BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service.	Case No. 14-841-EL-SSO
In the Matter of the Application of Duke Energy Ohio for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	Case No. 14-842-EL-ATA

- - -

PROCEEDINGS

before Ms. Christine M.T. Pirik and Mr. Nick Walstra, Attorney Examiners, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-A, Columbus, Ohio, called at 10 a.m. on Wednesday, October 22, 2014.

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VOLUME I

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1 Wednesday Morning Session,
2 October 22, 2014.
3 - - -
4 EXAMINER PIRIK: We will go on the
5 record. The Public Utilities Commission of Ohio has
6 assigned for public hearing at this time and place
7 Case Nos. 14-841-EL-SS0 and 14-842-EL-ATA, which are
8 captioned In the Matter of the Application of Duke
9 Energy Ohio for Authority to Establish a Standard
10 Service Offer Pursuant to Revised Code 4928.143, in
11 the Form of an Electric Security Plan, Accounting
12 Modifications and Tariff for Generation Service, and
13 for the Authority to Amend its Certified Supplier
14 Tariff.
15 My name is Christine Pirik. I am the
16 deputy legal director, and with me is Nick Walstra,
17 an attorney examiner in the Commission's legal
18 department, and we will be presiding at this hearing.
19 At this time I'll take appearances on
20 behalf of the parties.
21 On behalf of the company.
22 MS. SPILLER: Good morning, your Honor.
23 Amy Spiller, Jeanne Kingery, Elizabeth Watts, and
24 Rocco D'Ascenzo, counsel for the Applicant Duke
25 Energy Ohio, 139 East Fourth Street, Cincinnati, Ohio

45202.

EXAMINER PIRIK: We'll just go around the table. We will start with this table.

Mr. O'Brien.

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

EXAMINER PIRIK: I just want to be sure, more so for the blowers on this end, and I would ask during appearances that you speak very loudly, but when we actually start discussing things, you are going to need to use the microphones. So just speak up loudly.

MR. DARR: On behalf of Industrial Energy Users - Ohio, the law firm of McNees, Wallace & Nurick, Frank Darr and Matt Pritchard, 21 East State Street, Columbus, Ohio.

MR. BEELER: On behalf of the staff of the Public Utilities Commission of Ohio, the Office of the Ohio Attorney General Mike DeWine, Steve Beeler, Thomas Lindgren, and Ryan O'Rourke, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215.

MS. HUSSEY: Good morning, your Honor.

1 On behalf of The Kroger Company, Rebecca Hussey, the
2 law firm of Carpenter, Lipps & Leland, 280 North High
3 Street, Columbus, Ohio 43215.
4 MS. BOJKO: Thank you, your Honors. On
5 behalf of the Ohio Manufacturers' Association, the
6 law firm of Carpenter, Lipps & Leland, I am Kimberly
7 W. Bojko, 280 North High, Suite 1300, Columbus, Ohio
8 43215.
9 MS. GRADY: Thank you, your Honors. On
10 behalf of the residential customers of Duke Energy
11 Ohio, the Office of Consumers' Counsel, Bruce J.
12 Weston, Consumers' Counsel, 10 West Broad Street,
13 Columbus, Ohio 43215, as well as entering the
14 appearance of Dane Stinson and Dillon F. Borchers of
15 the law firm of Bricker & Eckler, LLP, 100 South
16 Third Street, Columbus, Ohio 43215. Thank you.
17 MR. ALLWEIN: Good morning, your Honors
18 and counsel. On behalf of the Sierra Club, I am
19 Christopher J. Allwein with the law firm of Williams,
20 Allwein & Moser, 1500 West Third Avenue, Columbus,
21 Ohio 43212. And with me is Tony J. Mendoza, staff
22 attorney with the Sierra Club, 85 Second Street, 2nd
23 Floor, San Francisco, California 94105. Thank you.
24 MR. K. BOEHM: Good morning, your Honors.
25 Appearing on behalf of the Ohio Energy Group, I'm

1 Kurt Boehm. Also with me is Mike Kurtz and Jody
2 Kyler Cohn with the law firm of Boehm, Kurtz &
3 Lowery, 36 East Seventh Street, Cincinnati, Ohio
4 45202.
5 MR. OLIKER: Good morning, your Honor.
6 On behalf of the Interstate Gas Supply, Joseph
7 Oliker, 6100 Emerald Parkway, Dublin, Ohio 43016.
8 Thank you.
9 MR. PETRICOFF: Thank you, your Honors.
10 On behalf of the Retail Energy Supply Association,
11 Constellation NewEnergy, Exelon Generation, LLC, the
12 law firm of Vorys, Sater, Seymour & Pease, M. Howard
13 Petricoff, Gretchen Petrucci, and Mike Settineri.
14 Also on behalf of Miami University and the University
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16 Attorney General.
17 MR. HART: On behalf of the Greater
18 Cincinnati Health Council, Douglas E. Hart, 441 Vine
19 Street, Cincinnati, Ohio -- Suite 4192, Cincinnati,
20 Ohio 45202.
21 MR. NOURSE: Good morning. On behalf of
22 the Ohio Power Company, Steven T. Nourse and Matthew
23 J. Satterwhite, One Riverside Plaza, Columbus, Ohio
24 43215.
25 EXAMINER PIRIK: That's it? Is there

anyone in the audience?

MR. McDERMOTT: On behalf of FirstEnergy, Jacob A. McDermott, Scott Casto, and Mark Hayden, 76 South Main Street, Akron, Ohio.

MR. DOUGHERTY: Good morning. On behalf of the Ohio Environmental Council, Trent A. Dougherty, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212.

MR. STINSON: On behalf of the Ohio Development Service Agencies, Dane Stinson and Dillon Borchers, Bricker & Eckler, LLP, 100 South Third Street, Columbus, Ohio 43215.

MR. SECHLER: Thank you, your Honor. On behalf of EnerNOC, Joel E. Sechler of the law firm of Carpenter, Lipps & Leland, 280 North High Street, Columbus, Ohio 43215. Thank you.

MR. CLARK: On behalf of the Direct Energy Services, LLC, and Direct Energy Business, LLC, Joseph M. Clark, 21 East State Street, 19th Floor, Columbus, Ohio 43215, as well as Gerit F. Hull from Eckert, Seamans, Cherin & Mellott, LLC, 1717 Pennsylvania Avenue Northwest, 12th Floor, Washington, D.C. 20006 -- 2-0-0-0-6. Thank you.

MR. MASON: Donald L. Mason of Roetzel & Andress, 155 East Broad Street, Columbus, Ohio, on

behalf of Wal-mart Stores East, LP, 2001 Southeast 10th Street, Bentonville, Arkansas, and also entering an appearance for Richard Chamberlain, 6 Northeast 63rd Street, Suite 400, Oklahoma City, Oklahoma.

MS. SOBEKI: Good morning. On behalf of the Dayton Power and Light Company, Judy Sobecki, 1065 Woodman Drive, Dayton, Ohio 45432.

MS. MOONEY: On behalf of Ohio Partners for Affordable Energy, I'm Colleen Mooney, 231 West Lima Street, Findlay, Ohio 45840.

EXAMINER PIRIK: Is that all the appearances we have?

Okay. I know that there are a lot of attorneys that are involved in perhaps cross-examination of different witnesses. There are a couple chairs at the table in different areas. If you will be cross-examining the witness, I would ask that you come up to the table. Otherwise, I will only be calling on the attorneys that are sitting at the table. You know, I won't be looking beyond that into the audience to see if there is someone else who wants to cross-examine someone. So if you are going to cross-examine, I ask you to move up. That will go for the duration of the hearing.

1 The first thing I would like to talk
2 about is how we are going to handle striking of
3 testimony and confidential information in testimony.
4 We have a number of documents that have been filed
5 under seal with alleged confidential information in
6 them.
7 I had asked at the prehearing conference
8 for Duke to take a look at at least the testimony of
9 their Witness Arnold to be sure that everything that
10 can be in the open record is in the open record.
11 I believe Duke made an attempt at that
12 and filed something on October 1st. So I hope
13 everyone has a copy of that and has noticed that. We
14 have reviewed it, but at the time when Mr. Arnold
15 takes the stand will be the time when we will
16 actually discuss any motions to strike, as well as
17 the alleged confidential information and whether or
18 not the motion should be granted with regard to his
19 testimony.
20 There are other witnesses of intervenor
21 witnesses where confidential information has,
22 likewise, been alleged, and I believe that they are
23 keeping that information confidential due to the
24 request of Duke. So what the Bench would ask is --
25 we would ask Duke to look at that testimony. I

1 believe it's Taylor, Hixon, Mierzwa, Wilson and
2 Hamilton and Jackson, and, likewise, prepare proposed
3 unredacted versions of those for the Bench to look
4 at.
5 Those witnesses won't be on for a while,
6 so if you could provide those to the Bench, your
7 proposal as to what should be unredacted by the end
8 of the day this Friday, that will help the Bench in
9 actually looking at it, and then we will provide the
10 other parties copies of those also.
11 We won't rule on those requests until the
12 witness is actually on the stand. And as a general
13 matter, we have seen in the motions for protective
14 order requests that have to do with the overall
15 amount of the funds with respect to OVEC that
16 customers will be paying. I can tell you as a
17 general matter the Bench generally believes that
18 customers have a right to have that information in
19 the open record in a cumulative, aggregated basis.
20 Perhaps -- and I am not going to say we
21 are going to keep confidential information that is
22 the more detailed information as to the components of
23 that overall aggregation, but at least at this time,
24 you know, we are willing to entertain those
25 arguments, but you should be aware of the fact that

1 this is consistent with other rulings in other cases,
2 and we feel strongly that the customers have a right
3 to know the overall number.
4 So as you review the testimony of the
5 witnesses, we would ask that you take that into
6 consideration, and hopefully that won't be an issue
7 when the motion is brought before us.
8 We would also note that in that
9 information -- in that testimony there's also quite a
10 bit of information with regard to reliability issues.
11 While we will entertain arguments with regard to
12 trade secrets, you should be aware that on a general
13 basis, the Bench feels that customers have a right to
14 review aspects of reliability as well.
15 So we're not saying that all of it is in
16 the open record. We are saying we are willing to
17 entertain arguments with regard to trade secrets and
18 what should appropriately be confidential, but on the
19 broader scheme, we would ask that you look at the
20 documents and the testimony of the intervenor
21 witnesses with that in mind and make as much open as
22 you possibly can.
23 One issue that was brought to our
24 attention yesterday through e-mail was the order of
25 witnesses on November 4 with regard to Witness

1 Campbell, Whitlock, and Zhang. I understand that
2 there's a disagreement as to what the order of those
3 witnesses should be. Unless there is a really good
4 reason, the Bench feels that Mr. Campbell should go
5 first and then Mr. Whitlock and Mr. Zhang.
6 Based on the -- I guess the
7 cross-examination that everyone has put on the table,
8 it appears as if we will be able to get through all
9 those witnesses on that day. That is our intent.
10 I think Duke did an excellent job of
11 pulling everybody together and putting everything on
12 the calendar, and we appreciate those efforts. That
13 had to have taken a lot of time and a lot of effort,
14 but we think that that's the best way to go. Since
15 the first draft went out with Campbell at the
16 beginning, we think that's appropriate.
17 With regard to the October 20, 2014,
18 motion to quash, there has not been an opportunity to
19 have a memo contra to that, so at this time we will
20 take arguments on behalf of the parties with regard
21 to that motion.
22 So if Duke would like to set the motion
23 in place.
24 MS. KINGERY: Thank you, your Honor. Is
25 this working? Okay.

1 As we stated in our motion that we filed
2 to quash or limit the subpoenas, there are a number
3 of reasons for quashing or limiting. First of all,
4 the overall reason is lack of relevance of the OVEC
5 issues in this proceeding. This is a standard
6 service offer case. There is no issue whatsoever
7 with regard to any need to attempt to transfer the
8 OVEC interests.
9 Much of, if not all of, what the parties
10 are talking about with Mr. Whitlock has to do with
11 efforts to get the consent to transfer the OVEC
12 interests, and those are simply not relevant to this
13 proceeding. So that should be quashed. The motion
14 to call Mr. Whitlock should be quashed entirely.
15 In addition to that, all four of the
16 individual subpoenas require those witnesses to bring
17 along a number of documents. These are all documents
18 that have already been requested in discovery. Duke
19 has already responded to those requests. The time
20 for discovery is long past. Written discovery had to
21 be completed some weeks ago, and the depositions were
22 required to be completed by the 10th of this month.
23 They should be done.
24 And beyond that, it's highly burdensome
25 for these witnesses to have to bring along all the

1 documents that we have already produced. So that is
2 entirely unreasonable and burdensome at this point.
3 Beyond that, the subpoenas that OCC
4 issued require the witnesses to be present from day
5 one of the hearing until whenever they would be
6 called to the stand. That is entirely unreasonable,
7 and we would ask that if the motions are not quashed,
8 that at least they be allowed a date certain to come
9 to Columbus and testify.
10 The final subpoena that OCC has issued is
11 a corporate subpoena. They ask that if any of their
12 questions can't be answered by these witnesses, that
13 Duke would then provide an additional witness or
14 multiple witnesses.
15 We've already deposed all of these
16 witnesses. OCC has. They know exactly what these
17 witnesses know and don't know. If they didn't ask
18 some questions in the depositions and, therefore,
19 don't know what these people know with regard to
20 those unasked questions, that's not our problem.
21 They had an opportunity.
22 This is not the time, again, for further
23 discovery. These are the witnesses that they've
24 called. They know what they are going to say. That
25 should be sufficient. So the corporate subpoena

1 should be quashed entirely.
2 EXAMINER PIRIK: Thank you.
3 OCC.
4 MR. BERGER: Thank you, your Honor.
5 EXAMINER PIRIK: It's not on until --
6 like hold it for a minute and it will flash red and
7 green and then push it. No. Now you have to push
8 it. There you go.
9 MR. BERGER: Thank you, your Honor. Good
10 morning. We certainly appreciate Duke's concerns
11 regarding the witnesses not having to appear during
12 the entire course of the hearing. We're certainly
13 agreeable to the schedule they put forward for the
14 appearances of those witnesses. So I don't think
15 that's an issue. They don't have to be here for the
16 entire hearing, and that's just a routine matter to
17 indicate the first day of the hearing is the date
18 that the subpoena applies to.
19 With respect to the documents and -- with
20 respect to the relevance issue, let's talk about
21 that, because the issue of the company's proposed
22 price stabilization rider relates to the OVEC assets,
23 as we all know. And the OVEC assets are being held
24 by Duke even though there was an order in the
25 previous ESP case that specifically addressed the

1 sale or transfer of generation assets and the
2 disposition of those assets being divestiture by the
3 end of this year. So I think it was the general
4 understanding of OCC and many of the parties, I
5 believe, that Duke was going to attempt to transfer
6 those assets to an affiliate or sell those assets.
7 As a result, we did not believe at the
8 time of the last ESP case that there would be any
9 question that there was going to be some proposed
10 rate recovery with respect to assets that had been
11 divested.
12 So consequently we think it's essential
13 to evaluating the merits of the proposed price
14 stabilization rider that we keep those assets in
15 rates whether Duke made good faith efforts to
16 transfer or sell those assets. And Mr. Whitlock's
17 deposition and the corporate subpoena to the extent
18 Mr. Whitlock can't answer the question goes to that
19 issue. So we think it's essential. We certainly
20 deposed Mr. Whitlock on that, to the extent he was
21 able to answer, although he wasn't produced
22 specifically to address that issue.
23 With respect to the other witnesses, we,
24 likewise, deposed those witnesses. Their testimony
25 goes specifically to the economic value of the OVEC

1 assets and to the calculation and for purposes of the
2 ESP versus MRO test of the PSR and its effect on that
3 calculation. So those witnesses are essential, your
4 Honor.
5 The company has not put forward any
6 witness in its direct testimony to testify as to the
7 economic value, nor is there any witness who is
8 capable of doing so, to the best of my knowledge.
9 Mr. Wathen is the only one who really addresses that,
10 I believe, in his deposition. He was not able to
11 answer many of the questions. So those other
12 witnesses were produced in response to deposition
13 subpoenas.
14 We believe that they encompass all the
15 issues, but in the event that the witness is not able
16 to answer questions, we reserve the corporate
17 subpoena in the event that the scope of the subpoena
18 that was directed to all these witnesses they are not
19 able to address.
20 We think that's reasonable and prudent.
21 We have been provided with these witnesses. These
22 witnesses have testified as to the scope of their
23 testimony. And as long as the scope of their
24 testimony remains what they say it is, we don't think
25 we will need another witness, but we reserve the

1 right to have one produced should they say that they
2 can't answer the questions.
3 In terms of the documents, certainly many
4 of the documents were produced, and we expect that
5 those documents will be brought by the witnesses to
6 the extent -- and I think our subpoena specifically
7 refers to the extent that those witnesses authored
8 the documents or had input into the documents that
9 were produced in discovery and, you know, to the best
10 of our knowledge, these specific areas were the
11 subject of much discovery regarding the calculation
12 of the PSR, the calculation of the value of OVEC.
13 There was a lot of discovery on that, but to the
14 extent that these witnesses participated in answering
15 discovery or to the extent that they prepared the
16 underlying workpapers and things of that nature that
17 form these calculations, we think that they should be
18 prepared with the documents produced in discovery to
19 address that.
20 The discovery rules, in particular
21 4901-1-25, address the fact that at a hearing, as
22 well as at a deposition, you can have a subpoena
23 duces tecum requiring the production of documents,
24 and the documents are to be produced on the initial
25 day of the hearing.

1 We're happy to have those documents as
2 soon as possible and prior to the witnesses'
3 testimony to the extent that there are documents that
4 have not already been produced. To the extent the
5 documents have already been produced, you know, there
6 is no need for them to reproduce them to us. They
7 can just verify these are the documents that the
8 witness -- or the witness can say these are the
9 documents he prepared, authored, or had input into at
10 the time that he or she testifies.
11 EXAMINER PIRIK: Okay. So just to be
12 clear, what you are requesting as far as documents
13 go, you're not requesting that -- I mean, you have
14 all of the discovery. You have all of the
15 information. You know who authored those pieces of
16 discovery. You are not asking for those pieces of
17 discovery. You are just saying if there is any
18 additional documents, you are asking them to bring
19 those.
20 MR. BERGER: Right. If there is anything
21 that hasn't been identified that's in the scope of
22 the subpoena duces tecum that hasn't been produced in
23 this case that's applicable to the scope of those
24 subpoenas that we think have already been -- those
25 documents have already been requested in this case,

1 that witness can produce those at that time if, for
2 example, they realize, oh, I should have produced
3 this in response, or Duke realizes that should have
4 been produced to address this witness's testimony.
5 So I think that addresses all the
6 concerns raised by Ms. Kingery, and so we would rest
7 on the belief that these subpoenas are proper, that
8 they relate to witnesses who have important testimony
9 regarding relevant issues in this case, and that the
10 document requests are consistent with the information
11 that should have been produced during discovery and
12 that the witnesses can produce that -- or should have
13 those documents ready at the time they testify.
14 Thank you.
15 EXAMINER PIRIK: Ms. Kingery.
16 MS. KINGERY: Thank you. I would just
17 like to underline three points. First of all, with
18 regard to the relevance of this information,
19 Mr. Berger states that the stipulation and order from
20 the existing ESP is relevant and that it required us
21 to try and transfer the OVEC assets. He states that
22 as if it's a foregone conclusion, but it is not.
23 And I expect there will be testimony that
24 you will hear that goes to that issue, but it is
25 certainly not a foregone conclusion that Duke was

1 required to transfer or sell the OVEC assets, and we
2 contend that this information is not relevant because
3 there was no such requirement.
4 Second of all, as to the corporate
5 subpoena, I maintain, as I stated earlier, that it is
6 unreasonable at this point. It is merely an
7 extension of discovery that should already have been
8 completed.
9 OCC knows what these witnesses know.
10 They've already deposed them. So there should be no
11 question about whether the witness can or cannot
12 answer a particular question, unless they didn't
13 depose them on that question.
14 But to say that because they're surprised
15 at the hearing shouldn't mean that we have to prepare
16 another witness or multiple witnesses to come and
17 answer those questions that we don't even know are
18 coming. That's unfair and not reasonable, and it's
19 an abuse of the process.
20 And the third one goes back to this
21 question of what the subpoenaed witnesses are
22 required to bring along with them. I'm still not
23 clear whether Mr. Berger expects, for example, Bryan
24 Dougherty to show up with boxes of information that
25 he's already produced. I don't see any other

1 witnesses showing up with all the information that
2 they may have been responsible for in discovery
3 responses.
4 If OCC wishes to cross-examine
5 Mr. Dougherty, for example, on a particular document
6 that was produced in discovery, OCC should present
7 that to Mr. Dougherty as an exhibit, distribute it to
8 all the parties and to the Bench and to the court
9 reporter just like we always do. Mr. Dougherty does
10 not have to bring those documents back into the room.
11 Just one minute.
12 And finally with regard to the corporate
13 subpoena, I would also note that this would cause --
14 and I don't really like slippery slope arguments, but
15 if we use the corporate subpoena at this point, I can
16 see corporate subpoenas being used all throughout
17 subsequent cases, because we would all like to be
18 able to call additional witnesses if we don't get
19 answers to the questions that we ask. So I would
20 respectfully suggest that that's a substantial change
21 in the normal procedure at this Commission.
22 MS. BOJKO: Your Honor, may others be
23 heard?
24 EXAMINER PIRIK: Ms. Bojko, yes.
25 MS. BOJKO: A couple of quick points. We

1 concur with OCC that the company is the entity that
2 raised the OVEC issue and the relevance and the
3 corporate separation issues. In Don Wathen's
4 testimony, he interprets the stipulation, and he
5 brought that issue to us. So we have a right to
6 explore that issue and a right to counter that issue
7 at hearing.
8 Secondly, as far as discovery should be
9 done, I beg to differ. On one occasion -- and I have
10 copies here for the Bench and parties, if you would
11 like to see, but OMA asked several questions
12 specifically about Mr. Whitlock's deposition and
13 documents that we believed we learned of in
14 Mr. Whitlock's deposition.
15 In response to OMA's discovery request,
16 Duke just objected, numerous objections, but they
17 objected to our discovery requests and did not
18 provide any additional information. So we started
19 going down the path of a motion to compel. I
20 inquired into Duke's counsel why they didn't respond
21 to the questions because Mr. Whitlock stated that the
22 documents existed in the deposition.
23 I found out later, just late last week,
24 that they did, in fact, produce some documents in
25 response to I believe it was RESA's discovery

1 responses. There was no reference which is required
2 by the administrative rules, and there was no
3 indication that they weren't purely refusing to
4 answer my questions.
5 So when we go down the path of whether
6 Mr. Whitlock or others from the depositions should
7 bring documents with them, additional documents, I
8 don't believe anybody is asking them to bring
9 discovery documents that have already been produced,
10 but I do concur that Mr. Whitlock should bring
11 additional documents that we did request in discovery
12 that was never provided to us in discovery if those
13 documents do, in fact, exist. It is not clear from
14 the discovery responses or my communications with
15 counsel whether those documents do or do not exist.
16 So it is those documents that I believe
17 are relevant to the subpoena that was issued and that
18 we would concur in that subpoena, and we would have
19 stated as such as timing would have been allowed, but
20 discovery is not concluded because discovery has not
21 been completed before the hearing, and that's what we
22 are seeking to obtain from Duke, particularly from
23 Mr. Whitlock because he referenced documents in his
24 deposition that were never produced.
25 Thank you, your Honor.

1 MS. SPILLER: Your Honor, may I be heard
2 on the comments from Ms. Bojko?
3 EXAMINER PIRIK: Before we do that, is
4 there any other party, any other intervenor, that
5 would like to weigh in on the motion? That way, you
6 can resolve it all at once. Anyone else?
7 Okay.
8 Duke, go ahead. Ms. Spiller.
9 MS. SPILLER: Your Honor, thank you, and
10 it's somewhat unfortunate that we're having a
11 discovery dispute in your presence because I think it
12 perhaps could have been addressed outside of this
13 hearing room.
14 But to be clear, in Mr. Whitlock's
15 deposition, and we can go through the transcript as
16 necessary, he identified some documents, two
17 categories of documents, one which was expressly
18 identified as something belonging to OVEC. We said
19 we would make an inquiry of OVEC.
20 At no time during the deposition was
21 Mr. Whitlock or his counsel asked to produce
22 documents which would normally be the course in a
23 deposition when a document request is made during the
24 course of the deposition. That did not occur.
25 Subsequently discovery requests were

1 tendered to Duke Energy Ohio, incredibly broad with
2 not reasonable time parameters, references to any
3 sponsoring company, and there are 13, references to
4 any transfer. So appropriate objections were
5 asserted by the company.
6 In the spirit of good faith, we did
7 produce discovery responses. Included within the
8 discovery that was tendered by the company were the
9 two documents identified in Mr. Whitlock's
10 deposition. So I find it somewhat disingenuous to
11 allege that the company has not been fair in the
12 course of this discovery.
13 There is a process. These are seasoned
14 attorneys who know the process. Tender discovery.
15 If you don't like the answers, let us know, and we
16 can have a conversation. Tell me why you think it's
17 relevant. We'll indicate to you why we think we
18 don't based upon the terminology that you've included
19 in your request.
20 But to come in here and have this debate
21 now I think is a bit atypical and somewhat unfair,
22 particularly when the documents that were asked were
23 produced. And so now we are at a situation where
24 people either didn't come back and ask us for
25 information, or they don't like the information that

they received, and they are asking for a corporate subpoena so that we can continue to run through the gristmill of people who may have a little bit of information.

I just think that opens the door, particularly in this case, when parties are now injecting contractual interpretations. Do we now issue a subpoena to the OCC and their attorneys or their subject matter experts who negotiated the last ESP stipulation? I just think we're opening up a Pandora's box when, in fact, we have an established discovery process that the parties had the opportunity to follow.

MR. OLIKER: Can I have a clarification of Ms. Spiller's statement?

EXAMINER PIRIK: Mr. Oliker.

MR. OLIKER: Did you say the documents were not requested from Mr. Whitlock within his deposition?

MS. SPILLER: They were not.

MR. OLIKER: Can we have a moment to pull up his deposition transcript?

EXAMINER PIRIK: I don't think it's necessary based on after hearing everyone's arguments and where the Bench is on the different issues that

are party to the motion to quash, but I appreciate the offer.

MR. OLIKER: Thank you.

EXAMINER PIRIK: With regard to Mr. Whitlock, obviously at the time that he's on the stand, if there are questions that are being asked that Duke feels are not relevant to the case, they can make an appropriate objection at that point in time; and at that point in time, the Bench will decide what the scope will be of his testimony.

So with regard to that, the motion to quash is denied, and Mr. Whitlock will appear. It sounds as if the question of whether or not the witnesses need to be here as of present day has been resolved. As far as OCC is concerned, they are fine with them coming on their day of testimony. So I think that issue is basically moot. So we don't have to rule on that issue.

With regard to the other witnesses and the documents, as well as Mr. Whitlock, what my understanding of OCC and what they are saying is to the extent that the information was provided during the course of discovery and those documents have already been given to the other parties in the case, there is no need for them to duplicate that by

1 bringing that with them to the stand. However, if
2 there were documents that they mentioned in their
3 depositions that have not been produced, then they
4 need to bring those with them.
5 Of course, there will be a process where
6 I'm sure there will be questions asked of the
7 witness, and whatever is in deposition will come
8 before us, and we will know exactly what those
9 documents are that they are discussing.
10 With that in mind, that brings us to the
11 corporate subpoena and the overall question of
12 documents or other witnesses. Not having been party
13 to the depositions and know exactly what's in the
14 deposition transcripts, I can't necessarily say. So
15 we are going to withhold ruling on that piece of it.
16 Obviously an appropriate request can be done at a
17 later time.
18 Our expectation would be for the
19 witnesses that have been called, we have a subpoena
20 that every question that can be asked will be asked
21 of those witnesses, and there's every possibility
22 that there will be no further need for anything else
23 to occur either documentwise or additional
24 witnesswise.
25 But we are going to hold that in

1 abeyance, and we will see where those witnesses go.
2 Until they get on the stand, the Bench isn't going to
3 be aware of exactly where testimony is going with
4 those witnesses. With that being said, I think, you
5 know, it's basically denied to the extent just
6 stated.
7 Are there any questions about what the
8 ruling was?
9 MR. BERGER: Yes, your Honor. Just a
10 question about the scope of the document production
11 at the hearing. You indicated that it was to the
12 extent questions were asked in deposition that they
13 had information to that wasn't produced. Our
14 subpoena duces tecum tries to define the scope of the
15 documents and that in our viewpoint is what the scope
16 of the documents should be.
17 To the extent those documents have
18 already been produced, I don't see a need for them to
19 bring them. But to the extent that there are other
20 documents within the scope of the subpoena duces
21 tecum that haven't been produced, they should bring
22 those. Some of those might have been asked about in
23 the deposition. Not all of them would likely have
24 been asked about in the deposition.
25 EXAMINER PIRIK: Well, I understand your

1 point. I also think that the deposition was an
2 opportunity for discovery, and I think that was the
3 road you needed to go down at that point in time. I
4 don't think, you know, based upon conjecture of what
5 may or may not be part of that, if there are
6 documents that they are aware of that are part of
7 questions that they have been asked in deposition
8 that they need to turn over, then I think that they
9 need to come forward with those.
10 But I don't think that they can just, you
11 know -- so I guess to the extent that you're asking
12 them to conjecture basically on what you are
13 requesting, then the motion to quash is granted to
14 that extent.
15 MR. BERGER: The subpoena duces tecum
16 defines a scope of documents, your Honor.
17 EXAMINER PIRIK: And what is that
18 definition? You are not being very clear.
19 MR. BERGER: I'll just pull up the
20 subpoena and point it out.
21 EXAMINER PIRIK: I mean, if there is a
22 subject matter specific to what you are asking them
23 to produce that was gone down in discovery but
24 perhaps they have additional documents, then that
25 would be appropriate.

1 MR. BERGER: I think in particular for
2 Mr. Whitlock's deposition, you know, certainly we
3 believe that all the documents that Duke has access
4 that pertain to its consideration of the sale or
5 transfer of its assets since the ESP order was the
6 primary area that we're concerned about was not
7 produced, even though it was requested as part of
8 numerous discovery requests, some of which were
9 objected to on relevance grounds, others which they
10 said there was no non-privileged information that
11 exists. I can show you the discovery requests, or we
12 can address this at the time of Mr. Whitlock's
13 testimony.
14 EXAMINER PIRIK: So, I mean, specifically
15 what you are asking about are situations such as
16 Ms. Bojko brought up where they objected to providing
17 the information, and I guess to the extent that there
18 is information out there to be had and they've
19 objected to it and have not provided it, that's part
20 of the ruling that they do need to bring that with
21 them.
22 And the Bench will decide at that time
23 whether it's relevant, whether it's confidential,
24 whether it has anything to do with this proceeding.
25 So that is within the scope of our ruling, that that

1 does need to be provided, and the motion to quash is
2 denied.
3 MR. BERGER: Thank you.
4 EXAMINER PIRIK: Does that clarify it for
5 you?
6 MR. BERGER: Yes.
7 EXAMINER PIRIK: Okay.
8 MS. BOJKO: Your Honor, may I have one
9 more clarification?
10 EXAMINER PIRIK: Yes.
11 MS. BOJKO: Mr. Whitlock works for --
12 even though -- this is another tricky area, but even
13 though Mr. Whitlock may be employed by Duke
14 corporate, and it seems like all the employees might
15 be under the corporate umbrella, he works for an
16 affiliate.
17 So we have similar concerns regarding
18 affiliate documents and when those documents should
19 be produced, and I believe that you said in your
20 ruling issued from the Bench that if we could get the
21 documents from the affiliate a different way, which
22 to me would be through Mr. Whitlock, that that would
23 also be appropriate and that those documents should
24 be produced in the same manner.
25 MS. KINGERY: Your Honor, if I might,

1 this is once again further expanding the continuing
2 effort at discovery in this case. The subpoena that
3 was prepared by OCC is broader by a substantial
4 margin than what was discussed at the deposition.
5 I haven't compared it exactly to the
6 written discovery that had been provided to us, so I
7 don't know for sure that it is broader than that, but
8 it is unreasonably broad. They are going back to
9 substantially broad time periods, back to the
10 beginning of 2012.
11 Ms. Bojko is now talking about affiliate
12 contracts. I don't even know what she is referring
13 to. Mr. Whitlock is employed by not Duke Energy Ohio
14 but another affiliate, as most of us are. But that
15 doesn't mean that he's going to have access to some
16 affiliate agreements that I don't even know what she
17 is referring to.
18 So, again, I have no idea now what he
19 should bring with them, no idea at all. So we are
20 going to need a lot more clarity than this in order
21 to comply.
22 MS. BOJKO: Well, your Honor, the company
23 should be well aware of what I am referencing because
24 it was a discovery request and it was objected to.
25 And then there was an additional e-mail sent to Duke

on October 17th trying to work out the discovery dispute. And in that it talks about affiliate documents.

