

1 BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

2 - - -

3 In the Matter of the :
4 Application to Modify, :
5 in accordance with :
6 Section 4929.08, Revised :
7 Code, the Exemption : Case No. 12-2637-GA-EXM
8 Granted Columbia Gas of :
9 Ohio, Inc. in Case :
10 No. 08-1344-GA-EXM. :

11 - - -

12 PROCEEDINGS

13 before Ms. Christine M.T. Pirik, Hearing Examiner, at
14 the Public Utilities Commission of Ohio, 180 East
15 Broad Street, Room 11-A, Columbus, Ohio, called at
16 10:00 a.m. on Wednesday, December 5, 2012.

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18 VOLUME I

19 - - -

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14 On behalf of Columbia Gas of Ohio.

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

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1 Wednesday Morning Session,
2 December 5, 2012.

3 - - -

4 EXAMINER PIRIK: Go back on the record.
5 We're reconvening the hearing in Case
6 No. 12-2637-GA-EXM which was continued from
7 December 3rd.

8 I see there are some parties who are here
9 who did not have an opportunity to make an appearance
10 on Monday, so I will give them that opportunity now.

11 Is there someone here on behalf of
12 Dominion Retail?

13 (No response.)

14 EXAMINER PIRIK: Mr. Stinson.

15 MR. STINSON: Yes, thank you, your Honor.
16 On behalf of Hess Corporation, Dane Stinson, Bailey
17 Cavalieri, LLC, 10 West Broad Street, Columbus, Ohio
18 43215.

19 EXAMINER PIRIK: Thank you.

20 Go ahead.

21 MR. EINSTEIN: John Einstein on behalf of
22 Volunteer Energy.

23 EXAMINER PIRIK: Thank you.

24 Mr. Rinebolt.

25 MR. RINEBOLT: On behalf of Ohio Partners

1 for Affordable Energy, David C. Rinebolt and Colleen
2 L. Mooney, 231 West Lima Street, Findlay, Ohio,
3 45840.

4 EXAMINER PIRIK: On behalf of Stand.

5 (No response.)

6 EXAMINER PIRIK: On behalf of Honda.

7 MR. LONG: Yes, your Honor. M. Anthony
8 Long on behalf of Honda, 24000 Honda Parkway,
9 Marysville, Ohio, 43040.

10 EXAMINER PIRIK: Is there anyone that I
11 missed?

12 (No response.)

13 EXAMINER PIRIK: Then we'll begin.

14 Columbia.

15 MS. LESLIE: Thank you, your Honor.
16 Prior to calling our first witness we'd like to mark
17 a few exhibits. The first exhibit to mark as Joint
18 Exhibit 1 is the amended stipulation and
19 recommendation.

20 EXAMINER PIRIK: The document will be so
21 marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MS. LESLIE: And marked as Columbia's
24 Exhibit 1 will be the proof of legal notice.

25 EXAMINER PIRIK: The document will be so

1 marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MS. LESLIE: And as Exhibit 2, Columbia
4 Exhibit 2 is the revised program outline filed
5 November 28th, 2012.

6 EXAMINER PIRIK: That document is so
7 marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MS. LESLIE: And marked as Columbia
10 Exhibit 3 are the revised tariff sheets, this is a
11 clean version of those.

12 EXAMINER PIRIK: The document will be so
13 marked. Were those filed at a certain time or are
14 they just being presented here today?

15 MS. LESLIE: They'll be presented today.

16 EXAMINER PIRIK: Okay.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MS. LESLIE: At this time Columbia would
19 like to call its first witness, Michael D. Anderson.

20 EXAMINER PIRIK: Please raise your right
21 hand.

22 (Witness sworn.)

23 EXAMINER PIRIK: Thank you.

24 - - -
25

1 MICHAEL D. ANDERSON

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

4 DIRECT EXAMINATION

5 By Ms. Leslie:

6 Q. Good morning, Mr. Anderson.

7 A. Good morning.

8 Q. Can you please state your name and
9 business address for the record.

10 A. My name is Michael D. Anderson, 200 Civic
11 Center Drive, Columbus, Ohio, 43215.

12 Q. Thank you, Mr. Anderson.

13 And did you cause to be filed prepared
14 direct testimony in this proceeding?

15 A. Yes, I did.

16 Q. And do you have any corrections to that
17 testimony?

18 A. Yes, I have two corrections to that
19 testimony. The first occurring on page 7, line 9,
20 after the word "demand" that period should be a comma
21 and the capitalized "The" should be lowercase.

22 The second change is on page 24, line 10,
23 the figure 3.945 should be 2.616.

24 Q. Do you have any other corrections?

25 A. No, I do not.

1 Q. And if I were to ask you the questions
2 that are contained in your direct testimony today,
3 would your answers still be the same?

4 A. Yes, they would.

5 MS. LESLIE: At this time, your Honor,
6 I'd like to mark the prepared direct testimony of
7 Michael D. Anderson filed on November 12th, 2012,
8 as Columbia Exhibit No. 4.

9 EXAMINER PIRIK: That document is so
10 marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. LESLIE: Your Honor, the witness is
13 available for cross-examination.

14 EXAMINER PIRIK: Thank you.

15 MR. RINEBOLT: Your Honor.

16 EXAMINER PIRIK: Yes.

17 MR. RINEBOLT: Would this be an
18 appropriate time for a motion to strike?

19 EXAMINER PIRIK: Yes.

20 MR. RINEBOLT: I move to strike on page
21 18, lines 24 and 25, where Mr. Anderson indicates a
22 situation OCC and OPAE should favor based on comments
23 in their memorandum contra. Mr. Anderson does not
24 speak for OPAE. I can't speak for OCC on this, but
25 it's a conclusion that's not warranted in testimony.

1 EXAMINER PIRIK: Are there any other
2 motions?

3 MR. RINEBOLT: No, that's the only one,
4 your Honor.

5 EXAMINER PIRIK: Anyone else? Additional
6 motions to strike?

7 (No response.)

8 EXAMINER PIRIK: First I'm going to turn
9 to OCC with regard to that statement.

10 MR. SAUER: Just a second, your Honor.

11 OCC would join OPAE in that motion to
12 strike in that Columbia doesn't speak for OCC.

13 EXAMINER PIRIK: Ms. Leslie.

14 MS. LESLIE: Your Honor, Columbia would
15 withdraw the reference to the OCC and that line,
16 however, it's Mr. Anderson's opinion, this testimony
17 is his opinion and it's a valid statement. There's
18 no -- I don't think anybody is assuming that
19 Mr. Anderson's speaking for OPAE or OCC but merely
20 stating his opinion.

21 EXAMINER PIRIK: Mr. Rinebolt, do you
22 have any response?

23 MR. RINEBOLT: Given that Columbia's
24 willing to withdraw the statement, that's
25 satisfactory. Is that, I assume that's what --

1 EXAMINER PIRIK: That's not what I
2 understood. I understood you were willing to
3 withdraw it with regard to OCC.

4 MS. LESLIE: That is correct, your Honor.

5 MR. RINEBOLT: Okay. Certainly
6 Mr. Anderson has an opinion, but his characterization
7 of OPAE's memo contra and our intention is improper
8 to be included in the testimony.

9 EXAMINER PIRIK: I'm going to deny the
10 motion to strike and I'm going to allow
11 cross-examination on that issue, obviously, for
12 Mr. Anderson at the appropriate time.

13 And he's tendered for cross-examination?

14 MS. LESLIE: Yes, your Honor.

15 EXAMINER PIRIK: I understand that
16 there's a number of entities that have signed on to
17 the stipulation so as far as cross-examination goes,
18 I will go through those parties initially and then I
19 will go to those parties that have not signed the
20 stipulation for cross-examination.

21 So at this time I'd call upon
22 Mr. Petricoff.

23 MR. PETRICOFF: Yes, your Honor. We have
24 no questions.

25 EXAMINER PIRIK: Mr. Clark.

1 MR. CLARK: No questions, your Honor.

2 EXAMINER PIRIK: I don't see IGS in the
3 room so, or Dominion Retail, so I'll now turn to
4 Mr. Serio or Mr. Sauer.

5 MR. SAUER: No questions, your Honor.

6 EXAMINER PIRIK: And Mr. Reilly?

7 MR. REILLY: No questions, your Honor.

8 EXAMINER PIRIK: Mr. Rinebolt?

9 MR. RINEBOLT: Yes, your Honor, we have
10 questions.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Rinebolt:

14 Q. Good morning, Mr. Anderson.

15 A. Good morning, Mr. Rinebolt.

16 Q. Let's turn initially to page 2, lines 20
17 through 27 of your testimony. In this answer you
18 indicate -- you describe Columbia's distribution
19 network and repeatedly throughout the testimony you
20 point out that it's a fairly complex distribution
21 system.

22 Has Columbia Gas of Ohio ever analyzed or
23 considered simplifying the distribution system to
24 support greater competition?

25 A. Columbia's, the network is spread out

1 over 60 counties in the state of Ohio. Some of that
2 occurs naturally as Columbia's customers grow and
3 expand through those service territories, so
4 occasionally we will find an opportunity to coalesce
5 some of those isolated systems, but given the
6 extremely widespread nature of our distribution
7 system, that opportunity does not present itself very
8 often.

9 So on a system-wide basis, no, we have
10 not.

11 Q. Does the complication of the system,
12 then, result in the pipelines owned by affiliates of
13 Columbia or subsidiaries of NiSource make them
14 critical to system operation?

15 A. Yes. The nature of our distribution
16 network makes all pipelines that we receive service
17 from critical to our operation.

18 Q. Thank you.

19 Let's turn to page 8 of your testimony,
20 please. And you discuss between lines 4 and 8 that
21 the physical basis -- on a physical basis the
22 majority of the gas consumed originates in the Gulf
23 Coast region. Can the TCO pipeline, I'll call it
24 "TI-CO" because I think most people do, can the TCO
25 pipeline be reversed and used to move gas from Ohio

1 production to the gulf?

2 A. No. The TCO pipeline does not go to the
3 Gulf of Mexico.

4 Q. All right. Can the flow in TCO be
5 reversed to move Ohio production south?

6 A. In the context that it can represent
7 something with a certain amount of resources invested
8 could they be, then yes, it could be.

9 Q. If Columbia were to release capacity
10 through an off-system sale, could that capacity be
11 used for that purpose?

12 A. The nature of off-system sales does not
13 incorporate capacity release.

14 Q. Could the assets that are sold or could
15 the rights that are sold through off-system sales be
16 used to move Ohio production south?

17 A. In terms of the rights associated with
18 off-system sales, no.

19 Q. Just as a point of interest, do any
20 subsidiaries of the NiSource holding company purchase
21 released capacity from -- or, purchase from Columbia
22 Gas of Ohio through off-system sales?

23 A. Yes.

24 Q. Let me see. On page 9 of your testimony
25 in lines 1 through 4 you discuss the west side

1 expansion project and that it will enable Marcellus
2 shale supplies to be transported to the Gulf Coast
3 region. Would that also apply to production from the
4 Utica clay?

5 A. My understanding of the receipt points
6 associated with the west side expansion project are
7 points that are located within the footprint of the
8 Marcellus shale, so for Utica to be able to access
9 that project it would first have to have facilities
10 constructed to move it to those receipt points before
11 it could be moved on that particular project.

12 Q. Are you aware of any plans to construct
13 such linkages?

14 A. No, I am not.

15 Q. On page 18, Mr. Anderson, at lines 12
16 through 13, the end of a discussion about pipelines,
17 you indicate that Columbia's assignment to suppliers
18 is consistent with a level playing field approach; is
19 that correct?

20 MR. CONWAY: Your Honor, could I have the
21 reference to the passage?

22 A. Yeah, I don't see that in that reference.

23 MR. RINEBOLT: Let me just double check
24 the page numbers. I'm sorry, it's page 14. And it's
25 between -- the question begins at line 10 and the

1 answer is in line 13 I'm just laying some foundation
2 here.

3 Q. So is the approach to assigning pipeline
4 capacity, does that create a level playing field for
5 marketers?

6 A. That is the design -- the primary purpose
7 behind that design, yes.

8 Q. So that design purpose would also
9 effectively eliminate the ability of suppliers to
10 compete on matters relating to capacity cost.

11 A. No, I don't agree with that.

12 Q. Could you explain to me why.

13 A. Suppliers under the program, while they
14 receive this assignment of capacity, are free to use
15 that capacity in any manner that they see fit. If
16 through their processes they decide that they want to
17 use that capacity in a different way, they are free
18 to do so. So I don't think that it limits them in
19 terms of their ability to compete.

20 Q. But they do still have to pay for that
21 capacity, correct?

22 A. Yes, they do.

23 Q. But they could utilize an alternative to
24 the capacity they purchase from Columbia in order to
25 deliver gas to Ohio end-use customers; is that

1 correct?

2 A. That's correct.

3 Q. Okay. At the top of 18, page 18, you
4 talk about -- you bring up the issue of balancing
5 fees, and I just have a question for you on that.
6 Now, if customers pay -- customers are either going
7 to pay the balancing fee embedded in the commodity
8 price they pay to consumers or as a special rider, a
9 separate rider, would that be true?

