

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of: :
: Case No. 12-1230-EL-SSO
The Application of The :
Ohio Edison Company, :
The Cleveland Electric :
Illuminating Company, :
and The Toledo Edison :
Company for Authority to :
Provide for a Standard :
Service Offer Pursuant to :
R. C. Section 4928.143 in :
the Form of an Electric :
Security Plan. :

- - -

PROCEEDINGS

before Mr. Gregory Price and Ms. Mandy L. Willey,
Hearing Examiners, at the Public Utilities Commission
of Ohio, 180 East Broad Street, Room 11-C, Columbus,
Ohio, on June 6, 2012, called at 10:00 a.m.

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VOLUME III

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1 Wednesday Morning Session,

2 June 6, 2012

3 - - -

4 EXAMINER WILLEY: Let's go ahead and go
5 on the record. The Public Utilities Commission has
6 called for hearing at this time and place case No.
7 12-1230-EL-SSO, being In the Matter of the
8 Application of the Ohio Edison Company, the Cleveland
9 Electric Illuminating Company, and the Toledo Edison
10 Company for Authority to Provide for a Standard
11 Service Offer Pursuant to Section 4928.143, Revised
12 Code, in the Form of an Electric Security Plan.

13 Let the record reflect this is the third
14 day of hearing.

15 Before we proceed today, would any of the
16 parties like to make any motions?

17 MR. KUTIK: Yes, your Honor.

18 EXAMINER WILLEY: Mr. Kutik.

19 MR. KUTIK: Earlier in this case, your
20 Honor, we had asked the Bench to take administrative
21 notice of the records on which our application is
22 based, and particularly the records in the 10-388 and
23 09-906 case. Our application specifically refers to
24 the record in the 10-388 case, and the 10-388 case,
25 in turn, relies on certain documents in the record in

1 09-906.

2 The admonition we received from the Bench
3 was that it was the Bench's preference rather than
4 designate the entire record, that we be somewhat
5 surgical in determining what we wanted to have the
6 Bench and the Commission rely upon in its -- in their
7 collective decisions in this case, and so we have
8 done that.

9 So at this time, your Honor, we have
10 passed around a list indicating the documents that we
11 wish the Bench to take administrative notice of, and
12 they are as follows: Starting in Case No. 09-906, we
13 seek to have the Bench and the Commission take
14 administrative notice of Company Exhibits 1 through
15 7, which comprise the application in that case and
16 the attachments to the application, the various
17 exhibits, and supporting exhibits and testimony in
18 support of the application. Those are Company
19 Exhibits 1 through 7.

20 We also ask that the Bench and Commission
21 take administrative notice of two pages from the
22 transcript in that case, both from Volume IV, and
23 those being pages 493 and 586.

24 With respect to Case No. 10-388, we
25 request that the Bench and the Commission take

1 administrative notice of Joint Exhibit 1, which is
2 the stipulation in that case, as well as Company
3 Exhibits 1 through 3 and Company Exhibit 12. Company
4 Exhibits 1 through 3 are the application,
5 stipulation, Mr. Ridmann's initial testimony in
6 support of the stipulation, as well as various errata
7 and attachments. Exhibit 12 is Mr. Ridmann's
8 testimony in support of the supplemental stipulations
9 in that case.

10 We also ask that the Commission and the
11 Bench take administrative notice of Staff Exhibits 1
12 through 4, which are the prefiled testimony and the
13 testimony that was, in fact, admitted into the record
14 of Staff Witness Choueiki, Tarkenton, and two for
15 Mr. Fortney.

16 We also ask the Bench and the Commission
17 to take administrative notice of IEU Exhibit 2, which
18 was the testimony of IEU Witness D'Angelo. We also
19 ask that the Commission and the Bench take
20 administrative notice of several pages from the
21 transcript in that case, those being Volume I, page
22 317; from Volume II, pages 483 and 484; and from
23 Volume III, pages 579 and 775.

24 And we so move at this time.

25 EXAMINER WILLEY: Thank you. Does any

1 party have a response to Mr. Kutik's motion for the
2 Bench to take administrative notice?

3 MR. DORTCH: Yes, your Honor. AEP Retail
4 does object to the motion made by Mr. Kutik. AEP
5 Retail has no particular issue if the Bench wishes to
6 take notice of administrative orders --
7 administrative entries or even orders of the
8 Commission that were entered in that case. But what
9 we have here is really an attempt to move wholesale
10 entire blocks of evidence submitted in these prior
11 cases into this case.

12 Now, AEP Retail, first of all, we don't
13 believe that's proper. If the company wished to put
14 on evidence in this case, it should do so. But,
15 secondly, and equally important, AEP Retail was not a
16 party to this prior proceeding. It has not had the
17 opportunity to evaluate the witnesses' testimony,
18 cross-examine those witnesses, or to consider putting
19 its own witnesses on in response to those witnesses.

20 If I understand what is meant by
21 administrative notice in this particular motion,
22 effectively the -- effectively the result will be no
23 different than if -- if these items which, at least
24 without the docket in front of me for these cases,
25 look to be a pretty wholesale inclusion of the record

1 made in these prior cases. It's really effectively
2 no different than moving those into evidence. We
3 don't believe that's proper, and we oppose the
4 motion.

5 EXAMINER WILLEY: So, Mr. Dortch, are you
6 objecting to the Bench taking administrative notice
7 of the entirety of the documents or did you have
8 certain --

9 MR. DORTCH: The entirety of the
10 documents, your Honor. In fact, as I said, any
11 entries or orders are certainly fair game for
12 administrative notice, but this is -- this is tran --
13 you know, just to refer to the last four items, that
14 appears to me to be three or four days -- I'm sorry,
15 these are -- initially -- I'm sorry, Mr. Kutik, I
16 misunderstood. Those, I believed, were four days'
17 worth of transcripts. I do now see that they are
18 particular pages from the transcript.

19 MR. KUTIK: Five to be exact.

20 MR. DORTCH: I'm sorry?

21 MR. KUTIK: Five pages to be exact.

22 MR. DORTCH: Five pages to be exact. It
23 really doesn't change my objection, your Honor. It's
24 still an attempt to introduce evidence in this
25 proceeding that was submitted in another proceeding

1 that AEP Retail has not had an opportunity to respond
2 to.

3 Your Honor, if, you know, if the
4 company -- or if the companies intended to utilize
5 this and wished to add, you know, put it in, explain
6 why they are asking that it be used so it can be
7 examined on an item-by-item basis, it might perhaps
8 be different, but moving things in wholesale is what
9 we do object to.

10 EXAMINER WILLEY: Thank you, Mr. Dortch.
11 Mr. Warnock.

12 MR. WARNOCK: NOPEC objects for similar
13 reasons and some other ones in addition to what I'm
14 going to call kind of Constitution issue with due
15 process and confrontation issues that Mr. Dortch
16 highlighted. You know, these cases and also we're
17 okay, you know, with the stipulation, I believe, from
18 the 10-388, which case has already been taken
19 administrative notice of. The orders and entries,
20 that's fine.

21 But, you know, we have testimony trying
22 to be admitted for folks that did not testify in this
23 hearing, and, you know, what's kind of lost in this
24 is there is a separate application and a separate ESP
25 proposal that are pending in this case that need to

1 be analyzed, you know, under the statute the ESP
2 versus MRO test, but also the three-part test for a
3 stipulation.

4 That stand-alone application is what's at
5 issue here, not what's gone on in these prior
6 proceedings. Regardless of how you want to
7 characterize this, as an alleged continuation of a
8 prior case, it's not. It's a separate proceeding so
9 we have -- we also object to all of these except for
10 the 10-388 stipulation.

11 EXAMINER WILLEY: Okay. Thank you,
12 Mr. Warnock.

13 Mr. Sauer.

14 MR. SAUER: OCC would join in both the
15 NOPEC and AEP Retail's objections to admitting or
16 taking administrative notice of these items at this
17 time.

18 EXAMINER WILLEY: Mr. Dortch, do you have
19 something to add?

20 MR. DORTCH: Yes, your Honor, I would
21 like to amend my objection. I did not recognize the
22 stipulation and I should have. I have no objection
23 to the stipulation being recognized through
24 administrative notice from the 10-388 case.

25 EXAMINER WILLEY: Thank you.

1 Mr. Petricoff.

2 MR. PETRICOFF: Yes, your Honor. RESA
3 would like to join in the objection as well with the
4 exception of we don't object to the 10-388
5 stipulation. The reason we don't object to that is
6 that it's clear what the relevance is. It is not
7 clear, for example, what the relevance is from these
8 days of hearing, what's in those days of hearing or
9 from prior testimony. And in order to get into the
10 record, it's got to be relevant and there's got to be
11 some showing of that.

12 EXAMINER WILLEY: Thank you.

13 MR. KAPLA: Objection. Sierra Club joins
14 in as well, your Honor.

15 MR. VICKERS: ELPC also joins.

16 MR. HAYS: NOAC also joins the
17 objections.

18 MR. KUTIK: May I be heard, your Honor?

19 EXAMINER WILLEY: Yes.

20 MR. KUTIK: The administrative notice of
21 portions of the record is a routine proceeding that
22 is recognized in other proceedings. And, in fact,
23 AEP Retail's affiliate has regularly offered these
24 types of documents and evidence as on administrative
25 notice in proceedings in their cases.

1 The parties were certainly on notice that
2 the companies intended to rely upon the 10-388
3 record. That was part of our application, and being
4 a party in a prior case is not a requirement for
5 administrative notice. The documents are what they
6 are. The evidence is what it is, and it's
7 indisputable with respect to those two facts. That's
8 the requirement for administrative notice.

9 With respect to the objections of NOAC or
10 NOPEC, I just note that those -- they were signatory
11 parties to the 10-388 case and certainly can't claim
12 any prejudice with respect to that.

13 With respect to why the record of 09-906
14 is relevant, those documents contain, among other
15 things, the various competitive bid process
16 supporting documents, the master service supply
17 agreement, communication protocols, and the credit
18 requirements and other things that are basic nut and
19 bolts of what will go into what -- what is widely
20 regarded as a highly successful process that we hope
21 the Commission will support.

22 EXAMINER WILLEY: Thank you, Mr. Kutik.

23 I'm going to reserve ruling on your
24 motion until later today. During the time being, if
25 you feel the need to mark any of the exhibits, we can

1 certainly mark those exhibits as needed.

2 MR. LAVANGA: Your Honor.

3 EXAMINER WILLEY: Yes, Mr. Lavanga.

4 MR. LAVANGA: I just wanted to -- first
5 of all, I support the company's motion to take
6 administrative notice of the record in the previous
7 two proceedings. I would also request that in
8 addition to the materials that were listed, that we
9 include Nucor Exhibit 1 from Case 09-906, which is
10 the direct testimony of Nucor's witness Dennis Goins.

11 EXAMINER WILLEY: Did you say that was
12 Nucor Exhibit 6?

13 MR. LAVANGA: Nucor Exhibit 1.

14 EXAMINER WILLEY: Nucor Exhibit 1. And
15 that was the direct testimony of?

16 MR. LAVANGA: Dr. Dennis Goins.

17 EXAMINER WILLEY: I'll also reserve
18 ruling on your motion.

19 Does any party have a response to that?

20 MR. DORTCH: Same objection, your Honor.

21 EXAMINER WILLEY: Mr. Warnock.

22 MR. HAYS: Same objection.

23 MR. SAUER: Same objection.

24 MR. PETRICOFF: Same objection.

25 EXAMINER WILLEY: I will reserve ruling

1 on that motion.

2 All right. Is there anything else we
3 need to discuss before we proceed with Mr. Frye?

4 Mr. Warnock, is this your witness?

5 MR. WARNOCK: This is my witness.

6 EXAMINER WILLEY: You may proceed.

7 MR. WARNOCK: NOAC and NOPEC jointly call
8 Mark Frye to the stand.

9 - - -

10 MARK L. FRYE

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

13 DIRECT EXAMINATION

14 By Mr. Warnock:

15 Q. Good morning, Mr. Frye.

16 A. Good morning.

17 Q. Could you please state your name and
18 business address for the record.

19 A. Mark Frye, F-R-Y-E, Palmer Energy
20 Company, 241 North Superior Street, Toledo, Ohio.

21 Q. And for whom are you currently employed?

22 A. I'm the president of Palmer Energy
23 Company.

24 MR. WARNOCK: Your Honor, may I approach?

25 EXAMINER WILLEY: You may.

1 MR. WARNOCK: I am going to have marked
2 as Joint NOPEC/NOAC Exhibit 1 the testimony of Mark
3 Frye.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. WARNOCK: And just for clarification
6 purposes, in talking with counsel for FirstEnergy,
7 the document that I'm handing out to Mr. Frye and the
8 parties was previously filed under seal and
9 protective order was granted for it.

10 Since that time, an agreement has been
11 reached that it's not confidential, so the version
12 that I'm handing out, it was previously filed under
13 seal, confidential, but will be used for purposes of
14 this hearing as a public document.

15 MR. KUTIK: Your Honor, just to be clear,
16 and I'm not suggesting that counsel has
17 misrepresented anything in any way, but just to be
18 clear, the specific piece of information that appears
19 in Mr. Frye's prefiled testimony that was previously
20 redacted for public view we believe is not
21 confidential. However, the information by which
22 Mr. Frye took this and what was provided to NOPEC and
23 NOAC in discovery, that does remain to be
24 confidential.

25 MR. WARNOCK: And thank you for the

1 clarification. There were -- and specifically there
2 were two redactions in Mr. Frye's testimony on page
3 6 -- I'm sorry, page -- yeah, page 6, I believe
4 line -- I'm sorry. It was MRF Exhibit 3 and page 9,
5 line 25, that were previously redacted.

6 Q. (By Mr. Warnock) Mr. Frye, do you have
7 what was previously marked as Joint NOPEC/NOAC
8 Exhibit 1 before you?

9 A. I do.

10 Q. Could you please identify that exhibit?

11 A. This is my testimony in this particular
12 case.

13 Q. And was this testimony prepared by you or
14 under your direction and supervision?

15 A. It was.

16 Q. Do you have any changes or corrections to
17 that testimony today?

18 A. I do.

19 Q. And what are those changes?

20 A. On page 6, line 10.

21 Q. And what is the change?

22 A. The exhibit where I have listed "MRF-5"
23 should be listed as "MRF-6."

24 Q. Do you have any other changes to your
25 testimony?

1 A. No, I do not.

2 Q. If I were to ask you the same questions
3 today that are in your direct testimony, would the
4 answers be the same?

5 A. They would.

6 MR. WARNOCK: Your Honor, at this time I
7 would tender the witness for cross.

8 EXAMINER WILLEY: Thank you.

9 Begin with Mr. Sauer.

10 MR. SAUER: No questions, your Honor.

11 EXAMINER WILLEY: Mr. Dortch.

12 MR. DORTCH: No questions, your Honor.

13 EXAMINER WILLEY: Mr. Royer.

14 MR. ROYER: No questions.

15 EXAMINER WILLEY: Mr. Vickers?

16 MR. VICKERS: No questions, your Honor.

17 EXAMINER WILLEY: Mr. Kapla.

18 MR. KAPLA: No questions, your Honor.

19 EXAMINER WILLEY: Mr. Lavanga.

20 MR. LAVANGA: No questions, your Honor.

21 MS. KYLER: Jody Kyler, on behalf of the
22 Ohio Energy Group. No questions.

23 EXAMINER WILLEY: Thank you.

24 Mr. Petricoff.

25 MR. PETRICOFF: No questions, your Honor.

1 EXAMINER WILLEY: And, Mr. Kutik.

2 MR. KUTIK: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Kutik:

6 Q. Good morning, Mr. Frye.

7 A. Good morning.

8 Q. Mr. Frye, you have a fairly regular
9 relationship with NOAC and NOPEC, do you not?

10 A. Yes.

11 Q. NOAC you are on retainer for, correct?

12 A. I have an energy consulting relationship
13 with -- with NOAC communities.

14 Q. And you are on a retainer; you get a
15 retainer for that?

16 A. I get paid by the various consumers who
17 are participants in the NOAC communities
18 aggregations.

19 Q. Isn't that true; isn't that a retainer?

20 A. You can characterize it as a retainer.
21 It's part -- it's part of the supply contract with
22 the various suppliers and the various municipalities.

23 Q. And these firms, that is, NOPEC and NOAC,
24 represent about 10 to 20 percent of your business
25 from a revenue standpoint, correct?

1 A. Approximately.

2 Q. And NOAC is among your top five clients,
3 correct?

4 A. Correct.

5 Q. And NOPEC is among your top 20 clients,
6 correct?

7 A. Correct.

8 Q. Now, as far as you know, NOPEC and NOAC
9 have had -- had the opportunity to participate in the
10 negotiations in the ESP II case, correct?

11 A. Yes.

12 Q. And as far as you know, NOPEC and NOAC
13 were able to see draft versions of the stipulation
14 that was being discussed in negotiations in that case
15 before the stipulation was filed.

16 MR. WARNOCK: Your Honor. I thought I
17 heard you say ESP II.

18 MR. KUTIK: Yes.

19 MR. WARNOCK: The 10-388 case?

20 MR. KUTIK: Yes, I am.

21 A. I'm sorry, could you repeat the question,
22 please, Mr. Kutik?

23 Q. Sure. That the -- these parties, NOAC
24 and NOPEC, had an opportunity to review the
25 stipulation or drafts of the stipulation that was

1 being discussed in negotiations in the ESP II before
2 those stip -- that stipulation was filed, correct?

3 A. To the best of my recollection, that's
4 correct.

5 Q. And NOPEC and NOAC in that case had the
6 opportunity to make comments on the stipulation as
7 drafted in that case.

8 A. Are you talking -- you say "that case."
9 Are we talking about this particular case, Mr. Kutik?

10 Q. No. I am still talking about ESP II.

11 A. Yes.

12 Q. And the same would be true for this case?

13 A. Yes.

14 Q. Now, you believe that since NOPEC and
15 NOAC didn't have -- or didn't agree with the
16 stipulation, it is not supported by broad residential
17 representation, correct?

18 A. Are we now talking about this particular
19 stipulation, Mr. Kutik?

20 Q. Yes, I am.

21 A. You are jumping back and forth.

22 Q. I am not jumping around. I thought my
23 questions were clear, but I will be glad to clarify
24 them for you.

25 A. Thank you.

1 Q. With respect to this case because NOPEC
2 and NOAC did not support the stipulation, the
3 stipulation is not supported by broad residential
4 representation, correct?

5 A. I believe my testimony, Mr. Kutik, is
6 that the OCC, NOAC, and NOPEC did not sign on to the
7 stipulated settlement and that, therefore, the
8 settlement lacks broad residential representation.

9 Q. Well, my question was specifically about
10 you and your clients. Is it your testimony that
11 because NOPEC and NOAC did not support the
12 stipulation, that the stipulation is not supported by
13 the broad representation -- broad residential
14 representation? That's your testimony, isn't it?

15 A. No, I don't believe so, Mr. Kutik.

16 Q. All right. Well, don't you believe that
17 if NOPEC and NOAC had agreed to the stipulation, that
18 the stipulation would be supported by broad
19 residential representation?

20 A. Yes, I would say that's a fair
21 assessment.

22 Q. Okay. And you believe that because NOAC
23 and NOPEC represent municipalities that represent
24 residential customers, correct?

25 A. Yes and no. The NOAC communities are a

1 coalition of individual municipalities who work
2 together to secure governmental aggregation supply
3 contracts and provide those governmental aggregation
4 offers to residential and small business consumers.

5 NOPEC, on the other hand, is a council of
6 governments, and while there are municipalities who
7 agree to participate in NOPEC, it's my understanding
8 that NOPEC stands as a CRES in its own right as a
9 governmental aggregator, and NOPEC, therefore,
10 directly makes that offer through their contracts
11 with various suppliers.

12 Q. Well, isn't it true, though, that you
13 believe because municipalities can represent
14 residential customers, that NOPEC and NOAC's
15 agreement would represent broad residential support?

16 MR. WARNOCK: Objection. I don't believe
17 Mr. Frye ever testified about municipalities
18 representing residential customers.

