

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Ohio Power :
Company and Columbus :
Southern Power Company :
for Authority to Merge and: Case No. 10-2376-EL-UNC
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 :
Curtailement Service :
Riders. :

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

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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. :

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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 10:30 a.m. on Monday,
 15 October 17, 2011.

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17 VOLUME IX

18 - - -

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11 AICUO's Responses to the IEU-Ohio's Fourth Set of Interrogatories	1647	--

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FES Exhibit	Identified	Admitted
15 (a) STIP-OCC-INT-361	1662	--
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16 (i) STIP-IEU-RFA-6.8 1662 --

17 (a) STIP-FES-INT-17-17-043 1662 --

17 (b) STIP-IEU-INT-3-008 1662 --

17 (c) STIP-IEU-INT-6-001 1662 --

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AICUO Exhibit Identified Admitted

1 Direct Testimony of C. Todd Jones 1627 1651

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1 Direct Testimony of Jeffrey Hecker 1654 1657

2 Direct Testimony of Hisham M. Choueiki, PhD, PE 1658 1660

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Monday Morning Session,
October 17, 2011.

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EXAMINER SEE: Let's go back on the record. Before we proceed I just want clarification from IEU-Ohio that we can proceed with this next witness today.

MR. DARR: Yes, your Honor. We've noted an objection with regard to the current state of the proceedings, however, with regard to the witness on behalf of AICUO, IEU is prepared to go forward this morning and waive with regard to that witness any objection with regard to the current proceeding status.

EXAMINER SEE: Just so the record is clear, we had scheduled to go forward today with C. Todd Jones, Jeffrey Hecker with the staff and Hisham Choueiki also with the staff. And you're not waiving your objection --

MR. DARR: No, ma'am.

EXAMINER SEE: Your objection for proceeding with those witnesses.

MR. DARR: That is correct, ma'am.

EXAMINER SEE: All right. Thank you.

Mr. Haque.

1 MR. HAQUE: Yes, your Honor. On behalf
2 of the AICUO we'd like to call C. Todd Jones, please.

3 EXAMINER SEE: Before we proceed,
4 Mr. Jones, let me get brief appearances of the
5 counsel starting with the company.

6 MR. NOURSE: Thank you, your Honor. On
7 behalf of the company, Steven T. Nourse, Matthew J.
8 Satterwhite, and Daniel R. Conway.

9 EXAMINER SEE: On behalf of OCC.

10 MR. ETTER: Good morning, your Honors.
11 On behalf of Ohio's residential utility customers,
12 the Office of Ohio Consumers' Counsel, Terry R. Etter
13 and Maureen R. Grady, Assistant Consumers' Counsel.

14 EXAMINER SEE: FES.

15 MR. HAYDEN: Good morning, your Honor.
16 On behalf of FES, Mark Hayden, James Lang, Laura
17 McBride, Trevor Alexander, and David Kutik.

18 MR. HOWARD: Your Honor, on behalf of
19 Compete Coalition, Constellation NewEnergy,
20 Constellation Energies Commodity Group, Exelon
21 Generation Company, PJM Power Providers Group, and
22 Retail Energy Suppliers Association, please have the
23 record reflect the appearance of M. Howard Petricoff,
24 Michael Settineri, Lija Kaleps-Clark and Stephen M.
25 Howard. Thank you.

1 EXAMINER SEE: On behalf of IEU.

2 MR. OLIKER: On behalf of IEU-Ohio, Sam
3 Randazzo, Frank Darr, Joe Oliker, and Gretchen
4 Hummel.

5 EXAMINER SEE: Ms. Hand.

6 MS. HAND: On behalf of Ormet Primary
7 Aluminum Corporation, Emma Hand and Doug Bonner.

8 MR. HAQUE: Your Honor, on behalf of the
9 Association of Independent Colleges and Universities
10 of Ohio, Asim Haque, Greg Dunn, and Chris Miller.

11 EXAMINER SEE: Ms. McAlister.

12 MS. McALISTER: On behalf of the OMA
13 Energy Group, Lisa McAlister and Matt Warnock.

14 EXAMINER SEE: Mr. Margard.

15 MR. MARGARD: Thank you, your Honor. On
16 behalf of the Commission staff, Werner Margard, John
17 Jones, and Steven Beeler and also show the appearance
18 today of Thomas McNamee.

19 EXAMINER SEE: Is there any other counsel
20 present?

21 Mr. Jones, if you could raise your right
22 hand.

23 (Witness sworn.)

24 EXAMINER SEE: Thank you.

25 Mr. Haque.

1 C. TODD JONES

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

4 DIRECT EXAMINATION

5 By Mr. Haque:

6 Q. Good morning, Mr. Jones. This is a
7 hearing regarding a stipulation signed by the AICUO
8 in the ongoing AEP rate case, did you submit
9 testimony in support of that stipulation?

10 A. Yes, I did.

11 Q. And do you have that direct testimony
12 with you today?

13 A. Actually, I left it at my chair.

14 Q. Okay.

15 MR. HAQUE: Your Honor, if you don't
16 mind.

17 EXAMINER SEE: You can approach.

18 MR. HAQUE: Thank you.

19 Q. Mr. Darr pointed out to me that I did not
20 ask your name for the record.

21 MR. HAQUE: So I appreciate that,
22 Mr. Darr.

23 Q. Could you please state your name for the
24 record?

25 A. Yes. My name is C. Todd Jones.

1 Q. Okay. The direct testimony that I've
2 just presented to you, that was prepared under your
3 direction?

4 A. Yes, it was.

5 Q. And do you have any updates to the direct
6 testimony?

7 A. I do. On page 3, line 11, I would direct
8 that the phrase "made bypassable" be changed to the
9 word "eliminated."

10 Q. Okay. And why are you making that
11 revision, Mr. Jones?

12 A. It's not that the phrase "made
13 bypassable" was inaccurate but that my understanding,
14 and I've been advised that the term "eliminated"
15 would be more consistent with the term of art used in
16 these type of proceedings.

