

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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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. :

- - -

PROCEEDINGS

before Ms. Greta See and Ms. Sarah Parrot, Attorney  
Examiners, and Commissioner Andre Porter, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room 11-A, Columbus, Ohio, called at 9:00  
a.m. on Tuesday, April 24, 2012.

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19                   Utilities Commission of Ohio.

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1                                   Tuesday Morning Session,

2                                   April 24, 2012.

3                                   - - -

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

5                   Let's take brief appearances of the  
6 counsel for parties.  Let's start with the company  
7 and go around the room.

8                   MR. NOURSE:  Thank you.  For Ohio Power  
9 Company, your Honor, Steven T. Nourse, Matthew J.  
10 Satterwhite, Daniel R. Conway, Christen M. Moore,  
11 Yazen Alami.

12                  MR. PETRICOFF:  Your Honor, on behalf of  
13 Exelon Generation, Constellation NewEnergy, Direct  
14 Energy, and the Retail Energy Supply Association, M.  
15 Howard Petricoff and Lija Kaleps-Clark.

16                  MR. LANG:  Your Honor, on behalf of  
17 FirstEnergy Solutions, Mark Hayden, Jim Lang, and  
18 Dave Kutik.

19                  MS. KINGERY:  On behalf of Duke Energy  
20 Retail Sales and Duke Energy Asset Management, Amy B.  
21 Spiller and Jeanne M. Kingery.

22                  MR. RANDAZZO:  On behalf of the  
23 Industrial Energy Users of Ohio, Frank Darr and  
24 Samuel Randazzo.

25                  MR. KURTZ:  For the Ohio Energy Group,

1 Mike Kurtz.

2 MS. McALISTER: On behalf of the Ohio  
3 Manufacturers Association, Lisa McAlister.

4 MR. CAMPBELL: On behalf of Interstate  
5 Gas Supply, Andrew Campbell and Melissa Thompson.

6 MS. KERN: On behalf of the Ohio  
7 Consumers' Counsel, Kyle Kern and Melissa Yost.

8 MR. JONES: Steve Beeler, John Jones on  
9 behalf of staff.

10 MR. ROYER: Barth Royer for Dominion  
11 Retail.

12 EXAMINER SEE: Thank you.

13 Mr. Nourse, you had marked as an exhibit  
14 at the end of the day yesterday an item that was  
15 going to be brought to the parties today, AEP Exhibit  
16 110.

17 MR. NOURSE: Mr. Hess's ESP testimony?

18 EXAMINER SEE: Yes.

19 MR. NOURSE: That copy is on the way. I  
20 didn't have it this morning. We will provide it  
21 today on the record.

22 EXAMINER SEE: Okay. Mr. Kurtz?

23 MR. KURTZ: Thank you, your Honor. Ohio  
24 Energy Group calls Lane Kollen.

25 (Witness sworn.)

1 EXAMINER SEE: Thank you. Have a seat.

2 - - -

3 LANE KOLLEN

4 being first duly sworn, as prescribed by law, was  
5 examined and testified as follows.

6 DIRECT EXAMINATION

7 By Mr. Kurtz:

8 Q. Mr. Kollen, would you identify yourself  
9 for the record, please.

10 A. Yes. My name is Lane Kollen.

11 Q. And your business address?

12 A. My business address is J. Kennedy and  
13 Associates, Inc., 570 Colonial Park Drive, Suite 305,  
14 Roswell, Georgia 30075.

15 Q. Do you have in front of you a document  
16 called "Direct Testimony and Exhibits of Lane  
17 Kollen"?

18 A. I do.

19 Q. Do you have any corrections or additions  
20 you would like to make to your prefilled testimony?

21 A. I do. Starting on page 13, line 2, the  
22 word "earned" should be stricken from the end of the  
23 question. So it reads -- the question now reads "How  
24 does the Company's 2011 return on equity compare to  
25 other affiliated AEP East utilities?"

1 Q. Anything else?

2 A. Yes. On page 17, line 21, the two words  
3 "single" and "unchanging" should be stricken and  
4 replaced with a single word "flawed;" and then after  
5 the two words "capacity charge," the word  
6 "methodology" should be inserted.

7 Q. Can you repeat that, Mr. Kollen?

8 A. Yes. Line 21, page 17, the two words  
9 "single, unchanging" should be stricken and replaced  
10 with the single word "flawed;" after the two words  
11 "capacity charge" insert the word "methodology." But  
12 the sentence nows reads "Given this uncertainty, I  
13 don't believe it would be reasonable simply to rely  
14 on a flawed capacity charge methodology during the  
15 transition period as AEP Ohio recommends."

16 Q. Are those all of your changes or  
17 recommendations?

18 A. Yes.

19 Q. I forgot to ask, was this testimony  
20 prepared by you or under your direct supervision?

21 A. Yes.

22 Q. Were these changes due -- adopted as your  
23 prefiled direct testimony?

24 A. Yes.

25 MR. KURTZ: Your Honors, I tender the

1 witness for cross-examination.

2 EXAMINER SEE: Mr. Kurtz, did we mark  
3 OEG?

4 MR. KURTZ: I'm sorry, I guess this  
5 should be marked as OEG Exhibit 102.

6 EXAMINER SEE: The exhibit is so marked.  
7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. KURTZ: Thank you, your Honor. And  
9 with that I tender the witness for cross-examination.

10 EXAMINER SEE: Mr. Randazzo?

11 MR. RANDAZZO: Yes, your Honor. I have a  
12 motion to strike I would like the Bench to consider  
13 before cross-examination proceeds to sections of the  
14 testimony.

15 First is at page 4 the basis for the  
16 motion is the same in both instances. The first is  
17 at page 4, lines 5 through 9, the second is on page  
18 17 -- excuse me, 12.

19 EXAMINER SEE: So it's page 12?

20 MR. RANDAZZO: Yes, page 12, not 17, page  
21 12, line 4 through line 21. And in both cases  
22 Mr. Kollen is referring to the results of a  
23 settlement agreement that was adopted by the  
24 Commission. That settlement agreement precludes the  
25 parties from relying on the results of that agreement

1 in any other proceeding. And I believe the testimony  
2 here is a violation of that agreement.

3 It is binding among the parties to that  
4 agreement. It is also a violation of the rules  
5 dealing with the ability to use the results of  
6 settlement agreements in other proceedings as  
7 evidence of a merit-based approach.

8 MR. KURTZ: Your Honor, I think this  
9 testimony refers to the Commission's order which  
10 adopted the settlement, and the Commission order, of  
11 course, is public record. It's what sets the Duke --  
12 Duke capacity price in going forward, so it is  
13 terribly relevant because that's how the Duke matter  
14 was handled, and it's not a violation of the  
15 settlement agreement because we are relying on the  
16 Commission's order which, of course, is the binding  
17 operative document.

18 MR. LANG: Your Honors.

19 EXAMINER SEE: Just a minute.

20 Mr. Lang.

21 MR. LANG: Yes, your Honor. Just to  
22 Mr. Kurtz's last point, the Duke stipulation which I  
23 have in my hand says that "The stipulation is  
24 submitted for purposes of these proceedings only and  
25 neither this stipulation nor any Commission order

1 considering this stipulation shall be deemed binding  
2 in any other proceeding, nor shall the stipulation or  
3 any -- or any such order be offered or relied upon by  
4 any party in any proceedings."

5 MR. KURTZ: To the extent that language  
6 says "shall not be binding," it isn't binding. We  
7 present the results of the Duke stipulation and how  
8 the recommendation here is similar to what the  
9 Commission approved in the Duke matter. In the Duke  
10 matter the Commission approved RPM pricing for CRES  
11 suppliers plus an ESSC charge, which is a  
12 nonbypassable charge, \$5.4 per megawatt hour as the  
13 total compensation charge to Duke.

14 Here what Mr. Kollen is recommending is  
15 the Commission approve RPM as the capacity pricing,  
16 but if the Commission decides to go more than RPM, as  
17 sort of indicated in the Commission's pleading to  
18 FERC, it -- the Commission should not go higher than  
19 the current pricing of \$145 per megawatt day.

20 All this testimony does is quantify the  
21 effect of that RPM premium, in essence. The premium  
22 above RPM is -- the cap being offered by Mr. Kollen  
23 is the same as the premium Duke received through its  
24 ESC charge. That's all this testimony is doing.  
25 It's making that comparison.

1           To turn a blind eye and to put your head  
2     in the sand as to what the operative rates of Duke  
3     are -- what Duke customers are paying for capacity  
4     is -- is unreasonable, and it's not in violation of  
5     the spirit or the intent of that document, or as a  
6     practical matter, it would just be not in the  
7     interest of coming to a reasonable conclusion in this  
8     case to simply ignore what happened in the Duke  
9     matter.

10           MR. RANDAZZO: Your Honor, may I be  
11     heard, please?

12           EXAMINER SEE: Yes.

13           MR. RANDAZZO: Mr. Kurtz -- this is not a  
14     deviation from the legal grounds that I cited  
15     earlier, but Mr. Kurtz invites the Commission to  
16     pursue a terrible policy. We are all under a lot of  
17     stress as a result of various and numerous cases.  
18     Some of us occasionally find a way to work things out  
19     and present the Commission with a settlement  
20     agreement. It's accepted as a package.

21           The lesson that comes from the advocacy  
22     of Mr. Kurtz is those people that do find a way to  
23     work things out are then subjected to the consequence  
24     of their willingness to settle in another case as an  
25     indication of what's appropriate in that other case.

1           It is the reason why settlement  
2 agreements are not allowed as evidence of a  
3 merit-based dispute or to resolve a merit-based  
4 dispute unless it's for the purpose of enforcing the  
5 settlement document. It's a terrible policy and it's  
6 illegal.

7           MR. KURTZ: Your Honor, my last comment  
8 is this, the ESSC charge is a Duke tariff. There is  
9 nothing secret about it. It's on the -- the tariff  
10 is on customers' bills they receive every month. All  
11 this testimony does is compare the RPM proposal here  
12 to the Commission-approved Duke ESSC tariff which is  
13 on -- is on my bill right now as we speak and is on  
14 another million other Duke Energy customers'. It's a  
15 tariff on file with the Commission, and it would just  
16 be silly for this Commission to ignore that.

17           MR. NOURSE: Your Honor, may I be heard  
18 on this matter --

19           EXAMINER SEE: Yes, Mr. Nourse.

20           MR. NOURSE: -- on behalf of Ohio Power?  
21 The -- I agree with Mr. Kurtz and I would also  
22 indicate that I, you know, I wanted to ask some  
23 questions about this -- about this Duke charge and,  
24 you know, I think in recent litigation involving the  
25 ESP stipulation AEP had also managed a settlement

1 with parties.

2 The Commission had a similar situation  
3 and I believe determined that stipulations that  
4 result in Commission orders, Commission orders could  
5 be relied upon and cited, especially in the context  
6 of issues like whether a particular proposal violates  
7 regulatory policies or is consistent with regulatory  
8 policies and principles, and I believe that's the  
9 nature of the inquiry and the comparison that would  
10 be -- would be made in this testimony to be discussed  
11 through cross-examination, so I think it -- I think  
12 it is appropriate.

13 Your Honor, I apologize, I did want to  
14 mention one more thing for the record. I believe the  
15 testimony of Witness Ringenbach has already been  
16 admitted in the record, and she discussed the Duke  
17 charge as well and was subject to cross-examination  
18 about it.

19 EXAMINER SEE: After considering the  
20 motion to strike, the cited portions of Mr. Kollen's  
21 testimony and the arguments made by the various  
22 parties, the Bench has decided to deny the motion to  
23 strike Mr. Kollen's testimony at page 4 and at page  
24 12.

25 Let's begin cross.

1 MS. KERN: No questions, your Honors.

2 EXAMINER SEE: Thank you, Ms. Kern.

3 Mr. Campbell?

4 MR. CAMPBELL: No questions.

5 EXAMINER SEE: Mr. Campbell, no  
6 questions.

7 Mr. Yurick?

8 MR. YURICK: No questions, your honor.

9 EXAMINER SEE: Mr. Randazzo?

10 MR. RANDAZZO: Yes.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Randazzo:

14 Q. Mr. Kollen, for purposes of my  
15 cross-examination I would like to focus on the  
16 portion of your testimony beyond your recommendation  
17 that the Commission adopt RPM-based capacity. It is  
18 the balance of your testimony, the alternative that  
19 you suggest that I would like to discuss with you.

20 Page 1 you indicate that you are with J.  
21 Kennedy and Associates?

22 A. Yes, that's correct.

23 Q. Is Mr. Baron, Steve Baron also with J.  
24 Kennedy and Associates?

25 A. He is.

1           Q.    Did Mr. Baron testify in the ESP II  
2 proceeding associated with Ohio Power and Columbus  
3 Southern in support of the settlement that the  
4 Commission has now rejected?

5           A.    It is my understanding that he did.

6           Q.    Were you involved in the analysis --

7           A.    No.

8           Q.    -- associated with that case?

9                   Were you involved on behalf of the Ohio  
10 Energy Group in the Duke case that is referenced in  
11 your testimony?

12          A.    No.

13          Q.    To the extent that the settlement in the  
14 Duke case committed Ohio Energy Group to not rely  
15 upon the results of that case in any other  
16 proceeding, would you agree that the Ohio Energy  
17 Group has violated that commitment?

18               MR. KURTZ: Your Honor, I object. That  
19 calls for a legal conclusion.

20          Q.    Based upon your extensive regulatory  
21 experience cited in your testimony.

22               EXAMINER SEE: The objection is  
23 sustained.

24          Q.    Mr. Kollen, at page 3 of your testimony,  
25 line 2, you have the words "regulatory framework."

1 Is the regulatory framework that you describe there  
2 provided in the balance of your testimony?

3 A. It is.

4 Q. And that would include the recommendation  
5 to go to RPM in the -- the alternative  
6 recommendation?

7 A. Yes.

8 Q. And nothing more?

9 A. Well, it's within the four corners of the  
10 testimony.

11 Q. Okay.

12 A. And that's what I address in the  
13 testimony, first, the RPM as the primary  
14 recommendation, but in the event that the Commission  
15 desires to go beyond simply the promotion of retail  
16 competition and additional alternative competitive  
17 suppliers, and with this dual objective as the  
18 Commission described in its filing with the FERC,  
19 then the Commission may want to consider the balance  
20 of the recommendations.

21 Q. Understood. Line 3 and throughout your  
22 testimony, you use "AEP Ohio." Are you -- you refer  
23 to "AEP Ohio."

24 A. Yes, I do.

25 Q. What's your understanding of what lines

1 of business are conducted by AEP Ohio?

2 A. Presently it's a vertically integrated  
3 utility with generation transmission distribution  
4 functions.

5 Q. And which of those functions are -- do  
6 you think are subject to the jurisdiction of the  
7 Public Utilities Commission of Ohio?

8 A. I believe all of them are, presently.

9 Q. So you believe that the generation  
10 function of AEP Ohio is subject to the regulatory  
11 jurisdiction of the -- and that would be the  
12 wholesale as well as the retail generation?

13 A. Well, my understanding is that Senate  
14 Bill 221 changed the regulatory paradigm but still  
15 retained the Commission's oversight and jurisdiction  
16 over the generation function.

17 Q. Okay. When you say "function," is that  
18 synonymous with "price"?

19 A. Yes, to some extent.

20 Q. Okay. So as you describe it, you would  
21 say that to the extent that the Commission has  
22 authority to approve a price, that that's also  
23 authority over the generation function, your  
24 understanding?

25 A. Yes. Well, it's much broader authority

1     than simply approving a price but that would be one  
2     of the functions or jurisdictional functions of the  
3     Commission.

4             Q.     So throughout -- throughout your  
5     testimony you are approaching these issues as though  
6     AEP Ohio is a vertically integrated utility  
7     consisting of generation, transmission, and  
8     distribution functions, correct?

9             A.     For the present time, yes.

10            Q.     With regard to the transmission function,  
11     what jurisdiction does the Public Utilities  
12     Commission have over -- based on your understanding  
13     over the transmission function?

14            A.     In what respect?

15            Q.     Over the function, the same respect that  
16     you used it for purposes of generation, what's your  
17     understanding of the PUCO's jurisdiction over  
18     transmission?

19            A.     And you are not asking for a legal  
20     opinion?

21            Q.     No, sir.

22            A.     Well, with respect directly to this  
23     proceeding, there is the PJM tariff and the  
24     requirement initially -- well, the provision in the  
25     tariff that states initially that the state

1 compensation mechanism will apply and, now, it  
2 appears to me, again, not offering a legal opinion,  
3 but that if there is a state compensation mechanism,  
4 it has to come from the state jurisdiction so in my  
5 assessment there is a deference then to the state to  
6 establish that as the initial focus. And that's  
7 really the context of my testimony.

8 Q. Okay. You referred to the state  
9 compensation mechanism. I asked you about  
10 transmission. Do you understand that the state  
11 compensation mechanism deals with the transmission  
12 function?

13 Let me strike the question and restate  
14 it.

15 Is it your understanding that the state  
16 transmission -- or the state compensation mechanism  
17 that you just described refers to the ability of the  
18 Commission to, PUCO, to set a price for transmission?

19 A. No.

20 Q. All right. Now, let's go back to my  
21 question, what is your understanding of the PUCO's  
22 jurisdiction over the function of transmission?

23 A. I don't know if this Commission has  
24 retained jurisdiction for siting, for example. I  
25 don't know to the extent that the Commission has

1 jurisdiction to establish a flow-through transmission  
2 tariff for retail purposes. I believe that is the  
3 case.

4 Q. All right. And if you say a  
5 "flow-through tariff," are you referring to a  
6 situation where the retail jurisdiction flows through  
7 the price to -- established by the Federal Energy  
8 Regulatory Commission?

9 A. That's -- that was my reference, yes.

10 Q. All right. Let's go back to my question,  
11 what jurisdiction does the Public Utilities  
12 Commission of Ohio, based on your understanding, have  
13 over the pricing -- setting the price and the  
14 compensation for transmission in interstate commerce?

15 A. Well, I can tell you this, that this  
16 Commission does not set the rates pursuant to the PJM  
17 tariff except to the extent that there is a deference  
18 to, for example, the state compensation mechanism.

19 Q. All right. So at least with regard to  
20 the transmission function your view that we're  
21 dealing with a vertically integrated utility here and  
22 that the Commission has jurisdiction over all the  
23 functions performed by that vertically integrated  
24 utility would be incorrect, correct?

25 A. Well, I don't think we established that.

1 That wasn't a question that you asked me previously.

2 Q. All right. Now, when you refer -- strike  
3 that.

4 All right. On page 3, lines 15 through  
5 18, you begin -- you are summarizing your testimony  
6 there, and you indicate that the alternative  
7 compensation should not exceed the 145.79 per  
8 megawatt day. Have I correctly understood your point  
9 there?

10 A. Yes.

11 Q. Okay. Now, do you make any distinction  
12 in that observation as between what would be paid by  
13 customers or governmental aggregation programs  
14 serving customers versus a CRES supplier?

15 A. No, I haven't.

16 Q. Do you understand that governmental  
17 aggregation programs are CRES suppliers?

18 A. That's my understanding.

19 Q. Now, you again on line 19, just to make  
20 sure I understand -- understood the results of my  
21 discussion earlier, when you use "AEP Ohio" on line  
22 19, you are referring to the vertically integrated  
23 utility structure that you -- we talked about a  
24 moment ago; is that correct?

25 A. I'm referring to the legal entity that is

1 vertically integrated at the present time.

2 Q. Okay. And for purposes of your  
3 testimony, did you have occasion to review the  
4 corporate separation plan that's been approved for  
5 AEP Ohio?

6 A. I did not in conjunction with this  
7 testimony.

8 Q. Have you reviewed the reliability  
9 assurance agreement of PJM?

10 A. Only selected provisions.

11 Q. You have not read the entire agreement?

12 A. That's true.

13 Q. Do you know if AEP Ohio has, on a  
14 stand-alone basis, elected to be an FRR entity?

15 A. That's my understanding.

16 Q. But did you review the reliability  
17 assurance agreement to identify whether AEP Ohio  
18 has -- on a stand-alone basis has executed that  
19 agreement?

20 A. No.

21 Q. Now, page 4 of your testimony, line 23,  
22 you use the word "utility." Can you tell me what you  
23 mean by "utility" there?

24 A. Again, I mean the legal entity AEP Ohio  
25 which is a vertically integrated utility, presently.

1           Q.    Okay.  And I think the other word you use  
2 occasionally in your testimony is "company."  Would  
3 that be equivalent to how you've used AEP Ohio?

4           A.    Yes.

5           Q.    All right.  And let's turn to page 5, top  
6 of the page, the question asks you about recent  
7 history of AEP Ohio's capacity pricing and then you  
8 go on to use the "AEP" in the answer.  Can you tell  
9 me in your testimony when you are referring to "AEP,"  
10 who are you referring to?

11          A.    I believe it's AEP Corporation, but I  
12 don't know in what capacity, as an agent for AEP Ohio  
13 or if on its own.

14          Q.    So did you review the application that  
15 you reference in your testimony?

16          A.    I believe I reviewed excerpts of it.

17          Q.    What is the basis of your summary here  
18 about what's in the application, what relief AEP  
19 sought?

20          A.    Two things; I believe the excerpt of the  
21 application, and then in addition this Commission's  
22 entry from, I believe, March 7 has a recitation of  
23 the history of not only the retail proceedings but  
24 the FERC proceedings.

25          Q.    Okay.  So for purposes of your testimony

1 you did not make an independent evaluation of what  
2 was contained in the application; is that correct?

3 A. I believe you are talking about the FERC  
4 application?

5 Q. Yes.

6 A. I believe I reviewed excerpts of the  
7 application.

8 Q. Okay. You didn't make an independent  
9 evaluation of the entire application; is that  
10 correct?

11 A. I did not review the entire application.

12 Q. All right. On page 6 of your testimony  
13 you describe the two-tiered capacity charge structure  
14 at the top of the page, and you say "These charges  
15 are currently in effect until May 31, 2012," correct?

16 A. Yes.

17 Q. What happens on June 1?

18 A. The charges revert to RPM.

19 Q. Now, again on page 6, just to make sure,  
20 line 18, when you use the word "company" you are  
21 referring there to AEP Ohio, correct?

22 A. Yes.

23 Q. All right. Now, you quote a section from  
24 the PJM reliability assurance agreement starting on  
25 the bottom of page 6. Now, I would like to ask you

1 your understanding of various terms.

2 Line 22, you use the term "FRR entity."  
3 Do you know if that's a defined term in the  
4 reliability assurance agreement?

5 A. I didn't actually use the term. The PJM  
6 RAA itself actually uses that term just as a starting  
7 point in the response.

8 Q. Okay. I'm sorry.

9 A. As far as the FRR entity, whether or not  
10 that's a defined term, I don't know for certain, but  
11 I expect that it is.

12 Q. Okay. And the same with "FRR Capacity  
13 Plan," is that -- would you expect that to be a  
14 defined term?

15 A. Yes, I do.

16 Q. And, again, you didn't look at the  
17 reliability assurance agreement to identify what that  
18 means; is that correct?

19 A. I did not go back through the definition  
20 section of the RAA, that's correct.

21 Q. And how about in the line 23, the "FRR  
22 Service Area," did you -- would you expect because of  
23 the capitalization of "Service" and "Area," that is  
24 also a defined term in the reliability assurance  
25 agreement?

1           A.    Yes, I would.

2           Q.    Did you review the agreement to determine  
3 the definition of that term?

4           A.    No.

5           Q.    And on page 7, line 2, do you see the  
6 words FRR -- or the term "FRR Entity" there, and then  
7 it says "for its FRR capacity obligations"? Did you  
8 for purposes of your testimony identify the relevant  
9 FRR capacity obligations that are associated with AEP  
10 Ohio as you use that term in your testimony?

11          A.    Well, yes. Those capacity obligations  
12 include providing capacity for the shopping and  
13 nonshopping customers within the AEP Ohio footprint,  
14 the service area.

15          Q.    Do you understand that an FRR entity has  
16 to designate specific generating assets as part of  
17 its FRR obligation in satisfaction of PJM's  
18 requirements?

19          A.    I believe that's correct. However, you  
20 can substitute specific generating assets as well  
21 under certain circumstances.

22          Q.    And what is your understanding with  
23 regard to the specific generating units that have  
24 been identified to support the FRR capacity  
25 obligation?

1           A.    I have not done an investigation of that  
2   so I don't know.

3           Q.    Okay.  Now, on line 10, page 7, the quote  
4   you include in your testimony references an "FRR  
5   Entity's cost."  Did you look at the RAA or  
6   reliability assurance agreement to see if it contains  
7   a definition of cost?

8           A.    I don't believe that it does.

9           Q.    Okay.  Now, you --

10          A.    At least not with respect to the  
11   contention in this paragraph of this provision.

12          Q.    Now, if I were -- if I were an FRR  
13   entity, and I was making arrangements for capacity to  
14   satisfy my PJM obligation on a bilateral basis or  
15   through a contractual arrangement, and my payment for  
16   capacity was tied to a market-based price, my cost of  
17   that capacity would be based on a market-based price,  
18   correct?

19          A.    Well, the premise in your question  
20   answers itself, so the answer would be yes.

21          Q.    So the term "cost" does not necessarily  
22   indicate any particular pricing methodology to the  
23   entity that is purchasing the capacity; is that  
24   correct?

25          A.    Are you referring to the FRR entity or

1 the CRES provider?

2 Q. The FRR entity.

3 A. Well, the term "cost" is undefined in  
4 this provision.

5 Q. Right.

6 A. So there is no particular methodology to  
7 determine that "cost" that is specified, that the  
8 term itself is undefined.

9 Q. And so you understand that in this  
10 context that we're in an FRR entity that provides  
11 capacity to a CRES supplier in Ohio is essentially a  
12 capacity middleman; is that correct?

13 A. I think I would agree with that.

14 Q. Have you seen the commercials -- never  
15 mind.

16 And so if the capacity middleman or the  
17 FRR entity paid a market-based price for that  
18 capacity that is then resold to a CRES supplier, the  
19 FRR entity's cost of the resold capacity would be  
20 based on a market-based price, correct?

21 A. That's a virtually identical question to  
22 the question you asked me earlier, and the premise in  
23 the question answers itself. If you assume something  
24 and there is a result, is the assumption correct?  
25 That's basically what you're asking me, and the

1 answer, of course, would be yes under the  
2 hypothetical.

3 Q. Right. And -- thank you. Now, on page  
4 10 where you are talking about your ceiling price of  
5 145.79 per megawatt day, you say that "A single price  
6 structure," beginning at line 14, "A single price  
7 structure would also reduce customer confusion  
8 regarding queuing and would be administratively more  
9 efficient." What do you mean by "queuing"?

10 A. Well, the rush to get into the first tier  
11 is basically as opposed to landing in the second  
12 tier.

13 Q. Okay. And am I correct that RPM would  
14 provide a single price structure?

15 A. That is correct.

16 Q. And eliminate confusion about queuing?

17 A. Yes.

18 Q. So relative to your 145.79-megawatt day  
19 ceiling proposal, we could get to the same outcome by  
20 using RPM, correct?

21 A. With respect to those issues but not with  
22 respect to the issue of capital attraction, the  
23 second of the two objectives of the Commission  
24 according to its filing with the FERC.

25 Q. Right. Okay. Now, on the bottom of page

1 10 you begin to discuss the earned return for AEP  
2 Ohio in 2011. Is the analysis that you summarize  
3 there based upon information reported in the FERC  
4 Form 1 for Ohio Power for the year ended 2011?

5 A. No. I believe that I obtained the  
6 information from an SEC filing the 10-K.

7 Q. Okay.

8 A. Presumably the numbers would be the same  
9 but I didn't verify that. I don't believe at the  
10 time that I filed this testimony that AEP had filed  
11 its FERC Form 1 for 2011 yet.

12 Q. All right. Now, you mention on line 21  
13 that there was -- you made an adjustment to remove  
14 plant impairment expense. What is "plant impairment  
15 expense"?

16 A. My understanding is that AEP wrote off  
17 the remaining net book value of certain of its  
18 generating assets, generating units. I believe the  
19 Sporn facilities or one of the units there at that  
20 facility were written off, and these are nonrecurring  
21 or extraordinary items that really should not be  
22 counted in an ongoing computation of the earned  
23 return, the same manner that they are excluded for  
24 SEET purposes.

25 Q. Okay. So this was related to a reduction

1 in the asset value that AEP Ohio recorded in 2011; is  
2 that correct?

3 A. Yes. I have a footnote on my Exhibit  
4 LK-3, page 2 of 2, that describes the asset  
5 impairment adjustment in a little bit more detail.  
6 This is a write-off that AEP Ohio took in 2011 for  
7 Sporn Unit 5 and the FGD project at Muskingum Unit 5.

8 Q. Okay. And when -- when that impairment  
9 expense -- first of all, the impairment expense hits  
10 the income statement for that year; is that correct?

11 A. Yes, it does.

12 Q. And effectively reduces net income for  
13 the year?

14 A. That's correct. It's an unusual or  
15 nonrecurring item and under the SEET determination  
16 which we attempted to emulate as closely as possible  
17 with the exception of off-system sales, but the  
18 Commission has determined that for purposes of these  
19 types of earnings evaluations and determination of  
20 the earned rate of return that nonrecurring or  
21 extraordinary costs need to be removed.