And prior to receiving a response back, which I believe I'm required to do before filing a motion to compel before you, your Honor issued a ruling on this exact subject matter. So Duke is well aware of what I'm talking about. They had an e-mail trying to resolve the discovery dispute, and they refused to answer the discovery dispute.

And I believe that your Honor's ruling said that they would cooperate in obtaining affiliate documents. And that's what I'm expecting that they do, cooperate in obtaining the affiliate documents, which is what we requested through discovery by the discovery deadline.

EXAMINER PIRIK: I think we've heard enough. I do understand where everyone is coming from. Discovery in this case has been a challenge. It's been a challenge for the parties. It's been a challenge for the Bench in trying to keep up with the challenges that the parties have thrown our way.

That being said, we did issue a ruling on Monday with regard to the affiliate information, and our expectation is that Duke will support and help us

1 get the information on the record that's relevant and
2 necessary for this proceeding.
3 So I'm going to clarify and see if I can
4 get it right this time. It's not just the
5 information that was discussed during the deposition
6 that the subpoenaed witnesses, especially
7 Mr. Whitlock, are expected to bring.
8 If there was some discovery requests
9 where there was an objection and he has that
10 information, he needs to bring that with him so that
11 that can be pursued as to whether or not it's
12 relevant for the record in this case or not.
13 I know that's a difficult task. There
14 could be -- that's why we're holding the separate
15 subpoena open with regard to the corporate subpoena,
16 and we'll see where we go. I mean, the hope is that
17 all the information from these witnesses and
18 Mr. Whitlock will be present and provided during
19 that.
20 Our hope is that Duke will work with the
21 intervenors to clarify to the extent that there are
22 documents that were requested in discovery, that the
23 expectation and hope is that Mr. Whitlock will
24 provide. I mean, I think that is the responsibility
25 of the intervenors to be very clear and bring that

1 information to the forefront well in advance of
2 Mr. Whitlock taking the stand so he has an
3 opportunity actually to bring the information with
4 him.
5 You know, if it turns out that all of the
6 information has been provided, then he won't have
7 anything that he will have to bring with him. But,
8 you know, I think it's important that we have a full
9 record, and it's important that everything that's
10 relevant is put on the record.
11 MS. KINGERY: Your Honor, if I might ask,
12 how would you like us to handle attorney-client
13 privilege? Because a lot of these documents are
14 privileged.
15 EXAMINER PIRIK: We would ask that you
16 create a privilege log and that you provide that
17 privilege log to the Intervenors and you provide the
18 documents to the Bench that support that privilege
19 log, and we will review it.
20 We will need to set a schedule for that.
21 So you will have to let us know when you are
22 prepared, but it will have to be well in advance of
23 when Mr. Whitlock takes the stand so that the Bench
24 has an opportunity to look at the information and an
25 opportunity to rule on it.

1 MS. KINGERY: Thank you.
2 EXAMINER PIRIK: Are there any other
3 questions with regard to that issue?
4 Speaking of privilege logs, there is a
5 privilege log outstanding that OCC provided to the
6 Bench yesterday. We have reviewed that privilege
7 log.
8 I'm taking it, Ms. Grady, you would
9 actually like to make an argument on this point,
10 because I was ready to rule, because we have reviewed
11 it, and we do have an opinion about this, but we will
12 allow to you make a statement.
13 MS. GRADY: Your Honor, very briefly, we
14 did -- as you know, your Honors issued a ruling that
15 we were to produce to Duke per discovery any
16 documents we were claiming had common interest
17 privilege that did not reveal legal strategy.
18 So yesterday we complied with the ruling,
19 produced a privilege log, produced documents that we
20 redacted so that the majority of the document could
21 be seen. We tried to be very specific about our
22 redactions and not to be over-inclusive in what was
23 given.
24 We did then produce numerous documents, I
25 believe up in the hundreds of pages of documents, to

1 the company. We believe that what is on our
2 privilege log does reveal legal strategy; and,
3 therefore, consistent with your Honors' rulings, it
4 would be subject to the common interest privilege as
5 the order indicates. That's it.
6 EXAMINER PIRIK: Does Duke have anything
7 to say with regard to the privilege log issue?
8 MS. SPILLER: No, your Honor.
9 EXAMINER PIRIK: We did review the
10 privilege log and the document that went with it.
11 While it may very well be that at one point in time,
12 the information that has been redacted is information
13 that the parties were discussing how to go forward on
14 a specific pleading. After looking at it,
15 essentially that information is already in the open
16 record. It's already been filed.
17 So as not to make any kind of a precedent
18 with regard to our ruling here, that is the only
19 reason why we're saying that OCC needs to turn over
20 that information unredacted to the company. So this
21 is not a precedent to be set for any other type of
22 case. It is just in this situation what we saw in
23 the redacted information was information that is
24 already in the open record in the docket in this case
25 as far as the arguments the company made -- or the

1 OCC and the parties made with regard to a certain
2 filing are in that filing.
3 So there's no need to protect information
4 that has essentially been disseminated to everyone.
5 So we are asking that you turn over that information
6 as soon as possible to the company.
7 MS. BOJKO: I'm sorry, your Honor. Given
8 that I am party to the common interest claim, may I
9 seek clarification of your ruling? Comments of what
10 to remove out of pleadings, what not to remove, and
11 opinions about what the company is trying to do or
12 not do in its filing, those would not have been made
13 public in the ultimate document that was seen at the
14 Commission.
15 EXAMINER PIRIK: Did you see the
16 document? Did you look over what OCC had given us to
17 review that was redacted?
18 MS. BOJKO: Indeed I did.
19 EXAMINER PIRIK: My ruling is that they
20 need to turn the information over to the company.
21 There is no need to keep that information
22 confidential.
23 MS. BOJKO: You mean the e-mails that
24 talk about what we believe the intent of the company
25 is and what we believe the company is doing in X

1 strategy and --
2 EXAMINER PIRIK: Yes, yes.
3 Are there any other questions?
4 Hearing none, are there any other issues
5 that we need to discuss on the record before we go
6 forward with the first witness?
7 MR. DARR: Your Honor, order of
8 cross-examination.
9 EXAMINER PIRIK: That's a good question.
10 It could be different for every witness.
11 MR. DARR: That was what I was going to
12 raise, your Honor. There are a multitude of
13 alignments in terms of the way the issues have been
14 presented to the Commission through both testimony
15 and various pleadings.
16 As a result, for example, with regard to
17 the stability rider -- I am trying to think of the
18 right way to describe it. With regard to the
19 stability rider, we have a number of companies that
20 are appearing here that have an interest in assuring
21 that Duke is successful in pursuing that rider with
22 the Commission and many other parties that are not.
23 Given that we are talking about
24 cross-examination here, to the extent that a party
25 might be aligned, it's not clear that they would be,

in fact, adverse to Duke. For example, we have our colleagues at Ohio Power who are pursuing not only a similar rider, also seeking to expand it. DP&L has made a similar argument in pleadings with regard to the generation transfer. FirstEnergy Solutions is a party to a proposed contract with regard to the transfer of certain assets, including OVEC as well, or the contracting of certain assets including OVEC.

With regard to the fact that there are those kinds of alignments, we would request that the Bench order the cross-examination so that parties that are more likely to be aligned than not be required to cross-examine first or waive their right to cross-examination and thereby avoid the problem that has appeared in other proceedings in which a party which has an alignment that is more close to the companies than not is taken out of order and thereby raises the opportunity strategically to prepare arguments on behalf of the company because of the alignment.

Thank you, your Honor.

EXAMINER PIRIK: Thank you.

I also know that typically there is some coordination between intervenors who have common interests as far as who takes the lead on a certain

1 witness, and the Bench is open to having that
2 individual go first in the hopes that then
3 cross-examination later will be less, and we are open
4 to that. Otherwise, we will go around the table in
5 order, with staff going last.
6 MS. SPILLER: And, your Honor, if I may,
7 this may be a comment to Mr. Darr's remarks, and
8 there was a suggestion of an alignment between the
9 company and other intervenors in this proceeding. I
10 just would like to raise the issue of friendly cross
11 because I think there are alleged alignments beyond
12 those involving the company, and so we would just
13 elicit the Court's guidance -- or the Bench's
14 guidance in terms of prohibiting friendly
15 cross-examination among and between Intervenors.
16 EXAMINER PIRIK: The expectation would be
17 that what's in the prefiled testimony is in the
18 prefiled testimony, and there would not be friendly
19 cross. Of course, it will be incumbent upon the
20 parties to bring that to the Bench's attention if, in
21 fact, it starts going down a different road. And, as
22 I said, with every witness, cross-examination order
23 could be different based upon what those interests
24 are.
25 I think what Mr. Darr is bringing up is a

1 good point at this point in time, where we will have
2 Ohio Power, DP&L and FES cross first, and then we
3 will go in order of the table, unless there is some
4 reason to do otherwise, with staff going last.
5 And so we are open to having the same
6 type of a discussion if there is a need to have a
7 different order of cross on different intervenors.
8 We are open to those requests.
9 MS. SPILLER: Thank you, your Honor.
10 EXAMINER PIRIK: I am not saying we are
11 going to grant those requests every time. I am
12 saying we are open to them.
13 MS. SPILLER: Thank you, your Honor, and
14 I appreciate that. I suspect that there may be
15 requests as we approach the intervenors' witnesses.
16 MR. NOURSE: Your Honor, that was my
17 question. So your comment just now related to
18 company witnesses? There would be similar alignments
19 most certainly for intervenor cross as well, correct?
20 EXAMINER PIRIK: Correct.
21 MR. NOURSE: Okay. Thank you.
22 EXAMINER PIRIK: Correct. It will go
23 both directions.
24 MS. SPILLER: Thank you, your Honor.
25 EXAMINER PIRIK: Thank you. So at this

time, we will have Duke call their first witness.

MS. SPILLER: Your Honor, at this time, Duke Energy Ohio calls to the stand James P. Henning.

(Witness sworn.)

MS. SPILLER: Thank you, your Honor.

And if I may, before Mr. Henning's direct examination, if I could ask to be marked as Duke Energy Ohio Exhibit 1 the application, including the attachments, that the company filed in this matter on May 29, 2014.

I would also ask, your Honor, for purposes of the record that Mr. Henning's direct testimony also filed on May 29, 2014, in this matter be marked as Duke Energy Ohio Exhibit 2.

And if I may approach, I have copies of the application and Mr. Henning's testimony for the reporter, as well as a copy of his testimony for the witness.

EXAMINER PIRIK: Yes. And those documents will be so marked.

MS. SPILLER: Thank you, your Honor.

(EXHIBITS MARKED FOR IDENTIFICATION.)

- - -

JAMES P. HENNING

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

DIRECT EXAMINATION

By Ms. Spiller:

Q. Good morning, Mr. Henning.

A. Good morning.

Q. Can you identify yourself for the record, please.

A. My name is James E. Henning. I am president of Duke Energy Ohio. My business address is 139 East Fourth Street, Cincinnati, Ohio 45202.

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

A. I do.

Q. And what is that document, please?

A. It's my direct testimony.

Q. And, sir, was that testimony filed on May 29, 2014?

A. Yes, it was.

Q. And do you have any corrections or changes to your direct testimony?

A. I do have one change to my testimony on page 2, line 16, at the end of the paragraph. I

1 would add that I am also responsible for Duke Energy
2 Ohio rates and regulatory strategy department.
3 Q. And is that additional responsibility,
4 sir, that you assumed subsequent to the filing of
5 your direct testimony?
6 A. Yes, it is.
7 Q. And, Mr. Henning, with regard to your
8 direct testimony identified in Duke Energy Ohio's
9 Exhibit 2, that document, including the revisions
10 that you just made to it, if I were to ask you those
11 same questions today, would your answers be the same
12 as reflected in your testimony?
13 A. Yes, they would.
14 MS. SPILLER: Thank you. Your Honor, the
15 witness is available for cross-examination.
16 EXAMINER PIRIK: Thank you.
17 Mr. Nourse?
18 MR. NOURSE: No questions. Thank you.
19 EXAMINER PIRIK: Ms. Sobecki?
20 MS. SOBEKI: No questions, your Honor.
21 Thank you.
22 EXAMINER PIRIK: FES?
23 MS. McALISTER: No questions, your Honor.
24 EXAMINER PIRIK: Thank you.
25 Mr. O'Brien?

MR. O'BRIEN: I have no questions, your Honor.

EXAMINER PIRIK: Mr. Darr.

MR. DARR: Thank you, your Honor.

EXAMINER PIRIK: Could you use the microphone, please.

- - -

CROSS-EXAMINATION

By Mr. Darr:

Q. Mr. Henning, my name is Frank Darr. I am with Industrial Energy Users of Ohio.

EXAMINER PIRIK: You are going to need to pull the microphone closer.

Q. Would you take a look at page 4 of your testimony, sir. I believe beginning at page 4, line 6, and going through page 5, line 6, you provide a discussion of what you describe as the wholesale market fundamentals for energy and capacity, correct?

A. That is correct.

Q. Now, as of January 1, 2015, Duke Energy is going to be fully divested of its own generation resources, depending on how we define "own" with regard to OVEC; but with regard to the legacy assets, those will have been transferred; is that correct?

A. Did you say Duke Energy Ohio?

Q. Yes.

A. Yes, that's correct.

Q. And according to your application, you are proposing to retain the 9 percent interests that Duke Energy Ohio currently has in the Ohio Valley Electric Corporation, correct?

MS. SPILLER: I am going to object to the mischaracterization of the application.

EXAMINER PIRIK: The witness can clarify.

MS. SPILLER: Thank you, your Honor.

A. I'm not sure I understand the word "retain." Can you please rephrase maybe.

Q. Turning to page 10 of your testimony, you point out there that Duke currently has a 9 percent interest in the Ohio Valley Electric Corporation; is that correct?

A. That's correct.

Q. And as part of the proposed rider, stability rider, there is the possibility of expanding the interests that Duke Energy Ohio may have in other generation assets; is that correct also?

A. I believe what I stated was that Duke Energy Ohio would have the option to include other similar arrangements.

Q. Now, with regard to these other arrangements, these would be purchased power agreements for additional generation resources; is that correct?

A. I'm not sure I specifically stated what the other arrangements would be, so it could be a variety of different arrangements.

Q. Could it be an arrangement similar to that that the company currently has with the Ohio Valley Electric Corporation?

A. It could.

Q. And for the record, what other options is the company considering as a means to populate the rider?

A. At this time, the company is not considering additional options.

Q. So it's fair to say that at this point in time, the scope of the rider is limited to the company's 9 percent interest in the Ohio Valley Electric Corporation; is that correct?

A. I would say it's fair to say that the scope of the rider is limited to Duke Energy Ohio's contractual entitlement with Ohio Valley Electric Corporation.

Q. Now, as of June 1 of 2015, Duke Energy

1 Ohio will no longer be what is called a fixed
2 resource requirement entity; is that correct?
3 MS. SPILLER: Your Honor, I am just going
4 to object. This is outside Mr. Henning's testimony.
5 EXAMINER PIRIK: Mr. Darr?
6 MR. DARR: Your Honor, this goes to the
7 need and requirements of Duke Energy Ohio to retain
8 its interests in the OVEC entitlement. It also goes
9 to repeated references made by Mr. Henning throughout
10 his testimony as to matters going to the wholesale
11 market.
12 EXAMINER PIRIK: Objection overruled.
13 A. Can you repeat the question, please?
14 Q. Certainly. As of June 1, 2015, Duke
15 Energy Ohio will not be an FRR entity; isn't that
16 correct?
17 A. I'm not sure of the exact date when Duke
18 Energy Ohio will no longer be an FRR entity.
19 Q. As of January 1, 2012, is it fair to say
20 that Duke Energy Ohio procured its supply for its SSO
21 commitment through an all requirements auction?
22 A. Duke Energy Ohio did conduct a wholesale
23 auction for SSO supply. I am not sure what the exact
24 date of the auction was, but that did commence in
25 providing SSO service offerings January 1, 2012.

1 Q. And under that SSO auction, Duke Energy
2 Ohio is securing for its SSO customers both the
3 capacity and energy necessary to serve those
4 customers; is that correct?
5 MS. SPILLER: Again, your Honor, object
6 to the extent this is outside the scope of
7 Mr. Henning's testimony.
8 EXAMINER PIRIK: Overruled.
9 A. Can you repeat the question?
10 Q. Yes. Am I correct that under the SSO
11 auction process that Duke Energy Ohio is currently
12 using, it is procuring both the capacity and energy
13 necessary to serve the SSO customers?
14 A. I'm not sure about the specifics of what
15 was procured in the SSO auction.
16 Q. Do you anticipate that beginning on
17 June 1, 2015, Duke will secure -- and by Duke, in
18 this instance I mean Duke Energy Ohio -- will secure
19 both its energy and capacity through the SSO auction?
20 A. I know as part of our current ESP
21 application that we identify a process to procure for
22 Duke Energy Ohio's customers for the SSO a wholesale
23 auction, but I'm not well-versed in the specifics of
24 what we were procuring in that. That question might
25 be better directed to Bob Lee, who is the company

1 witness, to talk about the actual wholesale auction
2 process.
3 Q. Now, in your testimony at pages 4 and 5,
4 you had this extended discussion about issues with
5 the current market design of the wholesale and
6 capacity markets. Are you aware that PJM is
7 addressing issues regarding reliability that PJM
8 believes were exposed by the January, 2014, weather
9 events?
10 A. I'm generally aware of that initiative.
11 Q. And these investigations that PJM is
12 addressing have resulted in filings at the Federal
13 Energy Regulatory Commission with regard to the
14 design of the demand curve and a proposal to redefine
15 the capacity performance product, correct?
16 A. I'm not familiar with that particular
17 filing you're referencing.
18 Q. Which filing? The BRR design?
19 A. I'm not familiar with whatever filing
20 you're referencing.
21 Q. Are you familiar with the fact that PJM
22 has proposed a new product which it defines as
23 capacity performance?
24 A. No.
25 Q. Are you aware of any efforts on the part

of PJM to coordinate gas and electric transport -- gas transportation issues?

A. Can you be more specific with that question?

Q. You're aware there were issues raised by PJM with regard to the ability of generators to secure firm supplies of transportation of gas, correct?

A. I'm aware there has been some general discussions around that issue, yes.

Q. Are you aware of efforts on the part of PJM to conduct meetings or conferences or issue statements with regard to the coordination of gas and electric for the purpose of securing gas supplies for generators?

A. No.

Q. With regard to the OVEC assets in particular, the nameplates on these assets in aggregate is around 2,400 megawatts; is that correct?

A. I do not know the name plate capacity.

Q. Would you say, subject to check, that it's around 2,400 megawatts?

A. It might be better directed to additional -- a different witness for the company.

Q. Are you comfortable with the fact that

1 the company has a 9 percent interest in the OVEC
2 generation assets?
3 A. It's my understanding the company has a
4 9 percent interest in Ohio Valley Electric
5 Corporation, that's correct.
6 Q. Have you attempted to calculate the
7 effect of removing the 9 percent interest on the peak
8 demand of PJM?
9 MR. OLIKER: Could I have that question
10 read back, please?
11 (Record read.)
12 MR. OLIKER: Thank you.
13 A. No.
14 Q. Are you familiar with what the peak load
15 requirement was on January 7, 2014, the day that's
16 been identified as the polar vortex?
17 A. No.
18 Q. At this point in time, Mr. Henning, are
19 you aware of any efforts on the part of OVEC to close
20 either Kyger Creek or Clifty Creek?
21 A. No.
22 Q. And, in fact, there is no plan to retire
23 Clifty Creek before 2040; isn't that correct?
24 A. I don't have any insight to that, whether
25 they do or do not.

1 MR. DARR: I would like to have a
2 document marked as IEU-Ohio Exhibit 1.
3 EXAMINER PIRIK: The document is so
4 marked.
5 (EXHIBIT MARKED FOR IDENTIFICATION.)
6 Q. I will hand you what has been marked as
7 IEU Exhibit 1. Would you identify that for us,
8 please.
9 A. I believe it's a data response issued by
10 the company in regards to Sierra Interrogatory
11 03-065.
12 Q. Okay. It indicates that William Don
13 Wathen, Jr., responded to this request, correct?
14 A. That's correct.
15 Q. And Mr. Wathen is the same Mr. Wathen
16 that's providing testimony on behalf of Duke Energy
17 Ohio in this proceeding?
18 A. I certainly hope so.
19 Q. Does he indicate in his responses that
20 there is no plan to retire Clifty Creek before 2040?
21 MS. SPILLER: Your Honor, excuse me. If
22 I may object. I think a better witness here is
23 Mr. Wathen. Mr. Henning has indicated he is not
24 aware of efforts by OVEC and has no insight into
25 issues concerning retirements or closures.

1 EXAMINER PIRIK: Mr. Darr?
2 MR. DARR: Certainly Mr. Wathen provided
3 the answer to the response. I am inquiring on this
4 issue with regard to Mr. Henning because Mr. Henning
5 has raised the issue of the availability of resources
6 in the wholesale market.
7 EXAMINER PIRIK: To the extent the
8 witness knows the answer, I will allow the question.
9 A. Okay. Can you --
10 Q. The question is whether or not -- the
11 question that I posed to Mr. Henning is whether or
12 not the response indicates on behalf of Duke Ohio
13 that there is no plan to retire Clifty Creek in 2040;
14 is that correct?
15 A. I do not know the answer to that.
16 Q. You don't know that the answer to the
17 question provided on IEU Exhibit No. 1 --
18 EXAMINER PIRIK: Mr. Darr, Mr. Darr.
19 Q. -- is that there is no response?
20 EXAMINER PIRIK: I am not asking for him
21 to read this as to what it says. If he is aware of
22 the information that's contained in the document,
23 then he can answer. Otherwise, I believe Mr. Wathen
24 is the appropriate witness.
25 MR. DARR: Your Honor, I apologize if it

appeared that I am badgering the witness, but it appears that he is not answering my question. My question was has the company responded in a certain way, and that's all I was asking.

EXAMINER PIRIK: If he was aware of this document and he's aware that this is a correct response, the only way to understand whether it's the correct response or not is to ask Mr. Wathen. If he is not aware of where this information came from, then all he can do is read the paper.

Do you have a follow-up question that you are interested in?

MR. DARR: I will go another line, your Honor.

EXAMINER PIRIK: Thank you.

Q. (By Mr. Darr) So if I am to understand it correctly, sir, you have not addressed in your testimony whether or not there is a plan to close Clifty Creek or Kyger Creek; is that correct?

A. I believe my testimony speaks for itself.

Q. That wasn't my question, sir.

Did you in terms of preparing your testimony consider whether or not Clifty Creek or Kyger Creek were going to close?

A. I don't believe there is any reference in

my testimony to Clifty Creek or Kyger Creek.

Q. Is there anything in your testimony that would suggest that the OVEC generation assets would not be available if Duke Energy Ohio did not receive the stability rider that it's requesting?

A. Once again, I don't believe there is any reference to Kyger Creek or Clifty Creek in my testimony.

MR. DARR: May I have the question read back, please.

(Record read.)

Q. Again, sir, I am asking you to respond to that question.

MS. SPILLER: Your Honor, I believe that the witness did in that the assets owned by OVEC are Kyger Creek and Clifty Creek.

MR. DARR: That apparently is the question Duke would like to have answered, but that is not the question I asked.

EXAMINER PIRIK: I agree.

Could you reread the question again and have the witness answer.

(Record read.)

A. I do not believe so.

Q. Moving on then. Thank you.

1 Duke is also retiring assets currently;
2 is that correct?
3 A. Can you please be more specific?
4 Q. Certainly. In 2012, am I correct that
5 Duke retired Beckjord No. 1?
6 A. So you are referring to Duke Energy Ohio
7 just to be clear?
8 Q. Yes.
9 A. Duke Energy Ohio has initiated plans and
10 made announcements to retire the Beckjord station.
11 Q. And in 2012, it retired Beckjord No. 1,
12 correct?
13 A. Subject to check on the date. I don't
14 remember the specific date, but we have retired
15 operations at the entire Beckjord station, yes.
16 Q. Am I also correct that Beckjord 2 and 3
17 have been retired as well in 2013?
18 A. Similar response, that all of the units
19 at Beckjord station have been retired or announced
20 retirement, and subject to check on the date, I am
21 not sure of the specific date of that specific unit.
22 Q. So 5 and 6 as well?
23 A. Yes.
24 Q. And Unit 4 was also retired in 2014,
25 correct?

A. I would say it's the same response, that there is no -- we've retired all units at Beckjord station. I'm not sure of the specific date of that retirement, though.

Q. And it's Duke's view that even after the plant's retirement, specifically the Beckjord plant, and generators, Duke Energy Ohio continued to deliver safe, reliable, and affordable energy to Duke's customers, correct?

A. When you say "delivered," distribute?

Q. I use the word intentionally, sir. I said "delivered."

A. Through our distribution system, we will continue to deliver safe, reliable and, yes, affordable energy to our customers.

Q. Are you familiar with activities on the part of Duke Energy to construct what is known as the Atlantic Coast Pipeline?

MS. SPILLER: Objection, your Honor. This is outside the scope of Mr. Henning's testimony.

EXAMINER PIRIK: Mr. Darr?

MR. DARR: It goes to the relevance of the testimony that Mr. Henning provided with regard to the instability of gas resources as generation resources.

1 MS. SPILLER: And, your Honor, if I may,
2 Mr. Henning's testimony is focused on PJM and the PJM
3 wholesale market. What Mr. Darr is intending to
4 inject is a proposal that is outside of PJM, and so I
5 think it again is irrelevant -- or I think it is
6 additionally irrelevant in addition to being outside
7 of Mr. Henning's testimony.
8 EXAMINER PIRIK: I'll allow the question
9 to the extent the witness can answer.
10 Mr. Darr, could you repeat the question?
11 MR. DARR: Certainly.
12 Q. (By Mr. Darr) Are you aware of an effort
13 on the part of the Duke Energy to construct what is
14 called the Atlantic Coast Pipeline?
15 A. I'm generally aware of that initiative.
16 Q. And as I understand it, the Atlantic
17 Coast Pipeline will move gas, natural gas, from the
18 Marcellus and Utica shale regions 550 miles, give for
19 take a few miles, to North Carolina, correct?
20 A. I believe that is correct.
21 Q. And that gas will then be used to serve
22 natural gas generation in the Carolinas, correct?
23 A. I believe it's to serve the North
24 Carolina market. I am not sure if it's specifically
25 limited to electric generation.

1 Q. And according to Duke Energy, this
2 project is designed to improve the reliability and
3 geographic diversity and supply of natural gas from
4 Carolina customers, correct?
5 A. I'm not sure about that specific
6 statement. Sorry.
7 MR. DARR: May I have this marked as IEU
8 Exhibit No. 2, please.
9 EXAMINER PIRIK: The document will be
10 marked.
11 (EXHIBIT MARKED FOR IDENTIFICATION.)
12 Q. Do you have in front of you what has been
13 marked as IEU Exhibit No. 2?
14 A. I do.
15 Q. Would you identify for us what this is?
16 A. The title of this slide says, "Fall
17 Roadshow Update."
18 Q. Are you familiar with what the Fall
19 Roadshow Update is?
20 A. Not specifically familiar with it.
21 Q. Is it fair to say that for investors Duke
22 Energy prepares presentations?
23 MS. SPILLER: Your Honor, this witness
24 has just said he is not familiar with that Fall
25 Roadshow Update, and we are now getting into an issue

1 that is clearly outside Mr. Henning's testimony.
2 EXAMINER PIRIK: Mr. Darr?
3 MR. DARR: Your Honor, this is a document
4 that comes directly off Duke's website. Mr. Henning
5 can testify as to the scope of his understanding.
6 The point of the document is to identify the fact
7 that Duke Energy is in the process of expanding
8 natural -- its reliance on natural gas.
9 MS. SPILLER: And, your Honor, this is
10 not even Duke Energy Ohio that's involved with this
11 process. These are entities subject to the
12 regulation of other commissions and other
13 jurisdictions. So I think we are injecting an issue
14 that is outside the scope of the company's ESP
15 application.
16 MR. DARR: I beg to disagree, your Honor.
17 When Mr. Henning testifies that the wholesale market
18 is unstable and needs to be fixed because -- and one
19 of the factors that is causing that is natural gas,
20 Duke is turning around in North Carolina and piping
21 in natural gas because it believes there is a benefit
22 to it, I think I have a right to inquire.
23 EXAMINER PIRIK: While I appreciate the
24 arguments, I think it's important that when documents
25 are presented to witnesses, that there is some --

that the witness has actually seen the document and can actually authenticate it as something that they are familiar with. If they cannot do that, then I think we need to move on.

And I also think that when you ask questions of a witness, they need to answer according to what their knowledge is. If not, then that information needs to come from a witness that has the knowledge, or a witness should have been presented that can bring these issues to light.

So, you know, if you can authenticate this with this witness and the witness has knowledge of it, then that's one thing.

MR. DARR: That was the point of my question that was objected to, your Honor.

EXAMINER PIRIK: Okay. If that's where you are going, if you are trying to authenticate it with this witness, I'm fine with those questions.

MR. DARR: Thank you, your Honor. And the point of my response was to address the relevancy objection and was limited to that.

Q. (By Mr. Darr) Mr. Henning, as part of your activities as vice president of the government and regulatory affairs and as state president of Duke Energy Ohio and as general manager of commercial

1 operation, are you familiar with the fact that
2 investors are regularly provided information through
3 what are called roadshows?
4 A. I've never participated in what you are
5 referring to as the Fall Roadshow or helped prepare
6 any documentation for the Fall Roadshow.
7 Q. Again, that wasn't my question, sir. Are
8 you familiar with the fact that Duke Energy prepares
9 presentations for investors called roadshows?
10 A. I'm familiar with the fact that Duke
11 Energy does have conversations, have meetings, and
12 shares information with investors, yes.
13 Q. And these are done on a regular basis,
14 correct?
15 A. I do not know what basis they are done
16 on.
17 Q. Well, you do an annual or quarterly
18 meeting with regard to the earnings of the company,
19 correct?
20 A. I'm familiar with the quarterly earnings
21 update, but I wouldn't call that a roadshow.
22 Q. Okay. And you've just said that you also
23 are familiar with the fact that there are investor
24 presentations, correct?
25 A. I'm familiar that the company does

1 conduct investor presentations, yes.
2 Q. And you would expect that the information
3 presented through those presentations would be true
4 and accurate on behalf of Duke Energy and its
5 affiliates, correct?
6 A. Absolutely.
7 Q. And, subject to check, would you agree
8 that the Fall Roadshow is a document that appears on
9 the Duke Energy website?
10 A. This is the first I've seen of this
11 document, so I do not have any way to validate
12 whether it is on the website or not.
13 Q. Would you accept that, subject to check?
14 A. Yes.
15 Q. Would you agree with me that what is
16 marked page 26 in the lower right-hand corner of IEU
17 Exhibit 2, that Duke Energy identifies one of the
18 project benefits of this project identified as the
19 Atlantic Coast Pipeline, that it improves the
20 reliability and geographic diversity and supply of
21 natural gas for the Carolinas' customers?
22 MS. SPILLER: Your Honor, if I may
23 object, Mr. Darr is now attempting to authenticate
24 through Mr. Henning information that is in a document
25 that Mr. Henning cannot properly authenticate.

