

THE PUBLIC UTILITIES COMMISSION OF OHIO

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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 Thursday,
February 17, 2011.

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VOLUME II

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1 Thursday Morning Session,
2 February 17, 2011.

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4 EXAMINER WILLEY: Let's go on the record.

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

12 I am Mandy Willey and this is Gregory
13 Price and we are the attorney examiners before you
14 today. And just to note for the record this is the
15 second day of hearing.

16 Mr. Corcoran, are you ready to proceed?

17 MR. CORCORAN: Yes, I am. The CKAP
18 Parties call Mr. Larry Frawley to the stand. I would
19 like to have his prepared testimony marked as CKAP
20 Parties Exhibit 1.

21 EXAMINER PRICE: Okay. It will be so
22 marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 - - -
25

1 LARRY FRAWLEY

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

4 DIRECT EXAMINATION

5 By Mr. Corcoran:

6 Q. Sir, could you please state your full
7 name and business address for the record?

8 A. Larry Frawley, Keller Williams Realty,
9 30400 Detroit Road, Suite 1, Westlake, Ohio 44145.

10 Q. And are you regularly employed by Keller
11 Williams?

12 A. I am.

13 Q. Are you the Larry Frawley who has
14 prepared testimony that was filed on January 10,
15 2011, in this case?

16 A. Yes.

17 Q. On whose behalf do you appear?

18 A. CKAP, Joan Heginbotham, Bob Schmitt, and
19 CKAP.

20 Q. And Steigerwald?

21 A. Steigerwald.

22 Q. Is that a yes?

23 A. Yes.

24 Q. Do you have your prepared testimony with
25 you on the stand?

1 A. Yes.

2 Q. Did you prepare the testimony or have it
3 prepared at your direction?

4 A. I did.

5 Q. Did you have any changes or corrections
6 to that prepared testimony?

7 A. No.

8 Q. If I asked you today the same questions
9 found in your prepared testimony, would your answers
10 be the same?

11 A. Yes.

12 MR. CORCORAN: CKAP Parties tender the
13 witness for cross-examination.

14 EXAMINER WILLEY: All right. The witness
15 is available for cross-examination. We'll start with
16 Mr. Small.

17 MR. KUTIK: Your Honor, would the Bench
18 entertain motions to strike?

19 EXAMINER WILLEY: Yes, we will.

20 MR. KUTIK: Your Honor, the companies
21 move to strike page 3 on the first line, the sentence
22 that begins after the word "homes," the sentence that
23 begins "Potential homebuyers," and through the rest
24 of that paragraph. In this part of Mr. Frawley's
25 testimony he is reporting what others have told him

1 and that's hearsay. We object on those grounds.

2 We have another motion, your Honor, but
3 I'll wait to get your ruling on that.

4 EXAMINER WILLEY: Do you have a response
5 to that, Mr. Small -- I'm sorry, Mr. Corcoran, I
6 apologize.

7 MR. CORCORAN: That's okay. I don't
8 believe that's entirely accurate. Yeah, that is my
9 response, that is not entirely accurate. There
10 are -- there were phrases in there that Mr. Frawley
11 testified at his deposition were things that were
12 first-hand knowledge.

13 EXAMINER PRICE: Well, that may be true
14 but that doesn't help the Bench any.

15 MR. KUTIK: Your Honor, may I address
16 that?

17 EXAMINER PRICE: Uh-huh.

18 MR. KUTIK: Does the Bench have before --
19 before you Mr. Frawley's deposition?

20 EXAMINER WILLEY: Yes.

21 EXAMINER PRICE: Yes.

22 MR. KUTIK: At page 33, line 15, of his
23 deposition, I asked him about statements, the
24 purchase of another all-electric home fell through
25 because the media reports spooked the potential buyer

1 and caused them to look elsewhere.

2 Mr. Frawley said that came from another
3 real estate agent. That was the question and answer
4 I asked him in his testimony at that portion of the
5 deposition.

6 At -- and he also said -- and he also
7 admitted that this was something that he heard from
8 someone else. I then asked him on page 34, line 9,
9 about the statement of a potential buyer liking the
10 house but was concerned about the electric rate
11 doubling, and he admitted at that portion of his
12 testimony that was also something that somebody told
13 you about what a purchaser said. In fact, that's
14 double hearsay.

15 MR. CORCORAN: And, your Honor, those two
16 statements are specific and I think the motion was to
17 eliminate the entire paragraph. The first
18 statement -- the first one, two -- the first three
19 sentences were not something that Mr. Kutik just
20 cited to and that was something that Mr. Frawley
21 experienced firsthand.

22 EXAMINER PRICE: He would only experience
23 that firsthand if he was a buyer. Otherwise --
24 otherwise he is still reporting what the buyers told
25 him. He is saying homebuyers have heard these

1 reports and have been reluctant to look into homes
2 that are all electric.

3 Unless he is a potential homebuyer who
4 has heard these reports of reluctance to buy an
5 all-electric house, it is hearsay, isn't it?

6 MR. KUTIK: And indeed, your Honor, at
7 the first sentence we did discuss at page 31, line
8 18, of his deposition, he was told these things by
9 the buyers Matthew and Melanie Geller.

10 EXAMINER WILLEY: At this point we are
11 going to grant the motion to strike as to the
12 specific excerpt that you cited.

13 MR. KUTIK: Thank you, your Honor. The
14 second and last motion to strike, your Honor, is
15 directed to page 4 of Mr. Frawley's testimony in a
16 particular sentence in the answer No. 8. About
17 halfway down the answer and on the line that begins
18 "A loss of value," there is a sentence that says "One
19 of our Strongsville residents has already
20 successfully reduced his property value and his
21 property taxes." That too is hearsay. We would
22 object and move to strike on those grounds.

23 EXAMINER WILLEY: Do you have a response
24 to that, Mr. Corcoran?

25 MR. CORCORAN: No, other than that it

1 should just be looked at for -- for its evidentiary
2 value.

3 EXAMINER WILLEY: We are also going to --

4 MR. SMALL: Your Honor, if I may.

5 EXAMINER WILLEY: Yes.

6 MR. SMALL: If I may? Rule 703, basis of
7 opinion testimony by experts the facts or data in the
8 particular case upon which the expert bases an
9 opinion or inference may be those perceived by him or
10 admitted in the evidence.

11 I believe the matter that's the subject
12 to the motion to strike was admitted into evidence in
13 the Strongsville local public hearing and, therefore,
14 would be a basis for testimony by an expert.

15 EXAMINER WILLEY: Mr. Kutik, do you have
16 a response?

17 MR. KUTIK: That foundation is not laid
18 in the witness's testimony, your Honor, so it still
19 remains to be hearsay and not within the exception.

20 EXAMINER PRICE: Mr. Frawley.

21 THE WITNESS: Yes.

22 EXAMINER PRICE: Did you attend the
23 Strongsville public hearing?

24 THE WITNESS: I did.

25 EXAMINER WILLEY: Didn't you hear the

1 witness say this?

2 THE WITNESS: I did.

3 EXAMINER PRICE: And do you know the
4 witness's name?

5 THE WITNESS: It's former Mayor Dale
6 Finley.

7 EXAMINER PRICE: Mr. Kutik, he's
8 indicating that he actually did attend the hearing.

9 MR. KUTIK: On that basis, your Honor,
10 then we will have to withdraw our motion.

11 EXAMINER PRICE: Thank you very much.

12 EXAMINER WILLEY: Mr. Small, are you
13 ready to proceed?

14 MR. SMALL: Okay, I'm sorry, you you're
15 asking if I have questions?

16 EXAMINER WILLEY: Yes.

17 MR. SMALL: No questions, your Honor.

18 EXAMINER WILLEY: No questions, okay.

19 Mr. O'Brien.

20 MR. O'BRIEN: Thank you, your Honor. I
21 just have a few questions.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. O'Brien:

25 Q. Good morning, Mr. Frawley, my name is Tom

1 O'Brien, I am representing the Ohio Manufacturers
2 Association and the Ohio Hospital Association in this
3 proceeding. I just have a couple of questions.

4 If you could turn your attention to page
5 4 of your testimony, question and answer No. 8. You
6 state there that "If the all-electric rate discount
7 were removed, those homes would stay on the market
8 longer and the homes would continue to lose value as
9 Table 2 demonstrates."

10 Can you explain for me how Table 2 is
11 demonstrating the impact of the removal of the
12 all-electric discount?

13 A. Absolutely. If you -- if you look on
14 that, the difference of the homes sold and the home
15 values per square foot, the difference increased
16 greatly between 2009 and 2010 in the all-electric
17 homes. The rate was taken away I believe in late
18 2009, was very effective and public in 2010.

19 Q. What would the figure have been for 2007?

20 A. I don't have those numbers here.

21 Q. Did you conduct a corresponding analysis
22 to see what the differential, this same differential,
23 would have been for all-electric homes, say, in the
24 American Electric Power service territory where
25 all-electric homes don't get discounts?

1 A. I didn't. I focused on just Strongsville
2 numbers.

3 Q. Mr. Frawley, do you live in an
4 all-electric home?

5 A. I do.

6 MR. O'BRIEN: No further questions, your
7 Honor.

8 EXAMINER WILLEY: Okay.

9 Mr. Elisar.

10 MR. ELISAR: Mr. Randazzo is asking.

11 EXAMINER WILLEY: Oh, Mr. Randazzo.

12 MR. RANDAZZO: Thank you.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Randazzo:

16 Q. Mr. Frawley, turn to page 2 of your
17 testimony. And you describe in response to question
18 2 your experience in the real estate business seven
19 years. Do you see that there?

20 A. Correct.

21 Q. How many of the homes that you've sold
22 were all-electric homes?

23 A. I believe less than 10. I don't have
24 that exact number.

25 Q. Okay. And that's in the seven years?

1 A. Correct.

2 Q. Uh-huh. And the compensation -- my
3 understanding is that the compensation that you get
4 as a real estate agent is basically a commission
5 that's based on the selling price of the home or the
6 purchase price if you are representing the buyer; is
7 that correct?

8 A. That's correct.

9 Q. And do you differentiate in the
10 commission structure as between all-electric homes
11 and other homes?

12 A. It's the same.

13 Q. So as I understand the situation here,
14 the higher the price of the home, the greater your
15 compensation would be in the event that you would
16 sell the home?

17 A. That's usually the truth, yeah.

18 Q. Now, you say in response to question No.
19 4 where you identify you're appearing on behalf of
20 Bob Schmitt Homes, when were you retained by Bob
21 Schmitt Homes?

22 A. What do you mean by "retained"?

23 Q. Well, you say you are appearing on
24 behalf. Were you retained by Bob Schmitt Homes?

25 A. No. Am I being compensated for it, no.

1 Q. Well, did they ask you to come and
2 testify? Did Bob Schmitt Homes specifically ask you
3 to come and testify?

4 A. Yes.

5 Q. And who on behalf of Bob Schmitt Homes
6 did that?

7 A. Kevin.

8 Q. Mr. Corcoran?

9 A. Mr. Corcoran.

10 Q. And who asked you to appear today on
11 behalf of Sue Steigerwald?

12 A. I have just been involved in it, so I
13 don't think anybody necessarily from CKAP. In other
14 words, I have not been asked by anybody from CKAP to
15 be here, just from Bob Schmitt Homes.

16 Q. Okay. And so where you say you are
17 appearing on behalf of Citizens for Keeping the
18 All-Electric Promise, you have not been asked
19 specifically by CKAP to appear here today; is that
20 correct?

21 A. That's correct.

22 Q. And how about Sue Steigerwald?

23 A. I have not been asked by Sue Steigerwald.
24 The only question I had about appearing here was from
25 Mr. Corcoran.

1 Q. And how about Joan Heginbotham?

2 A. No.

3 Q. Have you ever talked to Joan Heginbotham?

4 A. No.

5 Q. And then you say any "owner of an
6 all-electric home." To whom would that refer to?

7 A. Any owner of an all-electric home, in
8 Strongsville we have the largest concentration of
9 all-electric homes in the state of Ohio per square
10 acre.

11 Q. Okay. But were you asked by any specific
12 owner of an all-electric home to appear here today?

13 A. No.

14 Q. So the only conversation you had with
15 anybody relative to your appearance today would be
16 with Mr. Corcoran?

17 A. That would be correct.

18 Q. Now, you say in response to question 6
19 "All-electric homes have received a large amount of
20 media coverage due to removal of the discount."

21 Do you know the extent to which that
22 media coverage has been facilitated by activities of
23 CKAP?

24 A. That I don't know. You know, the City of
25 Strongsville put on the first of really three

1 hearings last January in January -- I believe January
2 of 2010 so that was mostly the City that wanted to
3 open up communications with the residents. We
4 probably had nearly a thousand people at that event.

5 Q. Okay. Now, with regard to your -- your
6 experience with all-electric homes, do all-electric
7 homes all use the same type of heating?

8 A. If you are talking about forced air or
9 baseboard heat, there is a difference.

10 Q. How about the differences between
11 air-to-air heat pumps and geothermal heat pumps, are
12 you aware if there is a difference between air-to-air
13 heat pumps and geothermal heat pumps?

14 A. I am not aware of that. I am sure there
15 is, but I am not aware of that.

16 Q. Do you have some notion one is more
17 efficient?

18 A. Probably the geothermal but I don't know
19 that for a fact either.

20 Q. Do you know the extent to which the
21 all-electric homes employ geothermal versus
22 air-to-air heat pumps?

23 A. I don't.

24 Q. Do you know the extent to which the
25 all-electric homes use resistance heating versus some

1 type of heat pump?

2 A. I don't.

3 Q. Did you inquire in your analysis the type
4 of heating equipment that was employed by the
5 all-electric home for purposes of doing your
6 comparison?

7 A. The numbers show it's either all electric
8 or it's not, so there is no -- there is no basis
9 between -- it's an electric home or nonelectric home.

10 Q. Okay. You would agree that there are
11 various types of electric heating for purposes of
12 residential dwellings, right?

13 A. I would.

14 Q. And you would agree that geothermal is
15 one type that is employed in Bob Schmitt Homes, for
16 example?

17 A. Not to my knowledge in Strongsville.

18 Q. Now, on page 4, you have your column
19 designated as "Mixed Utilities."

20 A. Correct.

21 Q. Are there any oil or propane customers in
22 there?

23 A. There could be.

24 Q. You don't know though?

25 A. I don't know.

1 Q. What -- what type of heating source would
2 the customers use that are in the mixed utilities
3 category?

4 A. Mixed categories could be wood, could be
5 coal, could be fuel oil, could be propane, could be
6 natural gas.

7 Q. But for purposes of your study you didn't
8 differentiate based upon the type of heating source?

9 A. No. Well, I did but just either electric
10 or everything else.

11 Q. Something else. And -- strike that.

12 MR. RANDAZZO: That's all I have. Thank
13 you very much.

14 THE WITNESS: Thank you.

15 EXAMINER WILLEY: Mr. Kutik.

16 MR. KUTIK: Thank you.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Kutik:

20 Q. Mr. Frawley, as you admitted earlier, you
21 are an all-electric homeowner, correct?

22 A. I live in an all-electric home, yes.

23 Q. And your electric company is CEI,
24 correct?

25 A. I believe the bill comes from CEI, yes.

1 Q. And you moved into your house in 2009,
2 correct?

3 A. That's correct.

4 Q. And when you moved into your house,
5 nobody made a promise to you from CEI or FirstEnergy
6 as to how long your rates would last, did they?

7 A. That's correct. No one did.

8 Q. And, in fact, isn't it true, that you are
9 a member of CKAP?

10 A. I joined their organization for
11 newsletters, yes.

12 Q. You are a member, correct?

13 A. Yes.

14 Q. And you are familiar with their demands,
15 correct?

16 A. That's correct.

17 Q. And one of the demands is that the
18 discount should stay with the property, correct?

19 A. That's correct.

20 Q. So if CKAP's demands would be granted in
21 this case, you would personally benefit, correct?

22 A. Not necessarily.

23 Q. You would get the discount, wouldn't you?

24 A. I rent the home.

25 Q. But you get the discount?

1 A. I don't own the home. That's what I
2 said, I live in an all-electric home.

3 Q. You pay the bills?

4 A. I do.

5 Q. You pay the utility bills?

6 A. I do.

7 Q. So you would benefit, would you not?

8 A. I am sure I would.

9 Q. Now, it was your idea to prepare your
10 testimony, wasn't it?

11 A. Yes.

12 Q. You volunteered, correct?

13 A. I did.

14 Q. And even before you began to prepare your
15 testimony you were concerned about property values in
16 Strongsville for all-electric homes, right?

17 A. That's correct.

18 Q. And that was an attitude that you had
19 before you started at the beginning to prepare the
20 data for your testimony, correct?

21 A. What do you mean?

22 Q. Well, you had that view before you
23 started preparing your testimony, correct?

24 A. What was "that view"?

25 Q. The view that there was a concern that

1 you had about the continuing value of all-electric
2 homes.

3 A. That's correct.

4 Q. And in addition to testifying in this
5 case you have spoken in public meetings on the
6 all-electric issue, have you not?

7 A. I have.

8 Q. And you are also running for City Council
9 in Strongsville.

10 A. I am.

11 Q. Now, you mentioned in your testimony
12 about potential stigmas, correct?

13 A. Correct.

14 Q. And you would agree with me, would you
15 not, that stigmas can attach to a home if there is a
16 negative perception about the home, correct?

17 A. Restate that question.

18 MR. KUTIK: Could you read it, please.

19 (Record read.)

20 A. That would be correct.

21 Q. And if there is publicity about a
22 negative feature of homes and a home has that
23 negative feature, a stigma may attach to that home,
24 correct?

25 A. That is correct.

1 Q. And if there is more widespread publicity
2 about a negative aspect of the home, it's more likely
3 than not or it's more likely that a homeowner or a
4 potential buyer would have a negative perception
5 about that home, correct?

6 A. That's correct.

7 Q. You are aware, are you not, that CKAP has
8 had many efforts to publicize this issue about this
9 so-called discount going away, correct?

10 A. That's correct.

11 Q. Let's talk about your qualifications to
12 render your opinion in this case. Sir, you are not a
13 college graduate, correct?

14 A. That's correct.

15 Q. And you drove a truck for 27, 29 years,
16 something like that?

17 A. Twenty-nine at least.

18 Q. You got your realtor's license in 2003?

19 A. That's correct.

20 Q. And you were part-time for several years?

21 A. That's correct.

22 Q. While you were working for UPS?

23 A. Uh-huh.

24 Q. Is that correct?

25 A. That's correct. You have been doing your

1 research.

2 Q. Thank you, sir.

3 Now, to get a real estate license or
4 broker's license, you had to take four courses,
5 correct?

6 A. That's correct.

7 Q. And none of those courses had anything to
8 do with statistical analysis, correct?

9 A. That's correct.

10 Q. You are not a certified real estate
11 appraiser?

12 A. That's correct.

13 Q. You are aware that there are two
14 requirements for -- two general requirements for
15 certified real estate appraiser; one is kind of an
16 experiential requirement, and the other is an
17 education requirement taking a certain number of
18 courses; you are aware of that?

19 A. That's correct.

20 Q. And you haven't qualified on either one
21 of those yet, have you?

22 A. Either one.

23 Q. Now, let me have you turn to page 4 of
24 your testimony. Are you there, sir?

25 A. Uh-huh. I am.

1 Q. You realize you need to answer orally so
2 the court reporter can get your answers.

3 A. Yes.

4 Q. Thank you.

5 Now, I want to direct you specifically to
6 question and answer 9. And the second to last line
7 on the page there is a sentence that starts "The
8 biggest jump in sales and pricing occurred when the
9 discount was removed and those trends are continuing
10 due to the uncertainty surrounding the all-electric
11 discount rate." Do you see that?

12 A. I do.

13 Q. And would it be fair to say that's really
14 the nub. The essence of your testimony?

15 A. That's correct.

16 Q. And that conclusion was based upon --
17 strike that.

18 With respect to the bills of all-electric
19 customers and those customers that had a discount,
20 you don't know what happened to those customer's
21 bills other than the fact they went up, correct?

22 A. That's correct.

23 Q. And your view with respect to the, quote,
24 discount, end quote, was that it was taken away
25 entirely in 2009, correct?

1 A. That's correct.

2 Q. Now, let's talk a little bit about the
3 conclusion that we talked about which is the essence,
4 the nub of your testimony. It would be fair to say
5 that that conclusion is based upon the data in Tables
6 1 and 2 in your testimony, correct?

7 A. That's correct.

8 Q. And that data in those tables in turn are
9 based upon a database that is sometimes in the real
10 estate industry called MLS, correct?

11 A. That's correct.

12 Q. "MLS" stands for what?

13 A. Multiple Listing Service.

14 Q. And you took the data in the Multiple
15 Listing Service and you prepared six reports which
16 are entitled "CMA Reports," correct?

17 A. That's correct.

18 Q. And those CMA Reports are attached to
19 your testimony.

20 A. That's correct.

21 Q. And there are two reports for 2008, two
22 reports for 2009, two reports for 2010, and perhaps
23 further on in '11, correct?

24 A. Just '10.

25 Q. All right. And with respect to each year

1 there is one report for homes that are heated with
2 anything other than electricity, so we will call
3 those the other homes, and there's a report for homes
4 heated with electricity, correct?

5 A. That's correct.

6 Q. At least according to the MLS data.

7 A. Correct.

8 Q. Now, the information that we get out of
9 the CMA doesn't tell us about things like the
10 condition of the property, correct?

11 A. That's correct.

12 Q. And you would agree with me that the
13 condition of the property would have an effect on the
14 value of the property.

15 A. That's correct. That's why we use three
16 years.

17 Q. You would agree with me also that we
18 can't tell from the CMA Report whether a particular
19 property is a condo or a cluster home or a detached
20 home, correct?

21 A. That's correct.

22 Q. We also -- it doesn't really say, there
23 is no listing, no special designation in the report
24 for rental properties, correct?

25 A. Other than price. The price would have

1 been well below a couple thousand dollars. The
2 report actually shows the actual purchase price.

3 Q. All right.

4 A. So it would not have been -- probably
5 would not have been rental property.

6 Q. Well, did you review the CMA Reports to
7 determine whether any of the properties listed were
8 rental properties? You didn't do that, did you?

9 A. I don't believe I did, no.

10 Q. Let's look at that. Let me have you look
11 at the CMA Report for 2009 for electric homes,
12 electric-heated homes. Are you there, sir?

13 A. I am, yes.

14 Q. Okay. The first home, if I have the
15 right report, is 21791 Meadows Edge Lane, correct?

16 A. That's correct.

17 Q. And it shows a sale price of \$2,500,
18 correct?

19 A. That's correct.

20 Q. And it shows that that house was
21 originally listed for \$314,900 and then had an
22 existing list price of \$299,900, correct?

23 A. That's correct.

24 Q. Do you think that house sold for \$2,500?

25 A. Probably rental property.

1 Q. Okay. Do you think it's probably rental
2 property or is it your conclusion that is most likely
3 a rental property?

4 A. That would be my conclusion it is.

5 Q. Let me have you now refer to the -- the
6 CMA Report for 2009 for the properties. The first
7 property listed there is 14805 Lenox Drive No. 205.
8 Do you see that?

9 A. I do.

10 Q. Just from the address could we conclude
11 from that that's most likely a condo?

12 A. Probably the first two are, yes.

13 Q. And could we also conclude, given the
14 fact that the list -- that the sale price is shown as
15 \$850 and the list price is 114,000, it looks like,
16 500 dollars, that that is also a rental?

17 A. That's correct.

18 Q. And the next property on Donegal Lane,
19 that's also most likely a rental.

20 A. Probably so.

21 Q. You would agree with me, would you not,
22 the real estate market has suffered serious declines
23 in values?

24 A. Yes.

25 Q. In this area of the world?

1 A. Yes.

2 Q. And particularly in Strongsville.

3 A. Particularly all over the state.

4 Q. And that's true for all-electric homes
5 and other homes.

6 A. Correct.

7 Q. And this is the first what we will call a
8 downturn in the market you've experienced in the
9 market, is it not?

10 A. That would be correct.

11 Q. Now, when we are looking at the data that
12 you put together and that you display in Tables 1 and
13 2, you agree with me, would you not, that it would be
14 useful to know whether the differences between
15 years -- or between all-electric homes and other
16 homes are meaningful, correct?

17 A. Restate that question.

18 Q. Well, you wouldn't expect in any year
19 that the data that you show for all electric would be
20 the same as for other homes, correct? You would
21 expect there would be some difference?

22 A. For the electric and the nonelectric home
23 but not necessarily year to year.

24 Q. You wouldn't expect there to be
25 differences in real estate values and the amount of

1 transactions from year to year --

2 A. Oh, that.

3 Q. -- you wouldn't expect that?

4 A. Yeah, values in that. But I wouldn't --
5 if there's discrepancies, I would say those would
6 follow three years certainly.

7 Q. I guess my point is that we wouldn't
8 expect the data to be identical for both types of
9 homes for all three years. We would expect there to
10 be some differences.

11 A. That's correct.

12 Q. That's how the market is.

13 A. Right.

14 Q. Things move around.

15 A. The market is the market.

16 Q. So it's important when we are looking at
17 these differences to understand whether the
18 differences are meaningful, correct?

19 A. Correct.

20 Q. Now, as we indicated earlier, you don't
21 have a background in statistical analysis, correct?

22 A. That's correct.

23 Q. No expertise in that whatsoever.

24 A. None at all.

25 Q. And you are not familiar with the phrase

1 statistical -- "statistically significant," correct?

2 A. Correct.

3 Q. And so you can't tell me whether if that
4 phrase "statistically significant" is used in
5 statistical analysis, whether the numbers that you
6 see in your table are statistically significantly
7 different, correct?

8 A. That's correct.

9 Q. Now, looking back to your CMA Report, you
10 only looked at the average price per square foot,
11 correct?

12 A. Correct.

13 Q. And you only looked at that for three
14 years.

15 A. Correct.

16 Q. And you only looked at that in
17 Strongsville.

18 A. That's correct. I am looking for a
19 trend.

20 Q. Right. Let me talk to you about some
21 other data.

22 A. Okay.

23 Q. The CMA Report also shows something
24 called days on market/cumulative days on market,
25 correct?

1 A. That's correct.

2 Q. And that's shown in the CMA Report
3 "DOM/CDOM," correct?

4 A. That's correct.

5 Q. And that can be an indicator of the
6 marketability of homes, correct?

7 A. True.

8 Q. And so if the days on market from year to
9 year is going down, that would be the sign of an
10 improving market, correct?

11 A. That's correct.

12 Q. Let's look at that data. It's true, is
13 it not, that in 2009, according to your report, the
14 average electric days on market was 108 and the
15 average cumulative days on market was 168?

16 A. That's correct.

17 Q. And moving to 2010, looking at again
18 electrically heated homes, the average days on market
19 was 99 and the cumulative days on market was 149?

20 A. That's correct.

21 Q. Now, if we look at other homes in 2009,
22 days on market was 101.

23 A. Correct.

24 Q. Cumulative days on market was 133.

25 A. That's correct.

1 Q. And in 2010, days on market was 103.

2 A. That's correct.

3 Q. And cumulative days on market was 140.

4 A. Yes.

5 Q. So days on market and cumulative days on
6 market for electrically heated homes improved from
7 2009 to 2010, correct?

8 A. That's correct.

9 Q. And, in fact, days on market and
10 cumulative days on market were lower in 2010 for
11 electric homes than other homes, correct?

12 A. That's correct.

13 Q. Let's talk about another indicator and
14 that's the what I will call the percent list price.
15 That's indicated on your reports as well, correct?

16 A. That's correct.

17 Q. And what that represents is a ratio of
18 the sales price to the list price, correct?

19 A. That's correct.

20 Q. And obviously the higher the number kind
21 of the better indicator for the marketability or
22 value of the house, correct?

23 A. That's correct.

24 Q. And if we go from one year to the next,
25 improvement in that number indicates an improving

1 market for those types of homes, correct?

2 A. True.

3 Q. Now, in 2009, if we look at all-electric
4 homes or electric-heated homes, the percent, the
5 average percent list price was 88.2, correct?

6 A. What was that question again?

7 Q. The average percent list price for
8 all-electric homes was 88.2.

9 A. Correct.

10 Q. And in 2010, the average percent list
11 price for electric homes was 91.5.

12 A. All-electric homes I have at 94.67.

13 Q. Okay. This is 2010.

14 A. In 2010, correct.

15 Q. So that the number went up in 2009 to
16 2010.

17 A. That's correct.

18 Q. And that number in 2010 is comparable,
19 that is, the all electric percent list price number
20 is comparable to that same value for other homes in
21 2010, correct?

22 A. Correct.

23 Q. Now, since you are not an expert in
24 statistics, isn't it true you don't know the
25 difference between an average and a median?

1 A. That's correct.

2 Q. But you do recognize that the median
3 value of a group from year to year may indicate
4 something about the market, correct?

5 A. That's correct.

6 Q. And so whatever the median is, if it's
7 going up from one year to the next, that would
8 indicate an improving real estate market, correct?

9 A. Could also indicate falling prices in a
10 particular area.

11 Q. Okay.

12 A. Also could be listed in sales price.

13 Q. Well, isn't it true that improving median
14 price from one year to the next would indicate an
15 improving sales market?

16 A. It could. Once again, you have to put
17 all the factors in with price also.

18 Q. In 2009 the electric homes median sales
19 price was 156,000, according to your report, correct?

20 A. I show 2009 --

21 Q. For electric homes?

22 A. -- 148,353.

23 Q. Those were electric homes sold between
24 1-1-09 and 12-31-09?

25 A. Could I have back the answer and

1 question, please?

2 EXAMINER PRICE: Go ahead, ask that
3 question again.

4 MR. KUTIK: The question was --

5 EXAMINER PRICE: I would like to hear the
6 reporter. Can I have the question and answer back,
7 please.

8 (Record read.)

