

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 to 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 9:00 a.m. on Tuesday, April  
23, 2013.

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VOLUME VII

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## OEG EXHIBITS

IDFD ADMTD

1 - Direct Testimony of Lane Kollen  
Public

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1A - Direct Testimony of Lane Kollen  
Confidential

1484 1690

13 - FERC Order Authorizing  
Disposition of Jurisdictional  
Facilities, Docket No. EC12-9

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## OCC EXHIBITS

IDFD ADMTD

22 - Direct Testimony of J. Richard  
Hornby - Public

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22A - Direct Testimony of J. Richard  
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23 - Direct Testimony of Kenneth  
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1 Tuesday Morning Session,  
2 April 23, 2013.

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4 EXAMINER STENMAN: Let's go on the  
5 record. Is there anything we need to talk about  
6 before we get started today?

7 MS. SPILLER: No, your Honor.

8 EXAMINER STENMAN: Yes?

9 MS. KINGERY: We would move that in  
10 Volume III of the transcript from Wednesday of last  
11 week, on page 596, lines 3 and 22, there's the name  
12 of a counterparty to contracts and we would move that  
13 that be granted a protective order.

14 EXAMINER STENMAN: That motion will be  
15 granted.

16 MS. KINGERY: Thank you.

17 EXAMINER STENMAN: We have three  
18 witnesses scheduled for today. Who wants to go  
19 first?

20 MR. KURTZ: Your Honor, OEG Witness  
21 Mr. Lane Kollen I think is first.

22 EXAMINER STENMAN: Mr. Kollen, please  
23 raise your right hand.

24 (Witness sworn.)

25 EXAMINER STENMAN: Thank you.



1 LANE KOLLEN

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

4 DIRECT EXAMINATION

5 By Mr. Kurtz:

6 Q. Will you state your name and business  
7 address for the court, please?

8 A. Yes. My name is Lane Kollen. My  
9 business address is J. Kennedy & Associates,  
10 Incorporated, 570 Colonial Park Drive, Suite 305,  
11 Roswell, Georgia, 30075.

12 Q. Did you prepare and have submitted to the  
13 court reporter a confidential and a public version of  
14 your direct testimony and exhibits?

15 A. I did.

16 THE WITNESS: Could I ask a question, the  
17 microphones, is it on when the red light is on?

18 EXAMINER STENMAN: It's on when the red  
19 light is on.

20 THE WITNESS: It's on when the red light  
21 is on.

22 Okay. I just turned it on.

23 Q. The answer is yes?

24 A. Could you repeat the question?

25 Q. Did you prepare by you or your -- under

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1 your direct supervision the confidential and public  
2 versions of your direct testimony and exhibits?

3 A. Yes.

4 MR. KURTZ: Your Honor, I ask that that  
5 be marked as OEG 1 and 1A.

6 (EXHIBITS MARKED FOR IDENTIFICATION.)

7 Q. Mr. Kollen, do you have any corrections  
8 or additions you'd like to make to your testimony?

9 A. I have a few corrections. On page 12,  
10 the footnote down at the bottom of the page, there's  
11 a reference to "Section IV.B," that reference should  
12 be to "Section IV.A."

13 Page 13, line 1, the reference to  
14 "Mr. Jansen" should be "Ms. Janson."

15 And similarly on page 17, line 4, the  
16 reference to "Mr. Jansen" should be "Ms. Janson" and  
17 the E in her name should be changed to O.

18 Q. With those corrections if I were to ask  
19 you the same questions as those contained therein,  
20 would your answers be the same?

21 A. Yes.

22 MR. KURTZ: Your Honor, I tender the  
23 witness for cross.

24 EXAMINER STENMAN: Thank you.

25 Before we begin crossing this witness I

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1 think it would be a good time to go through the  
2 confidential version of his testimony and determine  
3 what is actually confidential and also for the  
4 company to make a motion for protective order.

5 MS. SPILLER: Yes, your Honor. And I am  
6 certainly happy to begin the discussion with the  
7 confidential portions of Mr. Kollen's testimony, and  
8 I believe that the first confidential information is  
9 contained on page 34, lines 16 through 17, and then  
10 again line 20 through 21.

11 Although I would acknowledge that there  
12 has been a general discussion with respect to  
13 anticipated retirement of Beckjord, that the public  
14 information reflects an anticipated retirement date  
15 in 2015. This information is not necessarily  
16 consistent with that and, in fact, shows more  
17 detailed information regarding the operation of the  
18 Beckjord station prior to 2015, information that  
19 would have been gleaned from certainly Dr. Zhang's  
20 confidential modeling analysis in the commercial  
21 business model.

22 And so this testimony I think really is  
23 indicative of what Mr. Zhang's information has shown  
24 with respect to Beckjord and, given that his  
25 information was previously granted confidential

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1 treatment, would similarly propose that this text be  
2 rendered confidential as well.

3 EXAMINER STENMAN: With respect to lines  
4 16 and 17 can we just pare that redaction down to the  
5 date?

6 MS. SPILLER: That's fine, your Honor.

7 EXAMINER STENMAN: Thank you.

8 MS. SPILLER: Moving forward, similarly  
9 page 35, the redacted text appears on lines 5 through  
10 9 and then again 15 through 17. Similarly, although  
11 there is some information in the public record in  
12 respect of Beckjord, this is more detailed  
13 information that has been deduced from that which has  
14 already been rendered confidential by the Bench,  
15 particularly the activity of specific units within  
16 Beckjord and the activity associated with their  
17 operation.

18 EXAMINER STENMAN: Okay.

19 MS. SPILLER: With respect to page 36,  
20 the information that was proposed as confidential on  
21 lines 21 through 22, the company is not seeking  
22 confidential treatment of that information.

23 EXAMINER STENMAN: Okay.

24 MS. SPILLER: Moving forward, your Honor,  
25 to page 37, that which has been proposed for

1 redaction from OEG concerns the shaded text on lines  
2 3, lines 5 through 8, line 9 through 14, line 15  
3 through 16, and then intermittently text on lines 19  
4 through 23.

5 This information was derived from the  
6 forecast that Mr. Savoy had prepared with respect to  
7 future years, forecasting information that the Bench  
8 has already granted confidential treatment for. As  
9 the forecasted information is not placed in the  
10 public domain and the details of that forecasting  
11 have not been placed in the public record in these  
12 proceedings, we would ask for confidential treatment.

13 I would note, your Honor, that lines 15  
14 through 16, I do believe that that was placed in the  
15 public record in some respect. I would probably ask  
16 that -- I am fine to release in line 15 the O&M  
17 expense, and then the balance of that line I would  
18 not. And then line 16 I think could be released into  
19 the public record as that would be consistent with  
20 testimony that has been rendered to date.

21 EXAMINER STENMAN: Okay.

22 MS. SPILLER: And finally I have, your  
23 Honor. And, your Honor, on page 39, if memory serves  
24 with respect to Mr. Wathen's Exhibit WDW-1, we only  
25 had confidential treatment of two pages in that

1 document, they would not be those that are contained  
2 on page 22 of the attachment.

3 Moving forward, your Honor, to page 40 of  
4 Mr. Kollen's testimony, the shaded text on lines 4  
5 and 5, again, this is information that is predicated  
6 upon forecasted confidential information that is not  
7 released into the public and certainly would not  
8 release into the public in this granular level of  
9 detail so, consistent with the prior rulings from the  
10 Bench, would ask for confidential treatment of this.

11 EXAMINER STENMAN: Okay.

12 MS. SPILLER: And, your Honor, just  
13 briefly, as the Bench is well aware, the arguments  
14 asserted by the company with regard to confidential  
15 treatment, much of this information is very detailed  
16 and specific, concerns the operations of plants,  
17 concerns future financial information of Duke Energy  
18 Ohio in a level of detail that is not otherwise put  
19 into the public domain and, given that it is  
20 forecasted information, has not been put into the  
21 public domain.

22 And, your Honor, I believe that would  
23 also carry forward with respect to the confidential  
24 exhibits that are included in Mr. Kollen's testimony.

25 EXAMINER STENMAN: I think we need to go

1 through those exhibits also.

2 MS. SPILLER: Yes, your Honor.

3 EXAMINER STENMAN: And just to go back  
4 quickly to the text, I will take any objections to  
5 protective treatment before we finally rule on this  
6 document, but when the company does prepare a newly  
7 redacted document, I would ask that you leave as many  
8 words in the open record as you possibly can, even in  
9 some of the sentences that you have asked for  
10 protective treatment.

11 MS. SPILLER: Yes, your Honor.

12 EXAMINER STENMAN: With respect to the  
13 exhibits.

14 MS. SPILLER: Well, your Honor, this is  
15 Mr. Kollen's calculations that, again, would be based  
16 upon information that is confidential and so I think  
17 releasing the information, certainly the numeric  
18 information, is problematic in that with the headings  
19 one could certainly back into the confidential  
20 information that may have been provided by the  
21 company understanding that we will certainly take  
22 care to compare this to Mr. Wathen's WDW-1 exhibit  
23 and the information that was not rendered  
24 confidential with respect to that.

25 So, for example, I note on line 14 that

1 that information is in the public record.

2 EXAMINER STENMAN: Yes. With respect to  
3 the headings that go across the top, I notice there  
4 are some ROEs there, would those remain in the  
5 confidential or in the public record?

6 MS. SPILLER: Your Honor, I think those  
7 are -- those are public. That's Mr. Kollen's  
8 testimony.

9 EXAMINER STENMAN: Okay.

10 MS. SPILLER: Your Honor, Exhibit 3 to  
11 Mr. Kollen's was actually, this was an exhibit that  
12 FirstEnergy Solutions introduced yesterday.

13 EXAMINER STENMAN: Yes.

14 MS. SPILLER: Information that would not  
15 be confidential.

16 EXAMINER STENMAN: Okay.

17 MS. SPILLER: Mr. Kollen's Exhibit 4,  
18 again, this is information that would have come, I  
19 believe, from the FERC Form 1 that references  
20 Attachment B to the company's stipulation, the page  
21 that was not given confidential treatment.

22 Kollen Exhibit No. 5, your Honor, this  
23 certainly is economic -- this is generation volumes  
24 with regard to Duke Energy Ohio assets, would argue  
25 that this is certainly confidential information and



1 indeed reflects forecasted information as well as  
2 information with respect to August through December  
3 that is not put into the public record.

4 EXAMINER STENMAN: Just the numerics,  
5 correct?

6 MS. SPILLER: Yes, your Honor.

7 Mr. Kollen's, and continuing on it looks  
8 like with this particular -- let me go back to  
9 Mr. Kollen's Exhibit No. 5. Obviously, the discovery  
10 response in and of itself, page 1 of that exhibit, is  
11 not confidential. Page 2 we just discussed with  
12 respect to generation volumes. Page 3, which is a  
13 discovery response, that in and of itself we are not  
14 seeking confidential treatment of.

15 The following page, however, is the  
16 actual response to what was identified as OCC  
17 Interrogatory 11-073. This is information that  
18 concerns contracts into which the company entered, so  
19 we certainly would argue that the details, I would  
20 think the trade number is fine, the station is fine,  
21 but the additional detail under the rest of the  
22 columns, contract price January through May, 2005,  
23 tons, all of that, we would request confidential  
24 treatment for.

25 Certainly the Duke Energy Ohio's

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1 contracting or contractual activities we believe is  
2 not public, has not been put into the public record  
3 and would work an unfair advantage to the company if  
4 it were.

5 And with respect to Mr. Kollen's Exhibit  
6 No. 6, the first page of that is a discovery  
7 response. That response in and of itself is not  
8 confidential, however, the balance of this exhibit  
9 reflects the confidential information associated with  
10 Duke Energy Ohio's commercial business model, the  
11 modeling that was utilized by Dr. Zhang with respect  
12 to the calculations that he performed in this case.

13 So this is both the -- this is -- the  
14 inputs that would have been utilized with respect to  
15 that information that is proprietary and unique to  
16 Duke Energy Ohio, if released into the public, would  
17 certainly allow others to ascertain how that actual  
18 production cost modeling is utilized and, therefore,  
19 result in an unfair competitive advantage to Duke  
20 Energy Ohio.

21 EXAMINER STENMAN: Just the numerics?

22 MS. SPILLER: Yes, your Honor, that's  
23 fine, yes.

24 Kollen Exhibit No. 7, I think, your  
25 Honor, going back to his prior exhibit which was the

1 FES exhibit, your Honor, I think this is simply the  
2 prior document that was included in Mr. Kollen's  
3 Exhibit 3 which is also a duplication of the FES  
4 exhibit from yesterday, there is some additional text  
5 at the bottom but I believe that's simply  
6 Mr. Kollen's, his calculations.

7 EXAMINER STENMAN: Okay.

8 MS. SPILLER: Kollen Exhibit No. 8, this,  
9 your Honor, is the discussion that would have been  
10 predicated upon Mr. Savoy's, it was actually per his  
11 deposition. This is information that would have  
12 discussed in respect of Mr. Savoy's deposition a  
13 forecast of years 2013 and beyond.

14 So what is requested in this, again,  
15 would reflect forecasted information so this is  
16 consistent with those portions of Mr. Kollen's  
17 deposition -- I'm sorry, of his direct testimony in  
18 this proceeding that have been identified as  
19 confidential and so for reasons similar to the actual  
20 text of the testimony would ask for confidential  
21 treatment of this information as well.

22 EXAMINER STENMAN: Just the numerics?

23 MS. SPILLER: That's fine, your Honor.

24 And then the final exhibit to  
25 Mr. Kollen's direct testimony is LK No. 9, and, your

1 Honor, we believe that this information would be  
2 confidential, this sort of information not be put  
3 into the public record in this level of detail and  
4 would ask for confidential treatment of the exhibit,  
5 the numeric information.

6 EXAMINER STENMAN: Does the numeric  
7 information include after 2011 valuations in taxable  
8 valuation of production 8 percent factor.

9 MS. SPILLER: I'm sorry, your Honor, can  
10 you restate?

11 EXAMINER STENMAN: There's a line taxable  
12 valuation of production after 8 percent factor, is  
13 that numeric information confidential?

14 MS. SPILLER: Yes, your Honor, we believe  
15 that the percentage only would be.

16 EXAMINER STENMAN: Okay.

17 MS. SPILLER: The numeric, yeah, I think  
18 we're fine with the numeric, and then in the text  
19 that percentage factor, the number. And similarly,  
20 further down, midway down the page it appears again.

21 EXAMINER STENMAN: Yes.

22 Are there any objections to Duke's  
23 request for protective treatment?

24 MR. KURTZ: Yes, your Honor. Your Honor,  
25 this case is a \$729 million rate increase case, and

1     this case dramatically affects the public.

2             What we have here is a combination of  
3     historic test year information, the retroactive  
4     portion and prospective test year information for  
5     ratemaking purposes. This type of information is  
6     routinely deemed to be publicly available in rate  
7     cases using future test years throughout the country.  
8     There's nothing competitively sensitive about that.

9             These Midwest coal assets are dedicated  
10    to the FRR load, there's nobody who can compete with  
11    Duke Energy Ohio with respect to those assets. The  
12    (REDACTED) assets are under contract and there's  
13    nothing -- nobody can compete with those units  
14    either.

15            So this idea that Duke Energy Ohio will  
16    somehow be competitively hurt by letting the public  
17    understand why the utility's asking for a  
18    \$729 million rate increase is completely overblown.  
19    You've repeatedly said that your basic position is to  
20    make things as public as possible because it's the  
21    Public Utilities Commission regulating a public  
22    utility, the public should understand why their rates  
23    are going up or are proposed to go up.

24            So I think that this is overkill, the  
25    information we've redacted. We stand behind the

1 other stuff should be made public. So we object.

2 MS. SPILLER: And, your Honor, if I may  
3 briefly, first would ask that the Bench redact the  
4 reference to (REDACTED), I think that is consistent  
5 with the Bench's rulings with regard to entities with  
6 whom Duke Energy Ohio interacts.

7 And I would further note, as has been  
8 stated repeatedly through the course of this hearing,  
9 the information that has been put forth with respect  
10 to the legacy coal assets is not the sort of  
11 information that is put out into the public record.  
12 As Duke Energy Ohio witnesses have indicated on a  
13 reporting segment it is a Commercial Power reporting  
14 segment that includes legacy assets as well as gas  
15 assets, formerly the Duke Energy North America  
16 assets, as well as other.

17 So what is put out into the public record  
18 is a number much larger than that which has been  
19 identified in this case. And it would, in fact, be I  
20 think competitively dis -- Duke Energy Ohio would be  
21 competitively disadvantaged if, in fact, the  
22 information at this detail, this level of detail is  
23 put out into the public record.

24 I would further note that all last week  
25 when we were talking about this information Mr. Kurtz

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1 did not raise this objection with respect to  
2 information specific to the legacy assets, rates of  
3 return, and the like that have been put forth in this  
4 case on that discrete detail and I think at this  
5 point, you know, I appreciate that the Bench has been  
6 very diligent with respect to having as much in the  
7 public record as possible, but that information is,  
8 in fact, confidential.

9 MR. KURTZ: Your Honor, the whole --

10 EXAMINER STENMAN: Quickly.

11 MR. KURTZ: Yeah, the whole nature of  
12 ratemaking is that on a traditional cost of service  
13 ratemaking basis commissions absolutely have to look  
14 at information that is beyond the basic information  
15 reported in public documents. Commissions have to  
16 get into the details of the revenue requirement  
17 request, and they do it on a public basis. That's  
18 the nature of traditional ratemaking.

19 These units are not in the competitive  
20 world, at least during the term of the FRR plan,  
21 because they're dedicated to Ohio load, so there will  
22 be no competitive harm to Duke Energy Ohio if this  
23 information is made public, no competitive harm  
24 whatsoever.

25 EXAMINER STENMAN: Thank you.

1 Any other objections?

2 MS. BOJKO: Yes, your Honor. As you  
3 recognized a little bit ago, there are words in  
4 between numbers and things of that nature that just  
5 do not need to be redacted, so my objection would be  
6 similar to what you've already stated that you would  
7 like to see the company do but just so it's noted for  
8 the record.

9 And I agree that the company seems to be  
10 redacting even in the transcripts that we have  
11 generic kind of PJM market descriptions, all of those  
12 are public information and knowledge and, in fact, a  
13 lot of it was discussed at the Dayton hearing just a  
14 few weeks ago.

15 So I do think we need to be cautious and  
16 numbers we can redact, but anything else in general  
17 descriptions of the process and how PJM works should  
18 not be redacted. Thank you.

19 EXAMINER STENMAN: Thank you.

20 Anyone else?

21 MS. GRADY: OCC would join with  
22 Mr. Kurtz's objection. I think we're being overly  
23 broad. I think the fact, the point is they're asking  
24 for reregulation here with respect to the legacy  
25 generation units. They're asking for customers to



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1 pay that. So in the normal or in the course of a  
2 traditional ratemaking process, Mr. Kurtz is correct,  
3 projections are used. We look at forecasts, we look  
4 at operating income, we look at rate base, we look at  
5 all of these items. I don't think it's any different  
6 than what has occurred before.

7 And to the extent that we have  
8 information that indicates that the company is  
9 forecasting decreases in O&M, I think that's  
10 certainly relevant and I don't think that that should  
11 be treated as confidential. It should be public.  
12 The public has a right to know.

13 EXAMINER STENMAN: Thank you.

14 We'll take a ten-minute -- or probably  
15 about a seven-minute break. We'll be back at a  
16 quarter till.

17 MS. SPILLER: Thank you, your Honor.

18 (Recess taken.)

19 EXAMINER STENMAN: Let's go back on the  
20 record.

21 Protective treatment will be granted for  
22 the following information. I'm going to endeavor to  
23 do this without revealing any information.

24 Ms. Spiller, can you turn on your  
25 microphone.

1500

1 MS. SPILLER: I'm sorry, your Honor, yes.

2 EXAMINER STENMAN: It somehow eliminates  
3 the feedback.

4 MS. SPILLER: Right.

5 EXAMINER STENMAN: On page 34, just the  
6 dates will be granted confidential information.

7 On page 35, the dates and also the  
8 numbers with respect to Beckjord.

9 MS. BOJKO: I'm sorry, on 35 are you  
10 talking about all the dates or just on line 20, the  
11 month and date, or even the years subsequent?

12 EXAMINER STENMAN: On line 20.

13 MS. BOJKO: 21.

14 EXAMINER STENMAN: 21? Only the dates  
15 that confidential treatment have been requested for  
16 in the filed document by OEG on page 35.

17 MS. BOJKO: So are there some redacted on  
18 line 21? The answer is yes, the years are? Oh, no.

19 EXAMINER STENMAN: I don't have a  
20 requested redaction on line 21 on page 35.

21 MS. BOJKO: No, 34, I'm sorry.

22 EXAMINER STENMAN: 34. 22, the dates,  
23 the numbers, and years. On 35, dates, Beckjord  
24 numbers. 36 is in the open record. On page 37, the  
25 numbers leaving in the dollar signs and also the

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1 millions. The numbers on lines 5, 6, and 7 including  
2 a word that is also redacted on line 15 that we  
3 discussed previously.

4 On line 9, that same word.

5 The rest will remain in the open record.

6 On lines 19 through 23 it will be the  
7 numbers leaving in the dollar signs, the millions,  
8 the percents.

9 I believe page 39 will be in the open  
10 record.

11 On page 40, leaving in the dollar signs  
12 and the millions.

13 Turning to the exhibits, the redactions  
14 will be as proposed by the company with the exception  
15 of, I believe it's Attachment 5. I see a cover page  
16 and a response, a cover page and a response, there's  
17 a USD/ST in the table, that can remain in the open  
18 record, it's just a label under contract price.

19 And with respect to the remainder of the  
20 exhibits it will be discussed with the company,  
21 protective treatment will be granted.

22 MS. SPILLER: Thank you, your Honor.

23 EXAMINER STENMAN: Thank you. I believe  
24 at this point we can commence with the  
25 cross-examination of Mr. Kollen.

1 MS. SPILLER: And, your Honor, if it may  
2 please the Bench, I'd like to first move to strike  
3 portions of Mr. Kollen's direct testimony.

4 EXAMINER STENMAN: Go ahead.

5 MS. SPILLER: I guess for ease of the  
6 argument what I would like to do, I have three  
7 general categories, I will identify all of those that  
8 would fall within the first argument and then the  
9 second and then the third. And then go back and  
10 address the substantive arguments with respect to all  
11 of those. The first category, your Honor, being the  
12 longest.

13 Duke Energy Ohio would move to strike  
14 Mr. Kollen's testimony beginning on page 3. And, I'm  
15 sorry, I might have that wrong.

16 Oh, no. Here we go. I'm sorry, it's  
17 page 3, line 4. So beginning with the word --  
18 beginning with the words "in addition to" carrying  
19 through line 7, "the FRR entity" through the balance  
20 of that sentence.

21 Page 3, line 11, just that line.

22 Page 3, lines 20 through 23.

23 Page 4, lines 1 through 11. So it would  
24 be the sentence that terminates about two-thirds of  
25 the way through on line 11.

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1 MS. GRADY: Ms. Spiller, do you mind  
2 slowing down a bit --

3 MS. SPILLER: Sure.

4 MS. GRADY: -- so we can follow.

5 MS. SPILLER: I'm sorry.

6 MS. GRADY: The last motion to strike I  
7 got was on page 3, lines 20 to 23.

8 MS. SPILLER: After that, Ms. Grady, page  
9 4, lines 1 through 11. And it would be the sentence  
10 that would terminate about two-thirds of the way  
11 through line 11.

12 Page 4, lines 15 through 23.

13 Page 5, lines 1 through 13.

14 Page 5, lines 17 through 23.

15 Page 6, lines 1 and 2.

16 Page 6 on lines 7 and 8 beginning with  
17 line 7 I would ask that the following be stricken  
18 "and confirms that the ESSC provides more than  
19 sufficient compensation."

20 Page 8, lines 1 through 3, so the  
21 sentence that would terminate approximately halfway  
22 through line 3.

23 Page 11, lines 22 through 25.

24 Page 12, this is a long one, page 12,  
25 line 1 all the way through page 18, line 8.

1                   Page 19 --

2                   EXAMINER PIRIK: Can you slow down just a  
3 second. Okay.

4                   MS. SPILLER: Thank you, your Honor.

5                   Page 19 on line 10, the word "additional"  
6 that comes toward the end of that line.

7                   Page 19, lines -- the sentence that  
8 begins on line 13, "Duke's unique" carrying through  
9 the balance of that page, line 16.

10                  On page 20, beginning on line 11, this  
11 would be the second part of the sentence so moving to  
12 strike "and should not be used." That language  
13 carrying through to line 12.

14                  Page 22 on line 11 in the question the  
15 word "additional."

16                  Moving forward to page 25 -- no. Strike  
17 that, your Honor.

18                  Moving forward to page 27, on line 23 and  
19 line 24, and on line 23 asking that the following be  
20 stricken at the end of that sentence "are a component  
21 of the just and reasonable."

22                  Carrying forward to page 28, the  
23 remainder of that sentence that concludes on line 1.

24                  On page 28, line 8, the word at the end  
25 of the sentence "additional."

1           Moving forward to page 36 -- I'm sorry,  
2           your Honor, strike that.

3           And those, your Honor, are the proposed  
4           portions of Mr. Kollen's testimony that I will  
5           address with respect to my first argument. Very  
6           briefly, two other portions of the transcript to  
7           which additional arguments would apply, or separate  
8           arguments would apply.

9           Moving back to page 22 of Mr. Kollen's  
10          direct testimony, the sentence that begins on line 7  
11          and carries through line 9.

12          And then, finally, your Honor, moving  
13          back to page 47, line 10 through page 49, so  
14          including the graphics and the text, carrying forward  
15          to page 49, lines 3 through line 8, the first part of  
16          that sentence on line 8 "in prior years without any  
17          refunds."

18          If I may, your Honor, with respect to the  
19          first category of testimony that we would ask be  
20          stricken from Mr. Kollen's testimony, it is a legal  
21          opinion. Mr. Kollen is offering his opinions with  
22          respect to the treatment of a motion to dismiss, a  
23          decision that is beyond his expertise to make.

24          He is also offering his opinions with  
25          respect to contract interpretation, what a document

1 says, what a document means. Mr. Kollen is not  
2 qualified to render those conclusions and the fact  
3 that he -- and if he were to be permitted to do so I  
4 think would unfairly prejudice Duke Energy Ohio in  
5 that Mr. Kollen's testimony with respect to contract  
6 interpretation or the disposition of a motion to  
7 dismiss, he cannot provide any probative evidence on  
8 which the Commission will render its decisions in  
9 that regard.

10 The second category of testimony that  
11 would have been the testimony appearing on page 22,  
12 lines 7 through 9, the company's recent electric  
13 distribution rate case is irrelevant to these  
14 proceedings. This case is about Duke Energy Ohio's  
15 provision of capacity service as an FRR entity. The  
16 distribution assets, the electric distribution  
17 service provided by Duke Energy Ohio has no bearing  
18 whatsoever on the issues at bar in these proceedings.

19 The final portion of Mr. Kollen's  
20 testimony at issue and subject to this motion to  
21 strike is that which appears on pages 47 through 49.  
22 On these particular pages of his testimony Mr. Kollen  
23 is addressing total company -- total company earnings  
24 for years well before Duke Energy Ohio assumed the  
25 status of an FRR entity, well before it assumed the



1 obligation to self-supply capacity resources in its  
2 footprint.

3 So these issues are, and the testimony  
4 reflected on these pages, irrelevant and will not  
5 provide the Commission with any information  
6 whatsoever on which it will render its decision in  
7 this case and, indeed, in his testimony Mr. Kollen  
8 even admits that he is not offering these particular  
9 calculations for any purpose and that he is not  
10 asking for any sort of refund or adjustment, so I  
11 think it highly prejudicial and confusing to the  
12 record for him to provide information on returns on  
13 equity well outside of the time periods relevant to  
14 this proceeding.

15 EXAMINER STENMAN: Thank you.

16 Mr. Kurtz.

17 MR. KURTZ: Thank you, your Honor.

18 Your Honor, granting Ms. Spiller's  
19 motions to strike, which would eviscerate his  
20 testimony, frankly, would prejudge all of the major  
21 matters in this case. It would prejudge what the AEP  
22 order means and how it should apply here; it would  
23 prejudge the prior Duke ESP stipulation and how it  
24 should apply here; it would prejudge all the  
25 important elements of this case, and that is

1       improper.

2                   It would leave the Commission with an  
3       inadequate record and it would be highly prejudicial  
4       to the consumers of southwestern Ohio who are being  
5       asked to pay \$729 million. That's my fundamental  
6       observation about this motion. It's extreme -- in  
7       the extreme.

8                   On the three basic points that Mr. Kollen  
9       is not -- he's not rendering a legal opinion, he's  
10      not professing to do so. In all of these cases that  
11      involve an analysis of the AEP order, the statutes  
12      that govern, whether this is a competitive wholesale  
13      or noncompetitive, 4905, 4928, there has to be some  
14      discussion of the law to provide a coherent position.

15                  So that is what Mr. Trent did, what --  
16      Mr. Wathen was cross-examined repeatedly on these  
17      type of questions, it's commonplace.

18                  Certainly you two and the Commissioners  
19      are well-qualified to not be boondoggled by anything  
20      Mr. Kollen may say if you consider it to be improper  
21      legal opinion and the Commissioners certainly can  
22      weigh that evidence as well.

23                  On the question of the distribution rate  
24      case, that testimony was presented to demonstrate  
25      that the company would get a double recovery of

1 property taxes if its position is granted.

2 It got X amount of property tax in the  
3 distribution stipulation and it wants the same amount  
4 of money here through this case, and so that is  
5 completely relevant and it's very important and, in  
6 fact, the Duke witnesses, Mr. Savoy and Mr. Wathen,  
7 had differing property tax numbers in their testimony  
8 and Mr. Kollen is pointing out that inconsistency.

9 Finally, on the historical earnings  
10 perspective that Mr. Kollen provides, that -- the  
11 company is asking for retroactive treatment. They're  
12 asking for this rate increase to go back to August 1.  
13 They want the state of Ohio, this Commission, to  
14 reregulate their deregulated generating assets and  
15 they want you to reregulate those assets  
16 retroactively.

17 So the Commission's policy, of course, is  
18 to move towards deregulation, not reregulation, and  
19 certainly not retroactive reregulation. What we felt  
20 was important for the Commission to have in front of  
21 it when judging Duke Energy Ohio's retroactive  
22 reregulation proposal was to look at the earnings  
23 that this company has had over the -- since Senate  
24 Bill 3 was passed, and it also goes to the financial  
25 integrity question that's throughout this case.

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1           They're going to lose money on the  
2 Midwest coal assets. Well, that's only part of Duke  
3 Energy Ohio, it's only part of the power plants it  
4 owns, and they've been making supernormal,  
5 extraordinary returns on those very same assets from  
6 consumers since Senate Bill 3 was enacted.

7           So in judging whether one or two years of  
8 underearnings on one subset of Duke Energy Ohio's  
9 power plants is -- qualifies as some sort of  
10 emergency, the Commission should understand that  
11 those subpar earnings are one part of the company's  
12 power plant holdings, the coal not the gas, is offset  
13 by the supernormal profits they've made in Ohio off  
14 of consumers in the past since Senate Bill 3's been  
15 enacted.

16           EXAMINER STENMAN: The motion to strike  
17 will be denied.

18           MS. SPILLER: Thank you, your Honor.

19           Good morning, Mr. Kollen.

20           EXAMINER STENMAN: Oh, did you want to go  
21 first or did you want the intervenors to go first?

22           MS. SPILLER: I'm sorry, I didn't  
23 anticipate any examination from the interveners.

24           EXAMINER STENMAN: Let me just give them  
25 an opportunity.

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1 MS. SPILLER: Thank you, your Honor.

2 EXAMINER STENMAN: Ms. Grady?

3 MS. GRADY: Good morning, Mr. Kollen. I  
4 have no questions.

5 EXAMINER STENMAN: Ms. Petrucci?

6 MS. PETRUCCI: No questions.

7 EXAMINER STENMAN: Ms. Bojko?

8 MS. BOJKO: No questions.

9 EXAMINER STENMAN: Mr. Hart?

10 MR. HART: No questions.

11 EXAMINER STENMAN: Mr. Darr?

12 MR. DARR: No, ma'am.

13 EXAMINER STENMAN: Ms. Spiller.

14 MS. SPILLER: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Ms. Spiller:

18 Q. Good morning, Mr. Kollen.

19 A. Good morning.

20 Q. You have been here through the  
21 proceedings this morning, correct?

22 A. Yes.

23 Q. Have heard your arguments your counsel  
24 has advanced to treatments with respect to certain  
25 documents, correct?

1           A.    With respect to the confidentiality of  
2 certain documents.

3           Q.    Yes, sir.

4           A.    Yes.

5           Q.    And, Mr. Kollen, you agree with your  
6 attorney that Duke Energy Ohio's assets are not in  
7 the competitive world right now.

8           A.    With respect to which assets?

9           Q.    With respect to its legacy coal assets,  
10 sir.

11          A.    With respect to the legacy coal assets,  
12 that's correct.

13          Q.    And those legacy coal assets are not in  
14 the competitive world right now because they are  
15 dedicated to Duke Energy Ohio's fixed resource  
16 requirement plan, correct?

17          A.    They are part of the company's commitment  
18 to meet its FRR load obligation.

19          Q.    And that commitment, sir, will extend  
20 through May 31, 2015, correct?

21          A.    Yes, that's correct. Along with the  
22 contracts for other                    (REDACTED)  
23 (REDACTED).

24                MS. SPILLER: And, your Honor, I think  
25 again we're getting into some confidential

1 information with respect to counterparties. I would  
2 just ask that the record be noted to reflect that.

3 Q. And, Mr. Kollen, I will endeavor, there  
4 has been confidential treatment given to certain  
5 information in this proceeding, I will certainly  
6 endeavor to stay away from that with respect to the  
7 questions that I ask of you this morning, okay?

8 A. Sure.

9 Q. Thank you, Mr. Kollen.

10 You are here testifying on behalf of the  
11 Ohio Energy Group, correct?

12 A. Yes.

13 Q. And counsel for the Ohio Energy Group,  
14 Mr. Kurtz and Ms. Kyler-Cohn, assisted in the  
15 preparation of your direct testimony in this case,  
16 correct?

17 A. Yes.

18 Q. And you also consulted with witnesses  
19 from FirstEnergy Solutions with respect to your work  
20 in this case, correct?

21 A. I don't think I would characterize it as  
22 consulting with witnesses with other parties -- or  
23 for other parties. However, I did have some  
24 conversations with them with counsel present.

25 Q. And those conversations, sir, with

1 FirstEnergy Solutions were had prior to the time that  
2 any intervenor testimony was filed in this  
3 proceeding, correct?

4 A. Yes, that's correct. But the  
5 conversations took place after the comments, the  
6 joint comments were filed by OEG and OCC and other  
7 comments by other parties were filed.

8 Q. I understand, but your conversations with  
9 FirstEnergy Solutions' witnesses were conducted prior  
10 to the time that you filed your direct testimony in  
11 this case, correct?

12 A. Yes, that's true.

13 Q. And so when you filed your direct  
14 testimony in this case, you had a pretty good  
15 indication of what those other intervenor witnesses  
16 would say, correct?

17 A. I'm not sure what the phrase "pretty good  
18 indication," but we did discuss some of the issues  
19 and, again, this conversation was with counsel  
20 present so I'm not sure how far I can go into the  
21 content of those conversations, but nevertheless we  
22 did discuss some of the issues and I did know what  
23 some of the parties were going to -- the positions  
24 that they would take.

25 Q. So you knew the positions that would be



1 taken by other parties to this case with respect to  
2 their interpretation of Duke Energy Ohio's ESP  
3 stipulation, correct?

4 A. Well, I knew that prior to the date of  
5 these conversations because I knew that from the  
6 position of the parties in the joint motion to  
7 dismiss. I knew that from reading the comments of  
8 the various parties participating on behalf of OEG  
9 and along with OCC on the comments.

10 Q. So, sir, it's fair to say that before you  
11 performed any work in this case you knew the position  
12 of your client, correct?

13 A. No, that's not true.

14 Q. You --

15 A. I assisted in developing those positions  
16 with my client, counsel for my client.

17 Q. But with respect to the legal conclusions  
18 that would have been contained in the motion to  
19 dismiss, you did not participate in that regard,  
20 correct?

21 A. As far as the legal opinions provided in  
22 the motion to dismiss, I would have discussed those  
23 with counsel but would not have provided a legal  
24 opinion or advised them from a legal perspective.

25 Q. Thank you.

1           Mr. Kollen, your primary conclusion in  
2 this case is that Duke Energy Ohio is attempting to  
3 recover additional compensation for the cost it  
4 incurs in providing FRR capacity service, correct?

5           A.    Yes, that's correct.

6           Q.    And your conclusion must be -- your  
7 conclusion is predicated upon your opinion that Duke  
8 Energy Ohio is already recovering through its retail  
9 rates the cost it incurs for providing FRR capacity  
10 service, correct?

11          A.    To meet its FRR load obligation, yes.

12          Q.    And your conclusion, your primary  
13 conclusion, Mr. Kollen, is also predicated upon your  
14 belief that Duke Energy Ohio has existing retail  
15 rates for the specific purpose of establishing its  
16 level of compensation for FRR capacity service,  
17 correct?

18          A.    It's really a combination of wholesale  
19 and retail rates, based upon the terms of the  
20 stipulation in the 11-3549 proceeding, and as I  
21 describe in my testimony that is a comprehensive  
22 scheme of compensation consisting of both wholesale  
23 and retail components but nevertheless it's a, I  
24 believe, fully compensatory cost recovery mechanism.

25          Q.    And we'll get to that in a moment, sir.

1517

1 But you believe that Duke Energy Ohio currently has  
2 existing retail rates that were established for the  
3 specific purpose of its level of compensation with  
4 respect to its FRR capacity obligations, correct?

5 A. Yes. That's one of the components of its  
6 compensation for providing capacity services pursuant  
7 to its FRR load obligation.

8 Q. And you believe that those retail rates,  
9 sir, were established in Duke Energy Ohio's ESP  
10 docket under case 11-3549, correct?

11 A. Yes, that's correct. And that's my  
12 reading of the stipulation and the Commission's order  
13 approving the stipulation.

14 Q. And we'll get to that as well, sir.

15 You were not involved as a witness for  
16 OEG in connection with Duke Energy Ohio's ESP,  
17 correct?

18 A. The 3549 case?

19 Q. Yes, sir.

20 A. That's correct.

21 Q. And, sir, so that I don't have to  
22 continue to restate the case number, can we have the  
23 agreement that for purposes of your examination this  
24 morning when I refer to the ESP case or Duke Energy  
25 Ohio's ESP case, that you understand that to be the

1 ESP filed under case 11-3549?

2 A. I will accept that.

3 Q. Thank you, sir.

4 And, Mr. Kollen, you were not involved as  
5 a witness for any party in Duke Energy Ohio's ESP  
6 proceeding, correct?

7 A. That's true.

8 Q. But you have served as an expert for the  
9 Ohio Energy Group with respect to Ohio regulatory  
10 matters, correct?

11 A. Yes, repeatedly.

12 Q. And you have consulted with and served as  
13 a witness for OEG for an extended period of time,  
14 correct?

15 A. Yes.

16 Q. And you would agree with me, Mr. Kollen,  
17 that OEG is a sophisticated participant in the Ohio  
18 regulatory arena, wouldn't you?

19 A. I would think so, yes.

20 Q. And you would also agree, Mr. Kollen,  
21 that OEG, as the representative of large commercial  
22 and industrial businesses in Ohio, would take care to  
23 ensure that any regulatory settlements that it signs  
24 would clearly and unambiguously reflect the terms to  
25 which it has agreed, correct?

1           A.    I would think so, and I think that the  
2 stipulation, the language in it, was a resolution of  
3 all of the issues raised by the parties in that  
4 proceeding, including the issues of compensation.

5           Q.    Well, Mr. Kollen --

6           A.    So I would agree with that.

7           Q.    Well, we're not talking just about the  
8 ESP stipulation here. As a general proposition you  
9 would agree with me that Ohio Energy Group takes care  
10 to ensure that the stipulations that it enters into  
11 on behalf of large industrial and commercial  
12 enterprises clearly and unambiguously set forth the  
13 terms to which OEG has agreed on their behalf,  
14 correct?

15          A.    I don't know if I can speak for OEG in  
16 that respect, but I would anticipate that to be true.

17          Q.    Well, in your years consulting with OEG  
18 and serving as an expert witness for them have you  
19 ever found OEG to sign a stipulation that they did  
20 not read and review?

21          A.    No, that has not been my experience.

22          Q.    And in your years of experience did you  
23 ever know OEG to sign a stipulation that they  
24 believed confusing or lacking in detail?

25               MS. GRADY: Objection.

1 EXAMINER STENMAN: Grounds?

2 MS. GRADY: Relevance.

3 EXAMINER STENMAN: Overruled.

4 A. I don't really know what you mean by the  
5 term "lacking in detail."

6 Q. You would expect the stipulations that  
7 OEG signs, again, would be comprehensive and clearly  
8 delineate the terms to which OEG has agreed, correct?

9 A. Yes. That's a different question, but  
10 the answer to this question is yes.

11 Q. Okay. And you would find that to be true  
12 with respect to OEG's representation of large  
13 industrial and commercial enterprises within Duke  
14 Energy Ohio's service territory, correct?

15 A. What is the reference to "that" in the  
16 question?

17 Q. That OEG would take care to ensure that  
18 settlement agreements that they sign within  
19 regulatory proceedings initiated by or involving Duke  
20 Energy Ohio clearly and unambiguously set forth the  
21 terms to which OEG has agreed.

22 A. Yes. And we believe the recent one, the  
23 3549, does unambiguously address the issues that are  
24 at issue in this proceeding.

25 Q. And I understand, sir. And trust me, we

1 will get to that document. But as a general  
2 proposition, given your years of experience with OEG  
3 in connection with Duke Energy Ohio matters, you  
4 would agree that OEG takes care to ensure that the  
5 stipulations they sign are clear and unambiguous,  
6 correct?

