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STATE OF OHIO
BEFORE THE
PUBLIC UTILITIES COMMISSION

In the Matter of)
the Review of the)
Alternative Energy)
Rider Contained in)
The Tariffs of Ohio) Case No. 11-5201-EL-RDR
Edison Company, The)
Cleveland Electric)
Company, and The)
Toledo Edison Company)

* * * * *

Volume I of II in the Telephonic
Deposition of DENNIS J. GOINS, Ph.D, was
taken on Wednesday, February 13, 2013,
commencing at 11:02 a.m., at the Offices of
Brickfield Burchette Ritts & Stone, PC., 1025
Thomas Jefferson Street N.W., 8th Floor West
Tower, Washington, D.C., before Ryan K.
Black, Notary Public, Registered Professional
Reporter.

* * * * *

Reported by:
Ryan K. Black, RPR, CLR

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I N D E X

DEPOSITION OF DENNIS J. GOINS, Ph.D

WEDNESDAY, FEBRUARY 13, 2013

VOLUME I OF II

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Mr. O'Rourke	--
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Mr. Burk	--
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Ms. Dunn	--
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Mr. Siwo	--
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Mr. Berger	--
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E X H I B I T S I N D E X

* * * NO EXHIBITS MARKED * * *

1 Whereupon --

2 DENNIS J. GOINS, Ph.D.,
3 called to testify, having been first duly
4 sworn or affirmed, was examined and testified
5 as follows:

6 EXAMINATION

7 BY MS. FLOYD:

8 Q. What's your name?

9 A. It is Dennis Goins.

10 Q. I want to quickly go over the
11 ground rules for a deposition.

12 First, Dr. Goins, you just took an
13 oath to tell the truth. If you don't
14 understand a question, will you please tell
15 me?

16 A. I will.

17 Q. Otherwise, if you answer the
18 question, then it's fair to assume that you
19 understood the question.

20 Do you understand that?

21 A. I understand what you said.

22 Q. Okay. Second, to help the court
23 reporter preserve the record, please wait
24 until I'm finished asking a question before
25 you start to answer a question.

1 Will you do that for me?

2 A. I will.

3 Q. Third, for the court reporter,
4 please refrain from answering questions with
5 gestures or uh-huh sounds or other sounds.

6 Will you do that for me?

7 A. I will.

8 Q. If I refer to the FirstEnergy Ohio
9 Utilities as the companies or FEOUs, will you
10 understand whom I'm referring to?

11 A. I will.

12 Q. What did you bring with you today?

13 A. I have a copy of my testimony, a
14 computer, a white tablet for notes, a pen, a
15 mouse, and a bottle of water.

16 Q. Okay. Do you have any corrections
17 to your testimony?

18 A. I have two that I was planning to
19 make when and if I appear, but I can make
20 them now, if you'd like.

21 Q. Please do.

22 A. At Page 8, Line 19, the word would,
23 which is the first word in that sentence,
24 should be changed to should, s-h-o-u-l-d.

25 And at Page 8, Line 24, the word

1 would following FirstEnergy should be changed
2 to should.

3 Q. Do you have any other corrections?

4 A. No.

5 Q. Is it correct that you're
6 testifying on behalf of Nucor and Ohio Energy
7 Group?

8 A. Yes.

9 Q. What did you do to prepare for
10 today's deposition?

11 A. I reviewed my testimony. I
12 reviewed some of the documents that are cited
13 or listed in the testimony. I took quick
14 glances back at the Exeter and Goldenberg
15 reports. And I had a discussion with
16 counsel.

17 Q. Did you meet with anyone other than
18 counsel to prepare for today's deposition?

19 A. I did not.

20 Q. Who do you work for?

21 A. Myself. I'm a sole proprietorship
22 doing business as Potomac Management Group.
23 I've operated this way since 1985.

24 Q. What experience do you have
25 regarding solicitations for Renewable Energy

1 Credits?

2 A. I've never participated directly in
3 a solicitation for Renewable Energy Credits.

4 Q. Do you have any other experience
5 regarding solicitations for Renewable Energy
6 Credits, other than direct participation?

7 A. No. I've never worked with a
8 company in formulating -- or a client in
9 formulating either a strategy for or a
10 program plan to acquire Renewable Energy
11 Credits.

12 Q. Do you have any experience in
13 negotiating REC procurements?

14 A. No, I do not.

15 Q. Do you have any experience in rate
16 design related to the recovery of costs for
17 the procurement of RECs?

18 A. I'm trying to remember. I've been
19 in a number of cases that have involved
20 riders or programs dealing with Renewable
21 Energy Resources. And I can't remember
22 specific -- I have testified, for example, on
23 opt-out programs; for example, for large
24 commercial industrial customers, from
25 applicable energy efficiency credits, some of

1 which may include or may have included
2 Renewable Energy Resources.

3 Q. Do you have any experience in the
4 rate design of -- I'm sorry.

5 Do you have any experience
6 regarding the rate design related to the
7 recovery of cost for the procurement of
8 Renewable Energy Resources?

9 A. I'm not sure what the question
10 means.

11 Q. What do you need to know more about
12 my question?

13 A. Well, rate design encompasses, you
14 know, a multitude of areas and issues, from
15 the basic structure of rates to costs that
16 are included to adherence to public policies
17 and rules and regulations, recognition or
18 adherence to precedent.

19 Q. And under your understanding of
20 rate design, do you have any experience in
21 rate design related to the recovery of costs
22 for Renewable Energy Resources?

23 A. To the extent that those costs may
24 be recovered in riders that include the
25 broad, general term of energy efficiency

1 programs or program costs, I have dealt in
2 issues related to those. I have not dealt
3 specifically with a rider designed solely for
4 the recovery of Renewable Energy Resources.

5 Q. So you do not have experience in
6 rates in that design with regard to a rider
7 that's specifically -- sorry, designed to
8 recover costs related to Renewable Energy
9 Resources; is that correct?

10 A. Well, I'm not sure anybody does.
11 As I said, I'm not aware of riders that are
12 dedicated solely -- well, I shouldn't say I'm
13 not aware.

14 In Ohio, Rider AER is not designed
15 solely to recover Renewable Energy Resource
16 costs or the costs of Renewable Energy
17 Credits.

18 Q. Dr. Goins, do you have any
19 experience in rate design related to a rider
20 for the recovery of Alternative Energy
21 Resources?

22 A. I may have filed comments on those
23 in -- I can't remember specific cases. I may
24 have filed comments on behalf of clients
25 regarding those issues in Arkansas, Indiana,

1 and/or South Carolina.

2 Q. Do you have any experience in Ohio
3 regarding rate design with regard to a rider
4 for the recovery of Alternative Energy
5 Resource costs?

6 A. No, I've never participated in a
7 case on behalf of a client dedicated solely
8 to that issue.

9 Q. Well, have you participated in Ohio
10 on behalf of a client generally related to
11 the recovery of Renewable Energy Resource
12 costs, other than this proceeding?

13 A. Well, I've assisted clients in
14 cases; for example, the ESPs, in some of
15 those involving FirstEne5rgy in matters
16 related not to Renewable Energy Resources,
17 but to demand response and interruptible
18 programs that are included, or the cost of
19 recovery, which is related to specific riders
20 established by FirstEnergy.

21 Q. Other than your experience
22 regarding demand response and interruptible
23 specific riders, do you have any experience
24 in Ohio regarding rate design regarding the
25 recovery of Alternative Energy Resource

1 costs?

2 MR. LAVANGA: Objection. Asked and
3 answered.

4 THE WITNESS: No.

5 BY MS. FLOYD:

6 Q. Dr. Goins, you testified that you
7 submitted testimony and affidavits in nearly
8 200 proceedings; is that correct?

9 A. No, I don't think it is.

10 Q. Why is it not correct?

11 A. It says I have submitted testimony
12 and affidavits and provided technical
13 assistance in nearly 200 proceedings.

14 Q. So how many of those proceedings
15 addressed Renewable Energy Credits?

16 A. I don't know. I did not go back
17 and -- I did try -- I gave, I think,
18 Mr. Lavanga a list of cases that were related
19 to -- it may have been energy efficiency or
20 renewableness. I'm not sure which. It was a
21 question that was -- I'm not sure whether
22 FirstEnergy asked it or who, but he asked me
23 to identify cases related to -- and I can't
24 remember the specifics of what the question
25 was, whether it was just renewables in

1 particular, energy efficiency in general, or
2 cost recovery of programmatic costs
3 associated with those.

4 Q. Do you know whether you've been
5 involved in any proceedings addressing
6 Renewable Energy Credits specifically?

7 A. If I was, it was on what I would
8 call a very broad scale or very broad
9 subject. It was not to the specificity of
10 items that I've addressed in the testimony
11 filed in this case.

12 Q. Is this the first case that you've
13 been involved in regarding rate design and
14 involving the costs related to Renewable
15 Energy Credits?

16 MR. LAVANGA: Objection. Asked and
17 answered.

18 THE WITNESS: Again, on a
19 single-issue item, that would be generally
20 true. Although, again, I'll point out that
21 Rider AER, regardless of what's being
22 recovered through the rider now, encompasses
23 more than simply Renewable Energy Credit cost
24 recovery.

25 BY MS. FLOYD:

1 Q. What's your understanding of what
2 Rider AER encompasses?

3 A. Well, it was set up to -- my
4 understanding is it was set up to recover the
5 costs associated with the alternative energy
6 technology costs and Renewable Energy
7 Resource costs that are part of the laws and
8 regulations in the state regarding the
9 renewable resource standard or alternative
10 energy standard.

11 Q. What information -- I want to talk
12 about the information you reviewed in
13 conducting your evaluation. Did you review
14 the Goldenberg and Exeter Audit Report?

15 A. I did.

16 Q. Did you conduct any analysis to
17 verify Goldenberg's opinions and
18 calculations?

19 A. No, I did not attempt to verify
20 their numbers or calculations.

21 Q. Did you conduct any research to
22 verify the Goldenberg opinions or
23 calculations?

24 A. I think -- wasn't that the same
25 question you just asked me?

1 Q. Can you answer my question?

2 A. Well, it would be the same answer I
3 just gave you.

4 Q. So you didn't conduct any analysis
5 or research to verify Goldenberg's opinions
6 or calculations? That's correct?

7 A. That's correct.

8 Q. You also reviewed the Exeter
9 Report; is that correct?

10 A. I did.

11 Q. Did you conduct any analysis or
12 research to verify opinions within the Exeter
13 Report?

14 A. No.

15 Q. Did you review the Companies'
16 direct testimony, exhibits, and discovery
17 responses for your testimony?

18 A. I reviewed the testimony, and I
19 reviewed some discovery responses. I don't
20 know that I reviewed all discovery responses.

21 Q. What discovery responses did you
22 review?

23 A. I don't have a list of them, but
24 they were discovery responses that counsel
25 had provided to me on the basis of

1 conversations and discussions that we had
2 had on these issues.

3 Q. But you cannot identify the
4 particular discovery responses that you
5 reviewed for your testimony?

6 A. Well, some of them, or at least one
7 or two of them are listed in the testimony
8 itself. And, you know, off the top of my
9 head, I can't identify those.

10 Q. Can you describe the topics of
11 those discovery responses?

12 A. They ranged from general responses
13 about the acquisition -- the REC acquisition
14 process to the budgeting and planning process
15 conducted by FirstEnergy, and some specifics
16 related to issues that were related I think
17 directly to items within the Goldenberg and
18 Exeter Reports. But, again, off the top of
19 my head, I can't, you know, identify a
20 specific one.

21 Q. Did you review statutes related to
22 the AEPS requirements?

23 A. I did.

24 Q. What statutes?

25 A. The ones, again, that are cited in

1 my testimony.

2 Q. Any other statutes?

3 A. I may have. I don't recall.

4 Q. Did you review any --

5 A. I've been involved in cases that
6 were related to SB 221. And some of those I
7 can't separate from, you know, whether I
8 reviewed them in this case or had seen
9 something in a prior case. But that is
10 -- that I've listed in the testimony, for
11 example, were regulations and laws that I
12 specifically focused on.

13 Q. Did you review Section 4928.64 of
14 the Ohio Revised Code?

15 A. I may have. I can't remember.

16 Q. You cite 4928.64 in your testimony;
17 is that correct?

18 A. Yes.

19 MR. LAVANGA: Can we have a
20 reference?

21 THE WITNESS: Well, you said 49 --
22 BY MS. FLOYD:

23 Q. 4928.64.

24 A. Yes, I do cite that.

25 Q. Did you review 4928.64?

1 A. I did.

2 Q. Did you review any AEPS Statutes
3 from states other than Ohio?

4 MR. LAVANGA: Objection. Unclear
5 what AEPS means.

6 THE WITNESS: Not for purposes of
7 preparing this testimony.

8 BY MR. FLOYD:

9 Q. What Commission Orders did you
10 review for purposes of preparing your
11 testimony in this case?

12 A. Well, certainly I reviewed the ESP
13 3 order. And I can't remember other specific
14 orders that related to this case. There may
15 have been, but I just can't remember them
16 right now.

17 Q. Did you review any of the Ohio
18 Administrative Rules related to Renewable
19 Energy Resource requirements for your
20 testimony in this case?

21 A. Yes.

22 Q. What rules?

23 A. The OAC 4901:1 through 40 -- 1-40,
24 in particular. And I'm sure I probably
25 looked at some other rules that were in and

1 around that provision or may have been linked
2 to it in some way.

3 Q. You mentioned that you reviewed SB
4 221-related cases. What cases are those?

5 A. No. What I said was that, in prior
6 cases, those cases have involved a number of
7 issues related to SB 221. And so I may,
8 during the course of those cases, have
9 reviewed or come in contact with legislation
10 that dealt with the renewable energy standard
11 that was done, not that was -- that
12 information acquired in another case or
13 proceeding, but not in this one. I simply
14 can't identify them.

15 I did not review other SB 221
16 cases, other than, in particular, the order
17 for ESP 3. Also, I've tried to remember if I
18 went back and reviewed the orders from ESP 1
19 and 2.

20 Q. Do you know whether you reviewed
21 the orders in the ESP 1 and 2?

22 A. I can't recall right now.

23 Q. The other cases that you were
24 involved in related to SB 221, do you know
25 whether those cases involved Renewable Energy

1 Resource requirements?

2 A. They were not focused on the cases,
3 as this particular case is, certainly.

4 Q. Is it fair to say those cases did
5 not involve issues regarding compliance with
6 Renewable Energy Resource requirements or
7 cost recovery for those expenditures incurred
8 to comply with those requirements?

