BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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PROCEEDINGS

before Ms. Greta See and Mr. Jonathan Tauber, Attorney Examiners, and Commissioner Andre Porter, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-A, Columbus, Ohio, called at 8:30 a.m. on Thursday, May 31, 2012.

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VOLUME X

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ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

APPEARANCES:

American Electric Power Service Corporation
By Mr. Steven T. Nourse
Mr. Matthew J. Satterwhite
and Mr. Yazen Alami
One Riverside Plaza, 29th Floor
Columbus, Ohio 43215

Porter, Wright, Morris & Arthur, LLP
By Mr. Daniel R. Conway
and Ms. Christen Moore
41 South High Street
Columbus, Ohio 43215

On behalf of the Ohio Power Company and
Columbus Southern Power Company.

AEP Retail Energy Partners, LLC
By Mr. Jay E. Jadwin
155 West Nationwide Boulevard, Suite 500
Columbus, Ohio 43215

On behalf of the AEP Retail Energy
Partners.

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

Jones Day
By Mr. David A. Kutik
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114

Jones Day
By Ms. Allison E. Haedt
325 John J. McConnell Boulevard, Suite 600
Columbus, Ohio 43215

Calfee, Halter & Griswold LLP
By Mr. James F. Lang
and Ms. Laura C. McBride
1400 KeyBank Center
800 Superior Avenue
Cleveland, Ohio 44114

APPEARANCES: (Continued)

Calfee, Halter & Griswold, LLP
By Mr. N. Trevor Alexander
Fifth Third Center, Suite 1100
21 East State Street
Columbus, Ohio 43215

On behalf of the FirstEnergy Service Corporation.

McNees, Wallace & Nurick, LLC
By Mr. Frank P. Darr
Mr. Samuel C. Randazzo
Mr. Joseph E. Oliker
and Mr. Matthew R. Pritchard
Fifth Third Center, Suite 1700
21 East State Street
Columbus, Ohio 43215-4228

On behalf of the Industrial Energy Users of Ohio.

Taft, Stettinius & Hollister
By Mr. Zachary D. Kravitz
and Mr. Mark S. Yurick
65 East State Street, Suite 1000
Columbus, Ohio 43215

On behalf of the Kroger Company.

Office of the Ohio Consumers' Counsel
By Ms. Maureen R. Grady
Mr. Terry L. Etter
and Mr. Joseph P. Serio
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

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

\- - -

APPEARANCES: (Continued)

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

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

Ice Miller, LLP
By Mr. Christopher L. Miller
Mr. Gregory J. Dunn
and Mr. Asim Z. Haque
250 West Street
Columbus, Ohio 43215

On behalf of the Association of Individual Colleges and Universities, City of Upper Arlington, City of Grove City, and City of Hillsboro.

Boehm, Kurtz & Lowry
By Mr. Michael L. Kurtz
Mr. Kurt J. Boehm
and Ms. Jody M. Kyler
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

On behalf of Ohio Energy Group.

Bricker & Eckler, LLP
By Mr. Thomas J. O'Brien
100 South Third Street
Columbus, Ohio 43215-4291

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

On behalf of the Ohio Hospital Association.

APPEARANCES: (Continued)

Duke Energy Ohio, Inc.
By Ms. Jeanne W. Kingery
155 East Broad Street, 21st Floor
Columbus, Ohio 43215

Duke Energy Ohio, Inc.
By Ms. Amy B. Spiller
Ms. Elizabeth Watts
and Mr. Rocco D'Ascenzo
139 East Fourth Street
Cincinnati, Ohio 45202

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

On behalf of the Retail Sales and Duke Energy Commercial Asset Management.

Eberly McMahon, LLC
By Mr. Robert A. McMahon
Ms. Elizabeth Watt
and Mr. Rocco D'Ascenzo
2321 Kemper Lane, Suite 100
Cincinnati, Ohio 45206

On behalf of Duke Energy Ohio.

Bricker & Eckler, LLP
By Mr. Thomas J. O'Brien
100 South Third Street
Columbus, Ohio 43215-4291

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

On behalf of the Ohio Hospital Association.

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

On behalf of Dominion Retail, Inc.

APPEARANCES: (Continued)

Bricker & Eckler, LLP
By Ms. Lisa Gatchell McAlister
and Mr. J. Thomas Siwo
100 South Third Street
Columbus, Ohio 43215-4291

On behalf of Ohio Manufacturers Association.

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

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

Eimer, Stahl, Klevorn & Solberg, LLP
By Mr. David M. Stahl
and Mr. Scott C. Solberg
224 South Michigan Avenue, Suite 1100
Chicago, Illinois 60604

On behalf of Constellation Exelon Generation Company, LLC.

Covington & Burling, LLP
By Mr. William Massey
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On behalf of The Compete Coalition.

Ohio Poverty Law Center
By Mr. Joseph V. Maskovyak
and Mr. Michael Smalz
555 Buttles Avenue
Columbus, Ohio 43215

On behalf of Appalachian Peace and

Justice Network.

APPEARANCES: (Continued)

Keating, Muething & Klekamp PLL
By Mr. David A. Meyer
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202

Keating, Muething & Klekamp, PLL
Ms. Holly Rachel Smith
HITT Business Center
3803 Rectortown Road
Marshall, Virginia 20115

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

Bricker & Eckler, LLP
By Mr. Christopher L. Montgomery
Mr. Matthew Warnock
and Mr. Terrence O'Donnell
100 South Third Street
Columbus, Ohio 43215

On behalf of Paulding Wind Farm, LLC.

SNR Denton US, LLP
By Ms. Emma F. Hand
Mr. Thomas R. Millar
and Mr. Daniel D. Barnowski
1301 K Street NW
Suite 600 East Tower
Washington, D.C. 20005

On behalf of Ormet Primary Aluminum Corporation.

EnerNOC, Inc.
By Mr. Gregory J. Poulos
471 East Broad Street, Suite 1520
Columbus, Ohio 43215

On behalf of EnerNOC.

APPEARANCES: (Continued)

Kegler, Brown, Hill & Ritter, LPA
By Mr. Roger P. Sugarman
Capitol Square, Suite 1800
65 East State Street
Columbus, Ohio 43215

On behalf of National Federation of Independent Business, Ohio Chapter.

Bailey Cavalieri, LLC
By Mr. Dane Stinson
10 West Broad Street
Columbus, Ohio 43215

On behalf of the Ohio Association of School Business Officials, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Schools Council.

Whitt Sturtevant, LLP
By Mr. Mark A. Whitt
Ms. Melissa L. Thompson
and Mr. Andrew John Campbell
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, Ohio 43215

Interstate Gas Supply, Inc.
By Mr. Vincent Parisi
and Mr. Matthew White
6100 Emerald Parkway
Dublin, Ohio 43016

On behalf of the Interstate Gas Supply, Inc.

Vectren Source
By Mr. Joseph M. Clark
6641 North High Street, Suite 200
Worthington, Ohio 43085

On behalf of Direct Energy Services and Direct Energy Business.

APPEARANCES: (Continued)

Thompson Hine, LLP
By Ms. Carolyn S. Flahive
Ms. Stephanie M. Chmiel
and Mr. Michael Dillard
41 South High Street, Suite 1700
Columbus, Ohio 43215

On behalf of Border Energy Electric Services, Inc.

Williams, Allwein & Moser
By Mr. Todd M. Williams
Two Maritime Plaza
Toledo, Ohio, 43604

On behalf of the Ohio Business Council for a Clean Environment.

William, Allwein & Moser
By Mr. Christopher J. Allwein
1373 Grandview Avenue, Suite 212
Columbus, Ohio 43212

On behalf of the Natural Resources Defense Council.

Dayton Power & Light Company
By Ms. Judi L. Sobecki
1065 Woodman Drive
Dayton, Ohio 45432

On behalf of Dayton Power & Light.

Ohio Automobile Dealers Association
By Mr. Charles C. Howard
and Ms. Sarah Bruce
655 Metro Place South, Suite 270
Dublin, Ohio 43017

On behalf of the Ohio Automobile Dealers Association.

APPEARANCES: (Continued)

Hahn, Loeser & Parks, LLP
By Mr. Randy Hart
200 Huntington Building
Cleveland, Ohio 44114

On behalf of Summit and Fostoria Ethanol.

Matthew Cox Law, Ltd.
By Mr. Matthew Cox
4145 St. Theresa Boulevard
Avon, Ohio 44011

On behalf of the Council of Smaller Enterprises.

The Behal Law Group, LLC
By Mr. Jack D'Aurora
501 South High Street
Columbus, Ohio 43215

On behalf of the University of Toledo.

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INDEX

- - -

INDEX (Continued)

- - -

Thursday Morning Session,

May 31, 2012.

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EXAMINER TAUBER: Let's go on the record. Let's begin with brief appearances, starting with the company and we'll work our way around again.

MR. NOURSE: Thank you, your Honor. On behalf of Ohio Power Company, Matthew J. Satterwhite, Steven T. Nourse, Yazen Alami, Daniel R. Conway, and Christen M. Moore.

MS. GRADY: Thank you, your Honor. On behalf of the Ohio Consumers' Counsel, Maureen R. Grady, Terry L. Etter, and Joseph P. Serio.

MR. HAYDEN: Good morning. On behalf of FES, Mark Hayden and Jim Lang.

MR. DARR: Good morning. On behalf of Industrial Energy Users of Ohio, Sam Randazzo, Matt Pritchard, Joe Oliker, and Frank Darr.

MS. KINGERY: Thank you, your Honor. On behalf of Duke Energy Retail Sales and Duke Energy Commercial Asset Management, Amy Spiller, Jeanne Kingery, and Philip Sineneng.

MR. BOEHM: Good morning. On behalf of OEG, Kurt Boehm.

MR. STINSON: Good morning. On behalf of

the Ohio Schools, Dane Stinson.

MR. SIWO: Good morning. On behalf of OMA Energy Group, Lisa McAlister and Thomas Siwo.

MR. CAMPBELL: Andrew John Campbell on behalf of Interstate Gas Supply, Incorporated.

MR. MILLAR: On behalf of Ormet Primary Aluminum Corporation, Tom Millar, Jim Barnowski, and Emma Hand.

EXAMINER SEE: I'm sorry. Repeat that again.

MR. COX: On behalf of Ormet, Tom Millar, M-i-l-l-a-r, Jim Barnowski, and Emma Hand.

EXAMINER SEE: Thank you.

MS. KALEPS-CLARK: On behalf of Exelon Generation Company, LLC, Constellation NewEnergy, Inc., and Constellation Energy Commodities Group, David Stahl, M. Howard Petricoff, and Lija Kaleps-Clark.

And on behalf of RESA and Direct Energy, M. Howard Petricoff, Lija Kaleps-Clark, and Steve Howard.

MR. BEELER: Steve Beeler and Vern Margard, Assistant Attorneys General, on behalf of the staff.

EXAMINER TAUBER: Thank you.

Mr. Boehm?

MR. BOEHM: Thank you.

OEG calls Lane Kollen.

(Witness sworn.)

EXAMINER TAUBER: Before we begin, there is an outstanding motion to strike by IEU and OCC, and we are going to deny the motion to strike; but, as has been the case with all the motions to strike before, the parties will have the opportunity to raise any issues during cross-examination.

(EXHIBIT MARKED FOR IDENTIFICATION.)

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LANE KOLLEN

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

DIRECT EXAMINATION

By Mr. Boehm:

Q. Good morning, Mr. Kollen.

A. Good morning.

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

A. Yes. My name is Lane Kollen. My business address is J. Kennedy and Associates, 570 Colonial Park Drive, Suite 305, Roswell, Georgia 30075.

Q. Do you have in front of you testimony marked OEG 101 which is the direct testimony exhibit of Lane Kollen filed on May 4, 2012?

A. Yes.

Q. Do you have any changes to this testimony?

A. Yes, I have one change. This is on page 5, line 13. The words "a projection of" should be stricken. That's the only change that I have.

Q. Thank you. If I asked you the same questions today as appear in your testimony, would your answers be the same?

A. Yes.

MR. BOEHM: Mr. Kollen is available for cross-examination.

EXAMINER TAUBER: Thank you.

MR. BOEHM: Your Honor, do you need copies?

EXAMINER TAUBER: We got them. Thank you.

Ms. Kaleps-Clark?

MS. KALEPS-CLARK: No questions. Thank you.

EXAMINER TAUBER: Mr. Millar?

MR. MILLAR: No questions.

EXAMINER TAUBER: Mr. Campbell?

MR. CAMPBELL: No questions.

EXAMINER TAUBER: Mr. Siwo?

MR. SIWO: No questions, your Honor.

EXAMINER TAUBER: Mr. Stinson?

MR. STINSON: No questions, your Honor.

EXAMINER TAUBER: Ms. Kingery?

MS. KINGERY: No questions, your Honor.

EXAMINER TAUBER: Mr. Darr?

MR. DARR: Yes.

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CROSS-EXAMINATION

By Mr. Darr:

Q. Good morning, Mr. Kollen.

A. Good morning.

Q. Is it fair to say you're taking a position that's slightly different today than the position you took in the capacity case, correct?

A. It is slightly different.

Q. And the capacity case, your position was that the Commission should adopt the RPM rate subject -- and if it didn't adopt the RPM rate, you proposed the ESM. Do I have that correct?

A. Yes. And that would be in conjunction with the maximum capacity rate of 145.79 per megawatt-day.

Q. The testimony in this case summarizes, at page 3, indicates you are proposing that the RPM rate be set at a simple average of the three forward prices for 2012 to 2015, correct?

A. Yes.

Q. And then the ESM would apply if the Commission did not rely on that price?

A. Yes. Or on an annual RPM price.

Q. Is it fair to say that the AEP proposal is for a state-compensation mechanism that has two prices for capacity, correct?

A. Yes.

Q. And is it also your understanding, as Mr. Diaz put it earlier in this hearing, "capacity is capacity"?

A. I don't -- I'm not aware of that statement, but I don't know if he said that or not.

Q. Do you have -- would you agree that capacity serving one customer is capacity serving another customer? Materially, there is no difference in capacity?

A. Subject to the same terms and conditions, I would agree.

Q. And, in fact, one of the reasons that you propose using a single price, whether the average or the RPM price, was that it would reduce concerns about discriminatory pricing, correct?

A. Yes.

Q. And are you aware of anything, other than the timing of when a customer got in line to receive capacity, as to whether or not there is a cost difference or other material difference that would explain the 146 versus 255 a megawatt-day price that's been proposed by the company?

MR. NOURSE: Your Honor, I object. I think we are getting into some friendly cross here. IEU is trying to get this witness to say things that are consistent with his testimony that support IEU's position that he could have presented through his own witnesses.

MR. DARR: Well, as a matter of fact, we have presented it through our own witnesses, and what I'm trying to determine is the scope of Mr. Kollen's understanding of the company's proposal so we can start driving it down from there.

EXAMINER TAUBER: The objection is overruled.

A. I'm not aware of any cost basis for the two-tier pricing differential.

Q. Now, I've reviewed your testimony, and I don't find anything that compares the comparables -- comparables -- I always mispronounce that word -- of the capacity costs embedded in the SSO rates versus the charges that you've proposed. Am I correct in that you don't address that issue?

A. That's correct.

Q. And is it fair to say you have not formed any cost-of-service analysis that would determine if the SSO capacity costs were comparable to your proposed capacity; is that correct? Is that also correct?

A. Yes, I haven't formed any analysis with that issue.

Q. As we were discussing earlier, your calculation of the proposed -- of a proposed capacity cost is a simple average, correct?

A. Yes, three forward years.

Q. And this number that results from your calculation, the 69.20, is it similar, and I'm using that term in the common understanding, to any of the cost figures we've seen presented by AEP Ohio?

A. It's not based upon cost, AEP Ohio's costs, so I would answer it is not similar in any broad respect.

Q. And would it be fair to say AEP Ohio, if it were permitted to charge this rate that you propose, 69.20 per megawatt day, would recover in the planning years 2012-'13 and 2013-'14 a rate that exceeds the current RPM rate?

A. Yes, that's true, and it would be less than the present RPM rate for the '14 to '15 years.

Q. And that's simply a function, you used a simple average; is that correct?

A. Yes, that's correct.

Q. In your testimony -- well, let me back up a second.

In your preparation for your testimony in this proceeding, did you perform independently an analysis of the ESP versus MRO test?

A. I did not.

Q. And I understand from your testimony that your concerns are limited to capacity prices, whether or not the Commission should authorize what you described as the ESM, and problems with the proposed retail stability rider, correct?

A. Yes.

Q. And is it fair to say you're not offering any testimony with regard to whether or not your recommendations for changes in the proposed modified

ESP would bring this proposed modified ESP into compliance with the ESP versus MRO test?

A. I did not address that.

Q. I would like you to turn to your Exhibit 2 attached to your testimony. Are you there?

A. Yes.

Q. That attachment is taken from testimony provided by Kentucky Power in a Kentucky Power case; is that correct?

A. Yes, that's correct. Actually, Mr. Weaver -- this was an exhibit to Scott Weaver's testimony, and he's an employee of AEP Service Corp. which is the service company that provides technical expertise to the AEP affiliates including Kentucky Power.

Q. And this document contains a 20-year forward forecast; is that correct?

A. It does.

Q. And do you understand what the purpose of that forward forecast was?

A. Yes. It was used for assessing whether or not it would be better to shut down Big Sandy 2 rather than retrofit it. If Big Sandy were to be shut down, the option then would be to buy -- to buy capacity and energy throughout PJM.

Q. And are you aware of the current status of that application?
A. I believe that decision is due this week, perhaps even today.
Q. Are you aware that there may have been a decision by the company to change its position on that?
A. No, I'm not aware of that.
Q. Now, looking at the page that you've pulled from the testimony in Kentucky, I would like you to look at the last block of information which is labeled "Capacity Value." Do you see that?
A. I do.
Q. And for 2012 there is a capacity value of 16.46. Is that number reflecting the RPM price for at least some part of 2012?
A. That is my understanding.
Q. And for 2013, 27.73 is listed as the capacity price. Would that also be the capacity price for some part of 2013 as established by the RPM rate?
A. Yes. That's my understanding.
Q. And for 2014, we see $126. $126, again, would that be for part of the year in 2014, the capacity rate that would have been established by the

RPM rate?
A. Yes, that's correct.
Q. Thereafter, it appears that there are price in the 280, 230, variety of other numbers. Do you know how those capacity prices were calculated?
A. Yes. They were developed by AEP in the Commodities and Fundamentals Group, and they have a number of models that they use for that purpose.
Q. So those would not reflect the RPM rates after 2014, correct?
A. Well, it reflects AEP's projection of those RPM rates and not the actual base residual auction results.
Q. The actual forward BRA results would be reflected in the first three entries, correct?
A. That's correct, yes.
Q. So at least for purposes of this application, for Kentucky Power to calculate a forward price, it's fair to say that AEP was using, for capacity, the RPM rate, correct?
A. Yes, that's correct.
Q. I would like to turn to your ESM proposal. Now, the ESM relies on determining a return on equity, correct?
A. Yes, it does.

Q. And you said a minimum to protect the company and a maximum to protect the customers.

A. Yes. I think that the goal there was one of the two objectives of the Commission itself in its filing before the FERC, and that would be to ensure the ability of the utility to attract capital, and that was the reason for the lower end of the ESM earnings' return-on-equity range.

Q. Now, the number that's calculated is a total company number for the return on equity, correct?

A. Yes, but adjusted for -- to remove extraordinary nonrecurring costs and unusual items.

Q. And that, I believe, you do because you want to reflect a process that's similar to that used in the SEET process?

A. Yes, with one exception and that would be to include the off-system sales.

Q. Now, you're aware there's been some dispute as to what stays in and what comes out of the calculation for the SEET, correct?

A. Yes, I think it's pretty well been established by the Commission now, through a series of orders, even though I believe that there are certain issues yet on rehearing and/or appeal.

Q. Yes. In fact, Mr. Kurtz and I just argued one of those cases about a month-and-a-half ago in front of the Supreme Court.

MR. NOURSE: I think you left somebody out.

MR. DARR: Some of us were in the room. Well, based on that assumption, I think we've got an Attorney Examiner involved in the case, Mr. Nourse involved in the case, but that's another story.

EXAMINER SEE: Let's move on with this story.

MR. DARR: I appreciate that, your Honor.

Q. (By Mr. Darr) Now, if we looked at total lines of business, you would use the income or revenues that would extend beyond simply the retail operations of the company, correct?

A. Yes, that's correct.

Q. And if we looked at the -- well, would you agree that the FERC Form 1 would provide us a listing of those revenue sources?

A. Yes. That's correct, it does. I'm not sure what the reference to those is, but it does provide a listing of reference -- or revenue sources.

Q. Okay. Fair. Let's clear -- let's clear up the issue raised by my question. There are multiple revenue sources that go into the total income or operating income of the company used for calculating the return on equity, correct?

A. Yes, that's correct.

Q. And if we wanted to identify, for purposes of your calculation, the revenue sources, would it be appropriate to look at the FERC Form 1 operating revenues for the total company number?

A. Yes. And that's consistent with the SEET computation the Commission has adopted where it starts with the -- the per books full operating income and makes certain adjustments to that and that would be for the numerator of the earned-return computation.

MR. DARR: I believe we are up to IEU Exhibit 123.

EXAMINER TAUBER: Yes.

MR. DARR: I request to have this item marked as IEU Exhibit 123.

EXAMINER SEE: Mr. Darr?

MR. DARR: My apologies, your Honor.

EXAMINER TAUBER: The exhibit shall be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Mr. Darr) Do you have in front of you what's been marked as IEU Exhibit 123?

A. I do.

Q. And do you recognize that is the FERC Financial Report for 2010 for the Ohio Power Company?

A. Yes, it is. Or excerpted pages.

Q. Well, actually, you have a copy of the full report also, right?

A. I do, yes, for the exhibit itself is excerpted pages.

Q. Now, turning to page 114, that is the Statement of Income, correct?

EXAMINER TAUBER: I think the mics went out.

MR. DARR: I think I'm back on. There we go.

A. Yes, it is.

Q. And if we look at the "Operating Revenues" on line 2, it has a reference to pages 300 and 301, correct?

A. Yes, it does.

Q. Now, operating revenues, is that -- am I correct that's the total operating revenue of the company?

A. Yes.

Q. And if we turn to pages 300 and 301, we get a listing of the items that are included in the total operating -- or, excuse me, the operating revenue listed on page 114, correct?

A. Yes, that's correct.

Q. And there we find that the sales -- or, the operating revenues consist of both retail and sales for resale, correct?

A. Yes, that's correct.

Q. And, in addition to that, there are other operating revenues which include such things as "Forfeited Discounts" on line 16, "Miscellaneous Service Revenues" on line 17, "Rent from Electric Property" on line 19, and "Other Electric Revenues" listed on lines 21, 22, and 23, correct?

A. Yes.

Q. In fact, there is no values for 23 -- lines 23 and 24.

A. Correct.

Q. Now, if these revenues change or if expenses change such that the return on equity falls below 7 percent, your proposed mechanism would result in an unavoidable surcharge on all customer groups, correct?

A. Yes, that's correct. However, the Commission could modify that so -- should it so choose, so it would be only applicable, for example, to shopping customers if they weren't the proximate cause of the drop in the earnings.

Q. And is it fair -- is it fair to say --

EXAMINER TAUBER: It just went out again.

MR. DARR: We are maybe at the end of the life of the batteries.

THE WITNESS: Mine just went out again too.

Q. Well, you bring up an interesting point. You identified cost causation as an issue. Is it fair to say there is no constraint on the company to reduce expenses to make up the shortfall as presented in your proposal?

A. I would agree with the proposition that there is no requirement that it do so, but in order for there -- in order to be earnings below 7 percent, that would certainly be one opportunity for the company to not have a surcharge would be to reduce expenses and, in that manner, it would fall between the 7 percent lower threshold and the 11 percent upper threshold and there would be no rate change.

Q. Now, the process that you are proposing to identify whether or not a surcharge occurs is predicated on a process similar to that used in the evaluation of significantly excessive earnings, correct?

A. Yes. The process would be identical, with the exception of the threshold earnings, return on equity, earnings percentages, and with the exception of whether or not the off-system sales margins were included in the calculation.

Q. Now, you are aware that obviously the State of Ohio is not a cost-of-service state with regard to generation services, correct?

A. In some respects I would agree with you on that.

Q. And on others, not so much?

A. Well, not so much if you have a fuel adjustment clause, I think that's cost based.

Q. Fair enough. But with regard to generation services, other than some specifically identified by the ESP statute and which specifically allows for cost of basically a cost-based FAC, it is not a rate-of-return state, correct?

A. For the generation function, that would be correct.

Q. And have -- you have participated in this state, I believe, with regard to cases involving rate-of-return analysis, for example, for the distribution cases?

A. Yes, that's correct.

Q. And you're familiar with the fact that the staff normally undergoes a pretty significant review of the company's filing similar to what would be done by an auditor checking books of the company, correct?

A. Yes.

Q. And as part of that, the company goes through -- excuse me, the Commission staff goes through a detailed analysis to check whether or not the plan is in place as reported, how that plan is being operated, and such things as the expenses being reported by the company as well, correct?

A. Yes, I'm aware of that.

Q. With regard to the SEET analysis, are you aware of any analysis similar to that, that is not by the Commission staff, to check or tieback the numbers contained in the FERC Form 1s that are used in that analysis?

A. I'm not aware that there is a comparable process, but I do know that the calculation is sufficiently simple that the amounts that are used in the calculation can be traced back to the Form 1 and then through -- through the formula be traced there.

So I don't think it's a very complex calculation, and there are very limited ratemaking adjustments, really primarily only to remove extraordinary nonrecurring or unusual items, and to remove off-system sales.

Q. But in terms of checking what's contained in the FERC forms and the workpapers provided by the company, you are not aware of anything that's done by the staff to do the kind of check to determine whether or not the ROE calculations are supported at a deeper level; is that correct?

A. Again, it's not really analogous to a rate because there aren't ratemaking adjustments. Everything is straight out of the Form 1. If you are asking am I aware that the staff goes back behind the Form 1 to audit the per books number, I don't believe that's done.

Q. That was my question. Thank you.

When you were here the last time, I think Mr. Randazzo asked you whether or not large expenses, such as a corporate bonus to corporate officers and directors, might affect the calculation of the return on equity. Do you recall that line of questions?

A. I do.

Q. And I believe your response to that was that it might have an effect; is that correct?

A. Yes. If there were a large expense, it certainly would have an effect on the income used in the numerator of either the SEET computation or the equity stabilization computation which, you know, not to be repetitive, but is patterned to follow precisely after the SEET computation with the exception of the off-system sales and the thresholds.

Q. And it's fair to say that the company has argued in the past that there is asymmetry to the SEET calculation in as much as they believe they take a beating on the top end but don't get any protection on the bottom end, correct?

A. I don't know if I've actually seen that argument from the company, but it's true that the SEET is a consumer-protection mechanism, if you will, to avoid overcharging through the various rates and tariffs pursuant to an ESP, and so, by its very nature, it's asymmetric.

Q. By the same token, it appears that your mechanism provides a protection for the company which you argue is based on the need to protect the investment, correct?

A. Well, it's actually to target the two objectives that the Commission itself identified in its filing with the FERC, and that is to promote alternative competitive supply and retail competition on the one hand, but then, on the other hand, to ensure that the public utility is available to attract capital. And so really the ESM is the balancing of those two objectives, primarily focusing on the second of the two.

Q. One of the other rationales that you give in your testimony is that the ESM also allows customers to make a better informed shopping decision. I believe that's on page 11, lines 20 to 22 of your testimony. Now, it's fair to say, as a result of this proceeding or the capacity case, a capacity charge is going to be determined one way or the other, correct?

A. I'm sorry. Could you repeat that?

Q. Sure. It's fair to say that as a result of either this proceeding or the capacity charge proceeding, the capacity charge is going to be set, correct?

A. Yes, that's correct.

Q. And is it fair to say the customers will not be confused as to the rate other than the questions that you've raised with regard to the problems inherent in a two-tiered capacity price, correct?

A. They may be confused, yes.

Q. Because of the fact that it's two-tiered?

A. Yes, or where they stand in line basically.

Q. And in the alternative, they wouldn't be confused if the Commission decided to adopt a single capacity price going forward, correct?

A. Yes, that's correct. At least on an annual basis, that's correct.

Q. The second issue that you raise with regard to the ESM is that it may be difficult to determine if the company is being reasonably compensated under this current environment, correct?

A. Yes.

Q. The objective there is that if the Commission were to establish a capacity charge at something greater than RPM, at least for the first two years, what protection would there be against something that is over compensatory?

A. And that's what we're taking to target as well.

Q. And it's fair to say that the company already for its distribution function has the opportunity to secure a rate of return based on its set of tariffs, correct?

A. Yes, that's correct.

Q. And I believe you also said in your testimony in the capacity case that you recognize that the transmission rates embedded in retail prices, in fact, is a flow through of the FERC rates, correct?

