classic hearsay.

3 We are not objecting, your Honor, to the  
4 advertisements themselves. But we are objecting to  
5 anything that appears to be a newspaper article given  
6 it's hearsay and, your Honor, given the breadth and  
7 the width of the document, the length of the  
8 document, I will defer from going through that,  
9 unless you believe I need to do that.

10 EXAMINER PRICE: Just to make the record  
11 clear, you're not objecting to -- in Exhibit 18 you  
12 are not objecting to any advertising, solely the  
13 replication of the newspaper articles?

14 MR. KUTIK: Yes. As an example, your  
15 Honor --

16 EXAMINER PRICE: I guess four pages in  
17 there is a newspaper article.

18 MR. KUTIK: Is it four? Yeah. Well,  
19 there's document that starts out "1950 the DeSotos  
20 are rolling off the line." That's not relevant.

21 What about five -- five pages in from the  
22 DeSotos is a document which appears in lower  
23 right-hand corner "Amazing new electric heat pump  
24 heats and cools" and so on and so forth and the logo  
25 of The Illuminating Company, that part of that

1 exhibit we would not object to.

2 But like on the prior page there is a --  
3 there is what appears to be a newspaper article which  
4 on the right side of the page if you are looking at  
5 it longways, it says "First Costs on Heat Pump Giving  
6 Year-Round Service." We would object to that as an  
7 example.

8 EXAMINER PRICE: Thank you.

9 Mr. Small.

10 MR. SMALL: Newspaper articles are  
11 self-authenticating documents and the cure to the  
12 problem presented by hearsay is that you call the  
13 author of it. You can hardly call the author of  
14 articles that appear in newspaper -- newspapers, and  
15 that's the reason why we have a concern on  
16 self-authenticating documents.

17 MR. KUTIK: Can counsel cite the rule?

18 EXAMINER PRICE: That should have been my  
19 question, Mr. Kutik, so.

20 MR. KUTIK: Your Honor, I don't believe  
21 there is a rule that says newspapers are  
22 self-authenticating. That's my response.

23 EXAMINER PRICE: I will inquire.

24 Mr. Small, cite the rule, please.

25 MR. KUTIK: The rule about

1 self-authenticate is Rule 902.

2 EXAMINER PRICE: Since you are citing, I  
3 suspect that's not going to help Mr. Small.

4 MR. KUTIK: It's entitled  
5 self-authentication.

6 Your Honor, at this point we'll withdraw  
7 our objections, just to move on.

8 EXAMINER PRICE: Okay. Might as well let  
9 Mr. Ridmann go to lunch now because I think we are  
10 going to be taking him after lunch.

11 MR. KUTIK: Your Honor, our -- we'll -- I  
12 think Exhibit 21 is in your packet. We'll -- we'll  
13 waive on Exhibit 21.

14 Same for Exhibit 19. Exhibit 23, your  
15 Honor.

16 EXAMINER PRICE: I'm sorry, I don't have  
17 19 or 23.

18 MR. KUTIK: All right.

19 EXAMINER PRICE: My next one after 21 is  
20 24.

21 MR. KUTIK: Yes, okay, your Honor.

22 MR. SMALL: I'm sorry, are you saying  
23 your next one meaning --

24 EXAMINER PRICE: Packet they gave us.

25 MR. KUTIK: Right, yes. This is, your

1 Honor, a document which purports to provide cost  
2 figures to convert to natural gas from electricity,  
3 electric service on this document as with similar  
4 compilations with respect to gas versus electric  
5 costs on his hearsay and it's improper opinion  
6 testimony.

7 EXAMINER PRICE: Thank you.

8 Mr. Small.

9 MR. SMALL: On 24 no additional  
10 arguments.

11 EXAMINER PRICE: Okay. 25.

12 MR. KUTIK: Your Honor, with respect to  
13 Exhibit 25 our objection is directed to materials  
14 that start after the second page. It appears to be  
15 some handwritten notes of undetermined origin. Also  
16 to be irrelevant to the extent it refers to things  
17 like former consultant to Enron and things like that.

18 EXAMINER PRICE: Thank you.

19 Mr. Small.

20 MR. SMALL: No additional arguments, your  
21 Honor.

22 EXAMINER PRICE: And the last one I have  
23 is 26.

24 MR. KUTIK: That's the last one that I  
25 will respond to, your Honor. Your Honor, this

1 appears to be an e-mail to some unknown individual  
2 from H.G. Wardlaw who is a witness in the hearing.  
3 And it -- what follows is what must only be  
4 determined to be a bizarre collection of documents  
5 relating to things like Three Mile Island, MacKenzie  
6 Company, Road Rants of the Plain Dealer, blackouts,  
7 et cetera.

8 This document contains numerous documents  
9 that are hearsay. They appear to be articles of some  
10 type. Some are copied from magazines. Some are  
11 copied off the internet. So this is classic hearsay  
12 and besides being irrelevant.

13 EXAMINER PRICE: Mr. Small, would you  
14 care to address the relevance of these?

15 MR. SMALL: I know you haven't cared so  
16 far for my broader arguments, but the OCC's position  
17 is basically that the -- that the Commission invited  
18 individuals to bring their documents with them to the  
19 local public hearings and we on that basis --

20 EXAMINER PRICE: I understand, Mr. Small.  
21 This is a document that you specifically marked.  
22 Unless I am incorrect, the only documents we are  
23 dealing with today are documents that OCC  
24 specifically marked and moved -- moved its admission.  
25 And so I am asking what about these documents that

1 you marked and moved for admission do you think is  
2 relevant today?

3 MR. SMALL: The OCC supported the  
4 residential customers coming to the local public  
5 hearings and bringing their documents with them. In  
6 that respect they moved for the admission of that  
7 document.

8 EXAMINER PRICE: But you didn't move for  
9 admission of all the documents that were brought. We  
10 had hundreds of documents come in. You selected from  
11 each -- from each hearing you had a subset of  
12 documents that you moved to submission on.

13 MR. SMALL: I believe we amended to move  
14 all the documents.

15 EXAMINER PRICE: At Kirtland?

16 MR. SMALL: Ms. Grady was at Kirtland.

17 MS. GRADY: Yes.

18 MR. SMALL: And says affirmative, yes.

19 EXAMINER PRICE: So at Kirtland you moved  
20 the admission of 26 documents, and you were not  
21 selective, you simply moved the admission of  
22 everything at Kirtland?

23 MS. GRADY: That's correct.

24 MR. SMALL: I believe that's true.

25 EXAMINER PRICE: Mr. Small is arguing for



1 Ms. Grady.

2 MR. SMALL: I believe that's true, your  
3 Honor.

4 EXAMINER PRICE: So your argument then is  
5 anything a residential customer brought is relevant  
6 to this proceeding?

7 MR. SMALL: Well, it's -- it's important  
8 since to the extent individuals --

9 EXAMINER PRICE: You need to speak up,  
10 Mr. Small, or speak into the thing.

11 MR. SMALL: -- entered into the record.  
12 Individuals can cite to or not cite to it as far as  
13 its importance or importance to the record, but.

14 EXAMINER PRICE: Seriously, Mr. Small,  
15 you have moved its admission. You need to show some  
16 relevance here beyond a customer brought it. That's  
17 not the way any of these other hearings proceeded.  
18 Certainly that wasn't the conduct at Sandusky,  
19 Strongsville, Springfield.

20 MR. SMALL: I think that was our  
21 intention in the hearings. But, you know, to the  
22 extent the Bench has a problem with what is it, North  
23 Ridgeville Exhibit 26 --

24 EXAMINER PRICE: Kirtland.

25 MR. SMALL: Kirtland Exhibit 26, I'm not

1 going to make an argument for its particular  
2 relevance to this proceeding.

3 EXAMINER PRICE: Okay.

4 MR. KUTIK: Your Honor, I could beg your  
5 indulgence, if you would allow me, I would like to  
6 withdraw my waiver with respect to Exhibit 18 and  
7 this is why. I'm willing to concede the point that a  
8 newspaper article may or may not be authentic. But  
9 that doesn't mean that it's admissible simply because  
10 it's authentic.

11 The document also has to be -- a document  
12 must also satisfy the hearsay rules or the nonhearsay  
13 rules, as the case may be. Whether the document is  
14 authentic, it still is hearsay, and on that grounds  
15 we would I guess resuscitate our objection.

16 EXAMINER PRICE: Would you care to,  
17 Mr. Small, address the issue of hearsay, whether  
18 there is a hearsay exception in Exhibit 18?

19 MR. SMALL: No. The argument I make is  
20 that the real question about hearsay, the purpose of  
21 the rule, not just the four corners of the rule but  
22 the purpose of the rule is to define or to question  
23 problems of whether authentic material is being  
24 presented to the -- to the --

25 EXAMINER PRICE: No, Mr. Small. The

1 purpose of hearsay is whether the party can properly  
2 contest the truth in the material. How can  
3 FirstEnergy contest the truth of material contained  
4 in a newspaper article whose author is not here to  
5 attest to it?

6 MR. SMALL: That would be impossible to  
7 find such an individual to cross-examine or to place  
8 on the stand.

9 EXAMINER PRICE: Right. But you're  
10 sponsoring -- you're sponsoring this document.

11 MR. SMALL: I'm arguing for the authority  
12 of the PUCO and the Bench to admit such materials.

13 EXAMINER PRICE: Do you have a specific  
14 hearsay exception that you believe this at least  
15 arguably falls within?

16 MR. SMALL: You are referring to the  
17 newspaper articles.

18 EXAMINER PRICE: I believe that's what we  
19 are talking about.

20 MR. SMALL: Well, no, your Honor.

21 EXAMINER PRICE: No, okay.

22 MR. KUTIK: Your Honor, other than the  
23 Maumee exhibits and other than the exhibits that we  
24 specifically indicated that we would defer our  
25 argument in anticipation they would be offered by the

1 parties -- the other parties later in this case, that  
2 concludes our objections to the public hearing  
3 exhibits.

4 EXAMINER PRICE: Thank you. What we will  
5 do, there certainly has been a lot of material  
6 presented to the Bench to review. I suspect -- well,  
7 we will defer ruling on that material. I suspect we  
8 will not be prepared, in light of the hearing today  
9 and hearing tomorrow that we won't be prepared to  
10 rule on that until Friday, so if that possesses a  
11 problem for any party, I need to know now.

12 Okay. Let's go off the record.

13 (Discussion off the record.)

14 EXAMINER PRICE: Mr. Small, would you  
15 like to call your first witness?

16 MR. SMALL: Yes, thank you, your Honor.  
17 The OCC calls Mr. Elio Andreatta to the stand.

18 (Witness sworn.)

19 EXAMINER PRICE: One minute, please, go  
20 off the record.

21 (Discussion off the record.)

22 EXAMINER PRICE: Please state your name  
23 and address for the record.

24 THE WITNESS: Elio Andreatta, 5922 Mill  
25 Creek Boulevard, Youngstown, Ohio.

1 EXAMINER PRICE: Please proceed,  
2 Mr. Small.

3 - - -

4 ELIO ANDREATTA  
5 being first duly sworn, as prescribed by law, was  
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Small:

9 Q. Mr. Andreatta, is it correct that you  
10 worked for one of the FirstEnergy electric  
11 distribution utilities, either Ohio Edison, Cleveland  
12 Electric Illuminating, or Toledo Edison?

13 A. Yes, Ohio Edison.

14 Q. And during what period of time did you  
15 work for Ohio Edison?

16 A. 1985 to 1989.

17 Q. And can you tell me when you departed,  
18 what month in 1989?

19 A. I started this job in August so I am  
20 going to say probably in July.

21 Q. What was your position at Ohio Edison?

22 A. It was residential representative.

23 Q. Would that be a sales representative?

24 A. Yeah.

25 Q. And did you have direct contact with

1 residential customers in your work for Ohio Edison?

2 A. Yes.

3 Q. What were your basic responsibilities as  
4 a residential sales representative?

5 A. People building new houses you talk to  
6 them about the current programs. Deal with heating  
7 dealers.

8 Q. During your work for Ohio Edison did you  
9 have occasion -- did you have occasion to meet  
10 Mr. Thomas Logan?

11 A. Yes.

12 Q. And how did you -- how did you meet  
13 Mr. Logan?

14 A. You know, I can't remember if he actually  
15 called in or if it came from one of the dealers that  
16 we dealt with as a lead.

17 Q. And when you refer to "a lead," what are  
18 you referring to as a --

19 A. Either the homeowner would call in for  
20 questions or the heating dealer would ask us to go  
21 with him on a sales call.

22 Q. So the vendor would ask the company  
23 representative to go with them on a sales call; is  
24 that --

25 A. On occasion, yes.

1           Q.    And do you call -- recall what you  
2 discussed with Mr. Logan?

3           A.    You know, that was 23 years ago, so I'm  
4 going to say probably, you know, equipment, but I  
5 really can't say for sure.

6           Q.    During your employment, time of  
7 employment with Ohio Edison, did Ohio Edison have a  
8 program referred to as Alternative Plus?

9           A.    Yeah.

10          Q.    And what was the program?

11          A.    It was to promote electric add-on heat  
12 pumps or total electric heat pumps to the customers.

13          Q.    Okay. I have here what's been marked at  
14 Strongsville local public hearing as Strongsville  
15 Exhibit 2.

16               MR. SMALL: Your Honor. May I approach?

17               EXAMINER PRICE: You may.

18               MR. SMALL: Your Honor, I have a limited  
19 number of color copies which Mr. Jones and I made  
20 during the break, so I'll just ask if . . .

21          Q.    Mr. Andreatta, I provided you with a  
22 letter dated June 18, 1988, it's marked as Strong's --  
23 as Strongsville Exhibit 2 at the top that was  
24 provided to the Commission by Mr. Logan at the  
25 Strongsville local public hearing. Do you recognize

1 the stationery on -- upon which the letter is  
2 written?

3 A. Yes, I do.

4 Q. Is that stationery that was used during  
5 your work for Ohio Edison?

6 A. Yeah. That was the letterhead that was  
7 used on the program.

8 Q. And the program you are referring to is  
9 the Alternative Plus Program that you mentioned  
10 earlier?

11 A. That's correct.

12 Q. Now, the letter at the bottom is signed  
13 Elio. Do you see that?

14 A. Yes.

15 Q. And did you sign your name in that  
16 fashion during your work for Ohio Edison?

17 A. You know, back in those days there was  
18 only one person named Elio so it was pretty safe to  
19 sign things that way.

20 Q. And you signed your name in that fashion  
21 meaning your first name as opposed to your entire  
22 name?

23 A. Yeah.

24 Q. Okay. Is this your signature on -- do  
25 you recognize your signature on this letter?



1           A.    You know, that's a -- I could say yeah,  
2           it looks like my signature. I don't remember signing  
3           it though.

4           Q.    Okay. I'm not asking whether you  
5           remember specifically this letter but whether you  
6           recognize your signature.

7           A.    That looks like the way I would have  
8           signed my name back then.

9           Q.    And did you write letters during this  
10          period, approximately 1988, which is the date of this  
11          letter, did you write letters directly to residential  
12          customers during your work for Ohio Edison?

13          A.    You know, that's not a common practice,  
14          no. It wasn't a daily activity.

15          Q.    It wasn't a daily activity. Did you  
16          write some letters?

17          A.    Without putting a number on it there  
18          might have been one or two. Like I said, not a  
19          common practice.

20          Q.    And did you respond to residential  
21          inquiries during your work for Ohio Edison?

22          A.    When you say "respond to" --

23          Q.    Inquiries by residential customers.

24          A.    Oh, yeah, that was part -- that was part  
25          of the job, if they had questions, you did your best

1 to answer them.

2 Q. Now, I have a few questions concerning  
3 your office procedure. Did you have an individual  
4 who typed -- typed your letters at Ohio Edison?

5 A. We did have a secretary, yes.

6 Q. And who would have typed letters that you  
7 drafted?

8 A. Yes.

9 Q. And if you were to send a -- when you  
10 sent letters to -- outside the company was there an  
11 individual at Ohio Edison, one or more individuals at  
12 Ohio Edison who reviewed your work before it went  
13 outside the company?

14 A. Yes.

15 Q. And who -- what was -- what was the  
16 position of that person?

17 A. He would have been my direct supervisor.

18 Q. Okay. Did you have more than one  
19 supervisor during the period that you worked for Ohio  
20 Edison?

21 A. You know going back, in those days there  
22 was actually a residential -- residential supervisor  
23 and then there was a superintendent and then the  
24 division manager, so there was actually three levels  
25 in Youngstown at the time.

1           Q.   And what levels would have reviewed your  
2 work before they went outside the company?

3           A.   Just -- just my residential supervisor  
4 because I -- you know, obviously hadn't been there  
5 that long. The other two probably wouldn't have seen  
6 it.

7           Q.   Let's turn to the contents of the letter  
8 itself. This second paragraph I'm looking at the --  
9 at the letter itself. This is a three-page exhibit  
10 with a two-page attachment. I am looking at the  
11 letter itself. The second paragraph refers to --  
12 sorry. The second paragraph, the third line refers  
13 to Power Commander. Do you see that?

14          A.   Yes.

15          Q.   Are you familiar -- familiar with the  
16 Power Commander Program?

17          A.   I vaguely remember how that operated,  
18 yeah.

19          Q.   And what was that about?

20          A.   You know, it involved either add-on heat  
21 pumps or water heating or a combination of both that  
22 customers would get that and they would get a  
23 discount on their electric bill.

24          Q.   And in the next sentence it refers to it  
25 says "Next came the new heat pump." Do you see?

1           A.    Yes.

2           Q.    Do you recall discussing a new heat pump  
3 with Mr. Logan?

4           A.    I can't say that I remember the day that  
5 that happened but.

6           Q.    I mean the general topic, not the  
7 specific.

8           A.    Oh, yeah.

9           Q.    Next I'm here on the second paragraph,  
10 fourth line at the end, it says "and finally the new  
11 rate." Do you see that?

12          A.    Yes.

13          Q.    Do you recall having contact with  
14 Mr. Logan concerning the new rate?

15          A.    You know, I can't actually pinpoint that,  
16 no.

17          Q.    As far as the specific conversation or  
18 the subject matter?

19          A.    As far as the specific wording of the  
20 conversation, but the new rate would lead to, you  
21 know, the all electric rate.

22          Q.    Okay. Let's turn to the attachments to  
23 the letter. And this is a two-page tariff sheet  
24 effective March 18, 1988. Were you familiar during  
25 your work for Ohio Edison with the, as it says at the

1 top, optional heating rate?

2 A. Yes.

3 Q. And what was that?

4 A. I'm sorry, I don't understand.

5 Q. What -- what was the optional heating  
6 rate? Who did it apply to?

7 A. Electrically heated homes with electric  
8 space heating that you heat the home with.

9 Q. And do you recall whether this was a  
10 heating rate that was available to Mr. Logan?

11 A. Yes, yes, it was.

12 Q. Now, the word "experimental" is shown at  
13 the top of the attachment. It says "Optional Heating  
14 Rate" and then "(Experimental)." Do you see that?

15 A. Yes.

16 Q. And that word also appears in the first  
17 sentence of the -- or I'm sorry, the second sentence  
18 of the letter itself.

19 A. Okay.

20 Q. Okay. What was your understanding of  
21 during your work for Ohio Edison of how the word  
22 "experimental" was used?

23 A. Experimental being that the company had  
24 the ability at any time to stop offering the rate.

25 Q. And what would happen to the customer

1 after the tariff was withdrawn?