9 A. Well, certainly, you know, the ESP
10 3 case did. You know, the stipulation and
11 the order approving the stipulation are
12 related to some of those issues.

13 Q. Other than the ESP 3 case, any
14 other case?

15 A. I don't recall one.

16 Q. Did you review publicly-available
17 information for your testimony?

18 A. I did.

19 Q. What publicly-available information
20 did you review?

21 A. Well, I reviewed the information
22 available on the FirstEnergy website related
23 to the Renewable Energy Credits procurement
24 processes that FirstEnergy had undertaken, or
25 has undertaken, or plans to undertake. I

1 reviewed some information related to the
2 price of solar RECs from the PJM EIS website.

3 I mean, those are two pieces that I
4 remember right off the top of my head.

5 Q. Did you review any other
6 publicly-available information for your
7 testimony?

8 A. I'm sure I probably did, but I
9 can't cite anything. If it's not listed in
10 my testimony as a citation, it was probably
11 just reviewed for informational purposes and
12 I went on from there and didn't plan to use
13 it or to incorporate it in the formulation of
14 my conclusions or recommendations.

15 Q. Did you incorporate any of the
16 publicly-available information that you
17 reviewed into your conclusions or your
18 recommendations in your testimony?

19 A. Not in the sense of the specific
20 recommendations or conclusions shown on Pages
21 4 through 6 of my testimony. Certainly that
22 information helped inform me and provided a
23 better understanding not only of
24 FirstEnergy's testimony in this case, but
25 also the Goldenberg and Exeter Reports.

1 Q. Did you review any additional
2 documents for your testimony?

3 A. I'm sure -- I know I went to the
4 NREO website and reviewed information that
5 was -- general information, none of which I
6 specifically incorporated in my testimony.
7 And I'm trying to remember if there were
8 any other specific website resources that I
9 reviewed.

10 Q. What information did you review on
11 the NREO website?

12 A. I can't remember right now. NREO
13 just has a lot of information regarding RECs
14 and general alternative energy programs. I
15 looked at the website, you know, not only in
16 the context of this case, but other work that
17 I do, just as an information resource.

18 Q. Other than the information that you
19 reviewed, did you perform any analysis to
20 support your testimony?

21 A. Well, in terms of analysis, if you
22 mean empirical analysis, some of the numbers
23 that are shown in the tables, you know, I've
24 prepared those tables. But as I mentioned
25 earlier, I did not attempt to go back and

1 empirically verify or test any of the data
2 and analyses contained in the Goldenberg and
3 Exeter Reports.

4 Q. Did you conduct any study to
5 support your testimony?

6 A. Well, I spent, you know, time
7 thinking about it. I'm not sure what kind of
8 study you mean.

9 Q. Other than thinking about your
10 testimony, did you conduct any independent
11 research or study to support the opinions in
12 your testimony?

13 A. If your question is asking whether
14 I attempted to determine whether someone
15 else had reached conclusions or made
16 recommendations identical to the ones
17 presented in my testimony, I did not.

18 Q. Did you conduct any independent
19 research or studies to support your
20 testimony?

21 MR. LAVANGA: Objection. Asked and
22 answered.

23 THE WITNESS: Again, I'm not sure,
24 again, what you mean by study.

25 BY MS. FLOYD:

1 Q. What does study mean to you?

2 A. Well, I gave you my definition of
3 what I would conclude in terms of analysis
4 and study. I did study the issue.

5 Q. Did you create any charts or table
6 to support your opinions in your testimony?

7 A. Only those that are shown in the
8 testimony itself.

9 Q. You have no additional charts or
10 tables to support your opinion, other than
11 the ones in your testimony?

12 MR. LAVANGA: Objection. Asked and
13 answered.

14 THE WITNESS: I'm not sure what
15 those charts or tables would be.

16 BY MS. FLOYD:

17 Q. Do you have any additional
18 spreadsheets, charts or tables, other than
19 the ones in your testimony, that support your
20 testimony?

21 A. No.

22 Q. Do you have any experience in
23 drafting legislation setting benchmarks for
24 Renewable Energy Resource requirements for
25 utilities?

1 A. I have never provided that service
2 to a client or on behalf of a client.

3 Q. Do you have any personal experience
4 in drafting legislation setting benchmarks
5 for Renewable Energy Resource requirements
6 for utilities?

7 A. No, I would not do it on a personal
8 basis. I would do it on behalf of a client.

9 Q. So it's fair to say you don't have
10 any experience in drafting legislation
11 setting benchmarks for Renewable Energy
12 Resource requirements for utilities?

13 A. No. I've never been directly
14 involved in the legislative process on that
15 issue.

16 Q. Do you have any experience in
17 drafting administrative rules regarding
18 benchmarks for Renewable Energy Resource
19 requirements for utilities?

20 A. No.

21 Q. So it's fair to say you didn't
22 have any involvement with the Commission's
23 rulemaking proceedings relating to the
24 Commission's adoption of chapters of the Ohio
25 Administrative Code that were related to

1 Renewable Energy Resource requirements for
2 utilities?

3 A. That's correct.

4 Q. You're aware that those proceedings
5 took place, though; is that correct?

6 A. I am.

7 Q. Did you review the Commission's
8 opinion and order in the rulemaking
9 proceeding related to the Commission's
10 adoptions of rules related to Renewable
11 Energy Resource requirements?

12 A. I don't know. Again, I reviewed
13 some orders that I can't recall which cases
14 they came from, and I cannot recall them now.

15 Q. Did you review any of the
16 Companies' Electric Security Plans?

17 A. I'm not sure what you mean by
18 review.

19 Q. In the process of preparing your
20 testimony, did you review or read, analyze,
21 any of the Companies' Electric Security
22 Plans?

23 MR. LAVANGA: To clarify, when you
24 say Electric Security Plans, do you mean the
25 stipulations in the cases?

1 BY MS. FLOYD:

2 Q. Dr. Goins, did you review any of
3 the Companies' Electric Securities Plans
4 whether entered through orders in
5 stipulations in cases?

6 A. Certainly, as I told you, with the
7 with respect to ESP 3, I specifically
8 reviewed that one I remember. And I
9 participated, I think, in ESP 1.

10 Q. Did you have any involvement with
11 ESP 2?

12 A. No. I don't think I testified --
13 I'm trying to get the dates straight. I
14 don't think I testified in ESP 2.

15 Q. Is it fair to say that you're
16 familiar with the Companies' ESP 3 plan?

17 A. Well, I'm familiar with the
18 stipulation and the order from that case.

19 Q. Dr. Goins, would you agree that
20 4928.64 specifies annual benchmarks that
21 delineate both the percentage and composition
22 of Renewable Energy Resources that each
23 electric distribution utility in Ohio must
24 include in electricity supplied to SSO
25 customers?

1 A. Yes.

2 Q. And you'd agree that an electric
3 distribution utility may use Renewable Energy
4 Credits to satisfy the benchmarks in Section
5 4928.64?

6 A. Yes.

7 Q. You'd also agree that a utility
8 need not purchase RECs to comply?

9 A. I assume it could build the
10 resources or acquire them directly. So I
11 guess the answer to your question would be,
12 yes. But for general purposes, the purchase
13 of RECs is acknowledged as an acceptable
14 compliance mechanism.

15 Q. RECs are one of the options a
16 utility has for complying with the renewable
17 energy benchmarks; is that correct?

18 A. Yes, that's my understanding.

19 Q. A utility has other options, other
20 than RECs, to comply with the benchmarks?

21 A. That's my understanding.

22 Q. Now, is it also your understanding
23 that if a utility does use RECs to comply,
24 then there are certain requirements regarding
25 those RECs?

1 A. Well, again, I'm not sure what you
2 mean by requirements. A REC can't be a piece
3 of paper you buy from some person on the
4 street. There have to be certain
5 characteristics of the REC, my understanding
6 is, if that's what you mean by requirements.

7 Q. So if the Company uses RECs to
8 comply, then Rule 4901 of Ohio Administrative
9 Code sets forth certain rules regarding those
10 RECs. Do you agree with that?

11 A. Yes, I think that's correct.

12 Q. For example, a company couldn't
13 double-count RECs; is that correct?

14 A. You cannot double-count, that's
15 correct.

16 Q. Double-counting of RECs would be
17 prohibited; is that correct?

18 A. That's my understanding.

19 Q. Do you agree that the baseline for
20 a utility's renewable energy requirements
21 under 4928.64 is based on a volume per a
22 megawatt hour basis?

23 A. Yes.

24 Q. Would you agree that this is a
25 volumetric energy charge?

1 A. Rider AER is, yes.

2 MR. LAVANGA: Lydia, excuse me for
3 breaking in, but did we have somebody call
4 in?

5 MR. BERGER: Yes. This is Tad
6 Berger. Sorry to be late joining the call,
7 but I'm here now.

8 BY MS. FLOYD:

9 Q. Dr. Goins, what is a volumetric
10 energy charge?

11 A. It is a charge applicable to
12 kilowatt hour purchases.

13 Q. Would you agree that a customer's
14 load factor has nothing to do with the Rider
15 AER charge?

16 A. Well, only to the extent that
17 customers with high load factors are going to
18 have a relatively higher share of kilowatt
19 hours per unit of demand imposed on the
20 system than a lower load factor customer.

21 So I make the statement in my
22 testimony, I believe, that higher load factor
23 customers bear a disproportionate share of
24 the cost under Rider AER simply because it is
25 a volumetric charge.

1 If it were a non-volumetric charge,
2 I think it's reasonable to say that those
3 higher load factor customers would bear a
4 smaller share of the compliance costs
5 recovered under Rider AER.

6 Q. And, again, what is a volumetric
7 charge?

8 A. It is a charge based on kilowatt
9 hour consumption.

10 Q. So if someone uses more, then they
11 have a higher charge?

12 A. They pay more, yes. They pay the
13 same rate. They simply pay more in total
14 expenditures or total costs.

15 Q. So volumetric charge is based on
16 usage?

17 A. Yes.

18 Q. Load factor has nothing to do with
19 usage, does it?

20 MR. LAVANGA: Objection.

21 THE WITNESS: Well, usage is a
22 component of calculation of load factor.

23 BY MS. FLOYD:

24 Q. Other than that you calculate load
25 factor based on usage, usage itself is not

1 actually related to load factor; is that
2 correct?

3 MR. LAVANGA: Objection.

4 THE WITNESS: Usage is related to
5 load factor in the sense that I've talked
6 about it in my testimony.

7 BY MS. FLOYD:

8 Q. Dr. Goins, would you agree
9 regarding Rider AER, if you use more, then
10 someone will pay more -- excuse me.

11 With regard to Rider AER, if you
12 use more energy, then someone will pay more
13 of a Rider AER charge; is that correct?

14 A. Yes, in total bill they will.

15 Q. The charge is based on the energy
16 usage; is that correct?

17 A. Yes. By class it's a stated
18 voltage-adjusted volumetric energy charge.

19 Q. So a customer's load factor has
20 nothing to do with the Rider AER charge; is
21 that correct?

22 MR. LAVANGA: Objection. Asked and
23 answered.

24 THE WITNESS: Again, a customer's
25 load factor -- a higher load factor customer,

1 based upon the manner in which the costs
2 are allocated to be recovered through Rider
3 AER and then recovered through Rider AER,
4 higher load factor customers pay a
5 disproportionately higher share of those
6 total compliance costs than lower load factor
7 customers.

8 BY MS. FLOYD:

9 Q. What do you mean by
10 disproportionate share?

11 A. Disproportionate in the sense that
12 the per-unit demand imposed on the system,
13 they will pay, based on their load factor, a
14 higher percentage of the cost, again, based
15 on the way those costs are allocated,
16 initially, and then recovered volumetrically.

17 Q. Are you saying that a customer with
18 a higher load factor than another customer
19 will use more energy?

20 A. The customer may. In particular, I
21 think the statement that I make in my
22 testimony is that large, high load factor
23 industrial customers; for example, those
24 served under Rate GT, certainly on a relative
25 basis, use significantly more kilowatt hours

1 than do customers served under the
2 residential rates, for example.

3 Q. So if a high load factor Rate GT
4 customer uses more kilowatt hours, then they
5 will pay a higher Rider AER charge than
6 residential customers who would use less
7 energy; is that correct?

8 A. They will pay a higher share of the
9 total compliance costs that FirstEnergy flows
10 through and recovers through Rider AER.

11 Q. Because they're using more energy;
12 is that correct?

13 A. That's correct.

14 Q. Do you consider it unfair that the
15 higher load factor customers who use more
16 energy pay more for Rider AER?

17 A. Unfair? I didn't make -- state an
18 opinion in my testimony. I simply said that
19 it was my opinion that that's what happened.
20 They pay a, in particular, large higher load
21 factor. Customer groups pay a higher share
22 of the renewable compliance costs than do
23 lower load factor classes.

24 Q. And those customers pay a higher
25 share Rider AER because they use more energy;

1 is that correct?

2 A. That's correct.

3 Q. I'd like to talk about the
4 recommendations in your testimony. Is it
5 correct to say that you're making four
6 recommendations?

7 A. Yes.

8 Q. Is it correct that you're
9 recommending that the Commission establish
10 a mandatory non-discretionary annual
11 expenditure cap limiting the FEOU's expenses
12 incurred in meeting their renewable resource
13 obligations that can be recovered through AER
14 to no more than 3 percent of their cost of
15 producing or acquiring substitute energy?

16 A. That's correct.

17 Q. Is it correct that this is a
18 forward-looking recommendation?

19 A. That's correct.

20 Q. You're recommending that the
21 Commission establish on a going-forward basis
22 a cap of 3 percent; is that correct?

23 A. Yes.

24 Q. Okay. You're recommendation does
25 not effect recovery of costs for 2009 through

1 2011 related to renewable energy requirements
2 through Rider AER?

3 A. No, it does not.

4 Q. If the Commission accepted your
5 recommendation, what is the first year that
6 the cap would apply?

7 A. The plan year reasonably, and
8 depending on when the order came out in this
9 case, would be 2014.

10 Q. You also are recommending that the
11 Commission establish a rate cap limiting
12 Rider AER charge for each rate class to 3
13 percent of the applicable Rider GEN energy
14 charge for the class; is that correct?

15 A. Yes.

16 Q. And this is also a forward-looking
17 recommendation?

18 A. Yes, it is.

19 Q. When are you -- what year is the
20 year that you're recommending would be the
21 first year that this would apply?

