

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Duke Energy:
Ohio for Authority to :
Establish a Standard :
Service Offer Pursuant to :
Section 4928.143, Revised : Case No. 14-841-EL-SSO
Code, in the Form of an :
Electric Security Plan, :
Accounting Modifications :
and Tariffs for Generation:
Service. :

- - -

In the Matter of the :
Application of Duke Energy:
Ohio for Authority to : Case No. 14-842-EL-ATA
Amend its Certified :
Supplier Tariff, P.U.C.O. :
No. 20. :

- - -

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 9 a.m. on Monday,
October 27, 2014.

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VOLUME IV

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Monday Morning Session,
October 27, 2014.

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EXAMINER WALSTRA: We will go on the
record then. And if there's nothing else, Duke, you
may call your witness.

MS. KINGERY: Thank you. Duke calls Mark
E. Hollis to the stand.

(Witness sworn.)

EXAMINER WALSTRA: Thank you. You may be
seated.

MS. KINGERY: I would ask that the
testimony of Mark E. Hollis, filed on May 29th, 2014,
be marked as Duke Energy Ohio 11.

EXAMINER WALSTRA: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. KINGERY: May I approach?

EXAMINER WALSTRA: You may.

THE WITNESS: Do you want me to turn this
on?

EXAMINER WALSTRA: Just hit the button.

MS. KINGERY: And the Bench doesn't need
a copy?

EXAMINER WALSTRA: No.

MS. KINGERY: Okay.

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MARK E. HOLLIS

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

DIRECT EXAMINATION

By Ms. Kingery:

Q. Good morning, Mr. Hollis.

A. Good morning.

Q. Would you please state your full name and
business address for the record.

A. Sure. Mark E Hollis, 550 South Tyron
Street, Charlotte, North Carolina 28202.

Q. Thank you.

And do you have in front of you what has
just been marked as Duke Energy Ohio Exhibit 11?

A. I do.

Q. And what is that document?

A. That is the -- my direct testimony on
behalf of Duke Energy Ohio.

Q. And did you prepare that testimony or
cause it to be prepared on your behalf?

A. I did.

Q. And are there any corrections or
modifications that you would make to your testimony
today?

A. There are.

1 Q. And what are they, please?

2 A. Page 2, starting with line 20, it says "I
3 am sponsoring Attachment MEH-1, which is the current
4 CSP...." There is a change that needs to read "which
5 was the current CSP at the time of my testimony of
6 Duke Energy Ohio."

7 Continuing in that same paragraph, line
8 22, says -- starts with "is under consideration."
9 That should be changed to "was recently approved...."

10 Q. So it would read "was recently approved
11 by the Commission..."?

12 A. Correct.

13 Line 23, says "to show changes from the
14 current CSP." It would then be "the previous CSP."

15 And the same line -- on the same topic --
16 theme, at least, page 3, line 17, it says "The
17 current CSP." Since my testimony the new one has
18 been approved, so it should read "the CSP that was
19 current at the time of my testimony, a copy...."

20 In the same theme, page 4, line 15, it
21 says "The 2014 Plan is currently under
22 consideration...." That should be changed to "The
23 2014 Plan was recently approved by the Commission."

24 And lastly, page 5, line 5, it says "That
25 application is currently under consideration by the

1 Commission." It should say "That application was
2 recently approved by the Commission."

3 Q. Thank you.

4 Are there any other revisions or
5 modifications you would make to your testimony today?

6 A. Not to my knowledge.

7 Q. And if I asked you all of these questions
8 today, would your answers be the same?

9 A. Yes.

10 MS. KINGERY: Your Honor, the witness is
11 available for cross-examination.

12 EXAMINER WALSTRA: Thank you.

13 Mr. O'Brien.

14 MR. O'BRIEN: No questions, your Honor.

15 EXAMINER WALSTRA: Mr. Pritchard.

16 MR. PRITCHARD: Yes, your Honor. Thank
17 you.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Pritchard:

21 Q. Good morning, Mr. Hollis. My name is
22 Matt Pritchard. I represent the Industrial Energy
23 Users of Ohio.

24 A. Good morning.

25 Q. At pages 1 and 2 of your testimony, you

1 describe your role in regards to the corporate
2 separation, correct?

3 A. I am just looking over 1 and 2. Yes, it
4 looks like that's a summary.

5 Q. And your title is Manager of Compliance?

6 A. Correct.

7 Q. And as part of those responsibilities as
8 Manager of Compliance, are you responsible for
9 training Duke's employees on the corporate separation
10 requirements?

11 A. Yes.

12 Q. Now, will you turn to page 6 of your
13 testimony. And here you describe -- here you testify
14 that Duke's corporate separation plan --

15 A. Could you say which line number?

16 Q. Well, beginning at line 4 and continuing
17 on to the next page --

18 A. Okay.

19 Q. -- is what I will be referencing. Here
20 you describe and testify that Duke's corporate
21 separation plan is in compliance with the state
22 policy, correct?

23 A. Correct.

24 Q. And specifically in regards to the state
25 policy (H) in section 4928.02, you testified that

1 Duke's corporate separation plan complies with that
2 provision, correct?

3 A. Yes. As those policies have been
4 explained to me by counsel, yes.

5 Q. And the section that I just referenced
6 prohibits Duke Energy Ohio from providing an
7 anti-competitive subsidy to its affiliates.

8 MS. KINGERY: Objection. You're
9 misstating the testimony.

10 EXAMINER WALSTRA: If the witness needs
11 to correct it, he can. He can answer to the best of
12 his abilities.

13 THE WITNESS: Could you repeat the
14 question?

15 Q. Sure. I'll rephrase it.

16 In your opinion does, section 4928.02(H)
17 prohibit Duke Energy Ohio from providing an
18 anti-competitive subsidy to its affiliates?

19 A. Yes.

20 Q. And beginning on line 26 of page 6 and
21 carrying on to the next page, you give an example of
22 what you would consider an anti-competitive subsidy
23 that would violate the statute; is that correct?

24 A. Yes.

25 Q. And you testify here that if the

1 regulated public utility used revenues from its
2 distribution business to subsidize an affiliated
3 competitive retail electric service provider, that
4 would be a violation of the statute, correct?

5 A. Yes.

6 Q. And when you use the words "regulated
7 public utility" here, are you referring to Duke
8 Energy Ohio's distribution business?

9 A. Correct.

10 Q. And Duke Energy Ohio's generation
11 business, under the corporate separation
12 requirements, Duke Energy Ohio, the distribution
13 company, treats Duke Energy Ohio's generation
14 business as if it were an affiliate, correct?

15 A. That's correct.

16 Q. And Duke Energy Ohio's corporate
17 separation plan requires Duke Energy, the
18 distribution business, to operate independently from
19 its generation business, correct?

20 A. Correct.

21 Q. And when Duke Energy Ohio filed its
22 electric security plan in this proceeding, did Duke
23 Energy Ohio, the distribution business, consult with
24 its generation business in preparing its plan?

25 MS. KINGERY: Objection. Misstates the

1 testimony.

2 MR. PRITCHARD: I asked a question if it
3 occurred. I'm not summarizing his testimony.

4 EXAMINER WALSTRA: Overruled.

5 A. I do not know specifics of people that
6 consulted with people.

7 Q. Do you train Duke Energy Ohio's -- let me
8 rephrase that.

9 You stated previously that you train Duke
10 Energy Ohio on the corporate separation requirements,
11 correct?

12 A. We do deploy training.

13 Q. And as part of that training, what
14 guidance do you give the distribution business in
15 regards to communicating with the generation
16 business?

17 A. I don't have the training in front of me,
18 and it's -- it's been a while since it was deployed
19 meaning in 2013. But, in general, I'm trying to
20 recall specifically what it says, but we do talk
21 about separation, books and records, we talk about
22 separation of information. But I don't recall
23 specifically the wording of the trainings, but it
24 is -- it is covered in the training material.

25 Q. Are the distribution employees of Duke

1 Energy Ohio permitted to consult with the generation
2 employees for purposes of preparing an electric
3 security plan?

4 MS. KINGERY: Objection, your Honor.
5 There's no evidence -- there's no testimony by this
6 witness that there was a corporate separation plan
7 prepared for this case.

8 MR. PRITCHARD: My question goes to the
9 corporate separation requirements which this witness
10 has been presented to testify about as required by
11 the Commission's rules.

12 EXAMINER WALSTRA: Overruled.

13 THE WITNESS: Could you repeat the
14 question?

15 MR. PRITCHARD: Will you have the
16 question reread. Thank you.

17 (Record read.)

18 A. I don't -- I don't know that I can answer
19 that question.

20 Q. Do you not know -- sitting here today do
21 you know the answer to that?

22 A. Well, when you say "consult," could you
23 be more specific?

24 Q. How would you define "consult"?

25 A. Well, in my role, consulting is asking

1 questions, providing answers, having discussions.
2 There's no limits.

3 Q. Well, do the Duke -- do Duke's corporate
4 separation requirements place any limitations on the
5 communications that Duke -- Duke's distribution
6 employees may have with the generation employees?

7 A. Yes. There are rules around confidential
8 system operating information that should not be
9 shared. There are rules around customer information
10 that should not be shared. There are separate books
11 and records.

12 Q. In regards to future business strategies,
13 are the distribution and generation employees allowed
14 to sit down and have discussions on what the future
15 of their businesses would look like?

16 MS. KINGERY: Your Honor, objection.
17 This is getting far afield of any relevance to the
18 approval of the ESP that's been proposed in this
19 case.

20 MR. PRITCHARD: Duke Energy Ohio has
21 offered, as part of its electric security plan, a
22 rider that's related to generation power plants. My
23 questions are directed to the witness who testifies
24 on the corporate separation requirements, and I am
25 inquiring whether or not -- what the requirements of

1 Duke's corporate separation plan, how they apply to
2 the PSR proposal and his understanding of the
3 requirements. It's -- my questions are directly tied
4 to what Duke has presented in this case.

5 MS. KINGERY: Your Honor, I would just
6 note that the rider PSR that has been proposed in
7 this case is not proposed as a generation rider; it's
8 a financial hedge.

9 MR. PRITCHARD: Well, it's -- as Duke, I
10 believe, I don't want to misstate the prior testimony
11 in this case, but I believe it's been testified to
12 that this is a -- it's not a directly-owned
13 generation asset, but Duke's power plant entitlement
14 is clearly a generation entitlement. I believe
15 that's been established last week during the
16 testimony.

17 And if it's a generation-related
18 entitlement, whether Duke considers that generation
19 or not, I believe I am allowed to pursue questions
20 about whether or not a generation-related -- because
21 it's related to generation assets, is within the
22 purview of the corporate separation requirement.

23 MS. KINGERY: Your Honor, I would contend
24 that it is not related to generation assets. It's
25 related to stock assets. We own stock in OVEC.

1 EXAMINER WALSTRA: I think both sides
2 clearly have arguments. I think that's what we are
3 exploring here so I am going to overrule it at this
4 time.

5 THE WITNESS: So could we hear the
6 question again?

7 (Record read.)

8 A. No.

9 Q. And in Duke's corporate separation plan,
10 the fourth -- what was listed as the fourth amended
11 corporate separation plan and identified as
12 Attachment MEH-2, you testified on direct a few
13 minutes ago that this is the corporate separation
14 plan that was recently approved by the Commission in
15 a separate docket, correct?

16 A. Correct.

17 Q. And were there any modifications to the
18 fourth amended corporate separation plan ruled on in
19 the Commission's order in that case?

20 A. There were modifications to the plan.

21 Q. Sitting here today, do you know what
22 those modifications were?

23 A. In general, I can tell you that the list
24 of affiliates has changed based on the Duke Energy
25 Progress Energy Merger. In addition, the Duke Energy

1 Ohio regulated business -- one second. I'll find the
2 page. To summarize, Duke Energy Ohio may also offer
3 products and services other than retail electric
4 service.

5 Q. And that -- that last topic you
6 identified, was that in response to a specific page
7 of your corporate separation plan? Were you looking
8 at something in particular?

9 A. It was page 66.

10 Q. And if we wanted to get the Commission's
11 specific rulings on your corporate separation plan
12 instead of general terms, we could just look at the
13 Commission's order in that docket, correct?

14 A. I would guess so.

15 Q. But the -- what's presented here was what
16 you had proposed in the case, not what was ultimately
17 approved, correct?

18 A. Well, this -- this plan has been
19 approved.

20 Q. Subject to the -- the two modifications
21 to what you presented here that you just testified
22 to, correct?

23 A. Including the modifications, yes. My
24 understanding that this fourth amended plan has been
25 approved.

1 Q. And in the fourth amended corporate
2 separation plan, the Ohio Valley Electric Corporation
3 or OVEC is listed as an affiliate of Duke Energy
4 Ohio, correct?

5 A. Could you point me to that?

6 Q. Yes. It's page 39.

7 A. Yes, I see that with a caveat of a
8 minority interest noted.

9 Q. The --

10 A. I believe that's a 9 percent.

11 Q. The caveat that you just clarified to
12 doesn't change the status of OVEC as an affiliate of
13 Duke Energy Ohio though, correct?

14 A. Well, I would have to defer to the legal
15 definition of "affiliate" in that matter. We have a
16 minority interest. I would not equate them to a Duke
17 Energy Kentucky, for example.

18 Q. Well, if you turn back to page 12 of this
19 attachment and let me know when you get there.

20 A. Okay.

21 Q. Am I reading this correctly: "The
22 following list includes the list of affiliates within
23 Duke Energy as of March 1, 2014"?

24 A. That's what it says.

25 Q. And then on the next page begins a list

1 of affiliates by alphabetical order and if we flip
2 several pages forward to what's identified as page 39
3 of your attachment, the list continues in
4 alphabetical order until we get to OVEC; is that
5 correct?

6 A. That's correct. In looking at the list,
7 I do not see any others -- I haven't studied it in
8 detail -- that say "minority interest." I think the
9 focus on that is the "minority interest." In fact, I
10 don't see that statement anywhere except for that
11 one.

12 Q. And one final line of questions,
13 Mr. Hollis. Will you turn to what's been marked as
14 page 65 in Attachment MEH-2.

15 A. Page 65?

16 Q. Correct.

17 A. Okay.

18 Q. And beginning with point A. which is
19 titled "Generation," at the beginning of this -- this
20 paragraph you are -- the corporate separation plan is
21 describing a stipulation in Duke's prior electric
22 security plan, correct?

23 A. Correct.

24 Q. And at the end of this section, Duke's
25 corporate separation plan identifies and I am

1 directly reading what begins "as such." Do you see
2 that?

3 A. In the "Generation" section?

4 Q. Yes.

5 A. I do.

6 Q. And here Duke's corporate separation plan
7 states that "Duke Energy Ohio, as a regulated
8 electric distribution company, treats its generation
9 as a non-regulated affiliate and abides by both the
10 FERC Standards of Conduct and Ohio's code of
11 conduct." Do you see that?

12 A. I do.

13 Q. And it -- strike that.

14 MR. PRITCHARD: I have no further
15 questions.

16 EXAMINER WALSTRA: Thank you.

17 Ms. Hussey?

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Hussey:

21 Q. Good morning, Mr. Hollis.

22 A. Good morning.

23 Q. Could you please turn to page 6 of your
24 testimony.

25 A. Sure.

1 Q. And there you testified at -- you testify
2 at lines 6 through 9 that Duke's current separation
3 plan is consistent with the state policies in 4928.02
4 Revised Code, correct?

5 A. Did you say 6 through 9?

6 Q. Yes.

7 A. Yes.

8 Q. Okay. And at line 6 through 7 your
9 language states "To the extent that Divisions (A)
10 through (N) of Revised Code 4928.02 have relevance to
11 a corporate separation plan or corporate separation
12 in general...." Do you see those words?

13 A. I do.

14 Q. Okay. Is it your contention that the
15 policies in 4928.02(A) through (N) are not relevant
16 to Duke Energy Ohio's corporate separation plan?

17 A. I don't have the -- those divisions in
18 front of me, but, as testified, where they have
19 relevance, the plan addresses those.

20 Q. Okay. Thank you for the clarification.

21 From your understanding to what do Duke
22 Energy Ohio contractual entitlements in OVEC actually
23 entitle Duke to?

24 MS. KINGERY: Objection. This is outside
25 the scope of this witness's testimony.

1 EXAMINER WALSTRA: He can answer if he
2 knows.

3 A. I don't know.

4 Q. Okay. Under rider PSR Duke proposed to
5 flow through to customers the net costs or benefits
6 associated with the sale of its OVEC entitlements
7 into PJM; is that correct?

8 MS. KINGERY: Objection. The witness
9 just said he didn't know.

10 EXAMINER WALSTRA: He can answer if he
11 knows.

12 A. I do not know.

13 Q. To the extent that you do know, if
14 benefits accrued to customers under rider PSR, they
15 have arisen from the sale of Duke's share of OVEC
16 generation into PJM; is that correct?

17 MS. KINGERY: Objection. The witness has
18 just answered this saying he does not know anything
19 about rider PSR.

20 A. Yeah. I do not know.

21 EXAMINER WALSTRA: He can answer if he
22 knows.

23 A. I don't know.

24 MS. HUSSEY: Okay. No further questions.
25 Thank you.

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EXAMINER WALSTRA: Ms. Bojko.

MS. BOJKO: Yes, thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Bojko:

Q. Mr. Hollis, just so I understand the timing, you filed your testimony and then, subsequent to your testimony being filed, the Commission, in June of this year, approved the fourth amended corporate separation plan with modifications?

A. I'm not exactly sure of the date, but after my testimony, correct.

Q. And the modifications that the Commission ordered have subsequently been incorporated into your fourth amended corporate separation plan?

A. Correct.

Q. But you have not attached a new or amended -- fourth amended corporate separation plan to your testimony; is that correct?

A. The -- to my understanding, the fourth amended corporate separation plan has been approved.

Q. Right. But my question is MEH-2 is not the plan that was actually approved by the Commission; is that correct?

A. I guess the fourth amended corporate

1 separation plan has been approved. I am not sure
2 what you're asking.

3 Q. I thought you just told us that in June,
4 when the Commission issued its order, that the
5 Commission made modifications to the proposed fourth
6 amended corporate separation plan. And then you just
7 stated that you incorporated those changes into your
8 corporate separation plan. I'm trying to understand.
9 I don't believe MEH-2 is the approved, most-recent
10 corporate separation plan.

11 A. Well, that's not my understanding. I
12 believe it changed from -- at the time the third was
13 approved, which was amended to the fourth, which then
14 was approved.

15 Q. Okay. But I thought you just said that
16 the Commission made changes in Case 14-689 to the
17 as-filed fourth amended corporate separation plan.

18 A. To my knowledge, the fourth amended plan
19 has been approved.

20 Q. Okay. In its current form as it's
21 attached to MEH-2?

22 A. To my knowledge.

23 Q. So what were you referencing on page 66
24 when you said the Commission made a modification
25 change?

1 A. They approved Duke Energy Ohio being
2 authorized to provide other than retail -- let me use
3 exact worded -- offer other products and services
4 other than retail electric.

5 Q. So you weren't -- in response to
6 questions from other counsel, you weren't saying that
7 they actually revised this section?

8 A. I believe this section was revised with
9 the amendment. As it reads, as I am looking at it,
10 that was --

11 MS. KINGERY: Your Honor.

12 EXAMINER WALSTRA: Yes.

13 MS. KINGERY: If I could interject a
14 comment. Duke Energy Ohio would stipulate that there
15 was an amendment that was ordered by the Commission
16 in Case No. 14-689 that has not been incorporated
17 into the copy attached to the witness's testimony.

18 MS. BOJKO: Thank you. That's what I was
19 trying to understand.

20 EXAMINER WALSTRA: Thank you.

21 A. It is -- the distribution section of the
22 third is drastically changed in the fourth, was where
23 I was...

24 Q. Okay. And your understanding of 14-689,
25 the Commission order that just recently approved the

1 fourth amended corporate separation plan with
2 modifications, specifically stated that Duke must
3 demonstrate that no costs associated with any of
4 those nonelectric products or service -- services
5 shall be borne by the regulated utility customers; is
6 that correct?

7 MS. KINGERY: Your Honor, I am going to
8 object to the relevance of this line of questioning.
9 This case is not a rehearing of 14-689. There is
10 nothing about that order that's relevant to the SSO.

11 EXAMINER WALSTRA: I am going to overrule
12 it right now.

13 A. Could you point me to that line or repeat
14 the question?

15 Q. Sure. My question is: It's your
16 understanding, from the 14-689 case, where the
17 Commission approved the fourth amended corporate
18 separation plan with modifications, that the
19 Commission stated that no costs associated with any
20 products or services, other than retail electric
21 service as you noted in page -- on page 66 of your
22 MEH-2 attachment, that no costs associated with those
23 products or services shall be borne by the regulated
24 utility customers.

25 A. That's correct.

1 Q. And you believe that that finding would
2 be consistent with the state policy that you
3 reference on page 6 of your testimony because 4928.02
4 says just that, that it's avoiding subsidies to a
5 competitive retail electric service or to a product
6 or service; is that correct?

7 A. Yes.

8 Q. And also, just for clarification, you
9 state on page 2 of your testimony that it satisfies,
10 this ESP satisfies filing requirements of
11 4901:1-35-03 (C)(4). Do you see that on line 17?

12 A. I do.

13 Q. Okay. So it's your understanding from
14 this paragraph that (C)(4) requires a detailed list
15 of all waivers that have previously been issued by
16 the Commission to the -- to Duke regarding its
17 corporate separation plan; is that accurate?

18 A. I don't recall the specific requirements
19 of the code.

20 Q. Well, you have it listed on line 13, do
21 you not? As one of the requirements?

22 A. Yes. A list of all the waivers
23 previously issued by the Commission.

24 Q. I mean, I have the entire administrative
25 rule if that's necessary for you to look at.

1 A. No. I see it.

2 Q. Okay. So my question to you, sir, was
3 Duke did not provide that list in this ESP filing,
4 did it?

5 A. I believe I testified that the Commission
6 had not granted any waivers.

7 Q. Okay. So that's why you did not provide
8 the list; is that right?

9 A. Right.

10 Q. Okay. And it's your understanding that
11 your third amended corporate separation plan was
12 approved in 11-3549?

13 A. I don't recall the specific number but
14 the third plan was approved.

15 MS. BOJKO: Okay. Your Honor, it appears
16 from your chart that you handed us that it would be
17 appropriate to mark this as an exhibit. I would like
18 to mark, as OMA Exhibit 2, the Opinion and Order in
19 Case No. 11-3549-EL-SSO.

20 EXAMINER WALSTRA: It is so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MS. BOJKO: May I approach, your Honor?

23 EXAMINER WALSTRA: You may.

24 Q. Sir, do you have in front of you what I
25 have just marked as OMA Exhibit 2 which is the

1 Opinion and Order in Case No. 11-3459 [verbatim]
2 EL-SSO?

3 A. I do.

4 Q. And could you turn to page 45 of that
5 order, please?

6 A. Okay.

7 Q. And on page 45 of this opinion and order
8 it talks about corporate separation plans and it
9 talks about Duke's third amended CSP; is that
10 accurate?

11 MS. KINGERY: Your Honor, objection.
12 There's no evidence that this witness has ever seen
13 this document.

14 MS. BOJKO: Well, your Honor, I was
15 getting to that if you give me a couple more
16 questions.

17 EXAMINER WALSTRA: Overruled.

18 A. What was the question again?

19 Q. The question is on page 45, beginning of
20 section D., it's talking about Duke's third amended
21 CSP and the approval of that third amended CSP; is
22 that right?

23 A. I see that.

24 Q. And this is the opinion and order that
25 you alluded to that you believed approved Duke's

1 third amended CSP?

2 A. For the third amended, yes.

3 Q. Yes? And you had -- I think you stated
4 previously that you've been the compliance officer
5 or -- I'm sorry, I don't want to put words in your
6 mouth, but what do you consider yourself to be, the
7 compliance?

8 A. Manager.

9 Q. Manager, I'm sorry. So you are the
10 compliance manager for Duke and you were the
11 compliance manager for Duke during the third amended
12 CSP as well?

13 MS. KINGERY: Objection. Could Counsel
14 clarify what portion of Duke she's talking about
15 there?

16 MS. BOJKO: Duke Energy -- let's have the
17 witness answer.

18 A. I work for Duke Energy Business Services
19 and manage compliance across a number of entities as
20 well as topics.

21 Q. Okay. And that -- one of those entities
22 is Duke Energy Ohio; is that correct?

23 A. Correct.

24 Q. And then other affiliates you work with.

25 A. Correct.

1 Q. I'm not sure if you answered my prior
2 question. So you were compliance manager and had
3 responsibility for the third amended CSP for Duke
4 Energy Ohio; is that correct?

5 A. For -- for compliance with, yes.

6 Q. And on -- first of all, I want to go to
7 the bottom of page 45 when this talks about waivers.
8 We just discussed you testified that you didn't
9 believe any waivers were granted to Duke; is that
10 right?

11 A. Right.

12 Q. So let's look at the bottom of page 45.
13 It starts talking about the parties support Duke's
14 request for a waiver of the requirements of Rule
15 39 -- or, 4901:1-37-09(B) through (D); is that
16 correct?

17 A. Yes, I see that.

18 Q. Okay. And then if we turn the page to
19 the Commission's actual decision in this, look to the
20 first full paragraph on page 46, in the middle it
21 says "Therefore, we conclude that, to the extent
22 necessary, Rule 4901:1-37-09(B) through (D)...should
23 be waived and Duke should be authorized to transfer
24 title to all of its generation assets out of Duke, in
25 accordance with the provisions of the stipulation."

1 Do you see that?

2 A. I do.

3 Q. And then it also says "...we conclude
4 that Duke's full legal corporate separation and Third
5 Amended CSP, as provided in the stipulation, are in
6 compliance" in the rules and it should be approved;
7 is that correct?

8 A. That's what it says.

9 Q. So it appears in the last case, adopting
10 the third amended corporate separation that there
11 were some waivers approved by the Commission; is that
12 right?

13 MS. KINGERY: Objection. Misstating the
14 witness's testimony.

15 EXAMINER WALSTRA: Overruled.

16 A. Well, I mean, I can go by what it says
17 here.

18 Q. The order appears to have granted some
19 type of waiver with regard to the third amended
20 corporate separation agreement; is that true?

21 A. It appears so.

22 Q. Could you turn to page 3 of your
23 testimony. And if you could hold onto that exhibit,
24 we will come back to that, sir. Could you turn to
25 page 3 of your testimony.

1 A. Sure.

2 Q. For clarity look at line 15. It talks
3 about requirements of 4928.37 and then it refers to
4 an administrative code chapter. I believe there was
5 a typo. I just want to understand the chapter you
6 were talking about was 4901:1-37; is that accurate?

7 A. I believe that's correct.

8 Q. Okay. And you said in response -- we've
9 established that you were the corporate separate --
10 or, you are the compliance manager for corporate
11 separation. With Mr. Pritchard, you stated you had
12 responsibilities to make sure that the entities that
13 you deal with do, in fact, comply and employees
14 comply; is that accurate?

15 A. Yes.

16 Q. Okay. And then you were asked a question
17 about training materials. How do you go about
18 ensuring compliance? What do you do to ensure
19 compliance?

20 A. We deploy training on various topics.
21 We, in the training, have a specific place where we
22 can be asked questions. We can be consulted with.
23 We provide contact information and, on any questions,
24 we help the business with their questions about
25 compliance.

1 Q. Okay. So it's a proactive training that
2 you do. And then, after the training is completed,
3 in your day-to-day it would just be questions that
4 you receive from different employees or from the
5 business entities?

6 A. That, in combination with we have a few
7 tools that we use to monitor compliance.

8 Q. Okay. That's what I was -- what's the
9 tools that you are using? Are you talking about the
10 recordkeeping or what kind of tools?

11 A. No. The specific tool would be
12 OpenPages. It's an IBM product.

13 Q. Okay. And what does that do?

14 A. It's -- we have certain requirements such
15 as filings and other requirements in the tool. It
16 sends reminders where people must attest or
17 acknowledge compliance with those requirements.

18 Q. Which requirements?

19 A. Well, it's -- it's a very broad tool.

20 Q. So you mean it just randomly selects an
21 employee and sends them a question and asks if they
22 comply?

23 A. No. It is very planned, very specific
24 requirements assigned to individual employees, and
25 they have a -- especially in the narrative,

1 explaining to them what they are attesting to or what
2 they are acknowledging specific to their job
3 function.

4 Q. So then the narrative picks out a job
5 function that they might have and then is, like, a
6 reminder, so to speak --

7 A. Correct.

8 Q. -- of you are doing this; is that right?

9 A. Right.

10 Q. Okay. Do you go -- do you go around and
11 audit, so to speak, any of the entities or listen in
12 on conversations to see if they are complying with
13 the rules?

14 A. We do not audit. We rely on internal
15 audit for that function. However, we do have an
16 escalation process that's built into the tool.

17 Q. An escalation would be if you believe
18 someone is not complying with the rules?

19 A. Or they have not completed their
20 assignment.

21 Q. And in response to Mr. Pritchard, you
22 talked about that Duke cannot provide a subsidy to an
23 affiliate for a competitive retail electric service;
24 is that right?

25 A. Yes.

1 Q. Okay. And you also believe the same to
2 be true that the regulated Duke entity cannot provide
3 a subsidy to a product or competitive product or
4 service.

5 A. Correct.

6 Q. And it's your understanding that
7 distribution and transmission are in the regulated
8 side of the business and that generation is in the
9 unregulated or the competitive business.

