

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Gregory Price and Ms. Mandy Chiles,  
Attorney Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-A,  
Columbus, Ohio, called at 10:00 a.m. on Tuesday,  
February 19, 2013.

- - -

VOLUME I

- - -

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

- - -

## APPEARANCES:

FirstEnergy Service Company  
By Mr. James W. Burk  
and Ms. Carrie M. Dunn  
76 South Main Street  
Akron, Ohio 44308

and

Jones Day  
By Mr. David A. Kutik  
and Ms. Lydia M. Floyd  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190

On behalf of the FirstEnergy Companies.

Bruce J. Weston, Ohio Consumers' Counsel  
By Ms. Melissa Ranay Yost  
Mr. Edmund "Tad" Berger  
Mr. Michael J. Schuler  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215

On behalf of the Residential  
Consumers of the FirstEnergy Company.

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

On behalf of the Sierra Club.

Environmental Law & Policy Center  
By Mr. Trent A. Dougherty  
Mr. Nicholas A. McDaniel  
Ms. Cathryn N. Loucas  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212

On behalf of the Ohio Law & Policy  
Center.

## APPEARANCES (Continued):

Boehm, Kurtz & Lowry  
By Mr. Michael L. Kurtz  
and Ms. Jody Kyler Cohn  
36 East Seventh Street  
Suite 1510  
Cincinnati, Ohio 45202-4454

On behalf of the Ohio Energy Group.

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

On behalf of Mid-Atlantic Renewable  
Energy Coalition.

Bricker & Eckler, LLP  
By Mr. Frank L. Merrill  
100 South Third Street  
Columbus, Ohio 43215-4291

On behalf of Ohio Manufacturers  
Association.

Vorys, Sater, Seymour and Pease, LLP  
By Mr. M. Howard Petricoff  
and Mr. Stephen M. Howard  
52 East Gay Street  
Columbus, Ohio 43216-1008

On behalf of Interstate Gas Supply.

Mike DeWine, Ohio Attorney General  
William L. Wright, Section Chief  
Public Utilities Section  
By Mr. Thomas Lindgren  
and Mr. Ryan O'Rourke  
180 East Broad Street, Sixth Floor  
Columbus, Ohio 43215-3793

On behalf of the Staff of the Public  
Utilities Commission.

APPEARANCES (Continued)

Brickfield, Burchette, Ritts & Stone, P.C.  
By Mr. Michael K. Lavanga  
1025 Thomas Jefferson Street N.W.  
Eighth Floor, West Tower  
Washington, D. C 20007

On behalf of the Nucor Steel Marion, Inc.

- - -

## INDEX

- - -

## WITNESS

## PAGE

Donald Storck	
Direct Examination by Mr. O'Rourke	27
Cross-Examination by Mr. Berger	29
Cross-Examination by Mr. Kurtz	35
Cross-Examination by Ms. Dunn	38
Steven Estomin	
Direct Examination by Mr. Lindgren	46
Cross-Examination by Ms. Yost	48
Cross-Examination by Mr. Kutik	73
Examination by the Examiner Price	118
Redirect Examination by Mr. Lindgren	123
Recross-Examination by Mr. Kutik	135
Daniel R. Bradley	
Direct Examination by Mr. Kutik	148
Cross-Examination by Ms. Yost	155
Cross-Examination by Mr. McDaniel	220
Cross-Examination by Mr. O'Rourke	241
Redirect Examination by Mr. Kutik	246
Recross-Examination by Ms. Yost	263
Examination by the Examiner Price	276

- - -

## INDEX

- - -

## COMPANIES' EXHIBITS

IDFD ADMTD

1A	1 - Direct Testimony of Daniel R. Bradley - Public	147	279
	- Direct Testimony of Daniel R. Bradley - Confidential	148	279
	5 - NARUC Market Assessment	88	145
	6 - Exeter Associates Set 3 - INT-1	114	145
	7 - Entry, Case No. 11-53201-EL-RDR, 11/20/11	116	--

- - -

## OCC EXHIBITS

IDFD ADMTD

1 - FirstEnergy Interview Notes, 4/20/12 Confidential	58	145
2 - Pennsylvania AEPS Pricing	172	280
3 - REC Pricing, Berkeley National Laboratories	177	280
4 - OCC Set 3 - INT2	179	281
5 - Navigant Consulting Memorandum, 7/30/09 - Confidential	190	281
6 - FirstEnergy RFP, Issued 7/15/09	215	281
7 - Pennsylvania Administrative Code, 52 PA Code 75.64 (2013)	264	--
8 - 2009 Non-Compliance Penalty Chart	267	282
9 - Navigant Consulting Report, 8/21/09, Confidential	272	--

- - -

## INDEX

- - -

## ELPC EXHIBITS

IDFD ADMTD

1 - Navigant Market Research Report,  
6/3/10 - Confidential

221 280

- - -

## COMMISSION-ORDERED EXHIBITS

IDFD ADMTD

1 - Financial Audit

28 45

- Exeter Audit Report - Public

47 145

2B - Exeter Audit Report - Confidential

47 145

- - -

Tuesday Morning Session,  
February 19, 2013.

- - -

EXAMINER CHILES: The Public Utilities  
Commission of Ohio has called for hearing at this  
time and place Case No. 11-5201-EL0RDR, being  
In the Matter of the Review of the Alternative Energy  
Rider Contained in the Tariffs of Ohio Edison  
Company, The Cleveland Electric Illuminating  
Company, and The Toledo Edison Company.

My name is Mandy Chiles, and with me is  
Gregory Price, and we are the attorney examiners  
assigned by the Commission to hear this case.

We'll begin by taking appearance of the  
parties, beginning with the companies.

MR. BURK: On behalf of Ohio Edison  
Company, the Cleveland Electric Illuminating Company,  
and The Toledo Edison Company, James W. Burk and  
Carrie M. Dunn, 76 South Main Street, Akron, Ohio.

Also on behalf of the companies, David A.  
Kutik and Lydia Floyd, 901 Lakeside Avenue,  
Cleveland, Ohio, with the law firm of Jones Day.

EXAMINER CHILES: Thank you.

Staff.

MR. LINDGREN: On behalf of the staff of



1 the Commission, Ohio Attorney General Mike DeWine, by  
2 Thomas Lindgren and Ryan O'Rourke, Assistant  
3 Attorneys General, 180 East Broad Street, Sixth  
4 floor, Columbus, Ohio 43215.

5 EXAMINER CHILES: Thank you.

6 MR. LAVANGA: Good morning, your Honor.  
7 On behalf of Nucor Steel Marion, Michael Lavanga of  
8 the law firm Brickfield, Burchette, Ritts & Stone,  
9 P.C, 1025 Thomas Jefferson Street, N.W., Washington,  
10 D.C. 20007.

11 EXAMINER CHILES: Thank you.

12 MR. KURTZ: Good morning, your Honors.  
13 For the Ohio Energy Group, Mr. Michael L. Kurtz and  
14 Jody Kyler Cohn.

15 EXAMINER CHILES: Thank you.

16 MR. McDANIEL: Good morning. On behalf  
17 of the Environmental Law & Policy Center, Nick  
18 McDaniel, 1207 Grandview Avenue, Suite 201, Columbus,  
19 Ohio 43212.

20 EXAMINER CHILES: Thank you.

21 MR. DOUGHERTY: Good morning, your  
22 Honors. On behalf of the Environmental Law & Policy  
23 Center, Trent Dougherty and Cathryn M. Loucas, 1207  
24 Grandview Avenue, Columbus Ohio 43212.

25 EXAMINER CHILES: Thank you.

1 MR. ALLWEIN: Good morning, your Honors  
2 and everyone. My name is Christopher J. Allwein, on  
3 behalf of the Sierra Club, 1373 Grandview Avenue,  
4 Suite 212, Columbus, Ohio 43212.

5 EXAMINER CHILES: Thank you.

6 MS. YOST: Good morning, your Honors.  
7 Melissa Yost, Tad Berger and Michael Schuler on  
8 behalf of the Office of the Ohio Consumers' Counsel,  
9 10 west Broad Street, Suite 1800, Columbus, Ohio  
10 43215. Thank you.

11 EXAMINER CHILES: Thank you.

12 MR. HOWARD: Good morning, your Honor.  
13 On behalf of Interstate Gas Supply, Inc., we would  
14 have the record reflect the appearance of Vorys,  
15 Sater, Seymour and Pease, 52 East Gay Street,  
16 Columbus, Ohio 43215, by M. Howard Petricoff and  
17 Stephen M. Howard. Interstate Gas Supply does not  
18 plan to present any witnesses or cross-examine any  
19 witnesses, but we would like the opportunity to write  
20 a brief at the appropriate time in support of the  
21 position that the electric policy of the state calls  
22 for renewable energy, not the payment of penalties.  
23 Thank you.

24 EXAMINER CHILES: Thank you.

25 Mr. Siwo.

1 MR. SIWO: Good morning. On behalf of  
2 Mid-Atlantic Renewable Energy Coalition, Terrence  
3 O'Donnell and J. Thomas Siwo, Bricker & Eckler, LLP,  
4 100 South Third Street, Columbus, Ohio 43215.

5 EXAMINER CHILES: Thank you.

6 MR. MERRILL: Good morning, your Honors.  
7 Frank Merrill on behalf of the OMA Energy Group,  
8 Bricker & Eckler, 100 South Third Street, Columbus,  
9 Ohio 43215.

10 EXAMINER CHILES: Thank you. Are there  
11 any other parties present who wish to enter an  
12 appearance?

13 All right. Hearing none, before we  
14 proceed with testimony, are there any procedural  
15 matters that we need to hear on the record?

16 MR. KUTIK: Yes, your Honor. The  
17 companies would like to be heard on a motion relating  
18 to the treatment of certain confidential information,  
19 and because it does involve a discussion of  
20 information we believe is confidential, proprietary,  
21 and a trade secret, we would request that the  
22 argument on the motion be held or treated as a  
23 confidential portion of the transcript subject to  
24 your ruling otherwise.

25 EXAMINER PRICE: We will go ahead and go

1 into confidential session at this time. Are there  
2 any parties that do not have confidentiality  
3 agreements with the companies?

4 MS. DUNN: Yes, your Honor, there are.

5 EXAMINER PRICE: There are?

6 MS. DUNN: Yes. Mr. Howard, Mr. Siwo,  
7 and also Mr. Merrill for OMA.

8 MR. KUTIK: Your Honor, for this  
9 argument, though, we would waive the exclusion of  
10 those parties. If they want to participate in this  
11 argument, we would have no issue.

12 EXAMINER PRICE: Thank you. That would  
13 be great. If we can -- Mr. Howard is leaving  
14 anyways. You don't have to leave, Mr. Howard.

15 MR. HOWARD: I understand. Thank you.

16 MR. KUTIK: That's his cue, your Honor.

17 EXAMINER PRICE: If we could ask the  
18 staff to close the doors, as much as it pains me,  
19 while we are on confidential transcript.

20 (CONFIDENTIAL PORTION.)  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(PUBLIC RECORD.)

MR. KUTIK: Your Honor, I have  
clarification of something we discussed before we  
started today, and that is that my understanding is  
with respect to the various protective orders,  
motions that have been filed, that the Bench is going  
to defer rulings on those. My request at this time  
would be that any material designated in those  
protective orders or subject to the protective orders

1           be treated as confidential until the ruling  
2           otherwise.

3                   EXAMINER PRICE:  Yes, that's how we will  
4           proceed.

5                   MS. YOST:  Are we on the record?

6                   EXAMINER PRICE:  We are.

7                   MS. YOST:  The confidential portion?

8                   EXAMINER PRICE:  No.

9                   MS. YOST:  Can we go to the confidential  
10          portion?

11                   EXAMINER PRICE:  Let's return to the  
12          confidential portion of the transcript.

13                   (CONFIDENTIAL PORTION.)

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(PUBLIC RECORD.)

EXAMINER CHILES: Are the companies ready  
to proceed?

MR. KUTIK: Your Honor, we believe the  
staff will call their witnesses first.

EXAMINER CHILES: I apologize.

Mr. Lindgren.

MR. LINDGREN: Mr. O'Rourke will be  
calling the first witness.

MR. O'ROURKE: Thank you, your Honor. We  
will be calling Mr. Don Storck.

(Witness sworn.)

EXAMINER CHILES: And I would ask that  
you be seated, and I would ask that you please turn  
your microphone on.

1                               You may proceed.

2   - - -

3                               DONALD STORCK

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

6                               DIRECT EXAMINATION

7               By Mr. O'Rourke:

8                       Q.    Could you please state your name for the  
9               record.

10                   A.    Donald Storck.

11                   Q.    What is your business address?

12                   A.    One West Main Street, Cincinnati, Ohio  
13               45202.

14                   Q.    And who do you work for?

15                   A.    I work for Goldenberg Schneider.

16                   Q.    And was your firm asked to prepare a  
17               financial audit of the company for this case?

18                   A.    Yes.

19                   MR. O'ROURKE:   May I approach?

20                   EXAMINER CHILES:   You may.

21                   Q.    I'm handing you what I would like to have  
22               marked as Commission-ordered Exhibit No. 1.

23                   EXAMINER PRICE:   The version you are  
24               marking as No. 1, do we have a confidential?

25                   MR. O'ROURKE:   There is no



1 confidentiality issue.

2 MS. YOST: I'm sorry. Could we get a  
3 copy of that?

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. (By Ms. O'Rourke) I have just handed you  
6 what's been marked Commission-ordered Exhibit No. 1.  
7 Do you recognize that?

8 A. Yes, I do.

9 Q. Did you prepare this document?

10 A. Yes, I did.

11 Q. Do you have any corrections that you  
12 would like to make to this before we make you  
13 available for cross-examination?

14 A. Yes. On page 9, there is a chart  
15 entitled "Ohio Investor Owned Utilities (cents per  
16 KWh)." Next to the bottom on line CSP, first quarter  
17 it says ".0709." I would like to change that to  
18 ".0707."

19 Q. Do you have any other clarifications?

20 A. No, I do not.

21 MR. O'ROURKE: With that, your Honor, we  
22 would make Mr. Storck available for  
23 cross-examination.

24 EXAMINER CHILES: Thank you. Let's begin  
25 with OCC.

1 - - -

2 CROSS-EXAMINATION

3 By Mr. Berger:

4 Q. Good morning, Mr. Storck. My name is Tad  
5 Berger. I am with the Ohio Consumers' Counsel.

6 Looking at your chart on page 9, can you  
7 tell --

8 MR. KUTIK: Mr. Berger, can you turn your  
9 microphone on?

10 MR. BERGER: I'm sorry.

11 Q. Looking at your chart on page 9, did you  
12 take all these numbers from the filings of the  
13 various companies?

14 A. Yes, I did. Some of them were calculated  
15 from the filing but, yes, all these came from filings  
16 or tariffs.

17 Q. Okay. And in a number of places if  
18 you'll look at, for example, the 2011 numbers for the  
19 FirstEnergy companies, the first three lines of the  
20 chart, all those numbers are the same. Does that  
21 simply indicate there was no adjustment made in the  
22 third -- in the -- I'm sorry, for the second, third,  
23 and fourth quarters?

24 A. That is correct.

25 Q. Okay. And would you agree with me that

1           one -- one conclusion one could reach is that the  
2           overall amount of cost incurred per kilowatt-hours by  
3           the FE companies is significantly higher than any  
4           other utility in the state given that they share the  
5           same purchasing obligations?

6           A.    I can't say cost incurred.  I can say  
7           cost billed to customers.

8           Q.    Okay.  Would you agree with me that  
9           generally in these filings that the cost billed is  
10          reflective of the cost incurred?

11          A.    Generally, yes, because there is  
12          reconciliations.  Because I have not looked at the  
13          other companies other than FE generally, yes.

14          Q.    Okay.  Did you -- did you look beyond the  
15          actual numbers in the filings and read the actual  
16          filings or the reports of the filings?

17          A.    Yes; for FirstEnergy, yes.

18          Q.    What about for the other companies?

19          A.    I just went to the filings, and either  
20          for Dayton Power & Light, I just pulled things right  
21          off the tariff, or AEP, it had to be a calculated  
22          number, and the Duke Energy came from the tariff.

23          Q.    Okay.  And do you know what the reason  
24          was in 2011 that there was no quarterly adjustment in  
25          quarters 3 and 4 for the FE companies, for the

1 FirstEnergy Ohio utilities?

2 A. I don't know why those did not change.

3 Q. Okay. Did you determine for any of the  
4 companies other than the FirstEnergy Ohio utilities  
5 whether the costs reflected were projected costs in  
6 any instance, or were they actual costs incurred?

7 A. I did not examine them in that detail.

8 Q. Okay. For the FirstEnergy Ohio utilities  
9 you determined that they are actual costs; is that  
10 correct?

11 A. There's actual costs in there and there's  
12 some projections used in the calculation.

13 Q. Okay. In terms of what would make the  
14 rates for the different utilities different, what  
15 would be some of the factors that might cause some  
16 variation in these rates other than the cost of  
17 actually purchasing the renewable energy?

18 A. One thing that could change the  
19 compliance obligation is based on a three-year  
20 historical period, and depending on how that relates  
21 to your current sales level, that can affect it, your  
22 strategy, if you want to self-generate versus  
23 purchase RECs. That's all I can think of off the top  
24 of my head.

25 Q. Do volumetric variations between the

1 companies affect these numbers at all in terms of  
2 their actual kilowatt-hours consumed by customers?

3 A. Well, the kWh, are you saying between the  
4 compliance obligation, which is the three-year  
5 historical average, and the current sales level?

6 Q. Well, the amount of recovery would be  
7 reconciled each year to the actual kWh utilized by  
8 customers on any particular system so there might be  
9 some variation there?

10 A. There could be, yes.

11 Q. And weather conditions might, to some  
12 extent, affect the level of kWh?

13 A. Yes, it could.

14 Q. And would the primary difference be in  
15 the amounts actually paid for renewable energy, in  
16 your opinion?

17 A. I can't really say that because there's  
18 other factors. Again, the comparison of the  
19 three-year historical period to the current period,  
20 which rates are applied, that can have a large impact  
21 on it, too.

22 Q. And these -- these numbers, there was no  
23 breakdown in any of these numbers for the riders in  
24 terms of whether they reflected different products.  
25 It was all just one number for the entire companies'

1 portfolio of renewables; is that right?

2 A. For -- are you saying all the companies  
3 or just FirstEnergy?

4 Q. For all the companies.

5 A. I know Dayton Power & Light, they had  
6 costs and they are related to generation of  
7 renewables.

8 Q. Okay. Did they break down the rider AER  
9 by cost of generation of renewables versus purchased  
10 renewables?

11 A. Yes. There was a separate line item on  
12 their filing.

13 Q. Okay. Was that the case with any other  
14 utility?

15 A. I don't believe any other utility had  
16 that, but, again, I did a cursory review.

17 Q. Okay. Would these -- would these amounts  
18 differ if there were any force majeure actions taken  
19 or requested and not -- and RECs or renewable energy  
20 not purchased? Would that influence the rider?

21 A. Yes. If you had a situation where you  
22 didn't have to charge the customers for certain RECs  
23 or you didn't have to acquire them, yes, that would  
24 affect the rate.

25 Q. Would the fact that any utility made a

1 compliance payment affect the renewable energy, the  
2 rider AERs?

3 A. I'm -- I don't fully understand the law.  
4 I don't think I can answer that question.

5 Q. Okay. Did you evaluate that question?

6 A. I looked at it, and I know there is a  
7 force majeure provision, but I didn't evaluate as far  
8 as how it impacts the rate.

9 Q. Okay. Are there any other factors that  
10 you are aware of that would have influenced the rider  
11 AER rates and cause variation other than the ones  
12 we've discussed?

13 A. None that I can think of at this time.

14 MR. BERGER: Just one second, your Honor.

15 All right, thank you, Mr. Storck. That's  
16 all I have.

17 EXAMINER CHILES: Thank you.

18 Mr. Allwein.

19 MR. ALLWEIN: No questions, your Honor.

20 EXAMINER CHILES: Mr. Merrill.

21 MR. MERRILL: No questions.

22 EXAMINER CHILES: Mr. Siwo.

23 MR. SIWO: No questions.

24 EXAMINER CHILES: Mr. Dougherty.

25 MR. DOUGHERTY: No questions.

1 EXAMINER CHILES: Mr. McDaniel.

2 MR. McDANIEL: No questions, your Honor.

3 EXAMINER CHILES: Mr. Kurtz.

4 MR. KURTZ: I do, thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Kurtz:

8 Q. Would you turn to page 9 of your report.

9 A. Yes.

10 Q. I am struck by on the CEI number at the  
11 top, the 4.699 cents per kilowatt-hour, that was the  
12 AER charge for the -- for the second and third and  
13 four quarter of 2011.

14 A. Yes.

15 Q. Do you agree that it -- if this was -- if  
16 the 3 percent cap was in effect and this was at the  
17 3 percent -- let me ask you this, do you know what  
18 this -- these numbers are 3 percent of? If we take  
19 the .4699 and divide by .03, get a generation rate of  
20 15.66 cents a kilowatt-hour, in other words, if  
21 generation was 15.66 cents per kilowatt-hour, these  
22 AER rates would be 3 percent of that.

23 A. It sounds proper.

24 Q. But the generation rates were a third of  
25 15.66, or certainly a half, anyway, in the second,



1           third, fourth quarters of 2011 on CEI as a result of  
2           the auctions, correct?

3           A.    I don't recall the exact generation  
4           price, but, yes, it was something less than that.

5           Q.    Why didn't the 3 percent cap work to  
6           protect consumers in those -- in those quarters? In  
7           other words, why was -- why was this number so much  
8           higher than the generation rate that the auction --  
9           that the customers were actually paying via the  
10          competitive bid auction?

11          A.    I can't explain that.

12          Q.    Did your audit attempt to give the  
13          Commission some recommendations as to how consumers  
14          might be protected in the future?

15          A.    We gave some recommendations about the  
16          calculation and the 3 percent cap and some different  
17          methodologies that could be used or some  
18          alternatives.

19          Q.    Would any of your alternatives protect  
20          consumers against paying a high percentage of the  
21          generation bill for the AER charges?

22          A.    I think they would if they were  
23          implemented and assuming the Commission approved that  
24          methodology.

25          Q.    What were some of those consumer

1           safeguards that you've recommended that would protect  
2           consumers against paying AER charges that are  
3           substantially more than 3 percent of the cost of  
4           generation?

5           A.    We didn't recommend safeguards.  We  
6           recommended alternative methodologies to calculate  
7           the 3 percent.

8           Q.    And what were some of those?

9           A.    We looked at doing it on a historical  
10          basis so at the end of the year go back and look and  
11          say, well, what was my compliance costs compared to  
12          my generation costs.

13          We looked at doing it on a prospective  
14          basis, so if you will look at a year in advance, so  
15          you have kind of an idea of are you going to be close  
16          to 3 percent, more, or less.  We looked at one  
17          methodology you need to adjust the generation to be  
18          based on the historical three-year test period.

19          We looked at a methodology where we may  
20          want to adjust the generation cost for the benefit of  
21          the renewable energy in the PJM system.  Those are  
22          some of the methodologies we looked at.

23          Q.    Okay.  So those were the options or the  
24          alternatives you suggested, but you did not recommend  
25          any one in particular?

