

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 8:30 a.m. on Wednesday,
April 17, 2013.

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VOLUME III

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1 Wednesday Morning Session,
2 April 17, 2013.

3 - - -

4 EXAMINER PIRIK: Mr. Kurtz.

5 MR. KURTZ: Thank you, your Honor.

6 - - -

7 SCOTT NIEMANN, PH.D.

8 being previously sworn, as prescribed by law, was
9 examined and testified as follows:

10 CROSS-EXAMINATION

11 By Mr. Kurtz:

12 Q. Good morning, Mr. Niemann.

13 A. Good morning.

14 Q. Would you turn to page 15 of your
15 testimony, please, line 22 at the bottom. Line 22.

16 A. Okay.

17 Q. Let me just -- "An FRR entity is also
18 restrictive in its ability to sell surplus resources
19 in the RPM auctions. An FRR entity is allowed to
20 offer into RPM auctions only resources in excess of
21 its resource requirement, plus the lesser of
22 3 percent or 450 megawatts."

23 Let's talk about that in the context of
24 Duke Energy Ohio. Duke Energy Ohio is the FRR
25 entity; is that correct?

1 A. That's correct.

2 Q. Okay. So the resources that they have
3 would be the Midwest coal resources as well as the
4 Midwest gas resources?

5 A. For what was ultimately used to meet
6 their FRR obligation, yes, as well as resources that
7 were purchased under bilateral contracts.

8 Q. Okay. You have -- let's -- what is -- I
9 know it changes every year a little bit, but what is
10 the load we're talking about here basically for --
11 for the Duke Energy Ohio consumers?

12 A. You know, so as you said, it changes
13 every year, and it depends on whether you are looking
14 at Duke Energy Ohio's service area or the entire Duke
15 Ohio/Kentucky service area. But, you know, roughly
16 we'll say 5 to 6 thousand megawatts.

17 Q. Let's definitely take Kentucky out. How
18 much just for Ohio?

19 A. Round numbers, let's call it 5,000
20 megawatts.

21 Q. Okay. And then the legacy coal assets,
22 the installed capacities, is 3,800 megawatts, which
23 would include Beckjord?

24 A. You know, I don't have the exact numbers
25 in front of me, but subject to check, that sounds

1 about right.

2 Q. Okay. And then the legacy, the Midwest
3 gas assets, are 3,025, I believe.

4 A. That's about right, I believe, yes.

5 Q. So 6,825 megawatts installed.

6 A. Yes.

7 Q. Is that correct? Okay. Now, for
8 purposes of the FRR, it's the installed capacity
9 times the forced outage rate to get the UCAP, the
10 U-C-A-P, which is what the relevant megawatt number?

11 A. That's correct.

12 Q. Okay. So in some of your workpapers,
13 I've seen that the FRR UCAP from the legacy -- from
14 the Midwest coal is approximately 3,100 megawatts?

15 A. I would have to review those because I
16 don't have them in front of me.

17 MR. KURTZ: Okay. This is -- this is a
18 confidential exhibit and I will -- I would like to go
19 into confidential session at the end, but can I just
20 hand the witness this or show this to him just to
21 confirm -- oh, I'm sorry, it's more like (REDACTED)
22 megawatts, but can I show the witness this document?

23 EXAMINER PIRIK: Has it been marked?

24 MR. KURTZ: No.

25 EXAMINER PIRIK: Why don't we mark it on

1 the record and then you ask as many questions as you
2 can on the record, and then at the end we'll have
3 confidential.

4 MR. KURTZ: OEG 7.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. KURTZ: Should I hand it out to
7 everyone?

8 MS. SPILLER: We would like to see it.

9 EXAMINER PIRIK: Yes. So this exhibit,
10 Karen is correct, this exhibit should be marked as 7A
11 since it's confidential.

12 MR. KURTZ: Okay.

13 EXAMINER PIRIK: And we're going to need
14 a redacted version of it. I don't know what's
15 confidential and what's not.

16 Mr. Kurtz, do you have -- do you know
17 what's confidential and what's not, or do we need to
18 ask Duke to review the document and let us know?

19 MR. KURTZ: It's Duke -- Duke is the one
20 claiming confidentiality.

21 EXAMINER PIRIK: Okay.

22 MS. SPILLER: So, your Honor, would you
23 like us to do that now?

24 EXAMINER PIRIK: Yeah. We kind of have
25 to; otherwise, we don't know where he's limited.

1 MS. SPILLER: And it does appear the
2 parties in the room are all subject to
3 confidentiality agreements with the company so just a
4 moment, please, your Honor.

5 MR. KURTZ: For purposes of this question
6 the only thing I want to do is just the very bottom,
7 the sum numbers, the ones that are yellowed we'll
8 take out when we make it official.

9 EXAMINER PIRIK: We would also recommend
10 in the future parties not highlight anything because
11 we are going to ask you to unhighlight them, and the
12 court reporters are going to have many copies of the
13 same documents, so the copies you hand out to
14 individuals, we would ask you not highlight it.

15 MR. KURTZ: Unfortunately, everything I
16 have brought has already been pre-highlighted, so
17 we'll --

18 EXAMINER PIRIK: Well, perhaps tomorrow
19 you can start bringing unhighlighted versions. That
20 would be good for the court reporter, at least.

21 MR. BEELER: Were there extra copies
22 somewhere?

23 EXAMINER STENMAN: Here's an extra copy
24 if anybody --

25 EXAMINER PIRIK: So is it okay if he

1 proceeds with those numbers and then in the
2 confidential portion if he has other questions?

3 MS. SPILLER: Well, your Honor, on this
4 document the final three -- it's our position the
5 final three columns furthest most to the right would
6 be confidential, including the totals on page 1.

7 MR. KURTZ: Let me see if I can ask these
8 questions without getting specific about the
9 confidentiality.

10 EXAMINER PIRIK: Okay. Hold on. Let's
11 go off the record for a minute.

12 (Discussion off the record.)

13 EXAMINER PIRIK: We'll go back on the
14 record.

15 Ms. Spiller, with regard to OEG Exhibit
16 7A.

17 MS. SPILLER: Yes, your Honor. With
18 respect to this document, it is Duke Energy Ohio's
19 position in taking these by page numbers, so page 1
20 of OEG Exhibit 7A, the three columns to the written
21 titled "EFORD, FRR Committed Megawatts, UCAP
22 Committed Megawatts," so the numbers below those
23 three columns, including the totals that have been
24 highlighted on this page, are confidential.

25 I'll explain the rationale in a moment.

1 Turning to page 2 of OEG Exhibit 7A, on here it would
2 be the four columns to the right, again, "EFORd, FRR
3 Committed Megawatts, UCAP Committed Megawatts,
4 Megawatt Incremental from 2012-2013," so the totals,
5 the numeric information below each of those four
6 columns including the totals.

7 Similarly on the final page of the
8 three-page exhibit, the four columns to the right
9 side of the document the titles being "EFORd, FRR
10 Committed Megawatts, UCAP Committed Megawatts,
11 Megawatt Incremental for 2012-2013," again, the
12 numeric information set forth below those four
13 columns, it is Duke Energy Ohio's position that these
14 are confidential -- confidential pieces of
15 information,

16 and certainly, your Honor, this is
17 information that reflects Duke Energy Ohio's capacity
18 position known to those intervenors in this case with
19 whom we have a CA that Duke Energy Ohio will be
20 engaged in the base residual auctions, the
21 competitive wholesale auction, if you will, within
22 the RPM structure, and as such, disclosure of this
23 information in the public record or outside of the
24 confines of the confidentiality agreements limited to
25 this case could compromise Duke Energy Ohio's

1 participation in those processes, giving those which
2 will be competitive -- giving those which will be
3 competitors an unfair competitive advantage vis-a-vis
4 Duke Energy Ohio.

5 Consequently, your Honor, we believe the
6 information reflected in these columns to be trade
7 secret -- trade secret as defined under Ohio law.
8 This is not information that is publicly known. We
9 take care within the company to shield it from
10 disclosure from those that do not otherwise have a
11 business need to know, and would ask this information
12 be granted confidential treatment.

13 EXAMINER PIRIK: Are there any objections
14 to this motion?

15 MR. KURTZ: Okay. Thank you.

16 Q. (By Mr. Kurtz) Mr. Niemann, per --

17 EXAMINER PIRIK: Well, I haven't granted
18 the motion yet.

19 We will grant the motion for protective
20 order. We would need Duke to provide the court
21 reporters a redacted and unredacted version --

22 MS. SPILLER: Yes, your Honor.

23 EXAMINER PIRIK: -- of the document.
24 Also I would note there is a portion of the record,
25 or at least a number in the record, thankfully, there

1 was no one here that had not signed a confidentiality
2 agreement, but we will redact that portion of that
3 page and submit it with the confidential portion of
4 the record at the conclusion.

5 MS. SPILLER: Thank you, your Honor.

6 EXAMINER PIRIK: Now, Mr. Kurtz.

7 MR. KURTZ: Thank you, your Honor.

8 Q. (By Mr. Kurtz) Okay. So we have about
9 5,000 megawatts of Duke Energy Ohio load. We have
10 6,825 megawatts of generation owned by Duke Energy
11 Ohio. What I'm trying to get -- understand is how
12 much -- how much of that can be bid into the RPM,
13 given these FRR holdback restrictions that you --
14 that you've testified to on page 15 and 16?

15 MS. SPILLER: And, your Honor, I am just
16 going to object to the form of the question in terms
17 of the generation owned by Duke Energy Ohio.

18 EXAMINER PIRIK: We'll allow the witness
19 to clarify in his answer.

20 A. So you established at about 5,000
21 megawatts of load, I agree with that. I don't have
22 the exact number for the amount of owned generation
23 by DEO as well as the assets that -- that were
24 contracted for by DEO. You said 6,800. I don't have
25 the numbers in front of me to check that, but subject

1 to check, I'll concede the 6,800.

2 Q. How much of that -- how much of the 6,800
3 can be bid into the RPM auction? I understand from
4 your testimony an FRR is restricted as to how much it
5 can participate. It's the lesser of 3 percent or
6 450 megawatts, and there's something else you talk
7 about in the next sentence. How much can Duke Energy
8 Ohio bid into the RPM, approximately, I guess?

9 A. So before we talk about specific numbers,
10 they would be able to bid in anything -- any surplus
11 above 3 percent above their obligation. So their
12 obligation is determined by their load plus a reserve
13 margin of approximately 15 percent.

14 So if we're taking about 5,000 megawatts,
15 you would add -- you would be 57, 58 hundred
16 megawatts roughly, and then an additional 3 percent
17 on top of that, and the excess from that they --
18 under the rules would be allowed to sell back, though
19 at any point in time they have to have enough
20 capacity in their FRR -- or designated as FRR
21 resources to meet their obligation; otherwise, they
22 are subject to penalties.

23 So, you know, if you had exactly the
24 minimum amount you needed, you would be taking on the
25 risk you could lose a unit and be left short.

1 Q. Okay. I think I understand. So 5,000
2 times 1.15 is 5,750 times 1.03. So anything over
3 approximately 5,922 megawatts they would be able
4 to -- they would not be able -- they would or would
5 not be able to bid into the RPM?

6 A. They would be able to sell anything above
7 that 3 percent surplus.

8 Q. Okay. So if it's 5,900, and they owned
9 6,800, they could bid in approximately 900 megawatts
10 into the RPM auction?

11 MS. SPILLER: Objection to the form.

12 A. Again, if those are the right numbers,
13 and that's the actual amount of capacity that they
14 have, and 5,000 megawatts, as we said, was just a
15 round number, but mechanically, yes, that's how it
16 would work. They could sell that, again, subject to
17 the risk that if their EFORD changed, which would
18 reduce the amount of capacity they had available, or
19 if they were -- if they -- if they lost a unit to --
20 to an outage, they would have to replace that with
21 unit-specific capacity which may not be available, so
22 it may be prudent to carry some surplus above that to
23 account for that potential circumstance.

24 Q. Okay. How much -- how much capacity has
25 Duke Energy Ohio committed to its FRR versus --

1 versus the amount that it's going to meet through
2 bilateral contracts?

3 A. I haven't done that exact calculation.

4 Q. Okay. Do you know if the Beckjord units
5 are available to be used to meet the FRR obligation?

6 A. Some of them are for some period. I
7 believe it's Beckjord Unit 1 is scheduled for
8 retirement, and --

9 Q. When? Scheduled for retirement when?

10 A. I would have to check. I would have to
11 check the date. I don't have that information in
12 front of me, but I believe it may have been available
13 for the initial FRR period and excluded from the
14 plans thereafter because it was not going to be
15 available.

16 Q. Okay. The expensive year is the '14-'15
17 planning year. Until then it's pretty cheap. That's
18 when the RPM goes to 125.99 per megawatt-day; is that
19 correct?

20 MS. SPILLER: I am going to object to the
21 characterization of "expensive year."

22 Q. That's when the RPM is substantially
23 higher than the two years we are dealing with, isn't
24 it?

25 A. I mean, we are talking about the cost of

1 meeting FRR obligation so I'm not sure that those
2 numbers are really relevant for that, but in terms of
3 where the RPM price cleared, it was substantially
4 higher in '14-'15 than it had been the prior two
5 years, yes.

6 Q. Would the RPM price be relevant to the
7 bilateral contract price that Duke would be able
8 to -- to contract for to meet its FRR obligation?

9 A. It may to some extent, but you're talking
10 about a different market with transactions occurring
11 in a different point in time and they clear at a
12 different price.

13 Q. So the bilateral transactions are not
14 necessarily tied to the RPM pricing?

15 A. You know, certainly what buyers and
16 sellers are going to be willing to accept or pay in
17 bilateral markets will be informed by what they
18 expect to occur in later -- in later auctions in the
19 BRA as well as what's committed perhaps from --
20 previously in the BRA, so in that sense it's related
21 but it's not -- they can be very different products,
22 very different -- you know, trading at different
23 points in time, so the pricing could diverge for very
24 sound reasons.

25 Q. If an entity owns capacity that hasn't

1 been bid into the RPM auction, its options are to do
2 a bilateral contract or bid into the incremental
3 auction?

4 A. It would have both of those options.

5 Q. And I think you testified earlier the
6 incremental auctions tend to historically have been
7 well below the base residual auction?

8 A. So over recent history, the load
9 forecasts within PJM have been revised downward from
10 the time that the base residual auction was conducted
11 to the time the incremental auctions were conducted,
12 so that's removing a large amount of demands from the
13 auction, and as a result, prices have fallen in the
14 incremental auctions.

15 As a general matter, looking forward, you
16 wouldn't expect there to be a significant difference
17 between the incremental auctions and the base
18 residual auctions without some change in load or some
19 change in -- some major change in supply.

20 Q. Here's something I didn't understand, on
21 page 15 on line 9, you say, "Additionally, an FRR
22 entity is responsible for establishing an FRR plan to
23 meet its full expected Reliability Requirement ..."
24 That's the 5,000 megawatts, approximately, we have
25 been talking about?

1 A. The 5,000 megawatts plus the 15 percent
2 reserve margin.

3 Q. Okay. Thank you. "... for a given
4 Delivery Year, no later than one month prior to the
5 BRA for that Delivery Year." And then on line 18 you
6 say, "Hence, an FRR entity is responsible for
7 securing resources to cover 100 percent of its
8 resource requirement" -- approximately
9 5,750 megawatts -- "typically three years in
10 advance."

11 So, in other words -- in other words,
12 Duke Energy Ohio to meet its '14-'15 planning year
13 obligations as an FRR would have to have its plan in
14 place a month before May, 2011?

15 A. For the -- I'm sorry, for which planning
16 year or which delivery year?

17 Q. For the delivery year of '14-'15.

18 A. So for '14-'15, and, yes, in
19 approximately April of 2011, they would have to
20 establish that they had enough resources lined up to
21 meet that plan.

22 Q. What happens if you don't have that
23 established a month before? Let's keep using this a
24 month before May of 2011.

25 A. So that's a requirement for an FRR entity

1 to have FRR status for that auction, so I would have
2 to go back and review exactly what -- what remedies
3 are available and so forth, but I believe that in
4 order to be an FRR entity, to be a compliant FRR
5 entity, to have a compliant plan, you would have to
6 have those resources lined up so you would be deemed
7 noncompliant by PJM if you didn't.

8 Q. Well, let me ask you a hypothetical. If
9 there were seven bilateral contracts that were all
10 entered into substantially after the April, 2011,
11 period for -- for the FRR plan, what would that mean?
12 I mean, it wouldn't be one month before. It would be
13 after. What happens to those contracts? Does it
14 count penalty? What happens?

15 MS. SPILLER: I am going to object.
16 Excuse me, Mr. Niemann. I am going to object to the
17 lack of foundation. It assumes facts not in
18 evidence.

19 MR. KURTZ: Well, they are in evidence.
20 That's the confidential bidding documents, but I
21 didn't want -- I don't want to get specific. Those
22 were those bilateral contracts.

23 EXAMINER PIRIK: Objection overruled.

24 Q. So hypothetically, what happens?

25 A. So hypothetically, it would depend on

1 what the nature of those contracts or those
2 agreements would be. There are certain cases where
3 you could have resources in a plan at a contract that
4 might be struck after -- after the BRA had been
5 conducted.

6 Q. Well, that's what I don't understand.
7 You say it's a requirement to have your plan lined up
8 a month before the BRA for the three years in advance
9 so you have to have it in place approximately April,
10 2011, for the '14-'15 planning year. But assuming
11 that Duke Energy Ohio did not have that accomplished,
12 what happens?

13 A. Again, they need to have enough resources
14 in their plan to have a compliant plan with PJM, but
15 you could have resources in the plan even if the
16 final contract hadn't been struck, depending on the
17 circumstances, for example, if you had an agreement
18 in place that you would do a transaction at the
19 auction price after the auction had occurred.

20 Q. So you could tell PJM in April of 2011,
21 my plan is to enter into bilateral contracts and that
22 would satisfy?

23 A. So I would have to look back at the exact
24 requirements within -- within the PJM tariff, but if
25 you can demonstrate that you can have those resources

1 committed to your plan, you can include them in the
2 plan.

3 Q. But if you didn't have the contracts
4 already entered into, how would you demonstrate that
5 you have that?

6 A. It -- if you had another agreement in
7 place or if they were assets perhaps owned by an
8 affiliate where you could have such an agreement, you
9 could demonstrate to PJM satisfaction that those
10 resources were going to be there.

11 Q. So if you -- so for purposes of this
12 if -- if Duke were to tell PJM, we have in our
13 Midwest gas assets the DECAM assets, we have those
14 available and we'll contract for those, that could
15 satisfy?

16 A. If -- if the DECAM assets were included
17 in the plan, they would be allowed to be excluded --
18 they would be excused from offering into the base
19 residual auction and, therefore, would be available
20 to be included in the FRR plan.

21 Q. Do you know if the DECAM assets were used
22 in that -- in that manner?

23 A. I want to be careful we don't talk about
24 confidential information. Perhaps this is better
25 handled in a confidential session.

1 EXAMINER PIRIK: You mean as far as --
2 because I think the only thing that's confidential,
3 at least in the OEG 7A -- are you talking about that
4 or some other confidential portion?

5 THE WITNESS: I believe it's OEG 7A, the
6 confidential exhibits that were discussed with
7 Mr. Trent yesterday.

8 EXAMINER PIRIK: Are you asking for
9 numbers?

10 MR. KURTZ: No. I just want to know --
11 let me start again.

12 Q. (By Mr. Kurtz) You have this testimony
13 that says you have to have your plan set up a month
14 before the base residual auction so April of 2011 for
15 the '14-'15 year. We know -- would it be -- would it
16 qualify for PJM if the DECAM assets were -- I guess
17 my question is this. Do you know if the DECAM assets
18 were part of the FRR plan?

19 A. Again, my knowledge there is partially
20 informed by the confidential document so I just want
21 to be careful I don't disclose anything that's not
22 appropriate at this point.

23 MS. SPILLER: And, your Honor, just for
24 clarity, Dr. Niemann referenced OEG Exhibit 7A but
25 then alluded to documents that were discussed with

1 Mr. Trent yesterday, and I think those would probably
2 be OEG Exhibit 4A.

3 MR. KURTZ: Right now the only question
4 is just basic. Were the DECAM assets part of the
5 Duke Energy Ohio FRR plan? Is that confidential?

6 MS. SPILLER: Based upon what was
7 redacted in the document and accepted by the
8 Commission, I would -- or by the Bench, yes, the
9 counterparties were.

10 MR. KURTZ: I'll save that question for
11 the confidential portion.

12 EXAMINER PIRIK: That would be
13 appropriate.

14 MR. KURTZ: Okay.

15 Q. (By Mr. Kurtz) Pages 17 and 18, if you
16 would, or maybe -- oh, no, 16 and 17, you use the
17 phrase "orphaned resources" twice, one on page 16,
18 line 20; page 17, line 1. What do you mean by
19 "orphaned resources"?

20 A. So the way I've used the term "orphaned
21 resources" and defined it within my testimony, it's
22 referring to situations where an FRR entity
23 establishes an FRR plan to -- with enough resources
24 secured to be compliant under the PJM requirements,
25 and then there is a change in load forecast so that

1 later on when you get to the delivery year, all those
2 resources are no longer needed. And the resources
3 that would have been secured three years in advance
4 and now are no longer needed are what I am referring
5 to as orphaned resources.

6 Q. Okay. So, for example, if you have
7 bilateral contracts as part of your plan and you
8 bought X but the load goes down, you essentially
9 bought too much and, therefore, they are orphaned?

10 A. They are orphaned in the sense that a
11 transaction has been made or -- or self-supply has
12 been arranged for assets in advance with an
13 expectation of what the load that will be paying the
14 FZCP will be. The amount -- the total quantity
15 that's paying the FZCP decreases because of a
16 decrease in the load forecast; therefore, those load
17 resources were secured but not paid based on the
18 FZCP.

19 Q. I understand they are orphaned in the
20 sense you have more than you need in the secondary
21 market or the incremental auction market is typically
22 or has historically been very low, page 18, line 6.
23 So you have more than you need, and when you go to
24 resell it, the resale market is not very -- very
25 good.

1 A. Again, in that example where the load has
2 dropped and you've taken demand out of the market,
3 you would expect the prices to fall to a lower level
4 than they would have been at the time you secured
5 those resources.

6 Q. Okay. Does Duke Energy Ohio have any
7 orphaned resources, based upon what you know of this
8 record?

9 A. The load forecast for the Duke
10 Ohio/Kentucky zone, Duke Energy Ohio and Kentucky
11 zone is definitely decreased since -- since June of
12 2010, and basically over this entire period has
13 decreased pretty much every year that PJM has come
14 out with a new load forecast, yes, that would result
15 in orphaned resources.

16 Q. Okay. And so we know that Duke is
17 meeting -- Duke Energy Ohio is meeting its FRR
18 requirement with bilateral contracts so -- so
19 essentially they bought more than they need, it turns
20 out.

21 A. They bought the amount that they were
22 required to buy to meet the requirement at the time.
23 But when the actual delivery year rolls around, they
24 no longer need that much. PJM has released them from
25 that. But it doesn't mean they are off the hook for

1 paying for those contracts that they signed three
2 years ago when they had to sign them to meet their
3 plan.

4 Q. You understand the structure of this case
5 is ratepayers would be on the hook, ratepayers would
6 pay the full purchase power costs and, therefore, pay
7 for these orphaned resources.

8 MS. SPILLER: I am going to object to
9 the -- the terminology, form of the question.

10 EXAMINER PIRIK: Objection overruled.

11 The witness can answer.

12 A. In the RPM construct, the end customers
13 who are the beneficiaries of the capacity service and
14 the reliability that provides ultimately pay the
15 cost, so that's correct.

16 Q. I mean, under this cost-based methodology
17 where customers get credit for the amount of revenue
18 associated with the Duke plan and then have to pay
19 the purchased power costs of these bilateral
20 contracts, in other words, that's the structuring of
21 the cost-based mechanism that you are supporting, so
22 to the extent that Duke Energy Ohio bought more than
23 it turns out they need, ratepayers would end up
24 paying for those orphaned resources.

25 A. Those costs would be used in the

1 formulation of the nonbypassable charge, that's
2 correct.

3 Q. It just struck me, if -- do the CRES
4 suppliers and the auction providers, everybody has to
5 meet the 5,000 megawatt approximate load, plus a
6 15 percent reserve margin; is that correct?

7 A. In the case of a non-FRR entity, PJM
8 actually steps into that role and acts as a central
9 buyer, and then at the end of the day you are just
10 responsible for whatever your -- your responsibility
11 is for the delivery year.

12 Q. I'm sorry, I mean for Duke Energy Ohio.
13 I mean, right now it's approximately 5,000 megawatts
14 plus approximately 15 percent. That's -- that's the
15 amount of capacity that has to be purchased to meet
16 this footprint?

17 A. That's the amount of capacity that has to
18 be purchased by the FRR entity for the footprint.

19 Q. Okay. And that's the amount of capacity
20 that will be paid for through PJM. That's the amount
21 of money they will get for their -- for providing
22 that amount of capacity; is that correct?

23 A. No, not necessarily. So that -- because
24 those resources are secured outside of the auctions
25 through self-supply and bilaterals, those costs are

1 separate from PJM, they are not passing those on
2 directly, and so what -- what they are ultimately
3 paid in terms of the payments from F -- payments from
4 PJM at the final zonal capacity price, that's based
5 on the load at the -- at the time of the delivery
6 year.

7 Q. Plus -- plus a reserve margin?

8 A. Plus a reserve margin, yes.

9 Q. So Duke will get paid for the amount of
10 capacity it supplies and is required to supply the
11 actual demand plus a 15 percent reserve; is that
12 correct?

13 A. Well, I would characterize the capacity
14 demand as including that 15 percent so you're using
15 demand to say their demand is -- demand for energy
16 plus 15 percent. So the capacity demand is based on
17 the expected peak load for energy, the amount that
18 they are going to have to deliver in the, you know,
19 peak day of the year under normal conditions, but on
20 top of that they're securing an additional 15 percent
21 that's needed to meet the reliability requirements,
22 they are reflecting the fact that there will be
23 fluctuations in demand, there will be unit outages,
24 there will be other things, so prudent planning, as
25 conducted by PJM, involves securing margin on top of

1 that.

2 Q. The 5,000 megawatts we have been talking
3 about is the footprint demand before the reserve
4 margin?

5 A. It's the peak -- the forecasted peak
6 demand for energy so, yes, it's before the 15 percent
7 is added.

8 Q. In terms of you use the term "FZCP,"
9 that's the final zonal capacity clearing price? I
10 may have gotten the acronyms wrong. That's what that
11 is?

12 A. Final zonal capacity price, that's
13 correct.

14 Q. Which is RPM plus a scaling factor,
15 general -- incremental auctions it's RPM plus
16 something?

17 A. Well, it's plus or minus something. It's
18 basically a -- it's a complicated calculation, but
19 it's approximately a weighted average of the base
20 residual auction price and the incremental auction
21 price, depending on the volume in each. So, I mean,
22 the way it's calculated is that all of the -- all of
23 the payments to generators for their capacity that's
24 cleared through the base residual auction and the
25 incremental auctions is allocated back to load, pro

1 rata, based on their share of the peak load. So the
2 FZCP is the rate that makes the equation work out so
3 that the amount that's being collected from load
4 equals the amount that's being paid to generators.

5 Q. Okay. You're supporting the cost-based
6 structure proposed by Duke in this case as
7 appropriate?

8 A. As appropriate in the case of the -- of
9 Duke as an FRR entity, yes.

10 Q. Okay. Are you aware for one of the
11 initial starting points is how much capacity revenue
12 Duke Energy Ohio will be receiving as an FRR and
13 that's used to offset the fixed costs in their
14 proposal, the leg -- the legacy coal assets, the
15 Midwest coal assets? In other words, one of the
16 parts of the equation is the amount of capacity
17 revenue Duke will be receiving?

18 A. When you say "capacity revenue," what
19 type of revenue from what source?

20 Q. What we use is the approximate 5,000
21 times the FZCP for the first planning year because
22 when they did this application, they didn't have it
23 for the second and third so they used RPM, and you
24 discussed the differential earlier on, and we know
25 the FZCP for the second planning year.

1 But that's the way they do it in the
2 application. They take the 5,000 megawatts times the
3 FZCP essentially, as we start with that number. And
4 my question is essentially this, should they take --
5 assuming we do a cost-based rate appropriately,
6 should be 5,000 megawatts plus a reserve margin times
7 the FZCP?

8 A. So, you know, I don't have the
9 application in front of me and can't speak to exactly
10 what's in those calculations, but the -- it's the
11 capacity obligation for Duke Energy Ohio which is
12 load plus a reserve margin that's paid, the final
13 zonal capacity clearing price.

14 Q. Okay. We will definitely go into
15 confidential session on that question. That's a big
16 number. Let me ask you this, you support the
17 cost-based proposal as sort of similar to traditional
18 ratemaking, page 5 and pages 12 through 13 of your
19 testimony? It's just a general proposition; is that
20 fair to say?

21 A. So can you point me to the sections on 5,
22 and I believe it was 13?

23 Q. Yeah, 12 and 13. Page 5, line 17,
24 "... basically a regulatory service obligation, not
25 unlike the historic service obligation of Ohio

1 utilities prior to restructuring ... cost based
2 ratemaking, which warrants recovery of embedded
3 costs."

4 And then bottom of 12 through 13, you're
5 basically supporting the cost base recovery; is that
6 correct?

7 A. I'm supporting the mechanism proposed by
8 Duke in its application, that's correct.

9 Q. Okay. Now, under traditional
10 ratemaking -- you may not be an expert in Ohio
11 ratemaking, but do you understand that under
12 traditional ratemaking, a utility files a rate case,
13 say, on August 29, 2012, they would not get new rates
14 or additional rates until 275 days later?

15 MS. SPILLER: I am going to object to the
16 relevance of the question, certainly outside the
17 scope of this witness's testimony.

18 MR. KURTZ: He said he supports
19 cost-based ratemaking, the traditional recovery of
20 fixed costs.

21 EXAMINER PIRIK: Objection overruled.

22 A. I've not reviewed the specific rules for
23 when those rates would apply. It was not relevant to
24 my testimony, and it's not something that I have a
25 recollection of as we sit here today.

1 Q. Okay. Would you agree under traditional
2 ratemaking all the generating assets owned by the
3 utilities would be included in the calculation, not
4 just the unprofitable generating assets?

5 MS. SPILLER: Your Honor, I'll object to
6 the characterization of the "unprofitable generating
7 assets."

8 MR. KURTZ: I could be more specific.

9 Q. That's the whole negative return is on
10 the coal assets.

11 EXAMINER PIRIK: I will allow the witness
12 to answer.

13 A. I'm sorry, could we have the question
14 read back?

15 Q. I will rephrase. Under traditional
16 ratemaking, would you agree that all the generating
17 assets owned by the utility would be included in the
18 revenue requirements calculation?

19 A. Not necessarily. I would have to say the
20 assets that were being used to provide the relevant
21 service would be included.

22 Q. Well, so if used to serve wholesale load,
23 you would do a jurisdictional allocation; is that
24 what you are referring to?

25 A. I'm not sure I can answer that specific

1 example.

2 (Confidential portion.)

3 Q. But we do know the (REDACTED) assets are
4 certainly under bilateral contracts and we'll find
5 out if part of the FRR plan in the confidential
6 section. So assuming -- assuming that they are
7 providing a service under traditional ratemaking,
8 would they be included?

9 (Public record.)

10 MS. SPILLER: Your Honor, if I may, I
11 appreciate Mr. Kurtz's attempt to protect that which
12 is confidential, but I think that question there
13 certainly disclosed some information that had
14 previously been redacted with respect to OEG Exhibit
15 4.

16 MR. KURTZ: I'll rephrase.

17 Q. As a general rule, except for --

18 EXAMINER PIRIK: Let me -- let me ask
19 specifically.

20 (Confidential portion.)

21 MS. SPILLER: Well, I think, your Honor,
22 it's the statement with respect to (REDACTED) being a
23 counterparty to bilateral transactions.

24 (Public record.)

25 MS. SPILLER: The identity of the

1 counterparties had been redacted yesterday,
2 consistent with your rulings.

3 EXAMINER PIRIK: I think that's true.
4 Please read that.

5 (Record read.)

6 EXAMINER PIRIK: I mean, we are going to
7 have to redact that first sentence. Is that
8 sufficient?

9 MS. SPILLER: I think that's sufficient,
10 your Honor. Thank you.

11 EXAMINER PIRIK: Okay. Mr. Kurtz, you
12 really need to be careful.

13 MR. KURTZ: Okay.

14 Q. (By Mr. Kurtz) As a general rule under
15 traditional ratemaking, except for generating assets
16 that are dedicated to wholesale load, whether it be a
17 municipal contract or something, wouldn't all the
18 power plants owned by the utility be included in the
19 revenue requirements calculation?

20 A. The calculations would include the costs
21 to the entity that's -- that's providing the service.
22 It would include the costs -- all the costs in
23 providing that, some of which may come from assets,
24 some of which may come from power purchase agreements
25 or capacity purchase agreements so you would allocate

1 the cost of the agreements.

2 Q. Okay. Would you agree that under
3 traditional ratemaking all of the revenue received by
4 the utility under PUCO-approved tariffs would be
5 included as revenue for the company?

6 A. So I can't speak to exactly what would be
7 included under -- under Ohio law. But as a general
8 concept, you would -- the rate would be calculated
9 such that you are providing compensation for the full
10 cost of providing the service. To the extent that
11 there's compensation coming from other sources for
12 that same service, you would traditionally net those
13 out.

14 Q. When you look at the revenue that the
15 utility is receiving versus cost, you look at the
16 revenue from rate schedule GT, general service
17 transition, general service primary, general service
18 secondary residential, their fuel adjustment tariff,
19 et cetera, wouldn't the Commission typically look at
20 all the revenue from all of the PUCO tariffs?

21 A. Only to the extent that they were
22 relevant. Again, you would have to -- you know,
23 it's -- it's not just as simple as saying that all
24 the revenue of the utilities should be considered.
25 There are revenues that are coming from different

1 circumstances that are unrelated that shouldn't be
2 considered so you have to look at the full set in the
3 right context.

4 Q. I agree with that. But revenue from
5 wholesale sales, that's not under a PUCO tariff. For
6 example, that account 447, off-system sales,
7 that's -- whether that's included or not is a
8 different question, but can you think of any example
9 where revenue from a PUCO-approved tariff would not
10 be factored into a PUCO revenue requirement for a
11 traditional utility?

12 A. Again, if it's for an unrelated service,
13 it may be irrelevant to that calculation.

14 Q. So if it is for a gas service, you
15 wouldn't look at it in an electric case. That
16 certainly makes sense.

17 A. That's right.

18 Q. Okay, okay. All right. Do you have an
19 opinion as to whether the \$110 million from the ESSC
20 PUCO-approved tariff is relevant?

21 A. As I explained yesterday, I have not
22 reviewed the ESSC. I can't form an opinion on that.

23 Q. Would you agree that under traditional
24 ratemaking, only prudently incurred costs would be
25 included in the revenue calculations?

1 A. I would agree that they are typically
2 reviewed to make sure they are prudent costs.

3 MR. KURTZ: Other than the confidential
4 sections, I have no more questions.

5 EXAMINER PIRIK: Thank you.

6 Ms. Petrucci.

7 MS. PETRUCCI: No questions.

8 EXAMINER PIRIK: Ms. Bojko.

9 MS. BOJKO: No questions, your Honor.

10 Thank you.

11 EXAMINER PIRIK: Mr. Hart.

12 MR. HART: Just a couple.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Hart:

16 Q. Mr. Niemann, I think you testified in
17 response to Mr. Kurtz --

18 EXAMINER PIRIK: Mr. Hart, can you please
19 use the microphone.

20 MR. HART: I'm sorry.

21 Q. Mr. Niemann, I think in response to
22 Mr. Kurtz's question, you said that the final zonal
23 capacity price, FZCP, was a balance point so that the
24 payments into PJM from load-serving entities would
25 equal the payments out to capacity suppliers; is that

1 correct?