19 EXAMINER WILLEY: Mr. Kutik, do you have
20 a response?

21 MR. KUTIK: I am not characterizing his
22 testimony. I am just asking, "Isn't that your view,
23 sir."

24 EXAMINER WILLEY: I am going to overrule.

25 A. Could you repeat the question again,

1 Mr. Kutik?

2 Q. Sure. Isn't it your view that you
3 would -- you believe that if NOPEC and NOAC supported
4 the stipulation, the stipulation would have support
5 from broad residential representation because you
6 believe that NOAC and NOPEC represent municipalities
7 that represent residential customers?

8 A. No. I believe that NOAC and NOPEC have
9 governmental aggregations, which as representing
10 those governmental aggregation consumers, those
11 municipalities represent broad -- broad residential
12 representation.

13 Q. So municipalities may have an interest
14 and may be able to represent residential customers,
15 correct?

16 A. If that's who they are attempting to
17 represent, potentially, yes.

18 Q. Okay. Now, from your dealings with NOPEC
19 and NOAC and otherwise, you do have knowledge about
20 shopping and various shopping levels and shopping
21 activity within the state of Ohio, do you not?

22 A. I do.

23 Q. And would it be fair to say that you
24 believe the shopping levels within the FirstEnergy
25 EDUs' territory is among the highest in the state?

1 A. They are.

2 Q. And with respect to government
3 aggregation activity, would it also be true that
4 there is more government aggregation activity within
5 the FirstEnergy EDUs than anywhere else in the state?

6 A. To the best of my recollection, that's
7 correct.

8 Q. And, further, you would believe or you
9 understand that there are many CRES suppliers that
10 are currently active in the FirstEnergy EDUs'
11 territory?

12 A. Yes.

13 Q. Now, you've testified in a number of ESP
14 cases, have you not?

15 A. I have.

16 Q. And you've testified in Case No. 08-935
17 regarding FirstEnergy.

18 A. Yes.

19 Q. You've testified in Case No. 08-917
20 regarding AEP Ohio.

21 A. Correct.

22 Q. You've testified in 08-1094 regarding
23 DP&L.

24 A. Yes.

25 Q. You've testified in Case No. 9 -- excuse

1 me -- 09-906 regarding FirstEnergy again.

2 A. Correct.

3 Q. And you've testified in Case No. 11-346
4 regarding AEP again.

5 A. Correct.

6 Q. And would it be fair to say that in none
7 of those cases do you recall testifying on the
8 subject of whether the ESP was more favorable in the
9 aggregate than an MRO?

10 A. That's incorrect.

11 Q. All right. Well, isn't it true that you
12 can't recall testifying in the 08-935 case about that
13 subject?

14 A. That's correct.

15 Q. And isn't it true you cannot -- you also
16 cannot recollect testifying on that subject in the
17 08-917 case?

18 A. That's correct.

19 Q. And isn't it true you can't recall
20 testifying about that subject in the 08-1094 case?

21 A. That's correct.

22 Q. And isn't it also true you couldn't
23 recall testifying about that in the 09-906 case?

24 A. That's correct.

25 Q. And isn't it true you couldn't recall

1 testifying about that, or you didn't believe you
2 testified about that, in the 11-346 case?

3 A. My testimony in the 11-346 case does
4 include some conversation about the aggregate test of
5 an ESP versus an MRO.

6 Q. All right. Well, in this case you're not
7 testifying about whether the Commission should or
8 should not approve the ESP, correct?

9 A. My testimony in this case revolves around
10 the fact that the quantitative test that FirstEnergy
11 put forward includes RTEP charges, and when you
12 exclude those RTEP charges, the quantitative test for
13 an ESP versus an MRO has failed, and, therefore,
14 because it fails, I was pointing out to the
15 Commission that that failure was, in fact, there and
16 that that should be taken under consideration when
17 they're evaluating the ESP.

18 Q. Now, let's get to my question.

19 A. Fair enough.

20 Q. Which is, you're not testifying on the
21 subject of whether or not the Commission should adopt
22 or approve the ESP, correct?

23 A. I believe my testimony indicates that on
24 page 7, lines 16 through 22 -- or my answers on line
25 18 through 22 talks about the fact the ESP fails the

1 quantitative test, as I just mentioned, and doesn't
2 provide sufficient benefits to residential and small
3 business consumers.

4 MR. KUTIK: Your Honor, I move to strike
5 as nonresponsive.

6 EXAMINER WILLEY: Do you have a response,
7 Mr. Warnock?

8 MR. WARNOCK: I think he is explaining
9 his answer. The question was about the test, and he
10 is explaining --

11 MR. KUTIK: No. My question was about
12 whether or not the Commission should approve the ESP
13 as proposed.

14 MR. WARNOCK: I think that's up to the
15 Commission, not up to the witness.

16 EXAMINER WILLEY: I am going to deny your
17 motion to strike. I am going to give the witness
18 some leeway in providing a full answer.

19 But, Mr. Frye, I would like you to please
20 listen carefully to counsel's question and answer
21 that question rather than elaborating.

22 THE WITNESS: Yes, your Honor.

23 Q. (By Mr. Kutik) Let's try it again. Isn't
24 it true you are not testifying in this case, not
25 rendering an opinion as to whether the Commission

1 should or should not approve the ESP?

2 A. The Commission can approve it or not
3 approve it.

4 Q. That's not my question.

5 A. The test -- would you let me finish,
6 Mr. Kutik?

7 Q. Please, go ahead.

8 A. I'm not testifying whether or not the ESP
9 should be necessarily approved by the Commission.
10 The Commission has the ability to do that if they so
11 choose.

12 Q. So you're not rendering an opinion as to
13 whether the Commission should or should not approve
14 the ESP, correct?

15 A. My opinion is rendered in my testimony
16 that the quantitative test has failed in the ESP III
17 case.

18 Q. Again, you are not rendering an opinion
19 as to whether the Commission shouldn't approve the
20 ESP?

21 A. No, I am not.

22 Q. All right. And isn't it true that you're
23 not testifying in this case as to whether the ESP is
24 more favorable than an MRO?

25 A. I'm testifying that the quantitative test

1 that the companies put forward fails the ESP versus
2 the MRO test. As for the other potential factors
3 that the Commission may consider, they're obviously
4 welcome to do so. That's up to them.

5 Q. So let's get back to my question. So
6 you're not testifying in this case whether the ESP is
7 more favorable than an MRO, correct?

8 A. I don't know what the Commission would
9 consider in the quantitative versus the qualitative
10 question. I'm commenting in my testimony about the
11 quantitative aspects of it. What the Commission
12 chooses to take into account in the quan -- or the
13 qualitative aspect of it is their decision.

14 EXAMINER WILLEY: Mr. Frye, sorry to
15 interrupt you. I just want to tell you again, I
16 would like you to please listen carefully to
17 counsel's question and directly answer that question.
18 You know, I will give you some leeway as far as
19 giving a full reply, but I wouldn't like you to
20 elaborate so far beyond the question that was asked.

21 THE WITNESS: Yes, your Honor. I'll try
22 to do better.

23 EXAMINER WILLEY: Thank you.

24 Q. (By Mr. Kutik) Mr. Frye, isn't it true
25 that you're not rendering an opinion as to whether

1 the ESP is more favorable in the aggregate than an
2 MRO?

3 A. That's correct.

4 Q. Now, although you've made some comments
5 about the quantitative comparison of the ESP compared
6 to an MRO, you're not taking a position as to whether
7 the Commission should consider qual -- qualitative
8 aspects, correct?

9 A. I am not.

10 Q. In fact, you believe that the Commission
11 could approve hypothetically an ESP that had rates
12 higher than market rates, correct?

13 A. They could.

14 Q. And you also believe that if the
15 Commission approved an ESP that included rates below
16 market rates, that that would be anti-competitive?

17 A. It may.

18 Q. With regard to the DCR and your comments
19 about the DCR and how that should be handled in the
20 quantitative aspect of the ESP versus MRO test, you
21 believe that the DCR should be included and
22 considered as part of the ESP side of the ESP versus
23 MRO test, correct?

24 A. To the extent the companies included that
25 in their test, yes.

1 Q. Okay. You believe it's not appropriate,
2 however, to consider the effect of similar re --
3 recovery of similar costs that might be collected by
4 the DSR for evaluating an MRO, correct?

5 A. You mean the DCR?

6 Q. DCR, yes, thank you.

7 A. That's correct.

8 Q. If the companies had a rate case in
9 which -- and proposed to recover the type of costs
10 that are being proposed to be recovered under the
11 DCR, you would agree with me, would you not, that the
12 likelihood that in the rate case -- the likelihood of
13 the recovery of zero would be zero, that there would
14 be a likelihood those costs would be recovered,
15 correct?

16 A. There's a likelihood that some costs
17 would certainly be recovered.

18 Q. Okay. In fact, you would expect that the
19 companies' expenditure would likely be recovered,
20 correct?

21 MR. WARNOCK: Objection. This is
22 entirely speculative about what would happen in a
23 hypothetical rate case.

24 EXAMINER WILLEY: Mr. Kutik, your
25 response?

1 MR. KUTIK: The ESP versus MRO is, in
2 itself, a speculative exercise, your Honor. We are
3 speculating about what a proposed MRO would be like,
4 and so this is fair game for this witness.

5 EXAMINER WILLEY: Your objection is
6 overruled.

7 A. Could you repeat the question again,
8 Mr. Kutik?

9 Q. Sure.

10 A. Thank you.

11 Q. If the companies had a rate case and
12 proposed to recover the type of costs proposed to be
13 recovered here through the DCR, the likelihood of
14 recovery in the rate case would not be zero, correct?

15 A. I believe I testified a moment ago,
16 Mr. Kutik, that they would likely receive some
17 recovery.

18 Q. Right. So the answer to my question is
19 "yes"?

20 A. I believe they would receive some
21 recovery. I don't know the likelihood of zero versus
22 not zero.

23 Q. Okay. Well, it's -- it is not likely
24 that the recovery would be zero, correct?

25 A. In my judgment I would assume that the

1 company would file for a rate increase if it needed
2 it and it had proper justification; therefore, you
3 are correct.

4 Q. Thank you. In fact, you would expect
5 that the companies' expenditures would likely be
6 recovered.

7 A. To some extent or another, they would
8 likely be recovered.

9 Q. Thank you. Now, you participated, as we
10 mentioned just a little while ago, in the AEP Ohio
11 ESP II case, Case No. 11-346, correct?

12 A. I did.

13 Q. And in that case AEP proposed a rider
14 DIR, correct?

15 A. Correct.

16 Q. And rider DIR and the rider proposed in
17 this case, rider DCR, are similar in that both would
18 recover incremental capital expenditures since the
19 respective companies' last distribution rate cases,
20 correct?

21 A. That's my general recollection.

22 Q. And you are aware, are you not, since you
23 participated in the 11-346 case, that the Commission
24 expressed a view as to how the DIR should be --
25 should be considered as part of the ESP versus MRO

1 test, correct?

2 A. I didn't follow that particular section
3 of the rate case, Mr. Kutik, so I don't recall what
4 the Commission's judgment on that was.

5 Q. With regard to Mr. Ridmann's calculations
6 with respect to the effect of DCR-type recovery in a
7 rate case, in terms of what's in his testimony, you
8 don't know how he came up with his figures; is that
9 correct?

10 A. Which figure? On the ESP or MRO side?

11 Q. The MRO side.

12 A. No, I do not.

13 Q. The DCR is currently part of the
14 FirstEnergy EDUs rates, correct?

15 A. That's correct.

16 Q. And there are caps as to what the
17 companies can recover in a year under rider DCR.

18 A. Under the stipulated settlement approved
19 by the Commission, that's my understanding.

20 Q. And these caps, as far as you understand
21 it, increase by \$15 million per year; is that
22 correct?

23 A. That's my general recollection.

24 Q. And the companies propose in this case
25 that the caps increase by a similar rate of \$15

1 million per year.

2 A. Beyond -- \$15 million a year above the
3 prior levels in the current ESP.

4 Q. Yes.

5 A. Yes.

6 Q. The companies here have proposed
7 essentially a two-year extension of the current DCR,
8 correct?

9 A. I'm not sure how to answer that,
10 Mr. Kutik. To the extent this is a separate case or
11 a continuation of the existing ESP case, I'm not sure
12 how to answer it. I understand the application is
13 asking for a continuation of DCR rider.

14 Q. For two years.

15 A. For two additional years.

16 Q. So the potential increases as a result of
17 this ESP from current rates would be about \$45
18 million, correct?

19 A. Yes. Both 30 million in the first year
20 and 45 million in the second year.

21 Q. Well, actually, it would be 15 million in
22 the first year and 30 million in the second year,
23 correct?

24 A. No; because we're in the second year of
25 the ESP currently, Mr. Kutik, not the third, so,

1 therefore, there's another 15 to take into account.

2 Q. Fair enough. So from the end of the ESP,
3 the additional caps would be 45 million, correct?

4 A. Total, yes.

5 Q. And of that \$45 million, not all of that
6 would be paid by residential customers, correct?

7 A. That's my general recollection, that's
8 correct.

9 Q. And the revenue requirement for the DCR
10 rider for residential customers, or the allocation to
11 residential customers, is less than half, correct?

12 A. That's my general recollection, yes.

13 Q. I want to talk to you about some of the
14 features of rider DCR, as you understand them. If
15 the companies don't spend money, that would -- don't
16 spend money, they don't recover it, correct?

17 A. Correct.

18 Q. And there's a quarterly filing.

19 A. That's my recollection, yes.

20 Q. And there is a reconciliation between
21 expenditures and charges recovered, correct?

22 A. I believe that there is, yes.

23 Q. And there is an annual audit.

24 A. I don't recall whether the audit is
25 annual, but I do recall that there is some ability

1 for the Commission to audit.

2 Q. There is a regular audit.

3 A. Regular audit, fair enough.

4 Q. And that audit allows parties, other than
5 the staff, an opportunity to review the audit and to
6 make comments on the audit, correct?

7 A. To the best of my understanding, yes.

8 Q. And you would agree with me that these
9 are positive aspects of the DCR.

10 A. The ability for other parties to -- to
11 evaluate and consider it would be a positive aspect
12 of the DCR, yes.

13 Q. Okay. And the reconciliation is a
14 positive aspect of the DCR.

15 A. Yes.

16 Q. And all of those things are proposed to
17 be continued in the ESP III, correct?

18 A. To the best of my recollection, yes.

19 Q. Now, with respect to RTEP costs and the
20 recovery of RTEP costs or the nonrecovery of RTEP
21 costs, you would agree with me, would you not, having
22 the company forego those costs or recovery of those
23 costs, as well as recovery of MISO exit fees, was a
24 benefit to ESP II.

25 A. Yes.

1 Q. And there was nothing that required the
2 First -- FirstEnergy companies to have the same terms
3 in this ESP as it had in the last ESP, correct?

4 A. I'm not sure I understand your question,
5 Mr. Kutik, in regards to "the same terms."

6 Q. Okay.

7 MR. KUTIK: Your Honor, may I approach?

8 EXAMINER WILLEY: You may.

9 Q. Mr. Frye, I noticed you didn't bring
10 anything up on the stand with you, so I assume you do
11 not have copies of your deposition; am I correct
12 about that?

13 A. That's correct.

14 Q. Let me show you a copy.

15 Mr. Frye, I would like you to turn to
16 page 58 of your deposition. Are you there, sir?

17 A. I am.

18 Q. And directing your attention to line 19,
19 did you testify as follows: "Question: I wanted to
20 change topics now, Mr. Frye. Is there anything that
21 required FirstEnergy to have the same terms in this
22 ESP that it had in the last ESP?

23 "Answer: Not that I know of."

24 Is that your testimony, sir?

25 A. That's my testimony.

1 Q. Now, the companies were also free to
2 attempt to negotiate or renegotiate the terms from
3 ESP II, correct?

4 A. To the extent that they were able to get
5 the parties and the Commission to agree to it, yes.

6 Q. Okay. Now, let me change topics. You
7 have not undertaken a forecast with regard to where
8 energy prices may be over the proposed term of ESP
9 III, correct?

10 A. Correct.

11 Q. And based on forward price curves, the
12 marketplace anticipates that energy prices will be
13 higher in the future, correct?

14 A. Yes.

15 Q. And the forward curve shows a trend of
16 prices increasing throughout the course of the
17 proposed ESP, correct?

18 A. In this particular marketplace, that's
19 correct.

20 Q. Now, in a similar situation in December
21 of 2009, you recommended that the companies go out
22 and auction a three-year product, correct?

23 A. I did.

24 Q. And you testified that you believed in
25 that case that electricity prices would increase

1 every six months during a period from May, 2010,
2 through May, 2012, correct?

3 A. That was my expectation.

4 Q. And you thus recommended that the
5 companies purchase at that time 100 percent in 2010
6 for delivery to customers throughout the -- through
7 May of 2014, correct?

8 A. At that time that was my -- that was my
9 testimony.

10 Q. Now, you believe that capacity costs in
11 ATSI for the planning year 2015-2016 will be \$357 per
12 megawatt-day, correct?

13 A. That's my understanding of the results of
14 the BRA auction in PJM for ATSI.

15 Q. Other than credits for curtail customers,
16 you don't know whether there were any credits for
17 anything else applied to that \$357 figure, correct?

18 A. Not that I know of.

19 MR. KUTIK: Your Honor, may I approach?

20 EXAMINER WILLEY: You may.

21 MR. KUTIK: And I only have one copy of
22 this exhibit with me, your Honor, but it has already
23 been marked and admitted into evidence, and that's
24 Company Exhibit 6, which has at the title "2015/2016
25 Delivery Year Summary of Auction Results," and I will

1 show counsel a copy.

2 EXAMINER WILLEY: Thank you.

3 Q. Mr. Frye, let me show you what has been
4 marked and admitted as Company Exhibit 6. Have you
5 ever seen that before?

6 A. Not that I can recall.

7 MR. KUTIK: May I approach, your Honor?

8 EXAMINER WILLEY: You may.

9 Q. You say you haven't seen that before?

10 A. Not that I can recall.

11 Q. So you don't know whether that's a
12 document published by PJM?

13 A. I don't recall seeing it in a document
14 published by PJM.

15 Q. Looking at the middle of the document, it
16 refers to zonal CTR credit rates. Do you know what
17 CTR means?

18 A. No.

19 Q. Thank you. Now, you believe that the
20 Commission should require the companies here to
21 auction in October of this year and January of next
22 year two products: One, a product for delivery
23 beginning in May of -- excuse me -- June, 2013, to
24 May of 2014, and then a two-year product beginning in
25 June of 2014, correct?

1 A. Yes.

2 Q. So part of the auction in October of 2012
3 January of 2013 would be for product or -- which
4 would have delivery starting in June of 2014,
5 correct?

6 A. Correct.

7 Q. And you don't recall whether the
8 Commission has stated any preference as to when
9 auctions should be held relative to the beginning of
10 delivery, correct?

11 A. I don't recall.

12 Q. With regard to a competitive bidding
13 process, you would agree with me, would you not, that
14 in many cases it's prudent to use a product approach
15 that minimizes the risk from unpredictability and
16 volatility?

17 A. For some customers, yes.

18 Q. And you've heard of the concept of
19 hedging.

20 A. Yes.

21 Q. Hedging is a fairly accepted way to
22 minimize the risks of volatility.

23 A. Yes.

24 Q. And you're aware of the concept of
25 laddering in the procurement of SSO load.

1 A. I am.

2 Q. And you're aware that laddering may be
3 viewed as auctioning off different lengths of product
4 that may overlap.

5 A. Yes.

6 Q. And laddering is an acceptable method to
7 hedge risk in an energy market.

8 A. It's one method, yes.

9 Q. To the extent that the companies want to
10 use a product or a series of products that minimizes
11 risks and volatility, laddering could be a reasonable
12 thing to do.