7 A. Yes, to the best of our belief and  
8 understanding. Of course, we can't control what  
9 other parties might do after the fact.

10 Q. And, sir, we'll get to that as well.

11 In your years of experience before  
12 regulatory commissions across the state including the  
13 FERC you would agree that regulatory commissions  
14 speak through their orders, correct?

15 A. Generally, yes.

16 Q. And you would agree, Mr. Kollen, based  
17 upon your experience, that commission decisions and  
18 orders reflect the findings of those commissions,  
19 correct?

20 A. Generally, yes. They could be with more  
21 or less detail and there may be other factors that  
22 were involved in those decisions, for example, the  
23 entirety of the record I would expect to have been  
24 considered and evaluated in terms of reaching a  
25 decision, and of course you can't identify every

1 piece of information that went into the  
2 decision-making process.

3 But you would expect that the most  
4 important factors were addressed in the commission  
5 orders.

6 Q. Well, sir, would you expect the  
7 commission's final determination to be set forth in  
8 its order, correct?

9 A. That's true, by definition, yes.

10 Q. And you would expect that to be the case  
11 with respect to this Commission, correct?

12 A. Yes, I would, by definition.

13 Q. And in your experience, Mr. Kollen, you  
14 have not known the Ohio Commission to issue orders  
15 that omitted its final determinations, have you?

16 A. That's correct.

17 Q. Sir, you are not an attorney, correct?

18 A. True.

19 Q. You are not competent by training to  
20 express opinions or conclusions of law, correct?

21 A. Not legal opinions, that's correct.

22 Q. And whether an agreement has been  
23 violated is a legal determination, correct?

24 A. I would agree to some extent that is true  
25 because if it were adjudicated in a court, for



1 example, that would be a legal adjudication, but  
2 certainly the terms and provisions of a settlement  
3 agreement can be addressed by a nonattorney and  
4 assessed as to whether or not those terms have been  
5 met or complied with.

6 Q. Sir, let me go back to my question.  
7 Whether an agreement has been violated is a legal  
8 determination, correct?

9 A. Ultimately it may be a legal  
10 determination, but an assessment of whether or not it  
11 has been violated may require expert analysis and  
12 that's what I bring to the table here.

13 Q. And we'll get to that as well, sir.

14 But to the extent you are offering an  
15 opinion as to the disposition of the joint motion to  
16 dismiss, you rendered those opinions with the  
17 consultation and advice of your counsel, correct?

18 A. With respect to my prefiled testimony,  
19 that would be correct.

20 Q. Thank you.

21 Mr. Kollen, you did not provide any legal  
22 analysis or legal conclusions with regard to the  
23 motion to dismiss that OEG and other parties filed in  
24 this case, did you?

25 A. That's correct.

1           Q.   And you did not provide any legal  
2           analysis or legal conclusions with respect to any  
3           other reply briefs or comments that OEG may have  
4           filed in this case, correct?

5           A.   That's correct. I provided assistance  
6           but I did not provide legal opinions.

7           Q.   And you do not know, sir, what facts are  
8           determinative of a motion to dismiss, do you?

9           A.   I don't understand the question.

10          Q.   Well, sir --

11          A.   In other words, are you asking what  
12          factors a judge would consider?

13          Q.   What is the legal criteria applicable to  
14          the disposition of a motion to dismiss; do you know  
15          that, sir?

16          A.   Not sitting here right now.

17          Q.   Mr. Kollen, you have not testified before  
18          the FERC with regard to PJM capacity markets,  
19          correct?

20          A.   I believe that's correct.

21          Q.   You have, however, provided testimony on  
22          behalf of OEG in Ohio with regard to the proposed  
23          standard service offers of various electric  
24          distribution utilities, correct?

25          A.   Yes, that's correct.

1           Q.   And you have also, sir, provided  
2 testimony both in and outside of Ohio with regard to  
3 revenue requirements, correct?

4           A.   Yes.

5           Q.   And, in your opinion, return on equity is  
6 a component of a utility company's revenue  
7 requirement, correct?

8           A.   Yes.  It's used in the -- to determine  
9 the rate of return applied to rate base and that is a  
10 component of the revenue requirement.

11          Q.   And based upon your experience in Ohio  
12 you would agree that the Ohio Commission follows a  
13 general framework for purposes of evaluating utility  
14 companies' revenue requirements, correct?

15          A.   Within the context of a rate case, that's  
16 correct.

17          Q.   And the use of this general framework for  
18 revenue requirement purposes is consistent, as  
19 applied by the Ohio Commission, regardless of the  
20 utility company at issue, correct?

21          A.   Within the context of a base rate  
22 proceeding, for example, it's reasonably consistent.  
23 There may be some differences, but procedurally it's  
24 reasonably consistent.  That's not the case here, but  
25 in the context of a base rate proceeding it's

1 reasonably consistent.

2 Q. And in your more than 40 years of  
3 experience you've not known the Ohio Commission to  
4 approve for a utility company under its jurisdiction  
5 a negative return on equity, have you?

6 A. I'm not aware of that circumstance.

7 Q. Mr. Kollen, you did not draft the  
8 stipulation relative to Duke Energy Ohio's ESP, did  
9 you?

10 A. I did not.

11 Q. And you were not a witness in that  
12 proceeding, were you?

13 A. That's correct.

14 Q. You did not provide any legal analysis or  
15 legal conclusions with regard to the content of the  
16 ESP stipulation, did you?

17 A. That's correct.

18 Q. According to your curriculum vitae, sir,  
19 you have utility experience in the financial rate,  
20 tax, and planning areas, correct?

21 A. Yes, among others.

22 Q. And according to your curriculum vitae,  
23 sir, you specialize in revenue requirements, taxes,  
24 evaluation of rate and financial impacts of  
25 ratemaking, utility mergers and acquisitions, and

1 diversification, correct?

2 A. Yes, among others.

3 Q. Your CV does not note, sir, that you  
4 specialize in contract interpretation, does it?

5 A. It does not. But that's an inherent part  
6 of the ratemaking process; assessing the structure  
7 within the local regulatory jurisdiction for setting  
8 rates, what the standards are, just and reasonable  
9 for example, the application of prior settlements,  
10 prior Commission decisions, that's just an inherent  
11 part of the ratemaking process, and in my experience  
12 experts are given a great deal of leeway in  
13 interpreting those agreements to help inform the  
14 decision-makers.

15 MS. SPILLER: Your Honor.

16 A. Because they're not purely of a legal  
17 analysis.

18 MS. SPILLER: Your Honor, I move to  
19 strike everything after "it does not" as  
20 nonresponsive.

21 EXAMINER STENMAN: Motion denied.

22 Q. Mr. Kollen, your interpretation of the  
23 company's ESP stipulation did not involve expert  
24 review of revenue requirements, did it?

25 A. Within the context of this case I would

1 say yes.

2 Q. No, sir, I'm asking about your  
3 interpretation of the ESP stipulation, not what is at  
4 issue in this case in terms of the company's cost for  
5 providing FRR capacity service.

6 A. Well, I think I can't really draw the  
7 distinction because my review of the stipulation was  
8 in the context of this case and, as I indicated in my  
9 prefiled direct testimony in this case, the ESSC  
10 revenues were more than fully compensatory in my  
11 assessment.

12 So from that perspective I did analyze  
13 the revenue requirement effects resulting from the  
14 ESP proceeding.

15 Q. So it is the effect of a particular rider  
16 that influenced your view of what the stipulation  
17 says?

18 A. No. The applicability of the stipulation  
19 in the context of this case.

20 Q. But, sir, what I'd like to do is talk  
21 about your interpretation of the ESP stipulation for  
22 a moment. You are rendering to this Commission your  
23 views on what that stipulation says, correct?

24 A. Yes, that's correct. And how it applies  
25 in the context of this case.

1           Q.    But let's start first with what it says.  
2   And for purposes of determining what the ESP  
3   stipulation says you did not need to -- you did not  
4   need to apply any expert analysis or expert  
5   evaluation in the area of revenue requirements,  
6   correct?

7           A.    I think that's correct, but let's see  
8   once where you go with your additional questions --

9           Q.    Sure.

10          A.    -- because we may need to circle back to  
11   that.

12          Q.    Absolutely.

13                And, sir, your interpretation of the  
14   company's ESP did not involve any expert analysis or  
15   expert evaluation of taxes, correct?

16          A.    That's correct.

17          Q.    And your interpretation of the ESP  
18   stipulation did not involve any expert analysis or  
19   expert evaluation of rates and financial impacts of  
20   ratemaking, correct?

21          A.    Could you repeat that?

22          Q.    Sure.

23          A.    I think that maybe the format of the  
24   question has changed just a little bit, so let's go  
25   back through that again.

1530

1 Q. It's not intended to, but I'll do it  
2 again.

3 A. Okay.

4 Q. Your interpretation of the ESP  
5 stipulation did not involve any expert analysis or  
6 expert evaluation of rate and financial impacts of  
7 ratemaking, correct?

8 A. Again, I'm having a little bit of trouble  
9 distinguishing between an interpretation of the ESP  
10 stipulation outside of the context of this case, and  
11 so these were factors that I did look at with respect  
12 to this case.

13 Q. Well, sir, you should be able to read the  
14 ESP stipulation and interpret it in isolation and  
15 outside of this case, correct?

16 A. Why would I do that?

17 Q. Can you do that? Can you --

18 A. I could, but I'm here within the context  
19 of this case.

20 Q. Okay. In terms of financial impacts of  
21 ratemaking, what you did, sir, was offer an opinion  
22 with respect to your view of what certain riders were  
23 intended to compensate Duke Energy Ohio for, correct?

24 A. Yes.

25 Q. But in reading the ESP stipulation and



1     ascertaining what that document means you did not  
2     need to utilize any expertise in financial  
3     ratemaking, did you?

4             A.     Well, I don't know if I would  
5     categorically agree with that.  You know, I did  
6     review other parts of the record in 3549 and  
7     including the history of the company's application  
8     and how different aspects of the company's request  
9     were resolved through the stipulation, among which  
10    was the company's request for a cost-based capacity  
11    charge.  And the company ceded that issue in  
12    conjunction with the stipulation as a resolution of  
13    all issues as in the opening paragraph of the  
14    stipulation.

15            And so, in my view, the ESSC is a  
16    substitution for a cost-based capacity rate.  So from  
17    that perspective I did do the analysis and  
18    interpretation that you just asked me about.

19            Q.     So, Mr. Kollen, is it your testimony that  
20    you could not gain the meaning and interpretation of  
21    the ESP stipulation without relying upon other  
22    documents?

23            A.     Well, I think that's true to obtain a  
24    full and comprehensive understanding of the  
25    stipulation you have to go back to what the company

1 was requesting, the positions of all the parties in  
2 that proceeding to determine how those issues were  
3 resolved through the stipulation.

4 Q. So it's your testimony, sir, that the  
5 stipulation did not clearly and unambiguously set  
6 forth the agreements of the parties because you  
7 needed to reach back to other documents?

8 A. That's not my testimony. The stipulation  
9 does, in fact, set forth the agreement of the  
10 parties, but to understand what various parties  
11 conceded or what they were willing to accept within  
12 the context of the settlement or the stipulation  
13 itself, you need to go back and see what the position  
14 of the parties was.

15 Q. And we'll get to that, sir.

16 Mr. Kollen, you did not apply any expert  
17 opinion or analysis with regard to utility mergers,  
18 acquisitions, or divestitures with regard to your  
19 interpretation of the ESP stipulation, did you?

20 MR. DARR: I'm sorry, could I have that  
21 question read back, please?

22 (Record read.)

23 MR. DARR: Thank you.

24 A. Well, the stipulation itself addresses  
25 the divestiture of the generation assets, so I would

1 say that I did, at least in some respects, consider  
2 merger, acquisition, or divestiture issues with  
3 respect to that stipulation, because that's a subject  
4 that is addressed specifically in the stipulation.

5 Q. But there was no technical analysis that  
6 you were required to employ with respect to your  
7 interpretation of the ESP stipulation insofar as it  
8 concerned Duke Energy Ohio's commitment to transfer  
9 assets, correct?

10 A. Well, it's applicable in this proceeding,  
11 I believe, because of the timing of the divestiture  
12 and the company's request in this proceeding to have  
13 capacity charge determinations and deferrals all the  
14 way through May 31 of 2015.

15 Q. But, sir, that was an analysis that you  
16 did specific to the request of the company in this  
17 case, correct?

18 A. Yes. And you cannot, as I said  
19 repeatedly, you cannot separate the applicability of  
20 the settlement or the stipulation in the ESP  
21 proceeding because that is directly at issue in this  
22 proceeding. That's what we're here to discuss,  
23 whether or not the ESP stipulation has an effect on  
24 this proceeding. We believe it does.

25 Q. I understand your position, sir. But if

1 we could focus on the ESP stipulation and your  
2 interpretation that you are offering to this  
3 Commission, I would like to focus on that first,  
4 please.

5 A. I am happy to do that, but, again, the  
6 interpretation of it is within, as to the  
7 applicability, within the context of this proceeding.  
8 So, once again, we can't just separate the two. We  
9 can't just put the stipulation in a bucket on its own  
10 and say, well, what is the interpretation, because  
11 the issue is what is the interpretation with respect  
12 to this proceeding.

13 Q. You did not, sir, on behalf of OEG, offer  
14 any expert testimony with respect to the  
15 interpretation of Duke Energy Ohio's ESP stipulation  
16 relative to the company's most recent electric  
17 distribution rate case, did you?

18 A. I did not testify on behalf of OEG in the  
19 recent distribution rate case.

20 Q. And you're not aware of OEG having filed  
21 any testimony in the electric distribution rate case,  
22 correct?

23 A. I am not aware of any testimony in that  
24 case by OEG.

25 Q. And, Mr. Kollen, although you had no

1 involvement in the ESP proceeding, you didn't draft  
2 the ESP stipulation, you believe that you are capable  
3 and competent in providing an interpretation of that  
4 document, correct?

5 A. Yes, indeed.

6 Q. Okay. And your interpretation of the ESP  
7 stipulation has been informed by counsel for OEG,  
8 correct?

9 A. Yes, among other sources including the  
10 testimony of witnesses in that proceeding and the  
11 Commission's order itself.

12 Q. But your opinion in this case regarding  
13 what the ESP stipulation says was also informed by  
14 the legal arguments of intervenors, correct?

15 A. With respect to the joint motion to  
16 dismiss in this proceeding, yes.

17 Q. Mr. Kollen, given your work for OEG in  
18 respect of the standard service offer filings of  
19 various Ohio distribution utilities you know that  
20 distribution utilities in Ohio are required to offer  
21 a standard service offer of competitive retail  
22 electric service, correct?

23 A. Yes, that's true.

24 Q. And you are familiar, sir, with the  
25 requirements of Ohio Revised Code chapter 4928,

1 correct?

2 A. Generally speaking, yes.

3 Q. And the criteria for standard service  
4 offers of competitive retail electric service are set  
5 forth in Chapter 4928 of the Revised Code, correct?

6 A. Yes.

7 Q. And a standard service offer of  
8 competitive retail electric service can take the form  
9 either of a market rate offer or an electric security  
10 plan, correct?

11 A. True.

12 Q. And you are aware, sir, that Duke Energy  
13 Ohio is currently providing a standard service offer  
14 of competitive retail electric service in the form of  
15 an ESP, correct?

16 A. Yes.

17 Q. And, Mr. Kollen, given your experience in  
18 the Ohio regulatory arena do you know that the  
19 Commission has certain criteria that it will employ  
20 when determining whether a stipulation submitted to  
21 it is just and reasonable, correct?

22 A. Generally speaking, yes.

23 Q. And that criteria is not unique to any  
24 particular utility company that may have initiated  
25 the application that culminated in the stipulation,

1 correct?

2 A. I believe that's correct. Just as well  
3 as it isn't necessarily comprehensive and necessarily  
4 the same criteria that are applied to all  
5 stipulations presented to the Commission.

6 MS. SPILLER: And, your Honor, we would  
7 ask that Mr. Kollen be given what has previously been  
8 marked as IEU Exhibit No. 5, the stipulation and  
9 recommendation in 11-3549, please. And we have  
10 copies if his counsel does not.

11 MR. KURTZ: We've got it.

12 Q. Do you have the copy with you, sir?

13 A. I have a copy of the stipulation and  
14 recommendation. I do not have a copy of the  
15 Commission's order with me.

16 Q. Oh, I'm sure we'll be to take care of  
17 that today.

18 A. I'm sure.

19 Q. Do you have other documents up there with  
20 you, sir --

21 A. I do.

22 Q. -- other than your direct testimony?

23 A. I have a few things. I have the  
24 application of Duke Energy Ohio, a few excerpts of  
25 different public documents that Duke has filed with

1 the Securities & Exchange Commission, a few data  
2 request responses, and I have a copy of the opinion  
3 and order in Case No. 10-2929, and I have a copy of  
4 the joint motion to dismiss by the signatory parties  
5 in this proceeding, a copy of the comments filed by  
6 the OCC and OEG.

7 Q. Okay. Super.

8 You mentioned, sir, that you did not have  
9 the opinion and order in Duke Energy Ohio's ESP  
10 proceeding, correct?

11 A. Not here on the stand with me, that's  
12 correct.

13 MS. SPILLER: Your Honor, if we may  
14 approach to provide the witness with what has been  
15 previously marked as Kroger Exhibit 8.

16 EXAMINER STENMAN: I believe it's been  
17 provided to him.

18 THE WITNESS: Yes, I have a copy of it.

19 MS. SPILLER: Wonderful.

20 Q. And, Mr. Kollen, if you could, please,  
21 could you turn to page 41 of what has previously been  
22 marked as Kroger Exhibit 8, the opinion and order in  
23 case 11-3549.

24 A. Yes, I have it.

25 Q. And set forth on that page, sir, toward



1 the bottom of the page are the three criteria that  
2 the Commission considers for purposes of determining  
3 whether a stipulation is reasonable, correct?

4 A. Well, if I could read it, in considering  
5 the reasonableness of a stipulation the Commission  
6 has used the following criteria. It doesn't say that  
7 it always does, doesn't say that it limits it only to  
8 these criteria, but simply says it has used these  
9 three criteria.

10 Q. And those are the criteria that were  
11 employed by the Commission in respect of its review  
12 of Duke Energy Ohio's ESP stipulation, correct?

13 A. Yes. Among other criteria.

14 Q. Well, let's talk about that other  
15 criteria for a moment. You say the Commission also  
16 reviewed the provisions relating to a transfer of  
17 generating assets, correct?

18 A. Yes, that's correct.

19 Q. While having read and interpreted the  
20 stipulation you know that it made provision for Duke  
21 Energy Ohio to transfer its legacy generating assets  
22 by no later than December 31, 2014, correct?

23 A. The stipulation did have that requirement  
24 and it also had the requirement that Duke Energy Ohio  
25 agreed to use its best commercial efforts to

1 accomplish that prior to December 31, 2014, but no  
2 later than that date.

3 Q. Well, let's talk about that for a minute.  
4 You do not know the status of the activities related  
5 to Duke Energy Ohio's transfer of its legacy assets,  
6 do you?

7 A. Well, we do know that, and I don't know  
8 if this is confidential, but I'll try to describe it  
9 in a nonconfidential manner, but we do know that the  
10 gas generating assets were moved to a subsidiary, a  
11 wholly-owned subsidiary, Duke Energy Ohio. We know  
12 that the legacy coal-fired generating assets, the  
13 ownership has been retained by Duke Energy Ohio.

14 Q. Well, sir, let me go back here, and I  
15 appreciate your attention to confidential matters,  
16 but the stipulation in Duke Energy Ohio's ESP did not  
17 pertain to the transfer of the gas assets, correct?

18 A. Except to the extent that the legacy  
19 generating assets referred to some CTs, for example;  
20 combustion turbines.

21 Q. And what the stipulation provided for was  
22 that Duke Energy Ohio would transfer its legacy  
23 generating assets to a subsidiary or affiliate no  
24 later than December 31, 2014, correct?

25 A. Yes, and use its best commercial efforts

1 to do so prior to that date.

2 Q. And you do not know the status of the  
3 work involved in transferring the legacy generating  
4 assets out of Duke Energy Ohio, do you?

5 A. With respect to the legacy coal-fired  
6 generating assets, they have not been transferred  
7 out. I do know that Duke Energy Ohio has put the  
8 analysis of its strategic options with respect to  
9 those assets on hold.

10 MS. SPILLER: Your Honor.

11 A. I think it's directly responsive. You  
12 asked me would I know and --

13 Q. No, sir, I asked you --

14 A. I'm telling you what the status is and  
15 Duke Energy has disclosed publicly through  
16 presentations that they have put the disposition of  
17 those assets on hold until the resolution of this  
18 case.

19 Q. Sir, let me go back to the requirement in  
20 the stipulation upon which you offer testimony in  
21 this case. The requirement is that Duke Energy Ohio  
22 transfer the assets to an affiliate or subsidiary by  
23 no later than December 31, 2014, correct?

24 A. Yes, that is one requirement. And at the  
25 risk of repeating my prior answer, it also requires

1 Duke Energy to use its best commercial assets to  
2 accomplish that prior to December 31, 2014.

3 Q. And with respect to the transfer from  
4 Duke Energy Ohio of its legacy generating assets to  
5 an affiliate or subsidiary you do not know the status  
6 of the company's work in that regard, correct?

7 A. Well, I did respond to that in a prior  
8 question and I said I do know to the extent that the  
9 company has put all strategic options on hold with  
10 respect to those assets, according to a publicly  
11 available document that we obtained in this  
12 proceeding. And it has put the disposition of those  
13 assets on hold until there's a resolution of this  
14 proceeding. Because -- I mean, it's perhaps  
15 self-evident but it bears mentioning and that is that  
16 the company's request in this case is to reregulate  
17 its legacy generating assets.

18 Q. Well, sir --

19 A. And, I mean, that is at the very heart of  
20 the case here, and so I understand why the company  
21 has put the disposition of those assets on hold.

22 Q. Are you through?

23 A. Yes.

24 Q. Okay. You're saying that the company,  
25 and you're echoing the comments of your counsel, that

1 the company is initiating efforts to reregulate its  
2 generation, correct?

3 A. Yes, that's correct. And that's actually  
4 the testimony of your witness, Mr. Garrett.

5 Q. And Mr. Garrett talked about the  
6 application of regulatory accounting, correct?

7 A. He did, but he described the company's  
8 request in this proceeding as a request to reregulate  
9 those generating assets. And it's only under the  
10 reregulation of the assets, in other words, going  
11 backward, not going forward, and not maintaining the  
12 status quo, the deregulated status of those assets,  
13 but to retroactively reregulate them and then make  
14 them subject to regulatory accounting. Because the  
15 only way that the deferral will work the assets have  
16 to be reregulated going backwards and then subjected  
17 to regulatory accounting. And that's what  
18 Mr. Garrett described.

19 I'm not echoing the comments of  
20 Mr. Kurtz, I'm simply repeating what Mr. Garrett  
21 himself said, and I agree with that, that is a  
22 request -- the company's request to reregulate the  
23 generation assets.

24 Q. And the Commission did that last year for  
25 an FRR entity, correct?

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1           A.    No.  If you're talking about AEP Ohio --

2                   EXAMINER STENMAN:  Hold on a moment.  Can  
3 everyone turn their microphones back on.  Please  
4 continue.

5                   THE WITNESS:  Okay, I thought we had lost  
6 power but the light was on.

7           A.    I think you're referring to AEP Ohio  
8 Power and AEP Ohio Power, its generating assets have  
9 been subject to regulation and the accounting rules  
10 with respect to regulated generation and it's only  
11 going forward after the end of its ESP that those  
12 assets will be unregulated.

13           Q.    So it's your position that AEP Ohio has  
14 consistency -- consistently applied regulatory  
15 accounting treatment to all aspects of its generation  
16 business, correct?

17           A.    I don't believe that's true with respect  
18 to all aspects of its generation business, but the  
19 portions of the business that have continued to  
20 remain subject to ratemaking in one form or another.

21           Q.    And, sir, do you know whether AEP Ohio  
22 has adopted regulatory accounting with respect to  
23 their fuel deferral?

24           A.    Yes, it has.

25           Q.    And that was done in approximately 2009?

1           A.    I don't know what time period it was  
2 done.

3           Q.    Okay. And you know that AEP Ohio has  
4 more recently adopted regulatory accounting treatment  
5 of the deferral associated with its capacity  
6 revenues, correct?

7           A.    Yes, that's correct. That was in  
8 conjunction with the Commission's decisions in the  
9 10-2929 case and also the amount of the deferral is  
10 affected by the Commission's decision in the 11-346  
11 case.

12          Q.    So they went back and reapplied  
13 regulatory accounting to particular aspects of their  
14 generation business, correct?

15          A.    I would not characterize it that way.  
16 The company had a continuing treatment of its  
17 generation assets as regulated and then there are  
18 other aspects of its business that were and remain  
19 subject to regulatory accounting.

20          Q.    Mr. Kollen, you don't know what evidence  
21 the Ohio Commission relied upon in approving Duke  
22 Energy Ohio's ESP stipulation, do you?

23          A.    Yes. Presumably it relied upon the  
24 record in the proceeding and then gave substantial  
25 weight to the stipulation among the parties.

1           Q.    Sir, do you have your deposition in front  
2 of you?

3           A.    I do not.

4           MS. SPILLER: Your Honor, I'll move on.  
5 I need a document that's not readily available.

6           Q.    Mr. Kollen, it's your testimony that the  
7 entirety of the Commission's rationale for its  
8 approval of the ESP stipulation may not even be set  
9 forth in its order of November 22nd, 2011, correct?

10          A.    That's correct, because there obviously  
11 is a substantial record that led to, ultimately, the  
12 stipulation, and that record consists of the  
13 company's application, it consists of testimony in  
14 the proceeding, including the company's request for a  
15 cost-based capacity charge, and it consists of the  
16 positions and testimony of all of the other parties  
17 in the case.

18          Q.    And, sir, you don't know what evidentiary  
19 record was before the Commission when it reviewed and  
20 modified the company's stipulation for purposes of  
21 the order issued November 22nd, 2011, correct?

22          A.    Your question is -- maybe I didn't  
23 understand it, but I thought that the entire  
24 evidentiary record would be available to the  
25 Commission in its consideration of the stipulation.



1           Q.    But you don't know what was admitted into  
2 the record, do you?

3           A.    I have not gone back and systematically  
4 reviewed that, but I do know that the filings that  
5 were made with respect to the company's application,  
6 the testimony of the witnesses, I did not go through  
7 the hearing transcript, I will readily acknowledge  
8 that, but assuming that the majority of that  
9 information is in the record which generally it is  
10 with certain limited exceptions, I think that the  
11 Commission had a very substantial evidentiary record  
12 with diametrically opposed positions from various  
13 parties.

14          Q.    Sir, did any party -- did any intervenor  
15 file direct testimony in that case? "That case"  
16 being Duke Energy Ohio's ESP.

17          A.    I don't recall sitting here right now.

18          Q.    So, sir, is it fair to say that you just  
19 don't know what the evidentiary record consisted of  
20 relative to Duke Energy Ohio's ESP proceeding?

21          A.    Well, it consisted of whatever it is, and  
22 at a minimum it includes the company's application  
23 and its request, and the parties then considered the  
24 company's request and their positions and reached the  
25 stipulation.

1           Q.    Sir, I'm not interested in what the  
2 parties considered. I'd like to focus on the  
3 Commission for a moment, if we may. Do you not know  
4 the extent of the evidentiary record that was relied  
5 upon by the Commission in rendering its decision on  
6 November 22nd, 2011, in Duke Energy Ohio's ESP  
7 proceeding, correct?

8           A.    I don't know the full extent of the  
9 record but I do know that at a minimum it included  
10 the company's application and the testimony of its  
11 witnesses in which it requested a cost-based capacity  
12 charge rate, and it ceded that issue when it entered  
13 into the stipulation.

14           MS. SPILLER: Your Honor, move to strike  
15 after "I don't know the full extent of the record" as  
16 nonresponsive.

17           EXAMINER STENMAN: Motion denied.

18           Q.    So, Mr. Kollen, although you don't know  
19 what evidence the Commission relied upon and you  
20 don't know all of the Commission's rationale for  
21 approving the company's ESP stipulation, it's your  
22 opinion that the Commission, in fact, intended to  
23 create a state compensation mechanism for Duke  
24 Energy Ohio relative to its FRR capacity service  
25 obligations, correct?

1           A.   Well, I think we have to back up and kind  
2 of systematically go through the premises in your  
3 question. The extent of the record is whatever it  
4 was --

5           Q.   Let's stop there.

6           A.   No, whether I know what it is or not, as  
7 far as other parties filing testimony, I did review  
8 much of the testimony and I did review the  
9 application of the company in that proceeding,  
10 presumably the Commission considered at least that.  
11 And given that the stipulation was a resolution of  
12 all issues, it says that right in the first  
13 paragraph, then my conclusion from that was that it  
14 was a resolution of the company's request and the  
15 company agreed to forego that request in exchange for  
16 the results under the stipulation. That's my  
17 understanding.

18          Q.   Mr. Kollen, you're presuming or  
19 speculating with respect to the extent of the  
20 evidentiary record, correct?

21          A.   No, not at all.

22          Q.   You don't --

23          A.   I told you what I did know. I told you I  
24 knew there was an application. I know that there was  
25 testimony filed.

1           Q.    But, sir, my question to you is the  
2           extent of the evidentiary record upon which the  
3           Commission relied for purposes of rendering its  
4           decision.  You have indicated in response to that,  
5           sir, that you are presuming that certain items were  
6           reviewed, correct?

7           A.    They were -- I don't think I used that  
8           term.  I said they were available for review and the  
9           Commission had them available for review and  
10          presumably that informed them as to the  
11          reasonableness of the stipulation.

12          Q.    But you're presuming what the Commission  
13          reviewed, correct?

14          A.    Well, I mean we can go back through the  
15          order and we can say, you know, the order says.  You  
16          know, it's got appearances.  It's got, you know, a  
17          brief recitation of what the proceeding was all  
18          about.  Somebody wrote this, and somebody, meaning  
19          the Commission, reviewed that.

20                Now, I haven't gone and polled each one  
21          of the Commissioners to see if they've read this but  
22          I presume that they did because they signed it.

23          Q.    So you're presuming, sir, correct?

24          A.    Well, I think it's a reasonable  
25          presumption that the Commissioners who signed this

1 order read the order and understood what they were  
2 writing -- or signing, I should say.

3 Q. And, again, sir, you don't know all of  
4 the Commission's rationale for approving the ESP  
5 because, in your opinion, the ESP order may not set  
6 forth the Commission's complete or comprehensive  
7 rationale, correct?

8 A. In my experience Commission orders don't  
9 have every piece of evidence reiterated in the four  
10 corners of the actual Commission order. It has the  
11 important points that they believe support the  
12 decision that it has made.

13 Q. And so although you don't know the entire  
14 rationale upon which the Commission relied and you  
15 are giving some presumption as to what the Commission  
16 may have reviewed, it is your opinion that the Ohio  
17 Commission, in fact, intended to establish a state  
18 compensation mechanism for Duke Energy Ohio as an FRR  
19 entity, correct?

20 A. That is exactly right.

21 Q. And you believe that the Ohio Commission,  
22 in fact, intended to create a state compensation  
23 mechanism for Duke Energy Ohio in connection with its  
24 ESP, correct?

25 A. Yes. And that the company accepted that

1 as its state compensation mechanism as well knowing  
2 that -- what its PJM FRR load obligations were,  
3 knowing what the requirements and terms of the  
4 reliability assurance agreement was, and knowing what  
5 its obligations were under both -- both agreements.

6 Q. And although all of the parties and the  
7 Commission, in fact, intended this to occur, the  
8 words "state compensation mechanism" do not appear  
9 anywhere in the ESP stipulation, do they?

10 A. I believe that's correct, but I don't  
11 believe it's necessary for the words to appear.

12 Q. Okay. Well, Mr. Kollen, you would agree  
13 with me that on November 22nd, 2001, [verbatim] the  
14 Commission knew the term "state compensation  
15 mechanism" because it had expressly created a state  
16 compensation mechanism on December 8, 2010, correct?

17 A. I'm not sure about the dates. What is  
18 the context of the question?

19 Q. I'm simply asking you, sir, whether you  
20 would agree that the Ohio Commission was familiar  
21 with the term "state compensation mechanism" on  
22 November 21, 2011, because on December 8, 2010, the  
23 Ohio Commission expressly created a state  
24 compensation mechanism.

25 A. I don't think I would agree with that

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1     characterization, and I'm not really sure what you're  
2     referring to. Perhaps you could clarify your  
3     question. If you're talking about AEP Ohio Power,  
4     the Commission set a state compensation mechanism  
5     specifically for AEP Ohio Power, but also  
6     specifically said that it was only for that utility  
7     and it shouldn't be taken to assume that it applied  
8     to any other entity within the state.

9             Q.     Now, we'll get to the July and October  
10     orders in a moment, sir. But on October 8, 2010, the  
11     Ohio Commission expressly adopted a state  
12     compensation mechanism, correct?

13            A.     I don't know what you're referring to.  
14     Maybe you could clarify your question.

15            MS. SPILLER: Your Honor, may we  
16     approach?

17            EXAMINER STENMAN: You may.

18            MS. SPILLER: Your Honor, we would ask  
19     for the identification of Duke Energy Ohio Exhibit  
20     13, a Commission entry in case 2929 dated October 8,  
21     2010, we would also ask that administrative notice be  
22     taken of the entry. I'm sorry, December 8, 2010.

23            EXAMINER STENMAN: The document will be  
24     so marked and administrative notice will be taken.

25            MS. SPILLER: Thank you.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Ms. Spiller) Mr. Kollen, do you have  
3 before you what has been marked as Duke Energy Ohio  
4 Exhibit 13 in this proceeding?

5 A. I do.

6 Q. And, sir, this is an order issued by the  
7 Ohio Commission on December 8, 2010, expressly  
8 establishing a state compensation mechanism, correct?

9 A. Well, the company provides a recitation  
10 of the rates and recovery mechanisms that it provided  
11 to the AEP Ohio companies, meaning Ohio Power  
12 Company, at the time, and Columbus Southern Power  
13 Company. And then in response to AEP Ohio's request  
14 before the FERC the Commission said that it would now  
15 expressly adopt as a state compensation mechanism the  
16 company's, current capacity charges established by  
17 the three-year capacity auction conducted by PJM,  
18 Inc., during the pendency of this review. That's  
19 what the Commission decided in this case.

20 Q. And so, sir, you would agree with me that  
21 on December 8th, 2010, the Ohio Commission expressly  
22 established or adopted a state compensation mechanism  
23 for an FRR entity, correct?

24 A. I will answer this way: The Commission  
25 will now expressly adopt as a state compensation



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1 mechanism for the companies, in this case meaning the  
2 two AEP Ohio companies, the current capacity charges  
3 established by the three-year capacity auction  
4 conducted by PJM, Inc., during the pendency of this  
5 review.

6 Q. Thank you.

7 And, certainly, sir, based upon what you  
8 just read into the record you would agree with me  
9 that the Ohio Commission was familiar with the term  
10 "state compensation mechanism" when they approved  
11 Duke Energy Ohio's ESP stipulation on November 22nd,  
12 2011, correct?

13 A. Yes, that's correct.

14 Q. And, Mr. Kollen, the Ohio Energy Group  
15 intervened in case 10-2929, correct?

16 A. Yes, that's correct.

17 Q. In fact, pretty quickly after the  
18 Commission order was issued on December 8, 2010?

19 A. I don't know when they filed the  
20 intervention.

21 MS. SPILLER: May we approach, your  
22 Honor?

23 EXAMINER STENMAN: You may.

24 MS. SPILLER: Your Honor, we would ask  
25 for purposes of identification that the following be

1 marked as Duke Energy Ohio Exhibit 14, it is the  
2 motion of intervention of the Ohio Energy Group filed  
3 on December 13, 2010, in Case No. 10-2929, and ask  
4 that administrative notice be taken of the filing.

5 EXAMINER STENMAN: The document will be  
6 so marked and administrative notice will be taken.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Mr. Kollen, you have before you what has  
9 been marked as Duke Energy Ohio Exhibit No. 14,  
10 correct?

11 A. I do.

12 Q. And that is the motion of intervention of  
13 the Ohio Group -- Ohio Energy Group in case 10-2929,  
14 correct?

15 A. It appears to be.

16 Q. Docketed about five days after the  
17 Commission's entry that we just referred to, so  
18 docketed on December 13, 2010, correct?

19 A. I think it says December 15.

20 Q. I'm sorry.

21 A. Unless I'm looking at something  
22 incorrectly.

23 Q. Okay. You're right, the cover letter is  
24 December 15, 2010, to docketing. So about a week  
25 later, correct?

1 A. So it appears.

2 Q. And, based upon -- strike that.

3 Sir, you were a witness for the Ohio  
4 Energy Group in the 10-2929 case, correct?

5 A. Yes, that's correct.

6 Q. And that is the AEP Ohio capacity case,  
7 correct?

8 A. We refer to it as the capacity charges  
9 case, yes.

10 Q. Mr. Kollen, going back to the Duke Energy  
11 Ohio ESP, you've indicated that the stipulation does  
12 not use the terminology "state compensation  
13 mechanism." You would agree with me also, sir, that  
14 the Commission's order modifying and approving the  
15 stipulation does not use the term "state compensation  
16 mechanism," correct?

17 A. That's correct. It doesn't mean that  
18 isn't what it was, but it didn't use that term.

19 Q. When the Ohio Energy Group signed the  
20 Duke Energy Ohio ESP stipulation, it was aware of the  
21 existence of the reliability assurance agreement or  
22 RAA, correct?

23 A. Yes, that's correct. And that's why  
24 there was a provision in the stipulation that Duke  
25 Energy agreed that it would not seek to have the FERC

1 impose a cost-based state compensation mechanism.

2 Q. And we'll get there in a moment.

3 And given the Ohio Energy Group's  
4 intervention on December 15, 2010, in case 10-2929,  
5 the capacity charges case, you would agree with me  
6 that the Ohio Energy Group knew in October of 2011  
7 that the Commission had previously and in another  
8 docket expressly adopted a state compensation  
9 mechanism, correct?

10 A. Yes. For those two utilities.

11 MS. SPILLER: Your Honor, may we  
12 approach?

13 EXAMINER STENMAN: You may.

14 MS. SPILLER: Thank you.

15 We would ask that the following be marked  
16 for purposes of identification as Duke Energy Ohio  
17 Exhibit 15, a stipulation and recommendation filed in  
18 case 11-2641, and ask that administrative notice be  
19 taken of the document.

20 EXAMINER STENMAN: The document will be  
21 so marked and administrative notice will be taken.

22 MS. SPILLER: Thank you.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Mr. Kollen, you had just mentioned a  
25 filing that would have alerted the Ohio Energy

1 Group's -- their attention to the reliability  
2 assurance agreement, correct?

3 A. I'm not sure that I mentioned that. I  
4 think you asked me about a document and that was  
5 related to the AEP Ohio capacity charges case.

6 Q. Sir, I believe what I had asked you was  
7 whether when the Ohio Energy Group signed Duke Energy  
8 Ohio's ESP stipulation, it was aware of the existence  
9 of the RAA and in answering that you made reference  
10 to a prior filing in which there was provision made  
11 about a filing at the FERC under 205, correct?

12 A. I mentioned that there was a provision in  
13 the stipulation and the ESP -- the ESP stipulation  
14 with respect to a prohibition against DEO seeking a  
15 FERC cost-based rate.

16 Q. Can you point to me, sir, where in the  
17 ESP stipulation docketed under case 11-3549 that you  
18 have before you, where that concession occurs or  
19 appears?

20 A. DEO 15 that you just handed me?

21 Q. No, sir, you referenced the ESP  
22 stipulation previously marked as Kroger Exhibit --  
23 or, I'm sorry, IEU Exhibit 5, I believe.

24 MS. BOJKO: Your Honor, so the record is  
25 clear, it was Kroger No. 8. The ESP opinion and

1 order?

2 MS. SPILLER: No, Mr. Kollen was looking  
3 at the stipulation.

4 MS. BOJKO: Oh, I apologize.

5 MS. SPILLER: No worries.

6 MR. KURTZ: Your Honor, if it would help  
7 the record, we would stipulate that the Duke Energy  
8 Ohio's agreement not to go to FERC, to seek a  
9 cost-based rate under Section 8.1 of the PJM RAA was  
10 not in this stipulation, it's in the stipulation  
11 which is Duke 15 which is, it's in the MISO transfer  
12 case you may recall when Duke agreed to -- when the  
13 Commission gave approval for Duke to transfer from  
14 MISO to PJM.

15 So the witness can look in this order,  
16 it's not there, it's in the other stipulation, and  
17 we'll stipulate that it's not in here.

18 THE WITNESS: Right. I had realized  
19 that, too. It's in the other stipulation in the  
20 other docket.

21 Q. (By Ms. Spiller) Sir, let's get to that  
22 other stipulation in the other docket that's been  
23 marked as Duke Energy Ohio Exhibit 15, a stipulation  
24 and recommendation filed in case 11-2641, correct?

25 A. Yes, that is correct. It's paragraph 20.

1 Q. And that was the stipulation, sir, that  
2 was filed on October 26th, 2011, correct?

3 A. It has a docketing date of April 26,  
4 2011?

5 Q. No, I'm sorry. You're correct. This was  
6 docketed April 26th, 2011, correct?

7 A. Yes. Yes. I thought you were just  
8 repeating what I had said. I'm sorry, I didn't  
9 realize it was a question.

10 Q. And turning to page 13 of Duke Energy  
11 Ohio's Exhibit 15, the Ohio Energy Group was a  
12 signatory to this stipulation, correct?

13 A. That's correct.

14 Q. And as of the time it signed this  
15 stipulation that was docketed on April 26th, 2011,  
16 the Ohio Energy Group was aware of the RAA and the  
17 three methods of compensation available to FRR  
18 entities under the RAA, correct?

19 A. Was aware of the RAA, that's correct. As  
20 was Duke Energy, obviously.

21 Q. But also aware was OEG on April 26th,  
22 2011, of the three forms of compensation available to  
23 an FRR entity under that document, correct?