2 A. It was -- you know, it was my  
3 understanding that they couldn't offer it to new  
4 customers but people that were signed up on it would  
5 be able to keep that rate.

6 Q. And was this Ohio Edison's normal  
7 practice while you worked for the company?

8 A. You know, I can't comment on that because  
9 what I can do is relate to the supervisor who had the  
10 discussions with us. So whether it was company  
11 policy or not, you know, I can't.

12 Q. I see. So as far as you're concerned,  
13 your work and through your supervisor, that was the  
14 policy that you were asked to represent?

15 A. Yes.

16 Q. Okay. I am going to ask you to look at  
17 this -- at this letter and ignore the marks that have  
18 been placed on it. The Exhibit 2 which was placed on  
19 it by a court reporter, the stamp. If you would  
20 ignore the word "copy," if you would ignore the  
21 handwritten word "save," and the -- and the bold  
22 block on the letter. If you would ignore those  
23 markings on the letter.

24 Excluding those matters do you have any  
25 reason to believe that this letter and its

1 attachments were not accurate copies of  
2 correspondence that you had with Mr. Logan?

3 A. You know, not word for word but it does  
4 look like something that could have been sent from  
5 our office, you know, with the supervisor's approval.  
6 Can't be sure about the exact wording but it looks  
7 like something that would have gone out, yes.

8 MR. SMALL: Your Honor, the witness is  
9 available for cross-examination.

10 EXAMINER PRICE: Mr. Corcoran?

11 MR. CORCORAN: Nothing, your Honor.

12 EXAMINER PRICE: Mr. O'Brien?

13 MR. O'BRIEN: I have no questions, your  
14 Honor.

15 EXAMINER PRICE: Mr. Randazzo?

16 MR. RANDAZZO: Just a couple.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Randazzo:

20 Q. Mr. Andreatta, would you look at the  
21 document that counsel for OCC has asked you about,  
22 and specifically the tariff sheet. Do you have that  
23 in front of you, sir?

24 A. Yes, I do.

25 Q. Okay. If you look down the tariff sheet,

1 do you see the thing -- see the item that's  
2 designated "PIP Arrearage Adjustment"?

3 A. The second highlighted topic from the  
4 bottom, sir?

5 Q. Yes, sir, that's correct.

6 A. Okay.

7 Q. Yeah.

8 A. Okay.

9 Q. If this rate were eliminated based upon  
10 the understanding you described earlier, would the --  
11 would the customers that were subject to this rate on  
12 an experimental basis continue to pay the PIP  
13 arrearage charge that's designated there?

14 A. I don't know that, sir.

15 Q. How about on the fuel adjustment item  
16 that's the next one down?

17 A. You know, I don't know that either, sir.

18 Q. How about on the, turning the page, you  
19 see at the top of the next tariff sheet the  
20 construction work in progress adjustment.

21 A. Yes.

22 Q. If I were to ask you the same question  
23 about that item, would customers that signed up for  
24 this rate schedule continue to pay that charge even  
25 if this rate schedule were eliminated?



1           A.    And I would answer the same way, I don't  
2 know, sir.

3           Q.    Are you aware of whether or not the fuel  
4 adjustment mechanism and the PIP arrearage adjustment  
5 were eliminated by operation of state law?

6           A.    No, I don't.

7           MR. RANDAZZO:   Okay.   Thank you very  
8 much.

9           EXAMINER PRICE:   Thank you.

10          Mr. Kutik.

11          MR. KUTIK:   Thank you, your Honor.

12                               - - -

13                               CROSS-EXAMINATION

14   By Mr. Kutik:

15          Q.    Good afternoon, sir.

16          A.    Good afternoon.

17          Q.    It's correct, is it not, that you don't  
18 recall writing this letter?

19          A.    That's true.

20          Q.    In fact, you don't recall talking to  
21 Mr. Logan about the general subject of the longevity  
22 or the effective date of rates?

23          A.    That's true also.

24          Q.    In fact, you don't recall talking with  
25 any customer on that subject, correct?

1           A.   Twenty-three years ago, you're absolutely  
2 right, sir.

3           Q.   Now, would you say that you were a good  
4 Ohio Edison employee?

5           A.   You know, you would like to think so,  
6 yes.

7           Q.   You try to do a good job for the company?

8           A.   That's true.

9           Q.   And you took pride in your work?

10          A.   Yes.

11          Q.   And so it would be fair to say that your  
12 work product would not be work product that would  
13 show numerous errors or mistakes, correct?

14          A.   You know, you tried your best, so I'm  
15 going to say, yeah, that's probably a fair statement.

16          Q.   Okay. Now, I want to ask you about some  
17 of the issues in this letter. And let's start with  
18 some of the basics, like the date.

19          A.   Okay.

20          Q.   The date is June 18, 1988. The Bench can  
21 take administrative notice and I will ask you to  
22 assume that June 18, 1988 was a Saturday. Are you  
23 with me so far?

24          A.   Okay.

25          Q.   You said that you only wrote one or two

1 letters, correct?

2 A. Yeah, it wasn't a regular practice.

3 Q. Right. And the letters would have to be  
4 typed up by a secretary.

5 A. Yes.

6 Q. All right. And was it the case that you  
7 normally were in the office writing letters on  
8 Saturdays?

9 A. The -- I had availability to the office  
10 if you needed it on Saturday. We had keys. We could  
11 go in if we needed to. It wasn't every Saturday but  
12 on occasion.

13 Q. But in terms of staff to help you write  
14 letters, that wasn't a normal thing that went on that  
15 you recall, correct?

16 A. No.

17 Q. Now, let me talk about another thing that  
18 might be basic about this letter, and that's your  
19 title.

20 A. Okay.

21 Q. It says on this letter that you were  
22 senior residential representative, correct?

23 A. Yes.

24 Q. You were never a senior represent --  
25 residential rep, correct?

1           A.    I don't recall ever being that, no.

2           Q.    Now, you said that one of the things that  
3   you would do and the one or two letters that you  
4   recall writing was that you would share that with  
5   your supervisor, correct?

6           A.    That's true.

7           Q.    And so you and your supervisor,  
8   particularly if you are writing about rates, would it  
9   be fair to infer from that that you and he or she  
10   would go and look at the particular rates that you  
11   might be writing about, correct?

12          A.    I'm sorry, I didn't hear what --

13          Q.    Sure. I mean, would it be fair for us to  
14   assume if you are writing a letter about rates, that  
15   you and your supervisor would go look at the  
16   particular rates that you may be writing about?

17          A.    No. I don't think we would pull a rate  
18   book out to, you know, go over that. I took his --  
19   once a rate came out, you know, we will discuss it  
20   either individually or as a group, usually both.

21                If I gave him this, whatever changes he  
22   made, you know, they will either come back for me to  
23   see it or it would have went right to the girl to  
24   type it up. We wouldn't sit and study the rate.

25          Q.    You were familiar with the rates, were

1       you not?

2               A.     Yes.

3               Q.     And you had access to them to look them  
4       up if you had a question about them?

5               A.     Yes.

6               Q.     And the same was true for your  
7       supervisor.

8               A.     True.

9               Q.     Now, the rate sheets that are attached to  
10       what purports to be a letter is this first revised  
11       sheet No. 1, correct?

12              A.     Okay.

13              Q.     That's what it says, right?  You have to  
14       answer orally.

15              A.     Yes.

16              Q.     And on the second page it says "Rules and  
17       Regulations:  The Company's Standard Rules and  
18       Regulations shall apply to the installation and use  
19       of electric service."  Do you see that?

20              A.     Yes.

21              Q.     And you were familiar with the company's  
22       rules and regulations, correct?

23              A.     Yes.

24                   MR. KUTIK:  May I approach the witness,  
25       your Honor?

1 EXAMINER PRICE: You may.

2 MR. KUTIK: Your Honor, we would like to  
3 have marked as Company Exhibit 46 a document that on  
4 the first page is Original Sheet 4.1 Replacing Fourth  
5 Revised Sheet 4-1, and the second page is First  
6 Revised Sheet 4-1 Canceling Original Sheet 4.1.

7 EXAMINER PRICE: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Mr. Andreatta, I have handed you what has  
10 been marked for identification as Company Exhibit 46.  
11 Do you recognize this as some of the rules and  
12 regulations, first page was effective December 17,  
13 1985, the second page effective February 24, 1989,  
14 correct?

15 A. Yes.

16 Q. And you would agree with that these  
17 appear to be parts of the rules and regulations, the  
18 standard rules and regulations, at least the first  
19 page, that were in effect on January 18, 1988,  
20 correct?

21 A. I would have to say yes.

22 Q. Now, this document paragraph D under  
23 Roman Numeral II talks about the term of the  
24 contract, correct?

25 A. Yes.

1           Q.    It says "Unless otherwise provided  
2           therein a service contract shall be for a term of one  
3           year or as specified in the applicable rate  
4           schedule," correct?

5           A.    Okay.

6           Q.    And with respect to revisions which  
7           appears in the general provisions No. 1, paragraph B,  
8           it says "The Company's Schedule of Rates and the  
9           Standard Rules and Regulations as herein contained  
10          may be terminated, amended, supplemented or otherwise  
11          changed from time to time only in accordance with law  
12          and the rules promulgated thereunder by The Public  
13          Utilities Commission of Ohio. No agent,  
14          representative, or employee of the Company has any  
15          right to modify or alter any provision of the  
16          Company's standard --" excuse me, "Schedule of Rates  
17          or the Standard Rules and Regulations." Do you see  
18          that?

19          A.    Yes, I do.

20          Q.    And you are aware of that, correct?

21          A.    It's written. I am sure at one point in  
22          our employment we did go over that.

23          Q.    Okay. And under title or Roman Numeral  
24          II, paragraph C, it says "Service contract, the  
25          entire agreement: The service contract shall

1     constitute the entire agreement between the customer  
2     and the Company and no promise, agreement, or  
3     representation of any agent, representative or  
4     employee of the Company shall be binding upon it  
5     unless the same shall be incorporated in the service  
6     contract." Do you see that?

7             A.    Yes, I do.

8             Q.    And I assume you were generally familiar  
9     with that rule as well? Fair to say?

10            A.    I am going to say it was probably  
11    something that was gone over, yes.

12            Q.    So to the extent that you were doing your  
13    job, to the extent your supervisor was aware of these  
14    rules and regulations, your supervisor wouldn't or  
15    you wouldn't do something that was knowingly in  
16    violation or contrary to the rules and regulations of  
17    the company, correct?

18            A.    I think that's a fair statement, yes.

19            Q.    And any document that would be contrary  
20    to that would not likely be a document that would  
21    come from you, correct?

22            A.    I'm sorry, I don't understand that  
23    question.

24                   MR. KUTIK: Withdraw the question. No  
25    further questions.



1 EXAMINER PRICE: Thank you.

2 Staff?

3 MR. JONES: No questions, your Honor.

4 EXAMINER PRICE: Mr. Small, redirect?

5 MR. SMALL: No questions, your Honor. At  
6 this time the OCC would renew its motion to admit  
7 Strongsville Exhibit 2, having been presented by  
8 Mr. Logan with personal knowledge as the person  
9 receiving it and further supported by the testimony  
10 of Mr. Andreatta, the purported author of the -- of  
11 the letter and its -- and its accompanying enclosure.

12 EXAMINER PRICE: Well, the Bench might  
13 have questions for the witness first.

14 MR. SMALL: Oh, I'm sorry. Just stop me  
15 there.

16 EXAMINER PRICE: We'll come back to that.  
17 Do you have any questions?

18 EXAMINER WILLEY: No.

19 - - -

20 EXAMINATION

21 By Examiner Price:

22 Q. You have no recollection of writing this  
23 letter, do you?

24 A. No, I can't recall, you know, the day or  
25 time that that happened, no.

1           Q.    Is it fair to say that you only wrote a  
2 handful -- if you ever wrote letters like this if  
3 this is your letter, you only wrote a handful of  
4 them?

5           A.    Yeah, that wasn't a common practice.

6           Q.    Less than six?

7           A.    You know, I don't know if I could say  
8 less than six.

9           Q.    Less than 12?

10          A.    You know, I don't think I could answer  
11 that.

12          Q.    Very small number.

13          A.    Yeah.

14          Q.    Rarely wrote them?

15          A.    You know, being there for four years and  
16 dealing with so many people, you know, it would be  
17 hard to say what "small" would be.

18               EXAMINER PRICE:  Okay.  Fair enough.  
19 Okay.  Thank you, you are excused.  Have a safe drive  
20 back to Youngstown.  Thank you for participating.

21               Mr. Small, we will take up your motion  
22 again, you don't have to repeat it.

23               MR. SMALL:  I renew our -- the OCC's  
24 motion to admit Strongsville Exhibit 2.

25               EXAMINER PRICE:  Any objections to the

1 admission of Strongsville Exhibit 2?

2 MR. KUTIK: Yes, your Honor. We object.

3 EXAMINER PRICE: Grounds, Mr. Kutik.

4 MR. KUTIK: We think there are  
5 substantial questions with respect to the genuineness  
6 of this letter. This witness could not verify this  
7 letter. Did not recall reviewing it. At best he  
8 could say it looked like his signature and that this  
9 was the letterhead. There are numerous basic errors  
10 which he said was inconsistent with his practice,  
11 inconsistent with the policies.

12 EXAMINER PRICE: Mr. Small, response?

13 MR. SMALL: Yes, your Honor. The  
14 witness -- first of all, we have the sworn testimony  
15 of Mr. Thomas Logan that he received this letter.  
16 It's his personal knowledge of receiving this letter  
17 from Mr. Andreatta. That should have been sufficient  
18 in the OCC -- is the OCC's position.

19 But in addition to that we put on  
20 Mr. Andreatta who's confirmed the -- and I don't  
21 think Mr. Andreatta can be faulted for not  
22 remembering a single letter addressed to an  
23 individual, Mr. Logan, 23 years ago or roughly 23  
24 years ago, as he said.

25 But the cross-examination of

1 Mr. Andreatta indicated that he -- that the contents,  
2 the form, the stationery, the program that's being  
3 promoted here, the manner in which he signed his  
4 name, the fact that he did have customer contact like  
5 this, that the promised enclosures in the letter are  
6 consistent with the enclosures that are attached as  
7 part of the exhibit, all -- even though he can't  
8 recall, and one could understand, Mr. Logan was a  
9 particular customer so he would have specific  
10 knowledge concerning the one item that was important  
11 to him when he received contact from Ohio Edison,  
12 Mr. Andreatta is in a different situation not only  
13 was it a long time ago but he was dealing with a --  
14 as a customer representative and with a much larger  
15 base of people.

16 But not only did he -- did he confirm the  
17 basic contents of the letter but also he remembers  
18 Mr. Logan. He remembers these contacts, and I don't  
19 think there is -- any -- has anybody ever put a date  
20 on a letter which was not the actual date when it was  
21 transmitted? Minor things.

22 There's no suggestion that this was not a  
23 company representative writing a letter on company  
24 stationery concerning a company program, and as  
25 Mr. Andreatta represented, shown -- would have been

1 approved by a supervisor before being transmitted to  
2 the customer.

3 EXAMINER PRICE: Mr. Kutik, would you  
4 like to respond?

5 MR. KUTIK: Yes, your Honor. It's  
6 telling that in making an objection or responding to  
7 my objection that counsel has embellished what the  
8 witness has said.

9 The witness never said that the content  
10 of this letter was similar to what he said or similar  
11 to what he was aware of. As elucidated from your  
12 questions, he rarely wrote letters. It would  
13 probably be an event that he would remember if he  
14 wrote the letter.

15 The fact that it has such basic errors as  
16 a date, as his title, the fact that it contradicts  
17 the rules and regulations not once, not twice, but at  
18 least three times, and supposedly was reviewed by a  
19 supervisor, calls into great question the voracity of  
20 this letter.

21 In addition, your Honor, we believe that  
22 Mr. Logan, as we can present evidence on that topic  
23 if you wish, had certain animus against the company  
24 and so his testimony that he received the document is  
25 in no way reliable.

1           MR. SMALL: Your Honor, I have one other  
2     thing that I would like to mention/argue, which is  
3     Mr. Kutik is representing that the -- that there are  
4     portions of this letter which perhaps go against the  
5     provisions or the manner in which these utilities  
6     were regulated by the Public Utilities Commission of  
7     Ohio, but it is the OCC's position that there were  
8     representations and supported by testimony in the  
9     local public hearings that the representations were  
10    made by representatives of Ohio Edison not always in  
11    writing but representations were made that were  
12    inconsistent with the manner in which these companies  
13    were regulated by the Public Utilities Commission.

14           So the mere fact that the company is out  
15    there making contact with customers in a manner  
16    that's inconsistent with the regulation including  
17    other tariff provisions does not -- does not dismiss  
18    the importance, in fact, it highlights the importance  
19    of this --

20           EXAMINER PRICE: Mr. Small, I think you  
21    are getting way beyond admissibility of this  
22    particular document.

23           MR. SMALL: I am just saying I hear the  
24    argument because it conflicts with a company policy  
25    it can be authentic and that is --

1 EXAMINER PRICE: That's a different  
2 argument. You can make that but you don't need to  
3 make your whole argument about what you are going to  
4 argue later on.

5 We are going to -- we are going to go  
6 ahead and admit Strongsville Exhibit No. 2. The  
7 company is certainly free to make any arguments it  
8 wishes to make regarding the weight the Commission  
9 should ascribe to a particular document. With  
10 respect to any bias Mr. Logan has against the  
11 company, that's the companies' decision to put that  
12 on or not.

13 MR. KUTIK: Thank you.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER PRICE: At this time we will  
16 take our lunch. Please, I know that we are behind  
17 today. Let's please be back by 2:30. We will take  
18 Mr. Ridmann and then we'll at least begin Mr. Yankel.

19 Thank you, we are off the record.

20 (Discussion off the record.)

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

23 Mr. Kutik, before lunch you had a motion  
24 you'd like to make?

25 MR. KUTIK: Yes, your Honor. The company

1 moves for admission of Company Exhibit 46.

2 EXAMINER PRICE: Any objection to the  
3 admission of Company Exhibit 46?

4 Seeing none, it will be admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 EXAMINER PRICE: Now we are off the  
7 record.

8 (Lunch recess taken at 1:30 p.m.)

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1 Wednesday Afternoon Session,  
2 February 16, 2011.

3 - - -

4 EXAMINER PRICE: Go back on the record.

5 At this time we'll take the testimony of  
6 Mr. Ridmann on behalf of FirstEnergy.

7 Mr. Ridmann.

8 (Witness sworn.)

9 EXAMINER PRICE: Please state your name  
10 and business address for the record.

11 THE WITNESS: My name is William Ridmann.  
12 My business address is 76 South Main Street, Akron,  
13 Ohio.

14 EXAMINER PRICE: Thank you.

15 Mr. Kutik.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 - - -

18 WILLIAM R. RIDMANN

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

21 DIRECT EXAMINATION

22 By Mr. Kutik:

23 Q. Mr. Ridmann, do you have in front of you  
24 what's been marked as Company Exhibit 1 entitled  
25 "Direct Testimony of William R. Ridmann on behalf of

1 Ohio Edison Company, The Cleveland Electric  
2 Illuminating Company, and Toledo Edison -- and Toledo  
3 Edison Company"?

4 A. Yes, I do.

5 Q. And what is that?

6 A. It's my direct testimony in this case.

7 Q. Do you have any additions or corrections  
8 to make to that document?

9 A. I do not.

10 Q. If I asked you the questions that appear  
11 in that document, would your answers be as appear in  
12 that document?

