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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Ohio)
Power Company and Columbus Southern) Case No. 10-2376-EL-UNC
Power Company for Authority to Merge)
and Related Approvals)

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company for Authority to) Case No. 11-346-EL-SSO
Establish a Standard Service Offer) Case No. 11-348-EL-SSO
Pursuant to §4928.143, Ohio Rev. Code,)
in the Form of an Electric Security Plan.)

In the Matter of the Application of)
Columbus Southern Power Company and) Case No. 11-349-EL-AAM
Ohio Power Company for Approval of) Case No. 11-350-EL-AAM
Certain Accounting Authority)

In the Matter of the Application of)
Columbus Southern Power Company) Case No. 10-343-EL-ATA
to Amend its Emergency Curtailment)
Service Riders)

In the Matter of the Application of)
Ohio Power Company) Case No. 10-344-EL-ATA
to Amend its Emergency Curtailment)
Service Riders)

In the Matter of the Commission Review of)
the Capacity Charges of Ohio Power) Case No. 10-2929-EL-UNC
Company and Columbus Southern Power)
Company.)

In the Matter of the Application of)
Columbus Southern Power Company) Case No. 11-4920-EL-RDR
for Approval of a Mechanism to Recover)
Deferred Fuel Costs Ordered Under)
Ohio Revised Code 4928.144)

In the Matter of the Application of)
Ohio Power Company for Approval)
of a Mechanism to Recover) Case No. 11-4921-EL-RDR
Deferred Fuel Costs Ordered Under)
Ohio Revised Code 4928.144)

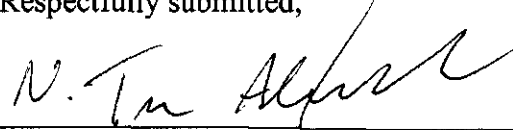
**FIRSTENERGY SOLUTIONS CORP.'S
NOTICE OF FILING DEPOSITION TRANSCRIPT**

FirstEnergy Solutions Corp. ("FES"), pursuant to O.A.C. 4901-1-21, hereby provides notice to all parties that it is filing the following deposition transcripts:

- Exhibit A- Joseph Dominguez

Dated: October 6, 2011

Respectfully submitted,



Mark A. Hayden (0081077)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-7735
(330) 384-3875 (fax)
haydenm@firstenergycorp.com

James F. Lang (0059668)
Laura C. McBride (0080059)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

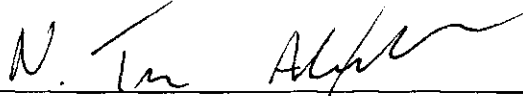
David A. Kutik (0006418)
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
(216) 586-3939
(216) 579-0212 (fax)
dakutik@jonesday.com

Allison E. Haedt (0082243)
JONES DAY
P.O. Box 165017
Columbus, OH 43216-5017
(614) 469-3939
(614) 461-4198 (fax)
aehaedt@jonesday.com

Attorneys for FirstEnergy Solutions Corp.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp.'s Notice of Filing Deposition Transcript* was served this 6th day of October, 2011, via e-mail upon the parties below.



One of the Attorneys for FirstEnergy Solutions Corp.

Steven T. Nourse
Matthew J. Satterwhite
Anne M. Vogel
American Electric Power Corp.
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
stnourse@aep.com
mjsatterwhite@aep.com
amvogel@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
41 South High Street
Columbus, Ohio 43215
dconway@porterwright.com

Cynthia Fonner Brady
David I. Fein
550 W. Washington Street, Suite 300
Chicago, IL 60661
cynthia.a.fonner@constellation.com
david.fein@constellation.com

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620
ricks@ohanet.org

Shannon Fisk
2 North Riverside Plaza, Suite 2250
Chicago, IL 60606

Dorothy K. Corbett
Amy Spiller
Duke Energy Retail Sales
139 East Fourth Street
1303-Main
Cincinnati, Ohio 45202
dorothy.corbett@duke-energy.com
amy.spiller@duke-energy.com

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@bklawfirm.com
mkurtz@bklawfirm.com

Terry L. Etter
Maureen R. Grady
Jeffrey L. Small
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
etter@occ.state.oh.us
grady@occ.state.oh.us
small@occ.state.oh.us

Thomas J. O'Brien
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4291
tobrien@bricker.com

Jay E. Jadwin
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor

sfisk@nrdc.org

John W. Bentine
Mark S. Yurick
Zachary D. Kravitz
Chester Willcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
jbentine@cswslaw.com
myurick@cswslaw.com
zkravitz@cswslaw.com

Terrence O'Donnell
Christopher Montgomery
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
todonnell@bricker.com
cmontgomery@bricker.com

Jesse A. Rodriguez
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, Pennsylvania 19348
jesse.rodriguez@exeloncorp.com

Glen Thomas
1060 First Avenue, Ste. 400
King of Prussia, Pennsylvania 19406
gthomas@gtpowergroup.com

Henry W. Eckhart
2100 Chambers Road, Suite 106
Columbus, Ohio 43212
henryeckhart@aol.com

Christopher L. Miller
Gregory H. Dunn
Asim Z. Haque
Stephen J. Smith
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, Ohio 43215
cmiller@sزد.com
ahaque@sزد.com
ssmith@sزد.com
gdunn@sزد.com

Columbus, Ohio 43215
jejadwin@aep.com
Michael R. Smalz
Joseph V. Maskovyak
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, Ohio 43215
msmalz@ohiopoveritylaw.org
jmaskovyak@ohiopoveritylaw.org

Lisa G. McAlister
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
lmcaster@bricker.com
mwarnock@bricker.com

William L. Massey
Covington & Burling, LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
wmassey@cov.com

Laura Chappelle
4218 Jacob Meadows
Okemos, Michigan 48864
laurac@chappelleconsulting.net

Pamela A. Fox
Law Director
The City of Hilliard, Ohio
pfox@hilliardohio.gov

M. Howard Petricoff
Stephen M. Howard
Michael J. Settineri
Lija Kaleps-Clark; Benita Kahn
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, Ohio 43215
mhpeticoff@vorys.com
smhoward@vorys.com
mjsettineri@vorys.com
lkalepsclark@vorys.com
bakahn@vorys.com

Sandy Grace
Exelon Business Services Company
101 Constitution Avenue N.W., Suite 400 East
Washington, DC 20001
sandy.grace@exeloncorp.com

Kenneth P. Kreider
David A. Meyer
Keating Muething & Klekamp PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202
kpkreider@kkmklaw.com
dmeyer@kkmklaw.com

Holly Rachel Smith
Holly Rachel Smith, PLLC
Hitt Business Center
3803 Rectortown Road
Marshall, Virginia 20115
holly@raysmithlaw.com

Gregory J. Poulos
EnerNOC, Inc.
101 Federal Street, Suite 1100
Boston, MA 02110
gpoulos@enernoc.com

Philip B. Sineneng
Terrance A. Mebane
Carolyn S. Flahive
Thompson Hine LLP
41 S. High Street, Suite 1700
Columbus, Ohio 43215
philip.sineneng@thompsonhine.com
carolyn.flahive@thompsonhine.com
terrance.mebane@thompsonhine.com

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
gary.a.jeffries@aol.com

Steve W. Chriss
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, Arkansas 72716
stephen.chriss@wal-mart.com

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
barthroyer@aol.com

Werner L. Margard III
John H. Jones
William Wright
Thomas Lindgren
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215
werner.margard@puc.state.oh.us
john.jones@puc.state.oh.us
William.wright@puc.state.oh.us
Thomas.Lindgren@puc.state.oh.us

Emma F. Hand
Douglas G. Bonner
Keith C. Nusbaum
Clinton A. Vince
SNR Denton US LLP
1301 K Street, NW, Suite 600, East Tower
Washington, DC 20005-3364
emma.hand@snrdenton.com
doug.bonner@snrdenton.com
keith.nusbaum@snrdenton.com
Clinton.vince@snrdenton.com

Samuel C. Randazzo
Joseph E. Olikier
Frank P. Darr
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com

David M. Stahl
Arin C. Aragona
Scott C. Solberg
Eimer Stahl Klevorn & Solberg LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
dstahl@eimerstahl.com
aaragona@eimerstahl.com
ssolberg@eimerstahl.com

John N. Estes III
Paul F. Wight
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave., N.W.
Washington, DC 20005
jestes@skadden.com
paul.wight@skadden.com

Christopher J. Allwein
Williams, Allwein and Moser, LLC
1373 Grandview Avenue, Suite 212
Columbus, Ohio 43212
callwein@williamsandmoser.com

Jay L. Kooper
Katherine Guerri
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095
jkooper@hess.com
kguerri@hess.com

Robert Korandovich
KOREnergy
P. O. Box 148
Sunbury, OH 43074
korenergy@insight.rr.com

Colleen L. Mooney
David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45840
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org

E. Camille Yancey
Nolan Moser
Trent A. Dougherty
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
camille@theoec.org
nolan@theoeg.org
trent@theoeg.org

Joel Malina
Executive Director
COMPLETE Coalition
1317 F Street, NW
Suite 600
Washington, DC 20004
malina@wexlerwalker.com

Tara C. Santarelli
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212
tsantarelli@elpc.org

Allen Freifeld
Samuel A. Wolfe
Viridity Energy, Inc.
100 West Elm Street, Suite 410
Conshohocken, PA 19428
afreifeld@viridityenergy.com
swolfe@viridityenergy.com

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of
Ohio Power Company and Columbus
Southern Power Company for Authority to
Merge and Related Approvals No. 10-2376-EL-UNC

In the Matter of the Application of
Columbus Southern Power Company and
Ohio Power Company for Authority to
Establish a Standard Service Offer
Pursuant to 4928.143, Ohio Rev.
Code, in the Form of an Electric No. 11-346-EL-SSO
Security Plan No. 11-348-EL-SSO

In the Matter of the Application of
Columbus Southern Power Company
and Ohio Power Company for No. 11-349-EL-AAM
Approval of Certain
Accounting Authority No. 11-350-EL-AAM

In the Matter of the Application of
Columbus Southern Power Company
to Amend its Emergency No. 10-343-EL-ATA
Curtailement Service Riders

In the Matter of the Application of
Ohio Power Company to Amend
its Emergency Curtailement No. 10-344-EL-ATA
Service Riders

In the Matter of the Commission
Review of the Capacity Charges
of Ohio Power Company and No. 10-2929-EL-UNC
Columbus Southern Power Company