1           A.    Right, didn't recommend.  We were just  
2           asked to provide alternatives.

3                   MR. KURTZ:  Thank you, your Honor.

4                   EXAMINER CHILES:  Thank you.

5                   Mr. Lavanga.

6                   MR. LAVANGA:  No questions, your Honor.

7                   EXAMINER CHILES:  Ms. Dunn.

8                   MS. DUNN:  Thank you, your Honor.

9                           - - -

10                           CROSS-EXAMINATION

11           By Ms. Dunn:

12                   Q.    Good morning, Mr. Storck.  I am one of  
13                   the attorneys for the company in this case.  When I  
14                   refer to "the companies," I do mean Toledo Edison  
15                   Company, The Cleveland Electric Illuminating Company,  
16                   and Ohio Edison Company, okay?

17                   A.    Okay.

18                   Q.    And also if you refer to FirstEnergy in  
19                   your testimony, we're also referring to the  
20                   companies, okay?

21                   A.    Okay.

22                   Q.    Okay.  Great.  I just had a couple of  
23                   questions about your background.  At one point in the  
24                   past you did work for Duke Energy Ohio or one of its  
25                   affiliates, correct?

1 A. Correct.

2 Q. And at least your last position with that  
3 company was in the rates services department?

4 A. That is correct.

5 Q. And so then you're familiar with rate  
6 filings and tariffs at the Public Utilities  
7 Commission.

8 A. I'm familiar with Duke Energy's in that  
9 timeframe, yes.

10 Q. Okay. Thank you. And the date appearing  
11 on the cover page of your report, if you'll turn to  
12 that, that's -- that's June 15, 2012, correct?

13 A. Correct.

14 Q. But the report was actually filed with  
15 the Commission on August 15, 2012, correct?

16 A. Correct.

17 Q. And are you aware that in between those  
18 two dates, June 15 and August 15, 2012, that the  
19 companies received an order on their third electric  
20 security plan application?

21 A. Yes, I am aware. I am now aware.

22 Q. You are now aware?

23 A. Yes.

24 Q. Is it fair to assume Goldenberg didn't  
25 make any changes or amendments to its audit report as

1 a result of any provisions in that ESP III order?

2 A. That is correct.

3 Q. Have you had the opportunity to review  
4 Eileen Mikkelsen's testimony on behalf of the  
5 companies?

6 A. I have read it.

7 Q. And do you agree with her testimony that  
8 there are now regulatory commitments specifically in  
9 the ESP III order that would prevent the companies  
10 from implementing at least some of the  
11 recommendations in the Goldenberg report?

12 A. Yes.

13 Q. Now, Mr. Berger asked you a few questions  
14 about your Goldenberg's chart on page 9. Could you  
15 please turn to that. And I just want to walk through  
16 a couple of things related to the data on that page.  
17 I see there is a separate line for CSP, which is  
18 Columbus Southern Power, correct?

19 A. Correct.

20 Q. And OP, which is Ohio Power.

21 A. That is correct.

22 Q. And combined if I refer to AEP, you know  
23 I'm talking about those two, correct?

24 A. Correct.

25 Q. Now, AEP didn't have a stand-alone rider

1 AER during the audit period, correct?

2 A. Correct.

3 Q. And for AEP the cost incurred related to  
4 renewable energy credits were included as a component  
5 of their fuel rider, correct?

6 A. Correct.

7 Q. And Duke also did not have a stand-alone  
8 rider AER during the audit period, correct?

9 A. Correct.

10 Q. And their costs related to renewable  
11 energy credits were part of their fuel rider,  
12 correct?

13 A. Correct.

14 Q. And then we'll also notice on this page  
15 DP&L's rate, at least through the audit period, it  
16 never changed, correct?

17 A. Correct.

18 Q. Now, also in looking at the data on page  
19 9, there is no breakout as far as categories of  
20 renewable energy credits, i.e., solar, nonsolar, in  
21 state, all state, correct?

22 A. Correct.

23 Q. And Goldenberg's chart on page 9 is not  
24 indicative of the actual price paid by each electric  
25 utility for renewable energy credits, correct?

1 A. Correct.

2 Q. And Goldenberg's chart also is not  
3 indicative of what it actually costs each electric  
4 utility to comply with its 2009 renewable energy  
5 mandates, correct?

6 A. Correct.

7 Q. And the same goes for 2010, correct?

8 A. Correct.

9 Q. And 2011?

10 A. Yes.

11 Q. And Goldenberg's chart is not indicative  
12 of the costs that the companies incurred to comply  
13 with the 2009 renewable energy mandates relative to  
14 the cost that any other utility used to comply for  
15 that period?

16 A. I'm sorry, could you please repeat the  
17 question?

18 Q. Sure. That was a long question. Let me  
19 try again. So the chart is not indicative of what  
20 costs the companies incurred to comply with the 2009  
21 renewable energy mandates relative to the costs any  
22 other utility incurred to comply with the renewable  
23 energy mandates for that period of time?

24 A. Let me answer it this way, this is just  
25 basically information pulled from their tariffs. It

1 shows what they billed their customers. It's not  
2 necessarily -- doesn't have -- doesn't necessarily  
3 have reconciliations in it. So I can't tell you  
4 exactly what's in these, especially for the companies  
5 other than the FirstEnergy companies.

6 Q. And so, for example, for AEP you don't  
7 know whether those -- there were some costs to comply  
8 with mandates that may have been incurred in the  
9 purchased power portion of their rider.

10 A. Correct.

11 Q. And those costs, you don't know whether  
12 they were estimated or actual or both.

13 A. Correct.

14 Q. And then for DP&L, for example, same  
15 thing, you don't know whether those are estimated or  
16 actual costs or both, correct?

17 A. Correct.

18 Q. And are you aware that DP&L self-supplied  
19 through the Yankee Solar Facility?

20 A. I know in looking at their filing they  
21 had some capital costs included in their filing, but  
22 that's all I know about them.

23 Q. In their filing, you mean in their rider  
24 AER filing?

25 A. Yes.



1                   Q.   And for Duke's numbers, you don't know  
2                   whether those were actual costs, estimated costs, or  
3                   both, correct?

4                   A.   Correct.

5                   Q.   If you'll give me just one moment.

6                   A.   Sure.

7                   Q.   Now, you mentioned earlier there may be  
8                   some reconciliation included in those riders --  
9                   excuse me -- not included in those riders.

10                  A.   May or may not be included.

11                  Q.   And the reconciliations might include  
12                  recovery of actual dollars, correct?

13                  A.   Correct.

14                  MS. DUNN:  Your Honor, we have no further  
15                  questions.

16                  EXAMINER CHILES:  Thank you.

17                  Staff redirect?

18                  MR. O'ROURKE:  No redirect from staff,  
19                  your Honor.

20                  EXAMINER CHILES:  I have no questions.  
21                  Thank you.  You may step down.

22                  Mr. O'Rourke, you marked an exhibit as  
23                  Commission-ordered Exhibit 1.

24                  MR. O'ROURKE:  Yes, your Honor.  We would  
25                  like to move that into the record.

1 EXAMINER CHILES: Are there any  
2 objections to the admission of Commission-ordered  
3 Exhibit 1, the financial audit report?

4 Seeing none, it will be admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 EXAMINER PRICE: Let's go off the record  
7 for 10 minutes. I promised OCC some exhibits to  
8 review. I will fulfill my promise. Ten-minute  
9 break.

10 (Recess taken.)

11 EXAMINER PRICE: Let's go back on the  
12 record. Would staff like to call its next witness?

13 MR. LINDGREN: Thank you, your Honor.

14 The staff calls Steven Estomin to the  
15 stand.

16 (Witness sworn.)

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

19 THE WITNESS: My name is Steven Estomin.  
20 My business address is Exeter & Associates, 10480  
21 Little Patuxent Parkway, Columbia, Maryland.

22 EXAMINER PRICE: Proceed, Mr. Lindgren.

23 MR. LINDGREN: Thank you.

24 - - -

25 STEVEN ESTOMIN

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

3 DIRECT EXAMINATION

4 By Mr. Lindgren:

5 Q. Good morning, Mr. Estomin.

6 A. Good morning.

7 Q. Was your firm selected by the Commission  
8 to perform a management performance audit of the  
9 alternative energy resource acquisitions of the  
10 FirstEnergy utilities?

11 A. Yes.

12 Q. Thank you. And were you involved in that  
13 audit?

14 A. I was.

15 Q. And there was a report produced as a  
16 result of that audit?

17 A. Yes.

18 MR. LINDGREN: May I approach the  
19 witness?

20 EXAMINER PRICE: You may.

21 MR. LINDGREN: Let the record reflect I  
22 am handing the witness what I have marked as  
23 Commission-Ordered Exhibit 2A, as well as  
24 Commission-ordered Exhibit 2B; and I would note for  
25 the record that 2A is the public version of the

1 document and 2B is the confidential version.

2 EXAMINER PRICE: So noted.

3 (EXHIBITS MARKED FOR IDENTIFICATION.)

4 Q. (By Mr. Lindgren) Dr. Estomin, is this  
5 the audit report I just asked you about?

6 A. Yes, it is.

7 Q. And do you have any corrections you would  
8 like to make to this report today?

9 A. No, I do not.

10 MR. LINDGREN: Thank you. I have no  
11 further questions. The witness is available for  
12 cross-examination.

13 EXAMINER PRICE: Consumers' Counsel.

14 MS. YOST: OCC is willing to go first of  
15 the intervenors, but we would like to follow the  
16 company.

17 EXAMINER PRICE: Mr. Kutik, do you have a  
18 preference?

19 MR. KUTIK: We would like to go last,  
20 your Honor.

21 EXAMINER PRICE: Pardon me?

22 MR. KUTIK: We would like to go last.

23 EXAMINER PRICE: I think it's traditional  
24 to go next to last, but last because the staff won't  
25 be doing any cross.

1 Ms. Yost, you win the toss.

2 MS. YOST: I have very limited questions  
3 on the public record. Are we on the limited process?

4 EXAMINER PRICE: Did you want to be  
5 first?

6 MS. YOST: I can go first.

7 EXAMINER PRICE: You can go first. We  
8 are on the public record.

9 - - -

10 CROSS-EXAMINATION

11 By Ms. Yost:

12 Q. Good morning, Mr. Estomin. My name is  
13 Melissa Yost. I am with the Office of the Ohio  
14 Consumers' Counsel.

15 MR. BURK: Could you please turn your  
16 microphone on. Thank you.

17 Q. You have before you a copy of the -- of  
18 the Exeter report, correct?

19 A. That's correct.

20 Q. And what was your role in drafting this  
21 report?

22 A. I was the primary author of the report.  
23 I also supervised the analysis and performed much of  
24 the analysis myself.

25 Q. Did you make the final decisions on

1           behalf of Exeter what the final draft would include?

2                   A.    Yes, I did.

3                   Q.    Are you familiar with the broker known as  
4           Evolution Markets?

5                   A.    Yes.

6                   Q.    What do you know about Evolution Markets?

7                   A.    They do provide published information  
8           regarding prices of RECs in various markets.  Their  
9           information has been relied upon by the Department of  
10          Energy in a lot of their analyses that they perform  
11          and has appeared in reports put out by the Department  
12          of Energy regarding RECs prices and is generally an  
13          organization relied upon by many people engaged in  
14          purchasing RECs and selling RECs in the market and in  
15          various markets in various states.

16                  Q.    Thank you.  Have you had the opportunity  
17          to read or review other Ohio utilities' requests for  
18          proposals regarding renewable energy credits?

19                  A.    No.

20                  Q.    On page 29 of the contract, sir -- I mean  
21          Exeter report --

22                  A.    Yes.

23                  Q.    -- under "Statutory Violations," do you  
24          see that section, sir?

25                  A.    Yes, I do.

1           Q.    It states, "While this audit is not a  
2                legal review and the following opinion is not based  
3                on a legal review, we found no indication that the  
4                FirstEnergy Ohio utilities operated outside of the  
5                legal requirements established by the Ohio AEPS  
6                legislation."

7                        Was such a review within the scope of  
8                your work?

9           A.    A legal review, no.

10           Q.   And on page 28 of the report, sir, if you  
11                could turn to that page, starting with the third line  
12                down towards the end of that sentence, you indicate,  
13                "there do not appear to be any technical violations  
14                of the Ohio's AEPS statute and the FirstEnergy Ohio  
15                utilities appear not to have violated the letter of  
16                the legislation."

17                       Do you see that, sir?

18           A.    Yes, I do.

19           Q.    Do you have an opinion whether they  
20                violated the intent or the spirit of the law?

21                       MR. KUTIK:  Objection.

22                       EXAMINER PRICE:  Grounds?

23                       MR. KUTIK:  Friendly cross.

24                       MS. YOST:  Your Honor, I don't know the  
25                answer.

1 EXAMINER PRICE: Pardon me?

2 MS. YOST: I don't know what the witness  
3 is going to answer. It's not friendly cross.

4 EXAMINER PRICE: I don't think whether  
5 you know the answer is the definition of friendly  
6 cross, but I will overrule the objection anyway.

7 You can answer.

8 THE WITNESS: Has it been overruled?

9 EXAMINER PRICE: The objection is  
10 overruled. You can answer the question if you know.

11 A. I believe so. My reading of the  
12 legislation is that it contains at least two  
13 components designed, at least in part, to limit the  
14 degree to which consumers would be exposed to the  
15 high prices of complying with the AEP legislation --  
16 excuse me -- the RPS legislation.

17 And that includes both the 3 percent  
18 rule, as it's called, and also the compliance payment  
19 amounts. Virtually all states -- not all, but  
20 virtually all states have some type of limitation on  
21 exposure to consumer costs, and I think both of those  
22 aspects of the legislation get to this, so I think to  
23 my mind there is at least some recognition on the  
24 part of the legislature passing this legislation that  
25 there be some brake on a cost and brake -- by "brake"



1 I mean B-R-A-K-E -- on costs associated with  
2 complying with the renewable energy mandates  
3 contained in the legislation.

4 Q. On page 9 of your -- excuse me -- of the  
5 Exeter report, sir, there's a subheading titled  
6 "Contingency Planning."

7 A. Yes, I see that.

8 Q. During your investigation or audit,  
9 FirstEnergy -- and by "FirstEnergy," I mean  
10 FirstEnergy utilities, okay?

11 A. Yes.

12 Q. FirstEnergy provided you three copies of  
13 the FirstEnergy corporate FE utilities commodity  
14 portfolio risk management policy, correct?

15 A. That's correct.

16 Q. And there was a 2009, 2010, 2011 version.

17 A. That's correct.

18 Q. And just to clarify, none of the versions  
19 provided contained a contingency plan part of that  
20 policy, correct?

21 MR. KUTIK: Objection.

22 EXAMINER PRICE: Grounds?

23 MR. KUTIK: Friendly cross.

24 EXAMINER PRICE: The company -- this is  
25 not a situation where the company's already had its

1 cross and she's attempting to rehabilitate the  
2 witness, although I do appreciate the fact that OCC  
3 and staff are not necessarily adverse on this issue.  
4 We will give Ms. Yost --

5 MR. KUTIK: That's the point of my  
6 objection, your Honor.

7 EXAMINER PRICE: I understand. I  
8 understand. We will give Ms. Yost a little more  
9 leeway, but we are not going to go all day like this.  
10 Overruled.

11 THE WITNESS: I'm sorry, can you please  
12 repeat the question?

13 Q. (By Ms. Yost) Sure. We were talking  
14 about the three documents, three separate versions of  
15 the commodity portfolio risk management policy. Did  
16 any of those versions of the policy contain a  
17 contingency plan?

18 A. No, none of those contained a specific  
19 contingency plan.

20 Q. What is your understanding of when the  
21 first request for proposal to purchase renewable  
22 energy credits starting year 2009 was issued?

23 A. I believe that was issued in mid 2009,  
24 and the exact date of that was July 15, I believe.

25 Q. And what is your understanding of why

1 FirstEnergy waited until mid July, 2009, to issue its  
2 first request for proposal?

3 A. It's my understanding there were issues  
4 related to Commission orders and what they would be  
5 precisely permitted to do in the conduct of the RFP.  
6 So as a means of avoiding potential exposure to risk,  
7 the company adopted this time schedule.

8 Q. When you say "potential exposure to  
9 risk," do you mean exposure to financial risk?

10 A. Yes.

11 Q. Were there any reasons other than  
12 financial risks provided by the companies as to why  
13 they waited until mid 2009 to issue the first request  
14 for proposal?

15 A. Not that I can recall and not that I am  
16 aware of.

17 EXAMINER PRICE: Are you aware of any  
18 utilities in Ohio issuing RFPs for REC credits prior  
19 to the company?

20 THE WITNESS: It's my understanding that  
21 other companies did issue RFPs prior to that date.

22 EXAMINER PRICE: Which companies?

23 THE WITNESS: I don't recall offhand.

24 Q. (By Ms. Yost) Have you made a  
25 determination whether the RFPs could have been issued

1 previous to July, 2009?

2 A. Certainly they could have been issued  
3 prior to that date.

4 Q. Were there any actions that the company  
5 would have taken in regards to the issuance of the  
6 request for proposals before the Commission's entry  
7 approving the stipulation in this case was issued?

8 A. I don't immediately recall the date of  
9 the stipulation, but it would have been possible, for  
10 example, for the utilities -- for the FirstEnergy  
11 utilities to get everything essentially lined up in  
12 preparation for the issuance of the RFP. The degree  
13 to which they did that, I'm not sure.

14 Q. And you are aware that Navigant was  
15 selected as the independent evaluator for the  
16 purposes of request for proposals 1 through 6?

17 A. Yes, I am.

18 Q. And were you ever provided a copy of  
19 Navigant's scope of work?

20 A. Yes, I was.

21 Q. And what was that scope of work included  
22 in?

23 A. Essentially to perform duties and  
24 functions associated with the development, issuance  
25 of the RFPs, evaluation of the bids, preparation of

1 recommendations associated with executing contracts  
2 associated with those bids, and also dealing with  
3 many of the mechanics associated with the RFP, for  
4 example, dealing with questions by potential bidders  
5 and interfacing with the company on various aspects  
6 of the RFP document.

7 Q. And I'm looking for the specific titling  
8 of the document. What document was the scope of work  
9 included in?

10 A. I believe Navigant did have a contract  
11 with -- with FirstEnergy, and I believe we received a  
12 copy of that in response to one of our data requests.

13 MS. YOST: Your Honor, I think I have  
14 done my best to avoid areas that will elicit  
15 confidential responses, so this concludes my  
16 questions at this time in regards to the public  
17 record.

18 EXAMINER PRICE: Are you ready to go on  
19 the confidential transcript? We are going to do that  
20 now.

21 MS. YOST: If that's what the Bench --

22 EXAMINER PRICE: That's the way we are  
23 going to do it.

24 Okay. Let's go to the confidential  
25 portion of our transcript and prevail upon

1 Mr. Lindgren to close the door.

2 (CONFIDENTIAL PORTION.)

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(PUBLIC RECORD.)

EXAMINER PRICE: Mr. Allwein, cross?

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

EXAMINER PRICE: Mr. Dougherty?

MR. DOUGHERTY: No questions, your Honor

Mr. McDaniel.

MR. McDANIEL: No questions.

EXAMINER PRICE: OEG.

MR. KURTZ: No questions, your Honor.

Nucor.

MR. LAVANGA: No questions, your Honor.

1 EXAMINER PRICE: Company.

2 MR. KUTIK: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Kutik:

6 Q. Good morning, Doctor.

7 A. Good morning.

8 Q. You said earlier that you were the  
9 principal drafter of the report, correct?

10 A. That's correct.

11 Q. And would it be fair to say that this was  
12 the first time that you were involved in an audit of  
13 a utility's energy or REC procurement program?

14 A. Yes.

15 Q. And, in fact, it was the first time that  
16 Exeter had been involved in an audit of a REC  
17 procurement program, correct?

18 A. Yes.

19 Q. You have never had the responsibility or  
20 have never been hired by a utility to design an RFP  
21 program for energy procurement?

22 A. Not by a utility, but by other  
23 organizations who have issued RFPs for --

24 Q. My question was utilities, sir.

25 A. No.



1 Q. And you've not been responsible for the  
2 implementation of an RFP for RECs, correct?

3 A. No, that's incorrect.

4 Q. Okay. Well, do you not recall talking to  
5 me on December -- in December of this year?

6 A. I do.

7 Q. And did you not indicate then that you  
8 had not been responsible for the implementation of a  
9 utility program to meet an AEPS?

10 A. Your question that you asked me before  
11 was not specific to a utility.

12 Q. It was, sir.

13 A. If you read the record back, you'll see  
14 it was not.

15 Q. Well, let me ask the question that I  
16 thought I asked, which was have you ever been -- have  
17 you ever been responsible for the implementation of a  
18 procurement program for a utility to meet an AEPS?

19 A. No.

20 Q. Okay. Would it also be true you have not  
21 acted as an independent evaluator hired, either by a  
22 utility company or a Commission, for an RFP for a REC  
23 program, correct?

24 A. That's correct.

25 Q. Now, prior to this case, would it also be

1 fair to say you've only testified in one case  
2 involving the review of a REC procurement program?

3 A. That is correct.

4 Q. And that was in Pennsylvania, was it not?

5 A. That's correct.

6 Q. And in Pennsylvania you testified on  
7 behalf of the Office of the Consumers' Advocate.

8 A. Correct.

9 Q. And that case you also testified that  
10 because of the -- I think the word you used was  
11 fundamental mismatch between supply and demand in the  
12 solar REC market, you recommended or supported an  
13 establishment of a limit price, correct?

14 A. I believe that's correct.

15 Q. Now, in drafting that report, would it be  
16 fair to say you did little independent research?

17 A. I would ask what you mean by "independent  
18 research."

19 Q. All right. Research other than your  
20 investigation and questions to the company.

21 A. No, I think that would be incorrect.

22 Q. All right. Well, isn't it true that with  
23 respect to the independent research you did in terms  
24 of other reports that you relied upon, isn't it fair  
25 that you relied upon the Department of Energy report

1           that you cite on page 26 in your testimony -- in your  
2           report, correct?

3           A.    That's one piece of analysis.

4           Q.    Right.  And another piece of analysis  
5           that you used was a report that was prepared in part  
6           by Exeter sponsored by NARUC relating to an analysis  
7           of the Ohio renewables market, correct?

8           A.    That's correct.

9           Q.    That report was issued sometimes around  
10          September, 2011?

11          A.    That's correct.

12          Q.    You were not involved in that report.

13          A.    No.

14          Q.    Nor was anyone on the team from Exeter  
15          that was involved in the audit in this case, correct?

16          A.    Not significantly involved, no.

17          Q.    Okay.  Nevertheless, would it be fair to  
18          say that you would regard that report as being  
19          authoritative in terms of an analysis of the Ohio  
20          renewables market?

21          A.    Are you referring to the NARUC report?

22          Q.    Yes, I am, sir.

23          A.    I think it was a reasonably solid piece  
24          of work.  I don't agree with everything in there, but  
25          I believe it was, by and large, a competent piece of

1 work.

2 Q. It was competent enough for you to be  
3 able to rely on, wasn't it?

4 A. Which I did, in part.

5 Q. Now, in preparing this report, you did  
6 not look at the results of any RFPs from any other  
7 Ohio utility for their procurement of RECs, correct?

8 A. That's correct.

9 Q. Nor did you look at any other Ohio  
10 utility's contingency plans with respect to those  
11 types of RFPs.

12 A. That's correct.

13 Q. Would it be fair to say, sir, that when  
14 we are looking at a relatively recent statute that  
15 seeks to require utilities or other companies to  
16 purchase renewable power, in the first few years of  
17 that, there is a tension between the goal of  
18 enhancing renewable capacity and affordability?