13 A. Yes, they would.

14 Q. In this document you make a proposal on  
15 behalf of the companies. Can you describe the status  
16 of the proposal that the companies made in the  
17 application in light of your proposal in this  
18 testimony?

19 EXAMINER PRICE: Could we go off the  
20 record for one moment?

21 (Discussion off the record.)

22 EXAMINER PRICE: Back on the record.

23 I'm sorry, Mr. Kutik. Please proceed.

24 MR. KUTIK: I think I finished my  
25 question, if the court reporter could read my

1 question.

2 EXAMINER PRICE: Please.

3 (Record read.)

4 A. I think what the company proposed in the  
5 application as filed in February of 2010, the  
6 proposal actually ought to be withdrawn because  
7 what's happened is that the Commission, subsequent to  
8 that application, issued an order which went a  
9 different direction, as you will see in terms of what  
10 was -- what was ordered for the companies to do going  
11 forward at least for the current winter period.

12 And we have basically come up with the  
13 proposal in the -- my testimony pretty much addresses  
14 where -- what should happen going forward now from  
15 this state. Therefore, my testimony really contains  
16 the companies' proposal in this case.

17 MR. KUTIK: No further questions.

18 EXAMINER PRICE: Thank you.

19 Mr. Elisar.

20 MR. ELISAR: No questions.

21 EXAMINER PRICE: Mr. O'Brien.

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

23 EXAMINER PRICE: Mr. Small, do you have a  
24 preference to go before or after Mr. Corcoran?

25 MR. SMALL: I believe I should go first,

1 your Honor. Is that agreeable?

2 MR. CORCORAN: That's fine.

3 EXAMINER PRICE: Mr. Small.

4 MR. SMALL: Thank you, your Honor. As a  
5 matter -- I'm sorry. Preliminary matter, motions to  
6 strike, your Honor.

7 EXAMINER PRICE: Please proceed.

8 MR. SMALL: The OCC moves to strike a  
9 portion of Mr. Ridmann's testimony located on page  
10 13, line 14, and proceeding to the end of the  
11 sentence which is on line 14, the word -- ending with  
12 the word "conservation."

13 In this portion of Mr. Ridmann's  
14 testimony Mr. Ridmann interprets Ohio law. He is not  
15 an attorney. He is not qualified to state an opinion  
16 as an expert on the subject matter contained in this  
17 portion of his testimony.

18 EXAMINER PRICE: Thank you. Your motion  
19 to strike will be denied. Mr. Ridmann is well  
20 qualified to testify as to the regulatory matters,  
21 and I am sure he would acknowledge that he is not  
22 rendering a legal opinion on these matters.

23 THE WITNESS: Correct.

24 EXAMINER PRICE: Thank you.

25 MR. SMALL: Before I start the -- my

1 cross -- the remainder of my cross-examination, I  
2 just wanted to make it be clear about your clarifying  
3 statement on the stand. Was your statement that the  
4 companies' proposal should be seen as that which is  
5 contained in your testimony and not in the  
6 application submitted by -- originally submitted by  
7 the company in this case; was that the gist of your  
8 testimony?

9 THE WITNESS: That's correct.

10 MR. SMALL: Thank you.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Small:

14 Q. Mr. Ridmann, if you would please turn to  
15 page 13 of your testimony. And at the same portion  
16 which was just the motion -- the subject of the  
17 motion to strike concerning policy after Senate Bill  
18 221, as you understand it, does state policy as it  
19 existed after Senate Bill 221 was enacted support  
20 reasonably priced retail electric service?

21 A. I would think possibly that's a policy of  
22 the state that we would support reasonably priced  
23 electric service.

24 Q. Also does Ohio state policy support the  
25 protection of at-risk populations?

1           A.    Again, I would think that would seem like  
2   a reasonable policy of the state.

3           Q.    Are you familiar with Senate Bill 3 which  
4   you ushered in competitive electric service,  
5   generation service?

6           A.    Yes.

7           Q.    And was Senate Bill 3 passed in 1999?

8           A.    Yes, it was.

9           Q.    Was there a policy after the enactment of  
10   Senate Bill 3 but before Senate Bill 221 took effect  
11   that supported conservation and energy efficiency?

12          A.    I presume there were state policies that  
13   supported energy efficiency during that time frame.

14          Q.    Did CEI, to your knowledge did CEI and  
15   Toledo Edison have programs to reduce demand and  
16   energy during the 1990s?

17          A.    How do you define "programs"?

18          Q.    Matters either tariff or nontariff items  
19   that promoted the reduction and energy usage and/or  
20   peak demand.

21          A.    Yes. The companies had tariff programs  
22   or I can think of at least Centerior had some  
23   incentive programs to reduce energy and demand. I  
24   think what changed though with Senate Bill 221, we  
25   never had mandates for targets and penalties for not

1 achieving energy reductions or demand reductions and  
2 that's really what changed with Senate Bill 221.

3 Q. Did Cleveland Electric Illuminating and  
4 Toledo Edison have such programs as refrigerator  
5 pickup programs during the '90s?

6 A. Yes, they did. Again, with no hard  
7 targets to achieve through those programs.

8 Q. Okay. I would like to go back towards  
9 the -- more towards the beginning of your testimony.  
10 From 1991 -- I'm on page 2, approximately lines 15  
11 through 18, where you discuss your background.

12 From 1991 to 1996, you worked for  
13 Centerior Energy Corporation in various marketing  
14 positions; is that correct?

15 A. Yes. Actually -- actually through --

16 EXAMINER PRICE: Let's go off the record.

17 (Discussion off the record.)

18 A. I think I was going to say that  
19 actually --

20 Q. We aren't back on the record.

21 EXAMINER PRICE: We weren't but we will  
22 now. Go ahead.

23 A. I think I was about to say that actually  
24 I had marketing positions through part of 1997 at  
25 Centerior. It didn't end in 1996.

1           Q.    And at Centerior Energy Corporation your  
2 responsibilities involved marketing for both CEI and  
3 Toledo Edison, correct?

4           A.    Yes, when I was in the director of  
5 marketing position.

6           Q.    And marketing as a Centerior activity  
7 involved at various times the development of  
8 programs, meeting with large customers,  
9 communications, and including advertising, economic  
10 development, and various economic studies, correct?

11          A.    At various parts in time, yes. There  
12 were times when, for instance, communication did not  
13 report to me in that time frame. And also I think  
14 economic development at some point did not report to  
15 me, but so it changed throughout the time period of  
16 1991 through about October of 1997 the  
17 responsibilities changed, as you might expect in a  
18 large corporation.

19          Q.    And by communications, you referred to  
20 responsibilities over communications, that was  
21 primarily advertising, correct?

22          A.    Yes. As I -- yes. It was primarily  
23 advertising.

24          Q.    Now, the sales function during this time  
25 that you worked in marketing involved more direct



1 contact with customers as opposed to the marketing  
2 activities you just described, correct?

3 A. That's correct. The sales function had  
4 the primary responsibility with meeting with  
5 customers. But they would pull in marketing people  
6 as needed.

7 Q. Okay. And I am -- now, I am page 2, line  
8 17 through 18 of your testimony, and it states that  
9 you became executive director of marketing for  
10 FirstEnergy Service Corporation. Do you see that?

11 A. Yes, I do.

12 Q. And did that position involve marketing  
13 for CEI, Toledo Edison, Ohio Edison, and Penn Power?

14 A. Yes, it did.

15 Q. And your responsibilities changed when  
16 you took that position so you didn't have as much  
17 responsibility for communications and economic  
18 development; is that correct?

19 A. That's correct. Those were not part of  
20 the marketing organization in FirstEnergy.

21 Q. Okay. Let's turn to page 4 of your  
22 testimony, lines 3 through 5. And you use the term  
23 "electric heating customers." Do you see that?

24 A. Yes, I do.

25 Q. Okay. You use that term in your

1 testimony to mean those customers who primarily heat  
2 their homes with electricity, correct?

3 A. Correct.

4 Q. And I'm moving to page 10, line 4 of your  
5 testimony. At that point in your testimony you  
6 referred to revenue requirements for the companies.  
7 Do you see that?

8 A. Yes, I do.

9 Q. Okay. The revenue requirement that you  
10 mentioned in your testimony, that's only determined  
11 at the time when rate cases are filed, correct? Or  
12 during the course of a rate case?

13 A. I would say total revenue requirements  
14 are determined at a time of a rate case.

15 Q. And there aren't any determinations of  
16 that in between the rate cases, correct?

17 A. I would say not in terms of -- generally  
18 not in terms of total revenue requirements. There  
19 may be special -- well, for instance, a fuel rider as  
20 such which had revenue requirements associated with  
21 that would be determined in the fuel case, but in  
22 terms of overall rates generally, it would be  
23 determined at the time of the base rate case.

24 Q. Before passage of Senate Bill 3, CEI,  
25 Cleveland Electric Illuminating, and Toledo Edison

1 were unable to obtain the revenue requirements  
2 supported in their rate case applications in Case  
3 95-299 and 95-300, correct?

4 MR. KUTIK: May I have those case  
5 numbers, please?

6 EXAMINER PRICE: Can you provide the case  
7 numbers?

8 (Record read.)

9 A. The company for a -- the company proved a  
10 higher revenue requirement basically than what the  
11 company asked for in the case is a way to put it than  
12 what it actually got out of the case. So it didn't  
13 get its full revenue requirement.

14 I will add I can't think of a case where  
15 I was involved at least where the company ever got  
16 its, what it would call its total revenue requirement  
17 out of a base rate case.

18 EXAMINER PRICE: Except 07-551, of  
19 course.

20 THE WITNESS: We didn't get everything we  
21 asked for in that case.

22 EXAMINER PRICE: Everything you earned,  
23 everything you deserved.

24 MR. KUTIK: That's a different question.

25 Q. Well, let's be careful about the cases I

1 refer to in my question, Case 95-299 and 95-300,  
2 those were -- are properly referred to as the  
3 Centerior rate case -- the Centerior rate case  
4 combined. Are you familiar with that term?

5 A. Well, I'm familiar with Centerior rate  
6 cases.

7 Q. Okay. And in that case the revenue  
8 requirement that was determined by the Commission was  
9 higher than what was actually put into rates; is that  
10 correct?

11 A. I'm not actually positive of that. I'm  
12 not certain. Could be. I mean because I think the  
13 amount that the company asked for was a fair amount  
14 below the revenue requirements it proved so it could  
15 be that the Commission came up with something in  
16 between. I just don't remember offhanded.

17 Q. Okay. Let's turn to page 12 of your  
18 testimony, lines 4 through 6. And here you refer to  
19 the companies' cost structure on page 12, line 4. Do  
20 you see that?

21 A. Yes, I do.

22 Q. And this cost structure that you refer to  
23 in your testimony refers to prices that the companies  
24 pay to lending suppliers for supplying generation to  
25 the companies as a result of auctions, correct?

1           A.    Yes, that's primarily what we are talking  
2 about in this aspect.

3           Q.    And do you know what a descending clock  
4 auction is?

5           A.    Yes, I do.

6           Q.    And such an auction moves from higher  
7 prices to lower prices, correct?

8           A.    Correct.

9           Q.    And that process deals with lower prices  
10 until there is just enough supply to meet the load or  
11 the demanded load, correct?

12           THE WITNESS:   Could you repeat the  
13 question.

14           (Record read.)

15           EXAMINER PRICE:   Mr. Small, maybe you  
16 better rephrase that question.

17           MR. SMALL:   All right.

18           Let me try it one more time.

19           EXAMINER PRICE:   Thank you.

20           Q.    The descending clock auction process  
21 deals with lower prices until there is just enough  
22 supply to meet the load, correct?

23           A.    It ends basically when there is enough  
24 supply to meet the demand.

25           Q.    And as part of the auction process and

1 communicating --

2 A. And there is no excess, I should say.

3 Q. As part of the auction process and  
4 preparation for the bidding, load shape information  
5 is provided to bidders as part of the auction  
6 process, correct?

7 A. Yes.

8 Q. Let's turn to page 13, lines 15 through  
9 16. And here you refer to the cost of generation  
10 service. Do you see that?

11 A. Yes, I do.

12 Q. You're not referring -- you are not  
13 referring in your testimony at this point to the cost  
14 of generation service to the winning bidders in the  
15 auction, correct?

16 MR. KUTIK: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. KUTIK: I think it's vague, your  
19 Honor. I am not sure what the question means.

20 EXAMINER PRICE: He can answer it if he  
21 understands it.

22 THE WITNESS: Could you repeat the  
23 question.

24 (Record read.)

25 A. No. I'm talking about the cost of

1 generation or the cost of purchased power to the  
2 FirstEnergy Ohio utilities.

3 Q. And you don't know the cost of generation  
4 service by the winning bidders in the auctions,  
5 correct?

6 A. I do not.

7 Q. Okay. You mention on page 13, line 16,  
8 of your testimony that you believe electric heating  
9 customers, and I quote, "receive an appropriately low  
10 price signal." Do you see that?

11 EXAMINER PRICE: Mr. Small, can you  
12 reread that? You misspoke.

13 MR. SMALL: I'm sorry?

14 EXAMINER PRICE: You misspoke, I don't  
15 think you got the "inappropriately" out.

16 MR. SMALL: Let me try it again.

17 Q. I'm sorry, I am not -- I don't know  
18 exactly how that went but let's try page 13, line 16,  
19 and you state that you believe that electric heating  
20 customers "receive an inappropriately low price  
21 signal"; is that correct?

22 A. That's correct.

23 MR. SMALL: I'm sorry, your Honor, I  
24 thought that's what you said.

25 EXAMINER PRICE: It might have been me.

1 I might have picked up incorrectly.

2 Q. Has, Mr. Ridmann, has any auction been  
3 conducted that determines the cost of generation  
4 service for FirstEnergy's residential electric  
5 heating customers separate and apart from the cost of  
6 generation service for other customers?

7 A. No. Basically the total load of the  
8 company is -- is auctioned.

9 Q. And so there has been --

10 A. There's no separate for residential or  
11 for that matter residential electric heat. It's  
12 included in the overall pricing the supplier  
13 supplies.

14 Q. Suppose hypothetically that the  
15 FirstEnergy electric distribution utilities purchased  
16 the generation service for its electric heating,  
17 residential electric heating customers in organized  
18 power markets. Do the price in organized power  
19 markets vary over the hours of the day?

20 A. If you mean the location marginal pricing  
21 that's posted for the RTOs vary over the time of day,  
22 yes, they do.

23 Q. And do the prices vary in organized power  
24 markets from season to season?

25 A. Yes.



1           Q.    And are prices generally higher during  
2           the summer than they are in the winter?

3           A.    At least for the RTO that we are in they  
4           are, which is why we reflected it in one -- one of  
5           the reasons why it's reflected in our seasonal rates.

6           Q.    Do you have any reason to believe -- I'm  
7           sorry. Was the RTO that you are referring to the  
8           MidWest ISO?

9           A.    Yes. And also I think it's also for PJM.

10          Q.    All right. I think you anticipated my  
11          question. Okay.

12                Have you conducted a cost of service  
13          study using metering data that reveals load for  
14          residential heating customers?

15          A.    What time frame?

16          Q.    Have you conducted one in connection with  
17          your work in this case?

18          A.    No, I have not conducted a cost service  
19          study in this case other than I would think the  
20          generation that we are paying or the price we are  
21          paying for the purchased power of generation that's  
22          the cost of generation, the purchased power for these  
23          companies.

24          Q.    Does FirstEnergy collect metering data  
25          sufficient to support cost of service studies for --

1 from residential customers that distinguishes between  
2 electric heat and nonelectric heat customers?

3 A. In what time frame?

4 Q. Currently.

5 A. Not that I'm aware of.

6 MR. SMALL: Your Honor, I would like a  
7 two-page document marked as OCC Exhibit 2.

8 EXAMINER PRICE: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. SMALL: May I approach?

11 EXAMINER PRICE: You may.

12 MR. SMALL: For the Bench's information  
13 I've marked it -- I have asked that it be marked as  
14 OCC Exhibit 2 and we are reserving OCC Exhibit 1 for  
15 Mr. Yankel's testimony.

16 EXAMINER PRICE: Thank you.

17 Q. Mr. Ridmann, what's been marked as OCC  
18 Exhibit 2 is OCC interrogatory 57. Do you recall  
19 seeing this discovery request?

20 A. Yes, I do.

21 Q. And you are the person who is responsible  
22 for responding to it?

23 A. Yes.

24 Q. And this discovery request asks for the  
25 raw usage data load research data on customers; is

1       that correct?

2             A.     Yes.

3             Q.     And the response is that the company,  
4       similar to your response on the stand that the  
5       company doesn't collect this information; is that  
6       correct?

7             A.     Yeah. We went back through our files to  
8       see what we had done previously and we don't have the  
9       raw data. We have -- obviously we had to have some  
10      summary information to do the cost service study in  
11      the 07-551 case, but in terms of raw data it no  
12      longer exists based on our review of all of our  
13      files.

14            Q.     And in -- I'm sorry. What was the  
15      reference, 09-551?

16            A.     07.

17            Q.     07-551, I'm sorry.

18                    Cost of service study was done on total  
19      residential customer class, correct?

20            A.     That's correct.

21            Q.     There was no distinguish between electric  
22      heat customers and standard residential customers?

23            A.     That's correct.

24            Q.     And did the company at that time have  
25      information that could distinguish between the

1 standard and the electric heat customers?

2 A. Not that I'm aware of.

3 Q. Okay. Would you please turn to page 20,  
4 line 13 of your testimony, and there you make a  
5 reference to "generation service for free." Do you  
6 see that?

7 A. Yes, I do. Yes.

8 Q. Okay. And do you arrive at this  
9 conclusion in your testimony based upon adding the  
10 RDC, EDR, and RGC credits at various usage levels and  
11 comparing it with the generation service charge for  
12 residential customers who don't receive the credits?

13 A. Yes. Essentially looking at all three  
14 credits that the customers are currently getting.

15 Q. But the RDC is a distribution credit,  
16 correct?

17 A. The RDC is a credit off the distribution  
18 rate, that's correct. But all I'm stating here is  
19 when you add up all the credits, that basically  
20 exceeds the -- the amount that's -- we're being  
21 charged, the companies are being charged for  
22 generation.

23 If you exclude the RDC, which is the  
24 distribution credit, in your calculations so you just  
25 have the EDR and RGC, is the sum of the EDR and the

1 RGC credits greater than the generation charge for  
2 residential customers who don't receive these  
3 credits?

4 A. If you could hold on one minute.

5 I would say for CEI it's very close  
6 because the EDR above 500-kilowatt hours usage is 1.9  
7 cents credit and the RGC is 4.2 cents credit, so  
8 that's 4.61 credit which is close to the generation  
9 rate for Ohio Edison.

10 The EDR credit above 500-kilowatt is  
11 again 1.9 cents, in the RGC credit is 3.9 cents,  
12 which adds up to 5.8 cents which is pretty much,  
13 again, almost wipes out the costs that the companies  
14 are paying for generation.

15 And for Toledo Edison, again, the EDR  
16 rate is above 500-kilowatt 1.9 cents and the RGC rate  
17 for Toledo depends on the rate you are on but it goes  
18 from some point it's 1.8 cents for the apartment  
19 rate, it's 3.1 cents and, of course, the credit  
20 starts with the RGC is at various levels depending on  
21 the company.

