

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 : Case No. 10-2376-EL-UNC
Merge and Related :
Approvals. :

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

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

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

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

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

1471

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

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

9 - - -

10 PROCEEDINGS

11 before Ms. Greta See and Mr. Jonathan Tauber,
12 Attorney Examiners, at the Public Utilities
13 Commission of Ohio, 180 East Broad Street, Room 11-A,
14 Columbus, Ohio, called at 9 a.m. on Friday,
15 October 14, 2011.

16 - - -

17 VOLUME VIII

18 - - -

19
20
21 ARMSTRONG & OKEY, INC.
22 222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
23 (614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724
24
25

- - -

1 APPEARANCES:

2 American Electric Power
3 By Mr. Steven T. Nourse
4 Mr. Matthew J. Satterwhite
5 1 Riverside Plaza
6 Columbus, Ohio 43215-2373

7 Porter, Wright, Morris & Arthur, LLP
8 By Mr. Daniel R. Conway
9 41 South High Street
10 Columbus, Ohio 43215-6194

11 On behalf of the Applicants.

12 FirstEnergy Service Company
13 By Mr. Mark A. Hayden
14 76 South Main Street
15 Akron, Ohio 44308

16 Jones Day
17 By Mr. David A. Kutik
18 Ms. Allison Haedt
19 North Point
20 901 Lakeside Avenue
21 Cleveland, Ohio 44114

22 Calfee, Halter & Griswold, LLP
23 By Mr. James F. Lang
24 1400 KeyBank Center
25 800 Superior Avenue
Cleveland, Ohio 44114

Calfee, Halter & Griswold, LLP
By Mr. N. Trevor Alexander
Ms. Laura McBride
Fifth Third Center
21 East State Street
Columbus, Ohio 43215

On behalf of FirstEnergy Solutions
Corporation.

- - -

1 APPEARANCES: (Continued)

2 McNeese, Wallace & Nurick, LLC
3 By Mr. Frank P. Darr
4 Mr. Samuel P. Randazzo
5 Mr. Joseph Olier
6 Fifth Third Center, Suite 1700
7 21 East State Street
8 Columbus, Ohio 43215-4288

9 On behalf of Industrial Energy Users.

10 Chester, Willcox & Saxbe, LLP
11 By Mr. Mark S. Yurick
12 Mr. John Bentine
13 Mr. Zach Kravitz
14 65 East State Street, Suite 1000
15 Columbus, Ohio 43215-4213

16 On behalf of the Kroger Company.

17 Janine L. Migden-Ostrander
18 Ohio Consumers' Counsel
19 By Mr. Terry L. Etter
20 Ms. Maureen R. Grady
21 Assistant Consumers' Counsel
22 10 West Broad Street, Suite 1800
23 Columbus, Ohio 43215-3485

24 On behalf of the Residential Ratepayers
25 of Columbus Southern Power Company and
Ohio Power Company.

Mike DeWine, Ohio Attorney General
By William Wright, Section Chief
Public Utilities Section
Mr. Werner L. Margard, III
Mr. Steven Beeler
Mr. John Jones
Assistant Attorneys General
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793

On behalf of the staff of the Public
Utilities Commission of Ohio.

- - -

1 APPEARANCES: (Continued)

2 Ohio Partners for Affordable Energy
3 By Ms. Colleen L. Mooney
4 Mr. David C. Rinebolt
5 231 West Lima Street
6 Findlay, Ohio 45840

7 On behalf of Ohio Partners for Affordable
8 Energy.

9 Schottenstein, Zox & Dunn Co., LPA
10 By Mr. Christopher L. Miller
11 Mr. Gregory J. Dunn
12 Mr. Asim Z. Haque
13 250 West Street
14 Columbus, Ohio 43215

15 On behalf of the Association of
16 Individual Colleges and Universities,
17 City of Hilliard, City of Grove City.

18 Boehm, Kurtz & Lowry
19 By Mr. David Boehm
20 Mr. Michael L. Kurtz
21 Mr. Kurt Boehm
22 36 East Seventh Street, Suite 1510
23 Cincinnati, Ohio 45202

24 On behalf of Ohio Energy Group.

25 Ohio Environmental Council
By Mr. Nolan Moser
Mr. Trent A. Dougherty
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449

On behalf of the Ohio Environmental
Council.

Thompson Hine, LLP
By Mr. Philip B. Sineneng
41 South High Street, Suite 1700
Columbus, Ohio 43215

On behalf of Duke Energy Retail.

1 APPEARANCES: (Continued)

2 Covington & Burling
3 By Mr. William Massey
4 1201 Pennsylvania Avenue
5 Washington, D.C. 20004

6 On behalf of The Compete Coalition.

7 Ohio Hospital Association
8 By Mr. Richard L. Sites
9 155 East Broad Street, 15th Floor
10 Columbus, Ohio 43215

11 Bricker & Eckler, LLP
12 By Mr. Thomas J. O'Brien
13 Mr. Matthew W. Warnock
14 100 South Third Street
15 Columbus, Ohio 43215-4291

16 On behalf of Ohio Hospital Association.

17 Bricker & Eckler, LLP
18 By Ms. Lisa Gatchell McAlister
19 Mr. Matthew W. Warnock
20 100 South Third Street
21 Columbus, Ohio 43215-4291

22 On behalf of Ohio Manufacturers
23 Association.

24 Vorys, Sater, Seymour & Pease, LLP
25 By Ms. Lija Kaleps-Clark
Mr. M. Howard Petricoff
P.O. Box 1008
52 East Gay Street
Columbus, Ohio 43216-1008

On behalf of Exelon Generation
Company, LLC, Constellation NewEnergy,
Inc., Constellation Energy Commodities
Group, Inc., Retail Energy Supply
Association, The Compete Coalition,
PJM Power Providers Group, and Direct
Energy.

1 APPEARANCES: (Continued)

2 Exelon Generation Company, LLC
3 By Ms. Sandy Grace
4 101 Constitution Avenue NW
5 Washington, D.C. 20001

6 Eimer, Stahl, Klevorn & Solberg, LLP
7 By Mr. David M. Stahl
8 Mr. Scott Solberg
9 224 South Michigan Avenue, Suite 1100
10 Chicago, Illinois 60604

11 On behalf of Exelon Generation Company,
12 LLC.

13 Mr. Henry W. Eckhart
14 1200 Chambers Road, Suite 106
15 Columbus, Ohio 43212

16 On behalf of the Sierra Club and Natural
17 Resources Defense Council.

18 Ohio Poverty Law Center
19 By Mr. Joseph V. Maskovyak
20 Mr. Michael Smalz
21 555 Buttles Avenue
22 Columbus, Ohio 43215

23 On behalf of Appalachian Peace and
24 Justice Network.

25 Keating, Muething & Klekamp PLL
By Mr. Kenneth P. Kreider
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202

Ms. Holly Rachel Smith
HITT Business Center
3803 Rectortown Road
Marshall, VA 20115

On behalf of Wal-Mart Stores East, LP,
and Sam's East, Inc.

- - -

1 APPEARANCES: (Continued)

2 Bell & Royer Co., LPA
3 By Mr. Barth E. Royer
4 33 South Grant Avenue
5 Columbus, Ohio 43215

6 On behalf of Dominion Retail, Inc.

7 Bricker & Eckler, LLP
8 By Mr. Christopher L. Montgomery
9 Mr. Terrence O'Donnell
10 100 South Third Street
11 Columbus, Ohio 43215

12 On behalf of Paulding Wind Farm, II.

13 Environmental Law & Policy Center
14 By Ms. Tara C. Santarelli
15 1207 Grandview Avenue, Suite 201
16 Columbus, Ohio 43212-3449

17 on behalf of the Environmental Law &
18 Policy Center.

19 SNR Denton US, LLP
20 By Ms. Emma F. Hand
21 Mr. Douglas G. Bonner
22 1301 K Street NW
23 Suite 600 East Tower
24 Washington, D.C. 20005

25 On behalf of Ormet Primary Aluminum
Corporation.

EnerNOC, Inc.
By Mr. Gregory J. Poulos
101 Federal Street, Suite 1100
Boston, Massachusetts 02110

On behalf of EnerNOC.

- - -

1478

INDEX

- - -

Witnesses	Page
Joseph G. Bowser	
Direct Examination by Mr. Darr	1480
Cross-Examination by Ms. McAlister	1494
Cross-Examination by Mr. Satterwhite	1497
Redirect Examination by Mr. Darr	1523
Kevin M. Murray	
Direct Examination by Mr. Darr	1528
Cross-Examination by Ms. McAlister	1533
DANIEL J. DUANN	
Direct Examination by Mr. Etter	1544
Cross-Examination by Mr. Nourse	1557
Cross-Examination by Mr. Kurtz	1604

- - -

IEU Exhibits	Identified	Admitted
8 - Direct Testimony of Joseph G. Bowser	1481	1527
9A- Direct Testimony of Kevin M. Murray, Public Version	1530	--
9B- Direct Testimony of Kevin M. Murray, Confidential Version	1530	--
10 - Exhibit KMM-11	1530	--

- - -

OCC Exhibits	Identified	Admitted
1 - Revised Direct Testimony of Daniel J. Duann	1544	1611

- - -

1479

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1480

1 Friday Morning Session,
2 October 14, 2011.

3 - - -

4 EXAMINER SEE: Let's go on the record
5 IEU?

6 MR. DARR: Thank you, your Honor. IEU
7 calls Joe Bowser, please.

8 EXAMINER TAUBER: Please raise your right
9 hand.

10 (Witness sworn.)

11 EXAMINER TAUBER: Thank you.

12 - - -

13 JOSEPH G. BOWSER
14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Darr:

18 Q. Please state your name.

19 A. My name is Joseph G. Bowser.

20 Q. By whom are you employed?

21 A. I'm employed by McNees, Wallace & Nurick.

22 MR. DARR: For the record could I ask
23 that IEU testimony that was previously filed
24 yesterday with the Commission be marked as IEU
25 Exhibit No. 8.

1 EXAMINER SEE: The exhibit is so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Do you have in front of you what's been
4 marked as IEU Exhibit No. 8?

5 A. Yes, I do.

6 Q. Could you identify that for us, please?

7 A. Yes. It's the prefiled direct testimony
8 that was filed on October 13th.

9 Q. And do you have any additions or
10 corrections to that testimony?

11 A. Yes, I do. At page 12, on line 15 the
12 word "principals" should be spelled with an "l-e-s"
13 at the end rather than an "a-l-s" at the end. And
14 the other correction is page 15, line 9, the figure
15 of "\$75 million" should be "\$69 million." And those
16 are the only corrections I have.

17 Q. If I asked you the questions that are
18 contained in there, would your answers be the same?

19 A. Yes.

20 MR. DARR: Move for the admission of IEU
21 Exhibit No. 8 and tender the witness for
22 cross-examination.

23 EXAMINER TAUBER: Ms. McAlister.

24 MS. McALISTER: Thank you, your Honor.

25 MR. SATTERWHITE: Your Honor, prior to

1 questions, would this be the appropriate time to move
2 for some motions to strike in the testimony?

3 EXAMINER TAUBER: Sure. We can do that
4 now.

5 MR. SATTERWHITE: I went ahead and typed
6 up the page numbers to make it easier for people to
7 follow along.

8 And, your Honor, there are three basic
9 areas and three basic arguments for the motions to
10 strike. If you want to, I can go through all of them
11 first and -- is that the easiest way to proceed?

12 EXAMINER TAUBER: Yes, if you could
13 please do that.

14 MR. SATTERWHITE: The first one I listed
15 here deals with page 6 in the testimony, lines 21
16 through 23, and page 7, line 1, and in this testimony
17 Mr. Bowser cites to the unadmitted testimony of
18 Ms. McCarter from earlier in this case.

19 Staff is not offering that testimony in
20 this case, it's not been sponsored in this case, it
21 would be hearsay for this witness to rely upon that
22 testimony. There's no foundation to rely upon it
23 because it's not in the record, and AEP did not have
24 the opportunity to cross or move to strike or test
25 the underlying analysis of Ms. McCarter, and the

1 party that she represents did sign the stipulation,
2 and so we think it's inappropriate for Mr. Bowser to
3 rely upon that for his testimony.

4 The second set of motions to strike start
5 on page 9, lines 18 through 23, through page 10,
6 lines 1 through 7, and then also on page 10, lines 21
7 through 22, through page 11, lines 1 through 7.

8 In this area of the testimony Mr. Bowser
9 has citations to the Staff Report from the 11-351
10 case. He seeks to introduce staff's treatment in the
11 Staff Report in a different case of a DIR mechanism
12 proposed there to the mechanism proposed here by the
13 parties in the stipulation.

14 Obviously, his argument relies upon that,
15 as his language says, "Based on the findings in the
16 Staff Report....," and he seeks to compare the
17 staff's treatment of those issues.

18 Obviously, objections can be filed.
19 Statutorily, the company and all the parties have
20 rights to file objections to the Staff Report. The
21 Staff Report was filed, but it has to go through an
22 entire process.

23 Portions of the Staff Report can be
24 stricken, can be removed by the staff, it can change
25 completely, so it would be improper to rely upon the

1 Staff Report in this case as the basis of anything.
2 It denies, again, the company and the signatory
3 parties their due process if this witness relies upon
4 that incomplete Staff Report where it stands in that
5 process right now.

6 Then finally, your Honor, there's a
7 number of citations I've listed here under No. 3
8 starting on pages 20, lines 8 through 12; 21 lines 5
9 through 23; and then essentially the four pages, page
10 22, lines 1 through 22; page 23, lines 1 through 23;
11 page 24, lines 1 through 22; page 25, lines 1 through
12 22; and page 26, lines 1 through 18.

13 And in this part of the testimony the
14 witness relies upon testimony he previously provided
15 dealing with the remand decision, and although the
16 witness updated his testimony and provided
17 supplements yesterday to reflect the remand decision,
18 he still has a number of arguments left in his
19 testimony that deal with the uncertainty of the
20 decision that was pending.

21 If you look on page 20 in the beginning,
22 it says "Has the Commission issued a decision yet?"
23 "No." Well he's updated that now with question 29,
24 so we don't think that's appropriate to have that in
25 the record.

1 It incorporates a number -- throughout
2 all of these pages it incorporates a number of
3 arguments and opinions from the 08-917 case, in
4 particular he relies on the testimony of Mr. Murray,
5 the testimony that he gives in that case as well.
6 That testimony is not in this case.

7 What this amounts to is an attempt to
8 seek rehearing of the Commission's order in 08-917
9 and burden this record with all the issues that the
10 Commission already decided in that case. There's an
11 appropriate place to do that, they can ask for
12 rehearing in that case, but there's no reason for
13 this witness to put those arguments back in this case
14 and rely upon all the arguments that are not
15 developed.

16 Obviously, if this were allowed to stand,
17 the company and signatory parties on rebuttal would
18 have to put the entire case that they had put on
19 before in this case to make sure all the elements of
20 that case are referred to here. The Commission made
21 their decision in this case and it shouldn't be
22 applied in this case as well be allowed to be
23 bootstrapped onto this case.

24 EXAMINER TAUBER: Mr. Darr.

25 MR. DARR: Briefly, your Honor. With

1 regard to the first item, citations to nonadmitted
2 testimony in this case, specifically with regard to
3 page 6, lines 21 through 23, effectively at this
4 point, because of the positions of the staff, the
5 company, and the various other signatory parties this
6 amounts to a statement by a party opponent. In Rule
7 801 that is, by definition, not hearsay and,
8 therefore, can be used. Clearly, it's in a document
9 that's publicly available and we believe that the
10 hearsay exception does not apply.

11 With regard to foundation, the foundation
12 is contained within the testimony provided by
13 Mr. Bowser in that he has identified where he has
14 drawn the testimony and that is all that is necessary
15 for purposes of providing a foundation for this
16 nonhearsay statement.

17 With regard to the second citation or
18 second motion or part of the motion presented by
19 AEP Ohio, and that is in regard to statements with
20 regard -- that are drawn from the Staff Report,
21 again, the Staff Report, given the alignment of the
22 parties in this case, constitutes a statement by a
23 party opponent, therefore, is not hearsay by
24 definition. Second, if it were hearsay, it would
25 nonetheless be available to the parties to use under

1 the hearsay exception for public documents.

2 This is a report that's prepared by an
3 agency with a duty to report, in fact, in this case a
4 statutory duty to report, thus, this is accepted
5 under hearsay Rule 803.

6 Finally, with regard to the references to
7 the remand hearing, in that regard we believe, and it
8 has been our position throughout, that the PIRR in
9 this case is affected by the results in the other
10 case.

11 The other case is contrary to why I
12 believe, not firmly decided yet, there's still
13 opportunity for rehearing, as exciting as I know all
14 of us would find that, but there's no finality to it.
15 So to the extent that there are remaining issues and
16 the extent that those issues flow through to this
17 case, that testimony is still relevant to the
18 resolution of this case and thus the argument that
19 this is an untoward application for rehearing simply
20 isn't correct.

21 On that basis, your Honor, I believe that
22 each one of these, each prong of this motion to
23 strike should be denied.

