

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Review of the Application :
of Ohio Edison Company, :
The Cleveland Electric :
Illuminating Company, The : Case No. 12-2190-EL-POR
Toledo Edison Company for : Case No. 12-2191-EL-POR
Approval of Their Energy : Case No. 12-2192-EL-POR
Efficiency and Peak :
Demand Reduction Program :
Portfolio Plans for 2013 :
through 2015. :

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PROCEEDINGS

before Mr. Gregory Price and Ms. Mandy Willey Chiles,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:00 a.m. on Thursday,
October 25, 2012.

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VOLUME IV

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1 Thursday Morning Session,
2 October 25, 2012.

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4 EXAMINER CHILES: Let's go ahead and go
5 on the record. The Public Utilities Commission of
6 Ohio has called for hearing at this time and place
7 Case Nos. 12-2190-EL-POR, 12-2191-EL-POR,
8 12-2192-EL-POR, being In the Matter of the
9 Application of Ohio Edison Company, The Cleveland
10 Electric Illuminating Company, and The Toledo Edison
11 Company for Approval of Their Energy Efficiency and
12 Peak Demand Reduction Portfolio Plans for 2013
13 through 2015.

14 And, Mr. Allwein, are you ready?

15 MR. ALLWEIN: Yes, your Honor, we are.

16 Your Honors, at this time the Natural
17 Resources Defense Council would like to call Dr. Joel
18 Swisher to the stand.

19 (Witness sworn.)

20 EXAMINER CHILES: Thank you. You may be
21 seated at this time.

22 Before you get started, Mr. Allwein, we
23 will entertain any motions to strike. Any party have
24 motions?

25 MR. ALLWEIN: Well, if I may, your Honor,

1 I do have a couple of revisions which I think will
2 alleviate some of the counsel's motions, but if you
3 would like the counsel to do it first.

4 EXAMINER CHILES: You may go ahead with
5 those.

6 MR. ALLWEIN: Okay. We had an Attachment
7 2, an Attachment 4, and those were supposed to be
8 specific discovery responses from the company to
9 NRDC, and we had inadvertently included the entire
10 set, which added to the volume, so we are going to
11 revise Attachment 2 and Attachment 4 down to the
12 specific discovery response referred to in the
13 testimony. And I have this written down, too. I am
14 going to give -- do you want a copy now?

15 EXAMINER PRICE: That's very helpful.

16 EXAMINER CHILES: Thank you.

17 MR. ALLWEIN: And I gave a copy to
18 counsel already. And then attached -- Attachment 11
19 was a rather voluminous spreadsheet, and it turned
20 out that Mr. Swisher was only referring to actually
21 two pages of the 643, so we have revised Attachment
22 11 to only reflect the portion of the company's
23 discovery response to which he actually referred to
24 in the testimony. And I have provided that to
25 counsel as well.

1 EXAMINER CHILES: Thank you.

2 MR. ALLWEIN: And that's all I have.

3 EXAMINER CHILES: All right. Thank you.

4 At this time we will entertain motions to
5 strike, if any.

6 MS. KOLICH: Yes, your Honor. I may have
7 to refer to some -- well, I may have to refer to some
8 portions of the deposition, so can we at least swear
9 the witness in case --

10 EXAMINER CHILES: We have.

11 MS. KOLICH: I won't ask to approach yet.

12 Yes, with that, Mr. Swisher has 14
13 attachments to his testimony. The companies do not
14 object to Attachment 1.

15 Attachment 2 Mr. Allwein has taken care
16 of the issue, which leaves us, starts with Attachment
17 3, which is the AEP Ohio Residential DSM Potential
18 2012 to 2014. Now, when I -- when I deposed the
19 witness, the witness -- I asked him each time what
20 was the purpose of attaching each of these documents.
21 On page 106, line 1, of his deposition transcript --

22 EXAMINER PRICE: Do you have a copy for
23 the Bench?

24 MR. ALLWEIN: May I get a copy, too? I
25 did not purchase that deposition.

1 EXAMINER PRICE: Page 106?

2 MS. KOLICH: I'll check my notes. It was
3 line 1, I know. So Attachment 3 was 106, line 1.
4 This is a document that was -- as the deposition
5 transcript shows on lines 9 and 10, this was a
6 document prepared by Navigant, and it basically
7 reflects the AEP approach to the Market Potential
8 Study regarding the on-site visits question.

9 As a preliminary matter, the AEP's
10 approach is not relevant to this case given this is a
11 FirstEnergy case, but, moreover, Mr. Swisher was not
12 involved in the preparation of this document. It has
13 an awful lot of detail in there that the company
14 can't cross on with -- without knowing exactly which
15 portions of this document he's relying on. The
16 company has no way to figure out what it needs to
17 defend against.

18 There's two ways to do this. We can
19 either find out what -- which pages he needs to --
20 that he is relying on and have those identified, or I
21 could cross on the whole document, and I really would
22 prefer not -- the second option. And beyond that,
23 it's hearsay because apparently it's being offered
24 for the truth of the matters asserted in there, and,
25 again, we have no way to -- to ask the person who

1 prepared it.

2 EXAMINER CHILES: Thank you.

3 Mr. Allwein, do you have a response to
4 the motion to strike or the request to narrow his
5 attachment?

6 MR. ALLWEIN: Well, first of all, counsel
7 is correct, it is a PowerPoint presentation by a
8 Navigant consultant to the AEP Ohio residential
9 collaborative. And the point isn't that Mr. Swisher
10 is attesting to the truth of the extensive data
11 within the PowerPoint; he was just merely using this
12 as an illustrative example that -- that AEP based
13 their achievable potential, which is the subject of
14 his testimony on not only surveys, but also on-site
15 visits, and that's really all this is meant to
16 show --

17 EXAMINER PRICE: Isn't that the problem?
18 He is offering this for the truth of the matter
19 asserted that AEP relied on-site visits, right?
20 That's hearsay.

21 MR. ALLWEIN: Yes. Okay. Well, an
22 expert witness can rely on anything in regarding --
23 regarding their testimony.

24 EXAMINER PRICE: And your citation to
25 authority for that would be?

1 MR. ALLWEIN: I think it's Ohio Rule of
2 Evidence 703.

3 EXAMINER PRICE: Which we have with us.

4 MR. ALLWEIN: Okay.

5 EXAMINER PRICE: Would you care to
6 respond?

7 MS. KOLICH: I would, thank you.

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

9 (Discussion off the record.)

10 MS. KOLICH: Could I have Mr. Allwein's
11 response read back, please.

12 EXAMINER CHILES: Would you read it back,
13 please.

14 EXAMINER PRICE: Let's go ahead and read
15 back Mr. Allwein, and then I have a follow-up
16 question for Mr. Allwein before we get to you.

17 MS. KOLICH: You might want to ask it
18 because I would have to ask her to reread it again.

19 EXAMINER PRICE: Go ahead and read his
20 last response, please.

21 (Record read.)

22 EXAMINER PRICE: Mr. Allwein, so you're
23 interpreting 703 as allowing him to rely on anything?

24 MR. ALLWEIN: Well, I am broadly
25 interpreting the first phrase in that --

1 EXAMINER PRICE: Which first phrase?

2 MR. ALLWEIN: "The facts or data in a
3 particular case on which the expert bases his
4 opinion." I guess you could narrowly construe that
5 as only the facts in this case, but --

6 EXAMINER PRICE: I think the problem is
7 the second half of the sentence, is "the facts --
8 "the facts and data in a case upon which an expert
9 can base an opinion on or inference may be those
10 perceived by the expert or admitted in evidence at
11 the hearing."

12 He has not perceived any of the data that
13 he is relying upon, nor has it been admitted into
14 evidence at this hearing.

15 MR. ALLWEIN: That's correct, your Honor.

16 EXAMINER PRICE: So if we all agree it's
17 hearsay and we agree that 703 doesn't get it in, is
18 there a hearsay exception that could get it in?

19 MR. VICKERS: Your Honors, can we just
20 offer an idea for the hearsay exception, rather than
21 have counsel search for things.

22 EXAMINER PRICE: Sure.

23 MR. VICKERS: In the interest of time, we
24 would just encourage everyone to look at 803.18, the
25 learned treatises exception. It refers to published

1 treatises, periodicals, or pamphlets. You know,
2 maybe not contemplating in 1998 quite the robustness
3 of PowerPoint, but we do have a document here that
4 was ascertained by everyone, clearly relied upon by
5 the witness.

6 It's reliable authority by the testimony
7 or admission of the witness, which I believe
8 Mr. Swisher is testifying to, and I would also just
9 sort of encourage us to think about the fact that in
10 administrative proceedings like this, the hearsay and
11 the evidence rules, in general, tend to be a bit
12 lenient.

13 EXAMINER PRICE: They're lenient, and
14 there is just making things up.

15 MR. VICKERS: Of course.

16 EXAMINER PRICE: This document has not
17 been published. I'm willing to interpret learned
18 treatise very broadly, you know. In past cases
19 things that are arguably not learned treatises, we've
20 allowed broad interpretation. I think there is a
21 citation to something here in the Electricity
22 Journal. I think in a federal court or a court of
23 common pleas there would be an argument that's not a
24 learned treatise. I think we probably have allowed
25 things from the Electricity Journal in under the

1 learned treatise.

2 But the fact that this is a PowerPoint
3 that was prepared by consultants who are not in the
4 courtroom and not available for cross-examination
5 doesn't make it a learned treatise. I mean, that's
6 sort of like anything on the internet would be a
7 learned treatise. Well, I don't think that works.

8 MR. VICKERS: My only counter to that
9 would just be that Mr. Swisher is an expert, has
10 looked at many of these things, and, I guess, the
11 argument would be for Mr. Swisher's perspective, that
12 he can tell the difference between something that he
13 just finds on the internet and something that was
14 presented in a reputable form done by a reputable
15 organization that he would rely on as an expert
16 witness in a case. But that's sort of --

17 EXAMINER PRICE: But that's circular.
18 That means any expert can rely upon anything, and the
19 fact that he -- the fact that he attached it makes it
20 admissible because he attached it. If this were a
21 company witness, you may not be in such a hurry to
22 say anything that they rely upon can come in.

23 MR. VICKERS: I just want to clear up,
24 and we can question the witness on the reliability of
25 this document, but I think just saying merely because

1 it wasn't published in a peer review journal means
2 that it's not something you can rely on, I'm just
3 concerned about that for the future, just in general
4 for our procedural process here.

5 MS. KOLICH: Your Honor, unless you are
6 ready to rule?

7 EXAMINER PRICE: Proceed.

8 MS. KOLICH: There doesn't seem to be any
9 reliance on this document. As Mr. Allwein described
10 it, he is simply putting it in as an illustrative
11 example. That's not reliance on anything in
12 formulating opinions.

13 EXAMINER PRICE: Does that mean you are
14 withdrawing your motion to strike?

15 MS. KOLICH: No. But it's certainly not
16 coming in under the learned treatise exception, and
17 it still, as you pointed out, prepared by Navigant
18 probably based on statements made by AEP, neither of
19 which have representatives in this room to ask any
20 questions about any statement made in this document.

21 EXAMINER CHILES: Mr. Allwein, do you
22 have anything additional to add?

23 MR. ALLWEIN: I do not at this time, your
24 Honors.

25 EXAMINER CHILES: The motion to strike is

1 granted. I believe it's the entirety of Attachment
2 3, the "AEP Ohio Residential DSM Potential."

3 MS. KOLICH: Moving on to Attachment 4,
4 Mr. Allwein has taken care of that issue, bringing us
5 to Attachment 5, and it was addressed in the
6 transcript on 106, line 20. No, I stand corrected.

7 EXAMINER PRICE: Are you talking about "A
8 Framework for Data Center Efficiency Strategy"?

9 MS. KOLICH: Yes.

10 EXAMINER PRICE: Okay.

11 MS. KOLICH: I'll come back to that. I
12 have the wrong reference there. Attachment 6, which
13 is the "Consortium for Energy Efficiency," that one
14 is addressed on page 85, line 3 of the deposition
15 transcript. If you'll look up on page 84, line 19 is
16 where the discussion begins. What -- I asked the
17 witness what's the point of this document, and the
18 answer starts on line 3 of page 85.

19 "It's just a table of programs that
20 different utilities around the country have
21 introduced addressing data centers as dedicated
22 programs. So I introduced that as an attachment just
23 to support the statement that this is something that
24 utilities are doing. It's a relatively new area, but
25 there are programs that are out in the field."

1 The company is willing to stipulate to
2 that statement. I move to strike the document,
3 however, on the same basis as the other one. First
4 of all, it's hearsay. Second of all, there's a
5 lot -- there's a lot of pages here with a lot of
6 stuff on them to make that one statement or that one
7 point.

8 MR. ALLWEIN: Your Honors, in the
9 interest of time, we are willing to agree to the
10 stipulation and withdraw that attachment.

11 MS. KOLICH: Counsel appreciates that.
12 Thank you.

13 EXAMINER PRICE: Which line is referenced
14 in his testimony?

15 MS. KOLICH: It's in deposition -- oh,
16 I'm sorry.

17 MR. ALLWEIN: It's page 11, and it is
18 line --

19 MS. KOLICH: 15.

20 EXAMINER PRICE: You withdraw the
21 attachment, but the companies will stipulate to
22 allowing the statement.

23 MR. ALLWEIN: Allowing the statement,
24 that's fine.

25 EXAMINER CHILES: Thank you.

1 MR. MCNAMEE: That was Attachment 6?

2 MR. ALLWEIN: Yes.

3 MS. KOLICH: Attachment 7 is "Building
4 Commissioning: A Golden Opportunity for Reducing
5 Energy Costs and Greenhouse Gas Emissions." That
6 document was referenced in his testimony on page 15,
7 line 6, and is addressed on page 90, line 17, of the
8 deposition transcript.

9 MR. ALLWEIN: Kathy, excuse me for a
10 minute. I'm sorry.

11 Your Honors, before we go on, I did get
12 two complete copies of Mr. Swisher's testimony and
13 attachments. I didn't know if you -- I was going to
14 give them to you when I presented the witness, but I
15 didn't realize we were going to have a procedural --

16 EXAMINER PRICE: We've got copies of the
17 attachments. If we run across one we didn't bring
18 down, we will let you know.

19 MR. ALLWEIN: Sorry, Kathy. Go ahead.

20 MS. KOLICH: If you look on page 90, line
21 17, again, the question up on 16, what was the
22 purpose of attaching Attachment 7 to his testimony.

23 "Answer: The purpose was just to support
24 the statement that retro-commissioning can achieve
25 significant savings in commercial buildings. Those

1 savings are additional. They are different from what
2 you get through retrofit programs, and that the costs
3 are reasonable."

4 The next question starting on line 23
5 asks, "Were you involved in the development of this
6 report?"

7 The answer is, "No, I was not. It was
8 done by Evan Mills and Lawrence Berkeley."

9 The company moves to strike this entire
10 document on the basis of hearsay. Clearly it's being
11 included for the purposes stated starting on line 17
12 of the deposition transcript and being offered for
13 the truth of the matter asserted. Mr. Mills is not
14 here to be cross-examined or questioned about
15 anything in the -- any of the text or conclusions
16 drawn in this document, what the assumptions were.

17 EXAMINER PRICE: Are you willing to
18 stipulate to --

19 MS. KOLICH: No, I am not.

20 EXAMINER PRICE: Not on this one?

21 MR. ALLWEIN: I do have a response to
22 that, your Honor, if counsel is finished.

23 MS. KOLICH: Yes.

24 EXAMINER CHILES: Go ahead.

25 MR. ALLWEIN: This is clearly a public

1 record under the hearsay exception Rule 803, No. 8.
2 Lawrence Berkeley National Labs is a -- is part of
3 the United States Department of Energy, and this
4 document is some -- this document is the kind of
5 document that Lawrence Berkeley Labs produces in the
6 course of their activities.

7 EXAMINER CHILES: Mr. Allwein, the first
8 page of this document contains a legal document that
9 says it was prepared as a result of work sponsored by
10 the California Energy Commission. It does not
11 represent the views of the Commission, UC, their
12 employees, or the State of California.

13 EXAMINER PRICE: There's also another
14 disclaimer from the United States Government
15 disclaiming any --

16 MR. ALLWEIN: Well, I guess I would also
17 put forward that it's a learned treatise under
18 803.18, but it was -- I think it was sponsored by
19 LBNL, but I'm looking at it.

20 EXAMINER PRICE: I think it was sponsored
21 by the California Energy Commission, but then they
22 turned around and said we're not endorsing this in
23 any manner. The disclaimer is on the second page,
24 Mr. Allwein.

25 MR. ALLWEIN: Thank you. And we're

1 speaking about Attachment 7; is that correct?

2 EXAMINER PRICE: Yeah.

3 MR. ALLWEIN: And the first line in the
4 disclaimer is "This document was prepared as an
5 account of work sponsored by the United States
6 Government."

7 EXAMINER PRICE: Please keep reading.

8 MR. ALLWEIN: "While this document is
9 believed to contain correct information, neither the
10 United States Government nor any agency thereof... or
11 any of their employees, makes any warranty, express
12 or implied, or assumes any legal responsibility for
13 accuracy, completeness, or usefulness."

14 EXAMINER PRICE: That doesn't sound like
15 a claim of -- that this information is either kept in
16 the course of a public record or that it is
17 necessarily accurate.

18 MR. ALLWEIN: Well, conceding that point,
19 your Honor, I would say that it is definitely a
20 learned treatise and available for admission under
21 that exception.

22 EXAMINER PRICE: Why do you think it's a
23 learned treatise?

24 MR. ALLWEIN: Well, it was prepared by a
25 scientist from Lawrence Berkeley National Labs. It

1 was prepared for the California Energy Commission,
2 and it is a publication regarding the field that
3 Dr. Mills is involved in.

4 MS. KOLICH: Well, if Dr. Mills is here,
5 I will be happy to cross-examine him.

6 MR. ALLWEIN: And I guess I would point
7 out one more item. It says if it's admitted the
8 statements may be read into evidence but not be
9 received as exhibits, so I'm willing to not include
10 the attachment, but I -- I think Dr. Swisher's
11 statements in his testimony should remain.

12 EXAMINER CHILES: Motion to strike is
13 granted as to the entirety of Exhibit 7. I believe
14 it's Exhibit 7; is that correct?

15 MR. ALLWEIN: Attachment 7.

16 EXAMINER CHILES: Attachment 7, as well
17 as could you give me the specific line reference
18 again?

19 MS. KOLICH: That was 7. It would have
20 been in his testimony on page 15, line 6.

21 I've got this all written on a chart. I
22 better confirm that for you. I thought you just
23 wanted where it was referenced.

24 EXAMINER CHILES: This was a line -- a
25 line within the testimony?

1 MS. KOLICH: Yes, lines 3 through 10.

2 EXAMINER CHILES: On page?

3 EXAMINER PRICE: 15.

4 MS. KOLICH: 15.

5 EXAMINER CHILES: Line 3, beginning with
6 the statement "A recent study"?

7 MS. KOLICH: Yes.

8 EXAMINER CHILES: And line 10, ending
9 with "productivity"?

10 I'm sorry, did you have something to say,
11 Mr. Allwein?

12 MR. ALLWEIN: No. I was just going to
13 ask about the first half of line 3.

14 EXAMINER CHILES: Yes. Line 3 will be
15 struck beginning with "A recent study" through the
16 entirety of line 10.

17 MS. KOLICH: Moving on to Attachment 8
18 it's "A Utility's Perspective on
19 Retro-commissioning." Looks like it's published by
20 Dylan Matthews, Program Manager of Commonwealth
21 Edison.

22 And that document is referenced in the
23 testimony on page 16, line 21. The purpose as
24 explained in the deposition starts on page 91, line
25 16. Again, if you'll look -- or on line 14, I asked

1 the witness: "What was the purpose for including
2 this document."

3 "Answer: Just to point out that a utility
4 in the region, Illinois, that is, ComEd, is
5 conducting a commercial sector retro-commissioning
6 program, that they were reporting on the progress of
7 the program at the National Retro-commissioning
8 Conference last year, so they are at least a couple
9 of years into the program."

10 The company is willing to stipulate that
11 statement into the record, but moves to have the
12 document Attachment 8 stricken.

13 EXAMINER PRICE: Mr. Allwein.

14 MR. ALLWEIN: In the interest of time --
15 in the interest of time, your Honors, I will agree to
16 the stipulation and the -- I will withdraw Attachment
17 8.

18 EXAMINER CHILES: Thank you.

19 MS. KOLICH: Moving to Attachment 9, it
20 looks like an ACEEE -- ACEEE report of some kind.
21 Unfortunately, I don't have that one in the
22 deposition transcript as to its purpose, but, again,
23 this document --

24 EXAMINER PRICE: But your witnesses have
25 relied upon ACEEE documents in this proceeding.

1 MS. KOLICH: They have, but they have not
2 attached them to their testimony where it becomes
3 part --

4 EXAMINER PRICE: That's not the question.
5 The question is, your witnesses, by relying on these
6 documents, have certainly implicitly said these
7 documents are reliable.

8 MS. KOLICH: I'm not arguing the
9 reliability of an ACEEE document. But I agree my
10 witnesses have, too, relied on that, which is why I
11 am not arguing that. And the concern I have is
12 without knowing -- and I will cross on this -- the
13 purpose of this document in his testimony, I have no
14 idea which portions of it are being relied on or for
15 what purpose. I could --

16 EXAMINER PRICE: I don't see that as a
17 grounds for a motion to strike.

18 MS. KOLICH: No. I was just going to say
19 I'll withhold any motion to strike until I obtain
20 further information from the witness during
21 cross-examination.

22 EXAMINER PRICE: Okay.

23 MS. KOLICH: If that's acceptable to the
24 Bench.

25 EXAMINER PRICE: Yes.

1 MS. KOLICH: No. 10, Attachment 10, is a
2 "Guide to Resource Planning with Energy Efficiency,"
3 and that is referenced in footnote 30 of his
4 testimony and also on page 24, line 2.

5 EXAMINER PRICE: Mr. Allwein, at this
6 point if you could share with us a copy of your
7 Attachment 10.

8 MR. ALLWEIN: Sure. Would each of your
9 Honors like a copy?

10 EXAMINER CHILES: Yes, please.

11 MS. KOLICH: And discussion as to the
12 purposes of this deposition can be found in the
13 deposition transcript, page 111 -- page 111, line --
14 starting on line 9. When asked about this document,
15 the answer on line 9 was: "It was included just to
16 recommend avoided costs methodology approach."

17 Again, the witness indicated on lines 12
18 and 13 that he had no involvement in the development
19 of this document. The document -- the document is
20 hearsay. And if it could be considered a learned
21 treatise, the rule, while allowing the admission of
22 certain information, certainly does not contemplate
23 the allowance of a voluminous report with no
24 reference to any statements on which the witness is
25 relying.

1 And under the learned treatise exception
2 or the rule if -- if the information is admitted, the
3 statements may be read into evidence but may not be
4 received as exhibits. So if -- here they are
5 offering the entire document as an exhibit with the
6 companies not knowing anything as to which pages on
7 which the witness is really referring. I can
8 cross-examine on it if that's the Bench's preference.

9 EXAMINER PRICE: No. But I have a
10 question for the witness.

11 Were you involved in the preparation of
12 this document at all?

13 THE WITNESS: No, not specifically that
14 document.

15 EXAMINER PRICE: Mr. Allwein.

16 MR. ALLWEIN: I would like to cite again
17 the hearsay exception 803, No. 8, which is a public
18 record. This is a document put out by the United
19 States Environmental Protection Agency. If you look
20 at the very beginning, it says it's intended as a
21 guide to --

22 EXAMINER PRICE: Whoa. Let's go back to
23 your public record. The actual rule states,
24 "Records, reports, statements, or data compilations,
25 in any form, of public offices or agencies, setting

1 forth (A) the activities of the office or agency, or
2 (B) matters observed pursuant to duty imposed by law
3 as to which matters there was a duty to report."

4 Now, to what degree does this fit into A
5 or B?

6 MR. ALLWEIN: I think it fits into B
7 because this is part of the EPA's goal of, you know,
8 clean air and clean water. That's why they promote
9 energy efficiency as a part of that plan.

10 EXAMINER PRICE: Okay. Now, on the
11 second -- third -- the fourth page there is a
12 disclaimer.

13 MR. ALLWEIN: I see the disclaimer. But
14 I think just about every document put out by the U.S.
15 Government has a disclaimer very similar to that.

16 EXAMINER PRICE: But I think a public
17 record that's setting forth the activities of the
18 agency or reporting on matters to which this is a
19 duty to report would not have that sort of
20 disclaimer, would it?

21 MR. ALLWEIN: I'm not sure, your Honor.
22 I mean, it says if you have any questions regarding
23 the plan, the two folks to contact. The folks in
24 here are both USEPA employees.

25 EXAMINER PRICE: Well, if you had brought

1 them, maybe you could have them sponsor it. Isn't
2 that the problem? It's --

3 MR. ALLWEIN: It appears to be.

4 EXAMINER CHILES: All right. The motion
5 to strike is granted as to the entirety of I believe
6 it's Attachment 10, "Guide to Resource Planning with
7 Energy Efficiency."

8 And, I apologize, was there also a line
9 within the testimony that you moved to strike?

10 MS. KOLICH: I'm checking on that right
11 now, your Honor.

12 EXAMINER CHILES: Okay.

13 MS. KOLICH: The reference in his
14 testimony is on page 24, line 2. If you will just
15 give me a second.

16 EXAMINER CHILES: Thank you.

17 MS. KOLICH: Yes, actually the reference
18 starts on page 23, line 19, and carries over to page
19 24, line 2, and we would move to strike that portion
20 of the testimony.

21 EXAMINER CHILES: I'm sorry, page 23,
22 line 19, through page 24, line 2?

23 MS. KOLICH: Yes.

24 EXAMINER CHILES: That portion of the
25 testimony will be struck in its entirety.

1 MS. KOLICH: As to Exhibit -- I'm sorry,
2 Attachment No. 12, "2016 Levelized Cost of New
3 Generation Resources from the Annual Energy Outlook
4 2010."

5 EXAMINER CHILES: Mr. Allwein, do you
6 have a copy of that attachment for the Bench?

7 MR. ALLWEIN: Yes, your Honors.

8 EXAMINER CHILES: Thank you.

9 MS. KOLICH: And that document is cited
10 in his testimony at page 25, line 6, I believe. I'll
11 double-check that.

12 MR. ALLWEIN: I'm sorry, we're on 12,
13 right?

14 MS. KOLICH: Yes. It's -- the purpose of
15 attaching the document is included in the deposition
16 transcript on page 109, starting on line 5. And,
17 well, actually, it says on line 6, that's referenced
18 referring back to Attachment 12.

19 EXAMINER PRICE: Okay. Now, this is
20 not -- this document is not a report that was
21 facilitated by the U.S. Energy Information Agency.
22 They prepared this document, didn't they?

23 THE WITNESS: Yes.

24 EXAMINER PRICE: I'm sorry, I wasn't
25 asking you, but I was asking counsel. But I will go

1 ahead and ask the witness that question, too.

2 MS. KOLICH: You are going to have to ask
3 him. I don't see a reference.

4 EXAMINER PRICE: Who prepared this
5 report, Dr. Swisher?

6 THE WITNESS: It's part of the background
7 for the forecasting, Department of Energy.

8 EXAMINER PRICE: Now, we commonly in this
9 Commission rely on U.S. Energy Information Agency
10 documents, do we not?

11 MS. KOLICH: Yes. I'll withdraw it.

12 EXAMINER CHILES: Thank you.

13 EXAMINER PRICE: And that's 12 and 13?

14 MS. KOLICH: That brings us to Attachment
15 13, and it's referenced on page 110, line 7, of the
16 deposition transcript. And this, too, was created by
17 EIA, and I will withdraw the motion to strike this
18 one at this time, but I will be cross-examining on
19 it.

20 EXAMINER CHILES: Thank you.

21 MS. KOLICH: And then Attachment 14, that
22 is addressed in the deposition transcript, page 111,
23 line 22. And the question on line 21: "And that's
24 being attached for what reason?"