22 For example, CEI the RGC begins basically  
23 at the first kilowatt hour for Ohio Edison as far as  
24 the 450-kilowatt hour point and for Toledo Edison  
25 generally starts at around 2,000 kilowatt hours. So,

1     you know, in summary at least for CEI pretty much  
2     wipes out the generation charge and for the others it  
3     approximates it.

4             Q.     Would you please turn to page 22, lines 2  
5     through 6 of your testimony. And begin -- are you  
6     there, Mr. Ridmann?

7             A.     Yes, I am.

8             Q.     And beginning on line 2, you state that  
9     "Rates paid by most CEI electric heating customers at  
10    present are less than they were in December, 2008."  
11    Do you see that?

12            A.     Yes, I do.

13            Q.     Didn't the Public Utilities Commission  
14    order CEI to file an RGC rate that would provide all  
15    electric customers would bill impacts commensurate  
16    with bills in December of 2008?

17            A.     Are you reading from the specific order?

18            Q.     I believe I'm not reading from a specific  
19    order. I believe I'm characterizing it, but.

20            A.     I think generally the order said  
21    something about put the rates back to the two  
22    thousand -- you know, 2008 level. But in complying  
23    with the order we were basically told how to  
24    interpret that language and we designed rates to  
25    follow the instructions we were given by how to

1 interpret that.

2 And given those instructions there are,  
3 as I state in my testimony, examples of customers who  
4 are paying less than they were in 2008, in December  
5 of 2008.

6 Q. And the -- did you use the word  
7 "instructions"? Is that the word you used?

8 A. Yes.

9 Q. And those instructions came from whom?

10 A. Tammy Turkenton and Bob Fortney.

11 Q. In other words, staff -- PUCO staff  
12 members?

13 A. That's correct.

14 Q. And so when in your reference on line 2  
15 of page 22, that most CEI electric heating customers  
16 use that term, is that because some customers would  
17 be at the rates for December, 2008 but others would  
18 be at lower rates than December, 2008?

19 A. That's correct.

20 Q. Please turn to page 28 of your testimony.

21 Now, on -- I'm on page 28, line 5, and  
22 here with reference to the average customer that you  
23 refer to at that point did you use the average usage  
24 for the winter periods of 2007 and 2008 for  
25 electrically space heated homes?

1           A.    Yeah.  We used the 2002 -- 2007 and 2008  
2 data for electrically heated homes and at the time I  
3 gave my deposition, I thought it was across all three  
4 companies but it's actually for Ohio Edison.

5           Q.    Ohio Edison only?

6           A.    Yes, yes, that's correct.

7           Q.    Okay.  You identify customers have  
8 electric space heating based upon identification  
9 codes from Ohio Edison's customer records, correct?

10          A.    That's correct.

11          Q.    And customers who are coded by the  
12 company being on a load management rate weren't  
13 considered for purposes of determining whether the  
14 residents was electrically heated, correct?

15          A.    That's correct.  We really tried to pick  
16 a schedule that was strictly related to space --  
17 electric space conditioning.

18          Q.    And your calculations did not include  
19 customers in apartments if the customer was on an  
20 apartment rate, correct?

21          A.    That's right.  We tried, again, because  
22 of the schedule we picked it was primarily homes  
23 that -- space heating that didn't have add-on heat  
24 pumps, et cetera.  We were trying to keep the data as  
25 pure as we could.



1           Q.    But there might be customers who are in  
2           apartments that were part of the calculations but  
3           only if they weren't on an apartment rate, correct?

4           A.    The possibility could exist.

5           Q.    There are apartments that are located on  
6           nonapartment tariff schedules or being served off of  
7           nonapartment tariff schedules, correct?

8           A.    I don't know that for certain but it  
9           wouldn't surprise me.

10          Q.    Okay.  What other customers were excluded  
11          in the calculations?

12               MR. KUTIK:  Objection.  There is no  
13          testimony that any customer was excluded from the  
14          calculation.

15          A.    I don't think I excluded any.  I think we  
16          picked a rate schedule that was basically electric  
17          heating for electric heating customers.

18          Q.    Okay.  I am trying to determine the  
19          exclusions that you had of customers in order to  
20          determine that group of customers, so.  Were there  
21          other exclusions of residential customers?

22               MR. KUTIK:  Objection.  Mischaracterizes  
23          his testimony.

24               EXAMINER PRICE:  Sustained.  Please  
25          rephrase.

1           Q.    Let's move on to page 28, lines 21  
2 through 22.

3           A.    Did you say lines 21 and 22, Mr. Small?

4           Q.    Yes.

5           A.    Thank you.

6           Q.    In here I am referring to the conversion  
7 factors. Do you see that that's split between lines  
8 21 and 22?

9           A.    Yes, I do.

10          Q.    And you use the 200 percent efficiency  
11 for electric heating systems in your calculations,  
12 correct?

13          A.    That's correct.

14               MR. SMALL: Your Honor, I would like a  
15 one-page exhibit marked as OCC Exhibit 3.

16               EXAMINER PRICE: So marked.

17               (EXHIBIT MARKED FOR IDENTIFICATION.)

18               MR. SMALL: Approach?

19               EXAMINER PRICE: You may.

20          Q.    Mr. Ridmann, do you recognize the exhibit  
21 that the OCC just had marked as OCC Exhibit 3 as a  
22 one-page document from your workpapers that were  
23 provided to the OCC as part of your deposition on  
24 January 24?

25          A.    Yes.

1           Q.   And in the table it lists approximately  
2 efficiency for electric systems ranging from  
3 98 percent to 330 percent, correct?

4           THE WITNESS:  I'm sorry, could you reread  
5 the question?

6           (Record read.)

7           MR. KUTIK:  One more time, may I have the  
8 question read one more time.

9           EXAMINER PRICE:  Please.

10          (Record read.)

11          A.   Yes, that's correct.

12          Q.   And the 200 percent assumption is the  
13 number that you used in your calculations as close to  
14 the 196 percent shown for the air source heat pump;  
15 is that correct?

16          A.   Yes, that's -- we used 200 percent which  
17 is basically based on the air source heat pump and it  
18 basically agrees with what manufacturers have been  
19 telling us and actually agrees with what Bob Schmitt  
20 Homes had used pretty much in documents they provided  
21 to us.

22          Q.   Do you know how many heat pumps as  
23 opposed to other forms of electric heating are used  
24 by the electric heating customers?

25          A.   I do not, but my analysis basically when

1 I use the gas I used a high efficiency gas furnace so  
2 that apples and apples would be compared, if you  
3 will. So I used a high efficiency -- I used heat  
4 pump of 200 and I used very high efficiency gas unit  
5 90 percent, which is what's required to get the  
6 Energy Star rating for a gas furnace, and we used  
7 those to be comparable, basically.

8 Q. Okay. Would you please turn to page 30  
9 of your testimony. And lines 17 through 19. In here  
10 you state that "The Companies did not have a  
11 policy -- and could not have a policy -- under which  
12 the Companies guaranteed a continuing availability of  
13 any rate schedule or charge or credit." Do you see  
14 that?

15 A. Yes.

16 Q. At the time of your -- that you have --  
17 at the date of your prefiled -- when your testimony  
18 was prefiled, had you read the testimony from the  
19 local public hearings from the former employees of  
20 the FirstEnergy electric distribution utilities?

21 A. I think I read their testimony subsequent  
22 to that time. Subsequent to the date of my filing my  
23 testimony.

24 Q. Would you please turn to page 34 of your  
25 testimony, lines 6 through 7.

1           A.    Yes.

2           Q.    You proposed to retain the seasonal rate  
3 design for generation charges; is that correct?

4           A.    Yes.

5           Q.    Okay.  The price coming out of the  
6 auction is a single price without seasonality; is  
7 that correct?

8           A.    That's correct.

9           Q.    And the seasonal rates that you referred  
10 to on page 34 were approved by the Commission under  
11 the new provisions of Senate Bill 221; is that  
12 correct?

13          A.    The season rates that are in place today  
14 for generation basically reflect an option that  
15 under -- under an ESP plan that came out in the ESP  
16 plans were part of Senate Bill 221.

17          Q.    The Commission also approved as part of  
18 the standard service offer cases involving  
19 FirstEnergy a smart meter pilot project, correct?

20                THE WITNESS:  Could you reread the  
21 question, please.

22                (Record read.)

23          A.    Quibble over words a little bit.  In the  
24 first ESP basically part of the agreement was to work  
25 with the DOE, file a request with the DOE to get

1 funding for a Smart Grid application and we did so  
2 and then subsequent to that there's been discussions  
3 with the Commission staff and DOE to actually come to  
4 agreement on the Smart Grid project. Just to bring  
5 clarity to what's happened in this time frame.

6 Q. And is currently the intention of the  
7 FirstEnergy electric distribution utilities to  
8 proceed with a pilot program in the CEI service  
9 territory? Is that correct?

10 A. Yes, it is.

11 Q. And as part of that pilot program,  
12 would -- is it CEI's intention and plan to evaluate  
13 different rate designs?

14 A. Yes.

15 Q. All right. Let's move to page 35  
16 through -- actually 35 through 40 of your testimony  
17 where you discuss a proposed process for removing  
18 customers and those who would receive the RGC  
19 credits. Is that a general summary of that portion  
20 of your testimony?

21 A. I talk about basically customers that  
22 should be removed from the RGC.

23 Q. Okay. And your proposal only applies to  
24 eligibility for RGC credit, correct?

25 A. That's correct.

1 MR. SMALL: Your Honor, OCC would like to  
2 have a single-page document marked as OCC Exhibit 4.

3 EXAMINER PRICE: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. SMALL: Approach?

6 EXAMINER PRICE: You may.

7 Q. Mr. Ridmann, do you recognize what  
8 I've -- we've just had marked as OCC Exhibit 4 as a  
9 workpaper from -- workpaper 4 that was provided to  
10 the OCC before your deposition on January 24?

11 A. I recognize this as one of my workpapers.

12 Q. Your estimate of the numbers of customers  
13 by electric distribution utility are shown on  
14 workpaper 4, correct? I'm referring to the totals at  
15 the bottom of --

16 A. Yeah, the totals reflect our estimations  
17 of nonheating customers and those who are heating  
18 customers based on the various rates sheet numbers,  
19 if you will, in the third column from the left.

20 Q. And are these figures by electric  
21 distribution utility summed and rounded produce the  
22 159,000 customers shown on page 39, line 2 of your  
23 testimony? Looking at the bottom of OCC Exhibit 4  
24 and comparing it with page 39, line 2 of your  
25 testimony?

1 MR. KUTIK: May I have the question read,  
2 please?

3 EXAMINER PRICE: Please.

4 (Record read.)

5 A. The -- you know, my testimony in line 2,  
6 page 39 refers to nonelectric heating customers  
7 159,000 and that corresponds to nonheating customers  
8 on my workpaper 4 of 158,700.

9 Q. I'm sorry, so you pointed out the number  
10 on workpaper 4, OCC Exhibit 4, which was the middle  
11 number at the bottom, correct, 158,700?

12 A. Correct. Those are the nonheating  
13 customers, our estimation of it.

14 Q. And that number has been rounded for  
15 purposes of your testimony to 159,000 on page 39,  
16 line 2; is that correct?

17 A. Yes.

18 Q. So Exhibit 4, OCC Exhibit 4, workpaper 4  
19 is the supporting documentation for the numbers that  
20 appear concerning your customer counts in your  
21 testimony, correct?

22 A. That's correct.

23 Q. So this workpaper also shows the  
24 breakdown by electric distribution utilities CEI and  
25 Ohio Edison and Toledo Edison, correct?



1           A.     Correct.

2           Q.     Okay.  Let's go to page 39.  Question and  
3     answer 33.  I believe that it folds over to the top  
4     of page 40.

5                     Now, in this portion of your testimony  
6     you refer to two communications with customers  
7     regarding their loss of RGC credit, at line 13 you  
8     refer to a postcard, lines 22 and 23, you refer to a  
9     follow-up with a second communication.  Do you see  
10    that?

11          A.     Yes.

12          Q.     A customer did not respond by -- I assume  
13    that these communications would have a specified date  
14    where the customer would be asked to respond to the  
15    companies?

16          A.     Yeah.  We would probably ask them,  
17    although we haven't devised obviously the  
18    communication, I would expect it to include some date  
19    asking it to respond by.

20          Q.     And if a customer didn't respond by that  
21    specified date in those communications but could  
22    later prove to the company that the electricity was a  
23    primary source for the customer residence, would the  
24    customer then again be eligible for the RGC credit?

25          A.     Yes.  If they showed us that they -- that

1 they were heating electrically, we would make them  
2 eligible for the RGC credit.

3 Q. And would you propose to make that  
4 retroactive to the period when they lost the RGC  
5 credit as part of the postcard and other  
6 communication proposal that you have?

7 A. I haven't thought a whole lot about it  
8 but I would think we would probably make it  
9 retroactive. Again, we would hope a lot of customers  
10 would respond one way or the other with two programs.  
11 So there would be minimal numbers who would have to  
12 come back and ask for to say that they were all  
13 electric when they respond to prior communications.

14 Q. Okay. You state on page 40, lines 19  
15 through 20 of your testimony that "The rider RGC  
16 credit amount for the upcoming winter beginning  
17 September 1 will be determined." Do you see that  
18 portion of your testimony?

19 A. Yes.

20 Q. Does your testimony contain the blocking  
21 that you estimate would be used for the winter  
22 seasons?

23 A. Either my testimony or the workpapers do.

24 MR. SMALL: All right. The OCC would  
25 like a single-page document, it's labeled Workpaper

1 6, and we would like it marked as OCC Exhibit 5.

2 EXAMINER PRICE: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. SMALL: Approach?

5 EXAMINER PRICE: You may.

6 Q. Mr. Ridmann, do you recognize the exhibit  
7 that has just been marked as OCC Exhibit 5 as a page  
8 from your workpapers that were provided to the OCC in  
9 connection with your deposition on January 24?

10 A. Yes.

11 Q. And this exhibit shows the RGC credits  
12 that you estimated would result in the adjustment  
13 from the adjustment to the R -- strike that, your  
14 Honor.

15 Mr. Ridmann, what's been marked as OCC  
16 Exhibit 5, that provides the blocking that you  
17 estimate would be used for the winter seasons,  
18 correct?

19 A. Our estimate -- our estimation based on  
20 the companies' proposal.

21 Q. Okay. And there was a little bit of  
22 confusion earlier -- my earlier examination. This is  
23 not shown in your testimony but it's in your  
24 workpaper, correct?

25 A. Correct.

1           Q.    And the RGC credits for winter, 2011, to  
2           2012, there is that line for each one of the  
3           companies, those were used to develop the typical  
4           bills that are located in your testimony as  
5           Attachment WRR-7, correct?

6           A.    Yes, for the 2011 and 2012 time period.  
7           The 7 doesn't go out through '14. It was used for  
8           the time periods that were contained in Attachment  
9           WRR-7. That only goes out, you know, through the  
10          winter of 2011-2012.

11          Q.    What you're confirming WRR-7 does not  
12          contain the winters after 2011-2012, correct?

13          A.    That's correct.

14          Q.    But the -- but the blocking and the  
15          credits that are shown for 2011-2012, those  
16          correspond to the -- to the typical bill analysis  
17          that you do have in your testimony, correct?

18                THE WITNESS: Could you reread the  
19          question, please.

20                (Record read.)

21          Q.    Okay. Let's go to page 46 of your  
22          testimony. And on page 46, question and answer 41,  
23          you discuss your proposal to collect costs, correct?

24          A.    Yeah, I talk about the companies'  
25          proposal for recovering the costs associated with the

1 RGC.

2 Q. And on lines 13 and 14 you discuss  
3 deferrals arising each year starting at -- on  
4 September 1, 2011, correct?

5 A. Yes.

6 Q. And these annual deferrals that you are  
7 referring to are costs that result from the RGC  
8 credits during winter periods, correct?

9 A. Again, I may quibble here slightly and  
10 say the interest -- there is interest that would go  
11 on just not for the winter period. In other words,  
12 it goes on annually but other than that the RGC  
13 credits basically are as a result of discounts in the  
14 winter period.

15 Q. Is your response that the costs are from  
16 the winter period but there are also interest charges  
17 during the nonwinter periods; is that --

18 A. Yes, to the extent the deferrals exist  
19 the interest would be charged, calculated during the  
20 nonwinter months also.

21 Q. And the first of these winter periods  
22 begins on September 1, 2011, and ends on May 31,  
23 2012, correct?

24 A. Yes, it starts September 1, 2001 and goes  
25 through May 31, 2012.

1           Q.    And have you reviewed Mr. Fortney's  
2   proposal to freeze rates in -- for this first winter  
3   of 2011-2012?

4           A.    Yes, I did.

5           Q.    And for this first winter period  
6   2011-2012, are the costs associated with your  
7   proposal more or less than the costs associated with  
8   Mr. Fortney's proposal?

9           THE WITNESS:   Could you reread the  
10   question.

11           (Record read.)

12           MR. KUTIK:   Are we talking about the  
13   amount of the credit?

14           EXAMINER PRICE:   Mr. Small, are you  
15   talking about the amount of the credit?

16           MR. SMALL:   I am talking about the amount  
17   of the -- well, this all relates back to lines 13 and  
18   14 referring to the deferrals arising each year  
19   starting at September 1, 2011 so I'm talking about  
20   the first winter period and the deferrals that he is  
21   referring to.   I'll ask a preliminary question.

22           Q.    Mr. Ridmann, would Mr. Fortney's  
23   proposal, there would also be a deferral associated  
24   with the first winter 2011-2012.   Is that your  
25   understanding?

1           A.     That's correct.

2           Q.     And can you compare the two of them, the  
3     one associated with your proposal for the first  
4     winter, 2011-2012, with Mr. Fortney's proposal and  
5     tell me which would create the greater deferral?

6           A.     Just give me one minute.

7                     I believe the companies' would create  
8     less deferrals because the companies' proposal is to  
9     increase the rates at 12 percent per year and  
10    Mr. Fortney's was to -- and what results from that  
11    basically the RGC credit going down. And  
12    Mr. Fortney's proposal was basically to keep the  
13    rates frozen for the first year.

14          Q.     And your response, I take it, takes into  
15    consideration all the changes in rates that are  
16    expected to go through the -- that first winter  
17    period, that is through the end of the winter period  
18    2011-2012, correct?

19          A.     My response took into account the fact  
20    that we've estimated basically what the other -- what  
21    the riders would do as a result of the ESP-2, if you  
22    will, and takes that into consideration.

23          Q.     And the conclusion after considering all  
24    those factors including other rates that would be  
25    changing is that the companies' proposal would result

1 in lower deferrals, correct?

2 A. For that -- for that first year. If you  
3 assume that Mr. Fortney's by keeping the rates  
4 constant, if you will, that that would be applied  
5 against the prior deferrals.

6 MR. SMALL: Okay. I am still on page 46,  
7 question and answer 41. I would like a three-page  
8 document labeled by the company as Workpaper 7 marked  
9 as OCC Exhibit 6.

10 EXAMINER PRICE: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. SMALL: Approach?

13 EXAMINER PRICE: You may.

14 Q. Mr. Ridmann, do you recognize the exhibit  
15 that has just been marked as OCC Exhibit 6?

16 A. Yes, I do.

17 Q. That was a work -- one of your workpapers  
18 provided to the OCC in preparation for the January 24  
19 deposition?