9 MR. KUTIK: May I approach the witness,
10 your Honor?

11 A. Your answer is correct, average sold
12 price is what I quoted at the 148.

13 Q. I want to talk about median.

14 A. You are correct.

15 Q. So the record is clear, the median sales
16 price for the all-electric homes in Strongsville,
17 according to your report for 2009 was \$156,000,
18 correct?

19 A. That's correct.

20 Q. In 2010, the values were \$167,500,
21 correct?

22 A. That's correct.

23 Q. So the median improved from 2009 to 2010,
24 correct?

25 A. That's correct.

1 Q. And that's the median price, correct?

2 A. Median price.

3 MR. KUTIK: Thank you. No further
4 questions.

5 EXAMINER WILLEY: Are you finished?

6 MR. KUTIK: Yes. No further questions.

7 EXAMINER WILLEY: Does the staff have any
8 questions?

9 MR. JONES: Yes, your Honor.

10 MR. LINDGREN: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Lindgren:

14 Q. Mr. Frawley, in your analysis you only
15 looked at the real estate market in Strongsville; is
16 that correct?

17 A. Once again, I didn't do an analysis, I
18 guess.

19 Q. Well, your familiarity is only with the
20 Strongsville market; is that correct?

21 A. That -- these are just the Strongsville
22 reports that I pulled, correct.

23 Q. So you didn't look at all at the real
24 estate market, in other areas, for example, Lake
25 County or Lorain County?

1 A. I didn't because Strongsville has the
2 largest concentration of all-electric homes.

3 Q. So you don't have any idea what the
4 impact has been on all-electric homes in other areas;
5 is that correct?

6 A. That's correct.

7 Q. Mr. Frawley, I am looking at your Table 2
8 on page 4 of your testimony, now, would you agree
9 with me that there are many factors other than the
10 utilities that would factor into the sales price of a
11 home?

12 A. That is correct.

13 Q. And this -- this table doesn't take into
14 account any of those other factors; is that correct?

15 A. It doesn't, though I compared three years
16 worth of data both in the other arena and also in the
17 all-electric arena. Once again, I was looking for a
18 trend.

19 Q. Thank you. But you wouldn't have any
20 idea, for example, if for the 2010 data you looked at
21 whether the homes with mixed utilities had updated
22 kitchens or more modern appliances than the
23 all-electric houses; is that correct?

24 A. That's correct.

25 MR. LINDGREN: Thank you. I have no

1 further questions.

2 EXAMINER WILLEY: Are there any questions
3 on redirect?

4 MR. CORCORAN: Yes.

5 - - -

6 REDIRECT EXAMINATION

7 By Mr. Corcoran:

8 Q. Mr. Frawley, there was a lot of
9 discussion about the percent of list price and the
10 days on market and cumulative days on market. Are
11 those numbers influenced by the price of the home?

12 A. Yes, certainly.

13 Q. And are those numbers more likely to
14 be -- strike that.

15 Is the percent list price numbers
16 expected to be higher if the -- if the home is listed
17 at a lower amount?

18 A. Say that again.

19 Q. In -- I'm sorry, in relation to other
20 homes that are on the market.

21 A. It would be fair to say that homes that
22 are listed at a higher price are going to have longer
23 days and cumulative days on market.

24 Q. And so homes that are priced more towards
25 the market are going to sell faster?

1 MR. KUTIK: Objection, leading.

2 Q. Are the -- is the price of the home going
3 to dictate how quickly it sells?

4 A. Yes. Most circumstances, yes.

5 Q. And in most circumstances what would
6 that -- what would that be? Strike that.

7 If the price of the home is lower
8 compared to other homes in the area, is that going to
9 influence its days on the market and its list price?

10 A. Yes.

11 Q. Favorably or unfavorably?

12 A. Favorably on the less-priced homes, only
13 because we have a larger market of buyers for those
14 homes.

15 Q. Have you noticed whether or not the
16 all-electric homes have been priced at an attractive
17 level?

18 A. Priced at an attractive level, yes.

19 Q. And that would cause their days on the
20 market, cumulative days on the market, to be lower?

21 A. It should.

22 Q. And it would also have their percent list
23 price be higher?

24 A. Correct.

25 Q. And as a realtor, how important is the

1 price per square foot number?

2 A. It is very important. It plays out in
3 appraisals after we sell the property, especially in
4 a comparables market.

5 Q. Would you consider it to be the most
6 important number that you deal with as a realtor?

7 A. I mean, it is an important number.

8 Q. Is it -- is it an important number to
9 determine the market -- the market conditions of
10 homes?

11 A. Yes. I mean, it will go down as market
12 conditions worsen, if that's what you mean.

13 MR. CORCORAN: No further questions.

14 EXAMINER WILLEY: Are there any questions
15 on recross?

16 MR. RANDAZZO: Just a couple, if I may.

17 EXAMINER WILLEY: Okay.

18 - - -

19 RECROSS-EXAMINATION

20 By Mr. Randazzo:

21 Q. Counsel asked you some questions about
22 the square foot statistic. How is that statistic
23 calculated? Does it include, for example, the space
24 that would be covered by a garage area?

25 A. It is supposed to be just finished square

1 footage, which means above ground level, not
2 including basements, not including garages.

3 Q. Well, you said "supposed to be." Is
4 there some standard by which people report that sort
5 of information?

6 A. Most agents are supposed to follow the
7 public record's, tax record's, finished square
8 footage.

9 Q. Okay. So did you check to see whether or
10 not the information that was being reported was
11 following that requirement?

12 A. I did not.

13 Q. Okay. So if there is a square footage
14 here, it would be only the finished -- your
15 assumption would be that it would be a finished
16 square foot area in a dwelling?

17 A. That's correct.

18 Q. All right. And why would there be zero
19 square feet?

20 A. Zero square foot, because it becomes an
21 option for the agent as they are inputting the
22 information to leave that spot with zero.

23 Q. Okay. So you do have some zeros in your
24 data pool, right?

25 A. That's correct.

1 Q. And you know they are not accurate,
2 right?

3 A. That's correct.

4 Q. Didn't you remove the zeros?

5 A. I can't go in and change any of that
6 information.

7 Q. Well, you could have removed it from your
8 table for purposes of your calculation.

9 A. I would have had to remove the whole
10 listing.

11 Q. So how do you value a zero?

12 A. Well, here is what I did: All I took was
13 all-electric homes that sold between -- just what it
14 says here, between 1-1-09 and 12-31-09, and
15 nonelectric homes. That's the numbers I provided
16 because I am not a statistical analysis.

17 Q. I know, but you show price per square
18 foot on page 4, right?

19 A. Correct.

20 Q. All right. So for those homes where you
21 show a zero in your -- in the data pool that's
22 attached to your testimony, how did you calculate the
23 price per square foot?

24 A. Once again, you can see there is just
25 totals at the bottom of those pages.

1 Q. So --

2 A. But if you look also, if you look through
3 all of the data, you will see zeros on practically
4 every one of those pages.

5 Q. Yeah, I noticed.

6 A. I can't change that information.

7 Q. But you know it's wrong, right?

8 A. Well, absolutely.

9 EXAMINER PRICE: Did you study as to
10 whether it's consistently wrong or some random
11 variation?

12 THE WITNESS: Random variation I guess
13 you could say. If you look through those tables, you
14 will see there's some zeros on practically every page
15 of that.

16 EXAMINER PRICE: But you didn't do
17 anything to account for those zeros.

18 THE WITNESS: No, I didn't.

19 EXAMINER PRICE: You didn't do anything
20 to ensure they were evenly spread from -- across the
21 tables.

22 THE WITNESS: No, I didn't.

23 EXAMINER PRICE: Thank you, Mr. Randazzo.

24 MR. RANDAZZO: I have nothing further,
25 your Honor.

1 EXAMINER WILLEY: Mr. O'Brien, did you
2 have any recross?

3 MR. O'BRIEN: No, thank you, your Honor.

4 EXAMINER WILLEY: Mr. Kutik.

5 THE WITNESS: I need at least one more.

6 - - -

7 RECROSS-EXAMINATION

8 By Mr. Kutik:

9 Q. So you did nothing to, what we might say,
10 cleanse your data of erroneous material, correct?

11 A. That's correct.

12 Q. I notice in response to your counsel's
13 question about the importance of price per square
14 foot that you said it was an important factor,
15 correct?

16 A. Absolutely.

17 Q. Because there are a number of indicators
18 that one needs to look at to determine what's
19 happening in the market, correct?

20 A. Correct, fair market price condition.

21 Q. A whole bunch of things, correct?

22 A. Absolutely.

23 Q. And so what one needs to do when one is
24 assessing what's happening in the market is to look
25 at all the data and all indicators to determine

1 what's happening, fair to say?

2 A. Fair to say.

3 MR. KUTIK: No further questions.

4 EXAMINER WILLEY: We have no further
5 questions so you may be excused. Thank you.

6 MR. JONES: Your Honor.

7 MR. LINDGREN: Just briefly, your Honor.

8 EXAMINER WILLEY: I apologize.

9 - - -

10 RECROSS-EXAMINATION

11 By Mr. Lindgren:

12 Q. Mr. Frawley, you have conceded there are
13 some mistakes in these tables with regard to the
14 square foot where zeros were mistakenly entered?

15 A. That's correct.

16 Q. Isn't it also possible that there are
17 other data -- as -- other areas -- errors in other
18 columns in these tables?

19 A. That's correct. That's why I pulled
20 three years of data.

21 Q. But you haven't independently verified
22 any of these data, have you?

23 A. These are directly from the MLS system,
24 that's correct.

25 MR. LINDGREN: Thank you. No further

1 questions.

2 EXAMINER WILLEY: Mr. Frawley, you may be
3 excused. Thank you very much.

4 MR. CORCORAN: Your Honor, the CKAP
5 Parties move to admit Exhibit No. 1.

6 EXAMINER WILLEY: Are there any
7 objections?

8 MR. RANDAZZO: Your Honor, we would
9 object. The cross-examination of this witness
10 demonstrates that the individuals or organizations
11 that he states that he's appearing on behalf of have
12 not authorized this witness to appear here.

13 I would also suggest that the
14 cross-examination demonstrates that the information
15 contained in this testimony is worth any
16 trustworthiness and unreliable on its face and,
17 therefore, improper opinion testimony. We would
18 object to the admission of the exhibit.

19 MR. KUTIK: We would join in that motion,
20 your Honor.

21 EXAMINER WILLEY: Any other objections?
22 Do you have a response?

23 MR. CORCORAN: Yes, I do. Your Honor, my
24 clients authorized me to ask Mr. Frawley to appear on
25 their behalf.

1 EXAMINER WILLEY: Okay.

2 EXAMINER PRICE: Would you like to
3 address the other issues raised by Mr. Randazzo? I
4 think he raised the issues as to reliability of the
5 data.

6 MR. CORCORAN: As far as the data is
7 concerned, Mr. Frawley mentioned he is not able to
8 change those numbers. It's a report that is
9 generated that he has no ability to change.

10 MR. RANDAZZO: Is this argument in favor
11 of my motion or against?

12 MR. CORCORAN: The numbers are what they
13 are, and they are consistent throughout the years.

14 MR. KUTIK: Your Honor, there has been no
15 foundation laid that the data is reliable at all. It
16 just said this is the data: I used it, I know it's
17 wrong, and I used it anyway.

18 MR. RANDAZZO: Yeah. My point, your
19 Honor, for the objection is the witness acknowledged
20 that he knew the information was wrong and it is
21 improper for a witness to express an opinion after
22 acknowledging that the basis for that opinion is
23 wrong.

24 It's an odd bit of testimony as it
25 stands, but I think in fairness to the witness, mercy

1 rule ought to apply here, and it had ought not to be
2 admitted into evidence.

3 EXAMINER WILLEY: Yes.

4 MR. CORCORAN: Your Honor, the CMA
5 Reports are something that are standard in the
6 industry and the -- while Mr. Frawley noted that some
7 of the numbers are wrong, is a report that realtors
8 rely on.

9 MR. KUTIK: Your Honor, that would be
10 nice coming from the witness but it did not come from
11 the witness. There is no foundation laid with
12 respect to what this data is or whether it's reliable
13 at all. What we know is that it's in error and the
14 witness knew it was in error and he did nothing about
15 it.

16 EXAMINER WILLEY: We are going to admit
17 the exhibit, and the Commission will give the
18 testimony the weight that is warranted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER PRICE: Let's go off the record,
21 please.

22 (Discussion off the record.)

23 (Recess taken.)

24 EXAMINER PRICE: Let's go back on the
25 record. Mr. Corcoran, do you have another witness?

1 MR. CORCORAN: I do. I would like to
2 call Michael Schmitt to the stand.

3 (Witness sworn.)

4 EXAMINER PRICE: Please be seated and
5 state your name and business address for the record.

6 THE WITNESS: My name is Mike Schmitt,
7 business address is 8501 Woodbridge Court, North
8 Ridgeville, Ohio 44039.

9 EXAMINER PRICE: Please proceed,
10 Mr. Corcoran.

11 MR. CORCORAN: Thank you.

12 - - -

13 MICHAEL SCHMITT
14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Corcoran:

18 Q. Mr. Schmitt, are you employed?

19 A. Yes, I am.

20 Q. By whom?

21 A. Bob Schmitt Homes.

22 Q. And what is your position?

23 A. Currently the CEO and president.

24 Q. How long have you worked for Bob Schmitt
25 Homes?

1 A. Started part-time back in the summer of
2 1972, became full-time in 1979.

3 Q. And have you always been the president
4 and CEO of Bob Schmitt Homes?

5 A. No, I have not.

6 Q. Would you tell me some of the positions
7 that you've held with Bob Schmitt Homes?

8 A. Well, back in the summer of '72, I
9 started on the landscape crew, summer job through my
10 high school years, and as I got closer to graduating
11 from college, I became full-time and worked on the
12 various construction crews through 1987, became
13 general superintendent of the company in 1987.

14 From there I pretty much ran all the
15 day-to-day operations from 1987 through I think it
16 was 2001 roughly that I became CEO and president.

17 Q. And what business is Bob Schmitt Homes
18 in?

19 A. We are a developer, home builder.

20 Q. How long has the company been in
21 business?

22 A. Sixty-plus years.

23 Q. Who is the founder of Bob Schmitt Homes?

24 A. Bob Schmitt.

25 Q. And since you share the last name, could

1 you tell me, are you related to Mr. Schmitt?

2 A. Yes, I am. Bob is my uncle. Bob
3 Schmitt, when he founded the company, he --

4 Q. Well, how did Mr. Schmitt approach home
5 building?

6 A. Well, Bob's education was he got a degree
7 from Ohio State back in 1941 as an industrial
8 engineer. From there he went to -- he served in the
9 Navy during World War II and worked in an engineering
10 capacity with the government.

11 After the -- after the war, he got into
12 the home building business with his father in
13 Mansfield, Ohio, and made a decision to come up to
14 the Cleveland area in 1950.

15 Q. And you mentioned Bob Schmitt had a
16 college degree. Was that degree important in the
17 home building industry?

18 A. Well, at the time there was probably not
19 too many people that were obtaining that degree, but
20 he -- he took the practices of industrial engineering
21 and applied it to the home-building process.

22 Q. And why was that important?

23 MR. KUTIK: Objection.

24 Q. Or was it important?

25 MR. KUTIK: Objection.

1 EXAMINER PRICE: Grounds?

2 MR. KUTIK: Opinion testimony.

3 EXAMINER PRICE: We will give them a
4 little bit of leeway as he lays his foundation.
5 Overruled.

6 A. Well, Bob, as I said, brought the
7 engineering background to the home-building business
8 because he wanted to improve on the process and lower
9 the cost of building a home to the consumer.

10 It was very important to him that he give
11 the consumer the best -- the best deal -- best bang
12 for the buck, and he brought that process through --
13 he was the first in the state of Ohio to build the
14 prefabbed wall panel and truss panel, which was
15 unheard of back in the late '40s/early '50s.

16 And he was looked at as rather an odd
17 duck back in that time because he was really the only
18 one doing it. Of course, today 95 percent of the
19 industry is now building that way.

20 So he was really a pioneer ahead of his
21 time, which pretty much related to what we are
22 talking about here today with energy efficiency. And
23 he incorporated energy efficiency into his homes in
24 the early '70s because he saw a need for that to come
25 into the product of building homes for the consumer.

1 Q. And when you talk about "energy
2 efficiency," what are you talking about?

3 A. Well, basically the keeping the cost as
4 low as possible to operate the house. And the -- and
5 how that relates to building a home, No. 1, the
6 structure, how it's insulated, what type of equipment
7 you are using, in our case it became the rate
8 structure of the all-electric home.

9 Q. And did Bob Schmitt Homes build
10 all-electric homes?

11 A. Many, three thousand plus.

12 Q. Get back to that in a minute, but as far
13 as energy efficiency is concerned, the standards --
14 did Bob Schmitt Homes develop energy efficiency
15 standards in the '60s?

16 A. Bob was very instrumental and he
17 partnered up with a number of companies, General
18 Electric for one, Dow Chemical another. General
19 Electric was, of course, the leader in the
20 development of the heat pump.

21 And we did a lot of test houses for GE on
22 that heat pump and looked for ways of improving the
23 product, and as you know, over the years the
24 efficiencies of that unit have become much better as
25 time passed on.

1 Dow Chemical, Bob worked hand in hand
2 with them in developing insulation standards, most
3 notably would be styrofoam product that we used in
4 our foundations and wall panels to -- to give the
5 houses a higher insulation value, R value.

6 Q. Did you ever talk about energy efficiency
7 and insulation standards with Bob Schmitt?

8 A. It was pretty much a religion around our
9 company. The -- it was a constant day-to-day
10 discussion. As a young kid, it was a constant
11 discussion at the dinner table when the family got
12 together. It never ended.

13 It's kind of a joke around the company
14 that don't bring up energy efficiency in front of Bob
15 because if you did, you'd be sitting there talking
16 about it for five hours, so it was -- it was his --
17 his love to produce that high efficiency home for the
18 consumer.

19 He wanted to make that house as
20 affordable to the consumer as possible. He was
21 really heavily involved in this on not just a local
22 level, a national level.

23 Bob was appointed to the National
24 Institute of Building Sciences, otherwise known as
25 NIBS, by President Ford back in I believe it was 1975

1 that happened, and that just went to show how
2 involved the company was involved in energy
3 efficiency, and, of course, CEI, Ohio Edison,
4 FirstEnergy was a big part of that.

5 Q. You mentioned that you talked about this
6 stuff at the dinner table. Was your father involved
7 with the company?

8 A. Yes. My father Ed, 14 years younger than
9 Bob, Ed was the youngest of the family. Ed was the
10 chief architect of the company. Graduated from
11 Nebraska with a degree in architecture and also
12 served in the Navy after his college years and then
13 after he got out of the Navy, he went to work for Bob
14 Schmitt as an architect. Ed's position was, of
15 course, designing the homes and designing the systems
16 that went into the homes.

17 At that time heat loss calculations were
18 not required to build a home. As of today, they are
19 because of new energy codes have been developed
20 throughout the years, so it's something that Bob and
21 Ed were both well ahead of their times -- the time on
22 building homes that are energy efficient.

23 Q. And you were part of all those
24 conversations?

25 A. Constantly.

1 Q. You mentioned that FirstEnergy and its
2 related companies, prior companies, were involved in
3 discussions. What role did they play in energy
4 efficiency in the building of homes?

5 A. Well, I started to have contact with the
6 FirstEnergy on a personal level when I became general
7 superintendent in 1987. And that contact --

8 EXAMINER PRICE: Mr. Schmitt.

9 THE WITNESS: Yes, sir.

10 EXAMINER PRICE: You're aware that in
11 1987 there was no FirstEnergy, aren't you?

12 THE WITNESS: CEI, I'm sorry.

13 EXAMINER PRICE: I think for purposes of
14 the proceeding it would be very helpful if you could
15 not use the FirstEnergy holding company except when
16 we are speaking of it in the present. If you are
17 referring to the operating companies, it would be
18 helpful for the record if you could say "CEI" or
19 "Ohio Edison" or "Toledo Edison," so our record is
20 clear for the Commission to review.

21 THE WITNESS: Okay. Got you.

22 A. Well, in 1987 it would have been CEI that
23 I dealt with on the first -- on the land development
24 basis of putting their infrastructure in, and most
25 notably every Wednesday for the last 35 years we have

1 an internal real estate meeting and in our real
2 estate meetings are the essential people of Bob
3 Schmitt Homes, the staff, and all the real estate
4 agents that we employ to sell our houses. And that,
5 as I say, happens every Wednesday morning and has for
6 a long, long time.

7 At those meetings was probably 90 percent
8 of the time was a representative from CEI. And it
9 was kind of a joke, internal joke, and actually we
10 did have an office in our office set up for the CEI
11 rep to camp out in.

12 And his job -- what he had -- what he
13 accomplished in our meetings was to talk to our
14 agents about selling electric homes. It was a like I
15 say, a constant discussion on how do we sell electric
16 homes? How do we get over the stigma that electric
17 homes are cold versus the gas homes that are
18 supposedly warmer? So it was a constant discussion
19 with the reps of CEI.

20 Q. And did -- did the company Bob Schmitt
21 Homes ever have any representatives speak to
22 FirstEnergy -- the CEI?

23 A. Restate that again, please.

24 MR. CORCORAN: Could you read that back,
25 please.

1 (Record read.)

2 A. Yeah, I spoke to many reps from CEI.

3 Q. And did Bob Schmitt talk to CEI?

4 A. Constantly.

5 Q. And you were aware of those
6 conversations?

7 A. Yes. I was involved in a lot of
8 conversations with CEI reps and Bob Schmitt. I could
9 throw out some names to you.

10 MR. CORCORAN: Well, before we go into
11 that, your Honor, I have a one-page exhibit that I
12 would like to introduce at this time and mark it CKAP
13 Parties No. 2.

14 EXAMINER PRICE: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. Mr. Smith, you have been handed what's
17 been mark as CKAP Parties Exhibit No. 2. Have you
18 ever seen that letter before?

19 A. Yes.

20 Q. And are you aware of the contents of that
21 letter?

22 A. Yes.

23 Q. Could you tell me what you know about the
24 letter?

25 A. Well, Bob was really the spokesman for

1 CEI in selling electricity as a home builder. Of
2 course, you know, Bob Schmitt was the -- was one of
3 the leading home builders in Ohio and probably the
4 country, and the CEI leaned on Bob a lot to talk to
5 other builders about selling electric homes.

6 And not only did he perform functions
7 like this letter in front of me, I saw a whole host
8 of builders come into our office and sit down and
9 listen to Bob Schmitt talk about building electric
10 homes.

11 I had an occasion to go to a luncheon and
12 sat at a table, went with Bob Schmitt and sat at a
13 table and had a long discussion with a guy in upper
14 management for CEI by the name of Anthony Lockhart.
15 And Anthony Lockhart, the gist of his conversation to
16 Bob was, "Bob, you know, we need your help. You are
17 doing a great job out there. How many more builders
18 can you talk to about selling all-electric homes?
19 We've got to sell electricity."

20 And his conversation with based on the
21 need for CEI to grow by selling electric homes and
22 that was their -- their business model to grow their
23 company was to sell all-electric homes. And we were
24 their conduit to do that.

25 As I said, I saw a whole bunch of

1 builders come into the office. We were in the
2 Strongsville office through 1995, '96, we moved to
3 North Ridgeville.

4 But during that period that I was in the
5 capacity of general superintendent from '87 through
6 '95, '96, I saw probably anywhere from 75 to 80 home
7 builders come into our office to talk about building
8 all-electric homes, to listen to Bob talk about
9 building all-electric homes, and many of those
10 meetings also were -- was a representative from CEI,
11 a marketing rep.

12 Q. How many -- how often did the marketing
13 reps visit with Bob Schmitt Homes?

14 A. Weekly basis, they were there one or two
15 days a week.

16 Q. And why were they there?

17 A. They were there to talk to the people
18 within the organization of Bob Schmitt Homes and the
19 real estate agents that we employed. You know,
20 understand that this whole thing, there would not
21 have been one electric home built by Bob Schmitt
22 Homes if there was not a rate in place to do that
23 home. We knew -- they knew --

24 MR. KUTIK: Your Honor, at this point I
25 move to strike. There is no question pending. He

1 has gone beyond the question. It is improper for a
2 witness to pontificate and give long narrative
3 answers without being responsive to a question. Give
4 us an opportunity to object. So I move to strike.

5 EXAMINER PRICE: Motion to strike will be
6 granted. Please just go ahead and answer the
7 questions that's your attorney questions.

8 THE WITNESS: Yes.

9 MR. CORCORAN: Your Honor, I have a
10 single-page exhibit that I would like to have marked
11 as CKAP Parties Exhibit No. 3.

12 EXAMINER PRICE: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. (By Mr. Corcoran) Mr. Smith, you have
15 before you what's been marked as CKAP Parties Exhibit
16 No. 3. Have you ever seen this document before?

17 A. Yes.

18 Q. And could you describe what this is to
19 me, please.

20 A. This is a map of the Bob Schmitt
21 subdivision in North Ridgeville, Ohio. The colored
22 areas that you see are the streets that have been
23 developed. And the uncolored areas marked as
24 "future" are -- is future that's just raw land.

25 Q. And is this the current subdivision that

1 Bob Schmitt Homes is working on?

2 A. Yes, it is.

3 Q. Mr. Schmitt, is this subdivision an
4 all-electric subdivision?

5 A. Yes, it is.

6 Q. Is it true, though, that there is --
7 strike that. Is there gas available to this
8 subdivision?

9 A. Yeah. If you look off to the left-hand
10 side of the drawing here where it says Root Road and
11 then you see a street called Meadows Edge Lane, when
12 the rate was taking -- taken away back in I guess it
13 would be late 2006/early 2007, I made a decision at
14 that time to -- to by gas in off of Root Road to that
15 area.

16 Now, that area had already been
17 developed, the lots were in, the electric was in.
18 But seeing that the electric company and the
19 regulatory Commission here saw fit to take away the
20 rate, we decided to bring in gas because we knew it
21 would be a problem with selling all-electric homes.

22 Q. And so the gas line serves which
23 particular area?

24 A. The dark green area.

25 Q. And the other areas then are not served

1 by gas?

2 A. Those are all electric.

3 Q. Was the -- was -- at this point which
4 service company is servicing this area?

5 A. Well, FirstEnergy, but I guess it's Ohio
6 Edison that was the company that we started out with.

7 Q. And was Ohio Edison aware that this --
8 these areas were going to be all electric?

9 A. Oh, yes.

10 MR. KUTIK: May I have the question read,
11 please.

12 EXAMINER PRICE: Please read the
13 question.

14 (Record read.)

15 MR. KUTIK: Objection. Calls for
16 speculation.

17 EXAMINER PRICE: Sustained.

18 Please rephrase your question.

19 Q. Did you ever have discussions with Ohio
20 Edison about these subdivisions?

21 A. Yes.

22 Q. And were those discussions about
23 whether -- what type of energy would serve the
24 subdivisions?

25 A. Yes.

1 Q. What type of energy was that?

2 A. All-electric subdivision.

3 MR. CORCORAN: Your Honor, I have a
4 series of documents. There are 10 in one packet. I
5 would like to have these marked as Exhibits 4 through
6 whatever.

7 EXAMINER PRICE: 4 through 14, I think,
8 13.

9 MR. CORCORAN: 13, right.

10 EXAMINER PRICE: They will be so marked.

11 (EXHIBITS MARKED FOR IDENTIFICATION.)

12 Q. Mr. Schmitt, on CKAP Exhibit 3 there are
13 some notations down in the right-hand bottom corner.
14 Do you see that?

15 A. Yes.

16 Q. And what I've just handed to you is CKAP
17 Parties No. 4 through 13. We will go through these
18 one at a time, but No. 4 is the first one. Have you
19 ever seen that document?

20 A. Yes, I have.

21 Q. And what is it?

22 A. Well, it's the -- this is the start of
23 the Ridgefield subdivision. It shows all the land
24 that we've purchased and the first street that we put
25 in being Woodbridge Court.

1 Q. And what is this document commonly
2 referred to as?

3 A. I'm sorry, I can't hear you.

4 Q. What is this document commonly referred
5 to as?

6 A. The plat.

7 Q. And the plat is something that is the --
8 explain to me the plat process.

9 A. Well, before the first house is built
10 the -- we as a company employ an engineering firm
11 to -- to do drawings for the street and all the
12 infrastructure that goes with that street to
13 accommodate future homes.

14 And that process, of course, is initiated
15 by Bob Schmitt Homes and once that -- those drawings
16 are done, the drawings are forwarded to the various
17 entities that need to have the drawings for approval
18 basis, most notably being the Ohio EPA, those
19 drawings go to the city within which the property is
20 within, in this case North Ridgeville; and the
21 various utility companies involved in putting the
22 infrastructure for those homes, in this case being
23 Ohio Edison and the phone company.

24 Those drawings are -- are in their hands
25 for approval, and once the company gets approval from

1 the city and the EPA, construction starts on putting
2 in the infrastructure.

3 Once the roads are poured, the utility
4 company, the electric company, will come in and put
5 their infrastructure in for those houses.

6 Q. And, Mr. Schmitt, the beginning of the
7 platting process you mentioned starts with the
8 engineering.

9 A. Yes.

10 Q. And how far in advance is that before the
11 platting process?

12 A. You know, it varies. It could be
13 anywhere from 6 to 18 months.

14 Q. And is the utility companies usually
15 aware of the project -- the plat --

16 A. They are aware from day one they are
17 aware of what's going on.

18 Q. "From day one" you mean how far back?

19 A. From day one officially they knew that it
20 was going to be an all-electric subdivision but
21 officially once they got the drawings they knew that
22 on those drawings that it would be an all-electric
23 subdivision.

24 Q. And approximately how far in advance
25 would they have known that?

1 A. From the time the plat is signed or.

2 Q. And is -- is the platting process the
3 first part of putting together a subdivision?

4 A. The planning?

5 Q. Is the platting process the first -- the
6 beginning of the subdivision process?

7 A. Yeah, that's the -- that's the end of, I
8 mean once the plat is done, signed off on, the roads
9 are in. The infrastructure is in.