10 A. Columbia has proposed in the filing in
11 this case to change its methodology of charging the
12 balancing fee from the suppliers directly to the
13 customers.

14 Q. And from a standpoint of a customer,
15 would a customer be indifferent as to whether it's
16 charged directly to customers or embedded in the
17 commodity portion of their bill?

18 MS. LESLIE: Objection, your Honor. This
19 question calls for speculation on what the consumers
20 are thinking.

21 EXAMINER PIRIK: Mr. Rinebolt.

22 MR. RINEBOLT: Your Honor, I'm more
23 interested in the economic effect on customers. If
24 customers are paying the 22 percent on the bill, is
25 that the equivalent to paying the 22 percent embedded

1 in their rates.

2 EXAMINER PIRIK: I think with that
3 clarification of the question I'll allow the
4 question. Also, could you turn on your microphone.

5 MR. RINEBOLT: Yes.

6 EXAMINER PIRIK: While I can hear you, I
7 want to be sure everyone can. You might have to push
8 it a second time.

9 (Discussion off the record.)

10 A. Could you reask the question, please?

11 MR. RINEBOLT: Could you repeat it,
12 please?

13 (Record read.)

14 EXAMINER PIRIK: I believe it was
15 clarified, though, with regard to a comparison and
16 that's the appropriate question that I'm allowing.

17 MR. RINEBOLT: A comparison on an
18 economic basis.

19 EXAMINER PIRIK: So could you restate the
20 question?

21 MR. RINEBOLT: Very well.

22 Q. (By Mr. Rinebolt) Whether or not the
23 price of balancing is a separate rider on the
24 customer bill, it's billed directly to the customer,
25 or whether it's paid by the supplier as a part of the

1 commodity portion of the bill, the customer's paying
2 it either way; is that correct?

3 A. I think that's difficult for me to answer
4 from a couple of perspectives, one is that, you know,
5 from Columbia's standpoint we're indifferent. I
6 mean, we receive it whether it's from the marketer or
7 supplier or whether it's from the customer. Under
8 the assumption that marketers pass through that cost
9 to the customer, then the answer is yes.

10 Q. Do you believe that for competitive
11 purposes a supplier could possibly discount that
12 cost?

13 A. That would require me to, you know, make
14 an assumption that I'm not prepared to make.

15 Q. Now, as part of this stipulation there's
16 a renewal of a series of pipeline contracts for five
17 years; is that correct?

18 A. Yes, it is.

19 Q. Okay. Did Columbia do any analysis to
20 determine the benefit of renewing those TCO contracts
21 for different renewal terms, for one year, for two
22 years, for three years, or as much as ten years?

23 A. No, we did not.

24 Q. Why, then, did you choose five years?

25 A. We chose that because that was an

1 agreement amongst the parties in the discussions that
2 led to the filing in this particular case, that the
3 desire's for consistency, for a five-year period
4 where the suppliers knew what they were going to be
5 receiving, that was a major influence and a decision
6 to take this to five years on the renewal.

7 Q. And that's in contrast to the stipulation
8 reached in Case No. 08-1344 where the pipeline
9 contracts were renewed for three years because that
10 was the length of that stipulation?

11 A. I would say that it's identical to that
12 proposition.

13 Q. Thank you.

14 One last question, and this relates to
15 material that's on page 28 in line 17 to line 24. If
16 Columbia made no off-system sales, who would pay for
17 the unneeded pipeline attributes?

18 A. We have no unneeded pipeline attributes.

19 Q. So everything that you contract for will
20 be sold somewhere; it will either go to marketers or
21 it will be sold through an off-system sale.

22 A. No. We retain capacity to provide system
23 balancing services that are necessary to operate the
24 program.

25 Q. And the cost of that is embedded in the

1 22 cents?

2 A. We have no fee for 22 cents.

3 Q. That's the balancing fee that customers
4 would pay.

5 A. No, it is not.

6 Q. I'm sorry. 27 cents?

7 A. No, sir.

8 Q. Could we just say the balancing fee the
9 customers will pay compensates Columbia for the
10 purposes of the set-aside capacity that's used for
11 balancing?

12 A. Columbia recovers those costs through the
13 services it provides for that service.

14 Q. Very well.

15 MR. RINEBOLT: I have no more questions,
16 your Honor, thank you.

17 Thank you, Mr. Anderson.

18 EXAMINER PIRIK: I'm just going to
19 assume -- there are a couple of counsel not sitting
20 at the table, I'm going to assume if you're not
21 sitting at the table you're not going to ask cross,
22 so I'm only going to call upon those who are at the
23 table.

24 Mr. Einstein?

25 MR. EINSTEIN: No questions, your Honor.

1 EXAMINER PIRIK: Mr. Stinson?

2 MR. STINSON: No questions, your Honor.

3 EXAMINER PIRIK: Redirect?

4 MS. LESLIE: No, your Honor.

5 EXAMINER PIRIK: Thank you, Mr. Anderson.

6 MS. LESLIE: Your Honor, at this time I'd
7 like to move the admission of Mr. Anderson's
8 testimony that's been marked as Exhibit No. 4,
9 Columbia Exhibit No. 4.

10 EXAMINER PIRIK: Are there any
11 objections?

12 (No response.)

13 EXAMINER PIRIK: Hearing none, Columbia
14 Exhibit 4 will be admitted into the record.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 MR. GALLON: Your Honor, at this time
17 Columbia Gas would like to call Michele Caddell to
18 the stand.

19 (Witness sworn.)

20 EXAMINER PIRIK: Thank you.

21 I believe the court reporters are asking
22 if you have copies of the exhibits you need to
23 provide, you provide them over here. Is that
24 correct?

25 THE REPORTER: Yes. Thank you.

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MICHELE L. CADDELL

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

DIRECT EXAMINATION

By Mr. Gallon:

Q. Ms. Caddell, good morning.

A. Morning.

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

A. Yes, Michele Lynn Caddell.

Q. What is your position with Columbia Gas
of Ohio?

A. I am the Manager of Supplier Services.

MR. GALLON: I've handed the court
reporter what we're going to ask her to mark as
Columbia Gas Exhibit 5.

EXAMINER PIRIK: The document is so
marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Do you have a copy of that document in
front of you?

A. I do.

Q. And can you identify the document that
has been marked as Columbia Exhibit 5?

1 A. Yes, I can identify that as being my
2 direct testimony in this case.

3 Q. Is this a true and accurate copy of the
4 prefiled testimony you're presenting in this case?

5 A. Yes, it is.

6 Q. Do you have any corrections or changes to
7 make to that testimony at this time?

8 A. Yes, I have one.

9 Q. And what is that correction or change?

10 A. On page 1, line 9, the word "manager"
11 spelled as "manger."

12 Q. So on page 1, line 9 the word "manger" is
13 being corrected to "manager." Do you have any other
14 corrections or changes at this time?

15 A. No, I do not.

16 MR. GALLON: Your Honor, at this time we
17 would submit Columbia Gas Exhibit 5 as Ms. Caddell's
18 testimony subject to cross-examination.

19 EXAMINER PIRIK: Thank you.

20 Mr. Petricoff?

21 MR. PETRICOFF: No questions, your Honor.

22 EXAMINER PIRIK: Mr. Clark?

23 MR. CLARK: No questions, your Honor.

24 EXAMINER PIRIK: Mr. Serio or Mr. Sauer?

25 MR. SAUER: No questions, your Honor.

1 EXAMINER PIRIK: Mr. Reilly?

2 MR. REILLY: No questions, your Honor.

3 EXAMINER PIRIK: Mr. Rinebolt?

4 MR. RINEBOLT: No questions, your Honor.

5 EXAMINER PIRIK: Mr. Einstein?

6 MR. EINSTEIN: No questions, your Honor.

7 EXAMINER PIRIK: Mr. Stinson?

8 MR. STINSON: Yeah, just a few questions
9 to clarify.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Stinson:

13 Q. Good morning, Ms. Caddell.

14 A. Good morning.

15 Q. As I said, I have just a few questions to
16 clarify a bit of your testimony.

17 On pages 2 to 3 you list six billing
18 enhancements and their programming costs. Just a
19 general question, just I'd like to know if those
20 costs except for the larger logo sizes would be
21 covered through the CSS rider.

22 A. Yes.

23 Q. And that both CHOICE and SCO customers
24 pay the CSSR [verbatim] rider.

25 A. Yes, that's correct.

1 Q. And the same with the four billing
2 enhancements on pages 3 to 4 of your testimony in the
3 programming costs.

4 A. Yes.

5 Q. And those costs also are recovered
6 through the CSSR rider?

7 A. Yes.

8 Q. Next on pages 4 to 5 of your testimony
9 you list the benefits that the enhancements will
10 provide customers, and isn't it correct that those
11 enhancements would benefit CHOICE customers?

12 A. Those benefits would benefit all
13 customers whether they're shopping or not.

14 Q. And how would they benefit nonshopping
15 customers?

16 A. Because they have the choice to shop.

17 Q. So you're saying that they benefit
18 persons who wish to become CHOICE customers.

19 A. Correct. The benefits are there for the
20 customers.

21 Q. If I am an SCO customer and I have no
22 intent on becoming a CHOICE customer, how do those
23 enhancements benefit me as a current SCO customer?

24 A. Because the customer as an SCO customer
25 still has the ability to shop with a supplier other

1 than its current SCO supplier.

2 Q. I'm satisfied with my SCO service; I
3 don't want to shop currently. How does that
4 enhancement benefit me as an SCO customer?

5 A. Because the benefit is there for you if
6 that decision for you will ever change.

7 Q. If I were to become a CHOICE customer and
8 I terminate my CHOICE contract, would the SCO service
9 stand ready to serve me?

10 A. Yes.

11 Q. Would SCO service be a benefit to me as a
12 CHOICE customer, then?

13 A. I would say yes, if that's a benefit the
14 customer's looking for.

15 Q. At a place in your testimony you refer at
16 times to "CHOICE customers" and also to "CHOICE
17 suppliers" and then in other places you refer to
18 "suppliers and customers." In those places where you
19 referred to "suppliers and customers," do you intend
20 that to mean CHOICE suppliers and choice customers?

21 A. If you can point to the reference, I
22 could probably speak better to that question.

23 Q. Just some examples, page 5, line 6, a
24 supplier's rate change.

25 A. In that reference I'm speaking directly

1 to suppliers who submit rates.

2 Q. And those would be CHOICE suppliers?

3 A. This would be CHOICE suppliers or
4 governmental aggregated suppliers.

5 Q. Are governmental aggregation suppliers
6 CHOICE suppliers also?

7 A. Yes, in my reference they are all.

8 Q. I really don't want to go through all of
9 them, but I will if you want me to. Line 12,
10 Supplier Logo, that would be the CHOICE supplier
11 logo?

12 A. That would be any CHOICE supplier logo.

13 Q. Line 17, CHOICE suppliers.

14 A. Yes.

15 Q. Line 19, CHOICE suppliers.

16 A. Yes.

17 Q. 27 you have suppliers and customers
18 listed there, those are both CHOICE?

19 A. The reference to customers there are all
20 customers.

21 Q. Are all customers?

22 A. Meaning all customers eligible to shop.

23 Q. And in that respect if I am a current SCO
24 customer, I am not using those billing enhancements,
25 am I?

1 A. No, but, again, you're eligible to.

2 Q. But I'm not if I'm a current SCO
3 customer.

4 MR. GALLON: Objection. Asked and
5 answered.

6 Q. Well, let me rephrase it. As long as I
7 stay an SCO customer I will not benefit from those
8 enhancements.

9 A. Again, I believe the benefits are there
10 for you if you choose to shop.

11 MR. STINSON: Your Honor, I would ask
12 that the witness be responsive to the question. If I
13 never become an SCO customer, I'm sorry, if I never
14 become a CHOICE customer and remain a TCO customer,
15 those billing enhancements are not going to benefit
16 me.

17 MR. GALLON: Your Honor, I believe the
18 witness has been responsive to that question on a
19 number of times now.

20 EXAMINER PIRIK: Actually, I don't
21 believe she has.

22 If you're an SCO customer, do you use
23 these billing enhancements as an SCO customer?

24 THE WITNESS: If you're willing --

25 EXAMINER PIRIK: Yes or no?

1 THE WITNESS: No.

2 EXAMINER PIRIK: Thank you.

3 Q. (By Mr. Stinson) And if I never become a
4 CHOICE customer, I'll never use those billing
5 enhancements.

6 A. Correct.

7 MR. STINSON: Thank you. No other
8 questions.

9 EXAMINER PIRIK: Redirect, Mr. Gallon?

10 MR. GALLON: Your Honor, I have no
11 redirect. Thank you.

12 EXAMINER PIRIK: Thank you very much.

13 THE WITNESS: You're welcome.

14 MR. GALLON: Your Honor, we'd move for
15 submission of Columbia Exhibit 5.

16 EXAMINER PIRIK: Are there any
17 objections?

18 (No response.)