A. Yes.

Q. So that leaves us with the generation component, correct?

A. In that sequence, yes.

Q. And it's fair to say you recognize that the retail generation business is deemed to be competitive by Ohio law?

A. I believe so.

Q. And you're familiar with the fact that AEP Ohio is not eligible for any additional generation transition related -- excuse me. Let me rephrase that.

And you're familiar with the fact that AEP Ohio is not eligible for any additional generation-related transition costs, correct?

A. In a broad sense, I understand that, yes.

Q. Is it fair to say, though, that if your ESM is adopted, it's unknown at this time whether the

ESM, as approved, would result in additional charges under the mechanism that you propose?

A. Yes, that's true. There may be additional refunds, and with respect to additional charges, that certainly would be an exposure, and I would say an almost definite exposure under the company's retail stability rider.

Q. And if the ESM generated a rate increase, there is no provision that you provided for the Commission to determine if the ESP is still superior to the MRO, correct?

A. Did you mean the ESM?

Q. No. ESP.

A. Okay.

Q. Whether or not the electric security plan would be superior to the alternative of an MRO.

A. Could you ask me the question again? It started with ESM and went to ESP and compared that to the MRO, so I just want to make sure I understood the question.

Q. That's fair. Let me start again.

If the ESM, your proposal --

A. Yes.

Q. -- generated a rate increase, there is no provision that you've provided in your proposal for the Commission to determine if the electric security plan is still superior to the MRO; is that correct?

A. Let me ask a clarifying question: You mean on an ongoing basis or just looking forward at this time ahead for three years?

Q. On an ongoing basis.

A. The answer would be there would be no provision for a subsequent review of that determination.

Q. Am I still correct that you view AEP Ohio, as it sits today, as a vertically-integrated utility?

A. Physically, yes. It still owns generation assets. They are functionally separated, but not legally separated.

Q. In your prior testimony on capacity prices, you indicated that you had not reviewed corporate separation -- the corporate separation plan; is that correct?

A. That's correct, and I still have not.

MR. NOURSE: You already anticipated my last question. Thank you very much, Mr. Kollen.

THE WITNESS: You're welcome.

EXAMINER TAUBER: Thank you.

Mr. Lang?

MR. LANG: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Lang:

Q. Good morning, Mr. Kollen.

A. Good morning.

Q. Now, your testimony addresses the -- part of your testimony addresses an appropriate capacity pricing under the modified ESP for the next three planning years, correct?

A. Yes. Essentially what that is is a representation of my testimony in the capacity charges' case.

Q. And just looking at the next three planning years, do you agree that the RPM auction process that resulted in the RPM RTO pricing was a transparent one?

A. I have no reason to disagree with that.

Q. And certainly those RPM RTO prices that you're referencing in your testimony for the next three planning years are known today, correct?

A. Yes, that's correct. And that's what we recommend be used.

Q. And that's -- so the recommendation -- or the primary recommendation is using the -- the average, which is the $69.20 per megawatt-day, for each of the three planning years, correct?

A. Yes, that's correct.

Q. And -- and that, of course, would be an alternative to what's in the modified ESP which is the two-tiered capacity pricing; is that right?

A. Yes, in combination with that retail stability rider.

Q. And is it fair to say you do not have an opinion as to whether the Commission should use the $69.20 per megawatt-day price as part of the MRO price test?

A. I have not addressed that, and I do not have an opinion sitting here today.

Q. Now, in the capacity case, in your previous testimony in the capacity case, you recommended that if the Commission did not use the RPM market pricing, that the Commission should set the capacity price up to, but not exceeding, $146 per megawatt-day; is that right?

A. Yes, yes, that's correct.

Q. Now, if the Commission set the capacity price at $146 per megawatt day, was it your belief in that proceeding that the equity -- or, the equity stabilization mechanism would not be needed?

A. No. That's -- we offered that as a means of a tool, if you will, for the Commission to apply in the event that it overshot an appropriate capacity rate that, in turn, resulted in an earned return on equity that was over 11 percent.

Q. Okay.

A. So, in effect, it was a consumer protection in the event that the Commission overpriced, if you will, the capacity rate.

Q. Is it still your belief that the capacity price as part of the modified ESP, in any case, should not exceed $146 per megawatt-day?

A. Yes.

Q. Now, what we're talking about as part of the modified ESP is really a three-year transition period for AEP Ohio; is that correct?

A. I've heard it referred to as that, and I may have used that term myself.

Q. And the end of that transition is a transition to fully competitive market pricing effective June 1, 2015; is that right?

A. Yes.

Q. Now, in the capacity case, you proposed what you called an "earnings stabilization mechanism." Here you are calling it an "equity stabilization mechanism." Is there a difference in those -- is there a reason you used different terms?

A. I thought I had used "equity stabilization mechanism," but if I used it, the two terms would be interchangeable.

Q. Now, the equity stabilization mechanism, as you propose here, would apply until AEP Ohio achieves corporate separation; is that right?

A. Yes, that's correct.

Q. So given AEP Ohio's projected corporate separation date, the stabilization mechanism would apply for part of 2012 and then all of 2013.

A. Yes, that's correct.

Q. Are you recommending that it apply on a calendar basis or planning-year basis?

A. We have been thinking of a calendar-year basis, and the reason for that is to parallel the SEET calculation.

Q. So the determination of whether earnings are less than 7 percent would be made on a calendar-year basis and parallel with the -- with AEP Ohio's SEET proceeding?

A. Yes, that's correct.

Q. Now, starting June 1, 2015, all the generating facilities currently owned by AEP Ohio, except for the Amos 3 and Mitchell plants, will receive market pricing for capacity under the reliability pricing model; is that your understanding?

A. Yes.

Q. So after June 1, 2015, the AEP Genco, which will then own plants post-corporate separation --

A. Correct.

Q. -- at that time the Genco will be compensated for the reliability value of those units as determined by the market through the reliability pricing model; is that right?

A. Yes, that's correct, unless it enters into some bilateral contracts with third parties.

Q. And, again, thinking about the 2015-2016 planning years, assuming AEP Genco's fully-embedded costs are approximately $400 per megawatt-day, but the RPM price is approximately $130 per megawatt day, you would not consider that market price in that example to be confiscatory, would you?

A. No.

Q. And that's because market pricing cannot be considered to be confiscatory, would you agree?

A. I would agree, yes.

Q. Now, if we assume a different hypothetical, assume AEP Ohio has an ROE of 10 percent in 2012, 6 percent in 2013, and then 10 percent again in 2014, over that three-year period you would not think that AEP Ohio would be unable to attract capital, would you?

A. I would agree with that.

Q. Now, let's assume the Commission approves or adopts the equity stabilization mechanism as you propose, and let's assume AEP Ohio in the year 2013 has an ROE of 3 percent, so in that case AEP Ohio would make a filing in approximately May, 2014, as part of its SEET filing, correct?

A. Yes.

Q. And then you anticipate that that filing would receive the same sort of review as previous SEET filings have to date, correct?

A. Yes, that's correct.

Q. And that would entail a review of the nonrecurring expenses, extraordinary expenses, and inappropriate expenses to the extent they fall in the exclusions as specified by the Commission in the SEET proceedings, correct?

A. Yes, that's correct.

Q. Now, the earliest you would expect the

ESM charge to start would be in late -- in that case would be in late 2014, correct?

A. Yes.

Q. And that ESM charge, as approved by the Commission, would be a nonbypassable charge imposed on all AEP Ohio customers, correct?

A. Yes, although, the Commission would have flexibility with respect to that as I mentioned previously.

Q. Okay. And under the example that I've described with 3 percent ROE, the ESM charge would be designed to collect the difference between the 3 percent and the 7 percent ROE, correct?

A. Yes, that's correct.

Q. And you would expect that that design, that collection, would occur over a one-year period.

A. Yes.

Q. So in that case it would run through late 2015, or if it had a longer collection period, longer than late 2015, correct?

A. Yes. I would agree with that. I hadn't really thought through that time sequence, but I think that would be correct.

Q. Okay. And in your testimony, you estimate that for purposes of AEP, approximately 100 basis points is the equivalent of $69 million, correct?

A. Yes.

Q. So in this example of 3 percent ROE, the charge would be intended to recover 4 times $69 million.

A. Yes, that's correct.

Q. Some 400 basis points, correct?

A. Yes, that's correct.

Q. So subject to check, that would be a charge of approximately $276 million.

A. Yes.

Q. Now, the ROE determination, I think you mentioned for purposes of the equity stabilization mechanism, would include off-system sales revenues. That's a difference from the SEET test, correct?

A. The present SEET test, yes.

Q. So you would agree that when the Commission is considering whether AEP Ohio is available to attract capital, that the Commission has to include all of AEP Ohio's revenues.

A. Yes. And I think that's important because AEP Ohio is the entity that is financing, not some subset of AEP Ohio and, in fact, this whole issue using a three-year average as opposed to an annual discrete RPM price should minimize the affect of any surcharge given that it would effectively provide a higher capacity rate in the first two years by comparison to RPM, and it would more likely than not ensure that the company does not go below that 7 percent lower threshold under the equity stabilization mechanism. So it's just more of a remote possibility under a three-year average that there would be a surcharge.

Q. Now, with the example that I gave with return on earnings of 3 percent, it's possible that -- that those lower earnings could be a result of management imprudence, correct?

A. It's possible. It could be caused by any number of factors, but the greater likelihood would be to assign the causation to the shopping load as -- because of the difference between embedded recovery through the SSO rates compared to the capacity rates under RPM or whatever the capacity rate the Commission determines.

Q. Well, I think Mr. Darr asked you earlier that there could be an impact on earnings simply as a result of the AEP Ohio management not taking proactive steps to reduce expenses, correct?

A. Yes. That's a possibility. I think it's increasingly unlikely that would be the case, though, because even under any of the scenarios, the company would have a direct interest in reducing expenses and operating prudently and efficiently.

MR. LANG: No further questions. Thank you, Mr. Kollen.

Thank you, your Honors.

EXAMINER TAUBER: Thank you.

Ms. Grady?

MS. GRADY: No questions, your Honor.

EXAMINER TAUBER: Mr. Nourse?

MR. NOURSE: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Nourse:

Q. Good morning, Mr. Kollen.

A. Good morning.

Q. Like deja vu all over again.

We had a discussion recently in the capacity case about your similar recommendations. I have to go through some of that again this morning for the record.

First of all, let me just start with a point you made a moment ago with Mr. Lang that -- your belief that a market-based price can never be confiscatory. Did I get that correct?

A. Well, the question was asked within the context of once the -- the company became an RPM entity and it wasn't in conjunction with this transition period where the company remains an FRR entity.

Q. Okay. So then would you agree that during the period the company remains an FRR entity a -- an RPM rate could be confiscatory?

A. Well, it's a possibility and that's why we proposed the equity stabilization mechanism. So, in other words, the state compensation mechanism in our assessment, in order to meet the Commission's dual objectives of promoting retail competition on the one hand, and then ensuring the ability of the utility to attract capital on the other hand, requires some intervention, if you will, to -- to meet that second objective, particularly if the RPM is very low as it is over the next two planning and delivery years.

Q. Okay. So the two objectives that you've mentioned that reference back, I believe, to a filing at FERC that the PUCO made.

A. Yes.

Q. That's where you are coming up with

those, right?

A. That's correct. And that was cited both in my capacity charges' testimony and in this testimony.

Q. Right. So do you believe those two objectives are subtending or could be conflicting at times?

A. I think there's he tension between those two objectives, and the Commission itself indicated in its filing that required a quote-unquote delicate balance, and I would agree with that.

Q. Okay. And so why is it that -- is it your belief then that promoting competition creates financial harm for AEP Ohio?

A. I'm sorry. Could you repeat that? I'm not sure I understood the question. I think it's not a correct premise.

Q. That's fine. So you're saying that promoting -- the two goals, sticking with that, the two goals of promoting competition and ensuring the company's not financially harmed are -- there's a tension?

A. There's a tension, yes.

Q. So does that suggest promoting competition can inflict financial harm on the company?

A. It's a possibility, yes.

Q. Okay. And why is that?

A. Well, I think that the testimony in this case is that the RPM is $20 approximately in the upcoming planning year, and $33 in the subsequent planning year, and the testimony is that that is a substantial reduction from the present RPM rate of $146 per megawatt-day.

Given that the company earned 146 -- earned almost a 12-percent rate of return in calendar year 2011 with an RPM capacity rate of $146, if that capacity rate drops down, all else being equal, the earnings of the company will be less.

Q. Yes. And "all else being equal" meaning that the shopping levels in 2011 would remain the same in the future?

A. Not necessarily. If they remain the same or go up, the company's earnings would be less, all else equal.

Q. Okay. And the reason -- so you're saying there is an inverse relationship between the shopping level and the company's ROE; is that correct?

A. If we use 2011 as a starting point and $146 per megawatt-day as the starting point and then if we drop that down to a lower RPM rate, a substantially lower RPM rate, that will put downward pressure on the company's earnings.

Q. And so the capacity pricing mechanism is the reason or the explanation of why there's an inverse relationship between shopping levels and ROE; is that fair?

A. What is the reference to "capacity pricing mechanism"?

Q. Well, that's what we're talking about, the capacity pricing mechanism, RPM, cost.

A. Right. I didn't know if you meant to say "RPM" or are you just --

Q. I'm asking you more generally.

A. -- asking generally if the capacity price is in there?

Q. Yes, generally.

A. Okay.

Q. It's a function of the capacity charge pricing mechanism that produces that inverse relationship, correct?

A. Under the circumstances that are at hand, yes. And, on the other hand, if that capacity pricing mechanism, as you refer to it, if the capacity charge is excessive, for example, if it's substantially greater than even what it was last year, then arguably earnings could improve for the company.

Q. Okay. And you -- I believe you stated earlier to clarify your position, your recommendation, the primary recommendation is that RPM pricing be used, period, correct?

A. Yes, that's correct. Although we've modified it -- I've modified it slightly in this proceeding that we're now recommending a three-year average. The reason for that is that because the RPM pricing is substantially lower in the next two planning delivery years, then that would put more downward pressure on the company's earnings if a three-year average were to be used over the next three years.

And that would not only provide less pressure on the company's earnings on the one hand, but it would provide a lower likelihood of the equity stabilization mechanism kicking in, or, you know, something analogous to that.

Q. Okay. So it's a levelized RPM period is your primary recommendation?

A. I would characterize it as an average period.

Q. Okay. And is there a section in your testimony where you support the notion that RPM pricing should be used, or are you just saying that should be the outcome in the capacity case?

A. That was my testimony in the capacity charges case. I didn't reiterate the testimony other than to just simply state that was my position in that case.

Q. Okay. Now, so then your alternative position, I gather, is that the -- anything above RPM, including this averaged RPM approach, in that case you would trigger the ESM proposal, correct?

A. Yes.

Q. Okay. So this seems a little odd to me, but you have got to remember who I represent, but you're saying the --

A. I don't know what to take away from that comment.

Q. I'll get to that.

So you're saying that if the rate is higher, then we need earnings protection.

A. Well, we think that the correct approach is to use RPM for a three-year average.

If, on the other hand, the Commission moves along this spectrum, or if you can describe at that time conflicting tensions between the two objectives of promoting retail competition on the one hand and ensuring utilities' ability to attract capital on the other hand, if you look at that -- that second of the two objectives, then the question is -- and the Commission uses that as the basis for a higher capacity rate than the RPM or the three-year average, then the Commission also runs the risk of overly compensating the company.

And so that -- that's the rationale then for having ESM, or the equity stabilization mechanism. It's a protection, if you will, for customers on the upside as far as the company overearning, but, in exchange for that, providing the company some downside protection. But it's only if the Commission decides to move away from its prior reliance upon the RPM as the state compensation mechanism.

Q. Yes. So your concern then in your alternative scenario is that the company will overearn if they get anything more than RPM; is that fair?

A. Well, that's certainly one concern, right. There's dual concerns. One, on the one hand, is that the capacity rate be too low; on the other hand, that it be too high. So what we've attempted to do is devise a regulatory tool, if you will, that would allow the Commission to be within certain reasonable -- a zone of reasonableness, either clawback something excessive or increase something that was inadequate.

Q. Well, that's where I was having trouble. You say on the one hand you're concerned if the rate is set above RPM, the compensation might be too low and that's part of your bottom end of your dead band in the ESM. Why aren't you concerned about the rate being too low at RPM?

A. Well, because we think that the -- the primary position of the Commission, which has historically been the case, the state compensation mechanism is the RPM, except on this interim basis which we have the two-tiered rate presently in effect.

But if the Commission then wants to move off of RPM as a state compensation mechanism for whatever reason, if it believes that additional compensation is necessary above and beyond RPM, only if it gets over that threshold do we want some type of consumer protection and that's the -- that was the genesis, really, of the ESM.

Q. Okay. But only if the Commission increases the rate are you concerned about the underearning; is that correct?

A. Well, yes, because that would be a policy decision on the part of the Commission to establish a rate greater than RPM on the basis of attempting to beat the second of the two stated -- the Commission's two stated objectives.

So only under those circumstances would there be the risk of overshooting the full compensation level. And that was then the genesis of the ESM.

Q. Okay. Did you do a financial analysis -- well, first of all, let me clarify some things.

So to finish off this clarification of your recommendation, so there's no scenario under your recommendation that this -- this levelized or average RPM rate of $69 would -- would exist at the same time ESM exists; is that correct?

A. That would be my recommendation, but the Commission, of course -- and I do say in my testimony that the Commission can certainly take the concept and move it around to meet whatever it sees as the appropriate balancing of the two objectives, so that would be a possibility. It is not my recommendation,

but it's a possibility.
Q. Okay. But part of your ESM presumes, does it not, that anything below 7 percent ROE would be unreasonable?
A. It doesn't necessarily presume unreasonableness, but anything within the 7 to 11 percent would constitute a zone of reasonableness, but that anything below 7 percent effectively would be unduly low or not sufficient, not sufficiently compensatory.
Q. Okay. So have you done a financial analysis of what the impact would be on the company during 2012 through 2015 period of the $69 rate?
A. I have not.
Q. And you've not compared that -- the impact of your recommendation for the $69 rate to the company's projections of earnings using the two-tiered proposal for pricing of capacity as well as the proposed RSR mechanism?
A. I have not performed my calculations along those lines.
Q. Okay. Let me ask you to accept, subject to check, and just assume, for purposes of a hypothetical here, if other parts of the record demonstrate that the difference would be $370 million

between the company's proposal and your $69 rate, okay? Can you assume that?

A. Well, I don't know whether the $370 million is an annual amount or if it's a three-year amount. I would need a little bit more explanation or description of what -- what it is that this $370 million of revenue represents.

Q. Okay. So let's assume it's an annual number. You can assume that, okay?

A. Okay.

Q. All right. Now, using your -- you have the converter on page 9 of a 1 percent ROE being $69 million, correct?

A. For each 100 basis points, yes.

Q. Yes, for one change in ROE, so the $370 million figure that I asked you to assume, that would be more than 5 percent?

A. Looking at -- solely looking at the revenue, and I don't know what attendant facts are relevant to the $370 million of revenue; for example, I don't know if there's been a reduction mentioned because you're not generating.

I don't know the proximate cause of the $370 million of revenue. What I did here is I determined the rate on investment of common equity investment and if -- if all you did was drop out revenue, it would be a 69 -- $69 million of revenue would result in 100-basis-points reduction in the rate of return, but you're also dropping out expenses, that would be a countervailing factor.

Q. Right. And I asked you to assume the 370 was based on, all else being equal, simply the difference between the two-tiered pricing mechanism the company's proposing as well as the RSR revenue. That's simply a revenue source, right?

A. Yes.

Q. That those go away and your $69 rate proposed or charged, so let's assume that, that's fine, I'm not going to walk through the calculation right now, we could do that, but under your converter then there would be an excess of 50 percent negative impact on ROE using the $370 million figure, correct?

A. Yes, all else equal, yes.

Q. Okay. And have you looked at the company's projected ROE under the plan that does assume the two-tiered pricing for capacity and that does assume the RSR revenue?

A. Well, I've seen results. I haven't seen actual underlying calculations other than what were detailed in Mr. Allen's exhibit, I believe it was

Mr. Allen's exhibit, no. It was some other witness, some other AEP witness, but I did see that calculation.

Q. Okay. And subject to check, would you agree that Witness Sever, in Schedule OJS-2, says the ROE for 2013 would be 7.5 percent?

A. Yes, I saw that. I wasn't able to validate that. It's based upon a series of assumptions, most of which were not identified by Mr. Sever, so it's basically just kind of something that is out there, but, again, it's unverifiable, at least in the information that I had or that Mr. Sever provided in his testimony.

Q. Did you examine Mr. Sever's workpapers?

A. No.

Q. Did you -- did OEG issue any data requests or discovery requests concerning those numbers?

A. I don't know.

Q. Okay. And you didn't check into it yourself, did you?

A. I did not.

Q. Okay. So is it fair to say -- would you expect that using your $69 proposed rate that the company's ROE, during the term of the ESP, would also

be below 7 percent, all else being equal?
A. I think that would be correct.
Q. Okay. So the --
A. And, of course, it would depend upon the starting point if -- but I think generally that would be correct.
Q. Okay. Now, one of the things that you -- that you, I guess, critique, is the two-tiered pricing relative to the allegation of being discriminatory, correct?
A. I did not address that issue --
Q. Okay.
A. -- in my testimony in this proceeding.
Q. I think you had some questions about it a few minutes ago.
A. I had one question from Mr. Darr.
Q. Okay. And if the Commission were to establish a single -- a single-capacity-charge level rather than a two-tiered approach, the RSR -- the company's proposed RSR could work in conjunction with a single capacity charge level instead of a two-tiered level; is that correct?
A. The conceptual framework for the company's RSR is independent of the structure of the capacity charge itself, whether it's one -- one

single rate or multiple tiers. It's basically a make-whole type of proposal.

Q. So the answer would be "yes"?

A. I think -- it is yes, and I thought I said that.

Q. Okay. So in your testimony in the capacity case where we've discussed your recommendation was slightly different but mostly the same --

A. And the company's proposal was slightly different as well.

Q. Yes. Okay. But in your capacity testimony, you stated that both of your recommendations produced just and reasonable rates. Do you recall that?

A. Refresh me on both of my recommendations.

Q. Well, in the capacity case, you had RPM and then you had the ESM. You didn't have the average rate.

A. Yes, that's correct.

Q. Okay. So is it your testimony today that both of your recommendations produced just and reasonable rates for the company?

MS. GRADY: Objection. I'm sorry. Objection.

A. Yeah.

MS. GRADY: Asking for clarification. I don't know what recommendations in which case you're talking about. Mr. Kollen testified that he made different sets of recommendations in both cases, so I would like clarification, for purposes of the record, as to what recommendations you are referring to.

MR. NOURSE: I can rephrase, your Honor.

EXAMINER TAUBER: Thank you.

Q. So, Mr. Kollen, we just compared your two recommendations that you made in the capacity case with the two recommendations you're making in this ESP case and you recall those, correct?

A. Yes, I do.

Q. In the -- excuse me. In the capacity case it was your testimony that both of your two recommendations in the capacity case produced just and reasonable rates for the company, and you recall that, correct?

A. I do, yes.

Q. So my question: Have your two recommendations in this ESP case, is it your opinion that they also produce just and reasonable rates for the company?

A. Yes. And the reason for that is that the

Commission, I believe, has a significant amount of discretion as to the capacity charges and the manner in which they are applied.

And in order to address the two objectives that it stated in the filing to the FERC and in order to make that assessment, it has to make a series of what I would call "threshold policy decisions." The first one being a state compensation mechanism, should it be RPM or should there be something more? And if it is RPM, I believe that that's just and reasonable.

On the other hand, if it should be something more, then I believe that's just and reasonable, subject to the constraints that would be imposed under the -- my equity stabilization mechanism.

So I don't see a discrepancy or a divergence there, even though the rates would be substantially different. I see that, either way, they would fall within the just and reasonable standard.

Q. Okay. So with respect to your primary recommendation of average RPM rates, and presuming, under the example we went through a few minutes ago, that the resulting ROE would be in the 2 to 3 percent range for the company, that doesn't change your opinion as to whether the rates are just and reasonable?

A. No, it doesn't. And because the Commission is going to have to decide where on the spectrum of achieving those objectives it wants to land, so, for example, if the Commission doesn't give a great deal of weight to the ability of the utility to attract capital or doesn't give a great deal of weight on a discrete annual basis but looks over the longer term, it may determine that a lower return on equity is acceptable for the next couple of years.

It isn't something that explicitly really needs to be addressed. And then, therefore, it gives effectively -- whether it states it or not but effectively then it would give greater weight to the promoting retail competition an alternative supply so that's why I say that there really is a very significant judgment on the part of the Commission where it wants to land on the spectrum of achieving these objectives.

And so I'm not going to argue that a 2 or 3 percent resulting rate of return for one or two years is not just and reasonable if the Commission makes a policy decision that RPM is the state compensation mechanism and it's sufficiently compensatory.

Q. But you are agreeing in your answer in order for the Commission to reap that result, they would be sacrificing the second goal of maintaining ability to attract capital, correct?

A. No, I wouldn't necessarily agree with that. I would say that they are giving it less weight. I don't think it's sacrificing. That suggests to me getting rid of it all together, but giving it less weight and perhaps looking at the longer term RPM turns back up in the third upcoming planning year.

Q. Does an ROE of 2 to 3 percent permit the company to attract capital?

A. Over the long term, it would not. I don't know that it would have a significant effect over the next one or two years.

Q. And you testify in a lot of regulatory -- traditional regulatory jurisdictions, correct?

A. I do.

Q. And have you recommended that -- let's just stick with a single digit rate of return for a couple of years and then we'll fix it later. Is that something you've recommended before?

A. I'm not sure I follow the question, but we have recommended and I have personally recommended sharing -- earnings sharing mechanisms that protect on the downside the company in a certain earnings level and on the upside protect the consumers from any excessive earnings.

Q. But have you -- have you recommended in a traditional regulatory jurisdiction that if there's a 2 percent ROE the utility's earning, that that's unacceptable but we're going to wait for two years and fix it later? Is that something you recommended before?

A. Well, not directly, but indirectly, that certainly has been the result of some of my recommendations and those of other consultants with my firm. For example, that allowance of certain purchase power costs on a temporary basis would result -- in fact, result in lower returns for that period of time. After which the returns reverted more to a normal traditional return on equity.

Q. Okay. And you may have indicated this before, but for clarity, did you examine the financial impact on AEP Ohio of the RPM pricing that you're recommending?

A. No, I haven't done any independent

calculations.

Q. Okay. So you didn't consider that in making your recommendation; you didn't consider the financial impact?

A. Well, I did consider the financial impact in framing the equity stabilization mechanism, but the Commission itself has to make the determination of what the appropriate state compensation mechanism is. If it is limited to RPM, then that's the answer. And it doesn't get overridden by whatever the financial consequences of that are.

If, on the other hand, there is a more of a weighting, if you will, given to the second of the two objectives that the Commission stated, and that is the ability of the utility to attract capital, then perhaps that would lead to some threshold decision to add something more to the RPM.

But whether or not, and how, or in what manner that should be affected by the company's earnings is, again, a second threshold or second-level-threshold issue for the Commission to determine.

And what I have done is I simply said, listen, if you go up from RPM, then I propose that you adopt an equity stabilization mechanism in conjunction with that to actually explicitly achieve that second of the two objectives, at least within a zone of reasonableness.

Q. Okay. And this is probably going to go a lot quicker if you don't repeat -- summarize your whole position every time I ask you a question, okay?

A. Yeah. But I had to put some context around that answer. It wasn't an easy one to give a "yes" or "no" to.

Q. It's up to you.

A. I always try to give you a "yes" or "no" and explain, but that one required a little bit more.

Q. Okay. To get to your ESM theory, the Commission has to reject your primary recommendation; is that correct?

A. Yes. Or it could decide to accept the primary recommendation and then move to the ESM but because I think the Commission can, in this instance, pick and choose.

Q. But that's not your recommendation, and I'm correct that to get to the ESM, under your testimony the Commission has to reject your primary recommendation, right?

A. Under my recommendation, yes, that's correct.

Q. Okay. Now, did you consider the fact that the company is a fixed resource requirement entity during 2012 through 2015 in making your recommendations?

A. To some extent, yes, because that's a fact and, but, yet, the Commission historically has used for the state compensation mechanism the RPM.

Q. Okay. And is it your understanding of the fixed requirement -- fixed resource requirement that the company basically self-supplies generation rather than selling it into the RPM, purchasing out of the RPM?

A. Purchasing out of PJM, yes.

Q. Well, I said "RPM."

A. Yes.

Q. So it's -- the FRR is a way to bypass the RPM market; is that accurate?

A. Yes.

Q. Okay. And is it your understanding that AEP Ohio has -- as part of that FRR obligation in its FRR plan, RPM -- with PJM has designated specific generation assets that match up with the -- with the connected load in Ohio?

A. I don't know the answer to that question. I think I've read -- I just don't know.

Q. Okay. Now, what's your understanding of the pricing options under the FRR promotions? Do you have an understanding?

A. Yes, I do. The first, it's really a series of relationships. The state compen -- the FERC defers and the PJM defers to the state compensation mechanism if, in fact, there is one in place. And so that would be the first step. If there is one in place, then that's what it is.