2 A. Mechanically that's how it works.

3 Q. So the amount that PJM bills is equal to
4 what it pays out?

5 A. For the amounts through the base residual
6 and incremental auctions.

7 Q. Okay. In your opinion if Duke agreed
8 that PJM would bill the FZCP for the capacity used by
9 the load-serving entity, is that the equivalent of
10 agreeing to accept that amount for its capacity?

11 A. I'm sorry, could you repeat that.

12 Q. If Duke agreed to have PJM bill its
13 capacity at the FZCP, is that the equivalent of Duke
14 agreeing to accept that amount as payment for its
15 capacity?

16 A. I don't know that the -- what they agree
17 to in terms of a billing mechanism would equate to
18 them agreeing to that. I mean, that's really a legal
19 question. I don't have an opinion on that.

20 Q. So you have no opinion one way or the
21 other on that.

22 A. No.

23 MR. HART: Okay.

24 EXAMINER PIRIK: Mr. Darr.

25 MR. DARR: Thank you, your Honor.

CROSS-EXAMINATION

By Mr. Darr:

Q. Mr. Niemann -- Dr. Niemann, excuse me, let's start out with a couple of issues with regard to the calculation you made with regard to whether or not the maintenance of an F -- FRR status would have a distorting effect on the market, and I believe that's discussed at page 20 of your testimony.

EXAMINER PIRIK: Mr. Darr, can you move the microphone closer. Thank you.

Q. Now, in terms of making this calculation, I understand that you provided workpapers that were associated with that that contained all of the units and demand resources that were contained in the FRR plan, correct?

A. No. I don't believe that's correct. I know that the demand resources were not shown there. And I'm not sure if that list was a comprehensive list snapshot of everything that was -- of all the resources that were being used. It was -- included all of the DEO legacy assets, I believe certainly all of the assets that had offer caps calculated.

MR. DARR: I would like to have an exhibit marked then, please. This would be IEU Exhibit No. 8.

1 EXAMINER PIRIK: The document is so
2 marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. (By Mr. Darr) Dr. Niemann, do you have in
5 front of you what has been marked as IEU Exhibit 8?

6 A. Yes, I do.

7 Q. Are these the workpapers we have just
8 been discussing?

9 A. Yes, they are.

10 Q. And that's the redacted version; is that
11 correct?

12 A. That's correct.

13 Q. And what you're suggesting to me, this is
14 a partial list of assets for which an offer cap would
15 have been calculated or would you like to correct
16 that?

17 A. I'm just reviewing the document. I may
18 have misspoken when I said there is not DR included.
19 It's my understanding that there may -- that all of
20 the demand resources that were included may not show
21 up in this plan.

22 For the purposes of my calculations in my
23 testimony, I was not using this to establish what
24 comprehensively was in the plan but rather to
25 establish what the offer caps in the base residual

1 auction for 2014-2015 would have been for the Duke
2 Energy Ohio legacy assets.

3 Q. Going back to your testimony, sir, on
4 page 20, do you not state, "Based on the information
5 provided by the Company, I confirmed that the offer
6 caps that would have been in place for the assets if
7 they had been offered into the BRA, all of the
8 resources in the FRR plan would have cleared as
9 economic supply"?

10 Doesn't that suggest, sir, that this
11 sheet which you calculated the offer caps on contains
12 all of the assets for all -- or all of the resources
13 in the FRR plan that would have cleared?

14 A. Sir, can you give me the line numbers
15 that you were reading from?

16 Q. Certainly. Page 20, starting on line 22,
17 going through page 21, line 2.

18 A. Let me clarify by putting this in kind of
19 the full context of the testimony. This discussion
20 is really referring to the Duke Energy Ohio legacy
21 assets, and you'll see on page 20, line 15, the
22 discussion is focused on Duke Energy Ohio assets.
23 The other assets in the plan, because they were
24 coming in through bilateral contracts, they were at a
25 market price. It was constructed of the bilateral

1 contracts.

2 And so the question in terms of whether
3 or not Duke's self-supplying assets, whether that's
4 distortionary would just refer to the assets they
5 were self-supplying so that would be the Duke Energy
6 Ohio legacy assets.

7 Q. Okay. So if I -- going back to IEU
8 Exhibit No. 8, I should be able to find on this
9 exhibit references to each of the legacy assets; is
10 that what you are saying?

11 A. There are other assets included as well.

12 Q. I understand that. But will I be able to
13 find each of the legacy assets on this list of assets
14 that has been offered into the PJM or FRR plan for
15 Duke?

16 A. I believe so. Again, what I can confirm
17 is there conclusively would be all of the assets that
18 could have been offered into the '14-'15 BRA and
19 would have had offer caps calculated by the market
20 monitor.

21 Q. Did you check?

22 A. Did I check what specifically?

23 Q. Did you compare the list of legacy assets
24 with the list of the FRR assets for which you
25 calculated the offer cap?

1 A. I checked that the -- that this list
2 included the assets that could have been offered into
3 the '14-'15 BRA.

4 Q. Well, actually, the first sheet on IEU
5 Exhibit 8 is for the '12-'13 BRA, correct?

6 A. Yes. And the calculations that I did
7 were for the '14-'15 delivery year. So the document
8 that was provided to me by the company also included
9 information for earlier delivery years which were
10 included in the workpapers, but it's the information
11 for '15-'16 which was used to establish what offer
12 caps would have been approximately for '14-'15 that
13 was relevant to the analysis discussed in my
14 testimony.

15 So at the time that Duke Energy Ohio
16 filed its application to join PJM, the base residual
17 auctions had already occurred for the first -- the
18 first three delivery years, only '14-'15 where the
19 auction had not yet occurred, so by definition there
20 could not be any distortion in those earlier
21 auctions. They had already occurred. Adding having
22 Duke as FRR status after the fact would not be
23 distortionary so, therefore, the analysis is focused
24 on '14-'15.

25 Q. Okay. Fair enough. Let's take a look at

1 what would be pages 5 and 6 of IEU Exhibit No. 8.

2 Now, going back to my original question, did you
3 check the list of legacy assets against the list
4 contained in IEU Exhibit 8?

5 A. So, I mean, let me state again what was
6 relevant for my testimony and for the calculations
7 that I did based on these workpapers was the Duke
8 Energy Ohio assets that would have been available and
9 could have been offered into the 2014-2015 base
10 residual auction. And I confirmed that those were
11 there. I believe that is comprehensive of the legacy
12 assets, but I would have to verify that.

13 Q. Do you have Attachment A in front of you?

14 A. Attachment A to?

15 Q. To the application.

16 A. I do not.

17 MR. DARR: May I approach?

18 EXAMINER PIRIK: Yes.

19 MR. DARR: Let the record reflect I am
20 handing the witness Attachment A to the application,
21 page 1 of 1.

22 Q. (By Mr. Darr) Now, with regard to this
23 year, is it fair to say the Killen CT, which is
24 listed on Attachment A, is not listed in any of the
25 assets contained on pages 5 and 6? Just to complete

1 that sentence, that are listed on pages 5 and 6 of
2 IEU Exhibit 8.

3 A. That appears to be correct, and I believe
4 that is a jointly-owned asset that Duke Energy Ohio
5 may not be bidding into the -- may not have control
6 over bidding into the base residual auction.

7 Q. Is it also fair to say that Beckjord 1 is
8 listed?

9 A. Beckjord 1 is listed, yes.

10 Q. And you are aware of the fact, are you
11 not, that PJM reported that as of 2012, Duke has
12 deactivated that unit?

13 A. Yes.

14 Q. And if we go back to the list of legacy
15 assets on Attachment A to the application, we see
16 that 100 percent of Beckjord 1 is listed as part of
17 those legacy assets, correct?

18 A. That's correct. The --

19 Q. Thank you. I want to go back to years
20 2012 and 2013, which would be pages 1 and 2 of IEU
21 Exhibit No. 8. On IEU Exhibit No. 8 on pages 1 and
22 2, do you see any representation there that
23 Beckjord's 2, 3, or 4 are part of the FRR plan?

24 A. So I want to be clear with the term FRR
25 plan, what is shown in Exhibit IEU 8, which are the

1 workpapers, the public version of the workpapers from
2 supporting my testimony, this is -- the initial
3 years -- well, really all the years are a snapshot of
4 what resources were devoted in the plan, which is at
5 any point in time which is a little different from
6 the plan itself, so I just wanted to clarify that.

7 And so looking at the pages you pointed
8 out, I would suspect it's the case that the specific
9 Beckjord units you referred to were not included --
10 were not designated as part of the plan at that time,
11 likely because they may not have been needed given
12 the drop in load that occurred. But, again, I would
13 note that my calculations were based on the
14 information on pages 5 and 6 where those units are --
15 are included.

16 Q. Going back to my question, do you see
17 Beckjord Units 2, 3, or 4 listed on pages 1 and 2 of
18 IEU Exhibit No. 8?

19 A. No, they are not listed on those pages.

20 Q. Do you see the Killen CT listed on that
21 page -- or pages? Excuse me.

22 A. So there is a listing of -- for Killen,
23 and I would have to verify exactly what is included
24 in that, but I believe that is referring to the unit
25 2 and CT is not listed.

1 Q. And, in fact, when we look at the legacy
2 assets, correct -- excuse me. When we look at the
3 legacy assets, Killen 2 is listed separately from the
4 Killen CT; is that correct?

5 A. That's correct.

6 Q. And similarly, the Beckjord units are
7 listed differently than the Beckjord CT units,
8 correct?

9 A. Yes, that's correct.

10 Q. So it would appear that the approach used
11 in each one of these documents is that when you have
12 a generation unit other than a coal unit, it's
13 specifically designated as either a generating
14 tran -- excuse me, a gas unit or a CT unit, correct?

15 A. Yes. I mean, that's very clear in most
16 cases for the specific example of Killen. What's
17 listed here just shows Killen without the Killen 2
18 designation or Killen CT, so I would have to verify
19 exactly what's included in that Killen line.

20 Q. In either case it's either the Killen
21 coal unit or the Killen CT unit that's not listed,
22 correct?

23 A. That's correct.

24 Q. Going to pages 3 and 4 of IEU Exhibit No.
25 8, would you agree that it's again that Beckjord

1 Units 2, 3, and 6 are not listed on this document?

2 A. Yes, that's correct.

3 Q. Now, it's also clear that there are a
4 number of units listed here that are not part of the
5 legacy units listed on Attachment A. Is that also
6 correct?

7 A. Yes, that's correct.

8 Q. And this would include, for example,
9 units that are designated by the OVEC designation.

10 A. Yes.

11 Q. And are you familiar with what OVEC is?

12 A. Ohio Valley Electric Co-op, yes.

13 Q. And are you familiar with the contract or
14 relationships among the OVEC members concerning that
15 generation?

16 A. I don't recall all the details. I know
17 that there are jointly owned units among OVEC and
18 O -- and OVEC members as well as other -- other
19 generation owners in Ohio.

20 Q. And is it fair to say that there are a
21 number of other units here that would be designated
22 as the so-called DENA gas assets?

23 A. The gas assets owned by different Duke
24 corporate entities at different points in time are
25 included here, yes.

1 Q. I would like to move on to another topic.
2 You are not aware of any other FRR entity that is
3 receiving fully embedded cost recovery for capacity
4 under an FRR construct, are you?

5 A. I have not comprehensively reviewed all
6 of the compensation mechanisms for other FRR entities
7 so I don't know.

8 Q. So the answer to my question is you are
9 not aware of any, correct?

10 A. That's correct.

11 Q. And there's no argument in this case, is
12 there, that this is a wholesale set transaction for
13 provision of capacity?

14 A. It's a transaction involving FRR capacity
15 which we have typically been referring to as a
16 noncompetitive wholesale service.

17 Q. And specifically it is a wholesale
18 service; you are not arguing in any way that it's
19 related to retail service to an ultimate consumer,
20 correct?

21 A. Well, the retail customers are the
22 ultimate beneficiary of the service, but, yes, I
23 think it's accurate to classify it as a wholesale
24 service.

25 Q. "Beneficiary" being an interesting use of

1 the term in this case. It's fair that what we are
2 talking about is a wholesale transaction, not a
3 transaction for the end user directly, correct?

4 MS. SPILLER: I'm going to move to strike
5 the commentary about the designation of customers.

6 EXAMINER PIRIK: Overruled.

7 A. I'm sorry, can you repeat the question or
8 have it read back?

9 Q. I'll repeat -- I'll restate the question.
10 Is it fair to say that what we're talking about is a
11 wholesale transaction in that we are talking about
12 transactions or provision of capacity that is not
13 directly provided to the end user or consumer?

14 A. We're talking about transactions
15 involving supply of capacity which is typically
16 considered a wholesale product.

17 Q. Now, you indicate that "An FRR entity has
18 less flexibility due to adjust to changes," and you
19 make that initial comment, I believe, at page 5,
20 lines 1 and 2 of your testimony.

21 I want to turn to the other side of the
22 ledger for a moment, and that is look at the
23 requirements for a non-FRR entity. Now, under the
24 RAA and -- do you need a copy of the RAA?

25 A. I don't have one in front of me.

1 MR. DARR: Your Honor, fortunately for
2 the trees, I only brought five copies of this, but I
3 don't -- unfortunately, for the others in the room, I
4 don't have copies of that that I can share.

5 I would like to have a document marked as
6 IEU Exhibit 9.

7 EXAMINER PIRIK: The document is so
8 marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MS. SPILLER: Mr. Darr, I'm sorry, do you
11 have one for counsel for the witness?

12 MR. DARR: No. I only brought five with
13 me.

14 MS. SPILLER: It would just be helpful to
15 follow along with you, sir.

16 MR. DARR: I'm sorry?

17 MS. SPILLER: It would just be helpful to
18 follow along.

19 EXAMINER PIRIK: Mr. Darr, you have a
20 copy? Okay.

21 MR. DARR: I have a copy, a dangerously
22 unbound copy.

23 EXAMINER PIRIK: If you need to use the
24 court reporter's.

25 MR. DARR: It should be fine.

1 MS. GRADY: I have a stapler.

2 MS. SPILLER: You are just so helpful
3 with your supplies over there.

4 MR. DARR: I'm good, thanks. We'll do it
5 later.

6 Q. (By Mr. Darr) Do you have in front of you
7 what's been marked as IEU Exhibit No. 9?

8 A. I do.

9 Q. Could you identify that for us, please?

10 A. This is the PJM "Reliability Assurance
11 Agreement" or RAA.

12 Q. And could you identify the date of this
13 particular version. It gets updated pretty
14 regularly.

15 A. Let me see. Yes, it says effective date
16 1-4-2013.

17 Q. And this is the RAA that we have been
18 referring to regularly throughout this proceeding,
19 correct?

20 A. Yes, it is.

21 Q. Now, with regard to a non-FRR entity, is
22 it fair to say that three months in advance of
23 BRAA -- excuse me, BRA for a delivery year, PJM posts
24 a full requirement and reserve margin.

25 A. PJM posts a forecast load and reliability

1 requirement for the pool. I believe what's posted is
2 actually comprehensive for all of PJM, including FRR
3 entities.

4 Q. And "Unless otherwise agreed by PJM's
5 Board, the Forecast Pool Requirement and PJM Region
6 Installed Reserve Margin for such Planning Period
7 shall be considered firm and not subject to
8 re-determination thereafter," correct?

9 If you need a reference, take a look at
10 page 89, Schedule 4-B, I believe it is.

11 A. That's what the RAA says, yes.

12 Q. And then pursuant to Schedule 8, the
13 non-FRR entity is obligated to pay the daily unforced
14 capacity obligation -- pay for the daily unforced
15 capacity obligation, correct?

16 A. I'm sorry, can you give me a page number.

17 Q. I think it's page 113.

18 A. I'm not finding the specific language you
19 read on page 113. Maybe you could point me more
20 specifically to the location.

21 Q. First sentence on page 113, "For each
22 billing month during a Delivery Year, the Daily
23 Unforced Capacity Obligation of a Party that has not
24 elected the FRR Alternative ... shall be determined
25 on a daily basis for each Zone as follows:

1 "Daily Unforced Capacity Obligation."

2 Am I missing something?

3 A. It continues on to a fairly longer
4 formula, but I agree that those are the words in that
5 schedule in part A.

6 Q. And then the pricing mechanism which is
7 set out in Article 7 for a non-FRR entity requires
8 that a party be responsible to pay the locational
9 reliability charge times the unforced capacity
10 obligation times the final zonal capacity price.

11 If you need a specific reference, that's
12 on page 35.

13 A. Okay. I see that. I can't verify it
14 matches exactly what you read, but I'm sure it does
15 so, subject to check. That's fine.

16 Q. It's also fair to say that a non-FRR
17 entity can under certain circumstances self-supply
18 capacity resources, correct?

19 A. That self-supply for a non-FRR entity is
20 a little bit more complicated -- again, I accept
21 that. I qualified that, but go on. And so a non-FRR
22 entity that owns resources can bid those into the
23 base residual auction or incremental auctions on a
24 self-supply basis. But in some sense what they are
25 supplying is going to be independent of their final

1 obligation so -- so they will have -- essentially by
2 bidding that into the market, they will have that
3 market as a capacity resource that will have an
4 obligation and will apply towards their final
5 obligation, but their final obligation is really for
6 nonunit-specific capacity coming out of the base
7 residual auction.

8 Q. It's an auction to allow them to
9 self-supply by bidding that load in and taking the
10 market price, correct?

11 A. Right. I mean, they can't necessarily
12 guarantee that they'll fully hedge their position
13 just because of the mechanics of how the market
14 works, but they can offer their supply into the
15 auction and in that sense self-supply, yes.

16 Q. And all parties, FRR or non-FRR, are
17 under a similar obligation to coordinate and
18 cooperate with one another, correct?

19 A. I guess I don't know the specific
20 requirement that you are referring to, but I think as
21 a general matter, they are required to cooperate with
22 one another, yes.

23 Q. Well, isn't it fair to say the
24 cooperation and coordination treatment is set out in
25 Section 9.1 of the RAA?

1 A. Section 9.1 is specifically referring to
2 coordination in the context of meeting reliability
3 and research adequacy requirements.

4 Q. So that's sort of the mutual assistance
5 requirements, correct?

6 A. I think that's a reasonable
7 characterization.

8 Q. And is it also fair to say that capacity
9 that clears creates a financial commitment to provide
10 that capacity for non-FRR entities?

11 A. For an entity that clears capacity in the
12 base residual auction they are -- they have the
13 financial obligation to supply that capacity either
14 through a specific unit or through capacity procured
15 through incremental auctions, which in that case
16 would not need to be unit-specific capacity. It
17 could be general PJM capacity from the incremental
18 auction.

19 Q. It would be fair to say, would it not,
20 that the overriding purpose of the RAA is to assure
21 that adequate capacity resources are planned and made
22 available to provide reliability service to loads
23 within the PJM region with the intent to implement
24 the agreement in a manner that's consistent with a
25 robust competitive marketplace?

1 A. So I'm not sure if the language you just
2 read is specifically coming from PJM's description of
3 the RAA or from the RAA itself, but as a, you know,
4 general description, I think that's fairly accurate.
5 I would just note that that potentially accommodates
6 noncompetitive service as well, and that's actually
7 what's explicitly accounted for with the FRR auction.

8 Q. Well, to allay any ambiguity about where
9 that language came from, would you take a look at
10 Article 2, "Purpose."

11 EXAMINER PIRIK: Mr. Darr, do you have a
12 page number for that?

13 MR. DARR: Page 23, your Honor.

14 A. You know, again, without reviewing word
15 by word the statement you gave earlier, I believe
16 that's consistent with what's here, yes.

17 Q. In your testimony you do not discuss the
18 relationship between Duke Energy Ohio and DECAM, its
19 unregulated affiliate, correct?

20 A. I don't think I can say I don't address
21 it at all. I mean, I do -- allow me to find the
22 place here. On page 22, lines 1 and 2, for example,
23 I discuss that "Duke Energy Ohio plans to transfer
24 its legacy generation to its nonregulated affiliate,
25 Duke Energy Commercial Asset Management."

1 Q. Any other discussion?

2 A. Not that I recall.

3 Q. You're aware that revenues may be
4 transferred to affiliates if the generation is spun
5 off, correct?

6 A. I'm sorry, could you say that again.

7 Q. You're aware that revenues may be
8 transferred, speaking now specifically about capacity
9 revenues or this charge that's being proposed in this
10 case, these may be spun off to -- if the affiliate --
11 if the generating assets are spun off, that the
12 revenues for that will follow those affiliates? You
13 are aware of that, correct?

14 A. Yes, I believe that's consistent with
15 what I discuss on page 22 of my testimony.

16 Q. And if the revenues are transferred to an
17 affiliate, you have not looked at the effect on the
18 finances of the affiliate, correct?

19 A. No, I have not.

20 Q. Now, on page 16 of your testimony going
21 on to page 17, you discuss these what you describe as
22 the "orphaned resources."

23 A. Yes.

24 Q. And part of the reason why these
25 resources might be orphaned is that, as you described

1 earlier today with Mr. Kurtz, loads are going down,
2 correct?

3 A. That's right. So Duke Energy Ohio as an
4 FRR entity would have a responsibility to secure
5 resources to meet its FRR plan three years in
6 advance. To the extent that the requirement changes
7 as the load forecast declines, assets could become
8 orphaned.

9 Q. And it's fair to say that as we discussed
10 earlier today, Duke is also notifying PJM of
11 resources that are being deactivated as they become
12 uneconomic or otherwise unavailable, correct?

13 A. That's right. So Duke Energy Ohio
14 identifies the assets that are available to meet its
15 FRR plan. They simply have to show they have
16 identified enough resources they will be compliant.
17 The exact resources that are allocated to meeting
18 that plan on a daily basis can change from time to
19 time and that could change because of retirements.

20 Q. And, in fact, at least one of those
21 resources is one that's listed on the Attachment A
22 that we've been discussing here today, correct? I'm
23 speaking now of Attachment A to the application and
24 specifically the Beckjord unit.

25 A. Beckjord 1 has been deactivated, that's

1 correct.

2 MR. DARR: I have nothing further. Thank
3 you, your Honor.

4 EXAMINER PIRIK: Thank you.
5 Staff.

6 MR. BEELER: No questions, your Honor.

7 EXAMINER PIRIK: Would you like to take a
8 break or are you in --

9 MS. SPILLER: I would, for a couple of
10 reasons, yes, your Honor, so maybe 10 minutes.

11 EXAMINER PIRIK: We'll take a 10-minute
12 break, and I am a pretty sure there is a workshop
13 going on right next door. I think it started at
14 10:00 so we'll just need to be quiet as we are in the
15 hallway.

16 MS. SPILLER: So resume at 10:15?

17 EXAMINER PIRIK: Yes, 10:15.

18 MS. SPILLER: Thank you.

19 (Recess taken.)

20 EXAMINER PIRIK: We will go back on the
21 record.

22 Before we go back with redirect, the
23 court reporters, who are doing a wonderful job,
24 pointed out that with regard to the redaction that we
25 had on -- on the one question that Mr. Kurtz asked

1 Ms. Spiller, in your comments you also just
2 reiterated what he had said so we need to redact that
3 sentence also.

4 MS. SPILLER: Thank you, your Honor.
5 Sorry.

6 EXAMINER PIRIK: So I appreciate the
7 court reporters being so diligent in finding that for
8 us.

9 MS. SPILLER: As do I.

10 EXAMINER PIRIK: They have caught that,
11 and they will be redacting that sentence as well.

12 Now, with regard to redirect, do you have
13 any redirect?

14 MS. SPILLER: I do. Thank you, your
15 Honor.

16 - - -

17 REDIRECT EXAMINATION

18 By Ms. Spiller:

19 Q. Dr. Niemann, do you recall a question
20 from Mr. Darr, the last attorney to have examined
21 you, about other FRR entities receiving cost-based
22 compensation for their capacity obligation?

23 A. Yes, I do.

24 Q. Are you aware, sir, of any entities other
25 than this request by Duke Energy Ohio that may be

1 receiving cost-based compensation for their FRR
2 service obligations?

3 A. Yes. So AEP Ohio has requested and the
4 Commission has granted an approval for a cost-based
5 recovery mechanism, and AEP Michigan also has a state
6 compensation mechanism that is cost based.

7 Q. Thank you. Dr. Niemann, do you have
8 before you the exhibits that Mr. Kutik presented to
9 you yesterday on behalf of FirstEnergy Solutions?
10 Are they up there, sir?

11 A. I have FES 15 and 16, please.

12 Q. Sir, if you could draw your attention to
13 Exhibit FES Exhibit 15, and do you recall Mr. Kutik
14 asking you questions about this document?

15 A. I do.

16 Q. And in that line of questioning did
17 Mr. Kutik specifically call your attention to
18 paragraph 24 on page 12 of the document?

19 A. Yes, he did.

20 Q. Dr. Niemann, were you involved in the
21 settlement process that culminated in the reliability
22 assurance agreement or RAA?

23 A. Yes; in the RPM aspects, yes.

24 Q. So is it fair to say -- or strike that.

25 Were you familiar with the subject matter

1 of the FERC order that was marked as FES Exhibit 15?

2 A. Yes.

3 Q. And calling your attention back to
4 paragraph 24, what is the subject matter of that
5 particular paragraph, sir?

6 A. So in this paragraph the FERC is
7 establishing that based on the fact that RPM is a
8 compe -- contains a competitive market mechanism,
9 which they establish in the prior paragraph is within
10 a -- likely to be within a zone of reasonableness
11 because offers are mitigated and therefore should not
12 be subject to or not be influenced by market power,
13 that on a prospective basis, the mechanism should
14 produce just and reasonable prices.

15 Q. And in the document FES Exhibit 15, did
16 the FERC find that base residual auction or
17 market-based prices were the only measure of just and
18 reasonable prices?

19 A. No. The document does not say that at
20 paragraph 24, and, in fact, specifically at paragraph
21 20 the Commission noted that under the Federal Power
22 Act, the Commission is not bound to a particular
23 ratemaking methodology in setting rates as long as
24 rates fall within a zone of reasonableness.

25 Q. Thank you. The document IEU Exhibit 9,

1 the RAA, does that document, sir, also make provision
2 for the FRR alternative?

3 A. Yes, it does. At Section 8.1, the "Fixed
4 Resource Requirement Alternative" is laid out.

5 EXAMINER PIRIK: What page is that?

6 THE WITNESS: Sorry, that is page --
7 starting at page 116.

8 Q. And does the RAA identify different
9 pricing mechanisms available to FRR entities?

10 A. Yes. The RAA includes three potential
11 mechanisms. The first is a state compensation
12 mechanism which the RAA notes will be the predominant
13 mechanism and will take precedence over -- over the
14 other alternatives if it's in place.

15 Q. Alternatively, a rate at the final zonal
16 capacity price can be applied.

17 And, finally, the option is left open for
18 a Section 205 filing under the Federal Power Act to
19 establish another just and reasonable rate.

20 Q. Dr. Niemann, would you expect under a
21 Section 205 filing the FERC to approve a rate that
22 was not just and reasonable?

23 A. No. The Commission would only approve a
24 rate that it deemed to be just and reasonable.

25 Q. Dr. Niemann, would you expect that the

1 prevailing mechanism under the RAA, the state
2 compensation mechanism, would also produce a just and
3 reasonable result?

4 A. Yes, I would, and would note that in
5 Exhibit FES 15 at paragraph 24, the Commission is
6 specifically referring to prices in RPM which would
7 be set in the RPM auctions. And the RAA -- the RAA,
8 which is part of the comprehensive set of rules that
9 the Commission found to produce a just and reasonable
10 resource adequacy construct, allows for a state
11 compensation mechanism as well.

12 Q. And the paragraph, sir, that you just
13 referenced, does that statement mean that BRA or
14 market-based prices reflect just and reasonable
15 compensation for FRR entities such as Duke Energy
16 Ohio?

17 A. The paragraph is not addressing
18 compensation for FRR entities. It's addressing
19 prices in RPM, so the RAA language that allows for a
20 state compensation mechanism, the form of which would
21 be determined by the state, the RAA is not
22 proscriptive in that regard, would allow for an
23 alternative just and reasonable mechanism.

24 Q. And, Dr. Niemann, to your knowledge, has
25 the FERC declared that \$16 per megawatt-day reflects

1 just and reasonable compensation for an FRR entity?

2 A. To my knowledge, no.

3 Q. To your knowledge, Dr. Niemann, has the
4 FERC declared that \$16 per megawatt-day for capacity
5 reflects just and reasonable compensation for an FRR
6 entity?

7 A. To my knowledge, no.

8 Q. Are there multiple suppliers of capacity
9 within the BRA construct?

10 A. Yes, there are.

11 Q. Are there multiple suppliers of capacity
12 in Duke Energy Ohio's service territory currently?

13 A. There's a single entity that's
14 responsible for providing the supply under FRR.

15 Q. And who is that entity, please?

16 A. That's Duke Energy Ohio.

17 Q. And for how long will Duke Energy Ohio be
18 solely responsible for providing the capacity within
19 its footprint?

20 A. Until May of 2015.

21 Q. Do you recall being asked questions
22 yesterday about whether Duke Energy Ohio could have
23 stayed in MISO but participated in the PJM base
24 residual auction for the 2014-2015 planning year?

25 A. Yes, I do.

1 Q. And under that scenario would Duke Energy
2 Ohio have been required to remain a member of MISO
3 until June 1, 2014?

4 A. Yes, they would.

5 Q. Dr. Niemann, would you expect Duke --
6 would Duke Energy Ohio have faced any risks by
7 staying in MISO but participating in PJM's base
8 residual auctions for future delivery years?

9 A. Yes. Specifically by staying in MISO,
10 they would have been subject to additional cost
11 allocation under the transmission planning process or
12 MTEP in MISO, which at the time involved significant
13 costs related to what are called the MVP assets or
14 transmission being built for wind integration.

15 Additionally, if -- if Duke Energy Ohio
16 had remained in MISO and participated in the base
17 residual auctions for PJM, they would have faced a
18 risk that had they ultimately not migrated to PJM,
19 they would have procured capacity -- a significant
20 amount of capacity within PJM that they very well may
21 not be able to transfer over to MISO.

22 Q. There was a statement that you -- strike
23 that.

24 There was a term that you used in
25 response to a question from Mr. Kurtz yesterday. The

1 term was unit-specific capacity. What is that,
2 please?

3 A. So unit-specific capacity is capacity
4 that's coming from a specific named unit which is
5 different from the capacity in the BRA which is
6 general PJM capacity. It's not tied to any specific
7 unit.

8 But for an FRR entity, in order to show
9 that you have resources lined up, you have to have
10 individual specific-named resources. You can't rely
11 on general capacity coming from -- from the BRA or
12 the incremental auctions.

13 Q. So to the extent Duke Energy Ohio may
14 have acquired nonunit-specific capacity, could that
15 capacity be used to satisfy its FRR obligations?

16 A. I'm sorry, if it acquired nonunit
17 specific?

18 Q. Yes, sir.

19 A. So if Duke Energy Ohio had acquired
20 nonunit-specific capacity, it could not directly use
21 that to meet the FRR obligations. They would need to
22 enter into another transaction to secure resources
23 that were unit specific and so, no, they couldn't
24 directly use the nonunit-specific capacity.

25 Q. Do you recall -- strike that.

1 Do you recall questions from Mr. Kutik
2 yesterday about offer caps?

3 A. Yes.

4 Q. And, sir, did you review offer caps with
5 respect to the initial years in which Duke Energy
6 Ohio will serve as an FRR entity, those being partial
7 planning year 2011-'12 through PJM planning year 2013
8 through 2014?

9 A. So for the purpose of my direct testimony
10 I was looking at offer caps in the context of
11 identifying whether or not there would have been a
12 distortion -- distortionary impact on any of the base
13 residual auctions as a result of Duke Energy Ohio FRR
14 status. Because the base residual auctions had
15 already occurred for those initial delivery years,
16 there could be no distortion in those auctions,
17 therefore, that analysis was not relevant for those
18 years and was focused on the 2014-15 -- 2014-'15
19 delivery year.

20 Q. Do you recall questions, Dr. Niemann,
21 posed by Mr. Kutik regarding economically rational
22 decisions in respect of retiring assets?

23 A. Yes, I do.

24 Q. And, Dr. Niemann, if Duke Energy Ohio
25 were to -- were to retire all of the legacy assets

1 reflected in its FRR plan, what would be the result
2 of that?

3 A. So assets would have to be available to
4 supply capacity to meet the resource adequacy
5 requirements for the zone. Specifically it would
6 have to be what's typically called deliverable in the
7 zone. In other words, the -- by retiring the assets
8 you would have to make sure that there were other
9 assets that would -- that could provide the same
10 service in terms of locational delivery of energy.

11 And PJM for entities participating in the
12 BRA in advance of each BRA doesn't do an analysis to
13 determine whether or not there is sufficient
14 resources, so if retirements are planned when PJM
15 does that analysis, that's reflected, which can
16 result in premium price for that zone. The same
17 calculations are not done in advance of the FRR plan
18 being established.

19 Q. Thank you. And I suspect it's fair to
20 conclude that you recall questions and exchanges
21 yesterday regarding Robert Stoddard, correct?

22 A. Yes, I do.

23 Q. Dr. Niemann, did you rely upon Robert
24 Stoddard's testimony in the AEP capacity case for
25 purposes of drafting your testimony in this case?

1 A. No. I reviewed Mr. Stoddard's testimony
2 as it provided relevant and useful background
3 information. I did not specifically rely on it in
4 forming my opinions.

5 Q. And, sir, do you have up at the witness
6 stand what's been previously marked as OCC Exhibit
7 No. 3?

8 A. I don't believe I do. Could you tell me
9 the title of the document?

10 MS. SPILLER: Your Honor, may I approach?

11 EXAMINER PIRIK: Yes.

12 MS. SPILLER: Thank you.

13 Q. And, Dr. Niemann, can you identify OCC
14 Exhibit 3 for the record, please.

15 A. This is the Entry on Rehearing in Case
16 No. 10-2929-EL-UNC.

17 Q. And, sir, if you could turn to page 30 of
18 that document, please.

19 A. Okay.

20 Q. And is paragraph 73 a reflection of the
21 position asserted by FirstEnergy Solutions through
22 Mr. Stoddard and certainly the testimony that you
23 reviewed parts of which were read to you yesterday?

24 A. Yes. Paragraph 73 which reads:

25 "FES contends that the Capacity Order

1 unlawfully and unreasonably established an SCM based
2 on embedded costs. Specifically, FES argues that,
3 pursuant to the language and purpose of the RAA, the
4 only costs that can possibly be considered for
5 pricing capacity in PJM are avoidable, not embedded,
6 costs and that AEP-Ohio's avoidable costs would be
7 fully recovered using RPM-based pricing. FES asserts
8 that AEP-Ohio's FRR capacity obligations are not
9 defined by the cost of its fixed generation assets
10 but are instead valued based on PJM's reliability
11 requirements. FES believes that the Capacity Order
12 provides a competitive advantage to AEP-Ohio in that
13 the Company will be the only capacity supplier in PJM
14 that is guaranteed to recover its full embedded costs
15 for generation. FES notes that AEP-Ohio's status as
16 an FRR Entity does not justify different treatment,
17 as there is no material difference between the FRR
18 election and participation in PJM's base residual
19 auction."