13 A. Yes.

14 Q. A mix of one-, two-, or three-year
15 products may avoid large rate swings.

16 A. Yes, they may.

17 Q. And some customers may few relative
18 stability in rates as a benefit. You recognize that.

19 A. Yes.

20 Q. Now, as part of your work for Palmer
21 Energy, you have followed the FirstEnergy SSO
22 auctions, correct?

23 A. Generally.

24 Q. You believe that those auctions have been
25 successful.

1 A. For the purposes in which they're
2 intended, yes.

3 Q. And among the purposes was the
4 procurement of reliable power at reasonable prices.

5 A. To this point, yes.

6 Q. And those auctions have attracted a
7 sufficient number of bidders to garner a competitive
8 price.

9 A. Yes.

10 Q. You agree that as far as procured power
11 is concerned, the process should be revenue neutral
12 to the companies.

13 A. By and large, yes.

14 Q. And to the extent -- the companies
15 incurred costs in terms of what they pay a supplier,
16 the company should be able to recover those costs.

17 A. By and large, yes.

18 Q. Now, the price -- if the price of
19 products is averaged, as proposed by the companies,
20 the companies' cost would not be less in the early
21 part of the ESP, correct?

22 A. Based upon your application, Mr. Kutik?

23 Q. Yes.

24 A. Yes.

25 Q. And if the supplier is charging an

1 average cost across the term of the product, that
2 cost would be the companies' cost at any time.

3 A. Correct.

4 Q. Now, you have not **wholesale bidders bid
5 directly involved with and SSO auction, correct?

6 A. Correct.

7 Q. And you've -- and only one supplier --
8 one assignment -- excuse me -- in your career for
9 wholesale supplier.

10 A. That's correct.

11 Q. And that didn't have anything to do with
12 wholesale prices or wholesale contracts or
13 competitive bidding processes, correct?

14 A. Correct.

15 Q. Now, if you were a supplier participating
16 in a competitive bidding process, nevertheless, and
17 the competitive bidding process for a product of more
18 than a year, you would expect that you, as a
19 supplier, would recognize the time value of money,
20 correct?

21 A. I mean, one of the things I take into
22 account, yes.

23 Q. And that may be reflected in the
24 supplier's prices in -- in the bidding process,
25 correct?

1 A. It may be.

2 Q. Now, you have some criticism about using
3 average costs in a climate of increasing costs,
4 correct?

5 A. To what are you referring, Mr. Kutik?
6 My testimony?

7 Q. Well, you say, do you not, that you
8 believe that some customers under the companies'
9 proposal would have a disadvantage by the fact that
10 they may not be able to be around for the entire term
11 of the ESP, correct?

12 A. To the extent, yes, yes.

13 Q. That if a customer, for example, moves
14 halfway through and they haven't gotten the benefit
15 of the discounts they might receive later on, right?

16 A. Correct.

17 Q. And isn't it true that we could think of
18 a scenario where we would have customers benefit by
19 having customers come in halfway through?

20 A. In that potential scenario, that would be
21 true.

22 Q. Or if the customer expands.

23 A. That would be another potential scenario,
24 yes.

25 Q. And it would be true that the issue you

1 raise could be applied to virtually all of
2 FirstEnergy's rates that are based upon average costs
3 over time.

4 A. To the extent that those costs that they
5 would incur are rising, yes.

6 MR. KUTIK: May I have a minute, your
7 Honor?

8 EXAMINER WILLEY: You may.

9 MR. KUTIK: I have no further questions.
10 Thank you Mr. Frye.

11 EXAMINER WILLEY: Thank you.

12 Mr. McNamee.

13 MR. McNAMEE: My points have already been
14 covered. Thank you.

15 EXAMINER WILLEY: Thank you.

16 Mr. Warnock.

17 MR. WARNOCK: Could we have just a
18 minute?

19 EXAMINER WILLEY: Yes, you may.

20 (Discussion off the record.)

21 EXAMINER WILLEY: Go back on the record.

22 Mr. Warnock, are you ready?

23 MR. WARNOCK: I'm ready.

24 - - -

25 REDIRECT EXAMINATION

1 By Mr. Warnock:

2 Q. Mr. Frye, is it your position that this
3 particular ESP before the Commission should be
4 rejected?

5 A. It is.

6 Q. And, more specifically, is it your
7 position that this particular ESP proposal before the
8 Commission should be rejected because it fails the
9 quantitative ESP versus MRO test?

10 A. As I indicated on page 7, lines 18
11 through 22, that's correct.

12 Q. Mr. Frye, do you remember the questions
13 from counsel for the companies relating to rider DCR
14 and the \$45 million proposed increase?

15 A. Yes.

16 Q. Can you please explain that and relate it
17 to rider DCR as -- as approved as part of the ESP II
18 case?

19 A. It's my understanding that the current
20 ESP DCR has various caps for recovery that the
21 companies can recover that expand by \$15 million a
22 year and that the companies are proposing to keep
23 going with the rider DCR with incremental \$15 million
24 a year increases. That's where the \$45 million --
25 15 million in the first year incrementally compared to

1 the last year of the existing ESP and then
2 \$30 million in the second year.

3 As I understand the company's
4 application, they would have the opportunity to
5 recover a total of \$405 million, 45 million of which
6 would be the incremental increases from the last year
7 of the ESP -- of the existing ESP. Excuse me.

8 Q. And I turn your attention to page 9 of
9 your testimony, specifically lines 23 through 25.
10 Whether the amount of capacity that comes -- that
11 came out of the May 18 PJM BRA auction is \$294 a
12 megawatt or \$357 per megawatt-day, does that change
13 your testimony on lines 23 through 25?

14 A. To the extent that number of \$101 million
15 on there line 25 would be smaller because the \$294
16 megawatt-day charge, to the extent that's the actual
17 charge the companies -- that the consumers would pay
18 is lower than the 357, that number would clearly be
19 lower, but that doesn't change the overall thought
20 process of the testimony, which is you are pulling
21 future moneys into -- closer into the present that
22 consumers would pay.

23 MR. WARNOCK: No further questions, your
24 Honor.

25 EXAMINER WILLEY: Mr. Kutik, do you have

1 any recross?

2 MR. KUTIK: May I have a moment, your
3 Honor?

4 EXAMINER WILLEY: You may.

5 MR. KUTIK: No questions, your Honor.
6 Thank you.

7 EXAMINER WILLEY: Thank you.

8 Examiner Price?

9 EXAMINER PRICE: No questions.

10 EXAMINER WILLEY: Thank you, Mr. Frye.
11 You are excused.

12 MR. WARNOCK: Your Honor, at this time I
13 would like to move into evidence Joint NOAC/NOPEC
14 Exhibit 1.

15 EXAMINER WILLEY: Is there any objection
16 to the admission of NOAC/NOPEC Exhibit 1?

17 Hearing none, NOPEC/NOAC Exhibit 1 will
18 be admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER WILLEY: Mr. Petricoff.

21 MR. PETRICOFF: Thank you, your Honor.
22 At this time RESA would like to call to the stand
23 Teresa Ringenbach.

24 - - -

25 TERESA L. RINGENBACH,

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

3 DIRECT EXAMINATION

4 By Mr. Petricoff:

5 Q. Would you please state your name and
6 business address for the record.

7 A. Teresa L. Ringenbach. Business address
8 is 9605 El Camino Drive, Plain City, Ohio.

9 Q. And, Ms. Ringenbach, on whose behalf do
10 you appear today?

11 A. RESA and Direct Energy.

12 MR. PETRICOFF: Your Honor, at this time
13 I would like to have marked as RESA Exhibit 2 the --
14 I believe it's -- sorry, RESA Exhibit 3, the direct
15 prepared testimony of Teresa Ringenbach.

16 EXAMINER WILLEY: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. Ms. Ringenbach, do you have a copy of
19 what has just been marked as RESA Exhibit 3?

20 A. Yes, I do.

21 Q. And is that your direct prepared
22 testimony?

23 A. Yes.

24 Q. And was this done by or under your
25 supervision?

1 A. Yes.

2 Q. And if I were -- do you have any
3 corrections or changes to that document?

4 A. No.

5 Q. And if I were to ask you the same
6 questions that are printed there, would your answers
7 be the same?

8 A. Yes.

9 MR. PETRICOFF: Your Honor, the witness
10 is available for cross-examination.

11 EXAMINER WILLEY: Thank you. Let's begin
12 with Mr. Sauer.

13 MR. SAUER: No questions, your Honor.

14 EXAMINER WILLEY: Mr. Dortch.

15 MR. DORTCH: No questions, your Honor.

16 EXAMINER WILLEY: Mr. Royer.

17 MR. ROYER: No questions.

18 EXAMINER WILLEY: Mr. Vickers.

19 MR. VICKERS: No questions, your Honor.

20 EXAMINER WILLEY: Mr. Kapla.

21 MR. KAPLA: No questions, your Honor.

22 EXAMINER WILLEY: Mr. Lavanga.

23 MR. LAVANGA: No questions.

24 EXAMINER WILLEY: Mr. Clark.

25 MR. CLARK: No questions.

1 EXAMINER WILLEY: Mr. Burk.

2 MR. BURK: Thank you, your Honor.

3 EXAMINER WILLEY: Thank you.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Burk:

7 Q. Good morning, Ms. Ringenbach. How are
8 you?

9 A. I'm good.

10 Q. My name is Jim Burk with FirstEnergy. Do
11 you recall I took your deposition last week?

12 A. Yes.

13 Q. Now, today you stated you are testifying
14 on behalf of Direct Energy, but actually you are
15 filing on behalf of two Direct Energy entities.

16 A. Yes.

17 Q. The first one is Direct Energy Services,
18 LLC.

19 A. Yes.

20 Q. And the second one is Direct Energy
21 Business, LLC.

22 A. Yes.

23 Q. And you're actually employed by Direct
24 Energy Services, LLC, correct?

25 A. Yes.

1 Q. Okay. And Direct Energy Services, LLC,
2 is a holding company, and you are a shared employee
3 of that entity, correct?

4 A. Yes.

5 Q. And Direct Energy Services, LLC provides
6 for retail generation service to residential
7 customers, correct?

8 A. Yes.

9 Q. But at this time Direct Energy Services
10 has no customers in the FirstEnergy utility service
11 territories; is that correct?

12 A. Yes.

13 Q. And then Direct Energy Business provides
14 retail generation service to nonresidential
15 customers, correct?

16 A. Yes.

17 Q. Okay. And you're generally familiar with
18 Senate Bill 3, which was the legislation that
19 introduced competition for retail electric service in
20 Ohio, approximately 1999?

21 A. Yes.

22 Q. And you would agree that that service is
23 now, in fact, referred to as competitive retail
24 electric service.

25 A. Yes.

1 Q. And you would agree that providers of
2 that service are referred to as competitive retail
3 electric service or CRES providers?

4 A. Yes.

5 Q. Okay. That's typically how I am going to
6 refer to them today.

7 A. Okay.

8 Q. And you would agree CRES providers are
9 certified through a PUCO process set up under that
10 statute.

11 A. Yes.

12 Q. And you would agree that CRES providers
13 compete to provide competitive retail electric
14 service to retail customers in Ohio.

15 A. Yes.

16 Q. And you would agree that they have been
17 doing so since the beginning of 2001.

18 A. Yes.

19 Q. And that they continue to do so today.

20 A. Yes.

21 Q. But at this time you don't know how many
22 customers are shopping with CRES providers across the
23 state of Ohio; is that correct?

24 A. That's correct.

25 Q. Okay. Now, throughout your testimony you

1 make a number of references to competition; is that a
2 fair statement?

3 A. Yes.

4 Q. And you believe that an indicator of
5 competition is the number of CRES providers listed as
6 making offers on the PUCO Apples to Apples website at
7 any given time; is that correct?

8 A. Yes.

9 Q. And you believe that there is competition
10 if enough suppliers are making offers, even if no
11 customers have actually switched to any suppliers.

12 A. Yes.

13 Q. But you do not believe that the number of
14 customers that have actually switched to CRES
15 providers is an indicator of whether there is
16 competition for retail electric service in Ohio; is
17 that correct?

18 A. Yes.

19 Q. In fact, you would view that number of
20 customers who have actually switched as being
21 irrelevant to that determination.

22 A. In Ohio, yes.

23 Q. In Ohio, yes. And you also do not
24 believe that the number of CRES providers registered
25 to provide competitive retail electric service in an

1 electric utility service territory, that that is also
2 irrelevant as to whether there is competition for
3 retail electric service, unless they are actively
4 selling; is that correct?

5 A. Yes.

6 Q. But it's correct that a supplier that is
7 actively selling or making offers may not actually be
8 listed on the PUCO's Apples to Apples chart,
9 particularly if they are marketing to commercial and
10 industrial customers, correct?

11 A. Correct.

12 Q. But you do agree that the number of
13 suppliers actually supplying customers is an
14 indicator of whether there is competition for retail
15 generation service in Ohio; is that correct?

16 A. Could I have that question again?

17 Q. You agree that the number of suppliers,
18 CRES providers, actually supplying customers is an
19 indicator of whether there is competition for
20 electric retail service in Ohio.

21 A. Yes.

22 Q. But you are not aware of any public
23 utility commission has adopted what your opinion is
24 of what is competition?

25 A. That's correct.

1 Q. Now, do you believe that either of the
2 Direct Energy entities on behalf of -- of who you are
3 testifying today, do you believe they are at a
4 competitive disadvantage in Ohio, as compared to
5 other CRES providers because there's no purchase of
6 receivable program in Ohio?

7 A. I believe that we're all on the same
8 level playing field in that there is no purchase of
9 receivables.

10 Q. And would you agree with me that only
11 five states currently offer a purchase of receivable
12 program for retail electric service in the United
13 States?

14 A. Yes.

15 Q. And do you know how many states offer --
16 have competitive electric retail service within that
17 state?

18 A. I believe there's maybe 15.

19 Q. Now, one of the states that does offer at
20 this time a purchase of receivables program is
21 Pennsylvania, correct?

22 A. Yes.

23 Q. And you make a reference to that in your
24 testimony.

25 A. Yes.

1 Q. But in Pennsylvania the implementation of
2 a purchase of receivable program, at least for
3 Metropolitan Edison, Pennsylvania Electric Company,
4 and Penn Power, came about as a result of a
5 settlement agreement, correct?

6 A. Yes.

7 Q. It was not mandated by the Commission
8 that those companies implement a purchase of
9 receivable program; is that right?

10 A. That's right.

11 Q. Are you familiar with the term "subsidy"
12 as its used in the electric utility context?

13 A. Yes.

14 Q. And would you agree that a subsidy is
15 when a business expense of company A, for example, is
16 paid for by others rather than company A including
17 the business expense in its pricing?

18 A. Yes.

19 Q. And you're also not aware of any
20 provisions of public utility laws or rule in Ohio
21 that talk about subsidies or prohibiting subsidies in
22 Ohio?

23 A. Yes.

24 Q. Do you agree that uncollectible expense
25 is a legitimate business expense?

1 A. Yes.

2 Q. And you would agree that most competitive
3 businesses have collection risk?

4 A. Yes.

5 Q. And you would agree that without a
6 purchase of receivables program, if a CRES provider
7 has uncollectible expense, that amount of
8 uncollectible expense is either absorbed by the CRES
9 provider or included in the CRES provider's pricing
10 to its customers, correct?

11 A. Yes.

12 Q. Now, switching gears, talking a little
13 bit more specifically about your purchase of
14 receivables program that you discuss in your
15 testimony, you don't really have a specific
16 recommendation on the character of the program; is
17 that correct? Let me withdraw that.

18 You talk about two alternatives for a
19 program; one, where there's a discount rate to the
20 supplier, and the other program is a zero discount
21 with an uncollectible generation nonbypassable rider;
22 is that correct?

23 A. Yes.

24 Q. Okay. And you agree that your
25 preferred -- preferred approach would be where the

1 electric utility purchases Direct Energy's
2 receivables at a zero discount.

3 A. Yes.

4 Q. Okay. And so that means that Direct
5 Energy would get 100 percent of the billings for its
6 charges; is that correct?

7 A. That's correct.

8 Q. Or 100 percent of the amount for its
9 billing -- for its billings?

10 A. The total amount of the bill would get
11 paid, that total amount.

12 Q. Exactly. So would you agree that under
13 your preferred approach, you would have nonshopping
14 customers paying at least part of the generation
15 uncollectible expense that arose from service
16 provided by a CRES provider?

17 A. They could, yes.

18 Q. And it would also be true that shopping
19 customers of CRES provider A would be paying part of
20 the generation uncollectible expense rising from
21 service provided by CRES provider B; is that also
22 true?

23 A. Or the utility, yes.

24 Q. Correct. Thank you. So you would agree
25 that under your proposal the collection risk of

1 collecting all of the generation uncollectibles
2 associated with shopping customers would shift from
3 the CRES to the electric utility, correct?

4 A. The -- ask that question again.

5 Q. Okay. So you would agree that under your
6 proposal, the collection risk of collecting all the
7 generation uncollectibles associated with shopping
8 customers would shift from CRES providers to the
9 electric utility?

10 A. The collection risk of uncollectibles
11 would shift to --

12 Q. The utility from the CRES.

13 A. But through a rider under -- under the
14 rider approach. It would -- the utility would have
15 that risk recovered through the rider.

16 Q. Right. So -- so the risk would shift to
17 the utility, and then the utility would collect those
18 amounts through a nonbypassable rider.

19 A. Yes.

20 Q. Okay. And then ultimately the folks who
21 pay the rider would actually be shifted to customers
22 who actually pay the amounts through a nonbypassable
23 generation uncollectible rider.

24 A. Yes.

25 Q. Okay. And would you agree that if your

1 proposal was adopted, that Direct Energy would
2 effectively be indifferent as to whether the customer
3 pays or not for the service provided by Direct
4 Energy?

5 A. Yes.

6 Q. And the nonbypassable generation rider
7 that would be established under your preferred
8 approach would be charged to all customers, whether
9 or not they are shopping?

10 A. All residential and small commercial
11 customers.

12 Q. Okay. And you agree that this
13 nonbypassable generation uncollectible rider would
14 allow the electric utility to recover all of the
15 generation uncollectible expenses arising from the
16 service provided by the CRES provider to its
17 customers.

18 A. Yes.

19 Q. Okay. Do you agree that FirstEnergy
20 electric utilities currently have a bypassable
21 generation uncollectible rider?

22 A. Yes.

23 Q. But then under your proposal, that
24 bypassable generation uncollectible rider would
25 convert to a nonbypassable generation collectible

1 rider.

2 A. Yes.

3 Q. And as part of your proposal, the
4 electric utility would be authorized to disconnect
5 customers for nonpayment of charges for services
6 provided by the CRES provider?

7 A. Yes.

8 Q. But you would also agree that presently
9 the electric utility is prohibited from disconnecting
10 customers for CRES provider charges; is that right?

11 A. Yes.

12 Q. And in your experience is the
13 uncollectible expense of a CRES provider, while it
14 may vary due to different circumstances, is in the
15 range of 3 to 5 percent of amounts billed?

16 A. About the ability to shut off, yes.

17 Q. Or even as possibly as high as 6 percent?

18 A. Yes.

19 Q. And you would agree that the total amount
20 that could cause a customer to be disconnected would
21 increase under your proposal. That's correct, right?

22 A. To the extent that the utility doesn't
23 currently have the ability to disconnect for the CRES
24 commodity so their uncollectibles are focused only on
25 the wires charge, yes. The total amount would go up

1 because now you have commodity charges included in
2 that.

3 Q. Thank you. It's correct that Direct has
4 done no studies or analyses of the effect the
5 preferred approach of purchase of receivables program
6 will have on lower income customers; is that correct?

7 A. Yes.

8 Q. Do you agree that's something that should
9 be taken into account by the Commission in
10 determining whether to implement a purchase of
11 receivables program?

12 A. Yes.

13 Q. And you agree that uncollectible expense
14 will rise under a purchase of receivables program for
15 the utility because the utility is taking on the
16 uncollectible expense of shopping customers.

17 A. The total dollars could increase.

18 Q. Yes.

19 A. The percentage itself probably won't
20 change.

21 Q. Okay. Does Direct Energy Business
22 currently have customers in the FirstEnergy Ohio
23 territories?

24 A. Yes.

25 Q. Do you know if they have any collection

1 issues with customers?

2 A. I don't.

3 Q. And you didn't really know about Direct
4 Energy Services' uncollectible expense because you
5 haven't really experienced that since you have been
6 working for them.