24 MR. KUTIK: Your Honors, FES would also
25 join in opposition to that motion.

1 MR. SATTERWHITE: If it please the Bench,
2 I can respond, quickly.

3 EXAMINER TAUBER: Briefly, yes.

4 MR. SATTERWHITE: To the first position
5 about the testimony of staff, obviously the
6 Commission isn't bound strictly to the Rules of
7 Evidence in this case, it's a matter of fairness, and
8 it's a matter of the truth of the matter asserted for
9 the hearsay exception to begin with.

10 The point here is that AEP doesn't have a
11 chance to explore the opinions in that testimony, yet
12 it's being relied upon, so the Commission doesn't
13 have the benefit and AEP doesn't have the benefit of
14 testing whether the truth is there, so we're one step
15 further removed with this witness if he relies upon
16 that, and that's inappropriate.

17 Secondly, to the citations of the Staff
18 Report in another case, the same arguments as before.
19 I'd also point out in the remand case, in the
20 post-hearing briefs there was some debate about what
21 could be entered into the record and what could be
22 used on brief, and OCC and the parties in this case
23 dealt with administrative notice but they did cite
24 the Ohio Edison electric fuel case and cited the
25 statement that we do not believe it is proper to take

1 administrative notice of management audits whose
2 findings and recommendations may be subject to
3 reasonable dispute. The Commission did end up
4 granting that motion to strike in that case.

5 I think that's comparable here. We don't
6 have the staff here to defend the Staff Report, and
7 the point is that it's at a preliminary stage. It's
8 been filed, objections are due on Monday, and there's
9 a whole process that it needs to go through. It
10 can't be relied upon for the truth of the matter
11 asserted at this time and it's inappropriate to bring
12 that into this case.

13 And finally on the remand, your Honor,
14 the case is moving forward, they do have the
15 opportunity to ask for rehearing on that, but when a
16 Commission order is issued, it is binding, it's an
17 effective order, and the Commission made a decision
18 in that case.

19 What happens in the testimony of
20 Mr. Bowser is he relies upon the testimony of
21 Mr. Murray and his testimony in a prior case that are
22 not in this docket and not available for debate, and
23 properly so, because it shouldn't be in this docket.
24 But it shouldn't burden this record anymore with
25 those arguments, like I said, otherwise we're going

1 to have to put a number of arguments on rebuttal to
2 bring up all the arguments in the remand case into
3 this case as well; therefore, it shouldn't be part of
4 this record.

5 MR. DARR: If I may.

6 EXAMINER TAUBER: Briefly.

7 MR. DARR: Thank you, your Honor.

8 With regard to the fairness issue raised
9 by Mr. Satterwhite and the indication that there's no
10 chance to explore, in fact, they do, by
11 Mr. Satterwhite's own argument they have an
12 opportunity to file rebuttal testimony.

13 They may not like the fact that the PIRR
14 has these additional issues involved with it, but it
15 doesn't change the fact that we believe and we are
16 presenting a case supporting that the PIRR is
17 effective and public policy issues are implicated by
18 that.

19 With regard to his arguments concerning
20 administrative notice and the motion to strike in the
21 remand case, what was attempted there by the company
22 was to introduce by administrative notice after the
23 hearing record had closed, and when there was no
24 opportunity to rebut the evidence proposed by
25 administrative notice, to bring new items into the

1 record. That is not what is being done here.

2 What is being done here is presenting the
3 evidence that's in the Commission files with an
4 opportunity for the companies to present their own
5 version of what they -- of how they feel this should
6 work out. Thus, neither argument should warrant the
7 motion to strike at this time.

8 MR. KUTIK: Your Honor, may I be heard?
9 I just have two points.

10 EXAMINER TAUBER: You may, very briefly,
11 Mr. Kutik.

12 MR. KUTIK: First, I would like to remind
13 the Bench of its ruling with respect to the motion to
14 strike Mr. Dominguez's testimony where we made the
15 same argument Mr. Satterwhite just made about the
16 unfairness of allowing out-of-court statements or
17 out-of-hearing statements to be used. Of course,
18 that motion was denied as you might recall.

19 In this case it is one step closer than
20 it was with respect to what was cited with
21 Mr. Dominguez. Mr. Dominguez, the stuff that was in
22 there, that party was not here, an analyst we had no
23 opportunity even to talk with or have those parties
24 participate. Here, if the staff disagrees with the
25 citations that Mr. Bowser makes to their statements,

1 they can have a witness come in or one of their
2 witnesses can discuss that.

3 So there isn't the unfairness here that
4 there was with respect to Mr. Dominguez's testimony
5 and, obviously, as I said, you folks ruled that that
6 was okay. That's my first point.

7 My second point is with respect to the
8 DIR, the problem that AEP has with Mr. Bowser's
9 testimony was a problem that they brought upon
10 themselves by including the DIR in this case and in
11 having that issue pending or being dealt with in the
12 distribution case. So they brought it in as part of
13 the stip, and it's fair game to talk about the
14 inconsistent treatment between this case and the D
15 case.

16 EXAMINER SEE: And by the "D case" you
17 mean the distribution rate case.

18 MR. KUTIK: Distribution case, thank you.

19 EXAMINER TAUBER: At this time we'll take
20 the motion to strike under advisement.

21 MR. SATTERWHITE: Thank you.

22 EXAMINER TAUBER: We'll continue with
23 cross-examination. Actually, let's take a ten-minute
24 recess and then we'll continue with
25 cross-examination. Let's go off the record.

1 (Recess taken.)

2 EXAMINER TAUBER: Let's go back on the
3 record.

4 Before we get into cross-examination
5 there are a couple of matters to address for the
6 motion to strike. The first part, motion to strike
7 page 6, lines 21 through 23, page 7, line 1, and then
8 page 9, lines 18 to 23, through page 10, lines 1
9 through 7, and then also on page 10, lines 22 through
10 23, and page 11, lines 1 through 7, the motion to
11 strike that should be denied.

12 With regards to the third part of the
13 motion to strike as to page 20, lines 8 through 12,
14 page 21, lines 5 through 23, page 22, lines 1 through
15 22, page 23, lines 1 through 23, page 24, lines 1
16 through 22, page 25, lines 1 through 22, and finally
17 page 26, lines 1 through 18 shall be granted, as the
18 witness has acknowledged the Commission issued its
19 decision and need only consider the witness's
20 testimony as to the effects of the remand decision as
21 it has on this proceeding.

22 MR. DARR: For purposes of maintaining
23 the record we would proffer the portions that have
24 been stricken.

25 EXAMINER TAUBER: Okay.

1 MR. DARR: Thank you.

2 EXAMINER TAUBER: Thank you.

3 So now we'll do cross-examination, unless
4 there's anything else before we get into
5 cross-examination.

6 Thank you. Ms. McAlister, please
7 proceed.

8 - - -

9 CROSS-EXAMINATION

10 By Ms. McAlister:

11 Q. Good morning, Mr. Bowser.

12 A. Good morning.

13 Q. Can you hear me all right?

14 A. Yes.

15 Q. Okay. On page 1 of your testimony it
16 says that you're a technical specialist and that you
17 specialize or you focus on assisting IEU-Ohio members
18 to address issues that affect the price and
19 availability of utility services; is that correct?

20 A. Yes.

21 Q. Then on page 4 of your testimony in
22 question and answer No. 7 you talk about what you
23 reviewed to prepare your testimony. As part of
24 preparing for your testimony did you or anyone else
25 at IEU or McNees perform an analysis of the potential

1 bill impacts on the IEU-Ohio members that are
2 AEP Ohio customers?

3 A. I was approached by several members of
4 IEU-Ohio who had been provided calculations by the
5 company of what the impacts of the stipulation would
6 be on their rates. I believe it was four IEU-Ohio
7 members. And I looked at those calculations and
8 assisted the customers in determining what those
9 potential bill impacts were.

10 Q. So you reviewed an analysis that was
11 prepared by AEP Ohio for four of the IEU members,
12 correct?

13 A. That's correct.

14 Q. And if you know, how many IEU-Ohio
15 members are there that are AEP Ohio customers?

16 MR. DARR: Objection. Relevance.

17 EXAMINER TAUBER: Ms. McAlister.

18 MS. McALISTER: Your Honor, it goes to
19 the motivation of IEU-Ohio opposing the stipulation
20 and what Mr. Bowser reviewed in order to prepare his
21 testimony and analysis on whether it passes the test
22 that he concludes it does not.

23 EXAMINER TAUBER: Objection is overruled.

24 A. I don't know.

25 Q. There are more than four, though, aren't

1 there?

2 A. Yes.

3 Q. I want to be careful to not get into
4 confidential customer information, so without naming
5 who those four are, did they receive a rate decrease
6 in 2012?

7 A. My recollection is that two received a
8 rate increase in 2012 and two received a rate
9 decrease in 2012.

10 MS. McALISTER: I have no further
11 questions, your Honor.

12 Thank you, Mr. Bowser.

13 EXAMINER TAUBER: Mr. Kurtz?

14 MR. KURTZ: No questions, your Honor.

15 EXAMINER TAUBER: Mr. Yurick?

16 MR. YURICK: No questions, thank you,
17 your Honor.

18 EXAMINER TAUBER: Ms. Kaleps-Clark?

19 MS. KALEPS-CLARK: No questions, your
20 Honor.

21 EXAMINER TAUBER: Mr. Satterwhite.

22 MR. SATTERWHITE: Thank you, your Honor.

23 - - -

CROSS-EXAMINATION

By Mr. Satterwhite:

Q. Good morning, Mr. Bowser.

A. Good morning.

Q. How long, again, have you been with IEU?

A. Six years.

Q. Before that you had extensive experience with the Ohio Consumers' Counsel, correct?

A. I was there about ten years.

Q. In that time did you focus on Ohio matters, particularly the PUCO matters?

A. For the most part, yes.

Q. You stayed abreast of all the developments in the industry, issues before the PUCO in that time period?

A. I wouldn't say I stayed abreast of all the issues. There's only 168 hours in a week so it's tough to follow them all.

Q. You don't have to work more than 168?

A. No, I don't.

Q. Thought you might find a way.

But certainly all the ones that you dealt with your employer in cases you worked on, you followed the issues with those, correct?

A. To the best of my ability.

1 Q. I'd draw your attention to your testimony
2 on page 6. I have a couple different versions, I
3 think these are the same so if I get a line wrong,
4 just let me know.

5 Starting I believe around line 14 you
6 describe a scenario of what you believe is a
7 violation of the regulatory principles and practices
8 by the failure to provide support for the authority
9 for establishing the recommended DIR. Do you see
10 that?

11 A. Could you refer me to the line?

12 Q. Sure. Line 14. I apologize.

13 A. And then what was your question?

14 Q. First of all, I just want to make sure
15 you saw what I was talking about.

16 A. Yes, I do.

17 Q. And in that you're asserting that if the
18 stipulation, correct me if I'm wrong, if the
19 stipulation does not include the specific authority
20 for a portion of the stipulation, that it violates a
21 regular inventory principle or practice; is that
22 correct?

23 A. That's right. There wasn't detail in the
24 stipulation that indicated the authority for
25 establishing the DIR.

1 Q. But in your testimony you did not cite a
2 requirement established by the PUCO or the General
3 Assembly on this point, did you?

4 A. I believe 4928.143 requires, you know,
5 requires that there be an indication of the
6 authorization to set up that kind of rider.

7 Q. And I understand, well, I think you'd
8 agree you're not an attorney, correct?

9 A. Correct.

10 Q. So when you say 4928.143 includes that,
11 that's your opinion as a nonattorney?

12 A. Yes.

13 Q. Is it your understanding that 4928.143
14 governs the elements of a stipulation before the
15 PUCO?

16 MR. DARR: Objection. Asking for a legal
17 conclusion.

18 MR. SATTERWHITE: Your Honor, if I may.

19 EXAMINER TAUBER: Yes.

20 MR. SATTERWHITE: He cited this as the
21 statute that governs the statement that he's made and
22 I just want to probe his understanding of what he
23 thinks that statute means so it's clear.

24 EXAMINER TAUBER: Mr. Bowser, if you
25 could just answer the question and the Commission

1 will note that you're not an attorney.

2 THE WITNESS: Could I have the question
3 read back, please?

4 EXAMINER TAUBER: Certainly.

5 MR. SATTERWHITE: I can just restate it,
6 if that's easier.

7 Q. (By Mr. Satterwhite) Is it your
8 understanding that 4928.143 that you cite on line 12
9 of your testimony here governs the elements that can
10 be included in a stipulation before the PUCO?

11 A. I don't know.

12 Q. Okay. That's fine.

13 Does IEU ever enter into stipulations or
14 partial stipulations in cases before the Commission?

15 MR. DARR: Objection. Relevance.

16 MR. SATTERWHITE: If I may, your Honor.

17 EXAMINER TAUBER: Yes.

18 MR. SATTERWHITE: He's asserted that it's
19 against regulatory practices and principles to enter
20 into a stipulation and not give the exact statutory
21 authority for items in the settlement, so I'm trying
22 to probe if his employer, IEU, has ever entered into
23 a stipulation and whether they lived under that same
24 regime that he's asserting here.

25 EXAMINER TAUBER: Objection is overruled.

1 Q. Do you want me to repeat it again?

2 A. Please.

3 Q. No problem. Has your employer, IEU, ever
4 entered into a stipulation or a partial stipulation
5 in a case before the PUCO?

6 MR. DARR: Objection. Form.

7 EXAMINER TAUBER: Could you rephrase your
8 question, please?

9 Q. Mr. Bowser, IEU has been in a number of
10 cases before the Commission, correct?

11 A. That's correct.

12 Q. On occasion does IEU enter into a
13 stipulation to settle those cases?

14 A. I believe that's correct.

15 MR. SATTERWHITE: Your Honor, I think the
16 easiest way is I'd like to ask the Bench to take
17 administrative notice of the application in Case
18 10-388 filed on March 23rd of 2010, it's a document
19 that contains the stipulation and the FE companies'
20 electric security plan. This has a stipulation
21 attached to the document in the Commission's records
22 that I'd like to ask the witness some questions
23 about.

24 MR. DARR: We object, your Honor. Those
25 stipulations specifically provide that they do not

1 have any precedential effect. It's hard to see how
2 this will lead to anything productive in this.

3 MR. KUTIK: FES joins in that objection.

4 MR. SATTERWHITE: Your Honor, I can mark
5 it as an exhibit and ask questions on it. I believe
6 I have the right to probe into what the witness just
7 answered, that they do enter into stipulations and
8 his statement here in his testimony applies to
9 regulatory principles and practices before the
10 Commission, so items within that stipulation would
11 have to sit under the same standard that he's
12 proposing -- against the stipulation that he's
13 proposing here today.

14 MR. DARR: Again, the same objection
15 would apply whether he marks it as an exhibit or asks
16 for administrative notice, the question goes to
17 whether or not this is a proper use of the prior
18 Commission decisions. By the terms of the
19 stipulations themselves, it clearly is not.

20 MR. SATTERWHITE: If I may.

21 EXAMINER TAUBER: Very briefly.

22 MR. SATTERWHITE: We're not using this as
23 a precedent. We're using this as the actions of IEU.

24
25 EXAMINER TAUBER: The objection is

1 overruled.

2 MR. SATTERWHITE: May I approach, your
3 Honor?

4 EXAMINER TAUBER: You may.

5 MR. SATTERWHITE: Just to clarify, the
6 Commission is taking administrative notice of this,
7 just so the record is --

8 EXAMINER TAUBER: We'll take
9 administrative notice of it.

10 MR. SATTERWHITE: Okay.

11 Q. (By Mr. Satterwhite) Mr. Bowser, do you
12 have in front of you what the Bench has just taken
13 administrative notice of, the application and
14 stipulation from March 23rd, 2010, in Case 10-388?

15 A. Yes.

16 Q. In that I'd like you to draw your
17 attention -- first let me ask you this, does this
18 include a settlement agreement as part of this
19 filing, or stipulation and recommendation to be
20 exact, I guess?

21 MR. DARR: Objection, your Honor.
22 There's no demonstration that Mr. Bowser either
23 participated in or is even aware of this particular
24 proceeding.

25 MR. SATTERWHITE: Your Honor, that's why

1 I asked for administrative notice; it's a document of
2 the Commission, now I can ask him questions on it
3 based upon --

4 MR. KUTIK: But, your Honor, he needs to
5 lay a foundation with respect to this witness's
6 familiarity, so I join in the objection.

7 EXAMINER TAUBER: The objection is
8 sustained.

9 You do need to lay a foundation,
10 Mr. Satterwhite.

11 Q. (By Mr. Satterwhite) Mr. Bowser, are you
12 familiar with this case at all, 10-388?

13 A. I'm somewhat familiar with it. It's
14 the -- it appears to be FirstEnergy's last ESP case.

15 Q. And do you know if IEU participated in
16 this case?

17 A. I believe IEU did participate in this
18 case.

19 Q. And do you believe that IEU signed the
20 recommendation and stipulation in this case?

21 MR. DARR: Your Honor, we'll stipulate
22 that IEU participated in the case. And, in fact,
23 that an attorney on behalf of IEU signed the
24 stipulation.

25 EXAMINER TAUBER: Thank you.

1 MR. SATTERWHITE: Thank you for that
2 foundation.

3 Q. Mr. Bowser, so does this document include
4 that stipulation and recommendation that your counsel
5 just stipulated that IEU participated and signed in?