20 And I would agree that that summarizes
21 the -- many of the opinions in Mr. Stoddard's
22 testimony.

23 Q. And, sir, having been involved in the
24 process that culminated in the RAA, was AEP Ohio's
25 election as an FRR entity voluntary?

1 A. Yes. AEP Ohio elected to be an FRR
2 entity.

3 Q. Thank you. And, sir, turning to page 31
4 of OCC Exhibit 3, the Commission's Entry on Rehearing
5 in Case 10-2929, did the Commission respond to FES's,
6 FirstEnergy Solutions, position that you've just
7 identified?

8 MS. GRADY: Objection. I think the order
9 speaks for itself, your Honor. I don't know what
10 good it does to have Mr. -- Mr. Niemann read the
11 Commission's findings into the record.

12 MS. SPILLER: Well, your Honor --

13 EXAMINER PIRIK: Well, I am going to
14 overrule the objection.

15 MS. SPILLER: Thank you, your Honor.

16 A. I'm sorry, could you give me the page
17 number?

18 Q. Sure. Page 31, the bottom of the page,
19 sir.

20 A. Yes, this is responsive to the FES's
21 arguments and your -- the order reads:

22 "Initially, the Commission finds no merit
23 in IEU-Ohio's claim that AEP-Ohio is not an FRR
24 Entity. Although AEPSC signed the RAA, it did so on
25 behalf of the Company. The Commission also disagrees

1 with FES's contention that the Capacity Order affords
2 an undue competitive advantage to AEP-Ohio over other
3 capacity suppliers in PJM. The Commission initiated
4 this proceeding solely to review AEP-Ohio's capacity
5 costs and determine an appropriate capacity charge
6 for its FRR obligations. We have not considered the
7 costs of any other capacity supplier subject to our
8 jurisdiction nor do we find it appropriate to do so
9 in this proceeding. Further, the Commission does not
10 agree that the SCM that we have adopted is
11 inconsistent with the RAA. Section D.8 of Schedule
12 8.1 of the RAA provides only that, where the state
13 regulatory jurisdiction requires that the FRR Entity
14 be compensated for its FRR capacity obligations, such
15 SCM will prevail. There are no requirements or
16 limitations for the SCM in that section or elsewhere
17 in the RAA. Although Section D.8 of Schedule 8.1 of
18 the RAA specifically contemplates that an SCM may be
19 established by the state regulatory jurisdiction,
20 neither that section nor any other addresses whether
21 the SCM may provide for the recovery of embedded
22 costs, nor would we expect it to do so, given that
23 the FRR Entity's compensation is to be provided by
24 way of a state mechanism. The Commission finds that
25 we appropriately adopted an SCM that is consistent

1 with Section D.8 of Schedule 8.1 of the RAA."

2 MR. KUTIK: Your Honor, I am going to
3 move to strike this entire line of questions. In my
4 examination of Dr. Niemann, he only reviewed two
5 documents with respect to the AEP capacity case, one
6 being the Opinion and Order and two being
7 Mr. Stoddard's testimony.

8 The document that the witness is now
9 reading from is a document he said he didn't review
10 for purposes of this case and so for -- for counsel
11 to provide the witness this document and then have
12 him read it, it is a document that he didn't rely
13 upon and is just him parroting what counsel is giving
14 to him to read.

15 MS. SPILLER: Your Honor, if I may be
16 heard on this, we are where we are today because
17 Mr. Kutik attempted to impeach the credibility of
18 Dr. Niemann utilizing testimony of Robert Stoddard,
19 who happened to be a former colleague, and as I
20 objected to yesterday, I thought that improper use of
21 Mr. Stoddard's testimony.

22 Mr. Kutik expressly indicated that he was
23 using it for purposes of attacking the credibility of
24 Dr. Niemann, and Dr. Niemann, I think, has the right
25 on redirect to identify the purpose that he may have

1 used Dr.-- or Mr. Stoddard's testimony and further to
2 confirm whether or not Mr. Stoddard's testimony was
3 accepted by the Commission in making a determination
4 on issues that Dr. Niemann is here testifying to.

5 EXAMINER PIRIK: I would just have to say
6 that, you know, we've had a lot of items read into
7 the record, and this is one of them. And I think
8 Ms. Grady said it best, as the Entry on Rehearing
9 speaks for itself, so I don't know that there is a
10 purpose for reading the Commission's Entry on
11 Rehearing. I think in the Commission's review of the
12 record the Commission will be able to ascertain
13 exactly what they meant in their hearing and exactly,
14 you know, what -- what weight and what the
15 precedential value will be so, you know, if you want
16 your witness to --

17 MS. SPILLER: Oh, there's a question.

18 EXAMINER PIRIK: -- respond to some
19 question, I would appreciate that, but let's not just
20 randomly read in more information.

21 MS. SPILLER: Understood. And I assume
22 that would be a common ruling as we proceed.

23 EXAMINER PIRIK: I'll rule according to
24 what's appropriate at the time.

25 MS. SPILLER: Thank you, your Honor.

1 MR. KUTIK: Your Honor, so is my motion
2 to strike granted?

3 EXAMINER PIRIK: No, it's denied.

4 Q. (By Ms. Spiller) Dr. Niemann, as an
5 expert in the capacity markets, would you expect the
6 Ohio Commission finding in paragraph 7 of OCC Exhibit
7 3 to apply only to AEP Ohio?

8 MR. KUTIK: Objection, your Honor.

9 MS. GRADY: Objection.

10 MR. KUTIK: This witness has testified he
11 is not an expert in Ohio law, and anything with
12 respect to Ohio he said I am -- "I don't know
13 anything about it legally." That's a legal matter,
14 not a regulatory matter.

15 MS. GRADY: We would join.

16 MS. SPILLER: Your Honor, if I may,
17 Dr. Niemann was the only witness in this case who was
18 involved in the settlement process that culminated in
19 the RAA. He's certainly entitled to give his
20 interpretations as to the application of that
21 document, understanding he is not a legal -- he is
22 not an attorney, but he is certainly, and there has
23 been no dispute, an expert in the capacity markets
24 and I think someone who certainly could provide some
25 insight to the Commission as to the interpretation of

1 the RAA, unless counsel for the intervenors are so
2 inclined to agree that the Commission's findings in
3 case 10-2929 with respect to what the RAA allows are
4 equally applicable here.

5 MR. KUTIK: Your Honor, she's asking how
6 precedent should an applied. That's a legal
7 question.

8 EXAMINER PIRIK: I am just going to ask
9 if you could find Ms. Spiller's original question
10 before the objection.

11 (Record read.)

12 EXAMINER PIRIK: I am going to sustain
13 the objection.

14 MS. SPILLER: All right, your Honor. I
15 am going to rephrase.

16 Q. (By Ms. Spiller) Dr. Niemann, as an
17 expert in capacity markets and an individual involved
18 in the process that culminated in the RAA, was
19 Section D.8 of Schedule 8.1 of the RAA created only
20 for one entity?

21 A. No. It was created to address all FRR
22 entities.

23 Q. And from a regulatory economic
24 perspective, would you expect that particular
25 provision to be applied consistently?

1 A. Yes. I would expect that the rules that
2 applied to all FRR entities would be applied
3 consistently to all such entities.

4 MS. SPILLER: One moment, please, your
5 Honor.

6 Your Honor, just for clarity, my
7 co-counsel and I are -- she is probably more accurate
8 than I with respect to the numeric information that I
9 may have relaying, just wanted to clarify.

10 Q. To your knowledge, Dr. Niemann, has the
11 FERC declared that \$27 per megawatt-day for capacity
12 reflects a just and reasonable compensation for an
13 FRR entity?

14 A. To my knowledge, no.

15 MS. SPILLER: Thank you.

16 Your Honor, at this time, no further
17 questions.

18 EXAMINER PIRIK: Mr. Kutik?

19 MR. KUTIK: Yes, your Honor. Thank you
20 very much.

21 - - -

22 RECROSS-EXAMINATION

23 By Mr. Kutik:

24 Q. Dr. Niemann, in your review of the FERC's
25 order on denying rehearing in the case that helped

1 establish the RPM and RAA construct as we know it
2 today, isn't it true that the Commission on -- in
3 paragraph 20 on page 8 said the following: Under the
4 Federal Power Act, the Commission is not bound to a
5 particular ratemaking methodology in setting rates as
6 long as rates fall within a zone of reasonableness,
7 i.e., the rates are neither less than compensatory to
8 the seller nor excessive to the consumer. In
9 addition, the 'zone of reasonableness' may take into
10 account all relevant public interests, both existing
11 and foreseeable. These public interests may
12 appropriately include non-cost factors, such as the
13 need to stimulate additional investment."

14 They said that, correct?

15 MS. SPILLER: Objection, your Honor.
16 Taking the lead from Ms. Grady and Mr. Kutik this
17 morning, I think it inappropriate simply to read into
18 the record contents of an order that speaks for
19 themselves.

20 EXAMINER PIRIK: I understand your
21 objection, but you have to understand that what the
22 witness was reading there was the PUCO's order, and
23 my ruling said that the PUCO can interpret their own
24 orders.

25 In this situation the specific question

1 came after this paragraph, so I will rule accordingly
2 and request denied.

3 Q. That's what it said, correct?

4 A. I would agree that what you read
5 accurately reflects what's in the order, yes.

6 Q. And then on page 15, paragraph 31, the
7 Commission -- the Commission stated in the third line
8 from the bottom, "The Supreme Court has held that far
9 from" -- that "far from binding the Commission, the
10 just and reasonable requirement accords it broad
11 ratemaking authority and the just and reasonable
12 standard does not compel the Commission to use any
13 single pricing formula," with a cite.

14 And then it says, "In Federal Power
15 Commission versus Texaco, Inc., the court held that
16 every rate of every natural gas company must be just
17 and reasonable and does not require that the cost of
18 each company be compensated for its rates fixed with
19 respect to its own cost," correct?

20 A. I don't believe the last part of that
21 matches what's in -- what's in the order.

22 Q. Well, I will read it again. The last
23 sentence says, "In Federal Power Commission versus
24 Texaco, Inc., the court held that every rate of every
25 natural gas company must be just and reasonable does

1 not require that the cost of each company be
2 ascertained and that its rates fixed with respect to
3 its own costs."

4 A. I believe you got it right that time,
5 yes.

6 Q. Thank you. Now, you mentioned in
7 response to Ms. Spiller's questions that AEP elected
8 to become an FRR entity, correct?

9 A. Yes.

10 Q. DEO did, too.

11 A. DEO elected to move into PJM, and in
12 order to participate in the '12-'13, '13-'14, and
13 '14-'15 planning years as a PJM entity, the only
14 means to do that was as an FRR entity.

15 Q. They elected to be an FRR entity,
16 correct?

17 A. They elected to be an FRR entity.

18 Q. Thank you.

19 A. That was their only choice if they wanted
20 to join PJM.

21 Q. It was not their only choice, was it?

22 A. It was they'll only join if they wanted
23 to join PJM on the first of the year, 2012.

24 Q. Right. So if they wanted to join at that
25 time, they had to be an FRR entity, correct?

1 A. Yes.

2 Q. But if they wanted to join and delay when
3 they entered, as we talked about on your
4 cross-examination, they could have avoided being an
5 FRR entity; isn't that correct?

6 MS. SPILLER: Objection, argumentative.

7 EXAMINER PIRIK: Overruled.

8 A. If they were willing to take on the
9 additional risks, yes.

10 Q. Okay. Now, you are aware, are you not,
11 that at one point in time Duke management actually
12 approved waiting to go to PJM and participate in the
13 PJM auctions while staying in MISO; you are aware
14 they approved that, aren't you?

15 A. I'm not familiar with all the approvals
16 of Duke management regarding that decision.

17 Q. So you don't know that?

18 A. The --

19 Q. Do you know that, sir, or don't you?

20 A. The transition process to PJM was an
21 evolving process over time --

22 Q. Do you know whether they approved it,
23 sir?

24 MS. SPILLER: Excuse me, your Honor.

25 MR. KUTIK: I need an answer to my

1 question, your Honor.

2 EXAMINER PIRIK: I think I will allow the
3 witness to proceed, and then you can ask further.

4 Q. Do you know whether they approved it or
5 not? "Yes" or "no."

6 A. As I said, it was an evolving process.
7 There were different things considered and approved
8 at different points in time, and I am not aware of
9 all of them.

10 Q. You haven't answer my question, sir. Are
11 you aware they had at one point in time approved
12 delaying moving to PJM while participating in the PJM
13 auctions? Are you aware of that?

14 A. I'm aware of their final decision in
15 terms of how they were going to move into PJM. I am
16 not aware of an earlier decision, no.

17 Q. All right. And if they had approved it,
18 you would have expected that decision would have been
19 made with due care, correct?

20 MS. SPILLER: Objection as to what
21 Dr. Niemann knows about Duke Energy Ohio's decisions.
22 I think this is an improper hypothetical.

23 EXAMINER PIRIK: Objection overruled.

24 A. So as I said, this was an evolving
25 process. Clearly different decisions were made at

1 different points in time. There may have been
2 provisional decisions. I think what's reflected in
3 the final approval and the final approach was done
4 with due diligence.

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

6 EXAMINER PIRIK: Denied.

7 Q. Dr. Niemann, isn't it -- you would
8 expect, would you not, having worked with Duke,
9 having worked with other companies like Duke, that if
10 their senior management made a decision to approve a
11 move of from one RTO to another and the timing of
12 that move, that that decision would have been made
13 with due care and consideration for all relevant
14 facts? You would have expected that, wouldn't any?

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

17 MR. KUTIK: Hardly answered, your Honor.

18 EXAMINER PIRIK: Overruled.

19 A. So, as I said, this is not a final
20 decision, clearly.

21 Q. Can you answer my question, sir?

22 A. I'm not familiar with the exact decision
23 process for every decision made by Duke Energy Ohio
24 so I can't answer that question.

25 Q. So you wouldn't expect, which was my

1 question, you wouldn't expect that their decisions
2 would be made with due care and consideration for all
3 relevant factors? You wouldn't expect that then; is
4 that your testimony?

5 MS. SPILLER: Objection, it misstates the
6 witness's testimony.

7 MR. KUTIK: Well, thank you for coaching
8 the witness, but that's not a proper objection.

9 A. I would expect that their decisions would
10 be made by a reasonable decision process with
11 sufficient due diligence and care.

12 Q. Thank you.

13 A. I would note that was not a final
14 decision.

15 Q. All right. It wasn't just chance that
16 you happened to read Mr. Stoddard's testimony in the
17 AEP case, was it?

18 A. When I was engaged by Duke Energy Ohio to
19 provide testimony in this case, I reviewed background
20 documents. I reviewed documents filed in this
21 proceeding including the application, including the
22 comments of FirstEnergy Solutions. Many of the
23 points made in the initial comments of FirstEnergy
24 Solutions were closely related to what I understood
25 was in Mr. Stoddard's testimony; therefore, it seemed

1 like a reasonable document to review.

2 Q. Right.

3 A. And provided, you know, good background
4 information on the AEP case.

5 Q. Right. So Mr. Stoddard's testimony
6 provided reasonable background for you to understand
7 what was going on in the AEP case, correct?

8 A. I would say it provided a reasonable
9 summary of the testimony of other witnesses as well
10 as Mr. Stoddard's positions in that case.

11 MR. KUTIK: Thank you. I have no further
12 questions.

13 EXAMINER PIRIK: Thank you.

14 Ms. Grady.

15 MS. GRADY: No, no recross, your Honor.

16 Thank you.

17 EXAMINER PIRIK: Mr. Kurtz?

18 MR. KURTZ: None, your Honor.

19 EXAMINER PIRIK: Ms. Petrucci.

20 MS. PETRUCCI: No questions.

21 EXAMINER PIRIK: No questions.

22 Mr. Hart.

23 MR. HART: No.

24 EXAMINER PIRIK: Mr. Darr?

25 - - -

1 my direct testimony so it's not something that I had
2 researched or considered.

3 Q. So the AEP decision that you reviewed for
4 purposes of getting ready for your testimony is not
5 relevant but is a cost-based mechanism? Am I
6 understanding that correctly?

7 A. Which entities had a cost-based mechanism
8 in place was not relevant to my direct testimony. I
9 was certainly aware of the AEP case and the fact that
10 that was about a cost-based mechanism.

11 Q. So when you were asked in your
12 deposition, and I am looking now specifically at page
13 60, lines 14 through 19: "Question: And are you
14 aware of any other -- any other utility --
15 investor-owned utilities that would be receiving
16 compensation for their capacity at fully embedded
17 costs under the FRR construct in PJM?"

18 And you answered: "Again, I have not
19 conducted an exhaustive review; but, no, I am not
20 aware of any."

21 MS. SPILLER: Objection, your Honor. I
22 think it would be helpful --

23 EXAMINER PIRIK: Objection overruled.

24 MS. SPILLER: He doesn't have the
25 transcript, your Honor.

1 MR. KUTIK: It should be up there.

2 MR. DARR: I'll provide it to him.

3 THE WITNESS: It's not here. I don't
4 have a copy.

5 MS. GRADY: If you give me a moment, I
6 can find it, Mr. Darr.

7 MR. DARR: You don't have an extra copy?

8 MR. KUTIK: I gave him an extra copy.

9 THE WITNESS: You gave me a copy
10 yesterday. It wasn't here when I came in this
11 morning.

12 MR. DARR: To expedite this, if you allow
13 me to approach, I'll hand him mine.

14 EXAMINER PIRIK: That would be fine.
15 Thank you, Mr. Darr.

16 MS. SPILLER: And I'm sorry, Mr. Darr,
17 the page, please?

18 MR. DARR: 60, specifically lines 14
19 through 19, I believe.

20 THE WITNESS: To make sure I'm answering
21 the right question, could you repeat or have it read
22 back?

23 MR. DARR: Could we have it read back,
24 please.

25 (Record read.)

1 A. I think there's some additional important
2 language in the question that was asked at
3 deposition, which says "receiving compensation for
4 their capacity at fully embedded costs under the FRR
5 construct in PJM."

6 And as I was asked the question in my
7 deposition, I couldn't recall the exact details of
8 whether, for example, that AEP mechanism was at fully
9 embedded costs or the exact terms, and so, you know,
10 I didn't have that recollection at the time of my
11 deposition.

12 Q. None of that's reflected in your answer
13 here, is it?

14 A. In my answer where?

15 Q. Page 60, lines 14 through 19.

16 EXAMINER PIRIK: Mr. Darr, can you pull
17 the microphone towards you.

18 MR. DARR: My apologies.

19 Q. That's not reflected on your answer on
20 page 60, lines 14 through 19, is it?

21 A. Well, I'm answering the question but
22 above where it is reflected, so, I mean, I didn't
23 repeat the words, but I'm answering a question where
24 that concept of fully embedded costs is clearly
25 reflected.

1 Q. And are you aware of the scope of the
2 recovery mechanism that is as to what entities it
3 applies to in the AEP Ohio case?

4 A. As to what AEP entities it applies to?

5 Q. Yes, and the contracting parties with AEP
6 Ohio.

7 A. Specifically -- specifically, no. I
8 mean, I would have to go back and review exactly the
9 legal entities to which it applies.

10 MR. DARR: Thank you. I have nothing
11 further.

12 EXAMINER PIRIK: Thank you.

13 Mr. Jones.

14 MR. JONES: No questions, your Honor.

15 EXAMINER PIRIK: Thank you, Mr. Niemann.

16 MR. KURTZ: Your Honor, the confidential.

17 EXAMINER PIRIK: The confidential
18 portion, that's correct. Thank you for reminding me.

19 Are we okay with everyone in the room?

20 MS. KINGERY: No.

21 MS. SPILLER: Your Honor, I'm sorry, can
22 you identify yourself, please?

23 MS. MEYER: Krista Meyer.

24 MS. SPILLER: From?

25 MR. SHIELDS: She works for me.

1 MS. SPILLER: Okay. Thank you, Dan.

2 EXAMINER PIRIK: This will begin the
3 confidential portion of the transcript.

4 (Confidential portion.)

5 MR. KURTZ: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION (Continued)

8 By Mr. Kurtz:

9 Q. Dr. Niemann, the -- just by way of
10 background, the Duke Energy Ohio resource
11 requirement --

12 EXAMINER PIRIK: Your microphone, please.

13 Q. Approximately 5,000 megawatts.

14 EXAMINER PIRIK: Can you repeat the
15 question? I'm sorry.

16 Q. The Duke Energy Ohio resource requirement
17 is approximately 5,000 megawatts plus approximately a
18 15 percent reserve margin?

19 A. I'm sorry. Can I ask you to rerepeat
20 that. Some of it was missed with the microphone off.

21 Q. The Duke Energy Ohio resource requirement
22 is approximately 5,000 megawatts plus a reserve
23 margin of 15 percent.

24 A. In very round numbers, yes.

25 Q. Okay. Do you have in front of you

1 Exhibit 7A, which I think are your workpapers?

2 A. I have Exhibit 7A. I would note that
3 this is labeled as Exhibit RLL-3 and includes pages 3
4 of 5, 4 of 5, and 5 of 5. I believe that's -- must
5 be an exhibit for Mr. Luciani's testimony. It is the
6 reference or sourced to Niemann workpapers, so it
7 appears to be a document referring to my workpapers
8 or sources from my workpapers, but it is not my
9 workpapers.

10 Q. Okay. I'm sorry. You're right. Do
11 these accurately reflect your workpapers?

12 A. I've just seen it this morning so I -- I
13 haven't been able to review and verify that.

14 Q. Well, do you have your workpapers with
15 you?

16 A. Yes.

17 Q. And the only number I would ask you to
18 verify is the UCAP committed megawatt, for example,
19 (REDACTED) megawatts on the first page.

20 A. I don't believe my workpapers contained
21 any summation of capacity so I don't think the
22 (REDACTED) comes from my workpapers.

23 I certainly didn't use that number, and
24 my recollection not having my -- without having the
25 confidential version of my workpapers in front of me,

1 that number does not appear in my workpapers.

2 Q. Okay. Let me just ask you this basically
3 then. If the Duke Energy Ohio resource requirement
4 is approximately (REDACTED), it's clear that that
5 could not be provided simply by the Midwest coal or
6 the legacy coal units of Duke Energy Ohio; isn't that
7 true?

8 A. Yes, that's correct.

9 Q. Now, I understood that earlier -- what
10 you have to do as an FRR is one month before the base
11 residual auction for the year you are trying to meet,
12 you have to submit a plan to PJM naming specific
13 units as how you are going to meet that plan; is that
14 correct?

15 A. That's correct, you have to identify
16 unit-specific capacities that's sufficient to supply
17 your obligation.

18 Q. Okay. So in April of -- approximately
19 April of 2011, you've got to give PJM an FRR plan for
20 the 2014-'15 planning year naming specific units how
21 you are going to meet that approximate (REDACTED)
22 resource requirement?

23 A. Yes, that's correct.

24 Q. Okay. The question I asked you and you
25 deferred for the confidential portion is did Duke

1 Energy Ohio name any of the (REDACTED)
2 , the (REDACTED), units as -- as meeting
3 its FRR plan?

4 A. Yes, it did. Yes, Duke Energy Ohio did.

5 Q. Okay. For each of the three planning
6 years in question, were the (REDACTED) assets named
7 specifically in the FRR plan?

8 A. I believe so, yes.

9 Q. Okay. And then the process -- so the
10 (REDACTED) assets are (REDACTED) , and
11 (REDACTED); is that correct?

12 A. Subject to check, yes, I believe that's
13 correct.

14 Q. Were all of those units named as the --
15 as part of the FRR plan?

16 A. Again, subject to check, I believe so.

17 Q. Okay. Now, in order to effectuate that,
18 what Duke Energy Ohio would have to do -- first of
19 all, do you understand that (REDACTED)
20 (REDACTED) ?

21 A. Yes.

22 Q. Okay. So in order to effectuate that
23 Duke Energy Ohio would have to enter into a contract
24 with (REDACTED) to satisfy what they told FERC they
25 were going to do because -- in order to get that

1 unit-specific capacity.

2 A. Actually, I don't believe that's correct.
3 My understanding, and I haven't looked recently at
4 the specific details of -- of how capacity plans are
5 put together what the requirements are for an FRR
6 entity, but my understanding is that PJM -- or my
7 recollection is that PJM looks at it at a corporate
8 level, I guess a holding company level, so that a

9 (REDACTED) the -- the assets that could
10 be included in the FRR plan would be for the entire
11 entity, including (REDACTED) .

12 Q. Well, do you understand Duke Energy Ohio
13 did enter into bilateral contracts with (REDACTED)?

14 A. At some point in time, yes.

15 Q. And maybe that was unnecessary, is what
16 you are saying, because they could have just used the
17 capacity anyway?

18 A. No. It's un-- it was unnecessary for the
19 purposes of specifying the assets that were going to
20 be in the -- that were going to be used to meet the
21 FRR for PJM's purposes so PJM would accept assets in
22 the plan that were from a (REDACTED).

23 Q. Okay. And PJM doesn't care how much Duke
24 Energy Ohio pays (REDACTED) for that capacity.

25 A. PJM does not look at the prices, no.

1 Q. Okay. But you understand that in this
2 case that purchase price is being asked to be
3 recovered from consumers so that this Commission may
4 care.

5 A. Yes. I understand that it's included in
6 the recovery.

7 Q. Okay. And you understand that the
8 cost-based recovery mechanism here is only for the
9 legacy coal, not for the (REDACTED)?

10 A. I don't recall the -- specifically how
11 the -- how purchased -- or how bilaterals are treated
12 in that calculation.

13 Q. No. I mean in terms of the \$729 million
14 that Duke Energy Ohio is asking for, that's only with
15 respect to the legacy coal costs or it's -- and the
16 (REDACTED) is not included at all except to the
17 extent of these bilateral purchases are asked to be
18 recovered.

19 A. My understanding is the embedded costs
20 that are being recovered are based on the Duke legacy
21 assets.

22 Q. Okay. Now, do you also understand that
23 the (REDACTED) and the legacy coal -- they are
24 (REDACTED) owned by Duke Energy Ohio, correct?

25 A. Correct.

1 Q. And they are (REDACTED) -- the earnings
2 of (REDACTED) are reported up through the Commercial
3 Power segment of the Duke Energy segmented earnings,
4 Duke Energy Ohio segmented earnings?

5 A. I'm not deeply familiar with Duke's
6 reporting practices.

7 Q. Now, were you in the room when the SEC
8 10-K was shown and the Commercial Power segment of
9 Duke Energy Ohio's earnings was \$50 million in 2012
10 and \$78 million of earnings in 2011?

11 A. I don't recall the specific numbers.

12 Q. So if we would -- unless the SEC
13 accounting was wrong, Duke didn't lose money on all
14 of its power plants. It actually made money on all
15 the power plants that it said to PJM we are going to
16 serve as its FRR plan. If you look at DECAM and the
17 legacy coal combined --

18 MS. SPILLER: I am going to object to the
19 extent Dr. Niemann has said he didn't recall the
20 information.

21 EXAMINER PIRIK: Objection overruled.

22 A. I would have to go back and look at the
23 specific numbers.

24 Q. Now, I would like to ask you to look at
25 one additional -- one additional document we've asked

1 to have marked as OEG Exhibit 8A, also confidential
2 document.

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

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. Do you have that in front of you, doctor?

7 EXAMINER PIRIK: Hold on, Mr. Kurtz.

8 We are going to stay off the record for a
9 minute.

10 (Discussion off the record.)

11 EXAMINER PIRIK: Mr. Kurtz.

12 MR. KURTZ: Thank you, your Honor.

13 Q. (By Mr. Kurtz) Doctor, on page 1, line 1
14 net capacity revenue \$(REDACTED), do you see that?

15 A. I see the number (REDACTED). I don't see
16 anything specifically noting that's in the thousands,
17 but I'll take -- I'll accept that's probably
18 (REDACTED) million.

19 Q. Do you see at the bottom 729,122? If
20 that was not in the thousands, we would all go home.
21 But that's 729 million.

22 A. Yes, I see that number.

23 Q. So we've got this (REDACTED) million
24 (REDACTED). Now, on page 3 do you see the same
25 number, (REDACTED) million -- actually (REDACTED). I

1 guess there is a rounding somewhere. Do you see that
2 on page 3 of this document?

3 A. Yes, I do.

4 Q. Okay. You see how that was determined by
5 the -- first of all, the days -- the days in the
6 period, they are going back to August 1st of 2012
7 through the end of May of '13 so. That's 300 days.
8 You understand that; is that correct?

9 A. Yes.

10 Q. Okay. Actually, that's the final zonal
11 capacity rate, 16.73, isn't it? That's not RPM.

12 A. Well, final zonal capacity rate is --
13 does apply for RPM, but subject to check, I believe
14 that's -- that's the correct number for the FZCP.

15 Q. And that's a detail, and if you look
16 below that, the 27.73 and the 125.99, that's RPM
17 because I guess when they put this together, they
18 didn't have the FZCP yet.

19 A. So when you say "RPM," you are referring
20 to the base residual auction clearing price?

21 Q. Yes. You can see it for the 27.73, and
22 the 125.99, that's base residual auction clearing
23 price exactly.

24 A. I'm not going to depend on my
25 recollection down to the penny, but these -- these

1 look like the right numbers for the FZCP for the
2 first period and the BRA clearing price for the other
3 periods.

4 Q. Not important. In OEG Exhibit 5, but
5 here is what I really want to ask you about, the
6 net -- the megawatts, the (REDACTED) for the '12-'13
7 planning year, do you see that?

8 A. Yes, I do.

9 Q. Okay. Now, on page 2 of the document,
10 the fourth line, you see Load Requirement (Actual,
11 (REDACTED), the same number.

12 A. Yes, I see that.

13 Q. Okay. And if you read across, (REDACTED)
14 and then you go back to page 3, you see the
15 (REDACTED), correct?

16 A. Yes.

17 Q. And, again, you can match up the
18 (REDACTED) with the (REDACTED).

19 A. Yes, I see that.

20 Q. Okay. And so what this document does, it
21 multiplies this load times these prices, and you end
22 up with (REDACTED) million (REDACTED), which is the
23 starting of the revenue requirement for the 729. Do
24 you see that?

25 A. I see the number you are adding to

1 (REDACTED), yes.

2 Q. Here is the question, do these Load
3 Requirement (Actuals), (REDACTED), and the (REDACTED),
4 do those include the 15 percent reserve margin?

5 A. I didn't put these numbers together so I
6 can't speak to specifically what's included or not
7 included. And in terms of slicing the -- the
8 capacity obligation in that there are a lot of -- it
9 can be cut different ways. It's not always
10 straightforward to know what numbers are apples to
11 apples, for example, whether things apply to the
12 entire load zone or just a portion of the load. So,
13 you know, I don't know specifically what's included
14 in that calculation of the (REDACTED). It's not my
15 number.

16 Q. Okay. But just as you testified earlier,
17 what Duke Energy Ohio will be -- what Duke Energy
18 Ohio has to supply is the resource requirement in
19 their load -- in their zone plus 15 percent and
20 that's the amount that customers will ultimately pay,
21 correct?

22 A. Well, it's -- it's -- again, it's not
23 quite that simple. So the 15 percent reserve margin
24 is what's required above peak load on what's called
25 an ICAP basis, or installed capacity basis, which is

1 before any deratings for forced outages. The actual
2 requirements are typically specified on a UCAP basis
3 which is derated to reflect forced outages.

4 So if you're looking at it against peak
5 load and, again, this is in sort of round numbers,
6 just for an example that 15 percent reserve margin
7 might drop to a 7 percent excess above the peak load
8 and so, again, not knowing exactly how these numbers
9 were calculated or having the underlying load numbers
10 in front of me, I can't conclude what's included or
11 not included in these.

12 Q. Okay. But it would be appropriate for
13 purposes of determining how much money Duke will get,
14 Duke Energy Ohio will receive, for providing the
15 capacities required to provide, it would be
16 appropriate to use a -- whatever the right reserve
17 margin number is; isn't that correct?

18 A. The -- in calculating how much Duke will
19 receive, the correct quantity to which the FZC --
20 FZCP will be applied certainly needs to be used, yes.

21 Q. And the correct number includes a reserve
22 margin.

23 A. It includes the capacity requirement for
24 Duke Energy Ohio which would be based on load and
25 reserve margin requirement.

1 Q. Okay. And you don't know if these
2 numbers include reserve margin or not; we'll have to
3 ask some other Duke witness?

4 A. Yeah. I didn't prepare this numbers, no.
5 I can't speak to what's included.

6 Q. Just you can understand the simple math
7 that if we had -- if we were multiplying the same
8 dollar amount per megawatt-day by more megawatts, we
9 would get a number (REDACTED) than (REDACTED)
10 million, which would correspondingly reduce the
11 revenue requirement by whatever that added number is.

12 A. I mean, I agree that, yes, mechanically
13 if you multiply price by a larger number, you will
14 get a larger number from the result, but I can't -- I
15 can't speak to what's included in these numbers.

16 MR. KURTZ: Okay. Well, we will take it
17 up with maybe one of the other Duke witnesses.

18 I think that's it. Thank you, your
19 Honors.

20 EXAMINER PIRIK: Thank you. Is there any
21 redirect?

22 MS. SPILLER: One moment briefly, please,
23 your Honor.

24 (Discussion off the record.)

25 MS. SPILLER: Your Honor, thank you for

1 that brief recess. No questions on redirect of the
2 confidential portion.

3 EXAMINER PIRIK: Thank you. That's all.

4 THE WITNESS: All right. Thank you.

5 EXAMINER PIRIK: Thank you very much.

6 I know it's been a short period of time,
7 but have you had an opportunity to look at 8A and --
8 we are on the open record now, just to be clear.

9 (Public record.)

10 MS. SPILLER: We have, your Honor.

11 Again, as the Bench indicated, page 1 of the document
12 we've already addressed and the redactions have been
13 made, so we will be sure to be consistent therewith.

14 The next page of OEG Exhibit 8A, although
15 we certainly appreciate the generalities that were
16 discussed in terms of obligations, we believe that
17 the numeric information contained on this page, all
18 of it should be redacted as confidential.

19 Consistent therewith, turning to the
20 second -- I'm sorry, the third and fourth pages of
21 the four-page document with regard to the
22 information, contained in the boxes, the numeric
23 information including the total, so two columns on
24 the most furthest right side of the page under the
25 caption "Net Capacity Purchases (Open Megawatt)," and

1 then the column that is "Total," numeric information
2 in those columns we believe should be redacted --
3 should be redacted similarly

4 And consistent with that statement, on
5 the final page, the numeric information in the two
6 columns on the right-most side of that table under
7 the headings "Net Capacity Purchases" and "Total"
8 should be redacted as well.

9 Just to reiterate for the sake of
10 brevity, the same argument would be made with respect
11 to these documents and the information contained
12 therein, pages 2, 3, and 4 of OEG Exhibit 8. This
13 information identifies the capacity positions of Duke
14 Energy Ohio, certainly information that would be
15 informative in respect to the years in which Duke
16 Energy Ohio will be pending approval for and a
17 participant in -- in base residual auctions,
18 information that if disclosed to a competitor could
19 provide that entity with an unfair advantage
20 vis-a-vis Duke Energy Ohio.

21 Similarly, I would describe this
22 information as confidential trade secret under Ohio
23 law, care given within the company to ensure that
24 information such as that reflected in these documents
25 is not disclosed to individuals without a business

1 reason to know.

2 EXAMINER PIRIK: Are there any objections
3 to granting this motion for protective treatment?

4 Hearing none, those portions that you've
5 identified we will grant protection.

6 MS. SPILLER: Thank you, your Honor.

7 EXAMINER PIRIK: Just a couple of
8 housekeeping things. We need to receive clean
9 redacted and unredacted versions of OEG 8A and 8 and
10 OEG Exhibit 7 and 7A. We need to have those provided
11 to the court reporters so that they have the
12 appropriately redacted documents.