7 A. That's correct.

8 Q. And you don't know what the debt
9 collection practice of other CRES providers are
10 serving customers in the FirstEnergy utilities
11 territories.

12 A. Not currently, no.

13 Q. And you don't know whether CRES providers
14 that are currently active in Ohio have made the
15 investment to keep track of and pursue collection of
16 unpaid amounts from customers?

17 A. I don't.

18 Q. And you don't know what the debt
19 collection practices of other CRES providers are in
20 other service territories without a purchase of
21 receivables program?

22 A. No.

23 Q. And you would also agree that Direct has
24 not done any studies or analyses on the impact on the
25 electric utility as far as costs of implementing and

1 administering a purchase of receivable program?

2 A. Not for FirstEnergy, no.

3 Q. Right. But you would agree that this is
4 definitely a cost associated with implementing a
5 purchase of receivables program, correct?

6 A. Yes.

7 Q. And under your proposal, a CRES provider
8 could choose either to participate or not participate
9 in the purchase of receivables program; is that
10 correct?

11 A. We've recommended that it be -- if you
12 use consolidated billing, you have to use POR with
13 it, so their choice could be consolidated billing
14 with POR or dual bills. To the extent that's the
15 choice, yes.

16 Q. And you would agree that Direct considers
17 a number of factors when deciding to offer retail
18 generation service in a territory?

19 A. Yes.

20 Q. These factors would include whether you
21 can provide dual fuel and service types of products,
22 the size of the service territory, the makeup of the
23 customers, the ability to continuously serve
24 customers, those types of things?

25 A. Yes.

1 Q. And do you recall that you've testified
2 in FirstEnergy's first ESP Case no. 08-935-EL-SSO?

3 A. Yes.

4 Q. Okay. And in that testimony do you
5 recall you addressed the issue of purchase of
6 receivables as well?

7 A. Yes. I don't actually have the testimony
8 in front of me, though.

9 Q. I was really just asking for your
10 recollection.

11 A. Okay.

12 Q. But do you recall that the issue in that
13 case -- your recommendation wasn't regarding
14 acceptance of a purchase of receivable program, but
15 rather if the companies' generation uncollectible
16 rider was made bypassable, then the company should
17 purchase a receivables program? Do you recall that?

18 A. I don't recall that.

19 Q. Okay. But you recall that you didn't
20 make any independent recommendation about a purchase
21 of receivables program. Do you recall that?

22 A. I recall we asked for a purchase of
23 receivables program.

24 Q. Now, switching gears a little bit, talk
25 just briefly about supplier consolidated billing. In

1 your testimony you recommend to the Commission that
2 supplier consolidated billing be implemented in Ohio
3 after a workshop process in the FirstEnergy utility
4 service territories?

5 A. Yes.

6 Q. Is that right?

7 A. Yes.

8 Q. And supplier consolidated billing is a
9 situation where the utility would send all billing
10 information to a supplier, and the supplier would
11 include that information on a bill that it, in turn,
12 sends to the customer.

13 A. Yes.

14 Q. And the bill that the supplier sends to
15 the customer would also include the supplier charges,
16 correct?

17 A. Yes.

18 Q. And under your proposal, and subject to
19 any applicable PUCO rules, it would be the CRES
20 provider deciding when a customer was to be
21 disconnected, not the utilities.

22 A. What I would recommend is we would work
23 that out in the workshop, rules surrounding how a
24 CRES provider could say when a disconnection would
25 happen for the charges.

1 Q. Okay. So none of those rules exist
2 today, though, correct?

3 A. There are rules that exist for the
4 utility for disconnection, but not for the CRES
5 provider.

6 Q. Okay. And the bill provided by the
7 supplier would also include the marketing of products
8 for companies that are also owned by Direct Energy?

9 A. Yes.

10 Q. And there's a company called Clockwork,
11 sells energy home warranties. Is that a subsidiary
12 of Direct Energy?

13 A. Yes. Clockwork sells home warranties.
14 There's electricians that are actually on the ground.
15 There's HVAC. There's plumbers, a number of
16 companies underneath Clockwork, not just home
17 warranties.

18 Q. I got you. And these types of affiliated
19 companies would be able to market their products on
20 the customer bill, if Direct supplied -- if Direct
21 provided the consolidated bill?

22 A. I want to clarify. When you say market,
23 I view that as selling the product. They would
24 actually be able to, after the customers bought it,
25 put that charge on the bill.

1 Q. I understand. And that's one of the
2 primary benefits that Direct sees to consolidated
3 billing, correct?

4 A. That's one of them.

5 Q. Well, to gain business advantages and to
6 build brand loyalties?

7 A. And to also be able to immediately put on
8 the bill whatever electric product we can think of
9 without being limited to what the utility system is
10 capable of doing.

11 Q. Now, you agree right now the only place
12 Direct is currently providing supplier consolidated
13 billing for residential customers is in Texas,
14 correct?

15 A. Yes.

16 Q. And you would agree with me that Texas is
17 truly a different model than all other states when it
18 comes to their competitive framework, correct?

19 A. Yes.

20 Q. And you would agree that Direct -- but do
21 you agree that Direct Energy in Ohio can directly
22 bill its customers for the service it provides to
23 them, correct? You don't have to use utility
24 consolidated billing.

25 A. That's correct.

1 Q. And if you did that, Direct would be able
2 to customize their bill anyway they wanted to,
3 correct?

4 A. Yes.

5 Q. And you could add new products and
6 service offerings to that bill.

7 A. But we still won't be able to shut off,
8 which is a key part of this part of consolidated
9 billing.

10 Q. But you could design the bill format any
11 way you wanted.

12 A. Yes, we can.

13 EXAMINER PRICE: Could I ask a question?
14 I'm sorry, Mr. Burk.

15 You want to be able to shut off for
16 utility charges, or you want to be able to shut off
17 for CRES charges, or you want to be able to shut off
18 for affiliate charges?

19 THE WITNESS: We want to be able to shut
20 off for utility and supplier commodity-related
21 charges, not home warranty products, we're saying.

22 EXAMINER PRICE: So basically you want to
23 change the current system and allow you to be able to
24 directly cut off the commodity.

25 THE WITNESS: Yes.

1 EXAMINER PRICE: Thank you.

2 Thank you, Mr. Burk.

3 MR. BURK: Yeah, thank you, your Honor.

4 Q. (By Mr. Burk) I think my last question
5 was, you could design the bill format anyway you
6 wanted to, correct?

7 A. Yes.

8 Q. And that there are no PUCO rules or
9 regulations around the bill format when a CRES
10 provider directly bills its customers, correct?

11 A. On a dual bill, that's correct.

12 Q. Correct. And if Direct offered supplier
13 consolidated billing in Ohio, that would be only for
14 customers that it serves, correct?

15 A. Yes.

16 Q. And a CRES provider could choose whether
17 or not to provide supplier consolidated billing,
18 correct?

19 A. Yes.

20 Q. And so if Direct offered supplier
21 consolidated billing, you would expect its commitment
22 to do so would be for the term of the contract with
23 your customers.

24 A. Yes.

25 Q. And that term with your customers is

1 typically one to two years.

2 A. Yes.

3 Q. And you would agree that if Direct was
4 the only CRES provider that wanted to provide
5 consolidated billing, then the electric utility would
6 also have to maintain all of its current billing
7 system capabilities for everyone else.

8 A. Yes.

9 Q. It would still be obligated to offer
10 utility consolidated billing.

11 A. Yes.

12 Q. And the electric utility would have to
13 maintain that capability for Direct as well as they
14 may elect not to provide consolidated billing when
15 their customer contracts expire.

16 A. Yes.

17 Q. Do you -- and you don't know today if
18 there would be a charge from Direct to the electric
19 utility for doing supplier consolidated billing?

20 A. I don't believe, just in general, there
21 would be. I believe in deposition we discussed there
22 could be bill inserts and things we might charge the
23 utility for, but, again, I expect all of that would
24 be worked out in the workshop process.

25 Q. Okay. But today you don't know whether

1 Direct would be looking for a charge for that?

2 A. No.

3 Q. But, as you stated, you do believe there
4 would be a charge from Direct to the utility for
5 mandated bill inserts.

6 A. Yes. There potentially could be.

7 Q. And the charge would be both for the
8 billing insert itself and for the cost of placing the
9 bill insert into the bill, correct?

10 A. Yes.

11 Q. And presently Direct Energy has three
12 employees who handle all compliance issues related to
13 regulatory issues, billing issues, and to deal with
14 Commission personnel, the companies, and customers
15 for Direct's midwest region, correct?

16 A. For -- we have three employees that
17 dedicate to compliance.

18 Q. Correct.

19 A. Which doesn't necessarily mean
20 interacting with customers. We have a whole slew of
21 employees that deal with customer complaints, things
22 like that, so I want to be clear we have three who
23 are dedicated to compliance issues.

24 Q. Okay. So -- so if I took customers out
25 of my question, it would be correct?

1 A. Not -- our compliance people are the
2 people who actually review all of our processes and
3 make sure we are following all of the rules. They
4 don't necessarily interact with Commission. That
5 would be government affairs people, like myself.

6 Q. Okay.

7 A. And in Ohio we have two of those people,
8 myself and Joe.

9 Q. Okay. And the midwest region covers
10 Ohio, Michigan, Illinois, Indiana, Kentucky, and all
11 of Canada, correct?

12 A. No, no.

13 Q. That's what you testified. Isn't that
14 stated in your testimony?

15 A. No, no. All -- that was when I worked
16 for Integrys, was Canada. The midwest region is
17 Ohio, Illinois, Michigan, Pennsylvania, and
18 Indiana and Kentucky.

19 EXAMINER PRICE: But none of Canada.

20 THE WITNESS: No, none of Canada. I
21 don't have any of Canada. I did when I was with
22 Integrys, but not with Direct Energy.

23 Q. I misread your testimony.

24 A. But I put Indiana in there this time.

25 Q. And you're not aware of any studies or

1 analyses that have been done as to the level of the
2 cost incurred by the electric utility to implement
3 supplier consolidated billing, correct?

4 A. No. Only what I know from other cases
5 that have implemented purchase of receivables
6 programs.

7 Q. Okay. One additional area that you
8 briefly address in your testimony has to do with the
9 company's proposal related to rider AER.

10 A. Yes.

11 Q. Now, you addressed the companies'
12 proposal to extend it -- at, I think, page 15, line
13 5, for just a testimony reference. As you understand
14 it, the companies' proposal is to extend the recovery
15 of the cost of renewable energy credits over the life
16 of the proposed ESP III; is that correct?

17 A. Yes.

18 Q. But it's correct that a CRES provider
19 could structure their pricing to spread out the
20 collection of its renewable energy credit costs over
21 that period as well, correct?

22 A. Yes, they could.

23 Q. And you would agree that customers who
24 take generation service from the utility during the
25 ESP III period could view the companies' proposal as

1 a benefit?

2 A. Actually, I believe what I had said in
3 your deposition was that those customers may not view
4 it as a benefit if they thought that they could save
5 more, and they may not view it as a benefit if they
6 choose not to switch but realize they are paying more
7 than they would have if they just paid it in full up
8 front.

9 Q. We can go to your deposition, but do you
10 agree that in your deposition you -- you stated that
11 customers who take service during the entirety of the
12 ESP III period could view the company's proposal as a
13 benefit?

14 A. They could.

15 MR. BURK: I think that's all I have,
16 your Honor.

17 EXAMINER WILLEY: Thank you.

18 I believe we are to Mr. McNamee

19 - - -

20 CROSS-EXAMINATION

21 By Mr. McNamee:

22 Q. Good morning.

23 A. Good morning.

24 Q. You testified Texas is a different
25 framework.

1 A. Yes.

2 Q. Could you describe that framework for me.

3 A. So Texas, in general, there is not a
4 default service provided by the utility. Instead
5 what happens in Texas is if you don't make a choice
6 of a supplier, you are assigned to a supplier, so
7 your provider of last report is -- you are assigned
8 to a provider based on the amount of market share
9 that they have. Basically, if you're a big provider
10 in Texas, you will be the provider of last resort.
11 You are going to take on customers. So that's the
12 first major difference.

13 The second one is in Texas, when we do --
14 talk about supplier consolidated billing, the
15 customer when they move or sign up for new service,
16 or whatever it is, they contact a retail provider.
17 The retail provider then sends the enrollment -- and
18 there are very specific things we have to say to the
19 customer when they enroll with us, just beyond the
20 normal here is your price, all right?

21 The supplier then sends that to ERCOT,
22 where in Ohio we would send it to the utility for the
23 enrollment. ERCOT, which is their RTO, their
24 regional transmission operator, ERCOT then sends the
25 information to the utility to start the meter, and

1 then the utility sends it back, the meter
2 information, back to ERCOT, which sends it to the
3 supplier.

4 So there is sort of a middleman that you
5 don't have in Ohio today, but in Texas when we issue
6 that bill, while we can send a disconnection notice,
7 there's rules surrounding it. So we are allowed to
8 send a disconnection one day after the bill due date.
9 Disconnection cannot actually occur for no less than
10 10 days from then.

11 We also have to offer the customer a
12 levelized or average payment arrangements, different
13 payment plans. There's switch holds that apply.
14 There's things that apply for critical care customers
15 where we can't shut them off at all. There's what
16 they call a soft disconnect, which means in the
17 really hot summer months, you can sort of cycle their
18 power, but you can't actually fully shut them off.

19 So they have smart meters all across
20 Texas, too, so some of these things wouldn't apply in
21 Ohio because we don't have the meter structure for
22 it. But at the end of the day the customer can be
23 shut off for not paying their supplier and not paying
24 their wires charges.

25 MR. McNAMEE: That's all I need. Thank

1 you.

2 THE WITNESS: Thank you.

3 EXAMINER WILLEY: Thank you.

4 Mr. Petricoff.

5 MR. PETRICOFF: Could we have a moment
6 first, your Honor?

7 EXAMINER WILLEY: You may.

8 MS. YOST: Your Honor.

9 EXAMINER PRICE: We will go off the
10 record now.

11 (Discussion off the record.)

12 EXAMINER WILLEY: Let's go back on the
13 record.

14 MR. PETRICOFF: Okay, your Honor, we are
15 ready.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. Petricoff:

19 Q. Ms. Ringenbach, you remember when
20 Mr. Burk asked you about supplier consolidated
21 billing, and under the favored proposal where we have
22 the bad debt track, or collection, what would happen
23 if a customer -- I'm sorry -- if a CRES supplier
24 elected to use dual billing? Would they also --
25 their customers have to pay the bad debt track. Or

1 would that be bypassable?

2 A. If they use dual billing, they would
3 avoid the bad debt tracker because they wouldn't --
4 you wouldn't want a customer to be paying bad debt
5 for a commodity service to the utility and also be
6 paying bad debt for a commodity that they are
7 actually receiving from their supplier so they
8 wouldn't get double dinged.

9 Q. Were you envisioning a different tracker
10 than what exists today?

11 A. Under POR?

12 Q. Yes.

13 A. No.

14 Q. And then there was -- in your
15 cross-examination by Mr. Burk, there were questions
16 on the subject of supplier consolidated billing. How
17 would shutoffs be handled in Direct's view under
18 consolidated billing by the CRES?

19 A. So in our view, while this would all be
20 worked out in the workshop, all of the existing
21 protections that are there today for utility
22 customers would remain in place, and then there might
23 be additional protections in relation to what -- when
24 and how a CRES could request a disconnection.

25 Q. And who would do the actual turn-off?

1 A. It would be the utility, so everything
2 that exists today where you have to have, you know
3 payment plans and the customer, you know, the
4 disconnection happening at the door and be able to
5 take money and all of that would still remain.

6 MR. PETRICOFF: Thank you, your Honor. I
7 have no further redirect.

8 EXAMINER WILLEY: Thank you,
9 Mr. Petricoff.

10 Mr. Burk?

11 MR. BURK: Just a couple, your Honor.

12 - - -

13 RE CROSS-EXAMINATION

14 By Mr. Burk:

15 Q. Ms. Ringenbach, when you say the rider
16 would be no different -- the generation uncollectible
17 rider would be no different between what it is today
18 and under your proposal, I mean, in fact, it would be
19 different. It would be nonbypassable rather than
20 bypassable, correct?

21 A. Yes, that's right. It would be
22 nonbypassable because the utilities would be
23 purchasing the receivable, so the uncollectible would
24 not be the utilities' uncollectible, the customer
25 should be paying it because they are not paying the

1 price.

2 Q. Right. And it would also be because it
3 would collect suppliers' uncollectible amounts, where
4 today it does not, correct?

5 A. That's correct.

6 MR. BURK: Okay. I think that's all I
7 have. Thank you.

8 EXAMINER WILLEY: Thank you.

9 Mr. McNamee.

10 MR. McNAMEE: No, thank you.

11 EXAMINER WILLEY: Examiner Price.

12 EXAMINER PRICE: Yes, I have a couple.

13 - - -

14 EXAMINATION

15 By Examiner Price:

16 Q. If we went to a situation of supplier
17 consolidated billing, you would like to preserve the
18 right to do disconnects, right?

19 A. To request that the utility still.

20 Q. The utility.

21 A. Yes.

22 Q. Do utilities in this state charge
23 disconnect fees?

24 A. I believe that they charge a fee when
25 you're disconnected and then get reconnected.

1 Q. Who would get that fee then?

2 A. The --

3 Q. Would it stay with the utility?

4 A. Yes. All the trip charges would stay
5 with the utility because they are the ones that are
6 actually sending people out and doing all that, yes.

7 Q. Okay. If a customer wanted to make a
8 payment to the utility representative that came to
9 disconnect them, how would that transaction be
10 handled under supplier consolidated billing?

11 A. The utility would then send our portion
12 of that money to the supplier.

13 Q. And keep their own portion?

14 A. Exactly.

15 Q. The money flowing the other way.

16 A. Yes.

17 Q. You recommend the Commission form a
18 working group to support supplier consolidated
19 billing. Has the Commission ever formed a work group
20 to work prior to consolidated billing?

21 A. There was a working group way, way back.

22 Q. Don't say that. Many people in this
23 room --

24 A. I was there, too.

25 Q. -- were at that working group. It was

1 the OSPO working group.

2 A. Yes. I think the working group was
3 actually ending right around the time I came on board
4 at Integrys, but it sort of fell apart. And we have
5 to keep in mind that was when across the country
6 electric competition was just taking off. Retail
7 suppliers were just getting their footing.

8 The market is very different today than
9 it was back then. Back then suppliers were more
10 concerned about getting rate ready billing up and
11 running to get that price out there to customers than
12 they were concerned about creating differentiating
13 processes.

14 Q. But there were a number of issues that
15 were unresolved by that working group, weren't there?

16 A. I believe so because I don't think we
17 ever really delved into supplier consolidated
18 billing.

19 Q. Supplier consolidated billing was one of
20 those issues that was unresolved.

21 A. To be fair, everyone was saying we want
22 ready billing. Let's get up and running and then
23 maybe bill ready. Nobody was really thinking about
24 supplier consolidated billing at that point.

25 EXAMINER PRICE: Okay. Thank you.

1 That's all I have.

2 EXAMINER WILLEY: I have no questions.

3 You may step down.

4 Mr. Petricoff.

5 MR. PETRICOFF: Yes, your Honor. At this
6 time we would move to admit RESA Exhibit 3 into the
7 record.

8 EXAMINER WILLEY: Are there any
9 objections to the admission of RESA Exhibit 3?

10 Hearing none, RESA Exhibit 3 will be
11 admitted

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER WILLEY: Thank you. Let's go
14 off the record.

15 (Recess taken.)

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

18 Consumers' Counsel.

19 MS. YOST: Thank you, your Honor. At
20 this time I request that the Direct Testimony of
21 Daniel J. Duann, be marked as OCC Exhibit 10.

22 EXAMINER PRICE: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. YOST: And I would like to enter a
25 stipulation into the record. FirstEnergy, the PUCO

1 staff, OCC, and other intervenors stipulate that OCC
2 Exhibit 10, which is the Direct Testimony of Daniel
3 J. Duann be moved into evidence.