19 EXAMINER PIRIK: Hearing none, Exhibit 5
20 shall be admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER PIRIK: Mr. Conway.

23 MR. CONWAY: Thank you, your Honor. At
24 this time Columbia calls Tom Brown.

25 EXAMINER PIRIK: Mr. Brown, please raise

1 your right hand.

2 (Witness sworn.)

3 EXAMINER PIRIK: Thank you.

4 - - -

5 THOMAS J. BROWN, JR.

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

8 DIRECT EXAMINATION

9 By Mr. Conway:

10 Q. Mr. Brown, could you state your full name
11 for the record?

12 A. Thomas J. Brown, Jr.

13 Q. Mr. Brown, by whom are you employed?

14 A. Columbia Gas of Ohio.

15 Q. And what is your position with Columbia?

16 A. Director of Regulatory Affairs.

17 Q. And, Mr. Brown, did you prepare direct
18 testimony that was filed in the docket -- prefiled in
19 the docket on or about November 13th?

20 A. Yes.

21 MR. CONWAY: Your Honor, I'd like to mark
22 as Columbia Exhibit 6 Mr. Brown's prepared direct
23 testimony.

24 EXAMINER PIRIK: The document is marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. Mr. Brown, I assume you have a copy of
2 your prepared direct testimony with you.

3 A. Yes, I do.

4 Q. Okay. And then did you subsequently
5 prepare supplemental direct testimony that was
6 prefiled in the docket on November 27th or
7 thereabouts?

8 A. Yes.

9 MR. CONWAY: Your Honor, at this time I'd
10 like to mark as Columbia Exhibit No. 7 Mr. Brown's
11 supplemental direct testimony that was filed on --
12 prefiled on November 27th or thereabouts.

13 EXAMINER PIRIK: The document is so
14 marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. Mr. Brown, going back to what we marked
17 as Exhibit 6, your direct testimony from
18 November 13th, do you have any corrections or
19 modifications to make at this time to that testimony?

20 A. Yes, I have one. On page 23, lines 9
21 through 23, as indicated in my supplemental
22 testimony, I am withdrawing the question and the
23 answer that appears on page 23 of my direct
24 testimony.

25 Q. And with that modification, Mr. Brown, if

1 I were to ask you today the questions that appear in
2 your direct testimony that was prefiled on or about
3 November 13th, would your answers be the same as
4 they appear in that document?

5 A. Yes.

6 Q. And are those answers true and correct to
7 the best of your knowledge and belief?

8 A. Yes.

9 Q. And then turning your attention to
10 Columbia Exhibit 7, the supplemental direct
11 testimony, do you have any corrections or
12 modifications to make to that testimony at this
13 point?

14 A. No.

15 Q. And if I were to ask you the questions
16 contained in that testimony today, would your answers
17 be the same as they appear in that document?

18 A. Yes.

19 Q. And would those answers be true and
20 accurate to the best of your knowledge and belief?

21 A. Yes.

22 Q. And then, Mr. Brown, you reference in
23 your direct testimonies the, I believe the amended
24 stipulation and recommendation that was filed on the
25 27th, I believe, with your supplemental direct

1 testimony; is that right?

2 A. Yes.

3 Q. And are you familiar with the amended
4 joint motion that seeks to modify the existing
5 exemption orders from the 08-1344 case?

6 A. Yes.

7 Q. Now, and are you also familiar with the
8 revised proposed program outline that incorporates
9 provisions of the amended stipulation and
10 recommendation that was filed on the 27th?

11 A. Yes.

12 Q. And are you also familiar with the
13 tariffs that were marked today as Columbia Exhibit
14 No. 3 that Ms. Leslie identified at the outset of the
15 proceeding this morning?

16 A. Yes.

17 Q. And are you responsible for and
18 knowledgeable about, on the one hand, the revised
19 program outline that was submitted on
20 November 28th that reflects the changes up through
21 the amended stipulation and recommendation and
22 amended joint motion, and are you also familiar, on
23 the other hand, with the tariff sheets that
24 Ms. Leslie had marked previously as Exhibit No. 3 for
25 Columbia?

1 A. Generally, yes.

2 Q. Okay.

3 MR. CONWAY: Your Honor, at this time I
4 would move for the admission of Mr. Brown's prepared
5 direct testimony, which has been marked as Columbia
6 Exhibit No. 6, and I would also move for the
7 admission of the prepared supplemental direct
8 testimony that has been marked as Exhibit No. 7, and
9 also for the admission of the revised program outline
10 marked as Exhibit No. 2 and the revised tariffs that
11 are marked as Columbia Exhibit No. 3, and Mr. Brown
12 is available for cross-examination.

13 EXAMINER PIRIK: Mr. Petricoff?

14 MR. PETRICOFF: No questions, your Honor.

15 EXAMINER PIRIK: Mr. Clark?

16 MR. CLARK: No questions, your Honor.

17 EXAMINER PIRIK: OCC?

18 MR. SAUER: Thank you, your Honor, just a
19 couple of questions.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Sauer:

23 Q. Mr. Brown, good morning.

24 A. Good morning.

25 Q. If you could turn to your supplemental

1 testimony, page 10, lines 13 through 16. Are you
2 there?

3 A. Yes.

4 Q. I referred you to that portion of your
5 testimony where you're speaking to the change in the
6 balancing fee and the assurance in the amended
7 stipulation that there won't be a double-billing,
8 correct?

9 A. Yes.

10 Q. Is it your understanding that CRNG
11 suppliers who have current contracts in place that
12 would run beyond the April 1st, 2013, date would
13 have incorporated within those contracts that 32-cent
14 balancing fee?

15 A. They may or may not have that
16 incorporated.

17 Q. And to the extent they would have those
18 fees built into the rates those customers are being
19 charged, then would it be your expectation that those
20 contracts would somehow need to be modified in order
21 to avoid that double-billing?

22 A. I think that is the intent of the amended
23 stipulation.

24 Q. And has Columbia had any discussions
25 internally with regards to how that might be

1 accomplished?

2 A. No, we have not.

3 Q. Has there been any coordination with the
4 marketers to try and work out what might need to
5 happen in order to make sure that doesn't happen?

6 A. Not yet.

7 Q. Do you have any recommendations on how
8 the PUCO staff and/or OCC could verify that all
9 competitive retail natural gas suppliers would have
10 modified their contracts in order to assure that
11 customers are not being billed twice for the
12 balancing fee service?

13 A. I think the first steps would probably
14 need to be, assuming the stipulation is approved,
15 then there -- some kind of notice would need to be
16 provided to the suppliers indicating what the
17 provisions of the settlement and approving order are,
18 and probably some kind of a communications program to
19 convey that information, then, in a way for the staff
20 and the company and the Commission to verify how they
21 would be implemented.

22 MR. SAUER: No further questions, your
23 Honor.

24 EXAMINER PIRIK: Mr. Reilly?

25 MR. REILLY: No questions, your Honor.

1 EXAMINER PIRIK: Mr. Rinebolt?

2 MR. RINEBOLT: Several questions, your
3 Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Rinebolt:

7 Q. Good morning, Mr. Brown.

8 A. Good morning.

9 Q. Let's turn to page 8 of your direct
10 testimony. And in the question beginning at line 5
11 you discuss the, what you termed the cash deposit
12 required of SCO suppliers, correct?

13 A. Which line number, please?

14 Q. Beginning -- the question begins at line
15 5, and the answer runs through line 14.

16 A. Yes.

17 Q. Now, has Columbia undertaken an exercise
18 to estimate the costs it would incur as a result of
19 an SCO supplier defaulting?

20 A. No.

21 Q. So is it safe to say, then, that the
22 10-cent fee that was in the original motion was
23 simply a fee that was negotiated by the parties to
24 the stipulation?

25 A. The amount of the fee?

1 Q. The size of the fee.

2 A. Yes.

3 Q. And that would be also true for the
4 6-cent fee that's in the amended stipulation, the
5 revised stipulation.

6 A. That's correct.

7 Q. Okay. There was a similar fee proposed
8 by Columbia Gas in the initial program outline filed
9 in the application in Case No. 08-1344. Do you
10 recall that?

11 A. Not specifically.

12 Q. Okay. Thank you.

13 Columbia recovers a multitude of costs
14 through the CSRR mechanism. Could Columbia, if the
15 CSRR mechanism were modified, utilize that to collect
16 Columbia's costs associated with an SCO supplier
17 default?

18 A. That might be an alternative way.

19 Q. Now, the program outline indicates that
20 the 6-cent fee that we have now will not be charged
21 to CHOICE suppliers and for competitive retail
22 natural gas suppliers on the volumes that they sell
23 through the CHOICE program; is that correct?

24 A. Yes.

25 Q. Was that exemption a part of the

1 negotiations between the signatory parties and
2 Columbia to the stipulation?

3 A. The stipulation provides that the 6 cents
4 will only be charged to the SCO suppliers.

5 Q. Is there a danger of CHOICE suppliers
6 defaulting?

7 A. Sure.

8 Q. Do CHOICE suppliers have to post a letter
9 of credit as the SCO suppliers do?

10 A. There are similar credit evaluation
11 requirements for CHOICE and for SCO suppliers. SCO
12 suppliers are required to post an additional security
13 that is directed toward the situation where SCO
14 suppliers might be called upon to supply a greater
15 proportion of the SCO market in the event of a SCO
16 supplier default.

17 Q. Do you charge a -- is the 6-cent fee
18 going to be applied to customers served through a
19 governmental aggregation?

20 A. No.

21 Q. Now, that 6-cent fee, that will
22 essentially be embedded in the SCO price, correct?

23 A. I don't know if it will be or not.

24 Q. So the SCO supplier could choose to pay
25 that fee itself.

1 A. I don't know the calculus, if you will,
2 that an SCO supplier uses in determining its bid for
3 a retail price adjustment.

4 Q. But if the fee is not used, it will be
5 credited to the CSRR; is that correct?

6 A. Yes.

7 Q. So a fee that's levied on SCO suppliers
8 will go into a mechanism that credits all customers;
9 is that correct?

10 A. Yes.

11 Q. Okay. Mr. Brown, on the top of page 11
12 you're discussing the exit from the merchant
13 function, particularly on line 4. Now, you indicate
14 that upon the exit from the merchant function
15 Columbia will provide no default commodity service
16 for CHOICE-Eligible customers. Do you view the SCO
17 as a default service?

18 A. No.

19 Q. And with the SCO, Mr. Brown, it is
20 Columbia that holds the auction, correct, that
21 determines the retail price of whatever?

22 A. The actual mechanics of the auction are
23 conducted by a third party pursuant to a contract
24 from Columbia.

25 Q. And the only entities that are eligible

1 to bid on the SCO supply contract are competitive --
2 certified competitive retail natural gas suppliers
3 that have gone through Columbia's credit review
4 process.

5 A. That's correct.

6 Q. And the end result of the SCO auction is
7 the customers who receive the SCO service enter into
8 retail contracts with the marketers.

9 A. Under the SCO mechanism customers are
10 assigned to individual suppliers. They do not
11 necessarily enter into individual contracts or
12 agreements with those SCO suppliers.

13 Q. Are they served as though they were
14 retail customers under the SCO? The mechanics of
15 providing them natural gas commodity service.

16 A. What do you mean, the mechanics?

17 Q. How --

18 A. I'm sorry, go ahead.

19 Q. Does a marketer provide service to an SCO
20 customer through the same -- in the same manner that
21 it provides service to customers served through
22 bilateral contracts?

23 A. In the context of capacity assignment
24 creation, communication of demand curves, supply
25 responsibilities of the marketers, I believe the

1 answer is yes.

2 Q. Do participants in governmental
3 aggregations sign contracts with a marketer?

4 A. You're getting pretty deep into the
5 mechanics of opt-in and opt-out governmental
6 aggregations. I'm not sure whether the individual
7 customers sign contracts in an opt-in aggregation,
8 and under either circumstance it may be the
9 governmental aggregator itself that actually signs
10 the contract.

11 Q. Thank you, Mr. Brown. I'll ask
12 Mr. Parisi or Ms. Ringenbach that question, but I
13 appreciate your answer.

14 Let me see. Again on page 11, a little
15 further down, you indicate in the question that
16 begins on line 19 through the answer, or through line
17 27 that Columbia will send monthly updates on the
18 percentage of participation in the CHOICE program to
19 staff and other interested members of the stakeholder
20 group. OPAC has participated in the stakeholder
21 group in the past. Will OPAC have access to those
22 monthly updates in the future?

23 A. Yes.

24 Q. Thank you.

25 A. You're welcome.

1 Q. Now, it's my understanding that Columbia
2 and its stakeholder group will get together and
3 develop a customer education program at various
4 points in this process; is that correct?

5 A. Yes.

6 Q. Was the decision for -- that customers
7 should pay that education fee the product of the
8 negotiations of the stipulation?