25 The answer is: "Just to support the

1 statement that in some states the regulators have the
2 utilities include estimates of future CO-2 emission
3 costs as part of their -- in their planing and
4 procurement, effectively as part of their avoided
5 costs."

6 The companies will stipulate to that
7 statement, but we'll move to strike Attachment 14 on
8 the grounds of hearsay.

9 EXAMINER CHILES: Mr. Allwein.

10 MR. ALLWEIN: I'm sorry, counsel, could
11 you repeat the last part of your sentence there or
12 your last statement?

13 MS. KOLICH: That we will stipulate to
14 what was in the transcript record.

15 MR. ALLWEIN: Beginning with what, you'll
16 stipulate to?

17 MS. KOLICH: We will stipulate to the
18 statement found on line 22 of page 111 of the
19 transcript ending on page 112, line 1, of the
20 transcript, but we would move to strike the article
21 in the Electricity Journal on the basis that it's
22 hearsay.

23 EXAMINER PRICE: I have a question for
24 the witness. Electricity Journal is a peer-reviewed
25 journal, is it not?

1 THE WITNESS: Yes.

2 EXAMINER PRICE: Why don't you think this
3 would fall under the learned treatise exception?
4 This is a peer-reviewed journal, and, frankly, in the
5 past the Commission has relied upon, admitted
6 documents from Electricity Journal, over
7 FirstEnergy's objections, I might add, but I do
8 recall this coming up.

9 MS. KOLICH: Well, we got to stay
10 consistent, first of all. But it's an article
11 written by one, two, three, four different
12 individuals making statements. There's no way to
13 know what their statements are based on, what the
14 assumptions were on which they formed their
15 conclusions.

16 EXAMINER PRICE: That's always going to
17 be true of a learned treatise, isn't it?

18 MS. KOLICH: Well, if you are viewing it
19 as a learned treatise, I would agree with you.
20 However, under the rule, the learned treatise in its
21 entirety doesn't come into evidence. The statements
22 that are being relied upon can be read into the
23 record, is my understanding of that exception.

24 EXAMINER PRICE: Well, the rule certainly
25 says that, yes.

1 EXAMINER CHILES: We will we agree with
2 your interpretation of rule. I think this is a case
3 where we are going to broadly construe the rule, and
4 we are going to admit Attachment 14 in its entirety.

5 And I believe you stipulated to the
6 reference within the testimony?

7 MS. KOLICH: I stipulate to what?

8 EXAMINER CHILES: I'm sorry, you
9 agreed -- you didn't move to strike the reference to
10 Attachment 14 within the testimony; is that correct?

11 MS. KOLICH: No, I did not because I
12 wanted to wait for your ruling.

13 EXAMINER CHILES: Okay.

14 MS. KOLICH: I do withdraw the
15 stipulation to anything that was read from the
16 deposition transcript.

17 EXAMINER CHILES: Thank you.

18 MS. KOLICH: That leaves us with
19 number -- Attachment No. 5, and if we could take just
20 a 5-minute break, I just got to find the references.
21 It didn't make it on my summary sheet.

22 MR. ALLWEIN: Your Honor, do you need a
23 copy of Attachment 5?

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

25 (Discussion off the record.)

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

3 MS. KOLICH: Your Honor, this is a --
4 apparently a PowerPoint. These slides were not
5 prepared by the witness, and it's being offered to
6 support the statements made on page 10, starting on
7 line 6, therefore, being offered for the truth of the
8 matter asserted. That is classic hearsay, and there
9 is no exception. It is neither a learned treatise
10 nor a public record, and I can't think of any others
11 it would fit within.

12 EXAMINER CHILES: Mr. Allwein.

13 MR. ALLWEIN: Yeah. If I may, counsel,
14 Kathy, where was the discussion about this document
15 in the transcript again?

16 MS. KOLICH: There was no discussion.

17 MR. ALLWEIN: Oh, on Attachment 5?

18 MS. KOLICH: Correct, at least I didn't
19 find one.

20 EXAMINER PRICE: So you don't know if he
21 was involved in the preparation?

22 MS. KOLICH: Actually, I do. That
23 statement is in the deposition transcript.

24 MR. ALLWEIN: That's what I was asking
25 you.

1 MS. KOLICH: Okay. I apologize.

2 MR. ALLWEIN: I have something to say
3 about that.

4 MS. KOLICH: That is found on deposition
5 transcript page 106, line 20.

6 EXAMINER PRICE: Okay. Mr. Allwein, I
7 have a question for your witness.

8 You indicate in the deposition transcript
9 you were involved with the work that resulted in
10 these slides.

11 THE WITNESS: Yes.

12 EXAMINER PRICE: Can you testify of your
13 own knowledge of the facts that are listed in line 7
14 through 17?

15 THE WITNESS: Yes.

16 EXAMINER PRICE: That's work that you
17 did?

18 THE WITNESS: That was work that I did at
19 Rocky Mountain Institute. That was prepared by staff
20 who I hired after I left my employment there
21 summarizing earlier work.

22 EXAMINER CHILES: Okay. The motion to
23 strike is granted as to Attachment 5. However, the
24 underlying testimony, I believe that's page 10, line
25 6 through 17, the motion to strike is denied.

1 MS. KOLICH: I didn't move to strike
2 that.

3 EXAMINER CHILES: I apologize, just the
4 attachment itself.

5 EXAMINER PRICE: We just want to make
6 clear that we are not striking the underlying
7 testimony.

8 MS. KOLICH: Understood.

9 MR. OLIKER: Your Honor, could I have a
10 clarification? Which attachment was that?

11 EXAMINER CHILES: That's Attachment No.
12 5, entitled "The Framework for the U.S. Efficiency
13 Strategy."

14 MS. KOLICH: I believe that covers all
15 the attachments.

16 EXAMINER PRICE: I think so. Let go off
17 the record just one moment.

18 (Discussion off the record.)

19 EXAMINER CHILES: Let's go back on the
20 record.

21 Mr. Allwein, you may proceed.

22 MR. ALLWEIN: Indeed, your Honors, thank
23 you.

24 - - -

25

1 JOEL SWISHER

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

4 DIRECT EXAMINATION

5 By Mr. Allwein:

6 Q. Dr. Swisher, good morning.

7 A. Good morning.

8 Q. Could you please identify yourself for
9 the record.

10 A. My name is Joel Swisher.

11 Q. And can you give your business address
12 and your occupation, please.

13 A. My address is 4188 Amber Place, Boulder,
14 Colorado. I'm an independent consultant throughout
15 most of the year, and part of the year I'm a
16 consulting associate professor at Stanford University
17 in the Department of Civil and Environmental
18 Engineering.

19 MR. ALLWEIN: And, your Honors, if I may,
20 I have the exhibit I handed you earlier, and as has
21 been modified, marked as Natural Resources Defense
22 Council Exhibit 1, please.

23 EXAMINER CHILES: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. ALLWEIN: Thank you.

1 Q. Dr. Swisher, do you have a copy of what
2 has just been marked as Natural Resources Defense
3 Council Exhibit 1 in front of you?

4 A. Yes.

5 Q. And can you describe what that exhibit
6 is, please.

7 A. That's my resume. I believe I am looking
8 at the right thing?

9 Q. Well, no. It should be your --

10 A. Oh, it's my testimony. I do have that,
11 excuse me. I thought you meant Attachment 1.

12 Q. I'm sorry. And do you also have the
13 accompanying exhibits?

14 A. I do.

15 Q. All right.

16 EXAMINER PRICE: Let's off the record one
17 second.

18 (Discussion off the record.)

19 EXAMINER PRICE: Back on the record.

20 Q. Do you have any corrections that you
21 would like to make to your testimony today?

22 A. Yes. There -- in addition to the
23 modifications to the attachments, there were those
24 modifications that you noted earlier, there were two
25 errors in reference to the attachments, but I think

1 both of those attachments were struck; nevertheless,
2 I can give you the corrections.

3 The first one is on page 16, line 21. It
4 says "Attachment 9" but it should be "Attachment 8."
5 And on page 21, line 5, "Attachment F," which doesn't
6 exist, should be "Attachment 9."

7 Q. Okay. That was actually page 23, line 5,
8 I believe, correct?

9 A. I have 21.

10 Q. Okay. You are correct. Do you have any
11 other changes to your testimony today?

12 A. Not at this time.

13 EXAMINER PRICE: Mr. Allwein, are you
14 going to mark and admit the errata summary?

15 MR. ALLWEIN: I can, if that would be
16 helpful for the record.

17 EXAMINER PRICE: I think it would.

18 MR. ALLWEIN: All right. Could your
19 Honors please mark the testimony errata of Joe
20 Swisher as Natural Resource -- good grief, excuse
21 me -- as Natural Resources Defense Council Exhibit 2,
22 please.

23 EXAMINER CHILES: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Dr. Swisher, if I were to ask you the

1 same questions today under oath that appear in your
2 testimony, would you give the same answers?

3 A. Yes, I would.

4 Q. And, I'm sorry, I need to ask you one
5 other question. Was this -- was this testimony and
6 these exhibits, were they prepared by you or under
7 your direction?

8 A. Yes, they were.

9 MR. ALLWEIN: All right. And with that,
10 I present the witness for cross-examination.

11 EXAMINER CHILES: Thank you.

12 Mr. Dougherty.

13 MR. DOUGHERTY: No questions.

14 EXAMINER CHILES: Ms. Kern.

15 MS. KERN. No questions.

16 EXAMINER CHILES: Ms. Kyler.

17 MS. KYLER: No questions.

18 EXAMINER CHILES: Mr. Siwo.

19 MR. SIWO. No questions

20 EXAMINER CHILES: ELPC.

21 MR. VICKERS: No questions, your Honor.

22 EXAMINER CHILES: Mr. Olikier.

23 MR. OLIKER: No questions, your Honor

24 EXAMINER CHILES: Ms. Kolich.

25 MS. KOLICH: Thank you, your Honor.

1 - - -

2 CROSS-EXAMINATION

3 By Ms. Kolich:

4 Q. Just to clarify, your counsel just asked
5 if the exhibits attached to your testimony were
6 prepared by you or under your direct supervision.
7 Which exhibits were you referring to?

8 A. I was referring to the testimony.

9 Q. Okay, not your attachments.

10 A. No. I attached them, but I did not
11 prepare any of them.

12 Q. Okay. Now, one of the topics you
13 testified to is the Market Potential Study; is that
14 correct?

15 A. Yes, it is.

16 Q. Now, in the Market Potential Study,
17 there's three different types of market potential
18 that's looked at, isn't there?

19 A. That's correct.

20 Q. There's the technical, the economic, and
21 the achievable; is that right?

22 A. That's the typical framework, yes.

23 Q. Okay. Now, I am just trying to get my
24 arms around the scope of your testimony here. The
25 focus of your criticisms on the Market Potential

1 Study, they -- they focus mostly on the achievable
2 potential?

3 A. That's correct.

4 Q. Okay. Now, do you have a copy of the
5 Market Potential Study?

6 A. I do not have it with me.

7 MS. KOLICH: May I approach?

8 EXAMINER CHILES: You may.

9 MS. KOLICH: Just I've only got one copy
10 of it handy. Does counsel have a copy of the Market
11 Potential Study?

12 MR. ALLWEIN: If you tell me what page
13 you're on.

14 MS. KOLICH: Pages 13 through 21. And
15 it's a foundational question. I am not going to get
16 into a lot of details on these pages.

17 MR. ALLWEIN: Okay. Pages 13.

18 Q. (By Ms. Kolich) Dr. Swisher I handed you
19 pages 13 through 21 of the Market Potential Study
20 that was attached as an exhibit to the companies'
21 portfolio plans, and I would like to draw your
22 attention on page 13 to -- if you'll look on the left
23 side of that document, there are some years. Do you
24 see that?

25 A. Yes, I do.

1 Q. Okay. I am going to focus on all of
2 those pages simply on the years to which the plan --
3 the plans pertain, basically the years 2013, 2014,
4 and 2015. Okay?

5 A. Yes.

6 Q. Now, 13, I believe, is the Ohio Edison
7 high case -- base case, if you'll look at the top of
8 that page?

9 A. I'm sorry. Okay. Yes, page 13, yeah.

10 Q. Now, would you agree with me that during
11 the plan period, the 2013 through 2015 period, there
12 doesn't seem to be a constraint on the achievable
13 potential during those years; is that right?

14 A. I agree with that.

15 Q. Okay. And if you'll go to the next page
16 and look at the same years, and if you wouldn't mind
17 for the record telling us which case that is. I
18 believe it's Ohio Edison high.

19 A. High case, yes.

20 Q. Would you also agree during the plan
21 period the achievable potential doesn't seem to be
22 constrained during those years?

23 A. Yes, I agree with that.

24 Q. And would you, in the interest of time,
25 review the remaining pages which are included in the

1 report. Basically they would be the CEI base and
2 high case and the Toledo Edison base and high case,
3 and review the same years, 2013 through 2015.

4 And all I want to do is know whether your
5 answer would be the same, that during those years for
6 those situations, the potential doesn't seem to be
7 constrained, the achievable potential.

8 A. That appears to be correct, yes.

9 Q. Okay. So whether achievable should be
10 higher or lower during the plan period is somewhat
11 irrelevant for purposes of designing the plan, isn't
12 it?

13 A. I think that designing the plan for those
14 three years needs to establish programs that can meet
15 the plan in the future years, as well as, not
16 necessarily, but as you said, it doesn't constrain
17 the plan for the measures to be implemented in those
18 years.

19 Q. Doctor, do you have a copy of your
20 deposition handy?

21 A. No.

22 MS. KOLICH: Counsel, do you have a copy
23 of his deposition?

24 MR. ALLWEIN: Well, I have your copy.

25 MS. KOLICH: You have my copy, my extra

1 copy.

2 May I approach?

3 EXAMINER CHILES: You may.

4 Q. (By Ms. Kolich) Would you turn to page 25
5 of the deposition transcript, please, specifically
6 line 11. Actually, the question starts on line 7.

7 A. Is it the first page number, or the page
8 number in parentheses?

9 Q. Trade you. That can get confusing.

10 EXAMINER PRICE: It's the page numbers in
11 parentheses.

12 THE WITNESS: In parentheses, okay.

13 Q. I'll give you this one. It's easier to
14 follow. So if you'll look at page 25, line 16 -- I'm
15 sorry, line 11. And the question starts on line 7,
16 question by me: "I'm going to break it up into two
17 timeframes then when we talk about it, 'it' being the
18 Market Potential Study. So for the plan period, do
19 you think the achievable potential was reasonable or
20 should it be adjusted?" Do you see that question?

21 A. Yes.

22 Q. And your answer was: "I don't think that
23 it matters, I guess, is how I would answer that." Is
24 that correct?

25 A. That's what it says.

1 Q. Thank you. On page 5, line 9, of your
2 testimony, you reference the reliance on surveys and
3 interviews of customers; is that correct?

4 A. Yes.

5 Q. In the Market Potential Study?

6 A. Yes.

7 Q. At the time you developed your testimony,
8 you had not read the survey questions, did you?

9 A. No, I had not.

10 Q. Page 9, line 5, of your testimony.

11 A. I'm sorry which page?

12 Q. Page 9, line 5. I think you and I suffer
13 from the same bug.

14 A. It's going around.

15 Q. That's where you address the data center
16 and server room efficiency; is that right?

17 A. Yes.

18 Q. Now, just so I understand your position,
19 you recommend that the companies create a separate
20 data center program rather than include it within
21 their custom program; is that right?

22 A. Yes, that's what I recommended.

23 Q. Okay. And I think you referenced the AEP
24 program as a potential example of a data center
25 program.

1 A. Yes, that's an example that's begun in
2 Ohio.

3 Q. Do you know what percentage of the total
4 portfolio savings AEP's data center program
5 comprises?

6 A. I do not have those values at my
7 disposal.

8 Q. Now, in your testimony you are not making
9 any specific recommendation as to the exact nature of
10 the data center program you would like the companies
11 to implement, are you?

12 A. No, not really.

13 Q. And I believe you suggest that the
14 company should try to design one over the next
15 several months; is that right?

16 A. Yes.

17 Q. Page 13 of your testimony --

18 EXAMINER PRICE: Before we move on to
19 that, do you think that you have -- let me take a
20 step back. Do you have any background in economic
21 development at all?

22 THE WITNESS: Economic development?

23 EXAMINER PRICE: Yeah.

24 THE WITNESS: What do you mean by
25 "economic development"?

1 EXAMINER PRICE: Have you ever done any
2 economic development work in your background?

3 THE WITNESS: I think of economic
4 development as developing countries.

5 EXAMINER PRICE: Yeah, bringing in
6 businesses, that sort of thing.

7 THE WITNESS: I'm sorry.

8 EXAMINER PRICE: Bring in business,
9 creating a business climate helpful for business
10 development.

11 THE WITNESS: I'm kind of confused. I
12 mean, that's very vague.

13 EXAMINER PRICE: I know it is.

14 MS. KOLICH: Objection.

15 EXAMINER PRICE: Overruled.

16 I guess what I'm trying to get at is do
17 you think it would be helpful in terms of economic
18 development purposes for Ohio utilities to have these
19 sort of energy efficiency programs for data centers?
20 Data centers are one of the big things you read
21 about, that all the states are competing now for
22 these data centers, and they are very energy
23 incentive.

24 THE WITNESS: Yeah.

25 EXAMINER PRICE: Do you think there is a

1 value of bringing more data centers into the state?

2 THE WITNESS: I don't know if it would
3 bring more data centers in, but I should think that
4 it would make those that are here or come in more
5 competitive because energy costs are a significant
6 chunk of their operating costs. The older ones, as I
7 describe in the testimony, are very energy
8 inefficient, kind of shockingly so.

9 Some of the newer ones, particularly the
10 firms that are household names, like Facebook and
11 Google and HP, have made radical improvements, so
12 there is quite a potential for the newer ones that
13 might come in to be highly efficient and, therefore,
14 highly competitive in that aspect of the cost
15 structure.

16 I don't know if that answers your
17 question.

18 EXAMINER PRICE: Yeah. It does. Thank
19 you. Thank you.

20 Q. (By Ms. Kolich) If you'll turn to page 13
21 of your testimony. Now, are you aware that the
22 companies do include a retro-commissioning program
23 within their custom program?

24 A. Yes. I think I recognized that in here.

25 Q. And, again, you believe that -- you're

1 recommending that a separate retro-commissioning
2 program be created; is that right?

3 A. I recommend that that would be a good
4 idea.

5 Q. Okay. And, again, you don't have any
6 specific program design to recommend at this time; is
7 that right?

8 A. No. In the testimony I describe a few
9 elements of the retro-commissioning. The key thing
10 is that the assessment is a very different type of
11 assessment than what you do for typical retrofit,
12 efficiency measures, and so that's why having one --
13 one of the reasons having the separate identifiable
14 program might be better than including it with other
15 C&I programs.

16 Q. But you haven't -- you're not making any
17 recommendation as to a program as to exactly what it
18 should do, how much money should be earmarked for it,
19 those types of things, are you?

20 A. I haven't made such a detailed
21 recommendation, no.

22 Q. Page 14, line 14, of your testimony, you
23 refer to the proposed budget for the C&I custom
24 building program at more than 80 percent operations,
25 less than 20 percent incentives. Do you see that?

1 A. Yes, I do.

2 Q. Now, you haven't thought through how the
3 budget should be structured in the companies' new
4 construction program, have you?

5 A. I'm sorry. Is this new construction or
6 retro-commission that we are talking about?

7 Q. I should have -- I should have -- no. I
8 apologize. I apologize. I am talking about
9 retro-commissioning, so let's get the record clear
10 there. On line 14 of your testimony you talk about
11 the proposed budgets for the retro-commissioning
12 program at 80 percent operations and less than 20
13 percent incentives; is that right?

14 A. Yes, correct.

15 Q. Okay. And you haven't thought through
16 how that budget should be split should the companies
17 develop a single -- or a separate retro-commissioning
18 program, have you?

19 A. Not in detail, no.

20 Q. I had all these questions on attachments
21 that we're zipping through that aren't there anymore.
22 On page 18 of your testimony you discuss C&I new
23 construction there, so let's go there.

24 Are you aware that the companies' plan
25 includes a new construction program?

1 A. It was part of the small C&I custom
2 program, I believe. That's how I understood it.

3 Q. Yes.

4 A. So yes.

5 Q. And your criticism of this program that
6 the companies are going to offer under new C&I
7 construction goes to the budget allocated to this
8 program; is that right?

9 A. Well, really, the projected savings,
10 which were less than 1 percent of the total, seemed a
11 little out or whack, but, generally, if you think of
12 a program portfolio, you think of new construction,
13 residential, retrofit residential, retrofit
14 commercial, and new construction, and it's kind of
15 one of the main categories. .6 percent just seemed
16 like rather insignificant --

17 Q. Okay.

18 A. -- to an activity of that sort.

19 Q. Did you run an analysis as to what that
20 number should be?

21 A. I did not analyze an alternative, no.

22 Q. And line 22, page 18, of your
23 testimony -- I apologize. That's not the right
24 reference.

25 MS. KOLICH: And I apologize to the Bench

1 as well.

2 EXAMINER PRICE: No apology necessary.

3 Q. Do you know what the companies are
4 recommending or estimating as to the participation
5 rates under the new construction program, new C&I
6 construction program?

7 A. Well, for large customers it would be
8 zero because there are no participants. For small
9 customers it would not be zero, and I don't know the
10 assumption of the assumed rate.

11 Q. And, again, you are not making any
12 specific recommendations as to how the program should
13 be expanded, are you?

14 A. Well, I don't know if this is specific,
15 but I do think that one important aspect of a new
16 construction programs is the design assistance
17 function, and I didn't see that very clearly proposed
18 in the plan, so that would be one qualitative
19 recommendation, but I didn't make a quantitative plan
20 proposal.

21 Q. Now, on page 22 of your testimony, you
22 talk about avoided costs. Do you recall that?

23 A. Yes.

24 Q. Is it your position that the companies'
25 value attributed to the avoided cost is too high or

1 too low?

2 A. If anything, too low.

3 Q. Okay. So if we were to adopt your
4 recommendations, it would result in a higher avoided
5 cost; is that right?

6 A. I believe so, particularly capacity
7 costs.

8 Q. Okay. And if the avoided cost is higher
9 and we use your number to determine the cost
10 effectiveness of the plan, the plan would actually
11 result in a more cost-effective plan than what the
12 companies are saying in their plan; is that right?

13 A. It would tend to increase the economic
14 potential, and the amount would depend on how many
15 measures have been identified that would be close to
16 that threshold of cost effectiveness, so it could be
17 a little or it could be more than a little.

18 Q. Okay. A little or more than a little
19 cost, more cost effective?

20 A. More measures that would appear to be
21 cost effective and, therefore, increase the
22 potential. Sorry.

23 EXAMINER PRICE: But if there was a
24 measure that was on the bubble and we adopt -- the
25 Commission adopted your recommendation, then that

1 measure might move from being on the bubble to
2 clearly cost effective.

3 THE WITNESS: Exactly. That would
4 increase the potential, but it would also increase
5 the average cost which you'd be investing on this
6 issue, therefore, consider investing in.

7 EXAMINER PRICE: Thank you.

8 Q. Now, following up on that question, if
9 the company doesn't screen its programs for purposes
10 of inclusion in the plan based on cost effectiveness
11 of that specific measure or that specific program,
12 then it would be irrelevant -- the avoided cost would
13 more or less be irrelevant to the analysis, wouldn't
14 it?

15 A. I think so, but most of the cost tests,
16 including the total resource cost, utility cost, and
17 rate impact, all use avoided cost as the main
18 benefit. So if you are not using any of those, that
19 could well be the case.

20 Q. Okay. Now, in your testimony you are not
21 recommending a specific value be assigned to the
22 avoided cost based on your -- your analysis, are you?

23 A. No, I am not recommending a specific
24 value. I suggested the type of methodology that I
25 consider best practice, and that was one of the

1 stricken attachments.

2 Q. Okay. On the avoided cost when we talk
3 about the market potential studies, I broke it out
4 into the plan period and then the rest of the
5 timeframe in the Market Potential Study, and I want
6 to think about in terms of the plan period, again
7 with regard to the avoided costs, the plan period
8 being 2013 to '15.

9 Now, if we assume everything you say in
10 your testimony is -- is correct about avoided costs,
11 as well as your criticisms of the companies'
12 calculations, the effect on the plans during the plan
13 period would be relatively minor, wouldn't they?

14 A. It's hard to say. Most of the measures
15 have relatively long lifetimes of 10 or 15 years, and
16 the benefits are the avoided cost times those annual
17 savings resulting from the measures over that period
18 of time and then typically discount them back to
19 present value and levelize the cost.

20 But even a measure that's installed today
21 under today's plan has -- avoids costs further out in
22 the future, so the value of those avoided costs,
23 although diminishing over time because you are
24 discounting, would still be included. I don't know
25 whether I could say it would be major, minor, but I

1 don't think it would be trivial. You're saving
2 energy five years from now, so the value of that
3 energy is still part of your calculated avoided cost
4 for that measure you install today.

5 Q. Okay. Would you pull up your deposition
6 transcript, page 60.

7 A. I don't know -- it's here.

8 Q. And I am going to direct you to line 17.
9 Well, the question is on 12.

10 Are you there?

11 A. Yes.

12 Q. The question is, let's assume everything
13 you say is correct in your testimony about the
14 avoided cost and the calculations that are done by
15 the company. Is that going to affect the plan period
16 in a significant way?

17 I probably should have asked this better
18 in the deposition rather than cross, and I may regret
19 this, but your answer starts saying, "yes, it
20 actually could," and you explain why, but then you go
21 on to say, starting on line 22, "So it could have an
22 effect, possibly a minor effect, but it wouldn't be
23 zero."

24 And the old, right, never ask a question
25 you don't know the answer to, I am going to break,

1 which is, is it significant or minor? Or don't
2 you --

3 A. The transcript should have a comma after
4 "possibly," rather -- or it should not have a period
5 after "possibly." It's "possibly a minor."

6 Q. Okay.

7 A. And it's definitely not zero.

8 Q. Understood.

9 A. Does that answer your question?

10 Q. That clarifies it?

11 A. Does that answer both questions?

12 Q. Actually, it does. I lucked out on that
13 answer.

14 MS. KOLICH: Your Honor, if you can give
15 me just a few minutes, we may be finished.

16 EXAMINER CHILES: Sure.

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

18 (Discussion off the record.)

19 EXAMINER CHILES: Go ahead.

20 MS. KOLICH: That's all I have.

21 EXAMINER CHILES: Thank you.

22 Mr. Parram.

23 MR. PARRAM: No questions, your Honor.

24 EXAMINER CHILES: Mr. Allwein, redirect?

25 MR. ALLWEIN: May I have just a moment

1 with the witness?

2 EXAMINER CHILES: Let's take a 10-minute
3 recess.

4 MR. ALLWEIN: Okay. Thank you. Thank
5 you, your Honors.

6 EXAMINER CHILES: Off the record.

7 (Discussion off the record.)

8 EXAMINER CHILES: Let's go back on the
9 record.

10 Mr. Allwein.

11 MR. ALLWEIN: Thank you, your Honors.

12 - - -

13 REDIRECT EXAMINATION

14 By Mr. Allwein:

15 Q. Dr. Swisher, you were asked about the --
16 some of the tables in the Market Potential Study that
17 appeared to demonstrate their sufficient achievable
18 potential over the three-year life of the plan.

19 Does the fact that the Market Potential
20 Study shows this achievable potential for the
21 three-year plan mean that the companies do not need
22 to modify the way they determine achievable potential
23 for future years?

24 A. Not necessarily. I would suggest -- I
25 would recommend revisiting the methodology for the

1 future years beyond the plan study year period.

2 Q. Why is that?

3 A. Well, the incremental potential on an
4 annual basis in those years is -- seems to be a
5 fairly small amount, only about a half percent per
6 year in the base plan, which seems low to what I've
7 seen in other studies and even what utilities are
8 able to achieve, and, presumably, what they can
9 achieve is a subset of achievable potential in other
10 states.