22 Q. Okay.

23 A. So that's why I removed it.

24 Q. So in your methodological approach here  
25 it would be necessary for the Commission to -- if one

1 were to use an earned return type of benchmarking, it  
2 would be necessary for the Commission to look at the  
3 accounting and activities of the AEP Ohio for  
4 purposes of determining what types of adjustment  
5 should be made for purposes of restating the earned  
6 return?

7 A. Well, I don't -- I don't think I agree  
8 with that because you said with respect to what types  
9 of adjustments should be made. The Commission has  
10 already made the determination for SEET and what  
11 we've tried to do is pattern the ESM as closely as  
12 possible to the SEET. So the Commission has already  
13 made those determinations of the types of adjustments  
14 that should be made.

15 As to the specifics of the adjustments,  
16 of course, those would need to be identified and  
17 those are, I believe, readily identifiable in the  
18 published financial statements.

19 Q. Okay. You understand that the SEET, and  
20 you are referring to the significantly excessive  
21 earnings test process?

22 A. That's correct, yes.

23 Q. Otherwise known as "SEET"?

24 A. Yes, that's correct.

25 Q. What is your understanding of the purpose

1 of -- the SEET purpose?

2 A. The purpose of that test is to ensure  
3 that the utility's earnings are not significantly  
4 excessive as a result of ESP-related rate increases.

5 Q. Do you have any understanding with regard  
6 to where the Commission would get -- have the  
7 authority to establish an equity stabilization  
8 mechanism?

9 A. Well, I believe that the Commission in  
10 its filing to the FERC suggested that -- suggested in  
11 that filing that the state compensation mechanism  
12 would have to reflect a balance -- delicate balance,  
13 if you will, between RPM -- between the need to  
14 promote retail competition on the one hand and to  
15 enable the utility to continue to attract capital on  
16 the other hand.

17 And in addition to that, the Commission  
18 then in its entry, as I read that entry, on March 7,  
19 2012, where it establishes the two-tiered pricing,  
20 essentially established an RPM first tier pricing and  
21 then something else for the second tier.

22 So I believe that the Commission itself  
23 has determined that it has the authority to do so.  
24 And that would extend then in my assessment to the  
25 ESM.

1           Q.    So you have just given me all the reasons  
2 why you think the Commission would have the authority  
3 to adopt the equity stabilization mechanism related  
4 in your testimony?

5           A.    Well, I don't know if it's all the  
6 reasons I think that, but it certainly is support for  
7 the proposition that the Commission has the  
8 authority. Effectively I believe that you are asking  
9 me a legal question as to the extent of the  
10 Commission's authority.

11                   And what I am trying to do is give a  
12 layman's understanding of what I see as the  
13 Commission's own take on its authority without trying  
14 to get into the statute itself as far as the  
15 Commission's authority.

16           Q.    Right. And I understand the point that  
17 you're making. I guess my point, Mr. Kollen, is to  
18 the extent that you are recommending something  
19 illegal, or not authorized by a statute, then you  
20 wouldn't recommend to this Commission that the  
21 Commission go ahead and adopt it, would you, as an  
22 expert?

23           A.    I would agree with that. You know, it's  
24 one of those questions that you've asked me before  
25 with a premise that sort of answers itself.

1 Q. I have a habit of doing that.

2 A. It's actually very enjoyable.

3 Q. Well, for some people.

4 Now, the equity stabilization mechanism  
5 that you've recommended in your testimony, you are  
6 recommending that the Commission look at the total  
7 net income for all lines of business by AEP Ohio  
8 including regulated/unregulated activities, and using  
9 that as the numerator over the common equity balance  
10 for purposes of determining whether or not AEP Ohio  
11 has earned a return that would trigger some  
12 additional rate increase, correct?

13 A. Well, it's patterned after the SEET which  
14 includes in its numerator the company's earnings plus  
15 or minus various adjustments and then in the  
16 denominator of a common equity amount. And then the  
17 result of that by comparison to the benchmark rate of  
18 return, the so-called dead band, around the 9  
19 percent rate of return, whether that's 7 percent on  
20 the lower threshold or 11 percent on the upper  
21 threshold, would determine whether or not there is a  
22 surcharge or surcredit.

23 Q. Right. But you're using -- as I said a  
24 moment ago, my understanding of the math is that you  
25 would use total company allowances of business net

1 income as the numerator and total company common  
2 equity as the denominator that -- to calculate the  
3 earned return on equity, right?

4 A. Well, I couldn't really answer that yes  
5 because there are a series of adjustments both to the  
6 numerator and the denominator that the Commission has  
7 adopted for purposes of the SEET calculation. And,  
8 again, the concept here is we would emulate as  
9 closely as possible the SEET compensation with the  
10 exception of the off-system sales.

11 Q. Except, Mr. Kollen, that you are  
12 recommending that we set a floor return on common  
13 equity, correct?

14 A. Well, that -- that's true that the SEET  
15 computation does not have a floor in it, per se, only  
16 has a ceiling in it, but the concept, the computation  
17 conceptually and methodologically, is the same with  
18 the exception of the off-system sales.

19 Q. So let's talk about the accounting.  
20 Let's assume that AEP Ohio decides to give -- in 2011  
21 decides to give all of the executives a large bonus  
22 relative to the prior year. Would that be reflected  
23 in the net income reported for 2011?

24 A. Yes, unless it was deferred.

25 Q. Well, how are you recommending that

1       deferrals be handled?

2               A.     In the same manner that they are for the  
3       SEET.

4               Q.     All right.  So in the -- in the event  
5       that the executives of AEP Ohio were given a large  
6       bonus relative to the prior year, that would cause  
7       the 2011 net income to be less by the amount, year to  
8       year less, right?

9               A.     That's correct, as it would with the SEET  
10       as well.

11              Q.     Okay.  And in -- in the case of an  
12       impairment like the one that you described in your  
13       testimony, can you tell me what the effect on the  
14       balance sheet is when there is an impairment expense  
15       reported?

16              A.     Well, it starts really with the income  
17       statement.  The loss when you have an impairment  
18       depresses earnings for the period in which the  
19       impairment loss is recognized, and then it also has  
20       an effect on the balance sheet because it re --  
21       effectively reduces common equity.

22              Q.     Okay.  So have you recommended an  
23       adjustment to the common equity balance to reflect  
24       the impairment expense?

25              A.     I show that on my Exhibit LK-3 in the

1 computation.

2 Q. All right. So as the impairment expense  
3 you describe in your testimony is addressed on the  
4 balance sheet through a reduction in common equity,  
5 you are reducing the denominator in your earned  
6 income math, correct?

7 A. Well, that's the accounting on the  
8 company's books, but when you reverse that process,  
9 essentially what you do, restore the common equity to  
10 what it would have been but for the impairment loss,  
11 and you'll see that on my Exhibit LK-3.

12 Q. Right. Now, would the total company  
13 common equity balance include or reflect AEP Ohio's  
14 ownership in other companies?

15 A. That's correct. It would be whatever --  
16 whatever is on its balance sheet.

17 Q. So if AEP Ohio owned the Cardinal  
18 Operating Company, Central Coal Company, and the  
19 Conesville Coal Preparation Company, those -- that  
20 ownership would all be reflected in the common equity  
21 balance for AEP Ohio, correct?

22 A. Well, to the extent there was a common  
23 equity investment in those affiliates, but that would  
24 be equally as true with the SEET computation. What  
25 we would do is emulate as closely as possible the

1 SEET again with the exception of the off-system sales  
2 margins.

3 Q. Again, Mr. Kollen, the difference between  
4 the SEET process and what you are recommending is you  
5 are recommending a full return on common equity that  
6 would increase rates, aren't you?

7 A. Only in the circumstance where the  
8 company's earned return measured on the same basis  
9 for the SEET compensation was below the lower  
10 threshold of the dead band.

11 Q. Did you look at the other companies that  
12 are owned by AEP Ohio for purposes of identifying the  
13 extent to which those other owned interests are  
14 reflected in the common equity balance?

15 A. I did not.

16 Q. Would you accept, subject to check, and  
17 I'll provide you the FERC Form 1 for 2011, if you  
18 would like, that AEP Ohio owns Cardinal Operating  
19 Company and has 50 percent of the voting stock;  
20 Central Coal Company, has 50 percent of the voting  
21 stock; and the Conesville Coal Preparation Company  
22 with 100 percent of the voting stock?

23 A. Well, first of all, I don't know if  
24 that's true or not. It should be, in my assessment,  
25 a matter of public record, but then the question

1 becomes really whether or not there's any common  
2 equity at Ohio Power that is supporting those  
3 investments.

4 And then the next question is should  
5 there be an adjustment, and I believe that the  
6 Commission, even if it hasn't explicitly addressed  
7 that particular question already, has established  
8 that the SEET methodology in which these investments,  
9 to the extent they are funded by Ohio Power common  
10 equity, that isn't taken out of the denominator and  
11 so we're not proposing a change. I didn't go beyond  
12 the four corners of the SEET computation for the  
13 reasons that we discussed.

14 Q. Okay. Let's -- let's assume that AEP  
15 Ohio is operating the Cardinal station and that it  
16 incurs expenses as a result of operating that other  
17 business that are reflected in the total company  
18 income statement.

19 Are you suggesting that the Commission  
20 should allow an adjustment to retail rates in the  
21 event that the expenses recorded for AEP Ohio  
22 associated with lines of business unrelated to retail  
23 service should allow AEP Ohio to increase rates if  
24 the total company's earned return dropped below the  
25 floor you identify in your testimony?

1           A.    Well, first of all, I don't know that I  
2    agree with your premise.  I certainly don't have any  
3    actual support for it.  They are unrelated lines of  
4    business.  For all I know the Cardinal Coal Business,  
5    to the extent that there is one, may very well  
6    support the Cardinal Coal Plant.  In which case you  
7    would anticipate it would be appropriate to, in fact,  
8    consolidate those results.

9           But that's not an inquiry I made and,  
10   again, the reason I didn't make it is because we  
11   attempted to emulate as closely as possible the SEET  
12   calculation, the calculation that the Commission  
13   already has adopted.  We weren't looking to have that  
14   computation modified with the exception of cleaning  
15   up the off-system sales margins.

16           MR. RANDAZZO:  May I approach the  
17   witness?

18           EXAMINER SEE:  Yes.

19           Q.    Mr. Kollen, I am laying before you what I  
20   believe is the FERC Form 1 for 2011 for Ohio Power  
21   Company.  Will you accept that, subject to check?  
22   The name of the company is in the lower left-hand  
23   corner and the year-end period is 2011.

24           A.    I do see that.

25           Q.    Okay.  Would you accept that's the FERC

1 Form 1 for Ohio Power for 2011?

2 A. Well, I will accept it's the cover. I  
3 haven't looked through the Form 1 itself, if indeed  
4 that's what it is, but that's what the cover says.

5 Q. All right. I would like you to look at  
6 the Form 1 page that identifies the corporations  
7 controlled by the respondent. Do you see that page?

8 A. I do.

9 Q. And that would -- the respondent in this  
10 instance would be Ohio Power Company, correct?

11 A. Yes.

12 Q. And does it identify the corporations  
13 that are controlled by Ohio Power Company on that  
14 page?

15 A. That's what it says.

16 Q. And would you agree with me that those  
17 corporations include Capital -- Cardinal Operating  
18 Company, Central Coal Company, Conesville Coal  
19 Preparation Company?

20 A. Yes, and it says that Cardinal Operating  
21 Company operates the generating station. It says  
22 Central Coal Company is inactive. And it says that  
23 Conesville Coal Preparation Company provides coal  
24 washing services for one of the company's generating  
25 stations.

1                   So, you know, the two that are active  
2                   are -- or appear to be active, my assessment would be  
3                   that they are directly related to the operation of  
4                   the company's generation assets and for whatever  
5                   reason there were certain functions put into separate  
6                   entities.

7                   Q.     Okay.   Interesting assumption.

8                   So when you said your assumption is that  
9                   these companies are associated with the generating  
10                  assets, what generating assets did you have in mind?

11                  A.     Well, it looks like Cardinal and  
12                  Conesville.

13                  Q.     Do you know how many units are at  
14                  Cardinal?

15                  A.     I don't.

16                  Q.     Do you know whether or not Cardinal units  
17                  are used for purposes of supplying electricity to  
18                  Buckeye Power, which is the generating company for  
19                  the co-ops in the state?

20                  A.     I have not inquired into that and, again,  
21                  at the risk of being repetitive, you know, I simply  
22                  attempted to emulate the SEET calculation. That was  
23                  something the Commission adopted. It's an  
24                  appropriate pattern for the ESM, and I didn't inquire  
25                  further other than for the off-system sales margins

1 issue.

2 Q. All right. Now, if Ohio Power has an  
3 ownership interest in these companies, would that be  
4 reflected in the common equity -- total company  
5 common equity of Ohio Power?

6 A. Well, that was the discussion we had  
7 previously. I don't know the answer to that. I  
8 don't know if there is an investment, a dollar  
9 investment, or if there is -- how Ohio Power would  
10 have financed that investment.

11 Q. Now, embedded in Ohio Power's total  
12 company income statement, which would be revenues and  
13 expense, right?

14 A. Yes.

15 Q. That's what goes on the income statement.  
16 Would there be an allocation of administrative and  
17 general expense to Ohio Power Company flowing from  
18 the parent company and the service corporation and  
19 perhaps other affiliates?

20 A. Generally the affiliate charges flow from  
21 AEP Service Corp., not from the parent company. The  
22 Service Corp. employs, the executives of AEP, those  
23 affiliate charges go into all AEP, first-tier  
24 affiliates at least.

25 Q. Okay.

1           A.    And some second and third-tier  
2 affiliates.

3           Q.    All right.  And so executive compensation  
4 at the service company level would flow in some  
5 amount you would expect to Ohio Power; is that  
6 correct?

7           A.    Yes.

8           Q.    Okay.

9           A.    I would not only expect it, but I have  
10 done audits of that, and the answer to that is yes,  
11 that's true.

12          Q.    So, for example, in 2011 as reported in  
13 the Form 1, the chairman of the board for AEP was  
14 compensated over \$9 million.  Some of that would flow  
15 to Ohio Power, it would be your expectation, correct?

16          A.    Yes.

17          Q.    And then on the Form 1, would you agree  
18 that it shows the same individual received  
19 approximately \$488,000 in personal aircraft use?  
20 Would that also flow to the Ohio Power income  
21 statement?

22          A.    I don't know.  Some of those costs are  
23 retained or if they are pushed down to the affiliates  
24 such as Ohio Power, they are put below the line and  
25 so it's true that they would appear in net income.

1 It isn't true that such charges or costs would appear  
2 in operating income.

3 Q. Okay. But that's one of the things that  
4 could affect the earned return if you calculated it  
5 on a total company basis, correct?

6 A. Yes, it is.

7 EXAMINER SEE: Mr. Randazzo, do you have  
8 a second copy of the form you are looking at?

9 MR. RANDAZZO: Your Honors, I do not have  
10 one handy with me. I will provide one.

11 EXAMINER SEE: We have one. It would  
12 just allow you not to stand over the witness.

13 MR. RANDAZZO: Okay. I am happy to walk  
14 away from the witness if that's the point here.

15 Q. (By Mr. Randazzo) Mr. Kollen, do you have  
16 your 10-K you relied on for purposes of your 2011  
17 analysis?

18 A. I can check. I'm not certain. I don't  
19 have the entire, but I may have an excerpt of it.

20 Q. When -- when -- would you accept, subject  
21 to check, that for 2011 Ohio Power Company had net  
22 income of approximately \$464,992,339?

23 A. I would -- yes, I would agree with you on  
24 that. If you look on my Exhibit LK-3, page 1, this  
25 is the unadjusted return on common equity from the

1 Ohio Power 2011 10-K, and it's about the fourth  
2 labeled line on that schedule. It shows earnings net  
3 income total company of 464,993,000.

4 Q. Right. And if you know, what was the  
5 dollar magnitude of the dividends paid to the parent  
6 corporation by AEP Ohio in that same year, 2011?

7 A. I do not.

8 Q. Would you accept, subject to check, it  
9 was \$653 million?

10 A. I just don't have any basis to accept or  
11 reject.

12 Q. Well, it's in the 10-K, right?

13 A. It should be, yes.

14 Q. Will you --

15 A. I didn't specifically look at that.

16 Q. Will you accept, subject to check, it's  
17 \$653 million?

18 A. For what that's worth, I can accept it,  
19 but I neither accept or reject it for the  
20 truthfulness of the matter because I simply don't  
21 know.

22 Q. All right. Let's assume that it was \$650  
23 million. If AEP Ohio had \$650 million in dividends  
24 and net income of 464 million -- 465 million,  
25 approximately, is there an impact on the balance

1 sheet?

2 A. Well, there is, and I can answer your  
3 question -- your previous question in part factually  
4 by looking at my Exhibit LK-3 where I did take the  
5 common equity balance. And if you look on Exhibit  
6 LK-3, page 1 of 2, the first line is the common  
7 equity balance of 4 million 654 million at the end of  
8 2010. At the end of 2011 it was 4 million  
9 450 million so, in other words, it went down 204 --  
10 \$204 million.

11 Now, normally it would have gone up by  
12 the amount of the net income for the year, so if we  
13 add 204 to 464, it would be roughly \$670 million,  
14 would be the dividend.

15 Q. Okay.

16 A. I guess that confirms that the 650 amount  
17 you cited is at least in the ballpark.

18 Q. Thank you for that. You had it all the  
19 time.

20 A. I certainly did.

21 Q. Okay. So in the event that a company,  
22 AEP Ohio, in this circumstance pays more out in  
23 dividend than they have in net income, that has the  
24 effect of reducing the common equity, right?

25 A. It does. On the other hand, it has the

1 effect of reducing the earned return because the  
2 denominator is less.

3 Q. It has the effect of reducing the earned  
4 return?

5 A. I'm sorry, did I say that? Did I say  
6 "reducing"? I meant to say increasing.

7 Q. Right. So --

8 A. You reduce the common equity balance. It  
9 necessarily, all else being equal, increases the rate  
10 of return. I'm sorry, I misspoke.

11 Q. That's all right. I do that myself.

12 So what we've just illustrated, I think,  
13 and perhaps you'll agree, I hope, that the dividend  
14 policy of AEP Ohio will have an impact on the earned  
15 return calculation, correct?

16 A. Yes, that's true.

17 Q. Did you look at the dividend policy of  
18 AEP Ohio over the last 10 years?

19 A. I believe I have at different times for  
20 different proceedings but not in conjunction with  
21 this, and I don't recall what that policy is.

22 Q. Now, in the 10-K and the FERC Form 1,  
23 will you agree that there is generally an extensive  
24 discussion of the accounting policies that are  
25 followed by the reporting entity, in this case AEP

1 Ohio?

2 A. Yes.

3 Q. If a company changes accounting policies  
4 year to year, that also could have an impact on the  
5 computation of net income and your total company  
6 earned return, correct?

7 A. It could, that's a possibility, yes.

8 Q. Is -- is Ohio Power Company engaged in  
9 energy trading activities?

10 A. I don't know the answer to that.

11 Q. Do you know how Ohio Power Company  
12 accounts for the gains and losses associated with  
13 energy trading?

14 A. I would imagine in accordance with  
15 Generally Accepted Accounting Principles.

16 Q. And there's a wide range of acceptable  
17 accounting principles within Generally Accepted  
18 Accounting Principles, correct?

19 A. I don't think I would agree with that.

20 Q. Do you have the 10-K with you?

21 A. I was looking for that earlier. I  
22 have -- I believe I have an excerpt but that's it. I  
23 don't have the entirety of the 10-K.

24 MR. RANDAZZO: Your Honor --

25 Q. And you were talking about the 10-K for

1 2011; is that correct?

2 A. That's correct. I do have an excerpt of  
3 it with me.

4 Q. Okay. And so we're clear, your analysis  
5 is predicated on the information that's embedded in  
6 the 10-K for Ohio Power Company for 2011, correct?

7 A. Well, the analysis I did on my Exhibit  
8 LK-3 and in order to determine the earned return for  
9 2011, I relied upon the 10-K for that purpose.

10 Q. Okay. Let's assume -- I want you to  
11 assume that Ohio Power is engaged in energy marketing  
12 and risk management activities in wholesale  
13 electricity, coal, natural gas, emission allowances  
14 marketing, as well as risk management activities.  
15 Will you assume that for me?

16 A. Yes.

17 Q. Now, if there are gains and losses  
18 associated with that activity, your total company  
19 approach would embed those gains and losses in the  
20 calculation of the earned return on common equity,  
21 correct?

22 A. Yes, that's correct. And while you were  
23 asking me that question, I was able to confirm that  
24 indeed Ohio Power does engage in those activities.  
25 The service corp. performs those activities on behalf

1 of Ohio Power Company but the results, the financial  
2 results, of those activities do show up on Ohio Power  
3 Company's financial statements.

4 Q. And from the information that you've been  
5 able to pull forward from your memory as a result of  
6 referring to the document that you have, do you know  
7 whether or not Ohio Power uses what is called  
8 market-to-market accounting to handle the gains and  
9 losses associated with energy trading activities in  
10 the wholesale market?

11 A. I don't see that specifically, but that  
12 would typically be the case depending upon the  
13 purpose for which the transaction was entered into at  
14 the time it was entered into. There's a series of  
15 rules under Generally Accepted Accounting Principles  
16 that determine whether or not a transaction is marked  
17 market-to-market, again, depending upon the purpose  
18 of the transaction.

19 Q. Okay. And, again, so I understand your  
20 method, total company earned return calculation to  
21 the extent that AEP Ohio paid fines and penalties  
22 associated with violating environmental laws, for  
23 example, those fines and penalties would be reflected  
24 in your computation of net income and embedded in the  
25 earned return number, correct?

1           A.    Unless they were identified as unusual or  
2 extraordinary nonrecurring types of costs. In which  
3 case they should be taken out according to the  
4 Commission's determination already.

5           Q.    And how about potential losses associated  
6 with storms and other fires, tornadoes, those kinds  
7 of things? Would that be reflected in the income  
8 statement and then embedded in your earned return  
9 number based upon your methodological approach?

10          A.    Well, first of all, I don't think  
11 generally that the storm damages affect the  
12 generating units, generally speaking, but they do  
13 affect transmission and distribution assets and the  
14 cost to restore service.

15                I'm not certain whether or not Ohio Power  
16 uses reserve accounting for storm damage expenses,  
17 but if it does, then the actual costs of a storm  
18 would not affect the income statement because the  
19 actual costs of the storm are charged against the  
20 accounting reserve.

21                If on the other hand Ohio Power does not  
22 use reserve accounting, then the costs of a storm  
23 would go through the income statement. I just don't  
24 know which accounting Ohio Power uses for that  
25 purpose.

1           Q.    Okay.  How about if Ohio Power  
2           contributes to political campaigns, would that be  
3           reflected in the income statement that you recommend  
4           be used on a total company basis?

5           A.    I don't know.  I don't even know if Ohio  
6           Power can contribute to political candidates or  
7           causes.

8           Q.    Well, according to Generally Accepted  
9           Accounting Principles would it be appropriate to  
10          include political campaigns as -- as an expense for  
11          financial reporting purposes?

12          A.    Well, if we start from the premise that  
13          it's a legal undertaking and that it's a legal  
14          contribution, then it would be expensed when it was  
15          attributed, and it would go through the income  
16          statement.

17          Q.    How about the cost of commercials on  
18          T.V.?

19          A.    Anything that is legal that is expensed  
20          through the income statement would be reflected in  
21          the net income number used in the numerator for the  
22          ESM but, again, it's the same subject to adjustments.

23                  Our purpose or our approach was to  
24          emulate the SEET, so to the extent that these costs  
25          are flowed through into net income and those would

1 then be reflected in the numerator of the earned  
2 return computation, they are also reflected in the  
3 SEET computation.

4 Q. Okay. Mr. Kollen, I appreciate you  
5 helping us understand what you are recommending by  
6 referencing to the SEET, but would you agree with me  
7 that the SEET can never operate to increase rates?

8 A. That's correct.

9 Q. And what you're recommending is a  
10 mechanism that would automatically increase rates,  
11 right?

12 A. That's correct, not automatically but it  
13 would result in an increase in rates if the earned  
14 return was below the lower threshold.

15 Q. All right. And what type of audit  
16 process are you recommending that the Commission use  
17 for purposes of implementing this equity  
18 stabilization mechanism?

19 A. Well, the same one that is undertaken for  
20 the SEET, to the extent that there is one. In other  
21 words, the two would run in parallel, be the same  
22 proceeding presumably. The only difference would be  
23 the returns would be different.

24 Q. Okay. All right. Now, do you appear in  
25 other jurisdictions on behalf of members of the Ohio

1 Energy Group?

2 A. I suspect that I do, yes.

3 Q. Like Kentucky?

4 A. Yes.

5 Q. Do you think Kentucky Power should have  
6 an equity stabilization mechanism?

7 A. Different situation, that is a vertically  
8 integrated utility that is wholly subject to all  
9 retail rate regulation.

10 Q. But I thought you said your regulatory  
11 model was designed to comply with the Hope and  
12 Bluefield Standards and to make sure that the utility  
13 has the ability to contribute capital, correct?

14 A. Well, that is a Commission goal. I  
15 didn't state that it was my goal necessarily. What I  
16 was attempting to do was address both of the  
17 Commission's objectives; the first one was to promote  
18 retail competition on the one hand; on the other  
19 hand, attract capital, to allow the utility to  
20 attract capital. And I think that that has -- that  
21 objective has similarity to retail rate regulation.

22 MR. RANDAZZO: Could I have the last part  
23 of that answer read back, please.

24 Q. And similarities to retail rate  
25 regulation such as takes place in Kentucky?

1           A.     Generically, and that would include  
2     Kentucky, yes.

3           Q.     And if we want to simulate the effect of  
4     regulation in Kentucky, would we -- would it be  
5     easier just to let Ohio customers pay the rates that  
6     are charged by Kentucky Power?

7           A.     No. That isn't really the point. The  
8     point is that the Commission itself stated in its  
9     filing with the FERC, this is not the Commission  
10    staff, that the Commission itself stated that it has  
11    two objectives here in this proceeding, and the first  
12    objective is to promote retail competition. The  
13    second one is to attract capital.

14                 And I said that that second of the two  
15    objectives is similar to an objective in a -- in a  
16    regulated -- for retail ratemaking purposes  
17    environment.

18                 MR. RANDAZZO: That's all I have. Thank  
19    you very much.

20                 Thank you, Mr. Kollen.

21                 THE WITNESS: You're welcome.

22                 EXAMINER SEE: Ms. Kingery?

23                 MS. KINGERY: I have no questions, your  
24    Honor.

25                 EXAMINER SEE: Mr. Lang?

1 MR. LANG: Yes, your Honor. Thank you.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Lang:

5 Q. Good morning, Mr. Kollen.

6 A. Good morning.

7 Q. Now, looking at the expert testimony of  
8 appearances on your Exhibit 1, I see you participated  
9 in a few cases before the Federal Energy Regulatory  
10 Commission, or FERC; is that correct?

11 A. Yes, more than a few.

12 Q. More than a few. And those were cases in  
13 which you submitted testimony on behalf of the  
14 Louisiana Public Service Commission; is that correct?

15 A. Yes.

16 Q. Those matters related to the Entergy  
17 companies?

18 A. Yes, that's correct, and the Entergy  
19 system agreement which is similar to the AEP pool  
20 agreement in many respects, not the same but similar.

21 Q. Okay. Is the -- with regard to your FERC  
22 experience, is it fair to say you are not involved in  
23 matters at the FERC relating to PJM?

24 A. I think that's true.

25 Q. And are you -- you would agree that the

1 state compensation mechanism at issue in this  
2 proceeding could be subject to potential review by  
3 the FERC?

4 A. I do understand that, yes.

5 Q. Now, do you also agree that it is -- that  
6 according to FERC it's the -- the national policy has  
7 been to foster competition?

8 A. Yes.

9 Q. And it's FERC's responsibility to guard  
10 the consumer from exploitation by noncompetitive  
11 electric companies?

12 A. I suspect you are reading that from  
13 something, but I understand that to be the FERC's  
14 policy. I am not sure what the source of the  
15 citation is, but I do understand that.

16 Q. Fair enough. Now, with regard to your  
17 suggestion, I understand it's an alternative  
18 suggestion to have the state compensation mechanism  
19 set at a price of approximately 145 per megawatt day?

20 A. Well, not set at that price but no more  
21 than that price.

22 Q. Okay.

23 A. In other words, that would be a maximum  
24 level. And what we were attempting to do there is to  
25 say, Commission, if you don't think RPM is

1 sufficient, sufficient compensation to AEP Ohio, then  
2 if you have an adder to that, it should not exceed  
3 the 145. The sum should not exceed the 145.

4 Q. And at \$146 per megawatt day, that  
5 maximum number that you are recommending for the next  
6 two planning years, that is multiples of the RPM  
7 clearing price, correct?