19 A. That tension exists regardless of the  
20 vintage of the renewable portfolio standard  
21 legislation.

22 Q. Okay. But that tension exists,  
23 nevertheless.

24 A. Yes.

25 Q. Now, let's talk about your review and

1           your criticisms with respect to the FirstEnergy  
2           utilities and Navigant. You would agree with me that  
3           we should avoid ex post analysis, correct?

4           A. Yes.

5           Q. We should look at the reasonableness of  
6           the decisions that were being made based upon the  
7           facts and circumstances presented to them, that is,  
8           FirstEnergy Ohio utilities or Navigant, at the time  
9           the decisions were being made, correct?

10          A. Yes.

11          Q. Now, your report is not critical of the  
12          process that Navigant and the FirstEnergy Ohio  
13          utilities used with respect to the issuing of the  
14          RFPs, the receipt of bids, and the evaluation of  
15          bids, correct?

16          A. Correct.

17          Q. The process was open and transparent?

18          A. Yes.

19          Q. The product was clear?

20          A. Yes.

21          Q. There were adequate mechanisms used by  
22          Navigant to solicit or attempt to solicit interest in  
23          the RFPs?

24          A. Yes.

25          Q. The process, I believe you said earlier,

1 did not favor or disadvantage any particular bidder  
2 or set of bidders?

3 A. Correct.

4 Q. And for all the bids for RECs that the  
5 FirstEnergy utilities ultimately accepted, all of  
6 those bids were the first RECs to be accepted by  
7 Navigant, correct?

8 A. That's my understanding.

9 Q. And you don't -- and is it fair to say  
10 you believe that Navigant acted appropriately  
11 independent of the companies?

12 A. I didn't see any indication to the  
13 contrary.

14 Q. The process, it would be fair to say, was  
15 designed to be a competitive process.

16 A. Yes.

17 Q. And the process resulted in prices that  
18 reflected the market, correct?

19 A. Yes. Relatively speaking, yes.

20 Q. All right. And the market here, I think,  
21 as we mentioned earlier or may have mentioned  
22 earlier, was a nascent market, particularly with  
23 interstate or renewable.

24 A. Yes.

25 Q. And it was a market that was constrained

1 in the 2009 to 2011 time period, at least the period  
2 of the RFP 1, 2, and 3?

3 A. Certainly in the 2009-2010 timeframe.

4 Q. And part of 2011?

5 A. Yes, part of 2011.

6 Q. It would be fair to say there was no  
7 reliable available data at the time of the RFPs on  
8 REC prices for in-state all renewable products or  
9 RECs, correct?

10 A. Yes.

11 Q. And there was no reliability data on the  
12 RFPs on the amount of RECs that were available or  
13 potentially available in Ohio.

14 A. That's a little less clear.

15 Q. All right. Well, do you have your  
16 report, sir?

17 A. Yes, I do.

18 Are we looking at the redacted or  
19 nonredacted version?

20 Q. Let's look at the redacted version. Let  
21 me refer you to page 29 of your report. Are you  
22 there, sir?

23 A. Yes, I believe.

24 Q. And on the page -- under the heading  
25 "Market Information," you say, "At the time the

1           solicitations resulting in the procurement of the  
2           high-cost RECs were conducted, the market for  
3           In-State All Renewables in Ohio was still nascent;  
4           reliable, transparent information on market prices,  
5           future renewable energy products that may have  
6           resulted in future RECs trading at lower prices, or  
7           other information that may have directly influenced  
8           the Companies' decision to purchase the high-priced  
9           RECs was not generally available."

10                       That's what you wrote, correct?

11           A.    Correct.

12           Q.    Now, it's also true that the amount of  
13           RECs that might be potentially available was also  
14           unreliable.

15           A.    Yes.

16           Q.    Information on that.  And so there was  
17           significant uncertainty associated with assessing  
18           changes in future REC prices and the potential  
19           availability of RECs during the time of RFPs 1, 2,  
20           and 3.

21           A.    Correct.

22           Q.    Now, one basis that you use for a  
23           comparison of the amount of the price that -- prices  
24           that the companies paid for in-state renewable RECs  
25           was the compliance payment level in Ohio, correct?



1 A. Correct.

2 Q. And you used the term "alternative  
3 compliance payment" or ACP, correct?

4 A. That is correct.

5 Q. And neither that term nor those initials  
6 appear in the statute that is 4928.64; is that  
7 correct?

8 A. That's correct.

9 Q. For what we will call nonsolar RECs, the  
10 initial level of the compliance payment in Ohio was  
11 \$45, correct?

12 A. Yes.

13 Q. And would it be fair to say you have no  
14 basis or don't know where that number came from as  
15 the General Assembly selected it for inclusion in  
16 Section 4928.64?

17 A. I don't know specifically what approach  
18 that the legislature used to arrive at that number.  
19 I will say it is pretty consistent with similar types  
20 of payments in other states.

21 Q. All right. Well, isn't it true in some  
22 states the -- the ACP for nonsolar RECs can be as low  
23 as \$18?

24 A. I am not aware of an ACP that is set that  
25 low.

1                   Q.    Okay.  Are you aware of an ACP being set  
2                   for nonsolar RECs in the neighborhood of \$20?

3                   A.    Yes.

4                   Q.    And you would agree with me that whatever  
5                   the bases might be, which you said, I think you said,  
6                   you didn't know that that -- that would not be  
7                   considered a market price necessarily, correct?

8                   A.    It would not be considered a market  
9                   price --

10                  Q.    Thank you.

11                  A.    -- period.

12                  Q.    Now, in states that have an alternate  
13                  compliance payment where it is recoverable from  
14                  customers and where the ACP can be a mechanism that  
15                  can be used in lieu of the procurement payment -- or  
16                  procurement obligation, excuse me, you would believe  
17                  that the level of the ACP would act as a market cap  
18                  on prices subject to that ACP, correct?

19                  A.    Yes.

20                  Q.    And would you agree with me the  
21                  compliance payment in Ohio is somewhat punitive?

22                  A.    I ask you to indicate in what sense it  
23                  would be punitive.

24                  Q.    Well, the compliance payment cannot be  
25                  recovered from customers, can it?

1 A. No.

2 Q. And is the compliance payment -- well,  
3 let me ask you this, do you know the process by which  
4 a company's compliance payment is -- well, back up.

5 Isn't it true that you don't know the  
6 means or process by which a compliance payment for  
7 a -- for a utility not in compliance is set in Ohio?

8 A. Are you asking for how the magnitude of  
9 the compliance payment is set for whether a utility  
10 can employ that mechanism? Or I'm not sure I  
11 understand your question.

12 Q. Sure. Let me try again. If a utility is  
13 not in compliance with its procurement obligation,  
14 you're not aware of the process by which that utility  
15 would end up paying a compliance payment; fair to  
16 say?

17 A. I believe I am aware.

18 Q. All right. Well, in December when I  
19 asked you that question, wasn't your answer that you  
20 didn't know?

21 A. I don't recall my specific answer to the  
22 question. My understanding, permission has to be  
23 granted by the Commission in order to do that.

24 Q. And your understanding now is that the --  
25 there is a proceeding by which the level of

1 compliance is reviewed and the payment is assessed,  
2 correct?

3 A. I'm not sure about the payment being  
4 assessed part. The rest of it I -- that's my  
5 understanding.

6 Q. All right. So you don't know how the  
7 payment is assessed; fair to say?

8 A. Correct, yes.

9 Q. All right. As far as you know, though,  
10 you know a company that's not in compliance just  
11 can't write out a check and attach it to its  
12 compliance report, correct?

13 A. That's correct.

14 Q. It's basically something that's assessed  
15 on a finding of noncompliance, correct?

16 A. That's correct.

17 Q. In a space where the compliance payment,  
18 or in other states, an ACP, is not recoverable from  
19 customers, we would not expect the ACP or compliance  
20 payment to act as a cap on market prices, would you  
21 agree?

22 A. Yes.

23 Q. Now, another thing you look to in making  
24 your assessment about the prices for in-state all  
25 renewable RECs are -- is price information from other

1 states, correct?

2 A. That's correct.

3 Q. And that price information is information  
4 that's displayed on figure 3 on page 26 of your  
5 report, correct?

6 A. As is price information for other states  
7 as shown on Figure 3.

8 Q. And that information came from a  
9 Department of Energy report, correct?

10 A. Yes.

11 Q. That information, in turn, came from one  
12 broker.

13 A. My understanding, it came from Spectron.

14 Q. , my question is, it came from one  
15 broker, correct?

16 A. That was the broker that supplied that  
17 information, yes.

18 Q. Okay. And did you read Mr. Bradley's  
19 testimony?

20 A. Yes, I did.

21 Q. Mr. Bradley makes the comment that there  
22 are 89 certified brokers in the REC market. Are you  
23 aware of that?

24 A. I wasn't aware of the exact number, but  
25 that doesn't surprise me.

1                   Q.    Okay.  You wouldn't -- you have no reason  
2                   to think that Mr. Bradley is wrong with the order of  
3                   magnitude of that number.

4                   A.    No.

5                   Q.    Now, would it be fair to say that with  
6                   respect to broker information or -- back up.  Data  
7                   available from brokers, it tends to reflect  
8                   short-term deals reported by brokers which are only a  
9                   small part of the market?

10                  A.    Information that I see from brokers  
11                  breaks out the deals by the period for which the RECs  
12                  are purchased.  In other words, there will be prices  
13                  for 2009, 2010.  If by short term you mean a purchase  
14                  of RECs over a particular period of time, for, like,  
15                  say one year, yes, I would agree that's true.

16                  Q.    And it represents a small part.

17                  A.    I'm not sure how small the part is, but  
18                  it also reflects the type of market that FirstEnergy  
19                  was looking at when it purchased RECs.

20                  Q.    Does it represent a small part of the  
21                  market, sir?

22                  A.    I don't know what portion of the market  
23                  it represents.

24                  Q.    All right.

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

1 EXAMINER PRICE: You may.

2 MR. KUTIK: Your Honor, we would like to  
3 have marked as Company Exhibit 5, we are reserving 1  
4 through 4, a document entitled "Alternative Energy  
5 Resource Market Assessment, NARUC Grants & Research,"  
6 September, 2011.

7 EXAMINER PRICE: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Dr. Estomin, I have shown you what has  
10 been marked for identification as Company Exhibit 5.  
11 You recognize that document, don't you?

12 A. Yes, I do.

13 Q. And that is the report that Estomin --  
14 excuse me, that Exeter participated in with respect  
15 to an analysis of the Ohio market, correct?

16 A. Yes.

17 Q. I would like you to refer to page 12 of  
18 that document, please. Are you there?

19 A. Yes.

20 Q. And I want to refer you to the second  
21 paragraph and the second sentence in this paragraph,  
22 and it says there, does it not, "In Ohio, as in many  
23 other states, there is very little REC price  
24 transparency. Available price data is spotty and  
25 tends to reflect short-term deals reported by REC

1 brokers, which are only a small part of the market."

2 That's what it said there? That's what  
3 your colleagues at Exeter said, correct?

4 A. Yes.

5 Q. And they further said, "Further, some  
6 market participants trade RECs over the counter, or  
7 through brokers, with the express requirement that  
8 the price not be divulged so that they can be ahead  
9 of the market. This also reduces the usefulness of  
10 the broker data as a window to actual prices,"  
11 correct?

12 A. Correct.

13 Q. That's what your colleagues at Exeter  
14 thought, correct?

15 A. In part, along with the other authors of  
16 the report.

17 Q. Okay. Now, the data that we see on  
18 Figure 3 does not necessarily represent the actual  
19 price of any transaction, correct?

20 A. No.

21 Q. Was it correct or incorrect?

22 A. What you said is correct.

23 Q. Thank you. And because it represents  
24 specifically the midpoint between bids and asks.

25 A. My understanding is also that it does



1 include some portion of actually transacted  
2 purchases, but largely it is the average of bid and  
3 ask prices.

4 Q. All right. And we don't know the volume  
5 behind any specific data point, do we?

6 A. No, you don't.

7 Q. Or -- so we don't know whether the broker  
8 that's representing a bigger price in a particular  
9 market is representing the midpoint from bid and ask  
10 for handfuls of RECs or several tens of thousands of  
11 RECs like the companies have to buy, correct?

12 A. Correct.

13 Q. It would also be correct to say that none  
14 of the states that are shown in Figure 3 have an  
15 in-state requirement like Ohio has for nonsolar RECs.

16 A. I believe Illinois has an in-state wind  
17 requirement, but other than that, I think that's  
18 correct.

19 Q. And are you aware of -- well, you agree  
20 with me that an in-state requirement would have an  
21 effect on prices versus the absence of such a  
22 requirement.

23 A. An in-state requirement would have the  
24 effect of reducing the supply of RECs from which you  
25 can draw to fulfill the requirement, so other things

1           being equal, you would expect supply to be more  
2           constrained under that arrangement and, therefore,  
3           you would anticipate upward pressure on prices.

4           Q.    Okay.  Now, we also don't have any  
5           information on your Figure 3 regarding the date of or  
6           the age of the markets, correct?

7           A.    There's nothing on Figure 3 that  
8           indicates the age of the markets.

9           Q.    Okay.  And by age of the markets, would  
10          you agree with me that it would be the date between  
11          the -- either the enactment of the RPS, or the  
12          effective date of the requirements set out in the RPS  
13          on one hand, up to the dates that are shown on Figure  
14          3?  I am talking about age of the market, correct?

15          A.    Yes.

16          Q.    Now, are you familiar with some of the  
17          ages of the market or some of the enactment dates and  
18          effective dates of some of the RPSs that are shown  
19          here, sir?

20          A.    Yes.

21          Q.    Let me go through some of them.

22          A.    All right.

23          Q.    Would it be fair to say the RPS was  
24          enacted in 1998 and became effective in 2000?

25          A.    I believe that's correct.

1           Q.    The District of Columbia, the RPS became  
2           effective in 2005 -- excuse me, was enacted in 2005  
3           and became effective in 2007.

4           A.    Yes.

5           Q.    For Delaware it was -- the RPS was  
6           enacted in 2005 and became effective in 2008.

7           A.    Yes.

8           Q.    For Illinois it became -- it became  
9           enacted in 2007, became effective in 2008.

10          A.    I'm not sure about Illinois, but that  
11          sounds about right.

12          Q.    For Massachusetts, enacted 1997,  
13          effective 2003.

14          A.    Yes.

15          Q.    Maryland enacted 2004, effective 2006.

16          A.    Yes.

17          Q.    Maine, effective 1997 -- excuse me,  
18          enacted in 1997, effective 2000.

19          A.    Not sure about Maine.

20          Q.    New Hampshire, enacted 2007, effective  
21          2008.

22          A.    Sounds about right, but I'm not positive.

23          Q.    Pennsylvania, enacted 2008, effective  
24          2001 -- 1998, effective 2001.

25          A.    I believe that's correct.

1 Q. Rhode Island, enacted 2004, effective  
2 2007.

3 A. Sounds about right.

4 Q. And the last one is Texas, enacted 1999,  
5 effective 2002.

6 A. Yes.

7 Q. And it would be fair to say that the  
8 relative age of the markets can affect prices.

9 A. Can.

10 Q. Okay. In a nascent and developing  
11 market, you would expect potentially periods of  
12 disequilibrium between supply and demand.

13 A. Yes.

14 Q. And you would expect that the -- that  
15 such disequilibrium might be reflected in bid results  
16 from RFPs, correct?

17 A. Correct.

18 Q. And in Pennsylvania when you testified,  
19 you believed that such equilibrium-disequilibrium  
20 should lead to a cap on price, correct?

21 A. Yes.

22 Q. Now, you have -- you do talk a little bit  
23 about why -- well, strike that.

24 One of the reasons that you believe that  
25 other state price indicators might be useful is that

1           you believe that the development costs in other  
2           states would -- should be similar to those  
3           development costs in Ohio, nonsolar projects,  
4           correct?

5           A.    Yes.

6           Q.    But it would also be fair to say that  
7           prices are determined by other factors, like supply  
8           and demand.

9           A.    Yes.

10          Q.    Now, I want to talk to you specifically  
11          about some things that you suggest that the companies  
12          might have done other than buying the RECs. I guess  
13          we're talking still about in-state all renewables,  
14          okay?

15          A.    All right.

16          Q.    One thing you suggest is that they should  
17          have paid a compliance payment, correct?

18          A.    Yes, I indicate that in the report.

19          Q.    And for them to have done that, they  
20          would have just simply had to say, "We're just going  
21          to agree we can't comply and we'll have the  
22          Commission find us in noncompliance," correct?

23          A.    That's what you would have to do, yes.

24          Q.    Another thing that you suggest is that  
25          the companies should have applied or should have

1           considered applying for force majeure, correct?

2           A.    Correct.

3           Q.    And it would be fair to say that the  
4           force majeure provisions of 4928.64 do not refer to  
5           price, do they?

6           A.    I don't think they refer to anything.  
7           They indicate reasonably available.

8           Q.    All right.  And one way -- if a company  
9           is thinking about force majeure, one way that they  
10          could make their case that they are -- would be  
11          eligible for force majeure relief would be to do a  
12          competitive solicitation to show that RECs in a  
13          particular category would not be reasonably  
14          available, correct?

15          A.    Yes.

16          Q.    We expect that in the force majeure  
17          provisions, the Commission would look to determine  
18          what the company did to find RECs, correct?

19          A.    Correct.

20          Q.    And to find RECs that were -- then to  
21          take reasonable actions to find available RECs,  
22          correct?

23          A.    Reasonably available RECs, yes.

24          Q.    And certainly doing a competitive  
25          solicitation would be one way to demonstrate whether

1 reasonably available RECs exist or are available,  
2 correct?

3 A. One way, yes.

4 Q. Now, there is a provision in 4928.64 that  
5 does have a reference to price in that it refers to  
6 cost, correct?

7 A. I believe that's correct, yeah.

8 Q. And you mentioned earlier the 3 percent  
9 provision, correct?

10 A. Yes.

11 Q. And you have no reason to believe that  
12 the companies in a properly calculated 3 percent test  
13 were over the 3 percent test in 2009, 2010, or 2011,  
14 correct?

15 A. Correct.

16 Q. For the companies to have decided to  
17 apply for force majeure, you agree with me that it  
18 would have been prudent for them to be confident in  
19 their view that a force majeure application would be  
20 successful, correct?

21 A. Is your question that they would have to  
22 be above the 3 percent limitation in order for their  
23 force majeure to be successful?

24 Q. No.

25 A. Okay. Can you please restate your

1 question? I'm not sure I followed it.

2 Q. If a company is deciding whether it wants  
3 to seek force majeure relief under the statute --

4 A. Yes.

5 Q. -- it would be prudent for the company to  
6 be confident in its position that its application  
7 would be accepted and granted, correct?

8 A. As a general proposition, I would say  
9 yes.

10 Q. Okay. And isn't it true that as of RFPs  
11 1, 2, and 3, there had been no force majeure  
12 applications granted under 4928.64?

13 A. That's my understanding.

14 Q. And, in fact, to date there have been no  
15 force majeure applications even made in Ohio on the  
16 basis that prices were too high, correct?

17 A. That I am not sure about.

18 Q. You don't know of any.

19 A. I don't know of any.

20 Q. Now, it's true, is it not, that the  
21 Commission in -- or by 2011 had data available to it  
22 indicating that the supply of in-state RECs exceeded  
23 demand or, at least, there was not a deficit of  
24 supply? You are aware of that, right?

25 A. Can you please restate your question?



1 I'm sorry.

2 Q. Sure. Isn't it true by, let's say, the  
3 third quarter of 2011, the Commission had information  
4 available to it that indicated that there was  
5 sufficient supply to meet demand for in-state RECs?

6 A. Yes.

7 Q. And one of those data points was the  
8 report from Exeter, or including Exeter, that was  
9 sponsored by NARUC?

10 A. Yes.

11 Q. That's the report that we looked at  
12 earlier, correct?

13 A. Yes.

14 Q. Now, let me shift gears and ask you about  
15 something else you suggest the company should have  
16 done, and that is, that the company should have gone  
17 to the Commission or the Commission staff, correct?

18 A. Yes.

19 Q. Now, you are aware, are you not, that the  
20 staff during RFPs 1, 2, and 3 was aware of the  
21 process that the companies and Navigant were using,  
22 correct?

23 A. Yes.

24 Q. They were aware of the RFP process and  
25 how it was going to be run and things like that.

1                   A.    Yes.

2                   Q.    The staff had the opportunities to --  
3                   opportunity to look at the company's RFP website and  
4                   to attend webinars that Navigant put on and receive  
5                   other information that others in the marketplace were  
6                   receiving with respect to those RFPs, correct?

7                   A.    That's my understanding.

8                   Q.    It's also true that the staff was in a  
9                   position to see the results of the RFP; isn't that  
10                  correct?

11                  A.    I can't answer that positively or  
12                  negatively.

13                  Q.    Okay.  Are you aware of a website or web  
14                  page called PJM GATS, G-A-T-S?

15                  A.    Yes.

16                  Q.    Are you aware that there are certain  
17                  limited access parts of that website that reveal  
18                  retirements and price -- price retirements -- or the  
19                  prices of retired RECs?

20                  A.    Yes.

21                  Q.    Are you aware -- and you are aware, are  
22                  you not, that the staff has access to that  
23                  information?

24                  A.    I was not aware that staff had access to  
25                  that information.

1 Q. So you don't know one way or another?

2 A. Right.

3 Q. Now, you would agree with me that there  
4 is no requirement that you can point us to, either  
5 the statute, the regs, to have required the companies  
6 to have gone to the staff to advise them what was  
7 going on mid RFP, correct?

8 A. That's correct.

9 Q. And it would be fair to say also that at  
10 the time that you wrote your report, you were not  
11 aware if staff believed that the prices that the  
12 companies paid for in-state all renewable RECs was  
13 too high?

14 A. If the question you are asking is whether  
15 I believed that the staff believed that the prices  
16 for in-state all renewable RECs was too high? Are  
17 you indicating they did not know what the price was?

18 Q. No. I'm asking you, isn't it true that  
19 prior to your audit -- I'll ask you that way. Prior  
20 to your audit, were you aware of whether the staff  
21 ever believed that the prices paid for RECs by the  
22 companies was too high?

23 A. I would find it surprising if they didn't  
24 believe it was too high.

25 Q. But you didn't know, though, correct?

1 A. Correct.

2 Q. In fact, that's what you told me in  
3 December, correct?

4 A. Right.

5 Q. Now, you also don't know if the  
6 companies -- if the companies felt that way, whether  
7 the staff had communicated that to the companies,  
8 again, prior to your audit.

9 A. Correct.

10 Q. And more fundamentally, would it be fair  
11 to say that you don't know what, if anything, the  
12 Commission or the staff would have done if the  
13 companies would have come to them to show them, I'll  
14 say, the Navigant recommendations, correct?

15 A. You mean what decision would ultimately  
16 have been made by the Commission, what recommendation  
17 would have been ultimately made to FirstEnergy based  
18 on that information? Are you asking if I know what  
19 they would have done?

20 Q. Correct.

21 A. No, I don't.

22 Q. Now, you had some discussion -- I'll  
23 strike that.

24 You also -- or is it correct to say that  
25 you also suggest that Navigant should have done more

1 market research?

2 A. I don't believe that's anywhere in the  
3 report, but there wasn't a lot of information to be  
4 obtained in 2009 and 2010, certainly on the state of  
5 the market.

6 Q. Okay. And would it be fair to say,  
7 though, that Navigant did, in fact, do market  
8 research?

9 A. Yes.

10 Q. You said --

11 A. To the extent that there was information  
12 available.

13 Q. You said earlier that you had read  
14 Mr. Bradley's testimony, correct?

15 A. Yes.

16 Q. Mr. Bradley went through some of the  
17 things that Navigant did with respect to attempting  
18 to reach out to the market and either solicit  
19 interest or to understand or get feedback with  
20 respect to the RFP, correct?