24 A. Which are?

25 Q. Sir, do you --

1           A.    In other words, should we look at the  
2 reliability assurance agreement?

3           Q.    Well, can you identify the three forms of  
4 compensation without looking at the reliability  
5 assurance agreement?

6           A.    Well, sure.  You've got RPM and then  
7 you've got a cost-based rate, but in any event a  
8 deferral to the state ratemaking authority, if indeed  
9 there is a state compensation mechanism in name or in  
10 fact.

11          Q.    Well, sir, the RAA provides that if there  
12 is a state compensation mechanism, that mechanism  
13 shall prevail, correct?

14          A.    Yes.

15          Q.    And only in the event that there is not a  
16 state -- a prevailing state compensation mechanism  
17 will the default compensation for an FRR entity be  
18 the market prices that -- the RPM prices for  
19 capacity, correct?

20          A.    Yes.

21          Q.    And only in the instance that there is  
22 not a prevailing state compensation mechanism does an  
23 entity have the ability to make a filing under  
24 Section 205 of the Federal Power Act for a cost-based  
25 charge, correct?



1           A.    I think I would tend to agree with that  
2           interpretation, although I don't believe AEP agreed  
3           with that interpretation so apparently it's a matter  
4           of legal interpretation.

5           Q.    But you do agree, sir, that that is the  
6           final and third form of compensation available to an  
7           FRR entity under the RAA, correct?

8           A.    Where the FERC would establish --

9           Q.    Yes, sir.

10          A.    -- a cost-based rate, that's true.

11          Q.    And the Ohio Energy Group was aware of  
12          those three forms of compensation available to FRR  
13          entities under the RAA when it signed this  
14          stipulation in case 11-2641 on April 26th, 2011,  
15          correct?

16          A.    Yes.  As was Duke Energy Ohio.

17          Q.    As was the Ohio Consumers' Counsel,  
18          correct?

19          A.    Yes.  Presumably all parties would have  
20          been aware of that.

21          Q.    Mr. Kollen, given your activity in case  
22          10-2929, the capacity charges case as you referred to  
23          it, the Ohio Commission did expressly establish a  
24          state compensation mechanism on December 8, 2010,  
25          correct?

1           A.    It established a state compensation  
2 mechanism for the AEP Ohio companies, not  
3 generically, but for those two companies.

4           Q.    And it expressly established that state  
5 compensation mechanism for those FRR entities,  
6 correct?

7           A.    At the time it established that it was a  
8 single company or a single utility that was part of  
9 the AEP system FRR entity, that's correct.

10          Q.    And in response to that Commission order  
11 of December 8, 2010, the FERC issued an order in the  
12 205 filing that the AEP entities had initiated in  
13 November of 2010, correct?

14          A.    I may be a little fuzzy on the dates, but  
15 there was a sequence of events between the FERC and  
16 the PUCO that ultimately ended up in the 10-2929 case  
17 being resolved about the middle of 2012. But there  
18 was a series of back and forths.

19          Q.    But the FERC shortly after the Ohio  
20 Commission's December 8, 2010, order issued a  
21 determination that the state compensation mechanism  
22 prevailed and it deferred to the Ohio Commission in  
23 respect to the establishment of that compensation  
24 mechanism, correct?

25          A.    That's my understanding, correct.

1           Q.    Mr. Kollen, is it your opinion that the  
2           FERC would know of the existence of a state  
3           compensation mechanism if that state compensation  
4           mechanism is not clearly set forth and detailed in an  
5           Ohio Commission order?

6           A.    I can't speculate on that.  That's just  
7           too generalized.

8           Q.    So, Mr. Kollen, while the Ohio Commission  
9           had expressly adopted a state compensation mechanism  
10          in December of 2010, and the Ohio Energy Group knew  
11          of the compensation mechanisms available for FRR  
12          entities under the RAA as of October 26, 2011, it's  
13          your testimony that in the context of the ESP  
14          proceeding as well as the Commission's order of  
15          November 22nd, 2011, that the parties implicitly  
16          intended for and the Commission implicitly intended  
17          to approve a state compensation mechanism for Duke  
18          Energy Ohio.

19          A.    I didn't follow that, I'm sorry.  There  
20          was just too many things strung together.  I didn't  
21          get the whole sequence and it was a pretty long  
22          question, a lot of premises, and so if we could start  
23          over again, and it would be very helpful to me if it  
24          could be shorter.

25          Q.    Well, sir, we'll break it apart.  The

1 Ohio Commission expressly established a state  
2 compensation mechanism for FRR entities on  
3 December 8, 2010, correct?

4 A. It did so specifically for AEP. It had a  
5 state compensation mechanism previously which it  
6 addressed, but it said here we're expressly adopting  
7 the state compensation mechanism, so there's just no  
8 question with respect to that in the 2010 entry.

9 Q. And the Ohio Energy Group certainly as of  
10 October 26, 2011, knew of the three forms of  
11 compensation available to FRR entities under the RAA,  
12 correct?

13 A. The OEG -- at least the counsel for OEG  
14 and I as a witness and expert retained by OEG were  
15 aware of the Section 8 of the RAA.

16 Q. And despite that which was expressly set  
17 forth in Commission orders and that which was known  
18 by the Ohio Energy Group it is your opinion that the  
19 parties to Duke Energy Ohio's ESP proceeding  
20 implicitly intended for the Ohio Commission to  
21 approve a state compensation mechanism for Duke  
22 Energy Ohio, correct?

23 A. Yes. And that was the Commission's  
24 historic practice until it, quote/unquote, expressly  
25 adopted the state compensation mechanism in response

1 to the FERC decision in the AEP Ohio Power case.  
2 That had just been the historic practice.

3 Q. The historic practice of implicit orders?

4 A. No. Adopting a compensation mechanism  
5 without necessarily describing it as such using those  
6 specific words.

7 Q. And the Commission changed course in  
8 December 8 of 2011 by its expressed pronouncements in  
9 the order that's been presented to you as Duke  
10 Energy Ohio Exhibit 13, correct?

11 A. I don't think it changed course. I think  
12 that it was responding to a FERC decision and wanted  
13 to make sure that it had made it abundantly clear  
14 that its decision was, in fact, a state compensation  
15 mechanism. It was in response to the FERC order and  
16 uniquely for the AEP Ohio companies. I don't think  
17 the Commission changed course.

18 Q. Well, sir, in Duke Energy Ohio Exhibit 13  
19 wouldn't you agree with me that that entry was  
20 actually in response to a filing by the AEP entities  
21 at the FERC?

22 A. Yes, that's correct.

23 Q. And, sir, Duke Energy Ohio Exhibit 13  
24 indicates that that which may have previously been  
25 implicit in the eyes of the Ohio Commission was made

1 explicit by the Ohio Commission on December 8, 2010,  
2 correct?

3 A. Yes.

4 Q. Thank you.

5 Mr. Kollen, just and reasonable  
6 compensation is intended to preserve the financial  
7 integrity of a utility company, correct?

8 A. That would be one factor to be  
9 considered.

10 Q. And, sir, it's your testimony in this  
11 proceeding that in the AEP Ohio capacity charges case  
12 the Ohio Commission adopted a unique state  
13 compensation mechanism tailored specifically for  
14 AEP Ohio, correct?

15 A. Yes. In fact, it took great pains, I  
16 thought, to make that clear, particularly in the  
17 order on rehearing.

18 Q. And you testified much like today in the  
19 capacity charges hearing, correct?

20 A. I don't know about much like today but I  
21 did testify in that case.

22 Q. The reference there simply being that you  
23 testified live in this hearing room, correct?

24 A. I believe it was this hearing room, yes.

25 Q. And it was about a year ago, wasn't it,

1       sir?

2               A.     I think that's true.

3               Q.     And your primary recommendation in the  
4       AEP Ohio capacity case was that the Commission should  
5       approve RPM pricing as the state compensation  
6       mechanism, correct?

7               A.     Yes, that is correct.

8               Q.     And your primary recommendation that the  
9       state compensation mechanism for AEP Ohio should be  
10      RPM was because, in your opinion, that's what the  
11      other utilities in the state were receiving, correct?

12              A.     Yes.

13              Q.     Sir, I believe you said you have before  
14      you the Commission's initial opinion and order in  
15      case 10-2929, the capacity charges case? Do you have  
16      that, sir?

17              A.     I am looking for it. I think I do have  
18      it. Yes. I do have it.

19              Q.     And you have reviewed that decision,  
20      Mr. Kollen, the July 2nd, 2012, opinion and order in  
21      case 10-2929 for purposes of forming your opinions in  
22      this case, correct?

23              A.     Among many other documents, yes.

24              Q.     And in the July 2, 2012, order the  
25      Commission did not state that no other FRR entity was

1 entitled to recover their costs for providing  
2 capacity service in fulfillment of their FRR  
3 obligations, correct?

4 A. I think that's true. I mean, my take on  
5 that is that this order addressed only the AEP Ohio  
6 companies and then on rehearing in response to  
7 concerns that the Commission's opinion and order from  
8 July 2nd, 2012, here might be extrapolated or used as  
9 precedent in other proceedings the Commission  
10 clarified and said, indeed, it was unique to the  
11 AEP Ohio companies and shouldn't be considered  
12 generally applicable.

13 Q. And what was unique was the charge of  
14 \$188 per megawatt-day for AEP Ohio's capacity  
15 obligations, correct?

16 A. I think it was broader than that. I  
17 think that it was broader in the sense that  
18 cost-based capacity compensation and the rate itself  
19 were unique.

20 Q. But the Ohio Commission did not say that  
21 only AEP Ohio as an FRR entity is entitled to just  
22 and reasonable compensation for the service it  
23 provides in that capacity, correct?

24 A. Well, it didn't address any other  
25 utility, so of course it didn't state what you asked



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1 in your question. It addressed only the AEP Ohio  
2 companies.

3 Q. And in the July 2, 2012, order the  
4 Commission found that the capacity service provided  
5 by an FRR entity was a wholesale noncompetitive  
6 service, correct?

7 A. Could you refer me to the page, please?

8 Q. Sure. You have it with you, right?

9 A. I do.

10 Q. Page 13.

11 MS. GRADY: I'm going to object. There's  
12 a mischaracterization by the counsel. We went over  
13 this, the Commission did not find that it's a  
14 noncompetitive wholesale service, they found it was a  
15 wholesale service.

16 EXAMINER STENMAN: Please, Ms. Grady, you  
17 don't need to testify on the record, the witness can  
18 clarify any mischaracterization in questions.

19 Q. Are you at page 13, sir?

20 A. I am.

21 Q. And the second full sentence on page 13,  
22 therein the Commission is indicating that Section  
23 4928.05(A)(1) of the Revised Code provides that  
24 competitive retail electric service is, to a large  
25 extent, exempt from supervision and regulation by the

1 Commission, correct?

2 A. The Commission didn't find that. That's  
3 a representation as to what IEU-Ohio contends.

4 Q. Well, sir --

5 A. If I'm referring to -- if I'm looking at  
6 the sentences that you want me to starting with the  
7 first sentence on page 13 and continuing on to the  
8 second?

9 Q. So IEU-Ohio contended that the Commission  
10 needed to determine whether capacity service was a  
11 competitive or noncompetitive retail electric  
12 service, correct?

13 A. Yes.

14 Q. Yes. And that determination is important  
15 because 4928.05 of the Ohio Revised Code indicates  
16 that competitive retail electric service is generally  
17 exempt from supervision and regulation by the  
18 Commission, correct?

19 A. Well, I don't know if that's a  
20 representation that is being repeated by the  
21 Commission in its order, but made by IEU-Ohio, or if  
22 it's a response to that. I do know that the  
23 Commission concluded on this point in the last  
24 sentence in that same paragraph "We find it  
25 unnecessary to determine whether capacity service is

1 considered a competitive or noncompetitive service  
2 under Chapter 4928 Revised Code."

3 Q. Well, sir, you would agree with me that  
4 Chapter 4928 of the Ohio Revised Code pertains to the  
5 provision of competitive retail electric service;  
6 we've already established that today, correct?

7 A. That's correct.

8 Q. And would you also agree that under  
9 Section 4928 of the Ohio Revised Code that  
10 competitive retail electric service is, to a large  
11 extent, exempted from supervision and regulation by  
12 the Commission?

13 A. It would seem to me that's that legal  
14 opinion and I don't know that I can answer that  
15 question.

16 Q. So you're not capable of interpreting  
17 this particular provision.

18 A. As I said, I don't know that this  
19 statement in the order is something the Commission  
20 stated or whether it's a reiteration of a position  
21 that IEU-Ohio took, I don't know.

22 Q. So you don't know under Ohio law, despite  
23 your 40 years of experience, whether or not  
24 competitive retail electric services are generally  
25 and to a large extent exempted from supervision and

1 regulation by the Commission.

2 A. If that's what the particular statute  
3 says, that's what it says.

4 Q. And, sir, you would agree with me that  
5 noncompetitive retail service is generally subject to  
6 the supervision and regulation of the Ohio  
7 Commission.

8 A. That's what it says in the order and if  
9 these are the Commission's words, that's its  
10 interpretation of the statute.

11 Q. Well, you do you know, sir, whether  
12 noncompetitive retail electric service in Ohio is  
13 subject to supervision and regulation by the Ohio  
14 Commission.

15 A. That's what the Commission said in the  
16 order here.

17 Q. And you have no reason to dispute that,  
18 do you?

19 A. If those are the words of the Commission  
20 with respect to its understanding of the law, I don't  
21 dispute that.

22 Q. Thank you.

23 Moving down to the bottom of this first  
24 paragraph on page 13, as you have done, sir, the Ohio  
25 Commission concluded that the provision of capacity

1 for CRES providers by AEP Ohio pursuant to the  
2 company's FRR capacity obligations is not a retail  
3 competitive service as defined by Ohio law, correct?

4 A. I see that.

5 Q. And if the service is not a retail  
6 service, it would be a wholesale service, correct?

7 A. That generally would be correct, but the  
8 issue is whether or not the cost of that is recovered  
9 through retail rates ultimately.

10 Q. And, sir, you do believe that capacity  
11 service is a wholesale service, correct?

12 A. I think generally I would agree with  
13 that.

14 Q. And, sir, moving on to page 22 of the  
15 opinion and order of July 2nd, 2012, in case  
16 10-2929 --

17 A. What is the reference again?

18 Q. Page 22, sir.

19 A. Okay.

20 Q. And here in paragraph 20, I'm sorry, in  
21 paragraph 2 on page 22 the Commission indicated that  
22 "Pursuant to Section 4905.22 of the Revised Code all  
23 charges for service shall be just and reasonable and  
24 not more than allowed by law or by order of the  
25 Commission," correct?

1           A.    Yes.

2           Q.    The Commission further went on into the  
3   third paragraph on page 22 indicating that "As  
4   discussed above, the Commission finds that it has  
5   jurisdiction to establish a state compensation  
6   mechanism in this case pursuant to its general  
7   supervisory authority found in Sections 4905.04,  
8   4905.05, and 4905.06 Revised Code," correct?

9           A.    I'm sorry, I didn't follow that. I  
10   couldn't find where you were starting.

11          Q.    I'm happy to restate, sir. Page 22, the  
12   third paragraph, the bottom paragraph on the page.

13          A.    All right.

14          Q.    Therein the Commission indicated "As  
15   discussed above, the Commission finds that it has  
16   jurisdiction to establish a state compensation  
17   mechanism in this case pursuant to its general  
18   supervisory authority found in Sections 4905.04,  
19   4905.05, and 4905.06 Revised Code," correct?

20          A.    Yes, that's what it says.

21          Q.    In other words, sir, the Ohio Commission  
22   did not establish a state compensation mechanism  
23   under Chapter 4928 of the Ohio Revised Code, correct?

24          A.    I don't know. I can just tell you  
25   what -- the sentence that you read does not refer to

1 Section 4928.

2 MS. SPILLER: I'm sorry, can I have the  
3 answer read back.

4 (Record read.)

5 Q. And, in fact, sir, the Ohio Commission  
6 established state compensation mechanisms pursuant to  
7 its general supervisory authority provided for in  
8 Section -- Chapter 4905 of the Ohio Revised Code,  
9 correct?

10 A. As we just discussed, the answer is yes  
11 based upon the sentence that you've read.

12 Q. Thank you.

13 And moving down about midway through that  
14 final and third paragraph on page 22 the Ohio  
15 Commission further indicated that although Chapter  
16 4928 Revised Code provides for market-based pricing  
17 for retail electric generation service, those  
18 provisions do not apply because, as we noted, as we  
19 noted earlier, capacity is a wholesale rather than a  
20 retail service, correct?

21 A. You read that correctly.

22 Q. And, Mr. Kollen, Chapter 4928 applies to  
23 competitive retail electric service, correct?

24 A. I believe that's correct.

25 Q. And so FRR capacity service is not a

1 competitive retail service, it is, rather, a  
2 noncompetitive wholesale service, correct?

3 MR. DARR: Objection.

4 A. It is a --

5 MR. DARR: There's an objection pending.

6 THE WITNESS: I'm sorry.

7 EXAMINER STENMAN: Grounds?

8 MR. DARR: I can't -- we've been through  
9 this ad infinitum ad nauseam. This is a clear  
10 attempt on the part of Duke to read terms into the  
11 order that are not there. And if you go back to the  
12 application, Duke knows that those terms are not  
13 there because on this particular point they reach  
14 back to a motion to dismiss filed by the company in  
15 the Supreme Court case in which IEU filed a writ for  
16 the proposition that this is a noncompetitive  
17 service. Or, excuse me -- yes, that this is a  
18 noncompetitive service.

19 It is -- we can beat this horse until  
20 whenever, but that is improper at this point and  
21 counsel for Duke should not be pursuing this line of  
22 questions based on the impropriety that's already  
23 been demonstrated repeatedly in this record.

24 MS. GRADY: OCC would join in the  
25 objection. I think we're not getting anywhere, we're



1 reading vast portions of the Duke order into the  
2 record and on the same -- the witness -- or the  
3 counsel's asking legal questions, already made a  
4 motion to strike because this witness is not an  
5 attorney, I don't know where we're getting and I  
6 think -- I join Mr. Darr and I will say that the  
7 motion that he referred to is OCC Exhibit No. 2 I  
8 believe that we entered into evidence and has been  
9 gone over and gone over. This is an issue for  
10 briefing at this point.

11 MS. SPILLER: Well, your Honor, if I may  
12 briefly, the motion to strike was denied, we have an  
13 individual who is offering his opinions, his  
14 testimony for consideration by this Commission as to  
15 what was done in prior Commission decisions, what was  
16 done and what was the effect of the Ohio Commission's  
17 determinations.

18 He is describing certain findings as  
19 unique and, clearly, this issue of whether or not  
20 capacity service is noncompetitive is one that the  
21 intervenors brought up in examination of Duke  
22 Energy Ohio witnesses and it would be incredibly  
23 prejudicial if Duke Energy Ohio is unable to  
24 cross-examine the intervenor witnesses on this point.

25 I would further note that this reading

1 into the record of particular items is something that  
2 the intervenors did repeatedly throughout the course  
3 of the hearing and this witness, although he  
4 indicates he is not capable of offering legal  
5 opinions, has taken great opportunity in his direct  
6 testimony to provide conclusions with respect to what  
7 orders say, with respect to what stipulations say,  
8 with respect to what a joint motion to dismiss says.

9 He is also offering an opinion with  
10 respect to the Ohio Commission's decision in 10-2929.  
11 I think certainly I am entitled to cross-examine him  
12 on those findings.

13 MR. KURTZ: Your Honor, thank you. I  
14 think the witness is doing just great on these  
15 questions, so if you want to let Ms. Spiller continue  
16 to question him, we're fine with it.

17 EXAMINER STENMAN: Mr. Darr, exactly what  
18 is your objection other than you don't like the  
19 questions?

20 MR. DARR: It's more than that, your  
21 Honor. It's a misrepresentation of what the  
22 Commission found in the 2929 decision. The issue  
23 presented to the Commission by the IEU motion to  
24 dismiss was very narrowly crafted to address one  
25 issue: Did the Commission have the authority to

1 address either -- to address the matter that was  
2 presented by AEP Ohio, and that is the setting of a  
3 rate, a wholesale rate, with regard to capacity of  
4 services.

5 The issue presented in the motion to  
6 dismiss, whether or not that authority -- any  
7 authority existed under Chapter 29 -- excuse me, 4928  
8 to address generation service, and the motion very  
9 specifically set out that the Commission -- that the  
10 legislature in its adoption of 4928 identified  
11 generation services, deregulated generation services,  
12 and whatever residual authority the Commission had  
13 was captured in 4928.05.

14 The Commission was, in that -- in its  
15 response basically said that the Commission did not  
16 need to address whether or not this was a competitive  
17 service because it deemed it a wholesale service.  
18 That's a different issue than the way I believe  
19 Ms. Spiller is attempting to use the Commission's  
20 decision.

21 EXAMINER STENMAN: All right, Mr. Darr,  
22 you can make all of these legal arguments on brief.  
23 The objection is overruled.

24 Ms. Spiller, please continue.

25 MS. SPILLER: Thank you, your Honor.

1           Q.    (By Ms. Spiller) And, Mr. Kollen, do you  
2 have before you the entry on rehearing in case  
3 10-2929?

4           MS. GRADY:   Which entry on rehearing?  
5 There were several.

6           MS. SPILLER:   The one that was filed  
7 October 17th, 2012.

8           A.    I don't think so.

9           MS. SPILLER:   May we approach, your  
10 Honor?

11          EXAMINER STENMAN:   You may.

12          MS. SPILLER:   This was previously marked  
13 as OCC Exhibit 3.

14          Q.    (By Ms. Spiller) Do you have the  
15 document, sir?

16          A.    I do.

17          Q.    And this was previously marked OCC  
18 Exhibit No. 3, entry on rehearing in case 10-2929,  
19 the decision signed on October 17, 2012, by the Ohio  
20 Commission, correct?

21          A.    I'm sorry, I was distracted by leafing  
22 through the entry on rehearing. The question was  
23 whether or not it was an entry in the hearing in Case  
24 No. 10-2929 dated October 17th, 2012.

25          Q.    Yes, sir.

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1           A.    If I heard that correctly, the answer is  
2   yes.

3           Q.    Thank you.

4                   And, sir, if you could turn to page 39 of  
5   the document, please.

6           A.    Okay.

7           Q.    Now, the first full paragraph that  
8   appears on that page, approximately midway through  
9   the paragraph, therein the Commission found that  
10   "Having found that the capacity service at issue is  
11   not a retail electric service and thus not a  
12   competitive retail electric service, IEU-Ohio's  
13   argument that the Commission may not rely upon  
14   Section 4905.13, Revised Code is unavailing,"  
15   correct?

16          A.    You read that correctly.

17          Q.    Thank you.

18                   And, sir, if you could take a moment,  
19   please, and turn to page 28 of the Commission's entry  
20   on rehearing, OCC Exhibit 3.

21          A.    Okay.

22          Q.    About ten lines up from the bottom of the  
23   page therein the Commission indicated that it has an  
24   obligation under traditional rate regulation to  
25   ensure that the jurisdictional utilities receive just

1 and reasonable compensation for the services they  
2 render, correct?

3 A. Yes.

4 Q. And you do not believe, sir, that that is  
5 an obligation that is limited only to AEP Ohio, do  
6 you?

7 A. It does not indicate whether it's limited  
8 to AEP Ohio.

9 Q. And, in fact, sir, the terminology that  
10 the Commission used was "jurisdictional utilities,"  
11 correct?

12 A. It did use that term.

13 Q. And certainly more than just AEP Ohio is  
14 a utility under the jurisdiction of the Ohio  
15 Commission, correct?

16 A. Well, the two utilities involved in that  
17 proceeding were Ohio Power Company and Columbus  
18 Southern Power Company, but there are other  
19 jurisdictional utilities.

20 Q. Thank you, sir.

21 And you were a witness for the Ohio  
22 Energy Group in AEP's ESP proceeding, correct?

23 A. Yes. The ESP II proceeding?

24 Q. Sure, we can call it that, sir, filed  
25 under 11-348 I believe.

1 A. Yes.

2 Q. And you are aware, Mr. Kollen --

3 A. 11-346, I'm sorry, yes.

4 Q. And you are aware, Mr. Kollen, that the  
5 Ohio Commission approved a stability rider for  
6 AEP Ohio under its ES -- or, in connection with its  
7 ESP II proceeding, correct?

8 A. The ESP II proceeding, that is correct.

9 Q. And, sir, you are aware that the  
10 statutory justification for that rider was Ohio  
11 Revised Code 4928, correct?

12 A. I don't recall. But I would accept that  
13 subject to check. It would be in the order I'm sure.

14 Q. 4928.143.

15 A. That sounds right.

16 Q. And you are also aware, sir, given your  
17 involvement in Dayton Power & Light's SSO  
18 proceedings, that a similar or a stability rider is  
19 also at issue in their proceeding, correct?

20 A. It is at issue.

21 Q. And the statutory authority upon which  
22 both DP&L and the Commission staff had pointed to for  
23 purposes of the establishment of a stability rider in  
24 DP&L's case is 4928.143 of the Revised Code, correct?

25 A. I just don't recall, but I'll accept that

1 subject to check. I mean, it's a factual matter, I  
2 just don't recall.

3 Q. And, Mr. Kollen, the Ohio Commission did  
4 not require AEP Ohio to net its cost-based capacity  
5 charge for FRR service by the total amount of the  
6 stability rider approved in its ESP II proceeding,  
7 correct?

8 A. Not by the total amount, but by a  
9 significant amount of it, yes.

10 Q. One dollar out of the \$3.50 per  
11 megawatt -- per kilowatt-hour charge?

12 A. Yes, roughly 30 percent or so.

13 Q. And then that charge for the stability  
14 rider increases in the outer years of the ESP,  
15 correct?

16 A. It does.

17 Q. And the Commission did not increase the  
18 amount that would be directed to the capacity  
19 deferral, correct?

20 A. That's true.

21 Q. Mr. Kollen, you do not agree with the  
22 general proposition that the Commission has the  
23 authority to defer -- strike that.

24 You do not agree with the general  
25 proposition that the Commission has authorized the



1 deferral of previously incurred costs, correct?

2 A. Context is important here. I think we've  
3 discussed that previously, you and I have, outside of  
4 this hearing of course, but in my deposition, and  
5 context is important.

6 Generally, in the context of a base rate  
7 case proceeding, if there is a historical test year  
8 and there is an unusual type of cost that occurred in  
9 the test year, the Commission may allow a deferral of  
10 that cost and then an amortization of the expense  
11 going forward, but that would be one context.

12 But to just simply come in and for the  
13 utility to file a rate case, which is analogous to  
14 what the company has filed in some respects in this  
15 proceeding, and then to ask that it be retroactive to  
16 the historical year used as the test year, a year  
17 that's already passed, I don't think I've ever seen  
18 that in Ohio.

19 And so the company's request in this case  
20 is directly contrary to the Commission's historic  
21 practice and I believe represents impermissible  
22 retroactive ratemaking.

23 Q. Well, sir --

24 A. I mean, the company is asking for the  
25 establishment of a rate retroactively and a deferral

1 resulting from that rate retroactively, both I  
2 believe I've never seen in Ohio before. Certainly  
3 under a standard ratemaking proceeding.

4 Q. Well, sir, you would agree that the Ohio  
5 Commission authorizes deferral authority outside of  
6 base rate cases, correct?

7 A. In very limited cases. This is a, in a  
8 sense a comprehensive revenue requirement using  
9 historic, largely historic test year, and then asking  
10 that the rates be effective for that historic test  
11 year. And I have never seen that.

12 Q. We'll come back to that while documents  
13 are being identified, or located.

14 Mr. Kollen, you would agree with me that  
15 Ohio law provides the Ohio Commission with  
16 jurisdiction to oversee the books and records and  
17 systems of accounts of utilities under its  
18 jurisdiction, correct?

19 A. Yes. But that authority doesn't allow it  
20 to override generally accepted accounting principles,  
21 for example, and even if the company were authorized  
22 to retroactively reregulate its generation assets and  
23 retroactively establish a rate back to August 1 of  
24 2012, which I believe is impermissible, the  
25 accounting rules don't even allow the company to

1 recognize the deferrals back to 2012, they would have  
2 to be recognized in the year in which the Commission  
3 issued the order.

4 So, you know, it's essentially the  
5 historical period is already done. It cannot be  
6 undone from an accounting perspective.

7 Q. Mr. Kollen, you have reviewed Duke Energy  
8 Ohio's FRR plan to a limited extent, correct?

9 A. Yes.

10 Q. And was it the August 16, 2010,  
11 transitional or out-of-time FRR plan that you  
12 reviewed?

13 A. I don't know.

14 Q. You don't know whether it was the FRR  
15 plan that Duke Energy Ohio submitted prior to the  
16 May, 2011, base residual auction for the '14-'15  
17 planning year?

18 A. My recollection is that it was about the  
19 April, 2011, timeframe.

20 Q. And, sir, with respect to the FRR  
21 requirements, an FRR entity is required to submit to  
22 PJM their FRR plans at least 60 days prior to the  
23 base residual auction for the planning year that is  
24 three years hence, correct?

25 A. Generally, that's correct, yes.

1           Q.   And so with respect to the '14-'15  
2 planning year, that auction, that base residual  
3 auction, would have occurred in May of 2011, correct?

4           A.   True.

5           Q.   And so Duke Energy Ohio would have been  
6 required to submit its FRR plan for the '14-'15  
7 planning year approximately 60 days prior to May,  
8 2011, correct?

9           A.   Right. And I was under the impression  
10 that it was April of 2011 but it may have been March.

11          Q.   And you believe, sir, that that was the  
12 FRR plan that you reviewed?

13          A.   I believe so.

14          Q.   As an FRR entity Duke Energy Ohio  
15 self-supplies capacity resources for its footprint,  
16 correct?

17          A.   Yes.

18          Q.   In other words, Duke Energy Ohio bypasses  
19 the PJM RPM market and does not purchase or sell into  
20 that RPM market, correct?

21          A.   I don't think I would agree with that.  
22 To the extent that it doesn't have sufficient  
23 capacity, it has to acquire it someplace.

24          Q.   Well, an FRR entity cannot participate in  
25 the base residual auctions, correct?

1           A.     That's generally true.

2           Q.     And an FRR entity is required to utilize  
3 unit-specific capacity to meet its load obligation,  
4 correct?

5           A.     That's true.

6           Q.     And unit-specific capacity is not  
7 available in the incremental auctions, correct?

8           A.     I believe that is correct.

9           Q.     So would it be fair to say that an FRR  
10 entity such as Duke Energy Ohio bypasses -- does not  
11 sell into the RPM markets?

12          A.     Well, the reason I'm hesitating is  
13 because the stipulation classifies that all of it,  
14 Duke Energy's capacity, would be sold into the RPM,  
15 into the PJM and then PJM would supply the capacity  
16 to CRES providers. That's why I was hesitating.

17          Q.     The ESP stipulation, sir, provides that  
18 Duke Energy Ohio would supply capacity to PJM,  
19 correct?

20          A.     Yes.

21          Q.     And under the ESP stipulation Duke  
22 Energy Ohio is not buying back capacity for purposes  
23 of fulfilling its FRR capacity obligation, correct?

24          A.     That's true.

25          Q.     Mr. Kollen, as an FRR entity Duke Energy

1 Ohio is the only entity that is providing capacity  
2 resources for the load obligation of its entire Ohio  
3 zone, correct?

4 A. Yes.

5 Q. And Duke Energy Ohio as an FRR entity is  
6 obligated to provide capacity resources for the  
7 entire -- for the load obligations of its entire  
8 footprint through May 31, 2015, correct?

9 A. Yes.

10 Q. And you are aware, Mr. Kollen, that Duke  
11 Energy Ohio has committed capacity from its legacy  
12 generating assets to fulfilling its FRR capacity  
13 obligations through that date of May 31, 2015,  
14 correct?

15 A. Yes.

16 Q. Duke Energy Ohio's FRR obligations will  
17 not terminate on December 31, 2014, correct?

18 A. That's true.

19 Q. Sir, in your testimony you have made some  
20 calculations predicated upon activity concerning  
21 Beckjord, correct?

22 A. Yes.

23 Q. And you would agree with me, sir, that to  
24 the extent the Beckjord units are included in the FRR  
25 plan, the costs associated with those units should be

1 included in the calculation offered by Mr. Wathen in  
2 this case?

3 A. And, in fact, they are. There is no  
4 return on rate base, for example, and there's no  
5 depreciation expense because the assets are fully  
6 depreciated. There is no plan, at least with respect  
7 to, and maybe somebody needs to tell me whether or  
8 not I can talk about the CBM, but there's no plan to  
9 operate the Beckjord units after (REDACTED) of  
10 (REDACTED) in the CBM.

11 So our assessment and my assessment  
12 specifically is that none of the O&M should be  
13 reflected in the revenue requirement. Because, keep  
14 in mind that the company built its revenue  
15 requirement using a 2011 test year and that included  
16 the Beckjord O&M expense, and the company did not  
17 adjust that out; I did.

18 MS. SPILLER: And, your Honor, I would  
19 simply ask that what be given confidential is the  
20 date of (REDACTED) of (REDACTED).

21 EXAMINER STENMAN: Yes, I think his  
22 answer probably needs to be moved into the  
23 confidential portion of the record and the company  
24 can redact it accordingly.

25 Q. And, Mr. Kollen, the CBM to which you are

1 referring is a production cost model, correct?

2 A. It is, yes.

3 Q. And certainly in your years of experience  
4 you're familiar with such a model, correct?

5 A. Yes. Very familiar.

6 Q. Utilized -- production cost models are  
7 utilized to forecast, for example, energy margins,  
8 correct?

9 A. Yes, they are.

10 Q. A production cost model can also be  
11 utilized for purposes of forecasting ancillary  
12 services margins?

13 A. Yes.

14 Q. And you were not here for the testimony  
15 of Dr. Zhang, were you?

16 A. No.

17 Q. And, sir, so you don't know whether or  
18 not the references in a production cost model such as  
19 the -- such as the PJM -- such as the CBM also mean  
20 that a particular unit is not available for purposes  
21 of providing capacity, correct?

22 A. I would agree with that, however, in my  
23 experience, and I used to have direct responsibility  
24 for production cost modeling when I was an employee  
25 at the Toledo Edison Company, and that's been a



1 significant part of my consulting practice for  
2 decades, in my experience a unit, even though it may  
3 be designated as available in a production costing  
4 model, if there's no data associated with it, which  
5 there was not for the Beckjord units, in other words  
6 no heat rates, no fuel costs, no variable O&M, the  
7 unit just simply isn't dispatched in the model so  
8 it's not actually run in the forecast.

9 And it also is true that there were no  
10 energy revenues from Beckjord in the CBM.

11 Q. Not dispatching into the energy market  
12 does not mean that a unit is unavailable for purposes  
13 of capacity resources, correct?

14 A. True. But if the unit isn't going to be  
15 dispatched at all and that is the company's intent,  
16 and that is indicated by reviewing those inputs into  
17 the CBM as I described in my testimony, there  
18 shouldn't be any residual O&M expense. The company  
19 is planning to, certain of the units already are  
20 mothballed, and the company plans to retire them  
21 officially, all of them, by the end of 2014.

22 Q. Sir, you don't know why any particular  
23 inputs regarding Beckjord were utilized in the CBM  
24 because you were not here for Dr. Zhang's testimony,  
25 correct?

1           A.    I wasn't here for Dr. Zhang's testimony,  
2   but my experience with production cost modeling is if  
3   you don't have a heat rate for the unit, if you don't  
4   have the fuel cost for a unit, if you don't have the  
5   variable O&M cost for a unit, it can't run. It may  
6   be available for capacity commitment purposes, but it  
7   doesn't run.

8           Q.    Sir, I'd like to go back to your  
9   testimony regarding deferrals, if we may now. I  
10  would like to identify --

11           MS. SPILLER:  If we may approach, your  
12  Honor, it's previously been marked as IEU-Ohio  
13  Exhibit 14, the stipulation in case 03-93.

14           EXAMINER STENMAN:  You may.

15           Q.    And, sir, before we turn our attention to  
16  this stipulation and recommendation your testimony  
17  just indicated that although a unit may be available  
18  for capacity commitment purposes, it doesn't run. Do  
19  you recall that testimony?

20           A.    Well, that was the company's assumption  
21  with respect to the CBM and the Beckjord units.

22           Q.    And do you mean it doesn't run in the  
23  energy market or in the model?

24           A.    It doesn't run in the model and  
25  there's -- if it doesn't run in the model, then it

1 doesn't have any fuel cost and it doesn't have any  
2 market revenues.

3 Q. And, sir, you have before you what's been  
4 marked as IEU Exhibit 14, correct?

5 A. Yes.

6 Q. And this is a stipulation and  
7 recommendation in case 03-93, correct?

8 A. Yes.

9 Q. And it looks like, Mr. Kollen, if we turn  
10 to page 28, the Ohio Energy Group was a signatory to  
11 this stipulation, correct?

12 A. Yes.

13 Q. And, sir, turning to the main body of the  
14 stipulation and recommendation, if we may, page 11,  
15 paragraph 6, please. Do you have that reference,  
16 sir?

17 A. Yes, I do.

18 Q. And in that particular paragraph the  
19 parties to the stipulation including OEG agreed that  
20 CG&E could establish accounting deferrals  
21 representing the difference between its current  
22 revenue requirement on the net capital investment  
23 related to CG&E's distribution business less the  
24 revenue requirement on its capital investment related  
25 to CG&E's electric distribution business as approved

1 by the Commission in case 92-1464-EL-AER from July 1,  
2 2004, to December 31, 2005, correct?

3 A. Yes. And I would note too that this  
4 stipulation is dated May 19, 2004, and the deferral  
5 period is prospective from that date, July 1, 2004,  
6 through December 31, 2005, unlike the company's  
7 request in this case which is retroactive by some 12  
8 months, more likely than not, back to August 1, 2012.  
9 This stipulation operates to authorize a deferral  
10 prospectively is my read of it.

11 Q. Of revenue requirements, correct?

12 A. Yes. But not retroactively.

13 Q. And so the deferral period for revenue  
14 requirements would have commenced July 1, 2004,  
15 correct?

16 A. Right. Which is after the date of the  
17 stipulation May 19, 2004.

18 Q. And you would agree with me, sir, that  
19 the Ohio Commission would have approved the  
20 stipulation sometime after May 19, 2004, correct?

21 A. Sure.

22 Q. And, Mr. Kollen, you were also a witness  
23 for the Ohio Energy Group in AEP's RSP proceedings,  
24 correct?

25 A. Yes.

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1 Q. And you testified in that case, among  
2 other issues, on the deferral requests offered by  
3 AEP Ohio, correct?

4 A. Which case was this again, 11-346 or some  
5 other case?

6 Q. Oh, no, sir, it's AEP Ohio's rate  
7 stability plan.

8 A. Okay.

9 Q. Would have been filed in 2004.

10 A. That sounds right. What case number was  
11 that, if I could ask, just to help me --

12 Q. Sure.

13 A. -- refresh my recollection.

14 Q. 04-196 -- I'm sorry, 04-169.

15 MS. SPILLER: And, your Honor, if we may  
16 approach.

17 EXAMINER STENMAN: You may.

18 MS. SPILLER: We would ask that the  
19 following exhibit be marked as Duke Energy Ohio  
20 Exhibit 16, the opinion and order in case 04-169. We  
21 would also ask that administrative notice be taken of  
22 the document, please.

23 EXAMINER STENMAN: It will be so marked  
24 and administrative notice will be taken.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

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1 Q. (By Ms. Spiller) Do you have the  
2 document, sir?

3 A. I do.

4 Q. If we could turn to page 27.

5 A. Okay.

6 Q. And this is the Commission's discussion  
7 that, among other issues at the bottom of the page on  
8 page 27, concerns carrying costs on construction work  
9 in progress and in-service plant expenditures,  
10 correct? That's the heading.

11 A. Yes, down at the bottom of page 27,  
12 that's correct.

13 Q. And, sir, you were a witness for the Ohio  
14 Energy Group in this case, correct?

15 A. I was, yes.

16 Q. Turning to page 28 of the decision, the  
17 second full paragraph down, in connection with these  
18 deferrals at issue regarding carrying costs on  
19 construction work in progress and in-service plant  
20 expenditures the OEG had argued that these deferrals  
21 constituted retroactive ratemaking, correct?

22 A. Yes. I'm trying to refresh my  
23 recollection here, but I can only say that what  
24 you've read is correct. I don't have a specific  
25 recollection without reviewing more of the order on

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1 this topic.

2 Q. And turning to page 29 of the document,  
3 sir, the Commission did not accept OEG's argument  
4 that the requested deferrals constituted retroactive  
5 ratemaking, correct?

6 A. What page is that?

7 Q. Page 29, sir. "Commission Discussion"  
8 section.

9 A. Okay.

10 Okay, I found that. Was there a question  
11 pending? I'm sorry, I was just looking over this  
12 portion of the order on page 29.

13 Q. Oh, certainly, and therein on page 29 of  
14 the Commission's decision the Commission did not find  
15 that the requested deferrals constituted retroactive  
16 ratemaking, correct?

17 A. I don't see those words. I see "Similar  
18 to our reasoning for the RTO administrative charges,  
19 we do not believe that this proposed deferral is a  
20 rate increase." That's what I see.

21 Q. And they approved the deferrals, correct?

22 A. That's what the decision says.

23 Q. Thank you.

24 And, sir, if we could move to page 23 of  
25 the document just to be -- page 23 of the document,

1 and the particular deferrals that OEG believed  
2 constituted improper retroactive ratemaking were  
3 those concerning equity carrying charges on  
4 expenditures related to Account 107, which is  
5 construction work in progress, correct? The bottom  
6 of the page.

7 A. Yeah, I'm looking at it.

8 Q. Thank you.

9 A. Yes, that's correct.

10 Q. And those would have been carrying  
11 charges with respect to expenditures begun in 2002  
12 through 2005, correct?

13 A. Right. But they were included in  
14 construction work in progress and then added into the  
15 cost of plant. So I would distinguish that very  
16 clearly from the company's request in this case where  
17 it was not the cost of financing the plant which  
18 would then be added to the cost of plant and is very  
19 typical of traditional utility accounting, but,  
20 rather, in this case the company's asking for a rate  
21 increase retroactively bypassing the normal  
22 ratemaking procedural process. Big difference.