20 A. Yes, it was.

21 Q. Now, the reason why this is a three-page  
22 document is it's -- has one page for each of the  
23 electric distribution utilities; Cleveland Electric  
24 Illuminating on the first page, Ohio Edison on the  
25 second page, and Toledo Edison on the third page,



1 correct?

2 A. That's correct.

3 Q. Okay. On page 46 of your testimony, line  
4 20, you refer to a recovery mechanism. Do you see  
5 that?

6 A. Just give me one minute, please.

7 Q. I'm sorry?

8 A. Give me one minute to get to the page.  
9 Page 46, what lines?

10 Q. Line 20, and the words are "recovery  
11 mechanism."

12 A. Yes, yes, I see that.

13 Q. The rates shown -- now, going back to OCC  
14 Exhibit 6, the rates shown in column C, this would be  
15 column C of each one of the pages for each one of the  
16 EDUs, those show your estimated RGC recovery charges;  
17 is that correct?

18 A. That's correct.

19 Q. And that's -- those -- those recovery  
20 charges are a part of the recovery mechanism that you  
21 describe that you mentioned at the bottom of page 46  
22 of your testimony, correct?

23 A. That's correct.

24 Q. All right. The RGC recovery charges for  
25 2012 that are shown on OCC Exhibit 6, were used to

1 develop the typical bills that are located in your  
2 Attachment WRR-7, correct?

3 A. Yes, again, for the time period, you  
4 know, that corresponds to the Attachment WRR-7.

5 Q. Right. And we established you are making  
6 that qualification because there is only one year in  
7 WRR-7, correct?

8 A. There is one winter season under the  
9 proposed. That would be '11 and '12.

10 Q. And what were the estimated deferral  
11 amounts through May 31, 2011 that you used to  
12 determine the rates that are stated in your -- in  
13 what I have as OCC Exhibit 6?

14 A. I believe the total deferrals through  
15 May -- estimated total deferrals through May 31,  
16 2011, is approximately \$106 million.

17 Q. And do you have those figures by  
18 operating company?

19 A. I do not have those with me.

20 Q. Now, the rates shown on OCC Exhibit --  
21 when you provided the \$106 million figure, did that  
22 include carrying charges?

23 A. Yes, it did.

24 Q. Do you have the amount of the carrying  
25 charges that were included in that?

1           A.    I believe, subject to check, it was  
2   \$6 million and I think in my previous answer I think  
3   I gave 106 million, I think it may be 102 million,  
4   subject to check in total.

5           Q.    So you believe that the number is 102  
6   million including \$6 million in carrying charges.

7           A.    Right. Subject to check.

8           Q.    Now, the rates that you show in column C  
9   of what's been marked as OCC Exhibit 6, those rates  
10   depend upon a forecast of sales for customers that  
11   are shown in column B, correct?

12          A.    That's correct.

13          MR. SMALL: At this time the OCC would  
14   like marked a five-page document marked as OCC  
15   Exhibit 7.

16          EXAMINER PRICE: So marked.

17          (EXHIBIT MARKED FOR IDENTIFICATION.)

18          MR. SMALL: Approach?

19          EXAMINER PRICE: You may.

20          Q.    Mr. Ridmann, do you recognize what's been  
21   marked as OCC Exhibit 7 as exhibits containing  
22   schedule 1 information from Case 10-388?

23          A.    Yes.

24          Q.    You sponsored this schedule 1 information  
25   in the -- as part of the application in the case

1 10-388, correct?

2 A. Yes.

3 Q. Now, I am going to ask you to keep the  
4 former exhibit handy. Handier than I have apparently  
5 kept it. You will have to pardon me. Yes.

6 I would like you to -- again, and again,  
7 what has been marked as OCC Exhibit 7 has multiple  
8 pages but they are -- have a separate page for each  
9 one of the operating companies. The first one is  
10 CE -- Cleveland Electric Illuminating, second one is  
11 Ohio Edison, third one is Toledo Edison, correct?

12 A. That's correct.

13 Q. Okay. So let's take a comparison between  
14 what I've marked as OCC Exhibit 6 which shows the  
15 rates that you project for recovery of RGC and the  
16 values for -- and compare that with the schedule 1  
17 information.

18 And here I am at -- all right. So the  
19 forecasted sales figure that you show on Exhibit --  
20 that are shown on Exhibit 6 are higher than those  
21 shown on the schedule 1 information on OCC Exhibit 7.  
22 Do you see that?

23 I am talking about total kWh sales  
24 total -- residential -- let me give you a specific  
25 example. It will make it a little bit more clear.

1                   For instance, for CEI on OCC Exhibit 7  
2                   the total kW sales figures there for residential  
3                   customers is 4.9 billion kWh, correct?

4                   A.     Correct.

5                   Q.     And the figure in OCC Exhibit 6 regarding  
6                   your RGC recovery is 5.44 billion, correct?

7                   A.     Correct.   Correct.

8                   Q.     All right.   The question is what is the  
9                   source of your -- the forecast that you use to arrive  
10                  at the numbers shown on OCC Exhibit 6?

11                  A.     I believe it's the company forecast,  
12                  subject to check.

13                  Q.     When you refer to "the company forecast,"  
14                  are you referring to the forecast of residential  
15                  sales as shown in the long-term forecast report filed  
16                  by FirstEnergy EDUs with the Commission?

17                  A.     Or it may have been updated subsequent to  
18                  that.

19                  Q.     So there --

20                  A.     We continually update forecasts  
21                  basically.

22                  Q.     And when was the forecast performed that  
23                  you're referring to as the companies' forecast?

24                  A.     I don't exactly know what the date was  
25                  that they pulled in terms of the calculation.

1           Q.    The forecast that you are referring to  
2           would not be a forecast any later than the one that  
3           was filed in the FirstEnergy's long-term forecast  
4           report in 2010, would it?

5           A.    Could have been, because the testimony  
6           was developed in the November/December, you know,  
7           time frame in the -- the long-term forecasts was  
8           filed in April of 2010, probably would have been  
9           based on an October of 2009 estimate at that point.  
10          So there -- there could be up to a year difference.

11          Q.    But you're using either the 2010 LTFR  
12          forecast or a subsequent one?

13          A.    Or subsequent.

14          MR. SMALL:   Okay.   That completes my  
15          cross-examination.   Thank you, Mr. Ridmann.

16          EXAMINER PRICE:   Thank you.

17          Mr. Corcoran.

18          MR. CORCORAN:   No questions, your Honor.

19          EXAMINER PRICE:   Staff?

20          MR. JONES:   No questions, your Honor.

21          EXAMINER PRICE:   Redirect?

22          MR. KUTIK:   May we have a few minutes,  
23          your Honor?

24          EXAMINER PRICE:   You may.   Let's take a  
25          break until 4:00 o'clock.   Let's go off the record.

1 (Discussion off the record.)

2 (Recess taken.)

3 EXAMINER PRICE: Let's go back on the  
4 records.

5 Mr. Kutik, redirect?

6 MR. KUTIK: Yes, your Honor.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. Kutik:

10 Q. Mr. Ridmann, you were asked some  
11 questions comparing certain forecasted sales figures  
12 that appear in OCC Exhibits 6 and 7. Could you  
13 describe -- could you describe or contrast or compare  
14 those figures and where they came from, please?

15 A. Yes, I can. The OCC Exhibit No. 7 which  
16 was filed as part of the 10-388 case is basically --  
17 not basically, it is based on six months actual/six  
18 months forecasts for 2009. The information on OCC  
19 Exhibit No. 6 in terms of the kilowatt hours is based  
20 on the companies' long-term forecast report that was  
21 filed in April of 2010.

22 MR. KUTIK: No further questions.

23 EXAMINER PRICE: Thank you.

24 Recross, Mr. Elisar?

25 MR. ELISAR: No questions.

1 EXAMINER PRICE: Mr. O'Brien.

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

3 EXAMINER PRICE: Mr. Small?

4 MR. SMALL: No questions, your Honor.

5 EXAMINER PRICE: Mr. Corcoran?

6 MR. CORCORAN: No questions, your Honor.

7 EXAMINER PRICE: Staff?

8 MR. JONES: No questions, your Honor.

9 EXAMINER PRICE: I have a couple of brief  
10 questions, actually maybe only one.

11 - - -

12 EXAMINATION

13 By Examiner Price:

14 Q. If you can turn in your testimony to page  
15 46 that we had been discussing. Now, the companies'  
16 proposal is to recover the costs that have been  
17 deferred for future recovery solely from residential  
18 customers. Can you explain your rationale as to why  
19 you believe this should be recovered from residential  
20 customers only?

21 A. Well, I think the benefit -- historical  
22 benefits that accrued from the previously discounted  
23 rates before deregulation, if you will, went to the  
24 benefit of residential customers and I think, quite  
25 frankly, the GSGB customers are currently being very



1 generous in funding the EDR credits that accrue to  
2 the electric heating customers, and I think it's only  
3 fair that since the prior benefits went to the  
4 residential customers that they now pay basically for  
5 the credits that will be given under the RGC.

6 Q. The residential distribution credit  
7 rider, the credits, from whom are the costs incurred  
8 by those credits recovered?

9 A. They are recovered from the residential  
10 customers.

11 Q. So your proposal would be consistent with  
12 recovering -- RGC would be consistent with recovering  
13 the?

14 A. RDC.

15 Q. That's correct.

16 EXAMINER PRICE: Thank you, you are  
17 excused.

18 MR. KUTIK: Your Honor, at this time the  
19 company moves the admission of Company Exhibit 1.

20 EXAMINER PRICE: Any objection to the  
21 admission of Company Exhibit 1?

22 Seeing none, it will be admitted.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 MR. SMALL: Your Honor, OCC moves for  
25 admission of OCC's Exhibits 2 through 7.

1 EXAMINER PRICE: Any objection to the  
2 admission of OCC Exhibits 2, 3, 4, 5, 6, and 7?

3 MR. KUTIK: No objection.

4 EXAMINER PRICE: They will be admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER PRICE: Let's go off the record  
7 for one moment.

8 (Discussion off the record.)

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

11 MR. KUTIK: Just to anticipate your move  
12 to your left, we have an additional set of evidence  
13 that we would like to submit at this time.

14 EXAMINER PRICE: Okay.

15 MR. KUTIK: Before we anticipated your  
16 movement over to OCC and Mr. Yankel, and that is as  
17 we advised the parties we were advised that  
18 Ms. Steigerwald who initially had been on CKAP's  
19 witness list would not be testifying.

20 In light of that we now are prepared to  
21 admit into evidence, seek to admit into evidence  
22 certain excerpts from Ms. Steigerwald's deposition.

23 As the Bench is aware, rules before the  
24 Commission, particularly Rule 9011.21(N) says that  
25 depositions can be used in these proceedings as they

1 would be used in courts and the courts of record.

2 And pursuant to the rules of court.

3 Rule 32A of the Rules of Civil Procedure  
4 say that depositions may be used by a -- depositions  
5 of a party may be used by an adverse party against  
6 that party for any purpose.

7 Normally in a court proceeding, as I am  
8 sure the Bench is aware, to introduce a deposition  
9 would mean reading the deposition into the record.  
10 And to spare the Bench and the parties and counsel  
11 that burden, our proposal is simply to mark the  
12 excerpts from Volumes 1 and 2 as Company Exhibits 3A  
13 and 3B, so we request that those be marked at this  
14 time.

15 EXAMINER PRICE: Those excerpts will be  
16 so marked.

17 (EXHIBITS MARKED FOR IDENTIFICATION.)

18 MR. KUTIK: May I approach, your Honor?

19 EXAMINER PRICE: Yes. You said 3A and  
20 3B; is that correct?

21 MR. KUTIK: Yes. What we have done for  
22 the convenience of the Court or the Bench and the  
23 record is we have, after the cover page of each  
24 exhibit, indicated the specific lines and pages which  
25 constitute the excerpts to follow. At this time --

1 MR. SMALL: Excuse me. I haven't been  
2 provided a copy.

3 MR. KUTIK: Concurrent with our  
4 introduction, your Honor, of that testimony we move  
5 for the admission of certain documents which were  
6 marked in those -- that portion of the deposition and  
7 I can either walk the Bench through the specific  
8 exhibits at the -- at the Bench's pleasure or I could  
9 just mark them and we can move on.

10 EXAMINER PRICE: Do you have a summary  
11 document that you could mark as an exhibit and say  
12 that would or --

13 MR. KUTIK: Not at this time but I could  
14 prepare one.

15 EXAMINER PRICE: That would probably be  
16 the most expeditious.

17 MR. KUTIK: Okay. We will do that. Let  
18 me at this time provide for the Bench and the parties  
19 with what we will mark as Company Exhibits 4 through  
20 44.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 MR. KUTIK: So, your Honor, with -- and  
23 so at this time or if we are premature in our motion  
24 we would move for the admission of Exhibits 3A, 3B,  
25 and 4 through 44.

1 EXAMINER PRICE: Is there any objection  
2 to the admission of Exhibits 3A, 3B, and 4 through  
3 44?

4 MR. KUTIK: I'm sorry, 4 through 44. 3A  
5 3B, 4 through 44.

6 EXAMINER PRICE: That's what I said one  
7 more time.

8 MR. KUTIK: I might have misspoke.

9 EXAMINER PRICE: One more time, for the  
10 Company Exhibit 3A, Exhibit 3B, Exhibit Company 4  
11 through 44. Any objection to their admission?

12 MR. SMALL: Yes, your Honor.

13 EXAMINER PRICE: Mr. Small. Grounds?

14 MR. SMALL: Well, if it was just a simple  
15 matter of taking a deposition and not having  
16 called -- call a witness to the stand, we would have  
17 lots of -- lots of depositions being entered into the  
18 records and no witnesses appearing for  
19 cross-examination by person -- by attorneys such as  
20 myself.

21 I haven't had an opportunity to -- I  
22 don't have any opportunity to examine the witness  
23 associated with this testimony. Attorney examiners'  
24 instructions at the prehearing conference were clear  
25 that the parties could not call any witnesses who

1 were not on the witness list that were filed in  
2 December.

3 Now, I understand that Ms. Steigerwald  
4 was on the CKAP witness list and that CKAP apparently  
5 has decided not to call her to the witness stand.  
6 That's my understanding from e-mails that I have  
7 received somewhat -- sometime before January 7, a  
8 previous hearing date.

9 Subsequent to that the company had ample  
10 opportunity to subpoena Ms. Steigerwald to have her  
11 appear at today's hearing and to request -- to amend  
12 their witness list.

13 In fact, the OCC asked FirstEnergy  
14 Attorney Burk if we could do exactly that as far as  
15 sparing Mr. Andreatta down here from Youngstown so  
16 that we could have an agreed-to deposition held in  
17 Akron and have him -- his deposition transcript  
18 entered rather than having him required to come down  
19 to Columbus, to which the company never agreed, so  
20 requiring the OCC to continue and to subpoena  
21 Mr. Andreatta time and time again to make sure that  
22 we were subpoenaing him for the correct time period,  
23 and always at least five days before the hearing date  
24 as provided for in the Commission's rules.

25 The company is -- has decided it does

1 not -- has decided, despite the ample opportunity,  
2 that it is not going to subpoena Ms. Steigerwald, and  
3 therefore, there should be no testimony by  
4 Ms. Steigerwald either live or through deposition  
5 transcripts. And the same thing having to do with  
6 the same thing applies to the exhibits that were used  
7 during the deposition of Ms. Steigerwald.

8 EXAMINER PRICE: Mr. Corcoran.

9 MR. CORCORAN: Your Honor, we were  
10 notified this morning as to which exhibits were --  
11 they were going to introduce so I haven't had a  
12 chance to look at those exhibits at all. So I am not  
13 prepared to make a comment to any of those.

14 But along the lines of Mr. Small, Mrs.--  
15 Ms. Steigerwald's testimony at this point would be  
16 hearsay. And in order to have an exception under  
17 hearsay there needs to be shown a reasonable good,  
18 fair effort to procure attendance, and that hasn't  
19 happened.

20 I have a case for you if you would like  
21 me to cite to it.

22 EXAMINER PRICE: That's okay.

23 MR. KUTIK: Your Honor.

24 EXAMINER PRICE: Just wait, Mr. Kutik.  
25 The use of deposition transcripts as substantive

1 evidence in lieu of a witness is a highly contentious  
2 issue at this Commission. This is not the first time  
3 this has come up. And I have to admit that our rules  
4 on this are less than crystal clear.

5 We are going to take this under  
6 advisement and give you an answer on the admission --  
7 we'll hold off on the exhibits until you have a  
8 chance to look at them, Mr. Corcoran, but as to the  
9 deposition transcripts, we will take this under  
10 advisement and we will have an answer for you  
11 hopefully tomorrow.

12 On the other hand, it would be great if  
13 parties would work this out, because I will tell you,  
14 if I come back and say no, we are not going to let  
15 you admit the deposition transcripts, I am going to  
16 waive the subpoena rule and I will entertain a  
17 subpoena for Ms. Steigerwald.

18 So rather than doing this pointlessly, I  
19 think the parties need to think about getting  
20 together and seeing if they can work out the  
21 admission of this, but if we have to issue a subpoena  
22 for Ms. Steigerwald, she's a named intervenor and  
23 certainly I would be willing to waive the subpoena  
24 rule, the time rule, in order to accommodate her  
25 testifying.



1           And if we have to extend out to next week  
2           to accommodate her schedule, we'll extend out to next  
3           week to accommodate her schedule.

4           So we can take this under advisement but  
5           I would strongly advise the parties to sit down, look  
6           at the deposition transcripts, look at the exhibits,  
7           and come back with an amicable resolution before I  
8           have to render a decision.

9           MR. KUTIK: Your Honor, I understand your  
10          comments, but just for the purpose of allowing me to  
11          make my record, may I be heard in response to  
12          comments of counsel?

13          EXAMINER PRICE: You may.

14          MR. KUTIK: Your Honor, we believe that  
15          rules of the Commission are clear in terms of what we  
16          are allowed to do. We believe, as I indicated  
17          earlier, that the rules say you use a deposition like  
18          rules that are -- as are rules allow you in court,  
19          particularly Rules of Civil Procedure.

20          We did not have to, as Mr. Small and  
21          Mr. Corcoran suggest, have to subpoena  
22          Ms. Steigerwald under the Commission's rules and  
23          that's why we elected not to.

24          In contrast since Mr. Andreatta is not a  
25          party, we believe that it is important that we have

1 the right to cross-examine him before you and,  
2 therefore, we didn't -- we wanted to have that  
3 opportunity, and it's not a violation of any rules  
4 affecting complying with our rights.

5 So there isn't any equivalence between  
6 what happened with Mr. Andreatta and what happens  
7 with Ms. Steigerwald by the fact that she is a party  
8 and he is not.

9 EXAMINER PRICE: And I don't see any  
10 equivalence between the two situations. Again, this  
11 is not the first time this issue has come up. It  
12 is -- although you can certainly interpret our rules  
13 in the manner in which you would like to interpret  
14 our rules, it is not a common practice before the  
15 Commission, as Mr. Small has pointed out.

16 You know, my goal is to cure this and so,  
17 again, if we come back and don't allow the  
18 depositions directly, we will require Ms. Steigerwald  
19 to attend and be subject to your questions and you  
20 will have a chance to ask her those questions again  
21 live.

22 MR. KUTIK: Your Honor, subject to your  
23 ruling and potential further proceedings with respect  
24 to that testimony and subject to further argument  
25 with respect to the exhibits that we have just

1 submitted and further subject to our motion on  
2 Company Exhibit 2, the notice of publication, that  
3 concludes the presentation of our direct case.