10 Q. Is there a process of getting the
11 subdivision approved before the platting process?

12 A. Yes.

13 Q. And who does that approval?

14 A. Well, I just -- in this case it would be
15 the City of North Ridgeville, the Ohio EPA, and the
16 two utility companies Ohio Edison and at the time I
17 think it was GTE Phone.

18 Q. And you have on -- going -- just going
19 back to CKAP Parties No. 3, you have the subdivision
20 here laid out that includes a future area. Was this
21 entire subdivision approved --

22 A. Yes.

23 Q. -- by anybody?

24 A. Yes.

25 Q. At what point was that?

1 A. What time frame?

2 Q. Yes.

3 A. I believe it would have been 1993-'94,
4 somewhere in that time frame.

5 Q. And would you have had conversations with
6 Ohio Edison about the subdivision at that time?

7 A. Yes.

8 Q. And they knew that it was going to be an
9 all-electric subdivision at that time?

10 A. Yes.

11 Q. Okay. Going back to Exhibit No. 4,
12 Mr. Schmitt, at what point does -- signature for Ohio
13 Edison was when?

14 A. Can you say that again?

15 Q. Yeah, I am looking at Exhibit No. 4.

16 A. Right.

17 Q. And when did Ohio Edison sign off on this
18 plat?

19 A. I am having a tough time reading this.

20 Q. Do you wear glasses?

21 A. It looks like '95.

22 Q. Okay. And can you correlate the plat in
23 Exhibit No. 4 with the numbers that are on Exhibit
24 No. 3?

25 A. You mean as far as the land space?

1 Q. I am talking about the -- does the
2 information that's contained in Exhibit No. 4 also
3 appear on Exhibit No. 3?

4 A. Yes.

5 Q. And how so?

6 A. Well, it shows the -- encompasses the
7 whole area of land that the company purchased and
8 developed in this subdivision.

9 Q. And does it also mention the date that
10 Ohio Edison signed No. 4?

11 A. Yes.

12 Q. And it also mentions then when this plat
13 in No. 4 would be -- well, does it show that the plat
14 in No. 4 was recorded by any government entity?

15 A. Yes.

16 Q. Was that -- what entity is that?

17 A. It would be Lorain County.

18 Q. And does the information of when it was
19 recorded by the county also appear on both Exhibits 3
20 and 4?

21 A. Yes.

22 Q. And in number -- Exhibit No. 3, are the
23 number of sublots delineated for each phase?

24 A. Are the number of sublots what?

25 Q. Are they written -- do the number of

1 sublots appear on -- the number of sublots for each
2 phase on the plat appear on Exhibit No. 3?

3 A. Yes, yes.

4 Q. Okay. The first in Exhibit No. 4 it
5 covers some subdivision No. 1, is that correct?

6 A. Yes.

7 Q. Moving on to number -- Exhibit No. 5
8 which is on the next page, do you have that in front
9 of you?

10 A. Yes.

11 Q. Could you describe this exhibit to me,
12 please.

13 A. Well, this is the -- the next stage of
14 developing the land and the putting in the roads for
15 future homes.

16 Q. And that next step was what? Could you
17 describe it a little bit more definitively?

18 A. Well, the next step to developing our
19 all-electric subdivision.

20 Q. The title of the document is?

21 A. It's a plat.

22 Q. I am sorry?

23 A. The plat.

24 Q. Yeah. What's the title of Exhibit No. 5?

25 A. "Richfield Homes Subdivision No. 2."

1 Q. And who was Richfield Homes?

2 A. Richfield Homes was a -- the land part of
3 our operation, the land company, of which I also am
4 president of Richfield Homes.

5 Q. Was there a relationship between
6 Richfield Homes and Bob Schmitt Homes, then?

7 A. The relationship was Richfield Homes
8 would develop the property and sell the lots to Bob
9 Schmitt Homes.

10 EXAMINER PRICE: Was Richfield Homes an
11 affiliate of Bob Schmitt Homes or were they two
12 separately owned companies?

13 THE WITNESS: Two separately owned
14 companies at the time.

15 Q. And did -- did Ohio Edison sign Exhibit
16 No. 5?

17 A. Yes.

18 EXAMINER PRICE: What do you mean by
19 "sign Exhibit No. 5"? I know there is a signature of
20 an Ohio Edison representative there but what does
21 that signature -- what does that signature mean?

22 THE WITNESS: That means that they've
23 approved the subdivision and they were going to
24 supply the power, the energy to build homes in that
25 subdivision.

1 EXAMINER PRICE: Can you read the
2 paragraph above the Ohio Edison signature into the
3 record, please?

4 THE WITNESS: I can't read that.

5 EXAMINER PRICE: Well, but that paragraph
6 above that that you can't read, that is what you are
7 representing is Ohio Edison's commitment to the
8 subdivision, right? Is that what they are agreeing
9 to?

10 THE WITNESS: Yeah. It's -- it's on the
11 plat, yes.

12 MR. CORCORAN: Your Honor, I happen to
13 have a bigger version of that, if I may --

14 EXAMINER PRICE: You may approach.

15 MR. CORCORAN: Thank you.

16 EXAMINER PRICE: Thank you.

17 MR. CORCORAN: I don't have copies of
18 this though.

19 EXAMINER PRICE: That's fine. If he can
20 read that, if you are representing that that's the
21 same copy perhaps you can show that copy to Mr. Kutik
22 and the other counsel that this is just an enlarged
23 version.

24 Thank you, Mr. Corcoran.

25 MR. CORCORAN: Thank you.

1 EXAMINER PRICE: Now, Mr. Schmitt, can
2 you read into the record the agreement under the
3 language under "Underground Utility Easement" that
4 you are referring to that Ohio Edison signed off on?

5 THE WITNESS: "The Richfield Homes, Inc.
6 owners of the land platted herein do hereby grant
7 unto Ohio Edison Company, Alltel, GTE, Richfield
8 Homes, Continental Cable (or their successors and
9 assigns thereafter referred to as the grantees)
10 permanent right-of-way and easement 10 feet wide
11 under, over, and through all sublots blocked and all
12 land shown here on parcel with and continuous to all
13 street lines to construct, place, operate, maintain,
14 repair, reconstruct, and relocate such underground
15 electric and communication cables, ducts, conduits,
16 surface or below ground mounted transformers and
17 pedestals, concrete pads, and other facilities as are
18 deemed necessary or convenient by the grantees for
19 distributing and transmitting electric -- electricity
20 and/or communication signals for public and private
21 use at such locations as grantees may determine upon,
22 within, and across the easement premises. Said
23 easement rights shall include the right, without
24 liability therefore to remove trees and landscaping,
25 including lawns, width -- within and without said

1 easement premises which may interfere with the
2 installation, maintenance, repair, or operation of
3 said electric and/or communication facilities. The
4 right to install, repair, augment, and maintain
5 service cables outside the above described easement
6 premises and with the right to access, ingress, and
7 egress to and from any of the -- any of the within
8 described premises for exercising any of the -- any
9 of the purposes of this right-of-way and easement
10 grant. All sublots, blocks, and lands shall be
11 restricted to underground utility service."

12 EXAMINER PRICE: And that's the agreement
13 that Ohio Edison was signing off on, correct?

14 THE WITNESS: Yes, sir.

15 EXAMINER PRICE: Thank you.

16 Mr. Corcoran.

17 MR. CORCORAN: Thank you.

18 Q. (By Mr. Corcoran) Mr. Schmitt, the reason
19 for -- you mentioned earlier that Ohio Edison was
20 aware of different subdivisions or phases that were
21 being developed; is that right?

22 A. Yes.

23 Q. And this is -- in order to sign off on
24 these, they had to have the subdivision information
25 that contained -- that's contained on this plat.

1 A. Yes.

2 Q. And they had to have known which lots
3 were encompassing this -- each subdivision phase?

4 A. Yes.

5 Q. Okay. And that -- that signature on
6 Exhibit No. 5 was at what point by -- signed by Ohio
7 Edison? If you look at the big one, if you need to.

8 A. Well, it says here August 14, 1996 they
9 signed off on it.

10 Q. Okay. Mr. Schmitt, if you could look at
11 what's been marked as Exhibit No. 6. It's labeled
12 "Subdivision No. 3"?

13 A. Yes.

14 Q. On this particular one, does Ohio Edison
15 appear on this Exhibit No. 6?

16 A. Yes.

17 Q. Does it say "Ohio Edison"? I will direct
18 your attention to the bottom right-hand corner.

19 A. It says "FirstEnergy."

20 Q. Okay. And what was the date of that
21 signing?

22 A. That was signed May 28, 1998.

23 Q. Is that the same date that appears for
24 that subdivision phase on Exhibit No. 3?

25 A. Yes.

1 Q. Turn to the next page. It should be
2 Exhibit No. 7. The title of this -- this exhibit is
3 "Subdivision 4"?

4 A. Yes.

5 Q. And is this exhibit signed by
6 FirstEnergy?

7 MR. RANDAZZO: I object.

8 EXAMINER PRICE: Grounds?

9 MR. RANDAZZO: I have no -- well,
10 comment, I don't see the relevance of having plats
11 which convey an underground utility easement to
12 FirstEnergy, Ohio Edison, or other utilities to any
13 of the issues in this case.

14 EXAMINER PRICE: Mr. Corcoran, relevance?

15 MR. CORCORAN: Your Honor, this goes to
16 the issues of notice of when the electric company was
17 notified of the all-electric subdivision and sections
18 thereof.

19 EXAMINER PRICE: I think you need to
20 explain on that, Mr. Corcoran.

21 MR. CORCORAN: Certainly. We are -- we
22 have discussed that there are certain lots that are
23 all electric and some that have been able to receive
24 the discount and others that have not. And we are
25 going to discuss when those lots were -- when the

1 electric company was aware that the particular
2 subdivision phases were developed and then how that
3 fits into the timing of whether a lot is -- is
4 eligible for the discount or not.

5 EXAMINER PRICE: Could you repeat that
6 last phrase.

7 MR. CORCORAN: No. The idea is that
8 there are certain lots that are eligible for the
9 discount and certain lots that are not, and one of
10 the issues in this case is whether some of those lots
11 have been in existence prior to 2007, and the
12 argument is --

13 EXAMINER PRICE: I don't think that's an
14 issue at all in this case. I think the Commission
15 order was home and the RCP case, if I recall
16 correctly the Commission order -- well, first of all,
17 the Commission order speaks for itself, but as I
18 recall, the Commission was homes sold prior to
19 January 1, 2007.

20 So I don't think that the issue of
21 whether lots have been platted prior to the
22 Commission's entry on rehearing is relevant at all to
23 this.

24 MR. CORCORAN: One of the issues is
25 whether that order was correct in the sense that --

1 EXAMINER PRICE: I'm sorry, no, it's not.
2 That order -- the for appeal of the RCP stipulation
3 order ended 60 days after the Commission issued that
4 entry on rehearing. That is absolutely not an issue
5 in this case. We are not relitigating the RCP
6 stipulation under the guise of this case.

7 Mr. Randazzo, your objection is
8 sustained.

9 MR. RANDAZZO: Thank you, your Honor.

10 EXAMINER PRICE: Please proceed,
11 Mr. Corcoran.

12 MR. CORCORAN: Your Honor, I need a
13 minute, please.

14 EXAMINER PRICE: Let's go off the record
15 for 5 minutes.

16 (Recess taken.)

17 EXAMINER PRICE: Okay. Let's go back on
18 the record.

19 Mr. Corcoran, please proceed.

20 MR. CORCORAN: Thank you, your Honor.

21 Q. (By Mr. Corcoran) Mr. Schmitt, earlier we
22 had talked about conversations that Bob Schmitt Homes
23 had with Ohio Edison. And as far as the construction
24 of the homes were concerned, was Ohio Edison ever a
25 partner in the bidding of the home financially?

1 A. Yes. As far as marketing, they
2 contributed marketing dollars towards marketing our
3 homes.

4 Q. Did they produce -- do you know whether
5 or not they produced any ads for the company?

6 A. Yes.

7 MR. CORCORAN: Your Honor, I have a
8 one-page exhibit that I would like to introduce. And
9 at this point I'm not sure of the number.

10 EXAMINER PRICE: 14.

11 MR. CORCORAN: We are going to go that
12 way?

13 EXAMINER PRICE: We are. We already
14 marked the remaining plats.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 EXAMINER PRICE: Right now we are only
17 marking the first page of CKAP.

18 MR. CORCORAN: Correct. Just to make all
19 the attorneys aware, the exhibit that's been handed
20 to the court reporter is just the cover page that
21 looks like this, okay?

22 The information that's on the back was
23 miscopied and it will be something that's brought up
24 later.

25 MR. SMALL: This is the exhibit, the

1 front page?

2 MR. CORCORAN: Just this.

3 MR. SMALL: It's not two pages?

4 MR. CORCORAN: It is not.

5 Q. (By Mr. Corcoran) Mr. Schmitt, you have
6 been handed what's been marked Exhibit No. 14. Have
7 you ever seen this before?

8 A. Yes, I have.

9 Q. And could you tell me what it is?

10 A. It's an advertising ad from the
11 Illuminating Company, CEI, promoting Bob Schmitt
12 Homes.

13 Q. And you mentioned earlier that the CEI
14 and the other companies, Ohio Edison, FirstEnergy,
15 from time to time have contributed?

16 A. Yes, they did.

17 Q. To -- financially to the biddings of the
18 house? You mentioned that it was advertising,
19 correct?

20 A. Yeah. They contributed in two ways;
21 first marketing dollars towards marketing the
22 all-electric home, and secondly, to -- there were
23 dollars given to the company for putting in the high
24 efficiency air-to-air heat pump and/or geothermal and
25 those -- those numbers varied, and we as a company,

1 Bob Schmitt Homes, passed on those rebates to the
2 consumer.

3 Q. Mr. Schmitt, as far as Exhibit No. 14 is
4 concerned, can you give us an idea of when this might
5 have appeared?

6 A. Well, it's CEI's illuminating company, so
7 it's -- not quite sure when this came out. But it
8 had to have been before 1995.

9 Q. Well, if you looked at the -- the upper
10 left-hand corner with the words next to the
11 picture --

12 A. Yeah, for that I mean it's probably
13 somewhere between, you know, 1985 to 1990, somewhere
14 in that time frame.

15 Q. And the financial participation by the
16 company, did it go back that far or how far back did
17 it go?

18 A. It went back to the early '70s. By 1972
19 is when the relationship was struck between CEI and
20 Bob Schmitt Homes.

21 EXAMINER PRICE: What's your basis for
22 testifying it went back to the early '70s? In the
23 early '70s you were not yet general superintendent of
24 the company, were you?

25 THE WITNESS: No.

1 EXAMINER PRICE: So what's your basis for
2 saying the financial support went back to the early
3 '70s?

4 THE WITNESS: I'm a family member. I was
5 involved. You have got to remember --

6 EXAMINER PRICE: Do you have personal
7 knowledge the financial support went back to the
8 early '70s?

9 THE WITNESS: Yes, I do.

10 EXAMINER PRICE: How is that?

11 THE WITNESS: From Bob Schmitt and Ed
12 Schmitt.

13 EXAMINER PRICE: I'm sorry, Mr. Schmitt,
14 hearsay is not personal knowledge.

15 Q. (By Mr. Corcoran) Mr. Schmitt, have you
16 ever seen the documentation that would support your
17 information?

18 A. I've seen --

19 Q. Your knowledge of the financial
20 participation would go back to the '70s?

21 A. Yes.

22 MR. RANDAZZO: Well, if I might, when we
23 are talking about financial participation, are we
24 talking about Cleveland Electric Illuminating
25 contributing marketing dollars to Bob Schmitt Homes

1 or is it some other type of financial participation?

2 EXAMINER PRICE: I was referring to
3 marketing -- to the marketing dollars.

4 MR. CORCORAN: The witness has referred
5 to more than that.

6 MR. KUTIK: Well, your Honor, in light of
7 the witness's answer to your question, I move to
8 strike the answer preceding your question.

9 EXAMINER PRICE: Mr. Corcoran.

10 MR. CORCORAN: I'm sorry, I didn't hear
11 his --

12 EXAMINER PRICE: He moved to strike the
13 answer to the last question you posed. Do you have a
14 response to his motion to strike?

15 MR. KUTIK: Well, just to be clear, it
16 was the question before you had your colloquy with
17 him about his alleged personal knowledge.

18 EXAMINER PRICE: I understand, yes. The
19 last question posed by counsel.

20 MR. CORCORAN: Could we have that
21 question read, please, let's have the question --

22 EXAMINER PRICE: Let's have the last
23 question posed by Mr. Corcoran and the answer,
24 please.

25 (Record read.)

1 EXAMINER PRICE: Get everything caught
2 up. Mr. Kutik, you are moving to strike that last
3 answer?

4 MR. KUTIK: Yes, I am.

5 EXAMINER PRICE: Mr. Corcoran, your
6 response to his motion to strike.

7 MR. CORCORAN: And he's testified he has
8 personal knowledge.

9 EXAMINER PRICE: No. He testified he has
10 personal knowledge from Mr. -- based on hearsay. He
11 has not yet established he has personal knowledge of
12 those transactions dating back to the '70s.

13 MR. CORCORAN: Okay.

14 EXAMINER PRICE: Let me ask a question of
15 the witness. Have you reviewed the financial records
16 of Bob Schmitt Homes to establish that any of the
17 operating companies contributed financial support
18 to -- whether in the form of marketing dollars or
19 otherwise to the construction of all-electric homes
20 from -- between the period of 1972 and the date you
21 became general superintendent? Do you have present
22 recollection of any documents that support that?

23 THE WITNESS: I've seen documents.

24 EXAMINER PRICE: Do you have a present
25 recollection of any documents?

1 THE WITNESS: Yes.

2 EXAMINER PRICE: Okay.

3 THE WITNESS: I've seen it, yeah,
4 probably the last one that I've actually seen that
5 probably would be in the early, early -- mid-'80s
6 from CEI that they contributed marketing dollars
7 towards -- to Bob Schmitt Homes.

8 EXAMINER PRICE: In the early '80s.

9 THE WITNESS: Yes.

10 EXAMINER PRICE: And that's the earliest
11 you can place a document.

12 THE WITNESS: That's the earliest, I can,
13 yes.

14 EXAMINER PRICE: So we are going to
15 strike the last answer and Mr. Corcoran can rephrase
16 it based upon what we have heard so far.

17 MR. KUTIK: So to be clear, you are
18 granting the motion?

19 EXAMINER PRICE: I'm granting your motion
20 to strike, yes.

21 MR. KUTIK: Thank you.

22 Q. (By Mr. Corcoran) Mr. Schmitt, how far
23 back is your recollection as to the financial
24 contribution by CEI, Ohio Edison, or the FirstEnergy
25 companies?

1 A. I believe it was 1984.

2 MR. CORCORAN: Your Honor, I have a
3 one-page document that I would like to introduce as
4 Exhibit No. 15.

5 EXAMINER PRICE: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. Mr. Schmitt, you have been handed what's
8 been marked Exhibit No. 15. Have you ever seen that
9 document before?

10 A. Yes.

11 Q. Is this the document you were referring
12 to when you said you had knowledge of financial
13 contributions by the company back in the 1984?

14 A. Yes.

15 Q. This is a letter from Bob Schmitt Homes
16 to the illuminating company?

17 A. Yeah. Directed towards Ed Kaplan who was
18 our marketing rep.

19 Q. Do you know if you ever received the
20 payment --

21 A. Yes.

22 Q. -- mentioned in this letter?

23 Mr. Schmitt, were there ever any kind of
24 contracts -- I shouldn't say "any kind of." Were
25 there any contracts that were entered into by Bob

1 Schmitt Homes and any of the utility companies?

2 Regarding financial payments?

3 A. Yeah. I can recall an agreement with
4 FirstEnergy for our Richfield subdivision.

5 MR. CORCORAN: Your Honor, I have a
6 three-page document that I would like to have marked
7 as Exhibit No. 16.

8 EXAMINER PRICE: 16. So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. Mr. Schmitt, you have been handed what's
11 been marked as Exhibit No. 16. Have you ever seen
12 this document before?

13 A. Yes.

14 Q. Could you tell me what it is, please?

15 A. Well, it's a -- it's an agreement between
16 Bob Schmitt Homes and FirstEnergy to what they are
17 going to do to help us sell/market the all-electric
18 homes.

19 Q. And Mr. Schmitt, I am going to direct
20 your attending to the second page of this document.
21 The second paragraph. Could you read that first
22 sentence, please.

23 A. "To support your efforts in providing the
24 most efficient heating and cooling systems to
25 Ridgefield Homes, FirstEnergy will provide system

1 allowances, and special marketing support as well as
2 a discounted electric rate to your homebuyers."

3 Q. And the next sentence, please?

4 A. "The installation of the equipment noted
5 in Exhibit I will qualify Richfield Homes for the
6 customized program and homebuyers for FirstEnergy's
7 discounted all-electric rate. Customers are placed
8 on this year-round rate when the sole source of space
9 heating and water heating are electric."

10 Q. And Mr. Schmitt, did -- did FirstEnergy
11 provide system -- referring to the first sentence in
12 that paragraph, did FirstEnergy provide system
13 allowances in special marketing support a discount
14 electric rate to the homebuyers?

15 A. Yes.

16 Q. Could you also read the first sentence of
17 paragraph 3?

18 MR. KUTIK: Your Honor, I object --

19 EXAMINER PRICE: Grounds?

20 MR. KUTIK: -- to this document and any
21 testimony of the document. It is unsigned. It is
22 marked up. It is designated a proposal so any --
23 without proper foundation, your Honor, it's improper
24 to have any further testimony on the document.

25 EXAMINER PRICE: Mr. Corcoran, perhaps

1 you could lay a little further foundation for this
2 document.

3 Mr. Randazzo, we'll hear Mr. Randazzo's
4 objection and then we'll.

5 MR. RANDAZZO: Yeah. Your Honor,
6 foundation or not -- we all know there is a
7 foundation for home builders but there is a --
8 foundation or not, I just don't see what this has to
9 do with any of the issues in this proceeding.

10 We have agreements that even on the face
11 of the representations that are being made date back
12 to the late '90s. We're here talking about issues
13 related to continuation of a discount that was
14 established subsequent to that.

15 The witness has already testified that
16 he's aware they took away the all-electric discount
17 in 2006. I'm just not -- maybe it's just me, but I'm
18 not seeing how any of this advances the -- the -- any
19 of the issues that are open for litigation or
20 contested in this proceeding.

21 EXAMINER PRICE: Well, the Commission did
22 expand the scope of this hearing to include
23 FirstEnergy's marketing practices, so I think this is
24 within the scope of the Commission's order, but I do
25 agree that Mr. Corcoran needs to lay a better

1 foundation, and I'm sure he will do so at this time.

2 MR. CORCORAN: I would love to. Thank
3 you, your Honor.

4 Q. (By Mr. Corcoran) Mr. Schmitt, you've
5 seen this document before, correct?

6 A. Yes.

7 Q. And do you know if this document was ever
8 signed?

9 A. No, but I do know we received the checks
10 and every contract house that I built where we put in
11 the geothermal or air-to-air heat pump, those
12 incentives were passed on to our customers, and I can
13 certainly show that contract form with our customers.
14 I have all the contracts in my office.

15 MR. KUTIK: Your Honor, I renew my motion
16 to strike.

17 EXAMINER PRICE: Overruled.

18 Q. Mr. Schmitt, the Exhibit 1 on page 2 --

19 EXAMINER PRICE: Exhibit 1, Mr. Corcoran?

20 MR. CORCORAN: There is a chart in here
21 labeled "Exhibit 1."

22 EXAMINER PRICE: Oh, I'm sorry.

23 Q. Could you describe that -- how that
24 arrangement was supposed to work?

25 A. Well, as we -- when we built a home, if

1 they -- if the customer chose to go geothermal, it
2 was -- it was more expensive -- it's a more expensive
3 procedure to put geothermal in versus the air-to-air
4 heat pump, and the FirstEnergy was allowing dollars
5 to Bob Schmitt Homes to put those geothermal systems
6 in, and as I said before, Bob Schmitt Homes would
7 forward that credit to the homebuyer as it relates to
8 the purchase price.

9 Q. And, Mr. Schmitt, on this document on
10 pages 2 and 3, it mentions different incentives that
11 were available to Bob Schmitt Homes. And are those
12 incentives what you were talking about earlier with
13 help with financial assistance with equipment and
14 with marketing dollars?

15 A. Yes.

16 MR. CORCORAN: Your Honor, I have a
17 five-page document --

18 EXAMINER PRICE: I have a question first
19 on this.

20 MR. CORCORAN: Go ahead.

21 EXAMINER PRICE: This document.
22 Mr. Schmitt, does anywhere on this document does it
23 indicate that FirstEnergy is promising that there
24 will be a discount to all-electric customers
25 permanently?

1 THE WITNESS: Well, if you go to
2 paragraph 3 where it says "FirstEnergy's discounted
3 all-electric rate is frozen to the year 2006. At
4 this time, rates are expected to decrease by 20
5 percent," which, of course, we all know --

6 EXAMINER PRICE: That's two sentences.
7 The first is a guarantee that the rate would stay in
8 place until 2006. Did the -- did the rates stay
9 frozen until August, 2006?

10 THE WITNESS: Yes.

11 EXAMINER PRICE: Do you have any basis
12 for believing that it was not people's expectation in
13 1998 that energy prices might decline after 2006?

14 THE WITNESS: Well, it was our opinion
15 and always has been our opinion that in talking with
16 the various electric companies that, you know, there
17 is such a thing called inflation in our world and
18 nothing is the same. But the -- the difference
19 between the normal electric rate --

20 EXAMINER PRICE: I think you are not
21 being responsive to my question.

22 I'm saying was it unreasonable for
23 parties in December, 1998, to believe that in 2006
24 electric rates may decline?

25 THE WITNESS: Not according to

1 FirstEnergy.

2 EXAMINER PRICE: Did you have any reason,
3 in December of 1998, that that statement was not
4 true?

5 THE WITNESS: We believed everything
6 FirstEnergy told us.

7 EXAMINER PRICE: Okay. Thank you.

8 Mr. Corcoran, please proceed.

9 MR. CORCORAN: Are you ready now for my
10 next exhibit?

11 EXAMINER PRICE: Yes, I am.

12 MR. CORCORAN: Thank you. This will be
13 17.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. Mr. Schmitt, you were handed Exhibit 17.
16 Have you ever seen this document before?

17 A. Yes.

18 Q. And --

19 MR. KUTIK: Your Honor, may we have a
20 moment. I don't believe this was produced in
21 discovery.

22 EXAMINER PRICE: You may.

23 MR. KUTIK: Your Honor, I object to this
24 document and testimony on this document based on the
25 grounds it was not produced in discovery.

1 EXAMINER PRICE: Mr. Corcoran, did you
2 produce this document in discovery?

3 MR. CORCORAN: I am going to check right
4 now.

5 EXAMINER PRICE: Thank you.

6 MR. CORCORAN: I believe that we did.
7 Yes, we did, your Honor.

8 EXAMINER PRICE: On what date?

9 MR. CORCORAN: I can't tell by what I am
10 looking at right now.

11 EXAMINER PRICE: Is there some way you
12 can identify it for FirstEnergy?

13 MR. CORCORAN: Yeah. It -- I have to
14 check my e-mail, but it looks like it should have
15 been in and around January 14.

16 MR. KUTIK: Your Honor, I will accept
17 Mr. Corcoran's representation. We will further check
18 that. Our records are not in compliance with his
19 representation, I would advise the Bench.

20 EXAMINER PRICE: Okay. Well, why don't
21 we go ahead and take the testimony on this document
22 and in the event it turns out that it was not
23 tendered to you in discovery, we'll address that at
24 that time.

25 MR. KUTIK: Thank you.

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

3 MR. CORCORAN: Thank you.

4 Q. (By Mr. Corcoran) Mr. Schmitt, Exhibit
5 No. 17, have you seen it before?

6 A. Yes.

7 Q. And the title of the document is "Project
8 Assistance Program for Residential Builders and
9 Developers," right?

10 A. Yes.

11 Q. And was Bob Schmitt Homes a participant
12 in this program?

13 A. Yes.

14 Q. Mr. Schmitt, on the fourth page of this
15 exhibit, would you turn to that page, please. The
16 title of the page is "Energy Efficient Heating and
17 Cooling Systems," do you have that in front of you?

18 A. Yes, I do.

19 Q. And on this page it's mentioning the
20 maximum consumer benefits. Do you see that section?

21 A. Yes.

22 Q. And what are those benefits?

23 A. "Lower operating costs, discounted rates
24 from FirstEnergy, save money every month, more
25 dollars available to upgrade their dream home, energy

1 efficient homes have higher resale value."

2 Q. And, Mr. Schmitt, the --

3 MR. CORCORAN: Your Honor, I have a --

4 EXAMINER PRICE: Are you moving on from
5 this document?

6 MR. CORCORAN: For a second.

7 EXAMINER PRICE: For a second.

8 MR. CORCORAN: I will be referring to it
9 after I introduce this next one.

10 EXAMINER PRICE: Okay.

11 MR. CORCORAN: I have a three-page
12 document that I would like to have marked. We are up
13 to 18.

14 EXAMINER PRICE: So marked CKAP 18.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. Mr. Schmitt, do you have in front of you
17 Exhibit No. 18? Have you seen this document before?

18 A. Yes.

19 Q. And the title of this document is
20 "Project Assistance Program"?

21 A. Yes.

22 Q. Is that the same program that's referred
23 to in Exhibit 17?

24 A. Yes.

25 Q. And, Mr. Schmitt, in No. 18 this was a

1 project letter of agreement between FirstEnergy and
2 Bob Schmitt Homes? Is that right?

3 A. Yes, it was.

4 Q. Moving on to page 2, you can see in the
5 third paragraph Ohio Edison is going to provide money
6 in advance to purchase brochures and other forms of
7 advertising; is that right?