11 And the methodology itself is very
12 unorthodox, using an approach to ascertain a
13 participation rate that I haven't seen in other
14 studies or used. And being novel, it would be
15 advisable, I think, to try to correlate that against
16 actual achieved potential in some jurisdictions.
17 Lacking that, I would recommend using a more standard
18 methodology that is based on data from actual
19 programs rather than a prospective survey data.

20 Q. All right. Now --

21 MS. KOLICH: Your Honor, I would move to
22 strike that response. The question I asked dealt
23 with the achievable potential during the plan years.
24 It had absolutely nothing to do with how that was
25 calculated or what methodologies were used.

1 MR. ALLWEIN: Your Honor, the question
2 was something like she asked him to agree that
3 achievable potential was not constrained during 2013
4 to 2015, and Dr. Swisher's answer was it should be
5 redesigned for future years.

6 EXAMINER CHILES: Can I have the answer
7 read back, please?

8 (Record read.)

9 MS. KOLICH: I would move to strike
10 starting with "and the methodology."

11 EXAMINER CHILES: The motion to strike is
12 denied. You may continue.

13 Q. (By Mr. Allwein) Dr. Swisher, you were
14 asked about the proposed retro-commissioning in the
15 companies' plan. What is your understanding of that
16 proposal?

17 A. My understating is that it was proposed
18 as a part of the custom efficiency program for large
19 C&I customers under the efficient buildings part of
20 the program. It had a distinction between buildings
21 and equipment. It was, I believe, in large
22 building -- large buildings, C&I Energy Efficient
23 Buildings Program, Large, and it was a subset of that
24 program.

25 Q. Okay.

1 A. Rather than a stand-alone program, which
2 is what I would recommend because of inherent
3 differences with retrofitting compared with
4 retrofit-type measures.

5 Q. Okay. And counsel for the companies
6 asked you if you had performed a -- or if you had
7 proposed a budget or provided a detailed
8 recommendation. Do you recall that?

9 A. Yes.

10 Q. And does the fact that you didn't provide
11 a detailed recommendation or a budget for that
12 program diminish your recommendation that this might
13 be a good program for the companies to adopt?

14 A. No. I recommended the program because I
15 think it's important to have a distinct
16 retro-commissioning program because, as I said, it
17 has inherent differences with the other retrofit
18 programs, and it has, in my opinion, a large
19 potential because commercial buildings simply don't
20 work very well, and you can -- you can confidently
21 assume there is retro-commissioning energy savings
22 potential in just about every commercial building out
23 there.

24 So even a small program, to get started
25 and establish the capability, including the

1 contractors that can do the sorts of assessments for
2 retro-commissioning, which are different from the
3 sort of work you do in a typical energy audit for a
4 retrofit program, establishing that capability would
5 be a worthwhile recommendation.

6 Q. All right. And I want to ask you,
7 counsel asked you a few questions about avoided costs
8 and your position was that their avoided costs were
9 too low. And I just wanted to ask you, is --
10 regarding the companies's current avoided costs, do
11 you believe that they should take a different
12 approach to determine these avoided costs in the
13 future?

14 A. I would recommend revisiting the avoided
15 costs calculation in the methodology for future
16 years, particularly on the capacity costs.

17 Q. Why?

18 A. The capacity costs values are calculated
19 on the basis of a combination of observed forward
20 capacity market prices, presumably from this region
21 from a recent time, and that gives you a few -- a
22 stream of values for a few years, and then there is
23 no future market values beyond that. And then from
24 that point, the cost values are extrapolated,
25 basically a flat escalation rate that looks kind of

1 like background inflation.

2 When you put those values together and
3 create, for example, a net present value calculation,
4 what's -- what's the avoided capacity costs, at no
5 time does it give you a signaling that would be a
6 high enough cost that would provide an incentive for
7 anybody to build new capacity. It wouldn't be cost
8 effective. The value of that capacity would not
9 reach the cost of building the capacity, which seems
10 illogical. So based on that observation, I would
11 suggest revisiting the methodology and redoing the
12 avoided costs for the future years, technically for
13 capacity costs.

14 MR. ALLWEIN: All right. One moment,
15 your Honors. That's all the questions I have, your
16 Honors. Thank you.

17 EXAMINER CHILES: Thank you.

18 Recross, Mr. Dougherty.

19 MR. DOUGHERTY: No questions.

20 EXAMINER CHILES: Ms. Kern.

21 MS. KERN: No questions, your Honor.

22 EXAMINER CHILES: Ms. Kyler.

23 MS. KYLER: No question.

24 EXAMINER CHILES: Mr. Siwo.

25 MR. SIWO: No questions, your Honor

1 EXAMINER CHILES: ELPC.

2 MR. McDANIEL: No questions, your Honor

3 EXAMINER CHILES: Mr. Olikar.

4 MR. OLICKER: No questions, your Honor.

5 EXAMINER CHILES: Ms. Kolich.

6 MS. KOLICH: Yes, your Honor. Just a
7 minute.

8 Yes, your Honor.

9 - - -

10 RECROSS-EXAMINATION

11 By Ms. Kolich:

12 Q. Regarding the avoided capacity costs,
13 Mr. Swisher, the last answer you gave you referred to
14 needing to --

15 MS. KOLICH: Could I have the last part
16 of his answer read? I don't want to mischaracterize
17 it. What I want to do is just clarify he referenced
18 future years, and I just want to know what timeframe
19 we're talking about.

20 A. I'm sorry, I believe it was after 2016.

21 Q. Oh, okay. I guess I didn't need the
22 answer.

23 A. And I said pretty much the same thing, I
24 think a little more clearly, in the testimony --

25 Q. Okay.

1 A. -- I actually referred to.

2 Q. Okay. Now, you also stated, I believe,
3 that the avoided capital costs were based on a flat
4 escalation. Do you recall that?

5 A. Yes, I do.

6 Q. Okay. Do you know how the companies'
7 escalation cap -- sorry. Do you know how the
8 companies escalated capacity costs in the future?

9 A. I believe they took the last year of the
10 market cost value observations and escalated it using
11 a rate that was taken from an NE -- Department of
12 Energy Information Administration forecast from the
13 region. And I just calculated what that rate was,
14 and it looked essentially the same year by year by
15 year from the spreadsheet materials that were sent.

16 MS. KOLICH: That's all I have.

17 Q. I'm sorry, did I cut you off?

18 A. No, I was just going to say what
19 attachment that was.

20 Q. Would you please.

21 A. I believe it was -- now, I am in trouble.
22 It was 2 or 4.

23 Q. It was one of the responses to the
24 discovery requests?

25 A. Yes, yes.

1 MS. KOLICH: That's fine. That's all I
2 have, your Honors.

3 EXAMINER CHILES: Thank you.

4 I'm sorry, Mr. Parram.

5 MR. PARRAM: No questions, your Honor.

6 EXAMINER CHILES: Mr. Allwein.

7 MR. ALLWEIN: Your Honors, I would move,
8 please, that the -- I'm making a motion for the
9 admission of Natural Resources Defense Council
10 Exhibits 1 and 2 to be admitted into the record, 1
11 being the testimony and exhibits -- remaining
12 exhibits, and 2 being the errata sheet.

13 EXAMINER CHILES: Are there any
14 objections to the admission of NRDC Exhibits 1 and
15 NRDC Exhibit 2?

16 MS. KOLICH: Subject to the Bench's
17 striking of various documents, there's no objection.

18 EXAMINER CHILES: Hearing none, NRDC
19 Exhibits 1 and 2, subject to the Bench's striking of
20 some of the attachments and portions, NRDC Exhibits 1
21 and 2 will be admitted.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 MR. ALLWEIN: Your Honors, may
24 Dr. Swisher step down?

25 EXAMINER CHILES: You are excused. Thank

1 you.

2 EXAMINER PRICE: Mr. Siwo.

3 MR. SIWO: Thank you. The OMA Energy
4 Group calls John Seryak to the stand.

5 (Witness Sworn.)

6 EXAMINER PRICE: Please state your name
7 and business address for the record.

8 THE WITNESS: John Seryak, business
9 address, 3709 North High Street, Columbus, Ohio
10 43214.

11 EXAMINER PRICE: Please proceed.

12 - - -

13 JOHN SERYAK

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

16 DIRECT EXAMINATION

17 By Mr. Siwo:

18 Q. Mr. Seryak, who are you employed by?

19 A. Go Sustainable Energy, LLC.

20 Q. On whose behalf are you providing
21 testimony today?

22 A. The OMA Energy Group.

23 Q. And was the testimony that was filed on
24 October 5, 2012, in this proceeding prepared by you
25 or at your direction?

1 A. Yes.

2 MR. SIWO: I would like to have marked
3 OMA Exhibit 101, the prefiled testimony of John
4 Seryak.

5 EXAMINER PRICE: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. Mr. Seryak, do you have a copy with you
8 of what's just been marked as OMA Energy Group
9 Exhibit 101?

10 A. Yes.

11 Q. Do you have any changes or additions to
12 make to that exhibit?

13 A. No.

14 Q. And if I were to ask you the same
15 questions as what is in that exhibit, would your
16 answers be the same?

17 A. Yes.

18 Q. And they are true and correct to the best
19 of your knowledge and belief?

20 A. Yes.

21 MS. SIWO: Your Honor, at this time I
22 move for the admission of OMA Energy Group 101, and
23 Mr. Seryak is available for cross.

24 EXAMINER PRICE: We will take up the
25 admission of the exhibit at the conclusion of cross.

1 Mr. Dougherty.

2 MR. DOUGHERTY: No questions.

3 EXAMINER PRICE: Mr. Allwein.

4 MR. ALLWEIN: No questions, your Honors.

5 EXAMINER PRICE: Ms. Kern.

6 MS. KERN: No questions, your Honor.

7 EXAMINER PRICE: MS. Kyler.

8 MS. KYLER: No questions.

9 EXAMINER PRICE: ELPC.

10 MR. VICKERS: No questions, your Honor.

11 EXAMINER PRICE: Mr. Olikier.

12 MR. OLIER: No questions, your Honor.

13 EXAMINER PRICE: FirstEnergy.

14 MS. DUNN: Thank you, your Honor, I do
15 have questions.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Dunn:

19 Q. Good morning, Mr. Seryak.

20 A. Good morning.

21 Q. How are you today?

22 A. Good.

23 Q. I know we met once before during your
24 deposition. My name is Carrie Dunn. I'm the
25 attorney for the companies in this case.

1 Mr. Seryak, this is the first time you've
2 testified at any regulatory proceeding, correct?

3 A. Correct.

4 Q. And you are a mechanical engineer by
5 trade, correct?

6 A. That's right.

7 Q. And also a registered professional
8 engineer in Ohio, correct?

9 A. Correct.

10 Q. And you stated earlier that you work for
11 Go Sustainable Energy, who is a member of the OMA,
12 correct?

13 A. Correct.

14 Q. And as of April to May of this year, OMA
15 had contracted with Go to assist customers with their
16 mercantile or C&I applications for the companies'
17 program and other companies, correct?

18 A. That's one capacity in which we work with
19 them.

20 Q. Okay. And you are familiar with the
21 mercantile program in Ohio, aren't you?

22 A. Yes.

23 Q. And you're aware that OMA is an
24 administrator for the mercantile program, aren't you?

25 A. Yes.

1 Q. And as an administrator, OMA receives a
2 commission for helping file certain paperwork for
3 that program, doesn't it?

4 A. That's my understanding.

5 Q. Now, you did not read the current plan
6 for 2009 to 2012, have you?

7 A. I have not read the current plan for 2009
8 to 2012.

9 Q. So the extent of your knowledge relating
10 to the current plan is that you're familiar with the
11 application forms for C&I programs, correct?

12 A. Yes.

13 Q. And the website for those programs?

14 A. Correct.

15 Q. Now, you're familiar with the draft TRM
16 in Ohio, aren't you?

17 A. Yes.

18 Q. And you're also familiar with the Total
19 Resource Cost test or TRC test, aren't you?

20 A. I wouldn't say I'm intimately familiar,
21 but I'm familiar in general with what the test says.

22 Q. You know what it is, correct?

23 A. Yes.

24 Q. Now, turning to page 4 of your testimony,
25 at the top you recommend a program called Track and

1 Tune Program, don't you?

2 A. Yes, Track and Tune is a --

3 Q. I just asked if you --

4 A. Yes.

5 Q. Okay. Thanks. The Ohio draft TRM does
6 not have a way to measure the savings realized from a
7 Track and Tune Program, does it?

8 A. That's my understanding.

9 Q. And you don't know for certain whether
10 the Track and Tune Program passes the TRC test, do
11 you?

12 A. I don't know for certain.

13 Q. And you don't know for certain whether
14 the companies would be able to count savings in Ohio
15 from a Track and Tune Program, do you?

16 A. I don't know for certain.

17 Q. Now, I would like to turn your attention
18 to the bottom of page 4 in your testimony, line 23,
19 and you are -- in that testimony you are recommending
20 a change in the cap for energy audits, correct?

21 A. Correct.

22 Q. Now, on line 23 you say, "For facilities
23 that use more than 3,000 megawatt-hours a year in
24 energy, the cap should be increased to incentivize
25 manufacturers by 1.5 cents a megawatt-hour for energy

1 audits." Do you see that?

2 A. Yes.

3 Q. Are you suggesting that the cap be 1.5
4 cents a megawatt-hour for the energy audits?

5 A. Yes, it could be interpreted that way.

6 Q. So can you -- do the math. If a customer
7 is a 3,000 megawatt-hour per year and has a 1.5 cents
8 a megawatt-hour for energy audits, that's about \$45,
9 correct?

10 A. No. Wait. That would not be about \$45.
11 Okay. Yes, per megawatt-hour. I think the intent
12 was 1.5 cents per kilowatt-hour.

13 Q. Would you like to make that correction?

14 A. I would.

15 Q. Now, the energy audits that you propose
16 in your testimony, those audits themselves don't
17 actually have any savings associated with them, do
18 they?

19 A. That's correct.

20 Q. And you're also recommending that these
21 energy audits savings calculations and estimates be
22 stamped and certified by a licensed professional
23 engineer, correct?

24 A. Correct.

25 Q. Someone like you, correct?

1 A. Correct.

2 Q. Now, on page 5 of your testimony, you
3 discuss bidding energy efficiency resources into the
4 PJM market, 5 to 6, correct?

5 A. Yes.

6 Q. You're not an expert on PJM bidding, are
7 you?

8 A. I am not.

9 Q. You don't know what goes on into bidding
10 in the PJM market, do you?

11 A. No.

12 Q. You don't know what sort of EM&V
13 requirements the company has to meet to bid resources
14 into PJM, do you?

15 A. I do.

16 Q. You do?

17 A. I have a fairly good understanding of the
18 EM&V requirement.

19 Q. The PJM requirements?

20 A. So far as the measurement and
21 verification required for individual technical
22 process behind the IPMVP, yes.

23 Q. And are you familiar with PJM Manual 18B?

24 A. Yes.

25 Q. Okay. Now, at page 6 you refer to a

1 three separate programs that you propose as pilot
2 programs, industrial insulation, cogged V-belts, and
3 venturi compressed air nozzles, correct?

4 A. As pilot prescriptive measures.

5 Q. Now, you don't have any recommendations
6 as to how the companies would recover the cost of
7 that program, do you?

8 A. As a prescriptive measure?

9 Q. Well, okay. So the company has energy
10 efficiency programs, right?

11 A. Yes.

12 Q. And they recover the cost of those
13 programs from their customers, correct?

14 A. Yes.

15 Q. So for these prescriptive measures, you
16 don't know how we would recover -- you don't know the
17 costs of that, correct?

18 A. You're asking for a quantitated --
19 quantified number?

20 Q. Yes.

21 A. No. I don't have a quantified number.

22 Q. Now, the company currently does have an
23 energy audit program, correct?

24 A. That's right.

25 Q. And you occasionally do energy audits,

1 don't you?

2 A. Yes.

3 Q. Bear with me one moment. Now, for the
4 measures that you are proposing in your testimony,
5 the three measures, the equation to determine the
6 savings from those programs could be a deemed
7 equation, correct?

8 A. Yes.

9 Q. However, a customer would still need to
10 provide different data to go into the equation to
11 determine the savings.

12 A. That's correct.

13 Q. The data would not be consistent from
14 customer to customer, correct?

15 A. Correct.

16 Q. And you would agree that manufacturing,
17 by its nature, the client -- the clients that OMA
18 represents, a large percentage of the efficiency
19 opportunities are custom.

20 A. That's right.

21 MS. DUNN: I have no further questions,
22 your Honor.

23 EXAMINER PRICE: Thank you.

24 Mr. Parram.

25 MR. PARRAM: No questions, your Honor.

1 EXAMINER PRICE: Redirect?

2 MR. SIWO: No redirect, your Honor.

3 MR. KELTER: Actually, I have a question,
4 your Honor. Okay, never mind. I got it.

5 EXAMINER PRICE: Okay. Any questions?

6 I have no questions.

7 You're excused.

8 Mr. Siwo, I'll take up your motions to
9 admit now.

10 MR. SIWO: Yes, sir. I renew my motion
11 to admit OMA Energy Group Exhibit 101.

12 EXAMINER PRICE: Any objections?

13 It will be admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

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

16 (Discussion off the record.)

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

19 Mr. Parram.

20 MR. PARRAM: Your Honors, staff would
21 like to call Staff Witness Gregory Scheck to the
22 stand.

23 (Witness sworn.)

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

1 THE WITNESS: My name is Gregory Scheck,
2 and I work for the PUCO on the staff, and the
3 business address is 180 East Broad Street, Columbus,
4 Ohio 43215.

5 EXAMINER PRICE: Please proceed.

6 - - -

7 GREGORY C. SCHECK
8 being first duly sworn, as prescribed by law, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Parram:

12 Q. Good morning, Mr. Scheck. Mr. Scheck, on
13 October 9, 2012, did you have prepared the Prefiled
14 Direct Testimony of Gregory Scheck filed in this
15 case?

16 A. Yes.

17 MR. PARRAM: Your Honors, I would like to
18 have marked for purposes of identification Staff
19 Exhibit 1, the Prefiled Direct Testimony of Greg
20 Scheck.

21 EXAMINER PRICE: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Mr. Scheck, is Staff Exhibit 1 in front
24 of you?

25 A. Yes.

1 Q. Is this the Prefiled Direct Testimony
2 that you had prepared and filed in this case?

3 A. Yes.

4 Q. If I were to ask you the same questions
5 that are contained in the -- in Staff Exhibit 1
6 today, would your answers be the same?

7 A. Yes.

8 Q. Did you answer all the questions
9 contained in Staff Exhibit 1 truthfully and to the
10 best of your ability?

11 A. Yes.

12 Q. Do you have any modifications to Staff
13 Exhibit 1, Mr. Scheck?

14 A. Well, I will probably have some
15 qualification regarding bidding in demand response
16 into the PJM market as it relates to the companies'
17 annual benchmark.

18 Q. But you don't have any corrections to
19 your testimony that you would like to make now,
20 Mr. Scheck?

21 A. No.

22 MR. PARRAM: Your Honor, I move for the
23 admission of Staff Exhibit 1 and tender Mr. Scheck
24 for cross-examination.

25 EXAMINER PRICE: Thank you. We will take

1 up your motion for admission after cross-examination.

2 Mr. Dougherty.

3 MR. DOUGHERTY: No questions.

4 EXAMINER PRICE: Mr. Allwein.

5 MR. ALLWEIN: No questions, your Honors.

6 EXAMINER PRICE: Ms. Kern.

7 MS. KERN: No questions, your Honor

8 EXAMINER PRICE: Ms. Kyler.

9 MS. KYLER: Just a few.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Kyler:

13 Q. Mr. Scheck, I am looking at your
14 recommendation on pages 4 to 5 of your testimony, and
15 I just wanted to clarify your recommendation. You
16 recommend increasing the budget for Cleveland
17 Illuminating and Ohio Edison-Large Energy Efficient
18 Equipment Programs?

19 A. Yes.

20 Q. And do you recommend maintaining the
21 budget for Toledo Edison's Large Energy Efficient
22 Equipment Program as proposed in the application?

23 A. Yes.

24 Q. Have you done any empirical analysis to
25 support increasing the budgets for C&I and Ohio

1 Edison?

2 A. The analysis I did was looking at the
3 megawatt-hour sales and number of customers that were
4 in each of those service companies. I didn't
5 explicitly, actually calculate the ratio, but with
6 the understanding that for the large enterprise
7 class, there was a lot more dollars allocated in
8 Toledo Edison customers, and yet they had, in terms
9 of numbers of sales, a lower amount than there were
10 in Ohio Edison, I believe a little less than what was
11 in Cleveland Electric Illuminating.

12 Q. Is that all you looked at in analyzing or
13 in preparing your recommendation?

14 A. Yes; other than there were transfers of
15 funds in the current plan that happened roughly about
16 a year ago that were approved by the staff that
17 were -- that amounted to at least or roughly 25
18 percent for both -- both of those companies.

19 And I believe in Ohio Edison's case, they
20 had asked for additional funds to be transferred in
21 above the 25 percent in that class. So based on
22 that, plus knowledge of customers having informal
23 complaints at the Commission getting rebates
24 processed, that's the decision that I made in terms
25 of increasing those budgets.

1 Now, it could be possible that if you
2 look at the totals for the large customer class,
3 there are a lot of dollars allocated for demand
4 reduction for both Ohio Edison, as well as Cleveland
5 Electric illuminating, relative to Toledo Edison, and
6 it might be possible to transfer funds from those two
7 categories into the particular large enterprise per
8 buildings and equipment, but I believe that should be
9 done before the plan is approved rather than after.

10 Q. Would you recommend transferring the
11 funds from Toledo Edison peak demand reduction to the
12 peak demand reduction program, to Cleveland Electric
13 Illuminating and Ohio Edison to remedy the imbalance?

14 A. The actual numbers for Toledo Edison peak
15 demands reduction is actually quite small relative to
16 the other two, so I would not recommend transferring
17 any of Toledo Edison's accounts, at least budgets,
18 proposed budgets, to either Cleveland Electric or
19 Ohio Edison.

20 Q. Have you quantified the budgets for each
21 company's Large Energy Efficient Equipment Programs
22 if your recommendation was adopted?

23 A. No, I haven't. It should be a
24 proportional share based on the megawatt-hours sold
25 in those classes.

1 MS. KYLER: No further questions.

2 EXAMINER PRICE: Thank you.

3 The ELPC.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Vickers:

7 Q. Good morning, Mr. Scheck. My name is
8 Justin Vickers. I represent the Environment Law &
9 Policy Center. I just have a few questions for you.

10 On page 2, starting with question 6 of
11 your testimony, you have a discussion of the pro rata
12 versus annualized savings accounting; is that
13 correct?

14 A. Yes.

15 Q. And you advocate here that FirstEnergy
16 adopt an annualized savings method?

17 A. I would recommend to the Commission to
18 approve an annualized savings method because this is
19 the most common method that I understand is used by
20 many utilities throughout the contry for accounting
21 simplicity. It's just lower cost to administrate.

22 Q. Under an annualized method, measures
23 installed on December 31 of the year would get
24 counted as though it had been installed on January 1.
25 They would have -- if one measure was installed on

1 December 31 and another on January 1, those would be
2 counted as the same savings. They were the same
3 measure.

4 A. In the same current year; however, when
5 you get to the end, whenever the measured life would
6 expire, then you would make an adjustment at the end
7 of the measured life accordingly, as when you put it
8 into service.

9 Q. Could you look at page 2, lines 20 to 22?
10 You state that "Under the pro-rata method, FE and its
11 contractors would need to keep track of measure
12 installation on a daily basis to accurately account
13 for savings on a pro-rata basis." Is that correct?

14 A. Yes.

15 Q. Could the companies keep track on a
16 monthly basis?

17 A. They could, except it still would take
18 more accounting administrative costs to do it that
19 way as well.

20 Q. How about on a quarterly basis?

21 A. They could do that as well, but I think
22 it's simpler just to know what year you put it in and
23 just count for that current year.

24 Q. Do you know how -- roughly the difference
25 in cost between a daily basis versus a monthly basis?

1 A. No, I do not.

2 Q. Do you have an idea of magnitude at all
3 in terms of how many more times or less -- more or
4 less it would cost?

5 A. Well, assuming that if you did it on a
6 daily basis, that would be some number probably
7 around 300. If you took out weekends, most people
8 don't install anything on weekends or holidays, so
9 probably have to account for at least 300 days out of
10 the year if you are doing it daily. Monthly would be
11 just 12 times a year.

12 Q. And quarterly would be four?

13 A. Correct.

14 Q. Let me turn to page 4 of your testimony.
15 Looking at question 9, lines 4 and 5, in particular,
16 you identify two problem lighting programs in the
17 companies' current existing plan that expire this
18 year; is that correct?

19 A. Yes. These are -- I would say these are
20 historical problems that have been -- as far as to my
21 knowledge, both have been corrected or taken care of.

22 Q. And you identify the CFL as one of those
23 areas?

24 A. Yes.

25 Q. And commercial lighting as another?

1 A. Yes.

2 Q. And could you just describe what those
3 problems were.

4 A. The first one --

5 MS. KOLICH: Objection.

6 EXAMINER PRICE: Grounds.

7 MS. KOLICH: These problems were problems
8 that the witness already stated he believes have been
9 taken care of. They involve programs in a plan
10 that's not before this Commission. This case is
11 about whether or not the plans achieve the benchmarks
12 for 2013 through 2015, and what happened in the past
13 is irrelevant.

14 EXAMINER PRICE: Overruled.

15 Q. Could you describe what those problems
16 were.

17 A. Essentially, the first one was more
18 dealing with an issue of, I'll say, the delivery of
19 CFLs. I think that the -- I'll say it was a joint
20 decision in terms of the company, as well as staff
21 and OCC, had agreed upon the delivery of sending out
22 two bulbs, basically every house, and they had
23 purchased the bulbs ahead of time.

24 And then there was a lot of kickback,
25 I'll say, once that was discovered by the general

1 public that some people didn't want two bulbs
2 delivered to their house. They would rather just
3 make that decision on their own, so it was a mistake
4 on, I'll say, multiple parties of just the program
5 design and delivery, that the best way to approach
6 the mass market with CFLs would be to go through,
7 I'll say, large box retailers and various retailers
8 of that type or hardware stores or even grocery
9 stores, which the company has -- has amended and
10 changed the program to do that.

11 Q. Could you describe that commercial
12 lighting problem.

13 A. Well, the commercial lighting problem,
14 from my knowledge, has -- from informal complaints
15 and discussions with the company, dealt with -- there
16 were an allocated number of dollars that came out
17 from the last plan that were in these categories that
18 I was discussing previously for the large and small
19 classes that have equipment and commercial lighting
20 in there.

21 The rebates that were originally -- the
22 initial rebates set for commercial lighting were set
23 at 80 cents a watt, which were fairly steep, could
24 pay for a large part of the project or maybe all of
25 it. I believe the company got overran with

1 applications in a very short period of time, two to
2 three weeks after the plan was approved. It was
3 approved around, I believe, on March 23rd of 2011,
4 which took over a year to get approved, and then the
5 program started -- kicked off around April 1.

6 We became aware of the problem somewhere
7 in late July, that the budgets were essentially
8 exhausted and that they needed to have a transfer of
9 funds, and they did reduce the rebates. I think they
10 were going to go to 65 cents per watt, but I think
11 they jumped straight to a nickel per kilowatt-hour,
12 which is a more appropriate level, but even then that
13 did show up -- or didn't show up on their website
14 right away when they made that change, which drew
15 some informal complaints about customers that
16 expected to get the 80 cents. Now they are being
17 told they are only getting a nickel per
18 kilowatt-hour.