8 A. There are three separate RPM clearing  
9 prices for the three-year period, yes.

10 Q. And for the next two planning years that  
11 \$145 per megawatt day is a multiple of the RPM  
12 clearing price for those next two years, correct?

13 A. If you are talking about the '12 to '13  
14 and then '13 to '14, the answer is yes.

15 Q. Thank you.

16 A. I was thinking that your question went to  
17 the final two years, and I just couldn't figure out  
18 exactly what you were saying, so, but with respect to  
19 the next two years, the immediately upcoming two  
20 years, the answer is yes.

21 Q. And just focusing on the next two years,  
22 you would agree that the RPM process that resulted in  
23 that pricing is a transparent one?

24 A. I generally would agree with that, yes.

25 Q. And certainly the clearing prices for

1 those two years are known?

2 A. They are known.

3 Q. Now, on I think it's the top of page 9 of  
4 your testimony, you refer to a 2.4 percent return on  
5 equity and that -- are you referring there to the  
6 return on equity analysis that the company AEP Ohio  
7 performed?

8 A. Yes.

9 Q. And do you know whether that calculation  
10 of return on equity for 2013 assumes -- assumes  
11 Commission approval of the company's currently  
12 pending AEP electric security plan?

13 A. I don't think it does. I think that what  
14 it assumes is that the present rates are maintained  
15 going forward. And then there's some assumption with  
16 respect to shopping, the number of customers and the  
17 load that actually shopped.

18 Q. So there is an assumption with regard to  
19 shopping and then there's also the assumption  
20 resulting in the 2.4 percent return on equity is the  
21 shopping at RPM-priced capacity for the shopping  
22 load, correct?

23 A. Yes, that's correct. That's my  
24 understanding. I didn't actually trace through the  
25 calculation. I simply repeated the result.

1           Q.    And under the company's analysis, the  
2 more shopping there is, the lower the company's  
3 calculated return on equity; is that correct?

4           A.    Yes, that's correct.

5           Q.    Now, the -- the return on equity  
6 calculation that the company made is for the year  
7 2013 so, you know, are we talking in terms of this --  
8 this return on equity number that's of concern? Are  
9 we only talking about 2013?

10          A.    The reference there is only to 2013. Of  
11 course, all else being equal, even with the same  
12 level of shopping in '13, if we move forward into  
13 '14, the return on equity would go up by comparison  
14 because for a portion of the year the RPM goes up.

15          Q.    And are you -- are you aware of AEP  
16 Ohio's proposal for corporate separation and pool  
17 termination, that that would occur effective  
18 January 1, 2014?

19          A.    Yes.

20          Q.    And so also in -- after -- if that occurs  
21 and after 2013, the Ohio -- Ohio Power will be able  
22 to receive 100 percent of its off-system revenues  
23 rather than the 40 percent that it currently receives  
24 under the pool, correct?

25          A.    That I'm not sure about. I think that

1 is -- you are talking about the MLR issue?

2 Q. Yes.

3 A. The member load ratio issue? I think  
4 there are things that the company could do to ensure  
5 that Ohio Power retains 100 percent of those margins  
6 as opposed to sharing them with the other members.

7 But now, let's see, your question was the  
8 post-divestiture, the post-corporate separation; is  
9 that correct?

10 Q. Maybe I can simplify --

11 A. Okay.

12 Q. Post -- after pool termination, the MLR,  
13 or member load ratio, that is part of the pool  
14 agreement would go away, right?

15 A. That's correct, that's correct. And  
16 under that scenario, which is what we expect, that's  
17 right, Ohio Power would retain 100 percent.

18 Q. Are you familiar with the shopping  
19 estimates that AEP Ohio provided in its 2010  
20 long-term forecast report proceeding, which actually  
21 had a hearing on a couple of weeks ago?

22 A. No.

23 Q. The 2.3 percent return on equity, is it  
24 your understanding that it's based on an assumption  
25 there will be 2 to 3 times more shopping in 2013 than

1       there is currently?

2               A.     Well, I think that at the end of 2011  
3       there was approximately 20 percent shopping, and I  
4       think that the assumption built into the 2.4 percent  
5       return on equity is 67 percent shopping or something  
6       in that neighborhood.

7               Q.     Do you know whether similar -- similar  
8       increases of shopping in the service territories of  
9       other electric distribution utilities in Ohio  
10      occurred as a result -- or one of the factors was  
11      that other EDUs had aggregation of governmental  
12      aggregation?

13              A.     I'm not sure what you're asking.

14              Q.     Are you aware -- one example is an entity  
15      in Northern Ohio called NOPEC which actually  
16      aggregates the governmental aggregation communities.  
17      Are you familiar with NOPEC?

18              A.     No, I believe not, no.

19              Q.     Now, the earnings stabilization  
20      mechanism, is -- is your proposal for an earnings  
21      stabilization mechanism on top of or in addition to  
22      the recommendation of a maximum state compensation  
23      mechanism of \$146?

24              A.     It works the other way. In other words,  
25      our primary recommendation is for the RPM, but if the

1 Commission wants to address the second of the two  
2 objectives, that is, attract capital, then our  
3 proposal is that in assessing where that state  
4 compensation level should be, that it should not be  
5 more than \$145, that would be the first threshold,  
6 not more than that.

7           Could be someplace in between RPM and the  
8 145, but then in addition the result should be  
9 subject to the equity stabilization mechanism, the  
10 earnings test. And that essentially is for the  
11 purposes of ensuring that the company is not provided  
12 an excessive compensation on the one hand. On the  
13 other hand, that it's not confiscatory, at least  
14 temporarily.

15           Q. So -- so one option for the Commission  
16 would be simply using the RPM pricing for the next  
17 three planning years plus the stabilization  
18 mechanism.

19           A. Well, that isn't one of our proposals. I  
20 mean, our -- our proposal is to use the RPM but --  
21 and that would promote retail competition. That  
22 would serve the first of the two objectives.

23           However, if the Commission seriously  
24 addresses the second of the two objectives, that is,  
25 to attract capital, then it could price the capacity

1 above the RPM up to 145.79 and then the earnings  
2 would be subject to the equity stabilization  
3 mechanism because we think that that essentially  
4 provides some comfort, if you will, to customers that  
5 the capacity price is not excessive from that -- the  
6 objective of attempting to attract capital, that's  
7 the one objective.

8 And then, on the other hand, that is not  
9 confiscatory, at least on a temporary basis. That's  
10 the rationale behind it.

11 Q. Okay. And just trying to understand,  
12 understanding the primary recommendation is RPM.

13 A. Yes.

14 Q. As the alternative option that's in your  
15 testimony, the Commission could use like the next --  
16 the next three-year average for RPM of approximately,  
17 you know, 78, 80 dollars per megawatt day and then  
18 combine that with this earnings stabilization  
19 mechanism you described in your testimony.

20 A. Yes. That isn't one of our  
21 recommendations but that is another responsibility  
22 the Commission could undertake. In other words, it  
23 could blend some of the recommendations. The idea  
24 really is to try to inform the Commission as to an  
25 approach that would be different than the RPM at the

1 one end, you know, that is proposed by many of the  
2 intervenors in this proceeding on the one end and on  
3 the other end the full capacity cost based on  
4 embedded costs that the company is proposing, so.

5 Q. Now, when you talk about like RPM on the  
6 one end, you certainly recognize that's what the  
7 market price would be in the rest of Ohio and in the  
8 rest of PJM; is that correct?

9 A. Yes, I do, yes.

10 Q. Now, we are -- what we are talking about  
11 here is a transition period of a three-year  
12 transition period for AEP Ohio, correct?

13 A. Yes.

14 Q. And at the end of that transition it's a  
15 transmission -- a transition to the -- I guess to the  
16 fully competitive market, correct?

17 A. Yes.

18 Q. And the -- so the period that we are  
19 talking about ends May 31, 2015, correct?

20 A. Correct.

21 Q. Now, and the alternative with the  
22 earnings stabilization mechanism is -- is a -- is  
23 that transition charged to those market rates if AEP  
24 Ohio's earnings would be less than 7 percent,  
25 correct?

1           A.    Yes.

2           Q.    And is that -- that determination of  
3 whether it's less than 7 percent, that's made on a  
4 year-by-year basis for each of those three years?

5           A.    Yes.  Same thing with the SEET.  In other  
6 words, our proposal is that the process parallels the  
7 SEET, the filing would be made at the same time, the  
8 calculations would be consistent with the exception  
9 of the off-system sales margins, and just that the  
10 return on equity benchmarks would be different.

11                    You would have a threshold -- a much  
12 higher threshold for the SEET test, and then on the  
13 other hand you would have a lower threshold and a  
14 lower upper threshold for the ESM, the equity  
15 stabilization mechanism.

16           Q.    Now, the -- using 7 percent as the lower  
17 band, in your testimony you have referenced, I think  
18 Mr. Randazzo has referred to it as the -- when --  
19 when rates are confiscatory.  Is the 7 percent --  
20 are you saying that a return on equity of less than  
21 7 percent would be confiscatory?

22           A.    In my judgment that's a -- that's a  
23 fairly lower earned rate of return but it's  
24 comparable to what the other AEP East utilities have  
25 earned over the last couple of years.  So I think

1 that that is an appropriate lower threshold, but  
2 something lower than that and intentionally set to  
3 achieve a lower return could be considered  
4 confiscatory.

5 Q. Let's be clear on that. So if you  
6 have -- if you have a return on equity of -- if AEP  
7 Ohio has a return on equity for say one year at  
8 6.8 percent and the year before it's 10 percent and  
9 the year after it's 10 percent, is that 6.8 percent,  
10 are you saying that that would be confiscatory?

11 A. I'm saying that it could be and the  
12 calculations are done on a discrete annual basis.  
13 And, you know, again, it was an attempt to emulate as  
14 closely as possible the SEET process rather than  
15 averaging over three years on a rolling basis or  
16 something like that.

17 Your point that, you know, some average,  
18 you know, could be used, that's another possibility,  
19 but, again, our attempt was to emulate the SEET  
20 process. But the Commission, of course, could  
21 exercise some discretion and do that on a -- on some  
22 kind of a rolling average basis if they chose to.

23 Q. Now, similar question, same example you  
24 have, say, you know, 10 percent in 2012, 6.8 percent  
25 in 2013, 10 percent in 2014, is it also your opinion

1     that under -- under those circumstances AEP Ohio  
2     would be unable to attract capital?

3             A.    No, that isn't my intent.

4             Q.    Okay.  Now, you refer on page 13 of your  
5     testimony to the other AEP East affiliated utilities.  
6     Now, the -- the states where these affiliates  
7     operate, West Virginia, Kentucky, and Indiana, you  
8     agree those are -- those are in the deregulated  
9     states?

10            A.    Generally, that's correct, and you forgot  
11    Virginia.  I don't think you said Virginia, right?

12            Q.    I said West Virginia, I did not say  
13    Virginia, so thank you.

14            A.    Okay.

15            Q.    And also with regard to AEP Indiana and  
16    Michigan, in -- for 2010 and 2011, they have not had  
17    retail competition in the AEP Indiana and Michigan  
18    territory in Michigan, correct?

19            A.    I believe that is correct.

20            Q.    Now, the return on equity that's shown  
21    for Appalachian Power, is that a return on equity  
22    that's -- that's confiscatory?

23            A.    If those rates continued in effect longer  
24    term, I would say yes.  Not necessarily on a  
25    temporary basis.

1           Q.    Right.  So you have to look at all of the  
2 earnings they have and look at that over long-term  
3 when making that confiscatory determination; is that  
4 fair?

5           A.    Well, I think generally I would agree  
6 with that.  I think with respect to the ESM what we  
7 were looking at is a protection, if you will, that if  
8 the capacity rate was set too high, there was some  
9 way to essentially protect the consumer.  On the  
10 other hand, if it was set too low, there was an  
11 opportunity then for the company to essentially up  
12 that -- that rate.  And so it was an attempt to  
13 balance it from that perspective.

14          Q.    For the -- I just want to ask a couple  
15 questions of practically how this works.

16          A.    Okay.

17          Q.    Let's assume you have a return on equity  
18 for 2013 that is 3 percent.  When would that actually  
19 be determined?

20          A.    That would be determined in the same  
21 procedural manner that the SEET earnings are  
22 determined.  So, in other words, a filing would be  
23 made sometime in May of the following year, and then  
24 the Commission would make a determination there would  
25 be a refund or a surcharge.

1           Q.    So what would be your estimate of when  
2   that surcharge would begin for that -- that would be  
3   a surcharge to compensate for that 2013 year?

4           A.    I would imagine sometime later in the  
5   year following the actual calendar year.

6           Q.    Okay.  So later -- it would start later  
7   in, say, 2014?

8           A.    Correct.

9           Q.    And then how long would that run?

10          A.    I would anticipate a year.  But it could  
11   follow -- it could follow, quite frankly, the same  
12   approach that the SEET follows.  And that would be  
13   our recommendation.

14          Q.    So with that example if it starts in late  
15   2014, that charge would actually be part of Ohio  
16   Power's rates actually going -- going past the  
17   transition period that we are talking about, correct?

18          A.    Yes, that's correct.

19          Q.    Now, you're not proposing that a prudence  
20   review would be included in that analysis, are you?

21          A.    Prudence review for what purpose?

22          Q.    For setting the ESM.

23          A.    Well, I am not sure how you are using the  
24   term "prudence," but it still would require a review  
25   similar to that that is undertaken for the SEET.  And

1 the adjustments all would be the same, although we  
2 recommend that there be -- that the off-system sales  
3 margins be included, whereas, the SEET presently  
4 doesn't include those or includes a scaled version of  
5 that.

6 But in any event we would anticipate the  
7 same type of process, the same type of review. So  
8 that would entail a review of nonrecurring expenses,  
9 extraordinary expenses, inappropriate expenses to the  
10 extent they fall within the exclusions as specified  
11 by the Commission to the SEET.

12 Q. You said including off-system sales. Is  
13 it your opinion that when the Commission is  
14 considering whether AEP Ohio is able to attract  
15 capital, that it would necessarily have to include  
16 all of the revenues of Ohio Power including  
17 off-system sales?

18 A. Yes.

19 Q. In the example that I gave of return on  
20 earnings in 2013 of 3 percent, it's possible that  
21 those earnings could result from company management  
22 imprudence, correct?

23 A. That's true.

24 Q. Now, if AEP Ohio earns -- this is again  
25 under the bands, the 7 percent, 11 percent bands, if

1 AEP Ohio earns more than 11 percent on its wholesale  
2 business and to a greater degree than it earns under  
3 11 percent on its retail business, would wholesale  
4 customers have to share the credit with nonshopping  
5 customers?

6 A. Are you talking about whole -- full  
7 requirements wholesale customers?

8 Q. Yes.

9 A. I would think so but this -- listen, this  
10 is a retail ratemaking mechanism and there is a  
11 jurisdictional allocation, I believe, in the SEET  
12 formula itself.

13 Q. Now, the -- we had discussions at the  
14 beginning of your testimony about the -- the  
15 stability rider that was approved in the Duke case  
16 by -- and that was by a settlement or a stipulation;  
17 is that your understanding?

18 A. Yes.

19 Q. And is it also your understanding that  
20 the settlement itself says that it's not  
21 precedential? It's not intended to have a  
22 precedential effect for other cases?

23 A. Yes, sir, that's my understanding. What  
24 we were talk -- attempting to do here is saying,  
25 listen, the Commission did and has approved something

1 in addition to RPM and we said, listen, if you  
2 compute that based upon the premium of the difference  
3 between the 145.79 and the RPM on average, that  
4 premium turns out to be 60 percent load factor  
5 Customer, roughly the same amount.

6 So what we did is we just simply compared  
7 that attempting to say the Commission should do that  
8 not necessarily based upon the Duke settlement but  
9 simply saying that it has adopted something similar  
10 to our proposal in the past.

11 Q. Now, do you understand that when there  
12 are settlements or stipulations reached in Commission  
13 proceedings, one of the reasons -- one of the reasons  
14 those settlements say that they should not have a  
15 precedential effect in other proceedings is because  
16 there is a number of elements that go into the  
17 settlement and no one piece of the settlement should  
18 be evaluated without taking the whole package into  
19 consideration?

20 A. Yeah, I understand that that's the  
21 predicate for the paragraphs or the provisions  
22 normally that say that the settlement agreement would  
23 have no precedential effect. However, they can be  
24 used, I think, to just simply say, listen, the  
25 Commission has recognized that RPM in, you know,

1 other circumstances may not be wholly compensatory  
2 but there may be other objectives and that state law  
3 doesn't prohibit that type of assessment.

4 Q. Now, are you aware that in the Duke  
5 proceeding all the customers in the Duke territory  
6 under that settlement immediately got competitive  
7 market prices?

8 A. Yes.

9 Q. And here today -- another provision is  
10 that Duke agreed to purchase CRES providers  
11 receivables at a zero discount, correct?

12 A. I don't know.

13 Q. You don't know that one?

14 A. No. I don't have that.

15 Q. Well, in any event, what you're proposing  
16 as your alternative proposal with the ESM, would you  
17 agree that it's more beneficial to the companies than  
18 what's in the Duke settlement?

19 A. I think it is because it essentially  
20 includes the equity stabilization mechanism which is  
21 something that Duke did not get.

22 MR. LANG: All right. Thank you, your  
23 Honors. That's all I have.

24 EXAMINER SEE: Ms. Kaleps-Clark.

25 MS. KALEPS-CLARK: No questions, your

1 Honor, thank you.

2 EXAMINER SEE: Mr. Nourse.

3 MR. NOURSE: Thank you, your Honor.

4 Would it be permissible to take a 5-minute break  
5 right now because I do have a bunch of questions?

6 EXAMINER SEE: Okay. Let's take a --

7 MR. NOURSE: Health break.

8 EXAMINER SEE: A health break?

9 MR. NOURSE: Never heard that term?

10 EXAMINER SEE: Mental health, yes. Let's  
11 take a 10-minute break.

12 (Recess taken.)

13 EXAMINER SEE: Mr. Nourse.

14 MR. NOURSE: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Nourse:

18 Q. Good morning, Mr. Kollen.

19 A. Good morning.

20 Q. Let me first clarify your  
21 recommendations. You talk about your two  
22 alternatives here, I believe, in several instances  
23 this morning, and your primary recommendation is RPM  
24 only, 100 percent RPM-priced capacity charge,  
25 correct?

1           A.    Yes, that's correct.

2           Q.    And your alternative recommendation is a  
3    combination of a \$146 megawatt day cap for capacity  
4    charge paid by CRES providers, and part B of the  
5    alternative is that the equity stabilization  
6    mechanism would operate in conjunction with retail  
7    rates in a nonbypassable charge; did I state that  
8    accurately?

9           A.    Yeah, I think generally, correct,  
10   correctly. But the -- just to make it clear, the  
11   145.79 would be the maximum charge per megawatt day  
12   and, you know, our thought on that was that it  
13   shouldn't be anything more than what is presently in  
14   place at the end of the year, the prior year.

15          Q.    Okay. We'll get into that in a little  
16   bit and I believe I said "cap" but --

17          A.    You did, yes.

18          Q.    Okay. So help me understand -- well, let  
19   me back up.

20                I think a couple times this morning you  
21   stated that really your alternative recommendation  
22   would be relevant or could be used by the Commission  
23   if the Commission wants to allow AEP the opportunity  
24   to earn a return and attract capital investment; is  
25   that correct?

1           A.    Yes.  The two objectives, the one is to  
2   promote retail competition and these other Commission  
3   objectives as put forth in the pleading with the  
4   FERC.  The first objective is to promote retail  
5   competition; the second one is to enable the utility  
6   to attract capital.  And so the two proposals, the  
7   something more than RPM, coupled the ESM, are meant  
8   to address the second of those two objectives.

9           Q.    Okay.  And in your mind is the second  
10  objective -- objective optional?

11          A.    Yes.  I think that the Commission has a  
12  degree of discretion here as evidenced by its March 7  
13  entry in this proceeding.

14          Q.    So it's your primary position that the  
15  Commission can -- can create a capacity charge, it  
16  would simply promote competition without regard to  
17  the impact on AEP Ohio financially; is that your  
18  position?

19          A.    Well, I think there are any number of  
20  things the Commission can do, but it identified the  
21  two objectives and what we were trying to do is  
22  address or respond to those two objectives.

23          Q.    Okay.  Do you believe both of your  
24  alternatives produced just and reasonable  
25  compensation for AEP Ohio?

1           A.    Well, I think that the RPM reflects the  
2 market value of the capacity and to that extent it is  
3 just and reasonable. The question is whether or not  
4 that's sufficient to attract capital over the  
5 transition period, and if the Commission believes  
6 that it is not sufficient, then we would propose some  
7 additional amount but subject to the equity  
8 stabilization mechanism to make sure that it's not  
9 too little in the sense of not being able to attract  
10 capital or too much in the sense of being overly  
11 compensatory. And there are any number of options the  
12 Commission could consider between those two  
13 proposals.

14           Q.    Okay. Well, you are kind of projecting  
15 your purposes and your options to the Commission and  
16 I am trying to get your recommendation and your  
17 understanding of your testimony and your reasons for  
18 supporting your recommendations.

19                    So you state, do you not, on page 3,  
20 lines 2 and 3, that your recommendations will provide  
21 just and reasonable compensation to AEP Ohio?

22           A.    Yes.

23           Q.    All right. And so is it your testimony  
24 that your primary recommendation of 100 percent RPM  
25 pricing will -- will that provide just and reasonable

1 compensation to AEP Ohio?

2 A. I think the answer to that is yes.  
3 Obviously it's not as much as if the capacity charge  
4 was greater and subject to the equity stabilization  
5 mechanism but, you know, just and reasonable is in  
6 the eye of the Commission and it requires  
7 considerable informed judgment. And to the extent  
8 this RPM is the appropriate rate, then that would be  
9 just and reasonable.

10 Q. So is that judgment informed by the  
11 impact, the financial impact of AEP Ohio of  
12 100 percent RPM pricing?

13 MR. RANDAZZO: Could I have a  
14 clarification. When you say AEP Ohio are you talking  
15 about total company AEP Ohio?

16 Q. Mr. Kollen, if you don't understand my  
17 question, you can so indicate.

18 EXAMINER SEE: Do you understand the  
19 question, Mr. Kollen?

20 THE WITNESS: I think so.

21 EXAMINER SEE: Okay. Please proceed.

22 A. Well, I think that my assessment is  
23 informed by the financial impact on the company. And  
24 that's why I proposed this alternative and it  
25 includes both a cap and a structure that ensures that

1 the company can attract capital but also ensures on  
2 the other hand that consumers are not overpaying.

3 Q. Okay. But that alternative is not part  
4 of your primary recommendation, correct?

5 A. Yes, that's correct.

6 Q. And when you say your position is  
7 informed, have you looked at the financial impact on  
8 AEP Ohio of 100 percent RPM pricing?

9 A. Other than what was contained in the  
10 company's presentation of the earned returns from  
11 additional shopping, no.

12 Q. Okay. Now, before we get into some  
13 details here, help me out with your testimony. I  
14 believe, say, starting on page 8 and following, you  
15 get into some of the reasons to believe that the  
16 Commission may establish a capacity mechanism above  
17 RPM, correct?

18 A. Yes. And then you get into the detail of  
19 your alternative recommendation.

20 Q. Can you point me to the area in your  
21 testimony that supports your primary recommendation  
22 of why RPM should be used?

23 A. I don't extensively address that. I just  
24 essentially took that as a foundational assumption  
25 and that essentially the compensation mechanism had

1     been RPM through December 31, 2011. It will be RPM  
2     and that is the appropriate rate because it reflects  
3     a transparent market rate from PJM and it's the rate  
4     that is in effect for the other utilities in the  
5     state.

6             Q.     Okay. Did you take it as an assumption  
7     that -- that the RPM rate is appropriate or are you  
8     sponsoring that conclusion and defending that  
9     conclusion?

10            A.     Well, that's -- that is my  
11     recommendation.

12            Q.     Okay. But in your prior answer you --  
13     you use the word "assumed," take it as a given, I  
14     believe you said. So are you sponsoring and  
15     defending that proposition or did you just take it as  
16     an assumption or your primary recommendation?

17            A.     Well, I think a little of both, but it is  
18     a primary recommendation and I'm here to support  
19     that.

20            Q.     Okay. Now, let's talk a little bit about  
21     the RAA language. I think you -- you included some  
22     of the key language here on pages 6 and 7 from the  
23     RAA. And section 8 -- Schedule 8.1, Section D8,  
24     correct?

25            A.     Yes.

1           Q.    Okay.  Now, do you know when the RAA  
2 language here was first adopted and became effective?

3           A.    I don't recall.  I believe that was  
4 addressed in Mr. Horton's testimony but I don't  
5 recall specifically.

6           Q.    You don't recall?  Do you recall when you  
7 first became aware of it?

8           A.    I don't.

9           Q.    Okay.  Was it recently?

10          A.    I think that's likely.  I just don't have  
11 a specific recollection.

12          Q.    Okay.  Do you recall hearing about the  
13 2010 filing at FERC by AEP concerning this language?

14          A.    Yes, I'm aware of that.

15          Q.    Okay.  And you heard about it in 2010 or  
16 more recently?

17          A.    Probably sometime last year.

18          Q.    Okay.  And can you tell us your  
19 understanding of what it means to be an FRR entity  
20 under the RAA?

21          A.    Sure.  Essentially that's a fixed  
22 resource requirement and you basically self-supply  
23 your generation as an FRR entity rather than selling  
24 into PJM or purchasing from PJM.

25          Q.    Okay.  And Mr. Randazzo asked you I think

1     what you characterize as a hypothetical earlier  
2     about -- about AEP purchasing capacity and then  
3     passing it on as a middleman to CRES providers; do  
4     you recall that?

5             A.     That was part of one of his questions  
6     that it included a hypothetical, or a premise I think  
7     is what I would perhaps better characterize it as.

8             Q.     Okay. Well, does that premise reflect  
9     reality?

10            A.     Well, not as an FRR entity.

11            Q.     Okay.

12            A.     I can't recall if the premise in  
13     Mr. Randazzo's question was a bilateral purchase or  
14     if it was PJM but it was a market-based purchase and  
15     I don't think that an FRR entity is precluded from  
16     purchasing, so I don't think it was indicative of  
17     either an FRR or a non-FRR entity, but in any event.

18            Q.     And what I'm getting at, Mr. Kollen, is  
19     in your investigation of the facts as you understand  
20     them here in this case, is it your understanding that  
21     AEP Ohio's capacity that is being sold to CRES  
22     providers was purchased from somewhere else?

23            A.     For example, bilaterally? I think there  
24     may be some purchases but I don't know. I think most  
25     of the load is supplied by generation owned by Ohio

1 Power or the other AEP affiliate companies.

2 Q. And to your point about your  
3 understanding of being an FRR entity, the FRR entity  
4 bypasses the RPM market and doesn't purchase from or  
5 sell into the RPM market, correct?

6 A. That's correct.

7 EXAMINER SEE: Mr. Kollen, could you  
8 please pull the microphone closer to you.

9 THE WITNESS: I'm sorry, yes, your Honor.

10 Q. Okay. Now, what's your understanding of  
11 the pricing options that exist under the Schedule 8.1  
12 that's quoted in your testimony?

13 A. Well, the first one really is -- it's not  
14 specific but the priority would be a state  
15 compensation mechanism, and if the state regulatory  
16 jurisdiction requires switching customers or the LLC  
17 to compensate the FRR entity for its FRR capacity  
18 obligations, the state compensation mechanism will  
19 prevail. I think that's sort of  
20 self-explanatory. What that is isn't specified. Now,  
21 what that is comprised of. But it says if there  
22 isn't a state compensation mechanism, then you go to  
23 RPM and alternatively the utility can file with the  
24 FERC under Section 205 of the Federal Power Act for  
25 some other basis for compensation.

1           Q.    Okay.  And the state compensation  
2 mechanism concept you referred to, is it your  
3 understanding that that refers to retail or wholesale  
4 rates?

5           A.    Well, it's the rates that are charged to  
6 the CRES providers and which they then pay.

7           Q.    Okay.  So your understanding is that --  
8 first of all, is that capacity charge paid by CRES  
9 providers a wholesale rate or retail rate?

10          A.    Well, the pricing for it is determined by  
11 this Commission under a state compensation mechanism.

12          Q.    Well, sir, I think that's part of what  
13 we're debating in this case.

14          A.    I understand that.

15          Q.    What I'm asking you, is the capacity  
16 charge at issue in your mind a wholesale charge or  
17 retail charge?

18          A.    Well, I think it's a wholesale charge.  
19 But on the other hand I think that the FERC defers  
20 effectively to the state and in -- to the situation  
21 with state compensation mechanism.

22          Q.    And it's fair to say that that issue as  
23 to the scope of the state compensation mechanism  
24 under the RAA is the subject of debate not only in  
25 this proceeding but in pending FERC proceedings?

1           A.    My understanding is that is the case.

2           Q.    Okay.  If -- if a cost-based rate is  
3   appropriate and the Commission, you know, is looking  
4   at adopting a cost-based rate, do you have any reason  
5   to challenge the \$355 a megawatt day rate the company  
6   proposes?