17 Q. Thank you, Mr. Jones.

18 Now, if you were asked the same questions
19 today as you were asked in that direct testimony,
20 would your answers be the same?

21 A. Yes, they would.

22 MR. HAQUE: Your Honor, I would like to
23 move for the admission of, if I haven't marked the
24 exhibit, I'm sorry, AICUO Exhibit 1 into the record
25 subject to any cross-examination.

1 EXAMINER SEE: AICUO Exhibit 1 is so
2 marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 EXAMINER SEE: Ms. Grady.

5 MS. GRADY: Yes, your Honor, would now be
6 an appropriate time to hear motions to strike?

7 EXAMINER SEE: Yes.

8 MS. GRADY: Your Honor, OCC would move to
9 strike portions of Mr. Jones's testimony beginning on
10 page 3, line 12, the sentence beginning "This should
11 result in savings to many consumers" and continuing
12 on through line 14, page 3, ending with "the best
13 possible rates."

14 EXAMINER SEE: So it's essentially those
15 two sentences, correct?

16 MS. GRADY: Yes, your Honor. And if I
17 could briefly explain the basis of our motion.

18 EXAMINER SEE: Yes.

19 MS. GRADY: In response to discovery when
20 asked about these specific statements AICUO has
21 indicated that it has conducted no independent
22 investigation but has relied upon the expertise and
23 the opinions of others. Mr. Jones did not attend --
24 furthermore, Mr. Jones did not attend the
25 negotiations but was merely kept advised by his

1 attorney. The statements should be struck on several
2 grounds, your Honor.

3 In discovery in response to a request for
4 admission AICUO stated Mr. Jones is a lay witness and
5 not an expert, as such his testimony is governed by
6 Ohio Rules of Evidence 701. That rule states that if
7 the witness is not testifying as an expert, the
8 witness's testimony in the form of opinions or
9 inferences is limited to those opinions and
10 inferences which are rationally based on the
11 perception of the witness and helpful to a clear
12 understanding of the witness's testimony, or the
13 determination of a fact in issue.

14 This testimony, your Honors, is not
15 rationally based on the witness's perception nor is
16 it helpful to a clear understanding of the fact in
17 issue. On the latter standard, one of the primary
18 facts in issue in this case is whether the
19 stipulation will effectuate shopping. The
20 nonstipulating parties argue that the agreement will
21 constrain shopping, not effectuate it. Mr. Jones's
22 assertion based on what his attorney was told by AEP
23 with respect to the effects of the stipulation on
24 shopping is not helpful to a clear understanding of
25 this fact in issue.

1 It is clearly hearsay, and Mr. Jones's
2 lay opinion on this should be rejected as is not
3 proper testimony under Rule 701 and is hearsay
4 consisting of secondhand or thirdhand information or
5 opinions relayed by Mr. Jones' counsels.

6 Also, under no exception to the hearsay
7 rule it should be struck. Alternatively, your
8 Honors, we would ask that the testimony be allowed in
9 but not for the truth of the matter asserted.

10 MR. OLIKER: Your Honor, IEU-Ohio would
11 join the motion.

12 EXAMINER SEE: Mr. Haque, did you wish to
13 respond?

14 MR. HAQUE: Yes, your Honor. Again,
15 we've dealt with this motion with respect to a
16 previous witness. Again, the core of this motion is
17 that essentially Mr. Jones was not in the room during
18 settlement discussions and deciphering what was
19 happening here in the stipulation.

20 Again, if Ms. Grady's motion is upheld,
21 essentially every party other than AEP would be
22 subject to this ruling that essentially the legal
23 counsel for all of the parties cannot educate their
24 respective witnesses with respect to what's happened
25 in settlement discussions, first of all.

1 Second of all, Rule 701 is correctly
2 stated by Ms. Grady, but it is her opinion that
3 Mr. Jones's testimony is not rationally based on the
4 perception of the witness or helpful to the clear
5 understanding of the witness's testimony.

6 Mr. Jones's testimony can be given whatever weight
7 that the Commission wants to give it or the attorney
8 examiners want to give it at the end of the day, so
9 that portion of Ms. Grady's motion to strike, again,
10 is her opinion.

11 With respect to hearsay, your Honor,
12 hearsay requires an out-of-court statement.
13 Mr. Jones at no point says "Asim Haque, my attorney,
14 said the following." Mr. Jones was educated about
15 the proceedings by his legal counsel, and it's not
16 hearsay.

17 MR. NOURSE: Your Honor, the companies
18 would like to join in opposition to the motion. I
19 think it's pretty plain that the first sentence
20 sought to be struck relates to the riders to be
21 eliminated and it certainly is a rational inference
22 from an observation of the terms of the stipulation.

23 The second sentence in and of itself
24 contains the observation about the fully competitive
25 model of the stipulation's end point and itself

1 contains an observation that that structure will
2 benefit customers, and I think these are plain and
3 simple statements and observations based on the
4 stipulation itself. They're certainly not hearsay.
5 And the Commission can assess the weight of the
6 statements.

7 EXAMINER SEE: The motion to strike
8 Mr. Jones's testimony is denied.

9 According to my notes, the only party
10 that planned to cross-examine Mr. Jones is OCC.

11 MS. GRADY: Your Honor, OCC did indicate
12 that it will have cross-examination, yes.

13 EXAMINER SEE: Okay. Proceed, Ms. Grady.

14 MS. GRADY: Thank you.

15 MR. OLIKER: Your Honor, IEU-Ohio also
16 has cross-examination.

17 EXAMINER SEE: Okay.

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Grady:

21 Q. Good morning, Mr. Jones.

22 A. Good morning.

23 Q. Let's talk for a moment about the
24 association. The association consists of member
25 institutions that include colleges within AEP Ohio's

1 service territory; is that correct?