9 A. That's what the stipulation provides.

10 Q. Has Columbia ever received any customer
11 complaints about the SCO?

12 A. Not to my knowledge.

13 Q. And do you view the SCO price as a price
14 that's set by the market?

15 A. It's set by the auction.

16 Q. Which is a function of the natural gas
17 market.

18 A. Which is a function of the bidding
19 mechanism that was established several years ago and
20 used by Columbia for three auctions so far.

21 Q. Is there anything that's -- this seems to
22 be cutting out, is that all right? Okay.

23 Could you tell me why 70 percent shopping
24 is the magic number that would trigger an exit of the
25 merchant function for nonresidential customers?

1 A. That was a compromise benchmark, if you
2 will, that was reached by the parties.

3 Q. Now, I'm looking at page 13, line 37, or
4 actually between 35 and 39, and you indicate that if
5 there is a merchant function, an attempt to exit the
6 merchant function for residential customers, that
7 Columbia will file an application and the Commission
8 will hold a hearing, and Columbia will bear the
9 burden of proof; is that correct?

10 MR. CONWAY: Mr. Rinebolt, are you in the
11 direct or the supplemental direct?

12 MR. RINEBOLT: I'm in the direct. It's
13 page 13, 35 through 39.

14 A. That section was modified in the amended
15 stipulation.

16 Q. Will Columbia still file an application,
17 should it choose?

18 A. Yes.

19 Q. And will that application be an
20 alternative -- an application for alternative
21 regulation under 4929.04?

22 A. I think it would be under the exemption
23 provisions of 4929.

24 Q. Would the application -- then could
25 filing a motion, as you've done in this case, satisfy

1 the requirements of the stipulation that you file an
2 application?

3 A. I think it's the intent of the
4 stipulation that it would be a de novo application,
5 if you will. In other words, all parties are free to
6 express their opinions or positions and it would
7 require all of the filing requirements and elements
8 of an exemption application.

9 Q. Okay. And as you're probably aware, the
10 Commission has draft rules related to an application
11 to exit the merchant function. Should those rules be
12 approved prior to Columbia's filing, is it Columbia's
13 intention that it would comply with those Commission
14 rules?

15 A. It's our intention to always comply with
16 Commission rules. And we expect other parties to do
17 the same.

18 Q. There is a series of discussions within
19 the stipulation about modifications to the billing
20 options that are available. Have you had -- are you
21 aware of any requests from customers for other
22 billing options to be made available?

23 A. I'm -- not to my knowledge.

24 Q. And prior to the negotiations associated
25 with this stipulation did Columbia have any plans to

1 upgrade its billing system?

2 A. That's a question that really should have
3 been directed to Ms. Caddell.

4 Q. And was the decision that customers would
5 pay for the modifications to the billing system a
6 product of the negotiations between Columbia and the
7 signatory parties?

8 A. That's what the stipulation provides for.

9 Q. Now, as I recall, the marketers do pay
10 for one portion of the billing system modification,
11 the portion associated with the larger logo on the
12 bills.

13 A. I believe there is a separate charge for
14 that, yes.

15 Q. And that charge would be credited to the
16 CSRR.

17 A. Yes.

18 Q. On page 19 at line 29 --

19 A. Which exhibit?

20 Q. This is 19 of your direct.

21 MR. CONWAY: I'm sorry, which line are
22 you at, Mr. Rinebolt?

23 MR. RINEBOLT: I'm on 29.

24 MR. CONWAY: Thank you.

25 Q. But the question kind of deals with your

1 discussion here. Do you view it as necessary for
2 Columbia to maintain flexibility in terms of the
3 pipeline capacity it acquires as the market for shale
4 gas develops?

5 A. Yes.

6 Q. Now, in the previous, as you may recall
7 from my conversation with Mr. Anderson, and you would
8 be aware of this too, the previous stipulation the
9 pipeline capacity was -- I'll speak up. I can do
10 that.

11 EXAMINER PIRIK: Why don't you just
12 switch it with Mr. Stinson.

13 Q. -- the pipeline capacity contract was
14 renewed for three years as a result of the prior
15 stipulation; is that correct?

16 A. I don't think that's correct. My
17 recollection, and this is really within
18 Mr. Anderson's expertise, my recollection is the term
19 of the original stipulation in 08-1344 was coincident
20 with the expiration date of pipeline contracts.

21 Q. Okay. Why do you view five-year
22 extensions as providing flexibility?

23 A. Well, again, I think that's an area of
24 inquiry that was properly directed to Mr. Anderson.

25 Q. I was just asking it because it was a

1 part of your testimony, but let's pass on the
2 question.

3 There has been discussion and there is
4 discussion in your testimony at the top of page 20
5 about the shadow billing data. What in this figure
6 of \$884,587,332 implies that the CHOICE program was
7 designed to generate guaranteed savings?

8 THE WITNESS: Could I have that question
9 read back, please?

10 (Record read.)

11 A. I think in that answer I'm referring to
12 some of the discussion and the comments in other
13 pleadings that were filed earlier in this proceeding
14 that seemed to indicate there was an intent in the
15 establishment of the CHOICE program premised on some
16 kind of guaranteed or minimum level of savings, and
17 that was not why the program was established.

18 Q. But the shadow billing data is accurate,
19 to the best of your knowledge.

20 A. Shadow billing is an -- is a comparison
21 of what customers under the CHOICE program paid and
22 what they might have paid under service from
23 Columbia. There are lots of -- there are many
24 variables and different circumstances and changes in
25 programs over the years that would have been included

1 or reflected in that calculation.

2 Q. But for what it is, a comparison between
3 what CHOICE customers paid and what customers served
4 through initially the GCR through its many
5 incarnations and then the SSO and the SCO, it is what
6 it is, that's what that number represents.

7 A. With acknowledgment of the changes and
8 differences and different circumstances, yes, it is
9 what it is.

10 Q. And I just have one last question about
11 your direct testimony. And this is on the very last
12 page which I believe is page 24. You indicate that
13 the -- and I'm quoting on line 1, "The Stipulation is
14 consistent with the Commission precedent and
15 specifically with the Commission's actions with
16 respect to Dominion East Ohio in Commission Case
17 No. 12-1842-GA-EXM."

18 My question is, Mr. Brown, if you know,
19 has the Commission issued a final opinion and order
20 in that case?

21 A. I don't believe so.

22 Q. Let's move to your supplemental
23 testimony, then. At the bottom of 6, line 38 and 39,
24 you indicate that "The Amended Stipulation clarifies
25 that only Columbia may file an application to exit

1 the merchant function for Columbia's residential
2 customers."

3 Now, that is limited to the term of the
4 stipulation, correct? That commitment.

5 I'm sorry, take your time.

6 A. Yes.

7 Q. And after the stipulation, the terms of
8 this stipulation expire, any party could file a
9 complaint under 4929.04 in order to -- in order to
10 request an exit.

11 A. I don't believe that's correct.

12 Q. I'm sorry. Section 4929.08.

13 A. I don't believe that's correct, your
14 statement is correct.

15 Q. Could you tell me why?

16 A. To the best of my recollection, I don't
17 think Chapter 4929 permits entities other than the
18 utility to file an exemption, and I believe also that
19 the rules that you had mentioned earlier for
20 implementing exemption or exit the merchant function
21 filings would only provide for the utility to file
22 such an application.

23 Q. And the last question I have, or it may
24 be two questions but it's on the same point, just to
25 clarify your answers to OCC questions, at this point

1 there is no mechanism designed to prevent
2 double-billing for the balancing fee?

3 A. That's correct.

4 MR. RINEBOLT: Thank you very much,
5 Mr. Brown.

6 THE WITNESS: You're welcome.

7 EXAMINER PIRIK: Mr. Einstein?

8 MR. EINSTEIN: No questions, your Honor.

9 EXAMINER PIRIK: Mr. Stinson?

10 MR. STINSON: Thank you.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Stinson:

14 Q. Bear with me, Mr. Brown. Mr. Rinebolt
15 took a lot of my questions so I want to go through
16 and see what I have left here.

17 On the last question that he asked
18 regarding the balancing fee, I understand that
19 there's no system to ensure that that protection is
20 given. Could there be resistance to that proposal to
21 have the marketers change their contract price from
22 the marketers themselves?

23 A. That's possible.

24 Q. On your direct testimony generally on
25 lines 10 to 13 on page 8, you indicate that the new

1 SCO security deposit needed to pay default expenses,
2 I just want to know whether any SCO supplier in
3 Columbia's territory has ever defaulted.

4 A. No.

5 Q. Do you know whether SCO suppliers in any
6 other LDC's territory in Ohio have defaulted?

7 A. I don't know.

8 Q. Have any defaulted, to your knowledge?

9 A. I don't know.

10 Q. Has any SSO supplier operating in
11 Columbia's territory defaulted?

12 A. No.

13 Q. And what about any CHOICE suppliers, have
14 any CHOICE suppliers operating in your territory
15 defaulted?

16 A. To the best of my knowledge, there have
17 been a couple small ones. The other example that
18 occurs to me was the bankruptcy of Enron a number of
19 years ago.

20 Q. Do you remember an entity in Ohio called
21 New Power back in 2002?

22 A. I have no recollection.

23 Q. Thanks.

24 Now, isn't it true that the costs to be
25 incurred by Columbia in the event of a default of an

1 SCO supplier is that the -- is the cost of the volume
2 needed to meet the demand over 150 percent of the
3 tranches they serve?

4 A. No, I think there might be other direct
5 costs that Columbia would have to incur, primarily on
6 a short-term or emergency basis in the event of a
7 default.

8 Q. Turning to the second revised program
9 outline, page 20, paragraph 5. Sorry, page 21 at
10 paragraph 5.

11 MR. CONWAY: This is the version that
12 we've marked as an exhibit, Mr. Stinson; is that
13 correct?

14 MR. STINSON: Yes, it was marked as
15 Columbia Exhibit 2.

16 A. What was the page number, please?

17 Q. Page No. 21, paragraph 5. I'll give you
18 a chance to review that, let me know when you're
19 ready.

20 A. Okay.

21 Q. I believe that this involves a situation
22 where an SCO supplier is also a CHOICE supplier,
23 correct?

24 A. I think it covers the situation both of
25 an SCO supplier without a CHOICE market and also a

1 supplier that is serving both markets.

2 Q. Thank you.

3 Now, paragraph 5 speaks of "CHOICE
4 Customers, SCO Customer, or DSS customer quantities
5 that are unserved as a result of a CHOICE/SCO
6 Supplier default will be allocated to the remaining
7 SCO Suppliers, in concert with the monthly
8 development of Demand Curves in the next available
9 monthly billing cycle...."

10 My question is: Until that next
11 available monthly billing cycle who serves those
12 defaulted customers?

13 A. I believe they would be served by
14 Columbia.

15 Q. Then in paragraph 5i it talks about
16 allocating those customers up to the 150 percent
17 threshold in the credit requirements, correct?

18 A. Which subparagraph?

19 Q. I. Small i.

20 A. Oh, yes.

21 Q. And then paragraph I guess small ii talks
22 about unserved demand over the 150 percent limit.
23 And it's my understanding from reading that paragraph
24 that that unserved demand over that limit would also
25 be served by Columbia; is that correct?

1 A. Yes.

2 Q. On page 11 of your initial testimony,
3 Exhibit 6 at line 33 --

4 A. Wait a minute. Original testimony?

5 Q. Yeah.

6 A. Page?

7 Q. 11.

8 A. Okay.

9 Q. Line 33. It's going to carry over to the
10 next page, too. Just a reference that talks about
11 the nonresidential education programs, and on page 12
12 it speaks of two phases, there was a Phase 1 program
13 that will be targeted to all CHOICE-Eligible
14 customers; is that correct?

15 A. Yes.

16 Q. And that program will include explaining
17 the rights to choose another supplier and also make
18 references to the Apples to Apples chart?

19 A. Yes.

20 Q. Now, if CHOICE customers, customers that
21 are taking service from a CHOICE supplier, receive
22 that information, isn't there a benefit to them to
23 know that there are other suppliers and other prices
24 out there?

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

1 Q. Well, here, in Phase 1 of the program,
2 again, the target of the program information is all
3 CHOICE customers, we've established -- all
4 CHOICE-Eligible customers. I think we've established
5 that. And those program requirements will provide
6 those CHOICE-Eligible customers with an Apples to
7 Apples chart, and that Apples to Apples chart would
8 show those CHOICE-Eligible suppliers the prices of
9 the suppliers that are out there in the market for
10 which they could take service, correct?

11 A. To the extent they're listed on the
12 Apples to Apples, yes, it could.

13 Q. I'm just trying to see if there was a
14 benefit to those CHOICE-Eligible suppliers of
15 receiving that information such that they can see
16 what other suppliers are out there, another supplier
17 may have a lower price than what the customer
18 currently has.

19 A. Is the question whether CHOICE-Eligible
20 customers would benefit from having that information?

21 Q. Yes.

22 A. Sure.

23 Q. What about CHOICE suppliers, would they
24 benefit by having that information too,
25 CHOICE-Eligible customers, if suppliers wanted to

1 show what prices they have, that their prices may be
2 lower? If customers are provided that information,
3 would that be a benefit to those CHOICE suppliers?