4 EXAMINER PRICE: Thank you.

5 Mr. Small, while we contemplate these  
6 other matters would you care to call your witness --  
7 your next witness.

8 MR. SMALL: Thank you. Let me reorganize  
9 my desk here a little bit.

10 EXAMINER PRICE: Let's go off the record  
11 one minute, please.

12 (Discussion off the record.)

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

15 (Witness sworn.)

16 EXAMINER PRICE: Please be seated. State  
17 your name and business address for the record.

18 THE WITNESS: Anthony Yankel,  
19 Y-A-N-K-E-L, 29814 Lake Road, Bay Village, Ohio.

20 EXAMINER PRICE: Thank you.

21 MR. SMALL: Your Honor, if we could --

22 EXAMINER PRICE: I'm sorry, the Bench  
23 needs to get caught up in his paper organization as  
24 well.

25 EXAMINER PRICE: Please proceed,

1 Mr. Small.

2 MR. SMALL: The OCC calls Mr. Anthony  
3 Yankel to the stand and we would like the prepared  
4 testimony marked as OCC Exhibit 1.

5 EXAMINER PRICE: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 EXAMINER PRICE: Please proceed.

8 MR. SMALL: Mr. Yankel, would you please  
9 state your full name and business address -- maybe if  
10 you have done that.

11 EXAMINER PRICE: I've done that.

12 MR. SMALL: I'm sorry, I missed that.

13 - - -

14 ANTHONY J. YANKEL

15 being first duly sworn, as prescribed by law, was  
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Small:

19 Q. By whom are you regularly employed?

20 A. Yankel and Associates, Incorporated.

21 Q. That's a consulting company?

22 A. Yes, it is.

23 Q. And are you the Anthony Yankel whose  
24 prepared testimony was filed on January 10, 2011 in  
25 this case?

1 A. Yes.

2 Q. And on whose behalf do you appear?

3 A. The Ohio Office of Consumers' Counsel.

4 Q. And do you have your prepared testimony  
5 with you on the stand?

6 A. Yes, I do.

7 Q. And that's been marked as OCC Exhibit 1.  
8 Did you prepare the testimony OCC Exhibit 1 or have  
9 it prepared at your direction?

10 A. Yes.

11 Q. Do you have any changes or corrections to  
12 your prepared testimony?

13 A. I have one.

14 Q. And what is that change?

15 A. Exhibit 3, page 3.

16 EXAMINER PRICE: Just to clarify, page  
17 AJY.

18 A. AJY-3.

19 Q. And what page was that?

20 A. Page 3 of 3.

21 Q. 3 of 3?

22 A. The title right now says "CEI Residential  
23 Bills." It should say "TE Residential Bills."

24 Q. So AJY-3 has one page for each company  
25 and one of them was mislabeled; is that your

1 correction?

2 A. That is correct.

3 Q. Do you have any other changes or  
4 corrections?

5 A. None that I'm aware.

6 Q. If I asked you today the same questions  
7 found in your prepared testimony as modified by your  
8 single correction on this, would your answers be the  
9 same?

10 A. Yes, they would.

11 MR. SMALL: The OCC tenders the witness  
12 for cross-examination.

13 EXAMINER PRICE: Mr. Corcoran.

14 MR. CORCORAN: No questions, your Honor.

15 EXAMINER PRICE: Mr. O'Brien.

16 MR. O'BRIEN: Thank you, your Honor. I  
17 just have a few questions.

18 MR. KUTIK: Well, your Honor, before  
19 counsel begins will the Bench entertain motions to  
20 strike at this time?

21 EXAMINER PRICE: Yes.

22 MR. KUTIK: Your Honor, the companies  
23 move to strike the following testimony and the  
24 testimony is based upon the same grounds. The  
25 testimony is -- starts at page 3, line 15, to page 5,

1 line 9. Basically the question and answer to No. 6.  
2 And then starting at page 32, line 17, going to page  
3 41, line 2, questions and answers 32 to 42.

4 MR. SMALL: Maybe I could ask counsel to  
5 repeat, that was a fairly extensive.

6 MR. KUTIK: Sure. There are two parts.  
7 The first part is page 3, line 15, to page 5, line 9,  
8 question and answer 6. The second part begins at  
9 page 3 --

10 MR. SMALL: 32, okay.

11 MR. KUTIK: Line 17, and continues  
12 through page 41, line 2, the ten questions and  
13 answers starting with question 32 and ending with 42.  
14 I guess that's 11 questions.

15 The basis of our motion, your Honor, is  
16 the principle of collateral estoppel. As the Bench  
17 is aware, where there is an administrative proceeding  
18 of judicial nature and the parties have had an  
19 adequate opportunity to litigate issues involved in  
20 that proceeding.

21 The document of collateral estoppel  
22 applies cite the cases of Superiors Grand Meats, Inc.  
23 versus Lindley 82 Ohio State Second 133, 1980 case.  
24 Also Ohio Consumers' Counsel versus Public Utilities  
25 Commission, 111, Ohio State Third 300, 2006. And

1     that concludes, your Honor, matters that are  
2     concluded by settlement.

3             We would cite Scott versus East Cleveland  
4     16 Ohio State Third 429, 1984 Case. The stipulation  
5     once entered into and filed by, accepted by an  
6     administrative body or a court is binding upon the  
7     parties and is in fact deemed adjudicated for the  
8     purposes of determining the remaining issues in the  
9     case.

10            Cite Foreigner versus Whitta, Seneca  
11     Court of Appeals, March 16, 1994, 1994 Westlaw  
12     114881. And Shanklands versus Loman 2011 Ohio 255  
13     Third District. The party who has agreed to a  
14     stipulation cannot retract or withdraw it.

15            Whitehall Ex Rel Henessey versus Bambi  
16     Motel 131 Ohio Ap Third 374 Tenth District 1988. The  
17     consistency, your Honor, that collateral estoppel  
18     mandates applies to this Commission.

19            And this Commission has recognized the  
20     binding natures -- binding nature of stipulation to  
21     prevent parties like OCC from changing its position  
22     as it seeks to here.

23            And we would point to the case of Dayton  
24     Power & Light Case No. 05-1090-EL-ATA. And in that  
25     case DP&L filed an application to implement a new



1 rider to recover storm damage expenses. OCC sought  
2 to intervene, to oppose that.

3 The DP&L opposed OCC's stance in that  
4 case by pointing out there were two stipulations in  
5 their cases, ETP stipulation and the RSP stipulation,  
6 which recognized that OCC had agreed that the  
7 companies' distribution rates would remain frozen but  
8 for the adjustments permitted in the ETP stipulation  
9 including storm damage expenses.

10 The Commission in rejecting OCC's attempt  
11 to change from the position that it took in the  
12 stipulation noted as follows: The OCC was a  
13 signatory party to both the ETP stipulation and RSP  
14 stipulation. OCC claimed that the RSP stipulation as  
15 a package benefited ratepayers in the public  
16 interest.

17 Moreover, the OCC represented to the  
18 Commission that the RSP stipulation did not violate  
19 any important regulatory principle. If OCC pleads  
20 the adjustments to the distribution rate freeze for  
21 recovery of storm damage expense could be made only  
22 by application for an increase in rates rather than  
23 through an application for tariff approval, OCC could  
24 have and should have raised that issue with the  
25 Commission at the time the RSP stipulation was

1 submitted to the Commission for approval.

2 Just as in that case, OCC is attempting  
3 to walk away from stipulations that it had reached  
4 previously. We are prepared to provide the Bench  
5 with copies of those stipulations.

6 In the RCP case the parties both in the  
7 initial stipulation and in supplemental stipulation  
8 recognize and agree that discount rates, special  
9 rates, would no longer be available to electric  
10 heating customers coming to the premises that is that  
11 new customers would not be eligible for those rates.

12 Similarly in the ESP case the -- there  
13 was a stipulation in that case where the parties  
14 again agreed that the availability and eligibility  
15 for the discounted rates that would be available as a  
16 result of the ESP case would be available only under  
17 the eligibility rules as established in the RCP case.

18 Your Honor, Mr. Yankel recommends, among  
19 other things, that the discount be available to all  
20 customers, new customers and so forth. And so to the  
21 extent that his recommendation and also supported by  
22 OCC contradicts the OCC's position, and taking in the  
23 stip -- in the stipulation of both of those cases  
24 collateral estoppel bars him or bars OCC from  
25 presenting his evidence on that issue. Based on that

1 we move to strike.

2 MR. ELISAR: Your Honor, IEU joins that  
3 motion, if we may.

4 EXAMINER PRICE: Thank you. Please.

5 MR. ELISAR: Specifically the OCC agreed  
6 in the RSP, as my colleague pointed out, that they  
7 would be bound by the stipulation, and furthermore,  
8 they agreed that they would not contest the  
9 stipulation in any form.

10 Unfortunately, what we have here today,  
11 your Honor, is that the OCC is engaged in contesting  
12 that stipulation, as my colleague discussed earlier  
13 in this very forum.

14 Again, under collateral estoppel the IEU  
15 would urge this body and your Honor to consider  
16 striking his testimony, as Mr. Yankel is an agent for  
17 OCC and OCC has agreed to these terms.

18 EXAMINER PRICE: Thank you.

19 Mr. O'Brien.

20 MR. O'BRIEN: Your Honor, I would just  
21 like to add to this that in the stipulation under  
22 discussion both the OMA and OHA agreed to a  
23 continuation of rider EDR on the strength of the  
24 terms and conditions that were struck underneath that  
25 stipulation.

1           It is our position that the OCC, through  
2 Mr. Yankel's testimony, is changing the significant  
3 terms and conditions of that stipulation. I just  
4 wanted to add that for the record.

5           EXAMINER PRICE: Thank you.

6           Mr. Corcoran, would you like to join the  
7 collateral estoppel motion?

8           MR. CORCORAN: No, thank you, your Honor.

9           EXAMINER PRICE: Mr. Small, would you  
10 care to respond?

11          MR. SMALL: Yes, your Honor. The matter  
12 of collateral estoppel and its application on matters  
13 of rate -- rate-related matters before the Commission  
14 is, of course, and has been, as you've characterized  
15 it earlier, a matter of great discussion, matter of  
16 litigation.

17          In fact, the OCC as an example was  
18 unsuccessful in arguing collateral estoppel against  
19 the FirstEnergy EDUs in trying to enforce the  
20 electric transition plan ETP stipulation that was  
21 signed under circumstances where FirstEnergy sought  
22 changes to the resolution of the terms of the  
23 stipulation in the ETP case as part of Case 03-2144,  
24 which is commonly referred to at the Commission as  
25 the rate stabilization plan case.

1           You can find the OCC's objection in the  
2           person of Kim Bojko, the OCC's counsel, FirstEnergy's  
3           RSP Case 03-2144 transcript at 52 April 21, 2004,  
4           where FirstEnergy applied for and was successful in  
5           altering terms of its ETP stipulation as part of the  
6           rate stabilization plan argued against by the OCC  
7           unsuccessfully.

8           The position of the Commission has been  
9           that past stipulations and as well as the  
10          Commission's decisions itself are matters of concern.  
11          However, the circumstances of individual cases and  
12          the change in circumstances would be between when the  
13          stipulations, or in the case of Commission order,  
14          that the date of the order change in circumstances  
15          may require that collateral estoppel and res judicata  
16          not apply in those circumstances.

17          This is exactly that kind of  
18          circumstance. What a large part of the argument  
19          concerning the striking of the testimony revolves  
20          around forgets that the company made an application  
21          early 2010 and Commission acted to change the rates  
22          for residential customers for the end of the winter  
23          season 2010 -- 2009-2010. The latter part of that  
24          period.

25          The essence of this proceeding now that

1     that action has been taken, those rates have been  
2     changed and you can't really separate the collateral  
3     estoppel argument from the res judicata argument  
4     because the same argument would apply. The  
5     Commission has changed the rates.

6             And the argument would be that the  
7     Commission didn't have the ability to make those  
8     changes but, in fact, the Commission did make those  
9     changes, and the essence of this proceeding is what  
10    to do next, how to deal with the situation that is  
11    the so-called long-term solution.

12            The immediate term solution the  
13    Commission chose to change the rates for the winter  
14    season 2010-2011. Now, the question before -- for  
15    this proceeding is what to do for the longer term,  
16    which is the subject matter of Mr. Yankel's testimony  
17    as well as others, such as Mr. Ridmann and  
18    Mr. Fortney, so there is precedent for going -- for  
19    not applying collateral estoppel under these  
20    circumstances.

21            And I would argue these are exactly the  
22    circumstances when they don't apply when the  
23    Commission has already acted to change the rates that  
24    were approved in prior decisions.

25            EXAMINER PRICE: Mr. Kutik?

1           MR. KUTIK: Your Honor, one thing that I  
2 didn't hear in the comments from Mr. Small was that  
3 the testimony and the proposal from Mr. Yankel was  
4 somehow consistent or not a violation of a  
5 stipulation. So we should take that at this point as  
6 a given.

7           Given that it does conflict, then the  
8 issue is crystal clear before the Commission, will  
9 the Commission allow a party to walk away from the  
10 deal? Now, Mr. Small thinks, well, gee, the  
11 landscape has changed. Well, it hasn't. The parties  
12 are still bound by that stipulation.

13           The Commission on an emergency or  
14 contingent basis can issue orders, but in terms  
15 Mr. Small indicates on a long-term solution all the  
16 parties that signed those stipulations are still  
17 bound by those stipulations and collateral principle  
18 applies.

19           EXAMINER PRICE: Anybody else care to  
20 respond to Mr. Small? Mr. Elisar?

21           MR. ELISAR: Yes, if I could, agree with  
22 what the gentleman had to say. I would also like to  
23 point out specifically in answer 41 of Mr. Yankel's  
24 testimony it was a change what is agreed to and it is  
25 a detriment to the parties, specifically the

1 industrial parties who have agreed to this  
2 stipulation and signed it and are bound to it per the  
3 terms of this agreement, as they state specifically  
4 we shall be bound to it as signatories of that  
5 agreement.

6 Furthermore, we said we would not contest  
7 it, as I stated earlier, in any form, which is what  
8 we are doing here today.

9 MR. SMALL: I would like to make one more  
10 point, which is it's interesting that the parties  
11 that are supporting the motion to strike have no  
12 objection to -- and had no objection to Mr. Ridmann's  
13 testimony, which suffers the same frailty if you take  
14 the logic of it.

15 So what you really have here is a  
16 situation where parties want to tell one part of the  
17 story despite the fact that the stipulations in those  
18 same cases have not been followed by -- well, by  
19 anybody.

20 The testimony of FirstEnergy's witness  
21 Ridmann, Mr. Yankel, and the prefiled testimony of --  
22 of Mr. Fortney all depart from the stipulations and  
23 the orders of the Commission in the past on this  
24 subject matter.

25 So as a matter of fairness, if this



1 proceeding is to have any validity, you have to hear  
2 the different sides of how to move forward in this  
3 case, not just to strike one party's testimony.

4 EXAMINER PRICE: But in all fairness as  
5 to the OMA and IEU-Ohio, to the extent Mr. Yankel  
6 does not impose any costs on their clients, they have  
7 no interest in enforcing the stipulation because they  
8 are held harmless; isn't that right?

9 MR. SMALL: Well, I understand their  
10 interest. I am saying as a matter of --

11 EXAMINER PRICE: And as to the staff, I  
12 am trying to recall correctly, it was my recollection  
13 that staff was not on the RCP stipulation. Am I  
14 incorrect in that?

15 MR. SMALL: I will a give an example --  
16 I've lost my mic.

17 I will give an example: Mr. Fortney in  
18 his testimony proposes to do away with the EDR  
19 credit. Well, that's a -- that's a change from  
20 the -- from the ESP stipulation.

21 EXAMINER PRICE: I'm just asking about  
22 the RCP at the moment.

23 MR. JONES: I don't think staff was -- I  
24 don't think we were.

25 EXAMINER PRICE: That's fine. I was

1 wrong. Staff is not on all the stipulations. Okay.

2 I don't think anybody is going to be  
3 surprised it is an evidentiary matter, we are going  
4 to deny the motion to strike.

5 The parties who seek to enforce the  
6 stipulation have every right to raise this in their  
7 brief and to raise it as a legal matter before the  
8 Commission, but we are going to hear the testimony of  
9 Mr. Yankel on this topic.

10 MR. SMALL: Thank you, your Honor.

11 EXAMINER PRICE: So we are back -- any  
12 further motions to strike?

13 MR. KUTIK: No, your Honor, that's it.

14 EXAMINER PRICE: Anybody else?  
15 Mr. O'Brien?

16 MR. O'BRIEN: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. O'Brien:

20 Q. Good afternoon, Mr. Yankel.

21 A. Good afternoon.

22 Q. Could you please turn your attention to  
23 the aforementioned Q and A 41, on page 40 of your  
24 testimony. Can you hear me okay?

25 A. Well enough.

1           Q.    Thank you for that endorsement here.  I  
2   will get a microphone.

3                    Have you found that question and answer?

4           A.    I'm there, yes.

5           Q.    Okay.  Well, in that answer you make  
6   reference to the fact that you believe the all  
7   electric customers should generally benefit the  
8   system with high usage during times of low energy  
9   costs.  What benefits are you referring to in that  
10   sentence?

11           A.    Maybe one of the easiest ways to do it  
12   would be to look at Mr. Ridmann's testimony.  
13   Mr. Ridmann has some quotes in his testimony that  
14   talk about revenues coming from all electric  
15   customers exceeding their costs of service.

16                    He also talks about reduced operating  
17   expenses, cycling of units, economic operation of the  
18   facilities, basically what I would consider EFC  
19   costs, the costs of fuel, to me that would be the  
20   types of efficiencies I am talking about.

21           Q.    So you didn't do any independent analysis  
22   to see what the auction results would have been in  
23   the absence of that all electric, I am going to  
24   characterize it as off-peak usage, did you?

25           A.    That is correct.

1           Q.    Would the benefit that's -- that we are  
2 talking about here be any different for a non-all  
3 electric customers' off-peak usage as well?  Would  
4 the benefit be any different?

5           A.    It's only a matter of degree.  The  
6 electric space heating customers tends to have a  
7 great deal of off-peak usage so, therefore, there is  
8 a great deal of benefit.

9                    If there is another customer, customer  
10 group that has off-peak usage, depending on, again,  
11 how much of that off-peak usage there is, it may or  
12 may not be as much of a benefit.  One would be street  
13 lights, street lights are pretty much -- pretty much  
14 off peak.  They are not totally off peak but pretty  
15 much off peak, so that would be another example.

16          Q.    Do all electric customers use energy on  
17 peak as well?

18          A.    Yes, they do.

19          Q.    Would the benefits provided by customers  
20 that use usually only off peak be greater than the  
21 benefits provided by the all electric customers?

22                   THE WITNESS:  Could I have that reread.

23                   EXAMINER PRICE:  Please.

24                   (Record read.)

25          A.    I would think so, yes, assuming that you

1 are talking about, say, street lighting customers,  
2 yes.

3 MR. O'BRIEN: Thank you. I have no  
4 further questions, your Honor.

5 EXAMINER PRICE: Thank you.

6 Mr. Elisar?

7 MR. ELISAR: Just one, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Elisar:

11 Q. The benefits that you just covered, Mr.  
12 Yankel, are they related to the generation functions?

13 A. I was thinking of them at the moment as  
14 generation functions, yes. There would be also  
15 distribution function as well, but I think as I was  
16 speaking I was speaking on generation.