6 MR. DARR: Objection. Still no
7 foundation with regard to the knowledge of this
8 witness.

9 MR. SATTERWHITE: If I may, your Honor, I
10 was trying to get there when they stipulated the
11 document was there, so I thought I could cut short
12 the questions there. He said he's familiar with the
13 case. His counsel's said this is a valid document
14 the company signed. He stated he's been involved in
15 the cases with IEU.

16 It's a document on the Commission docket
17 that I believe I have the right to ask questions of
18 the witness. Now that it's been established that IEU
19 participated, I can now test his theory that he's
20 applying against the signatory parties stipulation
21 against the valid document because counsel said that
22 they have actually signed as well in another case.

23 MR. DARR: Your Honor, if I may.

24 EXAMINER TAUBER: You may.

25 MR. DARR: If the point of this is to

1 demonstrate that the stipulation in the prior case
2 does not have specific citations to it, then I
3 believe he has in the record at this point through
4 his administrative notice the document.

5 The remainder of this discussion, there's
6 no foundation with regard to the motivation or
7 participation or anything else of this particular
8 witness. So this whole line of questions would be
9 inappropriate and I object.

10 MR. SATTERWHITE: If I may, your Honor, I
11 can be quick.

12 EXAMINER TAUBER: Very briefly.

13 MR. SATTERWHITE: I'd be happy to cross
14 Mr. Darr later if he wants to, but this witness is
15 the one that stated the principle that he's applying
16 to this statement and I would like to get his answers
17 to what's happened in the past with his employer.

18 EXAMINER TAUBER: Objection is overruled.

19 MR. SATTERWHITE: Can you read the last
20 question so I can see where we were?

21 (Record read.)

22 A. Yes, I see that that's included in here.

23 Q. If I can draw your attention to page 13
24 of the stipulation and recommendation.

25 A. Yes.

1 Q. That deals with something called rider
2 DCR, the delivery capital recovery. Do you see that?

3 A. Yes, I do.

4 Q. Are you familiar with that mechanism?

5 A. No. No, I'm not.

6 Q. Do you see anywhere in this document
7 where there are specific statutory authority included
8 for approval of that mechanism?

9 A. Well, since I'm not an attorney, I don't
10 think I'd be able to judge if that authority exists
11 for this.

12 Q. Okay. But in your review of it you don't
13 see any authority for it?

14 A. Well, maybe I'd have to review the whole
15 document to determine that. I mean --

16 Q. Well, let me ask it this way: You
17 reviewed the stipulation that the signatory parties
18 filed in this case, correct? And when I say "this
19 case," I mean the September stipulation that we're
20 litigating right now.

21 A. The AEP case.

22 Q. Correct.

23 A. Yes.

24 Q. And did you review that completely to
25 determine -- to make this statement that there were

1 no authority included -- that there was no authority
2 included for the DIR?

3 MR. KUTIK: Your Honor, I object at this
4 point. If we're getting into the substance of the
5 stipulation, that's expressly contrary to the
6 language of the stipulation itself; it said on page
7 34 that it may not be relied upon in any other
8 proceeding. So the fact that something is or is not
9 in this or that certain issues have been handled a
10 certain way with respect to the stipulation that was
11 entered in this case is not relevant to any other
12 case.

13 MR. SATTERWHITE: If I may, your Honor.

14 EXAMINER TAUBER: Mr. Satterwhite.

15 MR. SATTERWHITE: I'm not trying to get
16 into the substance of the items within the case.
17 This witness has testified to the three-part test to
18 be applied against stipulations and I think we have a
19 right to apply the stipulations he's signed in the
20 past to see whether that fits under the same standard
21 and the judgment he's made of the signatory parties
22 in this case.

23 So it gets into the merits of this case,
24 it gets into the actions of the application of that
25 case -- in this case.

1 MR. KUTIK: He's specifically pointing to
2 language in the stipulation. That's substance,
3 therefore, it's contrary to the specific language of
4 the stipulation and how the Commission has read that
5 stipulation in its subsequent order.

6 MR. SATTERWHITE: Your Honor, I tried to
7 find an example of something that was akin to
8 something in this case to make it easier to
9 understand for everyone, that's all.

10 MR. DARR: If I may, your Honor.

11 EXAMINER TAUBER: You may.

12 MR. DARR: If the point of this is to
13 find something that's akin, then counsel for FES is
14 perfectly correct. You can't use this particular
15 stipulation to show something else because the
16 stipulation by its own terms says it has no
17 precedential effect.

18 The stipulation also says it's relying on
19 a whole series of documents that may or may not be
20 relevant or may not even be apparent in this case.
21 So this is a bit of a reach and that's why we're
22 objecting.

23 MR. SATTERWHITE: It's simply to impeach
24 the application of the test he's laying out, your
25 Honor. You can pick any provision in here, I just

1 thought that would be easiest for people to follow
2 along with.

3 EXAMINER TAUBER: The objection is
4 overruled.

5 A. Is a question pending?

6 Q. There is, but let me ask another one,
7 maybe it will be easier, because I think I had a long
8 question there.

9 So do you see anything in item No. 2 on
10 13 or anywhere else in this stipulation and
11 recommendation that enumerates each provision or each
12 paragraph what the statutory authority is for that
13 paragraph?

14 A. I can take a while to review this, but it
15 would take me a while to review it.

16 Q. That's why I was trying to draw you to a
17 paragraph, because isn't it true that under your
18 analysis you're saying that anything included in this
19 stipulation has to have the statutory authority
20 included with it?

21 MR. DARR: Objection. Mischaracterizes
22 the direct testimony.

23 MR. SATTERWHITE: Your Honor, that's why
24 I asked him if that's what it means.

25 EXAMINER TAUBER: Objection is overruled.

1 THE WITNESS: Could I have the question
2 read back?

3 (Record read.)

4 A. I wouldn't make that broad of a
5 conclusion. I wouldn't say "anything." I don't
6 think I exhaustively can say that that's true for
7 anything in the stipulation.

8 Q. So on page 6 of your testimony starting
9 on line 14 where you say "By failing to provide
10 support for the authority for establishing the
11 recommended DIR," you're making a distinction with
12 the DIR and other elements of the stipulation that
13 would require specific authority to be listed?

14 A. In the instance that you're citing to
15 here, this is specifically for the DIR.

16 Q. Okay. And so your testimony I believe
17 earlier, and correct me if I'm wrong, is that it's
18 your belief that 4928.143 has a requirement that the
19 stipulation has to have specific authority detailing
20 the authority for the DIR, correct?

21 A. Yes, that's correct.

22 Q. Okay. Now, on page 7 of your testimony
23 in question and answer 11, if I can get you to turn
24 there for me.

25 A. Okay.

1 Q. Here you continue with your -- a
2 description of what you believe violates regulatory
3 principles and practices and you discuss the
4 nonbypassability of the rider and the risks
5 associated with it and the returns that would apply
6 with that, correct?

7 A. That's correct.

8 Q. And you did not cite a requirement
9 established by the PUCO or General Assembly that
10 would require the outcome that you propose in this
11 answer, correct?

12 A. What do you mean by "the outcome" in the
13 proposal?

14 Q. What violates regulatory principles and
15 practices in this case.

16 A. In effect, because the DIR is a
17 stand-alone rider that's nonbypassable, the company's
18 financial and business risk is reduced relative to
19 these revenue streams, in effect there's no
20 regulatory lag, the investments have already been
21 made and, in effect, the only risk to the company is
22 really the risk of collecting the dollar amounts.

23 So in my opinion a weighted average cost
24 of capital is not an appropriate carrying charge on
25 that rider.

1 Q. But in this answer you don't cite to a
2 PUCO rule or anything from the General Assembly that
3 requires that, correct?

4 A. In this answer no.

5 Q. Okay. And your view of the lower
6 business and financial risk on this answer is solely
7 related to a view of the DIR and not taking all the
8 components of the stipulation together, correct?

9 A. That's correct.

10 Q. I'd ask you to turn to page 8 of your
11 testimony.

12 A. Okay.

13 Q. In here you discuss the carrying cost
14 that provides for, I'm down around line 18, 19, 20,
15 associated income tax, and you say but it fails to
16 identify if the benefit the companies acquire will be
17 recognized in the calculation. Do you see that?

18 A. Could you give me the line number again?

19 Q. Sure. It's basically the sentence that
20 starts on 18 and finishes on 21. I just want to make
21 sure we're at the same place.

22 A. I see the language. And what was the
23 question?

24 Q. I just wanted to make sure you were
25 there. If you saw it first.

1 A. Yes.

2 Q. My question is, is the violation of the
3 regulatory principles -- strike that.

4 The violation of the regulatory
5 principles and practices you're citing here is that
6 the stipulation fails to identify if the benefit you
7 identify from the accelerated depreciation is
8 recognized in the carrying cost calculations,
9 correct?

10 A. That's correct. And the fact that the,
11 you know, components of the total carrying charge are
12 missing, as I indicated earlier, up on lines 4
13 through 7 on page 8. So it's the incompleteness for
14 basically a carrying charge that's going to end up
15 being over 20 percent when you factor in the weighted
16 average cost of capital as well as these other
17 components.

18 Q. And you did not cite a requirement
19 established by the General Assembly or the PUCO rules
20 in relation to that, did you?

21 A. Not specific rules, but I think it's good
22 regulatory practice that, you know, information be
23 complete and that all the components that should be
24 accounted for are reflected.

25 Q. And when you say "good regulatory

1 practice," that's rooted in your opinion, not in
2 administrative code rule or statute, correct?

3 A. It's my experience based on the practices
4 that the Commission has followed in the past.

5 Q. I'd ask you to turn to page 10 of your
6 testimony, please.

7 A. Okay.

8 Q. The note I have is I'm going to ask you
9 about lines 13 through 20, let me get there.

10 A. Okay.

11 Q. And here is it correct that you're
12 asserting that it violates regulatory practices and
13 principles that a rate increase or decrease that the
14 Commission -- that the Commission should authorize be
15 based on cost of service and not be driven by
16 backward-looking increases; is that correct?

17 A. That's correct.

18 Q. And in this answer did you cite to any
19 requirement established by the General Assembly or
20 PUCO rules that this is required?

21 A. No specific citations to those, but my
22 position is based on the fact that the companies have
23 these distribution rate cases pending, it's been I
24 believe over 15 years since the time of both CSP and
25 Ohio Power's last distribution rate cases, therefore,

1 to be looking at the return -- a rider that's based
2 on distribution plant, there should be an examination
3 of the cost of service.

4 And, you know, in the distribution cases
5 there's a date certain in those cases of
6 August 31st, 2010, so to me good regulatory
7 practice would dictate that that be looked at and
8 examined and form the basis for permitting any
9 recovery of these type of charges.

10 Q. Do you know if ESP rates are required to
11 be -- to follow cost-based rate of return?

12 A. I don't know.

13 Q. Are you asserting that it violates
14 regulatory practices and principles to adopt a
15 distribution related provision in an electric
16 security plan?

17 A. Well, as we discussed earlier, I believe
18 under 4928.143 that this provision basically wouldn't
19 be acceptable.

20 Q. I'm just asking generally if you're
21 asserting that it violates regulatory practices or
22 principles to adopt a distribution-related provision
23 in an electric security plan.

24 MR. DARR: Before he answers, I object.
25 Form of the question is vague.

1 MR. SATTERWHITE: Your Honor, I think the
2 question is pretty short and clear and --

3 EXAMINER TAUBER: Sustained. Please
4 rephrase the question, Mr. Satterwhite.

5 Q. Mr. Bowser, to the extent you know,
6 you're familiar with electric security plans,
7 correct?

8 A. Generally, yes.

9 Q. You participate in cases to establish
10 electric security plans on behalf of IEU?

11 A. I'm participating in the current case,
12 yes.

13 Q. And to the best of your knowledge do you
14 believe it violates regulatory practices and
15 principles to adopt a distribution-related charge in
16 the context of an electric security plan?

17 MR. DARR: Objection. It's the same
18 question that was ruled on about three questions ago.

19 MR. SATTERWHITE: If I may, your Honor, I
20 think it's, again, it's a straightforward question.
21 He's testifying to what violates regulatory practices
22 and principles and in this section he indicates that
23 something should be based on cost of service and he
24 brings up the distribution rate case is where it
25 should be properly done.

1 So I'm asking and I think we have the
2 right to ask if that can be done in an electric
3 security plan, does that get to the crux of why he's
4 saying this violates regulatory practices and
5 principles.

6 EXAMINER TAUBER: Objection's overruled.

7 A. I think I already answered your question
8 as to why I believe it violates regulatory practices
9 when I talked about being based on a cost of service.
10 So what's the rest of the question then?

11 MR. SATTERWHITE: Can I have that
12 question reread so I don't run afoul of saying it any
13 differently and getting another objection from
14 Mr. Darr?

15 MR. DARR: I object, your Honor. I
16 certainly have a right to object when the question is
17 improper. I ask that that be stricken.

18 EXAMINER TAUBER: That will be stricken.
19 And the question will be reread.

20 MR. SATTERWHITE: Thank you.

21 (Record read.)

22 A. I don't know.

23 Q. Turn to page 13 of your testimony,
24 please.

25 A. Yes.

1 Q. And around line 12 you begin to discuss
2 section 4928.20(I), I believe, of the Revised Code.
3 Do you see that?

4 A. Yes.

5 Q. And you start that paragraph "...based on
6 the advice of counsel...." and you end that paragraph
7 "...per the advice of counsel." Do you see that?

8 A. Correct.

9 Q. Are you making a legal argument in this
10 paragraph?

11 A. My argument is based on advice from
12 counsel, but, again, I'm not an attorney.

13 Q. So to the extent this relies on the
14 advice of counsel for the requirement, you're not
15 representing factual matters, you're just relying on
16 counsel for those matters; is that correct?

17 A. What do you mean by "factual matters"?

18 Q. Well, what are you trying to assert in
19 this paragraph?

20 A. I'm asserting here that community
21 aggregation programs can't be charged these because
22 they haven't received benefits for CSP customers
23 because the phase-in deferral or postponed revenues
24 for the company have basically been for Ohio Power
25 only.

1 Q. So to the extent in lines 19 and 20 you
2 assert that based on your understanding of advice of
3 counsel that's unlawful, that's based on the advice
4 of counsel and not your determination because you're
5 not an attorney, correct?

6 A. Correct.

7 Q. Okay. Turn to page 14 for me.

8 A. Yes.

9 Q. And here you raise another argument that
10 you believe violates regulatory principles and
11 practices dealing with the accumulated deferred
12 income taxes, correct?

13 A. Correct.

14 Q. And did you cite a requirement from the
15 PUCO rules or the General Assembly that the treatment
16 that you talk about here is not allowed?

17 A. No. This is based on a long-held
18 regulatory practice of the Commission that when
19 returns are granted on investment balances, those
20 returns should be net of accumulated deferred income
21 taxes because those taxes, in effect, represent a
22 source of cost-free capital to the companies and,
23 therefore, there should not be a return on that
24 portion of the investment.

25 Q. If you'd turn to page 15. On the top of

1 15, lines 1 through 10, you're discussing the
2 carrying charge, the percentage of the carrying
3 charge. Do you see that?

4 A. Yes.

5 Q. And you propose what you think should be
6 the correct carrying charge; is that correct?

7 A. Yes. I went back and looked at what
8 contemporary interest rates were for BBB-rated bonds
9 and came up with what I believe is actually a little
10 bit on the conservative side, about a 3.75 percent
11 interest rate for seven-year bonds.

12 Q. But in this answer you do not cite a PUCO
13 rule or statute from the General Assembly that would
14 require that application, do you?

15 A. No, I do not.

16 Q. And in response to question 18 on the
17 bottom of page 15 you discuss securitization. Do you
18 see that?

19 A. Yes.

20 Q. So is it your understanding that the
21 stipulation calls for securitization to already be
22 happening as part of the stipulation?

23 A. No, I don't believe it does, but in my
24 opinion I think the companies could have reflected
25 that in the stipulation had they desired to, but I

1 know there's a provision in the stipulation that
2 calls for the parties cooperating to place in effect
3 legislation.

4 I don't believe legislation is needed to
5 do that. I think in the companies -- or, in the
6 stipulation I think the securitization could have
7 been provided for, perhaps the only thing that would
8 have been missing is the final balance of the
9 phase-in deferral that would be, you know, the basis
10 for the securitized dollars since there are still
11 issues pending that could affect that ultimate
12 phase-in deferral balance.

13 Q. So in your testimony do you cite a PUCO
14 rule or statute that would require the signatory
15 parties to not join an agreement to potentially
16 secure -- sorry -- to potentially seek securitization
17 in the future?

18 A. No, I didn't.

19 MR. SATTERWHITE: If I can have one
20 second, your Honor, I think I'm about done. I'll
21 just check.

22 Thank you, your Honor, that's all I have.

23 Thank you, Mr. Bowser.

24 EXAMINER TAUBER: Mr. Darr, do you need a
25 few minutes for redirect?

1 MR. DARR: If I could, your Honor.

2 EXAMINER TAUBER: Let's go off the
3 record.

4 (Recess taken.)

5 EXAMINER TAUBER: Let's go back on the
6 record.

7 Mr. Darr.

8 MR. DARR: Thank you for the recess, your
9 Honor.

10 - - -

11 REDIRECT EXAMINATION

12 By Mr. Darr:

13 Q. Turning to the document that was
14 administratively noticed in the application and
15 attachment document in 10-0388-EL-SSO, could you turn
16 to page 13 of that document, Mr. Bowser?