21 A. Yes.

22 Q. And you have no reason to dispute the  
23 numbers of phone calls and contacts and the things  
24 that he set out in his testimony, correct?

25 A. No. They are reasonably consistent with

1 the information we received at the time we were  
2 conducting the audit.

3 Q. And you have no reason to believe also  
4 that when Navigant was receiving feedback or  
5 information about the market, that Navigant was  
6 passing that information along to the companies,  
7 correct?

8 A. Correct.

9 Q. And at one point, at least, Navigant had  
10 prepared a report on its -- actually, on several --  
11 at several points in time Navigant prepared reports  
12 on its findings in the marketplace, correct?

13 A. Yes.

14 Q. One such report was issued in October of  
15 2009, correct?

16 A. Yes.

17 Q. And that report was issued before the  
18 companies finalized their decisions on the RFP for  
19 RFP No. 2, correct?

20 A. That's my understanding, yes.

21 Q. You also recommended that Nav -- that the  
22 companies should have set a limit price, correct?

23 A. Correct.

24 Q. And that, again, is for in-state all  
25 renewable RECs, correct?

1 A. Yes.

2 Q. And would it also be fair to say no  
3 states without an ACP have a requirement that you are  
4 aware of, correct?

5 A. Yes.

6 Q. It would also be fair to say setting a  
7 limit price would have required FirstEnergy to have  
8 knowledge of market prices.

9 A. No, I would not agree with that.

10 Q. Well, did you agree with that in  
11 December, sir?

12 A. Set a limit price, what needs to be known  
13 is --

14 Q. Sir, I asked you --

15 EXAMINER PRICE: Mr. Kutik.

16 MR. KUTIK: I asked in December --

17 EXAMINER PRICE: First, I understand he  
18 is not answering your question.

19 MR. KUTIK: Thank you, your Honor.

20 EXAMINER PRICE: But on a going-forward  
21 basis, please let the witness finish his answer.

22 MR. KUTIK: Doctor --

23 EXAMINER PRICE: Mr. Kutik will restate  
24 his question, but you did not answer his question two  
25 questions ago, so let's try again.

1           Q.    (By Mr. Kutik) My question, sir, isn't it  
2           true you told me in December that setting a limit  
3           price would have required knowledge of market prices  
4           by FirstEnergy?

5           A.    I'm not sure of the context I said that  
6           in. I don't have a transcript of that, and I'm not  
7           sure exactly the question I was responding to.

8           Q.    Thank you. Well, would you agree with me  
9           there was not a liquid transparent market for  
10          in-state all renewable RECs in Ohio during RFP 1, 2,  
11          and 3?

12          A.    Yes.

13          Q.    Now, related to limit prices, you suggest  
14          that the companies should have had a contingency plan  
15          in place for the contingency of high prices, correct?

16          A.    Yes.

17          Q.    And it would be fair to say you're not  
18          aware of any other utility that had such a  
19          contingency, correct?

20          A.    Correct.

21          Q.    Now, you had some questions from Ms. Yost  
22          regarding the companies' ESP. Do you remember that?

23          A.    Yes.

24          Q.    Did you review the companies' ESP, the  
25          first ESP order?



1 A. I believe I did, the first two.

2 Q. Okay. Did you review any of the  
3 briefing, pleadings that led up to that?

4 A. I can't recall.

5 Q. Okay. Are you aware or -- I'll back up.

6 You're aware, are you not, that one of  
7 the issues that was being resolved or attempted to be  
8 resolved as part of the ESP was the companies'  
9 competitive bidding process for the -- in Ohio called  
10 the SSO load? You are aware of that, are you not?

11 A. Yes.

12 Q. And one of the issues with respect to the  
13 competitive bidding process is what would be included  
14 in the product to be bid, right?

15 A. Yes.

16 Q. And one of the issues with respect to  
17 what product would be bid is whether the suppliers  
18 would have to bid on or include renewable energy or  
19 RECs, correct?

20 A. Yes.

21 Q. And that was unresolved until the end of  
22 that case, was it not?

23 A. That was my understanding, yes.

24 Q. Now, you also suggest that the companies  
25 might have waited to purchase RECs, correct?

1 A. Yes.

2 Q. All right. For example, the companies in  
3 2009 purchased 2010 and 2011 vintage RECs in order to  
4 meet those obligations?

5 A. In part.

6 Q. In part, thank you. And in 2010 the  
7 companies purchased some RECs to meet their 2011  
8 obligation, correct?

9 A. Yes.

10 Q. And your -- you would agree, would you  
11 not, that where you have a procurement obligation for  
12 a certain number -- certain years, that it might be a  
13 prudent practice to procure for that requirement over  
14 several different procurements, correct?

15 A. Yes.

16 Q. Some people might call that laddering,  
17 correct?

18 A. Yes.

19 Q. And laddering is a well-recognized  
20 procurement strategy to hedge against uncertainty in  
21 the marketplace, correct?

22 A. Correct.

23 Q. Would it be fair to say that in 2008 and  
24 2009 the country was going through what some people  
25 call the financial crisis?

1 A. Yes.

2 Q. And that continued some -- some actually  
3 might think it continues until today, correct?

4 A. Correct.

5 Q. And with respect to the finance market in  
6 2009 and 2010, would it be fair to say that finding  
7 financing for renewable projects was relatively  
8 difficult?

9 A. Yes.

10 Q. Would it be also fair to say that in the  
11 2009 to 2011 timeframe in Ohio there was great  
12 uncertainty with respect to the market for RECs in  
13 Ohio?

14 A. Certainly 2009, 2010, a little less so in  
15 2011, I think.

16 Q. And that uncertainty that existed in  
17 those years reflected the same types of uncertainty  
18 that were present in more mature markets, correct,  
19 for RECs?

20 A. Could you be more specific, please?

21 Q. Sure. Well, isn't it true in December of  
22 2011, you wrote that attempting to model REC prices  
23 is likely to produce results that entail a high  
24 degree of uncertainty?

25 A. Yes.

1 Q. And you were writing about the Maryland  
2 market, were you not?

3 A. Yes.

4 Q. And that is a market that is more mature  
5 by a few years than Ohio.

6 A. Yes.

7 Q. You also characterized in 2009, late  
8 2009, the Pennsylvania market as having future market  
9 conditions for in -- for RECs that were "Uncertain,"  
10 correct?

11 A. Yes.

12 Q. And in the -- around the same timeframe  
13 you were aware of prices for solar RECs, for example,  
14 in New Jersey that within a year increased by a  
15 factor of three?

16 A. Yes.

17 Q. And that prices for those RECs in New  
18 Jersey, solar RECs in New Jersey, were, perhaps, as  
19 much as 20 times solar RECs in other states, correct?

20 A. Yes.

21 MR. KUTIK: Your Honor, may I have a  
22 moment, please?

23 EXAMINER PRICE: You may.

24 MR. KUTIK: Your Honor, at this time I  
25 have completed my questions for the public version or

1 the public portion of the record, and I would like  
2 now to proceed to the confidential questions.

3 EXAMINER PRICE: We will now go on to the  
4 confidential portion of our hearing.

5 (CONFIDENTIAL PORTION.)  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(PUBLIC RECORD.)

EXAMINER PRICE: And, Mr. Lindgren,  
redirect?

MR. LINDGREN: Yes, thank you, your  
Honor.

- - -

## REDIRECT EXAMINATION

By Mr. Lindgren:

Q. Dr. Estomin, I believe you testified in response to a question from the company's counsel that you had not been involved previously in the procurement of RECs on behalf of a utility, but you may have had some other involvement. Could you explain how you have been involved in REC procurement in the past?

A. On direct procurement end, we have done a lot of work with the Department of Defense, generally, and the U.S. Air Force as a separate entity in the Department of Defense in procuring RECs for installations throughout the country. I'm routinely asked to evaluate REC bids that come in from RFPs that are issued by the Department of Defense.

There's also some contracts that they have that permit bilateral purchases of RECs, and I'm asked to evaluate those -- those offers and the prices of those offers consistent with market conditions in the states to which they apply.

We are also engaged in work for the U.S. Department of Energy's Rubin's California labs, Lawrence Livermore National Laboratory, Berkeley

1 standard accelerator, and making power supply  
2 purchasing decisions for them, and part and parcel of  
3 that is REC purchases.

4 Also the Department of Defense has  
5 separate requirements over and above state RPSs to  
6 fulfill the mandates of an executive order, so they  
7 are looking to purchase additional RECs, voluntary  
8 RECs, if you will, over and above state requirements,  
9 and we have been involved in a number of those  
10 acquisitions as well.

11 Q. Thank you. Dr. Estomin, I believe you  
12 testified that a compliance payment or alternative  
13 compliance payment would not -- not establish a  
14 market price, but my question is, does it have an  
15 influence on the market price?

16 A. Yes. One of the effects of a -- of an  
17 alternative compliance payment is, in essence, the  
18 discipline of the market since suppliers know that  
19 nobody is going to purchase RECs at a price above the  
20 alternative compliance payment, or few would do that.

21 So what we see is prices that are no  
22 more, you know, than the alternative compliance  
23 payments, and in my own modeling of prices, if a  
24 state has an RPS policy that includes an alternative  
25 compliance payment, that establishes the maximum



1 amount of REC price in the future.

2 EXAMINER PRICE: Doesn't that run the  
3 risk of shortages if the alternative compliance  
4 payment isn't enough for renewable energy providers  
5 to invest -- to support their investments in  
6 generation? Doesn't that run the risk of shortfalls,  
7 especially if it's an arbitrary number picked out of  
8 the blue?

9 THE WITNESS: Yes. And that situation  
10 has emerged from time to time and it's typically  
11 corrected. For example --

12 EXAMINER PRICE: How is it corrected?

13 THE WITNESS: The state of Maryland, for  
14 example, had legislation that initially  
15 established -- and the same I think is true for  
16 District of Columbia, initially established \$20.  
17 That was the determined to be too low. That was  
18 raised to \$40 in Maryland. I think it's a little bit  
19 higher in the District of Columbia. In fact, many of  
20 the RPS bills that were initially enacted were  
21 modified one or more times to make corrections in the  
22 way they operate.

23 EXAMINER PRICE: So they did create  
24 shortages.

25 THE WITNESS: Whether they created

1 shortages or not, I'm not sure, but there is  
2 certainly a potential there to create shortages.

3 MR. LINDGREN: Thank you.

4 Q. (By Mr. Lindgren) Dr. Estomin, you were  
5 asked some questions regarding a chart on page 26 of  
6 your audit report.

7 A. Yes.

8 Q. I believe you testified that certain  
9 factors, such as the age of state's market based on  
10 the date of enactment of its statute and also the  
11 presence of an in-state requirement, can affect  
12 prices. Given these variations, what value is there  
13 in looking at prices reflected in other states?

14 A. Each state has their own peculiarities  
15 regarding what's contained in their renewables  
16 portfolio standards reflecting political factors that  
17 may come into play at the time the RPS was developed,  
18 different perspectives by legislatures in different  
19 states in different -- different objectives from  
20 the -- from the legislation.

21 So that all of the states on here to some  
22 degree have differences in the specifics, either  
23 associated with the geographical area from which the  
24 renewable energy can come from, where the RECs can  
25 come from, the types of resources that are eligible

1 to participate, the shelf life of the RECs, and so  
2 forth.

3 So there are all these differences  
4 between these, and the purpose of the information  
5 provided on this table is basically to provide, you  
6 know, a general perspective on what's -- on what REC  
7 prices have been in many other states, you know,  
8 throughout the country over a long period of time  
9 relative to some of the prices paid by the  
10 FirstEnergy utilities as a result of their  
11 solicitations for in-state all renewable RECs.

12 Q. Thank you. Dr. Estomin, I believe you  
13 testified that a company would need to be confident  
14 that a force majeure application would likely be  
15 granted before making that filing. My question is,  
16 can a company ever -- ever be absolutely certain that  
17 any application they make will be granted by the  
18 State Commission?

19 A. No, with potentially some rare  
20 exceptions, but even in the event that a force  
21 majeure is applied for and ultimately rejected, at  
22 least that provides some guidance to the utility on  
23 what the objectives are of the Commission.

24 EXAMINER PRICE: Wouldn't their only  
25 alternative at that point be to make the compliance

1 payment?

2 THE WITNESS: No. They could go out and  
3 purchase the RECs.

4 EXAMINER PRICE: You say go out and  
5 purchase -- okay, I understand what you are saying,  
6 yes.

7 Q. (By Mr. Lindgren) Are you aware there is  
8 some other utilities in Ohio that have, in fact, made  
9 applications for force majeure declarations and those  
10 applications have been granted?

11 A. No, I was not aware of that.

12 Q. Thank you. Dr. Estomin, I believe your  
13 report stated that FirstEnergy should have  
14 established a limit price as part of its RFP  
15 evaluation. How would a limit price be established  
16 with the limited market information that the company  
17 had? Would there still have been a way to do that?

18 A. Yes. Establishment of a limit price is  
19 essentially going to create, you know, a balance  
20 between the costs that would be put on customers  
21 versus addressing this issue in some other mechanism.  
22 The -- essentially with the establishment of a  
23 limited price, it does modify the demand curve that  
24 the company is operating under, so instead of a  
25 downward sloping demand curve, and that intersects

1 the price curve, and you wind up with what has been  
2 represented as a market price, what a limit price  
3 will do you would have a horizontal section of the  
4 demand curve so that under no circumstances would  
5 price ever be higher than that limit.

6 And if it turned out that was  
7 insufficient to induce, you know, supply, then you  
8 wouldn't be able to purchase any, and some  
9 alternative approach would have to be used, for  
10 example, the application of a force majeure.

11 What could guide the establishment of  
12 that price is a couple of factors. One is what's  
13 going on in other states with some adjustment,  
14 recognizing the capacity situation in Ohio; or,  
15 alternatively, some recognition of what the costs  
16 associated with the project development are, what  
17 kind of RECs prices would be needed for a developer  
18 to stay in business, and then providing some level of  
19 potential range over and above that, in other words,  
20 some profit above that, as opposed to just taking a  
21 price that market would provide under extremely  
22 constrained circumstances.

23 And, quite frankly, there is no magic  
24 number associated with price ceiling to the  
25 establishment of what a reasonable person would hold

1 to believe a reasonable price reflective of a whole  
2 capacity of circumstances and information and data  
3 available to the extent it was available.

4 Q. Thank you.

5 EXAMINER PRICE: I would like to follow  
6 up with that. If -- you've asked the Commission to  
7 look at disallowing some of these REC purchases. I  
8 guess that then begs the question of how much would  
9 we disallow. If you can't quantify what the limit  
10 price should have been, how can the Commission, based  
11 on the record of this proceeding, calculate the  
12 amount to disallow?

13 THE WITNESS: What you are not going to  
14 know is the price that should have been paid for the  
15 RECs. You cannot know that price. What you can know  
16 is a price over which the company should not have  
17 bid. And that would depend, in part, upon the  
18 Commission's own assessment of what they believe to  
19 be appropriate.

20 For example, one factor that might be  
21 considered in this is to look at what other states  
22 have paid for a similar type of product and adjust  
23 that upward by 20 percent, 50 percent, 100 percent to  
24 accommodate the situation in Ohio under a constrained  
25 market.

1                   An alternative might be that the  
2                   alternative compliance payment of \$45 representing a  
3                   legislative cap on what was anticipated the companies  
4                   above saying anything \$45 would be inappropriate, or  
5                   recognize that \$45 limit cost, utilities can't  
6                   collect that from their consumers, that the  
7                   legislature recognized this as a potential and  
8                   realized that utilities might pay more than the \$45  
9                   so adjust that upward.

10                  There's no magic number, but certainly  
11                  whatever the number is is going to be less than a --  
12                  are we on confidential here?

13                  EXAMINER PRICE: No.

14                  THE WITNESS: It's going to be less for  
15                  the price paid for some of the RECs, no matter what  
16                  kind of yardstick you use.

17                  EXAMINER PRICE: You say there is no  
18                  magic number, but the Commission has to decide  
19                  whatever the number is based on the record of this  
20                  case. We can't just arbitrarily boost up by 10 or 20  
21                  percent the price being paid in Maryland.

22                  So I guess my question to you -- maybe we  
23                  need to go on to the confidential portion of our  
24                  transcript -- is what is the appropriate price that  
25                  disallowance the Commission should consider basing

1 the disallowance on, and at this point I think I will  
2 go into the confidential portion of this transcript  
3 so that he can answer that question.

4 (CONFIDENTIAL PORTION.)  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(PUBLIC RECORD.)

Q. (By Mr. Lindgren) Dr. Estomin, did you do any analysis whether the 3 percent test had been complied with in this case?

A. We did some very cursory analysis, and if we relied primarily on the financial auditors to address that issue.

MR. LINDGREN: Thank you. I have no further questions.

EXAMINER PRICE: At this time we will take a ten-minute break since we have been going for quite a while now. I am sure the witness could use a break, and the parties can prepare their recross.

Let's go off the record for ten minutes.

(Recess taken.)

EXAMINER PRICE: Let's go back on the record. Just to caution everybody, this is still the public transcript.

Ms. Yost.

MS. YOST: No questions, your Honor.

EXAMINER PRICE: Mr. Allwein.

1 MR. ALLWEIN: No questions, your Honor.

2 EXAMINER PRICE: Mr. Dougherty.

3 MR. DOUGHERTY: No questions.

4 EXAMINER PRICE: Mr. McDaniel.

5 MR. McDANIEL: No questions.

6 EXAMINER PRICE: Mr. Kurtz.

7 MR. KURTZ: No questions.

8 EXAMINER PRICE: Mr. Lavanga.

9 MR. LAVANGA: No questions.

10 EXAMINER PRICE: Mr. Kutik.

11 MR. KUTIK: Thank you, your Honor.

12 - - -

13 RECROSS-EXAMINATION

14 By Mr. Kutik:

15 Q. Dr. Estomin, you were talking with your  
16 counsel about ACPs. Let me refer you now to figure  
17 6 -- Figure 3 on page 26.

18 A. Yes.

19 Q. Now, would it be fair to say that there  
20 were -- there are ACPs in each of the states listed,  
21 or most of them?

22 A. Yes.

23 Q. And would it be fair to say under at  
24 least some circumstances in each of these states, the  
25 ACP is recoverable?

1 A. Yes.

2 Q. With respect to some of the states here,  
3 would it be fair to say, for example, that  
4 Connecticut had an ACP in the range of \$55 for  
5 nonsolar?

6 A. I think that's right.

7 Q. Same for the District of Columbia.

8 A. You're saying an ACP?

9 Q. Yes.

10 A. Oh, yes, yes.

11 Q. For Delaware the ACP ranged from 25 to 80  
12 dollars.

13 A. Yeah. Delaware acts a little strangely  
14 because it depends on how much you have to employ  
15 it --

16 Q. Okay.

17 A. -- so.

18 Q. But in that range.

19 A. Yes.

20 Q. Illinois had an ACP in a range as high as  
21 \$8 and as low as 95 cents.

22 A. I'm not sure of the exact numbers, but  
23 that sounds about right.

24 Q. Massachusetts had an ACP that ranged  
25 since 2003 from a low of \$50 to a high of in 2012

1           \$64.

2                   A.    Yes.

3                   Q.    Maine had an ACP that ranged in 2007 to  
4           2012 from \$57 to \$64.

5                   A.    Yes.

6                   Q.    New Hampshire starting in 2008 to 2012  
7           had an ACP that ranged from 58, almost \$59, to about  
8           \$64.

9                   A.    I think that's about right.

10                  Q.    New Jersey had an ACP of \$50.

11                  A.    Yes.

12                  Q.    Pennsylvania had an ACP of \$45.

13                  A.    Yes.

14                  Q.    Rhode Island had an ACP that ranged  
15           between 2007 and 2012 from a little over \$57 to \$64.

16                  A.    Yes.

17                  Q.    Now, you mentioned in response to -- I  
18           don't know if this was a confidential or not  
19           confidential, so maybe I should hold this question to  
20           the confidential section. Let me ask you a little  
21           bit about force majeure.

22                  A.    All right.

23                  Q.    Now, you are aware that the companies did  
24           actually comply with their obligations to purchase  
25           in-state all renewable RECs for 2009, 2010, 2011,

1 correct?

2 A. Yes.

3 Q. So there was appropriately certified RECs  
4 that could be purchased and used for that obligation  
5 for those years.

6 A. Yes.

7 Q. Now, if the company applied for a force  
8 majeure application -- well, let me back up.

9 Do you know when the company is required  
10 to procure a force majeure obligation for any  
11 particular year? Do you know what the deadline is?

12 A. No, I don't.

13 Q. So you don't know whether it's  
14 December 31 of that year or sometime after that year.

15 A. No, I don't.

16 Q. All right. Well, assume for me that it's  
17 sometime at the end of the first quarter of the  
18 subsequent year. Are you with me?

19 A. All right.

20 Q. Would -- if the company went in, let's  
21 say, halfway through a particular year, and say we're  
22 talking about 2010, let's say they went in June of  
23 2010 seeking force majeure for 2010. Do you think it  
24 would be reasonable for the company to expect that  
25 somebody might argue you really haven't exhausted the

1 market; there might be reasonably available RECs out  
2 there?

3 A. If you are asking whether somebody might  
4 make that argument, sure.

5 Q. It wouldn't be an unreasonable argument  
6 to make.

7 A. Perhaps not.

8 Q. And would it be fair to say that it might  
9 behoove the company to wait until the end of the  
10 compliance period to make a force majeure application  
11 so that someone couldn't make that argument?

12 A. That's certainly an option the company  
13 would have.

14 Q. And if the company filed force majeure,  
15 let's say, at the end of the compliance period, let's  
16 say at the end of the first quarter or the beginning  
17 of the second quarter of the subsequent year, they  
18 would not -- they would be basically going all in,  
19 right? They wouldn't have the option to purchase  
20 RECs later for that year unless they were allowed to  
21 do it through the force majeure process, correct?

22 A. If they -- if they waited until the  
23 second quarter of the year to make their force  
24 majeure application, I think that's right because I  
25 think the Commission has 90 days to come to a

1 decision on that.

2 Q. Okay. And do you know whether, through  
3 no fault of anyone, the Commission has taken longer  
4 than 90 days to review force majeure applications?

5 A. No, I do not.

6 Q. Okay. So, for example, it may have taken  
7 over a year to resolve some force majeure  
8 applications, at least initially, under the statute.

9 A. I have no knowledge one way or the other.

10 MR. KUTIK: Okay. Your Honor, I believe  
11 those are all my questions for the public session.

12 EXAMINER PRICE: At this time we'll go to  
13 the confidential portion of our hearing.

14 (CONFIDENTIAL PORTION.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(PUBLIC RECORD.)

EXAMINER PRICE: Mr. Lindgren.

MR. LINDGREN: Nothing, your Honor.



1 EXAMINER PRICE: You are excused.

2 MR. LINDGREN: I would move the admission  
3 of Commission-ordered Exhibits 2A and 2B.

4 EXAMINER PRICE: Any objection to the  
5 admission of Commission-ordered Exhibits 2A and 2B?

6 Seeing none, they will be admitted.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 EXAMINER PRICE: Ms. Yost.

9 MS. YOST: Thank you, your Honor. At  
10 this time I would like to move OCC Exhibit 1 into  
11 evidence.

12 EXAMINER PRICE: Any objections to the  
13 admission of OCC Exhibit 1?

14 It will be admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 MR. KUTIK: Your Honor, at this time the  
17 companies would move for the admission of Companies'  
18 Exhibits 5 and 6, and we ask the Bench to take  
19 administrative notice of Exhibit 7.

