

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the Application:
of Duke Energy Ohio, Inc., for :
the Establishment of a Charge :Case No.
Pursuant Revised Code Section :12-2400-EL-UNC
4909.18. :

In the Matter of the Application:
of Duke Energy Ohio, Inc., for :Case No.
Approval to Change Accounting :12-2401-EL-AAM
Methods. :

In the Matter of the Application:
of Duke Energy Ohio, Inc., for :Case No.
the Approval of a Tariff for a :12-2402-EL-ATA
New Service. :

- - -

PROCEEDINGS

before Ms. Christine M. T. Pirik and Ms. Katie
Stenman, 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 Monday, April
15, 2013.

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VOLUME I

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- - -

1	INDEX		
2	- - -		
3	WITNESS	PAGE	
4	B. Keith Trent		
	Direct Examination by Ms. Spiller	25	
5	Voir Dire by Ms. Bojko	30	
	Cross-Examination by Mr. Kutik	38	
6	Cross-Examination by Ms. Kern	120	
	Cross-Examination by Mr. Kurtz	144	
7	Cross-Examination by Mr. Darr	206	
8	- - -		
9	COMPANY EXHIBITS	IDFD	ADMTD
10	1 - Application - Public Version	17	--
11	1A - Application - Confidential Version	17	--
12	2 - Prefiled Direct Testimony of B. Keith Trent	17	--
13	- - -		
14	FES EXHIBITS	IDFD	ADMTD
15	4 - IEU-Ohio Exhibit 1A in Case	42	--
16	No. 10-2586-EL-SSO		
17	5 - IEU Exhibit 4A in Case	48	--
18	No. 10-2586-EL-SSO		
19	6 - Letter from Noel Symons to Kimberly D. Bose, 6/25/10	60	--
20	7 - Letter from Noel Symons to Kimberly D. Bose, 8/16/10	63	--
21	8 - Reply Brief of Duke Energy Commercial	70	--
22	Asset Management and Duke Energy		
23	Retail Sales filed in Case		
	No. 10-2929-EL-UNC		
24	9 - Initial Brief of DECAM and DERS	74	--
25	filed in Case No. 10-2929-EL-UNC		

INDEX (Continued)

- - -

3	FES EXHIBITS	IDFD	ADMTD
4	10 - PowerPoint, Duke Energy Ohio ESP Filing, 6/2/11	83	--
5	11 - Duke Energy conference call transcript, 6/22/11	83	--
6	12 - PowerPoint Third Quarter Earnings Review and Business Update, 11/3/11	93	--
7	13 - Duke Energy conference call transcript, 11/3/11	93	--
8	14 - PowerPoint, Financial Overview, Lynn Good, Executive VP and Chief Financial Officer	116	--
9			
10			
11			
12	- - -		
13	OCC EXHIBITS	IDFD	ADMTD
14	1 - AEP Opinion and Order, 7/2/12	126	--
15	2 - Motion to Dismiss, PUCO, 9/25/12	128	--
16	3 - Entry on Rehearing, 10-2929-EL-UNC	140	--
17	- - -		
18	IEU EXHIBITS	IDFD	ADMTD
19	1 - Notification of CBP Auction Results, 11/15/11	215	--
20	2 - Notification of CBP Auction Results, 2/16/12	215	--
21	3 - Notification of CBP Auction Results, 11/14/12	215	--
22	4 - Duke Energy Answer, FERC Case No. ER10-2254-000	226	--
23	5 - Stipulation and Recommendation,	231	--
24			
25			

INDEX (Continued)

- - -

OEG EXHIBITS

IDFD ADMTD

2 - PowerPoint, Energy Investor and
Analyst Meeting, 2/28/13

154 --

3 - Excerpt from Duke Corp. 2012 SEC
Form 10-K

174 --

4 - Master Power Purchase Agreements

192 --

- - -

Monday Morning Session,

April 15, 2013.

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EXAMINER PIRIK: Go on the record. In the Matter of the Application of Duke Energy Ohio, Inc., for the Establishment of a Charge Pursuant to Section 4909.18 Revised Code, Case No. 12-2400, 12-2401, and 12-2402-EL-UNC.

At this time we will take appearances on behalf of the parties. On behalf of Duke.

MS. SPILLER: Thank you, your Honor. Good morning again, Amy Spiller, Rocco D'Ascenzo, Jeanne Kingery, Elizabeth Watts on behalf of Duke Energy Ohio, the applicant in this proceeding, 139 East Fourth Street, Cincinnati, Ohio 45202.

EXAMINER PIRIK: We'll begin to my left and go around the table.

MS. MOONEY: On behalf of Ohio Partners for Affordable Energy, I'm Colleen Mooney, 231 West Lima Street, Findlay, Ohio.

MR. O'BRIEN: Good morning, your Honor. On behalf of the City of Cincinnati, Bricker & Eckler, LLP by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215. Thank you.

MR. SONDERMAN: Good morning, your Honor.

1 On behalf of DPL Energy Resources, I'm Andrew
2 Sonderman, Kegler, Brown, Hill & Ritter, 65 East
3 State Street, Columbus, Ohio.

4 MS. GRADY: Thank you, your Honor, on
5 behalf of the residential ratepayers of the Duke
6 Energy Ohio, the Office of the Consumers' Counsel,
7 Maureen R. Grady, Kyle L. Kern, 10 West Broad Street,
8 Suite 1800, Columbus, Ohio 43215. Thank you.

9 MR. KURTZ: Good morning, your Honors,
10 Mike Kurtz and Jody Kyler Cohn for the Ohio Energy
11 Group, Boehm, Kurtz & Lowry, 1510 URS Center,
12 Cincinnati Ohio.

13 MR. ROYER: Thank you, your Honor. Barth
14 E. Royer, Bell & Royer Co., LPA, 33 South Grant
15 Avenue, Columbus, Ohio 43215, on behalf of the
16 Dominion Retail.

17 MS. PETRUCCI: Good morning. On behalf
18 of Constellation NewEnergy, Inc.; Exelon Generation
19 Company, LLC; Interstate Gas Supply, Inc.; and the
20 Retail Electric Supply Association -- I'm sorry, the
21 Retail Energy Supply Association, the law firm of
22 Vorys, Sater, Seymour and Pease, M. Howard Petricoff,
23 52 East Gay Street Columbus, Ohio.

24 MR. PETRICOFF: Thank you, your Honor.
25 On behalf of the University of Cincinnati and Miami

1 University, Mike DeWine, Attorney General, M. Howard
2 Petricoff, Special Assistant Attorney General, 52
3 East Gay Street, Columbus, Ohio.

4 MR. HAYDEN: Good morning, your Honors.
5 On behalf of FirstEnergy Solutions, Mark Hayden; from
6 the law firm of Jones Day, David Kutik and Lydia
7 Floyd; from the law firm of Calfee, Halter &
8 Griswold, Jim Lang and Trevor Alexander.

9 MR. NOURSE: Good morning, your Honor.
10 On behalf of the Ohio Power Company, Steven T.
11 Nourse, One Riverside Plaza, Columbus, Ohio 43215.
12 Thank you.

13 MS. BOJKO: Thank you, your Honors. On
14 behalf of the Kroger Company, Kimberly W. Bojko,
15 Mallory M. Mohler, with the law firm Carpenter Lipps
16 & Leland, 280 North High Street, Suite 1300,
17 Columbus, Ohio.

18 MR. HART: On behalf of the Greater
19 Cincinnati Health Council, Cincinnati Bell, Inc.,
20 Douglas E. Hart, 441 Vine Street, Suite 4192,
21 Cincinnati, Ohio 45202.

22 MR. DARR: On behalf of the Industrial
23 Energy Users of Ohio, McNees, Wallace & Nurick,
24 present today are Joseph Olikier and Frank Darr, 21
25 East State Street, Columbus, Ohio.

1 MR. BEELER: Thank you, your Honor. On
2 behalf of the staff of the Public Utilities
3 Commission, Steven L. Beeler and and John Jones,
4 Assistant Attorneys General, 180 East Broad Street,
5 Columbus, Ohio, 432150.

6 EXAMINER PIRIK: Are there other parties
7 in the audience that we missed?

8 MR. SIWO: On behalf of the Ohio
9 Manufacturers Association, J. Thomas Siwo, Matthew W.
10 Warnock, Bricker & Eckler, LLP, 100 South Third
11 Street, Columbus, Ohio 43215.

12 MR. PAULEY: Good morning, your Honors.
13 I am James Pauley from Faruki, Ireland & Cox. I am
14 here on behalf of Dayton Power and Light Company, and
15 also on behalf of the Judi Sobecki, who could not be
16 here today.

17 EXAMINER PIRIK: I appreciate that not
18 everyone is sitting at the counsel table. I will
19 call for those who are not sitting at counsel table
20 if you wish to cross-examine a witness, I would ask
21 that you move up to the table and other counsel will
22 make space for you. Otherwise, I will not call on
23 you for cross-examination because we are going to go
24 through the order that we have. Also, while it was
25 okay with us that you did not use the microphones

1 during appearances, because the importance of that is
2 for the court reporter to be sure they hear everyone,
3 I need to be sure that if you are speaking in any
4 fashion, whether it an objection or whatnot, that you
5 turn on your microphone and you use it so that
6 individuals in the back of the room as well as the
7 court reporters can hear you clearly.

8 So before we do that, I understand that
9 there are a couple of items that we need to go over
10 before we start with our first witness.

11 MS. GRADY: Thank you, your Honor. As
12 your Honors are aware, on October 4, 2011, a Joint
13 Motion to Dismiss of the company's application was
14 filed by numerous signatory parties to the
15 stipulation reached in Case No. 11-3549-EL-SSO.
16 Those parties that joined in the Joint Motion to
17 Dismiss, the Office of Consumers' Counsel, the Ohio
18 Energy Group, the Ohio Manufacturers' Association,
19 the City of Cincinnati, the Ohio Partners for
20 Affordable Energy, the Greater Cincinnati Health
21 Council, the Kroger Company, the Industrial Energy
22 Users - Ohio Wal-Mart Stores East, LP, and Sam's
23 East, Inc., and Cincinnati Bell, Inc.

24 At that time, your Honor, we made a
25 Motion to Dismiss which was filed at the Commission

1 again on October 4, 2011, and we argued that the PUCO
2 should dismiss the application for numerous reasons,
3 including that the Commission should enforce the
4 entire Duke ESP stipulation and not permit the
5 company to violate that stipulation along with other
6 legal arguments. At this time we would renew our
7 Joint Motion to Dismiss.

8 MS. SPILLER: Very briefly, your Honor,
9 thank you. On October 19, 2012, Duke Energy Ohio
10 responded to the Joint Motion to Dismiss. We will
11 certainly reiterate the arguments today that were
12 incorporated into that written document responding
13 primarily to the argument raised by Ms. Grady this
14 morning that the Commission should enforce the ESP
15 stipulation approved in Case No. 11-3549.

16 I would like to confirm that there is no
17 intention as indicated by the witnesses in our
18 proceeding on behalf of Duke Energy Ohio or in our
19 application that there is any intent whatsoever to
20 deviate from the terms of the ESP stipulation.
21 Importantly, however, the ESP stipulation did not
22 address the issue that is relevant to this case
23 today, and that issue being Duke Energy Ohio's
24 entitlement to just and reasonable compensation for
25 what the Commission has described as a noncompetitive

1 wholesale service for capacity.

2 And, your Honor, we would again in
3 response to the arguments raised in connection with
4 the reply to the Joint Motion to Dismiss ask that it
5 be denied.

6 EXAMINER PIRIK: Thank you. We have
7 reviewed those filings, and the Commission in their
8 overall consideration after the closure of this
9 hearing and briefing schedule will take the Motion to
10 Dismiss and the replies and so forth under
11 consideration at that time.

12 MS. GRADY: Thank you, your Honor.

13 Another procedural matter to raise, your
14 Honor, on Friday a Joint Notice to Take Deposition
15 and request for production of documents was filed by
16 the Industrial Energy Users - Ohio, FirstEnergy
17 Solutions, the Ohio Energy Group, and the Office of
18 the Ohio Consumers' Counsel.

19 That Joint Notice to Take Deposition was
20 to take the deposition upon oral examination of Ralph
21 L. Luciani, who is the consultant that was procured
22 by the staff of the Public Utilities Commission of
23 Ohio to present direct testimony, which direct
24 testimony was filed April 9, 2013, in this
25 proceeding.

1 We have had discussions with the staff,
2 and it appears that the staff does not intend to
3 honor that joint notice of deposition so we would ask
4 that at some point in time, perhaps when it's
5 convenient for the attorney examiners, that we be
6 allowed to present this matter as an oral motion to
7 compel so that we can expeditiously move forward, and
8 if the ruling is favorable, go forward and conduct
9 the deposition of Mr. Luciani at times that are
10 convenient prior to the point that Mr. Luciani is
11 scheduled to present his direct testimony.

12 MR. BEELER: Your Honor, the staff, as
13 Ms. Grady represented, does oppose the deposition
14 notice. The staff believes under its rules and
15 Commission proceedings with other cases that the
16 staff is exempt from discovery of this type so,
17 again, we do oppose the -- the Notice for Deposition.
18 And also we would request, you know, a ruling of some
19 sort to get this matter resolved today, if possible.

20 EXAMINER PIRIK: We will take the motion
21 and the response under consideration and we will rule
22 later -- later this morning.

23 MR. BEELER: Thank you.

24 EXAMINER PIRIK: Is there any other
25 procedural matter we need to address before we start

1 with the first witness?

2 Hearing none, Ms. Spiller.

3 MS. SPILLER: Thank you, your Honor.

4 Before we turn to our first witness, if I may, I
5 would ask that we mark the application that Duke
6 Energy Ohio has filed in this proceeding, there are
7 both a public and confidential version, I would ask
8 that the public version of the application be marked
9 as Duke Energy Ohio Exhibit 1 and that the
10 confidential version of the application be marked as
11 Duke Energy Ohio Exhibit 1A, please.

12 EXAMINER PIRIK: The documents are so
13 marked.

14 (EXHIBITS MARKED FOR IDENTIFICATION.)

15 MS. SPILLER: And with that, your Honor,
16 Duke Energy Ohio would call to the stand its first
17 witness Keith Trent.

18 EXAMINER PIRIK: Before we begin with the
19 first witness, I want to be sure that we understand
20 there are comments filed in this docket as well as
21 some reply comments. What was the intent of the
22 parties as far as those comments? Are we going to
23 mark those as exhibits? Or I just want to be sure we
24 are consistent that we mark all of them or we mark
25 none of them.

1 MS. SPILLER: And, your Honor, we would
2 certainly defer to your decision in that regard with
3 respect to whether the comments and reply comments
4 would be filed as exhibits in the proceeding.

5 MS. GRADY: We would be happy to file our
6 comments and joint reply comments as exhibits.

7 EXAMINER PIRIK: We will take care of
8 that procedural matter at the end of the day.

9 MS. SPILLER: Thank you.

10 EXAMINER PIRIK: Mr. Trent, would you
11 please raise your right hand.

12 (Witness sworn.)

13 MS. SPILLER: Your Honor, additionally
14 with respect to the marking of exhibits, we would ask
15 that Mr. Trent's testimony be marked as Duke Energy
16 Ohio Exhibit 2, please.

17 EXAMINER PIRIK: The document is so
18 marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MS. SPILLER: Thank you, your Honor.

21 EXAMINER PIRIK: Ms. Spiller, I would
22 also note there are a couple of pages within the
23 application itself that have obviously been marked as
24 confidential, and pursuant to our discussion we would
25 like to determine whether or not those should be

1 deemed confidential at this time. I believe it's
2 Attachment B and Attachment C.

3 MS. SPILLER: Yes, your Honor. We did
4 have two attachments, Attachment B and Attachment C,
5 that did contain redacted information. On Attachment
6 B, line 7 as well as line 8, we do believe that
7 information to be confidential information in that it
8 does contain some proprietary forecasted information
9 from Duke Energy Ohio.

10 We additionally identify you had line
11 numbers 10 and 11 that would have been derived based
12 upon forecasted information in respect of business
13 activity that we would deem to be of a proprietary
14 nature and thus believe that the information should,
15 in fact, be deemed to be confidential.

16 EXAMINER PIRIK: Can I ask with regard
17 to -- I am going to number the columns. I am looking
18 at Attachment B, page 3. That's the page where you
19 marked "confidential." Can I ask why the description
20 column and the reference column are confidential?

21 MS. SPILLER: One moment, please, your
22 Honor. Your Honor, we will revise the exhibit to
23 unredact the descriptions on lines 7, 8, 10, and 11
24 as well as the reference.

25 EXAMINER PIRIK: I have the same question

1 then for Attachment C, page 1, which is the other
2 item.

3 MS. SPILLER: Yes, your Honor.

4 EXAMINER PIRIK: As far as the
5 description goes.

6 MS. SPILLER: Yes, your Honor. We would
7 similarly unredact the descriptions.

8 EXAMINER PIRIK: Is there any other
9 column on that exhibit that can be unredacted?

10 MS. SPILLER: Well, your Honor, on
11 reflection with respect to these descriptions, they
12 were provided based upon Duke Energy Ohio's position
13 and its PJM load obligation, information that is not
14 publicly known, and so if we were to identify these
15 sources, I think one could back into the amount of
16 the capacity that has been procured in addition to
17 that that is being supplied through the company's own
18 legacy generating assets, hence the reason why we
19 would have redacted the descriptions in submitting
20 the application.

21 EXAMINER PIRIK: Are you referring to
22 Attachments B and C?

23 MS. SPILLER: Certainly, your Honor,
24 Attachment C. And then the numbers -- there is the
25 similarity in the numeric information with respect to

1 Attachment B, so the description, yes, on line 7 and
2 8. Again, the concern that if the description is
3 made public, that you could take the surrounding
4 numeric information and identify the amount of the
5 short and, hence, also identify the amount of Duke
6 Energy Ohio's position and ultimately its load
7 obligation, which, again, is not public information.

8 EXAMINER PIRIK: So you're saying --
9 okay. Now we are looking at Attachment B.

10 MS. SPILLER: Yes, your Honor.

11 EXAMINER PIRIK: You are saying you want
12 to keep the description and reference confidential?

13 MS. SPILLER: On lines 7 and 8, and on
14 lines 9 and 10, 11, the descriptions as well as the
15 reference, I don't think that those descriptions in
16 and of themselves would allow someone to identify the
17 confidential information. Certainly the numeric
18 information is confidential having been predicated on
19 our forecast.

20 EXAMINER PIRIK: Okay. Attachment B,
21 page 3, the description and reference in lines 7 and
22 8 shall be kept confidential and the description and
23 reference in lines 10 and 11 will be unredacted.

24 MS. SPILLER: Thank you, your Honor. And
25 we will certainly correct, if we may substitute

1 Exhibit 1A, at the conclusion of this conversation to
2 ensure we have the accurate document for the record.

3 EXAMINER PIRIK: Thank you. Attachment
4 C, page 1, I just want to be sure we are on the same
5 page, still looking at the description column.

6 MS. SPILLER: Yes, your Honor.

7 EXAMINER PIRIK: Lines 1, 2, 3.

8 MS. SPILLER: Correct.

9 EXAMINER PIRIK: Those need to be
10 confidential?

11 MS. SPILLER: As well as the comments.

12 EXAMINER PIRIK: Right. I am just
13 looking at the description. You want the description
14 of lines 1, 2, and 3, you want all descriptions
15 confidential?

16 MS. SPILLER: Yes, please.

17 EXAMINER PIRIK: I don't understand how
18 lines 1, 2, and 3 of the description are
19 confidential.

20 MS. SPILLER: Well, your Honor, line 2 is
21 the description associated with the purchases that
22 Duke Energy Ohio is making associated with the short
23 position, the need to acquire additional capacity to
24 fulfill its obligations, and so if you redact or if
25 you leave it in the public domain, all of those

1 descriptions, again, I think the concerns that one
2 could back into this information.

3 EXAMINER PIRIK: I am not asking for the
4 comment. I am -- I am just asking about the
5 description.

6 MS. SPILLER: Okay. Your Honor, I think
7 provided the numeric information and the comments in
8 those three columns remain confidential, we would be
9 fine with releasing the descriptions on lines 1, 2,
10 and 3.

11 EXAMINER PIRIK: Thank you. And the
12 remainder shall -- the remainder of the request shall
13 remain redacted.

14 MS. SPILLER: And, your Honor, also line
15 4 we would ask that the redactions apply in respect
16 of the "Total for Period" column and the "Average
17 Annual." Duke Energy Ohio is comfortable
18 unredacting, if you will, the description as well as
19 the comments. I believe that would be consistent
20 with testimony that is in the public record.

21 EXAMINER PIRIK: Could you push the
22 button on our your microphone again.

23 MS. SPILLER: I'm sorry, your Honor.

24 EXAMINER PIRIK: That's okay, I did hear
25 you, line 4 description and line 4 comments, you are

1 okay with unredacted.

2 MS. SPILLER: Yes, your Honor.

3 EXAMINER PIRIK: Okay. Line 14, just the
4 beginning part or but not the parentheses?

5 MS. SPILLER: That would be fine, your
6 Honor. We would ask that the balance of that line
7 remain confidential with respect to the comments that
8 indicate the formula that would be applied to arrive
9 at the information.

10 EXAMINER PIRIK: With regard to the
11 remainder of the information on Attachment B and
12 Attachment C, the motion for protective order is
13 granted.

14 Do all the parties understand what we
15 just discussed for cross-examination purposes? I
16 want to make sure everyone is comfortable with that.
17 And the company will file appropriately unredacted
18 versions in the public record later today?

19 MS. SPILLER: Yes, your Honor.

20 EXAMINER PIRIK: And provide the court
21 reporter copies.

22 Okay. You may proceed with the witness.

23 MS. SPILLER: Thank you.

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B. KEITH TRENT

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

DIRECT EXAMINATION

By Ms. Spiller:

Q. Good morning, Mr. Trent.

A. Good morning.

Q. Could you state your name for the record,
please.

A. Yes, I am Keith Trent.

Q. And do you have before you, sir, what has
been marked as Duke Energy Ohio Exhibit 2 to this
proceeding?

A. Yes, I do.

Q. And is that a copy of your direct
testimony filed on March 1, 2013?

A. Yes, it is.

Q. Mr. Trent, do you have any changes to
make to your testimony?

A. I have one change and then one additional
piece of information. On page 2, line 12, there's a
typographical error in the date where it says, "Until
July 2, 2013," that should read "Until July 2, 2012."
So that's one correction.

And then on page 12, at the top there's a

1 reference to an estimated SEET earnings for 2012, and
2 it's my understanding that we filed this morning the
3 SEET information for 2012, and that was a negative
4 2.76 was the ROE.

5 Q. And, sir, with those changes and
6 additional information that you have provided, would
7 the questions to -- would the answers to the
8 questions posed in your direct testimony be the same
9 today as when you submitted your testimony on
10 March 1?

11 A. Yes.

12 Q. And do you hereby adopt your direct
13 testimony as revised this morning as your direct
14 testimony in this proceeding?

15 A. Yes.

16 MS. SPILLER: Thank you.

17 Your Honor, the witness is available for
18 cross.

19 EXAMINER PIRIK: FirstEnergy.

20 MR. DARR: Motion to strike first, your
21 Honor. May we address the motion to strike?

22 EXAMINER PIRIK: Yes.

23 MR. DARR: IEU would move to strike on
24 page 18, lines 6 through 14, for the following
25 reasons -- may I approach briefly?

1 EXAMINER PIRIK: Yes.

2 MR. DARR: Your Honor, this testimony
3 relates to Mr. Trent's description of the
4 Commission's handling of RSP cases in the early and
5 mid 2000s. Specifically he references Case No.
6 02-2779 and a case number which is related to the
7 DP&L first RSP filing in Case No. 03-93-EL-ATA. Both
8 of these cases were resolved by settlement.

9 You have in front of you the pages from
10 the -- the cover page and the relevant language from
11 the settlements themselves related to the use or
12 misuse of these settlement documents. In this
13 instance Duke appears to be relying on Mr. Trent's
14 interpretation of the various settlements to support
15 the following statement, that the RSP is a plan, the
16 elements of which were not expressly set forth in
17 Title 49 of the Revised Code for the apparent
18 argument that the Commission can go willy-nilly
19 devising plans to meet particular needs of a utility
20 when they are presented to them.

21 That certainly isn't the law in this
22 state, but more importantly, use of the stipulations
23 by Mr. Trent in this way would be a direct violation
24 not only of the DP&L order, but specifically the
25 order in the Cincinnati Gas & Electric case of which

1 Duke is now the subsequent party.

2 The danger inherent in allowing this sort
3 of testimony to be presented and -- to the Commission
4 is amplified by two things: No. 1, Mr. Trent
5 couldn't possibly testify as to his personal
6 knowledge of this since he was not in a position, as
7 I understand it from his prefiled testimony, to
8 testify about the RSPs. He wasn't involved. And,
9 second, the Ohio Supreme Court in the case dealing
10 with the Duke -- excuse me, the DP&L case
11 specifically found that there was statutory support
12 for both of the relevant provisions that were
13 challenged by none other than Constellation NewEnergy
14 also here in the room today.

15 Specifically at paragraph 29 of the
16 decision it states the transition rider treatment was
17 mandated by 4928.36 (A) (6) and at paragraph 46 and 47
18 of that decision, which you have in front of you, the
19 alternative bidding process was approved pursuant to
20 section 48 -- excuse me, 4928.14(B). Thus we have a
21 situation where we have a witness testifying as to
22 things of which he was not apparently involved with
23 as to conclusions which were clearly refuted by the
24 Supreme Court, which constitutes the law of the land
25 for this case.

1 Therefore, we would move to strike on the
2 bases that it violates the stipulation and it also is
3 inconsistent with the applicable law.

4 MS. SPILLER: Your Honor, if I may
5 respond, I think, first and foremost, Mr. Trent's
6 testimony has been significantly mischaracterized.
7 There is no intention or inference at all to suggest
8 that the Commission acts in a willy-nilly fashion.

9 Importantly as well, Mr. Darr has relied
10 upon stipulations when, in fact, Mr. Trent's
11 testimony focused on the Commission's orders which
12 would serve as precedent in the Commission's decision
13 in that respect, and if you were to look at
14 Mr. Trent's testimony on line 10, he is simply saying
15 that the specific elements of a plan that would be
16 characterized as a rate stabilization plan were not
17 codified in Title 49.

18 He also referenced the Commission order
19 as indicating instruction on the part of the
20 Commission to invite other electric distribution
21 utilities to similarly pursue rate stabilization
22 plans, which they did, so the import of
23 Mr. testimony -- Mr. Trent's testimony here is not to
24 debate stipulations or what might have been set forth
25 in stipulations, but instead to give reference to the

1 Commission's orders and how they treated utility
2 companies consistently with respect to these rate
3 stabilization plans.

4 EXAMINER PIRIK: At this time we are
5 going to deny the motion to strike. However, you
6 will have the opportunity to thoroughly cross the
7 witness, and you may renew your motion at a later
8 time based upon your cross-examination.

9 MR. DARR: Thank you, your Honor.

10 EXAMINER PIRIK: Yes, Ms. Bojko.

11 MS. BOJKO: Thank you, your Honor. I
12 also have a motion to strike, and it may be more
13 instructive if I do a little bit of voir dire here to
14 assist the process, if you might allow.

15 EXAMINER PIRIK: That will be fine.

16 MS. BOJKO: Thank you.

17 - - -

18 VOIR DIRE

19 By Ms. Bojko:

20 Q. Good morning, Mr. Trent. My name is Kim
21 Bojko.

22 A. Good morning.

23 Q. And I represent the Kroger Company in
24 this case. Turning to page 3 of your testimony,
25 lines 15 through 18, you state that the purpose of

1 your testimony is to provide an overview of Duke's
2 application for approval of a cost-based charge to
3 compensate Duke for providing capacity service in
4 connection with its obligations as a FRR entity, a
5 fixed resource requirement entity, in PJM; is that
6 correct?

7 A. Yes.

8 Q. And you describe the service Duke is
9 providing as a noncompetitive wholesale capacity
10 service; is that correct?

11 A. Yes.

12 Q. Now, turning to page 4 of your testimony,
13 lines 14 through 17, you also explain that in Duke's
14 application Duke is also requesting approval to
15 create a regulatory asset and defer the difference
16 between its cost-based charge and the market-based
17 rates that it currently receives from PJM; is that
18 correct?

19 A. Yes.

20 Q. So now turning to page 22 of your
21 testimony, starting with the question on line 12 --
22 are you there?

23 A. Yes.

24 Q. Starting with that question on line 12,
25 you give an overview of Duke's economic development

1 activities; is that correct?

2 A. Yes.

3 Q. Are there any economic development costs
4 considered capacity service costs?

5 A. I'm not specifically aware of economic
6 development costs that are capacity costs.

7 Q. And are there any economic development
8 costs associated with your FRR obligation?

9 A. I don't believe so.

10 Q. Are there any economic development costs
11 that would be associated with the cost-based charge
12 that you seek authority for in this case?

13 A. I'm sorry, repeat that for me, please.

14 Q. Are there any economic development costs
15 associated with the cost-based charge that you are
16 seeking authority, that Duke is seeking authority in
17 this case for?

18 A. No. I think this was providing -- to
19 provide context in terms of the role of Duke and the
20 impact of Duke on returns that are below what's fair
21 and reasonable compensation. I think that's what
22 this is about.

23 MS. BOJKO: Thank you, your Honor. I ask
24 that the answer be stricken after the word "no."
25 It's not responsive to my question.

1 EXAMINER PIRIK: Motion denied.

2 Q. Mr. Trent, are there any economic
3 development costs associated with the market-based
4 rates that you currently receive from PJM?