4 EXAMINER PRICE: Does any party oppose
5 the stipulation?

6 MR. KUTIK: Your Honor, the stipulation
7 is we have no objection to the stipulation.

8 EXAMINER PRICE: Oh, okay. With that
9 clarification, does any party have an objection to
10 the stipulation?

11 Seeing none, OCC Exhibit 10 will be
12 admitted into the record.

13 MS. YOST: Thank you, your Honor.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER PRICE: Call your next witness.

16 MR. SAUER: The OCC would call Mr. Wilson
17 Gonzalez to the stand, and I would like to have his
18 direct testimony marked as OCC Exhibit 11.

19 EXAMINER PRICE: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MR. SAUER: There is also a brief errata
22 sheet I would like to have marked as OCC Exhibit 11A.

23 EXAMINER PRICE: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 (Witness sworn.)

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

3 THE WITNESS: My name is Wilson Gonzalez.
4 I'm employed at 10 West Broad Street, Columbus, Ohio.

5 - - -

6 WILSON GONZALEZ,
7 being first duly sworn, as prescribed by law, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Sauer:

11 Q. And, Mr. Gonzalez, are you the same
12 Wilson Gonzalez who's direct testimony was filed in
13 this case?

14 A. Yes, I am.

15 EXAMINER PRICE: Let's go off the record
16 for one moment.

17 (Discussion off the record.)

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

20 Mr. Sauer, please proceed.

21 MR. SAUER: All right.

22 Q. And on whose behalf do you appear here
23 today?

24 A. I appear on behalf of the Ohio -- the
25 Office of the Ohio Consumers' Counsel.

1 Q. And do you have your prepared testimony
2 with you on the stand?

3 A. Yes, I do.

4 Q. And did you prepare the testimony or have
5 it prepared at your direction?

6 A. Yes, I did.

7 Q. And do you have any changes or
8 corrections to your direct testimony?

9 A. Yes. I have several changes to my
10 testimony.

11 Q. And are those changes contained on the
12 document that was marked as OCC Exhibit 11A?

13 A. Yes.

14 Q. And if I asked you today the same
15 questions found in your direct testimony in OCC
16 Exhibit 11, would your answers be the same, except
17 for the items noted on the errata sheet marked OCC
18 Exhibit 11A?

19 A. Yes.

20 MR. SAUER: OCC moves for the admission
21 of Exhibit 11 and 11A and tender the witness for
22 cross-examination.

23 EXAMINER PRICE: Thank you.

24 Mr. Warnock.

25 MR. WARNOCK: No questions, your Honor.

1 EXAMINER PRICE: Mr. Hays.

2 MR. HAYS: No questions.

3 EXAMINER PRICE: Mr. Dortch.

4 MR. DORTCH: No questions, your Honor.

5 EXAMINER PRICE: Mr. Royer.

6 MR. ROYER: No questions.

7 EXAMINER PRICE: Mr. Vickers.

8 MR. VICKERS: No questions.

9 EXAMINER PRICE: Mr. Lavanga.

10 MR. LAVANGA: Just a couple, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Lavanga:

14 Q. Good morning, Mr. Gonzalez.

15 A. Good morning, Mr. Lavanga.

16 Q. How are you?

17 A. Good, thank you.

18 Q. Could you go to page 41 of your
19 testimony, please. Are you there?

20 A. Yes.

21 Q. Now, in response to the question, answer
22 to question 47, you state that rider ELR and OLR
23 should be considered in the companies' energy
24 efficiency and peak demand reduction portfolio
25 proceeding; is that correct?

1 A. Yes, I do.

2 Q. Isn't it true that the current ELR and
3 OLR riders were approved by the companies' last ESP
4 case, 10-388?

5 A. Yes, they were.

6 Q. Okay. And before that, these rates were
7 approved in the companies' initial ESP case, which
8 was 08-935?

9 A. That's correct, but that's because the
10 energy efficiency standards were just coming into
11 being. So I'm saying, you know, that bill went into
12 effect in 2008. We've had a number of years, and,
13 according to my understanding, is if you look at
14 49 -- the rules in 4913.9 that deal with energy
15 efficiency and peak demand, it's best, I feel, to
16 migrate -- it could be migrated into that particular
17 proceeding.

18 MR. LAVANGA: Your Honor, could I move to
19 strike everything after "that's correct."

20 MR. KUTIK: We join, your Honor.

21 EXAMINER PRICE: Granted.

22 Q. Now, you are aware that rider ELR
23 provides for economic interruption, correct?

24 A. Yes.

25 Q. And would you agree that this means that

1 when the market price of energy gets above a certain
2 percentage or -- strike that.

3 Would you agree that this means that when
4 the market price of energy gets a certain percentage
5 above the SSO price, an economic interruption is
6 triggered, and the customer has the option of
7 curtailing or buying through the interruption at the
8 market price?

9 A. Yes, I do.

10 Q. Now, if a supplier in an SSO auction
11 knows that it won't have to serve interruptible load
12 at the SSO price when market prices get high, isn't
13 it possible that the supplier would bid in a lower
14 price than if the interruptible load were not
15 available?

16 A. That's possible.

17 Q. So would you agree that the existence of
18 ELR interruptible load could lead to a lower SSO
19 generation price?

20 A. Everything else being equal, it could,
21 yes.

22 Q. Okay. And in that case, wouldn't this be
23 a benefit to all SSO customers?

24 A. Yes, the same way the residential direct
25 load control programs are.

1 Q. Now, if an emergency interruption is
2 called under ELR, and this interruption avoids a
3 capacity shortfall or blackout, doesn't that provide
4 a benefit to all customers?

5 A. Yes.

6 Q. In fact, it would provide a benefit to
7 all of the utilities' customers, whether they were
8 shopping or nonshopping, wouldn't it?

9 A. Yes; for reliability, yes.

10 MR. LAVANGA: No further questions.

11 Thank you.

12 EXAMINER PRICE: Thank you.

13 Mr. Petricoff.

14 MR. PETRICOFF: No questions, your Honor.

15 EXAMINER PRICE: Mr. Kutik.

16 MR. KUTIK: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Kutik:

20 Q. Good afternoon, Mr. Gonzalez.

21 A. Good afternoon, Mr. Kutik.

22 Q. You have participated in each of
23 FirstEnergy's ESP cases as part of the OCC team,
24 correct?

25 A. That's correct.

1 Q. And with respect to the first two ESPs,
2 you were part of the negotiating team for OCC?

3 A. I was part of the case, correct.

4 Q. And in this case as well.

5 A. Yes.

6 Q. In the prior two cases, or at least --
7 excuse me. With respect to the stipulation or
8 stipulations that were reached in the prior cases,
9 OCC had an opportunity to review those stipulations
10 before they were filed and to present comments on
11 them, correct?

12 A. I believe so, yes.

13 Q. And OCC had a similar opportunity in this
14 case, correct?

15 A. Much limited opportunity.

16 Q. Well, you had the opportunity to review
17 the stipulation and to make comments, did you not?

18 A. I would say, again, compared to other
19 ESP's, prior ESP's, we had a much more limited
20 opportunity.

21 Q. But you had the opportunity nevertheless?

22 A. Yes, we did.

23 Q. Now, it would also be fair to say that
24 many of the positions that you take in this case you
25 or OCC took in the ESP II case, correct?

1 A. I would -- I would disagree. There's
2 some that I took similar positions and there are
3 others -- other places where I didn't.

4 Q. All right. Let's talk about the ones
5 that appear to be repeats. You take a position here
6 that since OCC didn't sign the stipulation, the
7 stipulation is not supported by broad residential
8 representation, correct?

9 A. That's correct.

10 Q. And you took that position in the prior
11 case, the ESP II case, correct?

12 A. That's correct.

13 Q. And, nevertheless, the Commission
14 approved the stipulation.

15 A. That's correct also.

16 Q. You took the position -- you take the
17 position here that the DCR should not be adopted,
18 correct?

19 A. Yes.

20 Q. And you took the position that the DCR
21 shouldn't be adopted as proposed in the ESP II,
22 correct?

23 A. That's correct.

24 Q. The Commission approved the stipulation
25 with the DCR as proposed, correct?

1 A. The Commission did, yes.

2 Q. You take the position here that lost
3 distribution revenues should not be collected,
4 correct?

5 A. No. I don't take that position in this
6 case.

7 Q. Okay. Do you have your deposition?

8 A. Yes.

9 Q. Do you need a copy, Mr. Gonzalez?

10 A. I have it.

11 Q. Mr. Gonzalez, do you have your
12 deposition?

13 A. Yes, I do.

14 Q. Let me try the question again. You
15 propose in the ESP II case -- or that you opposed
16 that. You opposed the company's proposal to collect
17 lost distribution revenues without a cap, correct?

18 A. Yes, I believe that's the case.

19 Q. And there is no such cap in the ESP II,
20 correct?

21 A. That's correct.

22 Q. You take the position in this case that
23 interruptible rate discounts should not be collected
24 from residential customers, correct?

25 A. That's correct.

1 Q. And you took that position in the ESP II,
2 correct?

3 A. That's correct.

4 Q. And, nevertheless, the Commission
5 approved the stipulation with the recovery of the
6 ESP -- of those discounts from all customers -- all
7 customer classes, correct?

8 A. Yes. The Commission made a decision
9 based on the totality of the record.

10 Q. Now, in both this case and the ESP II
11 case, you took the position that PIPP generation load
12 should be bid out, correct?

13 A. There's a subtle difference that we
14 talked about. In this particular case, my testimony
15 speaks to -- there's no difference between offering a
16 PIPP discount in an MRO or an ESP, so that's
17 different than what you alluded to in my last
18 testimony where I did make a -- an example -- a
19 recommendation that if it had been bid out at a
20 greater discount than 6 percent, the -- that would
21 have impacted Witness Ridmann's Exhibit 1.

22 Q. So you testified in both cases, or you
23 testified in the past case, you testified in this
24 case that you think it's feasible for the PIPP load
25 to be bid out, correct?

1 A. It's feasible, yes.

2 Q. And the Commission didn't accept your
3 recommendation in ESP II on that issue, correct?

4 A. I believe, yeah, they did not.

5 Q. All right. I want to talk to you about
6 each of those positions, or at least most of them.
7 You believe, do you not, that no stipulation not
8 signed by OCC should be approved by the Commission.

9 A. No, I don't.

10 Q. You don't take that position?

11 A. No. I take the position in this case
12 that since we don't have -- that we don't have broad
13 residential participation or representation in the
14 stipulation there. I oppose the first prong.

15 Q. Well, is it your view that no stipulation
16 that is not signed by OCC should be approved by the
17 Commission?

18 A. No. I think that's an extreme position.

19 Q. So -- so it is possible.

20 A. Yes.

21 Q. Okay. And so it's possible that if OCC
22 doesn't sign, there could be broad residential
23 representation without OCC, correct?

24 A. I didn't go that far.

25 Q. All right. So would it be fair to say

1 that you believe that if OCC is in a case and it
2 doesn't sign the stipulation, that you don't believe
3 that the stipulation could pass the three-prong test
4 because there's not broad -- there's not support from
5 broad residential representation, correct?

6 A. I would agree with the last part, that
7 there wasn't -- that piece I still agree there wasn't
8 broad residential participation. However, the
9 Commission has and probably will continue to apply
10 the three-prong test and render a decision approving
11 a settlement.

12 Q. Well, I am not asking you for your
13 understanding what the Commission has done. I'm
14 asking you about your personal view.

15 Isn't it your view that the Commission
16 cannot approve a stipulation in a case where OCC is a
17 party because without OCC, there would not be
18 broad -- broad residential representation?

19 A. I would say there wouldn't be broad
20 residential representation, but that's a subsector --
21 subsection of the first prong, reasonable,
22 knowledgeable, and so on. So it's -- for that piece
23 of the first prong test, we would -- we would say it
24 wouldn't meet that subsection. Whether it meets the
25 full subsection of the first prong test is

1 supposition.

2 Q. So the answer to my question is "yes."

3 A. I would have to --

4 THE WITNESS: If you could reread it,
5 please, the question.

6 (Record read.)

7 A. My answer to that would be no, based on
8 my discussion.

9 Q. So you believe the Commission could
10 approve a stipulation in a case that OCC is not a
11 party -- or is a party, excuse me, where OCC doesn't
12 sign the stipulation, and pass the three-prong test,
13 correct?

14 A. I would say us not being on a settlement
15 is a -- I would say an important consideration for
16 the Commission, but they can still approve, you know,
17 could still pass the three-prong test.

18 Q. Thank you. Because there are other
19 parties that are participating in cases that do
20 represent consumers, correct?

21 A. There could be.

22 Q. Okay. And, in fact, OCC has called -- or
23 termed some of the parties that are participating in
24 this case as consumers or representing consumers,
25 correct?

1 A. Can you be more specific, please?

2 Q. I certainly will be.

3 MR. KUTIK: Your Honor, may I approach?

4 EXAMINER PRICE: You may.

5 MR. KUTIK: Your Honor, I would like to
6 have marked as I believe it's Company Exhibit 9 a
7 multi-page document.

8 EXAMINER PRICE: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 A. Can I take a look at it?

11 Q. Yes, please.

12 EXAMINER PRICE: Mr. Kutik, I believe you
13 left us short one.

14 MR. KUTIK: Oh, I'm sorry.

15 MR. DORTCH: Your Honor, may I have the
16 exhibit number again?

17 MR. McNAMEE: 9.

18 EXAMINER PRICE: 9.

19 MR. KUTIK: I believe I misstated. It
20 should be Exhibit 10.

21 EXAMINER PRICE: Okay. It will be marked
22 as Company Exhibit 10.

23 Q. Now actually I need a copy.

24 Mr. Gonzalez, I've handed you a
25 multi-page document which actually it's a series of

1 documents. It's not, just two. Do you recognize
2 them, correct, as two documents?

3 A. Yeah, I recognize the two documents.

4 Q. Okay. Let's just make sure we understand
5 what the documents are.

6 A. Okay.

7 Q. There are two documents. The first
8 document, which is two pages, appears to be a letter
9 from Gregory J. Poulos, Assistant Consumers' Counsel;
10 appears to be on Office of Consumer's Counsel
11 letterhead to Renee J. Jenkins, Secretary of the
12 Docketing Division. It's basically the FirstEnergy
13 EDUs cases, Case No. 08-935-EL-SSO; am I correct?

14 A. Yes.

15 Q. And the letter is signed by a number of
16 parties, correct?

17 A. Yes.

18 Q. And the number -- and the parties are
19 identified to this letter as the Ohio Consumer and
20 Environmental Advocates, correct?

21 A. That's correct.

22 Q. And among those parties that are listed
23 as Ohio Consumer and Environmental Advocates are the
24 Northwest Ohio Aggregation Coalition, Citizen Power,
25 Neighborhood Environmental Coalition, Cleveland

1 Network Housing, the Empowerment Center of Greater
2 Cleveland.

3 Do you see all those, among others,
4 correct?

5 A. That's correct.

6 Q. Okay. And all these -- all these
7 entities that are listed on this letter are deemed by
8 OCC as being part of Ohio Consumer and Environmental
9 Advocates, correct?

10 A. At this specific time that this letter
11 was written, that's correct.

12 Q. Right. And you were part of the OCC
13 team, were you not, in Case 08-935?

14 A. Yes, I was.

15 Q. Okay. Let's turn to the second document.
16 Do you recognize this as comments in support of
17 application of the Ohio Consumer and Environmental
18 Advocates in Case No. 09-641-EL-ATA, which referred
19 to the FirstEnergy EDUs' Application for Approval of
20 a Residential Distribution Deferral Rider. Do you
21 see that?

22 A. I see that, but I wasn't part of this
23 particular case.

24 Q. And that also lists, does it not, as part
25 of the Ohio Consumer and Environmental Advocates,

1 Neighborhood Environmental Coalition, the Empowerment
2 Center of Greater Cleveland, United Clevelanders
3 Against Poverty, Cleveland Housing Network, and The
4 Consumers for Fair Utility Rates represented by
5 Joseph Meissner, correct?

6 A. That's correct.

7 Q. You don't doubt that with respect to the
8 second of these two documents that comprise Exhibit
9 10, that this document was something that was filed
10 by the Office of Consumers' Counsel in the docket
11 09-641, do you?

12 A. It looks official.

13 Q. Okay. So the answer to my question is
14 "yes"?

15 A. Yes.

16 Q. Okay.

17 MR. KUTIK: Your Honor, may I approach
18 again?

19 EXAMINER PRICE: You may.

20 A. Can I keep these?

21 Q. You may.

22 MR. KUTIK: Your Honor, I would like to
23 have marked as Company Exhibit 11 a multi-page
24 document entitled Motion to Stay Implementation of
25 Residential Stage 2 Tariffs, by the Office of

1 Consumers' Counsel, The City of Cleveland, The
2 Neighborhood Environmental Coalition, The Empowerment
3 Center of Greater Cleveland, Cleveland Housing
4 Network, Consumers for Fair Utility Rates, and Ohio
5 Partners for Affordable Energy.

6 EXAMINER PRICE: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Mr. Gonzalez, I have handed you what has
9 been marked for identification as Company Exhibit 11.
10 Do you recognize this as a filing in Case No.
11 07-829-GA-AIR, among others, correct?

12 A. Yes.

13 Q. And that's a case involving Dominion East
14 Ohio, correct?

15 A. I believe it's a rate case, yes.

16 Q. Yes. And you did participate on the team
17 in that case, did you not?

18 A. I believe I was on the case team.

19 Q. I remember you, Mr. Gonzalez. Now, this
20 is a filing by a number of parties. Do you see that?

21 A. Yes, I do.

22 Q. And I want to refer you to the second
23 page of the document, and in the first paragraph
24 after it introduces the parties, the document then
25 states "collectively 'Joint Consumer Advocates.'" Do

1 you see that?

2 A. Yes, I do.

3 Q. And among the consumer advocates would be
4 the City of Cleveland, correct?

5 A. Yes.

6 Q. And the Cleveland Housing Network?

7 A. Yes.

8 Q. And the Empowerment Center of Greater
9 Cleveland?

10 A. That's correct.

11 Q. And Ohio Partners for Affordable Energy?

12 A. That's correct.

13 MR. KUTIK: Your Honor, may we go off the
14 record?

15 EXAMINER PRICE: You may.

16 (Discussion off the record.)

17 EXAMINER PRICE: At this time we will
18 take our break for lunch and for the Commission
19 meeting, and we will resume at 2 o'clock. Thank you
20 all.

21 (Thereupon, at 12:40 p.m., a lunch recess
22 was taken until 2:00 p.m.)

23 - - -

24

25

1 Wednesday Afternoon Session,
2 June 6, 2012.

3 - - -

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

6 Mr. Kutik, please proceed.

7 MR. KUTIK: Thank you.

8 - - -

9 WILSON GONZALEZ,
10 previously sworn, as prescribed by law, was examined
11 and testified further as follows:

12 CROSS-EXAMINATION (Continued)

13 By Mr. Kutik:

14 Q. Mr. Gonzalez, before the break we were
15 talking about some consumer groups, and I want to
16 talk to you about some payments made to some of the
17 those groups, some of those groups under the
18 stipulation, particularly payments proposed to be
19 made to the Consumer Protection Association, the
20 Empowerment Center, and Cleveland Housing Network.

21 You refer to those -- part of that
22 agreement -- agreement between those parties and the
23 companies in reference to NOAC, NOPEC, EnerNOC Set 1,
24 No. 1, your testimony page 9 and your footnote 6,
25 correct?

1 A. That's correct.

2 Q. And you also attached the response to
3 your testimony, correct?

4 A. Yes.

5 Q. And this interrogatory response is
6 explaining how the moneys are to be paid out as a
7 result of the stipulation in this case, correct?

8 A. That's correct.

9 Q. This isn't setting out an agreement that
10 provides some additional payment above and beyond
11 what the stipulation calls for, correct?

12 A. That's what I'm saying.

13 Q. And essentially what we see in the
14 agreement that's attached to the interrogatory
15 response is that it just allocates the payment to
16 specific tasks or components, such as administration,
17 correct?

18 A. Yes.

19 Q. And these moneys, as you understand it,
20 will come from shareholders, correct?

21 A. That's correct.

22 Q. And these wouldn't be described as
23 transfer payments.

24 A. That's correct.

25 Q. I want to talk to you a little bit about

1 the DCR now. We agree, can't we, that DCR-type
2 recovery is permitted under SB 221?