20 EXAMINER PRICE: Any objection to the  
21 admission of Companies' Exhibits 5 and 6?

22 Seeing none, they will be admitted, and  
23 we will go ahead and take administrative notice of  
24 Companies' Exhibit 7.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 EXAMINER PRICE: Let's go off the record  
2 at this point.

3 (Discussion off the record.)

4 (At 2:01 p.m., a lunch recess was taken  
5 until 3:13 p.m.)

6 - - -

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Tuesday Afternoon Session,  
February 19, 2013.

- - -

EXAMINER PRICE: Let's go on the record.

Mr. Kutik, would you like to call your  
next witness.

MR. KUTIK: Yes, your Honor. For the  
first witness the company calls Daniel R. Bradley.

(Witness sworn.)

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

THE WITNESS: My name is Daniel R.  
Bradley. My business address is 1400 Old Country  
Road, Suite 402, Westbury, New York 11590.

EXAMINER PRICE: Please proceed,  
Mr. Kutik.

MR. KUTIK: Your Honor, at this time the  
companies would like to have marked as Company  
Exhibit 1 the public version of a document entitled  
Direct Testimony of Daniel R. Bradley, Navigant  
Consulting, on behalf of the Ohio Edison Company, The  
Cleveland Electric Illuminating Company, and The  
Toledo Edison Company.

EXAMINER PRICE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. KUTIK: Your Honor, we would also  
2 like to have marked at this time Company Exhibit 1A,  
3 the confidential version of that document.

4 EXAMINER PRICE: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 - - -

7 DANIEL R. BRADLEY  
8 being first duly sworn, as prescribed by law, was  
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Kutik:

12 Q. Good afternoon, Mr. Bradley. Do you have  
13 in front of you what has been marked for  
14 identification as Exhibits 1 and 1A for the company?

15 A. Yes.

16 Q. What is that?

17 A. It is the confidential and  
18 nonconfidential copies of my testimony.

19 Q. And when you say confidential,  
20 confidential is 1A, and the nonconfidential is 1?

21 A. Yes, that's my understanding.

22 Q. Do you have any additions or corrections  
23 to make to your testimony?

24 A. I have one correction to make to my  
25 testimony.

1 Q. Where is that?

2 A. Page 6, line 7.

3 Q. And what correction would you like to  
4 make at page 6, line 7?

5 A. There was a misspelling of the word  
6 "Voluntary." It is currently spelled as  
7 "voluntarily." It should be spelled as "voluntary."  
8 That's all.

9 Q. Subject to that correction, if I asked  
10 you the questions that appear in these documents,  
11 would your answers be as appear in these documents?

12 A. Yes.

13 Q. Mr. Bradley, were you in the room when  
14 Dr. Estomin testified this morning?

15 A. Yes, I was.

16 Q. Mr. -- Dr. Estomin during his  
17 examination, there seemed to be an indication or some  
18 discussion about waiting to purchase RECs; in other  
19 words, not purchasing RECs before the year you have  
20 the obligation. Do you remember that general line of  
21 discussion?

22 MS. YOST: Objection.

23 EXAMINER PRICE: Grounds?

24 MS. YOST: Your Honor, this is rebuttal  
25 testimony, and it's not proper to do it orally. It

1 should be prefiled, and the other parties should have  
2 an opportunity to review and cross-examine the  
3 witness on such testimony.

4 EXAMINER PRICE: Mr. Kutik.

5 MR. KUTIK: We are placing this, your  
6 Honor, as part of his direct testimony exactly so  
7 they do have the opportunity to do cross. We didn't  
8 have the opportunity to see any direct or any  
9 commentary with respect to Mr. Estomin, or  
10 Dr. Estomin, and so we think this is a fair and  
11 reasonable procedure to allow limited commentary. I  
12 only have two questions, your Honor, with respect to  
13 what Dr. Estomin testified about.

14 EXAMINER PRICE: If you only have two  
15 questions, it seems like a very efficient use of our  
16 time so we will go ahead and allow them. If there is  
17 a problem later, we will pick it up later.  
18 Overruled.

19 Q. (By Mr. Kutik) There was the suggestion  
20 made that it might be reasonable, given certain  
21 prices that were obtained in the RFPs, for the  
22 companies to have waited and, therefore, if there had  
23 been any shortage of RECs in subsequent years, then  
24 to file a force majeure. Does that seem a reasonable  
25 path to you?

1           A.   No, it does not. The strategies that we  
2           discussed and employed with the FEOUs in terms of  
3           laddering RFPs over a course of three years, purchase  
4           RECs for compliance obligations is a common strategy  
5           used in the electric utility industry for the  
6           procurement of RECs, as well as for the procurement  
7           of other energy products.

8           At the time that the decisions that  
9           Navigant was making with respect to RECs recommended  
10          to the FEOUs for purchase, we had limited reasonable  
11          availability of information that we could rely upon  
12          to forecast going forward to determine whether the  
13          prices of RECs would go up or down.

14          Given this -- the information that we had  
15          and given that this is a strategy commonly used in  
16          the marketplace, we felt the reasonable and prudent  
17          recommendation to our client was to recommend that  
18          they purchase the RECs. Had we recommended  
19          otherwise, they may have wound up in a situation a  
20          year or two later in which they did not have RECs  
21          that were reasonably available in the marketplace at  
22          such time.

23          Q.   And did you feel at that point you would  
24          be subject to criticism that you hadn't purchased  
25          RECs when you had the time -- when you had them at

1 hand?

2 A. Potentially. It's one of these  
3 situations it's damned if you do, damned if I don't  
4 kind of situation you're in. But at the time,  
5 given all the facts that we had before us, the  
6 recommendation to select RECs for compliance with  
7 the new state statute seemed to us, we believe  
8 still today, to be a reasonable and prudent  
9 approach.

10 Q. Dr. Estomin also seemed to indicate in  
11 questions, I believe from Attorney Examiner Price,  
12 that he did not believe that the prices offered for  
13 bids in the RFP would be market prices -- believed  
14 they would not be market prices. Do you agree with  
15 that?

16 MS. YOST: Objection, your Honor, and I  
17 am going to say leading, and we are on to our third  
18 question. I thought it was stated earlier it was two  
19 questions.

20 MR. KUTIK: It's not a leading question,  
21 and the second question was a follow-up from the  
22 first.

23 EXAMINER PRICE: We'll allow the  
24 question. Let's wrap this up.

25 MR. KUTIK: It's my last question,



1           hopefully, your Honor.

2                   A.    I believe the prices that are bid into an  
3           RFP from the marketplace represent market prices. A  
4           big differentiating factor is that the prices that  
5           are bid into the RFP are bid -- in particular, that  
6           RFPs require the bidder to accept the terms and  
7           conditions of the contract that is set out as part of  
8           this RFP.

9                   In other words, when the FirstEnergy Ohio  
10          utilities selects that REC and executes that  
11          contract, that bidder has to deliver, and there's  
12          financial penalties for nondelivery or  
13          undeliverability.

14                   So given that structure, I think that  
15          that's a vastly different market price and a real  
16          market price as compared to indicative prices that  
17          you may find out from one -- one broker's limited  
18          volumes.

19                   MR. KUTIK: I have no further questions.  
20          Thank you, your Honor.

21                   EXAMINER PRICE: I have a couple of  
22          follow-ups, but these won't count against Mr. Kutik.

23                   THE WITNESS: Sure.

24                   EXAMINER PRICE: Can you relate to the  
25          Bench any prior instance where you recommended to a

1 client to ladder into an illiquid or nascent market?

2 THE WITNESS: In my prior experience,  
3 actually before working for the FEOUs in Ohio, I had  
4 worked as an independent monitor for PECO in  
5 Pennsylvania, and while the Pennsylvania market I  
6 would say is different, much different, than the Ohio  
7 market and that it can draw from all over PJM and is  
8 somewhat -- you know, has some of the  
9 characterization of a more liquid and transparent  
10 market, I would still characterize it as relatively  
11 nascent, given it's only been around for a couple of  
12 years. In that scenario we ultimately ran two to  
13 three RFPs over the course of time to procure -- to  
14 procure RECs.

15 EXAMINER PRICE: Okay. Do you think it  
16 makes sense to go long to buy RECs in the out years  
17 in an illiquid or nascent market?

18 THE WITNESS: Well, in an illiquid or  
19 nascent market, one of the struggles that you have  
20 making the decision is gathering information you can  
21 rely on. Recognizing that the statutes for  
22 requirements go up in future years and supply is  
23 uncertain, it's really a calculated risk or a gamble  
24 that you have to take at that time not knowing if the  
25 market is going one way or another.

1 EXAMINER PRICE: Okay. Well, one last  
2 question, and then I'll allow Ms. Yost to return, if  
3 you were in a damned if you do, damned if you don't  
4 situation, doesn't it make sense to talk to your  
5 regulator?

6 THE WITNESS: It was my understanding  
7 during the time that there were instances in which  
8 the FirstEnergy utilities reviewed with the regulator  
9 the process of the RFP.

10 EXAMINER PRICE: It's your understanding  
11 they were communicating with the regulator?

12 THE WITNESS: It's my understanding they  
13 met with the regulators and reviewed the structure of  
14 the RFPs and the plan for procuring RECs.

15 EXAMINER PRICE: Okay. Thank you.  
16 Ms. Yost.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Yost:

20 Q. Good afternoon, Mr. Bradley. My name is  
21 Melissa Yost. I am with the Office of Ohio  
22 Consumers' Counsel.

23 This case today is the first proceeding  
24 that you have testified as an expert witness,  
25 correct?

1           A.    Correct, this is my first opportunity to  
2   testify.

3           Q.    And Navigant was selected to be the  
4   independent evaluator for RFPs that are at issue in  
5   this proceeding, correct?

6           A.    Correct.

7           Q.    And the role of the independent evaluator  
8   is defined -- or was defined by the scope of work set  
9   forth by the FirstEnergy utilities, correct?

10          A.    Correct.

11          Q.    And the scope of work was defined in the  
12   request for proposal to which Navigant replied to,  
13   correct?

14          A.    Correct.

15          Q.    And the first RFP was in May, 2009, that  
16   Navigant replied to, correct?

17          A.    The first RFP, right, that we replied to  
18   for the role of independent evaluator was in May,  
19   2009.

20          Q.    And the second RFP that Navigant replied  
21   to was in November of 2010, correct?

22          A.    Yes.

23          Q.    And in regards to RFPs Nos. 1 and 2, Leah  
24   Bissonette was the project manager for Navigant for  
25   those RFPs, correct?

1           A. Leah Bissonette was the project manager  
2 of the relatively small team that we had working on  
3 the project, yes.

4           Q. And at the time that Leah Bissonette was  
5 project manager for Navigant, you were support for  
6 her for requests for proposals 1 and 2, correct?

7           A. That's correct. Leah brought me in  
8 because of my previous experience working with PECO  
9 as the independent monitor in Pennsylvania.

10          Q. And in your role as support for  
11 Navigant's project manager, you did not make  
12 recommendations to the project manager for Navigant  
13 as to whether bids for RECs should be accepted by  
14 FirstEnergy, correct?

15          A. As a team, we conducted the Phase II  
16 evaluation, and Leah, I believe, was the one who  
17 transmitted that recommendation to the FEOUs.

18          Q. And just to clarify, going forward when I  
19 use the word "FirstEnergy," I mean FirstEnergy  
20 utilities operating in Ohio, okay?

21          A. Okay. I understand.

22          Q. Would you agree in your role as support  
23 for the Navigant project manager for requests for  
24 proposal 1, you did not make recommendations to the  
25 project manager for Navigant as to whether bids for

1 renewable energy credits should be accepted by  
2 FirstEnergy?

3 MR. KUTIK: Objection, asked and  
4 answered.

5 EXAMINER PRICE: Ms. Yost?

6 MS. YOST: I'm sorry?

7 EXAMINER PRICE: He objected to your  
8 question. I am asking you to respond.

9 MS. YOST: Its a different question, your  
10 Honor.

11 MR. KUTIK: It's the same question.

12 MS. YOST: I am asking specifically with  
13 respect to proposal Exhibit 1.

14 EXAMINER PRICE: Okay. I'll allow it.

15 A. RFP No. 1, I worked on the team that  
16 developed the recommendation. I believe Leah  
17 Bissonette was the one who transmitted that  
18 recommendation to the FEOUs.

19 Q. Have you completed your answer, sir?

20 A. Yes.

21 Q. Do you recall I took your deposition  
22 January 29? Do you have a copy of that -- your  
23 deposition transcript with you, sir?

24 A. Yes.

25 Q. Can I have you turn to page 45 of the

1 public version of that.

2 A. Okay.

3 MS. YOST: Your Honors, I have extra  
4 copies if you would like to be provided one.

5 EXAMINER PRICE: Please. Can we have the  
6 page reference again?

7 MS. YOST: Sure. Page 45, starting with  
8 line No. 8.

9 Q. Question: "In your role as support for  
10 the Navigant project manager for requests for  
11 proposal 1, did you make recommendations to the  
12 project manager for Navigant as to whether bids for  
13 renewable energy credits should be accepted by  
14 FirstEnergy?"

15 Answer: "No."

16 Did I correctly read that, sir?

17 A. You did.

18 Q. And when Ms. Bissonette left Navigant,  
19 you became the project manager for requests for  
20 proposal No. 3; is that correct?

21 A. Yes.

22 Q. And you continued your role as project  
23 manager for Navigant for requests for proposals 3, 4,  
24 5, and 6, correct?

25 A. Correct.

1 Q. And in 2007, that was the first time you  
2 were a Navigant project manager for a project that  
3 involved the procurement of renewable energy credits,  
4 correct?

5 A. That is correct with respect to renewable  
6 energy credits in 2007. Prior to that, I had worked  
7 in projects involving renewable energy credits. This  
8 was the first involving renewable energy products  
9 that I had been manager of.

10 Q. And previous to 2009, Navigant did not  
11 have any experience with the procurement of renewable  
12 energy credits for its clients in Ohio, correct?

13 A. Well, that is correct. Given that 2009  
14 was the initial compliance year, I don't think that  
15 there were many folks who would have had experience.

16 Q. If I could have you turn to page 14 of  
17 your testimony starting on line 3, please let know  
18 when you are there.

19 A. I'm there.

20 Q. Line 3, first full sentence starts  
21 "Navigant did not perform rate calculations of the  
22 selection recommendations." Why didn't Navigant  
23 perform rate calculations of the selection  
24 recommendations?

25 A. The rate calculations I'm referring to



1 here, rate calculations, AER rider rate calculations,  
2 were outside of our scope of work as the independent  
3 evaluator for the RFP.

4 Q. So just to clarify, the rate calculations  
5 that you reference on lines 3 and 4 of page 14 were  
6 calculations that were outside your scope of work,  
7 correct?

8 A. Yes.

9 Q. And, Mr. Bradley, I do apologize to the  
10 extent I jump around in your testimony. I'm trying  
11 to address all the portions that can be on the public  
12 record, and then we'll later address those portions  
13 that are in the confidential portion.

14 A. Of course. I understand.

15 Q. Page 15 in -- of your testimony, in  
16 response to a question starting on line 6, your  
17 answer states on line 6, "As part of each RFP, RCS  
18 provided Navigant with the estimated target  
19 quantities of RECs desired by the FEOUs for the  
20 specific Categories that they were seeking to  
21 purchase through the RFP process."

22 What do you mean by "the estimated target  
23 quantities of RECs"?

24 A. Each RFP that's issued, whether it was  
25 these or others, usually is soliciting a specific

1 quantity of a product. So in this case, it would be  
2 laying out by the four categories, and by categories  
3 I mean in-state all renewable, in-state solar,  
4 out-of-state renewable, out-of-state solar.

5 So those are, generally speaking, the  
6 four categories the FEOUs would relay to Navigant how  
7 many RECs in each one of those categories were going  
8 to be sought in the RFP.

9 Q. So it was the FEOUs that determined that  
10 there would be laddering in certain RFPs; is that  
11 correct?

12 A. The information provided to us included  
13 RECs for a couple of years. We had discussions with  
14 them, but ultimately it was their decision.

15 Q. And did Navigant ever make any  
16 recommendations as to the estimated target quantities  
17 of RECs to FirstEnergy?

18 A. No, Navigant did not make that  
19 recommendation.

20 Q. Page 26 of your testimony, Mr. Bradley.

21 A. I'm there.

22 Q. Starting on line 17, "Were Navigant and  
23 RCS aware of other Ohio utility REC procurements?"  
24 And you indicate, "Yes." My question to you is when  
25 did Navigant become aware of other Ohio utility REC

1 procurements?

2 A. Navigant became aware of four REC  
3 procurements that are listed here in the June to July  
4 timeframe in 2009.

5 Q. Did Navigant become aware of all four of  
6 the RFPs identified on page -- starting on page 26,  
7 line 21, through page 27, line 12, before RFP No. 1  
8 was issued?

9 A. No. Item No. 4 there, DP&L issued an RFP  
10 on July 24, 2009, which was just a couple of days  
11 after the FEOUs issued RFP 1.

12 Q. How did Navigant become aware of these  
13 RFPs of other Ohio utilities?

14 A. The Department of Energy maintains a  
15 website called -- they basically gather up renewable  
16 energy RFPs or REC RFPs across the country and they  
17 publish to this website. This is an easy place to  
18 reference RFPs across the country that are coming up.  
19 In addition, Google searches and, in general, our  
20 market research at the time.

21 Q. Page 36 of your testimony, starting on  
22 lines 16 and 17, you state, "In this memo, Navigant  
23 observes, solar RECs priced up to \$700/SREC in New  
24 Jersey in 2009." This memo you are referencing is a  
25 confidential memo?

1 A. I believe it is a confidential memo.

2 Q. And this number \$700 per SREC, is  
3 included in this July 30, 2009, memo.

4 A. Yes.

5 Q. And why was this information not redacted  
6 if it was contained in a document that's marked  
7 confidential for purposes of this proceeding?

8 A. Although this \$700 number for SREC in New  
9 Jersey was in the public domain and published on the  
10 New Jersey's public utilities website, it wasn't the  
11 only information conveyed in that memo. I believe  
12 there may have been other information in that memo  
13 that would have been considered confidential.

14 MS. YOST: Mr. Bradley, that will  
15 conclude my line of questioning until we go to the  
16 confidential portion in regard to this portion of  
17 your testimony.

18 EXAMINER PRICE: Ms. Yost, I have a  
19 follow-up to your last question. Mr. Bradley, is it  
20 unusual that solar SRECs would be priced sharply  
21 higher than all renewable SRECs?

22 THE WITNESS: You know, there can be  
23 times when the two overlap. They're market prices,  
24 generally speaking, and there have been times in the  
25 published information available on the Pennsylvania

1 Public Utilities Commission website where nonsolar  
2 RECs are actually at the highest point, higher than  
3 the lowest point on the solar RECs, so there are  
4 times where they overlap.

5 EXAMINER PRICE: As a general rule,  
6 regardless of the times they overlap, isn't it  
7 generally the case that solar RECs are more expensive  
8 than all renewable RECs?

9 THE WITNESS: As a general proposition,  
10 to the date in the markets with their own separate  
11 supply curves and whatnot?

12 EXAMINER PRICE: Yes.

13 THE WITNESS: I would say generally we've  
14 seen SREC prices, you know, that may be somewhat  
15 higher. The difficulty in the comparison is there  
16 is just oftentimes SREC prices in New Jersey are  
17 published actual transactions, and you don't really  
18 have a non-SREC -- a nonsolar REC to compare it to,  
19 so that's why it makes it a little bit of a difficult  
20 comparison, and we can't really say with certainty.

21 I've seen times when it overlaps. In  
22 general, if you have a steep demand curve for solar,  
23 you may wind up in a situation generally solar SRECs  
24 may be more expensive than renewable RECs in general.

25 EXAMINER PRICE: Fair enough.

1                   Ms. Yost, do you want to go to the  
2 confidential portion at this time?

3                   MS. YOST: I might have a couple more  
4 questions that are public.

5                   EXAMINER PRICE: Oh, I'm sorry. Okay.

6                   Q. (By Ms. Yost) Page 45 of your testimony,  
7 Mr. Bradley, starting on line No. 11, the answer is,  
8 "No. Navigant understood based on information  
9 available at the time of RFPs 1-3, and as described  
10 in Section II (above), that the Ohio AEPS differed  
11 from many state RPS laws in that they did not provide  
12 an alternative compliance payment, i.e., a payment  
13 which may be made in lieu of procuring RECs." And  
14 then you have a footnote 14.

15                   In regards to line 11, you indicate that  
16 Navigant understood based on information available at  
17 the time of the RFPs 1-3. So that time would have  
18 been for years 2009 and 2010, correct?

19                   A. That's correct.

20                   Q. And in support of your statement on lines  
21 11 through 14, you reference an October 1, 2008,  
22 letter from the Speaker, what is indicated as  
23 directed to Allen Schriber, Chairman of the PUCO,  
24 from Speaker Jon Husted of the Ohio House of  
25 Representatives. Do you see that, sir?

1 A. Yes.

2 Q. You did not possess that letter until  
3 December, 2012, correct?

4 A. That's correct.

5 Q. So you weren't aware of this letter at  
6 the time you made your recommendation to FirstEnergy  
7 regarding their procurements of renewable energy  
8 credits, correct?

9 A. I was not aware of the letter. It  
10 mirrored what I read in articles at the time in Ohio  
11 publications, but I had not seen this letter.

12 Q. Page 53 of your testimony, please,  
13 starting with question No. 9, you are indicating you  
14 do not agree with Navigant regarding certain  
15 observations. On line 16 --

16 A. Excuse me, do you mean Exeter?

17 Q. I'm sorry, yes. I apologize, Exeter.  
18 Specifically on lines 16 through 20 it states, "the  
19 limited pricing information that was available  
20 referenced by Exeter in Figure 3 of its report has  
21 very limited, if any, value. That data is only from  
22 one of 89 brokers," and it continues on. Do you know  
23 who that data is from?

24 A. I understand that data would likely be  
25 from Evolution Markets or Spectron Group.

1 EXAMINER PRICE: What's the basis of your  
2 understanding?

3 THE WITNESS: The basis of my  
4 understanding is my recollection of reading the  
5 Exeter report.

6 EXAMINER PRICE: Thank you.

7 Q. And if it's from one broker -- I'm sorry.  
8 I am misunderstanding. What broker is it from?

9 A. Sitting here, off the top of my head, I'm  
10 saying it's either from Spectron Group or Exeter or  
11 Evolution Markets. I believe I recollect those names  
12 from reading the Exeter report.

13 Q. Do you have the Exeter report with you?

14 A. I do.

15 Q. Could you take a look and see if that  
16 helps refresh your recollection.

17 A. Well, I am not seeing a specific  
18 reference in my quick perusal of this. I would  
19 recollect it would be the Spectron Group.

20 Q. Okay. Do you recall that during your  
21 deposition you indicated that in all of your REC  
22 procurements that you have been involved with, you  
23 had never come across that player?

24 A. I had never come across that player in an  
25 RFP response. They were included on the distribution



1 list for the RFPs at issue. They never responded,  
2 and they never contacted us.

3 Q. In making your recommendations to  
4 purchase in-state all renewable RECs for FirstEnergy,  
5 you did not consider that a force majeure was an  
6 option, correct?

7 A. That is correct.

8 Q. And you never advised FirstEnergy to seek  
9 a request for a force majeure because it was outside  
10 your scope of work, correct?