ORAL DEPOSITION OF JOSEPH DOMINGUEZ, ESQUIRE
MONDAY, OCTOBER 3, 2011

CAPTION CONTINUES

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<p>1 CAPTION CONTINUED</p> <p>2</p> <p>3 In the Matter of the Application of 4 Columbus Southern Power Company 5 for Approval of a Mechanism to No. 11-4920-EL-RDR 6 Recover Deferred Fuel Costs Ordered 7 Under Ohio Revised Code 4928.144</p> <p>8 Oral deposition of JOSEPH DOMINGUEZ, 9 ESQUIRE, taken at the offices of Exelon Corporation, 10 300 Exelon Way, Kennett Square, Pennsylvania, on 11 Monday, October 3, 2011, commencing at 9:04 a.m., 12 before Barbara McKeon Quinn, a Registered Merit 13 Reporter and Notary Public, pursuant to notice.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 JOSEPH DOMINGUEZ, ESQUIRE, having been 2 duly sworn, was examined and testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. KUTIK:</p> <p>5 Q. State your name.</p> <p>6 A. Joe Dominguez.</p> <p>7 Q. Where do you work?</p> <p>8 A. Exelon.</p> <p>9 Q. And what's the full name of the company 10 you work for?</p> <p>11 A. Exelon Corporation.</p> <p>12 Q. What do you do for Exelon Corporation?</p> <p>13 A. I act as senior vice president for 14 communications, public policy, and governmental 15 affairs for Exelon Generation Company, its wholly- 16 owned subsidiary.</p> <p>17 Q. You're a lawyer?</p> <p>18 A. Yes.</p> <p>19 Q. Are you licensed to practice in any 20 state?</p> <p>21 A. Yes. I'm licensed to practice in 22 Pennsylvania and New Jersey.</p> <p>23 Q. Have you had your deposition taken 24 before?</p> <p>25 A. First time.</p>
Page 3	Page 5
<p>1 APPEARANCES:</p> <p>2 JONES DAY 3 DAVID A. KUTIK, ESQUIRE (Via telephone) 4 dakutik@jonesday.com 5 901 Lakeside Avenue 6 Cleveland, Ohio 44114 7 216-586-3939 8 Counsel for FirstEnergy Solutions Corp.</p> <p>9</p> <p>10 EIMER STAHL KLEVORN & SOLBERG LLP 11 SCOTT C. SOLBERG, ESQUIRE 12 ssolberg@eimerstahl.com 13 and DAVID M. STAHL, ESQUIRE (Via telephone) 14 224 South Michigan Avenue 15 Suite 1100 16 Chicago, Illinois 60604-2516 17 312-660-7600 18 and 19 SANDY GRACE, ESQUIRE 20 sandy.grace@exeloncorp.com 21 Exelon Business Services Company 22 101 Constitution Avenue N.W., 23 Suite 400 East 24 Washington, DC 20001 25 Counsel for Exelon Corporation</p> <p>17 SNR DENTON US LLP 18 DOUGLAS G. BONNER, ESQUIRE (Via telephone) 19 doug.bonner@snrdenton.com 20 1301 K Street, NW 21 Suite 600 East Tower 22 Washington, DC 20005-3364 23 202-408-6400</p> <p>24</p> <p>25</p> <p>26 EXAMINATION INDEX</p> <p>27 JOSEPH DOMINGUEZ, ESQUIRE</p> <p>28 BY MR. KUTIK 4</p> <p>29 BY MR. SOLBERG 75</p> <p>30 BY MR. KUTIK 77</p>	<p>1 Q. Have you taken or defended depositions 2 in your career?</p> <p>3 A. Many times.</p> <p>4 Q. So I can assume, then, that you know the 5 rules of the deposition and the need to answer my 6 question using words?</p> <p>7 A. Yes.</p> <p>8 Q. Have you brought anything with you to 9 the deposition today?</p> <p>10 A. I did.</p> <p>11 Q. What did you bring?</p> <p>12 A. I brought my direct testimony in this 13 case from July 25, 2011, I brought a copy of the 14 Stipulation that's been entered by a number of the 15 parties, and I brought a copy of the testimony I gave 16 in support of the Stipulation.</p> <p>17 Q. Would it be okay with you if, when 18 referring to your July testimony, I refer to that as 19 your direct testimony, and referring to your September 20 file testimony, I refer to that as your Stipulation 21 testimony?</p> <p>22 A. That's fine with me. You may have to 23 remind me a couple times, but I'll try to do the best 24 I can.</p> <p>25 Q. Sure.</p>

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1 Did you participate in the negotiations
2 that led up to the Stipulation in this case?
3 **A. Yes.**
4 Q. What was your role?
5 **A. I represented Exelon Generation in those**
6 **stipulations -- discussions.**
7 Q. In those negotiations?
8 **A. Yes.**
9 Q. Did you attend all of the negotiations?
10 **A. I believe so. Either in person or by**
11 **telephone.**
12 Q. Did you have meetings or negotiations
13 with AEP Ohio or their representatives that were not
14 attended by parties or representatives of parties
15 other than AEP Ohio or Exelon?
16 **A. Yes.**
17 Q. How many such meetings or negotiations
18 or conversations were there, that is, direct
19 conversations between Exelon and AEP only?
20 **A. I'd say three to six.**
21 Q. Were there negotiations or conversations
22 between AEP and Exelon that you were not a party to?
23 **A. You know, Howard Petricoff may have, who**
24 **was our local counsel, may have had a number of**
25 **conversations with AEP regarding scheduling issues or**

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1 **specific items in the settlement wherein he**
2 **represented Exelon as well as a number of other**
3 **parties that he's counsel of record to that I was not**
4 **a participant in.**
5 Q. Anyone else that might have had a
6 conversation with AEP on behalf of Exelon that you
7 were not a party to?
8 **A. Not that I can recall, no.**
9 Q. Would it be fair to say that with
10 respect to substantive conversations about a potential
11 settlement, you either were a party to or were aware
12 of almost all of the communications that went back and
13 forth between Exelon and AEP?
14 **A. Yes.**
15 Q. Now, did there come a time when you
16 became aware that FirstEnergy was no longer
17 participating in the negotiations?
18 **A. No, not really. There was a time where**
19 **they didn't show up, but I wasn't sure if that meant**
20 **that they had terminated discussions or that those**
21 **discussions had continued on a one-off basis with AEP.**
22 Q. Well, during the time when you saw that
23 FirstEnergy Solutions had not shown up, did you
24 continue to have discussions with FirstEnergy
25 Solutions?

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1 **A. Yes.**
2 Q. Did there come a time when you were
3 aware that IEU was not participating in the
4 negotiations?
5 **A. Again, the same answer I would give.**
6 **There was a time where they stopped coming to the**
7 **settlement discussions, but I wasn't sure whether they**
8 **were continuing discussions behind the scenes or not**
9 **in kind of this shuttle diplomacy that occurs in many**
10 **of these negotiations.**
11 Q. And when you were aware that IEU was not
12 showing up, did you continue to have conversations on
13 behalf of Exelon with IEU representatives?
14 **A. No.**
15 Q. Did there come a time when you were
16 aware that OCC was not in the room involved in the
17 negotiations?
18 **A. Yes.**
19 Q. After you became aware that OCC was not
20 there, did Exelon continue to have discussions with
21 OCC?
22 **A. No.**
23 Q. Is it correct to say that with regard to
24 the proposed ESP that is set forth in the Stipulation,
25 you did no study to quantitatively compare the ESP

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1 versus an MRO?
2 **A. Yes.**
3 Q. And would that be also fair to say that
4 no one at Exelon did that?
5 **A. That's correct, yes.**
6 Q. Do you have with you Exelon's responses
7 to any of the discovery that was served on Exelon in
8 this case?
9 **A. No.**
10 Q. Well, I want to read you a response that
11 Exelon provided to an IEU interrogatory, Interrogatory
12 No. 1-1, and I want to read you a particular -- I
13 don't think the question is important, but let me just
14 read you a statement that's in the response.
15 It says, During negotiations certain
16 nonsettling parties, including FES and IEU, raised the
17 issue whether the Stipulation would be able to meet
18 the test, that is, the MRO versus the ESP test, and
19 Staff and AEP Ohio affirmatively stated that based on
20 their negotiating positions it would.
21 Do you recall a statement to that effect
22 in Exelon's discovery responses to IEU?
23 **A. I don't.**
24 Q. Would that statement be true?
25 **MR. SOLBERG: Object to the form. Which**

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1 statement?

2 **MR. KUTIK:** The statement I just read.

3 **THE WITNESS:** Yes, that's generally

4 correct.

5 **BY MR. KUTIK:**

6 Q. Do you recall who at Staff made

7 statements that based on their negotiating positions

8 the Stipulation would pass the ESP versus MRO test?

9 **A. Not at this moment.**

10 Q. Was it one of the attorneys for the

11 Staff or was it one of the members of the Staff such

12 as Mr. Fortney or Ms. Baer or someone like that?

13 **A. I -- I remember the statement being**

14 **made. I just don't remember who it came from.**

15 Q. But you do remember the Staff saying

16 that?

17 **A. Yes.**

18 Q. Who from AEP Ohio said that?

19 **A. I believe both counsel said that and I**

20 **guess the only person I really remember saying that is**

21 **Steve Nourse.**

22 Q. Steve Nourse?

23 **A. Yeah.**

24 Q. Mr. Dominguez, could you get a little

25 closer to the phone or speak up. I'm having just a

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1 little trouble hearing you at the end of your

2 sentences.

3 **A. Sure. I will. I'm sorry.**

4 Q. Do you recall the earliest time that

5 anyone from AEP said that based upon their negotiating

6 positions they believed that the ESP, the proposed ESP

7 would meet the ESP versus MRO test?

8 **A. As near as I could remember, AEP always**

9 **took the position, whether with regard to their**

10 **proposed ESP in the filed case and throughout the**

11 **negotiations, that the ESP was preferable to the MRO**

12 **in the aggregate.**

13 Q. When did Staff first take the position

14 that the Stipulation proposed ESP would be more

15 favorable in the aggregate than the MRO?

16 **A. I think it occurred probably within the**

17 **two- to three-week period before the case settled,**

18 **and, in the initial instance, Staff was saying things**

19 **like they believe that they could get to a settlement**

20 **with proposals that they were making, counter**

21 **proposals in the negotiations that would pass the ESP**

22 **versus MRO test.**

23 **In other words -- and I am not trying to**

24 **be cagey -- but it was a staple of the discussions in**

25 **the case from the outset because the parties recognize**

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1 **that that was the legal requirement.**

2 Q. Did anyone from Staff indicate to you in

3 the week before the Stipulation was signed that they

4 had done any quantitative analysis that showed that

5 the proposals that were on the table could meet the

6 ESP versus MRO test?

7 **A. The discussions in the room were that**

8 **they had done a quantitative analysis and that, in**

9 **fact, the terms that ultimately made themselves into**

10 **the Stipulation would pass the test.**

11 Q. And that was from Staff?

12 **A. Yes.**

13 Q. You don't recall who said that?

14 **A. I don't. I'd be guessing.**

15 Q. Now, would it also be fair to say that

16 you did not independently analyze the generation rate?

17 **A. Yes.**

18 Q. For example, you did not compare any

19 base generation rate increase between the initial

20 proposed ESP and the Stipulation proposed ESP;

21 correct?

22 **A. I was aware of how the numbers were**

23 **moving, but I didn't do an analysis, a rate analysis,**

24 **of the generation rate either with regard to the**

25 **originally proposed ESP or the numbers that were in**

Page 13

1 **the Stipulation.**

2 Q. Did you compare the change in revenues

3 that might be generated by the initially proposed ESP

4 versus the proposed ESP that resulted in the

5 Stipulation?

6 **A. There again, I was aware that there was**

7 **a discussion in the room about the revenues that were**

8 **generated by the proposed ESP relative to the**

9 **Stipulation, but I didn't do any separate analysis to**

10 **quantify or verify the revenue that was derived from**

11 **either the originally filed ESP or the Stipulation.**

12 Q. Do you know whether the base generation

13 revenues proposed from the -- in the initial

14 Stipulation are more or less than what the results

15 from the base generation revenues in the Stipulation?