3 A. Yes. And I cite the particular statute
4 that sets that out.

5 Q. And you cite -- well, I will just call it
6 143(B)(2)(h) correct?

7 A. Excuse me. Yes, I do.

8 Q. And the Commission previously has
9 approved the DCR without reference to that particular
10 statute, correct?

11 A. Yes. You pointed that out at the last --
12 at my deposition.

13 Q. Now, with regard to that particular part
14 of the statute, that is, 143(B)(2)(h), that statute
15 doesn't say anything about the company needing to
16 come forward with -- with evidence or information
17 about reliability, rather, it provides that the
18 Commission needs to examine those things, correct?

19 A. I would say it's part of the 143, you
20 know, Senate Bill 221. You know, the ESP is an
21 application made by the company, so I would think
22 that, generally speaking -- I'm not an attorney, but,
23 generally speaking, the application and the burden of
24 proof is on the company.

25 Q. But the statute directs, that particular

1 statute directs, the Commission to examine issues
2 relating to reliability as set out in 143(B)(2)(h),
3 correct?

4 A. That's correct.

5 Q. Now, in this case Mr. Baker did that,
6 correct?

7 A. Yes. Mr. Baker used -- cited that
8 particular part of the statute and presented
9 information.

10 Q. And he used the companies' reliability
11 data, correct?

12 A. Yes.

13 Q. Compared that to the applicable
14 reliability standards, correct?

15 A. The reliability standard as it stands
16 now, yes.

17 Q. And he also referenced certain consumers'
18 surveys for customer expectation with respect to
19 reliability, correct?

20 A. Yes. He had a -- he cited a 2008 survey,
21 correct.

22 Q. And you understand now that survey was
23 from 2008; is that correct?

24 A. Yes, I do.

25 Q. Now, you've corrected your initial

1 testimony to reflect the stipulation that was reached
2 in case 09-759, which is the FirstEnergy EDUs'
3 reliability standards case, correct?

4 A. Yes; and that's contained if my errata.

5 Q. And so we can understand, that the
6 stipulation provided that if the companies failed two
7 of potentially six applicable criteria, then the
8 companies would have to come forward by 2014 with a
9 new application for reliability standards, correct?

10 A. That's correct.

11 Q. And as we sit here today, the company has
12 not failed two or more of those applicable criteria,
13 correct?

14 A. To my understanding, they haven't.

15 Q. So as we sit here today, the company has
16 no obligation under the stipulation to come forward
17 with a new application for reliability standards as
18 of 2014, correct?

19 A. Based on that settlement, that's correct.

20 Q. And you are not aware of any other
21 obligation apart from the settlement that the
22 companies have made with respect to coming in for a
23 new application regarding reliability standards,
24 correct?

25 A. I don't know if there is one.

1 Q. You are not aware of any.

2 A. I am not aware of any, no.

3 Q. We can also agree, can we not, that the
4 DCR is part of the companies' current rates, can we
5 not?

6 A. Yes, from the ESP II.

7 Q. All right. And so with respect to an
8 increase from current rates, the ESP III does not
9 represent an increase of \$405 million, correct, with
10 respect to DCR? Let me ask you it again.

11 The companies' proposal under the ESP III
12 regarding DCR does not represent an increase from
13 current rates of \$405 million, correct?

14 A. That's correct.

15 Q. And you were in the room when I had
16 discussion with Mr. Frye about the caps, were you
17 not?

18 A. I was in the room.

19 Q. And do you agree with Mr. Frye that the
20 caps increase currently at a rate of \$15 million a
21 year?

22 A. Yes.

23 Q. And do you agree that the ESP III
24 proposal is to increase that rate of increase -- or
25 to keep that rate of increase, that is, \$15 million a

1 year?

2 A. Yes.

3 Q. And the ESP III proposal relates to two
4 particular years for the DCR, basically the year
5 beginning in June, 2013, and the year beginning in --
6 excuse me, the year beginning June, 2014, and the
7 year beginning, June, 2015, correct?

8 A. That's correct.

9 Q. So the caps or the proposed increases in
10 caps from the ESP II represent a \$45 million increase
11 in the caps, correct?

12 A. Represents a \$45 million increase over
13 the existing DCR.

14 Q. Thank you. But not all of the -- that
15 \$45 million increase is paid by the RS rate -- rate
16 schedule customers, correct?

17 A. That's correct. We pay a good
18 percentage, but --

19 Q. You pay less than half.

20 A. That's true.

21 Q. I want to talk to you now about lost
22 distribution revenues.

23 A. Yes, sir.

24 Q. You testified -- you've testified about
25 the recovery of lost distribution revenues as a

1 result of energy efficiency programs in a number of
2 cases, have you not?

3 A. That's correct.

4 Q. You testified in Case No. 04-571-GA-AIR
5 regarding Vectren, correct?

6 A. Yes.

7 Q. You testified in Case No. 05-474-GA-ATA
8 regarding Dominion, correct?

9 A. Yes.

10 Q. And you testified in Case No.
11 07-829-GA-AIR regarding Dominion again, correct?

12 A. Yes.

13 Q. And in each of these cases you testified
14 that successful energy efficiency programs result in
15 lost distribution revenue, correct?

16 A. Yes.

17 Q. In each of those cases you testified that
18 lost distribution revenues recovery provides
19 incentives for companies to put energy efficiency
20 programs in place, correct?

21 A. I may have stated something like that.
22 I'd like to state it more, it removes the
23 disincentive. It removes the barrier.

24 Q. But that's what you testified in each of
25 those cases we just mentioned.

1 A. In each of those cases, yes.

2 Q. And those two propositions that you
3 testified about in each of these three cases, those
4 two propositions apply to gas companies and electric
5 companies, correct?

6 A. Roughly, yes.

7 Q. Now, your calculation of lost
8 distribution revenue impact appears on page 38 of
9 your testimony, correct?

10 A. Yes, it does.

11 Q. Okay. And it also is shown on footnote
12 59, correct?

13 A. Yes.

14 Q. And your calculation takes figures off of
15 the companies' responses to OCC Set 1, Interrogatory
16 1, attachment 1, correct?

17 A. Yes.

18 Q. And that is the last attachment to your
19 testimony, correct?

20 A. Yes. Yes, it is.

21 Q. And Mr. Ridmann testified about the chart
22 that appears in that attachment, correct?

23 A. Yes.

24 Q. Now, your testimony or your calculation
25 assumes that each year's figures in that chart are

1 incremental, that is, just for that year, not
2 including pre -- prior years, correct?

3 A. Are you talking about my figures as
4 corrected?

5 Q. Did you correct those figures?

6 A. Yes. That's part of my errata.

7 MR. SAUER: Do you need a copy of that?

8 MR. KUTIK: I thought it was the old one.

9 I have it. I have it.

10 MR. SAUER: You've got it?

11 MR. KUTIK: I have a copy. Thanks very
12 much.

13 Q. Okay. So we've changed your numbers in
14 light of Mr. Ridmann's testimony, correct?

15 A. In light of, yeah, my review -- re-review
16 of his testimony.

17 Q. Right.

18 A. Based on what he said on the stand.

19 Q. Right. And what he said on the stand was
20 the numbers were not incremental; the numbers were
21 cumulative, correct?

22 A. Right.

23 Q. And given that, you changed each year's
24 potential cost of the lost revenue recovery from 6.8
25 million to 11.1 million, correct?

1 A. That's correct.

2 Q. And you've gone in your footnote 59 from
3 75.6 to 49.9 million.

4 A. That's correct.

5 Q. Now, that makes the calculation of lost
6 distribution revenues starting from year 2012,
7 correct?

8 A. That's correct.

9 Q. So if we just looked at the period of the
10 ESP III, the calculation would boil down to 22.2
11 million, correct?

12 A. Be half of 2014's, another -- all of
13 2015, and half of the 2016 number, yes.

14 Q. 22.2.

15 A. Yeah. Although -- although I will say
16 that in the current stipulation there's no -- you
17 know, there's no caveat at the end of that. They can
18 still -- the way the stipulation is written, they can
19 still continue to collect lost revenues. It's an
20 open issue.

21 Q. But I asked about the period of the
22 stipulation, and your calculation would be 22.2
23 million for the period of the stipulation.

24 A. For the period of the stipulation, but it
25 just doesn't end.

1 Q. Now, I want to turn your attention now to
2 a different subject, and that's the subject of demand
3 response being bid in at the BRA. You're familiar
4 with a case, Case No. 12-814, correct?

5 A. I'm familiar with that case, but I
6 didn't -- my testimony I don't believe treated --

7 Q. Are you familiar with that, sir? That's
8 all I asked you.

9 A. Yes, I'm familiar with that case.

10 Q. And that case was In the Matter of the
11 Commission's Review of the Participation of The
12 Cleveland Electric Illuminating Company, The Ohio
13 Edison Company, and The Toledo Edison Company in the
14 May, 2012, PJM Reliability Pricing Model Auction,
15 correct?

16 A. Yes.

17 Q. And you worked on the OCC team that was
18 on that case, correct?

19 A. I was on that team, yes.

20 Q. And in that case the companies filed some
21 comments in response -- or a report in response to
22 the Commission's initial order in that case, correct?

23 A. Yes, they did.

24 Q. And in that case the -- among other
25 things, the companies were attempting to seek some

1 assurances that they would be compensated for any
2 risks they took in bidding those type of resources
3 meaning DR -- DR resources, correct?

4 A. That's my understanding.

5 Q. And OCC filed comments after the
6 companies filed their papers, correct?

7 A. Yes, we filed comments.

8 Q. And OCC did not suggest that the
9 Commission provide the companies with any assurances
10 regarding the risks that might be taken in bidding DR
11 resources, correct?

12 A. I don't have our comments before us so I
13 would -- you would have to refresh my memory.

14 Q. Let me help you out in that regard.

15 MR. KUTIK: May I approach, your Honor?

16 EXAMINER PRICE: You may.

17 MR. KUTIK: Your Honor, I would like to
18 have marked as Company Exhibit 12 a Motion to
19 Intervene and Comments by The Office of the Ohio
20 Consumers' Counsel --

21 EXAMINER PRICE: So marked.

22 MR. KUTIK: -- in Case No. 12-814-EL-UNC.
23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 EXAMINER PRICE: Let's go off the record.

25 (Discussion off the record.)

1 EXAMINER PRICE: Let's go back on the
2 record.

3 Q. Mr. Gonzalez, excuse me, I have handed
4 you what has been marked for identification as
5 Company Exhibit 12. Do you recognize that as a
6 filing by OCC in case 12-814?

7 A. Yes.

8 Q. And having had a chance -- have you had a
9 chance to review this?

10 A. I'm up to about a page and a half. I
11 think I get the gist.

12 Q. Okay. My question to you, sir, was would
13 it be fair to say these comments -- in these comments
14 OCC did not suggest that the Commission provide the
15 company with assurances about potential risks of
16 bidding demand response resources into the base
17 residual auction?

18 MR. SAUER: Could I have the question
19 reread, please.

20 EXAMINER PRICE: You may.

21 (Record read.)

22 Q. And the rates being -- we are talking
23 about is the risk of recovery.

24 A. So you're talking about our comments on
25 page 5?

1 Q. I am talking about your comments
2 generally.

3 A. Where we state the risks appear to be
4 greatly exaggerated?

5 Q. Sir, is there anything in there that said
6 OCC supports providing the companies assurances for
7 any risk -- of recovery relating to the demand
8 resource bids into the BRA? They did not, did they?

9 A. I just want to make sure.

10 Yeah, I believe that's correct.

11 Q. Okay. Now, I want to talk to you a
12 little bit about the settlement process for a couple
13 of minutes. You would agree with me, would you not,
14 that each settlement is unique?

15 A. Yes.

16 Q. And that in terms of cases before the
17 Commission, each stipulation is unique from prior
18 stipulations.

19 A. Unique to the facts of the case, yes.

20 Q. Okay. And all parties are perfectly free
21 to enter into a brand new deal, correct?

22 A. I would say that if parties are aware of
23 a stipulation before it's filed, they can. But if
24 it's filed after it and it has a certain momentum, it
25 becomes more problematic.

1 Q. Okay. Let me refer you to your
2 deposition, page 57. Are you there, sir?

3 A. Yes.

4 Q. And did you testify as follows starting
5 at line 2: Question --

6 MS. YOST: Would you hold on for just a
7 second? We are just trying to locate it so we can
8 follow along.

9 MR. SAUER: Page 57?

10 MR. KUTIK: Page 57.

11 MR. SAUER: Thank you.

12 Q. At line 2 did you testify as follows:
13 "Question: So they can -- all parties are perfectly
14 free to enter into a new deal, correct?"

15 A. "Answer: Yes."

16 Q. Did you testify that way in your
17 deposition, sir?

18 A. Yes. And I basically --

19 Q. Thank you.

20 A. Just --

21 EXAMINER PRICE: Mr. Kutik, please allow
22 him to finish his answer, and then you can do what
23 you feel like you need to do.

24 MR. KUTIK: Thank you, your Honor. I
25 apologize to you, and I apologize to the witness.

1 EXAMINER PRICE: Mr. Gonzalez, would you
2 like to finish your answer?

3 A. I'm just saying I don't disagree. I
4 don't think what I said is inconsistent with what I
5 said here. I just qualified it.

6 Q. Well, the record will reflect and the
7 Bench will make up its mind as to whether you are
8 right or I am right.

9 Now, would it be also fair to say that
10 just because the parties took or supported a position
11 in one case, that doesn't necessarily mean that that
12 party is bound to the same position in the second
13 case as far as the stipulation is concerned.

14 A. I believe that's true.

15 Q. Okay. Now, let me talk to you a little
16 bit about the ESP versus MRO test, and I want to talk
17 to you about the treatment of rider DCR. You are
18 aware, are you not, that Mr. Fortney expressed a view
19 as to how DCR revenues, costs should be covered --
20 that could be recovered under the DCR could be
21 treated for purposes of the ESP versus MRO test,
22 correct?

23 A. Yes.

24 Q. And Mr. Fortney noted that since dollars
25 would be recovered either through the DCR or

1 potentially through a rate case, the DCR in an ESP
2 would have no effect on the ESP versus MRO test,
3 correct?

4 A. That's Mr. Fortney's testimony. I
5 disagree.

6 Q. I understand that. And Mr. Fortney cited
7 the Commission's December 14, 2011, decision in Case
8 No. 11-346, the AEP Ohio's ESP II case, to support
9 his view, correct?

10 A. The case has since been rescinded, yes.

11 Q. But Mr. Fortney correctly expressed what
12 the Commission determined in that opinion and order,
13 did he not?

14 A. Yeah, in that opinion and order that was
15 rescinded, yes.

16 EXAMINER PRICE: Excuse me. I don't
17 think "rescinded" is the proper word.

18 THE WITNESS: Okay. I am not an
19 attorney, so.

20 EXAMINER PRICE: Well, then perhaps you
21 shouldn't make legal opinions.

22 MR. KUTIK: You anticipated my next
23 series of questions, your Honor.

24 Q. Now, when you said that the Commission
25 "rescinded" its order, isn't it true that what the

1 Commission subsequently determined is to reject or
2 not approve the ESP that was at issue in that case,
3 correct?

4 A. I would stand corrected and use that
5 terminology.

6 Q. And when -- when the Commission decided
7 that it was -- it felt compelled to reject that ESP,
8 the Commission made no mention about the DCR or the
9 DIR in that case or how those revenues should be
10 considered as part of the ESP versus MRO test,
11 correct?

12 A. That's correct.

13 Q. Now, you reviewed the calculations of the
14 ESP versus MRO test that were done by Mr. Ridmann,
15 correct?

16 A. Yes.

17 Q. And you understand that the methodology
18 that Mr. Ridmann followed in this case was the
19 methodology that Mr. Ridmann presented and that
20 Mr. Fortney commented on in the ESP II case, correct?

21 A. I don't recall the second part of your
22 question.

23 Q. All right. So let me break it down. You
24 recall that Mr. Ridmann used the same methodology
25 that he used in this case in the ESP II case,

1 correct?

2 A. Yes. It was an accepted methodology.

3 Q. So the Commission accepted that
4 methodology.

5 A. That's correct.

6 Q. Now, I want to talk to you about PIPP
7 load and bidding PIPP load. I believe there was an
8 exhibit that OCC offered, it was admitted into
9 evidence, that showed that PIPP load represents
10 between 2 and 3 -- or around 2 and 3 percent of each
11 companies' total sales. Is my recollection correct?

12 A. Yes, roughly.

13 Q. And you're not proposing that there could
14 be the same type of auction for PIPP load that there
15 is for SSO load, correct?

16 A. Not necessarily.

17 Q. Okay.

18 A. It could be an RFP or some type of
19 mechanism.

20 Q. Because you understand if we had a
21 declining clock, declining clock auction, or the type
22 of thing that's used with competitive bidding
23 processes for SSO load now, that if the product that
24 is bid out small, that may inhibit the number of
25 bidders and, therefore, make potentially higher bid

1 prices. You understand that, correct?

2 A. Everything else equal, yes.

3 Q. Now, if we're going to have some type of
4 competitive bidding process like an RFP, or whatever,
5 you would envision that for the PIPP load bidders'
6 offers, in whatever format we're talking about, would
7 have to be capped at 6 percent off of the competitive
8 bid price, correct?

9 A. Yes.

10 Q. So bidders that would participate in that
11 SSO -- excuse me -- in that PIPP load auction would
12 have to agree up front that they were going to take
13 something less than market rates, correct?

14 A. Yeah, the same way FES does.

15 Q. And would it be fair to say that OCC
16 undertook some discovery on whether bidders would
17 be -- whether wholesalers or CRES suppliers would be
18 interested in bidding on that, correct?

19 A. Yes. We tried to gauge that.

20 Q. And the best you could determine is that
21 some companies said that they may have considered it,
22 correct?

23 A. Yes. The word is "may."

24 Q. Thank you.

25 A. Given the short timeframe and everything

1 else.

2 Q. And you're not aware of any competitive
3 bid process for PIPP load for electricity, correct?

4 A. I'm aware of it for gas but not
5 electricity, you're right.

6 Q. Now, you are aware, are you not, that the
7 Commission has determined in comparing an ESP versus
8 an MRO, it may consider qualitative benefits and
9 quantitative benefits, correct?

10 A. Yes.

11 Q. And you don't disagree with that, the
12 Commission looks at qualitative and quantitative
13 benefits.

14 A. I think they look at the whole -- all the
15 benefits in the case, quantitative and qualitative.

16 Q. I understand you understand they do that.
17 My question is you don't disagree with that, do you?

18 A. In my testimony I place a great value on
19 the quantitative benefit as a -- we would want to
20 pass that.

21 Q. Isn't it true you don't disagree the
22 Commission can consider quantitative and qualitative
23 benefits?

24 A. Yes. I don't disagree with that.

25 Q. Okay. Now, I want to talk to you about

1 some things you don't consider to be benefits. Isn't
2 it true that you don't consider the fact that the ESP
3 III would keep RS-based distribution rates constant
4 as a benefit?

5 A. I see that related to the DCR so I look
6 at the base -- the base -- the RS was constant or
7 fixed and the DCR increased a lot. I see those two
8 as costs or charges for delivery services, so I see
9 it as a totality. I don't see -- I see it as a
10 package.

11 Q. All right. Let me have you turn to your
12 deposition, sir, page 93. Are you there, sir? Are
13 you there, sir?

14 A. Okay.

15 Q. Mr. Wilson -- Mr. Gonzalez, are you
16 there? I've got Wilsons on the brain. I'm sorry.

17 A. I'm trying to read it.

18 Q. Sure. Did you testify at page 93 as
19 follows, starting at line 4: "So you can't say --

20 "Answer: No, I can't.

21 "Question: -- sitting here today -- let
22 me finish my question. Would it be fair to say that
23 you can't say that customers get a benefit due to the
24 fact that RS base rates are not scheduled to increase
25 during the proposed ESP term. Fair to say?

1 "Answer: Fair to say. I would say
2 that."