11 A. Yeah. Well, it was outside of our scope  
12 of work. That information and the recommendations we  
13 would have given them would have given them the  
14 information that they would have needed to make a  
15 decision on force majeure.

16 Q. So that was their decision to make  
17 whether there should be an application for force  
18 majeure, sir?

19 A. Yes.

20 Q. An that's not -- and the application of a  
21 force majeure is not something you considered in  
22 making your recommendation to FirstEnergy regarding  
23 the purchase of renewable energy credits, correct?

24 A. Correct.

25 Q. Mr. Bradley, you had other clients that

1           you have advised in regards to the procurement of  
2           renewable energy credits, correct?

3           A.    Yes.

4           Q.    And those other clients, the states that  
5           they were procuring those credits in, those states  
6           had force majeure provisions also, correct?

7           A.    Yes.

8           Q.    And have any of those other clients ever  
9           specifically asked Navigant to exclude a  
10          recommendation regarding force majeure from their  
11          recommendation whether to purchase RECs?

12          MR. KUTIK:  Objection.  There has been no  
13          evidence that FirstEnergy asked Navigant to exclude  
14          that from their decision making or recommendation.

15          MS. YOST:  Your Honor, I am asking  
16          whether any of these clients have ever asked them to  
17          exclude it.

18          EXAMINER PRICE:  I'll allow it.

19          A.    In our work for our clients, we've never  
20          seen, in terms of an independent evaluator role,  
21          we've never seen any scope of work item that  
22          requested that we make recommendations on force  
23          majeure, nor in many of the RFPs that we have  
24          responded to for the role of independent evaluator  
25          have we seen any such request be in a scope of work

1           that we would have responded to.

2                       EXAMINER PRICE: Did FirstEnergy ask you  
3           to exclude force majeure from your scope of work?

4                       THE WITNESS: No.

5                       EXAMINER PRICE: Thank you.

6                       MS. YOST: I'm sorry, your Honor. Could  
7           you read the question back?

8                       EXAMINER PRICE: Read the question and  
9           answer back, please.

10                      (Record read.)

11                      Q. Mr. Bradley, you consider Pennsylvania to  
12           be a state where there is a transparent liquidity  
13           market for nonsolar RECs, correct?

14                      A. I believe that in comparison to other  
15           states, that Pennsylvania exhibits characteristics  
16           that are more liquid and transparent than other RPS  
17           states. An example of that would be, you know, at  
18           the very least, in Pennsylvania in each December of  
19           each year, I think as formerly discussed in the  
20           hearing, the Pennsylvania Public Utilities Commission  
21           posts for that year the highest price paid for a  
22           compliance REC, the lowest price paid for a  
23           compliance REC, and a weighted average of the RECs  
24           used to comply in that year.

25                      Q. Thank you. That's a very helpful

1 introduction to the exhibit I would like to  
2 introduce.

3 MS. YOST: At this time, your Honor, I  
4 would like to have marked OCC Exhibit 2. May I  
5 approach the Bench, your Honor?

6 EXAMINER PRICE: You may.

7 So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Mr. Bradley, please take a moment to  
10 review OCC Exhibit 2.

11 Mr. Bradley, have you seen OCC Exhibit 2  
12 before?

13 A. Yes.

14 Q. What is OCC Exhibit 2?

15 A. OCC Exhibit 2 is the Pennsylvania AEPS,  
16 Alternative Energy Credit Program, pricing sheet  
17 that's published on the Pennsylvania aeaps.com  
18 website.

19 Q. And this is the information that we  
20 discussed during your deposition that you have been  
21 reviewing once a year for the past six years,  
22 correct?

23 A. Correct.

24 Q. And on page 51 of your testimony,  
25 specifically footnote 18 on page 51, the footnote

1 indicates there is a Pennsylvania AEPS website, and  
2 this is the same website that is indicated on the top  
3 right of OCC Exhibit 2, correct?

4 A. Yes.

5 Q. And you use S priced RECs from OCC  
6 Exhibit 2 in your testimony, correct?

7 MR. KUTIK: Could I have the question  
8 read, please?

9 EXAMINER PRICE: Reread the question,  
10 please.

11 (Record read.)

12 MR. KUTIK: I assume that means SREC  
13 prices?

14 A. And it's a minor technicality, in  
15 Pennsylvania they are called alternative energy  
16 credits, AECs.

17 Q. Some of the prices from OCC Exhibit 2 are  
18 found in your testimony on page 51, correct?

19 A. Correct.

20 Q. Specifically line 16, you said "Average  
21 SRECs of \$260.19." That comes from OCC Exhibit 2?

22 A. Yes.

23 Q. And OCC Exhibit 2 also indicates the  
24 prices for nonsolar RECs, correct?

25 A. Yes, Pennsylvania.

1           Q.    Yes.  In Pennsylvania they have their REC  
2           program separated from solar RECs and Tier I, Tier II  
3           RECs, correct?

4           A.    Correct.  Those are different  
5           classifications.

6           Q.    And Tier I and Tier II RECs are all --  
7           all renewable RECs, correct?

8           A.    I don't know about all renewable.

9           Q.    You could say nonsolar RECs.

10          A.    Nonsolar RECs.  They may or may not  
11          include resources that would be considered renewable  
12          in other states.  Tier II includes large hydro or  
13          waste coal.  These aren't typically, I know,  
14          renewable energy standard type of resources, but they  
15          are included in certain states' classifications.

16          Q.    So in 2009, what was the highest price in  
17          Pennsylvania for nonsolar RECs?

18          A.    It's a difficult question to answer  
19          because in Pennsylvania the AEPS allows RECs to be  
20          sourced from anywhere in PJM, which is the largest  
21          electricity -- electric wholesale market in the  
22          world.  So when we look at prices here, we just have  
23          to bear in mind this includes, you know, a vast  
24          geographic area from which RECs can be drawn.  But if  
25          that is the instance in which we are talking about,

1 looking at 2009 here, Tier I REC, the AEC price range  
2 highpoint would be \$23.

3 Q. And that's an actual transaction,  
4 correct?

5 A. This would be an actual transaction for a  
6 REC that was used in that year for compliance. It  
7 may have been purchased in previous years, but it  
8 would have -- at one point someone paid \$23 for a REC  
9 that was then retired in 2009.

10 Q. And what was the highest REC in 2010?

11 A. For nonsolar RECs, as indicated on OCC  
12 Exhibit 2, in 2010, with the same caveats that I put  
13 on the last one, meaning it comes from anywhere in  
14 PJM, \$24.15. When this says "Weighted Average  
15 Price," just to be clear, this is the price at the  
16 end of the year looking backwards over the  
17 compliance.

18 Q. But that's not what we are talking about,  
19 is it, Mr. Bradley, in my line of questioning just  
20 now?

21 A. No. The only -- the only point I was  
22 making here is that agreeing these are actual prices,  
23 but these would not necessarily have been known  
24 during the course of the year in which a utility was  
25 seeking compliance. This information is published,

1 typically, in the December or later timeframe, is all  
2 I am saying.

3 Q. And the highest price you've seen for a  
4 REC -- nonsolar REC purchased in the state of  
5 Pennsylvania is less than \$100, correct?

6 A. Correct.

7 Q. And you've been reviewing pricing  
8 information regarding the state of Pennsylvania since  
9 2006?

10 A. 2006-2007, yeah.

11 Q. And ever since 2006-2007, Pennsylvania  
12 has made the information regarding the lowest and the  
13 highest price of nonsolar RECs public information,  
14 correct?

15 A. I believe they have, and prior to 2008,  
16 it's either not shown on this printout that you have,  
17 or it was shown in a report rather than posted on the  
18 website. But in my recollection, I believe prior to  
19 2008 there was also this information.

20 Q. And you make it a habit to check this  
21 information every year when it's released?

22 A. Yes; or sometime thereafter.

23 MS. YOST: Your Honor, at this time I  
24 would like to approach the Bench and have OCC Exhibit  
25 3 marked as REC pricing.



1 EXAMINER PRICE: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Mr. Bradley, have you seen what is marked  
4 as OCC Exhibit 3?

5 A. I believe I have.

6 Q. This is a document that you relied on in  
7 the preparation of your testimony in this proceeding,  
8 correct?

9 A. Yes, I refer to this in my testimony.

10 Q. Could you turn to the figure DRB-2 that  
11 is attached to your testimony.

12 A. Okay.

13 Q. In regards to your attachment DRB Figure  
14 2 and OCC Exhibit 3, they are for the same time  
15 periods, correct, January, 2005, to July, 2012?

16 A. Correct.

17 Q. And the same states are indicated in each  
18 exhibit, correct?

19 A. Correct.

20 Q. Why are the -- the lines indicating each  
21 state's renewable energy credit pricing different  
22 between OCC Exhibit 3 and attachment DRB-2?

23 A. Can you point out your difference? I'm  
24 not sure what you're referring to.

25 Q. Sure. For example, we can take the

1 green -- I believe that's Connecticut. It starts  
2 around \$30. And if you follow Connecticut starting  
3 in January, 2005, that line is different from Figure  
4 X, which is Attachment DRB-2 versus OCC Exhibit 3.

5 A. I don't know why there is a difference  
6 there.

7 Q. And --

8 A. You know, I don't know where you got this  
9 exhibit here.

10 Q. Did you create Attachment DRB-2?

11 A. Yes.

12 Q. Did you create OCC Exhibit 3?

13 A. I don't know.

14 MS. YOST: Your Honor, may I approach the  
15 Bench and have OCC Exhibit 4 marked?

16 EXAMINER PRICE: You don't know if you  
17 created OCC Exhibit 3?

18 THE WITNESS: I don't. I don't know if I  
19 created it or not, and also I believe when I say  
20 "create," this was an illustration that I took off of  
21 the Berkeley National Laboratories website. I wasn't  
22 creating these charts, so.

23 MR. KUTIK: Just for clarification,  
24 "this" you are pointing to your attachment.

25 THE WITNESS: Yes, my attachment.

1 EXAMINER PRICE: You did not create  
2 Attachment DRB-2; you simply sourced it from another  
3 source.

4 You may approach. I'm sorry, Ms. Yost.  
5 We will mark your document as OCC Exhibit 4.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MS. YOST: Thank you, your Honor.

8 Q. Please take a moment to familiarize  
9 yourself with OCC Exhibit 4.

10 Mr. Bradley, are you ready to proceed?  
11 Take as much time as is necessary.

12 A. Okay.

13 Q. Page 2 of OCC Exhibit 4, please, first of  
14 all, have you seen OCC Exhibit 4?

15 A. This is the one you just handed me?

16 Q. Yes, sir.

17 A. I have now seen it.

18 Q. On page 2 --

19 EXAMINER PRICE: I'm sorry, Ms. Yost.

20 Have you seen it before today?

21 THE WITNESS: I don't remember seeing  
22 this before today.

23 EXAMINER PRICE: You don't recall ever  
24 seeing this before right now?

25 THE WITNESS: Correct.

1 EXAMINER PRICE: Thank you, Ms. Yost.

2 Q. (By Ms. Yost) On page 2 of OCC Exhibit 4,  
3 the very last sentence, it indicates, "Mr. Bradley,  
4 relied upon OCC's Set 3 - INT 2 attachments 26  
5 through 35." And on the top of OCC Exhibit 3, do you  
6 see where it indicates OCC Set 3 - INT-2, Attachment  
7 32? Do you see that, sir?

8 A. Yes.

9 Q. And your testimony was that you did not  
10 produce this -- this chart that you used the  
11 information from another publication; is that  
12 correct?

13 MR. KUTIK: Objection. "This chart"?

14 EXAMINER PRICE: Which chart, Ms. Yost?

15 MS. YOST: Let's do the one that's  
16 attached to your testimony, Attachment DRB-2.

17 MR. KUTIK: So the question now is what?

18 EXAMINER PRICE: Please rephrase your  
19 question.

20 Q. In regards to Attachment DRB-2, what was  
21 your source of information for DRB-2?

22 A. It was a graph that was on the Berkeley  
23 National Laboratory's website, if I recall. What I  
24 did here was took the graph and I drew in the lines  
25 just to show the times of RFP 1, 2, 3, 4, 5, 6.

1 Q. So you're indicating that you took the  
2 graph directly from Berkeley National Laboratory and  
3 only added the six boxes and the corresponding lines,  
4 which are indicated requests for RFP 1 through 6; is  
5 that your testimony, sir?

6 A. Yes.

7 Q. Do you know why the lines are different  
8 in regards to Attachment DRB-2 versus OCC Exhibit 3?

9 EXAMINER PRICE: Ms. Yost, are you  
10 talking about the colored lines or vertical lines?

11 MS. YOST: The colored lines that  
12 indicate the state's REC pricing.

13 Q. Do you know whether Attachment DRB-2  
14 accurately reflects the chart from Berkeley National  
15 Laboratory?

16 A. I believe it does.

17 Q. Do you know whether the OCC Exhibit 3  
18 accurately reflects the chart from Berkeley National  
19 Laboratory?

20 A. I do not know if it does. It may have  
21 appeared in a similar report. You know, again,  
22 sitting here, I don't know.

23 EXAMINER PRICE: I'm confused as to your  
24 state of knowledge as to OCC Exhibit 3. Have you  
25 seen this exhibit before in your life?

1 THE WITNESS: This OCC Set 3?

2 EXAMINER PRICE: Yes.

3 THE WITNESS: I honestly don't know. I  
4 may have seen something. These two graphs look very  
5 similar.

6 EXAMINER PRICE: I understand that.

7 THE WITNESS: And so I don't know sitting  
8 here today whether I have.

9 EXAMINER PRICE: Did you produce OCC  
10 Exhibit 3?

11 THE WITNESS: I don't believe that I did.

12 EXAMINER PRICE: To the best of your  
13 knowledge, did you rely on OCC Exhibit 3 in preparing  
14 your testimony?

15 THE WITNESS: To the best of my  
16 knowledge, no.

17 EXAMINER PRICE: Thank you.

18 Q. (By Ms. Yost) Who did you provide  
19 Attachment DRB-2 to? Who did you provide it to  
20 before it was publicly filed?

21 A. Attachment DRB-2 to my testimony, who did  
22 I provide it to?

23 Q. Before it was publicly filed, yes.

24 A. My -- my co-workers, Robert Kendall, he  
25 took a look at it, and then we provided this document

1 to FirstEnergy Ohio utilities.

2 Q. Specifically who at FirstEnergy Ohio  
3 utilities?

4 A. I would have sent this document to Meghan  
5 Moreland.

6 Q. Would you have sent it in an electronic  
7 version?

8 A. I believe so, yes.

9 EXAMINER PRICE: From my total layman's  
10 eye, it appears that DRB-3 -- 2, Attachment DRB-2 has  
11 more data points than OCC Exhibit 3. My question is  
12 the information you obtained for DRB-2, did you put  
13 in that chart all the information that was available  
14 from Berkeley National Labs at that point in time?

15 THE WITNESS: I used a chart that  
16 Berkeley National Labs had prepared at that time.  
17 You know, I copied it.

18 EXAMINER PRICE: Copied that chart.

19 THE WITNESS: Copied that chart, and then  
20 I drew the --

21 EXAMINER PRICE: Then you drew the  
22 vertical lines.

23 THE WITNESS: Correct.

24 Q. (By Ms. Yost) Just to clarify, it was a  
25 matter of cutting the chart from the Berkeley

1 National Laboratory and pasting it and adding the  
2 vertical lines indicating RFPs 1 through 6?

3 A. Correct.

4 MS. YOST: Your Honor, I am just going  
5 through briefly to see if I have any other public  
6 information.

7 EXAMINER PRICE: Thank you.

8 Q. Mr. Bradley, making recommendations  
9 whether FirstEnergy should purchase bids in response  
10 to the RFPs, Navigant did not consider that making a  
11 compliance payment in lieu of purchasing the RECs in  
12 its recommendation, correct?

13 A. That is correct. It's our understanding  
14 that's not a voluntary option for compliance in the  
15 state of Ohio.

16 Q. Mr. Bradley, you would agree that the  
17 consideration of compliance payments was not within  
18 your scope of work, correct?

19 A. Correct.

20 Q. So just to clarify, you talked about your  
21 scope of work being defined in the two RFPs that  
22 Navigant responded to, correct?

23 A. Correct.

24 Q. And that consideration of compliance  
25 payment would be outside the scope of work in the



1 RFPs, correct?

2 A. Correct. It's in the voluntary method of  
3 compliance in Ohio, in the AEPS.

4 Q. If consideration of the compliance  
5 payment was outside your scope of work pursuant to  
6 the RFPs, why do you address the compliance payments  
7 in Ohio in your testimony?

8 A. The reason for that is to underscore my  
9 belief, Navigant's belief, that the Ohio ACS does not  
10 lay out a provision whereby a utility can submit a  
11 voluntary alternative compliance payment similar to  
12 the states like New Jersey, Massachusetts, or  
13 Delaware that is acceptable for compliance with the  
14 obligations.

15 EXAMINER PRICE: Have you reviewed the  
16 past Commission cases when -- when -- when compliance  
17 payments have been ordered?

18 THE WITNESS: In Ohio?

19 EXAMINER PRICE: Yes.

20 THE WITNESS: I'm generally aware that in  
21 late 2011, I believe in 2012, there were some matters  
22 with competitive retail electric suppliers. I have  
23 not reviewed those in detail.

24 EXAMINER PRICE: You've not reviewed a  
25 case where the Commission has ordered compliance

1 payment in the past?

2 THE WITNESS: No. I am generally aware  
3 of that now, but I have not reviewed those.

4 EXAMINER PRICE: Have you reviewed those  
5 at the time of your testimony?

6 THE WITNESS: No, I did not.

7 EXAMINER PRICE: Would it surprise you if  
8 a CRES provider in their AEC filing simply made the  
9 compliance payment because they had not purchased  
10 RECs?

11 THE WITNESS: It would not surprise me.

12 EXAMINER PRICE: But you would not  
13 consider that to be voluntary.

14 THE WITNESS: I would not consider that  
15 to be voluntary. I would consider a CRES provider  
16 with a small number of RECs that they were seeking  
17 for compliance maybe to attempt that path. I would  
18 view that differently than I would a utility --

19 EXAMINER PRICE: Does the law make any  
20 distinction between the two situations?

21 MR. KUTIK: Well, your Honor, he was in  
22 the middle of an answer.

23 EXAMINER PRICE: You're right. You're  
24 correct, Mr. Kutik. Please. And then I'll ask the  
25 question.

1 THE WITNESS: Sure. I would just view a  
2 large Ohio utility, you know, seeking to attempt to  
3 pay alternative -- a compliance payment under the  
4 AEPS, it's just a very different path, although maybe  
5 this is where you are going, the law doesn't make  
6 that distinction. My reading of AEPS, the spirit and  
7 intent of it was clearly to procure RECs, not  
8 necessarily comply through other means.

9 EXAMINER PRICE: But you do understand  
10 payment of the compliance payments, the funds  
11 received from the compliance payments, is funneled  
12 indirectly by the state into further renewable  
13 generation; is that correct?

14 THE WITNESS: That's my understanding of  
15 how the statute is laid out.

16 EXAMINER PRICE: Thank you, Ms. Yost.

17 Q. (By Ms. Yost) Mr. Bradley, you said the  
18 spirit of AEPS legislation was to procure RECs; is  
19 that correct?

20 A. That's correct.

21 Q. Is it the spirit of the AEPS legislation  
22 in Ohio to procure RECs at any price?

23 A. The statute says for the two potential  
24 avenues for relief, there's the -- there's the  
25 3 percent calculation, which to me addresses the

1 issues of cost; the other potential avenue of relief  
2 would be a force majeure, which in my reading seems  
3 to go to reasonable availability in the marketplace.

4 Q. The 3 percent cost cap you just  
5 referenced, did you ever perform that calculation in  
6 regards to requests for proposal No. 1?

7 A. Prior to RFP 1 in probably June of 2009,  
8 myself and my colleague, Leah Bissonette, attempted  
9 to calculate the 3 percent using the 3 percent  
10 methodology. At that point we had an understanding  
11 of the compliance obligation which we received per  
12 step 1 of our process here when we received from the  
13 FEOUs the number of RECs that are going to be  
14 solicited.

15 And we went to the 10-K report that the  
16 FirstEnergy Ohio utilities had on file with the SEC,  
17 and we took the total purchase power costs for the  
18 prior two years, performed the calculation, and came  
19 up with REC prices above \$1,000 for the renewable  
20 in-state category. We were reasonably comfortable  
21 going in that unless REC prices were above \$1,000, it  
22 would be unlikely that the 3 percent would be  
23 triggered.

24 Q. When was this calculation attempted?

25 A. June, late June, 2009.

1 EXAMINER PRICE: I have a follow-up  
2 question with your understanding. Of the intent to  
3 determine General Assembly. The law says reasonably  
4 available; is that correct?

5 THE WITNESS: That's correct.

6 EXAMINER PRICE: And you don't think  
7 "reasonably" has any relationship to price. It means  
8 something totally different from price.

9 THE WITNESS: My reading of "reasonably  
10 available" is competitively bid primarily, so.

11 EXAMINER PRICE: So you think the General  
12 Assembly was using competitively bid as a synonym  
13 with reasonable?

14 THE WITNESS: Yeah, that's my belief.

15 EXAMINER PRICE: Okay. Fair enough.

16 MS. YOST: I think I am ready to move to  
17 the confidential portion.

18 EXAMINER PRICE: Okay. At this time we  
19 will go back to the confidential portion of our  
20 transcript.

21 (CONFIDENTIAL PORTION.)  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(PUBLIC RECORD.)

EXAMINER PRICE: Please proceed,

Mr. McDaniel.

Q. (By Mr. McDaniel) Mr. Bradley, have you  
reviewed Mr. Earle's testimony for FirstEnergy in  
this case?

1 A. Yes.

2 Q. I'm sorry, Dr. Earle. And Dr. Earle  
3 discusses the effects supply and demand can have on  
4 REC prices; is that correct?

5 A. Yes, that's correct. I believe he also  
6 discusses market design and the impact of the market  
7 design on prices.

8 Q. Do you have the Companies' Exhibit 5 in  
9 front of you?

10 A. And the name of that document you are  
11 referring to?

12 Q. I'm sorry. It's the NARUC report to the  
13 Public Utilities Commission of Ohio entitled  
14 "Alternative Energy Resource Market Assessment."

15 A. I do not have that in front of me.

16 MR. McDANIEL: I have extra copies.

17 Q. Mr. Bradley, I think you stated earlier  
18 you were in the room when Mr. Estomin was questioned;  
19 is that correct?

20 A. Yes.

21 Q. And he was asked about this report,  
22 correct?

23 A. Yes.

24 Q. I would like to direct your attention to  
25 page 12 of this report. It's the section discussing

1 "Tracking REC Prices." Do you see the third  
2 paragraph of this page? Halfway through the first  
3 sentence it says, "REC prices can be different for  
4 short-term trades and for long-term contracts." And  
5 it continues, "Short-term markets are strongly  
6 influenced by supply and demand and high prices may  
7 simply be a sign that demand is growing faster than  
8 new projects can get built." Do you see that?

9 A. Yes.

10 Q. Mr. Bradley, you are aware that  
11 FirstEnergy utilities outside of Ohio are subject to  
12 other states' RPSs, correct?

13 A. Yes.

14 Q. And those states include Pennsylvania and  
15 New Jersey?

16 A. Yes.

17 Q. Did you review the REC procurement  
18 processes of FirstEnergy's Pennsylvania/New Jersey  
19 utilities while acting as independent evaluator?