8 A. Yes.

9 Q. And then there was additional moneys that
10 were going to be distributed on a per-home basis?

11 A. Correct.

12 Q. There was a difference -- was there a
13 difference between the amount that was going to be
14 given for geothermal and heat pumps?

15 A. Correct.

16 Q. Turning to the next page, Mr. Schmitt, do
17 you see that first paragraph there?

18 A. Yes.

19 Q. It mentions that the -- well, are you
20 familiar with the FirstEnergy employee who signed
21 this agreement?

22 A. Yes, I am.

23 Q. And did you have conversations and
24 spend -- or, have conversations with this person?

25 A. On a constant basis.

1 Q. Who was -- who was he?

2 A. Mike Challenger.

3 Q. And what kind of conversations did you
4 have with Mr. Challenger?

5 A. It was all based on what he could do to
6 help, what FirstEnergy could do to help Bob Schmitt
7 Homes sell electric homes.

8 Q. And he mentions in the beginning
9 paragraph that he's excited about continuing the
10 working relationship that was started between the
11 companies in the '70s and has continued into the new
12 millennium?

13 A. Correct.

14 Q. He mentions also that this Project
15 Assistance Program is good for both companies and
16 customers will benefit?

17 A. Correct.

18 Q. And they are going to benefit how?

19 A. Well, the customer benefits by having a
20 very efficient home, and FirstEnergy, Ohio Edison,
21 CEI, all benefited by selling more electricity.

22 As I stated before, part of CEI's -- you
23 know, they were the first company we dealt with and
24 the -- the idea of selling more electricity in the
25 winter months, in the colder months, was very

1 appetizing to them because they didn't have a whole
2 lot of business during those months. Their
3 business --

4 MR. KUTIK: Your Honor, at this point we
5 are beyond the question so I will again move to
6 strike.

7 EXAMINER PRICE: We will grant the motion
8 to strike.

9 Please just focus on answering the
10 question your counsel asks.

11 THE WITNESS: Okay.

12 EXAMINER PRICE: But first, I have a
13 question. At the bottom of page 3 of CKAP Exhibit 18
14 it states "I'd like to participate. I have read and
15 agree to the attached Project Assistance Agreement."

16 Did you -- do you have a copy of the
17 project assistance -- Project Assistance Agreement?

18 THE WITNESS: Personally do not have a
19 copy with me, your Honor.

20 EXAMINER PRICE: Are you going to
21 produce -- introduce the Project Assistance
22 Agreement, Mr. Corcoran?

23 MR. CORCORAN: Your Honor, this is the
24 only copy that we have.

25 THE WITNESS: What I can produce are the

1 checks, copies of the checks.

2 EXAMINER PRICE: I am just asking, this
3 agreement incorporates another agreement.

4 MR. CORCORAN: Oh, I'm sorry, I didn't
5 understand your question.

6 EXAMINER PRICE: Apparently a Project
7 Assistance Agreement attached to this document. I am
8 asking if you are planning on introducing the Project
9 Assistance Agreement.

10 MR. CORCORAN: No, your Honor. We don't
11 have that document.

12 EXAMINER PRICE: Okay. Thank you.
13 Please proceed, Mr. Corcoran.

14 MR. CORCORAN: Your Honor, I have a
15 two-page exhibit that I would like to introduce at
16 this time, No. 19.

17 EXAMINER PRICE: So marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. Mr. Schmitt, you have some time to look
20 at this document --

21 A. Yes.

22 Q. -- that has just been handed to you that
23 has been marked Exhibit 18?

24 And you had mentioned that there were
25 checks given to you under the terms of these

1 programs?

2 A. Correct.

3 MR. KUTIK: I'm sorry, I'm having -- I
4 can't hear the questions.

5 EXAMINER PRICE: Please speak up,
6 Mr. Corcoran.

7 MR. CORCORAN: Could you read the last
8 question to him, please.

9 EXAMINER PRICE: Please.

10 (Record read.)

11 EXAMINER PRICE: Mr. Corcoran, you
12 intended end to say "Exhibit 19"?

13 MR. CORCORAN: I did, your Honor. Yes.

14 Q. (By Mr. Corcoran) So, Mr. Schmitt, you've
15 been handed Exhibit 19 and the first page being a
16 letter, and the second page being a check; is that
17 correct?

18 A. Correct.

19 Q. And the first page explains what,
20 Mr. Schmitt?

21 A. Well, it identifies the subplot for the
22 house that was just constructed that the geothermal
23 heating system was installed.

24 Q. And the second page signifies what?

25 A. The rebate amount for each particular

1 subplot and also references the name of the person I
2 contracted with to build the house.

3 Q. Okay. So this is an example of those
4 financial incentives that were offered to the
5 company?

6 A. Yeah. And as I said before, these
7 incentives were passed on dollar for dollar to the
8 homeowner.

9 EXAMINER PRICE: Mr. Schmitt, you are not
10 testifying that these checks that are attached to
11 CKAP Exhibit 19 are in return for the letter of
12 agreement that is CKAP Exhibit 18, are you?

13 THE WITNESS: Yeah. That was part of it.

14 MR. CORCORAN: Your Honor, I believe
15 this -- well, Mr. -- can I ask a question then?

16 EXAMINER PRICE: Please proceed.

17 Q. (By Mr. Corcoran) Mr. Schmitt, would
18 these rebates and incentives match Exhibit No. -- as
19 proposed by Exhibit No. 16?

20 A. Yes. The numbers aren't the same but it
21 refers to the geothermal systems.

22 Q. 18 is more related to the --

23 A. It does show the geothermal systems too.

24 Q. But it's also alluding to the marketing
25 dollars.

1 EXAMINER PRICE: But let's just let the
2 record be clear, what's the date on CKAP 18?

3 THE WITNESS: March 13, 2000.

4 EXAMINER PRICE: And what are the dates
5 of the checks on CKAP 19?

6 THE WITNESS: June 24, 1999.

7 EXAMINER PRICE: So you are not
8 testifying that 18 and 19 are related in any fashion;
9 is that correct?

10 THE WITNESS: No, no.

11 EXAMINER PRICE: Thank you.

12 Q. Mr. Schmitt, the financial incentives
13 that the -- that Ohio Edison and CEI and FirstEnergy
14 contributed to Bob Schmitt Homes, those -- those
15 incentives were paid over several years, weren't
16 they?

17 A. Oh, yes.

18 Q. And you testified that your personal
19 knowledge goes back to '84?

20 A. Yes.

21 MR. CORCORAN: Your Honor, there is
22 another exhibit I would like to introduce, which is a
23 two-page exhibit. If you remember, it was miscopied
24 and attached to an earlier exhibit which everybody
25 received. If you remember this first cover page? I

1 am moving on to now the back sides of that cover page
2 and following page.

3 EXAMINER PRICE: We will mark then the
4 backside of that page --

5 MR. CORCORAN: I am going to hand the
6 court reporter --

7 EXAMINER PRICE: A clean one.

8 MR. CORCORAN: A clean one.

9 EXAMINER PRICE: We will mark that CKAP
10 20.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. KUTIK: And to be clear, it's both of
13 these pages, correct?

14 Q. Mr. Schmitt, you have been handed what's
15 been marked as Exhibit 20. Do you have that in front
16 of you?

17 A. Yes.

18 Q. Have you seen that document before?

19 A. Yes.

20 Q. And --

21 MR. KUTIK: Your Honor, I object.

22 EXAMINER PRICE: Grounds, please.

23 MR. KUTIK: Two. One, it's cut off so I
24 object to any question with respect to a document I
25 can't read, and two, relevance.

1 EXAMINER PRICE: Well, on your first
2 grounds I will overrule you for the time being.
3 Let's see what his questions are and if it relates to
4 the cut-off part of the page.

5 And on your second grounds, I'll also
6 overrule you for the time being. Let's see if he can
7 true this up to the relevant issues in this case.

8 Please proceed, Mr. Corcoran.

9 MR. CORCORAN: Okay. Thank you, your
10 Honor.

11 Q. (By Mr. Corcoran) On this second page of
12 this document, which is the part that's not cut off,
13 do you have that in front of you?

14 A. Yes.

15 Q. The -- first of all, do you know what
16 this document is?

17 A. It's advertising showcasing who Bob
18 Schmitt Homes is.

19 Q. And this information was communicated to
20 who?

21 A. The public.

22 Q. Future customers?

23 A. Customers, yeah.

24 Q. And on the second page of this document
25 there is a section marked "Energy Conservation." Do

1 you see that?

2 A. Yes.

3 Q. And at the bottom of that in that last
4 paragraph it starts with "Quality energy efficient
5 measures"?

6 A. Yes.

7 Q. Do you see that? Okay. It mentions in
8 here that -- well, I'll have you read the -- that
9 last section, please.

10 A. "Quality energy efficient measures like
11 these not only minimize monthly utility payments but
12 qualify owners of Bob Schmitt Homes for the energy
13 efficient reduction in their bills from The Cleveland
14 Electric Illuminating Company."

15 Q. Mr. Schmitt, where would you have gotten
16 that information from?

17 MR. KUTIK: Your Honor, I'll object again
18 on grounds of relevance. Move to strike.

19 EXAMINER PRICE: Overruled.

20 Q. Please answer the question.

21 A. CEI.

22 Q. And so the information that Bob Schmitt
23 Homes communicated to customers on this issue
24 of rates or reduction in bills was something that was
25 given to you by the utility companies themselves?

1 A. Yeah. Actually they supplied us with the
2 kilowatt usage for each home and we put that together
3 in a chart as compared to square footage and we were
4 able to show our future prospective customers what
5 their energy costs would be as it related to square
6 footage of the house they were looking to build or
7 wanted to build.

8 EXAMINER PRICE: Do you have a date when
9 this brochure was utilized by Bob Schmitt Homes?

10 THE WITNESS: The looks of the houses it
11 would probably be 1977, '76, somewhere in that time
12 frame.

13 EXAMINER PRICE: And did you run -- did
14 you participate in the formulation of this brochure?

15 THE WITNESS: No.

16 EXAMINER PRICE: The language that you
17 read that's in the Bob Schmitt brochure, you have no
18 idea -- you have no personal knowledge of the genesis
19 of that knowledge, do you, where that language came
20 from?

21 THE WITNESS: I know it came through the
22 relationship with Bob Schmitt and CEI.

23 EXAMINER PRICE: How do you know that?

24 THE WITNESS: I lived it, this was our
25 life. I mean, home building is our --

1 EXAMINER PRICE: I understand that you
2 have been involved with the company your entire
3 career. My question is at the time of this brochure
4 were you involved with the relationship between Bob
5 Schmitt and CEI or were you involved in a different
6 part of the company?

7 THE WITNESS: I was involved in the
8 construction of the homes.

9 EXAMINER PRICE: So the answer to my
10 question you were not involved with the relationship
11 between CEI and Bob Schmitt Homes?

12 THE WITNESS: No, at this time, no.

13 EXAMINER PRICE: Thank you.

14 Q. Mike, has the company used --

15 MR. KUTIK: Your Honor, based upon that
16 move to strike his answer with regard to where the
17 answer came from?

18 EXAMINER PRICE: Mr. Corcoran, response,
19 please.

20 MR. CORCORAN: Mr. Schmitt was aware of
21 the -- the relationship between CEI and Bob Schmitt
22 Homes.

23 EXAMINER PRICE: Mr. Corcoran, his only
24 basis would have been hearsay.

25 MR. CORCORAN: He was working for the

1 company at that time.

2 EXAMINER PRICE: Well, I understand that,
3 but he wasn't involved in that aspect of the
4 relationship. That aspect of the company. He
5 doesn't have personal knowledge --

6 THE WITNESS: Can I say something?

7 EXAMINER PRICE: No.

8 He doesn't have personal knowledge. I
9 mean, I understand that he has spent his career with
10 this firm but the question is whether he has personal
11 knowledge. And if he doesn't have personal
12 knowledge, it's hearsay, and it can only come in --
13 come in under hearsay if you can point to an
14 exception that's relevant and that would fit.

15 MR. CORCORAN: I can't point to one, your
16 Honor.

17 EXAMINER PRICE: Then I have no choice
18 but to grant the motion to strike.

19 MR. CORCORAN: I understand that.

20 Q. (By Mr. Corcoran) Mr. Schmitt, the
21 language that's contained in this document, is that
22 the language that's been used throughout the years in
23 its marketing?

24 A. On a consistent basis.

25 Q. And you are personally aware of those

1 statements made in the marketing of the company?

2 A. Yes.

3 Q. And the information, since the
4 information has been consistent, your personal
5 knowledge is that it has come from the company?

6 MR. KUTIK: Objection.

7 Q. The information that --

8 EXAMINER PRICE: I think that -- I don't
9 know what the grounds of his objection is, but you
10 are certainly leading the witness.

11 MR. CORCORAN: And that's why I was
12 changing my question.

13 EXAMINER PRICE: Please rephrase.

14 Q. Mr. Schmitt, the information that's
15 communicated to those customers regarding is -- where
16 does that come from?

17 A. The information came from CEI.

18 Q. And did it also come from subsequent
19 companies over the years? I am not specifically
20 talking about this information, I am talking about
21 you have used this language consistently through the
22 years and that information has consistently come from
23 the companies?

24 MR. KUTIK: Your Honor, I object on two
25 grounds; one, he is testifying at this point, that

1 is, counsel, so it's leading, secondly, no foundation
2 has been laid to establish, as you pointed out in
3 your question to this witness, his personal
4 knowledge.

5 The fact that it's, quote, consistent,
6 end quote, doesn't automatically make us jump into
7 the realm of his personal knowledge.

8 EXAMINER PRICE: On the aspect of leading
9 the witness I am going to sustain your objection.
10 With respect to the permanent knowledge issue, I am
11 going to give Mr. Corcoran some leeway but it will go
12 to the weight of the testimony that that will be
13 given by the Commission.

14 MR. CORCORAN: Thank you, your Honor.

15 Q. (By Mr. Corcoran) Mr. Schmitt, you
16 testified you have personal knowledge of the use of
17 this language in marketing efforts by Bob Schmitt
18 Homes; is that right?

19 A. Yes.

20 Q. Okay. And the information that is used
21 in those marketing efforts during the course of time
22 with the company, where did that information come
23 from?

24 MR. KUTIK: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: Again, no foundation, your
2 Honor. The fact that he knows about the marketing
3 doesn't necessarily know -- establish he has personal
4 knowledge with respect to the source of the
5 statement.

6 EXAMINER PRICE: Mr. Schmitt, were you at
7 any time responsible for the relationship between CEI
8 in your career at Bob Schmitt Homes?

9 THE WITNESS: No.

10 EXAMINER PRICE: At any time did you
11 personally --

12 THE WITNESS: I --

13 EXAMINER PRICE: You have to answer my
14 questions. At any time were you involved personally
15 involved with negotiations with CEI or Ohio Edison or
16 Toledo Edison?

17 THE WITNESS: Ohio Edison, yes.

18 EXAMINER PRICE: Okay. Then,
19 Mr. Corcoran, you need to ask the witness questions
20 as it relates to his relationship with Ohio Edison
21 rather than CEI.

22 Q. (By Mr. Corcoran) Mr. Schmitt, does the
23 company use similar language in its marketing efforts
24 currently, or I'm sorry, not currently, but since the
25 company has had a relationship with Ohio Edison?

1 A. The message has been consistent all
2 through the years.

3 Q. And you personally have knowledge of
4 that?

5 A. Yes.

6 Q. And the message that's been communicated
7 during your time of your relationship with Ohio
8 Edison, where did the information come from?

9 A. That came from Ohio Edison.

10 MR. CORCORAN: If I could just have a
11 moment, your Honor.

12 EXAMINER PRICE: You may.

13 MR. CORCORAN: Your Honor, I have -- I
14 have several documents to introduce but I have
15 completely -- can we go off the record for a second?

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

18 (Discussion off the record.)

19 EXAMINER PRICE: Let's take 5 minutes and
20 stay off the record.

21 (Discussion off the record.)

22 EXAMINER PRICE: At this time we're going
23 to take recess for lunch. We will return at 2:15.
24 Thank you all. Off the record.

25 (Lunch recess taken at 1:13 p.m.)

1 Thursday Afternoon Session,
2 February 17, 2011.

3 - - -

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

6 Proceed, Mr. Corcoran.

7 MR. CORCORAN: Thank you, your Honor. At
8 this time I would like to introduce CKAP Exhibits 21
9 through 30.

10 EXAMINER PRICE: 21 through 30?

11 MR. CORCORAN: Yes.

12 (EXHIBITS MARKED FOR IDENTIFICATION.)

13 - - -

14 MICHAEL SCHMITT

15 called as a witness, being previously duly sworn,
16 testified further as follows:

17 DIRECT EXAMINATION (Continued)

18 By Mr. Corcoran:

19 Q. Mr. Schmitt, you have been handed
20 Exhibits 21 through 30. Do you have those in front
21 of you?

22 A. Excuse me?

23 Q. Do you have those in front of you?

24 A. Yes, I do.

25 Q. Mr. Schmitt, earlier you testified that

1 in 1987 you started -- you started in a leadership
2 role, more administrative role when you became
3 general superintendent; is that right?

4 A. Yes, I did.

5 Q. And as general superintendent and
6 subsequently as CEO, are you responsible for the
7 overall company and the people that are employed by
8 the company?

9 A. Yeah. I am in the position of general
10 superintendent of Bob Schmitt Homes, basically
11 responsible for all the day-to-day operations of Bob
12 Schmitt Homes and everything associated with it.

13 Now, we have numerous officers within the
14 company, numerous superintendents, and when I became
15 general superintendent, I was responsible for
16 everybody and their actions with the exception to Ed
17 Schmitt and Bob Schmitt.

18 Q. And you are aware of the relation -- you
19 also had responsibility over the relationship between
20 the -- at that time '87 would have still been CEI and
21 Ohio Edison?

22 A. Yes.

23 Q. And you testified earlier that there were
24 a number of CEI and Ohio Edison representatives that
25 you had contact with.

1 A. Yes.

2 Q. Could you tell me who some of those
3 people were?

4 A. From CEI my contacts were with Ed Kaplan
5 who was a marketing rep, Tony DeSinska who was Ed
6 Kaplan's boss, and as I mentioned previously, I had
7 met Anthony Lockhart on two occasions.

8 Q. And --

9 A. And also with -- with respect to Ohio
10 Edison, FirstEnergy, a gentleman by the name of Mike
11 Challenger.

12 Q. And may have been others that had contact
13 with other people within Bob Schmitt Homes that --

14 A. Yeah. There were other representatives
15 that they had contact with. Joe Molnar is one of our
16 officers. He is a -- he is actually in charge of the
17 marketing department which I oversee. And Joe
18 reports to me on the daily activities of that
19 department.

20 Q. Earlier you had testified that there was
21 some financial incentives that the electric utilities
22 have provided to Bob Schmitt Homes. And I want to
23 direct your attention to Exhibits 21 through 30.
24 Have you seen these documents?

25 A. Yes, I have.

1 Q. We'll start with just 21, please.

2 A. Yes, I've seen it before.

3 Q. And can you describe it to me.

4 A. Well, it's a check from Ohio Edison dated
5 December 7, 1992. And it's labeled "Advertising
6 Rebate." Money to contribute to advertising of the
7 all-electric home from Bob Schmitt Homes.

8 Q. And you knew about this payment?

9 A. Yes.

10 Q. And --

11 EXAMINER PRICE: Can I ask you a
12 question?

13 THE WITNESS: Uh-huh.

14 EXAMINER PRICE: What's the significance
15 to you they contributed money to the advertising in
16 your opinion? I mean --

17 THE WITNESS: Well, we are a conduit for
18 them to sell their electricity and we're -- we're --
19 from the energy efficiency standpoint we are a --
20 we're a team partner with them in selling the
21 all-electric home.

22 EXAMINER PRICE: Was there something
23 inappropriate about that in 1992?

24 THE WITNESS: Inappropriate? No. I
25 don't think so.

1 EXAMINER PRICE: Okay.

2 THE WITNESS: If --

3 EXAMINER PRICE: If the evidence in the
4 hearing demonstrated -- indicated that both the
5 individual customers who had the all-electric homes
6 and the other ratepayers benefited by the
7 construction of all-electric homes, does that mean
8 FirstEnergy did something wrong?

9 THE WITNESS: Not at this time.

10 EXAMINER PRICE: Okay.

11 THE WITNESS: No.

12 EXAMINER PRICE: Thank you.

13 Q. (By Mr. Corcoran) Mr. Schmitt, the next
14 exhibit, 22, can you describe that to me as well?

15 A. That's a similar document. Same date, a
16 little less money.

17 Q. And, again, it was a payment from Ohio
18 Edison to Bob Schmitt Homes?

19 A. Yes.

20 Q. And it looks -- can you tell what it
21 might have been used for or been --

22 A. I'm sorry, I couldn't hear you.

23 Q. Could you tell what it might have been a
24 check for?

25 A. It was a check towards reimbursing us for

1 advertising dollars.

2 Q. Okay. And Exhibit No. 23, would you
3 please describe that to me, please.

4 A. Same thing, a couple days later, December
5 10, '92, advertising dollars.

6 EXAMINER PRICE: Mr. Corcoran, I will let
7 you lead a little bit more for the sole purpose of
8 identifying these documents.

9 MR. CORCORAN: Excuse me?

10 EXAMINER PRICE: I'll let you lead a
11 little bit more for the sole purpose of identifying
12 these documents.

13 MR. CORCORAN: Thank you, your Honor.

14 Q. And, again, Mr. Schmitt, this check was a
15 check from Ohio Edison to Bob Schmitt Homes and for
16 advertising money?

17 A. Correct.

18 MR. RANDAZZO: I hate to do this, are we
19 on the check for \$537.07?

20 MR. CORCORAN: Yes.

21 MR. RANDAZZO: Thank you.

22 Q. Mr. Schmitt, if you could turn to 24.
23 This is a check from Ohio Edison dated -- the check
24 is dated September 2, 1997, to Bob Schmitt Homes; is
25 that right?

1 A. Correct.

2 Q. And, again, that would have been a
3 payment for either advertising or equipment rebates?

4 A. Correct.

5 Q. And the next page, 25, it looks like a --
6 a chart that explains the addresses and the amount of
7 the total rebate paid and when those payments were
8 made; is that right?

9 A. Correct.

10 Q. Is that something that you or the company
11 would have prepared?

12 A. Well, yeah. This list here was our
13 accounting of the -- of the money received from Ohio
14 Edison.

15 Q. It covers the years it looks like --
16 well, it covers November, '96, through August of '97?

17 A. Yes.

18 Q. And Exhibit No. 26, Mr. Schmitt, is a
19 check, the check is dated June 16, 1998. It is a
20 check from Ohio Edison to Bob Schmitt Homes in the
21 amount of \$17,625; is that right?

22 A. Correct.

23 Q. Again, it was a financial payment to Bob
24 Schmitt Homes for either advertising or rebate --
25 equipment rebates?

1 A. Yes.

2 Q. 27, the next page, it looks like a check
3 from Ohio Edison to Bob Schmitt Homes for a total of
4 \$12,750, check dated October 20, 1998?

5 A. Yes.

6 Q. And it was for payments either related to
7 advertising or equipment rebates?

8 A. Correct.

9 Q. The next page, 28.

10 A. Okay.

11 Q. This is a letter from FirstEnergy to Bob
12 Schmitt Homes that explains a rebate check and the
13 sublots that were attached to those rebates; is that
14 right?

15 A. Yes.

16 Q. Next page is 29. 29 is a -- an agreement
17 between Bob Schmitt Homes and FirstEnergy regarding a
18 rebate off of an entry fee to a Parade of Homes
19 entry; is that right?

20 A. Yeah, that's a rebate to participate in
21 the Parade of Homes as a partner of FirstEnergy.

22 Q. And the only way you were eligible for
23 that rebate was because it was an all-electric home
24 according to --

25 A. Correct.

1 Q. -- the third line?

2 MR. RANDAZZO: Could I have question and
3 answer read back, please?

4 EXAMINER PRICE: Please.

5 (Record read.)

6 MR. RANDAZZO: I object, move to strike.

7 EXAMINER PRICE: Grounds, please?

8 MR. RANDAZZO: Leading, and inconsistent
9 with the face of the document.

10 EXAMINER PRICE: Can you explain further,
11 Mr. Randazzo, on the second grounds?

12 MR. RANDAZZO: Yeah, the second grounds,
13 the third line is apparently the model home
14 sponsorship package. Is that what you are referring
15 to, Counsel?

16 MR. CORCORAN: Yes.

17 MR. RANDAZZO: It says "Electric Heating
18 Technologies." It doesn't say anything about all
19 electric.

20 EXAMINER PRICE: Sustained.

21 Please rephrase, Mr. Corcoran.

22 MR. CORCORAN: Okay.

23 Q. (By Mr. Corcoran) Mr. Schmitt, this
24 was -- this was an agreement between FirstEnergy and
25 Bob Schmitt Homes where it -- you would receive a

1 discount off of the entry fee for a home that was
2 entered into the Parade of Homes?

3 A. Yes.

4 Q. And it had to have electric heating
5 technologies; is that right?

6 A. Well, that's all we had in the
7 subdivision was electric. There was no other choice.

8 Q. You anticipated my next question. The
9 address of the entry home was -- on here it says 8616
10 Gatewood Drive?

11 A. Correct.

12 Q. And was that home an all-electric home?

13 A. Yes, it was.

14 Q. And so it, therefore, qualified as an
15 electric heating technology?

16 A. It was an all-electric geothermal home.

17 Q. Okay. Did you receive 50 percent off the
18 builder entry fee?

19 A. Yes.

20 Q. Next page is 30.

21 MR. CORCORAN: I'm sorry, your Honor. It
22 looks like I have more than 10 pages here.

23 EXAMINER PRICE: No. I had it right. 21
24 through 30, right?

25 MR. RANDAZZO: More than 10.

1 MR. CORCORAN: There's more than 10 here.

2 EXAMINER PRICE: My mistake.

3 MR. CORCORAN: I meant to say 15
4 originally, I guess.

5 MR. RANDAZZO: Let's wait and see.

6 MR. CORCORAN: Yeah, we'll get there.

7 Q. (By Mr. Corcoran) 30, Mr. Schmitt, is a
8 letter from FirstEnergy to Bob Schmitt Homes
9 regarding rebates for geothermal homes; is that
10 right?

11 A. Correct.

12 Q. And it was May 24 of 1999?

13 A. Correct.

14 Q. We also have before you on the next page,
15 Exhibit No. 31.

16 EXAMINER PRICE: I have no next page.

17 MR. KUTIK: That's what we don't have.

18 MR. RANDAZZO: Well, it's also in my
19 package what would have been Exhibit 31 appears to
20 also be Exhibit 19.

21 MR. CORCORAN: I'm sorry, yes. We have
22 already entered that into the record.

23 MR. RANDAZZO: Well, it's been marked.

24 EXAMINER PRICE: It's been marked as
25 Exhibit 19.

1 MR. CORCORAN: I'm sorry, yes.

2 EXAMINER PRICE: Right now, we are at
3 Exhibit 30 and holding.

4 MR. CORCORAN: And you don't have
5 anything else beyond 30?

6 EXAMINER PRICE: No.

7 MR. RANDAZZO: I do.

8 EXAMINER PRICE: Perhaps you can return
9 those to Mr. Corcoran at the appropriate time.

10 Q. (By Mr. Corcoran) Mr. Schmitt, the
11 purpose of these payments between the electric
12 utility and Bob Schmitt Homes was to -- well, I'll
13 ask the question instead of leading it.

14 What was the purpose of these payments
15 from the electric utility company to Bob Schmitt
16 Homes?

17 A. Well, I created a partnership between the
18 two companies and that partnership was to sell the
19 all-electric -- all-electric development that we had
20 and all the sublots within that development with all
21 electric.

22 MR. RANDAZZO: Move to strike.

23 EXAMINER PRICE: Grounds?

24 MR. RANDAZZO: Opinion. The creation of
25 a partnership involves at least legal judgment and I

1 perhaps should have objected sooner but the -- the
2 answer is not responsive to the question and contains
3 an opinion that should have been the subject of
4 prefiled testimony if it was going to be expressed.

5 MR. KUTIK: We join in that objection.

6 MR. CORCORAN: And, your Honor, he is not
7 an expert, and he's not been designated as an expert.
8 He is not offering expert testimony.

9 EXAMINER PRICE: As I understand it, he
10 is offering this testimony solely his state, his own
11 personal knowledge, his own perception of the purpose
12 of partnership; is that correct?

13 MR. CORCORAN: The partnership between
14 the two companies, yes.

15 EXAMINER PRICE: Right. Okay. So why
16 don't you rephrase the question and ask it in a
17 more -- consistent with that manner.

18 MR. CORCORAN: Okay.

19 MR. KUTIK: So you will grant the motion,
20 your Honor?

21 EXAMINER PRICE: I am hoping he will
22 rephrase the question; we won't have to get to that.

23 MR. KUTIK: Well, because there was an
24 answer so there was a motion to strike.

25 EXAMINER PRICE: Then I will grant the

1 motion to strike.

2 Rephrase the question, Mr. Corcoran.

3 Q. (By Mr. Corcoran) Mr. Schmitt, were you
4 using the word "partnership" as a legal term?

5 A. No.

6 MR. CORCORAN: Would you still like me to
7 rephrase that question, your Honor?

8 EXAMINER PRICE: I think I would like you
9 to rephrase the question because I think you're --
10 you're tending to ask the question what was
11 FirstEnergy's perspective in forming their business
12 relationship. He can't testify to what was in
13 FirstEnergy's mind. He can only testify to what was
14 in Bob Schmitt's purposes -- or his purposes on
15 behalf of Bob Schmitt.

16 Q. Mr. Schmitt, your understanding of the
17 relationship between FirstEnergy and Bob Schmitt
18 Homes was what?

19 A. Our relationship with FirstEnergy was
20 solely on the idea of building all-electric homes and
21 we're not -- we're not a scattered lot builder. We
22 build neighbors, communities. We buy big blocks of
23 land and develop that land into one dedicated
24 subdivision.