7           A.    Yes.

8           Q.    And did you submit testimony regarding  
9   that?

10          A.    No.

11          Q.    Okay.  Now, you stated earlier -- made a  
12   reference to RPM capacity pricing as being market  
13   pricing.  Do you believe that RPM auction clearing  
14   prices are the only indication of capacity market  
15   price?

16          A.    Well, they are the capacity market price  
17   mechanism by which PJM establishes that market price.  
18   I mean, arguably you could develop other means of  
19   establishing a market price but that, you know, the  
20   RPM is the means by which PJM has -- has determined  
21   is the appropriate way to do it.

22          Q.    Well, okay.  For the purpose in which  
23   it's applied but the RPM price does not apply to FRR  
24   entities.  Didn't you agree to that earlier?

25          A.    Yes.

1           Q.    Okay.  And would you also agree that  
2   bilateral contracts are out there that could also be  
3   an indicator of market pricing for capacity?

4           A.    It's possible.

5           Q.    And two parties freely negotiating terms  
6   and conditions including price for capacity, wouldn't  
7   that be an indicator of market price for capacity?

8           A.    It could be in certain circumstances,  
9   yes.

10          Q.    And could some of those contracts cover  
11   long-term agreements that exceed the one-year RPM  
12   price that's -- that's being discussed here?

13          A.    Yes.

14          Q.    Okay.  And --

15          A.    You know, you would have to look at the  
16   terms of the contracts, the duration of them, the  
17   capacity energy price, the parties involved, and the  
18   circumstances surrounding them.

19          Q.    Correct.  But under that situation, the  
20   price would be another indicator of market capacity  
21   price, correct?

22          A.    It would be something that you could take  
23   into account as far as your informed judgment,  
24   certainly.

25          Q.    And in your understanding would such a

1 contract, perhaps let's say if it were a 10-year  
2 term, take into account things that the RPM pricing  
3 mechanism does not account for?

4 A. For example, embedded costs, yes.

5 Q. Embedded costs, a stable agreed to rate  
6 would be another feature of that kind of agreement?

7 A. There could be any number of facts or  
8 circumstances that might be relevant in that  
9 situation.

10 Q. And those are valid concerns in the  
11 context of a market price, are they not?

12 A. They may be.

13 Q. Okay. Have you -- have you examined --  
14 well, let me back up. You are stating in your  
15 testimony that the -- and under your alternative for  
16 the moment, I'll ask you about that, part A is the  
17 146 rate, correct? Have you examined the ability of  
18 CRES providers in Ohio to compete for retail  
19 customers based on \$146 per megawatt day capacity  
20 charge?

21 A. I have not other than the switching rates  
22 that were in effect as of the end of last year, which  
23 were about 20 percent.

24 Q. And have you examined whether CRES  
25 providers could compete with retail customers at any

1 other level, such as \$255 per megawatt day or \$355  
2 per megawatt day?

3 A. Well, I would think the higher the  
4 capacity charge, the more ability the CRES providers  
5 are able -- more able they are to compete.

6 Q. But you haven't examined any of those  
7 other pricing levels besides the current RPM in your  
8 observation a moment ago?

9 A. No, because I think there is a  
10 relationship, obviously the greater the capacity  
11 charge, the easier it is for the CRES provider to  
12 compete.

13 Q. Okay. But that's not my question.

14 A. Your question was did I investigate, and  
15 I said no.

16 Q. Thank you. All right. So is it -- is it  
17 possible that CRES providers have profit margins  
18 under the current RPM rate such that they can absorb  
19 capacity charge increases without impacting the  
20 retail rates?

21 A. I don't know. I haven't done an  
22 investigation of that.

23 Q. Would you agree that there are multiple  
24 factors that influence whether a CRES provider can  
25 make an offer that competes with the particular

1 standard service offer rate?

2 A. Yes.

3 Q. And capacity is not -- capacity charge is  
4 not the only factor, is it?

5 A. It's a significant factor but not the  
6 only factor.

7 Q. Okay. Now, have you examined what level  
8 of capacity costs are recovered in AEP Ohio standard  
9 service offer rates?

10 A. I have not.

11 Q. Okay. If evidence were demonstrating  
12 that the standard service offer rates collect  
13 capacity charges above \$146 per megawatt day, would  
14 that be a reason to also support the wholesale  
15 capacity charge of the higher capacity rate?

16 A. In what respect? I don't think so but  
17 perhaps I'm missing something.

18 Q. Do you have any -- do you have any  
19 opinion on whether there should be comparable rates  
20 paid for -- by CRES providers versus SSO customers  
21 for capacity?

22 A. I would think not. I mean, the point is  
23 that CRES providers were to have the opportunity to  
24 sell at less than the standard service offer, that  
25 would be the expectation.

1 Q. Why would you say that?

2 A. Well, effectively the Commission itself  
3 has made that determination with respect to setting  
4 the capacity pricing of the state compensation  
5 mechanism at RPM prior to earlier this year and if  
6 you argue that 146.75 which was in effect the latter  
7 part of last year is something less than the  
8 company's embedded costs, the Commission has already  
9 made the determination that's an appropriate public  
10 policy objective.

11 Q. Is it your understanding the Commission  
12 has set anything other than an interim state  
13 compensation mechanism in Ohio?

14 A. I don't know the answer to that.

15 Q. Okay. You state on page 5 of your  
16 testimony that your understanding -- and I am looking  
17 at the sentences from line 10 to 13, that the  
18 RPM-based rate is the interim mechanism that was  
19 adopted in combination with retail rates including  
20 the recovery of POLR charge. Do you see that?

21 A. Yes.

22 Q. Okay. Now, is it your understanding or  
23 belief that the POLR charge reflected capacity costs  
24 associated with shopping load?

25 A. That is my understanding.

1           Q.    Is it your understanding that the POLR  
2 charge reflected financial risk associated with the  
3 optionality of standard service offer customers to  
4 shop and return to standard service offer rates?

5           A.    My understanding is that was the  
6 rationale advanced by the company. I don't recall  
7 what the Commission said.

8           Q.    Okay. Do you -- do you -- is it your  
9 understanding that the POLR charge still exists?

10          A.    No.

11          Q.    Okay. So the combination we talked about  
12 on line 12 no longer exists either, does it?

13          A.    That's true. It's been repriced. The  
14 POLR charge is no longer in place, RPM through the  
15 end of last year, the Commission's entry, I believe  
16 it was March 7 of this year, established a two-tier  
17 interim state compensation mechanism.

18          Q.    Okay. But to be clear, the POLR charge  
19 has not been replaced, has it?

20          A.    That's correct. But there's -- there's  
21 an entirely different and new two-tier state  
22 compensation mechanism that provides additional  
23 capacity revenues.

24          Q.    Okay. Mr. Kollen, are you familiar with  
25 retail contracts that exist today with CRES

1 providers?

2 A. No --

3 Q. Of generation certainly?

4 A. No, not generally.

5 Q. Okay. So you're not familiar with OEG  
6 members' contractual arrangements?

7 A. That's correct.

8 Q. Okay. All right. Let me move to -- move  
9 to page 7 of your testimony. Okay. You talk in your  
10 testimony about compensation, I mean, you are quoting  
11 in line 16 on page 7, actually PJM pleading in the  
12 FERC docket where it refers to compensating AEP for  
13 the cost to satisfy its FRR capacity obligation. Do  
14 you see that?

15 A. I do.

16 Q. And then we talked about previously your  
17 statement -- your overarching statement on page 3,  
18 line 3, that you're intending to convey  
19 recommendations for just and reasonable compensation,  
20 correct?

21 A. Yes.

22 Q. Okay. So -- but your -- you're falling  
23 short of saying even though your intention is to  
24 compensate that the -- your primary recommendation is  
25 to use RPM pricing and you haven't really examined

1 the financial impact on AEP Ohio. Do I have that  
2 correct?

3 A. I told you that I examined it through  
4 2013 based upon the company's analysis and then after  
5 that, I have not.

6 Q. All right. Okay. Let's -- let's move  
7 into you're discussing your alternative  
8 recommendation and, okay, so on pages 8, 9, you state  
9 multiple reasons why you might predict or anticipate  
10 the Commission would adopt a charge exceeding RPM,  
11 correct?

12 A. Yes.

13 Q. Okay. Now, I believe on earlier  
14 examination you were discussing the 2.4 percent  
15 that's stated on page 9, line 1, with Mr. Lang. Do  
16 you recall that?

17 A. I do.

18 Q. Okay. And I think you stated something  
19 to the effect that the more shopping there is, the  
20 lower the ROE would be, there is a direct  
21 relationship there?

22 A. All else being equal.

23 Q. Okay. And does that --

24 A. And under the assumptions that the  
25 company used in its analysis. For example, I don't

1 believe that there was a reinstatement of the  
2 distribution rider. I don't believe that there was  
3 certain other recoveries that the company has  
4 proposed in conjunction with its ESP, the latest  
5 version of that.

6 When you start introducing all of these  
7 other revenue enhancements, if you will, the earned  
8 return, of course, would be higher than what the  
9 company analysis showed.

10 Q. Okay. You said "all else being equal."  
11 As it pertains to this case that we are sitting here  
12 discussing today, what drives the lower ROE is the  
13 low cost RPM capacity charges, isn't that the case?

14 A. Well, what drives the lower ROE is not  
15 necessarily the low cost but a lower capacity charge  
16 than what it is currently receiving from nonshopping  
17 customers.

18 Q. So it's not shopping per se that drives  
19 the ROE down. It's the pricing mechanism for  
20 capacity, correct?

21 A. Yes.

22 Q. Okay. Now, in your opinion then does  
23 the -- is the motivation or context of your  
24 alternative recommendation to avoid confiscatory  
25 rates as you used that term in your testimony?

1           A.    Well, it's to put some boundaries or some  
2 rails around whatever Commission -- the Commission  
3 decides in this case. If it doesn't decide to use  
4 RPM as the basis for the capacity charges, then the  
5 question -- and it decides to do something more, the  
6 question is how can it on the one hand safeguard the  
7 consumers and then on the other hand essentially  
8 achieve the second of the Commission's two objectives  
9 which is to attract capital.

10           Q.    Okay. Let me ask you to turn to page 10.  
11 And on line 11 -- starting at line 10, you are  
12 talking about concerns about discriminatory pricing,  
13 correct?

14           A.    Yes.

15           Q.    And that's in the context of two-tiered  
16 capacity pricing?

17           A.    Yes, it is.

18           Q.    Okay. Now, is it -- is it your opinion  
19 that -- excuse me. Mr. Kollen, is it your opinion  
20 that two-tiered pricing is discriminatory?

21           A.    I think that it should be, yes, and based  
22 upon applying it to first-in-line shoppers the lower  
23 rate, and then next in line a higher rate. If it's  
24 going to be a market rate, it should be a market  
25 rate. If it's going to be a cost-based rate, it

1       should be a cost-based rate.

2               Q.     Okay. Well, what about you premised most  
3       of your testimony on what you perceived is the  
4       Commission's primary goal of increasing shopping.  
5       For example, OEG agreed in the recent stipulation to  
6       a two-tiered capacity price, did it not?

7               A.     My understanding is that it did but in  
8       conjunction with a series of other terms and  
9       conditions.

10              Q.     Sure. And I'm not trying to suggest you  
11       need to agree to it now. What I'm asking you is  
12       whether it's discriminatory or whether it could also  
13       be used to promote competition to the degree of deep  
14       discounts in tier 1.

15              A.     There would be a number of factors that  
16       would have to be considered and I can't answer the  
17       question in the abstract.

18              Q.     Well, I thought you did, maybe I  
19       misunderstood that you abstractly stated two-tiered  
20       pricing as discriminatory.

21              A.     Yes; that's a different question of  
22       whether or not two-tiered structure advanced  
23       competition and that was the question you just asked  
24       me.

25              Q.     I was asking you to consider that as part

1 of your opinion --

2 A. Okay.

3 Q. -- as to whether it's discriminatory in  
4 the sense that it would be anticompetitive.

5 A. Okay. I hadn't really thought about  
6 that. I don't know the answer to that.

7 Q. It could actually be pro-competitive,  
8 could it not?

9 A. Are you suggesting though that with other  
10 terms and conditions wrapped around it, it could be  
11 pro-competitive? In that case, I would agree in the  
12 abstract, yes, but the facts and circumstances would  
13 be very specific.

14 Q. Yes. And, again, I am not trying to talk  
15 about the stipulation that's been rejected as saying  
16 OEG should be bound by that in any way. I am asking  
17 you conceptually about the discrimination concern.

18 A. No. I understand. That's why I answered  
19 the way that I did.

20 Q. Thank you.

21 Okay. In your recommendation of the cap  
22 of \$146 per megawatt day, did you -- that happens to  
23 the -- essentially the current RPM price, correct?

24 A. Yes.

25 Q. Okay. And did you consider or was it

1 part of your reasoning supporting that cap particular  
2 impacts on OEG members or is this more of a  
3 conceptual general basis supporting your 146 cap?

4 A. Yeah, it would be more of a general  
5 construct.

6 Q. So is the general construct, let's stick  
7 with the status quo rate of RPM?

8 A. Well, let's stick with RPM and to the  
9 extent that it will go down on June 1, then if the  
10 Commission decides to essentially increase the  
11 capacity charge to something more than RPM, then it  
12 should be no more than what the existing rate is.

13 Q. Okay. Let me ask you about your further  
14 down on page 10 you got a question and answer  
15 starting on line 17 and you refer to the  
16 approximately 11 percent return on equity for 2011  
17 for AEP Ohio. Do you see that?

18 A. Yes.

19 Q. Is 11 percent ROE reasonable in the  
20 context of Senate Bill 221 electric distribution  
21 utility in Ohio?

22 A. Well, it's an earned result and it was  
23 based upon what the Commission determined were  
24 reasonable rates in effect at that time.

25 Q. Okay. Is it your opinion that the 11

1 percent ROE that was earned is unreasonable? For  
2 2011?

3 A. I would think it is one reason of  
4 reasonableness if the Commission were to set a return  
5 on equity which is why I used 11 percent as the upper  
6 end of the range for the equity stabilization  
7 mechanism starting from a mid point of 9 percent,  
8 which is, I believe is a reasonable return on equity,  
9 and then plus or minus 2 percent.

10 So the lower end of that range would be  
11 7 percent. The upper percent would be 11 percent.  
12 So I believe that's the upper end of a potentially  
13 reasonable zone -- zone of reasonableness.

14 Q. Okay. Now, would you agree that if your  
15 primary recommendation of RPM pricing is adopted,  
16 that the expected return for AEP Ohio, all else being  
17 equal, would be dramatically reduced from that level?

18 A. Well, I think that's right because your  
19 revenue would be less than what is currently obtained  
20 from the standard service offer customers.

21 Q. And would you also agree that under your  
22 alternative RPM -- excuse me, alternative capacity  
23 charge of 146 cap that the 11 percent return that was  
24 realized in 2011 would also be reduced?

25 A. I don't know. The reason I don't know is

1 because there are a number of standard service offer  
2 customers who will not switch and it would depend on  
3 where the Commission puts the capacity charge and it  
4 would also depend upon the energy margins and the  
5 revenues from the ancillary services.

6 Q. Okay. Well, maybe I didn't state may  
7 question very well, but what I'm asking you is under  
8 your alternative capacity pricing, a cap of \$146 per  
9 megawatt day, and just like the prior question about  
10 RPM pricing, my question to you is -- is all else  
11 being equal, would you expect that the ROE would be  
12 less than 11 percent?

13 A. Yes.

14 Q. Okay. And in other words, the  
15 approximately 20 percent shopping that you refer to  
16 on page 11 would go up, would increase, correct?

17 A. Yes. Presumably.

18 Q. As we talked about before, because of  
19 the -- because of the capacity pricing, there's  
20 inverse relationship to ROE based on today's status  
21 quo in facing either of these alternatives, correct?

22 A. I think that's generally true, all else  
23 being equal. And in the past that has allowed at  
24 least Columbus Southern Power to have significantly  
25 excessive earnings, and now going forward the shoe is

1 on the other foot where the earnings are less but  
2 still within the zone of reasonableness, I believe.

3 Q. Okay. And the SEET issue you referenced  
4 has already been addressed by the Commission,  
5 correct?

6 A. Yes, in terms of the methodology and  
7 refund quantifications and things like that. My  
8 point was that in prior years using RPM the company  
9 has done extremely well and had earned returns that  
10 were far in excess of what I would consider to be a  
11 zone of reasonableness.

12 But nevertheless, the company was allowed  
13 to retain those except to the extent they were  
14 significantly excessive. And now the company is in a  
15 situation where projected forward earnings will be  
16 less and there's -- there's some balance there that  
17 needs to be assessed by the Commission in its  
18 judgment as to what the appropriate capacity charge  
19 level is.

20 Q. Is the SEET provision a balanced  
21 provision in your review?

22 A. It's asymmetrical. In other words, it  
23 doesn't provide a backstop for the company which is a  
24 benefit, of course, of the equity stabilization plan  
25 that it provides earnings protection below 7 percent,

1       whereas the SEET did not include such a protection.  
2       It was only an excess earnings mechanism.

3               Q.     And the Commission decided the SEET case  
4     and is deciding -- they decided the case for 2009,  
5     2010 case is pending, correct? So the Commission  
6     addresses the overearnings that you mentioned in a  
7     manner that's generally consistent with Senate Bill  
8     221, correct?

9               A.     The provisions of Senate Bill 221, that's  
10    correct. My point was simply that in prior years the  
11    company has done extremely well with RPM pricing, and  
12    now over the next couple of years the company  
13    projects that it's going to do very poorly. And my  
14    only point was that, you know, you were happy to keep  
15    the excessive earnings when they were available and  
16    now they are -- in my assessment no entitlement then  
17    to recovery then based upon embedded costs, even if  
18    it were correctly imputed. That was just the  
19    symmetry that I was asking.

20              Q.     Okay. Well, let's talk about your  
21    observation a little bit. No. 1, you're saying the  
22    company was happy with RPM pricing and that you're  
23    suggesting that that RPM pricing somehow caused  
24    excessive earnings; is that what you're saying?

25              A.     Well, it was certainly a factor that was

1 considered in conjunction with the rest of the  
2 company's earnings on an aggregate basis.

3 Q. Is it your opinion RPM pricing on those  
4 years drove excessive earnings?

5 A. It was a factor, yes.

6 Q. Do you understand -- do you have any  
7 understanding about the shopping levels that occurred  
8 in 2009?

9 A. Relatively light.

10 Q. Relatively light?

11 A. Yes.

12 Q. Can you give us a better description of  
13 what you mean by that?

14 A. I think under 3 percent.

15 Q. And would the RPM pricing the company was  
16 happy with have driven the excessive earnings that  
17 you are referring to?

18 A. It would have had an impact.

19 Q. How so?

20 A. Well, to the extent that the earnings  
21 were determined on a total company basis, all  
22 contributors to earnings would be considered whether  
23 those were from standard service offer customers or  
24 whether they were from shopping customers.

25 Q. Wouldn't it, in fact, have eroded the

1 earnings it otherwise would have incurred without  
2 shopping?

3 A. Well, I was just simply saying when RPM  
4 was higher in prior years, the company was happy to  
5 have that as the basis for the capacity charge. And,  
6 now, it's not happy to have it.

7 Q. Well, without regard to your attribution  
8 to the company's happiness, sir, did -- is it also  
9 possible that the company did not experience  
10 significant shopping in 2009, and it simply was not a  
11 material issue at all for the company or anybody  
12 else?

13 A. It grew in significance in 2010 and then  
14 in 2011.

15 Q. Okay. So to wrap up on our discussion of  
16 the 11 percent, you would agree that the 11 percent  
17 you discuss starting at the bottom of page 10 for  
18 return on equity is not indicative of an expected  
19 return for either of your recommendations, correct?

20 A. Yes, that's correct.

21 Q. Okay. Now, on page 12 of your testimony  
22 you're discussing a -- I guess a way of  
23 characterizing your \$146 cap rate as conveying a  
24 premium above RPM of \$76?

25 A. Yes.

1           Q.    Okay.  Now, just -- let me just ask you,  
2   I mean, the term "premium," if -- if the Commission  
3   determines a cost-based rate is appropriate,  
4   characterizing an amount above RPM as a premium would  
5   not be accurate, would it?

6           A.    Well, it would because it would be,  
7   nevertheless, an increment over RPM, at least for the  
8   first two years, and, yes, on the company's  
9   computations all three years.

10          Q.    Okay.  But if you were to use the term  
11   "premium" in that context of a prudent cost-based  
12   rate, it would have to be a premium above RPM, that  
13   whole phrase, right?

14          A.    Yes.

15          Q.    Just as a factual statement that it's  
16   above RPM.

17          A.    Right.  And any definition of cost,  
18   whether it's the company's definition of embedded  
19   cost without an energy credit offset, or if it's some  
20   other definition of costs, such as avoided costs or  
21   something like that, anything that would result in a  
22   capacity charge of excess of RPM, that differential  
23   would be something I would characterize as a premium.

24          Q.    All right.  With that explanation let me  
25   move to the next Q and A here.  You are talking about

1 the Duke settlement and the Duke order that adopted  
2 the settlement. In particular now, you made a  
3 calculation in your answer starting at line 6 still  
4 on page 21 that as I understand it, this calculation  
5 they've done to compare the \$5.40 per megawatt hour  
6 charge Duke customers pay, the recommendation \$146  
7 per megawatt day you've translated that just  
8 mechanically or mathematically into a \$5.30 megawatt  
9 hour charge for AEP?

10 A. Yes, that's correct.

11 Q. Okay. And that's all you meant when you  
12 say it's nearly identical, that you're saying as a  
13 matter of math, correct?

14 A. Yes, that's correct.

15 Q. So the impact, once again, the impact  
16 on -- the financial impact on AEP Ohio is different  
17 and -- would be different than it is on or would be  
18 on Duke under their settlement, correct?

19 A. Yes.

20 Q. Okay. And then in line 12 you say  
21 initially AEP customers would not be charged -- any  
22 SSO customers would not be charged a premium and then  
23 you go on to say that the SSO rates the nonshopping  
24 customers would pay, essentially we have an embedded  
25 premium, using your terms, correct?

1 A. Yes.

2 Q. Okay. And when you use the term  
3 "initially" on line 12, is that to remind us that --  
4 or your alternative recommendation here of \$146 is  
5 linked to the ESM mechanism and that that could also  
6 be triggered depending on the financial results of  
7 the company for a particular year?

8 A. Well, actually I think I was linking it  
9 to the final statement in the paragraph with respect  
10 to an AEP SSO option.

11 Q. Okay. But you would agree with the link  
12 I just described?

13 A. I was thinking more of the correct answer  
14 rather than trying to correct the question.

15 Q. Very well. Let me just ask you a new  
16 question then.

17 A. Okay.

18 Q. To clarify, I think it's clear, but your  
19 \$146 rate is part of your alternative recommendation  
20 that's linked to your proposal for the ESM, correct?

21 A. Yes. Just to be clear, the \$146 per  
22 megawatt day is a cap, not a specific proposal for a  
23 rate.

24 Q. Okay. And I probably said "cap" every  
25 time except that one, so you caught me.

1                   Okay. Let's turn to page 13, your table,  
2                   this -- or I guess some numbers you put on the page  
3                   for -- these are ROEs that are actual realized per  
4                   books ROEs; is that correct?

5                   A.     Yes.

6                   Q.     Okay. And so, for example, you are aware  
7                   in 2010 AEP went through a major severance program?

8                   A.     Yes, that's correct.

9                   Q.     So that the results for 2010 would  
10                  include things such as the severance.

11                  A.     Yes, that's correct.

12                  Q.     Excuse me, impact of the severance  
13                  program.

14                  A.     Yes, as well as the savings from the  
15                  severance program. In other words, there's a cost  
16                  upfront but then there is an off-setting savings as  
17                  well, so both would be reflected in the 2010 results.

18                  Q.     Well, let's talk about that. Have you  
19                  actually reviewed the severance program that occurred  
20                  in 2010?

21                  A.     I have in conjunction with another  
22                  proceeding, yes.

23                  Q.     And wasn't it the case given the cost,  
24                  substantial cost of the severance program, that this  
25                  is a net savings in 2010?

1           A.    No.  It was a net cost in 2010.

2           Q.    Okay.  Now, is it fair to say in response  
3 to earlier questions I believe you are indicating or  
4 had indicated that the average of around 7 percent  
5 was the basis for your -- the floor of the ESM of  
6 7 percent; is that fair?

7           A.    Well, it was a factor.

8           Q.    Okay.

9           A.    Essentially the question is, you know,  
10 how does the 7 percent compare to the other  
11 affiliated companies and it's not that far different,  
12 particularly when you look at both 2010 and 2011 and  
13 the 7 percent really is effectively a 5 percent  
14 return on equity for the generation function which is  
15 functionally equivalent to a debt rate of return.

16          Q.    Yeah.  So is it fair to say that level of  
17 earnings is either confiscatory or bordering on  
18 confiscatory?

19          A.    Well, I think the premise of the  
20 equitable stabilization mechanism is to establish a  
21 floor below which the earnings could be or the  
22 capacity charges could be considered confiscatory,  
23 could be.

24          Q.    Okay.

25          A.    That's a judgment call on the part of the

1 Commission. What this is an attempt to do is give  
2 the Commission some information to make that  
3 assessment in order to establish the rate upfront,  
4 whether it's RPM or RPM plus, to then put some  
5 borders around that, some guardrails, if you will.

6 Q. Right. I understand. So even though  
7 that's a judgment the Commission would have to make  
8 in your judgment, your opinion and your basis for  
9 your recommendation, that's where you draw -- drew  
10 the line of 7 percent, correct?

11 A. Yes, that's correct.

12 Q. Okay. Now, let's talk a little bit about  
13 these operating companies you listed here and where  
14 they operate. So is it your understanding generally  
15 that these companies operate in several states that  
16 use traditional regulation?

17 A. For alternatives to traditional  
18 regulation, for example, Virginia and West Virginia  
19 have different regulation for -- but I would not  
20 characterize as "traditional." They have incentive  
21 rates of return and bumpers or guardrails and things  
22 like that, so.

23 Q. Okay. Anything else like -- is there  
24 anything like Senate Bill 221 in those other states?

25 A. No, at least not that AEP companies are

1       availing themselves of.

2               Q.     Well, okay. All right. Shortcut this.

3               A.     It's in the eye of the beholder.

4               Q.     All right. Is there -- is there retail  
5 shopping in any of these states that these companies  
6 operate in?

7               A.     Not by those companies for their  
8 customers.

9               Q.     Well, let me just clarify, help you out a  
10 little bit there. On Michigan, is there retail  
11 shopping in Michigan?

12              A.     My understanding is not for the Indiana  
13 and Michigan customers.

14              Q.     Well, I'm talking about the regulatory  
15 structure in the state.

16              A.     In the state itself? I'm not sure.

17              Q.     And are you aware of any limits on  
18 shopping in Michigan?

19              A.     No.

20              Q.     Okay. But in general none of these  
21 companies operate in states with retail competition  
22 for generation, do they?

23              A.     I would agree with that.

24              Q.     Okay. Now, you stated earlier, I  
25 believe, these are actual realized per books returns.

1 Now, are you aware that -- of any rate relief that's  
2 been granted for these companies since the time of  
3 this -- these returns were realized?

4 A. My recollection is that Appalachian Power  
5 has had a rate increase in Virginia sometime either  
6 in 2010 or 2011. I'm not familiar with the rate  
7 increases, if any, in Indiana and Michigan. Kentucky  
8 Power had a rate increase I think in late 2010.  
9 Probably contributed to the increase in the earned  
10 return from 8 to 9.3 percent.

11 Q. Okay. So none of these returns are  
12 authorized ROE, are they?

13 A. That's true. These are actual earned  
14 returns on equity.

15 Q. And you mentioned the Virginia rate case.  
16 Do you recall that an ROE was authorized in that case  
17 of 10.9 percent?

18 A. That is my recollection but that is  
19 subject to various statutory bumpers, if you will,  
20 because of the process that the state went through on  
21 the generation and some would argue partial  
22 deregulation and reregulation of those assets.

23 Q. All right. But is it fair to say the 4.9  
24 percent you have got listed for APCo in 2010 was  
25 neither acceptable to the company nor the Commission?

1           A.    Well, I don't think that was the issue.  
2    This is an actual earned return and the authorized  
3    return is seldom the same as the earned return.  But  
4    this was not the specified authorized rate of return.  
5    It's something less.

6           Q.    But yet you're using this as a basis to  
7    support an authorized ROE for 7 percent, are you not?

8           A.    Actually I am using it to justify a  
9    reasonable lower bound for non-confiscatory capacity  
10   charge, not to justify a regulated rate of return  
11   applied to embedded costs investment.

12          Q.    And the 4.9 percent for 2010 APCo  
13   realized, would that be confiscatory in your  
14   judgment?

15          A.    Well, it would be below what I think  
16   would be appropriate for the lower end of a  
17   reasonable range of return on common equity, but it  
18   would still be very close to the cost of debt if you  
19   were looking at a debt rate of return as opposed to  
20   an equity rate of return.