16 **A. They were more, but that's not the whole**

17 **of the story. The originally filed ESP had a number**

18 **of nonbypassable surcharges that were not quantified**

19 **in the ESP filing itself.**

20 **And so when I think of the generation**

21 **rate, I think of the accumulation of the nonbypassable**

22 **charges as well as the generation rate, the actual**

23 **generation rate, and I compare that in the originally**

24 **filed ESP as compared to the Stipulation which just**

25 **has the generation rate with many of those**

<p style="text-align: right;">Page 14</p> <p>1 nonbypassable surcharges eliminated. 2 Q. My question, though, was about the base 3 generation rate, and the base generation rate revenues 4 increased comparing the initial proposal in the 5 application versus the Stipulation proposed ESP; 6 correct? 7 MR. SOLBERG: Object. Asked and 8 answered. 9 THE WITNESS: I think I would give the 10 same answer. If you're looking for me to compare one 11 line item against the other line item, I don't 12 remember as I sit here today how those two things 13 compared. 14 However, I could tell you that I didn't 15 think about it through that lens. The lens that I 16 used to think about it was all of the nonbypassable 17 surcharges plus the GRR, or the generation rate, 18 pardon me, and I would compare that to the -- to the 19 generation rate that was in the Stipulation. 20 That's the way I thought about it, and, 21 at the end of the day, I think it was lower, and 22 that's what I recall from the conversations. 23 Q. Did you make any comparison of the 24 increase in revenues with respect to the base 25 generation rate versus the effect on revenues by</p>	<p style="text-align: right;">Page 16</p> <p>1 analysis and his comparison of the ESP to the MRO, and 2 I agreed that that analysis looked right. But I never 3 sat down and verified it, if you will. 4 Do you follow me? 5 Q. My question was you supported it; 6 correct? 7 A. I made reference to it. 8 Q. Well, didn't you, in your direct 9 testimony, conclude that AEP at least had failed to 10 show that the ESP was better or more favorable than 11 the MRO? 12 A. Yes. 13 Q. And you cited Mr. Schnitzer in his 14 comments about the errors that AEP had made in its 15 analysis; correct? 16 A. Yes, I did. 17 Q. Did you support Mr. Schnitzer's view 18 that the initial proposal would cost customers to pay 19 in the neighborhood of 700 million to 1 billion 20 dollars more than an MRO? 21 MR. SOLBERG: Object to form. 22 THE WITNESS: The word "supported," to 23 me, means that I did something that verified 24 independently Mr. Schnitzer's conclusions. I did not 25 do that. I looked at his testimony, I thought it was</p>
<p style="text-align: right;">Page 15</p> <p>1 eliminating the POLR charge? 2 A. No, I did not. 3 Q. So you don't know how those two 4 compared? 5 A. No. 6 Q. Do you believe that the base generation 7 rates are higher than a fully competitive market base 8 solution would produce? 9 A. Yes. 10 Q. Previously you supported the testimony 11 of Mr. Schnitzer; correct? 12 A. I believe I supported parts of the 13 testimony of Mr. Schnitzer. 14 Q. Well, particularly you supported the 15 previous testimony of Mr. Schnitzer with respect to 16 his comparison of the ESP and the MRO. 17 MR. SOLBERG: Object to form. Vague. 18 THE WITNESS: Yeah. Let me just make 19 sure, Mr. Kutik, I'm answering your question 20 correctly. 21 I didn't do the analysis. I hadn't done 22 it for the Stipulation. I didn't do the analysis of 23 the MRO and ESP from a quantitative standpoint at any 24 time in the history of this case. 25 I did make reference to Mr. Schnitzer's</p>	<p style="text-align: right;">Page 17</p> <p>1 right, and I cited those parts of his testimony that I 2 thought were right in my own testimony. 3 So we're tripping up over the use of 4 this word "supported." I just want to be clear what I 5 did and what I did not do. 6 BY MR. KUTIK: 7 Q. Did you agree with Mr. Schnitzer's 8 conclusions -- 9 A. Yes. 10 Q. -- that the initial proposal would cost 11 customers 700 million to 1 billion dollars more than 12 MRO? 13 A. Yes, but I didn't independently verify 14 it. 15 Q. One of Mr. Schnitzer's comments about 16 Ms. Thomas's prior testimony was that she had 17 overstated the capacity number to be used in coming up 18 with a competitive benchmark price. 19 Do you recall that? 20 A. I recall that generally, the theme of 21 it. 22 Q. Did you agree with that? 23 A. There has been a dispute in this case 24 from the outset as to what the appropriate capacity 25 price should be, whether it should be the RPM</p>

Page 18

1 equivalent price for the RPM zone or whether it should
2 be a cost based rate.
3 In my direct testimony we argued our
4 litigation position that it should be the RPM capacity
5 rate, but that has been a disputed issue from the very
6 outset of the case and ultimately the heart of the
7 Stipulation.
8 Q. Would it be fair to say that you don't
9 believe that AEP Ohio would be entitled to charge CRES
10 providers for capacity in the range of 347 to 355
11 dollars per megawatt day?
12 MR. SOLBERG: Object to form. Calls for
13 a legal conclusion.
14 THE WITNESS: It would be fair to say
15 that I thought that there were two sides to that
16 issue. One, the AEP position that it was entitled to
17 numbers in the range that you just described.
18 Another, that all AEP was entitled to
19 was the RPM RTO capacity price. That issue was
20 unresolved as we went into the case.
21 Q. And wasn't it --
22 A. It was resolved -- let me finish. It
23 was resolved by the Stipulation.
24 Q. And wasn't it true that it was Exelon's
25 position that they did not believe that AEP Ohio

Page 19

1 should be entitled to charge in the neighborhood of
2 347 to 355 dollars per megawatt day to CRES providers
3 for capacity?
4 A. That was our litigation position, yes.
5 Q. Do you believe that if there was an MRO
6 that AEP would be entitled to charge wholesale
7 suppliers for capacity in the range of 347 to 355
8 dollars per megawatt day?
9 MR. SOLBERG: Object to the form. It
10 calls for a legal conclusion.
11 THE WITNESS: I don't know the answer to
12 that one way or the other. That issue was an issue
13 that was close cousin to the issue of what AEP could
14 charge CRES providers, which, as you know, is being
15 litigated at the Federal Energy Regulatory
16 Commission.
17 It is also close cousin to an issue that
18 the Commission began an investigation on in its 2929
19 docket. It, again, is the disputed issue at the heart
20 of this case; what is the right capacity charge that
21 could be charged to CRESes or that could be charged to
22 other bidders who would participate in a competitive
23 procurement for customers that are supplied by default
24 service in the AEP zone.
25 Q. Is Exelon a participant in what's known

Page 20

1 as the 10-2929 case of the Commission?
2 A. Yes. And I believe that's now been
3 joined -- I'm looking at counsel -- but I believe
4 that's now been joined in the Stipulation as well.
5 Q. Does that case involve what price AEP
6 could charge wholesale suppliers bidding on POLR load
7 in a competitive bidding process?
8 MR. SOLBERG: Object to the form. Calls
9 for a legal conclusion. The case involves what it
10 involves.
11 THE WITNESS: Do you want me to go ahead
12 and answer?
13 MR. SOLBERG: You can answer, sure.
14 THE WITNESS: As I said, I would
15 describe it as a close cousin issue, Mr. Kutik. It
16 would resolve, as I understand it, what AEP could
17 charge to CRES providers; likewise, for the cases
18 before the FERC.
19 BY MR. KUTIK:
20 Q. That wasn't my question.
21 My question was, does it involve, that
22 is, the 10-2929 case involve what price AEP Ohio could
23 charge for capacity to wholesale suppliers who were
24 bidding in a competitive bidding process to supply
25 POLR load in AEP Ohio?

Page 21

1 MR. SOLBERG: Same objection.
2 THE WITNESS: And same answer.
3 BY MR. KUTIK:
4 Q. Well, can you answer the question yes or
5 no?
6 MR. SOLBERG: Same objection.
7 THE WITNESS: I think it's a related
8 legal issue, but I'm not here to testify as a lawyer.
9 I'm here to testify as a witness.
10 If your question is, will it resolve
11 that issue dispositively? I think it will be
12 precedent for the resolution of the issue of what
13 price could be charged to wholesalers perhaps, but it
14 is not directed specifically to answer that question.
15 It is directed specifically to answer
16 the question of what price can AEP charge to CRES,
17 that's C-R-E-S, providers.
18 Q. So your view is that the 10-2929 issue
19 is a related issue but it's not the same issue?
20 MR. SOLBERG: Same objection.
21 THE WITNESS: That's correct.
22 And my answer is, that is correct.
23 BY MR. KUTIK:
24 Q. Are you familiar with the reliability
25 assurance agreement in PJM?

Page 22

1 **A. Yes.**
2 Q. Are you aware of, on a very general
3 basis, the PJM tariffs?
4 **A. Yes.**
5 Q. Do our wholesale suppliers who might bid
6 into an MRO required to take capacity from AEP?
7 **MR. SOLBERG:** Object to form.
8 **THE WITNESS:** I believe that they can
9 buy capacity from AEP, but they could also buy
10 capacity from other sources in the RTO that would
11 satisfy the reliability criteria for capacity in the
12 AEP zone and, therefore, should, and I emphasize
13 should, because I'm not sure that the tariff deals
14 with this specifically, but should qualify as a
15 capacity resource for wholesale supplier bidding for
16 default service load in the AEP zone.
17 **BY MR. KUTIK:**
18 Q. So a wholesale supplier would not be
19 required to take capacity from AEP?
20 **MR. SOLBERG:** Object to form. Asked and
21 answered.
22 **THE WITNESS:** Same answer.
23 **BY MR. KUTIK:**
24 Q. It would not be; correct?
25 **A. I -- it's the same answer I just gave.**

Page 23

1 It's a longwinded answer perhaps, but it's the same
2 answer.
3 I believe that other capacity would
4 satisfy the reliability criteria and therefore qualify
5 as capacity that can be used by a bidder, but I am not
6 aware that that issue is directly addressed in the RAA
7 that you referenced earlier in your question.
8 Q. Let me refer you to your direct
9 testimony on Page 22, and particularly the question
10 and answer that begins on Line 9.
11 **A. Sure. Let me -- let me read it.**
12 Q. And I'm only going to ask you about the
13 answer Line 16 through 19.
14 **A. 16 through 19 on Page 22 or 23?**
15 Q. 22.
16 **A. Yes. I've read it and I agree with that**
17 **testimony.**
18 Q. And that suggests, does it not, that
19 wholesale suppliers could get capacity from other
20 sources than AEP; correct?
21 **A. Yes. And as I said, I believe it would**
22 **qualify as capacity that could be used by a default in**
23 **a default procurement by a supplier.**
24 Q. Have you done any studies to determine
25 the effect of capacity prices on retail shopping?