5 A. No. I believe the economic costs are
6 separate.

7 Q. Are there any economic development costs
8 associated with the regulatory asset in deferral, the
9 nonbypassable rider that Duke seeks authority to
10 establish in this case?

11 A. No. As I said before, this testimony is
12 to illustrate the impact that Duke has in this
13 community and the difficulty that we would have in
14 terms of continuing that in light of the returns that
15 we're achieving at this point.

16 MS. BOJKO: Again, your Honor, I ask that
17 his answer be stricken after the word "no" and the
18 witness be instructed to answer the questions if they
19 are "yes" or "no," clearly and briefly, or we will be
20 here for weeks.

21 MS. SPILLER: Your Honor, I certainly
22 would --

23 EXAMINER PIRIK: I'll deny the motion to
24 strike.

25 However, Mr. Trent, I believe that you

1 should answer the question directly.

2 THE WITNESS: I'm trying.

3 Q. So I believe your answer was no, there
4 are no economic development costs you're seeking
5 embedded in any kind of deferral or the nonbypassable
6 rider that you are seeking authority for?

7 MS. SPILLER: Asked and answered.

8 A. I will give the same answer as I gave
9 before.

10 Q. But you are not proposing any economic
11 development costs be flowed through that rider; is
12 that correct?

13 A. That's correct.

14 Q. And on page 24 of your testimony starting
15 with the question on line 1, you give an overview of
16 Duke's charitable giving philosophy. Do you see
17 that?

18 A. Yes.

19 Q. And are there any charitable giving costs
20 considered capacity service costs?

21 A. I don't believe so.

22 Q. And are there any charitable giving costs
23 associated with your FRR obligation?

24 A. Not that I am aware of.

25 Q. And are there any charitable giving costs

1 associated with the cost-based charge that you seek
2 authority for in this case?

3 A. Not that I am aware of.

4 Q. And are there any charitable giving costs
5 associated with the market-based rate that Duke
6 currently receives from PJM?

7 A. Not that I am aware of.

8 Q. And are there any charitable giving costs
9 associated with the regulatory asset and deferral of
10 that nonbypassable rider that Duke seeks authority to
11 collect in this case?

12 A. I don't believe so.

13 MS. BOJKO: Your Honor, I move to strike
14 page 22, line 12, through page 23, line 21, as well
15 as page 23, line 1 through line 13.

16 MS. SPILLER: I'm sorry, Ms. Bojko. Can
17 you like -- page 23, lines 1 through 13?

18 MS. BOJKO: I'm sorry, the last one was
19 page 24, line 1 through 13, lines 1 through 13.

20 EXAMINER PIRIK: Ms. Spiller.

21 MS. SPILLER: Thank you, your Honor.

22 MS. BOJKO: I'm sorry, I haven't stated
23 my reasons for my motion to strike, your Honor.

24 EXAMINER PIRIK: Okay, Ms. Bojko.

25 MS. BOJKO: Your Honor, the information

1 provided on these two pages -- three pages is
2 irrelevant. The witness just admitted that Duke's
3 application for approval of a cost-based charge to
4 compensate Duke for providing capacity service in
5 connection with its obligation as a FRR entity in PJM
6 and to create a regulatory asset and defer the
7 difference between that cost-based charge and the
8 market-based rates that it currently receives from
9 PJM does not include any costs associated with Duke's
10 economic development or charitable giving activities.
11 Thus, per Rule 402, the testimony is not of
12 consequence to the determination of the application
13 of this case and is irrelevant and not admissible.

14 Additionally, per Rule 403(b) the
15 testimony should be excluded because any probative
16 value that it may have is substantially outweighed by
17 the danger of unfair prejudice, confusion of the
18 issues, and it is clearly misleading to the
19 Commission.

20 Thank you, your Honor.

21 EXAMINER PIRIK: Thank you.

22 Ms. Spiller.

23 MS. SPILLER: Thank you, your Honor.

24 Mr. Trent is here as the chief operating
25 officer of Duke Energy, here as a policy witness to

1 identify the overall scope of the application, what
2 the company is seeking as well as the consequences
3 and significance of the application. The information
4 with respect to Duke Energy Ohio and who Duke Energy
5 Ohio is and what they do in southwest Ohio we believe
6 is informative to this case, as has often been the
7 case with policy witnesses, to provide a description
8 of the applicant.

9 To the extent that Ms. Bojko believes the
10 information irrelevant, we believe that the
11 Commission can certainly weigh the evidence as they
12 deem necessary. But to be clear, this case does have
13 significant impacts to Duke Energy Ohio and the
14 activities that they do provide to our customers in
15 southwest Ohio, and Mr. Trent's testimony in this
16 respect was to identify those activities.

17 MS. BOJKO: Your Honor, may I respond? I
18 thought this case was about a capacity charge and
19 capacity service and whether the company would be
20 able to obtain compensation for that capacity. I did
21 not believe that this case was about the rates set in
22 Duke Ohio's territory and the impacts on southeastern
23 Ohio.

24 MS. SPILLER: Your Honor, again,
25 Mr. Trent is providing an overview of Duke Energy

1 Ohio, something that is very common with regard to
2 policy witnesses. He is indicating and does indicate
3 in his testimony the current financial condition of
4 Duke Energy Ohio, and in this respect to the extent
5 the Commission -- I think the Commission could
6 benefit from this information with regard to whether
7 the compensation of Duke Energy Ohio is, in fact,
8 just and reasonable compensation. Again, asking for
9 the Commission to weigh the evidence and make the
10 determination of the issue in this case.

11 EXAMINER PIRIK: At this time we are
12 going to deny the motions to strike.

13 However, you will have the freedom of
14 cross-examination at a later time as well.

15 MS. BOJKO: Thank you, your Honor.

16 EXAMINER PIRIK: Mr. Kutik.

17 MR. KUTIK: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Kutik:

21 Q. Good morning.

22 A. Good morning.

23 Q. I want to talk to you briefly about some
24 of the positions that you've held in management
25 within Duke. Is it correct to understand that in

1 July of 2008, you became group executive and chief
2 strategy policy and regulatory officer?

3 A. That's correct.

4 Q. And that was a change in position from
5 what you had previously in that you picked up the
6 chief regulatory officer, correct?

7 A. That's correct.

8 Q. And you held that position until July of
9 2009, correct?

10 A. Correct.

11 Q. And at that time you became group
12 executive and president of the commercial businesses
13 of Duke Energy.

14 A. Correct.

15 Q. And you held that position until July of
16 2012, correct?

17 A. Yes.

18 Q. And when we talk about the commercial
19 businesses of Duke, that includes a business segment
20 called Midwest Generation, correct?

21 A. That is correct.

22 Q. And Midwest Generation is a component of
23 Duke Energy Ohio.

24 A. That's correct. And just to be clear
25 there's the legal entity and then the financial

1 segment reporting entity, but I think you've stated
2 it correctly.

3 Q. Thank you. And other parts of the
4 commercial businesses of Duke Energy Ohio -- excuse
5 me, of Duke include Duke Energy Commercial Asset
6 Management?

7 A. That's correct.

8 Q. And Duke Energy Retail Sales.

9 A. That is correct.

10 Q. And so when you were president of the
11 commercial businesses, those entities reported to
12 you, so to speak.

13 A. Ultimately, yes.

14 Q. Now, during your time as president of the
15 commercial businesses and perhaps before and after,
16 you were a member of something called the Transaction
17 Review Committee, correct?

18 A. That's correct.

19 Q. The Transaction Review Committee
20 comprises some or all of the direct reports to the
21 CEO of Duke Energy, correct?

22 A. Yes. It doesn't include all, but it
23 includes many, actually most.

24 Q. Most of them.

25 A. Yeah.

1 Q. And the purpose of the Transaction Review
2 Committee is to vet proposals and strategy for the
3 CEO.

4 A. I would say generally that's correct.
5 Primarily it's focused on transactions that require
6 under our delegation of authority CEO approval.

7 Q. Part of -- or one of the things that the
8 Transaction Review Committee looked at in 2010 was a
9 proposal to migrate a certain part of the Duke system
10 from MISO to PJM, correct?

11 MS. SPILLER: Objection, your Honor. If
12 I may, I believe this line of questioning about Duke
13 Energy Ohio's realignment is irrelevant to the issues
14 in this proceeding.

15 EXAMINER PIRIK: Overruled.

16 Q. And the -- I can call it the TRC, the
17 Transaction Review Committee?

18 A. Yes.

19 Q. The TRC reviewed a proposal initially in
20 February of 2010, correct?

21 A. I can't give you specific dates, but I
22 wouldn't quibble with you either on that.

23 MR. KUTIK: Your Honor, may I approach,
24 please?

25 EXAMINER PIRIK: Yes.

1 MR. KUTIK: Your Honor, at this time I
2 would like to have marked as FirstEnergy Solutions or
3 FES Exhibit 4 a document that was previously marked
4 in Case No. 10-2586-EL-SSO. In that case it was
5 marked as IEU-Ohio Exhibit 1A.

6 EXAMINER PIRIK: The document is so
7 marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MS. SPILLER: Your Honor, if I may,
10 Mr. Kutik appears to be traveling down the path of
11 Duke Energy Ohio's realignment to PJM, an issue that
12 was addressed in the docket that he just referred, an
13 issue that is at this point irrelevant to this case.
14 Duke Energy Ohio is an FRR entity, and the question
15 here is about our compensation in respect of the
16 obligations under that designation.

17 EXAMINER PIRIK: Your motion is noted on
18 the record. However, I'm going to allow Mr. Kutik to
19 continue with this line of questioning.

20 Q. (By Mr. Kutik) Mr. Trent, I've handed you
21 what has been marked for identification as FES
22 Exhibit 4.

23 A. Just to be clear, this document doesn't
24 have that Exhibit 4 on it.

25 Q. The court reporter has marked it.

1 A. Okay.

2 Q. Your copy has not been marked.

3 A. Okay.

4 Q. And you recognize this, do you not?

5 A. You know, I don't particularly recognize
6 it. I'm not saying I haven't seen it before. I
7 just --

8 Q. You don't recall seeing this as part of
9 your testimony that you gave in Case No. 10-2586?

10 A. Again, I may have seen this. I just
11 don't specifically recall it. I am not saying I
12 didn't see it, though. As I sit here today, it just
13 doesn't jar my memory.

14 Q. Okay. Well, this appears to be an
15 interrogatory response, does it not?

16 A. It does.

17 Q. And -- or a request -- response to a
18 request for production of documents. And it provides
19 a list, at least the first page does, of documents,
20 correct?

21 A. I see -- are you talking about the
22 five -- when you say "a list," are you talking about
23 the things that are numbered 1 through 5, or what are
24 you talking about in terms of a list?

25 Q. Well, it says "Confidential Proprietary

1 Trade Secret," and the first thing it says is "See
2 Confidential Attach IEU-Second-Supp-POD-03-005(1),
3 Transaction Review Committee White Paper - February
4 (Draft)."

5 A. I see that.

6 Q. All right. And then there is other
7 documents that are listed here.

8 A. Got it, okay.

9 Q. And if we look to the second page of this
10 exhibit, this is the White Paper, correct?

11 A. It says at the top "Transaction Review
12 Committee Whitepaper."

13 Q. Okay. You are familiar with this
14 document, are you not?

15 MS. SPILLER: Objection, asked and
16 answered.

17 A. Yeah. I don't have a specific
18 recollection of reviewing this, but if this went to
19 the TRC, then I would have reviewed it, I just don't
20 recall specifically.

21 Q. All right.

22 A. I would further note this does refer to
23 this being a draft, and so, you know, I don't
24 necessarily see drafts of white papers before they go
25 to the committee.

1 MR. KUTIK: Your Honor, may I approach?

2 EXAMINER PIRIK: Yes.

3 Q. (By Mr. Kutik) Mr. Trent, I've handed you
4 some pages from the transcript of Case No.
5 10-2586-EL-SSO, correct?

6 A. Yes.

7 Q. Do you recognize those pages as being
8 selected excerpts from your testimony given in that
9 case, correct?

10 A. It appears to be. I don't think I have
11 ever seen the transcript, but it appears to be.

12 Q. All right. And let me have you refer to
13 page 763.

14 A. Okay.

15 Q. Starting at line 2 you testified as
16 follows: "Question: Okay, I believe you have some
17 documents in front of you right now, IEU-Ohio
18 Exhibits 1 through 5. I believe they are 1 through
19 5A, actually.

20 "Answer: Okay.

21 "Question: Are you familiar with those
22 documents? You just mentioned them a moment ago.

23 "Answer: Well, I didn't mention all of
24 them. I said some of the documents. Let me see. I
25 am familiar with 1A and 2A. 3A I've seen. I can't

1 recall whether I've seen this before this proceeding.
2 I may or may not have. 4A I am familiar with. 5A I
3 believe I've seen, yes."

4 Is that -- you testified like that,
5 correct?

6 A. No, that's helpful, and this was years
7 ago so my memory was fresher with respect to this
8 document so I don't dispute that testimony.

9 Q. All right. So you've seen this document
10 before, the --

11 A. I must have. I see a lot, and time has
12 passed. I don't dispute that I have seen the
13 document.

14 Q. So now, going to the White Paper, the one
15 that you testified before that you had -- you were
16 familiar with, this is a document that discusses the
17 operation -- transfer of the operational control of
18 Duke Energy Ohio transmission assets from the Midwest
19 Independent System Operator, MISO, to PJM Independent
20 System Operator, PJM, on June 1, 2014, and
21 participate in PJM's 2014/15 planning year, PY,
22 auction to be held in May, 2011, correct?

23 MS. SPILLER: Your Honor, if I may,
24 again, I think this document speaks for itself, and
25 this issue is not relevant to the issues in this

1 proceeding.

2 EXAMINER PIRIK: Thank you, Ms. Spiller.
3 Your objection has been noted on the record.

4 MS. SPILLER: Thank you, your Honor.

5 A. Yeah. I think you essentially read from
6 the first paragraph. Those transactions sound right.
7 I think you read that accurately.

8 Q. Right. And so the proposal was for Duke
9 Energy Ohio to migrate to PJM starting June 1, 2014,
10 correct?

11 A. When you say "the proposal," I'm not sure
12 but the -- that was what was being discussed in this
13 particular document.

14 Q. And if the company that is Duke Energy
15 Ohio was going to migrate to PJM as of June 1, 2014,
16 and participate in the -- in the BRA auctions
17 starting in May of 2011, Duke Energy Ohio would not
18 have to have been an FRR entity, correct?

19 A. I think that is accurate, yes.

20 Q. Now, the TRC approved the proposal to
21 migrate to PJM starting June 1, 2014, did it not?

22 A. I don't recall a specific date that was
23 approved by the TRC for the migration. There may
24 have been a -- an approval at some point in time, but
25 ultimately that is not what we decided to do.

1 MR. KUTIK: Your Honor, may I approach,
2 please?

3 EXAMINER PIRIK: Yes.

4 MR. KUTIK: Your Honor, at this time I
5 would like to have marked as FES Exhibit 5 a document
6 previously marked and admitted in Case No.
7 10-2586-EL-SSO as IEU Exhibit 4A.

8 EXAMINER PIRIK: The document is so
9 marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. (By Mr. Kutik) Mr. Trent, I have handed
12 you what has -- the court reporter has marked for
13 identification as FES Exhibit 5, and as we mentioned
14 earlier in reading your prior testimony, you're
15 familiar with this document, are you not?

16 A. I am.

17 Q. And this appears to be an interrogatory
18 or request for production answer which attaches a
19 PowerPoint, correct?

20 A. I see that, yes.

21 Q. And this was a PowerPoint that was
22 prepared for the TRC, correct?

23 A. Yes.

24 Q. It's Entitled "DEO DEK Asset Transfer
25 MISO to PJM, TRC Update prepared May 12, 2010,"

1 correct?

2 A. Yes.

3 Q. And as we go -- as we go to the second
4 page of this PowerPoint, it says in the first bullet
5 point "TRC Action Requested," correct?

6 A. Yes.

7 Q. And in the second bullet point under
8 that, it says "TRC previously approved transfer
9 effective June 1, 2014," correct?

10 A. I see that, yes.

11 Q. Okay. And that's consistent with your
12 recollection at this time?

13 A. I don't have an independent recollection
14 of that approval. I'm not disputing that it says
15 what it says. But I think this does reflect that
16 ultimately that is not the course that was taken.

17 Q. Right. Because what this -- what this
18 PowerPoint is seeking to have the TRC do is to
19 revisit the decision about when to migrate and to
20 approve a transfer of DEO and DE -- DEK from MISO to
21 PJM effective June 1, 2012, correct?

22 A. Well, certainly there is a -- an update
23 here that talked about a change of course. I'm not
24 certain that this transaction had to be approved by
25 the TRC in the first place so my view of this was

1 handled a little more informally than some of the
2 other transactions, which is why I don't have a real
3 specific recollection of this, but ultimately we did
4 not decide to transfer effective June 1, 2014.

5 Q. All right. But my question is what is
6 being asked -- the question being asked by TRC is to
7 approve a transfer of DEO DEK from MISO to PJM
8 effective June 1, 2012, correct?

9 A. Yes.

10 Q. And you would expect that this PowerPoint
11 would set out the important and relevant reasons for
12 revisiting the decision as to when to migrate,
13 correct?

14 A. You know, I really would not agree with
15 that in that, as I said before, this was sort of a
16 process that was a bit less formal than some other
17 processes were. We had a definitive action. We were
18 proving a transaction and moving forward. This
19 particular discussion was kind of an ongoing,
20 evolving-type thing so I'm not sure I would expect
21 every sort of key point to be on the slide.

22 Q. I didn't say every key point; I said the
23 important key points.

24 A. I am not even sure if all of the
25 important ones necessarily would be on here because

1 this was basically used as sort of a launching pad
2 for more discussion, and that's what we had in this
3 case.

4 Q. Well, certainly this PowerPoint is what
5 the TRC was going to rely upon in making its
6 decision, correct?

7 A. No, that's not correct. What we were
8 relying on is the discussion that takes place at the
9 TRC and information that we were provided so we
10 certainly don't solely rely on what's on the
11 PowerPoint pages.

12 Q. Now, what -- one of the things this thing
13 says, this PowerPoint, is it asks the question, "What
14 has changed?" Right?

15 A. Yes.

16 Q. And what has changed was the fact that
17 Duke could learn from the experience of the
18 FirstEnergy companies, correct?

19 A. I don't -- I don't -- I mean, it says
20 that there's an FE stipulation. I am not sure that
21 it says we could learn from FE, but it says there was
22 an FE stipulation that's changed.

23 Q. Right. And the FE stipulation dealt with
24 some fairly significant financial issues, correct?

25 A. You know, I've not reviewed the FE

1 stipulation.

2 Q. Well, you are familiar with MTEP and RTEP
3 costs, are you not?

4 A. I am familiar with MTEP and RTEP costs,
5 yes.

6 Q. And those can be fairly significant,
7 correct?

8 A. Those can be fairly significant, yes.

9 Q. And how to handle and how to recover
10 those would be important things that Duke would want
11 to know before it made the decision when and how to
12 migrate to PJM, correct?

13 MS. SPILLER: Objection, your Honor,
14 relevance.

15 EXAMINER PIRIK: Overruled.

16 A. We would certainly want to have that --
17 an understanding of potential outcomes in connection
18 with the proposal that we would be making for
19 approval.

20 Q. And this PowerPoint is pointing to how
21 that particular issue was resolved by stipulation for
22 the FirstEnergy companies, correct?

23 A. I don't see anything that says
24 specifically there. It says there is a stipulation
25 with PUCO, and then it's hard to read, but it looks

1 like MTEP recovery, and I think that says V RTEP; is
2 that -- I am not sure if I am reading that correctly.

3 Q. Yes.

4 A. So those words are on there.

5 Q. So the answer to my question is yes?

6 A. No, I don't think so. I think I have
7 just -- the words are there, but I don't think that
8 fits with what your question was.

9 Q. Okay. My question was Duke was un -- got
10 the news as to what the result was for FirstEnergy
11 with respect to the recovery of MTEP and RTEP costs,
12 correct?

13 A. We certainly became aware of that.

14 Q. Right. Now, Duke was also aware at this
15 time how FirstEnergy sought to transition into PJM,
16 correct?

17 MS. SPILLER: Objection, your Honor.
18 ATSI's transition into PJM is not related to Duke
19 Energy Ohio's activities.

20 EXAMINER PIRIK: Mr. Kutik.

21 MR. KUTIK: Your Honor, I think I can
22 clear up the relevance if we turn to the next page of
23 this document.

24 EXAMINER PIRIK: Okay. I will give you
25 some leeway there.

1 A. I'm sorry, can you repeat the question?

2 Q. Sure.

3 MR. KUTIK: Can you read the question,
4 please, Karen.

5 (Record read.)

6 A. Yes, we became aware.

7 Q. And the way that FirstEnergy was going to
8 transition between the time that it entered into PJM
9 and the time that it would fully be integrated into
10 PJM by virtue of participating in the BRA was that
11 FirstEnergy was going to hold what was called
12 transition auctions, correct?

13 A. I do not recall the specifics of the
14 transition plan with FirstEnergy.

15 Q. Let me refer you to page No. 3 of the
16 PowerPoint, sir. The last major bullet point on that
17 says, "FE transactional auctions cleared and
18 consistent with expectations." Do you see that?

19 A. You said the last bullet point? Where
20 are you?

21 Q. The last major bullet point, there are
22 three major bullet points, and the last one says, "FE
23 transitional auctions cleared consistent with
24 expectations."

25 A. I'm sorry. I missed the double-sided.

1 It does say that.

2 Q. Okay. And so Duke was aware that
3 FirstEnergy was transitioning by use of auctions,
4 correct?

5 A. Well, it refers to the transitional
6 auctions on this PowerPoint, yes. Again, I don't
7 have an independent recollection of exactly what
8 their plan called for, but it says that on the slide.

9 Q. And this also indicates that DEO as part
10 of this proposal will hold transitional auctions for
11 planning year 2011/2012 and planning year 2013 and
12 2014, correct?

13 MS. SPILLER: I am going to object to the
14 extent you have mischaracterized the document.

15 EXAMINER PIRIK: I am going to overrule
16 the objection.

17 A. So the words are here. It says, "DEO
18 will hold transitional auctions for PY 2012/2013 and
19 PY 2014/2015 and PY 2013/2014."

20 Q. And that was being proposed, was it not,
21 as part of this -- as part of this PowerPoint?

22 A. Well, I don't know that it was being
23 proposed as part of this PowerPoint. It's a
24 statement under this bullet point.

25 Q. Okay. Now, as part of your review as a

1 member of the TRC, and perhaps otherwise, you are
2 familiar with some of the workings of the PJM
3 capacity market, correct?

4 A. I have some familiarity. I am not a
5 deep, deep expert like some other witnesses are, but
6 I have familiarity.

7 Q. And PJM uses something called the
8 reliability pricing model, correct?

9 A. Yes.

10 Q. And this is administered pursuant to the
11 reliability assurance agreement or RAA?

12 A. That's my understanding, yes.

13 Q. And the reliability pricing model, or
14 RPM, provides one mechanism for the delivery payment
15 and compensation for capacity supply through
16 something called the base residual auction or the
17 BRA, correct?

18 A. Yes. I'm familiar with the base residual
19 auction.

20 Q. And the base residual auction is held
21 every May, correct?

22 A. Yes.

23 Q. And that's -- it's held every May for the
24 delivery years starting June three years hence.

25 A. That's my understanding, yes.

1 Q. The RAA also provides for the fixed
2 resource requirement or FRR.

3 A. Yes.

4 Q. And the FRR, therefore, is a construct of
5 the RAA.

6 A. I believe that the FRR is a construct of
7 the RAA, yes.

8 Q. The RAA, for example, defines what an FRR
9 entity is.

10 A. Yes, that's my understanding.

11 Q. And, of course, the RAA might be deemed
12 to be a PJM document.

13 A. Well, the RAA is a document that's an
14 agreement that involves PJM.

15 Q. Now, the FRR is something that relates to
16 capacity, correct?

17 A. Yes.

18 Q. The service that an FRR entity provides
19 is capacity, correct?

20 A. Yes.

21 Q. And the compensation that an FRR entity
22 receives for the capacity that it provides to other
23 load-serving entities comes from PJM, correct?

24 A. My understanding is that the FRR entity
25 is responsible for providing capacity for load that

1 capacity is providing, in effect, to PJM that then
2 really serves as a conduit and supplies that to
3 load-serving entities' suppliers.

4 Q. The compensation, how that works, the
5 cash, for lack of a better term, or the dollars flow
6 through PJM to the FRR entity, correct?

7 A. I believe that is correct. The cash
8 flow -- this is very complicated, but I believe that
9 is correct.

10 Q. As a general matter you agree with that.

11 A. I think that's right.

12 Q. Now, the FRR sets forth -- excuse me, the
13 RAA sets forth various mechanisms by which an FRR
14 entity may be compensated, correct?

15 A. Yes. It identifies three methods.

16 Q. All right. Now, we talked a little bit
17 about the TRC's information that came to the TRC with
18 respect to the migration of Duke Energy Ohio and Duke
19 Energy Kentucky to PJM. As part of that process,
20 would it be fair to say that the TRC and other
21 members of Duke management considered the financial
22 aspects of that migration?

23 A. We considered the financial aspects both
24 from a utility's standpoint and also from the
25 customer's standpoint, yes.

1 Q. And from a segment standpoint?

2 A. I don't know that we looked at it from
3 the segment standpoint. I can't recall that.

4 Q. Okay. Do you recall that -- you do
5 recall that there were financial projections that
6 were discussed.

7 A. There were some projections, financial
8 projections, that we talked about, but in terms of
9 specifics, I can't recall.

10 Q. All right. And isn't it true you can't
11 recall any projections that you saw with respect to
12 the potential migration of Duke Energy Ohio into PJM,
13 that any of those projections showed a negative rate
14 of return?

15 A. I did not see a negative rate of return
16 that I recall, but it's been a while.

17 Q. Now, are you familiar with someone called
18 or named Noel Symons, S-Y-M-O-N-S?

19 A. Yes.

20 Q. And Mr. Symons is a lawyer at the McGuire
21 Woods law firm, correct?

22 A. That's my understanding, yes.

23 Q. And he is counsel for Duke on matters
24 before the FERC from time to time.

25 A. That's correct.

1 Q. And you are aware, are you not, that Mr.
2 Symons filed an application on behalf of Duke Energy
3 Ohio and Duke Energy Kentucky with the FERC to
4 approve the move to PJM from MISO?

5 A. That wouldn't surprise me. But I
6 can't -- I can't tell you definitively that he did.
7 It would not surprise me.

8 MR. KUTIK: Your Honor, at this time may
9 I approach?

10 EXAMINER PIRIK: Yes.

11 MR. KUTIK: Your Honor, I would like to
12 have marked as FES Exhibit 6 a document dated June
13 25, 2010, from Noel Symons to Kimberly D. Bose.

14 EXAMINER PIRIK: The document is so
15 marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. (By Mr. Kutik) Mr. Trent, I have handed
18 you what the court reporter has marked as FES Exhibit
19 6. Do you have that in front of you, sir?

20 A. Yes.

21 Q. And this appears to be the application
22 that Mr. Symons filed on behalf of Duke Energy Ohio
23 and Duke Energy Kentucky, correct?

24 A. Yes. It appears to be.

25 Q. And in this -- and this related to

1 approval for the migration of those two companies to
2 PJM, correct?

3 A. Correct.

4 Q. And in this filing Duke Energy Ohio and
5 Duke Energy Kentucky indicate that it will seek to
6 enter the PJM market as of June 1 -- excuse me,
7 January 1, 2011, correct?

8 A. I know that that's what we ultimately
9 talked about. In terms of what it says in this
10 particular filing, if you could direct me to a
11 particular place, that would be helpful.

12 Q. All right. Well, certainly Duke was not
13 seeking to move or to transition into PJM by June 1,
14 2014, at this time, correct?

15 A. That's right. But I thought your
16 question said something about 2011.

17 Q. Correct.

18 A. Yeah.

19 Q. All right. Now, there would be a period
20 of time under this filing where Duke Energy Ohio
21 would have to be a fixed resource requirement entity,
22 correct?

23 A. That's correct.

24 Q. And in this proposal or in this
25 application, it contemplates that during the period

1 between the time that DEO first migrated into PJM and
2 the delivery year for the first BRA that Duke Energy
3 Ohio could participate in, that transition period
4 Duke Energy Ohio would procure the capacity through
5 transitional auctions, correct?

6 A. Are you saying that is what's set forth
7 in this filing?

8 Q. Yes.

9 A. Again, it's a very lengthy filing, and if
10 you can point me to it, I'll be happy to look at it
11 and confirm that. I just don't remember everything
12 that's in the filing.

13 Q. Sure. And let me refer you to the
14 attachment to Mr. Symons' letter, an attachment
15 labeled "Agreement to Implement Expansion of PJM
16 Region for Duke Energy Ohio and Duke Energy
17 Kentucky." Do you see that?

18 A. I do.

19 Q. And if we go to page 18 of that document,
20 there's a schedule that says "Schedule 3.2.5 Project
21 Implementation Plan." Do you see that?

22 A. I do.

23 Q. And if we go to the second page of that
24 schedule, there is a No. 30. Are you there, sir?

25 A. Yes.

1 Q. No. 30 says, "Hold Integration RPM
2 Auctions for Transmission Owner's Control Area 11/12,
3 12/13 and 13/14 Delivery Years." Do you see that?

4 A. I do see that.

5 Q. So it would be fair to conclude from this
6 Duke was initially proposing that for the transition
7 period it would hold transition auctions. At least
8 initially that was the proposal.