22 A. Well, theoretically, you could go
23 in with a quarterly change following the
24 order. But, practically, if it coincided
25 with the first compliance year of the 3

1 percent mandatory cap, it would be consistent
2 on that basis.

3 Q. I'm sorry. What year is the first
4 year that you're recommending that the 3
5 percent cap apply?

6 A. What I said was, technically, it
7 could actually go into effect in the
8 quarterly adjustment following the
9 Commission's order in this case. However,
10 when we're talking about the plan year for
11 the mandatory 3 percent cap being effective
12 for the plan year 2014, it may seem
13 reasonable to make the implementation of the
14 Rider AER cap consistent with that plan year.
15 So that would be with the quarter beginning
16 January of 2014.

17 Q. You're also recommending in setting
18 Rider AER charges that the Company should
19 continue to utilize loss adjustments
20 consistent with current practices; is that
21 question?

22 A. Yes, I am.

23 Q. What are loss adjustments?

24 A. Loss adjustments are simply a
25 mathematical adjustment to recognize the

1 voltage differential or the losses associated
2 with voltage differentials of serving
3 customers at different voltages.

4 It takes more energy from the bus
5 or power plant to deliver one kilowatt hour
6 to a secondary distribution customer than it
7 does to deliver a kilowatt hour to a
8 transmission customer.

9 Q. You would agree that a transmission
10 customer has no distribution losses?

11 A. That's correct.

12 Q. So a loss adjustment for a
13 distribution customer would be zero; is that
14 correct?

15 A. I'm not sure what you mean by loss
16 adjustment for a distribution customer.

17 Q. I'm sorry. A loss adjustment for a
18 transmission customer, like customers in Rate
19 Class GT, would be zero; is that correct?

20 A. Or close to it.

21 Q. Why do you say close to it?

22 A. Well, again, every customer, even a
23 transmission, may not be served at exactly
24 the same voltage, so that it depends upon
25 where you're measuring the output or delivery

1 of the energy source. So for practical
2 purposes, the loss adjustments that are
3 incorporated in the current design of Rider
4 AER reflect the notion that I'm talking
5 about.

6 Q. The loss adjustments that reflect
7 the current design of Rider AER for a Rate GT
8 customer are what?

9 A. I don't recall it off the top of my
10 head.

11 Q. Do you believe that the loss
12 adjustment for a Rate GT customer could be
13 zero?

14 A. Conceptually, if you were taking
15 power directly out of the power plant, and,
16 again, it depends on how you're measuring
17 from the point at which you start measuring
18 the losses. And that would be the point at
19 which FirstEnergy's taking delivery of
20 purchases that it makes.

21 Q. You're also recommending that the
22 Commission should refund any disallowed REC
23 costs to rate classes using the current
24 design of Rider AER; is that correct?

25 A. Yes.

1 Q. You're not making a recommendation
2 of whether any REC costs should be
3 disallowed, though; is that correct?

4 A. Yes, that is correct.

5 Q. You don't have an opinion regarding
6 whether any of the REC costs should be
7 disallowed; is that correct?

8 A. That's correct.

9 Q. Are you making any other
10 recommendations in your testimony?

11 A. I don't think so.

12 Q. So you're not making any other
13 recommendations than the four we discussed in
14 your testimony; is that correct?

15 A. Yes. I think that would be fair.

16 Q. Do you have any opinion regarding
17 whether the Companies' costs of procuring
18 RECs from 2009 to 2011 were within the 3
19 percent cap as set forth under Section
20 4928.64?

21 A. Can I go back? I'm sorry. I
22 missed that because I was thinking about the
23 answer that I just gave you.

24 In the testimony following these
25 four recommendations that are listed here,

1 there are pieces of the testimony that
2 elaborate on these four. For example, when
3 you described, and I'm speaking specifically
4 about the recommendation shown at Page 5,
5 when you discussed the first recommendation
6 about the mandatory non-discretionary annual
7 expenditure cap, you included the designation
8 that it would be forward-looking or the
9 descriptor that it would be forward-looking.
10 And I don't talk about that until later in
11 the testimony, and I also talk about this
12 specific recommendation, as well.

13 So just to be clear, I don't make
14 any recommendations, other than those that
15 are directly related to these four shown on
16 Page 5. Anything else said about these four
17 recommendations would simply be clarification
18 or a suggestion to deal with a potential
19 problem with them, if there is one.

20 Q. Is it fair to say that, other than
21 the recommendations on Page 4 and then the
22 other supporting opinions that you have in
23 your testimony, you're not making any other
24 recommendations?

25 A. That's correct.

1 Q. All your recommendations in this
2 case are set forth in your testimony?

3 A. They are.

4 Q. Dr. Goins, do you have any opinion
5 regarding whether the Companies' cost of
6 procuring RECs in 2009 to 2011 were within
7 the 3 percent cap as set forth under Section
8 4928.64?

9 A. Do I have an opinion? The data
10 provided by the Company indicates that they
11 were within the 3 percent cap, or 3 percent
12 provision.

13 Q. And your opinion is that the
14 Companies were within the 3 percent provision
15 of Section 4928.64 for the RECs that they
16 procured during 2009 through 2011; is that
17 correct?

18 A. I have made no determination,
19 independent, that would contradict the
20 statements made by FirstEnergy that they were
21 within the 3 percent provision within the
22 2009 through 2011 period.

23 Q. Dr. Goins, is it correct that you
24 do not have an opinion regarding the
25 Companies' actions in procuring RECs in 2009

1 through 2011, whether they were reasonable?

2 A. That's correct.

3 Q. And is it correct you have no
4 opinion regarding whether the Companies'
5 costs of procuring RECs in 2009 to 2011 were
6 prudently incurred?

7 A. That's correct.

8 Q. You have no opinion regarding any
9 of the REC categories for any of the
10 -- sorry. You have no opinion regarding the
11 prudence for any of the REC categories for
12 any of the years?

13 A. That's correct.

14 Q. Is it correct to say you conducted
15 no analysis regarding the prudence of
16 FirstEnergy REC purchases?

17 A. I did not.

18 Q. And it's fair that you're
19 testifying that you take no position
20 regarding whether the costs associated with
21 specific REC purchases cited by us were
22 imprudent or should be disallowed; is that
23 correct?

24 A. Yes.

25 Q. Is it correct you have no opinion

1 regarding whether the Company should have
2 purchased RECs in the RFPs at issue in this
3 case?

4 A. Yes.

5 Q. You have no opinion regarding the
6 reasonableness of the Companies' RFPs?

7 A. That's correct.

8 Q. No opinion regarding the FEOU's
9 selection of bids over other bids in the
10 RFPs?

11 A. That's correct.

12 Q. You have no opinion regarding the
13 outcome of the RFPs?

14 A. That's correct.

15 Q. You have no opinion regarding the
16 reasonableness of the prices that the
17 Companies pay to purchase RECs during 2009
18 through 2011?

19 A. That's correct.

20 Q. You have no opinion regarding
21 whether Section 4928.64 allows a utility to
22 make a compliance payment in lieu of meeting
23 benchmarks under the statutes; is that
24 correct?

25 MR. LAVANGA: Can I have that

1 question reread, please?

2 (Referred-to testimony read back.)

3 THE WITNESS: For purposes of this
4 testimony, yes.

5 BY MS. FLOYD:

6 Q. Why do you qualify your answer
7 with, for purposes of this testimony?

8 A. Because, ultimately, I think it
9 boils down to a legal conclusion of -- let's
10 put it this way: I know that there is
11 testimony in this case that takes contrary
12 positions on this issue. And I have not made
13 a determination of which of those positions
14 is -- or if one is more reasonable than the
15 other, or if one is correct and the other
16 incorrect.

17 Q. So it's fair to say that you're not
18 offering an opinion regarding whether Section
19 4928.64 allows a utility to make a compliance
20 payment in lieu of meeting benchmarks under
21 the statute?

22 A. Yes. I am offering no opinion on
23 that issue.

24 Q. Is it correct to say you have no
25 opinion regarding the force majeure process

1 provided for under Section 4928.64?

2 A. Again, I'm not sure what an opinion
3 on that would be. I recognize that it is an
4 option available to the utility under certain
5 circumstances. And I have no -- I'm not sure
6 what an opinion on that provision means or
7 is. If you're asking whether the opinion
8 relates to whether FirstEnergy should or
9 should not have invoked a force majeure
10 clause, I have no opinion on that.

11 Q. Is it correct to say that you're
12 offering no opinion regarding whether any
13 costs incurred by the Companies for the
14 purchase of RECs during 2009 through 2011
15 should be disallowed?

16 A. That's correct.

17 Q. Do you have an opinion regarding
18 the benefits of a competitive process?

19 MR. LAVANGA: Objection. The
20 question is vague.

21 THE WITNESS: Again, which
22 competitive process are you speaking of?
23 BY MS. FLOYD:

24 Q. Do you have an opinion regarding
25 the benefits of a RFP?

1 A. For RECs?

2 Q. Sure. Do you have an opinion
3 regarding the benefits of an RFP for RECs?

4 A. Well, I have an opinion that if
5 properly structured and implemented, a
6 competitive bid RFP is one way to achieve
7 reasonable results.

8 Q. Dr. Goins, it's correct that you're
9 recommending that the Commission establish a
10 mandatory non-discretionary annual cap that
11 limits the Companies' recovery of costs
12 incurred to comply with renewable energy
13 benchmarks to no more than 3 percent of the
14 Companies' costs of producing or acquiring
15 substitute energy; is that correct?

16 A. That's correct.

17 Q. What is your basis for this
18 recommendation?

19 A. The basis is stated at Pages 6 and
20 -- 6 through 8, probably, of the testimony.

21 Q. What are you relying on to support
22 this recommendation?

23 A. Well, I'm relying, as I state in
24 the testimony, on the language of 4928.64
25 and, again, what I say is a reasonable

1 interpretation of that language, as well as
2 the Commission's own regulations in 4901, and
3 also that what I believe what is simply a
4 reasonable process on a going-forward basis
5 to establish some limits or certainty that
6 customers can expect in terms of costs that
7 they may have to pay under these provisions
8 for implementing the Alternative Energy
9 Standards, Renewable Energy Standards.

10 Q. Other than relying on 4928.64, the
11 Commission's rules relating to the renewable
12 energy benchmark and your analysis of what a
13 reasonable process would be to establish
14 limits and certainty for customers, are you
15 relying on anything else to support your
16 recommendations?

17 A. Well, I also point out at the top
18 of Page 8 that, to some degree, I believe
19 that the existence of a cap would give
20 FirstEnergy some negotiating leverage with
21 REC suppliers.

22 Now, I have made no empirical
23 analysis or an attempt to quantify that
24 leverage. I simply say that it is one
25 element, for example, that could enable

1 FirstEnergy to deal with potential market
2 problems, if, in fact, there are REC
3 suppliers who do have market power or who
4 attempt to achieve excessive economic rents
5 in some way because of the lack of a mature
6 market or whatever circumstances might give
7 potential suppliers any degree of market
8 power.

9 Q. Dr. Goins, is it fair to say that
10 your opinion regarding the cap giving --
11 would give FirstEnergy leverage, you did not
12 conduct any independent study or research to
13 support that opinion?

14 A. No. Again, I'm not sure how you
15 would conduct -- I guess there are ways in
16 which you could structure experimental
17 analyses that would help you quantify or
18 determine that. I'm basing it simply on
19 general experience, long-term, that if a
20 potential supplier knows you have a limit on
21 what you can spend, it may influence the
22 bidding strategies that potential suppliers
23 develop and implement.

24 Q. You didn't conduct any studies or
25 independent research, though, to support that

1 opinion; is that correct?

2 A. No, not in this case.

3 Q. Now, regarding the basis for your
4 recommendation for establishing a 3 percent
5 cap, is it fair to say that your basis is
6 your review of 4928.64, your interpretation
7 of the Commission's rules relating to
8 renewable energy work resources set forth in
9 4901 of the Ohio Administrative Code, and the
10 other analysis that you've conducted; is that
11 correct?

12 A. Yes.

13 Q. So you haven't actually conducted
14 any research or studies to support that
15 recommendation? That's correct?

16 A. Well, again, I'm not sure how you
17 would support that recommendation. It is
18 simply a recommendation.

19 Q. You haven't conducted any
20 independent studies or research to support
21 that recommendation?

22 A. Again, I don't know that one could
23 do the independent research to support that
24 recommendation. The recommendation could
25 have been for a discretionary cap, as opposed

1 to a mandatory cap, for example. Then one
2 could have analyzed or made comparisons of
3 the pros and cons of a discretionary versus a
4 mandatory non-discretionary. One could have
5 chosen a 2 percent cap, as opposed to a 3
6 percent or a 4 percent cap or some other
7 number, and one could have made some
8 comparative analyses of the pros and cons
9 of those different positions.

10 I did not do that. I simply chose
11 a mandatory 3 percent annual expenditure cap
12 as a reasonable recommendation based on the
13 discussion that I provide in these pages.

14 Q. You did not conduct -- other than
15 the discussion you have on these pages, you
16 did not conduct any independent research or
17 analysis to support your recommendation; is
18 that correct?

19 A. No. And, again, I'm not sure
20 exactly what kind of analysis that one
21 would do to support this recommendation.

22 Q. But you didn't do any independent
23 analysis or research to support this
24 recommendation?

25 MR. LAVANGA: Objection. Asked and

1 answered.

2 THE WITNESS: I'll stick with the
3 answer I gave you just prior to this.

4 BY MS. FLOYD:

5 Q. And so the answer -- is it correct
6 to say you did not do any analysis or
7 research independent of the opinions you've
8 set forth in this testimony to support your
9 recommendation for a 3 percent cap; is that
10 correct?

11 MR. LAVANGA: Objection.

12 THE WITNESS: Are we going to
13 continue along this until I say yes?

14 BY MS. FLOYD:

15 Q. Dr. Goins, can you answer my
16 question?

17 A. Again, I don't know how to answer
18 it, because I don't know what -- when you
19 talk about analysis or research or anything,
20 I don't know what you're talking about.

21 Q. Did you do any research or analysis
22 or studies outside of your testimony to
23 support your recommendation for a 3 percent
24 cap?

25 A. No. As I told you, everything is

1 included in my opinion.

2 Q. Now, you mentioned that one could
3 do a comparison between a discretionary or a
4 non-discretionary cap. Is it fair to say you
5 did not make any analysis of a comparison
6 between a discretionary or non-discretionary
7 cap?