3 Is that your testimony, sir?

4 A. I can't say no; I can't yeah because of
5 the total package, page 92.

6 Q. Thank you. And the fact -- and you also
7 agree that the fact that under an ESP, the Commission
8 would periodically review the SSO process. You also
9 do not agree that that's a benefit, correct?

10 A. Can you point to that in my deposition
11 testimony?

12 Q. Well, I am not asking you yet about your
13 deposition. I may.

14 A. Okay.

15 Q. But, right now, I'm asking you, isn't it
16 true -- isn't it a fact that you don't believe that
17 it's a benefit that under an ESP the Commission would
18 have the opportunity to periodically review the SSO
19 process?

20 A. As opposed to an MRO?

21 Q. Correct.

22 A. No. I would think the best result would
23 benefit customers the most.

24 Q. I am not sure you answered my question,
25 sir. Isn't it true that you can't say that the fact

1 that under an ESP the Commission would review -- or
2 can review periodically the SSO process is a benefit?

3 A. No. I would think that whichever --
4 again, whichever --

5 Q. I'm sorry?

6 A. Whichever yielded the best result, I
7 would say that's what the MRO-ESP test is about.

8 Q. Let's go to your deposition, sir, since
9 you don't want to answer that question. Let's see if
10 we can look at your deposition. Let's start at page
11 94, line 24. Did you testify as follows:

12 "Question: Right. And if we assume that
13 the typical term for an SSO or an ESP, excuse me, is
14 about ever three years, that would mean the
15 Commission is reviewing the SSO process for an EDU
16 about every three years, correct?

17 "Answer: Yes.

18 "Question: And would that be a benefit
19 of an ESP versus an MRO, that the Commission can
20 review the SSO process every three years or so?

21 "Answer: I couldn't say. I couldn't say
22 yes. I think it's because the SSO brings a lot of
23 other costs that an MRO wouldn't, so I would have to
24 balance that with your question.

25 "Question: So the answer is you don't

1 know?

2 "Answer: Probably -- I would be maybe
3 stronger, I would probably say no."

4 Did you testify that way, sir?

5 A. Yes.

6 Q. Thank you.

7 A. And for the reasons stated in the
8 sentence before.

9 Q. Now, I want to talk to you about the DCR
10 and some maybe potential benefits under the DCR. You
11 heard me talk with Mr. Frye about the DCR, did you
12 not?

13 A. Yes, I did.

14 Q. And would you agree that he -- with what
15 he agreed to, is that if moneys aren't spent, the
16 companies don't get to charge for it, correct?

17 A. That's correct.

18 Q. And that the DCR includes a quarterly
19 reconciliation process, correct?

20 A. Yes.

21 Q. And there's a detailed annual audit with
22 the ability of parties, like OCC, to participate,
23 correct?

24 A. Yes, that's true.

25 Q. And, in fact, OCC has taken the

1 opportunity to participate in the DCR audits relating
2 to the FirstEnergy Ohio utilities, correct?

3 A. I believe so. I'm not involved in that
4 case, but I understand that we are.

5 Q. And you would agree with me that with
6 respect to those things, those wouldn't be something
7 that we would see in a rate case, correct?

8 A. You wouldn't see it in a rate case, you
9 are saying?

10 Q. Yes, a detailed audit like what happens
11 in the DCR.

12 A. Yeah, I don't know -- I don't know if the
13 Commission has a right to audit the companies'
14 application in a rate case.

15 Q. So you don't know.

16 A. I don't know, yes.

17 Q. All right. How about with respect to
18 quarterly reconciliation, you don't get that in a
19 rate case, do you?

20 A. No. You get what the Commission
21 authorizes in a rate case, whatever your revenue
22 requirement is.

23 Q. Right. So if the company spends less,
24 they still get to keep the money, right?

25 A. Subject to a SEET test, perhaps.

1 Q. Okay. Now, there's also a cap on how
2 much the companies can recover under the DCR,
3 correct?

4 A. Yes, a very high cap.

5 Q. But it's a cap, nonetheless.

6 A. Yes, it is.

7 Q. And you would agree with me that there
8 really isn't a cap on how much the company can
9 request for recovery in a rate case, correct, with
10 respect to capital improvements?

11 A. I believe the company can make its
12 application.

13 Q. Okay. So the answer to my question is
14 "yes"?

15 A. Yeah. Within -- within reason.

16 Q. Sure. Now, you would agree with me also,
17 would you not, that customers also get benefits if
18 the increase they see in their rates is gradual as
19 opposed to steep?

20 A. The rise is gradual, yeah. I think -- I
21 think gradual increases, that's a principle in
22 ratemaking, gradual.

23 Q. That's a good thing.

24 A. Could be.

25 Q. Okay. And OCC in the past has suggested

1 laddering or staggering of products for an auction
2 for SSO load, correct?

3 A. Yes.

4 Q. And that's -- that was done to reduce
5 risk of going out to bid your whole load at one time,
6 correct?

7 A. It's a common strategy.

8 Q. You just anticipated my next question,
9 that staggering or laddering is an accepted tool to
10 reduce the risk of -- to reduce risk and volatility,
11 correct?

12 A. It has been used like that in the past,
13 yes.

14 Q. Now, you would agree with me, would you
15 not, that the FirstEnergy SSO auctions have been
16 successful?

17 A. I would say there was an issue with the
18 first SSO when the company rejected the Commission
19 order and they went out and bid on their own. I
20 think we filed testimony, and so I would say that --
21 there was some problems with that particular.

22 Q. Let me then change it, change my
23 question. With respect to all of the SSO load
24 auctions that have been done under an approved ESP,
25 those have been successful, have they not?

1 A. Those have been certified by the
2 Commission and have been approved by the auction
3 managers so, yes.

4 Q. You would agree they have been
5 successful.

6 A. To the extent they've yielded market
7 price, yes.

8 Q. Okay. And, in fact, OCC has made some
9 laudatory comments about those auctions; isn't that
10 correct?

11 A. I can't say about every auction, but I
12 would anticipate that in the past we have when
13 auctions have yielded low prices, market prices, yes,
14 we probably have made some comments.

15 Q. Do you recall OCC calling one of the
16 results of the FirstEnergy auctions "a great outcome
17 for consumers in northern Ohio"?

18 A. Does the quote say who said it?

19 Q. Pardon?

20 A. Is that a quote?

21 Q. I am asking you if you recall OCC issuing
22 a press release saying that the result of the
23 FirstEnergy auctions was "a great outcome for
24 consumers in Northern Ohio"?

25 A. I could have read that, yes.

1 Q. Pardon?

2 A. I could have read that.

3 Q. Let me see if I can refresh your
4 recollection, sir.

5 MR. KUTIK: May I approach, your Honor?

6 EXAMINER PRICE: You may.

7 MR. KUTIK: Your Honor, I would like to
8 have marked as Company Exhibit 13 a news release from
9 the Office of Consumers' Counsel for immediate
10 release, contact Ryan, I guess it's, Lippe. The
11 headline, Ohio Consumers' Counsel, Auction Brings
12 Lower Rates to FirstEnergy Customers.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Gonzalez, I have handed you what has
15 been marked for identification as Company Exhibit 13.
16 Do you recognize this as a press release?

17 A. Yes, I do.

18 Q. And one press release that's dated
19 May 14, 2009?

20 A. Yes.

21 Q. Another press release that's dated
22 May 29, 2009?

23 A. I see that.

24 Q. Is that correct, sir?

25 A. Yes.

1 Q. And May 14, 2009, third paragraph, it
2 says, "'This is a great outcome for consumers in
3 Northern Ohio, who have struggled with high rates for
4 too long. While utility rates are increasing around
5 the state, a rate decrease is welcome news,' said
6 Consumers' Counsel Janine Migden-Ostrander."

7 Did I read that correctly?

8 A. Yes.

9 Q. And on May 29, 2009, does this press
10 release quote Ms. Migden-Ostrander saying, "This is
11 good news for customers throughout northern Ohio" --
12 this is in the second paragraph -- "who receive the
13 benefits of the recent auction beginning with their
14 June electric bill." Is that correct?

15 A. These are after-the-fact comments in a
16 press release.

17 Q. And these were press releases from the
18 Ohio Consumers' Counsel?

19 A. Yes, after -- after an auction has taken
20 place and we know what the results are.

21 Q. Right.

22 EXAMINER PRICE: You don't normally issue
23 press releases for unsuccessful auctions, do you,
24 lauding the outcome of unsuccessful auctions, do you?

25 THE WITNESS: We probably would not.

1 Q. So the FirstEnergy ESPs, as they have
2 been structured in terms of the competitive bidding
3 processes, have yielded good results for customers;
4 would that be fair to say?

5 A. I would say the first two auction prices,
6 yes.

7 MR. DORTCH: Your Honor, could the
8 witness be admonished to raise the level of his voice
9 a bit?

10 EXAMINER PRICE: Admonish is a bit harsh.

11 But I will ask, Mr. Gonzalez, if you
12 could strive to raise your voice for counsel who are
13 fighting our heating and cooling system.

14 THE WITNESS: I apologize.

15 MR. KUTIK: Your Honor, I have no further
16 questions.

17 MR. DORTCH: I could have asked that a
18 while ago.

19 EXAMINER PRICE: Mr. McNamee.

20 MR. McNAMEE: Thank you.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. McNamee:

24 Q. Good afternoon, Mr. Gonzalez. It's true
25 the OCC has served at least six sets of

1 interrogatories on the company in the case. Isn't
2 that right?

3 A. Yes, I believe that's my understanding.

4 Q. Okay. Let me turn to a different topic.
5 Your recommendation regarding the ELR/OLR program
6 costs.

7 A. Yes.

8 Q. If the -- if your recommendation were
9 adopted, that would have the effect of increasing the
10 costs imposed on the members of those classes, isn't
11 that right?

12 A. You're saying of the remaining members
13 that are picking up the cost for that.

14 Q. Yes.

15 A. Yes.

16 Q. Okay. That would raise their cost of
17 doing business.

18 A. Yes; but it would give our customers more
19 disposable income to spend to generate more business.

20 Q. Okay. Would raising the cost of an
21 industrial's operations increase or decrease its
22 competitiveness?

23 A. Everything else being equal, it would --
24 you know, depending what was said, it would tend to
25 decrease their competitive price.

1 MR. KUTIK: Now, I would join Mr. Dortch
2 in asking the witness to raise his voice, and I'm
3 almost like right next to him.

4 EXAMINER PRICE: Please attempt to raise
5 your voice, Mr. Gonzalez.

6 A. Okay. If -- I'll just qualify my answer.
7 Can you hear me? I would say everything else being
8 equal, a higher cost would hurt their competitiveness
9 unless they are a monopoly. If they are a monopoly,
10 it wouldn't have that effect.

11 Q. I see. Do you know the magnitude of the
12 effect of the adoption of your recommendation, the
13 magnitude of the effect that it would have on the
14 members of that class?

15 A. I believe we have discovery how much we
16 are being charged. I think it's -- I don't know
17 exactly, but there's a discovery response, I believe
18 it's over the three companies, ballpark, maybe
19 15 million, 12 million dollars. So however many
20 kilowatt-hours are involved in the class, I don't --
21 I haven't done the math, but I don't think it's -- it
22 would be a big per kilowatt-hour charge.

23 MR. McNAMEE: Okay. All right. That's
24 all I need. Thank you.

25 EXAMINER PRICE: Mr. Sauer, redirect?

1 MR. SAUER: Could we have a few minutes,
2 your Honor?

3 EXAMINER PRICE: You may. Let's go off
4 the record.

5 (Recess taken.)

6 EXAMINER PRICE: Okay. Let's go back on
7 the record.

8 Mr. Sauer, redirect?

9 MR. SAUER: Yes, a couple of questions,
10 your Honor. Thank you.

11 - - -

12 REDIRECT EXAMINATION

13 By Mr. Sauer:

14 Q. Mr. Gonzalez, do you remember when
15 Mr. Kutik was asking you some questions about lost
16 distribution revenues and you cited some natural gas
17 cases that involved OCC's participation in those
18 cases?

19 A. Yes, I remember.

20 Q. Are you aware of other cases that have
21 involved lost distribution revenues that you have
22 been involved in?

23 A. Yes. I filed testimony also in Dayton
24 Power & Light's ESP 08-1094, I believe, and there I
25 was -- I was very adamant that there be a cap on lost

1 revenues because of the cumulative effect of that.

2 I also filed in Case 11-351, the AEP
3 distribution rate case. I expressed concern about
4 growing levels of cumulative lost distribution
5 revenues, especially as the benchmarks for energy
6 efficiency increase. So -- so -- so, yes, I have
7 testified on those issues in other cases besides the
8 ones Mr. Kutik mentioned.

9 Q. And Mr. Kutik was looking at your
10 testimony, I believe it's footnote 59, where you've
11 got the -- the calculation of what the lost
12 distribution revenues may be.

13 A. That's correct.

14 Q. And you focused on the years of this ESP
15 III term and calculated, I believe, 22.2 million as
16 the effect, and is it your opinion that that's a
17 conservative result?

18 A. Yes. Mine was very conservative because
19 I just took the cumulative total through 2012 as in
20 the exhibit. While we know 2013 the company has to
21 meet a .9 percent of its total sales, you know, the
22 three-year rolling average, in 2014, it has to meet
23 another percent; in 2015 it has to meet another
24 percent; and then in 20, you know, 16 it would be
25 half of the 1 percent.

1 So that's 3.5 percent of the company's
2 total sales that it has to meet in energy efficiency,
3 so that's a lot of lost revenues that the company has
4 not -- the company has not documented in this
5 particular case.

6 Q. And Mr. Kutik asked you some questions
7 regarding the DCR. Do you recall that line of
8 questions?

9 A. Yes.

10 Q. And he was comparing the DCR to a rate
11 case?

12 A. Yes.

13 Q. In your opinion is the DCR annual review
14 comparable to a review in a rate case?

15 A. No.

16 Q. And --

17 EXAMINER PRICE: Excuse me, Mr. Sauer.

18 You testified earlier you did not
19 participate in the audit.

20 THE WITNESS: In -- I'm not participating
21 in the current audit in this case.

22 EXAMINER PRICE: So what's your basis for
23 saying the audit is not comparable to the rate case
24 audit?

25 THE WITNESS: I believe my understanding

1 of the rate case is you have a Staff Report, a
2 review, and there's use and useful issues that can
3 come up, pudency issues that can come up. I think in
4 the stipulation the DCR is more of a reasonable
5 standard.

6 EXAMINER PRICE: But you don't have any
7 actual knowledge of what did -- was involved in the
8 DCR audit.

9 THE WITNESS: I haven't been in this DCR
10 audit, that's correct, but I have been in rate cases
11 so -- and I read the stipulation.

12 EXAMINER PRICE: Okay. Thank you.

13 Thank you, Mr. Sauer.

14 Q. (By Mr. Sauer) And the stipulation you
15 are referring to is the ESP III stipulation and its
16 description of the review or whatever is in the
17 stipulation that discusses --

18 A. Correct.

19 Q. -- the annual review?

20 EXAMINER PRICE: If I could follow-up,
21 Mr. Sauer. I'm sorry.

22 You indicated in a rate case audit, it
23 would look at property that was used and useful. Do
24 you believe that the company is billing under the DCR
25 for property that's not used and useful and that the

1 auditor missed that fact?

2 THE WITNESS: I don't know. I haven't
3 been involved in the case.

4 MR. KUTIK: I'm sorry. What was the
5 case?

6 THE WITNESS: I don't know.

7 EXAMINER PRICE: He doesn't know. I'm
8 sorry, Mr. Sauer.

9 Q. (By Mr. Sauer) If you -- if you look at
10 the DCR, Mr. Gonzalez, and the company spends a
11 significant amount of money to improve their
12 distribution facilities, would you anticipate that
13 that may result in lower operating and maintenance
14 costs as the older equipment is replaced?

15 A. Yes. I think that's the difference with
16 the rate case also. A rate case looks at both costs
17 and savings, and the DCR just looks at the company's
18 costs.

19 Q. Mr. Gonzalez, do you recall that
20 Mr. Kutik had asked you some questions regarding
21 OCC's participation in cases with Ohio Partners for
22 Affordable Energy, for example?

23 A. Yes, I do.

24 Q. Do you know who Ohio Partners for
25 Affordable Energy represent or what their interests

1 are in this case?

2 A. Yeah. I believe OPAE interests in this
3 case is -- is to protect their members, partly to
4 protect -- not protect but to -- they provide
5 weatherization services.

6 MR. SAUER: Your Honor, I would like to
7 mark an exhibit OCC Exhibit No. 12, which would be
8 the Ohio Partners for Affordable Energy motion to
9 intervene in this case and the motion to intervene
10 filed on behalf of the Empowerment Center, the
11 Cleveland Housing Network, and the Consumer
12 Protection Association.

13 EXAMINER PRICE: Why do you want to mark
14 motions that were filed in the docket in this
15 proceeding?

16 MR. SAUER: To just make them part of the
17 record.

18 EXAMINER PRICE: They are part of the
19 record.

20 MR. SAUER: Yeah.

21 EXAMINER PRICE: They are part of the
22 record. They have been filed in this proceeding.

23 MR. SAUER: They are in the docket, but
24 they are not in the record of this case.

25 EXAMINER PRICE: Okay. I'll mark it. So

1 marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MS. YOST: Your Honor, could we mark the
4 motion to intervene, the second one, as No. 13, for
5 clarity?

6 EXAMINER PRICE: The second one is which
7 party?

8 MR. SAUER: That is the Empowerment
9 Center, the Cleveland Housing Network, and the
10 Consumer Protection Association.

11 EXAMINER PRICE: It is so marked.

12 MR. SAUER: Thank you.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Gonzalez, if you could -- do you have
15 a copy of the Ohio Partners for Affordable Energy's
16 motion to intervene?

17 A. Yes, I do.

18 Q. Did I give you a copy? And on page 2,
19 does it state who -- what their primary interest is
20 at the very bottom of that page?

21 MR. KUTIK: Your Honor, I object.

22 EXAMINER PRICE: Grounds?

23 MR. KUTIK: The document says what it
24 says. As the Bench has already pointed out, it is in
25 the record. They can brief it. Mr. Gonzalez doesn't

1 need to read it. He has no independent knowledge
2 with respect to what their interest is, or at least
3 it hasn't been established as that.

4 EXAMINER PRICE: We will give Mr. Sauer a
5 little leeway on this and allow him to proceed.

6 MR. SAUER: Thank you, your Honor.

7 Q. (By Mr. Sauer) Could you read what their
8 interests are, Mr. Gonzalez.

9 A. Yeah. It says, "OPAE's primary interests
10 in this case is to protect the interests of low and
11 moderate income Ohioans and OPAE members whose
12 provision of electric service will be affected by
13 this proceeding."

14 Q. And on OCC Exhibit No. 13, do you have a
15 copy of the Empowerment Center and the Cleveland
16 Housing Network and the Consumer Protection
17 Association's motion to intervene?

18 A. Yes.

19 Q. And on page 4, do they state in the
20 second full paragraph what their interests are in
21 this case?

22 MR. KUTIK: Objection.

23 EXAMINER PRICE: I understand your
24 continuing objection.

25 MR. SAUER: Thank you, your Honor.

1 Q. Could you read for the record what the
2 interest of that organization and their members are
3 in the case?

4 A. "Thus the Citizens Coalition and the
5 low-income families represented by the Coalition have
6 'a real and substantial interest' in the outcome of
7 this current set of cases, as required by OAC
8 4901-1-11(A)."

9 And then it says, "While other parties to
10 this proceeding may also be concerned about the
11 issues that affect low-income families, they have
12 other sets of customer groups which they must also
13 represent, which may impact their legal assistance to
14 low-income families."

15 Q. And in the paragraph starting, "the
16 Citizens Coalition," you understand the Citizens
17 Coalition to be the Empowerment Center of Greater
18 Cleveland, the Cleveland Housing Network, and the
19 Consumer Protection Association?

20 A. Yes.

21 MR. SAUER: No further questions.

22 EXAMINER PRICE: Mr. Gonzalez.

23 THE WITNESS: Yes.

24 EXAMINER PRICE: The low-income families
25 represented by the coalition, do you believe they are

1 residential customers or commercial or industrial
2 customers?