9 A. It appears to be the case. I'm just not
10 that familiar with the details of this particular
11 filing.

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

13 EXAMINER PIRIK: Yes.

14 MR. KUTIK: Your Honor, at this time we
15 would like to have marked as FirstEnergy Exhibit 7,
16 FirstEnergy Solutions Exhibit 7, a document dated
17 August 16, 2010, from Mr. Symons to Kimberly D. Bose.

18 EXAMINER PIRIK: The document is so
19 marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. (By Mr. Kutik) Mr. Trent, I have handed
22 you what the court reporter has marked as FES Exhibit
23 7, and you recognize this as a filing, do you not, of
24 Mr. Symons on behalf of Duke Energy Ohio and Duke
25 Energy Kentucky dated August 16, 2011 -- 2010?

1 Excuse me.

2 A. Yes, it appears to be.

3 Q. And this filing is entitled -- you can
4 see the title in the first sentence, "the FRR planned
5 filing," correct?

6 A. Yes.

7 Q. And so at this point Duke Energy Ohio and
8 Duke Energy Kentucky are laying out part of what they
9 are going to do as part of an FRR entity, correct?

10 A. Yes.

11 Q. FRR entities have to file something
12 called FRR plans.

13 A. That's correct.

14 Q. And this is part of that planning
15 process.

16 A. That is my understanding.

17 Q. Now, in this filing Duke Energy Ohio
18 indicates that it will be providing capacity through
19 qualified resources, correct?

20 A. Again, I would prefer to look at specific
21 parts of the document to confirm that. My
22 understanding that was the intention.

23 Q. All right. Well, we can look at page 11.

24 A. Okay.

25 Q. The second-to-the-last line, the line

1 beginning there, it says, "Pursuant to the Duke FRR
2 Plan, DEO will obtain firm capacity from qualified
3 Capacity Resources," correct?

4 A. I see that.

5 Q. And part of that meant or what that meant
6 was that Duke Energy Ohio, for example, would provide
7 capacity through its own resources and resources
8 obtained through bilateral contracts. That was your
9 understanding of how the plan was to work, correct?

10 A. Yes.

11 Q. And Duke Energy Ohio indicated that it
12 would supply the capacity needs of other load-serving
13 entities in Duke Energy Ohio at the RPM price,
14 correct?

15 A. Again, I would like to see where you are
16 referring to.

17 Q. Sure. Page 12, the paragraph that begins
18 in the second-to-last line of the text, it says, "Per
19 schedule 8.1 of the RAA, DEO is required to fulfill
20 the FRR capacity needs of alternative electric retail
21 suppliers serving switched load. DEO will serve such
22 load at the RPM price as provided for in Section D.8
23 of Schedule 8.1, unless the alternative retail LSE
24 supplies its own capacity pursuant to an election and
25 commitment made under Section D.9 of Schedule 8.1,"

1 correct?

2 A. I see that.

3 Q. And DEO was also proposing to charge that
4 for other wholesale suppliers within Duke Energy
5 Ohio, correct?

6 A. When you say "other entities," so my
7 understanding was that Duke Energy Ohio was proposing
8 to supply capacity to winners of the auction as well
9 as CRES providers and that those entities would be
10 charged these market rates.

11 Q. Right, the RPM price, as you say in here.

12 A. Yeah.

13 Q. Now --

14 A. I think final zonal capacity pricing is
15 what they are being charged, I believe.

16 Q. Fair enough. The LSEs within the Duke
17 service territory, as we just read, could have opted
18 out of receiving capacity from DEO, correct?

19 A. There are opt-out provisions. I'm not an
20 expert on the opt-out provisions, but I know there
21 are opt-out provisions for CRES providers.

22 Q. And what you understand is that once the
23 plan, Duke Energy Ohio plan, starts, the LSEs in Duke
24 Energy Ohio, if they haven't opted out before the
25 plan starts, they cannot opt out until the plan is

1 over.

2 A. That is generally my understanding, but,
3 again, I would add the caveat I'm not the most deep
4 expert on that topic, but that's my understanding.

5 Q. Now, so far in the process -- well, I'll
6 back up.

7 These applications that we just looked
8 at, they were approved, correct? In other words, DEO
9 had the authority to migrate from MISO to PJM.

10 A. Yes. We obtained approval from the
11 Commission as a result of a stipulation between
12 parties and also from FERC.

13 Q. Okay. And would it be fair to say that
14 Duke Energy Ohio became a member or a participant in
15 the capacity market in PJM as of January 1, 2012?

16 A. Yeah. When you say "a member of the
17 capacity market," we became an FRR entity at that
18 point, yes.

19 Q. Fair enough. And since January 1, 2012,
20 Duke Energy Ohio has been able to meet, at least thus
21 far, its FRR obligations, correct?

22 A. Yes.

23 Q. And as far as you know, it is the intent
24 and anticipation of Duke Energy Ohio to meet its FRR
25 obligations until the end of the FRR plan, correct?

1 A. It's certainly our intent to do that.
2 Obviously, there are some risks associated with that
3 but it is our intent.

4 Q. Thank you. Now, you would agree with me,
5 would you not, that there is nothing in the RAA that
6 gives an R -- an FRR entity an absolute right to
7 charge cost-based capacity, right?

8 A. Well, as I said before, the RAA provides
9 three mechanisms. It does not mandate any one
10 mechanism, and it does not specifically reference
11 cost-based capacity as being a right.

12 Q. And there is nothing inherent about being
13 an FRR entity that would make it impossible or
14 inappropriate for a utility to charge for capacity on
15 the basis of system sales of RPM final zone capacity
16 price rates, correct?

17 A. Well, the word "inappropriate" is
18 something that I have to think about a little bit.
19 In terms of the RAA itself, it doesn't address
20 whether it's impossible or inappropriate. Having
21 said that, I think that the Ohio Commission has
22 talked about it has an obligation to ensure that an
23 entity providing a noncompetitive wholesale service
24 is entitled to fair compensation, and so if they were
25 not receiving that, I think that it would be

1 inappropriate.

2 Now, the question -- if the question is
3 focused solely on the RAA, it doesn't talk about
4 impossible or inappropriate.

5 Q. So do you disagree with my statement?

6 MS. SPILLER: Objection. He's answered
7 the question.

8 A. I have tried to answer it, and I have
9 tried to get context to make it a full answer.

10 Q. Frankly, I am not sure what the answer
11 is. That's why I asked if you disagreed with my
12 statement.

13 A. Well, again, I would tell you that in
14 reference to something being inappropriate, I think
15 that an FRR entity that is not receiving just and
16 reasonable compensation for providing this wholesale
17 service, that would be inappropriate.

18 Q. So you would agree then that there is
19 nothing inherent about being an FRR entity that would
20 make it impossible or inappropriate for the utility
21 to charge for capacity on the basis of final zone
22 capacity price rates.

23 MS. SPILLER: Objection, asked and
24 answered.

25 EXAMINER PIRIK: Overruled.

1 A. I would tell you --

2 THE WITNESS: I'm sorry.

3 EXAMINER PIRIK: That's fine, I overruled
4 so you can continue.

5 THE WITNESS: I need to pause. I'm
6 sorry.

7 EXAMINER PIRIK: That's fine.

8 A. I would give you the same answer. I
9 think it is inappropriate for the recovery to be
10 limited to the final zonal capacity price if that
11 results in the utility receiving less than just
12 compensation.

13 Q. Okay.

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

15 EXAMINER PIRIK: Yes.

16 MR. KUTIK: Your Honor, I would like to
17 have marked at this time for identification FES
18 Exhibit 8 a document entitled "Reply Brief of Duke
19 Energy Commercial Asset Management and Duke Energy
20 Retail Sales" filed in Case No. 10-2929-EL-UNC.

21 EXAMINER PIRIK: The document is so
22 marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. SPILLER: Excuse me, your Honor. If
25 we may, while Mr. Kutik is making his way back to his

1 seat and having reviewed this document, I would
2 object to its relevance in this proceeding.
3 Certainly these are positions that were advanced by
4 parties that are not at all involved in this case and
5 irrelevant and prejudicial to the applicant here.

6 EXAMINER PIRIK: I am going to overrule
7 at this time and allow Mr. Kutik to begin his cross
8 and see where it goes.

9 Q. (By Mr. Kutik) Mr. Trent, I've shown you
10 what the court reporter has marked as FES Exhibit 8,
11 and this document appears to have been filed May 30,
12 2012, correct?

13 A. It appears to be.

14 Q. And at that time you were president of
15 the commercial businesses, which included the two
16 companies that are noted on this brief, correct?

17 A. That's correct.

18 Q. And let me refer you to page 6 of this
19 brief. And about six -- or five lines down, the line
20 that begins "FRR entity." There is a second sentence
21 that begins on that -- on that line that says, "There
22 is nothing inherent about being an FRR entity that
23 makes it impossible or inappropriate for a utility to
24 charge for capacity on the basis of RPM FZCP rates,"
25 correct?

1 MS. SPILLER: Objection, your Honor. If
2 I may, I don't know if Mr. Kutik is attempting to use
3 this to try to impeach Mr. Trent, but, again, this
4 document and the content thereof has no application
5 with respect to Duke Energy Ohio and their request in
6 this proceeding; further noting that this document
7 was filed prior to the Commission's issuance of an
8 order on July 2, 2012, in Case 10-2929.

9 EXAMINER PIRIK: Mr. Kutik.

10 MR. KUTIK: Your Honor, those comments
11 are appropriate for brief, not necessarily
12 appropriate for the use for impeachment -- or
13 objection to impeachment. This witness was head of
14 or was responsible for, from an organizational
15 standpoint, for the companies that are noted in this
16 brief, and it is relevant, we believe, your Honor,
17 that the companies that he was responsible for then
18 took positions that he disclaims now.

19 EXAMINER PIRIK: Objection overruled.

20 A. I'm sorry, what was the question?

21 Q. Sure. The question is on page 6 of this
22 brief, Duke Energy Commercial Asset Management and
23 Duke Energy Retail Sales says, "There is nothing
24 inherent about being an FRR entity that makes it
25 impossible or inappropriate for a utility to charge

1 for capacity on the basis of RPM FZCP Rates."

2 Correct?

3 A. Yes. That was a statement that was made,
4 a legal argument that was made by these two entities.
5 The Ohio Commission subsequently determined that it
6 had an obligation to ensure that an entity providing
7 these services receive just and reasonable rates and
8 so, you know, the argument that was being made here
9 didn't win the day.

10 Q. You thought that argument was correct at
11 the time, did you not?

12 A. As I've stated before, you know, I think
13 that the companies were making good-faith legal
14 arguments. You don't always win those.

15 Q. Okay.

16 A. And this was one they didn't win, and we
17 now have a ruling by the Commission that gives us
18 information here.

19 Q. Well, isn't it true, sir, that you
20 thought that that argument was correct at the time?

21 MS. SPILLER: Objection, asked and
22 answered.

23 EXAMINER PIRIK: Overruled.

24 A. I believe there was a good-faith basis
25 for make the legal arguments.

1 Q. Thank you.

2 A. It was not successful.

3 Q. Now, would you agree with me that
4 generation is the designation for the electric
5 commodity itself and everything that goes into the
6 creation of that commodity?

7 A. I don't understand that question.

8 Q. So you can't agree with it?

9 A. I just don't understand it.

10 Q. All right.

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

12 EXAMINER PIRIK: Yes.

13 MR. KUTIK: Your Honor, at this time we
14 would like to have marked as FES Exhibit 9 the
15 "Initial Brief of Duke Energy Commercial Asset
16 Management and Duke Energy Retail Sales" filed in
17 Case No. 10-2929-EL-UNC.

18 EXAMINER PIRIK: The document is so
19 marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. (By Mr. Kutik) Mr. Trent, I have handed
22 you what the court reporter has marked as FirstEnergy
23 Exhibit 9. This is the Initial Brief of Duke Energy
24 Commercial Asset Management and Duke Energy Retail
25 Sales in Case No. 10-2929-EL-UNC, correct?

1 A. It appears to be.

2 Q. And this brief appears to have been filed
3 in May of -- May 23 of 2012, correct?

4 A. It appears to be.

5 Q. During the time you were president and
6 responsible for these two entities, correct?

7 A. That's correct. I need to clarify. I
8 didn't review these -- these filings before they were
9 made, just to make sure that I'm clear about that.

10 Q. All right. Let me have you turn to page
11 2.

12 A. Okay.

13 Q. In the first paragraph these two
14 companies say, "Generation is the designation for the
15 electric commodity" service -- excuse me, "the
16 electric commodity itself, and everything that goes
17 into the creation of that commodity." That's what
18 they said at the time, correct?

19 MS. SPILLER: Same objection, your Honor.
20 This document is not one that Mr. Trent has authored
21 or that he reviewed, and to the extent Mr. Kutik is
22 trying to garner admission through a pleading I think
23 is an inappropriate use of the document.

24 EXAMINER PIRIK: Mr. Kutik.

25 MR. KUTIK: Your Honor, this witness is

1 responsible for these companies. There is no --
2 there is no argument as to what this document is,
3 that it is authentic so it's not hearsay. It's
4 authentic, and so I can ask the witness about it.

5 EXAMINER PIRIK: Objection overruled.

6 A. I'm sorry, could you ask the question
7 again.

8 Q. Sure. These two companies said in this
9 brief, "Generation is the designation for the
10 electric commodity itself and everything that goes
11 into the creation of that commodity," correct?

12 A. You read that sentence correctly. And
13 again, this was filed prior to the time that the
14 Commission issued an order clarifying the capacity
15 case in the AEP Ohio case.

16 Q. Okay. Now, you would agree with me,
17 would you not, that capacity as part of generation
18 service is a competitive service in Ohio?

19 A. You know, I don't agree with that. I
20 think -- let me finish my answer.

21 Q. Sure. Go ahead.

22 A. I think that the Commission in the AEP
23 Ohio case made it clear that the capacity being
24 provided by an FRR entity is -- is a noncompetitive
25 wholesale service and not a competitive electric

1 retail service.

2 Q. Let me refer you to page 7 of the initial
3 brief of the two companies. In the second sentence
4 on page 7 says, "As previously noted, capacity, as
5 part of generation service, is a competitive service
6 in Ohio. It is therefore not subject to traditional
7 cost-based -- "cost-based ratemaking." Do you see
8 that?

9 MS. SPILLER: Again, your Honor,
10 objection to the use of this document attempting to
11 elicit admissions from the witness with respect to a
12 pleading that was filed by counsel.

13 EXAMINER PIRIK: Your objection is noted
14 on the record; however, I will overrule.

15 MS. SPILLER: Thank you, your Honor.

16 A. So I would give an answer similar to what
17 I said before, this was a legal argument that was
18 being made in this pleading. It did not carry the
19 day. It was a good-faith, you know, based legal
20 argument. It did not carry the day, and the
21 Commission determined otherwise in this case.

22 Q. So Duke Energy Commercial Asset
23 Management and Duke Energy Retail Sales did make the
24 argument that, as previously noted, capacity as part
25 of generation service is a competitive service in

1 Ohio?

2 A. They made that argument and they lost,
3 and the Ohio Commission clarified what the law is
4 here according to the Commission. That's correct.

5 Q. Would you agree with me that it is
6 critically important to recognize that generation
7 service is specifically categorized by statute as a
8 competitive service?

9 A. I do not agree with that based on -- and
10 I am basing it not on this pleading. I am basing it
11 on the Commission's ruling in the case in which this
12 pleading was made.

13 Q. Would you agree that thus capacity is
14 similarly a competitive service subject to
15 competitive pricing rather than traditional cost of
16 service pricing?

17 A. Sitting here today, I do not agree with
18 that, and that's based again on the Commission's
19 ruling.

20 Q. And would you agree that -- well, let
21 me -- would you agree that on page 7 of this brief
22 after the quote, middle of the page it says -- the
23 two companies that you were responsible for said, "It
24 is critically important to recognize that generation
25 service is specifically categorized, by statute, as a

1 competitive service."

2 And skipping a sentence it says, "Thus,
3 capacity is similarly a competitive service, subject
4 to competitive pricing rather than traditional
5 cost-of-service pricing," correct?

6 A. Are you asking me did you read that
7 correctly?

8 Q. Yes.

9 A. Yes, you read it correctly. Those were
10 arguments we were making in the case and they did not
11 prevail.

12 Q. Okay. And would it be fair to say that
13 nowhere in Ohio law is there any provision that would
14 give Duke Energy Ohio the right with regard to -- or
15 such a right, that is, for embedded capacity costs,
16 such a right to charge for -- charge based upon
17 embedded capacity costs with respect to generation of
18 service?

19 MS. SPILLER: I'm sorry, can I have that
20 read back?

21 MR. KUTIK: Let me try it again.

22 MS. SPILLER: Thank you.

23 Q. Would it be fair to say that nowhere in
24 Ohio law is there any provision that would give Duke
25 Energy Ohio the right to recover its embedded

1 capacity costs with regard to a generation service?

2 A. In my view there is law. It's as defined
3 by the Commission's ruling in the AEP Ohio case, that
4 an FRR entity providing capacity service is a
5 noncompetitive wholesale service and is entitled to
6 recover under traditional ratemaking principles.

7 Q. And in the AEP capacity case, Duke Energy
8 Commercial Asset Management and Duke Energy Retail
9 Sales argued, nevertheless, in this proceeding, AEP
10 "suggests that it has a right to recover its
11 embedded" costs -- "capacity costs. Nowhere in Ohio
12 law is there any provision that would give AEP Ohio
13 such a right with regard to a generation service."
14 That's what they argued, correct?

15 A. Their arguments are stated there, and
16 those arguments did not prevail.

17 Q. I want to change topics now, and I want
18 to talk to you about Duke Energy Ohio's most recent
19 ESP. Now, in that most recent ESP DEO sought
20 permission to establish an embedded cost-based
21 capacity charge, correct?

22 MS. SPILLER: Your Honor, I am going to
23 object. What may have been requested in the
24 application, the issues therein, were never litigated
25 so that's irrelevant to this case.

1 EXAMINER PIRIK: Overruled.

2 A. The ESP that was initially filed did have
3 a charge based on costs.

4 Q. And that was for capacity, correct?

5 A. Yes.

6 Q. And that charge was proposed to be called
7 rider RC, right?

8 A. Rider RC involved recovery of capacity
9 costs is my memory of the ESP allocation.

10 Q. And rider RC was rider retail capacity,
11 correct?

12 A. I think that's right.

13 Q. Now, by the time that -- well, back up.
14 You filed testimony or testimony was
15 filed on your behalf, correct, in that case?

16 A. That -- on behalf of the application,
17 yes.

18 Q. Yes. And at the time that you filed your
19 application -- excuse me, your testimony, Duke had
20 already stipulated in another case, Case No. -- or
21 Case Nos. 11-261-EL-RDR and Case No. 11-26 --
22 2642-EL-RDR, In the Matter of the Application of Duke
23 Energy Ohio, Inc. for Approval of the Establishment
24 of Rider BTR and Associated Tariffs and In The Matter
25 of the Application of Duke Energy Ohio, Inc., for

1 Approval of the Establishment of RTO and Associated
2 Tariffs.

3 MS. SPILLER: I am going to object to the
4 first case number. I believe it's incorrect.

5 Q. 11-2641.

6 MS. SPILLER: 261.

7 A. I can't recall the case numbers, I'm
8 sorry.

9 Q. Okay. But do you recall a stipulation
10 with respect to -- with respect to a PUCO proceeding
11 regarding the migration of DEO into PJM?

12 A. Yes, I do recall that.

13 Q. And do you recall that stipulation was
14 filed in April of 2011?

15 A. I can't recall the date, but I'm not
16 going to quibble with dates on you.

17 Q. Would you accept that, subject to check?

18 A. Yeah, sure.

19 Q. And in that stipulation, one of the
20 things that Duke Energy Ohio agreed is that it would
21 not pursue its right to seek a capacity cost
22 determination under the RRA at FERC?

23 A. We did agree we would not seek cost base
24 recovery at FERC.

25 Q. All right. Now, with respect to its ESP

1 proposal, Duke management analyzed that proposal from
2 a financial aspect -- or financial point of view,
3 correct?

4 A. Yes. I mean, I don't recall specific
5 projections, but we certainly would have had some
6 analysis of it.

7 MR. KUTIK: Your Honor, may I approach?

8 EXAMINER PIRIK: Yes.

9 MR. KUTIK: Your Honor, I would like to
10 have two exhibits marked at this time. The first
11 exhibit that we would like to have marked as FES
12 Exhibit 10 appears to be a PowerPoint, and it's
13 Entitled "Duke Energy Ohio ESP filing June 2, 2011."
14 And as FES Exhibit 11, we would like to have marked a
15 document Entitled "Duke Energy conference call
16 transcript" with a date of June 22, 2011.

17 EXAMINER PIRIK: The documents are so
18 marked.

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 Q. (By Mr. Kutik) Mr. Trent, I have handed
21 you what the court reporter has marked as FirstEnergy
22 Exhibit -- FirstEnergy Solutions Exhibit 10. And do
23 you recognize that as a PowerPoint presentation that
24 was given to analysts?

25 A. Yes.

1 Q. And this is on the subject of the ESP
2 filing.

3 A. That's correct.

4 Q. And you are listed or shown in the first
5 page as one of the presenters, correct?

6 A. That's correct.

7 Q. One of the things that First -- Duke
8 Energy -- excuse me, that Duke Energy management
9 indicated with respect to its filing is that it would
10 recover costs and earn fair returns, correct?

11 A. I'm sorry, so would you say that more one
12 more.

13 Q. That it would recover costs and earn fair
14 returns, correct?

15 A. No, sir, say the whole question.

16 Q. One of the things that you and Mr. Rogers
17 and Ms. Janson were telling analysts about the ESP
18 proposal was that it would -- Duke Energy Ohio would
19 recover costs and earn fair returns.

20 A. That was certainly what we were
21 attempting to do with the ESP.

22 Q. Right. And we see that on page 3 of this
23 PowerPoint, do we not, under the box that says Duke
24 Energy Ohio --

25 A. Where are you talking about?

1 Q. Page 3.

2 A. I'm there.

3 Q. There are three boxes on the left,
4 Customers, Duke Energy Ohio, State of Ohio.

5 A. Yeah. I do recall, and earn fair
6 returns, yes.

7 Q. So under the Duke Energy Ohio, it says
8 "Recovers costs and earns fair returns," correct?

9 A. Yeah. That was the goal.

10 Q. That was one of your objectives.

11 A. Yes.

12 Q. And on page 4 you're discussing the Ohio
13 Framework -- the Challenges that -- the Ohio
14 Framework presented to utilities, correct?

15 A. Yes.

16 Q. And one of the things that's noted on the
17 bottom is "Framework of DE-Ohio's current ESP makes
18 it difficult to earn adequate long-term returns on
19 generation." Do you see that?

20 A. Yes.

21 Q. And you also set forth in the appendix
22 identification which appears at starting before page
23 9, and now specifically referring to page 9, a
24 "Summary of Proposed ESP Riders," correct?

25 A. Yes.

1 Q. And one of those proposals is rider RC,
2 Retail Capacity, correct?

3 A. Yes.

4 Q. Now, let me have you turn to FES Exhibit
5 11. Now, from time to time Duke management or some
6 of Duke -- someone at Duke management have conference
7 calls with analysts, correct?

8 A. Yes.

9 Q. And those conference calls are
10 transcribed, correct?

11 A. Yes.

12 Q. And those transcriptions are -- or
13 transcripts are publicly available, correct?

14 A. Yes.

15 Q. And this is a -- you recognize this as a
16 transcript from a call on June 22, 2011?

17 A. It appears to be, without going offline,
18 but it looks like the format I have seen in the past,
19 yes.

20 Q. And if there was a conference call on
21 June 2, 2011, the conference call would have covered
22 the PowerPoint that you looked at that we marked as
23 FES Exhibit 10, correct?

24 A. Yes.

25 Q. Now, one of the things that the company

1 did, you and Ms. Janson and Mr. Rogers, is you
2 describe some aspects about the returns that have
3 been earned and would likely be earned, correct?

4 A. We certainly talk about returns. I'm
5 not -- I don't recall specifically talking about
6 returns that we would likely earn but --

7 Q. Fair enough. Let me refer you to page 3
8 of the transcript, and it indicates there that you
9 are talking, starting about a little less than a
10 third of the way down, correct?

11 A. Yes.

12 Q. So, in other words, under where it says
13 Keith Trent, that's you talking.

14 A. That's correct.

15 Q. And in the I believe sixth paragraph
16 down, the paragraph that begins, "Third," you're
17 saying "Third, our plan provides Duke Ohio the
18 ability to earn a fair and reasonable return on its
19 generating assets." Do you see that?

20 A. I do.

21 Q. And you further say, "We propose to
22 decouple energy and capacity prices and recover the
23 capacity component through a nonbypassable charge."
24 Do you see that?

25 A. I do.

1 Q. That was rider RC?

2 A. That was rider RC in the application.

3 Rider RC in the stipulation was very different.

4 Q. And we will get to that in a minute.

5 A. Okay.

6 Q. And then you also start over on page 4
7 discussing returns in the top of the page. You say,
8 "A second challenge is evident in the imposition of a
9 significantly excessive earnings test, which
10 asymmetrically limits the upside earnings ability of
11 utility companies without providing any downside
12 protection. Under our current SSO, our earned
13 returns on common equity, including those from our
14 Ohio T&D business, fell from 9.5% in 2009 to around
15 7% in 2010. As a reminder, our authorized return on
16 our T&D business is 10.63%, and with our proposal we
17 are asking for a 10.75% return on our dedicated
18 generation assets."

19 MS. SPILLER: Your Honor, if I may, we
20 are getting quite far afield of Mr. Trent's direct
21 testimony in this case and now addressing returns
22 that were applicable under prior plans, also
23 addressing authorized returns in respect to the
24 distribution business that is Duke Energy Ohio. So I
25 think we are -- we are well beyond documentation and

1 any commentary that is relevant to this proceeding.

2 EXAMINER PIRIK: Mr. Kutik.

3 MR. KUTIK: Your Honor, in this
4 proceeding Mr. Trent says that the company as a
5 result of where they stand now, the company's
6 financial position is in dire straits or is in dire
7 condition. And we -- what I'm trying to establish,
8 your Honor, is that the company was very familiar and
9 very focused on what its returns would be, what its
10 returns had been as it went through the process with
11 respect to its ESP and its ESP stipulation.

12 EXAMINER PIRIK: Objection overruled.

13 MS. SPILLER: Thank you, your Honor.

14 A. I'm sorry, were you just asking me if you
15 read that paragraph correctly?

16 Q. That's what you said, correct?

17 A. Yes.

18 Q. All right. Now, in October of 2011, the
19 DEO agreed to a stipulation in its ESP case, correct?

20 A. Yes.

21 Q. And as I think you mentioned earlier, as
22 part of the ESP stipulation rider RC was not an
23 embedded cost-based capacity charge but rather was a
24 charge that was going to be based upon final zone
25 capacity prices.

1 A. Well, I mean, let me back up a little bit
2 on that. I mean, the stipulation that was agreed to
3 was -- was completely different, I mean, almost night
4 and day to the original application so it was a
5 completely different construct, including the way
6 capacity was going to be provided.

7 So capacity under the original
8 application was going to be provided directly to our
9 customers, and there would be a charge that was
10 contemplated that would come through rider RC. In
11 the stipulation the capacity would be provided by the
12 DEO to wholesale providers and rider RC became a
13 different mechanism, really a mechanism --
14 flow-through mechanism to the wholesale customers, so
15 the same name, rider RC, but very, very different.

16 Q. Okay. Let's get to my question which was
17 rider RC became not a cost-based capacity charge but
18 a charge that was going to be based upon final zone
19 clearing capacity prices.

20 A. Well, again, what I would tell you is
21 rider RC changed fundamentally in that it became a
22 conduit through which market prices would be
23 collected from customers and ultimately would be paid
24 to the wholesale capacity provider -- or wholesale
25 providers.

1 MR. KUTIK: Your Honor, I move to strike
2 and request that the witness be ordered to answer the
3 question.

4 EXAMINER PIRIK: You need to directly
5 answer the question.

6 THE WITNESS: Your Honor, I am trying the
7 best I can.

8 EXAMINER PIRIK: Could you rephrase it
9 again, Mr. Kutik?

10 MR. KUTIK: Sure.

11 Q. Rider RC in the stipulation became not a
12 capacity -- a capacity -- cost-based capacity charge
13 but instead became a charge that was going to be
14 based upon a final zone capacity price, correct?

15 A. And what I would say is rider RC became a
16 conduit through which market-based prices were
17 collected from customers and ultimately were paid to
18 the CRES providers and actually just the auction
19 winners so it was a different mechanism, yes.

20 Q. Well, it wasn't just the auction winners,
21 it was any LSE, right, that would pay final
22 capacity -- final zone capacity price?

23 MS. SPILLER: I am going to object on the
24 form of the question with respect to rider RC.

25 EXAMINER PIRIK: Objection overruled.

1 A. I'm trying to recall when you say any
2 load-serving entity, you would be including the CRES
3 providers?

4 Q. Yes.

5 A. For some reason I was thinking the CRES
6 providers were receiving the payment directly from
7 customers.

8 Q. So it would be fair to say either -- that
9 either CRES providers or winners of the wholesale
10 auctions would be paying for capacity based upon the
11 final zone capacity price, correct?

12 A. Under the stipulation the CRES providers
13 and the auction winners were paying and would be
14 charged by PJM that final zonal capacity prices.

15 Q. The stipulation also included something
16 called rider ESSC, correct?

17 A. That is correct.

18 Q. And would it be fair to say that as it
19 did with the ESP proposal, some of Duke
20 Energy's management discussed the stipulation with
21 analysts?

22 A. I would assume that's correct, yes.

23 MR. KUTIK: Your Honor, may I approach?
24 At this time I would like to mark two exhibits, two
25 documents as exhibits. First as FES Exhibit 12 a

1 document, PowerPoint presentation, entitled "Third
2 Quarter Earnings Review and Business Update,
3 November 3, 2011." And as FES Exhibit 13 I would
4 like to have marked a document entitled "Duke Energy
5 Conference Call Transcript, November 3, 2011."