17 A. Yes.

18 Q. And am I correct that this DCR rider was
19 established to pick up changes that were not included
20 in the rate base determined in opinion and order of
21 January 21st, 2009, in Case No. 07-551-EL-AIR?

22 MR. SATTERWHITE: Objection, your Honor.
23 I think Mr. Darr tried to limit me on my
24 cross-examination of this away from the substance and
25 just to the questions of whether the principle and

1 regulatory practice that the witness was saying
2 needed to be in stipulations was in this stipulation
3 or not.

4 MR. DARR: If I may, your Honor, I think
5 the point of this is to address the very issue that
6 Mr. Bowser raises in his testimony which is the
7 appropriateness of the exception. The notion that
8 this is motivated for some reason other than
9 appropriate regulatory practice or Commission orders
10 or any other matters that are relevant under the
11 Commission's standard is clearly in play by
12 Mr. Satterwhite's questions.

13 EXAMINER TAUBER: The objection's
14 overruled.

15 A. Yes, at the bottom of page 13 it
16 indicates that this rider, this delivery capital
17 recovery rider, covers investment that was not
18 included in the rate base and determined in a
19 Commission order of January 2009, which it goes on to
20 say on page 14 was FirstEnergy's last distribution
21 rate case.

22 Q. And with regard to the appropriateness or
23 inappropriateness of the adoption of the stipulation,
24 is it appropriate to look at the settlement itself
25 along with any related testimony?

1 A. Yes.

2 Q. And have you had an opportunity to look
3 at any related testimony with regard to this
4 particular settlement?

5 A. No, I have not.

6 Q. Finally, with regard to the
7 appropriateness of the ADIT adjustment to various
8 assets, you indicated that you felt that that was an
9 appropriate level -- or appropriate under current
10 Commission policy. Do you recall that?

11 A. Yes. And when you say "ADIT," you mean
12 accumulated deferred income taxes.

13 Q. Yes, I do. Thank you for clarifying that
14 for the record.

15 Are you familiar with the company's
16 position with regard to adjustments for accumulated
17 deferred income taxes in other cases?

18 A. I am familiar with at least one other
19 case which was for Appalachian Power Company and
20 Wheeling Power Company, which was in West Virginia in
21 2009, and in that case the company's witness
22 indicated that it was appropriate to remove the
23 accumulated deferred income tax balance from an
24 investment balance prior to carrying charges being
25 applied.

1 Q. And would that inform your understanding
2 of the appropriate regulatory policies to be applied
3 in an ADIT adjustment?

4 MR. SATTERWHITE: Objection, your Honor.
5 The question was actions by the company in other
6 jurisdictions and now he's breaking into the
7 appropriateness of regulatory policies and practices.
8 If he's willing to stipulate that whatever AEP does
9 in every instance is the proper regulatory principle
10 and practice, maybe we can talk, but I don't think
11 that's where he wants to go.

12 MR. DARR: I'll withdraw the question,
13 your Honor.

14 EXAMINER TAUBER: Thank you.

15 MR. DARR: Nothing further.

16 EXAMINER TAUBER: Recross, Ms. McAlister?

17 MS. McALISTER: No, your Honor.

18 EXAMINER TAUBER: Mr. Satterwhite?

19 MR. SATTERWHITE: No. Nothing further,
20 your Honor, thank you.

21 EXAMINER TAUBER: Are there any other
22 parties that would like recross-examination at this
23 time?

24 (No response.)

25 EXAMINER TAUBER: No questions. You may

1 be excused, thank you.

2 THE WITNESS: Thank you.

3 MR. DARR: At this time, your Honor, I'd
4 again move the admission of IEU Exhibit No. 8,
5 please.

6 EXAMINER TAUBER: Are there any
7 objections to IEU Exhibit No. 8?

8 (No response.)

9 EXAMINER TAUBER: Hearing none --

10 MR. SATTERWHITE: Your Honor, I'm going
11 to object subject to the motion to strike that was
12 granted by the Bench reflected in there.

13 EXAMINER TAUBER: That shall stand, IEU
14 Exhibit 8 will be admitted into the record.

15 MR. DARR: Thank you, your Honor.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 MR. DARR: Do you wish to proceed with
18 Mr. Murray?

19 EXAMINER TAUBER: Sure.

20 MR. DARR: IEU-Ohio, then, would call
21 Kevin Murray.

22 EXAMINER TAUBER: Please raise your right
23 hand.

24 (Witness sworn.)

25 EXAMINER TAUBER: Thank you.

1 MR. DARR: May I proceed?

2 EXAMINER TAUBER: Give the Bench one
3 minute.

4 Go ahead, Mr. Darr.

5 MR. DARR: Thank you.

6 - - -

7 KEVIN M. MURRAY

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

10 DIRECT EXAMINATION

11 By Mr. Darr:

12 Q. Would you state your name, please?

13 A. Kevin Murray.

14 Q. By whom are you employed?

15 A. McNees, Wallace & Nurick, LLC.

16 MR. DARR: For purposes of the record
17 could I have marked his public testimony as IEU
18 Exhibit 9, the attachment which was filed yesterday
19 and labeled KMM-11 marked as IEU Exhibit 10.

20 And I need to make an inquiry on how the
21 Bench wants to deal with the confidential exhibit
22 that was filed under seal and I believe is still
23 subject to seal.

24 MR. NOURSE: Mr. Darr, you're referring
25 to KMM-10. Exhibit KMM-10?

1 MR. DARR: I am, Mr. Nourse.

2 There is a confidential version of the
3 testimony which also is attached to it, I suppose
4 what we can do is mark that as IEU 11 or do an A/B
5 off of No. 9. Designate the public "A" and the
6 nonpublic "B."

7 MR. NOURSE: Your Honor, just to be
8 clear, I don't anticipate asking him any questions
9 about that exhibit, so hopefully we don't need to go
10 into a sealed transcript, but certainly would like
11 the exhibit itself to be entered under seal.

12 EXAMINER SEE: Give me just a minute,
13 please.

14 One more time, Mr. Darr, we're going to
15 make the public version of Mr. Murray's testimony IEU
16 Exhibit --

17 MR. DARR: We can call it 9A. The
18 version under seal would be, if this is the way you
19 want to do it, 9B, that's the version that you, I
20 believe, entered the protective order on the first
21 day of hearing.

22 EXAMINER SEE: I'm sorry. Say that
23 again.

24 MR. DARR: I believe it's the version you
25 put a protective order on on the first day of

1 hearing.

2 EXAMINER SEE: Okay. Those two exhibits
3 are marked.

4 (EXHIBITS MARKED FOR IDENTIFICATION.)

5 MR. DARR: And IEU 10 is the schedule
6 which was filed yesterday.

7 MR. NOURSE: Which is Exhibit KMM-11,
8 correct?

9 MR. DARR: The header on it is KMM-11,
10 that's correct.

11 EXAMINER SEE: Okay, Mr. Darr, provide
12 the Bench with a copy because I also had the old copy
13 of -- don't we have a revised -- perfect. Thank you.

14 Okay. Exhibit IEU 9, 9A, 9B, and IEU 10
15 have been marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. DARR: Thank you, your Honor.

18 I'd also advise the Bench and the parties
19 that we distributed a question and answer that we
20 were going to insert orally today to the parties
21 yesterday so that they would have access to it.

22 EXAMINER SEE: And that would be 48A?

23 MR. DARR: Yes, question 48A and answer
24 48A, and I thought what we'd do this morning is just
25 read those into the record with your permission.

1 EXAMINER SEE: Okay.

2 Q. (By Mr. Darr) Have you considered the
3 effect of the elimination of POLR charges in
4 accordance with the Commission's remand order issued
5 on October 3rd, 2011, on the ESP versus MRO
6 comparison? Yes, Mr. Murray?

7 A. Yes, the Commission's remand decision on
8 October 3rd, 2011, directed companies to remove
9 POLR charges from the current rates. To illustrate
10 the effect of this decision I've prepared Exhibit
11 KMM-11 to reflect the results of the Commission's
12 remand order on the ESP versus MRO comparison.

13 After removing POLR charges and based
14 upon the same data and adjustments I used to prepare
15 Exhibit KMM-5, OPCo's proposed ESP is less favorable
16 than an MRO by \$4.83 per megawatt-hour, or
17 556 million over the term of the proposed ESP. And
18 CSP's proposed ESP is less favorable than an MRO
19 option by \$8.55 per megawatt-hour or 660 million over
20 the term of the proposed ESP.

21 This illustration does not include the
22 effects of the Commission's decision on the amount of
23 the phase-in deferral that may be eligible for
24 recovery from customers.

25 Q. And just so the record is clear, when you

1 reference 556 million, you were referencing dollars,
2 correct?

3 A. That's correct.

4 Q. And when you reference 660 million, you
5 were referencing dollars there as well, correct?

6 A. That's correct.

7 Q. Now, with regard to page 51, there's some
8 comments there regarding corporate separation. Since
9 the filing have there been any other actions by Ohio
10 Power with regard to corporate separation? 51 of
11 Exhibit 9, actually 9A.

12 A. Yes. Since my testimony was filed the
13 companies have filed an application to amend their
14 corporate separation plan in Case No. 11-5333.

15 Q. Do you have any corrections or additions?

16 A. Yes, I do.

17 Q. Could you give those to us, please?

18 A. On page 44, line 17, the sentence that
19 starts "Exhibit KMM-7" should be corrected to
20 reference "KMM-8." Other than that and the additions
21 to my testimony that we've discussed, I have no other
22 corrections.

23 EXAMINER SEE: Mr. Murray, is your mic
24 on?

25 THE WITNESS: I believe so.

1 EXAMINER SEE: Slide it a little closer
2 to you, please.

3 THE WITNESS: I will apologize, I'm
4 fighting a cold, so if I trail out a bit, just tell
5 me.

6 EXAMINER SEE: Okay.

7 Q. With those corrections are there any --
8 if we asked you the questions that are contained in
9 your testimony today in 9A and with the addition
10 of -- 9A and 9B and with the addition of IEU Exhibit
11 10, would your answers be the same?

12 A. Yes, they would.

13 MR. DARR: Tender the witness and move
14 for the admission of the three exhibits.

15 EXAMINER SEE: Okay. Ms. McAlister?

16 MS. McALISTER: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. McAlister:

20 Q. Good morning, Mr. Murray.

21 On page 1 of your testimony --

22 MR. NOURSE: Your Honor, I'm sorry to
23 interrupt. I wanted to do a motion to strike perhaps
24 before cross-examination begins.

25 I apologize, Ms. McAlister.

1 EXAMINER SEE: Go ahead, Mr. Nourse.

2 MR. NOURSE: Thank you. I've got a sheet
3 here for reference as I'm going through this that
4 I'll provide the Bench.

5 While that's being handed out there's two
6 motions to strike and one of them is reflected on
7 this page, the other one is not reflected on the
8 page, so I'll start with that.

9 MR. RANDAZZO: Could you wait until we
10 get the handouts before you proceed?

11 MR. NOURSE: I'm starting with the one
12 that's not on the page, Mr. Randazzo.

13 MR. RANDAZZO: Okay.

14 MR. NOURSE: In light of
15 Mr. Satterwhite's motion being granted earlier I
16 wanted to also move for striking the question that
17 starts on page 29, line 15, and the answer ends on
18 page 30, line 3.

19 This question and answer 31 advances the
20 position that IEU took in the remand proceeding and
21 twice in this answer it refers to charges as being
22 illegal and it references Mr. Bowser's testimony at
23 the very beginning which is the passages that were
24 stricken earlier. That's the first motion to strike.

25 The second one is the one that's

1 reflected on the sheet here, page 13, lines 6 through
2 20, and this passage relies on testimony that was
3 filed but not adopted or sponsored in any hearing
4 from staff witness Jodi Bair.

5 Mr. Murray's reliance here on this, the
6 quoted statement, is hearsay. As discussed earlier,
7 this type of reference to staff testimony that's not
8 been subject to cross-examination, it's not been
9 sponsored, it's not been subject to motions to
10 strike, your Honor, and I believe it's inappropriate
11 for Mr. Murray to rely on this.

12 It's also quoting, for purposes of a
13 legal argument which is confirmed in lines 18 through
14 20 of this passage, saying that Ms. Bair's legal
15 position is correct.

16 I've cited some case law here, your
17 Honor, that under Ohio law -- Ohio and Federal Courts
18 do not allow expert witnesses to testify about legal
19 conclusions, that's the domain of the court and the
20 Commission.

21 And, furthermore, this passage from
22 Ms. Jodi Bair's testimony is being used out of
23 context. That testimony was filed in relationship to
24 a facility's closure cost rider that was contained in
25 the company's application and has been withdrawn

1 under the stipulation this hearing's about, and
2 Mr. Murray is trying to take that and apply it in a
3 different context saying that she would agree with
4 him in this current context.

5 So I think for all those reasons, your
6 Honor, that passage needs to be stricken from the
7 record.

8 That concludes my motion to strike.

9 EXAMINER SEE: Thank you, Mr. Nourse.
10 And that is your motion to strike that's addressed
11 with what you provided the Bench and the other
12 parties.

13 MR. NOURSE: The sheet I gave you
14 addresses the passage on page 13 and the other part I
15 was just explaining orally, the first part, for page
16 29 to 30.

17 MR. DARR: Response, your Honor?

18 EXAMINER SEE: Just a minute.

19 Mr. Darr.

20 MR. DARR: Thank you, your Honor. Taking
21 them in the order that they were presented, with
22 regard to the ESP versus MRO comparisons, the
23 specific -- I'm going to go from specific to general
24 on this.

25 The specific items that were stricken

1 with regard to Mr. Bowser's testimony related to
2 adjustments in the PIR. There is no suggestion here
3 that there is anything -- anything in any way
4 consistent with the testimony as contained in
5 Mr. Murray's testimony with regard to adjustments to
6 the ESP, particularly the adjustments that resulted
7 from the remand decision which are set out in the
8 schedule. That's the specific.

9 In regard to the general, I would point
10 to the fact that we still maintain our general
11 position that I outlined for you earlier with regard
12 to the PIR testimony, that it is relevant here in
13 addressing whether or not public policies that the
14 Commission must weigh in terms of addressing the
15 stipulation are violated.

16 So looking at these two things going,
17 again, from the specific to the general, I think on
18 both bases the motion to strike should be denied.

19 With regard to the specific request
20 concerning Ms. Bair's testimony, again, your Honor, I
21 believe you had previously ruled today that these
22 statements are either not hearsay, well, basically
23 that they are not hearsay in the first instance.
24 That's the import of your earlier decision.

25 These statements are contained in the

1 public testimony that has been filed by the
2 Commission, there's no reason to not trust their
3 relevance, certainly there's an opportunity for the
4 company to note, through its interrogation of
5 Mr. Murray, any rebuttal testimony that they may wish
6 to put on to address the context or the weight of
7 that evidence.

8 And in essence that's basically what
9 Mr. Nourse is arguing, that the weight of the
10 evidence, that you should somehow prejudge this
11 evidence. That would not be appropriate.

12 Therefore, we would ask that the second
13 item, the second prong of his motion to strike also
14 be rejected based on your prior ruling with regard to
15 Mr. Bowser's testimony.

16 MR. KUTIK: FES would join in opposition
17 to the motions.

18 MR. ETTER: OCC as well, your Honor.

19 MR. NOURSE: May I briefly respond?

20 EXAMINER SEE: I'm sorry. That was FES
21 and --

22 MR. ETTER: OCC.

23 EXAMINER SEE: -- and OCC.

24 Mr. Nourse, did you want a brief
25 opportunity to respond?

1 MR. NOURSE: Yes, your Honor. Regarding
2 the page 29 to 30 piece, again, this is referencing
3 Mr. Bowser's testimony. Mr. Bowser doesn't just make
4 a PIR adjustment, he has three parts that go into
5 that: The environmental that was sustained in the
6 remand order, the POLR, and the flow-through effects
7 which was also reversed or rejected in the remand
8 order.

9 In addition, Ms. Thomas revised her
10 testimony to reflect under both interpretations of
11 the order the POLR piece, so these statements about
12 being illegal based on Mr. Bowser's testimony relate
13 back directly to what was stricken from Mr. Bowser's
14 testimony.

15 With respect to the page 13 passage,
16 Mr. Darr, nor any of the other parties, responded to
17 the argument and case law that's set forth here that
18 Ms. Bair's testimony clearly addresses a legal issue
19 and it's inappropriate above and beyond and separate
20 from the hearsay arguments that Mr. Darr did address.

21 MR. DARR: May I address that second
22 point, your Honor? I had a note and neglected to
23 address it.

24 MR. NOURSE: He already had a chance to
25 do that earlier.

1 MR. DARR: Certainly I have the burden of
2 demonstrating that the testimony should be in and I
3 believe I'm entitled to the last word on this one.

4 MR. NOURSE: Not with a motion.

5 MR. DARR: May I address that, your
6 Honor?

7 EXAMINER SEE: Briefly, Mr. Darr.

8 MR. DARR: Thank you, your Honor.

9 I believe, I guess with regard to expert
10 testimony, experts can enter opinions with regard to
11 questions of ultimate fact, as in this case, a legal
12 fact. More appropriately, a mixed question of law
13 and fact.