10 A. That's correct.

11 Q. And you're familiar, sir, with 4928.17 of
12 the Revised Code as it's referenced in your
13 testimony; is that right?

14 A. Generally.

15 Q. Okay. And under 4927.18 it also says
16 that no utility shall be in the business of supplying
17 a noncompetitive retail service and a product or
18 service, other than retail electric service, unless
19 they are corporately separated; is that right?

20 MS. KINGERY: Objection. The witness is
21 not a lawyer and does not have the statutory section
22 in front of him.

23 EXAMINER WALSTRA: He can answer if he
24 knows.

25 A. I don't know.

1 MS. BOJKO: I would be happy to provide
2 the section to him, your Honor. I'm not sure if you
3 want to mark, as exhibits, statutory provisions.
4 I'll just pass it out, if that's fine, to refresh his
5 recollection.

6 EXAMINER WALSTRA: That's fine.

7 MS. BOJKO: May I approach?

8 EXAMINER WALSTRA: You may.

9 Q. With regard to the comment about you not
10 being an attorney, sir --

11 MS. BOJKO: Do you need a copy?

12 MS. KINGERY: Thank you.

13 MS. BOJKO: Anybody else need a copy?

14 Q. Sir, does it appear before you that you
15 have 4928.17 which is the statutory provision that's
16 referenced several times in your testimony?

17 A. It does.

18 Q. Okay. And I understand you are not an
19 attorney, sir, but you are the compliance manager and
20 you have specifically referenced sections of both the
21 Revised Code as well as the Administrative Code in
22 your testimony; is that right?

23 A. Yes.

24 Q. And it's my understanding that you are
25 here today to tell us that the corporate separation

1 plan does, in fact, meet these requirements of the
2 law; is that correct?

3 A. Yes, as advised by counsel.

4 Q. You didn't write in your testimony "as
5 advised by counsel" before cutting and pasting
6 sections of the Revised Code, did you?

7 A. I do see, on line 2 of page 3, "On advice
8 of counsel," and I think I reference that in several
9 places.

10 Q. Oh, okay, I see it. Thank you.

11 But you are saying you believe this plan
12 attached meets the statutory provisions and
13 administrative rules; is that right?

14 A. Yes, as advised by counsel.

15 Q. Okay. And now, let's get back to my
16 question about 4928.17. I want to make sure that
17 it's your understanding that similar to the state
18 policy, that you've already discussed with
19 Mr. Pritchard and Ms. Hussey and now myself, that
20 4928.17 also states that no utility shall be in the
21 business of supplying a noncompetitive retail
22 electric service and a product or service, other than
23 retail electric service, without first being fully
24 separated; is that right?

25 A. Can you point me to that?

1 Q. Section (A) of 4928.17.

2 MS. KINGERY: I would interpose an
3 objection. The question is misstating the words of
4 the statute.

5 MS. BOJKO: I never claimed to be reading
6 from the statute, your Honor. I was paraphrasing. I
7 asked if his understanding was what I asked him.

8 EXAMINER WALSTRA: Overruled.

9 A. Could you repeat the question?

10 Q. I'm asking if it's your understanding
11 that 4928.17(A) also prohibits an electric utility
12 from supplying the noncompetitive retail electric
13 service and a product or service, other than a retail
14 electric service, unless they have been fully
15 separated.

16 A. In my typical job, I would seek advice of
17 counsel, but I believe that's what it says.

18 Q. And if you look at (A)(1) of that same
19 section, it says -- I'm paraphrasing again, but it
20 says at a minimum, the plan has to provide for the
21 provision of the competitive retail electric service
22 or a nonelectric product through a fully separated
23 affiliate of the utility; is that right?

24 MS. KINGERY: Your Honor, I am going to
25 object again. I don't know where this line of

1 questioning is going, but this question of whether or
2 not the corporate separation plan fulfills the
3 requirements of Revised Code 4928.17 and the rules
4 thereunder is not an issue in the ESP.

5 In the ESP rules we're required to
6 present a witness to indicate that we have a plan,
7 what its status is, the issue of waivers, not that it
8 is in compliance with the law. That is the -- an
9 issue for a corporate separation plan case such as we
10 just had in 14-689.

11 MR. OLIKER: Your Honor, I would object.
12 That misstates the rules.

13 MS. BOJKO: It does. It misstates the
14 rules and she's testifying and, in addition to that,
15 this witness is sitting here today telling us it
16 complies. If he's not going to answer the questions,
17 then I would move to strike his entire testimony
18 because that's what he is doing in this testimony.

19 EXAMINER WALSTRA: Overruled.

20 THE WITNESS: So could we repeat the
21 question?

22 (Record read.)

23 A. I believe that's what it says.

24 Q. And, sir, you've stated in your testimony
25 and we talked that there was a typo. You're familiar

1 with Chapter 4901:1-37, the corporate separation
2 rules of the Commission as well; is that correct?

3 A. Generally.

4 Q. Okay. And under those rules,
5 specifically 3704(C)(6), it's your understanding that
6 Duke has to avoid anti-competitive subsidies flowing
7 from a noncompetitive retail service such as
8 distribution to a competitive retail service such as
9 generation; is that correct?

10 MS. KINGERY: Objection. Again,
11 Ms. Bojko is asking about a particular statutory
12 section. The witness does not have either the
13 Revised Code or the Administrative Code in front of
14 him.

15 MS. BOJKO: Your Honor, I could provide
16 him a copy, but he has testified to all of these
17 sections in his testimony, so it shouldn't be a
18 surprise we are asking about things he testified to.

19 EXAMINER WALSTRA: If he doesn't
20 recollect it, then.

21 MS. BOJKO: May I approach then?

22 EXAMINER WALSTRA: You may.

23 Q. So if we go to 4901 dash colon -- or,
24 :1-37-04(C)(6) which is on page 2 in the middle.

25 A. (C)(6)?

1 Q. Yes.

2 A. (D)(6) or (C)(6)?

3 Q. "C" as in cat.

4 A. That's at the bottom of page 1 on my
5 copy.

6 Q. Oh, I'm sorry (D)(6). My apologies.

7 A. Okay.

8 Q. (D)(6) is where we find that the
9 requirement that "The utility shall ensure effective
10 competition in the provision of retail electric
11 service by avoiding anti-competitive subsidies
12 flowing from a noncompetitive retail electric service
13 to a competitive retail electric service or to a
14 product or service other than retail electric service
15 and, vice versa"; is that right?

16 A. That's what it says, yes.

17 Q. Okay. And so -- so pursuant to that
18 rule, it's your understanding that Duke has to avoid
19 any anti-compe -- anti-competitive subsidies flowing
20 from its distribution service to a competitive retail
21 service as generation; is that right?

22 A. That's my understanding.

23 Q. Okay. And then, so similarly, this rule
24 would also require Duke to avoid providing any
25 anti-competitive subsidies flowing from the

1 distribution side of the business to a product or
2 service other than retail electric service; is that
3 correct?

4 A. That's what it says.

5 Q. Okay. And I'm sorry, you testified
6 earlier that you knew who OVEC was; is that right?
7 And you knew it was listed in the affiliate chart
8 on -- attached to your testimony?

9 A. Correct, with the minority interest note.

10 Q. Okay. And today, however, did you state
11 that you're not familiar with the price stability
12 rider?

13 A. I'm not.

14 Q. So you're testifying today that Duke's
15 electric security plan satisfies the corporate
16 separation rules and regs as required, but, yet, you
17 do not know the components of Duke's application?

18 MS. KINGERY: Objection. Misstates the
19 prior testimony.

20 EXAMINER WALSTRA: The witness can
21 answer. Overruled.

22 A. I do many things on a daily basis and
23 cover many entities, and I have not seen that.

24 Q. Okay. But let's go back to 35,
25 4901:1-35-03. This is specifically mentioned on

1 page 2 of your testimony, line 17, and it's your
2 understanding that this rule actually provides for
3 certain things that an electric security plan
4 application has to include; is that right?

5 A. Right.

6 MS. BOJKO: May I approach, your Honor?

7 EXAMINER WALSTRA: You may.

8 Q. This, sir, is the rule that you were
9 talking about that lists out what should or shouldn't
10 be filed with regard to an electric security plan
11 case?

12 A. Right.

13 MS. KINGERY: I'm sorry, Counsel, was it
14 35-03(C)(4) -- or, 35-03 that you gave him?

15 MS. BOJKO: I did give him 03, sorry.

16 MS. KINGERY: Thank you.

17 THE WITNESS: Yes.

18 MS. BOJKO: I'm sorry, I didn't make
19 copies.

20 MS. KINGERY: That's fine. I have a
21 copy.

22 MS. BOJKO: If you will bear with me for
23 one second.

24 Q. (By Ms. Bojko) Okay. If you look at
25 (C)(4), it lists out things the utility shall provide

1 in its ESP and it says "a description of its
2 corporation separation plan"; is that correct?

3 A. Correct.

4 Q. And if you turn to (F), section (F),
5 please.

6 A. Okay.

7 Q. Section (F) says the SSO application --
8 it is your understanding this is an SSO application
9 which means an electric security plan application; is
10 that right?

11 A. That's correct.

12 Q. So (F) says "The SSO application shall
13 include a section demonstrating that its current
14 corporate separation plan is in compliance with
15 section 4928.17..." and "Chapter 4901:1-37 of the
16 Administrative Code, and is consistent with the
17 policy of the state as delineated in divisions (A) to
18 (N) of section 4928.02...." Is that accurate?

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

20 Q. Okay. So your testimony is responsible
21 for doing just that in the application, to
22 demonstrate that you are in compliance with the
23 rules, is that correct, and the statute?

24 A. Yes.

25 Q. So in your testimony demonstrating that

1 the ESP is in accordance with the rules and the
2 Administrative Code, you did not review all
3 components of the ESP application to ensure such
4 compliance?

5 A. I did not review the entire contents. I
6 work very closely with counsel to form the corporate
7 separation plan.

8 Q. So, as we sit here today, you cannot tell
9 me that every component of Duke's filed ESP is in
10 compliance with the corporate separation statutory
11 provision or administrative rules.

12 A. Again, on the advice of counsel, that's
13 what I testified to.

14 Q. Right. I'm asking you if you know, as
15 the expert witness put on the stand to meet this
16 statutory and rule provision, can you tell me that
17 every component of Duke's ESP is in compliance with
18 the corporate separation rules?

19 A. To the best of my knowledge.

20 Q. But you did not review the PSR component
21 to see if that is in compliance with the corporate
22 separation rules; is that correct?

23 A. That's correct.

24 Q. So you did not review every component and
25 make a judgment of whether each component was or was

1 not in compliance with the corporate separation plan.

2 MS. KINGERY: Asked and answered.

3 EXAMINER WALSTRA: Overruled.

4 A. That's correct.

5 Q. That's correct, you did not review each
6 component?

7 A. I did not.

8 MS. BOJKO: Thank you. I have no further
9 questions, your Honor. Thank you.

10 EXAMINER WALSTRA: Thank you.

11 OCC.

12 MR. BERGER: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Berger:

16 Q. Good morning, Mr. Hollis. My name is Tad
17 Berger. I am with the Office of Ohio Consumers'
18 Counsel. If you can't hear me, let me know.

19 A. Okay. Good morning.

20 Q. Just following up on some of the
21 questions that were asked of you. I think you talked
22 about a legal definition of "affiliate, do you recall
23 that, with Mr. Pritchard?

24 A. I do.

25 Q. And what is -- what -- what particular

1 statute or regulation were you referring to in that
2 regard?

3 A. I don't have it in front of me, and I
4 don't recall the specific number, but I am aware that
5 there is a legal definition.

6 Q. Is it part of a regulation or a statute,
7 the one that you are referring to? Certainly there
8 are many definitions and different laws of
9 "affiliate." Are you talking about --

10 A. To the best of my memory it was, I
11 believe, an Ohio Administrative Code, but I'm -- I'm
12 not 100 percent certain of that.

13 Q. But you don't know what chapter of the
14 Ohio Administrative Code?

15 A. No. As part of our training, again, we
16 define affiliates.

17 Q. Is that the definition you use for the
18 purposes that you were talking about earlier?

19 A. It is.

20 Q. Okay. But you don't know what section
21 it's in or chapter.

22 A. I don't recall specifically where it is.

23 Q. And is it your understanding that chapter
24 defines "affiliate" to exclude minority interests?

25 A. It's my understanding that there must be

1 common ownership and control, and in my opinion, for
2 OVEC, that does not exist. We have a very minor
3 interest and no control of the operations.

4 Q. So your belief is that there has to be
5 not only common ownership, you don't disagree there
6 is common ownership.

7 A. I think there's -- I don't know who all
8 the owning parties are. I know that we have
9 9 percent.

10 Q. Yes. So there's common ownership between
11 Duke Energy Ohio and OVEC, wouldn't you agree with
12 that?

13 A. If OVEC has ownership.

14 Q. Well, Duke Energy Ohio is a 9 percent
15 shareholder of OVEC.

16 A. Right.

17 Q. So isn't that common ownership? Isn't
18 that the meaning of common ownership there?

19 A. Right.

20 Q. So there's no dispute about whether
21 there's common ownership. You're just saying control
22 has to be exerted in order for there to be --

23 A. Right. That's my understanding.

24 Q. But you can't cite me to any provision of
25 the law or regulations that says that.

1 A. No. Again, I've seen it in developing
2 training. I developed that training a year ago. We
3 will be deploying it again in the future to which we
4 will be looking at it again, but it's been a while
5 since I have referenced that specific. And, again, I
6 have a different definition of "affiliate" in six
7 different regulated utilities, so it's hard to
8 remember the specific place of all of those entities.

9 Q. And when you say six different regulated
10 utilities, you're taking about --

11 A. Duke Energy Kentucky, Ohio, Indiana,
12 Florida, Duke Energy Progress, Duke Energy Carolinas.

13 Q. Are you responsible for compliance in all
14 those states?

15 A. I am.

16 Q. Do you know --

17 A. Among other things.

18 Q. Okay. And you reference the term
19 "minority interests" and you refer to it -- and you
20 refer to that in terms of the Ohio Valley Electric
21 Corporation and Duke's ownership interest there.

22 A. That's correct, in the CSP, as to the
23 affiliates.

24 Q. Is it your understanding that this is a
25 provision of the Ohio Administrative Code that

1 defines "minority interest" for purposes of your
2 usage of that term in that -- in the CSP document
3 that you referenced?

4 A. I do not know the answer to that
5 question.

6 Q. So when you were indicating that that
7 that minority interest somehow changed Duke's
8 responsibility in terms of its corporate separation
9 plan, you don't know whether that term actually does
10 have any effect on Duke's responsibilities under the
11 corporate separation plan?

12 A. No. From a legal perspective, and,
13 again, I would have to defer to the legal definition
14 of affiliates, I do understand that we have a
15 9 percent ownership, but we have no control, and for
16 all the purposes that we define affiliates in any
17 training materials, OVEC has never been listed nor
18 mentioned.

19 Q. Okay. And your use of the term
20 "control," similarly you don't know whether that term
21 is actually utilized in any statute or regulation for
22 the purposes you're using it here, do you?

23 A. I believe the word "control" is used in
24 the definition of "affiliate."

25 Q. Okay. But, again, you don't even know

1 what chapter you are referring to.

2 A. I do not.

3 MR. BERGER: Okay. Just one minute, your
4 Honor.

5 Q. So, Mr. Hollis, if you are mistaken and
6 there is nothing in the Administrative Code regarding
7 control being a limiting factor with respect to the
8 definition of affiliate, would you agree with me that
9 if that is, in fact, the case, then your proviso
10 wouldn't apply and there wouldn't be any difference
11 in the treatment of OVEC versus any other affiliate?

12 A. Again, I'm not an attorney. I think it's
13 going to depend on the legal definition of
14 "affiliate" and the interpretation of the law that
15 would dictate if it is an affiliate or not.

16 Q. Do you recall receiving any written
17 opinion from counsel regarding the definition of
18 "affiliate" and why OVEC could be excluded from the
19 responsibilities of reporting as an affiliate?

20 A. I have not.

21 Q. You have not received any communication
22 from counsel regarding that?

23 A. Regarding if OVEC is an affiliate?

24 Q. Yes.

25 MS. KINGERY: Objection. Attorney-client

1 privilege. He's asking what he has been advised by
2 counsel.

3 EXAMINER WALSTRA: Sustained.

4 Q. In terms of your understanding, you say
5 in your testimony that your understanding of the --
6 of what has to be reported is based on advice of
7 counsel and what has been reported is based on advice
8 of counsel, you would agree with that, right?

9 A. That's correct.

10 Q. So you're indicating that your
11 understanding is based on what you've been told,
12 correct? So you're sharing the views of counsel with
13 this Commission based -- with respect to your
14 testimony; isn't that correct?

15 A. I would say my testimony is mine, but
16 based on the advice of my counsel.

17 Q. You're sharing those communications in
18 putting forth your testimony, aren't you?

19 MS. KINGERY: Objection. That misstates
20 what Mr. Hollis said.

21 EXAMINER WALSTRA: I think that's what
22 he's asking. Overruled.

23 A. When you say "communications."

24 Q. When you say "based on advice of
25 counsel," that is a communication to you regarding

1 what the law provides, isn't it?

2 A. Yes. But it depends on the topic.

3 Q. And when you are expressing your
4 viewpoint here, you're disclosing confidential
5 communications between you and counsel; isn't that
6 correct?

7 A. Not to my knowledge.

8 MS. KINGERY: Your Honor, I object. He
9 is just continuing to try and explore what his
10 counsel has told him. And his testimony does not say
11 my counsel told me the following. It says he got
12 advice from his counsel helping to lead to his
13 opinion that he expressed in his testimony.

14 EXAMINER WALSTRA: I believe that's what
15 he is trying to explore, so, at this point, I am
16 going to overrule and allow the question.

17 A. Could you repeat the question?

18 Q. So your testimony reflects the advice of
19 counsel regarding -- regarding your opinion regarding
20 corporate -- the responsibilities of reporting for
21 the corporate separation plan; isn't that correct?

22 A. I would say that's one factor. I am my
23 own person and do have my own thoughts. As far as
24 the legal components of filing, yes, I receive
25 advice.

1 Q. Okay. I am going to read from you -- to
2 you, the definition of "affiliates" and in Ohio
3 Administrative Code 4901:1-37-01. I don't know if
4 you have that section.

5 A. No. I don't believe I do.

6 Q. I am going to provide you with an extra
7 copy of the volume.

8 MR. SERIO: May I approach, your Honor?

9 EXAMINER WALSTRA: You may.

10 Q. And we provided you with a copy of the
11 2013 edition of the Ohio Administrative Code which is
12 the most recent text of that code other than the
13 pocket part.

14 Are you familiar -- is this the provision
15 you were referring to earlier in terms of the
16 definition of "affiliates"?

17 A. I believe so, yes.

18 Q. And it defines "affiliates" as "companies
19 that are related to each other due to common
20 ownership or control." Do you see that?

21 A. I do.

22 Q. Okay. And using the term "or," would it
23 be your understanding that if any entity has common
24 ownership, that they would be defined as an affiliate
25 even if they didn't have control?

1 MS. KINGERY: Objection. Sorry,
2 objection. This witness is not an attorney.
3 Mr. Berger is asking for a legal interpretation of a
4 Commission rule.

5 EXAMINER WALSTRA: Mr. Berger.

6 MR. BERGER: Your Honor, he is a policy
7 witness. He is testifying about this entire subject
8 matter. Unless he wants to put counsel up to
9 testify, he's obligated to testify because he's the
10 compliance officer and he's testifying in order to
11 put forth the company's plan as Ms. Bojko well
12 established.

13 EXAMINER WALSTRA: Overruled. The
14 witness can testify to his understanding.

15 Can I get that code section again that
16 you were referring to?

17 MR. BERGER: 4901-1:1-37-01 paragraph
18 (A).

19 EXAMINER WALSTRA: Thank you.

20 Q. Can you answer the question or do you
21 need it repeated?

22 A. I would say that in my job function, if I
23 were asked this question on a daily basis, that I
24 would seek counsel to the legalities of an
25 "affiliate," but I can read what it says here.

1 Q. Okay.

2 A. We have never -- we have never, in any
3 context that I am aware of, listed OVEC, other than
4 the CSP, that was pointed out earlier, where we have
5 used OVEC as an affiliate in the context of my job.

6 Q. Well, have they always been listed as an
7 affiliate for as long as Duke Energy Ohio has -- has
8 been a shareholder of OVEC? Have they always been
9 listed for purposes of the corporate separation plans
10 as far as you know?

11 A. The only place that I've looked is in
12 that last listing so I cannot confirm previous
13 listings. They have not been listed in any material
14 that I have produced in training.

15 Q. Okay. And is there a reason they weren't
16 listed in the materials you produced for training?

17 A. Because they're a minority interest and
18 they're -- in the training they don't rise to the
19 level of any -- there's -- we don't have employees
20 there. There's nothing to separate.

21 Q. You would agree they are listed in the
22 third amended plan, aren't they?

23 A. Subject to check, I would have to look.

24 Q. And in terms of employee training,
25 certainly employees such as Mr. Whitlock, who

1 provides services and are participants on behalf of
2 the board, don't they have to be trained regarding
3 corporate separation?

4 A. Yes, I believe subject to check,
5 Mr. Whitlock takes training.

6 Q. Okay. And does he take training with
7 respect to OVEC?

8 A. I have -- I do not know.

9 Q. Okay. So you don't -- you haven't
10 directed any training toward him for that purpose; is
11 that correct?

12 A. Related to OVEC, no.

13 Q. Are there other Duke corporation
14 employees providing services on behalf of Duke Energy
15 Ohio with respect to OVEC?

16 A. I am unaware.

17 Q. Okay. Your -- are you familiar with the
18 fact that there were a number of Duke Energy Ohio --
19 Duke Energy Corporation employees who participated in
20 the preparation of the price stabilization rider
21 filing in this case, including Bryan Dougherty?

22 A. I have heard that through testimony, but
23 that's the extent of my knowledge.

24 Q. Okay. Are you aware of Mr. Wathen having
25 participated in that -- in the preparation of that

1 proposal?

2 A. I would assume, based on his testimony,
3 yes.

4 Q. But you have no idea what steps were
5 taken in proposing the price stabilization rider as
6 to ensuring that these employees function in
7 accordance with the requirements of the corporate --
8 the corporate separation plan; is that correct?

9 A. I do not know the specifics, no.

10 Q. You don't know that -- what -- you don't
11 know that anything was done to ensure that they
12 operated in compliance with those requirements.

13 A. Which requirements?

14 Q. With the requirements of the corporate
15 separation plan.

16 A. So what -- what are you asking me again?

17 Q. Well, if OVEC is indeed an affiliate for
18 purposes of the section we are looking at here, you
19 don't know what steps were taken to ensure that in
20 proposing the price stabilization rider, that they --
21 that they operated as employees in accordance with
22 the corporate separation plan.

23 A. No. I did not monitor specifically their
24 actions.

25 Q. Okay. And you -- you made no inquiry

1 of -- and you made no audit of those actions,
2 correct?

3 A. That's correct.

4 Q. Well, Mr. Hollis, are you familiar with
5 the requests that Duke made whether -- are you aware
6 that Duke made any requests to transfer the OVEC
7 interest?

8 A. I'm not.

9 Q. So if there were, in fact, such requests
10 made to transfer or sell the OVEC interest, you're
11 not aware of any steps that were taken to ensure that
12 in proceeding in that manner that the employees who
13 were engaged in that were, in fact, operating in
14 compliance with the corporate separation plan. You
15 wouldn't know that.

16 MS. KINGERY: Your Honor, objection. He
17 just -- the witness just stated he didn't know
18 anything about requests to transfer.

19 EXAMINER WALSTRA: Overruled.

20 A. Yeah, I had -- I have no knowledge of the
21 OVEC relationship or dealings or the employees
22 engaged in that.

23 Q. Who would be responsible for overseeing,
24 on behalf of Duke Energy Ohio, compliance with the
25 corporate separation plan with respect to Duke's OVEC

1 interest?

2 A. Well, that would fall into my department.

3 Q. Would there be anybody under your
4 oversight who would have more specific knowledge with
5 respect to the OVEC interest?

6 A. No.

7 Q. So if you weren't aware of it, it's not
8 happening?

9 A. I don't believe -- I cannot confirm or
10 deny anything has or has not happened.

11 Q. Well, you can confirm and you have
12 confirmed that you are not aware of any efforts that
13 were made.

14 A. Yes, I can confirm I'm not aware.

15 Q. And if you're not aware of any efforts,
16 then it wasn't made under your -- under your
17 oversight, correct? No steps were taken under your
18 oversight if you are not aware of them?

19 A. I am not aware, but I am aware that the
20 individuals do receive training annually that
21 would -- that would clearly explain the separation
22 plan.

23 Q. You're saying general training would have
24 been provided to all employees of the Duke Energy
25 companies; is that what you're saying?

1 A. Not all employees.

2 Q. Would it -- do you know that it would
3 have been provided to those employees who had
4 interaction with OVEC?

5 A. Depending on who those employees are and
6 depending on which function that their job falls
7 within, some of them would have had the training,
8 yes. But, again, not knowing specifically who or
9 which job function and not having the list of
10 training recipients, I can't say specifically.

11 Q. Now, Ms. Bojko pointed out that you
12 weren't aware of the waiver from the corporate
13 separation plan requirements that was granted with
14 respect to generation assets in the last ESP
15 proceeding. Do you remember that?

16 A. That's correct.

17 Q. Okay. And why weren't you aware of that
18 waiver?

19 A. When was the last ESP proceeding?

20 Q. I believe the order was in 2012.

21 A. I was not the manager of Duke Energy Ohio
22 compliance at that time.

23 Q. Would you have been -- would you have had
24 the responsibility of apprising yourself of existing
25 waivers?

1 A. Again, I do many things in a day for many
2 entities, and unless it specifically is asked of me,
3 typically I would not proactively seek waivers in all
4 jurisdictions.

5 Q. So you're saying you would not have had
6 the responsibility of apprising yourself of existing
7 waivers before putting forth the testimony you put
8 forth?

9 A. As it relates to the knowledge that I
10 have at the time and this separation plan that I'm
11 testifying to, I was not aware of any waivers.

12 Q. Okay. You did not review the previous
13 ESP order?

14 A. I did not.

15 Q. You are aware that -- you testified that
16 the Commission has not granted any waivers of the
17 plan for the previous versions of the Duke Energy
18 Ohio CSP; you are aware you gave that testimony.

19 A. Yes, to the best of my knowledge.

20 Q. What did you base your knowledge on if
21 you did not review the prior plans?

22 A. Although its -- my knowledge is collected
23 through my job function.

24 Q. So if something didn't happen while you
25 were in the capacity you are in currently, you -- you

1 have no basis -- you can still testify in your
2 viewpoint that something didn't exist in previous
3 versions of the CSP?

4 A. Again, to my knowledge, I was unaware of
5 that waiver.

6 Q. Now, is it your view, Mr. Hollis, that an
7 electric utility, operating under a corporate
8 separation plan, may retain generating assets if it
9 uses them for wholesale service?

10 A. Could you restate the question?

11 Q. Yes. Is it your view that an electric
12 utility, operating under Revised Code 4928.17, in a
13 corporate separation plan adopted pursuant to that
14 provision, may retain generating assets if it uses
15 them for wholesale sales?

16 A. I would have to review it specifically.
17 Again, I have responsibility for six entities'
18 compliance, and I do not memorize all of the
19 provisions.

20 Q. Okay. Are you familiar with the
21 stipulation and recommendation in the last ESP
22 proceeding at 11-3549-EL-SSO?

23 A. Again, did I not review the previous ESP.

24 Q. You are aware that the third amended
25 corporate separation plan that was attached to your

1 testimony was approved in that proceeding, correct?

2 A. I believe that's correct.

3 Q. And are you aware that that was the
4 result of the stipulation that was approved by the
5 Commission?

6 A. I believe the plan was approved by the
7 Commission.

8 Q. Were you aware that as a result of the
9 settlement in that case and the Commission's approval
10 of that settlement, that the company was supposed to
11 divest its generation assets -- or, is supposed to
12 divest its generation assets by the end of this year?

13 A. That's my understanding.

14 Q. And is it your -- also your understanding
15 that the company is supposed to divest its interests
16 in contractual entitlements by the end of the year?

17 MS. KINGERY: Objection. This goes --
18 this line of questioning is going far beyond the
19 knowledge of this witness. This witness is here to
20 talk about the corporate separation plan. He is not
21 here to talk about the stipulation in the last ESP
22 case and what it may or may not have required.

23 MR. BERGER: Your Honor, the stipulation
24 directly concerns corporate separation. Structural
25 separation is key to what the definition of corporate

1 separation is under article 4928.17 and, therefore,
2 whenever I ask him about divestiture, it's implicit
3 in corporate separation language.

4 MS. KINGERY: He is here to talk about
5 the plan, not the sale of generation assets.

6 EXAMINER WALSTRA: Overruled.

7 A. To my knowledge, we will, by the end of
8 this year, have divested all of the Duke Energy
9 Ohio -- or, Duke Energy Commercial generating assets,
10 but, beyond that, I don't know the specifics of the
11 entitlements.

12 Q. Okay. Is OVEC a generating asset?

13 A. Again, we have a minority interest -- in
14 my context, I would not consider it an asset as
15 comparable to Beckjord.