6 EXAMINER PIRIK: The documents are so
7 marked.

8 (EXHIBITS MARKED FOR IDENTIFICATION.)

9 Q. (By Mr. Kutik) Mr. Trent, I have handed
10 you what the court reporter has marked as FES
11 Exhibits 12 and 13. These appear to be analysts -- a
12 presentation, PowerPoint presentation, to analysts
13 and the accompanying transcript, correct?

14 A. Yes.

15 Q. And if we look at page 10 of Exhibit 12
16 of the PowerPoint, that's laying out some of the
17 features of the Duke Energy Ohio ESP settlement,
18 correct?

19 A. Yes.

20 Q. Noting a total nonbypassable stability
21 charge of \$330 million?

22 A. I see that.

23 Q. And also indicating that energy would be
24 sold into Ohio markets or via bilateral contracts.

25 A. I see that.

1 Q. And indicating also that the "stipulation
2 balances the interests of customers, the state of
3 Ohio and investors," correct?

4 A. I see that statement.

5 Q. Now, in terms of the conference call,
6 Mr. Rogers starting on page 7 -- I believe it's
7 Mr. Rogers, is discussing the ESP filing referring to
8 slide 10.

9 A. Okay.

10 Q. Okay. If you look back on Exhibit 12,
11 page 10 of that is the ESP settlement discussion,
12 correct?

13 A. Yeah. It obviously doesn't cover the
14 full part of the settlement, but it has some bullets
15 there on the settlement, yes.

16 Q. And it says in the second full paragraph,
17 "We have sought a solution that balances the needs of
18 our customers, our investors, and the Company, while
19 at the same time recognizing the state's preference
20 for competitive electric markets, market base rates,
21 and customer choice. Throughout the negotiations to
22 seek agreement on a new ESP, our objectives have
23 remained constant." Do you see that?

24 A. Yes, I see that.

25 Q. And you were part of the decision-making

1 process in the negotiations on Duke's side, correct?

2 A. In terms of the stipulation?

3 Q. Yes.

4 A. Yes.

5 Q. And would you agree with the statement
6 there, "throughout the negotiations to seek agreement
7 on a new ESP, our objectives remained constant"?

8 A. Yes. But just to be clear, the ESP, as I
9 appreciate it, based on the Commission's ruling in
10 the AEP Ohio could not and did not include and deal
11 with the provision of wholesale capacity services so
12 I think we need to make sure we understand the
13 context and timing here.

14 Q. Well, I just want to know whether the
15 statement made here that "our objectives remained
16 constant" was a true statement. You said "yes,"
17 correct?

18 A. I believe so, yes.

19 Q. Okay. Now, later on down the page on the
20 fourth paragraph from the bottom there is a comment,
21 "I am sure many of you are wondering how the
22 stipulation will impact our earnings for Commercial
23 Power in 2012 and forward. The stipulation, if
24 approved, provides financial results within the range
25 of our assumptions through 2014. After consideration

1 of a number of earnings drivers -- including merger
2 benefits, constructive rate case outcomes, and
3 effective cost control, among others -- we are well
4 positioned to achieve our long-term 4% to 6%
5 earnings growth target." Do you see that?

6 A. I do.

7 Q. And that was a true statement as far as
8 you knew.

9 A. It was true as far as I knew, but I would
10 say that we were not at that point, to my knowledge,
11 contemplating negative returns, negative ROEs, and
12 that's certainly what we have today.

13 Q. Now, let me now refer you to page 13 of
14 this transcript. And about a little less than a
15 third of the way down there is a comment and a
16 question from a man by the name of Greg Gordon from
17 ISI Group. He says, "Thanks, hello. Morning. So
18 when looking at the generation assets in Ohio, is it
19 fair to say that based on the current level of
20 revenues they are generating" -- "they are generating
21 that they basically make no money?"

22 A. Can I apologize just a moment? I'm not
23 sure where you are reading from. I must have missed
24 it.

25 Q. Page 12, sir.

1 A. I'm sorry, I was on 13.

2 Q. Let me start over again.

3 A. Okay.

4 Q. Are you with me now?

5 A. Yes.

6 Q. Comment from Mr. Gordon, Greg Gordon at
7 the top, it says, "Thanks, hello. Morning. So when
8 looking at the generation assets in Ohio, is it fair
9 to say that based on the current level of revenues
10 they are generating that they basically make no
11 money?

12 MS. SPILLER: Objection, your Honor.

13 MR. KUTIK: I'm not finished.

14 Q. And then Ms. Good, who is the CFO, says
15 "You know, Greg, that's a good question. I think the
16 coal assets are challenged in this environment with
17 low power prices. I think our team in Ohio has done
18 an extraordinary job of optimizing around those
19 assets and delivering returns that are consistent
20 with what you would expect elsewhere. They have also
21 been very aggressive on O&M and continue to be.

22 "One of the things we like about the
23 settlement is with the stability charge it does
24 provide a bit of strength to the earnings over the
25 next three years."

1 That was Ms. Good's commentary to the
2 question about whether the generation assets
3 currently make no money.

4 MS. SPILLER: Your Honor, if I may now
5 that Mr. Kutik has finished, the first part of the
6 question is clearly hearsay. The second part of the
7 question I would submit is hearsay as well. Again,
8 far beyond the field of Mr. Trent's proceeding in
9 this case in talking about matters that are not
10 relevant to his testimony.

11 EXAMINER PIRIK: Mr. Kutik.

12 MR. KUTIK: Your Honor, while it clearly
13 isn't hearsay in that this is a document that was
14 obviously generated by the company and is kept by the
15 company in terms of its investor relations, I think
16 it's fairly clear on its face. And I believe, your
17 Honor, with respect to the relevance in terms of the
18 company's perceptions of their finances at the time
19 of the stipulation are certainly relevant to the
20 arguments that we want to make in this case, your
21 Honor. They knew what they were getting into in the
22 stipulation, and now, they are seeking another bite
23 at the apple.

24 EXAMINER PIRIK: Mr. Trent, were you on
25 this conference call?

1 THE WITNESS: I don't know. I do not
2 recall. I'm on some, but I just don't know if I was
3 on this one or not.

4 MS. SPILLER: Your Honor, if I may, I
5 believe the front page identifies participants.

6 MR. KUTIK: And, your Honor, whether he
7 was there or not, it's irrelevant in terms of the
8 evidentiary nature of this document. It is clearly a
9 company document, and these are statements being made
10 by his fellow management that he can either disclaim
11 whether he knows anything about it or he can agree to
12 them. That's what we are talking about here.

13 MS. SPILLER: Your Honor, if I may, I
14 don't believe being a company document renders
15 something not hearsay. I think certainly a
16 fundamental evidentiary rule is that hearsay is an
17 out-of-court statement. These statements have not at
18 all been attributed to Mr. Trent. There has been no
19 foundation laid for the document, and Mr. Kutik
20 simply is reading commentary in the document seeking
21 to authenticate its evidentiary value here through
22 Mr. Trent.

23 MR. KUTIK: And we talked about the
24 transcripts, your Honor, and the witness has
25 authenticated the transcripts.

1 EXAMINER PIRIK: I am going to overrule
2 the objection and allow the witness to answer to the
3 best of your understanding.

4 Q. (By Mr. Kutik) Do you have the question
5 in mind, sir?

6 A. No.

7 MR. KUTIK: I don't either.

8 May we have the question read, your
9 Honor.

10 (Record read.)

11 A. I can't confirm or deny that that -- the
12 accuracy of the transcript, certainly say that first.
13 But what I would say is certainly at the time the
14 returns that we were thinking about with respect to
15 these assets were -- we knew they weren't great in
16 our minds, which I think was what Lynn was trying to
17 communicate and as I recall, but we certainly were
18 not contemplating this spiral that has, in fact,
19 taken place, the spiral downward.

20 Q. Well, later on in this transcript
21 Mr. Gordon, same page, asked this question: "Would
22 you characterize the capacity or the -- would you
23 characterize the revenue stream that you are asking
24 for being at a level that would allow you to earn a
25 return commensurate with what you would expect from a

1 regulated asset? Or is the math different?"

2 And then the question gets bucked to
3 Mr. Rogers, who says, "Yes. I think the math is
4 different. I think the actual ROE is lower than what
5 you would expect from a regulated business. I mean,
6 that is the reality of the settlement."

7 So was that consistent with your
8 understanding of the company's expectations at that
9 time, correct?

10 A. Well, my expectations at the time were
11 that it was not going to produce -- we were not going
12 to be producing a return with respect to DE-Ohio that
13 was as strong as the regulated returns that we were
14 seeing that were, you know, some of the double
15 digits. We were not anticipating what's actually
16 happened, the downward spiral down into negative
17 returns.

18 Q. Now, Mr. Gordon, continuing on page 13,
19 asked the following question "so if I were to
20 summarize it in nonfinancial terms, assuming this
21 settlement is approved, it makes the assets
22 financially viable in the transition?"

23 And Mr. Rogers agreed with that, correct?

24 A. I don't think that's how I would read it.
25 He starts out saying, "I think that is true. But I

1 think" -- and then it cuts off so. Again, we were
2 contemplating at this time that the returns would not
3 be stellar but not what -- what happened.

4 Q. Right. And you contemplated that the
5 assets could be financially viable in transition --
6 in the transition, correct?

7 A. Well, again, I think that Jim did not
8 give a full answer here because he was going to
9 qualify that answer, it appears to me, and it got cut
10 off.

11 Q. Were you at an analyst meeting this year?

12 A. Yes.

13 Q. Ms. Good, the executive VP and chief
14 financial officer, provided a presentation at that
15 meeting?

16 A. Yes, she did.

17 Q. Financial overview?

18 A. Yes.

19 MR. KUTIK: May I approach?

20 EXAMINER PIRIK: Mr. Kutik, is this a
21 good time to take a break, or are you close to?

22 MR. KUTIK: Well, your Honor, I am
23 towards the end of my examination, but if you want to
24 take a break, that's perfectly fine.

25 EXAMINER PIRIK: I think it might be a

1 good time just to take a lunch break. We have been
2 here for a few hours so how about if we reconvene and
3 take to 1:45.

4 MR. KUTIK: Thank you, your Honor.

5 MS. SPILLER: Thank you, your Honor.

6 (At 12:28 p.m., a lunch recess was taken
7 until 1:45 p.m.)

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Monday Afternoon Session,
April 15, 2013.

- - -

EXAMINER PIRIK: We'll go back on the
record. We do have a pending motion, and so now that
we are back on the record, we are going to entertain
that motion.

Ms. Grady.

MS. GRADY: Thank you, your Honor. At
this time, your Honors, we would move under 4901-1-23
of the Ohio Administrative Code to compel the
deposition of Mr. Luciani. Mr. Luciani is the
consultant retained by the staff to present direct
testimony, and we are seeking to have conduct
Mr. Luciani's deposition prior to Mr. Luciani
providing direct testimony in this proceeding.

At this point, your Honor, OCC, OEG, IEU,
and FES has exhausted all reasonable means of
resolving this issue with the staff. The staff has
rejected both formal depositions as well as informal
questioning of its witness. The basis for the motion
is as follows, your Honor: Mr. Luciani is an
independent consultant retained by the staff. He was
retained by the staff on March 26 of this year.
Under 4903.082 parties are entitled to ample

1 discovery rights. Specifically, Section 4901.121
2 allows any party to a PUCO proceeding to take the
3 testimony of any other party or person by deposition
4 upon oral examination. The only exception is that a
5 member of the PUCO staff may not be deposed.

6 Mr. Luciani is not a member of the PUCO
7 staff. He is an independent consultant, therefore,
8 the exception does not apply. As the Commission has
9 noted, most recently in Case No. 12-1682-EL-AIR by
10 entry denying OCC's interlocutory appeal dated March
11 20, 2013, the process of deposing witnesses has
12 proven resourceful because it enables parties to
13 cross-examine witnesses and to focus their questions
14 adhering to those issues that are relevant to the
15 proceeding. The Commission recognizes that the
16 depositions can assist with the efficiency of the
17 overall proceeding.

18 The information that we are seeking
19 through the deposition of Mr. Luciani is relevant.
20 Even though Mr. Luciani indicates that the staff does
21 not support the cost-based capacity rate, it presents
22 an assessment of what the appropriate cost-based
23 capacity rate should be. The objections that the
24 staff has raised is that this is --

25 EXAMINER PIRIK: Ms. Grady, can you push

1 your button. There you go, push it off and back on.

2 MS. GRADY: The objections that the staff
3 has raised is that this is a slippery slope that they
4 do not want to go down. They do not want to allow a
5 deposition to go forward of the independent
6 consultant.

7 Your Honor, we would submit that we are
8 not going down a slope but we are exercising our
9 discovery rights under 4901-1-21, and given the
10 discrete circumstances here, the deposition should be
11 permitted to go forward.

12 And if I may take a moment to put this
13 all in context, the -- the timing, of course, is not
14 optimal, but we believe it is necessitated under the
15 circumstances in this case. Per the October 3, 2012,
16 order, the staff's testimony was originally due when
17 all the other intervenors' testimony was due. You
18 may recall that at the prehearing conference in
19 March 7, 2013, the staff requested to be given an
20 additional week until April 2, 2013, to file its
21 testimonies.

22 The intervenors then proceeded to file
23 testimony on March 26, 2013. Then the staff asked
24 for a second extension and was given another week
25 until April 9, 2013.

1 At the time the staff asked for its
2 second request for extension OCC, OEG, and IEU did
3 not oppose but sought to have a one-week continuance
4 in the hearing to assess and respond to the staff's
5 testimony. That continuance was denied by the -- by
6 the attorney examiners on April 1, 2013. The parties
7 received Mr. Luciani's testimony on April 9 after
8 4:00 p.m. with no workpapers.

9 On April 10, Mr. Darr contacted the staff
10 attorneys and requested that the staff make
11 Mr. Luciani available for informal discussions. On
12 April 11, the staff indicated there would be no
13 direct access to Mr. Luciani provided to the
14 intervenors.

15 We received workpapers from Mr. Luciani's
16 testimony on the morning of the 12th. We filed our
17 notice of deposition later that day, and the staff
18 this morning indicated that they would not honor the
19 notice to deposition. At this time we would move for
20 a motion to compel and request that Mr. Luciani be
21 permitted to be deposed by the intervenor parties.

22 Thank you.

23 EXAMINER PIRIK: Thank you. Does any
24 other party wish to comment on the motion in chief?

25 MR. KUTIK: Yes, your Honor, if we may be

1 heard.

2 EXAMINER PIRIK: Yes.

3 MR. KUTIK: This case differs from the
4 rule that usually is applied in this case in that
5 we're not dealing with a staff witness. We are
6 dealing with a person who is a consultant. Part --
7 part of the purpose of the rule was not to burden
8 staff, not to have their time burdened with
9 discovery.

10 That policy or that fundamental rationale
11 for the rule doesn't apply in this case. Further,
12 the rationale also doesn't apply in terms of the
13 nature of the testimony itself. These are not just
14 calculations or positions of statement. These are
15 outcomes of fairly complex models that cannot be
16 understood simply by review of the workpapers.

17 So it is fair to the parties, all of the
18 parties in this case, to get some additional
19 understanding of Mr. Luciani's calculations and the
20 basis for his calculations before he takes the stand
21 rather than having to go through that in open
22 hearing.

23 We then -- we, therefore, ask that we
24 have an opportunity to question Mr. Luciani whether
25 it's on -- in the nature of a deposition, or I would

1 add, in the nature of just an interview. We used
2 that process -- the FirstEnergy Ohio utilities used
3 that process in a recent AER audit where we were
4 given access and all the parties were given access to
5 the staff's consultant, and we took a few hours
6 able -- where we were able to ask some questions that
7 clarified the issues for us, and we were able to
8 expedite our examinations in that case.

9 EXAMINER PIRIK: Thank you. Any other
10 comments on behalf of movants?

11 Staff.

12 MR. BEELER: May I respond, your Honor?

13 EXAMINER PIRIK: Yes.

14 MR. BEELER: Thank you. Mr. Luciani and
15 the staff opposes the motion and believes that this
16 is similar to any other Commission proceeding.
17 Mr. Luciani is an agent of the staff as hired under
18 4901.19, employed by the Commission as an expert and,
19 therefore, Mr. Luciani is subject to the same -- the
20 same standards as any other staff member under
21 4901.16.

22 And, furthermore, the -- the functions
23 that Mr. Luciani is performing here are functions
24 that could otherwise be performed by staff -- sorry,
25 your Honor -- performed by staff had they had the

1 resources at the time to perform -- to perform
2 this -- this type of analysis. And then,
3 furthermore, the -- the rules that are stated are
4 obviously 49 -- 4901-1-16, which exempts staff from
5 the rules in the Administrative Code. Those rules
6 are 4901-1-16 to 4901-1-24, and that's precisely the
7 rule Ms. Grady cited in her motion to compel.

8 And, furthermore, under the more specific
9 Section 4901-1-21 that specifically speaks to
10 depositions, the staff is exempted from that -- from
11 that section as well. Again, the parties will
12 have -- would have an opportunity to cross
13 Mr. Luciani, and that's what is permitted under this
14 proceeding. Thank you.

15 EXAMINER PIRIK: Thank you. I know
16 Mr. Kutik mentioned two avenues, one being a
17 deposition itself and one being staff permitting a
18 type of an interview of the -- of the witness. Do
19 you have anything with regard to the interview
20 itself?

21 MR. BEELER: The staff believes that
22 interview, again, to use Ms. Grady's words, were --
23 would be a slippery slope. It's something akin to a
24 deposition, and staff would oppose that as well. Or
25 something akin to discovery generally.

1 EXAMINER PIRIK: The examiners agree that
2 the consultant is -- was hired on behalf of staff and
3 acts as an agent of staff; therefore, is not subject
4 to discovery under the rules of the Commission. That
5 being said; therefore, you know, a deposition itself
6 is not something that we would require in this case,
7 and we would not -- we would deny the Motion to
8 Compel with regard to a deposition.

9 However, given the fact that his
10 testimony was filed so closely to the hearing date
11 and in order to give parties an opportunity to
12 actually have some discussion with the witness prior
13 to going on the stand so it has some idea of where
14 the witness is coming from, we would ask staff to try
15 to work something out so that there would be the
16 possibility of, perhaps, a teleconference with the
17 witness so that parties would have the opportunity to
18 ask him questions.

19 It would be a nontranscribed opportunity
20 because it's not a deposition, and it is not a piece
21 of discovery, but we would ask staff to look into
22 that and see whether or not that would be possible to
23 do before the witness takes the stand. We think that
24 would make the testimony itself on the day of the
25 witness taking the stand a little bit more efficient

1 and hopefully would help parties to know the focus of
2 their cross-examination at that time.

3 So that's our request on behalf of staff.
4 But as far as a Motion to Compel, we are denying the
5 motion to compel.

6 All right. I believe Mr. Trent is still
7 on the stand, and Mr. Kutik is still crossing.

8 MR. KUTIK: Thank you, your Honor. May I
9 proceed?

10 EXAMINER PIRIK: Yes.

11 - - -

12 CROSS-EXAMINATION (Continued)

13 By Mr. Kutik:

14 Q. Good afternoon, Mr. Trent.

15 A. Good afternoon.

16 Q. I want to go back to a couple of things
17 very briefly. We mentioned earlier that the company
18 had at least planned to meet its FRR obligations
19 through not only its own resources but through
20 bilateral contracts, correct?

21 A. Correct.

22 Q. And that is how the company so far has
23 fulfilled those obligations.

24 A. Yes.

25 Q. And some of those bilateral contracts are

1 with Duke affiliates or a Duke affiliate.

2 A. That's correct.

3 Q. We earlier -- changing topics, we earlier
4 looked at a draft of a White Paper and a PowerPoint
5 that apparently were presented to the TRC. Do you
6 remember that?

7 A. Yes.

8 Q. Exhibits 4 -- FES Exhibits 4 and 5.

9 A. Yes.

10 Q. And would it be fair to say that you
11 cannot remember the TRC relying on any other
12 documents relating to the potential migration of DEO
13 to PJM?

14 MS. SPILLER: I am going to object. It
15 misstates Mr. Trent's former testimony.

16 EXAMINER PIRIK: I'll overrule the
17 objection and let the witness clarify if it does
18 misstate.

19 A. Okay. So what I testified before was
20 that, you know, we had seen these documents. I can't
21 recall whether -- I think there actually were other
22 documents. In fact, I think my testimony referred to
23 some other documents related to this issue.

24 I can also tell you definitively there
25 were many discussions that took place that, you know,

1 were -- included these points, but we had furthermore
2 detailed discussions, so the TRC did not just rely
3 on, you know, the bullet point type information
4 that's in the PowerPoint. We had several -- several
5 discussions as we addressed this.

6 Q. Mr. Trent, do you have the excerpts of
7 the transcript from Case No. 10-2586 before you?

8 A. I believe so. Is that Duke Ohio Volume
9 IV?

10 Q. Yes.

11 A. I see that.

12 Q. And as we talked earlier, this is an
13 excerpt for part of your testimony you gave at the
14 Commission in that case, correct?

15 A. Yes.

16 Q. And we earlier looked at page 763 of that
17 transcript, did we not?

18 A. Yes.

19 Q. And on that page you indicated you were
20 familiar with certain documents that were presented
21 to you, correct?

22 A. Say that one more time.

23 Q. That you were familiar with certain
24 documents presented to you that were marked as
25 Exhibits 1 through 5A, correct?

1 A. Yes. There's testimony regarding those
2 documents in here.

3 Q. Right. And, again, you testified that
4 you -- at that page that you were familiar with those
5 documents, correct?

6 A. Well, if I might read from the testimony,
7 what I said was, "I'm familiar with 1A and 2A. 3A
8 I've seen. I can't recall whether I have seen this
9 before this proceeding. I may not have. 4A I'm
10 familiar with. 5A I believe I've seen, yes."

11 Q. Okay. And then you were asked so,
12 Mr. Trent: "Are these the documents the Transaction
13 Review Committee relied upon to support its
14 recommendations to exit the Midwest ISO and join PJM?

15 "Answer: Certainly the White Papers and
16 the PowerPoint are things that the TRC had in front
17 of them and looked at, you know. I wouldn't say that
18 we relied on every aspect of what's in there, but
19 this is the information that was presented to us
20 during the review."

21 A. No. You inserted the word "the" after
22 the word "is."

23 Q. All right. Well, thank you for that
24 correction. I am not finished reading.

25 A. Please read it accurately.

1 Q. "Question: Are there any other documents
2 that you relied" on -- "upon in making that decision
3 to exit the Midwest ISO?

4 "Answer: Not documents that I remember."
5 That was your testimony then, correct?

6 A. Yes, but I want to clarify what I said in
7 that prior answer was -- yeah, well, the transcript
8 says what I testified to, yes.

9 Q. Thank you.

10 A. But it didn't -- you did leave out a
11 word, though.

12 Q. Thank you for correcting that.

13 MR. KUTIK: Now, your Honor, at this
14 point may I approach?

15 EXAMINER PIRIK: Yes.

16 MR. KUTIK: Your Honor, we would like to
17 have marked as FES Exhibit 14 a document that says
18 "Financial Overview, Lynn Good, Executive VP and
19 Chief Financial Officer." It appears to be a
20 PowerPoint presentation.

21 EXAMINER PIRIK: The document is so
22 marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. (By Mr. Kutik) Mr. Trent, I've handed you
25 what the court reporter has marked as FES Exhibit 14,

1 and this appears to be a PowerPoint presentation that
2 was given at an analyst meeting in 2013, correct?

3 A. Yes.

4 Q. And you said earlier that you have
5 attended analyst meetings in this year, correct?

6 A. Yes.

7 Q. And does this appear to be an -- a
8 financial -- a presentation of various aspects --
9 financial aspects of Duke Energy?

10 A. It's a financial overview, yes.

11 Q. And does it say anywhere in this
12 financial overview that the condition of Duke Energy
13 Ohio is in dire condition?

14 A. Does it contain those words, those
15 specific words?

16 Q. Yes.

17 A. This -- well, I don't think the
18 presentation says that.

19 Q. Does it say anywhere -- it doesn't say
20 anywhere in this presentation, does it, even that
21 Duke Energy Ohio was expected to have a negative rate
22 of return?

23 A. No. The --

24 Q. Is the answer "no"?

25 A. Well, no, I can't. This presentation,

1 for the most part, was focused on the segments which
2 is different than -- than DEO, Duke Energy Ohio, so I
3 don't think it was addressing that specifically. But
4 to the extent there is a location that the return of
5 Duke Energy Ohio is not negative, I don't think this
6 presentation would support anything that's different
7 from that its a negative.

8 Q. There is nothing in here that shows Duke
9 Energy Ohio's rate of return is negative, correct?

10 MS. SPILLER: Objection, asked and
11 answered.

12 EXAMINER PIRIK: I'll overrule the
13 objection.

14 A. The SEET filing we made this morning
15 shows the return is negative. I don't know that --

16 MR. KUTIK: Move to strike, your Honor.

17 A. I don't know specifically in this
18 presentation it says anything about it because that
19 was not what we were focusing on, Duke Energy Ohio as
20 an entity, as much as a segment.

21 MR. KUTIK: Move to strike.

22 EXAMINER PIRIK: Motion denied.

23 However, Mr. Trent, I think it's a simple
24 question if you can just answer the question.

25 THE WITNESS: I will try. It's a long

1 presentation with a lot of material.

2 MR. KUTIK: May I have the question read
3 and put to the witness again, please, your Honor.

4 EXAMINER PIRIK: Yes.

5 Do you need a moment, though, Mr. Trent
6 to read over the presentation?

7 THE WITNESS: Sure. That would help.

8 (Record read.)

9 A. There's nothing in here that references
10 Duke Energy's earnings, Duke Energy Ohio's earnings
11 one way or the other in returns of negative or
12 positive.

13 Q. And this presentation was given sometime
14 in 2013?

15 A. Yes, but -- as I talked before, we report
16 financials on a segment basis and discuss with the
17 financial committee that.

18 Q. My question was clearly about time, sir.

19 A. It was in 2013. I think you already
20 asked me that.

21 Q. It was in the first quarter of this year?

22 A. Yes.

23 MR. KUTIK: I have no further questions.
24 Thank you, Mr. Trent.

25 EXAMINER PIRIK: Thank you.

1 Ms. Grady.

2 MS. KERN: Yes.

3 EXAMINER PIRIK: Yes.

4 - - -

5 CROSS-EXAMINATION

6 By Ms. Kern:

7 Q. Good afternoon, Mr. Trent. I'm Kyle
8 Kern. I am with the Office of Consumers' Counsel.

9 A. Good afternoon.

10 Q. Mr. Trent, you are currently employed by
11 Duke Energy Business Services as executive president
12 and chief operating officer of regulated utilities
13 for Duke Energy Corporation; is that correct?

14 A. I think you may have left "vice" out,
15 executive vice president, but otherwise it's correct.

16 Q. Thank you. And you received your
17 Bachelor degree in electrical engineering from
18 Southern Methodist University; is that correct?

19 A. Yes, I did.

20 Q. And then you went on to obtain your juris
21 doctorate from the University of Texas College of
22 Law; is that correct?

23 A. That's correct.

24 Q. And you are currently licensed to
25 practice law in the states of North Carolina and

1 Texas; is that correct?

2 A. Yes, that's correct. The Texas license I
3 am currently inactive, which you can choose an
4 inactive status if you are not practicing there, but
5 the license is still there.

6 Q. Okay. Thank you. And you are also
7 licensed to practice in front of numerous federal
8 courts and the United States Supreme Court; is that
9 correct?

10 A. Yes.

11 Q. And the purpose of your testimony in this
12 proceeding, as stated on page 3, lines 15 through 18,
13 is to "provide an overview of the Company's
14 Application, which requests approval of a cost-based
15 charge to compensate the Company for providing
16 capacity service in connection with its obligations
17 as a fixed resource requirement entity in PJM
18 Interconnection, LLC." Did I read that correctly?

19 A. You did.

20 Q. Okay. And you believe that this charge
21 is a wholesale charge; is that correct?

22 A. Yes.

23 Q. And you state that on page 3, line 20.

24 A. Yes.

25 Q. And if Duke's request is approved by the

1 PUCO, the company will be able to defer part of its
2 capacity costs; is that your understanding?

3 A. Yes, that's the request that we are
4 making.

5 Q. The cost that Duke is seeking to defer
6 would include the difference between the final zone
7 capacity price CRES providers are currently being
8 charged per the Duke ESP stipulation and Duke's
9 embedded costs for providing capacity; is that your
10 understanding?

11 A. Well, a couple of things. I think we are
12 on the same page. When you refer to Duke, you are
13 talking about Duke Energy Ohio?

14 Q. Duke Energy Ohio.

15 A. And then with respect to the calculation,
16 you've referenced CRES providers, but I need to
17 confirm whether we also -- would also set the
18 amount -- I think you're right because I think the
19 auction providers would be under a different
20 scenario, yeah.

21 Q. Thank you. And the capacity costs
22 requested to be deferred, if approved, will be
23 charged to retail customers; is that your
24 understanding?

25 A. Yes.

1 Q. And retail customers as used in your
2 understanding would be companies -- the company Duke
3 Energy Ohio's distribution customers; is that
4 correct?

5 A. Yes.

6 Q. Okay. Do you recall this morning when
7 Mr. Kutik was examining you and you discussed a
8 document that has been marked as FES Exhibit 9, and
9 it's the initial brief of Duke Energy Commercial and
10 Duke Energy Retail from the AEP capacity Case No.
11 10-2929?