If there isn't one in place, the default is to RPM pricing. But then the utility has the option, under Section 205 of the Federal Power Act, to go to the FERC and seek a cost-based recovery for the capacity.

Q. Okay.

A. A below cost based is not defined.

Q. Your position is the last thing you mentioned, the Section 205 option, is only available if there is no state compensation mechanism?

A. Yes, that's my read of the promotion of the PJM reliability assurance agreement, the RAA.

Q. Okay. And you understand there is a dispute about that and there's a couple of cases at the FERC pending currently?

A. That is my understanding.

Q. Okay.
A. I've given you my read of it. And I believe that's a correct reading of it.
Q. Okay. Now, the capacity charge that we're talking about, you agree that's a wholesale charge?
A. Yes.
Q. Okay. Have you examined the extent to which capacity costs of AEP Ohio are reflected in SSO rates for nonshopping customers?
A. They are; but as far as quantifying it, I don't know. I have not done an independent analysis of that.
Q. Now, is it your opinion a cost-based rate, if the Commission adopted a cost-based rate for capacity, that shopping levels would go down?
A. By "cost-based rate," I'm assuming you mean an embedded cost rate as opposed to an incremental cost rate or?
Q. Yeah. Let's just take the $355 per megawatt-day rate to start.
A. Assuming that's more than something that was embedded into the SSO rate, presumably then shopping rates would not increase.
Q. Okay. And so your answer presumes that

the 355 is greater than what's in the SSO rate for capacity, correct?

A. Yes. I added that assumption because --

Q. Okay.

A. -- you did not have that included in your question. I thought that was an important threshold issue.

Q. I agree.

Okay. Would you agree that there's a number of factors that go into the CRES providers offering of a retail rate to compete with the SSO offering?

A. Yes.

Q. And capacity charge level is merely one of several; is that fair?

A. It is one, yes.

Q. Okay. And would you agree that if the decision of whether a CRES provider would change their retail rate or try to terminate a contract -- an existing contract with the shopping customer would also depend on the embedded margin that's part of that existing rate?

A. I would think, I don't know for certain, but I would think that would be the case.

Q. In other words, if there's high enough margin a CRES provider is experiencing, they may or may not have to change their retail rates based on capacity charge rate increases, correct?

MR. DARR: Objection, no foundation. The witness has already testified that he's not -- not familiar with what those numbers might be.

MR. NOURSE: I think he's given several answers already in this line of questions. I think the question is clearly an example or a hypothetical, so I don't think it needs foundation.

EXAMINER TAUBER: The objection is overruled.

A. I can't speak for a CRES provider, but just as a matter of economic theory and practice, in my experience the answer would be that would be a factor to be considered, yes.

Q. Okay. Now, assume for me that the -- that the Commission would find that the -- excuse me, the company's cost of capacity as equal to or greater than $255 per megawatt day, okay?

A. Okay.

Q. And under that example would you agree that the company's proposed two-tiered pricing capacity would promote competition?

A. All else being equal, I would think so.

I haven't done an analysis of it, but I would think so.

Q. Okay. You had some questions earlier about ESP pricing, and I believe you discussed the ESP statute, your understanding of how the pricing works, earlier -- earlier this morning, correct?

A. Maybe if you can refresh my recollection --

Q. Yes.

A. -- on the specific issue.

Q. Questions about whether the ESP rates can be cost based.

A. Okay.

Q. Do you recall those questions?

A. Yes. Mr. Darr, yes.

Q. You agree -- yes. You agree that beyond the FAC or the fuel adjustment clause, that ESP rates can be based on costs in part?

A. Oh, in part. Example, environmental costs to some extent -- I'm sorry, environmental cost recovery is based, in part, upon costs. And there may be other riders that are based upon cost, but at least those two, the environmental recovery rider and the fuel adjustment clause rider, are cost-based tariffs.

Q. Okay. And just because a rate is not developed or calculated based on the rate of return rate-based method, that does not mean that the rate proposed or adopted isn't -- isn't based on costs, correct?

A. I'm not sure what you mean by that question.

Q. Okay. Let's come at it a different way. Is it your understanding that the ESP rates are subject to the MRO test? You're familiar with that?

A. Yes, I am.

Q. Okay. And so, in general terms, would you agree that as long as the MRO test is satisfied, that the Commission has tremendous flexibility and discretion in setting rates in an ESP?

A. It does have discretion.

Q. And certainly there is no prohibition that rates cannot be based on cost that you are aware of, is there?

A. I'm not aware of a prohibition that rates cannot be based upon cost.

Q. Okay. And referencing costs in establishing rates would be, generally speaking, would be a reasonable thing, would you agree?

A. It depends on the context.

Q. Okay. Now, is it your understanding that things like automatic increases are permitted for nonfuel based rates in an ESP?

A. Oh, in other words, that the ESP rates can move upward based upon prespecified increases? I believe that's true.

Q. Yes.

Okay. So a form of alternative regulation could be used to -- to an index or a -- or an automatic percentage increase, those are the things that you think would be allowed under that statute?

A. I'm not here to give a legal opinion on what would be allowed, but I believe that I have seen those types of structures proposed, and I believe that the Commission has adopted them in the past, for example, for the two AEP companies in this state.

Q. Okay. Now, what revenue decoupling?

A. What about it?

Q. Is that something that would fit into the discretion and flexibility that you mentioned earlier?

A. I'm not sure how broad the Commission's discretion or flexibility is, but I think it is fairly broad. I don't agree with revenue decoupling, but it would be a -- potentially fall point within the Commission's discretion. That doesn't make it acceptable because it can be done even if it can be done.

Q. And we may have talked about this before, but you've never met a revenue decoupling proposal that you liked, have you?

A. Generally, I do not like them because it, in effect, decouples the cause and effect relationship. And it, in my experience, is a very harmful mechanism generally to consumers.

Q. Okay. Now, page 5, carrying over to page 6 of your testimony, you're speaking to the $3 per megawatt-hour credit that Mr. Allen uses, correct?

A. Yes. He doesn't really use it. That's the company's proposal.

Q. Yes.

A. But all off-system sales revenues would essentially contribute a $3 per megawatt-hour margin to the revenue amounts in each of the future delivery years.

Q. Well, okay. To be fair, his -- Mr. Allen's proposal doesn't -- isn't explicitly tied to off-system sales margins, is it?

A. Well, actually it is. It's the -- for components of revenue and for -- I'm sorry, I should have said "for shopping customers." I misspoke. The $3 per megawatt-hour credit for -- is for shopping load basically.

Q. And I gather you're saying in this sentence that ends on line 2 of page 6 that the Commission should use actual energy margins. That suggests that the Commission should use and do an after-the-fact credit or is that just saying that it should be 100 percent of off-system sales margins? What are you saying there?

A. Yes. Actual energy margins.

Q. And what does that mean relative to off-system sales margins?

A. Okay. Well, what we're talking about here is shopped load and presumably it would carry roughly the equivalent margin as an off-system sales margin.

And so essentially what I was saying was that if you look at the projections, the energy pricing projections from AEP range in the 50, 60 dollars per megawatt-hour, and if you look at the margin on that, assuming that the company has a production cost, a run cost of maybe $35 per megawatt-hour.

You've got a margin there that is substantially greater than $3 a megawatt-hour and that's what I would recommend that if the Commission adopts a retail stability rider along the lines of that proposed by the company in this proceeding, that at least with respect to the shopping credit, it be the actual margin as opposed to the imputed $3 per megawatt-hour.

Q. Have you done an evaluation of the -- the so-called actual energy margins or attempted to quantify what it should be?

A. No, I haven't. I haven't beyond what I just simply described to you and I think that, you know, to the extent that you've got a 30 to 35 dollar per megawatt-hour production cost, that would be fuel and available O&M, that's a factor of ten-fold greater than the $3 proposed by the company.

Q. But you're throwing out assumptions. Did you do an analysis or quantify what the -- what your recommended actual energy margin credit should be?

A. Well, no, because the -- the formula itself would define that. The actual energy margins would be available and known, and they will be whatever they are, but my assessment is that they would be substantially greater than $3, perhaps by a factor 10 in some on-peak hours and substantially less than that in off-peak hours, not less than $3 but less than on the on-peak hours.

Q. Okay. But you're speculating when you are throwing out the numbers in your answer just now, right?

MR. BOEHM: Objection. I don't think -- object to the form of the question that he's speculating.

MS. GRADY: I would also object on the grounds it has been asked and answered.

MR. NOURSE: Well, your Honor, I think he's stated numbers in the last two answers, that's true. And then I followed up with asking him if he did any actual evaluation and quantification, and I believe he said no. So since he threw it again in the answer, I am asking him the same question.

EXAMINER TAUBER: Could you rephrase your question, Mr. Nourse?

Q. Notwithstanding what you just said in your answer, Mr. Kollen, you've not done any evaluation or quantification to develop a specific energy credit that you're -- you would propose in your testimony, correct?

A. Well, I answered you previously that I have not quantified an annual or delivery year amount because it would be determined based upon the actual margins and -- but, yes, as opposed to the company's proposal to just simply use a $3 per megawatt-hour imputed margin.

Q. Okay.

A. So I can't quantify it without knowing what the future is, unless I were to take the company's projected energy prices on-peak and off-peak and compare those to the company's production costs on-peak and off-peak.

And I told you that what I had done is a fairly rough estimate of the differential. If the production cost is 30 to 35 dollars per megawatt-hour, and the on-peak price is 50 to 60 dollars per megawatt-hour, then you can compute the margin as a factor of maybe 10 times greater than what the company has proposed. That's the quantification I've done. I haven't gone beyond that.

Q. Okay. Let's turn to page 15. You had a little bit of a discussion earlier about the Kentucky Public Service Commission case and you're referencing it here on page 15 and you reference it in Exhibit LK-2. Do you recall that?

A. Yes.
Q. Okay. So are you familiar with the Kentucky case?
A. Quite, yes.
Q. That's the Big Sandy case, right?
A. Yes, it is.
Q. Okay. And do you know if the company withdrew that case?
A. I suspect that based upon Mr. Darr's cross-examination, but I was not aware of that. I'll have to have a discussion with Mr. Kurtz about that after I get off the stand.
Q. Okay.
A. Or Mr. Boehm, yes.
Q. Now, but relative to your understanding, up to that point was the period 2012 through 2015 at issue in that case?
A. Yes. The next 30 years were at issue in that case with respect to the billion dollar investment of the recovery over that time period in the options to retrofitting Big Sandy 2 with a scrubber and doing other balanced plant modifications.
Q. When was the Big Sandy scrubber proposed to go in service?

A. 2016, second quarter.

Q. Okay. So the comparison that was done in the case would have been to the cost of Big Sandy for 2016 and following -- during the life of service for that plant compared to projected market rates for that long-term period, correct?

A. In part. There were a number of scenarios looking at five years of purchasing in the PJM capacity and energy markets, five-year scenario, ten-year scenario, after which time, after the five or ten years, the scenarios generally required the construction or acquisition of combined-cycled natural-gas-fired capacity.

Q. Right. But the period in question was 2016 and following, was it not?

A. Yes.

Q. Okay. Do you know if the prices that you've copied into your exhibit here, LK-2, if since the time those were prepared that they've gone down?

A. I don't know. I believe that the most recent BRA results came out maybe a couple of weeks ago, but I have not reviewed those.

Q. Okay. Well, I'm talking about the -- the projected prices.

A. Oh, AEP's projected prices?

Q. The projected energy prices that are reflected in LK-2.

A. These are AEP's projected energy prices and I'm trying to get clarification on your question has AEP revised them, and, if so, presumably they would be different than this, but this was the recent projection that I had developed by AEP Service Corp. in conjunction with the Kentucky Power case in Kentucky.

Q. Do you know when this projection was made?

A. Earlier this year is my recollection.

Q. In 2012?

A. My recollection is that it was earlier this year, maybe at the very end of last year.

Q. Maybe in September of 2011?

A. That could be. That could be. The company filed its case in December, I believe, of last year, so the forecast was prepared prior to that date, I'm sure.

Q. You don't know whether it remains accurate; is that correct?

A. Well, forecasts -- the accuracy of a forecast, of course, is only borne out by actual experience, but if the question is has it changed since that time, I don't know.

Q. Okay. On page 16 of your testimony you're making a reference here, the bottom half of the page, to the -- well, here you make a reference to the Mitchell generating unit being sold. Do you see that?

A. Yes, I do.

Q. And you state in line 16 and following, the sale -- the asset sale will have no effect on the company's revenues from CRES providers. Do you see that?

A. I do.

Q. Okay. Now, you are not saying that the company's revenues are not affected by the sale of these assets, are you?

A. No. I'm saying the revenues from the CRES providers are not affected. You know, we're a capacity charge case. We are trying to determine the capacity charge rate that will be charged to CRES providers.

And the company then developed this traditional cost-based revenue requirement and divided it by the coincident peak load as the rate then that would be -- or the cost-based rate that would be applied to the CRES providers, regardless of its actual cost structure going forward. So effectively that would be fixed under the company's proposal in the capacity charge case.

And my point here is that if those assets, then, are sold out from underneath, the cost structure goes down of either AEP Ohio Power or the Genco in the future and, but, yet, the charges to the CRES providers don't go down to reflect that. And that was the point of these statements on this page.

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

That's all I have, your Honor.

EXAMINER TAUBER: Thank you.

Mr. Margard?

MR. MARGARD: No questions. Thank you.

EXAMINER TAUBER: Let's take a five-minute break at this time. Let's go off the record.

(Recess taken.)

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

Mr. Boehm, any redirect?

MR. BOEHM: No redirect. Sorry, no redirect, your Honor.

EXAMINER TAUBER: Okay. Thank you.

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EXAMINATION

By Examiner Tauber:

Q. Mr. Kollen, the Bench has a couple of questions for you.

A. Okay.

Q. If you could turn to page 18 of your testimony.

A. Yes.

Q. I don't think we got into that at all today, so I just want to clarify for the record. Is it the equity-based mechanism you propose, the 7 percent being the lowest end of the threshold, but then if the Commission were to adopt a revenue-based mechanism, you recommend 7 percent as a starting point which is the equivalent of $689 million. What is the basis for that?

A. Well, under the company's retail -- quite an echo in there -- the retail stability rider, they start out with 2011 as the revenue bogey, if you will, and so they determined that AEP Ohio Power had earned a little over 12 percent in 2011. And if you'll reduce that down to 10-1/2 percent, the net -- the bogey for the total revenue, and then they would compare the actual revenue from four categories along with the $3 per megawatt-hour on shopping load amount as -- as the future revenue and compare that to the bogey. And then the bogey -- the difference would be the revenue that would be recovered through the retail stability rider.

What I'm suggesting is that the 10-1/2 percent is too high as a starting point. If you're going to have a low end-based rider, push it down to 7 percent, and that would be comparable to the 7-percent low end of the equity stabilization mechanism.

And we think that that 7 percent is reasonable, falls within the zone of reasonableness cited by the Ohio Supreme Court for these reasons: First of all, it's almost doubles the cost of the long-term debt. Second of all, it's about a 10.8 percent return if you gross it up for income taxes which is what the customers will have to pay. Third, it's at or above what the other affiliate companies are earning. And then, you know, so we think that it's reasonable for those -- those reasons.

Q. And then you say that this assumes the Commission will authorize the capacity charges proposed by the company in this proceeding. How would that change if the Commission were to adopt your average RPM price over the three-year period?

A. Well, the revenues would be less because -- than what the company itself has projected. The reference I think you're mentioning is on page 18, starting on line 14.

Q. Right.

A. This is the company's projection in Mr. Allen's Exhibit WAA-6. And what he did was a revenue projection in each of the next three delivery years, June 1 to May 31, '12 to '13, '14 to '15, and what the revenues would be under its two-tiered proposal in this proceeding. And if the average of $6 is used in lieu of the company's proposal, those revenues, the projected revenues, would be less.

Q. Oh, so then it would be the same result if we adopted the 146 threshold, but not as dramatic perhaps?

A. It still would be less if we -- if we adopted the $146 per megawatt-day as the maximum amount, a single-capacity rate, as opposed to a two-tiered rate.

EXAMINER SEE: Just try to speak loud.

THE WITNESS: Okay, okay, we'll try that.

A. The company has in its revenue

projections over the next three delivery years a two-tiered capacity rate, and the first tier is the 146, and then the second tier is the 255.

Q. Okay. Correct.

A. So if you have a single rate, 146, the projected revenues would be less than what Mr. Allen projects on his WAA on Exhibit 6.

Q. So then would your recommendation change at all with the 7 percent return on equity?

A. No, because each of the future years would not be affected by that as far as the actual revenues. Remember, it's only the bogey, the starting point, that's affected by the return on equity so, you know, if you use a 7-1/2 percent rate of return -- or 7 percent rate of return, the revenue bogey would be 689 million based on 2011.

Then the actual revenues in those four categories will be whatever they are based upon the capacity rate that the Commission allows, the level of shopping, the level of off-system sales, and then those revenues will be compared to the bogey and the difference under the company's proposal would be the retail stability rider surcharge.

EXAMINER TAUBER: Correct. Okay. Thank you.

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EXAMINATION

By Examiner See:

Q. Mr. Kollen, you're familiar and have testified before the Commission in the significantly excessive earnings test cases.

A. Yes, yes.

Q. So you understand that as part of that proceeding, it's possible for the Commission to order the company to refund moneys to customers.

A. Yes, that's correct.

Q. I'm trying to understand how your proposal, your ESM proposal, works in conjunction with the SEET filing.

A. Essentially --

Q. I understand that you want them to be filed together, but are they totally independent of one another?

A. Yes, they are in terms of the calculation because if there's a divergence in the calculation between the SEET and the equity stabilization mechanism, it would be in the area of the off-system sales margin's treatment, and because right now the Commission has determined that off-system sales margins are out -- out of the numerator, out of the denominator. We think they should be in there for purposes of the equity stabilization mechanism because it should be all encompassing with all of the revenues, all of the earnings. But, you know, essentially the calculations would be the same with that exception.

But then the significantly excessive earnings test requires a selection of a group of comparable companies and then --

Q. Mr. Kollen, I understand how the SEET works. My question is, is it possible for the company to be required to refund under the SEET and still get a charge under the ESM?

A. No. In fact, what the ESM would serve to do is essentially compress the SEET test, so, in other words, assuming that the calculations were identical, and let's say that the SEET threshold ended up being 16 percent because it was based upon a comparable group plus plus, okay?

So let's say the SEET's earned threshold return was 16 percent. Anything over 16 percent was refunded. Well, what the ESM would do would be to effectively cap that at 11 percent. And so even if you might not have a refund under the SEET, you might under the ESM, but you would never have a situation where there would be a surcharge under the ESM in conjunction with a refund under the SEET.

EXAMINER SEE: Thank you.

THE WITNESS: You're welcome.

EXAMINER TAUBER: You may be excused. Thank you.

THE WITNESS: Thank you.

MR. BOEHM: OEG moves for the admission of Mr. Kollen's direct testimony OEG 101.

EXAMINER TAUBER: Are there any objections to the OEG Exhibit 101?

Hearing none, it shall be admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. BOEHM: Thank you, your Honor.

MR. DARR: Move the admission of IEU 123.

EXAMINER TAUBER: Any objection to IEU Exhibit 123?

Hearing none, it shall be admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER SEE: The Bench notes that during the break counsel for IEU, Mr. Oliker, provided the Bench with a -- with the new cover for IEU Exhibit 116 as previously requested.

Mr. Stinson?

MR. STINSON: Yes, your Honor. The Ohio Schools would call Mark Frye.

If I could approach, your Honor?

EXAMINER SEE: Yes.

(Witness sworn.)

EXAMINER SEE: Thank you. We are going to try the mics one more time. Turn it around, please.

THE WITNESS: Fair enough.

EXAMINER SEE: And pull it closer to you.

THE WITNESS: Okay.

(EXHIBIT MARKED FOR IDENTIFICATION.)

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MARK FRYE

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

DIRECT EXAMINATION

By Mr. Stinson:

Q. Mr. Frye, would you state your full name and address for the record, please.

A. Mark R. Frye, 241 North Superior Street, Toledo, Ohio. I'm the President of Palmer Energy Company.

Q. I've placed before you what's been marked as Schools Exhibit 101. Can you identify that, please.

A. That's my testimony that I prepared -- my written testimony that I prepared in this particular case.

Q. And it was prepared by you or under your direct supervision?

A. It was.

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

A. I do. I have three. On page 3, line 4, where it talks about "including Ohio Power Company's" and in parentheses it has "AEP-Ohio." I would like to add two other defining terms there, the "Company" in parentheses, "Company" in parentheses with a capital C, "or AEP" in parentheses.

My second change would be on page 12, line 3, where I use the word "understated," the word should be "overstated."

And on the same page, line 16, where I have the words "Exhibit DMR-3," I would like to revise that to "AEP Ohio's Supplemental Response to School's INT-1-007."

MS. GRADY: I'm sorry. I missed the specific place that that insertion is.

THE WITNESS: That's line 16, page 12.

Q. I think you replaced Exhibit DMR-3 with the supplemental discovery response?

A. That's correct.

Q. Any other changes?

A. No.

Q. If I were to ask you the same questions that occur in your direct testimony, would your answers, as corrected, be the same today?

A. They would.

MR. STINSON: Thank you. I'll move the admission of Schools Exhibit 101, subject to cross.

EXAMINER SEE: Before we begin with cross, Mr. Frye, could you give me the reference -- the correction that you made to page 12, line 16, one more time, please.

THE WITNESS: Certainly, ma'am. "AEP-Ohio's Supplemental Response to Schools INT-1-007."

EXAMINER SEE: Okay.

Cross, Ms. Kaleps-Clark?

MS. KALEPS-CLARK: No questions. Thank you.

EXAMINER SEE: Mr. Millar?

MR. MILLAR: Millar, no questions.

EXAMINER SEE: Mr. Yurick?

MR. YURICK: No questions.

EXAMINER SEE: Mr. Campbell?

MR. CAMPBELL: No questions.

EXAMINER SEE: Mr. Siwo?

MR. SIWO: Just a couple of questions, your Honor.

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CROSS-EXAMINATION

By Mr. Siwo:

Q. Good morning, Mr. Frye. How are you doing today?

A. I'm fine, thank you. How are you?

Q. I'm fine. My name is Thomas Siwo. I am here on behalf of OEM Energy Group, and I just have a few questions for you.

Mr. Frye, you recommend rejecting the RSR all together, but if the Commission adopts an RSR, it is your proposal that the RSR not be collected from schools, correct?

A. That's correct.

Q. Okay. Is it your proposal that if the RSR is adopted but not collected from schools, that the total RSR amount will be reduced by that proportion -- will be reduced by the proportion that otherwise would be allocated to the schools, or should it be allocated and recovered from other customers?

A. My preference would be that the Commission would adopt it without collecting the RSR on anyone else or assigning those charges to anyone else.

Q. Okay. So you do propose that proportion be reduced rather than collected from other customers.

A. Correct.

MR. SIWO: Thank you.

No further questions, your Honor.

EXAMINER SEE: Mr. Boehm?

MR. BOEHM: No questions, your Honor.

EXAMINER SEE: Ms. Kingery?

MS. KINGERY: No questions, your Honor.

EXAMINER SEE: Mr. Darr?

MR. DARR: No questions.

EXAMINER SEE: Mr. Lang?

MR. LANG: No questions. Thank you.

EXAMINER SEE: Ms. Grady?

MS. GRADY: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Grady:

Q. Good morning, Mr. Frye.

A. Good morning.

Q. Can we go for -- can we -- can we pull for a moment to your discussion on page 3, and I would like to explore with you a little bit about the service that -- the service that the schools are taking in its efforts in relation to getting a supply for electricity service.

You mention on page 3, line 6, the "SchoolPool." Do you see that?

A. Yes, I see that.

Q. And can you tell me how long the SchoolPool has operated?

THE WITNESS: Thank you, your Honor.

A. The SchoolPool, as far as I can recall, was initially started shortly after SB 3 went into effect in 2001.

Q. Is the SchoolPool, to your knowledge, still functioning?

A. No, it's not as far as I know.

Q. Okay. Now, further on down, you indicate that the OSC has operated an electric purchasing program since 1998. Do you see that?

A. Yes.

Q. Do you know if that effort is currently in place?

A. No, it's not.

Q. Has that effort been superseded by the Power4Schools program that you mention on line 13?

A. Both -- both efforts have been superseded by the Power4Schools program.

EXAMINER SEE: Let's go off the record for a second.

(Discussion off the record.)

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

Q. (By Ms. Grady) Now, the Power4Schools program, that is currently underway; is that correct?

A. Yes.

Q. And is that -- that program expected to be underway during the term of the ESP?

A. Yes.

Q. And you indicate on line 15 that the "Electricity is purchased and delivery arranged through a third-party competitive retail electric service provider under a master contract...." Do you see that?

A. Yes.

Q. Do you know what capacity price the

schools are paying under that master contract?

A. I don't know specifically what the capacity price is. It's my general understanding that it was based upon the RPM costs for portions of the purchase requirements, but the contract is more complicated than that in that it has various discounts based on certain potential outcomes in this regulatory proceeding.

Q. So that the -- would you agree that the capacity price is a discounted price?

A. It's the -- as far as I know, currently anyone participating would be serving under the RPM through that pricing structure. I wouldn't necessarily characterize it as discounting.

Q. Do you know anything about the tier 1 and the tier 2 price discounts proposed in this case?

A. I'm familiar with it, yes.

Q. Is the master contract at all tied to the tier 1 or tier 2 discounts, if you know?

A. I'm trying to think if that specific set of circumstances, because of the filing in this case, occurred after the contract was -- was structured, so I don't know -- I don't know whether that was included in that or not.

Q. The master contract that you reference, is that -- do you know how long that's in effect for?

A. The master contract is about 8-1/2 years in length. There's about 7, 7-1/2 years left. The portion of the various distribution utilities that AEP owns would be -- the pricing structure would be two or three years as I generally recall.

Q. Now, you indicate on line 17 that the schools have -- have saved approximately "$20 million dollars since initiating the third party power supplies." Do you see that reference?

A. I do.

Q. Are you talking about specifically the Power4Schools program, or are you talking about the predecessors?

A. I was talking about the predecessors and the Power4Schools combined.

Q. Now, on page 5 of your testimony, lines 9 to 10, you state that if the RSR is adopted -- if the RSR is adopted, that the PUCO should consider special rate treatment for Ohio schools. Do you see that reference?

A. I do.

Q. And the special treatment that you recommend is not to apply the RSR to the Ohio schools, and that treatment is explained on page 6, lines 1 to 4?

A. That's correct.

Q. Now, when we go back to page 5, lines 10 to 12, you state that such treatment has been provided and acknowledged previously by the PUCO, the Ohio Legislature, and the Ohio Supreme Court. Do you see that reference?

A. I see where it says on advice of counsel, yes.

Q. And the treatment you're referring to there is the special treatment?

A. Correct.

Q. Mr. Frye, is it your understanding that based on the advice of counsel that the treatment provided and acknowledged by the PUCO was the same treatment that you seek here that charges not be applied to schools?

A. Correct.

Q. And do you -- do you have an understanding of what charges those might have been?

A. Well, it depends on the circumstances. There are currently in existence special rates for schools on Ohio Power Company's system which comprise a particular rate for both distribution and for generation.

The Commission has recognized discounts in the existing ESP case on FirstEnergy territory where the distribution and the generation discounts if they happen to be still purchasing SSO supplies on that particular company. Those are the ones that I'm most familiar with.

I think there might be one also, a school -- special school rate for DP&L territory, but I'm not positive about that. I have some general recollection.

Q. And when you refer to the special school rates, is it your understanding that those are rates provided under tariffs that have been approved by the PUCO?

A. They were -- they are provided in some cases under tariffs and other cases they are percentage discounts based upon either distribution or an SSO charge. In the case of FirstEnergy, I think it's approximately 8.7 percent.

Q. Would it be your understanding that that discount would have been approved by the Commission as part of a regulatory proceeding; is that correct?

A. Yes. That's what I'm referring to.

Q. Now, is it your understanding, based on the advice of counsel, that the treatment provided and acknowledged by the Ohio Legislature was the same treatment that you seek here, that the charges not be applied to schools?

A. That's less clear to me. I believe that my general understanding is that -- it just went out again.

Okay. My apologies.

It's my general understanding that there's a -- some potential -- there's some flexibility or opportunity for -- for utilities to provide discounts to governmental entities in their discretion.

Q. And with -- with respect to your understanding -- with respect to your understanding of that situation, do you understand that that treatment is provided specifically in SB 221?

A. No, I don't. I don't recall that specifically whether it was SB 221 or some other section of the Ohio Revised Code.

Q. Is it your understanding, Mr. Frye, that based on the advice of counsel, that the treatment provided and acknowledged by the Ohio Supreme Court is the same treatment that you seek here, that is, that the charge should not be applied to schools?

MR. STINSON: Objection. I would just

like a clarification. When you are talking about "the charge," are you talking about the charge in the Supreme Court case, the charge here, or could you clarify?