Page 24

1 **A. No.**
2 Q. Do you know whether anyone within Exelon
3 has?
4 **A. You know, I suspect that people in our**
5 **retail group have done it, but I don't know for sure**
6 **one way or the other.**
7 Q. Do you know whether anyone has made any
8 analysis of the effect of the proposed charges for
9 capacity that are set forth in the Stipulation on
10 shopping?
11 **A. No, I'm not aware of that.**
12 **MR. SOLBERG:** For clarification, you
13 mean anyone at Exelon?
14 **MR. KUTIK:** Correct.
15 **BY MR. KUTIK:**
16 Q. Is that how you understood my question,
17 Mr. Dominguez?
18 **A. Yes. And it's Dominguez.**
19 Q. I'm sorry.
20 Would paying \$255 per megawatt day
21 versus the RPM price benefit customers?
22 **MR. SOLBERG:** Object to form.
23 **THE WITNESS:** Are you asking me if
24 paying a higher price is better for customers than
25 paying a lower price?

Page 25

1 **BY MR. KUTIK:**
2 Q. Yes.
3 **A. Quite obviously, no, it isn't.**
4 Q. Will set-aside provisions here that are
5 in the Stipulation limit competition?
6 **A. I believe that they will enhance**
7 **competition relative to the originally filed ESP, and**
8 **they would enhance competition relative to a litigated**
9 **resolution of this case that would have customers**
10 **paying some price higher than the RTO price for all**
11 **classes of customers as AEP has pushed for from the**
12 **outset and, as I indicated, is the heart of the**
13 **dispute in this case.**
14 Q. Do you believe that the set-asides will
15 limit competition above the percentage amounts for RPM
16 pricing?
17 **MR. SOLBERG:** Object to form.
18 **THE WITNESS:** I don't look at the case
19 from that lens. At the outset of the case I looked at
20 an AEP litigation position that would have all
21 customers pay a capacity price which was much higher
22 than RPM.
23 Thus, from that starting point, allowing
24 some customers to access RPM price capacity, which is
25 much lower than what AEP had proposed, would advance

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1 competition substantially relative to the filed case.
2 **BY MR. KUTIK:**
3 Q. I understand that you didn't look at it
4 that way, but I'm entitled to an answer to my
5 question.
6 **MR. KUTIK:** Barbara, could you read it
7 and, Mr. Dominguez, if you could please answer it.
8 (The reporter read back the following
9 testimony:
10 "Q Do you believe that the set-asides
11 will limit competition above the percentage amounts
12 for RPM pricing?")
13 **MR. SOLBERG:** I believe I had an
14 objection.
15 **THE WITNESS:** No. I believe the
16 set-asides allow for more competition within the
17 percentages of the set-aside than would have otherwise
18 occurred had we lost this case.
19 **BY MR. KUTIK:**
20 Q. That's not my question either.
21 My question is, do you believe that it
22 will limit competition to the amount of the
23 set-asides?
24 A. No.
25 Q. Pardon?

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1 A. The answer is no.
2 Q. Do you believe that they'll be shopping
3 amounts that will be greater than the percentages set
4 aside for RPM prices?
5 A. I don't know.
6 Q. It's fair to say that the 255 price is
7 higher than the expected RPM prices for the period of
8 the ESP; correct?
9 A. No.
10 Q. You expect the RPM prices to be higher
11 than 255?
12 A. Well, you keep saying "expected." There
13 is no expectation with regard to a number of the
14 years. Through '14 and '15 the price has been settled
15 by auction and is in fact lower than 255.
16 The ESP continues. However, for '15,
17 '16 there's no auction that's occurred and I'm not
18 going to speculate on whether the result of that
19 auction will be higher or lower than 255.
20 Q. So through May of 2015, the 255 price is
21 a higher price than the RPM price; correct?
22 A. That's correct. It's higher than the
23 RPM price but lower than what AEP filed for in its
24 original ESP application.
25 Q. And the fact that the price is -- the

Page 28

1 255 price is higher means that they'll be less head
2 room for CRES providers to supply customers at that
3 level; correct?
4 **MR. SOLBERG:** Object to form.
5 **THE WITNESS:** Could you repeat that
6 question?
7 **MR. KUTIK:** Barbara, could you read it,
8 please.
9 **THE WITNESS:** I think you're going to
10 have to rephrase it more than just repeat it, but we
11 can do it any way you want.
12 **MR. KUTIK:** Let's have it read.
13 (The reporter read back the following
14 testimony:
15 "Q And the fact that the price is --
16 the 255 price is higher means that they'll be less
17 head room for CRES providers to supply customers at
18 that level; correct?")
19 **THE WITNESS:** No, that's not correct.
20 Less -- it's certainly a higher price
21 than the RPM price, and if you assumed the world where
22 the issue of the capacity price hadn't been in dispute
23 and had been settled at the RPM price, then your
24 statement would be correct.
25 But the world that we faced here was one

Page 29

1 where the capacity price is unsettled and the 255
2 price, while higher than the RPM price, is still
3 substantially lower than the litigated position in the
4 ESP that AEP has taken.
5 **BY MR. KUTIK:**
6 Q. Well, I know you want to talk about the
7 initial position, but my question is comparing the 255
8 versus the RPM. And isn't it true that CRES providers
9 will have less head room if they have to buy capacity
10 at 255 versus buying capacity at RPM?
11 A. Yes.
12 Q. Now, referring back to Mr. Schnitzer's
13 initial testimony, you agreed with his view, did you
14 not, that Ms. Thomas had understated the cost of the
15 initial ESP?
16 A. Can you direct me to where that is in my
17 testimony so I could read it?
18 Q. Well, did you or didn't you? Do you
19 recall?
20 A. I -- I -- I did agree that there were
21 errors in Ms. Thomas's testimony. I did cite certain
22 provisions of Mr. Schnitzer's -- or certain
23 conclusions that were contained in Mr. Schnitzer's
24 testimony.
25 Q. Okay. For example, on Page 5 of your

Page 30

1 direct testimony.
2 **A. Yes.**
3 Q. Lines 7 through 9, you say, As detailed
4 in Mr. Schnitzer's testimony, AEP Ohio's witnesses
5 made a number of errors in calculating the competitive
6 benchmark and failed to fully quantify the cost of all
7 the surcharges AEP Ohio proposes in its ESP.
8 You said that; correct?
9 **A. Yes.**
10 Q. And when you're referring to the failure
11 to fully quantify a number of errors in calculating or
12 failed to fully quantify the cost of all the
13 surcharges, that was comment on the fact that
14 Ms. Thomas had understated the costs of the initial
15 ESP; correct?
16 **A. Yes.**
17 Q. For example, she did not include any
18 value for rider GRR; correct?
19 **A. Yes.**
20 Q. Mr. Schnitzer came up with a value for
21 that; correct?
22 **A. I believe so, Mr. Kutik, but it's been**
23 **so long since I read Mr. Schnitzer's initial testimony**
24 **that that's as best as I can give you right now.**
25 Q. Sure. And Mr. Schnitzer also commented

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1 that Ms. Thomas failed to provide a value for the pool
2 termination and modification rider; correct?
3 **A. I don't remember one way or the other if**
4 **that was one of the points that Mr. Schnitzer made.**
5 **I'd have to refer back to his testimony.**
6 Q. Do you believe that AEP had a corporate
7 strategy to discourage shopping?
8 **A. Yes.**
9 Q. And, in fact, you believe that AEP
10 formed its ESP proposal to implement that strategy to
11 discourage shopping?
12 **A. Yes.**
13 Q. And you also believe that certain
14 justifications that AEP had given for nonbypassable
15 riders and other aspects of its initial proposal were
16 false; correct?
17 **A. That's correct. As reflected I think in**
18 **my initial testimony, I think they made -- they**
19 **attempted to justify their ESP as a means of giving**
20 **Ohio more control over generation and as a means of**
21 **protecting Ohio jobs.**
22 **And as I indicated, I believe that those**
23 **were false justifications, in fact, incorrect and that**
24 **the real goal that AEP had been pursuing was its own**
25 **financial interests.**

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1 Q. With respect to the first issue that you
2 mentioned, control over Ohio generation, you believe
3 that AEP Ohio is long in capacity, do you not?
4 **A. I think AEP Ohio owns more than enough**
5 **capacity to meet the NERC requirements for the AEP**
6 **zone. However, I do understand that AEP Ohio is only**
7 **one of a number of companies involved in the**
8 **interconnection agreement. Some of those utilities**
9 **are long, some of those utilities are short and,**
10 **historically, there's been a sharing of those**
11 **generation resources.**
12 **From a capacity perspective I believe I**
13 **recall that AEP Ohio is one of the companies in that**
14 **pool that is long generation and, in fact, has more**
15 **than adequate generation already to meet NERC**
16 **requirements at least for those auctions that have**
17 **been concluded.**
18 **Having said that, there continues to be**
19 **an unquantified impact associated with the retirement**
20 **of units attributable to the implementation by EPA of**
21 **the Air Toxics Rule and the Cross-State Air Pollution**
22 **Rule, and I believe that AEP has indicated that it has**
23 **not finalized unit retirement decisions associated**
24 **with the impact of those EPA rules.**
25 **Therefore, whether they will be long**

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1 **generation in the future or not is an issue that**
2 **remains open in my mind.**
3 Q. Do you believe that AEP Ohio was long in
4 capacity through the period of the ESP; correct?
5 **A. Which ESP are you referring to? Which**
6 **term? The originally filed term or the Stipulation?**
7 Q. The stipulated proposed term.
8 **A. No. My comments regarding their length**
9 **related to the originally filed 29-month ESP. I've**
10 **made no testimony and don't know whether they will**
11 **continue to be long for '15 or '16, and inasmuch as**
12 **they have not finalized retirement decisions, I can't**
13 **know.**
14 Q. Well, isn't it true that you believe
15 that their reserve margin was higher than the PJM
16 target reserve margin through the period of the ESP?
17 **A. Again, I'm going to have to ask you the**
18 **same question. Which ESP term are you speaking about?**
19 Q. The one through -- the one that's being
20 stipulated to.
21 **A. Same answer. No. I have not done that**
22 **analysis. The original --**
23 Q. Let me have your -- go ahead.
24 **A. My original testimony pertained to the**
25 **29-month ESP that AEP had initially filed.**

Page 34

1 Q. Let me refer you to Page 34 of your
2 testimony.
3 **MR. SOLBERG:** The direct testimony,
4 David?
5 **MR. KUTIK:** Yes.
6 **MR. SOLBERG:** While he's looking,
7 there's been several beeps. Has anyone joined?
8 **MR. KUTIK:** Well, let's get an answer to
9 the question and then we'll cover that.
10 **THE WITNESS:** I don't know that you
11 asked a question. You referred me to Page 34.
12 **BY MR. KUTIK:**
13 Q. Well, you said you didn't make an
14 analysis.
15 Isn't Page 34 your analysis of reserve
16 margin through 2016?
17 **MR. SOLBERG:** Object. Mischaracterizes
18 his testimony.
19 **THE WITNESS:** Right. It is, but it's
20 not a final analysis. As you can see from the table,
21 it says Conceptual Retirements 2009 through 2015. And
22 what I'm trying to tell you is that we don't have a
23 final number.
24 Even as I sit here today, AEP hasn't
25 made any formal retirement announcements to PJM, and