12 A. I remember questions regarding that, yes.

13 Q. If you could locate that document.

14 A. Okay. I have it. It's Exhibit 9, right?

15 Q. Yes, thank you. And if you could turn to
16 page 7 of FES Exhibit 9, and I'm looking in about the
17 middle of the page, there's a sentence that begins
18 "Thus," and it states, "Thus, capacity is similarly a
19 competitive service subject to competitive pricing
20 rather than traditional cost-of-service pricing."

21 Do you see that -- that sentence?

22 A. I do, and that would be similar to what I
23 talked about before, that that was a legal argument
24 that we were making that we did not prevail on.

25 Q. Correct. And I believe that you

1 indicated to Mr. Kutik that there was Ohio law or
2 Ohio precedent, I don't recall the term you used,
3 that rejected this argument that Duke made; is that
4 correct?

5 A. Well, what I referred to is that -- that
6 the Ohio Commission ruled in this case taking a
7 position that the capacity that was being provided
8 was, in fact, a noncompetitive wholesale service, and
9 so that was the basis of my statement that there was
10 support for -- for this in Ohio.

11 Q. Thank you for that, and I wanted to
12 clarify that the Commission ruling that you were
13 speaking of earlier with Mr. Kutik was the PUCO's
14 ruling in the 10-2929 proceeding, the AEP capacity
15 case; is that correct?

16 A. Yes.

17 Q. Okay. Thank you. And if you could turn
18 to page 9 of your testimony, please.

19 A. Okay.

20 Q. At lines 19 through 21, you have a Q and
21 A, and it begins, you state, "Has the Commission
22 determined whether an FRR entity's capacity services
23 are competitive retail or noncompetitive wholesale
24 services?" Do you see that?

25 A. Yes.

1 Q. Okay. And if we follow on to page 10 of
2 your direct testimony at lines 1 and 2, we can see
3 the answer, and you state, "Yes, it has. The
4 Commission has declared that the capacity service
5 provided by an FRR entity such as Duke Energy Ohio is
6 a noncompetitive wholesale service." Is that
7 correct?

8 A. Yes.

9 Q. Okay. And then you have a footnote,
10 footnote 8 at the bottom of the page, where you cite
11 to two documents. Would you agree?

12 A. Yes.

13 Q. Okay. And, first, you cite to the
14 July 2, 2012, Commission Opinion and Order from the
15 AEP 10-2929 proceeding, correct?

16 A. Correct.

17 Q. And you cite specifically to page 13 of
18 that decision.

19 A. Yes.

20 Q. Okay. And do you have a copy of the AEP
21 July 2 Opinion and Order by the Commission with you,
22 sir?

23 A. I don't -- I don't think so.

24 Q. Okay.

25 MS. KERN: Your Honors, may I approach?

1 EXAMINER PIRIK: Yes.

2 MS. KERN: OCC would like to have this
3 document marked as OCC Exhibit 1.

4 EXAMINER PIRIK: The document will be so
5 marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. (By Ms. Kern) Mr. Trent, can you please
8 turn to page 13 of the document that's been marked
9 OCC Exhibit 1, please.

10 A. Yes.

11 Q. And if we look at the first paragraph on
12 the page that begins "IEU-Ohio," I want to turn your
13 attention specifically to the last sentence of that
14 paragraph.

15 A. Okay.

16 Q. And that sentence reads, "Accordingly, we
17 find it unnecessary to determine whether capacity
18 service is considered a competitive or noncompetitive
19 service under Chapter 4928 Revised Code." Did I read
20 that correctly?

21 A. Yes. Yes. It does refer to the capacity
22 service being a wholesale rather than retail, but
23 you've read that correctly.

24 Q. Okay. So you would agree with me that
25 the Commission did not make a determination because

1 they found it unnecessary to opine as to whether
2 capacity service is noncompetitive or competitive?

3 MS. SPILLER: I am going to object to the
4 extent it misstates the Commission's order.

5 MS. KERN: Your Honor, we just read the
6 sentence into the record, and Mr. Trent agreed that I
7 read it correctly.

8 EXAMINER PIRIK: I believe the order
9 speaks for itself.

10 Q. Okay. Mr. Trent, is there any other spot
11 on page 13 of the 10-2929 July 2 order that you feel
12 the Commission defined capacity service as
13 competitive or noncompetitive?

14 A. If you want to take a moment to review
15 it, I can, yeah. I do not see anything specifically
16 on this page that references competitive versus
17 noncompetitive. I do know in our case that the FRR
18 entity is providing all of the capacity, but I don't
19 see anything on this page about competitive versus
20 noncompetitive.

21 Q. Thank you, Mr. Trent.

22 MS. KERN: I would move to strike his
23 response when he got past the point of saying he
24 didn't see anything else on the page because that was
25 responsive to my question.

1 EXAMINER PIRIK: Motion denied.

2 Q. And, Mr. Trent, if we look at page 10 of
3 your testimony, again, at footnote 8, the second
4 document that you've cited to there is a Motion to
5 Dismiss submitted on behalf of the Public Utilities
6 Commission of Ohio, correct?

7 A. Yes.

8 Q. Okay.

9 MS. KERN: Your Honors, may I approach or
10 Ms. Grady approach?

11 EXAMINER PIRIK: Yes.

12 MS. KERN: I would like to have this
13 document marked as OCC Exhibit 2.

14 EXAMINER PIRIK: The document is so
15 marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. (By Ms. Kern) Mr. Trent, if you want to
18 take a second to review this document and make
19 certain this is the document that you referenced in
20 footnote 8?

21 A. Yes.

22 Q. Okay. So you would agree this is the
23 document that you cited in support of your belief
24 that the Commission has declared that capacity
25 service is a noncompetitive wholesale service; is

1 that correct?

2 A. Yes.

3 Q. Okay. If you could please turn to page 9
4 of the Motion to Dismiss, OCC Exhibit 2.

5 A. Yes.

6 Q. And in your testimony when you said that
7 "The Commission declared that capacity service
8 provided by an FRR entity such as Duke Energy Ohio is
9 a noncompetitive, wholesale service," were you citing
10 specifically to the block quote in the middle of the
11 page by Commissioner Roberto that appears in her
12 concurring and dissenting opinion?

13 A. Not necessarily, no. I don't think I was
14 referring to that. But in the paragraph above that
15 there's a reference to -- there's a theory that the
16 Commission lacked jurisdiction, and then it goes on
17 assumes that capacity service is a competitive retail
18 electric service, and then the next sentence says,
19 "This conflicts with the Commission's expressed
20 findings and uncontested facts established in the
21 evidentiary record below." So from my view that ties
22 the two concepts together. Their findings were it
23 was not a competitive retail service.

24 Q. Mr. Trent, the sentence that you pointed
25 to that begins "This conflicts with the Commission's

1 Commission's express findings and the uncontested
2 facts established in the evidentiary record below,"
3 would you agree with me -- or with me that there is a
4 citation then to Commissioner Roberto's concurring
5 decision to support this statement in this Motion to
6 Dismiss?

7 MS. SPILLER: I am going to agree to the
8 extent that mischaracterizes the document.

9 EXAMINER PIRIK: I will allow the witness
10 to answer.

11 A. Well, I was sort of reading this sentence
12 order here, and I appreciated the sentence order. It
13 was saying the Commission -- the argument that was
14 being made was that the Commission lacked authority
15 and that that argument assumed that capacity service
16 is a "competitive" retail electric service.

17 And in the next sentence it says, "This
18 conflicts with the Commission's express findings,"
19 and so from my standpoint, the competitive -- they
20 were saying the assumption of it being a competitive
21 service is in conflict with their express findings.

22 Q. And do you know, sir, what those express
23 findings were? Can you point me to those express
24 findings?

25 A. Well, I mean, I can't point to all of

1 them. Obviously, it's a lengthy document, but that's
2 how I read this, and we were citing to this
3 particular page in my testimony.

4 Q. And we established that you are an
5 attorney, sir. Is that correct?

6 A. Yes. Not practicing right now, but I'm
7 licensed.

8 Q. Okay. Fair enough. And is there a
9 difference in your opinion between a motion to
10 dismiss filed by the Public Utilities Commission of
11 Ohio and a ruling or opinion and order that's issued
12 by the Public Utilities Commission of Ohio?

13 MS. SPILLER: Your Honor, if I may
14 interject and -- interject and lodge an objection,
15 Mr. Trent is not here in his capacity as an attorney.
16 He's acknowledged although he has licenses, he is not
17 a practicing attorney, and we are asking now for a
18 legal opinion from this individual.

19 EXAMINER PIRIK: Overruled.

20 A. So are you -- the question is is an order
21 more powerful in terms of legal sort of precedent
22 than a Motion to Dismiss filed by the Commission?

23 Q. Does a pleading represent an express
24 finding of the Commission?

25 A. I don't -- I don't know if it represents

1 an express finding of the Commission, I mean, but I
2 would generally defer to the Commission's sort of
3 characterization of -- in a pleading as to what its
4 findings were.

5 Q. And your characterization, again, I
6 believe is in the sentence that says, "This conflicts
7 with the Commission's express findings that the
8 uncontested facts established in the evidentiary" --
9 "facts established in the evidentiary record below,"
10 correct?

11 A. I'm sorry. Could you repeat that one
12 more time?

13 MS. KERN: Could you repeat my question,
14 please.

15 (Record read.)

16 A. Yes.

17 Q. Can you, as you sit here today, point me
18 to the express findings of the Commission in its
19 order in 10-2929 where it found that capacity service
20 was noncompetitive -- is noncompetitive?

21 A. Without going through the entire order I
22 can't, but I would note that they did make an express
23 finding that I see here that the capacity obligations
24 are not a retail electric service as defined by Ohio
25 law.

1 Q. Okay. Mr. Trent, if you look at page 9
2 where Commissioner Roberto's concurring and
3 dissenting decision is noted -- or is cited to in the
4 middle of the page, if you look at the italicized
5 text, it says, "Additionally, I find that because the
6 fixed resource requirement is a noncompetitive retail
7 electric service, the Commission must establish the
8 appropriate rate based upon traditional costs of
9 service principles." Do you consider that quote that
10 I just read to be an expressed finding of the
11 Commission?

12 A. No.

13 Q. Why not?

14 A. Well, I just didn't consider it a
15 concurring -- opinion necessarily to be an express
16 finding.

17 Q. Okay. Thank you. Mr. Trent, you were
18 involved in Duke Energy Ohio's electric security
19 plan, Case No. 11-3549; is that correct?

20 A. I'm sorry. Say that one more time.

21 Q. You were involved in Duke Energy Ohio's
22 electric security plan proceeding?

23 A. Yes.

24 Q. And you filed direct testimony in that
25 proceeding; is that correct?

1 A. Yes.

2 Q. And you're familiar then with the
3 application filed by Duke Energy Ohio in its ESP
4 proceeding; is that correct?

5 A. Yes.

6 Q. And you discussed with Mr. Kutik that in
7 the application Duke Energy Ohio proposed a
8 cost-based rate for capacity that it was providing as
9 an FRR entity; is that correct?

10 MS. SPILLER: Objection, asked and
11 answered.

12 A. Yes.

13 EXAMINER PIRIK: Overruled.

14 Q. And the Duke ESP, Duke Ohio ESP, case
15 resulted in a stipulation; is that correct?

16 A. There was a stipulation in that case.
17 The stipulation ended up being very, very difficult
18 from the application.

19 MS. KERN: I would move to strike
20 everything after "yes," your Honor.

21 EXAMINER PIRIK: Motion denied.

22 Q. You -- you've reviewed that stipulation;
23 is that correct?

24 A. I've reviewed it, yes.

25 Q. And you were one of the individuals who

1 gave financial approval for the Duke Ohio ESP
2 stipulation?

3 A. I was involved in the approval process,
4 yes.

5 Q. And there is no provision in that
6 stipulation allowing for Duke Energy Ohio to collect
7 its embedded costs of capacity; is that your
8 understanding?

9 A. Well, as I've testified before, the -- in
10 my view the stipulation did not address what Duke
11 Energy Ohio could or could not recovery for the
12 provision of a wholesale service. So there was a
13 provision that dealt with how capacity payments would
14 funnel through rider RC, but I do not -- did not view
15 those provisions as dealing with the payment to Duke
16 Energy Ohio for the provision of this wholesale
17 capacity service.

18 Q. My question is a little bit different.
19 It's that there is no provision in the stipulation
20 allowing Duke Energy Ohio to collect its embedded
21 costs of capacity.

22 MS. SPILLER: Objection, asked and
23 answered.

24 EXAMINER PIRIK: Overruled.

25 A. As I said, I don't think the stipulation

1 deals with the provision of wholesale capacity being
2 delivered by the company so it doesn't address that.

3 Q. Thank you. On page 4, line 7 of your
4 testimony, I'll let you get there, you state "Duke
5 Energy Ohio is not receiving just and reasonable
6 compensation for the capacity services it must
7 furnish as an FRR entity." Do you see that?

8 A. Yes.

9 Q. And generally would you agree that the
10 services an FRR entity furnishes are to provide
11 capacity for its entire footprint for the entire
12 period of time that an FRR plan is submitted?

13 A. That is part of it. There's more in
14 terms of an FRR entity in terms of having to identify
15 specific units and having to do it for 100 percent of
16 the load, so I agree that what you've described is
17 part of it, but I wanted to kind of elaborate a bit.

18 Q. Thank you.

19 A. Okay.

20 Q. Has the requirement to maintain and
21 provide capacity for Duke's entire footprint changed
22 since Duke Energy Ohio signed the settlement
23 agreement in the Duke ESP case?

24 A. In terms of the actual load I couldn't
25 comment on whether that's changed or not. In terms

1 of the obligation to provide wholesale capacity for
2 the load, I don't think that's changed.

3 Q. Thank you. And did we -- Mr. Kutik
4 established that you are familiar with PJM's
5 reliability assurance agreement; is that correct?

6 A. I can't say that I'm an expert on the
7 entire agreement, but I know what it is, and I am
8 generally familiar with it, yes.

9 Q. Well, I am actually going to cite you --
10 or refer you to page 8 of your testimony where you
11 cite the RAA -- or paragraph of it.

12 A. Right. Yes.

13 Q. And in the passage of the RAA that you've
14 cited on page 8 of your testimony, there is
15 essentially pricing alternatives available for FRR
16 entities that operate in states such as Ohio; would
17 you agree?

18 A. Yes.

19 Q. And one pricing alternative would be the
20 capacity price in the unconstrained portions of PJM;
21 would you agree?

22 A. Yes.

23 Q. And a second alternative would be where
24 an FRR entity makes a Federal Power Act 205 filing
25 requesting a change to a method based on costs?

1 A. With FERC, yes.

2 Q. With FERC, correct. And the final
3 mechanism would be if the state had a compensation
4 mechanism for the FRR entity, a state compensation
5 mechanism.

6 A. When the provision provides that that is
7 one method, state compensation mechanism, yes.

8 Q. Are you aware of any PUCO precedent that
9 requires a state compensation mechanism for one FRR
10 entity to apply to another FRR entity?

11 A. Well, the way that I would think about
12 that is in the AEP Ohio case in my view the
13 Commission established a precedent where they said if
14 you are an FRR entity and you are earning below
15 market, that you are entitled to recover under this
16 state the cost-based mechanism so that's in my view
17 precedent that would apply here.

18 Q. Did you read the Commission's October 17,
19 2012, entry on rehearing in the AEP capacity case?

20 A. I did. I scanned that one, yes.

21 Q. Are you familiar with the PUCO's
22 limitations that their decision -- they didn't
23 consider other FRR entities when they made their
24 decision in the AEP Ohio case?

25 A. Well, I would like to see the exact

1 language of the order but what I -- you know, what I
2 recall and my understanding of the order was
3 essentially that just because you are an FRR entity
4 doesn't necessarily indicate that you're going to be
5 entitled to specific recovery but what I also gleaned
6 from that and would expect would be that if you are a
7 similarly situated utility, then it would be
8 reasonable to expect that the Commission would uphold
9 its precedent and that's how I understood and
10 interpreted that subsequent order.

11 MS. KERN: Your Honor, I would move to
12 strike his response after him stating that he didn't
13 recall that language.

14 EXAMINER PIRIK: I am going to say motion
15 denied, but I also want to note since we are going
16 down the road of actually marking Commission orders,
17 which for citing purposes I think is a lot easier to
18 do it that way, and it may be that you are looking to
19 see if you have copies of it because I think that
20 that would benefit all of us and I think we need to
21 mark it as an exhibit since you are actually
22 questioning on it.

23 MS. KERN: Thank you, your Honor. And we
24 do have -- we're checking.

25 Your Honor, may we go off the record for

1 for just a minute while I get a copy of this?

2 EXAMINER PIRIK: Yes. You mean go off
3 the record as in take a break?

4 MS. KERN: Yes.

5 EXAMINER PIRIK: Why don't we just take a
6 5-minute break while we are getting a copy of this.

7 (Recess taken.)

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

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. (By Ms. Kern) Mr. Trent, you have what we
12 would like to have marked as OCC Exhibit 3, and it is
13 the Commission's October 17, 2012, Entry on Rehearing
14 in the AEP capacity proceeding.

15 A. Yes.

16 Q. And you indicated previously that you
17 have reviewed this entry on rehearing; is that
18 correct?

19 A. Yes; not in great detail but I have
20 reviewed it.

21 Q. Okay. And if I could have you turn to
22 page 32 of that Entry on Rehearing.

23 A. Okay.

24 Q. And the first full sentence at the top
25 in -- in the top paragraph it states, "The Commission

1 initiated this proceeding solely to review AEP Ohio's
2 capacity costs and determine an appropriate capacity
3 charge for its FRR obligations. We have not
4 considered the cost of any other capacity supplier
5 subject to our jurisdiction, nor do we find it
6 appropriate to do so in this proceeding."

7 Did I read that correctly?

8 A. Yes. And that is consistent with my
9 understanding before in that certainly I would have
10 understood we would have needed to make a filing to
11 have this precedent applied, but I still believe
12 this -- that I interpreted this as establishing a
13 precedent for a similar entity.

14 Q. Is there a specific point in the Opinion
15 and Order, the July 2 Opinion and Order, or this
16 Entry on Rehearing where the Commission states that
17 this is precedent for other FRR entities?

18 A. Well, you have --

19 Q. Or is that just your legal opinion after
20 reviewing these?

21 A. Yeah. I mean, it's just the way I
22 interpret it.

23 Q. Thank you.

24 A. The way the Commission --

25 Q. That was responsive to my question.

1 A. I would like to finish the response.

2 EXAMINER PIRIK: No, I think that's fine,
3 Mr. Trent. Thank you.

4 Q. All right. If we turn to page 24, lines
5 20 to 22 of your testimony, please, and specifically
6 lines 20 to 22 on page 24.

7 A. Okay.

8 Q. You testified as to the consequences of
9 Duke not receiving approval of a cost-based capacity
10 charge; is that correct?

11 A. Yes.

12 Q. And, first, you indicate that if the
13 proposals in the application are not approved, Duke
14 Energy Ohio will be forced into operating at a
15 significant financial loss, with projected annualized
16 returns on equity ranging from a negative 3.6 to a
17 negative 13.5; is that correct?

18 A. Yes.

19 Q. And the source of those projected
20 annualized returns on equity is Mr. Savoy's testimony
21 filed in this proceeding; is that correct?

22 A. Yes. Mr. Savoy would be the person who
23 can address that more -- in more detail.

24 Q. And would that be referring to Exhibit
25 BDS-3 of Mr. Savoy's testimony?

1 A. I don't know.

2 Q. And the returns on equity are derived
3 based on Duke's legacy generation assets, is that
4 correct, that are in Mr. Savoy's testimony?

5 A. I believe that the returns that he's
6 talking about here at the high end of 13.5 would be
7 the returns associated with the generation assets.
8 The negative -- well, as I referred to earlier today,
9 the negative 2.76 is all of Duke Energy Ohio, which
10 would include their -- the transmission and
11 distribution assets as well as the generation assets,
12 so I think that there's a range here that includes
13 the generation assets only and then the -- the DEO as
14 an entity.

15 Q. And the 2.76 that you just referenced is
16 in regard to the SEET filing; is that correct?

17 A. Yes, it is the SEET filing.

18 Q. You haven't done any independent analysis
19 to confirm Mr. Savoy's numbers, have you?

20 A. No. I found him reasonable to rely on.

21 MS. KERN: Okay. That's all the
22 questions I have, your Honor. Thank you.

23 Thank you, Mr. Trent.

24 EXAMINER PIRIK: OEG.

25 MR. KURTZ: Thank you, your Honor.

1 - - -

2 CROSS-EXAMINATION

3 By Mr. Kurtz:

4 Q. Good afternoon, Mr. Trent

5 A. Good afternoon.

6 Q. By way of background, on page 21 of your
7 testimony you are asked to "Please generally describe
8 the Duke Energy Ohio corporate and business
9 structure," and then you proceed to do so; is that
10 correct?

11 A. Yes.

12 Q. I want to ask you some questions about
13 that. After the merger with Progress in mid-2010,
14 Duke Corp. is now the largest utility in the United
15 States; is that correct?

16 A. Yes.

17 Q. Assets of over 100 million?

18 A. You know, I don't have all those numbers
19 in my head, but your first statement is accurate.

20 EXAMINER STENMAN: Can I stop you for
21 just a second? Can we go off the record for a
22 second?

23 (Discussion off the record.)

24 EXAMINER STENMAN: Let's go back on the
25 record.

1 Q. (By Mr. Kurtz) Duke Corp. has three
2 business segments; is that correct?

3 A. Yes.

4 Q. Okay. United States Franchised Electric
5 & Gas; is that the first segment?

6 A. Yes, that's the first segment.

7 Q. And you are in charge of that?

8 A. It's a bit confusing. I have the title
9 chief operating officer for the regulated utilities,
10 which is that segment. We kind of run that segment
11 through a committee that's called the Utility
12 Executive Committee so it's more of a committee.

13 Q. Okay. But the U.S. Franchised Electric &
14 Gas is where the regulated utilities of Duke or --
15 that's the business segment that they -- those
16 earnings are reported up to?

17 A. That's correct.

18 Q. The second segment is Commercial Power;
19 is that correct?

20 A. That's correct.

21 Q. And Mr. Manly, who I think is in the
22 audience, he is the head of that section?

23 A. Yes.

24 Q. Okay. And then international energy or
25 International Power; is that correct?

1 A. That's correct.

2 Q. Okay.

3 A. I think there's another -- to be clear I
4 think there's another thing we report as "Other" I
5 don't really consider as a segment, but it is in
6 there.

7 Q. Right. Duke Energy Ohio has two business
8 segments -- well, three if you include "other,"
9 correct, for SEC reporting purposes, the regulated
10 utility and then Commercial Power; is that correct?

11 A. No, that's not correct. And let me
12 explain. It's a little bit complicated. Part of it
13 is right. So Duke Energy Ohio has within it from a
14 reporting standpoint -- let me back up. Commercial
15 Power has three main -- two main parts. It's got the
16 unregulated generation, which includes the legacy
17 generation assets and the gas assets and renewables.
18 All right? Duke Energy Ohio as a legal entity would
19 include ownership of the generation assets, but it
20 doesn't include any ownership of the renewables so
21 that's why it's not exactly the same.

22 Q. Right. I understand that. The
23 renewables and Duke Energy Retail Services are also
24 in Commercial Power, but they are not part of Duke
25 Energy Ohio, correct?

1 A. Well, I think from a legal entity
2 standpoint they are, but from a -- I need to get the
3 org charts out, but what I would say is from a
4 financial segment standpoint, I've given that
5 testimony from Duke Energy Ohio's standpoint. It --
6 it does include the generation. I think that DERS
7 and DECAM may be outside that now.

8 Q. Right, they are. So when I look at the
9 SEC 10-K for Duke Corp. for 2012 and I see Duke
10 Energy Ohio total earnings of 175 million, and then
11 that's reported by segment Franchised Electric & Gas
12 159 million and then Commercial Power within Duke
13 Energy Ohio of 50 million, when they are reported
14 separately like that, is that consistent with what
15 you were telling me?

16 A. I'm not sure how to answer that, but the
17 way I would say it is that Commercial Power has the
18 generation assets. It has DERS and DECAM and it has
19 renewables.

20 Q. For purposes of Duke Energy Ohio, the
21 regular -- the regulated entities, the Franchised
22 Electric & Gas are Ohio T&D, Ohio gas, and then the
23 Kentucky-integrated operations, which are a
24 wholly-owned affiliate of Duke Energy Ohio; is that
25 correct?

1 A. Well, those regulated components do feed
2 into USF&G.

3 Q. Okay. And then for the Commercial Power
4 segment of Duke Energy Ohio there are -- there are
5 two segments, correct, the Midwest gas assets and the
6 Midwest coal assets, correct?

7 A. Commercial Power -- I don't think
8 Commercial Power has the gas assets -- when you say
9 gas assets, are you talking about the gas-fired
10 generation?

11 Q. Yes.

12 A. Okay. Yeah, Commercial Power has
13 gas-fired generation, and it has what I would call
14 the legacy assets. So it has those -- those two as
15 well as Commercial Power also has renewables.

16 Q. So within Duke Energy Ohio there are the
17 legacy coal assets, 3,800 megawatts that are
18 dedicated to FRR service, correct?

19 A. Yes.

20 Q. And then also within the Duke Energy Ohio
21 ownership structure are the Midwest gas assets, 3,025
22 megawatts, Washington Lee, Hanging Rock, and one
23 other unit, correct?

24 A. Yeah. I mean, I would have to check the
25 math, but roughly that's right.

1 Q. Okay. And Duke Energy Midwest gas, which
2 is part of Duke Energy Ohio, is actually owned by
3 DECAM, Duke -- Duke -- what is the acronym? Duke
4 Asset Management?

5 A. Commercial Asset Management.

6 Q. Yeah, what is the correct acronym?

7 A. Duke Energy Commercial Asset Management
8 is the correct name. You know, I don't -- I need
9 to -- I don't know whether that entity actually owns
10 the gas asset now or not. I just am not sure.

11 Q. Okay. Do you know that DECAM, Duke
12 Energy Commercial Asset Management, is a wholly-owned
13 subsidiary of Duke Energy Ohio, correct?

14 A. I believe that it is.

15 Q. Okay. And the president of DECAM, Duke
16 Energy Commercial Asset Management, is Mr. Whitlock,
17 who's also in the room?

18 MS. SPILLER: Your Honor, I am going to
19 object to the relevance of questions regarding DECAM.
20 They are not relevant to this proceeding.

21 EXAMINER PIRIK: Mr. Kurtz.

22 MR. KURTZ: DECAM is owned by Duke Energy
23 Ohio. The relevance is this, throughout this entire
24 testimony -- I'm going to walk through it in
25 detail -- the witness mixes phrases of Duke Energy

1 and the legacy assets and he mixes the terms.

2 Duke -- they are claiming that Duke Energy Ohio is in
3 a dire financial situation, but they are leaving out
4 that DECAM assets, which is owned by Duke Energy
5 Ohio, and are very profitable and the SEC 10-K shows
6 that, and they are focusing the Commission's
7 attention on Duke Energy legacy coal, which are not
8 profitable if you exclude the 110 million ESSC
9 charge. This is central to the Commission's
10 understanding of the whole case, the corporate
11 structure of Duke Energy Ohio.

12 EXAMINER PIRIK: Thank you. Objection
13 overruled.

14 Q. So Mr. Whitlock is president of DECAM; is
15 that correct?

16 A. I believe so, yes.

17 Q. Is he an officer of Duke Energy Ohio?

18 A. I do not know at this time.

19 Q. Do you know if he is an employee of Duke
20 Energy Ohio?

21 A. I think that he would be an employee of
22 Duke Energy Business Services but I'm not sure.

23 Q. On page 10 of your testimony,
24 Mr. Trent -- excuse me, page 11, you make a statement
25 at the bottom of the page at line 20, "Duke Energy

1 Ohio witness Brian Savoy testifies concerning the
2 projected annualized return on equity for Duke Energy
3 Ohio's generating assets. He concludes that the ROE
4 in 2012, without a cost-based charge, is a dismal
5 negative 13.5 percent, correct?

6 A. Yes.

7 Q. Now, regarding that statement, Mr. Savoy
8 calculates the return on equity of only part of Duke
9 Energy Ohio's generating assets. The Midwest coal
10 assets exclude the profitability of the Midwest gas
11 assets, correct?

12 A. You know, it would be better to ask
13 Mr. Savoy about that question, but my understanding
14 is that this negative 13.5 is the legacy coal assets.
15 Other places we talk about a broader set of assets.

16 Q. Now, that negative 13.5 percent excludes
17 or ignores or doesn't take into account the
18 \$110 million ESSC charge and that's correct also,
19 isn't it?

20 A. I don't recall specifically whether
21 that's the case or not, but Mr. Savoy can answer
22 that.

23 Q. Okay. Now, on page 24, and you were
24 asked this just briefly by counsel for OCC, line 21,
25 Duke Energy Ohio -- this is your testimony -- will be

1 forced into operating in a significant financial lose
2 with a projected annual returns on equity ranging
3 from negative 3.6 to a negative 13.5 percent. Now,
4 when you say Duke Energy Ohio, you don't mean Duke
5 Energy Ohio there, do you? You mean the -- the
6 Midwest coal legacy assets which is a subset of Duke
7 Energy Ohio, correct?

8 A. No. I think that the 13.5 percent
9 references the legacy generation assets. The
10 negative 3.5, as I understand it, is the larger set
11 of assets.

12 Q. Are you guessing about that, or do you
13 know?

14 A. No. My -- well, that was my
15 understanding, but, again, Mr. Savoy can clarify
16 that. Certainly the SEET test that we filed that's
17 the negative 2.76 included -- at a minimum it
18 included the legacy generation assets as well as the
19 T&D parts of the business. I know I'm comfortable
20 with that.