MS. GRADY: Your Honor, I'm just -- I'm trying -- or, Mr. Stinson, I'm trying to understand the -- how the -- whether the treatment that we're talking about, the treatment here, where the schools asked to be exempted from the charge is the same treatment that has been provided and acknowledged by the Ohio Supreme Court. I'm just trying to make that determination.

MR. STINSON: Well, I think Mr. Frye's acknowledged he is not an attorney. Mr. Frye can answer if he can.

EXAMINER SEE: We recognize that Mr. Frye is not an attorney, and with that understanding he can answer the question.

A. I don't know.

Q. Now, on page 12 of your testimony, you give a more detailed discussion of your recommendation that the retail stability rider should not be applied to schools. Do you see that discussion?

A. I do.

Q. And at line 13, you say that schools are a part of customer class -- are a part of a customer class, and I was wondering what "customer class" the schools are part of, if you know.

A. My general understanding is the companies are proposing that the schools be in the commercial customer class.

Q. And when you say the company is proposing, are you talking about Mr. Roush's schedules?

A. Yes.

Q. Do you know what rate schedules the schools take under with respect to Ohio Power Company?

A. I don't know every single rate structure that they take, but I have seen various rate structures, including GS-1, GS-2, and GS-3, and in a few cases GS-4. No, excuse me, GS-4 -- no, GS-4 on Ohio Power is too large. No school is on GS-4 that I can recall.

Q. So it's your understanding that schools take under multiple schedules depending upon the characteristics of the school and the energy usage; is that correct?

A. They take under multiple schedules based upon whatever contract -- whatever rate that they determined they want to be served under.

Q. When you said that the school -- that it's your understanding that the company has treated schools as part of a commercial customer class, can you identify that schedule, what schedule that would refer to, if you know, rate schedule?

A. I don't know what particular rate schedule other than the fact that GS-1, GS-2, that they are generally considered -- schools are generally considered in the business commercial customers. They wouldn't be considered residents, and they certainly wouldn't be considered industrial so, therefore, historically there's three customers that that I've seen: Residential, commercial, and industrial. They don't fit in the other two categories.

Q. Do you have -- do you have with you Mr. Roush's Exhibit DMR-3 where he calculated the retail stability rider?

A. I do not.

MS. GRADY: May I approach?

EXAMINER SEE: Yes.

Q. Are you familiar with this schedule, Mr. Frye?

A. I have seen this schedule, yes.

Q. Now, is it your understanding this schedule is the company's proposed calculation of the retail stability rider?

A. That's the company's proposal is my understanding, yes.

Q. And can you tell me where on the schedule the schools -- the schools would be considered and what column, whether the first column, the second column or -- the second column or the third column of that schedule? It would be under the column?

A. Some of the schools would be a load -- would be under GS-1. Others of the schools would be under GS-2/3/4, SBS, EHS, and SS.

Q. And does -- is it your understanding that "SS" is schools designation, if you know?

A. Yes.

Q. So would it be your testimony then that, Mr. Frye, that the -- some of the schools would see a pro -- if your proposal is rejected, some of the schools would see an RSR rate of .17070 and some of the schools would see an RSR rate of .16948; is that correct?

A. Presuming this calculation is approved by the Commission and accurate, yes.

Q. Do you know if -- if we look at least at the column entitled "GS-1, FL," do you know how much of the revenue requirement shown on the line labeled "Class Allocation of Revenue Requirement," do you know how much the schools -- how much of that revenue requirement the schools would pay if your proposal is not adopted?

A. No, I do not. I do not know exactly what all every school district purchases in the way of electricity on the GS-1 rate over the entire AEP service territory.

Q. And, Mr. Frye, if I asked you the same question with respect to the following column, the GS-2/3/4 column, the third column on DMR-3, do you know how much revenues the schools would pay if your proposal is not adopted and this proposal is adopted and the -- of the 54,063,655 RSR?

A. My answer, I believe, would be the same.

Q. I believe you testified in response to a question by OMA that the -- it was your recommendation that if the Commission -- let me strike that.

Do you recall testifying in response to questions from OMA that if the Commission rejected the RSR but -- but did not collect the RSR from the schools, that you would recommend it -- the total RSR be reduced?

MR. STINSON: Objection. I don't think that's what the OMA question was. I don't think -- you are presuming the RSR is rejected?

MS. GRADY: Yes.

Q. Let me rephrase that. You testified that your recommendation is to reject the RSR, that's your primary recommendation, correct?

A. That's one of my recommendations, yes.

Q. And then the secondary recommendation is if the RSR is approved, that the school should not have to pay the RSR, correct?

A. That's correct.

Q. And in that secondary recommendation OMA questioned you about, well, what happens when your recommendation that the schools not pay is adopted. Do you recall that question?

A. I recall it.

Q. And your response was that the total RSR amount should be reduced by the portion that the schools would have to pay; is that correct?

A. That's correct.

Q. If the Commission instead determines that the schools -- if the Commission determines -- let me strike that.

If the Commission determines that the schools should not have to pay the RSR and does not reduce the total RSR by your -- by the school's portion, do you have an opinion on whether that portion should be allocated and recovered from that particular customer class or another customer class?

MR. STINSON: Well, objection. What customer class?

MS. GRADY: That's what I'm asking Mr. Frye.

MR. STINSON: It's unclear what is being asked. The only thing I heard was "that customer class."

EXAMINER SEE: The witness can answer the question.

A. I have no opinions on which customer class should be allocated those charges.

Q. Now, on page 13 of your testimony, you indicate that the RSR charge was created using a customer class average and that schools do not fit the average customer class. Do you see that?

A. I do.

Q. Which customer class were you referring to there?

A. Generally speaking, the commercial customer class.

Q. Is it your testimony, Mr. Frye, that the schools have zero contribution to the company's peak?

A. No, that's not my testimony.

Q. Can you explain what contribution you believe the schools have to the company's peak then?

A. I don't know what the schools' contribution to the company peak is. We requested some information on that, and I believe the response was that they didn't have anything available.

So I went down through the analysis in my testimony indicating what the -- what the explanation or the thought process that I went through that they shouldn't necessarily -- that they shouldn't be paying the RSR.

Q. But your conclusion is that they should pay a zero portion of the RSR, correct?

A. To the extent that the Commission approves an RSR, yes.

Q. If the data showed that the schools contributed to the peak, would it be your testimony that the schools should then bear a portion of the RSR?

A. No.

Q. Is it your testimony, Mr. Frye, that the schools are not the cost causer of the peak usage of the five CP analysis that is conducted?

A. Generally speaking, based upon the information that I have available, yes.

Q. And so your theory is that if they are not causing costs, that they should not pay for those costs; is that generally true?

A. If they aren't the causation of the peak, yes.

Q. Is it your understanding, Mr. Frye, as you testify on page 12, the company's request for the RSR is related to reduction in revenues due to higher shopping levels?

A. That's one component of it.

Q. Okay. And what are the other components, if you know?

A. To the extent that the company's ability to charge for capacity to various CRES, what that charge is, and the shopping would be the -- would be the revenue driver.

Q. And customers then would be purchasing the capacity if they're shopping; is that correct?

A. No. That's not -- that's not an accurate statement. As far as I know, the CRES would be buying the capacity from the companies and then ultimately, in some form or fashion, passing that charge through the pricing structure that they are offering to the consumer.

MS. GRADY: Thank you, Mr. Frye. That's all the questions I have.

Thank you, your Honor.

EXAMINER SEE: Mr. Alami?

MR. ALAMI: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Alami:

Q. Mr. Frye, just to follow-up on some questions posed by Ms. Grady, if the Commission adoptions the RSR but also adopts your secondary proposal that the schools be opted out of paying for the RSR, it's your understanding that the costs allocated to the schools would have to be allocated to other customers; is that correct?

A. That would be dependent upon the Commission's decision.

Q. But if the Commission adopts the RSR as proposed by the company and adopts your proposal.

A. If they adopt my -- if they adopt the RSR and they adopt my proposal as you've indicated, then those revenues that would otherwise be derived from the RSR that the schools would pay aren't being charged to anybody. That's what I've testified to.

Q. Right. But my -- is it your understanding that if the Commission adopts the RSR but does not adopt your proposal and includes the schools as a customer required to pay costs under the RSR, that the schools would be, in fact, allocated a portion of those costs; is that correct?

A. To -- yes, to the extent that the Commission adopted that and rejected my recommendations.

Q. And to the extent that the Commission adopted the RSR but adopted your recommendation, those costs would have to be allocated to other customers.

A. Not necessarily, I don't see that that would necessarily be required. The Commission could exclude those particular charges completely.

Q. You said you don't necessarily see that that would be required, but would you agree that that's a possibility?

A. I would think that that's one -- that's within the Commission's discretion to do so.

Q. So is that a "yes"?

A. I believe that -- I believe the Commission has the ability to -- to exempt the schools and consumers from those charges or to force the schools to pay those charges if they decide that the RSR would be adopted.

Q. That wasn't my question, Mr. Frye. My question was, would the costs that were originally allocated to the schools have to be allocated to other customers if the schools were no longer required to pay the RSR?

MR. STINSON: Objection. Asked and answered.

EXAMINER SEE: Sustained.

Q. Now, as part of your primary recommendation that the RSR is not permissible, on page 9, lines 16 through 17 of your testimony, you state that "In paying the...RSR, AEP-Ohio distribution customers would be subsidizing AEP-Ohio's competitive service." Do you see that?

A. I see that.

Q. Can you please elaborate what you mean by "subsidizing"?

A. That one -- that one group would be paying something that they didn't otherwise -- that they didn't otherwise create the charge for.

Q. Looking on page 10, at lines 6 through 7, you state that in your judgment "the collections by the Company may exceed that by a significant amount." And are you referring to the revenue target when you say that amount?

A. Based upon the assumption that the -- that the Commission adopts -- adopts the application as filed, yes, the revenue target.

Q. And have you done any calculations to support your judgment?

A. Nothing specific.

Q. Also on page 10, on line 4, you state that your overall concern with the RSR is that it's too speculative; is that correct?

A. That's my testimony.

Q. And can you please elaborate on what you mean by it being "too speculative"?

A. The collection mechanism has -- has many variables to it, and as I go into my testimony, the $3 per megawatt-hour credit has the potential for significant variability and that, to me, is a -- as I understand it, is a plug number it. Could be $3. It could be the actual -- the actual shopped load energy margin may be substantially higher than that.

Thus, the $3 makes it very speculative in its nature. That because of that, that's an unknown value as we sit here today. We do not know even if the Commission approved the process.

Q. By is it also your understanding that the RSR would be reconciled annually to ensure that whatever the costs are that are to be collected under the rider, customers would pay no more than those costs?

MR. DARR: Objection, your Honor. I appreciate that the company has used the term "costs" frequently in reference to this rider, but I think it's revenues. And the record has become somewhat confused by this misuse of what -- of the company -- by the company of its own definitions of what's embedded in this charge.

MR. ALAMI: I can rephrase.

EXAMINER SEE: Thank you.

Q. Is it your understanding, Mr. Frye, if the RSR is reconciled annually, that those revenues would -- that the revenues under the rider would only be collected as necessary by the customers with no more, no less, to reach the revenue target?

A. It's my understanding the application will ultimately be evaluated so that the $929 million in annual collections could be static, but it makes the presumption that there's only $3 a megawatt-hour of -- of margin in -- in that -- and that assumption may or may not be ultimately true.

So the company's net collections, to the extent margins are higher than $3 a megawatt-hour, would be higher. And that would not, as I understand the application, be accounted for in the company's revenue collection structure.

Q. And have you undertaken any calculations to test that assumption?

A. Just in -- no, just in review of the company's testimony.

Q. In your -- also on page 10, on lines 11 through 12, in your calculation there of the $100 million figure there on line 12 related to increasing wholesale power market prices, did you assume as part of that calculation that the sales needed to generate those collections would occur?

A. I recall generally utilizing the same structural assumptions that I believe it was Mr. Allen did in his -- his calculations to determine the extra $1 a megawatt-hour value.

Q. But did you make an assumption that -- with that calculation?

A. I made the same assumptions that

Mr. Allen made.
Q. So you have no reason to question the assumptions that Mr. Allen made?
A. I have general reasons to question whether or not $3 a megawatt-hour is -- understanding what I know about the business, is -- is reasonable and rational. I haven't done any formal studies in that regard.
Q. Moving on to lines 13 and 4 of page 10, here you state that there's another way that AEP -- and I believe you amended your testimony to have your reference to "AEP" mean "Ohio Power Company"; is that correct?
A. Correct.
Q. Can you elaborate on your statement that AEP can capture additional profit by securing cost decreases in fuel as the company sells energy related to previous SSO customers?
A. To the extent that Mr. Allen assumes that shopping will be increasing those -- the amount of megawatt hours, kilowatt hours, whatever consumption pattern you want to assume or whatever facts you want to assume, it becomes available to be sellable in the marketplace.
To the extent that that SSO customer is

no longer purchasing that electricity, if the companies can secure decreases in their fuel charges, all other things being equal, then those kilowatt hours, megawatt hours that otherwise would be purchased by SSO customers would then increase their -- the company's collections on a net basis.

Q. Are you familiar with the fuel procurement process of a company like AEP Ohio?

A. I have some limited understanding of that. I certainly wouldn't declare myself an expert in that regard.

Q. And what's that limited understanding?

A. That the company goes through a fuel procurement process to feed its various power plants, that they've got contracts associated with such that are -- that are arrived at, and that to the extent they are selling to SSO customers, they go back to the Commission with -- with what those fuel charges are and they pass those charges through an FAC cost that are currently paid by the customers who are buying SSO supply.

Q. And to the extent AEP Ohio or the company procures fuel through a contract, would it make it more -- in your opinion is the ability to realize cost decreases in fuel less likely?

A. Could you repeat the question again, please, sir?

Q. You stated earlier in your response to your limited understanding of the fuel procurement process of AEP Ohio, that the company procures fuel through contracts; is that correct?

A. Correct.

Q. And do you have any idea of the length of those contracts?

A. No.

Q. Would you agree that given that the company has procured an amount of fuel through a contract, that that decreases its ability to decrease its fuel expenses to the extent that that contract is in place?

MR. STINSON: Can I have that reread, please?

(Record read.)

MR. STINSON: I object. If counsel could rephrase. There is so many "its," I don't think there is any reference to what he is referring to.

MR. ALAMI: I'll rephrase.

Q. Does purchasing fuel through a contract limit the company's ability to decrease its fuel expenses?

A. It may or it may not.

Q. But you agree there is a possibility it may?

A. There is a possibility.

Q. On page 10, on lines 15 through 17, you indicate here, to the extent AEP Retail can sell the power supplies, then the company -- related to the previous SSO customers, that the company can realize profits this way. Could you please explain what you are referring to in those -- at page 10, at lines 14 through 17?

A. Generally speaking, what I'm referring to is that the companies have a retail arm called "AEP Retail," that my understanding is they are in the business of selling retail electricity to retail customers.

I don't know that they sell to wholesale customers or not, but I do know that they have retail offers on -- available to consumers to the extent that they are selling those retail customers electricity that would otherwise have gone to SSO customers, that there may be incremental margins well beyond the $3 per megawatt-hour that they secure through those contract arrangements with -- with their customers.

Q. And is it your testimony that AEP Ohio may share in those revenues?

A. To the extent that my -- my understanding -- I don't know what the contract is between AEP Retail and AEP Ohio or AEP Corporate as far as revenue sharing goes, but my general understanding is that AEP Ohio still owns the generating assets, and to the extent that AEP Retail are utilizing those generating assets to sell that electricity, that AEP Retail would potentially profit depending on -- it would depend on the transfer cost relative to the sale price, but that there would be incremental margin potentially available for the companies in that regard.

Q. So is it then your testimony that AEP Ohio can dedicate the energy associated with the load that it has shopped to AEP Retail for the latter to sell?

A. What do you mean by "dedicate," sir?

Q. You tell me. I believe you said to the extent AEP Retail can sell the power supplies. When you referred to "power supplies," are you referring to the supplies associated with AEP Ohio's load that has shopped?

A. Yes.

Q. And is it your testimony that those power supplies can be sold by AEP Retail?

A. Yes. It's my testimony that they could be sold by AEP Retail.

Q. On page 11, lines 9 through 13, you state that if the tier 1 capacity charges are limited in the three years of the ESP to 21, 31, and 41 percent of the load of every customer, it is unreasonable to assume that shopping under the tier 2 pricing will reach the levels projected by Mr. Allen; is that correct?

A. That's my testimony, yes.

Q. And you also -- is that a re-creation of Mr. Allen's projections there in the table on page 11 of your testimony?

A. Yes, I believe it is.

Q. And you testified in the capacity charge case, correct, the 10-2929?

A. Yes, I did.

Q. And in preparing your testimony in that case, did you review the company's application and testimony filed in that case?

A. Yes, I did.

Q. And are you aware of testimony in that case, meaning the capacity charges case, that the company is currently experiencing customer shopping at $255 per megawatt-day?

A. I recall that.

Q. So is it still then your testimony that tier 2 pricing is impairing shopping?

A. That's not my testimony there, sir.

Q. Your testimony -- what is your testimony with respect to the tier 2 pricing?

A. That it's unreasonable to assume that shopping under tier 2 pricing will reach 65 percent, 80 percent, and 90 percent for the residential, commercial, and industrial customer classes, considering tier 2 pricing was designed to impair shopping.

Q. Right. On that last part of that sentence you say tier 2 pricing was designed to impair shopping -- impair switching -- or, switching, excuse me. Do you mean that to mean "shopping"?

A. Yes, switching from SSO suppliers to third-party suppliers.

Q. And would the fact that shopping at the tier 2 price has, in fact, been occurring tend to discredit your characterization of the tier 2 price is designed to impair switching?

A. No.

Q. And why is that?

A. The fact that some customers have determined in their thought process that they want to shop at a capacity charge of $255 a megawatt-day doesn't necessarily mean that it doesn't impair other customers from shopping at $255 a megawatt-day. That's an individual customer-by-customer decision.

Q. If the Commission determined the price of capacity to be greater than or equal to $255 per megawatt-day as a result of the decision in the capacity charges case, would you agree that the company's two-tiered pricing would promote competition or shopping?

A. It may.

Q. Earlier, I believe you had a discussion with Ms. Grady just in terms of the fact and that you are aware that some schools are currently receiving electric service from CRES providers; is that correct?

A. Yes.

Q. And I also believe that during that discussion you stated that -- well, let me ask you as opposed to just assuming. On page 16, line 3, you state that "The two tiered pricing is discriminatory"; is that correct? The first sentence there?

A. Yes.

Q. And further down on page 16, at lines 8 through 13, you explain, and I believe you also explain in your discussion with Ms. Grady, that the company's charges for capacity go to -- are paid by the CRES provider who then, in anticipating a profit, ultimately passed those costs on to its customers; is that correct?

A. To their customers, yes.

Q. Is it possible that two shopping schools paid different prices for capacity?

A. It's possible.

Q. Is that because it's a function of their individual contract with their CRES provider?

A. That's one potential explanation, yes.

Q. Is it possible that two shopping schools served by the same CRES provider could be charged two different rates for capacity?

A. Certainly.

Q. Would you consider such a scenario -- would you consider that under such a scenario price discrimination is occurring?

A. No.

Q. Why is that?

A. Because that's a -- that's a market decision in a deregulated market where the potential -- the profit potential of that individual power supplier is determined based upon what they could sell it at. That's an open and deregulated marketplace.

Second, I don't necessarily know under your circumstances whether or not you have two schools that are absolutely exactly the same in regards to demand charges and other factors. There's terms and conditions in a contract. There are many variables to any particular supply agreement that could impact those charges. Capacity is one of those potential variables.

Q. Understood. So what's your definition or understanding of price discrimination then?

A. When -- my understanding is in regards to a regulated entity like AEP Ohio, the company's charging different charges for the same service.

Q. But under the scenario where two schools -- two shopping schools are receiving the same service from a CRES provider and the same CRES provider at two different prices, you don't consider that to be price discrimination?

MR. STINSON: Objection. Asked and

answered.

EXAMINER SEE: Overruled. You can answer the question, Mr. Frye.

A. To the extent they have the ability to sell at a profit in an open market, no, I don't consider that discrimination. That's a function of the market.

Q. And do you understand generally that one of the purposes of AEP Ohio's modified ESP plan is to transition to a competitive market?

A. I understand that that's what its application indicates, yes.

MR. ALAMI: I think that's all the questions I have, Mr. Frye. Thank you.

EXAMINER SEE: Mr. Margard?

MR. MARGARD: No questions. Thank you, your Honor.

EXAMINER SEE: Any redirect, Mr. Stinson?

MR. STINSON: If I could have just a moment, your Honor?

EXAMINER SEE: Yes.

(Discussion off the record.)

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

Mr. Stinson, any redirect?

MR. STINSON: Yes, your Honor. Just one question.

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REDIRECT EXAMINATION

By Mr. Stinson:

Q. Mr. Frye, on your cross-examination by AEP Ohio, you were asked whether or not you agreed the two-tiered capacity charges specifically, if it's the second tier, was at 255, whether that would promote competition, and I believe you indicated it may; is that correct?

A. I believe that the hypothetical that was put in front of me was compared to the capacity charge of $355, if the -- if that was approved, the discounted -- quote-unquote discounted rate of 255.146 that was proposed in the application could that promote competition.

And the answer is relative to 355, you know, it may. And the reason it may is because the avoidable costs that a customer who decides to shop may pay, the capacity is only one component of those overall charges.

So if energy and other -- and other potential charges to the extent those prices for capacity are low enough, the customer may still shop relative to the $355 a megawatt-day charge.

MR. STINSON: Thank you. No other questions, your Honor.

EXAMINER SEE: Recross.

Mr. Barnowski?

MR. BARNOWSKI: No questions, your Honor.

EXAMINER SEE: Mr. Yurick?

MR. YURICK: Just one question, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Yurick:

Q. So, sir, compared to RPM, the two-tiered pricing would not promote competition; is that correct?

A. Compared to where -- where it's at --

MR. ALAMI: I'll object here. I think that's outside the redirect. It's friendly cross as well.

EXAMINER SEE: The objection is -- it's overruled, but it's getting close to friendly cross.

A. Could you repeat the question again?

MR. YURICK: Could I have the court reporter read the question back, please?

(Record read.)

A. It would -- it would inhibit competition based upon the same provisor they put in since the prices in the mix are higher than the -- the current RPM price or the RPM cost over the next four years, the impact of that would be to inhibit competition.

MR. YURICK: No further questions.

Thank you, your Honor.

EXAMINER SEE: Mr. Campbell?

MR. CAMPBELL: No questions.

EXAMINER SEE: Mr. Siwo?

MR. SIWO: No questions, your Honor.

EXAMINER SEE: Thank you.

Mr. Boehm?

MR. BOEHM: No questions, your Honor.

EXAMINER SEE: Ms. Kingery?

MS. KINGERY: No questions, your Honor.

EXAMINER SEE: Mr. Darr?

MR. DARR: No questions.

EXAMINER SEE: Mr. Lang?

MR. LANG: No. Thank you.

EXAMINER SEE: Ms. Grady?

MS. GRADY: No. Thank you.

EXAMINER SEE: Mr. Alami?

MR. ALAMI: No. Thank you, your Honor.

EXAMINER SEE: Mr. Margard?

MR. MARGARD: No. Thank you, your Honor.

- - -

EXAMINATION

By Examiner See:

Q. Mr. Frye, you do not believe that the RSR charge should be applicable to the schools?

A. That's correct, your Honor.

Q. For the reasons -- for the policy reasons that you set forth in your testimony?

A. That's right, your Honor.

Q. Is there anything else in the record that supports your position that schools should not incur the RSR -- the RSR charge if it is adopted?

A. To the extent, your Honor, that in the prior Opinion and Order, the prior settlement that occurred, it's my understanding or recollection that one of the main -- one of those charges, the MTR charge, the companies agreed and the Commission passed and has since rescinded that those charges would not otherwise be paid by schools.

In my mind, this structural arrangement would be similar in nature and, if I recall correctly, the RSR is lower than what the MTR was scheduled to be.

Q. Okay. Any other reason?

A. Not that I can think of, your Honor.

EXAMINER SEE: Okay. Thank you.

Mr. Stinson?

MR. STINSON: At this time, your Honor, I move the admission of Schools Exhibit 101.

EXAMINER SEE: Are there any objections?

Schools Exhibit 101 is admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER TAUBER: Ms. Kingery?

Ms. Spiller?

MS. SPILLER: Duke Energy Commericial Asset Management would call to the stand Mr. Kenneth J. Jennings.

(Witness sworn.)

MS. SPILLER: And, your Honor, may I approach?

EXAMINER TAUBER: You may.

MS. SPILLER: Thank you. For purposes of identification, your Honor, I would ask that Duke Energy Commercial Asset Management Exhibit 102 be marked for the record.

EXAMINER TAUBER: It shall be so marked.

MS. SPILLER: Thank you.

(EXHIBIT MARKED FOR IDENTIFICATION.)

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KENNETH J. JENNINGS

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

DIRECT EXAMINATION

By Ms. Spiller:

Q. Mr. Jennings, can you identify yourself for the record, please.

A. My name is Kenneth Jennings. I -- go ahead.

Q. And by whom are you employed?

A. Duke Energy Commercial Enterprise.

Q. And what is your position at Duke Energy Commercial Enterprise, sir?

A. Director of Market Policy and RTO Services.

Q. And, sir, do you have before you what has been marked as Duke Energy Commercial Asset Management Exhibit 102?

A. Yes.

Q. And can you identify that for the record, please?

A. Yes.

Q. And what is it?

A. It's my testimony, I'm sorry.

Q. And was that testimony, sir, filed by you or under your supervision?

A. Yes.

Q. Do you have any changes to your testimony today?

A. I do. One change on page 4.

Q. And what is that change, please?

A. On line -- at line 5, it says, "This occurs five months before the beginning of the delivery year...." I would change that to "about three months." That's my only change.

Q. And, Mr. Jennings, if I were to ask you today the questions that are set forth in your direct testimony identified as Duke Energy Commercial Asset Management 102, would your answers be the same with the caveat of the correction you provided us today?

A. Yes, it would.

MS. SPILLER: Your Honor, we would move for the admission of Exhibit Duke Energy Commercial Asset Management 102, subject to cross-examination.

EXAMINER TAUBER: Thank you, Ms. Spiller.

Mr. Millar?

MR. MILLAR: No questions, your Honor.

EXAMINER TAUBER: Mr. Yurick?

MR. YURICK: No questions. Thank you.

EXAMINER TAUBER: Mr. Campbell?

MR. CAMPBELL: No questions.

EXAMINER TAUBER: Mr. Siwo?

MR. SIWO: No questions, your Honor.

EXAMINER TAUBER: Mr. Stinson?

MR. STINSON: No questions, your Honor.

EXAMINER TAUBER: Mr. Boehm?

MR. BOEHM: No questions, your Honor.

EXAMINER TAUBER: Mr. Darr?

MR. DARR: No questions, your Honor.

EXAMINER TAUBER: Mr. Lang?

MR. LANG: No questions.

EXAMINER TAUBER: Mr. Etter?

MR. ETTER: No questions, your Honor.

EXAMINER TAUBER: Mr. Nourse?

MR. NOURSE: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Nourse:

Q. Good morning, Mr. Jennings.

Okay. Can you turn to page 5, and at the bottom of page 5, we got a question and answer that carries over to page 6. And you're stating here that the -- correct me if I'm wrong, you're stating here that the RAA -- first of all, you know what the RAA

refers to, correct?
A. Yes. It's in my testimony.
Q. Yes, the reliability assurance agreement. So you're saying here that the RAA does not preclude an FRR entity from immediately adopting a market-based pricing approach; is that correct?
A. No, that's not what I -- I don't think that's what I said. Can you repeat the question again?
Q. Okay. You see the question at the bottom of page 5 in your testimony?
A. Yeah.
Q. Okay. And are you saying that the RAA permits or does not restrict immediate adoption of a market-based pricing mechanism for capacity for an FRR entity?
A. I think that's true as long as a state-approved mechanism hasn't already been implemented.
Q. Okay. And the contractual commitments that you refer to in line 18, at page 5, what does that refer to?
A. That refers to essentially the agreements and the manuals of PJM with regard to RPM.
Q. With regard to FRR entities?

A. Well, FRR is essentially a part of RPM.

Q. Okay. And so is the answer "yes"?

A. Repeat the question.

Q. I asked you if your answer --

A. I thought I answered the question. That's why I am asking you to repeat it.

Q. I asked you if your answer applied to FRR entities, and you said according to the manuals and agreements under -- with regard to RPM --

A. Yeah, I think all I'm --

MS. SPILLER: Excuse me, if I may. I think Mr. Nourse may have put his questions out of order. The first question that was asked was what are the contractual commitments, and Mr. Jennings identified those as the PJM manuals. The next question is whether that applied to an FRR entity. Mr. Jennings indicated that an FRR entity is a subset of -- FRR is a subset of RPM.

EXAMINER TAUBER: That's correct. If you can answer based on that, Mr. Jennings.

A. Can you read back the question again?

Q. Okay. Let's start over. All my questions relate to an FRR entity.

A. In my -- in my opinion, the rules in the agreements of PJM apply to everyone whether they are

RPM or FRR.