17 MR. ELISAR: So if I may.

18 EXAMINER PRICE: You may.

19 Q. Do you believe that that benefit then  
20 would be available to customers who shop for their  
21 electricity?

22 A. I'm not sure what you mean by "would be  
23 available." Are you looking for the RGC discounts to  
24 be available or something different? I just don't  
25 follow the question.

1 EXAMINER PRICE: I think what he is  
2 saying is do customers who shop for their generation  
3 receive any benefit by the load profile of the all  
4 electric customers?

5 MR. ELISAR: Thank you.

6 EXAMINER PRICE: Sometimes it's easier to  
7 do up here.

8 MR. ELISAR: Thank you, sir.

9 A. I'm not sure how the shopping is  
10 arranged. I would assume that if the shopping is  
11 arranged such that you do know that there are all  
12 electric customers versus non-all electric customers,  
13 that that would to some extent influence the  
14 marketer. To what extent, I don't know what the --  
15 you know, I am not a marketer, I don't know how much  
16 they take that into account.

17 EXAMINER PRICE: You've not modeled this?

18 THE WITNESS: No, I certainly have not.

19 EXAMINER PRICE: You have not talked to  
20 retail marketers about this?

21 THE WITNESS: No, I have not.

22 EXAMINER PRICE: Have you relied on any  
23 studies in the literature regarding retail marketers?  
24 In the pricing strategies?

25 THE WITNESS: No. I just know that

1 basically off-peak energy is usually much less  
2 expensive than nonpeak energy and then there is the  
3 amount of plants necessary for the off peak versus  
4 the on peak.

5 So it's 30 years worth of knowledge along  
6 those lines, but, no, I have not done a specific  
7 study.

8 EXAMINER PRICE: Sorry, Mr. Elisar.

9 MR. ELISAR: That's all right. Thank  
10 you.

11 Q. (By Mr. Elisar) Would the benefit -- or  
12 do you know if the benefit would show up in the  
13 auction price for default customers?

14 A. I would assume if I was putting together  
15 a bid, that I would certainly be taking that into  
16 account, the fact that there was valley filling or  
17 not valley filling, as the case may be. If there was  
18 not valley filling, it would certainly be different.  
19 The price that I would offer would certainly be  
20 higher.

21 MR. ELISAR: Thank you.

22 EXAMINER PRICE: Thank you.

23 Mr. Kutik?

24 - - -

25 CROSS-EXAMINATION

1 By Mr. Kutik:

2 Q. Mr. Yankel, in developing your proposal  
3 and before you prepared your testimony you spoke with  
4 others outside of OCC, correct?

5 A. Yes.

6 Q. And among the folks you spoke with are  
7 Sue Steigerwald and Kevin Corcoran, correct?

8 A. Yes.

9 Q. In terms of your expertise, sir, you  
10 don't hold yourself out as an expert in real estate  
11 valuation, do you?

12 A. No, I do not.

13 Q. In terms of your proposal, would it be  
14 fair to say that basically what you are saying is  
15 that you believe that residential electric heating  
16 rates, or I will use your term, residential all  
17 electric customers rates, should be 65 percent of the  
18 standard residential customers rate plus or minus a  
19 band of 5 percent?

20 A. That's not quite right, and actually the  
21 proposal I have for 65 percent is at the 3,500 kWh  
22 mark, actually that percentage would decrease if you  
23 got to 2,000, it would probably increase if you got  
24 to, you know, much higher usage levels. So that's  
25 how I put it together, but basically it's 65 percent



1 at the 3,500 level, yes.

2 Q. Plus or minus 5 percent.

3 A. Yes.

4 Q. And that would include charging  
5 customers, electric heating customers two-thirds of a  
6 rider?

7 A. I'm not following what you're talking  
8 about there.

9 Q. Well, isn't it true that your proposal  
10 would include charging all electric customers  
11 two-thirds of any rider?

12 A. If a rider went up, there would be a  
13 tendency to have a discount as there is a discount  
14 now, as there was a discount 10, 15 years ago for the  
15 EFC rider, for example, or the PIP rider, there was a  
16 discount that was taken into account.

17 So effectively the overall bill as I am  
18 proposing would be similar to what it used to be is  
19 the 65 percent, yes. Two-thirds.

20 Q. So the answer to my question would be  
21 that there would be a charge to all electric  
22 customers the charge of a rider, all electric  
23 customers would be two-thirds of the rider, correct?

24 A. The impact on the bill would be  
25 two-thirds of a rider, yes.

1           Q.    Now, you also believe that the discount  
2           should apply to what we'll call nonstandard,  
3           nonelectric heating customers, correct?

4           A.    Yes.  I lump them as the mix.  I  
5           basically did not address them in any detail, yes.

6           Q.    But your proposal includes they get this  
7           discount as well?

8           A.    Yes, at this time, yes.

9           Q.    And your proposal is the discount should  
10          be indefinite.

11          A.    That is correct.

12          Q.    In fact, you believe on a long-term basis  
13          it should be permanent.

14          A.    I don't know if I ever said "permanent"  
15          then, but I think I said infinity is an awful long  
16          time, for a long time, yes.

17          Q.    Now, it would be appropriate to -- to  
18          denominate or describe your proposal as an in effect  
19          declining rate, correct?

20          A.    One could look at it as a declining block  
21          rate because it's cheaper, it's essentially  
22          two-thirds of the standard rate, or one can look at  
23          it simply as its own rate.

24                   It does have the rider that's taking  
25          place in my scheme of things at the at least this

1 particular part of the rider at the 1,000 kWh level  
2 so it could be viewed as a declining block depending  
3 how you want to look at it.

4 Q. Again, it could be looked at or described  
5 or referred to as a type of declining block rate,  
6 correct?

7 A. Has the same impact as a declining block  
8 rate, yes.

9 Q. And I am not sure you said this, but you  
10 would agree that basically declining block rates, the  
11 more you use, the less you pay.

12 A. You pay at a lower rate and I believe I  
13 said that you still pay more. It's just that you're  
14 paying at a lower rate per kilowatt hour.

15 Q. So the more you use on a -- on a dollar  
16 per kWh basis, it's less?

17 A. No. You're charged different rates  
18 again. In my case at the thousand kWh level you  
19 begin to be charged a lower rate. That rate stays  
20 the same throughout. Your bill would continue to go  
21 up and just not go up as fast as if it was on the  
22 standard rate.

23 Q. Well, isn't it true in general a  
24 declining block rate would tend to increase usage?

25 A. Lower prices in general would tend to

1       increase usage as would higher prices in general  
2       would tend to decrease usage.

3               Q.     So the answer to my question is yes?

4               A.     Yes.

5               Q.     Now, you are not aware, are you, sir,  
6       whether the companies are subject to any mandates  
7       proposed by statute for reduction in usage  
8       benchmarks, for reduction in usage, correct?

9               A.     I'm generally aware but not specifically  
10      aware.

11              Q.     But you couldn't tell me, for example,  
12      what those are and how those compare to your  
13      proposals, correct?

14              A.     No, and I don't believe my proposal would  
15      be addressing those -- those standards.

16              Q.     Well, isn't it true that you don't know  
17      whether your proposal is consistent or inconsistent  
18      with the benchmarks?

19              A.     I don't see my proposal as one that is  
20      increasing costs -- excuse me, increasing usage or  
21      proposal as the cost may be.

22              Q.     Isn't it true you don't know whether your  
23      proposal is consistent or inconsistent with the  
24      statutory benchmarks with respect to reduction of  
25      usage?

1           A.    I don't know -- my understanding, and it  
2   is limited, is that there are conservation standards.  
3   I don't believe that the intent was to charge  
4   everybody twice as much for electricity in order to  
5   reduce energy, so I believe the standards were for a  
6   different purpose than that.

7                    Again, I don't know specifically what the  
8   standards are, but I think they are to reduce  
9   energy -- I think conservation is what they are to  
10   promote.

11                   MR. KUTIK:  Your Honor, or let me ask  
12   Mr. Yankel.

13           Q.    Do you have a copy of your deposition  
14   handy?

15           A.    Yes, I do.

16                   MR. KUTIK:  Your Honor, may I approach  
17   the Bench?

18                   EXAMINER PRICE:  You may.  I have a copy  
19   of his deposition.

20                   MR. KUTIK:  Of his deposition?

21                   EXAMINER PRICE:  Yes.  January 20?

22                   MR. KUTIK:  Yes, your Honor.

23                   EXAMINER PRICE:  Okay.

24           Q.    Mr. Yankel, let me refer you to page 77  
25   of your deposition.  Do you recall I did take your

1 deposition on January 20, 2010, correct -- 2011,  
2 correct?

3 A. Yes. I'm on page 77. Is that?

4 Q. Yes. And isn't it true I asked you these  
5 questions and you gave these answers starting on line  
6 16: Are you aware of whether the companies in this  
7 case are subject to a statutory mandate to meet  
8 reduction around usage benchmarks?

9 Answer: I don't know if they have that  
10 statutory requirement.

11 Question: Assuming that --

12 Answer: I don't know that there has  
13 been, you know, a push for energy, I know that there  
14 has been, you know, a push for energy conservation.  
15 I don't know if there's really a requirement.

16 Question: Okay. So you don't know  
17 whether if there is such a requirement your proposal  
18 is consistent or inconsistent with that requirement,  
19 correct?

20 Answer: I don't know -- if I don't know  
21 what the requirement is, I can't answer that.

22 Question: Right, so you don't know,  
23 correct?

24 Answer: Correct.

25 You gave that testimony in your

1 deposition, did you not?

2 A. Yes, I did.

3 Q. Now, the primary reason that you proposed  
4 this discount in this fashion is that you believe  
5 that it is cheaper to serve electric heating  
6 customers than it is to serve other residential  
7 customers, correct?

8 A. Other residential and other customers. I  
9 won't just leave it as residential, but, yes.

10 Q. And in coming to that conclusion in terms  
11 of a cost of service study with respect to the  
12 companies, the document that you looked at was a cost  
13 of service study from Case No. 99-1212-EL-RTP,  
14 correct?

15 A. They appeared there but they were also --  
16 I actually from cases prior to that 95 to 99 and  
17 95-300 and whatnot, but they also appeared in  
18 99-1212. The same studies.

19 Q. Now, that document included costs from  
20 CEI and from Toledo Edison from 1995, correct?

21 A. The two I mentioned, yes, and there was  
22 another one from Ohio Edison, yes.

23 Q. And the Ohio Edison costs were reflected  
24 as of 1989, correct?

25 A. That is correct.

1           Q.    Now, you are aware that the companies  
2   have had a distribution case more recently than 1999,  
3   correct?

4           A.    My understanding is there was at least  
5   one in 2007.

6           Q.    Now, is it your belief, sir, that when  
7   the rate -- the special rates for electric heating  
8   customers were first introduced they were cost based?

9           A.    I cannot answer that with respect to CEI  
10   and Toledo Edison. I believe from the time I was  
11   looking at them, which was much later, I think those  
12   two were introduced around 1970, approximately. I  
13   don't have any information back that far.

14                But the information I have closer to  
15   1990, also the information for the Ohio Edison  
16   numbers for 1989, yes, I believe those are cost based  
17   at that time.

18           Q.    So is your best belief that you believe  
19   that on introduction of at least the Ohio Edison  
20   rates that they were cost based?

21           A.    Yes. And it seems to be so testified by  
22   the company. Again, I just -- that's when they were  
23   introduced by Ohio Edison. I just don't have  
24   information going back further for CEI and Toledo as  
25   to whether or not they were cost based originally.



1           Q.    And isn't it the case that you don't know  
2 whether today the companies' rates are cost based or  
3 not?

4           A.    I have no direct information but I also  
5 have no reason to believe that there was any major  
6 change in cost of service principles.

7           Q.    Okay. You don't know whether they are  
8 cost based or not, correct?

9           A.    I have no basis for assuming there is a  
10 difference at this time.

11          Q.    You don't know whether they are cost  
12 based or not, isn't that correct?

13          A.    I have no basis for giving a number --

14               EXAMINER PRICE: Mr. Yankel, I think that  
15 he is asking a questioning that tends for a "yes" or  
16 "no" answer, so I would appreciate it if you can  
17 answer "yes" or "no" or explain perhaps why you  
18 cannot answer "yes" or "no."

19               Please repeat the question, Mr. Kutik.

20          Q.    Sure. You don't know whether the  
21 companies' rates today are cost based or not?

22          A.    I do not know because I have not done a  
23 study, yes, correct.

24          Q.    Now, let me refer you to page 11 of your  
25 testimony. And specifically the sentence that begins

1 on line 19 and goes to line 21. Are you there, sir?

2 A. Yes.

3 Q. You refer to certain costs there,  
4 correct?

5 A. Yes.

6 Q. And the specific costs that you are  
7 referring to there would be distribution-related  
8 costs, would they not?

9 A. As I would refer to those, they're  
10 distribution to some extent, I guess I refer to them  
11 a little more customer-related, yes, distribution.  
12 But they are not really the poles going up and down  
13 the street distribution.

14 Q. They will normally be recovered through  
15 distribution rates, correct?

16 A. Yes.

17 Q. Let me now refer you to page 12 of your  
18 testimony. And the sentence that begins on line 6  
19 and goes through or to line 8. It says "Thus, fixed  
20 costs of meters, poles, and wires will generally be  
21 recovered over more units usage by these customers,  
22 i.e., at a lower rate per kWh." Do you see that?

23 A. Yes, I do.

24 Q. And those are distribution-related costs  
25 as well, correct?

1           A.    Yes, and those again would be more the  
2           distribution you see going up and down the streets,  
3           the poles, and wires going up and down street.

4           Q.    Now, it would be fair to say you don't  
5           know what percentage of an electric heating  
6           customer's bill represents distribution costs,  
7           correct?

8           A.    I've not done that study, no.

9           Q.    And your answer would be the same with  
10          respect to the percentage of an average residential  
11          customer, in other words, you don't know what  
12          percentage of an average residential customer  
13          represents distribution costs?

14          A.    Again, I have not done that study.

15          Q.    So you don't know?

16          A.    That's correct.

17          Q.    Now, you would agree with me, would you  
18          not, sir, that the generation portion of the  
19          companies' rates is market based?

20          A.    Yes, they're competitively bid, yes.

21          Q.    And you believe that the what we'll call  
22          the change or at least they were market based as of  
23          the late 2000s, correct?

24          A.    That is correct.

25          Q.    And you don't know how the companies

1 currently effective generation rate was set?

2 A. I'm not sure what you mean "currently  
3 effective." It came out of the auction, I know that,  
4 and I know there was whatever seasonality to it, but  
5 the specifics, no.

6 Q. So in terms of how the rates that are  
7 currently in effect, the generation rates that are  
8 currently in effect, you don't know how those are  
9 set, correct?

10 A. No, I have not looked into that.

11 Q. Okay. And you don't know if rider GEN  
12 has been set through a competitive bidding process?

13 A. I assume it has.

14 Q. You don't know that, correct?

15 A. We have been on competitive bid for I  
16 think a while now. A year or two, a couple of years,  
17 so I am assuming there is.

18 Q. Let me refer you to your deposition, sir.

19 A. Okay.

20 Q. Page 57.

21 A. Yes.

22 Q. Let me direct you to line 15. Did I ask  
23 you these questions and did you give the following  
24 answers:

25 Question: The rider GEN is the cost of

1 generation, correct?

2 Answer: Yes. I believe that's how it's  
3 referred to, yes.

4 Question: That's the cost or the rate  
5 that's been set through the competitive bidding  
6 process, correct?

7 Answer: I don't know. I didn't look  
8 into that specifically.

9 Is that your testimony, sir?

10 A. That was my testimony then, yes.

11 Q. Now, you know that the companies no  
12 longer own generation facilities, correct? By "the  
13 companies" I am talking about the three companies  
14 that are applicants in this case.

15 A. That is correct. They haven't owned them  
16 for a decade.

17 Q. And the companies' generation cost is  
18 based upon what they pay their generation suppliers?

19 A. Yes.

20 Q. They pay those suppliers on a dollar per  
21 kilowatt hour basis, correct?

22 A. That would be my understanding.

23 Q. Okay. And the generation costs for  
24 companies would be considered a variable cost,  
25 correct?

1           A.    As they pay that cost one could call it a  
2           variable cost, yes.

3           Q.    Now, with respect to Mr. Ridmann's  
4           calculations regarding the amount of the discounts,  
5           the change in the discounts, and the amount of what  
6           represents the charge through rider GEN, you have no  
7           reason to dispute those numbers, do you?

8           A.    I have no reason to dispute the  
9           calculations.  Again, I think maybe the basis of the  
10          calculations is a little -- you know, it includes  
11          things like distribution costs and whatnot but, yes,  
12          the numbers are -- I agree with the numbers.

13          Q.    Now, you believe it's a requirement in  
14          setting rates that customers that are cheaper to  
15          serve should pay lower rates, correct?

16          A.    Yes.

17          Q.    And we might call you a follower in that  
18          regard of the principle of cost causation, correct?

19          A.    I guess.

20          Q.    In other words, that cost should be  
21          recovered from those segments of the companies'  
22          customers that cause those costs, correct?  
23          Generally?

24          A.    Generally, yes.

25          Q.    Now, you would advocate that as long as

1 it's demonstrated that it costs less to serve  
2 electric heating customers than standard residential  
3 customers, that electric heating customers should pay  
4 less than standard residential customers, correct?

5 A. Yes.

6 Q. But you also believe that even if it  
7 could be proven that it costs more for or the same to  
8 serve electric heating customers than other  
9 residential customers, that electric heating  
10 customers should still pay a lower rate, fair to say?

11 A. Two different principles, yes. First of  
12 all, I believe there is cost causation which we  
13 should follow. I believe that that cost causation is  
14 that it is cheaper for all electrics to be served.

15 Should things turn upside-down, something  
16 happen, I have no idea what, you know, could take  
17 many years, who knows, and if that does change and  
18 goes upside-down, at that point I think there is a  
19 different problem, and that's just back to the  
20 principle of gradualism.

21 I don't think you can just change out  
22 these people instantly because there has been change.  
23 They can't change that quickly, but two different  
24 principles are involved.

25 Q. Again, if it's proven that it costs the

1 same to serve electric heating customers as other  
2 residential customers, you will not be in favor of  
3 eliminating the rates -- eliminating the discounts,  
4 correct?

5 A. Could you either --

6 Q. Sure, let me try again. If it could be  
7 shown that the cost to companies is the same to serve  
8 electric heating customers as it does other  
9 customers, including standard residential customers,  
10 you would not be in favor of eliminating the  
11 discounts for electric heating customers, correct?

12 A. It depends on whether or not I agree with  
13 the analysis, but, yes, if I agree with the analysis  
14 I -- I think again back to principles of cost of  
15 service, I would not see any reason for a discount.

16 Q. Okay. So that if it could be shown that  
17 it cost the companies the same to serve electric  
18 heating customers as other companies, you will be in  
19 favor of eliminating the discount?

20 A. That would be difficult under today's  
21 situation where everything has been blended by the  
22 company, but if it could be shown that, yes, that's  
23 where I stand.

24 Q. Now, you are proposing that, as I think  
25 we mentioned earlier, that nonstandard, nonelectric



1 heating customers get the same credit as electric  
2 heating customers, correct?

3 A. As they have been getting presently and  
4 again with that caveat because there's water heating  
5 customers and whatnot, they are getting something  
6 different but basically as they are presently getting  
7 discounted, yes.