25 And in talking with all the reps from

1 FirstEnergy, Ohio Edison, it was understood that this
2 subdivision would be an all-electric subdivision.

3 Q. And, Mr. Schmitt, the homes that were
4 constructed in that subdivision are going to remain
5 in place for a long period of time -- strike that.

6 In order to be eligible for the
7 discounted energy rate that was offered by the
8 electric companies, were there construction standards
9 that had to be met in order to achieve that rate?

10 A. Yes.

11 Q. And what were those standards?

12 A. Well, it gets back to the energy
13 efficiency and -- and going back to the formation of
14 this rate we worked endlessly, tirelessly on the
15 improving upon above the building code for energy
16 standards and not only from an equipment standpoint
17 which we can see here with the air-to-air pump and
18 the geothermal being a much more efficient piece of
19 equipment than say even an 80 percent or even a
20 90 percent gas furnace, the -- the insulation
21 standards were -- were upgraded tremendously to build
22 this kind of house at a cost to the homeowner.

23 That wasn't -- the homeowners knew that
24 that was going to be a little bit more money but they
25 knew they were getting a well-insulated, well-built

1 energy-efficient home.

2 Q. And --

3 A. The two companies were green well before
4 this green became effective here in the last five to
5 seven years. And that's really what's kind of
6 disheartening on my behalf.

7 MR. KUTIK: Your Honor, at this point
8 he's gone -- moved beyond the question so I move to
9 strike the last comment.

10 EXAMINER PRICE: Motion to strike is
11 granted.

12 Q. Mr. Schmitt, was there a specific
13 construction requirement to achieve the discount
14 rate?

15 MR. KUTIK: Objection, asked and
16 answered.

17 EXAMINER PRICE: Sustained.

18 Q. Could you give me an example of some of
19 those construction standards that were required in
20 order to achieve the rate, discount rate?

21 A. You have a minimum of an 80-gallon hot
22 water tank. If you didn't have that 80-gallon hot
23 water tank, it didn't qualify for that rate.

24 EXAMINER PRICE: Mr. Schmitt, are you
25 familiar with the concept of a payback period?

1 THE WITNESS: Yeah.

2 EXAMINER PRICE: Okay. So what would --
3 in 1985 when you were superintendent --

4 THE WITNESS: '87.

5 EXAMINER PRICE: '87, sorry, my
6 mistake -- what would the payback period have been
7 for the 80-gallon tank you just talked about on the
8 then-applicable all-electric rate? Have you ever
9 done a study? Are you aware of that? How quickly
10 with the reduced rate in the '80s would a customer
11 have been paid back for their additional investment?

12 THE WITNESS: I really can't tell you
13 that on the air-to-air system because at that point
14 we did not -- in '87 we did not -- did not put any
15 geothermal systems in. The first geothermal system
16 went in --

17 EXAMINER PRICE: I was just referring to
18 the 80-gallon hot water tank we're talking about.

19 THE WITNESS: That's just standards the
20 electric company put upon us. The reason for that is
21 because the electric tank has a slower recovery rate
22 than the gas.

23 EXAMINER PRICE: I understand.

24 THE WITNESS: So I don't think an
25 electric home could function properly with a family

1 living in the home on a, say, 50-gallon or 40-gallon
2 tank, which most gas homes have, you know, 40 to 50.
3 So with the slower recovery rate, I think it was --

4 EXAMINER PRICE: It would have been
5 impractical to build an all-electric home without an
6 80-gallon tank?

7 THE WITNESS: Yes.

8 EXAMINER PRICE: It would have benefited
9 nobody.

10 THE WITNESS: A lot of our homes, our
11 bigger homes, had 120-gallon tanks.

12 EXAMINER PRICE: Thank you.

13 Please proceed, Mr. Corcoran.

14 MR. CORCORAN: Thank you, your Honor.

15 Q. (By Mr. Corcoran) Mr. Schmitt, you were
16 talking about geothermal installation -- equipment
17 installation and do you know how long the payback
18 period was for that?

19 A. Yeah. When Ohio Edison was giving out
20 the rebates on the geothermal systems, we in turn, as
21 I said before, passed that rebate on to our customer
22 and our calculations were, depending on the size of
23 the home and the design of the home, the payback
24 period was anywhere from 7 to 10 years on the
25 installation of that geothermal heating and cooling

1 system.

2 EXAMINER PRICE: In other words, a
3 customer who installed one in 1997, as some of your
4 rebates indicated, would have been paid back their
5 investment sometime between 2004 and 2007?

6 THE WITNESS: Assuming they were still in
7 the house. Assuming that the rate was similar.

8 MR. CORCORAN: That's all the questions I
9 have.

10 EXAMINER PRICE: Mr. Small,
11 cross-examination?

12 MR. SMALL: No questions, your Honor.

13 EXAMINER PRICE: Mr. Sites.

14 MR. SITES: Thank you, your Honor. No
15 questions.

16 EXAMINER PRICE: Mr. Randazzo.

17 MR. RANDAZZO: Yes, just a few, I hope.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Randazzo:

21 Q. Mr. Schmitt, do you have in front of you
22 what has been marked as CKAP Exhibit No. 16? It's
23 the FirstEnergy Project Assistance Program document?
24 16 would have been relatively --

25 A. Yes.

1 Q. -- a few hours ago.

2 A. Yes, sir.

3 Q. Okay. Would you turn to the fourth page
4 in.

5 A. All right. I've only got 3.

6 MR. KUTIK: I think you are referring to
7 17.

8 MR. RANDAZZO: Okay.

9 MR. CORCORAN: This is 17.

10 Q. 17 then, I apologize.

11 A. 17, okay.

12 Q. Yeah. We're on CKAP --

13 MR. KUTIK: What page?

14 Q. CKAP Exhibit 17, four pages in.

15 A. Okay.

16 Q. Next-to-the-last page.

17 A. Yes, sir.

18 Q. It says "Energy Efficient Heating and
19 Cooling Systems." Do you see that?

20 A. Yes.

21 Q. Okay. And on that page are listed
22 various types of electric heating systems, correct?

23 A. Correct.

24 Q. We talked about geothermal. Geothermal,
25 is that a correct description there of a geothermal

1 system?

2 A. Yes.

3 Q. Okay. All right.

4 A. Now, there is a cost to that.

5 Q. Well, I am going to get to that, we are
6 going to have a conversation about that. All right.

7 Now, we've got four different types of
8 heating technologies listed on this page, correct?

9 A. Correct.

10 Q. And in the case of an add-on heat pump,
11 that would have been available for a residential
12 customer that may have also been heating with an
13 alternative fuel, correct?

14 A. I would assume so, yes.

15 Q. Well, it says so, right?

16 A. We never got into that.

17 Q. Okay. With regard to the -- all of the
18 systems there except for the add-on heat pump, there
19 are varying degrees of tradeoffs between the
20 front-end capital costs and operating costs
21 associated with the system, right?

22 A. Yes.

23 Q. For a geothermal system you have a higher
24 front-end cost.

25 A. Yes.

1 Q. Which would have raised the price of the
2 home for the -- for the customer that wanted to go
3 with geothermal, right?

4 A. Right.

5 Q. And for geothermal you would then have a
6 lower operating cost, correct? In other words, your
7 cost of energy would be less --

8 A. Because it's more efficient, yes.

9 Q. Because it's more efficient.

10 A. Right.

11 Q. So for these various types of
12 technologies there is always a tradeoff between the
13 amount the homeowner is willing to pay on the front
14 end versus what the customer might pay during the
15 life of the operation of the equipment, correct?

16 A. Correct.

17 Q. So within the -- within these
18 technologies you had some homeowners that actually
19 elected to pay the higher front-end cost and go with
20 geothermal, right?

21 A. Right.

22 Q. And some other customers decided to
23 reduce the front-end cost on buying the home and take
24 the risk on the operating cost side, right?

25 A. Well, I don't know if it was a risk.

1 Q. Well, but you would tell them there is a
2 higher operating cost associated with the
3 nongeothermal systems, right?

4 A. Yeah. I would tell them as far as
5 efficiency that's not -- you know, the geothermal was
6 the most efficient piece of equipment made.
7 Secondary to that would be the all-electric heat pump
8 is the next efficient machine. You are trying to put
9 it into a scale, yeah.

10 Q. Okay. Did you tell the potential
11 homebuyers that their operating costs would be higher
12 if they chose anything other than the geothermal?

13 A. Well, once -- you know, when we first
14 started putting this in, we didn't have the data to
15 support that but once -- after, you know, say the
16 first year houses that were built, when we got that
17 data from the electric company and, yeah, we could
18 prove it, we could show per kilowatt on a kilowatt
19 basis and relate it to the square footage, that,
20 yeah, it was a more efficient system on top of what
21 the manufacturer stated too.

22 Q. Really wasn't my question. What I was
23 asking you was whether or not you told the potential
24 homebuyer that they -- they would have a lower
25 operating cost if they chose the geothermal.

1 A. I personally did not. That would have
2 been the position of Ed Schmitt.

3 Q. It would have been the position?

4 A. Position of Ed Schmitt, my father, the
5 chief architect.

6 Q. It would have been his position. Who --
7 who would communicate that type of information to the
8 potential homebuyer?

9 A. Ed Schmitt and the real estate agents.

10 Q. In any of the materials that you've
11 provided that are Bob Schmitt advertising-type
12 materials, was there any indication in those
13 materials that if you chose geothermal versus
14 air-to-air heat pump, there would be a higher
15 operating cost for the air-to-air heat pump?

16 A. Not that I can recall. We didn't get
17 into the geothermal until -- we did our first test
18 house actually in Strongsville. It was one of our
19 last lots that was done in 1995. And it was kind of
20 a test house where we had it metered.

21 We had about 8 to 10 different meters on
22 the house that CEI put on and they were involved in
23 the test and we took that information and carried it
24 on to our next subdivision which was in North
25 Ridgeville, the Richfield subdivision, and decided to

1 go with the geothermal product to start out that
2 subdivision.

3 Q. So you started out in the Ridgeville --
4 Richfield subdivision which is the graphic on what is
5 marked CKAP No. 3 with the geothermal heat pump?

6 A. Yeah. Once the -- once the rebate for
7 the geothermal was taken away, we -- we kind of
8 discouraged the people going with the geothermal
9 because the payback period was much higher. It
10 turned out to be, you know, closer to 35 to 40 years
11 and we felt it wasn't worth it to the consumers.

12 So after, I don't know the exact year, I
13 am going to guess it's 2003, 2004 was probably the
14 last geothermal system we put in. From there to just
15 recently the last three months we didn't do any
16 geothermal. It was all air-to-air.

17 Just recently we have some lots in the
18 older section that have been sitting there for say
19 anywhere from seven to ten years and we had customers
20 interested in buying those lots. They knew that it
21 was an all-electric lot but they -- they were willing
22 to -- even with the rate being taken away they were
23 willing to buy that lot as long as they could put in
24 geothermal.

25 So I just recently put in two more houses

1 within the last three to four months that are
2 geothermal because they are in the section where the
3 all-electric lots are.

4 Q. Okay. So -- so we've already talked
5 about the fact that geothermal is more efficient.
6 Customers that are -- that you just described in
7 those two lots, two recent lots that were developed,
8 elected the geothermal because the -- of the
9 efficiency associated with it, efficiency of the
10 equipment. And that decision was made based upon --

11 A. I can't sell the lots. I mean, I am
12 contributing to this with them. I am giving them a
13 rebate somewhere -- depending on the size of the
14 house, roughly \$3,000 per unit. So if the house is
15 large, it's got two units, I am giving them \$6,000
16 credit to put that geothermal system in to move that
17 lot. Otherwise I can't sell them.

18 Q. But you are willing to do that.

19 A. I have to do that.

20 Q. Yeah. Okay. So within the all-electric
21 category of customers, we've got different types of
22 technologies, some of which are more efficient than
23 others, right?

24 A. Yes.

25 Q. Okay. Let's say that I was a homeowner

1 and back in 2000, 2001, I elected to -- I am an
2 all-electric customer. I elected to go with the
3 geothermal heat pump because it was more efficient, I
4 thought it was the right thing to do, and my neighbor
5 next door decided to go with an air-to-air heat pump
6 which is less efficient, right?

7 A. Right.

8 Q. Between those two customers which one
9 benefits the most from the all-electric discount?

10 A. I would say they both benefit.

11 Q. Which one benefits the most?

12 A. I can't really answer that question.
13 It's what their preference was, you know, what they
14 are willing to spend.

15 Q. Well, let me reask the question then
16 because I tried to collapse it.

17 For purposes of the electricity bill
18 calculation or the operating cost differences between
19 those two technologies, would the air-to-air heat
20 pump be more expensive to operate, have a higher
21 electric bill than the geothermal heat pump?

22 A. Yes. If the rate structure was the same,
23 yes.

24 Q. Okay. So if we continued the
25 all-electric discount for the hypothetical customer

1 that picked the air-to-air heat pump. We're really
2 subsidizing the heat pump customer at the expense of
3 the geothermal customer, right?

4 A. I don't -- I don't see that. I don't see
5 any of this as being subsidizing.

6 Q. Yeah, I take that point.

7 A. The real subsidizing is the all-electric
8 customer has subsidized everybody else from the
9 beginning.

10 EXAMINER PRICE: Mr. Schmitt, there is
11 not a question pending.

12 Q. Let's try it this way, from the materials
13 that have been handed out here today, FirstEnergy
14 made payments available to Bob Schmitt Homes to
15 encourage the use of geothermal system, correct?

16 A. And air-to-air heat pumps, yes.

17 Q. Geothermal was one of the choices?

18 A. Was one of them, yes.

19 Q. And they actually gave more dollars to --
20 for the geothermal systems.

21 A. On the basis it was a more expensive
22 system.

23 Q. But they gave more dollars to encourage
24 the use of the geothermal; is that correct?

25 A. Yes.

1 Q. And it was up to the customers, the
2 ultimate customers, or the purchasers of the homes to
3 determine which heating system they wanted to include
4 in their home even in an all-electric subdivision; is
5 that correct?

6 A. I don't know if we really gave them a
7 choice. As I said, we started out with the
8 geothermal and we pushed the -- I wasn't building any
9 air-to-air systems when the geothermal rebate was
10 available. We didn't start building the air-to-air
11 houses until the geothermal rebate disappeared.

12 Q. So -- oh, I see. Bob Schmitt' Homes made
13 the decision on what heating systems?

14 A. We made the decision, yes.

15 Q. So it wasn't even a decision that the
16 homebuyer had an opportunity to make; is that
17 correct?

18 A. No.

19 Q. So -- so as far as you know, there was no
20 communication going between FirstEnergy and any of
21 the homebuyers that encouraged them to buy
22 all-electric homes? No direct communication?

23 A. Only on an advertising basis.

24 Q. There was no direct communication --

25 A. No, just advertising.

1 Q. All right. I would like to ask you do
2 you have I believe it's CKAP No. 14 that on the
3 backside became CKAP 20? Do you recall that? It's
4 this brochure, bob Schmitt Homes.

5 A. Okay.

6 Q. On CKAP Exhibit 20 first page, you see a
7 column that's called "Pay Grow Finance Plan."

8 A. Which one are you looking at, 20?

9 Q. Yeah, CKAP Exhibit 20 which looks like a
10 trifold, originally it was a trifold brochure.

11 A. All I have is -- oh, this, okay, yeah.
12 Okay. Yes, I see it.

13 Q. Okay. "Pay Grow Finance Plan."

14 A. Yes.

15 Q. Are you familiar with the "Pay Grow
16 Finance Plan"?

17 A. Yes, I am.

18 Q. And as I understand it from the text
19 here, this was a means of guaranteeing a homeowner
20 they wouldn't lose any value on their home; is that
21 correct?

22 A. The -- the idea of the Pay Grow Plan was
23 put together by Bob Schmitt during tough times back
24 in the late '70s/early '80s when interest rates went
25 up 18 percent.

1 Q. I remember.

2 A. I am sure some of you are aware of that.

3 Q. I remember.

4 A. We had trouble selling houses.

5 Q. Yes.

6 A. So with the cooperation of our banker at
7 the time we were actually subsidizing these houses.
8 We were -- our customers were paying 12 percent, 11,
9 12 percent on these internal financed homes and
10 the -- to get them to buy a house, and as I said, the
11 bank at the time was -- was with us on this and we
12 kept going during those rough times of high interest
13 rates by subsidizing the interest rates.

14 Q. But if you look at paragraph No. 3 under
15 that column, do you see the numbered paragraph 3?

16 A. Yes.

17 Q. Didn't the plan also guarantee that the
18 buyer could sell the property at a premium above the
19 purchase price?

20 A. Yes.

21 Q. And for how long is -- did that Pay Grow
22 Finance Plan remain in effect?

23 A. It started out with Broadview Savings and
24 Broadview Savings had some difficult times themselves
25 and I think, I am trying to remember the time, they I

1 think ceased to exist in 1985.

2 At that point we had a relationship with
3 Huntington Bank and Huntington Bank backed us on the
4 Pay Grow Plan and we sold houses on that basis
5 through -- I am trying to think when the last deal
6 was. Probably 2002, somewhere around there.

7 And then it became kind of obsolete
8 because I am sure everybody is aware interest rates
9 really started to come down and it really wasn't
10 advantageous to the customer to get on the Pay Grow
11 Plan.

12 Q. But as I understand it, it was an option
13 that was available to somebody that wanted to move
14 into the home.

15 A. Yes.

16 Q. And under this plan it would give the
17 person moving into the dwelling an opportunity to
18 acquire the home and also have a guarantee that they
19 could turn back the home without experiencing a loss
20 for whatever reason?

21 A. Yes. And they also had the benefit
22 because the title was held in trust to write off the
23 interest payments and tax -- taxes paid on the
24 property just like any other normal --

25 Q. Just as though they owned the home.

1 A. Just as though they owned it.

2 Q. They got the mortgage deduction as well
3 as the property tax deduction as part of this
4 program?

5 A. Yes.

6 Q. Now, have you had any folks turn back
7 their home under this program?

8 A. Oh, we had a number of them throughout
9 the years, professionals that got transferred to
10 another city, yeah, that's happened.

11 Q. All right. Now, one last question, on
12 the other side of CKAP Exhibit 20 in the third column
13 of the brochure, you referenced this earlier, that
14 starts with "ESP - an Energy Savings Package"? Do
15 you see that column?

16 A. Yeah.

17 Q. It says "At the first hint of a natural
18 gas shortage." Do you recall the natural gas
19 shortages in the '70s?

20 A. As I stated before, I was just a kid just
21 starting out. I mean, I was entering my sophomore
22 year of high school. It's just from a conversation
23 standpoint in talking to Ed Schmitt and Bob Schmitt,
24 my relatives, that they saw that I had an interest in
25 the business. And I didn't know it at the time, but

1 they were grooming me to continue the business on
2 beyond them.

3 Q. Are you aware that during the '70s that
4 it was not possible to hook up a home -- a new home
5 to natural gas?

6 A. Yes, yes, sir.

7 Q. So if you were trying -- if you were a
8 developer interested in building new homes in the
9 '70s, it would not have been possible during a
10 portion of that time, based on your recollection, to
11 get natural gas?

12 A. Yeah, I don't know exact dates and all
13 that, but that's the premise, yes.

14 Q. And so from a developer's perspective you
15 would not have been able to develop property, build
16 new homes, except for the fact that you were able to
17 heat the homes with electricity or something other
18 than natural gas?

19 A. It was my understanding that the lots
20 were developed; they just weren't allowing the
21 connections to the houses.

22 Q. Well, you couldn't sell a home --

23 A. Right.

24 Q. -- if you wanted to heat it with natural
25 gas.

1 A. Right. And I don't know how long that
2 time frame was. I just know that it happened. I
3 couldn't tell you if it was six weeks or two years.

4 Q. So from Bob Schmitt's perspective the
5 ability to build an all-electric dwelling was
6 critical to its ability to develop properties and to
7 sell homes, correct?

8 MR. CORCORAN: Objection. Are you asking
9 Bob Schmitt Homes or Bob Schmitt individually?

10 MR. RANDAZZO: Bob Schmitt Homes.

11 A. Yeah, I said I don't know what the time
12 frame was, but it was my understanding you could not
13 get a gas permit for a new home and, hence, CEI
14 entered into the picture.

15 Q. And CEI entering the picture, a good
16 thing from Bob Schmitt's -- Bob Schmitt Homes'
17 perspective, right?

18 A. Well, keep in mind they approached him.

19 Q. Well, regardless of who talked to who
20 first, it was a good thing for Bob Schmitt?

21 A. It turned out to be good for both
22 companies. I mean, that's the reality.

23 Q. All right. Did -- just one more
24 question, on CKAP Exhibit 3 which is the colored
25 layout of the Ridgfield subdivision, who is the gas

1 supplier to the homes that are off Root Road there?

2 A. Columbia Gas.

3 Q. Have you had discussions with Columbia
4 Gas about bringing gas service into the other
5 unfinished lots there?

6 A. I wish I had, but times are so tough I am
7 trying to get rid of the lots I have. I mean,
8 normally we would have developed half of this future
9 site here but, you know, with what's happened in the
10 last four years, we're struggling to survive.

11 Q. Understood, understood. But would it be
12 your expectation that natural gas service would be
13 available for the undeveloped portion of the
14 subdivision?

15 A. Yes, sir.

16 Q. Okay. And the -- so it's not whether --
17 it's not an all-electric service relationship that is
18 holding back the development of the balance of this
19 subdivision, correct?

20 A. No. It is holding back the development
21 of the 8 to 10 lots I have left in the all-electric
22 section which I think are hashed out here with red
23 marker.

24 Q. Understood. Are those -- have those lots
25 been sold or are they still being held by --

1 A. Only one of them has been sold and that
2 would have been the lot on Timber Ridge marked as
3 sublot 319 and that's one of the geothermal
4 installations I was just talking about.

5 Q. All right. Just so we're clear then, you
6 would have -- as a developer, you would have the
7 ability to arrange for natural gas supply for the --

8 A. For the future.

9 Q. -- portion of this subdivision that has
10 not been developed to this point?

11 A. Yes, sir.

12 MR. RANDAZZO: That's all I have. Thank
13 you very much.

14 EXAMINER PRICE: Thank you.

15 Mr. Kutik.

16 MR. KUTIK: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Kutik:

20 Q. Mr. Schmitt, you said that times are
21 tough, correct?

22 A. Tough for the whole country.

23 Q. And times are tough for builders, not
24 just all-electric home builders, correct?

25 A. Correct.

1 Q. It would not be an understatement to say
2 you have a lot riding on the outcome of this case,
3 correct?

4 A. Well, that's Bob Schmitt Homes does, has,
5 you know, exposure here on eight to nine lots.

6 Q. Well, is the answer to my question,
7 "yes"?

8 A. Yeah, I wouldn't say it's a lot in
9 respect to the whole issue.

10 Q. Well, all -- isn't it true that Bob
11 Schmitt Homes has been building all-electric homes
12 for 30 years and have built over 3,000 homes,
13 all-electric homes?

14 A. Yeah, and I live in one of those
15 subdivisions.

16 Q. That was my next question, you live in
17 one of those? Would it, in fact, be fair to say your
18 business modeling depends heavily on all-electric
19 homes?

20 A. Currently, no. But formerly, yes.

21 Q. Do you have your deposition with you,
22 Mr. Schmitt?

23 A. No, I don't.

24 Q. Do you believe, sir, that as FirstEnergy
25 changed or the -- the rates with respect to

1 all-electric homes were changed, isn't it true you
2 believe that FirstEnergy was attacking your business?

3 A. Yeah.

4 Q. And isn't it true that --

5 EXAMINER PRICE: Mr. Schmitt, you are
6 going to have to speak up so the reporter can hear
7 everything you say.

8 Q. You might want to put the microphone
9 closer to you, sir.

10 And isn't it also true, sir, that you
11 feel so strongly about this that you're having your
12 counsel, Mr. Corcoran, who is your vice president and
13 general counsel, you are basically funding his
14 representation of the so-called grass organization,
15 CKAP, and two other parties in this case, correct?

16 A. I don't think he's funding CKAP; he is
17 funding my point of view.

18 Q. Well, isn't it true he is representing
19 CKAP, correct?

20 A. I haven't been involved in those
21 discussions.

22 Q. Sir, is Mr. Corcoran representing CKAP?

23 A. Yes, he is.

24 Q. And Mr. Corcoran is being paid by you,
25 correct?

1 A. Correct.

2 Q. And Mr. Corcoran isn't being paid by
3 CKAP, is he?

4 A. Not to my knowledge.

5 Q. Right. So that Mr. Corcoran is paid only
6 by you to represent you and CKAP and Ms. Steigerwald
7 and Ms. Heginbotham, correct?

8 A. Correct.

9 Q. Now, it's also true, is it not, that you
10 have no proof that CEI or Ohio Edison made any
11 promise that a special electric heating rate would
12 last forever?

13 A. I have no contractual proof. I just have
14 their word in talking with their people.

15 Q. You have no proof, correct?

16 A. No. I didn't have a tape recorder with
17 me.

18 Q. And there is no document that you can
19 point us to to indicate that, that Ohio Edison or CEI
20 was making a promise that rates would last forever,
21 correct?

22 A. My document would be the plats that we
23 formed that they signed off on that they knew it was
24 going to be all electric. That's --

25 Q. Can you show me in the plat, sir, where

1 it says FirstEnergy said or Ohio Edison said or CEI
2 said that any special rate would last forever?

3 A. No.

4 Q. Can you show me where that language is,
5 sir?

6 A. No.

7 Q. Now, I want to talk to you about some of
8 the documents that you discussed with your counsel.
9 I guess I'm having some trouble understanding what's
10 a contract and what's not a contract and what's an
11 agreement and what's not an agreement.

12 Let me refer you to Exhibit 28 which is a
13 letter dated November 9, 1998. Do you have that,
14 sir?

15 A. Yes.

16 Q. That lists certain rebate amounts,
17 correct?

18 A. Yes.

19 Q. And so that would be a rebate for one
20 particular heating technology per lot, correct?

21 A. Correct.

22 Q. Now, there's a similar -- let me refer
23 you to Exhibit 19. That's a letter from Ms. Haughn
24 to Mr. Molnar dated June 25, 1999, correct?

25 A. Correct.

1 Q. And that too provides an amount for a
2 rebate for a particular lot, correct?

3 A. Correct.

4 Q. And that also, again, is the amount of a
5 rebate for one particular heating technology,
6 correct?

7 A. Yes.

8 Q. Now, let's look at Exhibit 16. That's
9 the document that says "Proposal Presented By
10 FirstEnergy" dated December, 1998, correct?

11 A. Let me find it here.

12 Q. It's this document, sir.

13 A. Is that -- okay. Okay. I got it.

14 Q. Now, this document isn't signed, correct?

15 A. Correct.

16 Q. And this document has mark-throughs and
17 marginal notations on it?

18 A. Correct.

19 Q. Okay. And when we look at the amount or
20 exhibit -- the Exhibit I or 1 at the bottom of the
21 second page of this document, that's listing the
22 proposed amount of the rebate, correct, for a
23 particular type of electric heating technology?

24 A. Yes.

25 Q. And the numbers we see there don't match

1 up, for example, on the numbers we see in Exhibit 28
2 or Exhibit 19, correct?

3 A. Correct.

4 Q. So it's fair to say that with respect to
5 those checks, those checks were written under an
6 agreement that was other than specified, than the
7 terms we see in Exhibit 13, correct?

8 A. Yeah. It looks like they upped the ante.

9 Q. And it may well have been there didn't
10 need to be a, quote, written contract, end quote, for
11 FirstEnergy to give you or give your company a
12 rebate, correct?

13 A. Right.

14 Q. Now, this document, Exhibit 16, is a
15 document which was written in 1998, by its title
16 page, correct?

17 A. Yes, sir.

18 Q. And when we look on the second page and
19 particularly the third paragraph, it talks about
20 FirstEnergy's discount all-electric rate being frozen
21 until 2006, correct?

22 A. Yes.

23 Q. That's what FirstEnergy was saying might
24 happen, correct?

25 A. No.

1 Q. Well, it says FirstEnergy's discount rate
2 is frozen until the year 2006. That's what they said
3 was going to happen, correct?

4 A. Right.

5 Q. Okay. And it says "At this time, rates
6 are expected to decrease by 20 percent," correct?

7 A. Correct.

8 Q. And "at this time" refers to December of
9 1998, correct?

10 A. I'm not sure. I don't think that's
11 clear.

12 Q. Okay. So you don't know what it means.

13 A. Well --

14 Q. Do you believe that a reasonable reading
15 would be that when it says "at this time" --

16 A. The way I read it is at 2000 -- in the
17 year 2006, rates may be adjusted downward.

18 Q. So you believe that the words "at this
19 time" means 2006, not 1998?

20 A. Well, that's what they're referring to in
21 the first sentence.

22 Q. "At this time," wouldn't that be in the
23 time it was written?

24 A. That's speculation.

25 Q. All right. That's one way it could be

1 read. Do you agree with that?

2 A. Yeah.

3 Q. Okay. Now, between 1998 and 2006, are
4 you aware of whether there was any significant change
5 in the law in Ohio relating to Ohio utilities?

6 A. Yeah. I'm aware that deregulation was
7 brought in through the Taft administration in 1999
8 and at the time it was thought to be a good thing for
9 all parties. The energy companies --

10 Q. So you were aware there was a change.

11 A. Sure.

12 Q. That change occurred sometime in the
13 early 2000 or 1999, somewhere in there?

14 A. I believe it was '99, maybe 2000,
15 somewhere in that time frame.

16 Q. Let me refer you to Exhibit 17 which is a
17 Project Assistance Program. Are you there, sir?

18 A. Yeah.

19 Q. And let me refer you to the page that
20 Mr. Randazzo was talking to you about. And
21 particularly the four maximum consumer benefits. One
22 of those you mentioned with your counsel was
23 discounted rates from FirstEnergy, correct?