Q. Okay. Well, we can get into the detail here, but I'm only asking you about FRR entities --

A. And I answered that, I thought.

EXAMINER SEE: Just a minute. Mr. Jennings, please wait for the question so that it's clear in the record.

And, Mr. Nourse, please don't interrupt the witness until he has completed his answer. Okay? Thank you, both. Go ahead.

Q. Okay. Mr. Jennings, you're saying, bottom of page 5, line 18, you're referencing "contractual commitments" there and your answer a moment ago indicated you're referring to all of the RPM requirements and obligations which you believe all apply to FRR entities. Is that correct so far?

A. Yes.

Q. So your -- you do not agree with the notion that FRR entities have a different set of rules that apply to them?

A. The rules that apply to FRR entities are defined under RPM and the RAA.

Q. Okay. And are they a different set of rules that apply only to FRR entities?

A. There are -- there are modest differences to FRR entities.

Q. Thank you. So in your answer on the top of page 6, are you stating that nothing in the RAA rules or agreements prevents an immediate -- an immediate adoption of market-based pricing for capacity?

A. I thought I answered that question. As long as there is not a predefined state mechanism already in place.

Q. Okay. So with the caveat about the state-compensation mechanism, you're saying an FRR entity has no barriers to providing market-based prices for capacity at any -- at any time.

MS. SPILLER: Objection, your Honor, asked and answered.

MR. NOURSE: Your Honor, I think we are trying to get this cleared up and move forward so.

EXAMINER TAUBER: The objection is sustained. I think it has been asked and answered.

Q. Okay. All right. So I'll assume the answer is "yes."

MS. SPILLER: I'm going to object and move to strike.

EXAMINER TAUBER: Let's move on, Mr. Nourse.

MR. NOURSE: Your Honor, I'm going to mark this as our next exhibit. 129.

MS. SPILLER: Counsel? Mr. Nourse?

MR. NOURSE: Coming around.

MS. SPILLER: Thank you.

EXAMINER TAUBER: The exhibit shall be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Mr. Nourse) Okay. I'm waiting until your counsel gets a copy before I talk about this, sir.

Okay. Do you have the exhibit that was just marked as AEP Ohio 129?

A. It's not marked AEP anywhere but.

Q. Okay. We all just marked it. Can you mark your copy?

A. AEP Ohio 129?

Q. Yes, sir.

A. Okay.

Q. Okay. And -- okay. First of all, do you recognize this as the Schedule 8.1 of the Reliability Assurance Agreement that's applicable to FRR entities?

A. Yes.

Q. And do you see the effective date in the bottom right of the first page that would indicate that's the current version?

A. I do see that.

Q. Okay.

A. I'm not sure that it's current, but I assume that it's pretty recent.

Q. Okay. Have there been any updates since March 26, 2012, that you are aware of?

A. I can't be sure. Almost every month there is an update to manuals and documents and so I can't be certain.

Q. Okay. Well, you let me know if we talk about any provisions that you think are not updated, okay?

A. Okay. No problem.

Q. You are familiar with the FRR -- you are familiar with Schedule 8.1, correct?

A. Yes, sir.

Q. And, in fact, in your testimony you cite various provisions out of this particular schedule, correct?

A. Yes, sir.

Q. Okay. So on page 6 in follow-up to the -- in follow-up to the discussion we just had, you go on on page 6 and state under Section D.9 or

D-9 that a CRES provider can self-supply capacity with approximately 60 days' prior notice. Do you see that down in lines --

A. Yes, sir.

Q. -- 10 through 12?

Okay. So can we turn to Section D.9 which I believe is on page 111 --

A. Uh-huh.

Q. -- of this document. Okay. So to clarify, the 60-day notice you're talking about is applicable to subsequent delivery years beyond those addressed in the FRR entity's then-current FRR plan; is that correct?

A. Are you reading that from the RAA or?

Q. I was reading from the first sentence of D.9, yes.

A. Okay. I didn't hear you. This isn't what you said, but if you want me to read it, I will.

Q. Well, just --

A. It says "Notwithstanding, the for --

EXAMINER TAUBER: Mr. Jennings, could you wait and answer the questions that Mr. Nourse poses to you.

MR. NOURSE: Okay. Why don't we read the question back, please, your Honor.

(Record read.)

A. And my question was are you taking that from this page or is this an interpretation of this page that you're making?

Q. Sir, you need to listen to my questions and answer them, not ask me questions.

MS. SPILLER: Your Honor, if the witness doesn't understand the question, I think he certainly is entitled to ask for clarification from Mr. Nourse.

EXAMINER TAUBER: Mr. Jennings, do you understand the question posed to you?

THE WITNESS: Not really because he said that it -- that his statement was taken from this page and I'm not sure that it was.

Q. Okay. Mr. Jennings, let's read into the record the first sentence of D.9.

A. The first sentence of D.9? "Notwithstanding the foregoing, in lieu of providing the compensation described above, such alternative retail LSE may, for any Delivery Year subsequent to those addressed in the FRR Entity's then-current FRR Capacity Plan, provide to the FRR Entity Capacity Resources sufficient to meet the capacity obligation described in paragraph D.2 for the switched load. Such...Agreement and the PJM Operating Agreement, all requirements applicable to resources committed to an FRR Capacity Plan under this Agreement, and shall be committed to service to the switched load under the FRR capacity plan of such FRR entity."

Q. Okay. That's -- that's more than what I asked you to read. Okay. So based on the first sentence and in reference to your testimony, line 10, page 6, the notice there that you're referring to, does that notice apply for any delivery year subsequent to those addressed in the FRR entity's then-current FRR capacity plan?

A. I think it does. The only thing I would add, the 60 days is not necessarily defined in the RAA. And that's probably a gap in the RAA that I think essentially an LSE could wait and not necessarily give 60 days' notice.

The 60 days' notice is really relevant to the FRR entity themselves. They must give that notice 60 days before the base residual auction. I think it would merely be right for an LSE to give the FRR entity and PJM that 60-day notice.

Q. Okay. If a CRES supplier self-supplies, don't they become an FRR at that point?

A. No, they do not.

Q. Do CRES providers in Ohio have the option of becoming an FRR entity?

A. Only -- CRES suppliers do not have the opportunity to become an FRR entity.

Q. Okay. So with respect to AEP Ohio, it's your understanding that they are an FRR entity through May of 2015, correct?

A. I'm not sure of the date. I'm not as familiar with the SSO filing or the capacity filing that AEP made. My testimony is really limited to the impact of the RAA and interaction with PJM.

Q. Okay. So you don't know whether AEP Ohio is an FRR entity through May, 2015?

A. I know that they are an -- yes, I do know that, yes.

Q. Okay.

A. I apologize, I'm thinking.

Q. Okay. Now, with respect to paragraph D.9 here that we just read and as it applies to AEP Ohio, what is the first delivery year subsequent to those addressed in AEP Ohio's current FRR capacity plan?

A. With regard to D.9? Can you repeat it again? I'm sorry, there was a lot there.

MR. NOURSE: Can you read it back, please?

EXAMINER TAUBER: Let's take a 5-minute

recess. Let's go off the record.

(Discussion off the record.)

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

(Record read.)

A. Yes.

Q. That certainly wasn't the last question, but I guess we'll have to redo this.

Okay. So, Mr. Jennings, with respect to AEP Ohio, what is the first delivery year subsequent to those addressed in AEP Ohio's current FRR capacity plan?

A. I guess the first year that they had an FRR plan would have been June 1, 2007, through May 31, 2008.

MR. NOURSE: Okay. Could you read my question back?

(Record read.)

Q. I don't think you're --

A. I don't know what an FRR plan is quite frankly. What are you considering a current FRR plan? An FRR plan you -- in my opinion you should have several current FRR plans. One for each delivery year, right?

Q. Okay. Go back and look at the sentence, the first sentence of D.9, that we have been talking about. And would you agree that the notice in the applicable period when a retail LSE would be permitted to self-supply, under this provision that you cite in your testimony, is a delivery year subsequent to those addressed in the FRR entity's then-current FRR capacity plan?

A. Okay. I think I get where you're headed now. So based on existing FRR plans that have already been submitted -- admitted by AEP, I think at the time a CRES supplier would have been provided the opportunity to opt out, they would have had the impression that the price was one price, and which it's not that price today, so they entered into contracts at -- at the assumption of a market-based price and which AEP has since changed that price.

So, in my opinion, I think that it would only be right that a CRES supplier would be provided an open season in order to mitigate that risk and somehow provide substitute resources in order to avoid that -- that charge that's greater than market.

MR. NOURSE: Okay. Your Honor, I move to strike the entire answer and ask that the question be reread and the witness be instructed to answer it.

MS. SPILLER: Well, your Honor, if I may

respond to that objection. Mr. Nourse is asking about a current FRR capacity plan and, to my knowledge, there has been no such plan put forth in this record. So he's basing questions on facts that are not yet in evidence or even assumed to be in evidence.

MR. NOURSE: Your Honor, the question immediately preceding this the witness indicated that AEP Ohio is an FRR entity until the middle of 2015, and he's referencing this notice provision on page 6 in his testimony, and I don't think it applies to the period leading up to the middle of 2015 at this point, and I'm asking him to -- to address that.

EXAMINER TAUBER: I think the witness's answer was nonresponsive, so strike that and have the question read back again.

And, Mr. Jennings, if you could answer the question as posed to you.

A. The only thing I would add to that, the testimony --

EXAMINER TAUBER: Mr. Jennings, we will have the question read back to you, and then you can answer the question. Thank you.

(Record read.)

A. My answer is no.

Q. Okay. Do you agree that it's too late for a CRES supplier to provide notice under this provision, D.9 --

A. No, I do not agree.

Q. Let me finish my question.

A. I thought you paused. I thought you were done. I apologize.

Q. Okay. Do you agree that it's too late for a CRES provider to invoke this section, D.9, with respect to the delivery period prior to May, 2015?

A. No. I disagree.

Q. Okay. And you are relying on this provision, D.9, in your answer?

A. That and my -- that and my understanding of -- of just and reasonable under the RAA. And I would -- I would assert that changing the rate after the rate has been established would be unjust and unreasonable.

Q. Okay. So are you asserting that the language in this paragraph that you cited in your testimony on page 6 should be disregarded or changed to address the circumstances you are describing?

A. Yes. I either believe that it should be changed or I think that an LSE could have the right to file a 206 at FERC and have that changed -- or either have the language changed or have the rate changed.

Q. Okay. Now, on page 7 of your testimony -- well, first of all, before you get there, the bottom of page 6, I have got a question. Line 18, you refer to "above-market pricing." Do you see that?

A. Yes.

Q. And do you acknowledge that AEP Ohio's costs for providing capacity are above the RPM rates?

A. I would not know that.

Q. You don't know; is that what you said?

A. Yeah. How would I know that?

Q. I don't know what you know. I'm just asking you what you know.

A. I do not know that.

Q. Okay. Thank you. And in line 19 where you refer to the PJM agreements, is that a reference to Schedule 8.1 of the RAA?

A. Yes, it is.

Q. Okay. And -- okay. So now moving to page 7, and the answer to that question that starts in line 1 and finishes in line 11, you are referring to an example that you note starting on line 6 and following or "...LSEs that elected to opt out of Duke

Energy Ohio's FRR plan." Do you see that?

A. Yes.

Q. Okay. And did -- did this happen. This LSE election, prior to DEO submitting its FRR plan for that delivery year?

A. Yes, it did, but I would add that the circumstance has not changed since that -- that window was offered.

Q. Now. Are you familiar with the Naperville case at FERC?

A. No, I'm not.

Q. Okay. Now, in the middle of page 7, you -- you have a new question and answer here, starting on line 12, talking about an open window occurring in the middle of a planning year. Do you see that question?

A. Yes, sir.

Q. Okay. And your answer was yes, this could occur in the middle of a planning year, correct?

A. Yes.

Q. Okay. And do you have a particular provision in Schedule 8.1 in mind when you answered "yes"?

A. No, I did not have a particular

provision, but I will say this: That it's happened already and so, therefore, there is clearly precedent for it.

Q. It's happened. You are referring to the Duke situation?

A. Yes.

Q. And Duke agreed to that as part of a larger agreement, correct?

MS. SPILLER: Objection. I think that's also an inaccurate reflection of the record here. If we're talking about an FRR opt-out, that was not part of Duke Energy Ohio's ESP filing.

MR. NOURSE: Your Honor, you know, I appreciate Ms. Spiller might want to help the witness, but I asked him a question about a statement in his testimony, and I'm asking him -- he can explain the answer if he knows.

A. It was not part of an agreement at all.

Q. Okay.

A. It was -- it was part of the transition.

Q. Part of a transition for what?

A. To PJM.

Q. For PJM?

A. Yes.

Q. From what to what?

A. From MISO to PJM.

Q. Yeah, okay.

Now, are you aware a that change in regulatory circumstance may trigger prospective changes in the FRR plans?

A. I'm aware of one instance.

Q. I'm asking about provisions in the RAA. Are you aware of how that works?

A. "Provisions," can you be more specific?

Q. Provisions in Schedule 8.1. Are there provisions that you are aware of that apply when there is a state regulatory change?

A. Which allows an entity to get out of the FRR obligation, correct?

Q. You tell me your understanding.

A. That's the only one I am aware of is what my point is.

Q. Did you rely on that in presenting your testimony?

A. No, I did not.

Q. Okay. Can you turn to page 108 of Exhibit 129. Directing your attention to provision C.3.

A. What page again?

Q. It says "108" at the bottom right. And I directed your attention to provision C.3. Do you see that?

A. Yes, that's what I referred to a minute ago when I said that you could terminate the FRR plan.

Q. Okay. And the last -- well, let's just read, if you would, read it into the record, it's one sentence.

A. "Notwithstanding subsections C.1 and C.2 of this Schedule, in the event of a State Regulatory Structural Change, a Party may elect, or terminate its election of, the FRR Alternative effective as to any Delivery Year by providing written notice of such election or termination to the Office of the Interconnection in good faith as soon as the Party becomes aware of such State Regulatory Structural Change but in any event no later than two months prior to the Base Residual Auction for such Delivery Year."

Q. Okay. And, again, with respect to this provision, is it too late for a CRES provider to invoke this provision relative to the delivery years prior to May, 2015?

A. A CRES provider has no rights as an FRR entity and cannot terminate their obligation to PJM.

Only -- only the FRR entity can terminate the FRR obligation.

Q. Right. So if AEP Ohio, in this instance, were to invoke or be recommended or suggested to invoke this regulatory structure or change provision, it is too late to do that prior to delivery years actually at this point beyond the middle of 2016; is that correct?

A. I think you could provide that notice 60 days prior to May of 2013 for the delivery year that you referred to, I believe. I'm not sure what you said again but.

Q. I referred to 2016; is that correct?

A. Yes, sir.

Q. Okay. Now, do you -- did you consider in discussing the option you believe exists to -- to open a window in the middle of the planning year, did you consider the financial impact on AEP Ohio of that option?

A. I contemplated certain aspects of that, I suppose.

Q. Okay. Did you make any findings or observations about the financial impact under your option?

A. I -- well, did I find any con -- did I draw any conclusions; is that what you're asking me?

Q. I asked you if you made any observations or --

A. Sure.

Q. -- made any findings, conclusions, yes.

A. I concluded that if -- if substitute resources were provided by a CRES supplier, the harm done to the CRES supplier would be minimized while -- while AEP should be indifferent in the fact they can subs -- they can take the substitute resources, replace capacity resources of which they have in the FRR plan.

They could then market those resources bilaterally, or they could sell them in PJM incremental auctions. They could also use them to mitigate peak-hour penalties and other types of penalties that might be levied on AEP by PJM.

Q. Okay. So I take it by your answer, you agree that the existing resources designated in the AEP Ohio's current FRR plan would be displaced?

A. They don't have to be. They can be left in the FRR plan.

Q. They can be left in and --

A. Used to mitigate penalties and other things such as -- well, I think AEP is familiar with

the peak-hour penalty.
Q. Okay. And, again, is it your understanding there would be an adverse financial impact of that decision?
A. I have no clue.
Q. Okay. You haven't considered that in making your recommendation?
A. No more than AEP has considered their effect on the LSE.
Q. You haven't considered that in making your recommendation?
A. Excuse me?
Q. Is that a "yes" or a "no" on my question?
A. What was your question again?
Q. You haven't considered the financial impact on AEP Ohio in making your recommendations, correct?
MS. SPILLER: And, your Honor, I think the witness answered the question.
EXAMINER TAUBER: I think the witness answered about LSE. I don't think he answered the question.
A. No, I have not done any analysis on the impact to the -- the books and records of AEP.
Q. Okay. Page 8, you have a question and

answer that starts on line 15 and asking about what happens if opt-out capacity is greater than the CRES obligation or vice versa. Do you see that?

A. Yes, sir.

Q. And you talk about netting. You go on to say in line -- starting at line 17, "To the extent that a CRES provider over-supplies its obligation, then it receives a payment equal to the FRR entity's Reliability Charge rate times the quantity over-supplied." Do you see that?

A. Yes, sir.

Q. And what -- what provision are you relying on there?

A. This is past practice. It -- this is the practice that's been used by FirstEnergy in their opt-out provision. It was the same option that was provided by Duke Energy in their opt-out provision. It was suggested by PJM that this would be the approach used. In our opinion the price that the locational charge or the FRR reliability charge that is the netted charge becomes the market so it should be the price that's paid to the oversupply. It's also the price that pays for undersupply.

Q. Is there a provision in 8.1 that supports this statement?

A. There is a manual that was -- that was written and a document, but, PJM, that is posted on the PJM portal. It -- manuals are not always explicitly written into all the documents. So there's clearly -- there's clearly documentation that has been written by PJM and not by the FRR entities that I referred to.

Q. Okay. I will ask you again, is there a provision in Schedule 8.1 that supports this statement?

A. No. I'm just saying that PJM has documents that support it and most of my testimony refers to the agreements. And we specify the agreements as not just the RAA, the tariff, the operating agreements, the manuals, and that's what I'm referring to when I say that it can be done.

Q. Now, under your example or recommendation, is it a bilateral contract with AEP Ohio for capacity in your example?

A. Do you mean in my scenario?

Q. Yeah.

A. There would be.

Q. Okay. And wouldn't you expect that a contract would address matters such as the statement you're making in lines 17 through 19 on page 8?

A. I'm only providing a proposal which I think would work.

Q. Okay. And are you aware of other examples -- well, let me back up. Is a bilateral contract something that both parties to the contract would voluntarily agree to?

A. I guess that I think that goes somewhat gray. I think in every case both parties have agreed to the -- to my experience with that.

Q. So the examples you used with Duke and FirstEnergy, the utilities voluntarily agreed to those agreements, correct?

A. I wouldn't describe it as everyone just voluntarily agreed to everything. I think AEP was a party to the FE agreements and -- and there was -- there was a stakeholder process in PJM that somewhat vetted those agreements. The Duke agreements were handled somewhat differentially.

The agreements were provided to all the parties, the parties provided comments, either Duke accepted those comments or they negotiated to get an acceptable term, and then -- and then pretty much everyone agreed to the terms of those agreements. That's the way I recall that.

Q. Okay. So in both cases Duke and

FirstEnergy both agreed to the terms of the contract, correct?

A. Yes.

MR. NOURSE: Okay. That's all the questions I have, your Honor. Thank you.

EXAMINER TAUBER: Mr. Beeler?

MR. BEELER: No questions, your Honor.

EXAMINER TAUBER: Ms. Spiller, redirect?

MS. SPILLER: May we have a moment?

EXAMINER TAUBER: Sure.

MS. SPILLER: Thank you.

EXAMINER TAUBER: Let's go off the record.

(Recess taken.)

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

Ms. Spiller?

MS. SPILLER: Thank you, your Honor.

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REDIRECT EXAMINATION

By Ms. Spiller:

Q. Mr. Jennings, you were asked some questions by Mr. Nourse about a CRES provider wanting to opt out of the AEP FRR plan. With respect to the three PJM delivery years that commence on June 1, 2012, and end on May 31, 2015, is this a process by which CRES providers could opt out of AEP Ohio's FRR plan?

A. Yes.

Q. And what is that process, please?

A. Essentially, a CRES provider would give notice that they were going to opt out in some type of open window or open zone for opt-out. Upon giving notice to PJM and AEP that they were opting out, then through the -- the ERPM system they would transfer units, specific capacity resources, to PJM. PJM would then substitute those resources in to the FRR plan and reduce the capacity obligation for AEP.

Subsequently, AEP's obligation would be lower and -- and the CRES provider would now have a capacity obligation in which they've matched their resources to and they would -- those resources would then stay in place.

The CRES supplier that provided the resources would then be subject to any other performance penalties or any other type of costs associated with that load. It's much like the process that occurs today and has occurred in Duke Energy Ohio and FirstEnergy.

MS. SPILLER: Thank you, your Honor.

Nothing further.

EXAMINER TAUBER: Thank you.

Mr. Millar?

MR. MILLAR: No questions, your Honor.

EXAMINER TAUBER: Mr. Yurick?

MR. YURICK: No questions.

EXAMINER TAUBER: Mr. Campbell?

MR. CAMPBELL: No questions.

EXAMINER TAUBER: Mr. Stinson?

MR. STINSON: No questions.

EXAMINER TAUBER: Mr. Boehm?

MR. BOEHM: No questions.

EXAMINER TAUBER: Mr. Darr?

MR. DARR: No questions, your Honor.

EXAMINER TAUBER: Mr. Lang?

MR. HAYDEN: Your Honor, one second.

EXAMINER TAUBER: Sure.

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CROSS-EXAMINATION

By Mr. Lang:

Q. Mr. Jennings, for the process you just described for the next three planning areas, is it your understanding that AEP Ohio would have to consent in order for that process to be -- to be implemented?

A. Yes.

MR. LANG: That's all I have. Thank you.

EXAMINER TAUBER: Thank you.

Mr. Etter?

MR. ETTER: No questions.

EXAMINER TAUBER: Mr. Nourse?

MR. NOURSE: Thank you.

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RECROSS-EXAMINATION

By Mr. Nourse:

Q. Mr. Jennings, in your redirect exam you referred to an "open window," "open zone" period. Where does that come from?

A. It's a proposal. As I said, AEP would have to consent.

Q. Okay. And in addition to consent, I believe you stated earlier there would have to be a filing at FERC to adjust or modify provisions of the RAA --

A. No.

Q. -- is that correct?

A. No, I would disagree with that. There is no changes to the RAA. This type of process has occurred. The parties that I referred to consented and, therefore, it was done.

Q. Okay. In my cross-examination earlier, we went through two provisions, D.9 and C.3 of Schedule 8.1. Do you recall that?

A. Yes, sir.

Q. And do you recall that we concluded that it was too late to invoke those provisions regarding the planning years prior to 2016?

MS. SPILLER: Your Honor, I think this is getting beyond the scope of redirect examination.

MR. NOURSE: Your Honor, she asked about the planning years, and she asked about the process. I'm trying to fit together what he said during cross with what he said during direct -- redirect.

MS. SPILLER: And the record would speak to what Mr. Jennings said during cross-examination by Mr. Nourse, so I think we are now at this point treading on covered ground.

EXAMINER TAUBER: We are getting very close to treading ground we've already covered. Mr. Nourse, if maybe you could rephrase your question.

Q. (By Mr. Nourse) Okay. Mr. Jennings, earlier we discussed provision D.9 and provision C.3 of the Schedule 8.1. And my question now, in light of your redirect statements with your counsel that there's an open zone and open window, is there some other provision in Schedule 8.1 of the RAA that you are relying on that we did not discuss earlier during my cross-examination?

A. The point I was making was that the RAA does not preclude the open zone and, therefore, would not require a FERC filing of any type. A similar process has already been -- been used in other -- in other areas where the FRR entity consented.

Q. So your point about consent in these examples you've used is that if the parties agree, they don't have to follow the minimum notice provisions that we talked about earlier.

A. Also no minimum notice for a CRES supplier. I referred to that in the process, but there is no minimum notice for a CRES supplier.

Q. So your point about consent is that if parties agree, they don't have to follow the provisions in Schedule 8.1; is that correct?

A. Correct.

MR. NOURSE: Thank you. That's all I have.

EXAMINER TAUBER: Mr. Beeler?

MR. BEELER: No questions, your Honor.

EXAMINER TAUBER: Commissioner Porter?

COMMISSIONER PORTER: No, thank you.

EXAMINER TAUBER: You may be excused. Thank you, Mr. Jennings.

THE WITNESS: Thank you.

EXAMINER TAUBER: Ms. Spiller?

MS. SPILLER: Your Honor, at this time Duke Energy Commercial Asset Management would renew their request for the admission of their Exhibit 102, please.

EXAMINER TAUBER: Is there any objections to 102?

MR. NOURSE: No.

EXAMINER TAUBER: Exhibit 102 shall be admitted into the record.

MS. SPILLER: Thank you, your Honor.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. NOURSE: Your Honor, I'll move for admission of Exhibit 129.

EXAMINER TAUBER: Is there any objection to AEP Ohio Exhibit 129?

Hearing none, it shall be admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. NOURSE: Your Honor, you may be doing this anyway, but I would suggest we take a lunch break before the next witness.

EXAMINER TAUBER: That was the plan. We'll reconvene at 1:45. Let's go off the record.

(Thereupon, at 12:55 p.m., a lunch recess was taken.)

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Thursday Afternoon Session,
May 31, 2012.

- - -

EXAMINER SEE: Mr. Darr.

MR. DARR: Thank you, your Honor. IEU calls Mr. Hess.

With permission, could we have Mr. Hess's direct testimony marked as IEU 124?

EXAMINER SEE: The exhibit is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER SEE: Have a seat.

Mr. Darr. Go ahead.

MR. DARR: Thank you, ma'am

- - -

J. EDWARD HESS

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

DIRECT EXAMINATION

By Mr. Darr:

Q. Please state your name.
A. My name is J. Edward Hess.
Q. By whom are you employed?
A. I'm employed by McNees, Wallace & Nurick.
Q. What's your position with McNees, Wallace & Nurick?

A. A technical specialist.
Q. On whose behalf are you testifying today?
A. Industrial Energy Users of Ohio.
Q. Do you have in front of you what's been marked as IEU Exhibit 124?
A. Yes, I do.
Q. Please identify that.
A. It's my direct testimony in this proceeding.
Q. Do you have any additions or corrections to that testimony?
A. I do not.
Q. If asked today the questions that are contained in IEU Exhibit 124, would your answers be the same?
A. Yes, they would.
MR. DARR: I would move for the admission of IEU Exhibit 124 and tender the witness for cross-examination.
EXAMINER SEE: Any questions, Mr. Barnowski?
MR. BARNOWSKI: No questions, your Honor.
EXAMINER SEE: Mr. Yurick?
MR. YURICK: No questions.
EXAMINER SEE: Mr. Campbell?

MR. CAMPBELL: No questions.

EXAMINER SEE: Mr. Stinson?

MR. STINSON: No questions.

EXAMINER SEE: Mr. Boehm?

MR. BOEHM: No questions, your Honor.

EXAMINER SEE: Mr. Stinson?

MR. STINSON: No questions, your Honor.

EXAMINER SEE: Mr. Lang?

MR. LANG: No. Thank you.

EXAMINER SEE: Mr. Etter?

MR. ETTER: No questions, your Honor.

EXAMINER SEE: Mr. Nourse?

MR. NOURSE: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Nourse:

Q. Good afternoon, Mr. Hess.

A. Good afternoon.

Q. So looking at the index to your testimony here, I just want to get a brief summary before we dive in. Is it fair to say that you're recommending, suggesting that AEP Ohio's two-tiered capacity charge as well as the pool-termination provision as well as the retail stability rider are all invalid and inappropriate for adoption by this Commission?

A. Yes.

Q. And you have a common thread, I believe, in discussing each of those three items, tying back to your view that the provisions of Senate Bill 3, as well as the ETP stipulation from AEP Ohio's electric transition plan case, support your recommendation that the -- those three items should be rejected, correct?

A. As they are additional requests for transition revenues, yes.

Q. Okay. I couldn't quite fit that in. That was already a long question. All right. Thank you.

So the -- so it's fair to say that your recommendations, your observations, and assertions in your testimony all go back to that -- that claim that these provisions of the ESP are untimely, therefore, invalid additional requests for transition revenues, correct?

A. That's correct. In addition, I believe the RSR is inconsistent with corporate separation requirements.

Q. Okay. All right. So with the RSR, you provide additional reasons supporting your recommendation that it be rejected. Is that also

true with the pool termination provision?
A. No. The pool termination provision is a request for transition revenues.
Q. Okay. And the two-tiered capacity charge is based on -- solely on that argument as well?
A. That's correct.
Q. Okay. Now, on page 2 you get -- you get into your background, your experience. You refer to your prior position with the staff, correct?
A. Yes, sir.
Q. Okay. And is it fair to say that you were -- you worked closely with the Commission, in particular Chairman Schriber, former Chairman Schriber, in both the legislative process as well as the implementation of Senate Bill 3?
A. Yes, Senate Bill 3.
Q. Senate Bill 3.
A. Yes, that's correct.
Q. In fact, I seem to recall you may have had a picture in your office back when you were here at the Commission. Do you know what picture I'm talking about?
MR. DARR: Objection, relevance.
MR. NOURSE: Don't you want to know the answer, your Honor?