21          Q.    Okay.  Now, you go on, I believe, on the  
22   bottom of page 13, the Q and A starting on line 16,  
23   to talk about what I think you characterize as a  
24   regulatory obligation to view -- to examine the issue  
25   of adequate compensation.  You go on to discuss

1 some -- some infamous case law here on that subject,  
2 correct?

3 A. I don't know if it's infamous, but I  
4 think it is well known, yes.

5 Q. Okay. Now, so the bottom of page 14 then  
6 you -- you're concluding that the Commission may be  
7 correct that it has an obligation to ensure AEP Ohio  
8 is reasonably compensated for its capacity  
9 obligations so it has an opportunity to earn at least  
10 a non-confiscatory term. Do you see that?

11 A. I do.

12 Q. Okay. So you're basically agreeing, are  
13 you not, that this -- in the context of this case  
14 that in your opinion as a nonlawyer the Commission  
15 has an obligation to ensure adequate compensation  
16 occurs for AEP Ohio's capacity obligation, correct?

17 A. That the Commission may have an  
18 obligation, in other words, I am not disagreeing with  
19 that. That's the Commission's position in a pleading  
20 before the FERC and I'm not disagreeing with  
21 that. What I am attempting to do is assist the  
22 Commission in addressing that objective if it  
23 believes it has that objective or that obligation.  
24 I'm not affirming the obligation. I don't disagree  
25 with it on the other hand.

1           Q.    Okay.  In your -- your first  
2    recommendation, your primary recommendation, does not  
3    fulfill that goal, does not consider that -- that  
4    purpose, correct?

5           A.    Well, it doesn't address that.  It  
6    addresses only the concept of market pricing and  
7    promoting retail competition.  It doesn't even look  
8    to the ability to attract capital, which is why I  
9    think that my proposal is the balanced proposal here  
10   because it looks at both objectives.

11          Q.    Okay.  Let me shift to page 15 and so  
12   here you are getting into your -- your ESM proposal a  
13   little bit and you state in lines 15 and 16 "Looking  
14   at either revenue or expenses in isolation cannot  
15   give a regulatory body the comprehensive financial  
16   picture."  Correct?

17          A.    That's correct.  And that's absolutely  
18   true.

19          Q.    Okay.  Now, so the -- you are aware, are  
20   you not, that as a matter related to these issues  
21   that are being discussed here today, as part of the  
22   separate case in the ESP II proceeding, modified ESP  
23   proposal that AEP has filed publicly, part of that is  
24   a rate stabilization charge that is characterized as  
25   a revenue decoupling for generation?

1 A. Yes.

2 Q. Are you aware of that?

3 A. I've seen that. I've read the testimony.

4 Q. Okay.

5 A. Disagree with it.

6 Q. Well, I figured you would and that's what  
7 I thought this sentence was going to. So -- but let  
8 me ask you this, so Mr. Randazzo asked you a series  
9 of questions earlier about various scenarios that  
10 could affect the actual ROE going into future years  
11 for AEP Ohio. Do you recall that?

12 A. I do.

13 Q. And there were examples of executive  
14 bonuses, trading losses, political donations. Do you  
15 recall those?

16 A. I do.

17 Q. Okay. Now, you would agree that  
18 regardless of the -- whether those examples were  
19 realistic, those kinds of issues, in other words,  
20 contested expenses or revenues, would be -- would be  
21 endemic to these proceedings under the ESM; is that  
22 fair?

23 A. I don't think so. And the reason I don't  
24 agree with that is that, again, at the risk of  
25 repeating myself, the ESM I structured that to

1 emulate the SEET earnings methodology and aside from  
2 some principal issues as far as whether or not  
3 nonrecurring or extraordinary costs were included or  
4 whether off-system sales margins would be included,  
5 there -- as far as I know, no disagreement over the  
6 quantification of some of those issues. For example,  
7 you know, the AEP severance program, the  
8 quantification of that was not an issue.

9 Q. Okay. Is it your understanding,  
10 Mr. Kollen, that the 2009 SEET issues are still --  
11 still pending on appeal?

12 A. I believe that's correct.

13 Q. Okay. So it's probable but not  
14 guaranteed that we'll get a final decision on the  
15 2009 SEET issues sometime later in 2012; is that  
16 accurate?

17 A. I think that's probably accurate. But,  
18 again, those go primarily to principles and once the  
19 principles are decided I don't think there was a  
20 dispute over the quantifications. And what you're  
21 suggesting is that, I think, you know, oh, well, it  
22 would have to be a detailed critical analysis of  
23 everything that went into an earnings or net income  
24 determination, and what I'm suggesting to you is that  
25 there hasn't been such a -- any critical type of

1 evaluation of -- in the past of the Southern Power's  
2 or Ohio Power's earnings for that earnings analysis  
3 to what you suggested. In other words, if there were  
4 fines in 2009 or if there was excessive executive  
5 compensation in 2009, 2010, I don't believe any party  
6 raised those issues in the SEET proceeding. If they  
7 had and if those expenses had been pushed out, it  
8 would have raised the company's earnings, and there  
9 are significantly excessive earnings in the amount of  
10 refund, but to my recollection nobody raised those  
11 issues.

12 Q. Well, again, I prefaced my question to  
13 not endorsing the realistic nature of Mr. Randazzo's  
14 examples, but nonetheless, you would agree that the  
15 SEET -- the SEET proceedings have been contentious  
16 and litigious over a number of years, would you not?

17 A. Well, I would but they have been  
18 contentious over principles. In other words, how is  
19 the methodology to be applied? And I would suggest  
20 that the equity stabilization mechanism following the  
21 principles the Commission has already resolved would  
22 limit the contention because the principles are now  
23 established unless they are overturned on appeal.

24 Q. Well, is it your opinion then by that  
25 answer that you believe the Commission has set forth

1 a clear -- clear approach for SEET that will be easy  
2 and clear to administer in the future already?

3 A. I think as far as the computation of the  
4 earned return, the answer is yes. As far as issues  
5 such as the choice of a comparable group of  
6 companies, that may be open to more interpretation,  
7 but the threshold issue of what the actual earned  
8 return is and the costs and the revenues that are  
9 included and the common equity that is included, I  
10 think, is fairly well settled for that purpose and  
11 that's why we attempted to emulate that as closely as  
12 possible with respect to the equity stabilization  
13 mechanism.

14 Q. Okay. Would you agree that those issues  
15 about adjustments and the second-guessing what  
16 produced an ROE under your ESM proposal would be  
17 avoided if -- if it were a revenue decoupling  
18 mechanism?

19 A. I'm not sure what issues of contention  
20 you're talking about because I think the principles  
21 have been established and are -- the Commission has  
22 already decided with respect to SEET, so I don't see  
23 contention going forward with respect to the  
24 stabilization plan.

25 Q. So you don't believe that -- and I am

1 talking about ESM, not SEET, but if you want to keep  
2 referring to it, that's fine. Your ESM  
3 recommendation, you don't believe that if AEP came in  
4 with a 6 percent ROE and the ESM were triggered to  
5 cause a rate increase, that there would be  
6 intervenors challenging that proposal?

7 A. Well, there may very well be intervenors  
8 challenging that proposal because the company may  
9 very well have not have applied consistently with the  
10 SEET methodology the Commission previously adopted.

11 I can't say that no party would challenge  
12 anything just like AEP can't say that no party would  
13 challenge its revenue numbers. I don't know  
14 that. But, you know, the fact that there may be some  
15 contention, and I don't agree that there would be,  
16 the fact that there may be one, the equity  
17 stabilization mechanism does not mean this should be  
18 thrown out in favor of a revenue type of approach  
19 that is flawed from its very foundation. It's truly  
20 decoupling because it's absolutely decoupled from any  
21 viable measure of the company's financial  
22 performance.

23 Q. All right. And you are conceptually  
24 opposed to decoupling as a general matter; is that  
25 correct?

1           A.    I don't know. That could have very broad  
2 ramifications. I'm opposed to revenue as a means of  
3 establishing capacity charges or trueing them up,  
4 however you want to characterize it.

5           Q.    Are you making a distinction between  
6 decoupling and revenue decoupling?

7           A.    I don't know what you mean by that term  
8 "decoupling." It means a lot of things to a lot of  
9 different people. I'm referring to the company's  
10 proposal in the other proceeding for the use of  
11 revenue as a retail stability rider as opposed to in  
12 this proceeding OEG's proposal for an equity  
13 stabilization mechanism based upon the formulas.

14          Q.    Okay. Have you -- have you ever met a  
15 decoupling proposal that you liked?

16          A.    I don't know.

17          Q.    Have you ever supported one in testimony?

18          A.    I don't recall.

19          Q.    Okay.

20          A.    What? Supported a revenue decoupling  
21 mechanism? I don't believe that I have.

22          Q.    Okay. Let me ask you to turn to page 17,  
23 okay, and at the top of the page I believe you are  
24 discussing the -- essentially the pool effect, and  
25 you conclude by in lines 6 and 7 stating "However,

1 these capacity equalization payments could change  
2 significantly or be discontinued altogether once the  
3 existing AEP Pool Agreement is terminated." Do you  
4 see that?

5 A. I do.

6 Q. Okay. When you say it "could change  
7 significantly," you're talking about going down or  
8 being diminished, reduced, correct?

9 A. I didn't really make a directional  
10 representation.

11 Q. I noticed that.

12 A. Well, they could change significantly.  
13 This is one of the contexts of their significant  
14 uncertainty as to what the future looks like. If you  
15 go back to the question, it was "Why do you state  
16 that there is 'significant uncertainty' regarding AEP  
17 Ohio's capacity costs?" Because we don't even really  
18 know what their capacity portfolio is going to look  
19 like in the future or what the revenues or where they  
20 are going to be coming in from will look like. And  
21 I'm simply listing a number of aspects or a number of  
22 causes of that uncertainty.

23 Q. Okay. But if -- Mr. Kollen, I think you  
24 understand the AEP pool, and so I'm asking you a more  
25 direct question here. If the pool was terminated, is

1 the \$370 million you reference in line 5 for capacity  
2 equalization payment, is that going to go away? Is it  
3 going to increase?

4 A. Well, it probably won't increase. I  
5 don't know if it will go away entirely. It depends  
6 upon the structure of a new agreement if indeed there  
7 is one, and it depends on what the company  
8 effectively does with the capacity. For example, does  
9 it or will it transfer ownership of some of the  
10 generating units so that it no longer has an  
11 obligation for the fixed costs of certain generating  
12 units?

13 Those get pushed out to those companies  
14 who are paying for out of the capacity reserving  
15 equalization charges pursuant to the existing pool  
16 agreement. The ownership of those assets will be  
17 pushed out to companies such as Appalachian Power,  
18 Kentucky Power.

19 Q. Do you -- are you aware or not aware of  
20 the plans that AEP Ohio has with the pool  
21 termination, or you say you are just completely  
22 unaware of what's going to happen to the units and  
23 whether Ohio Power is going to be part of a new pool  
24 agreement? Is that what you said?

25 A. Well, nobody knows what the final shape

1 of any new agreement might be but, you know, there is  
2 a recent proposal by AEP that I believe has been  
3 withdrawn and not resubmitted yet before the FERC and  
4 that had a -- it was characterized as a cost sharing  
5 agreement and there was a transfer of some of the  
6 Ohio Power generation capacity to Appalachian Power  
7 and the Kentucky Power, which right now are short  
8 companies.

9 So essentially in that case the capacity  
10 equalization payments, even under the existing pool  
11 agreement, would go down, but the company would also  
12 simultaneously be relieved of the costs of those  
13 assets because the ownership would be transferred to  
14 other companies.

15 Q. Okay. And you mentioned earlier, I  
16 believe, you read the ESP testimony?

17 A. I believe I read most of it, yes.

18 Q. And do you recall whether those matters  
19 of the full termination and asset transfers were  
20 discussed in that testimony?

21 A. Yes.

22 Q. Mr. Kollen, do you know what the rate is  
23 that pool members pay for capacity?

24 A. I don't, not right offhand.

25 Q. For -- on a dollar-per-megawatt-day basis

1 or any other basis?

2 A. Right. I don't know right offhand.

3 Q. Okay. So you don't know if it's higher  
4 than even the \$355 rate being proposed in this case  
5 by the company?

6 A. I don't.

7 Q. Would it surprise you to know that it's  
8 higher?

9 A. No. And one of the reasons why is that  
10 there is a 14 percent return built in the pool  
11 agreement on embedded costs of capacity which is much  
12 higher than any retail rate of return.

13 Q. So you think that accounts for the  
14 difference it's above 355?

15 A. Well, you asked me if I would be  
16 surprised if it was. I told you I didn't know if it  
17 was, and you said then, well, what would you  
18 attribute that to, and I said, well, one factor would  
19 be a higher rate of return embedded into the pool  
20 agreement for the capacity equalization charges.

21 And then you asked me, well, is it your  
22 opinion that that's the totality or the primary  
23 reason. I don't know. I'm just simply saying that's  
24 one factor.

25 Q. Okay.

1 EXAMINER SEE: Could both of you make an  
2 effort to speak up, please.

3 THE WITNESS: I'm sorry, your Honor.

4 Q. And to get more directly to the bottom  
5 line here, you state in lines 14, 15 that the  
6 generation divestiture and new pooling agreement will  
7 impact Mr. Pearce's costs-to-service analysis?

8 A. Right.

9 Q. Okay. And do you know what the impact  
10 would be?

11 A. No.

12 Q. And --

13 A. I don't think anyone could know with  
14 certainty what it would be at this point.

15 Q. And do you -- you stated earlier you did  
16 not evaluate Mr. Pearce's costs-for-service study,  
17 did you?

18 A. I think you asked me if I had evaluated  
19 the 355 and whether or not I address that in my  
20 testimony. I told you that, yes, I had evaluated it,  
21 but, no, I had not addressed it in my testimony.

22 Q. Okay. And similarly the -- you go on to  
23 say here on page 17 the retirement -- announced  
24 retirements, and you conclude that those would impact  
25 Mr. Pearce's calculations. Same answer, you don't

1 know the impact? You haven't tried to quantify that,  
2 correct?

3 A. I haven't tried to quantify the impact,  
4 that's correct.

5 Q. Okay, okay. Let's turn to page 18,  
6 please. And on lines 16 to 19, you make a statement  
7 that I would like to clarify for the proposal for  
8 ESM, and you say that if your earnings are within the  
9 bandwidth, there would be no rate changes operating  
10 to recover defined costs, such as the FAC. Do you  
11 see that?

12 A. Yes.

13 Q. Now, does this imply your proposal would  
14 restrict other retail rate mechanisms that are in  
15 place or would be approved in the ESP case?

16 A. No.

17 Q. Okay.

18 A. For example, if there were distribution  
19 riders approved, that wasn't meant to restrict that.

20 Q. Okay. Let me ask you on page 19, you  
21 mentioned this in passing earlier, but under your ESM  
22 proposal that you modeled after the SEET method,  
23 you've -- you've made an exception there part of the  
24 established method as you refer to it for off-system  
25 sales, correct?

1           A.     Yes.

2           Q.     And just to be clear, you understand that  
3     the off-system sales margins have been excluded under  
4     the Commission's established SEET methodology; is  
5     that your understanding?

6           A.     Yes, that's correct. And I've addressed  
7     why they should be included for this and, of course,  
8     we continue to believe or maintain that they should  
9     be incorporated for the SEET as well, but it's  
10    particularly important that they be reflected in this  
11    earnings computation because as there are more and  
12    more shopping -- or as there is more and more  
13    shopping, the off-system sales will, of course,  
14    increase.

15          Q.     Okay. Let me also clarify down further  
16    on page 19 you talk about the extraordinary items  
17    such as power plant retirement will be adjusted for  
18    purposes of the ESP. To clarify when you say the  
19    extraordinary items could be excluded, you're saying  
20    that all costs and expenses or liabilities that may  
21    affect the financial result associated with the power  
22    plant retirement would be excluded from the ESM; is  
23    that what you're saying?

24          A.     Yes. And I believe that's consistent  
25    with the Commission's decisions on the SEET

1 methodology as a matter of ratemaking principles.

2 Q. Okay. On page 20, lines 20 to 22, you  
3 are making a statement here that once generation  
4 divestiture occurs, the Commission could explore  
5 other methods for ensuring the state compensation  
6 mechanism is effective, right?

7 A. Yes.

8 Q. So are you recommending a hard expiration  
9 for the -- your proposal or simply suggesting that  
10 the door might be open to reevaluate the mechanism  
11 after generation divestiture?

12 A. Well, our recommendations are a hard  
13 expiration. Nevertheless, the Commission could  
14 devise some other approach or some variation of what  
15 it had in place prior to the divestiture, but our  
16 proposal is that it just simply expires upon  
17 divestiture.

18 Q. Okay. And is it your understanding that  
19 AEP's proposal or proposed timeline corporate  
20 separation would be effective January 1, 2014?

21 A. Yes.

22 Q. And so we're here today trying to discuss  
23 the capacity charge that would be in effect prior to  
24 June, 2015, when the company will become a  
25 participant in the RPM-capacity market, correct?

1 A. Yes.

2 Q. And so your recommendation only covers  
3 part of that period and would expire under that  
4 example on January 1, 2014?

5 A. Yes.

6 MR. NOURSE: Okay. Thank you,  
7 Mr. Kollen.

8 That's all the questions I have, your  
9 Honor.

10 EXAMINER SEE: Thank you.Mr. Jones?

11 MR. JONES: No questions, your Honor.

12 EXAMINER SEE: Mr. Kurtz?

13 MR. KURTZ: Your Honor, if there is no  
14 questions from the Bench, there is very brief  
15 redirect.

16 EXAMINER SEE: Just a minute, please,  
17 Mr. Kurtz. Go ahead, Mr. Kurtz.

18 MR. KURTZ: Thank you, your Honor.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Kurtz:

22 Q. Mr. Kollen, in your questions from  
23 Mr. Nourse I believe you indicated 7 percent on  
24 return on equity for the total company was equivalent  
25 to a 5 percent return on equity for the generation

1 business only. Do you recall that?

2 A. Yes, I do.

3 Q. How did you make that 5 percent return on  
4 equity calculation?

5 A. Well, essentially what I did was I made a  
6 couple of assumptions that the generation business --  
7 based in fact but that the generation earnings  
8 comprised about 60 percent of the company's earnings  
9 or business, and the transmission and distribution  
10 portion of the company's earnings were about  
11 40 percent.

12 And if you simply assume an authorized  
13 rate of return of 10 or 11 percent on the wires  
14 portion of the business, the transmission and  
15 distribution, and we can back-calculate when the  
16 effect on the overall company return on equity would  
17 have to be from generation, when you do that, it's  
18 5 percent to bring it down to 7 percent on an overall  
19 basis.

20 Q. And would a 5 percent return on equity  
21 for the generation portion of the business be roughly  
22 equivalent to a cost of long-term debt?

23 A. Yes, it would. And I think that that is  
24 indicative of, you know, of further test on the  
25 reasonableness of the lower end of the equity

1 stabilization mechanism.

2 Q. I want to ask you about the lower end of  
3 the equity stabilization mechanism. If AEP Ohio's  
4 adjusted return on equity for 2011 is approximately  
5 11 percent as you've calculated it, that is what  
6 you've calculated, correct?

7 A. Yes, it is.

8 Q. How much revenue loss or expense increase  
9 would AEP Ohio have to experience before it would be  
10 at the bottom of the bandwidth, the 7 percent return  
11 on equity?

12 A. Well, on a net basis the revenue  
13 reduction or expense increase would have to be as  
14 much as \$280 million. So that before the company's  
15 earned return would drop down to 7 percent, all else  
16 being equal, starting with the 11 percent, each  
17 1 percent is worth \$70 million in terms of revenue.  
18 So if you lost \$70 million, the earned return would  
19 drop from 11 to 10 percent, another 70 million, 10 to  
20 9, et cetera, all the way down to 7 percent would  
21 require a loss of revenues or an increase in expenses  
22 of \$280 million.

23 Q. So before consumers would pay a single  
24 dollar of surcharge to bring the earnings up to  
25 7 percent, AEP Ohio would have to experience a loss

1 of \$280 million?

2 A. Yes, that's correct.

3 Q. Mr. Lang asked you a question as to  
4 whether or not this scenario fit within your  
5 methodology. He said, if I recall, if he took the  
6 RPM for the three-year future RPM of \$20 a megawatt  
7 day, \$33 a megawatt, and \$153 a megawatt day and  
8 simply took the average, do you recall that?

9 A. I do recall that, yes.

10 Q. Simple average of that would be \$69 a  
11 megawatt day, correct?

12 A. Yes.

13 Q. He asked you -- and that's lower than  
14 your cap; your cap is 145, correct?

15 A. Yes.

16 Q. So if the Commission were to just average  
17 out the RPM over the three-year period and establish  
18 it at \$69 a megawatt day and plus provide a downside  
19 earnings protection in the 7 percent range through  
20 the earnings sharing mechanism, would that -- would  
21 that construct be consistent with what you've  
22 recommended?

23 A. Yes, it would, because our  
24 recommendation, to reiterate, is RPM as a primary  
25 recommendation. But if the Commission does something

1 more than RPM, then it would -- should be capped out  
2 at the present RPM at 145.79. So anything in between  
3 that would also be, I believe, reasonable,  
4 particularly in conjunction with an equity  
5 stabilization plan.

6 MR. KURTZ: Thank you, your Honor. Those  
7 are all the redirect questions I have.

8 EXAMINER SEE: Ms. Kern, any recross?

9 MS. KERN: No, thank you, your Honor.

10 EXAMINER SEE: Mr. Sugarman?

11 MR. SUGARMAN: No, thank you, your Honor.

12 EXAMINER SEE: Mr. Yurick?

13 MR. YURICK: No, thank you, your Honor.

14 EXAMINER SEE: Mr. Randazzo?

15 MR. RANDAZZO: One question, if I may.

16 EXAMINER SEE: Go ahead.

17 - - -

18 RECROSS-EXAMINATION

19 By Mr. Randazzo:

20 Q. Mr. Kollen, your counsel asked you about  
21 the 69 per megawatt day scenario accompanied by the  
22 equity stabilization mechanism and whether or not  
23 that would be consistent with your  
24 recommendation. Were you saying in answering that were  
25 the Commission to adopt at that type of structure, it

1 would need to adopt it as the state compensation  
2 mechanism?

3 A. Well, that would be our recommendation,  
4 yes.

5 Q. Because if the Commission did not adopt  
6 it as the state compensation mechanism, the PJM  
7 tariff would then provide AEP Ohio the opportunity to  
8 make a 205 filing, correct?

9 A. Right, would revert or default to RPM but  
10 it would also provide AEP Ohio the opportunity to go  
11 to FERC and get something else.

12 MR. RANDAZZO: Thank you.

13 EXAMINER SEE: Ms. Kingery?

14 MS. KINGERY: No questions, your Honor.

15 EXAMINER SEE: Mr. Lang?

16 MR. LANG: No, your Honor, thank you.

17 EXAMINER SEE: Ms. Kaleps-Clark?

18 MS. KALEPS-CLARK: No questions, your  
19 Honor, thank you.

20 EXAMINER SEE: Mr. Jones?

21 MR. JONES: No questions, your Honor.

22 EXAMINER SEE: Mr. Nourse?

23 MR. NOURSE: Thank you, your Honor.

24 - - -

25



1 you that the company can do a Section 205 action at  
2 any time?

3 A. Well, that would be my reading of it  
4 because the predicate "in the absence of a state  
5 compensation mechanism," and indeed there is one  
6 right now, we're recommending -- or I'm recommending  
7 that there be one as a result of this proceeding.

8 And it would seem to me my read of this  
9 as a nonattorney and just as a regulatory expert that  
10 there is not an absence of a state -- and will not be  
11 an absence of a state compensation mechanism so none  
12 of these other things get triggered.

13 Q. So that's your opinion, look at the first  
14 phrase and not the last part of the sentence?

15 A. It's the predicate for the entire  
16 sentence. In other words, it's a threshold that must  
17 be crossed before the rest even applies.

18 Q. Okay. Well, that's your opinion. Is it  
19 your understanding that very debate is the subject of  
20 a pending FERC proceeding?

21 A. Yes, it is my understanding.

22 Q. Okay. So it is a matter that's in  
23 dispute, your interpretation -- your interpretation  
24 is incorrect, then AEP Ohio could file its Section  
25 205 case even if there is a state compensation

1 mechanism, correct?

2 A. Well, again, the premise of your question  
3 answers itself. In other words, if my understanding  
4 of it is incorrect --

5 Q. Yeah.

6 A. -- and the company is correct, then the  
7 company's filing before the FERC is correct and, of  
8 course, the answer is yes, that's right.

9 Q. Okay. And you could be wrong about your  
10 interpretation, right?

11 A. And the company could be too. FERC will  
12 make that decision.

13 Q. So it's a debatable matter that's the  
14 subject of current litigation; would you agree?

15 A. Yes.

16 Q. So let me ask you about the \$20 million  
17 that you referenced in response to Mr. Kurtz's  
18 question about how much -- approximately how much  
19 revenue would have to be lost by AEP Ohio to  
20 experience the -- I think what you're considering is  
21 the confiscatory ROE level, and that was your  
22 testimony, right, \$20 million?

23 A. Yes, before the company's earnings would  
24 drop down to 7 percent.

25 Q. Do you know what \$280 million is

1 equivalent to relative to the load that would be  
2 lost --

3 A. I don't know. I haven't made that  
4 calculation.

5 Q. -- to shopping? Okay. And if it were  
6 between 20 and 25 percent, would that suggest that  
7 that's a likely scenario or unlikely?

8 A. Well, I don't know. I haven't made the  
9 computation, and I don't know what the likelihood of  
10 shopping is.

11 Q. Okay. If -- if \$146 is adopted or RPM is  
12 adopted, is it your opinion that there could be an  
13 excess of 25 percent additional shopping in AEP  
14 Ohio's territory?

15 A. Sure, that's entirely possible. Thank you.  
16 That's all I have, your Honor.

17 EXAMINER SEE: Thank you. Thank you,  
18 Mr. Kollen.

19 Mr. Kurtz.

20 MR. KURTZ: Oh, your Honor, I move for  
21 the admission of OEG Exhibit 102, Mr. Kollen's direct  
22 testimony.

23 EXAMINER SEE: Are there any objections  
24 to the admission of OEG Exhibit 102?

25 MR. RANDAZZO: Just renew our motions to

1 strike as earlier ruled upon by the Bench.

2 EXAMINER SEE: Okay. Then OEG Exhibit  
3 102 shall be admitted into the record.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER SEE: Let's --

6 MR. NOURSE: Your Honor, could I just  
7 make a quick statement?

8 EXAMINER SEE: We are still on the  
9 record. Mr. Kollen, you are released.

10 MR. NOURSE: I'm sorry. I just wanted to  
11 note for the record I am distributing the exhibit we  
12 discussed of Mr. Hess's ESP I testimony which I  
13 believe was AEP Exhibit 110.

14 EXAMINER SEE: 110. Yes, that is AEP  
15 Exhibit 110.

16 MR. NOURSE: Thank you.

17 EXAMINER SEE: Let me -- are there any  
18 objections to the admission of AEP Exhibit 110 which  
19 we discussed late yesterday evening?

20 Hearing none, AEP Exhibit 110 shall be  
21 admitted into the record.

22 (EXHIBIT MARKED AND ADMITTED INTO  
23 EVIDENCE.)

24 EXAMINER SEE: Mr. Sugarman.

25 MR. SUGARMAN: It could be off record but

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1 before adjournment.

2 EXAMINER SEE: With that we are going to  
3 take a lunch break and reconvene at 2:15. Let's go off  
4 the record.

5 (Discussion off the record.)

6 (Thereupon, a lunch recess was taken at  
7 1:05 p.m.)

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1 Tuesday Afternoon Session,  
2 April 24, 2012.

3 - - -

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

6 I believe that IEU has their next  
7 witness.

8 Mr. Darr.

9 MR. DARR: Thank you ma'am. IEU calls  
10 Kevin Murray.

11 EXAMINER PARROT: Please raise your right  
12 hand.

13 (Witness sworn.)

14 EXAMINER PARROT: Please be seated.

15 - - -

16 KEVIN M. MURRAY  
17 being first duly sworn, as prescribed by law, was  
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Darr:

21 Q. Please state your name.

22 A. Kevin Murray.

23 Q. By whom are you employed?

24 A. I am employed by McNees, Wallace &  
25 Nurick, LLC.

1 MR. DARR: For the record I'd like to  
2 have marked IEU Exhibit 102-A and 102-B, being the  
3 direct testimony of Kevin Murray on behalf of  
4 IEU-Ohio.

5 With the Court's permission or the  
6 Bench's permission mark the public version A and the  
7 non-public version B.

8 EXAMINER PARROT: So marked.

9 (EXHIBITS MARKED FOR IDENTIFICATION.)

10 MR. DARR: Thank you, your Honor.

11 Q. (By Mr. Darr) Do you have in front of you  
12 what's been marked as IEU Exhibit 102-A and B?

13 A. I have what's been marked as 102-B.

14 Q. And could you identify what 102-B is?

15 A. It's my direct testimony that was filed  
16 in this proceeding on April 4th.

17 Q. And is that the redacted or unredacted  
18 version?

19 A. It's the unredacted version.

20 Q. And, again, you've identified that as  
21 your testimony; is that correct?

22 A. That's correct.

23 Q. Do you have any corrections to that  
24 testimony?

25 A. No, I do not.

1           Q.    If you were asked the questions contained  
2           in that testimony, would your answers be the same as  
3           set out therein?