23 Q. Mr. Kollen, this case is not a case for  
24 an increase in rates, is it?

25 A. It is.



1 Q. And --

2 A. It is, because the company's whole case  
3 rests on the determination of a capacity charge rate  
4 that would be retroactively effective to August 1 of  
5 last year and compared that to the FZCP rate and the  
6 difference times the company's load would be used for  
7 the deferral. That would be the \$158 that the  
8 company computed. That is the rate that the company  
9 is asking be retroactively implemented, and the  
10 deferral is based upon the difference between this  
11 retroactive rate and the FZCP starting on that same  
12 date.

13 Q. Mr. Kollen, you've read the company's  
14 application, correct?

15 A. I have.

16 Q. You've read the testimony submitted by  
17 the company in support of its application, correct?

18 A. Yes.

19 Q. And having read those documents, sir, you  
20 know that Duke Energy Ohio is not seeking in this  
21 proceeding any rates that would serve to populate its  
22 proposed rider DR-CO, correct?

23 A. With respect to that. But it is seeking  
24 the determination of a rate retroactive to August 1  
25 that would be used, then, to determine the deferrals

1 that ultimately would be recovered through the rider,  
2 the DR-CO rider.

3 Q. But it's your belief that what the  
4 company is proposing in its case is a rate of  
5 \$158 per megawatt-day?

6 A. Right. Which is overstated, of course,  
7 because it doesn't reflect the reserve margin  
8 requirements that it's based only upon the load, the  
9 customer load, I believe that the company conceded  
10 yesterday, at least I'm informed, that that was not  
11 correct and that it should reflect the reserve  
12 margin.

13 Q. Were you also informed that in connection  
14 with yesterday's discussion it was explained in great  
15 detail that the \$158 per megawatt-day is not a rate  
16 but was offered for purposes of illustration and  
17 comparison with respect to the outcome in the  
18 AEP Ohio case?

19 A. I was informed that that was the  
20 testimony of Mr. Wathen, but I would respectfully  
21 disagree with that. The company's request is based  
22 upon the determination of a rate, the rate was  
23 incorrectly calculated, but, nevertheless, the  
24 company's request rests upon the determination of a  
25 rate that would be applied to the FZCP and the

1 difference multiplied times some measure of load or  
2 load with margins would be the amount of the  
3 deferrals.

4 So the rate does matter. It's not an  
5 insignificant issue. It's an entirely relevant  
6 issue. The deferrals cannot be computed without the  
7 rate, and the rate itself, the company is requesting  
8 that it be implemented retroactively for purposes of  
9 the deferral.

10 Q. Mr. Kollen, in your years of experience  
11 with regulatory commissions have you ever encountered  
12 a situation where similarly situated utilities are  
13 subject to diametrically opposed recovery of their  
14 costs associated with providing the same or similar  
15 service?

16 A. I'm not sure what diametrically opposed  
17 means, but I can say this, that commissions, in my  
18 experience, even though they don't always agree with  
19 me, in my experience at least give thoughtful  
20 consideration to the unique circumstances of each  
21 utility and they operate within, generally, a  
22 consistent framework set forth by the law and by  
23 precedent, but nevertheless may fashion different  
24 solutions for different utilities at different times  
25 given the unique circumstances.

1           Q.    But certainly intend on fulfilling their  
2 overall obligations, correct?

3           A.    Yes.  Generally there's a state statutory  
4 obligation to implement just and reasonable -- fair,  
5 just, and reasonable rates, frequently that's even  
6 written into the statutes.

7           Q.    Mr. Kollen, you have not reviewed Ohio's  
8 emergency rate relief statute, have you?

9           A.    That's true.

10          Q.    And you are aware, sir, that this  
11 particular case was not brought under the provisions  
12 of Ohio's emergency rate relief statute, correct?

13          A.    I understand that to be the case.

14          Q.    And having not reviewed Ohio's emergency  
15 rate relief statute you don't know the standard of  
16 review applicable to an emergency rate proceeding  
17 before the Commission, correct?

18          A.    Not the statutory standard of review,  
19 that's correct.  I can tell you that generally  
20 emergency rate relief is sought by utilities that  
21 legitimately or believe that they have a financial  
22 emergency, for whatever reason.  But I've seen that  
23 in circumstances where the utility was unable to  
24 finance or had insufficient cash flow.  But that has  
25 been my experience with emergency rate relief, that

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1 it's not -- it's very rarely used and it really is  
2 focused on a financial emergency.

3 Q. But you know it's not at issue in this  
4 proceeding, correct?

5 MR. DARR: Objection.

6 EXAMINER STENMAN: Grounds?

7 MR. DARR: I'll withdraw the objection.  
8 Excuse me. Rethought the question.

9 A. Well, except that the company didn't file  
10 the case under the emergency statute, I understand  
11 that to be the case. Nevertheless, I think that the  
12 company's relief is so extraordinary that certainly  
13 some aspects of the emergency relief should be  
14 applied in the sense of particularly a retroactive  
15 application of the rate increase.

16 Q. Sir, you don't know what the provisions  
17 are with respect to the application of Ohio's  
18 emergency rate relief statute, correct?

19 MS. GRADY: Objection.

20 EXAMINER STENMAN: Grounds?

21 MS. GRADY: Asked and answered.

22 EXAMINER STENMAN: Overruled.

23 A. I said before that I hadn't reviewed the  
24 emergency relief statute. I was simply responding  
25 and going a little further saying in my experience

1 very few utilities very seldom ask for emergency rate  
2 relief and the standards are really very high to  
3 obtain rate relief. It really would have to be an  
4 emergency situation.

5 Q. Now, Mr. Kollen, you opine in your direct  
6 testimony that in approving the ESP stipulation the  
7 Ohio Commission implicitly created a state  
8 compensation mechanism for Duke Energy Ohio, correct?

9 A. I referred to that as a de facto state  
10 compensation mechanism, yes.

11 Q. But we've already established that those  
12 words, "state compensation mechanism," do not appear  
13 in the document, correct?

14 A. Right. That's true.

15 Q. And they do not appear --

16 A. But they don't have to, and they don't  
17 appear. We've already crossed that -- we've already  
18 addressed that several times this morning.

19 Q. But it's your testimony that the first  
20 component of this implied state compensation  
21 mechanism is Duke Energy Ohio's receipt pursuant to  
22 the ESP stipulation of RPM pricing from suppliers,  
23 correct?

24 A. I referred to it as a de facto state  
25 compensation mechanism and that's one component of

1 the compensation.

2 Q. And, sir, "de facto" has a specific  
3 meaning under the law, correct?

4 A. I don't know if it does or not, but I  
5 have my meaning of that and that is it's not stated  
6 as the state compensation mechanism but effectively  
7 it is. And, as I mentioned earlier this morning, the  
8 Commission had a practice of not using those specific  
9 words until it expressly used that term in  
10 conjunction with the AEP/Ohio Power companies.

11 Q. And it had a practice of not expressly  
12 using those terms until December 8, 2010, correct?

13 A. Well, it had, to my knowledge, not  
14 specifically used that term although I haven't  
15 researched the prior order. But nevertheless it was  
16 in adopting state compensation mechanisms which it  
17 said in that entry in the 10-2929 case.

18 Q. And that was December 8, 2010, correct?

19 A. It was in that entry, yes.

20 Q. The entry that you reviewed with me this  
21 morning, correct?

22 A. Yes, for the fifth time.

23 Q. Now, Mr. Kollen, in your direct testimony  
24 beginning on page 12 you cite to three provisions of  
25 the ESP stipulation in which you believe it is

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1 established that Duke Energy Ohio agreed to receive  
2 RPM pricing from suppliers with respect to its FRR  
3 capacity obligations, correct?

4 A. Yes.

5 Q. And, sir, you have the stipulation in  
6 front of you, correct?

7 A. I'm sure I do.

8 Q. I'll give you a moment to locate it.

9 A. Okay. I have it.

10 Q. And the first of the three provisions  
11 upon which you rely is actually set out in your  
12 footnote on page 12, correct?

13 A. That's correct.

14 Q. And that is Section II.B, as in boy, of  
15 the stipulation, correct?

16 A. Yes.

17 Q. And that appears on page 7 of the  
18 document, sir?

19 A. That's true.

20 Q. And therein Section II.B of the  
21 stipulation provides that Duke Energy Ohio shall  
22 supply capacity to PJM which in turn will charge for  
23 capacity to all wholesale supply auction winners for  
24 the applicable time periods of Duke Energy Ohio's ESP  
25 with the charge for said capacity determined by the



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1 PJM RTO which is the FZCP in the unconstrained RTO  
2 region, correct?

3 A. Yes, that's correct.

4 Q. And moving forward to Section IV.B, and I  
5 believe you corrected that this morning to be Section  
6 IV.A, correct?

7 A. Yes.

8 Q. And, in fact, there is only one paragraph  
9 under that section, correct?

10 A. Sure enough.

11 Q. And, sir, the particular language  
12 utilized in your footnote on page 12 of your direct  
13 testimony is not the language in the stipulation that  
14 was approved by the Commission, correct?

15 A. Could you say that again.

16 Q. Sure. The Section IV.A of the  
17 stipulation that you cite in your direct testimony in  
18 support for your opinions in this case was not the  
19 language that was ultimately approved by the Ohio  
20 Commission on November 22nd, 2011, correct?

21 A. Oh, you're referring to the change from  
22 Duke Energy Ohio to PJM. That's correct. There was  
23 a change.

24 Q. And so Section IV.A as approved by the  
25 Ohio Commission indicates that: Consistent with

1 Section II.B above the parties agree that Duke Energy  
2 Ohio shall supply capacity resources to PJM which, in  
3 turn, will charge for capacity resources to all CRES  
4 providers in its service territory for the term of  
5 the ESP with the exception of those CRES providers  
6 that have opted out of Duke Energy Ohio's FRR plan  
7 for the period during which they opted out.

8 The section further continues: The  
9 parties further agree that during the term of the ESP  
10 PJM shall charge CRES providers for capacity as  
11 provided by the PJM RTO which is the FZCP in the  
12 unconstrained RTO region for the applicable time  
13 periods of the ESP, correct?

14 A. Yes.

15 Q. Mr. Kollen, OEG was aware of and  
16 consented to the change in Section IV.A of the ESP  
17 stipulation, correct?

18 A. That is my understanding.

19 MS. SPILLER: Your Honor, if we may have  
20 marked for identification Duke Energy Ohio Exhibit  
21 17, and if we may approach, please.

22 EXAMINER STENMAN: You may.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Mr. Kollen, I have handed to you what has  
25 been marked as Duke Energy Ohio Exhibit 17. This is

1 an e-mail response from Mr. Kurtz in connection with  
2 an e-mail request that I had extended to him on  
3 November 14, 2011, correct?

4 A. It appears to be.

5 Q. And Mr. Kurtz is counsel for OEG,  
6 correct?

7 A. He is.

8 Q. Mr. Kurtz was counsel for OEG in  
9 connection with Duke Energy Ohio's ESP proceeding,  
10 correct?

11 A. Yes, he was.

12 Q. Certainly authorized in his capacity as  
13 counsel to speak on behalf of OEG, correct?

14 A. Yes.

15 Q. And in this particular e-mail response  
16 Mr. Kurtz indicates that OEG concurs with the change  
17 to modify the ESP stipulation to provide that PJM  
18 shall charge CRES providers for capacity, correct?

19 A. Yes.

20 Q. And Mr. Kurtz responded on the same day  
21 that I had actually initiated the request to him and  
22 other counsel, correct?

23 MS. BOJKO: Objection, your Honor.

24 EXAMINER STENMAN: Grounds?

25 MS. BOJKO: I think this mischaracterizes

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1 the change, the e-mail language and the change made  
2 by the company.

3 EXAMINER STENMAN: The e-mail language?

4 MS. BOJKO: The language in the e-mail  
5 does not state what Ms. Spiller just stated it says.

6 EXAMINER STENMAN: The witness can  
7 clarify any misstatement.

8 A. What was the question?

9 Q. My question, sir, was simply that in this  
10 e-mail exchange Mr. Kurtz, on behalf of OEG, concurs  
11 with the requested change which would be in Section  
12 IV.A of the ESP stipulation, correct?

13 MS. GRADY: Objection.

14 EXAMINER STENMAN: Grounds?

15 MS. GRADY: Hearsay.

16 EXAMINER STENMAN: Overruled.

17 A. From my reading of the e-mail it simply  
18 says -- the e-mail from Mike Kurtz addressed to you  
19 says "Amy, OEG concurs with the change and request  
20 for expedited treatment."

21 Q. And the request for change concerned a  
22 revision to Section IV.B -- IV.A of the ESP  
23 stipulation, correct?

24 A. No.

25 MS. BOJKO: Objection.

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1 EXAMINER STENMAN: Grounds?

2 MS. BOJKO: Your Honor, the e-mail that  
3 Ms. Spiller sent to the company that she is trying to  
4 get into the record, it does not call it a change, it  
5 calls it a small error, and it says twice there was a  
6 small error, the error appears. There's nowhere in  
7 her language does it use the word "change." If she's  
8 going to read things into the record, she needs to do  
9 it completely and correctly.

10 EXAMINER STENMAN: Your concerns are  
11 noted for the record.

12 Q. (By Ms. Spiller) And, Mr. Kollen,  
13 Mr. Kurtz responded to my e-mail request of  
14 November 14, 2011, at 10:15 a.m. on November 14,  
15 2011, at 2:46 p.m., correct?

16 A. Did I hear two times? I'm sorry, I don't  
17 mean to be difficult, but did you say "10:15"? Or  
18 did you say --

19 Q. I'll rephrase it. Mr. Kurtz responded to  
20 my e-mail request within the day -- on the day that  
21 it was issued, correct?

22 A. Yes, that's true.

23 Q. Thank you.

24 Sir, you were aware of that change to the  
25 ESP stipulation when you drafted your testimony in

1 this case, correct?

2 A. Aware of it either at the time that I  
3 drafted it or shortly thereafter.

4 Q. And yet that wasn't a change that you  
5 made to your testimony this morning, was it?

6 A. No.

7 Q. The third and final section upon which  
8 you rely for your conclusion that the ESP stipulation  
9 set forth Duke Energy Ohio's agreement to be  
10 compensated at RPM rates by suppliers is Section I.B,  
11 as in boy, correct?

12 A. Section I.B, that's correct.

13 Q. And that is the section, sir, that  
14 appears on page 6 of the ESP stipulation, correct?

15 A. Yes, that's correct.

16 Q. And you certainly, sir, would have taken  
17 care to read the entire paragraph for purposes of  
18 directing your -- for purposes of preparing your  
19 direct testimony in this case, correct?

20 A. Yes.

21 Q. And having read the entire paragraph B  
22 that appears on page 6 and carries over to page 7 of  
23 the stipulation, you're aware that this paragraph  
24 pertains to Duke Energy -- to what would happen in  
25 the event the Ohio Commission modifies -- rejects or

1 modifies Duke Energy Ohio's next SSO application,  
2 correct?

3 A. Well, that's certainly true with respect  
4 to the first sentences in this provision, but as we  
5 have previously discussed, there's a further  
6 description and that's the part that I've extracted  
7 and shown in my testimony that describes the  
8 continuation of the existing situation, meaning the  
9 situation that was addressed by the stipulation.

10 And I think that it clearly illustrates  
11 the combined nature of what the parties agreed to in  
12 the sense of the FZCP in conjunction with the ESSC.  
13 And that's why I included it in the testimony.

14 Q. And so by clear illustration we would be  
15 able to read the words that were utilized in  
16 paragraph I.B for purposes of confirming your  
17 interpretation of the document, correct?

18 A. Could you repeat that?

19 Q. Sure. You used the term "clearly  
20 illustrates," and to the extent the language is  
21 clearly illustrative of your opinions we would be  
22 able to find those words and, thus, the clear  
23 illustration of your conclusion within paragraph I.B  
24 of the stipulation, correct?

25 A. Well, I don't know what "those words" in

1 your question referred to, but I believe that this  
2 clearly demonstrates that this was the de facto  
3 compensation mechanism adopted by the Commission  
4 consisting of the FZCP plus the ESSC. And for the  
5 reasons I specify in my testimony.

6 Q. And, again, sir, if it was clearly  
7 determinative, we would be able to find the words  
8 within paragraph I.B of the stipulation that reflect  
9 your interpretation of this paragraph, correct?

10 A. Again, I don't know -- you changed the  
11 question just a little bit so now you're referring to  
12 "the word" and previously you referred to "those  
13 words," but what I'm describing here is that under,  
14 for so long as Duke Energy Ohio is a fixed resource  
15 requirements, FRR, entity, and I'm not going to go  
16 ahead and read the whole thing, but that this  
17 describes the compensation mechanism, and that there  
18 was no ambiguity as to how the company was being  
19 compensated and for the manner in which it was being  
20 compensated for the duration of the ESP.

21 Q. So it's your testimony, sir, that the  
22 words that you utilized and relied upon in Section  
23 I.B of the ESP stipulation clearly and unambiguously  
24 established Duke Energy Ohio's compensation for its  
25 capacity obligations for the period of January 1,



1 2012, through May 31, 2015, correct?

2 A. Yeah. I think it certainly informs the  
3 understanding of the parties as to what was agreed to  
4 in the ESP stipulation and that that was actually  
5 compensatory from everybody's perspective. That's my  
6 understanding of that provision.

7 Q. Well, sir, my question was whether or not  
8 the language upon which you relied in your opinion  
9 clearly and unambiguously establishes Duke Energy  
10 Ohio's compensation for its capacity obligations for  
11 the period of January 1, 2012, through May 31, 2015.

12 A. In my opinion it does. Obviously, it's  
13 not clear and unambiguous to the company because you  
14 disagree with that, but in my opinion it does.

15 Q. Well, if the language is clear and  
16 unambiguous, we should have the same opinion, right?

17 A. Well, and I'm a little surprised that we  
18 don't.

19 Q. Well, sir, let's go back to this  
20 paragraph I.B. You read it in its entirety for  
21 purposes of forming your opinions in this case,  
22 correct?

23 A. Yes.

24 Q. And you know, sir, that this particular  
25 paragraph is speaking to the provisions or what would

1     happen subsequent to May 31, 2015, should the  
2     Commission reject or modify Duke Energy Ohio's next  
3     SSO filing such that the company withdraw that  
4     filing, correct?

5             A.     Yes.   But the latter part of this  
6     paragraph reflects the other aspects of the  
7     stipulation with respect to the use of or the  
8     obligation of Duke Energy Ohio as an FRR entity under  
9     PJM Interconnection and that it would provide  
10    capacity at the final zonal capacity price.  That's  
11    what was agreed to in the other parts of this  
12    document.

13            And I believe that this correctly  
14    describes the circumstances that the parties had  
15    agreed to, and what this paragraph does is it says in  
16    the event that the Commission rejects Duke Energy  
17    Ohio's next SSO application, this continues in  
18    effect.  So I agree that it informs us all on what  
19    the parties had agreed to.

20            Q.     Well, let's --

21            A.     Because it couldn't continue in effect if  
22    it didn't exist as a result of the stipulation.

23            Q.     Let's go to the language that you relied  
24    upon for purposes of your testimony, that which you  
25    just identified.  And in your testimony, sir, you

1 didn't include the entire sentence on which you  
2 relied, did you?

3 A. That's true. I did not put "for purposes  
4 of this paragraph" because I didn't think it was  
5 essential to understanding that the rest of the  
6 paragraph was representative of what the parties had  
7 agreed to and that that would continue regardless of  
8 whether the Commission rejected Duke Energy Ohio's  
9 next SSO application.

10 Q. "For purposes of this paragraph" refers  
11 to paragraph I.B of the stipulation, correct?

12 A. It does, yes.

13 Q. And I.B of the stipulation concerns what  
14 will happen subsequent to May 31, 2015, correct?

15 A. Yes. And it also describes the present  
16 circumstances as a result of the ESP stipulation.  
17 And that's the point that I'm trying to make. I  
18 don't disagree with you. But it's not limited only  
19 to that.

20 Q. The language that you omitted, sir, says  
21 "for purposes of this paragraph the parties also  
22 agree," and then you continue on with the language,  
23 correct?

24 A. Well, let me give you a hypothetical.  
25 For purposes of this hearing the date is the same

1622

1 today for the 24-hour period from midnight of this  
2 morning until midnight tonight. Now, that fact  
3 exists independently of the prepositional phrase "for  
4 purposes of this hearing." It's a fact.

5 So this description here of the  
6 circumstances where the compensation mechanism is  
7 based upon the FZCP in order to meet the FRR load  
8 obligation doesn't deny that fact. The reason I  
9 excerpted that is because I thought it was an  
10 adequate description.

11 Q. You didn't think it was important to what  
12 the parties meant. Right?

13 A. What wasn't important to what the parties  
14 meant?

15 Q. The language that you omitted. You've  
16 just described it as additive.

17 A. Well, that's right. I don't think that  
18 it's essential to the part that I extracted and  
19 because that represents the -- a description of the  
20 circumstances, the compensation mechanism that would  
21 continue in effect but that had otherwise been  
22 adopted pursuant to the stipulation. All this  
23 paragraph does is it says if the Commission rejects  
24 the next SSO application, then what we've agreed to  
25 here continues. And so what I've said is this is

1     what the parties have agreed to.

2             Q.     What the paragraph says, sir, is if the  
3     Commission rejects or substantially modifies the next  
4     ESP application such that Duke Energy Ohio withdraws  
5     that application, these things set forth in this  
6     paragraph will happen, correct?

7             A.     Yes, that's right. And these things that  
8     are set forth in the extracted portion of that  
9     paragraph that I have in my testimony are what has  
10    otherwise been agreed to in this stipulation.

11            Q.     And so you're saying that in other  
12    provisions of the stipulation Duke Energy Ohio agreed  
13    to provide capacity at the final zonal capacity price  
14    and, hence, agreed to be compensated for its capacity  
15    obligations at the final zonal capacity price,  
16    correct?

17            A.     Yes, that's true.

18            Q.     And neither of the --

19            A.     Plus, plus, plus, plus the ESSC.

20            Q.     We're not there yet but we'll get there.

21            A.     Well, I have to have a complete answer.

22            Q.     But, sir, neither of the provisions that  
23    we just read, Section II.B or Section IV.A, indicate  
24    that Duke Energy Ohio would provide capacity at the  
25    final zonal capacity price and, hence, be compensated

1 at the final zonal capacity price for its FRR  
2 obligations, correct?

3 A. That's what it says to me.

4 Q. That's not what the words say, do they?

5 A. That's what it says to me. We can read  
6 them again.

7 Q. What it says, sir, is that Duke Energy  
8 Ohio shall supply capacity to PJM and PJM shall  
9 charge suppliers, correct?

10 A. It says "The Parties also agree that for  
11 so long as Duke Energy Ohio is a fixed resource  
12 requirements, FRR entity, under PJM Interconnection,  
13 LLC, PJM, it will provide capacity at the final zonal  
14 capacity price, FZCP in the unconstrained regional  
15 transmission organization, RTO, region."

16 Q. And you just told me, sir, that those  
17 same words would appear in the other provisions of  
18 the ESP stipulation upon which you rely for purposes  
19 of concluding that Duke Energy Ohio agreed in the  
20 context of this stipulation to receive FZCP  
21 market-based pricing for its FRR capacity  
22 obligations, correct?

23 A. I don't understand the distinction you're  
24 making. I mean, I just read what it says. I'm not  
25 sure what you're asking now that it is different than

1 this. Are you changing a word or a phrase or  
2 something? I don't understand.

3 Q. Sir, you have read Section I.B that  
4 pertains to events after May 13 -- strike that.

5 You've read a provision within Section  
6 I.B of the stipulation, that section pertaining to  
7 what will happen after May 31, 2015, you have read a  
8 portion of that paragraph and you have concluded that  
9 what that language says is similar or the same as  
10 what is provided for elsewhere in the stipulation,  
11 correct?

12 A. Yes.

13 Q. And the other two provisions and where  
14 you say this other language is similarly provided are  
15 Sections II.B and Section IV.A of the stipulation,  
16 correct?

17 A. Yes. With respect to the stipulation,  
18 and then there's further -- there's testimony from  
19 the company's witnesses with respect to the  
20 stipulation and the meaning of it from the company's  
21 perspective which I subsequently cite.

22 Q. But let's stick with the stipulation for  
23 a moment.

24 A. And I answered that.

25 Q. Neither Section II.B nor Section IV.A

1 indicate that Duke Energy Ohio will provide capacity  
2 at the final zonal capacity price and in exchange be  
3 compensated for its capacity obligations at the final  
4 zonal capacity price, correct?

5 A. These two provisions -- there's other  
6 provisions in the stipulation that address the rate,  
7 the RC for the SSO load, and those do specifically  
8 refer to the FCZP -- FZCP.

9 Q. Well, sir, if I could go back to my  
10 question, neither Section I.B nor Section IV.A  
11 indicate that Duke Energy Ohio will provide capacity  
12 at the final zonal capacity price and in exchange be  
13 compensated for its capacity obligations at the final  
14 zonal capacity price, correct?

15 A. I don't think that's correct because  
16 there's an obligation of Duke Energy to provide its  
17 capacity to PJM at the FZCP and then PJM will, in  
18 turn, sell that capacity back to the CRES providers  
19 and at the FZCP.

20 Q. And so it's your testimony, sir, that  
21 Section II.B and Section IV.A of the stipulation  
22 provide that Duke Energy Ohio shall supply capacity  
23 to PJM at the FZCP.

24 A. Yes, that's my -- that's my understanding  
25 of those provisions.



1           Q.    That's what you believe the language  
2    says.

3           A.    Yes.

4           Q.    But the language doesn't say that, does  
5    it, sir?

6           A.    Well, it does.

7           Q.    Can you point to me where in Section II.B  
8    it says Duke Energy Ohio shall supply capacity to PJM  
9    at the FZCP?

10          A.    It says to all wholesale supply auction  
11   winners for the applicable time periods of Duke  
12   Energy Ohio's ESP with a charge for said capacity  
13   determined by the PJM RTO which is the FZCP in the  
14   unconstrained RTO region.

15          Q.    That's the charge as between PJM and the  
16   supplier, correct?

17          A.    Yes.

18               EXAMINER STENMAN:  Let's go off the  
19   record for a moment.

20               (Discussion off the record.)

21               EXAMINER STENMAN:  Let's take a 45-minute  
22   lunch break and we will return at 1:40.

23               (Thereupon, at 12:53 p.m., a lunch recess  
24   was taken until 1:40 p.m.)

25               - - -

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1 Tuesday Afternoon Session,  
2 April 23, 2013.

3 - - -

4 EXAMINER STENMAN: Let's go back on the  
5 record. Ms. Spiller.

6 MS. SPILLER: Yes, your Honor. Ready to  
7 resume.

8 - - -

9 LANE KOLLEN

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

12 CROSS-EXAMINATION (Continued)

13 By Ms. Spiller:

14 Q. Mr. Kollen, it's your opinion that Duke  
15 Energy Ohio's ESP stipulation expressly established  
16 rider ESSC for the sole purpose of compensating Duke  
17 Energy Ohio in its provision of capacity service as  
18 an FRR entity, correct?

19 A. Yes.

20 Q. And in identifying what you believe to be  
21 the purpose of rider ESSC, you did not mention in  
22 your direct testimony that Duke Energy Ohio agreed to  
23 conduct auctions for its standard service offer load  
24 beginning January 1, 2012, correct?

25 A. I believe that's correct.

1           Q.   And in identifying what you believe to be  
2   the purpose for rider ESSC, you did not mention in  
3   your direct testimony that Duke Energy Ohio agreed to  
4   not participate in these auctions for its SSO load,  
5   correct?

6           A.   That's true.

7           Q.   And in identifying what you believe to be  
8   the purpose for rider ESSC, you did not mention in  
9   your direct testimony, sir, that Duke Energy Ohio  
10   would participate in the base residual auction for  
11   the '16-'17 planning year, correct?

12          A.   That it would?

13          Q.   That it would, yes, sir.

14          A.   I don't recall that I mentioned that.

15          Q.   And you also, sir, did not mention in  
16   identifying what you believe to be the purpose for  
17   rider ESSC that Duke Energy Ohio agreed in the  
18   context of its ESP stipulation to seek an early  
19   termination of its FRR status, correct?

20          A.   That's correct. I did not mention that  
21   in my direct testimony.

22          Q.   And you know, sir, that the ESP  
23   stipulation reflected an overall package resolution  
24   by the parties, correct?

25          A.   Yes, that's correct. Including

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1 concessions or agreements to -- by Duke Energy Ohio,  
2 for example, to effectively cede its request for a  
3 cost-based capacity charge rate.

4 Q. Well, let's talk about that request now  
5 that you identified Duke Energy Ohio as having ceded.  
6 Duke Energy Ohio filed an ESP application on June 20,  
7 2011, correct?

8 A. On or about that date. I'm not certain  
9 of the exact date, but, yes, mid-2011.

10 Q. And as we have established, sir, that  
11 would have been an ESP for standard service offer of  
12 competitive retail electric service, correct?

13 A. Yes.

14 Q. That was an ESP under which Duke Energy  
15 Ohio proposed to directly provide capacity services  
16 to its retail customers, correct?

17 A. Yes.

18 Q. It was an ESP application pursuant to  
19 Chapter 4928 under which suppliers, whether wholesale  
20 or competitive electric retail suppliers, would have  
21 no role whatsoever in the provision of capacity to  
22 Duke Energy Ohio's retail customers, correct?

23 A. I'm not sure I followed that question.

24 Q. Well, you are familiar with the company's  
25 proposal in its ESP application, correct?

1           A.    Yes.

2           Q.    And, again, sir, we've just established  
3   that it was a proposal under which Duke Energy Ohio  
4   would directly provide capacity services to all of  
5   its retail customers, correct?

6           A.    Directly provide capacity services to its  
7   standard service offer customers, yes.

8           Q.    And so the application as you remember it  
9   did not make any provision for Duke Energy Ohio to  
10   directly provide capacity services to shopping or  
11   non-SSO customers, correct?

12          A.    I think that's correct.  But I'd have to  
13   verify that.  I'd have to refresh my recollection.

14          Q.    Mr. Kollen, do you know how much load  
15   Duke Energy Ohio was serving under its SSO -- strike  
16   that.

17                Do you know how much SSO load Duke Energy  
18   Ohio was serving under its ESP that would have been  
19   in effect in October of 2011?

20          A.    I don't.

21          Q.    Mr. Kollen, I would ask you to assume for  
22   purposes of this next line of questioning that  
23   Mr. Wathen testified yesterday in this proceeding  
24   that in 2011 Duke Energy Ohio had been serving  
25   approximately 60 percent of its residential load.

1 Will you keep that assumption --

2 A. With standard service offer?

3 Q. Yes, sir.

4 A. Okay.

5 Q. And, Mr. Kollen, you know that if Duke  
6 Energy Ohio's ESP as filed in case 11-3549 had not  
7 been approved by the Commission to take effect  
8 January 1, 2012, that the company's first ESP would  
9 have continued, correct?

10 A. I agree.

11 Q. And Duke Energy Ohio in that  
12 circumstance, sir, would have continued serving SSO  
13 customers under the rates established in that first  
14 ESP, correct?

15 A. Yes.

16 Q. And, sir, you have no reason to dispute  
17 that with respect to the SSO customers being served  
18 by Duke Energy Ohio under its first ESP, Duke Energy  
19 Ohio was collecting approximately \$50 a megawatt-hour  
20 from those customers, correct?

21 A. I don't know sitting here today. I just  
22 don't know.

23 Q. So you have no reason to dispute that,  
24 correct?

25 A. I have no reason to agree with it either.

1 I just don't know.

2 Q. Sir, you would agree with me that in  
3 agreeing to conduct competitive auctions effective  
4 January 1, 2012, Duke Energy Ohio gave up whatever  
5 standard service offer load it may have been serving  
6 in the fall of 2011, correct?

7 A. Yes.

8 Q. Mr. Kollen, you do know that rider RC  
9 will not be altered if the company's request in this  
10 case is approved, correct?

11 A. Yes.

12 Q. And you are aware, sir, that Duke Energy  
13 Ohio and AEP Ohio jointly own generating assets,  
14 correct?

15 A. Yes.

16 Q. And some of those assets are -- some of  
17 those jointly owned generating assets are being used  
18 to fulfill AEP Ohio's FRR capacity obligations,  
19 correct?

20 A. Yes.

21 Q. And some of those same jointly owned  
22 generating assets are being used to fulfill Duke  
23 Energy Ohio's capacity obligations, correct?

24 A. Their respective shares meaning their --  
25 AEP Ohio and Duke Energy's, yes.

1           Q.    Yes, sir.  And like Duke Energy Ohio  
2   AEP Ohio is an FRR entity through May 31, 2015,  
3   correct?

4           A.    They're both FRR entities through May 31,  
5   2015.

6           Q.    And like Duke Energy Ohio AEP Ohio's  
7   obligated to self-supply capacity for its load zone  
8   through May 31, 2015, correct?

9           A.    AEP is obligated through that date, yes.

10          Q.    Mr. Kollen, shutting down all of Duke  
11   Energy Ohio's legacy generating assets would increase  
12   the probability of creating a constrained zone in  
13   Duke Energy Ohio's footprint, correct?

14          A.    I think I'd agree with that, but I don't  
15   know what relevance it has to this case.  But I think  
16   if you shut down all of the capacity or a good  
17   portion of it in a constrained zone, that would have  
18   an effect on the availability of capacity or the  
19   price for it.

20          Q.    And in that regard, sir, as you are  
21   aware, in last year's base residual auction the  
22   constrained zone in northern Ohio led to a market  
23   price for capacity of \$357 per megawatt-day, correct?

24               MR. HAYDEN:  Objection, relevance and  
25   well outside the scope of this witness's testimony.



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1 EXAMINER STENMAN: Overruled.

2 A. I don't know.

3 Q. (By Ms. Spiller) Sir, you are familiar  
4 what the base residual auction results from last  
5 year, correct?

6 A. Yes.

7 Q. And would reviewing a PJM document  
8 refresh your recollection as to the auction results  
9 for northern Ohio?

10 A. It may. I don't know. The \$353 per  
11 megawatt-day does not ring a bell with me.

12 MS. SPILLER: Your Honor, may we  
13 approach? I'm not necessarily intending to introduce  
14 but to see if the document would refresh the  
15 witness's recollection.

16 EXAMINER STENMAN: You may.

17 MS. SPILLER: Thank you.

18 EXAMINER STENMAN: Mr. Kollen, do you  
19 have an answer or are you waiting for Ms. Spiller to  
20 ask a question?

21 THE WITNESS: Oh, I'm sorry.

22 Q. I'm sorry, I thought you were reviewing  
23 the documents, sir.

24 A. I am. Is there a question pending?

25 Q. Having reviewed the documents, sir, is

1 your recollection refreshed as to the results of the  
2 2012 base residual auction for the 2015-2016 planning  
3 year in respect of the ATSI zone?

4 A. Yeah, it's in northern Ohio for the ATSI  
5 LDA, the price for resources of \$357 per  
6 megawatt-day. I don't know what the relevance is to  
7 the Duke Energy Ohio trading hub, but something  
8 separate and distinct.

9 Q. Mr. Kollen, do you know whether Duke  
10 Energy Ohio can unilaterally and independently shut  
11 down generating assets that it jointly owns with  
12 entities such as AEP Ohio?

13 A. Generally not. I don't know specifically  
14 with respect to any of the individual units, but  
15 generally you can't do that.

16 Q. Mr. Kollen, you have not done any  
17 analysis on whether Duke Energy Ohio would be able to  
18 locate unit-specific capacity if it were to retire  
19 its legacy assets that have been committed to its FRR  
20 plan, correct?

21 A. Could you repeat that?

22 Q. Sure. You have not done any analysis on  
23 whether Duke Energy Ohio would be able to locate  
24 unit-specific capacity sufficient to meet its FRR  
25 obligations if it were to retire its legacy assets

1 that have been committed to its plan.

2 A. I haven't done that analysis and I don't  
3 think anybody's suggesting that in this case, so I'm  
4 not, again, sure what the relevance of that is.

5 Q. So by your answer, sir, would I be  
6 correct in concluding that it's your opinion that the  
7 legacy generating assets should continue to be  
8 dedicated to or should continue to be committed to  
9 Duke Energy Ohio's fulfillment of its FRR capacity  
10 obligations?

11 A. I don't disagree with that. It's a  
12 matter of the compensation that we're here in this  
13 proceeding to address.

14 Q. Mr. Kollen, are you familiar with Duke  
15 Energy Ohio's cost of debt?

16 A. Yes.

17 Q. And how does that cost of debt compare to  
18 a negative 2.4 percent return on equity?

19 A. Well, they're two different things, first  
20 of all. A return on equity is earnings divided by  
21 common equity capitalization and the cost of debt is  
22 the average interest rate on the debt outstanding.

23 Q. And you have never offered an expert  
24 opinion in Ohio that a public utility company's cost  
25 of debt was a reasonable rate of return, have you?

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1           A.    I don't recall that I have except in this  
2    case.  If the Commission chooses to authorize the  
3    company to retroactively implement a rate per  
4    megawatt-day, a capacity rate per megawatt-day, back,  
5    to August 1, 2012, then I do think that the debt only  
6    rate of return is a reasonable rate of return given  
7    the circumstances.

8           Q.    It's your opinion that in looking at a  
9    utility company's financial integrity the entirety of  
10   the business should be evaluated, correct?

11          A.    Yes.  And not just one segment or a  
12   subset of a segment which the company has done in  
13   this case.  Rather than looking at Duke Energy Ohio  
14   on an aggregate basis what the company has done is  
15   it's looked at a subset of its legacy generation  
16   excluding the amounts held of capacity held in a  
17   wholly-owned affiliate and instead just focusing on  
18   certain coal-fired legacy generation.  In other  
19   words, the losers versus ignoring the winners.

20          MS. SPILLER:  I'm going to move to strike  
21   everything after "yes" as nonresponsive.

22          EXAMINER STENMAN:  Denied.

23          Q.    Mr. Kollen, in setting Duke Energy Ohio's  
24   natural gas rates the Commission does not evaluate  
25   Duke Energy Ohio's electric distribution business,

1 correct?

2 A. To my understanding that would be  
3 correct, although there's some common costs that are  
4 incurred by Duke Energy Ohio and then those costs are  
5 allocated or distributed, if you will, between the  
6 electric and the gas businesses.

7 Q. And in setting Duke Energy Ohio's  
8 electric distribution rates the Commission does not  
9 consider all of the company's natural gas rates,  
10 correct?

11 A. I think generally that's correct.

12 Q. And when setting Duke Energy Ohio's  
13 electric distribution rates the Commission does not  
14 consider the earnings from its generation business,  
15 correct?

16 A. I wish that were true, but because the  
17 distribution business essentially is a regulated  
18 business that stands on its own, and that's why the  
19 company recently filed and has a distribution revenue  
20 requirement, and then the distribution company also  
21 has other obligations including the provision of  
22 standard service offer to nonshopping customers, and  
23 so those are the types of rates that we're addressing  
24 in this case.

25 So if you're going to consider the effect

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1 on the utility of providing these capacity related  
2 services, then you need to look at the entirety of  
3 the utility, not a subset of the generation segment,  
4 only the losers so to speak.

5 MS. SPILLER: I'm going to move to strike  
6 "only the losers so to speak."

7 EXAMINER STENMAN: Denied.

8 Q. Mr. Kollen, I'm going to go back to my  
9 question. For purposes of setting Duke Energy Ohio's  
10 electric distribution rates the Commission does not  
11 consider the earnings from its generation business,  
12 correct?

13 A. Well, I guess it really depends on, you  
14 know, the distribution functional rates of those  
15 tariffs, the Commission does not consider the  
16 generation.

17 Q. Thank you. And in setting Duke Energy  
18 Ohio's most recent ESP or standard service offer for  
19 competitive retail electric service the company did  
20 not consider Duke Energy Ohio's electric distribution  
21 rates, correct?

22 A. I don't think that question was stated  
23 correctly. Did you mean the Commission or did you  
24 mean the company?

25 Q. I'm sorry, the Commission.

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1           A.    I think I would agree with that.

2           Q.    And for purposes of setting Duke Energy  
3 Ohio's rates the Ohio Commission does not consider  
4 the revenues of the subsidiaries of Duke Energy Ohio,  
5 correct?

6           A.    Could you repeat that question?

7           Q.    Sure. For purposes of setting Duke  
8 Energy Ohio's rates the Ohio Commission does not  
9 consider the revenues of the subsidiaries of Duke  
10 Energy Ohio, correct?

11          A.    Well, I thought that was what we were  
12 here to discuss. In other words, the company's  
13 request is to do just that, and I guess I was under  
14 the impression that the ESP case, in part, was to  
15 address that as well.

16          Q.    Well, in the ESP did the Ohio Commission  
17 consider the revenues of Duke Energy Kentucky?

18          A.    No.

19          Q.    Did the Ohio Commission in the ESP case  
20 consider the revenues of KO Transmission?

21          A.    Not to my understanding.

22          Q.    Mr. Kollen, you would agree with me that  
23 the Midwest gas assets have never been used and  
24 useful in Duke Energy Ohio's provision of utility  
25 service to its customers, correct?

1           A.    I think they are now.

2           Q.    You believe they're used and useful.

3           A.    Well, my understanding is that there's a  
4 contract between Duke Energy Ohio and (REDACTED) that  
5 those assets now are providing service.

6           MS. SPILLER:  And, your Honor, again,  
7 we'd just move to -- that question and answer into  
8 the confidential portion.

9           EXAMINER STENMAN:  Yes, let's do that.

10          Q.    Mr. Kollen, the Midwest gas assets have  
11 never been in rate base for Duke Energy Ohio,  
12 correct?

13          A.    That's a different question, but I  
14 believe that is true.

15          Q.    And used and useful is a term specific to  
16 the regulatory arena, correct?

17          A.    Oh, I don't know if it's specific to  
18 the -- or unique to the regulatory arena.  It  
19 certainly is a term that is used within the  
20 regulatory arena.