14 As I recall, Ms. Bair is, in fact, an
15 attorney. In fact, she represented this Commission
16 quite ably for a number of years until she was
17 promoted to her new position. It's hard to believe
18 that she can't render an opinion as to whether or not
19 the law requires one thing or another and that others
20 can't rely on that.

21 Therefore, we would request both on the
22 substantive legal basis that this be allowed in, but
23 more practically that it's something that the
24 Commission has, in fact, relied on in the past.
25 Thank you.

1541

1 EXAMINER SEE: The Bench is going to take
2 a few minutes to consider the motions. We'll go off
3 the record.

4 (Recess taken.)

5 EXAMINER SEE: Let's go back on the
6 record. We'll take a lunch recess until 12:30 and
7 reconvene at that time.

8 (Thereupon, at 11:20 a.m. a lunch recess
9 was taken.)

10 - - -

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Friday Afternoon Session,
2 October 14, 2011.

3 - - -

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

6 Before we continue with the motions to
7 strike Mr. Murray's testimony, there's an issue
8 that's been raised by counsel for IEU.

9 Mr. Randazzo.

10 MR. RANDAZZO: Yes, your Honors. I would
11 ask that we be permitted to speak to the Bench with
12 Ms. McAlister on the record as a Bench conference to
13 raise this issue, which is a delicate issue, and get
14 your guidance before we have a broader discussion in
15 a public setting.

16 EXAMINER SEE: Okay. And you want that
17 meeting transcribed with the court reporter present?

18 MR. RANDAZZO: Yes, your Honors. I need
19 to have it transcribed.

20 EXAMINER SEE: For efficiency can I ask
21 the other parties to clear the room for a minute.

22 (Recess taken.)

23 EXAMINER SEE: Let's open the doors.

24 Let's proceed with the hearing. Prior to
25 the lunch break there was a motion to strike the

1 testimony of Mr. Murray made by AEP Ohio. After
2 considering those motions the Bench concludes that
3 the motion to strike as to page 13 is denied, and as
4 to page 29, carrying over to page 30, is granted.

5 At this time the Bench will not proceed
6 with the cross-examination of Mr. Murray.

7 Mr. Murray, the Bench expects you to be
8 available sometime early next week, Monday through
9 Wednesday, to continue with your testimony.

10 MR. RANDAZZO: And so you know,
11 Mr. Murray, we've already advised the Bench that you
12 will be.

13 THE WITNESS: I guess I will be.

14 EXAMINER SEE: OCC -- Mr. Etter, would
15 you like to proceed with testimony of Mr. Duann?

16 MR. ETTER: Yes, your Honor. We'd like
17 to call Daniel Duann to the stand.

18 MR. KUTIK: Can we go off the record?

19 EXAMINER SEE: Yes.

20 (Discussion off the record.)

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

23 EXAMINER TAUBER: Mr. Duann, please raise
24 your right hand.

25 (Witness sworn.)

1 EXAMINER TAUBER: Thank you.

2 Mr. Etter.

3 MR. ETTER: Thank you.

4 Your Honors, I've put before you a
5 document entitled "Revised Direct Testimony of Daniel
6 J. Duann, PhD, CRRA, in Opposition of the Stipulation
7 and Recommendation on Behalf of the Office of the
8 Ohio Consumers' Counsel," dated October 12th, 2011,
9 and I would like to mark that as OCC Exhibit 1.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 - - -

12 DANIEL J. DUANN

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

15 DIRECT EXAMINATION

16 By Mr. Etter:

17 Q. Dr. Duann, do you have a copy of OCC
18 Exhibit 1 before you?

19 A. Yes.

20 Q. And is this the -- well, you have
21 prepared or had this prepared at your direction; is
22 that right?

23 A. Yes.

24 Q. Okay. And do you have any changes to
25 make?

1 A. Yes.

2 Q. What would be the first change?

3 A. Would be on page 7, line 11, at end of
4 line, the "421," that should be changed to "351."
5 The second change is on --

6 EXAMINER SEE: I'm sorry. Repeat that
7 last one.

8 THE WITNESS: Okay. On page 7, line 11,
9 at the end of the line there's a "421 million," that
10 "421" should be changed to "351."

11 On the same page, line 12, at end of that
12 line "171 million in 2014," that "171" should be
13 changed to "102."

14 And on page 12 --

15 EXAMINER SEE: Just a minute, Mr. Duann.
16 I'm sorry, I have several versions of your testimony
17 sitting up here.

18 MR. ETTER: Can we go off the record for
19 a moment, your Honor?

20 EXAMINER SEE: Yes, we can.

21 (Discussion off the record.)

22 EXAMINER SEE: Let's go back on the
23 record.

24 A. Okay. The third change is on page 12,
25 line 13. The three -- you have "three adjustments,"

1 the "three" should be changed to "two."

2 On the same page, line 16, "I made three
3 adjustment," the "three" should be changed to "two."

4 And on page 13, the first line starting
5 with "First," the whole line should be deleted, and
6 on line 2 start with "from" the whole line should be
7 deleted, and the line 2 I will add first, "I complete
8 remove the POLR charge."

9 And the same page, line 4 on the first
10 part, the "third" should be changed to "second."

11 The next change is on page 18, line 4, in
12 the answer 14, "The third adjustment," "The third"
13 should be changed to "The second."

14 And on page 20, line 17, at the beginning
15 of that line "three adjustment" should be changed to
16 "two." And after that "a lower Base Generation
17 Rate," that should be deleted.

18 And on page 24, line 6 and 7, at the end
19 of the line 6 it read "the removal of the
20 environmental carrying charge and," that should be
21 deleted. So line 6 and 7 will be read like this:
22 "the full impact of the Remand proceeding, that is,
23 the POLR charge and the flow-through effect."

24 And on the same page, line 9, "though the
25 Commission has not decided the Remand proceeding,"

1 the "not" should be deleted. So it should read
2 "though the Commission has decided the remand
3 proceeding."

4 On the same page, line 12, "the 'Remand
5 Revised 2012 rate,'" I will add "2012 total
6 generation rate." I will add the two word "total
7 generation," and I will make the same change on line
8 19 of the same page, so it will read: "I used the
9 'Remand Revised 2012 Total Generation Rate before
10 Proposed ESP.'"

11 And that's all the change I have.

12 Q. Thank you. And if I were to ask you the
13 same questions that are in OCC Exhibit 1 today with
14 the changes you just noted, would you respond the
15 same?

16 A. Yes.

17 MR. ETTER: Thank you.

18 I now tender the witness for
19 cross-examination and move for the admission of OCC
20 Exhibit 1.

21 MR. NOURSE: Your Honor, I've got motions
22 to strike.

23 EXAMINER SEE: Okay.

24 MR. NOURSE: These motions to strike are
25 all related to the same argument or same problem, in

1 my view, that Mr. Duann has really not updated his
2 testimony for the remand order and continues to make
3 arguments that have been rejected in the remand
4 order, and consistent with this morning's rulings I'd
5 like to move for his testimony in this regard to be
6 stricken.

7 I'll give you the references and I'll
8 preface it by saying it is my belief that his
9 testimony and the numbers that he changed, he
10 surgically changed a few numbers, really these
11 numbers flow throughout his testimony and exhibits.

12 Having said that, I think there's some
13 clear areas that can be segregated and I believe
14 should be stricken starting with page 11 and the
15 offset paragraph that's labeled No. 1 between lines
16 10 and 13. That's one of his adjustments based on
17 the embedded environmental carrying charges that the
18 Commission rejected.

19 No. 3 --

20 MR. ETTER: Excuse me, are you asking
21 that all of from 10 to 13 be --

22 MR. NOURSE: Yeah, the paragraph that's
23 offset and numbered 1, lines 10 to 13, be stricken.

24 The paragraph that's offset and numbered
25 3 falls within lines 17 through 20 is the next part,

1 and that adjustment also relates to the flow-through
2 effect; the Commission rejected that argument.

3 The next one is on page 13, and it starts
4 on line 8 of page 13 with question 11 and carries all
5 the way through to, I'm sorry, the end of page 15.
6 Again, this is a discussion about the environmental
7 carrying charges, one of the arguments rejected in
8 the remand order.

9 The next item is on page 18 starting on
10 line 1 with question 14, and it carries over through
11 page 18, 19, through the end of page 20, line 22.
12 This is where he's adjusting the phase-in rider zero
13 based primarily on the flow-through effects argument
14 as well as the environmental carrying charges.

15 And, your Honor, I'd like to go to the
16 exhibits next.

17 EXAMINER SEE: Okay.

18 MR. NOURSE: Exhibit DJD-A is a
19 calculation of the embedded environmental carrying
20 charges in base rates during the prior ESP, the
21 current ESP period, 2009 through 2011.

22 Attachment DJD-B is a collection of
23 annual environmental carrying charges from '9 through
24 '11, 2009 through 2011.

25 Attachment DJD-C is the POLR charge

1 collections through June -- through May of 2011 from
2 April 2009. The only column in that exhibit that
3 would remain firmly, I believe, is column D, June
4 through December POLR, and the Total column would
5 also be affected by A, B, and C and should be
6 stricken.

7 The next attachment, DJD-D, this is an
8 estimate of revenues collected and the only portion
9 of this exhibit I believe that would remain pertinent
10 would be the one portion of Column B titled POLR,
11 it's the three lines in the middle, 32.4 million,
12 18.2 million, 50.7 million, and then, I'm sorry, the
13 three lines before that for October and
14 December 2011.

15 EXAMINER SEE: So, Mr. Nourse, you're
16 proposing that everything other than June --

17 MR. NOURSE: Those six lines.

18 EXAMINER SEE: -- through September 2011
19 for Column B for POLR be excluded?

20 MR. NOURSE: Yes, except I also would
21 leave in October through December. So it's six
22 numbers in the middle of that chart and not including
23 the totals at the bottom.

24 And to be frank, I'm not sure about what
25 to do with DJD-E. I believe this carries through the

1 base -- his adjustment rates before the ESP
2 throughout this chart. I didn't attempt to try to
3 say what should be stricken or not, but some of these
4 things I'm going to have to ask him some questions on
5 regardless. Similarly with the other exhibits
6 leading up to Exhibit J, DJD-J, I'd like to address
7 specifically.

8 So I believe the columns that should be
9 stricken are A, C, E, the unnumbered column labeled
10 Stipulated ESP Rate Over MRO Rate, and the unlettered
11 column after G, to the right of G, Yearly Costs of
12 ESP Over MRO, including the total at the bottom.

13 All these exhibits are based on
14 adjustments made flowing through to the environmental
15 carrying charges and the prior collected POLR and
16 prior collected environmental that fall within the
17 OCC's flow-through theory.

18 EXAMINER SEE: Just so I'm clear on the
19 last exhibit, Revised Attachment DJD-J, you are
20 asking that columns A, C, E, and the column in the
21 last section about comparison entitled Stipulated ESP
22 Rate Over MRO Rate, and then the Final Yearly Cost of
23 ESP Over MRO column be removed.

24 MR. NOURSE: Correct.

25 EXAMINER SEE: As well as the total,

1 okay, in the last column. Okay.

2 MR. NOURSE: And there's one additional
3 motion to strike I'd like to add in the text that I
4 missed in my list, and that's page -- this one begins
5 on page 11, line 22, and ends on page 12, line 12.

6 So, your Honor, some of the changes that
7 were made in additional direct narrowly changed some
8 of the language that refers to three adjustments to
9 "two" and so on, but the exhibits and the numbers
10 that flow throughout those exhibits still reflect all
11 three of those adjustments.

12 So in short, I don't believe Dr. Duann
13 has really updated or revised testimony based on the
14 remand order and, similar to the arguments that were
15 made this morning by Mr. Satterwhite, these arguments
16 presenting this information is irrelevant, it's
17 confusing, and it basically pursues a position that
18 would be pursued on rehearing, and the order as it
19 stands now is effective and it's purely speculative
20 to presume that it would change on rehearing.

21 EXAMINER SEE: Mr. Etter, did you want to
22 respond?

23 MR. ETTER: Yes, your Honor. Besides all
24 the arguments that were made this morning I'd like to
25 note that Dr. Duann on page 13 of his testimony,

1 particularly lines 14 through 17, is noting that he
2 is dealing with the annual carrying charges on
3 environmental investments made after January 1, 2009,
4 and those were not a part of the remand proceeding,
5 and so that is, you know, the crux of his testimony.

6 As well it is a document that he has made
7 considerable adjustments to including his
8 calculations.

9 MR. NOURSE: Just on that point, your
10 Honor, I believe the post-2009 environmental carrying
11 charge for the pre -- the '1 through '8 period were
12 the carrying charges at issue and that were raised by
13 parties in the remand proceeding. They were embedded
14 in the base rate -- base generation rate, certainly
15 for Dr. Duann to go back and make these adjustments
16 to his year-end rate has no basis in any Commission
17 order or decision.

18 EXAMINER SEE: Mr. Etter, were you going
19 to address the other portions of the motions to
20 strike?

21 MR. ETTER: Well, I think the arguments
22 that counsel makes, you know, deal with his
23 comparison of this document to the remand proceeding
24 and, you know, we believe that all of this is
25 relevant and it hasn't been re-argued.

1 We're not re-arguing the remand
2 proceeding here, we are arguing how these figures
3 relate to the figures that have been presented in the
4 stipulation and in the testimony regarding this in
5 support of the stipulation.

6 MR. KUTIK: Your Honor, may I be heard in
7 opposition to the motion?

8 EXAMINER SEE: Yes.

9 MR. KUTIK: Your Honor, it seems to me
10 that the arguments that Mr. Nourse makes are
11 arguments that or points that he can pursue on cross
12 and on brief. They're all arguments with respect to
13 the weight of the calculations made by this witness,
14 not with respect to their admissibility.

15 Just because he doesn't agree with them
16 because he thinks it's not called for by the
17 Commission's opinions doesn't mean that that's
18 inadmissible. What it means is he potentially has a
19 basis to argue that Dr. Duann is wrong. That's not a
20 basis for excluding evidence.

21 MR. NOURSE: Your Honor, the companies
22 were directed to revise their testimony to reflect
23 the remand order. We've done so. The other parties
24 have purported, including Dr. Duann, purported doing
25 that, but it's clearly not the case from looking at

1 his testimony and exhibits, they extensively continue
2 to purvey the same arguments that have been rejected
3 by the Commission in the remand order.

4 MR. DARR: If I may, your Honor.

5 EXAMINER SEE: Go ahead, Mr. Darr.

6 MR. DARR: Thank you, ma'am.

7 I would reiterate the arguments that we
8 made earlier today, we believe this is relevant, that
9 the adjustments do need to be flowed through. An
10 order of the Commission is not final and, in fact,
11 the company itself has filed alternative tariffs in
12 response to the ESP remand order arguing that they
13 have claims that we don't think are appropriate.

14 It strikes me at this point in the game
15 these issues are still open, they're still relevant,
16 and they clearly impact the Commission's decision as
17 to whether or not this stipulation is in the public
18 interest.

19 MR. KURTZ: Your Honors, may I speak as
20 well in support of the company on this issue?

21 EXAMINER SEE: Go ahead, Mr. Kurtz.

22 MR. KURTZ: I think what was happening
23 here is it's more than the weight of the evidence.
24 This evidence, which continues to argue theories from
25 the remand case that were rejected, and this

1 testimony is not consistent with the ruling that the
2 exhibits should be reflective -- amended to reflect
3 the remand order create misleading and -- a
4 misleading record and an inaccurate record. So I
5 think it does a disservice to the Commission and to
6 parties to leave this information in.

7 EXAMINER SEE: The Bench is going to take
8 a few minutes to consider the motions. We'll
9 reconvene at ten after.

10 MR. NOURSE: Thank you, your Honor.

11 EXAMINER SEE: Let's go off the record.

12 (Recess taken.)

13 EXAMINER SEE: Let's go back on the
14 record.

15 The Bench has had an opportunity to
16 consider AEP Ohio's motions to strike portions of
17 Dr. Duann's testimony and after reviewing the
18 portions of the testimony finds that the motions to
19 strike should be granted.

20 Let's proceed with cross-examination of
21 this witness. AEP made a motion to strike. Is there
22 some agreement who will start cross-examination of
23 Mr. Duann?

24 MR. KURTZ: Your Honor, I think
25 Mr. Nourse was going to start.

1 EXAMINER SEE: Mr. Nourse.

2 MR. NOURSE: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Nourse:

6 Q. Good afternoon, Dr. Duann.

7 A. Good afternoon.

8 Q. Now, did you follow the motions to strike
9 that were made relative to your testimony a few
10 moments ago?

11 A. I was here and I heard everything.

12 Q. Did you understand which portions of your
13 testimony were stricken from the record?

14 A. Yes. I made the note in my copy.

15 Q. Okay. So I want to ask you about areas
16 that weren't stricken, some additional questions.
17 First, if you could turn to page 5, please. Are you
18 there?

19 A. Yes.

20 Q. Okay. The sentence that starts on line 1
21 says the stipulation forces customers to forego a
22 variety of rate revenue reductions, it goes on on
23 line 3 to say "The proceedings include the AEP Ohio
24 Remand...."

25 A. Yes.

1 Q. And it goes on to reference the PIR.

2 A. Yes.

3 Q. What's your understanding of the
4 stipulation relative to this statement you're making
5 about foregoing revenue -- rate and revenue
6 reductions relative to the remand and the PIR cases?