16 Q. As compared to what?

17 A. Beckjord.

18 Q. Because you don't have 100-percent
19 ownership interest in an asset, you don't consider it
20 a generating asset?

21 A. Or control. It is a gen -- it is a
22 generator, so it is a generation asset.

23 Q. And do you know whether the stipulation
24 addressed all generating assets?

25 A. To the best of my knowledge it was the

1 assets that we have previously divested, with the
2 exception of Beckjord, which is planned for the end
3 of the year, and that was the extent of my knowledge.

4 Q. And when you say "previously divested,"
5 what are you referring to there?

6 A. The other generation assets that have
7 been removed from the -- other than Beckjord.

8 Q. Okay.

9 A. Spun off or divested to other entities.

10 Q. And so, it's your understanding that it
11 would not include OVEC even though it's a generating
12 asset?

13 A. Again, I don't --

14 MS. KINGERY: Objection. Misstating the
15 witness's testimony and he has already answered that
16 question.

17 MR. BERGER: I don't think he answered
18 the question whether he considered OVEC a generating
19 asset for purposes of the settlement.

20 MS. KINGERY: And there's no evidence
21 that he has reviewed this settlement.

22 MR. BERGER: The evidence exists, your
23 Honor, in the facts that he testified in regard to
24 the third amended corporate separation plan which was
25 a product of the settlement in that case.

1 EXAMINER WALSTRA: Overruled. The
2 witness can ask for clarification. He can testify to
3 his knowledge.

4 A. Yeah, to my knowledge I am unaware of the
5 OVEC -- specifics surrounding OVEC.

6 Q. And does -- does Duke Energy Ohio, to
7 your knowledge, receive generation output that it
8 sells in the marketplace from OVEC? Are you aware
9 that they receive 9 percent entitlement to the output
10 of OVEC?

11 MS. KINGERY: Your Honor, this is a
12 witness on the corporate separation plan. It's not a
13 witness on OVEC generation or the contract with OVEC.

14 EXAMINER WALSTRA: If the witness knows,
15 he can testify.

16 A. Again, I have no knowledge of the OVEC
17 operations other than what's been stated in the last
18 three days.

19 Q. And are you familiar with the proviso in
20 the -- in the stipulation in the last ESP case
21 regarding the treatment of contractual obligations?

22 A. Again, I have not reviewed the previous
23 stipulation or ESP case.

24 Q. You never reviewed it or you just haven't
25 recently reviewed it?

1 A. It happened in 2012, no, I probably have
2 not.

3 Q. And, Mr. Hollis, do you know whether the
4 company currently maintains separate accounting of
5 its transmission and distribution assets and services
6 from its generating assets and services?

7 A. I know we do have separate books and
8 records. The specifics of the accounting separation,
9 I would have to defer to the accounting function.

10 Q. Do you know whether OVEC is treated as
11 generation for accounting purposes?

12 A. I do not.

13 Q. So you did not review the accounting with
14 respect to OVEC prior to giving your testimony.

15 A. No. Again, I have six regulated
16 utilities within my job function, and there is a
17 breadth of accounting that happens on a daily basis
18 and I am not an accountant.

19 Q. You are aware that your testimony
20 addresses the appropriateness of the separation of
21 accounting.

22 A. That's correct. So we educate the
23 accounting functions on that separation. That's the
24 extent of my accounting expertise.

25 Q. In terms of educating the accounting

1 function, are you saying you're educating accounting
2 employees?

3 A. Correct.

4 Q. And when you educate those accounting
5 employees about what they need to separate, do you
6 tell them that they need to separate anything that
7 has to do with generation from anything that has to
8 do with transmission and distribution?

9 A. In the training we don't get that
10 specific.

11 Q. Well, how specific do you get? What do
12 you tell them?

13 A. It's really kept at the level of separate
14 books and records.

15 Q. Well, what are you telling them they have
16 to separate?

17 A. Well, the accounting books would be one
18 of those things.

19 Q. Well, are you telling them they have to
20 separate -- have separate accounting books for
21 transmission and distribution from generation or what
22 is it that you are telling them they have to
23 separate?

24 A. Again, I'm not an accountant, but they do
25 have separate, as Ms. Mullins testified to, there are

1 separate employees in those separate job functions
2 for generation as well as transmission and
3 distribution that do the accounting separately.

4 Q. You're saying they are separate
5 employees.

6 A. Right. And the books and records would
7 be separate.

8 Q. Okay. And are these Duke Energy Ohio
9 employees or are these Duke Energy Business Services
10 employees you are talking about?

11 A. I don't know. It depends on the
12 employee. I would have to check.

13 Q. And you don't know whether they are told
14 whether to separate generation from transmission and
15 distribution. All you know is that you have
16 different employees working on what you believe are
17 those separate functions; is that right?

18 A. In the training we do specify the
19 separation of the entities and the books and records
20 that go with those entities. And Duke Energy Ohio
21 generation is treated as a nonregulated affiliate,
22 thus, it must have separate books and records.

23 Q. And you don't know whether OVEC falls
24 within that.

25 A. I do not.

1 Q. So you don't know whether OVEC is treated
2 as a generating asset or a T&D asset?

3 A. No. Again, I have very limited knowledge
4 of OVEC other than the minority interest.

5 Q. And you don't know whether it's currently
6 treated as an unregulated interest or a regulated
7 interest; is that right?

8 A. I do not.

9 Q. And you don't know whether it's treated
10 as a competitive retail electric service or as a
11 none -- a noncompetitive service?

12 A. I do not.

13 MR. BERGER: Thank you. That's all I
14 have, Mr. Hollis.

15 THE WITNESS: Thank you.

16 EXAMINER WALSTRA: Mr. Boehm.

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

18 EXAMINER WALSTRA: Thank you.

19 Mr. Oliker.

20 MR. OLIKER: Good afternoon -- good
21 morning, Mr. Hollis. Before we proceed, are you okay
22 to continue or do you want to take a break? It's up
23 to you. I just want to make sure. You have been
24 going at this for a while.

25 MS. KINGERY: It has been a little while.

1 THE WITNESS: A break would be nice.

2 EXAMINER WALSTRA: Yeah, we can take a
3 break. Come back at 11.

4 (Recess taken.)

5 EXAMINER WALSTRA: We will go back on the
6 record.

7 MR. OLIKER: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Oliker:

11 Q. Good morning, Mr. Hollis. My name is Joe
12 Oliker. I represent IGS Energy.

13 A. Good morning.

14 Q. Just a few questions for you. You
15 indicated that you oversee the operations of six
16 states, correct?

17 A. Compliance, not operations.

18 Q. Okay. The compliance of six different
19 states in which Duke operates. How many employees
20 work for you?

21 A. Currently, I have two.

22 Q. So the three of you are responsible for
23 Duke's compliance with its interactions with all of
24 its affiliates in all of the states?

25 MS. KINGERY: Objection. The term "Duke"

1 is unclear.

2 EXAMINER WALSTRA: Can you clarify?

3 MR. OLIKER: Yeah.

4 Q. It is it true that you oversee Duke
5 Energy Ohio and all of its other utilities like Duke
6 Carolina and Duke Florida, you're responsible for the
7 compliance with corporate separation for each of
8 those different utilities?

9 A. We facilitate the training and awareness
10 as well as the compliance tools that we use to enable
11 compliance.

12 Q. How much time would you say you devote to
13 Duke Energy Ohio?

14 A. It depends on any given day or week. It
15 could be a few hours. It could be many hours. My
16 time, generally, is pretty well split across many
17 entities.

18 Q. Okay.

19 A. This week, quite a bit.

20 Q. Now, corporate separation requirements
21 under Ohio law, they apply to Duke Energy Ohio's
22 interactions with its affiliates but also internal
23 business units of Duke Energy Ohio that provide
24 competitive service or noncommodity services,
25 correct?

1 A. Could you be specific which functions
2 you're --

3 Q. Let's start with the first part. You
4 agree that the purpose of a corporate separation plan
5 is to govern the interactions between Duke Energy
6 Ohio, the utility, and its affiliates?

7 A. In general, yes.

8 Q. Okay. And you would also agree that
9 historically and even currently there are portions of
10 Duke Energy Ohio, the utility, that provide
11 competitive retail electric service or products and
12 service other than utility electric service?

13 A. Duke Energy Ohio employees provide other
14 products and services?

15 Q. Divisions of Duke Energy Ohio, itself,
16 that you would agree you would segment the utility
17 into the noncompetitive portion which is the wires,
18 the T&D business.

19 A. T&D, right.

20 Q. And then there is another part of the
21 utility that may provide products and services other
22 than retail electric service.

23 A. I don't know that it's part of the
24 utility if you are speaking about the employees
25 themselves.

1 Q. Just to clarify that, when you say it's
2 not part of the utility, would you agree that Duke
3 Energy Ohio may own or have business units that
4 provide other businesses besides noncompetitive
5 service?

6 A. I would have to check, but not to my
7 knowledge.

8 Q. Okay. Let me -- let's do a hypothetical,
9 maybe. I'll try to get this really simple. Duke
10 Energy Ohio currently owns Duke Beckjord, correct?

11 A. Correct. I believe so.

12 Q. Okay. But you would -- for corporate
13 separation purposes, it has -- Duke Energy Ohio has
14 to treat the portion of its business that owns
15 Beckjord as an affiliate, correct?

16 A. Right.

17 Q. Okay. And, for example, if Duke Energy
18 Ohio had a portion of its business that provided
19 noncommodity services, it would also have to treat
20 that portion of its business as an affiliate.

21 A. Give me an example of a noncommodity
22 service that you are getting to.

23 Q. Let's -- maybe we will get there in a
24 second.

25 A. Okay.

1 Q. Maybe could you give me -- what is your
2 definition of a product or service other than retail
3 electric service?

4 A. Definition would be a product or service
5 that's either not tariffed or not regulated by the
6 Commission.

7 Q. Okay. And if a portion of Duke Energy
8 Ohio provided those types of services, then the
9 corporate separation plan would have to control
10 Duke's interactions with that portion of the
11 business.

12 A. Currently, the utility does not offer
13 those services.

14 Q. Assuming that it did, would you agree
15 that the corporate separation plan would control
16 those interactions?

17 A. I would agree that some determinations
18 would have to be made, and the risk assessed, the
19 legal aspect assessed, and we would have to make some
20 decisions on that action.

21 Q. So is your answer you don't know whether
22 a corporate separation plan would control Duke Energy
23 Ohio's interactions with a business unit within Duke
24 Energy Ohio that provided products or services other
25 than retail electric service?

1 MS. KINGERY: Objection. Misstates the
2 testimony.

3 MR. OLIKER: Your Honor, I'm just trying
4 to find out. He can clarify if that's not his
5 testimony.

6 EXAMINER WALSTRA: Overruled.

7 A. I would say that while the fourth amended
8 plan allows for it, there have been no determinations
9 made; thus, we have never approached that topic to
10 make any determinations. And so, when I say
11 "determinations," I would assess what the corporate
12 separation plan calls for, I would consult counsel,
13 there would be a number of parties involved in any
14 decisions regarding that matter, and that has not
15 happened.

16 Q. And I'm just trying to understand, your
17 answer to my question is you don't know.

18 A. It's a new part of the corporate
19 separation plan that has not been acted upon. We
20 have not made any determinations to date.

21 Q. Turning to your testimony, Mr. Hollis.

22 A. Okay.

23 Q. And also our prior discussion, you would
24 agree that Duke Energy Ohio cannot provide any
25 benefits or competitive advantages to its affiliates?

1 A. Generally, yes, that's true.

2 Q. And let's take that a step further. Duke
3 Energy Ohio, the electric distribution utility, could
4 also not provide a competitive advantage to the
5 portion of its business that owns Beckjord.

6 A. I believe they have to be separated. One
7 is treated as a nonregulated affiliate and the other
8 is treated as regulated.

9 Q. When you say one is treated as a
10 regulated affiliate and one is treated as an
11 unregulated affiliate, you are referring to Beckjord
12 as being the unregulated affiliate, and the EDU as
13 being the regulated company?

14 A. That's correct.

15 Q. Okay. Earlier Mr. -- Mr. Berger, with
16 the OCC, asked you a question about Duke retaining
17 generating assets and bidding them into the wholesale
18 market. Do you remember that question?

19 A. Vaguely.

20 MS. KINGERY: And I would object. This
21 is assuming facts not in evidence.

22 EXAMINER WALSTRA: Overruled.

23 Q. And you said -- I think you said you
24 would have to review the corporate separation laws
25 and rules to make a determination on whether Duke

1 could retain generating assets and be in compliance
2 with Ohio law. Was that your answer?

3 A. I believe that's probably close. I
4 would -- I personally have only -- I have knowledge
5 of the divestiture of the Duke-owned generation
6 assets by the end of this year, Beckjord being the
7 last of those, but specifics, other than that, I
8 would not know.

9 Q. Let's ask from a compliance standpoint.

10 A. Okay.

11 Q. Let's assume -- is it your opinion that
12 Duke could not transfer its generating assets? Say
13 that did not occur. It maintained Beckjord and all
14 of its other generating assets and it sold that
15 output in the wholesale market, would Duke be in
16 compliance with the corporate separation laws?

17 A. Again, I have not looked at the
18 generation aspect of that detail recently. Under the
19 assumption that all of them will be sold by the end
20 of this year.

21 Q. What is your understanding of Ohio's
22 corporate separation law regarding the transfer of
23 generating assets? And when I say Ohio's law, I mean
24 4928.17.

25 MS. KINGERY: And I am going to object

1 here. This witness is here to talk about the
2 corporate separation plan. That is the plan, not the
3 separation of assets. He is not here to talk about
4 the -- the permission that the company might need or
5 might have needed or might have gotten to transfer
6 generating assets, and transfer of generating assets
7 was resolved in the previous case.

8 EXAMINER WALSTRA: If the witness knows,
9 he can testify to that.

10 A. Other than the knowledge that we are
11 divesting all of them at the end of the year, that's
12 the extent of my knowledge.

13 Q. So you don't have a legal understanding;
14 is that your testimony?

15 A. I am not an attorney, no.

16 Q. Had you reviewed 4928.17 before today?

17 A. Probably components of it. Not in its
18 entirety, no.

19 Q. Okay. But you do believe Ohio corporate
20 separation laws sort of divide up -- there's three
21 buckets: There's noncompetitive service, there's
22 competitive service, and then there's products and
23 services other than retail electric service.

24 A. I would agree with that.

25 Q. Okay. And the last two issues that I

1 mentioned, which were competitive retail electric
2 service and products and service other than retail
3 electric service, those are unregulated services
4 under Ohio law, correct?

5 A. So generation, and other products and
6 services.

7 Q. Right.

8 A. Yes.

9 Q. Okay. And would you agree that
10 generation service, whether it's -- in general, it's
11 competitive service, whether it's sold in PJM
12 Interconnection or a con -- a customer contract, for
13 example, in Ohio?

14 A. Is that a question? I am not sure I
15 understood your question.

16 Q. Generation service is a competitive
17 service, correct?

18 A. Right.

19 Q. Would you agree that generation sold in
20 the PJM markets are competitive relative to other
21 generators?

22 A. I don't know that I'm --

23 Q. If you know.

24 A. -- qualified to answer that.

25 Q. Do you have an opinion?

1 A. No.

2 Q. Okay. Have -- sorry, I have another
3 hypothetical for you. And what I'm trying to
4 understand is if Duke Energy Ohio were to offer its
5 customers a financial product, let's assume the
6 utility claims that the product is a financial hedge
7 that will provide a credit to customers when market
8 prices are high, but it will be a charge to customers
9 when market prices are low. Note that this product
10 doesn't require Duke Energy Ohio to provide any
11 electricity to customers at all. Would you consider
12 that product a noncompetitive service, a competitive
13 service, or a product and service other than retail
14 electric service?

15 A. I don't know that I've ever thought of
16 that. So I don't know that I can answer your
17 question. Again, I deal with many entities daily and
18 most of the time I do not have the rules memorized
19 and refer to them heavily. We call the departments
20 that would be more familiar with that such as the
21 rates department.

22 Q. Given your understanding of corporate
23 separation, and products and services other than
24 retail electric service, how would you classify that
25 financial product?

1 MS. KINGERY: Objection. The witness
2 just answered that question.

3 EXAMINER WALSTRA: He can answer to the
4 best of his knowledge.

5 A. Again, I would call -- if I got that
6 question in my job, I would call various other
7 experts in that space. The rates department would be
8 one of them.

9 Q. Earlier you were talking about benefits
10 or subsidies, revenue, provided to an affiliate. Do
11 you remember that discussion?

12 A. Generally.

13 Q. Okay. And now, you would agree that Duke
14 Energy Ohio is not only prohibited from providing
15 revenue to a competitive service or nonproduct --
16 nonelectric provided service, it could also be -- it
17 is also limited to providing any competitive
18 advantage to an affiliate.

19 A. I believe that's true.

20 Q. Okay. Now, let me ask you another
21 hypothetical. Assume for a second that Duke has an
22 affiliate that offers products and services other
23 than retail electric services.

24 A. Okay.

25 Q. And Duke allows that affiliate to use its

1 utility bill to invoice and collect for the cost of
2 providing those services to customers.

3 A. Okay.

4 Q. But Duke refuses to allow CRES providers
5 to use the utility bill to invoice and collect for
6 similar products and services. Under the facts of
7 this hypothetical, would you agree that Duke is
8 violating its corporate separation plan?

9 MS. KINGERY: Assumes facts not in
10 evidence.

11 EXAMINER WALSTRA: Sustained.

12 MR. OLIKER: Your Honor, it is a
13 hypothetical.

14 MS. KINGERY: There still has to be some
15 connection with the facts in this case.

16 EXAMINER WALSTRA: I think there is an
17 issue of relevance here. If you want to talk about
18 that.

19 MR. OLIKER: For one, the witness is
20 testifying, your Honor, that he -- that Duke's
21 corporate separation plan is in compliance with Ohio
22 law and that they are complying with Ohio law in
23 their implementation of that plan. I am trying to
24 first establish what he would consider to be a
25 violation of Ohio law and then I'm going to move into

1 specific facts to this case, but I will do it another
2 way if you would like me to.

3 MS. KINGERY: Your Honor, this is not the
4 forum for looking for violations of the corporate
5 separation plan. Yes, the rules for ESPs do require
6 us to present this witness, as we've talked about, in
7 order to provide testimony that we have a plan, that
8 it is in compliance with the law. And we've done
9 that. But this is not the place to raise allegations
10 of potential corporate separation violations, whether
11 they exist, whether they don't exist, or whether they
12 could exist.

13 And, frankly, this issue was just
14 considered by the Commission in the corporate
15 separation plan case. And the Commission, there,
16 very clearly stated that if there were allegations of
17 corporate separation plan violations, those should be
18 taken up on a case-by-case basis in -- through the
19 vehicle of a complaint case which could easily be
20 lodged by a CRES provider against the utility if they
21 believed that there was evidence of a problem.

22 This is not the appropriate forum for
23 that discussion.

24 EXAMINER WALSTRA: I think there are a
25 lot of arguments to be made. I do think this line of

1 questioning is pretty tangential at this point so I
2 am going to sustain it.

3 MR. OLIKER: Your Honor, may I ask him
4 questions about Duke's proposal in this case which
5 are directly related to this?

6 EXAMINER WALSTRA: I think that's what we
7 have been doing.

8 MR. OLIKER: Okay.

9 Q. (By Mr. Oliker) Mr. Hollis, you include a
10 reference in your testimony to Duke Energy One in
11 your list of affiliates, correct?

12 A. Could you point me specifically where
13 you're talking in my testimony?

14 Q. In your testimony if you look at
15 Attachment MEH-1, page 26.

16 A. MEH-1 being the previous corporate
17 separation plan.

18 Q. It's listed on MEH-2 at page 30.

19 A. Okay.

20 Q. First, look at MEH page 2 -- I mean
21 MEH-2, page 30.

22 A. Yes, I see Duke Energy One is
23 incorporated.

24 Q. And it says "Sells electric-related
25 services to customers," correct?

1 A. That's what it says.

2 Q. Okay. Now, go back to MEH-1, page 26,
3 where there is a more complete description of that
4 entity.

5 MS. KINGERY: Objection. MEH-1 does not
6 reflect the current CSP.

7 EXAMINER WALSTRA: Overruled. I think
8 that's understood.

9 A. Okay. I see that.

10 Q. Okay. Would you agree that Duke Energy
11 One offers strikeshop and unground protection
12 services to customers?

13 MS. KINGERY: Objection. Your Honor just
14 ruled that we should not, in this case, be talking
15 about unrelated issues, and there is nothing in the
16 ESP that relates to Duke Energy One or to strikeshop
17 or underground protection.

18 MR. OLIKER: No, but there is a provision
19 in their ESP where they are trying to not let CRES
20 providers bill for similar services; yet, they are
21 allowing Duke Energy One to do that.

22 MS. KINGERY: Mr. Olikier is testifying at
23 this point.

24 MR. OLIKER: I'm establishing the
25 relevance.

1 MS. KINGERY: Those facts are not in
2 evidence and this is not a witness to talk about what
3 tariff revisions might be proposed.

4 MR. OLIKER: I am putting the facts into
5 evidence now through this witness who has knowledge
6 of this.

7 MS. PETRUCCI: And if I can just add,
8 this witness has stated the company is intending on
9 proceeding under the newly-approved corporate
10 separation plan, so we should have the opportunity to
11 explore how that would actually take place.

12 EXAMINER WALSTRA: Let's see where this
13 line of questioning is going. You've only asked one
14 question so far in terms of relevance, we haven't
15 really got to where he is going with this but, we'll
16 overrule at this point and see where it's going.

17 MR. OLIKER: For the record and clarity,
18 it would probably just be easier for me to repeat the
19 question, your Honor. Thank you.

20 Q. (By Mr. Oliker) Mr. Hollis, you would
21 agree that Duke Energy One, Inc., provides
22 underground protection service and strikstop service
23 to customers in Ohio?

24 A. Yes.

25 Q. Would you agree that those are products

1 and services other than retail electric service?

2 A. I would.

3 Q. Would you agree that Duke Energy One,
4 Inc. utilizes Duke Energy Ohio's utility bill to
5 invoice and collect for strikstop service and
6 underground protection service?

7 A. I have not seen a bill, but I believe
8 that there is a line item on the bill.

9 Q. And would you agree that Duke Energy Ohio
10 does not allow CRES providers to utilize its utility
11 bill to invoice and collect for similar services?

12 A. To my knowledge, that topic has never
13 been brought to my attention.

14 MR. OLIKER: Your Honor, I would like to
15 approach the witness, please.

16 EXAMINER WALSTRA: You may.

17 MR. OLIKER: Actually, I'm sorry. I need
18 one minute, your Honor.

19 EXAMINER WALSTRA: Okay.

20 MR. OLIKER: We'll come back to that in a
21 second.

22 Q. Now, if I understand your answer, you're
23 not aware whether Duke Energy Ohio is prohibiting
24 CRES providers from offering services -- or,
25 utilizing the utility bill to offer services such as

1 strikestop or underground protection?

2 A. To my knowledge, I have never been a
3 party to any discussions or seen any suggestions to
4 that fact.

5 Q. Would you agree that if Duke Energy Ohio
6 was allowing its affiliate to use the utility bill to
7 invoice and collect for noncommodity services, but it
8 did not allow CRES providers to do so, that Duke
9 would be in violation of its corporate separation
10 plan?

11 MS. KINGERY: Objection. Assumes facts
12 not in evidence.

13 MR. OLIKER: I am asking him a
14 hypothetical.

15 EXAMINER WALSTRA: This seems to be kind
16 of along the same line as before, so I am going to
17 sustain.

18 Q. Mr. Hollis, have you read the testimony
19 of Dan Jones?

20 A. I have not.

21 Q. Are you familiar with the bill writing
22 functions?

23 A. No.

24 Q. Would you agree that in order to allow
25 Duke Energy One to utilize the utility bill, no

1 system upgrades were necessary?

2 A. I have no knowledge of what technical
3 changes were required or not required.

4 MR. OLIKER: Your Honor, I would like to
5 mark an exhibit and approach the witness.

6 EXAMINER WALSTRA: You may.

7 MS. KINGERY: Mr. Oliker, what Exhibit
8 No. was this?

9 MR. OLIKER: Your Honor, I would like to
10 mark this, I believe it's IGS Exhibit 5.

11 EXAMINER WALSTRA: It is so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Mr. Hollis, did you respond to
14 interrogatories or assist in the preparation of
15 interrogatory responses in this proceeding?

16 A. I did.

17 Q. And if you look at the document in front
18 of you, would that be IGS Interrogatories, Set No.
19 2-1 through -7?

20 A. Yes.

21 Q. Did you prepare most of these responses,
22 Mr. Hollis?

23 A. Portions.

24 Q. And do these questions pertain to Duke's
25 relationship with its affiliate, Duke Energy One?

1 MS. KINGERY: Your Honor, I would object
2 again. I would renew my objection. We are still
3 talking about details of the strikeshop service and
4 the underground protection service offered by Duke
5 Energy One. This is not even remotely connected to
6 this case. Duke Energy One is not a party to this
7 case and it's not part of the testimony of this
8 witness.

9 EXAMINER WALSTRA: Mr. Olikar.

10 MR. OLICKER: Your Honor,
11 cross-examination is available on any issue relevant
12 to the proceeding. In this proceeding we have here
13 is our corporate separation witness, he is testifying
14 he is complying with his corporate separation plan,
15 but we have evidence that they are providing a
16 benefit to their affiliate, and then we also have
17 testimony that Duke has submitted in this case where
18 they are trying to further close the loop to prevent
19 CRES providers from being on the utility bill at all.
20 I am just trying to explore those issues.

21 MS. KINGERY: And, again, the Commission
22 has just stated that questions such as this, such as
23 Mr. Olikar is talking about, are appropriately raised
24 in a complaint case. They were not appropriate in
25 the corporate separation plan case, and now

1 Mr. Olikier, having failed there, is trying to bring
2 them up in the course of getting our approval of our
3 electric security plan for Duke Energy Ohio.

4 MR. OLIKER: Your Honor, Duke put this
5 issue specifically in play when it submitted the
6 testimony of Dan Jones which tried to exclude CRES
7 providers from being on the utility bill.

8 MS. KINGERY: I would further object that
9 the final statement by Mr. Olikier misstates the
10 testimony of Mr. Jones.

11 EXAMINER PIRIK: Hold on just a minute.

12 EXAMINER WALSTRA: Ms. Kingery, are
13 you --

14 MS. KINGERY: At the end there I had
15 suggested that the last argument raised by Mr. Olikier
16 also misstated Mr. Jones' testimony.

17 MS. PETRUCCI: And, your Honor, RESA
18 supports the arguments against the objection.

19 EXAMINER WALSTRA: I am going to overrule
20 it and see where this goes.

21 A. I have no idea what the question was.

22 (Laughter.)

23 Q. I'll just restate it, Mr. Hollis.

24 A. Thank you.

25 Q. These interrogatories which pertain to

1 Duke Energy's relationship with Duke Energy One with
2 respect to billing, you provided many of these
3 responses, correct?

4 A. Correct.

5 Q. And did you review these responses before
6 they were sent to parties in discovery?

7 A. I did.

8 Q. And does what's been marked as IGS
9 Exhibit 5 appear to be a true and accurate copy of
10 those responses?

11 A. It is. However, on a few responses it
12 lists my name and, others, it does not, which may be
13 correct.

14 Q. Okay. And turning to IGS-INT-2-5.

15 A. Okay. This one does not have my name on
16 it.

17 Q. Would you agree at the bottom it says
18 "legal"?

19 A. Correct.

20 Q. And can you take a minute to review that
21 response?

22 A. Sure. Okay.

23 Q. Would you agree that no system upgrades
24 were necessary for Duke Energy One to utilize the
25 utility bill to invoice and collect for strikestop

1 and underground protection service?

2 A. That is what it says.

3 Q. Do you know whether Duke Energy Ohio
4 includes charges for strikeshop service and
5 underground protection service in its POR program?

6 A. I do not.

7 Q. And to be clear, you're not offering an
8 opinion in this case whether Duke is in compliance
9 with its corporate separation requirements in the
10 event that Duke is not allowing CRES providers to
11 utilize the utility bill for products and services
12 other than retail electric service?

13 MS. KINGERY: Objection. That --
14 objection. That question was filled with negatives.

15 EXAMINER WALSTRA: If the witness
16 understands the question, he can answer.

17 A. Can you clarify your question?

18 Q. In the event that Duke Energy Ohio does
19 not allow CRES providers to utilize the utility bill
20 to invoice and collect for products and services
21 other than retail electric service, you don't offer
22 an opinion on whether Duke is in compliance with its
23 corporate separation requirements.

24 A. I have no knowledge of any CRES provider
25 or other nonaffiliate being denied such, so, no, I

1 have no opinion.

2 Q. Would your answer be different if Duke
3 was prohibiting CRES providers from utilizing the
4 utility bill?

5 MS. KINGERY: Assumes facts not in
6 evidence.

7 EXAMINER WALSTRA: Overruled.

8 A. My answer would be if that question came
9 to me directly again, we would assess the rules, we
10 would make some determinations, and we would
11 determine how to comply with the rules in that
12 specific hypothetical scenario.

13 Q. Mr. Hollis, your testimony indicates Duke
14 Energy Ohio has not received any waivers and you had
15 a discussion about that with Ms. Bojko. Do you
16 remember that?

17 A. I do.

18 Q. Is it your opinion that an electric
19 distribution utility can offer products and services
20 other than retail electric service without a waiver
21 from the Public Utilities Commission of Ohio?

22 MS. KINGERY: Objection. Facts not in
23 evidence again.

24 MR. OLIKER: It's just a general question
25 of his understanding of the law and his position as

1 compliance.