13 Likewise, with regard to the confidential
14 transcript, as we requested with the transcript
15 yesterday, we would have Duke review that transcript
16 so that we can appropriately have the redacted and
17 unredacted versions provided. FirstEnergy, as
18 yesterday, will receive a copy of that even while
19 Duke is reviewing it.

20 I don't know we really set the timing as
21 to how long you would have to review that
22 information, but we would hope certainly by the end
23 of the week we would be able to have the confidential
24 documents from yesterday, today, and if there is
25 anything tomorrow, completed by the end of the day on

1 Friday when we close for the day.

2 MS. SPILLER: Yes, your Honor. And
3 certainly in respect to the exhibits, we are
4 endeavoring to do those during the breaks throughout
5 the day so by end of day the court reporters are
6 given the correct redacted documents.

7 EXAMINER PIRIK: We appreciate that.
8 Thank you very much.

9 With regard to exhibits.

10 MS. SPILLER: Oh, I'm sorry your Honor
11 it's me. Duke Energy Ohio would move for the
12 admission into the record the Direct Testimony of
13 Dr. Scott Niemann identified as Duke Energy Ohio
14 Exhibit 3.

15 EXAMINER PIRIK: Are there any
16 objections?

17 Hearing none.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 MR. KUTIK: Your Honor, at this time FES
20 moves for the admission of FES Exhibits 15 and 16.

21 EXAMINER PIRIK: Are there any
22 objections?

23 MS. SPILLER: Your Honor, with respect to
24 FES Exhibit 15, no objection.

25 With respect to FES Exhibit 16, the

1 Direct Testimony of Robert Stoddard filed in Case
2 10-2929, we would renew my objection from yesterday
3 that there has been a lack of foundation of
4 Mr. Stoddard's deposition in this case, as there has
5 been no showing that the witness has been -- has been
6 rendered unavailable. His former testimony was
7 provided in the case in which Duke Energy Ohio was
8 not a party, and, thus, was deprived of any
9 opportunity to develop or rebut the content of
10 Mr. Stoddard's testimony on cross-examination.

11 And in that respect I believe it is
12 highly prejudicial to admit the testimony in that it
13 certainly would be a deprivation of Duke
14 Energy's Ohio due process to examine a witness whose
15 substantive testimony is intended to be used against
16 it.

17 EXAMINER PIRIK: Mr. Kutik.

18 MR. KUTIK: Your Honor, first, it is
19 clear, despite Dr. Niemann's denial, that he relied
20 upon this information. In response to my question on
21 redirect, he said that it was a helpful piece of
22 information for him to understand about the positions
23 of the parties in the AEP Ohio case which was part of
24 his work for this case. So on that basis it is
25 admissible.

1 And with respect to it being former
2 testimony, the witness indicated that Mr. Stoddard is
3 in Boston and, therefore, beyond the subpoena power
4 of any party.

5 EXAMINER PIRIK: Duke's objections are
6 noted for the record. FES Exhibits 15 and 16 will be
7 admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 EXAMINER PIRIK: OEG.

10 MR. KURTZ: Yes, we move the admission of
11 OEG Exhibits 7, 7A, 8, and 8A.

12 EXAMINER PIRIK: Are there any
13 objections?

14 MS. SPILLER: No, your Honor.

15 EXAMINER PIRIK: Hearing none, those
16 exhibits will be admitted into the record.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER PIRIK: IEU.

19 MR. DARR: Thank you, your Honor. Move
20 the admission of IEU Exhibits 8 and 9, please.

21 EXAMINER PIRIK: Are there any
22 objections?

23 MS. SPILLER: No, your Honor.

24 EXAMINER PIRIK: Those exhibits shall be
25 admitted on to the record.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 EXAMINER PIRIK: That's all the exhibits
3 we have at this point in time. Outstanding. Let's
4 go off the record for a moment.

5 (Discussion off the record.)

6 EXAMINER PIRIK: Go back on the record.

7 MR. D'ASCENZO: Thank you, your Honor.

8 For its next witness, Duke Energy Ohio calls
9 Dr. James H. Vander Weide.

10 Thank you, your Honor.

11 - - -

12 JAMES H. VANDER WEIDE

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

15 DIRECT EXAMINATION

16 By Mr. D'Ascenzo:

17 Q. Dr. Vander Weide, would you please state
18 your name for the record and address.

19 A. Yes. My name is James H. Vander Weide
20 and my address is 3606 Stoneybrook Drive, Durham,
21 North Carolina.

22 Q. Thank you.

23 MR. D'ASCENZO: Your Honor, for purposes
24 of identification, we've just passed out what we
25 would like to mark as Duke Energy Ohio Exhibit No. 4,

1 I believe we are on.

2 EXAMINER PIRIK: The document is so
3 marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. D'ASCENZO: Thank you.

6 Q. Dr. Vander Weide, do you have a copy of
7 what was just marked as Duke Energy Ohio Exhibit 4?

8 A. Yes, I do.

9 Q. Would you please identify that document,
10 please.

11 A. Yes. That is my direct testimony.

12 Q. And, Dr. Vander Weide I think there is a
13 little button in front of you on that microphone, if
14 you would please turn that on.

15 A. Yes.

16 Q. Thank you, sir. I'm sorry, could repeat
17 that response?

18 A. Yes. This is my direct testimony.

19 Q. And Dr. Vander Weide, do you have any
20 changes, corrections, or additions to your testimony?

21 A. Yes. Schedule 5, there is a column
22 labeled as "Stock Return." It's an exhibit titled
23 "Comparative Returns on S&P 500 Utility Stock Index
24 and Moody's A Rated Utility Bonds." And I notice
25 that in the printing there were several items of --

1 of -- several data items in that "Stock Return"
2 column that are out of line. For instance, there is
3 a -- between line 5 and line 6, there is a No. 35.16
4 percent.

5 Q. Yes.

6 A. That should be moved up to line 5. So
7 that every time there is a little dash and a number
8 below that dash, the number should be moved up one
9 row.

10 Q. Okay. So just for clarity sake, again,
11 that seems to appear on line 11 with the 20.05 so --

12 A. Yes.

13 Q. -- that would also move up a line?

14 A. Yes, that's correct.

15 EXAMINER STENMAN: Could that be a
16 negative 35.16?

17 THE WITNESS: No, it's not a negative.
18 Yeah, no.

19 Q. And, again, on line 12, is that the same,
20 that number would move up to line 12?

21 A. Yes.

22 Q. And is that number a negative?

23 A. I do not believe so. No, it's not. I
24 can tell by looking at the sub -- well, I'm sorry. I
25 would have -- I would have to investigate that. It

1 could well be, now that I look at it, because if I
2 look at line 12 and compare it to line 11, the stock
3 price went down on the index so that would indicate a
4 negative return. And that would be true in each --
5 yeah, I believe, now that I look at this more
6 carefully, that it is a negative.

7 Q. Okay. And is that the same for all of
8 those numbers then?

9 A. Yes.

10 Q. They all should be negative?

11 A. Yes.

12 Q. Okay. And Dr. Vander Weide, I'm sorry,
13 just accidentally flipped the page and I noticed it
14 appears on the next page of the schedule there is the
15 same issue; is that correct?

16 A. Yes.

17 Q. So, again, for clarity of the record, are
18 all of those numbers then negative in the column?

19 A. Yes.

20 Q. And they all -- all of those numbers that
21 have sort of fallen down a line should be part of the
22 line above.

23 A. Yes.

24 Q. Okay. With those corrections, Dr. Vander
25 Weide, are there any other changes or amendments to

1 your testimony?

2 A. No, there are not.

3 Q. And if you were asked those same
4 questions today, would your responses be the same?

5 A. Yes.

6 MR. D'ASCENZO: Thank you.

7 Your Honor, the witness is available for
8 cross-examination.

9 MS. KERN: Your Honor, for sake of
10 clarity of the record, could we request Dr. Vander
11 Weide's Schedule 5 be amended to show the proper
12 numerical number next to the place where it belongs.

13 EXAMINER PIRIK: I guess I am not having
14 a problem understanding what exactly is the problem.
15 I think that it was just a negative number and the
16 negative moved it to the next line, so.

17 MS. KERN: I was just asking then on the
18 proper line where the number belongs if that change
19 could be made.

20 EXAMINER PIRIK: I don't have a problem
21 with that, but I think it's fine the way it is.

22 I mean, if you could provide OCC with
23 one. Do other people want that? I don't find that a
24 necessity. I think it's fine the way I have it.

25 Do we have an order witness here, or an

1 order as far as cross-examination goes? Do the
2 parties have a preference?

3 If not we, will start over here on the
4 left.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Kern:

8 Q. Good afternoon, Mr. Vander Weide. I'm
9 Kyle Kern with the Office of Consumers' Counsel.

10 A. Good afternoon.

11 Q. Dr. Vander Weide, would you agree that
12 you're testifying as to what return on equity Duke
13 Energy Ohio should earn through a cost-based charge
14 for providing capacity services as an FRR entity?

15 A. Let me just review my purpose statement
16 to be sure that you summarized that correctly. My --
17 my purpose statement is on page 2 beginning on line
18 14, and my recall is that you summarized that
19 correctly.

20 Q. Thank you. And you indicate in your
21 testimony that you are aware that in a previous order
22 the, Commission approved a cost based charge for
23 capacity services that included a return on equity of
24 11.15 percent for Ohio Power; is that correct?

25 A. Yes, it is.

1 Q. And have you reviewed the Commission's
2 order in the AEP capacity proceeding?

3 A. I have read it, yes.

4 Q. Okay. And are you aware of what the
5 Commission's basis for the 11.15 ROE used in the AEP
6 capacity proceeding was?

7 A. I've read the order. I would have to
8 reread it or be directed to a particular passage in
9 it to be able to answer questions about it.

10 Q. So you can't answer my question as far as
11 you're not aware of what the Commission's basis was
12 for the 11.15 ROE, is that correct, as you sit here
13 today?

14 A. Yes. I can't recall what it is. I would
15 have to relook at the order.

16 Q. If we go to page 12 of your testimony,
17 specifically I'm looking at lines 2 and 3, you note
18 that Duke Energy Ohio has two business divisions, the
19 U.S. Franchised Electric & Gas and Commercial Power;
20 is that correct?

21 A. Yes.

22 Q. And you note also on page 12, I believe
23 this is line 16 through 18 of that testimony, that
24 Commercial Power provides energy capacity and other
25 services to the PJM wholesale market and capacity

1 services is part of its FRR obligations; is that
2 correct, sir?

3 A. Yes, it is.

4 Q. Thank you. For financial reporting
5 purposes, are the operations of Duke Energy Ohio's
6 two business divisions reported together or
7 separately?

8 A. My recall is that in the 10-K information
9 filed with the SEC, that those are -- they have --
10 they have -- they have separate summary results for
11 both of those as part of the Duke Energy Ohio 10-K.

12 Q. Your recollection is that the two
13 business divisions are reported separately in the
14 10-K?

15 A. Well, I'm not entirely sure what you mean
16 by "reported separately." There are information
17 items that are reported separately. I don't believe
18 there is a complete balance sheet and income
19 statement and cash flow statement for the two
20 segments because they are business segments. And
21 usually in a 10-K there would be segment information
22 that would have a summary items but not a complete
23 set of financial statements.

24 Q. Are you aware of the credit ratings
25 agencies, such as Moody's, that provide separate bond

1 ratings for the two divisions we just discussed?

2 A. It's my understanding they do not.

3 Q. Thank you. In estimating the return on
4 equity in this proceeding, you estimate an equity
5 cost rate for a proxy group of electric utilities and
6 a proxy group of gas pipelines; is that correct?

7 A. Yes.

8 Q. And you arrive at equity costs of 10.7
9 percent for the electric utilities and 12.6 percent
10 for the gas pipelines, and I believe that's discussed
11 on page 48 of your testimony, line 8, if you want to
12 take a look.

13 A. Yes. Yes. And also I -- that's the
14 average result, and I also list a -- a result,
15 though, without the capital asset pricing model for
16 the reasons I suggest in my testimony, and so my
17 range is from 10.7 to 12.6.

18 Q. Thank you, sir. And based on your
19 results, you conclude that the 11.15 percent is
20 ultimately the appropriate ROE in this proceeding; is
21 that correct?

22 A. Yes.

23 Q. And on page 48, line 13, you indicate
24 that the 11.15 percent is at the lower end of your
25 range; that is correct?

1 A. Yes, that's the range, from 10.7 to 12.6,
2 is at the lower end of that range.

3 Q. On pages 29 to 30 of your testimony --
4 I'll give you a moment to get there. Specifically on
5 line 6, you start a question and answer where you
6 discuss why you have used gas pipeline companies in
7 your proxy group; is that correct?

8 A. I don't use the word "gas." I say "a
9 group of pipeline companies."

10 Q. Okay. So you discuss why you have used a
11 group of pipelines companies in your group; is that
12 correct?

13 A. Yes.

14 Q. Okay. And on page 29, lines 11 to 12,
15 you indicate that the regulated electric utilities
16 group is less risky than the generation assets of
17 Duke Energy Ohio; is that correct?

18 A. Yes, it is.

19 Q. And have you performed any studies, sir,
20 in your testimony that show these electric companies
21 are less risky than the generation assets of Duke
22 Energy Ohio?

23 A. I don't describe any studies in my
24 testimony. It's based on my experience for over 35
25 years as an expert in the electric utility industry.

1 And it's -- it's generally understood that generation
2 assets, especially those that operate in restructured
3 marketplaces, but generation assets in particular are
4 more risky than transition and distribution.

5 MS. KERN: Your Honors, I would move to
6 strike his response after he said -- where he said he
7 does not describe any such analysis or studies in his
8 testimony.

9 EXAMINER PIRIK: Motion denied.

10 Could we maybe have you switch
11 microphones because that one keeps cutting out. It's
12 a little difficult to hear.

13 MS. KERN: Sure.

14 EXAMINER PIRIK: Thank you.

15 Q. On page -- that's better. On page 30 of
16 your testimony -- sorry. On page 30 of your
17 testimony, lines 1 and 2, you indicate that you use
18 the proxy group of gas pipeline -- pipeline companies
19 because these companies operate in both competitive
20 markets and regulated markets; is that correct?

21 A. Again, I didn't use the word "gas"
22 pipeline, but that is what I say, yes.

23 Q. Can we agree you are referring to gas
24 pipeline companies when you say pipeline?

25 A. No, we don't. Some of them -- most of

1 them are gas pipeline companies, but some of them
2 have oil pipeline operations as well.

3 Q. Okay. Thank you. Would you agree that
4 the company is requesting a cost-of-service approach
5 to cover its capacity requirements in this
6 proceeding?

7 A. Yes.

8 Q. And so the company is requesting a
9 traditional regulated cost-of-service approach be
10 applied to Duke Energy Ohio's capacity requirement;
11 is that correct?

12 A. Yes.

13 Q. Mr. Vander Weide, you have not performed
14 any studies comparing the riskiness of pipeline
15 companies with the riskiness of Duke Energy Ohio's
16 generation assets, electric utilities, or utilities
17 in general, have you?

18 A. I have not conducted such a study, but I
19 provide information in my schedules that has bond
20 ratings and Value Line safety rankings and other --
21 and betas for those companies.

22 Q. Thank you.

23 MS. KERN: Your Honor, that's responding
24 to my question sufficiently. My question was whether
25 he had performed any analysis and he said he had not.

1 MR. D'ASCENZO: Your Honor --

2 EXAMINER PIRIK: I understand, but I
3 think you need to let the witness finish his answer.

4 MR. D'ASCENZO: Thank you. Please
5 continue.

6 A. Yes. In some sense it's hard to
7 interpret whether I did the analysis or not. I -- I
8 did not do the fundamental analysis, but I did review
9 the information that's published in the financial
10 community about the risk measures, and they indicate
11 that although the pipelines are slightly more risky,
12 as I suspected they were, than the electric
13 utilities, they -- they certainly are in the same
14 ballpark.

15 MS. KERN: Your Honor, if Ms. Grady may
16 approach, I have an exhibit I would like to have
17 marked as OCC Exhibit 4.

18 EXAMINER PIRIK: The document is so
19 marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Mr. Vander Weide, if you would take a
22 moment to review the exhibit that's just been
23 distributed to you and marked as OCC Exhibit 4.

24 A. Yes.

25 Q. And the interrogatory states that you are

1 the person responsible for answering it. Do you see
2 that at the bottom?

3 A. Yes.

4 Q. And do you recognize this interrogatory
5 as a question that you provided an answer to?

6 A. Yes, I do.

7 Q. And the request asks if the company
8 performed any studies comparing the riskiness of gas
9 pipelines with the riskiness of generation assets of
10 DE-Ohio electric utilities in general and/or public
11 utilities in general. Do you see that?

12 A. Yes.

13 Q. And about the middle of the response it
14 says, "Without waiving said objection, to the extent
15 discoverable, limiting this response to these
16 proceedings in the spirit of discovery, no"; is that
17 correct?

18 A. Yes. But I have to tell you that
19 interpreting that question, I interpreted the
20 question to refer to did I do direct studies that I
21 was responsible for themselves, and since providing
22 that request, I realize that I did provide
23 information that was not my direct studies, but it
24 was information about the risk that is publicly
25 available, and that is the information with regard to

1 bond ratings and Value Line safety ratings and betas
2 shown on my schedule.

3 Q. And did you have a discussion with
4 counsel about your -- your change in answer?

5 MR. D'ASCENZO: Objection, your Honor.
6 Objection.

7 MS. KERN: On what grounds?

8 MR. D'ASCENZO: You are asking what
9 conversation we had with him.

10 MS. KERN: I asked if he had a
11 conversation. I didn't ask the content of the
12 conversations.

13 MR. D'ASCENZO: You absolutely did ask
14 the content.

15 EXAMINER PIRIK: Objection, okay.
16 Objection sustained.

17 MR. D'ASCENZO: Thank you.

18 Q. Mr. Vander Weide did you advise your
19 counsel this response was no longer appropriate as
20 far as responding to OCC Interrogatory 15-147?

21 MR. D'ASCENZO: I am going to object,
22 your Honor, with respect to the characterization of
23 this response. There is more information in the
24 response that counsel did not read. And the
25 response, if counsel would read the entire response,

1 it discusses Dr. Vander Weide's assessment of the
2 risk.

3 EXAMINER PIRIK: Okay. I want to be sure
4 we're not testifying on behalf of the witness.

5 MR. D'ASCENZO: Thank you.

6 EXAMINER PIRIK: I think we will go ahead
7 and let the witness answer the question and see where
8 we go from there.

9 MR. D'ASCENZO: Thank you.

10 THE WITNESS: Could I have the question
11 repeated then, please.

12 (Record read.)

13 A. No, because I didn't think it was
14 necessary. I was -- I was clarifying what my
15 interpretation was, about what the question was; that
16 is, did I actually do the underlying work to assess
17 the risk of the pipelines verse the electric
18 utilities, and under that interpretation my -- my
19 answer is correct as I said in the interrogatory.

20 But subsequently in reviewing my
21 testimony in the last two days, I noticed that in the
22 schedules I did, in fact, provided information on
23 risk, comparative risk, of the pipelines and the
24 electric utilities. Although I didn't do the
25 underlying work for that, that is work that would be

1 available to any investor, and my purpose in
2 supplying it in my schedules was to provide a view of
3 the relative risk of the two industries.

4 MS. KERN: Thank you. Now, would you
5 agree that all of the companies in your pipeline
6 group are set up as master limited partnerships?

7 A. Yes.

8 Q. And how many electric utilities are set
9 up as master limited partnerships?

10 A. I don't know of any.

11 Q. Would you agree that tax investors pay --
12 that the taxes investors pay affect their investment
13 decisions?

14 A. Yes.

15 Q. And would you also agree that investors
16 care about their tax returns?

17 A. Yes.

18 Q. Would you agree that master limited
19 partnerships pay no corporate income tax at the state
20 or federal levels?

21 A. They are not corporations so they can't
22 pay corporate taxes.

23 Q. Does Duke Energy Ohio pay income taxes to
24 the U.S. and Ohio governments?

25 A. Yes.

1 Q. And would you agree that master limited
2 partnerships do not pay dividends but instead have
3 distributions to its limited partners?

4 A. Yes.

5 Q. Would you also agree that limited
6 partners in master limited partnerships also record a
7 pro rata -- pro rata share of the MLP's depreciation
8 on their own taxes to reduce their tax liability?

9 A. That I'm not sure of. I am not a tax
10 expert.

11 Q. Okay. Let's talk about one of the
12 pipeline companies that you use in your group,
13 Buckeye Partners, LP. You tell me, over the past
14 five years has the pro rata depreciation deduction
15 offset the taxes on the distribution to an individual
16 limited partner?

17 A. No, I haven't examined it at that level.
18 My fundamental consideration were -- was were they of
19 the same risk because investors demand, independently
20 of their tax situation, to have a return that's
21 commensurate with the risk of the investment, and
22 that was my -- my assessment was with regard to the
23 risk, taxes have nothing to do with their required
24 return because to the extent there were tax benefits,
25 that would change the stock price.

1 Q. How did you determine to use those
2 pipeline companies?

3 A. Because I have -- I have experience
4 testifying for pipeline companies and I understand
5 from that experience reasonably well what their risks
6 are.

7 Q. And you claim in your testimony that you
8 use pipelines because they operate in both
9 competitive and regulated markets; is that correct?

10 A. Yes.

11 Q. And let's go back to Buckeye Partners.
12 What percent of Buckeye Partners pipeline throughout
13 is subject to regulated pricing -- throughput, excuse
14 me.

15 A. I didn't examine the percentage that was
16 subject to regulated pricing, but they are subject
17 to -- Buckeye I would have to review, but I know
18 that, in general, these companies are subject to FERC
19 regulation.

20 Q. But you are not sure for Buckeye; is that
21 correct?

22 A. I would have to -- I would have to review
23 for Buckeye. I would to refresh my memory.

24 Q. Do you know for any of the other pipeline
25 companies that you've used?

1 A. It's my understanding that the rest of
2 these companies are subject to regulation by the
3 FERC. I'm not sure with regard to Buckeye as I sit
4 here.

5 Q. Do you know the percentage of how much is
6 competitive and how much is noncompetitive?

7 A. Generally there's much greater percentage
8 for these companies that are regulated by the FERC.
9 Competition isn't quite as clear in terms of defining
10 what it means because for many of these companies,
11 they face alternative risks in a -- there are
12 alternative routes that gas or oil can be delivered
13 to the final destination, so there's certainly some
14 competition, but FERC has a very specific definition
15 of competition to indicate lack of market power.

16 Q. But --

17 A. And Buckeye was -- has been deemed to be
18 competitive, I believe, with regard to lack of market
19 power and the other companies have not.

20 Q. As you sit here today, you don't know the
21 percentage for the pipelines you use that's
22 competitive versus noncompetitive; is that correct?

23 A. No. I didn't -- I didn't attempt to
24 assess that because I didn't feel it was important.

25 Q. One of the other pipelines that you use

1 is Boardwalk pipeline; is that correct?

2 A. Boardwalk is not one of my pipeline
3 companies. I'm looking at Schedule 3. Boardwalk was
4 a candidate, I'm sorry, looking at the notes, but I
5 eliminated its result because in my opinion it was an
6 outlier.

7 Q. So you did look at Buckeye -- Boardwalk
8 in your analysis, but you ultimately did not use
9 Boardwalk; is that correct?

10 A. Yes.

11 Q. Okay. And do you know the percentage of
12 Boardwalk's pipeline throughput that is subject to
13 regulation?

14 A. I did not look at the exact percentage.
15 It would be my general understanding that a high
16 percentage would be ultimately subject to FERC
17 regulation.

18 Q. And you're looking at Schedule 3 of your
19 testimony, correct?

20 A. Yes.

21 Q. And we just discussed that you did not
22 use Boardwalk in your -- in your group; is that
23 correct?

24 A. Yes, that's correct.

25 Q. And you ultimately eliminated over

1 one-third of your pipeline companies because their
2 DCF equity cost rates were considered outliers; is
3 that correct?

4 A. Yes.

5 MS. KERN: Thank you. I have no further
6 questions.

7 EXAMINER PIRIK: OEG.

8 MR. KURTZ: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Kurtz:

12 Q. Good afternoon, professor.

13 A. Good afternoon.

14 Q. On page 12 of your testimony --

15 A. That was 12?

16 Q. Yes.

17 A. Yes, I'm there.

18 Q. Okay. You talk about the U.S. Franchised
19 Electric & Gas operations of Duke Energy Ohio as well
20 as the Commercial Power aspects of it.

21 A. Yes.

22 Q. Okay. And you reviewed the SEC Form 10-K
23 to understand that Duke Energy Ohio operates with two
24 business segments?

25 A. Yes.

1 Q. Okay. Do you have the 10-K in front of
2 you?

3 A. No, I do not.

4 Q. This is OEG Exhibit 3. Would you accept,
5 subject to check -- or counsel can hand it to you,
6 that's fine.

7 MR. D'ASCENZO: Your Honor, may I
8 approach?

9 EXAMINER PIRIK: Yes.

10 Q. The page I would ask you to look at is
11 page 151 of 478.

12 A. I'm sorry, I can't find 151.

13 Q. Oh, it's in the top right-hand corner.

14 A. Oh, okay. Yes.

15 Q. Okay. Is this the business segment
16 reporting abbreviated financial statements you were
17 discussing earlier?

18 A. Yes.

19 Q. Okay. So for 2012 it's correct that the
20 Franchised Electric & Gas made \$159 million?

21 A. Yes.

22 Q. Okay. And the Commercial Power segment
23 made 50 million in 2012; is that correct?

24 A. Yes.

25 Q. The Commercial Power segment, as you

1 understand it, consists of the Duke Energy Ohio
2 Midwest coal assets, sometimes call the legacy
3 assets, legacy coal assets, as well as the Duke
4 Energy Ohio Midwest gas assets, which are owned by
5 Duke Energy Ohio's wholly-owned subsidiary DECAM,
6 Duke Energy Commercial Asset Management. Is that
7 Commercial Power segment reporting, as you understand
8 it?

9 A. I'm sorry, I don't recall the first part
10 of your sentence. The exact description of the two
11 is listed just above the business segment data. But
12 I don't recall what your sentence was to match it to
13 that.

14 Q. Well, the Commercial Power owned 6,825
15 megawatts of generation, which is the legacy coal as
16 well as the Midwest gas assets, which are owned by
17 Duke Energy Commercial Asset Management, DECAM.

18 A. I'm not familiar with the detail of
19 the -- of the exact assets that are part of
20 Commercial Power. The description of Commercial
21 Power is -- is contained in page 151.

22 Q. Yeah. Well, okay. Let's go to page 20
23 of 478. This describes commercial power. I'll just
24 read this. Commercial power generation operation --

25 A. Let me get there first.

1 Q. Okay.

2 A. Okay.

3 Q. "Commercial Power generation operations,
4 excluding renewable energy generation assets,
5 consists primarily of coal fired and gas fired
6 nonregulated generation assets which are dispatched
7 into the wholesale markets."

8 They are describing in detail. Let me
9 start again and just ask you a different question.
10 If the Commercial Power segment of Duke Energy Ohio
11 made \$50 million in 2012, and -- I don't want to walk
12 you through all of it.

13 Do you assume that if the legacy coal
14 part of the Commercial Power lost money, it stands to
15 reason that the natural gas part of Commercial Power
16 made money; isn't that correct?

17 A. Again, I don't know whether coal and gas
18 are the only two parts of that, but if they are, and
19 under your assumption, that would seem to be correct.

20 Q. Okay. And for 2011 the Commercial Power
21 segment made \$78 million; is that correct?

22 A. Yes.

23 Q. And you understand the basic reason
24 you're here is because Duke Energy Ohio wants a
25 cost-based return for its legacy coal assets because

1 it claims it's losing money on them. You understand
2 that, correct?

3 A. I'm not -- I don't think I can testify on
4 why they believe they are here and what their
5 understanding of it is. I have indicated what my
6 purpose is in the initial part of my testimony on
7 page 2.

8 Q. Okay. Let's -- I'll ask you to assume --
9 assume that the Commercial Power business reporting
10 segment of Duke Energy Ohio consists of two segments
11 of assets, coal and gas. If they are losing money on
12 the coal assets and they made \$78 million in 2011 on
13 a combined basis, it stands to reason that they made
14 money on the gas assets, would you agree? Okay?

15 MR. D'ASCENZO: I am going to object to
16 the extent it's already been asked and answered.

17 EXAMINER PIRIK: I believe that's true.
18 I think he did answer this question.

19 MR. KURTZ: I asked him for 2012. Now I
20 am asking basically the same question for 2011.

21 EXAMINER PIRIK: Okay.

22 MR. KURTZ: Which is sort of the test
23 year in this case.

24 EXAMINER PIRIK: I see.

25 You can answer the question.

1 A. Well, let me first state that I'm not the
2 expert on the financial results for the company and
3 so I can't tell whether they did or did not make
4 money --

5 Q. Okay.

6 A. -- on those operations.

7 Q. Okay.

8 A. I think it would be better to ask the --
9 the person who is the expert on the financial results
10 for the company.

11 Q. Okay. I want to -- I want to read you
12 another -- you did review the 10-K prior?

13 A. Yes.

14 Q. Would you turn to page 20 of 478. I'd
15 like to just read you the -- it says "Other Matters,"
16 the third highlighted from the bottom. It says, "As
17 discussed in the U.S. Franchised Electric & Gas
18 section above, the PUCO approved Duke Energy Ohio's
19 new ESP in November of 2011. In November 2011, as a
20 result of changes resulting from the PUCO approval of
21 the new ESP Commercial Power ceased applying
22 regulatory accounting treatment to its Ohio
23 operations. Currently, no portion of Commercial
24 Power applies regulatory accounting."

25 Do you know what regulatory accounts is?

1 MR. D'ASCENZO: Objection, beyond the
2 scope of the witness's testimony.

3 EXAMINER PIRIK: Overruled.

4 A. I generally understand that regulatory
5 accounting is accounting that is prescribed by the --
6 by the FERC accounting rules.

7 Q. Do you understand that only regulated
8 enterprises can receive a deferral order from their
9 regulator which allows them to not book expenses in
10 one particular year and move it to a different year,
11 whereas, regular private businesses can't adjust
12 their earnings such?

13 MR. D'ASCENZO: Could I please have that
14 read back.

15 EXAMINER PIRIK: Yes.

16 Q. I'll rephrase. Do you understand only
17 regulated operations can apply regulatory accounting?

18 A. I think that would follow by definition.

19 Q. And can regular businesses, nonregulated
20 businesses, can they apply -- can -- deferral
21 accounting on their books?

22 A. Regulated -- I mean, nonregulated
23 businesses use deferral accounts all the time, as a
24 matter of fact. They have choices, subject to
25 Generally Accepted Accounting Principles, about what

1 period they recognize various expenses in and -- and
2 so there are items where they defer various expenses
3 and other case where they don't.

4 Q. Now, do you understand the FASB 71 only
5 applies to regulated utilities which authorizes the
6 Commission to allow a utility to defer cost from one
7 period to the next?

8 A. I'm not familiar -- I don't recall what
9 FASB 71 is. Is that depreciation accounting?

10 Q. No. It's deferred accounting treatment.

11 A. For what?

12 Q. For a regulated business. When --
13 when --

14 A. For a regulated business, they use
15 regulatory accounting, yes.

16 Q. When the 10-K says they stopped using
17 regulatory accounting, does that mean anything to
18 you?

19 A. It means that they use generally accepted
20 accounting principles, which still allow them to
21 defer certain expenses, but they -- there might be a
22 difference between generally accepted -- the items
23 that one would normally defer under generally
24 accepted accounting and under regulatory accounting
25 specified by the FERC.

1 Q. One last question on this document, page
2 82 of 478. I'll just read this. "Duke Energy Ohio
3 is subject to wholesale commodity price risk for its
4 nonregulated generation portfolio. The nonregulated
5 generation portfolio dispatches all of their
6 electricity into unregulated markets and receives
7 wholesale energy margins and capacity revenues from
8 PJM."

9 Have you ever testified before as to what
10 the proper rate of return should be for an
11 unregulated enterprise?

12 A. I can't recall.

13 Q. And who would there be to testify in
14 front of if it's unregulated? There is no regulator
15 who can set a return, isn't that right?

16 A. I don't recall whether you used the word
17 "regulated" in your question or not. There are times
18 where a rate of return is of interest in legal
19 proceedings for unregulated companies. I don't
20 recall whether you said it was a regulated rate of
21 return or not.

22 Q. Well, let me ask it again. Have you ever
23 testified in front of a state regulatory Commission
24 as to the proper rate of return for an unregulated
25 business?

1 A. No.

2 MR. KURTZ: Thank you, your Honor.

3 EXAMINER PIRIK: Thank you.

4 Ms. Petrucci.

5 MS. PETRUCCI: No questions.

6 EXAMINER PIRIK: FirstEnergy.

7 MR. KUTIK: No questions. No questions.

8 EXAMINER PIRIK: Mr. Hart.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Hart:

12 Q. Dr. Vander Weide, I want to explore the
13 concept that Duke's generation assets are riskier
14 than a regulated utility. Do you understand the
15 relief that Duke is seeking in this case would give
16 it an embedded cost pricing?

17 A. Yes.

18 Q. And that would not be subject to market
19 risk as to price, correct?

20 A. I'm not sure what you mean by market
21 risk.

22 Q. You understand that a company that is
23 unregulated and sells in a competitive market has to
24 accept the price that the market bears, correct?

25 A. Yes.

1 Q. And in this case Duke is seeking prices
2 that are based on its embedded costs not market
3 prices.

4 A. I'm not -- I'm not sure that that's a
5 true statement, sir. There is -- my understanding is
6 there -- they are seeking compensation. I don't --
7 I'm not -- I don't believe I would agree they are
8 seeking prices.

9 Q. All right. Let me amend my question
10 then. Would you agree that the relief that Duke is
11 seeking to be compensated for its capacity based on
12 an embedded cost as opposed to a market price?

13 A. Yes, for a particular period of time.

14 Q. And the price that might be charged for
15 that capacity, there may be a component that's marked
16 base components. That's the difference between
17 embedded costs and market price?

18 A. Yes.

19 Q. But the total of the two pieces of
20 compensation would equal an embedded cost.

21 A. Yes; for this particular period of time.

22 Q. Okay. Do you also understand that Duke
23 is seeking a nonbypassable rider that would be
24 imposed on distribution customers?

25 A. Generally, yes.

1 Q. And so would that not equate to
2 distribution assets as far as collection risk with
3 the capacity assets?

4 A. No.

5 Q. It would not equate the collection risk?

6 A. I thought you talked about the risk. You
7 are talking about collection risk?

8 Q. Yes.

9 A. And I'm not sure how to define
10 "collection risk."

11 Q. Well, let me ask you a different way.
12 Understanding Duke is subject to competitive supply
13 for retail customers such that a customer could elect
14 to take its supply from a different generating
15 company --

16 A. Yes.

17 Q. -- and by making this rider bypassable,
18 there's no risk that customers shop and go to another
19 generating company and wouldn't pay for the capacity.

20 MR. D'ASCENZO: Could I have that reread,
21 please.

22 (Record read.)

23 Q. Let me withdraw that. I misspoke because
24 I left out "nonbypassable." My question to you is if
25 the rider becomes nonbypassable such that all

1 distribution customers are paying for capacity, isn't
2 that a different situation than if the rider were
3 bypassable where shopping customers could avoid it?