2 A. That is correct.

3 Q. And those members take service under a
4 variety of schedules from the companies?

5 A. That is correct.

6 Q. They take service from Ohio Power plus
7 Columbus Southern Power?

8 A. That is my understanding.

9 Q. Is it safe to say that the member
10 universities do not take service under the
11 residential rate schedules?

12 A. That, I do not know. Our members have a
13 variety of operational structures. To the extent
14 that any of them own residential buildings in the
15 neighborhood of their campuses, as many of our
16 colleges do, I am not aware as to whether those are
17 residential rate or not.

18 Q. Now, AICUO is not aware of how many of
19 its member colleges are currently shopping; is that a
20 fair statement?

21 A. That is -- it is correct that I cannot
22 tell you the number of our colleges that are engaged
23 in shopping.

24 Q. So you wouldn't know how many of your
25 members, as of September 7th, 2011, were shopping,

1 would you?

2 A. I cannot offer that information.

3 Q. And, Mr. Jones, AICUO has not analyzed
4 whether there currently are impediments to shopping
5 for its members, has it?

6 A. The association has taken advice from
7 counsel and reviewed information associated with
8 these proceedings in drawing its conclusions about
9 shopping as a practice and believes that shopping
10 will occur.

11 Q. Let me ask you again, Mr. Jones, AICUO
12 has not analyzed whether there are currently
13 impediments to shopping for its members.

14 A. I am aware that some of our members have
15 not engaged in shopping. To what extent that they
16 would engage in shopping because there are
17 impediments I do not know so I can't answer your
18 question.

19 Q. Thank you. Do you know if your members
20 will receive a shopping credit of \$10 a megawatt-hour
21 commencing on January 1st, 2012, under the
22 stipulation?

23 A. I don't recall. That might be accurate,
24 but I don't specifically recall.

25 Q. Now, let's refer to your testimony at

1 page 3, lines 12 through 15, which still remain, and
2 you indicate there that the companies are gravitating
3 to a model that will effectuate shopping. Do you see
4 that reference?

5 A. Yes.

6 Q. And you conclude that this will
7 invariably allow AICUO member colleges to shop more
8 effectively for the best possible rates. Is that a
9 fair --

10 A. That is my testimony.

11 Q. Now, that statement reflects the fact
12 that in settlement discussions AICUO was informed by
13 AEP Ohio that changes in AEP's business model would
14 result in more shopping for AEP's current customers;
15 is that correct?

16 A. That is accurate.

17 Q. And AICUO has no independent knowledge
18 apart from what it was told by AEP with respect to
19 whether the changes in AEP's business model will
20 result in more shopping for AEP's customers; is that
21 correct?

22 A. I have not had any advice other than from
23 counsel and that which I gleaned from reading fine
24 news sources such as Hanna and Gongwer.

25 MS. GRADY: May I approach the witness,

1 your Honor?

2 EXAMINER SEE: Yes.

3 MS. GRADY: Let me withdraw that.

4 EXAMINER SEE: Okay.

5 Q. Mr. Jones, you mentioned that you had had
6 some information from news sources. Can you explain
7 what you mean there and what you indicate there?

8 A. Well, I can't say what specific
9 information I gleaned over time, but since engaging
10 in these rate proceedings on behalf of the
11 association I read the statehouse news sources that I
12 read as any individual who's involved in government
13 affairs does and so I can't tell you specifically
14 what I gained from there, but I listened to my
15 counsel and I read what is reported in the press.

16 Q. So was what is reported in the press,
17 would that have addressed whether the changes in
18 AEP's business model would result in more shopping
19 for AEP's customers?

20 A. It may have. I don't specifically
21 recall.

22 Q. And you don't recall specifically what
23 information that was or what news source that was?

24 A. No.

25 Q. Or the date of that news source?

1 A. Again, I was merely adding to your
2 comment that when you asked whether specifically I
3 was listening to counsel or exclusively listening to
4 counsel and I said "no." I utilized other sources to
5 draw information.

6 Q. Now, you do not have independent
7 information on how the stipulation will result in
8 more shopping for the members of the AICUO, do you?

9 A. I do not have.

10 Q. And so you have not independently
11 confirmed that the stipulation will invariably allow
12 AICUO member colleges to shop more effectively for
13 the best possible rates; is that correct?

14 A. I would dispute that statement. I view
15 independent information as being information I've
16 gleaned from multiple sources so I would ask to --
17 ask what your definition of "independent information"
18 is.

19 Q. What information do you have that you
20 rely on for the basis of the statement that the
21 stipulation will invariably allow AICUO member
22 colleges to shop more effectively for the best
23 possible rates?

24 A. If you work from the premise that there
25 is going to be more shopping, I subscribe to the

1 basic principles of economics that greater access to
2 pricing information, to transparency of market
3 processes, and potentially increased numbers of
4 suppliers will inevitably lead to more competitive
5 and transparent rates for any product or service.

6 Q. Now, when you began that answer, you said
7 "if you work from the premise that there will be more
8 shopping." Is that correct?

9 A. In my statement I said that the companies
10 are gravitating toward a model that will effectuate
11 shopping. My statement was meant to mirror that
12 statement.

13 Q. And the fact that you believe or the
14 premise that there will be more shopping you're
15 relying upon the company.

16 A. No, I did not say that. I'm relying on
17 advice of counsel who were participating in
18 proceedings who gleaned their opinion, as I
19 understand, from the experts who testified as part of
20 the proceedings, from other information gained in the
21 proceedings, from materials from the company, and
22 from other news sources that I follow in the course
23 of doing what I do.

24 Q. So that information was also gleaned in
25 the settlement discussions; is that correct?

1 A. Well, I can't tell you from where it was
2 gleaned. This is only a small part of my job, so I
3 don't -- I'm a lay witness, I have general
4 recollections about such matters.