2 EXAMINER WALSTRA: Overruled.

3 THE WITNESS: Could you read the question
4 back?

5 (Record read.)

6 A. It is my understanding, as approved in
7 the fourth amended corporate separation plan, that
8 Duke Energy Ohio in paragraph C., Distribution, page
9 66, it says "Duke Energy Ohio may also offer products
10 and services other than retail electric service,
11 consistent with Ohio policy."

12 MS. BOJKO: Your Honor, may I seek
13 clarification, please? He's reading from the fourth
14 amended corporate separation plan. I believe that
15 during my cross-examination he agreed the company
16 stipulated there were modifications made to that
17 plan. And I thought he said particularly to that
18 piece. Is that not accurate?

19 THE WITNESS: That's the new piece that
20 went into the fourth amended plan.

21 MS. BOJKO: That's the new piece that
22 went in the plan. All right. I guess I would ask,
23 he is referring to MEH-2 that actually isn't the
24 MEH-2 that we have before us.

25 THE WITNESS: It is the one I have.

1 MS. KINGERY: May I try to clarify a
2 little bit?

3 EXAMINER WALSTRA: Please.

4 MS. KINGERY: I believe the initial
5 questions that were asked of the witness about
6 modifications to the plan, I think the intent of the
7 question may have been to ask whether the Commission
8 modified the proposed plan when it issued the final
9 finding and order. I believe that the witness
10 interpreted it as asking what modifications were made
11 through the application, and he answered by
12 describing the types -- the two general categories of
13 modifications that the fourth amended plan made.

14 But the ultimate question, I think, that
15 you asked and we stipulated to was that the
16 Commission required a slight modification of the
17 proposed plan and that slight modification is not
18 reflected in MEH-2 because it hadn't come out when
19 this was filed.

20 MS. BOJKO: Right. So that's exactly
21 what I thought you had told me previously, so, I
22 mean, that's my point. We keep referring back to an
23 attachment that's not the most recent fourth amended
24 corporate separation plan, and I guess I would
25 recommend that we file a corrected MEH-2 at some

1 point, and that's what I was going to seek, but it's
2 going --

3 MS. KINGERY: We would be most happy to
4 do that.

5 MS. BOJKO: I just think the record is
6 not going to be clear if we keep referring to the
7 version that's attached to his testimony.

8 EXAMINER WALSTRA: And what you're
9 reading from is the one that's from your actual
10 attachment?

11 THE WITNESS: That's correct.

12 MS. KINGERY: And if your Honor would
13 like, we can certainly file that by tomorrow morning,
14 and I believe that the change that we'll have to make
15 does not affect the part that Mr. Hollis is reading.

16 MS. BOJKO: I don't know. We've searched
17 the docket and we can't find when a new plan was
18 filed, so I don't know. And that's what part of my
19 question was earlier and why I have a concern is we
20 don't know what the new plan looks like because it's
21 not in the docket anywhere. We can't find it.

22 MS. KINGERY: And I don't think that the
23 Commission required it to be filed after the order
24 was issued, but we would be most happy to file it at
25 least in this docket. We can crossfile it in that

1 docket as well if that would be helpful.

2 MS. BOJKO: I mean, I don't know whether
3 there was a requirement or not, but it doesn't seem
4 like we can refer to an approved fourth amended plan
5 that isn't the version that was actually approved.
6 That's all I'm suggesting.

7 I mean, your Honor, the other concern is
8 I don't know what it looks like. I don't know what
9 the redline is. And in this case we're saying the
10 ESP is in compliance with that fourth amended plan, I
11 sure would like to see what the fourth amended plan
12 that we are saying it's in compliance with looks
13 like.

14 EXAMINER WALSTRA: That might be
15 something we could work on over lunch and kind of
16 comport with whatever -- if there is an amended one
17 or if it's just through Commission order or however
18 it came about with the most updated one, and then we
19 can kind of go from there, but I think we can kind of
20 proceed with what we have now.

21 THE WITNESS: So am I to refer to this
22 copy?

23 EXAMINER WALSTRA: Yes, I think to the
24 extent that you have, and people can question you on
25 your knowledge otherwise.

1 MS. BOJKO: Okay. That going -- that's
2 the part I don't know. I don't know if what he is
3 reading, if the language is the same, that's what I
4 don't understand. He is reading things into the
5 record that I don't know if they are accurate or not
6 accurate because we haven't seen the plan.

7 EXAMINER WALSTRA: Right. And I don't
8 know if you guys can question whether he knows or not
9 either. What he is reading from is the plan that's
10 the attachment.

11 MS. BOJKO: But it's not the correct
12 plan.

13 MS. KINGERY: I would also note, your
14 Honor, that this was not requested in discovery.
15 We're happy to supply it, we can do that over lunch,
16 bring it back after the end of our lunch break. We
17 would be happy to do that.

18 MS. BOJKO: I don't know how to respond
19 to that. He is sitting here today testifying that
20 this is the plan that's in place and this is the
21 plan. He's modified his testimony to incorporate
22 that this is the existing plan that was recently
23 approved, but, yet, he didn't provide a corrected
24 version of his testimony on the stand today with that
25 plan as approved by the Commission.

1 So he's -- he's modified half of his
2 testimony, but hasn't modified the rest of his
3 testimony, so I think that's unfair to say we didn't
4 request it in discovery, because it was attached to
5 his own testimony.

6 MS. KINGERY: Your Honor, the parties --

7 EXAMINER WALSTRA: We'll just proceed now
8 as we are and then, over lunch, hopefully people can
9 look at what the Commission ordered or if there is a
10 redlined copy that still kind of seems to be up in
11 the air right now. When we come back after lunch, we
12 can proceed to decide procedurally how we are going
13 to proceed, if there is cross off of that.

14 MS. KINGERY: Thank you, your Honor. And
15 I believe the only revision that the Commission
16 ordered, subject to check, which I'll do over lunch,
17 was to modify the language to include a statement
18 that detailed records will be kept which demonstrate
19 that assets will be transferred at fully allocated
20 costs. So it's a recordkeeping requirement and
21 nothing more. But I will provide it over lunch. I
22 will provide a redlined copy.

23 EXAMINER WALSTRA: Thank you.

24 MS. BOJKO: I would just like to say, for
25 the record, he specifically told me in my cross that

1 sentence and provision had been revised. I went and
2 read, from the order, the portion that had to do with
3 offering products and services, and the Commission
4 did modify that and clarify that provision.

5 I guess it's difficult for us to sit here
6 and say we don't know what the redline looks like and
7 we don't know if we would oppose the redline as not
8 being in compliance with the Commission order based
9 on what Counsel just said.

10 MR. OLIKER: My understanding there is
11 also additional provisions that require a work order
12 for the provision of nonproducts and services other
13 than retail electric service which is also included
14 in the claim.

15 MS. KINGERY: I believe that was to be
16 put in the tariff, so you could check the tariff
17 filing.

18 EXAMINER WALSTRA: Until we see the
19 actual copy, I don't think there is much we can do.
20 So we will address this after lunch and proceed as we
21 are now.

22 MR. OLIKER: So would you like me to
23 continue?

24 EXAMINER WALSTRA: Go ahead.

25 Q. (By Mr. Oliker) I am sorry to do this,

1 but I think -- I understand you gave an answer to my
2 question, but I don't know if it was fully responsive
3 to my question. It was more about your understanding
4 of 4928.17 that you are recommending that the
5 Commission find that you are in compliance with
6 corporate separation rules. And I guess my question
7 is -- let's go to -- you've had, previously, 4928.17
8 put in front of you, right?

9 A. Yes.

10 Q. Would you look at (A)(1)?

11 A. Okay.

12 Q. Could you just take a moment and please
13 read (A)(1). And just familiarize yourself with that
14 portion of the statute.

15 A. Okay.

16 Q. Would you agree the statute provides for
17 noncompetitive electric service and products and
18 services other than retail electric service through
19 separate affiliates?

20 A. Yes.

21 Q. Okay. Now, if we go down to (C), take a
22 moment to look at that and tell me if this is
23 correct: The Commission can provide a waiver of the
24 (A)(1) requirement for good cause.

25 MS. KINGERY: Your Honor, first of all,

1 this witness is not an attorney; and, second of all,
2 this is not the rehearing of 14-689. This is an
3 issue that was raised in that case. It's currently
4 on appeal to the Ohio Supreme Court. This is not the
5 forum for the witness to talk about the legality of
6 the corporate separation plan as it was just amended
7 by the Commission.

8 MR. OLIKER: Your Honor, I wouldn't be
9 asking this question, but he's got a provision in his
10 testimony that says they haven't received any
11 waivers, and I am just trying to explore his
12 understanding.

13 MS. KINGERY: That actually misstates his
14 testimony. He says there are no waivers of the plan.

15 EXAMINER WALSTRA: Overruled.

16 A. Could you repeat the question?

17 Q. Would you agree that (C)(1) -- or, sorry,
18 4928.17(C), it does provide that the Commission can
19 give a waiver of the (A)(1) requirement to provide
20 services separately for products and services other
21 than retail electric service through an affiliate?

22 A. I see where the Commission shall issue an
23 order approving or modifying, yes.

24 Q. So the answer is "yes"?

25 A. I see that, yes.

1 Q. And I am just trying to go to page 6 of
2 your testimony where you indicate the Commission
3 hasn't provided any waivers. What do you mean by
4 that statement?

5 A. Where are you?

6 Q. I think it's on page 6. I'm sorry. It's
7 on page 4. "Has the Commission granted any waivers
8 of the plan or the previous versions of the Duke
9 Energy Ohio CSP?" Your answer is "No." I am just
10 trying to understand what do you mean by that
11 statement?

12 A. To my knowledge, waivers of the corporate
13 separation plan.

14 Q. Do you mean the Commission's rules and
15 Ohio law or can you just clarify what would an
16 example of a waiver of the corporate separation plan
17 be?

18 A. I would think a waiver would be separate
19 from the law. It would be a -- what I would consider
20 a special circumstance or other than the law.

21 Q. Can you give me an example? I am just
22 trying to understand.

23 A. In my simple mind, while 4928.17, that
24 you pointed to, says the Commission must approve the
25 utility to offer other products and services; they

1 have done that. That would be a difference in what
2 this specifically says.

3 MR. OLIKER: Can I have that answer read
4 back, please?

5 (Record read.)

6 Q. When you are referring to "this," are you
7 referring to your testimony?

8 A. No. I was looking at the 4928.17 that
9 you were pointing to.

10 Q. Okay. Let's go back to my question which
11 is: Can you give me an example of a waiver of the
12 corporate separation plan? I think that was my
13 question.

14 A. No. I don't have an example.

15 Q. And I'm not sure you've answered this
16 question yet. But it's your understanding that
17 today, while the Commission has authorized Duke
18 Energy Ohio to provide products and services other
19 than retail electric service, Duke Energy Ohio has
20 not offered any of those products yet.

21 A. Not to my knowledge.

22 Q. Did you do any research or due diligence
23 to find out if that is true?

24 A. I did general inquiry in my job as
25 compliance.

1 MR. OLIKER: That's all I have, your
2 Honor. Thank you.

3 EXAMINER WALSTRA: Thank you.

4 MR. OLIKER: Thank you, Mr. Hollis.

5 THE WITNESS: Thank you.

6 EXAMINER WALSTRA: Ms. Petrucci.

7 - - -

8 CROSS-EXAMINATION

9 By Ms. Petrucci:

10 Q. Good morning. Almost good afternoon.
11 Okay. Earlier you stated that Duke Energy Ohio is
12 including, on its bills, amounts for strikestop
13 service and underground protection service, correct?

14 A. That's true, yes.

15 Q. When did Duke begin including amounts for
16 those services?

17 A. I do not know the specific date.

18 EXAMINER WALSTRA: Mr. Hollis, I think
19 your microphone went out as did mine.

20 A. I don't know the specific dates.

21 Q. Can you give me any idea as to whether
22 it's been within the last year or two or within the
23 last ESP period?

24 A. I don't know specifically.

25 Q. Is strikestop service, an energy

1 commodity service?

2 MS. KINGERY: Objection. Asked and
3 answered.

4 EXAMINER WALSTRA: Overruled.

5 A. I would say it's an other product and
6 service.

7 Q. Would you agree with me that it's a
8 noncommodity service?

9 A. It's an other product and service.

10 Q. Would your answer be the same with
11 respect to underground protection service as well?

12 A. It would be.

13 Q. If you could turn to Attachment MEH-1,
14 page 26.

15 A. The third amended plan?

16 Q. Yes.

17 A. Okay.

18 Q. At the top of that page -- are you there
19 yet?

20 A. I am.

21 Q. At the top of that page there is a
22 description for strikstop service and underground
23 protection service. Do you see those?

24 A. I do.

25 Q. Is that your understanding of what each

1 of those services involves, as currently being
2 offered and included on Duke Energy Ohio's bills in
3 Ohio?

4 A. I'm generally familiar with the actual
5 technologies or protection programs. I would say
6 that's a fair summary.

7 Q. Will Duke seek to amend the fourth
8 amended corporate separation plan following this --
9 the decision in this ESP case?

10 A. I would have to consult with various
11 people. The only amendment I believe that would be
12 made at this point is once Beckjord is divested. I
13 would say it's possible.

14 Q. You stated earlier that you had not
15 reviewed Witness Dan Jones' testimony in this ESP
16 case. Are you aware that Duke is proposing to
17 include a default provision in the supplier tariff
18 for including noncommodity charges by a supplier?

19 A. No.

20 Q. Just make sure I'm clear. You indicated
21 earlier that Duke Energy Ohio has made no
22 determination as to whether it will allow other
23 products and services to be included on its bills;
24 isn't that correct?

25 A. I believe what I said was Duke Energy

1 Ohio has not made any determination with regards to
2 offering other products and services?

3 Q. And in the course of offering, that would
4 include doing the billing function, correct?

5 A. If that was determined.

6 Q. And your answer was with respect to Duke
7 Energy, itself, offering those other products and
8 services.

9 A. Duke Energy Ohio.

10 Q. Yes. That's what I meant.

11 A. Correct.

12 Q. But you agreed with me, just a couple of
13 moments ago, that the strikstop service and the
14 underground protection service that are included on
15 Duke Energy Ohio's bills constitute other products
16 and services, correct?

17 A. As offered by Duke Energy One.

18 Q. When those services are included on the
19 bill, does the customer pay for them directly to Duke
20 Energy Ohio?

21 A. I don't know the specifics of the flow of
22 payments specifically to those products.

23 Q. Is it one total amount that's charged?

24 A. I'm not sure.

25 MS. PETRUCCI: I have no further

1 questions. Thank you.

2 EXAMINER WALSTRA: Thank you.

3 Mr. Hart.

4 MR. HART: Yes, your Honor. Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Hart:

8 Q. Mr. Hollis, let me start by asking if you
9 know the difference between a bypassable and a
10 nonbypassable rider.

11 A. No, I'm not familiar with that.

12 Q. Okay. You're aware that distribution
13 customers of Duke can choose their electric service
14 suppliers as far as generation service?

15 A. I am.

16 Q. And do you understand that there are
17 certain charges that Duke Distribution bills to all
18 customers regardless of who their supplier of
19 electricity is?

20 MS. KINGERY: Objection. Asked and
21 answered.

22 EXAMINER WALSTRA: Overruled.

23 A. I'm generally aware. I think that
24 question would be better suited for somebody in the
25 rates.

1 Q. Okay. Well, I am -- what I am trying to
2 understand is whether, in the course of interpreting
3 your corporate separation plan, the notion of a
4 bypassable or nonbypassable rider is relevant to you.

5 A. I made no determinations on that.

6 Q. Let's turn to the plan itself. You
7 understand, I guess, that Ohio law requires that a
8 corporate -- corporate separation plan include
9 certain features.

10 A. Correct.

11 Q. And there's both a statute and a
12 Commission rule in that regard, correct?

13 A. Right.

14 Q. And the statute and the rule establish
15 minimum requirements, correct?

16 A. I agree.

17 Q. And would you agree that Duke, if it
18 chooses, may agree to assume a higher standard of
19 conduct than the bare minimum?

20 A. I would say that's true in many aspects
21 of work and life, yes.

22 Q. And when Duke presents and gains approval
23 of the corporate separation plan, would you agree
24 that that plan then governs conduct of not just the
25 statute and the rule?

1 A. I would agree.

2 Q. So if the plan takes on additional
3 restrictions or obligations that aren't mandated by
4 the statute or the rule, the plan would still impose
5 those requirements.

6 A. That would be my compliance take on it.

7 Q. Okay. Now, the plan contains certain
8 substantive rules about how Duke Energy Ohio will
9 interact with affiliates; is that right?

10 A. I think so. Do you have a specific --

11 Q. No, just generally. The term "affiliate"
12 is used rather broadly throughout the agreement,
13 right?

14 A. Right.

15 Q. And there's nowhere within the substance
16 of the plan, is there, that distinguishes between
17 those duties that apply to a wholly-owned affiliate,
18 a majority-owned affiliate, or a minority-owned
19 affiliate?

20 A. No. Other than the list of affiliates,
21 back to OVEC, it's the only one that I've seen thus
22 far that says "minority owned."

23 Q. But I am talking about the substantive
24 rules, not the list of affiliates, but the
25 substantive rules that say what Duke can and cannot

1 do with regard to an affiliate, applied across the
2 board to all types of affiliates, regardless of
3 percent of ownership?

4 A. I think the legal definition of -- back
5 to the legal definition of affiliates and making a
6 determination what is an affiliate, there are
7 provisions that affiliates must comply with.

8 Q. Well, let's -- first, let's look at the
9 corporate separation plan, I guess the third version
10 which is MEH-1, and if you would look at page 13 of
11 that plan.

12 A. Okay.

13 Q. Would you agree with me that the last
14 sentence of that paragraph says "The following list
15 includes the list of affiliates within Duke Energy as
16 of June 1, 2011"?

17 A. Yes.

18 Q. And that's followed by a multi-page list
19 of affiliates?

20 A. Correct.

21 Q. And on that affiliate list is OVEC.

22 A. That is true.

23 Q. Okay. Now, if you turn to the fourth
24 plan and I believe it's -- it would be page 12 of 69
25 perhaps.

1 A. Yes.

2 Q. Same paragraph applies there or appears
3 there?

4 A. It is. Different date.

5 Q. And that's the date -- the date is June
6 of 2014 there.

7 A. March 1, 2014.

8 Q. March 1, okay, I'm sorry. Let's back up
9 a second. The fourth plan, as I understand it from
10 the case that was filed in order to approve it, was
11 primarily done in order to reflect changes to the
12 Duke corporate family as a result of the acquisition
13 of Progress Energy?

14 A. That's one of the changes.

15 Q. So the list of affiliates would be
16 different because you have new affiliates that didn't
17 exist before.

18 A. That is true.

19 Q. And if we look at that list of affiliates
20 that's in the fourth plan, OVEC is also listed there.

21 A. Correct. I believe we saw that.

22 Q. And you've noted the words "minority
23 interest" appear on that listing. That's new
24 language in the fourth plan, isn't it?

25 A. I would have to check. Compared to the

1 third plan. What page was it on the third plan
2 again?

3 Q. I believe the list is on page 31 where
4 OVEC appears.

5 A. Yes, that appears to be correct.

6 Q. Okay. Now, those two words are new, but
7 the rest of that description is the same, isn't it?

8 A. I didn't confirm that, but subject to
9 check --

10 Q. Subject to check.

11 A. -- I'll take your word for it.

12 Q. Am I correct there were no changes made
13 to the substantive rules in the plan to say this rule
14 does not apply to a minority interest?

15 A. I don't recall any that went to that
16 specificity. Obviously, by inserting the two words,
17 it was viewed that this is a -- certainly a minor
18 interest.

19 Q. But, nonetheless, it's still an affiliate
20 and listed as an affiliate.

21 A. Again, I think we are going to have to go
22 back to the legal definition of an "affiliate" and
23 have a determination made. We own 9 percent stock,
24 or Duke Energy Ohio does from my understanding.
25 There's no parent to that that owns stock also in

1 OVEC. I would say if you and I both owned IBM stock,
2 we would not be an affiliate, so I think we need a
3 legal -- I am going to defer to a legal definition.

4 Q. All right. Let's talk about that for a
5 minute. You agreed with me earlier, did you not,
6 that Duke could agree to assume higher burdens than
7 required by the legal standards?

8 A. That is true.

9 Q. And Duke supplied the list of affiliates,
10 didn't it?

11 A. We did.

12 Q. And with the fourth plan, an entirely new
13 list of affiliates was swapped out for the old list
14 of affiliates, correct?

15 A. I believe some are still the same, but it
16 does have new affiliates listed.

17 Q. And OVEC is on both lists, correct?

18 A. Correct.

19 Q. And OVEC was not removed from the list of
20 affiliates in the fourth plan even though it's a
21 minority interest.

22 A. I believe that appears to be correct.

23 Q. Can you show me any rule, any substantive
24 rule in the fourth plan that says this rule only
25 applies to majority-owned affiliates and not to all

1 affiliates?

2 A. I cannot. Again, I don't know, legally,
3 is OVEC truly an affiliate. I think --

4 Q. For purposes of your plan, it is an
5 affiliate, isn't it?

6 A. It is listed in the document, yes.

7 Q. All right. Let's go to the substantive
8 section of the plan. Let's look at the fourth
9 version, MEH-2, page 48.

10 A. Okay.

11 Q. And this is the section that contains
12 "The Code of Conduct"; is that correct?

13 A. It is.

14 Q. And the introductory paragraph says "This
15 affiliate Code of Conduct governs the actions of Duke
16 Energy Ohio and its affiliates," correct?

17 A. That's correct.

18 Q. So it would govern Duke Energy Ohio and
19 OVEC, correct?

20 A. Again, I am going to have to go back to
21 is OVEC an affiliate, because we have a very minor
22 ownership, 9 percent, from my understanding, of
23 stock, and in the training that we deploy and the
24 understanding that we have, it would not qualify as
25 an affiliate as the others in the list, which none of

1 the others that I have noted say "minority interest."

2 So, again, I am going to have to defer back to a

3 legal final determination.

4 Q. Do you wish to change any of your
5 previous answers or withdraw them?

6 A. Specifically?

7 Q. The questions I have asked you today and
8 your answers, are you withdrawing or modifying any of
9 those previous answers?

10 MS. KINGERY: Your Honor, I would object
11 to this question. He is bullying and badgering this
12 witness. If he has some specific answer he believes
13 is in conflict with what Mr. Hollis has just said, he
14 should refer to it.

15 EXAMINER WALSTRA: Can you be more
16 specific?

17 MR. HART: Well, your Honor, he's said
18 several times that Duke can take on higher burdens
19 than the law requires. He's acknowledged that Duke
20 listed OVEC as an affiliate. He's acknowledged
21 nothing in the plan says minority affiliates are
22 treated different than majority affiliates. And now,
23 when asked if a particular provision of the plan
24 applies to OVEC, he is trying to defer to legal on
25 that. He's already given these other answers that

1 are entirely inconsistent. So I am trying to
2 understand whether he is standing behind the previous
3 answers or whether he is attempting to somehow modify
4 those answers.

5 EXAMINER WALSTRA: If you want to ask for
6 a specific clarification between one thing and
7 another, you can do that.

8 MR. HART: Let's just move on, because I
9 think we can deal with this in argument.

10 Q. (By Mr. Hart) If you would turn to the
11 next page, paragraph 5, which is, I take it, part of
12 "The Code of Conduct," correct?

13 A. Page 49?

14 Q. Yes.

15 A. Yes.

16 Q. All right. Paragraph 5 says "Duke Energy
17 Ohio shall not tie (nor allow an affiliate to tie),
18 as defined by state and federal antitrust laws, or
19 otherwise condition the provision of Duke Energy
20 Ohio's regulated services...." I am going to stop
21 there for a moment. Would you agree if we get rid of
22 the section dealing with antitrust ties, that that
23 provision says Duke shall not otherwise condition the
24 provision of its regulated services?

25 A. I guess if you remove the federal

1 antitrust sentence, that's what it would read.

2 Q. And what I am getting at is that the
3 conditioning of provision of service is not limited
4 to the antitrust sense, but it applies in all senses.

5 MS. KINGERY: Objection. This calls for
6 a legal conclusion. This witness is not an attorney.

7 EXAMINER WALSTRA: He can answer to the
8 best of his knowledge.

9 A. I would not have an opinion on that.

10 Q. All right. Let's move on further into
11 the sentence. It says "...condition the provision of
12 Duke Energy Ohio's regulated services, discounts,
13 rebates, fee waivers, or any other waivers of
14 ordinary terms and conditions of service, including
15 but not limited to tariff provisions, to the taking
16 of any goods and/or services from Duke Energy Ohio's
17 affiliates." That's what it says, correct?

18 A. I see that.

19 Q. Does that mean to you that Duke cannot
20 tie the provision of distribution service to a
21 customer being required to take a service from a Duke
22 affiliate?

23 MS. KINGERY: Again, I would object.
24 This is a legal conclusion that Mr. Hart is asking
25 for. The concept of tying is a very complicated

1 subject within antitrust law. Mr. Hollis is not an
2 expert on antitrust law or anything remotely
3 connected to it.

4 MR. HART: Your Honor, he is responsible
5 for this plan and for educating Duke employees on
6 what the plan means so I think his understanding is
7 highly important.

8 MS. KINGERY: And when he needs to
9 clarify the application of the plan to a particular
10 circumstance, Mr. Hollis has indicated that he seeks
11 consultation with attorneys.

12 EXAMINER WALSTRA: Overruled.

13 A. My normal day, when I get a question that
14 I'm not -- I don't interpret the rules. Typically,
15 my first phone call is to my counsel to do
16 interpretations.

17 Q. Well, let me ask a question and see if
18 you can answer this one: If Duke were to say if
19 you're a distribution customer of Duke Energy Ohio,
20 you have to take some power from OVEC, would the
21 corporate separation plan allow that or not?

22 MS. KINGERY: Objection. Assumes facts
23 not in evidence.

24 EXAMINER WALSTRA: Overruled.

25 A. I don't know the answer to that question.

1 Q. So you don't know whether it could
2 require customers to buy power from OVEC?

3 A. I don't know enough about the OVEC
4 operation to answer that question.

5 Q. Well, let's make it simpler then. Could
6 Duke Energy Ohio require its distribution customers
7 to buy power from a Duke-owned midwest generation
8 facility?

9 A. To my knowledge, all our generation
10 facilities are being divested.

11 Q. Well, that's not my question. My
12 question is whether Duke Energy Ohio could require
13 its distribution customers to buy power from those
14 plants.

15 A. I don't know that the utility can require
16 any customer to do anything against their will but,
17 again, I am not an attorney to determine some of the
18 minor points of the legalities.

19 Q. Well, you understand Duke Energy Ohio can
20 require distribution customers to pay distribution
21 rates, right?

22 A. Right, but they have a choice also as to
23 who their generator is.

24 Q. And that's what I am getting at is can
25 Duke tell the distribution customer who it has to buy

1 its power from?

2 MS. KINGERY: Once again, Mr. Hollis is
3 not an attorney. He has not been called here to
4 testify about the application of corporate separation
5 laws and rules to hypothetical situations.

6 EXAMINER WALSTRA: If he knows, he can
7 answer.

8 A. Again, I would consult legal on that
9 question.

10 Q. So you couldn't answer that question?

11 A. No.

12 MR. HART: Okay. Thank you.

13 EXAMINER WALSTRA: Staff?

14 MR. BEELER: No questions, your Honor.

15 EXAMINER WALSTRA: Do you want to break
16 for lunch here and come back for redirect?

17 MS. KINGERY: That's fine. Thank you.

18 EXAMINER WALSTRA: We'll come back at
19 1:35.

20 (Thereupon, at 12:25 p.m., a lunch recess
21 was taken.)

22 - - -

23

24

25

Monday Afternoon Session,
October 27, 2014.

- - -

EXAMINER WALSTRA: We can go back on the record. We were talking off record about the modified CSP and, Ms. Kingery, do you want to go ahead?

MS. KINGERY: Yes. We have made the minor modification that was required by the Commission's order in Case 14-689, I think it was. And that change related to one of the agreements listed in section IV of the CSP, and specifically the Commission required that we amend it to include a statement that pricing under the Intercompany Asset Transfer Agreement would be made at not less than fully allocated costs. And we have -- or, I think it said actually will be transferred at fully allocated costs. I made that amendment. I have a redlined copy. I just brought section IV because nothing else changed.

EXAMINER WALSTRA: Okay.

MS. KINGERY: So I don't know if you would like to have that made an exhibit. Do you want Mr. Hollis to address it?

EXAMINER WALSTRA: Since we're already at

1 redirect anyway, maybe he can address it in redirect.

2 MS. KINGERY: Okay.

3 EXAMINER WALSTRA: So, yeah, go ahead.

4 MS. KINGERY: All right. So I would ask
5 that the -- an amendment that we have just prepared
6 showing the change to section Roman Numeral IV of the
7 corporate separation plan in compliance with the
8 Commission's order in Case No. 14-689 be marked as
9 Duke Energy Ohio Exhibit 12.

10 EXAMINER WALSTRA: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. KINGERY: And may I approach?

13 EXAMINER WALSTRA: You may.

14 MS. BOJKO: Your Honor, may we have an
15 opportunity to review since this hasn't been passed
16 out before?

17 EXAMINER WALSTRA: Certainly, take a
18 couple of minutes.

19 MS. KINGERY: Let me know when everybody
20 is ready and I'll move on.

21 EXAMINER WALSTRA: Does anyone need more
22 time?

23 Go ahead.

24 MS. KINGERY: All right. Thank you.

25 - - -

REDIRECT EXAMINATION

By Ms. Kingery:

Q. Mr. Hollis, I have just presented you with what has been marked Duke Energy Ohio Exhibit 12. Do you have that in front of you?