21          Q.    Mr. Kollen, you would agree with me that  
22 not all capacity services are subject to RPM pricing,  
23 correct?

24          A.    True.

25          Q.    And you would also agree with me, sir,



1 that RPM pricing can be confiscatory, correct?

2 A. I don't know under what circumstance as  
3 context is important.

4 Q. Well, sir, do you recall testifying last  
5 year in AEP Ohio's case that RPM pricing could be  
6 confiscatory?

7 A. I don't, but I may have. I just don't  
8 recall.

9 MS. SPILLER: Your Honor, if we may  
10 approach and have marked for identification Duke  
11 Energy Ohio Exhibit 18. Your Honor, we have marked  
12 for identification purposes as Duke Energy Ohio  
13 Exhibit 18 an excerpt from the transcript of the  
14 hearing in case 10-2929, Volume VI of the transcript  
15 relative to a hearing -- a day of the hearing that  
16 occurred on Tuesday, April 24, 2012.

17 EXAMINER STENMAN: It will be so marked.

18 MS. SPILLER: Thank you.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. Mr. Kollen, do you have before you what  
21 has been marked as Duke Energy Ohio Exhibit 18?

22 A. I do.

23 Q. And, sir, would you agree with me that  
24 this is a portion of the transcript of the  
25 proceedings in case 10-2929?

1           A.    It appears to be a transcript from those  
2   proceedings.

3           Q.    And, sir, if we would look at page 1162,  
4   that provides the index and reflects that you were  
5   subject to both direct and cross-examination on pages  
6   1165 through 1198, correct -- I'm sorry, 1298,  
7   correct?

8           A.    It does.

9           Q.    And in the 10-2929 case your initial  
10   recommendation was that the Commission adopt RPM as  
11   the state compensation mechanism for AEP Ohio,  
12   correct?

13          A.    Yes.

14          Q.    But you also, sir, in that case proposed  
15   an equity stabilization mechanism, correct?

16          A.    Yes.

17          Q.    A banded mechanism, if you will, that  
18   would allow AEP Ohio a return on equity on the low  
19   end of 7 percent and a high end of 11 percent,  
20   correct?

21          A.    Yes.

22          Q.    And you did so, sir, because it was your  
23   opinion that RPM rates could be confiscatory,  
24   correct?

25          A.    Again, I don't recall.

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1           Q.   Well, you certainly found, sir, that a  
2   return on equity of 7 percent is at the fairly lower  
3   end of an earned rate of return on page 1227.

4           MS. GRADY:  Can counsel give a reference  
5   on that page to the lines that you're referring to?

6           MS. SPILLER:  Sure.  The question that  
7   begins on line 16.

8           MR. HAYDEN:  Can I have the question  
9   reread, please?

10          EXAMINER STENMAN:  Yes.

11          (Record read.)

12          A.   Okay, is there a question pending?  I'm  
13   on that page and I've read what I think is relevant.

14          Q.   Sir, was your opinion approximately a  
15   year ago today that a 7 percent earned rate of return  
16   would be on the lower end of a rate of return  
17   spectrum?  Correct?

18          A.   Yes, that's correct.  And keep in mind,  
19   too, that my testimony in the AEP case is with  
20   respect to -- okay, this was the capacity charges  
21   case, yes.  And this was in conjunction with a  
22   recommendation to adopt a rate stabilization  
23   mechanism which would have provided a low end rate of  
24   return in exchange for a cap on the company's  
25   earnings as well for when RPM was higher than a

1 cost-based rate.

2 So, in other words, it was a symmetrical  
3 recommendation to, in effect, provide some low-level  
4 support to the AEP/Ohio Power companies at the same  
5 time by regaining that, the value of that concession,  
6 if you will, when the company's earnings would be  
7 higher due to a higher RPM. So it was an attempt to  
8 balance out the low and the high ranges of the RPM so  
9 that was the context in which this testimony was  
10 offered.

11 Q. Sir, Duke Energy Ohio's cost of debt is  
12 below the fairly lower end of the -- the rate of  
13 return spectrum that you identified for another FRR  
14 entity, correct?

15 A. Yes. The context is different, of  
16 course, and that's important, but 4.11 percent, which  
17 is Duke Energy's cost of long-term debt on a weighted  
18 average basis is less than 7 percent mathematically.

19 Q. Now, the returns on equity that you  
20 propose with respect to the equity stabilization  
21 mechanism, again, the upper end of that was  
22 11 percent, correct?

23 A. Yes. And that would operate as a cap on  
24 the company's earnings.

25 Q. And you are aware, sir, that subsequent

1 to your proposal the Ohio Commission found that a  
2 rate of return of 7.6 percent, the low end of your  
3 band, was insufficient to yield just and reasonable  
4 compensation in the provision of FRR capacity  
5 service, correct?

6 A. Right. Over the term of the ESP, not in  
7 any particular year, but over the term of the ESP.

8 Q. And the Ohio Commission also found that a  
9 rate of return of 2.4 percent, a positive  
10 2.4 percent, was insufficient to yield just and  
11 reasonable compensation for an FRR entity in its  
12 provision of capacity service, correct?

13 A. That's true with respect to AEP, and keep  
14 in mind too that in the case of AEP all of the  
15 capacity revenues were included and all of the costs  
16 were included of all of the generating assets, not  
17 just the losers. So there was a very big difference  
18 between the AEP case and the Duke Energy case that we  
19 have before us in this proceeding.

20 Q. Mr. Kollen, the Ohio Commission did not  
21 accept even the upper end of your equity  
22 stabilization mechanism in that it approved for  
23 AEP Ohio a rate of return of 11.15 percent for its  
24 capacity obligation, correct?

25 A. That's correct, in the capacity charges

1 case. But then in the subsequent ESP case the  
2 Commission determined that a reasonable range was 7  
3 to 11 percent and actually used a 9 percent rate of  
4 return, but also adopted a cap on the company's  
5 earnings, and it described its decision in the ESP II  
6 case as the result of the extraordinary circumstances  
7 before us, and I don't think we have extraordinary  
8 circumstances before us here in the Duke Energy case.

9 Q. Well, sir, the range of ROEs that you  
10 reference in the ESP II proceeding for AEP Ohio did  
11 not concern their capacity service obligation, did  
12 it?

13 A. It did not in one sense but keep in mind  
14 that the capacity charges that were set in the 2929  
15 case, the capacity charges case, would have an impact  
16 on AEP/Ohio Power's earned returns and therefore  
17 would affect the cap on the company's earnings  
18 implemented in the ESP II case.

19 Q. Well, sir, let's be clear. In the  
20 capacity case for AEP Ohio the Commission adopted a  
21 cost-based formula for AEP Ohio in respect of its  
22 provision of capacity services as an FRR entity,  
23 correct?

24 A. Yes, but keep in mind that these cases  
25 were running simultaneously and that the capacity

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1 charges in turn fed into the ESP II case. In other  
2 words, there was a sequencing --

3 Q. I understand.

4 A. -- and so you can't ignore that context.  
5 And the capacity charges case was necessary in order  
6 to complete the ESP II case which is why the capacity  
7 charges case was completed first and then the results  
8 of that considered in the ESP II case.

9 Q. And in the capacity --

10 A. But in contrast here we have Duke Energy  
11 which already had its ESP case and now is attempting  
12 to or is seeking an additional charge.

13 Q. In the AEP Ohio capacity charges case the  
14 Ohio Commission adopted a cost-based charge for  
15 AEP Ohio with respect to its FRR capacity  
16 obligations, correct?

17 MS. GRADY: Objection.

18 EXAMINER STENMAN: Grounds?

19 MS. GRADY: Asked and answered.

20 EXAMINER STENMAN: Overruled.

21 A. Yes.

22 Q. And in doing so, sir, they adopted an  
23 11.15 percent return on equity for AEP Ohio with  
24 respect to its specific provision of FRR capacity  
25 service, correct?

1           A.    Yes.  But for all of its generation  
2   assets, the losers and the ones that were in the  
3   money, so not just the losers.

4           Q.    And in the ESP II proceeding the Ohio  
5   Commission adopted a different return on equity with  
6   respect to AEP Ohio's RSR or retail stability rider  
7   that had been approved under Section 4928.143 of the  
8   Ohio Revised Code, correct?

9           A.    I'm not certain about the reference to  
10  the Revised Code, but in any event, it utilized a  
11  range of 7 to 11 percent and actually in order to  
12  make its assessment settled on a 9 percent return on  
13  equity in the ESP II case.

14          Q.    And did you not, sir, for purposes of  
15  your testimony in this case, at all acknowledge or  
16  attempt to utilize the 11.15 percent that the Ohio  
17  Commission found reasonable in ensuring that an FRR  
18  entity was justly and reasonably compensated for  
19  their FRR services, correct?

20          A.    Well, I did address the 11.15 percent and  
21  I addressed it and determined that it was  
22  unreasonable on several levels and then proposed  
23  several adjustments, first of all to the 9 percent  
24  and then down to 7 percent and then finally down to a  
25  4.11 percent which is a debt only rate of return.



1           Q.   Well, sir, the reasons for which you  
2   discounted the 11.15 percent ROE is because you said  
3   it wasn't what the Ohio Commission used in AEP Ohio's  
4   ESP, correct?

5           A.   That was one of the reasons.

6           Q.   Well, sir, if we look on pages 42 and 43  
7   of your testimony beginning on line 19 on page 42,  
8   your first three reasons for why you discounted the  
9   11.15 percent are related specifically to your --  
10   specifically to AEP Ohio's ESP II, correct?

11          A.   On lines 21 through 22, yes.

12          Q.   And carrying over onto page 43. So your  
13   first, second, and third reasons for rejecting the  
14   11.15 percent is because that's what the Ohio  
15   Commission did not use in an ESP proceeding to  
16   establish standard service offer of competitive  
17   retail electric service, correct?

18          A.   I think I agree with that.

19          Q.   And then your final reason is simply that  
20   you believe the 11.15 percent greater than the  
21   company's cost of long-term debt, correct?

22          A.   Right. Those are the four reasons that I  
23   list there.

24          Q.   Mr. Kollen, you offer no opinion on the  
25   mix of capacity resources that Duke Energy Ohio is

1 using to meet its FRR capacity obligations, correct?

2 A. In other words, the mix of the legacy  
3 coal-fired units and those that are held by the  
4 wholly-owned subsidiary of Duke Energy? I don't  
5 think I address that. I think I may have mentioned  
6 it, but I don't think I addressed it in the sense of  
7 I had any issue with it.

8 Q. Okay. Mr. Kollen, you believe that the  
9 more current -- that a more current projection is  
10 more reliable for purposes of assessing the future,  
11 correct?

12 A. Generally, that's true. I mean you could  
13 construct one that is totally unreliable regardless  
14 of the timing of the projection, but if the same care  
15 was devoted to both forecast or projections then the  
16 more recent one would tend to be more reliable and  
17 more credible.

18 Q. And in this case the most recent or the  
19 most current projection of Duke Energy Ohio's future  
20 energy margins comes from Mr. Luciani's testimony,  
21 correct?

22 A. I'm not really sure what he relied on,  
23 quite frankly. I know that he had a different  
24 projection or forecast than what the company did and  
25 what the company used to quantify the effect in the

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1 rate that it is proposing in this case, but I don't  
2 know the timing of Mr. Luciani's projections.

3 Q. Sir, if you could turn to page 42 of your  
4 testimony, please.

5 Are you there, sir?

6 A. Yes.

7 Q. And on line 14 you use the term "captive  
8 customers," correct?

9 A. Yes.

10 Q. And here you simply mean Duke Energy  
11 Ohio's retail distribution customers, correct?

12 A. Yes. And that term was used I believe by  
13 the company in its FERC filing on corporate  
14 separation but, you know, it's a term that I mean to  
15 refer to the distribution customers who will be  
16 paying this charge.

17 Q. So you don't ascribe any technical  
18 meaning to the word, correct?

19 A. Which word?

20 Q. "Captive."

21 A. In what sense?

22 Q. In the way that you've used it on line  
23 14, page 42 of your testimony.

24 A. Well, I know, but I don't know what you  
25 mean by the term "technical meaning." I told you

1     what I meant by the use of that term and I don't know  
2     if you have anything else in mind with respect to the  
3     use of the term "technical meaning."

4             Q.     Just asking how you used the word, sir.

5             A.     Okay. Well, I explained it to you but I  
6     don't know what technical meaning is beyond that, so.

7             Q.     Sir, you've not done any analysis of the  
8     financial impact to Duke Energy Ohio were the  
9     Commission to deny its application in this  
10    proceeding, correct?

11            A.     I don't think that's correct. I reviewed  
12    the impact of varying returns on a total company  
13    basis and, let's see if I can find that, because the  
14    company has maintained that the earned return on a  
15    segment or a subset of a segment of the business is a  
16    proxy for the entire company. For example, that was  
17    in Mr. Trent's testimony and also in another  
18    witness's testimony. But that simply isn't true.  
19    Because what the company did is it looked at a subset  
20    of the generation segment and said that's what the  
21    earned return is or will be under our projections.

22                    I pointed out that you really need to  
23    look, if you're concerned about financial integrity,  
24    you need to look at the entire utility, and then I  
25    did some computations that would give an indication

1 of how much impact the generation segment had on the  
2 overall company.

3 Q. Mr. Kollen, the FERC Form 1 does not  
4 include any assets that are not directly owned,  
5 correct?

6 A. That are owned by affiliates, not owned  
7 by Duke Energy Ohio, that's correct.

8 Q. And the same, sir, would be true for  
9 AEP Ohio, that its FERC Form 1 would not include any  
10 assets that AEP Ohio does not directly own, correct?

11 A. I think that's true. I would have no  
12 reason to believe otherwise.

13 Q. And AEP Ohio relied on FERC Form 1 data  
14 for year ending 2010 for purposes of its cost-based  
15 capacity charge, correct?

16 A. Yes. Except that I don't think AEP Ohio  
17 had a separate generation affiliate that -- a  
18 wholly-owned affiliate, which Duke Energy does.

19 Q. Mr. Kollen, you cannot dispute that the  
20 property tax allocation done by Duke Energy Ohio in  
21 this proceeding is consistent with how property taxes  
22 were allocated for purposes -- strike that, let me  
23 start over.

24 Mr. Kollen, you cannot dispute that the  
25 property tax allocation done by Duke Energy Ohio in

1 this proceeding is consistent with how property taxes  
2 are allocated for purposes of its transmission  
3 revenue requirements, correct?

4 A. I did not actually look at the tariff  
5 calculations for Duke's OATT, but I did compare the  
6 distribution rate case, the allocation of property  
7 taxes in that case, so I think that answers your  
8 question.

9 Q. Well, not entirely. My question was  
10 about Duke Energy Ohio's transmission revenue  
11 requirements. You do not know how property taxes are  
12 allocated in -- are allocated for purposes of Duke  
13 Energy Ohio's transmission revenue requirements,  
14 correct?

15 A. That's true. I did not investigate that.  
16 As I said in my prior answer, I looked at the  
17 distribution allocation which is a predominant  
18 allocation of property taxes in the company's  
19 distribution rate case.

20 Q. And, sir, you also cannot dispute that  
21 Duke Energy Ohio's property tax allocation in this  
22 proceeding is the same as that which the Ohio  
23 Commission approved in establishing AEP Ohio's costs  
24 for providing FRR capacity service, correct?

25 A. I did not look at that. I don't know the

1 answer to that. But I do know what Duke did is  
2 incorrect and it would provide for double recovery of  
3 the same property taxes under the company's proposed  
4 capacity charge rate and its distribution revenue  
5 requirement, and I think that's inappropriate and  
6 improper.

7 Q. But you don't know whether the Ohio  
8 Commission has already approved the same property tax  
9 allocation in a proceeding regarding a similarly  
10 situated FRR entity, correct?

11 A. I know that you're referring to AEP/Ohio  
12 Power and I told you that already, that I had not  
13 looked at that so I don't know what AEP/Ohio Power  
14 did in the capacity charges case. But if it did it  
15 the same way Duke did, it's definitely wrong.

16 Q. And you certainly, sir, had the  
17 opportunity as a witness on behalf of an intervenor  
18 in the AEP Ohio case to review the testimony that had  
19 been submitted by AEP Ohio in that proceeding,  
20 correct?

21 A. That's correct. But I didn't look at  
22 everything and certainly didn't provide testimony on  
23 every issue in this case, potential or actual.

24 Q. You did not provide -- strike that.

25 Did you review Kelly Pearce's testimony?

1           A.    I did but I did not look specifically at  
2   the property tax allocation and --

3           Q.    Would you --

4           A.    -- you know, I just simply did not look  
5   at it. In this case I did. And it's wrong.

6           Q.    And, sir, do you typically in filing  
7   direct testimony identify those issues that you  
8   believe to be important?

9           A.    I do. That's not to say that I don't  
10   miss issues and/or in some cases don't even address  
11   them, but I did not look at that in the AEP Ohio  
12   Power case.

13          Q.    Mr. Kollen, in your testimony you  
14   conclude that if the company is allowed to receive  
15   its costs in providing FRR capacity service, that  
16   this would be a drain on the Ohio economy, correct?

17          A.    No, that's not what I said. I said that  
18   if the company's request in this proceeding is  
19   granted, it would provide an additional drain on the  
20   Ohio economy, because it would be recovering the same  
21   cost twice, once through the ESSC and then again  
22   through the capacity charge retroactive back to  
23   August 1 of last year.

24          Q.    And your conclusion will hold only if the  
25   ESSC does what you contend it does, correct?



1           A.   Well, it's a retail tariff, it provides  
2 regulated revenues to Duke Energy Ohio, those are  
3 assigned to the Commercial Power segment so, you  
4 know, on the company's financial reporting those  
5 revenues are matched with those legacy assets.  
6 There's no reason not to include those revenues.  
7 Clearly, they're being recovered and the company  
8 views them as being recovered to pay for those legacy  
9 generation assets. And so if we ignore them  
10 altogether as you posed hypothetically in your  
11 question, then, you know, would the company have a  
12 stronger case for a capacity based charge? Perhaps.  
13 But I don't think you can in the real world assume  
14 away \$110 million a year of revenue.

15           Q.   Mr. Kollen, with respect to the Ohio  
16 Commission's order of July 2nd, 2012, in the AEP Ohio  
17 capacity charges case, did you think that a  
18 significant ruling?

19           A.   Yes.

20           Q.   Did you think the Commission's ruling on  
21 July 2, 2012, changed the landscape with respect to  
22 capacity services provided by utilities in Ohio?

23           A.   Only for the AEP/Ohio Power. I did not  
24 think it would have any implications at all for Duke  
25 Energy Ohio.

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1           Q.    And prior to July 2, 2012, the Ohio  
2 Commission had not expressly identified capacity  
3 service provided by an FRR entity as a wholesale or  
4 nonretail service, correct?

5           A.    I don't know. I'm not even that  
6 concerned with those distinctions because I think  
7 it's artificial in the sense of retail ratemaking  
8 because whether you call the ESSC the provision of  
9 some type of retail service or wholesale service, the  
10 fact of the matter is that it's collected subject to  
11 a retail tariff and then the company itself segments  
12 that to the Commercial Power segment and, more  
13 specifically, to the legacy coal-fired generation  
14 asset.

15                So, you know, whatever you want to call  
16 it, wholesale or retail service, competitive or  
17 noncompetitive, the fact of the matter is the company  
18 is getting the revenue, it's recognizing it for  
19 financial and accounting purposes, and, you know,  
20 it's being recovered from retail customers and that's  
21 the important fact.

22           Q.    Sir, you don't know that the ESSC  
23 revenues are utilized for purposes of Duke Energy  
24 Ohio's legacy coal assets, do you?

25           A.    I do know that. That's how it's reported

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1 in the 10-K and it's reported in conjunction with the  
2 Commercial Power segment.

3 Q. It's reported under the Commercial Power  
4 segment, correct?

5 A. That's correct, yes.

6 Q. And that's as much as you know, correct?

7 A. That's what I know, and that's a matching  
8 of the revenue to the costs within the same segment.  
9 You know, the company collects those revenues, the  
10 ESSC revenues, pursuant to a retail tariff.

11 Q. And what you know based upon what has  
12 been disclosed in the public record and what has been  
13 disclosed in this proceeding is those revenues are --  
14 come in through the retail -- the regulated side and  
15 are reported on the Commercial Power business  
16 segment, correct?

17 A. Yes. Correct.

18 Q. And that's the extent of what you know  
19 about the ESSC reporting internal to Duke Energy  
20 Ohio, correct?

21 A. I don't know if I would characterize it  
22 as the extent of what I know, but I think it's the  
23 substance of what I know.

24 Q. Sir, let me go back to my question that I  
25 had asked you. July 2nd, 2012, was the first time

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1 since Senate Bill 3 was enacted that the Ohio  
2 Commission declared capacity service by an FRR entity  
3 to not be a retail service, correct?

4 A. I haven't done a search of that. I, you  
5 know, I've read the Commission's order in the  
6 AEP Ohio capacity charges case and I've read the  
7 order in the ESP II case and we went through that  
8 this morning, and it says what it says.

9 Q. And you would agree with me, sir, that  
10 prior to July 2nd, 2012 -- strike that.

11 Would you agree with me that since the  
12 enactment of Senate Bill 3 it was not until July 2,  
13 2012, that the Ohio Commission affirmatively declared  
14 that FRR capacity service was not subject to  
15 regulation under Chapter 4928, correct?

16 MS. GRADY: Objection.

17 EXAMINER STENMAN: Grounds?

18 MS. GRADY: Asked and answered.

19 EXAMINER STENMAN: Overruled.

20 A. And, again, the Commission's orders state  
21 what they state. You know, with respect to the legal  
22 implications of that, that's up to the attorneys to  
23 brief I'm assuming.

24 Q. Mr. Kollen, in your many years of  
25 experience in the Ohio regulatory arena have you

1 known the Ohio Commission to make adjustments to  
2 revenue requirements for items that were not known  
3 and measurable?

4 A. I'm not sure I understand the question.

5 Q. Well, you do know what "known and  
6 measurable" changes are, correct?

7 A. I do.

8 Q. For purposes of revenue requirement.

9 A. Yes, I do. Are you suggesting that, or  
10 is the question has the Commission made adjustments  
11 to the revenue requirement to somehow increase it or  
12 reduce it for something that isn't known and  
13 measurable? Is not known and measurable. Is that  
14 the question?

15 Q. Well, sure, we'll go with that.

16 A. No, I don't know. I mean, I'm just  
17 asking you because I want to make sure I understood  
18 the question before I provided an answer to you.

19 Q. Well, in your experience does the  
20 Commission adjust revenue requirements only for items  
21 that are known and measurable?

22 A. I think generally that's true. It starts  
23 out with a test year amount and it makes various  
24 adjustments and then the adjusted operating income  
25 and the adjusted cost of capital and the adjusted

1 rate base are all factored in to determine the  
2 revenue requirement. But everything is adjusted.

3 Q. Mr. Kollen, on pages 47 through 49 of  
4 your testimony, sir, the graph that's on page 48 is a  
5 depiction of total company returns for Duke  
6 Energy Ohio and its predecessor company the  
7 Cincinnati Gas & Electric Company from 2001 through  
8 2011, correct?

9 A. Yes.

10 Q. And these are total company meaning that  
11 they would include both the natural gas and electric  
12 distribution operations of Duke Energy Ohio as well  
13 as transmission, generation of Duke Energy Ohio as  
14 well as the operations of all subsidiaries of Duke  
15 Energy Ohio, correct?

16 A. That may be true at least in part through  
17 2007 or '8 and then thereafter the analysis was based  
18 upon the company's SEET filing and I believe that the  
19 SEET filing removes the natural gas distribution  
20 activities as well as Duke Energy Kentucky.

21 But we, to my recollection, we did adjust  
22 for some of these factors as well back to 2001 -- to  
23 2001 where we had the information, and we did ask for  
24 more specific information from the company and the  
25 company objected and refused to provide it so we went

1 with the best information we had.

2 Q. To your knowledge, sir, your lawyer never  
3 pressed, when the company refused to provide  
4 information it thought irrelevant, correct?

5 A. I don't know.

6 Q. Mr. Kollen, you just made mention of the  
7 SEET filings, those are filings applicable to  
8 electric distribution utilities operating under ESPs,  
9 correct?

10 A. Correct.

11 Q. The SEET provisions are codified in  
12 Chapter 4928 of the Ohio Revised Code, correct?

13 A. Some section of it, yes.

14 Q. And you are aware, sir, that the SEET is  
15 intended to ensure that electric distribution  
16 utilities in their provision of standard service  
17 offer do not significantly overearn, correct?

18 A. Yes.

19 Q. And to the extent there is overearning,  
20 there is a refund to customers, correct?

21 A. To the extent that the earnings are over  
22 the significantly excessive threshold there is a  
23 refund to customers.

24 Q. And you are aware, sir, that for purposes  
25 of its current ESP Duke Energy Ohio has a SEET

1 threshold of 15 percent, correct?

2 A. That's my recollection.

3 Q. Meaning that if the company were to have  
4 significantly excessive earnings or earnings that  
5 exceed 15 percent, those excess earnings would be  
6 refunded to customers, correct?

7 A. Yes.

8 Q. And in that circumstance, sir, the  
9 customer can -- strike that.

10 In that circumstance, sir, Duke Energy  
11 Ohio is not or cannot earn supranormal returns as you  
12 have used -- returns as you have used that term in  
13 your testimony, correct?

14 A. No, that's not correct. The company can  
15 earn supranormal returns to the extent they're over  
16 the average of the authorized returns, as I've  
17 defined that in my testimony, up to the point of the  
18 significantly excessive earnings threshold, and that  
19 of course has only been through since the  
20 implementation of the SEET. And if I recall  
21 correctly, that went into effect in 2009.

22 So all of the excessive or significantly  
23 excessive earnings and the supranormal earned returns  
24 prior to that point in time were retained and would  
25 have been retained by Duke Energy Ohio.



1           Q.   And, sir, I believe you've identified as  
2 normal 10 percent, correct?

3           A.   I think that it was approximately  
4 10 percent in 2010 and '11 based upon the authorized  
5 returns on equity for electric utilities throughout  
6 the United States. So I identified that as the  
7 normal return on equity for electric utilities and  
8 anything above that I characterized as supranormal.

9           Q.   And anything below that would be  
10 subnormal, correct?

11          A.   You could consider it that way if you  
12 decided to define that term in that manner.

13          Q.   Well, sir, don't you agree with me that  
14 there should be some balance and equity with respect  
15 to how you define supernormal -- supernormal and  
16 subnormal?

17          A.   Well, we could. If you wanted to use  
18 that term and define it in that manner, I would not  
19 be disagreeable to that.

20          Q.   Now, Mr. Kollen, in your testimony you  
21 identify differences with respect to property taxes  
22 that appeared on the Exhibit BDS-1 to Mr. Savoy's  
23 testimony as well as WDW-1, an attachment to  
24 Mr. Wathen's testimony, correct?

25          A.   I think more specifically, I think on

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1 Mr. Savoy's financial forecasts he had taxes other  
2 than income taxes and the property taxes would be a  
3 component of that. It wasn't a direct correlation,  
4 but the fact that the amount of these other taxes on  
5 Mr. Savoy's forecast was only a fraction of the  
6 property tax expense that Mr. Wathen had, I thought  
7 was an indictment of the excessive amount of the  
8 property tax expense on Mr. Wathen's quantifications.

9 Q. But in comparing those two documents you  
10 did not incorporate or address the differences with  
11 respect to O&M, did you?

12 A. No, not directly. That's true.

13 Q. Thank you.

14 MS. SPILLER: One moment, please, your  
15 Honor.

16 EXAMINER STENMAN: Yes.

17 MS. SPILLER: No further questions, your  
18 Honor, thank you.

19 EXAMINER STENMAN: Thank you.

20 Staff?

21 MR. JONES: No questions, your Honor.

22 EXAMINER STENMAN: Any redirect?

23 MR. KURTZ: Could we have five minutes?

24 EXAMINER STENMAN: Yes.

25 MR. KURTZ: Thanks.

1 (Recess taken.)

2 EXAMINER STENMAN: Let's go back on the  
3 record. Redirect?

4 MR. KURTZ: Thank you, your Honor.

5 - - -

6 REDIRECT EXAMINATION

7 By Mr. Kurtz:

8 Q. Mr. Kollen, do you recall questions from  
9 counsel for Duke about consistent treatment of Duke  
10 and AEP and the rate of return recommendation you  
11 made in the AEP case compared to this case and  
12 similar treatment for similarly situated entities?

13 A. I do.

14 Q. In your opinion are Duke and AEP  
15 comparable or similarly situated?

16 A. No, they really are not. In the case of  
17 AEP, the Commission was interested in moving AEP  
18 forward to deregulation and competitively priced  
19 capacity. In this case Duke is seeking to reregulate  
20 its generation and also to retroactively reregulate  
21 it through a retroactive application of a rate and  
22 the application of regulated accounting.

23 In addition, in the AEP case AEP included  
24 all revenues associated with its legacy generating  
25 assets. It also included all of those assets, what I

1 would characterize as the losers and the winners, and  
2 then in the AEP case, that was a litigated case and  
3 the Duke Energy ESP case was stipulated.

4 Q. Do you recall a question about the  
5 \$158 per megawatt-day that was stated on page 1 of  
6 the application here and your discussion about the  
7 deferral cannot be calculated without having a rate?

8 A. That's right. I do recall that.

9 Q. Let me ask you just a hypothetical.  
10 Assume the Commission August 1, 2013, gave Duke  
11 Energy Ohio a \$75 million total package through  
12 December 31, 2014, so just hypothetical, for that  
13 17-month period they got \$75 million. How would you  
14 go about calculating the rate which would be  
15 deferred?

16 A. Well, the way that I would do that is  
17 similar to the way that Mr. Wathen did it with some  
18 adjustment, and which I believe Mr. Wathen agreed to  
19 yesterday, and that is I would take the 75 million, I  
20 would divide it by the number of months that the rate  
21 was to be in effect, in this case 17 months under the  
22 OEG alternative if the Commission actually allows the  
23 company to recover additional amounts, so I take the  
24 75 million in your hypothetical, divide it by 17 and  
25 then multiply it times 12 in order to get

1     \$53 million for an annual period.

2                   Then I would divide that by the company's  
3     load grossed up for the reserve margins, so the  
4     company's load is about --

5           Q.     Please assume 5,172 megawatts --

6           A.     Okay.

7           Q.     -- for that.

8           A.     If I would do that, that's comparable to  
9     4,460 megawatts of customer load but they have to  
10    actually provide or obtain 5,172 under your  
11    hypothetical, so if I divide the \$53 million by the  
12    5,172 megawatts of load plus reserves, and then  
13    divide that by 365 days, I come up with a dollar per  
14    megawatt-day capacity charge, and, you know,  
15    basically that result would be the rate.

16          Q.     According to my math that would be \$28 a  
17    megawatt-day and that would be added to the FZCP to  
18    create the cost-based compensation?

19          A.     Yes, that's correct.

20          Q.     With the FZCP being sort of cash right  
21    now and the \$28 being collected on a deferred basis.

22          A.     Right. Plus the ESSC, right.

23          Q.     Okay. One last question line. You were  
24    asked a number of questions about the status of the  
25    divestiture and you pointed out that Duke was under

1 an obligation to do things as quickly as possible or  
2 something to that effect. Do you remember those  
3 questions?

4 A. I do, yes. Under the stipulation, the  
5 ESP stipulation, Duke is under an affirmative  
6 obligation to use its best commercial efforts to  
7 separate the generation assets to an affiliate, not a  
8 wholly-owned subsidiary but an affiliate, by  
9 December 31, 2014.

10 Q. And with Ms. Spiller you walked through  
11 the stipulation and the Commission order approving  
12 the stipulation which would be IEU Exhibit 5 and  
13 Kroger Exhibit 8. Do you recall that?

14 A. I do.

15 Q. Do you recall mentioning that the FERC  
16 has also issued their order approving the  
17 divestiture?

18 A. I do recall that, yes.

19 MR. KURTZ: Your Honor, could we have  
20 marked as OEG No., I don't know what, but this is the  
21 FERC order effectuating the PUCO order in the ESP  
22 case.

23 MS. SPILLER: And, your Honor, I'm going  
24 to move to strike the last two exchanges. Mr. Kollen  
25 did not mention at all the FERC having issued its

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1 order with respect to Duke Energy Ohio's transfer of  
2 assets in cross-examination.

3 EXAMINER STENMAN: Your objection will be  
4 overruled.

5 With respect to the exhibit, it will be  
6 mark as OEG 13.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Mr. Kollen, have you seen this order  
9 before?

10 A. I have, yes.

11 Q. Okay. Would you turn to page 9 of the  
12 order. Paragraph 23, "Description of Proposed  
13 Transaction," will you read that, please?  
14 Mr. Kollen, paragraph 23.

15 A. Yes, I'm finding it, I've got some  
16 extraneous pages and out of order pages but I'm on  
17 page 9 now.

18 Q. Okay. Page 9, paragraph 23.

19 A. I have that.

20 Q. Will you please read that.

21 A. "Applicants state" -- this is the FERC  
22 order approving the corporate separation in the Duke  
23 Energy Ohio reorganization. "Applicants state that  
24 the principle purpose of the Proposed Transaction is  
25 to achieve full structural corporate separation of

1 Duke Ohio's generation assets from its transmission  
2 and distribution business in accordance with the Ohio  
3 Stipulation and the Ohio ESP Order."

4 Q. Is your understanding that is the ESP  
5 order we've been talking about?

6 A. Yes, in 11-3549.

7 Q. Okay. Would you turn to page 1 of this  
8 FERC order.

9 A. Yes.

10 Q. What do you make of all these -- first of  
11 all, the stipulation requires Duke Energy Ohio will  
12 transfer title at net book value to all of its  
13 generation assets out of Duke Energy Ohio. On the  
14 first page of this FERC order what do you make of all  
15 these corporate entities that apparently comprise all  
16 the assets, all the generation owned by Duke Energy  
17 Ohio?

18 A. Yes. Basically, there's a whole series  
19 of entities into which Duke Energy Ohio would  
20 transfer its ownership interest including the DECAM  
21 gas assets. And they would no longer be owned by  
22 Duke Energy Ohio. Including the DECAM assets.

23 Q. Okay. Mr. Kollen, on this FERC order  
24 effectuating the Ohio ESP and approving the, actually  
25 on September 5, 2012, they did approve the transfer,



1 correct?

2 A. Yes.

3 MS. SPILLER: I'm going to object to the  
4 characterization of the FERC order effectuating the  
5 Ohio ESP stipulation.

6 Q. The FERC order issued pursuant to the  
7 applicant saying the primary purpose of this FERC  
8 filing was to effectuate the ESP order.

9 EXAMINER STENMAN: Okay.

10 Q. Will you turn to page 4, paragraph 8.

11 A. Okay.

12 Q. Can you read the whole paragraph but  
13 after the first sentence, will you read that and give  
14 an opinion as to what that means.

15 A. Well, let me read it first. "Applicant  
16 states that the Commission has determined that,  
17 because Duke Ohio has no captive wholesale or retail  
18 power sales customers, concerns over the potential  
19 for affiliate abuse are sufficiently mitigated to  
20 permit Duke Ohio to operate without affiliate  
21 restrictions on its interactions with its  
22 market-regulated power sales affiliates."

23 Q. Okay. Do you understand that typically  
24 sales between affiliates -- if a utility -- the  
25 corporate -- the affiliate transaction rules apply if

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1 the utility has captive customers but don't apply if  
2 there's full customer choice?

3 MS. SPILLER: Objection. Beyond the  
4 scope of cross-examination.

5 EXAMINER STENMAN: Mr. Kurtz.

6 MR. KURTZ: Let me rephrase.

7 Q. On page 19 of this order, Mr. Kollen --

8 A. Okay.

9 Q. -- midway down paragraph 50 the sentence  
10 beginning "They argue," they being Duke Ohio, "They  
11 argue," will you read that, please?

12 A. Yes. From that point to the end of the  
13 paragraph?

14 Q. No, just that sentence.

15 A. Oh, okay. "They argue that because Ohio  
16 is a retail open access state, Duke Ohio has no  
17 captive wholesale or retail customers and no  
18 wholesale or retail power customers served at rates  
19 that are tied to whether Duke Ohio owns or does not  
20 own generation."

21 Q. Now, if the Commission approves the cost  
22 based reregulation in this proceeding, would that  
23 position of Duke at FERC be true -- continue to be  
24 true, in your opinion?

25 A. No, it wouldn't. It would substantially

1 change things, and the FERC then would legitimately  
2 be concerned about affiliate abuses particularly when  
3 affiliates enter non-arm's length transactions.

4 MS. SPILLER: Again, move to strike,  
5 beyond the scope of cross-examination.

6 MR. KURTZ: Your Honor, this is --  
7 Ms. Spiller asked about the status of the transfer  
8 and the FERC closed the loop here by approving the  
9 transfer, so I'm just -- and this case would create  
10 captive customers by moving to reregulation and  
11 imposing a cost-based nonbypassable charge, the state  
12 of Ohio would be creating captive customers in which  
13 case the affiliate transaction rules would apply.

14 The FERC approved the transfer on the  
15 premise that Ohio did not have captive customers, we  
16 were deregulated, the return to regulation calls into  
17 question the affiliate transactions in particular, I  
18 think you know the transaction I'm referring to where  
19 the same person signed on both sides of it for  
20 (REDACTED) and there is reason to be concerned about  
21 affiliate abuse.

22 MS. SPILLER: And, your Honor, I believe  
23 Mr. Kurtz's exchange or argument is properly placed  
24 in the confidential section given some of his  
25 comments.

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1 MR. KURTZ: Well, actually, your Honor,  
2 on page 20 of this FERC order FERC recognizes that  
3 DECAM could provide FRR service because that's what  
4 Duke Energy told FERC.

5 EXAMINER STENMAN: I agree with you, I  
6 think it's the reference to the number. So I do need  
7 your comments to be placed in the confidential  
8 portion of the transcript.

9 MS. SPILLER: Thank you, your Honor.

10 EXAMINER STENMAN: And the motion to  
11 strike is denied.

12 Q. (By Mr. Kurtz) One last thing about this  
13 FERC approval order, Mr. Kollen, page 20, paragraph  
14 53, do you recognize that Duke Energy Ohio told FERC  
15 that DECAM could be providing part of the FRR service  
16 through contracts with DECAM but customers are  
17 protected from affiliate abuse related to affiliate  
18 contracts because -- because there would be no  
19 captive customers and that this case would create  
20 captive customers?

21 A. Yes. I see that. And that's exactly  
22 right. It says that on page -- paragraph 53 on page  
23 20 and also in paragraph 54.

24 MR. KURTZ: Thank you, your Honor. No  
25 more questions.

1 EXAMINER STENMAN: Thank you. Just  
2 quickly polling the intervenors, any recross?

3 MS. GRADY: No, your Honor.

4 MS. PETRUCCI: No.

5 MR. JONES: No, your Honor.

6 EXAMINER STENMAN: Ms. Spiller.

7 MS. SPILLER: Thank you, your Honor.

8 - - -

9 RECROSS-EXAMINATION

10 By Ms. Spiller:

11 Q. Mr. Kollen, I'll start with OEG Exhibit  
12 No. 13. Duke Energy Ohio is not the only applicant  
13 in this filing, correct?

14 A. That's true.

15 Q. And, sir, do you know that the gas  
16 assets, formerly the Duke Energy North America  
17 assets, were transferred to DECAM in April of 2011?

18 A. Yes.

19 Q. So those are not directly owned by Duke  
20 Energy Ohio, correct?

21 A. Well, the DECAM itself is a hundred  
22 percent owned by Duke Energy Ohio and the  
23 stipulation, the ESP stipulation, applies to all of  
24 Duke Energy Ohio's generating assets, not only those  
25 that are owned directly but those that are within the

1 DECAM affiliate too which is a wholly-owned  
2 affiliate. I read "all" as being all.

3 Q. So are you saying under the ESP  
4 stipulation Duke Energy Ohio was required to transfer  
5 the Midwest gas assets to DECAM although that had  
6 already occurred?

7 A. No. I'm saying that they were required  
8 to diverse the DECAM assets along with the legacy  
9 coal-fired assets to other affiliates before  
10 December 31, 2014.

11 Q. Well, sir, you're going to have to help  
12 me with that one. Do you have the stipulation in  
13 front of you?

14 A. I do.

15 Q. And there is a section on page 25 that  
16 says "Generating Assets," correct?

17 A. Yes.

18 Q. And therein it says that "Duke  
19 Energy Ohio shall transfer title of all of its  
20 generation assets out of Duke Energy Ohio." Correct?

21 A. Yes. And I read "all" to mean all  
22 regardless of whether or not some of them are parked  
23 in a wholly-owned subsidiary or not.

24 Q. And you also know, sir, that the assets  
25 as provided for in paragraph B on page 26, the assets

1 are to be transferred to an affiliate, correct?

2 A. Yes. But not a subsidiary of Duke Energy  
3 Ohio and I think that's borne out by the level of  
4 detail in the FERC application and order.

5 Q. Well, sir, you do know that a subsidiary  
6 is an affiliate, correct?

7 A. Oh, I do know that, yes.

8 Q. And, sir, if we look at page 9 of the  
9 stipulation, there's a footnote that defines  
10 generation assets, correct?

11 A. Yes.

12 Q. And that footnote provides that the  
13 generation assets shall refer to all generation  
14 assets currently directly owned by Duke Energy Ohio,  
15 whether operating or retired, but shall not include  
16 any generation assets currently owned by an affiliate  
17 or a subsidiary of Duke Energy Ohio. Correct?

18 A. It does say that, yes.

19 Q. And that is a defined term, "generation  
20 assets," for purposes of this stipulation, correct?

21 A. It appears to be.

22 Q. And if we go back to page 25, sir, the  
23 defined term "generation assets" again appears,  
24 correct?

25 A. Assuming that it's the same term, yes.

1           Q.   Well, do you think the parties to the  
2           stipulation had a different meaning with respect to  
3           generation assets in paragraph VIII.A of the  
4           stipulation than as otherwise defined previously in  
5           the document?