8 A. No, it would not be fair.

9 Q. Why isn't it fair?

10 A. Because I explained why I believe a
11 mandatory cap is necessary.

12 Q. Did you consider --

13 A. If you look at Page 8, at Line 7
14 there's a specific question regarding why it
15 should be mandatory.

16 Q. Did you consider that a 3 percent
17 mechanism could be discretionary?

18 A. Well, yes, if I made a decision
19 that it should be mandatory, which, again, at
20 Page 8 of the testimony I specifically
21 address, the answer would be, yes, I had to
22 in order to reach a decision that it should
23 be mandatory.

24 Q. Now, is it correct to say that
25 you're not suggesting that --

1 A. Also, I was informed, or my
2 position on this was guided, in part, in
3 terms of this issue; for example, of
4 mandatory versus discretionary, by a response
5 that FirstEnergy gave to a data request in
6 which FirstEnergy said something to the
7 effect that they did not -- FirstEnergy did
8 not consider the 3 percent provision to be a
9 cap or a limit. And, in part, while I don't
10 reference, I don't think, that specific RFI
11 response in this testimony, certainly the
12 items or the discussion that I have regarding
13 -- at Pages 6 to 8 do address, for example,
14 this issue of discretionary versus mandatory,
15 and why I believe the language of both the
16 rules and the legislation imply that this is
17 more than just a guide, that it does imply a
18 limit, as I say, or ceiling on payments.

19 Q. Dr. Goins, you're not suggesting
20 that the Companies' ability to recover costs
21 that the Companies incurred to comply with
22 the renewable energy benchmark during 2009 to
23 2011 should be capped at 3 percent of the
24 Companies' cost of producing or acquiring
25 substitute energy for 2009 to 2011; is that

1 correct?

2 A. No. My recommendations are not
3 backward-looking, as we've discussed.

4 Q. Now, is it fair to say you're also
5 not testifying that 4928.64 currently applies
6 a mandatory cap on a utility's recovery of
7 costs to comply with renewable energy
8 benchmark?

9 MR. LAVANGA: Can I have that
10 question reread, please?

11 (Referred-to testimony read back.)

12 THE WITNESS: The 4928.64 -- the
13 quote that I show at Page 6 of the testimony
14 simply indicates that the 4928.64 says the
15 Company need not comply with the benchmark.
16 And, again, my look at what the Commissioners
17 had to say on that, the Commission's use and
18 the -- has used the word cap, not in the
19 sense of -- or limit. Mandatory, I don't
20 think, has been determined.

21 BY MS. FLOYD:

22 Q. So you're not testifying that
23 4928.64 currently applies a mandatory cap on
24 a utility's recovery of the costs to comply
25 with renewable energy benchmarks; is that

1 correct?

2 A. Yes. My reading of 4928.64 is that
3 it does not impose a mandatory cap.

4 Q. Your recommendation, then, thus
5 would require a change in the statutory
6 language; is that correct?

7 A. No. What I say is -- at Page 7,
8 Line 11, I recommend that the Commission
9 interpret the 3 percent mechanism as a
10 mandatory non-discretionary cap on those
11 level of expenditures.

12 I haven't seen anything, for
13 example, that -- there may be something, but
14 I haven't seen it, that would prohibit the
15 Commission from making such an
16 interpretation.

17 Q. But you agree, though, that the
18 Commission cannot interpret Section 4928.64
19 in any way that's inconsistent with the
20 language of the statute; is that correct?

21 MR. LAVANGA: Objection. Calls for
22 a legal conclusion.

23 THE WITNESS: Do you want me to
24 answer?

25 MS. FLOYD: Yes.

1 THE WITNESS: The Commission will
2 interpret the statute as the Commission
3 thinks it is required to do by law. And I
4 can't tell the Commission, you know, what it
5 has to do. I'm simply suggesting that it
6 make this interpretation, as I've indicated.
7 BY MS. FLOYD:

8 Q. You testified that the 3 percent
9 mechanism in Section 4928.64 could be
10 interpreted as a reasonable cap and ceiling
11 on the Companies' annual compliance costs.
12 What is the basis for your opinion.

13 A. Well, the specific language of
14 4928.64 says that, under certain situations,
15 that the Company need not comply with the
16 benchmark; in other words, you don't have to
17 comply with the benchmark if your reasonable
18 expected costs of compliance exceeds the
19 reasonable expected costs of otherwise
20 producing or acquiring the requisite
21 electricity by 3 percent or more.

22 So the legislature sort of put the
23 burden -- at least in my reading, put the
24 burden on the Company to make a reasonable
25 interpretation of the statute, if it wanted

1 to, to be able to justify expenditures that
2 exceeded the 3 percent cap or 3 percent
3 provision. Because the legislature said, you
4 don't have to comply with it if these
5 conditions exist.

6 Q. Would you read that the language of
7 4928.64 provides an option to a utility of
8 whether to procure RECs or Renewable Energy
9 Resources or not under the 3 percent
10 mechanism in that statute?

11 MR. LAVANGA: Objection.
12 Mischaracterizes his testimony.

13 THE WITNESS: It doesn't present an
14 option. It does, again, two things, in my
15 mind. One, it says that you, as a utility,
16 need not comply under these conditions; and,
17 two, I infer from the language in the
18 statute, and based on my experience, that
19 if the situation exists in which you exceed
20 the 3 percent provision, that there is a
21 reasonable basis for someone asking you,
22 were your expenditures in excess of this 3
23 percent provision reasonable and prudent; in
24 other words, I think anything above that 3
25 percent provision shifts a much higher

1 standard on the utility to justify its
2 actions.

3 BY MS. FLOYD:

4 Q. What specific language in Section
5 4928.64 are you relying on to make that
6 opinion?

7 A. I said that it was my inference and
8 my interpretation of the language that I just
9 cited, and that's quoted in my testimony.

10 Q. But to be clear, Dr. Goins, you're
11 relying on the language in Section 4928.64
12 that -- (b)(3) that says, an electric
13 distribution utility or an electric services
14 company need not comply with a benchmark
15 under Division (b) or (2) of this section
16 to the extent that it's reasonably-expected
17 costs with that compliance exceeds it's
18 reasonably-expected costs of otherwise
19 producing or requiring the requisite
20 electricity by 3 percent or more.

21 That's the language that you're
22 referring to in 4928.64; is that correct?

23 A. Yes.

24 Q. You're not relying on any other
25 language in 4928.64 to support your opinions?

1 A. I'm not sure, because I'm not
2 looking at the statute right now.

3 Q. Do you believe that there could be
4 other sections in the statute that support
5 your opinion?

6 A. There may be. Again, I'm not
7 looking at the statute right now, so I would
8 want to review the entire section before I
9 gave you a definitive answer.

10 Q. In your testimony, though, you just
11 quote that sentence, and then the following
12 sentence, which, let me just be clear, you
13 quote the sentence I read and then the
14 following sentence in 4928.64(c)(3); is that
15 correct?

16 A. Yes.

17 Q. So that's the language that's
18 supporting your opinion in your testimony?

19 A. Well, as I say again at Line 24 of
20 that page, both the -- I quote or cite
21 4928.64(c)(2), and then OAC 4901:1-40 and
22 4901:1-40-08.

23 So those would be in addition. You
24 asked me are there other provisions than the
25 statute, and certainly 4928.64(c)(2) has this

1 specific term, I think, cost cap. So
2 it would also be used to support my
3 recommendation.

4 Q. Any other provisions in the
5 statute that you're relying on to support
6 your recommendation?

7 A. Again, I'm not looking at the
8 Statute, other than what's listed here in the
9 testimony, so I don't know. I would have to
10 review those provisions of the Statute in
11 order to give you an answer, and I'm not
12 looking at it.

13 Q. Now, you'd agree that Section
14 4928.64(c)(3) does not say, shall not comply
15 with the benchmark? You'd agree with that,
16 correct?

17 A. I would.

18 Q. It says, instead, 4928.64(c)(3)
19 says, need not comply; is that correct?

20 A. That's correct.

21 Q. Would you agree that the language,
22 need not comply, is discretionary?

23 A. I think that's probably reasonable,
24 that need not comply.

25 I think it's also reasonable that

1 it could be mandatory, as well, given
2 the references to a cost cap there in
3 4928.64(c)(2), and also the Commission's
4 interpretation of that Statute in its
5 regs -- or regulations.

6 And, you know, I also would point
7 out that I show, at the top of Page 7, a
8 quote from FirstEnergy on, specifically,
9 4928.64(c)(3), which FirstEnergy said
10 mandates that 4928.64(c)(3) mandates that
11 EDUs be excused from complying with the
12 Statute's Alternative Energy Portfolio
13 requirements, that if the cost of complying
14 with those standards exceeds, by 3 percent or
15 more, the costs that EDUs and their customers
16 would otherwise incur to acquire the
17 requisite energy.

18 Q. Dr. Goins, so --

19 A. So all I'm saying is that, in
20 addition to the Statute, I'm relying, in
21 part, on FirstEnergy's own words. I think
22 this is an accurate quote from FirstEnergy's
23 filing.

24 Q. Dr. Goins, my question to you was,
25 is one interpretation of the language, need

1 not comply as discretionary, a reasonable
2 interpretation?

3 A. It could be. I think it could also
4 be a reasonable interpretation that it is, in
5 fact, mandatory. As I said, that -- and
6 that's the way I believe the Commission
7 should interpret it, that the language almost
8 gives the Commission, I think, more leeway,
9 not the utility, but the Commission itself,
10 in how it wants to interpret that portion of
11 the Statute.

12 I mean, one could say that this
13 provision of the Statute was written for the
14 utilities, and one could also say it was
15 written for the regulators to give them some
16 flexibility in how they wanted to see -- how
17 they wanted to implement rules and
18 regulations that would implement the
19 legislation in a way that would be fair and
20 reasonable, given that the legislature at the
21 time the law was written didn't know how the
22 markets were ultimately going to develop.

23 Q. So it's fair to say that one
24 interpretation of need not comply is that
25 that language is discretionary, correct?

1 MR. LAVANGA: Objection. Asked and
2 answered.

3 THE WITNESS: To the extent we just
4 went through the point that the Statute does
5 not say, shall not comply. So the question
6 is whether need is -- need not comply is
7 ambiguous in the sense of being mandatory or
8 discretionary. And given that it is
9 ambiguous, then one would have to conclude
10 that one, if one wanted, could argue that it
11 was a non-mandatory provision or a
12 discretionary provision. That would be one
13 interpretation of it.

14 One could also make the
15 interpretation that it does, given not only
16 the language, but given how various parties,
17 including FirstEnergy and the Commission,
18 made statements regarding this specific
19 provision following the write-in legislation,
20 it implied that the language itself may be
21 mandatory.

22 Whether it is or isn't, what I'm
23 asking the Commission to do is clarify the
24 issue and interpret it as a mandatory cap.
25 Because, at least in my opinion, this

1 language gives the Commission the ability --
 2 whether it has the legal authority, the
 3 lawyers could argue, but the language, to
 4 a person reading the statute, could be
 5 interpreted as giving the Commission leeway
 6 to interpret it in a way that could justify a
 7 mandatory annual expenditure cap.

8 BY MS. FLOYD:

9 Q. Dr. Goins, you're not suggesting,
 10 though, that you know why the legislature
 11 included this language, are you?

12 A. No, I do not.

13 Q. You don't know their intent for
 14 including the language, need not comply, in
 15 this specific section of 4928.64, do you?

16 A. I don't have firsthand knowledge,
 17 no.

18 Q. And so you'd agree that -- or is it
 19 your opinion that need not comply is
 20 ambiguous?

21 A. Yes. I think that's a reasonable
 22 interpretation of the language.

23 Q. So need not comply couldn't mean
 24 -- be discretionary -- that the section is
 25 discretionary; is that correct?

1 MR. LAVANGA: Objection. Asked and
2 answered.

3 THE WITNESS: Again, if it's need
4 to comply, what I think is -- even if it's
5 discretionary, what it does is it calls into
6 question the reasonableness and prudence of
7 expenditures in excess of the 3 percent
8 provision. Because I do think the language
9 puts an additional burden on the utility or
10 the service company to justify the incurrence
11 and recovery of compliance costs in excess of
12 the 3 percent provision.

13 BY MS. FLOYD:

14 Q. As written, the language, need not
15 comply, does not prohibit a utility from
16 complying with a benchmark; is that correct?

17 A. Pardon me? Can you repeat that?

18 Q. Sure. As written, the language,
19 need not comply, does not prohibit a utility
20 from complying with a benchmark; is that
21 correct?

22 A. I really don't understand the
23 question.

24 The language, need not comply, does
25 not prohibit a utility from complying with

1 the benchmark? I don't understand the
2 question.

3 Q. What don't you understand about my
4 question?

5 A. I'm not sure. I just don't
6 understand it.

7 MR. LAVANGA: Can you restate it,
8 please.

9 BY MS. FLOYD:

10 Q. Dr. Goins, you're not suggesting
11 that the language in Section 4928.64(c)(3)
12 prohibits a utility from complying with one
13 of the renewable energy benchmarks set forth
14 in that statute, are you?

15 A. Oh, no.

16 Q. And you would agree that Section
17 4928.64 does not create a mandatory cap on
18 the costs that a utility can incur to meet a
19 benchmark under the statute; is that correct?

20 A. It does not create an explicit
21 mandatory cap, no.

22 Q. Under a discretionary 3 percent
23 mechanism, what circumstances would you
24 expect that a utility would decide to exceed
25 the 3 percent test?

1 A. There could be circumstances in
2 which market prices and market supply
3 availability were such that prices were
4 significantly higher than what the company
5 anticipated. One could anticipate that there
6 were deferral costs being recovered; that,
7 you know, depending on the timing of the
8 recovery it could push the cost above the
9 3 percent provision. One could think that
10 there might be market situations in which
11 there were opportunities within the market to
12 make purchases in excess of what one would
13 normally make at favorable prices, or, for
14 whatever reason that one might want to make,
15 that could contribute to that. One could
16 think that if there were carrying costs being
17 recovered on deferred expenditures from prior
18 years that, depending on the timing of the
19 recovery of those, it could affect the
20 compliance with a 3 percent -- or a
21 discretionary 3 percent provision.

22 Q. Would you agree that your
23 recommendation for a 3 percent cap would
24 effectively limit the amount of renewable
25 energy that a utility would procure each

1 year?

2 A. No, it wouldn't limit the amount,
3 if by amount you mean physical certificates.
4 It would limit the amount you could spend in
5 compliance costs on an annual basis.