A. I do.

Q. And do you see the change that was made on what has been identified as page 11 of 69, it's a redlined copy?

A. I do.

Q. And have you had an opportunity to review that change?

A. I have.

Q. And with that change would there be any alterations in any of your testimony given heretofore today?

A. No.

Q. Thank you.

Mr. Hollis, do you recall earlier today discussing with several attorneys the definition of the term "affiliate" as it relates to OVEC?

A. I do.

Q. And you talked about the appropriate standard being the definition found in rule 4901:1-37-01(A), correct?

1 MR. OLIKER: Objection, leading the
2 witness.

3 MS. KINGERY: I'm merely reminding him of
4 the conversation he had earlier.

5 EXAMINER WALSTRA: Overruled.

6 A. I see it, yes.

7 Q. And your testimony previously was that
8 the critical factors were what?

9 A. Common ownership and control were the
10 two.

11 Q. Okay. So I would like to explore those
12 two just a little bit. First, let's talk about
13 common ownership. To talk about that, I believe you
14 were asked what that meant to you, correct?

15 A. Correct.

16 Q. Is that something you had ever really
17 thought about before?

18 A. No, not specifically.

19 Q. So let's talk about what "common" means
20 as an adjective. If two people were described as
21 having a common interest, what would you think that
22 means?

23 A. They would have a similar interest.

24 Q. So "common ownership" now should mean
25 what?

1 A. That they would have a similar ownership.

2 Q. Okay. And we have heard in this case, in
3 prior days of testimony, that Duke Energy Ohio owns a
4 small percentage of OVEC; is that correct?

5 A. That's correct.

6 Q. And to the best of your knowledge, does
7 any other entity within the Duke Energy corporation
8 family own any stock in OVEC?

9 A. No.

10 Q. And who owns -- what entity owns Duke
11 Energy Ohio, if you know?

12 A. I don't know specifically. It's a big
13 structure.

14 Q. To the best of your knowledge, does the
15 entity that owns Duke Energy Ohio own any of OVEC?

16 A. No.

17 Q. So would you deem Duke Energy Ohio and
18 OVEC, under your definition of "common ownership," to
19 have common ownership?

20 A. No.

21 Q. Now, let's talk about control.

22 MS. BOJKO: Your Honor, may I have the
23 last two questions reread, please? And the answers?

24 EXAMINER WALSTRA: Sure.

25 (Record read.)

1 MS. BOJKO: Your Honor, I am going to
2 object to the two questions and move to strike. The
3 witness says he doesn't know who owns and then he
4 goes on to say that they have common ownership or
5 don't have common ownership. If he doesn't know who
6 owns Duke Energy Ohio, he said it's a big company,
7 how could he possibly make the next two concluding
8 statements?

9 MS. KINGERY: Your Honor, he had also
10 just previously testified that no entity within the
11 Duke Energy Corporation family of companies owns any
12 of OVEC other than Duke Energy Ohio.

13 MS. BOJKO: If he doesn't know who owns
14 Duke Energy Ohio, how could he possibly make that
15 conclusion?

16 EXAMINER WALSTRA: I am going to overrule
17 it. You can explore that on recross.

18 MS. BOJKO: Thank you.

19 Q. (By Ms. Kingery) With regard to control,
20 which I believe you said was the other important
21 factor, to the best of your knowledge, does any
22 employee of Duke Energy Ohio or any of its
23 affiliates, "affiliates" as that is within the Duke
24 Energy Corporation family of companies, control the
25 day-to-day operations of OVEC?

1 A. No.

2 Q. And does anybody within the Duke Energy
3 family of companies operate the generating assets
4 that are owned by OVEC?

5 A. No.

6 Q. Do you recall that you were also asked
7 questions regarding waivers this morning?

8 A. I do.

9 Q. And do you recall being directed to the
10 Opinion and Order that was issued by the Commission
11 in the last ESP case?

12 A. I do.

13 Q. And do you recall being asked to look at
14 page 45?

15 A. I do.

16 Q. Would you please flip to that page again.

17 A. Okay. All right.

18 Q. And now, let's just hold that for a
19 minute and look at your testimony and I would ask you
20 to turn to page 4.

21 A. Okay.

22 Q. And would you please read out loud the
23 final question and answer on the page.

24 A. Sure. "Has the Commission granted any
25 waivers of the plan or the previous versions of the

1 Duke Energy Ohio CSP?" The answer was "No."

2 Q. Thank you. All right. Now, if you look
3 at page 45 of the Opinion we were just discussing,
4 and you look at the final paragraph that carries over
5 on to the next page.

6 A. Okay.

7 Q. What did, if you can tell, what did the
8 Commission grant a waiver of?

9 A. As it states here it looks like it's
10 relating to the sale or transfer of generating
11 assets.

12 Q. And where was -- what was the item that
13 was waived?

14 A. The requirements set forth in rule
15 4901:1-37-09 (B) through (D).

16 Q. Thank you. And I believe you indicated
17 that that related to the transfer of generating
18 assets?

19 A. Correct.

20 Q. Is there anything in this paragraph that
21 talks about the Commission granting a waiver of
22 provisions of the corporate separation plan?

23 A. No.

24 Q. And finally, would you turn to page 65 of
25 MEH-2.

1 A. Okay.

2 Q. Do you recall being asked, I believe by
3 Mr. Pritchard this morning, about the final sentence
4 in paragraph A.?

5 A. Right.

6 Q. And just to refresh all of our
7 recollections, could you read that sentence?

8 A. Sure. "As such, Duke Energy Ohio, as a
9 regulated electric distribution company, treats its
10 generation as a non-regulated affiliate and abides by
11 both the FERC Standards of Conduct and Ohio's code of
12 conduct."

13 Q. And what do you mean by "generation" or
14 what do you believe the plan means by "generation" in
15 that sentence?

16 A. All of its directly-owned assets.

17 Q. And why do you say that?

18 A. I mean, as referred back up in the
19 beginning of the same paragraph, "Duke Energy Ohio
20 agreed to transfer all of its directly owned, legacy
21 generation assets to an affiliate."

22 MS. BOJKO: I'm sorry, where did the
23 witness just read from?

24 THE WITNESS: Paragraph A., the first
25 sentence.

1 MS. BOJKO: Of what document?

2 THE WITNESS: MEH-2. Sorry.

3 MS. KINGERY: MEH-2, page 65.

4 MS. BOJKO: Thank you.

5 MS. KINGERY: That's all I have. Thank
6 you, your Honor.

7 EXAMINER WALSTRA: Thank you.

8 Mr. Pritchard.

9 MR. PRITCHARD: Yes. Thank you.

10 - - -

11 RECROSS-EXAMINATION

12 By Mr. Pritchard:

13 Q. On that last topic, the sentence you read
14 from page 65 of document Attachment MEH-2, will you
15 look at attachment MEH-1, page 53 of 56, and let me
16 know when you are on page 53.

17 A. You said page 53?

18 Q. Correct.

19 A. Okay.

20 Q. Is the last sentence in paragraph A. the
21 exact same sentence as you just discussed in
22 Attachment MEH-2?

23 A. Give me a moment to compare them. Yes,
24 it appears to be the same.

25 Q. And to the best of your knowledge, does

1 Duke treat all its generation assets as if they were
2 a nonregulated affiliate?

3 A. Could you clarify "Duke"?

4 Q. Duke Energy Ohio.

5 A. All of the owned assets, directly-owned
6 assets, yes, I believe so, yes.

7 Q. With regards to its OVEC entitlement, are
8 you aware of whether they treat that as a
9 nonregulated affiliate?

10 A. I am not. From my understanding we own
11 9 percent of the shares, not the asset.

12 Q. And so, you don't believe the corporate
13 separation rules apply to the OVEC entitlement?

14 A. I think it's -- it's not an affiliate.

15 Q. Do you still have in front of you the
16 Commission rule that OCC used to refresh your
17 recollection and which was -- contains the definition
18 of "affiliate"?

19 A. I do.

20 Q. Am I correct that that rule states that
21 the affiliate standard shall also apply to any
22 internal merchant function of the electric utility
23 whereby the electric utility provides competitive
24 service?

25 A. That's what it says.

1 Q. And so, would that provision of the
2 definition of "affiliate," the internal merchant
3 function, in your opinion, would that cover the OVEC
4 entitlement?

5 A. Again, I am going to refer back to the
6 legal definition of "affiliate" and an interpretation
7 legally to declare it an affiliate or not.

8 Q. You testified earlier that you are the
9 manager of compliance for corporate separation for
10 Duke Energy Ohio, correct?

11 A. Correct.

12 Q. And so, in implementing that compliance,
13 do you provide any guidance to Duke Energy Ohio about
14 whether OVEC is required, the OVEC entitlement is
15 required to comply with the Duke -- with the
16 corporate separation requirements?

17 MS. KINGERY: Your Honor, I am going to
18 object to this. This is going far beyond the scope
19 of my redirect. I talked about the first sentence in
20 that definition, but there has been no cross thus far
21 and no redirect that related to the internal merchant
22 function question.

23 MR. PRITCHARD: Well, the scope of the
24 third point was a tieback between the legacy assets
25 that were supposed to be transferred and the

1 definition of "affiliate." The -- what Duke has been
2 arguing here is OVEC is not within the definition of
3 "legacy affiliates." This is the scope of redirect.

4 They are asking and, by implication,
5 saying that the OVEC entitlement is not within the
6 definition, is not within the -- the statement here
7 that they are trying to be treated -- or, that they
8 need to be treated as an unregulated affiliate. My
9 question goes to the exact same subject matter. They
10 stated it in the negative. I'm stating it in the
11 positive.

12 EXAMINER WALSTRA: Overruled.

13 THE WITNESS: Would you repeat the
14 question?

15 MR. PRITCHARD: Would you read the
16 question back to the witness, please?

17 (Record read.)

18 A. I have not.

19 Q. And, sitting here today, do you have any
20 opinion about whether the OVEC entitlement is
21 required to comply with the corporate separation
22 requirements?

23 MS. KINGERY: I am going to object.
24 Could Counsel clarify what he means by an entitlement
25 having to comply? I don't know how an entitlement

1 can act.

2 Q. Do the corporate separation requirements,
3 that is to treat the OVEC entitlement -- let me back
4 up.

5 The statement here in the -- both the
6 third and the fourth amended corporate separation
7 plans has a statement that says "...Duke Energy Ohio,
8 as a regulated distribution electric company, treats
9 its generation as a non-regulated affiliate and
10 abides by both the FERC Standards of Conduct and
11 Ohio's code of conduct." Do you see that reference?

12 A. I do.

13 Q. And is the Ohio code of conduct that's
14 referenced here the corporate separation
15 requirements?

16 A. It is.

17 Q. And so, this statement here says Duke
18 Energy Ohio applies the corporate separation
19 requirements to its generation as if its own internal
20 generation was held by that of an affiliate, correct?

21 A. My opinion is that OVEC is not an
22 affiliate. We own 9 percent of the stock.

23 Q. I understand that, but before we get to
24 that, this is just saying that, let's say the
25 Beckjord unit that we've been talking about earlier,

1 whether that unit was owned by Duke Energy Ohio or
2 Duke Energy Retail, the corporate separation
3 requirements would apply as between the distribution
4 company and that generation asset.

5 A. As affiliates of one another.

6 Q. Okay. And that affiliate code of conduct
7 would apply the corporate separation rules,
8 regardless of whether that generation asset was owned
9 by Duke Energy Ohio's generation business or Duke
10 Energy Retail's generation business, correct?

11 A. Because we treat Duke Energy Ohio
12 generation as a nonregulated affiliate.

13 Q. Correct. And so, when we get to OVEC,
14 you understand that it's your company's position that
15 that is not a legacy-owned generation asset?

16 A. Define "legacy owned." We own 9 percent
17 of the shares.

18 Q. If I use the term "directly owned," would
19 that be a more accurate representation to you?

20 A. Yeah. I would not equate Beckjord to
21 OVEC, no.

22 Q. Okay. But since OVEC it is not -- it's
23 not directly owned entirely by Duke Energy Ohio,
24 correct?

25 A. OVEC?

1 Q. Correct.

2 A. No, it is not.

3 Q. Beckjord, is that entirely owned by Duke
4 Energy Ohio?

5 A. I don't know the full answer to that.

6 Q. Do you know if all of the generation
7 assets that are referenced here on page 65 of MEH-2,
8 as, in the first sentence, directly-owned generation
9 assets, do you know if Duke Energy Ohio owned
10 100 percent of all those assets?

11 A. I do not.

12 Q. And if Duke Energy Ohio did not own
13 100 percent of all those assets -- strike that.

14 MR. PRITCHARD: I don't have any further
15 questions. Thank you.

16 EXAMINER WALSTRA: Thank you.

17 Ms. Hussey.

18 MS. HUSSEY: Nothing from the Kroger
19 Company, your Honor.

20 EXAMINER WALSTRA: Ms. Bojko.

21 MS. BOJKO: Thank you, your Honor.

22 - - -

23 RECROSS-EXAMINATION

24 By Ms. Bojko:

25 Q. Start with Amended Attachment MEH-2 which

1 is Duke Exhibit 12. Do you have that in front you,
2 sir?

3 A. I do.

4 Q. And when I asked you questions earlier
5 this morning, you told -- I thought you told me
6 earlier, I am not trying to put words in your mouth,
7 I am trying to understand what you told me before,
8 that there was a provision in the corporate
9 separation plan that was modified by the Commission's
10 recent entry with regard to products and services,
11 and we specifically were discussing page 66, I
12 believe, in the plan. Do you recall that discussion?

13 A. I do.

14 Q. Okay. So are you now -- given the
15 amended attachment to your testimony, are you now
16 saying that there were no modifications to your plan
17 based on the Commission's order in Case No. 14-689?

18 A. It appears that there was one amendment
19 to section IV to the plan.

20 Q. So the answer to my question is no, you
21 don't believe that section C. on page 66 was modified
22 by the Commission's order?

23 A. I believe as section C. reads in MEH-2,
24 it is accurate.

25 Q. Okay. But you do believe that the

1 discussion of costs and -- excuse me, products and
2 services was in the Commission's order approving your
3 plan; is that correct?

4 A. Where are you referring to?

5 Q. We had a big discussion this morning of
6 how the Commission's order approved the new fourth
7 amended corporate separation plan with modifications.

8 A. Right.

9 Q. I believe you told me this morning one of
10 those modifications was in regard to section IV that
11 you just passed out, but then there was a second
12 modification in section XIV. C. which had to do with
13 offering of products and services.

14 A. That is true. There is a section of
15 MEH-2 that is not in MEH-1 and that's what I was
16 referring to.

17 Q. Okay. But we then went to the Commission
18 decision approving the fourth amended plan, MEH-2 as
19 amended, and I believe you told me that there were
20 modifications based on the Commission's order with
21 regard to costs, products or services.

22 A. The amendment that I meant was from 3 to
23 4.

24 Q. Okay.

25 A. Not an amendment after 4.

1 Q. Okay. So when we went to the
2 Commission's order approving 4, that didn't apply to
3 4?

4 A. If it approved 4, then it applied to 4.

5 Q. Then it applied to 4.

6 Okay. And then those modifications that
7 the Commission made or clarifications in the
8 Commission's order was regarding products and
9 services; isn't that correct?

10 A. To the best of my knowledge, the
11 discussion was around this section IV and the last
12 sentence that's now been amended. That's the only
13 other amendment that I know of.

14 Q. Okay. The Commission's Opinion and
15 Order, approving the fourth amended, we read portions
16 of that. Do you recall that?

17 A. Vaguely.

18 Q. Okay. And we talked about it in context
19 of section C. on page 66 of the plan.

20 A. Okay.

21 Q. I understand -- is it fair to say that
22 it's the company's position now that there are no
23 further amendments to MEH-2; is that fair?

24 A. Yes.

25 Q. Is that based on your advice of counsel?

1 A. That is fair, yes.

2 Q. And that's based on your advice of
3 counsel?

4 MS. KINGERY: Objection.

5 EXAMINER WALSTRA: I think he answered
6 it.

7 MS. BOJKO: I don't think he answered
8 whether it was based on advice of counsel.

9 MS. KINGERY: And discussions between a
10 client and an attorney are privileged.

11 MS. BOJKO: I'm not asking for
12 conversations. I am asking if his new knowledge is
13 based on advice of counsel.

14 EXAMINER WALSTRA: He can answer.

15 A. I'm aware of this amended MEH-2, yes.

16 Q. And you don't believe there are any
17 further amendments required since our discussion this
18 morning; is that right?

19 A. Not to my knowledge, no.

20 Q. So, during the lunch break, did you go
21 back and read the Opinion and Order issued in 14-689?

22 A. I did not.

23 Q. Okay. So when we -- we talked about that
24 this morning, we talked about it stating, "...as a
25 condition to our approval of this provision of the

1 plan, we direct Duke to establish the necessary
2 agreements and processes to guarantee that, upon the
3 request of the Commission or Staff, Duke has access
4 to the information necessary to prove that no costs
5 associated with these products or services are being
6 borne by the regulated utility's customers," right?

7 A. Okay.

8 Q. Do you recall that discussion this
9 morning?

10 A. I do.

11 Q. And then the order goes on to say and it
12 states that "Duke is directed to incorporate Staff's
13 recommendation to the tariff language." So is it
14 your understanding now that the discussion we had
15 this morning is an actual modification to the tariff
16 provision and not a modification to the corporate
17 separation plan itself?

18 A. I don't believe I know the answer to that
19 question.

20 Q. And we also read this morning the part
21 that said "While we find that Duke's proposal in this
22 regard is reasonable and should be approved, we
23 emphasize that none of the costs associated with the
24 services and products may be passed on to Duke to the
25 regulated utility customers," right?

1 A. Correct.

2 Q. Okay. And it's your understanding that
3 Duke -- that Duke Ohio owns 9 percent of OVEC; is
4 that correct?

5 A. That's what I understand, yes.

6 Q. Okay. And it's also your understanding
7 that OVEC -- or, that Duke Ohio is entitled to
8 9 percent of the generation output from the OVEC
9 units.

10 MS. KINGERY: Objection. This has been
11 asked and answered.

12 EXAMINER WALSTRA: Overruled.

13 A. I don't know what the entitlements state.
14 I just know we have 9 percent ownership share.

15 Q. And with that ownership share, you do
16 know there's a generation output associated with that
17 share; is that right?

18 MS. KINGERY: The witness just answered
19 this question. He said that he knows we own -- that
20 the company owns 9 percent of the stock, but that he
21 doesn't know anything else.

22 MS. BOJKO: Actually, he didn't say that
23 but.

24 EXAMINER WALSTRA: Overruled.

25 A. Yeah, I do not know what the entitlements

1 or the contractual obligations are.

2 Q. No. But I'm asking you if you would
3 assume that if you own a portion of a generating
4 plant, that you would be entitled to the output of
5 that generating plant.

6 MS. KINGERY: Objection. Misstates the
7 witness's testimony that he just stated.

8 EXAMINER WALSTRA: He can clarify.

9 A. Again, I don't -- I've never seen the
10 entitlements, don't know what they say, don't know
11 what they are.

12 Q. Well, you referenced numerous times today
13 the Beckjord. Do you know that the company owns
14 Beckjord and receives generating output from
15 Beckjord?

16 A. I believe that to be true.

17 Q. And as compliance manager, wouldn't you
18 assume that any ownership of a generating asset has
19 to be corporately separated from other business
20 functions?

21 MS. KINGERY: Asked and answered.

22 EXAMINER WALSTRA: Overruled.

23 A. For Duke Energy Ohio?

24 Q. Yes.

25 A. Yes, I believe the generation business is

1 treated as a nonregulated affiliate.

2 Q. Okay. In -- with regard to the OVEC
3 shares that you're referencing, is it your
4 understanding that through this ESP that the company
5 is offering an insurance product to customers?

6 A. I do not know.

7 Q. When you were referencing the "affiliate"
8 definition in rule 37-01(A), just so the record is
9 clear, it says "or," right? It doesn't say "and."
10 It says "common ownership or control"?

11 A. That's correct, that's what it says.

12 Q. And, I'm sorry, I have to go back to who
13 you think owns Duke Energy Ohio.

14 A. I don't know which parent entity
15 specifically. It falls somewhere within the Duke
16 Energy Corporation umbrella and it may be Duke Energy
17 Corporation, but I would have to check that. I don't
18 know who the parent company is.

19 Q. Okay. And so, who owns OVEC?

20 A. All I know is Duke Energy Ohio has
21 9 percent.

22 Q. But Duke Energy Ohio, the entity.

23 A. I believe that's correct.

24 Q. So if one affiliate owns generation and
25 another affiliate doesn't, is it your job as

1 compliance manager to ensure that there is no
2 cross-subsidy between a regulated entity and a
3 generating entity -- or, an entity that owns
4 generating assets, I should say?

5 A. I would say it's my job to educate the
6 parties that are involved with ensuring that
7 subsidies do not share information.

8 Q. I'm sorry, I didn't mean to misstate your
9 position. I thought that you testified earlier this
10 morning that you had responsibilities to ensure
11 corporate compliance with the corporate separation
12 statutes and rules in the I think you said six
13 jurisdictions that you provide that service to; is
14 that not accurate?

15 A. That is true in the aspect that we train
16 and educate the employees in those specific functions
17 and we rely on their expertise to maintain compliance
18 with the rules.

19 Q. So after an initial training, you, as
20 corporate compliance manager, do nothing to go back
21 and ensure that those employees are following the
22 training that you put forth?

23 MS. KINGERY: And again, I would object.
24 This is going beyond the scope of the cross -- the
25 redirect.

1 EXAMINER WALSTRA: Overruled.

2 A. I would not say I do nothing. We give
3 questions, but internal audits serves a testing
4 function role.

5 Q. But that's not under -- you do not,
6 yourself, audit, or you do not, yourself, ensure
7 corporate compliance with those corporate separation
8 plans; is that right?

9 A. I don't test to ensure that they are
10 separate.

11 Q. And is it your understanding the
12 umbrella -- you just said you don't know which parent
13 company or the exact name of the entity that owns
14 Duke Energy Ohio. But it's your understanding that
15 no matter where an employee is in that structure of
16 companies, that the generation business cannot
17 subsidize the regulated business or vice versa; is
18 that your understanding?

19 MS. KINGERY: This has been asked and
20 answered numerous times.

21 EXAMINER WALSTRA: Overruled.

22 A. We treat the Duke Energy Ohio regulation
23 portion of the business as an unregulated affiliate
24 and, thus, no subsidies.

25 Q. And just so we're clear, the regulated in

1 your mind is distribution and transmission, and the
2 unregulated piece is the generation?

3 A. That's correct.

4 Q. Okay. As your role as compliance
5 manager, it is your testimony here today that, say,
6 that the electric security plan does fulfill the
7 requirements set forth in the statutory provisions in
8 the Administrative Code including the 4901:1-35-03(F)
9 that we discussed; is that right?

10 MS. KINGERY: Excuse me. Is Counsel
11 asking this witness to state whether the entire
12 electric security plan meets all filing requirements?
13 Is that what I heard?

14 EXAMINER WALSTRA: Is that your question?

15 MS. BOJKO: I'm not sure what she heard
16 or didn't hear so I can't answer.

17 EXAMINER WALSTRA: Can I have the
18 question read back?

19 MS. BOJKO: I thought he was the witness
20 to say it met the filing requirements for this
21 particular rule which has to do with corporate
22 separation is what my question was.

23 A. So specific to the corporate separation
24 plan.

25 Q. I'm reading from your testimony, sir. I

1 am not trying to put words in your mouth.

2 A. Can you point to where you are reading?

3 Q. Page 2, 16 and 17.

4 A. Yes, I believe the corporate separation
5 plan satisfies those requirements.

6 Q. I am asking if you believe that the
7 electric security plan on -- proposed in this case,
8 satisfies the corporate separation plan in compliance
9 with 4928.17 and Chapter 37 of the administrative
10 rules.

11 A. So you're talking about the ESP now, not
12 the CSP.

13 Q. Well, sir, you reference 4901:1-35-03(F),
14 and if we turn to that rule, it says "The SSO
15 application," which you told me earlier this morning
16 that equated to the ESP application, so "The SSO
17 application shall include a section demonstrating
18 that its current corporate separation plan is in
19 compliance with section 4928.17, and Chapter
20 4901:1-37 Administrative Code," as well as the state
21 policy section that you referred to earlier today.

22 A. To the best of my knowledge, I believe
23 that to be true.

24 Q. Okay. And, on redirect, your counsel
25 asked you about OMA Exhibit 2. Do you have that in

1 front of you?

2 A. I do.

3 Q. And you referred to "directly owned"; is
4 that right, in your testimony here today?

5 A. I did.

6 Q. Can you look at page 45 that you read
7 with your counsel and tell me where the words
8 "directly owned" are?

9 A. I guess I could read it if you would
10 like. The word "directly" is used.

11 Q. And where was that used?

12 A. The second paragraph under D.

13 Q. How about "directly owned"?

14 A. I'm still reading. Separately the word
15 "owned" its own business is used in section D.(3).

16 Q. Which is citing the provision. How about
17 let's look in the ordering paragraph of the
18 Commission. Can we look at the first sentence or
19 first paragraph where it says -- well, let's look at
20 the ordering paragraph. Turn to page 46. Doesn't it
21 say that -- it talks about waivers again, but to the
22 extent necessary, rule 37-09(B) through (D) should be
23 waived and Duke should be authorized to transfer
24 title to all of its generating assets out of Duke, in
25 accordance with the provisions of the stipulation; is

1 that correct?

2 A. That's what it says.

3 Q. And then it says we conclude that Duke's
4 full legal corporate separation and third amended CSP
5 are in compliance with 4928.17. Do you see that?

6 A. I do.

7 Q. So in that provision, in the ordering
8 paragraph, it uses the terms transfer title to all of
9 its generating assets; is that correct?

10 MS. KINGERY: And, your Honor, I would
11 just like the record to note the witness has not ever
12 been asked whether he has seen this document before.
13 He has not been directed to read the entire document
14 to see whether there is any definition of generating
15 assets. He has certainly not been involved in the
16 prior case to determine whether there was a meaning
17 ascribed to the term "generating assets" and, yet,
18 now Ms. Bojko is going far beyond what I asked on
19 redirect, is asking him to read random spots in the
20 order and asking if "directly owned" is in there.

21 MS. BOJKO: I laid a foundation this
22 morning with regard to this document, and him being a
23 compliance manager, and that the third amended
24 separating -- corporate separation plan came out of
25 it. It's a little late, after Counsel used this

1 document herself, to now be objecting to me using the
2 same document that she used on redirect.

3 MS. KINGERY: And I used one sentence.

4 MS. BOJKO: She talked about the waivers.
5 I am talking about the waivers as well as she also
6 talked about section XIV about the directly owned
7 legal generating assets. And she also claims the
8 transfer of generating assets on the last sentence on
9 page 45 was not in the corporate separation plan.
10 Now we are finding it is in the corporate separation
11 plan. It's under section XIV.

12 EXAMINER WALSTRA: It's overruled. You
13 can proceed.

14 MS. BOJKO: Thank you.

15 Q. So there it says all of its generating
16 assets, and when you were talking about a waiver to
17 your counsel earlier today, relating to the sale or
18 transfer of your generating assets, there is specific
19 language about the generating assets and the transfer
20 of such in your corporate separation plan in section
21 XIV, is there not?

22 A. Yes, there is. And that's the language
23 "directly owned."

24 Q. Right. And that says, it talks about the
25 transfer of generating assets which is the exact

1 thing the Commission is talking about with regard to
2 a waiver on the bottom of 45 that your counsel had
3 you read; is that correct?

4 A. That's the first time I've seen the
5 waiver. I don't have an opinion on the legalities of
6 the waiver. I do know what the fourth amended
7 approved corporate separation plan says and it says
8 "directly owned."

9 Q. Right. And when you talked -- talked
10 this afternoon with your counsel about the last
11 section, you said that that's the exact thing that
12 the waiver was applicable to; isn't it?

13 A. I believe the waiver is applicable to
14 generation assets, but it does not use the same
15 language.

16 Q. Well, it says relating to the sale or
17 transfer of generating assets, does it not?

18 A. That's what it says.

19 Q. And you also reference 37-09(B) through
20 (D) in your redirect with your counsel, did you not?

21 A. I believe that's true.

22 Q. And if you look at 37-09, isn't it true
23 that that whole section talks about generating assets
24 and the transfer and sale of generating assets?

25 A. Where are you looking?

1 Q. You told your counsel this morning that
2 rule 4901:1-37-09(B) through (D) had to do with the
3 waiver of generating assets.

4 A. Correct. That's what I read on page 46.

5 Q. Okay. And so, I'm asking you isn't it
6 true at that that chapter 37, section 9, the whole
7 entire section of the Commission's rules, deal with
8 the sale and the transfer of generating assets?

9 A. That appears to be what it's talking
10 about; the sale of generation assets.

11 Q. Okay. And that subject matter is -- is
12 the subject of Attachment MEH-2 -- Amended MEH-2; is
13 that correct?

14 A. The subject of MEH-2, amended, is
15 financial arrangements and transactions.

16 Q. Right.

17 A. Specifically with regards to the
18 Intercompany Asset Transfer Agreement.

19 Q. Right. And it's talking about
20 transferring generating assets to affiliates, is it
21 not?

22 A. It is.

23 Q. Do you know, sir, if any costs -- or,
24 let's put it this way. If costs for a generating
25 unit were passed on to regulated customers through a

1 distribution charge, that, in your mind, would be in
2 violation of the corporate separation plan as the
3 manager of FERC compliance and corporate separation
4 plan; is that correct?