EXAMINER SEE: Your Honor is curious. Overruled.

A. Yeah. We were invited over as a group, after the Senate Bill 3 had been signed, to take a picture with some of the legislative leaders, and I was included in the picture.

Q. Okay. In fact, if I had a copy of that picture, I would have tried to make it an exhibit, Mr. Hess, but, okay, so you were at the signing session where the Governor signed Senate Bill 3 into law, correct? Is that what that picture was?

A. No. It was later.

Q. All right. It was later, all right. Very good.

Now -- and if Dr. Schriber had testified in connection with Senate Bill 3 while you were still an employee at the Commission, would you have been involved in discussions preparing his testimony or reviewing it?

A. Mr. Nourse, I don't remember that. Probably not. I mean, Chairman Schriber was always very good about differentiating staff and Commission --

Q. Okay.

A. -- as you well remember.

Q. Okay. All right. So let me ask you another question about page 2, answer 5 of your testimony, you mentioned that you've testified in some AEP cases. All of those cases are AEP cases that you're listing subsequent to leaving the staff; is that correct?

A. That's correct.

Q. Okay. And is that because this is an AEP case, or are there other cases that you've testified in besides AEP cases since the time you left the staff?

A. No, no, this is the total list of the cases I've testified in.

Q. All right. Now, on page 3 you talk about documents you reviewed in preparing your testimony and those include the testimonies of Dr. John Landon and Dr. Edward P. Kahn that were presented on behalf of AEP Ohio in Case No. 99-1729 and 1730?

A. That's correct.

Q. Okay. And you refer to the work that was done in those -- in those testimonies in your -- in your testimony today, correct?

A. That's correct.

Q. Okay. And your testimony today, IEU Exhibit 124 is, in fact, attempting to capsulate or summarize the content of those two pieces of testimony, correct?

A. No. It's intended to give a historical perspective on what happened in AEP 99-1729-EL-ETP and the results thereof.

Q. Okay. So you're presenting -- you're summarizing or referencing the analysis they did in the testimony in that case, right?

A. I used Dr. Landon's exhibits as an example of some of the mathematics of what we went through to determine transition costs.

Q. When you say "we went through," are you referring to what the company went through or what the staff went through?

A. Most of the parties involved in the case.

Q. Okay. And staff in that case had an outside consultant that addressed these matters relating to stranded cost claim reflected in Dr. Landon's and Dr. Kahn's testimony, correct?

A. I'm sorry, could I have the question reread, please?

Q. I can rephrase it, it's fine.

Mr. Hess, did the staff hire an outside consultant in the ETP cases to -- to evaluate the stranded cost analysis that was in Dr. Landon's and

Dr. Kahn's testimony?

A. No. We hired an independent consultant to determine whether there were stranded costs in CSP and Ohio Power cases. It wasn't necessarily just to analyze Dr. Landon's calculation.

Q. Okay. But that was part of what they did.

A. I don't remember.

Q. Okay. Now, I would like to make those two pieces of testimony exhibits so we can discuss a couple of provisions in them. Do you have them with you because I have limited copies?

A. I think I brought the two exhibits you marked in the last case.

Q. Yeah, okay.

MR. NOURSE: Your Honor, I have got some copies. I will provide IEU's counsel and the Bench, but I do have limited copies. These are thick. I will have to provide them later.

EXAMINER SEE: Mr. Nourse --

MR. NOURSE: And, your Honor, I will serve these by e-mail later today on the parties and bring additional copies tomorrow at the hearing, okay?

EXAMINER SEE: Okay.

Q. Okay. So, Mr. Hess, on your copy it may have an exhibit number from the capacity case. Let's put -- let's put a new number on there. For Dr. Kahn's testimony, let's refer to that as AEP Ohio Exhibit 130. Okay. And Dr. Landon's will be 131.

A. Okay.

EXAMINER SEE: The exhibits are so marked.

(EXHIBITS MARKED FOR IDENTIFICATION.)

MR. NOURSE: Thank you.

Q. (By Mr. Nourse) If you could turn -- let me first identify these documents better because they are part of a filing and they don't have the case number on the front. This is for Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP, so both documents were filed in that -- in those cases.

And so, Mr. Hess, these are the same documents that you referred to in your testimony, are they not, on page 3 of your testimony?

A. Yes.

Q. Okay. So if we could look at Dr. Landon's testimony, Exhibit 131, and if you could turn to page 34.

A. I have that.

Q. Okay. And before we get there, let's

just make it clear what we're talking about here. You explained this in your testimony, but the context of what Drs. Landon and Kahn did was to compare a net present value of a future revenue stream of market price revenue on the one hand to the net book value of generating assets as of the year 2000 on the other hand; is that generally accurate?

A. It's probably more accurate to say "market revenues received" rather than "market price" because the market price was multiplied times the generation of the units when they were dispatched.

Q. Okay. So revenues based on projected market prices.

A. Correct.

Q. And then net present value, right?

A. Well, no. The revenues then would have been reduced by associated expenses. It was the -- it was a present value of the cash flow.

Q. Okay. All right. So my question in that context is, do you agree, based on looking at page 34, Dr. Landon's testimony, that his analysis, he said it was necessary to use estimates of future electricity spot prices for the entire duration of the remaining useful life of the asset, in lines 7 through 9. Do you see that?

A. Yes, I see that.

Q. Okay. So you agree based on that statement it was Dr. Landon's view that an appropriate forward analysis of the market price for a particular generating asset should match up with the useful life of the asset.

A. I believe that's correct, yes.

Q. Okay. And so in your analysis in your testimony --

A. Mr. Nourse, I'm sorry, can I interrupt you? Could I have the last question reread?

(Record read.)

A. Well, again, it would be the cash flow.

Q. Okay. But my question here is about the scope, the duration of the analysis forward view is that the remaining life of the asset, correct?

A. That's correct, it should be the total asset.

Q. Now, in your testimony here today your -- is it correct that your -- the comparable component of your analysis is to look to the RPM price during the 2012 through 2015 period?

A. Are you asking me if I were to do the analysis right now, what market price would I use?

Q. Well, answer that question, that's fine.

That's a good question.

A. I can't answer your question until --

Q. Why don't you answer the question you thought I meant. That's fine.

MR. DARR: Objection. There's no question pending at this point based on what I just heard.

MR. NOURSE: Well, I did ask him to answer the question that he just stated, so I'll state it, Mr. Hess.

Q. What market price would you use if you were doing a stranded cost investment today?

MR. DARR: Objection, relevance.

EXAMINER SEE: Overruled.

A. I'm not sure I know the answer to that, Mr. Nourse.

Q. That was a good question. But you did not do any kind of long-term view of forward RPM prices for capacity as part of your testimony today, did you?

A. That's correct.

Q. Okay. Okay. So correct me if I'm wrong, but when you say in your testimony -- you refer to the concept of being "above-market" and I'll look on page 16, line 20 as an example.

A. We are on my testimony now?
Q. Yeah.
A. Okay.
Q. When you say "above-market" in your testimony, are you referring to the market being the RPM capacity price?
A. Yeah, I believe I state that on question 28 and answer 28.
Q. Okay. So did -- did Dr. Landon use RPM prices as parts of his analysis?
A. No.
Q. Okay. In fact, you would agree there was not a capacity market, a fundamental capacity market, in place at the time Mr. Landon performed his analysis, correct?
A. Secondhand information, I believe somewhere in Dr. Landon's testimony he refers to the capacity and energy market in PJM.
Q. Can you find this reference for me?
A. I'm sorry, it's in Dr. Kahn's testimony.
Q. And what's the reference? Are you referring to page 17?
A. No, sir, I think it's before that. He compares -- he describes an energy market and a capacity and energy market. He gives, unfortunately,

California as a description of what an energy market was and PJM as a description of what the capacity and energy market is.

Q. What page are you looking at?

A. Mr. Nourse, it was a couple of days ago I saw that, and I'm going to have to find it.

Q. Okay. Well, you may have to do that during redirect. I can't help you there. Okay. So -- I'm sorry.

You did agree that there was not an organized capacity market in the year 2000, correct?

A. My reference, I believe, is on page 10.

Q. Oh.

A. Starting at line 13.

Q. And what are you taking from this statement?

A. He was describing just generally that there was a capacity and energy market in PJM, New York Power Pool, and NEPOOL.

Q. And are those the markets that he used to project his forward price?

A. No. He goes on to say that there was an uncertainty as to which RTO AEP was going to be joining back in 1999. I believe the two that he mentions are MISO and the Alliance which was a proposal of FirstEnergy and AEP to create an RTO.

And he says because it's uncertain how those RTOs will price the product, he didn't really know which one to use, so he went with the energy market proposal.

And, again, I'm simply responding to your question whether or not there was an energy and capacity. I have no firsthand knowledge of these markets.

Q. Okay. Is it your understanding that Dr. Kahn included in his forward pricing projections an energy-only price?

A. No. He assumed an energy-only market. His price -- he describes how he got his price because I believe it's the variable cost of the last unit called his MPC -- MCP.

Q. Okay. And let me ask you to turn to page 18 since you're looking at Dr. Kahn -- are you looking at Dr. Kahn's testimony?

A. I have Kahn's open right now.

Q. Dr. Kahn's testimony on page 18, and if could you read aloud the sentence that begins on 19 and ends on line 22.

A. "Thus, Dr. Landon can use the model outputs to estimate energy revenues by multiplying the regional price in an hour by the plant-specific generation in that hour and summing over all 8,760 hours in a year and all plants in the target sample."

Q. Okay. So is it your understanding that Dr. Landon used the model to produce energy revenues in the forward-price simulation from that statement?

A. Yes. You asked me "Dr. Landon" to calculate the revenues; is that correct?

Q. Dr. Landon ran the model, correct, and iterated it between the projections of Dr. Kahn?

A. Dr. Kahn ran the model. Dr. Landon used the output of the model to calculate his Exhibits 1 and 2, I believe, which are attached to my testimony. I may have that reference wrong.

Q. Well, that's fine, but the bottom line is the statement I just had you read, doesn't that indicate that the output of the model was to estimate energy revenues?

A. The term "energy revenues" is there, but, again, what Dr. Kahn used is described -- is pricing methodology, is described earlier in his testimony. He also has a description in there about how that pricing methodology recovers both variable and fixed costs.

Q. And where is that reference?

A. At page 6, line 22, "Do fixed costs of production affect the...MCP at all?"

"Yes, but only over the long term. If, over time, a producer cannot recover sufficient revenues to defray a plant's fixed expenses," the plants would be retired.

Q. Okay. Well, that's just saying if you don't collect revenues enough to cover your variable and fixed costs, then your -- your investment may be stranded, correct?

A. No. It states you would have to retire it.

Q. Okay. So you believe that statement means that Dr. Kahn had actually incorporated some value for capacity revenue as part of his forward market revenue projections?

A. Well, I explained to you earlier how he got his MCP and, again, it's described in his testimony. It's the available cost of the last unit called upon and within that structure. He says that some of the earlier units that are called upon, that value allowed to collect those fixed costs. It's described in his testimony.

Q. Okay. So the variable costs of the unit that's clearing, isn't that similar to the PJM energy

market?
        A.   I don't know the answer to that.
        Q.   Okay. Well, one more question on Dr. Kahn. I'm trying to find the reference here.
             Never mind. I'll move on.
        A.   And, Mr. Nourse, just so it is clear, I think I make it there in my testimony, too, this was the study that the company provided and relied upon to make its determination that there are -- were no GTC revenues necessary.
        Q.   Right. Okay. And, Mr. Hess, is it fair to say that if -- if we were to do a stranded cost analysis today using the same method, we would get a different answer, right?
        A.   Just as long as it's not assumed I'm going to do a stranded cost. I believe the time to do it was here, absolutely. Things have changed.
        Q.   Okay. Now, one of the things you did when you were on staff was testify in AEP's ESP I proceeding; is that correct?
        A.   Yes, sir.
        Q.   Okay. And I would like to ask you about your testimony which I have here.
             MR. NOURSE: I would like to mark this 131 -- 132.

EXAMINER SEE: 132.

(EXHIBIT MARKED FOR IDENTIFICATION.)

A. Mr. Nourse, are we done with Landon and Kahn?

Q. Probably.

A. I just wanted to know.

Q. We can set them off to the side, yeah.

Okay. Mr. Hess, do you have Exhibit 132?

A. Let me see if I brought a copy, if you will give me a second. I did bring a copy.

Q. Okay. I ask you to turn to page 8.

A. And this is 132?

Q. It's just been marked AEP Exhibit 132.

A. And you want me to turn to page 8?

Q. Yes, sir.

A. I have that.

Q. Okay. Now, as part of this case, you were testifying about a request the company made for a plant closure rider, correct?

A. Correct.

Q. And on page 8, lines 9 through 11, you make the following statement: "Although the current" -- "Although the economic value of generating fleet was never specifically addressed by the Commission, it could be assumed that the net value of the company's fleet was not stranded." Do you see that?

A. Yes.

Q. And then you go on, in lines 15 to 17, to say, "Given that the market rates have increased significantly since it was measured in" the ETP cases, "we are assuming that net value of the generating fleet is still positive." Do you see that?

A. Yes, sir.

Q. Okay. So --

MR. DARR: Before we continue, your Honor, I believe I'm entitled to have the rest of the answer, beginning at line 5, read into the record as well.

MR. NOURSE: Your Honor, I don't think Mr. Darr is entitled to anything like that. I'm reading the part. I can ask him questions about it. The witness can respond, and counsel can deal with other issues on redirect if he so chooses.

EXAMINER SEE: That you can, Mr. Darr.

MR. DARR: Thank you, ma'am.

Q. So, Mr. Hess, is it fair to say that the staff did not agree with the stranded costs claim in the ETP cases initially and subsequently in the ESP proceeding?

A. I don't understand the question. Perhaps it would help if I had it reread.

Q. I can rephrase, that's okay.

So, first of all, Mr. Hess, with respect to the ETP cases, did staff in its analysis and through its outside expert we talked about earlier -- was staff of the opinion that AEP Ohio did, in fact, have stranded investments?

A. I don't believe that's correct. However, we did agree, and as far as a global settlement, to allow the company to recover the regulatory asset investments.

Q. Okay. Well, the regulatory asset recovery is not stranded generation investment, is it?

A. Well, you would ask me about stranded assets. Now, I guess regulatory assets were to be accounted by the statute in the quantification of stranded transition costs.

Q. That was part of the transition revenue, but it was not part of stranded investment, was it?

A. Yeah. Perhaps to keep these separated, we could refer to it as "RTC" and "GTC." "RTC" referring to the "regulatory transition costs." "GTC" referring to what I think you're referring to as -- the acronym stood for "generation transition costs."

Q. Correct. But in your -- in your -- we'll get back to your ESP testimony in a moment.

So are you saying that it's correct or incorrect that the staff in the ETP cases believed that AEP Ohio had stranded investment costs?

MR. DARR: Can I have that question read back, please?

EXAMINER SEE: Sure.

(Record read.)

A. Again, Mr. Nourse, we agreed, as a global settlement, to allow AEP to recover the stranded regulatory asset and in-transition costs.

Q. Okay. I'm not talking about the settlement. I'm talking about staff's position in the ETP cases.

MR. DARR: Objection, relevance.

MR. NOURSE: Your Honor, this witness's testimony is based entirely on the ETP stipulation and I'm exploring the settlement and their position in that case. It's certainly relevant.

MR. DARR: The position of the staff with regard to the settlement is not relevant. What is relevant is what is contained in the settlement.

That is what Mr. Hess is testifying to.

MR. NOURSE: Your Honor, if I might, the -- this witness testified to this very subject recently in the capacity case, and I'm merely trying to get him to say the same thing he did there, and it was certainly relevant in that case.

EXAMINER SEE: The objection is overruled.

MR. NOURSE: Your Honor, I would like to mark AEP Ohio Exhibit 133.

EXAMINER SEE: The exhibit is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. NOURSE: Thank you, your Honor.

This is the transcript of Mr. Hess's testimony from the 10-2929 case.

Q. (By Mr. Nourse) Mr. Hess, can I ask you to turn --

MR. DARR: Could you hold on a second, please? I don't have a copy of it yet.

MR. NOURSE: I'm sorry. I'll wait.

Q. (By Mr. Nourse) Okay. Mr. Hess, if you would turn to page 1084. And is it accurate on lines 15 through 16, you stated, "There were no stranded investments in 2000 and there were no stranded investments in 2009." Is that accurate?

A. Yes, that's what it states. Again, what I believe we were talking about were not regulatory transition costs; it was the GTC portion.

Q. And that's exactly what I'm asking you about as we clarified earlier.

Okay. So back to your ESP testimony, it's Exhibit 132, we were on page 8. So is it fair to summarize your answer on page 8 as stating that the staff -- well, No. 1 stating that the Commission never made a finding about the economic value of AEP's generation fleet; is that part of your answer?

A. That statement there is "Although the economic value of the generating fleet was never specifically addressed by the Commission," yes.

Q. So the Commission, to clarify that, never made a finding that AEP Ohio had stranded generation investment, GTC, did it?

A. No, it did not.

Q. And the staff never believed that AEP Ohio did have stranded investment or GTC, did it?

A. No, it did not.

Q. And, in fact, you are stating at the end of this answer on page 8 --

A. Mr. Nourse, can I back up a little bit? I'm doing that from a 13-year-old memory. I don't have the supporting workpapers that would do that. The only reason I'm making that assumption is based upon the settlement.

Q. Okay. Well, again, we read what you said a couple weeks ago, so that's not that long ago.

A. Okay.

Q. So at the end of your answer on page 8 you're saying because market rates have increased significantly since the time of the ETP cases, the net value or stranded benefit, as I believe you referred to it, is still positive; is that correct?

A. I don't refer to it as "stranded benefit." My statement is we are assuming the net value of the generating fleet is still positive.

Q. Okay. So you never used the term "stranded benefit"?

A. That's not what I said. I don't know that I ever used the term "stranded benefit." I'm trying to refer to this testimony on page 8.

Q. Okay. Now, the Commission relied on your testimony when they decided the ESP I case, did they not?

A. No.

Q. I'm sorry, did you say "no"?

A. I did say "no."

Q. Okay. All right.

A. I believe -- and I say "no" because I believe that the Commission gave the company the authority to file its claim when it -- when it had that claim available.

Q. Okay. How did that turn out? Do you recall?

A. I believe it was the Sporn case; is that correct?

Q. Sporn 5, yes.

A. I believe the Commission rejected the company's claim.

MR. NOURSE: Okay. Now, let me mark, your Honor, as Exhibit 134 an Opinion and Order in the ESP I case.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER SEE: This is actually an excerpt of ESP I.

MR. NOURSE: I'm sorry, it is an excerpt. The original was a little longer than this as you may recall.

EXAMINER SEE: I do.

Q. (By Mr. Nourse) Okay. And, actually, Mr. Hess --

MR. DARR: Again, I need to ask if you

have a question pending --

MR. NOURSE: I'll wait.

Q. (By Mr. Nourse) Okay. Mr. Hess, I'm shifting gears here. I want to ask you about another aspect of the ESP I case, and I've got the Opinion and Order excerpt here that I would like to have you look at. And I included in the excerpt the entire section Roman Numeral VIII of the decision that's entitled "MRO versus ESP" starting on page 69. Do you see that?

A. Yes, sir.

Q. Okay. And if we look at page 72 -- okay. Sorry, if you look at page 72, there's a statement at the end of the paragraph carried over from page 71 that says using Staff Witness Hess's methodology of the quantification of the ESP versus MRO comparison, as modified herein, we believe that the cost of the ESP is 673 million for Columbus Southern Power and 747 million for Ohio Power, and the cost of the MRO is 1.3 billion for CSP and 1.6 billion for OP. Do you see that?

A. Yes.

Q. Okay. And with respect to your understanding of the MRO test that applies to an electric security plan, you are familiar with the MRO test, right?

A. Yeah, but that's the subject of Mr. Murray's testimony in this proceeding.

Q. Okay. But I want to ask you about this. It's -- the Commission referred to you in your -- your testimony. So is it fair to say that the MRO test compares a watered-down future market price with the proposed ESP price?

MR. DARR: Objection.

EXAMINER SEE: Basis?

MR. DARR: The question is at least ambiguous using terms like "watered down" which has little or no legal significance.

MR. NOURSE: Okay. Let me back up. I would be happy to rephrase, your Honor.

Q. Mr. Hess, relative to the MRO test in your work in the ESP I case that the Commission relied on in the decision here, let me ask you a couple of questions.

First of all, under the MRO test, is part of the procedure to look at future-expected market prices, sometimes referred to as a "benchmark price," in the MRO test?

A. And just so it's clear, Mr. Nourse, in your Exhibit 132, I believe the math that the

Commission is referring to in my methodology is on Exhibit JEH-1.

Q. Right. Plus they made -- had modifications as they reference in this statement that would slightly change that, I believe, but that's -- that's correct, Mr. Hess.

And so using JEH-1 as part of Exhibit 132 then, the part of the calculation here is to reject an estimated market price, correct?

A. Yes, line 2 of the estimated cost of the market rate option as an estimated market price.

Q. Okay. And then what I meant by "watered down," is it your understanding that that market price then is applied in a weighting or blending in this case for a three-year ESP in the ratio of 10, 20, and 30 percent of the amended price under the MRO?

A. Yes.

Q. Okay. And then that -- that result is compared to the proposed ESP price, correct?

A. That's correct. That's what this methodology did.

Q. And so getting back to the Commission's finding on page 72, just if we do the simple math here since the companies CSP and OPC were broken out

separately, what the Commission is saying here, based on your testimony, the ESP cost was 1.4 billion and the MRO cost was 2.9 billion; is that correct?
A. So you added 673 million for CSP and 747 million for Ohio Power to get the ESP cost?
Q. Yes, sir.
A. Is that how you got the two numbers?
Q. 1.4 billion.
A. 1 billion, 420 million, yes.
Q. Okay. And the MRO cost was 2.9 billion, correct?
A. That's correct.
Q. So the MRO test that you performed in the ESP I case showed, did it not, that the MRO costs more than twice as much as the ESP that was adopted?
A. No. Mr. Nourse, this was the Commission's quantification. Mine was on JEH-1. They used my methodology.
Q. Yes, okay, fair clarification. So your understanding of the Commission's finding here is that the MRO costs more than twice as much as the ESP, correct?
A. That's correct.
Q. And does that tell you that the market rates at that time were much higher than the ESP

rates, especially when accounting for the watering-down we talked about earlier?

A. Well, again, are you talking about rates that would have come out of an MRO, or are you talking about the actual market rate?

Q. What I'm talking about is the fact that the MRO, the market rates that you incorporated in your JEH-1 exhibit you just talked about, is -- is watered down in the sense that the lower SSO rate is mixed in with it to produce the MRO cost, correct?

A. That's correct.

Q. And so the fact that the MRO cost was more than twice what the ESP cost was, per your methodology, doesn't that suggest that market rates at that time were much higher than the proposed ESP rate?

A. No. It suggests to me that the MRO costs would have been higher than the ESP costs.

Q. Okay. What was the market price that you used in your JEH-1?

A. $74.71 per megawatt-hour for CSP and $73.59 per megawatt-hour for Ohio Power.

Q. Thank you.

A. I believe the source of that was Dan Johnson, Staff Witness Johnson.

Q. Okay. And by the way, those are based on the forward market prices, right?

A. You would have to look at Dan Johnson's testimony.

Q. Okay. Get back to your testimony here. Now, on page 7 of your testimony?

A. Okay. Which testimony?

Q. Back to your testimony in this case.

A. In this case, okay, thank you. Can I put these down?

Q. Yes.

A. Thank you.

Q. Okay. So page 7 you are referring here to the four criteria for transition revenue claimed for FTC, correct?

A. No. Transition new claim for GTC and RTC, I believe.

Q. Okay. But it applies to the GTC claim, right?

A. Correct.

Q. Okay. So would you agree that the -- I'll say the "key provision," they all four apply, but the key provision that would be in dispute at that time would have been No. 3, the costs that are "unrecoverable in a competitive market"?

A. No. Because it was part of the statute, they are probably all key.

Q. Okay. But what I was really asking was whether No. 3 was the point that was in contention, if you will, in the ETP cases.

A. No. Actually, what would have been in contention in the ETP case was the whole qualification of the market price methodology, the dispatch of the units, the estimated fuel costs through 2030. It was -- methodology was probably as much an issue as any one of these four criteria.

Q. Okay. But those items you just mentioned all go to the question of whether an asset would be unrecoverable in a competitive market; is that correct?

A. Yes.

Q. Okay. On page 8 of your testimony in line 4, and following on to the end of the sentence in line 6, you use a phrase "market prices for the entire range of generating services and fixed and available costs used in Ohio's prior cost-based ratemaking system." Do you see that?

A. Yes.

Q. Okay. Is that just another way of saying all of the wholesale and retail sales of energy that would occur?

A. Yeah. It was a total company valuation.

Q. Okay. So, in other words, we included in this analysis for stranded costs, the wholesale revenues, correct?

A. "We included in this analysis"?

Q. The larger "we," under Senate Bill 3, and the examination of stranded investment, the revenue that was used was based not only on retail sales but wholesale sales, correct?

A. Well, I'm not sure there was a real distinction made. It was a market price.

Q. Okay. But the quantity, was that just for the retail sales --

A. No.

Q. -- in terms of calculating revenue or did they include wholesale sales as well?

A. No, sir. It was the total dispatch of the generation system for Ohio Power and CSP.

Q. So you are agreeing with me, I think, right? It's retail and wholesale revenues.

A. That's correct. It was the total dispatch of the generating fleet, yes, which would have included both generation for retail and wholesale sales.

EXAMINER SEE: Mr. Hess, slide the mic just a little closer to you. Just a little. Yes.

Q. Okay. Now, further down on page 8, I just want to clarify a couple of things.

Okay. The statement that begins on line 22 and carries over to page 9, line 2, this is based on the advice of counsel. You are referring to RC 4928.141 in saying that excluded any previously authorized allowances for transition costs with the exclusion of becoming effective on and after the date of the allowance -- the date the allowance was scheduled to end under the prior rate plan. Do you see that?

A. Yes.

Q. Okay. Now, does this provision apply to AEP Ohio?

A. Yes.

Q. Did AEP Ohio have a previously-authorized allowance for transition costs that would have still been in effect as of 2009?

A. No. The transition costs recovery mechanism for AEP Ohio ended in either '7 or '8 depending on the company.

Q. Okay. So this provision really did not apply, did not operate for AEP Ohio, did it?

MR. DARR: Objection. Requires a legal conclusion. Misstates the testimony.

MR. NOURSE: Well, your Honor, I'm trying to clarify this and why he included it. I don't think it has any applicability to AEP Ohio. I think he previously agreed to that. I'm not sure if we're just having trouble communicating here.

MR. DARR: I think what the gentleman agreed to was that the transition cost recovery period for these two companies ended in 2007 and 2008. He also stated that the section does apply, and so the characterization otherwise implicit in Mr. Nourse's question is inappropriate.

MR. NOURSE: Okay. I'll withdraw that question.

Q. (By Mr. Nourse) Mr. Hess, can you turn to page 1097 of your capacity case testimony that I handed you. It's Exhibit 133.

A. 1097, capacity transcript, right.

Q. It's the transcript. If you labeled it, it would be 133.

A. I have that. What page did you say to refer to?

Q. Okay. On 1096 we start the discussion of RC 4928.141 and then on 1097 in line 7, I say, "So does this provision apply to AEP Ohio that you discuss here?" And you answered "no" and you go on to explain, correct?

MR. DARR: Objection, your Honor. Improper impeachment.

EXAMINER SEE: The objection is overruled.

A. Well, just so we can go back, I don't want -- I know you have all been in this room quite a while, but you had asked me if it was applicable to AEP. I believe the statute was applicable, the law was applicable to AEP. Was it -- could we practically apply it to AEP, no, I don't think so and I think that's what I'm stating here. I think we are agreeing on the same thing.

I'm just concerned about the language, the description you used when you said "was it applicable?" I believe the law is applicable to all the EDUs in the state.

Q. Again, on page 1097 I asked you if it applied, and you said "no," correct?

A. Okay. A little more careful today.

Q. All right. So, Mr. Hess, you agree that under Senate Bill 3 that the vision, the assumption, the predicate of Senate Bill 3 was that after the market development period, the market rates would be lower than the regulated rates.

A. No. I'm not sure I ever made that assumption.

Q. And why don't you agree with that statement?

A. However, I mean, which company are we talking about here? They would be lower than regulated rates? I think there was an assumption the rates would be lower than some of the FirstEnergy company's rates that were in effect in 1999. But I don't think the assumption was that it would be lower than Monongahela Power rates or Ohio Power rates.

Q. Okay. Now, fast forward to Senate Bill 221. Do you agree that at the time Senate Bill 221 was considered and was passed that market rates were higher than SSO rates?