4 A. Could be.

5 Q. It could be how?

6 A. Having their information provided to
7 customers that might not have it.

8 Q. And so that those customers could select
9 service with the other CHOICE supplier.

10 A. That's always an option.

11 Q. Thanks.

12 Page 12, line 20, the stipulation
13 addresses Phase 2 of the education program and that
14 is going to be directed to the remaining
15 nonresidential customers who haven't shopped.

16 MR. CONWAY: Can I have that question
17 again -- I'm sorry. If you're finished, can I have
18 the question read back, please?

19 (Record read.)

20 MR. CONWAY: Thank you.

21 Q. Is that correct?

22 A. Yes.

23 Q. And that information will also consist of
24 the Apples to Apples chart?

25 A. The stipulation provides it would include

1 the Apples to Apples.

2 Q. Much like we talked about just a second
3 ago, if that information were given to customers, it
4 would be a benefit to CHOICE suppliers because those
5 customers would be able to look at the prices and
6 products of the CHOICE suppliers.

7 A. Yes.

8 Q. Thank you.

9 Directing you to page 7 of Joint Exhibit
10 No. 1 which is the amended stipulation. It says
11 there "If Columbia exits from the merchant function
12 for any customer class, Columbia will provide no
13 default commodity service for CHOICE-Eligible
14 customers...."

15 A. What line are you looking at?

16 Q. Paragraph 20, there's no line to it, just
17 the first sentence in the paragraph.

18 A. Yes.

19 Q. I'm just a little bit confused there
20 that, when I read that, I took that to mean that you
21 currently provided a default service, in response to
22 Mr. Rinebolt, was that the SCO was not a commodity
23 service. Is the MVR a commodity service?

24 MR. CONWAY: Could I have the question
25 read back, please?

1 (Record read.)

2 MR. CONWAY: You can stop there, I think
3 that's not what he said, but -- you can ask him the
4 question about the premise, but I would object to it,
5 the characterization of what he told Mr. Rinebolt
6 about the nature of the SCO service.

7 Q. Do you recall the question and answer
8 from Mr. Rinebolt, Mr. Brown?

9 A. Not specifically.

10 Q. I guess I'll restate Mr. Rinebolt's
11 question. Do you view SCO service as a default
12 service?

13 A. In the context of a service provided for,
14 arranged for by Columbia for CHOICE-Eligible
15 customers that do not shop, I think I would say that
16 is a default service.

17 In the context of this paragraph,
18 paragraph 20, we're talking about once an exit for
19 any -- exit from the merchant function has occurred,
20 there would no longer be a default service in that
21 sense of a service paid for -- or, I'm sorry,
22 arranged for or provided by Columbia.

23 Q. So you're saying the MVR would not be a
24 default service.

25 A. Not arranged by Columbia, that's correct.

1 EXAMINER PIRIK: Before we move on can we
2 go off the record for a minute.

3 (Discussion off the record.)

4 EXAMINER PIRIK: Mr. Stinson.

5 MR. STINSON: Thank you.

6 Q. Let's see here. Page 15, line 18 of your
7 initial testimony you indicate that --

8 A. Wait a minute.

9 Q. I'm sorry.

10 A. Page 15?

11 Q. Yes. Line 18.

12 A. Okay.

13 Q. You just state there that customers will
14 remain on Columbia's customer list. By that do you
15 mean that CHOICE-Eligible customers will be available
16 for aggregation?

17 A. Yes.

18 Q. I had some aggregation questions for you,
19 Mr. Brown, but, like Mr. Rinebolt, I think I'll
20 reserve those for other folks.

21 Just getting back to the stipulation a
22 bit and just in general terms. Just at the exit of
23 any class, is it correct that non-CHOICE customers
24 will be assigned to a specific MVR supplier?

25 A. Upon the exit?

1 Q. Yes.

2 A. Yes, that's correct.

3 Q. Now, those customers that are assigned to
4 an MVR supplier, they'll remain with that MVR
5 supplier until the customer chooses another supplier?

6 A. Yes.

7 Q. Of course, if the MVR supplier is
8 terminated, the customer could be reassigned to
9 another MVR supplier, correct?

10 A. Yes.

11 Q. Now, the stipulation also requires the
12 periodic disclosure of MVR prices to MVR customers;
13 is that correct? If you want a reference, it's in
14 the stipulation, page 9, paragraph 26.

15 A. Yes.

16 Q. My question is, since you're giving
17 periodic disclosures of MVR prices, can an MVR
18 customer that's assigned to one MVR supplier at some
19 point choose to be a customer of another MVR supplier
20 for that MVR rate?

21 A. You're asking if an MVR customer could
22 sign an agreement for an MVR rate from another
23 supplier?

24 Q. Yes.

25 A. Yes.

1 Q. With the other supplier at the other
2 supplier's standard price, terms of condition and
3 service.

4 A. I would think they could sign an
5 agreement with another supplier for any offering that
6 that supplier had in the market. It's the same thing
7 as signing up for a choice contract with another
8 supplier.

9 Q. Would the customer have to sign an
10 agreement to be reassigned to another MVR supplier?
11 Would they just make that request to be in that MVR
12 program with that supplier?

13 A. I think after they've been assigned --
14 after a customer has been assigned to an MVR
15 supplier, if they want to go with another supplier,
16 they would have to sign an agreement.

17 Q. The stipulation imposes certain
18 restrictions on MVR suppliers. I just want to
19 clarify that with you, that they include that MVR
20 suppliers cannot charge an early termination fee; is
21 that correct?

22 A. Do you have a reference for that?

23 Q. Yeah.

24 A. I think you're correct, but I'd like the
25 reference to check it.

1 Q. In your testimony at page 16, line 15 and
2 16.

3 A. Yes.

4 Q. And the commodity price must be based on
5 NYMEX, correct? That would be stipulation page 7,
6 paragraph 20.

7 A. Yes.

8 Q. The next is that the stipulation must be
9 posted on the Apples to Apples chart, correct,
10 stipulation 13, paragraph 40?

11 MR. CONWAY: Could I have that reference
12 again, Mr. Stinson?

13 MR. STINSON: Stipulation page 9,
14 paragraph -- I'm sorry. Stipulation page 13,
15 paragraph 40.

16 A. What was the question?

17 Q. I'm just trying to confirm that the
18 restrictions on the MVR program suppliers is that the
19 MVR price must be posted on the Apples to Apples
20 chart.

21 A. That's what paragraph 40 says.

22 Q. Thanks.

23 Are there any other limitations to the
24 MVR suppliers' prices, terms, or conditions of
25 service?

1 A. Not that I recall without going back
2 through a detailed reading of that portion of the
3 stipulation.

4 Q. The last page of your initial testimony,
5 page 24, the first answer there, lines 1 to 3 --

6 A. Yes.

7 Q. -- there you reference the Dominion East
8 Ohio case. Do you know that the stipulation in the
9 Dominion case also contained a SCO security deposit
10 provision?

11 A. I don't know.

12 Q. Upon the residential exit from the
13 merchant function do you know if auctions will still
14 be held to serve non-CHOICE-Eligible customers?

15 A. I can't -- to the best of my
16 recollection, the stipulation does not address that
17 issue.

18 Q. Has there been any discussions as to how
19 the non-CHOICE-Eligible customers will be served upon
20 exit?

21 A. To the best of my recollection, there was
22 a general discussion that the non-CHOICE-Eligible
23 customers would be served through a RFP process, not
24 necessarily by an auction.

25 Q. But there is nothing in the stipulation

1 that calls for the end of the auction for
2 non-CHOICE-Eligible customers, correct?

3 A. I believe that's correct.

4 Q. Under the RFP process who would
5 administer the RFP process?

6 A. I would expect that would be done by
7 Columbia.

8 Q. Just a few more, Mr. Brown.

9 I know that in the prior stipulation --
10 in the other case, 08-1344 -- that there was a
11 statement that Columbia has not expressed a present
12 intent to, nor does this agreement contemplate, that
13 Columbia seeks to exit the merchant function. Even
14 under that, that filed stipulation, Columbia could
15 have filed a new application for residential exit,
16 could it not?

17 A. I'm sorry.

18 Q. Nothing prohibited Columbia for filing a
19 new application for a residential exit, did it?

20 A. Nothing in the old stipulation?

21 Q. Right. I don't mean it to be that
22 technical. Let me rephrase the question for you.

23 so that even if Columbia at a certain
24 point in time intended not to exit the merchant
25 function, nothing would preclude Columbia at some

1 point in the future from filing an application to
2 exit.

3 A. I don't think there was any statement or
4 any provision one way or another in the existing
5 stipulation.

6 Q. Okay. Just by the same token, if this
7 joint motion were not approved and the joint
8 stipulation were not approved in this proceeding,
9 nothing would preclude Columbia at some point in the
10 future from filing a new application to exit the
11 merchant function on its own for residential
12 customers, would it?

13 In other words, you don't need approval
14 of this joint stipulation to at some point in the
15 future file an application to exit the residential
16 market.

17 A. Absent approval of -- if this stipulation
18 is not approved, I think all parties have, you know,
19 the full array of options open to them.

20 Q. Yeah, you have the legal right under
21 section 4929.04 to file another application, correct?

22 A. Yes.

23 MR. STINSON: Thank you. No further
24 questions, your Honor.

25 Thank you, Mr. Brown.

1 THE WITNESS: You're welcome.

2 EXAMINER PIRIK: Mr. Conway, redirect?

3 MR. CONWAY: May we have just a minute,
4 your Honor, to make our decision?

5 EXAMINER PIRIK: Yes. Let's go off the
6 record.

7 (Discussion off the record.)

8 EXAMINER PIRIK: We'll take five minutes
9 and we'll complete Mr. Brown, then take a lunch break
10 and come back for the other two witnesses.

11 (Recess taken.)

12 EXAMINER PIRIK: Go back on the record.
13 Mr. Conway.

14 MR. CONWAY: Thank you, your Honor.
15 Columbia has no redirect examination for Mr. Brown.

16 EXAMINER PIRIK: Thank you, Mr. Brown.

17 MR. CONWAY: At this time, your Honor,
18 Columbia would move for the admission of Exhibits 6
19 and 7, Mr. Brown's direct and supplemental direct
20 testimony.

21 EXAMINER PIRIK: Are there any
22 objections?

23 (No response.)

24 EXAMINER PIRIK: Columbia Exhibits 6 and
25 7 will be admitted into the record.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 MS. LESLIE: Your Honor, at this time
3 Columbia has no further witnesses and would like to
4 move Columbia Exhibit 1, the proof of legal notice,
5 Columbia Exhibit 2, the revised program outline filed
6 November 28th, 2012, and Columbia Exhibit 3, the
7 revised tariff sheets into the record.

8 EXAMINER PIRIK: Are there any
9 objections?

10 MR. RINEBOLT: Your Honor, I have a
11 question.

12 EXAMINER PIRIK: Yes.

13 MR. RINEBOLT: It's my understanding that
14 Joint Exhibit 1 is only the stipulation and I wanted
15 to inquire, because we intend to cite to the motion
16 itself, if you would prefer to have the motion on the
17 record and accepted as an exhibit.

18 EXAMINER PIRIK: Here's my difficulty is
19 that testimony also refers to the comments, so even
20 though I know that OCC's comments have been changed,
21 in order to keep the record complete I'm thinking we
22 need to mark the comments so that to the extent
23 they're being referenced in testimony, that would be
24 appropriate.

25 What you're saying is that in your brief

1 you intend on citing to the motion or just in
2 general?

3 MR. RINEBOLT: To the joint amended
4 motion.

5 EXAMINER PIRIK: Yeah, I think for
6 reference purposes, citing purposes, it would be
7 helpful, and I'm fine with Joint Exhibit 1 being the
8 stipulation and then perhaps we could make Joint
9 Exhibit 2 the actual joint motion.

10 MS. LESLIE: Yes, your Honor, if that's
11 what you would prefer, we can do that. So if we can
12 mark for the record as Joint Exhibit 2 the joint
13 motion to modify -- the amended joint motion to
14 modify.

15 EXAMINER PIRIK: Do we have a filing?

16 MS. LESLIE: We can mark that as Joint
17 Exhibit 2.

18 MR. SERIO: Just to keep it clear, that
19 was the one that was filed on the 27th?

20 MS. LESLIE: Yes.

21 So at this time -- actually, we'll hold
22 off on moving the joint exhibit.

23 EXAMINER PIRIK: Okay. Are there any
24 objections to Columbia Exhibits 1 and 2 and 3?

25 (No response.)

1 EXAMINER PIRIK: Hearing none, those
2 exhibits will be admitted into the record.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 EXAMINER PIRIK: At this time we're going
5 to take a lunch break until, let's say 1:20, and then
6 we'll reconvene and take the two witnesses this
7 afternoon.

8 (Luncheon recess taken.)

9 - - -

1 Wednesday Afternoon Session,
2 December 5, 2012.

3 - - -

4 EXAMINER PIRIK: We'll go on the record.
5 Mr. Rinebolt.

6 MR. RINEBOLT: I have been informed by
7 one of my colleagues that you already granted my
8 motion to practice pro hac vice.