19 And so I think that got repaired over
20 time, but the fact is that pretty much those budgets
21 were exhausted very quickly, and it would be better
22 to have, as they propose in their current plan, a
23 range of incentives that they can move around from a
24 nickel per kWh to 12 cents a kWh for the commercial
25 lighting so they can adjust the incentives based on

1 the demand and more appropriately manage these
2 particular budgets so they don't run out of money, in
3 a sense.

4 When they did that, they had a line of
5 customers that were waiting to get rebates, and some
6 of those took very, very long to get rebates, and
7 they had to wait for some others to drop off out of
8 the line to get the money.

9 So that is my best understanding what
10 happened. I haven't heard any complaints recently,
11 but just going forward with the next plan, that's the
12 reason why staff has made its recommendations as to
13 better manage those programs so we don't have a
14 number of informal complaints from customers about
15 receiving rebates on time and also the change in the
16 rebate level that they are notified.

17 Q. Now, if you take a look at lines 8 to 11
18 on page 4 there, specifically -- well, look at 8 to
19 12. You state that the companies -- this starts at
20 9 -- "should have learned what to avoid in terms of
21 program design and ways to improve delivery going
22 forward, and Staff hopes the same or similar issues
23 do not arise in future programs." Is that right?

24 A. Correct.

25 Q. Can you -- can you explain the basis for

1 staff's hope that the similar problems won't arise in
2 this case in this plan?

3 A. Well, based on the changes the companies
4 have made in its current program, I think they have
5 addressed that, as well as in the future programs.
6 The first one is the delivery mechanisms for CFLs
7 going to retailers. I think that takes care of the
8 CFL issues. The flexible rebate levels based upon
9 demand on the commercial lighting side, I think that
10 takes care of it going forward in the next plan.

11 Q. And will staff monitor the plan to make
12 sure these problems don't arise again?

13 A. Well, staff has recommended to receive
14 quarterly reports on the timing of rebates return to
15 customers from the time they file the applications.
16 If they have a deficiency, to have a quick turnaround
17 to customers or to notify them of the deficiencies in
18 applications, and then a certain amount of date once
19 they have completed all the paperwork to finish the
20 process to receive their rebate within 45 days.

21 MR. VICKERS: One second.

22 Q. Can we turn to page 11 of your testimony.
23 Looking at question 20, and here you are discussing
24 the shared savings mechanism, and you state in the
25 question and answer in 20 that there should not be an

1 absolute dollar cap on the companies' shared savings;
2 is that correct?

3 A. Yes. Other than there is a built-in cap
4 by the SEET test, it's referred to as the
5 significantly excessive earnings test, which is now
6 required under Senate Bill 221 for all the companies.

7 Q. And you anticipate my next question
8 there. Do you have any idea what that effective cap
9 on earnings for 2013 would be per company?

10 A. No, I do not.

11 Q. An estimate? And looking at -- sorry.

12 A. Let me finish. We do have staff that
13 actually do work on the actual earnings of the
14 companies each year, and if there's a case, they will
15 address that in any hearing before the Commission.

16 Q. Sorry. To take you back here, if you go
17 to page 9 of your testimony, I'm looking at lines 4
18 to 6 here, there's a discussion of -- of the
19 incentive level, and you express some concerns that
20 the incentive level magnitude is too hard -- too
21 high. You note it's an after-tax incentive; is that
22 right?

23 A. Could you tell me where it says it's too
24 high?

25 Q. Sure. Lines 1 and 2, "Staff is concerned

1 about the magnitude of the after-tax incentive of
2 13%."

3 A. Yes. Based on the information in other
4 cases, of looking at the returns of after tax, when
5 you include tax on a before-tax basis, what the
6 company has to collect can sometimes be 50 percent of
7 the total amount of the revenue received from the
8 rider in order to arrive at a number and, say, 13 or
9 15 percent.

10 Q. And so are you aware of other utilities
11 that use after tax rather than pretax rate for their
12 incentive mechanism?

13 A. Both AEP Ohio and Duke Energy Ohio, both
14 use after tax.

15 Q. That's helpful. Were you present
16 yesterday when Mr. Demiray testified?

17 A. I believe I was here. At least most of
18 the time I was here.

19 Q. Sure. Do you recall him -- he gave a
20 sort of rough estimate of \$2.1 million per company
21 for the savings mechanism that they are proposing at
22 the 10 to 15 percent level. Do you recall that?

23 A. Yes.

24 Q. Do you have an estimate of the magnitude
25 of the difference? So the company there is using the

1 after-tax method. If they are to use the 10 to
2 15 percent compliance, proceeding under what they
3 have proposed, do you know the difference between
4 pretax and after tax in terms of what the incentive
5 would be based on the \$2.1 million?

6 A. Well, typically the numbers I've seen on
7 the before tax, it would make up at least 50 percent
8 of the total corporate taxes, 3 percent of state and
9 local taxes that make up the difference, so you
10 normally -- the numbers I have seen are right around
11 50 or a little over 50 percent of that total number.

12 Q. So if it were pretax, then just make sure
13 I understand, it would be about half of what
14 Mr. Demiray estimated if it were pretax rather than
15 after tax?

16 A. It would be in addition to if it's before
17 tax.

18 MR. VICKERS: Okay. No further
19 questions. Thanks.

20 EXAMINER PRICE: Thank you.

21 Mr. Olikar.

22 MR. OLICKER: Hopefully just a few
23 questions, your Honor.

24 - - -
25

CROSS-EXAMINATION

By Mr. Oliker:

Q. It's always difficult because you don't get discovery or depositions on staff witnesses.

I guess to start, Mr. Scheck, you mentioned you made some qualifications on PJM bidding. Do you have -- not knowing what you are going to say, I think I would like to hear what those qualifications might be before I ask my questions.

A. I'll need to turn to the section in my testimony on that first.

EXAMINER PRICE: Page 11.

THE WITNESS: Yes.

A. On the Q and A for line -- or question and answer for 21, I'm recommending the companies "bid in its capacity reductions obtained from its planned energy efficient and peak demand reduction programs into the PJM Base Residual Auction next May and in future BRAs."

However, to clarify in terms of the next sentence, I'm putting forward a bidding strategy to mitigate risk bidding, bidding in at zero or some number to eventhe &V amount to qualify their bids, would be floor bid so that way it would most likely clear the market.

1 the 75 percent number only relates to
2 those resources that the company can claim that are
3 qualified. You bid in either the BRA auction or any
4 incremental auction. So depending on the nature of
5 the resource and the length of the resource they can
6 claim, will determine, to some extent, whether they
7 can bid that into the BRA or the incremental auction.

8 Resources that they can't claim nor have
9 ownership of, and what I would specify, in
10 particular -- in particular, customers that have
11 received an exemption, which would be only those
12 customers that would be classified as mercantile
13 customers under the law, which is consumption of over
14 7000,000 kilowatt-hours a year, could possibly
15 qualify to receive an exemption from the company for
16 paying the energy efficiency rider.

17 And what that implies, the customer has
18 done enough in a given year or multiple years to at
19 least reach a pro-rata amount of whatever the
20 benchmark of the company would have been to achieve
21 in the same year.

22 If the customer requests an exemption and
23 it's approved by the Commission, my view is that the
24 customer would have ownership rights of that
25 capacity, bid into the PJM market, and, therefore,

1 the company could not claim those. If the customer
2 wanted to commit such resources to the company, they
3 could do so, but that would be up to the customer.

4 MR. OLIKER: I actually think I might
5 have liked that answer once. Could I have one
6 second, your Honor?

7 Q. Just so I can clarify that, Mr. Scheck, I
8 think implicit in your answer, you think there is a
9 difference between the ability to have ownership to
10 bid into PJM and whether or not FirstEnergy could
11 count the attributes of energy efficiency measures
12 for purposes of the benchmarks, correct?

13 So under your -- under the idea you just
14 put forward, if there was a form they could have two
15 boxes potentially, you could check saying they can
16 have my energy efficiency attributes for purposes of
17 the benchmarks, but I would like to retain the right
18 to bid in PJM.

19 Is that what you are saying, that's a
20 possibility?

21 A. I'm not thinking of it that way. If you
22 had received a rebate for performing energy
23 efficiency, whether retrospective or prospectively
24 speaking, I think you committed those rights to the
25 company and they can count those, but they can bid in

1 those resources of capacity that are related to
2 energy efficiency.

3 However, if you had performed the energy
4 efficiency on your own and paid out of your own
5 pocket, meaning a customer, and then you requested an
6 exemption because you met your pro-rata share of the
7 benchmarks, for however long that would be, that
8 period, then you could actually bid that in, and you
9 could commit -- or at least allow the company to
10 count those, but you would have to commit those to
11 the company, but you would retain your rights, and
12 you would spell that out that you would retain the
13 rights to bid those in because you have an exemption
14 from the rider itself.

15 MR. OLIKER: Thank you, Mr. Scheck.
16 That's -- I think that's all the questions I have,
17 your Honor.

18 EXAMINER PRICE: Thank you.

19 Mr. Lang -- FirstEnergy.

20 MS. KOLICH: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. Kolich:

24 Q. Good afternoon, Mr. Scheck. My name is
25 Kathy Kolich. I'm counsel for the companies, and I

1 am going to be asking you some questions this
2 afternoon. If at any time you don't understand the
3 question, just let me know. I will be more than
4 happy to rephrase; otherwise, I will assume you
5 understand the question, okay?

6 Could you turn to your testimony, page 3,
7 line 12. You make the statement -- actually, it
8 starts on 11. "The addition of more measures should
9 give more opportunities for customers to participate
10 and make it easier for the FirstEnergy Operating
11 Companies to reach their annual benchmarks and
12 potentially exceed them." Do you see that?

13 A. Yes.

14 Q. Now, is it your opinion, as designed, are
15 the plans -- strike that. In your opinion, are the
16 plans designed, as filed, to achieve the annual
17 benchmarks for the periods 2013, '14, and '15?

18 A. I didn't actually sum up the total
19 numbers, but I would assume the company wouldn't have
20 put forth a plan that didn't reach the benchmarks,
21 and if the Commission were to approve an incentive
22 mechanism for the companies, I think there would be a
23 stronger purpose to reach -- not only reach the
24 goals, but exceed the goals with a financial reward.

25 Q. Okay. So you have no reason to believe

1 that the plans will not achieve the energy efficiency
2 targets, correct?

3 A. Yes.

4 Q. And the same thing, you have no reason to
5 believe that the companies will not achieve the peak
6 demand reduction benchmarks as set forth in the
7 statutes during the planned period.

8 A. Well, I will qualify my answer with the
9 peak demand reduction benchmarks. The issue I have
10 with the companies' application, and I believe it was
11 in -- I'm not remembering if it's Mr. Demiray's or
12 Mr. Miller's testimony referring to the company,
13 would basically say they would count capacity or peak
14 demand reductions from customers that were
15 participating through third parties in the PJM
16 auctions for capacity.

17 I don't believe that right has been
18 conferred to the companies. That still is up to the
19 individual customers, mercantile customers, to
20 clarify whether or not they want to commit resources
21 to the companies, in particular, customers that are
22 already going through third parties right now or plan
23 to in the future. I believe they retain the
24 ownership of peak demand reductions; therefore, I
25 would recommend the companies would still have to

1 purchase those attributes from those customers to
2 enable -- or at least have customers commit them,
3 free of charge, to the company in order to be able to
4 count them.

5 Q. But the companies have budgeted funds in
6 that peak demand reduction program, haven't they?

7 A. Yes, that's correct, which just seems in
8 contradiction to the statement being made in the
9 application, and I think it's Mr. Miller's testimony
10 saying that the companies would like to count and
11 essentially not have to pay for those resources.

12 So I don't really understand the
13 connection there between having a budget and then
14 saying that the companies will -- planned on counting
15 those resources. So either I assume that they want
16 to continue, as they are doing now, which is to hold
17 an auction, a sealed bid auction, basically, to
18 purchase these particular demand resources from other
19 third parties to fulfill their obligation as a last
20 resort if they are short.

21 Q. As you acknowledged, the Commission has
22 not yet ruled on the companies' position to be able
23 to count those peak demand -- those peak demand
24 reduction credits without any -- any payment by the
25 companies. Is that your understanding of the status

1 of that issue?

2 A. Yes, that is my understanding of the
3 status. It's not been determined yet. The behavior
4 of all the companies has been -- has been some sort
5 of financial payment to receive a commitment from the
6 customer so the company can count it. I connect the
7 word "count" with the word "commit" that's in Senate
8 Bill 221.

9 Q. Okay. So as part of the plan, if the
10 companies don't put any money in the budget and the
11 Commission rules against them, what -- the companies
12 would not have any funds available to pay for those
13 credits through an auction should they have to go
14 that way; is that right?

15 A. Well, not exactly. I mean, the company
16 at any time can ask for an increase in the budget, if
17 necessary. There is a provision in our rules for
18 that, and the company has actually done that already
19 in the current plan, so it is possible to request
20 additional funds to meet peak demand requirements if
21 the Commission sees that as I see it, that the word
22 "commit" and "count" have a nexus meaning, they go
23 together as prescribed in Senate Bill 221.

24 Q. Now, you're familiar with how the
25 companies recover their costs of the plan through the

1 energy efficiency rider; is that right?

2 A. Yes. It's recovered on a kilowatt-hour
3 basis.

4 Q. And that's based on actual costs
5 incurred, right?

6 A. Correct.

7 Q. Now, I believe you stated that the
8 companies have already come to the Commission in the
9 current plan and asked for an increase in the budget;
10 is that what you said?

11 A. I believe that's for Ohio Edison
12 Operating Company only.

13 Q. Are you sure it wasn't a shift of funds
14 either -- within the class?

15 A. It may have. I can't recall whether it
16 was an increase or an additional shift above the
17 25 percent.

18 Q. Okay. If the -- if, in fact, it was an
19 increase, is it your position that there would not be
20 the need for an evidentiary hearing before an
21 increase in budget would be allowed to be approved?

22 THE WITNESS: Could you read that
23 question back to me again.

24 EXAMINER PRICE: Please.

25 Q. I can make it faster. I'll just restate

1 it. If, in fact -- well, is it your opinion that the
2 companies can seek an increase in the budget of the
3 portfolio plan without any need for an evidentiary
4 hearing on the issue?

5 A. No. I believe they would have to have an
6 evidentiary hearing to do so.

7 Q. So as designed today, the plans, if --
8 with the funds in the budget and assuming the
9 companies have to hold an auction or otherwise pay
10 for those credits, understanding that scenario, would
11 you agree with me that the plans as filed are also
12 designed to achieve the peak demand reduction
13 benchmarks in the statute for the plan period?

14 A. Yeah. Based on the budgets you have put
15 forward, I believe that's the case.

16 Q. Okay. Page 4, line 6, of your
17 testimony -- sorry -- you referred to the residential
18 CFL program. Do you see that?

19 A. Yes.

20 Q. And that program was approved by the
21 Commission before the companies launched it; isn't
22 that right?

23 A. Correct.

24 Q. On line 15, page 4, you discuss some
25 concerns you have with the programs being proposed in

1 this plan; is that right?

2 A. Most likely, in particular, with the C&I
3 budget or Ohio Edison C&I relative to Toledo Edison.
4 The concern mainly goes to the fact that I have a
5 list now, or at least have received a list, of the
6 companies' rebates received for the various of
7 customers who have filed for rebates under mercantile
8 customers.

9 I believe -- I don't know the total
10 dollar amounts or the megawatt-hours it represents,
11 but over half of the total on the page are Ohio
12 Edison, and then the next three pages or so are from
13 CEI, and then the last page or so is Toledo Edison.
14 So just based on current responses from the current
15 plan, there has been more demand for doing the
16 commercial class within those two companies because
17 they represent larger amounts of sales than, say,
18 Toledo Edison does.

19 Even though Toledo Edison may have one
20 very large customer in the class, there is no
21 guarantee that that customer is going to adopt any or
22 many of the energy efficiency rebates that you may
23 have.

24 Q. Now, additional funds are allocated to
25 Ohio Edison and CEI for the commercial and industrial

1 lighting program. Is that the one you're suggesting?

2 A. Yes. Primarily as to -- relating to
3 where commercial lighting comes out, I believe it's
4 the equipment program under the large, the large
5 class there.

6 Q. Okay. So if additional funds are
7 suggested by your -- added to the C&I, this "EE
8 Equipment-Large," is there any guarantee that
9 participation will increase?

10 A. My concern is not a participating
11 increase. My main concern is about funds running out
12 and customers being frustrated because either they
13 have to be told they are waiting in line, or there
14 aren't sufficient funds to rebate them at this time.
15 It will have to wait.

16 And I think having programs that get cut
17 off in the middle of a three-year cycle is not a good
18 idea. I think that the Commission would rather see
19 there is sufficient funds there without having too
20 much allocated in the budget, but to make sure there
21 is sufficient funds there for customer demand so that
22 the companies won't run out of the funds that they
23 have.

24 I believe that there was only about \$4
25 million allocated for Cleveland Electric

1 Illuminating, which is quite a bit lower than to the
2 Ohio Edison total in the same class.

3 Q. Now, I believe, it was Mr. Vickers who
4 asked you some questions about the problems with the
5 lighting program, commercial lighting program, in the
6 current plan. Do you recall that?

7 A. I don't remember his exact questions, but
8 yes.

9 Q. And you explained the situation to him.

10 A. Yes.

11 Q. Is that the concern you have under the
12 current plan as well?

13 A. It mostly relates to having sufficient
14 funds there to take care of the demand that customers
15 may have. We don't want to have a pile of informal
16 complaints from customers saying that "I haven't
17 received my rebate. It's been six months since I
18 filed my application."

19 Q. Okay. So is it a rebate processing
20 problem, or is it a budget problem?

21 A. I think it's both, based on the requested
22 increases for both Ohio Edison and Cleveland Electric
23 in the current plan. We did not have any for Toledo
24 Edison, so my belief is the issue relates to having
25 sufficient funds in those categories which should be,

1 as I call it, the large chunk before you would get --
2 your energy efficiency savings would come from those
3 classes, so our concern from the staff is making sure
4 you have sufficient budget available to meet the
5 needs of the demand for motors, HVAC, lighting, and
6 those categories.

7 Q. Now, if I recall your explanation, under
8 the current plan a significant driver as to the
9 perceived problems or actual problems, as the case
10 may be, was a relatively high rebate level for those
11 lighting projects, isn't that right?

12 A. That problem drove a lot of it. Outside
13 of that, we did meet with some company personnel
14 about a year -- a little over a year ago. There were
15 a number of company personnel that came down to
16 relate to that they were not on top of this problem,
17 which simply goes to if I'm running a program, I need
18 a time stamp, the date in which applications come in.
19 I've got my budget, and I'm assuming a conversion
20 rate of something like 85 percent of the requested
21 rebates are going to be paid out and subtracting that
22 against the budget.

23 And the company really didn't have a clue
24 for quite a while, and the number of applications that
25 came in were quite high, and my concern is being able

1 to properly manage it before it gets out of control.
2 So if you have a high rebate, you need to keep --
3 someone needs to keep track or the gatekeeper needs
4 to notify management that the probability of payout
5 and where we stand with respect to the budget in
6 terms of the length of the time the program has been
7 approved, where are we at so we don't run into this
8 problem, where we have exhausted all of the funds
9 within two or three weeks and then we have another
10 year and a half to go before the next plan is
11 approved.

12 So that's my main concern, yes. It could
13 have been driven by very high rebates, but I think
14 the company wasn't aware of the problem until a bit
15 later, and I didn't get the sense there was any time
16 stamping going on with I think it was probably the
17 company's contractor as far as when were these logged
18 in, when were they paid out. I think that was done
19 later. They picked up on it and learned how to
20 manage the program.

21 I don't want to manage the program, but I
22 want to make sure the company manages it correctly so
23 the budget can last for three years. That's what I'm
24 saying. If you don't spend the funds, you can always
25 reduce the amount and adjust the riders accordingly.

1 Q. So you -- as you understand it, the
2 companies now do log their applications; is that
3 right?

4 A. Yes, after the problem occurred, though.

5 Q. Understood.

6 A. Yeah. We have not had any problems to
7 date that I know of with any of the other companies.
8 In fact, the last DP&L collaborative I went to there
9 was a customer came in to extol the great way in
10 which they managed their program and how they
11 processed their rebates. So they actually had
12 customer confirmation at a collaborative, whereas I
13 didn't hear that from any customers in your current
14 plan, at least initially, so.

15 Q. Do you know what the companies are
16 projecting as far as participation rates in the large
17 C&I EE Equipment Program for Ohio Edison?

18 A. No, I don't.

19 Q. How about CEI?

20 A. No, I don't.

21 Q. Do you have any reason to believe that
22 those projections are wrong?

23 A. No, not necessarily. However, a customer
24 who may have requested a rebate for lighting the
25 first time around, they request a rebate for motors

1 or HVAC another time around.

2 MS. KOLICH: Could I have that answer
3 reread, please?

4 EXAMINER PRICE: You may.

5 (Record read.)

6 A. Do you need clarification?

7 Q. No. There is no question before you.
8 I'm debating whether the answer should be before me.
9 Okay. Now, on on page 4, line 20, you talk about an
10 imbalance in the opposite direction. Do you see
11 that?

12 A. Yes.

13 Q. Are you saying it's the opposite
14 situation for peak demand as far as budgeting that --

15 A. Yes.

16 Q. T&D is too low?

17 A. T&D is fairly low. I think it's relative
18 to \$18 million for Ohio Edison and 11 million,
19 between 11 and 12 million, for Cleveland Electric,
20 and about I think it's 1.2 million, I don't have the
21 figures right in front of me, for Toledo Edison, so,
22 and yet that relationship is quite different between
23 those operating companies.

24 And then you look at the budgets for the
25 equipment for larger -- large commercial/industrial,

1 the amount of money budgeted for the equipment
2 program, Toledo Edison is significantly higher than
3 it is for Cleveland Illuminating, yet it doesn't
4 match up with the megawatt-hours.

5 It's also my understanding you have one
6 really big customer in Toledo Edison, so that's
7 banking on that customer is going to accept and want
8 to do a lot of rebates that the company would be
9 counting on in that class. If that customer doesn't
10 accept it, then you may have way overbudgeted for
11 that particular company.

12 Q. And if they do?

13 A. And if they do, that's fine, but it still
14 doesn't obviate the issue there is still a lot more
15 megawatt-hours out there for Ohio Edison and
16 Cleveland Electric Illuminating.

17 MS. KOLICH: If I could have just a
18 minute, your Honor.

19 EXAMINER PRICE: You may. Sorry.

20 Q. Now, on page 5, line 10, you offer a
21 suggestion on how these budgets should be allocated
22 to both Ohio Edison and CEI. Do you see that?

23 A. Yes.

24 Q. And you're suggesting that the allocation
25 be based on the estimated square footage of those

1 customers in the -- in the territories?

2 A. Yes; or alternatively, you could use
3 megawatt-hours of sales. They are probably roughly
4 equivalent, not necessarily the energy intensity will
5 be identical from one to the next, but either square
6 footage or megawatt-hour of sales.

7 Q. Okay. Assuming you did the estimated
8 square-footage approach, how are the companies
9 expected to know that?

10 A. They may not. That's why I said you
11 probably substitute megawatt-hours of sales.

12 Q. Okay.

13 A. But they could also consult surveys to
14 pick up some square footage, as far as survey work
15 for -- from customers.

16 Q. I thought I heard you say the calculation
17 based on customer consumption would achieve the same
18 goal; is that right?

19 A. It probably is a pretty good proxy.

20 Q. So why would you suggest the company
21 spend money on customer surveys to determine square
22 footage?

23 A. It depends on how much money needs to be
24 spent. If you are going to survey customers already,
25 I don't think it adds any additional, or not much

1 additional, cost to begin with, and I think the
2 company's recommending -- or has surveyed many
3 customers. I'm also recommending that you survey the
4 customer satisfaction of those customers that are
5 applying for rebates and either received them or
6 didn't receive them.

7 Q. Page 6, line 13, the question, "Do you
8 have any recommendations regarding the processing of
9 C&I prescriptive rebates," do you see that?

10 A. What line is that you are on?

11 Q. Just setting -- we're transitioning here,
12 question 14.

13 A. Yes.

14 Q. It's asking you about suggestions on the
15 prescriptive rebate process. Do you see that?

16 A. Yes, yes.

17 Q. Do you know how many prescriptive rebates
18 are processed today by the companies?

19 A. I have a list that's 10 pages long. I
20 didn't count the total that are received on 10-23.
21 I'm assuming it's probably at least 500 to 1,000.

22 Q. Okay. You don't know the current rebate
23 process -- the current rebate processing time?

24 A. From what I'm looking at, the original
25 ones look like they took quite a bit longer to turn

1 around. The more recent ones are turning much
2 quicker.

3 Q. And what are you looking at there?

4 A. Staff Data Request 4, the Rebate
5 Application received, date approved, and the check
6 mailed within X number of business days, the dates
7 for each of these, which operating company it was.

8 Q. Okay. Does it give the turnaround time
9 currently?

10 A. Other than you would have to calculate
11 each one of them, I haven't had time to go through
12 and look at that, but the turnaround time, just
13 looking at the initial ones that went out in 2011
14 versus the ones that are now in 2012, the current
15 turnaround time has been much quicker recently.

16 Q. And on line 17, page 6, I believe you
17 indicated, that logging in of the applications is
18 already being done by the companies; is that right?

19 A. Yes, that is correct.

20 Q. Now, on page 7, line 4, you make a
21 recommendation that the companies submit a log report
22 to the staff on a quarterly basis. Do you see that?

23 A. Yes.

24 Q. Would it be acceptable to the staff if
25 the companies simply added that as an agenda item to

1 their collaborative process --

2 A. That would be fine.

3 Q. -- and provided such information during
4 that process instead?

5 A. Yeah. That would be probably even
6 better.

7 Q. And on line 1, page 7, of your testimony,
8 you talk about after-the-fact participation
9 satisfaction surveys. Do you see that?

10 A. Yes.

11 Q. Do you know what -- strike that.

12 The companies have quality control
13 processes and procedures in place today, don't they?

14 A. I'm not sure -- with respect to what?

15 MS. KOLICH: Could I have that reread?

16 EXAMINER PRICE: You may.

17 (Record read.)

18 Q. You're not sure with respect to what is
19 -- as far as what I'm asking you or as far as what
20 quality control they have in place?

21 A. I'm assuming that the company has some
22 quality control procedures in place. I don't know if
23 they have any quality related to energy efficiency
24 rebate programs.

25 Q. Okay.

1 A. I mean, the company is responsible --

2 Q. There is no question in front of you.

3 A. All right.

4 EXAMINER PRICE: Mr. Scheck, were you
5 going to complete your answer, or were you going on
6 to another topic?

7 THE WITNESS: Yes. All I am saying is
8 the company hires a lot of contractors to basically
9 administer their programs. It's still the companies'
10 responsibility to oversee those contractors. Whether
11 they have quality control with them, I don't know.

12 Q. (By Ms. Kolich) So you don't know if the
13 companies already perform satisfaction surveys or
14 solicit satisfaction surveys from customers?

15 A. The only surveys that I heard about in
16 terms of the -- the filing in cross-examination of, I
17 believe, it's Mr. Fitzpatrick was dealing with just
18 general surveys with customers, whether or not they
19 have received rebates or not. It's just the general
20 population of customers.

21 What I'm interested in is getting a
22 satisfaction response with respect to the rebate
23 programs for customers that actually did apply and
24 surveying both customers that received a rebate and
25 customers who did not receive a rebate and getting

1 their reaction from that.

2 Q. And you don't know if the companies do
3 that today or not, do you?

4 A. I do not.

5 Q. How much would you suggest the companies
6 budget -- assuming they don't already do it, how much
7 would you suggest the companies budget be for such
8 survey participation?

9 A. Well, assuming that the maximum I've seen
10 so far is maybe a thousand customers receiving
11 rebates, I don't think it would be -- it would be
12 probably a pro forma survey sent to all of the
13 customers that either applied or received rebates, so
14 there would be some additional expense. I don't
15 think it would be exorbitant, meaning it would be
16 millions and millions of dollars, by any means. It
17 would be something less -- quite less -- far less
18 than that.