5 Q. Do you understand the RPM set-aside
6 concept as set forth in the stipulation?

7 A. I believe I have an understanding of it.
8 It depends upon the depth of specificity into which
9 you wish to probe.

10 Q. Do you understand how the allocation of
11 RPM capacity will affect the member colleges?

12 A. I'm not sure I can give you specific
13 information to explain it.

14 Q. Do you know what customer group the
15 members of AICUO would fall under?

16 A. I would have to look back at my records.
17 I know they fall currently in a variety of customer
18 groups.

19 Q. Now, you testify that some of the riders
20 that were previously nonbypassable in the original
21 SSO application have now been eliminated.

22 A. That is correct.

23 Q. And that's page 3 of your testimony,
24 lines 9 through 11.

25 A. The section that I recently asked to be

1 changed, that's correct.

2 Q. Yes. Do you know if evaluations have
3 been assigned to all the riders that are part of the
4 stipulation?

5 A. No. My statement was more one of an
6 aggregate analysis of market pricing under any
7 economic system, that if you have additional riders
8 in a system like -- in a regulated system like this,
9 you are likely to have, I won't call them price
10 distortions, but lack of predictability and
11 transparency pricing.

12 Q. And are you familiar with the current
13 riders that have no value assigned to them under the
14 stipulation such as the generation resource rider and
15 the pool termination rider?

16 A. I'm aware that there are riders, but I
17 can't tell you specifically about them.

18 Q. Now, you testify on page 2 -- let me
19 strike that.

20 You testify on page 3, lines 7 through
21 10, that definitive evaluations have now been
22 assigned to riders such that consumers from each
23 customer class should now have a better understanding
24 of the rates to be paid. Do you see that reference?

25 A. I do.

1 Q. Would you agree with me that your
2 understanding of the rates to be paid over the life
3 of the SSO for the member colleges was gained by
4 relying on and accepting the opinions of those
5 involved in the negotiations?

6 A. No. I'm sorry, I can't make that
7 statement. The position of AICUO vis-a-vis its
8 colleges was gained through information from the
9 proceedings, analysis of those who participated in
10 the proceedings, and advice of counsel, and, again,
11 my understanding of the case from larger media
12 reports.

13 MS. GRADY: May I approach the witness,
14 your Honor?

15 EXAMINER SEE: Yes.

16 A. And, I should say, general conversations
17 I've had with my member institutions.

18 MR. HAQUE: I'm going to object to this,
19 your Honor. I'd like to know the basis or the
20 evidentiary foundation for what Ms. Grady is
21 attempting to do which is essentially have Mr. Jones
22 read an interrogatory and response that were prepared
23 by counsel, under what evidentiary basis she can do
24 that.

25 EXAMINER SEE: You're inquiring of me --

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1 MR. HAQUE: No, I'm objecting because I'd
2 like to know the evidentiary foundation for what's
3 about to occur.

4 EXAMINER SEE: Ms. Grady.

5 MS. GRADY: Yes, your Honor. I was going
6 to go through the response to Interrogatory No. 7
7 supplemental response for impeachment purposes.

8 EXAMINER SEE: The objection is --

9 MR. HAQUE: Can I just note one thing?

10 EXAMINER SEE: Yes.

11 MR. HAQUE: Rule 613 requires that the
12 impeachment be a witness's previous statement. That
13 interrogatory clearly states it was prepared by
14 counsel. If the OCC would have deposed Mr. Jones, we
15 might have created a statement where he could have
16 been impeached, but that did not occur here.

17 EXAMINER SEE: Mr. Jones, are you aware
18 of the interrogatories that were prepared by your
19 counsel?

20 THE WITNESS: I'm aware we had
21 interrogatories prepared.

22 EXAMINER SEE: Did you prepare any of
23 them?

24 THE WITNESS: Excuse me, ma'am?

25 EXAMINER SEE: Did you respond to any of

1 them?

2 THE WITNESS: No, I did not draft any of
3 them. No.

4 EXAMINER SEE: Ms. Grady.

5 MS. GRADY: Yes, your Honor.

6 EXAMINER SEE: Proceed.

7 Q. (By Ms. Grady) Mr. Jones, I'm going to
8 show you supplemental response, the Association of
9 Independent Colleges and Universities of Ohio
10 Supplemental Responses to the First Set of
11 Interrogatories and Request for Admission, and I'm
12 going to read Interrogatory No. 7, the question and
13 the response, and I'm going to ask you if I'm
14 correctly reading that into the record.

15 Interrogatory 7, "Please provide the
16 AICUO's understanding of the rates to be paid for the
17 life of the company's SSO for member colleges of
18 AICUO as referenced in Witness Jones's testimony at
19 page 3, lines 8 through 9." Did I read that
20 correctly?

21 A. You have recited what is on the page
22 before me.

23 Q. Response: "Objection, see general
24 objections. AICUO further objects in that this
25 interrogatory seeks information that is confidential

1 and is protected by the attorney-client privilege,
2 subject to and without waiving the foregoing AICUO's
3 understanding of the rates to be paid for the life of
4 the company's SSO for residential customers is that
5 the rates will be better than those rates initially
6 proposed by AEP in its ESP.

7 "AICUO derived its understanding through
8 its participation in the general settlement
9 discussions regarding the stipulation and AICUO
10 relied upon the expertise and the calculations of the
11 PUCO staff, the AEP staff, and a number of
12 participating parties in drawing its conclusions as
13 to residential rates.

14 "AICUO did not commission an independent
15 expert analysis in association with the stipulation.
16 Furthermore, the stipulation and the appendices
17 attached to the stipulation speak for themselves."

18 Did I read that correctly?

19 A. You accurately and enthusiastically read
20 that.

21 Q. Thank you.

22 Now, Mr. Jones, you have not evaluated,
23 have you, whether the stipulation meets the
24 three-prong standard?

25 A. I have not.

1 Q. Do you know what the three-prong standard
2 is?

3 A. I was able to give you that response
4 because I'm not aware of what the three-prong
5 standard is.

6 Q. And you consider yourself a lay witness
7 in this proceeding; is that correct?

8 A. That is correct.

9 Q. Now, you are not providing expert
10 testimony on whether the settlement is a product of
11 serious bargaining among capable and knowledgeable
12 parties, are you?