A. Again, I don't know the answer to that. You would have to be a lot more specific what company you're talking about, what rate class are we talking about.

Q. Okay. Well, you gave an answer to the Senate Bill 3 question. Let's start with Senate Bill 221, the Senate Bill 221 question relative to AEP Ohio.

A. Mr. Nourse, I used to have those statistics and then would rely on a Dan Johnson or someone to give me an estimate of what a market rate is, but I don't remember what the overall rates were for CSP or Ohio Power during the discussions of Senate Bill 221.

Q. So -- and I'm not really distinguishing. My original question wouldn't distinguish between AEP, Columbus Southern, Ohio Power, or any other EDU. In general, is it fair to say that market rates were higher than SSO rates?

A. I don't think I can make that statement.

MR. NOURSE: Okay. Your Honor, I would like to mark Exhibit 135.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Hess, do you have the document we just marked Exhibit 135?

A. Yes, I do.

Q. Okay. And do you recognize this document?

A. No. I've never seen it before. I don't think I have ever seen it before. I may have seen a copy of it, but it was --

Q. Okay. And this appears to be testimony before the House Public Utilities Commission by Allen

R. Schriber, Chairman of the PUCO, dated November 28, 2007, does it not?

A. Yes.

Q. And does that timeframe suggest that Senate Bill 221 was being actively deliberated?

MR. DARR: I'm sorry, I missed that question. Could you reread it, please?

MR. NOURSE: Well, I'm just asking Mr. Hess whether the date November -- the end of November, 2007, as well as the title, indicates that the subject was about Senate Bill 221 and that was being considered at the legislature.

MR. DARR: Objection, your Honor. The witness has already identified he has never seen this before, and now we're being asked to not only identify the document for him but relay what another person said before the legislature.

MR. NOURSE: Your Honor, this document -- I'm not sure if IEU is questioning the authenticity of it, but it's very common for witnesses in these proceedings to review documents they haven't seen before. Mr. Hess testified earlier that he worked closely with Dr. Schriber in matters involving Senate Bill 3 and Senate Bill 221.

THE WITNESS: No, sir. Senate Bill 3.

MR. NOURSE: So, your Honor, I think it's an appropriate question.

MR. DARR: It kind of makes my point Mr. Hess interrupted the way he did. But the point of this is when these -- when documents are used, particularly in the context where a witness has not -- apparently doesn't -- well, apparently has not seen them before, it's oftentimes the company's own document.

In this instance this is not Mr. Hess's work product. It has -- it is about matters of which he's already said he has not seen before. It's inappropriate.

MR. NOURSE: Your Honor, it's a PUCO document, and at the time, Mr. Hess was a PUCO employee, so I think it's -- it's -- the same concept applies.

MR. LANG: And, your Honor, the FES joins the objection for lack of foundation.

MR. ETTER: OCC joins the objection. And I believe earlier Mr. Hess said in these matters Chairman Schriber would separate the Commission from the staff in preparation of testimony before the legislature.

EXAMINER SEE: The objections are

overruled. You can answer the question, Mr. Hess.

THE WITNESS: I'm afraid I'm going to have to have it repeated.

EXAMINER SEE: Fine.

(Record read.)

A. I don't know the answer to your question, Mr. Nourse. I wasn't involved in Mr. Schriber's Senate Bill 221.

And I apologize for interrupting you earlier. I only -- I hope I made this clear earlier that it was Senate Bill 3 that I was actually involved with Dr. Schriber. Senate Bill 221, to my knowledge, there weren't a whole lot of staff that were involved.

Q. That's fine and that's really what I want to get to. If you could turn to page 2 of Dr. Schriber's testimony, there is a section called "History." Do you see that?

A. Yes.

Q. And it's discussing Senate Bill 3 in that section, correct?

MR. DARR: Same objection, your Honor.

EXAMINER SEE: The objection is noted.

A. Yes. The first paragraph under "History" is about Senate Bill 3.

Q. Okay. How about the second paragraph?

MR. DARR: Same objection, your Honor.

EXAMINER SEE: Noted.

Q. Mr. Hess, isn't the entire section "History," goes on to the end of page 3, about Senate Bill 3?

A. Well, Senate Bill 3 was applicable law during this timeframe, yes.

Q. Okay. And let me just ask you about a couple of statements made in his testimony and ask you if you disagree or agree with them.

On page 2, the last paragraph, first sentence, it says, "Ohio moved toward restructuring the electric industry with the belief that competitive market forces would develop and hold down prices." Do you believe that's an accurate statement with respect to Senate Bill 3?

A. Yes.

Q. If you could turn to page 3, the second sentence on the page, the statement that says, "To minimize the effects of rate 'sticker shock' and gradually transition customers to market-based rates, the PUCO worked with Ohio's electric utilities to develop rate stabilization plans...." Do you see that?

A. Yes.

Q. Is that accurate?

MR. DARR: Objection, your Honor. What is he asking what is accurate? It certainly is -- he certainly has quoted the statement correctly. Is he asking something else?

MR. NOURSE: As I indicated, your Honor, I was reading statements out of his testimony to ask Mr. Hess if he agrees or disagrees with the statements that relate to Senate Bill 3.

A. Again, I really don't know what Dr. Schriber meant by "rate 'sticker shock.'"

Q. Okay. Let's read another quote then. Down in the next-to-last paragraph, the first sentence, "There is significant evidence demonstrating that the prices customers are paying now under the RSPs are less costly than those that would result from market-based prices." Do you agree with that statement?

A. I don't know what he based his analysis on, and I don't think that I can agree with it. I don't know the answer to the question.

Q. So based on your knowledge, you disagree with that statement?

A. I don't agree or disagree with it. I

don't have a position on it.

Q. Mr. Hess, during the period Senate Bill 3 was in effect, is it fair to say you were the highest-ranking staff member that dealt full-time with electric regulatory issues?

A. Well, I didn't deal full-time with electric regulatory issues.

Q. Well, what was your title before you left the Commission?

A. I believe it was Chief of the Electricity and Accounting Division.

Q. Okay.

A. I can give you a good example, Mr. Nourse. During this time period, I was working on gas-based distribution rate cases. We had five of them filed with the Commission and that's where my attention was.

Q. Well, let me rephrase then. During your period before you left the staff, were you the highest-ranking staff person that dealt with electricity regulatory issues?

A. No. There was a Chief of Staff office. Mr. Lesser was put in charge of that --

Q. Okay.

A. -- at the time I left the staff.

Q. All right. Now, if you turn to page 7 of the Schriber testimony, in the first sentence in the conclusion it says, "In conclusion, I believe that Senate Bill -- "Substitute Senate Bill 221 is a sensible balance between regulation and competition as it provides utilities with the option of pursuing either a competitive market pricing plan or an electric security plan." Do you see that?

A. Yes.

Q. Do you agree with that?

A. Okay. This testimony was in place in 2007, testified in 2007. The bill that I would have been aware of was the final bill which wasn't signed into law until 2008, I believe the summer of 2008, so I'm not sure what draft Dr. Schriber is referring to here.

Q. Okay. Fair enough. I think this Senate Bill 221 was signed by the Governor on May 1, does that sound accurate, of 2008?

A. I'll accept that, yes.

Q. So do you believe this statement is accurate as to the final version of Senate Bill 221 that passed?

A. Yeah. I have no reason to -- to doubt the legislative intent.

Q. Do you recall -- let's leave this document for the moment. Do you recall in the context of the time period when Senate Bill 221 was being deliberated and considered by the legislature of a discussion of what was called the "Ohio Power problem"?

A. No, sir, I am not aware of that at all.

Q. Okay. Would it be your recollection that in 2008 that Ohio Power's standard service offer rates were significantly below market rates?

A. No, sir. I believe they were market rates. However, a CRES provider couldn't provide service below that rate so there wasn't much shopping going on in the Ohio Power service territory.

Q. Okay. You say "they were market rates." Are you referring to the phrase "market-based rates" that was part of Senate Bill 3?

A. I'm referring to the Commission's determination in 04-169 that the RSP rates that were requested by CSP and Ohio Power were market rates. I don't know whether the term was "market-based rates" or "market rates," which I believe were in place in 2008.

Q. So are you aware in any Commission orders a distinction being drawn between market rates and the market-based SSO rates under 4928.14?

A. Between markets rates and market-based rates, no, sir.

Q. Okay. I'm trying to clarify because I thought you were making a distinction, Mr. Hess, between what I would call "fully-competitive unconstrained market rates" and -- on the one hand, and, on the other hand, the quote-unquote market-based rates that were approved under the provision in Senate Bill 3 that was found in RC 4928.14. That's a distinction you're making?

A. No. My distinction is that Ohio Power -- by definition the Commission said that the Ohio Power standard service offer rates were market rates, market-based rates or market rates. I don't remember. And my distinction was that a -- generally a CRES provider was not able to provide rates that could beat those rates.

Q. Okay. And when you say the Commission made a finding, is that in connection with the SSO statute that was made under Senate Bill 3, if you know?

A. I don't remember how it made that finding.

Q. Are you using the term "market-based

standard service offer rates" differently than meaning an "unconstrained fully-competitive market rate"?

A. I don't know what you mean by an "unconstrained fully-competitive market rate.

MR. NOURSE: Okay. Your Honor, I would like to mark Exhibit 135.

EXAMINER SEE: 136.

MR. NOURSE: 135. I'm sorry, 136.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Okay. Mr. Hess, have you seen this document?

A. Yes, sir. I believe you gave me a copy of it in the capacity case.

Q. Okay. So on page 1, the fourth paragraph of the Executive Summary, can you read the first two sentences into the record?

MR. DARR: Objection, your Honor. No foundation.

Q. Okay. Mr. Hess, is this -- since you said you recognized it, and we talked about this quite a bit a couple of weeks ago, I thought we could move forward, but that's fine. Let's back up.

Is this an IEU-Ohio produced document?

A. It has IEU-Ohio logo at the top, top

right-hand corner of the first page, and it looks like on all the pages.

Q. And based on the title, before we even get into the content, would this be a document that appears to be advocating in the context of consideration of Senate Bill 221?

A. Well, the title is "Electricity Post 2008, A Commonsense Blueprint for Ohio."

Q. Okay. And based on your discussions from a couple of weeks ago, and your understanding of the content, is that -- is this an IEU-advocacy piece for -- in connection with Senate Bill 221?

A. Mr. Nourse, I'm not sure how I responded during the capacity case about this document. I was not aware of it then. That was the first time I had ever seen it. I'm not sure I can describe it as an advocacy document for IEU-Ohio.

Kevin -- I wasn't employed by McNees Wallace during this time period. Kevin Murray might be a better witness to ask of these -- about this document.

Q. Okay. Well, I want to ask you some questions about it. It is an IEU document, and you are representing IEU today, correct?

A. Like I said, it has IEU's logo at the top right-hand corner on every page.

Q. Okay. So could you read the first two sentences of the fourth paragraph on the front of the page?

A. "The rate shock clock is ticking in Ohio. We have urged Ohio's leaders to consider how the worthwhile objectives of electric restructuring might be better accomplished through changes to Ohio's electric restructuring law."

Q. Okay. Do you have an understanding what that means?

A. No.

Q. In particular, the "rate shock clock is ticking in Ohio," do you not understand that reference?

A. That's probably the part I really don't understand.

Q. Okay. Can you turn to page 5. Actually let's stop on the way at page 3. Okay. And is there a statement on page 3 in the fourth paragraph that says, "Senate Bill 3 assumed that effective competition would lower prices relative to 1999 levels"?

A. Yes.

Q. And you agree that was IEU's position at that time?

A. Again, I'm not certain. I think Kevin would probably be a better witness to respond to this.

Q. Okay. And let's go back to page 2 for a moment. In the box "Summary of Recommendations," can you read the first sentence of item 2 out loud so we can discuss it?

A. "We recommend that the General Assembly repeal the statutory declaration that generation service is a competitive service for purposes of giving Ohio better options to affect the price of electricity."

Q. Okay. And do you agree that goes on to say that repealing the competitive service designation for generation service "would align Ohio law with reality." Do you see that?

A. Well, might as well read the whole sentence. "The action would align Ohio law with the reality and position Ohio to better control electric price and service outcomes for the benefit of the public interest."

Q. So would you agree that's advocating for reregulation of generation service?

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

Mr. Nourse.

Q. Okay. And item 3 in the box, what's your understanding of what item 3 is saying?

A. There was a provision under Senate Bill 3 that allowed the vertically-integrated utility companies to transfer their generating assets without Commission approval and I believe that was 4928.17 paragraph (E).

Q. "E" as in Edward?

A. "E" as in Edward, thank you.

Q. Okay. Sorry. Do you happen to know how that turned out in the final legislation under Senate Bill 221?

A. I believe that was adopted.

Q. Okay. And in the last part of that item, it refers to "...schemes like those of Monongahela Power." Do you see that?

A. Yes.

Q. What's that referring to?

A. Again, I have no idea.

Q. You have no idea?

A. No.

Q. Did you work on any cases involving Monongahela Power during this time period?

A. Yes, I did. I did not work on any

schemes of Monongahela Power, though.

Q. Okay. Well, that's what IEU called it, right?

A. It's in this document. Again, the questions are probably better asked of Kevin.

Q. Is it your understanding Kevin Murray prepared this document?

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

Q. Okay. Just a couple more items, Mr. Hess. Could you turn to page 4. And the third paragraph up from the bottom, do you see the statement "The term 'market-based' is not defined by Ohio law or PUCO regulations"?

A. Yes.

Q. And it goes on to say, "Ohio's electricity objectives require the PUCO to ensure that prices are reasonable." Do you see that?

A. I see that statement, yes.

Q. Okay. Does that suggest to you that IEU believed that market-based rates were fully-competitive unconstrained market rates?

A. No. It suggests to me "market-based" wasn't defined.

Q. And that the Commission could exert regulatory control and create a different outcome, then of fully-competitive unconstrained market rates, correct?

A. I don't get that out of the statement at all.

Q. Okay.

A. It simply states that market-based rates are not defined by Ohio law.

Q. I asked you about the second follow-up statement, but that's fine.

We can move on to page 7. The last paragraph, the first sentence, can you read at that sentence out loud?

A. "There is nothing in Senate Bill 3 that requires an auction or competitive bidding process to be used to establish a 'market-based' price for the SSO."

Q. Okay. Do you agree with that statement?

A. Mr. Nourse, I'm just talking about what 4928.14 required. There was -- there were two requirements under that and I thought one of them was a competitive bid. I don't remember.

Q. So you may disagree. You don't remember?

A. I don't remember.

Q. Okay. Do you remember whether IEU advocated against the use of competitive bidding process for establishing SSO rates in the 2007-2008 timeframe?

A. I don't remember that.

MR. NOURSE: Okay. Your Honor, I would like to mark Exhibit 137.

EXAMINER SEE: 137.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Okay. Mr. Hess, do you have the document we just marked AEP Exhibit 137?

A. Yes, I do.

Q. Does this appear to be the Initial Comments of Industrial Energy Users-Ohio docketed September 7,2007, in Case Nos. 07-796 and 797?

A. Yes.

Q. Okay. And could you turn to page 2?

A. I have that.

Q. The paragraph -- last paragraph that carries over to page 3, can you read the first sentence in that paragraph?

A. "The term 'market-based' is not defined by Ohio law and there are a variety of ways to develop a market-based price."

Q. Okay. Did you -- do you recall what this particular case was about in looking at the case caption?

A. Well, I mean, I hate to admit this, but no, I don't.

Q. Okay. Could you turn to page 3 and read the last sentence just above where it says "comments"?

A. The one that's underlined in here? I'm sorry.

Q. It may be. It says, "FirstEnergy's Application asks...." It's on page 3, the sentence right before the heading "Comments."

A. "FirstEnergy's Application asks the Commission to rely on an auction process to establish the foundation for the discrete prices that the Commission will approve for default generation supply."

Q. Okay. Now, can you, if you would, read the sentence underlined at the bottom of page 3 that carries over?

A. "As demonstrated from results in other states, the auction results are almost certain to produce prices significantly higher than they are today."

Q. So with regard to that statement, Mr. Hess, would you agree that's a prediction by IEU that the auction-based market prices would be higher

than the current -- then current SSO rates?
A. That's what the statement says, yes.
Q. Okay. And then on page 4, the first sentence of the new paragraph, can you read that?
A. The other one underlined?
Q. Yeah.
A. "The Commission's experience in the case of FirstEnergy has provided a preview of the potential rate shock that is built in to auction-driven electric pricing."
Q. Okay. And what do you understand that statement to mean?
A. I really don't know. I don't know what the Commission experience it's referring to.
Q. Okay. Do you understand what "rate shock" typically refers to in regulatory settings?
A. Significant increase in a customer's bill.
Q. Thank you, Mr. Hess.
I'll ask you a couple of follow-up questions going back to some things we discussed recently. First of all, in connection with your recollection about RC 4928.14, I believe you mentioned that there was -- one of the requirements was that the SSO rate be market-based, correct?

A. I believe that was the term used, yes.
Q. Okay. And do you know whether that provision that imposed that requirement that was repealed as part of Senate Bill 221?
A. Yeah, I don't know the answer to that.
Q. Okay. Is it your understanding that under Senate Bill 221, SSO rates are required to be market-based?
A. Again, they need to be in compliance with either an MRO or an ESP.
Q. Okay. And is -- is an MRO a market-based rate?
A. An MRO is defined by the statute.
Q. Is it a market-based rate in your opinion?
A. I'm afraid I don't know the answer to that question.
Q. Okay. Do you agree that the MRO involves a period where prices are blended between market rates and prior SSO rates adjusted for certain things; is that accurate?
A. Yeah. I think we were through that earlier in my exhibit in the ESP I case that AEP filed.
Q. So the market rate component of a

market-rate offer SSO rate is only a fraction of the total rate, correct?

MR. DARR: Objection. Asked and answered, third time.

MR. NOURSE: Well, your Honor, I think a couple of answers ago he said he didn't know how to answer the question whether an MRO was a market rate, so I'm trying to clarify that.

EXAMINER SEE: The objection is overruled.

A. Yeah. You take a percentage of a market rate and add it to the existing standard service offer.

Q. Okay. So do you agree there is a distinction, a difference between market rate and a market-based standard service offer rate?

A. Well, Mr. Nourse, I mean a "market rate" could be defined as willing buyers and willing sellers. I think what you're trying to do is make a distinction between that and the equilibrium point on a supply-and-demand curve. And are those different, could those be different, yes.

Q. Okay. Well, for the period leading up to 2009, when Senate Bill 3 was in effect, was there a difference or distinction between the market rate and a market-based standard service offer rate?

A. Again, depending on whose quantifying it, if you were a willing buyer and willing seller, it could be defined as a "market rate."

And another way to quantify it would have been through an RFP or some kind of an auction. I mean any of those can be defined as a "market-based rate."

Q. Right. And that -- those definitions that you listed are different from a fully competitive market rate, aren't they?

A. Different methodology of how to establish a market rate.

Q. Okay. Now, you stated earlier that Monongahela Power SSO rates were -- I believe you said they were much lower than market rates; is that correct?

A. Monongahela Power had very low rates. There was little to no shopping in the Monongahela Power service territory.

Q. And I believe you said no CRES provider could make an offer that would compete with that rate, correct?

A. That's correct.

Q. And so do CRES suppliers make competitive market rate offers?

A. CRES providers make rate offers.

Q. Are they competitive market rate offers?

A. I would state they make a rate offer. Whether it's a competitive market rate, they could make a -- any offer that they preferred.

Q. So -- so you agree that a CRES offer could be below an SSO tariff price, but not necessarily be a competitive offer; is that what you're saying?

A. It would not be very sustainable.

MR. NOURSE: Okay. Now, your Honor, I would like to hand the witness a document. It's already part of AEP Exhibit 120. It's already been admitted into this record. For convenience, I reprinted it. I'm sorry. We don't need to mark it, but it's for handy reference.

Q. Mr. Hess, on the subject of Monongahela Power, do you recall the 05-765 case at all?

A. Yes.

Q. Okay. And as I stated, I believe, a few minutes ago, the Mon Power system SSO rates were much lower than competitive market offer rates. And were you aware that at that time --

MR. DARR: Objection, your Honor.

Mr. Nourse is now testifying, as he has done previously, and I don't think he's correctly described the testimony as it has been laid out, so I move to strike that little comment that he just stuck in there about Mon Power being below certain rates.

MR. NOURSE: Well, your Honor, first of all, I would like to finish my question before there is an objection. Secondly, I was stating my understanding of the witness's testimony. He can certainly correct me without assistance from counsel if he believes it's inaccurate.

Q. Mr. Hess -- I'm sorry.

EXAMINER SEE: Just a moment.

Go ahead and finish your question, Mr. Nourse.

Q. Mr. Hess, was it your understanding that the dispute leading up to this decision in the November 9, 2005, Opinion and Order I've handed you involved a situation where Monongahela Power Company attempted to conduct a competitive bidding price to establish that price based on competitive bidding for its SSO?

A. I believe Monongahela -- Mr. Nourse, I don't think this one was about the competitive bid that Monongahela Power as you put it. I think this one was about CSP and purchasing Monongahela Power certified service territory.

Q. Right. And I was asking about the background. I asked you about the dispute leading up to this case and this decision, whether that was triggered by Mon Power attempting to set its standard service offer rates based on a competitive bidding process. Is that your understanding?

A. Monongahela Power tried to end its development market price in 2003 and wanted to establish a market rate in 2004 and 2005 based upon a -- an RFP process, I believe it was.

Q. Okay. On page 8, turn to page 8.

A. I have that.

Q. There's a reference there in the middle of the page to Mon Power's competitive bid process abbreviated as CBP. Do you see that?

A. Yes, I do see it.

Q. And do you see the table below there on page 8 that sets forth MP rates, Mon Power rates, and CSP rates, Columbus Southern Power rates?

A. Yes. I see it.

Q. Okay. And that based on the lead-in sentence above that table, is this information from Mon Power Witness Blankenship's testimony involving a side-by-side comparison for a three-year rate period? I'll withdraw that question.

Move to page 10, if you would, Mr. Hess. And if you look in the next-to-last paragraph of page 10, is this a statement that says, "The evidence shows that the Mon Power customers, being acquired by CSP, will be far better off under the rates established in the company's proposal than by being served at a CBP provided by Mon Power." Do you see that?

A. I see that statement, yes.

Q. And you believe the reference there is to competitive bidding process provided by Monongahela Power Company?

A. Competitive bidding process, yes.

Q. And if you turn to page 11, the carryover paragraph, it's referring to an OCC argument and the end of the sentence says that it would most likely leave Mon Power customers subject to charges under a CSP starting in 2006. Do you see that?

A. I see that statement, yes.

Q. Do you see the observation that "The evidence in this proceeding substantiates that such charges would be much higher than CSP RSP rates." Do you see that?

A. I see the statement, yes.

Q. Okay. Do you have any reason to disagree with those findings of the Commission?

A. No.

Q. Okay. So, Mr. Hess, would you agree there is a difference between a quote-unquote market-based SSO rate under Senate Bill 3 and the results of a competitive bidding process?

A. They certainly were in this case, yes.

Q. Okay. And the result of this dispute, Mon Power, if you recall, was that Columbus Southern Power took over their Mon Power territory to serve these customers; is that correct?

THE WITNESS: Could I have the question reread?

(Record read.)

A. That's correct. And they auctioned off the load of Monongahela Power and the differential between the CSP rate and the auctioned off rate was spread to all of the CSP customers.

Q. So, again, at that time there was a differential as you called it between competitive bidding rate result and the SSO rates of Columbus Southern Power, correct?

A. Yes.

Q. Okay. Now, shifting to Senate Bill 221, do you agree that the market rate option involves an additional transition period of six to ten years?

A. Mr. Nourse, I haven't been involved in many MRO cases, and I'm not sure what you're referring to. I believe -- I'm not sure what you're referring to.

Q. Okay. Well, we talked earlier about your testimony in the ESP I proceeding for AEP Ohio, correct?

A. That's correct.

Q. You submitted testimony, did you not, on the MRO test?

A. Yes.

Q. And the MRO test involves a projection of the expected results under a market-rate option, does it not?

A. For the three years, yes.

Q. Okay. For the term of the ESP in question.

A. That's correct.

Q. And that case, it happened to be three years, okay. So is that -- does that mean your knowledge about the MRO test cuts off at three years?

A. No. I simply stated I don't have a copy of the law in front of me, and you had asked me about an extension for six to ten years, and I don't remember that specifically in the MRO statute.

Q. Okay. But it's certainly longer than three years, correct?

A. You know, my understanding was that there is a five-year phase-in rate.

Q. And then what happens in the fifth year then? Do you recall?

A. Again, I don't remember that.

Q. 10, 20, 30, 40, 50? Does that sound right?

A. That's correct.

Q. So it's year six you get to 100 percent market rate under the market-rate option, correct?

MR. DARR: Objection.

EXAMINER SEE: What basis, Mr. Darr?

MR. DARR: Well, first of all, he's asking him to make a legal conclusion. Second, I believe it misstates what the law actually says. His question, thus, is unreasonable under this context for both reasons.

MR. NOURSE: Your Honor, we've already established Mr. Hess offers the MRO test within the AEP case and he just agreed that I refreshed his recollection with the 10, 20, 30, 40, 50, and so I was just closing the loop on his refreshed recollection. His understanding, not a legal conclusion.

EXAMINER SEE: Okay. You can answer the question to the best of your ability, Mr. Hess.

A. Again, Mr. Nourse, I don't remember what happens in the sixth year. I thought there was Commission discretion after three years and percentages could change, but, again, I don't remember.

Q. Okay. So let's talk about the MRO conceptually, then, based on the recollection you've given. Again, was it your understanding that leading into Senate Bill 221, that market rates were higher than SSO rates for AEP Ohio?

A. No. I think I've already testified, in fact, that the Commission defined the RSP rates as a market rate.

Q. Okay. Well, I'm talking about the MRO option, sticking with that, Mr. Hess. Your testimony, we can pull it back out, JEH-1, and the conclusion that the Commission reached in the ESP I proceeding that the MRO cost was more than twice as much as the ESP cost. Do you recall that?

A. Yes, I do.

Q. And those -- the MRO test uses future market rates as a component of the MRO test, does it not?

A. Yes, it does.

Q. Okay. So is there anything unclear about referencing those as "market rates"?

A. Well, again, your original question was leading up to Senate Bill 221. The rates that were in place at that point in time were the RSP rates. I thought that's the question I responded to.

Q. Yeah. And when --

A. And then we shifted to the test that was done by the Commission in ESP I.

Q. Okay. And were the -- when was the company's ESP I proposal filed, if you recall?

A. Late summer or early fall of 2008.

Q. Okay. So that would have been a few months after -- actually 90 days after the law passed; is that correct?

A. Yes.

Q. Okay. So would the -- do you know if the market prices changed between -- substantially between May and August of 2008?

A. No, I don't know the answer to that. I wasn't involved in the market.

Q. Okay. All right. So the numbers that you used in your MRO test in the ESP I demonstrate, did they not, that market rates were much higher than standard service rates for AEP Ohio?

MR. DARR: Objection, relevance. Asked and answered.

MR. NOURSE: Well, if it's asked and answered, I can move on.

EXAMINER SEE: It is.

MR. NOURSE: It was background information for my next question.

THE WITNESS: So do I answer?

EXAMINER SEE: No. It has been asked and answered. I thought Mr. Nourse heard me say that.

Q. (By Mr. Nourse) Circling back to revisit 221, Mr. Hess. Is it your understanding that the design of Senate Bill 221 and the market-rate blending period that we've discussed presumes that market rates were higher than SSO rates?

MR. DARR: Objection, relevance.

MR. NOURSE: Well, your Honor, I think it relates to his testimony and his reliance back on Senate Bill 3 and matters relating back to that, and I'm trying to tie it in here if I can get there.

EXAMINER SEE: The objection is overruled, but tie it in quickly.

THE WITNESS: And, I'm sorry, I'm going to have to have the question repeated.

EXAMINER SEE: Sure.

(Record read.)

A. The development of Senate Bill 221 presumes that the market rate is higher than the SSO rate.

Q. The SSO rate you're referring to would be the result of an ETP or the current SSO rate? It would be the result of the electric security plan rate that would be under Senate Bill 221 --

A. ESP. I'm sorry.

Q. ESP?

A. The design of Senate Bill 221 assumed that the market rate was higher than what the ESP rate would have been.

MR. DARR: Mr. Hess, are you just reiterating the question or are you making a statement?

THE WITNESS: I'm trying to figure it out, yes.

A. I don't know about the design of Senate Bill 221, and I'm a little confused by the math, what you are trying to ask.

Q. Let me ask it a different way. Is there some reason you could think of why the General Assembly would impose a six-plus-year blending period to get customers to market rates --

MR. DARR: Objection, relevance.

Q. -- unless --

MR. DARR: Objection. I'm sorry, I didn't mean to interrupt the question. I thought you had stopped.

Q. -- unless the presumption was and the facts were that market rates were higher than SSO rates?

MR. DARR: Objection, relevance, and it requires a supposition that's clearly inappropriate under these circumstances. The law is -- it states what it says.