21 Q. Now, the negative 13.5 percent that I
22 just read was not Duke Energy Ohio. That was Duke
23 Energy Ohio's Midwest coal assets. We know that
24 much, correct?

25 MS. SPILLER: Objection, asked and

1 answered.

2 MR. KURTZ: Well, I want to clarify, your
3 Honor, because the testimony is for the Midwest coal
4 assets. That's -- it is -- Mr. Savoy does not
5 testify as to the return on Duke Energy Ohio, so the
6 witness's understanding is wrong there, but the
7 13.5 percent is just the Midwest coal. I just want
8 to get clarification on that.

9 EXAMINER PIRIK: Yes. Objection
10 overruled.

11 A. I think that's what I said. I think the
12 13.5 relates to the coal assets. The negative 13.5
13 included a broader set, and, again, the SEET included
14 the broader set with the T&D.

15 Q. Now, the DECAM assets, the Duke Energy
16 Commercial Asset Management coal assets, the 3,025
17 megawatts, those do provide FRR capacity for Duke
18 Energy Ohio; isn't that correct?

19 A. Did you say the DECAM coal assets?

20 Q. No, the DECAM gas assets. The Midwest
21 gas provides FRR capacity for Duke Energy Ohio.

22 A. That is my understanding.

23 Q. Okay. They do that through bilateral
24 contract with Duke Energy Ohio, correct?

25 A. That is my understanding, yes.

1 Q. So DECAM, a wholly-owned subsidiary of
2 Duke Energy Ohio, provides FRR service to Duke Energy
3 Ohio through a bilateral contract.

4 A. That is my understanding, yes.

5 Q. Or series of bilateral contracts,
6 actually; is that correct?

7 A. I have not studied the agreements but my
8 understanding is that's correct.

9 MR. KURTZ: Your Honor, if I could have
10 marked as OEG Exhibit 2 what --

11 EXAMINER PIRIK: The document is so
12 marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. You were asked questions by Mr. Kutik
15 about this analyst meeting earlier, were you not?

16 A. Not about this sort of formulation of the
17 debt, no. I was asked about an analyst meeting in
18 February, though.

19 Q. Well, this was February 28, 2013.

20 A. Yeah, but you've got a series of
21 different sort of pieces of text.

22 Q. I didn't want to give complete copies of
23 all the presentations, but I have those if you would
24 prefer. I didn't want to burden the record with
25 things I wasn't going to ask about.

1 A. Well, all I would say it is a not a
2 complete -- this is not a complete set. I mean, it's
3 up to you, I mean, but it's just not a complete set.

4 Q. So this was February 28, 2013. You were
5 giving a presentation, along with Mr. Rogers;
6 Mr. Manly, head of commercial business; and Ms. Good,
7 financial overview, among others?

8 A. Yes.

9 Q. Okay.

10 MS. SPILLER: Excuse me, Mr. Kurtz.

11 But, your Honor, the document that's been
12 marked as Ohio -- I'm sorry, OEG Exhibit 1 is
13 highlighted in certain places. I don't know the
14 intent there, but that is not how that document was
15 originally prepared or circulated.

16 MR. KURTZ: I put the highlighting in,
17 your Honor, for ease of reference.

18 EXAMINER PIRIK: Thank you for the
19 clarification.

20 Q. I originally did have all the
21 presentation, and then I thought I might get an
22 objection for putting in extra stuff I shouldn't, so
23 I toned it down. That's why you see when you go --
24 it's the third page -- fourth page of the document.
25 It's marked page 21 in the right-hand corner. This

1 is the appendix to your presentation, isn't it?

2 A. Yeah, I think so, but.

3 Q. I just want to understand, you call all
4 of the Ohio generating units nonregulated. Why is
5 that?

6 A. I mean, that's just how we talk about
7 them, just shorthand.

8 Q. Well, isn't it true that when the
9 Commission issued its order approving the ESP
10 stipulation at the end of 2011, that for financial
11 accounting purposes these power plants were no longer
12 using regulatory accounting and they were treated as
13 deregulated assets?

14 A. Yeah. In terms of specific accounting
15 treatment I would defer to -- to others, to Mr. Savoy
16 or others. I can't specifically tell you anything
17 about the accounting treatment.

18 Q. Do you know this much about it, that in
19 order for deferral accounting to be applied, the
20 entity has to be a regulated entity and the deferral
21 accounting does not apply to unregulated entities?

22 MS. SPILLER: Your Honor, if I may, I
23 think this is well beyond the scope of Mr. Trent's
24 testimony with regard to the deferral treatment, and
25 there are other witnesses in this proceeding capable

1 of addressing that question.

2 EXAMINER PIRIK: Thank you, Ms. Spiller.
3 If the witness knows the answer to the question, I'll
4 allow him to answer.

5 MS. SPILLER: Thank you.

6 A. I would have to defer to folks who know
7 about the accounting treatment.

8 Q. Okay. The next excerpt is from
9 Ms. Good -- by the way, she is on the Duke Energy
10 Ohio Board of Directors, isn't she?

11 A. I can't say specifically. It wouldn't
12 surprise me if she was, but I would need to see the
13 directors.

14 Q. I thought it was you, Mr. Rogers, and
15 Ms. Good.

16 A. It may be.

17 Q. Okay. Now, on what's marked at the
18 bottom page 25, the -- do you see how she has the
19 2013 key EPS earnings per shared drivers? You've got
20 the U.S. Franchised Electric & Gas to the left.
21 That's your division, correct?

22 A. It's the group that I work in, yes.

23 Q. Okay. And then the Commercial Power,
24 there's reference to the Ohio cost-based capacity
25 filing. Is that the case we're in here?

1 A. Yes.

2 Q. So if the Commission grants Duke Energy
3 Ohio \$729 million plus interest, that would be
4 reported up through the Commercial Power group,
5 correct?

6 A. I am not certain how the accounting would
7 work on that.

8 Q. Can I ask you to turn to the page where
9 we have the corporate structure chart.

10 A. Yes.

11 Q. At the bottom is Duke Energy Ohio, and as
12 we were discussing earlier, you have got the Ohio
13 T&D, the Ohio gas, and the Kentucky as the regulated
14 entities reporting up to you, correct?

15 A. Well, again, they report up to this --
16 USFE&G that I mentioned.

17 Q. Okay. But they report up the U.S.
18 Franchised Electric & Gas. They get moved up to that
19 business segment, Duke Corp. has u.S. Franchised
20 Electric & Gas, Commercial Power, and International,
21 and the regulated entities in Ohio get reported up to
22 U.S. Franchised Electric & Gas, correct?

23 A. Yes.

24 Q. Now, the Midwest coal, that's the legacy
25 assets we're talking about, the 3,800 megawatts?

1 A. Yes.

2 Q. Okay. And they are part of Duke -- they
3 are owned by Duke Energy Ohio, correct?

4 A. That's correct.

5 Q. And they are dedicated to the FRR plan,
6 correct?

7 A. That's correct.

8 Q. And then the Midwest gas assets, that's
9 owned by DECAM or direct subsidiary of Duke Energy
10 Ohio, and that's the Duke Energy Ohio gas assets,
11 correct?

12 A. That's what I mentioned to you earlier.
13 I know that they are owned by a subsidiary. I just
14 can't recall specifically if it's DECAM or another
15 subsidiary.

16 Q. Okay. And these Midwest gas assets
17 provide FRR capacity through bilateral contracts with
18 Duke Energy Ohio, correct?

19 A. Correct.

20 Q. Okay. And the negative returns that
21 we're talking about here in this case are focused
22 just on the Midwest coal; is that correct?

23 A. That's not correct.

24 MS. SPILLER: Objection, asked and
25 answered several times now.

1 A. It's not correct, and I have said before,
2 we talked about the 13-1/2 percent. I think that did
3 reference the coal assets. The 13-1/2 percent, as I
4 appreciate it, included -- included a broader set of
5 assets, and then I talked about the SEET, which I
6 think may be the SEET and the 13-1/2, we are
7 referring to the same. It's just an updated
8 calculation. So we've talked about more than one
9 negative number.

10 MR. KURTZ: Your Honor, could I have a
11 confidential exhibit that I would like to have the
12 witness refresh his recollection on these earnings
13 questions, whether the negative earnings are just the
14 legacy coal assets or a broader spectrum?

15 EXAMINER PIRIK: Is this a separate
16 exhibit, or is it attached to someone's testimony or
17 is it --

18 MR. KURTZ: It's -- oh, it's a
19 confidential attachment to the Savoy testimony.

20 EXAMINER PIRIK: And you are just using
21 it -- because it will come in under Mr. Savoy.
22 You're just using it to refresh his memory?

23 MR. KURTZ: Yes.

24 EXAMINER PIRIK: Could you show it to
25 counsel, to Duke, before you --

1 MS. SPILLER: Oh, I know what it is.

2 Thank you, your Honor.

3 EXAMINER PIRIK: You know what it is.
4 You are okay with it?

5 MS. SPILLER: I think Mr. Trent has
6 already addressed this question indicating that the
7 questions are better directed to Mr. Savoy, who is a
8 witness in the case.

9 EXAMINER PIRIK: Oh, and I appreciate
10 that, but we want to be sure since Mr. Trent is here
11 for a period of time that any questions that he can
12 answer that he can.

13 So I'm okay with you approaching the
14 witness. Just to be certain I know the witness knows
15 not to --

16 MR. KURTZ: Attachment BDS-3,
17 confidential, page 1 of 3.

18 EXAMINER PIRIK: Okay. But you are not
19 necessarily crossing him on this exhibit, just
20 refreshing his memory.

21 MR. KURTZ: Correct, just for clarity of
22 the record.

23 Q. Mr. Trent, I just ask you to see the
24 heading "Legacy Generation Assets" and ask you if
25 this is the 13-1/2 percent negative and the negative

1 3.6 that we've been referring to as the spectrum of
2 negative earnings just on legacy coal?

3 A. Okay. Yeah. So there are a set of
4 numbers and the 13-1/2 to 3-1/2 -- or 3.6 may have
5 had a temporal aspect in terms of a time period there
6 was just those assets.

7 Q. Just the legacy coal?

8 A. Yes. But I also did testify in terms of
9 the SEET that includes a broader set, which is in
10 closer to the range I think that was what was
11 creating some misrepresenting on my part, but the 276
12 does include a broader set of assets.

13 Q. Now, okay, so the negative returns
14 referred to in your testimony, the dire consequences
15 and so forth, that's just with respect to the Midwest
16 coal generation legacy assets.

17 A. No, I wouldn't agree with that.

18 Q. Well, the negative numbers in your
19 prefiled written testimony, which was filed March 1
20 before the SEET filing was made, you were referring
21 to these numbers, were you not?

22 A. Well, I think I was also in the testimony
23 as we go forward and in different -- there was a
24 different place where we talked about the returns in
25 here. I talked about, you know, that the returns

1 were more -- broadly were -- were negative as well or
2 poor.

3 Q. When you filed your testimony on
4 March 1 -- I understand the SEET filing was made
5 today. When you filed your testimony on March 1, you
6 were referring to Mr. Savoy's legacy coal earning
7 numbers, correct?

8 A. Well, I testified about several things,
9 but on page 12 of my testimony, we talk about the
10 13-1/2 percent, but then I go on to say that the
11 preliminary analyses of the company's earnings for
12 2012, as mandated by the SEET, indicate that we'll
13 report a negative ROE on that as well. We've now
14 filed that and so, indeed, it is negative, so I talk
15 about the coal assets being negative as well as, you
16 know, the assets that are covered under the SEET.

17 Q. Okay. That's fair enough. But let me
18 ask you this. You understand what we are here about,
19 is the company's performed the revenue requirements
20 calculation for the Midwest coal assets. The costs
21 are X. The revenues coming in are Y, and in order to
22 get up to 11.15 percent ROE, the company needs
23 \$729 million going all the way back to August 1,
24 2012, and moving forward to May 31, 2015. That's the
25 rate increase request we are here dealing with, isn't

1 it, just the Midwest coal?

2 MS. SPILLER: I am going to object to the
3 character of a rate increase.

4 EXAMINER PIRIK: I will allow the witness
5 to answer that because he can clarify.

6 A. We are seeking cost-based capacity
7 recovery, and as I appreciate it, the calculation and
8 Mr. Wathen's -- a combination of Mr. Wathen and
9 Mr. Savoy can really answer in more detail, but the
10 cost-based capacity, as I appreciate it, is based on
11 the legacy coal assets.

12 Q. So the Duke Energy Ohio Midwest gas
13 assets are not included in the calculation, just to
14 be clear, correct?

15 A. I believe that is correct, but, again, I
16 would really defer to Mr. Savoy and Mr. Wathen and to
17 their testimony on that.

18 Q. Now, you know this, the \$110 million for
19 your ESSC charge is not include in your company's
20 quantification for deferral or rate increase of
21 729 million? You know that, correct?

22 A. There is not a credit for the stability
23 charge. I do believe the stability charge was
24 included in the SEET calculation.

25 Q. Okay. Now, if you turn to page -- well,

1 page 37 at the bottom -- I guess we can skip that
2 one. Let's --

3 EXAMINER PIRIK: You are back to OEG
4 Exhibit 2?

5 MR. KURTZ: Yes, ma'am, yes.

6 Q. Page 38, this Commercial Power, this
7 includes the earnings from -- the earnings or the
8 losses from the Duke Energy legacy coal, Duke Energy
9 Ohio gas assets, as well as, I think you testified to
10 earlier, the renewables and the DERS, Duke Energy
11 Retail Services, the CRES marketer here in Ohio, all
12 of that is captured in this commercial market power
13 earning line?

14 A. I think that's correct.

15 Q. The next page in the document is just the
16 ratings of Duke Energy Ohio. The Midwest coal assets
17 do not have a separate credit rating for S&P,
18 Moody's, and Fitch, do they?

19 A. Not that I am aware of.

20 Q. They rate just Duke Energy Ohio, that
21 corporate entity, correct?

22 A. They rate a lot of different entities.

23 Q. But for purposes -- for purposes of this,
24 they rate -- they do rate Duke Energy Ohio as a
25 consolidated entity, all of its subsidiaries and so

1 forth.

2 A. That would be my understanding.
3 Mr. DeMay would be a better witness to talk to about
4 the credit ratings.

5 Q. Moody's, Standard and Poor's, and Fitch
6 all have Duke Energy Ohio as investment grade credit.

7 A. I think that's correct.

8 Q. If they felt that Duke Energy Ohio was in
9 a dire financial situation, do you think that they
10 would be maintaining an investment grade credit?

11 MS. SPILLER: Objection, calls for
12 speculation.

13 A. Yeah. I really can't answer to what they
14 are addressing here. And, again, Mr. DeMay would be
15 the person who could -- who could talk about that
16 more effectively.

17 Q. Okay. And Duke Energy Ohio is the entity
18 that issues debt; in other words, Duke Energy legacy
19 coal doesn't issue their own debt. It's all issued
20 by the owner, Duke Energy Ohio; is that correct?

21 A. I believe that is correct, but, again,
22 Mr. DeMay would be the better person to ask.

23 Q. I would like to ask you a couple of
24 questions about the commercial business segment,
25 which owns the -- which, I guess, let's just be

1 clear. The legacy coal which is the subject of this
2 case is owned by Duke Energy Ohio but the earnings
3 are reported up through the Commercial Power business
4 unit, correct?

5 A. I think that is right.

6 Q. Okay. Page 58 at the bottom here, a
7 couple -- flip two pages. The Commercial Power
8 segment, the Midwest Generation coal, they say 3,700,
9 I think it's 3,800, and then gas 3,200. It's
10 slightly different numbers elsewhere. Are those the
11 legacy coal assets we've been talking about?

12 A. The 3,700 megawatts?

13 Q. Yeah.

14 A. I believe so.

15 Q. Okay. And the gas is the DECAM, Duke
16 Energy Ohio, gas assets?

17 A. I think we've talked about this before.
18 I know those gas assets are owned by a subsidiary of
19 Duke Energy Ohio. I can't remember specifically if
20 it's DECAM.

21 Q. Okay. If you turn the page one more, do
22 you know whether the gas assets are profitable?

23 MS. SPILLER: Objection, relevance, your
24 Honor.

25 MR. KURTZ: They go into the earnings of

1 Duke Energy Ohio. They are -- the Midwest gas assets
2 are owned by Duke Energy Ohio. I thought this case
3 was about the financial integrity of Duke Energy
4 Ohio. This is a major operating segment of that
5 company.

6 MS. SPILLER: But, your Honor --

7 EXAMINER PIRIK: Objection overruled.
8 Objection overruled.

9 Q. Do you know if the gas assets are
10 profitable?

11 A. And by "profitable" you mean earning at
12 least some profit as opposed to negative, losing
13 money; is that what you are talking about?

14 Q. Yes, yes.

15 A. I believe that they are profitable. I
16 don't know specifically how profitable at this point
17 in time. I don't think that they are -- I would
18 consider them to be strong in terms of returns.

19 Q. Okay. Would you turn another page
20 talking about the "Midwest Commercial Generation
21 Strategies," page 60, in the bottom right-hand
22 corner, regulatory, pursue Ohio cost-based capacity,
23 that's this case?

24 A. Yes.

25 Q. Okay. So, again, if the Commission

1 awards 729 million plus interest, that profitability,
2 that extra revenue would get reported up to the
3 Commercial Power group.

4 A. It would. It's part of Duke Energy Ohio.

5 Q. Okay. Now, when it says, "Continue to
6 execute hedging program to lock-in energy margins,
7 essentially contracting assets," do you know if the
8 energy output from the Midwest coal and/or Midwest
9 gas have been hedged or sold forward?

10 A. You know, I am no longer over this
11 business so I just can't tell you.

12 Q. Would Mr. Savoy know?

13 A. I don't know.

14 Q. Do you know anybody in this case who's
15 testifying about how profitable or unprofitable those
16 Midwest coal assets are would know if the energy has
17 been sold forward?

18 A. I don't know specifically any of the
19 witnesses here would be able to testify about that.
20 Mr. Savoy could testify, I think, about
21 profitability.

22 Q. Okay. Will you flip the page one more
23 time, "Mitigate earnings pressures in Midwest
24 Commercial Generation business. Continue our
25 successful costs control efforts." Do you know

1 anything about the costs control efforts?

2 A. I know that we have -- let me see, that
3 Midwest commercial generation has tried to reduce
4 costs as much as they can. You can't -- you have to
5 be careful about cutting into bone.

6 Q. Do you know that -- excuse me. Were you
7 finished?

8 A. And so there's only so much you can do
9 with the cost-cutting mechanism. I know they have
10 focused on it.

11 Q. Do you know that's an issue in this case,
12 that some of the parties have argued that the more
13 recent forecasts of O&M expense which is -- which is
14 lower reflecting cost control should be used rather
15 than the 2011 FERC Form 1 data?

16 A. I'm not sure I understood your question.

17 Q. Do you know that some parties want to use
18 the more updated O&M expenses which are lower and,
19 therefore, make the legacy coal assets less
20 unprofitable? Do you know that that's an issue in
21 the case?

22 A. I haven't -- I haven't looked at that
23 issue.

24 Q. Could you -- could you flip to page 74
25 where you give "Midwest Generation guidance

1 assumptions." You don't, Mr. Manly does. But since
2 this is part of the case, let me ask you. The owned
3 capacity in megawatts 6,825, is that 3,800 megawatts
4 coal and 3,025 megawatts of Midwest gas, if you know?

5 A. Roughly. When we talked about the owned
6 capacity, it's those two components. When you say
7 coal, there's -- there are some oil fired, but they
8 are not significant.

9 Q. I know. I'm calling them coal because
10 that's the way you presented them, or Duke Corp, to
11 the investment community. I understand there is a
12 small --

13 A. Yeah. Even in this there was a reference
14 to coal and wells, so I just wanted to make sure we
15 are clear on that.

16 Q. What's that -- we are talking about the
17 Midwest coal assets and the Midwest gas assets, which
18 are both owned by Duke Energy Ohio. That's what's
19 referred to here, 6,825 megawatts?

20 A. And some oil fired.

21 Q. Okay. The PJM capacity revenues of
22 50 million that would reflect what, RPM pricing as
23 FRR entities, among other things?

24 A. Well, I think this is the reference. I
25 believe it would be the market-based component.

1 Q. Right. Now, the ESP stability charge of
2 110 million -- footnotes -- stability charge would be
3 collected by Duke Energy Ohio. That's the ESSC
4 charge that we know about; is that correct?

5 A. That's correct.

6 Q. So the ESSC revenue is tied to the
7 Midwest -- the Midwest power plant assets of Duke
8 Energy Ohio, correct?

9 MS. SPILLER: Objection. It misstates
10 the document.

11 EXAMINER PIRIK: I'll allow the witness
12 to clarify.

13 A. What this states is that this stability
14 charge is collected by Duke Energy Ohio. And in
15 terms of the accounting, I don't -- I don't know
16 whether it goes into the FE&G or Commercial Power
17 segment. I do know, as I said before, that was
18 included in the SEET calculation.

19 Q. Now, Mr. Manly is -- who's reporting here
20 and giving the investment community earning guidance
21 for 2013 about the commercial segment includes it in
22 his presentation. Is there any reason to believe
23 that the \$110 million ESSC charge is not reported up
24 through Commercial Power?

25 A. Again, I want to try to be accurate, and

1 I just don't know it's here in this presentation. I
2 see that. I understand that.

3 Q. The next line, the assumed economic
4 generation volume is 35 million megawatt-hours and,
5 then it's shown on a chart here to the -- to the
6 right. I guess that's just how many megawatt-hours
7 that these units are expected to clear in the PJM
8 market for 2013?

9 A. Yeah. This would be the combined
10 anticipated energy that comes from the coal and gas
11 generation for 2013 as an estimate.

12 Q. Now, wholesale energy margins,
13 \$350 million, is that the profit that these units are
14 expected to make selling power into the energy
15 market?

16 A. I wouldn't call that profits. This is
17 margin, but this would not cover all the costs.

18 Q. Well, it would -- it would be the energy
19 revenue less the variable operating expenses to get
20 an operating margin. Isn't that how that's used?

21 A. I think that's accurate, yes. But you
22 talked about profit before, which I think is not
23 accurate, and on margins generally I would really
24 defer to the folks like Brian, Mr. Savoy.

25 Q. So do you know that -- how much energy

1 margins that the legacy coal units will generate out
2 into the future is at issue in staff's testimony as
3 well as the company's projection?

4 A. I'm not familiar specifically with
5 arguments that are being made by all the parties, so
6 I can't -- I can't say specifically.

7 Q. Do you know of that projected 350 million
8 energy margins how much is supposed to be -- is
9 expected to come from the gas assets and how much
10 from the legacy coal assets?

11 A. I do not.

12 Q. Finally, I guess the final page of this
13 just lists the Midwest primarily coal. As you point
14 out, it's got some coal, oil and Midwest gas fired.
15 That, I guess, just sort of confirms that 6,825 we
16 have been talking about. Is that a fair way to read
17 this document?

18 A. I'm not sure I understood what your
19 question was, but I think this does identify the
20 various generation assets.

21 MR. KURTZ: Okay. Your Honor, could I
22 have marked as OEG Exhibit 3.

23 EXAMINER PIRIK: The document will be so
24 marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. Mr. Trent, this is an excerpt from the
2 Duke Corp 2012 SEC Form 10-K.

3 MS. SPILLER: Again, your Honor, it
4 appears to have been altered to include redacting of
5 selected text.

6 MR. KURTZ: Well, I have highlighted.

7 MS. SPILLER: I'm sorry, highlighting.

8 EXAMINER PIRIK: Thank you for the
9 clarification.

10 Q. If you turn to the second page, page 11
11 of 478, the Duke Energy business segments, we
12 discussed this, U.S. Franchised Electric & Gas,
13 Commercial Power, and International Energy, is that
14 correct, that's the Duke corporate business segments?

15 A. For financial purposes those are the
16 three segments, and then what we talked a little bit
17 with Other, which is referenced there.

18 Q. Right, okay. Now, the very last sentence
19 it says, "The substantial majority of U.S. Franchised
20 Electric & Gas operations are regulated and,
21 accordingly, these operations qualify for regulatory
22 accounting treatment." Did I read that correctly?

23 MS. SPILLER: Your Honor, if I may
24 object. We are now talking about the accounting
25 treatment relative to entities not within this

1 Commission's jurisdiction, and, in fact, subject to
2 jurisdictions of other regulatory commissions. I
3 think we are certainly well far afield of Mr. Trent's
4 testimony in this proceeding, and I believe this line
5 of questioning is irrelevant.

6 MR. KURTZ: Your Honor, if I may.

7 EXAMINER PIRIK: Mr. Kurtz.

8 MR. KURTZ: The company is asking for a
9 \$729 million deferral, actually, a retroactive
10 deferral, for power plants that are no longer
11 regulated and no longer qualify for deferral
12 accounting treatment. In order to use deferral
13 accounting treatment the entity has to be regulated
14 because regular businesses can't defer expenses for
15 accounting treatment. They have to take them as
16 occurred. If you are regulated, you can defer
17 expenses and recover them in the future.

18 This \$729 million retroactive deferral to
19 August 1 of last year would require the Commission
20 to -- as the company's accounting witness states --
21 to reregulate the generating units that are now
22 deregulated and states the point of this
23 cross-examination. It's essential to the deferral
24 requests of the company.

25 EXAMINER PIRIK: Objection overruled.

1 Q. So deferral accounting applies to
2 virtually all the Franchised Electric & Gas that gets
3 reported up to you; is that correct?

4 A. Well, I said this a few times today. It
5 doesn't report to me. It reports to a committee.
6 I've also told you I am not an accounting expert. I
7 am not an expert in terms of deferral accounting.
8 This sentence talks about regulatory accounting
9 treatment, and to get into that, what I would say,
10 you really need to talk to a witness other than me
11 because I just can't talk much about that.

12 Q. Well, if you turn to page 20 of 478, let
13 me just get -- see if you understand this. In the
14 middle of the page, the bottom, "Other Matters. As
15 discussed in the U.S. Franchised Electric & Gas
16 section above, the PUCO approved Duke Energy Ohio's
17 new ESP in November 2011. In November 2011, as a
18 result of changes resulting from the PUCO's approval
19 of the new ESP, Commercial Power ceased applying
20 regulatory accounting treatment to its Ohio
21 operations. Currently, no portion of Commercial
22 Power applies regulatory accounting."

23 Do you understand that to mean that the
24 regulatory accounting does not apply to the assets
25 you're seeking a deferral for, the Midwest coal

1 assets?

2 A. Again, I would really need to defer.
3 You've read this accurately, but I would need to
4 defer to -- to folks who have more deep knowledge
5 regarding regulatory accounting to really address
6 your question.

7 Q. While we are on that page, let me read
8 you a phrase. The first highlighted section under
9 Commercial Power, Commercial Power's generation
10 operations, excluding renewable energy generation
11 assets consist primarily of coal-fired and gas-fired
12 nonregulated" generating -- "generation assets which
13 are dispatched in the wholesale markets. These
14 assets are comprised of 6,825 net megawatts of power
15 generation primarily located in the Midwestern U.S."

16 Now, these nonregulated generating assets
17 are the Midwest coal and the Midwest gas assets of
18 Duke Energy Ohio, correct?

19 MS. SPILLER: Objection, asked and
20 answered.

21 EXAMINER PIRIK: Objection overruled.

22 A. The -- if I understood your question
23 correctly, the coal-fired assets are the ones we have
24 been talking about, they are owned by Duke Energy
25 Ohio. I think the gas-fired assets are owned by a

1 subsidiary of Duke Energy Ohio.

2 Q. Okay. So these are the nonregulated
3 assets referred to in your SEC Form 10-K?

4 A. I don't understand. Are you --

5 Q. You referred to those assets as
6 nonregulated in the SEC Form 10-K. And earlier we
7 saw that regulatory accounting treatment no longer
8 applies to them. And I just want to clarify that
9 these nonregulated assets are the subject of this
10 case; is that correct?

11 A. Well, again, I would say that the coal
12 assets, as I appreciate, that are here are the ones
13 owned by Duke Energy Ohio and the gas assets are the
14 ones that are owned by a subsidiary of Duke Energy
15 Ohio.

16 Q. Okay. Would you turn the page to page 24
17 of 478.

18 A. Okay.

19 Q. This is discussing Duke Energy Ohio, and
20 then it's got two business segments of Duke Energy
21 Ohio, the Franchised Electric & Gas and the
22 Commercial Power; is that correct?

23 A. Yes.

24 Q. Okay. Now, at the bottom of the
25 Franchised Electric & Gas, the last sentence of the

1 first paragraph, "Substantially all the Franchised
2 Electric & Gas' operations are regulated and,
3 accordingly, these operations qualify for regulatory
4 accounting treatment." Did I read that correctly?

5 MS. SPILLER: Objection, your Honor.
6 This is irrelevant with respect to Duke Energy Ohio's
7 regulated lines of business.

8 MR. KURTZ: I would just like to draw the
9 distinction in order to get the deferral, and an
10 entity has to be regulated, which is the Ohio T&D,
11 the Ohio gas, and the Kentucky operations. The other
12 aspects of Duke Energy Ohio, the commercial segment,
13 the Midwest coal assets or the legacy assets, which
14 is the rate increase requests here, don't qualify for
15 regulatory accounting because they are unregulated.
16 They would have to be reregulated by the Commission
17 in order for a deferral to be awarded, and that's the
18 point I am just trying to discuss with the witness.

19 EXAMINER PIRIK: I'll allow the question.

20 A. I think the question was did you read the
21 sentence correctly. I believe you did read the
22 sentence correctly. But, again, I would tell you
23 that I don't have expertise in regulatory accounting.