13 A. Not that I'm aware of.

14 Q. And you are not providing expert
15 testimony to address whether the settlement as a
16 package benefits ratepayers and the public interest.

17 A. As a lay witness I'm not providing expert
18 testimony, and as a representative of AICUO I am only
19 here to speak on the impact on my member colleges.

20 Q. Thank you.

21 And you are not providing expert
22 testimony to address whether the settlement as a
23 package violates any important regulatory principle
24 or practice, are you?

25 A. Well, I am not testifying as an expert

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1 witness, so as a threshold matter I can't get to the
2 latter part of your question.

3 MS. GRADY: Thank you very much,
4 Mr. Jones.

5 That's all the questions I have, your
6 Honor.

7 EXAMINER SEE: Mr. Darr? Mr. Oliker?

8 MR. OLIKER: One minute, your Honor,
9 please.

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11 CROSS-EXAMINATION

12 By Mr. Oliker:

13 Q. Good morning, Mr. Jones.

14 A. Good morning.

15 Q. I'll try to be as brief as possible. I
16 think you briefly talked to Ms. Grady about the RPM
17 set-aside for capacity in the stipulation.

18 A. Yes.

19 Q. When you authorized your counsel to sign
20 the stipulation on September 7th, were you aware that
21 the amount of megawatt-hours that had been allocated
22 to the commercial class had been exceeded?

23 A. I may or may not have. I don't
24 specifically recall a discussion on that matter.

25 MR. OLIKER: May I approach, your Honor?

1 EXAMINER SEE: Yes.

2 MR. HAQUE: I'm going to renew my
3 objection, presenting a discovery response prepared
4 by legal counsel that are not the statements of
5 Mr. Jones for impeachment purposes. For impeachment
6 purposes they are improper under Rule 613.

7 MR. NOURSE: The companies join the
8 objection. There's no foundation for doing so.

9 EXAMINER SEE: Mr. Haque, I'm going to
10 need you to speak up.

11 MR. HAQUE: Thank you.

12 MR. OLIKER: Your Honor, I have a
13 response in a second once I pass these out.

14 Your Honor, first, I would state that
15 these are requests for admissions which are
16 conclusively established against the party for the
17 proceeding. Additionally, I would also highlight
18 that Mr. Jones most likely authorized counsel to
19 respond to these interrogatories. And he also said
20 he is familiar with them.

21 And particularly I was talking about
22 request for admission 4-7.

23 MR. NOURSE: Your Honor, I'm not sure I
24 heard Mr. Oliker correctly, but I'm not aware of
25 anything in the record where this witness indicated

1 his familiarity with these questions and these
2 responses.

3 MR. OLIKER: I can ask him if you would
4 like me to, your Honor.

5 EXAMINER SEE: Go ahead, Mr. Oliker.

6 MR. OLIKER: Proceed?

7 EXAMINER SEE: Proceed. Go ahead.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. (By Mr. Oliker) Mr. Jones, earlier you
10 mentioned that you viewed the interrogatory
11 responses. Did you also view the interrogatories
12 that were served on the AICUO by the Industrial
13 Energy Users of Ohio?

14 MR. HAQUE: Objection. That's a
15 mischaracterization of the testimony, your Honor. He
16 did not say he had viewed the interrogatories, he
17 said -- he did not say that he had reviewed the
18 interrogatories.

19 EXAMINER SEE: Rephrase, Mr. Oliker.

20 Q. Mr. Jones, you are familiar that
21 interrogatories were served on the AICUO; is that
22 true?

23 A. I'm familiar that we've had
24 interrogatories served on us on multiple occasions.

25 Q. And did you authorize counsel to respond

1 on behalf of AICUO?

2 A. I have authorized counsel to respond to
3 all interrogatories to which counsel has responded
4 to.

5 Q. So his statements would reflect the views
6 of the AICUO; is that correct?

7 A. The responses of counsel to
8 interrogatories to AICUO are made on behalf of AICUO.

9 Q. Thank you.

10 And do you see what is in front of you
11 that I marked as IEU-Ohio Exhibit 11?

12 A. What page are you on?

13 Q. I'm on page No. 4 which is a Request for
14 Admissions, Fourth Set.

15 A. 4-7.

16 Q. That's correct.

17 A. That which you previously mentioned?
18 Yes, I see that on the page before me.

19 MR. HAQUE: Your Honor, before we get
20 into what I believe the next question will be, I
21 don't think that there's been an official response
22 from the Bench as to whether or not Mr. Olikar can
23 question Mr. Jones as to the discovery that he's
24 currently looking at that Mr. Jones has in front of
25 him.

1 EXAMINER SEE: After going back and
2 looking at the transcript, the Bench realizes that
3 Mr. Jones responded that he was only aware of them
4 and that he had not reviewed them.

5 MR. OLIKER: Your Honor, he authorized
6 counsel to respond on behalf of AICUO --

7 MR. HAQUE: Yes, your Honor, but --

8 MR. OLIKER: -- in its submission.

9 MR. HAQUE: Yes, your Honor, but if this
10 is under Evidence Rule 613 meant to impeach Mr. Jones
11 it has to be a statement made by Mr. Jones.

12 MR. KUTIK: Your Honor, may I speak in
13 opposition to the objection?

14 EXAMINER SEE: I'm sorry, Mr. Kutik?

15 MR. KUTIK: I'd like to speak in
16 opposition to the objection. Your Honor, may I?

17 EXAMINER SEE: Go ahead.

18 MR. KUTIK: Commission's Rule
19 4901-1-21(D) say that -- I'm sorry, 4901-1-22(D) says
20 "Unless otherwise ordered by the Commission, the
21 legal director, the deputy legal director, or the
22 attorney examiner, any matter admitted under this
23 rule is conclusively established against the party
24 making the admission."

25 So this may be used for any purpose

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1 whether the witness was aware or not. He's a party,
2 the party made the admission, it's proper.