1 MR. DARR: Mr. Henning did just
2 authenticate the document, your Honor, subject to the
3 only qualification that he would want to check it
4 against the website. Authentication is no longer an
5 issue.
6 What is at issue is the fact that Duke
7 Energy Ohio is making statements with regard to the
8 reliability of gas resources in the roadshow and
9 making other representations to this Commission, and
10 that's the point of this document. Authentication is
11 not an issue.
12 MS. SPILLER: Your Honor, I think we're
13 sort of playing a shell game here with references to
14 Duke Energy, Duke Energy Ohio. They are absolutely
15 different entities, and Mr. Henning has indicated
16 that Duke Energy corporate prepares documents for
17 investors, and somehow Mr. Darr wants to springboard
18 that into a Fall Roadshow document that Mr. Henning
19 has never received or prepared, has never reviewed,
20 has never seen pieces of before today, that somehow
21 that is an authentic and reliable document.
22 EXAMINER PIRIK: Objection sustained.
23 Do you have questions for this witness
24 that are within his knowledge?
25 Q. (By Mr. Darr) Mr. Henning, at page 4,

1 lines 9 and 10 of your testimony, you state that
2 there are approximately 25,000 megawatts of capacity
3 that's scheduled for retirement between 2011 and
4 2019, correct?
5 A. Yes, 24,932 megawatts in the PJM zone
6 between 2011 and 2019, yes.
7 Q. And the source of that statement is the
8 2013 State of the Market Report from PJM, correct?
9 A. That's correct.
10 Q. And specifically that comes out of the
11 planning section of that report, correct?
12 A. I do not know specifically where it came
13 from within that document.
14 Q. Well, your footnote, footnote 1,
15 indicates "Section 12, Planning (March 2014),"
16 correct?
17 A. That's correct. I just don't have the
18 document here in front of me to confirm exactly where
19 it's at.
20 MR. DARR: I would like to have marked as
21 IEU Exhibit No. 3 then.
22 EXAMINER PIRIK: The document is so
23 marked.
24 (EXHIBIT MARKED FOR IDENTIFICATION.)
25 Q. Do you have in front of you what has been

1 marked as IEU Exhibit 3?
2 A. I do, yes.
3 Q. And is this the report or section that's
4 referred to in footnote 1 on page 4 of your
5 testimony?
6 A. Yes, I believe it is.
7 Q. Would you turn to page 351 where the page
8 that's marked 351 is in IEU Exhibit 3.
9 A. Okay.
10 Q. And if we look at table 12-7, that's
11 where it identifies the 24,932 megawatts that are
12 planned for retirement through 2019, correct?
13 A. Yes.
14 Q. And if we do a little quick addition,
15 some of these retirements are planned, and those
16 amount to 13,769 megawatts, correct?
17 A. Subject to the verification of your math,
18 yes, I would say that's correct.
19 Q. Now, would you turn to page 360 -- or the
20 page that's marked as 360 on Exhibit 3?
21 A. Page 360, did you say?
22 Q. There isn't one. I apologize. Page 349.
23 A. Page 349?
24 Q. Yes.
25 A. Okay.

Q. And in there on table 12-4, we see the amount of generation that is currently under construction, correct?

A. That is correct.

Q. And am I correct that the report that you rely upon indicates that there is 14,057 megawatts under construction as of December 31, 2013?

A. That is correct.

Q. In keeping with the examiner's recent ruling, I need to inquire, have you had an opportunity to look at the report of the Independent Market Monitor that addresses the next six months of planning for PJM? When I refer to the next six months, I am referring to the next six months contained in January to June, 2014.

A. I'm sorry. I'm not following what document you are asking me to look at.

Q. Have you looked at the updated IMM report for the period that covers through June, 2014?

A. I look at a lot of reports. I do not know specifically if I looked at that report or not.

Q. I have a copy in front of me. Would you like to take a look at it and see whether or not you've reviewed it? Would it help refresh your recollection?

1 A. Yes.
2 MR. DARR: At least for identification
3 purposes, I would like to have this marked as IEU
4 Exhibit 4, please.
5 EXAMINER PIRIK: The document is so
6 marked.
7 (EXHIBIT MARKED FOR IDENTIFICATION.)
8 Q. Do you have in front of you what has been
9 marked as IEU Exhibit 4 for identification?
10 A. I do.
11 Q. Based on that, have you had an
12 opportunity to determine whether or not you have
13 reviewed this report before?
14 A. I've looked at this document before, yes.
15 Q. And if we turn to page 362, we have here
16 a table 12.6, which is similar to the table we
17 described in IEU Exhibit 3 which describes the PJM
18 retirements for 2011 through 2019, correct?
19 A. That's correct.
20 Q. And this report indicates that the total
21 anticipated retirement is 25,902, correct?
22 A. That's correct.
23 Q. And of those, the planned retirement,
24 again doing a little quick math, is 13,769, correct?
25 A. Subject to the verification of the math,

1 that's correct.
2 Q. Now, if we turn to page 360 as its marked
3 in IEU Exhibit 4, we have table 12-4, correct?
4 A. That's correct.
5 Q. And I would be correct, would I not, that
6 the generation under construction as reported in this
7 planning document, IEU Exhibit 4, is
8 18,947.7 megawatts, correct?
9 A. That's correct.
10 Q. Do you have any personal participation in
11 the planning process that PJM is going through to
12 address issues raised by the polar vortex?
13 A. No, I do not have any direct
14 participation.
15 Q. What about indirect participation?
16 A. I would say I have no participation in
17 that.
18 Q. I'm sorry. I missed that answer.
19 A. I said no.
20 Q. Are you familiar with the proceedings
21 used by PJM called reliability backstop?
22 A. No, I'm not.
23 Q. Are you familiar with any additional
24 auction processes the PJM might use to add resources
25 if insufficient resources clear in the market or

1 post-auction resources become deactivated?
2 A. No, I'm not.
3 Q. Are you aware of whether PJM can secure
4 additional generation resources up to 15 years?
5 A. No, I'm not.
6 Q. Now, with regard to the rider that you
7 are proposing, the stability rider, you are proposing
8 you maintain that rider as long as Duke maintains its
9 rights to energy and capacity for the Ohio Valley
10 Electric Corporation interest; is that correct?
11 A. Yes, as long as Duke Energy has
12 contractual entitlement to energy and capacity with
13 OVEC, we will continue to provide that, that's
14 correct.
15 Q. And that right to the capacity and energy
16 from the Ohio Valley Electric Corporation is governed
17 by an agreement between Duke Energy Ohio and the Ohio
18 Valley Electric Corporation, correct?
19 A. Yes.
20 Q. And you are aware -- well, let me ask it
21 this way. Are you aware that there are provisions of
22 that agreement by which Duke may transfer or assign
23 its rights to a third party?
24 A. I'm not aware of that provision.
25 MR. DARR: I have nothing further. Thank

you.

Thank you, Mr. Henning

THE WITNESS: Thank you.

EXAMINER PIRIK: Ms. Hussey?

MS. HUSSEY: Thank you.

- - -

CROSS-EXAMINATION

By Ms. Hussey:

Q. Mr. Henning, could you please refer to page 2, line 9, of your testimony.

A. Page 2, did you say?

Q. Yes, line 9. I believe you state you are responsible for ensuring Duke's customers have access to reasonably priced electric services, among other things, correct?

A. I'm sorry. You want me to -- you want me to just repeat that statement? I'm sorry.

Q. I just wanted to make sure that I had characterized that properly.

A. Ensuring customers have safe and reasonably priced natural gas service, that's correct, yes.

Q. And what would be your definition of reasonably priced electric service?

A. I would say reasonably priced as in

1 comparison to other utilities in the state could be a
2 definition.
3 Q. Okay. Would you please turn your focus
4 to page 4, lines 9 through 12. And I believe in that
5 portion of your testimony you discuss the expected
6 retirement of numerous generating units and capacity
7 in the PJM zone, correct?
8 A. I've referenced 24,932 megawatts planned
9 retirement in PJM zone between 2011 and 2019,
10 correct.
11 Q. Okay. And your testimony also states the
12 overwhelming majority of the retirements occurring by
13 June 15, 2015, would be coal plants; is that correct?
14 A. That's correct.
15 Q. Okay. Is it true that the OVEC
16 generating units at Kyger Creek and Clifty Creek are
17 coal units?
18 A. That's my understanding.
19 Q. Okay. And is it your position that
20 without the Commission's approval of the PSR, that
21 the Kyger Creek and Clifty Creek generating units
22 would be retired?
23 MS. SPILLER: Objection. Asked and
24 answered by Mr. Darr.
25 EXAMINER PIRIK: Overruled.

A. Can you repeat the question? I'm sorry.

MS. HUSSEY: Could you read it back, please.

(Record read.)

A. No.

Q. And I believe you previously discussed with Mr. Darr that Duke owns a 9 percent interest in the Kyger and Clifty Creek generating units, correct?

A. I believe I stated that Duke owns 9 percent interest in Ohio Valley Electric Corporation, that's correct.

Q. Okay. And do you know how much of Duke's load, overall load, this represents?

A. Not specifically, no.

Q. Okay. At page 10, lines 6 through 8, you state that the PSR --

A. Hold on a second.

Q. Okay.

A. Lines 6 through 8, you said?

Q. Sure.

A. Okay.

Q. Are you there?

A. Yes, I am.

Q. Okay. You state that the PSR as proposed "could be expanded to include similar financial

1 arrangements with other generators;" is that correct?
2 A. "To provide further protection for Ohio
3 customers," yes, that's correct.
4 Q. I'm sorry. Could you repeat that?
5 A. I'm sorry. I am just completing the
6 sentence you are referring to.
7 Q. Okay.
8 A. "To provide further protection for Ohio
9 customers," yes.
10 Q. To date, has Duke, either formally or
11 informally, proposed any such arrangements with other
12 generators?
13 A. No.
14 Q. Okay. Let's turn to page 11, lines 8
15 through 15. And as part of the testimony in those
16 lines, you discuss the approval of riders for a term
17 beyond the approved SSO period; is that correct?
18 A. Yes, specifically the alternative energy
19 resource rider, yes.
20 Q. Okay. And are you discussing the
21 alternative energy resource rider with reference to a
22 different rider that's been proposed in this ESP?
23 A. I believe the question was has the
24 Commission approved riders for a term extending
25 beyond the approved SSO, and I answered yes in the

1 affirmative, that yes, the Commission has approved
2 and authorized alternative energy resources.
3 Q. And it's on these grounds that you
4 testified that it would be appropriate for the
5 Commission to approve the PSR for a term beyond the
6 ESP period?
7 A. That's correct.
8 Q. Okay. And it appears this opinion is
9 based in part on customers benefiting from what you
10 believe to be the stability provided by the PSR; is
11 that correct?
12 A. I don't think I based it on that context.
13 I take that back. I did base it on that,
14 yes. There is a benefit for stability to customers,
15 yes. Sorry.
16 Q. Would you still believe that approval of
17 the PSR through 2040, which is my understanding of
18 when Duke is proposing it through, was appropriate if
19 the stability that's predicted from the PSR does not
20 come to fruition?
21 A. Can you repeat the question again? I'm
22 sorry.
23 Q. Sure. Would you still believe that
24 approval of the PSR through 2040 was appropriate if
25 the stability that is predicted was coming about from

1 the PSR does not come to fruition?
2 A. So I believe that the approval of the PSR
3 should be for a term longer than the ESP period and
4 as long as Duke continues to have contractual
5 entitlements to the energy and capacity through OVEC.
6 Q. What if the predicted stability is not
7 achieved by the end of the ESP term?
8 A. What if -- I don't understand.
9 Q. Would you still think the approval of the
10 PSR was appropriate at that time?
11 A. I think the PSR provides a hedge, an
12 insurance, for our customers, and I think that's a
13 value to customers for consideration for approval.
14 Q. And if the stability that has been
15 predicted does not occur by, say, 2020, would you
16 argue that it would still be appropriate to implement
17 the PSR?
18 A. I think that the proposed PSR will
19 provide stability for customers through a hedge.
20 It's an insurance policy. So the opportunity to
21 provide that benefit to customers should be afforded
22 and approved for a period longer than the ESP and as
23 long as Duke continues to have that contractual
24 entitlement.
25 Q. And I understand that, but that's not

1 exactly what I asked. I said if in a certain period
2 of time, which I believe I phrased as 2020, if the
3 stability that's been predicted has not been
4 demonstrated, would it still be appropriate to
5 continue?
6 MS. SPILLER: Your Honor, I am going to
7 object to the extent I believe this witness has
8 already answered the question describing the benefits
9 of the PSR.
10 EXAMINER PIRIK: Overruled.
11 A. I'm not sure I can answer a hypothetical
12 question and know what happens in the year 2020 the
13 way you are asking that question. That's what I'm
14 struggling with.
15 Q. Okay. It's my understanding that Duke
16 has proposed that the PSR be approved through 2040,
17 which also forces the rest of us to accept that the
18 stability will be inherent in that through 2040. So
19 I'm asking about specific points along the years
20 until 2040 and how that's appropriate, and would it
21 be appropriate if the stability was not demonstrated
22 by a certain period of time as a road mark?
23 A. Are you -- I still don't understand the
24 question. Are you asking me to project what happens
25 in 2020 on a look-back basis to determine -- I'm

1 struggling with the question.
2 Q. Basically I'm trying to divine whether
3 you believe it would be appropriate for the PSR to be
4 continued if in, say, a period of six years it still
5 had not been demonstrated to provide stability to
6 customers.
7 A. I believe the proposed PSR will provide
8 stability to customers, so I think that it should be
9 approved for a term longer than 30 years.
10 MS. HUSSEY: Okay. Thank you. No
11 further questions.
12 EXAMINER PIRIK: Ms. Bojko?
13 MS. BOJKO: Yes, your Honor. Thank you.
14 - - -
15 CROSS-EXAMINATION
16 By Ms. Bojko:
17 Q. Good afternoon, Mr. Henning. As you
18 know, my name is Kim Bojko, and I represent the Ohio
19 Manufacturers' Association.
20 A. Good afternoon.
21 Q. You are testifying today as an overall
22 policy witness, and you're supporting the general
23 components of the ESP that Duke has put before the
24 Commission; is that accurate?
25 A. I would say it's accurate, yes.

Q. And you're generally supporting the distribution capital investment rider in this case, the storm rider, and the price stability riders; is that correct?

A. I'm introducing those, yes, as components of our ESP, that's correct.

Q. And if you could turn to page 13 of your testimony, please, sir. You provided a table here. Do you see that?

A. Yes.

Q. Did you prepare this table?

A. It was prepared under my direction.

Q. And in this table, you refer to an AEP rider case. Do you see that? AEP meaning Columbus Southern and Ohio Power.

A. Are you referring to Case No. 14-83-EL-RDR?

Q. I am.

A. Yes, I see that.

Q. Do you not know that's a proceeding before the Commission regarding rider implementation?

A. I'm not familiar with all the details associated with that case, no.

Q. So the billing data that you referenced is what AEP proposed in their application on the date

1 listed here; is that accurate?
2 A. Once again, I'm -- this table was
3 prepared under my direction. Jim Ziolkowski had a
4 big part in preparing this table, so specifics in
5 regards to the rate components that went into
6 calculate that total bill might be better directed to
7 Mr. Ziolkowski.
8 Q. Okay. So is it fair to assume then you
9 do not know whether this rate has actually been
10 approved by the Commission through that application
11 that AEP filed?
12 A. I'm not familiar with that case in that
13 level of detail.
14 Q. Okay. What about the FirstEnergy case
15 that you have listed here, 13-2005-EL-RDR, do you
16 know what that case is about?
17 A. I do not have the specifics about that
18 case either.
19 Q. And so you wouldn't know whether that
20 billing information has been approved or not approved
21 by the Commission?
22 A. I haven't followed that case since the
23 time of this application, no.
24 Q. And, sir, would your answers be the same
25 regarding the Dayton Power & Light proceeding listed

on your table?

A. That's correct. I'm not familiar with the detail of that case as well.

Q. And so, sir, you wouldn't know that that case resulted in a stipulation either?

A. No. I'm not familiar with that detail.

Q. The last case listed in your chart is Duke Energy Ohio. Are you familiar with this information?

A. I'm sorry. What?

Q. Are you familiar with the Duke Energy Ohio information listed on the table?

A. I'm familiar with the Advantage Ohio, yes.

Q. Well, are you familiar where this bill impact information data came from?

A. Attachment JEZ-3 for Jim Ziolkowski.

Q. Do you know what this rate is in regards to?

A. My understanding is that it's a calculation of a total bill of delivery to residential customers in Ohio.

Q. And do you know whether -- I'm sorry.

A. I was going to say to Duke Energy Ohio's residential customers.

1 Q. And do you know whether it's a summer,
2 winter rate, or both?
3 A. I don't have that information readily
4 available, no, I do not.
5 Q. And you referenced Attachment JEZ.
6 That's an attachment for James Ziolkowski? Am I
7 pronouncing that correctly?
8 A. Right. Yes, that's correct.
9 Q. Okay. And so this rate is the current
10 billing rate. It doesn't include all of the
11 components proposed in the ESP by Duke; is that
12 correct?
13 MS. SPILLER: Your Honor, if I may
14 object. The witness has just said he doesn't have
15 the information readily available that's referenced
16 in Mr. Ziolkowski's attachment.
17 EXAMINER PIRIK: If he knows the answer,
18 I will allow the question.
19 MS. SPILLER: Thank you.
20 A. Subject to check Mr. Ziolkowski's
21 attachment, I would say that's correct.
22 Q. And so do you know whether it's an
23 average rate over the life of the ESP for residential
24 customers?
25 A. Over which ESP are you referring to? I'm

sorry. The current ESP?

Q. Well, it's your table, sir. That's what I am trying to ask. Is it the current ESP or the future ESP?

A. Once again, I don't have that information readily available, so I can't answer that.

Q. So you're not familiar with what that rate may or may not include?

A. I'm familiar that that total bill calculation is a compilation of what the total bill would be represented for Duke Energy Ohio residential customers, yes.

Q. Currently or in this ESP proceeding that you are proposing?

A. I believe it was at the time of preparation of this table.

Q. So that would mean current bill?

A. That's my understanding.

Q. And although you've highlighted or pulled out one rate for one consumption level of a residential customer, you believe that the full current bills, as well as the bill impacts of the ESP proposed by Duke today, would be in JEZ-3 attached to Mr. Ziolkowski's testimony?

A. Can you repeat that question, please?

Q. Ziolkowski; is that right?

(Record read.)

A. So I am aware that Mr. Ziolkowski has performed different rate analyses. I am not sure specifically if it's only limited to JEZ-3, but he would have performed rate impact and rate analysis, yes, as part of our application.

Q. Isn't it true that the MRO versus ESP evaluation performed by Duke in this case does not include the quantitative effect or costs of the PSR rider?

A. I think that question might be better directed to Don Wathen who speaks to the MRO test.

Q. And, sir, would your answer then be the same with regard to the quantitative effect of the costs of the DCI rider, distribution and capital investment rider?

A. In regard to the MRO test?

Q. Yes.

A. Yes, that would be better addressed with Witness Wathen.

Q. So let's go back to page 4 of your testimony that you discussed a little bit this morning. You discussed with Mr. Darr that on lines 9 and 11 on page 4, the 25,000 megawatts that you

1 reference there came from the PJM document; is that
2 correct?
3 A. That's correct.
4 Q. Okay. Sir, do you know if the OVEC units
5 are listed as plants expected to be retired between
6 now and 2019 on that document?
7 A. I do not know that.
8 Q. And given your response, is it fair to
9 say you don't know whether the OVEC units have been
10 retrofitted or upgraded with regard to environmental
11 compliance?
12 A. I'm not sure what environmental control
13 equipment has been installed on the OVEC units.
14 Q. And in drafting your testimony,
15 specifically that on page 4 through 6, I believe,
16 when you are talking about the PJM market, did you
17 consider the amount of capacity under construction in
18 PJM when drafting your comments for your testimony?
19 A. I did not reference anything in regards
20 to the amount of capacity being constructed, no.
21 Q. I know you didn't reference it, sir, but
22 did you take it into consideration when drafting your
23 testimony about the wholesale market?
24 A. Yes, I was generally aware there was
25 additional capacity constructed, yes.

Q. Isn't it true, sir, that Duke's ESP will not prevent generating units from retiring?

A. Can you repeat that question? I want to make sure I understand it.

(Record read.)

A. I believe that to be true, yes.

Q. And isn't it also true that Duke's proposed PSR rider will not prevent any of the expected megawatts listed in your testimony from being retired?

A. I can't speak to the intentions and the qualifications of whether those planned retirements will happen or not.

Q. Right. But the PSR rider will have no effect on whether those generating plants owned by other entities will or will not retire; is that correct?

A. That's correct.

Q. You also discuss resource diversity in this section. Do you see that, sir, on line 9?

A. Yes.

Q. And it appears from your statements in this section that Duke supports resource diversity; is that a fair statement?

A. I'm sorry. I don't believe Duke stated

"I support resource diversity." Can you be more specific where I said that?

Q. I am asking if that's a fair characterization. If you read from pages 4 to 6, you talk about resource diversity, and I am asking if Duke supports resource diversity.

A. I think the greater resource diversity there is the less volatility there is on their market price, yes.

Q. So as I read your testimony, you are encouraging PJM to place additional value on resource diversity; is that correct?

A. I'm not sure if I am encouraging PJM. I am just making an observation of the market.

Q. And does Duke's ESP in this proceeding propose any resource diversity?

A. No, I don't believe so.

Q. Let's turn to page 5 of your testimony, line 12. You talk in line 12 --

A. What page?

Q. I'm sorry. Page 5.

A. Page 5. Okay.

Q. You are talking about stability and predictability. In this section, are you referencing the hedge or the insurance premium proposed by Duke

1 through the PSR rider?
2 A. I think I'm referencing the entire ESP.
3 Q. And you've made statements here this
4 morning I think through your testimony that you
5 believe the insurance premium will bring stability to
6 customers' rates; is that accurate?
7 A. I believe that the insurance and hedge
8 will help reduce volatility on behalf of the
9 customers, that's correct.
10 Q. And that reduction of volatility or
11 stability, you are referencing that if prices go up
12 in the wholesale market and more revenue is obtained
13 from the sale of Duke's entitlement to OVEC, it would
14 be a net credit on the customer's bill, and that
15 would then offset the cost of the customers'
16 consumption, and that's where you are creating the
17 stability or reduction in volatility?
18 A. I would say that's a fair
19 characterization of the mechanics of the rider, and
20 the net impact to customers is a reduction in
21 volatility, that's correct.
22 Q. And that reduction only occurs if market
23 prices exceed the cost of operating the generating
24 units; is that correct?
25 A. I don't believe that to be correct.

1 Q. Well, the customers will only see a
2 credit on their bill if the revenue generated in the
3 market exceeds the costs of operating the generating
4 units; is that right?
5 A. That's correct.
6 Q. And you believe that this would be true
7 even if a customer is under a fixed price contract;
8 is that right?
9 A. I'm sorry. Can you repeat the question?
10 Q. Your stability theory is -- it's your
11 belief that that theory exists even if a customer is
12 under a fixed price contract?
13 A. I believe that customers, yes, will
14 reduce volatility by participating under the PSR,
15 that's correct.
16 Q. So if the OVEC costs exceed the revenue
17 and it is a net cost to customers, you believe that
18 that's stabilizing customers' rates?
19 A. I believe it's reducing volatility, yes.
20 Q. And if the customer is under a fixed
21 price contract, will they see an increase in their
22 rates if it is a net cost to customers?
23 A. I believe that to be true, yes.
24 Q. So a customer's rate could increase above
25 their fixed price contract under that scenario; is

1 that correct?
2 A. No, I don't think their rate would
3 change. I think their total charges may change.
4 Q. Excuse me. Thank you for the
5 clarification.
6 Their bill would increase above their
7 fixed price contract; is that accurate?
8 A. Their bill from -- their total bill would
9 otherwise increase absent any, you know, adjustments
10 for usage, that's correct.
11 Q. And on page 6 of your testimony, line 2,
12 here you reference Duke proposing some modifications
13 to rate design. What rate design modifications are
14 you referencing here?
15 A. So that's specifically rate designs
16 associated with Rider RE and Rider RC.
17 Q. And that is also discussed further in
18 Mr. Ziolkowski's testimony; is that right?
19 A. Mr. Ziolkowski's testimony, correct.
20 Q. On page 7, line 17, of your testimony,
21 you're discussing storm rider; is that accurate?
22 MS. SPILLER: Ms. Bojko, which line?
23 Page 7, line 7?
24 MS. BOJKO: 17.
25 MS. SPILLER: Oh, okay.

A. Starting on line 17, you have the question and response.

Q. Okay. I'm sorry.

A. Continuing on to line 5 on page 8, that's correct.

Q. On lines 20 and 22, you state that Duke's service territory has been affected by a hurricane, a tornado, a derecho or derecho, however you want to pronounce it, and a polar vortex; is that correct?

A. In the last six years, yes, that's correct.

Q. And when you reference the polar vortex, you're talking about the January, 2014, winter event?

A. That's correct, yes.

Q. Okay. What storm restoration efforts were needed during the polar vortex?

A. I don't remember the specifics of storm restorations during that event.

Q. Let's turn to page 8 of your testimony. Let's get back to the price stability rider.

A. What page? I'm sorry.

Q. Page 8 is where you start talking about the price stability rider.

A. Page 8.

Q. In response to other counsel this

1 morning, you stated that Duke is requesting to
2 include purchased power arrangements with other
3 generators, but my question to you, sir, is are you
4 actually asking the Commission to approve the
5 possibility of that?
6 A. I think we're asking the Commission to
7 approve the option to include other arrangements,
8 yes.
9 Q. So immediately you would like the net
10 costs or benefit of OVEC to be passed through the
11 price stability rider. You would also like the
12 Commission to leave open the opportunity to file
13 additional purchased power arrangements or other
14 options that you referenced this morning?
15 A. I think that's a fair characterization.
16 Q. And would it be in a subsequent filing an
17 option to add other purchased power arrangements?
18 A. I would assume that we would do it in a
19 subsequent filing.
20 Q. And, sir, are you familiar with the
21 recent AEP subsequent filing where they did just
22 that, they added purchased power arrangements to
23 their ESP request?
24 A. I'm generally aware of it, yes.
25 Q. And is that what you envision that Duke

1 would do in a subsequent filing?
2 A. I'm not sure exactly what the nature, but
3 something similar. We would come before the
4 Commission and ask for approval to expand the PSR.
5 Q. But at this time, sir, I think you've
6 stated you don't have any other particular purchased
7 power arrangements in mind or generating units in
8 mind that you would request such approval for?
9 MS. SPILLER: Objection. Asked and
10 answered.
11 EXAMINER PIRIK: Overruled.
12 A. That's correct. Currently Duke Energy
13 Ohio, we do not have any other arrangements
14 contemplated at this time.
15 Q. So in this proceeding, you're requesting
16 that customers pay for Duke's portion of OVEC's
17 generating units for the operation and maintenance
18 expense associated with those OVEC generating units;
19 is that right?
20 MS. SPILLER: I object to the extent that
21 misstates Mr. Henning's testimony.
22 EXAMINER PIRIK: Mr. Henning can answer
23 the question as clarification.
24 MS. SPILLER: Thank you.
25 A. I think that what we are proposing is

1 that customers will benefit and participate in a
2 mechanism that would either credit the dollars back
3 to the customer or charge customers for the net
4 benefit associated with our arrangement, contractual
5 arrangement, with OVEC.
6 Q. But at a minimum, customers would be
7 expected to pay the costs of operating the OVEC
8 units; is that accurate?
9 A. I'm not sure what the minimum amount
10 would otherwise be. I'm sorry.
11 Q. We start with the costs of the generating
12 units, and it's only if after those units are
13 actually sold into the market and if there happens to
14 be a net benefit, that that's shared with customers;
15 is that right?
16 A. So, yes, the delta between the revenue
17 and the cost set forth in the contractual entitlement
18 will either be charged or credited to the customers,
19 that's correct.
20 Q. But the customers will always be
21 responsible for paying the operation and maintenance
22 expense of OVEC.
23 A. Only when -- I guess the underlying root
24 of the equation or the calculation, yes, but that
25 will be offset by whatever revenue that's extracted

1 through the contractual entitlement of OVEC.
2 Q. Right. There is a guaranteed cost
3 recovery of the OVEC units; and if there happens to
4 be any revenue, that that revenue would then credit
5 back to customers?
6 A. I'm not sure I understand the phrase "the
7 guaranteed cost recovery."
8 Q. Well, Duke is guaranteed to get the cost
9 recovery from customers; is that right? The
10 customers will be required to pay for OVEC's
11 operating and maintenance expenses?
12 A. So the way the formula will work is that
13 whatever costs that are incurred as part of the
14 contractual arrangement, those costs will be offset
15 by the corresponding revenue which is extracted from
16 the capacity and revenue markets, and the delta
17 between those -- the cost and the revenue will be
18 passed along to customers, either in the form of a
19 credit or a charge.
20 Q. And if there isn't any revenue to offset,
21 the customer would just pay the charge, the full cost
22 of the --
23 A. Assuming there is no revenue, yes, that's
24 correct.
25 Q. And your application is proposing that

that rider PSR be nonbypassable so it's paid by shopping and nonshopping customers; is that correct?

A. It would be a nonbypassable rider; that's correct.

Q. And the rider is not tied to any physical generation, it's a financial transaction; is that accurate?

A. So it's a contractual entitlement with Ohio Valley Electric Corporation.

Q. But the customers will not receive any physical generation from the OVEC units; is that correct?

A. That's correct, a financial transaction.

Q. Do you know what the estimated costs per megawatt-hour for OVEC is?

A. I do not.

Q. Do you know whether it's a fixed cost?

A. I do not know what the cost structure is.

Q. Do you know whether the OVEC contract that Duke is responsible for includes escalation clauses?

A. I do not.

Q. So you don't know, sir, whether it includes escalation clauses for capital expenditures at the OVEC units or future environmental

1 regulations?
2 A. I do not.
3 Q. And that actual contract between OVEC and
4 Duke, it was not approved by the Commission; is that
5 accurate?
6 A. I'm not aware whether it was or was not.
7 Q. Does Duke control the operations of OVEC?
8 A. I'm not sure.
9 Q. So you wouldn't know who would control
10 the operations, the day-to-day operations?
11 A. I do not know, no.
12 Q. Do you know whether Duke has a seat at
13 the OVEC board?
14 A. I'm aware that Duke has a member on the
15 OVEC board, yes.
16 Q. Would you classify the PSR rider as a
17 distribution charge?
18 A. I'm not sure how I would classify it. I
19 know it's a rider proposed in our ESP case.
20 Q. Do you know, sir, whether retail
21 suppliers that operate in Ohio's market own or have
22 affiliates that own generation assets?
23 A. Can you repeat that question?
24 Q. I can rephrase. Do you know whether
25 there are retail marketers, CRES providers, in Ohio

1 that operate in the Ohio market, whether they own or
2 have affiliates that own generation assets?
3 A. Currently in Duke Energy Ohio territory,
4 there are 60 retail electric suppliers. I assume
5 that some of them have affiliates that own or operate
6 generation.
7 Q. Sir, is it your understanding that for
8 the first several years, the PSR rider is projected
9 to be a cost to customers because the costs of OVEC
10 are projected to outweigh the benefits that it might
11 receive?
12 MS. SPILLER: Objection, your Honor. I
13 think this is seeking to elicit information that the
14 company has requested confidential treatment of.
15 EXAMINER PIRIK: I would just caution the
16 witness not to say anything that would be
17 inappropriate, as well as in the questioning, but I
18 think we need to go as far as we can without
19 revealing alleged confidential information.
20 MS. SPILLER: Thank you, your Honor.
21 A. Can you repeat the question?
22 Q. Sure. Is it your understanding that for
23 the first several years, the PSR rider is projected
24 to be an actual charge of cost to customers because
25 the costs of OVEC are projected to outweigh the

1 benefits?
2 A. I'm familiar with the analysis that was
3 performed on behalf of the company, but I'm not
4 familiar with the specifics of the timeframe maybe
5 that you are referencing or even year-by-year impacts
6 to customers.
7 Q. Okay. Well, is it your understanding
8 that during the term of the proposed ESP that OVEC
9 will result in a net cost to customers?
10 A. So our proposed ESP includes a price
11 stability rider that would extend beyond the term of
12 the existing ESP. And over the life of the PSR, I
13 believe it would be a benefit to customers.
14 Q. Right. But during the first three years
15 of the ESP -- isn't your ESP a three-year term?
16 A. Our ESP we are proposing is a three-year
17 term for our ESP, that's correct.
18 Q. So during the first three years, so '15
19 to '18, is it proposed to be a net cost to customers,
20 the PSR rider?
21 A. I don't recall over that specific time
22 period because our PSR is proposed to go longer than
23 the term of the ESP.
24 Q. But Duke has made statements in its
25 application that it does suspect that it will be a

1 charge to customers in the first several years; isn't
2 that accurate?
3 A. I am not familiar with that specific
4 statement.
5 Q. So we discussed a little bit that if
6 customers are assessed a charge, it will have an
7 effect of increasing the customer's bills; is that
8 correct?
9 A. That's correct.
10 Q. And this would be true whether or not a
11 customer chose to shop; is that accurate?
12 A. That's correct. We are proposing the
13 rider PSR as a nonbypassable rider.
14 Q. How often, sir, will the PSR rider be
15 updated?
16 A. I think that question might be better
17 directed to either Don Wathen or Peggy Laub.
18 Q. Is it your understanding the rider will
19 have to be updated at some point?
20 A. Yes, I believe it will be updated. The
21 specifics of when and what we are proposing would be
22 better directed to those two witnesses.
23 Q. And if the PSR is updated, then the net
24 charge or net benefit would change to customers, and
25 it would, therefore, change their overall bill; is

1 that correct?
2 A. Assuming that there would be a change in
3 the credit or charge that would result in a
4 corresponding change to the customers as well.
5 Q. And that would be true even if a customer
6 entered into a long-term fixed contract with a
7 supplier; is that correct?
8 A. It would be subject to all customers
9 regardless of if they are an SSO customer purchasing
10 from a CRES provider.
11 Q. And under that scenario, the PSR rider
12 then could actually result in an increase to a
13 shopping customer's fixed price contract, the overall
14 amount that they pay; is that correct?
15 A. It would be either an increase or a
16 decrease, that's correct.
17 Q. And is it true, sir, that the competitive
18 bid auctions result in an averaged SSO price that is
19 a fixed price for generation for customers that take
20 service pursuant to the SSO?
21 A. Over time it is an average, that's
22 correct.
23 Q. And the PSR rider would be in addition to
24 that SSO rate established by the auctions; is that
25 correct?