4 A. I haven't really thought about that I'm
5 not sure.

6 Q. Okay. I am going to ask you to think
7 about it now. Wouldn't Duke's risk be less if all
8 distribution customers have to bear the capacity cost
9 than if only the customers who were -- who remain as
10 Duke Retail customers have to bear the cost?

11 A. We could -- I could quibble about it. I
12 don't believe that that would be a major risk factor.
13 There might be some slight difference in risk, but I
14 don't see it as a -- that would change my analysis in
15 any way.

16 Q. All right.

17 A. Or my conclusions.

18 Q. I think you also made commentary about
19 the risk of recovery of the cost of an asset over its
20 life. Do you understand in this proceeding all that
21 is at issue is the time period from August, 2012,
22 through May of 2015?

23 A. I do understand that. However, the risk
24 of the assets that are used to provide -- fulfill
25 their obligations as an FRR entity is over the life

1 of those assets. If they have to retire them early,
2 that's the risk, and that would affect any -- that
3 would affect -- that would affect their incentive to
4 invest in those assets any further.

5 Q. But only for that three-year period,
6 correct?

7 A. Assets don't change, and the risk of
8 those assets when one considers whether to invest in
9 those assets one would look at the entire life of the
10 assets.

11 Q. Just a couple of questions. I'll wrap
12 up. On Schedule 2 I believe you showed your DCF
13 results for electric companies.

14 A. Yes.

15 Q. And you show Duke at 8 .2 percent?

16 A. Yeah. We're using the word "Duke" quite
17 differently.

18 Q. That's Duke Corporation, not Duke Ohio?

19 A. Duke Energy Corporation, yes.

20 Q. Okay. And that would include all of the
21 Duke entities in different states. Most of them are
22 regulated.

23 A. Let me make it quite clear that 8 .2 is
24 not the cost of equity for Duke Energy Corporation.
25 We only can estimate the cost of equity using various

1 estimates and models, and so that's why one uses an
2 entire group or a large group of comparable
3 conditions because the results of any one company are
4 not of an accurate estimate.

5 MR. HART: Your Honor, I will move to
6 strike that answer as nonresponsive to my question.

7 EXAMINER PIRIK: Denied.

8 Q. Mr. -- Dr. Vander Weide, you show your
9 analysis of Duke Corporation on the DCF model as
10 resulting in 8 .2 percent, correct?

11 A. I wasn't quite finished with my response
12 to your question, but I do show that, but not as an
13 estimate of the cost of equity.

14 Q. Thank you?

15 A. DCF result.

16 Q. And that's all I asked you, was DCF
17 result.

18 A. No. You asked about the cost of equity.

19 Q. I don't believe I did.

20 MR. HART: If you could read the question
21 back, please.

22 EXAMINER PIRIK: Mr. Hart, would you
23 please just let him finish his answer.

24 MR. HART: I think he finished.

25 EXAMINER PIRIK: Thank you.

1 Go ahead you can finish your answer.

2 A. Yes. I state quite clearly early on in
3 my testimony that I use a large group of comparable
4 companies because the estimate of the cost of equity
5 for any single company is not very reliable, that one
6 has to use a large sample because you can reduce the
7 uncertainty in the estimate for any one company by
8 applying the DCF model to a large sample of
9 companies. And so I never look at the result or
10 place any weight on the result of any individual
11 company in my sample group.

12 Q. One final question, if you would look at
13 Schedule 8.2, I believe it is the betas.

14 A. Yes.

15 Q. You show a Beta of 0.6 for Duke; is that
16 correct?

17 A. Yes.

18 Q. And that's at the low end -- low end of
19 the range of that group of companies?

20 A. It is at the low end of the range. I
21 also discuss in my testimony, however, that
22 estimating betas is a difficult task, that one ought
23 to -- there is a lot of evidence that the beta for an
24 individual company underestimates the true --
25 especially if the beta turns out to be less than one,

1 underestimates the true risk of the company and
2 the -- and, hence, the required return for that
3 company.

4 MR. HART: Okay. That's all I have.
5 Thank you.

6 EXAMINER PIRIK: Thank you.

7 Mr. Darr, how much cross do you have?

8 MR. DARR: Very little, your Honor.

9 EXAMINER PIRIK: How much is very little?

10 MR. DARR: Less than 5 minutes.

11 EXAMINER PIRIK: Less than 5?

12 MR. DARR: Assuming that the answers are
13 less than 5.

14 EXAMINER PIRIK: How much does staff
15 have?

16 MR. BEELER: We don't have anything.

17 EXAMINER PIRIK: I think we can go ago
18 ahead, Mr. Darr.

19 MR. DARR: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Darr:

23 Q. With regard to the equity of DEO, is it
24 your understanding that the equity is held by
25 Cinergy?

1 A. The equity is held by Duke Energy
2 Corporate. I believe that Cinergy is an intermediate
3 organization between Duke Energy Corporate and Duke
4 Energy Ohio.

5 Q. Well, let me ask it this way. It would
6 be fair to say at that Duke Energy Ohio is a
7 wholly-owned subsidiary of other entities, correct?

8 A. Yes.

9 Q. And we could look toe 10-K and follow the
10 chain of ownership, correct?

11 A. Yes.

12 Q. I would like you to take a quick look at
13 page 17 of your testimony.? At the top of the page
14 you have, responding to a question that says -- that
15 asks: Does the RPM rate enable Duke Energy Ohio to
16 earn a reasonable rate of return? And then you
17 respond by quoting the application, specifically
18 paragraph 15.

19 A. Yes.

20 Q. You then go on to indicate there are a
21 number of risks that -- that Duke Energy Ohio
22 experiences. Do you see that --

23 A. Yes.

24 Q. -- on line 14? The first item you
25 identify is the "weakness in the overall price and

1 demand of energy." Would you describe that as a
2 general statement, that the market that Duke is
3 operating in leads to a weak overall price?

4 A. Yes. That's the risk.

5 Q. Would you also agree that the "excess
6 availability of dispatchable generation plants," that
7 you identify as the second item leading to risk, for
8 DEO is a market-related risk?

9 A. Yes, it is.

10 Q. And would you also agree that the third
11 item, which you identify, which is "changing
12 commodity prices, especially natural gas prices,"
13 would be a market risk that DEO faces?

14 A. Yes.

15 Q. And the fourth item that you identify, a
16 regulatory risk associated with clean air
17 requirements. Would you describe that as a
18 regulatory risk associated with EPA requirements?

19 A. Well, that's a -- that's a general risk
20 associated with clean air requirements. If the --
21 the clean air requirements require more stringent
22 exhaust systems, more expensive exhaust systems, and
23 require additional expenditures to reduce the
24 emissions from coal-fired plants, for instance, that
25 would be an expense for all electric generation

1 companies that would -- that would affect their risk.

2 Q. And is it fair to describe that as a
3 regulatory risk?

4 A. To the -- yes, to the extent the company
5 has regulated businesses, it would be. It would also
6 be a risk for nonregulated generation companies.

7 Q. And the fifth item that you identify the
8 "costs of meeting renewable energy requirements,"
9 again, that would be a regulatory risk, correct?

10 A. Yes.

11 Q. And that would be true, particularly in
12 Ohio, which has specific renewable requirements,
13 correct?

14 A. Yes.

15 Q. And that would be generally applicable to
16 all generators that service Ohio, correct?

17 A. Yes.

18 Q. And the last item, uncertainty relating
19 to changes in PJM's cost allocation and operating
20 procedures, would it be fair to characterize that as
21 a regulatory risk as well?

22 A. Yes.

23 Q. And, again, would that be a risk that is
24 common to all generators operating in Ohio since all
25 of them are now members of PJM?

1 A. I believe that would be correct.

2 Q. Now, going back to the first three items,
3 the market risks related to demand and supply, the
4 first two items, and the third item related to
5 commodity prices, which may, in fact, drive some of
6 the supply and demand questions, would that also be
7 common to all generators here in the state of Ohio?

8 A. Yes, it would.

9 Q. Now, with regard to the negative returns
10 that are occurring, would you agree that those
11 negative returns are being largely driven by the fact
12 that we have in Ohio and in the region a relatively
13 soft market for energy at this time?

14 A. I believe there are at least two factors.
15 One is that there's a -- by "soft market" there is
16 not as much demand as was forecasted several years
17 ago, and I think also the decline in natural gas
18 prices has had an impact on profitability because, at
19 least on the energy side in PJM, utilities can earn
20 a -- if they're not the marginal plants that is
21 dispatched, they can earn a margin on the cost of the
22 last plant that is dispatched and their own variable
23 cost.

24 And 5h3 natural gas plants have usually
25 been the last plant dispatched, and so if natural gas

1 prices go down, that margin goes down as well.

2 Q. So it's fair to say that under the
3 current economic environment, it's the fact that
4 market prices for power are depressed relative to the
5 embedded costs that could otherwise be recovered; is
6 that correct?

7 A. I believe it's a little bit more
8 complicated than that.

9 Q. It usually is.

10 A. But I would -- yeah, right, I would
11 agree, but I would say those are two major factors,
12 yes.

13 MR. DARR: Thanks. That's all I have.
14 Thank you very much.

15 EXAMINER PIRIK: Staff?

16 MR. BEELER: No questions, your Honor.

17 EXAMINER PIRIK: Redirect?

18 MR. D'ASCENZO: If I could have just one
19 moment.

20 EXAMINER PIRIK: Yes.

21 MR. D'ASCENZO: No questions, your Honor.

22 EXAMINER PIRIK: Thank you. Thank you
23 very much. You're excused.

24 THE WITNESS: Thank you.

25 EXAMINER PIRIK: With regard to exhibits?

1 MR. D'ASCENZO: Thank you, your Honor.
2 At this time Duke Energy Ohio would like to move what
3 has been marked as Duke Energy Ohio Exhibit No. 4,
4 the Direct Testimony of Dr. Vander Weide, into
5 evidence, please.

6 EXAMINER PIRIK: Are there any
7 objections?

8 Hearing none, it shall be admitted.
9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 EXAMINER PIRIK: OCC.

11 MS. KERN: OCC would like to move for
12 admission of what is marked as OCC Exhibit 4. It's
13 the interrogatory response to OCC 15-147.

14 MR. D'ASCENZO: No objection, your Honor.

15 EXAMINER PIRIK: Hearing none, it shall
16 be admitted into the record.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER PIRIK: We will break now for
19 lunch until ten until 2:00.

20 (At 12:38 p.m. a lunch recess was taken
21 until 2:00 p.m.)

22 - - -

23

24

25

1 Wednesday Afternoon Session,
2 April 17, 2013.

3 - - -

4 EXAMINER PIRIK: Go back on the record.
5 Would Duke like to call its next witness.

6 MS. KINGERY: Thank you, your Honor.
7 Duke Energy Ohio would call Stephen G. DeMay at this
8 time.

9 (Witness sworn.)

10 MS. KINGERY: And, your Honor, we would
11 ask that the Direct Testimony of Stephen G. DeMay be
12 marked as an exhibit, Duke Energy Ohio Exhibit No. 5.

13 EXAMINER PIRIK: The document is so
14 marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MS. KINGERY: Thank you.

17 - - -

18 STEPHEN G. DEMAY
19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Ms. Kingery:

23 Q. Good afternoon, Mr. DeMay.

24 A. Good afternoon.

25 Q. Do you have before you what has just been

1 marked as Duke Energy Ohio Exhibit No. 5?

2 A. Yes, I do.

3 Q. And what is that document?

4 A. This is my direct testimony.

5 Q. And you are Stephen G. DeMay?

6 A. I am.

7 Q. And by whom are you employed?

8 A. Duke Energy Business Services.

9 Q. Thank you. And do you have any changes
10 or amendments that you would make to your testimony
11 today?

12 A. I do not.

13 Q. And if I were to ask you all those same
14 questions today, would your answers be the same?

15 A. Yes.

16 Q. And do you adopt this testimony as shown
17 on Duke Energy Ohio Exhibit No. 5 as your own?

18 A. I do.

19 MS. KINGERY: Thank you very much.

20 The witness is available for
21 cross-examination.

22 EXAMINER PIRIK: Thank you.

23 MR. KURTZ: I think by agreement, I was
24 going to be first.

25 EXAMINER PIRIK: And what's the

1 remaining? Is there any other order, or are you just
2 going first?

3 MR. KURTZ: I don't know. I guess OCC
4 second.

5 EXAMINER PIRIK: Okay, we will just go
6 back around the table. That's fine.

7 Mr. Kurtz.

8 MR. KURTZ: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Kurtz:

12 Q. Good afternoon, Mr. DeMay.

13 A. Good afternoon.

14 Q. Would you turn to page 5 of your
15 testimony. Line 5 you say, "Duke Energy Ohio is
16 currently earning negative returns on generating
17 plants, as described by Duke Energy Ohio witness
18 Brian D. Savoy.

19 EXAMINER PIRIK: Can you pull the
20 microphone just a little bit closer.

21 Q. Did you hear what I read or looked at?

22 A. Yes, I did.

23 Q. Okay. What you really mean by that is
24 Duke Energy Ohio is earning negative returns on only
25 part of the power plants owned by Duke Energy Ohio,

1 that being the Midwest coal.

2 A. Those are the only power plants that Duke
3 Energy Ohio directly owns, and that's what I was
4 referring to.

5 Q. Okay. Duke Energy Ohio -- a direct
6 wholly-owned subsidiary of Duke Energy Ohio is DECAM,
7 correct?

8 A. It is.

9 Q. Okay. And DECAM owns the Midwest gas
10 assets, correct?

11 A. That's correct. But those assets have
12 never been under the jurisdiction of the state of
13 Ohio.

14 Q. Now, those assets are part of Duke Energy
15 Ohio's FRR plan, correct?

16 A. Only by way of a bilateral contract.

17 Q. Did you hear -- were you here for
18 Dr. Niemann's testimony?

19 A. For most of it, yes.

20 Q. Did you understand that he said that one
21 month before the base residual auction for the
22 planning year, Duke Energy Ohio has to specify by
23 generating unit what's in its FRR plan, and those --
24 those specified generating units include each and
25 every one of the DECAM assets?

1 MS. KINGERY: Objection. This goes well
2 beyond the scope of this witness's testimony.

3 EXAMINER PIRIK: I am going to overrule
4 the objection and see where it's going and decide.

5 A. It is my understanding that the gas
6 assets that you're referring to are contracted by
7 Duke Ohio bilaterally, and that the cost of those
8 bilateral contracts are reflected in this filing in
9 the company's application, not the invested capital
10 in them themselves.

11 Q. Right. And Duke Energy Ohio is earning
12 positive margins on those units, is it not?

13 A. You know, you have quoted a number of
14 times \$50 million of commercial -- net income from
15 the commercial businesses of Duke Ohio. And I would
16 point out that that's on a base, an equity base, of
17 \$2.7 billion, which is below 2 percent return. So I
18 think while the gas plants are making positive
19 earnings, they are making anemic returns.

20 Q. Will you turn to page 6 of your
21 testimony. On line 19, you say, "As described by
22 Duke Energy Ohio witness Savoy, Duke Energy Ohio is
23 currently in a negative return position with regard
24 to its generating assets, thus already compromised
25 with regard to cash flow."

1 So, again, what you mean there is just
2 the -- just the coal assets, not all the assets owned
3 by Duke Energy Ohio.?

4 MS. KINGERY: Objection. He is
5 mischaracterizing the testimony.

6 EXAMINER PIRIK: The witness can clarify.
7 That's fine.

8 You can clarify. Go ahead.

9 A. I am referring to the assets that are
10 relevant, and those would be, in my opinion, the
11 gas -- excuse me, the legacy coal plants of Duke
12 Ohio.

13 Q. Now, you understand that one of the big
14 themes throughout this case is the financial
15 integrity of Duke Energy Ohio, and, of course, since
16 it is wholly owns DECAM and DECAM owns the gas
17 assets, that's reflected in the consolidated earnings
18 of Duke Energy Ohio, correct?

19 A. What you have just said is true from an
20 accounting perspective, but it was the company's
21 decision to drop those assets down. We did that for
22 tax efficiency purposes. Tomorrow the company could
23 move those assets out of the ownership of Duke Ohio,
24 and we would have every right in doing so. I think
25 the fact that they are an indirect subsidiary of Duke

1 Ohio is really not relevant.

2 Q. Can Duke Energy Ohio get rid of those
3 assets, even though they are committed to its FRR
4 plan through May 31, 2015?

5 MS. KINGERY: Again, objection. This is
6 going beyond the scope of this witness's testimony.
7 He's not an expert in the FRR plan.

8 EXAMINER PIRIK: Overruled.

9 A. I don't know that Duke Ohio can get
10 rid -- Duke can get rid of the assets, but they can
11 certainly become an affiliate of Duke Ohio rather
12 than an indirect subsidiary.

13 Q. Direct subsidiary.

14 A. Indirect. The power plants are housed in
15 subsidiaries of DECAM.

16 Q. DECAM is a direct, wholly-owned
17 subsidiary of Duke Energy Ohio?

18 A. It is, but the power plants are not.

19 Q. Now, would you turn to page 10 of your
20 testimony, line 20, and as described in the
21 application of the direct testimony of Mr. Savoy,
22 Duke Energy Ohio's generating assets will operate at
23 a significant financial loss over the next several
24 years if this request is denied. Then you go on and
25 cite the negative returns of 3.6 to 13.5. Again,

1 that's just the coal assets.

2 A. Yes, that's correct.

3 Q. Okay. Now, are you familiar anywhere in
4 this application where it was made clear that -- that
5 Duke Energy Ohio also owns profitable gas assets?

6 MS. KINGERY: Objection.

7 EXAMINER PIRIK: Objection overruled.

8 A. Would you repeat the question? I'm
9 sorry.

10 Q. It's -- it was at least unclear to me,
11 maybe to others, can you show where it's been set out
12 specifically that Duke Energy Ohio also owns
13 profitable natural gas assets as well as the
14 unprofitable coal assets?

15 A. Well, no, I can't, and I don't say so in
16 my own testimony, but it is clearly spelled out in
17 our 10-K, which is a document that you have referred
18 to quite a bit.

19 Q. Just to be -- just for clarification, the
20 ESSC charge, the \$110 million charge, you are
21 familiar with that, of course.

22 A. I am.

23 Q. That gets reported up through Duke Energy
24 Ohio through its Commercial Power business segment?

25 A. That is correct.

1 Q. You discuss the bond ratings of Duke
2 Energy Ohio throughout this testimony, do you not?

3 A. It's the thrust of my testimony.

4 Q. Duke Energy Ohio is the entity that
5 issues debt, not -- not the Midwest coal generation,
6 not DECAM, not any other subsidiary.

7 A. That's correct.

8 Q. Okay.

9 MR. KURTZ: Your Honor, if I could have
10 marked as OEG Exhibit 9, this is nonconfidential and
11 there is no yellow.

12 EXAMINER PIRIK: The document is so
13 marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MS. KYLER: May I approach?

16 Q. Okay. This is a data request or data
17 response from Duke. You're familiar with the bond
18 ratings, correct?

19 A. Yes, sir.

20 Q. Okay. Let's just take them one by one.
21 Moody's Secured Debt, Duke Energy Ohio has been rated
22 A2 since 2010. Is A2 better than A3?

23 A. Yes, it is.

24 Q. Okay. So what happened was from 2006 it
25 was not rated, then for '7, '8, and '9, it was A3,

1 and then the ratings improved to A2, and that's where
2 they stay to today.

3 A. That's correct.

4 Q. Okay. So that's a pretty strong
5 investment grade credit rating, isn't it?

6 A. It is, yes. That, incidentally, though,
7 applies to the T&D business.

8 Q. Well, all of Duke Energy Ohio.

9 A. No. This is a rating of secured debt,
10 which is only issued and secured by the property of
11 our T&D business.

12 Q. Okay. Let's go to the next one, Moody's
13 Senior Unsecured. Duke Energy Ohio has been Baal for
14 the last ten years; is that correct?

15 A. I see that.

16 Q. And that would apply to -- to more than
17 just the T&D business?

18 A. Yes. That would apply to debt that is no
19 longer being issued in Ohio but legacy debt that's
20 outstanding. That is a general unsecured obligation
21 of the company so it is not tied to any specific
22 assets.

23 Q. Okay. Is Baal a fairly strong investment
24 grade?

25 A. Yes, it is.

1 Q. And so at least Moody's, for that
2 purposes, does not ascribe any negative -- well, is
3 that -- is that unstable, positive, or negative
4 watch?

5 A. Stable.

6 Q. Stable, okay. So at least --

7 A. It's an outlook.

8 Q. Okay.

9 A. Okay.

10 Q. Some of the ratings agencies use outlook.
11 Some of them say -- what did you say?

12 A. Well, "watch" means something is
13 imminent. "Outlook" is more, you know, 12 to 18
14 months.

15 Q. So Moody's Senior Unsecured has Duke
16 Energy Ohio, including all of its businesses, a
17 fairly high investment grade, and it's been that way
18 for ten years?

19 A. It looks like there has been some
20 stability there, yes.

21 Q. Moody's Junior Unsecured, not rated; S&P,
22 Secured; that would be -- that would be the T&D
23 business also, would it not?

24 A. Exactly, right.

25 Q. Okay. S&P Senior Unsecured, it was down,

1 a grade from A- to BBB+ in 2012; is that correct?

2 A. That's correct, July of 2012.

3 Q. Okay. BBB+ is still investment grade,
4 isn't it?

5 A. Yes.

6 Q. Okay. How many notches down would you
7 have to go before you lose investment grade under the
8 S&P Senior Unsecured ratings?

9 A. Three notches, so it would go from BBB+
10 to BBB flat, to BBB-, that's two. The third one
11 would take you to BB+, and that's below investment
12 grade.

13 Q. Fitch Secured, again, that's T&D,
14 correct?

15 A. Yes.

16 Q. Okay. Fitch Unsecured, they started
17 rating this -- well, I guess it was rated back in
18 2006, '5, '4, and '3, BBB+, correct?

19 A. When Duke Ohio was -- prior to the merger
20 of Duke Energy and Cinergy, Cinergy carried a Fitch
21 rating. After the merger, Duke did not. But then
22 when we completed our merger with Progress Energy, we
23 picked up the rating again.

24 Q. Okay. And A- is a strong investment
25 grade?

1 A. Yes.

2 Q. As treasurer, are you familiar with the
3 corporate structure of Duke Energy Ohio?

4 A. Yes, I am.

5 MR. KURTZ: Could we have this marked as
6 OEG 10.

7 EXAMINER PIRIK: Yes.

8 MR. KURTZ: Unconfidential and no yellow.

9 EXAMINER PIRIK: We have a come a long
10 way.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. This is a document that I prepared trying
13 to understand the corporate structure of Duke Energy
14 in Ohio, and I would like for you to walk us through
15 it and make any corrections, if necessary.

16 Do you have that document in front of
17 you?

18 A. Yes.

19 Q. Okay. Duke Energy Ohio Ownership, maybe
20 that's ownership is flipped. But, first of all, I
21 started with the earnings guidance from February of
22 2013, so Ohio T&D, that's the regulated transmission
23 and distribution in Ohio. Is that a fair way to read
24 it?

25 A. I can't tell whether you're trying to

1 show legal entities or just what collection of assets
2 or businesses are within the single legal entity of
3 Duke Ohio. I don't know what's going on.

4 Q. Let me ask you to look at this, OEG 2,
5 page -- it's marked at the bottom 36.

6 MS. KINGERY: Do you have that up there
7 with you?

8 THE WITNESS: No.

9 Q. I was trying to mimic the structure that
10 was used by your CFO, I guess.

11 A. What page are you on?

12 Q. It's marked 36 in the bottom.

13 A. I see it.

14 Q. Okay. I used Ohio T&D the same way I
15 think Ms. Good was using it. That would be Ohio
16 transmission and distribution of the regulated entity
17 that issues secured debt. Is that -- assuming that
18 that's what it means when I say Ohio T&D, is that
19 accurate so far?

20 A. Yes. Would you like me to orient you to
21 this page, or do you -- or just answer your
22 questions?

23 Q. Feel free. Go ahead.

24 A. Well, we recognize, of course, that the
25 reporting structure or SEC reporting is different

1 than the legal structuring of the company, and so
2 this page is intended to reconcile the two. And so
3 the columns that you see, "USF&G, Commercial,
4 International," are our three SEC reporting segments.

5 The rows are the legal entities so that
6 Duke Ohio -- the row Duke Ohio includes businesses
7 within our reporting segment, USF&G, and those would
8 be the T&D business, the gas distribution business,
9 and then the Kentucky utility business.

10 And under Commercial Power reporting
11 segment, Duke Ohio owns the Midwest coal generation
12 and the Midwest Gas generation. The Duke Ohio row is
13 a Duke Ohio consolidated view.

14 Q. Okay. Good. Thank you. So on the chart
15 that I developed, the left-hand column, Ohio T&D,
16 Ohio Gas Distribution, and Kentucky, that would --
17 that's correct, isn't it? Those are the -- those are
18 all owned by Duke Energy Ohio, and those earnings are
19 reported up through the U.S. Franchised Electric &
20 Gas business segment, correct?

21 A. Yes.

22 Q. Okay. And the East Bend, Woodsdale,
23 Miami Fort, that's owned by the Kentucky vertically
24 integrated utility?

25 A. I'm not sure, but --

1 Q. Okay.

2 A. -- it sounds right.

3 Q. Now, in the middle I put Duke Energy
4 Commercial Asset Management and then Midwest Gas
5 Generation and just listed what -- what those are.
6 Is that a correct way to depict the structure?

7 MS. KINGERY: I would object to this,
8 particularly, this part of this exhibit from the
9 standpoint that you've -- you're mixing together
10 business segment structure and legal structure. So
11 you're showing here Duke Energy Commercial Asset
12 Management. You've added that to what the company
13 had prepared, which was business segments. So it's a
14 mixture, and I just want the record to reflect that.

15 Q. Duke Energy Ohio owns DECAM, does it not?

16 A. Yes, it does.

17 Q. Okay. And DECAM owns the Midwest gas?

18 A. Yes.

19 Q. Okay. And Duke Energy Ohio also owns the
20 Midwest coal, but I guess that would not be in a
21 separate subsidiary; that's directly owned by Duke
22 Energy Ohio?

23 A. Correct. Its assets within the legal
24 entity Duke Energy Ohio.

25 Q. Okay. And then turning --

1 MS. KINGERY: I would further note,
2 continuing with my objection, of the confusion of
3 this document because you have DECAM under Duke
4 Energy Ohio --

5 EXAMINER PIRIK: You know what might be a
6 good idea, is if the witness could explain what's in
7 the exhibit.

8 MS. KINGERY: I apologize.

9 EXAMINER PIRIK: It would be fine on
10 redirect you would be able to make sure it's clear on
11 the record.

12 MS. KINGERY: I'll do that. Thank you,
13 your Honor.

14 EXAMINER PIRIK: Thank you.

15 Q. Is there any clarification you want to
16 make on this, Mr. DeMay, to make it more accurate or
17 better in any way?

18 A. I would only make the observation that I
19 think you do mix and match businesses, assets, and
20 legal entities.

21 Q. Okay.

22 A. But, you know, you explained it. We
23 walked through it. I think that's fine.

24 Q. Now, the next page, page 2, this is the
25 SEC reporting what you were -- did I do this

1 correctly?

2 A. This is Duke Energy Corp. business
3 segment, SEC reporting. It's missing the
4 International segment.

5 Q. Well, actually, I made a mistake. It
6 shouldn't be Duke Corp. It should be Duke Energy
7 Ohio?

8 A. Okay.

9 Q. That's what I was trying to do. Now, if
10 you change the title to Duke Energy Ohio, is this how
11 the earnings are reported?

12 A. Let me just study this for a second.
13 There would be another column, but I don't think
14 that's probably consequential to your discussion. I
15 would say this is correct.

16 Q. Okay. I just have to ask you this
17 general question. You're aware that Duke Energy Ohio
18 is seeking to defer for later recovery \$729 million?

19 A. Yes.

20 Q. How will the ratepayers of southwestern
21 Ohio be benefited if the Commission grants your
22 request?

23 A. Well, I think the request is one seeking
24 compensation for a noncompetitive service that we're
25 providing, so in the sense that they are already

1 benefiting, they are benefiting from the capacity
2 that is dedicated to them and the reliability that
3 that capacity affords.

4 Q. So we would be paying \$729 million for
5 something we already have?

6 A. Well, clearly the capacity is in the
7 ground, and customers are benefiting from it. We are
8 seeking just compensation for that, that is correct.

9 Q. And PJM ensures reliability, and you have
10 got FRR plans through the -- through May of 2015. Is
11 there \$729 million worth of benefits somewhere here
12 for ratepayers?

13 A. I can't tell you what benefit -- put a
14 dollar value on the benefit. That's in the company's
15 application. I can't personally do that. But the
16 state of Ohio, the Public Utilities Commission of
17 Ohio, has established a compensation mechanism for
18 this noncompetitive wholesale capacity service. They
19 established that in the AEP case, and we are seeking
20 under materially the same facts that kind of
21 compensation for the service that we're providing.

22 Q. So, in your opinion, your proposal is
23 fair to Duke Energy Ohio, but as far as you can tell,
24 there is no benefit to consumers?

25 A. I didn't say that at all. I said that

1 the consumers are benefiting from that capacity that
2 is dedicated to them and the reliability that
3 capacity affords.

4 Q. And we already have that.

5 A. It doesn't mean you shouldn't be paying
6 for it. You're getting value. Now we seek value in
7 return, just and reasonable compensation.

8 Q. I thought you were going to say things
9 like improve borrowing costs with better debt rating
10 from Moody's and S&P and that type of thing. Is that
11 a benefit consumers would get?

12 A. The consumers are -- that is a benefit
13 that the consumers would get if the utility is
14 financially strong, and I use the term in my
15 testimony "financial strength and flexibility." This
16 compensation mechanism helps the company achieve the
17 objective of financial strength and flexibility.

18 I say in my testimony why that's
19 important for customers, and it's because it --
20 having financial strength and flexibility for a very
21 capital-intensive business, that this business allows
22 the company to access capital through all market
23 conditions. It allows it to maintain a level of
24 liquidity that allows it to operate, and so, you
25 know, I did not tie all the pieces together, and I

1 appreciate you giving me the opportunity to do that.

2 Q. By the end of 2014, Duke Energy Ohio will
3 be a wires company, won't it? That's what the
4 Commission has ordered and that's what Duke Energy
5 Ohio agreed to. At the end of 2014, it would no
6 longer own generating assets; isn't that true?

7 A. That -- I think that's true.

8 Q. Okay. So the capital intensive part is
9 going to be over in one year and eight months, or
10 something like that?

11 A. Are you suggesting the T -- the T&D
12 business is not capital intensive or the generation
13 business isn't?

14 Q. Well, no. The generation business is
15 certainly the more capital intensive.

16 A. Well, perhaps, but the T&D business
17 requires maintenance capital. It requires expansion
18 capital for new connections, you know, replacing old
19 equipment and so on.

20 Q. You would have to issue a check of a lot
21 of debt to make up \$729 million in interest savings,
22 versus being a high investment grade versus a low
23 investment grade, or something of that nature,
24 wouldn't you? The interest costs are not that much
25 different.

1 A. I'm not sure what you are asking. If
2 you're suggesting that the company in lieu of getting
3 \$729 million, suffer a weaker balance sheet and,
4 perhaps, higher interest costs, I think that's a
5 terrible trade and very short-sighted.

6 Q. Well, let's suppose the Commission denied
7 this request and Duke Energy Ohio had higher
8 borrowing costs. You would have to borrow a lot of
9 money, the T&D business, to -- before that
10 \$729 million rate differential was hit, wouldn't you?

11 A. The mistake you're making, you're boiling
12 credit quality down to just the cost of debt. Access
13 is as important as anything. And I was fortunate or
14 unfortunate, depending on how -- what your view of
15 being treasurer during a financial crisis, and this
16 company was able to issue debt when it had to issue
17 debt, and it did so because it had strong credit
18 ratings and had a strong balance sheet.

19 And that's just something -- it's like an
20 insurance policy. I don't give that up, and so cost
21 of capital is one. Access to capital is another.
22 And I want to -- one other thing, it's not just
23 capital, CAPEX, that we're financing with this
24 company. There are debt maturities, and when a
25 \$500 million debt matures, like one did at Duke Ohio

1 last year, and a \$250 million maturity comes due this
2 year, you have to be able to access the markets to
3 refinance that, and strong balance sheets assure your
4 ability to do so through all market conditions.

5 Q. Two questions, do you expect Duke Energy
6 Ohio to remain investment grade credit when it's a
7 T&D company only after 2014?

8 A. Yes, I do. And it's because we're taking
9 steps to assure that it does.

10 Q. I wanted to ask you about that debt
11 refinancing, but I forgot. What interest rate debt
12 is coming due that you are going to replace?

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

14 Q. Do you know if you are going to refinance
15 it at a lower cost?

16 A. Oh, most certainly.

17 Q. Well, that would improve earnings,
18 wouldn't it?

19 A. All things being equal, yes, yeah.

20 MR. KURTZ: Thank you, your Honor. No
21 more questions.

22 THE WITNESS: Thank you.

23 EXAMINER PIRIK: Ms. Petrucci.

24 MS. PETRUCCI: No questions.

25 EXAMINER PIRIK: Did I miss OCC?

1 MS. KERN: Yes. A few your Honor,
2 thanks.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Kern:

6 Q. Mr. DeMay, I am Kyle Kern with the Office
7 of Consumers' Counsel.

8 A. Hi, Ms. Kern.

9 Q. Hello. On page 3 of your testimony,
10 lines 9 through 11, you indicate that your testimony
11 involve the financial objectives of Duke Energy Ohio
12 and the company's associated issue of credit quality;
13 is that correct?

14 A. Yes.

15 Q. And did you perform any empirical
16 analysis to support your testimony that you filed in
17 this proceeding?

18 A. Empirical analysis to support what?

19 Q. Your testimony at all.

20 A. No.

21 Q. And have you relied on the financial
22 analysis of other Duke witnesses for purposes of this
23 proceeding?

24 A. I relied on a number of things for
25 purposes of this proceeding, including the testimony

1 and analysis of my fellow witnesses.

2 Q. And would that be Mr. Savoy?

3 A. Yes; although I really just refer to the
4 negative returns in his testimony.

5 Q. Thank you. And would you agree that
6 return on equity is an important metric generally for
7 utilities?

8 A. It is, and it is -- it's an important
9 measure for equity investors, and especially so for
10 utility investors because so much equity is invested
11 in them.

12 Q. Thank you. At the bottom of page 10 of
13 your testimony, you discuss the significance of Duke
14 Energy Ohio operating at an annualized negative
15 return on equity. Do you see that?

16 A. I do.

17 Q. And in your role as vice president and
18 treasurer of Duke Energy Business Services, you would
19 agree that you discuss the company's financial plans
20 with the three major credit agencies that you
21 referred to in your testimony?

22 A. Yes.

23 Q. And also in your role as vice president
24 and treasurer, you would discuss the outcomes of
25 regulatory proceedings that are pertinent to Duke

1 Energy Ohio with the three major credit rating
2 agencies, would you agree?

3 A. Yes.

4 Q. And you were the treasurer, I believe,
5 during Duke Energy Ohio's most recent electric
6 security plan proceeding?

7 A. I was.

8 Q. Okay. And just for purposes of the
9 record, you understand that to be Case No. 11-3549,
10 the ESP that's currently in place?

11 A. Yes.

12 Q. Okay. Thank you. And during the
13 company's most recent electric security plan
14 proceeding, was one of Duke Energy Ohio's financial
15 objectives to maintain financial strength and
16 flexibility?