3 MR. HAQUE: Your Honor, was that last
4 piece read by Mr. Kutik, was that text from the rule
5 or is that just --

6 MR. KUTIK: That's text from the rule.

7 EXAMINER SEE: The objection is
8 overruled. Go ahead, Mr. Olikier.

9 Q. (By Mr. Olikier) Mr. Jones, I'm going to
10 read to you 4-7, page 4. "Admit that on
11 September 7th, 2011, You did not have information
12 that the megawatt hours awarded for the commercial
13 class as described under Appendix C of the
14 Stipulation exceeded the pro rata allocation of the
15 RPM set aside of 3,033,479 megawatt hours." And your
16 response was "Admit."

17 MR. NOURSE: Your Honor, I object. I
18 don't think Mr. Olikier read the question correctly as
19 it appears in the document.

20 EXAMINER SEE: And I would agree with
21 you. The objection is sustained.

22 MR. OLIKER: Can I have one minute, your
23 Honor?

24 EXAMINER SEE: Yes.

25 Mr. Olikier, are you ready to proceed?

1 MR. OLIKER: I have no more questions,
2 your Honor.

3 EXAMINER SEE: Any other party have
4 cross-examination for this witness?

5 (No response.)

6 EXAMINER SEE: Mr. Haque.

7 MR. HAQUE: No redirect, your Honor. We,
8 again, ask to have admitted into the record AICUO
9 Exhibit No. 1.

10 EXAMINER SEE: Are there any objections
11 to AICUO Exhibit 1?

12 MS. GRADY: Your Honor, note our
13 continuing objection based on our motion to strike.

14 EXAMINER SEE: Your objection is so
15 noted.

16 MR. OLIKER: IEU-Ohio joins, your Honor.

17 EXAMINER SEE: Noted. If there are no
18 other objections, AICUO Exhibit 1 is admitted into
19 the record.

20 MR. HAQUE: Thank you, your Honor.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER SEE: Thank you, Mr. Jones.

23 THE WITNESS: Thank you, ma'am.

24 EXAMINER SEE: With that, we're going to
25 adjourn the hearing until 2 o'clock this afternoon.

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1 Thank you.

2 (Thereupon, at 11:35 a.m., a lunch recess
3 was taken.)

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Monday Afternoon Session,
October 17, 2011.

- - -

EXAMINER SEE: Let's go back on the record. Throughout this proceeding we have followed the process that witnesses in support of the stipulation are crossed by those that have opposed the stipulation and there has not been an opportunity for what we referred to earlier as friendly cross.

Earlier this morning IEU voiced an objection to continuing the hearing as to the remaining witnesses which are only staff witnesses. Scheduled for today were Jeffrey Hecker and Hisham Choueiki. Over IEU's objection on the basis that only parties opposing the stipulation are going to be cross-examining staff witnesses we're going to continue with the testimony of Mr. Hecker and Mr. Choueiki.

So with that, Mr. Margard.

MR. MARGARD: Thank you, your Honors. Staff would call Mr. Jeffrey Hecker to the stand, please.

MR. DARR: Just note that we still need to resolve the issue with regard to Mr. Murray's testimony as well.

1 EXAMINER SEE: We're not continuing with
2 Mr. Murray's testimony until further notice. The
3 ruling that I just made as far as continuing the
4 hearing is only as to the staff witnesses which will
5 include Hecker, Choueiki, and tomorrow Fortney and
6 Johnson.

7 MR. DARR: And we've already provided for
8 the record our objection at this point. Thank you.

9 EXAMINER SEE: Yes.

10 Mr. Hecker, if you could raise your right
11 hand.

12 (Witness sworn.)

13 EXAMINER SEE: Thank you.

14 Mr. Margard.

15 MR. MARGARD: Your Honor, if you please,
16 I would like to ask that Mr. Hecker's prefiled
17 testimony filed in this matter on August 4th of 2011
18 be marked for purposes of identification as Staff
19 Exhibit No. 1.

20 EXAMINER SEE: The exhibit is so marked.

21 MR. MARGARD: Thank you, your Honor.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

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JEFFREY HECKER

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

DIRECT EXAMINATION

By Mr. Margard:

Q. Please state your name, Mr. Hecker.

A. Jeffrey Hecker.

Q. And by whom are you employed?

A. The Public Utilities Commission.

Q. Mr. Hecker, do you have before you what's
been marked as Staff Exhibit No. 1?

A. Yes.

Q. What is that document, please?

A. It's my prefiled testimony.

Q. This is testimony that you prepared or
was prepared at your direction?

A. Yes.

Q. Do you have any changes, corrections,
modifications of any sort to this testimony?

A. No, sir.

Q. Mr. Hecker, if I were to ask you the same
questions as are posed in this exhibit, would your
answers today be the same?

A. Yes.

MR. MARGARD: Your Honor, I respectfully

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1 move for admission of Staff Exhibit No. 1 subject to
2 cross-examination and tender the witness for that
3 purpose.

4 EXAMINER SEE: Okay. Earlier the only
5 party thus far that indicated they had some
6 cross-examination for Mr. Hecker was IEU.

7 Mr. Oliker?

8 MR. OLIKER: That's correct, your Honor.

9 EXAMINER SEE: Go ahead.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Oliker:

13 Q. Good afternoon, Mr. Hecker.

14 A. Good afternoon.

15 Q. In your testimony you support the
16 company's storm damage recovery mechanism; is that
17 true?

18 A. Yes.

19 Q. Did you perform any analysis regarding
20 the current liability of AEP Ohio's distribution
21 system?

22 A. No, I did not.

23 Q. And did you assess the effect of the
24 storm damage recovery mechanism approved by the
25 Commission on future reliability?

1 A. No, sir.

2 Q. Did you perform any assessment of whether
3 customers' expectations and AEP Ohio's expectations
4 are aligned?

5 A. No, sir.

6 MR. OLIKER: That's all I have, your
7 Honor.

8 EXAMINER SEE: Did any other party have
9 cross-examination for Mr. Hecker?

10 (No response.)