5 MS. KINGERY: Objection, your Honor.
6 Again, this is going -- again, this is going beyond
7 the scope of cross. Ms. Bojko had an opportunity to
8 ask these questions in her initial cross -- I said on
9 "cross," I meant "redirect," I apologize. She -- she
10 does not have the opportunity at this point simply to
11 rehash and ask new questions.

12 EXAMINER WALSTRA: Ms. Bojko?

13 MS. BOJKO: I'm not, your Honor. This
14 was all in the recross. We talked about OVEC
15 generating assets. We talked about the transfer. We
16 talked about waivers. I'm just trying to get an
17 understanding, as compliance manager, of what he
18 thinks is or is not with regard to the OVEC. She
19 opened the door when she did OVEC. These are new
20 questions I drafted while I was sitting hear
21 listening to her redirect.

22 EXAMINER WALSTRA: I am going to
23 overrule.

24 A. My understanding this sale of generation
25 assets are directly-owned assets, not stock in OVEC.

1 Q. I appreciate that. That wasn't my
2 question.

3 MS. BOJKO: Could you read the question
4 back, please.

5 (Record read.)

6 A. You say "any generation," are you talking
7 OVEC?

8 Q. No. I was taking generally. Let's back
9 it up a little bit. If there were capital
10 expenditures for a generating unit, would those be
11 able to be passed on to distribution customers?

12 A. I believe there are separate books and
13 records for the nonregulated affiliate and the
14 regulated affiliate.

15 Q. So the answer would be no, you couldn't
16 pass on generating unit capital investments to
17 distribution customers?

18 A. I'm not an accounting expert, but I would
19 think you couldn't subsidize one to the other.

20 Q. And I am not asking about accounting. I
21 am asking from your standpoint as a corporate
22 separation plan compliance manager. That's the
23 perspective I'm asking. I understand you're not an
24 accountant so I don't want your accounting view. I
25 wanted to know if you thought that that would be in

1 violation of the corporate separation plan, and I
2 think I just heard you say yes.

3 A. I mean, I would have to do a little
4 research, but I believe that to be true.

5 Q. Okay. And so, if you had O&M expenses
6 associated with a coal-generating unit, could those
7 be passed on to distribution customers as your role
8 as a compliance manager?

9 A. Again, I'm going to have to do research.
10 I think there's many factors that go into the answer
11 of that question. I don't know, sitting here today,
12 that I have an answer for you.

13 Q. Well, I thought we talked about that the
14 policy of the state was to not subsidize a
15 nonregulated generation function with regulated --
16 with customers of a regulated generating function.

17 A. Correct. And I believe they cannot
18 subsidize each other.

19 Q. So if you were passing on costs for
20 capital expenditures or O&M, and making them be paid
21 by a distribution customer, that would be a form of a
22 subsidy, would it not be?

23 MS. KINGERY: Objection, your Honor. The
24 witness has already said this is beyond his
25 expertise, that he doesn't do accounting work and

1 doesn't know the answer to the question.

2 EXAMINER WALSTRA: I am going to
3 overrule. He can answer if he knows.

4 A. Again, separate books and records, I
5 don't know the specific answer to your question.

6 Q. I want to be perfectly clear, I know your
7 counsel injected the word account -- he is not an
8 accountant. I am not asking for your accounting
9 perspective. I'm asking as the compliance manager of
10 the corporate separation plan, whether the
11 corporate -- corporate separation laws and rules that
12 we've discussed all day today, whether they would
13 allow a distribution customer to pay for generating
14 O&M expenses or generating assets, cost recovery for
15 those?

16 A. And again --

17 MS. KINGERY: Ms. Bojko is continuing to
18 ask questions that are -- that require expertise of
19 other people, whether those be attorneys or
20 accountants. She's not asking him about compliance
21 and the corporate separation plan.

22 EXAMINER WALSTRA: If he knows within his
23 position, he can answer.

24 A. Again, I don't know. I would have to do
25 some research and pull the various parties together

1 to answer that question.

2 Q. I guess I don't understand. As a
3 corporate separation plan compliance manager, isn't
4 it your job to determine which functions would cross
5 the line in the corporate separation plan context,
6 which is would violate either the corporate
7 separation plan, the statutes in each of the
8 jurisdictions you talked about, or the Commission
9 rules in each of the jurisdictions you talked about?

10 A. To determine how they would violate the
11 rules?

12 Q. To determine if certain activities would
13 violate the rules, absolutely.

14 A. Typically, if we get a question or
15 concern about that, we would not interpret the rules
16 to answer that question directly. We would consult
17 with legal counsel.

18 Q. Okay. But I thought you said as a
19 compliance manager you ensure that there's no cross
20 subsidies; is that accurate?

21 A. That's what we train people on, yes.

22 Q. Okay. And one of those ensurances that
23 is under your purview as a compliance manager is to
24 ensure that the corporate separation plan is
25 followed; is that correct?

1 MS. KINGERY: That entirely misstates
2 what the witness just said.

3 EXAMINER WALSTRA: He can clarify.

4 A. Again, I am responsible for the six
5 jurisdictions. We train the entities, and as it
6 pertains to their specific function, they're
7 responsible for complying with that. We do not test
8 to ensure that they are doing it.

9 Q. And I'm not asking that. I'm trying to
10 figure out what you -- there has to be -- before you
11 can train somebody, you have to have general
12 principles; isn't that true?

13 A. That's correct, that's correct.

14 Q. So, as a general principle, I am trying
15 to understand how would you train an employee. Would
16 you train an accountant to transfer funds from a
17 regulated entity to a deregulated entity?

18 A. No.

19 Q. Okay. So the same level, I'm asking you
20 from a corporate separation plan perspective, would
21 you allow generating costs from a generating unit to
22 be paid for by distribution customers in a
23 deregulated environment?

24 A. Again, I would go back to the rules. I
25 do not have them memorized. There are six very

1 complex environments that I work in. I would have to
2 ask some questions to get clarification.

3 Q. Well, I mean, let's go back to those
4 rules that you referenced in your testimony. You
5 state on page 6 of your testimony that you have to
6 avoid anti-competitive subsidies; isn't that true?

7 A. That's --

8 Q. Through the state policy?

9 A. That's what it says, yes.

10 Q. Okay. And so, you're telling me
11 before -- we'll end it at this -- you're telling me
12 that you have to avoid anti-competitive subsidies
13 going from a noncompetitive service to a competitive,
14 or to a product or service; is that right?

15 A. And vice versa.

16 Q. And vice versa. Thank you.

17 And it also says you would prohibit the
18 recovery of any generation-related costs through
19 distribution of transmission rates; isn't that true?

20 A. That's what it says, yes.

21 Q. Okay. So given -- now, I am talking
22 about Ohio specifically. Just given this state
23 policy, we could go and do 4928.17 as well as the
24 Commission rules as well, but just through this
25 policy, under my scenario, a regulated entity, Duke

1 Energy Ohio, would be prohibited from recovering
2 generation-related costs, such as what I was talking
3 about, the O&M associated with the coal unit or the
4 actual capital investment of a coal unit, you would
5 be prohibited from recovering those costs through
6 distribution and transmission rates; is that correct?

7 MS. KINGERY: Objection. Your Honor, the
8 witness has been asked this question over and over
9 again, and keeps saying that if he were asked that
10 question in his work, that he would go and get help
11 and he would ask advice from counsel or others.
12 Asking it again isn't going to change the answer.

13 MS. BOJKO: Your Honor, what I heard him
14 say is he would have to consult the specific rule in
15 the specific jurisdiction and that's exactly what I
16 am asking him to do. He is consulting the rule in
17 the jurisdiction and -- to make that scenario.
18 That's his whole testimony is that he's here to
19 sponsor the corporate separation plan. I mean, this
20 is his role as compliance manager. That's why we're
21 here. That's why he cited all the statutes in his
22 testimony.

23 EXAMINER WALSTRA: I am going to overrule
24 it.

25 A. So let me clarify. When I say "consult

1 the rule," I also consult legal counsel. We don't
2 make any interpretations in the compliance
3 department.

4 Q. Yeah. And I am asking you as your -- in
5 your opinion as being the corporate separation
6 compliance manager, you actually put this testimony
7 together, did you not?

8 A. I did.

9 Q. Okay. If you believe that that would
10 comply with the rule.

11 A. So you're asking in my opinion. Again, I
12 don't typically form an opinion without consulting my
13 legal counsel for an interpretation and it's hard to
14 form an opinion when you don't know all the facts.

15 Q. But you would agree with me that a
16 competitive retail electric service is a function and
17 noncompetitive is a distribution transmission
18 function; is that right? I think that's in your
19 testimony somewhere.

20 A. I believe that's true, yes.

21 Q. And, beyond that, you have no opinions
22 without consulting an attorney; is that right?

23 MS. KINGERY: Misstates the testimony of
24 the witness.

25 MS. BOJKO: I am asking if he has one.

1 EXAMINER WALSTRA: He can answer.

2 A. No, at this time I do not have an
3 opinion.

4 MS. BOJKO: I have no further questions
5 for this witness. Thank you.

6 EXAMINER WALSTRA: Thank you.

7 Mr. Berger.

8 MR. BERGER: Thank you, your Honor.

9 - - -

10 RECROSS-EXAMINATION

11 By Mr. Berger:

12 Q. Mr. Hollis, in redirect you were asked
13 some questions about the 9 percent interest that Duke
14 Energy Ohio has in OVEC. And you were referred to
15 the definition of "affiliate" which talks about
16 common ownership. Is it your viewpoint that a
17 9 percent interest is not -- is not sufficient to
18 constitute an ownership interest under that
19 provision?

20 A. Again, this is going to have to be an
21 interpretation of this legal definition before that
22 can be determined. We have a minor interest in OVEC,
23 9 percent. The other 81 -- 91 percent, if my math is
24 correct, is owned by some other party, and I don't
25 know who they are. There's not a common ownership

1 under the Duke Energy umbrella of entities.

2 Q. Is there somewhere you're deriving the
3 definition of "ownership" as used in that section in
4 a way that would limit it to a certain percentage
5 ownership or is that just your --

6 A. That's just my --

7 MS. KINGERY: He's misstating the
8 witness's testimony. The witness said nothing, in
9 redirect, about the 9 percent being a limiting
10 factor.

11 MR. BERGER: I believe he did, your
12 Honor.

13 EXAMINER WALSTRA: The witness can answer
14 if he knows.

15 A. That's just my, again, subject to a legal
16 interpretation of the rule.

17 Q. But you're not -- that testimony doesn't
18 reference -- you're not referencing any other rule or
19 any other statute regarding the percentage that would
20 qualify Duke Energy Ohio for ownership under this
21 provision.

22 A. I am not. I'm also -- I did not find any
23 other entry in the list of affiliates that said minor
24 interest.

25 Q. Well, you put the minority interest in

1 that -- in that corporate -- Duke Energy Ohio or you,
2 on behalf of Duke Energy Ohio, put that statement in
3 that corporate separation plan, right? Nobody else
4 did that.

5 A. Yes. Somebody at the company did.

6 Q. Do you know who that somebody was?

7 A. I do not.

8 Q. Okay. And you approved it because you
9 were responsible for approving the language that goes
10 into the corporate separation plan, isn't it -- isn't
11 that true?

12 A. That's correct.

13 Q. Okay. And -- but you don't know who put
14 it in.

15 A. No. Many entities were added. That's
16 quite an exhaustive list. I didn't look at every
17 affiliate entry.

18 Q. Did you read the provision there, the
19 description of OVEC?

20 A. I did not.

21 Q. Okay.

22 A. Not prior to --

23 Q. Do you know the description of OVEC is at
24 least ten years out of date since it still indicates
25 that OVEC serves the Federal Government, and it

1 hasn't served the Federal Government since 2003?

2 A. I was not aware of that.

3 Q. Okay. In any event, so you didn't derive
4 the -- the statement, your opinion regarding the
5 level of ownership that's required for this
6 provision, from anywhere.

7 MS. KINGERY: Objection. Again, he is
8 misstating the testimony of the witness.

9 EXAMINER WALSTRA: Was that a question,
10 Mr. Berger?

11 MR. BERGER: Yes, it was. He didn't
12 derive it from any statute or regulation. I asked
13 him that before. I was just repeating it, but.

14 A. No. I did not interpret that, just the
15 legal definition. I do not treat OVEC as an
16 affiliate. We, in the compliance department, never
17 have.

18 Q. Okay. And I think you indicated another
19 reason you didn't treat OVEC as an affiliate, other
20 than the fact that they have only a 9 percent
21 interest, was because there -- because they weren't,
22 in your viewpoint, affiliated companies because Duke
23 owns its 9 percent share in OVEC, but Duke is owned
24 by another corporation; would that accurately state
25 what you said?

1 A. Duke Ohio?

2 Q. Duke Ohio, yes.

3 A. Duke Ohio is the only, to my knowledge,
4 Duke Energy Corporation entity that owns 9 percent of
5 OVEC.

6 Q. Okay. Would you agree that another
7 corporation of Duke Energy Ohio -- at Duke Energy
8 owns Duke Energy Ohio?

9 A. Yes, another entity does.

10 Q. And that identity also would then be the
11 owner of Duke's 9 percent share?

12 MS. KINGERY: That's a legal question, I
13 think we could find an answer to that somewhere other
14 than this nonlawyer witness.

15 EXAMINER WALSTRA: If he knows, he can
16 answer.

17 A. I don't know.

18 Q. Okay. So if you don't know if
19 affiliation runs vertically or that you have to be at
20 the same level of affiliation in order to be an
21 affiliated interest, you don't know that?

22 A. I don't, short of legal interpretation.

23 Q. Okay. But you were deriving a -- you
24 came up with a legal interpretation that you -- that
25 said you have to be at the same level of ownership;

1 wasn't that your testimony? You have to be at the
2 same level of ownership in order to be an affiliate.

3 So, for example, you're saying Duke
4 Energy Ohio owns its 9 percent share of OVEC but
5 because somebody above Duke Energy Ohio owns Duke
6 Energy Ohio, they can't be affiliated -- Duke Energy
7 Ohio's interest in OVEC -- or, OVEC and Duke Energy
8 Ohio, the parent company, can't be affiliated? Is
9 that what you are saying?

10 MS. KINGERY: Objection. Misstating the
11 testimony.

12 EXAMINER WALSTRA: He can clarify.

13 A. I am not really sure what you're asking.

14 Q. Well, let me ask it again. Okay. You're
15 saying, aren't you, that Duke Energy Ohio's 9 percent
16 share in OVEC is owned by Duke Energy Ohio, right?

17 A. Correct.

18 Q. Okay. So the OVEC interest is affiliated
19 with Duke Energy Ohio, correct?

20 A. I guess in that regard it's an affiliate
21 of itself.

22 Q. Well, OVEC is an affiliate of Duke Energy
23 Ohio, right?

24 A. Again, I am going to have to go back to I
25 don't know why it's in the CSP plan. It is noted as

1 a minor interest. I am going to have to defer back
2 to a legal interpretation of the definition of
3 "affiliates" to come to a conclusion on that.

4 Q. But aren't you saying because Duke Energy
5 Ohio is owned by somebody other than itself, and OVEC
6 and Duke Energy Ohio owns OVEC's 9 percent interest,
7 that because they are at different levels of the
8 corporate ladder, so to speak, they are not
9 affiliates? Isn't that your testimony? I am just
10 trying to understand your testimony.

11 MS. KINGERY: Objection.

12 Q. You testified that --

13 MS. KINGERY: Again, he is misstating the
14 testimony.

15 Q. -- that OVEC and Duke Energy Ohio are not
16 affiliates. Didn't you testify to that earlier?

17 A. Yes. From a compliance perspective, we
18 have never treated OVEC as an affiliate.

19 Q. I am not asking you whether you treated
20 them. I'm asking you why, in your viewpoint, they
21 are not affiliates, and isn't it because, in your
22 viewpoint, the ownership of Duke Energy Ohio is above
23 Duke Energy Ohio's level, and the ownership of OVEC
24 that exists in Duke Energy Ohio is at Duke Energy
25 Ohio's level. You are making that distinction by

1 saying because they are at different levels of the
2 corporate ladder; isn't that right? I am just trying
3 to understand your testimony.

4 A. I don't remember speaking levels. I was
5 making the point there is no other entity under the
6 Duke Energy umbrella that has an owning interest of
7 shares. That's no common ownership.

8 Q. There is no other entity other than Duke
9 Energy Ohio?

10 A. Ohio.

11 Q. Isn't it sufficient for Duke Energy Ohio
12 to own 9 percent of its shares?

13 A. Sure. It can own 9 percent of its
14 shares.

15 Q. And that would be sufficient to make them
16 affiliates, wouldn't it?

17 A. Again, the definition is going to require
18 legal interpretation. I don't know why it's in the
19 CSP the way it is. I do know it says minority
20 interest. We, in compliance, do not treat OVEC as an
21 affiliate.

22 Q. And you don't know why the term "minority
23 interest" was added; is that right?

24 A. Other than 9 percent, to me, is a
25 minority interest, but that's just me.

1 Q. If you and I -- if you, myself, and nine
2 other friends owned 9 percent each of IBM
3 corporation, would you think we had a minority
4 interest in IBM corporation?

5 A. We own 9 percent of IBM?

6 Q. Each of us owns an equal 9 percent share.
7 11 people own 9 percent share of IBM corporation. Do
8 you think those people would be considered minority
9 shareholders?

10 A. Well, in that context they are all 9
11 percent owners, and now you are getting back to
12 levels. So I would say we were pretty powerful if we
13 own 9 percent each of IBM. But it's just shares.
14 There's no control. There's no asset ownership. We
15 own shares.

16 Q. Okay. And does the statute say anything
17 about minority shares or does it just say common
18 ownership?

19 A. It does not, again, going back to the
20 "affiliate" definition is going to require legal
21 interpretation to make a final determination.

22 Q. And you consulted with legal in stating
23 your opinion here today, right?

24 A. I consult with legal frequently, yes.

25 Q. And so, your opinion is Duke Energy

1 Ohio's position that -- that Duke Energy Ohio and
2 OVEC are not affiliates?

3 A. Correct. I would say they are not
4 affiliates.

5 Q. Okay. And the testimony you use in your
6 testimony on redirect, you talked about whether it
7 was a directly-owned asset or not. The use of your
8 term "directly owned," is that based upon any
9 particular definition that you're aware of? Are you
10 aware of a definition of "directly owned" that
11 applies to your testimony?

12 A. No.

13 Q. So when you were using that term, it
14 didn't have any particular significance.

15 A. Could you point me back to where?

16 Q. I am talking about your redirect
17 testimony. You talked about the fact that the
18 generation assets were directly owned. And I am
19 wondering if you had any -- you were ascribing any
20 particular significance to that phrase.

21 A. Yeah. I was reading that from -- I don't
22 remember. We had referred to that earlier. I don't
23 see where, but I read that language specifically.

24 Q. Well, I am not asking you whether you
25 read the language from somewhere. I am just

1 wondering if you have a definition for "directly
2 owned."

3 A. Well, and that is why I would prefer to
4 refer back to the written.

5 Q. So you don't know what the definition
6 that -- whether you were ascribing any particular
7 significance to the words directly owned.

8 MS. KINGERY: Objection. If Mr. Berger
9 would allow the witness time to look to find out what
10 he was referring to, that would be helpful.

11 MR. BERGMANN: I'm happy to give him
12 time.

13 A. So that's actually in MEH-2, section XIV,
14 paragraph A. "Duke Energy Ohio agreed to transfer
15 all of its directly owned, legacy generation assets."

16 Q. There is no definition there, right?

17 A. Not to my knowledge, no.

18 Q. So were you ascribing any particular
19 significance to the words "directly owned"?

20 A. Well, I would have to say it's talking
21 about assets, not stock.

22 Q. And where do you derive that definition
23 from?

24 A. Definition of -- I am just telling you
25 this says "Duke Energy Ohio agreed to transfer all of

1 its directly owned, legacy generation assets to an
2 affiliate."

3 Q. Where do you derive the definition that
4 you just gave that "directly own" means assets,
5 actual assets and not a -- not an ownership interest
6 in stock?

7 A. Again, back to the legal definition of
8 "affiliates," in the Compliance Department we don't
9 treat OVEC as an affiliate because we own stock in
10 OVEC or Duke Energy Ohio.

11 Q. Those words, you would agree with me, no
12 definition is provided in this document, you would
13 agree with that, right?

14 A. Of which?

15 Q. Of "directly owned."

16 A. Yeah, I do not see it.

17 Q. Okay.

18 A. A formal definition.

19 Q. And the words you are attributing has a
20 difference in the fact that one is a stock ownership
21 interest and one is not. That doesn't appear
22 anywhere here, does it?

23 A. I don't see anything related to stock.

24 Q. Okay. And the ownership of stock
25 typically designates ownership, correct?

1 A. Ownership of stock, yes, I would say
2 that's true.

3 Q. Stock is a form of ownership.

4 A. Okay.

5 Q. Okay. There may be more than one form of
6 ownership, but stock is certainly a form of
7 ownership, you agree with that?

8 A. I believe stocks can be owned, yes.

9 MR. BERGER: Okay. Thank you. That's
10 all I have.

11 THE WITNESS: Thank you.

12 EXAMINER WALSTRA: Thank you.

13 Mr. Boehm.

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

15 EXAMINER WALSTRA: Mr. Olikar.

16 MR. OLIKER: Just a few questions, your
17 Honor.

18 - - -

19 RECROSS-EXAMINATION

20 By Mr. Olikar:

21 Q. Hello, Mr. Hollis.

22 A. Hello.

23 Q. I will try to make this quick. Were you
24 in the hearing last week?

25 A. I was for most of it.

1 Q. Which witnesses did you hear testify?

2 A. Excuse me, I couldn't hear, there was a
3 door.

4 Q. Which witnesses did you hear testify?

5 A. I heard Mr. Henning, I heard Mr. Wathen,
6 I heard Ms. Mullins.

7 Q. So you listened to -- sorry, I didn't
8 mean to cut you off. Any other witnesses?

9 A. I can't remember any others.

10 Q. But you did hear testimony regarding OVEC
11 and the Intercompany Power Agreement, correct?

12 A. Overheard some, yes.

13 Q. So you'd agree that you were present in
14 the hearing when there was testimony that indicated
15 Duke does have a right to call power under its OVEC
16 entitlement.

17 MS. KINGERY: Objection. This is asked
18 and answered. He has already talked about how much
19 he knows about the entitlement and it also goes well
20 beyond the scope of my redirect.

21 MR. OLIKER: Your Honor, he was here. He
22 can testify if he remembered the testimony on it.

23 EXAMINER WALSTRA: Overruled.

24 If you know.

25 A. And I don't know anything about the

1 entitlements about the obligations with OVEC.

2 Q. Okay. Well, in the definition of
3 "affiliate," you received some questions about that
4 from your counsel, and there's two parts, we decided,
5 right? Well, at least two parts, maybe a third, but
6 two parts are ownership and control.

7 A. Right.

8 Q. If Duke Energy Ohio has the right to call
9 9 percent of the power of OVEC on a day-to-day basis,
10 that would constitute control, correct?

11 A. Again, there is an interpretation of the
12 word "control" which is not defined that I could see.
13 So I guess that's subject to interpretation again.
14 Control could be in many forms.

15 Q. So you don't have an opinion on that?

16 A. No. I do not believe OVEC is an
17 affiliate.

18 Q. And just to be clear, you don't know if
19 Duke controls whether OVEC is dispatched in PJM or
20 MISO.

21 A. I believe that was in previous testimony,
22 but that is outside of my scope of work.

23 Q. And just to follow-up on that, you don't
24 know whether Duke has anybody that sits on OVEC's
25 board and make decisions regarding the operations of

1 OVEC?

2 A. I heard in testimony that Mr. Whitlock
3 does, as Mr. Whitlock --

4 Q. So you don't believe Mr. Whitlock has a
5 say in controlling the operations of OVEC?

6 A. I believe he is one of many voting board
7 members and I do not know how many.

8 Q. So you would agree in this situation,
9 compared to the 9 percent ownership of IBM, Duke has
10 relatively more control in proving its stock
11 ownership of OVEC than say owners of IBM.

12 A. Again, I think "control" is a very loose
13 term. I do not think Mr. Whitlock is directing all
14 the operations of OVEC, no.

15 MR. OLIKER: That's all the questions I
16 have, your Honor.

17 Thank you, Mr. Hollis.

18 EXAMINER WALSTRA: Thank you.

19 Ms. Petrucci.

20 MS. PETRUCCI: No questions.

21 EXAMINER WALSTRA: Mr. Hart.

22 MR. HART: Just a few.

23 - - -

24

25

RECROSS-EXAMINATION

By Mr. Hart:

Q. Mr. Hollis, there was a list of affiliates on the third iteration of the corporate separation plan, correct?

A. Correct.

Q. And the reason for amending it recently was to put a new list, at least one of the reasons to amend it was to put a new list of affiliates there, correct?

A. That was one of the changes, yes.

Q. And there were some companies that were added, correct?

A. Correct.

Q. And there were some companies that were deleted from the list.

A. I would have to compare.

Q. If we looked at the list, we could see which ones got added and which ones got subtracted?

A. Correct, we could do a comparison.

Q. And both, the third version and fourth version, listed OVEC as an affiliate, correct?

A. That's correct.

Q. And Duke self-supplied that list, correct?

1 A. That's true.

2 MR. HART: Thank you.

3 EXAMINER WALSTRA: Thank you.

4 Thank you, Mr. Hollis. You may step
5 down.

6 THE WITNESS: Thank you. I don't know
7 whose book I have.

8 EXAMINER WALSTRA: I forgot staff. Did
9 you have any questions?

10 MR. BEELER: No.

11 MS. KINGERY: Your Honor, I would move at
12 this time for the Duke Energy Ohio Exhibits 11 and
13 12.

14 EXAMINER WALSTRA: Are there any
15 objections?

16 Hearing none, they will be admitted.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 MS. BOJKO: Your Honor, at this time I
19 would like to move OMA Exhibit 2, please.

20 EXAMINER WALSTRA: Are there any
21 objections to OMA Exhibit 2?

22 MS. KINGERY: No, your Honor.

23 EXAMINER WALSTRA: Then it will be
24 admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 MR. OLIKER: Your Honor, may I?

2 EXAMINER WALSTRA: Yes.

3 MR. OLIKER: At this time I would like to
4 move for the admission of IGS Exhibit 5, but noting
5 that I only asked questions really pertaining to
6 interrogatories 1, 5, 7, and I would be open to just
7 putting those into the record and truncating the
8 exhibit.

9 EXAMINER WALSTRA: Any objections?

10 MS. KINGERY: No, your Honor.

11 EXAMINER WALSTRA: Then IGS Exhibit 5
12 will be admitted as amended.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 MR. OLIKER: Yeah. I will provide that
15 to the court reporter tomorrow.

16 EXAMINER WALSTRA: Just some clarifying
17 exhibits from before. OCC Exhibit 2, that was the
18 stipulation, and I believe -- were you guys not
19 moving to admit the whole stipulation with
20 amendments? I believe initially it was with no --

21 MR. BERGER: No attachments.

22 EXAMINER WALSTRA: -- attachments.

23 MS. BOJKO: Your Honor, I gave the court
24 reporter the whole document with the attachments.

25 EXAMINER WALSTRA: So the court reporter

1 does have the full document. Okay. That's what we
2 needed to make sure happened.

3 MR. BERGER: I think we already moved the
4 exhibit. Do you want us to move it at this time
5 given that the court reporter now has the full
6 document?

7 EXAMINER WALSTRA: For the record.

8 MR. BERGER: Okay. That's fine. We'll
9 move that, with the attachments, as OCC Exhibit 2.

10 EXAMINER WALSTRA: No objections?

11 That will be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 (Off the record.)

14 EXAMINER WALSTRA: And then OCC Exhibit 3
15 as well. Stipulation from 08-920.

16 MR. SERIO: I thought we took
17 administrative notice, your Honor.

18 EXAMINER WALSTRA: That was -- we had
19 that marked as an exhibit.

20 MS. PETRUCCI: That was a document that
21 had a couple of pages from the stipulation and a
22 couple pages from the order that were bound together.

23 EXAMINER WALSTRA: Okay. Is that a
24 partial?

25 MS. PETRUCCI: Well, the question came up

1 was it supposed to be the stipulation or was it
2 supposed to be the order because I'm not sure we all
3 anticipated it being both.

4 EXAMINER WALSTRA: I think what was the
5 exhibit was partially the Opinion and Order and
6 partial of the Stipulation. I'm not sure what you
7 guys were moving to have admitted.

8 MR. SERIO: Are we talking about 08-920,
9 your Honor?

10 EXAMINER WALSTRA: Yeah. We took
11 administrative notice of the Opinion and Order, and I
12 believe you guys were going to move for the
13 Stipulation.

14 MR. SERIO: We would move the stipulation
15 as OCC Exhibit 3. I will provide a copy to the court
16 reporter tomorrow.

17 EXAMINER WALSTRA: Okay. It mainly was
18 getting a copy to the court reporter, so, thank you.
19 That will be admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 MR. SERIO: Did your Honors need a copy
22 of that or just for the court reporter?