17 A. Yes. I would call that an ongoing
18 objective of our company.

19 Q. And you're aware that a settlement was
20 reached in the current Duke ESP proceeding, correct?

21 A. Correct.

22 Q. Would you have reported that information
23 about the ESP settlement to the three major credit
24 reporting agencies?

25 A. Yes, we would have.

1 Q. Okay. And you're aware --

2 A. We also -- we also, you know report that
3 publicly.

4 Q. Uh-huh.

5 A. Okay.

6 Q. And would one of the factors that you
7 reported to the three credit ratings agencies be that
8 the company was provided with an unavoidable
9 generation charge of \$110 million per year? It's
10 called rider ESSC.

11 A. That's correct, but we would have
12 characterized it as a stability charge or
13 stabilization charge, not a generation charge.

14 Q. Okay. Is it your understanding that
15 after the approval of the ESP stipulation by the
16 PUCO, that the credit outlook for Duke Energy Ohio by
17 the three credit reporting agencies was stable?

18 A. Yes, it was.

19 Q. And was there a change in that credit
20 reporting from the time prior to the ESP being
21 settled to the time when it was approved by the PUCO?

22 A. No. And I think what you're asking is
23 was there any ratings action whatsoever, outlook or
24 ratings, as a result of entering into this
25 stipulation. And the answer is no, but the rating

1 agencies were decidedly negative on the stipulation.

2 Q. And upon what do you draw the conclusion
3 that the credit rating agencies were decidedly
4 negative upon the stipulation?

5 A. Just reading their reports. So I could
6 say that it's in conversations with the company,
7 which is true, but you can see for yourself in
8 written reports that the agencies write on our
9 company that they -- they saw the virtue of clarity
10 and certainty finally coming through the settlement,
11 but they recognize that it, over time, would
12 diminish, and immediately and over time diminish
13 earnings, cash flow, and credit quality.

14 Q. But none of the credit rating agencies
15 downgraded Duke Energy Ohio.

16 A. No. And in my opinion, that's the
17 benefit of Duke Ohio being part of a very large
18 family of strong electric utility companies.

19 Q. And none of the three credit rating
20 agencies put Duke Energy Ohio on credit watch either,
21 did they?

22 A. No.

23 Q. Thank you. On page 7, line 10, you state
24 that "The current regulatory framework in Ohio
25 acknowledges the unique noncompetitive services

1 provided by FRR entities - services that are
2 associated with long-term commitments." Do you see
3 that?

4 A. I do.

5 Q. And upon what authority do you base this
6 statement?

7 A. This is a reference to the order that the
8 Public Utilities Commission issued with respect to
9 AEP.

10 Q. Are you referring to the July 2 Opinion
11 and Order.

12 A. I'm not sure of the date of it, but it's
13 the -- the cost-based capacity pricing mechanism.

14 Q. And on page 7, line 12, you state, "There
15 has been further recognition in Ohio that, in
16 providing FRR services, FRR entities are entitled
17 to just and reasonable compensation." Do you see
18 that?

19 A. I do.

20 Q. And, again, what recognition are you
21 referring to here?

22 A. Those words come out of the PUCO's order.

23 MS. KERN: I'm sorry, could I have his
24 answer reread? I didn't hear it.

25 (Record read.)

1 Q. So is the only support you rely on for
2 these statements, then, the AEP Ohio capacity
3 decision?

4 A. They are the only -- it's the only thing
5 I'm relying upon.

6 Q. And did you read the consequent Entry on
7 Rehearing in that proceeding, specifically the
8 October 17, 2012, entry?

9 A. No.

10 Q. So how did you make a conclusive
11 statement in your testimony if you didn't read those
12 subsequent entries on rehearing?

13 A. AEP is still enjoying the benefits of the
14 order issued back in July, I believe it is, and it's
15 on that basis that I make these statements.

16 Q. Are you familiar with the Commission's
17 ruling in the October 17, 2012, entry in the
18 capacity -- AEP capacity case that they initiated
19 that case solely to review AEP Ohio's capacity charge
20 for its obligations?

21 MS. KINGERY: I would object. That calls
22 for a legal conclusion. This witness is not a
23 lawyer.

24 EXAMINER PIRIK: Objection overruled.

25 A. I am not.

1 Q. And you reviewed briefly, I think, with
2 Mr. Kurtz that one of Duke Energy Ohio's positions in
3 this case is that its financial integrity could be
4 harmed if its application is not approved by the
5 Commission; is that correct?

6 A. I would say two things about that. No.
7 1, the financial condition of Duke Ohio has already,
8 in my opinion, been harmed by the terms of the ESP in
9 a quick move to market. I think what damages Duke
10 Ohio if this application fails is the view that the
11 business risk of this company --

12 THE WITNESS: Are you coming to?

13 A. That the business risk of Duke Energy
14 Ohio is elevated. And if you recall in my testimony,
15 credit ratings and credit quality come from two
16 different things, the qualitative aspects of Duke
17 Ohio business and the quantitative ones.

18 I think the quantitative ones certainly
19 don't improve without this capacity revenue. But the
20 qualitative attributes of Duke Ohio's business suffer
21 if we're denied something that another utility with
22 similar facts and circumstances is getting. And I
23 think that's the market's view, not just my own.

24 MS. KERN: Your Honor, I have what I
25 would like to have marked as OCC Exhibit 5.

1 EXAMINER PIRIK: The document will be so
2 marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)?

4 Q. If you want to take a moment to review
5 the document.

6 A. I'm familiar with the report.

7 Q. Thank you. And this is the same Moody's
8 report that you reference for purposes of your
9 testimony?

10 A. A number of various reports since the
11 ESP. The stipulation includes very similar language.

12 Q. Okay.

13 A. We can reference this report.

14 Q. Thank you. If you could turn -- is it
15 your understanding, first, that this is the most
16 recent report on Duke Energy Ohio issued by Moody's?

17 A. Yes.

18 Q. If you could turn to page 4 of the
19 document, there aren't page numbers, but --

20 A. The one that has what could change the
21 rating up?

22 Q. Correct. And in the middle of that page
23 there's a ratings factors bar and underneath that
24 there is a table.

25 A. Yes.

1 Q. Okay. The fourth factor on that table is
2 financial strength, liquidity, and key financial
3 metrics. Do you see that?

4 A. I do.

5 Q. And if we look to the scoreline, those
6 are strong grades for financial strength that Moody's
7 gave Duke Energy Ohio. Would you agree?

8 A. Yes, I would agree. And the reason the
9 company does not have a credit rating that matches
10 that is because the elevated business risk of this
11 restructured market.

12 Q. Well, if we -- if we look to the column
13 to the right, there is Moody's 12- to 18-month
14 forward view as of January, 2013, and if you look at
15 the grades, would you agree with me that there's
16 no -- essentially no change in the grades that
17 Moody's is giving Duke Energy Ohio?

18 A. I would, yes.

19 Q. Okay. On page 8 of your testimony, lines
20 5 to 7, you state that S&P's ratings outlook on Duke
21 Energy and all of its subsidiaries, including Duke
22 Energy Ohio, is currently negative. And you go on to
23 say that this is due to regulatory risk.

24 A. That's right.

25 Q. And when was the last time that S&P

1 upgraded or downgraded Duke Energy Ohio's bond
2 ratings?

3 A. It was in July of 2012.

4 Q. And that downgrade in 2012, would you
5 agree that the Senior Unsecured ratings of Duke
6 Energy and its subsidiaries were downgraded at that
7 time?

8 A. I would agree with that, and I would
9 point out that the secured ratings, which is how we
10 issued that at Duke Energy Ohio, were unaffected.

11 Q. Would you agree that this downgrade was
12 driven by issues associated with Duke Energy's merger
13 with Progress Energy?

14 A. I would agree that that's what
15 precipitated it, yes.

16 Q. And that merger was complete in July of
17 2012, correct?

18 A. Yes.

19 Q. Thank you. Has Moody's bond rating for
20 Duke Energy changed over the past five years?

21 A. It has not.

22 Q. Okay. As treasurer of the company, vice
23 president and treasurer, would you agree generally
24 that you must be very sensitive to information that
25 Duke Energy Ohio discloses to its investors?

1 A. I suppose I would agree that the company
2 has to be, I guess, transparent with investors and
3 careful. Is that the word you used?

4 Q. I said sensitive, but careful works.

5 A. Sensitive, I am not sure what you mean by
6 that. We certainly can't be selective in the kind of
7 information that we disclose.

8 Q. No. But you want to be accurate with the
9 information you disclose.

10 A. Sure. I'll give you that.

11 Q. And you would agree that you're required
12 to disclose material information to investors through
13 annual filings such as the 10-K; is that correct?

14 A. Did you say material information?

15 Q. Yes, material information.

16 A. Yes. We are required to disclose
17 material information whenever it's -- you know, not
18 just annually. We often disclose material
19 information during the course of the year.

20 Q. Okay. And you recall that we previously
21 discussed that return on equity is an important
22 metric for utilities; is that correct?

23 A. Yes.

24 Q. On page 12, lines 5 to 8 of your
25 testimony, you indicate that equity investors

1 recognize that the -- that the return on equity
2 earned by Duke Energy Ohio's legacy generating assets
3 will earn a negative ROE through the term of the FRR
4 without rate relief; is that correct?

5 A. Are you paraphrasing?

6 Q. Yes.

7 A. Yes.

8 Q. And did you disclose in your capacity as
9 vice president and treasurer that information,
10 meaning the negative ROE, to the investors in Duke
11 Energy's 10-K statement?

12 A. I don't think that we -- we did not
13 disclose ROEs on the basis of legacy generating
14 assets because they are not a segment that we report
15 on. We report on commercial power.

16 Q. So the legacy generation assets aren't
17 included in the ROE that is calculated from the 10-K?

18 A. I don't believe so.

19 Q. If we were to look at a Moody's or S&P
20 credit rating report for Duke Energy Ohio, generally
21 speaking, would we see a reported ROE for Duke Energy
22 Ohio's two business divisions? And by business
23 divisions, I mean Franchised Electric & Gas and
24 Commercial Power.

25 A. You might. I don't know, but that

1 information is certainly disclosed by the company on
2 the segment basis. We do report these things, and we
3 provide supplemental information for people to be
4 able to calculate that themselves, so if you're
5 asking me if the segment -- if the segment ratios are
6 available, they are calculable, but I don't think you
7 can get inside the segment on the basis of what we
8 disclosed.

9 Q. The return on the legacy generation
10 assets, is that something that the company would
11 report to the three major credit reporting agencies?

12 A. It is not something that we reported to
13 them because, you know, generally speaking, we report
14 to them on a legal entity basis and in -- this is not
15 to get too complicated with it, but the rating
16 agencies rate debt and debt is issued by an entity,
17 not a segment, and so we report on the basis of the
18 issuing entity.

19 Q. Okay.

20 MS. KERN: I have no further questions.
21 Thank you.

22 EXAMINER PIRIK: Thank you.

23 My understanding we had the gentleman
24 come in to kind of listen to what was happening with
25 the microphones. We'll just go off the record for a

1 minute.

2 (Discussion off the record.)

3 EXAMINER PIRIK: Go back on the record.

4 FirstEnergy.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Floyd:

8 Q. Good afternoon, Mr. DeMay. My name is
9 Lydia Floyd, and I represent FirstEnergy's corp.

10 A. Yes.

11 Q. I take it that you monitor trends in the
12 investments market, correct?

13 A. Yes.

14 Q. It's part of your job to monitor industry
15 events and financial markets, correct?

16 A. Yes.

17 Q. You monitor these trends by reviewing
18 analysts' reports and rating agency outlooks,
19 correct?

20 A. Among other things.

21 Q. So you do monitor rating analysts'
22 reports and rating agency outlooks, correct?

23 A. I do.

24 Q. You review analysts' reports daily,
25 correct?

1 A. I -- analysts' reports don't come out
2 daily. I review analysts' reports as they come out,
3 and as they are relevant to the Duke Energy
4 franchise.

5 Q. You regularly review reports from
6 Standard & Poor's correct?

7 A. As they come out I do, yes.

8 Q. And Standard & Poor's is regularly
9 reviewed and relied on by investors, correct?

10 A. Are you referring to debt investors? I
11 would agree. I think Standard and Poor's has some
12 equity research, but we really don't rely heavily on
13 equity research.

14 Q. You would agree that Standard & Poor's is
15 posted on Duke Energy's website; isn't that correct?

16 A. Yes. That would be the rating agency
17 reports so debt investors can look at those.

18 Q. And that's made available to investors?

19 A. Yes.

20 Q. Now, part of your job is to interact with
21 credit agencies, correct?

22 A. Yes.

23 Q. You are the primary interface with the
24 rating agencies, and there is information to be
25 shared and when they have questions, correct?

1 A. Correct.

2 Q. You have interactions with agencies on
3 all matters relating to Duke, including Duke Energy
4 Ohio, correct?

5 A. I'll say all material matters.

6 Q. You participate or attend analysts
7 meetings, correct?

8 A. Are you now referring To equity analysts
9 Meetings or rating agency analysts meetings? They
10 are different -- I'll just answer both for you.

11 I do participate in all rating meetings,
12 and the equity side, we have an investors relations
13 department that is the primary point of contact for
14 equity research analysts, but I participate in quite
15 a number of those.

16 Q. Okay. So it's correct to say that you do
17 participate in and attend equity analysts meetings,
18 correct?

19 A. Some.

20 Q. You do participate and attend equity
21 analyst meetings, correct?

22 A. Yes.

23 Q. Turning to outlooks, isn't it true that
24 following the approval of the Duke ESP stipulation,
25 that the outlook at the three credit agencies,

1 including Standard & Poor's, was stable?

2 A. It is true.

3 Q. You testified that Standard & Poor's
4 adopted a negative outlook in July of 2012, correct?

5 A. Yes.

6 Q. Isn't it true that the reason for the
7 downgrade had nothing to do with any development
8 relating to Duke Energy Ohio, correct?

9 MS. KINGERY: Objection. This has been
10 asked and answer, this whole line of questions we've
11 just gone through.

12 EXAMINER PIRIK: Objection overruled.

13 A. I would agree with that, yes.

14 MS. FLOYD: Your Honor, I would like to
15 mark the following document as FES Exhibit 17. May I
16 approach?

17 EXAMINER PIRIK: Yes. The document is so
18 marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MS. FLOYD: Let the record reflect I am
21 now handing what has been marked as FES 17, a
22 Standard & Poor's research report dated July 25,
23 2012.

24 EXAMINER PIRIK: Could we have a couple
25 of copies? You were coming this way.

1 Q. (By Ms. Floyd) Mr. DeMay, you recognize
2 this is the July 25, 2012, Standard & Poor's research
3 update titled "Duke Energy Corp. Rating Lowered to
4 'BBB+' from 'A-'; Progress Energy, Inc. BBB+ Rating
5 Affirmed; Outlook is Negative," correct?

6 A. Yes.

7 Q. Isn't it true that the first sentence
8 under the rationale on page 3 is that, "The ratings
9 downgrade on Duke Energy and its subsidiaries stems
10 from our view that abrupt leadership changes at the
11 company have heightened regulatory risk in North
12 Carolina and likely in Florida, significantly
13 weakening the company's consolidated 'excellent'
14 business risk profile under our criteria."

15 A. I would agree.

16 Q. And isn't it true S&P's commentary
17 regarding Duke Energy Ohio's new -- new ESP on page
18 5, second paragraph, was that "The new ESP allows
19 Duke Energy Ohio to collect \$330 million over three
20 years, which can help support the company's financial
21 profile"?

22 A. Well, I have this to say about your first
23 reading, and that is, that the ratings were lowered
24 and then outlook was made negative because the
25 Carolinas are a much more consequential part of our

1 business.

2 With respect to Ohio, that language has
3 been in there for the last several reports since the
4 date of the ESP, and I think the more they've gotten
5 to see the forward-looking forecasts of the Ohio
6 business, the less good they feel about it.

7 Q. Mr. DeMay --

8 MS. FLOYD: Your Honor, I move to strike
9 that answer as nonresponsive to my question.

10 EXAMINER PIRIK: Motion will be denied.

11 Q. Mr. DeMay, my question is, isn't it true
12 that S&P's commentary on page 5, second paragraph of
13 this document regarding Duke Energy Ohio's new ESP,
14 was that the new ESP allows Duke Energy Ohio to
15 collect \$330 million over three years --

16 MS. KINGERY: Objection.

17 Q. -- which could help support the company's
18 financial profile; isn't that correct?

19 MS. KINGERY: Objection, asked and
20 answered.

21 EXAMINER PIRIK: Overruled.

22 A. There's no doubt \$330 million helps
23 support the financial profile. How could it not?
24 But the financial projections for this company are
25 getting weaker and the rating agencies acknowledge

1 that.

2 Q. Mr. DeMay, my question is this doesn't
3 affect Standard & Poor's rating report from July 25.
4 Does it not say on page 5 --

5 A. It does say that.

6 Q. Second paragraph?

7 A. It does say that.

8 Q. It does say that "The new ESP will allow
9 Duke Energy to collect \$330 million over three years,
10 which can help support the company's financial
11 profile," correct?

12 MS. KINGERY: Asked and answered.

13 A. Yes, it does.

14 Q. Isn't it true the S&P then concluded, "As
15 a result, Duke has managed to restore its ability to
16 earn a stable and fair return on the bulk of its Ohio
17 assets as least through 2015"; isn't that correct?

18 A. It does say that. I don't believe they
19 said that with complete information, obviously not.

20 Q. Mr. DeMay, a decline in financial metrics
21 does not always result in a credit downgrade, does
22 it?

23 A. No, it doesn't.

24 Q. Major credit agencies assess risk,
25 correct?

1 A. Yes.

2 Q. Regulatory risk is one of those risks.

3 A. Sure.

4 Q. Most utilities operate with a certain
5 degree of regulatory risk, correct?

6 A. Okay.

7 Q. So you agree most utilities operate with
8 a certain degree of regulatory risk?

9 A. I believe in the concept of regulatory
10 risk, and if the company is subject to regulation, I
11 believe that risk exists, yes.

12 Q. Regulatory risk is not new to the utility
13 industry, correct?

14 A. Correct.

15 Q. And you would agree that Duke Energy has
16 faced regulatory risk in the past?

17 A. Duke Energy Ohio?

18 Q. Duke Energy Corporation.

19 A. Duke Energy Corporation has utility
20 subsidiaries that are exposed to regulatory risk.

21 Q. So you would agree Duke Energy Ohio has
22 faced regulatory risk in the past?

23 A. Of course.

24 Q. You would agree that regulatory risk is
25 not unique to Duke Energy Ohio?

1 A. No, I would agree.

2 Q. Isn't it true S&P subscribes higher risk
3 to restructured electric markets versus traditional
4 regulated markets?

5 A. Yes.

6 Q. You agree that Duke Energy Ohio is the
7 only one of Duke Energy's affiliates that operates in
8 a restructured market, correct?

9 A. I would. And it's also the one with the
10 weakest business risk rating from S&P.

11 Q. So you agree that Duke Energy Ohio is the
12 only one of Duke Energy's affiliates that operates in
13 a restructured market?

14 MS. KINGERY: Objection, asked and
15 answered.

16 EXAMINER PIRIK: Overruled.

17 A. I would agree, and I would also point out
18 that it has the lowest risk rating of any of Duke's
19 utilities.

20 Q. You testified that the company's
21 regulatory framework and climate is one of the most
22 important qualitative factors in assessing risk,
23 correct?

24 A. Yes.

25 Q. Is it fair to say Duke Energy Ohio is

1 moving from a regulated model towards a competitive
2 market?

3 A. I think the state of Ohio is moving from
4 a regulated market to a competitive market-based
5 market.

6 Q. Is it fair to say that investors
7 generally know that the generation has moved towards
8 a competitive market?

9 A. Yes, I think they know.

10 Q. Credit agencies would be aware of that,
11 correct?

12 A. Yes.

13 Q. It's a matter of Ohio regulation,
14 correct?

15 A. Yes; or deregulation, as the case is.

16 Q. Do you agree that at the beginning of a
17 rate case, you don't know the outcome of that case,
18 correct?

19 A. That's correct.

20 Q. There's more uncertainty at the beginning
21 of a rate case than when you actually know the
22 outcome of that case, correct?

23 A. There's more uncertainty, yes.

24 Q. And uncertainty is also a type of risk,
25 correct?

1 A. Yes.

2 Q. You testified that when assessing
3 business risk, consistency and predictability in
4 regulatory outcomes are vital, correct?

5 A. Don't leave out fairness. You can be
6 consistent and consistently unfair or
7 nonconstructive, and then consistency has no virtue
8 at all. So it's a consistency, predictability, and
9 fairness are very important.

10 Q. You believe that investors view this
11 Commission as pro market, correct?

12 A. I would say that most observers believe
13 that the state of Ohio is -- has been moving toward
14 a -- toward market and that this Commission is
15 probably pro market, yes.

16 Q. So you would agree that investors view
17 this Commission has pro market, correct?

18 MS. KINGERY: Asked and answered.

19 EXAMINER PIRIK: Overruled.

20 Go ahead.

21 A. In my opinion, yes. In my opinion, yes.

22 Q. You agree that if the Commission were to
23 overturn a previously agreed-upon stipulation, that
24 that action would not be considered consistent or
25 predictable, correct?

1 A. Not necessarily. I think it depends on
2 why the Commission was reversing its order and, you
3 know, two things come to mind. One is the reversal
4 of the AEP ESP order that happened, I think, in
5 February, 2012. That was met with quite a bit of
6 surprise in the financial community.

7 But if the Commission were to act because
8 circumstances changed rather than in an arbitrary
9 fashion, then I don't think the -- they would be
10 pinged for being, you know inconsistent or
11 unreliable.

12 Q. Mr. DeMay, do you have a copy of your
13 deposition in front of you?

14 A. No, I don't.

15 MS. FLOYD: Your Honor, may I approach?

16 EXAMINER PIRIK: Yes.

17 Q. Mr. DeMay, didn't you testify at your
18 deposition on page 86, line 15, didn't I ask you the
19 question: "If the Commission were to overturn a
20 previously agreed upon stipulation, would that" --

21 MS. KINGERY: Excuse me. Can we wait
22 until we get to the page, please.

23 A. Yes, I am there.

24 Q. All right. Mr. DeMay, let me direct you
25 to page 86, line 15. Are you there?

1 A. Yes.

2 Q. Isn't it correct that you were asked
3 during your deposition: "Question: If the
4 Commission were to overturn a previously agreed upon
5 stipulation, would that be considered consistent or
6 predictable?"

7 There is an objection.

8 "Answer: In my opinion, no."

9 Isn't that what you testified to?

10 A. And I read that question to mean in an
11 arbitrary fashion without new facts and
12 circumstances.

13 Q. Isn't that what you testified to during
14 your deposition, what I read?

15 A. Yes, and I'm telling you how I understood
16 the question.

17 Q. I'm just asking you if I read the
18 question and answer correctly in your deposition.

19 MS. KINGERY: Objection, asked and
20 answered.

21 A. And I'm saying, yes, you did.

22 Q. Thank you.

23 A. And I understood the question to mean
24 what I said it did.

25 Q. Mr. DeMay, you would agree embedded in

1 Duke Energy's stock price are estimates for future
2 performance, correct?

3 A. Generally speaking, any stock price does
4 reflect expected future cash flows of the company,
5 yes.

6 Q. Stock price reflects investors' views of
7 future performance, correct?

8 A. Yes.

9 Q. Those views could have a positive or
10 negative impact on stock price, correct?

11 A. Correct.

12 Q. And you agree that Duke Energy has
13 provided information regarding this case to the
14 public, correct?

15 A. The only thing the public knows about
16 this case is what is publicly available. They don't
17 know the outcome. They don't know the nature of
18 these proceedings. They don't know any of that.

19 Q. My question to you is, you would agree
20 that Duke Energy has provided information regarding
21 this case to the public, correct?

22 A. We have provided information about this
23 case, yes.

24 Q. You agree that Duke Energy talked about
25 this case at its analyst meeting on February 28,

1 2013, correct?

2 A. We spoke of our application and of our
3 filing, that's right, but not an outcome or expected
4 outcome.

5 Q. So you would agree that Duke Energy did
6 talk about this case at its analyst meeting on
7 February 28, 2013, correct?

8 A. I would agree with that.

9 Q. Isn't it true, Mr. DeMay, that the stock
10 price closed on Tuesday, April 16, 2013, at \$73.56,
11 near the 52-week high of \$73.59?

12 A. I think that's correct. Are you
13 suggesting there is a connection?

14 Q. Mr. DeMay, you do not know whether, other
15 than filing the application in this case, whether
16 Duke Energy Ohio has taken other steps to rectify the
17 negative cash flow, correct?

18 A. Would you repeat the question, please.

19 Q. You do not know whether, other than
20 filing the application in this case, whether Duke
21 Energy Ohio has taken other steps to rectify the
22 negative cash flow, correct?

23 A. Well, I can imagine that the company is
24 taking other steps, O&M control, operating
25 efficiency, you know, implementing operating

1 efficiencies. Our company is not one to just sit on
2 the sidelines. We are going to do whatever we can to
3 improve the situation.

4 Q. So is it correct you do not know --

5 A. I just told you, I think that's what's
6 going on at the company.

7 Q. Mr. DeMay, can you please turn to page 66
8 of your deposition.

9 A. Uh-huh.

10 MS. KINGERY: I'm sorry, what was that,
11 66?

12 MS. FLOYD: Yes.

13 Q. Are you there, sir?

14 A. Yes.

15 Q. I would like to direct to you line 17.
16 Isn't it correct that you testified:

17 "Question: Do you know, other than
18 filing the application in this case, has Duke Energy
19 Ohio taken other steps to rectify the negative cash
20 flow?"

21 There is an objection.

22 "Answer: I don't know."

23 Did I read that correctly?

24 A. Yes, you did.

25 Q. Mr. DeMay, you are the treasurer of the

1 company, correct?

2 A. Yes.

3 Q. Duke Energy Ohio currently experiences
4 access to debt at reasonable rates, correct?

5 A. Duke Energy Ohio hasn't accessed the debt
6 market since 2009. I believe if Duke Ohio were to
7 access debt today, it would be doing so in the
8 secured debt market on the T&D business, and in that
9 way they would not have trouble accessing the market
10 and upon reasonable terms.

11 Q. So the answer to my question is yes, Duke
12 Energy Ohio does currently experience access to debt
13 at reasonable rates, correct?

14 A. With the qualifier that it's secured debt
15 at the T&D utility.

16 Q. So the answer to my question is yes.

17 A. With the qualifier, I said yes.

18 Q. Isn't it true that if the Commission
19 denies Duke Energy Ohio's application, that you do
20 not believe that Duke Energy Ohio would lose access
21 to the debt markets, correct?

22 A. That is correct because we are issuing at
23 the T&D company.

24 MS. FLOYD: Thank you, Mr. DeMay.

25 THE WITNESS: Thank you.

1 EXAMINER PIRIK: Ms. Mooney.

2 MS. MOONEY: No further questions.

3 EXAMINER PIRIK: Ms. Bojko.

4 MS. BOJKO: Thank you, your Honor. I do
5 have a few questions.

6 - - -

7 CROSS-EXAMINATION

8 By Ms. Bojko:

9 Q. Good afternoon Mr. DeMay. I am Kim
10 Bojko, and I represent the Kroger Company in this
11 case.

12 A. Good afternoon.

13 Q. You were just talking with Ms. Boyd about
14 the -- Ms. Floyd about the settlements, and are you
15 aware that Duke has entered into settlements,
16 numerous settlements, in the past in various
17 proceedings?

18 A. At Duke Ohio or just generally?

19 Q. Duke Energy Ohio.

20 A. Yes.

21 Q. And you stated earlier today, I believe
22 to Mr. Kurtz, that you are aware of the ESSC charge
23 that was in the last ESP stipulation; is that right?

24 A. I am.

25 Q. And if the -- if the Commission took a

1 relook at that stipulation today and decided that
2 that ESSC charge was too high and decided to remove
3 that charge from the ESP stipulation, would that be
4 fair to Duke, in your opinion?

5 MS. KINGERY: Objection. I think that's
6 an improper hypothetical.

7 EXAMINER PIRIK: Objection overruled.

8 A. I have to say that the only way I can
9 answer that question is to say that I would need to
10 know -- I think duke would need to know -- our
11 investors would need to know on what basis, what
12 facts and circumstances changed to cause the
13 Commission to change their view. So if it was
14 arbitrary, unfair. If it were really foundational
15 reasons, you know, we might not like it, but it might
16 not be unfair.

17 Q. Okay. So if the Commission lined up all
18 the settlements Duke has entered into in the past
19 three years and we looked at each one of those
20 settlements, and as long as they were consistent and
21 didn't do it arbitrarily, it would be -- it would be
22 fair to Duke to remove one revenue stream that Duke
23 received in each of those stipulations.

24 MS. KINGERY: Objection. She is
25 mischaracterizing the testimony of this witness.

1 EXAMINER PIRIK: We'll let the witness
2 clarify it.

3 A. I am not sure how to answer that
4 question. I don't half understand it, but I can say
5 that I would expect if the Commission were relooking
6 at everything, they would be relooking at every
7 aspect of a revenue requirement, and maybe it's an
8 adjustment upward. Maybe it's an adjustment
9 downward. I don't know.

10 Q. So that's an interesting concept. So you
11 think if the Commission reopens and relooks at a
12 stipulation, that they should look at all issues in
13 the stipulation, and they can -- should consider the
14 package and all the components of the package and not
15 just one in rendering their decision?

16 MS. KINGERY: Objection, objection.
17 Again, she is mischaracterizing the testimony he just
18 gave.

19 EXAMINER PIRIK: I think the witness can
20 testify and clarify.

21 If you feel there is a clarification
22 needed.

23 A. I am actually in a place, I'm not even
24 sure what you are asking me right now, so, you know,
25 so let me say that I'm not suggesting that the

1 Commission reopen any order or any settlement that
2 the company has, and I was trying to respond to a
3 hypothetical, not very articulately, but I got
4 confused in the hypothetical, so if you want to start
5 over, I'm happy to.

6 Q. Well, you stated that it may be okay.
7 It, may be fair to the company, I think is how this
8 started, if the Commission reopened the settlement as
9 long as -- and reconsidered this ESSC charge as long
10 as they looked at the full revenue requirement and
11 other issues in the proceeding. I believe that's
12 what you stated.

13 A. I got lost in your hypothetical. Here is
14 what I'm saying. If the Commission -- you asked
15 me -- your very first question was something like
16 would I think it would be fair to the company if the
17 Commission changed a ruling or an order associated
18 with a settlement from sometime in the past. And I
19 think I will stick with my answer that it depends on
20 their reason for doing so. That's -- that's the best
21 I can answer to that question.

22 Q. And so my next hypothetical is if the
23 Commission did do that and they had a good reason to
24 do that, and I guess if they had a good reason, Duke
25 would say it was fair under your statement that you

1 just made, right?

2 A. It would depend on the reasoning.

3 Q. Okay. And say that they went then to the
4 next settlement of Duke Energy Ohio and they used the
5 same rationale, and they reopened that settlement and
6 changed a -- a similar rider, a similar rider that
7 produced revenue for the company. Would that be fair
8 because the Commission was not arbitrary?

9 A. I'll tell you what I think wouldn't be
10 fair, is for the -- for the Commission to reopen or
11 change previous orders on the basis of some policy
12 decision, but if -- if the company miscalculated
13 something or an intervenor did, or something like
14 that, if there was an error, then I don't -- I really
15 don't see, you know, the injustice, if you will, of
16 correcting an error. But I do think that a change in
17 policy is, you know -- you know, could be.

18 Q. And that's because investors in the
19 community and analysts rely on settlements and
20 Commission orders, approval of those settlements
21 to -- to look at it to see if there's consistency and
22 stability and fairness, as you pointed earlier in
23 rendering their analysis, on companies' ratings and
24 investments; is that right?

25 A. I think our stakeholders generally look

1 favorably upon settlements as a way of, you know,
2 getting through regulatory requests and proceedings.

3 Q. And then in the discussion you had with
4 Ms. Kern earlier today, you talked about regulatory
5 framework, and that is on page 7, line 10. And I'm
6 just asking for clarity because I'm not sure I
7 fully --

8 A. Is this my deposition or my testimony?

9 Q. No, no, your testimony.

10 A. Page 7?

11 Q. Yes, line 10.

12 A. Okay.

13 Q. I'm not really sure I understood or heard
14 your response. Your reference to the current
15 regulatory framework in Ohio, in that frame, is in
16 reliance on the -- the one Commission AEP Opinion and
17 Order issued in July, 2012. Was that your testimony?

18 MS. KINGERY: And I would object, just to
19 the extent this witness is not familiar necessarily
20 with the procedural aspects of the PUCO and,
21 therefore, may not understand all the language that
22 Ms. Bojko is asking.

23 EXAMINER PIRIK: If he has any problems,
24 he can ask clarification.

25 A. I think -- I think --

1 Q. Is there anything about my question that
2 you can possibly not understand?

3 A. I generally agree with what -- how you
4 characterized my answer before.

5 Q. Okay. So that was the only decision that
6 you relied on?

7 A. Me personally, yes.

8 Q. Okay. And then in the next sentence
9 on -- or, I'm sorry, it is the next sentence, but
10 line 12, and you say, "further recognition," again,
11 that reliance, that recognition, it's that same AEP
12 capacity Opinion and Order?

13 A. You heard me correctly before, yes.

14 MS. BOJKO: Okay. Thank you. I have no
15 further questions, your Honor.

16 EXAMINER PIRIK: Mr. Hart.

17 MR. HART: Yes.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Hart:

21 Q. Mr. DeMay, do you subscribe to the
22 efficient market theory?

23 A. For the most part. I think markets can
24 act very inefficiently, but it's a theory that's not
25 totally debunked.

1 Q. And basically the theory is the market
2 absorbs information and that's reflected in stock
3 prices and in credit ratings, correct?

4 A. Right. But it's better as a theory than
5 a practice, but you captured it.

6 Q. And the deficiency may be the time delay
7 between when the information is released and when
8 it's absorbed?

9 A. Not just time but, yeah, I think there is
10 just a lot of inefficiencies in that theory.

11 Q. But generally you do agree with it.

12 A. Yes.

13 Q. All right. And in the case of Duke you
14 entered into the ESP stipulation in October of 2011,
15 correct?

16 A. Yes.

17 Q. And that was reported to the market
18 promptly?

19 A. Uh-huh.

20 Q. And the credit rating agencies reacted to
21 it promptly.

22 A. I wouldn't say anybody reacted. They
23 absorbed the information.

24 Q. And reported on it, correct?

25 A. Who? The rating agency?

1 Q. Yes.

2 A. Yes.

3 Q. They described the ESP and how it was
4 going to show a decline in revenues.

5 A. Yes.

6 Q. And part of that stipulation was that
7 Duke would be pricing its capacity at market -- PJM
8 market pricing over the ESP period, correct?

9 A. Yes.

10 Q. And those market prices were known at the
11 time for the three year -- three year, five months
12 period, correct?

13 A. For the most part, yes.

14 Q. And those prices haven't changed; they
15 are still in place, correct?

16 A. Yes.

17 Q. In fact, the capacity price was at its
18 lowest in the first year of the ESP period, correct?

19 A. I don't know the trajectory of the
20 capacity prices.

21 Q. The record will reflect what it is. I'll
22 leave that to another day.

23 Now, this -- in this proceeding Duke is
24 seeking to get additional capacity revenue, correct?

25 A. Additional?

1 Q. Additional to what's provided in the ESP
2 settlement.

3 A. Are you referring to the -- I am getting
4 my acronyms all mixed up but the market-based
5 capacity revenue that we get from PJM?