4           A.    Yes, they would.

5           Q.    Now, is that true with regard to both IEU  
6           Exhibit 102-A and as to 102-B?

7           A.    That is correct. Other than the  
8           redaction, that the testimonies are identical.

9           MR. DARR: With that I move for the  
10          admission of 102-A and B, and I submit the witness  
11          for cross-examination.

12          EXAMINER PARROT: Thank you, Mr. Darr.  
13          Ms. Kern?

14          MS. KERN: No questions, your Honor.

15          EXAMINER PARROT: Ms. Thompson?

16          MS. THOMPSON: No questions, your Honor.

17          EXAMINER PARROT: Mr. Yurick?

18          MR. YURICK: No questions, your Honor.

19          EXAMINER PARROT: Mr. Kurtz?

20          MR. KURTZ: No questions, your Honor.

21          EXAMINER PARROT: Mr. Lang?

22          MR. LANG: No questions.

23          EXAMINER PARROT: Ms. Kaleps-Clark?

24          MS. KALEPS-CLARK: No questions, thank  
25          you.

1 EXAMINER PARROT: Mr. Conway?

2 MR. CONWAY: Thank you, your Honor. I do  
3 have a few questions.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Conway:

7 Q. Mr. Murray, can you hear me?

8 A. Barely. There's a fan running in my ear.

9 MR. CONWAY: Mr. Beeler, can you hear me?

10 MR. BEELEER: Yes.

11 Q. Just so I'm clear, Mr. Murray, 102-B is  
12 the confidential version of your testimony.

13 A. That's correct.

14 Q. You indicate on page 3 that the several  
15 recommendations you make, I believe, at the top of  
16 the page. The answer at the top of the page on page  
17 3, you conclude first that based on the policy and  
18 legal considerations discussed in your testimony, the  
19 Commission should not approve AEP Ohio's request to  
20 charge a cost-based rate for capacity. Is that the  
21 first recommendation you make?

22 A. Yes.

23 Q. And then there's a a second and a third  
24 recommendation. The second one has to do with the  
25 characterization of the downward sloping demand curve

1       that a PJM relies upon; is that right?

2             A.     Yes.

3             Q.     And then the third recommendation you  
4       make describes the type of information that you would  
5       recommend the Commission require AEP Ohio to provide  
6       so that customers and CRES providers can identify or  
7       can confirm the accuracy of bills rendered to them;  
8       is that right?

9             A.     That's correct.

10            Q.     With regard to the first recommendation  
11       which is your recommendation that the Commission not  
12       adopt AEP Ohio's proposal for a cost-based capacity  
13       charge, are you opposed to using any cost-based  
14       capacity charge, or is it just that you're opposed to  
15       the cost-based charge that the company has proposed?

16            A.     My understanding of the law in Ohio is  
17       the Commission is no longer able to establish a  
18       cost-based rate for generation.

19            Q.     And so is the answer to my question that  
20       you oppose any cost-based capacity charge?

21            A.     I don't see how the Commission has the  
22       legal authority to establish a cost-based charge for  
23       capacity. So yes is the answer to your question.

24            Q.     And the basis for your position is your  
25       understanding of the law in Ohio?

1           A.     Well, let me lay it out, and I think this  
2     is actually spelled out in IEU's motion to dismiss,  
3     the charge that is issued -- at issue here is the  
4     charge to be assessed upon retail electric suppliers,  
5     in my judgment wholesale rate. I think the company  
6     has agreed with that assessment, although we're  
7     proceeding with this proceeding.

8                 You have an initial question about  
9     whether or not the charge at issue is a wholesale  
10    rate or a retail rate. If it is a wholesale rate, it  
11    is entirely within the jurisdiction of the Federal  
12    Energy Regulatory Commission.

13                If we assume for the purposes of argument  
14    that it's a retail rate, the next threshold question  
15    you have to ask is does the Commission have -- the  
16    Ohio Commission have the authority to establish a  
17    retail rate?

18                That question rests upon in part the type  
19    of service that's at issue and whether or not it's a  
20    competitive service or a regulated service. The  
21    Commission has got continuing authority to set a  
22    regulated rate for distribution service, but the  
23    charge at issue here is clearly a generation charge.

24                The Commission's authority to set a  
25    generation-related charge is really related to

1 pricing that takes place under either an electric  
2 security plan or a standard service offer. The  
3 Commission's authority in that context is limited to  
4 approving pricing that's proposed by an electric  
5 distribution utility and related standard service  
6 supplier.

7 So I don't see how you make the  
8 connection that the Commission has got -- I can't  
9 reach the conclusion that the Commission has any  
10 authority to set a cost-based rate for generation.

11 MR. CONWAY: Your Honor, could I have the  
12 question read back?

13 (Record read.)

14 MR. CONWAY: And the answer.

15 (Record read.)

16 MR. CONWAY: Your Honor, I'd like to move  
17 to strike everything before the last sentence. It  
18 was all unresponsive to my question which was a  
19 simple question which could have been responded to  
20 with a yes or no answer. I'll take the last answer,  
21 but everything before that I would move to strike as  
22 nonresponsive.

23 MR. DARR: May I respond, your Honor?

24 EXAMINER PARROT: You may.

25 MR. DARR: Thank you, your Honor. The

1 question as asked was what is the basis, and inherent  
2 in that was the response that was given by the  
3 witness.

4 MR. CONWAY: Your Honor, that's not the  
5 question I asked, first of all. And, secondly, what  
6 we heard was a legal argument by the witness. And I  
7 simply asked him whether his position was based on  
8 his understanding of Ohio law. That calls for a yes  
9 or no answer.

10 EXAMINER PARROT: Your motion to strike  
11 is denied, Mr. Conway.

12 MR. CONWAY: Thank you.

13 Q. (By Mr. Conway) Let's go on to discuss,  
14 Mr. Murray, the aspects of your testimony that are  
15 based on legal considerations. At page 3 of your  
16 testimony, at lines 6 to 8, again, you indicate that  
17 for the reasons discussed in your testimony, based  
18 on both policy and legal considerations, the  
19 Commission should not approve AEP Ohio's cost-based  
20 proposal for pricing capacity. Do you see that?

21 A. Yes.

22 Q. And part of that statement that I'd like  
23 to explore with you is the extent to which your  
24 testimony is based upon legal considerations.

25 First of all, you're not a lawyer, right?

1           A.     That's correct.

2           Q.     And are you or are you not offering legal  
3 opinions through your testimony?

4           A.     I don't believe I'm offering legal  
5 opinions. I've clearly indicated I'm not a lawyer,  
6 and where I've touched upon things that might be  
7 considered legal opinions, I've indicated clearly  
8 they're based upon my discussions with counsel.

9           Q.     And can you -- would you list for me, if  
10 you can, exactly where in your testimony you are  
11 advancing legal positions in support of your  
12 opposition to AEP Ohio's request, IEU?

13          A.     Again, I may have missed these, I'm  
14 flipping through my testimony and trying to pick them  
15 all up, but I think the first one appears on page 15,  
16 lines 22 and 23.

17          Q.     And go ahead.

18          A.     Here I'm referencing actually the  
19 testimony of IEU Witness J. Edward Hess where he is  
20 discussing the request to obtain transition revenue.

21          Q.     And your reference to lines 22 and 23 is  
22 simply a reference to your statement that "and as I  
23 understand it based on the advice of counsel," and  
24 then you go on to characterize in your view the  
25 illegal request to obtain transition revenue after

1 the opportunity to submit such a claim expired. Is  
2 that what your reference to lines 22 and 23 is?

3 A. Yes. And actually the discussion that  
4 based upon the advice of counsel actually continues  
5 over to page 16 through line 6.

6 Q. So page 15, line 22, through page 16,  
7 line 6; is that right?

8 A. That's correct.

9 Q. And then what's the next place where  
10 you -- your testimony advances legal arguments that  
11 you were counseled on by your attorney in support of  
12 your position?

13 A. I'll disagree with the characterization  
14 that my testimony is a legal argument. I'll look for  
15 a similar reference to advice from counsel.

16 I believe the next one appears on page 28  
17 of my testimony.

18 Q. Did you say page 28?

19 A. Yes. Beginning on line 16.

20 Q. Does that continue over to line 3 on page  
21 29?

22 A. Yes, it does.

23 Q. Okay. What else?

24 A. I believe the next occurrence is on page  
25 31, actually starts on line 13, continuing several

1 lines thereafter with the sentence that begins "Thus,  
2 if the Commission did have authority to establish a  
3 cost-based rate, which I understand it does not."

4 Q. So that goes to line 17 then?

5 A. Yes.

6 Q. Are there any other instances in which  
7 you are providing testimony based on legal  
8 considerations that you --

9 A. Look at page 34, beginning on line 18,  
10 and again, I disagree with the characterization of my  
11 testimony, but here in my conclusions I'm restating  
12 some of the conclusions I reach in my testimony  
13 beginning on line 18.

14 Q. Page 34, did you say?

15 A. Page 34.

16 Q. Line 18?

17 A. Line 18, and the reference to my  
18 understanding actually continues through the sentence  
19 that appears -- or continues through line 5 on page  
20 35. Again, I skimmed through my testimony rather  
21 quickly. I think that's all the instances I recall.

22 Q. So is it accurate to say that anytime you  
23 reference your counsel as a source of support for a  
24 position that you present, that that would be an  
25 instance where your testimony is based upon legal

1 considerations that you were informed about on the  
2 basis of counsel's advice?

3 A. Reflects my understanding based upon  
4 ongoing involvement in regulatory proceedings here in  
5 Ohio as well as discussions with counsel.

6 Q. But my question is, is every time that  
7 the -- you're relying upon legal considerations in a  
8 presentation of your testimony, that you were  
9 informed about by your counsel that some reference  
10 like based on advice of counsel or some such would  
11 appear in the testimony?

12 A. Again, I think I want to try to identify  
13 as those instances where my testimony is based in  
14 part upon discussions with counsel. It also reflects  
15 my own internal conclusions.

16 Q. So what you're saying is that you agree  
17 with your counsel's positions?

18 A. Reflects my understanding of the law as a  
19 lay person.

20 Q. Going back to your first reference, page  
21 15, line 22, through page 16, line -- I think you  
22 said 6. You have that?

23 A. Yes.

24 Q. Is it accurate or is it the case that the  
25 testimony that continues after that section that you

1 just referenced starting with question 18 on page 16  
2 and continuing over to page 21, there is additional  
3 material there that you testify about which is based  
4 on legal considerations that you were informed about  
5 by your counsel? Or is that all independent --  
6 independently your testimony without reference to  
7 advice of counsel?

8 THE WITNESS: Could I have the question  
9 reread please?

10 (Record read.)

11 A. No, that's my testimony. I had  
12 involvement in these transition plan cases, in the  
13 process the Commission issues my restatement of the  
14 history as it occurred.

15 Q. So none of that testimony is based on  
16 advice of your counsel; is that right?

17 A. That's correct. It's my testimony.

18 Q. Let me refer you to page 19, line 16, and  
19 the sentence which begins "During this additional  
20 transition that I understand has no basis in law."  
21 You see that?

22 A. I believe I stand corrected. You pointed  
23 out a spot where I've overlooked a reference to as I  
24 understand the basis of law. So that would be an  
25 instance based upon my discussion with counsel as

1 well.

2 Q. And so which part of that answer on  
3 line -- excuse me, on page 19 is based on advice of  
4 your counsel?

5 A. The sentence, the entire sentence that  
6 begins "During this additional transition that I  
7 understand has no basis in law."

8 Q. So if I find any other instances in your  
9 testimony where you indicate that something's either  
10 required by or has no basis in or is otherwise  
11 governed by some legislation, law, regulatory rule,  
12 would it be the case that in those instances your  
13 testimony is based on advice of counsel?

14 A. Again, I believe where I have relied upon  
15 the advice of counsel I've tried to choose words in  
16 my testimony to clearly indicate so.

17 Q. Again, my purpose, Mr. Murray, is I'd  
18 like to just know in some completeness when I'm  
19 dealing with your testimony and when I'm dealing with  
20 the arguments that your counsel has provided to you  
21 or interpretations of law that your counsel provided  
22 to you that you relied upon.

23 So if there's any others as we go through  
24 this exercise that you would identify as being based  
25 on the advice of your counsel we haven't identified,

1 would you please let me know at that time?

2 A. Yes.

3 Q. Could I turn your attention to the  
4 sentence on page 16, which I believe is at lines 3  
5 through 6, and I think that you indicated was part of  
6 a portion of your testimony that's based on advice of  
7 counsel. Could you turn your attention to that  
8 sentence and take a look at it.

9 A. I'm there.

10 Q. You state there, Mr. Murray, do you not,  
11 that it's your understanding based on discussions  
12 with your counsel that the Commission no longer has  
13 the authority to subject generation service to  
14 cost-based regulation?

15 A. That's correct.

16 Q. And is your point that there is not a  
17 requirement to set generation service rates based on  
18 costs?

19 A. My point is that the generation service  
20 that the Commission has the authority to regulate is  
21 standard service offer generation service. Standard  
22 service offer generation service is a set based upon  
23 comparisons to market-based rates.

24 Q. And your statement in the sentence is  
25 that it is your understanding that the Commission no

1 longer has the authority to subject those prices to  
2 cost-based methodologies for establishing the rates;  
3 is that right?

4 A. That's correct.

5 Q. And --

6 A. If you look at the statutes for, for  
7 example, an electric security plan, there are some  
8 exceptions. For example, if the Commission is  
9 authorized to approve a fuel adjustment clause which  
10 is based upon cost.

11 Back up. The overall standard service  
12 offer rate has to be judged reasonable based upon  
13 comparison to market rates.

14 Q. Let me go back to my earlier question  
15 that I'd like to follow up on with you. Is it your  
16 position that the Commission is no longer required to  
17 set generation service rates based on costs, or that  
18 they may not set generation services rates based on  
19 costs?

20 MR. DARR: Objection. Asked and  
21 answered.

22 EXAMINER PARROT: Overruled.

23 THE WITNESS: Can I have the question  
24 read back, please?

25 (Record read.)

1           A.     The Commission is only authorized to set  
2 rates based upon the authority that's been delegated  
3 to it by the legislature. As I understand the two  
4 options, which is standard service offer rates set  
5 either on the electric security plan or in the market  
6 rate option, both options are set based upon  
7 benchmarking against market-based rates.

8                     As I've indicated, there are some  
9 exceptions in, for example, the electric security  
10 plan where you can develop an overall price that  
11 reflects some cost-based inputs, but the total  
12 overall resulting standard service offer price has to  
13 be judged reasonable based upon a comparison to  
14 market-based rates.

15           Q.     Let me try it a different way,  
16 Mr. Murray. Go to your testimony at lines 3 to 6,  
17 the sentence we've been focusing on here, and answer  
18 whether I changed the word "subject" to "require,"  
19 the beginning of the sentence would remain the same  
20 for you.

21                     So that if the sentence read "It is my  
22 understanding that the Commission no longer has the  
23 authority to require generation service to be cost  
24 based," would that be your position?

25                     Just trying to figure out whether the use

1 of the word "subject" is comparable to "require."

2 A. That would be correct.

3 Q. So I can substitute "require" for  
4 "subject" and the meaning would not be affected  
5 adversely, right?

6 A. Yes. I mean, again, my testimony is the  
7 Commission no longer has the authority to subject --  
8 to set generation rates based upon traditional cost  
9 of service based regulation as was historically the  
10 case prior to the enactment of Senate Bill 3.

11 Q. Let me ask you a follow-up question then.  
12 Would you agree that the lack of authority to require  
13 that a rate be set based on costs is not the same as  
14 the lack of authority to set a rate based on costs?

15 MR. DARR: Can I have that question read  
16 back, please.

17 (Record read.)

18 A. I don't understand the question.

19 Q. You can't answer the question?

20 A. I don't understand the question.

21 Q. What is it about the question you can't  
22 understand? Too many words, or?

23 A. Doesn't make sense to me.

24 MR. DARR: Objection, your Honor.

25 EXAMINER PARROT: Mr. Conway.

1 MR. CONWAY: Okay.

2 Q. Well, on the one hand you would have the  
3 lack of authority to require a rate to be set based  
4 on costs, okay? The lack of authority to require  
5 that a rate be set based on costs; do you understand  
6 that?

7 A. Yes.

8 Q. And then on the other hand you have the  
9 lack of authority to set a rate based on costs; do  
10 you understand that?

11 A. The Commission doesn't set rates. So,  
12 no, I'm not exactly sure what your question is.

13 Q. You said the Commission doesn't set  
14 rates?

15 A. That's correct. The Commission approves  
16 rates.

17 Q. Let me start over. Would you -- the  
18 first branch of the comparison is the lack of  
19 authority to require that a rate be approved based on  
20 costs. Okay? Are you with me?

21 A. Is there a question there?

22 Q. Did you understand what I just posed to  
23 you as one branch of the comparison?

24 A. Well, you keep wanting to substitute the  
25 word "required" to what I used the term "subject" in

1 my testimony, it's not exactly clear why you continue  
2 to want to do that.

3 Q. If you could just bear with me, I'm  
4 simply asking you to make a comparison and tell me  
5 whether or not you can conclude there's equivalence  
6 or not between the two items being compared.

7 So the first branch of the comparison is  
8 the lack of authority to require that a rate be  
9 approved based on costs. Do you have that in mind?

10 A. Yes.

11 Q. And then on the other hand the lack of  
12 authority to approve a rate based on costs. Do you  
13 have that in mind?

14 A. Yes.

15 Q. Then in your view are the two equivalent  
16 or are they different? And if you can't tell, that's  
17 okay, I'll move on.

18 A. They're different in the context of  
19 "require" suggests that the Commission would order a  
20 utility to file a cost-based rate. "Subject" as I've  
21 used it is a slightly different context in which the  
22 Commission is being asked to approve the cost-based  
23 rate. So perhaps with that nuance there's a  
24 distinction.

25 Q. Mr. Murray, at page 5 of your testimony,

1 could you turn there?

2 A. I'm there.

3 Q. At page 5 I believe you state that the  
4 capacity market rules in PJM have been a source of  
5 significant and frequent disagreement.

6 A. That's correct.

7 Q. What are the PJM capacity market rules to  
8 which you're referring there?

9 A. It is the rules as they were embodied at  
10 a PJM reliability assurance agreement which I believe  
11 has been marked earlier in this proceeding as an  
12 exhibit that are also various what are called  
13 business practice manuals that are written in more  
14 layman's terms, as opposed to contractual or tariff  
15 terms, that are supplemental materials that can help  
16 a reader develop a better understanding of how the  
17 capacity market operates in PJM.

18 Q. Is there anything else or is that the  
19 totality of the rules to which you're referring in  
20 that statement?

21 A. The rules themselves are rules that have  
22 been approved by the Federal Energy Regulatory  
23 Commission.

24 Q. And has the RAA been approved by the  
25 FERC?

1           A.     That's my understanding.

2           Q.     Okay.  And the business practice rules,  
3     were they approved by the FERC?

4           A.     Typically that's not the case.

5           Q.     But they are part of the source of the  
6     significant and frequent stakeholder disagreement  
7     that you referred to?

8           A.     No.  I think as I indicated, the business  
9     practice manuals are written within more layman's  
10    terms as opposed to legal terms, and to somebody that  
11    is trying to understand how the capacity market  
12    operates, the supplemental materials that you can  
13    rely upon to bring yourself up to the learning curve.

14          Q.     Have the business practice rules been one  
15    of the sources of significant and frequent  
16    stakeholder disagreement?

17          MR. DARR:  Objection.  Mischaracterizes  
18    the witness's testimony.

19          MR. CONWAY:  I'm not trying to  
20    characterize it, your Honor, I'm asking the question.  
21    Are those rules a part of the source of the  
22    disagreement?

23          MR. DARR:  The characterization was, I  
24    believe, your Honor, business practice rules.  
25    They're business practice manuals I believe is the

1 correct characterization.

2 MR. CONWAY: Excuse me, business practice  
3 manuals.

4 Q. (By Mr. Conway) Let me rephrase the  
5 question, Mr. Murray. Are the business practice  
6 manuals part of the source of the significant and  
7 frequent stakeholder disagreement to which you refer  
8 on page 5?

9 A. The rules as reflected in the reliability  
10 assurance agreement are the underlying source of the  
11 dispute. The business practice manuals help explain  
12 how those rules operate in practice. So the business  
13 practice manuals are not themselves the source of the  
14 dispute, but they help a reader understand disputes  
15 when they arise.

16 Q. So it sounds like the reliability  
17 assurance agreement is the scope of the capacity  
18 market rules -- of the source of capacity market  
19 rules to which you're referring; is that right?

20 A. That's correct. The rules that I'm  
21 referring to are those rules that are in effect as a  
22 result of the approval by the Federal Energy  
23 Regulatory Commission.

24 Q. With regard to the RPM auctions,  
25 Mr. Murray, that are undertaken on an annual basis,

1 and in particular the base residual auction, could  
2 you explain to me how the demand curve for the base  
3 residual RPM auction is established?

4 A. Sure. PJM -- PJM does a global forecast  
5 of load that it expects to see happen on a peak  
6 summer day for the upcoming delivery year. That load  
7 is based upon probabilistic studies that from a  
8 statistical standpoint weigh the possibility of load  
9 being higher or lower than the forecast what's called  
10 50/50 basis.

11 PJM then establishes a level of capacity  
12 resources that it believes are adequate such that the  
13 probability of a loss of load under peak load  
14 conditions is equivalent to one day in ten years.

15 That sets a starting point for the  
16 creation of downward sloping demand curve. And the  
17 weight at that point that's been described in I think  
18 some earlier witness testimony, it varies -- the  
19 level reserves varies on a year-to-year basis. In  
20 more recent years it's typically on the order of 15  
21 to 16 percent.

22 That is a point on a demand curve that  
23 corresponds to pricing quote associated with a factor  
24 of what's called net CONE, or the cost of new entry.

25 When PJM conducts the auctions, their

1 objective is to clear sufficient capacity resources.  
2 And these can be both demand and generation resources  
3 in a quantity sufficient to meet that level of  
4 reserves. The pricing on that -- the pricing under  
5 RPM is a function of the intersection of supply and  
6 demand in the downward sloping demand curve.

7 So if the level of offered capacity that  
8 clears a base residual auction intersects at that  
9 point in the downward sloping demand curve, the  
10 clearing price is equivalent to that factor of net  
11 CONE.

12 The concept behind downward sloping  
13 demand curve of PJM is that at that point the  
14 probabilistic loss of load expectation is one day in  
15 ten years. And as we know, if the lights go out over  
16 a broad section of the country, as the case back in  
17 2003, there could be tremendous economic disruptions  
18 and losses to customers.

19 So from a reliability perspective, PJM  
20 uses this as if we can clear additional capacity  
21 sources such that the level of reserves is actually  
22 higher and do so at a lower overall price to  
23 customers, it's a good thing to do.

24 Q. Mr. Murray, thank you.

25 A. I'm not finished with my answer.

1 MR. DARR: May he complete his answer,  
2 your Honor?

3 EXAMINER PARROT: Yes.

4 A. The slope of the downward sloping demand  
5 curve is deliberately set such that as you clear  
6 increasing level of reserves on that initial level of  
7 reserves that PJM thinks is necessary to establish  
8 one day in ten loss of load expectation, it will  
9 clear at a lower overall price such that if you take  
10 the quantity capacity that clears at that lower  
11 price, it actually produces a lower overall price to  
12 consumers.

13 And I walk through a mathematical example  
14 in my testimony.

15 Q. Are you finished?

16 A. Yes.

17 Q. You mentioned that the downward sloping  
18 demand curve is deliberately set for the purpose that  
19 you described, correct?

20 A. Yes.

21 Q. Okay. And it's deliberately set by PJM;  
22 is that right?

23 A. Yes. It's set based upon rules that are  
24 again embodied in the PJM's tariff on the reliability  
25 assurance agreement.

1           Q.    That was my next question.  It's based on  
2   these rules that I think you previously described  
3   were contained in the reliability assurance  
4   agreement; is that correct?

5           A.    That's correct.

6           Q.    So the demand curve is set according to  
7   PJM rules, right?

8           A.    That's correct.

9           Q.    Okay.  I think you might have mentioned,  
10   I have to admit I can't recall everything you  
11   provided in response to the earlier question, but I  
12   believe you mentioned net CONE.  The maximum clearing  
13   price for the auction is set equal to one and a half  
14   times net CONE; is that right?

15          A.    That's my understanding.

16          Q.    And that's according to a PJM rule,  
17   correct?

18          A.    That's my understanding.

19          Q.    And with regard to net CONE, that stands  
20   for "net cost of new entry"?

21          A.    Yes.  It's net cost of new entry for a  
22   reference type of generating facility.

23          Q.    And the reference type of generating  
24   facility is selected by PJM; is that right?

25          A.    That's correct.

1           Q.    And PJM can -- does it have the  
2   discretion to change what the reference generating  
3   facility is?

4           A.    That's not my understanding.  I believe  
5   it's always set based upon the use of the combustion  
6   turbine.

7           Q.    So it's set based on a CT, and it's  
8   forever into the future going to be set based on a  
9   CT?

10          A.    My understanding is in order to switch  
11   from a CT there would need to be some change in the  
12   market rules.

13          Q.    And then I think you mentioned to me that  
14   the cost of the reference facility is used to develop  
15   the net CONE value and then of course the one and a  
16   half times the net CONE value; is that right?

17          A.    That's correct.

18          Q.    So ultimately the net cost of entry is  
19   governed by the PJM rules in applied in that subject,  
20   right?

21          A.    That's correct.

22          Q.    So that's one of the PJM capacity market  
23   rules to which you referred in your testimony?

24          A.    That's one aspect of the PJM market  
25   rules.

1           Q.    Now, on the supply side when generators  
2   bid their capacity resources into the RPM auctions,  
3   is the amount that they may bid into the auctions  
4   regulated by PJM?

5                   Let me rephrase.

6                   Is the price that they may bid into the  
7   auction regulated?

8           A.    Regulated by whom?

9           Q.    PJM.

10          A.    No.  It's regulated by the Federal Energy  
11   Regulatory Commission.

12          Q.    And the price in which generators that  
13   are participating in the auction process may bid into  
14   the RPM auction is capped at some amount, isn't it?

15          A.    It may or may not be, depends on the  
16   specific generator and the circumstances.

17          Q.    And are you familiar with the maximum  
18   offer price that applies to generators bidding into  
19   the RPM auction?

20          A.    There in the PJM capacity market the  
21   PJM's market monitor makes a review each year on the  
22   overall structural competitiveness of the market, and  
23   part of that review is to determine whether or not  
24   suppliers are deemed to be pivotal.  "Pivotal" in  
25   this instance means in order to clear the level of

1 resources that are needed in the specific local  
2 delivery area or on a broader PJM region you would  
3 have to accept an offer from a generation resource in  
4 order to clear the market.

5 Generation owners that have capacity  
6 resources that fall into that category are subject to  
7 mitigation in an offer price.

8 Q. My question is as a general matter,  
9 Mr. Murray, are the generation resources that  
10 participants bid into the RPM market, are their  
11 prices capped?

12 In other words, is there a maximum price  
13 at which any of the generators that are bidding into  
14 the market may bid their generation into the market?

15 MR. DARR: Your Honor, may I have a  
16 clarification on this? First of all, I need to hear  
17 the beginning of that question.

18 (Record read.)

19 MR. DARR: Can we have a clarification as  
20 to what counsel means "as a general matter"?

21 MR. CONWAY: As opposed to the instance  
22 that Mr. Murray had described just previously in his  
23 prior answer.

24 THE WITNESS: If you can refresh my  
25 memory, I don't know what that was.

1           Q.     (By Mr. Conway) Let me try it again.

2                     The question -- let me give you the  
3 question again that I'm looking for an answer to.

4                     Generally with regard to participants in  
5 the PJM capacity market auction as the base residual  
6 auction, for example, are the participants limited  
7 generally, that means all of them, are they limited  
8 as to the price that they may bid into the auction?

9           A.     Well, when you use the term "generally,"  
10 I think you're, as I would interpret it, trying to  
11 identify that response to the question for all  
12 generators. The vast majority of generation in PJM  
13 is owned by companies that are affiliated what were  
14 at one time vertically integrated utilities.

15                    And as I indicated before, it's pretty  
16 typical for the independent market monitor to find  
17 that all of the local delivery areas in -- that are  
18 going to be defined in the upcoming basis should be  
19 watching for noncompetitors subject to seller market  
20 power.

21                    So most of the generating units are  
22 subject to mitigation rules.

23           Q.     Mr. Murray --

24           A.     If I could finish my answer, please.

25                    There are instances where you could, for

1     example, have a new generation facility that was  
2     constructed and owned by an independent power  
3     producer where that was the only asset they owned in  
4     the entire PJM market.