6 The term I used is -- or phrase is
7 that it would, essentially, set an annual
8 budget, a not-to-exceed budget for
9 FirstEnergy.

10 Q. So under your recommended 3 percent
11 cap, a utility could not purchase Renewable
12 Energy Resources that would exceed the 3
13 percent cap; is that correct?

14 A. Well, the utility could do what it
15 wished. As I say in the testimony, the
16 utility would, essentially, be responsible
17 for costs in excess of that cap.

18 Q. Now, you would agree that Section
19 4928.64 does not prohibit a utility from
20 recovering costs of procuring Renewable
21 Energy Credits from customers; is that
22 correct?

23 A. It does not -- yes. My reading of
24 that section is it doesn't deal with the
25 recovery of those costs.

1 Q. Section 4928.64 does not prohibit
2 a utility from recovering costs of procuring
3 Renewable Energy Credits from customers even
4 if those costs would be above the 3 percent
5 mechanism in that statute; is that correct?

6 A. Yes. I think that's a fair
7 reading.

8 Q. Would you also agree that Section
9 4928.64 expressly prohibits a utility from
10 recovering any compliance payment imposed by
11 the Commission on the utility from customers?

12 A. Did you say compliance penalty
13 payment?

14 Q. I said -- sorry.

15 I said, would you agree that
16 Section 4928.64 expressly prohibits a utility
17 from recovering any compliance payment
18 imposed by the Commission on the utility from
19 customers?

20 A. Yes. I think that -- well, again,
21 I'm not looking at the specific Statute.
22 It's in the Statutes.

23 Q. But it's your understanding that a
24 utility could not recover any compliance
25 payment from customers?

1 A. That's my understanding. I call it
2 a compliance payment penalty. That was why I
3 asked.

4 Q. Why do you call it the compliance
5 payment penalty?

6 A. Because I see it as a penalty.

7 Q. Now, would you also agree that
8 Section 4928.64 does not place a limit on the
9 amount of Renewable Energy Credits that a
10 utility can procure?

11 A. Yes. I think that's reasonable.

12 Q. And you agree that Section 4928.64
13 does not place a limit on the amount of
14 Renewable Energy Resources that a utility
15 can procure to comply with the statute?

16 A. Yes.

17 Q. Would you also agree that Section
18 4928.64 actually provides that nothing in the
19 Statute precludes a utility or a company from
20 providing a greater percentage of energy from
21 Renewable Energy Resources?

22 A. Again, I'm not looking at the
23 Statute itself, but I don't recall anything
24 that would prohibit the utility from doing as
25 you described in your question -- or doing

1 what you described in your question.

2 Q. How do you recommend the Commission
3 implement your recommendation for a 3 percent
4 cap?

5 A. First, it would issue an order
6 saying that its interpretation of 4928.64 was
7 as I've discussed in my testimony. And then
8 it would, essentially, set up a calculation
9 process similar to that described on Page 9
10 of my testimony in which the annual budget
11 for Renewable Energy Resources for
12 FirstEnergy companies would be set. And
13 based on that calculation or that process,
14 then, for that compliance year, the annual
15 expenditure's renewable resource compliance
16 costs would be capped at 3 percent.

17 Q. Are you suggesting that the
18 Commission make such an order in this
19 particular proceeding?

20 A. Well, I would hope so. The
21 Commission, I assume, could also say it
22 agrees that a cap is a -- a mandatory cap is
23 both reasonable and in the public interest,
24 and then either set up a sub-docket or
25 separate proceeding, which would be on a fast

1 track, to simply iron out any questions about
2 the mechanics of implementing the cap.

3 Q. Dr. Goins, I believe you mentioned
4 earlier another basis for your recommendation
5 for the 3 percent cap is the language you
6 cited from FirstEnergy's application for
7 re-hearing that's cited in your testimony on
8 Page 7; is that correct?

9 A. Yes.

10 Q. Do you know whether the Commission
11 ultimately agreed with FirstEnergy's
12 position, and this is the position of the
13 language you cite in your testimony?

14 MR. LAVANGA: Objection. It's
15 unclear what you mean by their position. I
16 mean, what position are we talking about?

17 BY MS. FLOYD:

18 Q. Dr. Goins, --

19 A. Yes.

20 Q. -- did you also rely on language in
21 your testimony that you believe FirstEnergy
22 stated -- I'm sorry. Strike that.

23 Dr. Goins, did you also testify
24 that you also, as part of your basis for
25 your opinion for the 3 percent cap, relied on

1 language that you quote from FirstEnergy on
2 Page 9?

3 A. I think you mean Page 7.

4 Q. Sorry. You're correct. I'm
5 talking about Page 7.

6 A. For purposes of determining whether
7 4928.64(c)(3) implies a cost cap as I am
8 discussing the term cost cap, yes, I did rely
9 on this statement.

10 Q. Do you know the context in which
11 FirstEnergy made that statement?

12 A. I can't recall it.

13 Q. Would it be possible that
14 FirstEnergy made that statement in its
15 application for re-hearing in Case Number
16 08-888 that you cited in Footnote 4 on Page
17 7?

18 A. Oh, if that's what you mean
19 by context, yes, the quote is from that
20 application for re-hearing.

21 Q. Do you know whether the Commission
22 ultimately agreed with the position that you
23 cite from FirstEnergy?

24 A. No, I don't.

25 Q. So you don't know whether the

1 Commission actually rejected FirstEnergy's
2 position?

3 MR. LAVANGA: Objection. What do
4 you mean by position?

5 BY MS. FLOYD:

6 Q. Dr. Goins, can you answer my
7 question?

8 A. I don't recall.

9 Q. So you don't know whether the
10 Commission has taken a position regarding
11 whether the language you cite from
12 FirstEnergy's application for re-hearing is
13 a correct interpretation of Section
14 4928.64(c)(3); is that correct?

15 A. Yes. I can't recall it.

16 MS. FLOYD: I'd like to take a
17 break now.

18 Can we take a 15-minute break?

19 MR. LAVANGA: That's fine for us.

20 Do you know how much longer you're
21 going to have?

22 MS. FLOYD: I think I have several
23 more hours.

24 MR. LAVANGA: Okay.

25 MS. FLOYD: Okay. So let's go off

1 the record.

2 THE WITNESS: I have a problem if
3 it's going to last several more hours.

4 MR. LAVANGA: Okay. Let's go off
5 the record.

6 (Recess taken.)

7 BY MS. FLOYD:

8 Q. Dr. Goins, I believe earlier you
9 agreed that Section 4928.64 does not place a
10 limit on the amount of Renewable Energy
11 Credits that a utility can procure each year;
12 is that correct?

13 A. Yes.

14 Q. Were --

15 A. Again, I'm not looking at the
16 Statute, but I don't recall one.

17 Q. How does the fact that Section
18 4928.64 does not place a limit on the amount
19 of Renewable Energy Credits that a utility
20 can procure affect your recommendation that
21 the Commission should implement a 3 percent
22 cap?

23 MR. LAVANGA: Objection.

24 THE WITNESS: It doesn't affect it
25 at all. The statute itself, again, includes

1 the language, you know, even if it doesn't
2 preclude the utility from buying RECs in
3 terms of a physical limit, it does have
4 specific language recognizing that excessive
5 expenditures may be unreasonable, and, as a
6 result, it includes the language that I
7 cited.

8 BY MS. FLOYD:

9 Q. Did you consider as part of your
10 recommendation the language in the Statute
11 that says that nothing in this section
12 precludes the utility or company from
13 providing a greater percentage of Renewable
14 Energy Resources?

15 A. Again, I'm not sure what you mean
16 by did I consider.

17 What I considered was the fact that
18 the Statute is explicit, regardless of what
19 it says about physical limits on purchases,
20 that it specifically says that the utility
21 need not comply under certain conditions.

22 Q. And it's that language that you
23 base your recommendation for 3 percent cap?

24 A. Along with all the other things
25 that we've discussed regarding this issue.

1 Q. And one of the things we discussed
2 that you're basing your recommendation on is
3 the language that you cite in your testimony
4 on Page 7 from FirstEnergy; is that correct?

5 A. Again, as it relates to the
6 interpretation of a statute as providing a
7 cap, which I've defined immediately on Line
8 11, Page 7, as to what a cost cap implies.

9 Q. Is it fair to say you don't
10 know whether the language you cite from
11 FirstEnergy's application from rate hearing
12 that you're citing in your testimony on Page
13 7, you don't know whether the Commission
14 adopted or rejected that language; is that
15 correct?

16 A. The Company in this quote that I
17 have is not asking the Commission anything.
18 It is simply making a statement, and I quote
19 the statement that the Company made regarding
20 what 4928.64(c)(3) says.

21 Q. You're quoting the language from
22 the Company on Page 7, isn't it right,
23 though, from the Companies' application for
24 re-hearing in Case Number 08-888; is that
25 correct?

1 A. That's correct.

2 Q. And you did not participate in Case
3 Number 08-888, did you?

4 A. Not directly, no.

5 Q. You understand that Case Number
6 08-888 was a rulemaking proceeding that the
7 Commission held regarding rules related to
8 Renewable Energy Resource benchmarks?

9 A. Yes.

10 Q. You didn't offer any recommendation
11 for a cap in those proceedings; is that
12 correct?

13 A. I did not.

14 Q. Do you know whether Nucor or OEG
15 offered any recommendations for a cap in
16 those proceedings?

17 A. I think they may have. I read
18 comments filed by both parties in various
19 cases. Again, I don't recall the specifics
20 right now.

21 Q. You are aware that the Commission
22 did approve rules after it held 08-888, that
23 rulemaking proceeding, that they did
24 ultimately approve rules. Are you aware of
25 that?

1 A. Yes.

2 Q. Do you know whether the rules
3 approved by the Commission related to the
4 Renewable Energy Resource requirements in
5 Section 4928.64 mandate that a utility be
6 excused from complying with the renewable
7 energy benchmarks if the utility's costs
8 exceed the 3 percent mechanism?

9 A. My recollection is that it doesn't
10 mandate that excuse.

11 Q. Okay. It's fair to say that the
12 rules provide that a utility may file an
13 application with the Commission for a
14 determination of whether the 3 percent
15 mechanism is exceeded; is that correct?

16 A. That's, again, my recollection.

17 Q. Okay. So you would agree that the
18 rules do not provide an automatic exemption
19 to a utility for complying with the Renewable
20 Energy Resource benchmark on the basis of the
21 3 percent cap?

22 A. As a specific exemption, no.

23 Q. Do you know whether the rules
24 approved by the Commission related to the
25 Renewable Energy Resource requirements apply

1 a mandatory 3 percent cost cap?

2 A. They do not.

3 Q. You're recommending that the
4 Commission change their rules to apply a 3
5 percent cost cap?

6 A. Well, I guess the phrase I've used
7 is the Commission should interpret the
8 Statute that way.

9 Q. Does your recommendation for a 3
10 percent cost cap take into consideration that
11 the Commission's rules do not apply a
12 mandatory cost cap on a utility at this time?

13 A. Yes, to the extent that I wouldn't
14 be recommending this if there were already a
15 mandatory cost cap in place.

16 Q. Dr. Goins, it's your opinion that a
17 mandatory 3 percent cap on renewable energy
18 expenditures would benefit customers and
19 FirstEnergy; is that correct?

20 A. Yes.

21 Q. And it's your opinion that a
22 mandatory 3 percent cap on the Companies'
23 annual renewable expenditures would protect
24 customers with potentially excessive
25 renewable energy costs, consistent with the

1 legislature's intent when it included the 3
2 percent mechanism in SB 221; is that correct?

3 A. Yes.

4 Q. What supports your belief that the
5 legislature's intent was to protect the
6 customers from potentially excessive
7 renewable energy costs?

8 A. Well, again, I told you earlier
9 that I have no firsthand knowledge of
10 exactly what went into or what was on the
11 legislature's mind when they wrote and voted
12 on this provision, 4928.64(c)(3), but that I
13 think that it is reasonable to interpret that
14 that they had some concern, given the host of
15 unknowns, as to what these compliance costs
16 of the legislation might be.

17 Q. You'd agree that's your
18 interpretation of what you believe the
19 legislature was concerned about, correct?

20 A. Yes.

21 Q. And you're basing that
22 interpretation on the language of the
23 statute; is that correct?

24 A. Yes.

25 Q. Did you attend any legislative

1 session in which the intent of SB 221,
2 which included the Renewable Energy
3 research Benchmark Statute, was discussed?

4 A. No.

5 Q. Other than the language of the
6 Statute, do you have any support for your
7 opinion regarding what the legislature's
8 intentions were?

9 A. Again, I have no firsthand
10 knowledge of what the legislature's intent
11 was, other than my interpretation of what
12 they wrote.

13 Q. Could the legislative intent of SB
14 221 have also been to encourage the advance
15 and renewable energy industry to flourish
16 in Ohio and maximize the economic and
17 environmental benefits to the state?

18 A. I think that was one intent, by
19 including a requirement for the purchase of
20 in-state renewable resources and solar
21 resources.

22 Q. All things being equal, if the
23 legislative intent that we just discussed,
24 you know, was to encourage the advance in
25 renewable energy industry to flourish in Ohio

1 and maximize the economic and environmental
2 benefits to the State, would imposing a 3
3 percent mandatory cap on renewable energy
4 expenditures be consistent with that intent?

5 A. Yes, it would.

6 Again, regardless whether the
7 legislature had a desire to promote the
8 development; in particular, the in-state
9 development of Renewable Energy Resources,
10 the legislature specifically included
11 language -- even given the benchmarks and the
12 targets that had been specified in the
13 legislation, even given that, they had
14 included language which specifically says
15 that, under certain conditions, a utility
16 need not comply with these benchmarks. And
17 regardless, you know, there are competing
18 goals here, obviously, in the legislation, or
19 at least from a reasonable reading of it.
20 And the legislature obviously recognized that
21 there was some limit on how much consumers
22 could be forced to pay in additional costs
23 to meet this other public purpose goal of
24 developing the renewable energy industry.

25 Q. Where in Section 4928.64 did the

1 legislature include a limit on a company's
2 purchases of renewable energy --

3 A. It --

4 Q. -- resources?

5 A. The language, again, specifically
6 says, the company need not comply with these
7 benchmarks under certain conditions. That's
8 as plain as I think the legislature could
9 make it.

10 Q. Does the language say that a
11 utility is limited to purchases that fall
12 within that 3 percent mechanism?

13 MR. LAVANGA: Objection. Asked and
14 answered.

15 THE WITNESS: No, it does not.

16 BY MS. FLOYD:

17 Q. Dr. Goins, you have an opinion that
18 a mandatory cost cap would give FirstEnergy
19 greater pricing leverage in negotiating
20 future REC procurements; is that correct?