7 A. Well, first let me talk about PIR case.
8 I believe in the stipulation there's a provision
9 there, it say that the PIR balance will not be
10 adjusted. And it is my understanding the PIR balance
11 has not even been established.

12 The PIR balance is calculated, you know,
13 under the procedure established in the first ESP and
14 then in every year there will be an FAC audit and so
15 in 2009, 2010, 2011, there should be three audit.
16 And the auditor has finished the audit in 2009 and
17 this case has been litigated and briefed and is
18 waiting for the Commission to decide.

19 For the 2010 FAC audit, you know, the
20 audit report has been completed and it is going to go
21 to a hearing pretty soon, but since the Commission
22 has not decide on this three audit and based on the
23 advice of the counsel, I believe, you know, they
24 have -- those fuel costs in these three years has not
25 been found to be prudent or reasonable.

1 And in this stipulation you, you know,
2 the stipulating party essentially just gave up, say
3 okay, the 634 million, that's it, there's no chance
4 to change on that.

5 As for the remand proceeding, I already
6 explain that the, you know, I explain in my testimony
7 that this is an issue in dispute regarding the
8 environmental carrying charge, regarding the POLR,
9 regarding the flow-through effect, and even though
10 the Commission has made a decision on this case, you
11 know, there is still opportunity for rehearing and
12 for appeal, so --

13 Q. Dr. Duann --

14 A. -- once again, if we agree with that and
15 we agree, you know, accept the stipulation, I think
16 you are essentially saying, you know, those issue are
17 resolved.

18 Q. Okay, Dr. Duann. I was trying to ask you
19 a narrow question, but you went all over the place
20 there. Let me go back and break that down a little
21 bit.

22 Let me try it this way: With respect to
23 the remand, because some portions of your testimony
24 have been stricken and I believe there's still other
25 places where these issues show up in your numbers

1 that you use in your testimony, so I want to be
2 clear, first let's start with the remand specifically
3 in the context of your statement about the
4 stipulation parties foregoing rate and revenue
5 reductions relative to the remand only. Are you
6 making that statement to include POLR, environmental,
7 and the flow-through in that context?

8 A. Yes.

9 Q. Okay. And is it your understanding of
10 the remand order -- setting aside any possibility for
11 change on rehearing, the current remand order only
12 involves a reduction relating to the POLR charge; is
13 that correct?

14 A. The Commission made a decision that allow
15 the carrying charge on 2001-2008 environmental
16 investment to be collected in the first ESP. The
17 Commission also rule that there will be no
18 retroactive -- there would be no flow-through effect.
19 That's what the Commission decide.

20 But I would like to point out that
21 regarding the three adjustment I made, first the
22 environmental carrying charge, I already include that
23 in my exhibit.

24 Regarding the second POLR and, you know,
25 since the Commission directed to correct, that's also

1 in my testimony -- in my exhibit.

2 Regarding the third point, third
3 adjustment I made of this, I adjust the PIAA
4 [verbatim] to zero and the balance of the FAC
5 deferral asset. That adjustment to zero is not only
6 based on the flow-through effect but also the effect
7 of possible adjustment in the FAC audit proceeding
8 where I just described.

9 So I, you know, I do not agree with your
10 statement that this exhibit has not considered the
11 effect of the remand. I think it perfectly reflect
12 the effect of the remand.

13 Q. Dr. Duann, I think we're going to be here
14 a lot shorter if you can try to answer my question.
15 In your answer just now you referred over and over to
16 your exhibit. You've got a lot of exhibits so let's
17 do it this way, let's turn to your exhibits and I'm
18 going to discuss the ones that are not stricken which
19 start with Exhibit E. Are you there?

20 A. Not yet. Just hold on.

21 Yes.

22 Q. I'd like for you to walk me through
23 Exhibit E and tell me which columns are affected and
24 still reflect your flow-through adjustment, any
25 adjustments you made to the PIR, and any

1 environmental adjustments you've made.

2 A. Okay. On Revised Attachment DJD-E, the
3 first on the base generation and that's -- that's the
4 same as David Roush's Exhibit DMD [verbatim], so
5 that's the same. That's already include in the
6 environmental carrying charge. First I remove that,
7 but in this exhibit I already add it back.

8 And the other, the full FAC is the same,
9 the full environmental the same, the total generation
10 the same, current transmission are the same as the
11 Roush. The current distribution are the same. And I
12 made adjustment for POLR; I adjust that to zero, and
13 I think that's what the Commission's order on the
14 remand.

15 And I also adjust the phase-in rider, I
16 adjust that to zero, and I already explain that in my
17 testimony very clearly on page 18, I explain how --
18 why I believe there's no deferral balance at the end
19 of 2011 because I believe this is a flow-through
20 effect as well as --

21 Q. Dr. Duann --

22 A. -- a potential adjustment in the FAC
23 audit proceeding.

24 Q. Dr. Duann, that page has been stricken
25 from the record, page 18.

1 A. But you asked me the question on that
2 exhibit.

3 Q. And I asked you again -- okay, with the
4 phase-in rider you adjusted it to zero so you took
5 the entire Ohio Power phase-in regulatory asset out.
6 Was that based on the 2009 fuel audit reduction you
7 made in the pending FAC audits? Does that account
8 for the entire PIR adjustment you made?

9 A. The potential adjustment in the FAC, in
10 the 2009 FAC adjustment involve an asset and I think
11 there's a confidential information relate to that,
12 but to answer your question is, is I made adjustment
13 of PIR based on both the flow-through effect as well
14 as the potential adjustment on FAC.

15 And to the best of knowledge I think the
16 current value of that FAC adjustment could exceed the
17 \$628 million deferral balance.

18 Q. Okay. Is part of your adjustment to zero
19 for Ohio Power on the PIR on Exhibit DJD-E related to
20 the flow-through? Is that what you just said?

21 A. Related to both the flow-through and the
22 potential adjustment of the 2009 FAC audit.

23 Q. Do you know what the numbers would be if
24 you backed out the flow-through adjustment?

25 A. I think the flow-through adjustment is on

1 page 18 of my testimony. That's 600.

2 Q. We can't talk about that. I'm asking
3 you --

4 MR. KUTIK: Your Honor, can he finish his
5 answer?

6 MR. NOURSE: Well he's going back to
7 testimony --

8 EXAMINER SEE: Just a minute.

9 MR. KUTIK: He's allowed to finish his
10 answer.

11 EXAMINER SEE: Thank you.

12 Mr. Duann, I'm going to direct you to
13 answer the question posed to you.

14 And, Mr. Nourse, let the witness finish
15 his response.

16 MR. NOURSE: Thank you, your Honor.

17 EXAMINER SEE: Proceed.

18 MR. KUTIK: Your Honor, can we have the
19 rest of the answer, then?

20 EXAMINER SEE: Go ahead, Mr. Duann.

21 THE WITNESS: Can I have the question
22 read back?

23 EXAMINER SEE: Sure.

24 (Record read.)

25 A. As I say, that's confidential, you know,

1 if you want to talk about it, I can talk about it.

2 Q. Would it be something greater than zero?

3 A. I think even in AEP's accounting book
4 it's greater than zero.

5 Q. Okay. So the zero for Ohio Power is not
6 correct. If you do not adjust for the flow-through
7 theory, the zero there is not correct. Do you agree?

8 A. No. Actually, I probably misunderstood
9 your question. I suppose your question is what's the
10 value of the potential adjustment. And is that the
11 question?

12 Q. What's the value -- do you know what the
13 value is for Ohio Power on the PIR column on that
14 exhibit if you do not include an adjustment for
15 flow-through?

16 A. That's in the Company Witness Roush's
17 Exhibit DMD-1.

18 Q. Okay. Are there any other numbers or
19 columns on Exhibit DJD-E that reflect either an
20 adjustment for environmental or for flow-through?

21 A. The base generation already include the
22 environmental carrying charge.

23 Q. I'm asking about your adjustment, sir.

24 A. In my exhibit I do not make any
25 adjustment for the environmental because I -- because

1 that's what the Commission's decision say. It can be
2 included so I include it.

3 Q. So the answer is no, there's no other
4 columns on Exhibit DJD-E that reflect an
5 environmental adjustment by you or a flow-through
6 adjustment by you?

7 A. There's a flow adjustment included in the
8 phase-in rider.

9 Q. We just talked about that. Are there any
10 others?

11 A. No.

12 Q. Let's move to Exhibit DJD-F.

13 A. Yes.

14 Q. In the column "Remand Revised 2012 Base
15 Generation Rate" you're citing Exhibit DJD-E for that
16 as a source, correct?

17 A. That's only for the 2012 base generation
18 rate.

19 Q. And that's --

20 A. That refer back to Company Roush's
21 Exhibit DMD-1.

22 Q. So that could just as easily refer to
23 DMR-1; is that what you're saying?

24 A. For the 2012 base generation rate, yes.

25 Q. Okay. Could you turn to DJD-G, and here

1 you've got the remand revised 2012 total generation
2 rate.

3 A. Yes.

4 Q. And that refers back to DJD-E.

5 A. Yes.

6 Q. And that reflects your adjustment?

7 A. In that one -- in that that's exactly the
8 same as Mr. Roush's number. That already reflect the
9 environmental carrying charge.

10 Q. The one that says "\$5.77 RS"?

11 A. Yes.

12 Q. I'm not seeing that number on DJD-E, can
13 you show it to me?

14 A. Yes, DJD-E on the left, one, two, three,
15 four, five, six, column 6, that total generation,
16 5.77, 8.48, 8.29, 5.93, 4.45.

17 Q. So, again, that could have said "DMR-1,"
18 not "DJD-E" there, as a reference?

19 A. Yes.

20 Q. Okay. Let's go to Exhibit H, same
21 question, the column "Remand Revised 2012 Total
22 Rate," does that reflect your adjustments?

23 A. Yes.

24 Q. So those numbers in the \$10.59 RS for CSP
25 reflects the effects of your flow-through

1 adjustments?

2 A. That's not a correct statement.

3 Q. So is the answer No?

4 A. That 10.59 for RS reflect the elimination
5 of the POLR as well as the PIR.

6 Q. So it does reflect the PIR which includes
7 the flow-through; is that what you're saying?

8 A. Flow-through and the adjustment,
9 potential adjustment for FAC audit.

10 Q. But if we corrected DJD-E for the
11 appropriate phase-in rider adjustment excluding
12 flow-through, you don't know what those numbers would
13 be, do you? On --

14 MR. ETTER: Objection, your Honor, I'm
15 not sure what he means by "appropriate phase-in
16 rider."

17 EXAMINER SEE: Okay.

18 MR. NOURSE: I can rephrase.

19 Q. Dr. Duann, again, we're looking at the
20 remand revised 2012 total rate on Attachment DJD-H,
21 and I'll use the \$10.59 for RS schedule for CSP as an
22 example. Are you with me so far?

23 A. Yes.

24 Q. And it says in the footnote the source is
25 Attachment DJD-E.

1 A. Yes.

2 Q. And my question is, does the \$10.59, I
3 see that on DJD-E as being adjusted for the phase-in
4 rider as well.

5 A. That's correct.

6 Q. And so that \$10.59 does reflect the
7 adjustment you made which includes the flow-through
8 effects; is that correct?

9 A. As I say, it include both the
10 flow-through as well as the FAC audit adjustment and
11 even, you know, it's through the flow-through and it
12 is my belief that the balance would, the phase-in
13 deferral balance could well be zero.

14 Q. But you don't know, you haven't done that
15 calculation and presented it in your testimony, have
16 you?

17 A. As I say, that's a confidential
18 information and I, you know, that's the only reason I
19 did not include it in my testimony.

20 Q. Dr. Duann, you've not presented that
21 calculation in your testimony, have you?

22 A. The calculation of what?

23 Q. Of the phase-in rider adjusted for just
24 the FAC argument you're making and not the
25 flow-through effects.

1 MR. ETTER: I'll object as to asked and
2 answered, your Honor. He's already provided a
3 response.

4 MR. NOURSE: All he said is it was
5 confidential. I don't know what that means.

6 MR. ETTER: I believe he also said he did
7 not include it.

8 EXAMINER SEE: The objection is
9 overruled.

10 Answer the question, Mr. Duann.

11 THE WITNESS: Can I have the question
12 read back?

13 (Record read.)

14 A. I did not include a workpaper or exhibit
15 regarding that particular value in my testimony.

16 Q. Thank you.

17 Let's move to Exhibit DJD-J.

18 A. Yes.

19 Q. Okay. It's my understanding that the
20 last column in this exhibit, "Yearly Costs of the ESP
21 Over the MRO," including the total at the bottom,
22 grand total for AEP Ohio, have been stricken. Is
23 there any reference in your testimony to those
24 numbers that were stricken in the exhibit?

25 A. Yes.

1 Q. Okay. Is that at the top of page 26?

2 A. Yes.

3 Q. And the number that's in line 1 is what
4 you're referring to; is that correct?

5 A. On page 26, line 1, the AEP Ohio customer
6 will likely pay 351 million.

7 Q. Okay.

8 MR. NOURSE: Your Honor, I would just
9 move for his answer just now be stricken as well as
10 that dollar figure in line 1 on page 26 as it does
11 reflect the analysis in the exhibit that was
12 stricken.

13 MR. ETTER: Your Honor, he asked about
14 the number and asked if that was the number.

15 MR. NOURSE: I didn't ask him to identify
16 it again. And he's verifying that it was carried
17 through from the exhibit into the testimony and now
18 there's no basis in the record to support that
19 number, it should be stricken.

20 Your Honor, I did state earlier that I
21 was trying to be direct about my motions to strike
22 and that there would be other areas that would be
23 affected.

24 EXAMINER SEE: To the extent that the
25 Bench has already determined that certain columns of

1 DJD-J should be stricken, it's consistent with that
2 motion to strike the number set forth on page 26,
3 line 1.

4 MR. ETTER: I'm sorry, your Honor, did
5 you grant the motion or not?

6 EXAMINER SEE: I'm granting the motion to
7 strike the number from page 26, line 1, given that
8 that portion of the last column in the Attachment
9 DJD-J has also been stricken.

10 MR. ETTER: Thank you.

11 Q. (By Mr. Nourse) Dr. Duann, are there
12 other places in your testimony where the number from
13 the last column of Exhibit DJD-J appear in the text?

14 A. Yes.

15 Q. Can you point me to the page and the line
16 where that occurs? Page 7 might be one area.

17 A. Yes, page 7, line 11.

18 Q. Okay. The number that you corrected
19 earlier at the end of line 11 reflects -- is the same
20 number we just spoke about, correct?

21 A. Yes, 351.

22 Q. Okay. And in line 12 I believe you've
23 got the three numbers that add up to that total.
24 Without identifying them, are those three numbers in
25 line 12 of page 7?

1 A. There are six numbers.

2 Q. Dollar figures.

3 A. And a year. They also numbers.

4 Q. I'm asking for dollar figures, sir.

5 A. There are three dollar figures, yes.

6 Q. And those are related to the last column
7 of Exhibit DJD-J; is that correct?

8 A. That's correct.

9 Q. Okay.

10 MR. NOURSE: Your Honor, I'd move to
11 strike the answer before -- two answers ago where he
12 divulged the number, and also move to strike from the
13 testimony the dollar figure at the end of line 11 on
14 page 7 and the three dollar figures on line 12 of
15 page 7.

16 EXAMINER SEE: And the motion to
17 strike -- Mr. Etter, did you want to respond?

18 MR. ETTER: The three dollar figures on
19 line 12, I'm not sure that they have been stricken
20 from any part of the attachments.

21 MR. NOURSE: I believe Dr. Duann just
22 answered that they did relate to the last column of
23 Exhibit DJD-J. And I believe they are reflective, if
24 you want to look at that column. There's an AEP Ohio
25 total for each year and they correspond to those

1 three numbers, part of the last column.

2 EXAMINER SEE: The motion to strike as to
3 page 7, beginning on line 11, to the end of line 12
4 is granted.

5 MR. NOURSE: Thank you, your Honor.

6 May I continue?

7 EXAMINER SEE: Go ahead, Mr. Nourse.

8 Q. (By Mr. Nourse) Dr. Duann, are there any
9 other places in your testimony where the results from
10 Attachment DJD-J appear?

11 A. I don't know. I haven't read through it
12 now.

13 Q. None that you can recall?

14 A. No, I cannot recall. I have to read it.

15 Q. Would you like to take some time to look
16 at it?

17 A. Are you referring only to the last column
18 of DJD-J, or are you referring any other?

19 Q. Right now I'm asking about the results of
20 the MRO test that you perform in DJD-J, any of the
21 stricken materials from DJD-J.

22 MR. ETTER: Your Honor, I think if
23 counsel has a specific portion of the testimony where
24 he would like Dr. Duann to look, he should reference
25 that.

1 MR. NOURSE: I already did and we went
2 through the ones I was aware of and I'm asking him if
3 he's aware of any others. It's his testimony.

4 MR. ETTER: And he already answered that
5 he's not aware of any others.

6 EXAMINER SEE: I'm sorry. Did you answer
7 that, Mr. Duann?

8 THE WITNESS: My answer is I don't know,
9 I have to reread the testimony, and I am reading that
10 right now.

11 EXAMINER SEE: You need to go through it,
12 therefore -- the witness is entitled to some time to
13 review so that he can appropriately answer the
14 question, so let's go off the record for a minute.