5             It's not likely in that incidence that  
6     the seller would be deemed to have market power. I  
7     don't recall off the top of my head in that specific  
8     circumstances if there's -- if their bid is subject  
9     to an absolute cap in the auction.

10            Q.     I'm sorry. I couldn't hear that last.

11            A.     If their bid is subject to an absolute  
12     cap in the auction.

13             And there's a further wrinkle here in  
14     that if you are in a constrained local delivery area,  
15     PJM has what's called the minimum offer price rule.  
16     In a newly constructed combustion turbine unit, for  
17     example, is offered subject to the minimum offer  
18     price. So it's kind of a mixture of rules in terms  
19     of how they apply to bidding behavior.

20            Q.     So, Mr. Murray, then if I got the gist of  
21     your answer, there would be caps on the maximum  
22     amounts that bidders could offer their generation  
23     resources into the auction on the one hand and there  
24     are also in some instances limits on the downside,  
25     limits on how low the offer prices can be for

1 generation offered into the auction; is that right?

2 A. That's correct.

3 Q. And those maximum price restrictions and  
4 the minimum price restrictions are all products of,  
5 again, PJM rules that govern those matters; is that  
6 right?

7 A. That's correct.

8 Q. Then ultimately is it the case that PJM  
9 is the one who is promulgating those rules?

10 A. I wouldn't characterize it that way. PJM  
11 operates a regional electricity market. They have  
12 governance in terms of how that organization is  
13 structured. They have, for example, members of PJM.  
14 If you're a member, you have input into the market  
15 rules.

16 There's an ongoing process within PJM  
17 where the rules are fairly dynamic. They can change  
18 over time. They have changed over time. The changes  
19 to those rules are made in applications at the  
20 Federal Energy Regulatory Commission typically under  
21 Section 205 of the Federal Power Act, occasionally  
22 206 of the Federal Power Act, but ultimately all  
23 those rules are regulated by the Federal Energy  
24 Regulatory Commission.

25 So PJM proposes rules or modification,

1 the Federal Energy Regulatory Commission ultimately  
2 approves or disapproves of the rule changes.

3 Q. That's helpful. In any event, at the end  
4 of the day there's a regulator that has final say  
5 over whether or not the rules are adopted and rules  
6 that it believes is appropriate; is that right?

7 A. That's correct.

8 Q. And at page 6 of your testimony, you have  
9 several bullets that appear at lines 10 through 18.  
10 You see that?

11 A. Yes.

12 Q. And I believe those bullets are a  
13 fundamental elements of the capacity market design  
14 for RPM; is that accurate?

15 A. That's correct.

16 Q. And then the fourth bullet describes a  
17 reliability backstop method. You see that?

18 A. Yes.

19 Q. Briefly if you could just describe what  
20 the reliability backstop mechanism is? And if you  
21 can't do it briefly, I'll move on and try to guide  
22 you through it a little bit. But I'm not looking for  
23 a, you know, a treatise on it. Can you do that?

24 A. I'll provide my understanding.

25 Q. Okay.

1           A.     Reliability backstop mechanism is  
2 actually embodied in I think it's called Attachment  
3 DD of PJM's tariff. In other than a brief reference  
4 to the existence of the backstop mechanism, it really  
5 isn't discussed in detail in the reliability  
6 assurance agreement.

7                     But the concept is based upon the fact  
8 that the RPM auction is structured simply to reflect  
9 projected load and what other capacity resources  
10 offer into the auction, you could run into a  
11 situation what the amount of generation resources  
12 that clear in a given base residual auction -- I said  
13 "generation resource," I'm really talking about  
14 capacity resources which is broader, but it could  
15 fall below the level identified earlier associated  
16 with a loss of load probability equal to one day in  
17 ten years.

18                     If that -- my understanding is that if  
19 that happens for three consecutive auctions, the  
20 reliability backstop mechanism kicks in. PJM will  
21 actually initiate and solicit a process to entice  
22 somebody to build capacity in the region and that  
23 process allows the recovery of the cost of that new  
24 unit over I believe a 15-year period.

25                     So it's conceptually a mechanism where if

1 the market doesn't produce the expected outcomes,  
2 there's a backstop mechanism in a way to construct  
3 and cover the costs.

4 Q. So it's a regulatory tool that provides  
5 some measure of failsafe for the whole process; is  
6 that right?

7 A. That's correct. My understanding it's  
8 never been triggered.

9 Q. But it's another regulatory tool in PJM's  
10 toolbox of regulatory mechanisms that apply to the  
11 auction, right?

12 A. That's correct.

13 Q. Just as a follow-up question, the PJM  
14 reliability backstop mechanism, it determines how  
15 capacity resources will be procured to meet the  
16 objectives of the backstop mechanism, correct?

17 THE WITNESS: Could I have the question  
18 reread, please.

19 (Record read.)

20 A. Again, it is a triggering mechanism that  
21 if it's triggered requires PJM to initiate certain  
22 events to acquire additional capacity.

23 Q. So would you agree that PJM has a  
24 comprehensive set of regulations that governs both  
25 the supply side of the auctions, the demand side of

1 the auctions, as well as the reliability backstop  
2 mechanism for the auctions that are all designed to  
3 ensure reliability of electric supply for the region?

4 A. I would agree. That's the intent of the  
5 rules.

6 Q. Would you agree that it's also a  
7 comprehensive set of regulations that governs how the  
8 pricing of those resources will be determined?

9 A. Yes. Clarification there: RPM largely  
10 deals with capacity prices. And PJM also has markets  
11 for energy and ancillary services that aren't  
12 specifically addressed directly as part of the  
13 reliability assurance agreement.

14 Q. Thank you for that clarification. And I  
15 was asking the questions in the context of the  
16 capacity market structure.

17 Mr. Murray, the standard service offer  
18 generation rates are retail prices, correct?

19 A. Yes.

20 Q. And the current standard service offer  
21 generation rates are a product of the first ESP  
22 generation standard service offer rate-setting  
23 process rate for Ohio, correct?

24 A. That's correct.

25 Q. And the rates, the generation standard

1 service offer rates that existed prior to the ESP I  
2 rates were established through the rate stabilization  
3 plans for AEP Ohio, right?

4 A. That's my understanding.

5 Q. And those, of course, were retail rates  
6 also, right?

7 A. That's correct.

8 Q. And before that the standard service  
9 offer rates that the electric transition plan  
10 established, they were also retail rates, correct?

11 A. That's correct.

12 Q. Now, the capacity charge that AEP Ohio  
13 assesses to CRES providers, that's a wholesale rate,  
14 right?

15 A. That's my understanding.

16 Q. Could you turn to page 14 of your  
17 testimony? And I'd like you to focus on lines 6  
18 through 8 on page 14. Do you see that?

19 A. Lines 6 through what, please?

20 Q. 6 through 8.

21 A. Okay, I'm there.

22 Q. It's a standalone, one-sentence  
23 paragraph. You see that?

24 A. I see it.

25 Q. And there you state that a cost-based

1 rate for capacity, quote, was uniquely provide an  
2 unwarranted subsidy to AEP Ohio, end quote. You see  
3 that?

4 A. Yes.

5 Q. So it's your position then that by  
6 charging a price that recovers its costs, AEP Ohio  
7 would be obtaining a subsidy; is that right?

8 THE WITNESS: Can I have the question  
9 reread, please.

10 (Record read.)

11 A. That's not my testimony. My testimony  
12 was establishing a cost-based rate for capacity would  
13 be contrary to the state's policies and provide an  
14 unwarranted subsidy. It may very well be that AEP  
15 can, for example, charge a standard service offer  
16 generation rate that allows it to recover its costs.

17 Q. Let me clarify it. I'm talking about the  
18 price being charged to CRES providers, not the  
19 standard service offer customers. Are you with me?

20 A. I'm with you.

21 Q. So is your position that by charging CRES  
22 providers a price, it recovers its capacity costs,  
23 AEP Ohio is obtaining or would obtain a subsidy?

24 A. Yes.

25 Q. Would you agree that the mainstream view

1 in regulatory circles and economic circles is that  
2 when a utility recovers its costs through a price but  
3 no more, there's not a subsidy to the utility?

4 MR. DARR: Objection. The question  
5 assumes a definition of utility that may or may not  
6 be appropriate here. I don't know what particular  
7 definition of utility Mr. Conway is using.

8 EXAMINER PARROT: Overruled.

9 THE WITNESS: Could I have the question  
10 reread, please.

11 (Record read.)

12 A. I don't understand your reference to  
13 "regulatory circles and economic circles."

14 Q. Would you agree that the mainstream view  
15 among economists and utility regulators is that when  
16 a utility recovers its costs but no more, there's not  
17 a subsidy to the utility?

18 MR. DARR: Same objection.

19 EXAMINER PARROT: Overruled.

20 A. No, and I think you have to take my --  
21 put my testimony here in context. We are talking  
22 about providing AEP the opportunity to recover a  
23 cost-based rate for capacity in an environment  
24 regulated by FERC which the rates are set based upon  
25 market.

1                   And in that context providing AEP an  
2                   opportunity to recover costs on a basis that  
3                   doesn't -- isn't available to other competitors in  
4                   the market is a subsidy.

5                   Q.    Let me ask you to assume, Mr. Murray,  
6                   that AEP Ohio is recovering its costs of capacity  
7                   from the services that it provides to standard  
8                   service offer customers. So that group is paying  
9                   prices that cover costs. Are you with me?

10                  A.    Not exactly. Who do you mean by "AEP  
11                  Ohio" in your question? Is it AEP Ohio the  
12                  distribution company, or is it the generation  
13                  company?

14                  Q.    I'm talking about the entity that  
15                  provides standard service offer service.

16                  A.    Which is the distribution company.

17                  Q.    Are you with me?

18                  A.    Yes.

19                  Q.    Okay. And then on the other hand AEP  
20                  Ohio provides capacity service to the CRES providers  
21                  at a cost that -- excuse me, at a price that recovers  
22                  less than its costs. Are you with me there?

23                  A.    No, I'm not. Because in our discussion  
24                  definitionally you said AEP Ohio was the distribution  
25                  company. AEP Ohio the distribution company is not

1 providing capacity to competitive retail electric  
2 suppliers. It's the generation owner within AEP.

3 Q. Your position is that AEP Ohio, that is,  
4 Ohio Power Company, is not providing capacity service  
5 to CRES providers?

6 A. I think that mischaracterizes my answer.  
7 My answer was --

8 Q. I apologize, I didn't mean to do that.

9 A. -- AEP Ohio as you defined it was the  
10 electric distribution utility. The electric  
11 distribution utility is not providing capacity to  
12 competitive retail electric suppliers. AEP Ohio  
13 Generating Company is the entity that is providing  
14 capacity to competitive retail electric suppliers.

15 Q. Is it your understanding that there is an  
16 AEP Ohio Generating Company that owns the generation  
17 used to supply capacity to CRES providers and is  
18 distinct from AEP Ohio the electric distribution  
19 utility that provides standard service offer to  
20 nonshopping customers?

21 A. They're not separate corporate entities  
22 but they're supposed to be functionally separated.

23 Q. And where does the EDU obtain the  
24 capacity that it uses to support SSO service?

25 A. You'll have to be more specific about

1 your question. You've asked that generically where  
2 does an EDU. Are you talking about a specific  
3 electric distribution utility in Ohio?

4 Q. Well, I was referring to AEP Ohio.  
5 Excuse me. I thought that was the context of our  
6 conversation.

7 Where does AEP Ohio, the EDU, get the  
8 capacity that it uses to support its standard service  
9 offer services?

10 A. AEP Ohio, as is the case with all of the  
11 so-called AEP East utilities, is operating under the  
12 fixed resource requirement alternative under the  
13 reliability assurance agreement.

14 Q. And it self-supplies the capacity used  
15 for its standard service offer; is that right?

16 A. I don't believe that's correct. That's  
17 actually one of the fictions that's been put forth in  
18 this proceeding.

19 Capacity in PJM is not something that's  
20 dedicated to specific customer loads. The notion  
21 that AEP Ohio is dedicating capacity to Ohio  
22 customers is absolute fiction. If you look at the  
23 reliability assurance agreement itself, which is a  
24 contract, following filing through the Federal Energy  
25 Regulatory Commission and signed by all the entities

1 that are deemed to be load serving entities in PJM,  
2 load serving entities is broader in that context than  
3 just electricity utilities. It's any entity by  
4 contract or franchise has an obligation to serve  
5 load.

6 If you look at the "whereas" clauses as  
7 they appear on page 4 of that agreement, I'll read it  
8 here, "Whereas, each party to this agreement is a  
9 load serving entity within the PJM region. Whereas,  
10 each party is committed to share its capacity  
11 resources with other parties to reduce the overall  
12 revenue requirements to other parties while  
13 maintaining reliability service. And, whereas, each  
14 party is committed to provide mutual assistance to  
15 other parties during emergencies."

16 And it continues on. The way the  
17 reliability assurance agreement works is to obtain  
18 sufficient capacity resources for the pool in total.  
19 It does not work to operate to dedicate capacity  
20 resources to AEP standard service offer load or any  
21 one else. It's a mutual assistance agreement.

22 And the reason that load serving entities  
23 enter into this agreement is it reduces the level of  
24 capacity resources they would otherwise have to  
25 obtain if they were standing on their own and not

1     relying upon a mutual assistance type of agreement in  
2     order to satisfy the one day in ten loss of load  
3     expectation I spoke of earlier.

4             So the structure of the agreement, you  
5     can point to and analysis in other industries, mutual  
6     aid agreements that exist in electric utility. You  
7     get hit by a storm, neighboring utilities got an  
8     obligation to send line crews to help you restore  
9     your system.

10            Same type of agreement conceptually but  
11     the capacity is not committed to serve individual  
12     load. It's committed for the pool in total. And  
13     it's not dispatched to serve load. The capacity  
14     resources once designated under the reliability  
15     assurance agreement are dispatched to provide energy  
16     on a pool-wide basis, not to serve any specific load  
17     including SSO load here in Ohio.

18            MR. CONWAY: Could I have my question  
19     read back, please.

20            (Record read.)

21            MR. CONWAY: And the beginning of his  
22     answer.

23            (Record read.)

24            MR. CONWAY: And, your Honor, I move to  
25     strike the remainder of the answer as not responsive.

1 MR. DARR: Response, your Honor? As has  
2 been the practice in this hearing throughout, we  
3 should be offering an opportunity to respond in  
4 complete terms and that's what Mr. Murray has done.

5 EXAMINER PARROT: I agree, Mr. Darr. The  
6 motion's denied.

7 Q. So at the risk of extending the  
8 cross-examination unduly, the answer is that AEP  
9 Ohio, the EDU, does not self-supply its capacity.

10 A. That wasn't my answer. The concept of  
11 self-supplying capacity is inconsistent with how the  
12 reliability assurance agreement works.

13 Q. So is the answer no then to my question.

14 THE WITNESS: Can I have the question  
15 reread.

16 (Record read.)

17 Q. And the answer is? I'm sorry, the answer  
18 is yes?

19 A. The answer is that's inconsistent. The  
20 notion that you -- the assumption that you're putting  
21 forth is inconsistent with how the reliability  
22 assurance agreement works in practice.

23 Q. And so --

24 A. Concept of self-supply has an economic  
25 consequence from the standpoint of how settlements

1 take place in the reliability assurance agreement.  
2 The concept of self-supply is inconsistent with the  
3 statistical requirements of how the reliability  
4 assurance agreement works.

5 Q. So, Mr. Murray, the AEP Ohio EDU does not  
6 self-supply, yes or no?

7 A. AEP Ohio along with AEP East operating  
8 companies elect a fixed resource requirement  
9 alternative.

10 Q. So you can't -- can you answer the  
11 question yes or no? Can you give me a yes or no to  
12 that question?

13 A. What do you mean by "self-supply"?

14 Q. I'll move on.

15 Could you turn back to page 14 of your  
16 testimony.

17 A. I'm there.

18 Q. And in the third full paragraph on that  
19 page of your answer, the third full paragraph of your  
20 answer, starting at line 9, you state that AEP  
21 Ohio -- actually at line 14, you state that AEP Ohio  
22 has successfully asserted that the establishment of  
23 generation standard service offer prices has nothing  
24 to do with cost-based ratemaking. You see that?

25 A. Yes, I do.

1           Q.    And at the bottom of page 14 and going on  
2 over to top of 15 you quote from an AEP Ohio brief  
3 filed in the first ESP proceeding that you contend  
4 supports your point; is that right?

5           A.    That's correct.

6           Q.    And you have highlighted, at least in  
7 part, AEP Ohio's argument in that fragment of its  
8 brief in the first ESP that it's 3 percent and  
9 7 percent automatic generation rate increases that  
10 AEP Ohio proposed to include in its first ESP need  
11 not be cost-based. Do you see that?

12          A.    Yes, I do.

13          Q.    And those 3 percent and 7 percent  
14 automatic generation rate increases, they were  
15 proposed rates by AEP Ohio?

16          A.    That's my recollection.

17          Q.    And the 3 percent increase applies to  
18 Columbus Southern Power and 7 percent applies to Ohio  
19 Power; is that right?

20          A.    That's my recollection.

21          Q.    And this is your example of how AEP Ohio  
22 has successfully argued that the SSO generation rates  
23 need not be cost-based, right?

24          A.    Well, it's one example. It's not all of  
25 the examples.

1           Q.    I understand that, but this is the  
2           example you have in your testimony.

3           A.    That's correct.  There are other  
4           examples.

5           Q.    And at line 16 you say "for example."  
6           And you just discussed the example that you're  
7           referring to there, right?

8           A.    That's correct.

9           Q.    Do you know whether the Commission  
10          approved these 3 percent and 7 percent annual  
11          generation service increases that you have referenced  
12          here?

13          A.    Give me a minute, I want to refresh my  
14          memory to make sure I don't misstate something.

15                My recollection is the Commission did  
16          approve automatic annual increases.  I don't recall  
17          offhand if they were the 3 percent and 7 percent.

18          Q.    You don't know whether or not it declined  
19          to approve the 3 percent and 7 percent increases that  
20          were requested?

21          A.    Again, my recollection of the first ESP  
22          is it did involve automatic increases but, again, I'm  
23          drawing a blank on the specifics.

24          Q.    Are automatic price increases permitted  
25          by the ESP statute in your lay opinion?

1           A.    I don't recall. I'd have to go back and  
2   look at the Revised Code.

3           Q.    Now, if it turned out that the Commission  
4   declined to approve the 3 percent and 7 percent  
5   proposed increases that you've referenced here in  
6   your example, would you agree with me that your  
7   argument is not supported by that example?

8           A.    No. What I'm pointing out is what the  
9   company said in their reply brief, that any increases  
10   were not required to be cost based. That's the  
11   company's position, not my argument.

12          Q.    Well, if the Commission had not approved  
13   the proposed 3 percent and 7 percent rate increases,  
14   then would you agree that it would not be -- these  
15   3 percent and 7 percent proposed increases would not  
16   be an example of AEP Ohio's successfully asserting  
17   that the establishment of generation prices has  
18   nothing to do with cost-based ratemaking?

19               MR. DARR: Objection. Asked and  
20   answered.

21               EXAMINER PARROT: Overruled.

22          A.    No. As I indicated previously, I  
23   provided a single example from my testimony. There  
24   are other examples that I would be happy to provide  
25   to illustrate where AEP has successfully argued that

1 electric security plan rates are not required to be  
2 cost based.

3 Q. Could you turn your attention to the  
4 testimony on page 15, starting at line 8 and  
5 continuing through 13? See that?

6 A. Yes.

7 Q. In that section of your testimony you  
8 refer to a period during which electric prices were  
9 very volatile and at times high as a result of  
10 various factors. Do you see that?

11 A. Yes.

12 Q. And then you include among those factors  
13 high natural gas prices influenced at times by  
14 improper market manipulation. You see that?

15 A. Yes.

16 Q. And then right after you make that  
17 reference to market manipulation of natural gas  
18 prices, you referenced in the next clause "AEP Ohio."  
19 Do you see that?

20 A. Yes.

21 Q. First of all, you're not claiming, are  
22 you, that AEP Ohio has engaged in market manipulation  
23 of natural gas prices?

24 A. Please define who do you mean by "AEP  
25 Ohio" in your question.

1           Q.    Well, you reference AEP Ohio in your  
2 testimony on line 11. That's what I'm referring to.

3           A.    There I'm using AEP the electric  
4 distribution utility. No, I am not asserting that  
5 the electric distribution utility improperly  
6 influenced markets.

7           Q.    Could you tell me during what period this  
8 sentence refers to?

9           A.    Well, if you look back and pick up on the  
10 reference to the Enron fiasco, I think Enron went  
11 into bankruptcy I believe back in 2001-2002. So it's  
12 really a period of time spanning roughly 2001-2002  
13 through probably 2008 when the economic recession hit  
14 and theretofore price volatility had claimed not just  
15 the electricity markets but also natural gas markets  
16 fizzled out somewhat due to changing demands, supply  
17 conditions, and overall changes in the economy.

18          Q.    So the period covers a time 2001 through  
19 2008 then; is that what you're referring to?

20          A.    Again, I'm just trying to be fairly broad  
21 in my description of what was going on. In fairness  
22 I think it would be a broader time period than that.

23          Q.    Mr. Murray, in 2007, the FirstEnergy EDUs  
24 made an application to the PUCO for approval of a  
25 competitive bid process. Do you recall that?

1           A.    Yes.

2           Q.    And the case number is 07-796; is that  
3 right? I think you referred to it at pages 10 to 11  
4 of your testimony.

5           A.    Your reference was again to Case No.  
6 07-796-EL-ATA?

7           Q.    Yes.

8           A.    I don't recall who initiated that  
9 proceeding. My recollection is that proceeding  
10 ultimately involved the Commission considering  
11 whether or not to move forward with a statewide  
12 competitive bidding process.

13          Q.    Do you recall that IEU-Ohio filed  
14 comments in that proceeding?

15          A.    I suspect they did.

16               MR. CONWAY: Your Honor, may I approach?

17               EXAMINER PARROT: You may.

18               MR. CONWAY: I'd like to have marked as  
19 the next AEP Ohio exhibit IEU's initial comments in  
20 Case No. 07-796 and 797 which docket stamp indicates  
21 were filed on September 5, 2007.

22               EXAMINER PARROT: The Exhibit will be  
23 marked AEP Exhibit 111.

24               MR. CONWAY: Thank you, your Honor.

25               (EXHIBIT MARKED FOR IDENTIFICATION.)

1           Q.    And can I have you turn to pages 3 and 4,  
2   Mr. Murray, of pages 3 and 4 of IEU's initial  
3   comments in this proceeding?

4           A.    I'm there.

5           Q.    And this is the Matter of Application of  
6   Ohio Edison Company and Cleveland Electric  
7   Illuminating Company and the Toledo Edison Company  
8   for Approval of a Competitive Bidding Process for  
9   Standard Service Offer Electric Generation Supply,  
10   Accounting Modifications Associated with  
11   Reconciliation Mechanism and Phase In and Tariffs for  
12   Generation Service; is that correct?

13          A.    That's correct.

14          Q.    And this proceeding, Mr. Murray, involved  
15   the FES EDU's proposal to institute a competitive bid  
16   process; is that right?

17          A.    At least initially.

18          Q.    And at the bottom of page 3 of the  
19   initial comments, the last sentence that carries over  
20   to the top of page 4 states "As demonstrated from  
21   results in other states, the auction results are  
22   almost certain to produce prices significantly higher  
23   than they are today." You see that?

24          A.    Yes.

25          Q.    And did you agree with that statement

1 when it was made by IEU?

2 A. Most likely.

3 Q. And then turning your attention to the  
4 first sentence of the first full paragraph on page 4.  
5 Which states "The Commission's experience in the case  
6 of FirstEnergy has provided a preview of the  
7 potential rate shock that is built into  
8 auction-driven electric pricing." Do you see that?

9 Would you agree with that statement when  
10 IEU made it in these comments?

11 A. Yes.

12 Q. So in September of 2007, IEU was opposed  
13 to use of a competitive bidding process to establish  
14 SSO generation price, correct?

15 A. I'd say the concern is actually broader  
16 than just a competitive bidding process. If you look  
17 at what was going on not just here in Ohio but in  
18 other states, it wasn't just the use of the  
19 competitive bidding process that was producing what  
20 the comment characterizes as "rate shock."

21 Utilities at the time had transferred  
22 generating assets to affiliates that in some cases,  
23 not just here in Ohio but in other states, were no  
24 longer subject to state level economic regulation.

25 They were in turn proposing auction

1 processes that in large measure were entirely or a  
2 large degree relied entirely on spot market prices to  
3 set the prices for default service and were doing so  
4 at a point in time where those markets were  
5 experiencing some significant volatility.

6 And the structure of the proposals and  
7 the way they were put forth subjected the results to  
8 the jurisdiction of the Federal Energy Regulatory  
9 Commission. So we had those proposals coupled with  
10 circumstances in which utilities were moving forward  
11 with strategies that limited the state utility  
12 commission's abilities to set what the state  
13 Commission might be used as just and reasonable  
14 prices.

15 And if you go back here in Ohio, we do  
16 have the specific example that occurred with  
17 Monongahela Power pursuing that type of strategy back  
18 in the 2004-2005 timeframe.

19 Q. So at the time of the comments that IEU  
20 submitted in this docket, the market prices were  
21 higher than the existing default generation service  
22 prices for the EDUs in Ohio; is that right?

23 A. Market prices set based upon mechanisms  
24 like competitive bids that relied entirely on spot  
25 market price, yes, were producing results that were

1 higher than standard service offer prices and, in  
2 fact, the comments reference an auction that was  
3 actually conducted by the Commission to test whether  
4 the rates under FirstEnergy's rate stabilization plan  
5 were judged to be more favorable than the results  
6 that were produced by the market.

7 Q. Mr. Murray, I want to hand to you a copy  
8 of what's been previously marked in an exhibit as AEP  
9 Ohio Exhibit 109. This is the IEU publication  
10 entitled "Electricity Post 2008, A Common Sense  
11 Blueprint for Ohio."

12 And could I turn your attention to page 7  
13 of the document? And at the bottom of page 7, the  
14 first sentence, states "There is nothing in SB 3 that  
15 requires an auction or competitive bidding process to  
16 be used to establish a 'market-based' price from the  
17 SSO." Do you see that?

18 A. Yes.

19 Q. Did you agree with that statement when it  
20 was made as part of this document?

21 A. I believe that statement is offering a  
22 legal interpretation of what was required under the  
23 law at the time.

24 Q. It's a legal conclusion?

25 A. It states there's nothing in SB 3. SB 3

1 is a law.

2 Q. And that was IEU's position in this  
3 publication, correct?

4 A. I suspect it was IEU's counsel's  
5 position.

6 Q. And do you agree with it?

7 A. I agreed with it at the time in my  
8 layman's understanding.

9 Q. And do you know when this document was  
10 published by IEU?

11 A. I don't have a specific date. It is  
12 referencing in the title Electricity Post 2008. So  
13 probably either before or during 2008. And the  
14 content suggests to me it was likely published at a  
15 point in time where the legislature was revisiting  
16 Ohio's regulations eventually promulgated what became  
17 Senate Bill 221.

18 Q. So sometime approximately 2007-2008 prior  
19 to the enactment of SB 221.

20 A. Again, I don't know the exact date. I'm  
21 speculating here based upon the content that would be  
22 my guess as to a likely date.

23 MR. CONWAY: Could I have that last  
24 answer read back, please?

25 (Record read.)

1           Q.    Now, is there anything that has been  
2    enacted as part of SB 221 in your understanding that  
3    would change your position that IEU advanced in that  
4    sentence that we just discussed? The sentence on  
5    page 7.

6           A.    Perhaps. That sentence was -- referenced  
7    was discussing the options that existed under SB 3 to  
8    establish standard service offer price. Based upon  
9    the passage of Senate Bill 221, there are two options  
10   to establish the default standard service offer  
11   prices; a market rate option and the electric  
12   security plan option.

13                   The market rate option clearly includes a  
14   competitive bidding process, and as we have seen in  
15   the case in several electric security plans here in  
16   Ohio, there have been electric security plans  
17   approved that also involve competitive bid process.

18           Q.    SB 221, I believe you just made the point  
19   but let me confirm, SB 221 does not require a  
20   competitive bidding process for ESP branch of the  
21   MRO -- or, excuse me, of the SSO, correct?

22           A.    That's my understanding. It's not  
23   required but there have been instances in which a  
24   competitive bid process has been proposed and  
25   approved as part of the electric security plan.

1           Q.    I keep returning to page 15 of your  
2 testimony, Mr. Murray.  Once again, I'd like you to  
3 turn your attention there.  Do you see the sentence  
4 at lines 16 through 20?

5           A.    Yes.

6           Q.    Where it says -- where you say "It also  
7 appears that the proposed CRES capacity price is  
8 designed to allow AEP Ohio to capture most of the  
9 bill reduction benefits that consumers would see by  
10 switching to a competitive supplier."  Do you see  
11 that?

12          A.    Yes.

13          Q.    Is your assumption that's implicit in  
14 this statement that the CRES provider would pass  
15 through to its customers the full amount of any price  
16 reduction in a capacity price it pays to AEP Ohio?