6           A.   I would assume not.

7           Q.   And so you would agree with me, sir, that  
8           pursuant to the ESP stipulation Duke Energy Ohio  
9           committed to transferring those assets that it then  
10          currently and then directly owned, correct?

11          A.   Yes. And then what it did is it went to  
12          the FERC and applied to transfer all of its assets  
13          including DECAM assets to an affiliate, that these  
14          affiliates are not wholly-owned subsidiaries of Duke  
15          Energy Ohio. And they represented that that was in  
16          furtherance of the commitments that Duke Energy had  
17          made in the ESP stipulation.

18          Q.   But, sir, we've just established that  
19          Duke Energy Ohio's commitment in the ESP stipulation  
20          was to transfer the assets that it currently and  
21          directly owned as of October 24, 2011, correct?

22          A.   Yes. And then it went to the FERC and it  
23          said this is what we want to do for our structural  
24          separation and it included all of the assets  
25          including the DECAM assets and it was stated that



1 this was being requested pursuant to the terms of the  
2 ESP stipulation.

3 Q. And, sir, if you go to page 6 of OEG 13,  
4 paragraph 7 is a discussion of the DECAM gas  
5 facilities, correct?

6 A. Yes.

7 Q. And therein it is indicated that the  
8 intention is to transfer -- strike that.

9 This, in fact, indicates that there are  
10 gas facility LLCs that are direct wholly-owned  
11 subsidiaries of DECAM, correct?

12 A. Yes.

13 Q. Now, sir, in your testimony you use the  
14 term "captive customers" and you did so for purposes  
15 of only referring to Duke Energy Ohio's distribution  
16 customers, correct?

17 A. Yes, that's correct.

18 Q. And you've now just embarked upon an  
19 exchange with your counsel regarding captive  
20 customers as that term is utilized in FERC  
21 proceedings, correct?

22 A. With respect to the divestiture order  
23 issued by the FERC, yes.

24 Q. And do you understand how the FERC  
25 defines FERC captive customers for purposes of its

1 regulations?

2 A. Well, it defined them affiliate or  
3 subsidiary wholesale and retail customers. It had a  
4 blanket characterization of captive customers so, in  
5 other words, it was fully inclusive.

6 Q. But do you know, sir, what the FERC  
7 regulations provide with respect to captive  
8 customers?

9 A. Those who cannot bypass the rate whether  
10 it's wholesale or retail.

11 Q. So in your opinion FERC defines captive  
12 customers as those who cannot bypass any rate.

13 A. Well, we can look at the context of how  
14 the term was used here.

15 Q. Well, sir, I'm asking about FERC  
16 regulation and FERC rules.

17 A. Well, I'm referring here to the FERC  
18 order where it used the term "wholesale and retail  
19 captive customers."

20 Q. And is your understanding that the FERC  
21 regulations with respect to captive customers defined  
22 that term as meaning only customers who cannot shop  
23 for any rate?

24 A. What it means is within the affiliate  
25 abuse context is where you have cost-based rates and

1 as a result of self-dealing among affiliates abuses  
2 can occur, for example, if you have the same person  
3 representing an entity that sells at market-based  
4 rates and then you have another entity that sells at  
5 cost-based rates, you can manipulate the transactions  
6 between the two entities so that the costs go up and  
7 are higher and greater amounts of revenue are  
8 recovered from the captive customers that take  
9 service on the cost-based rates. That's what the  
10 FERC is concerned about in the context of affiliate  
11 abuse. It's concerned about self-dealing.

12 And it specifically said that based upon  
13 the representations of Duke Energy Ohio in its  
14 application in this case, we don't believe that  
15 that's a problem. And so we're going to approve the  
16 separation or the divestiture because, and we won't  
17 endeavor to look into potential affiliate abuses or  
18 the affiliate relationships because there are no  
19 captive customers that will be at risk and that just  
20 simply will not be true if the Commission grants the  
21 company's request in this proceeding.

22 Q. Sir, I'm going to go back to my question.  
23 Do you know what the FERC rules and regulations  
24 provide with respect to captive customers? Are the  
25 rules, in your opinion, established by the FERC such

1       that they -- the term "captive customer" means any  
2       customer who cannot shop for any rate?

3           A.     Within the context, and I think that's  
4       important because I cannot answer your question "yes"  
5       or "no," but within the context of affiliate abuse  
6       it's those customers that cannot avoid the charge  
7       that would result from rates charged by a, you know,  
8       a regulated entity that has dealings, self-dealings,  
9       with affiliates.

10          Q.     For any service. Is it your opinion that  
11       the FERC regulation with respect to captive customers  
12       provides with respect to rates established for any  
13       service?

14          A.     I think that would be true. The FERC is  
15       concerned with affiliate abuse and the effects of  
16       self-dealing finding their way into costs that are  
17       recovered from captive customers who can't avoid  
18       that. You know, self-dealing sometimes is adequately  
19       and appropriately addressed when you have  
20       market-priced rates.

21                MS. SPILLER: Your Honor, I'm going to  
22       move to strike everything after "I think that would  
23       be true" as nonresponsive.

24                EXAMINER STENMAN: Motion denied.

25                MR. KURTZ: Mr. Kollen, were you

1 finished?

2 THE WITNESS: I'm finished. Thanks.

3 Q. Mr. Kollen, you would agree with me that  
4 there is a difference between the application of  
5 regulatory accounting under generally accepted  
6 accounting principles and the reregulation of  
7 generating assets, correct?

8 A. I'm not sure in what respect. Your  
9 question will have to be more specific than that.

10 Q. Well, just because an entity applies  
11 regulatory accounting to a particular item within its  
12 business operations does not mean that that entity is  
13 otherwise regulated, correct?

14 A. As Mr. Garrett testified in his prefiled  
15 direct testimony, regulation is a predicate to apply  
16 regulatory accounting principles under US GAAP.

17 Q. So it's your position, sir, that an  
18 entity must be regulated before it can apply  
19 regulatory accounting.

20 A. Yes. That's a prerequisite. That is a  
21 prerequisite. I agree with Mr. Garrett on that.

22 Q. You identified in response to a question  
23 from Mr. Kurtz four reasons why you believe Duke  
24 Energy Ohio is not similarly situated to AEP Ohio,  
25 correct?

1           A.    I thought there were five, but maybe two  
2 of them got blurred together.

3           Q.    But, sir, you did not acknowledge for  
4 purposes of your discussion that AEP Ohio and Duke  
5 Energy Ohio are the only entities providing capacity  
6 service in their respective territories, correct?

7           A.    Well, that would be a similarity, not a  
8 dissimilarity.

9           Q.    But you do agree, sir, that both are FRR  
10 entities, correct?

11          A.    Yes.

12          Q.    Both have agreed to transfer their  
13 generating assets, correct? By date certain,  
14 correct?

15          A.    Well, Duke Energy did and has  
16 authorization from both the PUCO and the FERC. AEP  
17 has agreed to divest its generating assets in  
18 conjunction with its ESP but still does not have  
19 authorization from the FERC.

20          Q.    But it made the commitment to transfer  
21 its assets by January 1, 2014, correct?

22          A.    It did.

23          Q.    And you are aware, sir, that the Ohio  
24 Commission has provided that AEP Ohio may continue to  
25 collect its costs for providing FRR capacity service

1 through May 31, 2015, and after corporate  
2 divestiture, correct?

3 A. Yes, that's correct. But the Commission  
4 also referred to the extraordinary circumstances  
5 before us and my reading of the Commission's order in  
6 the ESP II case was that the Commission was very  
7 pleased to have AEP Ohio move to basically a  
8 market-based capacity and energy within two years and  
9 nine months as opposed to waiting for five years, so  
10 I think there was quite a bit of leeway given the  
11 unique circumstances in that case.

12 Q. Sir, is it your opinion that AEP Ohio is  
13 going to get to market quicker than Duke Energy Ohio?

14 A. I didn't make that statement. I just  
15 noted what the Commission did and that was that  
16 through the process AEP would go to market much more  
17 quickly than if it had remained on its five-year  
18 track.

19 Q. Well, let me go back to my question. Is  
20 it your opinion, sir, that AEP Ohio will be fully at  
21 market more quickly than Duke Energy Ohio?

22 A. Well, basically the CRES providers are  
23 only paying FZCP, FZCP in the Duke Energy Ohio  
24 footprint, whereas, the CRES providers are paying  
25 something different in AEP Ohio.

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1 Q. So, sir, I'd like to go back to my  
2 question. Is it your opinion that AEP Ohio will be  
3 at market more quickly than Duke Energy Ohio?

4 A. No.

5 MS. SPILLER: I have no further  
6 questions, your Honor. Thank you.

7 EXAMINER STENMAN: Thank you.

8 Anything from staff?

9 MR. JONES: Nothing, your Honor.

10 EXAMINER STENMAN: Thank you, Mr. Kollen.

11 THE WITNESS: You're welcome. Thank you.

12 EXAMINER STENMAN: I believe we have some  
13 exhibits.

14 MR. KURTZ: Your Honor, we move the  
15 admission of OEG 1 and OEG 13. Oh, 1, 1A, and 13.

16 EXAMINER STENMAN: Any objections?

17 MS. SPILLER: No, your Honor.

18 EXAMINER STENMAN: Hearing none, OEG 1,  
19 1A, and 13 will be admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 MS. SPILLER: Your Honor, Duke Energy  
22 Ohio would move for admission, and I believe many of  
23 these have previously been given administrative  
24 notice, Duke Energy Ohio Exhibits 13, 14, 15, 16, 17,  
25 and 18.



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1 EXAMINER STENMAN: The only two that were  
2 not given administrative notice were 17 and 18. Any  
3 objections to the admission of Duke 17 and 18?

4 MS. BOJKO: Could you remind me what 18  
5 is? I apologize.

6 EXAMINER STENMAN: 18 is the transcript  
7 from the AEP capacity proceeding.

8 MS. BOJKO: Thank you.

9 EXAMINER STENMAN: Any objections?  
10 Hearing none, Duke 17 and 18 will be  
11 admitted.

12 MS. SPILLER: Thank you, your Honor.

13 EXAMINER STENMAN: Thank you.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 EXAMINER STENMAN: Ms. Kern.

16 MS. KERN: OCC calls J. Richard Hornby to  
17 the stand.

18 EXAMINER STENMAN: Please raise your  
19 right hand.

20 (Witness sworn.)

21 EXAMINER STENMAN: Thank you.

22 - - -

23

24

25

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1 J. RICHARD HORNBY

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

4 DIRECT EXAMINATION

5 By Ms. Kern:

6 Q. Good afternoon, Mr. Hornby.

7 A. Good afternoon.

8 Q. Could you please identify yourself for  
9 the record.

10 A. Yes. My name is James -- or J. Richard  
11 Hornby, H-O-R-N-B-Y.

12 Q. And are you the same Richard Hornby whose  
13 direct testimony was filed in this proceeding on  
14 March 26, 2013?

15 A. Yes.

16 MS. KERN: Your Honors, I would like to  
17 have marked for purposes of identification OCC  
18 Exhibits 22 and 22A, the prefiled direct testimony of  
19 J. Richard Hornby, both public and confidential  
20 versions.

21 EXAMINER STENMAN: It will be so marked.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

23 Q. And on whose behalf do you appear here  
24 today?

25 A. I'm here on behalf of the Office of Ohio

1 Consumers' Counsel.

2 Q. And do you have your prepared testimony  
3 with you on the stand?

4 A. I do.

5 Q. And did you prepare this testimony or  
6 have it prepared at your direction?

7 A. I did.

8 Q. Do you have any changes or corrections to  
9 your direct testimony?

10 A. Yes, I have a couple of corrections I  
11 could walk through.

12 Q. If you could go through those now, thank  
13 you.

14 A. First one's on page 7 at line 19. The  
15 word "competitors" should be deleted and replaced  
16 with "competition."

17 Q. Thank you.

18 A. Next is on page 17 at line 14, the  
19 reference "Rider DR-CO," so the "DR-CO" should be  
20 deleted and replaced with "RC."

21 Q. Thank you.

22 A. Next, on page 22 at line 20, the number  
23 "20112" should be deleted and replaced with "2012."

24 And on page 24, the sentence that begins  
25 at line 10, that entire sentence should be deleted.

1 So it runs from line 10 to line 13.

2 Q. And for purposes of clarification  
3 beginning with the words "In fact"?

4 A. Yes.

5 Q. Thank you.

6 A. And on page 34 at line 10, the sentence  
7 should end after the acronym "ESP." So the remainder  
8 of that sentence should be deleted that begins "As  
9 well as" and carries on to line 11.

10 Q. Thank you. Do you have any further  
11 corrections?

12 A. Two notation corrections in my exhibits.  
13 It's in Exhibit JRH-3, page 2 of JRH-3. At the  
14 bottom of the page, the last line is a reference to  
15 "sources," it's B-2 and B-4. The reference is  
16 "Attachment JRH-3 page 5," it should be "page 6."  
17 And, finally, on JRH-3, page 4, again at the bottom  
18 of the page, the last line of references "B-2, C-2,  
19 B-4, C-4, B-7" the reference is to "Attachment JRH-3,  
20 page 5" and should add "and 6." So it would be  
21 "pages 5 and 6."

22 Q. Thank you, Mr. Hornby. Do you have any  
23 further corrections?

24 A. No.

25 Q. And if I asked you the same questions

1 that are posed to you in your direct testimony today,  
2 would your answers be the same?

3 A. Yes, they would.

4 MS. KERN: Your Honors, I tender  
5 Mr. Hornby for cross-examination.

6 EXAMINER STENMAN: Thank you, I do note  
7 that there is a motion for protective order pending  
8 with respect to Mr. Hornby's testimony. The motion  
9 filed by OCC is very cursory. Would the company like  
10 to address the confidential nature of what's  
11 contained in his testimony?

12 MS. KINGERY: Yes, thank you, your Honor.

13 I believe in the text of the testimony  
14 there are two redactions, on pages 12 and 13. The  
15 one on page 12 relates to margins from the sale of  
16 energy and ancillary services. Consistent with the  
17 Bench's prior rulings we would redact just the  
18 number.

19 EXAMINER STENMAN: Yes.

20 MS. KINGERY: And then on page 13 there  
21 is a rate, it follows a subtraction, and again,  
22 consistent with the Bench's prior rulings we would  
23 redact just the number.

24 EXAMINER STENMAN: Yes.

25 MS. KINGERY: Moving to the attachments,

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1 Attachment JRH-2, and I think all of the redactions  
2 that are in these attachments are consistent with  
3 prior rulings and I don't believe that Duke Energy  
4 Ohio disagrees with anything as it was marked as it  
5 was submitted, so the numbers in the column "Annual  
6 Amounts" in the lines "Annual Margin from Energy  
7 Sales, Annual Revenue from Ancillary Services," and  
8 then the "Subtotal" would all be redacted, as well as  
9 the "Capacity Daily Rate" in the right-hand column.

10 EXAMINER STENMAN: Yes.

11 MS. KINGERY: Okay. I don't believe  
12 there's anything on JRH-3, page 1.

13 EXAMINER STENMAN: No.

14 MS. KINGERY: Page 2, I believe they have  
15 redacted the number from the annual margin from  
16 energy sales in the column entitled "Duke Filing to  
17 Collect Additional Capacity Costs."

18 EXAMINER STENMAN: Yes.

19 MS. KINGERY: And, again, that would be  
20 consistent with prior rulings. And the exact same  
21 spot on page 3.

22 EXAMINER STENMAN: Yes. Yes.

23 MS. KINGERY: Page 4 in the annual  
24 margins line there's a redaction again from the Duke  
25 filing. There's also, I believe, a redaction in the

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1 far right-hand column and I believe that's arithmetic  
2 and that, again, annual revenue from the sale of  
3 capacity at market prices --

4 EXAMINER STENMAN: Yes.

5 MS. KINGERY: -- two lines down.

6 Sorry, I need to go to my other copy.

7 Then the next page I don't believe  
8 there's anything redacted, that's page 5 of 6.

9 EXAMINER STENMAN: Correct.

10 MS. KINGERY: And page 6 of 6 there  
11 are -- we need bigger tables.

12 EXAMINER STENMAN: We do.

13 MS. KINGERY: The top table has two  
14 numbers redacted, in the far right-hand column  
15 referring to testimony of Mr. Rose and applying that  
16 to a future period.

17 EXAMINER STENMAN: Yes.

18 MS. KINGERY: And then the second table,  
19 "PJM Electric Energy Prices," again, projections  
20 looking forward by Rose. And then in the third table  
21 there are some estimates in the final two columns  
22 for, looks like, 2016 through '21 but I'm not sure I  
23 can read one of those numbers.

24 EXAMINER STENMAN: I believe that's it,  
25 correct?

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1 MS. KINGERY: Let me just confirm. I  
2 think you're right.

3 No. JRH-5, page 5 of 21, this a  
4 confidential response to OCC-POD-03-022, and just the  
5 numbers there for the 2012 capacity revenue from PJM  
6 and margins on energy and ancillary services sales.  
7 I believe those were redacted previously.

8 EXAMINER STENMAN: Yes.

9 MS. KINGERY: And page 6 of 21 -- just a  
10 moment.

11 Yeah, this is the detail behind the  
12 numbers on the previous side of the page, so that's  
13 not made public in that kind of detail by Duke Energy  
14 Ohio.

15 EXAMINER STENMAN: So just the numerics  
16 will be redacted?

17 MS. KINGERY: Yes, it would just be the  
18 numbers.

19 EXAMINER STENMAN: Okay.

20 MS. KINGERY: I think now we're at the  
21 end. Yes. And that's it.

22 EXAMINER STENMAN: Are there any  
23 objections to protective treatment as requested by  
24 the company?

25 Hearing none, protective treatment will



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1 be granted.

2 Cross-examination by any of the  
3 intervenors?

4 MS. PETRUCCI: No questions.

5 MR. HAYDEN: No.

6 EXAMINER STENMAN: Ms. Kingery.

7 MS. KINGERY: Thank you, and I would like  
8 to start with some motions to strike.

9 EXAMINER STENMAN: Yes.

10 MS. KINGERY: And all of these will be  
11 based on the fact that this witness is not an  
12 attorney and yet is providing legal opinions.

13 EXAMINER STENMAN: Okay.

14 MS. KINGERY: I will identify the pages  
15 and line numbers.

16 Page 5, the last sentence in the answer  
17 No. 10, first paragraph, so that would be the middle  
18 of line 10 and line 11.

19 Then page 6, lines 4 through 8, that  
20 would be beginning with the word "retail."

21 Line 7 -- I'm sorry, page 7, all of lines  
22 3 through 5.

23 Line 8 -- page 8, sorry, lines 1 through  
24 6.

25 And then at the bottom of that page on

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1 the second to the bottom line, line 21 starting with  
2 the words "Duke Energy Ohio" and carrying through to  
3 the next page, line 1, the word "respectively."

4 And then two lines farther down, the  
5 middle of line 3 through line 4.

6 Moving ahead to page 17, all of response  
7 No. 20.

8 Page 26, starting on line 15 the word  
9 "there," and going on to the next page line 2.

10 Page 33, lines 12 and 13.

11 Page 38, lines 6 through 19.

12 Page 40, lines 3 through 9.

13 And page 41, lines 6 through 14.

14 And, your Honor, we would submit that in  
15 all of these locations this witness is providing  
16 responses that are based on legal opinions either as  
17 to his reading of contracts or his opinion about how  
18 the Commission should rule in this proceeding and,  
19 therefore, we would move to strike.

20 EXAMINER STENMAN: Thank you.

21 Response?

22 MS. KERN: Yes, your Honors, first,  
23 Mr. Hornby's testimony in this case does discuss the  
24 Duke ESP stipulation and how it relates to this  
25 proceeding. It would be prejudicial to the consumers

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1 and to the intervenors to allow Duke witnesses to  
2 opine on the Duke ESP stipulation as well as the AEP  
3 capacity orders and I believe Mr. Trent, both  
4 Mr. Trent and Mr. Wathen were asked questions and did  
5 respond to those documents, but to deny the consumer  
6 parties or the consumers and especially Mr. Hornby  
7 the opportunity to address those documents.

8 Second, commissions and specifically  
9 attorney examiners have the expertise to weigh the  
10 evidence presented before them, specifically the  
11 testimony of expert witnesses.

12 And, finally, Mr. Hornby is not  
13 professing to be an attorney in this case. He's not  
14 an attorney. He has reviewed specific documents for  
15 purposes of drafting his direct testimony in this  
16 case, and he has opined on them based on his  
17 expertise and 30 years of experience in the energy  
18 industry and regulatory field.

19 So for these reasons we would request  
20 that this testimony not be stricken, it's appropriate  
21 and it's consistent with testimony that other  
22 witnesses have presented in this case thus far.

23 Thank you.

24 EXAMINER STENMAN: Thank you.

25 MS. KINGERY: Just very quickly I would

1 simply note that Mr. Trent is indeed an attorney.

2 EXAMINER STENMAN: That's noted for the  
3 record. And the motion to strike will be denied.

4 MS. KINGERY: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Kingery:

8 Q. Good afternoon, Mr. Hornby.

9 A. Good afternoon.

10 Q. Mr. Hornby, just to get your background  
11 on the record, you are educated in the field of  
12 engineering, correct?

13 A. Yes, undergraduate degree in engineering,  
14 master's degree in technology and policy.

15 Q. And isn't it true that other than one  
16 basic law course during your schooling you've had no  
17 legal education?

18 A. No formal legal education, that's  
19 correct. As we discussed in my deposition, though,  
20 over the past 30 years I have a fair amount of  
21 experience learning on the job and the opportunity to  
22 work with lawyers in a number of different contexts  
23 including in particular when I was at Nova Scotia  
24 working with the chief legislative draftsman as a  
25 technical adviser when they were developing

1     legislation to govern the offshore exploration and  
2     had to mirror federal legislation because there was a  
3     joint agreement and that was, I would say, quite a  
4     valuable practical education.

5             And subsequent to that, basically, my  
6     experience working with attorneys has been in the  
7     context of various cases where I've been reviewing  
8     contracts in the context of gas purchasing or  
9     electric power cases and having to understand, for  
10    example, the operation and structure of PJM  
11    deregulation and went through all that.

12            But, yes, no formal law courses other  
13    than the one I took at MIT.

14            Q.    I understand.  On-the-job training but  
15    not formal legal education.

16            A.    That's correct.

17            Q.    I have no on the job -- or no legal -- no  
18    training in engineering, but I have worked with  
19    engineers, but I don't think you want my opinions on  
20    engineering.

21            And you've also not had any formal  
22    education as to contract interpretation.

23            A.    That's correct in terms of formal  
24    coursework.  I've probably taken the occasional  
25    seminar, but no formal, say, college courses in

1 contract interpretation. Again, basically on-the-job  
2 training.

3 Q. And it's true, isn't it, that you have  
4 not represented OCC previously?

5 A. That's correct.

6 Q. And you have not represented any other  
7 Ohio clients either.

8 A. Let's put it this way, I haven't done any  
9 cases in Ohio so in that context I guess if there was  
10 companies based in Ohio, that I haven't worked for  
11 them in the context of any cases in Ohio.

12 Q. Great. Thank you.

13 Your primary recommendation in this case  
14 is that the Commission should grant the motion to  
15 dismiss that was filed by a number of parties; is  
16 that correct?

17 A. That's correct.

18 Q. But you're not a lawyer, correct?

19 A. That's correct.

20 Q. And your recommendation that the motion  
21 to dismiss should be granted was based on a couple of  
22 different rationales, correct?

23 A. Well, it was based on my review of the  
24 company application that I discuss in my testimony  
25 starting on page 5.

1           Q.    Your first justification for believing  
2           that the motion to dismiss should be granted is that  
3           you believe the application is incompatible with the  
4           ESP stipulation as you read it, correct?

5           A.    Yes.  It's my interpretation of the  
6           stipulation, not as a lawyer but based on my  
7           experience and the fact that I guess I can read and  
8           assess the context and, basically, my reading of the  
9           stipulation was that the company had agreed to accept  
10          compensation for its capacity at market-based prices  
11          for the term covered by the ESP and, therefore, I  
12          felt that that stipulation should rule.

13          Q.    And we'll get to the stipulation in a few  
14          minutes.

15                Your second justification, and we just  
16          need a "yes" or "no," just trying to get a lay of the  
17          land at this point, is based on your belief that the  
18          company's evidence regarding its negative financial  
19          circumstance is at odds with the various decisions it  
20          has made and you identify over the last few years,  
21          correct?

22          A.    Yes.  Basically, as I summarize on page  
23          6, the company has opted to not get to the hearing  
24          stage of seeking cost-based recovery until its  
25          application in this proceeding.

1           Q.    Now, you did not participate in drafting  
2 the motion to dismiss, did you?

3           A.    No.

4           Q.    And you did not participate in drafting  
5 the joint comments that OCC was a part of filing.

6           A.    No.

7           Q.    And you did not participate in drafting  
8 any joint reply comments, correct?

9           A.    Correct.

10          Q.    And you are aware, at least from your one  
11 basic law course, are you not, that opposing parties  
12 are generally given the opportunity to respond to  
13 arguments made against them?  Correct?

14          A.    Yes.

15          Q.    And the entity deciding the outcome of a  
16 case will generally take both sides' arguments into  
17 consideration before making a decision, correct?

18          A.    Yes.

19          Q.    But did you not review the company's  
20 reply comments, did you?

21          A.    No.  Not in detail.  I was really  
22 focusing in terms of my scope of work and effort on  
23 the testimony that the company witnesses ultimately  
24 filed.

25          Q.    But did you not review the reply comments



1 themselves filed by the company.

2 MS. KERN: Objection. Asked and  
3 answered.

4 EXAMINER STENMAN: Overruled.

5 A. Not in detail, no.

6 Q. Do you remember having your deposition  
7 taken?

8 A. Yes.

9 Q. And did you swear to tell the truth?

10 A. Yes.

11 Q. Do you recall my asking you whether you  
12 reviewed the company's reply comments?

13 MS. KERN: Can counsel point to a  
14 specific cite in the deposition transcript, please?

15 MS. KINGERY: We're trying to do that,  
16 just a moment.

17 MS. KERN: Thank you.

18 Q. We'll come back to that while we look for  
19 copies.

20 All right. In addition to believing that  
21 the Commission should grant the motion to dismiss,  
22 you also recommend, do you not, that any additional  
23 amounts that the Commission might authorize should be  
24 collected directly from CRES providers and wholesale  
25 auction winners? Correct?

1 A. Yes.

2 Q. And you also believe there should be no  
3 true-up, correct?

4 A. Yes.

5 Q. Okay. We're going to try and talk about  
6 each one of your arguments. So we'll start with your  
7 discussion of what the ESP stipulation provides. Do  
8 you have a copy in front of you of that stipulation?

9 A. No, I do not.

10 MS. KINGERY: Can you provide him a copy,  
11 I believe it's IEU Exhibit 5.

12 MS. KERN: Yes.

13 A. I have that now, thank you.

14 Q. All right. When you prepared and filed  
15 your testimony, you had reviewed the stipulation at  
16 that time, correct?

17 A. Yes.

18 Q. And you do believe, I assume, that OCC is  
19 careful that when it signs stipulations, they are  
20 accurate and complete?

21 A. I assume they gave it their best shot,  
22 yes.

23 Q. And you believe, do you not, that there  
24 are three portions of the stipulation that provide  
25 that the company will provide capacity to CRES

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1 providers and auction winners at the FZCP? Correct?

2 A. Well, I reference two provisions, I'm  
3 struggling a little bit with the third so do you want  
4 to take me to my --

5 Q. I believe that you discussed a third in  
6 your deposition.

7 A. Well, I guess the -- well, why don't you  
8 find that third reference.

9 Q. Sure. It's page 6, that's in paragraph  
10 I.B.

11 MS. KERN: We're talking about the  
12 stipulation, right, not his deposition transcript?

13 MS. KINGERY: Correct, we're talking  
14 about the stipulation.

15 MS. KERN: Thank you.

16 A. I'm having a little trouble recalling. I  
17 know there was a discussion during the deposition  
18 about another --

19 EXAMINER STENMAN: Can you turn your  
20 microphone back on.

21 THE WITNESS: Sure. Didn't know it  
22 turned off, sorry.

23 EXAMINER STENMAN: I think it turned off  
24 on its own.

25 THE WITNESS: I'm sorry.

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1           A.    I know there was some discussion during  
2   the deposition where we got to another section of the  
3   stipulation and my recollection, so first of all I'm  
4   not seeing it immediately on the pages 8 and 9 of my  
5   direct testimony, but my recollection from that  
6   back-and-forth was that I had perhaps pointed to a  
7   third section of the stipulation for a definition of  
8   the final zonal capacity prices.

9           Q.    That's fine.

10                So let's move to the two that you do  
11   discuss in your testimony. The first one of those is  
12   paragraph II.B on page 7.

13           A.    Yes.

14           Q.    Where it says "Acknowledging Duke Energy  
15   Ohio's status as an FRR entity in PJM, the Parties  
16   agree that Duke Energy Ohio shall supply capacity to  
17   PJM, which, in turn, will charge for capacity to all  
18   wholesale supply auction winners for the applicable  
19   time periods of Duke Energy Ohio's ESP with the  
20   charge for said capacity determined by the PJM RTO,  
21   which is the FZCP in the unconstrained RTO region."  
22   Did I read that correctly?

23           A.    Yes.

24           Q.    So would you please point me to the words  
25   in that paragraph that you believe actually establish

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1 that Duke Energy Ohio will charge the FZCP?

2 A. Okay, well, as it's painfully clear now I  
3 think to pretty much everybody in the proceeding that  
4 that provision and the other provision, IV.A, perhaps  
5 were not drafted as precisely or explicitly as  
6 perhaps one might like, so when I was preparing my  
7 testimony, in addition to reading that provision and  
8 the other provisions, I also asked some data  
9 responses which -- or data requests which are  
10 referred to on page 9 to try to get some  
11 clarification.

12 And so my statements on page 8 of my --  
13 and 9 of my testimony are the basis upon which I've  
14 interpreted that essentially Duke Energy is providing  
15 capacity to PJM, PJM's charging the CRES -- or, in  
16 this instance the wholesale auction winners for that  
17 capacity, charging them the market price for that  
18 capacity, getting -- and PJM is collecting revenues  
19 as a result and then remitting those revenues back to  
20 the company.

21 So it's not -- my position is not based  
22 solely on the wording of this provision because that  
23 doesn't spell it out crystal clear. It's based upon  
24 reading that and then looking at the data responses I  
25 received that I cite on page 9, and I guess I would

1 add to the fact that the company has been operating  
2 under the ESP since January 2012, so my conclusion  
3 was the company was not going to be giving the  
4 capacity away for free.

5 And based on all those facts, data  
6 responses, and my understanding of the dollars and  
7 revenues being reported in this proceeding, is that  
8 in effect that's the way that that provision has been  
9 implemented.

10 Q. Mr. Hornby, you have expertise with  
11 regard to PJM, correct?

12 A. Yes.

13 Q. And, in your opinion, based on your  
14 experience, what document would usually control to  
15 set the amount that PJM would pay to an entity that  
16 was providing something to it such as capacity?

17 A. Well, under the RPM construct where they  
18 have the auctions it would be the rules and  
19 regulations and framework governing the base residual  
20 auction, the incremental auctions, and so on. In  
21 this instance I don't know that -- I would assume  
22 there would be a document somewhere which would  
23 explain the relationship between Duke Energy and PJM  
24 in terms of the -- confirming that PJM is going to  
25 return the revenues that it collects from the

1 wholesale auction providers and the CRES providers  
2 back to Duke.

3 I have not seen that document.

4 Q. Would it be fair to say that PJM tariffs  
5 would control that pricing as a general statement?

6 A. I'm sure -- that would be a logical place  
7 to look in the tariff structure, yes.

8 Q. And those tariffs are approved by FERC,  
9 are they not?

10 A. Yes.

11 Q. And if FERC has approved tariffs,  
12 wouldn't it be logical to assume that a stipulation  
13 among parties in Ohio would not control?

14 A. Well, if the FERC considered it to be a  
15 state compensation plan, that would be one way it  
16 would control.

17 Q. But that's still PJM tariffs, FERC has  
18 still approved, allowing something to control that  
19 was established by a state, so it was still under  
20 FERC's control even though they have ceded that  
21 control to the state in the very limited instance of  
22 the state compensation mechanism, correct?

23 A. Yes.

24 MS. KERN: Objection on the grounds that  
25 it was a legal question, it's also a compound

1 question.

2 EXAMINER STENMAN: He can answer if he  
3 knows.

4 A. I would expect there would be a tariff in  
5 the PJM tariffs, FERC-approved PJM tariffs, that  
6 would pretty much govern all circumstances.

7 Q. So do you think it would be reasonable  
8 for a stipulation in a case in Ohio not to address  
9 the amount that the utility would receive from PJM  
10 since that's already established?

11 A. Well, I think, as I said at the outset,  
12 from all the discussion and discovery and whatever  
13 around these provisions, again, as a nonlawyer I  
14 would say the conclusion is that it's not worded as  
15 crystal clear as one might like, so it may have been  
16 improved had it -- with more references to, say, the  
17 PJM tariffs.

18 Q. I think we all agree it could have been  
19 worded a little more clearly, one way or another.

20 MS. KERN: Objection to counsel's last  
21 statement. It wasn't a question.

22 MS. KINGERY: I'll withdraw it.

23 EXAMINER STENMAN: Thank you.

24 Q. So, Mr. Hornby, can we agree, then, that  
25 neither paragraph II.B nor paragraph IV.A of the



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1 stipulation in the ESP case establishes a price, an  
2 amount, that Duke Energy Ohio will receive for its  
3 FRR capacity services?

4 A. Well, first of all, just to narrow it,  
5 that paragraph goes to the provision of capacity, so  
6 I don't know what beyond that in terms of FRR  
7 services you're talking about. This one talks about  
8 the provision of capacity as an FRR entity.

9 And we can agree that it's definitely not  
10 in this wording, there's no indication of the price  
11 that PJM, either the price that PJM is going to pay  
12 Duke is not spelled out, nor is it, unfortunately,  
13 spelled out that PJM is just going to take the  
14 revenues it collects from the wholesale auction  
15 winners and pass those revenues back to Duke or the  
16 revenues it collects from the CRES providers and pass  
17 them back.

18 So that compensation back to the company  
19 for the capacity it's providing is not spelled out in  
20 either of those provisions.

21 Q. Thank you.

22 And regardless of the fact that the  
23 language may not be worded as you wish it were  
24 worded, you also cannot dispute, can you, that it's  
25 worded as the parties intended?

1 MS. KERN: Objection to the  
2 characterization of how he wishes it would be worded.  
3 I think he explained where he got his rationale from  
4 and it's in his testimony what he cites to discovery  
5 responses from the company.

6 EXAMINER STENMAN: Overruled. He's free  
7 to clarify.

8 A. Well, as we've established, I wasn't  
9 involved whatsoever in any of this drafting or  
10 review, that's number one. There was a lot of  
11 parties to the settlement, whether this wording is  
12 what each of the parties intended, what we do know is  
13 the parties signed this stipulation as written.

14 Q. And so the answer to my question, then,  
15 is what?

16 A. Well --

17 Q. I had asked can you dispute that it is  
18 worded the way the parties intended it to be.

19 A. Well, I just don't -- no, I can neither  
20 dispute nor I guess confirm. All I know from the  
21 document itself is that the parties signed the  
22 document as it was written.

23 Q. All right. Thank you.

24 Mr. Hornby, a few minutes ago as we were  
25 starting to lay out the structure of our conversation

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1 we talked about the fact that one of your  
2 justifications for agreeing with the motion to  
3 dismiss was your impressions of the company's  
4 decisions over the last few years, correct?

5 A. Yes.

6 Q. And with regard to each of those  
7 decisions you argue that the company knew or should  
8 have known what the financial impact of its decision  
9 would be, correct?

10 A. Yes. You want to take me to a particular  
11 point in my testimony where you're starting from?

12 Q. Sure. This section starts on  
13 approximately page 18.

14 A. Okay.

15 Q. And the first reference to "knowing" or  
16 "should have known" is on page 20 at line 15.

17 A. Okay.

18 Q. Isn't it true that there is nothing in  
19 PJM's tariffs that would limit the application of a  
20 state compensation mechanism to only those  
21 circumstances where a company had never made a  
22 decision that was inconsistent with known or  
23 anticipated financial issues?

24 MS. KERN: Can I have the question  
25 reread, please?

1 (Record read.)

2 A. Yes. It's my understanding -- it's not  
3 where I was going with my testimony, I didn't make  
4 that point in my testimony in this section, it was  
5 more to the point that the company had the  
6 opportunity to ask or file for cost-based rates and  
7 didn't but it wasn't that the state compensation plan  
8 hinges on that.

9 Q. And, similarly, there's nothing in  
10 utility regulatory law, either federally or at the  
11 state level, that would limit the application of,  
12 let's say, just and reasonable rates to only those  
13 companies who have never made a decision that was  
14 incompatible with their financial interests.

15 A. That's correct. The point is when the  
16 Commission, I would expect the Commission would make  
17 a decision about just and reasonable rates when a  
18 company comes in, the rates have to be just and  
19 reasonable not only for the company to ensure --  
20 address its financial integrity but also for  
21 customers who have to pay it.

22 And everything has to be taken in context  
23 and I guess the -- what struck me, why I went through  
24 all this was like how did the company get to be in  
25 this position where it's losing money or says it's

1     losing money, and that's actually what sort of  
2     prompted me to look at these opportunities.

3             So, so certainly the company can come in,  
4     has come in, and says, okay, we're losing money, we  
5     need to recover our embedded cost of capacity, and  
6     I'm just saying that while there's a history here  
7     and, you know, why didn't you come in sooner if it  
8     was this bad, you know, is it -- a lot of this just  
9     you made a bad decision and now you're unhappy.

10            Q.    Well, let's talk about those decisions.  
11     So the first decision that you talk about is the  
12     company's decision in June of 2010 to apply to  
13     realign with PJM; is that correct?

14            A.    Yes.

15            Q.    And in June of 2010 isn't it true that  
16     the PUCO had never officially approved a state  
17     compensation mechanism based on cost?

18            A.    I don't know. I haven't done that  
19     research. On the other hand, I guess my philosophy,  
20     it never hurts to ask. So, I mean, if the company  
21     felt that that's what it needed, then the company  
22     certainly had the opportunity to ask.

23            Q.    Are you suggesting at all that the  
24     company's decision to move to PJM was not in its  
25     financial best interest?

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1           A.    I haven't researched all the factors as  
2   to why the company decided to leave MISO and come to  
3   PJM.  I think we had a bit of a discussion in the  
4   deposition that at that point it looked like the  
5   capacity prices in PJM were going to be higher than  
6   they were in MISO, but I'm sure there was lots of  
7   factors that influenced the company's decision.

8                   My testimony is solely limited to the  
9   fact that at this high level it would appear to me  
10  that the company knew or should have known at that  
11  point in time that when it was joining PJM and they  
12  had the auction results and its cost, that a  
13  market-based price wasn't going to cover its embedded  
14  cost of capacity.

15           Q.    So you say that --

16                   EXAMINER STENMAN:  Can everyone try to  
17  turn their microphones off.  You can turn them back  
18  on.  Thank you.  I don't understand it, but...

19           Q.    So you said that it never hurts to ask.  
20  Isn't it true that within a month after the  
21  Commission -- the PUCO first issued an opinion and  
22  order saying that there would be a state compensation  
23  mechanism based on cost, Duke Energy Ohio was at this  
24  Commission asking for the same?

25           A.    Yes, it was.  Of course, at that point it

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1 had already entered the stipulation and so put it in  
2 a different, at least in my view, a different context  
3 than AEP, but it certainly asked.

4 Q. So you're not aware, if we go back to  
5 June of 2010 and the decision to realign to PJM,  
6 you're not aware of what costs the company might have  
7 anticipated that it would face if it remained in  
8 MISO?

9 A. I haven't done that research, but the  
10 point is that the company was facing costs in MISO  
11 and facing revenues in MISO and it decided to join  
12 PJM based on the costs it had and the revenues it  
13 anticipated in PJM. So the fact that it decided to  
14 leave MISO and come to PJM, my assumption is the  
15 company decided all things considered it was likely  
16 to be better off financially as a member of PJM than  
17 a member of MISO.

18 Q. Would you please define the term "order  
19 of magnitude"?

20 A. Well, let's put it this way --

21 Q. You're an engineer.

22 A. Okay, about I'm about 185 pounds, okay,  
23 and if somebody, I'm not going to go around the room  
24 or guess my height or whatever, so that's a correct  
25 order of magnitude. It might be 190. I might be

1 180. I'm not 100 or 120. So the difference between  
2 order of magnitude and something more precise is  
3 you're in the right ballpark plus or minus 10 or  
4 15 percent say.

5 Q. Isn't it true that in the technical  
6 approach, that is such as an engineer might use it,  
7 the term "an order of magnitude estimate" would be  
8 one that is rounded to the nearest power of ten?

9 A. That may be a dictionary definition.  
10 That's not what I had in mind.

11 Q. So we're talking now about your order of  
12 magnitude estimate of the amount by which the  
13 company's embedded costs exceeded their market value  
14 in June of 2010, and I'm looking here on page 22,  
15 line 16.

16 So by "order of magnitude estimate," you  
17 meant it's your best guess?

18 A. Well, it wasn't a guess in the sense that  
19 there is a calculation behind it. It's an  
20 approximation, perhaps the term "approximation" might  
21 have been a better characterization than "order of  
22 magnitude."

23 But anticipating this line of questioning  
24 I wanted to put the caveat around it that, you know,  
25 I hadn't pulled the 10-Ks and gone into more detail,



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1 but I felt, based on the -- and I was transparent in  
2 where my numbers came from, and felt that, I don't  
3 know what price -- so if the price I'm quoting there  
4 on page 22 at line 10, \$208 per megawatt-day, that  
5 that was an appropriate approximation based on the  
6 numbers I had, you know, could have been 220, could  
7 have been 180, you know, it wasn't going to be 400,  
8 it wasn't going to be 100. So that was the mind-set  
9 in terms of the exercise I went through.

10 Q. And in coming up with your  
11 approximations, to what extent have you factored in  
12 changes in price of gas? Natural gas.