3 THE WITNESS: I believe they are mainly
4 residential customers, yes.

5 EXAMINER PRICE: And the low and moderate
6 income Ohians OP&E refers to, are they residential
7 customers?

8 THE WITNESS: I would say they
9 predominantly provide services to -- weatherization
10 services to residential.

11 EXAMINER PRICE: Do you know Consumers'
12 Counsel opposed the intervention of these parties
13 based upon them misstating their interests in this
14 proceeding?

15 THE WITNESS: I'm not aware.

16 EXAMINER PRICE: Redirect, Mr. --
17 recross, Mr. Warnock?

18 MR. WARNOCK: I have no questions, your
19 Honor.

20 EXAMINER PRICE: Mr. Dortch.

21 MR. DORTCH: No questions, your Honor.

22 EXAMINER PRICE: Mr. Royer.

23 MR. ROYER: No, thanks.

24 EXAMINER PRICE: Mr. Vickers.

25 MR. VICKERS: No questions, your Honor.

1 EXAMINER PRICE: Mr. Lavanga.

2 MR. LAVANGA: No questions, your Honor.

3 EXAMINER PRICE: Mr. Kapla.

4 MR. KAPLA: No questions, your Honor.

5 EXAMINER PRICE: Mr. Petricoff.

6 MR. PETRICOFF: No questions, your Honor.

7 EXAMINER PRICE: Mr. Kutik.

8 - - -

9 RECROSS-EXAMINATION

10 By Mr. Kutik:

11 Q. OPAE provides services, either directly
12 or indirectly, to residential customers, do they not?

13 A. Yes.

14 Q. With respect to the Cleveland Housing
15 Network, you don't have any experience to really know
16 what they do, do you?

17 A. No.

18 Q. And with respect to the Empowerment
19 Center, same thing, you don't know what they do
20 either.

21 A. Not specifically.

22 Q. Okay. Thank you. I must have missed
23 something, Mr. Gonzalez, in your testimony about the
24 lost distribution revenues on page 39 and 40, I
25 missed any recommendation about cap. There is none,

1 is there?

2 A. My recommendation is to treat it in
3 the -- in the portfolio case.

4 Q. There is none, no recommendation about a
5 cap, correct?

6 A. There's -- if you look at my page 38, it
7 says, "The problem arising from FirstEnergy's
8 proposal" --

9 EXAMINER PRICE: Mr. Gonzalez, I hate to
10 interrupt you.

11 THE WITNESS: Okay. Go head.

12 EXAMINER PRICE: If -- it seems to me,
13 Mr. Kutik has asked you a "yes" or "no" question. If
14 you could simply answer "yes" or "no" or explain why
15 you cannot, I would appreciate it.

16 A. I discuss the cap, but I don't see a
17 formal recommendation besides the one I made.

18 Q. Is the word "cap" even used?

19 A. Yes. I'll read it to you, "The problem
20 arising from" --

21 Q. What page are you on, sir?

22 A. Page 38, starting on line 16.

23 Q. Okay.

24 A. "The problem arising from FirstEnergy's
25 proposal is if the lost revenue calculation is not

1 capped by either a dollar amount or time period, the
2 balances can grow quite large."

3 Q. Okay. And your recommendation is that
4 the DCR be rejected, not capped, correct?

5 MR. SAUER: Object. We're talking about
6 lost distribution revenues, not DCR.

7 MR. KUTIK: I'm sorry. Thank you.

8 A. You threw me off there.

9 Q. You're recommending that the lost
10 distribution revenue as part of the ESP III proposal
11 be rejected, correct?

12 A. I formally state that I would like it
13 treated in another case, so.

14 Q. And that would be rejected in this case.

15 A. I would say so, yes.

16 Q. Okay. There's no recommendation that it
17 be capped as a modification to the company's
18 proposal. That's nowhere in your proposal.

19 A. That's correct.

20 Q. Now, let me talk to you a little bit
21 about DCR. I think I got that right this time.

22 A. Okay.

23 Q. Who is the auditor for the companies in
24 the DCR audit? Do you know that?

25 A. The only reason I know that is you

1 brought it up in deposition, but, otherwise, like I
2 said, I am not in that particular case.

3 Q. And you have had no interaction with
4 them?

5 A. No, I have not.

6 Q. Do you know whether they have issued a
7 report?

8 A. I said I'm not -- I'm not in that case.

9 Q. So you don't know.

10 A. I don't know, that's correct.

11 Q. And you don't know what they looked at.

12 A. No.

13 Q. You don't know what recommendations they
14 made?

15 A. No, I don't.

16 Q. You don't know what criteria they used.

17 A. I'm not in the case so I don't know.

18 Q. You don't know.

19 A. I don't know. I've stated that.

20 Q. You don't know what their recommendations
21 were?

22 MS. YOST: Objection. Asked and
23 answered.

24 EXAMINER PRICE: I don't think he asked
25 about --

1 MS. YOST: Could you read it back?

2 MR. KUTIK: I think I asked criteria;
3 now, I am asking recommendations.

4 EXAMINER PRICE: Okay. I will overrule
5 the objection. If I am wrong, the record will
6 reflect that. That will be my mistake.

7 Please answer the question, Mr. Gonzalez.

8 A. So did they -- I'm not familiar with the
9 recommendations, yes.

10 Q. Nor are you familiar whether OCC agreed
11 with the overwhelming part of the recommendations
12 made by the auditor, correct?

13 A. I was not part of the case so I don't
14 know.

15 Q. Nor are you aware whether OCC has made
16 any objection to the process of the criteria used by
17 the auditor in that case, correct?

18 A. They may have; they may not have.

19 Q. You don't --

20 A. I don't know.

21 MR. KUTIK: No further questions.

22 EXAMINER PRICE: Thank you.

23 Mr. McNamee.

24 MR. McNAMEE: No questions.

25 EXAMINER PRICE: Any questions?

1 EXAMINER WILLEY: No.

2 - - -

3 EXAMINATION

4 By Examiner Price:

5 Q. Mr. Gonzalez, do you have a concern that
6 FirstEnergy's reliability will improve too much based
7 upon the improvements funded by the DCR rider?

8 A. My concern is more alignment between --

9 Q. No. You have got to answer my questions
10 straight. Do you have a concern that their
11 reliability will improve too much based upon the
12 improvements funded by rider DCR? "Yes" or "no"?

13 A. As an economist, yes.

14 Q. You have concerns it will improve too
15 much.

16 A. I have a concern --

17 Q. I understand. And OCC's position in this
18 case fundamentally, or one of your positions in this
19 case, is to preserve the existing bid schedule from
20 10-388-EL-SSO, which provides for one-year bids in
21 October of this -- of 2012 and I think January of
22 2013; is that right?

23 A. That was Mr. Wilson's testimony, so I
24 believe his testimony is a one-year product until
25 some of the uncertainty perhaps clears up and then

1 maybe --

2 MR. KUTIK: Your Honor, can the witness
3 speak up?

4 EXAMINER PRICE: Mr. Gonzalez needs to
5 speak up in his answer.

6 MR. DORTCH: Can we have the response
7 read back.

8 EXAMINER PRICE: Let's have the response
9 back, and then I'll go on.

10 (Record read.)

11 Q. (By Examiner Price) But you oppose that
12 schedule in 10-388.

13 A. I oppose going to a ladder product. I
14 oppose --

15 Q. In 10-388.

16 A. I don't recall.

17 Q. You don't recall.

18 A. Yes.

19 Q. You opposed the ESP in 10-388?

20 A. Yes.

21 Q. You personally testified against it.

22 A. Yes, I did.

23 Q. With respect to the PIPP bid, you
24 indicate that the Commission should not count that as
25 a benefit under the ESP because DOD could bid this

1 out separately under an MRO; is that correct?

2 A. That's partly correct, but also just
3 under an MRO the same arrangement could be made.

4 Q. Is there a guarantee that under an MRO
5 FES would be free to provide a 6 percent discount?

6 A. I don't think there is a guarantee, no.

7 Q. Isn't it possible they could find some
8 other market for their power if the Commission
9 rejected this proposal?

10 A. They could.

11 Q. Would you collect economic development
12 programs through riders DSE1 and DSE2; would I be
13 correct -- I'm sorry. Do you think it's advisable
14 for the Commission to collect economic development
15 program costs through riders DSE1 and DSE2?

16 A. My inclination would be no because those
17 that are --

18 Q. Energy efficiency?

19 A. Correct.

20 Q. Do you disagree that riders ELR and OLR
21 have an economic development component to them,
22 promote manufacturing in this state?

23 A. Yeah, I believe they do.

24 Q. So would it be inappropriate to collect
25 them through riders DSE1 and DSE2?

1 A. Yes.

2 Q. My last question is, in 10-388 you
3 assessed a value for the RTEP costs that the company
4 was willing to eat as zero.

5 A. Yes. There were three factors of
6 uncertainty I assessed the probability of zero, yes.

7 Q. So that was a zero benefit in your view
8 of 10-388, zero-dollar benefit?

9 A. That -- that was my testimony, as opposed
10 to 100 percent, what the staff witness stated, so we
11 were at polar ends.

12 Q. You were at zero.

13 A. Correct.

14 Q. Do you think it's a benefit now, the fact
15 that the company is eating \$360 million of RTEP
16 costs?

17 A. I've stated so in my -- in my testimony
18 there's a figure that they've collected through the
19 date of their interrogatory, about 18 percent of what
20 they said they are going to collect, but it is a
21 benefit that they have --

22 Q. You didn't give them credit in 10-388.
23 Don't you think you should give them credit now?

24 A. In my footnote I give them partial
25 credit, 18 percent versus what they estimated they

1 would get.

2 Q. So the Commission should consider 18
3 percent as a benefit under this ESP?

4 A. Not under this ESP. That's a benefit of
5 the last ESP.

6 Q. The last ESP you gave them zero.

7 A. Yes.

8 Q. So now ex post facto?

9 A. After the fact.

10 Q. You are giving them that number.

11 A. You know, we both had estimates of what
12 was going to happen.

13 EXAMINER PRICE: That's all I have got.
14 Thank you. You are excused.

15 Mr. Sauer.

16 MR. SAUER: Thank you, your Honor. I
17 move for the admission of OCC Exhibits 10, 11, 12 --
18 or 11, 12, and 13.

19 EXAMINER PRICE: You need to speak up,
20 Mr. Sauer.

21 MR. SAUER: I would ask for the admission
22 of OCC Exhibits 11, 12, and 13, your Honor.

23 MR. KUTIK: How about 11A?

24 MR. SAUER: Pardon me?

25 MR. KUTIK: 11A.

1 MR. SAUER: And 11A.

2 MR. KUTIK: Your Honor, we have no
3 objection to 11 or 11A. We do object to 12 and 13.

4 EXAMINER PRICE: We will take
5 administrative notice of 12 and 13, but they will not
6 be admitted.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 MR. KUTIK: Your Honor, at this time the
9 company moves for the admission of Company Exhibits
10 10, 11, 12, and 13.

11 EXAMINER PRICE: Actually, I think
12 administrative notice is appropriate of Company
13 Exhibit 10, 11, 12, and 13 also, so I will take
14 administrative notice of those.

15 MR. KUTIK: 13, your Honor, is the press
16 release, which I'm not sure is a part of the public
17 docket.

18 EXAMINER PRICE: You're right. You're
19 right. That's correct. We will not take
20 administrative notice of 13. We will admit 13.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 MS. YOST: I'm sorry. What was --

23 MR. DORTCH: Your Honor, if I could have
24 repeated back to what the ruling was on the
25 admissions.

1 EXAMINER PRICE: I'm sorry. I'll start
2 over again. On the company exhibits, Company Exhibit
3 10 we will take administrative notice of. Company
4 Exhibit 11 we'll take administrative notice of. And
5 Company Exhibit 13 will be admitted.

6 MR. KUTIK: And with respect to Company
7 Exhibit 12, that's also administratively noticed?

8 EXAMINER PRICE: Yes.

9 *****Okay. At this time we are going to
10 rule on the companies' pending request to take
11 administrative notice of a number of documents that
12 are -- I am not going to read into the record but are
13 enumerated on -- in the filing the company handed out
14 today.

15 Under existing case law, the Commission
16 may take administrative notice of facts that the
17 complaining parties have had an opportunity to
18 prepare, respond to the evidence, and they are not
19 prejudiced by its introduction.

20 In this case, FirstEnergy provided notice
21 to all parties in its application that it intended to
22 seek administrative notice of all documents in
23 10-388-EL-SSO, which also had previously taken
24 administrative notice of all the documents in
25 09-906-EL-SSO.

1 Therefore, all the parties have had the
2 opportunity to conduct discovery of any evidence
3 presented in those proceedings. They have had the
4 opportunity to request FirstEnergy to specifically
5 identify the evidence in the record of those
6 proceedings that they intend to seek -- intend to
7 rely upon in this proceeding. They had the ability
8 to request a subpoena to compel witnesses from those
9 proceedings to appear for further cross-examination
10 of this hearing. They had the opportunity to
11 cross-examine the witnesses at this hearing regarding
12 any issues raised in those proceedings, and they had
13 the opportunity to present testimony at this hearing
14 to explain or rebut any of the evidence in the record
15 of that proceeding.

16 Therefore, we find that the parties are
17 not prejudiced by the taking administrative notice of
18 the documents listed by FirstEnergy, and we will go
19 ahead and take administrative notice at this time.

20 MR. LAVANGA: Your Honor --

21 EXAMINER PRICE: And we'll also take
22 administrative notice of the document Mr. Lavanga
23 referenced in the discussion this morning.

24 MR. LAVANGA: Thank you, your Honor.

25 MS. YOST: Your Honor, in regards to some

1 of the documents that were listed on FE -- what they
2 provided this morning, you spoke of facts in regards
3 to Commission precedent. So that would exclude any
4 opinions that are listed in regards to these --

5 EXAMINER PRICE: All the documents that
6 are listed we've taken administrative notice, whether
7 it's facts or opinion. I think we -- the rationale
8 that I explained applies equally to facts as -- to
9 opinion as it would to facts.

10 MR. WARNOCK: Your Honor, NOPEC would
11 like to renew its objection to the ruling and would
12 also request -- you cited some Commission precedent.
13 Was that reflected under specific references that you
14 might be able to provide?

15 EXAMINER PRICE: Sure. You might want to
16 look at In the Matter of the Application of The Ohio
17 Edison Company, The Cleveland Electric Illuminating
18 Company, and The Toledo Edison Company for Authority
19 to Establish a Standard Service Offer Pursuant to
20 Section 4928.143, Revised Code, in the Form of an
21 Electric Security Plan, Case No. 10-388-EL-SSO,
22 Commission entry on rehearing dated May 13, 2010, at
23 6 and 7, which is citing to Canton Storage and
24 Transfer Company versus Public Utilities Commission,
25 (1995) 72 Ohio St. 3d 1 at 8, which was citing to

1 Allen versus Public Utilities Commission (1988) 40
2 Ohio St. 3d 184, 186.

3 MR. WARNOCK: Thank you, your Honor.

4 MR. SAUER: Your Honor, OCC would renew
5 our objections to this as well.

6 EXAMINER PRICE: Thank you. Noted.

7 MR. DORTCH: Renewed --

8 EXAMINER PRICE: Thank you. Noted.

9 MR. DORTCH: -- our objections as well,
10 your Honor.

11 MR. VICKERS: ELPC renews its objections.

12 EXAMINER PRICE: You all can raise them
13 in your brief without renewing your objections. You
14 are all free to raise this in your brief.

15 Okay. Let's go off the record

16 MR. SAUER: Before that, your Honor.

17 EXAMINER PRICE: Let's stay on the
18 record.

19 MR. SAUER: Please. We had asked earlier
20 that we have the opportunity to reserve the right to
21 file rebuttal testimony that we are preparing -- or
22 providing, would be willing to provide by the close
23 of business on Monday, June 11, and resume the
24 hearing on Tuesday at 1:00 o'clock, and we would
25 filing surrebuttal to the company's rebuttal

1 testimony we would see at the close of business
2 today, if that's -- if we determine it's necessary.

3 EXAMINER PRICE: Mr. Kutik.

4 MR. KUTIK: Your Honor, I think the
5 request is, at best, premature and is most likely
6 improper. We have the burden in this case, and we
7 have the opportunity -- the burden of going forward,
8 and we should have the opportunity of closing. There
9 has been no demonstration that surrebuttal is
10 necessary, and I think we should all wait and see
11 what we get in rebuttal testimony, and if they feel
12 that there is some circumstances that suggest that
13 there is a need for surrebuttal, they can make it at
14 the end of the examination of any and all witnesses
15 that we present on rebuttal.

16 EXAMINER PRICE: Mr. Sauer, would you
17 care to respond to Mr. Kutik?

18 MR. SAUER: The point is we haven't -- we
19 haven't seen the sur -- their rebuttal yet, so we
20 don't know what's coming. We just want to make sure
21 the right is there in the event we need to file the
22 testimony. They have told us only that there are
23 three witnesses. They have had our testimony since
24 May 21. We don't know what the testimony is going to
25 entail, what they're addressing. We don't have any

1 of the issues that may come up.

2 EXAMINER PRICE: I'm still not sure if
3 you're asking to reserve the right to seek
4 surrebuttal testimony, or if you are asking me now
5 for the right to present surrebuttal testimony.

6 MR. SAUER: The latter.

7 EXAMINER PRICE: Do you have a copy of
8 FirstEnergy's rebuttal testimony?

9 MR. SAUER: I do not.

10 EXAMINER PRICE: Then how do you know if
11 you need to rebut it?

12 MS. YOST: Clearly there is going to be
13 at least two new witnesses to this proceeding.

14 MR. KUTIK: So what?

15 EXAMINER PRICE: I don't follow the logic
16 there. It seems to me that it sounds like you are
17 intending to do something to bolster your previous
18 witnesses rather than rebut testimony you haven't
19 heard yet.

20 MS. YOST: Well, we are just offering the
21 filing time and the time for the hearing. If you
22 don't want to agree to that now or the parties don't
23 want to agree to that now, we can wait, but it will
24 postpone things. If right -- as long as we reserve
25 our right to ask later, I guess tomorrow or Friday we

1 can proceed then.

2 EXAMINER PRICE: I think it makes more
3 sense to take this up after you have heard from the
4 FirstEnergy rebuttal witnesses, and then at that
5 point you may decide that you don't need to file it,
6 and we'll have wasted the poor court reporter's time
7 on this, so we will defer ruling on your request at
8 this time.

9 Anything else we need to address?

10 MS. YOST: May we ask when we are going
11 to receive that testimony? Will it be electronic?
12 When will it be?

13 MR. KUTIK: It will be electronic.

14 EXAMINER PRICE: I believe the company
15 committed they will have it to you by the close of
16 business today.

17 MR. KUTIK: That's --

18 MS. YOST: What time does their business
19 close?

20 MR. KUTIK: My time in terms of when the
21 testimony and the status of the testimony is about
22 two hours old, and I'm not in a position to give a
23 time, nor would I, if I knew.

24 EXAMINER PRICE: I generally believe
25 close of business adheres to the Commission time,

1 which I believe is 6 o'clock, although in this
2 proceeding it's been later than that, so I expect the
3 company to tender this by 6 o'clock tonight.

4 MR. KUTIK: We will endeavor to do that,
5 your Honor.

6 MR. LAVANGA: Your Honor.

7 EXAMINER PRICE: Mr. Lavanga.

8 MR. LAVANGA: Are we still scheduled to
9 start up at 1:00 tomorrow?

10 EXAMINER PRICE: We are still scheduled
11 to start up at 1:00 tomorrow to hear one witness on
12 rebuttal.

13 Anything else?

14 Then we are adjourned for the day. Thank
15 you all.

16 (Thereupon, at 3:42 p.m., the hearing was
17 adjourned.)

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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 Wednesday, June 6,
5 2012, and carefully compared with my original
6 stenographic notes.

7
8
9

Karen Sue Gibson, Registered
10 Merit Reporter.

11 (KSG-5540)

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Summary: Transcript of the Application of The Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company hearing held on 06/06/12 - Volume III electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.