9 EXAMINER PIRIK: I was looking, what
10 entry was that in? Perhaps I didn't bring that with
11 me.

12 MR. EINSTEIN: It was filed on 11/21.

13 MR. RINEBOLT: 11/21 entry, your Honor.
14 It was ruling on all the motions to intervene.

15 EXAMINER PIRIK: Yeah, that's the one
16 entry that I didn't put in my book so I couldn't for
17 sure say that I didn't but I'm thinking I'm pretty
18 sure I did that.

19 MR. RINEBOLT: My apologies.

20 EXAMINER PIRIK: I want to be sure you're
21 legal. As long as you're legal, that's all --

22 MR. RINEBOLT: Thank you so much.

23 EXAMINER PIRIK: Thank you for finding
24 that.

25 MS. LESLIE: Your Honor.

1 EXAMINER PIRIK: Yes.

2 MS. LESLIE: Prior to moving to the next
3 witness, Columbia would like to make its reply
4 comments as Columbia Exhibit 8 and move into
5 admission.

6 EXAMINER PIRIK: Since we are doing that
7 why don't we just go ahead right now and mark all of
8 the comments that have been filed.

9 Mr. Rinebolt.

10 MR. RINEBOLT: Your Honor, I would
11 request that we mark OPAE's comments in this
12 proceeding as OPAE Exhibit No. 1.

13 EXAMINER PIRIK: The document will be
14 marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 EXAMINER PIRIK: Mr. Sauer.

17 MR. SAUER: Your Honor, I would ask that
18 OCC comments filed November 5th be marked OCC
19 Exhibit No. 2, and we'll mark Bruce Hayes's testimony
20 as OCC Exhibit No. 1, if that's all right.

21 EXAMINER PIRIK: Yes, we'll mark
22 Mr. Hayes's testimony as Exhibit No. 1?

23 MR. SAUER: Right.

24 EXAMINER PIRIK: Okay. Those will be
25 marked.

1 (EXHIBITS MARKED FOR IDENTIFICATION.)

2 EXAMINER PIRIK: Mr. Petricoff.

3 MR. PETRICOFF: Yes, your Honor. The
4 RESA, Ohio Gas Marketers Group, we have comments and
5 reply comments, we have not had anything marked yet
6 so we'll mark our initial ones as RESA OGMG-1 and our
7 reply as RESA OGMG-2.

8 EXAMINER PIRIK: The documents are so
9 marked.

10 (EXHIBITS MARKED FOR IDENTIFICATION.)

11 EXAMINER PIRIK: I believe those were the
12 only comments, is that correct?

13 MR. REILLY: That's correct.

14 EXAMINER PIRIK: Okay. With regard to
15 the comments, why don't we just go ahead and, since I
16 want to have those in the record anyway, the parties
17 are moving those comments into the record?

18 MR. RINEBOLT: Move approval, your Honor.

19 MS. LESLIE: Yes, your Honor.

20 MR. SAUER: Yes, your Honor.

21 MR. PETRICOFF: Yes, your Honor.

22 EXAMINER PIRIK: With the exception of
23 Mr. Hayes, which we will wait for Mr. Hayes's
24 testimony, Columbia Exhibit 8, OPAE Exhibit 1, OCC
25 Exhibit 2, OGM/RESA Exhibits 1 and 2. Are there any

1 objections to those exhibits?

2 (No response.)

3 EXAMINER PIRIK: Hearing none, they'll be
4 admitted into the record.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER PIRIK: The next witness,
7 Mr. Clark, are you going next?

8 MR. CLARK: Yes, your Honor. Your Honor,
9 Direct Energy calls Cory Byzewski, please. And then
10 may I approach, your Honor?

11 EXAMINER PIRIK: Yes.

12 Please raise your right hand.

13 (Witness sworn.)

14 EXAMINER PIRIK: Thank you.

15 MR. CLARK: Your Honor, I request that
16 Mr. Byzewski's testimony be marked as Direct Energy
17 Exhibit 1.

18 EXAMINER PIRIK: The document is so
19 marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 - - -

22

23

24

25

1 D. CORY BYZEWSKI

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

4 DIRECT EXAMINATION

5 By Mr. Clark:

6 Q. Mr. Byzewski, will you state your name
7 and address for the record, please?

8 A. My name is Cory Byzewski. My business
9 address is 1001 Liberty Avenue, Suite 1200,
10 Pittsburgh, PA.

11 Q. By who are you employed and in what
12 capacity?

13 A. I'm employed by Direct Energy. I'm
14 currently the Vice President for Company-Owned
15 Operations for Clockwork Home Services.

16 Q. And do you have before you a document
17 marked as Direct Energy Exhibit No. 1?

18 A. I do.

19 Q. And can you identify that document?

20 A. It's my prepared testimony.

21 Q. And do you have any corrections or
22 additions to the testimony?

23 A. No. I think the only change since I last
24 did it was the line numbering.

25 MR. CLARK: And, your Honor, we provided

1 a copy with the line numbers to you as well as the
2 court reporter.

3 Q. If I were to ask you the questions
4 contained in Direct Energy Exhibit 1 on the stand
5 today, would your answers be the same as set forth
6 therein?

7 A. Yes, they would.

8 MR. CLARK: Your Honor, I'd move for
9 admission of the document of Direct Energy Exhibit
10 No. 1 and offer the witness up for cross-examination.

11 EXAMINER PIRIK: Thank you.

12 Mr. Petricoff?

13 MR. PETRICOFF: No questions, your Honor.

14 EXAMINER PIRIK: Columbia?

15 MS. LESLIE: No questions, your Honor.

16 EXAMINER PIRIK: Mr. Sauer or Mr. --

17 MR. SAUER: No questions, your Honor.

18 EXAMINER PIRIK: Mr. Reilly?

19 MR. REILLY: No questions, your Honor.

20 EXAMINER PIRIK: Mr. Rinebolt?

21 MR. RINEBOLT: Yes, your Honor, I have
22 two.

23 - - -
24
25

CROSS-EXAMINATION

By Mr. Rinebolt:

Q. Good afternoon.

A. Good afternoon.

Q. Referring to page 8, and I don't have a line number but I counted and I think it's line 7 and 8 --

A. Okay.

Q. -- you indicate that "Direct Energy has invested significant time and money to build a brand and a base of customers in Ohio"; is that correct?

A. That is correct.

Q. Did Direct Energy relocate its corporate office from Ohio to Pittsburgh?

A. No. It's relocated its corporate office from Toronto to Huston.

Q. To Houston. Did it relocate any offices that were in Ohio to Pittsburgh?

A. Yes, we have relocated offices from Ohio to Pittsburgh.

Q. And what is the nature of those offices? What is their function?

A. There was a small regional office in Columbus and we -- when we bought Strategic Energy in I believe it was 2009, could have been 2008, we

1 centralized several operations in Pittsburgh with
2 that and that was residential energy and small
3 commercial and business energy as well. But it
4 wasn't a corporate office. It wasn't a headquarters.

5 Q. All right. Did any people lose their
6 jobs as a result of the move from Columbus to
7 Pittsburgh?

8 MR. CLARK: Objection, your Honor.
9 Relevance. I don't understand where this is going.

10 MR. RINEBOLT: Your Honor, the relevance
11 is, is that the testimony indicates that Direct
12 Energy has invested significant time and money in
13 Ohio to build a brand name and base of customers.
14 We're just interested to see whether that also
15 equaled employment in the state and if that changed
16 when the offices were relocated.

17 EXAMINER PIRIK: Mr. Clark.

18 MR. CLARK: Your Honor, I guess I'm just
19 failing to see how it's relevant to Mr. Byzewski's
20 testimony. I mean -- yes.

21 EXAMINER PIRIK: I'm going to sustain the
22 objection.

23 MR. RINEBOLT: No more questions, your
24 Honor.

25 EXAMINER PIRIK: Mr. Einstein?

1 MR. EINSTEIN: No questions, your Honor.

2 EXAMINER PIRIK: Mr. Stinson?

3 MR. STINSON: Just a few, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Stinson:

7 Q. Good afternoon, Mr. Byzewski.

8 A. Good afternoon.

9 Q. Just a few questions. First of all,
10 looking at your attachments, and I don't think the
11 pages are numbered but I'll call it the second page,
12 the "Facts and Figures, Our Operations" and then the
13 first block has "Direct Energy Business," the second
14 block, "Direct Energy Residential." Do you have
15 that?

16 A. Yep.

17 Q. The second block there for Direct Energy
18 Residential states that Direct Energy is the largest
19 residential energy retailer in North America,
20 correct?

21 A. It does.

22 Q. That includes electric and natural gas?

23 A. It does.

24 Q. As far as Ohio operations, would Direct
25 Energy be the largest competitive retail natural gas

1 provider to residential customers in Ohio?

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

3 Q. Would it be one of the largest?

4 A. It would be.

5 Q. I note that on page 2 of your testimony
6 you were employed by The New Power Company; is that
7 correct?

8 A. I was.

9 Q. And what is the nature of the business of
10 New Power?

11 A. New Power was a energy marketer in I
12 believe from about 2000 to 2002 until it filed for
13 bankruptcy.

14 Q. And did it supply residential natural gas
15 service to customers in Ohio?

16 A. I believe it did, yes.

17 Q. And did it default on those contracts
18 when it filed bankruptcy?

19 A. I don't know.

20 Q. Do you know if those customers were
21 assigned to the bankruptcy court?

22 A. I do not.

23 MR. STINSON: I'm marking what would be
24 Hess Exhibit, I'll reserve No. 1 for our primary
25 witness, I'll mark this as Hess Exhibit 2.

1 EXAMINER PIRIK: The document is so
2 marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. STINSON: If I can approach, your
5 Honor.

6 EXAMINER PIRIK: Yes.

7 Q. If you can just review the first
8 paragraph or so there, Mr. Byzewski.

9 EXAMINER PIRIK: Mr. Stinson, do you need
10 this copy?

11 MR. STINSON: Yes.

12 MS. LESLIE: Your Honor, if we could get
13 a citation as to what this is so perhaps the other
14 parties can try to get on the same page.

15 MR. STINSON: I will, I'm just going to
16 be asking for administrative notice of this.

17 MR. CLARK: Your Honor, I object. If
18 he's going to ask for administrative notice, we don't
19 need an exhibit.

20 EXAMINER PIRIK: I understand, but
21 sometimes it is easier just to mark them as exhibits,
22 but if we're considering them administrative notice
23 for citing purposes, it's just easier for the record,
24 but I do understand. But you need to explain exactly
25 what it is on the record.

1 MR. STINSON: I will. It's an entry of
2 the Commission, it's a case that's captioned "In the
3 Matter of the Request for -- Request of New Power
4 Company for Waivers of the Requirements to Obtain a
5 Certificate for the Provision of Retail Natural Gas
6 Service." It was filed on October 17th, 2002, and
7 in the first paragraph it just explains --

8 MS. LESLIE: I'm sorry. Can we get a
9 case number?

10 MR. STINSON: 02-1666-GA-UNC.

11 MS. LESLIE: Thank you.

12 Q. Have you looked at that, Mr. Byzewski?

13 A. Yes, I have.

14 Q. Does that refresh your memory as to the
15 bankruptcy of New Power and the disposition of its
16 customers in paragraph 4?

17 MR. CLARK: Objection.

18 A. I'm not sure if it refreshes my memory
19 but it tells me what it is.

20 Q. Okay, thank you.

21 EXAMINER PIRIK: Mr. Clark.

22 MR. CLARK: He answered the question,
23 your Honor. Withdraw the objection.

24 MR. STINSON: He answered it.

25 I'd like to ask the Court to take

1 administrative notice of this entry.

2 EXAMINER PIRIK: Any objections?

3 MR. CLARK: I object, your Honor.

4 EXAMINER PIRIK: To taking administrative
5 notice?

6 MR. CLARK: I'm sorry, I jumped the gun.
7 Excuse me. I mean, your Honor, it's an order of the
8 Commission, he can cite it as precedent if he wants,
9 so.

10 EXAMINER PIRIK: We'll take
11 administrative notice, I mean, we're going to
12 continue to refer to it as Hess Exhibit 2 but it's
13 administrative notice.

14 MR. STINSON: Thank you.

15 Q. (By Mr. Stinson) Mr. Byzewski, Direct
16 Energy proposes proportional allocation of SCO
17 customers to the MVR upon exit of nonresidential and
18 nonresidential customers, correct?

19 A. It does.

20 Q. Now, at page 4 I was just going to refer
21 you to answer 9 because I don't have mine numbered,
22 you state that "Each Supplier's market share would be
23 calculated based on their total number of choice
24 eligible customers served inclusive of those enrolled
25 organically on a bi-lateral contract as well as

1 customers in community aggregation programs...."