15 (Off the record.)

16 EXAMINER SEE: Let's go back on the
17 record.

18 THE WITNESS: I did not find any other
19 place referring to the last column of DJD-J.

20 EXAMINER SEE: Mr. Nourse, before you
21 proceed, let me make sure the record is clear as to
22 my ruling.

23 Page 7, you requested that the dollar
24 figures on line 12 be omitted. I granted that.
25 Should I also remove everything in the parenthetical

1 so it would read "I find that AEP Ohio's customers
2 will liberally pay more over the three years under
3 the ESP" and continue?

4 MR. NOURSE: Well, your Honor, to be
5 honest, I think Dr. Duann's testimony as stricken
6 doesn't have any substantive MRO test results. I was
7 keen on getting the specific numbers and calculations
8 he made out. So, you know, I guess if he has no
9 evidence to support some of the statements, we can
10 argue about that on brief. I just want to make sure
11 the calculations are gone. That's what I was trying
12 to do.

13 EXAMINER SEE: And the numbers are not in
14 there, I just want to be clear as to what the record
15 now states.

16 MR. NOURSE: Yes. Thank you, your Honor.
17 That sounds fine.

18 May I proceed?

19 EXAMINER SEE: Yes.

20 Q. (By Mr. Nourse) Dr. Duann, can you turn
21 to page 21, and I'm directing your attention to
22 table 1 which begins on line 17 and carries over to
23 page 22. Do you see that?

24 A. Yes.

25 Q. The column entitled "Total Rate," the

1 fourth column, the total rate for CSP and the last
2 column, total rate for Ohio Power, I'd like to ask
3 you a couple of questions about both of those
4 columns. Do you see those?

5 A. Yes.

6 Q. Is this presentation based on your
7 Exhibit DJD-H in part?

8 A. Yes.

9 Q. And the first column of DJD-H we
10 discussed earlier, do you recall that discussion?

11 A. Yes.

12 Q. Does it also carry through to this table
13 that those two columns I just asked you about reflect
14 in part, among other things, your flow-through
15 adjustment?

16 A. They reflect my adjustment of eliminating
17 the POLR and the PIR.

18 Q. And your elimination of the PIR reflects
19 your flow-through adjustment; is that correct?

20 A. Reflect both the flow-through adjustment
21 as well as the adjustment, potential adjustment for
22 the FAC audit, yes.

23 Q. Okay. So do you know and have you
24 presented here in your testimony the total rates in
25 those columns that would be reflected if the

1 flow-through adjustment were not made?

2 A. I don't understand the question.

3 Q. Okay. Look at the 17 percent for CSP --
4 actually let's take Ohio Power. Ohio Power you've
5 got 20 percent for RS. Do you see that?

6 A. Yes.

7 Q. And does that 20 percent reflect the
8 adjustment you made for the flow-through effects?

9 A. As I already said, just by my estimation
10 of the potential FAC adjustment the PIR will be zero.
11 So you can include the flow-through adjustment or you
12 can exclude it, the number reflect both.

13 Q. Sir, when I asked you earlier with
14 respect to Exhibit DJD-E, the phase-in rider value
15 you have as zero, I asked you if you had presented
16 the calculation excluding the flow-through effects.
17 You confirmed that nowhere in your testimony or
18 workpapers reflects that revised calculation; did you
19 not?

20 THE WITNESS: Can I have the question
21 read back?

22 (Record read.)

23 A. That's correct.

24 Q. And, therefore, if we look at DJD-H,
25 which you just stated was the basis in part for the

1 table 1 we were looking at on page 21, if we look at
2 DJD-H, the remand revised 2012 total rates listed
3 there also reflect your PIR of zero; is that correct?

4 A. Correct.

5 Q. And those rates in that column on DJD-H
6 do not reflect an adjustment of the PIR that excludes
7 the effects of the flow-through; is that correct?

8 A. No, that's not correct.

9 Q. Okay. Go ahead and explain that one.

10 A. Well, as I explained, in reaching the --
11 in reaching my conclusion that a PIR should be zero
12 because I -- because it is my belief that at the end
13 of 2011 there's a strong possibility that phase-in
14 deferral balance should be zero and that the reason
15 the phase-in deferral balance should be zero,
16 because -- both, because both the flow-through effect
17 and the potential adjustment of the FAC audit, and I
18 also further can prove that even if we take out the
19 flow-through affect the value of the potential FAC
20 adjustment could possibly even -- could possibly be
21 bigger than the \$628 million.

22 Q. Have you presented in your testimony or
23 workpapers a calculation that isolates the effect of
24 your FAC argument --

25 A. No.

1 Q. -- on the PIR?

2 A. No.

3 Q. Do you have any quantification or
4 calculation to support the notion that the PIR would
5 be zero based solely on the FAC argument?

6 A. I look at the items in dispute, I look at
7 the characteristics of that asset, and I look at the
8 transaction of asset with similar characteristics in
9 the last two years and I reach the conclusion that
10 that the value is pretty high, is pretty substantial,
11 and it could well above the 628 million.

12 Q. Are you referring to, in your last
13 answer, the Putnam Reserve asset, is that what you're
14 talking about?

15 A. Yes.

16 Q. And so you're saying if the Putnam
17 Reserve is worth more than \$600 million and if that
18 reserve is sold for more than \$600 million, and if
19 the Commission requires the full value or a value
20 that exceeds \$600 million to be adjusted from the
21 phase-in recovery rider, then in that case the PIR
22 would be zero?

23 A. If, you know, as you indicate, if the
24 Putnam Reserve was sold at a value greater than
25 \$628 million and it is OCC's position as well as

1 others parties' position that the 2009 FAC cost, that
2 value should flow to the customer of Ohio Power, and
3 if that flows through, then there would be subsequent
4 adjustment to the 2009 FAC cost and if there's any
5 leftover or any adjustment to the carrying cost, that
6 will also flow through -- that will also reflect in
7 the 2010, and in that circumstance the phase-in
8 deferral balance would be zero or even be negative
9 and, you know, the Commission may decide additional
10 equipment are justified.

11 Q. So did you agree with my question or not,
12 Dr. Duann?

13 A. I already answer your question. I think
14 it's not just a direct application of the PIR value.

15 Q. Was your testimony in the 2009 audit
16 proceeding that the Putnam Reserve exceeded
17 \$600 million in value?

18 A. In my testimony in that proceeding my
19 recommendation is the Commission should credit an
20 amount to the ratepayer immediately and then trueup
21 with the value of that -- of that property that was
22 eventually disposed. That's my recommendation.

23 Q. And what credit did you recommend in your
24 testimony?

25 A. In that proceeding I base my

1 recommendation on the estimate value by -- by outside
2 consultant that was hired by AEP to value that and
3 that value, if I remember correctly, and -- in the
4 range from \$137 million to \$457 million.

5 Q. So that's a lot less than \$600 million,
6 isn't it?

7 A. That's the value they evaluate in
8 April 2009 and when we are, you know, when we are in
9 an economic downturn, when the commodity price is
10 falling, when, you know, the situation is quite a
11 different and the same amount of coal reserve
12 represent by that property, and I look at subsequent
13 transaction and the value are much higher.

14 Q. So, Dr. Duann, the record in that case is
15 closed. I was asking about your test of the record
16 there.

17 Let me suffice it to say, tell me if this
18 is correct, only if the Commission decides the 2009
19 FAC and ends up conveying a benefit to customers of
20 greater than \$600 million in that decision would your
21 percentage increases in table 1 be correct; do you
22 agree with that?

23 A. I agree with that and I will also
24 indicate that there are other adjustment in the 2009
25 case, but if you say the Putnam Reserve alone already

1 has that high value and the Commission already
2 decided to flow back those value to the customer,
3 yes, I think the PIR will be zero and my calculation
4 presented would be -- would be correct.

5 Q. Okay. Let me ask my question again, now.
6 Unless the Commission makes a decision in the 2009
7 FAC audit case that conveys value in any form more
8 than \$600 million to offset completely Ohio Power's
9 deferred fuel regulatory asset, unless that happens
10 wouldn't you agree that these rate increases in
11 table 1 are not correct?

12 A. No, I do not agree with that because we
13 still have the flow-through effect that relate to the
14 POLR and environmental carrying charge. That issue
15 still, you know, the Commission has a decision on
16 that but I think the party have the right of appeal.

17 Q. Okay. So, again, let's make it broader.
18 Unless the Commission grants the value in the 2009
19 FAC case of greater than \$600 million, or the
20 Commission reverses itself on rehearing and allows
21 the flow-through effects so that the \$600 million
22 fuel deferral is eliminated, unless one of those two
23 things happens, or both of them, these numbers in
24 table 1 are incorrect. Do you agree?

25 MR. ETTER: Objection. He said if one of

1 those two things or both of them. That's a compound
2 question.

3 MR. NOURSE: Your Honor, I'm trying to be
4 patient here and I think I made my questions pretty
5 clear. I'm not getting a direct answer.

6 EXAMINER SEE: You did include and or
7 both in your previous question. If you want to break
8 them up and proceed.

9 MR. NOURSE: I thought that's what and/or
10 meant, but I'll try again, your Honor.

11 Q. (By Mr. Nourse) Okay. Dr. Duann, do
12 these numbers in table 1 reflect your flow-through
13 adjustment?

14 A. The 78 percent -- the 20 percent does not
15 reflect any flow-through adjustment.

16 Q. It does not.

17 A. It does not.

18 Q. And is that answer premised on the idea
19 that the FAC impacts will eliminate the PIR?

20 A. No, because I think the 78 percent of
21 base generation rate, that's already reflect the
22 Commission's decision allowing the environmental
23 carrying charge. That's the same rate that Company
24 Witness Roush used.

25 Q. Dr. Duann --

1 A. So that does not reflect the
2 flow-through.

3 Q. Dr. Duann, this whole series of questions
4 I've directed you to the total rate column for
5 Columbus Southern Ohio Power and Ohio Power Company
6 and I focused --

7 A. Okay.

8 Q. -- in particular on the RS schedule for
9 Ohio Power at 20 percent. Does that 20 percent
10 figure reflect your flow-through adjustment?

11 A. Yes, reflect both flow-through and FAC.

12 Q. And if we exclude both the flow-through
13 and the FAC adjustments that you're making, do you
14 know what the correct numbers are for the total rate
15 columns for Ohio Power and Columbus Southern in
16 table 1?

17 A. I think that can be calculated from Roush
18 Exhibit DMD-1, and I did not make that calculation.

19 Q. Thank you.

20 Okay. Let's return to page 6 of your
21 testimony. In lines 2 and 3 you make a statement
22 that you don't believe that AEP Ohio or the signatory
23 parties have justified the significant increase,
24 you're referring to residential rate increases here;
25 is that correct?

1 A. No.

2 Q. Okay. This is discussing increase in
3 revenue?

4 A. Yes.

5 Q. Okay. When you say "justified," what are
6 you referring to? Justified based on what, cost?

7 A. Justified, whatever justification the
8 company can provide.

9 Q. What are you looking for to be justified
10 in your mind?

11 A. I'm looking for a rate, an ESP rate that
12 will fully reflect the value that -- the value of the
13 remand of the FAC audit and the phase-in recovery
14 rider, those I'm referring to on page 5.

15 Q. Okay. Let me move down to the next
16 paragraph there on page 6 starting on line 5, and
17 you're basically saying here, as I understand it,
18 that the residential customers are getting a
19 disproportionate share of the increases under the
20 stipulation; is that correct?

21 A. Yes.

22 Q. And down on line 13 you say that the
23 result is an unfair burden being placed on
24 residential customers. Again, is your opinion
25 informed relative to a cost-of-service argument or

1 analysis?

2 A. I'm simply referring to the increase in
3 rate or in revenue for the different class of
4 customer that I referred to in table 1. For example,
5 for the base generation rate the residential customer
6 got a 78 percent increase and the GS-1 customer has a
7 39 percent increase, the GS-2 got a 34 percent
8 increase, and I don't believe that's a reasonable.

9 Q. So you're not focused on the residential
10 impact here in this statement?

11 A. I'm focusing on the share of the
12 residential customer and I present the information on
13 table 1.

14 Q. Okay.

15 A. Which I look at both the base generation
16 rate and the total generation. But the total
17 generation rate is the same. The residential
18 customer got a 20 percent, GS-1 got a negative, got a
19 reduction of 27 percent, and the GS-2 customer got a
20 reduction of 24 percent.

21 Q. So all those statements are based on
22 table 1 which we just discussed at length? Is that
23 correct?

24 A. That's based on my evaluation of the
25 increase of the rate for various class of customer.

1 Q. And your evaluation is reflected in
2 table 1, is it not?

3 A. Is summarized in table 1, yes.

4 Q. Yes. Let me ask you to turn to page 8
5 and on page 8 starting on line 4 you indicate that a
6 return on common equity of 10.5 percent, this is in
7 connection with the DIR proposal, correct?

8 A. Yes. In this part it is related to my
9 discussion of the DIR.

10 Q. I'm focused on the 10.5 percent, I'd like
11 to talk to you about that. Now, is it your
12 understanding under the ESP statute that distribution
13 infrastructure improvement plans are one of the items
14 that are permitted?

15 A. Yeah, it is permitted under certain
16 conditions, yes.

17 Q. Okay. Fair enough. And is it provided
18 for, to your understanding of the statute, that such
19 rate mechanisms would be based on
20 rate-base/rate-of-return regulation?

21 A. Actually, I don't understand the
22 question.

23 Q. Is it your understanding that a
24 distribution rate adjustment mechanism under the ESP
25 statute is required to be based on

1 rate-base/rate-of-return regulation or traditional
2 ratemaking?

3 A. I'm hesitant because I do not exactly
4 mean "rate base regulation and traditional
5 regulation," you know, I try to answer it but I
6 really do not -- I think that's a very broad term.

7 Q. Okay. We'll break it down. So in line
8 10 you refer as part of your support for saying 10.5
9 is too high to the Staff Report in the company's
10 pending distribution rate case. Do you see that?

11 A. Yes.

12 Q. And you're involved in those cases on
13 behalf of OCC?

14 A. Yes.

15 Q. Okay. And that's what's known as a base
16 distribution case, would you agree?

17 A. Yes, you can -- yeah, you probably can
18 say it that way, yes.

19 Q. And that case is governed by traditional
20 rate-base/rate-of-return regulation, formula rates
21 under Chapter 4909 of the Revised Code, if you happen
22 to know that. Is that your understanding?

23 A. My understanding is that distribution
24 rate case is basically a cost-based regulation in the
25 state of Ohio.

1 Q. Correct. Thank you.

2 So does a distribution rate adjustment
3 mechanism in an ESP statute have to be based on the
4 same cost-based ratemaking principles that are
5 involved with the base distribution case?

6 A. I'm not attorney and I'm not giving a
7 legal opinion, but my understanding is the ESP really
8 does not specify what kind of mechanism to be used
9 under the ESP.

10 Q. Okay. So it's not limited to cost-based
11 rate of return, is it?

12 MR. ETTER: Objection. Asked and
13 answered. He stated it's not specified.

14 EXAMINER SEE: The objection is
15 sustained.

16 MR. NOURSE: That's fine, I'll move on.

17 Q. Dr. Duann, has OCC presented evidence of
18 a return on equity in the context of an ESP case
19 before?

20 MR. ETTER: Objection as to foundation.
21 Dr. Duann doesn't -- has not stated in his testimony
22 that he has been involved in all ESP cases or even is
23 aware of all ESP cases that OCC has been involved in.

24 MR. NOURSE: Okay. I was trying to be
25 more general. I can be more specific.

1 Q. Are you aware that OCC has taken a
2 position relative to the significantly excessive
3 earnings test under the ESP statute relative to
4 AEP Ohio?

5 A. Yeah, I think OCC intervened in the 2009
6 AEP Ohio SEET proceeding, yes.

7 Q. And I believe Dr. Woolridge was the OCC
8 witness there addressing the ROE ceiling in that
9 case, do you recall that?

10 A. Yes. Yes, I remember that.

11 Q. And do you recall what his ROE threshold
12 that he recommended was?

13 A. No, I don't recall.

14 Q. Was it above 10.5 percent?

15 A. I don't believe so. I cannot -- I do not
16 recall but my recollection is less than that.

17 Q. Okay. Would it refresh your recollection
18 if I told you for Columbus Southern Power
19 Dr. Woolridge's October 12th, 2010, testimony, at
20 page 23, indicated a range of 11.58 percent to
21 13.58 percent for the recommended ROE threshold?

22 A. I think you are talking about two totally
23 different things.

24 Q. I'm just asking you a question. You can
25 explain it through redirect if you want.

1 MR. ETTER: I'd object, your Honor,
2 because he's not showing any document to Dr. Duann.

3 MR. NOURSE: I asked him if it refreshed
4 his recollection.

5 Q. Does that sound correct, Dr. Duann?

6 EXAMINER SEE: Okay.

7 A. I'm trying to answer the question and my
8 answer to the question is the numbers you're
9 referring is not the ROE. This is ROE -- this is not
10 the ROE threshold for determining SEET. So that's
11 what I'm trying to get.

12 Q. That's not the question I asked you, sir.
13 Does that number, 11.58 to 13.58 percent, sound
14 correct for OCC's position of the ROE threshold in
15 the 2009 SEET proceeding for AEP Ohio?