6 Q. Correct. What I am asking you is this
7 case is all about increasing that amount of revenue,
8 correct?

9 MS. KINGERY: Objection.

10 EXAMINER PIRIK: Objection overruled.

11 A. I would say that this case is about
12 getting compensation as an FRR entity for the
13 noncompetitive --

14 EXAMINER PIRIK: Sometimes -- I think we
15 can go off the record for a minute.

16 (Discussion off the record.)

17 (Record read.)

18 A. -- wholesale capacity service that we're
19 providing.

20 Q. And that's the same amount of competitive
21 wholesale capacity service that was being provided
22 pursuant to the ESP.

23 A. Under a different recovery mechanism.

24 Q. Right. So you're seeking to increase the
25 recovery that Duke receives for its noncompetitive

1 wholesale capacity service.

2 A. My understanding is we're seeking to
3 recover the compensation that's due us under the
4 state-based compensation mechanism that didn't exist
5 when the ESP was entered into.

6 Q. Which would represent a \$729 million
7 increase in recovery for Duke.

8 A. I don't know if that's the delta or the
9 total, but I understand your number.

10 Q. Well, let me ask you about that. When
11 you say the delta, do you mean the delta between
12 RP -- the cost-based price you're seeking and the
13 market-based price?

14 A. That's what I was referring to.

15 Q. Is the ESSC any part of that delta
16 equation?

17 A. No, because that's not compensating us
18 for capacity.

19 Q. And how do you know that?

20 A. It's a stabilization charge and it was
21 awarded to the company for its rapid transition to a
22 competitive retail market.

23 Q. And what exactly is it stabilizing?

24 A. I can't answer that.

25 Q. What service does Duke provide for that

1 ESSC?

2 A. It is compensating us for a transition to
3 a competitive retail market.

4 Q. Which would be changing the capacity
5 pricing from cost to market?

6 A. No. That's not my understanding.

7 Q. So the capacity pricing has nothing to do
8 with the ESSC?

9 A. I told you my view the ES -- of that
10 \$330 million is a stabilization charge for a
11 transition for competitive retail service.

12 Q. Okay. And that charge was also reported
13 to the rating agencies in the market and they
14 reported on that as well.

15 A. Yes.

16 Q. Now, I want to change topics a bit here.
17 You've testified that consistency and fairness in
18 regulatory outcomes is important. I wanted to ask
19 you to consider that from a customer point of view.
20 Would you agree that consistency and outcomes is also
21 important to electric customers?

22 A. I think all stakeholders of Duke Energy
23 Ohio, all investors, customers, yeah, I would think
24 consistency is something everybody --

25 Q. That a customer would believe they had a

1 stable pricing mechanism for the three-year period
2 would not find it consistent and fair to suddenly be
3 faced with a \$729 million increase in what it has to
4 pay for electric service, would it?

5 A. You know, comments and questions like
6 that often come up when we look to do rate increases.
7 Is that -- is it fair to increase rates when
8 customers are on hard times or whatever. I think we
9 have to balance what is just and reasonable and
10 what's fair to investors and customers and I think
11 customers are getting something for this charge.
12 They are not getting nothing for this.

13 Q. Is that the thing you told Mr. Kurtz
14 about earlier?

15 A. Yes.

16 Q. Okay. There was no other thing that
17 you've thought about between now and then, have you?

18 A. That I thought of, no, sir.

19 MS. KINGERY: Objection, argumentative.

20 Q. Now, I want to contrast the case that
21 results in a settlement and a case that results in an
22 order. Do you understand the difference between
23 those two?

24 A. Yes.

25 Q. Okay. An order the Commission rules on

1 the disputed record and selects an outcome, correct?

2 A. I understand the difference between the
3 two.

4 Q. Okay. I am just trying to make the
5 record what your understanding is. And in the case
6 of a settlement all of the parties have collectively
7 come up with a result that the Commission has
8 blessed; is that fair?

9 A. Yes.

10 Q. So when a settlement is changed among the
11 parties, that's different than when a Commission
12 order is changed, isn't it?

13 A. I don't think anyone is suggesting any
14 settlement be changed, least of all me.

15 MR. HART: That's all I have. Thank you.

16 EXAMINER PIRIK: Mr. Darr.

17 MR. DARR: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Darr:

21 Q. A few minutes ago when you were talking
22 with counsel from FES, you indicated that you
23 expected that in response to the financial situation
24 at Duke Energy Ohio the company would begin to
25 undertake measures to try to improve the financial

1 situation. Did I capture that correctly?

2 A. You did but I was saying so not with
3 specific knowledge of such actions but general
4 knowledge of how our company reacts to things.

5 Q. But in any case you would expect the
6 management exercising due diligence to seek to
7 improve the cash position of Duke Energy Ohio,
8 correct?

9 A. Sure.

10 Q. And you are aware, are you not, that in a
11 traditional ratemaking case the Commission may
12 require the applicant in this case, Duke Energy Ohio,
13 to update its financial data as part of that
14 traditional ratemaking case, correct?

15 A. Well, traditional ratemaking case, it's
16 clear what test period you are using and what set of
17 expenses and the load estimates, et cetera, so. I
18 don't think that's -- I think that's pretty well
19 defined in most rate cases.

20 Q. As a matter of fact, in the course of
21 most rate cases, including those recently pursued by
22 Duke Energy Ohio, the Commission has indicated that
23 the company is required to provide updated
24 information, correct?

25 A. Would you repeat the question, please?

1 MR. DARR: Could you read it back,
2 please.

3 (Record read.)

4 A. I don't know if that's correct or not.

5 Q. Well, is it fair to say that in this
6 proceeding, the one in which you are seeking to
7 secure this compensation for providing wholesale
8 noncompetitive generation capacity service using a
9 traditional ratemaking methodology, the Duke Energy
10 Ohio has not reflected any updated O&M or other cost
11 savings that might affect -- might have been affected
12 while this case has been pending?

13 A. I don't know the details of our analysis.

14 Q. It's fair to say you are not aware of any
15 updated information, correct?

16 MS. KINGERY: Objection. He just said he
17 is not aware of it.

18 A. I have no knowledge whatsoever.

19 Q. To clear up a matter that came up this
20 morning, the securities structure or securities
21 ownership for Duke Energy Ohio is that Duke Energy
22 Ohio is a wholly-owned subsidiary of Cinergy,
23 correct?

24 A. Duke Energy Ohio?

25 Q. Yes.

1 A. I believe that's correct.

2 Q. And Cinergy is wholly owned by Duke
3 Energy; is that also correct?

4 A. Duke Energy Corporation.

5 Q. Now, Duke Energy Ohio in 2012 received
6 authorization from the Commission to issue and sell
7 up to \$800 million in principle amount of first
8 mortgage bonds, senior and junior, unsecured
9 indebtedness, or issue other long-term unsecured
10 indebtedness or any combination of that, correct?

11 A. Yes.

12 EXAMINER PIRIK: Mr. Darr, could you give
13 us a case cite for that?

14 MR. DARR: Absolutely, your Honor, case
15 12-905-GE-AIS.

16 EXAMINER PIRIK: Thank you.

17 Q. (By Mr. Darr) And as a condition of the
18 approval of that application, the Commission also
19 required that the applicant recognize that that
20 application was subject to the Commission's decision
21 in the last ESP case, correct?

22 A. You show me the document because I'm not
23 sure what you're referring to.

24 Q. Absolutely.

25 MR. DARR: May I approach?

1 EXAMINER PIRIK: Yes.

2 MR. DARR: I would like the record to
3 reflect I am showing the witness the Finding and
4 Order in Case No. 12-905-GE-AIS.

5 Q. And I am directing your attention to
6 paragraph 12.

7 MS. KINGERY: Mr. Darr, may I see it
8 first?

9 MR. DARR: Sure.

10 Q. Give you an opportunity to look at
11 paragraph 12.

12 MS. KINGERY: Thank you.

13 A. Are you directing me to the highlighted
14 section?

15 Q. Actually the sentence before that is what
16 I asked you about. The order incorporates or
17 references your last ESP case, correct? "Your"
18 meaning Duke Energy Ohio.

19 A. Okay. I'll read above the highlighted
20 section because I went to the highlighted section.

21 MS. KINGERY: For purposes of clarity of
22 the record could we have that entire paragraph just
23 read into the record.

24 EXAMINER PIRIK: I think what we need to
25 do -- I don't mind taking administrative notice. I

1 think we need to mark it since we are spending some
2 time on it and then we can go from there. That's how
3 we have done other ones.

4 MR. DARR: Your call, your Honor.

5 EXAMINER PIRIK: We would like to do
6 that.

7 MR. DARR: Then we ought to mark it I
8 believe IEU Exhibit --

9 EXAMINER PIRIK: 10.

10 MR. DARR: -- 10.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 EXAMINER PIRIK: And we'll take
13 administrative notice of it.

14 MR. DARR: Thank you, your Honor.

15 Q. (By Mr. Darr) Going back to my question,
16 I think I can repeat it accurately, the order
17 recognizes and incorporates a reference to the last
18 Duke Energy Ohio ESP order, correct?

19 A. Yes, it does.

20 Q. And you're aware that that ESP order
21 includes a provision by which Duke Energy Ohio has
22 agreed to divest itself of its generation assets by
23 sometime in 2014, correct?

24 A. That's correct. This financing order
25 incidentally is for a year. It expires on April 30

1 of this year.

2 Q. And is it fair to say that any securities
3 that are issued under this order are taken with the
4 notice that if the applicant's corporate separation
5 of its generation assets occur within the financing
6 period authorized in this order, it's associated tax
7 exempt bond should be structure -- restructured and
8 refunded, remarketed, or reissued to an affiliate or
9 subsidiary as the obligor.

10 A. You read that correctly and that is my
11 understanding.

12 Q. And, in fact, as I think you indicated a
13 little bit earlier, you had and have several large
14 securities issuances that are coming due, correct?

15 A. This is collect.

16 Q. And, in fact, you refinanced a securities
17 issuance in 2012 for about half a billion dollars.

18 A. I didn't refinance it at Duke Energy
19 Ohio. I refinanced it at Duke Energy Corporation in
20 compliance with this order.

21 Q. And you also have one coming due for
22 about \$260 million in 2013, correct?

23 A. Approximately, yes.

24 Q. And will both be covered by this
25 financing order?

1 A. They would. Well, hold on. No. Any
2 financing that I do at -- with Duke Energy Ohio as
3 the obligor is covered by this financing order. The
4 part that you've highlighted here says that if we
5 have moved -- completed a corporate separation where
6 the generation assets have occurred, then we will
7 follow that with a refinancing of tax exempt bonds
8 outside of Duke Energy Ohio. That's what that means.

9 Q. So effectively -- let me see if I have
10 captured the meaning of this correctly. What the
11 notification requires you to do is to have the debt
12 travel with the asset?

13 A. This particular order, which ends on
14 April 30, it will be replaced by a new fresh
15 financing order, gives me the ability as treasurer to
16 put that on Duke Energy Ohio. This part that you are
17 highlighting here says that if the generation assets
18 are transferred out, that certain debt, and it's a
19 tax exempt bond, will travel with it. That's what
20 that means. But if I were to retire them at Duke
21 Ohio and refinance it at our holding company, like I
22 had to do last year, that is not covered by this.

23 Q. I understand. And, in fact, the type of
24 language contained in the order which has been marked
25 IEU Exhibit No. 10, that's pretty much been standard

1 language in Ohio orders for sometime now, correct?

2 A. I don't know if it's standard or not, but
3 it looks fairly standard.

4 Q. And the notion is that if the assets are
5 secured to the debt, that those -- that that debt has
6 to be refinanced or restructured in some way.

7 A. No. Actually that's not what that's
8 saying. There is no debt that is secured by our
9 generation. There is debt at the company that has to
10 move out if those generation assets, come out because
11 if all we do is pull the generation assets out of
12 Duke Ohio, then what we have left behind is a T&D
13 utility that has too much debt on it. And so by
14 agreement with the Commission we have agreed that
15 additional amounts of debt must come out of Ohio if
16 the assets come out.

17 Q. Fair enough. Now, it's my understanding
18 that you believe that DEO is currently operating with
19 a negative cash flow after capital expenditures,
20 correct?

21 A. I did say that. I believe it's more like
22 break even and I was referring -- excuse me. I was
23 referring more to the Commercial Power segment of
24 Duke Ohio when I said that. I may not have said that
25 but that's what I was referring to.

1 Q. So are you saying now that the cash flow
2 situation of Duke Energy Ohio is not negative?

3 A. I'm saying that Duke Energy Ohio is
4 comprised of two segments. There's the T&D segments
5 and that is most certainly not cash flow related and
6 then there is the Commercial Power segment which
7 recently has been roughly cash flow neutral.

8 Q. I would like to turn your attention to
9 page 11, line 18. There you say --

10 A. Is this my testimony?

11 Q. Yes, sir.

12 A. Page 11?

13 Q. Page 11, line 18.

14 A. Okay.

15 Q. There I believe you state -- are you with
16 me?

17 A. I am.

18 Q. "Equity investors expect utilities like
19 DEO to recover their prudently incurred costs and
20 earn a fair and reasonable return for their
21 investors."

22 A. Yes.

23 Q. When you were using the term prudence,
24 are you using that in a regulatory context?

25 A. I am.

1 Q. And so you mean that these costs have
2 been reasonably incurred, correct?

3 A. Yes.

4 Q. And when you use --

5 A. That they were necessary and reasonably
6 incurred.

7 Q. Interestingly you've left out the use and
8 useful portion of that phrase that's usually included
9 in there. Do you intend to include that as well?

10 A. I think of use and useful as applying to
11 capital investment, property plan, and the equipment,
12 power plants, things like that. That would also
13 apply here.

14 Q. And, again, you would use that in the
15 regulatory sense, correct?

16 A. Yes.

17 Q. You use the term "fair and reasonable."
18 Now, as I recently learned in the Dayton Power &
19 Light case from my own witness, there is a lot of
20 different meanings of fair and reasonable. How did
21 you mean in this sentence?

22 A. Well, I think that fair and reasonable --
23 we are talking about a return so this is on investor
24 capital and I think, you know, returns to investors
25 is something that changes over time. It can change

1 with market conditions. It can change for lots of
2 reasons. And the reason, you know, there are expert
3 witnesses involved in establishing a fair rate of
4 return is because it's not an easy thing to
5 calculate. And so that's what I mean by fair and
6 reasonable determined by the facts and by very robust
7 analysis.

8 Q. So in the context that you are using it
9 today is it fair to say that you are using it in the
10 regulatory sense?

11 A. Yes. I would refer to Dr. Vander Weide's
12 determined ROE as being fair and reasonable on the
13 basis of his analysis as an example.

14 MR. DARR: Your Honor, I would like to
15 have marked as IEU Exhibit 11, and I have to provide
16 some explanation for this. Mr. Kurtz earlier in this
17 hearing provided portions of the 10-K. What I would
18 like to do is put the whole 10-K in. There are a
19 couple of reasons for doing this. One, for
20 completeness and the second is that unfortunately
21 Mr. Kurtz and I used two different sources for the
22 10-K. His page numbering is different from my page
23 numbering. So we are left in a bit of a quandary.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 MS. KINGERY: What year's 10-K is this?

1 MR. DARR: 2012.

2 MS. GRADY: Mr. Darr, do you have full
3 and complete copies of the 10-K?

4 MR. DARR: Actually for the parties -- or
5 the counsel what I've done is I've identified the
6 pages that I am intending to use and I was going to
7 circulate those.

8 MS. GRADY: Because I do have five full
9 copies of 2012, if you prefer to use those.

10 MR. DARR: Let's start with the company
11 and go from there.

12 MS. GRADY: Okay. Full 2012?

13 MS. KINGERY: Just one I think full.

14 EXAMINER PIRIK: We need to give the
15 court reporter a copy.

16 MS. GRADY: I intended to use this with
17 Mr. Savoy anyway.

18 MS. KINGERY: Thank you.

19 MS. GRADY: There is no marking, just an
20 orange tab indicating where I am going to go. This
21 is the full.

22 MR. DARR: I gave her one.

23 MS. GRADY: Did you guys want a full?
24 Anybody else want a full?

25 EXAMINER PIRIK: And I understand we have

1 the partial exhibit from OEG. I don't know if anyone
2 is going to be referring to it in the future, if OEG
3 is, but would it be possible if we could just refer
4 to this document from here on out?

5 MR. KURTZ: Yes, your Honor.

6 EXAMINER PIRIK: Okay. So if there is
7 any further cross or anything on any -- any
8 witnesses, unless we are doing it per year let's
9 refer to this document.

10 MS. GRADY: Your Honors, was it marked as
11 IEU?

12 EXAMINER PIRIK: 11.

13 MS. GRADY: Thank you.

14 EXAMINER PIRIK: It's marked as IEU
15 Exhibit 11.

16 MR. DARR: May I continue, your Honor?

17 EXAMINER PIRIK: Yes.

18 MR. DARR: Thank you.

19 Q. (By Mr. Darr) Mr. DeMay, do you have in
20 front of you what's been marked as IEU 11?

21 A. It is not marked. It's a 10-K for Duke
22 Energy Corporation and subsidiaries.

23 Q. And do you recognize this as the 2012
24 10-K for Duke Energy and the subsidiaries including
25 Duke Energy Ohio?

1 A. Yes.

2 Q. And as you discussed with Ms. Kern
3 earlier today, this contains the annual report to the
4 Securities and Exchange Commission, correct?

5 A. Yes.

6 Q. Now, earlier today you indicated that
7 it's important for Duke to secure this charge that
8 you're seeking in this case to maintain the financial
9 strength and flexibility of the company, correct?

10 A. Getting this application approved would
11 support our financial strength and flexibility, I
12 believe is the way I worded it.

13 Q. And in terms of actual financing
14 activities, debt in particular is important to both
15 plant improvements and new construction, correct?

16 A. I don't understand your question.

17 Q. Do you use debt financing for the purpose
18 of doing new construction and for plant improvement?

19 A. We don't only use debt financing, but we
20 do use debt financing.

21 Q. And it would be important to your company
22 to have low financing costs to do construction and
23 maintenance work, correct?

24 A. Well, I think everyone aspires to having
25 a low cost of capital.

1 Q. So the answer to my question is "yes,"
2 correct?

3 A. Yes, but capital -- the cost of capital
4 has to be balanced by the availability of capital.

5 Q. I understand that but the answer to my
6 question is "yes," correct?

7 A. Yes.

8 Q. Now, with regard to Duke Energy Ohio --
9 well, let me back up a second.

10 In your 10-K, I'm now looking at pages 11
11 and 12, there is a discussion of -- the continuation
12 of the discussion of "Generation Projects Currently
13 Under Construction." Do you see that?

14 A. The page number is in the middle of the
15 page so.

16 Q. That's one of the unfortunate
17 repercussions of the fact the EDGAR System has gone
18 to a new approach.

19 A. Can you give me the head of the
20 paragraph?

21 Q. Sure. It's -- if you stroll down, it
22 says page right below the 10 bar, says Part 1 and
23 then go all the way to the bottom of the page it says
24 "Recently Completed Generation Projects"?

25 MS. KINGERY: I'm sorry, I'm not finding

1 that either.

2 Q. Right below that is "Generation Projects
3 Currently Under Construction."

4 MR. DARR: May I approach? Maybe I can
5 expedite this.

6 EXAMINER PIRIK: Yes. Let's go off the
7 record for a minute.

8 (Discussion off the record.)

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

11 MR. DARR: Thank you, your Honor.

12 Q. (By Mr. Darr) After that little hiatus,
13 what else? Okay. Going down to the bottom of page
14 11 of the 10-K that you have in front of you, do you
15 see the section that's entitled "Potential New
16 Construction"?

17 A. Yes.

18 Q. And there are three projects listed
19 there; is that correct? Shearon, Levy, and Lee?

20 A. Shearon, Levy, and William State Lee,
21 right.

22 Q. And all of those projects are either with
23 Progress Energy Carolinas or Progress Energy Florida,
24 correct?

25 A. No. The Lee Nuclear Station is Duke

1 Energy Carolinas.

2 Q. So they're with Progress Energy
3 Carolinas, Progress Energy Florida, and Duke Energy
4 Carolina, correct?

5 A. Correct.

6 Q. And there are, at least in this version
7 of the 10-K, no projects scheduled currently for
8 Ohio-based generation, correct?

9 A. That's correct.

10 Q. Under "Current Construction," go up the
11 page a little bit, we have two projects identified,
12 Edwardsport and Sutton, correct?

13 A. Yes.

14 Q. And Edwardsport is Duke Indiana, correct?

15 A. Yes.

16 Q. And that is going to be dedicated to the
17 Midwest ISO?

18 A. Duke Energy Indiana is a member of MISO.

19 MS. KINGERY: And I would object to any
20 questions along the line of what Duke Energy Indiana
21 may be doing as it's outside the jurisdiction of
22 PUCO.

23 EXAMINER PIRIK: We'll see where this
24 goes.

25 MR. DARR: That's as far as it's going to

1 go, your Honor.

2 Q. And Sutton, that's a North Carolina
3 plant, correct?

4 A. Yes, Progress Energy Carolinas.

5 Q. And if we look at recently completed
6 projects on page 11, we see that there are five
7 listed, Cliffside, Buck, Dan River, Lee, and Smith,
8 correct?

9 A. Yes.

10 Q. And regardless of the company that owns
11 those facilities, all of those are located in North
12 Carolina, correct?

13 A. That is correct.

14 Q. So any capital issues with regard to Duke
15 Energy Ohio are related to maintenance capital at
16 this point, correct?

17 A. Generation lines?

18 Q. Yes.

19 A. I would say maintenance and perhaps
20 environmental expenditures. I don't know the
21 breakdown of CAPEX, but I know it's not being
22 invested in new plants.

23 Q. Now, in terms of notifying investors,
24 whether we are talking about equity investors or debt
25 investors, it's fair to say that Duke Energy Ohio has

1 reported to those investors that it is no longer
2 earning a retail margin on generation as a result of
3 the approved ESP, correct?

4 A. That's correct.

5 Q. And it's also correct -- and we would
6 find that on, for example, page 15 of your 2012 10-K
7 which has been marked as IEU Exhibit 11.

8 A. Are you asking me to go to a certain
9 place in the 10-K?

10 Q. I may be able to take you right there.
11 Specifically page 15, last paragraph.

12 A. Do you want me to read this?

13 Q. No. I am just asking whether or not that
14 statement is true indicated in your 10-K.

15 A. Well, then I will have to read it.

16 Okay, I've read it.

17 Q. And it's fair to say that the -- it now
18 owns retail margins on transmission distribution but
19 not on the underlying energy, correct?

20 A. Yes.

21 Q. And, in fact, whatever margins it's
22 earning is on the wholesale side, correct?

23 A. I suppose but I really don't know for a
24 fact.

25 Q. Well, isn't that -- excuse me. Go ahead.

1 A. I'll let you go.

2 Q. If we turn to page 18 of your 10-K, isn't
3 it, in fact, where you report that you are receiving
4 wholesale margins for energy and capacities at the
5 PJM market rates?

6 MS. KINGERY: Could you point to a spot
7 on page 18.

8 THE WITNESS: It's the first paragraph
9 under "Rates and Regulations."

10 Q. I believe so, yes, thank you. And as we
11 repeatedly found out yesterday, you were also
12 reporting the Commercial Power as ceased regulatory
13 accounting as of November of 2011, correct?

14 A. That is correct but we're not -- that
15 doesn't mean we can't implement it for, say, the
16 impact of this proceeding if we're awarded the
17 capacity charge.

18 Q. But as we sit here today, you are no
19 longer on regulatory accounting for generation assets
20 of Duke Energy Ohio, correct?

21 A. Correct.

22 Q. Now, if we turn to page 24, you -- the
23 10-K identifies many risk factors that affect the
24 Duke Energy parent and its subsidiaries, correct?

25 A. Yes.

1 Q. And, in fact, you warn investors that
2 deregulation or restructuring may result in increased
3 competition and unrecovered costs, correct?

4 A. I would have to see where you are
5 reading. If you could direct me.

6 Q. Well, going down under "Risk Factors" it
7 would be the third highlighted item.

8 A. I see that.

9 Q. And you also warn that, on page 26, that
10 the market is subject -- or that the company's
11 financial situation is subject to market
12 fluctuations, correct?

13 A. I don't think it uses exactly those
14 words, but the gist of your question is true.

15 Q. And on pages 28 and 29 you indicate,
16 "you" being Duke, indicate that participation in an
17 RTO could have a material adverse effect on results
18 of operations.

19 A. I see that.

20 Q. Now, in your testimony today have you
21 identified any issues with regard to the ability of
22 distribution resources or assets to provide a fair
23 and reasonable return?

24 A. Measured by themselves the T&D assets, I
25 believe, earn an adequate rate of return.

1 Q. And, in fact, you just settled or are in
2 the process of settling a distribution rate case at
3 this Commission, correct?

4 MS. KINGERY: Objection. It's irrelevant
5 to this proceeding.

6 EXAMINER PIRIK: Overruled.

7 A. Yes.

8 Q. And, in fact, you have a passthrough
9 provision with regard to your transmission charges
10 which is updated annually, correct?

11 A. I don't know the details of the
12 settlement.

13 Q. Are you aware it's even covered by
14 that -- are you referring to the distribution
15 settlement?

16 A. I thought you were, and I don't know the
17 details of it.

18 Q. Are you aware that there is a separate
19 rider that's updated annually --

20 MS. KINGERY: Objection.

21 Q. -- for transmission --

22 MR. DARR: May I finish my question,
23 please?

24 MS. KINGERY: Sorry.

25 Q. Are you aware there is a separate rider

1 that allows for the passthrough of the transmission
2 related charges approved by the Federal Energy
3 Regulatory Commission or as provided by a regional
4 transition organization?

5 MS. KINGERY: Objection, beyond the
6 scope.

7 EXAMINER PIRIK: Overruled.

8 A. I am not familiar with the details of the
9 rate case or the settlement terms.

10 Q. And you've not cited any reliable
11 concerns or violations in the provision of
12 transportation or distribution that are currently
13 occurring on the Duke Energy Ohio system, have you?

14 A. I have no knowledge of that as treasurer
15 of the company.

16 Q. And you're not testifying that
17 distribution service has become unreliable, are you?

18 A. No, I'm not. It's not in the scope of my
19 job as treasurer of the company.

20 Q. Would you turn to page 110 of the 10-K,
21 please, IEU Exhibit 11.

22 A. Okay. The "Statement of Cash Flows"?

23 Q. Yes. And is it fair to say the cash flow
24 from operating activities is listed as a positive
25 \$444 million?

1 A. Yes, for 2012 for Duke Energy Ohio.

2 Q. And that's important, right? I mean,
3 this is a cash flow statement that's broken down by
4 Duke Energy Ohio, and it's specific to Duke Energy
5 Ohio, correct?

6 A. Yes.

7 Q. And is it also true that there is stated
8 on --

9 A. That's -- I beg your pardon --
10 consolidated Duke Energy Ohio including Duke Energy
11 Kentucky, I believe.

12 Q. It's also true that net income for 2012
13 is listed as \$175 million, correct?

14 A. Yes.

15 Q. And in 2012, Duke paid up to its
16 stockholder \$175 million in 2012, correct?

17 A. Yes.

18 Q. And if we look at 2011, Duke Energy Ohio
19 on a consolidated basis had a net income of 194
20 million, correct?

21 A. Yes.

22 Q. And it paid up a dividend of 485 million
23 to its parent, correct?

24 A. Yes, but those amounts will fluctuate
25 widely. There will be years where there is no

1 distribution.

2 Q. I am correct, though, in 2011 --

3 A. You read that correctly.

4 Q. Is it also fair to say Duke has analyzed
5 the effect of transferring assets on Duke Energy
6 Ohio's balance sheet, correct?

7 A. Could you be more specific?

8 Q. You've looked at whether or not -- what
9 would happen if the generation assets are transferred
10 out to another party.

11 MS. KINGERY: I'm sorry. Could I have
12 the question reread.

13 (Record read.)

14 A. Are you referring to a third party or to
15 an affiliate?

16 Q. Either.

17 A. I know that I personally have
18 participated in an analysis of moving the assets
19 outside of Duke Energy Ohio to an affiliate but not
20 outside the company.

21 Q. Okay. And specifically that was my next
22 question. Your analysis considers the effect of
23 transferring the assets to a competitive affiliate
24 such as DECAM, correct?

25 A. The analysis that I have done in the past

1 does include that kind of analysis, yes.

2 Q. Part of that would result in moving the
3 debt out of Duke Energy Ohio, correct?

4 A. It would remove some debt out of Duke
5 Ohio. We've already moved \$500 million away from
6 Duke Energy Ohio to our parent company. Once we move
7 the generation assets it will be necessary for us to
8 move approximately another \$500 million.

9 Q. And the negative cash flows associated
10 with the generation assets will be moved to an
11 affiliate outside of Duke Ohio, correct?

12 A. Outside of a -- potentially a subsidiary
13 of, not necessarily so, though.

14 Q. And with regard to the T&D, the wires
15 company, is it fair to say that moving the debt would
16 tend to strengthen the metric of the remaining
17 utility, DEO?

18 A. You know, the analysis that I did
19 essentially sized the amount of debt that we could
20 carry at the utility company and preserve the current
21 credit ratings that we have there. We want to
22 preserve the credit quality of the utility so the
23 metrics may improve somewhat because we are taking
24 low returning assets away from the T&D utility. So
25 it will improve somewhat, but we're also managed --

1 we kind of balance that with the amount of debt we've
2 left behind.

3 Q. As to the remaining regulated utility,
4 you would expect an improvement in the metric,
5 correct?

6 MS. KINGERY: Objection, asked and
7 answered.

8 MR. DARR: It hasn't been answered yet,
9 your Honor.

10 EXAMINER PIRIK: Overruled.

11 A. I would say that we are targeting metrics
12 that are in line with the current credit rating and
13 that could represent a slight improvement.

14 MR. DARR: That's all I have.

15 EXAMINER PIRIK: Thank you.

16 Staff.

17 MR. BEELER: Nothing, your Honor.

18 EXAMINER PIRIK: Redirect.

19 MS. KINGERY: Could we have just a couple
20 of minutes?

21 EXAMINER PIRIK: Yes.

22 (Recess taken.)

23 EXAMINER PIRIK: We'll go back on the
24 record.

25 Redirect.

1 MS. KINGERY: No, your Honor.

2 EXAMINER PIRIK: Thank you, Mr. DeMay.

3 THE WITNESS: Thank you.

4 MS. KINGERY: Duke Energy Ohio would move
5 the admission of Duke Energy Ohio Exhibit 5.

6 EXAMINER PIRIK: Are there any
7 objections?

8 Duke Exhibit 5 shall be admitted.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 MS. KINGERY: Thank you, your Honor.

11 MR. KURTZ: Your Honor, we have two
12 exhibits, OEG 9 and 10 that we move for admission.

13 EXAMINER PIRIK: Are there any
14 objections?

15 MS. KINGERY: We would object to OEG 10
16 on the grounds that it's confusing, and its
17 combination of segment reporting and legal entities
18 we think is prejudicial at this point.

19 I would also note it's duplicative of
20 what is already in the record in the slide that
21 Mr. Kurtz was referring to.

22 MR. KURTZ: Your Honor --

23 EXAMINER PIRIK: Well, I am going to
24 admit the document for, you know, the benefit of what
25 it provides, but I think the witness did a good job

1 of explaining exactly the coalition, so.

2 MS. KINGERY: Thank you.

3 EXAMINER PIRIK: 9 and 10 OEG shall be
4 admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER PIRIK: FirstEnergy I think you
7 had one.

8 MS. FLOYD: Yes, your Honor. FirstEnergy
9 Solutions Corp. moves for the admission of Exhibit
10 17.

11 MS. KINGERY: No objections.

12 EXAMINER PIRIK: It shall be admitted
13 into the record.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER PIRIK: Mr. Darr.

16 MR. DARR: Thank you, your Honor. I
17 believe you've already taken administrative notice of
18 IEU Exhibit 10 and we'll circulate additional copies
19 and make one available to the court reporter in a
20 clean version. The version that the witness had had
21 highlight markers in it.

22 EXAMINER PIRIK: We appreciate that.

23 MR. DARR: And we also move for the
24 admission of IEU Exhibit No. 10 -- excuse me, IEU
25 Exhibit 11 which is the 2012 10-K.

1 MS. KINGERY: No objections.

2 EXAMINER PIRIK: No objections to the
3 document? It shall be admitted onto the record.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER PIRIK: OCC.

6 MS. KERN: Your Honor, OCC would move for
7 the admission of OCC Exhibit 5.

8 EXAMINER PIRIK: Are there any
9 objections?

10 MS. KINGERY: No, your Honor.

11 EXAMINER PIRIK: OCC Exhibit 5 shall be
12 admitted.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 EXAMINER PIRIK: Let's go off the record.

15 (Discussion off the record.)

16 EXAMINER PIRIK: Go back on the record.

17 MS. KINGERY: In that case Duke Energy
18 Ohio would call Julie Cannell to the stand.

19 - - -

20 JULIE M. CANNELL

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

23 DIRECT EXAMINATION

24 By Ms. Kingery:

25 Q. Good afternoon, Ms. Cannell.

1 A. Good afternoon.

2 Q. Would you please state your name and
3 business affiliation for the record.

4 A. Julie M. Cannell, I'm the president of my
5 own advisory firm, J.M. Cannell, Inc.

6 Q. Thank you. And do you -- oh, we need to
7 mark it.

8 MS. KINGERY: Duke Energy Ohio would mark
9 as Duke Energy Ohio Exhibit 6 the direct testimony of
10 Julie M. Cannell filed in this proceeding.

11 EXAMINER PIRIK: The document will be so
12 marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. And do you now have in front of you
15 what's just been marked as Duke Energy Ohio Exhibit
16 6?

17 A. I do.

18 Q. And is that your direct testimony?

19 A. Yes.

20 Q. And did you prepare that document, or was
21 it prepared under your direction?

22 A. Yes, it was.

23 Q. And do you have any corrections or
24 modifications to make to your testimony today?

25 A. No, I don't.

1 Q. And do you adopt that testimony as your
2 own?

3 A. Yes.

4 MS. KINGERY: Thank you. The witness is
5 available for cross-examination.

6 MR. DARR: Briefly, your Honor, a motion
7 to strike.

8 EXAMINER PIRIK: Yes. That would be
9 appropriate.

10 MR. DARR: Two issues. One, I move to
11 strike the testimony in whole. It contains an
12 extended discussion of cost service regulation and
13 investor expectations, totally irrelevant to this
14 case. Under Ohio law as we've already repeatedly,
15 that's not an issue that the Commission can decide in
16 an area that's been deregulated which is the case for
17 generation resources. Secondly and more
18 specifically, from 13 to the end is an extended
19 discussion of investor perception of the company that
20 is wholly irrelevant. Whether the Commission is
21 viewed as a good guy or bad guy is irrelevant to the
22 perception -- to the Commission's legal obligation to
23 decide a case on the facts and the law; therefore, it
24 is completely irrelevant and would move to strike all
25 of that testimony.

1 EXAMINER PIRIK: Is there any other
2 motions to strike?

3 Response?

4 MS. KINGERY: Yes, thank you, your Honor.
5 This testimony goes to the perceptions of --
6 perceptions of equity investors of the company and
7 how willing they are to put money into this company
8 as a result of those expectations. It's very
9 important to the ratepayers in Ohio that its company
10 have money to operate with and that it be a stable
11 company with substantial financial resources.

12 We just heard the testimony of Mr. -- we
13 just heard the testimony of Mr. DeMay who talked
14 about the importance of having access to debt. The
15 same can be said of equity investments so it is vital
16 to Duke Energy Ohio and its ratepayers that it be
17 perceived as a stable and predictable and a fair
18 place to invest. So the testimony of Ms. Cannell
19 supports those beliefs and the future financial
20 integrity of the company.