MR. NOURSE: Your Honor, the relevance is Mr. Hess's testimony here is that based on the 1999 provision in the law rates today cannot be above market, and I think that's squarely incorrect. I think it's very clear in the MRO structure and his testimony in the ESP I case that Senate Bill 221 allows recovery of rates above market.

MR. DARR: If I may, your Honor?

EXAMINER SEE: Go ahead, Mr. Darr.

MR. DARR: At this point Mr. Nourse has asked for the thoughts of former Commissioner -- former Chairman Schriber. Now he is asking for the thoughts of 132 members, most of whom are no longer sitting, and it doesn't lead us anywhere. The law is what it is. It doesn't require anyone to do any suppositions about what was intended and what was not intended.

What, in fact, has happened is that the company has submitted a plan under a stipulation which this Commission has found would not be approved under the same test. The question is what's the test, not what -- what the suppositions are. This whole line of questions is leading nowhere fast.

MR. NOURSE: Okay. Your Honor, you know, I'll move on because I've got a real example I want to talk about. So I'll withdraw that question.

I would like to mark as Ohio -- AEP Ohio Exhibit 138 --

MR. DARR: Your Honor, Mr. Hess has been on the stand now for the better part of almost two-and-a-half hours, maybe close to three hours. Is there any chance we could take a break at this point?

MR. NOURSE: Any time you would like to

break, it's fine with me.

EXAMINER SEE: Let's take a 10-minute recess. Let's go off the record.

(Recess taken.)

EXAMINER SEE: All right. Let's go back on the record.

Mr. Nourse.

Mr. Hess, you are going to have to cut your mic back on.

Mr. Nourse, your mic is on.

Mr. Hess -- yes, thank you.

Q. (By Mr. Nourse) Okay. Mr. Hess, before we get back to Exhibit 138, do you still have your transcript from the capacity case up there, Exhibit 133?

A. Bottom of the pile, yes, sir, I do.

Q. Okay. And before we took a break, I was asking you about how -- how and whether ESP rates, under Senate Bill 221 can be above-market rates. Do you recall that?

A. Yes.

Q. Do you agree it's -- it is permissible under Senate Bill 221 for ESP rates to be above-market rates?

MR. DARR: Objection, your Honor. Again,

I don't know the context of this question or its relevance.

MR. NOURSE: Your Honor, we talked about this in the capacity hearing. Mr. Hess had no trouble discussing it. And it certainly is relevant here as it was there.

EXAMINER SEE: The objection is overruled.

A. And your question was can ESP rates be greater than market rates; is that correct?

Q. Yes. Is it permissible, under your understanding of an ESP, that ESP rates be greater than market rates?

A. And we're talking about the standard service offer portion of the ESP rate; is that correct? Or could it just be the entire plan? I mean there is an awful lot more encompassed in the term ESP rates. There would be the standard service offer, distribution offerings, I'm not sure I could come up with the entire list, standard service offer.

MR. DARR: Again, objection, relevance and now the question is even more vague than when we started because of the request for clarification made by Mr. Hess.

MR. NOURSE: I'm not sure how it got more vague, your Honor. I clarified his question.

EXAMINER SEE: The objection is overruled. We went with the interpretation or the clarification that the witness asked and let's -- let's see if it can be answered.

A. So the question is can a standard service offer portion of an ESP be greater than a market rate?

Q. Correct.

MR. DARR: Objection. ESP requires a comparison of the ESP with the market rate offer. The question is not relevant to this proceeding.

MR. NOURSE: Your Honor, I thought you already ruled on this question.

EXAMINER SEE: I did. The objection is overruled.

Mr. Hess may answer the question. And, of course, if he needs any clarification, he can ask for that.

A. I'm just struggling with the math of it to try to figure out -- and if the ESP would pass the MRO test at that point in time. I don't know of a restriction, a legal restriction, where the SSO portion of an ESP has to be less than a market rate. So which would lead me to believe that an -- the SSO portion of an ESP could be greater than a market rate. But the ESP would have to pass the test paired to the MRO.

Q. Okay.

A. I'm just trying to think through the math of it to determine whether or not it's even possible.

Q. Okay.

MR. NOURSE: And, your Honor, I believe about to be marked as Exhibit 138 --

EXAMINER SEE: No. We were there.

MR. NOURSE: I was about to, sorry, the document I'm handing Mr. Hess.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. And, Mr. Hess, I believe your answer is a perfect segue into discussing this exhibit about the math. This is a hypothetical exhibit relative to the quantitative portion of the MRO test. It's set up in a similar format which you had in JEH-1 for your ESP testimony. These are hypothetical numbers. It's just I want to ask you a couple of questions about, if this is accurate, how the MRO test works in the context of the discussion we were just asking, okay?

A. Okay.

Q. And you see in line 1 that the legacy SSO price is adjusted for the environmental, purchased

power, renewables, and fuel is $70 --
A. I see that.
Q. -- a megawatt-hour in this example and the competitive bid market is 50, correct? Do you see that?
A. Yes.
Q. Okay. In this example the SSO rate is above a competitive benchmark or market rate. Can we agree on that?
A. Yes. The $70 is greater than $50.
Q. Okay.
A. I'm an accountant; I like the numbers.
Q. Taking it one step at a time here, that's correct.
Now, further down on line 8, you see where the proposed ESP price is $60 throughout the term, correct?
A. Yes.
Q. Okay. So the proposed ESP price is greater than competitive benchmark market price of $50 as well. You and I can do that math, correct?
A. Yes.
Q. All right. And then you see, under the MRO pricing, you've got your 10, 20, 30, 40, 50 percent for the weighting of the market price and

90, 80, 70, 60 percent for the non-market portion of the price blend. Do you see that?

A. Yes.

Q. And is that your understanding of how the MRO price test works, using the numbers that I've supplied?

A. Yes. So we're comparing the $60 in the first year to the 68; it passes by $8.

Q. Right.

A. 60 to 66, it passes by $6 and so on.

Q. Yes.

A. Yes.

Q. Okay. And then at the bottom we've got a -- the portion in line 13 shows how far above market it is, $10.

A. Yes, yes.

Q. Okay. And then with the -- the 50 million-megawatt hours of connected load for AEP Ohio, that's converted into an "Above Market" Revenue, correct?

A. Correct.

Q. Which totals out in this example of $2 1/2 billion.

A. I see that, yes.

Q. So is this a fair example of how the MRO test could work and permit above-market ESP revenues?

A. It certainly would pass. I would guess so, Mr. Nourse, in this case though that, I mean, if the market price is at $50 and the standard service offer is at $60, there is going to be quite a bit of shopping that would go on. So I don't think in the case where an ESP is offered at 60 bucks and a market price is 50 that you're going to realize above-market value of 2 billion, 500 million.

Q. Okay. But you wouldn't think, given that's an average rate, there would be 100-percent shopping, would you?

A. Well --

Q. And, again, Mr. Hess, if it helps, I'm not asking you to agree to the numbers I supplied or the -- or the level of which the above-market collection would occur. I'm simply, to your prior point, doing the math and doing the illustration.

A. Correct. So the $60 is allocated to the different rate structures, and rate structure is created from that allocation, and your suggestion then that the -- that $50 market price might not be -- that the $50 market price may not be lower in each one of those rate schedules.

Q. Is that consistent with what you would expect?

A. I don't know the answer to that. I asked for a clarification in your earlier question where you said that not everybody would be shopping. I guess I kind of assumed this was one customer.

Q. And in your JEH-1 in the ESP case we talked about earlier, did the market prices that you portray there, they are average -- they don't apply to every customer, do they?

A. Again, they were created by Mr. Johnson, and I think you're correct. I think it's an overall. Again, I'm just asking for clarification of what you asked me about where everybody would shop. I mean, I'm not trying to be argumentative.

Q. That's fine. I'm trying to help clarify it. So the math is correct here, right?

A. Yes.

Q. Okay. Okay. Just a couple more questions, Mr. Hess. Let me ask you to turn to page 11 of your testimony.

A. I have that.

Q. And in your answer 17 there, you're talking about Dr. Landon's methodology, the stranded cost evaluation. And you indicate there in answer 17 that his method included all the components and cost-based ratemaking associated with total generation service. Is that -- is that correct?

A. Yes.

Q. And would the plants that were looked at in 2000, they would not include plants that were subsequently acquired like Darby or Waterford, would they?

A. No.

Q. And the evaluation Dr. Landon did would not include capital investments made in the last 12 years to keep the fleet running, did they?

A. I don't think I agree with you. If I could take you to my JEH-1 in this proceeding which is Dr. Landon's Exhibit JHL-2, page 1 of 4, line 29, it's got a line in there for construction. I believe it did impact the cash flow analysis.

Q. Okay. Would that construction cost assumption, back in the year 2000, have anticipated subsequent environmental regulations?

A. One of the scenarios he ran took an aggressive position on environmental, and I don't remember whether this was in Kahn's or Landon's testimony that they said taking this aggressive position would assume additional environmental compliance.

Q. Okay. Do you know what forward prices Dr. Landon used for the 2012 through 2015 time period?

A. Yeah. Again, if I could direct you to -- I'm not even sure I can read them. If I could direct you to, again, my Exhibit JEH-1 which was Dr. Landon's Exhibit JHL-2, page 1 of 4, the market price on all four pages is on the second line for '12, '13, '14, and '15.

Q. I can't read it either. Can you tell me what the number is?

A. Like I said, no, I can't. Go to -- Kahn is actually the one that developed this, but he only developed it every three years. Landon did -- filled in the numbers in between.

It looks like -- okay. I'm now on Columbus Southern low gas and base environmental $32.69 for '12, 33.80 for '13. And how many years did you ask me for?

Q. Through '15.

A. 34.53 for '14, and 35.48 for '15.

On Ohio Power's low gas and base environmental, 32.69, 33.80, 34.53, and 35.48. It looks like they were the same numbers.

Q. Okay. And --

A. And Ohio Power -- I'm sorry, the last one I just read you was Ohio Power low gas and base environmental.

For Columbus Southern, high gas and alternative environmental, 35.36, 36.41, 37.49, and 38.60.

For Ohio Power, high gas and alternative environmental, for 2012 it's 35.38, 36.41, 37.40, and 38.60.

Q. Okay. Were those rates mixed together or averaged or blended together somewhere by Dr. Landon?

A. Yeah. I believe the model priced it hourly, if I remember correctly. It's described in, I believe it's Dr. Kahn -- Dr. Kahn's testimony about how the model spits the prices out.

Q. Okay. Have you done a comparison of the prices used by Dr. Kahn and Dr. Landon for 2012 through 2015 and unbundled the capacity component of those prices?

A. No.

Q. So you don't know how, if this was a capacity component to those forward prices, how that compares to the today's RPM rates?

A. No. Again, I've described how Dr. Kahn got his prices. It was the variable pricing of the last generator dispatched, and I believe they did by hour. And I don't have a breakdown of that. I mean I am not sure how you could break that down between capacity and energy.

Q. Okay. But you've not done any comparison between the projected prices that Dr. Landon and Dr. Kahn used to -- to the extent they included any capacity component, you haven't backed that out, number one; and, number two, you haven't compared that result, if there is any, to the current RPM prices, correct?

A. That's correct.

Q. Okay. Did IEU -- let me ask you first: Did the current RPM price -- do you know when that was established through base residual auction initially?

A. Current price, you're asking what's in place today, correct?

Q. Yeah.

A. Because I believe it changes tomorrow if I remember correctly. So it's about 146, is that -- is that the dollar value we're talking about?

Q. Yes.

A. Probably should defer this to Kevin, but it's my general understanding that the base residual auction would have occurred three years ago and then there would have been two other auctions since then that would have had an impact on that price. But, you know, I'm going from a description Kevin provided me. It's probably going to be better to ask him those questions.

Q. Okay. Well --

A. Kevin Murray, IEU Witness Kevin Murray.

Q. I got you.

My question is, so the rate that's in effect today initially went into affect June 1, 2011, correct? Is that your understanding?

A. I believe that's correct, yes.

Q. And the initial base residual auction to set that price would have been done in the spring of 2008; does that sound correct?

A. Again, based upon that very general understanding I have of it, I think that's correct.

Q. And that would have been actually coincidentally about the time the Governor signed Senate Bill 221?

A. Correct.

Q. Okay. Do you know if at that time in the 2007-2008 time period IEU supported the reliability pricing model?

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

MR. NOURSE: Okay. I would like to mark, your Honor, Exhibit 139.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Hess, I'm going to provide you the original document this excerpt was made out of in case you or your counsel would like to look at it.

Okay. Mr. Hess --

EXAMINER SEE: Mr. Nourse, if you could cut your mic on. And, Mr. Hess, if you could also cut yours on.

MR. NOURSE: Is it on now?

EXAMINER SEE: Yes.

THE WITNESS: Do they turn off automatically so you have to make sure they stay on?

EXAMINER SEE: We are testing. We're not sure exactly what they do.

MR. NOURSE: I think they do. Battery saver.

Q. (By Mr. Nourse) Okay. Mr. Hess, you have the document I just handed you, AEP Ohio Exhibit 139?

A. Yes.

Q. And this appears to be a presentation with Sam Randazzo, Industrial Energy Users - Ohio listed on the bottom there.

A. Where do you get that? It's a presentation? I mean I see Sam Randazzo, Industrial Energy Users of Ohio at the bottom.

Q. Okay. Why don't you look at the top where it says, "11th Annual ohio energy Management & Restructuring Conference, Tuesday & Wednesday, February 27-28, 2007. The Columbus Renaissance Hotel, Columbus, Ohio." Does that suggest this was a presentation during that meeting?

A. No. I think Sam provides the MEC group a document like this annually. I'm not sure that it's -- that he does a presentation on it.

Q. Okay. So this was information supplied on behalf of IEU-Ohio to industrial customers?

MR. DARR: If you know.

A. It's supplied, I believe -- I mean if it's similar to the one that he's handed out the last couple of years to -- it's provided to the organizers of the MEC conference to hand out, I believe.

Q. Okay. Why don't you turn to the page 19. Page 19 of the large document or the second page of the exhibit. Can you read the first full sentence on that page out loud?

A. "At the same time, PJM is pushing its very expensive RPM (reliability pricing model) proposal and contending with strong opposition from almost every stakeholder sector."

Q. Can you read the footnote attached to RPM?

A. It's footnote 29 on the page, "It should be renamed the 'revolting price model.'"

Q. Okay. Does that suggest to you that IEU was in favor of RPM in 2007?

A. I don't know the answer to that, Mr. Nourse. Again, probably better asked -- I don't know the answer to it.

Q. Okay. Mr. Hess, is it fair to -- going back to -- it's not working? Okay. Okay.

Going back to my question about what you reviewed or didn't review relative to the 2012 through 2015 period in connection with Dr. Landon's and Dr. Kahn's stranded costs analysis, is it fair to say that if you focus on a subset of the 30-year timeframe that they looked at, that you might get a different answer than they reached looking at the full 30 years?

A. Sure.

Q. Okay. And so --

A. Again, I think that's very improperly done -- not again, but I think that's very improperly done to just look at a portion of it. The whole picture has to be looked at.

Q. So you're saying it's improper just to look at a few years in comparison to the 30-year view that Dr. Landon and Dr. Kahn performed?

A. As far as calculating a stranded cost calculation or transition cost calculation, yes.

Q. So, for example, it would be inappropriate to pull out a three-year period and make -- draw conclusions based on new information that was not available at the time of their study in order to characterize something as stranded costs or not stranded costs; is that true?

A. I'm afraid I'm going to have to have that question reread.

(Record read.)

A. I'm sorry, Mr. Nourse. I don't understand your question. When are we comparing?

Q. Okay. We can start over with that question.

So if you did a -- if you did a 30-year view of stranded costs like Dr. Landon and Dr. Kahn did that you are relying on in your testimony, they reached one conclusion and, in fact, they reached the conclusion that there was some level of stranded costs, correct?

A. Yes.

Q. Okay. And if you look at a smaller period of time within their study, let's say 3 years instead of 30, depending on what 3 years you pick, you may reach a different result than the result they reached looking at 30 years, correct?

A. Yes.

Q. Okay. And let's say there was a similar 30-year view that was done and let's just say staff's consultant in the ETP case, staff's consultant reached the conclusion that there were no stranded costs; is that correct?

A. Are we in a hypothetical again? I told you I'm not sure I can remember.

Q. Okay. Let's make it a hypothetical. Let's assume that the staff's consultant did a similarly structured study for 30 years and reached the conclusion based on different assumptions that there were no stranded costs. Are you with me?

A. Okay, so we hit zero --

Q. Okay.

A. -- in the comparison of the 12-31-00 net book value.

Q. Okay. Yes. Now, if you were to take

their study in that example and look at a particular three-year period, you may conclude if you were just looking at the three-year period that there is stranded costs; is that correct?

A. The three-year period may end up with a different result than we ended up with in the 30-year calculation, yes.

MR. NOURSE: Okay. Okay. Those are all the questions I have. Thank you, Mr. Hess.

THE WITNESS: Thank you.

EXAMINER SEE: Mr. Margard? Mr. Beeler?

MR. MARGARD: No questions. Thank you, your Honor.

EXAMINER SEE: Redirect, Mr. Darr?

MR. DARR: A couple of minutes, your Honor?

EXAMINER SEE: Sure.

(Discussion off the record.)

EXAMINER SEE: Are you ready to proceed, Mr. Darr?

MR. DARR: Yes, ma'am, thank you.

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REDIRECT EXAMINATION

By Mr. Darr:

Q. Mr. Hess, I would like to turn you to AEP

Exhibit 139. Now, this consists of a cover page, page 19 of a report. Do you have the remainder of this report in front of you?

A. Yes. Mr. Nourse provided me with a copy of the --

Q. Would you turn to page 1 of that report.

A. I have that.

Q. And I believe it's footnote 1. Does it indicate whose views are being reported here?

A. The very last sentence states that the "Views reflected in this paper are my views and my views alone." I believe that refers to Mr. Randazzo.

Q. Who is identified as the author of the report?

A. The author of the report, the footnote refers to Mr. Randazzo at the top of the page.

Q. I would like you to turn now to AEP Exhibit 138. Do you have AEP 138 in front of you?

A. No, not yet. Can you tell me what it was?

Q. Sure. It's the hypothetical six-year transition under an MRO which was given to you by Mr. Nourse.

A. I have that.

Q. Now, the expected bid price on market competitive bench price is listed as $50 here, correct?

A. Yes.

Q. And then Mr. Nourse indicates at the bottom that the "'Above Market' Revenue" year-in and year-out would be half-a-billion dollars, correct?

A. Yes.

Q. And from that he concludes that the total above-market revenue would be $2-1/2 billion, correct?

A. Yes.

MR. NOURSE: Your Honor, I object to the characterization that Mr. Nourse concluded anything. I asked the witness a series of questions which he freely answered.

MR. DARR: Well, this is his exhibit but he has -- if that's the concern, then I'll just rephrase the question.

EXAMINER SEE: Thank you.

Q. That the exhibit purports to demonstrate that the above market revenue would be $2-1/2 billion, correct?

A. In total, yes.

Q. Now, would you expect customers to migrate to this above-market or pay in this above-market revenue under these circumstances?

A. No. Again, as I stated during cross-examination with Mr. Nourse, I would assume there would be quite a few customers shopping if the expected bid price or the market price was 50 bucks, and the ESP or the standard service offer was 60 bucks.

Q. And would you expect them to remain with the standard service offer under these circumstances for any appreciable period of time?

A. I don't think I know the answer to that. I don't know the timing of it.

Q. In any case would you expect the company would have -- well, you've already answered that.

You were also asked a series of questions after the break about whether or not a comparison of 3 years to a 30-year calculation of stranded costs would be appropriate. Do you remember those questions?

A. Yes.

Q. With regard to the recovery of stranded costs under the current legal framework, what is your understanding of whether or not stranded costs on -- that were determined three years today -- on a three-year basis to be -- would be recoverable?

A. Well, based upon advice of counsel, the opportunity to recover GTC-type stranded costs is actually, the opportunity to recover any stranded costs, RTC or GTC, is passed.

Q. Does it market at this point on a final 30-year basis or 3-year basis?

A. No.

Q. Now, finally, turning your attention to AEP Exhibit 132.

A. Again, could you identify for me what that looks like, what it is?

Q. This was your testimony in Case No. 08-917.

A. I have that.

Q. Now, Mr. Nourse had you read into the record certain portions of this testimony. Could you read for the record the testimony that you provided at page 8, lines 5 and 6?

A. "Answer: No, period. The economic value of the generating fleet was measured in AEP companies Electric Transition Plan, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP, period."

Q. And the following sentence?

A. "The AEP companies stipulated in that case that they would not impose any lost generation charges on any switching customers during the market development period," within parentheses, 2001 through 2005, end parentheses.

Q. Mr. Nourse also asked you several questions about Dr. Landon and Dr. Kahn's stranded cost analysis in the ETP case and the use of an energy price to forecast energy revenues. Do you recall those questions?

A. I remember him asking about Dr. Landon and Dr. Kahn's testimony, yes. He asked me whether they were energy prices.

Q. Did the plant values as of 12-31-2000 to which the market-based revenue stream was compared include fixed generation related costs such as rate base -- such as rate base, rate of return components?

A. Net plant value was the net plant value of 12-31-2000.

Q. Based on rate base components from the prior rates?

A. Well, the plant in service and the depreciation reserve had been updated through 12-31-00 from the date certain in the last AIR case proceedings.

MR. DARR: Thank you. That's all I have.

EXAMINER SEE: Mr. Barnowski?

MR. BARNOWSKI: No questions, your Honor.

EXAMINER SEE: Mr. Campbell?

MR. CAMPBELL: No questions.

EXAMINER SEE: Mr. Stinson?

MR. STINSON: No questions, your Honor.

EXAMINER SEE: Mr. Boehm?

MR. BOEHM: No questions, your Honor.

EXAMINER SEE: Mr. Siwo?

MR. SIWO: No questions, your Honor.

EXAMINER SEE: Mr. Lang?

MR. LANG: No. Thank you.

EXAMINER SEE: Mr. Maskovyak?

MR. MASKOVYAK: No questions.

EXAMINER SEE: Mr. Etter?

MR. ETTER: No questions, your Honor.

EXAMINER SEE: Mr. Nourse?

MR. NOURSE: No. Thank you, your Honor.

EXAMINER SEE: Mr. Margard?

MR. MARGARD: No. Thank you, your Honor.

EXAMINER SEE: Thank you, Mr. Hess.

THE WITNESS: Thank you.

EXAMINER SEE: Mr. Darr.

MR. DARR: Thank you, your Honor. I move the admission of IEU Exhibit 124.

EXAMINER SEE: Are there any objections

to the admission of IEU Exhibit 124?

Hearing none, IEU Exhibit 124 is admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER SEE: Mr. Nourse.

MR. NOURSE: Thank you, your Honor. I would like to move for admission of AEP Exhibits 130 through 138.

EXAMINER SEE: Are there any objections to the admission of AEP Exhibits 130, 131, 132, 133, 34 -- 136? Let me try that again. AEP Exhibits 130 through 138?

MR. LANG: Yes, your Honor.

MR. ETTER: Yes, your Honor.

MR. DARR: Yes, your Honor.

MR. LANG: Do you want to go first?

MR. DARR: Sure.

EXAMINER SEE: Hold on just a second before you get started.

Okay. I heard there were some objections coming from, I believe, Mr. Darr and Mr. Lang?

MR. DARR: Yes. Yes, ma'am.

EXAMINER SEE: I'm sorry, and Mr. Etter?

MR. ETTER: Yes.

EXAMINER SEE: Okay. Go.

MR. DARR: I'll start. I object to the admission of AEP 135. It's the Senate Bill 221 testimony by former Chairman Schriber. There is no foundation established for this document. It's improper. It was improperly used supposedly for impeachment and fundamentally though there was no foundation laid for the document. The witness specifically said he was not aware of it. He didn't participate in any of the activities related to Senate Bill 221. And we also established, I believe on cross-examination -- never mind. I'll leave that one go.

EXAMINER SEE: Is that it for you, Mr. Darr?

MR. DARR: Yes, ma'am.

EXAMINER SEE: Mr. Lang.

MR. LANG: Thank you, your Honor. I join on Exhibit No. 135 for the same basis.

I would also object to Exhibit 133 which is the partial transcript from the capacity case. It was used solely for impeachment purposes which was proper using it for impeachment purposes, but it would go against all Commission precedent to admit a prior transcript as an exhibit when it was used solely for impeachment purposes.

I hope we don't want to start taking, for example, all the deposition transcripts that are used for impeachment purposes in this case and start just putting an exhibit number on them and admitting them into the record; that would be wholly improper. So I object to 133.

And I think there is an objection also of the foundation for Exhibit 136 which is the blueprint document. The only thing that Mr. Hess could say was that it has an IEU label on the top of it. That was not sufficient foundation. He denied having knowledge of the document; actually referred Mr. Nourse to potentially discuss it with another IEU witness. And that would be it. Thank you.

MR. DARR: And I would join in the objection to 133 and 136.

EXAMINER SEE: Mr. Etter?

MR. ETTER: And OCC joins in those objections as well as we object to Exhibit 130. It appears to be a very lengthy document. I never received a copy it, but it's at least 81 pages and only 3 pages were referred to in cross-examination, pages 6, 10, and 18. You know, we would object to the entry of the rest of that document into the record.

The same thing for Exhibit 131. It's at least 34 pages and only one page was referenced in cross-examination, page 34, so we would object to the entrance of the rest of that document, as well as all of Exhibit 132 except for page 8 which was the only page that was referenced in cross-examination there.

And Exhibit 137 which is the IEU comments from Case No. 07-796, there were only four pages -- the four pages were referenced there, so we would object to the rest of that document being entered into the record of this proceeding.

In addition, as far as Exhibits 130 and 131 are concerned, the authors of those two documents, Dr. Kahn and Dr. Landon, are not witnesses in this case, so there was no opportunity for cross-examination of those witnesses -- or the authors of those documents in this proceeding, so any entrance of their previous testimony in a previous case, except for that portion that was referenced in cross-examination, would be inappropriate.

EXAMINER SEE: Would you like to respond, Mr. Nourse?

MR. NOURSE: Sure.

EXAMINER SEE: Wait a minute. Let me make sure there were no other objections to the admission of those exhibits.

Okay. Mr. Nourse.

MR. NOURSE: Thank you, your Honor.

Regarding Exhibit 135, Dr. Schriber's testimony, I think this is very similar to what parties are routinely using in Commission proceedings. At the time of this testimony, Mr. Hess was a PUCO employee in charge of electric regulation of the staff, and I believe the same objections were made to cross-examination were overruled.

What I did with that document was read statements out of the testimony and asked Mr. Hess to agree or otherwise disagree and comment on each of the statements, so I think -- I think that's a fair use and should be admitted for that reason.

As to Exhibit 133, I actually agree with Mr. Lang, and I probably didn't need to mark that as an exhibit and was busy marking exhibits this afternoon and didn't need to mark that one. I'll withdraw the motion to admit the transcript.

With regard to Exhibit 136 that's the -- the blueprint document. This is a document that was discussed and admitted in the capacity case, certainly relevant and admitted for the purpose used there which was really just replicated here because

Mr. Hess deals with the same topic in his testimony in this case. It is again an admission of a party interest and certainly an IEU document that -- that had pertinent passages that we read and discussed.

And with respect to -- I believe Mr. Etter objected to 130, 131 and 132; is that correct?

MR. ETTER: The portions that were not specifically -- cross-examination was not specifically directed to, yes.

MR. NOURSE: Well, your Honor, with respect to Dr. Landon and Dr. Kahn's testimony, obviously Mr. Hess relies heavily upon that testimony in his testimony here today. He's quoted and incorporated certain parts of it.

And, you know, in terms of the questions that were asked, we had a robust discussion of several pages. And, again, the same exhibits were relevant and admitted in the capacity case in the same context should be admitted here to complete the record.

With respect to the Hess testimony in ESP I Exhibit 132, same thing, your, Honor, I did discuss provisions in there. It wasn't just page 8. It was also his JEH-1, and he was free to refer to anything in that testimony during our discussion of all of those issues.

Again, this was admitted in the capacity record as a relevant document in this same topic of discussion we had in that record. It's appropriate to be admitted here.

Finally the 137, I believe OCC alone objected to that one. Again, this is a document that was discussed and multiple pages and was again admitted in the 10-2929 record for the same very purpose and use, and it's appropriate to admit it here.

EXAMINER SEE: The Bench is going to take the consideration of the AEP's exhibits moved into the record under advisement, review the transcript, and make a ruling tomorrow.

With that, is there -- if there is nothing further, we'll resume at 8:30 a.m. tomorrow.

MR. NOURSE: I believe, your Honor, could we go off the record to have a discussion about the schedule tomorrow before we sign off?

EXAMINER SEE: Yeah. Let's go off the record for a minute.

(Discussion off the record.)

EXAMINER SEE: Let's go back on the

record. We're adjourned until 8:30 a.m. tomorrow morning.

(Thereupon, the hearing was adjourned at 5:15 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, May 31, 2012, and carefully compared with my original stenographic notes.

____
Karen Sue Gibson, Registered
Merit Reporter

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(KSG-5536)