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1 so they continue to -- they continue to analyze the
2 potential impact of the EPA rules.
3 One rule has issued. The final toxics
4 rule won't issue until November. So they're not going
5 to know what the EPA rule is until next month, and
6 they've been pretty clear that they're going to not
7 make final decisions until they see all the rules.
8 Based on what I have seen to date, it
9 looks like they're going to have an adequate reserve
10 margin in the event that they hold on to all of the
11 generation that they currently hold on to and the 1980
12 megawatts of conceptual retirements are in fact the
13 reality.
14 Q. So if we're looking at the table or,
15 excuse me, the graph on Page 34 of your direct
16 testimony, there is a line that's labeled AEP Ohio's
17 Reserve Margin; correct?
18 **A. Right.**
19 Q. And that line considers what the margin
20 would be if all of the conceptual retirements occur?
21 **A. That's right. Our conceptual**
22 **retirements. But the final retirements haven't been**
23 **announced yet.**
24 Q. So if the conceptual retirements were to
25 take place, AEP Ohio would still have a reserve margin

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1 that's greater than the PJM targeted installed reserve
2 margin; correct?
3 **A. That's right.**
4 Q. What would you expect the PJM targeted
5 and installed reserve margin to be in 2016?
6 **A. The same as it is now.**
7 Q. You wouldn't expect it to be greater
8 than 27 or 28 percent; correct?
9 **A. I'm aware of no discussion at PJM to**
10 **change that number or at NERC.**
11 Q. You also believe that Ohio is a net
12 exporter of power; correct?
13 **A. That's right.**
14 Q. And you believe that Ohio generation
15 will do well in a competitive environment?
16 **A. I think so, yes.**
17 Q. And that once there is a competitive --
18 a fully competitive environment in Ohio, there will
19 not be a lack of resources to supply the needs of Ohio
20 customers?
21 **A. I have no reason to believe, as I sit**
22 **here today, that there will be a lack of energy or**
23 **capacity that would affect Ohio customers. Ohio is**
24 **part of a 13 state PJM power pool.**
25 **So I'm loathed to think about it from a**

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1 **state-by-state perspective because energy gets**
2 **transferred across the borders of the state, but I**
3 **don't think there's going to be any reliability issue,**
4 **I don't think that there is going to be any -- any**
5 **lack of energy or capacity in that market.**
6 Q. So as Ohio goes to a fully competitive
7 market, given the structure of the responsibility for
8 reliability in Ohio and in PJM, you do not have any
9 concerns about reliability or generation resources to
10 meet the needs of customers in Ohio at least through
11 2016?
12 **A. Well, again, Mr. Kutik, at least based**
13 **on what's been announced so far, I don't -- you know,**
14 **in this business one can only know what they know and**
15 **if there are other retirements that I certainly don't**
16 **expect, but which occur because of the EPA**
17 **regulations, then we might have to revisit that**
18 **issue.**
19 **But based on everything I know now,**
20 **there's going to be no negative reliability impact as**
21 **a result of going to competition and there will be --**
22 **continue to be adequate surplus of capacity within the**
23 **PJM RTO.**
24 Q. Would it be fair to say that you believe
25 that robust retail choice and competition benefits

1 customers and will better serve the interests of Ohio?
2 **A. Absolutely.**
3 Q. Would it be fair to say that you have
4 also previously recommended that the Commission adopt
5 a process that requires AEP Ohio Power Plant to
6 compete on a best price basis with other resources in
7 the market for the right to serve default customer
8 load?
9 **A. Yes. And I recognize the words that**
10 **you're asking me as coming from my testimony. So I**
11 **think you're just reading back different sections of**
12 **my testimony, but, yes.**
13 Q. Would it be fair to say that under the
14 Stipulation customers will not, in AEP Ohio that do
15 not shop, will not realize the benefits of a
16 competitively procured POLR load process until June of
17 2015?
18 **A. Yes.**
19 Q. Are you familiar with the parts of the
20 Ohio revised code that were established by S.B. 221?
21 **A. Yes, generally, but I'm not an expert on**
22 **those by any stretch.**
23 Q. Do you believe that the Commission had
24 the power to alter the initial proposed ESP without
25 AEP's approval?

1 **MR. SOLBERG:** Object to the form. Calls
2 for a legal conclusion.
3 **THE WITNESS:** I'll answer to the extent
4 I know. I believe that the Commission has the
5 approval to alter the ESP.
6 However, I did not understand that AEP
7 was required to accept the altered ESP under any
8 circumstance.
9 **BY MR. KUTIK:**
10 Q. I'm not sure I understood the last part
11 of your answer when you said you didn't understand
12 that AEP was not required to accept?
13 **A. I thought I said was required to**
14 **accept. I guess what I'm saying is, sure, I know the**
15 **Commission could alter the ESP and establish**
16 **conditions, but I think at the end of the day it's**
17 **still up to AEP to accept those conditions or not.**
18 Q. Right. AEP will not be required to do
19 an ESP that it does not agree to; correct?
20 **A. Yeah. That's right.**
21 **MR. KUTIK:** Let's go off the record for
22 a minute.
23 (Discussion off the record.)
24 **BY MR. KUTIK:**
25 Q. You also opposed AEP Ohio's proposal for

1 a number of generated related nonbypassable riders;
2 correct?
3 **A. I think you meant to say generation**
4 **related nonbypassable riders. Yes.**
5 Q. And, in fact, there's a problem with
6 generation related nonbypassable riders for shopping
7 customers in that shopping customers end up paying
8 twice for the same type of service; correct?
9 **MR. SOLBERG:** Object to form.
10 **THE WITNESS:** Not -- not always, but
11 certainly in some cases, yes.
12 **BY MR. KUTIK:**
13 Q. And you believe that nonbypassable
14 generation related riders are anticompetitive?
15 **A. Again, not always, but, generally, yes.**
16 Q. And to the extent that there would be
17 nonbypassable generation related riders that were
18 anticompetitive, that would be contrary to Ohio's
19 state policy as you understand it; correct?
20 **A. No. It isn't the way I understood it.**
21 I did understand and perhaps incorrectly that Ohio law
22 permits nonbypassable generation related riders for
23 new generation under certain circumstances and that
24 the Ohio legislature concluded that that was
25 appropriate and consistent with Ohio's other goals to

1 **support competition.**
2 Q. And part of the statute that allows or
3 would allow nonbypassable generation related riders
4 would require that the generation facility be required
5 from a resource needs standpoint; correct?
6 **MR. SOLBERG:** Object. Calls for a legal
7 conclusion.
8 **THE WITNESS:** That is what I understand,
9 yes.
10 **BY MR. KUTIK:**
11 Q. There are three riders I'd like to talk
12 with you about that are part of the Stipulation. The
13 first rider is rider GRR.
14 Are you familiar with that?
15 **A. Yes.**
16 Q. Are you familiar with rider MTR?
17 **A. Not nearly as familiar with the Market**
18 **Transition Rider, but I generally recall it from the**
19 **negotiations.**
20 Q. Mr. Dominguez, I need you to speak up a
21 little bit.
22 **A. Sure. My answer was that I'm not very**
23 **familiar with the MTR, but I remember it from the**
24 **negotiations somewhat.**
25 Q. So you're familiar enough with it that

<p style="text-align: right;">Page 42</p> <p>1 you know that there is a rider MTR that's in the 2 Stipulation? 3 A. Yes. 4 Q. And you're familiar with the rider for 5 pool termination or modification; correct? 6 A. Yes. 7 Q. And that's part of the Stipulation as 8 well? 9 A. That's right. It is. 10 Q. Is rider GRR generation related? 11 A. Yes. 12 Q. Is rider MTR generation related? 13 A. It certainly has tentacles to 14 generation, but I think about it more in terms of a 15 market design -- or, excuse me, rate design rider, but 16 I think the underlying costs are generation related. 17 Q. And would the pool termination 18 modification rider also be generation related? 19 A. Yes. 20 Q. Would it be fair to say that all three 21 of those riders, riders GRR, MTR, and the pool 22 termination modification rider, they're all 23 nonbypassable; correct? 24 A. Yes. That's right. 25 Q. And would it be fair to say that at</p>	<p style="text-align: right;">Page 44</p> <p>1 requirement. 2 You can't see any evidence for the need 3 of the Turning Point Project; correct? 4 A. And the reason I qualified it, 5 Mr. Kutik, is resource needs is a pretty broad 6 statement. One might argue that the need for regs is 7 a resource need, because the statute requires 8 electricity to come from a specific kind of generation 9 resource in the case of Turning Point Solar. 10 But if you are talking about resource 11 needs to solve their reliability criteria imposed by 12 NERC, then the answer is that it is absolutely not 13 needed as far as everything I know today. 14 Q. Would your answer with respect to 15 whether a plant is needed from a resource planning 16 standpoint be the same for the MR 6 unit? 17 A. Yes. 18 Q. That is that you see no evidence to 19 support a need for that? 20 A. Right. And we'll see once these rules 21 come out if there's some unexpected impact, but right 22 now, based on everything I see, there is no need for a 23 new CCGT in Ohio. 24 Q. Are you aware that AEP has a unit called 25 the MR or Muskingum River 5 unit?</p>
<p style="text-align: right;">Page 43</p> <p>1 least based upon what you currently know you can't, 2 can't see a need for shopping customers to pay for new 3 generation construction in Ohio by AEP Ohio? 4 A. That's right. As far as I know right 5 now, there is no need for new generation subject, as I 6 said, to some unexpected, at least on my part, 7 unexpected impact associated with EPA rules. 8 Q. Would it be also fair to say that you're 9 aware of no evidence for the need of the Turning Point 10 Project from a resource planning perspective? 11 A. I didn't address Turning Point 12 specifically in my direct testimony. So I have no 13 opinion about Turning Point one way or the other. 14 In terms of the supply of electricity 15 from a capacity and energy standpoint, Turning Point 16 would -- I would put Turning Point in a bucket with 17 any new generation; that I just don't expect that from 18 a resource needs standpoint there is a need for new 19 megawatts of energy or capacity in Ohio. 20 What I can't speak to is the situation 21 with Ohio's renewable mandate and how Turning Point 22 might address the need to acquire solar regs in 23 connection with that mandate. I just haven't analyzed 24 it. 25 Q. My question was from a resource planning</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Yes. 2 Q. And are you aware that that unit 3 presently is being contemplated for retirement? 4 A. Yes. 5 Q. As you understand the purpose of rider 6 GRR, would it be appropriate for AEP to seek to 7 recover the costs of closing the MR 5 unit through 8 that rider? 9 MR. SOLBERG: Object to form. 10 THE WITNESS: I don't think so. 11 BY MR. KUTIK: 12 Q. Would it be appropriate for AEP Ohio to 13 seek to recover the net book value of that plant upon 14 retirement, that is, the MR 5 plant through rider GRR? 15 A. Let me -- would you mind if I take a 16 look at the Stipulation on rider GRR before I answer? 17 Q. Oh, please. Please, go ahead. 18 A. I thought the GRR rider pertained to a 19 potential future application for the construction of 20 Turning Point and MR 6 in the event that there's a 21 demonstration of need and the other statutory 22 requirements to the Commission. 23 I did not see anything in the 24 Stipulation pertaining to the GRR rider that would 25 allow the recovery of book values associated with MR</p>