8 Q. And you didn't make an analysis whether  
9 it costs to serve nonstandard customers or electric  
10 heating customers the same, in other words, you  
11 didn't do an analysis of how the cost serves  
12 nonheating nonstandard customers jives with either  
13 the cost to serve electric heating companies or other  
14 residential customers?

15 A. Correct, I focused on the all electric  
16 customers only.

17 Q. The recommendation you have with respect  
18 to the size of the discount would be fair to say  
19 represents the size of the discount you believe that  
20 electric heating customers have enjoyed historically  
21 with respect to the three companies.

22 A. Yes.

23 Q. And to make your analysis on that point  
24 you look at one electric heating rate, one  
25 residential electric heating rate for each company,

1 correct?

2 A. At two different times, but, yes.

3 Q. We'll get to the time periods in a  
4 minute, but I just want to know the focus of your --  
5 the electric heating part of your analysis as opposed  
6 to the standard residential customer cost analysis  
7 dealt with one heating rate for each company.

8 A. Yes.

9 Q. Correct? For Ohio Edison you used rate  
10 11.

11 A. Yes.

12 Q. For CEI you used RES-H?

13 A. Yes.

14 Q. And for Toledo Edison you used R7,  
15 correct?

16 A. R07, but, yes.

17 Q. Okay. And with respect to each of those  
18 companies there are other rates, other electric  
19 heating rates than those three rates, correct?

20 A. Yes, but those primary larger rate  
21 schedules.

22 Q. Now, in coming up with your purported  
23 historical relationship, because I think you  
24 mentioned you only looked at the relationship in two  
25 distinct periods of time or two specific periods of

1 time, correct?

2 A. Correct.

3 Q. You didn't do a historical average over  
4 time, correct?

5 A. Not when I wrote my testimony. I have  
6 done one since but, yes.

7 Q. And in terms of the two points that you  
8 looked at, one point for all three companies was  
9 2008, correct?

10 A. Correct.

11 Q. And for Ohio Edison it was 19 -- the  
12 other point was 1992, correct?

13 A. Correct.

14 Q. And for Ohio Edison and Toledo Edison it  
15 was 1996.

16 A. CEI.

17 Q. CEI and Toledo Edison was 1996?

18 A. Yes.

19 Q. And the reason you used 1992 for Ohio  
20 Edison and 1996 for the other two companies is  
21 because those represented the earliest most  
22 accessible tariffs you could find.

23 A. Correct.

24 Q. And you didn't make an effort to research  
25 any rates that were available to these customers that

1 is electric heating customers prior to that date,  
2 correct?

3 A. I made an effort. It was not a Herculean  
4 effort. I did make an effort. That's what I relied  
5 on because it was easy enough.

6 Q. Let's take something that might be easy,  
7 like asking OCC whether they could get you additional  
8 rates. You didn't do that, right?

9 A. I don't know if I asked them or not.

10 Q. Okay. Let me refer you to your  
11 deposition, page 50. Are you there, sir?

12 A. No. I'm there.

13 Q. Let me ask you if I asked you the  
14 following questions and you gave the following  
15 answers starting at line 9.

16 Question: Did you ask the OCC to get any  
17 tariffs prior to 1996 for CEI or Toledo Edison?

18 Answer: I don't recall.

19 Question: Would your answer be the same  
20 for getting an Ohio Edison tariff prior to 1992?

21 I don't recall. I don't recall asking  
22 them.

23 Is that your testimony?

24 A. Yeah, that's just what I said now, isn't  
25 it?

1 Q. I don't know, is it?

2 A. I thought I said "I don't recall."

3 Q. So you don't know whether you did or not  
4 or you just didn't do it?

5 A. I don't recall if I asked them.

6 Q. Okay. Now, you don't know how the size  
7 of the rate differential between electric heating  
8 customers and standard residential customers, what  
9 that rate differential was before 1992 for Ohio  
10 Edison or before 1996 for CEI or Toledo Edison,  
11 correct?

12 A. I didn't at the time. Obviously  
13 Mr. Ridmann has supplied that information.

14 Q. For purposes of your study you did not  
15 look at that, correct?

16 A. That's correct.

17 Q. Now, you observe in your testimony that  
18 the relationship between electric heating customers  
19 and standard residential rates remained intact for  
20 almost 10 years throughout the period of  
21 deregulation, correct?

22 A. That's correct.

23 Q. And you have a general understanding of  
24 what happened to the companies' rates in the  
25 mid-1990s to the present, correct?

1           A.     Correct.

2           Q.     And the companies had rate freezes in  
3 effect, correct?

4           A.     Yes, I am not sure when but they did have  
5 rate freezes in effect.

6           Q.     You anticipated my next question. You  
7 don't know when the rate freezes were in effect but  
8 sometime during that time?

9           A.     I remember rate freezes, rate moratorium.

10          Q.     The rate freezes, at least as far as you  
11 know, have been in effect since the year 2000,  
12 correct? Do you know that -- whatever period of time  
13 they started it's -- rate freezes have been in effect  
14 since 2000?

15          A.     There have been rate freezes in effect.  
16 I'm not -- I -- the way it sounded when you said that  
17 it was like it has been frozen forever. And that  
18 wouldn't be the case.

19          Q.     Now, you are not real familiar with the  
20 companies' cases during the early part of  
21 deregulation, correct?

22          A.     I did not testify in the companies' cases  
23 as I recall in the early part of deregulation.

24          Q.     For example, with respect to the rate  
25 certainty plan, you don't know what the purpose of

1     that case was, right?

2             A.     I have no general ideas, but again, I did  
3     testify. I did not participate in it so, therefore,  
4     my knowledge is very limited.

5             Q.     Well, isn't it true that you don't know  
6     what the purpose of that case was?

7             A.     Nothing that I could testify to, no.

8             Q.     Now, you also didn't determine the rate  
9     differential between nonstandard nonelectric heating  
10    customers and residential customers for any point in  
11    time in preparation for your testimony, correct?

12            A.     That is correct. All I did was the  
13    electric space heating customers, all electric space  
14    heating customers versus standard, yes.

15            Q.     The discount you propose, and I think as  
16    you mentioned earlier, is based upon these two  
17    historical points that we mentioned earlier. And  
18    based upon a usage level of 3,500 kilowatt hours per  
19    month, correct?

20            A.     Correct.

21            Q.     And you don't know how many customers  
22    have usage level -- have that usage level, correct?

23            A.     That is correct.

24            Q.     And you don't know whether that's a  
25    majority of electric heating customers, correct?

1           A.    I don't know how many so I couldn't tell  
2   you if it was majority.

3           Q.    And you don't know the average winter  
4   monthly usage for electric heating customers, do you?

5           A.    No, I don't.

6           Q.    And you don't know whether 3,500  
7   kilowatts is typical monthly usage for electric  
8   heating companies, correct?

9           A.    Well, we are talking winter.  You've also  
10   got a lot of winter months May and whatnot, April, so  
11   that they are not much in the way of winter months  
12   although they are considered winter as far as the  
13   tariff goes.  No, I do not.

14          Q.    I think as you said earlier if you used a  
15   lower usage period to look at the historical  
16   relationships, would it be fair to say that you would  
17   come up with a different and perhaps lower discount?

18          A.    A lower nonusage period, the lower usage  
19   level?

20          Q.    Yes, if you use a lower usage level, the  
21   discount that would result would be a lower discount  
22   than the one you recommend?

23          A.    Yes, mathematically if I were to use,  
24   say, 2,000, I will get a lower discount but then I  
25   would have to match that lower discount to the 2,000



1 number. I could match it to all the numbers. I  
2 would have to match it to the 2,000 number.

3 That would end up producing a rate  
4 similar to what I've suggested and that rate would  
5 probably come out very close to where I am at. The  
6 point at which I chose needs to be matched to the  
7 percentage that I chose.

8 If I would have chosen 10,000, for  
9 example, it may have worked as well. I would have  
10 had a very high percentage but only at the 10,000  
11 mark. The impact wouldn't have been nearly as great  
12 at 3,500.

13 Q. Mathematically if you are using a lower  
14 discount, a differential you would have calculated  
15 would have been a lower number than the one you did  
16 calculate.

17 A. Can we do it again, the question?

18 MR. KUTIK: Sure. Could you read it,  
19 please.

20 (Record read.)

21 A. No. Because, again, I would have had to  
22 use that lower discounts -- when you are saying  
23 "discount," I am assuming you mean discount  
24 percentage.

25 EXAMINER PRICE: I think the word was

1 "differential." In other words, that if you used a  
2 lower number to calculate your historical rate  
3 differential, your calculated differential would be  
4 less as a matter of math, correct?

5 A. At that point in which you were doing it,  
6 the -- I think our math is -- we are talking two  
7 different sets of math here.

8 Q. Let me just refer to your deposition.

9 A. Okay.

10 Q. Let me refer you to page 70.

11 MR. SMALL: I'm sorry, what page?

12 MR. KUTIK: 70.

13 MR. SMALL: 70?

14 MR. KUTIK: Yes.

15 Q. Let me know when you are there.

16 A. I'm there.

17 Q. Did I ask the following questions and did  
18 you give the following answers at line, starting at  
19 line 8.

20 Question: Well, for example, if you used  
21 a lower usage number, would the percentages be  
22 different and lower?

23 Answer: Percentages would be.

24 Question: And we're talking the  
25 percentage different -- percentage differences,

1 right?

2 Answer: If I use the lower number, the  
3 percentages would be closer to that of the standard  
4 residential; is that clear?

5 Answer: Right.

6 Question: Right, so that if we're going  
7 to look at a usage level below 3,500 kilowatt hours  
8 per month and use that as a basis for what's going  
9 forward, we would be going -- the relationship to be  
10 going forward, then the discounts would be less,  
11 correct?

12 Answer: That is correct. And if I  
13 picked a higher number, it would have been a larger  
14 discount.

15 That was your testimony on January 20,  
16 2011, was it not?

17 A. With respect to percentages, yes.

18 Q. Okay. Now, with respect to the 3,500  
19 number, would it be fair to say also you don't know  
20 whether that number reflects the -- reflects or is  
21 typical of the monthly usage levels for nonstandard  
22 nonelectric customers?

23 A. I would assume it would be higher, but  
24 again, it was a place marker. It wasn't reflective  
25 of standard or average usage necessarily.

1           Q.    Now, you propose that the discounts begin  
2           at 1,000 kilowatt hours per month.

3           A.    Yes, for all three companies.

4           Q.    And you don't know what percentage of an  
5           average electric heating customer's winter usage  
6           represents heating, correct?

7           A.    No.

8           Q.    And you don't know if 1,000 kilowatt  
9           hours a month represents base loads for a typical  
10          electric heating customer, correct?

11          A.    First, 1,000 I was assuming was basically  
12          base load for one of these customers, it was the  
13          assumption I made.

14          Q.    It's an assumption but you don't know,  
15          correct?

16          A.    That is correct.

17          Q.    You believe that all customers who did  
18          not receive the discount should pay for it, correct?

19          A.    Yes.

20          Q.    And that the credit cost recovery charge,  
21          we'll call it, should be nonbypassable?

22          A.    That's what I said in the decision.  
23          After we went round and round it occurred to me I had  
24          a thought process that these customers were also not  
25          allowed to shop. I don't know what your assumption

1 was in shopping as far as that goes.

2 Assuming that these customers could not  
3 shop, which I think is historically how they were,  
4 then I think it should be nonbypassable.

5 Q. One of the basis for your belief that all  
6 customers who don't receive the credit should pay for  
7 that is the cost of service study that is attached to  
8 your testimony as Exhibit AJY-2, correct?

9 A. One of the reasons, yes.

10 Q. And that's the study for Case No.  
11 99-1212-EL-ETP, I think I said RTP earlier; is that  
12 correct?

13 A. I don't recall but, yes, the 99-1212.

14 Q. Okay. And that case was not a case for  
15 an application for an increase in rates, correct?

16 A. Correct.

17 Q. That was not what we might call a  
18 traditional ratemaking case where there was a revenue  
19 requirement being generated, correct?

20 A. It seems like it was sort of a  
21 requirement not for the company but just internally  
22 for each one of the rate groups and whatnot that was  
23 targets to be met but not -- not for the company, so  
24 it wasn't a general rate case, no.

25 Q. In fact, Case 99-1212 was a case that

1 involved the unbundling of rates, correct?

2 A. Yes. And, again, I think the intent was  
3 to keep basically rates about where they were and  
4 there was just a challenge doing that.

5 Q. So they weren't setting, say, a new  
6 revenue requirement.

7 A. Correct. Not for the company.

8 Q. Right. In terms of the impact of your  
9 proposal you have not determined what the percentage  
10 change in a customer's bill would be, correct?

11 A. Regarding paying for this reduction  
12 meaning the other customers?

13 Q. Yes?

14 A. No, I have not.

15 Q. And nor have you determined what you  
16 might call the overall costs of your proposal?

17 A. No, I have not. It's obviously less than  
18 what they are presently paying because it's probably  
19 about a third of the cost of where it's presently at,  
20 the RGC, but no, I have not done a calculation.

21 Q. So you don't know what the cost is,  
22 correct?

23 A. No, I never made that calculation.

24 MR. KUTIK: May I have a minute, your  
25 Honor?

1 EXAMINER PRICE: You may.

2 MR. KUTIK: That's all the questions I  
3 have. Thank you.

4 EXAMINER PRICE: Thank you.  
5 Staff.

6 MR. JONES: No questions, your Honor.

7 EXAMINER PRICE: Let's go off the record.  
8 (Discussion off the record.)

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

11 Mr. Small.

12 MR. SMALL: Thank you, your Honor.

13 - - -

14 REDIRECT EXAMINATION

15 By Mr. Small:

16 Q. Mr. Yankel, do you recall Mr. Kutik's  
17 questions concerning your position or your position  
18 concerning cost causation concepts?

19 A. Yes.

20 Q. And is your testimony or is your position  
21 as reflected in your prefiled testimony based on the  
22 cost of generation service to the company or the cost  
23 to serve the customers that are the subject matter of  
24 your testimony?

25 A. It's based upon the cost to serve the

1 customers, it's not based on costs to serve the  
2 company. I am looking at, you know, the overall  
3 costs that usually go through cost of service study  
4 and also the Commission's ability to recognize the  
5 fact that it's cheaper to serve or energy is cheaper  
6 at certain times than it is as others.

7 The companies are being charged at this  
8 point in time on a per-kilowatt-hour basis, but  
9 that's not necessarily how they should be charged by  
10 the Commission.

11 MR. SMALL: I have no further questions,  
12 your Honor.

13 EXAMINER PRICE: Recross, Mr. Corcoran?

14 MR. CORCORAN: None, your Honor.

15 EXAMINER PRICE: Mr. O'Brien?

16 MR. O'BRIEN: None, your Honor.

17 EXAMINER PRICE: IEU-Ohio?

18 MR. ELISAR: None, your Honor.

19 EXAMINER PRICE: Mr. Kutik?

20 MR. KUTIK: One minute.

21 EXAMINER PRICE: Please proceed.

22 - - -

23 RECROSS-EXAMINATION

24 By Mr. Kutik:

25 Q. Mr. Yankel, isn't it true with respect to



1 wholesale suppliers in today's market, particularly  
2 that supply FirstEnergy utility companies in Ohio  
3 that their prices are not based on a regulated rate  
4 subject to traditional rate -- regulated ratemaking,  
5 correct?

6 A. They are rates that they can change, I'm  
7 sorry. I missed the question.

8 Q. Sure.

9 MR. KUTIK: Please repeat the question.

10 (Record read.)

11 A. That is correct.

12 Q. Those prices are market based, are they  
13 not?

14 A. Those prices are market based but they  
15 reflect the cost that those companies incur which  
16 sometimes are very large and sometimes very small.

17 Q. Do they not reflect what the market  
18 brings?

19 A. Sometimes the market has actually  
20 negative prices where people have to sell and  
21 actually pay people to take the electricity right  
22 now, so in that case it's certainly there's some  
23 upside-down going on in the market.

24 Q. But they are based upon what the market  
25 is dictating, not upon the cost, correct?

1           A.    It's based upon the cost but the  
2           suppliers and marketers what their overall costs are  
3           for meeting every hour of the year.

4           Q.    Aren't market prices based upon supply  
5           and demand, sir?

6           A.    Yes.

7           MR. KUTIK:  No further questions.

8           EXAMINER PRICE:  Staff?

9           MR. JONES:  No questions, your Honor.

10                       - - -

11                       EXAMINATION

12   By Examiner Price:

13           Q.    Mr. Yankel, you're inferring that  
14           wholesale suppliers take into account in setting  
15           their bids at the auction that all electric customers  
16           are cheaper to serve; is that correct?

17           A.    They have an overall load profile they  
18           have to serve.  They are not necessarily looking at a  
19           particular class of customers.  They are looking at  
20           the overall load if that load isn't filled up in  
21           certain, you know, all the time effectively it's  
22           going to cost different because the supplier -- it's  
23           going to cost the supplier different.

24           Q.    Let me rephrase it.  You are inferring  
25           there is a benefit to all the ratepayers because of

1 the all electric discount, that's why you are saying  
2 because of the all electric load profile?

3 A. Yes.

4 Q. That's why you are saying there should be  
5 a discount?

6 A. Yes.

7 Q. Have you ever worked for a wholesale  
8 supplier?

9 A. No.

10 Q. Ever consulted with a wholesale supplier?

11 A. Just on the gas sides, not on electric  
12 sides.

13 Q. Have you discussed this issue with any  
14 wholesale suppliers?

15 A. No.

16 Q. Have you conducted a study of bidding  
17 strategies for wholesale suppliers?

18 A. No.

19 Q. Can you quantify --

20 A. I look at prices, you know, hourly  
21 prices, but, no.

22 Q. Can you quantify the impact of the all  
23 electric customers on wholesale suppliers bidding --  
24 bidding strategies?

25 A. I have not done a study like that. No.

1 EXAMINER PRICE: Thank you. You are  
2 excused.

3 Mr. Small?

4 MR. SMALL: Before we adjourn, your  
5 Honor, the OCC moves for the admission of OCC Exhibit  
6 1.

7 EXAMINER PRICE: Any objection to the  
8 admission of OCC's Exhibit 1 subject to, I am sure,  
9 the continuing motions to strike made by FirstEnergy  
10 and supported by IEU-Ohio and OMA?

11 MR. KUTIK: For the record, your Honor,  
12 we do make our objection based upon those grounds.

13 EXAMINER PRICE: Then subject to the  
14 continuing motions to strike, the OCC Exhibit 1 will  
15 be admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER PRICE: Anything else before we  
18 adjourn for the hearing?

19 Yes, Mr. O'Brien.

20 MR. O'BRIEN: I think you were going to  
21 say it next, reconvene time tomorrow.

22 EXAMINER PRICE: We will reconvene  
23 tomorrow at 10:00 o'clock.

24 MR. O'BRIEN: Thank you.

25 EXAMINER PRICE: At that time we will

1 take Mr. Frawley; is that correct?

2 MR. CORCORAN: Yes.

3 EXAMINER PRICE: Thank you, see you  
4 tomorrow at 10.

5 (Hearing was adjourned at 5:34 p.m.)

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## 1 CERTIFICATE

2 I do hereby certify that the foregoing is  
3 a true and correct transcript of the proceedings  
4 taken by me in this matter on day ,  
5 month date ,  
6 year , and carefully compared with my  
7 original stenographic notes.  
8

9  
10 Karen Sue Gibson, Registered  
Merit Reporter.

11 (KSG-5321)

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