11 EXAMINER SEE: Thank you, Mr. Hecker.

12 MR. MARGARD: Your Honor, I renew my
13 motion for admission of Staff Exhibit No. 1.

14 EXAMINER SEE: Are there any objections
15 to the admission of Staff Exhibit 1?

16 (No response.)

17 EXAMINER SEE: Hearing none, Staff
18 Exhibit 1 is admitted into the record.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 MR. MARGARD: Your Honor, staff would now
21 like to call Dr. Hisham Choueiki to the stand,
22 please.

23 EXAMINER SEE: Dr. Choueiki, if you would
24 raise your right hand.

25 (Witness sworn.)

1 EXAMINER SEE: Thank you.

2 MR. MARGARD: Your Honor, I respectfully
3 request that the prefiled testimony of Hisham
4 Choueiki filed in this matter on August 4th of 2011
5 be marked for purposes of identification as Staff
6 Exhibit No. 2.

7 EXAMINER SEE: The exhibit is so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 - - -

10 HISHAM M. CHOUEIKI, PhD, PE
11 being first duly sworn, as prescribed by law, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Margard:

15 Q. Would you please state your name.

16 A. Hisham M. Choueiki.

17 Q. And by whom are you employed?

18 A. The Public Utilities Commission of Ohio.

19 Q. Dr. Choueiki, you have before you what
20 has been marked for purposes of identification as
21 Staff Exhibit No. 2?

22 A. Yes.

23 Q. Can you identify that document for us,
24 please?

25 A. It's my prefiled testimony.

1 Q. Was this prepared by you or at your
2 direction?

3 A. Yes.

4 Q. Since the filing of this testimony do you
5 have any changes, corrections, additions,
6 modifications of any sort?

7 A. No.

8 Q. And, Dr. Choueiki, if I were to ask you
9 the same questions as are posed in this exhibit,
10 would your responses today be the same?

11 A. Yes.

12 MR. MARGARD: Your Honor, I respectfully
13 move for the admission of Staff Exhibit No. 2 subject
14 to cross-examination and tender the witness for that
15 purpose.

16 EXAMINER SEE: Okay. Does Ormet have any
17 questions for this witness?

18 MS. HAND: No, your Honor.

19 EXAMINER SEE: IEU?

20 MR. OLIKER: No, your Honor.

21 EXAMINER SEE: FES?

22 MR. HAYDEN: No questions.

23 EXAMINER SEE: APJN?

24 MR. MASKOVYAK: No questions, your Honor.

25 EXAMINER SEE: OCC?

1 MR. ETTER: No questions.

2 EXAMINER SEE: Is there any other party
3 opposing the stipulation that has cross for this
4 witness?

5 (No response.)

6 EXAMINER SEE: Okay.

7 MR. MARGARD: In that event, your Honor,
8 I respectfully renew my motion for the admission of
9 Dr. Choueiki's testimony.

10 EXAMINER SEE: Are there any objections
11 to the admission of Staff Exhibit 2?

12 (No response.)

13 EXAMINER SEE: Hearing none, Staff
14 Exhibit 2 is admitted into the record.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER SEE: Thank you, Dr. Choueiki.

17 THE WITNESS: Thank you very much.

18 MR. KUTIK: Your Honor.

19 EXAMINER SEE: Yes.

20 MR. KUTIK: At this time FES would seek
21 to admit certain documents as exhibits into the
22 record. These documents are discovery responses.
23 May I approach?

24 EXAMINER SEE: The Bench?

25 MR. KUTIK: Yes.

1 EXAMINER SEE: Yes, let's see what you
2 have.

3 MR. KUTIK: Your Honor, if I could
4 identify these and mark them for the record.

5 EXAMINER SEE: Yes.

6 MR. KUTIK: Your Honor, we propose three
7 sets of exhibits. First, as Exhibit FES 15(a), (b),
8 (c), (d), and (e), we would have marked as follows:
9 Stipulation -- the Response to Stipulation OCC
10 Interrogatory 16-361 we've marked as FES Exhibit
11 15(a); Response to FES Request for Admission 13-005
12 we've marked as FES Exhibit 15(b); Response to FES
13 Request for Admission 13-015 would be marked as FES
14 Exhibit 15(c); the Response to FES Request for
15 Admission 13-016 would be marked as FES Exhibit
16 15(d); and the Response to FES Request for Admission
17 13-017 would be marked as Exhibit 15(e).

18 With respect to the series that we've
19 marked as Exhibit -- or we'd like to have marked as
20 Exhibit 16(a) through (i) there will be as follows:
21 The Response to FES Interrogatory 17-029 would be
22 marked Exhibit 16(a); the Response to FES
23 Interrogatory 17-046 would be marked 17(b).

24 MR. CONWAY: 16(b)?

25 MR. KUTIK: 16(b), excuse me. The

1 Response to FES 17-047 would be marked 16(c); the
2 Response to FES Interrogatory 19-034 would be marked
3 16(d); the Response to FES Interrogatory 19-037 would
4 be marked 16(e); the Response to FES Interrogatory
5 19-039 would be marked as 16(f); the Response to FES
6 Interrogatory 19-041 would be marked as 16(g); the
7 Response to Stipulation FES Request for Admission
8 21-005 would be marked as 16(h); and the Response to
9 Stipulation IEU Request for Admission 6-008 would be
10 marked as 16(i).

11 We'd also like to have marked as Exhibit
12 17(a) through (d) the following: The Response to
13 Stipulation FES Interrogatory 17-043 will be marked
14 as 17(a); the Response to IEU Request for Admission
15 3-008 would be marked as 17(b); and the response to
16 Stipulation IEU Interrogatory 6-001 will be marked as
17 17(c).

18 (EXHIBITS MARKED FOR IDENTIFICATION.)