19 Q. Oh, so you're suggesting the companies do
20 this internally or hire an outside firm?

21 A. They could do it either way.

22 Q. Now, on page 7, lines 20 and 21, you're
23 recommending the audit payout for the large C&I be
24 increased from 5,000 -- to 5,000 from the currently
25 proposed 4,000 level; is that right?

1 A. Just to clarify, it's both small and
2 large C&I.

3 Q. I stand corrected. You're right.

4 A. I'm mostly concerned with the smaller
5 customers rather than the larger customers because
6 smaller customers, in many cases, don't have the
7 funds to put out to do an audit. So just from
8 knowledge about the utilities in the state, that they
9 have budgets of 5,000 for small customers and
10 provisions to pay down the audit if they participate
11 in rebate programs, my understanding was, in
12 listening to one of the discussions earlier in the
13 last couple of weeks from, I think it was,
14 Mr. Dargie, the conversion rate in Pennsylvania for
15 implementing energy efficiency measures from audits
16 was not very good in Pennsylvania. It was somewhere
17 between 0 and 5 percent.

18 Aversion rate in both Dayton and AEP is
19 much higher than that, so tying the audits --
20 increasing the audits a little bit for customers who
21 can't afford it, especially mostly the smaller C&I
22 customers, and then tying the audit results to
23 essentially some -- some rebate levels that the
24 customers can utilize that they are going to split in
25 terms of payment on that at certain levels, that will

1 entice more customers to participate.

2 Q. How many more?

3 A. The conversion rates, I believe, were on
4 the order of 30 or 50 percent, I believe, for AEP.
5 And for Dayton they were pretty high as well.

6 Q. Do you have a copy of that study?

7 A. No. But I can get you the -- it was
8 provided at the collaborative meeting, I believe. I
9 think I have the most recent one from DPL, but the
10 prior one, the conversion rate may be even higher
11 than that, maybe 70 percent, and AEP's was around
12 50 percent.

13 Q. What assumptions did they use in those
14 conversion rate calculations?

15 A. They basically performed audits, and then
16 they tracked who actually in the audits applied for
17 rebates.

18 Q. Generally, how much do these audits cost?

19 A. That will vary a lot, depending on the
20 size of the customer. A very large customer will
21 take -- for instance, a hospital could have a very
22 expensive audit that would be much more expensive
23 than even \$5,000, could be upwards -- I mean, audits
24 could go as high as 100,000. I would hope there
25 wouldn't be too many of those, but audits going above

1 \$10,000 would not be unusual, depending on the
2 complexity of the particular building that you are
3 looking at or buildings, if it's multiple, and the
4 number of processes that are going on. So it would
5 range quite a bit from a very small customer who
6 doesn't have a whole lot, it would be much cheaper
7 than that, maybe a couple thousand dollars, to as
8 high as maybe 20, 30 thousand dollars, even up to 50
9 thousand dollars.

10 Q. You indicated your concern lied mostly
11 with the small customers. What size customers are
12 you thinking there? As you said, they range in size
13 and the cost of audits range accordingly.

14 A. Correct. Stand-alone customers who don't
15 have resources would be my main concern. They are
16 very small commercial. AEP refers to it as an
17 express program. The idea is to have outreach to
18 them from the company, and understanding that they
19 don't have funds, it could be a stand-alone grocery
20 store, that type of arrangement. It has some --
21 there are certain things they could do, but they just
22 don't have resources onboard to be able to deal with
23 it.

24 Q. Okay. Now, on page -- page 8, line 1,
25 you refer to a penalty mechanism. Do you see that?

1 A. Yes.

2 Q. And on line 4, you suggest that the
3 companies impose a financial reimbursement obligation
4 on the customers who do not proceed and implement the
5 recommendations resulting from the audits; is that
6 right?

7 A. Yes.

8 Q. What if the customers dont' want to give
9 the money back?

10 A. I think you put it on their bill.

11 Q. The law would allow for that, if you
12 know?

13 A. I'm not sure. I mean, it would just be a
14 line item on the bill they would pay for.

15 Q. Okay. And I assume -- I should never
16 assume. Strike that.

17 How would you suggest the results be
18 tracked?

19 A. Could I get clarification, results of
20 what be tracked?

21 Q. Of whether or not the installs took place
22 within the six-month period, how should it be
23 policed?

24 A. Well, I think you would have applications
25 for rebates, and I don't believe the company actually

1 provides for rebates until after paperwork is shown
2 that a particular project was completed.

3 Q. So that's your suggestion on how to
4 police it?

5 A. Yes.

6 Q. Okay. I mean, short of that, if you have
7 a very, very large customer who received a
8 substantial audit, then you probably would send
9 somebody on-site just to do a check or a sample, at
10 least, of the projects they implement, make sure they
11 actually did what they said they did.

12 Plus you could look at a billing analysis
13 pre and post from when they said they started the
14 project, when they finished it, and looking at bills
15 after the fact.

16 Q. Now, on page 7, line 21, you don't have
17 to go there unless you want to, but you suggest an
18 increase by \$1,000 as far as the incentive goes. But
19 I don't see any recommended budget increase to cover
20 that increase. What are you recommending?

21 A. I'm not sure what the budget amount would
22 translate to. I don't know how many audits the
23 company was actually planning on doing, but I would
24 assume you would multiply the number of audits,
25 anticipated audits, times a thousand. Obviously,

1 having --

2 Q. Mr. Scheck, there is no question before
3 you.

4 A. Sorry.

5 EXAMINER PRICE: I think he was
6 completing his last answer. I acknowledge it was a
7 lengthy pause.

8 THE WITNESS: That's okay.

9 Q. I guess I need to start asking my
10 questions faster. On page 8, line 15, you indicate
11 that FE should be following up closely with these
12 customers who have applied for and accepted an audit.
13 The FE account representatives should have regular
14 contact with customers soon after they have had an
15 audit completed. Do you see that?

16 A. Yes.

17 Q. Do you have any reason to believe the
18 account representatives don't have regular contact
19 with their customers?

20 A. They may have. My impression is, based
21 on the results of audit conversions, energy
22 efficiency in Pennsylvania, gives me the impression
23 that the follow up either wasn't very good from
24 account reps, especially small customers. These are
25 customers you have to stay in close contact with in

1 order to remind them that they have an audit
2 completed, and in order to derive the benefits from
3 the audit, they need to take advantage of rebates the
4 company is offering in order to fulfill what the
5 audit recommendations are.

6 If you don't do that, they end up going
7 on the shelf somewhere, forgotten about, and six
8 months later they have totally forgotten about the
9 audit.

10 Q. Do you have any specific examples of that
11 happening, or is that just your assumption?

12 A. No. This is just from discussions with
13 both AEP and DP&L, especially AEP has very close
14 follow-up with small customers under their Express
15 program, with those customers multiple times after
16 the audit is completed, shortly thereafter.

17 MS. KOLICH: Then I would move to strike
18 your response as based on hearsay.

19 EXAMINER PRICE: Mr. Parram?

20 MR. PARRAM: Can you read back the
21 witness's response.

22 EXAMINER PRICE: Please.

23 MS. KOLICH: It's actually the response
24 before that because it was based on the hearsay that
25 he described there.

1 EXAMINER PRICE: Mr. Parram.

2 MR. PARRAM: I believe you asked the
3 witness what was the basis for his recommendation
4 for -- for following up with customers?

5 MS. KOLICH: I would have to have my
6 question reread, please.

7 MR. PARRAM: Well, I think the witness
8 was explaining that based upon his experience working
9 with AEP and DP&L, that they have -- that their
10 customers -- they are in close contact with their
11 customers, and that was the basis for his
12 recommendation. I'm not sure how that is the truth
13 of the matter asserted. That is not a specific
14 statement from AEP or DP&L.

15 MS. KOLICH: You are misunderstanding me.
16 I'm not moving to strike his explanation of how he
17 knows. I'm moving to strike the answer he gave me
18 when I asked him how does he know that, so that's the
19 question I would ask to have reread, please.

20 EXAMINER PRICE: We would like two
21 questions back, the question and the answer.

22 (Record read.)

23 MS. KOLICH: And I would move to strike
24 everything after they may have based on the grounds
25 that that information that he just provided is being

1 offered for the truth of the matter asserted and it's
2 based off of discussions related to him by
3 representatives of Dayton Power & Light and AEP.

4 MR. PARRAM: And I would say that the
5 witness has already testified that he had discussions
6 or heard Company Witness Dargie speak about
7 responsiveness as relates to -- in Pennsylvania as it
8 relates to their rebate program. That wasn't a
9 statement from DP&L. That was a statement directly
10 from the company so it's based upon a statement from
11 the company witness or company representative
12 himself.

13 MS. KOLICH: However, Mr. Dargie did not
14 discuss what small business customers do and leave
15 them on the shelves and, et cetera.

16 EXAMINER PRICE: Overruled. Mr. Scheck
17 is the staff expert on energy efficiency, and the
18 scope of his job is regularly monitoring and
19 attending the collaborative meetings for all the
20 utilities in the state. That's what his job is to
21 do. That's how he obtained this information.
22 Overruled.

23 Q. (By Ms. Kolich) Page 9 of your testimony
24 you talk about the shared savings mechanism.

25 A. Yes.

1 Q. And you make several suggested changes to
2 the mechanism as proposed by the company; is that
3 right?

4 A. Are you referring to the table? I'm not
5 sure to what you are referring.

6 Q. I am just talking in general that you've
7 made some suggested modifications to the companies'
8 mechanism as proposed in the plan.

9 A. I guess maybe asking a clarification
10 question.

11 Q. Sure.

12 A. When you say change in the mechanism, are
13 you talking about the table in terms of the
14 percentages and incentive percentages as it relates
15 to that or something else?

16 Q. Something else but the design of the
17 shared savings mechanism as proposed by the
18 companies, okay? You don't agree with the exact
19 design of that mechanism, do you?

20 A. I'm not following where I'm differing in
21 that regard from what the company has.

22 Q. Okay.

23 A. I would agree there is a difference in
24 terms of percentages and incentive percentages.

25 Q. Okay. We'll start there. And you've

1 made -- you've made suggestions to change the
2 percentage levels for purposes of calculating the
3 incentives; is that right?

4 A. Correct.

5 Q. Under your percentages how much would
6 the -- if you can ballpark it, what would the
7 resulting incentive amount be to the customer at the
8 highest level, the incentive tier 5? I'm just trying
9 to figure out what the maximum is the companies could
10 earn, if you know.

11 A. In this case the customer is the company
12 then?

13 EXAMINER PRICE: You said "to the
14 customer."

15 Q. I apologize. I am not too with it today,
16 apparently. How much -- what's the maximum the
17 companies can earn, if you know, under the incentive
18 structure you have set forth on page 9 under line 13?

19 A. I haven't calculated it in terms of
20 millions of dollars at this point.

21 Q. Okay. You can't provide a ballpark
22 number figure?

23 A. I'm sure it would be at least several
24 million dollars per operating company. It depends on
25 the size, and they achieved -- you are talking about

1 tier 5?

2 Q. The maximum, yes.

3 A. The maximum, I am sure it's several
4 million dollars. In total for all three operating
5 companies it might approach 10 million at the upper
6 end, but I don't know the exact amount.

7 Q. Fair enough.

8 A. But it's somewhere probably between 5 and
9 10 million dollars.

10 EXAMINER PRICE: Were you here for
11 Mr. Demiray's testimony yesterday?

12 THE WITNESS: Yes. I think he quoted
13 some number around a little -- low 2s, somewhere in
14 there, 2 million to 2-1/2, somewhere in that. I
15 don't know the exact amount.

16 EXAMINER PRICE: If he -- hypothetically,
17 subject to check the transcript, he had said \$2.1
18 million for a 10 percent incentive, do you believe
19 that your maximum incentive will be comparable to
20 that?

21 THE WITNESS: Probably pretty close to
22 that.

23 EXAMINER PRICE: If I can interject, I
24 have a quick question to follow up. Of the
25 differences between your chart and the company's

1 chart is you would not give a shared savings for
2 100 percent compliance. You require overcompliance
3 before you give the mechanism. Is there a reason for
4 that?

5 THE WITNESS: Yes. My reasoning is that
6 all the companies are expected to comply with the
7 law, and if you don't, there is a penalty for not
8 doing so so I think there is already built in
9 incentive to at least do what the law requires.

10 EXAMINER PRICE: Thank you.

11 Q. (By Ms. Kolich) Turning to page 12 of
12 your testimony, line 4, you recommend the companies
13 bid in 75 percent of their projected capacity
14 reductions. Do you see that?

15 A. Yes, with the qualification it's those
16 capacity reductions it can actually claim.

17 Q. Okay.

18 EXAMINER PRICE: What do you mean by
19 that? Do you mean where they establish ownership of
20 the capacity?

21 THE WITNESS: Yes. The company may reach
22 its benchmarks with respect to other -- I'll call
23 other demand response that's bid in by third parties.
24 They can actually be able to count that by doing as
25 they have done in the last couple of years, issue an

1 RFP to actually purchase the ability to -- to
2 purchase the ability from the customer to be able to
3 count that toward their annual goal but yet the
4 customer will still have the right to bid that in
5 themselves.

6 EXAMINER PRICE: I think yesterday
7 Mr. Demiray was talking about there was some
8 technologies that the company was certain would be
9 accepted by PJM and other technologies that were
10 perhaps not certain that they would be accepted by
11 PJM. In your 75 percent would you put only the
12 technologies where the company is certain PJM will
13 accept it?

14 THE WITNESS: I suppose, yeah, that would
15 be the case. I haven't heard at least in the last
16 couple auctions where they did energy efficiency
17 credit rejection from PJM regarding entities bidding
18 in the capacity component from energy efficiency. So
19 long as you complied with I think the Manuals 18 and
20 19 that were presented yesterday, they will accept
21 pretty much all of that which is bid in from their
22 various entities.

23 EXAMINER PRICE: I am done, thank you,
24 for now.

25 Q. (By Ms. Kolich) Back to line 4 of your

1 testimony on page 12, the reference to project
2 capacity reductions, could you give me a definition
3 what you mean there?

4 A. This would relate to the -- the amount
5 that the company can claim or has ownership of that
6 it would bid into the BRA auction so it may be some
7 number, and would likely be some number, less than
8 what is prescribed. As the outcome of Senate Bill
9 221 mandated, it could be a number less than that.

10 Q. Okay. So you're not suggesting to bid
11 75 percent of the statutory targets for energy
12 efficiency or peak demand.

13 A. Not necessarily. The company could
14 overcomply or it may have enough resources on its own
15 that it can claim whatever that number is, it could
16 be less than, it could be equal to, or it could be
17 greater than the statutory benchmark. It just
18 depends on how much the company can actually get on
19 its own, and that amount I would recommend to be
20 75 percent of the total to mitigate the quantity
21 risk.

22 EXAMINER PRICE: Mr. Scheck, I think the
23 part that I am not clear on is installed versus
24 projected. If the company has said that they are
25 willing to bid in installed resources, you have

1 indicated that you believe the company should bid in
2 projected resources that they have ownership of.

3 THE WITNESS: Yes.

4 EXAMINER PRICE: How would they get
5 ownership over a projected resource?

6 THE WITNESS: It depends on the length of
7 the contract.

8 EXAMINER PRICE: With the customer.

9 THE WITNESS: Correct.

10 EXAMINER PRICE: Okay. I'll think about
11 that for a while. Please proceed.

12 MS. KOLICH: I'm not allowed to think
13 about that for a while?

14 EXAMINER PRICE: You can, too.

15 Q. (By Ms. Kolich) Okay. So your
16 distinction that you have just made for the Attorney
17 Examiner Price is dependent on a multi-year contract
18 between the companies and the customer; is that
19 right?

20 A. Yes.

21 Q. Okay. Now, are you suggesting that the
22 companies bid any future capacity that they do not
23 have under contract at the time of the bidding?

24 A. I would say no, unless they have a very
25 good idea they are going to be able to acquire that.

1 Q. Now, page 12, line 3, you refer to price
2 and performance risk. Do you see that?

3 A. Yes.

4 Q. What are you referring to with regards to
5 the price risk?

6 A. Well, the company could provide its own
7 bid into the BRA auction and happen to bid in a
8 number that's too high and it doesn't clear and they
9 get zero dollars so in order to mitigate that risk,
10 the company could put in either zero, or they could
11 bid in the diminimus even peak costs associated with
12 the BRA auction to qualify for the bid.

13 Q. Okay. Let's stop there. So you're
14 suggesting they only be allowed to recoup the EM&V
15 costs or all costs incurred by the company to --
16 strike that.

17 Is it your position that the company can
18 only recover EM&V costs, or should they be able to
19 recover the costs incurred to make the bid?

20 A. I would assume that costs incurred to
21 make the bid would include any costs that are
22 associated with fulfilling Manuals 18 and 19 to do
23 that, and I believe you already have a contractor ADM
24 onboard to do EM&V work. I would assume it would
25 encompass that as well in terms of qualifying for a

1 bid. As they're evaluating and looking at the
2 compliance with Senate Bill 221 for those same
3 resources, they could tell you whether or not they
4 qualified for Manuals 18 or 19.

5 Q. In other words, you are not asking the
6 company to lose money by bidding lower than what it
7 would take to cover their costs.

8 A. No.

9 Q. Okay. Now, you also refer to performance
10 risk on line 3. Could you explain to me what that is
11 in your -- how you define that.

12 A. The performance risk is the market
13 participant takes on the risk of whoever these
14 customers are in terms of are they actually going to
15 reduce their -- their demand during these times
16 defined by PJM as the on-peak time, and I believe if
17 it's an emergency, they can call up to 10 times
18 during the summer up to, I believe, six hours in
19 duration so if the customer doesn't perform, the
20 company is at risk.

21 Q. And on line 5, I believe you suggest that
22 it purchase its obligations in a residual incremental
23 PJM auction in an effort to mitigate that performance
24 risk; is that right?

25 A. It could. However, I wouldn't

1 necessarily rely on that in the future because
2 there's been quite a difference between the initial
3 BRA auction and the incremental auctions so various
4 parties can gain the system by receiving a price that
5 is much higher than the BRA and knowing full well
6 they are not going to deliver and then pay whatever
7 the coverage is under the incremental auction and
8 keep the difference. And I think that over time that
9 arbitrage difference would be tightened up quite a
10 bit so there is no guarantee going forward that the
11 incremental auction will always be lower than the
12 BRA.

13 Q. Okay. What would you suggest as a way to
14 mitigate that performance risk?

15 A. I think I already put it down, 75 percent
16 of whatever you can qualify and that you can claim
17 would be a way to mitigate the risk.

18 Q. Now, on line 10 you talk about the
19 possibility that the companies -- I'm sorry, on line
20 9 it starts, "The companies could share in any
21 revenues received in the PJM auctions." Do you see
22 that?

23 A. Yes.

24 Q. How would you suggest they go about doing
25 that?

1 A. Well, I think in order to help mitigate
2 some risk then you could identify some percentage
3 number of the revenues received, I don't have a
4 prescribed amount, you could pick 10 percent,
5 something similar to whatever the amount of the
6 shared savings mechanism is in terms of the top
7 number, obviously, but you have to look at the total
8 dollar amount and that would vary based on forced to
9 clearing price, so you might have a cap associated
10 with that. It just depends. The price for capacity
11 has been jumping around quite a bit the last couple
12 of years. It's been very low. It's going to go back
13 up. Who knows what it is going to be five, ten years
14 from now.

15 EXAMINER PRICE: Isn't it likely that a
16 percentage of capacity cost is going to vastly exceed
17 the shared savings percentage? If you gave them 10
18 percent of the bid in capacity -- not you. If the
19 Commission authorized the company to split the
20 capacity -- the revenues coming back out of the
21 energy efficiency on a 90/10 basis, isn't that likely
22 to be substantially more than the maximum shared
23 savings?

24 THE WITNESS: I think it would be -- the
25 PDR I looked at as something independent of the table

1 and put forward. It's something in addition to.

2 EXAMINER PRICE: But why? Isn't the end
3 result of both your proposed shared savings mechanism
4 and the mechanism you are outlining here something
5 that's going to provide the company incentive to
6 maximize the actual energy efficiency delivery on the
7 one hand?

8 THE WITNESS: Yes.

9 EXAMINER PRICE: I mean, the only way
10 they are going to have capacity revenues is to get
11 energy efficiency that is verified and measured and
12 then bid into the auction.

13 THE WITNESS: Well, there is other
14 components besides just energy efficiency. I mean,
15 they can get -- they can compete for the same demand
16 response resources as a distribution company much
17 like EnerNOC or Constellation.

18 EXAMINER PRICE: I understand; I
19 understand.

20 THE WITNESS: Then they have direct load
21 control. They also have other DR they may have as
22 well so there's several opportunities for them to
23 pick up capacity resources and bid in the market much
24 like any other competitor can, and I'm sort of
25 drawing the compensation relationship that I best

1 understand between, say, a customer and EnerNOC,
2 something similar to 90/10 split is how they do
3 revenues they receive out of that BRA auction or
4 incremental auction. Typically, the customer will
5 keep 90 percent of the revenues and the company
6 representing the customer, and the market
7 participant, would normally keep about 10 percent.

8 EXAMINER PRICE: Okay. Thank you.

9 Q. (By Ms. Kolich) Lines 16 and 17 of your
10 testimony, on page 12, you address the dollar per
11 kilowatt per year T&D avoided cost the company used.
12 Do you see that?

13 A. Yes.

14 Q. Now, the company used \$20 a kilowatt a
15 year; is that right?

16 A. Yes. As a flat rise, as in their current
17 plan, it's the same number being used from one plan
18 to the next.

19 Q. Okay. Do you have a number that you
20 believe should be substituted for that number?

21 A. I don't have any particular number other
22 than I know that the company on an annual basis has
23 projects that they spent money on distribution for
24 sure, some transmission that may fall under state
25 jurisdiction, cost recovery, and, therefore, even if

1 it doesn't, it's still costs they could avoid whether
2 it's under ATSI or with each operating company, but
3 you have investments that you make every year that
4 would be included in the \$20 number.

5 It doesn't seem like it's supported by
6 anything. It's just like a number pulled out, said
7 we will just use \$20 flat. I think if the company
8 actually did a study or an analysis of its projects,
9 that number would fluctuate quite a bit over time, at
10 least in the short run you will have fluctuations
11 depending on your capital budget projects for
12 distribution and transmission, and I think that's
13 what you should use going forward.

14 To the extent you know what those numbers
15 are, then maybe use a trend line averaging those
16 numbers into a projection for that point forward or
17 whatever for whatever knowledge you may have. I am
18 assuming you wouldn't have any more than five years
19 or at most ten years of knowledge of distribution
20 projects and any transmission it may have.

21 I can tell you one of the companies has
22 provided a complete study, it's fairly thick, of all
23 the T&D projects I looked at, and they use that in
24 their avoided costs.

25 EXAMINER PRICE: You should try examining

1 Mr. Ridmann. He takes very lengthy pauses in his
2 answers.

3 MS. KOLICH: I've seen Mr. Ridmann
4 testify. I would not like to cross him.

5 Q. (By Ms. Kolich) You mentioned a study.
6 Was that done by an outside consulting firm, or was
7 that done internally?

8 A. I believe the company did it itself
9 because it has their name on it. I'm not sure, but
10 I'm pretty sure internally the company did it
11 themselves. It's an Ohio company.

12 Q. But it's not FirstEnergy; you are not
13 referring to our company?

14 A. No, no. It's Duke, if you want to know,
15 so.

16 Q. Okay.

17 MS. KOLICH: Could I have a minute,
18 please?

19 EXAMINER PRICE: You may.

20 Q. Now, Mr. Scheck, do you think the number
21 is too high or too low or don't you know?

22 A. I'm not sure other than the one study I
23 saw this number is substantially lower than what they
24 had.

25 Q. Okay. So if you increase the value to

1 the distribution T&D avoided costs component,
2 wouldn't that just make your plan more cost effective
3 from a TRC standpoint?

4 A. Yes. It will also provide more
5 incentives for the company on the shared savings.

6 Q. Now, on page 12, line 22, you then refer
7 to an escalation of these costs, these costs being
8 the \$20 T&D avoided cost component. Do you see that?

9 A. I'm sorry. What line was that on?

10 Q. Line 22, page 12.

11 A. I'm sorry. What was the question?

12 Q. I just asked if you see the reference to
13 the esca -- escalation of costs.

14 A. Yes.

15 Q. What would you escalate -- at what rate
16 would you escalate the value?

17 A. Well, I think the last rate case I think
18 the companies' average weighted cost to capital was
19 8.48 percent until there was some change. I would
20 assume some number like that.

21 Q. Okay.

22 A. Whatever it costs the company to borrow
23 money.

24 Q. Cost of debt or cost of capital?

25 A. Some combination thereof.

1 Q. Okay. Page 13, line 9, you indicate that
2 the staff is not in agreement with the companies'
3 position that they may be able to count peak demand
4 resources for those resources not being committed to
5 the companies by the mercantile customer. Do you see
6 that?

7 A. Yes.

8 Q. We touched on this earlier in your
9 testimony. What is the basis for your conclusion
10 that they should not be able to count them?

11 A. I'll say a couple. One is the behavior
12 of all the companies in Ohio has been to purchase
13 demand resources from customers who are the
14 representatives by either directly with a contractor
15 via through an auction which has been the most common
16 in the last couple of years, so indicating to me that
17 they believe that the company cannot count a source
18 that hasn't been committed to them. And I think that
19 foundation is actually established in Senate Bill 221
20 where it says "the customer may commit." It doesn't
21 say "the company shall count." It says "the customer
22 may commit," and I draw a nexus between committing
23 and counting.

24 Q. Based on the statutory language.

25 A. Correct.

1 EXAMINER PRICE: Based upon your
2 understanding though, Mr. Scheck, doesn't the
3 customer become a free rider? They have already
4 committed their demand response to PJM, and now,
5 they're getting financial compensation to do
6 something that they were going to do in any event,
7 additional financial compensation from the company?

8 THE WITNESS: I don't -- I don't know if
9 I would look at it that way. Free riders are saying
10 they would have done something anyway without
11 financial compensation. And I look at their initial
12 decision, and customers either decide they are not
13 going to participate or they are, so in this case I
14 don't know if it's the same applicable thing.

15 EXAMINER PRICE: But they have already
16 decided to participate in the PJM demand response
17 program, and they have already apparently received
18 appropriate compensation from PJM for that. Why
19 would they be entitled to additional compensation?
20 Why wouldn't the -- giving them additional
21 compensation from FirstEnergy make them free riders?
22 They are not providing any additional demand
23 response. They are getting paid twice for the same
24 demand response.

25 THE WITNESS: I don't know if they are

1 being paid entirely twice, generally, if they return
2 some of the auctions or the payments are less than
3 market price, but they do receive additional
4 compensation but this is something they did anyway to
5 receive compensation. I don't think any customer is
6 going to voluntarily submit demand resources into PJM
7 initially without any compensation. And from a free
8 rider perspective that's kind of what you look at,
9 would customers have done something anyway without
10 receiving any compensation.

11 So the initial action is customers were
12 not free riders because they wouldn't have done it
13 had they not received compensation. It just happens
14 to be the structure of our law says that the
15 companies in my view cannot count something the
16 customers didn't commit to them, so it's more of a
17 deficient in that regard, but as to whether I
18 consider them free riders, I am not sure I would say
19 that.

20 EXAMINER PRICE: I am more interested in
21 your economic analysis than your legal analysis.

22 THE WITNESS: I don't view it that way
23 because they are taking action with a -- they
24 wouldn't have taken this action otherwise initially
25 without getting compensation.

1 EXAMINER PRICE: Okay. Thank you.

2 Q. (By Ms. Kolich) I struggle with the same
3 problem. They are getting compensated. They may not
4 be getting compensated by the company, but they are
5 receiving compensation from the conservation service
6 provider, for example, aren't they?

7 A. My point is is that these customers
8 wouldn't have committed demand reductions to PJM
9 without compensation, period.