21 A. I say that it could.

22 Q. Do you have any independent
23 research, study or analysis to support your
24 opinion?

25 A. Only, you know, personal experience

1 in dealing with parties who are acquiring
2 goods and services, and, generally, when the
3 supplier knows that you have a cap or a limit
4 on what you can spend for certain things,
5 certain goods or services, and there are
6 multiple suppliers in particular, it can
7 affect the bidding strategy of those
8 suppliers.

9 Q. Other than your personal
10 experience, did you conduct any study --

11 A. No.

12 Q. -- regarding how a mandatory cost
13 cap would affect a negotiation of procurement
14 of Renewable Energy Resources or REC?

15 A. No.

16 Q. You agree that you're also offering
17 an opinion that the cost cap should reduce
18 the potential for disputes between
19 FirstEnergy and its customers regarding any
20 possible disallowance of any excessive and
21 prudent REC costs; is that correct?

22 A. Yes. To the extent that it
23 eliminates the issue of debating or
24 conducting prudent investigations of costs
25 in excess of the cap, to that extent I think

1 that it would reduce those disputes as it
2 relates to that issue.

3 Q. Do you have any study or research
4 to support that opinion?

5 A. No.

6 Q. So you can't say for sure whether a
7 cost cap would reduce disputes between
8 FirstEnergy and its customers regarding the
9 cost that FirstEnergy incurred to meet
10 renewable energy benchmarks?

11 A. Well, yes, I do. But, by
12 definition, it would eliminate the
13 discussion on costs in excess of the cap.

14 Q. So in your opinion, a cap would
15 eliminate disputes regarding costs in excess
16 of the cap; is that correct?

17 A. Between customers and the utility,
18 yes. Because, again, customers would
19 recognize that, under the cap as I've
20 described it here, FirstEnergy is responsible
21 for costs in excess of the cap. And then it
22 would be up to the Commission to make a
23 determination; for example, as I've noted in
24 the testimony, of whether the cap should be
25 temporarily adjusted for just cause or

1 reasonable cause or some other circumstance.

2 Q. What basis do you have to support
3 your belief it would eliminate those
4 disputes?

5 A. I just said it takes that element
6 out of the discussion; that element being
7 cost in excess of the cap.

8 Q. It's possible that other disputes
9 could arise, though, even if that element is
10 removed from the discussion?

11 A. Oh, there -- I don't make a claim
12 anywhere in my testimony that it would
13 eliminate disputes regarding prudence. I
14 simply say that, with respect to the costs in
15 excess of the cap, it does remove one element
16 of the discussion.

17 Q. You testified that, in your
18 opinion, if the 3 percent test prevented
19 FirstEnergy from meeting its renewable
20 benchmarks, that FirstEnergy would be exempt
21 from meeting its benchmarks for that year in
22 excess of the 3 percent capped amount; is
23 that correct?

24 A. Yes.

25 Q. What do you mean by exempt?

1 A. That it would not have to make up
2 the shortfall in a future year.

3 Q. What is the basis for your opinion?

4 A. I think it's reasonable.

5 Q. Are you aware of any utility that
6 the Commission has determined to be exempt
7 from meeting its renewable energy benchmarks
8 based on the 3 percent mechanism in 4928.64?

9 A. No, I'm not.

10 I'm sorry. I answered that
11 question thinking about my recommendation.
12 Your question dealt in general, right?

13 Q. That's correct.

14 A. I know there have been applications
15 for -- well, no, I don't. The force majeure
16 issues that I read about, in particular with
17 respect to FirstEnergy, dealt with problems
18 of being able to buy certain types of RECs.

19 Q. So you're not aware of any utility
20 that the Commission determined to be exempt
21 from meeting its renewable energy benchmarks
22 based on the 3 percent mechanism; is that
23 correct?

24 A. The 3 percent provision, yes. No,
25 I'm not.

1 Q. Would you agree that, under
2 the current rules, before any waiver of
3 compliance would apply, that a utility
4 would have to file an application with
5 the Commission and prove that the costs of
6 compliance with the benchmark would exceed
7 the 3 percent mechanism?

8 A. That's my understanding.

9 Q. You're recommending a method to
10 calculate the 3 percent test; is that
11 correct?

12 A. Yes.

13 Q. Would you agree that under
14 Section 4928.64, that the costs to acquire
15 electricity is calculated by taking the
16 average of the prior three years'
17 non-shopping megawatt per-hour sales,
18 multiplied by the average of SSO generation
19 costs for the applicable years, adjusted for
20 distribution loss?

21 A. That's my understanding of one way
22 to do it, yes.

23 Q. And that's the way that you
24 recommend calculating the utility's cost
25 to acquire electricity?

1 A. I think what I've recommended is
2 consistent with what you've just stated.

3 Q. So to be clear, you're recommending
4 calculating a utility's costs to acquire
5 electricity by using a three-year average
6 non-shopping megawatt hour sales for the
7 previous three years; is that correct?

8 A. Yes. In my testimony, that's the
9 baseline sales number that I used.

10 Q. Why are you recommending the
11 calculation of the utility's cost to acquire
12 in that manner?

13 A. In part, because of the way that
14 the calculations have progressed or at least
15 been implemented since 2009. In part, in
16 recognition that the number that would fall
17 out of this would be, probably, inflated
18 relative to a number that was calculated in
19 using current-year numbers for megawatt hour
20 sales or even a projected non-shopping sales
21 value. So to that extent, the cap on
22 expenditures is higher than it would be
23 otherwise.

24 I think FirstEnergy provided
25 testimony, for example, which talked about

1 why, in terms of Rider AER charges and
2 compliance expenditures, one of the factors
3 that caused those to be higher than one may
4 have liked or may have anticipated is simply
5 because, at the beginning of the transition,
6 the competition or retail accesses, the
7 non-shopping number was relatively high
8 and has declined over time.

9 Those are two elements.

10 Q. Are there any other elements for
11 why you're recommending calculating the
12 utility's cost to acquire in the manner that
13 you are?

14 A. I can't think of one right now.

15 Q. Do you believe using the three-year
16 average non-shopping megawatt hour sales to
17 calculate the utility's cost to acquire
18 electricity is consistent with 4829.64?

19 A. Yes.

20 Q. Do you believe it's consistent
21 with Goldenberg's recommended method?

22 A. Well, I'm not sure what
23 Goldenberg's -- Goldenberg had a bunch of
24 methods for calculation and offered up
25 various alternatives for the Commission's

1 consideration.

2 Q. Just to be clear, you're
3 recommending calculating the utility's total
4 cost to acquire electricity by taking the
5 average of the prior three years'
6 non-shopping megawatt hour sales and
7 multiplying that by the average of the SSO
8 generation cost for the applicable year,
9 adjusted for distribution loss; is that
10 correct?

11 A. Yes.

12 Q. Now, under your calculations,
13 you're recommending, to determine the cap,
14 you multiply the total cost to acquire
15 electricity by 3 percent; is that correct?

16 A. Yes.

17 Q. Under your calculations, is it
18 correct that you would wait until January
19 following the SSO auction before you would
20 make -- you would make your calculation
21 -- strike that.

22 Under your recommendation, is it
23 correct that you would wait until January
24 following the SSO action before the utility
25 would make the calculation?

1 A. Yes. That final piece of the
2 price, the SSO price, would not be known
3 until January of the compliance year. You
4 could, on a preliminary basis, set a
5 preliminary budget based on some expected
6 price and then adjust it on a final basis for
7 the January number.

8 Q. But under your recommended math,
9 you would not know the actual cap that would
10 apply until January of that year?

11 A. You would not know the final
12 number. That's correct.

13 Q. Under your recommendation for a
14 calculation of a 3 percent cap, you would not
15 know the cap for 2014 during 2013; is that
16 correct?

17 A. You would not know the final cap,
18 that's correct.

19 Q. If the companies had a heavy
20 portfolio of long-term contracts -- I'm
21 sorry. If a utility had -- strike that.

22 If the utility had a heavy
23 portfolio of long-term contracts for all the
24 RECs it needed to comply with the statutory
25 benchmarks for 2012 through 2015, how would

1 your cap apply -- I mean -- sorry. Is it
2 correct to say that if the companies had -- I
3 mean, if the utility -- sorry. Sorry.
4 Strike that.

5 If the utility had a heavy
6 portfolio of long-term contracts for all RECs
7 from 2012 to 2015, is it correct to say that
8 a utility would not know whether they were
9 over cap, under your method, for the year
10 2014 and 2015 until those years?

11 A. Yes, that's correct.

12 Q. So the utility would run the risk
13 in that instance, in the long-term contract,
14 of actually being over the cap?

15 A. Only if the dominance of the
16 long-term contracts was such that it pushed
17 the entire portfolio over that cap.

18 Q. Are you recommending a cap for each
19 year?

20 A. Pardon me? Yes. There would be a
21 cap.

22 Q. So if a utility had a heavy
23 portfolio of long-term contracts, they would
24 run a risk of exceeding the cap?

25 MR. LAVANGA: Objection. Asked and

1 answered.

2 THE WITNESS: Well, I don't know
3 whether they would or wouldn't. What I'm
4 saying here is that the utility's actual
5 expenditures for compliance in a compliance
6 year would be counted relative to or be
7 evaluated relative to the cap established
8 under the method that I've indicated.

9 BY MS. FLOYD:

10 Q. So the utilities wouldn't know what
11 their cap would be for any year other than
12 the current year that they're in; is that
13 correct?

14 A. That is correct, in terms of the
15 cap itself. They can certainly make
16 projections.

17 Q. In your testimony, you're not
18 recommending a method for how the utility
19 could compare whether its costs of complying
20 with the benchmark fell within a 3 percent
21 cap to, you know, a cost of complying or cost
22 of acquiring electricity without the
23 benchmarks, are you?

24 A. I got lost on that question. I'm
25 sorry.

1 Q. No problem.

2 Are you recommending a method in
3 which a utility can calculate a comparison to
4 where it falls within a 3 percent mechanism
5 in your testimony?

6 A. No. Again, the only thing
7 that I am recommending is that the annual
8 expenditures for compliance costs be limited
9 to, as I've said, this 3 percent cap. So the
10 actual expenditures of those compliance costs
11 would be compared against the cap as
12 determined for that compliance year.

13 Q. Do you know whether the renewable
14 energy benchmark under the AEPS Statute
15 changes if a utility's non-shopping customer
16 load changes?

17 A. If you would have asked me two
18 weeks ago, I would have told you. I cannot
19 remember.

20 Q. You're also recommending in
21 your testimony that Rider AER charges by
22 rate class be no greater than the cost of
23 substitute energy for each class; is
24 that correct?

25 A. Could I go back to the previous

1 question where you asked about the
2 non-shopping?

3 It will influence the number of
4 RECs that are purchased in the sense that it
5 will influence the level of supply that's
6 being bought.

7 Q. And how is that?

8 A. Simply on the basis of -- well,
9 I've gotta step back from that, because I
10 don't -- I can't remember the exact mechanism
11 -- the afore-related mechanism that's used.

12 I'm blank right now.

13 Q. Dr. Goins, is it correct you're
14 testifying that the Rider AER charges per
15 rate class should be capped at 3 percent to
16 the applicable Rider GEN energy charge for
17 each class per year?

18 A. Yes.

19 Q. And then you're recommending that
20 any costs over the 3 percent would be
21 deferred into future years; is that correct?

22 A. Yes.

23 Q. With regard to the 3 percent cap on
24 the Rider AER charges, is this an annual cap
25 or a biannual cap?

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A. It would be based on the SSO price that was determined for that compliance year and used in estimating the cap.

To the extent that the SSO price would change, then in the -- whenever it changed, the quarterly determination of Rider AER would also mean that that cap would change.

Q. Are you recommending that the cap is an annual cap?

A. The -- I've made -- in my testimony, I've made no specific recommendation with respect to that because there is an issue of whether it should be adjusted mid-year for the last two quarterly adjustments of Rider AER.

Q. So in your testimony, you're not suggesting how to resolve whether it is calculated annually or, perhaps, biannually?

A. That's correct.

Q. Is it fair to say that you're not sure how the cap would apply if a rate class is below 3 percent -- you know, the Rider AER is below 3 percent in the summer but above in the winter?

1 A. Well, I've made no recommendation
2 to deal with that, because I've made no
3 recommendation of when it would change.

4 Q. Do you have an opinion on how you
5 would deal with that?

6 A. Well, not right now.

7 Q. How do you suggest the Commission
8 implement your recommendations for a 3
9 percent cap on Rider AER charges?

10 A. There would, essentially, be a
11 determination that the maximum -- or the
12 change in Rider AER that was determined when
13 Rider AER was adjusted would be limited to no
14 more than 3 percent of the SSO price. And
15 that, to me, seemed a fairly straightforward
16 determination.

17 Q. How do you suggest the Commission
18 implement the 3 percent cap that you're
19 recommending on Rider AER charges?

20 A. I just told you.

21 Q. Is your recommendation for a 3
22 percent cap for Rider AER consistent with
23 the Companies' current EST?

24 A. I don't know of any specific way in
25 which it would not be consistent, or at least

1 I don't recall right off the top of my head.

2 Q. You'd agree, though, that the
3 Companies' current EST does not limit the
4 Companies' recovery of expenditures incurred
5 to meet the Companies' renewable resource
6 obligations to 3 percent of the Companies'
7 cost to produce either acquiring substitute
8 energy?

9 A. Yes. As far as I know, neither in
10 the stipulation or the final order, is there
11 any provision that does that.

12 Q. And there's no reference to a
13 3 percent cap on Rider AER charges when
14 compared to Rider GEN for rate class in the
15 Companies' current Electric Securities Plan;
16 is that correct?

17 A. To my knowledge, no -- or, yes, it
18 is correct.

19 Q. Now, it's fair to say you
20 understand that Rider AER was established by
21 the Companies' ESP plan? And that's ESP 1.

22 A. That's my understanding based on
23 reading of what transpired.

24 Q. Are you aware of any rate-making
25 case in which the Commission applied a cap on

1 a rider per rate class based on a comparison
2 of the rider to the Companies' generation
3 rider?

4 A. Not specifically, no.

5 Q. Your recommendation of a cap on
6 Rider AER, when compared to Rider GEN and at
7 a rate class basis is, you're not aware of
8 any other rate-making proceeding in which
9 that's been done; is that correct?