1 A. The PSR rate would either be a credit or
2 a charge.
3 Q. So just as we talked about with regard to
4 shopping customers, the PSR could result in a net
5 cost to customers, which would have the effect of
6 increasing an SSO customer's bill; is that correct?
7 A. Our proposed PSR could have a -- it will
8 have a net impact on a customer's bill, and it would
9 either be a decrease or increase, that's correct.
10 Q. Going back to pages 8 and 9 of your
11 testimony where we discussed polar vortex, you state
12 that the colder weather resulted in higher than
13 normal generation outages; is that accurate?
14 A. What page 8 did you say?
15 Q. Pages 8 and 9 you talk about the polar
16 vortex.
17 A. So I'm on page 8. Yes.
18 Q. And you state that the colder weather
19 resulted in higher than normal generation outages; is
20 that accurate?
21 A. Can you point to that line item for me to
22 review? Thanks.
23 Q. It's on page 9, top of -- it's lines 1
24 and 2 and 3.
25 A. Yes, I referenced that PJM admitted this

1 winter's cold weather resulted in higher than normal
2 generation outages.
3 Q. Do you know which types of generation
4 experienced outages during the polar vortex?
5 A. I believe both coal and natural gas.
6 Q. Were the OVEC units running during the
7 polar vortex?
8 A. I do not know the answer to that.
9 Q. Do you believe that if Duke obtains the
10 PSR rider approval in this case, that OVEC will
11 somehow operate differently?
12 A. I do not know.
13 Q. Well, do you believe that the PSR rider
14 will somehow have an effect on the overall operation
15 of the OVEC units?
16 A. Same answer to the last question.
17 Q. Do you know who determines when and how
18 much the OVEC units actually operate or don't
19 operate?
20 A. I do not know.
21 Q. Does Duke currently bid in its
22 entitlement of OVEC into PJM?
23 A. I believe so, subject to check.
24 Q. And would you believe that that would be
25 the case whether or not the PSR rider is approved in

1 this case?
2 A. I believe that would be the case.
3 Q. If Duke had a PSR already in place, would
4 the PSR have somehow prevented the polar vortex from
5 occurring?
6 A. That's a hypothetical question, and I
7 can't answer. Sorry.
8 Q. Well, do you envision that the PSR rider
9 will somehow prevent a future polar vortex from
10 occurring?
11 MS. SPILLER: Objection, your Honor. I
12 think this completely misstates Mr. Henning's
13 testimony.
14 EXAMINER PIRIK: Overruled.
15 A. Can you repeat the question?
16 MS. BOJKO: Could you read it, please?
17 (Record read.)
18 A. No.
19 Q. Isn't it also true that whether or not
20 Duke receives a PSR in this case has nothing to do
21 with whether generators have outages?
22 A. Can you be more specific in regard to
23 your reference to generators?
24 Q. Sure. Would the PSR rider, financial
25 mechanism as you stated, the insurance policy, have

1 any effect on whether a generator may or may not be
2 operating at any given point in time?
3 A. I don't think there is any linkage.
4 Q. You stated earlier today that the PSR
5 continues beyond the ESP period, and I believe you
6 said it's for as long as Duke receives energy and
7 capacity from OVEC; is that correct?
8 A. I think that's a correct representation
9 of what I said.
10 Q. So if Duke sells or transfers its
11 entitlement to an affiliate or to a third party,
12 under your proposal, would the PSR rider terminate at
13 that time?
14 A. I believe if Duke Energy Ohio no longer
15 has contractual entitlement, we would no longer be
16 able to offer it as a hedge to customers, that's
17 correct.
18 Q. And so then the net cost or the net
19 benefit to customers would cease at that time as
20 well; is that correct?
21 A. Yes, the ability to hedge would no longer
22 be available to the company or to the customers.
23 Q. And there's no timing proposed or that
24 prohibits Duke from selling the OVEC units at any
25 time in its ESP, is there?

1 A. None that I'm aware of.
2 Q. So Duke could sell its OVEC assets in
3 2015 or 2025? We just don't know? There is no
4 prohibition against selling it at any particular
5 point in time?
6 A. I am not aware of any prohibitions.
7 Q. Under Duke's proposal, are customers
8 given a choice as to whether they want to receive the
9 hedge or insurance policy that this PSR offers them?
10 A. No. It would be a nonbypassable charge
11 or credit for all customers, that's correct.
12 Q. Through your testimony at a couple of
13 different pages, pages 11, 12, and 24, you talk about
14 energy efficiency. Does Duke's proposed ESP offer
15 new energy efficiency programs?
16 A. Can you specifically point where you are
17 referring to? I'm sorry.
18 Q. You do it in a couple of different
19 places. You speak generally on pages 11 and 12 when
20 you are talking about the state policy, and then you
21 talk about energy efficiency again on page 24.
22 A. No. Our RSP does not propose any
23 additions to our currently approved energy efficiency
24 program.
25 Q. So my question is the same, sir, for new

1 demand-side management programs. Are there any new
2 demand-side programs proposed in your ESP?
3 A. No, I don't believe so.
4 Q. Does Duke's proposed ESP offer renewable
5 energy as a resource to the standard service offer?
6 A. So we are proposing to continue the rider
7 as part of our ESP.
8 Q. But the rider just recovers the cost for
9 compliance with the RSP standards; is that right?
10 A. That's correct.
11 Q. So my question is actually about the
12 physical generation. Does Duke's ESP offer renewable
13 resources in the standard service offer that it
14 provides?
15 A. I don't believe we are including that or
16 considering that as part of our auction.
17 Q. And nowhere in Duke's proposed ESP does
18 it encourage somehow the use or added resource of
19 renewable energy; is that correct?
20 A. Can you repeat the question?
21 Q. Does Duke's ESP propose or encourage the
22 use of renewable energy as a resource?
23 A. By customers?
24 Q. I guess I'm looking for does Duke in any
25 way propose renewable energy in its ESP before the

1 Commission?
2 A. Through our interconnection agreements,
3 we have an opportunity for renewable energy to
4 connect for distributing generation for customers to
5 install their own renewable energy and connect
6 systems.
7 Q. But that's under a net metering
8 arrangement that Duke has no control of what
9 demand-side management or resource that the customer
10 may --
11 A. So we are not proposing Duke Energy Ohio
12 to invest in any renewable energy as part of it, but
13 we would continue to promote mechanisms for customers
14 to install and connect through net metering or
15 interconnection agreements.
16 Q. Has Duke Ohio had settlement discussions
17 with any parties in this proceeding?
18 A. No.
19 Q. Has any affiliate of Duke Ohio had
20 settlement discussions with any parties in this
21 proceeding?
22 A. None that I'm aware of.
23 Q. Has Duke Ohio entered in any agreements,
24 written or oral, in this proceeding with any parties?
25 MS. SPILLER: Your Honor, I am going to

1 object to the extent this is outside the scope of
2 Mr. Henning's testimony.
3 EXAMINER PIRIK: Overruled.
4 A. Can you repeat the question?
5 Q. Sure. Has Duke Ohio entered into any
6 agreements, written or oral, with any parties
7 regarding any subject matter in this proceeding?
8 A. That's a rather broad question. So I
9 can't answer as to whether we've entered into any
10 agreements with any parties sitting in this room.
11 Q. Has Duke Ohio entered into any agreements
12 with any parties in this proceeding that would result
13 in a party supporting or agreeing not to oppose the
14 company's proposed ESP?
15 A. Not that I'm aware.
16 Q. Has any affiliate of Duke Ohio entered
17 into agreements, written or oral, with any parties
18 that result in the parties supporting or agreeing not
19 to oppose the ESP in this proceeding?
20 A. Not that I am aware.
21 Q. Has Duke Ohio asked customers of Duke
22 Ohio to submit comments or letters in this docket
23 agreeing to support the ESP?
24 A. Not that I am aware of.
25 Q. Has any affiliate, to your knowledge,

done the same?

A. Not that I am aware of.

MS. BOJKO: That's all I have. Thank you so much, sir.

THE WITNESS: Thank you.

EXAMINER PIRIK: I think now would be a good time to take a lunch break. So OCC we'll reconvene at 1:45 for your questions.

(Thereupon, at 12:33 p.m., a lunch recess was taken.)

- - -

1 Wednesday Afternoon Session,
2 October 22, 2014.
3 - - -
4 EXAMINER PIRIK: We'll go back on the
5 record.
6 Mr. Serio.
7 MR. SERIO: Thank you, your Honor.
8 - - -
9 CROSS-EXAMINATION
10 By Mr. Serio:
11 Q. Good afternoon.
12 A. Good afternoon.
13 Q. If you could turn to page 4 of your
14 testimony, Mr. Henning, on line 3, you reference the
15 company's financial viability.
16 A. I'm sorry. I'm on page 4. What --
17 Q. Page 4, line 3.
18 A. Okay.
19 Q. Is Duke financially viable today?
20 A. Are you referring to Duke Energy Ohio?
21 Q. Yes.
22 A. I would say based on our last SEET filing
23 that we are underearning on our return on investment.
24 Q. But is Duke financially viable --
25 A. If I look --

Q. -- in your words?

A. As I look at it under that context, I would say that by the definition of underearning and underperforming on our return on investment, I would say that we're not.

Q. So your definition of financial viability means that if you're underearning, you're not financially viable as a company?

A. That's one way of interpreting it, yes.

Q. Now, you talk about customers continually having increased expectations regarding dependable service. Do you see that reference also on page 4?

A. What line, please?

Q. Line 4.

A. Yes, I see that.

Q. And that expectation, as you define it, has increased since Duke's last rate case a year and a half ago, correct?

A. I don't know if it's defined specifically to the last rate case.

Q. Well, then let me ask you. Duke's last rate case, both for gas and electric, occurred in the 12-85 and 12-82 cases, correct?

A. We filed an electric distribution case in 2012, that's correct.

Q. And there was --

EXAMINER PIRIK: Mr. Serio, I want to be sure the record reflects that it's case numbers 12-1685 --

MR. SERIO: Yes, 12-1685 and 12-1682.

Q. That would have been the gas and electric rate case that Duke filed, correct?

A. I'm familiar with the filing of those cases, that's correct.

Q. And have customers' expectations regarding service reliability changed or increased since that rate case?

A. I speak to customers almost on a daily basis, whether they are industrial, commercial, or residential customers. And on an ongoing basis, customers' expectations do increase, yes.

Q. Now, when you refer to customers' expectations increasing, do you put any kind of cost in with that? So when a customer says, "I want better service," is there ever any corresponding reference to what it would cost to get that greater service reliability?

A. Specifically in conversations I have with customers?

Q. Yes.

1 A. Sure. We talk about that there's
2 investment requirements in order to improve
3 reliability, and what we try to do is balance the
4 impact of those investments to continue to provide
5 affordable rates for our customers, but also to help
6 increase their reliability of service.
7 Q. So customers understand that increased
8 reliability comes with a cost, correct?
9 A. That's a pretty general statement, but,
10 you know, the ones I speak to understand that there
11 is a cost component associated with us providing
12 service.
13 Q. Now, on page 4 of your testimony, I think
14 it's around lines 17 through 19, you talked about the
15 volatility and uncertainty experienced with the polar
16 vortex, and then you reference that natural gas-fired
17 generators don't have firm transportation or backup
18 fuel to avoid circumstances experienced in January of
19 2014. Do you see that?
20 A. I see that section of the testimony.
21 Q. Now, have you done any analysis to
22 determine what type of capacity or what type of
23 backup fuel that natural gas-fired generation
24 facilities in the PJM service territory have?
25 A. Have I done any analysis? No, no

1 analysis.
2 Q. So you don't know, for example, if
3 natural gas-fired generators are served with firm
4 capacity versus interruptible capacity?
5 A. I do know that, but I've not performed
6 any analysis on that.
7 Q. So do you know if any natural gas-fired
8 generators rely on firm capacity in the PJM service
9 territory?
10 A. I know some rely on and some do not rely
11 on it.
12 Q. And have you done any kind of analysis to
13 determine what kind of a backup supply those natural
14 gas generators have?
15 A. I am aware some have backup, and I am
16 aware of some that do not.
17 Q. And you're familiar with the term "shale
18 gas" in Ohio; are you not?
19 A. I'm aware of the term "shale gas"
20 throughout the United States.
21 Q. Are you familiar with shale gas
22 development in Ohio?
23 A. Yes, both Marcellus shale and Utica
24 shale.
25 Q. And are you also familiar with the

1 significant construction of natural gas pipelines in
2 Ohio in order to bring a lot of that natural gas from
3 the shale in Ohio both into the Ohio market and into
4 the interstate market?
5 A. I'm not specifically aware of any certain
6 types of projects or pipeline.
7 Q. But you're aware that in general there
8 are projects in Ohio to interconnect that production
9 to the market, correct?
10 A. Not specifically aware, no.
11 Q. When Duke initiated the SmartGRID
12 program, were there quantifiable reliability
13 improvements with the SmartGRID?
14 A. Can you be more specific about the
15 SmartGRID program, what you are referring to?
16 Q. You reference Duke's grid modernization
17 program in your testimony.
18 A. Where at?
19 Q. I think on page 4. Let me find it. Hold
20 on a second here. Now, we were talking about
21 customer expectations regarding service reliability.
22 Has Duke done any research with customers to
23 determine what level of service reliability they
24 expect?
25 A. I know we service -- I'm sorry. I know

1 we survey our customers in regards to their
2 understanding or their expectations in regards to
3 service reliability.
4 Q. When you survey customers, do you just
5 ask if customers want improved service, or do you
6 give them any quantification; do you want service
7 improvement by X?
8 A. I am not completely aware of the details
9 associated with the questions we ask them.
10 Q. And when you do the surveys with
11 customers, do you indicate how much it would cost
12 specifically in order for customers to get improved
13 service reliability?
14 A. Once again, I'm not completely aware of
15 all the depths of the details of the questions that
16 are asked in those surveys.
17 Q. On page 6 of your testimony, line 18, you
18 talk about balancing the interest of customers in
19 Duke. Do you see that?
20 A. I see the sentence that starts on 18.
21 Q. Now, to the extent that customers are
22 satisfied with Duke's reliability today, how is the
23 DCI rider that you've proposed addressing customer
24 expectations?
25 A. So as I stated before, there's increasing

1 expectations on behalf of our customers to continue
2 to expect us to provide even more reliable delivery
3 service. So I believe that the DCI as proposed will
4 continue to improve the reliability delivery service
5 on behalf of our customers, and that's the balance.
6 Q. You state in your testimony that rider
7 DCI will enable proactive investment to maintain --
8 A. Where are you referring to? I'm sorry.
9 Q. Page 6 of your testimony.
10 A. What line?
11 Q. Lines 11 and 12.
12 A. Okay.
13 Q. You say that the DCI rider will enable
14 proactive investment to maintain and improve
15 reliability for customers. If the Commission does
16 not approve the rider DCI, would the company still
17 make investment to maintain and improve distribution
18 reliability?
19 A. We will continue to invest in our system,
20 that's correct.
21 Q. So investment in reliability is not
22 contingent on rider DCI, correct?
23 A. The magnitude of the investment and the
24 impact of reliability is dependent on DCI.
25 Q. So you're saying that if it required a

1 $100 million investment without the DCI in order to
2 maintain reliability, the company would not make that
3 $100 million investment?
4 A. No, I'm not saying that. I'm just saying
5 that if we had the DCI, that that would enable us to
6 make that balance the benefits associated with
7 reliability, service to customers, and the financial
8 integrity of the company.
9 Q. But the company will spend whatever
10 capital costs are necessary in order to maintain
11 service reliability regardless of whether the
12 Commission approves rider DCI or not, correct?
13 A. I think the company is committed to
14 providing reliable service to our customers,
15 affordable rates to our customers, and we will
16 continue to evaluate the plant; in order to do that
17 it's regardless of whether DCI is approved or not.
18 Q. On page 7 of your testimony, on lines 13
19 and 14, you reference "infrastructure additions
20 necessitated by customer demand, and by distribution
21 asset management programs." Do you see that?
22 A. I'm sorry. What line numbers would that
23 be again?
24 Q. Lines 13 and 14.
25 A. Lines 13 and 14. I'm there now.

Q. Now, one item is "customer demand." The other is "distribution asset management programs." Can you explain to me what "distribution asset management programs" are?

A. Actually, I think the details associated with that might be better directed to Company Witness Mark Arnold.

Q. Well, I'll talk to Mr. Arnold about the details. I'm just curious as to what it means.

A. That would probably be a better question for Witness Arnold.

Q. So you don't know what that means in your testimony?

A. It's the management of distribution assets that we have to operate and provide delivery to our customers. The specifics around the program would be better directed to Mark Arnold.

Q. On page 8 of your testimony, the bottom of the page, bottom paragraph.

A. I'm there.

Q. You talk about natural gas generators are constrained by availability of firm transportation and are subject to curtailment and pipeline operational flows.

A. That's correct.

1 Q. Does that refer to generators that have
2 firm capacity or interruptible capacity?
3 A. So there's a reference to firm
4 transportation capacity, so interstate pipelines have
5 an identified level of firm delivery capacity
6 available on the pipeline, so it's with reference to
7 firm transportation capacity that I am referring to.
8 Q. Is the firm transportation capacity that
9 you refer to here that generators have the same type
10 of firm transportation capacity that Duke Energy Ohio
11 has for its natural gas customers?
12 A. The definition of firm transportation
13 capacity in that statement is the same that Duke
14 Energy Ohio would have for its local distribution
15 company, that's correct.
16 Q. So the risk of curtailment and
17 operational flow order is the same for Duke's natural
18 gas customers as it is for those natural gas
19 generators that you refer to in your testimony,
20 correct?
21 A. I believe what I'm saying in my statement
22 here is that it's constrained by the availability --
23 natural gas generators are constrained by the
24 availability and, therefore, subject to curtailment
25 of pipeline orders.

Q. Right, but my question to you was, is the curtailment that those generators are subject to the same kind of curtailment that Duke's natural gas customers are subject to pursuant to the firm transportation that Duke Energy Ohio has for its gas customers?

A. Assuming that generators would have firm transportation, yes, it would be the same tariffs and operational flow order requirements.

Q. Do you know the last time Duke's natural gas customers experienced curtailment from an interstate pipeline?

A. I do not know.

Q. Do you know if there was any curtailment during the polar vortex?

A. Curtailment of firm transportation capacity?

Q. Yes.

A. I don't believe there was any curtailment. I believe there was operation flow orders.

Q. And those operation flow orders impacted Duke's natural gas operations, correct?

A. I don't know if they impacted. I'm not sure.

Q. They applied.

A. They applied, that's correct.

Q. On page 13 of your testimony, you have that chart. And I believe you had a question this morning that asked you what constituted reasonably priced service, and you indicated that one measure was comparing it to other Ohio utilities. Do you recall that?

A. That's correct, yes.

Q. So in your opinion, does the fact that on your chart Duke Energy is lower than the other EDUs in Ohio mean that Duke's rates are reasonable?

A. That's one measure of reasonableness. That's a subjective measure, but I think that would be one measure of reasonableness.

Q. And then would the flip be if the company has the highest rates on that chart, then their rates are unreasonable?

A. I don't believe that's up to me to determine. That's up to --

Q. Based on your subjective analysis, if Duke's are reasonable because they are the lowest, does that mean that Columbus Southern Power's rates are unreasonable because they are the highest?

A. I just would conclude that they are

1 higher. I wouldn't conclude that they are
2 unreasonable. And, once again, reasonableness is a
3 subjective measure, and all I am saying is that
4 that's one way to think about our rates being
5 reasonable.
6 Q. Would the number of disconnections that
7 occur for customers be another way to determine
8 whether rates are reasonable?
9 A. I don't think so, no.
10 Q. So if a lot of Duke customers get
11 disconnected for nonpayment, you don't think that's a
12 reflection of rates being too high?
13 A. There's numerous reasons why a customer
14 could be disconnected.
15 Q. The fact they can't afford to pay their
16 rates being one of them?
17 A. The fact that they do not pay their
18 utility bills is one reason why a customer could be
19 disconnected.
20 Q. On page 14 of your testimony, lines 20
21 and 21 --
22 A. Okay.
23 Q. -- you talked about maintaining the
24 purchase of receivables program. Do you see that?
25 A. Yes.

1 Q. And you indicate that that ensures there
2 will continue to be numerous and diverse suppliers
3 willing to make CRES offers, correct?
4 Has Duke done any studies or analysis to
5 determine the impact that the existence of the POR
6 has on the number of suppliers that offer services in
7 the Duke territory?
8 A. Not that I'm aware of.
9 Q. Do you know if Duke's done any analysis
10 or studies to determine what impact, if any, the
11 existence of the POR program has on the number of
12 different supplier options offered by CRES providers
13 in the Duke service territory?
14 A. I'm not aware of that.
15 Q. Are you aware of any CRES providers in
16 the Duke service territory that do not participate in
17 service territories of EDUs that don't have POR
18 programs that participate in the Duke territory just
19 because you have the POR?
20 A. Duke currently has 60 certified retail
21 electric suppliers participating in our program. I
22 do not know with any degree of certainty what each
23 and every one of those suppliers do participate in,
24 what programs, and why they would have to participate
25 or not participate.

1 Q. On page 23 of your testimony, you talk
2 about the state policy to protect at-risk
3 populations. What is your definition of the at-risk
4 population?
5 A. I think at-risk population is found in
6 the policies of the state of Ohio.
7 Q. So your definition of what you
8 considerate risk is what group of customers? Is
9 there an income level? Is there a group of
10 customers? Who are you referring to when you say
11 at-risk customers?
12 A. I would think it's as defined in the
13 statute as part of the policy statement in 4928.
14 Q. So you're familiar with the definition in
15 Revised Code Section 4928 for at-risk customers?
16 A. I'm aware of it. I'm familiar. I'm
17 aware of it.
18 Q. Now, on page 23 of your testimony, on
19 lines 8 through 20, you identified two things that
20 the company is doing to protect at-risk customers.
21 One is a level playing field for SSO suppliers and
22 CRES providers. Do you see that?
23 A. Yes, I see that statement.
24 Q. And then the other one is the stability
25 proposal, the PSR rider, correct?

A. Yes, a benefit for all customers, including at-risk customers, yes.

Q. Those are the only two things you identify --

MS. SPILLER: Objection.

Q. -- on that page where you are talking about the at-risk customers, correct?

MS. SPILLER: Objection. That misstates Mr. Henning's testimony.

EXAMINER PIRIK: Mr. Henning can clarify if he needs to.

MS. SPILLER: Thank you.

A. Those are just two of the at-risk customers. The company is doing other things as well.

Q. Well, can you show me in that paragraph between 13 and 19 where you say that you are doing other things as well other than those two?

A. I think I just shared with you that we are doing other things. You know, I didn't say it was written down in that statement.

Q. So you're adding that to your written testimony?

A. You just asked if those were the only two things we were doing, and I answered your question

1 and said, no, we are doing other things.
2 Q. The two items that you testified to in
3 your written testimony, those are being done equally
4 for at-risk customers, as well as for all customers
5 of the Duke system, correct?
6 A. That's correct.
7 Q. Now, you are generally familiar with the
8 process for approval of a standard service offer by
9 the PUCO, correct?
10 A. Yes.
11 Q. And you understand that Duke has the
12 option of filing for an ESP or a market rate offer,
13 correct?
14 A. That's correct.
15 Q. And in this case, Duke filed for an ESP;
16 is that correct?
17 A. That's correct.
18 Q. On page 6 of your testimony, lines 1
19 through 9, you indicate that the ESP proposes
20 modifications to rate design to better align rates
21 for SSO supply to CRES providers. Do you see that?
22 A. To better align our rates with those of
23 CRES providers, that's correct.
24 Q. Did Duke do any analysis to determine
25 what rate design would be under an MRO instead of an

ESP?

A. Ask that question again. I'm sorry.

Q. Did Duke do any studies or analysis to determine what the rate design would be under an MRO instead of an ESP?

A. Not that I'm aware of.

Q. Now, on page 7 of your testimony, you talk about the weather events, the bottom of the page. "A hurricane, a tornado, a derecho, and a polar vortex," correct?

A. I see that, yes.

Q. And is the hurricane that you're referring to Hurricane Ike that occurred in 2008?

A. That would be the hurricane, yes.

Q. And the tornado that you refer to, what year would that have occurred in?

A. I'm searching my memory. I don't know the exact year when the tornado occurred.

Q. How about the derecho?

A. I believe that was summer of 2012.

Q. And the polar vortex occurred in 2014?

A. January, 2014, that's correct.

MR. SERIO: May I approach, your Honor?

EXAMINER PIRIK: Yes.

MR. SERIO: I would like to mark for

1 purposes of identification OCC Exhibit 1.
2 EXAMINER PIRIK: The document is so
3 marked.
4 (EXHIBIT MARKED FOR IDENTIFICATION.)
5 Q. Do you have what's been marked as OCC
6 Exhibit 1, Mr. Henning?
7 A. Yes, I do.
8 Q. And that is a data request from OCC to
9 Duke Energy, correct?
10 A. I assume. It's the first time I have
11 seen it.
12 Q. It's marked as OCC Interrogatory 11-321,
13 correct?
14 A. That's correct.
15 Q. And bottom of page 2, it says the person
16 responsible is Beth Clippinger. Do you know who
17 Ms. Clippinger is?
18 A. I know she works for the company.
19 Q. So you have no reason to doubt the
20 accuracy of the information that Ms. Clippinger
21 provided to OCC in this document?
22 MS. SPILLER: I am going to object only
23 to the extent Mr. Henning has just indicated he has
24 just seen this document.
25 EXAMINER PIRIK: If Mr. Henning knows

what the information is -- I don't think we have got to those questions yet -- then we will see where this goes.

MS. SPILLER: Thank you, your Honor.

A. Subject to verification, I assume this was submitted on behalf of the company by Ms. Clippinger.

Q. And if you look at page 2 of OCC Exhibit 1, that indicates the dollar amounts that the company spent for actual major storm costs, correct?

A. I don't see any dollar signs on here. I just see some numbers, so I don't know. I, once again, just saw this document for the first time.

Q. You indicated that you recall that Hurricane Ike occurred in 2008. Let's go to 2014. The polar vortex occurred in 2014, correct?

A. Yes. Yes, earlier this year.

Q. And do you know what type of storm restoration costs that Duke incurred as a result of the polar vortex?

A. No, I do not.

Q. Do you know if Duke incurred any costs as a result of the polar vortex?

A. If we did, it was minimal.

Q. So if you look at the June year-to-date

1 2014 total of 297,793, would that be consistent with
2 what you consider minimal?
3 A. Well, you are referring to a six-month
4 period. And in this example versus your question
5 earlier about the minimal occurrence was for the
6 polar vortex only, which was the month of January, so
7 it's a one-month versus six-month comparison.
8 Q. So if the polar vortex occurred in
9 January of 2014, that would be included in the first
10 six months of June year-to-date 2014, correct?
11 A. That's correct.
12 Q. So any restoration costs that you
13 incurred as a result of the polar vortex would have
14 been part of that 297,793, correct?
15 A. That's correct.
16 Q. And you indicated the derecho occurred in
17 2012, correct?
18 A. Yes.
19 Q. Do you recall the magnitude of cost that
20 Duke incurred as a result of storm damage from the
21 derecho?
22 A. I do not.
23 Q. Do you recall the magnitude?
24 A. I do not recall.
25 Q. Now, on page 7 of your testimony you

1 indicate that major storms --
2 A. Hold on a second. Let me get there.
3 What line, please?
4 Q. Line 23.
5 A. Okay. Thank you.
6 Q. Major storms have proven to have a
7 debilitating effect on your system and customers?
8 A. That's correct.
9 Q. Did the polar vortex have a debilitating
10 effect on your system?
11 A. No.
12 Q. The DSR rider that the company has
13 proposed won't do anything to prevent storms from
14 occurring, correct?
15 A. What rider? I'm sorry.
16 Q. The DSR storm rider.
17 A. It will not do anything to protect
18 weather from occurring and the consequences
19 associated with weather causing damage to our system.
20 Q. And any efforts that the company
21 undertakes in order to repair damage from a storm is
22 going to occur whether the company has the rider or
23 whether the company has to recover those costs
24 through distribution base rates, correct?
25 A. That's correct. The benefit associated

with the rider is that it affords the opportunity when we do not incur major storm damage costs to be able to refund that. Customers are provided a mechanism to refund that money back to the customers, and that will reflect those storm costs that would otherwise be embedded in base rates.

Q. That's assuming in any year the storm damage costs are less than what's built into base rates, correct?

A. That's correct.

Q. So if base rates were set in a period where there were not a lot of major storms, you wouldn't necessarily have instances where this benefit could occur, correct?

A. No, I disagree.

Q. Isn't it true that the storm rider -- the major benefit is that it allows Duke to recover the costs associated with restoration on an expedited or accelerated basis?

A. No. I would say that it's an equal benefit to customers and the company to refund money and provide dollars back to the customers when we have periods where we do not have major storm damage.

Q. Could the company have proposed a storm rider if you were proposing an MRO instead of an ESP

in this proceeding?

A. I do not believe so.

Q. Could the company have proposed a rider DCI if it was proposing an MRO instead of an ESP?

A. I do not believe so.

Q. Now, you talked about Revised Code Section 4928 throughout your testimony, correct?

A. Yes. There's several references.

Q. And you are not an attorney, correct?

A. That's correct.

Q. So your understanding of 4928 is based on your working with it and on advice of counsel, correct?

A. That's correct.

Q. Now, do you understand that 4928.02 was enacted as part of a larger bill, Senate Bill 221?

A. I'm aware of Senate Bill 221, yes.

Q. And have you reviewed the various versions of Senate Bill 221 as it was being debated in the House and Senate?

A. Are you referring to drafts working?

Q. Yes, different drafts of the bill.

A. No, I haven't.

Q. Are you familiar with the former versions of the legislation that required compliance with 4928

as part of an ESP versus MRO test which was removed from the final version?

MS. SPILLER: Objection. The witness has just said he's not seen the prior versions that culminated in Senate Bill 221 as passed.

EXAMINER PIRIK: If he knows the answer, he can answer.

A. As I stated before, I've not seen or am familiar with previous versions of draft legislation that led up to the passage of Senate Bill 221.

Q. At the top of page 12, lines 2 to 4, you indicate on the advice of counsel that the policies in Revised Code Section 4928.02 are guidelines to weigh in an evaluation of an SSO application, correct?