10 Q. Okay. Well, let's walk through the
11 process then. Let's assume the customer gets
12 compensated through their conservation service
13 provider, CSP, for committing those resources to PJM,
14 okay? They are getting compensated. They are just
15 not getting it from the company at this point, right?

16 A. That's correct, but the issue gets back
17 to initial action which is the customers were not
18 willing to commit anything to any party without being
19 compensated for something.

20 Q. I understand that. Let's carry on
21 through the process. They have been compensated.
22 They've committed and they have been compensated
23 through the CSP. Now, it's your position that in
24 order for the companies to be able to count those
25 resources that the customer has committed through the

1 CSP to the PJM, the company should pay the customer
2 again; is that -- is that your position?

3 A. Well, in order to acquire the resource to
4 meet your annual goal that the law provides that the
5 customer must commit the resource to the company, so
6 if I as a customer were going to do that, I would
7 probably want additional compensation, but to me that
8 doesn't make them a free rider. A free rider to me
9 is someone who is going to do it without any
10 compensation anyway, which I'm not aware of anybody
11 who are, at least if they did something, they weren't
12 aware of it, so I put in some compact fluorescent
13 bulbs, but I didn't receive any compensation for it
14 so am I a free rider?

15 I suppose you could maybe consider me
16 that, but what I'm saying is I didn't ask for any
17 additional compensation. In these cases customers
18 that are doing this are generally larger customers
19 that they go through a third party and they split
20 that. I don't see them going to a third party and
21 saying, oh, I'm here. You can bid in my resource,
22 and, by the way, I don't want to get any money. I
23 don't see that. It's the initial action that defines
24 whether or not they are a free rider.

25 Q. I'm not worried about the free ridership

1 issue in this hypothetical, by the way. Now, there
2 are -- there are CSPs in the marketplace already that
3 are accumulating those credits for purposes of
4 bidding them; is that right?

5 A. Yes, much like the company could be a CSP
6 as well.

7 Q. I understand that. In other words, you
8 are suggesting that in order for the companies to,
9 for example, try to acquire those credits that
10 otherwise would go to a CSP, the companies, in
11 essence, have to become a CSP and compete with the --
12 compete with the EnerNOCs of the world; is that
13 right?

14 A. I think by definition in PJM any EDU is
15 already qualified as a CSP.

16 Q. Okay. Regardless, in other words, the
17 company would compete with the EnerNOCs of the world
18 for the same finite amount of resources that would be
19 available to be bid into PJM; is that correct?

20 A. Yes. They do compete for the same
21 resources much like the company offers discounts on
22 demand charges for ELR/OLR customers. If they are
23 already picked up by the company, obviously it's not
24 likely that an EnerNOC would be able to provide the
25 same service because you've already supported them

1 through some discount which in that case you are not
2 representing that customer to PJM to receive some
3 sort of payment for capacity reduction.

4 Q. Right. And EnerNOC doesn't pay the
5 customer again either. They don't get paid, right,
6 under ELR?

7 A. Well, that's a function of the law.
8 There is no requirement on a curtailment service
9 provider to pay again for demand response provided
10 because they have no requirement to reach an annual
11 goal for peak demand reduction.

12 Q. Okay. Let's -- as I understand it, you
13 believe that what the company is proposing is
14 unlawful under the statute making the discussion
15 between commitment and -- I forget the term you used
16 but --

17 A. Count.

18 Q. And count, so your position is they
19 should not be able to do that -- should not be able
20 to count these resources without paying the customer
21 because it's your opinion it would be unlawful to
22 allow them to do so?

23 A. That is correct, even though I would
24 prefer the companies' position or, in general, that
25 companies should be able to count if that were the

1 case but the law, as I read it, isn't structured that
2 way.

3 Q. Okay. Now, you said you would actually
4 prefer to allow the companies to count these
5 resources without having to pay additional dollars.
6 Did I hear you correctly?

7 A. In the sense that if the customer
8 received an exemption meaning that if he goes through
9 a third party and they have paid for all of their
10 energy efficiency and they are just asking for an
11 exemption from the company, outside of that I
12 wouldn't oppose that, but I think if a customer has
13 already done this on his own, then I think he retains
14 his right to bid it in.

15 MR. OLIKER: Excuse me. Could I have a
16 clarification? Is the witness talking about energy
17 efficiency or peak demand reduction that is bid in
18 separately from PJM outside of any mercantile
19 project?

20 MS. KOLICH: I was going to ask the same
21 clarification.

22 EXAMINER PRICE: Go ahead and answer
23 Mr. Oliker's question.

24 MR. OLIKER: I'm sorry, thank you.

25 EXAMINER PRICE: No problem.

1 THE WITNESS: If a customer is bidding in
2 peak demand reductions unassociated with energy
3 efficiency and rebates, then I think they reserve
4 that right. However, there's still the customer
5 could bid in energy efficiency that he did and paid
6 out of his own dime, he could bid that in as well. I
7 don't see why not if they didn't request any
8 compensation from the company.

9 Q. (By Ms. Kolich) Okay. Let me try this
10 again a different way. If you are wrong in your
11 interpretation of the law and the law actually allows
12 the company to do what it's requesting with regard to
13 the demand credits, would you then be in favor -- or
14 would you agree with the Commission in allowing the
15 company to do what's requested?

16 A. No. I don't want to contradict the law.

17 Q. No, no. We're assuming you're wrong in
18 your interpretation of the law and that law does, in
19 fact, allow the companies to count these credits as
20 they are proposing, okay?

21 A. Uh-huh.

22 Q. Would you recommend to the Commission
23 that they approve that aspect of the plan and allow
24 the companies to go forward that way? I probably
25 didn't ask that right.

1 EXAMINER PRICE: Let me try. Let me try.
2 Mr. Scheck, irrespective of the legal arguments, one
3 way or the other, what's the best policy?

4 THE WITNESS: Well, I think the best
5 policy would be to allow companies to count all
6 retail customers in their territory for demand
7 reductions, whether they were acquired through a
8 third party versus the company directly because these
9 are all reductions that occurred within the service
10 territory, the customers were already compensated
11 whatever the split was from their third party and,
12 therefore, additional compensation shouldn't be
13 required from any distribution company to meet its
14 goals because the customer and its third party were
15 already provided that compensation.

16 MS. KOLICH: Thank you, your Honor.

17 Q. (By Ms. Kolich) Now, I just -- Mr. Oliker
18 asked you some questions, and I want to make sure I
19 understood -- that I heard the answer properly. In a
20 situation -- you are aware that the -- it was an
21 order from the Commission in the last -- the
22 company's last ESP III case, last ESP case, which is
23 referred to as ESP III, directed the companies to
24 make a change in their processes and procedures with
25 regard to obtaining ownership of energy efficiency

1 credits for purposes of bidding into PJM. You are
2 aware of that?

3 A. Yes.

4 Q. Okay. And are you also aware that change
5 in policy basically requires the companies to make
6 a -- as a prerequisite to participation in any
7 program the transfer of the customers' ownership
8 rights in those energy credits to the companies?

9 A. Yes. I guess what I'm not clear about is
10 if a customer has already done his own energy
11 efficiency, I don't see whereby they would transfer
12 anything to the company if they spent their own dime.

13 Q. No. I am trying -- I understand that and
14 we are going to get there. Just walking through
15 this, so that's your understanding of what the
16 company has to do is basically make a prerequisite of
17 participation -- in order to make the transfer of
18 energy credits a prerequisite to participation in the
19 company's energy efficiency programs, right?

20 A. And I'm not disagreeing with that. I
21 would agree that if there was any financial
22 compensation given to customers, then those rights
23 are conferred over to the company, and I don't have
24 an issue with that so whether it's retrospective
25 rebates or prospective, it doesn't matter to me.

1 They got financial compensation from the company. In
2 exchange they conferred over the capacity rights to
3 that compensation to the company.

4 Q. Okay. Now, you're also aware that the
5 customer has the option instead of participating in a
6 program and accepting a rebate, they can seek an
7 exemption from paying the rider if they commit the
8 resources from a self-direct program to the
9 companies. That -- do you know that to be the case
10 as well?

11 A. I don't necessarily see that. I see that
12 differently in terms of they could receive an
13 exemption and that means they don't pay the rider but
14 that still doesn't negate the fact the customer
15 already expended its own funds to do energy
16 efficiency. Now, I can bifurcate in this sense, that
17 if they receive some compensation for energy
18 efficiency and there's some capacity associated with
19 that energy efficiency, then, yes, the company could
20 claim that and bid it in. In the instance where the
21 customer also has additional peak demand reduction
22 beyond energy efficiency, then I think that would be
23 retained by the customer.

24 Q. Okay. I think you're jumping ahead and
25 assuming what I am going after. I'm not trying to

1 trip you up. I am just trying to make sure the
2 company is being in compliance with the Commission's
3 order in the ESP III case.

4 A. Yes.

5 Q. I'm not talking about what the company
6 can bid. All -- let's cut to the chase because
7 apparently you understand how the process works. If
8 a customer commits its program through the mercantile
9 self-direct program, do they have to give the company
10 the bidding right -- the ownership rights to their
11 credits generated from that program before the
12 company is allowed to apply for a favor -- before the
13 customer gets an exemption?

14 MR. OLIKER: Could I have a
15 clarification? Are you saying the ownership rights
16 for purposes of the benchmarks or the ownership
17 rights with respect to bidding into PJM?

18 MS. KOLICH: For purposes of complying
19 with the ESP order that says it has to be -- it's a
20 prerequisite to participation so it would be for
21 purposes of obtaining the ownership rights for
22 bidding into PJM.

23 A. I'm not clear but -- I'm not clear what
24 the Commission wants in terms of that total order,
25 but my view is a customer has already spent its own

1 dime, receives an exemption, still retains its right
2 to bid and not confer to the company.

3 Q. Okay.

4 MS. KOLICH: If I could have just one
5 minute.

6 Just several more questions.

7 EXAMINER PRICE: Several more questions?

8 MS. KOLICH: Two but if I say two, he'll
9 say something and I'm going to have to follow up, it
10 will be three so.

11 EXAMINER PRICE: Two more questions.

12 Q. (By Ms. Kolich) Mr. Scheck, if you
13 recommended customer satisfaction surveys, the
14 surveys that you recommended the company do, are
15 already being performed under the process evaluation
16 surveys, under normal M&V activities, would that
17 satisfy your concerns about obtaining results through
18 customer satisfaction surveys?

19 A. If they are being performed, yes.

20 Q. And you mentioned earlier issues with the
21 companies' rebate application process. If you know,
22 are you aware that FirstEnergy received a national
23 award from Kohl's Department Stores as one of the
24 three best utility partners for energy efficiency
25 with one of the considerations being the rebate

1 application process?

2 A. I was not aware of that. I think I was
3 aware Cleveland Clinic did receive one nationally so
4 we should have put that in this too.

5 Q. I am not aware of that one.

6 A. Yes.

7 MS. KOLICH: That's all I have, your
8 Honor.

9 THE WITNESS: Yes. They did receive the
10 award. John showed it to me six months ago or so
11 but, no, I was not aware of that, Kohl's did receive
12 one, but that's great.

13 EXAMINER PRICE: Thank you.

14 Redirect.

15 MR. PARRAM: Can I have just 5 minutes,
16 your Honor?

17 EXAMINER PRICE: Five minutes.

18 (Recess taken.)

19 EXAMINER PRICE: Go ahead, Mr. Parram.

20 MR. PARRAM: No questions, your Honor.

21 - - -

22 EXAMINATION

23 By Examiner Price:

24 Q. Mr. Scheck, I have a couple of questions.
25 They will be quick. Do you think FirstEnergy relies

1 to an excessive extent on kits for residential -- for
2 compliance for -- with the benchmarks for residential
3 customers?

4 A. I don't really have a response either
5 way. I'm not sure what the performance of the kits
6 will do. That will depend a lot on EM&V work done
7 after the fact. I believe they stated they were
8 opt-in kits so I would think that the installation
9 rates are going to be pretty decent if they are opt
10 in.

11 Q. Okay. Do you think they have too many
12 light bulbs in their kits?

13 A. No. Light bulbs produce a lot of savings
14 and I think I counted up in my house, I mean, there's
15 50, 60 sockets which I find is not an unusual number
16 for an average household so if there are six light
17 bulbs in a kit, it's very probable they can all be
18 used.

19 Q. Okay. You are the staff's expert for
20 energy efficiency so you are familiar with the energy
21 efficiency programs of all four utilities or utility
22 holding companies in the state; is that correct?

23 A. Yes, to an extent. Yeah.

24 Q. Is AEP Ohio required to bid their energy
25 efficiency into the PJM capacity auctions?

1 A. No. They haven't been required, but they
2 have done it anyway.

3 Q. Is Duke required to bid into the PJM
4 capacity auctions?

5 A. Not that I know of and they are exploring
6 it. That will be discussion for the next couple of
7 collaborative meetings.

8 Q. Is Dayton required to bid their energy
9 efficiency in the capacity auctions?

10 A. No, not that I know of.

11 Q. But you recommend that FirstEnergy be
12 required to bid into the capacity auctions. Why is
13 FirstEnergy different from the other three utilities?

14 A. I wouldn't probably differentiate if I
15 were to testify regarding any plans going forward. I
16 would recommend they all bid into the PJM capacity
17 market to offset revenues that are being spent on
18 programs. I should say costs rather than revenues.

19 Q. So you think as a going-forward policy,
20 it -- as a going forward matter, it would be the
21 staff's policy to require the companies to bid their
22 energy -- all of the companies to bid their energy
23 efficiency into the base residual auctions?

24 A. Not just energy efficiency but anything
25 that has a capacity reduction that has value either

1 in the BRA or if it doesn't go out very far, in an
2 incremental auction, so it could be in the current
3 year or it could be in a planning year but, yes, if
4 there's revenues to be gained to offset program
5 costs, then I think that would be a good idea --

6 EXAMINER PRICE: Thank you.

7 A. -- in the context of mitigating risk.

8 EXAMINER PRICE: Thank you. You are
9 excused.

10 Mr. Parram.

11 MR. PARRAM: Yes, your Honor. I would
12 like to move the admission of Staff Exhibit No. 1.

13 EXAMINER PRICE: Any objections to the
14 admission of Staff Exhibit 1?

15 Seeing none, it will be admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER PRICE: Anything further before
18 a lunch break?

19 We will all return at 3:00 o'clock.

20 Thank you, all.

21 (At 1:47 p.m., a lunch recess was taken
22 until 3:05 p.m.)

23 - - -
24
25

1 Thursday Afternoon Session,
2 October 25, 2012.

3 - - -

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

6 Ms. Kern.

7 MS. KERN: Thank you, your Honor. OCC
8 would like to call Wilson Gonzales to the stand, and
9 I would like to have his Direct Testimony marked as
10 OCC Exhibit 1, and I have an errata sheet to mark as
11 OCC Exhibit 2.

12 EXAMINER PRICE: Both exhibits will be so
13 marked.

14 (EXHIBITS MARKED FOR IDENTIFICATION.)

15 (Witness sworn.)

16 EXAMINER PRICE: Please be seated, and
17 state your name and business address for the record.

18 THE WITNESS: My name is Wilson Gonzales.
19 I am a senior energy policy advisor for the Ohio
20 Consumers' Counsel, 10 West Broad Street, Columbus,
21 Ohio 4321 -- 43215.

22 EXAMINER PRICE: Please proceed.

23 MS. KERN: Thank you.

24 - - -
25

1 WILSON GONZALES

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

4 DIRECT EXAMINATION

5 By Ms. Kern:

6 Q. Mr. Gonzales, are you the same Wilson
7 Gonzalez whose direct testimony was filed in this
8 proceeding?

9 A. Yes, I am.

10 Q. And on whose behalf do you appear today?

11 A. The Office of the Ohio Consumers'
12 Counsel.

13 Q. Do you have your prepared testimony with
14 you on the stand?

15 A. Yes, I do.

16 Q. And did you prepare this testimony or
17 have it prepared at your direction?

18 A. Yes, I did.

19 Q. Do you have any changes or corrections to
20 your direct testimony?

21 A. Yes, I have two corrections.

22 Q. And I'm going to ask you to go through
23 those, but are those the same two changes noted on
24 OCC Exhibit 2, the errata sheet?

25 A. Yes.

1 Q. Can you please point out the changes or
2 corrections to your testimony.

3 A. Yes. If you go to page 23, I want to
4 delete footnote 34.

5 Q. And your second change?

6 A. It's on the next page. If you look at --
7 on page 24, line 5, I want to insert the word -- the
8 Term "EE & LM" in front of "RPM," for clarity.

9 Q. Thank you. Do you have any other
10 changes?

11 A. No, I don't.

12 Q. If I asked you the same questions that
13 are posed to you in your direct testimony, would your
14 answers be the same?

15 A. Yes, they would.

16 MS. KERN: OCC moves for the admission of
17 OCC Exhibits 1 and 2 and tenders the witness for
18 cross-examination.

19 EXAMINER PRICE: We'll defer ruling on
20 your motion for admission of the exhibits until the
21 conclusion of cross-examination.

22 Mr. Dougherty.

23 MR. DOUGHERTY: No questions, your Honor.

24 EXAMINER PRICE: Mr. Somoza.

25 MR. Somoza: No questions, your Honor.

1 EXAMINER PRICE: Mr. Allwein.

2 MR. ALLWEIN: No questions, your Honor.

3 Ms. Kyler.

4 MS. KYLER: Just one.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Kyler:

8 Q. Mr. Gonzalez, would you apply your
9 recommendations on PJM bidding only to FirstEnergy,
10 or would you apply those on a statewide basis?

11 A. I would say generally I would want to
12 apply, you know, the basic tenets of my
13 recommendations to all the utilities in -- in Ohio to
14 bid their energy efficiency and demand response into
15 the PJM auction, and I think in terms of what the
16 specific plan is, I would say that would be flexible.

17 You know, if a company was very concerned
18 about the risk, you know, my position, you know, in
19 this particular case, that was a reaction to that
20 type of position, whereas, if a company has already
21 bid in in Ohio, has already bid in energy efficiency
22 resources, we might take a different tack. I think
23 the important thing is, though, all the utilities bid
24 in their energy efficiency and demand response into
25 the base residual auctions.

1 MS. KYLER: Thank you. No further
2 questions.

3 EXAMINER PRICE: ELPC.

4 MR. VICKERS: No.

5 EXAMINER PRICE: Ms. Mooney.

6 MS. MOONEY: No questions, your Honor.

7 EXAMINER PRICE: Mr. Lang.

8 MR. LANG: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Lang:

12 Q. Good afternoon, Mr. Gonzalez.

13 A. Good afternoon, Mr. Lang.

14 Q. There are two topics. I think we will
15 start with shared savings first. You are certainly
16 aware that both Duke and AEP have shared savings
17 incentive mechanisms as part of their portfolio
18 plans?

19 A. Yes. I'm also aware that they were the
20 product of a settlement.

21 Q. You jumped ahead of me there, but -- and
22 both of those were approved by the Commission, and,
23 as you said, as -- what the Commission approved in
24 each case was the Stipulation and Recommendation of
25 the parties.

1 A. That's correct.

2 Q. And it's your understanding that both the
3 Duke and AEP's shared savings mechanisms have
4 similarities; is that correct?

5 A. There have actually been four incentive
6 mechanisms filed since, I would say, since, you know,
7 Senate Bill 221 and the benchmarks, so they all had
8 some nuances that were different.

9 Q. Well, I can limit my question to the
10 shared savings mechanisms that were most recently
11 approved.

12 A. Okay.

13 Q. So can you, not looking for an extreme
14 amount of detail but at a high level, can you
15 describe what the similarities are?

16 MS. KERN: Your Honor, I'm going to
17 object to questions with respect to stipulations in
18 the Duke and AEP proceedings. We would like to look
19 at those stipulations and see the terms of them
20 before they are -- the witness is questioned about
21 them.

22 MR. LANG: And, your Honors, I am
23 actually asking him about the programs or the
24 incentive mechanisms that have been approved by the
25 Commission, simply if he can give us a high level

1 description of what the similarities are of what the
2 Commission approved.

3 MS. KERN: Your Honor, if I may, both of
4 those cases were stipulated. They present individual
5 terms that were agreed to as a package deal and not
6 to the individual -- specific provisions
7 individually.

8 EXAMINER PRICE: I think he is just
9 asking him to describe it at this point, so I don't
10 think that's an unfair question.

11 You can answer if you know.

12 A. Generally I know they were both shared
13 savings types of mechanisms, and they were both
14 tiered. I believe they both had exclusions in terms
15 of what kind of savings were counted and which ones
16 weren't.

17 Q. Okay. Anything else you can think of?

18 A. I think that's -- that's a good overall
19 overview.

20 Q. Okay. Now, with regard to the structure
21 of a shared savings mechanism, is it fair to say that
22 you do not have a preference as to the structure of
23 an energy efficiency incentive mechanism?

24 MS. KERN: Your Honor, I am going to
25 object as to the vagueness of the term "preference of

1 a structure." I'm not sure a preference as to what.
2 Are we saying a preference to a tiered mechanism or
3 some other type of incentive mechanism generally?

4 EXAMINER PRICE: Did you understand what
5 he meant by "preference," Mr. Gonzalez?

6 THE WITNESS: I would appreciate it if he
7 cleared it up a little bit.

8 EXAMINER PRICE: Okay, please rephrase.

9 Q. Okay. Another way to ask it, you are not
10 wedded to any particular structure what a shared
11 savings mechanism would be for an electric
12 distribution utility?

13 A. I would say, generally, you know, it
14 would be specific to a utility, the utility company,
15 and there are different types of mechanisms and
16 different types of shared mechanisms, even in Ohio.

17 The one thing I would say is, we'll
18 probably discuss this in my testimony, that I -- if
19 it's a shared savings mechanism, I believe the net
20 benefits should be specified as the net benefits from
21 a total resource cost test.

22 Q. I think we will get there. Earlier in
23 your testimony, though, you reference a three typical
24 components of cost recovery for energy efficiency
25 plans. And those three are program cost recovery,

1 collection of lost distribution revenues, and a
2 performance incentive; is that right?

3 A. That's correct.

4 Q. Now, your understanding is that the plans
5 approved this year for Duke and AEP address only
6 program cost recovery and the performance incentive;
7 is that correct?

8 A. That's correct, because the distribution
9 lost revenue issue was settled through a three-year
10 pilot program, decoupling.

11 Q. So they have -- outside their plans they
12 have a mechanism to collect lost distribution
13 revenues.

14 A. That's correct, yes.

15 Q. Now, with regard to the companies'
16 portfolio plan at issue in this proceeding, would you
17 agree that there are programs and measures that are
18 part of that plan?

19 A. There are a lot of programs -- there are
20 a number of programs and measures in the plans, yes.

21 Q. And with regard to the shared savings
22 incentive mechanism that's proposed that you address
23 in your testimony, it's your belief that how such a
24 mechanism is designed is more -- more art than
25 science.

1 MS. KERN: I'm sorry, I am going to
2 object to the question. It's vague. I'm not sure if
3 counsel is referring to a specific portion of
4 Mr. Gonzalez's testimony, where he is getting that
5 conclusion from.

6 MR. LANG: And, your Honor, I would say
7 it's more general than vague, and, in particular, I
8 am not referring to a specific part of his testimony.
9 I am asking him his view about design of shared
10 savings mechanism.

11 EXAMINER PRICE: Overruled.

12 MS. KERN: Can we have the question
13 repeated, please?

14 EXAMINER PRICE: You may.

15 (Record read.)

16 A. I would say it's both. I mean, there is
17 science to developing a shared savings mechanism set
18 of principles, and, on the other hand, especially in
19 a litigated case, you know, there's some -- you know,
20 like a lot of issues, there is some art to it, yes.

21 THE REPORTER: I'm sorry, I didn't catch
22 the end.

23 THE WITNESS: There is some art.

24 Q. To it.

25 A. To it.

1 Q. Yeah. And that would apply with respect
2 to the level of incentive that would be authorized by
3 the Commission; is that true?

4 A. It would apply to all the elements of the
5 shared savings mechanism.

6 Q. So also whether you use a rebate as part
7 of the mechanism; is that true?

8 A. I don't understand the rebate question
9 with respect to shared savings.

10 Q. I can move on.

11 Now, in determining whether the companies
12 should receive a shared savings incentive mechanism,
13 the first hurdle, the first decision to make is
14 whether the companies exceed the state benchmarks; is
15 that correct?

16 A. I would say yes, whether they exceed the
17 state benchmarks, both on an annual and incremental
18 basis.

19 Q. Uh-huh. And with regard to calculating
20 compliance with benchmarks, the companies include
21 self-directed mercantile results; is that your
22 understanding?

23 A. Yes.

24 Q. And you agree including mercantile
25 results for purposes of calculating compliance with

1 the benchmarks is appropriate, correct?

2 A. I would say including self-direct
3 mercantile that has been approved by the Commission
4 is appropriate, yes.

5 Q. In your testimony you make a distinction
6 that self-directed mercantile results should not be
7 counted for purposes of determining the shared
8 savings incentive; is that true?

9 A. That's correct. I believe that the -- an
10 incentive mechanism being given to the utilities
11 should stem from their actions and their activities.
12 So as the incentive mechanism for the utility, it is
13 not an incentive mechanism for the mercantiles who
14 undertake the projects.

15 Q. Well, is the -- the companies' existing
16 portfolio plans, the ones in place today, were
17 approved by this Commission in March of 2011; is that
18 your understanding?

19 A. Yes, I believe that was the -- a June
20 order, yes.

21 Q. And one component of what the Commission
22 approved in March of last year is the mercantile
23 self-direct program.

24 A. Yes, I believe that was the case, yes.

25 Q. And the mercantile self-direct program is

1 intended, in part, to incentivize customers to invest
2 in new energy efficiency projects; isn't that right?

3 A. I believe the mercantile programs, the
4 self-direct mercantile programs, are historically
5 mercantile programs that they have already, you know,
6 performed the energy efficiency. I would say that's
7 incorrect because they have already done it. Some of
8 these projects were done prior to the law being
9 passed, so, obviously, that had no -- no -- you know,
10 didn't give any signal to the mercantile that they
11 should do more.

12 Q. I'm sorry, I may not have been specific
13 enough. So when I talk about the mercantile
14 self-direct program, that is the program approved by
15 the Commission in March of 2011, all right? So we're
16 on the same page. So the mercantile self-direct
17 program that's been in place under the existing
18 portfolio plan is intended, in part, to incent
19 customers to invest in new energy efficiency
20 projects, putting the historical stuff to the side.

21 A. Okay. We put the historical stuff to the
22 side. Yes.

23 Q. Okay. Let's take a lighting project as
24 an example. Since March of 2011, one option for
25 mercantile customers is to receive an incentive for

1 participating in the C&I equipment program for
2 lighting, right?

3 A. Yes.

4 Q. Another option since March of 2011 is a
5 mercantile customer can complete a lighting project
6 on its own and then request an incentive through the
7 mercantile self-direct program, right?

8 A. Yes, they can.

9 Q. So since March of 2011, mercantile
10 customers have been able to take advantage of either
11 program to receive the incentive, correct?

12 A. That's correct.

13 Q. Now, where the mercantile customer is
14 using the companies' incentive to fund a lighting
15 project and has worked with the company, your
16 position is that project should be eligible for
17 shared savings, correct?

18 A. Yes.

19 Q. And if a mercantile customer takes a
20 rebate instead of the rider exemption and that
21 company has worked with a customer, that company has
22 worked with the FirstEnergy utilities, that project,
23 same situation, that project would count toward the
24 shared savings, correct?

25 A. Yes; unless it's a historical project.

1 That's the key -- one of the key points.

2 Q. And with that caveat, absolutely, it was
3 not -- so the record is clear, I wasn't asking about
4 the historicals, about the more recent incentives.

5 Now, with regard to the shared savings,
6 using, I guess, compliance percentage tiers, is your
7 recommendation -- I want to take you through the
8 tiers because I -- I'm not sure your -- what your
9 recommendation was specifically in your testimony.