10 A. That's correct.

11 Q. Dr. Goins, in your testimony, you
12 state that the Commission should thoroughly
13 examine the prudence of all REC purchases
14 that SE makes to comply with AEPS
15 obligations; is that correct?

16 A. The testimony sounds familiar.
17 Where are you reading from?

18 Q. On Page 15, Line 14.

19 A. Yes, that's what the testimony
20 says.

21 Q. Are you making this recommendation
22 on a prospective basis?

23 A. Yes. And I would -- if I rewrote
24 this today or wrote this today, I would
25 probably strike the word thoroughly, because

1 I'm not suggesting that there be a -- in
2 every compliance year there be a detailed
3 audit and prudence hearing on all REC
4 purchases.

5 My point that I'm trying to put
6 across here is that I believe that
7 FirstEnergy should only be allowed to recover
8 costs, whether it's RECs or any other costs,
9 from customers, that are reasonable and
10 prudent.

11 But I'm not saying that every time
12 FirstEnergy wants to adjust its costs or
13 recovery of costs, or apply for recovery of
14 costs, that what I consider to be a detail
15 prudence investigation be undertaken.

16 Q. Is it correct that you're not
17 seeking any opinion regarding the Companies'
18 purchases of RECs for 2009, 2010 and 2011?

19 A. That's correct.

20 MS. FLOYD: Can we go off the
21 record?

22 THE WITNESS: Sure.

23 MR. LAVANGA: Yep.

24 (Discussion occurred off the
25 record.)

1 BY MS. FLOYD:

2 Q. As part of your recommendation for
3 a 3 percent cap, is it correct that you're
4 recommending that costs that are incurred
5 above the 3 percent cap on Rider AER would be
6 deferred for recovery in a future year?

7 MR. LAVANGA: Objection. Can you
8 clarify which cap, which part of the cap
9 mechanism?

10 MS. FLOYD: Sure.

11 MR. LAVANGA: Are you talking about
12 the rate cap?

13 BY MS. FLOYD:

14 Q. You're recommending, Dr. Goins,
15 that any under-recovered renewable resource
16 costs that FirstEnergy incurred because of a
17 3 percent cap on Rider AER should be deferred
18 for recovery in future years; is that
19 correct?

20 A. That's correct.

21 Q. If a cost is deferred because a
22 rate class reaches the 3 percent cap, where
23 would this cost go?

24 A. It would go in some deferred
25 account, if that's what you mean.

1 Q. How would the deferrals be
2 allocated the next year to the rate classes?

3 A. Well, under the proposal as it
4 stands today, it would be allocated as the
5 costs are currently allocated. It's on a
6 loss adjusted basis to all classes.

7 Q. So it's fair to say that the
8 deferrals incurred because of a 3 percent cap
9 on Rider AER would be spread across all rate
10 classes?

11 A. As the proposal is currently
12 structured, yes.

13 Q. If the GT Class met the cap and
14 another rate class did not, would the
15 deferred renewable resource costs that are
16 deferred because the GT Class met its cap be
17 spread across all the other rate classes for
18 recovery in the next year?

19 A. Again, I missed the -- well, I
20 didn't miss. I heard it, but I didn't
21 understand the first half of that question.

22 Q. Sure.
23 What didn't you understand about
24 it?

25 A. I'm trying to figure out if you're

1 saying that, if the cap is applicable or not
2 applicable to a certain class because its
3 assigned AER cost is below the 3 percent
4 threshold versus another class whose AER
5 charge is subject to the 3 percent threshold,
6 and, therefore, some costs that would
7 normally have been recovered from that class
8 are deferred, would those deferrals be
9 recovered or spread across all classes in a
10 future recovery period? And as I said, under
11 the proposal as it stands now, the answer's
12 yes.

13 Q. So if one rate class meets its cap
14 in a year and the other rate classes do not,
15 is it fair to say that the next year the
16 other rate classes would be subsidizing the
17 renewable energy cost for the rate class that
18 did, in fact, meet its cap for the prior
19 year?

20 A. Well, they would be picking up a
21 share of the deferrals, given that they would
22 be subject to the allocations.

23 Q. Have you performed any study,
24 research or analysis of the shopping trends
25 for customers in different rate classes?

1 A. No, no study, no.

2 Q. Have you performed any analysis,
3 research or study of how a Rider AER cap
4 would have impacted different rate class
5 customers if it had been applied in the past?

6 A. No, I did no back-test of it.

7 Q. Have you done any study or research
8 analysis to determine how a Rider AER cap
9 would have impacted different rate class
10 customers if it is applied in the future?

11 A. No, because we won't know.

12 Q. Have you performed any analysis of
13 what the effect of a Rider AER cap would be
14 on Nucor?

15 A. No, I have not.

16 Q. How about on any member of Ohio
17 Energy Group?

18 A. No, I have not.

19 Q. Is Nucor a high-load factor
20 customer?

21 A. It's a reasonably high load factor,
22 in my understanding. I don't know the exact
23 load factor that Nucor has. But, in general
24 for basic steel operations, the type that
25 Nucor has, the load factor is generally

1 higher, for example, than a typical secondary
2 distribution customer.

3 Q. Do you know whether a cap of Rider
4 AER would require the companies to modify
5 their administrative system?

6 A. I'm sure it would require some
7 tweaking of the computer programs to track
8 any over or under-recoveries.

9 Q. You don't know whether it would
10 increase the administrative expenses of the
11 Company?

12 A. It would increase expenses, you
13 know, somewhat. They would probably be de
14 minimis.

15 Q. Do you agree, in general, that
16 Nucor is a high load factor customer?

17 MR. LAVANGA: Objection. Asked and
18 answered.

19 THE WITNESS: Again, I don't have
20 any current knowledge of Nucor's recent load
21 factor. What I do know is what I've said
22 earlier, and that is, in general, for a load
23 of this type, my experience indicates that
24 the typical load factor is higher than it is
25 for what we would call an average customer.

1 Certainly generally higher than a secondary
2 distribution customer; in particular, a
3 residential, for example.

4 BY MS. FLOYD:

5 Q. In your testimony, you also address
6 the issue of whether there could be chronic
7 under-recovery of Rider AER costs if a cap is
8 applied; is that correct?

9 A. Yes, I do.

10 Q. And it's correct to say that you
11 don't believe that this is a likelihood of
12 chronic under-recovery if a 3 percent cap
13 is applied because the likelihood should
14 diminish at the three-year non-shopping load
15 used in calculating the 3 percent cap becomes
16 more reflective of the current level of
17 non-shopping customers; is that correct?

18 A. Yes, I believe that would happen.

19 Q. What do you mean by becomes more
20 reflective?

21 A. That you don't get the large swings
22 that you did in the early years of shopping
23 on the FirstEnergy system, in which there was
24 very little shopping and then a great deal,
25 or, relatively speaking, there was a great

1 deal.

2 Q. When was there a great deal of
3 shopping?

4 A. Well, in the first year that we're
5 talking about here, in 2009, I think shopping
6 -- non-shopping likelihood was fairly small.
7 And during this three-year period, the
8 shopping likelihood increased significantly.
9 I think FirstEnergy's testimony, I can't
10 remember the witness, discusses that.

11 MS. FLOYD: Can we go off the
12 record, please?

13 MR. LAVANGA: Sure.

14 (Discussion occurred off the
15 record.)

16 MR. LAVANGA: Back on the record.

17 MS. FLOYD: It's my understanding
18 that Dr. Goins needs to leave for another
19 commitment and we will continue this
20 deposition tomorrow starting at 12:00, and
21 that's February 14th, 2013.

22 Thank you.

23 MR. LAVANGA: Thank you.

24 THE WITNESS: Thank you.

25 (Deposition suspended -- 2:12 p.m.)

1 UNITED STATES OF AMERICA)

2 DISTRICT OF COLUMBIA)

3 I, RYAN K. BLACK, the reporter
 4 before whom the foregoing deposition was
 5 taken, do hereby certify that the witness
 6 whose testimony appears in the foregoing
 7 deposition was sworn by me; that the
 8 testimony of said witness was taken
 9 By me in machine shorthand and thereafter
 10 transcribed by computer-aided transcription;
 11 that said deposition is a true record of the
 12 testimony given by said witness; that I am
 13 neither counsel for, related to, nor employed
 14 by any of the parties to the action in which
 15 this deposition was taken; and, further, that
 16 I am not a relative or employee of any
 17 attorney or counsel employed by the parties
 18 hereto, or financially or otherwise
 19 interested in the outcome of this action.

20
 21 RYAN K. BLACK
 22

23 _____
 Notary Public in and for the
 24 District of Columbia

25 My Commission Expires: 05/14/2016

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT NO: 1608998

CASE NAME: In Re: PUCO Case No. 11-5201-EL-RDR

DATE OF DEPOSITION: 2/13/2013

WITNESS' NAME: Dennis Goins, Ph.D.

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

_____ Date _____ Dennis Goins, Ph.D.

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and

Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT NO: 1608998

CASE NAME: In Re: PUCO Case No. 11-5201-EL-RDR

DATE OF DEPOSITION: 2/13/2013

WITNESS' NAME: Dennis Goins, Ph.D.

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date

Dennis Goins, Ph.D.

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

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ERRATA SHEET

RENNILLO DEPOSITION & DISCOVERY - A VERITEXT COMPANY

ASSIGNMENT NO: 1608998

PAGE/LINE(S) / CHANGE /REASON

Date Dennis Goins, Ph.D.
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20____.

Notary Public

Commission Expiration Date

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STATE OF OHIO
BEFORE THE
PUBLIC UTILITIES COMMISSION

In the Matter of)
the Review of the)
Alternative Energy)
Rider Contained in)
The Tariffs of Ohio) Case No. 11-5201-EL-RDR
Edison Company, The)
Cleveland Electric)
Company, and The)
Toledo Edison Company)

* * * * *

Volume II of II in the Telephonic
Deposition of DENNIS J. GOINS, Ph.D, was
taken on Thursday, February 14, 2013,
commencing at 12:10 p.m., at the Offices of
Brickfield Burchette Ritts & Stone, PC, 1025
Thomas Jefferson Street N.W., 8th Floor West
Tower, Washington, D.C., before Ryan K.
Black, Notary Public, Registered Professional
Reporter.

* * * * *

Reported by:

Ryan K. Black, RPR, CLR

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I N D E X

DEPOSITION OF DENNIS J. GOINS, Ph.D

THURSDAY, FEBRUARY 14, 2013

VOLUME II OF II

EXAMINATION BY:

PAGE:

Ms. Floyd120, 134

Mr. Lavanga129

Mr. O'Rourke--

Mr. Burk--

Ms. Dunn--

Mr. Siwo--

Mr. Berger--

E X H I B I T S I N D E X

* * * NO EXHIBITS MARKED * * *

1 MS. FLOYD: This is Lydia Floyd
2 appearing on behalf of Ohio Edison Company,
3 The Cleveland Electric Illuminating Company
4 and The Toledo Edison Company.

5 Can I have the other counsel on the
6 phone enter their appearances?

7 MR. LAVANGA: This is Michael
8 Lavanga for Nucor Steel Marion.

9 MR. BERGER: This is Edmund Berger
10 for the Ohio Consumer's Counsel.

11 MR. SIWO: Jay Thomas Siwo,
12 S-i-w-o, is the last name, Bricker and
13 Eckler, LLP, on behalf of the Mid-Atlantic
14 Renewable Energy Coalition.

15 MS. FLOYD: Do we have any other
16 counsel on the phone?

17 Are you ready, Dr. Goins?

18 DR. GOINS: Yes.

19 MS. FLOYD: Okay. Thank you.

20 Ryan, would you please swear in the
21 witness?

22 Whereupon --

23 DENNIS GOINS,
24 called to testify, having been first duly
25 sworn or affirmed, was examined and testified

1 as follows:

2 EXAMINATION (Cont'd)

3 BY MS. FLOYD:

4 Q. Dr. Goins, did you do any
5 investigation into the source of the numbers
6 in the Goldenberg Table that you refer to in
7 your testimony?

8 A. You mean did I confirm those
9 numbers?

10 Q. Yes. Did you do any work to
11 confirm the numbers in the Goldenberg Table
12 that you referenced in your testimony?

13 A. No, I did not.

14 Q. So you don't know whether those
15 numbers in the Goldenberg Table are accurate?

16 A. I don't have any independent
17 verification of it.

18 I assumed they were accurate.

19 Q. Dr. Goins, in Table Number 1 in
20 your testimony, it's correct to say that
21 you're not comparing Rider AER to Rider GEN
22 charges for each of the different rate
23 classes; is that correct?

24 A. That's correct.

25 Q. In the Table Rider GEN, is that

1 wholesale rates? Would you agree with that?

2 A. It's the blended SSO price.

3 Q. And it's a blended SSO price at a
4 wholesale level?

5 A. Well, by wholesale, I'm assuming
6 the Rider GEN is a retail rider if the data
7 that are used in the development of Rider GEN
8 represent wholesale transactions.

9 Q. So the numbers that you have listed
10 under Rider GEN and your Table Number 1, are
11 those wholesale prices?

12 A. They are. My understanding from
13 the Goldenberg Report, the --

14 Q. And the numbers you have -- and the
15 numbers you have listed under Rider AER under
16 Table 1, would you agree that those are
17 retail rates?

18 A. Well, Rider GEN and Rider AER are
19 both retail riders.

20 Q. My question, Dr. Goins, is, in this
21 table, the rates that you have listed below
22 Rider AER, are those at the retail rate
23 level?

24 A. Yes. That's my understanding.

25 Q. And the rates that you have listed

1 below under Rider GEN are at the wholesale
2 level; is that correct?

3 MR. LAVANGA: Objection. Asked and
4 answered.

5 THE WITNESS: Well, again, there
6 is no Rider GEN for a wholesale in terms of
7 Rider GEN being applicable here to retail SSO
8 sales.

9 BY MS. FLOYD:

10 Q. So it's your testimony that the
11 Rider GEN rates are not at wholesale level;
12 is that correct?

13 A. Rider GEN is not a rate regulated
14 by the FERC, which is the general definition
15 if one wants to identify whether a rider or a
16 rate is a wholesale or a retail rate.

17 Q. So you don't know whether the rates
18 in Table 1 under Rider GEN are retail or
19 wholesale rates?

20 MR. LAVANGA: Objection.
21 Mischaracterizes his testimony.

22 THE WITNESS: I'll stand on the
23 previous statements I've given you.

24 BY MS. FLOYD:

25 Q. And Dr. Goins, what is your

1 position on what the Rider GEN rates are?
2 Are they wholesale or retail?