24 A. Yes, sir.

25 Q. Now, isn't it true for people who bought

1 houses, all-electric houses, in the 1998 to 2000 time
2 period, that those people are still living in their
3 houses, that they are still receiving a discount?

4 A. Right now?

5 Q. Yes.

6 A. With the exception of the last winter,
7 yes, when the rates were taken away for roughly three
8 months.

9 Q. So you believe that there was some period
10 of time when folks who lived in all-electric homes
11 since let's say 2000 and continued to live through
12 those -- in those houses had no discount; is that
13 your testimony?

14 A. There was a period of a couple months
15 where they had no discount.

16 Q. So for a period -- I want to make sure we
17 understand. So your understanding what happened to
18 the rates was that for a period of a couple of months
19 at least, those folks who were living in the house in
20 2000, continuing to the present, for a couple of
21 months they had no discount; is that your testimony?

22 A. The discount --

23 Q. Is that a "yes" or "no," sir?

24 A. The discount was taken away --

25 Q. Is that a "yes" or "no"?

1 A. In 2006 --

2 EXAMINER PRICE: Mr. Schmitt, Mr. Kutik
3 has asked you a question and asked for a "yes" or
4 "no" answer, and so I would appreciate it if you
5 could answer "yes," "no," or explain why you cannot.

6 A. -- for a couple of months in 2006.

7 This was taken away.

8 Q. Now, with respect to discounted rates,
9 it's your testimony the discounted rates was
10 something that was important to your business, right?

11 A. Yes.

12 Q. And would it be fair to say that with
13 respect to what was happening with electric heating
14 rate -- well, let me back up.

15 Would it be fair to say that for the time
16 period where you owned a house, for however long
17 that's been, you have lived in an all-electric home?

18 A. Yes, I have.

19 Q. And for that entire period of time would
20 it be fair to say you never really checked to see
21 whether your own rate changed from time to time, fair
22 to say?

23 A. I would say that rates, as I said before,
24 will change with inflation. Nothing ever stays the
25 same.

1 Q. So you were aware then -- well, my
2 question first, sir; were you aware of whether your
3 own rates ever changed from time to time? You didn't
4 know that, did you?

5 A. I didn't really look, study it that
6 close.

7 Q. All right.

8 A. I just look at the physical final dollar
9 amount and it was low.

10 Q. So, again, you never looked to see
11 whether and how your rate changed from time to time,
12 right?

13 A. But I did know the rate was going to go
14 away.

15 Q. Well, let's talk about that in a minute.
16 Isn't it true, sir that when deregulation came about
17 you never even bothered to talk to Mr. Challender or
18 anybody else from Ohio Edison --

19 A. That's not true.

20 Q. Sir, let me finish. You need to wait for
21 me to finish my question before you answer. Do you
22 understand that, sir?

23 A. Yes.

24 Q. Okay. Thank you.

25 So isn't it true, sir, that when

1 deregulation came about, you never talked to
2 Mr. Challender about how deregulation might affect
3 the permanence of the all-electric rates?

4 A. That's not true. May I expand upon that?

5 Q. No. Let me show you your deposition.

6 MR. KUTIK: May I approach?

7 EXAMINER PRICE: You may, but the Bench
8 does not have copies.

9 MR. KUTIK: Yes. I am providing that.

10 EXAMINER PRICE: Thank you.

11 Q. Mr. Challender, let me refer you to page
12 71 of your deposition.

13 A. Are you talking to me?

14 Q. I'm sorry, Mr. Schmitt.

15 A. What page?

16 Q. 71. Now, your deposition was taken by
17 Mr. Saks, my colleague, on January 24, 2011, correct?

18 A. Yes.

19 Q. Have you had an opportunity to review
20 your deposition, sir?

21 A. No, I have not.

22 Q. All right. Did you waive your right to
23 review the deposition?

24 A. No, I did not.

25 Q. Okay. So you haven't afforded yourself

1 of that right, correct?

2 A. Correct.

3 Q. You understood you had that right but you
4 just haven't taken --

5 A. Yeah, I just didn't take it, yes.

6 Q. Now, let me refer you to page 71, line
7 14. Were you not asked the following questions and
8 did you not provide the following answers:

9 "Question: But you testified around the
10 time of deregulation was passed in the late 1990s you
11 were paying a little bit more attention and focusing
12 more on the PUCO aspects of rates, correct?

13 "Answer: Yes.

14 "And the PUCO's involvement in the rate
15 setting process, correct?

16 "Answer: Right.

17 "Question: All right. That being the
18 case, did that lead you to any discussions with
19 Mr. Challender at or around the time reflected in
20 Exhibit 11, for example, about the permanence of the
21 all-electric rates?

22 "Answer: No."

23 Did you provide that testimony at that
24 time on January 24, 2011?

25 A. That's what it says.

1 Q. Thank you. Now, sir, you were provided
2 with from time to time documents from CEI or Ohio
3 Edison which advised Bob Schmitt Homes that rates
4 would be subject to change, correct?

5 A. Yes.

6 Q. In fact, I think you testified earlier
7 that there was prepared some kil -- or kilowatt usage
8 for each home, some studies, kilowatt uses for each
9 home, for each customer to show the prospective
10 customer about what their electric bill might be.

11 A. Correct.

12 MR. KUTIK: May I approach, your Honor?

13 EXAMINER PRICE: You may.

14 MR. KUTIK: Your Honor, we would like to
15 have marked as Company Exhibit 53 a document which
16 bears the title "Ohio Edison Company Electric Heating
17 Program Analysis Consumer -- Customer Study," and it
18 bears the date of December 29, 1990.

19 EXAMINER PRICE: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Mr. Schmitt, you have a copy of Exhibit
22 53?

23 A. Yes, sir.

24 Q. And you recognize this as one of those
25 studies, one of those analyses, correct?

1 A. Yeah, that's a form of it, yes.

2 Q. Okay. And actually one of the things I
3 think that we -- I would like to draw your attention
4 to is at the top of the page. Do you see there is
5 what appears to be a fax legend?

6 A. Yes.

7 Q. And the No. 440-327-7540, that's Bob
8 Schmitt's number, isn't it, Bob Schmitt Homes?

9 A. That's our fax, yep.

10 Q. So that's a document that Bob Schmitt
11 had, correct, Bob Schmitt Homes had, correct? And at
12 the bottom it says "Energy Requirements and hence the
13 relative operating costs will vary with the weather,
14 the personal habits of the occupants, inside
15 temperature maintained, the quality of construction
16 and insulation. Consequently, the operating costs
17 provided are not guaranteed but are submitted as an
18 estimate which is based on rate schedules currently
19 in effect. The incremental costs per kWh for space
20 heating will vary, depending on the billing load and
21 the number of KWHs used for general purpose and air
22 conditioning. These rate schedules are subject to
23 change at any time as new rates are fixed by the
24 various regulatory authorities under which the
25 company operates." Do you see that?

1 A. Yes.

2 Q. And that's something that Bob Schmitt
3 Homes knew as of December 29, 1990, correct?

4 A. Yes.

5 Q. Now, from time to time Ohio Edison or CEI
6 would have documents or would sign agreements that
7 would refer to specific rate schedules, correct?

8 A. Yes.

9 MR. KUTIK: May I approach the witness,
10 your Honor?

11 EXAMINER PRICE: You may.

12 MR. KUTIK: Your Honor, we would like to
13 have mark as Exhibit 54 a document which has been
14 previously marked in Mr. Schmitt's deposition as
15 Exhibit 12. It bears the heading "Bob Schmitt
16 Homes/Ohio Edison Agreement, Ridge -- Richfield
17 Development," and it bears a date of December 3,
18 1998, and November 19, 1998.

19 EXAMINER PRICE: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Mr. Schmitt, showing you what's been
22 marked as Exhibit 54, that's -- that's a Bob Schmitt
23 Homes and Ohio Edison document, correct?

24 A. Yes.

25 Q. And basically is an application for

1 service, correct?

2 A. Correct.

3 Q. And what it's showing among other things
4 is which particular electric rate will apply to this
5 particular property, right?

6 A. Correct.

7 Q. And it refers in the bottom of the box on
8 the first page to electric rate 11A, 11B, and 11C,
9 correct?

10 A. Yes.

11 Q. And you have a general understanding, do
12 you not, that those are specific rate sheets or
13 tariffs for Ohio Edison, correct?

14 A. Yes.

15 Q. And isn't it true you never bothered to
16 look up the terms of 11A, 11B, or 11C, correct?

17 A. Yes.

18 Q. Now, you became president of the company
19 in 2001?

20 A. Yes.

21 Q. And it would be fair to say that sometime
22 in the 2005-2006 time frame you became aware that
23 there might be changes in the availability of
24 discounted rates to homes that were heated with
25 electricity, correct?

1 A. Yes.

2 Q. And your lawyer, Mr. Corcoran, filed
3 documents at the PUCO about that, correct?

4 A. Yes.

5 Q. And Mr. Corcoran, he reports to you,
6 correct?

7 A. Yes.

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

9 EXAMINER PRICE: You may.

10 MR. KUTIK: Your Honor, I am showing the
11 witness, and I will provide copies to the Bench, two
12 documents from Case No. 05-1125-EL-ATA, et al. The
13 first document is a document styled Motion to
14 Intervene on Behalf of Bob Schmitt Homes, Inc. and
15 Scott Kubit, a residential customer, bearing a docket
16 stamp of the PUCO of February 3, 2006.

17 I'm also going to show the witness a
18 document with the same -- the same case number, same
19 date docket stamp, and this one bears the title
20 Application for Rehearing of Bob Schmitt Homes, Inc.
21 and Scott T. Kubit, a residential customer.

22 MR. SMALL: This is 56?

23 MR. KUTIK: No, I am not marking this.

24 MR. SMALL: You are not marking it.

25 Q. Do you recognize that as two documents

1 that were filed on behalf of your company and
2 Mr. Kubit?

3 A. Yes.

4 Q. And that was -- those are documents where
5 Mr. Corcoran, your lawyer, is trying to make the case
6 to the Commission about not ending the availability
7 of special discount rates to new customers, correct?

8 And it says nowhere in any of those
9 documents that Ohio Edison, CEI, or Toledo Edison
10 ever made a promise that these rates were going to
11 remain in effect, do they?

12 A. It's been a while since I looked at this,
13 but I'm assuming that it does not.

14 Q. Okay. Now, Bob Schmitt Homes I think you
15 said has sold all-electric homes since the year 2007,
16 correct?

17 A. Yes.

18 Q. In fact, I think you said that you sold
19 an all-electric home fairly recently?

20 A. Yes.

21 Q. And you have been able to market
22 all-electric homes, correct?

23 A. It's been tough.

24 Q. But -- there are -- you would agree with
25 me, sir, there are benefits to all-electric homes

1 other than what the cost might be, correct?

2 A. Yes.

3 Q. There are benefits for safety, correct?

4 A. Yes.

5 Q. Comfort?

6 A. Yes.

7 Q. And cleanliness?

8 A. Yes.

9 Q. And over the years you've been satisfied
10 with being an all-electric customer in terms of the
11 heat in your house and how it works?

12 A. Yes.

13 Q. Correct?

14 And as far as you know, you haven't
15 received a lot of complaints from customers as well
16 about how their electric systems work and what they
17 feel about being in an electrically-heated house,
18 fair to say?

19 A. Until recently.

20 Q. Now, you said -- I think you said earlier
21 that as president and CEO, you, I wrote down "oversee
22 the marketing department"; is that right?

23 A. Yes.

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

25 EXAMINER PRICE: You may.

1 Q. Mr. Schmitt, Bob Schmitt Homes has a
2 website, correct?

3 A. Yes.

4 Q. And is it fair to say that your marketing
5 department works on your website?

6 A. Yes.

7 Q. And as you said, your marketing
8 department is under you, correct?

9 A. Yes.

10 MR. KUTIK: Your Honor, I would like to
11 have marked as Exhibits 56 through 61 various pages
12 from the Bob -- that appear to be from the Bob
13 Schmitt Homes website. The first starts "About Us,
14 News," that's Exhibit 57 -- 56 and there are various
15 news items on that Exhibit 57 also from the Bob
16 Schmitt website "About Us, News, Bob Schmitt Homes
17 Offers New Incentive Plan."

18 Exhibit 58, another page from the Bob
19 Schmitt Homes website "About Us, News, ReMax
20 Crossroads and Bob Schmitt Homes team up."

21 Exhibit 59, another page from the website
22 "About Us, News, Electric Deregulation - Let Your
23 Voice Be Heard."

24 Next exhibit, Exhibit 60, another from
25 the website of Bob Schmitt Homes, "About Us, News,

1 Bob Schmitt Homes Upholds Energy Efficiency."

2 Exhibit 61 from the website Bob
3 Schmitt -- "The Bob Schmitt Difference."

4 EXAMINER PRICE: They will all be so
5 marked.

6 (EXHIBITS MARKED FOR IDENTIFICATION.)

7 Q. Now, Mr. Schmitt, do you recognize
8 Exhibits 56 through 61 as being from your companies'
9 website?

10 A. Yes.

11 Q. And Exhibit 56 shows various news items,
12 news releases issued by Bob Schmitt, or at least
13 placed on your website, correct?

14 A. Yes.

15 Q. Let me refer you to the second page of
16 Exhibit 56. And the second-to-the-last item where it
17 says "Bob Schmitt Homes offers new incentive plan,"
18 do you see that?

19 A. Yes.

20 Q. If we flip to Exhibit 57, that's the news
21 about the incentive plan, correct?

22 A. Yes.

23 Q. And among other things in the incentive
24 plan if a -- if a current Bob Schmitt Homes' customer
25 referred someone to Bob Schmitt and that person

1 became a Bob Schmitt homeowner, they will get some
2 money, correct?

3 MR. CORCORAN: Objection, relevance.

4 A. Yes.

5 EXAMINER PRICE: We will give him a
6 little bit of leeway. Overruled.

7 Q. Is there anything misleading about an
8 incentive plan. Correct?

9 A. No. It's to -- this is an incentive plan
10 to sell the all-electric lots.

11 Q. You weren't doing anything misleading,
12 were you?

13 A. No.

14 Q. Let me now have you flip to Exhibit 59.
15 And that says "News, Electric Deregulation - Let Your
16 Voice Be Heard." Do you see that?

17 A. Yes.

18 Q. And you are urging people to contact the
19 governor, contact the PUCO, contact Chairman
20 Schriber, contact OCC, contact State Representative
21 Matt Lundy, and you give on this website a sample
22 letter of what somebody should say about electric
23 deregulation, correct?

24 A. Yes.

25 Q. Was this letter written by Mr. Corcoran

1 or at least reviewed by him?

2 A. It might have been reviewed.

3 Q. Okay. And so what you were attempting to
4 do or what Bob Schmitt Homes was attempting to do was
5 sort of state what the typical grievance might be of
6 an all-electric home owner with respect to the state
7 of that electric homeowner's electric bill, correct?

8 A. Yes.

9 Q. And it doesn't say anything in here about
10 a promise that the rate would be forever, does it?

11 A. No.

12 Q. And that document was written in 2007,
13 correct? If we look on Exhibit 56?

14 A. Yes.

15 Q. Okay. And it says nothing about how the
16 discount would last forever either, correct?

17 A. Right.

18 Q. Let me now have you turn to Exhibit 60.
19 This is a document entitled "Bob Schmitt Homes
20 Upholds Energy Efficiency," correct?

21 A. Yes.

22 Q. And about the middle of the first
23 paragraph there's a statement that says "Many of
24 their clients," I guess that's referring to Bob
25 Schmitt Homes, "Many of their clients have seen

1 energy bills cut -- energy bills nearly cut in half
2 from their previously owned homes. It is beneficial
3 for prospective homeowner to choose a builder like
4 Bob Schmitt Homes who truly understands heat loss and
5 efficiency rather than a builder who is merely
6 installing materials based on the building" goods --
7 "code." Do you see that?

8 A. Yes.

9 Q. Is Bob Schmitt in your view making a
10 promise that everybody's bills are going to be cut in
11 half? You weren't, were you?

12 A. No. It's -- you know, it depends on the
13 situation where the client was moving from.

14 Q. Sure. So you weren't making any promise,
15 correct? And you certainly didn't say anything about
16 what you were comparing in terms of the rate,
17 correct?

18 A. Correct.

19 Q. You never said that, you know, this is
20 the rate that might be subject to change? You didn't
21 say that, right?

22 A. Yes.

23 Q. You didn't think you needed to, right?

24 A. Right.

25 Q. And you didn't need to do it because it

1 wouldn't be misleading to keep it out, right?

2 A. Well, I don't know that was the intent
3 but it's not there.

4 Q. Well, you weren't intending to be
5 misleading, were you?

6 A. No.

7 Q. Your company wouldn't do anything that
8 was misleading, would they?

9 A. No.

10 Q. So by omitting that you weren't being
11 misleading, right?

12 A. No.

13 Q. What I said was correct.

14 A. You are correct.

15 Q. Now, let me now have you turn to Exhibit
16 61. Now, first, you know, sir, at the bottom of
17 Exhibit 61 there is a date, correct?

18 A. Yes.

19 Q. Okay. And will you accept that the date
20 there that's shown, January 22, 2011, was the date
21 this was printed out?

22 A. Yes.

23 Q. And so this was what was showing on your
24 website last month?

25 A. Yes.

1 Q. And what it says here in terms of "The
2 Bob Schmitt Difference" is "Our homes maintain their
3 resale value," correct?

4 A. Correct.

5 Q. And Bob -- Bob Schmitt Homes was
6 marketing all-electric homes, correct?

7 A. And at this point we are marketing gas
8 homes too.

9 Q. But it included all-electric homes,
10 correct?

11 A. Yes.

12 MR. KUTIK: Can I have a moment, your
13 Honor?

14 EXAMINER PRICE: You may.

15 Q. With respect to your building and the
16 electric heating technologies that you use,
17 Mr. Randazzo spoke to you about Exhibit 17. Could
18 you turn to that, please.

19 A. Okay.

20 Q. And Mr. Randazzo was talking to you about
21 the page that begins -- or that has at the top
22 "Energy Efficient Heating and Cooling Systems." Do
23 you see that?

24 A. Uh-huh.

25 Q. Is that a "yes"?

1 A. Yes.

2 Q. And there are four heating systems that
3 are discussed on that page, correct?

4 A. Correct.

5 Q. Now, would it be fair to say that Bob
6 Schmitt Homes is probably one of the largest builders
7 of all-electric homes?

8 A. Yes.

9 Q. At least in Northeast Ohio?

10 A. Yes.

11 Q. Would you think that you were one of the
12 largest builders of homes in the service territories
13 of Toledo Edison, Ohio Edison, and CEI?

14 A. Yes.

15 Q. And in building the homes would it be
16 fair to say that the large majority of the homes had
17 either the total electric heat bump or the geothermal
18 system?

19 A. Yes.

20 MR. KUTIK: No further questions, thank
21 you.

22 EXAMINER PRICE: Thank you.

23 Mr. Jones.

24 MR. JONES: No questions, your Honor.

25 MR. SMALL: May I make inquire?

1 EXAMINER PRICE: You may.

2 MR. SMALL: It's just about the
3 documents. We seemed to skip from 54 to 56. Is
4 there no 55?

5 MR. KUTIK: Correct.

6 MR. SMALL: I just wanted to make sure.

7 MR. KUTIK: Thank you.

8 EXAMINER PRICE: Mr. Corcoran, redirect?

9 MR. CORCORAN: Thank you, your Honor.

10 - - -

11 REDIRECT EXAMINATION

12 By Mr. Corcoran:

13 Q. Mr. Schmitt, there was some conversations
14 earlier about geothermal systems and you had
15 testified that Bob Schmitt Homes is giving a rebate
16 on customers -- to customers with geothermal systems
17 in all-electric lots.

18 Is there another rebate that -- is there
19 any other rebates or credits that would be -- that a
20 homeowner would be eligible for if they put a
21 geothermal system on those lots?

22 A. There's an incentive by the Federal
23 Government to put in the geothermal system going
24 through I believe it's 2016. That's in addition to
25 what we're doing.

1 Q. Thank you. There has been a lot about
2 who is paying me throughout this case. Are you
3 paying me outside my representation of Bob Schmitt
4 Homes as vice president and general counsel?

5 A. No.

6 Q. And am I, as vice president and general
7 counsel, representing all the parties in this case?

8 A. Yes.

9 Q. Are you sure about that?

10 A. Well, I.

11 EXAMINER PRICE: Would you like to
12 rephrase that question, Mr. Corcoran?

13 MR. CORCORAN: I would.

14 Q. Mr. Schmitt, are you aware whether or not
15 that I am representing the various parties to this
16 case in my -- in a private entity capacity?

17 A. No.

18 MR. CORCORAN: Okay. And I don't think
19 it matters. It just matters to me.

20 No further questions, your Honor.

21 EXAMINER PRICE: Mr. Small, recross?

22 MR. SMALL: No questions, your Honor.

23 EXAMINER PRICE: Mr. Sites?

24 MR. SITES: No, sir.

25 EXAMINER PRICE: Mr. Elisar.

1 MR. ELISAR: No questions, your Honor.

2 EXAMINER PRICE: Mr. Kutik.

3 MR. KUTIK: No questions.

4 EXAMINER PRICE: Mr. Jones.

5 MR. JONES: No questions, your Honor.

6 EXAMINER PRICE: Ms. Willey.

7 EXAMINER WILLEY: No questions.

8 EXAMINER PRICE: I don't have any

9 questions. You're excused. Thank you.

10 Mr. Corcoran, would you like to move

11 admission of a number of documents?

12 MR. CORCORAN: I would.

13 EXAMINER PRICE: Which ones?

14 MR. KUTIK: May I have one moment so I

15 can get them organized?

16 EXAMINER PRICE: Yes.

17 MR. KUTIK: Thank you, your Honor.

18 MR. CORCORAN: Your Honor, at this time I

19 would make a motion to move to admit CKAP Exhibit

20 Nos. 2 through 30.

21 EXAMINER PRICE: 2 through 30, all of

22 them within that stretch?

23 MR. CORCORAN: Yes.

24 EXAMINER PRICE: Any objection to any

25 exhibits of CKAP -- of CKAP Exhibits 2 through 30?

1 MR. KUTIK: Yes, your Honor. How would
2 you like me to proceed?

3 EXAMINER PRICE: Why don't you -- which
4 ones do you object to?

5 MR. KUTIK: Most of them.

6 EXAMINER PRICE: Okay. Let's start with
7 2.

8 MR. KUTIK: Okay. I do not object to
9 Exhibit 2. I object --

10 EXAMINER PRICE: One second, make sure,
11 does anybody object to the admission of CKAP Exhibit
12 2?

13 Seeing none that one will be admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER PRICE: We will do these one at
16 a time.

17 MR. KUTIK: I object, your Honor, to
18 Exhibits 3 through 13 on the grounds of relevance.
19 You moved to strike and to determine basically to
20 stop testimony with respect to platting and so forth
21 and demonstrated by your colloquy with Mr. Corcoran
22 this isn't relevant to any issue in the case.

23 EXAMINER PRICE: Mr. Corcoran, response?

24 MR. CORCORAN: Your Honor, Exhibit No. 3
25 was referenced many, many times in many ways. It was

1 not limited to the idea of the platting discussion
2 that we had. And for that reason I'm proposing the
3 admission on that one, on that particular document.

4 EXAMINER PRICE: Let's -- before we move
5 on from 3, does any other party have arguments they
6 would like to make with respect to for or against
7 admission of CKAP 3?

8 MR. ELISAR: Your Honor, we would just
9 join with respect to the relevance argument with
10 counsel with FirstEnergy.

11 EXAMINER PRICE: Well, I tend to agree
12 with Mr. Corcoran. CKAP 3 and only CKAP 3 was
13 discussed with respect to a couple of different lines
14 of questions. And I don't believe that there is
15 anything prejudicial in CKAP 3, so we are going to
16 admit that one.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER PRICE: Now, let's move on to,
19 Mr. Corcoran, do you have any arguments you would
20 like to make with respect to CKAP 4 through 13?

21 MR. CORCORAN: Just to the extent that
22 the company would have known that the subdivision
23 phases were all electric.

24 EXAMINER PRICE: I'm not sure of the
25 relevance of that. Anybody else care to make

1 arguments with respect to for or against the
2 admission of CKAP's 4 through 13?

3 MR. JONES: Your Honor, staff would join
4 to object to CKAP Exhibits 4 through 13 as the basis
5 already provided by the parties.

6 EXAMINER PRICE: Okay. I don't believe
7 that CKAP 4 through 13 are relevant for any purpose
8 since receiving them, and they will not be admitted.

9 Mr. Kutik?

10 MR. KUTIK: Your Honor, may I have a
11 minute?

12 EXAMINER PRICE: You may.

13 MR. KUTIK: Your Honor, our next
14 objection will be to Exhibit 16.

15 EXAMINER PRICE: Okay.

16 MR. SMALL: I'm sorry?

17 MR. CORCORAN: 16.

18 EXAMINER PRICE: Let's be clear then,
19 does anybody have an objection to the admission of
20 CKAP 14 or 15?

21 Seeing none, those will be admitted.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 EXAMINER PRICE: That takes us to 16.

24 MR. KUTIK: Yes, your Honor. Our
25 objection with respect to Exhibit 16 is that there is

1 really no authentication this is a -- anything other
2 than a draft and not certainly any kind of binding
3 agreement.

4 Mr. Schmitt admitted this is as appears
5 to be unsigned and has changes, strikes-throughs, and
6 doesn't correspond to any information relating to any
7 payments or whatever, so the probative value of this
8 is nil and on that basis we would move -- we would
9 object to its admission.

10 EXAMINER PRICE: Any other party care to
11 rise in support or opposition to the admission of
12 CKAP 16?

13 MR. ELISAR: IEU has obviously stated
14 their concerns with this earlier and again would like
15 to support FirstEnergy, Mr. Kutik, and their efforts
16 too.

17 MR. SMALL: Your Honor, if everybody else
18 is done, it wasn't represented as being a binding
19 agreement or an executed agreement. It is a
20 FirstEnergy document dated -- it represents the type
21 of marketing that FirstEnergy was doing even if it's
22 only a proposal and not an executed agreement, and as
23 the Bench has pointed out, that's a valid subject --
24 subject matter for this proceeding.

25 MR. KUTIK: It's not a type of anything.

1 There has been no testimony this was other than sui I
2 generis and other than a proposal which we don't know
3 was ever acted upon.

4 And specifically, your Honor, if they are
5 going to try to point to the issues about the
6 discount rate being frozen and so forth, well, we
7 don't know whether that was ever part of any binding
8 agreement, so it's prejudicial to us since they
9 didn't tie it up to a specific agreement or
10 commitment by FirstEnergy. Its relevance is lost.

11 EXAMINER PRICE: Mr. Corcoran.

12 MR. CORCORAN: Your Honor, it goes to the
13 issue of marketing of the all-electric rate and the
14 relationship between the company Bob Schmitt Homes
15 and the utility companies.

16 MR. JONES: Your Honor, staff would join
17 in objecting to this exhibit being admitted into
18 evidence.

19 EXAMINER PRICE: Well, we are going to
20 admit it into evidence. I don't see that it's
21 prej -- No. 1, I don't think it's prejudicial to
22 FirstEnergy at all. I don't think it's inconsistent
23 with what FirstEnergy is saying in this proceeding.

24 No. 2, at a minimum, it does appear to be
25 a marketing proposal and I think the witness laid a

1 sufficient foundation to support its submission, so
2 we will admit 16.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 MR. KUTIK: Your Honor, our next
5 objection is directed to Exhibit 18.

6 EXAMINER PRICE: Okay. So let's be clear
7 then, does anybody object to the admission of CKAP
8 17?

9 None. Let's go on to 18.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 MR. KUTIK: Your Honor, we would pose
12 this because it is incomplete. As was referenced in
13 I believe your colloquy, this refers to a Project
14 Assistance Agreement, incorporates, and that is not
15 attached nor was it produced nor do they apparently
16 have it, so on that grounds, your Honor, on the
17 grounds it's incomplete, we would object.

18 EXAMINER PRICE: Any other party care to
19 rise in support or opposition to the admission of
20 CKAP 18?

21 MR. ELISAR: We rise in support to the
22 objection as well.

23 EXAMINER PRICE: Mr. Corcoran, response?

24 MR. CORCORAN: Your Honor, I believe
25 similar to Exhibit No. 16, it goes to show the

1 marketing effort on behalf of the company and what
2 its proposals were to Bob Schmitt Homes.

3 EXAMINER PRICE: The difficulty,
4 Mr. Corcoran, is we have no idea what disclaimer may
5 or may not be in the rest of the document. The
6 document incorporates a separate document that
7 obviously contains some number of terms and
8 conditions. That second document would be the
9 Project Assistance Agreement.

10 We have no idea what disclaimers, what
11 information might be contained in that agreement that
12 is essentially a part of this document. I don't
13 think we have any choice except to exclude its
14 admission.

15 MR. CORCORAN: Well, your Honor --

16 EXAMINER PRICE: I've made my ruling,
17 Mr. Corcoran. Thank you.

18 MR. CORCORAN: Okay.

19 MR. KUTIK: Your Honor, we have no
20 further objections with respect to the CKAP exhibits.

21 EXAMINER PRICE: Any parties have any
22 objections to any of the remaining exhibits, CKAP 19
23 through 30?

24 Seeing nothing, all of those documents
25 will be admitted.

1 (EXHIBITS ADMITTED INTO EVIDENCE).

2 MR. KUTIK: Your Honor, at this point the
3 companies move for the admission of Exhibits 53, 54,
4 56, 57, 59, 60 and 61; in other words, we are not
5 seeking the admission of Exhibit 58.

6 MR. SMALL: I'm sorry, your voice trailed
7 off. Not seeking admission of?

8 MR. KUTIK: 58. So again, that's 53, 54,
9 56, 57, 59, 60, and 61.

10 EXAMINER PRICE: Just for my own
11 convenience let's handle these in groups. Anybody
12 object to the admission of Company Exhibits 53 and
13 54?