19 MR. KUTIK: Your Honor, as we noted
20 earlier today, the interrogatories are statements
21 under oath and these documents, and case law in Ohio
22 is clear, interrogatories may be used and may be
23 treated as statements under oath as if a witness were
24 on the stand. With respect to requests for
25 admission, as was earlier pointed out today, requests

1 for admission are conclusive admissions by a party
2 and all of these have been made and responses by
3 AEP Ohio with respect to matters at issue in this
4 case.

5 With respect to the exhibits that have
6 been marked as Exhibits 15(a) through (e), they all
7 relate to rider GRR and the Turning Point project
8 involved in that case. We believe that these
9 requests for admissions are relevant to our argument
10 that AEP and the signatory parties have not met their
11 burden to show that even in the future a project such
12 as the Turning Point project would be appropriate
13 subject for a rider under Section 4928.143.

14 With respect to Exhibit 16(a) through
15 (i), those interrogatories and requests for
16 admissions have to deal with Appendix C to the
17 stipulation as well as the detailed implementation
18 plan. We believe that those interrogatory and
19 request for admission responses are relevant to our
20 argument that the rules themselves are incomplete and
21 confusing and, therefore, do not serve the public
22 interest, among other reasons.

23 With respect to the request for the
24 exhibits that we've marked as Exhibits (a) through
25 (c), these relate to the issue of AEP's pool

1 termination and corporate separation, and
2 specifically with respect to what and what not AEP is
3 committing to with respect to the stipulation.

4 So, your Honor, we believe that these
5 documents are independently admissible, that is
6 independent of a witness, and we also believe they're
7 relevant, there can be really no question about their
8 authenticity and, therefore, we move their admission.

9 MR. NOURSE: Your Honor, may I respond?

10 EXAMINER SEE: Yes.

11 MR. NOURSE: First of all, we have not
12 seen these or counsel did not attempt to work out any
13 kind of stipulation, so we would like the opportunity
14 to review them. We have not seen that these are the
15 particular, out of the thousands of questions we got
16 in discovery, that these are the ones that were
17 selected for putting in the record.

18 But I think it's the practice at the
19 Commission the parties use discovery responses and
20 they attach them to testimony where they're making
21 certain points or relying on certain responses,
22 they're also used in cross-examination and in context
23 and the witness has an opportunity to respond and
24 explain the context of answers they were responsible
25 for, in addition to typically stating whether they

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1 still believe it applies in the context for which
2 it's being used, either in testimony subject to cross
3 or through cross where the witness is available to
4 explain that context.

5 So I don't have any objection to the ones
6 that are in here that are prepared by counsel. I
7 don't have any objection to the ones that are
8 admissions. But the interrogatories that relate to
9 particular witnesses that have already come and
10 testified and been subject to cross-examination could
11 easily have been asked about these in a way that
12 they're being sought to be used. I think it's
13 inappropriate to wait until the witness leaves the
14 stand and then just try to dump them in the record on
15 that basis.

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

17 EXAMINER SEE: Yes.

18 MR. KUTIK: Your Honor, I guess the
19 Commission's practice is what you're used to. I can
20 cite cases I've been in where interrogatories and
21 requests for admission have come in independently, so
22 I would assert that the Commission practice is as
23 I've done it. It's also the practice in front of
24 every court I've had the privilege of trying a case
25 in.

1 With respect to the issue of I suppose
2 unfairness, these are certainly admissions of the
3 party. They are admissions of particular witnesses,
4 as Mr. Nourse would have it. To the extent that
5 these witnesses have made statements that are against
6 the interests of AEP or need further explanation,
7 well, that's grist for rebuttal testimony. This is
8 being offered as part of our case. We don't have to
9 wait to put these admissions in as part of their
10 case, and if as part of their rebuttal case they want
11 to explain their interrogatory answers, well, they
12 are free to do that.

13 MR. NOURSE: Your Honor, again, to the
14 extent that we've not had an opportunity to review
15 these, one, and if counsel had raised them with us,
16 we might have already addressed this, there may be
17 other discovery responses that would also be
18 appropriate to enter at the same time and perhaps, if
19 that were the case, there wouldn't be any objection.
20 But again, we're not quibbling or opposing the
21 admission so that's not an issue, and the requests,
22 there's a few in here prepared by counsel, but my
23 argument and my objection went to the witnesses that
24 have been appearing already in this hearing and now
25 that they're gone, this issue is being raised.

1 EXAMINER SEE: The Bench will further
2 consider the motions to admit FES Exhibits 15, 16,
3 and 17 and address it tomorrow morning, that will
4 give AEP time to go through, make whatever issues
5 specifically to each exhibit for which they have
6 requested admission.

7 MR. NOURSE: Thank you, your Honor.

8 EXAMINER SEE: With that, we will start
9 with Witnesses Fortney and Johnson tomorrow morning,
10 in that order. We'll convene tomorrow at --

11 MR. MARGARD: Your Honor, can we go off
12 the record just a moment?

13 EXAMINER SEE: Yes.

14 (Discussion off the record.)

15 EXAMINER SEE: Let's go back on the
16 record. In an effort to accommodate the parties
17 we'll start at 8:45.

18 MR. HAYDEN: Thank you, your Honor.

19 EXAMINER SEE: Was there something else,
20 Mr. Hayden?

21 MR. HAYDEN: Yeah, there's something
22 else. We can go off.

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

24 (Discussion off the record.)

25 EXAMINER SEE: We're adjourned for the

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1 day until 8:45 tomorrow.

2 (Theeupon, the hearing was adjourned at
3 2:42 p.m.)

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5 CERTIFICATE

6 I do hereby certify that the foregoing is
7 a true and correct transcript of the proceedings
8 taken by me in this matter on Monday, October 17,
9 2011, and carefully compared with my original
10 stenographic notes.

11
12 Maria DiPaolo Jones, Registered
13 Diplomate Reporter and CRR and
14 Notary Public in and for the
State of Ohio.

15 My commission expires June 19, 2016.

16 (MDJ-3909)

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Summary: Transcript Transcript of Columbus Southern Power Company and Ohio Power Company hearing held on 10/17/11 - Vol IX electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.