10 Is your position that between 100 percent
11 and 105 percent, the shared savings should be
12 2 percent?

13 A. Yes. If you look at page 8 of our
14 objections, our filed objections, that was the OCC's
15 proposed incentive structure in this particular case,
16 yes.

17 Q. So then -- so that then takes between 105
18 and 110 percent, the shared savings would be
19 4 percent, right?

20 A. That's correct.

21 Q. And then 110 percent and 115 percent, the
22 shared savings would be 6 percent, right?

23 A. Yes.

24 Q. And then the top tier that you recommend
25 is that over -- over 115 percent would receive shared

1 savings of 8 percent, correct?

2 A. Yes.

3 Q. And to develop those percentages, one of
4 the things you did was to look at mechanisms approved
5 in other states, correct?

6 A. I did, yes.

7 Q. And, in fact, what you looked at in terms
8 of other states is the document that's cited in
9 footnote 21 of your testimony, correct?

10 A. That's one -- that's one document that I
11 used, but that's not the sole information I used in
12 making a determination.

13 Q. Since that's the one you cite, let's look
14 at that one.

15 MR. LANG: Your Honor, if I could mark
16 the document, please, and approach?

17 EXAMINER PRICE: You may.

18 MR. LANG: We are going to try this as
19 Companies' Exhibit No. 17.

20 EXAMINER PRICE: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Mr. Gonzalez, do you recognize what we
23 have had marked as Companies' Exhibit No. 17?

24 A. Yes.

25 Q. Is this the document that you reference

1 in footnote 21 of your testimony?

2 A. Yes.

3 Q. Is the -- the incentive mechanisms on
4 this exhibit that you believe are similar to what the
5 companies are proposing are which ones?

6 A. I would say generally, if you look at
7 Arizona's shared savings, if you look at Georgia's
8 shared savings, Hawaii's shared savings, Minnesota's
9 shared savings, and New Hampshire's shared savings
10 mechanism.

11 Q. Okay. Now, for those one, two, three,
12 four, five states that you have identified, is it
13 fair to say that you do not know whether the
14 utilities in those states receive lost distribution
15 revenues?

16 A. No, that's incorrect.

17 Q. Okay. Which states do you know that
18 information?

19 A. I know, for example, Minnesota, they
20 don't collect lost revenues.

21 Q. Okay. With regard to --

22 A. So that's why their incentive is
23 30 percent.

24 Q. With regard to Arizona, Georgia, Hawaii,
25 or New Hampshire, do you know whether those utilities

1 in those states receive lost distribution revenues?

2 A. No.

3 Q. For those five states you've identified,
4 do you know how the utilities recover their program
5 costs?

6 A. So as opposed to having the program costs
7 in base rates versus a rider, that kind of question?

8 Q. That kind of question.

9 A. No, I don't.

10 Q. Do you know any of the details of
11 Arizona's shared savings mechanism?

12 A. No, not specific. I don't recall.

13 Q. Would the same be true for Georgia,
14 Hawaii, and New Hampshire?

15 A. Yes, that would be true.

16 Q. Now, because you use an 8 percent cap, I
17 have to ask, I notice on here Connecticut, you did
18 not identify, but it has -- it's top incentive is
19 8 percent. Did you rely on that 8 percent in
20 Connecticut?

21 A. No.

22 Q. Okay.

23 A. This is just one table that I used in
24 making my determination. I think, as I mentioned in
25 deposition, I look at the total company's cost

1 recovery, so I look at the lost revenues that they
2 have been able to -- that they are collecting now. I
3 look at how they are collecting that money, when it's
4 in base rates, you know, with some regulatory lag, or
5 whether it's an incentive that's almost
6 contemporaneous in terms of a rider where they are
7 collecting the money.

8 I also look at -- so then I look at the
9 lost revenue, and I identify that in my testimony,
10 you know, what type of lost revenues are they
11 collecting, how much relative to other companies, and
12 so it's not just this table. This table is just one,
13 you know, one piece of information that I used.

14 MR. LANG: I'm sorry, could I have my
15 question read back, please.

16 EXAMINER PRICE: Please.

17 (Record read.)

18 MR. LANG: And, your Honors, I would move
19 to strike his response after "no," because I don't
20 think the rest of it was responsive to my question of
21 whether he relied on 8 percent or whether he relied
22 on Connecticut.

23 EXAMINER PRICE: Can I have the response
24 read back, please.

25 (Record read.)

1 EXAMINER PRICE: Thank you. We are going
2 to deny the motion to strike.

3 But, Mr. Wilson, I'd appreciate it from
4 this point forward if you could try to contain your
5 answers to the scope of the question.

6 MR. LANG: Thank you, your Honor.

7 THE WITNESS: Yes, your Honor.

8 Q. (By Mr. Lang) With regard to Minnesota,
9 you mentioned they -- your understanding is that
10 utilities in Minnesota do not recover lost
11 distribution revenues, and is that, in part, your
12 understanding of why the top incentive in Minnesota
13 is 30 percent?

14 A. That's correct.

15 Q. Do you know how that equates to a
16 percentage comparable to the companies' 13 percent
17 proposed here?

18 A. No, not offhand.

19 Q. So if you take out the lost revenues from
20 Minnesota's 30 percent, you don't know what that
21 would take the shared savings down to; is that fair?

22 A. I don't know. But I would add that
23 Minnesota is a vertically integrated state, so when
24 they are taking lost revenue out, they are taking out
25 not just distribution lost revenue but generation

1 lost revenue, so that's a bigger number, everything
2 else being equal.

3 Q. Now, New Hampshire is between 8 to 12
4 percent of a shared savings percentage; is that
5 right?

6 A. Yes.

7 Q. And then Arizona, you cited that, said up
8 to 10 percent; is that right?

9 A. Yes. So both Arizona and New Hampshire
10 are below your top rate of 13 percent.

11 Q. And above your top rate of 8 percent;
12 would that be fair?

13 A. Quid pro quo.

14 Q. So "yes"?

15 A. Yes.

16 Q. And Georgia is at 15 percent, but that
17 seems to be limited to a particular residential
18 program. Is that your reading?

19 A. Yes, very limited.

20 Q. Now, with regard to calculating the net
21 benefits under a shared savings program, your
22 recommendation is that the TRC test should be used;
23 is that right?

24 A. Are you referring to page 12 of my
25 testimony?

1 Q. Could be on page 12. I was just asking
2 you the question. It looks like you do discuss it on
3 page 12.

4 A. Yes. Total cost test is a fundamental
5 test --

6 Q. And that's --

7 A. -- in determining net benefits and
8 specifying net benefits.

9 Q. And that's the test that's used in Ohio
10 to determine what programs should be put into a
11 portfolio, at least on an aggregate portfolio basis,
12 correct?

13 A. On an aggregate basis, yes.

14 Q. So your recommendation is to use the same
15 test to calculate net benefits for purposes of shared
16 savings; is that right?

17 A. Yes. The determination of net benefits
18 should be specified as coming through the total
19 resource cost test.

20 Q. The option proposed by the companies is
21 the UTC test, correct?

22 A. That's correct.

23 Q. And your understanding is that the
24 incentive payment using the UTC is the net benefits
25 to the utility, correct?

1 A. Yes.

2 Q. Now, the TRC is not designed --

3 EXAMINER PRICE: Mr. Lang, you mean UCT,
4 right?

5 MR. LANG: I'm sorry.

6 EXAMINER PRICE: I was afraid you were
7 putting a new acronym.

8 MR. LANG: That's why it didn't work. I
9 was saying that, and it didn't sound right.

10 Q. (By Mr. Lang) So the UCT, utility cost
11 test. Now, the TRC is not designed as a measure for
12 considering proper incentive levels for a specific --
13 for a utility, is it?

14 A. I don't believe any of the tests in the
15 California standard practice were used to allocate
16 incentives. They were just used to calculate
17 cost/benefit, cost/benefit analysis from different
18 perspectives.

19 Q. So the answer to my question would be
20 yes, the TRC -- that the TRC is not designed for the
21 purpose I described.

22 A. That's correct.

23 Q. With regard to program savings, it should
24 be included or excluded from the shared savings test,
25 you believe that behavioral programs should be

1 excluded, correct?

2 A. Yes, that's my recommendation.

3 Q. And one of the reasons is you believe
4 that behavioral programs are difficult to --
5 difficult to measure, correct?

6 A. Can you refer me to my testimony, please?

7 Q. I'm actually -- this is discussion you
8 had with Ms. Kolich in deposition.

9 A. Okay. Can you re --

10 Q. I can read the question again.

11 A. Thank you.

12 Q. It's simply you believe that behavioral
13 programs are difficult to measure.

14 MS. KERN: Your Honor, if I may
15 interject, I believe he discusses this topic on page
16 15 of his testimony, starting at line 4, just to
17 direct him.

18 EXAMINER PRICE: Well, I think Mr. Lang
19 is simply asking him a higher level question than
20 what's actually in his testimony, so thank you.

21 But, Mr. Wilson, just go ahead and answer
22 the question.

23 A. Relative to other program measures, yes,
24 behavior programs are harder to measure.

25 Q. Now, your counsel referred to page 15 of

1 your testimony, so when you refer in your testimony
2 to behavioral programs, is it correct that you are --
3 specifically with regard to the companies' programs,
4 you are referring to the online audit?

5 A. That could be an example of a behavioral
6 program, yes.

7 Q. Specifically to the companies' programs,
8 do you have any other examples?

9 A. For example, if you had an OPower-type
10 information program, we -- I would also deem that a
11 behavioral program.

12 EXAMINER PRICE: I think he asked you
13 specific to the companies' programs, what else would
14 be behavioral.

15 THE WITNESS: Yes. I believe they
16 have -- similar in their portfolio, they have an
17 information program where they send information to
18 customers about their energy use -- usage and
19 comparative to other companies.

20 Q. So it's information provided to a
21 customer that says here is your average use and here
22 is how your use compares to your neighbors, and, by
23 the way, they are an energy hog?

24 A. Yes.

25 Q. In polite terms, I would assume.

1 And you prefer to that --

2 A. Behavioral.

3 Q. I think you called it an OPower?

4 A. Yes. I think that's one of the companies
5 that delivers that type of program.

6 Q. Uh-huh. Do you believe that that type of
7 program is a reasonable and effective program?

8 A. I would say the jury is out on that type
9 of program. It's a relatively new program. I think
10 people are grappling with how to measure it, how to
11 deal with whether the savings persist over time, so I
12 would say, like I said, the jury is out. These
13 programs are being piloted in the different areas.

14 Q. Have you done any analysis on the
15 effectiveness of that particular type of program over
16 time?

17 A. I don't think you really -- I don't think
18 anybody has done a true study over -- over time,
19 perhaps only --

20 Q. So you, obviously, have not.

21 A. I'm saying nobody has because it hasn't
22 been --

23 Q. My question was simply whether you had.
24 So you have not.

25 A. No, I have not conducted a study on that.

1 Q. Now, the concern, I think as you
2 described it, with behavioral programs is, in
3 particular, the issue of whether the benefits of the
4 program in a particular program year will persist
5 into future programming years; is that fair?

6 A. That's one -- that's one of the concerns
7 I have.

8 Q. Now --

9 A. There is also a measuring concern. Just,
10 you know, what are you getting? So it's two. It's
11 persistence, I think is the -- is a harder hurdle for
12 that type of program to pass. But, you know, what's
13 the EM&V analytics behind determining what are the
14 savings for those types of programs, and how would --
15 and, you know, we have a TRM, a Technical Reference
16 Manual, in Ohio, and there's no -- no guidance on
17 behavioral programs.

18 Q. Let me ask it this way, if you have a
19 behavioral program and there is a way to measure it
20 in the year offered, and you would find -- and it's a
21 measurement that OCC would find acceptable, is it
22 fair to count the efficiency savings from that
23 program if you're simply looking at in the year it's
24 installed and measured?

25 A. I would say if you had the right

1 analytics, and I think the analytics are pretty --
2 you know, would be pretty formidable in terms of you
3 have to really spend some M&V dollars on this. I
4 would say for one year, you could take the savings
5 for that one year, but you couldn't -- for most of
6 these programs, you take the lifetime savings in the
7 calculations. I would say you couldn't take the
8 lifetime savings from one year of experience from a
9 behavioral program.

10 Q. Now, part of your testimony is you
11 recommend a cap on the level of shared savings,
12 correct?

13 A. That's correct.

14 Q. And you agree that a cap on shared
15 savings will limit the utilities' incentive.

16 A. It could lim -- it could limit the
17 utilities --

18 MS. KERN: I was just going to see if
19 counsel could direct us to a line or page --

20 MR. LANG: No.

21 MS. KERN: -- that you are referring to.

22 MR. LANG: No. I'll keep asking him
23 questions to know what he knows.

24 A. I lost my -- can you repeat the question,
25 please.

1 Q. I can read it again. Do you agree a cap
2 on shared savings will limit the utilities'
3 incentive?

4 A. That presupposes that the utility met the
5 original conditions to qualify for incentive, so if
6 they don't qualify for an incentive, a cap or no cap
7 is immaterial.

8 Q. And certainly once the -- if a shared
9 savings cap is achieved, there would not be further
10 incentive to go beyond that cap, correct?

11 A. That's correct.

12 Q. One of the reasons you favor a cap is
13 because it could protect consumers from unforeseen
14 risk; is that fair?

15 A. I would say mainly it would protect
16 consumers, but I would say it would protect -- it may
17 protect a lot more. It may protect the company, and
18 it may protect public parties who sign on to a
19 stipulation.

20 Q. Now, with regard to that unforeseen risk,
21 if we were to use avoided costs for purposes of the
22 net benefits calculation, as those avoided costs are
23 determined today, so not taking into account future
24 unknown changes on avoided costs, if we just use
25 avoided costs from today, that would somewhat lessen

1 your concern, although it probably wouldn't eliminate
2 it; is that correct?

3 A. That's -- if you set a date certain for
4 avoided costs, and then everybody agreed to it, and
5 it was fully reviewed and so on and so forth, that
6 would be one way to eliminate that one risk item,
7 yes.

8 Q. Now, with regard to the companies'
9 avoided cost using -- developing the companies' plan,
10 that's not something you've directly studied; is that
11 true?

12 A. Yeah, we are aware of it. It was made
13 available through a discovery.

14 Q. Did you -- well, is it true that you did
15 not study those costs to determine whether you had
16 concerns with the values provided?

17 A. I would say when I looked at them, you
18 know, they were within a range. They were within a
19 range, but I know -- you know, I know that's a
20 contested issue in this case. Very general --

21 Q. I mean, is it contested by you? It's
22 not --

23 A. Not in my testimony, no.

24 Q. Okay. The -- let's talk about a
25 frequently visited topic in these proceedings, the

1 PJM bids. The companies are not obligated to bid
2 demand resources into the PJM capacity auctions,
3 correct?

4 A. Are you asking me for a legal opinion
5 or --

6 Q. No. I am asking you in your
7 understanding -- because you are not a lawyer, right?

8 A. I am not a lawyer.

9 Q. Happy not to be, right? So just in your
10 non -- you know, nonattorney understanding, the
11 question posed, do you agree that the companies are
12 not obligated to bid demand resources into the PJM
13 capacity auctions?

14 A. I would say, based on my nonlawyer
15 opinion, I know -- I'm familiar with the regs,
16 dealing with energy efficiency in the regs, and there
17 is no definite requirement that I see that spells out
18 the company would have, but I'm not the a lawyer.
19 There may be a clever lawyer that would say, you
20 know, that may fall under the just and reasonable,
21 you know, service provision, you know, providing
22 service.

23 Q. Now, do you agree that the companies can
24 only deliver to PJM what the companies own or have
25 rights to?

1 A. In terms of the day that they have to
2 deliver those nominated energy efficiency megawatts,
3 that's correct, on the delivery date.

4 Q. Are you somewhat familiar with
5 curtailment service providers?

6 A. Yes.

7 Q. And you understand that curtailment
8 service providers bid demand resources into the PJM
9 auctions, correct?

10 A. Yes, they do.

11 Q. And those curtailment service providers
12 assume a financial risk by bidding demand resources
13 that they do not own or have rights to, not in all
14 cases, but in some cases they do; is that your
15 understanding?

16 A. Yes.

17 Q. And when they do that, they are
18 essentially engaged in financial arbitrage, correct?

19 A. Yes.

20 Q. So as part of that, they have to
21 calculate hedging and exit strategies, correct?

22 A. Yes; but I believe the company's position
23 is much different than a CSP.

24 Q. Okay. Let's get to that. With regard to
25 demonstrating ownership of resources bid into the PJM

1 auction, you don't know specifically what PJM
2 requires as far as demonstrating ownership, correct?

3 A. I believe, generally, they just -- you
4 have to own the resource before it's delivered.

5 Q. And in terms of -- have you examined --

6 A. So it could be terms and conditions, for
7 example, you know, whenever you engage the customer,
8 you recruit a customer, you implement your program
9 measures, and terms and conditions yield the savings
10 of ownership to the company that suffices for PJM.

11 Q. Thank you. And is -- is your
12 understanding based on a -- based on a reading of the
13 PJM auction rules?

14 A. I've read the PJM auction rules, but I
15 just believe, based on the discussion we just had
16 about the CSP, the discussion -- I am aware that AEP
17 bid their customers' energy efficiency savings based
18 on the terms and conditions, and their plan was
19 approved by PJM.

20 Q. I do want to direct you to a specific
21 page in your testimony, page 17, and it's at lines 5
22 through 7, where you state that FirstEnergy
23 companies' bid only 36 megawatts of energy efficiency
24 resources into the PJM 2015-2016 base residual
25 auction. You state in your answer here that

1 FirstEnergy had 65 megawatts available to it to bid;
2 is that true?

3 A. They had identified up to 65 megawatts,
4 yes.

5 Q. And by having identified 65 megawatts,
6 does that mean they had 65 megawatts to bid into that
7 auction?

8 A. Can you ask that question again?

9 Q. You answered that they had identified
10 65 megawatts, so I want to know, is it -- when you
11 say that, by saying that they identified
12 65 megawatts, does that mean that in your
13 understanding they actually had 65 megawatts that
14 would qualify that they could bid into that auction?

15 A. I would say I believe they used the term
16 up to 65. I don't know -- the trouble I'm having is
17 other witnesses said they could have bid
18 300 megawatts. So from -- if we are going to limit
19 it to what FirstEnergy said, then they said they had
20 up to 65 megawatts.

21 Q. Now, does your testimony say that they
22 had 65, or they had up to 65?

23 A. My testimony says "65 megawatts were
24 identified by the company."

25 Q. And you're asking the Commission to

1 penalize the companies as part of the shared savings
2 proposal for not bidding 65 megawatts into the May --
3 the May, 2012, auction, correct?

4 A. Yeah. I thought I was very conservative,
5 given the amount of megawatts that were being
6 disputed in that particular case, so I took a lower
7 number.

8 Q. Now, you -- the 65 megawatts that you
9 cite in your testimony, you base that number on the
10 ESP III Stipulation itself, correct?

11 A. Yes.

12 Q. And that's, I believe, what you cite at
13 footnote 23 of your testimony.

14 A. Yes.

15 Q. Now, this Stipulation -- and, obviously,
16 you read the Stipulation and Order to cite it at
17 footnote 23, correct?

18 A. Yes.

19 Q. And that the Stipulation doesn't say that
20 the companies were committed to bid 65 megawatts,
21 correct?

22 A. It says, I believe, "up to 65 megawatts."

23 Q. Assuming a Commission order by May 3,
24 2012, the companies would use their best efforts to
25 qualify resources for the auction, correct?

1 A. That's correct.

2 Q. And that qualification was dependent upon
3 the level of customer agreement. They needed
4 customer contracts, correct?

5 A. I don't think they needed customer
6 contracts. They just needed a program that could
7 pass the first stage. They have to nominate some
8 energy efficiency that would pass the first stage of
9 the bidding process.

10 MR. LANG: I would like to mark the one
11 page of the Stipulation as an exhibit just so he can
12 review it, your Honor.

13 EXAMINER PRICE: That will be Company
14 Exhibit 18.

15 MR. LANG: Company No. 18.

16 EXAMINER PRICE: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 EXAMINER PRICE: The Bench will note for
19 the record this exhibit, as well as the prior
20 exhibit, each had what appears to be at the bottom a
21 deposition exhibit tag, but the actual -- this is
22 actually, for purposes of the hearing, Company
23 Exhibit 18 and the previous one was Company Exhibit
24 17.

25 MR. LANG: Thank you for that. I was

1 actually going to do that with the first exhibit and
2 forgot, but, yes.

3 Q. (By Mr. Lang) Now, Mr. Gonzalez,
4 paragraph 9 on Company Exhibit No. 18 is -- is the
5 provision you are referencing in your testimony; is
6 that correct?

7 A. That's correct.

8 Q. And as -- as you have stated here, but
9 not in your testimony, the statement was, "The
10 Companies have identified up to 65 megawatts of
11 energy efficiency resources," correct?

12 A. That's correct.

13 Q. And if you go seven lines down to the
14 sentence that starts, "The Companies will use,"
15 you'll see it says, "The Companies will use their
16 reasonable best efforts to put forward an M&V plan
17 that will be acceptable to PJM," correct?

18 A. That's correct.

19 Q. So you understand that an M&V plan that
20 was acceptable to PJM was a precondition of bidding
21 the energy efficiency resources into the auction,
22 correct?

23 A. That's correct.

24 Q. And then further stated, "only such
25 resource as qualify under a PJM-approved M&V plan and

1 for which the Companies have ownership and/or control
2 over the resources shall be considered as qualified
3 and bid into the PJM BRA auction," correct?

4 A. That's what the paper states, yes. Are
5 you asking me whether I agree with that?

6 Q. No. I am asking you if that's what the
7 provision was.

8 A. That's what the paper states, yes.

9 Q. And it goes on to say that the actual
10 number of megawatts of energy efficiency resources
11 that would be bid was dependent on the level of
12 customer agreement, which would be pursued and
13 identified following the signing of the Stipulation,
14 correct?

15 A. Yes.

16 Q. All right. Now, your recommendation in
17 this case is that the FirstEnergy utilities should
18 bid 100 percent of existing planned and forecasted
19 resources, correct?

20 A. That's incorrect.

21 Q. All right. Tell me why that's incorrect.

22 A. My testimony is specific that it has to
23 be eligible, which means meets the criteria of PJM,
24 especially that it has to be available during 3:00
25 p.m. to 6:00 p.m. during the months of June 1 through

1 August 31, I believe.

2 Q. All right. And thank you for that
3 clarification.

4 A. You're welcome.

5 Q. You -- you recommend that customers of
6 the companies assume the companies' risk for bidding
7 the demand resources, the eligible demand resources
8 into the PJM auctions, correct?

9 A. Yes, generally speaking. I would ask --
10 I would -- my recommendation would be for customers
11 to take that risk, given the company's so risk averse
12 in this particular field.

13 Q. And, now, the -- that shifting of risk
14 would be contingent upon an audit that would
15 determine whether the FirstEnergy utilities prudently
16 exer -- prudently exercise their management of
17 bidding into the base residual auction; is that
18 correct?

19 A. That's only logical. If we are taking a
20 risk, we want to make sure that -- and we are not
21 controlling the process, we want to make sure that
22 all the -- you know, the process and procedures of
23 that bid were undertaken to maximize this particular
24 benefit, yes.

25 Q. So let's take the next BRA auction in

1 May, 2013, as an example. What's your thought as to
2 how that audit would work, for example, when it would
3 happen?

4 A. And, again, you know, this is a broad
5 outline, but I would say that after the company has
6 bid, you know, we are going through our first big --
7 I remember Witness Demiray said "substantial," you
8 know, so this is going to be a substantial bid, we
9 expect. I would -- I would think it would benefit
10 all parties if there was a good review done to make
11 sure that the company did everything within its
12 control to maximize the benefits of that particular
13 auction.

14 Q. And so this is at page 24 of your
15 testimony, this -- we are discussing here lines, it
16 looks like, 17, 18, and 19. When you say "prudently
17 exercise its management of bidding EE & LM resources
18 into the Base Residual Auction," what specifically do
19 you mean? What would the Commission look at to
20 determine whether -- what would the Commission look
21 at to conduct that prudence review?

22 A. Well, the Commission would look at what
23 the companies had to bid in at that particular time,
24 you know, the nature of their programs, which one --
25 which programs qualified, and so on, and whether they

1 were bid, whether -- you know, for example, if -- the
2 simple case would be you missed a filing deadline,
3 and it doesn't get filed. I think that would be, you
4 know, an issue within your control, and you admitted
5 it.

6 So they would look at -- we have your
7 program plan, and we have -- and I also have a
8 recommendation that we talk about what the companies
9 are going to do to bid in, right? Have a meeting
10 with the collaborative and see what they are going to
11 bid in so we have some skin in the game. We
12 understand, at least we have some understanding, of
13 what the company is planning to do. The company
14 makes their case to us; you know, we talk about it.
15 We may make recommendations. You may say, no, it
16 doesn't apply, but at least we discussed it so to
17 limit some of the risk.

18 I mean, you know if there's something
19 that you -- so basically, hopefully, up front we
20 would have some agreement as to what gets bid in.
21 You guys would make a presentation. We would look at
22 it, and then if that quantity was bid in or something
23 similar to that, and it clears the auction and it had
24 the benefit of providing future revenue to defray the
25 costs of the energy efficiency rider through DSE, and

1 if it led to customers having to pay less for
2 capacity because of the impact that the energy
3 efficiency had in lowering -- potentially lowering
4 the capacity price, the final auction price, I think
5 that would be a good outcome.

6 Q. You had mentioned in that answer, you
7 know, saying "if we have skin in the game." Do you
8 mean the Consumers' Counsel having skin in the game?

9 A. I would think all the collaborative
10 members would want to be part of that discussion.

11 Q. What do you mean by "we have skin in the
12 game"? Are they --

13 A. No. I just meant we would want to have
14 an opportunity to have the companies make a
15 presentation in advance and have a better -- a
16 general understanding of the companies' position in
17 terms of what they are -- what types of programs they
18 are going to bid in and what level.

19 Q. So you're not volunteering the Consumers'
20 Counsel to assume financial risk; is that correct?

21 A. I'm saying -- my proposal would be for --
22 it's a proposal to try to deal with the issue we have
23 before us, and I'm trying to do it in a way where the
24 company has been so risk averse and is from that
25 particular strategy, and I am talking about Dargie's

1 testimony where he is just going to bid in what he
2 has in hand. I think that's very limiting.

3 Q. Okay.

4 A. So -- and I understand the companies'
5 risk, so I'm saying I would take our shot -- I would
6 take a shot with -- with customers bearing --
7 assuming some of that risk, and, you know, we
8 understand the incremental auction process and things
9 like that they could use to mitigate it. So that's
10 my general recommendation in this case.

11 Q. Well, let's take the May -- the next base
12 residual auction in May, 2013, as an example. That's
13 an auction for delivery year 2016-2017, correct?

14 A. That's correct.

15 Q. And you certainly agree that the existing
16 portfolio plan doesn't cover the delivery year of
17 2016 to 2017 in its entirety, correct?

18 A. Not in its entirety, but some of the
19 savings that will be gotten to through the companies'
20 plan would be eligible because there is a four-year
21 life on any energy efficiency program that's
22 undertaken.

23 Q. Well, I certainly agree that some energy
24 efficiency resources will be eligible in that future
25 time period, some will not, and that's why there has

1 to be a forecast, correct?

2 A. That's correct.

3 Q. So as part of that forecast, you're
4 asking the FirstEnergy companies, perhaps in concert
5 with the collaborative members, to engage in some
6 level of financial arbitrage, correct?

7 A. I think it's different than the CSP
8 arbitrage you mentioned earlier. My proposal is
9 asking the company to bid it in at basically zero or
10 some nominal value so that it clears. So there is no
11 risk or arbitrage on prices or anything such as is
12 the case with the -- with the ESP. The companies
13 should not care what the -- what they are bidding it
14 in. They just want it. You've already paid for the
15 resource. You just want -- you just want to make
16 sure it clears so it can benefit customers and
17 benefit the company by lower rates, by having lower
18 rates, and being more from an economic development
19 point of view, a better place for customers to
20 locate.