14 Seeing none, those will be admitted.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 EXAMINER PRICE: Any objection to the
17 admission of Company Exhibits 56, 57, 59, 60, or 61?

18 MR. CORCORAN: I'll renew, your Honor, my
19 objection to the admission of Exhibit 57 based on its
20 relevance.

21 EXAMINER PRICE: I think we will go ahead
22 and admit that. So we will go ahead and admit 56,
23 57, 59, 60, and 61.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

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

1 (Discussion off the record.)

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

4 MR. KUTIK: Your Honor, one additional
5 point. The companies move to strike all the
6 testimony from Mr. Schmitt relating to Exhibits 14
7 through -- 4 through 13, given its lack of relevance.

8 EXAMINER PRICE: Mr. Corcoran.

9 MR. CORCORAN: I have no comments, your
10 Honor.

11 EXAMINER PRICE: Okay. Anybody opposed
12 to the motion to strike?

13 Seeing none, we will grant the motion to
14 strike. All testimony related to CKAP Exhibits 4
15 through 13 will be stricken.

16 At this time let's take our next witness
17 Jesse Willits.

18 MR. CORCORAN: Your Honor, may I have
19 just a couple-minute break?

20 EXAMINER PRICE: Let's come back at 10
21 after 4.

22 (Recess taken.)

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

25 Mr. Corcoran, would you like to call your

1 next witness?

2 MR. CORCORAN: At this time I would like
3 to call Jesse Willits to the stand.

4 (Witness sworn.)

5 EXAMINER PRICE: Please be seated and
6 state your name and address for the record.

7 THE WITNESS: My name is -- my name is
8 Jesse Willits. I live at 10300 Munich, Parma, Ohio
9 44130.

10 EXAMINER PRICE: Thank you.

11 Mr. Corcoran.

12 MR. CORCORAN: Thank you, your Honor.

13 - - -

14 JESSE WILLITS

15 being first duly sworn, as prescribed by law, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Corcoran:

19 Q. Mr. Willits, do you own your home?

20 A. Yes.

21 Q. And when did you purchase your home?

22 A. 1975.

23 Q. What type of energy do you use to heat
24 your home?

25 A. Electricity.

1 Q. Do you have any other source of energy
2 for your home?

3 A. No.

4 Q. And, Mr. Willits, have you had any
5 communication with your electric company regarding
6 your -- your rates?

7 A. You have to speak up a little louder. I
8 can't hear too well.

9 EXAMINER PRICE: Mr. Corcoran, you might
10 try the mic.

11 MR. CORCORAN: Every time I turn it on it
12 goes off because the batteries are low.

13 EXAMINER PRICE: We can get you new
14 batteries.

15 Mr. Small, switch microphones with him
16 right now.

17 MR. SMALL: To be honest, I don't know
18 how to turn this one off.

19 Q. Mr. Willits, can you hear me now?

20 A. Good, thank you.

21 Q. All right. Okay. Have you had any
22 communications with your electric company about
23 rates?

24 A. Back whenever I bought my home, I called
25 and they said there was a discount, yes.

1 Q. And have you received any letters -- any
2 written correspondence from your electric company?

3 A. Once.

4 Q. Okay.

5 MR. CORCORAN: Your Honor, at this time I
6 would like to admit CKAP -- a two-page Exhibit CKAP
7 No. 31.

8 EXAMINER PRICE: You want to have that
9 marked?

10 MR. CORCORAN: Yes, please.

11 EXAMINER PRICE: We will do the admission
12 later.

13 MR. CORCORAN: Okay, if you would like to
14 do it that way.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. Mr. Willits, you have been handed what's
17 been marked CKAP Exhibit No. 31. Do you recognize
18 this exhibit?

19 A. Yes. It's a letter that I received in
20 1980.

21 Q. And could you tell me about this letter
22 and what your -- what your understanding of it is?

23 A. It basically is a letter stating that I
24 consider it to be almost a contract, if you'll notice
25 in the bold letters, the rate schedule there, there

1 would be no change until, there is a discount
2 provision, change of a customer.

3 Q. And I am going to read that to you
4 because you paraphrased it a little differently than
5 the way it's written. It says "Under the new rate
6 schedule," you are referring to that section right
7 there?

8 A. In the capital letters, yes.

9 Q. "Under the new rate schedule there will
10 be no change in the discount provisions until there
11 is a change of customer." Is that what you are
12 referring to?

13 A. Yes.

14 Q. Okay. And that's -- you said that's what
15 you believe to be a contract between you and the
16 electric company in this case, CEI.

17 MR. SAKS: Misstates his testimony and
18 leading.

19 EXAMINER PRICE: Please rephrase without
20 leading.

21 MR. CORCORAN: Thank you.

22 Q. Mr. Willits, that section, the bold
23 section capital letters that I just read to you, what
24 is your belief that that says to you?

25 A. I believe that says to me, and I will

1 point out that the word "no change," "no" is
2 underlined, and that came from The Illuminating
3 Company, CEI, and it simply -- quite simply can't get
4 any simpler than this, states there will be no change
5 in the discount provision until there is a change of
6 customer. I view that to be, lack of better words, a
7 contract in my eyes.

8 Q. Okay. And, Mr. Willits, I am going to
9 direct you to the second page of this exhibit. Can
10 you tell me what that is, please?

11 A. It's an envelope that the letter came in.

12 Q. It was an envelope written -- is the
13 envelope to you?

14 A. Yes.

15 Q. And there is writing on the envelope; is
16 that right?

17 A. That's my writing.

18 Q. And what does it say and why did you say
19 it?

20 A. I wrote it on there "save." We also put
21 it in our safety deposit box. It's the only written
22 proof that I have ever received that says, my wife
23 and I, we have a discount from Cleveland Electric
24 Illuminating.

25 I, again, whenever we purchased our

1 house, I had made phone calls and I had verbal
2 confirmations, but this is the one thing that I saw
3 that I said this is worth well saving and that's why
4 we put it in our safe all these years.

5 Q. And those verbal conversations that you
6 referred to, were they similar to this letter?

7 A. They said for as long as we have our
8 house -- let me take one small step back. We bought
9 a model home, and in the process of buying it we were
10 told that the rates were permanently available for
11 the all-electric home.

12 So prior to the sale I called
13 FirstEnergy -- Cleveland Electric Illuminating and
14 talked to customer service and confirmed. You will
15 have electric rates forever. So based on that right
16 there we went ahead and purchased the home.

17 If they would have said no, the rates
18 weren't forever, we probably wouldn't have bought it.
19 So this is the first opportunity that I've seen and
20 that's why we saved it all these years that says
21 there will be no change in the discount.

22 Q. And so for -- so from your perspective,
23 this -- this writing was independent confirmation of
24 your oral conversation with the electric company?

25 A. That's how I've always viewed it.

1 Q. Okay. And Mr. -- Mr. Willits do you have
2 any belief -- reason to believe that the electric
3 company would lie to you?

4 A. No.

5 MR. CORCORAN: No further questions.

6 EXAMINER PRICE: Mr. Small, cross.

7 MR. SMALL: No questions, your Honor.

8 EXAMINER PRICE: Mr. Sites.

9 MR. SITES: No questions, your Honor.

10 EXAMINER PRICE: Mr. Elisar.

11 MR. ELISAR: No questions, your Honor.

12 EXAMINER PRICE: FirstEnergy.

13 MR. SAKS: Yes, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Saks:

17 Q. Mr. Willits, good afternoon. Your
18 electric company is CEI, as you testified. You have
19 enjoyed your electric heating service over the years,
20 correct?

21 A. Yes.

22 Q. You find that it's safer than not having
23 carbon monoxide in the house as well as clean and the
24 heat provides adequate warmth, correct?

25 A. Yes.

1 Q. You, in fact, prefer electric heat over
2 gas heat, don't you, sir?

3 A. Yes, I do.

4 Q. Now, just so we're clear, you testified
5 that when you bought your home in 1975, it was the
6 salesperson who was selling you the house who told
7 you that the discounted rate for electric heating was
8 going to last forever, correct?

9 A. Yes. And that is why I called Cleveland
10 Electric Illuminating personally myself to verify it.

11 Q. Understood, when you spoke to CEI, you
12 said to them is there this discounted rate and can I
13 depend upon it and you were told "yes," correct?

14 A. I can't recall my exact words some 35
15 years or more ago, but to the tune that, yes, the
16 rate would be there for me in the future, yes. That
17 is a confirmation of what it says here, years later
18 there will be no change in the discount provision
19 until there is a change of customer. So that's a
20 confirmation to me that they didn't lie to me.

21 Q. All right, sir. Well, I didn't ask about
22 the letter right now, I am just asking questions
23 about the conversation, and my question for you is
24 you said to C -- you asked CEI in around 1975, you
25 researched the rate and you asked, you said I'm

1 buying this house, I am planning on living here, can
2 we depend upon this rate, and CEI said yes. That was
3 the sum and substance of your conversation, correct?

4 A. I would say yes, without knowing the
5 exact words, yes.

6 Q. Okay. Well, those are the words you said
7 to me when I took your deposition. Do you recall
8 that, sir?

9 A. Right.

10 Q. Okay. You have not had any other
11 conversations with CEI since that time, correct?

12 A. No, I haven't had a reason to other than
13 to call in a reading occasionally in the wintertime
14 and give them the reading on the meter. Other than
15 that, you're right.

16 Q. Fair enough. There has been no
17 conversations about your rates or anything like that
18 since that conversation in or around 1975, correct?

19 A. I believe about two years ago or a year
20 and a half ago I did call. I am going to be honest
21 with you, I don't recall the exact reason why I
22 called them though.

23 Q. Okay. You're not -- for purposes of this
24 today other than the conversation that you had in
25 1975 about which you have given, you can provide no

1 other testimony about any alleged representations or
2 promises made by CEI to you about your electric
3 discounted rate or the permanence thereof; is that
4 fair?

5 A. Yes.

6 Q. Okay. Thank you.

7 Now, Mr. Corcoran asked you some
8 questions about CKAP Exhibit 31, the letter you
9 saved. You made your decision to purchase your home
10 years before you ever received CKAP 31, correct?

11 A. Yes.

12 Q. And it is your assumption, am I correct,
13 that the words "discount provision" in that all
14 capitalized section that Mr. Corcoran read into the
15 record referred to the J rate discount or whatever it
16 has evolved into, correct?

17 A. The J rate discount and the proportion
18 compared to a regular residential rate that it
19 maintained throughout the years. I realize my rates
20 will go up, but they should remain proportionately a
21 discounted rate.

22 Q. Okay. Well, my question for you, sir, is
23 you are assuming that in that all capped sentence
24 that the word "discount provisions" refers to the J
25 rate that you were then on; is that correct?

1 A. I believe I would say yes, but I also
2 have to state that I did attend the Strongsville
3 meeting, the first one, and I heard other people talk
4 about the J rates, and the J rates is also changed
5 from -- on my Cleveland Electric Illuminating bill
6 from J rate to a different terminology, to a CEI
7 number, to some other number, but the right ballpark
8 has been there.

9 MR. SAKS: Your Honor, move to strike
10 everything after the word "but" that is
11 nonresponsive.

12 A. Okay.

13 EXAMINER PRICE: Granted.

14 Q. Okay. Prior to January of 2009,
15 Mr. Willits, did you know what rate you were on?

16 A. I was on a discounted rate and I don't
17 know the name any more and that's what I was trying
18 to allude to a moment ago. I don't know what it's
19 called currently.

20 Q. Okay. Well, I appreciate that. But if
21 we could focus on my questions, it might make us go a
22 little faster, sir. Thank you, though.

23 You do understand that your rate has
24 changed over the years; is that fair?

25 A. Can you further define "changed" because

1 I am still getting approximately a discount
2 proportionately to where it should be, so I don't
3 know how you define "changed."

4 Q. Well, you understood that the rate you
5 were getting and what you were paying for kilowatt
6 hour in 1980 has changed over the years, correct?

7 A. Yes, and I don't mind that it has gone up
8 as long as it remains proportional to the residential
9 all-normal customer.

10 Q. Right. And, you know even though you
11 have known your rates have changed over the years and
12 they increased, you've never complained to CEI
13 because you believed they were still discount
14 compared to the standard rate; is that fair?

15 A. You're right on.

16 Q. Now, when your electric bills increased
17 in December of 2009, you don't know if you were
18 paying less than what non-all-electric customers were
19 paying; is that right?

20 A. I don't know what I was paying
21 proportionate to them, the rates.

22 Q. And, in fact, you don't know if the
23 difference between what you paid and what the
24 non-all-electric customers paid in December of 2009
25 resulted in you getting a larger discount than

1 December of 2008, correct?

2 A. I'm sorry, say -- you lost me in that.

3 MR. SAKS: Can you read that back,
4 please.

5 (Record read.)

6 Q. Let me do it again. In fact, if the
7 difference between what you paid in December of 2009
8 and what the non-all-electric customers were paying
9 in December of 2009 resulted in a greater discount
10 than in December of 2008; isn't that true?

11 A. You are going to have to rephrase the
12 question in a way that it's easier for me to
13 understand because I'm not following you, once again.

14 Q. You just testified in December of 2009,
15 you knew your rates went up, correct?

16 A. Yes.

17 Q. But you didn't know how your rates
18 compared to what the standard ratepayers were paying,
19 correct?

20 A. Correct.

21 Q. So you also don't know if what you were
22 paying and the difference between your rate and the
23 standard rate in December of 2009 actually led you to
24 have a larger discount then than you had in December
25 of 2008; is that fair?

1 A. That's fair.

2 MR. SAKS: No further questions, thank
3 you.

4 EXAMINER PRICE: Mr. Jones.

5 MR. JONES: No questions, your Honor.

6 EXAMINER PRICE: Mr. Corcoran, redirect.

7 MR. CORCORAN: No questions, your Honor.

8 EXAMINER PRICE: Questions?

9 EXAMINER WILLEY: No questions.

10 EXAMINER PRICE: I don't have any
11 questions. Thank you, you are excused.

12 MR. CORCORAN: Your Honor, at this point
13 I move to admit CKAP No. 31.

14 EXAMINER PRICE: Any objection to the
15 admission of CKAP 31?

16 Seeing none, it will be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER PRICE: Mr. Jones, you appear to
19 have the next witness on the list.

20 MR. JONES: Yes. The staff would call
21 Bob Fortney to the stand.

22 (Witness sworn.)

23 EXAMINER PRICE: Please be seated and
24 state your name and business address for record.

25 THE WITNESS: My name is Robert B.

1 Fortney, F-O-R-T-N-E-Y, 180 East Broad Street,
2 Columbus, Ohio 43215.

3 EXAMINER PRICE: Please proceed,
4 Mr. Jones.

5 MR. JONES: Your Honor, could I have
6 marked for identification the prefiled testimony of
7 Robert B. Fortney that was filed in the docket on
8 January 24, 2011, as Staff Exhibit 1.

9 EXAMINER PRICE: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. JONES: And also, your Honor, if I
12 could have marked for identification the Staff Report
13 of Investigation and Report that was filed in the
14 docket September 24, 2010, as Staff Exhibit 1A.

15 EXAMINER PRICE: No. I already wrote 2.
16 Just kidding. So marked as 1A.

17 MR. JONES: Thank you, your Honor.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 - - -

20 ROBERT B. FORTNEY

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

23 DIRECT EXAMINATION

24 By Mr. Jones:

25 Q. Could you please state your name for the

1 record?

2 EXAMINER PRICE: I already did that.

3 MR. JONES: You did that.

4 Q. Mr. Fortney, where are you employed?

5 A. The Public Utilities Commission of Ohio.

6 Q. And what position?

7 A. I'm a public utilities administrator 3.

8 Q. Okay. And would you please identify for
9 the record what's before you marked as Staff Exhibit
10 1 and Staff Exhibit 1A, please?

11 A. Staff Exhibit 1 is my prefilled written
12 testimony in this case, and Staff Exhibit 1A was a
13 Staff Report that was filed in compliance with an
14 order from the Commission on September 24 of 2010 in
15 this proceeding.

16 Q. Okay. And were both of those documents,
17 Staff Exhibit 1 and Staff Exhibit 1A, prepared by you
18 or at your direction?

19 A. Yes, they were.

20 Q. Okay. And do you have any changes or
21 additions to make to either Staff Exhibit 1 or Staff
22 Exhibit 1A?

23 A. No.

24 Q. And if I were to ask you the same
25 questions that are contained within Staff Exhibit 1

1 or 1A, would your answers be the same here today?

2 A. Yes. I don't believe there is any
3 questions in Exhibit 1A.

4 MR. JONES: I think that, your Honor, at
5 this time I would offer Mr. Fortney for
6 cross-examination.

7 EXAMINER PRICE: Thank you.

8 Mr. Small.

9 MR. SMALL: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Small:

13 Q. Mr. Fortney, I believe you said that you
14 have your testimony on the stand. Would you -- I am
15 going to be asking questions primarily about page 3
16 of your testimony. If you could move to the bottom
17 of page 3.

18 A. Bottom of page 3.

19 Q. Yes, the bottom of page 3, and generally
20 the subject matter is the staff recommendation that
21 you have there. Is that the gist of the material at
22 the bottom page 3 and the top of page 4?

23 A. Yes, it is.

24 Q. Okay. I am going to be referring to
25 these as subparts, subpart A, subpart B, subpart C.

1 At the bottom of page 3 in subpart D of staff's
2 recommendation, and I am using that term as you use
3 it on line 13, you use the term customer in
4 connection with the receipt of the RGC discount. Do
5 you see that?

6 A. Yes.

7 Q. Does your use of the term "customer" on
8 page 3, lines 25 through 27, reflect your response to
9 question 9, discounts should be applicable so that,
10 and I quote, the grandfathered all-electric accounts
11 should stay with the property?

12 That quote was from page 4, lines 22
13 through 23. I am just asking if you are using the
14 terminology consistently between the two locations in
15 your testimony.

16 A. Well, I have made other recommendations
17 in my testimony, for instance, for load management
18 customers who do not heat primarily with electricity.
19 So my reference to "customer" in 6B refers to those
20 customers whatever is the result of this hearing that
21 are still receiving the RGC discount.

22 Q. Okay. I am not sure that was entirely
23 clear. I'm asking for your recommendation now as
24 it's stated on page 3 and your use of the term
25 "customer" on lines 24 through 27. And when you say

1 that a customer receives a certain percent of the RGC
2 discount, who is the customer that you are referring
3 to? Is that a customer whose grandfathered
4 all-electric accounts should -- stays with the
5 property?

6 MR. KUTIK: Objection. Asked and
7 answered.

8 EXAMINER PRICE: Let's give him some
9 leeway. Overruled.

10 A. All electric -- my definition of customer
11 is all-electric customers who heat primarily with
12 electricity that are currently on one of the
13 grandfathered rates.

14 Q. Okay. And the question is --
15 understanding what the customer is in the person's
16 dwelling today but if that -- if the current customer
17 sells and qualifies for this RGC discount that you
18 discuss on bottom of page 3, sells to a subsequent
19 owner of that residential property, does your
20 recommendation on page 3 encompass having the RGC
21 discount available to that subsequent owner of the
22 residential dwelling?

23 A. What RGC discount is applicable at that
24 time.

25 Q. Well, the question is what is your

1 recommendation for who should receive that discount?
2 Not, you know, pass it on to a future Commission
3 decision. I am asking for your recommendation or an
4 explanation of the recommendation you have on page 3.

5 EXAMINER PRICE: One second. If I can
6 help, Mr. Small, Mr. Fortney, your recommendation
7 at -- on page 3, lines 24 through 28, includes both
8 current customers and any future customers at the
9 same property in the event of a change of -- change
10 of property ownership; is that correct?

11 THE WITNESS: That is correct.

12 MR. SMALL: Thank you, your Honor. That
13 was where I was going.

14 Q. (By Mr. Small) All right. I think you
15 may have anticipated my question but let's try this,
16 does the term "customer" on page 3, I am in the same
17 place, lines 25 through 27, also refer to older
18 accounts that currently receive the RGC credit but
19 with the exclusion of the former load management
20 customers who do not heat with electricity?

21 A. That's my recommendation, yes.

22 MR. KUTIK: May I have the question and
23 answer read.

24 EXAMINER PRICE: Please reread the
25 question and the answer.

1 (Record read.)

2 Q. What -- on the topic of the exclusion of
3 former load management customers what method does
4 staff propose for the exclusion of some of the -- for
5 the exclusion of some of the former load management
6 customers from the RGC credits?

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

8 (Discussion off the record.)

9 EXAMINER PRICE: Back on the record.

10 MR. SMALL: Maybe we could have that last
11 question reread.

12 (Record read.)

13 Q. And in particular, Mr. Fortney, I am
14 referring to the people who don't -- the load
15 management customers that don't heat with
16 electricity.

17 A. If I am not mistake, and I don't have
18 Mr. Ridmann's testimony with me, I believe he
19 outlined the process. I assume or I believe that if
20 the Commission were to find this recommendation to --
21 were to approve this recommendation, that they would
22 order the staff and the company and probably the
23 Office of Consumers' Counsel to develop a process to
24 accomplish the exclusion of load management customers
25 who do not heat primarily with electricity.

1 Q. Do you agree that a customer should have
2 the ability to challenge a determination that the
3 customer no longer qualifies for the RGC credit, that
4 is, to provide proof that they have an all-electric
5 home?

6 A. Sure.

7 Q. Or I'm sorry, that they have a home that
8 heats with electricity?

9 A. Sure. They should have that ability.

10 Q. But do you think that a customer who was
11 incorrectly not included in those eligible for the
12 RGC credits should be able to challenge the
13 determination that originally kept the customer from
14 receiving the RGC credits?

15 A. I believe they already have that ability
16 through a complaint case.

17 Q. I am going to go back to your testimony
18 again to subpart B of staff's recommendation on page
19 3, line 24, where you referred to, and the term that
20 you have on line 24 is "frozen at current levels."
21 Do you see that?

22 A. Yes.

23 Q. The staff's recommendation referred to
24 frozen -- frozen RGC discount levels or frozen rates
25 or some other form of frozen, but what is it that is

1 frozen?

2 A. Essentially the bill for equivalent usage
3 levels would be frozen.

4 Q. So since the kWh for an individual
5 customer goes up and down, what you're saying is
6 the -- that the rate applied to that kWh should
7 remain frozen; is that correct?

8 A. The bills resulting from equivalent
9 kilowatt hours usage would be the same, yes.

10 Q. And that's the same thing as a frozen
11 rate, correct?

12 A. That was my intent.

13 Q. All right. I'm still on line 24 of your
14 page 23, and you use the term "current levels." Do
15 you see that?

16 A. Yes.

17 Q. What is the point in time for the frozen
18 levels? What does "current" mean in that -- in that
19 context?

20 A. Whatever the bill is right now.

21 Q. Now, do you agree that some components of
22 residential rates are expected to change between now
23 and those that would otherwise apply for the winter
24 that you referred to as year 1 that would be next
25 winter?

1 A. Yes, rates will change.

2 Q. And the recovery of accelerated
3 distribution deferral in RDD charges expire at the
4 end of May, 2011, correct?

5 A. I'm only hesitating because I believe
6 that there is -- will be a final reconciliation.

7 Q. Okay. I think the important part of my
8 question is that they are expected to, rates are
9 expected to change as a result of RDD charges
10 expiring sometime between now and September 1, 2011,
11 correct?

12 A. That's correct.

13 Q. So between this winter season and next
14 winter season there will be a change in rates due to
15 RDD charges expiring, correct?

16 A. That's correct.

17 Q. Okay. And generation rates will change
18 beginning in June, 2011, as a result of the auctions
19 that were conducted in October, 2010, and
20 February 2011, correct?

21 A. That's correct. Generation rates should
22 go down slightly.

23 Q. That change will also occur between now
24 and when the next winter season starts, correct?

25 A. That's correct.

1 Q. And distribution charges will change as
2 the DSI rider ends and on December 31 and is replaced
3 by the DCR charge January 1, 2012, correct?

4 A. I believe those are the correct dates,
5 yes.

6 Q. So that would be a change in the middle
7 of the first year when you have the frozen rates,
8 correct?

9 A. That's correct.

10 Q. And are there other rates you expect to
11 change before winter of year 1, which is next winter,
12 2011-2012, between now and then?

13 A. Well, there are several riders that are
14 reconciled quarterly or semi-annually or annually,
15 and those probably will change also.

16 Q. Okay. Is the AMI one of those -- one of
17 those riders?

18 A. I'm not specifically familiar with that
19 rider, but if it is a current rider and it's
20 reconciled quarterly or annually or semi-annually, it
21 probably will change, yes.

22 Q. Okay. How about the AER, meaning the
23 alternative energy resource rider? Will that change
24 between -- sometime between now and this winter --
25 next winter?

1 A. Same answer.

2 Q. And the DUN, the distribution
3 uncollectible riders?

4 A. Yes.

5 Q. And the GCR, the generation cost
6 reconciliation rider?

7 A. That changes quarterly, yes.

8 Q. And the PUR for PIP uncollectible rider,
9 does that change between now and next winter?

10 A. I don't know the answer to that. I don't
11 know how frequently that's changed.

12 Q. The NDU, which means the nondistribution
13 uncollectible rider?

14 A. If it is the rider that is reconciled,
15 yes, it will change.

16 Q. DSC for demand-side management and energy
17 efficiency rider?

18 A. Yes.

19 Q. Another rider that changes quarterly?

20 A. Correct.

21 Q. Okay. Do you propose -- I am trying to
22 get at this concept of frozen rates. Do you propose
23 that the RGC credits adjusted up or down to adjust
24 for each one of these changes in rates between now
25 and next winter or in the case of the distribution

1 charges that would take place on January 1, 2012?
2 Are you proposing that these RGC credits be adjusted
3 for all these ups and downs in the rates?

4 A. No, for year 1 I am proposing that since
5 the rates are frozen at the current level, that the
6 all-electric customers do not get the benefit of the
7 RDD dropping off. They do not get the benefit of the
8 lower generation auction price, nor will they have to
9 pay any riders that increase during that time period.

10 EXAMINER PRICE: Mr. Fortney, I think his
11 question was do you expect that the RGC would be the
12 mechanism to do that that would have to have small
13 adjustments to accommodate those charges?

14 THE WITNESS: I can't anticipate the RGC
15 being adjusted periodically. There will be one --
16 there are -- there are differences to accomplish
17 keeping the current rates frozen. One of them would
18 be for FirstEnergy to reduce the RGC amount for that
19 year. But once it's reduced, no. It would not be --
20 it would not fluctuate until the -- until the next
21 time period.

22 MR. SMALL: Thank you, your Honor. That
23 was the question.

24 Q. But if you just have a frozen RGC and
25 these other components of rates are changing, then

1 the total rate is -- the total rate is not frozen; is
2 that correct?

3 A. I believe it's not going to be exact just
4 like when we -- they instituted the RGC, to put
5 customers back to the 2008 rates, not every single
6 customer went back to exactly the 2008 rates but the
7 intent was that the RGC would put those customers
8 back to the 2008 rates, and that's exactly what the
9 intent of the adjusting the RGC at the -- to
10 accomplish the current frozen level of bills would be
11 accomplished.

12 Q. Okay. So I understand your proposal as
13 you've just explained it on the stand, it's not to
14 have exactly frozen rates but to determine an RGC
15 level at some point in time between now and when the
16 rates would be instituted for the winter of
17 2011-2012, to determine the RGC level and then to
18 hold that constant? That's what your recommendation
19 is; is that correct?

20 A. That's correct.

21 Q. And at what point in time would that
22 determination be made? And understand my concern
23 here is we have got rates that are -- that are going
24 up and down at various times so it might be important
25 to the calculation. At what point do you do the

1 calculation?

2 A. If this recommendation were adopted,
3 sometime between the adoption of the recommendation
4 when the Commission orders it to be adopted and
5 probably May 31 of this year.

6 Q. So your -- if I understood that answer,
7 you are proposing that the date selected for
8 determining the RGC level for next winter would take
9 place before the change in the RDD rate? That's the
10 one we said was coming off at the end of May, 2011.

11 A. It would accommodate the RDD going off.
12 It would anticipate those.

13 Q. So even if it was calculated before the
14 end of the RDD, it would -- it would project the
15 affect of the RDD and take that into account?

16 A. I guess since these are winter rates it
17 wouldn't have to be accomplished until before
18 September 1 of this year because that's the first
19 winter month.

20 Q. Okay. So just to summarize your proposal
21 or your recommendation, you would calculate the RGC
22 credit one time sometime between now and when winter
23 rates were implemented September, 2011, and it would
24 be at a point in time where you would take into
25 account the change -- the change in the RDD; is that

1 right?

2 A. And the new generation rate.

3 Q. And the new generation rate.

4 Anything else that you feel is important
5 to take into account?

6 A. Nothing that I can think of.

7 Q. Okay. Would you please refer to subpart
8 C as to what you referred to as staff recommendation
9 on page 30 through 31? Do you have that?

10 A. Yes, I do.

11 Q. Okay. And that recommendation has to do
12 with year 2, which is September, 2012 through May 31,
13 2013. For your year 2 recommendation to, I quote,
14 cap, cap the RGC discount at 7,500 kWh, how did you
15 determine the 7,500 kWh level?

16 A. This was my meager attempt to promote
17 conservation in rates. 7,500 is basically an
18 arbitrary number but it's approximately -- we have
19 heard that the average winter usage is somewhere
20 between 2,000 and 2,500 and the average peak winter
21 usage is somewhere around 3,500, so it's
22 approximately two to three times the average winter
23 usage for an all-electric customer. There's no
24 elaborate analysis to come to that number.

25 Q. Okay. What's the basis of those numbers

1 you just stated? Where did you gain or obtain those
2 numbers?

3 A. Well, I believe when the RGC was
4 instituted, we had several conversations with the
5 company and asked those type of questions. I don't
6 know what -- I don't believe there is any written
7 document. I believe we were informed of that by the
8 company.