23 EXAMINER WALSTRA: Just for the court
24 reporter. Okay. Now, we got that cleared up.

25 Duke, go ahead.

1 MS. WATTS: Thank you, your Honor. Duke
2 Energy Ohio calls Dan Jones to the stand. And may I
3 approach?

4 EXAMINER WALSTRA: You may.

5 (Witness sworn.)

6 EXAMINER WALSTRA: Thank you. You may be
7 seated.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 - - -

10 DANIEL L. JONES

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

13 DIRECT EXAMINATION

14 By Ms. Watts:

15 Q. Good afternoon, Mr. Jones.

16 A. Good afternoon, Ms. Watts.

17 Q. Are you still with us?

18 A. I'm still here.

19 Q. That's excellent. Would you state your
20 name and your employment for the record, please?

21 A. Yes. My name is Daniel L. Jones and I'm
22 employed by Duke Energy Ohio, Inc.

23 Q. And, Mr. Jones, do you have before you
24 what I just asked to be marked as Duke Ohio Exhibit
25 13?

1 A. (Nods head.)

2 Q. Would you tell me what that document is?

3 A. That's my direct testimony in this ESP
4 III case for Duke Energy Ohio here.

5 Q. And did you prepare that testimony for
6 this proceeding?

7 A. I did.

8 Q. And if I were to -- first of all, do you
9 have any corrections to that?

10 A. I have no corrections to the testimony.

11 Q. And if I were to ask you the questions
12 contained therein again today, would your answers be
13 the same?

14 A. My answers would be the same.

15 Q. And they are true and accurate to the
16 best of your knowledge?

17 A. Yes, they are.

18 MS. WATTS: Mr. Jones is available for
19 cross-examination.

20 EXAMINER WALSTRA: Thank you.

21 Mr. O'Brien.

22 MR. SERIO: Your Honor, before we go
23 around the table, you had indicated, at the beginning
24 of the hearing, that there would be certain witnesses
25 you would change the order because of the changing

1 potential preferences and disagreements on issues.
 2 Would this particular witness, there are issues,
 3 especially on the purchase of receivables, where IGS,
 4 RESA, and Constellation might not be -- might have a
 5 position that's more friendly to the company. I
 6 would move they do cross-examination first, then we
 7 go around the table to avoid any potential problems
 8 with that.

9 EXAMINER WALSTRA: Are there any
 10 objections to that?

11 MR. OLIKER: Can we go off the record for
 12 just a second?

13 EXAMINER WALSTRA: Sure.

14 (Discussion off the record.)

15 EXAMINER WALSTRA: We'll go back on the
 16 record. You can get a few questions in.

17 MR. OLIKER: Yeah, sure. Thank you, your
 18 Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Olikier:

22 Q. Good afternoon, Mr. Jones.

23 A. Good afternoon.

24 Q. My name is Joe Olikier and I represent IGS
 25 Energy. Just a few questions today. For one, your

1 testimony contains modifications to things like the
2 POR program and supplier tariff. You're familiar
3 with those versions as well, correct?

4 A. Yes, I am.

5 Q. Like, for example, would you agree that
6 Duke Energy Ohio currently charges a \$5 switching fee
7 to suppliers?

8 A. Yes, we do, according to the tariff.

9 Q. There are other fees as well that Duke
10 Energy charges CRES providers, correct?

11 A. There is a whole tariff with supplier
12 fees in it, correct.

13 Q. Could you identify a few of those charges
14 for me?

15 A. There's a fee for preenrollment list, as
16 you mentioned a fee for the switching, \$5 for
17 successful full enrollment. There's fees in there
18 for interval data, whether it's monthly interval data
19 or 12-month historical data. And, more recently, for
20 bill-ready billing, there are fees for bill-ready
21 billing depending on the type of customer.

22 Q. And do you know whether Duke responded to
23 discovery requests on the various fees that it
24 charges to customers?

25 A. I vaguely recall that. I remember an

1 interrogatory. I don't recall exactly what the
2 questions were.

3 Q. And for purposes of streamlining our
4 conversation would it help if all of those charges
5 were listed on one sheet for discovery responses that
6 Duke provided?

7 A. If you put it in front of me, I can
8 better answer the question, I guess.

9 MR. OLIKER: Could I please approach,
10 your Honor?

11 EXAMINER WALSTRA: You may.

12 MR. OLIKER: I apologize, these are not
13 stapled.

14 Q. Okay. Mr. Jones, do you see the document
15 that's been marked as RESA-INT-02-012?

16 A. I do.

17 MR. OLIKER: Your Honor, I would like to
18 mark this document as IGS 6.

19 EXAMINER WALSTRA: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. And, Mr. Jones, this is a discovery
22 response produced by Duke Energy Ohio, correct?

23 A. This is a discovery response from Duke
24 Energy Ohio, correct.

25 Q. And would you agree this discovery

1 response itemizes the charges that Duke Energy Ohio
2 includes in its certified supplier tariff?

3 A. Correct. These are -- these are monthly
4 fees that are billed to the CRES providers that
5 participate in our Customer Choice program.

6 Q. And these are similar to the charges that
7 we were just discussing prior to marking this
8 exhibit.

9 A. Yes. As I mentioned, yeah, there's fees
10 for switching and fees for preenrollment list, et.
11 cetera.

12 Q. Okay. I would just like to put a little
13 more push on this. For example, if you look -- this
14 is on page 2 of IGS Exhibit 6. Could you identify
15 what is "Registration fees"?

16 A. "Registration fees" is when a supplier
17 submits their initial registration packet in our
18 service area, there are certain costs associated with
19 that and evaluating the other financial exposure to
20 us in determining what kind of collateral will be
21 required. There's EDI testing that we do with them.
22 So it's a fee that covers the registration process.

23 Q. Okay. And what is "EUC Enrollment"?

24 A. End-use customer enrollment. That's
25 basically what you referred to as a switching fee,

1 and the way those are charged is when an enrollment
2 comes in, a customer has the right to rescind an
3 enrollment, to cancel an enrollment, so those fees
4 don't get charged into our system until the
5 enrollment reaches its effective date, and it's \$5
6 per activation with that supplier.

7 Q. And if I see -- it was \$7 in 2011, but it
8 reduced to 5 in 2012 and '13.

9 A. That was part of the stipulation for ESP
10 II.

11 Q. Okay. And what is "Pre-enrollment"?

12 A. "Pre-enrollment List," sometimes in the
13 industry called the "eligible customer list." I've
14 heard it called "ECL," but basically it's the
15 customers in your service territory without their
16 account numbers. It provides a lot of account detail
17 that's not related to the account number or to, you
18 know, credit-type concerns as far as, you know,
19 payment history or anything like that.

20 Q. Okay. Going back to EUC enrollment. You
21 would agree that that charge is applied when a
22 customer switches, but there is not a charge for
23 returning the customer to SSO service.

24 A. That is correct. It's only for switching
25 to a new supplier.

1 Q. Okay. And "Market Monitoring," can you
2 tell me what that is?

3 A. The Market Monitoring Report was put out
4 there at the very beginning of customer choice. Duke
5 Energy Ohio's system has the data that could, you
6 know, put together that Market Monitoring Report
7 that's required by a CRES provider to report to the
8 PUCO. And I think it has to do with, you know,
9 number of accounts you're serving, amount of megawatt
10 hours you're serving. So our system has that
11 information, but that's something we put out there
12 and, you know, no one have taken advantage of it.
13 The CRES providers do their own reporting to the
14 PUCO.

15 Q. Okay. And that's going to lead to some
16 of my other questions. First, let's see what these
17 other categories are. What about "Residential bill
18 fees."

19 A. Okay. Those are for -- for bill-ready
20 billing, and we made, according to the ESP II, by
21 September 30, 2013, we had to have bill-ready billing
22 operational. And in order for bill-ready billing to
23 be operational, we would have to be able to accept
24 what's called a changed transaction, to change from
25 rate ready to bill-ready, or to accept a bill-ready

1 enrollment. So by the time that suppliers started
2 enrolling accounts or changing accounts, the
3 bill-ready billing was very late in 2013, so those
4 charges just were in start-up, basically, during the
5 last part of '13. So '14 is really the first full
6 year of bill-ready billing for Duke Energy Ohio.

7 MR. OLIKER: Your Honor, did you say
8 3:20?

9 EXAMINER WALSTRA: Yes.

10 MR. OLIKER: I think I passed my time.

11 EXAMINER WALSTRA: All right. We'll
12 break, basically once the Power Siting meeting is
13 done, so probably 3:50 or so. Thank you.

14 (Recess taken.)

15 EXAMINER WALSTRA: We'll go back on the
16 record then.

17 MR. OLIKER: Karen, can I have my -- let
18 me know if it's too far back, but can I have my last
19 question read? I can't remember where I was in my
20 cross.

21 (Record read.)

22 MR. OLIKER: Okay. Great.

23 Q. Just for the record, could you describe
24 what the "Residential Bill Fees" are again?

25 A. Yes. Those fees are for bill-ready

1 billing which I had mentioned just began September 30
2 of 2013.

3 Q. And is it bill-ready billing just for
4 residential customers?

5 A. No, it's not. It's for all classes of
6 customers. So we do have fees for commercial,
7 industrial, and other public authority or
8 governmental-type accounts.

9 Q. Okay. Just for clarity of the record,
10 there are categories for residential bill fees,
11 commercial fees, and industrial fees. Are each of
12 those categories related to the bill-ready function?

13 A. I didn't hear the last part of the
14 question, I'm sorry.

15 Q. There are categories on IGS Exhibit 6 for
16 residential bill fees, commercial fees, and
17 industrial fees.

18 A. Right.

19 Q. Is that what you were referring to as the
20 bill-ready fees?

21 A. Yes. And it says other -- where it says
22 "Other Public" that's other public authority, that
23 would be governmental accounts, so there are -- on
24 the sheet you have given me here, there are four
25 separate categories of bill-ready fees and that's a

1 per bill fee, per month.

2 Q. Okay. And just to take this a step
3 further, could you just explain what "bill-ready" is?

4 A. Certainly. When customer choice began,
5 we had two forms of billing, rate-ready billing and
6 dual billing. Rate-ready billing is kind of what it
7 says, the rates are ready. We get the rates from the
8 supplier and we put them into our billing system. So
9 when we have the meter reads, we can calculate both
10 distribution charges and supplier charges and they
11 both appear on the Duke Energy Ohio bill. And that's
12 been pretty much the preferred -- the preferred
13 method for all these years was rate-ready. And the
14 dual situation, that's where we send the usage out to
15 the supplier and the supplier issues their own bill.
16 Okay? Just take a drink of water.

17 Q. I understand.

18 A. Okay. On bill-ready fees, what's going
19 on there -- excuse me, is we send out the usage to
20 the supplier, and the supplier calculates their bill
21 and send the charges back in to us.

22 So what happens in bill-ready billing is
23 that when we get the meter readings in to go to
24 billing, Duke Energy Ohio calculates its distribution
25 charges and holds them in its system. And we hold it

1 for three business days. We send out a transaction
2 to the suppliers that says here is the usage for this
3 account. And they have three business days to
4 respond back with their charges. So there's an
5 inbound transaction. And the reason it's called
6 "bill-ready" is this information is ready to go on
7 the bill. So it's bill-ready information.

8 They -- what suppliers are allowed on a
9 bill are 10 charge descriptions with 10 associated
10 charge amounts. So there's 10 lines allowed on the
11 bill, describe your charge, and place your charge
12 amount on the bill. So that's what comes in and
13 there is a section of the bill where these bill-ready
14 charges are displayed and those charges get totaled
15 up with the distribution charges to come up with the
16 total charge on the bill.

17 MR. OLIKER: Sorry. Could I hear the
18 witness's answer again, please?

19 (Record read.)

20 MR. OLIKER: Thank you.

21 Q. Let me clarify that. Could a supplier
22 put more than one bill-ready charge on the bill?

23 A. Well, the charge on the bill, the idea is
24 it's for electric commodity and the supplier could
25 have a very complicated rate. They might have

1 certain charges for demand or power factor. Certain
2 tiers to the kilowatt-hours. They could be billing
3 on-peak and off-peak. That's the reason for the
4 number of lines that are there on the bill-ready
5 billing. I think our experience so far has been
6 pretty much cent per kilowatt rates which is just
7 your kilowatt hours times the cent per kilowatt hours
8 and here is the charge amount.

9 Q. Just to -- I'm sorry, I didn't mean to
10 cut you off.

11 A. I guess, all I was saying is probably one
12 line is the usual that suppliers are using for
13 bill-ready billing because many of these are
14 residential accounts.

15 Q. All right. Just so I understand, you
16 could -- you could do 10 lines and have 10 different
17 descriptions, correct?

18 A. Ten charge descriptions, ten charge
19 amounts, correct.

20 Q. Okay. We will come back to bill-ready in
21 a minute. I just want to finish up on this sheet.
22 "Abandonment fee," can you tell me what that is on
23 IGS Exhibit 6?

24 A. What that is there is a required message
25 that the supplier -- my understanding of abandonment

1 is a supplier is under contract with customers and
2 they are going to abandon those customers, they are
3 not going to honor the contract they have with them,
4 they are basically going to leave our service
5 territory.

6 There is, according to Commission rule,
7 there is a bill message that's required for
8 abandonment, that has to start 90 days in advance of
9 that abandonment. So it's kind of an organized
10 leaving of a service territory and, you know, we are
11 willing to place that abandonment fee on our bill, or
12 the supplier has the option to make those
13 notifications themselves.

14 Q. How about "Duplicate Bill," can you tell
15 me what that means?

16 A. Quite honestly, I don't even know if that
17 fee has been used. The idea of a duplicate bill is
18 if, for some reason, the supplier actually needed a
19 copy of the customer's bill and, of course, that
20 would, you know, the customer authorizing that and it
21 would just be a separate copy of the bill to the
22 supplier for that fee.

23 Q. Okay. And how about "1 Month History"?

24 A. Okay. "1 Month History," that's an
25 interval history for a meter and let me explain a

1 little bit about that. In our service territory
2 we've got 700,000 accounts. Of those accounts there
3 are 4,000 accounts that have what we've called for
4 years "solid state recorders" or "interval data
5 recorders." And in the industry they generally refer
6 to them as "IDRs." So we've got 4,000 IDRs out there
7 and that's what these charges are for.

8 A supplier can choose to receive the
9 monthly billing information. Once we calculate our
10 distribution charges, we send out monthly usage, as I
11 already mentioned. That usage can be at the summary
12 level or the detailed level for these IDRs. So the
13 \$24 charge is for that monthly transaction that's
14 interval data for an IDR.

15 The \$32 fee there is, there's a
16 transaction a supplier can send in to request
17 interval history on these IDRs for a 12-month period.
18 So you're getting 150 minutes every 15-minute period
19 for 12 months and that fee is \$32 per meter.

20 And also, to mention that \$24 fee is \$24
21 per meter per month. So if you have more than one
22 IDR on the account, which some large customers do, it
23 will be \$24 for each of the meters.

24 Q. Okay. Thank you for that clarification.

25 Just to be clear, this interval data that

1 you're discussing, it does not pertain to the smart
2 meters in Duke's territory.

3 A. No, it does not at all involve AMI or
4 SmartGRID meters.

5 Q. So Duke does not currently have a tariff
6 that relates to the transmittal of customer usage
7 interval data per smart meters.

8 A. No, there is nothing in our tariff with
9 regard to that.

10 Q. And Duke Energy Ohio does not -- let me
11 take a step back. Duke Energy Ohio does have
12 time-of-use rates on the standard service offer,
13 correct?

14 A. I know there are some pilots that have
15 been done.

16 Q. But there are no charges to customers
17 that are participating in those pilots for access to
18 their smart meter information. If you know.

19 A. I'm sorry, say that again.

20 Q. The customers that are participating in
21 those pilots or customers in general that have smart
22 meters, they don't have to pay to access their
23 interval data, correct?

24 A. My understanding is there is an area on
25 our website where that data could be accessed by the

1 individual customer.

2 Q. And they don't charge the customer to
3 access that information.

4 A. Not that I'm aware of.

5 Q. So the cost of making the website
6 available for those customers to access that
7 information, that's recovered through distribution
8 rates.

9 A. I'm not sure how the recovery is done,
10 but, yeah.

11 Q. That's fine. Thank you.

12 Going back to the utility bill, you would
13 agree that Duke Energy Ohio prohibits CRES providers
14 from including line item charges on the utility bill
15 for noncommodity services or products of services
16 other than retail electric service?

17 A. Well, the -- what I have in my testimony
18 is that, you know, the idea here is that bill-ready
19 billing is for electric commodity. It is not for
20 other products and services. You know, I am not
21 aware of any rule that says we're required to allow
22 billing per, you know, other products and services.

23 So -- so, yeah, what my testimony is
24 about is limiting this to electric commodity, the
25 generation service. And we've even established a

1 section where -- in section 20 of our certified
2 supplier tariff that addresses the default, that we
3 would make that a default condition for misuse of
4 bill-ready billing should there be any charges we
5 learn about in these, you know, line-item charge
6 amounts that are not commodity involved.

7 Q. Thank you. That was my next question,
8 but let's go back to state of affairs now. Is it
9 your testimony that Duke does not currently allow
10 CRES providers to use the utility bill for -- to
11 include line item charges for noncommodity services,
12 correct?

13 A. Well, the intent of our implementation of
14 bill-ready billing on September 30, 2013, was it was
15 another method to bill electric commodity charges.
16 In other words, we wanted it to be consistent with
17 how rate-ready billing is being done, that it's
18 strictly for commodity. This was just another way to
19 bill the commodity.

20 Q. Okay. And that's -- thank you for that
21 clarification, but there's no -- I think you said
22 this, I just want to make sure, there is no way for a
23 CRES provider to currently bill on the utility bill
24 for noncommodity services, correct?

25 A. All right. The 10 charge descriptions

1 and 10 charge amounts, that's pretty much freeform
2 text. You know, does the possibility exist? You
3 know, a refrigerator go come through on that or
4 something that they are selling the customer, but the
5 intent is it's for electric commodity.

6 And, you know, the other situation we
7 have here is that in most cases we are purchasing
8 that receivable that comes in on a bill-ready
9 transaction and the idea of the purchase is we are
10 purchasing electric commodity charges.

11 Q. I'm sorry, Mr. Jones. I think I am not
12 being clear with my question. I understand this
13 is -- we're talking about the bill-ready function and
14 also the rate-ready function. But outside of the
15 bill ready function or the rate-ready function in
16 general -- this didn't make any sense either. Sorry.

17 Would you agree that besides using the
18 bill-ready function and flowing through the charge
19 under the 10 lines, there is no way for a CRES
20 provider to currently invoice and collect for
21 noncommodity charges on the utility bill?

22 A. I'm not aware of any method that's
23 available.

24 Q. And it has historically and presently
25 been Duke Energy Ohio's position that CRES providers

1 cannot use the utility bill for noncommodity
2 services.

3 A. Yeah, that's been our position, correct.

4 Q. Okay. Now, are you familiar with Duke
5 Energy One?

6 A. Vaguely.

7 Q. Now, would you agree that Duke Energy One
8 is an affiliate of Duke Energy Ohio that does use the
9 utility bill to invoice and collect for noncommodity
10 services?

11 A. You know, I've heard the discussion
12 earlier, the testimony earlier. And there were two,
13 quote, noncommodity products and services that were
14 mentioned. I'm aware those do show up on the Duke
15 Energy Ohio bill.

16 Q. And would you agree that Duke Energy Ohio
17 has devised a way to not include Duke Energy One's
18 charge in the POR program?

19 A. I have no direct knowledge of exactly how
20 Duke Energy One operates.

21 Q. So just to be clear, you don't know, one
22 way or the other, whether Duke Energy One's charges
23 are included in the POR program? That's fine if you
24 don't know.

25 A. Yeah, I don't know what any arrangements

1 are with regard to how the information gets on the
2 bill or, you know, anything about payment to the
3 charges.

4 MR. OLIKER: Could I have just one
5 minute, your Honor?

6 Q. Mr. Jones, do you know when Duke Energy
7 One first started using the utility bill to invoice
8 and collect for its noncommodity services?

9 A. I'm not sure when Duke Energy One came
10 into existence, so, yeah, I'm not familiar with what
11 all those arrangements were.

12 Q. Do you believe that that practice started
13 when Duke Energy One came into existence?

14 A. Well, I have been around a while, and I
15 do date back to, you know, the CG&E and PSI merger,
16 and I know there were folks that were PSI folks that
17 became, you know, Cinergy folks, and this was, you
18 know, before electric customer choice, and I think
19 some of those products existed back at that time,
20 some of the ones you mentioned earlier today. So
21 they do date back, you know, pre-customer choice.

22 MR. OLIKER: I have no more questions,
23 your Honor.

24 Thank you, Mr. Jones.

25 THE WITNESS: You're welcome.

1 EXAMINER WALSTRA: Ms. Petrucci.

2 MS. PETRUCCI: Yes. Thank you.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Petrucci:

6 Q. Do you know, Mr. Jones, when a customer
7 of Duke Energy Ohio receives a bill that includes
8 charges from Duke Energy One, whether they are
9 charged the full amount of the Duke Energy One
10 charges along with the Duke Energy Ohio charges?

11 A. I'm not totally familiar with that so I'm
12 not comfortable with answering that.

13 Q. Does that mean you also don't know, then,
14 if the customer makes a payment that all of that
15 money is collected by Duke Energy Ohio?

16 A. I don't know what the payment
17 arrangements are for Duke Energy One.

18 Q. And do you agree that the two services
19 that we referenced earlier, the strikestop and
20 underground protection services, constitute
21 noncommodity services?

22 A. I think that's been established earlier.

23 Q. Now, just a moment ago you indicated that
24 customers can access the AMI meter data through
25 Duke's website without a charge. Is that -- that's a

1 different website than the secure website that you
2 reference in your testimony, isn't it?

3 A. Correct. This is a separate website for
4 CRES providers that they have their own user ID and
5 password for, and it's used for more than just
6 obtaining usage history. They can also submit
7 rate-ready rates as well and a couple of other pieces
8 of functionality that's available to them.

9 Actually, just this year, we arranged for
10 that preenrollment list to be available out there on
11 that same website as well, so it's more than just
12 usage information that's on the secured supplier
13 website.

14 Q. My question was the customers themselves
15 are accessing that data, that AMI meter data, from a
16 different spot than what the CRES --

17 A. Yes. Absolutely. It's a different
18 section of the Duke Energy Ohio website, correct.

19 Q. And the secure supplier website, has that
20 also been referred to as "a portal" in the past?

21 A. We've referred to it as a supplier
22 portal, yes.

23 Q. And does it contain interval data?

24 A. Today, it contains interval data for the
25 IDR meters. So for the 4,000 meters I mentioned

1 previously, that data is available out there.

2 Q. And is that then, going back to what was
3 marked as IGS Exhibit 6, the fee to access that IDR
4 data, those are the two last items on the chart; is
5 that correct?

6 A. Well, it's basically the historical data.
7 So it would be the 12-month historical fee there and
8 that's \$32 per meter for 12 months of interval data.

9 Q. So, on an ongoing basis for those
10 customers, those 4,000 customers that have the IDR
11 meters, there isn't a charge to the supplier to
12 access the more current usage data; is that --

13 A. All the IDR meters, these fees apply to
14 them. So you are getting the 12-month historical
15 usage. It's the 12-month fee. If you enroll the
16 customer and then, after billing, when we send out
17 the usage information, it can be either summary or
18 detailed information, if it's detailed information,
19 it's that \$24 charge per meter.

20 Q. I thought you just explained that the \$24
21 charge was for historical usage data.

22 A. No. It's for the 12-month historical;
23 usage is \$32 per meter. And then the monthly,
24 basically billing kilowatt hours can be provided at
25 that detailed level and that's the \$24 charge per

1 meter.

2 Q. Okay. So is that second-to-last line on
3 the chart is the word "history" just a -- maybe a
4 mistake there, that should be just "monthly" data?

5 A. Yeah. One month usage or current month's
6 usage, maybe.

7 Q. Okay. I'm following along now. Thank
8 you.

9 A. Okay. But generally, you know, suppliers
10 would request the 12-month historical interval
11 usually to quote a price, you know, to a large
12 customer. And then once you get into actually
13 serving the customer, they would probably receive
14 that, you know, that monthly interval information.

15 Q. So, at present, you have roughly 4,000
16 customers that have this IDR meter and then the rest
17 of the customers have the AMI meters; is that
18 accurate?

19 A. I think that's pretty much accurate. I
20 think we are -- if we are not fully deployed, we are
21 almost fully deployed with the AMI meters.

22 Q. I am trying not to jump around here. So
23 let's take a look at the definition that you have
24 proposed in your testimony for interval meter.

25 A. Sure.

1 Q. On page 11 of the Attachment DLJ-1. I'm
2 sorry, that's not it. Page 3.

3 A. Page 3 of 25 on the marked-up copy.

4 Q. The proposed modified definition
5 effectively eliminates a supplier's ability to
6 request interval data from an AMI meter; is that
7 correct?

8 A. No. What -- what we're doing with this
9 definition of "interval meter" is that we currently
10 have, you know, a charge to change out a standard
11 demand meter for a commercial/industrial customer to
12 an interval meter. And back at the time that these
13 tariffs were first put together, the only interval
14 meters that existed were these IDRs that we're
15 talking about.

16 So in the last ESP, ESP II, we agreed
17 that we would establish a threshold of 200 kW to have
18 one of these "interval meters" installed which were
19 the IDRs. Previously, that threshold would have been
20 100 kW, so we moved that to 200 kW. So if a customer
21 has just a standard demand meter in place and they
22 have a load of 200 kW or greater, the requirement is
23 that has to be changed out to an interval meter,
24 meaning the IDR. Let me just explain the reason that
25 we need that meter in there is -- is for reporting

1 the PJM hourly load.

2 Q. Okay. Let me have you hold this spot on
3 page 3 where the definition of "interval meter" is
4 and then also look at page 11 of that same attachment
5 and specifically paragraph 7.4.a). Do you have both
6 spots?

7 A. I do. I am on 7.4.a).

8 Q. If the "interval meter" definition is
9 changed to refer only to the IDR meters, then doesn't
10 paragraph 7.4.a) only allow certified suppliers to
11 request data from the IDR meter through the DASR
12 process?

13 A. Yeah. Those are EDI transactions.
14 That's the historical interval information we have
15 been talking about here, the \$32 per meter. That is
16 the only interval data that's available via EDI
17 transactions are those 4,000 meters.

18 Q. Okay. What provision, then, within the
19 supplier tariff would allow a certified supplier to
20 request historical meter data that is available from
21 an AMI meter?

22 A. At this point, you know, there's nothing
23 in place to provide that. There's lots of discussion
24 that's been going on and working groups and, you
25 know, determining exactly how we go about this but,

1 yeah, there is significant costs involved in having
2 those capabilities because, you know, what we're
3 talking about here is a quantum leap because we've
4 got 4,000 IDRs today, 4,000 interval meters, and I
5 don't know if we have got a 7,000 total meters out
6 there as far as AMIs, but if you look at that, if you
7 divide 4,000 into 700,000, that's a jump of 175 times
8 what we have today.

9 So to have that capability for, you know,
10 on demand for any interval meter through an EDI
11 transaction is a significant cost that is going to
12 have to be recovered somehow. I don't think all the
13 details have been worked out on that, and I don't
14 know if this is the place to even talk about it.

15 Q. Well, let me ask you, did you tell me
16 that the start -- I'm sorry. I wrote down two dates.
17 September 30, 2013 and then I also wrote 2014 for the
18 start date of bill-ready billing. Which year was it?

19 A. I'm sorry. Okay. September 30, 2013,
20 was when bill-ready billing began. I think what I
21 said about '14 is '14 is the first year where you
22 would really see the charges accruing for bill-ready
23 billing because, you know, a lot of suppliers have
24 transferred accounts over to bill-ready billing in
25 the latter part of 2013.

1 Q. Okay. Now, let's go ahead and look again
2 at the "interval meter" definition. As it currently
3 exists, not as you are proposing to revise it, but it
4 involves any data from any interval meter, not
5 specifically the IDR nor specifically the AMI meter;
6 am I correct?

7 A. Let me read what the definition currently
8 is here. Yeah. And I see, you know, where you have
9 the interpretation it's for -- for any interval
10 meter, but this was, you know, in this ESP it was the
11 opportunity to show that, you know, the reason
12 interval meter was put here in the first place into
13 the certified supplier tariff is that for larger
14 customers we need that interval capability to report
15 usage information to PJM, and that's strictly what we
16 want to limit this to until, you know, other things
17 are determined about the costs and so forth with
18 regard to AMI interval data.

19 Q. Okay. So the answer to my question is
20 yes, as it's currently defined, not as you are
21 proposing to change it, but as currently defined, the
22 interval meter would apply to any data that would be
23 available from an IDR as well as an AMI meter?

24 MS. WATTS: Objection. The witness
25 already answered that question.

1 MS. PETRUCCI: I am just trying to verify
2 that he had, in fact, agreed with me.

3 EXAMINER WALSTRA: Overruled.

4 A. The way it's written it's subject to, you
5 know, interpretation as to what's meant by an
6 "interval meter," and we are trying to better define
7 that because "interval meter" was based on, you know,
8 back, early in choice, when these AMI meters were not
9 there and that was the purpose of interval meters all
10 along for customer choice was the ability to report
11 usage data for large customers on an hourly basis to
12 PJM or MISO originally.

13 Q. Let's go ahead and turn to page 14 of the
14 attachment. And let's look at paragraph 9.3.a).
15 Based on the modified -- the proposed modified
16 definition of "interval meter," this provision then
17 effectively would require the customers that choose
18 to shop to have an IDR meter; is that correct?