13 A. Well, I didn't think they came to bear.  
14 We're talking about the price of capacity and we're  
15 talking about what the company knew or should have  
16 known at that time, and at that time the auction  
17 results, so as of June of 2010, PJM had already  
18 conducted auctions, you know, three years out. So  
19 you had your -- it wasn't a guessing game. You had  
20 base residual auction results.

21 So -- and certainly the price of gas as  
22 it effected the energy price in PJM and in longer  
23 term it's probably going to affect the market price  
24 of capacity, but in the characterization of this  
25 analysis for the time period I covered the data was

1 essentially known and measurable.

2 Q. All right. Let's move to the next  
3 decision that you cite as problematic. I believe  
4 this is on page 24 at line 4. We've now moved  
5 forward to August 16, 2010, where the company filed  
6 its FRR integration plan with PJM and FERC. Do you  
7 see that?

8 A. Yes.

9 Q. And then you go on in that discussion on  
10 line 10 to note that in April of 2011, the company  
11 gave up its rights to seek a wholesale cost based on,  
12 I'm sorry, a wholesale cost-based capacity charge  
13 from the FERC in a stipulation in another case. Do  
14 you see that?

15 A. I struck that sentence in my opening  
16 errata.

17 EXAMINER STENMAN: He did.

18 Q. That's right but -- I'm sorry, so we'll  
19 move from that one over to answer 30.

20 A. Okay.

21 Q. Which says the same thing which is why  
22 you struck that language.

23 A. Right. It was a duplication.

24 Q. Okay. So let's look at answer 30.

25 A. Okay.

1 Q. So you see that.

2 A. Yes.

3 Q. Okay. Thank you.

4 So what I'd like you to do now for the  
5 next couple questions is keep two dates in mind.  
6 August, 2010, when the FRR capacity plan was filed  
7 and April of 2011 when this stipulation was entered  
8 into.

9 A. Okay.

10 Q. And let's talk about what happened  
11 between those two dates. So you are aware that, are  
12 you not, that in November of 2010 AEP made a filing  
13 at FERC for a cost-based rate?

14 A. Yes.

15 Q. And you are aware that in December of  
16 2010 the PUCO initiated Case No. 10-2929 and said no,  
17 you're not going to have a cost-based rate, we're  
18 officially stating that you're going to have a state  
19 compensation mechanism that while we think about it  
20 is going to be based on the auctions, correct?

21 MS. KERN: Objection. If counsel has the  
22 order to show Mr. Hornby so that he can see the  
23 specific reference, otherwise it's -- she's just  
24 representing her view of what the orders -- or,  
25 entry, excuse me, says.

1 Q. Do you have Duke Energy Ohio Exhibit 13  
2 in front of you?

3 A. No, I do not.

4 MS. KINGERY: Can counsel provide it?

5 MS. KERN: Sure.

6 Q. Mr. Hornby, I'd like you to turn to page  
7 2, please.

8 A. Okay.

9 Q. The carryover paragraph. And I'd like  
10 you, I'm going to read to you starting right below  
11 the italicized case references, "However, in light of  
12 the change proposed by the Companies, the Commission  
13 will now expressly adopt as the state compensation  
14 mechanism for the Companies the current capacity  
15 charges established by the three-year capacity  
16 auction conducted by PJM, Inc., during the pendency  
17 of this review."

18 Did I read that correctly?

19 A. Yes.

20 Q. So, as we were just discussing, between  
21 those two dates that we had identified we had an  
22 application to the FERC and then we had the  
23 Commission establishing SCM at the market rate,  
24 correct?

25 A. Yes.

1           Q.   And are you aware of a FERC response to  
2 the Commission's initiation of this case?

3           A.   Yes, I'm generally aware that the FERC  
4 deferred to the state order and rejected the AEP  
5 request.

6           Q.   So in light of those circumstances, would  
7 it not be reasonable for Duke Energy Ohio in  
8 negotiating a stipulation in Case No. 11-2641 not to  
9 put a lot of value on the ability to go to FERC?

10          A.   That certainly could have been its  
11 thinking at that point in time. I also don't provide  
12 a -- any of my estimates for that point in time.

13          Q.   But it's certainly a decision of the  
14 company that you cite.

15          A.   Yes. I noted that, yes.

16          Q.   Thank you.

17               All right. And the next decision that  
18 you describe as inconsistent with its financial  
19 situation is the decision to agree to the ESP  
20 stipulation, correct? That would be on page 27  
21 starting on line 4.

22          A.   Yes.

23          Q.   And the reason that you make that claim  
24 is based on your belief at the time you wrote this  
25 testimony that the ESP provided for the amount of --

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1 the level of compensation that Duke Energy Ohio would  
2 receive for capacity services, correct?

3 A. Yes.

4 Q. But as we've just discussed at some  
5 length, the stipulation does not actually provide on  
6 the, in black and white, on the written page for that  
7 level of compensation, correct?

8 MS. KERN: Objection to the extent that  
9 that was not Mr. Hornby's testimony.

10 EXAMINER STENMAN: He can clarify.

11 A. Well, without going back over old ground  
12 I think I agreed that the exact text of the two  
13 provisions we discussed earlier do not spell out the  
14 exact amount of capacity revenue that the company was  
15 going to receive.

16 Q. Thank you.

17 A. On the other hand, the company had -- at  
18 that point in time -- well, back off on that.

19 So what the, you know, what the company  
20 interpreted that as it was going to -- how it was  
21 going to play out down the road I guess is up to the  
22 company, but at the end of the day, you know, the  
23 company agreed to that stipulation, did not put in a  
24 proviso saying: Subject to our retaining our right  
25 to seek cost-based compensation down the road during

1 the term of this provision. The company agreed to  
2 the stipulation as written.

3 Q. But, again, the stipulation, we've  
4 agreed, does not clearly provide for any compensation  
5 and so --

6 A. Well, certainly the company --

7 Q. -- isn't it true --

8 A. The company came into the ESP asking for  
9 cost-based recovery, recovery of its embedded costs.  
10 It then agreed to a stipulation for some uncertain  
11 amount which is certainly no reference to costs, so I  
12 guess it's reasonable to assume that the amount they  
13 agreed to receive, even if it wasn't spelled out, was  
14 something closer to market-based revenue than to cost  
15 and certainly not zero.

16 Q. But based on your nonlegal background, if  
17 the contract does not provide for something, can you  
18 fill it in and have any basis for assuming what each  
19 party may have thought?

20 A. I'll certainly defer to the lawyers on  
21 that one.

22 Q. Thank you.

23 So let's take it down a little bit  
24 different path. Even if the stipulation had some  
25 language in it that was clearly specifying what Duke

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1 Energy Ohio would receive for capacity, let's see how  
2 we then look at the timeline, at the events  
3 surrounding these decisions, okay?

4 So for right now we're going to assume  
5 that the stipulation clearly specified market based  
6 rates, which isn't the case --

7 A. Right.

8 Q. -- but we'll assume that.

9 A. Agree to disagree.

10 Q. Okay. So is it not true that the ESP  
11 stipulation was signed and filed with the Commission  
12 on October 24, 2011?

13 A. Yes, I think that's the correct date.

14 Q. On October 24, 2011, had the PUCO issued  
15 a final order in case 10-2929?

16 A. No. Of course, on the other hand, it  
17 didn't prevent the company from applying in June,  
18 2011, for a cost-based rate.

19 Q. I didn't ask that.

20 A. But that's, you know, the context.

21 Q. The Commission had not yet issued a final  
22 order.

23 A. It had not.

24 Q. So the most recent statement that the  
25 PUCO had made about a state cost mechanism for any



1 entity was that it would be at market, correct?

2 A. That's the statement made for AEP/Ohio  
3 Power.

4 Q. Correct. But that was the most recent  
5 statement that the PUCO had issued --

6 A. Yes.

7 Q. -- on this topic.

8 And on October 24, 2011, isn't it true  
9 that FERC also had not changed its position with  
10 regard to this rate, that is, it had not turned  
11 its -- changed its decision and allowed AEP to have a  
12 cost-based rate?

13 MS. BOJKO: Objection, your Honor.

14 EXAMINER STENMAN: Grounds?

15 MS. BOJKO: I think that mischaracterizes  
16 the state of affairs.

17 EXAMINER STENMAN: Overruled.

18 A. My general understanding is that FERC  
19 didn't change its decision that it made about AEP and  
20 that it, the assumption is that would still continue  
21 to defer to a state compensation mechanism.

22 Q. So did Duke Energy Ohio on that date have  
23 any reason to know that the Commission would  
24 ultimately change its mind and approve a cost-based  
25 rate for AEP?

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1           A.    No more so than when it made the decision  
2   to file in June of 2011 asking for a cost-based rate.

3           MS. BOJKO:  I'm sorry, may I have that  
4   answer -- or the question and answer reread, please?

5           EXAMINER STENMAN:  Yes.

6           (Record read.)

7           MS. BOJKO:  Thank you.

8           Q.    Sir, was there anything filed in June of  
9   '11 with regard to cost-based rates or capacity  
10 charges?

11          A.    Well, my --

12          Q.    I'm just trying to understand your last  
13 answer.

14          A.    Okay.

15          Q.    When you said "It made the decision to  
16 file in June of '11," are you talking about the ESP  
17 application --

18          A.    Yes.

19          Q.    -- that the company filed?

20          A.    Yes.

21          Q.    Okay.  Thank you for that clarification.

22                I'd like to look at your testimony now on  
23 page 27.

24          A.    Okay.

25          Q.    And I'd like to start at the end of line

1 8, and I understand this is in the middle of a  
2 sentence but I don't think it's misleading.

3 MS. BOJKO: Objection.

4 EXAMINER STENMAN: Let's see how it goes.

5 MS. KINGERY: Right.

6 Q. "It is reasonable to assume that the  
7 Company considered numerous factors before deciding  
8 to agree to the stipulation. My analysis identifies  
9 two of those factors - the compensation the Company  
10 would receive under the ESSC established in the  
11 stipulation and the Company's expectation that the  
12 market value of the underlying legacy assets from  
13 June 2015 onward would be materially higher than  
14 their embedded costs," did I read that correctly?

15 A. Yes.

16 Q. So you have identified two factors, you  
17 described them as two of those factors, and isn't it  
18 correct that when you say "those factors," you're  
19 referring back to the previous sentence where you say  
20 "It's reasonable to assume that the Company  
21 considered factors"?

22 A. Yes.

23 Q. Did you speak with any representative of  
24 the company to help you identify the basis for the  
25 Commission -- the company's decision?

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1           A.    No.  We did ask several data requests and  
2 my understanding, based on pretty much all the  
3 experience I've had in various cases, is that if I  
4 picked up the phone and tried to call Mr. Trent, he  
5 probably wouldn't have answered my call.  But you  
6 have to go through the proper channels, and my  
7 understanding that the avenue that was available was  
8 basically through data requests.

9           Q.    Did you read any news releases that the  
10 company issued at the time the decision was made --

11          A.    No.

12          Q.    -- to try to determine this?

13                So isn't it correct that you have no  
14 basis in fact for the -- your conclusions that these  
15 are important justifications for the company's  
16 decision?

17          A.    Well, the basis is that for analyzing  
18 these two factors is that they go to the financial  
19 situation of the company vis-a-vis its ability to  
20 recover its embedded cost of capacity which the  
21 company says is a huge issue and big dollars  
22 involved, and so I felt that those are two factors I  
23 could put some numbers on and get my arms around and  
24 that was worthwhile putting some numbers on them.  If  
25 there are other offsetting factors, we weren't able

1 to elicit that through data requests.

2 Q. So you have no actual knowledge that the  
3 company signed the ESP stipulation in part because it  
4 expected market prices for capacity and energy to  
5 rise after the end of the ESP stipulation, correct?

6 A. This is one of these instances where, you  
7 know, the company was aware or should have been aware  
8 of the costs and the capacity prices that I use in my  
9 analysis because the capacity price projections that  
10 I use in my analysis are taken from the testimony of  
11 Judah Rose who was a company witness who had filed  
12 testimony a few months earlier.

13 Q. And I'm again trying to understand the  
14 purpose for the known or should have known legal  
15 standard.

16 A. Well, obviously, if I can't get a data  
17 response where the company can confirm that it knew,  
18 then I can't say definitively that it knew. So I  
19 have to say it either knew or it should have known.  
20 And I've used that standard in, say, prudence cases  
21 when you're trying to look at a transaction that took  
22 place, you know, several years in the past and  
23 without trying to, you know, second guess somebody,  
24 so then you say, well, what was the information  
25 available to the decision-maker at the time they made

1 the decision.

2 And you have to be able to back up that,  
3 okay, if the company -- you don't know for sure  
4 whether the company knew, and you say, well, what  
5 would a reasonable person have known. And since  
6 these, you know, I would expect it would know at that  
7 point in time its annual anticipated embedded cost of  
8 capacity and, I mean, I used what the company filed  
9 in that proceeding, and I used the projection of  
10 capacity revenues that the company witness, Mr. Rose,  
11 presented in the proceeding, so I'm assuming whoever  
12 made the decision was aware of both those costs and  
13 those revenues.

14 Now, other factors they took in  
15 consideration is, I don't know what other factors,  
16 but those two factors they would have known or should  
17 have known.

18 Q. So when you talk about your belief that  
19 the company knew something or should have known  
20 something, are you proposing that a company should  
21 not be authorized to recover just and reasonable  
22 rates if it knew or should have known some fact that  
23 you believe is inconsistent with the decision that it  
24 made?

25 A. I'm just trying -- it's hard to give a

1 "yes" or "no" answer to that. I think the Commission  
2 is facing in this proceeding an application by the  
3 company for recovery of a charge to recover its  
4 embedded cost of capacity and one of the company's  
5 positions is that, well, we need this because of --  
6 to ensure our financial integrity, just and  
7 reasonable rates.

8 And all I'm putting out here is the  
9 background, I know the parties disagree, but like  
10 from my position the company entered the stipulation,  
11 it entered it knowingly, the -- it's now apparently  
12 unhappy with the amount of money it's recovering for  
13 its capacity so it's coming in saying, oh, well, we  
14 want to recover those embedded costs of capacity that  
15 we're not recovering, we've got a shortfall, please  
16 approve it, just and reasonable rates.

17 And I'm saying, okay, well, isn't this  
18 the situation where the company made a decision and  
19 it's now unhappy with the way it's unfolded.

20 Q. Let's move on to the last decision that  
21 you identify as inconsistent. And I believe that is  
22 the decision not to file an application with the PUCO  
23 for approval of cost-based rates immediately after  
24 the ESP case. And that would be on page 31.

25 A. Okay.

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1           Q.   Starting on approximately line 7.  You  
2   say "Nevertheless, if Duke Energy Ohio held these  
3   positions as of November 2011, it is surprising that  
4   the Company did not seek to collect such costs before  
5   now.  Under its view, it could have applied to  
6   collect such costs immediately after entering that  
7   Stipulation.  Instead, the Company waited  
8   approximately ten months."

9                   Did I read that correctly?

10          A.   Yes.

11          Q.   In November, 2011, isn't it true that the  
12   Commission had not yet issued its order in 10-2929?

13          A.   That's correct.

14          Q.   So there was not a final order, or even  
15   an opinion and order, not a final order, until July  
16   of 2012, correct?

17          A.   That's correct.

18          Q.   So, again, in November, 2011, Duke Energy  
19   Ohio had no reason to believe that the Commission  
20   would change its mind and allow cost-based state  
21   capacity mechanism, correct?

22          A.   I would disagree.  The company doesn't  
23   know really what the Commission would do.  Mr. Trent  
24   is saying that the company's financial integrity is  
25   dire, and that they're not earning just and



1 reasonable rates, and this is a separate -- the cost  
2 recovery they're seeking for is a separate  
3 noncompetitive wholesale service not covered by the  
4 ESP, nothing in the ESP preventing the company from  
5 filing an application. So I'm saying, well, if you  
6 truly held all those views as of November, 2011, your  
7 financial situation I think was, you know, if you  
8 accept the company's numbers, just as dire then as it  
9 was when it filed in July, so I'm saying why did you  
10 wait six months, seven months, whatever.

11 Q. You have an alternative recommendation in  
12 your testimony, as we discussed earlier, suggesting  
13 that the Commission, if it approves any recovery in  
14 this case, should order that recovery to be collected  
15 directly from CRES providers and wholesale auction  
16 winners, correct?

17 A. Yes.

18 Q. And isn't it true that you believe that  
19 this approach in contrast to a collection from  
20 end-use customers would be fair and would not harm  
21 retail competition?

22 A. Yes.

23 Q. So is it fair to say that you believe a  
24 collection directly from end-use customers would harm  
25 retail competition?

1           A.    I'm not so much saying that the  
2           collection directly from end-use customers would harm  
3           retail competition. I think it's fair or a better  
4           proposition to collect the moneys that, whatever are  
5           approved, from the wholesale auction winners on the  
6           one hand and the CRES providers on the other.

7                   They're either going to pass all those  
8           amounts straight through to end-use customers or at  
9           the end of the day the end-use customers are going to  
10          pay for it, or at least with respect to the CRES  
11          providers and perhaps the wholesale auction winners,  
12          but certainly CRES providers, if they want to try to  
13          distinguish themselves one from the other in terms of  
14          the rates they offer their customers, they might be  
15          willing to absorb some portion of those.

16          Q.    You've read the Commission's order and  
17          entries on rehearing in 10-2929?

18          A.    Yes.

19          Q.    The capacity case.

20          A.    Yeah.

21          Q.    And you have also, I assume, read the  
22          orders in AEP's most recent ESP proceeding.

23          A.    Yes.

24          Q.    So you understand, do you not, that the  
25          Commission has looked at this issue and has

1 determined that the appropriate way to handle  
2 cost-based capacity collections is by having the CRES  
3 providers pay the auction price, the market-based  
4 price, and have the remainder collected directly from  
5 end-use customers.

6 A. Yes, I know that was their decision in  
7 that case.

8 Q. And you're aware that this was a  
9 substantial issue in the AEP proceedings.

10 A. I'm aware it was an issue. I don't know  
11 whether it was a substantial issue or not.

12 Q. Fair enough.

13 And, Mr. Hornby, you also argued that  
14 there should be no true-up in this proceeding,  
15 correct?

16 A. Yes. In terms of the recovery, the  
17 amount -- if any amount is approved.

18 Q. And in a typical rate proceeding isn't it  
19 true that a commission generally allows the utility  
20 the opportunity to earn a given rate of return?

21 A. Well, yes, the Commission will set rates  
22 that are designed to give the company the opportunity  
23 to recover its cost and earn a reasonable rate of  
24 return, but those are base rates that aren't subject  
25 to true up and there's no guarantee.

1           Q.    But the opportunity to earn is on the  
2 rate of return, correct? That's how it's usually  
3 expressed.

4           A.    That's how it's usually expressed.

5           Q.    And is there anything in this proceeding  
6 that you can point to that would guarantee the  
7 recovery of a particular rate of return?

8           A.    Well, no, but as I just said, the rates  
9 aren't set to guarantee the rate of return. The  
10 rates are set to give you the opportunity to earn  
11 your allowed rate of return.

12           MS. KINGERY: Just a moment. Could we  
13 have about a ten-minute break?

14           EXAMINER STENMAN: Let's go off the  
15 record.

16           (Discussion off the record.)

17           EXAMINER STENMAN: Let's take a  
18 ten-minute break.

19           (Recess taken.)

20           EXAMINER STENMAN: Let's go back on the  
21 record. Did you have any additional questions?

22           MS. KINGERY: We do not.

23           EXAMINER STENMAN: Did staff have  
24 anything?

25           MR. JONES: No, your Honor.

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1 EXAMINER STENMAN: Redirect?

2 MS. KERN: No redirect, your Honor.

3 EXAMINER STENMAN: Thank you.

4 THE WITNESS: Thank you, your Honor.

5 EXAMINER STENMAN: With respect to the  
6 exhibits?

7 MS. KINGERY: I don't believe we had any.

8 EXAMINER STENMAN: No. But OCC did.

9 MS. KERN: OCC would move for the  
10 admission of OCC Exhibits 22 and 22A with the  
11 exception of page attachment JRH-3, page 6 of 6.  
12 There's an issue that counsel is looking into with  
13 respect to this page, so we will notify your Honor  
14 when we have resolved this issue.

15 EXAMINER STENMAN: Any objections to the  
16 admission of OCC Exhibit 22 and 22A with the  
17 exception of the noted page?

18 MS. KINGERY: No objections, your Honor.

19 EXAMINER STENMAN: OCC Exhibits 22 and  
20 22A will be admitted with that exception.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 EXAMINER STENMAN: OCC, you may call your  
23 next witness.

24 MS. GRADY: Thank you, your Honor. OCC  
25 calls to the stand Dr. Kenneth Rose.

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1 EXAMINER STENMAN: Please raise your  
2 right hand.

3 (Witness sworn.)

4 EXAMINER STENMAN: Thank you.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 - - -

7 KENNETH ROSE, PH.D.

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

10 DIRECT EXAMINATION

11 By Ms. Grady:

12 Q. Good afternoon, Mr. Rose.

13 A. Good afternoon.

14 Q. For the record, can you identify yourself  
15 and who you are employed for purposes of this  
16 proceeding?

17 A. My name is Kenneth Rose --

18 EXAMINER STENMAN: Could you please turn  
19 your microphone on. Thank you.

20 A. My name is Kenneth Rose. I am an  
21 independent consultant and I was working under  
22 contract with OCC.

23 Q. Now, Mr. Rose, do you have before you  
24 what has been marked for identification purposes as  
25 OCC Exhibit No. 23, the direct testimony of Kenneth

1 Rose, Ph.D.?

2 A. Yes, I do.

3 Q. And can you identify that document for  
4 me?

5 A. I'm sorry, identify it?

6 Q. Yes. Do you recognize this document?

7 A. Yes, I do.

8 Q. And can you tell me what this document  
9 is.

10 A. This is the direct testimony of Kenneth  
11 Rose, Ph.D., which was filed in this case.

12 Q. And was this document, OCC Exhibit No.  
13 23, prepared by you or under your direct supervision  
14 and control?

15 A. Yes, it was.

16 Q. Do you have any additions, corrections,  
17 or deletions to this testimony at this time?

18 A. There were two corrections that we made  
19 at the deposition, I don't know if those became part  
20 of the record or not.

21 Q. If you could go through those, please.

22 A. Okay. On page 9 of my direct testimony,  
23 line 4, I'd like to change the word "earnings" to  
24 "revenue."

25 And on page 13, line 12, I'd like to

1 strike the parenthetical remark, "see case No."  
2 et al.

3 Q. Just to make sure the record is clear, if  
4 we go to the correction you made on page 9, the  
5 sentence that starts on line 3 should read: This is  
6 equivalent to requiring customers to guarantee a  
7 certain level of revenue for both the regulated  
8 transmission and distribution and unregulated  
9 portions, generation capacity, of Duke Energy Ohio's  
10 businesses; is that -- business; is that correct?

11 A. That's correct.

12 Q. And the sentence that, the next change  
13 that you mentioned on page 13, the sentence should  
14 read, beginning on line 10: "More time was also  
15 given to the company to manage the transition to  
16 competition under the company's rate stabilization  
17 plan period," correct?

18 A. That's correct.

19 Q. Are there any other additions,  
20 corrections, or deletions to your testimony?

21 A. No.

22 Q. Mr. Rose, if I were to ask you the  
23 questions that are posed in your testimony marked as  
24 OCC Exhibit No. 23, would the answers be the same?

25 A. Yes, they would.



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1 MS. GRADY: At this time, your Honor, we  
2 would tender Mr. Rose for cross-examination.

3 EXAMINER STENMAN: Thank you.

4 Any questions from intervenors?

5 MR. DARR: I was asking whether or not he  
6 had been sworn in.

7 EXAMINER STENMAN: Yes.

8 MR. DARR: I didn't catch it, that's why  
9 I asked.

10 EXAMINER STENMAN: I suppose we were very  
11 quiet then.

12 MR. DARR: Either that or I was too  
13 noisy.

14 EXAMINER STENMAN: Either way, it did  
15 happen.

16 MR. DARR: Okay, thank you.

17 EXAMINER STENMAN: Ms. Spiller.

18 MS. SPILLER: Thank you, your Honor,  
19 first I would move to strike certain portions of  
20 Mr. Rose's testimony, please.

21 EXAMINER STENMAN: Yes.

22 MS. SPILLER: Starting first on page 2,  
23 line 18, strike the word "additional."

24 Page 3, line 1 through line 15, line 17  
25 through line 19.

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1                   Page 4, line 1 through 7.

2                   Page 5, line 3 carrying down to line 14  
3 asking to strike the first four words on line 14,  
4 market development period.

5                   Moving to page 7, lines 8 through 10.

6                   Page 8, line 19 through 21, and that  
7 would be the sentence that begins toward the end of  
8 line 19 through, following all the way through line  
9 21, the conclusion of that sentence.

10                  Page 12, lines 13 through 23.

11                  Page 13, lines 1 through 2.

12                  Page 15, lines 13 -- strike that -- lines  
13 17 through 22.

14                  MS. BOJKO: I'm sorry, could you say that  
15 last one, page 13?

16                  MS. SPILLER: Sure, it was page 15, lines  
17 17 through 22.

18                  MS. BOJKO: Thank you.

19                  MS. SPILLER: And, your Honor, with  
20 respect to the motion to strike the testimony as  
21 identified on pages 2 through 18, this is testimony  
22 in which Mr. Rose is offering legal conclusions as to  
23 the disposition of a motion to summary judgment --  
24 or, a motion to dismiss as well as opinions as to the  
25 interpretation of a document, a document that, in

1 fact, has legal precedent and effect, its  
2 interpretation's certainly outside of his expertise.

3 I would certainly note as well that  
4 Mr. Rose is now the third -- strike that -- is the  
5 second of the two OCC witnesses who has offered  
6 opinion with respect to their views as to the motion  
7 to dismissal and the motion or -- strike that -- and  
8 the ESP stipulation, recommendations that, perhaps  
9 coincidentally or not, are identical, and at this  
10 point this testimony is prejudicial in that it is  
11 cumulative of the testimony that we just heard from  
12 Mr. Hornby --

13 With respect to the motion to strike  
14 concerning testimony on pages 12 and 13, the basis  
15 for this motion to strike is that this is not  
16 Mr. Rose's testimony. In fact, he is merely  
17 reiterating that which another witness, Mr. Effron,  
18 provides in his testimony. As this testimony is not  
19 attributed to Mr. Rose, it should not be included  
20 within his testimony. The reason for including it  
21 simply reinforces and gives undue weight to the  
22 testimony of Mr. Effron.

23 Finally, with respect to the proposed  
24 redactions on page 15 of Mr. Rose's testimony, he is  
25 offering legal opinions with respect to transition

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1 costs and the company's alleged attempt to recover  
2 same. Again, outside of his scope of expertise.

3 EXAMINER STENMAN: Thank you.

4 Ms. Grady.

5 MS. GRADY: Yes, briefly, your Honor.

6 Although Mr. Rose does at times offer what has been  
7 characterized as a legal opinion, like the other  
8 multitude of witnesses in this case who have  
9 testified on legal opinions, including Mr. Trent and  
10 Mr. Wathen, this testimony on legal opinion is bound  
11 up in the testimony on the regulatory policy.  
12 They're intertwined. It's difficult to separate the  
13 two, the legal questions from the regulatory  
14 questions, and so this witness has done just what  
15 every other witness has done and relied upon his  
16 expertise as -- and experience in the regulatory  
17 field.

18 I also might add, your Honor, that  
19 Mr. Rose is uniquely qualified to testify with  
20 respect to stranded costs and transition costs having  
21 worked on Senate Bill 3 which enacted the transition  
22 or the transition cost language that are found in the  
23 statute and continue to be provided today.

24 He is an expert in that field much more  
25 so than any other expert. He worked with the

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1 legislators. He drafted the legislation. He came up  
2 with the terms. I think it's very clear, and  
3 Ms. Spiller went into that information on his  
4 deposition, that Mr. Rose is very uniquely qualified  
5 in that respect.

6 Finally, with regard to counsel's  
7 contentions that this would be prejudicial, I think  
8 that that suggestion here discounts the fact that the  
9 attorney examiners as well as the Commission are  
10 expertly qualified to determine and to understand the  
11 information before it and will not be confused or  
12 prejudiced by the information presented.

13 And finally, your Honor, it's very  
14 consistent, rejecting the motion to strike is  
15 consistent with all the earlier rulings with respect  
16 to the numerous witnesses that have -- motions to  
17 strike have been made for.

18 EXAMINER STENMAN: Thank you. The motion  
19 to strike will be denied. The appropriate weight  
20 will be given to the testimony.

21 MS. SPILLER: Thank you, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Spiller:

25 Q. Mr. Rose, you were not at all involved in

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1 drafting Senate Bill 221, correct?

2 A. That's correct.

3 Q. And you are not an attorney, correct?

4 A. That's correct.

5 Q. You are not competent by training to  
6 express legal opinions or conclusions of law,  
7 correct?

8 A. Only to the extent that my expertise as  
9 an economist on restructuring and regulation apply.

10 Q. But, sir, you are not competent by  
11 training to express conclusions of law, correct?

12 A. I'm not an attorney if that's what you're  
13 asking, and I stipulated that.

14 Q. And your area of expertise does not  
15 concern the interpretation of legal conclusions,  
16 correct?

17 A. Only in the context of the issues that I  
18 raise on interpretation of the market. The  
19 operations of.

20 Q. And, sir, you believe you are qualified  
21 as an economist to render opinions with respect to --  
22 strike that.

23 You are qualified as an economist,  
24 correct?

25 A. That's correct.

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1 Q. And in that respect, sir, your area of  
2 focus is retail access to the markets, correct?

3 A. And I would also say wholesale markets.

4 Q. Okay. And you do not know, sir, what  
5 Ohio law provides with respect to interpreting  
6 contracts, correct?

7 A. No, I do not.

8 Q. And to the extent you may be rendering an  
9 opinion with respect to the interpretation or  
10 enforceability of an agreement, you've relied upon  
11 the advice of OCC counsel in this case, correct?

12 A. That's correct.

13 Q. And to the extent you are interpreting  
14 Commission orders, you rely upon the advice of  
15 counsel, correct?

16 A. And my own interpretation.

17 Q. And so for purposes of this case, sir,  
18 your direct testimony, you did rely upon counsel for  
19 the OCC for purposes of interpreting Commission  
20 orders, correct?

21 A. There are a couple points in my direct  
22 testimony where I state that.

23 Q. And, sir, you were aware of the primary  
24 recommendations of the OCC's other witnesses in this  
25 proceeding when you wrote your direct testimony in

1 this case, correct?

2 A. I saw drafts of other testimony, yes.

3 Q. And so you were aware of their  
4 recommendations, correct?

5 A. Yes.

6 Q. And, in fact, your primary recommendation  
7 is the same as the primary recommendations of all  
8 other OCC witnesses in this case, correct?

9 A. The three, the three that I reviewed,  
10 yes.

11 Q. Well, sir, are you aware of any other  
12 witnesses in this proceeding on behalf of the OCC  
13 other than Mr. Effron, Dr. Woolridge, and Mr. Hornby?

14 A. No.

15 Q. And those are the three gentlemen whose  
16 testimony you reviewed prior to the submission of  
17 your direct testimony in this case, correct?

18 A. The drafts of their, of their testimony.

19 Q. And those were the three gentlemen whose  
20 draft recommendations you were aware of prior to the  
21 submission of your direct testimony in this case,  
22 correct?

23 A. Yes.

24 Q. Now, sir, your primary recommendation is  
25 that the Commission grant the motion to dismiss that



1 had been filed by the OCC and other intervenors,  
2 correct?

3 A. Yes.

4 MS. GRADY: Your Honor, may I ask counsel  
5 to slow down a little bit. I know we would like to  
6 get out of here, but I have a hard time following her  
7 when she's speaking so fast and I would imagine the  
8 witness does too.

9 Q. Sir, are you having trouble?

10 A. Well, I'm from Chicago so I'm used to  
11 fast talkers.

12 Q. So we're good. We're good. All right.

13 Sir, as you are not an attorney, you do  
14 not know the standards of review to be applied to a  
15 motion to dismiss, do you?

16 A. What I did was read the motion to dismiss  
17 and in my own -- made my own interpretation of what  
18 that would mean with respect to the findings that I  
19 make in my direct testimony.

20 Q. But, sir, as you are not an attorney you  
21 do not know the standard of review to be applied to a  
22 motion to dismiss, correct?

23 A. Well, I do know what would happen if the  
24 motion to dismiss is granted.

25 Q. But, sir, for purposes of the

1 determination of the motion to dismiss, you do not  
2 know the legal criteria that would be applicable,  
3 correct?

4 A. Not specifically, no.

5 Q. And, sir, you did not draft the motion to  
6 dismiss, correct?

7 A. No, I did not.

8 Q. You did not provide any legal analysis or  
9 legal research with regard to the motion to dismiss,  
10 correct?

11 A. No.

12 Q. You did not provide any legal conclusions  
13 that were included in the motion to dismiss, correct?

14 A. No.

15 Q. And, in fact, Mr. Rose, it's fair to say  
16 that you had no involvement whatsoever in the motion  
17 to dismiss as you were first retained for purposes of  
18 this case about two to three months after that motion  
19 had been filed, correct?

20 A. That's correct.

21 Q. Mr. Rose, so in this case you cannot  
22 provide the Commission with any expert opinion that  
23 is relevant to its determination of whether the  
24 company's application is precluded by the ESP  
25 stipulation as argued by the OCC, correct?

1           A.    I do know what would happen if the motion  
2 to dismiss is granted.

3           Q.    But, sir, in terms of the legal criteria  
4 for granting that motion to dismiss you are not  
5 qualified to provide expert opinion to the Commission  
6 in order to aid it in its determination, right?

7           MS. GRADY:  Objection.

8           EXAMINER STENMAN:  Grounds?

9           MS. GRADY:  Asked and answered.

10          EXAMINER STENMAN:  Overruled.

11          A.    I'm -- could you repeat that?

12          MS. SPILLER:  Could we have it read back,  
13 please?

14          (Record read.)

15          A.    Not on the motion to dismiss  
16 specifically, no.

17          Q.    Thank you, sir.

18          Mr. Rose, in your testimony you do not  
19 dispute that Duke Energy -- you do not dispute Duke  
20 Energy Ohio's obligations as an FRR entity, correct?

21          A.    That's correct.

22          Q.    And you do not dispute in your testimony  
23 in this case that Duke Energy Ohio has committed its  
24 legacy generating assets to fulfilling its FRR  
25 capacity service obligation, correct?

1           A.    That's correct.

2           Q.    You do not dispute through your testimony  
3   in this case Duke Energy Ohio's embedded costs for  
4   fulfilling its FRR capacity service obligation,  
5   correct?

6           A.    I did not make an analysis of the  
7   embedded costs.

8           Q.    And, sir -- I'm sorry.

9           A.    I saw what the company had filed, but I  
10   didn't do my own analysis.

11          Q.    And, sir, for purposes of your testimony  
12   in this case you have not done an independent  
13   analysis of the company's financial condition,  
14   correct?

15          A.    That's correct.

16          Q.    You cannot dispute that the company  
17   incurred negative returns on equity for its legacy  
18   generation business in 2012, correct?

19          A.    I don't in my testimony. I did not  
20   address that.

21          Q.    And, sir, you cannot dispute that the  
22   company is projected to incur negative returns on  
23   equity for its legacy generation business through  
24   May 31, 2015, correct?

25          A.    I can't confirm or deny that.

1 Q. And, sir, the term that I just used,  
2 legacy generation business, you understand that to be  
3 the business that concerns Duke Energy Ohio's legacy  
4 coal assets, correct?

5 A. Yes.

6 Q. And those are the assets, sir, that were  
7 previously used and useful and in rate base, correct?

8 A. In the predecessor company, yes.

9 Q. Thank you, sir.

10 And you have not done an analysis on  
11 whether negative returns on equity would be  
12 compensatory for a utility company in the provision  
13 of its capacity service, correct?

14 A. I am not.

15 Q. You also do not dispute the Commission's  
16 determination that a return on equity of 7.6 percent  
17 is not compensatory for purposes of a utility  
18 company's provision of FRR capacity service, correct?

19 A. I have not.

20 Q. And, sir, you do not dispute through your  
21 testimony that Duke Energy Ohio incurred a negative  
22 return on equity with regard to its electric  
23 transmission, distribution, and generation business  
24 in 2012, correct?

25 A. I have not done that analysis, no.

1           Q.    And, Mr. Rose, the FRR obligation on the  
2 part of Duke Energy Ohio requires it to self-supply  
3 capacity for its footprint through May 31, 2015,  
4 correct?

5           A.    That's correct.

6           Q.    And, sir, there is no other entity in  
7 Duke Energy Ohio's service territory that has that  
8 obligation to supply capacity, correct?

9           A.    I don't know if any other entities, any  
10 other load-serving entities have opted out; that's  
11 possible under PJM rules. But I don't -- as far as I  
12 know Duke is the only one.

13          Q.    And, sir, for purposes of your testimony  
14 in this case did you review Duke Energy Ohio's  
15 transitional or out-of-time FRR plan that was filed  
16 with the FERC on August 16, 2010?

17          A.    No, I did not.

18          Q.    And, sir, would you agree with me that  
19 the FERC proceedings would have been the proceedings  
20 in which the opt-out was offered to alternate  
21 load-serving entities in respect of Duke Energy  
22 Ohio's FRR?

23          A.    I'm not sure when they can opt out. I  
24 think they can do that at any time there's an auction  
25 so there's been other opportunities since 2010.

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1           Q.    But you don't know as you sit here today  
2 whether any alternate load-serving entities have  
3 opted out of Duke Energy Ohio's FRR plan --

4           A.    No.

5           Q.    -- for the period at issue in this case;  
6 is that correct?

7           A.    That's correct.

8           Q.    Mr. Rose, Duke Energy Ohio's FRR  
9 obligation to provide capacity for all of the load in  
10 its footprint will persist after the company  
11 transfers its generating assets by no later than  
12 December 31, 2014, correct?

13          A.    That's right.

14          Q.    And the nature of Duke Energy Ohio's FRR  
15 capacity service obligation will not change after it  
16 transfers those legacy generation assets, correct?

17          A.    Could you explain what you mean by "the  
18 nature"?

19          Q.    Well, the company will still have the  
20 obligation to self-supply capacity resources to meet  
21 its load obligations for the Duke Energy Ohio load  
22 zone, correct?

23          A.    Until 2015.

24          Q.    Yes, sir.

25          A.    Yes.

1           Q.    Mr. Rose, you were not involved in the  
2           2006 PJM settlement proceedings that culminated in  
3           the creation of the fixed resource requirement, or  
4           FRR, entity, correct?

5           A.    That's correct.

6           Q.    Now, sir, you have identified yourself as  
7           an expert in electric market restructuring, correct?

8           A.    That's right.

9           Q.    And you've indicated that the issues in  
10          which you typically engage in that capacity concern  
11          retail and wholesale market access, correct?

12          A.    That's correct.

13          Q.    Prior to this year you had not provided  
14          testimony before the Ohio Commission, correct?

15          A.    Prior to this year, that's correct.

16          Q.    And you have provided testimony, sir, on  
17          behalf of OCC with regard to Dayton Power & Light's  
18          proposed electric security plan, correct?

19          A.    The current case.

20          Q.    Mr. Rose, would you agree with me that  
21          the Ohio Commission speaks through its orders?

22          A.    Yes.

23          Q.    And the orders issued by the Ohio  
24          Commission establish the rates, recovery mechanisms,  
25          rate allocations among customer classes and other



1 things, correct?

2 A. That's correct.

3 Q. And the Commission orders dictate what a  
4 utility recovers with respect to its provision of  
5 services, correct?

6 A. That's correct.

7 Q. And these Commission orders also dictate  
8 the rights that -- the rates that customers are  
9 charged in exchange for their receipt of those  
10 services, correct?

11 A. That's correct. Subject to appeal, of  
12 course.

13 Q. Sir, given the significance and effect of  
14 Commission orders you would agree that they are  
15 comprehensive, correct?

16 A. The orders?

17 Q. Yes, sir.

18 A. Generally speaking, yes. Or they specify  
19 what it covers.

20 Q. And the Ohio Commission's orders, you  
21 would agree, sir, are accurate, correct?

22 A. To the best of their abilities.

23 Q. And you would agree, sir, that the Ohio  
24 Commission's orders are complete, correct?

25 MS. GRADY: Objection. That's a very

1 general question. If you want to be specific about  
2 what orders we're speaking, I think that would help.

3 EXAMINER STENMAN: Overruled.

4 A. They're complete to the extent that they  
5 define in the order.

6 Q. And, Mr. Rose, you do not know the Ohio  
7 Commission to have issued orders that are inaccurate  
8 or incomplete, correct?

9 MS. GRADY: Objection.

10 EXAMINER STENMAN: Overruled.

11 A. Well, there have been times where I've  
12 disagreed with the findings of the Commission.

13 Q. But that doesn't render it inaccurate  
14 or -- strike that.

15 That doesn't render the order incomplete,  
16 correct?

17 MS. BOJKO: I'm sorry, I'm going to  
18 object now, that mischaracterizes the Commission's  
19 practice. I'm sure if you want to go to a particular  
20 order, there are many erratas, there are entry nunc  
21 pro tuncs that are filed. I mean, I think that's  
22 very unclear to make that kind of broad, sweeping  
23 characterization of the Commission's practices.

24 MS. SPILLER: Well, your Honor --

25 EXAMINER STENMAN: The witness is free to

1 clarify, and all of the Commission's orders speak for  
2 themselves.

3 A. I'm taking these questions, and maybe I  
4 should specify, as saying that the Commission does  
5 what it does and I don't disagree with that. They  
6 are complete to the extent as defined by the  
7 Commission, they change it and sometimes change their  
8 own opinions that they've made in the past. So it's  
9 an ongoing process as well. And they're human beings  
10 so they're not perfect.

11 Q. But you have no reason to dispute, sir,  
12 that the Ohio Commission takes care to ensure that  
13 the orders that it issues are, in fact, accurate at  
14 the time that they are issued, correct?