1 **5. At least not in the section I just investigated**
2 **regarding the GRR rider, which is contained in**
3 **Subsection 1 (d) on Page 6 of the Stipulation.**
4 Q. So sitting here today, your view would
5 be that to seek to recover the net book value of a
6 closed MR 5 would not be appropriate through rider
7 GRR?
8 A. Right. That's correct. I don't see it
9 covered in Subsection (d) on Page 6 of the
10 Stipulation.
11 Q. Are you aware of any evidence that
12 either the Turning Point Project or MR 6 has been or
13 will be competitively bid?
14 A. I'm aware that there had been
15 discussions that the construction work for MR 6 would
16 be competitively bid. I understand that's AEP's
17 intent. I don't know if that was set forth in this
18 Stipulation. I don't believe it was. I believe those
19 terms would be established in a subsequent proceeding
20 relating to the need to build the unit in the first
21 place.
22 Q. So is it your understanding that how
23 rider GRR would work, AEP Ohio would have to seek
24 approval of the construction of the Turning Point
25 Project for the MR 6 unit before they could recover

1 costs for those units?
2 A. Yes, sir. That's my understanding.
3 Q. Would it be your understanding that the
4 costs that would be sought to be recovered through
5 rider GRR would be subject to an audit?
6 A. It would be, in my view, subject to
7 audit rules, approval rules, and the like. Everything
8 that's associated with any rate recovery by AEP.
9 Having said that, I don't think this
10 Stipulation got into all those details regarding the
11 GRR because it, in fact, contemplates a continuation
12 of those proceedings if AEP elects to pursue them.
13 And so I don't think the book has been
14 written as yet in terms of audit rules and how the
15 competitive process is going to work with regard to
16 those units. I just -- that stuff just wasn't covered
17 in the Stip.
18 Q. So is it fair to say at this point we
19 don't know whether those costs will be subject to an
20 audit?
21 MR. SOLBERG: Object to form.
22 THE WITNESS: I -- as I said, I think
23 those are issues that are deferred to another
24 proceeding. They're not covered here. I would assume
25 that the Commission in approving MR 6 will ensure the

1 protection of customers and that some sort of audit
2 will be embodied in the ultimate outcome of the GRR if
3 in fact it's ever used.
4 BY MR. KUTIK:
5 Q. So it's your view that although it's not
6 particularly discussed in the Stipulation, it would be
7 your expectation that costs that would be sought to
8 recover under rider GRR would be subject to an audit?
9 A. An audit and other adequate consumer
10 protections. I assume that the Ohio Commission will
11 continue to do what it's always done and that is
12 protect customers, and that if the Commission decides
13 that audits are necessary to protect customers with
14 regard to the GRR, we'll definitely see that in the
15 next proceeding.
16 Q. Let me refer you to your Stipulation
17 testimony on Page 6.
18 A. Okay. I'm at Page 6.
19 Q. And particularly I want to refer you to
20 a paragraph that begins at Line 16 where you refer to
21 another example of positions that were negotiated;
22 correct?
23 A. Yes.
24 Q. And you specifically refer in the second
25 sentence that begins on Line 16 that the provision

1 grew out of AEP Ohio's position during negotiation the
2 termination of the AEP interconnection agreement and
3 AEP Ohio's corporate separation program -- corporate
4 separation were important preconditions to ensuring
5 that competitive procurement would be economically
6 feasible for the company.
7 Do you see that?
8 A. Uh-huh, I do see that.
9 Q. Who said that to you?
10 A. This really was -- I don't think so much
11 as someone saying it, but in my own mind how these
12 connections related to this -- or these provisions
13 related to the overall goals of the Stipulation.
14 Q. And how would AEP Ohio's corporate
15 separation make it economically feasible for the
16 company to engage in competitive procurement?
17 A. Well, when you think about a competitive
18 procurement for energy, the competitive suppliers have
19 the ability to bid units and we accept all risks and
20 rewards for those units.
21 So in the case of Exelon Generation, we
22 have a purely merchant generation fleet and I could
23 bid those units and if I happen to turn an enormous
24 profit one year, that might be calculated as a 30
25 percent return on equity, I get to keep that 30

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1 percent return on equity because I'm a competitive
2 participant. I'm no longer subject to rate based
3 treatment or any kind of excess earnings test.
4 Likewise is the case if I suffer losses
5 in any given year, I own those losses and I have no
6 right to go to the Commission or any monopoly customer
7 and say, hey, you owe me money because I suffered
8 losses. I'm completely merchant.
9 And so in the case of AEP, in the
10 absence of it being able to separate its generation
11 from the utility company, you'd be putting it in a
12 fairly difficult position.
13 Where if they had earnings that exceeded
14 a traditional -- you know, exceeded the rates that
15 they're allowed to recover in the seat, they would be
16 required to return those earnings back to customers,
17 because the customers still own the units.
18 So to my mind, separating the units had
19 to be a condition precedent to making this truly an
20 affiliate that participates in the market with all the
21 upside and downside risks that I described earlier
22 with regard to Exelon Generation.
23 Q. So would it be fair to say that with
24 respect to the seat test, that would tend to depress
25 the pricing that AEP Ohio generation could offer in a

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1 competitive bidding process?
2 A. I don't think it would affect the prices
3 that it would offer. It would affect its ability to
4 retain any profits associated with those sales or all
5 the profits associated with those sales.
6 But I use the C test as one example.
7 The other practical problem is, until they're
8 separated and out of the interconnection agreement,
9 you know, those two things occurred, then any profits
10 they derive from those units are subject to sharing at
11 other states and sharing with Ohio customers.
12 So, you know, to my mind in the history
13 of competitive market policy, every company that has
14 gone down the road of becoming a competitive market
15 participant for standard offerings has had to go
16 through corporate separation.
17 We here at Exelon had to separate our
18 generation assets from PECO and in Illinois from ComEd
19 in order to be able to have this separate business
20 that markets into these default procurements.
21 FirstEnergy did likewise in Ohio, and I would assume
22 that AEP would have to or would, you know, endure
23 enormous risk.
24 Q. Are there vertically integrated
25 utilities that do participate in competitive bidding

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1 processes?
2 A. There are, but those profits are subject
3 to an earnings test and those utilities would still
4 have the protection in the event that they suffered
5 losses.
6 Q. And isn't it true that AEP Ohio has bid
7 its generation into competitive bidding processes with
8 other companies?
9 A. It has. It has bid surplus generation
10 into the ComEd auction and into other auctions, but to
11 the extent it's earned profits on those, it has had to
12 return some of those profits to other states.
13 Q. So are you saying that because they have
14 to share profits they're less likely to participate?
15 A. What I'm saying is without the
16 separation you're always in this dangerous position of
17 your upside is capped by profit-sharing mechanisms;
18 yet, your downside isn't protected because you have no
19 way of knowing that you'll win any of the bid.
20 That's an unfair position to put a
21 company in long term, and I believe the Commission
22 will therefore allow AEP to separate its generation
23 assets from its wires assets.
24 MR. KUTIK: Barbara, could you read my
25 question.

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1 (The reporter read back the following
2 testimony:
3 "Q So are you saying that because they
4 have to share profits they're less likely to
5 participate?")
6 MR. SOLBERG: I'd object that it's been
7 asked and answered.
8 BY MR. KUTIK:
9 Q. Is the fact that it, AEP Ohio, would be
10 put in an unfair position mean that it's less likely
11 to participate?
12 A. It could.
13 Q. Would it also mean that the prices that
14 it might offer might be lower than it might otherwise
15 seek?
16 A. I don't see why it would.
17 Q. Why not?
18 MR. SOLBERG: Object to form.
19 THE WITNESS: If I understand your
20 question, Mr. Kutik, your point would be because I
21 have to share my profits I'm therefore incented to
22 make lower profits and by bidding a lower price. That
23 makes no sense to me.
24 BY MR. KUTIK:
25 Q. Well, frankly, your point makes no sense

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1 to me; that's why I'm trying to understand what you're
2 saying.
3 **MR. SOLBERG:** Object to the form.
4 **BY MR. KUTIK:**
5 Q. I'm trying to understand whether the
6 fact that a utility like AEP Ohio that has not
7 separated out of its generation assets would have an
8 incentive or disincentive to participate in the
9 competitive bidding process for its own POLR load?
10 **A. You did ask that question. You did ask**
11 **that question and I answered it. It might it. It**
12 **could.**
13 Q. Well, does it have an incentive or does
14 it not have an incentive?
15 **MR. SOLBERG:** Object to form.
16 **THE WITNESS:** It could. I don't know.
17 You would have to ask them ultimately.
18 **BY MR. KUTIK:**
19 Q. Okay. Does the fact that a company is
20 integrated like AEP Ohio depress the price that the
21 company might offer in a competitive bidding process
22 based on POLR load?
23 **MR. SOLBERG:** Object to the form.
24 **THE WITNESS:** I don't see how it would.
25 **BY MR. KUTIK:**

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1 Q. Would the fact that a company is
2 vertically integrated like AEP Ohio cause AEP Ohio to
3 act any differently in a competitive bidding process
4 than any other potential bidder?
5 **MR. SOLBERG:** Again, object to form.
6 Foundation. Speculation.
7 **THE WITNESS:** As I said, it could cause
8 them not to want to participate.
9 **BY MR. KUTIK:**
10 Q. Okay. Well, don't they have an
11 incentive to sell their energy and capacity?
12 **A. Of course.**
13 Q. On Page 7 of your Stipulation testimony
14 in Line 7 you refer to the fact that the provision
15 relating to corporate separation and so forth was
16 heavily negotiated; correct?
17 **A. Yes.**
18 Q. What do you mean by that?
19 **A. Well, I mean the parties at the table**
20 **spent a lot of time focused on whether the stipulation**
21 **would cover the corporate separation, what conditions**
22 **would be placed on AEP if corporate separation were**
23 **delayed.**
24 **I think we had ultimately a time line**
25 **that made it in -- I don't think, I know -- we had a**

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1 time line that made it into the Stipulation as to how
2 quickly pool termination, corporate separation, and
3 all these other things were going to go into effect.
4 I mean --
5 Q. What -- go ahead. Are you finished?
6 **A. Unless you have something more**
7 **specific. I mean, those were the general topics, but**
8 **it was -- it was discussed at length between a lot of**
9 **the parties.**
10 Q. Did the parties exchange a number of
11 proposals?
12 **A. I believe so on this issue of corporate**
13 **separation, its implications towards the competitive**
14 **procurements, I saw a number of different drafts.**
15 Q. And do you recall who prepared the first
16 draft?
17 **A. I think the first draft that I saw was**
18 **prepared by AEP, and what it basically provided for**
19 **was a pathway to another ESP where the issue of the**
20 **competitive procurement, you know, would be resolved.**
21 **So they agreed I think that in their --**
22 **In their original term sheet, if I remember correctly,**
23 **they agreed that they would pursue corporate**
24 **separation and all these things, but that ultimately**
25 **it wasn't this ESP that was going to mandate auctions**

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1 or participate -- or mandate the participation in RPM,
2 but rather those things would be decided in a future
3 ESP filing that AEP would undertake.
4 Those things, through the course of
5 fairly rigorous negotiations, became concrete
6 requirements for AEP to seek corporate separation in
7 this Stipulation to join in RPM and participate in the
8 next auction and then to conduct a series of auctions
9 beginning in a number of run-up years to the delivery
10 date on June 1st, 2015, for a default service.
11 Q. Well, thank you for that explanation,
12 but my question really was who drafted the first
13 draft. It was AEP; correct?
14 **A. Yeah. I -- I -- I thought I answered**
15 **that. Mr. Kutik, you could cut me off if I've**
16 **answered your question. You have my permission to do**
17 **so.**
18 Q. Did Exelon submit counter drafts --
19 **A. Yes.**
20 Q. -- on this provision?
21 **A. Yes.**
22 Q. On this provision?
23 **A. Yes.**
24 Q. Did other parties provide counter
25 drafts?