21 EXAMINER PIRIK: Mr. Darr, do you have
22 anything further?

23 MR. DARR: No, your Honor.

24 EXAMINER PIRIK: The objection to this
25 testimony will be noted for the record. The motion

1 to strike will be denied at this time, and the
2 Commission will weigh it accordingly.

3 MS. KINGERY: Thank you, your Honor.

4 EXAMINER PIRIK: I think if you turn the
5 microphone slightly to the side, yeah.

6 MS. KINGERY: We will try it that way.

7 EXAMINER PIRIK: If you are not directly
8 into it, it works a little better.

9 Okay. Cross-examination OCC.

10 MS. KERN: No questions, your Honor.

11 EXAMINER PIRIK: OEG.

12 MR. KURTZ: Thank up, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Kurtz:

16 Q. Good afternoon, Ms. Cannell.

17 A. Good afternoon.

18 Q. Duke Energy Ohio does not issue stock,
19 correct?

20 A. Correct.

21 Q. Okay. Duke Corporation issues stock,
22 correct?

23 A. Yes.

24 Q. Okay. Duke Corporation is the largest
25 electric utility in America?

1 A. With the merger with Progress Energy,
2 yes, that's correct.

3 Q. Okay. What was net income for the -- for
4 the new Duke Corp. in 2012?

5 MS. KINGERY: Objection, irrelevant.

6 A. I don't recall.

7 Q. Do you know what the market
8 capitalization of Duke Corp. is?

9 MS. KINGERY: Objection, irrelevant.

10 EXAMINER PIRIK: Overruled.

11 A. Duke Energy Corporation is about
12 \$113 billion in market cap.

13 Q. So that's the price per share times the
14 numbers of shares outstanding?

15 A. Yes. I mean, it could be calculated
16 either on the year end's shares or average number of
17 shares, yes.

18 Q. What percentage of Duke Energy Ohio is --
19 of Duke Corp., what percent is Duke Energy Ohio in
20 any way you want to do it? Capitalization, revenues,
21 earnings. About how big is the Ohio portion of Duke
22 Corp.?

23 A. Approximately 5 percent.

24 Q. Okay. And that's with the Commercial
25 Power division included?

1 A. I assume so.

2 Q. Okay. Once this Duke Energy Ohio becomes
3 a wires company only on January 1, 2015, any idea how
4 big Duke Energy Ohio will be as a percent?

5 A. I'm sorry, I don't.

6 Q. If an investor was looking at buying Duke
7 Corporation's stock, that investor would not be able
8 to see the earnings, positive or negative, of the
9 Midwest coal assets or the legacy coal assets,
10 correct? Because that number is not separately
11 reported.

12 A. I assume not. I have not looked at those
13 numbers in any detail.

14 Q. Do you understand that the Commercial
15 Power seg -- business segment of Duke Energy Ohio is
16 reported separately which would include the Midwest
17 coal and the Midwest gas but that the -- either of
18 them -- either of them are not reported separately?

19 A. Yes. It's reported as a whole.

20 Q. Do you understand that the company's
21 request here is to defer beginning August 1, 2012, a
22 calculation of a revenue deficiency and through
23 May 31, 2015, that total was projected to be
24 \$729 million?

25 A. Yes.

1 Q. If the Commission were to grant that
2 proposal, what effect would there be on 2012
3 earnings?

4 A. Ms. Good in talking at the analysts
5 meeting at the end of February, and that has been
6 mentioned here several times, did not give any
7 number. What she did say, however, was that
8 depending on the outcome of the case there could be a
9 material impact or significant, I am not sure which
10 word she used precisely, but there could be an impact
11 on the results.

12 Q. I guess what I was getting at actually
13 there would be no change on 2012 earnings even if a
14 deferral back to August 1 was granted? 2012 earnings
15 would not be restated; that income would be taken in
16 2013, correct?

17 A. I don't know.

18 Q. From an investor's point of view
19 certainly a utility -- Duke Corporation, which is
20 more profitable rather than less, is a better
21 investment, that's true, isn't it, all else equal?

22 A. Investors, all else equal, look for
23 financially strong and stable companies in which to
24 invest, assuming that the price reflects those
25 expectations.

1 Q. And \$729 million is a lot of money even
2 to the largest electric utility in America.

3 MS. KINGERY: Objection.

4 EXAMINER PIRIK: Objection overruled.

5 A. As I stated earlier, I could not give you
6 the exact net income number for the corporation so I
7 can't give an -- an exact answer to that question.

8 Q. Let me just ask you this question, what
9 do the consumers of southwestern Ohio receive in
10 exchange -- what value do they get if the Commission
11 grants a \$729 million deferral and subsequent rate
12 increase?

13 A. I believe that Mr. DeMay addressed that
14 earlier that this would be a stronger company
15 financially and more capable of having access to the
16 capital markets when needed.

17 Q. That's it? That's the extent of the
18 benefits to consumers?

19 A. Sir, my expertise here is not in terms of
20 the benefits to consumers.

21 MR. KURTZ: Thank you, your Honors.

22 EXAMINER PIRIK: Thank you.

23 Ms. Petrucci.

24 MS. PETRUCCI: No questions.

25 EXAMINER PIRIK: FirstEnergy, Ms. Floyd.

CROSS-EXAMINATION

By Ms. Floyd:

Q. Good afternoon, Ms. Cannell.

A. Good afternoon.

Q. My name is Lydia Floyd, and I represent FirstEnergy Solutions Corp.

A. Good afternoon.

Q. You worked with Duke Energy Corporation in the past on investor relations, correct?

A. Yes.

Q. You prepared investor relation personnel to prepare presentations to analysts, correct?

A. I assisted investor relations personnel in analysts -- in the preparation of analysts materials.

Q. So you have prepared investor relations personnel to prepare presentations to analysts.

MS. KINGERY: Objection, asked and answered.

EXAMINER PIRIK: Overruled. Go ahead and answer.

A. Actually it's typically not the investor relations personnel who do the presentations. It's typically the executive management team. But investor relations is responsible for preparing the

1 materials that are used in the presentations to
2 analysts.

3 Q. And you've worked with investor relations
4 to help prepare those materials for the presentations
5 to analysts, correct?

6 A. Yes.

7 Q. You prepared materials for the February
8 28, 2013, analysts meeting, correct?

9 A. Correct.

10 Q. You've listened to each of Duke Energy
11 Corporation's quarterly analysts calls for the past
12 three years, correct?

13 A. Correct.

14 Q. Isn't it true that other than Duke's
15 testimony that you are not aware of any statement by
16 Duke Energy to its investors that DEO is in dire
17 financial circumstances, correct?

18 A. That is -- I think that I've hung up a
19 little bit on the word "dire." Duke Energy
20 management has let the investment community know that
21 the returns being earned by DEO in terms of the
22 assets under discussion here are subpar. Those
23 returns are subpar certainly.

24 Q. Isn't it true that you're not aware of
25 any statements other than Duke's testimony in this

1 case by Duke Energy to its investors that Duke Energy
2 is in dire financial circumstances, correct?

3 MS. KINGERY: Objection, asked and
4 answered.

5 EXAMINER PIRIK: Objection overruled.

6 A. Yes.

7 Q. And isn't it true you are not aware of
8 any statement other than the testimony in this case
9 that Duke Energy Ohio is in dire financial
10 circumstances, correct?

11 A. Dire financial circumstances, yes.

12 Q. Other than the testimony in this case you
13 don't -- you do not know whether Duke provided
14 information regarding the returns referenced in your
15 testimony; isn't that correct?

16 A. I don't believe those were made public
17 until this filing.

18 Q. Ms. Cannell, do you have a copy of your
19 deposition?

20 A. No, I don't. Not up here.

21 MS. FLOYD: Your Honor, may I approach?

22 EXAMINER PIRIK: Yes.

23 Q. Ms. Cannell, I would like to direct you
24 to page 58.

25 A. I'm there.

1 Q. Isn't it correct that you testified in
2 your deposition starting on line 25 "Question: Has
3 DEO or Duke Energy provided information regarding the
4 returns that you reference in your testimony to the
5 financial community?

6 "Answer: Well, the testimony is public
7 information, so investors would have access to it.

8 "Question: Do you know whether they've
9 provided that information in any other context?

10 "Answer: I don't know." Did I read that
11 correctly?

12 A. You did.

13 MS. KINGERY: Objection. That did not
14 impeach the witness whatsoever so it's an improper
15 use of the deposition.

16 EXAMINER PIRIK: Overruled.

17 Q. When investors make their decisions to
18 invest, they look at the entirety of the corporation,
19 correct?

20 A. Correct.

21 Q. They look at the parent company, correct?

22 A. They look -- excuse me -- at what the
23 parent company owns and the parent company to the
24 extent that it is significant, yes, of course.

25 Q. They look at the subsidiary operations of

1 the company too, correct?

2 A. Correct.

3 Q. Investors examine all aspects of the
4 company, correct?

5 A. Yes.

6 Q. For Duke Energy investors look at the
7 entire portfolio of Duke Energy's assets when making
8 investment decisions, correct?

9 A. Yes.

10 Q. Equity investors would have some
11 knowledge about the company they are investing in,
12 correct?

13 A. They should.

14 Q. Investors make decisions to buy or sell
15 stock on information that is available and their own
16 analysis regarding that information, correct?

17 A. Correct.

18 Q. You agree that Duke Energy Corporation
19 has shared facts regarding this filing with its
20 investors, correct?

21 A. Yes.

22 Q. You agree that investors may look at
23 information from analysts meetings held by the
24 company, correct?

25 A. Correct.

1 Q. Investors also may look at information
2 regarding quarterly earnings calls, correct?

3 A. Correct.

4 Q. Some investors pay attention to analysts
5 reports, correct?

6 A. Yes.

7 Q. These reports are reviewed and relied on
8 by them, correct?

9 A. They're certainly reviewed. I think it
10 would vary to what extent they are relied upon.

11 Q. So you would agree that they are
12 reviewed, ranked, relied upon by investors, correct?

13 A. They can be, yes.

14 Q. Analysts reports could be a component in
15 an investor formulating a view about a company,
16 correct?

17 A. Correct.

18 Q. You read analysts reports on a frequent
19 basis, correct?

20 A. I do, correct.

21 Q. You would agree UBS is a reputable
22 analyst firm that is part of the investment
23 community, correct?

24 A. Correct.

25 Q. You are familiar with UBS analysts

1 reports?

2 A. I am.

3 Q. Deutsche Bank -- Deutsche Bank is a
4 reputable analyst firm that is part of the investment
5 community, correct?

6 A. Correct.

7 Q. You are familiar with Deutsche Bank
8 analysts reports?

9 A. I am.

10 Q. Citigroup is a reputable analyst firm
11 that is part of the investment community, correct?

12 A. Yes, yes.

13 Q. You've seen Citigroup's analysts reports
14 before?

15 A. Some, yes.

16 Q. Each of these firms employ analysts who
17 specialize in the electric utility industry.

18 A. Correct.

19 Q. Analysts have referenced these
20 proceedings, correct?

21 A. Yes, some have.

22 Q. Analysts don't seem to have a high degree
23 of confidence that Duke's request will be granted,
24 correct?

25 A. The reports that I saw, and there were

1 few of them, there may have been more that I didn't
2 see, but the few that I did see did not have a high
3 degree of confidence. They were written, I must say
4 though, in December and January and that was before
5 the company's comments were filed and -- and the
6 testimony as well.

7 Q. So you would agree that analysts don't
8 seem to have a high degree of confidence that Duke's
9 request will be granted; isn't that correct?

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

12 EXAMINER PIRIK: Overruled.

13 A. The reports that I saw that were written
14 in January and February did not have a high degree of
15 confidence. Excuse me, that were written in December
16 and January. I can't remember if I said January and
17 February or December and January.

18 MS. FLOYD: Your Honor, I would like to
19 mark as FES Exhibit 18 a report by UBS Investment
20 Research on Duke Energy dated March 1, 2013.

21 EXAMINER PIRIK: The document is so
22 marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. FLOYD: May I approach?

25 EXAMINER PIRIK: Yes.

1 Q. (By Ms. Floyd) Ms. Cannell, do you
2 recognize this as UBS analysts report on Duke Energy
3 dated March 1, 2013?

4 A. Yes.

5 Q. Isn't it true UBS reported that "The
6 company has a capacity case pending before the Ohio
7 Commission that if approved, would add about 20 cents
8 of incremental earnings power"; is that correct?

9 A. Could you point me to where that is in
10 the report, please? I'm seeing this for the first
11 time.

12 Q. Sure. If you would please turn to page
13 4.

14 A. Uh-huh.

15 Q. It's the paragraph numbered 3.

16 A. I see that.

17 Q. UBS further reported that "We think the
18 Ohio regulators will be reluctant to approve the
19 petition given the recent decisions in Ohio,"
20 correct?

21 A. Correct.

22 MS. FLOYD: Your Honor, I would like to
23 mark as FES Exhibit 19 a Deutsche Bank Markets
24 Research report dated March 1, 2013.

25 EXAMINER PIRIK: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MS. FLOYD: May I approach?

3 EXAMINER PIRIK: Yes.

4 Q. (By Ms. Floyd) Ms. Cannell, do you
5 recognize this document as a Deutsche Bank analyst
6 report on Duke Energy dated March 1, 2013?

7 A. Yes.

8 Q. Isn't it true on page 3 that Deutsche
9 Bank reported that "At Commercial Power we assume
10 earnings will decline as opposed to Duke's
11 expectations for a flat earnings profile versus 2012
12 as we do not assume the company will secure approval
13 for a charge cost-based capacity rate for its
14 generation in Ohio"; is that correct?

15 A. That's correct. May I make a comment
16 here which is that both of these reports dated
17 March --

18 Q. Ms. Cannell, I was just asking you if I
19 read that correctly --

20 A. You did.

21 Q. -- from Deutsche Bank's report. Thank
22 you.

23 MS. FLOYD: Your Honor, I would like to
24 mark as FES Exhibit 19 -- excuse me, 20 a Citi
25 research report dated March 1, 2013, titled "Duke

1 Energy Corp. Earnings Outlook More Reliant on
2 Non-Core Drivers Than Expected."

3 EXAMINER PIRIK: The document is so
4 marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. (By Ms. Floyd) Ms. Cannell, do you
7 recognize FES Exhibit 20 as a Citi research analyst
8 report dated March 1, 2013?

9 A. Yes.

10 Q. Isn't it true that Citi reported on page
11 1 that "Duke Energy Corp.'s outlook assumes an
12 accretive outcome from Duke Energy Ohio's cost of
13 capacity filing -- a filing on which we carry a more
14 conservative viewpoint"; isn't that correct?

15 A. Correct.

16 Q. Ms. Cannell, some equity investors
17 project future performance of a company when making
18 decisions whether to invest, correct?

19 A. Correct.

20 Q. One component of valuation of stock is
21 the current stock price, correct?

22 A. Correct.

23 Q. Investors consider trends and stock
24 prices in the context of valuation, correct?

25 A. They consider it in a relative sense.

1 Q. So it's correct that investors consider
2 trends in stock prices in the context of valuation?

3 A. Again, I would just restate that the fact
4 that a stock has performed in a certain way up to a
5 certain point really isn't meaningful. What's
6 meaningful is what that stock has done relative to
7 other investment possibilities and also what the
8 projected performance is going to be prospectively.

9 Q. Don't investors consider trends in the
10 context of valuation? Excuse me. I withdraw that.

11 Isn't it correct that investors consider
12 stock price in the context -- isn't it true that
13 investors consider stock price trends in the context
14 of valuation?

15 A. When an investor is looking at a
16 potential investment, I would just state again that
17 if the price has accreted a certain amount, it isn't
18 necessarily an automatic cutoff. If the belief is on
19 the part of an investor that there can be more
20 accretion relative more -- more to other investment
21 possibilities, then that's what they would consider.

22 Q. So the answer to my question is "yes"?

23 A. I just don't -- I think what you're
24 saying is, if I may ask -- actually let me ask for
25 clarification, please, of what you mean by stock

1 price trend. If you could give me an example.

2 Q. Do you have your deposition in front of
3 you?

4 A. I do.

5 Q. Will you please turn to page 30.

6 A. I'm there.

7 Q. Isn't it correct that at your deposition
8 you testified "Question: Do investors" -- okay, I'm
9 sorry. Line 18, isn't it correct -- sorry, line 15.

10 Let me start over. We're on page 30,
11 Ms. Cannell, and we are starting at line 15. Isn't
12 it correct that during your deposition on line 15 you
13 testified "Do investors also consider trends in a
14 company's stock price?

15 "Answer: Investors consider trends in
16 the context of valuation." Did I read that
17 correctly?

18 A. You did. And that was what I was trying
19 to state in my answer.

20 Q. So I read your deposition correctly?

21 A. You did.

22 Q. You agree that at least one of the
23 factors that could be reflected in a stock price of a
24 company would be the equity investors' views of
25 future financial performance, correct?

1 A. Yes, correct.

2 Q. Agree -- you would agree that if
3 investors anticipate a less than favorable outcome in
4 a regulatory proceeding, that the impact of that
5 expectation would be reflected in stock price,
6 correct?

7 A. It could be one of the factors, yes.

8 MS. FLOYD: I have no further questions.
9 Thank you.

10 EXAMINER PIRIK: Ms. Mooney.

11 MS. MOONEY: No questions.

12 EXAMINER PIRIK: Ms. Bojko.

13 MS. BOJKO: No questions, thank you.

14 EXAMINER PIRIK: Mr. Hart.

15 MR. HART: Yes, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Hart:

19 Q. Ms. Cannell, were you here for the last
20 witness's testimony?

21 A. For part of it.

22 Q. Okay. I'll ask you the same question.
23 Do you subscribe to the efficient market theory?

24 A. As someone who was an investor for 20
25 years, sir, I do in part, but I also understand that

1 there are opportunities that present themselves that
2 are not immediately captured in the initial market.

3 Q. Okay. But in general you do agree that
4 information is absorbed by the market and is
5 reflected in the stock price.

6 A. Eventually, yes.

7 Q. Okay. In your testimony you said you
8 used to follow Duke as an analyst at Lord Abbett. I
9 am trying to understand what that means versus what
10 you currently do.

11 A. I would be happy to explain. I was
12 employed by Lord Abbett & Company as a securities
13 analyst and subsequently later in my tenure there as
14 a portfolio manager. But as an analyst, as a
15 securities analyst, my responsibility was to
16 follow -- what's a better word, to understand in
17 depth the fundamentals of the utility industry and
18 the companies that comprised it and to determine what
19 investment possibilities there were within that
20 universe of stocks.

21 So by follow what I mean or meant was
22 that I knew the company pretty well. I would go to
23 their meetings. There weren't so many conference
24 calls back in the days that I was an analyst. They
25 have become very, very frequent now. But I would do

1 what I needed to do to determine whether or not Duke
2 was a good investment at any given time.

3 Q. So you would do a pretty deep dive into
4 the finances to understand what was going on?

5 A. As much as I could.

6 Q. The kind of work that UBS, Deutsche Bank,
7 and Citi did in these reports you were just asked
8 about?

9 A. One can't really tell to what extent
10 analysts go into detail, but I think it's --
11 generally speaking, the analysts who work for these
12 firms, they have staffs. They are not just
13 individually looking at them and so they do have the
14 resources to come to know the companies in decent
15 depth.

16 Q. Consideration of a regulatory filing in a
17 Ohio subsidiary of Duke is a pretty deep dive, isn't
18 it?

19 A. Certainly they would know the
20 fundamentals of the case.

21 Q. Now, what exactly do you do with respect
22 to Duke currently in, say, for the last two, three
23 years?

24 A. I am not currently retained by Duke other
25 than in this case. I'm not at this point in time

1 working with the investor relations.

2 Q. Well, I probably didn't ask that very
3 clearly. You testified that you have attended or
4 listened to analysts calls the last few years. I'm
5 just trying to understand what your role -- why it is
6 you are participating in those calls.

7 A. I worked with primarily in the last few
8 years personnel employed within Duke Corporation, the
9 parent Duke Energy Corporation, in their investor
10 relations operation, if you will. And what I would
11 do as I would be available, if they -- as I think I
12 stated in my deposition, if I had some times I was
13 asked my opinion on what -- how investors might react
14 to something that was being considered or how to
15 characterize something, I would look at the scripts
16 that the -- management typically use scripts to do
17 these calls so they are done efficiently and to
18 ensure that they were -- that they read well, that
19 they covered what they needed to cover, I would look
20 at the slides that would be used as part of the
21 presentation, and then I would listen to the call and
22 give any feedback that was necessary.

23 Q. Would you characterize that as consulting
24 on behalf of Duke as opposed to following and
25 reporting on Duke?

1 A. Yes.

2 Q. Now, you're aware that in the fall of
3 2011, Duke reported that it entered into the ESP
4 settlement here in Ohio.

5 A. Yes.

6 Q. Okay. And you understood that the result
7 of that would be they would then be receiving
8 market-based compensation for the capacity in Ohio.

9 A. Yes.

10 Q. And that would be a significant revenue
11 reduction from the cost of embedded costs
12 compensation.

13 MS. KINGERY: Objection. Goes beyond the
14 scope of this witness's testimony.

15 EXAMINER PIRIK: Overruled.

16 A. I did not know fully the -- the details,
17 the full details of the ESP.

18 Q. Okay. Wasn't the ESP released as a
19 document?

20 A. I don't know. It was not with anything
21 in which I was involved, no.

22 Q. Okay. Now, you understand the general
23 nature of this proceeding is that Duke is requesting
24 additional compensation for its capacity resources,
25 correct?

1 MS. KINGERY: Objection to the
2 characterization.

3 EXAMINER PIRIK: Can you just restate,
4 please?

5 Q. I'll try. You understand that the gist
6 of this case that we're here in today is Duke's
7 request to receive additional compensation for its
8 capacity in Ohio?

9 MS. KINGERY: Objection, same.

10 EXAMINER PIRIK: We'll let the witness
11 answer and clarify as she wishes.

12 A. I understand that Duke in this proceeding
13 is requesting to have a cost-based compensation
14 mechanism.

15 Q. And you understand that that's in the
16 order of \$729 million magnitude?

17 A. Yes.

18 Q. Would you consider that material?

19 A. I really can't put a number onto it other
20 than to say, as I did earlier, that -- that the
21 company has talked about the fact that the outcome of
22 the proceeding could have an impact on the results of
23 Commercial Power.

24 Q. You commented in your testimony on one of
25 the risks that Duke's facing is its negative returns

1 on its generation assets --

2 A. Yes.

3 Q. -- is that correct? Would it be fair to
4 say that the main cause of that negative return is
5 the capacity revenues?

6 A. The statement in my -- and I simply made
7 I think the statement of the negative -- expected
8 negative 3.62 negative, 13.5 percent returns,
9 those -- that came -- those figures came from
10 Mr. Trent's testimony.

11 Q. Okay. I am just trying to understand
12 your understanding of why that negative return is
13 happening.

14 A. My understanding is that the company is
15 being compensated for its capacity now under
16 market-based prices, PJM prices, and that is
17 significantly below the cost of that capacity.

18 Q. Okay. Now, the prices that Duke's
19 receiving for that capacity were known in the fall of
20 2011 when the ESP settlement was announced, weren't
21 they?

22 MS. KINGERY: Objection. This goes
23 beyond the scope of the witness's testimony.

24 EXAMINER PIRIK: Objection overruled.

25 A. As I said earlier, I don't know the

1 particulars of the ESP.

2 Q. Well, let me ask you a different
3 question. As a former investment analyst and one who
4 is familiar with investing, should Duke have
5 anticipated at the time it entered into the
6 stipulation that it would have negative returns in
7 this generation business?

8 A. I have no idea.

9 Q. Now, you've also testified generally that
10 investors react to bad news basically; is that fair?

11 A. That's fair.

12 Q. And they react -- one way they react is
13 they sell their stock and put their money somewhere
14 else?

15 A. They can.

16 Q. Was there any significant shareholder
17 movement as a result of the announcement of the ESP
18 in the fall of 2011?

19 A. I don't recall what the stock was doing
20 at the time, but I believe Mr. DeMay said earlier
21 that when uncertainty is resolved, even if the
22 outcome of whatever is at hand isn't great, at least
23 the uncertainty is resolved and investors discount
24 uncertainty. So to the extent this uncertainty is
25 removed, that's a positive even if all the

1 particulars of what is resolved, say, in a rate
2 settlement, even if those aren't ideal.

3 Q. So I take it your answer there was no
4 significant shareholder exodus as a result of the ESP
5 that you know of.

6 A. Again, sir, I don't really remember what
7 happened at that -- at that time to the stock.

8 Q. You comment institutional investors are
9 now the major stockholders in Duke, correct?

10 A. They own about half of the shares
11 outstanding so it's about 50/50.

12 Q. Do you know of any institutional
13 investors that sold its Duke holdings as a result of
14 the ESP announcement?

15 A. Again, I don't know any particulars from
16 that time in terms of who did what.

17 Q. Now, you were shown a moment ago three
18 analysts reports that discounted the chances of Duke
19 succeeding in this case. Do you remember those?

20 A. I do.

21 Q. I think you testified before you were
22 shown those, that you had seen reports like that back
23 in December and January, correct?

24 A. Correct.

25 Q. Okay. Was there any shareholder exodus

1 as a result of those negative predictions as to this
2 outcome?

3 A. Do you mean the reports that you
4 referenced?

5 Q. Yes, correct.

6 A. Well, two of them downgraded the stock so
7 I'm not sure on that particular day if there was any
8 significant exodus but there was some concern. But,
9 you know, Duke is a major -- it's a large corporation
10 as I was asked about earlier, and Ohio is a small
11 part of it. So at any given time what's happening in
12 one part of the corporation can have dominance over
13 what's happening in another time. At the time that
14 these reports were written right after the analysts
15 meeting, even though Duke Energy Ohio's situation was
16 discussed, so were other factors relating to the
17 corporation as a whole. There have been some good
18 news that had accrued over -- over recent weeks so
19 it's really a bit of a balancing act.

20 Q. So in the big picture of the Duke world
21 this case is not terribly significant to the
22 investment communities?

23 MS. KINGERY: Objection, mischaracterized
24 her testimony.

25 EXAMINER PIRIK: I will allow the witness

1 to answer.

2 A. I wouldn't say that. At this point in
3 time -- and, again, these reports were written
4 March 1 and the company filed its testimony on
5 March 1. So not all of what came out in testimony
6 perhaps was known at that time. Let's put it this
7 way, analysts were, if they chose, able to come to
8 the Ohio -- the PUCO's website and read the testimony
9 in detail. So that's one fact that I think at the
10 time this was written there were some assumptions
11 made, some judgments.

12 Also there is an awareness on the part of
13 investors that the returns are not positive here. So
14 I would not say that it doesn't matter, the outcome
15 of this case doesn't matter. I think it does matter.

16 Q. Okay. Go back to where I was a moment
17 ago, and as a result of these analysts reports
18 commenting on this case, are you aware of any
19 institutional investors selling their Duke stock?

20 A. When institutional investors sell their
21 shares, one is -- it's not known why they are selling
22 them. In fact, in my experience as an institutional
23 investor, if Lord Abbett lightened its position in
24 the utility stock, often the company would ask --
25 call me and ask me why. So the fact that some shares

1 are either being bought or sold one can speculate but
2 one cannot necessarily know for certain.

3 Q. That last answer, what was the time
4 reference of when they would call you?

5 A. When it became apparent that Lord Abbett
6 had sold -- we were major utility investors.

7 Q. When you were employed, you're talking
8 about 15 years ago or more?

9 A. That's right but I don't think it's too
10 different today.

11 MR. HART: Okay. That's all the
12 questions I have.

13 EXAMINER PIRIK: Mr. Darr.

14 MR. DARR: Very briefly, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Darr:

18 Q. Besides the risk of an adverse decision
19 in this case, it's fair to say that Duke also faces
20 risks associated with soft market, possible
21 environmental regulations -- changes in environmental
22 regulations, and changes by the accounting and
23 allocation methods used by the RTO, correct?

24 A. I am not familiar with the RTO in great
25 detail at all.

1 Q. Okay. Well, let's also then look at the
2 fact they face risk, basically market risk, to a soft
3 energy market at this time. That's true, isn't it?

4 A. That is correct.

5 Q. And you are aware of the fact that there
6 are pending environmental rule changes?

7 A. Yes.

8 Q. And the consideration of additional
9 environmental rule changes?

10 A. Yes.

11 Q. And each of these would have an adverse
12 impact on Duke Energy Ohio, correct?

13 A. Presumably they could.

14 Q. At page 7 of your testimony you indicate
15 that one of the concerns that may be raised in this
16 environment is the possibility of nothing being able
17 to fund capital improvements.

18 A. Can you point me to lines, please?

19 Q. About halfway down the page.

20 A. Are you referring to the sentence on
21 lines -- sentences on lines 17 through 19?

22 Q. Yes, ma'am.

23 A. This was a general statement.

24 Q. And that's my point, ma'am. Isn't it a
25 very general statement?

1 A. Uh-huh.

2 Q. Is that a "yes"?

3 A. Excuse me, I beg your pardon. Yes, it is
4 a general statement.

5 Q. And, in fact, were you here during the
6 testimony in which we learned I think from Mr. DeMay
7 that other than maintenance there are no capital
8 expenditures planned by Duke Energy Ohio at this time
9 with regard to generation-related facilities?

10 MS. KINGERY: Objection. He is
11 mischaracterizing the testimony.

12 MR. DARR: I don't think I am, your
13 Honor.

14 EXAMINER PIRIK: Objection overruled.

15 A. I don't know that I was here for that.

16 Q. You would look to the 10-K, would you
17 not, to see the amount of dividends paid by Duke
18 Energy Ohio during the ESP period?

19 A. I presume it would be there. I don't
20 know specifically.

21 Q. And to the extent that Duke Energy Ohio
22 has made dividend payments to its parent, those funds
23 would no longer be available directly to Duke Energy
24 Ohio for capital improvements, correct?

25 A. Unless they were -- correct, unless they

1 were replaced by other funds.

2 Q. Okay. Are you aware of anything that
3 would indicate that a parent would refund back to its
4 subsidiary dividend payments?

5 MS. KINGERY: Objection,
6 mischaracterization.

7 EXAMINER PIRIK: Objection overruled.

8 A. I don't think I'm the witness to answer
9 that.

10 Q. You're not aware of anything, correct?

11 A. No.

12 Q. And I believe in response to a couple of
13 questions -- some questions a few minutes ago you
14 indicated that a typical investor would be investing
15 in the portfolio of Duke companies, correct?

16 A. Correct.

17 Q. And would -- and I also think you
18 indicated that that portfolio would have diverse
19 risks based on the diverse risk associated with the
20 individual components, correct?

21 A. The risks would be I -- this may be
22 simplicity but weighted averages, yes.

23 Q. So it would be the portfolio risk that
24 the investor would be buying into, correct?

25 A. In buying the stock, Duke Energy

1 Corporation, yes.

2 Q. To the extent Ohio deregulated its
3 generation assets -- or deregulated generation retail
4 service in 2001, would you agree that there would
5 be -- there would have been sufficient time for the
6 risk associated with that to be incorporated into the
7 price of Duke Energy Ohio and thereby incorporated
8 into the price of Duke Energy, the parent?

9 MS. KINGERY: I'm sorry. Could I have
10 the question reread.

11 EXAMINER PIRIK: Yes.

12 (Record read.)

13 A. My understanding of what has transpired
14 in Ohio is that there have been -- it has not been a
15 straight line progression, that there have been --
16 different companies have had different provisions for
17 their move to competition so I think that there is --
18 in fact, I note it in my testimony in regard to
19 regulatory research associations' assessment of the
20 environment here, that there has been uncertainty.
21 Even though there has been some clarification, there
22 is still some uncertainty.

23 Q. It's fair to say, though, that the fact
24 that Ohio has a statute on the books that says that
25 retail generation service is no longer subject to

1 cost-of-service regulation, that's pretty much
2 commonly known at this point, isn't it?

3 A. Yes.

4 MR. DARR: Thank you. Nothing further.

5 EXAMINER PIRIK: Staff.

6 MR. BEELER: No questions, your Honor.

7 EXAMINER PIRIK: Thank you.

8 Redirect.

9 MS. KINGERY: Could we have a couple of
10 minutes?

11 EXAMINER PIRIK: Yes. We'll stay here.
12 As soon as you can get back would be appreciated.

13 MS. KINGERY: Okay.

14 (Discussion off the record.)

15 EXAMINER PIRIK: Go back on the record.
16 Do you have any redirect?

17 MS. KINGERY: Yes, thank you, your Honor.
18 We have one question.

19 EXAMINER PIRIK: Okay.

20 - - -

21 REDIRECT EXAMINATION

22 By Ms. Kingery:

23 Q. Ms. Cannell, you remember talking with
24 Ms. Floyd about the analysts reports that were marked
25 as FES 18, 19, and 20?

1 A. Yes.

2 Q. Can you tell us in your experience
3 whether regulatory decisions can impact stock prices?

4 A. Yes, they can.

5 Q. At what point in time might that happen?

6 A. When the decision is made. Anything up
7 until that time is speculative on the part of the
8 analyst.

9 MS. KINGERY: Thank you. That's all we
10 have.

11 EXAMINER PIRIK: That's it? Is there any
12 recross?

13 MR. KUTIK: One minute.

14 MS. FLOYD: No, your Honor.

15 EXAMINER PIRIK: Thank you.

16 Thank you very much.

17 THE WITNESS: Thank you.

18 MS. KINGERY: Thank you.

19 EXAMINER PIRIK: With regard to exhibits
20 Duke.

21 MS. KINGERY: Yes. We would move the
22 admission of Duke Energy Ohio Exhibit 6.

23 EXAMINER PIRIK: Are there any
24 objections?

25 MR. DARR: Note my objection, your Honor.

1 EXAMINER PIRIK: Hearing none it will be
2 admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 MR. DARR: Your Honor, I did renew my
5 objection.

6 EXAMINER PIRIK: Oh, you did? I thought
7 you said no objections. You didn't have the
8 microphone on. I couldn't hear you. I'm just
9 kidding.

10 MR. DARR: My error.

11 EXAMINER PIRIK: We will go back on the
12 record and your objection is noted for the record and
13 it will stand. As far as your motions to strike is
14 what you're referring to, correct?

15 MR. DARR: Yes, ma'am.

16 EXAMINER PIRIK: Okay. It is noted for
17 the record.

18 FirstEnergy.

19 MS. FLOYD: Your Honor, FirstEnergy moves
20 for the admission of FES Exhibit 18, Exhibit 19, and
21 Exhibit 20.

22 EXAMINER PIRIK: Are there any
23 objections?

24 MS. KINGERY: No, your Honor.

25 EXAMINER PIRIK: Those documents will be

1 admit.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 EXAMINER PIRIK: I don't believe there
4 are any other exhibits.

5 That concludes our hearing for today.
6 Tomorrow, who will we begin with tomorrow?

7 MS. KINGERY: Savoy, I believe.

8 EXAMINER PIRIK: Mr. Savoy.

9 MS. KINGERY: Is that right? Gretchen
10 has it. Yes, Mr. Savoy.

11 EXAMINER PIRIK: Okay. All right. We
12 will conclude the hearing for today. Thank you.

13 (Thereupon, at 5:37 p.m., the hearing was
14 adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Wednesday, April 17,
2013, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-72094)

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Summary: Transcript in the matter of Duke Energy Ohio hearing held on 04/17/13 - Volume III
- Public Version electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc.
and Gibson, Karen Sue Mrs.