A. That's correct.

Q. And those are policies of the state of Ohio regarding competitive electric retail service, correct?

A. I think they are policies that's contained within 4928.

Q. Do those policies apply whether the SSO is in the form of an ESP or MRO?

A. I am not sure. I think I'm testifying on behalf of the fact that our ESP is consistent with

1 those policies, so I'm not absolutely sure if it's
2 regardless of MRO or ESP.
3 MR. SERIO: I'm sorry. Could I get the
4 second half of that read back?
5 EXAMINER PIRIK: Mr. Henning, make sure
6 you are speaking into the microphone because
7 sometimes you drop off at the bottom of your
8 sentence.
9 (Record read.)
10 Q. Duke didn't perform any analysis to
11 determine how an SSO in the form of an MRO could
12 advance any of the state policies; is that correct?
13 A. Not that I'm aware of.
14 Q. There's nothing in your testimony or the
15 application or the testimony of any other Duke
16 witnesses that would have that type of analysis,
17 correct?
18 A. There could be, but not that I'm aware
19 of.
20 Q. Now, your testimony from page 11 to page
21 26, you go through the various policy sections of
22 4928.02, correct?
23 A. That's correct.
24 Q. And what you do there is you testify as
25 to how the proposed ESP satisfies each of the policy

1 statements in that particular section of the code,
2 correct?
3 A. Each of the policy statements that
4 support our SSO application, that's correct.
5 Q. Would each provision of the ESP that you
6 list in your answers on pages 11 through 26 regarding
7 statement policies also be available if the SSO were
8 offered in the form of an MRO?
9 A. I don't believe I did that analysis or
10 the company did that analysis to be able to answer
11 that question.
12 Q. Just before lunch, Ms. Bojko asked you a
13 few questions. I want to finish the loop on those.
14 Are you aware if Duke Ohio has any
15 agreements with any of the parties to this proceeding
16 where they would support or not oppose the PSR
17 proposal?
18 A. I'm not aware.
19 Q. Are you aware if any Duke affiliates have
20 any agreements with any of the parties in this
21 proceeding to support or not oppose the PSR?
22 A. I'm not aware.
23 Q. Now, this morning Mr. Darr asked you some
24 questions about evaluating -- I think it was
25 Mr. Darr -- about evaluating the PSR proposal that

1 the company has put forth with the OVEC facility.
2 How would you evaluate stability going
3 forward with respect to the PSR?
4 A. The PSR is going to produce either a
5 credit or a chargeback to the customers. The intent
6 of the PSR is to reduce volatility, so by nature of
7 the definition, the ability to reduce volatility with
8 a charge or credit to customers would produce a
9 successful outcome for the customers.
10 Q. How do you determine how much stability
11 is attributable to the PSR versus stability that just
12 occurs in the market at the time? How do you
13 separate the two?
14 A. I'm not sure I have an answer to that.
15 Q. So is it possible that any stability that
16 occurs if there is a PSR would have occurred
17 regardless depending on the market?
18 A. I guess that could be a form of
19 stability. I think that our proposal would add
20 additional stability in that case then to the overall
21 bills for customers.
22 Q. Does Duke have any plans to do any kind
23 of ongoing analysis to determine how successful the
24 PSR would be as far as contributing to stability of
25 rates?

A. Not that I'm aware of at this time, but it's something we would take into consideration.

MR. SERIO: Give me just a minute, your Honor. I think I'm done.

Q. Could you turn to page 16 in your testimony.

A. Page 16, did you say?

Q. Yes. On line 8, you reference SmartGRID. Do you see that?

A. That's correct, yes.

Q. As part of the SmartGRID approval, did the company agree to any type of measurable service reliability improvements?

A. Which approval are you referring to?

Q. When the Commission approved the SmartGRID as part of Duke's first ESP proceeding.

A. I don't recall at this time whether we did or didn't. I remember in the midterm review application, there was some discussions around certain reliability components. But regarding the first application, I'm not familiar with that.

Q. Do you know today if with the SmartGRID Duke has agreed that there would be specific service reliability improvements as a result of the SmartGRID deployment?

A. I'm aware of that, yes.

Q. Has Duke made any guarantees as far as service reliability improvement regarding rider DCI?

A. No, we did not commit to any type of guarantees as far as that proposal.

Q. So you testified that the company has proposed rider DCI because customers demand greater service reliability, yet the company has put forth no proposal to guarantee greater service reliability with rider DCI, correct?

A. That's correct.

MR. SERIO: That's all I have. Thank you.

EXAMINER PIRIK: Mr. Allwein.

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CROSS-EXAMINATION

By Mr. Allwein:

Q. Good afternoon, Mr. Henning; how are you?

A. Good afternoon.

Q. My name is Chris Allwein, and I am going to be asking questions on behalf of the Sierra Club this afternoon.

A. Okay.

Q. Several times you referenced information from PJM in your testimony; is that correct?

1 A. That's correct.
2 Q. And do you consider PJM to be a reliable
3 authority in the area of generation and resource
4 capacity?
5 A. Yes.
6 Q. And I want to turn to your testimony on
7 page 2. Are you there?
8 A. I am on page 2, yes.
9 Q. Beginning on line 11 on page 2, you state
10 in your testimony that you're involved in external
11 efforts relating to governmental and regulatory
12 affairs, interacting with state and community leaders
13 and regulators on matters relative to Duke Energy
14 Ohio's business and presence in Ohio. Is that --
15 A. I'm sorry. What line are you reading
16 from?
17 Q. Beginning on line 11.
18 A. Okay.
19 Q. And I went through the period on line 14.
20 A. Right. Okay.
21 Q. Okay. And my question is, how do you
22 normally fulfill these duties? How do you go about
23 these external efforts?
24 A. So I have individuals that work at Duke
25 Energy who would otherwise spend more of their

1 working days and times being active in these types of
2 initiatives, both internally and within the
3 community.
4 Q. Okay. And do you personally meet with
5 folks as well?
6 A. I do personally meet with a lot of people
7 within my job, not only within the community, but
8 within the regulatory bodies in the state of Ohio.
9 Q. Okay. And in terms of the state
10 regulatory bodies, who do you normally meet with, or
11 I should say, who do you or your representatives
12 normally meet with?
13 A. The representatives from the Public
14 Utilities Commission of Ohio, including staff, Ohio
15 EPA, Ohio Department of Transportation, are just a
16 couple of examples.
17 Q. Okay. Any others that you can think of?
18 A. Ohio Department of Taxation might be
19 another one.
20 Q. And who do you meet with in particular
21 from those agencies?
22 A. So, once again, the question to me was
23 asked who from my department or that work for me
24 would otherwise meet with them, so I would meet more
25 regularly with representatives of the Public

1 Utilities Commission of Ohio personally.
2 Q. Okay. Thank you.
3 And did you meet with folks from the
4 Public Utilities Commission of Ohio prior to the
5 filing of the application in this case?
6 A. I believe so, yes.
7 Q. And who did you meet with?
8 A. I believe that earlier this year, we
9 would have had a meeting with the various
10 Commissioners, including the Chairman of the
11 Commission.
12 Q. And your meetings with the Commissioners,
13 start there, what was the substance of your meeting
14 with those Commissioners?
15 A. I would say the substance was just to
16 derive a briefing on our planned filing that we would
17 otherwise make prior to June 1 of this year.
18 Q. Okay. And did you make any changes to
19 your plan based on feedback from the Commissioners?
20 A. I don't believe so.
21 Q. All right. And did you meet with folks
22 from the Ohio EPA?
23 A. I did not have any meetings with Ohio
24 EPA, no.
25 Q. Do you know if any Duke representative

had meetings with the Ohio EPA regarding this case?

A. I don't believe so.

Q. Did you or any representative from Duke meet with anyone from the Ohio Department of Natural Resources in connection with this case prior to filing?

A. Not that I'm aware of, no.

Q. Did you meet with all five Commissioners regarding this plan prior to its filing?

A. I believe we had separate meetings with each of the individual Commissioners. I believe -- subject to recollection, I believe we met with all five, but I can't say with certainty we did.

Q. And were all of those meetings this year?

A. It would have been earlier this year, yes, prior to the filing.

Q. Prior to June 1?

A. Yes.

Q. Okay. Have you met with anyone from the Public Utilities Commission since you filed the plan?

A. So I've had meetings with folks from the Public Utilities Commission, but not in conjunction with this plan. So I have met and had conversations with folks from the Public Utilities Commission, but, no, not in regards to the filing we have before them.

Q. Okay. Did you personally attend these meetings with the Commissioners prior to the filing?

A. Yes. I was present at those meetings.

Q. And who else was there from Duke?

A. I don't recall who else was there. I know other people from our company, but I don't recall the exact attendees that were in the meeting with me.

Q. Okay. And may I ask in addition to the Commissioners, did you meet with each Commissioner individually?

A. We had three separate meetings, if memory serves me correctly, to limit the number of Commissioners we were meeting with at any given time.

Q. Okay.

A. No more than two were present.

Q. Okay. And who else from the Commission was there in addition to the Commissioners? Do you know?

A. I believe Chief of Staff Katie Stenman was there as well. Besides that, I'm not sure. I don't recall.

Q. Okay. I would like to turn to page 4 of your testimony.

A. Okay.

Q. And I would like to look at lines 6 through 9, please.

A. All right. I'm there.

Q. Okay. And in the middle of that statement on lines 6 through 9, you mention that retail customers are significantly influenced by current wholesale market design fundamentals, and you say that these are creating a volatile and uncertain environment. Do you see that?

A. I see that.

Q. And then you go on to say that the PJM market design does not place any additional value on the market diversity. Do you see that?

A. Yes.

Q. And let me back up just a little bit. What do you mean by "significantly influenced"?

A. I mean that the cost that customers pay -- ultimately retail customers pay has a significant or a great movement in regards to energy and capacity prices.

Q. Okay. And I guess I'm wondering why you use the word "influenced."

A. Influenced, impacted.

Q. Okay. So I could substitute the word "impacted" for "influenced"?

A. I would stay with influenced. I am just trying to help clarify.

Q. Okay. All right. They are synonyms.

I want to go further down -- I'm sorry. I actually want to turn to page 6. On line 17, you refer to "further unpredictable market conditions." Do you see that?

A. Yes, I see that.

Q. And then just one more jump here. On page 8, line 9, you say, "There has been a fundamental shift in PJM's market structure." Do you see that?

A. I see that.

Q. And so based on those last two statements in your testimony, do you believe PJM's wholesale market design is fundamentally flawed?

A. I would not say it's fundamentally flawed. I would just say it's not perfect.

Q. Okay. And let me ask you, were you involved -- well, you stated you were mostly on the gas side of things up until 2010, is that correct, at the beginning of your testimony?

A. My past employment with Duke Energy, I spent the majority of my Duke Energy employment in our gas distribution business.

Q. Okay. So you weren't involved on the electric side of things until 2010?

A. That's correct.

Q. And in 2010, were you involved in the company's decision to move from MISO to PJM?

A. I was not involved in that decision.

Q. Okay. Can you briefly summarize why Duke Energy voluntarily moved from MISO to PJM?

MS. SPILLER: Objection, your Honor. This is outside the scope of Mr. Henning's testimony. This is an issue that's been litigated quite fully and robustly in our prior cases.

EXAMINER PIRIK: Mr. Allwein?

MR. ALLWEIN: Just a background question. Mr. Henning takes issue several times in his testimony with PJM. And since the company so recently moved from MISO to PJM, I was wondering if -- I think it's a good background question to the questions I'm going to ask regarding his statements that he makes here about PJM.

EXAMINER PIRIK: I'll overrule.

A. Can you repeat the question, please?

Q. Yes, sir. Can you summarize why Duke Energy moved from MISO to PJM?

A. I don't think -- you know, as I stated

1 before, I was not involved in that decision. So, no,
2 I wouldn't be able to summarize why we made that move
3 back in 2010.
4 Q. Okay. Well, based on the issues that you
5 presented in your testimony, do you think that Duke
6 Energy Ohio should have stayed with MISO?
7 A. As I said before, I'm not familiar with
8 the pros and cons of the decision, specifically
9 around the MISO market, so I would not be able to
10 opine on that.
11 Q. Okay. Has Duke Energy Ohio proposed
12 changes to the wholesale market design through the
13 PJM stakeholder process to address the volatility
14 that you refer to in your testimony?
15 A. I'm not involved with that, with those
16 ongoing discussions with PJM.
17 Q. Okay. Are you aware, has Duke Energy
18 Ohio filed any protests regarding PJM's market design
19 with FERC?
20 A. I'm not aware.
21 Q. And I just want to be clear in -- in the
22 industry jargon, Duke is a wires company, right?
23 Duke Energy Ohio is a wires company? A distribution
24 company?
25 A. Duke Energy Ohio provides distribution

1 and transmission services in addition to providing
2 SSO service to our customers.
3 Q. Okay. And so does Duke Energy Ohio
4 directly own any generation facilities?
5 A. At the conclusion of this year, Duke
6 Energy Ohio will no longer directly own any
7 generating assets in Ohio.
8 Q. So for your distribution and transmission
9 customers, is Duke responsible for generation?
10 A. Duke is responsible for providing a
11 standard service offer. Our proposal is in the form
12 of an electric security plan for our customers.
13 Q. Okay. And for those SSO customers, the
14 customers that don't shop, do you directly provide
15 generation for those customers from Duke's
16 facilities?
17 A. So Duke -- you are talking about Duke
18 Energy?
19 Q. Duke Energy Ohio.
20 A. At the end of this year, Duke Energy Ohio
21 will no longer have any generating assets. So at the
22 beginning of this term of this ESP, we will be
23 conducting wholesale auctions, and we will procure
24 supply for the wholesale auctions on behalf of our
25 customers from the wholesale suppliers.

Q. All right. Let's go to page 4 of your testimony, please.

A. I'm there.

Q. All right. Referring back again to lines 8 and 9, you state that the PJM market design does not place any additional value on resource diversity. Do you see that?

A. I do see that.

Q. And what does "resource diversity" mean?

A. In my mind, it's different types of generation and supply.

Q. Okay. And what does "additional value" mean?

A. Monetary compensation.

Q. So since you said that resource diversity means different kinds of generation resources, would you include wind generation in your definition of resource diversity?

A. I would include natural gas. I would include solar. I would include demand response. I would include coal.

Q. How about energy efficiency, would you include energy efficiency?

A. I would think of -- I think of energy efficiency as a supplement to it, but I'm not sure

1 that PJM does as well.
2 Q. Are you aware, are there currently more
3 types of these various resources we just talked about
4 contributing to PJM's capacity than there were in the
5 past?
6 A. I don't think I understand the question.
7 I'm sorry.
8 Q. Well, you've been talking -- you discuss
9 in your testimony resource diversity, and my question
10 to you is, do you think that PJM's resource mix -- do
11 you think it's more diverse or less diverse?
12 A. I would say it's changing, as I discussed
13 in my testimony, with the planned retirement of
14 25,000 megawatts of coal, that it is changing. So I
15 would say in that context it's less diverse because
16 PJM would be losing a significant amount of coal
17 generation assets.
18 I'm also aware of the fact that
19 additional natural gas generation has either been
20 constructed or plans to be constructed, which would
21 then reduce the diversity in the PJM market.
22 MR. ALLWEIN: Your Honor, may I approach?
23 EXAMINER PIRIK: Yes.
24 MR. ALLWEIN: May I have this marked as
25 Sierra Club Exhibit 1?

EXAMINER PIRIK: Yes. It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER PIRIK: While we are doing this, could someone prop the door open? Now that the meeting is over, it may not be so loud.

Q. (By Mr. Allwein) Mr. Henning, I have handed you what has been marked as Sierra Club Exhibit 1. And this is an update to the Federal Energy Regulatory Commission from Gary Helm of PJM. Do you see that on the front page?

A. I do see that.

Q. And basically we were talking about resource diversity. I wanted to turn your attention to page 4.

A. I see that chart on page 4.

Q. Okay. Great. And I apologize to everyone who has a black and white copy. So, Mr. Henning, do you see the blue line is coal and the red line is gas?

A. I do see the top two lines, coal and gas, the second from the top.

Q. Okay. And also listed here are nuclear, renewables, and demand response. Do you see that?

A. I do see those.

1 Q. And if you compare the 2013-2014 delivery
2 year, which has kind of an oblong -- I don't know.
3 We will call it a circle, I guess, shown there. If
4 you compare that to the 2010-2011 delivery year there
5 at the bottom, do you see that coal has decreased
6 slightly? Would you agree with me that coal has
7 decreased slightly?
8 MS. SPILLER: Objection, your Honor.
9 There has been no foundation laid with this exhibit
10 with respect to this witness.
11 EXAMINER PIRIK: I am going to wait and
12 see where the questions go before I make a
13 determination.
14 A. I would say that since 2007-2008, it has
15 remained relatively flat up to the 2013-'14 delivery
16 for coal.
17 Q. Okay. And if you look down at the bottom
18 two lines, "Demand Response" and "Renewables," would
19 you agree with me those two lines have increased?
20 A. I would say that demand response we've
21 seen a significant increase from 2011 through 2012
22 through the 2013 through 2014 period, and renewables
23 have had an increase as well.
24 Q. So based on this chart which was produced
25 by someone at PJM, would you agree with me that it

appears that the generation mix in PJM is currently more diverse than it has been over the past decade?

MS. SPILLER: Your Honor, I would again renew my objection.

EXAMINER PIRIK: Mr. Allwein?

MR. ALLWEIN: Well, your Honor, Mr. Henning makes several statements about the generation diversity or lack thereof in his testimony. He told us right at the beginning of my cross that he considers PJM to be a reliable authority. He refers himself to various information that he's gotten from PJM.

This was taken right off the PJM website, and I'm only using the chart on page 4 to illustrate that PJM, I think, disagrees with Mr. Henning that generation is becoming less diverse with the loss of coal.

EXAMINER PIRIK: Again, we are in a situation where I know you say this comes from the website. I have no reason to doubt that this is where it comes from, but there's no website site on the document, or there's nothing that shows that it came off a website. As far as I know, this is the first time Mr. Henning has ever seen this document.

So I don't know that it can necessarily

be taken for the truth of what's in the document. I mean, he can look at the chart, but I just don't -- I don't know where we are going with that.

MR. ALLWEIN: Okay. It was simply -- Mr. Henning appears in his testimony to make certain statements based on PJM information. And to his credit, he has provided a citation. I realize there is not a website address on this document. I mean, I could provide one later if that would make the Bench more comfortable with the discussion of this.

EXAMINER PIRIK: I think it would at least provide the parties an opportunity to look for the document and see where exactly it came from. I mean, I believe that's where you got it off of, but I still think we need to have more solid references so that we can actually look at it, especially if the witness has never seen it before. He can only speak to what he actually knows, whether it's in the document or not.

MR. ALLWEIN: That's true. But I was, I guess, relying on his statement that he considers PJM to be a reliable authority. And if I can show that this material comes from PJM, I think that's a sufficient foundation based on the commentary that he is making in his testimony regarding PJM and

generation resources.

EXAMINER PIRIK: I'll let you ask some more questions, but I still am concerned.

MR. ALLWEIN: Actually, I have the website address now if you would like it. Would you rather me send it around?

EXAMINER PIRIK: Well, in order to get it on the record, you would need to state it on the record.

MR. ALLWEIN: Okay. Well, I'll just ask the question.

EXAMINER PIRIK: Yes.

MR. ALLWEIN: Okay.

Q. (By Mr. Allwein) So would you agree with me, Mr. Henning -- well, can we have the last question read back?

(Record read.)

MR. ALLWEIN: Thank you.

A. So I would say based on this chart -- once again, this is the first time I have looked at this chart -- that there has been changes in regard to the generation mix of PJM capacity. As I look at this and specifically around the ring of the oblong shape, as you referred to it, 2013-'14, I would say that there is a definite change in the diversity of

1 base load generation, and, you know, the mix of base
2 load generation is declining out into the year
3 2015-2016.
4 Q. Okay. And when you say it's declining,
5 are you referring specifically to coal generation
6 declining?
7 A. Specifically the downward trend of coal
8 generation, yes. As I mentioned before in my
9 testimony, with the planned retirements near 25,000
10 megawatts of generation, that's not a surprising
11 trend for me.
12 Q. Okay. And would you agree with me that
13 with an increase in renewables into the PJM
14 generation mix, and renewables include solar and wind
15 generation, among others, that that would add to the
16 diversity of generation that is offered by PJM or, I
17 should say, procured by PJM?
18 A. I would say it would add to the
19 intermittency or intermittent resource availability,
20 but it would not contribute to the base load
21 generation capacity diversity.
22 Q. Okay. All right. Thank you.
23 So I think this has been established on
24 the record independent of the chart, but while coal
25 seems to be declining and natural gas resources are

1 increasing or under construction, as you stated
2 earlier, do you think that the generation is more
3 diverse because other resource types have grown in
4 terms of procurement by PJM?
5 A. I would say that as we see the upward
6 trend in gas generation, that the generation actually
7 becomes more volatile in the price afforded to the
8 customers.
9 Q. All right. Are you familiar with how the
10 PJM energy and capacity markets work?
11 A. Fairly familiar.
12 Q. Okay. Did you say fairly or barely?
13 A. Fairly, fairly. Sorry.
14 Q. Sorry. I just couldn't hear you.
15 A. Okay.
16 Q. Are you aware, for example, that PJM
17 establishes capacity values for different resource
18 types to reflect the amount of reliability capacity
19 that a particular resource can offer into the market?
20 A. I'm not familiar with that component, no.
21 Q. Okay. Are you familiar with the fact
22 that PJM determines minimum offer prices for new
23 resources based on their relative costs in order to
24 maintain the competitiveness of the market?
25 A. No, I am not familiar with that detail.

1 Q. Okay. Let me ask you a question. How
2 would you recommend that PJM place additional value
3 on resource diversity?
4 A. I don't know if I would personally have a
5 recommendation to offer at this time. I am not
6 involved in that process, that working group with
7 PJM.
8 Q. Okay. I want to ask you about a
9 statement on page 4, lines 12 and 13.
10 A. Okay.
11 Q. You state that "It is worth noting that
12 it was these coal plants that operated reliably
13 during the recent polar vortex." Do you see that?
14 A. That's correct.
15 Q. And I was wondering what plants are you
16 referring to when you say "these coal plants"?
17 A. One in particular that I'm aware of is
18 Beckjord generating station.
19 Q. So when you say these "coal plants,"
20 you're only referring to Beckjord?
21 A. That's one that comes to mind, yes.
22 Q. And I think we established earlier on the
23 record that Beckjord is retiring; is that correct?
24 A. Yes. As I referenced in the statement
25 before, that 25,000 megawatts is planning to be

retired between '11 and '19, that Beckjord is to be embedded in that 25,000 planned retirement.

Q. Okay. So of the 24,932 megawatts that you reference, you note that Beckjord operated reliably during the recent polar vortex. What other coal plants that are retiring that you're familiar with operated reliably during the recent polar vortex?

A. Unfortunately, I don't have a list of those committed to memory at this point in time. Sorry.

Q. Okay. Do you know if Kyger Creek operated reliably during the recent polar vortex?

A. I believe that -- I believe it was operating during the polar vortex, but that would have to be subject to check and verification.

Q. Okay. But just to use the language from your statement, do you know if it operated reliably during the polar vortex?

A. I believe it operated during the polar vortex. I'm not sure if it operated reliably or not, but I do believe it operated during the polar vortex.

Q. And did I ask you about Kyger Creek or Clifty Creek?

A. I believe you asked me about Kyger Creek.

1 Q. All right. So let me ask you about
2 Clifty Creek then. Did Clifty Creek operate reliably
3 during the polar vortex?
4 A. I believe, as well, that it operated. I
5 believe that the entitlements that we have to the
6 OVEC assets operated reliably during the polar
7 vortex. Specifically and whether that was Kyger
8 Creek or Clifty Creek, I would have to -- subject to
9 verification on that point.
10 Q. Okay. And let me ask you if you look
11 still on page 4, on lines 13 and 14, do you see where
12 you say -- after you talk about the coal plants that
13 operated reliably during the recent polar vortex, you
14 say, "thereby enabling Ohio's economy to continue to
15 function." Do you see that?
16 A. I do see that.
17 Q. When these coal plants retire, are you
18 stating that Ohio's economy will not continue to
19 function?
20 A. I don't believe I said that in that
21 statement, no.
22 Q. Well, let me ask you. Without these
23 units, if the retirements proceed as planned, will
24 Ohio's economy cease to function?
25 A. I hope it continues to function, but it's

1 a hypothetical question, so I wouldn't be able to
2 answer a definite answer on that.
3 Q. All right. Let's turn to page 9 of your
4 testimony.
5 A. What page? I'm sorry.
6 Q. 9, please.
7 A. Okay.
8 Q. And on page 9, you are citing to a
9 Michael J. Kormos. Do you see that?
10 A. Do you have a specific reference? I'm
11 sorry.
12 Q. Well, it looks like starting at the top
13 of the page, reference 5, 6, and 7, you're saying
14 that "higher than normal generation outages that
15 increased dependency on natural gas for electric
16 generation and complicated PJM's system operations
17 and resulted in significantly higher wholesale
18 electricity prices." Do you see that?
19 A. I do see that statement.
20 Q. All right. And that is the statement of
21 Michael J. Kormos; is that correct?
22 A. That's correct.
23 MR. ALLWEIN: Your Honor, may I approach?
24 EXAMINER PIRIK: Yes.
25 MR. ALLWEIN: Your Honor, may I have this

1 exhibit marked as Sierra Club Exhibit 2?
2 EXAMINER PIRIK: The document is so
3 marked.
4 (EXHIBIT MARKED FOR IDENTIFICATION.)
5 Q. Mr. Henning, I've handed you what's
6 marked as Sierra Club Exhibit 2. Can you tell me
7 what that is?
8 A. It's a statement of Michael J. Kormos,
9 Executive Vice President-Operations, PJM
10 Interconnection, LLC, offered on April 1, 2014.
11 Q. And have you seen this document before?
12 A. Yes.
13 Q. Earlier today someone asked you a
14 question about what kind of generation resources
15 experienced forced outages, and I believe you said it
16 was both gas and coal; is that correct?
17 A. I don't recall.
18 Q. Okay. If you look on the bottom of page
19 3 of this exhibit, do you see that it says, "At the
20 time of the peak demand hour on January 7,
21 approximately 22 percent of total installed
22 generation capacity in PJM (of all fuel types) was
23 unavailable because of forced outages associated with
24 routine equipment breakdowns?"
25 A. It goes on to say, "problems related to

1 operating in extreme cold temperatures and
2 fuel-supply issues." I do see that statement.
3 Q. Okay. And do you see it continues that
4 "Although there has been much focus on gas issues
5 associated with interruptible transportation, overall
6 the gas interruptions were not the major driver of
7 the high forced outage rates experienced in the PJM
8 region." Do you see that?
9 A. I do see that.
10 Q. And I believe you have the luxury of a
11 color copy.
12 A. I do have a color copy.
13 Q. All right. And I forgot to save one.
14 All right. Can you tell me what the red portion of
15 that circle that's illustrating total forced outages
16 represents?
17 A. To be quite honest, I am not sure. I see
18 a lot of red variations of colors on this colored
19 chart, so I hate to assume.
20 Q. Mine are all gray.
21 A. What's that?
22 Q. Mine are all gray.
23 A. Okay.
24 Q. Well, I'm referring to the --
25 A. Are you talking about the bottom left,

1 bottom right?
2 Q. The bottom left.
3 A. The bottom left. The bottom left portion
4 of the circle pie chart is coal, 13,700 megawatts.
5 Q. All right. And would you agree with me,
6 subject to check, that that's about 8 percent of
7 total PJM capacity?
8 A. Yes, subject to check of the math on
9 that.
10 Q. So would you agree with me coal plants
11 played a significant role in complicating PJM's
12 system operations and resulting in significantly
13 higher wholesale electricity prices during the polar
14 vortex?
15 A. I would say the outages of coal, natural
16 gas both played a significant contributing factor to
17 the higher prices that we experienced this January,
18 2014.
19 Q. And do you know, were any of the units
20 that represent that 13,700 megawatts of coal on
21 forced outage, were any of those units part of the
22 13,000 -- I'm sorry. Strike that.
23 Were any of the OVEC units part of the
24 13,700 megawatts of coal on forced outage during peak
25 demand times?

A. Can you repeat that question?

Q. Were any of the OVEC units part of the 13,700 megawatts of coal represented by that lower left portion of the graph on forced outage during peak demand times?

A. I do not believe so.

Q. Okay. And I want to ask you, do you know how each of the OVEC units, Clifty Creek Units 1 through 6 and Kyger Creek Units 1 through 5, performed on these key dates?

A. Not specifically, I do not.

Q. By key dates, I'm referring to page 10 of Sierra Club Exhibit 2. If you turn to that page, there is a chart that shows you the basically peak emergency days in January of the polar vortex.

A. I see it. January 6, 7, 8, January 22, 23, 24, 27, 28, 29, and 30?

Q. Right.

A. I see it.

Q. And would you be surprised to learn that Clifty Unit 3 was offline for 6 of the 12 days identified by Mr. Kormos?

A. Like I said, I didn't have any insight into what number of days and how it performed in those key days.

1 Q. All right. And would you be surprised to
2 know that Clifty Unit 6 was offline for one day and
3 operated less than 80 percent -- at 80 percent of its
4 full output for six of those identified days?
5 A. Same answer to the previous question.
6 Q. Okay. Do you know that Kyger Unit 1 was
7 offline for two of the identified days?
8 A. I do not.
9 Q. Did you know that Clifty Unit 1 and Kyger
10 Unit 2 were both offline at least one of those
11 identified days?
12 A. I do not.
13 Q. So my question to you is, does the fact
14 that some of the Clifty and Kyger Creek units
15 contributed to the forced outage issue -- does that
16 suggest that these units contributed to the operating
17 challenges faced by PJM during the polar vortex?
18 MS. SPILLER: Objection. Lack of
19 foundation.
20 EXAMINER PIRIK: Mr. Allwein?
21 MR. ALLWEIN: I'm not sure I understand
22 the objection.
23 MS. SPILLER: Well, you attempted to lay
24 the foundation with Mr. Henning asking if he knew
25 whether units were operating on any given points in

1 time, and he said he didn't know. You then asked a
2 question assuming that those facts had, in fact, been
3 established when they were not.
4 MR. ALLWEIN: Okay.
5 Q. (By Mr. Allwein) If, in fact, those
6 statements are true, Mr. Henning, would that suggest
7 to you that these units also contributed to the
8 operating challenges faced by PJM during the polar
9 vortex?
10 MS. SPILLER: Objection. Assumes facts
11 not in evidence.
12 EXAMINER PIRIK: I'll allow the question
13 if he knows the answer.
14 A. So since I don't know the specifics of
15 each of those individual units on each of those
16 specific days you referenced, I can't opine as to
17 whether that contributed to the challenges PJM faced
18 during the polar vortex dates.
19 Q. All right. Are you aware of other
20 generation resource types that reliably provided
21 energy during the polar vortex?
22 A. I know that PJM was able to meet its
23 delivery obligations during the polar vortex so there
24 were, in fact. Do I know personally each individual
25 unit? No, I do not.

1 Q. No, I wasn't asking about each individual
2 unit, just about generation types.
3 A. Oh, generation types. I know coal was
4 available. I know natural gas was available.
5 Renewables were available as well.
6 Q. Okay. So going back to your statement on
7 page 4 about the coal plants that operated reliably
8 during the recent polar vortex, there were actually
9 several different kinds of generation that operated
10 reliably during the polar vortex; isn't that true?
11 A. Consistent with PJM's analysis, there
12 were different types of generation that operated
13 reliably and some that did not operate reliably,
14 that's correct.
15 Q. Okay. And among those that did not
16 operate reliably, some coal plants did not operate
17 reliably, is that correct, according to the chart by
18 Mr. Kormos?
19 A. That's correct.
20 Q. I would like to turn your attention to
21 page 10.
22 MS. SPILLER: Mr. Allwein, is that
23 Mr. Henning's testimony or your Exhibit 2?
24 MR. ALLWEIN: I'm sorry. My apologies.
25 Q. Let's turn to your testimony, page 10.

1 A. Thank you.
2 MS. SPILLER: Thank you.
3 Q. And on lines 15 to 21, you discuss the
4 potential benefit customers would receive under the
5 PSR, and you state, "In a rising price environment,
6 the Company's margins from its contractual
7 entitlement will be positive." Do you see that?
8 A. I see that.
9 Q. And can you think of any scenario in
10 which rising price would not lead to a net benefit to
11 customers?
12 A. So as I prepared this testimony, I was
13 thinking about a situation where rising prices
14 resulting in margins that were positive and that
15 would otherwise forward a net credit back to
16 customers.
17 Q. Okay.
18 A. So under that set of scenarios, I'm not
19 sure I would see a situation that would not be
20 positive to customers.
21 Q. Okay. Well, for instance, I was thinking
22 if costs would continue to outstrip revenues in a
23 rising price situation, there would be no customer
24 benefit; isn't that correct?
25 A. No.