21 Q. Now, would you agree that some parties
22 are describing a form of financial arbitrage in terms
23 of bidding in forecasted resources that aren't yet
24 installed or in hand, and if those don't develop in
25 the future, then essentially buying them back out of

1 one of the incremental auctions?

2 A. I am aware of that, yes.

3 Q. And that would be a form of financial
4 arbitrage, correct?

5 A. Okay. Yes.

6 Q. You would agree. The -- in regard to the
7 question of bidding in 100 percent of the eligible
8 forecasted resources, if we were to look at the
9 2016-'17 planning year, what is the -- what is the
10 amount of forecasted resources for the 2016-'17
11 planning year?

12 A. I have to look at the companies' filing,
13 but it depends what number is used, but I know the
14 companies have as high as -- in 2015 they have it as
15 high as 658.3 megawatts. If you take away the
16 mercantile, it's about 460.

17 Q. Can you -- that is a number you cite in
18 your testimony, right? Do you know -- can you find
19 that for me?

20 A. I didn't cite it in my testimony.

21 Q. Oh.

22 A. I was trying to respond to your question.

23 Q. Let's see, you actually do on page 17.
24 Yeah, page 17, line 14.

25 A. I stand corrected.

1 Q. I'm just trying to help you.

2 A. Always appreciative.

3 Q. Let's see, you are citing Company Witness
4 Miller's ECM-2, and so that 658.3 megawatts is -- is
5 what? What does that represent?

6 A. That's what the company -- the company
7 projects. It's an estimate, and that would be a
8 starting point in the determining of that 653, what's
9 eligible to be bid into the auction.

10 Q. So that's the total cumulative projected
11 kilowatts or -- yeah, I guess, like I said, megawatts
12 in your example, total projected cumulative megawatts
13 saved, correct?

14 A. Yes.

15 Q. And that would be for the three companies
16 and that's a 2015 number, correct?

17 A. Correct.

18 Q. So you say that would be the starting
19 point for the 2016-2017 forecast?

20 A. That would be the starting point to see
21 what we would bid, yes. Yeah, and it would -- you
22 know, it would have to -- you know, from this number
23 you would have to determine what the eligibility is
24 out of this, based on Manual 18B and going through,
25 you know, the ownership issues, which I think, given

1 the Commission's order, I think that's a clear --
2 clarifies that particular item so.

3 Q. And I guess the same question for the
4 bidding to the May, 2014, and 2015 auction, the
5 forecast in that case, the forecast in that case, you
6 need one for the 2017-2018 delivery year. Would you
7 again be starting with this total reduction number
8 from 2015?

9 A. You are talking the next auction?

10 Q. Correct.

11 A. I think this is an issue in Ohio here
12 that we have to overcome because you're right, the
13 way the portfolio -- the three-year portfolio really
14 doesn't line up with the PJM base residual auction,
15 and somehow, you know, it's a question that goes
16 probably beyond this case.

17 But we have to figure out a way to align
18 the programs better. We have to get creative, you
19 know, maybe have an optional fourth year that gets
20 provided, a rolling year or something. We just have
21 to get there so that customers could maximize the
22 benefit of this.

23 Q. And then for the May, 2015, auction,
24 that's for delivery year 2018-2019, again, I guess
25 what we have before us would be starting from the

1 2015 numbers?

2 A. Well, I would say -- I would say -- I
3 would say going out that far, I think we have to, you
4 know -- obviously, the company has to -- according to
5 the law has a requirement -- an increase in
6 requirement to meet the energy benchmarks, so
7 there's -- and if they don't meet those benchmarks,
8 they would be penalized. So, you know, there's
9 some -- and so I would say somehow we have to be able
10 to capture the idea that your requirements for
11 megawatts are increasing annually and -- and,
12 therefore, we would want to tie that back to what you
13 have in your plans or projected in your plans.

14 Q. And we may need to know not only what's
15 increasing but also what the levels of eligible
16 energy resources are in those future years, correct?

17 A. You would have to make some estimates
18 when you nominate your energy efficiency. However, I
19 would say that as you go through Manual 18B, there's
20 a lot of opportunity -- and this is beyond the
21 incremental auctions. There's many opportunities to
22 modify. You could have one program that
23 underachieves and another one that overachieves. PJM
24 will let you take into account, you know, the balance
25 of that.

1 And it seems, you know, in talking with
2 the PJM, because we have had discussions with the PJM
3 person in charge of developing demand-side management
4 bidding, Susan Covino, and they want -- they want
5 this energy efficiency, and they are going to make it
6 easy. You know, they are going to try to make --
7 make it something that companies can do, and
8 that's -- if you read 15B, it's written that way so
9 that -- you know, obviously, we want to make sure the
10 megawatts are there, but, you know, there's going to
11 be enough flexibility to maneuver with, you know, to
12 make modifications to your original nominations to --
13 when you have to actually deliver those megawatts and
14 how do you do post kind of M&V implementation for
15 future auctions.

16 Q. Now, regard -- with regard to what is
17 eligible, EE & LM as referenced in your testimony on
18 page 23, I want to -- I wanted to ask you as part of
19 your errata, you deleted footnote 34. Why did you do
20 that?

21 A. It was nonsensical. It had just gotten
22 in there, I don't know how.

23 Q. With regard to the 658 megawatts of
24 demand reduction that's identified in the plan for
25 2015, forecasted in the plan for 2015, how much of

1 that was eligible for -- or would be eligible today
2 for the 2015-2016 delivery year?

3 A. Can you ask that one again?

4 Q. Yeah. You identified, pointed to
5 Mr. Miller's testimony, Exhibit ECM-2, and referenced
6 the total 658 megawatts of demand reduction for
7 forecast for plan year 2015. How much of that
8 658 megawatts was eligible to be bid into the recent
9 auction for the 2015-2016 delivery year?

10 A. I don't know. I haven't done that
11 calculation.

12 Q. Well, you do agree that there is some
13 amount of that number that would not be eligible --

14 A. Yes.

15 Q. Okay. And I think you mentioned this.
16 One example would be energy efficiency measures with
17 a four-year PJM life that would expire before the
18 delivery year, correct?

19 A. That's correct. And my testimony would
20 be that, hopefully, those savings before they expire,
21 they at least get into an incremental auction.

22 Q. And you would also have to look at energy
23 efficiency resources and load management capacity for
24 which the company does not have ownership rights,
25 correct?

1 A. Well, let's break that up into energy
2 efficiency and demand response. I believe in the
3 energy efficiency sphere, the company would have
4 control based on the materials and conditions on your
5 forms.

6 Q. Well, taken as an example, energy
7 efficiency savings resulting from, you know,
8 point-of-sale distribution of CFLs, that's not
9 something that could be bid into the PJM auction,
10 correct?

11 A. I think if the company had some -- in
12 planning the program and in talking to the
13 leadership, that notice was made available. I
14 believe they probably could, but I am not a lawyer in
15 terms of what the ownership was, but when you went to
16 buy the bulb, it was clear the savings would belong
17 to the company because they are the ones who are
18 incenting it. I think you can get around that
19 hurdle. I'm trying to get rid of hurdles here.

20 Q. How about -- how about, since you
21 mentioned this earlier, with regard to shared savings
22 behavioral measures? Is it your understanding those
23 would be eligible to be bid into the PJM auction?

24 A. You would have to -- you would have to --
25 it would have to pass the M&V protocols, and I am not

1 sure if those types of programs have been bid in or
2 not, but it would be -- it would have a higher hurdle
3 to pass.

4 Q. Do you know one way or the other whether
5 it would qualify?

6 A. I think it could qualify. I think all
7 PJM says is you have to set up an M&V plan, either
8 using international -- you know, the international
9 protocol or -- you have to make the case to PJM that
10 these things are a real savings, real megawatts.

11 EXAMINER PRICE: What makes -- if your
12 position is that they don't persist and the company
13 could only count it in the year it was installed, or
14 the year it was implemented, why do you believe that
15 the company could bid it in to a PJM auction for
16 delivery three years out? Am I missing something?

17 THE WITNESS: No, no, no. That's a very
18 good question. What I'm saying, if you had a
19 specific M&V that -- that does an evaluation of that
20 program every year, and that's what you send to PJM,
21 PJM may be able to accept it because it's something
22 that's happening every year as opposed to other
23 programs that you just evaluate them once.

24 EXAMINER PRICE: Then why don't you think
25 they should be able to keep count for the shared

1 savings? If they can get an M&V protocol that PJM
2 would accept three years out, why don't you think
3 they should get the count for the shared savings? If
4 it meets PJM's requirements for persistence, wouldn't
5 that be a reasonable -- once they get over that
6 hurdle, isn't it reasonable for them to count for the
7 shared savings?

8 THE WITNESS: I could see a time in the
9 future if that type of M&V protocol is established by
10 the companies, yes.

11 EXAMINER PRICE: Okay.

12 Q. (By Mr. Lang) Now, that 600-plus
13 megawatts for 2015 we discussed having ownership
14 rights, you recognize that some portion of that --
15 well, let me break that up.

16 You recognize that as of September 1 of
17 this year, the company is essentially requiring
18 transfer of ownership, to the extent they can, with
19 regard to the energy efficiency -- energy efficiency
20 measures, correct?

21 A. Yes, yes. And I'm glad because, you
22 know, Potomac Edison, Baltimore Gas & Electric,
23 ComEd, and all these other companies have transferred
24 their terms and conditions and adopted that type of
25 condition, yes.

1 Q. And prior to that date, if we are looking
2 at 2011, 2010, that's not necessarily the case.
3 There's demand resources that the customer has
4 retained the ownership rights, correct?

5 A. I believe in your prior forms you had a
6 check box, and to the extent that they wanted to
7 retain those ownership rights, I think that's
8 correct.

9 Q. So whatever that number is, that number
10 has to be backed out of the 600-some cumulative
11 number, correct?

12 A. I would say it could. The company could
13 go back to the customers, its large customers, and
14 explain the benefits of what.

15 Q. The -- and you understand there's also
16 contracted demand response load that companies' have
17 been procuring through an RFP process, correct?

18 A. My understanding -- are you talking about
19 ELR? Because I thought ELR was a tariff.

20 Q. ELR is a tariff. I'm talking about
21 outside of rider ELR.

22 A. Vaguely, I know the company has conducted
23 auctions to try to get -- are you talking in Ohio, or
24 are you talking Pennsylvania, or are you --

25 Q. In Ohio, Ohio utilities.

1 A. In Ohio utilities, yeah, vaguely I
2 recall.

3 Q. Let's ask it at a higher level.

4 A. Uh-huh.

5 Q. If the company is contracting for demand
6 response load that a customer has already bid into
7 the PJM auctions or is committed to bid into the PJM
8 auctions, in that case, that's not something that the
9 companies could bid, again, into the PJM auctions,
10 correct?

11 A. That's correct.

12 Q. And when we're looking at, say, the
13 2016-'17 delivery year or the 2017-2018 delivery
14 year, one of the forecasting requirements that's
15 required by your recommendation is figuring out how
16 much -- how much of the load expected for that future
17 delivery year will be -- will come from eligible
18 measures and how much will come from noneligible
19 measures, correct?

20 A. Yes.

21 Q. Now, did you mention in addition to base
22 residual auctions, there are --

23 A. Incremental.

24 Q. -- incremental auctions? At the top of
25 page 24 of your testimony, incremental auctions

1 that the -- I think you actually referred to in your
2 testimony as auctions that give the companies an
3 opportunity to purchase demand resources.

4 Incremental auctions, my question is for incremental
5 auctions there is also an opportunity for companies
6 to bid resources into those auctions, correct?

7 A. Yes. If you have energy efficiency that
8 can't be bid into the base residual auction because
9 of the four-year period and being three years out,
10 the company would be in -- the best interest of the
11 company and its customers is for you to bid it -- bid
12 those in, those eligible megawatts, into the
13 incremental auction.

14 Q. And it's in the interest of the customers
15 because there's also revenue from bidding into the
16 PJM incremental auction, correct?

17 A. Yes, although the prize is the base
18 residual auction.

19 Q. If customers assume the risk, and
20 assuming the Commission determines that the companies
21 have acted prudently in bidding demand resources into
22 the base residual auction, have you done any
23 quantification of what the level of that risk would
24 be in dollar terms?

25 A. You're talking about the level of risk of

1 assuming the risk?

2 Q. Essentially.

3 A. I have looked at what the potential
4 revenues could be if you bid, let's say, 300 and
5 something -- let's take a round number, 350 megawatts
6 you bid into PJM in the last auction, you would have
7 got about 40 million coming back to customers. It's
8 not clear what the effect, per se, is on the price,
9 which I think is the biggest effect.

10 So I think there's some good dollar
11 information in terms of how lucrative this could be,
12 and not just for your companies, but for Ohio as a
13 whole with the other companies, and then if you look
14 at the -- the way energy efficiency could begin, and
15 there's flexibility there.

16 And you also understand that there are
17 incremental auctions that historically, except for
18 one time, have been lower in price than the base
19 residual auction which means that if you were short
20 for any reason, you would be able to -- you would
21 actually -- your know, historically you would win
22 out, except for that one year when the incremental
23 auction exceeded the base residual.

24 Q. And have you done an analysis if the
25 price differential will continue into future

1 auctions?

2 A. No, that's -- nobody knows that. I'm
3 just going with the trend.

4 EXAMINER PRICE: When you say you are
5 "going with the trend," does that apply to
6 constrained areas, as well as the overall base
7 residual auction?

8 THE WITNESS: That's a more specific
9 question. I would say -- I would say no. I think we
10 can look --

11 EXAMINER PRICE: I'm asking what you did.
12 Did you look at constrained areas rather than the
13 overall base residual? When you say that your
14 analysis has been that the incremental auction prices
15 are less expensive than the base residual auction,
16 have you looked at constrained areas?

17 THE WITNESS: I was looking -- I have
18 looked at the Brattle report, and I believe they
19 looked at it for the different areas, EMAAC, MAAC,
20 and I believe the East -- there was some -- some of
21 the Eastern zones were constrained.

22 EXAMINER PRICE: And it held true?

23 THE WITNESS: And it held true, except
24 for that one exception in EMAAC.

25 EXAMINER PRICE: And that one exception

1 was, in fact, a constrained area.

2 THE WITNESS: I believe EMAAC was.

3 Q. (By Mr. Lang) Mr. Gonzalez, with regard
4 to your testimony, I think it starts at the bottom of
5 page 23, goes to the top of page 24, purchasing any
6 shortfall in an incremental auction, you understand
7 under that there are at least three incremental
8 auctions scheduled between each base residual auction
9 delivery year?

10 A. Yes. There's one 30 days. You know,
11 there's three incremental auctions that they -- you
12 know, 3 months, 10 months 20 months, I believe, is
13 the timeframe from the time of delivery.

14 Q. How does the company determine which
15 incremental auction to participate in if it needs to
16 purchase a shortfall?

17 A. The company would use their best
18 judgment, based on what the expectations are in that
19 price, how big a shortfall, you know, how much
20 balancing they need to do. They do that now for --
21 I'm sure the companies do that now. I guess
22 companies do that now who bid into the auction
23 generation resources.

24 Q. Would that decision also be subject to
25 prudence review by the Commission?

1 A. See, I would say that's a more
2 difficult -- you know, that's a more difficult -- I
3 would say that would be borderline, you know. You
4 know, I'm just saying that which of the auctions, you
5 know, we don't -- you know, hindsight, you bid it in
6 early and the price is less, and you find out that
7 your programs are really performing more than they
8 had before. That's -- I wouldn't want to get into
9 hindsight, you know, Monday morning quarterback when
10 it's nothing that's real egregious.

11 I think when I talk about my, you know,
12 in terms of prudence, it has to be something that's
13 out of the companies' control, something that's
14 fairly egregious. You paid 15 times more than what
15 you should have for M&V services, or you failed to --
16 you know, the auction was here and you failed to meet
17 the deadlines, or those kinds of things.

18 Q. Also on page 24 of your testimony, it's
19 paragraph lower case e, as in Edward, you're
20 discussing how revenues from the auctions should be
21 flowed back through to customers.

22 A. Yes.

23 Q. And you referred to using the existing
24 rate class allocation. That's on line 13. By
25 that -- one second.

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

2 (Discussion off the record.)

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

5 Q. By referring to existing rate class
6 allocation there, do you mean that the class that
7 generated the megawatts would receive the revenue?

8 A. I was stating that I know, you know,
9 DSE-1 is where ELR and OLR are recovered. So if you
10 get revenues from those programs, it flows back to
11 those customers that are paying for it, and the same
12 thing with DSE-2.

13 Q. So take as an example if there's an
14 energy -- you know, if there's megawatts that are
15 generated from a, you know, a small C&I program that
16 get bid in, would those -- would the revenue from
17 that be flowed back to the rate schedule GS?

18 A. I believe the customers pay based on rate
19 schedules, so it should flow back based on rate
20 schedules. I think that's one fair way to do it.

21 Q. With regard to what resources are
22 eligible under PJM rules, do you agree that the PJM
23 measurement and verification protocols may produce
24 savings that are less than what is deemed under --
25 under the Ohio TRM?

1 A. Yes.

2 Q. With regard to the process for bidding
3 into a PJM auction, do you agree that the bids
4 themselves are confidential?

5 A. I would say as part of the process, when
6 a company bids, I believe they are confidential, yes.

7 Q. And to use EnerNOC as an example, just
8 because they participate in these proceedings, you
9 know, you're not aware that EnerNOC goes around
10 announcing ahead of an auction what their bid
11 strategy is, what their bid amounts will be, correct?

12 A. Well, as I stated earlier, yeah, I don't
13 believe EnerNOC does it because they are in a
14 different position. The company is going to bid --
15 you know, my recollection is you bid it in at zero or
16 very little so you are going to clear the auction.
17 So it doesn't matter what price. You're a
18 price-taker, right?

19 And then in terms of the amount, you
20 know, how that's going to play, I would say EnerNOC
21 and anybody else can just look at your plans, make --
22 see what -- you know, what you're projecting, and
23 they can make probably a good estimate of how much
24 you are going to bid in.

25 So I could see in terms of the auction

1 the bids being confidential, but in terms of the
2 company revealing its bid strategy, that's more an
3 issue for FES. FES has a concern about it. They
4 were going to bid, you know, if they had programs or
5 if they had capacity. But the company as a whole,
6 it's you're a price-taker; you already paid for the
7 program.

8 EnerNOC has to go out and figure out, you
9 know, get the -- make sure that what they are going
10 to get from the customers is -- is greater than what
11 they are going to -- you know, what they are paying
12 for those customers to join them and bid their
13 megawatts is -- that they are going to get more from
14 the auction than what they are paying their
15 customers.

16 Q. And you had said EnerNOC can just look at
17 the companies' plan year and figure out what would be
18 bid in. We're talking about auctions beyond the plan
19 years, correct?

20 A. Yeah. But, I mean, they -- granted, I
21 think it's just saying EnerNOC would look and say
22 there are state requirements that go from 1
23 percent -- 1 percent, then 2 percent. There is a way
24 to calculate that. They see your filings. I think a
25 third party could -- could make a good guess at

1 what -- at what the company could potentially bid.

2 Q. I think we've covered here in the last
3 half hour that the eligibility determinations with
4 regard to specific resources and specific programs.
5 You know, if anyone was going to try to guess, you
6 know, make a guess, it would simply be a guess as to
7 how much could be bid in because you're guessing at
8 how much would be eligible in those -- for those
9 future delivery years, correct?

10 A. Yeah. It would be an estimate based on
11 information available, based on what the requirements
12 in Ohio are, based on the companies' plans how
13 they've -- their annual filings of how successful
14 they are so, yeah, it's an estimate.

15 Q. And as we are sitting here today, you
16 certainly don't know what level of energy efficiency
17 savings from the companies' plans will be eligible
18 for PJM and then the value that will be given to
19 those under the PJM rules as compared to the Ohio
20 rules, correct?

21 A. No. The only thing I could think I could
22 say safely with certainty, I think it's more than 36
23 mill.

24 Q. It looks like I have two more questions.
25 You discuss constraints. Specific to the constraints

1 and what you've described as a historic trend, how
2 many years has that trend existed for ATSI in PJM?

3 A. It couldn't be long because ATSI was just
4 created recently, so I believe this is the first ATSI
5 auction, or base residual auction.

6 Q. And that was the one base residual
7 auction, correct?

8 A. Yes.

9 MR. LANG: I think those are the two I am
10 going to do. Thank you, Mr. Gonzalez.

11 Thank you, your Honor.

12 THE WITNESS: Thank you, Mr. Lang.

13 EXAMINER PRICE: Mr. Parram.

14 MR. PARRAM: No questions, your Honor.

15 EXAMINER PRICE: Redirect?

16 MS. KERN: May we have a few minutes,
17 your Honor?

18 EXAMINER PRICE: You may. Be back by
19 5:00. Let's go off the record.

20 (Recess taken.)

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

23 MS. KERN: Your Honor, OCC has no
24 redirect.

25 EXAMINER PRICE: Excellent.

1 - - -

2 EXAMINATION

3 By Examiner Price:

4 Q. Mr. Gonzalez, your testimony basically
5 has four recommendations, is that correct, covering
6 two areas?

7 A. Covering two areas, yes.

8 Q. Do you think that your recommendation
9 that the company be required to bid in the PJM
10 auction, do you think that's an important policy?

11 A. That's a very important policy.

12 Q. Very important policy.

13 A. Correct.

14 Q. Is AEP Ohio required to bid their energy
15 efficiency into capacity auctions?

16 A. You are asking for like the legal, or is
17 it just --

18 Q. I am asking, are they obligated to bid
19 their capacity into the auctions, just in the manner
20 you are recommending the Commission obligate the
21 companies.

22 A. I would say AEP isn't, even though they
23 did --

24 Q. They are not obligated?

25 A. -- 204. I don't believe they are

1 obligated as of now, but I could see in the future.

2 Q. But they are not obligated because it
3 wasn't in their approved portfolio program; is that
4 correct?

5 A. That's correct.

6 Q. And that came about from a Stipulation;
7 is that correct?

8 A. That's correct.

9 Q. Signed by OCC.

10 A. Yes, we did sign on to that Stipulation.

11 Q. Even though it did not contain "a very
12 important policy recommendation."

13 A. It did not contain that very important
14 policy recommendation, but in the negotiation that
15 took place, and we had a meeting at AEP --

16 Q. You can't tell me about negotiations.

17 A. No. Oh, no, no. All I'm saying, that
18 was on the table as -- when we discussed avoided
19 costs.

20 Q. Okay. And Duke Energy Ohio, are they
21 under an obligation to bid their energy efficiency
22 into the PJM capacity auction?

23 A. Based on the Stipulation of their latest
24 portfolio?

25 Q. Yes.

1 A. No. We are having discussions with them
2 in the collaborative to try -- we are having
3 discussions with all the companies to try to resolve
4 this issue.

5 Q. Did AEP bid any capacity in the auction
6 in 2012-2013?

7 A. No. I know for a fact they didn't. I
8 know they bid in an incremental auction, I think,
9 once.

10 Q. In that auction it was zero?

11 A. Correct.

12 Q. 36 is more than zero, isn't it?

13 A. 36 megawatts is more than zero.
14 36 megawatts is more than zero, but the impact of
15 36 megawatts, you know, in a constrained zone versus
16 a non, yeah, I would factor that in.

17 EXAMINER PRICE: Okay. I think that's
18 enough for today. Thank you. You are excused.

19 Ms. Kern.

20 MS. KERN: OCC would move for the
21 admission of OCC Exhibit 1 and OCC 2.

22 EXAMINER PRICE: Any objection to OCC
23 Exhibits 1 and 2?

24 Seeing none, they will be admitted.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 EXAMINER PRICE: Mr. Lang, are you going
2 to move either of those two exhibits that were
3 marked?

4 MR. LANG: Company Exhibit No. 18 I will
5 not. No. 17 I will. That's the two-page state list.

6 EXAMINER PRICE: Any objection to the
7 admission of Company Exhibit 17?

8 Seeing none, it will be admitted.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 EXAMINER CHILES: Mr. O'Brien.

11 MR. O'BRIEN: Thank you, your Honor.

12 Right now, the Ohio Hospital Association
13 would call to the stand Marty Lanning, and ask the
14 Bench to direct the reporters to mark as OHA Exhibit
15 1 the Prefiled Direct Testimony of Marty Lanning.

16 EXAMINER CHILES: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 - - -

19 MARTY LANNING

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

22 DIRECT EXAMINATION

23 By Mr. O'Brien:

24 Q. Mr. Lanning, please state your name and
25 business address for the record.

1 A. Marty Lanning, and I am employed at
2 Energy Solutions located at 515 East Main Street,
3 Columbus, Ohio 43215.

4 Q. And do you have before you a document
5 that the reporters have marked as OHA Exhibit 1, your
6 Prefiled Direct Testimony in this proceeding?

7 A. Yes.

8 Q. Do you have at this time any additions,
9 deletions, or changes to that testimony?

10 A. Yes. OHA has made the determination to
11 withdraw issues 1 and 4 from my testimony.

12 Q. How will that affect your testimony?
13 Please describe for the examiners what is changing.

14 A. Sure. On page 2, line 11, the number
15 "four" will be replaced with the words "two basic
16 issues."

17 We will delete lines 13 through 15 on
18 page 2, delete line 20 on page 2, delete lines 22 to
19 25 on page 2. Delete lines 1 through 24 on page 3.
20 Delete lines 1 through 11 on page 4. Delete lines 1
21 through 22 on page 6. And delete lines 1 through 9
22 on page 7.

23 Q. Do you have any other changes or
24 corrections to your testimony?

25 A. No, I do not.

1 Q. As corrected, if I asked you these same
2 questions here today, would your answers be the same?

3 A. Yes.

4 MR. O'BRIEN: Your Honor, at this time I
5 would tender Mr. Lanning for cross-examination.

6 EXAMINER CHILES: Thank you. Is there
7 any cross of Mr. Lanning?

8 MS. DUNN: We just want to suggest
9 another change.

10 EXAMINER CHILES: Go ahead.

11 MS. DUNN: On line 3 it says "The OHA has
12 identified four areas of concern," to change "four"
13 to "two." I'm sorry, on page 2.

14 MR. O'BRIEN: The reason why we are not
15 changing that is because that does refer to our
16 objections filed in this case. While we will not be
17 supporting four objections, that document remains as
18 it is. That's the reason why we didn't change it.

19 We'll state for the record that
20 Mr. Lanning is not offering testimony in support of
21 two of those four objections.

22 MS. DUNN: Thank you. We have no cross.

23 EXAMINER CHILES: Okay. It appears that
24 none of the other parties have cross.

25 Examiner Price?

1 EXAMINER PRICE: No questions.

2 EXAMINER CHILES: I have no questions, so
3 thank you. You may step down.

4 THE WITNESS: Thank you.

5 MR. O'BRIEN: Your Honors, at this time I
6 would move OHA Exhibit 1 as presented here today into
7 evidence.

8 EXAMINER CHILES: Are there any
9 objections to the admission of OHA Exhibit 1?

10 Hearing none, OHA Exhibit 1 will be
11 admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER CHILES: Is there anything else
14 to come before us today?

15 Hearing none, we are adjourned until
16 tomorrow.

17 (The was hearing adjourned at 5:10 p.m.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Thursday, October 25, 2012,
5 and carefully compared with my original stenographic
6 notes.

7
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9
10 Karen Sue Gibson, Registered
Merit Reporter.

11 (KSG-5603)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on day ,
5 month date , 2012, and
6 carefully compared with my original stenographic
7 notes.

8
9 Rosemary Foster Anderson,
10 Professional Reporter and
Notary Public in and for
the State of Ohio.

11 My commission expires April 5, 2014.

12 (RFA-)

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Case No(s). 12-2190-EL-POR, 12-2191-EL-POR, 12-2192-EL-POR

Summary: Transcript of Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company hearing held on 10/25/12 - Volume IV electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.