9 Q. Okay. Now, I am moving on to subpart D
10 which would be located on page 4 of your testimony.
11 Top -- top of page 4. And here you referred to the
12 EDR discounts. Do you see that?

13 A. Yes.

14 Q. And the EDR discounts that you referred
15 to were included in the ESP that will take affect
16 June, 2011, correct?

17 A. I'm sorry, could I have the question
18 reread.

19 EXAMINER PRICE: Please reread the
20 question.

21 (Record read.)

22 A. That is correct.

23 Q. Would you agree with me that elimination
24 of the EDR would be inconsistent with the current
25 revenue allocations approved by the Commission in the

1 ESP that will take effect on June, 2011?

2 A. I'm not sure what you mean by "revenue
3 allocations."

4 Q. Well, when I am referring to the "revenue
5 allocations" I'm referring in this instance to the
6 revenue allocations in the ESP between customer
7 classes, so between residential customer and
8 industrial customer classes.

9 A. Well, Mr. Small, now that you have
10 pointed it out, I believe that that recommendation
11 regarding the elimination of the EDR credit for water
12 heating customers is probably in violation of the
13 stipulation.

14 Q. As -- getting past, you know, the case
15 law and stipulations, what was your intent or what
16 was the staff's intent in having the elimination of
17 the EDR discounts? If you eliminate the discounts,
18 you collect more revenue from the customers who
19 otherwise would have had the EDR discounts; is that
20 correct?

21 A. Yes, if they don't get the discount, they
22 pay whatever, more whatever the discount would have
23 been.

24 Q. Right. And my question is staff's intent
25 in eliminating the EDR, what is the recommendation as

1 far as where those moneys would be redistributed?

2 Where would this go to? Who would they go to?

3 EXAMINER PRICE: Who pays for the EDR,
4 Mr. Fortney?

5 THE WITNESS: Since the -- per the ESP
6 plan, GS secondary and GS primary customers pay for
7 the EDR discounts through a quarterly reconciliation.

8 Q. Okay.

9 A. The money saved by taking away the
10 discount to water heating customers would benefit the
11 GS secondary and GS primary customers.

12 Q. Okay, and you've just described what the
13 mechanism is according to the collection and
14 discounts that currently are accrued by the
15 Commission, correct?

16 A. There is a provision in the economic
17 development rider which indicates that the EDR
18 discounts will be paid for by the -- those customers.

19 Q. And I am going one step beyond -- I am
20 going one step beyond the mechanical now and I am
21 asking whether was that -- was that your -- I'm
22 sorry.

23 Was that your intent when you wrote this
24 testimony for that mechanism to benefit those
25 commercial customers or was it that that additional

1 money should go back to, for instance, reduce the
2 deferrals that are being collected on the -- on the
3 RGC discounts?

4 A. Truthfully, I have not thought that far
5 ahead who would benefit from the reduction in the
6 water heating EDR discount.

7 Q. Okay. Here on the stand do you have a
8 recommendation in that regard where -- where that
9 allocation/reallocation of revenue should take place
10 as a result of your recommendation?

11 A. My recommendation would be since the GS
12 secondary and GS primary pay for the EDR, if there is
13 a reduction in that amount, that that should apply to
14 them.

15 EXAMINER PRICE: Mr. Fortney,
16 irrespective of the ramifications regarding the ESP
17 stipulation and where the revenue goes, can you
18 explain to the Bench why you propose to eliminate the
19 EDR discounts for the water heating only customers?

20 THE WITNESS: Water heating only
21 customers by definition do not heat with electricity.
22 This discount is given solely for them having an
23 electric water heater. My intent was to remove the
24 credit from the -- to the generation rate and to
25 leave only the credit for the distribution rate.

1 EXAMINER PRICE: So water heating only
2 customers would continue to receive the existing
3 distribution discount?

4 THE WITNESS: According to my proposal,
5 yes.

6 EXAMINER PRICE: According to your
7 proposal. Thank you.

8 Q. (By Mr. Small) On page 4 of your
9 testimony you discuss bill pat -- impacts in question
10 and answer 7. On page 4, lines 5 through 8 you state
11 that the attachments to your testimony provide the,
12 and I quote, long-term bill impacts for all-electric
13 customers, unquote, resulting from your
14 recommendations. There are three attachments, one
15 each for CEI, Toledo Edison, and Ohio Edison in
16 your -- in your table, attached tables, correct?

17 A. That's correct.

18 Q. Okay. And on the first attachment, and
19 that attachment is for CEI, on the first attachment
20 it says at the top "All-Electric Bills/Match to
21 Testimony/CEI."

22 In that attachment the second column
23 contains bill amounts of varying usage levels and is
24 labeled "1-SEP," September 1, 2010, May 31, 2011,
25 current. Do you see that, the label on the second

1 column?

2 A. Yes.

3 Q. Okay. So the current, the word "current"
4 in that label you are referring to winter bills
5 between September, 2010, and through May, 2011,
6 correct?

7 A. Correct.

8 Q. And do your current bill amounts include
9 the residential deferred distribution rider, the RDD
10 that we referred to previously?

11 A. Yes, it would include the RDD because
12 that's being paid currently.

13 Q. And in your -- in your footnotes to your
14 testimony attachments down here in the footnotes, and
15 I'm again, I'm looking at the same table, when you
16 say that you assume the same costs per kWh as the
17 current auction, do you mean the generation auction
18 held in 2009 for the ESP that ends in 2011? Is that
19 what you mean by "current auction"?

20 A. I think it was in 2008.

21 Q. I'm sorry?

22 A. It was the first auction. I think it was
23 2008.

24 Q. What you have in your tables are the
25 auction that was held that created the rates that are

1 the generation rates that are in effect at this
2 present time, correct?

3 A. Correct.

4 Q. They are not the auction results from
5 October and February that resulted in new rates
6 for --

7 A. None of my tables reflect the new auction
8 rates. They were all the \$8.41 which was the
9 generation part of the first auction.

10 Q. Would you please turn to -- I am going to
11 move on and ask a few questions about the staff
12 investigation and report. I'll just, for short
13 terminology I will just refer to it as the Staff
14 Report. Do you understand that?

15 A. The September 24 report?

16 Q. Yes.

17 A. Okay.

18 Q. Would you please turn to page 5 of the
19 Staff Report. And on page 5 at the bottom there is a
20 discussion of assumptions that went into the
21 scenarios that are presented in the Staff Report.

22 Under the ESP in the case mentioned in
23 the report that's Case 10-388, do you agree that
24 FirstEnergy utilities are allowed to replace a
25 delivery system improvement rider, the DSI, with a

1 delivery capital recovery rider or DCR?

2 A. Yes, and I believe you gave the dates of
3 that in an earlier question but I -- if I recall the
4 rates, other than the couple rates in this report
5 reflected the new -- I have lost the acronym, the new
6 DCR rather than the old distribution recovery
7 mechanism.

8 Q. All right. Let's go through that a
9 little bit. You have attached -- there are
10 attachments to the Staff Report, and I am looking at
11 Attachment 2A, 2B, and 2C. One for each of the
12 FirstEnergy electric distribution companies. Is that
13 a fair characterization? I am just looking at what
14 they are, CEI --

15 A. Yes.

16 Q. Yes, okay. And you just -- I think
17 you -- I think you responded this way, there is a
18 column that says "Current All-Electric Bill." Do you
19 see that?

20 A. Yes.

21 Q. And was your response just now that that
22 current -- those current bill amounts in the staff
23 report include the DSI, the current --

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

25 Q. And then you see the next column, it

1 doesn't matter which one, 2A, 2B, 2C, it doesn't
2 matter which one we are working off, there is a
3 column next to it that says "Standard Residential
4 Bill." Do you see that?

5 A. Yes, I do.

6 Q. And does that standard residential bill
7 contain the DCR rather than the DCI?

8 A. To the best of my memory, yes. Anything
9 after the current bill replaces the DSI with the DCR.

10 Q. What was the DCR amounts that will take
11 effect on January 1, 2012 have not been determined
12 yet; is that correct?

13 A. I think -- I think we used an estimate.

14 Q. And what's the source of your estimate?

15 A. The company.

16 Q. Is that the same company estimate that
17 was contained in -- I just want to be accurate,
18 just -- I have just dropped the case number.

19 EXAMINER PRICE: 10-388.

20 MR. SMALL: 10-388, I'm sorry, thank you,
21 your Honor.

22 Q. Those are the estimates for the -- to the
23 DCR are the estimates that the company provided in
24 testimony in 10-388?

25 A. I believe that they are, yes.

1 Q. All right. Let's go back to your
2 testimony a little bit. I want to make sure I
3 understand what's in your tables. I'm back at your
4 bill impact tables.

5 For -- doesn't matter which one, I'm on
6 the CEI table. For the bill impact tables attached
7 to your testimony I think you said the DSI is in the
8 numbers that are in the column labeled "Current"; is
9 that correct?

10 A. I believe that's correct, because those
11 are the same numbers as in the current table of the
12 Staff Report.

13 Q. And for the column that's label "Year 1,"
14 is the DSI or the DSR or some combination of it in
15 those numbers?

16 A. Well, because those keep the same bills
17 as the current, it would be the DSI that would be in
18 those numbers.

19 Q. All right. Let's go over one more column
20 to the column labeled "Year 2." Is the DSI or the
21 DCR reflected in the column of numbers labeled "Year
22 2"?

23 A. I believe that would be the new -- the
24 replacement to the DSI.

25 Q. The DCR. The DCR?

1 A. DCR. There again, I am not sure of the
2 acronym but it's the DCI replacement.

3 EXAMINER PRICE: Just for my own
4 clarification then, from column 2 to 3 you transition
5 from the DSI number embedded in your numbers, you
6 transition from the DSI number to the DRR number?

7 MR. SMALL: Your Honor, I think you
8 misstated that just a little bit when going from year
9 1 to year 2.

10 MR. KUTIK: He said "column."

11 EXAMINER PRICE: I said "column." Thank
12 you, Mr. Kutik.

13 MR. SMALL: "Column," I'm sorry.

14 THE WITNESS: What I have labeled "Year
15 2" actually the fourth column because there is a
16 kilowatt hour column reflects the DCR.

17 Q. (By Mr. Small) And is that also true of
18 Year 3 is a DCR number?

19 A. Everything beginning Year 2 and after
20 will reflect the DCR number. That was my intent.

21 Q. What did you use for those -- you told us
22 that you used the first year number from the company
23 for the DCR at the beginning of this year. What did
24 you use for your assumptions for these other years?

25 A. I probably used then the first year DCR

1 exception for all the other years.

2 Q. Okay, but the DCR is subject to increase
3 over the next ESP period; is that correct?

4 A. I believe that's correct.

5 Q. So your tables don't reflect that
6 those -- that those DCR numbers might increase over
7 the time period.

8 A. No, they don't. They do not. You are
9 correct.

10 Q. We've been talking about the riders and
11 charges that go into bills. Are you -- are you
12 familiar with the bill format that -- that is used by
13 the companies to send out their monthly bills to
14 residential customers?

15 A. I'm sorry, I did not hear.

16 Q. I'm sorry, it was cutting out.

17 Are you familiar with -- we have been
18 talking about the charge to residential customers.
19 Are you familiar with the bill format that's used for
20 communicating, you know, sending out bills on a
21 monthly basis to FirstEnergy's customers, residential
22 customers?

23 A. No, sir. I don't -- usually don't get
24 involved in the bill format cases.

25 Q. Do you know whether a FirstEnergy

1 residential customer can see a credit from the RDC on
2 a monthly bill as a separate line item?

3 A. I believe they do see the RDC credit
4 on -- as a separate item on a monthly bill.

5 Q. And currently do you -- do you know
6 whether a residential customer can see a credit from
7 the EDR on their monthly bill?

8 A. It's my understanding that they -- the
9 EDR is not broken out on the current monthly bill.

10 Q. Currently can a FirstEnergy residential
11 customer see a credit from the RGC on their monthly
12 bill?

13 A. I believe they can, yes.

14 Q. As part of the staff recommendation that
15 you have been discussing, do you believe that the
16 total amount of the -- let me ask a preliminary
17 question.

18 The EDR and the RGC are both
19 generation -- portions of the generation of -- they
20 are part of the generation portion of the customer's
21 bill, correct?

22 A. They are both generation related.

23 Q. As part of the staff's recommendation for
24 FirstEnergy freezing the rates and then altering the
25 rates depending upon the various levels of the RGC,

1 is it staff's recommendation that the total
2 generation credits that the EDR and the RGC, whatever
3 level you are holding RGC, should be shown on the
4 customer's bill?

5 A. I am indifferent.

6 EXAMINER PRICE: How about the rest of
7 the staff?

8 THE WITNESS: Well, I believe that the
9 bill format that breaks out the RDC and the RGC was
10 probably approved at some point by the staff, so they
11 must have been content with that. But I don't know
12 that they have a preference either.

13 Q. Okay. I am back to the staff
14 investigation and report. And I'm at the summary of
15 on page 1 of this Staff Report. And the last
16 paragraph of that summary refers to the dismissal of
17 a lawsuit in Geauga County, correct?

18 A. Yes, it does.

19 Q. Okay. And then there's a reference to,
20 and I quote, additional issues may also need to be
21 examined, unquote.

22 Is that a reference to the marketing
23 practices of the FirstEnergy electric distribution
24 utilities?

25 A. It's a reference to regarding the

1 recovery of any revenue shortfall as a result of the
2 discounts.

3 Q. In preparing your recommendations in your
4 prefiled testimony did you review letters submitted
5 to the docket in this case for information concerning
6 situations faced by residential customers?

7 A. I have not reviewed every letter. And I
8 don't know how many there were, several but, yes, I
9 have read some of the letters that are -- many of
10 them of the same words so, yes, I am familiar with
11 the letters.

12 Q. And in preparing your -- your
13 recommendations, did you review the transcript of the
14 testimony submitted at the local public hearings?

15 A. No, I did not.

16 EXAMINER PRICE: Can we go off the
17 record?

18 (Discussion off the record.)

19 EXAMINER PRICE: Back on the record.

20 Q. Mr. Fortney, in previous questions was it
21 clear that I was asking and did you respond to my
22 questions that it was a -- I was asking whether you
23 had reviewed it in preparation for your testimony,
24 not the report? Did you understand that?

25 A. The documents that were filed at the

1 public hearing, is that what you are referring to?

2 Q. Yes. Did you review them in preparation
3 of your testimony?

4 A. No, I did not.

5 Q. Was the question.

6 MR. SMALL: I have no further questions.
7 Thank you, Mr. Fortney.

8 EXAMINER PRICE: Thank you, Mr. Small.

9 CKAP.

10 MR. CORCORAN: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Corcoran:

14 Q. Mr. Fortney, in your testimony you
15 proposed a reduction of phase-outs of the RGC credit;
16 is that right?

17 A. In the fifth year, yes.

18 Q. And if the RGC is phased out completely,
19 then that particular discount is eliminated; is that
20 correct?

21 A. Yes.

22 Q. And last winter there was no GCR credit?

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: The question is vague. "Last

1 winter" means what?

2 EXAMINER PRICE: Sustained.

3 Can you set a, like, a monthly time
4 period?

5 MR. CORCORAN: The last winter heating
6 season.

7 MR. KUTIK: Well, I still object, same
8 grounds.

9 EXAMINER PRICE: Pick a month.

10 MR. KUTIK: If we can define it by a
11 month and a year.

12 Q. (By Mr. Corcoran) Talking about the
13 winter heating season of 2010-2011, I'm sorry, 2009
14 through 2010. There was no RGC credit; is that
15 correct?

16 A. From September of 2009 to the
17 Commission's order in March of 2010, there was no RGC
18 credit.

19 Q. Okay. And in this matter we have been
20 charged with finding a long-term solution to this
21 problem; is that correct?

22 A. That was part of the instructions in one
23 of the Commission's orders, yes.

24 Q. And you believe that eliminating the RGC
25 is a long-term solution; is that correct?

1 A. In conjunction with continuing the RDC
2 and the EDR.

3 Q. But isn't it correct that as of the
4 winter season of September, 2009 through March of
5 2010, the EDR and the RDC were in effect?

6 A. Yes, they were.

7 Q. So your proposal then is your long-term
8 solution is to bring the discounts back to the same
9 level that they were at during the winter season of
10 September, 2009 through March of 2010?

11 MR. KUTIK: Objection. Mischaracterizes
12 his testimony.

13 EXAMINER PRICE: Overruled. I don't
14 think so.

15 A. Again, my proposal beginning September 15
16 of Year 5, which is winter bills subsequent to
17 May 31, 2015, there would be no RGC credit, that is
18 correct.

19 Q. And, therefore, then the discounts
20 without the RGC being in place would bring us to the
21 same level of discounts that we -- that we had in the
22 winter heating season of September, 2009 through the
23 March 2010 season?

24 A. Or any other changes in the EDR or RDC,
25 yes, that's exactly my recommendation.

1 Q. Okay.

2 EXAMINER PRICE: Mr. Fortney, just so the
3 record is clear, in returning the discounts to the
4 level of September of 2009 through February of 2010,
5 would not restore the same bill impact, would it?
6 Because the one rider, whose name is escaping me
7 right now, will have expired on its own terms; is
8 that correct?

9 THE WITNESS: No, it would not mean --
10 have the same bill impacts because of the RDD going
11 off because of any new generation rates and any new
12 riders that have been changed during that time.

13 MR. CORCORAN: No further questions.

14 EXAMINER PRICE: Mr. Sites?

15 MR. SITES: No questions, your Honor.

16 EXAMINER PRICE: Mr. Elisar?

17 MR. ELISAR: Just a few, your Honor, if I
18 may.

19 EXAMINER PRICE: Proceed.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Elisar:

23 Q. Mr. Fortney, do you have a copy of OCC
24 Exhibit 2, the alleged letter from Mr. Andreatta?

25 A. No, sir, I do not.

1 Q. You can have mine.

2 EXAMINER PRICE: Yes, Mr. Elisar, you may
3 approach.

4 MR. ELISAR: Excuse me, your Honor, I
5 believe it's Strongsville 2, not OCC 2. May I
6 proceed?

7 EXAMINER PRICE: Please proceed.

8 Q. Mr. Fortney, would you turn to the rate
9 schedule attached to OCC Exhibit 2.

10 MR. SMALL: I think we established it is
11 Strongsville Exhibit.

12 MR. ELISAR: Yes, I am sorry,
13 Strongsville Exhibit 2, thank you, Mr. Small. I
14 apologize.

15 Your Honor, may I?

16 EXAMINER PRICE: Please proceed.

17 MR. ELISAR: Thank you.

18 Q. (By Mr. Elisar) Mr. Fortney, do you see
19 the provision there, I think it's on the first page,
20 for recovery of the electric fuel component on the
21 bottom of that page?

22 A. Yes, I do.

23 Q. Thank you. Thank you. Now, am I correct
24 that the electric fuel component, or the EFC,
25 permitted electric utilities to recover fuel and

1 purchased power on the basis of a uniform kilowatt
2 hour charge?

3 A. That is correct. There were I believe
4 quarterly filings and semi-annual adjustments to the
5 electric fuel costs at that time -- clause at that
6 time.

7 Q. Thank you, Mr. Fortney.

8 Now, in the present case of FirstEnergy's
9 EDU, would I be correct that all the generation
10 supply provided by the EDU to its customers would be
11 purchased power since the EDUs no longer own
12 generation capacity?

13 A. It is power that is purchased via the
14 auction.

15 MR. ELISAR: Thank you. Mr. Fortney, if
16 I may?

17 EXAMINER PRICE: Please.

18 Q. So if the rate schedule attached to OCC
19 Exhibit 2 was used to bill residential customers
20 based on today's situation where the utility no
21 longer owns generation, the cost of generation supply
22 would flow through the EFC on a uniform per kilowatt
23 hour charge; is that correct?

24 A. In theory, that's correct, yes.

25 Q. Thank you. Thank you, Mr. Fortney. Now

1 if I may, last question, your Honor.

2 Mr. Fortney, have you attempted to
3 determine the price that all-electric customers would
4 pay if the structure of the rate attached to OCC --
5 I'm sorry, Strongsville Exhibit 2 was used in the
6 cost of generation supply to the EDU was required to
7 the EFC component on a uniform charged per kilowatt
8 hour?

9 A. I believe they would pay what every other
10 residential customer pays because that's how
11 residential customers are billed, on a
12 per-kilowatt-hour basis.

13 Q. And you have attempted to determine that
14 price, Mr. Fortney?

15 A. It's in the tariff, the rider GEN tariff.

16 MR. ELISAR: Thank you. Thank you, your
17 Honor, no further questions.

18 EXAMINER PRICE: Thank you, Mr. Elisar.
19 FirstEnergy?

20 MR. KUTIK: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Kutik:

24 Q. Mr. Fortney, counsel for OCC asked you
25 some questions about your proposal versus the

1 stipulation in the ESP case. Do you remember that?

2 A. Regarding the water heating --

3 Q. Yes.

4 A. -- discounts?

5 Yes, I remember.

6 Q. To your recollection isn't it true that
7 OCC did not sign that stipulation?

8 A. I do not recollect.

9 Q. Would you accept that, subject to check?

10 A. Huh?

11 Q. Would you accept that, subject to check?

12 A. The first ESP --

13 EXAMINER PRICE: The Bench will take
14 administrative notice of the fact that OCC did not
15 sign the stipulation in 10-388-EL-SSO.

16 MR. KUTIK: Thank you, your Honor.

17 Q. Now, with respect to the freezing in the
18 first winter period, the Year 1 of your proposal, to
19 the extent that there are other riders that are
20 frozen that other customers may change and there is
21 an underrecovery by the company, you would support,
22 would you not, that the company be allowed to accrue
23 those -- deferrals of those matters?

24 A. Any underrecovery resulting from the RGC
25 discount should be allowed to be deferred by the

1 company.

2 Q. And to the extent there are any other
3 riders that are frozen, if the Commission decides to
4 go that route and there is an underrecovery with
5 respect to those riders, you would also support a
6 deferral with respect to the underrecovery there?

7 A. Yes.

8 Q. With respect to either those deferrals or
9 deferrals that the companies have already accrued or
10 will accrue with respect to the RGC or any other
11 credits relating to the customer at issue in this
12 case, would you support the recovery of carrying
13 charges in those reports?

14 A. It is staff's opinion and recommendation
15 that FirstEnergy should be granted carrying charges
16 on a, we the termed, deferral bucket plus on any
17 ongoing deferrals, but the ongoing deferrals should
18 be very minimal because they should be recovered on a
19 more immediate basis.

20 Q. In the Staff Report there are some
21 scenarios that assume a, might call, a straight fixed
22 variable rate of some -- of some sort; is that
23 correct?

24 A. Yes, both columns 5 and 6 reflect some
25 variation of a straight fixed variable distribution

1 rate.

2 Q. Do you support the adoption of a straight
3 fixed variable rate in this case?

4 A. No, I do not.

5 MR. KUTIK: No further questions.

6 EXAMINER PRICE: Thank you.

7 Mr. Jones, redirect?

8 MR. JONES: Your Honor, could I have a
9 moment.

10 EXAMINER PRICE: You may. Let's go off
11 the record until -- be quick.

12 (Discussion off the record.)

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

15 MR. JONES: Your Honor, I have no further
16 questions.

17 EXAMINER PRICE: Thank you.

18 MR. JONES: At this time --

19 EXAMINER PRICE: Whoa, whoa, whoa. Not
20 yet, Mr. Jones.

21 Ms. Willey, do you have any questions?

22 EXAMINER WILLEY: I do not.

23 EXAMINER PRICE: I have a few.

24 - - -

25

EXAMINATION

By Examiner Price:

Q. Mr. Fortney, I was not clear in your recommendation on page 3 of your testimony how after Year 2 -- after Year 1 the staff proposes that changes in riders be addressed.

As a rider changes in Year 2 whether it's rider GEN or any of the other trued up riders, transmission cost recovery rider, would staff propose that those changes flow through to the all-electric customers?

A. After Year 2?

Q. In Year 2 and beyond.

A. In Year 2, oh, yes, yes.

Q. Okay. So the frozen rate is only for Year 1, and after that, they will pay dollar for dollar any changes in riders, they will see the benefit any reduction in the riders, they will pay any riders that increase on a dollar-per-dollar basis?

A. Yes.

Q. Thank you.

Just so the record is clear, because I think this has been an issue at this hearing and we have heard conflicting testimony, leaving aside

1 customers who might have purchased an all-electric
2 home after the discount had been terminated,
3 customers who have had all-electric homes from year
4 2000 on, has there ever been a period when they did
5 not receive a discount?

6 A. Not to my knowledge. As I said, the only
7 period -- the period that Mr. Corcoran referred to
8 when they were not receiving the RGC discount they
9 were still receiving the EDR and the RDC. Prior to
10 that they were on whatever schedule was applicable at
11 that time.

12 Q. The EDR and RDC, can you estimate the
13 percentage of discount that is off of a standard
14 service offer residential customer's total bill? Or
15 if not total bill you can leave transmission out of
16 that. It's up to you.

17 A. I believe, and actually I think it's
18 fairly consistent for all three companies, that the
19 EDR and RDC amount to about a 25 percent discount off
20 the total bill. There again, that's at maybe usage
21 level of 3,500. It varies from that usage level but
22 25 percent is the number that I have calculated.

23 Q. So, again, all-electric customers always
24 received at least a roughly 25 percent discount?
25 From other standard service offer customers?

1 A. I don't know what the percent discount
2 was prior to the EDR and the RDC.

3 Q. Since the institution of the EDR and the
4 RDC in the current ESP they have always received at
5 least a 25 percent discount roughly?

6 A. Yes.

7 Q. Thank you.

8 In -- so far I think we've had three main
9 proposals for a long-term solution, as Mr. Corcoran
10 pointed out. We have staff's proposal, we have OCC's
11 proposal in the form of Mr. Yankel's testimony, and
12 we have FirstEnergy's proposal in the form of
13 Mr. Ridmann's testimony.

14 Can you tell me which proposal has the
15 highest costs, and by "costs" I mean amounts to the
16 greatest discount that we passed along to other
17 ratepayers?

18 A. I would say that was probably my proposal
19 because, first of all, it keeps the -- essentially
20 keeps the RGC the same for Year 1 and then phases out
21 over the next four years and so it's basically a
22 five-year phase-out, where Mr. Ridmann's is a more of
23 a three-year phase-out. And Mr. Yankel's it's -- he
24 has a pretty severe discount the first year but he
25 proposes to continue that discount permanently.

1 Q. So Mr. Yankel's discount in Year 1 is
2 substantially less than the discount that the staff
3 is proposing?

4 A. For Year 1.

5 Q. For Year 1.

6 A. For year?

7 Q. For Year 1.

8 A. Yeah, for Year 1 where the staff proposes
9 keeping the same rates for at least for CEI and Ohio
10 Edison, Mr. Yankel's testimony about the RGC is
11 approximately a third of the RGC currently.

12 Q. Okay. If I recall correctly, Mr. Yankel
13 was not able to quantify the impact of the discount
14 that he was proposing. Has staff prepared an
15 estimate of the amount of the discount that
16 Mr. Yankel is proposing?

17 A. Very ballpark, I believe that the full
18 RGC discounts, the deferral amount annually is in
19 the -- is in the neighborhood of \$85 million. Since
20 Toledo is such a small part of this and Mr. Yankel's
21 proposals are about a third of the RDG for CEI and
22 OE, I believe that his deferrals would be in the
23 neighborhood of \$30 million.

24 Q. And that would be \$30 million annually?

25 A. Annually for as long as.

1 Q. I guess he said it wouldn't be forever
2 but in the long term.

3 Don't nod, you have to say "yes."

4 A. Yes.

5 Q. You have to verbalize it for the court
6 reporter. You were nodding, you weren't saying
7 "yes."

8 A. Yes.

9 Q. Never mind.

10 Finally, in your testimony you propose
11 that the deferrals be recovered solely from
12 residential customers. Can you explain to the
13 Commission the policy rationale behind staff's
14 recommendation to recover the deferrals solely from
15 residential customers?

16 A. Probably a couple different rationales.
17 No. 1 is I cannot, nor could any member of staff,
18 think of any reason whatsoever that a general service
19 customer should pay revenue shortfalls created by the
20 residential class.

21 This was done in the EDR but that was
22 done in the context of a stipulation and I'm assuming
23 that the GS secondary and GS primary representatives
24 got something of value to them in return for
25 accepting the EDR shortfall.

1 And secondly, they are residential
2 customers. The bid comes in to FirstEnergy. They
3 adjust that for loss factors and seasonality and
4 that's what the residential customer is expected to
5 pay so that FirstEnergy can pay their generation
6 providers.

7 And if there's any shortfall in the
8 residential revenue, then staff believes the
9 shortfall should be made up by other residential
10 customers.

11 Q. So you would characterize the ongoing
12 discounts as a revenue shortfall among the
13 residential customer class?

14 A. Yes.

15 Q. And you would recommend continuing to
16 collect that from all other residential customers
17 consistent with, say, the distribution credit that's
18 currently provided?

19 A. That's correct.

20 EXAMINER PRICE: Okay. Thank you, you
21 are excused.

22 Mr. Jones.

23 MR. JONES: Thank you, your Honor. At
24 this time I would like to move for the admission of
25 Staff Exhibits 1 and 1A.

1 EXAMINER PRICE: Any objection to the
2 admission of Staff 1 and 1A?

3 MR. KUTIK: No objection, your Honor.

4 EXAMINER PRICE: Hearing none, we will
5 admit it.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 EXAMINER PRICE: We will now adjourn
8 until 10:00 o'clock tomorrow morning.

9 MR. KUTIK: Your Honor, before we --

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

11 (Discussion off the record.)

12 (Hearing was adjourned at 5:53 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 Thursday, February 17,
5 2011, and carefully compared with my original
6 stenographic notes.

7
8

Karen Sue Gibson, Registered
9 Merit Reporter.

10 (KSG-5322)

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Summary: Transcript Transcript of Ohio Edison Company hearing held on 02/17/10. Vol II electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.