15 MS. GRADY: Objection.

16 EXAMINER STENMAN: Grounds?

17 MS. GRADY: Relevance.

18 EXAMINER STENMAN: Overruled.

19 A. They try to make the best decisions that  
20 they can at the time that they make the decision.

21 Q. Thank you.

22 Mr. Rose, although you were not involved  
23 in the drafting of Senate Bill 221, you are familiar  
24 with it, correct?

25 A. Yes, I am.

1           Q.   And you do know that under Senate Bill  
2   221 an electric distribution utility is required to  
3   offer standard service offer of competitive retail  
4   electric service, correct?

5           A.   Standard service offer either under MRO  
6   or ESP?

7           Q.   Yes, sir.

8           A.   Yes.

9           Q.   And that is a standard service offer of  
10 competitive retail electric service, correct?

11          A.   Through the bidding program.

12          Q.   I'm sorry?

13          A.   Through the bidding program?

14          Q.   No.

15          A.   Then I'm not sure what you're referring  
16 to as competitive.

17          Q.   Well, you're familiar with Revised Code  
18 4928, correct?

19          A.   Yes.

20          Q.   And therein it's provided that electric  
21 distribution utilities are required to offer standard  
22 service offers of competitive retail electric  
23 service, correct?

24          A.   Right. And that has been through a  
25 competitive bidding process that they've been

1 determining that it's a, that it's competitive.

2 Q. Well, sir, as a general proposition 4928  
3 does require that a standard service offer of  
4 competitive retail electric service must be offered,  
5 correct?

6 MS. GRADY: Objection. Asked and  
7 answered.

8 EXAMINER STENMAN: Overruled.

9 A. That's correct.

10 Q. And the standard service offer can take  
11 the form of either a market rate offer or an ESP,  
12 correct?

13 A. That's correct.

14 Q. And a standard service offer is not  
15 required by law to be offered pursuant to a  
16 competitive bidding process plan, correct?

17 A. I'm sorry, could you --

18 Q. A standard service offer is not required  
19 by law to be offered pursuant -- strike that.

20 A standard service offer is not required  
21 by law to include a competitive bidding process plan,  
22 correct?

23 A. Not by law, but it has been in practice.

24 Q. And it's been a practice in what respect,  
25 sir?

1           A.    In the actual ESPs that the Commission  
2   has approved, FirstEnergy and then -- was the first  
3   one I believe, AEP most recently.

4           Q.    Well, the first ESP that was approved for  
5   AEP Ohio did not include a competitive bidding  
6   process plan, correct?

7           A.    That's right.

8           Q.    The first ESP for Duke Energy Ohio did  
9   not include a competitive bidding process plan,  
10   correct?

11          A.    Are you referring to the -- which one now  
12   are you referring to?

13          Q.    The original, the first one, 08-920.

14          A.    No, it did not.

15          Q.    And Dayton Power & Light's first ESP  
16   proceeding did not include a competitive bidding  
17   process plan, correct?

18          A.    They did in their last ESP.

19          Q.    But that's the one that's currently  
20   pending before the Commission, correct?

21          A.    That's the one that just expired at the  
22   end of last year.

23          Q.    And you believe there was an auction  
24   involved for SSO service in Dayton Power & Light's  
25   first ESP?

1           A.    That, I don't recall now.  They're  
2 proposing one in the new one.

3           Q.    Yes, sir.

4                   But you would agree with me, sir, that an  
5 electric security plan for competitive retail  
6 electric service is not required to include a  
7 competitive bidding process.

8           A.    It's not in the law if that's what you're  
9 asking.

10          Q.    Thank you.

11                   Mr. Rose, in your testimony you reference  
12 the ESP stipulation that was docketed under case  
13 11-3549, correct?

14          A.    That's right.

15          Q.    And for purposes of our discussion this  
16 afternoon could we simply refer to that as the Duke  
17 Energy Ohio ESP proceeding?

18          A.    Okay.

19          Q.    Or the ESP stipulation.

20          A.    Okay.

21          Q.    Mr. Rose, you did not draft the Duke  
22 Energy Ohio ESP stipulation, correct?

23          A.    No, I did not.

24          Q.    And you were not a witness for the Ohio  
25 Consumers' Counsel in Duke Energy Ohio's ESP

1 proceeding, correct?

2 A. That's correct.

3 Q. And the interpretation of Duke Energy  
4 Ohio's ESP stipulation does not require expert  
5 analysis or evaluation of access to retail markets,  
6 correct?

7 A. To be able to evaluate what was in the  
8 stipulation?

9 Q. To evaluate what it said, yes, sir.

10 A. No, I don't think so.

11 Q. And the interpretation of the ESP  
12 stipulation did not require expert analysis or  
13 evaluation of access to wholesale markets, correct?

14 A. Well, I think some expertise was probably  
15 involved to understand what the terms are.

16 Q. But in terms of reading the document, did  
17 that concern expert analysis or evaluation of access  
18 to wholesale markets?

19 A. I would think so.

20 Q. For purposes of understanding words.

21 A. Yes.

22 Q. And those would be words specific to the  
23 PJM wholesale market?

24 A. Right.

25 Q. Such as "final zonal capacity price"?



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1           A.    Right, what that means, I would imagine  
2           that experts were involved in interpreting that and  
3           writing it.

4           Q.    Were there other terms within the ESP  
5           stipulation that you found were so technical in  
6           nature that they required interpretation through the  
7           application of expert analysis?

8           A.    From my part?

9           Q.    Yes, sir.

10          A.    No.

11          Q.    Mr. Rose, despite not being involved in  
12          the creation of the ESP stipulation or the  
13          proceedings relative to that case you believe that  
14          you are qualified to interpret the document, correct?

15          A.    Yes.

16          Q.    Mr. Rose, you would agree with me that  
17          the Ohio Commission has an obligation to ensure that  
18          jurisdictional utilities are justly and reasonably  
19          compensated for the services they provide, correct?

20          A.    For regulated services, yes.

21          Q.    And, sir, you are aware that the Ohio  
22          Commission has found that capacity service provided  
23          by an FRR entity is not a competitive retail electric  
24          service, correct?

25                MS. GRADY:  Objection.  Mischaracterizes

1 the order and the finding of the Commission.

2 EXAMINER STENMAN: He can clarify.

3 Go ahead and answer.

4 A. My interpretation of what the Commission  
5 found in that case was that they were making a  
6 distinction between retail versus wholesale, not  
7 competitive versus noncompetitive. I think your  
8 interpretation is that they were specifying a part of  
9 the law that deals with the noncompetitive services.

10 Q. Well, sir, in the part of the law that  
11 the Commission was referring to that pertains to  
12 noncompetitive services, is that part of the law in  
13 which the Commission relied in approving a cost-based  
14 charge for an FRR entity? Correct?

15 A. I'm sorry, I was looking for something, I  
16 didn't --

17 Q. Sure. Do you need the Commission's  
18 opinion and order from July 2nd, 2012?

19 A. I have excerpts of it here and that's  
20 what I was looking for.

21 Q. How about if we get you the entire  
22 document.

23 A. Well, the part --

24 Q. I would rather you have --

25 A. I do have the part that I was just

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1 referring to which is page 22 of the Commission order  
2 that you referred to. And it says that: We noted  
3 earlier -- this is in the last paragraph on the page  
4 in about the middle of the paragraph -- capacity is a  
5 wholesale rather than a retail service. The  
6 Commission's obligation under rate of return  
7 regulation is to ensure that the jurisdictional  
8 utilities receive reasonable compensation for their  
9 services that they render. That's referring to  
10 wholesale and retail distinction that they make.

11 MS. SPILLER: Your Honor, if we may  
12 approach to hand Mr. Rose the entire opinion and  
13 order I believe previously marked as OCC Exhibit 1.

14 EXAMINER STENMAN: Yes.

15 MS. GRADY: If we can have a moment, your  
16 Honor, to locate that.

17 EXAMINER STENMAN: Let us know once you  
18 find it.

19 Ready, Ms. Grady?

20 MS. GRADY: OCC Exhibit 1; is that  
21 correct?

22 EXAMINER STENMAN: Yes.

23 Q. (By Ms. Spiller) And, sir, you have the  
24 entire document, correct?

25 A. Yes, sir.

1           Q.   Previously marked as OCC Exhibit 1, the  
2   Commission's opinion and order in case 10-2929 issued  
3   on July 2nd, 2012, correct?

4           A.   What I was handed here is entry on  
5   rehearing. I thought you were referring to the  
6   July 2nd order.

7           Q.   Put that one aside. We'll get to that  
8   one in a moment.

9           EXAMINER STENMAN: Are we bringing him  
10   the opinion and order?

11          MS. SPILLER: Yes.

12          EXAMINER STENMAN: Wonderful.

13          THE WITNESS: It didn't match up, you had  
14   me worried.

15          Q.   And, sir, for purposes of the record the  
16   opinion and order in case 10-2929 signed by the  
17   Commission on July 2, 2012, has previously been  
18   marked as OCC Exhibit 1 in these proceedings. And  
19   you have this document in front of you, correct, sir?

20          A.   Now I do.

21          Q.   Thank you. And if you could turn to page  
22   13.

23          A.   Okay.

24          Q.   And, sir, the second sentence in the  
25   first full paragraph on page 13 of OCC Exhibit 1

1 indicates that "Section 4928.05(A)(1) Revised Code,  
2 provides that competitive retail electric service is,  
3 to a large extent, exempt from supervision and  
4 regulation by the Commission." Correct?

5 A. That's correct.

6 Q. Sir, certainly given your familiarity  
7 with Senate Bill 3 and your familiarity with Senate  
8 Bill 221 you would agree that competitive retail  
9 electric service is, to a large extent, exempted from  
10 the Commission's supervision and regulation.

11 A. That's correct.

12 Q. And moving back to page 22, the excerpt  
13 that you had previously identified.

14 A. Yes, I have it.

15 Q. In the second full paragraph it indicates  
16 that "Pursuant to Section 4905.22, Revised Code, all  
17 charges for service shall be just and reasonable and  
18 not more than allowed by law or by order of the  
19 Commission." Correct?

20 A. That's correct.

21 Q. And moving on to the third paragraph in  
22 OCC Exhibit 1, page 22, the Commission concluded that  
23 it had jurisdiction to establish a state compensation  
24 mechanism pursuant to its general supervisory  
25 authority found in Sections 4905.04, 4905.05, and

1 4905.06 Revised Code, correct?

2 A. That's correct.

3 Q. And, sir, you would agree with me based  
4 upon this finding and order that the Ohio Commission  
5 established a cost-based charge for FRR capacity  
6 service outside of the provisions of Chapter 4928.

7 A. Right. As we discussed at the  
8 deposition, they are suggesting that this is part of  
9 wholesale and, therefore, would fall under the  
10 category 4905, and I argued that that is, it is a  
11 competitive -- that the capacity market specifically  
12 is competitive and that's how FERC treats it, how PJM  
13 treats it and should not be placed in there. So, as  
14 we said I think several times in the deposition, I  
15 disagreed with that conclusion of the Commission.

16 Q. But you understand the Commission's  
17 conclusions to be those set forth in its opinion and  
18 order reflected as OCC Exhibit 1 in this case,  
19 correct?

20 A. That's what they said, yes.

21 Q. And, sir, if we can now move to the entry  
22 on rehearing in case 10-2929, the first document that  
23 you were handed.

24 MS. GRADY: May I have a moment to find  
25 that, please.

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1 EXAMINER STENMAN: Yes.

2 MS. GRADY: I have it, your Honor, thank  
3 you.

4 EXAMINER STENMAN: Okay.

5 Q. Sir, if you could turn to page 39 of that  
6 document, please.

7 MR. DARR: For the record just so it's  
8 clear, what's the exhibit number on that?

9 MS. SPILLER: This has previously been  
10 marked as OCC Exhibit 3.

11 Q. Are you there, sir?

12 A. Yes, I am.

13 Q. About midway through that first full  
14 paragraph on page 39 the Commission indicated "Having  
15 found that the capacity service at issue is not a  
16 retail electric service and thus not a competitive  
17 retail electric service, IEU-Ohio's argument that the  
18 Commission may not rely on Section 4905.13, Revised  
19 Code, is unavailing," correct?

20 A. Yes.

21 MS. GRADY: Correction, it's  
22 "unavailing," not "unavailable."

23 MS. SPILLER: I thought I said  
24 "unavailing," but you're right, that's what the text  
25 said.

1           Q.    And, Mr. Rose, you are certainly familiar  
2 with the Ohio Commission's opinion and order and  
3 entry on rehearing in case 10-2929, correct?

4           A.    That's correct.

5           Q.    And therein the Ohio Commission did not  
6 determine that AEP Ohio is the only jurisdictional  
7 utility entitled to just and reasonable compensation  
8 for the services it provides, correct?

9           MS. GRADY: May I have a clarification.  
10 There were several entries on rehearing issued. Are  
11 we talking about the October 17th, 2011, entry?

12          MS. SPILLER: Yes.

13          MS. GRADY: Thank you.

14          A.    On page 32 they specifically say that  
15 "The Commission," this is a quote, "The Commission  
16 initiated this proceeding solely to review AEP-Ohio's  
17 capacity costs and determine an appropriate capacity  
18 charge for its FRR obligations. We have not  
19 considered the costs of any other capacity supplier  
20 subject to our jurisdiction nor do we find it  
21 appropriate to do so in this proceeding."

22               And, sir, you would agree with me that  
23 the Ohio Commission does have an obligation to ensure  
24 just and reasonable compensation.

25          A.    For regulated services.



1           Q.    And in this case the Commission found  
2   that it -- it found that in its fulfillment of that  
3   obligation an FRR entity was entitled to cost-based  
4   charges for its capacity service, correct?

5           A.    With respect to the finding on capacity  
6   costs they can say that that's not competitive or  
7   they can characterize it that way, as my expertise as  
8   an economist says that you cannot separate capacity  
9   from the energy, that these are competitive, and it  
10   has been the policy of the state of Ohio to develop a  
11   competitive generation market. And you can't  
12   separate capacity from energy.

13          Q.    You cannot separate capacity from energy  
14   in what respect, sir?

15          A.    You can't say that I'm going to treat one  
16   as a regulated entity and, or as a regulated service  
17   and then the other as a deregulated service.

18          Q.    Well, sir, you are aware of the  
19   reliability assurance agreement, correct?

20          A.    Yes, I am.

21          Q.    And you are aware that the FRR construct  
22   was created within the reliability assurance  
23   agreement, correct?

24          A.    Yes.

25          Q.    And you are aware, sir, that within the

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1 RAA an FRR entity has at its disposal three  
2 compensation mechanisms for its capacity service,  
3 correct?

4 A. That's correct.

5 Q. And one of those, the prevailing  
6 mechanism, is a state compensation mechanism,  
7 correct?

8 A. That's correct.

9 Q. The other is RPM, correct?

10 A. That's correct.

11 Q. And the final is a compensation mechanism  
12 that results from a filing under Section 205 of the  
13 Federal Power Act for a cost-based charge, correct?

14 A. That's correct.

15 Q. And so, sir, under the RAA an FRR entity  
16 is not precluded from recovering its costs for FRR  
17 capacity service, correct?

18 A. They are able to go to the state, so  
19 the -- what FERC is saying in that provision that you  
20 cite is that the -- they are deferring to the state  
21 to determine the compensating mechanism. If they  
22 have one.

23 Q. But the FERC can also determine a  
24 cost-based compensation mechanism pursuant to a  
25 filing under Section 205 of the Federal Power Act,

1 correct?

2 A. My interpretation is they won't override  
3 a state that already has one.

4 Q. But, sir, under the RAA an FRR entity is  
5 not precluded from recovering its costs for FRR  
6 capacity service, correct?

7 A. They're not precluded, no.

8 Q. Thank you.

9 Mr. Rose, if we could -- do you have the  
10 ESP stipulation before you, sir?

11 A. Yes, I do.

12 Q. And I believe that was previously marked  
13 as Kroger Exhibit 8.

14 MS. SPILLER: I'm sorry, the stipulation  
15 and recommendation was IEU Exhibit 5.

16 A. This is 11-3549.

17 Q. Yes, sir.

18 And you believe, Mr. Rose, that within  
19 the ESP stipulation Duke Energy Ohio's compensation  
20 for its FRR capacity obligation was well laid out,  
21 correct?

22 A. It does specify what the -- what the  
23 mechanism would be for how they would recover their  
24 capacity costs.

25 Q. So, again, sir, it's your opinion that

1 that compensation mechanism for FRR capacity service  
2 is well laid out within the ESP stipulation, correct?

3 A. If you would define what you mean by  
4 "compensation." They're saying how the price would  
5 be determined for that capacity, and the only  
6 compensation part is that, was that reference to the  
7 ESSC where it specifies that the company would  
8 receive \$330 million over three years.

9 Q. And so is the rider ESSC the compensation  
10 that you believe Duke Energy Ohio agreed to in  
11 exchange for its provision of FRR capacity service?

12 A. Not the only one, but it specifically  
13 says that "an amount intended to provide stability  
14 and certainty regarding Duke Energy Ohio's provision  
15 of retail electric service as an FRR entity while  
16 continuing to operate under an ESP." That's on page  
17 16.

18 Q. Well, sir, you've offered your  
19 interpretation of the ESP stipulation for purposes of  
20 this case, correct?

21 A. That's correct.

22 Q. And it's your interpretation that the ESP  
23 stipulation established Duke Energy Ohio's  
24 compensation for its provision of FRR capacity  
25 service, correct?

1           A.    That's correct.

2           Q.    And you believe, sir, that that  
3    compensation as established in the ESP stipulation is  
4    well laid out in that document, correct?

5           A.    There are four different places in the  
6    document that I know of where it specifically says  
7    how they will be able to recover the costs.

8           Q.    And you would agree with me that, in your  
9    opinion, those provisions lay out quite well Duke  
10   Energy Ohio's compensation for its FRR capacity,  
11   correct?

12           MS. GRADY:  Objection.  Asked and  
13   answered several times now.

14           MS. SPILLER:  Well, he's not answering,  
15   that's why I'm --

16           EXAMINER STENMAN:  Let's not talk over  
17   each other.  The objection is overruled.  You may  
18   answer.

19           A.    I understand what I believe they meant.

20           Q.    Well, sir, you believe it's well laid out  
21   in the stipulation, correct?

22           A.    Yes, I do.

23           Q.    And if the compensation for Duke Energy  
24   Ohio -- that Duke Energy Ohio agreed to receive for  
25   its FRR capacity service is well laid out in the ESP

1 stipulation, you would agree with me that the  
2 language in the ESP stipulation would clearly  
3 describe that compensation, correct?

4 A. I can understand what is meant. I would  
5 think people that are familiar with how the capacity  
6 market works would understand those passages.

7 Q. And there are four provisions of the ESP  
8 stipulation that you believe establish that Duke  
9 Energy Ohio agreed in the context of the ESP  
10 stipulation to be compensated for its capacity  
11 obligations, correct?

12 A. That's correct.

13 Q. And, Mr. Rose, given your familiarity  
14 with Senate Bill 221 you would agree that Duke Energy  
15 Ohio's ESP was approved under Chapter 4928, correct?

16 A. That's correct.

17 Q. And do you also agree that capacity  
18 service as between an FRR entity and alternate  
19 load-serving entities is a wholesale transaction?  
20 Correct?

21 A. Yes, that's correct.

22 Q. And, sir, the first section of the ESP  
23 stipulation on which you rely for purposes of your  
24 opinions in this case is Section I.B, correct?

25 A. That one specifically is just a very

1 general reference, at the bottom of the page.

2 Q. Well, sir, this is one of the provisions  
3 on which you relied for your opinions in this case,  
4 correct?

5 A. Yes, it is.

6 Q. And it certainly is a paragraph that you  
7 would have read in its entirety for purposes of  
8 forming an interpretation of the document, correct?

9 A. That's correct.

10 Q. And this particular paragraph, I.B of the  
11 stipulation, speaks to that which will occur in the  
12 event the Ohio Commission rejects Duke Energy Ohio's  
13 next SSO filing or modifies that filing such as Duke  
14 Energy Ohio withdraws its next SSO application,  
15 correct?

16 A. That's right. After 2015.

17 Q. And so this paragraph makes provisions  
18 with respect to what will happen June 1, 2015, and  
19 beyond, correct?

20 A. It does, but I would just say that the  
21 way that this is phrased it's clearly talking about  
22 so long as Duke Energy Ohio is an FRR. That's the  
23 way it's phrased, kind of assumes that. While it is  
24 referring to past 2015, it's kind of assuming that  
25 they are already and that that would continue on and

1 that it would provide capacity at the final zonal  
2 capacity price.

3 Q. And it would provide capacity at the  
4 final zonal capacity price for purposes of paragraph  
5 I.B, correct?

6 A. That's correct.

7 Q. So for purposes of Duke Energy Ohio's  
8 next SSO application Duke Energy Ohio would provide  
9 capacity at the final zonal capacity price, correct?

10 A. That's correct.

11 Q. The next section on which you rely, sir,  
12 for purposes --

13 A. Continue to provide.

14 Q. Well, sir, does it say --

15 MS. GRADY: Your Honor.

16 Q. -- continue to provide?

17 MS. GRADY: Your Honor.

18 A. For so long as Duke Energy Ohio's a fixed  
19 resource requirement entity under PJM, that's how I  
20 interpreted that.

21 EXAMINER STENMAN: Ms. Spiller.

22 Yes.

23 MS. GRADY: I would just ask that the  
24 witness be accorded the courtesy of finishing his  
25 answer before counsel interrupts him.



1 EXAMINER STENMAN: Thank you.

2 MS. SPILLER: And I thought he was done,  
3 I'm sorry.

4 EXAMINER STENMAN: I understand.

5 Q. Mr. Rose, the language that you cite is  
6 preceded by the premise "for purposes of this  
7 paragraph," correct?

8 A. Yes, that is.

9 Q. And we've already established that "this  
10 paragraph" refers to the SSO that would take effect  
11 June 1, 2015, correct?

12 A. That's right.

13 Q. So for purposes of the SSO that will take  
14 effect June 1, 2015, Duke Energy Ohio would provide  
15 capacity at the final zonal capacity price, correct?

16 A. That's correct.

17 Q. It does not say Duke Energy Ohio will  
18 continue to provide capacity at the final zonal  
19 capacity price, correct?

20 A. It says for so long as Duke Energy Ohio's  
21 a fixed resource requirement entity.

22 Q. But it doesn't, for purposes of this  
23 paragraph, correct?

24 A. I don't have anything to add.

25 Q. Well, and, sir, you do know that with

1 respect to Duke Energy Ohio's next SSO application,  
2 that which would take effect June 1, 2015, Duke  
3 Energy Ohio is either going to be an FRR entity or a  
4 participant in the base residual auction, correct?

5 A. That's correct.

6 Q. And at the time the stipulation was filed  
7 on October 24, 2011, the parties didn't know which of  
8 those two alternatives would actually materialize,  
9 correct?

10 A. That's correct.

11 Q. The next provision on which you rely is  
12 Section II.B of the stipulation, correct?

13 A. That's right.

14 Q. And this indicates that the parties  
15 agreed that Duke Energy Ohio shall supply capacity to  
16 PJM which in turn will charge for capacity to all  
17 wholesale auction -- wholesale supply auction winners  
18 for the applicable time periods of Duke Energy Ohio's  
19 ESP with a charge for said capacity determined by the  
20 PJM RTO which is the FZCP in the unconstrained RTO  
21 region, correct?

22 A. That's right.

23 Q. This does not say that -- this does not  
24 say within this document that Duke Energy Ohio would  
25 receive compensation for its FRR capacity

1 obligations, correct?

2 A. It will charge capacity to all wholesale  
3 supply auction winners for the applicable time period  
4 of Duke Energy Ohio's ESP. And my interpretation of  
5 that was that's the capacity, that's for capacity  
6 that the winning bidders in the wholesale auction  
7 are -- that are using the Duke, the Duke  
8 Energy Ohio's capacity.

9 Q. They would be charged -- those suppliers  
10 would be charged by PJM, correct?

11 A. By PJM, right.

12 Q. And, sir, the other provision on which  
13 you rely is paragraph IV.B, correct? On page 12 of  
14 the document.

15 A. IV.A I believe.

16 Q. I'm sorry, IV.A, yes, sir.

17 A. That's correct.

18 Q. And you are aware, sir, that this  
19 paragraph was revised or changed after it was signed  
20 and filed with the Commission on October 24, 2011,  
21 correct?

22 A. I checked that after our meeting a couple  
23 weeks ago so I did see that, where in fact I was not  
24 sure at the time of the deposition.

25 Q. And so the ESP stipulation that was

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1 modified and then approved by the Ohio Commission on  
2 November 22, 2011, incorporated that change to  
3 Section IV.A, correct?

4 A. In the PUCO's opinion, right.

5 Q. Yes, sir.

6 A. There's one phrase I believe we're  
7 talking about, Duke Energy Ohio was changed to "PJM";  
8 is that correct?

9 Q. Correct.

10 And as a result of that change this  
11 paragraph IV.A provides in part that the parties  
12 further agree that during the term of the ESP PJM  
13 shall charge CRES providers for capacity as  
14 determined by the PJM RTO which is the FZCP in the  
15 unconstrained RTO region for the applicable time  
16 periods of its ESP, correct?

17 A. That's correct.

18 Q. And that change, sir, is consistent with  
19 the first sentence in paragraph IV.A, correct?

20 A. I'm sorry, in that same paragraph?

21 Q. Yes, sir.

22 A. I don't know if they changed that.

23 Q. No, the change to the second sentence  
24 render that second sentence consistent with the first  
25 sentence in paragraph IV.A, correct?

1           A.    I believe so.

2           Q.    And that change in the second sentence of  
3 paragraph IV.A that the Ohio Commission adopted and  
4 approved rendered that paragraph consistent with  
5 Section II.B of the stipulation, correct?

6           A.    To say "PJM"?

7           Q.    Yes, sir.

8           A.    Yes, I think so. That's a fairly typical  
9 procedure that PJM uses for their settlement process.

10          Q.    Well, sir, that fairly typical PJM  
11 procedure for settlement wasn't reflected in the ESP  
12 stipulation, correct?

13          A.    It says "PJM." PJM doesn't keep that.

14          Q.    There is no indication within Section  
15 IV.B of the ESP stipulation providing the level of  
16 compensation that Duke Energy Ohio would receive for  
17 its FRR capacity service, correct?

18          A.    It only specifies how that compensation  
19 would be calculated.

20          Q.    Sir, it specifies that PJM would charge  
21 suppliers at the FZCP, correct?

22          A.    That's correct. And the money would then  
23 be received by Duke is what I would assume that  
24 means.

25          Q.    And you're assuming that, correct?

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1 A. I am assuming that.

2 Q. The final provision on which you rely for  
3 purposes of your testimony in this case pertains to  
4 rider ESSC, correct?

5 A. That's correct.

6 Q. And, sir, having read the entire ESP  
7 stipulation you know that it was a -- it was intended  
8 to reflect a package of terms, correct?

9 A. That's correct. The terms being those  
10 provisions that all the parties agreed to?

11 Q. Correct.

12 A. Yes.

13 Q. Reflected a compromise of various issues  
14 as reflected in the ESP stipulation, correct?

15 A. That's correct.

16 Q. Now, given your focus within your area of  
17 expertise on retail access issues, you are familiar  
18 with the switching statistics for Duke Energy Ohio  
19 and other EDUs in Ohio, correct?

20 A. That's correct.

21 Q. And, in fact, sir, you knew that  
22 approximately 60 percent of Duke Energy Ohio's total  
23 SSO load was shopping in the fall of 2011, correct?

24 A. Well, also since our last meeting I  
25 revisited that rather than relying on my memory,

1     which I did before, so I have the numbers as of  
2     December 31st, 2012.

3             Q.     Well, sir, the relevant time period,  
4     those would be the fall of 2011 at the time the ESP  
5     stipulation was being finalized, correct?

6             A.     That's correct, it was probably less than  
7     this.

8             Q.     And what you're referring to are the  
9     statistics from the Ohio Commission with respect to  
10    switching?

11            A.     Right. I'm looking at a, you may see  
12    this if you like, summary of switched rates for EDUs  
13    to CRES providers in terms of customers for the month  
14    ending December 31st, 2012. And this is on the PUCO  
15    website.

16            Q.     Correct. And there would similarly have  
17    been a submission on the PUCO website for the quarter  
18    ending September, 2011, correct?

19            A.     I would presume that's still publicly  
20    available.

21            Q.     Okay. And if a second or new ESP had not  
22    been approved for Duke Energy Ohio effective  
23    January 1, 2012, then its then-existing ESP would  
24    have continued, correct?

25            A.     That's right.

1 MS. GRADY: Objection. For a legal  
2 conclusion, I think we have been -- it is a very  
3 legal conclusion subject to much debate.

4 EXAMINER STENMAN: Overruled. You can't  
5 have it both ways. It's overruled and the Commission  
6 will give the testimony its due weight.

7 MS. SPILLER: And, your Honor, may we  
8 approach?

9 EXAMINER STENMAN: You may.

10 MS. SPILLER: We would ask to be marked  
11 for purposes of the record Duke Energy Ohio Exhibit  
12 No. 19. It is a summary of switch rates for the  
13 month ending September 30, 2011.

14 EXAMINER STENMAN: It will be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. Mr. Rose, you have before you what has  
17 been marked as Duke Energy Ohio Exhibit No. 19,  
18 correct?

19 A. I believe so.

20 Q. And this is similar to the document that  
21 you had accessed from the Commission's website with  
22 respect --

23 A. Except this is September 30, 2011.

24 Q. Thank you. And the second provider is  
25 that of Duke Energy Ohio, correct?



1 A. That's correct.

2 Q. And so as of September 30, 2011,  
3 according to this document, 68.23 percent of Duke  
4 Energy Ohio's load was shopping, correct?

5 A. That's total sales, yes.

6 Q. Yes, sir.

7 A. Percent of total sales.

8 Q. And with respect to residential  
9 customers, as of September 30, 2011, Duke Energy Ohio  
10 was serving 65.63 percent of its residential  
11 customers, correct?

12 A. That's correct.

13 Q. Now, Mr. Rose, if Duke Energy Ohio's new  
14 ESP had not been approved for effect January 1, 2012,  
15 Duke Energy Ohio would have continued serving its SSO  
16 load under its initial ESP, correct?

17 A. I believe so, yes.

18 Q. And so some portion of the 32 percent of  
19 its total nonshopping load would have continued to  
20 have been served by Duke Energy Ohio, correct?

21 A. I'm sorry, 32 percent?

22 Q. Well, I simply, if 68 percent were  
23 shopping, my rough math would be 32 percent --

24 A. Oh, total. I thought you were looking at  
25 residential. 32 percent of the total sales, yes.

1           Q.   And approximately 35 percent of the  
2   resident -- strike that.

3                   65 percent of its residential sales,  
4   correct?

5           A.   66 percent rounded.

6           Q.   Would have continued to have been served  
7   by Duke Energy Ohio, correct?

8           A.   At that time, yes. Those numbers are  
9   higher now for the amount of customers that are  
10   shopping.

11          Q.   Sure. But, Mr. Rose, for purposes of  
12   your review of the ESP stipulation and your work in  
13   this case you did not attempt to quantify the value  
14   associated with Duke Energy Ohio agreeing to give up  
15   its remaining SSO load and go immediately to  
16   competitive auctions for a supply effective  
17   January 1, 2012, correct?

18          A.   I did not do that analysis.

19          Q.   And, sir, you do know that Duke Energy  
20   Ohio in the ESP stipulation agreed not to participate  
21   in those SSO load auctions, correct?

22          A.   Yes, I am.

23          Q.   But you have not for purposes of your  
24   work in this case attempted to quantify the value  
25   associated with Duke Energy Ohio's agreement not to

1 participate in those auction, correct?

2 A. I have not.

3 Q. Mr. Rose, it's your opinion that Duke  
4 Energy Ohio's request for costs associated with its  
5 FRR capacity service is really a request for stranded  
6 cost recovery, correct?

7 A. I don't believe you characterize it --  
8 the company doesn't characterize it that way.

9 Q. But that's your -- your opinion, correct?

10 A. My opinion was that it was either, can be  
11 interpreted as a stranded cost recovery or a  
12 reregulation of capacity.

13 Q. And stranded costs are costs that relate  
14 to competitive generation service, correct?

15 A. Stranded costs are costs that are not  
16 recoverable in a competitive market.

17 Q. And the costs would relate, then, sir, to  
18 competitive service, correct?

19 A. Right. Generation service.

20 Q. In other words, if a cost pertains to a  
21 noncompetitive service, it cannot be a stranded cost,  
22 correct?

23 A. That's still regulated.

24 Q. As a corollary to your argument that Duke  
25 Energy Ohio's request in this proceeding is one for

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1 stranded cost you also opine that its request is one  
2 for transition costs, correct?

3 A. Well, I make the distinction between --  
4 transition cost is the broader term that includes  
5 stranded cost, and I believe I used the term --  
6 "stranded costs," I'm talking about generation costs,  
7 and "transition costs" when I'm taking about all  
8 costs that were allowed or recoverable under Senate  
9 Bill 3.

10 Q. And, sir, you are aware that the Ohio  
11 Commission has found that an FRR entity's receipt of  
12 cost based charges for its capacity service is not a  
13 transition cost, correct?

14 A. I saw that, yes.

15 Q. And that was the Commission's finding in  
16 the AEP case, correct?

17 A. Right. And that stems from their view  
18 that -- that it's a wholesale, not retail.

19 Q. Mr. Rose, you would agree with me that  
20 the Ohio Commission consistently applies a general  
21 framework with regard to cost-of-service regulation,  
22 correct?

23 A. In general, yes.

24 Q. And, Mr. Rose, it's your understanding  
25 that avoided costs typically refers to energy costs

1 plus capacity, correct?

2 A. That's correct.

3 Q. And in this instance you would not expect  
4 avoided costs to be the mechanism for providing  
5 compensation for an FRR entity, correct?

6 A. When I hear the term "avoided costs" I  
7 think of avoided costs as calculated and interpreted  
8 by states to comply with PURPA and so that would  
9 generally mean avoided energy and if capacity is  
10 necessary, capacity cost, or through a competitive  
11 process. So no, I don't think it's the best method.

12 Q. Now, we mentioned AEP Ohio, AEP Ohio has,  
13 is an FRR entity with an obligation to self-supply  
14 capacity for its footprint, correct?

15 A. That's correct.

16 Q. And you know, sir, that AEP Ohio is using  
17 its own generating assets to fulfill that obligation,  
18 correct?

19 A. That's right.

20 Q. And some of the these are the same  
21 generating units that Duke Energy Ohio is using to  
22 fulfill its FRR capacity obligations, correct?

23 A. The same units?

24 Q. Well, Duke Energy Ohio and AEP Ohio  
25 jointly own generating units and/or generating --

1800

1 A. Right.

2 Q. -- stations, correct?

3 A. Right, proportioned out to ownership.

4 Q. But those generating units, some of them  
5 that are jointly owned by AEP Ohio and Duke Energy  
6 Ohio are used respectfully by both FRR entities to  
7 fulfill their respective FRR capacity obligations,  
8 correct?

9 A. They can't claim the same capacity but it  
10 would be portioned out for the ownership.

11 Q. Consistent with their ownership shares,  
12 correct?

13 A. Correct.

14 Q. Now, Mr. Rose, you believe that Duke  
15 Energy Ohio should have been at market much sooner  
16 than it was, correct?

17 A. For what, for generation?

18 Q. I believe that's your testimony.  
19 Correct?

20 A. Yes. If there's a specific part of the  
21 testimony, could you cite that for me?

22 Q. On page 13 of your testimony, sir.

23 A. At what point?

24 Q. Well, sir, the questions that were asked  
25 of you here concern Duke Energy Ohio's transition to

1 competition, correct?

2 A. That's right. This -- I wouldn't  
3 characterize it as saying that I believe that Duke  
4 Energy Ohio should be at competition sooner. The  
5 point here was to say that 13 years, as we've had as  
6 transition to a competitive generation market, and in  
7 that 13 years the companies, all companies, not just  
8 Duke, have had an opportunity to recover their costs.

9 Q. And a lot has happened in those 13 years,  
10 correct?

11 A. That's right.

12 Q. Including rate stabilization plans that  
13 were not, that succeeded the market development  
14 period, correct?

15 A. Right. The rate stabilization plan came  
16 into being because the rates started to increase  
17 considerably and they did that to avoid rate shock.

18 Q. And so the rate stabilization plans were  
19 intended to prevent full access to the competitive  
20 markets, correct?

21 A. They were intended to stabilize the price  
22 by the Commission.

23 Q. Because the alternative would have been  
24 going straight to market, correct?

25 A. That's right.

1           Q.    Mr. Rose, if you could turn back to page  
2 10 of your testimony, please.

3           A.    Okay.

4           Q.    There in the paragraph that begins on  
5 line 7 it's your position that this case should have  
6 been reviewed in the context of a full blown rate  
7 case, correct?

8           A.    That's right.

9           Q.    And you indicate that for purposes of a  
10 full blown rate case there is a 270-day time period  
11 that is applicable, correct?

12          A.    That's my understanding of what it would  
13 be under a traditional rate case.

14          Q.    Well, you are aware that a utility  
15 company is entitled to put rates in effect after six  
16 months, correct?

17          A.    Right.

18          Q.    I'm sorry, it's nine months.

19          A.    This is nine months. That's a little  
20 over nine months.

21          Q.    And you know, sir, that the Ohio  
22 Consumers' Counsel was given the opportunity to  
23 engage in this case shortly after the company made  
24 its filing on October 29, 2012, correct?

25          A.    In the current case?



1 Q. Yes, sir.

2 A. Yes.

3 Q. And you are aware that the Ohio  
4 Commission has found that the procedures of standard  
5 filing requirements are not applicable to a case such  
6 as this, correct?

7 MS. GRADY: Objection. That's a  
8 mischaracterization. If you want to cite to an  
9 opinion and order, that would be -- that would help  
10 the record and clarify the record, otherwise it's  
11 broad.

12 EXAMINER STENMAN: The witness can  
13 testify for himself, it's overruled.

14 A. The point of this paragraph was to point  
15 out that if it's, in fact, true that Duke Energy Ohio  
16 is in effect saying that there ought to be regulation  
17 of its capacity costs, then we ought to have the same  
18 amount of time to be able to review the documents and  
19 follow the procedure that you would in a rate case.

20 Q. Well, Mr. Rose, you know that Duke Energy  
21 Ohio is not asking within the context of this case  
22 for a Commission approval of rates that would be  
23 applicable under its proposed rider DR-CO, correct?

24 A. Not a specific rate.

25 Q. And so in this case the company is not

1 asking for an increase in rates, correct?

2 A. No. But you're asking the Commission to  
3 make a finding that would be used in such a case.

4 Q. But in this particular case the company  
5 is not asking for an increase in rates, correct?

6 A. Not in this case.

7 Q. And, sir, you would agree with me, based  
8 upon your experience, that the standard filing  
9 requirements are applicable to cases seeking an  
10 increase in rates, correct?

11 A. That's true and also that the company is  
12 asking for costs that would exceed \$700 million over  
13 a three-year period.

14 Q. Well, sir, let's talk about that for a  
15 minute. You don't know how rider DR-CO, if approved,  
16 you don't know the rates that would be set, correct?

17 A. No, I don't.

18 Q. You don't know when the recovery would  
19 commence, correct?

20 A. No.

21 Q. You don't know the rate design applicable  
22 to that rider, correct?

23 A. No, but I would expect the company to  
24 come in and specify those and then we would have a  
25 proceeding.

1805

1           Q.    And so while you talk about this number,  
2   you don't know how it would ultimately be collected,  
3   correct?

4           A.    Well, one constant is usually that the  
5   customers end up paying.

6           Q.    Well, customers are -- well, customers  
7   are indirectly receiving this capacity service  
8   provided by Duke Energy Ohio, correct?

9           A.    That's right.

10           MS. SPILLER: One moment, please, your  
11   Honor.

12           EXAMINER STENMAN: Yes.

13           MS. SPILLER: No further questions, your  
14   Honor.

15           EXAMINER STENMAN: Thank you.

16           Nothing from staff, I'm assuming?

17           MR. JONES: No, your Honor.

18           EXAMINER STENMAN: Redirect?

19           MS. GRADY: Two minutes.

20           EXAMINER STENMAN: Yes.

21           MS. GRADY: Thank you.

22           EXAMINER STENMAN: Quickly.

23           (Recess taken.)

24           EXAMINER STENMAN: Let's go back on the  
25   record. Any redirect?

1806

1 MS. GRADY: No, your Honor, thank you.

2 EXAMINER STENMAN: Thank you.

3 Thank you, Mr. Rose.

4 THE WITNESS: Thank you, your Honor.

5 EXAMINER STENMAN: With respect to the  
6 exhibits.

7 MS. GRADY: Yes, your Honor. OCC would  
8 move for the admission of Exhibit No. 23.

9 EXAMINER STENMAN: Any objections?

10 MS. SPILLER: No, your Honor.

11 EXAMINER STENMAN: OCC 23 will be  
12 admitted.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 MS. SPILLER: And, your Honor, Duke  
15 Energy Ohio would move for the admission of Duke  
16 Energy Ohio Exhibit No. 19.

17 EXAMINER STENMAN: Any objections? Any  
18 objections to Duke 19? Nobody's paying attention.  
19 Hearing none, Duke 19 will be admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 EXAMINER STENMAN: We'll reconvene at  
22 9 a.m. tomorrow. Do we have anything else we need to  
23 talk about?

24 MS. SPILLER: No, your Honor.

25 EXAMINER STENMAN: All right. See you in

1807

1 the morning.

2 MS. SPILLER: Thank you.

3 (Thereupon, the hearing was adjourned at  
4 6:05 p.m.)

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## 1 CERTIFICATE

2 I do hereby certify that the foregoing is a  
3 true and correct transcript of the proceedings taken  
4 by me in this matter on Tuesday, April 23, 2013, and  
5 carefully compared with my original stenographic  
6 notes.

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

10 My commission expires June 19, 2016.

11 (72160-MDJ)

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Summary: Transcript in the matter of Duke Ohio Energy hearing held on 04/23/13 - Volume VII  
- Public Version electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc.  
and Gibson, Karen Sue Mrs.