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1 **A. Yes.**
2 Q. Did Exelon provide more than one draft
3 on this provision?
4 **A. What provision are we talking about?**
5 Q. The one that was heavily negotiated,
6 Paragraph Roman IV 1 T that is the subject of the
7 Stipulation testimony at Pages 6 and 7.
8 **A. Sure. Yes.**
9 **MR. KUTIK:** Let's go off the record.
10 (Discussion off the record.)
11 **BY MR. KUTIK:**
12 Q. Was Appendix C heavily negotiated?
13 **A. I would say the concepts in Appendix C**
14 **were heavily negotiated, yes.**
15 Q. Who provided the first draft of Appendix
16 C?
17 **A. In its final form I think that came from**
18 **AEP relatively late in the negotiations, but the**
19 **language I see and the concepts were being batted**
20 **around for weeks in advance of the final form.**
21 **I wasn't -- Mr. Kutik, I wasn't really**
22 **much involved in these rules. This was something that**
23 **RESA and others had worked on, and I was aware those**
24 **discussions were going on but I -- I don't -- I didn't**
25 **follow this part of it all that carefully.**

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1 Q. If you could keep your voice up I'd
2 appreciate it.
3 **A. Yep.**
4 Q. When was the first draft that you saw of
5 Appendix C?
6 **A. As I see it now in the Stipulation?**
7 Q. Or any draft.
8 **A. I remember seeing internal e-mails with**
9 **language around the RPM set aside for probably a week**
10 **to week and a half before I saw what's in Appendix C.**
11 **The first time I saw it all pulled**
12 **together, or I should say even asked to see it pulled**
13 **together, was very late in the settlement discussions**
14 **when it was -- when it was provided in final form.**
15 Q. And by very late we're talking about
16 like September 6th?
17 **A. Yeah. I mean after Labor Day for sure.**
18 Q. Labor Day was September 5th.
19 **A. Yep.**
20 Q. Did Exelon submit any comments on any
21 draft of Appendix C or any language with respect to
22 the set aside?
23 **A. I know we participated in RESA and,**
24 **therefore, had a lot of comments, a lot of back and**
25 **forth with RESA around the retail electric supply**

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1 **terms and I would consider this a RES or a CRES issue,**
2 **if you will, and I know we had involvement there, but**
3 **it wasn't my involvement personally.**
4 Q. So Exelon may not have had any comments
5 independently, but as a member of RESA, RESA had
6 comments that you recall?
7 **A. That's right.**
8 Q. And were these discussions with RESA
9 before Labor Day about Appendix C?
10 **A. About the concepts in Appendix C,**
11 **certainly.**
12 Q. How about the language that appears in
13 Appendix C?
14 **A. I had -- yeah. I --**
15 Q. Did you have a conversation about that?
16 **A. I just don't have that personal**
17 **knowledge to know how much of the actual language that**
18 **I see now in Appendix C was the same language that**
19 **people had been talking about in the weeks running up**
20 **to the finalization of the settlement documents.**
21 Q. So would it be fair to say that the
22 language of Appendix C wasn't a prime focus of yours
23 in the negotiation?
24 **A. Not mine personally, no, it wasn't.**
25 Q. Was it the prime focus of anyone within

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1 Exelon?
2 **A. Yes. It was. It was our liaisons into**
3 **RESA were very involved in the -- in the concepts**
4 **here.**
5 Q. And who might that be?
6 **A. David Fein from our team, F-E-I-N, was**
7 **involved in those discussions.**
8 Q. But he doesn't represent Exelon, does
9 he?
10 **A. Oh, yes, he does. Yeah. But he**
11 **represents Exelon as a participant in the RESA group.**
12 Q. Okay. What I'm asking about is, was
13 there anyone who is employed by Exelon, either as a
14 contractor, an employee, who was -- had as his or her
15 main focus or principal focus Appendix C or the
16 concepts therein?
17 **A. Yes.**
18 Q. And who was that?
19 **A. Our local counsel Howard Petricoff and**
20 **David Fein.**
21 Q. Is David Fein under contract?
22 **A. No. He's an employee. He is an**
23 **employee.**
24 Q. And so you left it to him to work
25 through those issues?

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1 **A. That's right. I delegated this issue to**
2 **David.**
3 Q. Are you familiar with the details of
4 Appendix C?
5 **A. In a broad sense I am, yes.**
6 Q. All right. Well, let's see how good you
7 are.
8 There is mention in the Appendix C a
9 detailed implementation plan; correct?
10 **A. Yes.**
11 Q. Is it fair to say that AEP Ohio is
12 charged with developing that plan?
13 **A. I think certainly in its first -- in the**
14 **first instance, yes.**
15 Q. And what is your understanding of
16 whether AEP Ohio intends to share that with Exelon and
17 others, that draft of the detailed implementation
18 plan?
19 **A. I'm not sure I know the answer to that**
20 **question. My expectation is that once the plan is**
21 **drafted we will have discussions with AEP and there**
22 **will be a continuation of the discussions we've had to**
23 **date with AEP where they'll consider changes that we**
24 **propose and ultimately that, kind of in a workshop**
25 **process, will lead to an implementation plan that's**

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1 **practical and works for everybody.**
2 Q. Is there anything in the Stipulation
3 that requires AEP to incorporate any comments that
4 Exelon might make about the detailed implementation
5 plan?
6 **MR. SOLBERG:** Object. The document
7 speaks for itself.
8 **THE WITNESS:** I think there's a
9 contemplation in the Stipulation that that the parties
10 will continue to work together on certain CRES
11 issues. I don't remember, as I sit here, whether this
12 is one of those issues, but there's certainly an
13 expectation we'll continue to work together.
14 As to whether we have a legal right to
15 include whatever changes we think should be made and
16 require that on AEP, I don't think we have that, no.
17 Q. Okay. Have you been advised as to when
18 AEP will be providing you with a draft of their
19 detailed implementation plan?
20 **A. David and Howard may know that. I**
21 **don't. I don't remember anybody telling me.**
22 Q. Now, provisions of Appendix C
23 contemplate the formation of a queue of customers;
24 correct?
25 **A. Right. That's how I understand it.**

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1 Q. When will the queue start?
2 **A. Well, I think that participation begins**
3 **in the -- when the -- the program starts upon the**
4 **approval of a stipulation by the Commission. I don't**
5 **know when the queue actually begins. It's a good**
6 **question.**
7 Q. So a queue actually might have already
8 stated?
9 **A. It could have, yep. Yeah. And I think,**
10 **if I recall correctly, some of the groups of customers**
11 **were groups that had been participants even before the**
12 **stipulation was entered and protecting or so-called**
13 **grandfathering of their rights going forward not only**
14 **for the megawatts that they had under contract but**
15 **also for some expansion of those megawatts.**
16 Q. But it would be fair to say that as to
17 when the queue will start you don't know?
18 **A. Well, I think it depends for different**
19 **customers, right? I mean, in a sense the queue has**
20 **already begun for those customers who are already**
21 **shopping. I may be confusing the word "queue" here.**
22 Q. Okay. Now, the Appendix sets out five
23 groups of customers; correct?
24 **A. It does, yes.**
25 Q. And depending on what group a customer

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1 is in, that group will define or that membership will
2 define that customer's potential priority in getting
3 service through a CRES provider at a capacity price of
4 the RPM price; correct?
5 **A. Yes.**
6 Q. And the first group consists of those
7 customers who were shopping as of July 1st of this
8 year; correct?
9 **A. That's right, yeah.**
10 Q. And group two customers are those
11 customers who were shopping first after July 1st but
12 before September 7th of this year; correct?
13 **A. I'm looking at it. That appears to be**
14 **what it says, yes.**
15 Q. And one of the differences between group
16 one and group two customers is that group one
17 customers can expand their load beyond 10 percent and
18 still remain in group one; correct?
19 **A. Right. I think that's the group three**
20 **customer concept.**
21 Q. Right. So that a group two customer who
22 expands its load greater than 10 percent might fall to
23 group three; correct?
24 **A. I think so. That's right.**
25 Q. Other than the date of their service,

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1 can you provide me any basis why group one customers
2 should be distinguished from group two customers?
3 **A. I think it is really the date of their**
4 **service that drives the distinction. It's a little**
5 **bit of a first come, first serve concept and clearly**
6 **the CRES providers have been aware of these settlement**
7 **negotiations and that something may in fact occur that**
8 **limits shopping.**
9 **So maybe that's the justification, but**
10 **beyond -- beyond the date, I don't -- you know, I**
11 **don't -- it's speculation on my part.**
12 Q. Okay. Group three customers are
13 customers that are seeking to expand their load.
14 **A. Right.**
15 Q. Correct?
16 **A. Right.**
17 Q. And so a group four or a group five
18 customer who seeks to expand its load may be eligible
19 for membership in group three?
20 **A. I don't know. Mr. Kutik, you probably**
21 **exhausted my knowledge of how these different groups**
22 **relate to one another. I'd prefer others that have**
23 **more experience on these issues talk to them.**
24 Q. Sure. So sitting here today, you can't
25 tell me whether it might be possible for a group five

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1 or group four customer to jump into group three?
2 **A. I don't. I didn't -- I didn't track**
3 **this issue that carefully. Others at Exelon did.**
4 **MR. KUTIK:** I'm sorry. Barbara, could
5 you read the answer, please.
6 (The court reporter read back the
7 following:
8 "A I don't. I didn't -- I didn't track
9 this issue that carefully. Others at Exelon did.")
10 **BY MR. KUTIK:**
11 Q. Would that be Mr. Fein again?
12 **A. It would be Mr. Fein and Mr. Petricoff,**
13 **our local counsel.**
14 Q. Are you aware of what information a
15 group three customer would have to provide to get into
16 group three?
17 **A. No, I'm not. I don't remember. I -- I**
18 **remember there was an affidavit or some sort of**
19 **contract requirement that needed to be provided, but,**
20 **there again, I just -- I wasn't focused on Appendix C.**
21 Q. So the answer to the question what
22 information might be required for a group three
23 customer, the answer is you don't know?
24 **A. The answer is, as I said, I remember**
25 **contracts and affidavits being used as proof. I don't**

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1 **know if it applied directly to a group three customer**
2 **or if I'm confusing that with another provision here.**
3 **I don't want to suggest that I know that answer**
4 **definitively.**
5 Q. Okay. So, again, other than a
6 contractor and affidavit of some type, you're not
7 aware of any other requirement for group three
8 customers?
9 **A. That's right.**
10 Q. Does Exelon have any contracts with any
11 municipal aggregators in AEP Ohio territory?
12 **A. No.**
13 Q. Do you have such contracts with any
14 municipal aggregator in Ohio?
15 **A. No.**
16 Q. Have you seen such contracts?
17 **A. There are no such contracts.**
18 Q. All right. Are you aware of whether
19 there are contracts or arrangements between municipal
20 aggregators and CRES providers in any part of Ohio?
21 **A. I believe a number of other CRES**
22 **providers do offer contracts to municipal**
23 **aggregators. I haven't seen those contracts. I**
24 **know -- I know it because I've read it in the trade**
25 **press that they're involved in that business.**

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1 Q. So you haven't reviewed those contracts;
2 correct?
3 **A. No, not at all.**
4 Q. Well, are you aware of the process of
5 how customers can obtain service through a municipal
6 aggregation?
7 **A. I am generally aware that municipal**
8 **aggregators offer a contract rate to residential**
9 **customers within a municipality and that the**
10 **customers -- and that the rate is negotiated and that**
11 **customers then have an opt in or opt out right with**
12 **regard to taking advantage of those contract rates or**
13 **staying on the default rate.**
14 **That's -- I don't know if you are**
15 **looking for something more than that, but I know**
16 **that's generally how it works.**
17 Q. Are you aware of the process for a
18 municipality to establish itself as a municipal
19 aggregator?
20 **A. No, I'm not. That's not been a focus of**
21 **our business.**
22 Q. Do you know whether as part of the
23 process to become a municipal aggregator a
24 municipality has to offer an ordinance for
25 consideration by the residents?