1 Q. No customer financial benefit?
2 A. Financial benefit?
3 Q. Yes.
4 A. I would say the benefit to the customers
5 would be continued downward -- continued impact on
6 price volatility, which in that case if the costs
7 exceeded the revenues, there would be a charge. So
8 under your definition of financial benefit, they
9 would pay more, but they would still receive the
10 benefit of releasing volatility even if the
11 declining -- or increasing price environment where
12 revenue did not exceed costs.
13 Q. So you're saying that the benefit is
14 despite the fact that in that scenario they'll pay
15 more for electricity, there's somehow a hedge against
16 volatility?
17 A. As far as how volatile their prices would
18 be, there would be a -- I guess in the context of a
19 rising price environment limited to one particular
20 occurrence, we're talking about an adjustment to the
21 PSR over a longer period of time.
22 So my point would be that over that
23 period of time, the additional costs that a customer
24 would pay, yes, it would increase their costs. But
25 over the long term, the benefit to the customer is

1 less volatile rates.
2 Q. Okay. By long term, you mean sometime
3 between now and 2040; is that correct?
4 A. A longer period of time is longer than
5 just the polar vortex situation that we were talking
6 about before.
7 Q. Okay. And are you aware of any analysis
8 performed by the company of the potential costs or
9 benefits that will accrue to Duke customers as a
10 result of the PSR over the course of the proposed ESP
11 2015 through 2018?
12 A. I know there's been some analysis done by
13 the company of the impacts of the PSR, yes.
14 Q. And what do those analyses show in terms
15 of costs or financial benefit to customers?
16 MS. SPILLER: Your Honor, I would again
17 renew my comments about the claimed confidential
18 nature of that information.
19 EXAMINER PIRIK: Just put everyone on
20 notice to be careful about the line of questioning
21 and where you go with it.
22 A. So can you repeat the question?
23 Q. Well, you stated that you were aware of
24 an analysis that was performed, and I guess I was
25 asking you, was the result of that analysis for the

1 period of the ESP, did it show that customers would
2 accrue a cost or a financial benefit?
3 A. So as our proposal lays out a term longer
4 than the three-year ESP term for our PSR, the longer
5 the term of the PSR, the greater the benefit is for
6 the customers.
7 Q. Okay. But through 2018, do Duke
8 customers see any financial benefit from this PSR
9 rider?
10 A. I think they see a benefit associated
11 with reduction in volatility. Specifically what the
12 dollar impact is I have not committed to memory.
13 Q. Okay. So are you just not aware of the
14 analysis?
15 A. I am just not aware of the details
16 associated with that time period that you referenced.
17 Q. And can you point to any specific
18 evidence that will suggest that customers will see a
19 net financial benefit from the proposed PSR rider?
20 A. I cannot point to anything in particular.
21 The forecasts are just that, they're forecasts,
22 estimations in regards to where costs will be over a
23 long period of time. So I wouldn't be able to point
24 to anything specifically.
25 Q. Okay. I would like to turn to your

1 testimony on page 6, please. I'm looking at lines 21
2 and 22, and I believe you assert there that -- well,
3 beginning on line 18, that the ESP balances the
4 interests of customers with those of Duke Energy
5 Ohio. And on lines 21 and 22, you say, "without
6 negatively impacting the financial health of the
7 company in the provision of these services." Do you
8 see that?
9 A. That's correct. I see that.
10 Q. Can I ask you what negative impact did
11 the company foresee prior to filing this application?
12 A. So a component of our ESP includes a
13 distribution capital investment rider. And the
14 ongoing investments in our distribution capital
15 investment and distribution system without the
16 distribution capital investment rider would not
17 afford us time in the recovery of those investments
18 which would negatively impact the financial health of
19 our company. So, therefore, we are proposing the
20 distribution capital investment rider to help have
21 more timely recovery of those investments on behalf
22 of the customers.
23 Q. Did the company foresee any other
24 negative impact prior to filing the application?
25 A. I think that's the one that comes to mind

in preparation of that statement.

Q. Okay. So you're referring specifically to that rider and nothing else with that statement?

A. I believe that statement is tied to the timely restoration of services. Also the distribution storm rider would be another component for more ability to recover costs associated with restoration of services associated with outages due to major storm events.

Q. Okay. What benefits does the company expect from the proposal?

A. From the distribution storm rider?

Q. No, from the ESP generally. Well, let me clarify that question, if I may.

What financial benefits does the company expect from the proposal?

A. I think I articulated, too, what the company expects around the distribution and distribution storm rider.

Q. Okay. And if the ESP is approved and that approval includes rider PSR, what is your prediction regarding the outlook for the company's investors?

A. I'm not sure I understand the question.

Q. If the ESP is approved, including rider

1 PSR, I was wondering what your prediction is
2 regarding any financial benefit to the company's
3 investors.
4 A. I would say that the approval of the ESP,
5 which would include not only rider PSR but the storm
6 distribution rider and also distribution capital
7 investment rider, would provide greater clarity and
8 certainty to investors in Duke Energy in regards to
9 the future ability to recover costs associated with
10 service star customers.
11 Q. And how does that benefit the company's
12 investors?
13 A. I think Duke Energy investors are
14 conservative in nature and looking for a steady
15 return and a predictable return on the investments,
16 operations costs of the overall business, and I think
17 that would be viewed as positive by investors of Duke
18 Energy to have a forward-looking plan in regards to
19 how we would get recovery of distribution-related
20 investments, but also to protect from the risk of
21 being exposed to the seasons where extraordinary
22 storm expenses were to otherwise be incurred in
23 regards to restoration efforts.
24 Q. So if the application including rider PSR
25 is approved, will that increase earnings per share of

1 the company shareholders?
2 A. I know it will have a positive impact on
3 the earnings, normal predictable impact on the
4 earnings of the customers -- or of the company. A
5 lot of it is dependent on the impact of storms. In a
6 situation where we do not incur a base level of storm
7 restoration on behalf of our customers, we would
8 actually be refunding money back to our customers.
9 So it could have a downward impact on the earnings
10 for the company as well.
11 Q. Uh-huh. So you're not sure what benefit
12 this would have for the company's --
13 A. I think I articulated it could have a
14 benefit, but it could also have a downward pressure
15 as well based on the nature of the storm restoration
16 riders which, in fact, would actually refund money
17 back to customers that absent that rider would be
18 earnings on behalf of the company.
19 Q. Okay. What is the financial health
20 impact on the company if the Commission approves the
21 ESP but excludes rider PSR?
22 A. I don't know if I've thought about that
23 enough to strike an opinion on that.
24 EXAMINER PIRIK: Mr. Allwein, we need to
25 take a short break, and I didn't want to interrupt

1 this one of line of questioning if you have -- I am
2 sure you have more, but I don't want to have you lose
3 your train of thought. Could we take a break at this
4 time?
5 MR. ALLWEIN: I think now is a good time
6 to take a break, sure.
7 EXAMINER PIRIK: 15 minutes.
8 (Recess taken.)
9 EXAMINER PIRIK: Back on the record.
10 Mr. Allwein.
11 MR. ALLWEIN: Thank you, your Honor.
12 EXAMINER PIRIK: Hold on just a minute.
13 (Discussion off the record.)
14 EXAMINER PIRIK: Mr. Allwein.
15 MR. ALLWEIN: Thank you, your Honor.
16 Q. (By Mr. Allwein) Mr. Henning, I want to
17 go to page 7 of your testimony. I want to ask you
18 about something that I believe OCC's counsel asked
19 you earlier. On line 23 of page 7 you talk about how
20 major storms have proven to have a debilitating
21 effect on our systems. Do you see that?
22 A. I do see that.
23 Q. And then a couple of lines above line
24 20 -- well, 19 and 20, you say, "Significant weather
25 events are becoming more prevalent." Do you see

1 that?
2 A. I do see that.
3 Q. And I was wondering are you familiar with
4 United States Environmental Protection Agency and
5 their concern about carbon emissions and the impacts
6 those emissions have on these storms?
7 A. Not specifically on that issue. I'm
8 familiar with the Environmental Protection Agency, of
9 course, but not that specific issue.
10 Q. Okay. And I know that earlier in your
11 testimony, you stated that you're responsible for
12 ensuring Duke's services are provided in accordance
13 with applicable federal and state law. I believe
14 that's on page 2. Do you recall that?
15 A. Can you point specifically where that's
16 stated?
17 Q. That's lines 10 and 11.
18 A. On page 2. Excuse me. I was on page 3.
19 Q. What's that?
20 A. It's on page 3. I'm sorry. Yes, I see
21 that. That's true.
22 Q. Okay. And I point that out after these
23 statements from page 7 because I was wondering since
24 that is part of your responsibility, providing
25 services in accordance with applicable federal and

1 stated laws, are you aware of or familiar with
2 current environmental regulations that affect the
3 utility industry?
4 A. Generally I'm aware of regulations, yes.
5 Q. And are you aware of the EPA's current
6 regulations regarding carbon emissions?
7 A. Not specifically. I'm generally aware of
8 it, but not specifically.
9 Q. Okay. And are you aware of the EPA's
10 pending regulations regarding carbon emissions?
11 A. Can you be more specific in regards to
12 what pending regulations you are referring to?
13 Q. The proposed rules that I believe that
14 were put out this year by the United States
15 Environmental Protection Agency.
16 A. Are you referring to 111(d)?
17 Q. 111(d), yes, sir.
18 A. Yes, I'm familiar with those.
19 Q. Okay. And are you aware the EPA
20 anticipates -- and when I say the EPA, I am referring
21 to the federal EPA.
22 A. Okay. Thank you.
23 Q. Are you aware that the EPA anticipates
24 releasing new carbon emission rules in June of 2015?
25 A. Under the proposed rules Section 111(d)?

Q. Yes.

A. I know they have proposed rules that's pending. I'm not sure about the actual implementation date. I believe that the comment period has actually been pushed back to later this year.

Q. Okay. Thank you for that information.

Do you recognize the EPA as a reliable authority on the environmental impact of coal-fired generation units?

A. I believe they are a reliable authority, yes.

Q. And are you aware of generally or otherwise the reasons that the EPA seeks to limit carbon emissions through their current and pending rules?

A. I would say generally aware, yes.

Q. And so what is your general understanding of the purpose of these rules?

A. My understanding is that the purpose of the rules is to achieve a reduction in carbon emissions.

Q. Okay. And one source of carbon emissions are coal-fired generating units; is that correct?

A. One of many sources, that's correct.

Q. Are they a primary source?

A. I would say they are a contributing factor of that carbon emission, yes.

Q. Okay. Would you say they are a significant contributor?

A. I wouldn't be able to make that determination right here.

Q. And are you aware of the effects of carbon emissions on the environment?

A. As opined by the EPA is what you are referring to?

Q. Or another trusted source for you or Duke Energy Ohio.

A. So I'm familiar with analyses and reports and studies that have been done that indicate that carbon does have an impact on the environment, yes.

Q. Okay. And so regarding your statements about weather effects becoming more prevalent, can a connection be made between significant weather events and carbon emissions causing climate change?

A. I'm not a scientist to be able to say whether there is a strong connection there or not. I know there's theories and opinions and beliefs, including that of the USEPA, that would otherwise link the two together, yes, I'm aware of that.

1 Q. And do you as the president of Duke
2 Energy Ohio believe in the science of climate change
3 that man-made -- or that the activities of human
4 beings are having an effect on the climate,
5 specifically the warming of the planet?
6 MS. SPILLER: Your Honor, I am going to
7 object. This is beyond Mr. Henning's expertise.
8 Mr. Allwein is asking him about his beliefs of the
9 science of climate change. Mr. Henning has indicated
10 he does not have that area of specialty.
11 EXAMINER PIRIK: Overruled.
12 A. I would say once again I am not a
13 scientist that studied in great depth and details. I
14 have read different points of view on it, but I
15 wouldn't say as president of Duke Energy Ohio I have
16 an opinion one way or the other.
17 Q. Okay. Does Duke Energy Ohio have an
18 official position on climate change?
19 A. Not that I am aware of that we have
20 established an official position.
21 Q. I want to turn your attention to page 8,
22 line 11.
23 A. Okay.
24 Q. You talk about retirements which include
25 generating assets that have not reached the end of

1 their useful life. Do you see that?
2 A. I do.
3 Q. And can you tell me how Duke Energy Ohio
4 determines the end of the useful life of a coal
5 generating unit?
6 A. I can't tell you with specificity as to
7 exactly what goes into that. I know that we've --
8 for example, in other jurisdictions that Duke Energy
9 operates, as we would either build, construct, or
10 acquire generation assets, we would strike some type
11 of estimate in regards to the useful life of an
12 asset, but I can't tell you the specifics that go
13 into formulating a calculation determination for a
14 useful life of an asset.
15 Q. Okay. So if I were to name specific
16 generating assets that Duke has in their fleet
17 currently, you wouldn't be able to tell me how close
18 they are to the end of their useful life?
19 A. I probably could give you one, an
20 example, that I'm responsible for that's a Duke
21 Energy Kentucky asset that happens to reside in the
22 PJM market.
23 Q. Okay. Can you share that example with
24 us.
25 A. So, for example, Miami Fort Unit 6, which

is a Duke Energy Kentucky owned asset has an anticipated useful life through the year 2020, and it is subject and planned to be retired before June 1 of 2015 --

Q. Okay. So you know --

A. -- as an example.

Q. You know the end of the useful life is stated to be 2020, but you don't know what factors went into determining --

A. I don't know the specifics of the calculation that went into that, no.

Q. Okay. On page 9, line 21, you talk about repeating an event like the polar vortex of 2014. Do you see that?

A. I do see that.

Q. Are you predicting a similar event in the future?

A. I am not specifically predicting anything.

Q. I'm asking because on page 10, lines 1 and 2, you say that "events such as those experienced during January of this year can, and likely will, happen again."

A. That's correct.

Q. What is that based on?

1 A. Based on past history of storms and
2 events happening throughout my lifetime and a
3 reasonable expectation that we will see storms happen
4 for the remainder of my lifetime.
5 Q. Okay. So is it fair to say your
6 evidence -- your basis of support for that statement
7 is anecdotal?
8 A. No. It's personal experience and
9 observations.
10 Q. Okay. And I just want to go back to a
11 couple of things we talked about earlier. We talked
12 about meetings that you had with the Commissioners
13 prior to the application of the ESP filing. Do you
14 recall that?
15 A. I do.
16 Q. And during those meetings, did you
17 introduce rider PSR to the Commissioners?
18 A. I believe we discussed the concept of
19 what our plans were to file our ESP, and that was
20 included in our ESP.
21 Q. And you noted that you didn't change the
22 application based on the conversation, but did the
23 Commissioners offer any opinion at that time
24 regarding rider PSR?
25 A. None that I recall. It was an

1 informational briefing where we just were to share
2 and give a heads-up in regards to what our intentions
3 were, what we planned to file.
4 Q. Okay. And one agency or outreach that I
5 forgot to ask you about was the governor's office.
6 Did Duke Energy Ohio meet with the governor's office
7 or representatives from the governor's office about
8 the proposed ESP filing?
9 A. I do not recall.
10 Q. In your recollection, have you discussed
11 Duke's ESP filing with the governor's office or
12 anyone from the governor's office since the filing
13 has been made?
14 MS. SPILLER: Objection, your Honor. I
15 think we've allowed a lot of leeway with this line of
16 questioning, but these conversations are irrelevant.
17 The Commission will decide this case based on the
18 evidence.
19 EXAMINER PIRIK: Overruled.
20 A. I've had a lot of conversations about our
21 filing post filing. I can't remember specifically as
22 to whether that would have included someone from the
23 governor's office or not.
24 Q. Okay. So you can't recall whether you or
25 any representative had a discussion with the governor

1 or anyone from the governor's office regarding the
2 ESP filing?
3 A. I think I just answered that question.
4 Q. Well, I added actually representative, so
5 I was going beyond you personally having a meeting.
6 A. Once again, I've had a lot of
7 conversations. I know folks from Duke Energy have
8 had a lot of conversations. I'm not aware of or
9 recall whether anyone from Duke Energy Ohio has had
10 those conversations or not.
11 Q. And regarding rider PSR, does the
12 certainty of cost recovery, if the PSR rider is
13 approved as part of your ESP, does that provide
14 immediate financial value to the company or its
15 shareholders?
16 A. Can you repeat the question again?
17 MR. ALLWEIN: Can you reread the
18 question?
19 THE WITNESS: Yeah. Thank you.
20 (Record read.)
21 A. Compared to what? I'm sorry. It not
22 being approved?
23 Q. Upon approval. I wasn't asking for a
24 comparison. I was just speculating that -- asking
25 you to speculate that upon approval of the ESP and

1 including rider PSR, which I think that's what the
2 company wants, does that guaranteed cost recovery
3 provide some immediate value to shareholders and the
4 company financially?
5 MS. SPILLER: Your Honor, I am going to
6 object to the extent Mr. Allwein has just indicated
7 he would like this witness to speculate. I think his
8 question also misstates the testimony of Mr. Henning,
9 as well as the application.
10 EXAMINER PIRIK: Overruled.
11 A. So I can't answer what would happen in
12 the future in regards to the financial benefit of the
13 company with the approval of rider PSR.
14 Q. Okay. So you don't know if guaranteed --
15 the certainty of cost recovery makes any difference
16 financially to the company or its shareholders?
17 A. Once again, it's looking out into the
18 future and a determination of what the impact of that
19 is to the company. I can't predict the future.
20 MR. ALLWEIN: Your Honor, if you just
21 give me a minute, I think I might be finished here.
22 Q. (By Mr. Allwein) Just a couple last
23 questions, Mr. Henning. Thank you for your patience
24 and your time.
25 On page 5, you present a quote from

1 Governor Kasich. Do you see that? You say that "As
2 even Governor Kasich recently remarked, 'Ohio's
3 energy market is in a challenging time.'"
4 A. I do see that quote.
5 Q. Have you or any representatives of Duke
6 Energy Ohio met with the governor's office in
7 response to this remark?
8 A. Can you be more specific with the
9 question? I'm not sure what you're asking.
10 Q. Just deregulation versus regulation in
11 general.
12 A. Governor Kasich has been in office for
13 upwards of four years now. I know that we've had
14 conversations with the governor's office in regards
15 to the state of the electric utility industry in Ohio
16 on and off throughout the course of those four years.
17 But specifically in regards to this quote that is
18 from April 17, 2014, I'm not aware of any
19 conversations or meetings with the governor's office.
20 Q. Okay. And are you aware that the
21 chairman of the Pennsylvania Public Utilities
22 Commission likened these Ohio PPA proposals to
23 bailouts?
24 A. No, I'm not aware of that.
25 MR. ALLWEIN: All right. I have no

further questions, your Honor.

EXAMINER PIRIK: Thank you.

Mr. Boehm?

MR. K. BOEHM: Thank you.

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CROSS-EXAMINATION

By Mr. Boehm:

Q. Good afternoon, Mr. Henning.

A. Good afternoon.

Q. We have a few questions regarding Duke's power share demand response program. Can you direct us to which witness would be appropriate for those questions?

A. I would say the Company Witness Wathen or Company Witness Ziolkowski.

MR. K. BOEHM: Thank you. Those are all the questions.

EXAMINER PIRIK: Mr. Oliker?

THE WITNESS: That was quick.

MR. OLIKER: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Oliker:

Q. Good afternoon, Mr. Henning.

A. Good afternoon.

Q. I'll try not to have a choppy cross, but it's difficult following such an esteemed panel of counsel here. They have taken many of my questions.

A. I understand.

Q. Let's follow up a little bit on some of the background that counsel discussed with you earlier.

Now, it's my understanding you now have a new role. You're the director. You have responsibility over regulatory strategy and rates; is that correct?

A. No. In my role as president of Duke Energy Ohio, the director of rates and regulatory strategy now works directly for me.

Q. Okay. Is that the same for Kentucky?

A. Yes, it would be the same for Kentucky.

Q. So your role regarding rates and regulatory strategy, that extends into Kentucky as well?

A. That's correct.

Q. Okay. And earlier you talked about your background was mainly in the gas industry prior to 2010 or 2012?

A. 2010, yes. I worked in the utility industry for 24 years primarily with the focus on the

1 natural gas industry and natural gas distribution
2 industry.
3 Q. Do you have any experience in electric
4 dispatch?
5 A. I do not.
6 Q. Have you read any of the PJM manuals?
7 A. I read a lot of things. I don't believe
8 I have read the PJM manuals, though.
9 Q. You are lucky.
10 Okay. So do you often read on-peak and
11 off-peak pricing reports?
12 A. I'm aware of them. I receive daily
13 updates from our operations dispatch group in regards
14 to our Duke Energy Kentucky owned generation assets.
15 Q. Okay. Now, let's touch on some questions
16 that you discussed with Mr. Allwein. On pages 4 and
17 9, you talk a lot about volatility during the polar
18 vortex period. Now, would you agree during the polar
19 vortex, PJM saw the coldest temperatures it had seen
20 across its footprint in its 87-year existence?
21 A. I would have no reason to dispute that.
22 Q. Could you look at Sierra Club Exhibit 2
23 on page 2, and if you go down about halfway down the
24 page, would you agree that that statement is
25 contained there, that "PJM, in its nearly 87-year

1 history, has never experienced the prolonged cold
2 weather of January, 2014, across its footprint"?
3 A. That is contained in the statement by
4 Michael Kormos, yes, that's correct.
5 Q. Okay. And you also talk about volatility
6 related to natural gas, correct?
7 A. That is correct.
8 Q. Would you agree that during the polar
9 vortex, natural gas interruptions were less than five
10 percent of the total capacity that was required to
11 meet the demand?
12 A. Can you point to where that reference is?
13 I'm sorry.
14 Q. I'm asking if you agree with that
15 statement.
16 A. I don't have that statement readily in my
17 mind. So, no, I'm not aware of that statement.
18 Q. Okay. Would you turn to page 4 of
19 Mr. Kormos' statement, and would you agree that it is
20 present about five lines down?
21 A. "Natural gas interruptions, although
22 significant, removed less than five percent of the
23 total capacity required to meet demand on January 7."
24 I see that statement.
25 Q. Okay. Do you also agree that equipment

1 issues associated with both coal and natural gas
2 units made up the far greater proportion of forced
3 outages?
4 A. I do not have any reason to dispute the
5 statement.
6 Q. And you would agree that statement is
7 contained in Mr. Kormos' statement?
8 A. That's correct.
9 Q. Okay. Thank you.
10 Mr. Henning, on page 4 of your testimony,
11 you discuss generation retirements in PJM; is that
12 correct?
13 A. Hold on one second, please. Are you
14 referring to -- on lines 9 and 10?
15 Q. One moment. Let me get there. Yes, I
16 am.
17 A. Okay. Yes.
18 Q. You obtained the information regarding
19 retirements from the document that Mr. Darr provided
20 to you earlier; is that correct? It was a Market
21 Monitor Report.
22 A. Yes, I think it references the 2013 State
23 of the Market for PJM, yes.
24 Q. And you also indicated the most updated
25 discussion of retirements in PJM would be in the

1 January through June of 2014 market report, which is
2 also IEU Exhibit 4.
3 MS. SPILLER: I am going to object to the
4 extent that misinterprets Mr. Henning's testimony as
5 to what he may or may not have indicated.
6 EXAMINER PIRIK: I'll allow the question.
7 MS. SPILLER: Thank you.
8 A. So I have been asked a lot of questions
9 over the course of the day, and unfortunately that
10 was earlier this morning, so I'm not sure exactly
11 what the response was to the question.
12 Q. Okay. Let's come at it from a different
13 angle. Could you turn to IEU Exhibit 4, please.
14 A. Absolutely. I have it here in front of
15 me.
16 Q. You agree that this is a document
17 produced by the PJM market monitor?
18 A. I have no reason to doubt that it is,
19 yes.
20 Q. Okay. And this document discusses
21 retirements in PJM, correct?
22 A. Well, as I stated earlier this morning,
23 you know, without -- it's multiple pages of the
24 document, so I assume it does.
25 Q. Okay. Could you please turn to page 363.

1 A. I'm there, yes.
2 Q. And first you can let me know if you know
3 this offhand, or you can refer to the document, if
4 you would like. Would you agree that the planned
5 retirements are on average smaller subcritical coal
6 steam units without adequate environmental controls?
7 A. Are you referring to a specific table or
8 chart? Please help me. Guide me a little bit more.
9 Q. Let me ask you, for example, in the
10 context of when you wrote your testimony, did you
11 know that most of the coal-fired generation that's
12 retiring is smaller subcritical coal units?
13 A. I looked at it more as an aggregate, the
14 total of 25,000 approximately megawatts in generation
15 that's coal-fired generation that was retiring.
16 Q. Okay. Would you agree if you look at IEU
17 Exhibit 4 at table 12-8, which is the top right-hand
18 corner, most of the generation that is being
19 scheduled for retirement at PJM is smaller
20 subcritical coal units with an average size of 170
21 megawatts?
22 A. I see the reference "170 megawatts," yes.
23 Q. Do you agree?
24 A. I don't have a point of reference in
25 regards to whether they are small, large, or medium.

1 I just know that, in aggregate, that 25,000 were
2 coal-fired, you know, coal-fired generation planned
3 retirements.
4 Q. But just so I understand, you don't
5 disagree with the market monitor's analysis that most
6 of these units are 170 megawatts or smaller?
7 A. I would have no reason to disagree based
8 on, you know, my understanding of this report. It
9 says 170 megawatts average size for coal-fired
10 generations.
11 Q. And you would agree that these units have
12 an average age of 56.9 years?
13 A. I read that on the paper as well, yes.
14 Q. How old are you, Mr. Henning? I'm just
15 kidding.
16 Okay. Now, are you familiar with the PJM
17 generation kit?
18 A. Vaguely familiar.
19 Q. And if you turn to page 357 of IEU
20 Exhibit 4, would you agree that there is 63,000
21 megawatts of capacity in the PJM generation queue?
22 A. I would say subject to the footnote 10
23 below, that the 63,000 megawatts in the generation
24 capacity queue would need to be reduced to 47,590.2.
25 Q. I'm sorry. What page are you on,

1 Mr. Henning?
2 A. I am on the same page you are.
3 Q. I am on IEU Exhibit 4.
4 A. I am on IEU Exhibit 4.
5 Q. And page 357.
6 A. I thought you were on page 361.
7 Q. No, page 357, Mr. Henning.
8 A. Okay.
9 Q. And would you agree that there's 63,000
10 megawatts in the generation queue?
11 A. Once again, the point of reference to
12 63,000 that comes from table 12-5 on page 361
13 otherwise needs to be adjusted to reflect the D
14 rating, to reflect the installed intermittence of
15 some of the generation assets identified in that
16 table. So the net generation capacity available in
17 the queue is actually not 63,000. It would have to
18 be reduced to 47,590.2 megawatts.
19 Q. Mr. Henning, let's talk about that. You
20 are referring to what is called unforced capacity,
21 correct?
22 A. I'm not sure about the definition.
23 Q. What is a D rating?
24 A. D rating, it's a rating of less than
25 nameplate capacity.

1 Q. Okay. So would you agree the installed
2 capacity in the generation queue is 63,000 megawatts,
3 yet you believe that some of those megawatts need to
4 D rated because they're renewable?
5 MS. SPILLER: Objection. Your Honor,
6 Mr. Henning is reading the document, and it's not his
7 belief. It's what PJM has stated in their document.
8 MR. OLIKER: I am trying to find out if
9 he understands what he read from this footnote.
10 EXAMINER PIRIK: What he read from what?
11 MR. OLIKER: Mr. Henning read from
12 footnote 4, and I am not entirely sure that
13 Mr. Henning understands what he read, and I am trying
14 to understand his knowledge.
15 EXAMINER PIRIK: You know, I'll allow the
16 question to the extent the witness can answer.
17 Do you want to restate the question?
18 MR. OLIKER: Can you please reread it?
19 (Record read.)
20 Q. I'll just start over. Let's take it one
21 step at a time.
22 Mr. Henning, the 25,000 megawatts of
23 generation that's going to be retired, is that
24 installed capacity or unforced capacity, if you know?
25 A. It's my understanding it's installed

capacity.

Q. Okay. So would you agree that less than 25,000 megawatts is actually available as a capacity product?

A. Subject to clarification, I would agree.

Q. Would you agree the footnote that you discussed talks about renewable resources also have an unforced capacity level that's lower than the installed capacity level?

A. I believe that's what the footnote says, yes.

Q. Okay. Thank you.

Mr. Henning, there has been a lot of discussion about diversity in PJM, but I still don't think I understand exactly what you're talking about. Could you explain your definition of generation resource diversity?

A. So when I think of generation resource diversity, I think of different fuel types or capabilities to generate electricity.

Q. So, for example, if the majority of generation produced in PJM came from coal-powered plants, would that be a diverse set of resources?

A. I guess it would depend on what the other components of the generation parts were.

1 Q. Do you believe that PJM currently has a
2 diverse set of resources?
3 A. I think it does have a diverse set of
4 resources.
5 Q. So if after all of the retirements
6 occurred in a section of an RTO and the majority of
7 generation is still produced by coal, do you believe
8 that's a diverse set of resources?
9 A. I would suggest in my view that the
10 majority of generation of PJM will not be produced by
11 coal in the future. So I think that would decrease
12 the diversity of generation in the PJM market.
13 Actually, yeah, decrease the diversity.
14 Q. I appreciate that opinion, but assuming
15 that a part of PJM coal is still the majority
16 resource, do you believe that that's a diverse set of
17 resources?
18 A. That's hard for me to answer the question
19 when I don't agree with your assumption that coal
20 will be a majority of the generation in the PJM
21 market. We just spoke to and looked at
22 forward-looking projections of what the PJM capacity
23 mix would otherwise be, and I agreed that, yes, coal
24 would be a declining piece of the capacity market in
25 PJM and not a majority share.

1 Q. Mr. Henning, I'm just asking you to
2 assume with me for a second if the premise is true
3 that coal will remain a majority resource in a
4 portion of PJM.
5 A. I can't get my head around that.
6 MR. OLIKER: Your Honor, could you please
7 direct the witness to answer the question?
8 MS. SPILLER: Your Honor, I think the
9 witness has tried to answer the question. He can't
10 accept the hypothetical based upon what he has been
11 presented with today.
12 MR. OLIKER: That's why it's a
13 hypothetical set of facts that I've created.
14 EXAMINER PIRIK: Excuse me. I think the
15 issue is the word "remain." I think in phrasing a
16 hypothetical, that begs the assumption that that's
17 what's true today. So perhaps if you rephrase it and
18 not use the word "remain."
19 Q. Okay. Mr. Henning, let's make it very
20 simple. Assuming a portion of an RTO relies for the
21 majority of its power on coal, do you think that part
22 of the RTO has a diverse set of circumstances?
23 A. Are we talking about the PJM RTO in this
24 example?
25 Q. Yes.

A. What is the remaining part of the portfolio in your hypothetical example?

Q. It would be natural gas and renewables, all of the other things that are in there today. The majority --

A. Better framed, what percentage would be renewables and what percentage would be natural gas so I can completely understand the hypothetical that you are setting forth for me.

Q. Assume that they are -- maybe I can come at this from a different direction.

Mr. Henning, assume that the natural gas resources and renewable resources are what they are today. They are coal retirements that are expected in the future, but the majority of power will still come from coal resources. Do you agree that the resource set will be diverse?

A. So assuming coal resources are what they are today; is that correct? Is that what you want me to assume?

Q. All of the resources are what they are today. All the coal retirements are going to happen, but coal is still the majority resource. Is this a diverse set of resources in this part of the RTO?

A. I would say it's less diversity than what

we have today on that assumption.

Q. That's your answer even if coal is still the majority resource?

A. Once again, this is a hypothetical, and I am struggling with the hypothetical to try to provide you an answer.

Q. So your answer is it's still less diverse even if coal is the majority resource?

MS. SPILLER: Your Honor, I think the witness has answered the question, and I note that despite the Bench's instruction, we have simply replaced the word "remain" with "still." So I don't know that the meaning of the question has at all been altered for the witness.

EXAMINER PIRIK: I think he's made it clear that it's a hypothetical, and I think the witness is trying to answer the question, so I'll allow Mr. Oliker to continue.

Q. And I think there was a pending question.

(Record read.)

A. I think I answered that, yes.

Q. Are you familiar with the portions of PJM, Mr. Henning?

A. I'm sorry?

Q. Are you familiar with the different zones

of PJM?

A. Vaguely familiar.

Q. How about Southwestern MAC, do you know that one?

A. No, I am not familiar with it.

Q. Is there a witness from Duke Energy Ohio that would be better able to talk about that, if you know?

A. I'm not sure who would be the appropriate witness to talk about components or the segments of PJM.

Q. It is your opinion that natural gas resources will be the majority resource in PJM?

A. At least in the near term, yes, with the planned retirements of coal-fired generation.

Q. And that would include Ohio?

A. I would look at more as with the PJM market, not specifically state by state.

MR. OLIKER: Can I mark a document, your Honor?

EXAMINER PIRIK: Yes.

MR. OLIKER: I would like to mark as IGS Exhibit 1 the State of the Market Report for PJM for Q2014.