16 A. The number you are just referring to is
17 Ohio consultant Dr. Woolridge's position that if the
18 threshold, if the ROE of AEP -- of CSP or OP is
19 higher than those number, CSP and OP will have
20 significant excess earning. That does not mean that
21 number is the return on equity that is associated
22 with business and financial risk of CSP and OP.

23 Q. So you do acknowledge those were the
24 recommendations for the ROE threshold of OCC?

25 MR. ETTER: Objection. Asked and

1 answered.

2 MR. NOURSE: He didn't really answer it
3 directly, your Honor. He's arguing.

4 EXAMINER SEE: Dr. Duann.

5 MR. ETTER: He's explaining his answer,
6 your Honor.

7 EXAMINER SEE: Can you answer the
8 question directly, Dr. Duann?

9 THE WITNESS: Well, directly is I don't
10 remember what exactly, right now, whether that number
11 is the recommended threshold or not. If he can show
12 me the document, I can look at and . . .

13 Q. Okay. And you can't agree, subject to
14 check, that I just cited from his testimony?

15 A. I think my attorney always advise me not
16 to accept subject to check.

17 Q. Thank you.

18 The bottom half of page 8 you're
19 expressing a concern about double recovery relative
20 to the DIR proposal in this case, in the
21 distribution-based rate case; is that correct?

22 A. That's correct.

23 Q. And does your concern about double
24 recovery in this context go away if the base rate
25 increase only occurs through the date certain and the

1 DIR picks up post-date certain investment?

2 A. Specifically regarding the double
3 recovery aspect of the DIR, if, you know, the
4 distribution case recovered the return of and return
5 on those investment made before the date certain and
6 the DIR will only recover those after that, in that
7 circumstance there would not be a double recovery
8 under DIR.

9 Q. Okay. And likewise, if there were no
10 base distribution increase as a result of the AIR
11 case, your double recovery concern would go away and
12 be resolved regarding the DIR, correct?

13 A. No. That's two different things.

14 Q. Okay. Explain why not.

15 A. Because you say there's no increase in
16 the DIR. That does not mean -- increase in your base
17 generation. That does not mean they did not recover
18 anything, anything from the -- any distribution
19 investment you made before that date certain. It
20 doesn't mean that.

21 Q. Okay. Let me ask you a few questions
22 about securitization, and you start one of your
23 discussions of securitization on page 9 of your
24 testimony.

25 A. Yes.

1 Q. Okay. And so as I gather understanding
2 your testimony here, you're criticizing the
3 stipulation's provisions regarding securitization.

4 Now, is it your understanding that any of
5 the benefits, customer benefits, of the stipulation
6 are directly contingent on securitization occurring?

7 THE WITNESS: Can I have the question
8 read back, please?

9 EXAMINER SEE: Certainly.

10 (Record read.)

11 A. I cannot answer the question because the
12 question is ambiguous. There's so many benefit I
13 don't know what type of benefit or what you are
14 referring to. So I cannot answer that.

15 Q. You're saying there's too many benefits
16 in the stipulation to go through them?

17 A. No. I'm just saying there's too many.

18 MR. KUTIK: Nice try.

19 A. You what describe as a "benefit" so I
20 don't know what specific you're referring to.

21 Q. Okay. Let me ask you, does OCC believe
22 there's a downside to securitization?

23 A. Once again, you know, I cannot answer the
24 question because I don't know what kind of
25 securitization you're talking about.

1 Q. Well, what are you -- what are OCC's
2 concerns with securitization?

3 A. I cannot speak for OCC regarding this
4 particular issue, but it has always been OCC's
5 position that, you know, if there's any way that we
6 can reduce the cost to the customer and, you know, we
7 will certainly welcome and look at those.

8 Q. Is there a scenario where securitization
9 increases the costs to customers?

10 A. Oh, definitely.

11 Q. Okay. This is the one question you're
12 going to stop with at "yes" answering?

13 MR. KUTIK: Your Honor, I object and move
14 to strike.

15 MR. NOURSE: Okay. I was -- I withdraw
16 that comment.

17 EXAMINER SEE: Yes.

18 MR. NOURSE: I didn't intend anything
19 untoward.

20 Q. What is the scenario you have in mind?

21 A. The scenario could well be the scenario
22 in the stipulation is, you know, the customer has to
23 agree there will be no adjustment to the phase-in
24 deferral asset.

25 Okay, so if there's no adjustment,

1 \$628 million, so you give it a 3 percent, you give it
2 a 5 percent, you give it a 2 percent, that will still
3 be more expensive for the customer than where you can
4 really look at what did the proper amount of fuel
5 deferral balance would be. That could be zero, then
6 10 percent interest on zero is still zero.

7 So in that case the securitization is a
8 bad deal.

9 Q. Okay. Any others? Any other scenarios
10 you're concerned about?

11 A. Not right now. I may think of later.

12 Q. Okay. First of all, is it your
13 understanding that the phase-in recovery rider
14 regulatory asset represents actual fuel costs that
15 were incurred by the companies during 2009 through
16 the present?

17 A. No.

18 Q. They're not actual costs?

19 A. I do not necessary agree that the fuel
20 costs are recorded in the AEP's book are actual fuel
21 costs.

22 Q. I'm not asking --

23 A. We made that argument in the FAC audit
24 case.

25 Q. I'm not asking whether you agree they're

1 prudently incurred, I'm just asking you whether they
2 were incurred. Did you understand that?

3 A. Right, even not without prudent or
4 unprudent I think this is still controversy in the
5 argument regarding what is the actual cost.

6 Q. Okay. Do you have the stipulation with
7 you?

8 A. Yes.

9 Q. Can you turn to page 26.

10 A. Yes.

11 Q. Can you read aloud the first full
12 sentence?

13 A. Starting with "if"?

14 Q. Yeah.

15 A. "If, at any time after the PIRR
16 regulatory assets have been securitized, the
17 Commission or the Supreme Court of Ohio issues a
18 decision that impacts the amount of PIRR regulatory
19 assets, AEP-Ohio should use a mechanism to make an
20 adjustment (up or down) equal to the amount adjusted
21 by the Commission or Supreme Court of Ohio that
22 either prospectively adjusts rates through a credit
23 (or charge)."

24 Q. So is it your understanding of that
25 language that under your example that securitization

1 occurred and then subsequently there was a decision
2 of the Commission that required, for example, fuel
3 costs to be refunded to the customers, does this
4 language preclude or require that adjustment still be
5 made?

6 A. It depend on what kind of securitization
7 legislation that eventually enact.

8 Q. So regardless of whether it's -- let me
9 start again.

10 Your understanding is that if legislation
11 were to provide that a regulatory asset is
12 securitized and the amortization period begins for
13 recovery of that regulatory asset, that the
14 Commission's decision in our example in the FAC case
15 could not be implemented through a separate rate
16 adjustment mechanism or credit? Is that what you're
17 saying?

18 A. No, that's not what I'm saying.

19 Q. So it could still be made and customers
20 would be made whole in that example, correct?

21 A. No. I don't know whether that's true or
22 not. I don't know.

23 Q. Okay. Does the stipulation prevent OCC
24 from taking any position it wants to regarding
25 securitization language -- legislation, excuse me?

1600

1 A. I think the OCC did not sign the
2 stipulation so I think whatever the stipulation say
3 has no effect on OCC.

4 Q. Well, I'm not sure I'd go that far, but
5 the answer to my question is No?

6 THE WITNESS: Can I have the question
7 reread?

8 (Record read.)

9 MR. ETTER: Could you read the answer as
10 well?

11 (Record read.)

12 MR. ETTER: So I would object to asked
13 and answered.

14 MR. NOURSE: Your Honor, he gave a much
15 broader answer. I'm asking a very narrow question.

16 MR. ETTER: He's allowed to expand on his
17 opinions in his answer. He's got to give an answer
18 before he can expand on it.

19 EXAMINER SEE: Just a minute. The
20 question has already been answered.

21 MR. NOURSE: That's fine.

22 Q. Dr. Duann, does the stipulation constrain
23 the Commission to take a particular position on
24 securitization legislation if the stipulation is
25 adopted?

1 A. Yes.

2 Q. How so?

3 A. Because on page 25 of the stipulation you
4 say the signatory party agree to work in good faith
5 to -- at page 25, the bottom of the page it says "The
6 Signatory Parties agree to work in good faith to pass
7 suitable and appropriate legislation to address the
8 matter as expeditiously as reasonably and possible to
9 support any subsequent approvals needed or tariffs
10 required by AEP Ohio from the Commission to
11 securitize PIRR regulatory assets."

12 Q. But in your answer are you suggesting
13 that the Commission would be a signatory party if
14 they adopt the stipulation?

15 A. No. The Commission would not be a
16 signatory party.

17 Q. So I ask my question again: Is the
18 Commission constrained to take any particular
19 position on securitization legislation presuming it
20 adopts the stipulation?

21 A. I don't know. I don't know. Yeah, I
22 don't know.

23 Q. Okay.

24 A. I think the staff are probably
25 constrained but I don't know about the Commission.

1 MR. ETTER: Your Honor, can we go off the
2 record for a minute?

3 EXAMINER SEE: Yes, Mr. Etter.

4 (Discussion off the record.)

5 EXAMINER SEE: Let's take a brief recess,
6 ten minutes?

7 MR. NOURSE: Thank you.

8 (Recess taken.)

9 EXAMINER SEE: Let's go back on the
10 record.

11 Mr. Nourse.

12 MR. NOURSE: Your Honor, I'd like do one
13 thing, and if I can get that resolved I may not have
14 any additional questions. I'd like to move for the
15 administrative notice of the Commission's opinion and
16 order in the 2009 SEET docket for AEP Ohio, it's Case
17 No. 10-1261-EL-UNC, January 11th, 2011, opinion and
18 order.

19 MR. ETTER: And, your Honor, could we ask
20 for what purpose?

21 MR. NOURSE: The line of questions I had
22 earlier and Dr. Duann was unwilling to accept a
23 number that I read out of Dr. Woolridge's testimony
24 subject to check, so I'd like to -- I'm not sure,
25 your Honor, when we started taking administrative

1 notice of orders and I traditionally think you can
2 cite to an opinion and order in any brief at any
3 time, but to be safe that's my intent, that's my
4 request.

5 MR. KUTIK: Just for clarification, are
6 you citing it or you want to cite it for the
7 proposition of what OCC's position was in that case?

8 MR. NOURSE: Correct. Which is what I
9 was asking Dr. Duann about.

10 MR. DARR: If that's the case, I think
11 Dr. Duann's testimony today indicated why it's not
12 relevant, it goes to a totally different concept than
13 the notion of an ROE, and we would object.

14 MR. ETTER: We would object too, your
15 Honor, on that basis.

16 MR. NOURSE: Well, your Honor, I think
17 that's an argument or debate we can have on brief.
18 We got down to the point where I was simply asking
19 him to confirm the number and he couldn't do that.

20 He is the only OCC witness, he holds
21 himself out as an ROE expert, certified ROE expert,
22 and so I didn't think it would be that difficult to
23 get that number in the record.

24 EXAMINER SEE: And I'll take
25 administrative notice of the Commission's opinion and

1 order issued in 10-1261, AEP Ohio's SEET case.

2 MR. NOURSE: Thank you, your Honor.

3 I have no further questions for

4 Dr. Duann.

5 Thank you, Dr. Duann.

6 THE WITNESS: Thank you.

7 EXAMINER SEE: Mr. Kurtz?

8 MR. KURTZ: Very briefly, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Kurtz:

12 Q. Good afternoon, Dr. Duann.

13 A. Good afternoon.

14 Q. The FAC fuel audit that you've referred
15 to in your testimony, that case is not covered by the
16 stipulation; is that correct?

17 A. It's not, right, it's not in those cases
18 cited here on the cover page of the stipulation.

19 Q. And the FAC fuel audit has not yet been
20 decided, correct?

21 A. The Commission has not decided on the
22 2009 AEP Ohio FAC audit.

23 Q. The ESP remand case, that is not part of
24 the stipulation either, is it?

25 A. That case has been decided at the

1 Commission and the stipulation does not try to
2 resolve that case.

3 Q. So that case is not part of the
4 stipulation and that case has been decided, correct?

5 A. Yes. For the remand -- yes.

6 Q. As I understood it from earlier
7 questioning, your testimony on the rate impact and on
8 MRO-ESP test removed a \$628 million PIR, the fuel
9 deferral amount, from your analysis.

10 A. That's not correct.

11 Q. Do you assume that the PIR would be zero?

12 A. Yes.

13 Q. Okay. And as I understood your
14 testimony, you assumed the PIR would be zero based
15 upon your assumption about how this fuel audit case
16 may be decided by the Commission in the future and
17 based upon your assumption on how the remand case may
18 work out and be decided by the Commission on
19 rehearing; is that correct?

20 A. In evaluate the impact of the stipulation
21 regarding the total rate, not just, you know, not
22 base generation rate, not total generation, regarding
23 the total rate, I removed the POLR as well as the
24 PIR.

25 Q. Okay.

1 A. And the reason I removed the PIR is
2 because I believe that that's a reasonable
3 assumption.

4 Q. You removed the \$628 million PIR because
5 you think you can predict how the FAC case will be
6 decided in the future and you think you can predict
7 how the remand case will be decided on rehearing,
8 correct?

9 MR. ETTER: Objection. Argumentative.

10 MR. KUTIK: We join that, your Honor.

11 EXAMINER SEE: I'm going to allow the
12 witness to answer the question. Objection overruled.

13 THE WITNESS: Can I have the question
14 read back, please?

15 (Record read.)

16 A. No, that's not correct.

17 Q. Why did you -- on what basis did you
18 remove the \$628 million PIR account?

19 A. Because I believe there's a strong
20 possibility, as I said in my testimony, that the FAC
21 deferral balance will be zero.

22 Q. A strong possibility.

23 A. But I did not -- I did not predict what
24 will happen. That's the reason I say it.

25 Q. You think there's a strong possibility

1 that in the future the Commission will decide the
2 fuel case in a way that you predict, and you think
3 there's a strong possibility the Commission will
4 decide the remand case on rehearing in a way that you
5 predict; isn't that what you did?

6 MR. ETTER: Objection. I think that's a
7 mischaracterization of what he said.

8 MR. KURTZ: I think this is an incredible
9 piece of guesswork by the OCC's policy witness on
10 this thing. This is one of the more incredible
11 things I think I've ever heard.

12 EXAMINER SEE: Okay, Mr. Kurtz. Okay.
13 Move on, Mr. Kurtz.

14 Q. Did anybody review your testimony before
15 you filed it?

16 MR. ETTER: Objection, your Honor.
17 That's argumentative and it calls for Dr. Duann to
18 explain internal review processes that may have
19 confidential aspects to them.

20 MR. KURTZ: I'll ask another question.

21 Q. When OCC's management decided to not join
22 on to this stipulation, did they rely on your opinion
23 about the rate impact and about the MRO-ESP test?

24 MR. ETTER: Objection, your Honor. That
25 goes into the settlement process and that's

1 confidential. It's attorney-client privilege, trial
2 preparation.

3 EXAMINER SEE: The objection is
4 sustained.

5 Move on, Mr. Kurtz.

6 MR. KURTZ: Those are all my questions,
7 your Honor.

8 EXAMINER SEE: Okay.

9 Ms. Clark?

10 MS. KALEPS-CLARK: No questions.

11 EXAMINER SEE: Mr. Yurick?

12 MR. YURICK: No questions, your Honor.

13 EXAMINER SEE: Mr. Margard?

14 MR. MARGARD: No, thank you.

15 EXAMINER SEE: Redirect, Mr. Etter?

16 MR. ETTER: Can we take five minutes,
17 your Honor?

18 EXAMINER SEE: Yes.

19 MR. ETTER: Thank you.

20 (Recess taken.)

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

23 Mr. Etter.

24 MR. ETTER: We have no redirect, your
25 Honor.

1 EXAMINER SEE: Thank you, Mr. Duann.

2 THE WITNESS: Thank you.

3 EXAMINER SEE: You can step down.

4 MR. ETTER: And, your Honor, at this time
5 we would proffer those portions of Exhibit 1 that
6 were stricken, for continuity of the record, and move
7 for admission of OCC Exhibit 1.

8 EXAMINER SEE: Okay.

9 MR. NOURSE: Your Honor, subject to the
10 rulings on the motion to strike, we have no further
11 objections to the remainder of Exhibit 1.

12 EXAMINER SEE: OCC Exhibit 1 is admitted
13 into the record.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 MR. KUTIK: Your Honor, might we inquire
16 at this time what is the company's intention with
17 respect to rebuttal?

18 EXAMINER SEE: First let's close the
19 hearing and have that conversation.

20 At this time the hearing is adjourned for
21 today, we will reconvene Monday at 10:30.

22 (Thereupon, the hearing was adjourned at
23 4:20 p.m.)

24 - - -

25

1610

1 CERTIFICATE

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

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

10 (MDJ-3908)

11 - - -
12
13
14
15
16
17
18
19
20
21
22
23
24
25

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/28/2011 9:51:45 AM

in

Case No(s). 10-2376-EL-UNC, 11-0346-EL-SSO, 11-0348-EL-SSO, 11-0349-EL-AAM, 11-0350-EL-AAM

Summary: Transcript Transcript of Columbus Southern Power Company and Ohio Power Company hearing held on 10/14/11 - Vol VIII electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.