24 Q. Let's -- let's -- under Commercial Power,
25 the \$110 million ESSC charge is discussed under the

1 Commercial Power in Duke Energy Ohio business
2 segment, not the Franchised Electric & Gas. Do you
3 see that?

4 A. I see that, yes.

5 Q. Okay. Is that because the \$110 million
6 ESSC charge that was part of the stipulation in the
7 last case is reported in the same business --
8 business segment that -- where the power plants are
9 reported, the Commercial Power?

10 MS. SPILLER: Objection, asked and
11 answered.

12 EXAMINER PIRIK: Overruled.

13 A. You know, subject to having Mr. Savoy
14 confirm, I think that 110 million is reported in the
15 Commercial Power portion. Having said that, I do
16 believe that the 110 million is included in the SEET
17 return calculation that's filed with the Commission.

18 Q. Let me ask you to turn to page 33 of 478.
19 Just a small point just to be clear. See the Duke
20 Energy Ohio, East Bend, Woodsdale, Miami Fort? Those
21 are the power plants in -- that are in the Kentucky
22 rate base, regulated operations?

23 A. I'm sorry, would you direct me again?

24 Q. Page 33 of 478.

25 A. Okay.

1 Q. Those power plants of Duke Energy Ohio
2 are the Kentucky regulated power plants?

3 A. And which ones?

4 Q. The one highlighted, one deep, Miami
5 Fort.

6 MS. SPILLER: Objection to the relevancy.

7 Q. These are power plants owned by Duke
8 Energy Ohio. I just want to make clear that these
9 are the regulated Kentucky Power plants, even though
10 they are owned by Duke Energy Ohio. Duke Energy
11 Kentucky is a wholly-owned subsidiary of Duke Energy
12 Ohio.

13 MS. SPILLER: Again, your Honor, I think
14 irrelevant to the issues at heart here.

15 EXAMINER PIRIK: I understand, but I will
16 allow the question.

17 Q. Are these the Kentucky-regulated power
18 plants, if you know?

19 A. I believe that that's correct.

20 Q. Okay. Turn the page to the Commercial
21 Power -- oh, by the way, before that, these are all
22 the Progress Duke North Carolina and Duke South
23 Carolina and the Progress Florida, those are all the
24 regulated power plants that are listed on the 10-K;
25 isn't that correct? Duke Energy Carolinas, Progress

1 Energy Carolinas, Duke Indiana, Duke Kentucky,
2 somewhere on here is Progress Florida, those are all
3 the regulated power plants owned by Duke Energy
4 Corporation?

5 A. I believe that's correct.

6 Q. Now, on page 34 of 478 under Commercial
7 Power, we've got it says "Commercial Power, Duke
8 Energy Ohio" and then all the power plants are listed
9 again, the 6,825 megawatts, what we refer to as the
10 Midwest coal, the legacy coal, and the Midwest gas,
11 all of which are owned by Duke Energy Ohio; is that
12 correct?

13 MS. SPILLER: Objection, I think it
14 misstates Mr. Trent's prior testimony.

15 EXAMINER PIRIK: I'll allow Mr. Trent to
16 clarify.

17 MS. SPILLER: Thank you.

18 A. So we've talked already about Duke Energy
19 Ohio owning the coal and oil assets and that the
20 gas-fired assets are owned by a subsidiary of Duke
21 Energy Ohio.

22 Q. Okay. Oh, okay. On page 63 of 478 where
23 Duke Energy Ohio's earnings are reported or net
24 income, do you see that as net income of \$175 million
25 in 2012?

1 A. Yes.

2 Q. Okay. And that is all of the Duke Energy
3 Ohio, the regulated gas, the regulated electric, and
4 the Commercial Power businesses all rolled up into
5 this consolidated Duke Energy Ohio number?

6 A. Yes.

7 Q. Okay. Turn to the next page. There is a
8 small footnote, there is discussion later, I've
9 highlighted, "related to the transfer of certain
10 gas-fired generation assets to a wholly owned
11 subsidiary Duke Energy Commercial Asset Management,
12 (DECAM) in the second quarter of 2011." Does that
13 refresh your recollection who owned the Midwest gas
14 assets?

15 A. Yes, it does.

16 Q. So that would be DECAM?

17 A. Right.

18 Q. Okay. Turn the page again to 67 of 478.
19 On the Regulatory Accounting, let me read this to you
20 and see if -- and ask you questions. "As discussed
21 further in 1, 'Summary of Significant Accounting
22 Policies,' and Note 4, 'Regulatory Matters,' Duke
23 Energy Ohio discontinued the application of
24 regulatory accounting treatment to portions of its
25 generation operations in November 2011 in conjunction

1 with the approval of its new Electric Security Plan
2 by the Public Utilities Commission of Ohio."

3 Is that when the Duke Energy Ohio Midwest
4 coal and Duke Energy Ohio Midwest gas units were
5 deemed to be unregulated, the account -- regulatory
6 accounting no longer applied?

7 MS. SPILLER: Your Honor, if I may
8 object. Mr. Kurtz has repeatedly simply been reading
9 into the record different entries within this
10 document and then asking the witness to essentially
11 authenticate his testimony this afternoon.

12 To the extent Mr. Kurtz would like to ask
13 Mr. Trent his recollection as to accounting
14 practices, I think that would be a more appropriate
15 line of questioning, and if Mr. Trent doesn't know,
16 perhaps this document could be used to refresh his
17 recollection, but I think having Mr. Kurtz
18 essentially testify by reading this material into the
19 record is an improper use of it.

20 MR. KURTZ: I'll rephrase.

21 Q. Given your recollection of the accounting
22 treatment, did Duke Energy Ohio stop regulatory
23 accounting treatment for the Duke Energy Ohio Midwest
24 gas units, the legacy coal units -- excuse me, the
25 Midwest coal units, the legacy units, as well as the

1 Midwest gas units in November of 2011 when the PUCO
2 approved the ESP and that Duke treated those units as
3 unregulated from that point forward? Is that your
4 understanding of what happened?

5 A. You know, I really don't have an
6 understanding in terms of the accounting, regulatory
7 accounting or accounting treatment. As I said, it's
8 just not my area of expertise.

9 Q. You've testified that Duke Energy Ohio
10 and AEP -- or AEP Ohio are similarly situated, have
11 you not?

12 A. In my view, they are in terms of their
13 statuses, FRR entities that are -- that are earning
14 full returns.

15 Q. Do you know if the AEP Ohio generating
16 assets were ever deemed to be deregulated or
17 unregulated for SEC reporting purposes?

18 A. Not certain today as to whether -- how
19 they are being considered. My understanding is that
20 there was an issue in terms of whether AEP would
21 continue to be allowed to recovery a cost-based
22 capacity after assets were transferred away from the
23 utility. My understanding, the Commission found that
24 they would be able to recover it so I don't -- I
25 don't know the timing of that, but I didn't think

1 that was a distinction that made any difference.

2 Q. I'm not talking about that aspect of it.
3 I'm talking about the portion of the deferral before
4 the transfer. The AEP power plants owned by AEP Ohio
5 are all considered to be regulated at the time of the
6 order and today because the transfer hasn't happened.
7 They have asked FERC to approve it, but they haven't,
8 so those are still regulated and subject to
9 regulatory accounting even today; isn't that true?

10 MS. SPILLER: Objection, assumes facts
11 not in evidence.

12 A. I don't know whether that's true or not,
13 but from my standpoint it's -- it wasn't particularly
14 relevant with respect to what I was -- I was
15 reviewing.

16 Q. Do you know if in AEP's calculation of --
17 the Commission's calculation of \$188.88 per
18 megawatt-day, the Commission included all of AEP
19 Ohio's generating plants, the profitable ones as well
20 as the unprofitable ones in reaching that conclusion?

21 A. I don't have specific -- specific
22 information as to what assets were included in the
23 calculation of the \$188 per megawatt-day.

24 Q. Do you know if the \$188 per megawatt-day
25 included just the unprofitable AEP generating assets?

1 A. Again, I don't know the details of the
2 calculation of AEP's \$188 per megawatt-day.

3 Q. Let me ask you to turn to page 151 of
4 468. This is the Duke Energy Ohio earnings by
5 business segment. Do you see that?

6 A. Yes.

7 Q. Okay. So the Franchised Electric & Gas
8 in 2012 made \$159 million; is that correct?

9 A. I see that number, yes.

10 Q. Okay. And Commercial Power in 2012 made
11 50 million?

12 A. I see that, yes.

13 Q. Okay. So that would -- just to be clear,
14 the Commercial Power segment of Duke Energy Ohio's
15 Duke Energy Midwest coal, the legacy units, plus Duke
16 Energy gas, the DECAM gas units, correct?

17 MS. SPILLER: Objection, asked and
18 answered.

19 A. There's more in Commercial Power.

20 Q. So that wouldn't be reported up through
21 Duke Energy Ohio. The renewables are not part of
22 this; isn't that right?

23 A. I think that's correct.

24 Q. Okay. So -- so the Commercial Power
25 business of Duke Energy Ohio made \$50 million in

1 2012; is that correct?

2 MS. SPILLER: Objection, asked and
3 answered.

4 MR. KURTZ: He hasn't answered.

5 MS. SPILLER: You asked him if the number
6 was correct, and he identified that he saw the
7 number.

8 MR. KURTZ: I think he was about ready to
9 say no, it includes renewables, but this is just a
10 Duke Energy Ohio power segment.

11 EXAMINER PIRIK: I am going to let the
12 witness answer. The witness can answer.

13 A. Just state it one more time. I forgot.

14 Q. The Commercial Power segment of Duke
15 Energy Ohio made \$50 million last year?

16 A. That's what this says.

17 Q. Okay. And the year before in 2011 made
18 78 million?

19 A. That's what this says.

20 Q. Let's go back to 2011. So 159 from
21 Franchised Electric & Gas, 50 million from Commercial
22 Power, total of 209, then the other --

23 A. You said let's go back to 2011?

24 Q. I'm sorry, '12. Just to add up the 159
25 from regulated operation, 50 from the Commercial

1 Power, total 209, but then there is this Other, which
2 has an allocation of corporate overhead and things of
3 a negative number, and then that's where the Duke
4 Energy Ohio total earnings of 175, the number we saw
5 previously, that's how that's derived?

6 A. Well, I mean, generally I would say yes.
7 The one thing, you know, I would want more detail
8 into, you talk about corporate overheads and such,
9 and I'm not sure that accurately describes it, but
10 generally what you said is -- is correct, and there
11 is some corporate overhead that's associated there
12 with that.

13 Q. That's how you get to 175. You have to
14 put in the negative 34 from Other.

15 A. Your math is correct.

16 Q. The last page of the document, page 205,
17 it says, "DECAM is a nonregulated direct subsidiary
18 of Duke Energy Ohio. DECAM conducts business
19 activities including execution of commodity
20 transactions, third party vendor and supply
21 contracts." We have -- there is no question that
22 DECAM is the -- is a direct subsidiary of Duke Energy
23 Ohio, correct?

24 A. That's correct.

25 Q. Okay. And DECAM owns the Midwest gas

1 assets?

2 MS. SPILLER: Objection, asked and
3 answered.

4 A. Yeah. I think we said that three or four
5 times now.

6 Q. Right. And then the Midwest gas assets
7 provide FRR capacity to Duke Energy Ohio through
8 bilateral contracts, correct?

9 MS. SPILLER: Objection, asked and
10 answered.

11 A. Yes.

12 THE WITNESS: Sorry. I should have let
13 you rule.

14 EXAMINER PIRIK: That's fine. We have
15 asked and answered many of these same questions,
16 Mr. Kurtz.

17 MR. KURTZ: Okay. I am done with that
18 document.

19 Q. You have testified briefly about the
20 bilateral contracts between -- that Duke Energy Ohio
21 has used to meet its FRR. I believe on page -- let
22 me find it. Page 8, lines 2 through 5, "Duke Energy
23 Ohio has committed all of its owned legacy generation
24 resources" -- that's the legacy coal, correct?

25 A. Yes.

1 Q. Okay. "And entered into bilateral
2 transactions for purposes of fulfilling its capacity
3 obligations existing through May 31, 2015." Did I
4 read that correctly?

5 A. Yes.

6 Q. I would like to ask you some questions
7 about these bilateral contracts.

8 MR. KURTZ: Your Honor, these are
9 confidential but -- so I guess we just have this
10 marked as OEG 4.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. SPILLER: Your Honor, if I may, a
13 point of procedure, Duke Energy Ohio does not have
14 confidentiality agreements with all of the parties in
15 this proceeding, so to the extent Mr. Kurtz is
16 circulating confidential documents, we'll have to be
17 sure that they are provided to the correct
18 individuals only.

19 EXAMINER PIRIK: Could you first provide
20 the Bench a copy so we can see what you're referring
21 to as well as Duke so we can look at it?

22 Having looked at the document just
23 briefly, we understand that these are master power
24 purchase agreements, and I know we have dealt with
25 this in other dockets with Duke, and typically what

1 we allow to be confidential are rates and names of
2 other parties in the document if, in fact, that is
3 confidential.

4 So before -- before we go down any road,
5 obviously, the entire documents are not confidential,
6 just pieces of them. So I'm just trying to figure
7 out how we are going to handle this because,
8 obviously, we are at this point in cross. Now, what
9 we would typically do is wait until the end of all
10 open record because I don't really want to deal with
11 this at this point in time.

12 If there is anything general with regard
13 to the document that we can deal with, then we can do
14 that, but, Mr. Kurtz, are you going to get into
15 specific items in it?

16 MR. KURTZ: Yes.

17 EXAMINER PIRIK: Is the company going to
18 ask for small pieces of the documents to be
19 confidential?

20 MS. SPILLER: Certainly, your Honor. I
21 would agree not all the content is confidential, but
22 insofar as it concerns counterparties, terms, and
23 conditions to these transactions, and it sounds like
24 that is the type of information that Mr. Kurtz is
25 going to embark upon, that that would be deemed

1 confidential.

2 EXAMINER PIRIK: Mr. Kurtz, do you have
3 other portions of your cross that you still have to
4 go, or is this --

5 MR. KURTZ: I was just going to do one
6 foundation question. Oh, no, I do have other.

7 EXAMINER PIRIK: You have another that's
8 not confidential?

9 MR. KURTZ: That's correct. I can wait
10 and do the nonconfidential stuff.

11 EXAMINER PIRIK: I'm thinking what we
12 need to do, I was thinking of taking a break in 10
13 minutes, a 15-minute break, and at that point in time
14 I was hoping that the company would look at this
15 doc -- these documents and pinpoint exactly what you
16 would be requesting confidentiality of, and to the
17 extent Mr. Kurtz can ask as much as he can in the
18 open record, and then if we are actually getting into
19 any of those terms that we find to be confidential,
20 then that would be at the total end of all
21 cross-examination because we want the confidential to
22 be all in one segment.

23 MS. SPILLER: Understood. And, your
24 Honor, we do have a confidentiality agreement with
25 many of the parties here this afternoon, not all.

1 And for purposes of the review that you have asked of
2 us, wondering whether Mr. Kurtz has a clean version
3 of these documents that have not been, again,
4 selectively highlighted.

5 MR. KURTZ: No. I highlighted some
6 portions for ease of reference.

7 EXAMINER PIRIK: Do we have -- how
8 many -- let's go off the record for a minute.

9 (Discussion off the record.)

10 EXAMINER PIRIK: Now, we can go back on
11 the record.

12 Q. (By Mr. Kurtz) Mr. Trent, do you
13 understand part of the revenue requirements
14 calculation of Mr. Wathen includes as a revenue
15 requirement the purchased power costs for the
16 bilateral FRR obligation?

17 A. In terms of calculating the cost
18 associated with cost-based capacity, my understanding
19 is that the cost of this capacity under the bilateral
20 was included, but in terms of how much or that sort
21 of thing, I don't know.

22 Q. Okay. You say it was included.

23 A. That was my understanding, yes.

24 Q. Okay. Do you think that only prudently
25 incurred purchases should be recovered from

1 consumers?

2 MS. SPILLER: Objection to the extent
3 that asks for a legal opinion.

4 EXAMINER PIRIK: Objection overruled.

5 A. Well, I would generally defer to the
6 Commission to determine what's prudent or not and
7 what's recoverable or not. So I'm not sure that I
8 can answer beyond that.

9 Q. Well, do you think imprudently incurred
10 costs should be recovered from consumers through the
11 \$729 million deferral requests?

12 A. I wouldn't think that we would include a
13 request for imprudently incurred costs.

14 Q. Throughout your testimony, I can go back
15 and cite it, you referred to traditional ratemaking
16 and cost-of-service ratemaking. Is that a fair
17 characterization of the way you characterize your
18 request?

19 A. Well, I talk about traditional ratemaking
20 principles, and I was specifically referring, I
21 think, to some of the statements by the Commission in
22 the AEP Ohio case.

23 Q. Okay. In traditional ratemaking, the --
24 you just got through an electric and gas case. The
25 company files its request for rate increase, and then

1 there is a 275-day suspension period before the rates
2 go into effect by statute; is that correct?

3 MS. SPILLER: Objection, relevance.

4 A. Yeah.

5 EXAMINER PIRIK: Objection overruled.

6 A. I don't have specific knowledge of --
7 regarding the dates and calendaring for the
8 regulatory process here.

9 Q. You understand when a utility in all the
10 jurisdictions you operate, Kentucky, Florida, North
11 Carolina, South Carolina, when you file a rate case,
12 the rates don't go into effect immediately. There is
13 a suspension period to give the Commission a chance
14 to review the file.

15 A. Well, the rule is different in different
16 places in terms of when you can and can't put rates
17 into effect.

18 Q. Would you accept, subject to check, the
19 suspension period -- that the Commission has 275 days
20 by statute to rule on a rate case here under
21 traditional ratemaking?

22 MS. SPILLER: Objection, relevance.

23 A. Well, I feel like you are mixing a couple
24 of apples and oranges here in terms of rate case
25 principles. That's what I was referring to here, as

1 opposed to rate case proceedings and what -- even
2 more specifically referring to is what we consider to
3 be sort of the formula used in connection with the
4 AEP Ohio case. I wasn't talking about a rate case,
5 per se, when I was referring to rate case principles.

6 Q. Under traditional ratemaking, which is --
7 your belief is your request here is consistent with
8 traditional ratemaking?

9 A. That's not what I said. What I said
10 specifically, I believe, is that we believe that
11 traditional ratemaking principles apply in connection
12 with the calculation of the cost-based capacity, and
13 that was specifically addressed by the Commission in
14 the AEP Ohio case, and we tried to follow those rate
15 case principles.

16 Q. And the rate case principle, you filed
17 this case on August 29, 2012, correct?

18 A. Yes.

19 Q. And you asked for a deferral going back
20 to August 1, 2012, 28 days before you filed.

21 A. I believe that that's correct. I have to
22 check the dates, but I believe that's correct.

23 Q. Under traditional ratemaking, when a
24 utility filed for a rate increase, the rate increase
25 is suspended for 275 days. It doesn't go back a

1 month to pick up recovery under traditional
2 ratemaking principles.

3 MS. SPILLER: I am going to object, your
4 Honor, to the reference to a traditional rate case in
5 that this is not a request for a traditional rate
6 case. Clearly, a request to establish a charge and
7 deferral authority.

8 MR. KURTZ: The witness throughout his
9 testimony, I can go through it, refers to --

10 EXAMINER PIRIK: No, I understand,
11 Mr. Kurtz. I think he has answered your question,
12 but you can move on.

13 Q. Okay. Now, also under traditional
14 ratemaking principles, that -- that typically
15 ratemaking applies to regulated entities, not
16 unregulated entities, correct?

17 A. Again, I'm not talking about a rate case
18 for regulated entities. I'm talking about -- when I
19 was referring to the ratemaking principle, it was the
20 principle -- it was how you calculate things, and so
21 I still feel like you are mixing apples and oranges
22 here.

23 Q. Okay. Under traditional ratemaking
24 principles -- let me just ask you this, you
25 understand what Mr. Wathen did, he took the net book

1 cost of the legacy coal generation, the Midwest coal,
2 applied a rate of return to it, depreciation, fixed
3 O&M, and then he said how much revenue do these
4 machines generate, and there was the RPM revenue and
5 off-system sales margins, and he said, well, there's
6 negative, and in order to get to 11.15, here is how
7 much of a rate increase we need. You understand
8 that's the basic methodology, basic sort of a mini
9 rate case just on the legacy coal units?

10 MS. SPILLER: I am going to object to the
11 mischaracterization of Mr. Wathen's testimony.

12 A. Yeah.

13 EXAMINER PIRIK: I understand. That's
14 fine, Mr. Trent. I am going to let you answer the
15 question if you're able to.

16 A. Yeah. In terms of the exact formula that
17 Mr. Wathen used, I would defer to him. In general,
18 he calculated a cost associated with the assets and
19 then subtracted out margins that were being achieved.
20 I don't think he caught all the margins and ancillary
21 services and others, but in general, the methodology
22 he used was as I described it.

23 Q. Under traditional ratemaking principles,
24 would the Commission only look at the unprofitable
25 generating assets owned by a utility, or would it

1 also look at the profitable generating assets owned
2 by the utility?

3 MS. SPILLER: Objection, relevance, your
4 Honor.

5 EXAMINER PIRIK: Mr. Kurtz.

6 MR. KURTZ: Duke Energy Ohio owns
7 profitable units, the Midwest gas. That's how they
8 had \$50 million of earnings in 2012. And they
9 apparently own unprofitable generation assets,
10 Midwest coal, the legacy assets, both of which are
11 providing FRR service. And the company has chosen to
12 only look at the unprofitable segment of its business
13 and is asking for a \$729 million rate increase. My
14 question under traditional ratemaking principles,
15 would the Commission normally do that.

16 MS. SPILLER: And, your Honor, if I may
17 be heard on this, Duke Energy Ohio also owns Duke
18 Energy Kentucky, which Mr. Kurtz knows it is not all
19 considered with traditional rate case hearings. In
20 Ohio with respect to DECAM, Mr. Trent has already
21 testified that the cost associated with those assets
22 have not been included in the formula.

23 To the extent Mr. Kurtz would allow us to
24 revise the formula to include the operating expenses
25 relative to the DECAM assets, that's a different

1 comparison, but he's parsing out conveniently what he
2 wants this Commission to consider when, in fact, the
3 DECAM assets were not relevant to the cost buildup
4 performed by Mr. Wathen in this case and not relevant
5 to the calculations on which we are seeking the
6 charge.

7 EXAMINER PIRIK: I am going to allow the
8 question, and you can clarify on redirect.

9 MS. SPILLER: Thank you, your Honor.

10 Q. My question is, under traditional
11 ratemaking principles, would the Commission look at
12 the profitable as well as the unprofitable generating
13 assets of the utility?

14 A. And I feel like we are taking one sort of
15 aspect and trying to look at -- I think you have to
16 look at the whole context in terms of what's
17 happening here, you know, and in terms of the
18 specific sort of determination and formula that was
19 used by Mr. Wathen. He is the better person to ask
20 about that, and I would defer to the Commission in
21 terms of, you know, what costs should or shouldn't be
22 included.

23 Q. Under traditional ratemaking principles,
24 would the Commission typically exclude or ignore a
25 revenue item such as a \$110 million per year ESSC

1 charge?

2 A. Well, in this situation, as I appreciate
3 it, and, again, this was in the AEP Ohio case, the
4 Commission indicated that the ESSC charge -- and,
5 actually, in our case as well, I think that it's --
6 it's related to the competitive retail electric
7 service provision, and what we're talking about here
8 is not that. It's wholesale service, and so I think
9 the two are -- are different, and whether the
10 Commission would choose to take some of the stability
11 charge and apply credit here, this, you know, again,
12 I would defer to the Commission on that in terms of
13 what they believe is the right action.

14 MR. KURTZ: All right. Your Honors, I
15 think I'm done, other than the bilateral transaction
16 confidential issue.

17 EXAMINER PIRIK: My hope is that when we
18 come back from break, we'll have an understanding of
19 what is confidential, and to the extent Mr. Kurtz can
20 ask nonconfidential questions on those items, we will
21 do so at that time and then hold the confidential to
22 the end of this witness.

23 That being said, we will take a break, a
24 15-minute break until 4:30. Let's go off the record
25 because I think we need to talk about timing.

1 (Discussion off the record.)

2 EXAMINER PIRIK: We'll go back on the
3 record. Actually, we will go back off the record.

4 (Discussion off the record.)

5 EXAMINER PIRIK: Let's go back on the
6 record. With regard to the document that I believe
7 has been marked -- before we move on, let's do this.
8 It has been marked as OEG Exhibit 4. And I believe
9 Duke has had an opportunity to go through the
10 document and highlight those items which they are
11 requesting confidential treatment of. Would you --
12 would Duke like to make their arguments in regard to
13 the information?

14 MS. SPILLER: Your Honors, certainly.
15 This information we have designated as confidential
16 with regard to the document identified as OEG Exhibit
17 4. We would certainly argue that the information
18 reflected here is market-sensitive, proprietary,
19 trade secret information.

20 Certainly indicative of activity that is
21 occurring within the open markets and to the extent
22 this information is disclosed in the public record
23 would result in Duke Energy Ohio being unfairly
24 disadvantaged, vis-a-vis those counterparties with
25 whom it may interact, also vis-a-vis those other

1 entities that may be interested in interacting with
2 counterparties, the same as those engaged with Duke
3 Energy Ohio.

4 So consistent with Ohio law we would
5 state, your Honor, that this information is, in fact,
6 proprietary, trade secret as defined under the
7 statutes. This is not information that is widely
8 known or disclosed within the business operations of
9 Duke Energy Ohio and, in fact, there is care taken to
10 keep this information from -- from those who
11 otherwise do not have a business need to, in fact,
12 know of the contents therein.

13 We have taken care consistent with the
14 Bench's prior discussion to identify that which we
15 believe is confidential, such that the public record
16 can be as -- as open as possible.

17 EXAMINER PIRIK: Is there any objections
18 to the motion for protection?

19 Hearing none, we appreciate the fact that
20 the company went through and followed our
21 instructions, and the motion for protective order
22 with regard to those items highlighted in pink or
23 green, as the case may be, should be granted.

24 If the company could provide redacted
25 versions to the court reporters tomorrow as well

1 as -- redacted and unredacted versions is what we are
2 going to need, and we will need another copy for the
3 Bench.

4 MS. SPILLER: And, your Honor, certainly
5 we are happy to accommodate that. For purposes of
6 naming convention, I noted that OEG identified this
7 as Exhibit 4, although it is confidential, I am
8 assuming that for purposes of the record and when we
9 have both -- when we have both of the versions of the
10 document, that the public will be marked as OEG 4,
11 the confidential version to be marked as OEG 4A.

12 EXAMINER PIRIK: That would be
13 appropriate.

14 MS. SPILLER: Thank you.

15 EXAMINER PIRIK: With regard to -- I
16 understand we had a conversation off the record that
17 OEG's questions relate to the confidential
18 information, so at the conclusion of all of the
19 cross-examination tomorrow, we will have a period of
20 confidential cross-examination of the witness.

21 That being said, Mr. Kurtz, you were done
22 with your cross-examination?

23 MR. KURTZ: Yes.

24 EXAMINER PIRIK: Okay. I believe IEU is
25 next.

1 MR. DARR: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Darr:

5 Q. Let's start with the form of the relief
6 that you are asking for in your application.
7 Specifically you are looking at a nonbypassable
8 charge to collect the difference between what you
9 collect through your SSO and your CRES collections;
10 is that correct?

11 A. So the amount that we are -- would
12 deduct -- well, the deferral that we are seeking --
13 you asked about the deferral or total amount?

14 Q. The deferral.

15 A. So the deferral would include the
16 difference between what we are collecting in
17 connection with serving both the CRES providers and
18 the auction winners.

19 Q. That amount would be collected through a
20 retail charge, correct?

21 A. It would be retail payment, yes.

22 Q. Do you draw a distinction between a
23 payment and a charge that -- let me make sure I
24 understand the difference that you are describing.

25 A. No. I think there is not, as I was

1 thinking more in terms of the difference between
2 retail service and wholesale service, but I think
3 payment of charge is -- probably there is not a
4 distinction there.

5 Q. Your testimony does not address the
6 effect of the proposed charge or payment on the
7 ability of the current ESP to pass the ESP versus MRO
8 test; is that correct?

9 A. So my understanding from the Commission's
10 ruling in the AEP case is that -- that capacity of
11 this type is a wholesale service that is not governed
12 by the statute that you've referenced.

13 Q. That doesn't answer my question,
14 Mr. Trent. Let me repeat my question. Your
15 testimony does not address the effect of the proposed
16 charge on the ability of the current ESP to pass the
17 ESP versus MRO test, does it?

18 A. Well, I think my answer did address it in
19 that I said I do not believe that -- my understanding
20 of the AEP order, we don't have to and are not
21 subject to that test.

22 Q. So the answer to my question is that you
23 have not included anything in your testimony; is that
24 correct?

25 MS. SPILLER: Objection, asked and

1 answered.

2 MR. DARR: It has not been answered, your
3 Honor.

4 EXAMINER PIRIK: Objection overruled.

5 A. So my understanding is that we followed
6 the path that AEP Ohio Commission gave to us. I do
7 not think that we included any sort of analysis of --
8 if I understand what you are asking, greater than or
9 lower than market if that's what you are talking
10 about.

11 Q. I am asking whether or not the company
12 provided any testimony that would demonstrate that
13 the effect of the charge that you are asking for here
14 would affect positively or negatively the ability of
15 the company to pass the ESP versus MRO test.

16 A. And I do not believe that our testimony
17 addressed that, and, again, it was based on our
18 understanding from the Commission's precedent.

19 Q. And not only does your testimony not
20 address it, but there isn't any testimony provided by
21 Duke that addresses it in this proceeding, correct?

22 MS. SPILLER: I am going to object, your
23 Honor, to the relevance and to the suggestion that
24 the MRO versus ESP test is even applicable here.