EXAMINER PIRIK: The document is so

1 marked.
2 (EXHIBIT MARKED FOR IDENTIFICATION.)
3 Q. (By Mr. Oliker) Mr. Henning.
4 A. Yes.
5 Q. Earlier you mentioned you look at
6 independent market monitoring reports, correct?
7 A. I said I'm familiar with them, yes.
8 Q. So you've seen this document before or
9 this portion of the document?
10 A. I think it's actually a subset of maybe
11 what was provided to me earlier.
12 EXAMINER PIRIK: I'm sorry, Mr. Henning.
13 I can't hear what you are saying.
14 THE WITNESS: I said I think it's a
15 subset of what I was provided earlier today.
16 Q. Okay. So could you describe what this
17 document is?
18 A. It looks like it's a couple of pages out
19 of an overall larger report produced by PJM.
20 Q. It's produced by the independent market
21 monitor, correct?
22 A. For PJM, correct. I'm sorry.
23 Q. And it's dated May 15, 2014, correct?
24 A. That's correct.
25 Q. And I think we've covered it, but you

1 find the market monitor to be a credible resource,
2 correct?
3 A. I would have no reason to otherwise not
4 believe that.
5 Q. And this is actually from Section 12
6 Planning, correct, if you look at page 1 of the
7 document?
8 MS. SPILLER: I'm sorry. Page 1?
9 Q. I'm sorry. Page 361. My apologies.
10 A. I see there is a section "Planning."
11 Q. That's the same section you previously
12 referred to in your testimony, correct, but a
13 different document, of course, a more recent
14 document?
15 A. So, yes, in my -- in my testimony, I
16 referred to this report, but it was from I believe
17 2013 versus an updated document that you are
18 referring to here.
19 Q. Okay. And then if you go down to the
20 section that says "Generation Mix," in the very last
21 line it says, "Elsewhere in the PJM footprint,
22 continued reliance on steam (mainly coal) seems
23 likely, despite retirements of coal units."
24 A. I see that statement, yes.
25 Q. Is that correct? Okay. Let's shift

1 gears a little bit. And I apologize if I mention
2 anything that's been discussed earlier. I just want
3 to get a little background before we go into things.
4 Your testimony indicates that the PSR
5 provides a partial hedge against rising market
6 prices, correct?
7 A. Can you point specifically to where you
8 are referencing that?
9 Q. Just in general. I think you mentioned
10 it several places your testimony, Mr. Henning.
11 A. So, yes, the PSR does provide a hedge for
12 customers as part of our proposal.
13 Q. Okay. And you talked about this a little
14 with Mr. Allwein. But the notion that as market
15 prices rise, the OVEC resources will become more
16 profitable, correct?
17 A. As the revenue -- as market prices rise,
18 the revenue that's extracted from our contractual
19 arrangement with OVEC, and that will turn into a
20 credit back to customers, yes, that's correct.
21 Q. Okay. But at the same time, if the OVEC
22 costs rise to the same level as the market price,
23 then OVEC will be no more profitable and customers
24 will not see any dollars; isn't that correct?
25 A. That assumes that the fixed costs

1 associated with the OVEC entitlement rises as well.
2 And in my understanding, this fixed cost will not
3 otherwise rise proportionately.
4 Q. Maybe we can get through this through a
5 hypothetical. Assume that between the years 2015 and
6 2018 the PSR is a charge.
7 A. Okay.
8 Q. And then assume at that time there is a
9 steep increase in market prices in 2019, but OVEC's
10 costs of producing power rises in a one-to-one ratio
11 with the increase in market prices. So in this
12 circumstance, we're seeing a rise in market prices,
13 but we're not seeing any additional profitability for
14 OVEC. This could occur, correct?
15 A. I'm struggling with the hypothetical. I
16 see a rise in market prices increasing the revenue
17 under the entitlement that we have with OVEC
18 currently.
19 Q. Mr. Henning, could you please answer my
20 hypothetical?
21 A. I am struggling to understand your
22 hypothetical, so I apologize.
23 Q. Do you understand that it's possible that
24 market prices could increase at the same pace as
25 OVEC's cost of producing power?

1 MS. SPILLER: Your Honor, I am going to
2 object. I think the witness has indicated his
3 attempt to try to answer his question.
4 EXAMINER PIRIK: I'm going to allow
5 Mr. Oliker to try to clarify it and see whether we
6 can get this resolved.
7 Go ahead.
8 A. So can you please restate your
9 hypothetical?
10 Q. Do you understand that OVEC's costs of
11 producing power, this is fixed and variable cost,
12 could rise at the same pace as market prices so that
13 OVEC has the same cost of production or lower cost of
14 production -- sorry -- a higher cost -- let me
15 restate that.
16 Do you understand that it's possible that
17 market prices could rise at the same pace as OVEC's
18 cost of producing power so that OVEC is no more
19 profitable in a rising price situation?
20 A. There's a range of possibilities for
21 OVEC's prices and costs to increase or decrease in
22 relation to where energy prices are, and I can't
23 forecast exactly where that will be in the year 2019
24 for your hypothetical.
25 Q. So just assume for the purpose of this

1 hypothetical that market prices do rise at the same
2 pace as OVEC's cost of production. So we've got
3 rising market prices, and then OVEC is no more
4 profitable but still a charge to customers. In this
5 hypothetical, OVEC is not a hedge to rising market
6 prices; is that correct?
7 A. I guess in your hypothetical. I'm
8 struggling to understand it, though.
9 Q. Thank you.
10 Mr. Henning, isn't it true that you
11 cannot commit to the economic liability of the
12 coal-fired power plant beyond 2024 because of the
13 EPA's proposed carbon emission rules for existing
14 power plants?
15 A. I don't believe I can answer that
16 question at this time.
17 MR. OLIKER: May I approach the witness,
18 please, your Honor?
19 EXAMINER PIRIK: Yes.
20 MR. OLIKER: I would also like to mark a
21 document. Your Honor, I would like to mark as IGS
22 Exhibit 2 the direct testimony of James Henning on
23 behalf of Duke Energy Kentucky, Inc.
24 EXAMINER PIRIK: The document is so
25 marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)
2 Q. Mr. Henning, do you see the document
3 that's been marked as IGS Exhibit 2?
4 A. I do.
5 Q. Is that direct testimony submitted by you
6 in the state of Kentucky?
7 MS. SPILLER: Your Honor, I am going to
8 object. This is an incomplete copy of Mr. Henning's
9 testimony.
10 Q. And subject to that clarification, would
11 you accept this is an excerpt of your testimony in
12 the state of Kentucky? I am trying to save a few
13 trees.
14 EXAMINER PIRIK: Mr. Oliker, do you know
15 the case number for the case in Kentucky? I am a
16 little concerned about we are getting a lot of
17 partial documents, and I know some of them are very
18 voluminous. But if we don't have websites that are
19 on the documents or something we can refer to to
20 actually find them, I'm concerned that the record is
21 not going to be really clear.
22 MR. OLIKER: Sure. I can mark it with a
23 case number, your Honor.
24 EXAMINER PIRIK: Okay.
25 MR. OLIKER: And just for purposes of

1 clarification, could we mark it as the direct
2 testimony of James Henning on behalf of Duke Energy
3 Kentucky, Inc., in Case No. 2014-201?
4 EXAMINER PIRIK: 201?
5 MR. OLIKER: 201.
6 EXAMINER PIRIK: Okay.
7 (EXHIBIT MARKED FOR IDENTIFICATION.)
8 EXAMINER PIRIK: You can proceed.
9 Q. Mr. Henning, do you recognize the
10 document that's marked as IGS Exhibit 2.
11 A. I recognize the document, yes.
12 Q. And was this filed by you at the Kentucky
13 Public Service Commission on June 13, 2014?
14 A. It was filed on my behalf, yes, subject
15 to verification that the document is consistent with
16 that.
17 Q. Would you take a moment to look at it and
18 see if it resembles a true and accurate copy of your
19 testimony?
20 A. I don't have the actual copy with me, so
21 I did not memorize my written testimony. So
22 unfortunately I wouldn't be able to do that.
23 Q. But the portion that has been placed in
24 front of you, Mr. Henning?
25 A. Once again, there's three pages of

1 testimony written on here. I don't have my testimony
2 that was submitted in that case in front of me, so I
3 would, subject to verification, trust that this is an
4 accurate representation.
5 Q. Okay. Thank you.
6 Would you agree this testimony was filed
7 in support of Duke Energy Kentucky's request to
8 purchase Dayton Power & Light's interest in the East
9 Bend coal-fired generation station?
10 MS. SPILLER: Objection, your Honor.
11 Relevance.
12 EXAMINER PIRIK: Mr. Oliker?
13 MR. OLIKER: It's just a foundational
14 question.
15 EXAMINER PIRIK: I'll allow the question.
16 A. It is a supporting document of our
17 planned opposition of Dayton Power and Light in the
18 East Bend generating station, yes.
19 Q. And would you agree that in this
20 testimony you stated that East Bend will have a
21 minimum --
22 A. What are you pointing to?
23 Q. We can go to page 20, lines 4 to 6.
24 A. Yeah, thank you.
25 Q. Would you agree that you stated that

1 "East Bend will have a minimum life, conservatively,
2 of at least ten years, and depending upon the final
3 results of carbon legislation, perhaps even longer"?
4 A. Yes, that statement is in there.
5 Q. And would you agree your statement
6 referred to carbon legislation and also the EPA's
7 proposed rules regarding carbon emission limits for
8 existing power plants?
9 A. I see the reference result of carbon
10 legislation, and, once again, can you quickly point
11 to where that second part of that statement is
12 located in my testimony?
13 Q. I am asking what your understanding was
14 when you wrote the testimony, Mr. Henning.
15 MS. SPILLER: Your Honor, again
16 Mr. Henning doesn't have the benefit of his entire
17 testimony, and he is asking for guidance from the
18 attorney who only gave him a partial portion.
19 MR. OLIKER: Your Honor, I am asking
20 about a specific statement I did give to him.
21 EXAMINER PIRIK: Mr. Henning, are you
22 able to answer the question based upon this page that
23 you received?
24 THE WITNESS: I don't believe I am.
25 MR. OLIKER: Can I mark another document,

your Honor?

EXAMINER PIRIK: Yes.

MR. OLIKER: May I approach the witness?

EXAMINER PIRIK: Do you have the entire document with you?

MR. OLIKER: I do. I have one copy of the entire document.

EXAMINER PIRIK: Perhaps you could give it to the witness so it would at least refresh his memory, and then it's a public document.

MR. OLIKER: I have another way, too, that might be better.

EXAMINER PIRIK: Okay. Let's do that then. Thank you.

MR. OLIKER: Your Honor, I would like to mark as IGS Exhibit 3 discovery responses of Duke Energy Ohio in Case No. 2014-201.

EXAMINER PIRIK: The document is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Henning, do you see the document that's marked as IGS Exhibit 3?

A. Yes, I do.

Q. Did you answer discovery responses in Case No. 2014-201?

MS. SPILLER: Are you asking if Mr. Henning did that?

Q. Did either you or Duke Energy Ohio answer discovery responses in Case No. 2014-201?

A. So the discovery response that I think you are referencing here that I am looking at was not prepared by myself or was not prepared on behalf of Duke Energy Ohio as your question asked.

MR. OLIKER: Could I have that response read back?

(Record read.)

Q. Thank you for that clarification.

Did Duke Energy Kentucky or yourself produce discovery responses in Case No. 2014-201?

A. I assume we produced discovery responses, yes.

Q. And some of those discovery responses pertain to your testimony that is previously marked as IGS Exhibit 2, correct?

A. I would assume they would, yes.

Q. Okay. So let's look at the front page of this document, which is IGS Exhibit 3. Do you know who Rocco D'Ascenzo is?

A. I do.

MR. OLIKER: Would the company stipulate

1 that these discovery responses were produced by Duke
2 Energy Ohio?
3 MS. SPILLER: No.
4 MR. OLIKER: Would you like --
5 MS. SPILLER: No, they were not.
6 MR. OLIKER: I'm sorry. Duke Energy
7 Kentucky I mean.
8 MS. SPILLER: Are you waiting for
9 something?
10 MR. OLIKER: Would you stipulate they
11 were produced by Duke Energy Kentucky?
12 MS. SPILLER: I stipulate they are a copy
13 of a filing but not beyond that.
14 MR. OLIKER: Okay. The filing made by
15 Duke Energy Kentucky?
16 MS. SPILLER: Of a filing -- I would
17 stipulate to the authenticity of this document made
18 by Duke Energy Kentucky.
19 MR. OLIKER: Okay. Thank you.
20 Q. (By Mr. Oliker) Now, Mr. Henning --
21 A. Yes.
22 Q. -- could you turn to what is marked as
23 page 1, but it's -- all of them are page 1.
24 A. Are we on IGS Exhibit 3 still?
25 Q. Yes. This is DR-01-10 Public.

A. So just to clarify, IGS Exhibit 3?

Q. Yes, Exhibit 3. I'm sorry.

A. And then which page are you looking for?

Q. It's marked as DR-01-10 Public.

A. I'm there.

Q. And here would you agree that you were asked by the staff of the Public Utilities Commission in Kentucky, "East Bend will have a minimum life, conservatively, of at least 10 years, and depending upon the final results of carbon legislation, perhaps even longer. Explain what is meant by the underlying portion of the statement."

You were asked that question, and could you please just take a moment to read through the Confidential Proprietary Trade Secret Part, and I think the answer actually on the next page, would you agree that you reference Rule 111(d), which is the proposed carbon emission rules?

MS. SPILLER: I am going to object to the relevance. We are talking about East Bend Generation Station in Rabbit Hash, Kentucky. It has nothing to do with Duke Energy Ohio or its ESP application in this proceeding, and I would further object to the references, colloquially or not, to "you" in that Mr. Henning was not the one to have prepared this

1 discovery response.
2 EXAMINER PIRIK: Mr. Oliker?
3 MR. OLIKER: This is about testimony that
4 Mr. Henning filed, and it's relevant to Duke's claim
5 that the PSR is a good deal for customers through
6 2040 when Mr. Henning isn't willing to commit in
7 public filings that the coal-fired power plant is
8 going to last past 2024, and I am trying to explore
9 that issue.
10 EXAMINER PIRIK: I know it's -- you are
11 trying to do a work-around so that you can get back
12 to his testimony, but it may be better if you give
13 him the full copy of his testimony in Kentucky and
14 allow him to refresh his memory.
15 You know, I think with this document it's
16 the same issue as before. It doesn't appear as he
17 was the individual who was responsible for this
18 document, and it's, you know, in another proceeding.
19 And I do understand that, but it's just going to make
20 it more difficult to ask him questions about a
21 response that someone else gave.
22 MR. OLIKER: Your Honor, with respect to
23 he is the director of rates and regulatory and this
24 pertains to his testimony in Kentucky and the rest of
25 his testimony does not discuss the statement that is

1 contained in this discovery response. That's why
2 it's in the discovery response, and that's why the
3 staff for Kentucky asked about it because he didn't
4 discuss it except for in this one place.
5 EXAMINER PIRIK: Correct me if I'm wrong,
6 you are really trying to ask about the question in
7 his testimony. You are trying to ask questions about
8 the statement in his testimony, and you are trying to
9 get to that through this data response.
10 MR. OLIKER: Correct, because his
11 testimony is only clarified in this document.
12 MS. SPILLER: But it's his testimony in
13 the Kentucky filing that's discussed in IGS 3.
14 MR. OLIKER: Yes, we are talking about
15 his Kentucky testimony.
16 EXAMINER PIRIK: Okay. Are you using
17 this as a work-around to try to get him to answer the
18 question out of his testimony, or do you need this
19 document in the record?
20 MR. OLIKER: I need this document in the
21 record because the remainder of his Kentucky
22 testimony doesn't get to this issue. This is the
23 only document that discusses Mr. Henning's opinion on
24 what carbon legislation he was discussing because he
25 didn't seem to remember what his testimony meant.

1 MS. SPILLER: Your Honor, I am going to
2 object and move to strike the gratuitous remark from
3 counsel.
4 EXAMINER PIRIK: First of all, I am
5 concerned about partial documents being given to the
6 witness and to the Bench. I do understand the 300-
7 or 400-page documents. We can work around that,
8 especially if we can get websites so we can actually
9 find the documents at. But I think -- why don't we
10 take a five-minute break, and you can provide the
11 witness with a copy of the testimony. He can look at
12 it. You can continue your line of questioning with
13 that, and then we will see where it goes with this
14 interrogatory.
15 MR. OLIKER: I have his testimony.
16 EXAMINER PIRIK: All right.
17 MR. OLIKER: Thank you.
18 MS. SPILLER: Thank you, your Honor.
19 (Recess taken.)
20 EXAMINER PIRIK: We'll go back on the
21 record.
22 Mr. Oliker.
23 MR. OLIKER: Sure.
24 Q. (By Mr. Oliker) Mr. Henning, during the
25 break, you had an opportunity to look at I believe

it's IGS Exhibit 2, which is your direct testimony in Kentucky, correct?

A. Yes. You provided me with the complete copy of my direct testimony on behalf of Duke Energy Kentucky. Yes, I looked at that.

Q. And you believe it's a true and accurate copy of that testimony?

A. Yes, I do.

Q. Okay. And we were talking about page 20, a statement that you make, "East Bend will have a minimum life, conservatively, of at least ten years, and depending on the final results of carbon legislation, perhaps even longer."

Regarding that statement, would you believe you are referring to carbon legislation and also the EPA's proposed rules regarding emissions for existing power plants?

A. I would say, first of all, the statement referencing in ten years isn't taken into context of the nature of our analysis and done to determine an additional generation need for Duke Energy Kentucky.

If you afford me a moment to provide a little bit of background, part of our IRP process was to identify potential resources for Duke Energy Kentucky. We looked at a host of different

1 alternatives, including acquisition of other assets,
2 build of new generation, and also potential PPAs in
3 the timeframe of a ten-year period. So that is the
4 reference to the 10-year period.
5 Now, in regards to the question regarding
6 the result of carbon legislation, I think it's
7 specifically around potential legislation associated
8 with the EPA, primarily Section 111(d).
9 MR. OLIKER: Your Honor, I would move to
10 strike everything in his answer before as a result of
11 carbon legislation. That was completely unresponsive
12 to the question.
13 EXAMINER PIRIK: Motion denied.
14 Q. Just to be sure about your answer, you do
15 believe that included in legislation is rule-making
16 provisions from the EPA, correct, when you referenced
17 111(d)?
18 A. 111(d) is a component of the
19 consideration as part of my testimony, yes.
20 Q. Mr. Henning, to put a finer point on it,
21 IGS Exhibit 3 --
22 A. Yes.
23 Q. -- that effectively reiterates the
24 clarification that you just gave to me, correct,
25 regarding carbon rules and the statements in your

1 testimony?
2 A. Yes, specifically around East Bend
3 Generating Station in Rabbit Hash, Kentucky, not any
4 other generating asset in PJM.
5 Q. And do you agree that East Bend already
6 has environmental controls installed, correct?
7 A. It does, yes.
8 Q. Thank you. I'll just ask you a
9 hypothetical, Mr. Henning.
10 A. I'm not good with hypotheticals. It must
11 be my age. I'm sorry.
12 Q. Hope springs eternal.
13 MS. SPILLER: Objection. Move to strike.
14 Q. Assume in 2025 that the OVEC-sponsoring
15 companies, they make a determination that Clifty
16 Creek and Kyger Creek should both be retired. This
17 is a unanimous decision from all sponsoring
18 companies. But at the same time the Public Utilities
19 Commission of Ohio has approved a PSR through 2040.
20 Also assume that there is $2 billion of unappreciated
21 plant remaining on OVEC's books.
22 Under this hypothetical, in 2025 or at
23 some point going forward, would Duke Energy Ohio
24 collect the unappreciated plant balance associated
25 with OVEC from Ohio customers?

A. Can you repeat the hypothetical for me to make sure I understand?

(Record read.)

A. I don't know.

Q. Fair enough. And just a few more questions. Almost there.

Mr. Henning, in your testimony --

A. Kentucky testimony?

Q. No. This is back to your Ohio testimony, Mr. Henning.

A. Okay. Bear with me. Thank you.

Q. One of the things -- and I believe it's on page 21 you indicate that Duke is a member of PJM --

A. Hold on a second. Let me get there, please. Okay. Where are you referring to on the document?

Q. Well, you indicate that Duke is a member of PJM, and PJM is a market monitor, correct?

A. Where are you referencing? I'm sorry. I just want to make sure I'm looking at the right statement. It's been a long day.

Q. I think it's on line number 8. You say, "PJM has an independent market monitor whose primary responsibilities are to ensure there is no market

1 power and to take actions to mitigate the development
2 of any such market power," correct?
3 A. That's correct.
4 Q. So you would agree that for purposes of
5 PJM's markets the market monitor can provide helpful
6 guidance on what type of activities are detrimental
7 to the PJM market?
8 A. I wouldn't profess to say what
9 specifically PJM's market monitor should or shouldn't
10 do, but I would assume they would be able to evaluate
11 such market.
12 Q. And you do believe the market monitor is
13 a credible authority?
14 A. Yes, I do.
15 MR. OLIKER: If I could have just one
16 moment, your Honor.
17 EXAMINER PIRIK: Yes.
18 MR. OLIKER: That's all the questions I
19 have. Thank you, your Honor.
20 Thank you, Mr. Henning.
21 THE WITNESS: Thank you.
22 EXAMINER PIRIK: Mr. Petricoff.
23 MR. PETRICOFF: Thank you, your Honor.
24 - - -
25

1 CROSS-EXAMINATION
2 By Mr. Petricoff:
3 Q. Good afternoon, Mr. Henning.
4 A. Good evening.
5 Q. Believe it or not, I still have questions
6 after all of this, but hopefully it will just be a
7 few left.
8 Earlier today, I think in questioning
9 from Mr. Darr, you indicated that come June of 2015,
10 that Duke will no longer own generating capacity; is
11 that correct?
12 A. I believe I referenced Duke Energy Ohio.
13 Q. Duke Energy Ohio.
14 A. Yes.
15 Q. And if I say Duke, from now on I mean
16 Duke Energy Ohio.
17 A. Fair point. Duke Energy Ohio will no
18 longer own generating capacity, that's correct.
19 Q. And basically Duke Energy Ohio then will
20 meet its obligation to provide bundled standard
21 service by having an auction and acquiring power
22 through a competitive auction?
23 A. We will initiate an auction process for
24 the wholesale suppliers, that's correct.
25 Q. Okay. And the OVEC generation will not

be used as part of the power that's going to be used to meet the standard service obligation?

A. What did you say about OVEC? I'm sorry. I missed that one.

Q. That it will not be used, neither the OVEC capacity or OVEC energy will be used to meet the standard service obligations of Duke Energy Ohio?

A. That is not Duke Energy Ohio's intention to use its entitlement as part of bidding it into the wholesale auction, that's correct.

Q. Okay. So it's fair to say then come June, 2015, that the OVEC generation asset is strictly an investment by Duke Energy Ohio?

A. It is currently and it will continue to be an investment by Duke Energy and the contractual entitlement associated with that investment.

Q. Okay. And in calendar year 2014, how was the OVEC generation handled commercially? Was it just sold into the PJM market?

A. I'm not familiar enough with the day-to-day operations to know whether it was hedged or whether it was sold in the daily market.

Q. Okay. But it was not used to meet the standard service obligation for Duke Energy Ohio?

A. Not to my knowledge.

1 Q. And, to your knowledge, do you know
2 whether Duke Energy Ohio, the company, bore the
3 financial burden or the financial benefits of the
4 sale of the power of OVEC generation into the PJM
5 market?
6 A. I believe that to be accurate.
7 Q. Do you know offhand whether the revenues
8 covered the expenses for calendar year either 2013 or
9 thus far in 2014?
10 A. No, I don't have that readily available.
11 Q. Okay. Let's turn to page 4 of your
12 testimony, lines 10 to 12, and we have been through
13 this so many times that I'll try to make this brief
14 and pointed.
15 When I look at line 10 on page 4, it
16 indicates that this is your expectation that roughly
17 25,000 megawatts of generation in the PJM zone is --
18 and these are your words -- "expected to be retired
19 between 2011 and 2019." Do you see that?
20 A. I see that. It's a reference from the
21 State of the Market Report for PJM, yes.
22 Q. Now, did you make any calculation that
23 was similar to that which looked towards what the
24 expected additions in capacity would be between 2011
25 and 2019?

A. I looked at it as a component of that similar report. There are projections in regards to potential new generation coming on line, but I didn't incorporate that in my testimony, no.

Q. And you didn't make like a net calculation on whether PJM was going to be up or down capacity in 2019 versus where we are today in 2011 -- or where we were in 2011?

A. I am aware that there was a net, but my observation was more on what the planned retirement was within PJM.

Q. So it is possible at 2019 that PJM would actually have more generating capacity available than it does today or it had in 2011?

A. Sure. A lot of things are possible.

Q. Okay. Are you familiar with the base residual auction that took place this May for PJM?

A. I'm generally familiar, yes.

Q. Do you know whether or not there was more capacity bid into the base residual auction than cleared?

A. I do not know that.

Q. Now, I want to have you focus on page 4, lines 18 and 19. And you make the statement, "new natural gas-fired generation generally have neither

1 the firm transportation nor the backup fuel supply to
2 avoid the circumstances experienced in January of
3 2014." Do you see that?
4 A. Yes.
5 Q. Okay. Now, I want you to focus on the
6 word "generally." Did you look to see what the
7 situation was in Ohio?
8 A. Maybe not specifically in Ohio.
9 Q. Okay. Do you know whether there were
10 applications made for new electric generation filed
11 with the Ohio Power Siting Board in 2014?
12 A. I do not know.
13 Q. Do you know whether the process of
14 getting a certificate in Ohio requires a gas-fired
15 generator to demonstrate a supply or transportation
16 for its generation?
17 A. I do not know that requirement.
18 Q. Now, I would like you, if you would, to
19 turn to page 9 of your testimony. This is line 6 and
20 7. And here you've testified that "The averages of
21 realtime and day-ahead locational marginal pricing in
22 January 2014 spiked considerably." And I think once
23 again we're citing to the PJM presentation of
24 Mr. Kormos.
25 A. That's correct.

Q. Do you know -- well, first of all, when they said "spiked," what do you think is meant by "spiked"? Do you have a quantification for spiked?

A. I would think of it as an extreme increase.

Q. Something more like two- or threefold as opposed to two or three percent?

A. I would say greater than two percent. I'm not sure if I would put an upper limit on it to say two or three, but a steep increase is how I would think about that.

Q. Do you know how many days in January of 2014 we had a spike in the marginal locational pricing in the Duke delivery zone?

A. I don't have that readily available, no.

Q. Do you know how many days in PJM there was what you would consider spiked LMP prices?

A. No, I don't.

Q. Was there any price spiking this summer?

A. None that I'm aware of. Not of the same magnitude as would have been in the polar vortex back in January.

Q. Then, to your knowledge, for the year, have you seen any studies as to what the weighted average locational marginal pricing was either for

1 PJM or for the Duke delivery zone for 2014, you know,
2 the first -- I guess we're 10 months in?
3 A. I am not aware of any studies.
4 Q. Okay. At this point, do you anticipate
5 that the weighted average locational marginal
6 pricing -- actually, let's go back a step.
7 When we talk about the LMP price, that's
8 an hourly price, right?
9 A. I believe so.
10 Q. Right. And there are 8,760 clock hours
11 in a year?
12 A. I'll take your word for that.
13 Q. Subject to check, okay. And I guess the
14 question is, does the mere fact that we had some
15 spiking in January mean that -- we're at this point
16 10 months into the year -- that the locational
17 marginal pricing on weighted average is higher than
18 last year?
19 A. I don't know that.
20 Q. Okay. So it could be possible that
21 January was just an anomaly, and we'll finish up the
22 year with a weighted average locational marginal
23 price that looks a lot like 2013 or 2012?
24 A. I guess it could be possible.
25 Q. Okay. If you would, I would like you to

1 turn to page 10, and we'll look at lines I guess it's
2 4 to 7. This is where you present the rider PSR as a
3 solution to the volatility in retail prices.
4 A. Okay.
5 Q. Okay. I note that you have called this a
6 hedge for customers. Is it also a hedge for Duke?
7 A. I don't think I've thought of it that
8 way.
9 Q. Well, let me ask you this, and then I'll
10 let you go back and see if this would affect your
11 answer. If the Commission approves the application
12 and the proposed rider of PSR, isn't it true at that
13 point that Duke will be assured that it will collect
14 all of the costs that it has to pay to OVEC for the
15 generation, including a return on its investment?
16 A. I know we would under the proposed
17 mechanism, the PSR rider, there would be -- the first
18 part of the formula is the recovery of the costs
19 associated with contractual entitlement. So, yes, we
20 would be entitled to recover our costs associated
21 with our contractual entitlement, but not with OVEC.
22 Q. And part of that cost includes a return
23 on your investment? If you know.
24 A. Yeah, I believe it's -- you know, I
25 believe it's the costs that are charged to us for the

1 fixed costs of operating the plant plus the variable
2 cost standard service offer. I'm not specifically
3 sure what components are embedded in that cost.
4 Q. Okay. So there may or may not be a
5 return on the investment that are in the costs that
6 are paid to OVEC?
7 A. There may or may not be.
8 Q. So whether it's a hedge or not, you agree
9 with me that this does provide certainty in terms of
10 a revenue stream for Duke, this being the rider PSR
11 if it's approved?
12 A. Yes, I would agree there would be
13 certainty of recovery of our costs as a component of
14 our formula.
15 Q. Would the customers have the same level
16 of certainty? Do they know that they are going to
17 obtain a benefit from the rider PSR?
18 A. Yes, I believe the benefit that they
19 would have obtained a reduction in volatility.
20 Q. Okay. Let's explore that reduction in
21 volatility. If the price of power goes down and the
22 price of the OVEC power stays the same, then the
23 customer would be paying a premium through rider PSR,
24 but the rate would be more stable because it doesn't
25 drop down; is that correct?

A. So the rate would be more stable because it wouldn't move as far down as it otherwise would have moved absent the rider, that's correct. And that works exactly the same on the other side of the equation.

Q. And then just to pick up the example I know that you discussed with Mr. Oliker, if, in fact, the price of power goes up and the price of the OVEC power goes up even higher, then basically rider PSR accelerates the volatility; isn't that correct?

A. That assumes that the cost associated with our entitlement of OVEC goes up higher which I'm -- similar to my conversation with Mr. Oliker, I didn't agree to that hypothetical.

MR. OLIKER: I'm sorry. Could I have that answer read back?

(Record read.)

Q. But it is a possibility?

A. I guess it's a possibility.

Q. Okay. Thank you. Do you know what the end of the useful life is for the Kyger Creek or the Clifty Creek power plants?

A. I don't know specifically, no.

Q. Do you know whether it comes before 2040?

A. I don't believe it does.

Q. Okay? So you believe it's after 2040.

A. I don't believe it's before 2040.

Q. Okay.

A. I'm not sure if it's 2040 or --

Q. If the Commission approved -- well, first, let's go back.

Is Duke at the moment committed under the inter-partner agreement with OVEC to take 9 percent of the output between now and 2040?

A. What agreement are you referring to? I'm sorry.

Q. The inter-partner agreement -- let me ask this.

Did Duke sign an agreement with OVEC to agree to be a participating partner?

A. Yes.

Q. Okay. And as part of that agreement, are they obligated to take the power through calendar year 2040?

A. That's my understanding.

Q. Okay. If the Commission approves the rider PSR, has the Commission then obligated ratepayers to pay all the expenses for the generation from Kyger Creek and Clifty Creek for the next 26 years?

A. I believe if they approve our PSR, that the customers would be obligated then to -- or would have the opportunity to receive the net benefits or costs associated with our contractual entitlement with OVEC through the term of up to 2040 or as long as we continue to have that contractual entitlement.

Q. And right now you are contractually entitled for 26 years?

A. Through the year 2040 is my understanding, yes.

Q. Now, I want to go back because you used the words "They will have the opportunity." Can they decline the opportunity? Can they say, "No, I would rather not"?

A. No, they wouldn't. So it would be a nonbypassable charge or credit that would be passed along to the customers as part of our contractual entitlement with OVEC.

MR. OLIKER: Okay. I have no further questions. Thank you very much, Mr. Henning.

EXAMINER PIRIK: Mr. Hart?

MR. HART: Thank you, your Honor.