3 MR. LAVANGA: Objection. Asked and
4 answered.

5 THE WITNESS: For the fifth time or
6 sixth time, it is a retail rider incorporated
7 in the general tariff of the FirstEnergy
8 Companies.

9 BY MS. FLOYD:

10 Q. If the Rider GEN rates that you had
11 in your Table 1 were wholesale rates and not
12 retail rates, then would you agree that your
13 percentages in your final columns to the far
14 right would be lower?

15 A. Again, the Rider GEN is a retail
16 rider incorporated in the FirstEnergy
17 Operating Companies' tariffs or reflected
18 in those tariffs. The numbers -- my
19 understanding of the Goldenberg Report is
20 that these numbers shown under the column
21 Rider GEN represent a blended competitive
22 price as calculated by Goldenberg. That
23 blended competitive price would be reflected
24 in Rider GEN.

25 Q. I'm not sure you answered my

1 question. I asked you, if the Rider GEN
2 rates are the wholesale rates and the Rider
3 AER rates are retail rates, wouldn't the
4 percentage in the column that you have as
5 AER -- where you show this comparison of the
6 AER rate and the GEN rate, wouldn't those
7 percentages be lower?

8 A. Well, they may or may not be based on
9 the loss adjustment that one would use.

10 Q. Dr. Goins, would you agree that
11 Rate GT customers have lower Rider GEN
12 charges than other customers' rates?

13 A. Conceptually, they should.

14 Q. I'm sorry. I didn't hear your
15 answer. Can I have the court reporter read
16 it back?

17 (Referred-to testimony read back.)

18 BY MS. FLOYD:

19 Q. So other customer rate classes
20 have higher Rider GEN charges than Rate GT
21 customers; is that correct?

22 A. I'm not looking at Rider GEN now,
23 but I think that's a fair statement.

24 Q. Would you agree that when comparing
25 Rider GT Class customers' Rider AER charge

1 with their Rider GEN charge, this percentage
2 of difference will be higher than the same
3 comparison for other classes because Rider
4 GT customers have a lower Rider GEN charge?

5 A. I don't know, because I haven't
6 made the comparison.

7 Q. Would you agree that, in general,
8 if one class had a lower Rider GEN charge
9 than the other classes, then when you would
10 make a comparison between that classes' Rider
11 AER charge and the Rider GEN charge that the
12 percentage of difference would be higher for
13 the class of customers that have the lower
14 Rider GEN charge?

15 A. It would -- you lost me. The
16 comparison, again, would depend on -- the
17 results of the comparison would depend on the
18 level of the Rider AER charge by class and
19 the Rider GEN charge by class.

20 Q. And if one class had a lower Rider
21 GEN charge than the other classes, would you
22 anticipate that, when you did that comparison
23 for the class that had the lower Rider GEN
24 charge than the other classes, that the class
25 with the lower Rider GEN charge would have a

1 higher percentage when you do the comparison
2 between Rider AER and Rider GEN?

3 A. I don't know. Again, it would
4 depend on what the Rider AER charge was that
5 you were using for that specific class.

6 Q. Dr. Goins, you've not shown that
7 Rider AER causes a disproportionate impact on
8 Rate GT customers on any table that's in your
9 testimony; is that correct?

10 A. No, I don't have -- I only have two
11 tables in the testimony.

12 Q. Have you done any study or research
13 to show this?

14 A. No. I just discuss it, as we
15 discussed yesterday extensively in the
16 deposition about my concept of
17 disproportionate responsibility as it
18 applies to large load factor customer
19 groups.

20 Q. So other than your discussion in
21 your testimony, you don't have any
22 independent study or research to show a
23 disproportionate impact -- that Rider AER
24 causes a disproportionate impact on Rate GT
25 customers; is that correct?

1 A. Well, that's not -- my testimony
2 doesn't say that Rider AER caused a
3 disproportionate impact on customers. It
4 simply said that, in general, higher load
5 factor customers would bear a
6 disproportionate share of the compliance
7 costs, associated with the RPS standard, with
8 the RPS.

9 Q. In Table 2, --

10 A. Mm-hmm.

11 Q. -- you set forth the Rider AER bill
12 impact. The impacts that you're showing,
13 those are for the Rate GT customer class. Is
14 that what you're saying your table shows?

15 A. Yes.

16 Q. Have you done any analysis of the
17 Rider AER bill impact on any other rate
18 class?

19 A. No. This is --

20 Q. Do you know how many --

21 A. Excuse me. This is not a class
22 impact. It is a customer impact, by class.

23 Q. You're saying that Table 2 shows a
24 customer impact by -- a customer impact of
25 Rate GT Class customers; is that correct?

1 A. Yes. It is a -- your statement
2 was -- referred to class impacts of
3 Rider AER. And Table 2 looks at the
4 customer-specific impacts of Rider AER on
5 GT customers, and customer-specific being
6 defined by usage level on a monthly basis.

7 Q. Do you know how many Rate GT
8 customers have a usage level of 20,000
9 kilowatt hours per month?

10 A. No, I do not.

11 Q. Do you know how many customers in
12 the Rate GT Class have a usage level of 6,000
13 or less kilowatt hours per month?

14 A. No, I do not.

15 Q. Do you have any reason to disagree
16 that most of the Rate GT customers fall below
17 the 6 million usage level per month?

18 A. No, I do not.

19 MS. FLOYD: Dr. Goins and Mike, I'd
20 like to take a quick break.

21 Can we go off the record?

22 MR. LAVANGA: Sure.

23 (Recess taken.)

24 BY MS. FLOYD:

25 Q. Dr. Goins, do you know how many

1 Rate GT customers have a usage level of 20
2 million kilowatt hours per month?

3 A. No, I do not.

4 Q. Do you know how many Rate GT
5 customers have a usage level of 14 million
6 kilowatt hours per month?

7 A. No, I do not.

8 MS. FLOYD: Okay, Dr. Goins.
9 That's all the questions I have at this
10 point.

11 Are there any other parties on the
12 phone that have any questions for Dr. Goins?

13 MR. BERGER: No. This is Tad
14 Berger. I don't have any questions.

15 MR. LAVANGA: Lydia, this is Mike.
16 I am going to have a few redirect questions.

17 MS. FLOYD: Okay. Do you want to
18 go ahead?

19 MR. LAVANGA: Are there any other
20 parties that wish to ask questions?

21 It doesn't sound like it.

22 EXAMINATION

23 BY MR. LAVANGA:

24 Q. Dr. Goins, you received numerous
25 questions yesterday about the design of the

1 rate cap for Rider AER, including whether
2 this cap would be annual or biannual.

3 Do you recall that?

4 A. Yes, I do.

5 Q. Now, your testimony does not
6 contain all the details about how you would
7 apply that cap, correct?

8 A. That's correct. It does not
9 include details of how the rate cap would be
10 implemented. It specifies the general
11 parameters of the rate cap.

12 Q. If there was a concern about the
13 complexity of a AER cap applied on the basis
14 of rate schedule, is there a different option
15 or a different way that the cap could be
16 applied?

17 A. Yes. The simplest way, or at least
18 one of the simplest ways in which it could be
19 applied would be if one calculated a cap
20 simply as 3 percent of the company-specific
21 Rider GEN charge; that is, the charge before
22 it's adjusted for losses for the specific
23 rate classes.

24 Q. Would that be the blended
25 competitive rate price?

1 A. It would. And that 3 percent of
2 that number would essentially establish the
3 cap for Rider AER in that period. And for
4 that reported period, and on that basis, the
5 cap would remain in place for the period of
6 time in order to adjust it as necessary in
7 the AER proceedings.

8 Q. And under that approach, you would
9 not have a capped level that would vary by
10 rate schedule significantly, correct?

11 A. You would not.

12 Q. So the possibility of large
13 deferrals resulting from one class hitting
14 the cap and then being spread and recovered
15 from other rate classes in following years
16 would be limited or eliminated altogether,
17 correct?

18 A. It would certainly be mitigated.
19 And a general assessment would be that it
20 would be reduced significantly, relative to a
21 class-specific AER rate cap.

22 Q. So in your view, this mechanism
23 would be unlikely to lead to subsidization
24 of one class of customers by another in
25 recovering deferrals in future years?

1 A. I don't think it would.

2 Q. Okay.

3 A. And I'm not sure that -- well, I
4 don't think it will.

5 Q. Okay. Dr. Goins, you also got
6 a question yesterday about when your
7 recommended 3 percent expenditure cap
8 would take effect. Do you remember that?

9 A. I do.

10 Q. And you said 2014?

11 A. Yes. My answer was, essentially,
12 that it would -- the implementation date
13 would sync up with a full 12-month compliance
14 year.

15 Q. Is it also possible that the cap
16 could go into effect in 2013?

17 A. It is possible. It would depend
18 on how the Commission wanted to handle it in
19 this order and how long it took to get an
20 order issued in this case and resolve any
21 petitions for re-hearing or reconsideration.

22 In other words, it would ultimately
23 boil down to the timing of when the final
24 order -- final, final order was issued, with
25 the implementation rule. And I'm sure one

1 factor that the Commission would consider in
2 that timing decision would be the extent to
3 which -- at the point in time in which the
4 order was about to be issued, the operating
5 companies had completed their portfolio
6 acquisition of RECs for RECs for the 2013
7 period.

8 Q. So assuming that an order was
9 issued, say, in, June and at that point the
10 FirstEnergy Operating Companies had not yet
11 acquired all the RECs it needed for that
12 compliance year, wouldn't it be reasonable
13 to allow the cap to go into effect then?

14 A. Well, it would be reasonable.
15 There would be no harm to FirstEnergy.
16 FirstEnergy wouldn't be put at risk under
17 that situation.

18 Q. In other words, you would do the
19 cap calculation and that would create the
20 budget, essentially, for that compliance
21 year, and FirstEnergy just would not go over
22 that budget?

23 A. Yes. As I said, the cap mechanism,
24 as I envision it, would, essentially,
25 establish an annual budget for FirstEnergy's

1 compliance costs.

2 Q. Okay. And the same would be true
3 of the rate cap? Isn't it possible that that
4 could also go into effect in year 2013,
5 depending on when the Commission issues
6 its order in this proceeding?

7 A. You're talking about the rate
8 cap -- or I assume you're talking about the
9 AER cap?

10 Q. Correct.

11 A. It could go into effect, and, you
12 know, would be considered at the next
13 quarterly update of the Rider AER, subsequent
14 to the decision in the case.

15 It would depend solely on the
16 Commission's preference -- not solely, but it
17 would depend on the Commission's preference.

18 MR. LAVANGA: Okay, Dr. Goins.
19 That's all the questions I have.

20 Thank you.

21 MS. FLOYD: Can we go off the
22 record, please?

23 MR. LAVANGA: Yes.

24 (Recess taken.)

25 FURTHER EXAMINATION

1 BY MS. FLOYD:

2 Q. Dr. Goins, are you planning to
3 modify your testimony to reflect this
4 alternative recommendation?

5 A. No. My testimony is what it is
6 today. As I said earlier, I do not provide
7 implementation details for the rate cap or
8 the expenditure cap or the rate cap
9 mechanism.

10 Q. And is it fair to say regarding the
11 alternative mechanism that you just discussed
12 that you were also just providing general
13 parameters and not necessarily the specific
14 details?

15 A. Well, they were specific to the
16 level that you and I were discussing them
17 yesterday.

18 Q. Is it correct to say that the
19 alternative mechanism you were discussing,
20 you were providing some details, but not
21 necessarily all of the details for that
22 mechanism?

23 A. Well, I'm sure that I haven't
24 provided all of the details. I'm sure that
25 the Commission -- the Commission's staff,

1 maybe, or other parties, would certainly have
2 questions, suggestions. If they like the
3 proposal, they may offer constructive
4 criticism or ways to suggest of how it
5 should be improved. I don't know.

6 Q. So it's fair to say that the
7 details around it aren't firmly established?

8 A. That's correct, in terms of my
9 testimony.

10 MS. FLOYD: Do any of the other
11 parties on the phone have questions for Dr.
12 Goins?

13 Mr. Lavanga, do you have any
14 additional questions?

15 MR. LAVANGA: No additional
16 questions.

17 MS. FLOYD: Dr. Goins, at this
18 point, I need to let you know that you have
19 the right to review the transcript and to
20 make corrections to any stenography errors.
21 You also have the ability to waive that
22 right.

23 You need to indicate on the record
24 what you'd like to do?

25 MR. LAVANGA: We're not going to

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waive signature.

MS. FLOYD: Dr. Goins, thank you
very much for your time today, and we are
concluded at this time.

THE WITNESS: Thank you.

MR. LAVANGA: Thank you.

MS. FLOYD: Can we go off the
record?

MR. LAVANGA: Yep.

(Deposition concluded -- 12:37
p.m.)

1 UNITED STATES OF AMERICA)
2 DISTRICT OF COLUMBIA)

3 I, RYAN K. BLACK, the reporter
4 before whom the foregoing deposition was
5 taken, do hereby certify that the witness
6 whose testimony appears in the foregoing
7 deposition was sworn by me; that the
8 testimony of said witness was taken
9 By me in machine shorthand and thereafter
10 transcribed by computer-aided transcription;
11 that said deposition is a true record of the
12 testimony given by said witness; that I am
13 neither counsel for, related to, nor employed
14 by any of the parties to the action in which
15 this deposition was taken; and, further, that
16 I am not a relative or employee of any
17 attorney or counsel employed by the parties
18 hereto, or financially or otherwise
19 interested in the outcome of this action.

20
21 RYAN K. BLACK
22

23 _____
Notary Public in and for the
24 District of Columbia

25 My Commission Expires: 05/14/2016

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT NO: 1612930

CASE NAME: In Re: PUCO Case No. 11-5201-EL-RDR

DATE OF DEPOSITION: 2/14/2013

WITNESS' NAME: Dennis J. Goins, Ph.D.

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

Date

Dennis J. Goins, Ph.D.

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn Statement; and

Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT NO: 1612930

CASE NAME: In Re: PUCO Case No. 11-5201-EL-RDR

DATE OF DEPOSITION: 2/14/2013

WITNESS' NAME: Dennis J. Goins, Ph.D.

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date

Dennis J. Goins, Ph.D.

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

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ERRATA SHEET
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ASSIGNMENT NO: 1612930
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DAY OF -----, 20-----.

Notary Public

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Summary: Deposition of Dennis J. Goins electronically filed by MR. DAVID A KUTIK on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company