25 MR. DARR: I appreciate the objection.

1 EXAMINER PIRIK: Objection overruled.

2 MR. DARR: Thank you.

3 A. Actually I thought you were asking last
4 time about all the testimony, just not mine, so my
5 answer would be the same as before.

6 MR. DARR: Thank you. I have one
7 confidential exhibit as well. I will withhold
8 dealing with that until we go to the confidential
9 section. Is that how you prefer to treat that?

10 EXAMINER PIRIK: What I would ask is that
11 you provide a copy to the company at this time as
12 well as the Bench so we can look at it, and before we
13 close for today I can instruct the company as to what
14 we need them to do before tomorrow.

15 MR. DARR: I met with the company during
16 the break, your Honor, and the indication to me was
17 that this document will be treated as confidential in
18 whole because of the confidentiality agreements they
19 have with third parties.

20 EXAMINER PIRIK: I understand that, but
21 the Bench hasn't seen the document so the Bench can't
22 instruct the company as to what they need to have at
23 that point.

24 MR. DARR: I appreciate that. I will
25 provide you a copy of what we are -- what we are

1 seeking but what I am suggesting to the Bench I don't
2 have a way of getting around this one based on what I
3 was told.

4 EXAMINER PIRIK: Right. And the burden
5 is on the company to make the arguments but we need
6 to see it first.

7 MS. SPILLER: And, your Honor, if I may,
8 in response to Mr. Darr's statement, it's a document
9 that Duke Energy Ohio did not prepare. There are
10 third-party consultants and firms involved, and so
11 the special treatment, if you will, that Mr. Darr
12 suggests is because those individuals possess
13 privileges and rights and so we -- it's not as simple
14 as Duke Energy Ohio identifying that which may be
15 confidential.

16 There are third parties whose
17 confidential material is contained within the
18 documents pursuant to agreements with those third
19 parties. There would have to be an opportunity for
20 them to come in and assert their rights with respect
21 to the confidential -- the confidential information
22 contained therein, which is why I suspect that
23 Mr. Darr indicated that he would like to identify the
24 document in its entirety, understanding that the
25 Bench certainly needs an opportunity to review the

1 document to further form a judgment on that.

2 EXAMINER PIRIK: Okay. I understand what
3 you are saying, and it's all very cryptic. Not
4 having seen the document, I can't really respond to
5 that, but it will be the determination of the Bench
6 what is confidential and what isn't confidential. If
7 we have to bring other parties in to make their
8 arguments, then we will do so at that time, but we
9 are a public agency so we are going to do what we can
10 to make everything open, realizing that you'll have
11 the opportunity to make your arguments on any
12 specific item that is brought before us.

13 So if we could receive a copy of it
14 before the end of the day, then we can look at it
15 this evening and in the morning and have a better
16 response.

17 MS. SPILLER: Thank you, your Honor.

18 Q. (By Mr. Darr) At page 26 of your
19 testimony, if you would go there, please, you
20 indicate at that point in your testimony that it's
21 the position of Duke that the proposal that you have
22 here before the Commission in this application will
23 not change or adversely affect competition; is that
24 correct?

25 A. Yes.

1 Q. Is it also my -- am I correct that the
2 revenues that you are proposing to collect with
3 regard to the legacy generation assets would be
4 transferred to any Duke affiliate that these assets
5 are transferred to pursuant to the stipulation in the
6 ESP case?

7 A. At a point in time when the assets would
8 be transferred, then I would expect that the payments
9 associated with what we are requesting here would be
10 transferred.

11 Q. And is the expectation currently that
12 these assets would be transferred to either DECAM or
13 an entity similar to DECAM?

14 A. I would expect that they would be
15 transferred to an affiliate or subsidiary, I should
16 say, of Duke Energy Ohio. In terms of the specific
17 entity, I don't know that that's been determined.

18 Q. Is it fair to say that your competitive
19 affiliate DECAM is currently involved in the auction
20 processes to provide SSO load in other service
21 territories here in Ohio?

22 MS. SPILLER: Objection to the relevance,
23 your Honor, and certainly outside the scope of
24 Mr. Trent's direct testimony.

25 EXAMINER PIRIK: Mr. Darr?

1 MR. DARR: Goes to the relevance -- the
2 relevance, goes to his statement that this is not
3 going to affect competition in Ohio. He has proposed
4 to transfer -- the company has proposed to transfer
5 assets and a transfer of the related revenues, which
6 clearly are denominated as above market. That
7 potentially has a competitive effect. I want to
8 establish the fact they are, in fact, involved in
9 competitive activities.

10 EXAMINER PIRIK: Objection overruled.

11 A. So I believe that DECAM does get involved
12 in bidding activities in other service -- or with
13 other customers. I would note that DECAM would
14 continue to hold the FRR -- or they would hold an
15 obligation to supply the capacity that's been
16 transferred to them ultimately to meet the capacity
17 obligations.

18 Q. And, in fact, DECAM has been successful
19 in several auctions in the past, has it not?

20 A. They have been successful in winning
21 tranches in some auctions, yes.

22 MR. DARR: Your Honor, I would like to
23 have marked as IEU Exhibits 1, 2, and 3 and take
24 administrative notice --

25 EXAMINER PIRIK: You want those

1 documents -- well, whatever you are bringing up, you
2 have administrative notices. Go ahead. Finish your
3 list.

4 MR. DARR: The item No. 1 is a
5 notification of auction results dated November 15,
6 2011. Item No. 2 is notification of auction, CBP
7 auction, results dated February 16, 2012. And item
8 No. 3, or Exhibit No. 3, is notification of CPB
9 auction results dated November 14, 2012. Each of
10 these documents was filed with the Commission and
11 represents the auction results for various auction
12 events.

13 EXAMINER PIRIK: The documents are so
14 marked.

15 (EXHIBITS MARKED FOR IDENTIFICATION.)

16 MR. DARR: Is there any objection, your
17 Honor, to taking administrative notice, or is there
18 any problem with taking administrative notice of
19 these Commission findings?

20 EXAMINER PIRIK: There is no problem
21 taking administrative notice of them. However, we
22 want to mark them as exhibits.

23 MR. DARR: Right. That was my --

24 EXAMINER PIRIK: Right. I think you did
25 that appropriately.

1 Q. (By Mr. Darr) Turning to IEU Exhibit 1,
2 which is the letter dated November 15, 2011, I direct
3 your attention to Table 2 of that exhibit.

4 A. Yes.

5 Q. And this indicates that DECAM was the
6 winning bidder on four tranches in that auction,
7 correct?

8 MS. SPILLER: Your Honor, I am going to
9 object to the relevance and use of IEU Exhibit 1,
10 understanding Mr. Darr's previously stated purpose,
11 but looking at the delivery period, certainly not
12 relevant to his claim.

13 EXAMINER PIRIK: Mr. Darr.

14 MR. DARR: The point is, your Honor, you
15 have got a company that's going to be actively
16 involved in the market, or we know that DECAM has
17 been actively involved in the market. We also know
18 that the company is going to transfer these assets to
19 a nonregulated affiliate as required to by the ESP
20 stipulation.

21 On a going-forward basis, it is
22 reasonable to assume -- and that ultimately will be
23 your decision to make -- that they will continue to
24 be involved in the market, thus the statement it may
25 not -- on page 26, that this decision will not affect

1 or this application will not affect the competitive
2 outlook is subject to challenge, and that's the point
3 of putting this evidence on the record, so the
4 Commission decide whether or not there is, in fact,
5 support for this statement that this application will
6 not adversely affect competition in Ohio.

7 EXAMINER PIRIK: I'll overrule the
8 objection.

9 MR. DARR: Thank you, your Honor.

10 Q. (By Mr. Darr) Turning to IEU Exhibit No.
11 2.

12 A. Okay.

13 Q. Oh, going back, I guess I didn't get an
14 answer to my question, did I? DECAM was successful
15 in winning four tranches in this particular auction,
16 correct?

17 A. Yes, this shows DECAM was. It shows
18 AEP -- American Electric Power was. It shows others
19 were as well.

20 Q. Okay. Turn to IEU Exhibit No. 2. Again,
21 if we go back to Table 2 it shows that DECAM was
22 successful in winning one tranche in this auction,
23 correct?

24 A. It does, and it shows AEP Service Corp.
25 winning two also.

1 Q. And then, finally, if we go to IEU
2 Exhibit No. 3, it shows the DECAM was successful in
3 winning one tranche in this auction as well, correct?

4 A. Yes. And AEP Energy Partners winning
5 one.

6 Q. Now, on page 7 of your testimony, line
7 14, you indicate Duke was required to be an FRR
8 entity. Do you see that testimony?

9 A. Yes.

10 Q. Now, at the time that AEP or Duke made
11 its filing to be an FRR entity, the company was
12 already aware of the three-year-ahead prices that
13 would emerge from -- that would emerge from the RPM
14 auctions for what years?

15 A. So we filed -- well, it would have been
16 the next three auctions after the filing date, so the
17 auctions occur in May and it's for the third year
18 out. So I think it would have been '12 -- no, I
19 think it would be through '14-'15.

20 Q. And it's fair to say in a -- that you
21 filed stipulations in the BTR case around August --
22 excuse me, April 26, 2011, subject to check?

23 A. I was thinking about that last answer so
24 when I said '14-'15, I'm talking about ending
25 mid-year '15 as opposed to going through calendar

1 year '15. I just want to be clear about that.

2 So could you repeat your last question.

3 Q. Subject to check, would you agree you
4 filed -- you, being Duke Energy Ohio, filed a
5 stipulation in the BTR case April 26, 2011?

6 A. I don't remember the date specifically.

7 Q. Would you agree, subject to check?

8 A. Yeah. I mean, yeah, that's fine.

9 Q. And would you agree that the Commission
10 accepted that application -- or that stipulation May
11 25, 2011?

12 A. When you said "accepted the
13 stipulation" --

14 Q. Entered an Opinion and Order saying
15 that -- approving the stipulation.

16 A. And, again, subject to check, I don't
17 recall the specific date.

18 Q. And going through the same process, would
19 you agree that, subject to check, the ESP stipulation
20 was filed on October 21 -- excuse me, 24, 2011?

21 A. That sounds correct.

22 Q. And would you agree that, subject to
23 check again, that the Commission accepted through an
24 Opinion and Order the stipulation on November 22,
25 2011?

1 A. I believe that the Commission issued an
2 Opinion and Order for the stipulation in November of
3 2011, yes.

4 Q. Now, the company, I am referring now to
5 Duke Energy Ohio, is placing a large amount of
6 reliance on the Commission's decision in the AEP case
7 concerning capacity and the AEP case concerning the
8 collection of that -- of that deferral -- of a
9 deferral to support its application in this case,
10 correct?

11 A. Well, as I've stated before, we believe
12 that the -- that the order of the Commission provides
13 the applicable precedent here.

14 Q. So the answer to my question is yes?

15 A. I think I've characterized it the way I
16 would answer, that we believe and have referenced the
17 AEP capacity case as precedent for what we are
18 seeking a recovery for here.

19 Q. And you are aware that AEP Ohio through
20 American Electric Power Service Corp. filed an
21 application with the FERC in November of 2010?

22 MS. SPILLER: Objection to the relevance
23 of the FERC filing.

24 EXAMINER PIRIK: Objection overruled.

25 A. I don't know what FERC filings -- I can't

1 pinpoint dates for FERC filings by AEP.

2 Q. Okay. Would you agree that we could go
3 back to the record in the 2929 case or go to the FERC
4 docket and determine dates in which the AEP Service
5 Corp. filed its application on behalf of AEP Ohio?

6 A. I would expect you could go to the FERC
7 docket.

8 Q. Are you aware of when the Commission
9 opened its investigation of capacity charges with
10 regard to AEP Ohio?

11 A. I don't have the specific date.

12 Q. Would you agree, subject to check, it was
13 December 8, 2010?

14 A. Again, I would -- the record is going to
15 speak for itself in terms of the date.

16 Q. Now, in the FRR proceeding initiated by
17 Duke, there were actually multiple applications, as
18 we talked about this morning, correct?

19 A. When you say "multiple applications"?

20 Q. There was a transfer application
21 initially and then an FRR plan subsequent to that,
22 correct?

23 A. Yes, there was an FRR plan that was
24 submitted.

25 Q. And that was filed after the initial

1 notification of transfer, correct, or the application
2 to transfer from MISO to PJM?

3 A. Yes. So the FRR plan was filed
4 subsequent to the transition -- the move -- the
5 application move to PJM.

6 Q. Do you have in front of you what has been
7 marked previously as FirstEnergy Solutions Exhibit 7?

8 A. Yes, I do.

9 MR. KUTIK: That's the August 16, 2010,
10 letter?

11 MR. DARR: Yes.

12 A. I do.

13 Q. And earlier today you went through a
14 number of points with Mr. Kutik about this indicating
15 that Duke made certain commitments about using the
16 RPM price to serve alternative LSEs and the balance
17 of load, correct?

18 MS. SPILLER: Same objection, asked and
19 answered earlier today.

20 EXAMINER PIRIK: Objection, overruled.

21 A. You know, we have had several hours of
22 questions. I mean --

23 Q. Well, if we turn to pages 12 and 13, you
24 outline there that it's the intent of Duke to serve
25 load at the RPM price, correct?

1 A. On page 12 and 13 of Exhibit 7?

2 Q. Yes.

3 A. I didn't draft this document and didn't
4 review them as they refer to specific statements.

5 Q. Go from -- and I believe Mr. Kutik asked
6 you about this earlier. You go from the sentence
7 that begins at the bottom of page 12 and carries on
8 to page 13, it states specifically, "DEO will serve
9 such load at the RPM price," correct?

10 A. I see that statement.

11 Q. And then you confirm that again on page
12 14, correct?

13 MS. SPILLER: I am going to object to the
14 characterization of Mr. Trent doing the confirmation.

15 Q. Duke confirms that -- I'll rephrase my
16 question. Duke confirms that -- again, on page 14,
17 beginning with "The need to maintain reliability."

18 A. I'm sorry, I am not seeing where you are
19 referring to. I see it here. Yes, at the time this
20 was filed there was a -- it was accurate that the
21 intent was to charge the RPM price.

22 Q. And part of this was true because it was
23 "presumptively just and reasonable," correct?

24 A. Well, it states in the next page that
25 this particular proposal at this time is

1 presumptively just and reasonable. It does state
2 that. I would say also I'm not aware of anything
3 that would preclude us from seeking a different
4 methodology for recovering capacity, but at the time
5 this was filed, this was accurate.

6 Q. And then if we go to page 16, we find a
7 summary, and under No. 4 in the carryover paragraph,
8 "Duke also represents the capacity resources supplied
9 by DEO under the Duke FRR plan will be supplied at
10 the RPM final zonal capacity price for the
11 unconstrained region of PJM for the applicable
12 delivery year for all wholesale load, not just
13 alternative LSEs."

14 MS. SPILLER: Objection, asked and
15 answered. I think this document speaks for itself.

16 EXAMINER PIRIK: Overruled.

17 A. I think you've read that correctly.

18 Q. And that was Duke's representation to the
19 FERC concerning the FRR plan, correct?

20 A. It was at the time of this filing, and,
21 again, as I stated, I don't believe that there was
22 any -- anything in here that precluded us from --
23 from seeking a different capacity mechanism.

24 Q. Now, is it fair to say this application
25 was contested?

1 A. Again, I was not -- I didn't review this.
2 I didn't really follow the -- this proceeding in any
3 active way. It wouldn't surprise me it was
4 contested, but I don't have direct knowledge.

5 Q. Do you know whether or not the Office of
6 Consumers' Counsel became involved in this case?

7 MS. SPILLER: Your Honor, I am going to
8 object to the relevance as to what may have occurred
9 at the FERC with respect to migration to PJM. The
10 fact of the matter is we received FERC approval and
11 did migrate, and as the parties know, and it's
12 undisputed, that we are an FRR entity effective
13 January 1, 2012, as solicited by Mr. Kutik earlier
14 this morning.

15 EXAMINER PIRIK: Mr. Darr.

16 MR. DARR: What is disputed are the terms
17 and conditions of that approval, your Honor. They
18 represented -- "they" being Duke, represented that
19 they were going to serve all wholesale load at RPM.
20 They repeated that, and then when asked what was this
21 going to do to their retail rates, as I will show in
22 a second, they said, Well, we will leave that issue
23 open for the ESP case.

24 EXAMINER PIRIK: Objection overruled.

25 MR. DARR: Thank you, your Honor.

1 THE WITNESS: Could you restate the
2 question or have it read back, please.

3 Q. (By Mr. Darr) Yeah. Are you aware that
4 OCC became involved in the case, the Office of
5 Consumers' Counsel?

6 A. I don't have specific knowledge of who --
7 who was intervening in the case.

8 Q. Are you aware that Duke filed an answer
9 to that case?

10 A. Duke filed an answer to the case? I
11 don't have specific knowledge of it.

12 Q. Okay.

13 MR. DARR: I would like to have an item
14 marked as IEU Exhibit No. 4.

15 EXAMINER PIRIK: The document is so
16 marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MS. SPILLER: Your Honor, if I may note
19 for the record, not as evidence, as the highlighting
20 by Mr. Kutik, this document also appears to have been
21 shaded, presumably previously highlighted material
22 that would not have been inserted there by Duke
23 Energy Ohio.

24 EXAMINER PIRIK: Thank you.

25 Q. Do you have in front of you what's been

1 marked as IEU Exhibit 4?

2 A. I do.

3 Q. And is it fair to say that Duke Energy
4 Ohio was attempting to establish what the wholesale
5 rate was for capacity through the FRR filing that it
6 made?

7 A. Yeah. I am not familiar with this filing
8 and have not reviewed it previously so my ability to
9 testify regarding what we were seeking, particularly
10 in this motion, would be -- would be limited, and I
11 would need to review -- review it in its entirety.

12 Q. Let me direct your attention then. Going
13 to the third paragraph of what's been marked as IEU
14 Exhibit No. 4, could you take a look at that, please.

15 A. Okay.

16 Q. And based on the representations
17 contained in this document, is it fair to say that
18 Duke Energy Ohio was not seeking to dictate the
19 retail rates of DEO through this proceeding?

20 MS. SPILLER: Your Honor, if I may.
21 Mr. Trent has indicated that he -- he is not the
22 author of the document, does not recall having
23 reviewed the document, and could not testify to it
24 without a thoughtful review of the document in its
25 entirety, and now Mr. Darr is selectively drawing his

1 attention to one part of the document and asking the
2 witness to essentially authenticate.

3 EXAMINER PIRIK: Mr. Darr?

4 MR. DARR: Your Honor, I am not asking
5 him to authenticate. I am trying to elicit from him,
6 based on the fact he doesn't have any current
7 recollection, apparently, what the position was of
8 Duke before the -- before the FERC. The only
9 apparent way we can do that is to go back to the
10 documents at the time and have him verify for us what
11 those positions were.

12 EXAMINER PIRIK: I'll overrule the
13 objection.

14 A. Well, what I would say would be my
15 testimony with respect to this would be limited to
16 what's actually in the document itself. As I said, I
17 did not review this and wasn't really involved in
18 discussions regarding the filing of this -- this
19 document.

20 The additional thing I would say is at
21 this time the company definitely was not aware of a
22 cost-based state capacity mechanism that was created
23 by the Commission subsequent to this period in time.

24 Q. And I appreciate that, sir. At the time
25 that you filed the application, the expectation was

1 that the company would recover RPM-based revenues
2 through the provision of its capacity on the
3 wholesale side, correct?

4 MS. SPILLER: Objection, your Honor, to
5 the extent, again, I think this is an improper use of
6 this document given Mr. Trent's lack of knowledge as
7 to the content or having prepared it.

8 MR. DARR: Actually, your Honor, my
9 question was more general than that. Based on
10 everything that we have been discussing for the last
11 half hour or so, actually for the last half day or
12 so, what was the expectation. That's all I asked.

13 EXAMINER PIRIK: I agree. Objection
14 overruled.

15 A. So I can tell you generally, prior to the
16 time that the AEP capacity case came out, we were
17 contemplating that we would be charging market
18 rates -- based rates. The AEP case gave us
19 additional clarity in terms of what was available in
20 terms of a capacity payment mechanism, and I do not
21 believe that there are any filings that we made that
22 would preclude us from seeking a different capacity
23 mechanism in the future.

24 Q. So at the time -- going back to my
25 question, at the time you made your filings with the

1 FERC, the expectation was that you could recover
2 revenues at the market-based price for your wholesale
3 load, correct?

4 MS. SPILLER: Objection, asked and
5 answered.

6 EXAMINER PIRIK: Overruled.

7 A. Again, I would say that was the
8 anticipation at the time of the filing, but there was
9 not an understanding, at least that I am aware of,
10 that we would be precluded from doing anything
11 different in the future.

12 Q. And the triggering device for doing
13 something different in the future was the AEP
14 decision, correct?

15 A. Well, the AEP was part of it in terms of
16 understanding that this cost-based capacity mechanism
17 that was wholesale service would be available in the
18 state of Ohio, that, coupled with the fact that our
19 returns were spiraling downward.

20 Q. Now, we've already established that you
21 entered into a stipulation with regard to your ESP
22 that was approved in November of 2011, correct?

23 A. There was a stipulation we entered into
24 in that case, yes.

25 MR. DARR: And I would like to have

1 marked as IEU Exhibit No. 5 a document labeled
2 Stipulation and Recommendation.

3 EXAMINER PIRIK: The document is so
4 marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. (By Mr. Darr) Do you have in front of you
7 what's been marked as IEU Exhibit No. 5?

8 A. I do.

9 Q. Do you recognize this as the stipulation
10 in the case 11-3549 by Duke and various other
11 parties?

12 A. It appears to be so, yes.

13 Q. And this is the stipulation that we have
14 been talking about off and on today concerning the
15 recovery mechanisms that were established for
16 capacity for shopping and nonshopping customers,
17 correct?

18 MS. SPILLER: I am going to object to the
19 characterization of recovery mechanism. I think that
20 misstates the document.

21 A. Yeah.

22 EXAMINER PIRIK: I will allow the witness
23 to clarify.

24 A. This is the stipulation that the parties
25 agreed to in the ESP case, and I don't think that

1 your representation of what the stipulation is is
2 complete or accurate.

3 Q. And if we turn to page 12 of the
4 stipulation, it provides the -- in paragraph IV.A,
5 "The Parties further agree that, during the term of
6 the ESP, Duke Energy Ohio shall charge CRES providers
7 for capacity as determined by the PJM RTO, which is
8 the FZCP in the unconstrained RTO region, for the
9 applicable time periods of its ESP."

10 MS. SPILLER: And, your Honor, if I may,
11 Mr. Darr, although he referenced the stipulation that
12 was filed on October 24, failed to include the
13 amendment that serves particularly to amend the
14 paragraph of which he is now speaking. And it was a
15 motion that the Commission did, in fact, approve in
16 their issuing the Opinion and Order in November of
17 2011, so while this appears to be a representation of
18 what was filed on October 24, 2011, is not, in fact,
19 the accurate document in terms of final content.

20 MR. DARR: I am more than willing to
21 accept the modification. I believe the word -- what
22 was inserted is PJM?

23 MS. SPILLER: Correct.

24 MR. DARR: For Duke Energy Ohio?

25 MS. SPILLER: Correct.

1 MR. DARR: With that modification, fine.

2 EXAMINER PIRIK: Thank you.

3 MS. BOJKO: Your Honor, I think it's not
4 that simple, and I think there are going to be
5 questions later about that exactly. That document
6 that Ms. Spiller is referencing was not signed by all
7 the parties, and it was portrayed as a typographical
8 error, and I think, as you will see through this
9 proceeding, that that may not be an entirely accurate
10 statement, and we need to consider that.

11 So I don't accept the modification that
12 Ms. Spiller just stated to you. It was not signed by
13 all the parties and it is not part of the
14 stipulation.

15 EXAMINER PIRIK: What document are you
16 referring to specifically?

17 MS. SPILLER: Your Honor, it's a motion
18 of Duke Energy Ohio to admit an amendment to the
19 stipulation as Joint Exhibit 1.1, asking also for
20 expedited treatment filed with the Commission, it
21 appears, on November 16, 2011.

22 I would further note that the Commission
23 addressed this pending motion and the correction or
24 revision to the ESP stipulation in their -- in their
25 Opinion and Order approving and modifying the

1 stipulation. There was no -- there was no objection.
2 There was no entry on rehearing. There was no
3 contention whatsoever that that revision was
4 inappropriate.

5 EXAMINER PIRIK: Thank you, and I do
6 understand. I think what we will do is Mr. Darr will
7 continue with his cross-examination. If you would
8 like to bring another exhibit up on redirect, that
9 would be available then for recross, or if there is
10 another document, you can provide that in your
11 cross-examination.

12 MS. BOJKO: And I do intend to, so please
13 don't kill another tree to produce this document.
14 But thank you, your Honor. I think you'll see that
15 there is a reason Ms. Spiller was just testifying to
16 what happened after the case, and you'll soon find
17 out that there is a reason why nobody objected
18 because it was deemed to be a typographical error,
19 and it wasn't until this proceeding that we found out
20 the real intention behind the change, which was
21 misleading. And you're right, the Commission should
22 be made aware of it, and that's what we intend to do
23 through this providing.

24 MS. SPILLER: Your Honor --

25 EXAMINER PIRIK: Really, I don't need

1 counsel testifying any more. I think what we'll do
2 is we will go ahead with the exhibits. Mr. Darr can
3 continue and we'll take exhibits as they come along.

4 MR. DARR: Fine.

5 THE WITNESS: Your Honor, could I get one
6 clarification? I wasn't sure what the change was. I
7 wasn't following that so if I could get that, that
8 would be helpful.

9 MR. DARR: I would say there is no change
10 at this point, your Honor, because this was the
11 document that was filed with the Commission. We can
12 clarify through whatever process is appropriate, so
13 I'm going to withdraw my acquiescence at this point.

14 EXAMINER PIRIK: Okay. I think you
15 should just continue on your cross-examination of the
16 document as you have in front of you and then further
17 clarifications will happen.

18 THE WITNESS: There was a specific
19 statement as to something, and is it possible that
20 someone could read that back to me?

21 EXAMINER PIRIK: I don't think there is a
22 clarification at this point. At this point we are
23 just going with this document as it is written at
24 this point in time, and then with further cross there
25 could be other exhibits that will be presented, and

1 your counsel will then have the opportunity to
2 provide information on redirect if they so choose.

3 Q. (By Mr. Darr) Just so the record isn't
4 any more muddled up than it already is, just so it's
5 clear, in Section IV.A contained on page 12 of the
6 stipulation as filed provided that "Duke Energy Ohio
7 shall charge CRES providers for capacity as
8 determined by the PJM RTO, which is the FZCP in the
9 unconstrained RTO region, for the applicable time
10 periods of its ESP."

11 A. Are you reading a sentence there because
12 I'm not following the sentence you are reading?

13 Q. Sure. It's page 12, second sentence of
14 IV.A.

15 A. Where it starts out "The Parties further
16 agree"?

17 Q. Yes.

18 A. Okay. And what is the question again?

19 Q. Have I read that correctly?

20 A. Well, since I wasn't following what
21 sentence you were reading from, maybe --

22 MR. DARR: Can you read it back, please.
23 Can I ask that be it be read back, please.

24 EXAMINER PIRIK: Yes.

25 (Record read.)

1 A. So you did read that correctly. My
2 understanding of the stipulation that was approved by
3 the Commission was that PJM were charged the capacity
4 to the providers.

5 Q. I'll leave that to Ms. Bojko to sort out.

6 A. Okay.

7 Q. Turning to page 7, with regard to SSO
8 supply, is it fair to say that that section provided
9 that the parties also -- "The Parties agree that Duke
10 Energy Ohio shall supply capacity to PJM, which, in
11 turn" --

12 A. Could you point me to the sentence
13 specifically? I am just not following you.

14 Q. Sure. It's in section II.B.

15 A. Okay.

16 Q. There it says that "The parties agree
17 that Duke Energy Ohio shall supply capacity to PJM,
18 which, in turn, will charge for capacity to all
19 wholesale supply auction winners for the applicable"
20 -- "applicable time periods of Duke Energy Ohio's ESP
21 with the charge for said capacity determined by the
22 PJM RTO, which is the FZCP in the unconstrained
23 region RTO region."

24 A. Yeah. So I think you left out the
25 preamble, the first clause of that sentence, but the

1 part that you read was accurate, which is consistent
2 with my understanding that PJM was going to charge
3 for capacity to the auction winners as well as the
4 CRES providers.

5 Q. And the preamble is an acknowledgment
6 that Duke Energy Ohio has status as an FRR entity in
7 PJM, correct?

8 A. That's what it says, yes, and that is my
9 understanding, and that is not changing. We're not
10 proposing that that would be changed either.

11 Q. Now, we've already discussed that the
12 agreement also contains an ESSC, correct?

13 MS. SPILLER: Objection, asked and
14 answered.

15 A. The stipulation includes an ESSC.

16 MR. DARR: In deference to the Bench,
17 it's 5:30 right now. I don't know what you want to
18 do.

19 EXAMINER PIRIK: Looks like you have got
20 quite a bit more to go.

21 MR. DARR: I have got a couple of pages.

22 EXAMINER PIRIK: I think we should go
23 ahead and take our break now. If you could provide
24 us with the confidential document so we could look at
25 it tonight, I think that would be appropriate.

1 Is there anything else that we need to
2 discuss before we go off the record?

3 If not, we will reconvene tomorrow, April
4 16, at 8:00 a.m.

5 (The hearing adjourned at 5:28 p.m.)

6 - - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, April 15, 2013, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-72092)

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Summary: Transcript in the matter of Duke Energy Ohio, Inc. hearing held on 04/15/13 - Volume I electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.