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1 **A. I know that's a requirement in other**
2 **states. I'm not familiar with the Ohio requirements.**
3 **Q. Assuming that that was a requirement in**
4 **Ohio and assuming that such ordinances were on the**
5 **ballot for consideration this November, do you know**
6 **how long it would take a customer to actually receive**
7 **service under a municipal aggregation contract if such**
8 **ordinances were passed?**
9 **MR. SOLBERG: Object. Lack of**
10 **foundation.**
11 **THE WITNESS: I don't know.**
12 **BY MR. KUTIK:**
13 **Q. If a customer is in group one now and on**
14 **January 2nd of next year moves, will that customer**
15 **retain its status in group one?**
16 **MR. SOLBERG: Object. Lack of**
17 **foundation.**
18 **THE WITNESS: I don't know.**
19 **BY MR. KUTIK:**
20 **Q. If a customer under this Stipulation**
21 **provides a 90-day notice but then doesn't get the RPM**
22 **price, would that customer be able to remain in the**
23 **queue if they didn't accept service from a CRES**
24 **provider?**
25 **MR. SOLBERG: Object. Foundation.**

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1 **THE WITNESS: I don't know.**
2 **BY MR. KUTIK:**
3 **Q. And by remaining in the queue, what I**
4 **meant was keep their place in the queue.**
5 **MR. SOLBERG: Same objection.**
6 **THE WITNESS: I don't know how that is**
7 **handled.**
8 **BY MR. KUTIK:**
9 **Q. Is that something that you would defer**
10 **to Mr. Fein?**
11 **A. Yep. Yes. Mr. Fein and Mr. Petricoff**
12 **would work out those administrative details.**
13 **Q. If a customer in group two expands its**
14 **load by greater than 10 percent, will that customer be**
15 **required to pay capacity at 255?**
16 **MR. SOLBERG: Same objection.**
17 **THE WITNESS: I don't know. I don't**
18 **know.**
19 **BY MR. KUTIK:**
20 **Q. In your Stipulation testimony you**
21 **attached a number of reports from analysts; correct?**
22 **A. Yes.**
23 **Q. Have you spoken with the analysts who**
24 **have written these reports?**
25 **A. I have spoken to most of them but not on**

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1 **this subject. I've only read their reports with**
2 **regard to this subject, I believe.**
3 **Q. Okay. So would it be fair to say that**
4 **you can't offer any bases for these analysts'**
5 **conclusions and statements other than what appears in**
6 **these reports?**
7 **A. That's right.**
8 **MR. KUTIK: Let's go off the record for**
9 **a minute.**
10 **(Discussion off the record.)**
11 **BY MR. KUTIK:**
12 **Q. Mr. Dominguez, you said earlier that**
13 **after you were aware that FES was not in the room in**
14 **the settlement discussions you continued to have**
15 **communications with representatives of FES; correct?**
16 **A. Yes.**
17 **Q. Did FES ever indicate to you that it no**
18 **longer wished to be involved in settlement talks?**
19 **A. What I remember from the discussions,**
20 **with my discussions with FES, is that they could**
21 **support different parts of the stipulation we were**
22 **working on, such as the thresholds for the RPM**
23 **set-asides and certainly the conversion to a**
24 **competitive entity, but that they could not support**
25 **the rate increases in the base generation rate and**

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1 **that continued to be their posture pretty much to the**
2 **end.**
3 **So I don't think they ever said to me**
4 **we're not going to participate any more under any**
5 **circumstance. And, in fact, with regard to the**
6 **general framework, they indicated that they could**
7 **support many of the provisions, including ones we've**
8 **spoken about today, but didn't want AEP to get the**
9 **amount of money they were getting in their base GR**
10 **increase and that was the sticking point.**
11 **I always thought that at some point in**
12 **time if the GRR -- GR, excuse me, reached a level that**
13 **they could accept that they would come on board the**
14 **settlement.**
15 **And even on the last day when parties**
16 **were coming in to sign the Stipulation, I thought that**
17 **there was a chance that AEP would sign the Stipulation**
18 **when its delegation arrived.**
19 **Q. You mean FES?**
20 **A. FES, yeah.**
21 **Q. So it would be fair to say that you**
22 **never heard anyone from FES say, we're not interested**
23 **in settling, we're out?**
24 **A. They would never say it that way. They**
25 **would say we're not interested in settling on these**

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1 terms and we'll litigate it.
2 But in terms -- I mean, if you think
3 about it, it's just the kind of common sense talk
4 people would have and say, look, if they change this,
5 we can't -- we can't accept giving them all this
6 money, but that always left open the possibility that
7 they would come on board if the numbers moved in an
8 area that would be acceptable to them.
9 And, quite frankly, they contributed --
10 they contributed pretty heavily to a lot of the
11 changes that were made in bringing the Stipulation to
12 the point it reached on September 6th.
13 A lot of the suggestions they made
14 ultimately were incorporated, including the
15 elimination of many of the nonbypassable riders and in
16 particular the environmental riders that were a part
17 of the case as well as the POLR. They objected to
18 those things that were ultimately removed.
19 And so it was that sort of thing,
20 Mr. Kutik, where they were participants and movement
21 was made. Ultimately, it was never enough movement to
22 bring them on board, but up to the last minute I just
23 wasn't sure.
24 Q. And so you never heard that FES was no
25 longer interested in discussing settlement; correct?

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1 A. I don't -- not in that absolute way. At
2 least to my ear I never heard it that way.
3 MR. KUTIK: All right. Thank you. I
4 have no further questions at this time. I don't know
5 if any of the other lawyers who are on the phone have
6 any questions for you, Mr. Dominguez.
7 Does anyone have any questions?
8 MR. BONNER: This is Doug Bonner. I do
9 not have any questions for Mr. Dominguez.
10 MR. SOLBERG: We need to take one short
11 break off the record. We may need to clarify one
12 thing.
13 MR. KUTIK: Okay.
14 RECESS
15 EXAMINATION
16 BY MR. SOLBERG:
17 Q. Mr. Dominguez, earlier Mr. Kutik asked
18 you certain questions about Exhibit C to the
19 Stipulation.
20 Do you recall that?
21 A. Yes.
22 Q. And he asked about people who were
23 involved in negotiating Exhibit C.
24 Do you recall his question?
25 A. Yes.

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1 Q. Now, I think you said that you weren't
2 deeply or personally involved in negotiating the terms
3 of that exhibit; is that correct?
4 A. Right.
5 Q. And you mentioned two other individuals,
6 Howard Petricoff and David Fein.
7 Do you recall that?
8 A. Yes.
9 Q. Who's Howard Petricoff?
10 A. Howard is our local counsel.
11 Q. And what was his role for Exelon in
12 negotiating this, Exhibit C?
13 A. Howard was responsible for the drafting
14 of language and the negotiating of the provisions
15 with -- on behalf of RESA with AEP and other parties.
16 Q. And what is RESA, just so the record is
17 clear?
18 A. It's the Retail Electric Supply
19 Association. It's an association of companies that
20 are involved in retail electric supply in Ohio that
21 are called the CRES suppliers.
22 Q. And Exelon has a subsidiary that's a
23 member of these?
24 A. That's right. Exelon Energy.
25 Q. Now, you also mentioned David Fein and I

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1 think you referred to him as, quote, an employee.
2 Is David Fein an employee of any Exelon
3 entity?
4 A. No, he isn't. That was a -- that was a
5 mistake on my part. David is employed by
6 Constellation, and David is actually -- what I should
7 have said -- one of the officers or the leaders in
8 RESA in this association that we belong to.
9 I actually meant to say that Stephen
10 Bennett, who's on our team here at Exelon and who I
11 can verify is in fact an Exelon employee, was the
12 person I delegated responsibility to within the
13 company to work with Howard and other members of RESA,
14 including David Fein's company, Constellation.
15 MR. SOLBERG: I have no further
16 questions.
17 EXAMINATION
18 BY MR. KUTIK:
19 Q. So you delegated responsibility to
20 Mr. Bennett and Mr. Petricoff, the folks who have
21 contracts or who are employees of Exelon, to deal with
22 Appendix C?
23 A. That's right.
24 MR. KUTIK: I have no further questions.
25 MR. SOLBERG: All right. We're going to

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1 reserve signature.
2 **MR. KUTIK:** Okay. Very good. That
3 means we are concluded.
4 **MR. SOLBERG:** Great.
5 (Testimony concluded at 11:06 a.m.)
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1 **WITNESS CERTIFICATION**
2
3
4
5 I hereby certify that I have read the
6 foregoing transcript of my deposition testimony, and
7 that my answers to the questions propounded, with the
8 attached corrections or changes, if any, are true and
9 correct.
10
11
12
13
14
15 **DATE** _____ **JOSEPH DOMINGUEZ, ESQUIRE**
16
17
18
19 **PRINTED NAME** _____
20
21
22
23
24
25

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1 **CERTIFICATION**
2
3

4 I, **BARBARA McKEON QUINN**, a Registered
5 Merit Reporter and Notary Public in and for the
6 Commonwealth of Pennsylvania, hereby certify that the
7 foregoing is a true and accurate transcript of the
8 deposition of said witness who was first duly sworn by
9 me on the date and place herein before set forth.

10 I **FURTHER CERTIFY** that I am neither
11 attorney nor counsel for, not related to nor employed
12 by any of the parties to the action in which this
13 deposition was taken; and further that I am not a
14 relative or employee of any attorney or counsel
15 employed in this action, nor am I financially
16 interested in this case.
17
18
19
20

21 **BARBARA McKEON QUINN**
22 Registered Merit Reporter and Notary Public
23
24
25

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CERTIFICATION

I, BARBARA McKEON QUINN, a
Registered Merit Reporter and Notary Public
in and for the Commonwealth of Pennsylvania,
hereby certify that the foregoing is a true
and accurate transcript of the deposition of
said witness who was first duly sworn by me
on the date and place herein before set
forth.

I FURTHER CERTIFY that I am
neither attorney nor counsel for, not related
to nor employed by any of the parties to
the action in which this deposition was
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