20 A. Well, I have not. The reason I have not  
21 is that those are very different markets, and the  
22 market we are working at in Ohio is under very  
23 different market conditions. FirstEnergy utilities  
24 in the 2009 to 2011 time period was working under  
25 their ESP I and ESP II, which was granting them



1           certain recovery, so that is the environment within  
2           which I was looking.

3           Q.    Are you aware that FirstEnergy utilities  
4           in Pennsylvania have entered into long-term REC  
5           agreements for terms of five years or more?

6           A.    Generally aware.

7           Q.    Are you aware that FirstEnergy utilities  
8           in New Jersey have entered into long-term REC  
9           agreements for terms of five years or more?

10          A.    While I'm generally aware of that, again,  
11          these are different markets and under different  
12          jurisdictions and under different rules for recovery.  
13          In addition, the markets in Pennsylvania and New  
14          Jersey, as we were referencing earlier, are -- are  
15          older, have been around longer than the market in  
16          Ohio, takes some amount of time for these -- these  
17          types of markets to develop.

18          MR. McDANIEL:  Move to strike everything  
19          after "in addition," your Honor.

20          EXAMINER PRICE:  I think he was  
21          attempting to be responsive that time.  Denied.

22          Q.    Mr. Bradley, you testify that you  
23          monitored the RFPs of other Ohio utilities, correct?

24          A.    Yes.

25          Q.    And you are aware that at least one other

1 Ohio utility issued an RFP for long-term contracts in  
2 2008, correct?

3 A. Yes. Although I will say that I don't  
4 believe that that was specifically with respect to  
5 compliance solely with the Ohio AEPS.

6 Q. With regard to a long-term contract for  
7 the procurement of RECs, the contract could provide  
8 for the purchase price to change annually according  
9 to market price, correct?

10 A. If a contract was developed and a market  
11 price existed to which it could tie to,  
12 theoretically, yes; practically, no.

13 Q. Could I direct your attention back to the  
14 Companies' Exhibit 5, the NARUC report, page 21. Do  
15 you see at the bottom under Ohio where it says, "Ohio  
16 has approved several electric distribution utility  
17 programs to acquire solar or small wind RECs via  
18 long-term contracts. The standard contract for two  
19 of the programs is for 15-year terms, but the price  
20 paid changes annually according to market prices."  
21 Do you see that?

22 A. Yes, I see that.

23 MR. KUTIK: Your Honor, I object and move  
24 to strike.

25 A. I don't know.

1 MR. KUTIK: To what end, your Honor, that  
2 he can read this?

3 EXAMINER PRICE: Mr. McDaniel will ask a  
4 follow-up question to the witness.

5 MR. McDANIEL: Sure.

6 Q. Did FirstEnergy's contract as part of RFP  
7 6 for in-state all renewable RECs provide for the  
8 price to change annually according to market prices?

9 MR. KUTIK: Objection, your Honor.

10 EXAMINER PRICE: Grounds?

11 MR. KUTIK: The reference in the report  
12 has nothing to do with the question.

13 EXAMINER PRICE: Sustained.

14 Q. Page 21 of this report discusses Ohio  
15 utilities long-term contracts. FirstEnergy has a  
16 long-term contract for RFP -- or for RECs as part of  
17 RFP 6 at this point; is that correct?

18 A. Yes.

19 Q. And this report discusses some electric  
20 distribution utility programs in Ohio who have used  
21 long-term contracts, correct?

22 MR. KUTIK: Objection.

23 EXAMINER PRICE: Grounds?

24 MR. KUTIK: It says what it says, your  
25 Honor. This witness hasn't written this report.

1 This witness hasn't indicated that he agrees with  
2 this part of the report. He hasn't indicated that he  
3 thinks it's authoritative.

4 EXAMINER PRICE: Mr. Daniel, response?

5 MR. McDANIEL: This is the companies'  
6 only exhibit. It was cited to by Dr. Earle in his  
7 own testimony. So I'm not sure why it's not fair  
8 game.

9 MR. KUTIK: If he wants to ask Dr. Earle  
10 questions about this, he is more than free to do so.  
11 This witness isn't Dr. Earle.

12 EXAMINER PRICE: You haven't asked this  
13 witness if he considers this report to be  
14 authoritative and it's something he should rely upon  
15 or something he is sponsoring.

16 Q. (By Mr. McDaniel) Mr. Bradley, do you  
17 consider this report to be authoritative and  
18 something that is worth relying on?

19 A. Well, I haven't read the report in great  
20 detail. I'm aware of it. I don't agree with many of  
21 the items in here, many of the statements and  
22 conclusions in here. I have different opinions.  
23 But, again, this is not based on my having written  
24 this report, nor knowing the detail of every page of  
25 this report.

1           Q.   Do you have any reason to believe that  
2           it's -- the report's statement that there are Ohio  
3           electric distribution utilities with long-term  
4           contracts for REC prices where the price paid changes  
5           annually according to market prices, do you have any  
6           reason to believe that's incorrect?

7           A.   That -- while I do believe that that may  
8           be incorrect, I don't know for sure. But that  
9           strikes me as something that is out of the context of  
10          AEPS. It doesn't say whether this is being used as a  
11          compliance mechanism. It doesn't say what this is in  
12          reference to, and it doesn't describe what market  
13          prices -- what market prices are.

14                 In the time that I have been working in  
15          the Ohio market and all of the market outreach we  
16          have conducted, to this date the only market price  
17          that I have ever seen in Ohio for RECs has been the  
18          prices that come through these six RFPs.

19          Q.   Are you aware the context of this report?  
20          Strike that.

21                 Are you aware that this report was  
22          developed at the request of the Commission as part of  
23          their reporting obligations under the Ohio Revised  
24          Code 4928.64?

25                 MR. KUTIK: Objection, your Honor. The

1 report doesn't so indicate, and there is no evidence  
2 in the record that that's true.

3 EXAMINER PRICE: Sustained.

4 Q. Are you aware that the Public Utilities  
5 Commission of Ohio has reporting obligations  
6 understand Section 4928.64?

7 A. Yes.

8 Q. Mr. Bradley, I would like to move back to  
9 your testimony, pages 41 through 42. Here you  
10 discuss the negotiations with bidder 2 for a lower  
11 REC price as part of RFP 3, correct?

12 A. Yes.

13 Q. And RFP 3 sought renewable RECs for the  
14 years 2010 and 2011, correct?

15 A. Among other categories, yes.

16 Q. And among other categories, RFP 1 and 2  
17 sought the sale of renewable RECs for the years 2009,  
18 2010, 2011?

19 A. Yes.

20 Q. And page 42 you state that "The results  
21 of the negotiation were that 'Bidder 2' reduced its  
22 bid price by" -- which amounted to a savings to the  
23 FirstEnergy Ohio utilities and its ratepayers of  
24 approximately \$25 million, correct?

25 A. Correct.

1           Q.    In the context of RFPs 1 and 2, did  
2           Navigant negotiate with any in-state all renewable  
3           REC bidders for a lower price?

4           A.    Well, while we did not negotiate with  
5           bidders coming out of the RFP, we also were working  
6           under a very tight timeframe that didn't even  
7           accommodate, you know, the time required to negotiate  
8           with bidders, considering that 2009 was the first  
9           compliance year.

10          Q.    Okay.  Could I direct your attention to  
11          page 29 of your testimony.  With regard to RFP 1,  
12          FirstEnergy ultimately purchased 20,000 2009 in-state  
13          all renewable RECs, correct?

14          A.    Yes.

15          Q.    But FirstEnergy didn't just purchase '09  
16          RECs, correct?

17          A.    Correct.

18          Q.    FirstEnergy also purchased 50,000 2010  
19          in-state all renewable RECs, correct?

20          A.    Yes.  As part of a lateral structure of  
21          purchasing RECs over time, that is the strategy that  
22          was employed in this RFP.

23          Q.    In the context of RFP 1, did Navigant  
24          negotiate for a bid for a lower REC price for 2010  
25          in-state all renewable RECs?

1           A.   While Navigant didn't negotiate with the  
2 bidder coming out of RFP 1 for 2010 RECs, the  
3 development of the RFP itself provided for the buyers  
4 to accept the terms and conditions of the contract  
5 prior to submitting a bid, and then the bid -- the  
6 RFP set out for qualification and pricing rounds  
7 which pricing was evaluated and selections were made.  
8 Based on the design of that RFP and given the  
9 timeframe that we were working with, no, we did not  
10 negotiate coming out of RFP 1.

11           Q.   Could you turn to page 35 of your  
12 testimony, please. In the context of RFP 2,  
13 FirstEnergy purchased 37,965 2009 RECs; is that  
14 correct?

15           A.   Yes.

16           Q.   And what is the time period for RFP 2?  
17 Strike that.

18                   When was RFP 2 issued?

19           A.   RFP 2 was issued in September of 2009.

20           Q.   FirstEnergy also purchased 31,800 2010  
21 in-state all renewable RECs, correct?

22           A.   Yes.

23           Q.   And it purchased 26,084 2011 in-state all  
24 renewable RECs; is that correct?

25           A.   Yes, as part of the lateral strategy for



1 purchasing RECs over time.

2 Q. For RFP 2, did Navigant negotiate with a  
3 bidder for a lower REC price for 2010 or 2011  
4 in-state all renewable RECs?

5 A. Well, Navigant didn't negotiate. The RFP  
6 was designed to solicit competitive bids from the  
7 marketplace for these three time periods, along with  
8 the full acceptance of the terms and conditions of  
9 the contract that was put out with the RFP. In the  
10 context of this RFP and the RFP design and the  
11 procurement strategy employed, no, Navigant did not  
12 conduct negotiations, nor did we consider one  
13 necessary coming out of this RFP process.

14 MR. McDANIEL: Thank you, Mr. Bradley.

15 I have no further questions.

16 EXAMINER PRICE: Mr. Allwein.

17 MR. ALLWEIN: I have no questions, your  
18 Honor. Thank you.

19 EXAMINER PRICE: Ms. Kyler, Mr. Kurtz.

20 MR. KURTZ: No questions.

21 EXAMINER PRICE: OEG.

22 MR. KURTZ: No questions.

23 EXAMINER PRICE: Mr. Lavanga.

24 MR. LAVANGA: No questions, your Honor.

25 EXAMINER PRICE: Staff.

1 MR. O'ROURKE: Thank you, your Honor. I  
2 don't believe I'll have any confidential questions so  
3 this can all stay on the public transcript.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. O'Rourke:

7 Q. Good evening, Mr. Bradley. My name is  
8 Ryan O'Rourke, and I'll be asking you some brief  
9 questions on behalf of staff.

10 Could you turn to page 11 of your  
11 prefiled testimony. Let me know when you're there.

12 A. I'm there.

13 Q. And if you could go to lines 10 and 11,  
14 the words "RFP process" are used. Do you see that?

15 A. Yes.

16 Q. What do you mean by RFP process?

17 A. What I mean by RFP process is to describe  
18 to all potential bidders in Ohio and surrounding  
19 states what this RFP is soliciting, the rules for how  
20 it's being solicited. This includes the calendar of  
21 events that we are looking at. It describes the  
22 contract that the potential bidders would be agreeing  
23 to. We also provided in there a description of what  
24 we call the communications protocol, which set forth  
25 that all communication would flow to Navigant. It

1 walked through instructions on how to submit a  
2 proposal, and it also walked through how to begin the  
3 process of certification for a renewable energy  
4 generator in the state of Ohio by directing to your  
5 website and the rules you had posted at the time.

6 Q. And as part of the RFP process, didn't  
7 you hold a webinar to explain the process to  
8 potential bidders and the public?

9 A. Yes. As part of each RFP process, we  
10 held a webinar, typically attended by 100  
11 participants.

12 Q. Do you recall if staff ever participated  
13 in any of the webinars?

14 A. I do recall that staff was registered for  
15 participation in RFP 1, 2, and 3, I believe. Whether  
16 or not they actually participated, it's impossible to  
17 tell you with the electronics, but it's in the  
18 registration on the WebX data.

19 EXAMINER PRICE: So to answer that  
20 question more briefly, perhaps, they registered to  
21 participate, but you have no idea whether they  
22 actually participated.

23 THE WITNESS: No. It's my understanding  
24 that they participated, not 100 percent guaranteed,  
25 but they certainly registered.

1                   Q.    Thank you, Mr. Bradley.  Could you turn  
2                   to page 38 of your testimony.

3                   A.    Okay.

4                   Q.    And my question is going to be targeted  
5                   at footnote 12, but let's give you a little context  
6                   of how that arose.  So the question is on line 3,  
7                   starts on line 3, "Wouldn't the potential for an  
8                   increased supply of new renewable resources in Ohio  
9                   for 2011 have suggested waiting to purchase  
10                  additional RECs?"

11                  And you state, "No.  Navigant believed an  
12                  increase of new renewable energy resource generating  
13                  facilities in Ohio at some point in 2011 was a  
14                  possibility, given typical development timeframes of  
15                  a minimum of 2-3 years, but the timing of RECs being  
16                  available from these new facilities was uncertain.  
17                  New renewable resources that are certified late in  
18                  the year have a reduced window within which they can  
19                  generate RECs for compliance in that year.  For  
20                  example, a new renewable resource that is certified  
21                  in September 2011 has only 4-months to produce RECs  
22                  eligible for 2011 compliance."

23                  And you have footnote 12, and let's go  
24                  down there, and I will read that, "For new renewable  
25                  energy facilities, the PJM-GATS system begins to

1 count generation data toward the creation of RECs on  
2 the date of certificate issuance in the state of  
3 Ohio." Did I read all that correctly?

4 A. Yes.

5 Q. Okay. So for footnote 12, what is your  
6 basis for making that statement?

7 A. For footnote 12, the basis for that  
8 statement was -- was what I read both on PJM-GATS  
9 and, I believe, in the certification application  
10 instructions on the PUCO website.

11 Q. Okay. And when you refer to PJM-GATS,  
12 what you read -- what materials did you read?

13 A. The PJM-GATS website has a section with,  
14 you know, an overview or instruction on publicly  
15 available. That's what I would have read to -- when  
16 I was looking into this.

17 Q. Okay. So the universe of information  
18 that you relied upon for footnote 12 was the website  
19 information on PJM-GATS as well as the website  
20 information on the PUCO's website?

21 A. Yes.

22 EXAMINER PRICE: Was the fact that your  
23 understanding is -- PJM's system that they would only  
24 get RECs from the certification date forward, was  
25 that a significant factor in deciding to move forward

1 with the 2011 RECs, purchasing of 2011 RECs?

2 THE WITNESS: No, that was not. That was  
3 just making clarification here. It is -- it is  
4 complex in that if a new -- a new resource comes  
5 online in September, 2011, and is certified by the  
6 Commission to produce RECs, the RECs in PJM have to  
7 begin accumulating from that point forward, so  
8 renewable resources that is in the latter half of the  
9 year, we felt, were not going to be a major impact to  
10 supply in 2011 at all.

11 EXAMINER PRICE: My question, is that a  
12 significant factor in your decision to move forward  
13 purchasing in 2011 RECs?

14 THE WITNESS: Yes.

15 MR. KUTIK: I'm sorry, your Honor, I  
16 didn't hear your question.

17 (Record read.)

18 MR. KUTIK: I believe the witness  
19 answered, "Yes."

20 THE WITNESS: Yes. That is one of the  
21 factors that we took into consideration and we  
22 consider it a significant factor.

23 EXAMINER PRICE: Thank you. Thank you.

24 Q. (By Mr. O'Rourke) Mr. Bradley, for Phase  
25 II of the procurement process, you had an opportunity

1 to review the bids for RFPs 1 through 3 for the  
2 in-state all renewables, correct?

3 A. Yes.

4 Q. And as a follow-up to that question,  
5 would you agree that the bid results for the RFPs  
6 were not shared by Navigant with staff prior to the  
7 company entering into contracts with successful  
8 bidders?

9 A. Yes. Now, Navigant was not sending, you  
10 know, this information to staff.

11 MR. O'ROURKE: Nothing further, your  
12 Honor.

13 EXAMINER PRICE: Thank you.

14 Mr. Kutik, redirect.

15 - - -

16 REDIRECT EXAMINATION

17 By Mr. Kutik:

18 Q. Mr. Bradley, at the start of the  
19 cross-examination today, you were asked a question  
20 about the fact this is the first time that you have  
21 had the pleasure of testifying. Do you remember  
22 that?

23 A. I do remember that.

24 Q. And so it would have been the first time  
25 you would have been recognized as an expert in

1           testifying; is that correct?

2           A.    I have -- while this is the first time I  
3           am sitting in a courtroom testifying, I have  
4           submitted an independent monitor report coming out of  
5           the PECO RFPs to the Pennsylvania Public Utilities  
6           Commission, the approval of which was the approval of  
7           the results of the RFP for PECO.

8           Q.    And has your expertise been recognized in  
9           other forms?

10          A.    Yes, it has. I have been asked to and I  
11          have written papers on the subject of REC, REC price  
12          forecast, SRECs for the World Renewable Energy Forum,  
13          for the American Public Power Association, and I  
14          presented papers on RECs and REC regions at  
15          various -- at various forums for energy  
16          presentations.

17          Q.    You were also asked some questions about  
18          the change in status between RFPs 1 and 2 and RFPs 3  
19          through 6, the latter being when you became project  
20          manager -- project manager. Did your work -- the  
21          type of work and the participation of the work that  
22          you did change when you became project manager?

23          A.    No, it did not. The day-to-day was  
24          essentially the same before and after. All members  
25          of the small team we had working on this project



1 worked on virtually every aspect. The one, probably,  
2 differentiating factor between me as the project  
3 manager and Leah would have been she sent, physically  
4 sent, the invoice to FirstEnergy Ohio utilities for  
5 our services on a monthly basis.

6 Q. And with respect to the recommendations  
7 that Navigant made with respect to RFPs 1 and 2, were  
8 you part of the Navigant team that made -- came up  
9 with those recommendations?

10 A. Yes.

11 Q. You also had some discussion about the  
12 fact that the companies ultimately made the decision  
13 to pursue this laddering that we have been talking  
14 about today purchasing in 2010, 2011 RECs or partial  
15 of those RECs in 2009 and so on. Was that something  
16 that Navigant discussed with First -- the FirstEnergy  
17 utilities?

18 A. Yes. We discussed it with the  
19 FirstEnergy utilities, and we would -- we were  
20 recommending it. It was positive, and in our role as  
21 developing the RFPs, we felt it was a prudent course  
22 of action.

23 Q. Now, I want to direct your attention to  
24 OCC Exhibit 2, the Pennsylvania AEPS web page prices.  
25 Do you see that?

1 A. Yes.

2 Q. For 2011 the lowest price for solar is  
3 shown as \$25, correct?

4 A. Yes.

5 Q. And what's the highest prices for  
6 nonsolar?

7 A. \$50.

8 Q. And that was one of the data points that  
9 you relied upon in your earlier statement, I believe,  
10 to the Bench that you've seen overlap in those  
11 prices?

12 A. Yes, this is an example of that.

13 Q. And with respect to the data that we see  
14 here, does Pennsylvania have an ACP?

15 A. Yes, they do.

16 Q. And is the ACP different for solar and  
17 nonsolar?

18 A. Yes, it is.

19 Q. Which is higher?

20 A. The ACP for solar is higher than the ACP  
21 in Pennsylvania for nonsolar.

22 Q. You were also asked some questions about  
23 Spectron, and specifically you were asked about how  
24 you've never come into contact with them in any of  
25 the RFPs that you have been involved in; is that

1 correct?

2 A. That's correct.

3 Q. By the way, how many RFPs is that?

4 A. That is approximately 40 RFPs.

5 Q. 40 you said?

6 A. 40.

7 Q. And what would it mean to you -- what's  
8 the relevance to you of the fact that you have not  
9 come into contact with Spectron in those 40 RFPs?

10 A. The significance of that to me is that  
11 it's -- this is a broker that is -- may have its own  
12 business, but it's certainly not seeking to respond  
13 to RFPs to supply utilities with significant amounts  
14 of RECs for compliance obligations.

15 Q. You also had some discussions with  
16 respect to force majeure and whether you advised the  
17 companies about force majeure. And you indicated  
18 that you provided information. What did you mean by  
19 that?

20 A. What I meant by information was  
21 information on recently available RECs in the  
22 marketplace provided in the competitive procurement.

23 Q. Did you view it as your job to determine  
24 whether RECs were reasonably available?

25 A. Yes.

1 Q. How did you do that?

2 A. We did that by designing and  
3 implementing, issuing, soliciting, evaluating a very  
4 open, flexible RFP that sought -- in addition to  
5 that, we developed the distribution list with a  
6 tremendous amount of market outreach to encourage as  
7 many bidders as possible.

8 Q. Now, you are aware that the companies did  
9 seek a force majeure, force majeure relief with  
10 respect to the solar products, correct?

11 A. Yes.

12 Q. What was Navigant's role in that?

13 A. Navigant's role in that was issuing RFPs  
14 and determining from the market that in-state solar  
15 renewable energy credits were not reasonably  
16 available based on the fact that none were bid into  
17 the RFPs in 2009.

18 Q. Did Navigant also provide support that  
19 was used for the application that the company has  
20 filed?

21 A. Yes. If the company asked us for  
22 support, we provided it to them.

23 Q. Now, you were also asked some questions  
24 about OCC Exhibit 5. Do you have that in front of  
25 you?

1           A.    Yes.

2           Q.    I'm not sure whether it's -- whether it's  
3 clear on the record, so let me ask you this question.  
4 You were asked a bunch of questions about the phrase  
5 "pricing represents spot market transactions." Is it  
6 your view reading that based on what Navigant, that  
7 represents actual transactions?

8           A.    No, it's not my view this represents  
9 actual transactions. This is information that was  
10 available in the marketplace. These are not, in my  
11 opinion, market prices.

12          Q.    Okay. And except for Pennsylvania, which  
13 we looked at, and New Jersey, RECs are actual prices,  
14 something that are published in the states that are  
15 shown here?

16          A.    No. In general, REC prices in these  
17 states and other states are generally not made  
18 publicly available.

19          Q.    And with respect to the states that are  
20 shown here and pricing that's shown here, would all  
21 of these states have an ACP? I am looking  
22 particularly at the table that's Table 1 at the  
23 bottom of page 1 and up to page 2.

24          A.    All of the states would have an ACP with  
25 the exception of New York, which runs a much

1 different RPS design. It's centrally run by an  
2 organization called NYSERDA in New York, much  
3 different than the market-based, unbundled REC  
4 transactions in these other states that do have ACPs.

5 Q. And where -- where there are ACPs, would  
6 you expect that those ACPs as they operate in those  
7 states to operate as a limit on market prices?

8 A. Yes. They are both -- both set a limit  
9 on market prices because they are recoverable, but  
10 also because they can be used for voluntary  
11 compliance with RPS by a utility.

12 Q. Now, let's talk a little bit about, I  
13 think it's, OCC Exhibit 3. I may have the number  
14 wrong. That's one of the graphs that we were looking  
15 at. Do you have that in front of you?

16 A. Yes.

17 Q. And I want you to turn at the same time  
18 to Attachment DRB-2. Are you there?

19 A. Yes.

20 Q. Now, does it appear to you, now that you  
21 have had some time to look at it, that DRB-2  
22 represents perhaps a subset of the data that's  
23 plotted on Exhibit 3?

24 A. Yes, that's what it appears to me.

25 Q. What was the point of Attachment DRB-2?

1           A.    The point -- there is several points with  
2           DRB-2. No. 1, that all of these states that we are  
3           looking at here have PCP, which effectively set a  
4           price cap. No. 2, that this state, as noted down  
5           below, states that have data set forth in the table  
6           above, does not reflect results of competitive  
7           procurements or actual prices paid for RECs.