- - -

1 CROSS-EXAMINATION
2 By Mr. Hart:
3 Q. Good afternoon, Mr. Henning. I will try
4 to be brief.
5 A. Good afternoon.
6 Q. Now, you are the overview witness for
7 Duke. In other words, you presented an overview of
8 the application and all of the other witnesses'
9 testimonies; is that correct?
10 A. That's correct.
11 Q. I take it that means you have read all
12 that material?
13 A. I've reviewed, yes, I have.
14 Q. Okay. Correct me if I'm wrong, but am I
15 correct that there's nothing in the application or
16 any of the direct testimony from the Duke witnesses
17 to allow the Commission to make a financial judgment
18 as to whether OVEC will or will not be profitable?
19 A. Subject to verification, I would probably
20 agree with your statement.
21 Q. And at the time the case was filed and
22 all the testimony was filed, Duke had not even itself
23 made an analysis of what the future profitability or
24 loss of OVEC might be?
25 A. At the time of the filing?

Q. Correct.

A. Yes.

Q. And there's nothing in the filing that provides any historical data about what the results of OVEC have been during the time that Duke has participated in OVEC?

A. Not that I'm aware of.

Q. Now, as a result of discovery, am I correct that Duke did prepare a projection looking forward of what it expected the results to be of its investment of OVEC?

A. That's my understanding, yes.

Q. And I will attempt to avoid confidentiality, but you've already answered a question from Ms. Bojko earlier today that during the three-year period of ESP, the projection shows a net lose from OVEC; is that correct?

MS. SPILLER: I don't believe that's what the witness said.

EXAMINER PIRIK: The witness can answer the question as asked.

A. That question, if it was asked to me, it was earlier in the day, so I don't recall what my response was.

Q. So let me ask you to answer it now.

1 Doesn't that projection show an expected loss for
2 OVEC during the three-year period of ESP?
3 A. I believe it does.
4 Q. And just for the record, that would be
5 from June 1 of 2015 through May 31 of 2018; is that
6 correct?
7 A. That is correct, but that -- once again,
8 that's not the timeframe of our proposal for PSR.
9 Q. We'll get to that. And that projection
10 continues to show losses for years after May 31 of
11 2018 for some period of time as well, correct?
12 A. To the best of my recollection, it does.
13 But, you know, once again, I've reviewed a lot of
14 documents, and I don't have committed to memory each
15 and every year what the impact of what the PSR is on
16 behalf of the customers.
17 Q. Okay. So if we were to accept that
18 Duke's projections were accurate or reasonably
19 accurate, the rider PSR would have to be in place for
20 some number of years well beyond 2018 before there
21 would be a net benefit on the bill to a customer, a
22 net credit to the customer?
23 A. Assuming the forecasts are correct, yes.
24 Q. Okay. And currently Duke has this
25 participation agreement that goes through 2040, which

1 would be essentially a 25-year term beginning in June
2 of 2015; is that right?
3 A. Yes, contractual agreement with OVEC.
4 Q. Now, let's talk a little bit about what
5 that means. If OVEC's generation units don't get
6 dispatched, Duke still has to pay its 9 percent share
7 of fixed costs, correct?
8 A. So we have a contractual commitment,
9 which we have expenses, and then we have the
10 opportunity to dispatch and sell the generation
11 output from OVEC into the PJM market.
12 Q. Right, but I'm talking about if the units
13 don't dispatch, you still have the obligation to pay
14 those fixed costs, correct?
15 A. That's correct.
16 Q. And if the units do dispatch, you are
17 entitled to a 9 percent share of whatever marginal
18 revenue there might be?
19 A. Of the generation, yes.
20 Q. Okay. So for the OVEC investment to be
21 cash flow positive, the margins on those energy sales
22 and capacity sales have to exceed your fixed costs
23 that's unavoidable?
24 A. Fixed costs, and then whatever available
25 costs associated with running the units, yes.

Q. At least in the near few years, Duke doesn't predict that's going to happen, right?

A. Current forecast, yes.

Q. Okay. Now, as I understand Duke's proposal, rider PSR would remain in place so long as Duke has that entitlement to a share in OVEC, correct?

A. That's correct.

Q. So it might actually end sooner than 2040 if Duke were to either sell its investment or somehow terminate its participation agreement, correct?

A. If we no longer had the contractual entitlement, we wouldn't be able to honor the obligation for the PSR.

Q. If that were to happen, it would cut off some of the tail end years that are projected to be the more profitable years?

A. That's assuming that it was approved for a longer period of time out to the year 2040 like we are -- as we are proposing our --

Q. How long would Duke have to retain its share of OVEC before its projection would show that customers would at least break even?

A. I don't have the answer to that.

Q. Okay. Would you agree that in order for

you to reach that break-even point according to the projections, two things would have to happen. You would both have to continue to hold the investment, and the Commission would have to approve the rider beyond the three-year term of the ESP?

A. Yes, that would have to occur.

Q. And as I understand your testimony on page 11, you're basing the ability to have the rider extend beyond the term of the ESP on the fact that the Commission approved the alternative energy resource rider in the last ESP case; is that right?

A. That was just an example of a rider or where the Commission had approved something for a rider for longer than the term of the proposed --

Q. Okay. And that was rider -- I guess it's AERR, and it happened in Case 11-3549, right?

A. That's correct.

Q. Which was resolved by stipulation, correct?

A. Yes, that's correct.

Q. Okay. Now, let's talk a little bit about what rider AERR does -- before I get there, that's the only example you gave, isn't it?

A. Yes, that is.

Q. Okay. So let's talk about rider AERR.

As I understand it under Ohio law, Duke, to the extent it's providing generation service, has to use a certain percentage of alternative energy resources to do that?

A. Consistent with the compliance requirements as set forth by the state of Ohio.

Q. Correct.

A. Yes.

Q. So in order to do that, you either have to own some alternative generation resources of some sort or buy credits from somebody else?

A. That's correct.

Q. And Duke's main strategy has been to buy credits from other folks?

A. That's my understanding, yes.

Q. And, for example, people install solar power. Duke might pay that customer some amount of money in order to take advantage of that solar credit?

A. We would be buying renewable energy credits in multiple ways, the way you described, or on the open market, yes.

Q. So the renewable energy credits that we're talking about were the costs that would go into rider AERR; is that right?

A. That's my understanding, yes.

Q. So these would be costs that Duke incurred to provide energy during the course of the ESP?

A. No. I'm not sure about that. I think it's costs to comply with the renewable energy mandates.

Q. Okay. And the reason it has to comply with those is because it's offering generation supply?

A. If we buy the renewable energy credits, we are not buying the generation supply, especially with the energy credits.

Q. Let me try to go about this a different way. You are aware that if a CRES supplier takes the load away from Duke, that it becomes the CRES supplier's obligation to supply the alternative energy credits?

A. Based on a certain annual or multi-year term average of generation supply, yes.

Q. So if the customer shops and leaves Duke, that reduces your responsibility to obtain alternative energy credits?

A. That's correct.

Q. So the only costs -- well, I shouldn't

say the only, but the main cost that goes into the alternative energy resource rider is Duke's cost of acquiring these alternative energy credits?

A. That's correct.

Q. And the purpose of the rider then is to recover those costs from that customer base, correct?

A. Recover costs from customers associated with complying with state law.

Q. And the customers that are responsible to pay that rider are the customers who stay with Duke and do not shop? In other words, it's bypassable?

A. I believe that is correct.

Q. Okay. And the reason the alternative energy resource rider can extend beyond the three-year term of the ESP is that those costs may not have all been recovered within the three-year ESP period; is that right?

A. I would have to defer that question to our witness who is responsible for managing that program.

Q. Okay. But is it fair to say that the costs that get recovered through that rider are costs that were expended during that three-year ESP term?

A. That's my understanding, but if any deeper discussion around that might be more

1 appropriate for the specific witness who is
2 responsible for that program.
3 Q. Okay. Now, if we turn now to proposed
4 rider PSR, first, you're proposing that not be
5 bypassable, correct?
6 A. That's correct, nonbypassable.
7 Q. So a customer who shops and may have
8 either acquired a mixed price contract or maybe
9 they're willing to take the risk of price volatility
10 has no choice but to participate in what you call the
11 this PSR hedge?
12 A. Under our terms of our proposals, all
13 customers would be subject to the PSR credit or the
14 PSR charge.
15 Q. Okay. And the costs that would go into
16 that PSR rider wouldn't just be costs incurring
17 during the three-year term of the ESP, it would be
18 costs that were incurred as far out as 2040
19 potentially?
20 A. I guess over time, each incremental year,
21 another year would be added on to those costs, but we
22 wouldn't be including costs today that were
23 anticipated to be incurred in out years.
24 Q. Okay. Let me flip to the other issue
25 about the investment in OVEC. Are you familiar with

1 the concept of valuing a business by its cash flow?
2 A. Familiar, yes.
3 Q. You do that every day, don't you?
4 A. I don't know about every day but --
5 Q. It's very typical in your business?
6 A. Yes.
7 Q. And so the company or an investment that
8 has a positive cash flow is more valuable than one
9 that has a negative cash flow, correct?
10 A. I would say yes.
11 Q. And the proximity of positive cash flow
12 is also a positive influence on value? In other
13 words, the sooner you make the cash flow, the more
14 that's worth, correct?
15 A. Yes.
16 Q. So a dollar this year is worth a lot more
17 than a dollar 25 years from now?
18 A. Absolutely.
19 Q. Okay. Now, as we go through the next 25
20 years with the OVEC investment and we assume that the
21 Duke projection is correct, that it's going to go
22 from negative cash flow to positive cash flow,
23 wouldn't it also be true that the value of that
24 investment would be expected to increase over that
25 same period of time?

A. I'm not sure I follow you.

Q. We're valuing the cash flow and I am looking at a 40-year period that starts with negative cash flow and the positive cash flow is in the distance. Is that less valuable than if I'm at the break-even point and all future years are positive cash flow?

A. Wow. It's been a long day, and I'm sorry I am just not following your example. So if you could repeat that, I would appreciate it.

Q. I will follow my friend Mr. Oliker's example and give you a hypothetical. Let's just say very simply we have a two-year period.

A. Right.

Q. And period year number 1 is expected to lose a dollar. Period number 2 is expected to make a dollar. So break-even is zero, correct?

A. Right.

Q. So on day one, that investment is actually a negative value, isn't it?

A. If you are expecting -- yes, yes.

Q. Because you are going to realize the loss sooner than the gain.

A. Right.

Q. So the gain is worth less than the

losses?

A. Right, right.

Q. Now, if we go to year two, day one of year two, that investment is now worth a dollar, right?

A. Yes, I assume.

Q. Okay. So on year one, that investment is not really marketable to a third party, is it, because it's a negative value?

A. There's a market for all transactions whether, you know, it's negative or positive.

Q. Okay. But the market is much better in year two than it would have been year one?

A. There could be a lot of changes in the market conditions and, you know, environment.

Q. I am asking this hypothetical. These are assumptions.

A. Yes.

Q. So if we assume that Duke's projection of OVEC's future value is correct, wouldn't it be true that as years pass and the negative years are behind us, that the value of that investment is increased?

A. What investment are you talking about?

Q. The entitlement to OVEC's 9 percent.

A. So you are talking about a contractual

1 entitlement?
2 Q. Yes.
3 A. Not Duke Energy's ownership investment in
4 OVEC?
5 Q. I meant the big package, the package that
6 you are going to put in the rider.
7 A. So assuming -- can you repeat the
8 question again? I'm sorry.
9 Q. All right. Assuming we're several years
10 down the road where we are going to produce a
11 positive cash flow, the forward-looking value of the
12 entitlement to OVEC is going to be higher at that
13 point in time than it is today?
14 A. Based on assumption and forecast that the
15 back end of the OVEC entitlement is more positive
16 than the front end.
17 Q. That's exactly why Duke proposes that the
18 rider stay in place a number of years in order to be
19 able to capture its positive years so the net effect
20 is positive?
21 A. Yes, we are interested in the net effect
22 being positive and the benefit to the customers being
23 positive when we're -- over the long term of
24 contractual entitlement.
25 Q. If the value of that entitlement is

1 higher down the road, doesn't it make that also more
2 likely that Duke would seek to monetize that
3 investment or sell it?
4 A. I can't answer that question at this
5 time, if that's what our intentions would be.
6 Q. But if that were to occur, then the
7 positive benefit that's necessary for the customer
8 base to realize an overall positive benefit could be
9 taken away?
10 A. Assuming that the forecasts are accurate
11 and they didn't realize the positive benefit in the
12 front end of the term of the agreement -- of the PSR.
13 MR. HART: Thank you. That's all I have.
14 EXAMINER PIRIK: Staff? Mr. Beeler?
15 MR. BEELER: No questions, your Honor.
16 EXAMINER PIRIK: Redirect?
17 MS. SPILLER: We will have some. Can I
18 just have a couple of minutes, your Honor, please?
19 EXAMINER PIRIK: Yes.
20 MS. SPILLER: We will be quick.
21 (Recess taken.)
22 EXAMINER PIRIK: We're back on the
23 record.
24 Ms. Spiller.
25 MS. SPILLER: Thank you, your Honor.

1 - - -

2 REDIRECT EXAMINATION

3 By Ms. Spiller:

4 Q. Mr. Henning, I appreciate it's been a

5 long day --

6 EXAMINER PIRIK: Do you have the

7 microphone?

8 Q. I appreciate it's been a long day, and

9 I'll move quickly through this, but if you could

10 refer to your testimony, sir.

11 EXAMINER PIRIK: Can you pull the

12 microphone closer, please? Thank you.

13 Q. And specifically page 13 of your

14 testimony, there's a chart that appears there, and

15 you were asked questions by both Ms. Bojko and

16 Mr. Serio. This is a chart that identifies typical

17 residential bills for Duke Energy Ohio, as well as

18 the other electric distribution utility companies in

19 Ohio, correct?

20 A. That's correct.

21 Q. And you were asked questions from

22 Ms. Bojko about whether or not the financial or the

23 bill information that's included in the column for

24 the other Ohio distribution utilities was proposed or

25 current rates. Have you had an opportunity, sir, to

1 confirm whether the typical bill levels in the chart
2 are, in fact, approved rates?
3 A. Yes, the calculations were included in
4 their representative cases that are identified here,
5 and those were current rates, not proposed.
6 Q. And Mr. Serio was asking you questions
7 about reasonableness in a comparison as between these
8 rates and if a higher rate is necessarily
9 unreasonable. Do you believe that the Commission
10 would approve unreasonable rates?
11 A. No, I do not.
12 Q. There was a fair amount of discussion
13 with you, sir, concerning documents from the market
14 monitor, and if I could refer you, please, to the
15 documents from IEU-Ohio. Do you have, sir, in front
16 of you IEU Exhibit 3?
17 A. I do. I do.
18 Q. If you could turn, please, to page 353.
19 In table 12-9, it lists unit retirements for 2011
20 through 2019 broken down by bill type, correct?
21 A. That's correct.
22 Q. And, sir, would you agree with me,
23 certainly if we look over here, the percentage column
24 indicates that 76.7 percent of the expected
25 generation to retire are coal plants, correct?

1 A. That's correct, 76.7 percent.
2 Q. Sir, if you could turn, please, to page
3 350. And on that page there was a table 12-6,
4 correct?
5 A. That's correct.
6 Q. And there were some questions about the
7 capacity in the queue, and I believe Mr. Oliker had
8 asked you about a similar table. What is the total
9 capacity shown to be in the queue as reflected on
10 table 12-6 and IEU Exhibit 3?
11 A. Total is 67,299, subject, however, to the
12 adjustment reduction by PJM, which would bring it
13 down to 54,387 megawatts.
14 Q. And this is a reduction that is given to
15 wind and solar resources, correct?
16 A. Yes, that's my understanding.
17 Q. And the reduced capacity that's in the
18 queue, 54,387 megawatts, how much of that is coal?
19 A. 802 megawatts, very small percentage.
20 Q. Again, subject to check, would you agree
21 that that's about 1.5 percent?
22 A. Subject to check your math, yes.
23 Q. And, Mr. Henning, of the 54,387 megawatts
24 in the queue, would you agree, subject to check, that
25 about 80 percent of that is gas fired?

MR. OLIKER: Could you have that question repeated, please.

EXAMINER PIRIK: Yes.

(Record read.)

MR. OLIKER: Object. The statement mischaracterize the document. There are 67,000 megawatts in the queue.

EXAMINER PIRIK: Could you just rephrase the question? I'm not sure.

Q. Mr. Henning, with respect to table 12-6, there is a total capacity noted in the queue, correct?

A. That's correct.

Q. But there is a footnote that indicates when resources cannot be dispatched on demand, correct?

MR. SERIO: Objection. Your Honor, the footnote has nothing to do with table 12.6. The footnote has to do with the text. The question was to the table.

EXAMINER PIRIK: I understand that there's concerns on the intervenors' parts. There will be an opportunity for recross.

MR. OLIKER: I would join in the objection.

1 EXAMINER PIRIK: Thank you.
2 Q. Mr. Henning, we will just go about this a
3 different way. The capacity in the queue, over
4 43,000 megawatts are gas fired, correct?
5 A. That's correct, 39,420 CC and
6 4,049 megawatts of CT.
7 Q. Thank you. And if we could turn,
8 Mr. Henning, to IEU Exhibit 4, please, page 363.
9 And, again, we have a table 12.8 that identifies the
10 retirements by fuel type 2011 through 2019, correct?
11 A. That's correct.
12 Q. And is the percentage of coal expected to
13 retire between 2011 and 2019 -- what is that number,
14 please?
15 A. 77.4 percent.
16 Q. And if we turn to page 361 of IEU Exhibit
17 No. 4, please.
18 A. Okay.
19 Q. Table 12-5 is again an identification of
20 capacity in the queue, correct?
21 A. That's correct.
22 Q. And that capacity is listed in the table
23 without any changes to the footnotes as 63,009.4
24 megawatts, correct?
25 MR. OLIKER: Your Honor, I just object at

1 this point because counsel has been leading the
2 witness for the past several questions.
3 Q. Well, I'll rephrase.
4 Mr. Henning, what is the total capacity
5 in the queue on table 12-5 in IEU Exhibit 4?
6 A. The total capacity in the queue is listed
7 as 63,009.4. However, adjusted for the -- per the
8 footnote in 10, adjusted down to 47,590.2 megawatts.
9 Q. And of the capacity that's in the queue,
10 how much is coal, please?
11 A. Roughly 766 megawatts.
12 Q. And how much of the capacity that's in
13 the queue is gas fired?
14 A. Roughly 41,000 megawatts.
15 Q. And, Mr. Henning, you had some questions
16 today about fuel diversity. Do these planned
17 retirements and the capacity that's in the queue, can
18 you explain how they relate to your testimony
19 regarding fuel diversity?
20 A. So my testimony spoke to planned
21 retirements of coal impacting the availability of --
22 or the diversity of fuel mix in PJM, as I further
23 look at this chart and see a continuation of planned
24 retirements of coal with very limited amount of coal
25 being added, but it's a significant amount of natural

gas-fired generation planned to be added, in my opinion, that would decrease the diversity of fuel available in the PJM market.

Q. And I believe you had made a comment earlier in your testimony, sir, with respect to wind and solar, and those fuel sources being intermittent. Can you explain that, please?

A. So I think of wind and solar generation which is different than coal or natural gas-fired generation of not always being available on demand on a base load basis. So I think of that differently from a diversity standpoint in reliance on those resources the same way that I would think about coal or natural gas being more readily available.

Q. Mr. Serio had asked you questions discussing the MRO versus the ESP, and I believe he had asked you whether Duke Energy Ohio -- strike that.

I believe he had asked you whether rider DSR or rider DCI would be available under an MRO. Do you recall that question from Mr. Serio?

A. I do.

Q. If the company had proposed an MRO, Mr. Henning, could it have included in the MRO application a request for either rider DCI or DSR?

A. I do not believe we could have embedded into an MRO.

Q. If the company were providing a standard service offer in the form of an MRO, is the company still able to seek approval of either rider DCI or rider DSR?

A. We would have the opportunity in another application as part of a distribution rate case, yes, we would be able to.

Q. And Mr. Petricoff had asked you questions about Duke Energy Ohio's obligations under the ICPA, the inter-company power agreement, between OVEC and the sponsoring companies. And I believe you said that Duke Energy Ohio is obligated to take power.

A. I do recall that.

Q. So they are obligated to take the power under the ICPA?

A. So my understanding -- and if I misspoke, it was that we have the opportunity to take the power and dispatch that power into the wholesale market only when the costs of the power is less than the -- the variable cost of the power is less than the market price.

MS. SPILLER: Nothing further, your Honor. Thank you.

EXAMINER PIRIK: Thank you.

Is there any cross?

Did you get the clarifications you needed, Ms. Bojko?

MS. BOJKO: No.

MR. DARR: IEU has no cross, your Honor.

MS. HUSSEY: Nothing from Kroger, your Honor.

MS. BOJKO: Thank you, your Honor. Just real quickly.

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RECROSS-EXAMINATION

By Ms. Bojko:

Q. Under Duke's proposed ESP and their proposed rider PSR, isn't it true that Duke still has the choice as to whether to bid OVEC generation output into PJM or not bid it into PJM?

A. I believe that to be true.

Q. So customers could pay for the entirety of the OVEC costs, and then Duke has the option to bid it into PJM or not bid it in; is that your understanding?

A. So we would bid it into the market when the market price exceeds the variable costs associated with that power, that's correct.

MS. BOJKO: Thank you, nothing further.

EXAMINER PIRIK: Thank you.

MR. SERIO: No questions, your Honor.

MR. ALLWEIN: I have a question.

EXAMINER PIRIK: Go head, Mr. Allwein.

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RECROSS-EXAMINATION

By Mr. Allwein:

Q. Mr. Henning, you just responded to a question from your counsel about a decrease in diversity, and you pointed to the couple of IEU exhibits and a couple of tables that you looked at that show 76.7 percent of the retirements from 2011 through 2019 are coal. And you looked at a second table that showed that new construction was mostly natural gas; is that correct?

A. That's correct.

Q. And you're labeling that as a decrease in diversity because most of the retiring plants are coal and most of the plants being constructed are gas?

A. Yes. In my judgment, a greater reliance on natural gas and a lesser reliance on coal would decrease the diversity of the supply availability in the PJM market.

1 Q. Well, along those lines, if the coal
2 that's -- after the 76.7 percent retirements that are
3 coal, will there still be coal-fired generation
4 plants existing?
5 A. There will be less coal-fired generation
6 plants existing after the retirements, yes.
7 Q. Do you know what percentage this 76.7
8 percent of coal generation that's retiring represents
9 in terms of the entire existing operating coal fleet
10 in PJM currently?
11 A. I don't have that committed to memory,
12 no.
13 Q. So you don't know what the percentage is?
14 A. I said I don't have that committed to
15 memory.
16 Q. Okay. And do you know what percentage of
17 the natural gas plants under construction will
18 represent PJM's fleet once the natural gas plants go
19 online that are under construction?
20 A. I would assume it's a greater percentage
21 than is now currently in PJM's market.
22 Q. Okay. But after the retirements and
23 after construction is complete, they'll still be
24 coal-fired generation; is that correct?
25 A. That's my understanding.

Q. And there will still be natural gas-fired generation, correct?

A. Yes.

MR. ALLWEIN: I don't have any further questions.

EXAMINER PIRIK: Mr. Boehm?

MR. K. BOEHM: No questions, your Honor.

EXAMINER PIRIK: Mr. Oliker?

MR. OLIKER: Just really briefly.

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RECROSS-EXAMINATION

By Mr. Oliker:

Q. Mr. Henning, you discussed the portion of generation that's being retired and indicated that it was largely coal, correct? I think you pointed to a 77 percent number.

A. I believe it was 77.4 percent as indicated in this report.

Q. You haven't done any analysis to determine what percentage of the megawatts that were provided to PJM over the past year or two years those coal-fired power plants reduced, have you?

A. I'm sorry. Can you repeat the last part of the question?

Q. You haven't done any analysis of the

amount of megawatts as opposed to total generation of PJM that those 77 percent of the retirements provided is PJM?

A. No, I haven't.

Q. Just one or two more questions.

You mentioned that solar is an intermittent resource, right?

A. Yes, I believe I mentioned that.

Q. Are you familiar with the five coincident of peaks as that terminology is used in PJM?

A. Vaguely familiar, yes.

Q. Would you agree that they usually happen in July or August?

A. Subject to verification, I would agree.

Q. Would you agree that they usually happen when the sun is shining?

A. I would hope so.

MR. OLIKER: No more questions, your Honor. Thank you, Mr. Henning.

EXAMINER PIRIK: Mr. Petricoff?

MR. PETRICOFF: No questions, your Honor.

EXAMINER PIRIK: Mr. Hart?

MR. HART: No questions.

EXAMINER PIRIK: Mr. Beeler?

MR. BEELER: No questions. Thank you.

EXAMINER PIRIK: Thank you, Mr. Henning, for your time.

With regard to exhibits?

MS. SPILLER: Your Honor, at this time, Duke Energy Ohio would move for admission into the record as Duke Energy Ohio Exhibit 1, the application, including attachments; and then Duke Energy Ohio Exhibit 2, the direct testimony of James P. Henning filed on May 29, 2014.

EXAMINER PIRIK: Are there any objections?

Hearing none, those exhibits shall be admitted into the record.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER PIRIK: Mr. Darr?

MR. DARR: Yes, your Honor. I would like to move Exhibits 3 and 4 at this time, your Honor, and reserve on 1 and 2 until a later day.

EXAMINER PIRIK: Okay. Are there any objections to IEU Exhibits 3 and 4?

MS. SPILLER: No, your Honor.

EXAMINER PIRIK: Those exhibits shall be admitted into the record.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER PIRIK: Mr. Serio?

MR. SERIO: Thank you, your Honor. I would like to move OCC Exhibit No. 1 into the record.

EXAMINER PIRIK: Are there any objections?

MS. SPILLER: No, your Honor.

EXAMINER PIRIK: It shall be admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PIRIK: And Mr. Allwein?

MR. ALLWEIN: Yes, your Honor. Thank you. The Sierra Club moves for admission of Exhibits 1 and 2 into the record, and I have the website address for Exhibit No. 1.

EXAMINER PIRIK: Thank you. I think it would be sufficient since we are doing daily that you give that to the court reporter at the conclusion, and she can put that -- as opposed to reading it into the record, I think we will all accept the fact that you are going to give it to the court reporter at the conclusion.

MR. ALLWEIN: Thank you, your Honor.

EXAMINER PIRIK: That will be the last thing we have.

Are there any objections?

MS. SPILLER: Your Honor, Duke Energy

1 Ohio does object to Sierra Club No. 1. The document
2 was not properly authenticated with Mr. Henning.
3 Although, PJM may be a reliable source, I don't know
4 that that's enough to properly authenticate any
5 particular exhibit, particularly as the witness did
6 not rely upon this document for purposes of preparing
7 his testimony in this case.
8 EXAMINER PIRIK: Your objection is noted
9 on the record. It will be given its appropriate
10 weight. The exhibit shall be admitted.
11 (EXHIBIT ADMITTED INTO EVIDENCE.)
12 MS. SPILLER: No objection, your Honor,
13 to Sierra Club No. 2.
14 EXAMINER PIRIK: That document shall be
15 admitted also.
16 (EXHIBIT ADMITTED INTO EVIDENCE.)
17 EXAMINER PIRIK: Mr. Oliker?
18 MR. OLIKER: Thank you, your Honor.
19 IGS would move for admission of IGS
20 Exhibits 1, 2, and 3.
21 EXAMINER PIRIK: Are there any
22 objections?
23 MS. SPILLER: Your Honor, with respect to
24 IGS Exhibit 1, this was, I think as the witness had
25 indicated, part of one section, Section 12, of an

otherwise larger document. So it is a section, Section 12, that is reflected in IEU Exhibits 3 and 4. I don't have objection, per se, to the exhibit, but would for the sake of consistency, so the Commission has the benefit of the complete Section 12 in these various market reports prepared by the independent market monitor in our proposal, would be to include the entire Section 12.

MR. OLIKER: Your Honor, may --

EXAMINER PIRIK: Just a minute.

MR. OLIKER: Sorry.

EXAMINER PIRIK: I do understand, and this is kind of -- this is the Bench's concern about those partial documents, is that when I compare the IEU exhibit with the IGS exhibit, they really don't appear to be the same document. They appear to be separate different documents. They have different footers, different verbiage within the context of it.

So while I'm willing to accept the fact that this is an entity that, you know, presents quarterly reports, I'm concerned that these massive documents, there's no direction. There's no site as to where we are finding them.

So I think that's what we have to do, is when we have documents like this, while I'm okay with

1 having massive documents not put into the record, I
2 think we do need to have whole sections that you're
3 talking about so there's some reference point as to
4 exactly what's going on and then the website to the
5 area where it can actually be found and some
6 direction needs to be given in the record. And I
7 think that goes for both the IEU exhibits, as well as
8 the IGS exhibits.
9 So, you know, I'm not going to sit here
10 and make a comparison of the two, but early on when
11 we were kind of saying they were the same thing, I'm
12 not sure that they are the same thing specifically.
13 They look like kind of the same thing. They have the
14 same headers, so to speak, but it appears as if they
15 could be different documents.
16 We have no way of knowing because we only
17 have random pieces of the document. So if you could
18 clarify those for the record tomorrow, we can talk
19 more offline if we need to do that.
20 MR. OLIKER: Your Honor, are you saying
21 you would like the rest of Section 12, which I think
22 is the overlapping sections, in both of the
23 documents?
24 EXAMINER PIRIK: Yes, yes. And then some
25 cite as to where the full massive document can be

found I think would be helpful. That way it would be clear where we can actually get the documents.

MR. OLIKER: Okay. I can provide that. Thank you.

EXAMINER PIRIK: You too, Mr. Darr. Can you do that for yours?

MR. DARR: I assume what you are asking for is the website for Section 12?

EXAMINER PIRIK: Right, and the Section 12.

MR. DARR: That is Section 12.

EXAMINER PIRIK: That's it? That's all for yours?

MR. DARR: All there is.

EXAMINER PIRIK: Okay, if that's it then.

MR. OLIKER: Mine will look like his.

EXAMINER PIRIK: Okay.

MR. DARR: Just as a matter of clarification, I believe Mr. Oliker's Exhibit IGS 1 is from a different quarter than the two that I provided.

MR. OLIKER: Right. That's the distinction. One is January through March, and the other one is June.

EXAMINER PIRIK: It's six months versus

the three months. Yeah, it's definitely a bigger quarterly report than the quarterly report. I think that is the difference, but they are different documents.

MR. OLIKER: Yes.

EXAMINER PIRIK: Okay. I think that will clarify it and make the record -- I also want to note just at this time I know there are exhibits attached to testimony for different witnesses that are somewhat similar, especially some of the confidential stuff. And in order for clarification of the -- you know, for briefing purposes and for citing purposes in the future, I'm hoping we can come to an agreement that there's one document that's the document we are going to be referring to when it comes to that.

I think there's specifically one OVEC document -- well, there's several OVEC documents, I think, that have similar. So if Duke can kind of look into and kind of compare. We just need to be using the same documents so that we're not all over the board in citing different things. So we're not there yet, but this brought up that point, so we can go there.

Okay. So with regard to the IGS exhibits, with the caveat that we will get the

1 remainder of that Section 12 and a clarification on
2 the record for the website --
3 MS. SPILLER: And I also made comment,
4 your Honor, on IGS Exhibits 2 and 3, if I may
5 briefly, I would object to these documents on the
6 basis that they are irrelevant. There's testimony
7 from Mr. Henning in connection with a matter pending
8 in the Commonwealth of Kentucky concerning the East
9 Bend Generating Station.
10 I believe what Mr. Oliker was attempting
11 to do was to impeach Mr. Henning because of a
12 statement that Mr. Henning gave in respect to the
13 economic viability of any coal plant beyond 2024,
14 that's not what this testimony reflects in IGS
15 Exhibit 2 or as clarified in the discovery responses.
16 So these documents, I think, would be entirely
17 misleading to insert into this record.
18 EXAMINER PIRIK: Your objection is noted
19 for the record. However, they are going to be
20 admitted.
21 (EXHIBITS ADMITTED INTO EVIDENCE.)
22 MR. OLIKER: Thank you, your Honor.
23 EXAMINER PIRIK: Do we have anything else
24 as far as exhibits?
25 I think we're all set for this evening.

We will begin tomorrow with Mr. Lee.

MS. SPILLER: And at 9 o'clock, your Honor?

EXAMINER PIRIK: We will begin at 9 a.m. tomorrow, yes.

MS. SPILLER: Thank you.

(Thereupon, at 6:44 p.m., the hearing was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, October 22, 2014, and carefully compared with my original stenographic notes.

_____

Karen Sue Gibson, Registered Merit Reporter.

(KSG-5946)

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Summary: Transcript in the matter of Duke Energy Ohio Hearing held on 10/22/14 Volume I electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.