2 I guess the first question: What do you
3 mean by "organic"?

4 A. So a customer originally came through an
5 energy marketer in some fashion other than through an
6 SCO process.

7 Q. That would be like an individual
8 bilateral contract with that customer?

9 A. How they initially signed up with an
10 energy marketer, that would be the case.

11 Q. Okay. And then the other example you
12 give is a community aggregation program, correct?

13 A. Correct.

14 Q. You also use the word "inclusive." I'm
15 just wondering if there's any other classes or groups
16 of customers you're referring to or you're just
17 including the organic and the governmental
18 aggregation customers in your allocation.

19 A. The only two that come to mind would be
20 the bilateral and the aggregations.

21 Q. Thank you.

22 Now, you also indicate on page 4 and 5,
23 answer 9, that the proportional allocation
24 methodology should not include customers won through
25 the SCO auction process, correct?

1 A. That is correct.

2 Q. Does Direct Energy currently serve SCO
3 customers in Columbia's territory?

4 A. We do not.

5 Q. Does Direct Energy serve governmental
6 aggregation customers in Ohio?

7 A. We do.

8 Q. Do you have any idea about the balance
9 between the bilateral numbers, bilateral contract
10 numbers, and governmental aggregation numbers for
11 customers you serve?

12 A. The vast majority are bilateral
13 contracts.

14 Q. Are you familiar with the process for
15 opt-out governmental aggregation in Ohio?

16 A. Somewhat, yes.

17 Q. Generally.

18 A. Generally.

19 Q. Do you want to try it? Let's start after
20 the -- we'll just walk through the different steps.
21 Start after the -- there's been a referendum plan of
22 operation, the community's ready to go, the next
23 thing they would do would be to issue an RFP to serve
24 a community's load, correct?

25 A. I'm going to take your word for that.

1 I'm not entirely sure.

2 MR. CLARK: I'm sorry, your Honor, can I
3 object here. I think it's beyond the scope of his
4 testimony. I mean, we talk about an allocation
5 methodology, but we don't ever discuss the
6 intricacies of how government aggregation works.

7 MR. STINSON: Your Honor, he's
8 distinguishing his organic customers and aggregation
9 customers from SCO customers and I have every right
10 to inquire about the differences between the three.

11 EXAMINER PIRIK: Overruled.

12 Q. The community and the selected suppliers
13 then would enter into a supply agreement to serve the
14 load; is that correct?

15 A. I'm not entirely sure if we're missing
16 any steps, but that is part of the process.

17 Q. This is just a general process, the high
18 points.

19 A. Okay.

20 Q. The community and/or supplier would then
21 obtain the names and other information from the
22 utility about the eligible customers, account
23 numbers, addresses.

24 A. That's a part of the process, yes.

25 Q. The community and/or supplier would then

1 send opt-out notices to the eligible customers
2 explaining price, terms, and conditions of service.

3 A. That is correct.

4 Q. If an eligible customer does not want to
5 be a member of the aggregation, that customer must
6 affirmatively opt out of the aggregation program; is
7 that correct?

8 A. That is correct.

9 Q. By returning a postcard or calling the
10 supplier?

11 A. There's multiple processes that folks
12 use.

13 Q. Okay, thanks.

14 If an eligible customer does nothing,
15 that customer's automatically enrolled in the
16 aggregation, correct?

17 A. Correct.

18 Q. And the supplier, the competitive retail
19 natural gas supplier who supplies the community, does
20 not enter into an individual bilateral contract with
21 that customer.

22 A. No, they've done it through the community
23 by proxy.

24 Q. Well, my understanding is that the
25 opt-out notice would contain the price, terms, and

1 conditions, right?

2 A. Yes, it does.

3 Q. The customer can review those, right?

4 A. Yes.

5 Q. Then make a decision whether to opt out
6 or do nothing, correct?

7 A. Yes, the customer does make a decision at
8 that point, you are correct.

9 Q. Right. The customer does not enter into
10 an individual bilateral contract.

11 A. The customer has chosen to participate in
12 the program so they've made an affirmative decision
13 bilaterally with us to either be served by us and do
14 nothing or to contact us and opt out of the program.

15 Q. If the customer opts out, the customer
16 remains on the SCO rate, right?

17 A. Yes, because that customer would have
18 been on the SCO rate at that point.

19 Q. And during the term of the aggregation
20 period the customer can leave the aggregation program
21 and return to SCO service, correct?

22 A. You are correct, yeah, the customer has
23 the right to make a choice and they start with their
24 original choice to stay with the aggregation; when
25 they want to choose to leave, they have the right to

1 do so.

2 Q. And an opt-out program, a customer has
3 that right to opt out each two years of the program,
4 right?

5 A. They have the right to opt out at any
6 time.

7 Q. Let me rephrase that, then. Every two
8 years they have a right to opt out without a fee, a
9 termination fee.

10 A. I think with all our aggregations they
11 can opt out at any time without a termination fee.

12 Q. That's fine, I'll clear that up on brief
13 with the statute. That's fine.

14 A community also can choose to terminate
15 or not renew a supply agreement with a supplier; is
16 that correct?

17 A. That is correct.

18 Q. If the community chooses not to renew or
19 does terminate the agreement, it has the option to
20 enter into a supply agreement with another supplier.

21 A. Yes, the community has the option to do
22 that.

23 Q. That community can also choose not to
24 continue with the aggregation program and return the
25 members to the SCO.

1 A. Yes, I believe that's correct.

2 Q. Upon termination of the supply agreement
3 with the supplier -- I'm sorry, upon termination of
4 the supply agreement with the community, the
5 governmental aggregator has no right to keep that
6 customer, right? Or keep those aggregation member
7 customers.

8 A. I'm sorry, can you ask that again.

9 Q. Upon termination of the supply agreement
10 with the community, the governmental aggregation
11 supplier has no right to keep those aggregation
12 members as customers, correct?

13 A. If you're referring to a company like
14 Direct Energy as the aggregation supplier, that is
15 correct.

16 Q. Now, under Direct Energy's proposed
17 allocation methodology, if a Choice supplier never
18 bid in an SCO auction and never served SCO customers,
19 then the Choice supplier would still be entitled to a
20 share of the SCO customers upon exit from the
21 merchant function, correct?

22 A. That is correct.

23 MR. STINSON: I have no other questions,
24 your Honor.

25 Thank you, Mr. Byzewski.

1 THE WITNESS: Thank you.

2 EXAMINER PIRIK: Is there any redirect?

3 MR. CLARK: Your Honor, may we have just
4 a moment to confer?

5 EXAMINER PIRIK: Yes.

6 MR. CLARK: Thank you.

7 Thank you, your Honor, for the time, I
8 appreciate it. Just brief redirect.

9 - - -

10 REDIRECT EXAMINATION

11 By Mr. Clark:

12 Q. Mr. Byzewski, Mr. Stinson handed you an
13 entry from the Commission related to The New Power
14 Company.

15 A. Yes, that's correct.

16 Q. Did you have any decision-making
17 authority or have anything to do with the decision
18 related to this entry?

19 A. No, I did not.

20 Q. Did you even work at New Power at the
21 time this entry was issued?

22 A. I believe Mr. Stinson said it was October
23 of 2002, and I was not employed at New Power at that
24 time.

25 MR. CLARK: Thank you, your Honor.

1 EXAMINER PIRIK: Thank you.

2 Is there any recross?

3 MR. STINSON: Not here, your Honor.

4 EXAMINER PIRIK: Thank you very much.

5 THE WITNESS: Thank you.

6 MR. CLARK: Your Honor, we move for
7 admission of Direct Energy Exhibit 1, please.

8 EXAMINER PIRIK: Yes, are there any
9 objections to Direct Energy 1?

10 (No response.)

11 EXAMINER PIRIK: Hearing none, it will be
12 admitted into the record.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 EXAMINER PIRIK: We marked Hess 2 but we
15 will consider that administrative notice.

16 Mr. Sauer.

17 MR. SAUER: Thank you, your Honor. The
18 OCC calls Bruce Hayes to the stand and would like to
19 have his direct testimony marked as OCC Exhibit 1.

20 EXAMINER PIRIK: Mr. Sauer, could you
21 turn on your microphone, please.

22 MR. SAUER: May I approach, your Honor?

23 EXAMINER PIRIK: Please raise your right
24 hand.

25 (Witness sworn.)

1 EXAMINER PIRIK: Before you start,
2 Mr. Hayes, I just want to thank you for putting the
3 redline version of the joint stipulation attached to
4 your testimony. It was very helpful.

5 THE WITNESS: You're welcome.

6 EXAMINER PIRIK: Mr. Sauer.

7 MR. SAUER: Thank you, your Honor.

8 - - -

9 BRUCE M. HAYES

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

12 DIRECT EXAMINATION

13 By Mr. Sauer:

14 Q. Please state your full name and business
15 address for the record.

16 A. It's Bruce M. Hayes, and my address, work
17 address is 10 West Broad Street, 18th floor,
18 Columbus, Ohio, 43215.

19 Q. Are you the same Bruce Hayes whose direct
20 testimony was filed in this case?

21 A. Yes.

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

23 A. The Office of the Ohio Consumers'
24 Counsel.

25 Q. Do you have your prepared testimony with

1 you on the stand?

2 A. Yes, I do.

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

5 A. Yes.

6 Q. Do you have any changes or corrections to
7 your direct testimony?

8 A. Yes. On page 18, line 1, residential,
9 the word "residential" should be replaced with
10 "nonresidential."

11 Q. Is that your only change or correction?

12 A. Yes, it is.

13 Q. And if I asked you today the same
14 questions found in your direct testimony in OCC
15 Exhibit 1, would your answers be the same?

16 A. Yes, they would.

17 MR. SAUER: The OCC moves for the
18 admission of OCC Exhibit 1 and tenders the witness
19 for cross-examination.

20 EXAMINER PIRIK: Columbia?

21 MS. LESLIE: None at this time, your
22 Honor.

23 EXAMINER PIRIK: Mr. Petricoff?

24 MR. PETRICOFF: No questions, your Honor.

25 EXAMINER PIRIK: Mr. Reilly?

1 MR. REILLY: No questions, your Honor.

2 EXAMINER PIRIK: Mr. Rinebolt?

3 MR. RINEBOLT: Yes, your Honor. Thank
4 you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Rinebolt:

8 Q. Good afternoon, Mr. Hayes.

9 A. Afternoon, Mr. Rinebolt.

10 Q. Let's turn to, if we may, page 6 of your
11 testimony, and I'm looking particularly at the
12 paragraph between lines 9 and line 16.

13 A. I'm there.

14 Q. Could you explain to me why delaying the
15 exit of the merchant function for residential
16 customers provides additional protections for
17 consumers?

18 A. The delay gives time to make a more, in
19 my opinion, knowledgeable transition to an exit if
20 there's going to be one.

21 Q. Do you believe it's a protection for
22 consumers to have -- for residential consumers to
23 have the exit from the merchant function delayed for
24 any reason?

25 A. Well, at this time yes, I think it needs

1 to be delayed. It's -- under the original
2 stipulation I think there needs to be some safeguards
3 put in.

4 Q. As I recall under the original, the
5 opinion and order in Case No. 08-1344, which is a
6 part of this record obviously, there was required to
7 be a study of the impacts of the SCO on residential
8 and nonresidential customers. To your knowledge, has
9 that study ever occurred?

10 A. I don't remember the study.

11 Q. Okay.

12 A. Requirement for the study.

13 Q. But you believe studies in general of the
14 impact of the exit on nonresidential customers would
15 be positive for residential customers?

16 A. Yes, I think so. Columbia's residential
17 Choice, and Choice in general is, you know,
18 50 percent level. I don't think we're ready at this
19 point for exit.

20 Q. Let's explore a little bit the
21 nonresidential customer class. Ohio law treats
22 nonprofit agencies differently when it comes to
23 governmental aggregations, for example. Do you think
24 that nonprofit agencies should be treated differently
25 in terms of the exit from the merchant function?

1 Should they be exempted from the exit or given the
2 option to not be a part of the exit?

3 A. I don't know.

4 Q. Do you think antipoverty agencies,
5 nonprofits, should be exempted from the exit of the
6 merchant function for nonresidential?

7 A. I have no idea.

8 Q. Okay. Let's talk, then, about
9 residential customers who live in master-metered
10 buildings. Do you think that residential customers
11 receiving service in master-metered buildings should
12 be exempt from the merchant function exit for
13 nonresidential customers?

14 A. I don't have an opinion on that.

15 Q. Say residential customers are submetered
16 in these master-metered buildings, so they're
17 directly affected by the price that's paid by their
18 landlord, do you think that those customers should be
19 protected as you indicate, that protection of
20 customers for the delay are warranted?

21 A. Well, I think those customers would be
22 considered commercial accounts, correct?

23 Q. That's right, they're submetered in a
24 nonresidential building; I'll answer the question.

25 A. Yes. I mean, I'm sorry. Yes, they're

1 commercial customers. OCC's not taking a position on
2 commercial customers in this case.