8                     You know, a third observation would be  
9           that if you look on the lines for each one of these  
10          RFPs, some market prices are going up. Some market  
11          prices are going down. There's no consistency, and  
12          they are not moving in lockstep.

13                    Lastly, I would point out that these  
14          markets that we're looking at here were all developed  
15          years prior to the Ohio AEPS.

16           Q.    And would all of those points apply  
17          whether we substituted Ohio -- OCC Exhibit 3 for  
18          DRB-2?

19           A.    Yes.

20           Q.    You were also asked some questions about  
21          compliance payments and that you didn't provide any  
22          advice with respect to the compliance payment. Why  
23          didn't you?

24           A.    Navigant did not view compliance payments  
25          as a voluntary means of complying with the AEPS.

1           The -- you know, my view and Navigant's view of the  
2           statute is that compliance payments would be assessed  
3           after a Commission proceeding, and it's not  
4           necessarily a -- or it is not a voluntary act where a  
5           check is stapled to an annual report submitted in  
6           with compliance.

7           Q.   Does that happen with other states?

8           A.   Yes.

9           Q.   Did you come to the -- a view as to  
10          whether the companies were able to comply with their  
11          purchase obligations for in-state all renewables?

12          A.   Yes.  The companies were found to be in  
13          compliance in 2009 and 2010 and in 2011.

14          Q.   In that case would a compliance payment  
15          have been appropriate?

16          A.   No.  There's no need for a compliance  
17          payment if the -- if the compliance has been met.

18          Q.   Now, Attorney Examiner Price asked you  
19          about some cases, handful, that the Commission has  
20          been involved in where compliance payments have been  
21          ordered, and you said you are generally familiar with  
22          that.

23          A.   Yes.

24          Q.   Does that change your opinion?

25          A.   No, that does not.



1           Q.    You were also asked some questions, I  
2           believe, from counsel for ELPC about Pennsylvania,  
3           New Jersey, and long-term prices. And you said  
4           that -- when you answered one of the questions, that  
5           you felt that the experience there wasn't applicable  
6           or something that could teach us something here in  
7           Ohio because there were different rules for recovery.  
8           What do you mean by that?

9           A.    Well, what I mean by that, in these  
10          states recovery is set out by Commission order for  
11          each of the utilities that have a compliance  
12          obligation, and those utilities in the state then go  
13          to market.

14                For example, in Pennsylvania with PECO,  
15          they had an order for a Commission order that granted  
16          them recovery for five-year-forward contracts for  
17          RECs, and they did so choose to proceed to go with  
18          that RFP for five years in Pennsylvania.

19                I mean, another big distinction between  
20          the two where I keep getting tripped up on comparing  
21          these is that the market for Pennsylvania is just  
22          vastly different than Ohio, both in the structure of  
23          the market itself and in the geographical area from  
24          which RECs can be drawn.

25          Q.    Mr. Bradley, I want to now refer you to

1 page 26 of your testimony and, particularly -- if  
2 you're there.

3 A. Yes.

4 Q. -- the question and answer that starts on  
5 line 17 and goes over to the next page where you list  
6 some RFPs for other utilities that you are aware of.

7 A. Yes.

8 Q. And you were asked some questions about a  
9 long-term RFP. That long-term RFP, was that -- when  
10 you were talking about that before, was that AEP's  
11 that you are showing here?

12 A. Yes.

13 Q. Now, you say here that this was an RFP  
14 "seeking up to 300 megawatts of long-term supply from  
15 renewable energy sources and/or RECs." Why did you  
16 write it that way?

17 A. I wrote it that way because this RFP was  
18 not seeking unbundled RECs. This was seeking  
19 long-term -- long-term supply development of the full  
20 resource for up to 300 megawatts. This was -- I  
21 would characterize this as while renewable energy  
22 resources have generated RECs, this RFP would have  
23 been very different than an RFP for unbundled RECs.

24 MR. KUTIK: Your Honor, I believe that  
25 concludes my questions for the public session.

1 EXAMINER PRICE: I am inferring you have  
2 questions for the confidential section.

3 MR. KUTIK: Your inference is correct.

4 EXAMINER PRICE: At this time we will go  
5 to the confidential transcript.

6 (CONFIDENTIAL PORTION.)  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(PUBLIC RECORD.)

EXAMINER PRICE: Recross, Ms. Yost.

MS. YOST: Yes, your Honor. Thank you.

- - -

RE CROSS-EXAMINATION

By Ms. Yost:

Q. Mr. Bradley, did you just testify that in  
Pennsylvania the costs of an alternative --

1 alternative compliance payments in regards to  
2 renewable energy credits may be recovered from  
3 taxpayers?

4 MR. KUTIK: Can you turn on your  
5 microphone? I can't hear you.

6 EXAMINER PRICE: Just rephrase your  
7 question, please.

8 MS. YOST: Sure.

9 Q. Mr. Bradley, in your redirect did you  
10 testify that the costs of alternative compliance  
11 payments in Pennsylvania is recoverable from  
12 ratepayers?

13 A. My understanding is that it is in a force  
14 majeure proceeding.

15 MS. YOST: Your Honor, may I approach the  
16 witness and have OCC Exhibit 7 marked, please?

17 EXAMINER PRICE: The document will be so  
18 marked.

19 You may approach.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Mr. Bradley, would you please take a  
22 moment to look at OCC Exhibit 7 and when you are  
23 ready to proceed, please let me know.

24 Are you ready, Mr. Bradley?

25 A. Yes.

1 Q. You are familiar with the Pennsylvania  
2 Administrative Code regarding alternative compliance  
3 payments, correct?

4 A. Yes.

5 Q. And OCC Exhibit 7 that I just handed you  
6 specifically is that provision under 75.65 known as  
7 Alternative Compliance Payments. Have you seen this  
8 code provision before?

9 MR. KUTIK: Your Honor, I object. This  
10 isn't the code provision that the witness had  
11 referred to. The witness specifically referred to  
12 the collection of ACP during force majeure  
13 provisions.

14 EXAMINER PRICE: Sustained.

15 Q. So are you familiar with 75 -- Section  
16 75.65, Alternative Compliance Payments?

17 A. Among other provisions in the  
18 stipulation -- in the statute, yes.

19 Q. And under Section (a), (a)(2), it  
20 indicates that the -- I'm sorry, (3). It indicates,  
21 "The costs of alternative compliance payments made  
22 under this section are not recoverable from  
23 ratepayers," correct?

24 MR. KUTIK: Objection, your Honor.  
25 Improper impeachment, if that's when this is. The

1 witness again testified that it's recoverable under  
2 force majeure provisions. He hasn't been shown  
3 those.

4 MS. YOST: I'm asking questions about  
5 this provision, your Honor.

6 EXAMINER PRICE: I'll allow it.

7 A. This provision is just one of many in the  
8 statute, and they work together. What I'm looking at  
9 here are the words that you are reading. They appear  
10 in (a) (3), and I have read them before, but it's out  
11 of context to the whole statute.

12 EXAMINER PRICE: Why don't you explain  
13 for the Bench the context of the full statute.

14 THE WITNESS: Under a force majeure, if a  
15 force majeure is granted, it's my understanding --

16 EXAMINER PRICE: In Pennsylvania?

17 THE WITNESS: In Pennsylvania -- that the  
18 ACP payment is recoverable as a method of compliance.

19 EXAMINER PRICE: But only in the case of  
20 a force majeure.

21 THE WITNESS: Yes.

22 EXAMINER PRICE: Whereas in Ohio, if  
23 force majeure is granted, at least the practice has  
24 been to increase subsequent years' compliance  
25 obligations, not to also require a compliance

1 payment; is that correct?

2 THE WITNESS: My understanding, yes.

3 MR. KUTIK: You need to speak up,  
4 Mr. Bradley.

5 THE WITNESS: Yes, it's not in lieu of  
6 the provision.

7 EXAMINER PRICE: Thank you.

8 But just to clarify, again, for the  
9 record, where there is no force majeure  
10 determination, ACP payments in Pennsylvania are not  
11 recoverable for ratepayers.

12 THE WITNESS: Yes.

13 EXAMINER PRICE: Thank you.

14 MS. YOST: Your Honor, may I approach the  
15 witness and provide what is to be OCC Exhibit 8?

16 EXAMINER PRICE: You may.

17 So marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. Would you please familiarize yourself  
20 with what is OCC Exhibit 8. Mr. Bradley, let me know  
21 when you are ready to proceed.

22 A. Okay.

23 Q. Have you seen this document before that  
24 is marked OCC Exhibit 8?

25 A. Yes, I have.



1 Q. And what is this document?

2 A. This is a document that I provided as  
3 part of the documents that supported my testimony.

4 Q. So you did rely on this document OCC  
5 Exhibit 8?

6 A. Yes.

7 Q. And when did you produce this document?

8 A. Prior to my -- prior to finalizing my  
9 testimony. I don't have an exact date.

10 Q. Would that have been in approximately  
11 December, 2012?

12 A. It would have been fall, 2012.

13 Q. Second half of 2012; is that a fair  
14 assessment?

15 MR. KUTIK: Objection.

16 EXAMINER PRICE: Grounds?

17 MR. KUTIK: Asked and answered, your  
18 Honor.

19 EXAMINER PRICE: Sustained.

20 Q. Your first column you indicate  
21 Pennsylvania, you have it Tier I -- excuse me -- Tier  
22 I and II Resources, Alternative Compliance Payment  
23 (ACP), the amount \$45, and you have "Recoverable From  
24 Ratepayers?" And you have "Yes" and you have a No.  
25 2, and it says, "In the event of force majeure,

1 compliance entities may pay the ACP/SACP in lieu of  
2 ordinary compliance," correct?

3 A. Yes.

4 Q. And during your redirect with Mr. Kutik,  
5 did you testify that the alternative compliance  
6 payment in Pennsylvania is more for nonsolar RECs  
7 than solar RECs?

8 A. Pennsylvania, like many states, has  
9 separate classifications of resources. In  
10 Pennsylvania, they have three, Tier I, Tier II, and  
11 solar. Tier I and Tier II have the same ACP amount,  
12 and solar has a different SACP amount.

13 Q. That's right. And solar is ACP -- the  
14 SACP amount is a calculated amount, correct?

15 A. That's correct.

16 Q. And how do you calculate an SACP amount  
17 under the Pennsylvania law that you just testified  
18 about?

19 A. Well, in Pennsylvania they -- the SACP  
20 for compliance here is calculated on the information  
21 published on the PA PUC website. It's looking  
22 backwards, and it's approximately double the weighted  
23 average price reported by the Commission in -- at the  
24 conclusion of the hearing.

25 Q. And the double --

1 THE WITNESS: I'm sorry, could you read  
2 back his answer, please.

3 (Record read.)

4 Q. You would expect that the double of the  
5 weighted average price determined by the Commission  
6 would be more than \$45, correct?

7 A. And this is -- your question is with  
8 respect to --

9 Q. What you just testified about, how it was  
10 determined.

11 THE WITNESS: Could you please reread the  
12 question.

13 (Record read.)

14 A. While that's not a certainty, you know,  
15 it has happened in these early years of the solar  
16 classification of AECs in the past, but it's not a  
17 rule or certainty.

18 Q. So is it fair to say the alternative  
19 compliance payment in Pennsylvania for nonsolar RECs  
20 is not higher than the solar alternative compliance  
21 payment?

22 THE WITNESS: Could you please read the  
23 question back.

24 (Record read.)

25 A. Based on the markets operating these

1 years, no, it's not.

2 Q. What do you mean by "these years?"

3 A. I am looking at 2008, 2009, 2010, and  
4 2011.

5 EXAMINER PRICE: To the best of your  
6 recollection, has the Pennsylvania nonsolar  
7 compliance payment ever been higher than the  
8 Pennsylvania solar compliance payment?

9 THE WITNESS: No.

10 EXAMINER PRICE: Thank you.

11 THE WITNESS: I just want to note on the  
12 difference --

13 EXAMINER PRICE: There is no question  
14 pending. Thank you, though.

15 Let's go off the record.

16 (Discussion off the record.)

17 EXAMINER PRICE: Back on.

18 Q. Mr. Bradley, when you were discussing the  
19 alternative compliance payment when a force majeure  
20 is issued in Pennsylvania, you indicated that that  
21 payment was not recoverable from ratepayers. Where  
22 is that in Pennsylvania law?

23 A. I'm sorry, I'm having trouble hearing  
24 you. Could you move closer to the microphone?

25 Q. You indicated in Pennsylvania when a

1 force majeure is granted, the alternative compliance  
2 payment may be recoverable from ratepayers, correct?

3 A. Yes.

4 Q. And where is that found in the  
5 Pennsylvania code?

6 A. I understand that's in the force majeure  
7 provision of the Pennsylvania code.

8 Q. And how did you come to understand that,  
9 sir?

10 A. I reviewed the Pennsylvania code.

11 MS. YOST: Your Honor, I'm sorry, I think  
12 I have an exhibit that would be helpful if I can  
13 locate it.

14 EXAMINER PRICE: Let's go off the record  
15 for five minutes.

16 (Recess taken.)

17 EXAMINER PRICE: Just to be clear, we are  
18 on the public portion of the transcript coming out of  
19 the break.

20 Ms. Yost.

21 MS. YOST: I have got an exhibit, your  
22 Honor. May I approach?

23 EXAMINER PRICE: You may.

24 MS. YOST: At this time, your Honor, I  
25 ask a packet of confidential documents be marked as

1 OCC Exhibit 9.

2 EXAMINER PRICE: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Mr. Bradley, if you could take a moment  
5 to look at OCC Exhibit 9.

6 MR. KUTIK: Your Honor, this is a  
7 confidential document and we're not in confidential  
8 session, so I guess I do have a problem if we are  
9 going to ask questions about this document in open  
10 session.

11 EXAMINER PRICE: I understand.

12 Ms. Yost, are you going to ask a question  
13 that tends to call for an answer --

14 MS. YOST: No, your Honor, it should not.  
15 I am not going to use any confidential information,  
16 nor should it elicit any confidential information.

17 EXAMINER PRICE: Okay. If we tread into  
18 confidential territory, feel free to object.

19 Q. (By Ms. Yost) Mr. Bradley, you've seen  
20 OCC Exhibit No. 9, which is marked as a Competitively  
21 Sensitive Confidential document, upper right hand --  
22 upper right-hand corner, and it states Exeter  
23 Associates Set 3. You've seen this document before?

24 A. Yes.

25 Q. This group of documents?

1 A. Yes.

2 Q. We discussed these during your  
3 deposition?

4 A. Yes.

5 Q. Anywhere in these documents can you find  
6 where Navigant makes a determination that in-state  
7 all renewable energy credits are reasonably available  
8 in the marketplace and in sufficient quantities?

9 MR. KUTIK: Objection, your Honor, beyond  
10 the scope.

11 MS. YOST: Your Honor, it went to the  
12 language that is used for a force majeure  
13 determination. Upon redirect, Mr. Kutik was  
14 inquiring of how Navigant had advised them in regards  
15 to whether a force majeure should be sought.

16 MR. KUTIK: That's actually, wrong, your  
17 Honor. We did not say that. We did not talk about  
18 that. We talked about what they did with respect to  
19 force majeure, which was to not advise but to provide  
20 information so that the company could make a  
21 decision.

22 EXAMINER PRICE: We are going to sustain  
23 the objection.

24 Q. (By Ms. Yost) Anywhere in OCC Exhibit 9,  
25 do you use the -- is there the conclusion that

1 renewable energy credits are reasonably available in  
2 the marketplace --

3 MR. KUTIK: Same objection.

4 Q. -- in quantities?

5 EXAMINER PRICE: Ms. Yost, this is  
6 outside the scope of his redirect. What he -- his  
7 representation was exactly -- my recollection, they  
8 asked what their role was.

9 MS. YOST: Okay.

10 EXAMINER PRICE: Their role was to  
11 provide information.

12 MS. YOST: Thank you, your Honor. I have  
13 no further questions.

14 EXAMINER PRICE: Thank you.

15 Mr. McDaniel.

16 MR. MCDANIEL: Your Honor, I have no  
17 further questions. Just for clarity's sake, though,  
18 Mr. Kutik referred to a Navigant report as ELPC  
19 Exhibit 2. It's actually ELPC Exhibit 1.

20 MR. KUTIK: Thank you for that clarity.  
21 I appreciate it.

22 EXAMINER PRICE: Thank you.

23 Ms. Kyler, Mr. Kurtz.

24 MR. KURTZ: No questions.

25 EXAMINER PRICE: Mr. Lavanga.



1 MR. LAVANGA: No questions.

2 EXAMINER PRICE: Mr. O'Rourke.

3 MR. O'ROURKE: Nothing.

4 EXAMINER PRICE: You don't get off that  
5 easy.

6 Any questions?

7 EXAMINER CHILES: No.

8 - - -

9 EXAMINATION

10 By Examiner Price:

11 Q. Let's turn to OCC Exhibit 2, briefly.  
12 Pennsylvania AEPC, Alternative Energy Credit Program.  
13 The four years listed on OCC Exhibit 2, is there any  
14 year where the weighted average price of a solar AEC  
15 is higher than either a Tier I or Tier II AEC -- I  
16 mean, is lower, considerably lower?

17 A. I was going to say in all years it's --  
18 in all years it's higher.

19 Q. Is there any year where Tier I and Tier  
20 II weighted average price is even 10 percent of the  
21 solar?

22 A. No.

23 Q. Is there any year in which the solar AEC  
24 price is anything less than 40 times the price for  
25 the Tier I or Tier II?

1 A. No.

2 Q. Thank you. You are familiar with the  
3 Navigant market assessment report that was dated  
4 October 18, 2009, and provided to FirstEnergy; is  
5 that correct?

6 A. Yes.

7 Q. In that report did you indicate that the  
8 market supply conditions for in-state all renewable  
9 markets were marked by few willing and certified  
10 suppliers?

11 A. Yes.

12 Q. Did you indicate there are major  
13 uncertainties with respect to economic conditions  
14 that could support new renewable projects'  
15 development?

16 MR. KUTIK: Your Honor, I assume that you  
17 are referring to what he is saying in his testimony  
18 as opposed to reading from the document?

19 EXAMINER PRICE: I am just asking him a  
20 question, if he is familiar with those statements.

21 Q. Did you indicate there were major  
22 uncertainties with respect to economic conditions  
23 that could support new renewable energy projects'  
24 development?

25 A. Yes, that concept is in there.

1 Q. Did you indicate credit conditions  
2 concerning financing for new projects were a  
3 significant limiting factor?

4 A. I recall that's in there.

5 Q. Do you think all three of those factors  
6 are significant in your market assessment report?

7 A. All three of those factors are -- are  
8 significant factors, with one further description I  
9 would put around it, a lot of --

10 Q. I'll let you come back to that.

11 A. Okay.

12 Q. Do you think those three factors --

13 MR. KUTIK: Well, your Honor, I think --  
14 well, your Honor, if another party did this, I would  
15 be objecting, and I believe with respect to it, you  
16 would sustain it. He was qualifying his  
17 "significant," and he was in the middle of an answer.  
18 I think he should be allowed to finish.

19 EXAMINER PRICE: You are correct.

20 Q. Finish your answer.

21 A. Okay. The -- that evaluation was done on  
22 the certification applications, in part, at that  
23 time, which was October 16, 2009. So at that time we  
24 had -- we were working with limited information, and  
25 that information, you know, may have changed to some

1 degree within just a week or two later, so it was  
2 kind of a snapshot in time, if you will.

3 Q. I understand. Did you prepare another  
4 market assessment report before April, 2010?

5 A. No.

6 Q. Okay. Go back to my question. These  
7 were significant factors in your mind in your report.

8 A. Yes.

9 Q. Were they obstacles to compliance?

10 A. They were factors, not necessarily  
11 obstacles.

12 Q. Impediments?

13 A. Challenges.

14 Q. Challenges, okay. That will work.

15 EXAMINER PRICE: I don't have anything  
16 else. That's my last question. Thank you. You are  
17 excused.

18 MR. KUTIK: Your Honor, at this time the  
19 companies move for the admission of Companies'  
20 Exhibits 1 and 1A.

21 EXAMINER PRICE: Any objection to the  
22 admission of Companies' Exhibits 1 and 1A?

23 Seeing none, they will be admitted.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 EXAMINER PRICE: Mr. McDaniel.

1 MR. McDANIEL: Move to have admitted ELPC  
2 Exhibit 1.

3 EXAMINER PRICE: Any objection to ELPC  
4 Exhibit 1?

5 Seeing none, it will be admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER PRICE: Ms. Yost.

8 MS. YOST: At this time I would like to  
9 move OCC Exhibits 2, 3, 4, 5, 6, 7, and 8 into  
10 evidence. I am not moving Exhibit 9 into evidence at  
11 this time, but I would like to have it remain as a  
12 marked exhibit in case of future use.

13 EXAMINER PRICE: Okay. With respect to  
14 OCC Exhibit 7, we will not admit it but we will take  
15 administrative notice. It's Pennsylvania code. It  
16 speaks for itself.

17 Any objections to the admission of OCC  
18 Exhibits 2, 3 -- let's take them one at a time.

19 Objection to admission of OCC Exhibit 2?

20 MR. KUTIK: No.

21 EXAMINER PRICE: Seeing none, it will be  
22 admitted.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 EXAMINER PRICE: OCC Exhibit 3.

25 MR. KUTIK: No.

1 EXAMINER PRICE: Seeing none, it will be  
2 admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER PRICE: OCC Exhibit 4.

5 MR. KUTIK: No, your Honor.

6 EXAMINER PRICE: It will be admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 EXAMINER PRICE: 5?

9 MR. KUTIK: My understanding, your Honor,  
10 that OCC Exhibit 5 is confidential.

11 EXAMINER PRICE: Subject to  
12 confidential -- confidentiality, any objection to the  
13 admission of OCC Exhibit 5?

14 Seeing none, it will be admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER PRICE: 6?

17 MR. KUTIK: Your Honor, I need to locate  
18 a copy of that because I think -- no objection, your  
19 Honor.

20 EXAMINER PRICE: 6 will be admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 7 we've addressed. Any objection to  
23 OCC -- to the admission of OCC Exhibit 8?

24 MR. KUTIK: No, your Honor.

25 EXAMINER PRICE: That will be admitted.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(EXHIBIT ADMITTED INTO EVIDENCE.)

Does the court reporter have copies of  
OCC Exhibit 6?

Ms. Yost, please provide the court  
reporter copies of OCC Exhibits 2, 3, 4, 5, 6, 7, 8  
and 9.

MR. KUTIK: Are we off the record?

EXAMINER PRICE: No. No. Let's go off  
the record.

(Discussion off the record.)

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

That concludes our proceedings for this  
evening. We will reconvene at 10:00 o'clock  
tomorrow. Thank you, all.

We are off the record.

(The hearing adjourned at 7:15 p.m.)

- - -

## 1 CERTIFICATE

2 I do hereby certify that the foregoing is a  
3 true and correct transcript of the public proceedings  
4 taken by me in this matter on Tuesday, February 19,  
5 2013, and carefully compared with my original  
6 stenographic notes.

7  
8  
9  
10 Karen Sue Gibson, Registered  
Merit Reporter.

11 (KSG-5665)

12 - - -  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**3/5/2013 2:27:24 PM**

**in**

**Case No(s). 11-5201-EL-RDR**

Summary: Transcript in the matter of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company hearing held on 02/19/13 - Volume I - Public Version. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.