17                THE WITNESS:  Could I have the question  
18 reread?

19                (Record read.)

20          A.    The premise for the question, I believe,  
21 is incorrect.  The capacity pricing that AEP has  
22 proposed in this proceeding is actually a -- would be  
23 a cost increase for a competitive retail electric  
24 supplier.

25                As increase in the input cost, I'm

1 assuming that much or all of that may be passed  
2 through to the customer depending on who the specific  
3 terms and conditions are of the contract.

4 Obviously there may be contracts that may  
5 or may not allow it depending on the supply to pass  
6 through a cost element.

7 Q. Is your assumption that CRES providers  
8 pass through the cost that they bear for capacity to  
9 purchase from AEP Ohio, no more than, no less?

10 A. I'm aware of instances in which there are  
11 supply agreements that treat capacity costs as a  
12 passthrough.

13 Q. And do they -- do those agreements of  
14 which you're aware, do they pass through the cost of  
15 capacity dollar for dollar?

16 A. I'm aware of some agreement that's at  
17 least been proposed or have been in play in the  
18 context over the last year here in Ohio as a result  
19 of the dynamic regulatory environment we find  
20 ourselves in that do, in fact, reflect a passthrough  
21 dollar for dollar of capacity costs.

22 Q. And is that a universal provision in CRES  
23 provider contrast with their customers, or is it just  
24 a subset of all the contracts in your knowledge?

25 A. It is certainly not universal. It is I

1 think more common as a business practice involving  
2 contracts for commercial and industrial customers. I  
3 think it would be less typical to see those type of  
4 provisions in residential customer contracts.

5 And, in fact, I've included a couple of  
6 recent terms and conditions of residential supply  
7 offers as exhibits to my testimony. I've believe if  
8 you look at that, you probably wouldn't see  
9 passthrough of those specific agreements.

10 Q. And with regard to commercial customers,  
11 did you say that -- did you distinguish between large  
12 and small commercial customers in your recitation of  
13 what your understanding is about how such capacity  
14 costs will or will not necessarily be passed through?

15 A. I didn't distinguish between large and  
16 small commercial customers.

17 Q. Please do.

18 A. I don't think you can. What I was  
19 attempting to convey is it's more likely to have a  
20 higher level of sophistication and understanding of  
21 capacity charges and what they mean in terms of a  
22 supplier's offer to offer a competitive retail  
23 electric price when you're dealing with a commercial  
24 and industrial customer.

25 Because their business energy may be

1 an -- electricity may be an important input cost to  
2 their business. What I doubt is there's very few  
3 residential customers that have any understanding of  
4 the regulatory debate that's going on as we speak  
5 about how that may affect their bill.

6 Q. So you would say then that as the  
7 sophistication of the customer varies from high to  
8 low, the degree to which such capacity costs changes  
9 would be flowed through dollar for dollar would also  
10 vary?

11 THE WITNESS: Could I have the question  
12 reread.

13 (Record read.)

14 Q. In the same fashion.

15 A. What I'm saying is it's my judgment more  
16 likely if you were dealing with a customer that has a  
17 higher level of understanding of what's going on in  
18 the electricity market here in Ohio of seeing  
19 contracts that reflect a passthrough capacity cost,  
20 given at least in the case of customers serviced by  
21 AEP, given the regulatory environment we've found  
22 ourselves in for the last year.

23 Q. Could you turn to page 16 of your  
24 testimony, and the answer -- the question and answer  
25 No. 18 starts off with some context that you provide

1 regarding the customer choice initiative of 1999  
2 SB 3; is that right?

3 A. That's correct.

4 Q. And I believe at lines 14 through 16 you  
5 state that "These initiatives" which I understood to  
6 include SB 3, "were rooted in the view that  
7 competitive markets could do a better job of  
8 advancing the public interest in reasonable prices,  
9 reliable service, and innovation in traditional  
10 regulation." Do you see that sentence?

11 A. Yes.

12 Q. When you refer to "these initiatives,"  
13 you are including the customer choice initiative that  
14 culminated with SB 3; is that right?

15 A. It would include SB 3, but it would also  
16 include parallel efforts at the federal level as  
17 discussed in the immediately prior sentence.

18 Q. And you subscribed to that view when SB 3  
19 was enacted, correct, "that view" being the view  
20 that's articulated in that sentence of lines 14  
21 through 16; the competitive markets could do a better  
22 job of advancing the public interest in those  
23 various --

24 A. Did I subscribe to those views?

25 Q. Yes.

1           A.    At what point in time?

2           Q.    When SB 3 was being considered.

3           A.    Yes.  As a general proposition, I  
4    subscribed to the view that properly structured  
5    competitive markets can do a better job of  
6    disciplining prices in historical economic  
7    regulation.

8           Q.    And then could you refer back to AEP Ohio  
9    Exhibit 109, the "Electricity Post 2008 Common Sense  
10   Blueprint for Ohio," the IEU document?  And, again,  
11   this document presents IEU-Ohio's views and positions  
12   in the period leading up to SB 221 in May of 2008,  
13   right?

14          A.    It appears to be.

15          Q.    And on page 2 of this publication of IEU,  
16   there's a summary of recommendations.  Do you see  
17   that?

18          A.    Yes.

19          Q.    And could you read into the record the  
20   second recommendation on page 2?

21          A.    Yes.  "We recommend that the General  
22   Assembly repeal the statutory declaration that  
23   generation service is a competitive service for  
24   purposes of giving Ohio better options to affect the  
25   price of electricity.  This action would align Ohio

1 law with reality and position Ohio to better control  
2 electric price and service outcomes for the benefit  
3 of the public interest."

4 Q. So at the time of this IEU-Ohio  
5 publication back in the 2007-2008 period, IEU-Ohio  
6 believed that generation service was not competitive,  
7 correct?

8 A. I don't believe that's what this  
9 recommendation suggests. What this recommendation is  
10 suggesting the General Assembly do is repeal the  
11 provision of the Ohio law that declared generation of  
12 competitive service.

13 As I discussed earlier in my responses,  
14 it appeared in time with some instances where  
15 electric utilities were trying to rely upon proposals  
16 that were structured to subject pricing solely to the  
17 jurisdiction of the Federal Energy Regulatory  
18 Commission, and I believe what this recommendation is  
19 intending, the changes to Ohio law intended to  
20 provide the Ohio Commission with more tools in its  
21 quiver -- arrows in its quiver, to ensure that retail  
22 electric prices were judge and reasonable retail  
23 prices.

24 Q. If the General Assembly had adopted the  
25 IEU recommendation to repeal the statutory

1 recommendation that in generation services  
2 competitive service, would the result have been from  
3 a pricing standpoint that regulation would have  
4 reverted to the prior regime of cost to service rate  
5 base rate of return regulated pricing per generation  
6 service?

7 A. Not necessarily.

8 Q. And in any event, I take it you were in  
9 agreement with IEU's view with regard to this second  
10 recommendation on page 2 when the document was  
11 published?

12 A. Again, this is a recommendation that was  
13 offered at a point in time where the Ohio legislature  
14 was debating changes to Ohio's electricity laws and  
15 regulations. And I understand the strategy behind  
16 the recommendation, and I can certainly say that at  
17 the time I agreed with it for the reasons I've  
18 discussed.

19 Q. And this recommendation, if adopted,  
20 would have reversed the course that SB 3 had charted;  
21 is that right --

22 A. I don't believe that's correct.

23 Q. -- that with regard to the generation  
24 service?

25 A. I don't believe that's correct.

1           Q.    Did you agree with IEU-Ohio's  
2    recommendation No. 2 on page 2 of this document when  
3    it was made?

4           A.    Again, I think I have already stated that  
5    I agreed with it at the time it was made it was a  
6    strategy put forth trying to give the Ohio Commission  
7    additional authority in terms of setting just and  
8    reasonable prices. Had nothing do with whether or  
9    not that generation markets were or were not  
10   competitive.

11          Q.    You're saying had nothing to do with  
12   whether or not generation markets were competitive,  
13   and yet the recommendation urges the General Assembly  
14   to repeal the statutory declaration that generation  
15   service is a competitive service. And, sir, I cannot  
16   reconcile those two statements.

17          A.    As I've described, it's a strategy that  
18   was a means to an end. We were at a point in time  
19   where utilities were advancing proposals that in some  
20   cases involved pricing structures that were shifted  
21   regulatory oversight entirely to the Federal Energy  
22   Regulatory Commission.

23                Part of the ability to do that was based  
24   upon language in the Ohio law at that particular  
25   point in time that declared generation service and

1 competitive service.

2 So the recommendation was -- again, tried  
3 to produce a result that would give the Ohio  
4 Commission more regulatory influences.

5 Q. And would you agree that if the  
6 recommendation had been adopted, recommendation No.  
7 2, generation service would have been classified as a  
8 noncompetitive service and the market-based pricing  
9 standard that previously had applied as a result of  
10 SB 3 would not apply until such time as the PUCO  
11 might again determine that the generation service met  
12 the competitive service criteria?

13 THE WITNESS: Could I have the question  
14 reread.

15 (Record read.)

16 A. No, I would not agree. If the  
17 recommendation was adopted, it would simply have  
18 declared generational noncompetitive service.  
19 There's not enough specificity to speculate what the  
20 general service might have done in order to  
21 effectuate closing gaps in terms of how generation  
22 service prices would have been set at that point in  
23 time.

24 Q. Could you turn to page 11 of the IEU  
25 document, AEP Ohio Exhibit 109? And turning your

1 attention to the second paragraph on page 11, the  
2 last sentence. If you would please read that last  
3 sentence into the record. It starts with "the  
4 statutory declaration."

5 A. It says "If the statutory declaration  
6 that generation service is competitive and repealed,  
7 generation service would be classified as a  
8 noncompetitive service and the market-based pricing  
9 standard would not apply until such time as the PUCO  
10 might determine that generation service met the  
11 competitive service criteria."

12 Q. Mr. Murray, I have a few questions about  
13 the rate stabilization plan here. The first  
14 question, when was the rate stabilization plan  
15 proceeding for AEP Ohio? Do you recall? In your  
16 recollection was it in 2004-2005 period?

17 A. I believe it was initially proposed on  
18 February 9, 2004.

19 Q. And the rate stabilization period, it  
20 predated the SB 221 initiative, right?

21 A. That's correct.

22 Q. And it's your view, is it not, that the  
23 rate stabilization plans are an outcome that resulted  
24 from a realization that the development of  
25 competitive markets hadn't materialized in both scope

1 and pace that was expected at the time SB 3 was  
2 enacted?

3 A. I believe that's one of the factors that  
4 led to the rate stabilization.

5 Q. And that's consistent with your testimony  
6 in the ESP II proceeding for AEP Ohio that you  
7 provided last fall, is it not?

8 A. That's my recollection.

9 Q. And you believe that it would be  
10 appropriate to characterize the rate stabilization  
11 plans as providing a further transition, right?

12 A. I don't recall.

13 MR. CONWAY: Your Honor, may I approach  
14 the witness?

15 EXAMINER PARROT: You may.

16 MR. CONWAY: Your Honors, I'm  
17 distributing an excerpt from the transcript from the  
18 company's ESP II proceeding which included the  
19 hearing on the stipulation from September 7, 2011.

20 Q. And, Mr. Murray, could you turn to page  
21 1874? And would you read the last sentence of the  
22 answer that begins on line 12 and ends on line 15?

23 A. "So you could certainly characterize the  
24 rate stabilization plans as providing a further  
25 transition."

1           Q.    And this was a portion of your testimony  
2 taken in the hearing on the ESP II stipulation,  
3 correct? For AEP Ohio, correct?

4           A.    Well, in the excerpt that's been handed  
5 to me, yes. Well, and reference to my name.

6           MR. CONWAY: Your Honor, at this time I  
7 wonder if we might take a short break. I have a  
8 little bit more to go. We have another matter to  
9 discuss, wanted to make sure we could address before  
10 we got too far along into the evening.

11          MR. NOURSE: Your Honor, if I might, we  
12 wanted to --

13          EXAMINER PARROT: Mr. Nourse?

14          MR. NOURSE: Just wanted to address the  
15 discovery, update the Bench on the discovery issue  
16 and the impending interlocutory appeal discussion,  
17 and Mr. Satterwhite is here to do that for the  
18 company.

19          MR. DARR: Hold on, your Honor, I think  
20 there was a request to interrupt the  
21 cross-examination. It seems inappropriate at this  
22 point to suspend it so that we can have a discussion  
23 on a separate matter.

24          MR. NOURSE: Your Honor, we are simply  
25 trying to resolve procedural issues that have a

1 deadline today at 5:30 and so Mr. Conway, the  
2 cross-examiner, had agreed to take a break so we  
3 could briefly address this.

4 MR. DARR: I appreciate Mr. Conway agreed  
5 to it but no one else has at this point, your Honor.  
6 We'd like to have this witness be able to put his  
7 testimony and call it for the evening.

8 MR. HAYDEN: Your Honor, as Mr. Nourse  
9 indicated, there is a discovery matter, procedural  
10 matter with an impending deadline at 5:30. This  
11 would be very, very quick.

12 MR. RANDAZZO: It would be nice to know  
13 about it before you brought it up.

14 MR. NOURSE: I don't understand the  
15 objection. And the witness can have a five-minute  
16 break. It's just like any other break we've taken.

17 THE WITNESS: Your Honors, might afford  
18 me the opportunity to visit the men's room, which was  
19 going to be a request here shortly anyway.

20 EXAMINER PARROT: Let's take a ten-minute  
21 break.

22 THE WITNESS: Thank you.

23 (Recess taken.)

24 EXAMINER PARROT: Let's go back on the  
25 record.

1           Before we continue with the  
2           cross-examination of Mr. Murray, I believe there's a  
3           procedural issue that certain of the parties wish to  
4           address at this point?

5           MR. HAYDEN: Yes, your Honor, thank you.  
6           We have been working with the company to resolve the  
7           discovery dispute that has been ongoing. We have  
8           reached an agreement with respect to the information  
9           that FES would be providing to the company.

10          We are accumulating that information as  
11          we speak and would be providing that information to  
12          the company very shortly tonight. Subject to the  
13          company's review of that information, I believe we  
14          have an agreement on our discovery dispute, however,  
15          given the late hour of the day, we would respectfully  
16          request the Bench to grant an extension of time to  
17          file an interlocutory appeal until tomorrow morning  
18          at 10 a.m.

19          EXAMINER PARROT: Ms. Kaleps-Clark?

20          MS. KALEPS-CLARK: Your Honor, Exelon and  
21          Constellation are also in the same situation. We've  
22          also reached an agreement with AEP, and we will also  
23          be providing responses very shortly and would request  
24          an extension till 10 a.m. to file the interlocutory  
25          appeal, if that should be necessary.

1                   MR. SATTERWHITE: Your Honor, on behalf  
2 of the company, I believe the information that was  
3 talked about by both parties today was provided and  
4 there will be a need for interlocutory appeal and the  
5 hearing could move forward this week without any  
6 further delay, and I think there's a Bench ruling  
7 that was appropriate and the Bench could also delay  
8 the timeline of the interlocutory appeal and the  
9 company would have no opposition to that delay to try  
10 to work out this matter cooperatively with the  
11 parties.

12                   EXAMINER PARROT: And you said,  
13 Mr. Satterwhite, I just want to be very clear about  
14 it though, the company would be prepared to move  
15 forward on Thursday with the cross-examination of the  
16 FES witnesses and Exelon's witness; is that correct,  
17 on Thursday?

18                   MR. NOURSE: Yes.

19                   MR. SATTERWHITE: Correct.

20                   EXAMINER PARROT: And Dr. Lesser, I  
21 believe, is available you said on Friday; is that  
22 correct?

23                   MR. HAYDEN: Yes, your Honor, he's  
24 available on Friday.

25                   EXAMINER PARROT: And would you be

1 prepared then to move forward with his  
2 cross-examination on Friday, Mr. Satterwhite?

3 MR. SATTERWHITE: Yes, your Honor, thank  
4 you.

5 EXAMINER SEE: Off this subject, you were  
6 going to -- counsel for AEP was going to verify  
7 whether or not Mr. Frye was available tomorrow as  
8 opposed to April the 27th?

9 MR. NOURSE: Yes, your Honor. It's my  
10 understanding that Mr. Stinson indicated that he was  
11 not -- Mr. Frye was not available tomorrow, but he  
12 remains available Friday, per the prior tentative  
13 schedule.

14 EXAMINER SEE: Okay.

15 MR. DARR: Your Honor, is it clear that  
16 there are no other objections to this extension of  
17 the period of time for interlocutory appeals and any  
18 schedule extensions or changes that might be affected  
19 by those?

20 EXAMINER PARROT: If there are other  
21 objections, now is the time to raise them, Mr. Darr.

22 MR. DARR: We have no objection, but I  
23 think other parties obviously are going to be  
24 affected by this, so it might be appropriate to  
25 address that issue for the record.

1 EXAMINER PARROT: Are there any  
2 objections from any of the other parties to the  
3 motion for an extension of the deadline to file an  
4 interlocutory appeal?

5 MR. DARR: For the record, we support the  
6 proposal.

7 EXAMINER PARROT: In light of the  
8 representations made by Mr. Hayden and  
9 Ms. Kaleps-Clark, the Bench finds there are  
10 extraordinary circumstances such that an extension of  
11 the deadline is warranted here. FES and Exelon, et  
12 al., are hereby granted an extension to file, should  
13 it become necessary. And if it is necessary, we  
14 expect that the interlocutory appeals will be filed  
15 by 10 a.m. tomorrow.

16 MR. HAYDEN: Thank you, your Honor.

17 EXAMINER SEE: With a courtesy copy to  
18 the Bench immediately.

19 EXAMINER PARROT: Any other procedural  
20 matters?

21 MR. NOURSE: No, thank you.

22 EXAMINER PARROT: Thank you, everyone.

23 MR. JONES: Your Honor, I still have  
24 Mr. Smith as to where he would be slotted for  
25 testimony. It looks like now for Friday we have

1 Mr. Frye, Mr. Lesser, Mr. Harter, and we could have  
2 Mr. Smith tacked on the end there, but that's going  
3 to be an awfully long day depending on how late the  
4 Bench wants to go Friday.

5 EXAMINER SEE: It was my understanding  
6 that you asked for a date certain for Mr. -- for  
7 Staff Witness Stoddard.

8 MR. JONES: Yes, that's correct, your  
9 Honor. Mr. Smith, he's not available Monday or  
10 Tuesday. That's the problem. Throws us into the  
11 middle of next week that he would be available  
12 Wednesday.

13 EXAMINER SEE: He would be available  
14 tomorrow?

15 MR. JONES: No, next Wednesday.

16 EXAMINER SEE: Oh, okay. At this point  
17 scheduling is what it is and we'll have to deal with  
18 it.

19 MR. NOURSE: I'm sorry, your Honor, did  
20 we resolve anything with Mr. Smith? I didn't know he  
21 was on the schedule anywhere to this point.

22 EXAMINER SEE: April 27 indicates staff  
23 witnesses. There are two.

24 MR. NOURSE: Well, I guess are you  
25 talking about the email from two weeks ago? We've

1 had a lot of discussions since then, and I thought  
2 the only staff witness we talked about Friday was  
3 Mr. Harter.

4 EXAMINER SEE: That was the witness that  
5 required a date certain. So as the Bench indicated  
6 with other witnesses that had a date certain, we said  
7 we would make an effort to accommodate their  
8 schedule. But there is no guarantee. What staff is  
9 now requesting is some indication of when we will  
10 handle the other staff witness, and --

11 MR. NOURSE: Which is when, Friday?

12 EXAMINER SEE: -- and a recognition it  
13 could make Friday a very long day.

14 MR. RANDAZZO: Your Honors, could we go  
15 off the record for just a second?

16 EXAMINER SEE: Sure.

17 (Discussion off the record.)

18 EXAMINER SEE: Let's go back on.

19 EXAMINER PARROT: Mr. Conway?

20 MR. CONWAY: Thank you, your Honor.

21 Q. (By Mr. Conway) Mr. Murray, at pages 22  
22 and 23 of your testimony, you have some discussion  
23 of the circumstances of the FirstEnergy EDUs and  
24 Duke Energy Ohio on page 23. I have a few questions  
25 about FirstEnergy, page 22.

1                   When the FirstEnergy Ohio EDUs became  
2 members of PJM, they did not own generation assets,  
3 did they?

4           A.     Just to clarify you said "FirstEnergy  
5 EDUs"?

6           Q.     FirstEnergy's Ohio EDUs.

7           A.     That's correct. The generation assets  
8 were owned by a nonregulated affiliate.

9           MR. CONWAY: I'm sorry. Could I have  
10 that answer read back. I couldn't quite understand  
11 it.

12                   (Record read.)

13           Q.     And was capacity required to be procured  
14 for the nonshopping load of the FirstEnergy Ohio's  
15 EDUs during the two-year transition period as you  
16 describe?

17           A.     Yes.

18           Q.     And was that procured in the PJM's RPM  
19 auction?

20           A.     No, it was not. They were actually for  
21 the two-year transition period that you referenced,  
22 FirstEnergy conducted standalone what were  
23 characterized as transitional auctions to recognize  
24 the fact they were out of sync with the normal  
25 RPM-based residual auction cycle.

1           Q.     So it was an RPM auction but just not the  
2     base residual auction; is that right?

3           A.     Well, it wasn't an RPM auction.  
4     FirstEnergy, because they were out of sync, elected  
5     to be an FRR entity for a two-year transitional  
6     period. As an FRR entity, they have the obligation  
7     to satisfy a capacity obligation of PJM. Because  
8     they did not own generation assets, they conducted an  
9     auction to secure the necessary capacity commitments  
10    to satisfy -- commitment FRR plan to PJM for the  
11    FERC.

12          Q.     In any event, Mr. Murray, just to make  
13    sure I'm clear about it, the FES Ohio's EDUs have  
14    never bid generation into the PJM capacity auctions;  
15    is that right?

16          A.     Not to my knowledge. They don't own  
17    generating assets, but.

18          Q.     Okay. And turning to Duke, which you  
19    discuss at the bottom of page 23, Duke is currently  
20    operating under an FRR election, right?

21          A.     That's correct.

22          Q.     You note that Duke owns generating  
23    assets. Has Duke received approval from the Ohio  
24    Commission to transfer those generation assets?

25          A.     That's my recollection.

1           Q.    And have they received approval to do so  
2   at an embedded cost basis?

3           A.    My recollection is the transfer is  
4   contemplated at net book value.

5           Q.    Net book value?

6           A.    Yeah.

7           Q.    Thank you.  And I believe you were here  
8   this morning during the cross-examination of  
9   Mr. Kollen?

10          A.    Yes.

11          Q.    And do you recall the discussion that  
12   took place regarding Duke Ohio's electric service  
13   stabilization charge?

14          A.    Probably some of it.

15          Q.    In any event, you're aware that Duke has  
16   an electric service stabilization charge in place,  
17   right?

18               MR. DARR:  Objection.

19               EXAMINER PARROT:  Basis?

20               MR. DARR:  Same basis as we raised this  
21   morning, the stabilization charge is a function of  
22   the agreement that was entered into.

23               EXAMINER PARROT:  Overruled.

24               THE WITNESS:  Could I have the question  
25   reread, please?

1 (Record read.)

2 A. That's my recollection.

3 MR. CONWAY: Your Honor, that's all the  
4 questions I have.

5 EXAMINER PARROT: Thank you, Mr. Conway.  
6 Mr. Beeler?

7 MR. BEELER: No questions, your Honor.

8 EXAMINER PARROT: Any redirect?

9 MR. DARR: Yes, your Honor.

10 - - -

11 REDIRECT EXAMINATION

12 By Mr. Darr:

13 Q. Mr. Murray, earlier today Mr. Conway  
14 asked you some questions about the company's position  
15 with regard to whether or not its SSO rate was cost  
16 based or not cost based. Do you remember those  
17 questions?

18 A. Yes.

19 Q. You indicated that there were other  
20 examples in which AEP Ohio has indicated that its SSO  
21 rate is not cost based?

22 A. Yes.

23 Q. Could you share with us some of those  
24 other indications?

25 A. Specifically in the first electric

1 security plan, as I've testified earlier today, I  
2 believe, the Commission is required to test an  
3 electric security plan and in order to approve it  
4 must make a determination that the electric security  
5 plan in the aggregate is more favorable than a market  
6 rate offer.

7 In the first electric security plan  
8 proceeding, AEP Ohio put forth the testimony of  
9 Mr. Craig Baker, and in order to benchmark the  
10 electric security plan, Mr. Baker came up with an  
11 administratively determined estimate on comparable  
12 market prices.

13 If you go back and look at his  
14 development in his comparable market prices, again,  
15 they were market-based estimates and they also relied  
16 upon estimates for capacity costs that were assumed  
17 to be capacity priced upon RPM.

18 There was a similar analysis done with  
19 respect to the second electric security plan  
20 proceeding that is still underway, is the best way to  
21 characterize it.

22 Q. If you recall, were you here for the  
23 testimony of Mr. Munczinski?

24 A. Yes. I was present in the room.

25 Q. And at that time there was an exhibit,

1 Exhibit IEU 103, the testimony of Mr. Baker. Are you  
2 familiar with that exhibit?

3 A. I suspect that I've read it in the past.  
4 I don't have it with me today.

5 Q. Okay. Hang on just a second.

6 Let me show you what I believe was  
7 previously marked as IEU Exhibit 103. Do you  
8 recognize that?

9 A. Yes. It's the direct testimony of J.  
10 Craig Baker that I just referred to a few minutes  
11 ago.

12 Q. A couple of minutes ago in response to a  
13 question from Mr. Conway, you also indicated that  
14 FirstEnergy currently does not have any generation  
15 resources. Are you aware of other resources that can  
16 be bid into the PJM market?

17 A. Yes.

18 Q. And could you describe for the record  
19 what those resources might be?

20 A. You can also bid into the auction demand  
21 response resources.

22 Q. And are you aware of any activities  
23 currently where FirstEnergy the EDU may be seeking to  
24 bid in those sorts of resources?

25 A. Yes.

1 MR. DARR: Nothing further, your Honor.

2 Thank you.

3 EXAMINER PARROT: Ms. Kern?

4 MS. KERN: No further questions.

5 EXAMINER PARROT: Ms. Kingery?

6 MS. KINGERY: Nothing, thank you.

7 EXAMINER PARROT: Mr. Lang?

8 MR. LANG: No, your Honor.

9 EXAMINER PARROT: Ms. Kaleps-Clark?

10 MS. KALEPS-CLARK: No, thank you, your

11 Honor.

12 EXAMINER PARROT: Mr. Conway?

13 MR. CONWAY: No, your Honor.

14 EXAMINER PARROT: Mr. Beeler?

15 MR. BEELER: No questions, your Honor.

16 EXAMINER PARROT: Thank you, Mr. Murray.

17 You are excused.

18 Mr. Darr, I believe you already moved the  
19 admission, moved for the admission of IEU Exhibits  
20 102-A and 102-B. Are there any objections to the  
21 admission of either of those two exhibits?

22 Hearing none, IEU Exhibits 102-A and  
23 102-B are admitted.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 MR. CONWAY: Your Honor, just one point

1 of -- to make, 102-B contains confidential  
2 proprietary information. I can't recall now who's  
3 propriety or confidential information it is, but if  
4 it's mine, I want to keep it confidential.

5 MR. DARR: The materials were received  
6 from AEP Ohio.

7 EXAMINER PARROT: I believe they're  
8 already subject to a protective order.

9 MR. CONWAY: And it will remain so then.  
10 Thank you.

11 EXAMINER PARROT: Mr. Conway, did you  
12 wish to move for the admission of AEP Exhibit 111?

13 MR. CONWAY: Yes, your Honor.

14 EXAMINER PARROT: Are there any  
15 objections?

16 MR. DARR: No, your Honor.

17 EXAMINER PARROT: Hearing none, AEP  
18 Exhibit 111 is admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER PARROT: And, Mr. Conway, you  
21 had referred the witness at one point to a portion of  
22 the transcript from the ESP II proceeding. Did you  
23 wish to either mark or move for the admission of  
24 that?

25 MR. CONWAY: No, thank you, your Honor.

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1           EXAMINER PARROT: As a reminder, if an  
2 interlocutory appeal will be forthcoming, the Bench  
3 would appreciate -- I should say the Bench expects a  
4 copy of that no later than 10 a.m. tomorrow.

5           With that we will adjourn for the day.  
6 We will reconvene tomorrow at 1:00 p.m. with  
7 Mr. Geiger. Thank you.

8           MR. DARR: Thank you, your Honor.

9           (Thereupon, the hearing was adjourned at  
10 5:09 p.m.)

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## 1 CERTIFICATE

2 I do hereby certify that the foregoing is  
3 a true and correct transcript of the proceedings  
4 taken by me in this matter on Tuesday, April 24,  
5 2012, and carefully compared with my original  
6 stenographic notes.

7  
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9 

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Karen Sue Gibson, Registered  
Merit Reporter.

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Julieanna Hennebert, Registered  
Merit Reporter.

12 (KSG-5515)

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Summary: Transcript of Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company hearing held on 04/24/12 - Volume VI electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.