3 Q. If I may, OCC does not represent
4 nonresidential customers, does it?

5 A. OCC represents residential customers
6 which comprise 92 percent of all customers eligible
7 for choice in DSS.

8 Q. But you don't --

9 A. We do not represent residential
10 customers -- or, commercial customers. And
11 industrial customers.

12 Q. My apologies, Mr. Hayes, I really didn't
13 mean to walk over you.

14 But you, OCC, does not view residential
15 customers who live in master-metered buildings that
16 are billed under commercial tariffs as residential
17 customers; is that correct?

18 A. Correct.

19 Q. Now, Mr. Brown spent a lot of time in his
20 testimony, not on the stand, but in his testimony,
21 explaining why the shadow billing data is not
22 representative of much of anything and isn't useful
23 in evaluating the impact of Choice programs. Do you
24 believe the shadow billing data is useful in
25 evaluating Choice program options?

1 A. Yes, I do. I think it shows impacts,
2 billing impacts and can be used with other studies.

3 Q. So it provides a comparison between the
4 bills of customers who have exercised choice and
5 those who have chosen to remain on GCR, SSO, or SCO
6 service.

7 A. That's correct.

8 Q. Now, in the revised stipulation there
9 were a number of changes to the off-system sales and
10 capacity release sharing mechanism. Can you quantify
11 how much those changes will benefit residential
12 customers -- or, benefit customers generally?

13 A. It was 500,000 a year, 2.5 million over
14 the five-year period, for the change of the first
15 1 million, and then there was another change that
16 potentially could save customers another 5 million by
17 reducing, it was an overall cap.

18 Q. Thank you.

19 Let's turn now to the provision that you
20 discuss on, let me just double-check here, yes, on
21 page 9 and between -- it's between lines 4 and lines
22 11.

23 A. Yes.

24 Q. And you indicate that preventing
25 customers from being charged twice for the balancing

1 fee could save a typical customer approximately \$27 a
2 year. Is that correct?

3 A. I'm not finding that on page 9.

4 Q. I'm sorry. Page 7. Page 7. My mistake.

5 A. Okay.

6 Q. And so that has the potential to save
7 customers approximately \$27 a year, correct?

8 A. That is correct.

9 Q. Now, previous witnesses have indicated
10 that at the present time there's no mechanism to
11 enforce that provision of the stipulation; is that
12 correct?

13 A. That's correct. As far as I know.

14 Q. Could you illuminate me on OCC's ideas
15 associated with enforcing that provision in the
16 stipulation? How does OCC believe that that
17 provision should be enforced?

18 A. This is just an idea at this point. I
19 mean, we'd want to talk to other parties in this, I'm
20 not sure exactly if it would work or not, but at this
21 point marketers provide -- if I remember this right,
22 marketers provide the company with billing codes and
23 they know what codes go to what customers.

24 If they have bilateral contracts, then
25 those codes or those bilateral contracts could be

1 reduced by 32 cents. And it applies to other rates
2 as well.

3 Q. So say a customer has a two-year fixed
4 rate contract, then you would essentially look at
5 that billing code and then the marketer would be
6 directed to reduce its prices by the amount of the
7 balancing fee?

8 A. That's a possibility. That's kind of the
9 way, initially, I look at it.

10 Q. How would that apply to, say,
11 month-to-month contracts? How, if you looked at,
12 say, the July cost and removed 22 cents but the price
13 changes, how would you know what the appropriate
14 baseline is to reduce the 22 cents from?

15 A. I guess it depends on what type of
16 month-to-month contract it is. If it's a price above
17 NYMEX, then you could reduce it, you know, part of
18 that fixed price above the NYMEX. If it's like an
19 MVR, then I would expect on April whatever the date
20 is that there's an exit, then that rate would become
21 an actual rate. In other words, you wouldn't have to
22 reduce it at that point, it becomes the MVR monthly
23 rate.

24 Q. But if you're just on a variable rate
25 that isn't tied to any index, how are you going to

1 know whether that price reflects the 22 percent --
2 or, the 22-cent credit?

3 A. I'm not the one to be looking at it.

4 MR. SAUER: Your Honor, I'd object or at
5 least try to clarify that the balancing fee in
6 question I believe was 32 cents, not 22 cents --

7 EXAMINER PIRIK: Thank you, Mr. Sauer.

8 MR. SAUER: -- that he keeps asking
9 about.

10 EXAMINER PIRIK: Is that the fee you're
11 referring to?

12 MR. RINEBOLT: I'm referring to the
13 balancing fee and I'll just call it that. It's what
14 it is.

15 EXAMINER PIRIK: Thank you.

16 Q. (By Mr. Rinebolt) If your price varies on
17 a monthly basis, how would you know -- can you tell
18 me how one might know whether the balancing fee was
19 included in the price that was quoted for the
20 following month or wasn't included in the price?

21 A. Well, the monthly variable price is a
22 variable price and it's going to go to whatever the
23 company's going to offer at the date that the
24 balancing fees goes off. If they want to continue to
25 compete with other variable prices, they're going to

1 have to have a competitive rate.

2 Q. So you're counting on the competitive
3 market to drive down the rates to reflect the fact
4 that the balancing fee's been transferred directly to
5 customers.

6 A. For a variable rate, yes.

7 Q. Okay. Now, we've discussed the shadow
8 billing data, and the shadow billing data indicates
9 that the offers from Choice marketers get above those
10 of the standard service offer, the standard Choice
11 offer, the GCR rate over a period of time, sometimes
12 they've been lower, early in the period they were
13 lower. Does that give you comfort that competition
14 will squeeze that balancing fee out of the
15 competitive rates?

16 A. Well, just looking at the shadow billing
17 really doesn't tell you why there's a difference
18 other than there is a difference. You don't know if
19 that's from fixed rates. You don't know if they got
20 caught in a bad market. You just, based on that
21 information, you can't tell.

22 The differences are a reason of concern
23 or, you know, for our office, but the differences
24 themselves don't explain why there are differences.

25 Q. Okay. Let's turn to page 10 and 11 of

1 your testimony, and I'm looking specifically at
2 question 15 and your answer, and that answer runs on
3 to page 11.

4 A. Okay.

5 Q. Now, as I read this section, Columbia's
6 committed that should it seek to exit the merchant
7 function during the timeframe of this stipulation,
8 that it will file an application and there will be a
9 hearing.

10 A. For residential customers.

11 Q. For residential customers, correct.

12 A. Yes.

13 Q. Is it OCC's opinion that this application
14 will be filed under 4929.04 as an alternative
15 regulation case?

16 MR. SEIPLE: Objection. Calls for a
17 legal conclusion.

18 EXAMINER PIRIK: Mr. Rinebolt.

19 MR. RINEBOLT: Your Honor, the witness's
20 testimony indicates that there will be an
21 application. I just want to understand what type of
22 application his understanding is that it will be.

23 EXAMINER PIRIK: I think the type of
24 application would be appropriate. But if it takes
25 you to have to interpret the statute, you do not have

1 to go that far.

2 A. I don't know.

3 MR. RINEBOLT: I have no more questions,
4 your Honor. Thank you.

5 Thank you, Mr. Hayes.

6 THE WITNESS: Thank you.

7 EXAMINER PIRIK: Mr. Einstein?

8 MR. EINSTEIN: No questions, your Honor.

9 EXAMINER PIRIK: Mr. Stinson?

10 MR. STINSON: Just a few, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Stinson:

14 Q. Good afternoon, Mr. Hayes. I just want
15 to clarify a few things in your testimony beginning
16 with the SCO security deposit.

17 Now, as I understand it, and I'm
18 considering your footnote 1 to the amended
19 stipulation --

20 A. Yes.

21 Q. -- now, as I understand it, that it is
22 not OCC's position that the 10-cent per Mcf fee would
23 benefit ratepayers, correct?

24 A. Or the 6 cents.

25 Q. That was the second question. Thanks.

1 On page 12 of your testimony on line 8
2 you state that OCC "disagrees with the rationale
3 supporting the fee."

4 A. Yes.

5 Q. What do you disagree with?

6 A. Its rationale in how it's arrived at. In
7 other words, it's called a deposit, yet there's no
8 return to those funding the deposit.

9 Q. Anything else?

10 A. It seems like an unnecessary cost to the
11 SCO supplier.

12 Q. Why is that?

13 A. I don't understand the rationale behind
14 it, why it's needed.

15 Q. That fee is charged only to SCO
16 suppliers, right?

17 A. SCO and I believe to the DSS as well.

18 Q. It's not charged to CHOICE suppliers,
19 correct?

20 A. Correct.

21 Q. A lot of these questions have been
22 answered, just give me a second here.

23 On page 12, line 11 -- let me back up a
24 second.

25 Just to clarify the record, you're not in

1 favor of the SCO security deposit, cash deposit. You
2 stated that you don't think that deposit at 10 cents
3 or 6 cents provides a benefit to ratepayers. Is it
4 your testimony, then, that the benefit you're talking
5 about is the reduction of the fee from 10 cents to 6
6 cents?

7 A. That's one of many benefits. There are
8 other benefits that offset that 6-cent fee and that's
9 why we look at assign the overall totality of the
10 benefits of the SCO, or, of the stipulation.

11 Q. At page 12, line 11 you state that the
12 reduction from 10 to 6 cents could save SCO customers
13 \$3.40 a year and all SCO customers 3.2 million a
14 year, correct?

15 A. Yes.

16 Q. Isn't it true that if you applied the
17 6-cent charge, assuming you're a 85 Mcf average use
18 per year, the fee would cost customers an additional
19 \$5.10 per year?

20 A. Potentially, if the SCO or number of
21 customers remains the same.

22 Q. Making that assumption, correct?

23 A. Yes.

24 Q. And isn't it true that under the same
25 assumptions that the fee would cost SCO customers an

1 additional \$4.8 million a year?

2 A. That would sound correct.

3 Q. Page 10 of your testimony, I don't know
4 if you need an exact reference, but you state a
5 benefit to the amended stipulation is that the
6 stipulation provides for a full evidentiary hearing,
7 correct?

8 A. Yes.

9 Q. Isn't it true that the original
10 stipulation provided for an evidentiary hearing?

11 A. I don't think it -- I don't think it
12 provided for a hearing in which all parties could
13 participate. It could file an application. I'm not
14 sure there was a hearing.

15 Q. Do you know what kind of application?

16 A. Columbia could file an application to
17 exit the merchant function.

18 Q. Okay. Are you aware of the Commission's
19 statutory intervention rules?

20 A. In that case an evidentiary hearing would
21 be required.

22 Q. You also mentioned that the hearing --
23 or, the stipulation would require six local public
24 hearings.

25 A. Yes.

1 Q. That's a determination for the Commission
2 to make, right?

3 A. I would think that the Commission would
4 probably go along with that if they approved the
5 stipulation.

6 Q. But the Commission doesn't have to.

7 A. The Commission can do whatever they want,
8 yes.

9 Q. Oftentimes the Commission does order
10 local public hearings on its own in major cases,
11 doesn't it?

12 A. Yes, it does.

13 Q. Thanks.

14 MR. STINSON: I think that's all I have.
15 Thank you, Mr. Hayes.

16 EXAMINER PIRIK: Redirect?

17 MR. SAUER: Could we have a couple
18 minutes, your Honor?

19 EXAMINER PIRIK: Yes.

20 (Off the record.)

21 MR. SAUER: Just a couple questions, your
22 Honor.

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REDIRECT EXAMINATION

By Mr. Sauer:

Q. Mr. Hayes, do you recall Mr. Rinebolt asking you some questions about a balancing fee?

EXAMINER PIRIK: Can you pull the microphone closer.

Q. Do you recall Mr. Rinebolt asking you some questions about the balancing fee?

A. Yes.

Q. And the balancing fee, there will be a change in the balancing fee billing; is that correct?

A. Yes.

Q. And that change is not contingent upon an exit, is it?

A. That's correct.

Q. It's contingent on the Commission approving --

A. The stipulation, and it would go into effect April 1 in 2013.

MR. SAUER: Thank you. No further questions.

EXAMINER PIRIK: Is there any recross?

MR. RINEBOLT: Not on that, no.

EXAMINER PIRIK: Mr. Sauer.

MR. SAUER: Thank you, your Honor. We'd

1 like to move for the admission of OCC Exhibit No. 1.

2 EXAMINER PIRIK: Any objections?

3 (No response.)

4 EXAMINER PIRIK: Hearing none, OCC
5 Exhibit 1 will be admitted into the record.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER PIRIK: Go off the record.

8 (Discussion off the record.)

9 EXAMINER PIRIK: We'll go back on the
10 record.

11 We'll recess until tomorrow morning at
12 the 9:00 o'clock. Do we want to start at
13 9:00 o'clock so we'll be done for the day tomorrow?

14 MR. RINEBOLT: I'll make the early drive,
15 your Honor.

16 EXAMINER PIRIK: One more day. 9:00 a.m.
17 Thank you.

18 (Hearing adjourned at 2:22 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 Wednesday, December 5, 2012,
5 and carefully compared with my original stenographic
6 notes.

7
8 Maria DiPaolo Jones, Registered
9 Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

10 My commission expires June 19, 2016.

11 (MDJ-4092)

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Summary: Transcript Transcript from 12/5/12 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.