19 A. If they have a 200 kW load or larger,
20 they are required to have the IDR, correct.

21 Q. Does that mean that if the Commission
22 were to approve the definition that you've proposed
23 for "interval meter," that any customer whose usage
24 changes to 200-kilowatts has to then remove the -- an
25 AMI meter if they haven't -- let's put it this way,

1 not necessarily all customers -- I think we actually
2 talked about this earlier -- not all customers who
3 have 200-kilowatt usage have an IDR-marked meter
4 currently; would that be correct?

5 A. There are some that are 200 kW and larger
6 that do not have an IDR.

7 Q. Okay. So if this new definition were put
8 in place, those customers would have to change their
9 meter from an AMI to an IDR in order to select a CRES
10 supplier; is that the way I am reading this?

11 A. No. When you asked me about 200 kW and
12 larger that do not have an IDR, those would be
13 standard offer customers. If you are a standard
14 offer customer that has just a standard demand meter,
15 to go on customer choice, the requirement is, if you
16 are 200 kW or larger, it has to be changed to an IDR.

17 Q. Now, in the proposed supplier tariff that
18 you have attached to your testimony, there is no
19 definition for an AMI meter; isn't that correct?

20 A. That's correct. There is nothing in
21 there, I don't believe, about AMI.

22 Q. And Duke is proposing no changes to the
23 supplier tariff to address AMI meters even though
24 you've -- Duke -- not you, but Duke, has effectively
25 deployed AMI to virtually all customers or will be in

1 the next couple of months other than those 4,000 that
2 have the IDR meters, correct?

3 A. Right. There's no clear directive on how
4 all that is supposed to be done with the sharing of
5 data and so forth. And like I say, it's a
6 significant expense, so there's nothing in place to
7 report in this certified supplier tariff today.

8 Q. Let's turn to page 7 in your testimony
9 for a second. And this goes back to the bill-ready
10 billing. I am trying not to jump around but I think
11 I really have. Lines 1 through 3.

12 A. Uh-huh.

13 Q. Can you explain to me when you're not
14 basing the charge descriptions and the charge
15 amounts, how it's related to the number of metered
16 and unmetered services? I am not quite sure I
17 understood your point there.

18 A. Sure, sure, let me explain that. Coming
19 out of the original, you know, transition case and
20 putting customer choice in place, one of the things
21 we did back at that time was to actually put
22 bill-ready functionality into our system. We built
23 it and nobody came.

24 And the way it was structured was the
25 number of charge descriptions and charge amounts that

1 a supplier was permitted had to do with, well, how
2 much information do you have to bill. You know, so
3 there was only five -- you get five lines for a
4 meter. You know, one line for an unmetered service,
5 and it was kind of looked at on an account-by-account
6 level as far as how many lines on the bill that you
7 would receive.

8 But, as I say, it never really became
9 operational because I think some of the suppliers
10 that have requested it early on, you know, had left
11 Ohio or at least left our service area, so nobody was
12 using it.

13 So this last ESP -- well, ESP II, we
14 agreed to make bill-ready billing operational. We
15 had gone for so long where this functionality wasn't
16 used, it was going to have to be tested to verify
17 that things were going to work.

18 Well, when I went before the Ohio EDI
19 Working Group to get our change control approved for
20 these EDI transactions around bill-ready billing, we
21 found that this was kind of out of line with what
22 other utilities were doing in terms of 5 lines per
23 meter, one meter -- one line for an unmetered
24 service.

25 Most -- well, all the utilities in Ohio

1 that had implemented bill-ready billing were just
2 going by a certain number of line items permitted on
3 the bill. So this was done in negotiation with all
4 the folks on the Ohio EDI Working Group, whether they
5 be, you know, CRES providers, Commission staff, the
6 EDI providers, the other utilities.

7 So it was pretty well accepted that we
8 could change this over to 10 charge descriptions and
9 10 charge amounts. So that's all we're doing here is
10 making our tariff consistent with what is in the Ohio
11 EDI guidelines and the change control that was
12 approved by the Ohio EDI Working Group.

13 Q. Okay. Has this specific change been
14 approved by the PUCO? Was it permitted separately by
15 the Working Group, the EDI Working Group?

16 A. Well, the EDI Working Group, my
17 understanding is that's a governing body as well and
18 we're following the change control that was approved
19 for our EDI transactions. So when we made bill-ready
20 billing operational on September 30 of 2013, that's
21 how we started out was 10 charge descriptions and 10
22 charge amounts.

23 Q. And when was it that this was agreed upon
24 by Duke in the EDI Working Group? Do you know?

25 A. Well, it was definitely prior to

1 September 30 of 2013. It was, off the top of my
2 head, April, May, of 2013, but I would have to go
3 back and verify that.

4 Q. Okay. Let's look -- continuing on page 7
5 there, down to line 19, you indicate there that it's
6 necessary to provide additional information. How is
7 that information currently provided?

8 A. Well, with us, there is very few accounts
9 that are none purchase of receivable. This was a
10 discussion that came up in the RMI Working Groups.

11 Q. I know. My question is how is it
12 provided currently?

13 A. If it is provided, it has to be done via
14 e-mail. You know, basically what suppliers are
15 looking for is, you know, some of the details about
16 how the charge -- how the supplier charges were paid
17 on the Duke Energy Ohio invoice.

18 Q. And how frequent -- how frequently is
19 Duke providing that additional information about how
20 supplier charges are paid on the invoice? If you can
21 give me a rough idea.

22 A. Yeah. It's -- it's not all that frequent
23 today because of our, you know, purchase of account
24 receivable programs, that's pretty much what all of
25 the consolidated bill accounts are involved in. And,

1 you know, so some of the things that have been
2 discussed about all the information that needs to be
3 provided it's not really something that, you know, we
4 would be doing that often but, you know, if we did
5 it's definitely an expense to track down a lot of
6 these things.

7 Q. And you have not presented any figures or
8 numbers with respect to how much that administrative
9 cost would be; am I correct?

10 A. Yeah. There's nothing here representing
11 any cost.

12 Q. Okay. Let's go to page 8, please, of
13 your testimony. And looking at line -- the answer in
14 lines 6 through 16 there, you refer to electric
15 commodity charges. There isn't a definition for
16 "electric commodity charges" in the supplier tariff
17 that you proposed, is there?

18 A. I don't believe there is, no.

19 Q. And the -- the proposed change in the
20 language to the tariff you've described as being a
21 default provision in the event of misuse. Has there
22 been misuse of the bill-ready billing service?

23 A. To my knowledge, no.

24 Q. Okay.

25 A. Once again there's not -- it's very

1 difficult to detect because it's pretty much freeform
2 text, 10 charge descriptions, 10 charge amounts.

3 Q. But, effectively, this proposed change
4 will hold a CRES provider in default if a
5 noncommodity charge is submitted to Duke via bill
6 ready -- under the bill-ready format; is that
7 correct?

8 A. Correct. They have met a condition of
9 default. My understanding is once you have met a
10 condition of default, then Duke Energy Ohio would
11 have a decision to make. There are certain steps we
12 can take.

13 Q. Okay. Has -- and Duke doesn't propose
14 how to define noncommodity electric charges either,
15 in the supplier tariff; isn't that correct?

16 A. Well, I think in the area where we talk
17 about not placing those charges on a bill-ready
18 billing invoice, there are some examples of what is
19 meant by "noncommodity."

20 Q. Yes, page 18. That would be section 10,
21 10.9.b), I think, if that's what you were alluding
22 to.

23 A. I think that's right, 10.9.b).

24 Q. But it's open-ended. You acknowledge
25 that, don't you?

1 A. I mean, there's an all-encompassing and
2 other charges that would be considered noncommodity
3 charges, is how that's finished up with a list of
4 items.

5 Q. Okay. And then one of them is arrears
6 from a previous month's bill having been billed under
7 a different billing format other than bill-ready; am
8 I right?

9 A. Correct.

10 Q. And those arrears could actually be
11 related to the electric generation; am I right?

12 A. Could be. But, again, you know, that's a
13 misuse of bill-ready billing because it was
14 charges -- the example is on a dual bill where the
15 supplier is billing their own commodity charges, and
16 they haven't been able to collect from the customer,
17 and what they would be doing is putting these charges
18 onto one of these bill-ready invoices for us to
19 purchase, you know, what did not get paid to them on
20 a previous billing month. So we feel that's a misuse
21 of bill-ready billing. It's for current, electric
22 commodity, as I mentioned, when we send out the usage
23 information, the dollars that come back are supposed
24 to be for that current month.

25 Q. Okay. Thank you.

1 A. Uh-huh.

2 Q. Among the proposals that you've made
3 you're proposing to not allow CRES providers to
4 include the noncommodity, as we've just been
5 discussing, on the consolidated bill, so that they
6 are not included in the POR program, correct?

7 A. Correct, uh-huh, uh-huh.

8 Q. Wouldn't the more appropriate
9 recommendation be to require the CRES providers to
10 identify noncommodity charges and to exclude -- and
11 to exclude them from the POR program?

12 A. Well, you're talking additional costs
13 there, and the other thing is, you know, I serve in a
14 leadership role on the Ohio EDI Working Group, I
15 serve on different North American Energy Standards
16 Board subcommittees, and I have never seen where an
17 EDI transaction is being used for products and
18 services that are other than the commodity charge.

19 And I think it's a misuse of EDI
20 transactions, as well, to say that -- you know,
21 because there's nothing on the EDI transaction to say
22 this is a commodity charge, this is a noncommodity
23 charge. It would take revamping of a lot of things
24 to be able to accomplish what you're talking about
25 there.

1 Q. Okay. Now, I want to take a look at the
2 language that you've proposed regarding resettlement
3 and I think that's page 22 of the attachment. This
4 is the same language that was proposed for the master
5 supply agreement; am I correct? Do you know?

6 A. I'm not familiar with exactly what's in
7 the master supply agreement. I'm not involved in
8 that.

9 Q. The language here only allows Duke to
10 authorize or to initiate a resettlement or an
11 adjustment; am I correct?

12 A. Well, the way I read it, this talks about
13 the company. This talks about us, whether or not
14 we're required to request resettlement. It's
15 strictly about us, the way I read it. I don't think
16 it's preventing a CRES provider from asking for
17 resettlement.

18 Q. If Duke does authorize a billing
19 adjustment or resettlement, the CRES supplier is
20 obligated to accept that readjustment or
21 resettlement; is that correct?

22 MS. WATTS: Objection. There is nothing
23 in the language that discusses anything with respect
24 to Duke Energy Ohio authorizing anything.

25 Q. The second sentence, I'm sorry, starts

1 specifically "In the event the company authorizes
2 or" -- "authorizes or initiates a billing adjustment
3 or resettlement," and that's what my question goes
4 to.

5 EXAMINER WALSTRA: Overruled.

6 A. Yeah; I think what's meant by that is
7 just, you know, the company itself has assessed the
8 situation and, you know, it's going to suggest
9 resettlement.

10 Q. Okay. So then if we continue on with the
11 sentence, it says "Then each CRES supplier or
12 certified supplier and designated TSA shall consent
13 to such billing adjustment and resettlement."
14 Doesn't that obligate the supplier to basically
15 accept what Duke has decided to authorize or
16 initiate?

17 MS. WATTS: Objection, again.

18 Ms. Petrucci started at some point halfway in the
19 paragraph and left off the first part of the sentence
20 which is really the most important part.

21 MS. PETRUCCI: Your Honor, I think the
22 witness can answer the question as it was posed.

23 EXAMINER WALSTRA: Overruled.

24 THE WITNESS: Would you restate the
25 question, please?

1 MS. PETRUCCI: Can you reread it, please?

2 (Record read.)

3 A. I think that's what it says.

4 Q. Now, this resettlement language that's
5 being proposed for the supplier agreement was not
6 something that was agreed upon in the RMI Workshop or
7 the EDI Working Group, was it?

8 A. No, I don't recall any discussions with
9 regard to resettlement in those groups.

10 Q. Okay. The revised definition you've
11 proposed for the interval meter was also not agreed
12 upon by the -- in the RMI Workshop or the EDI Working
13 Group; isn't that correct?

14 A. Yeah, that was -- that was not discussed
15 there.

16 Q. So if we look at page 9 of your
17 testimony, lines 9 to 22, your statement that the
18 amendments that you've presented were discussed and
19 agreed upon in the EDI Working Group and RMI
20 Workshop; am I right?

21 A. Well, the things we're talking about
22 there with regard to the Ohio EDI Working Group is
23 what we talked about before. We pretty much put the
24 10 charge descriptions and 10 charge amounts. That
25 was according to the Ohio EDI Working Group.

1 The RMI Workshops, there was discussion
2 around the time, Duke Energy Ohio was the only one
3 that had a purchase of receivables program and it was
4 suggested during those workshops that we make it
5 mandatory so we didn't have to incur the expenses for
6 nonpurchase. Why should we be offering both
7 nonpurchase and purchase for consolidated billing?

8 Q. But not all of these proposals that you
9 presented actually have been agreed upon in the RMI
10 Workshop and/or in the EDI Working Group, correct?

11 A. Every single one of them, as you
12 mentioned the interval meter, that was not talked
13 about in either one of those groups, I agree.

14 Q. I want to go backward for a second, I'm
15 sorry, going back to the IGS Exhibit 6 and the list
16 of certified supplier charges.

17 A. Okay.

18 Q. The residential bill fee, that fee is
19 specifically to recover what? I'm not sure I
20 understood when you discussed it with Mr. Olikier.

21 A. Okay. We talked about what bill-ready
22 is. We, Duke Energy Ohio, calculate our distribution
23 charges and hold them in our system for up to three
24 business days. We send the usage information out to
25 the supplier. If the supplier does not return their

1 charges within three business days, we send out our
2 invoice with distribution charges on it only, with a
3 bill message that says your supplier charges will be
4 billed at a later date.

5 The whole idea behind these bill-ready
6 billing fees was, you know, the idea that we're --
7 we're holding off sending that bill out so there's a
8 cost of money to Duke Energy Ohio for bill-ready
9 billing. And so, when the fees were originally
10 established, you know, it was based on calculations
11 around that.

12 When you got to the settlement of ESP II,
13 Duke Energy Ohio, as part of that entire stipulation,
14 agreed to divide those charges by two. They are
15 one-half of what they used to be in the tariffs that
16 existed in, you know, 2010, 2011. So as it rolled
17 into 2012, these became the charges in the certified
18 supply tariff.

19 Q. So the 50 -- or, 5.6 cents under the
20 "Residential Bill Fee" is for the three-day delay in
21 sending the bill out to the customer?

22 A. It's to follow the stipulation for ESP II
23 at this point.

24 Q. And it basically represents part of the
25 cost involved in preparing a bill-ready bill? Is

1 that more accurate?

2 A. Well, you know, at this point it's a
3 stipulated number. So there's -- yeah, there are
4 costs associated with bill-ready billing, when you
5 talk about the three business days we have to wait
6 or, you know, any other charges associated with it,
7 or costs associated with it. We're just following
8 the tariff at this point. It's a stipulated tariff.

9 MS. PETRUCCI: I have no further
10 questions. Thank you.

11 THE WITNESS: Thank you.

12 EXAMINER WALSTRA: Ms. Hussey?

13 MS. HUSSEY: Nothing from the Kroger
14 Company, your Honor.

15 EXAMINER WALSTRA: Thank you.

16 Ms. Bojko?

17 MS. BOJKO: No questions. Thank you.

18 EXAMINER WALSTRA: Mr. Serio?

19 MR. SERIO: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 Mr. Serio:

23 Q. Good afternoon, Mr. Jones.

24 A. Good afternoon.

25 Q. Page 4 of your testimony.

1 A. I'm sorry, 4, did you say?

2 Q. Page 4.

3 A. Okay.

4 Q. Bottom of the page you're talking
5 about -- am I correct that, today, as long as a
6 customer is on a payment plan, they can participate
7 in retail choice?

8 A. Yes, they can.

9 Q. Okay. Now, you said that this was an
10 enhancement to eliminate the restriction that if a
11 customer had a 30-day arrearage of \$50 or more, they
12 could not participate. So you're saying that was
13 done away with during this ESP.

14 A. During -- well, after ESP II, I mean,
15 it's been in existence since January of 2012. These
16 were the things put in place as a result of ESP II.

17 Q. And receivables are purchased at a
18 hundred percent as a result of the stipulation from
19 the last ESP case, correct?

20 A. Correct.

21 Q. And by purchasing receivables at
22 100 percent, that means that any bad debt that a CRES
23 provider has is paid for 100 percent by remaining
24 customers that pay the cost of uncollectibles that's
25 built into Duke's base rates, correct?

1 A. Well, obviously, the supplier, they are
2 paid 100 percent, so they don't have to worry about
3 collections. And that, you know, collection
4 responsibility becomes a Duke Energy Ohio
5 responsibility and, you know, those charges are
6 eligible for disconnection if the customers do not
7 pay for those purchased charges. And if they do end
8 up being terminated and the charges are written off,
9 we do have a rider UE-GEN, uncollectible expense
10 generation, where those writeoffs can be recovered.

11 Q. CRES providers have customers that do
12 have bad debt, correct?

13 A. Well, I mean, I just described the
14 situation where that could occur.

15 Q. But because Duke purchases the
16 receivables at 100 percent, the CRES providers are
17 made whole; therefore, they have no business risk
18 associated with bad debt, correct?

19 A. They -- the way we pay this to the
20 suppliers is, for instance, we are in the month of
21 October here. All the receivables we bill on behalf
22 of the suppliers for the month of October we do not
23 pay that to them until the 20th of November or a day
24 in advance of the 20th of November, depending on how
25 the holidays and weekends fall.

1 So you could argue this is a cost for
2 suppliers too. They are waiting for that money. But
3 that's what was stipulated was, you know, we would
4 follow that same payment plan, the 20th of the month
5 following the month in which the receivables
6 occurred.

7 Q. If a CRES supplier has a thousand
8 customers and you weren't purchasing receivables at
9 100 percent, there would be a percentage of those
10 customers that don't pay their bills, correct?

11 A. Yeah. Experience would show that from
12 the standard offer figures and so forth. I would
13 expect that, yes.

14 Q. And that would be a business risk that
15 the CRES providers would normally have built into
16 their business that because you purchased
17 collectibles at 100 percent, they no longer face,
18 correct?

19 A. That was part of the stipulation for ESP
20 II.

21 Q. That was part of the stipulation, but do
22 you know what the overall percentage of bad debt is
23 for Duke's customers?

24 A. I haven't seen any recent figures on
25 that.

1 Q. But you would agree with me that there is
2 some bad debt. Duke doesn't collect 100 percent from
3 customers.

4 A. Sure, there is -- there are writeoffs
5 that occur out there, but I don't have any figures on
6 how much that is.

7 Q. Why didn't Duke propose in this case to
8 have collectibles purchased at the rate of actual bad
9 debt?

10 A. The -- as far as how purchase of
11 receivables has been operating, we have had no -- no
12 complaints brought before us with regard to that;
13 and, you know, the idea was to continue along with
14 what was agreed to in the ESP II.

15 Q. You're saying you've had no complaints.
16 You mean from, like, customers or from CRES providers
17 or who? Who wouldn't you have expected to complain
18 if they had a problem with receivables being
19 purchased at 100 percent?

20 A. Well, you know, following your line of
21 questioning, you know, would it be the customer?
22 But, you know, these riders that recover some of
23 these costs are a pretty small portion of the
24 customer's bill and, you know, like I said, it was
25 agreed to in an ESP and it really doesn't get

1 recognized by a customer as a major cost to them.

2 Q. Just because it was agreed to as part of
3 the last ESP doesn't mean that everyone is agreeing
4 to it in the current ESP, correct?

5 A. I don't know what the rules are around
6 the current ESP, but there's been no, you know,
7 changes proposed around purchase of receivables.
8 And, you know, I think that the statistics, when we
9 went with this program rolling into 2012, we had 20
10 electric suppliers operating in our program, and it's
11 up to, like, 60 and more now, so we've more than
12 tripled the participation. So it has brought more
13 suppliers to our service territory with more offers
14 to customers. So, from that point, one could argue
15 that it's beneficial to customers we've had this
16 because they've got more CRES providers available to
17 them.

18 Q. Has Duke done any kind of analysis to
19 determine the benefit of having more CRES providers
20 versus the cost of purchasing those receivables at
21 100 percent and subsidizing the CRES providers' bad
22 debt?

23 A. I'm not aware of any studies.

24 Q. Is it possible that customers pay more
25 for the bad debt than they actually get in benefit

1 from having more CRES providers?

2 A. I think there is lots of possibilities
3 around this. I think one could argue if suppliers
4 are charging less than the standard service offer,
5 once those charges get written off it could be less
6 writeoff for charges that are under the standard
7 service offer rate. So, as I said, there have been
8 no studies done on this.

9 Q. Now, you indicate that the enhancements
10 on page 5 of your testimony, you say that the 10
11 enhancements resulted in the increase in the number
12 of shopping customers and the number of CRES
13 providers. Do you see that?

14 A. Yes. Correct. Bottom of page 5.
15 Uh-huh.

16 Q. Have you done any kind of analysis to
17 determine of those 10 items, which ones actually
18 resulted in more CRES providers or more customers
19 participating in Choice?

20 A. No. We haven't done any surveys with
21 suppliers or anything of that nature to conduct a
22 study like that.

23 Q. Now, you've indicated, as part of the
24 current ESP, you're talking about making the purchase
25 of receivables mandatory, and you indicated that

1 there's two CRES providers who don't currently
2 participate, correct?

3 A. Correct.

4 Q. Is it possible that those CRES providers
5 could quit participating if POR is made mandatory?

6 A. I'm not one of those CRES providers. So
7 I couldn't answer that question.

8 Q. Have you had any discussions with those
9 CRES providers to determine if making POR mandatory
10 would result in their decision to no longer
11 participate?

12 A. I have had no discussions with those
13 suppliers regarding this matter.

14 Q. Are you aware of any services offered by
15 CRES providers in the Duke service territory that are
16 not offered in service territories where CRES
17 providers do not have POR?

18 A. Could you better define? You're talking
19 about "services." Are you talking about things other
20 than electric commodity? I am not sure what you
21 meant by that.

22 Q. No, no. If a CRES provider offers
23 service --

24 A. Okay.

25 Q. -- generally they offer a fixed price

1 contract, a variable contract, or some type of hybrid
2 that's some fixed and some variable, correct?

3 A. Correct, yes.

4 Q. Are you aware of any other services other
5 than combinations of those three?

6 A. I am not. I mean, there's -- there's the
7 Apples to Apples site that the PUCO has and that's
8 kind of, you know, the requirement -- that is the
9 requirement for the suppliers to report that out
10 there, and we review that from time to time, but it
11 really doesn't impact the operation of our certified
12 supplier business center. We're there to process,
13 you know, the request to put rate-ready rates into
14 our systems, to process the enrollments and so forth,
15 to various rate codes and all.

16 Q. You are aware there are EDUs in Ohio that
17 don't have purchase of receivable programs, correct?

18 A. I am aware of that, yes.

19 Q. And CRES providers that participate in
20 those EDU service territories offer fixed, variable,
21 and hybrid products, correct?

22 A. I haven't really looked at it that
23 closely to see what's being offered in the other
24 service territories.

25 Q. So you're not aware of -- you're not

1 aware if there's any services offered in the Duke
2 territory that are not offered in territories where
3 there's no POR?

4 A. I haven't looked at that so, no, I can't
5 testify to that.

6 Q. On page 8 of your testimony, on line 4,
7 the question indicates the tariff change is necessary
8 for default provision for the misuse of bill-ready
9 billing services. What do you mean by "misuse of
10 bill-ready billing services"?

11 A. Okay. What we're talking about there is
12 if you use one of those line items for a
13 noncommodity-type service, if it's some kind of
14 energy-efficiency product or, you know, software of
15 some kind, you know, monitoring energy usage, we
16 strictly expect that bill-ready billing be used for
17 basically the generation service.

18 We talked about this throughout the day
19 today of the various services that are out there, and
20 it's basically the generation service we want to
21 limit it to for bill-ready billing because that would
22 make it consistent with our rate-ready billing
23 scenario.

24 And then, also, the whole purchase of the
25 receivable piece that we talked about, it makes it

1 clear that we're purchasing generation service and
2 not any other products and services.

3 Q. I don't know if I asked you this. Do you
4 know how much the total bad debt for Duke is for the
5 12 months ending March 31st, 2014?

6 A. I do not.

7 Q. Looking at IGS Exhibit No. 6, am I
8 correct that the column that's rate -- I would take
9 that rate, and then if I look under a year and
10 there's a dollar amount, I would divide the dollar
11 amount by the rate and that would determine how many
12 times that rate had been charged?

13 A. That's correct, uh-huh.

14 Q. So, for example, if you look at the
15 residential bill fees in 2013, I take the \$2.75 and
16 divide it by the 0.056, and that would tell me how
17 many instances, correct?

18 A. Tell you how many residential bills in
19 start-up there were at the end of 2013, correct.

20 Q. Okay. And then you indicated that there
21 was about 4,000 IDG meters, I think you called them.

22 A. IDR, interval data recorders.

23 Q. IDR. And those are exclusively for
24 larger customers, correct?

25 A. Correct.

1 Q. Generally industrial customers?

2 A. Commercial, industrial, and governmental.

3 And, as I mentioned, the requirement is 200 kW and
4 larger than one of those IDRs needs to be in place.

5 MR. SERIO: Just one second, your Honor.
6 I think I'm done.

7 Q. And just so that I'm clear, Mr. Jones,
8 the cost of uncollectibles that's built into base
9 rates, that's paid by all of Duke's customers,
10 correct?

11 A. My understanding is there is built into
12 base rates there are uncollectibles there on the
13 distribution side, and there's also a distribution
14 rider and a generation rider for bad debt because the
15 distribution rider is anything over and above what's
16 in base rates.

17 Q. So that means that SSO customers, through
18 the base rate, pay the uncollectible costs associated
19 with shopping customers, correct?

20 A. I'm sorry. Say that again.

21 Q. Sure. SSO customers, through the base
22 rates, pay the uncollectible costs associated with
23 shopping customers, correct? Because of the POR.

24 A. That's -- that's all in there, in rider
25 UE-GEN.

1 MR. SERIO: Okay. Thank you. That's all
2 I have, your Honor.

3 EXAMINER WALSTRA: Mr. Hart?

4 MR. HART: No questions.

5 EXAMINER WALSTRA: Staff?

6 MR. BEELER: No questions. Thank you.

7 EXAMINER WALSTRA: Any redirect?

8 MS. WATTS: Yes, your Honor. Could we
9 take 5 minutes?

10 EXAMINER WALSTRA: Certainly.

11 (Recess taken.)

12 EXAMINER WALSTRA: We'll go back on the
13 record.

14 MS. WATTS: I just have a couple of quick
15 questions, your Honor.

16 EXAMINER WALSTRA: Okay.

17 - - -

18 REDIRECT EXAMINATION

19 By Ms. Watts:

20 Q. Mr. Jones, you will recall being asked
21 some questions, frankly, I don't personally recall
22 whether it was Mr. Olikier or Ms. Petrucci, but
23 questions related to customers receiving or accessing
24 data with respect to their usage on the Duke Energy
25 portal. Do you recall that?

1 A. I do recall that.

2 Q. And are you familiar or are you aware of
3 a Commission rule that requires Duke Energy Ohio to
4 provide 24 months of customer usage to the customer
5 upon the customer's request?

6 A. I am aware of that, yes.

7 Q. So that's a regulatory requirement,
8 correct?

9 A. Yes, it is regulatory requirement.

10 Q. Okay. And you answered some questions
11 with respect to the definitions in the tariff, in
12 particular the definition of interval data and the
13 need to clarify the distinctions between IDR data and
14 SmartGRID data. Do you recall that series of
15 questions?

16 A. Yes, I do.

17 Q. And Ms. Petrucci asked you if that came
18 out of the EDI Working Group or the RMI Working
19 Group, and you responded that it did not come from
20 either of those places, correct?

21 A. I did, yes.

22 Q. But is it responsive to changes in the
23 Commission's rules in Case No. 12-2050?

24 A. Right. 12-2050 is what's known as the
25 "Electric Service and Safety Standards," usually

1 referred to as the "ESSS rules." Yes, so there was
2 mention of -- of the, rather than the AMI, just the
3 "advanced meters" is how they referred to them.

4 And the other thing that came out in
5 that -- in the ESSS rules, 12-2050, had to do with
6 who holds the authorization from the customer because
7 for, basically, 14 years now, through these IDR
8 meters, the supplier holds the authorization to
9 retrieve that interval data. And the requirement in
10 the 12-2050 rules is that for residential customers,
11 the EDU must hold on to that customer authorization
12 prior to releasing the data to the CRES providers.

13 So it's really, you know, two sets of how
14 interval data is handled, and we wanted to make it
15 clear on our certified supplier tariff what it is
16 we're doing with the interval meter we're referring
17 to versus this advanced meter that's referred to in
18 the 12-2050.

19 MS. WATTS: Thank you. I have nothing
20 further.

21 EXAMINER WALSTRA: Mr. Olikar.

22 MR. OLICKER: Sure. Very briefly.

23 - - -
24
25

1 RECROSS-EXAMINATION

2 By Mr. Oliker:

3 Q. Mr. Jones, in the case of customer
4 interval data, you would agree the customer owns the
5 information, correct, regarding their own usage?

6 A. It sounds like a legal determination.
7 It's on the Duke Energy Ohio meter, that Duke Energy
8 Ohio owns these AMI meters.

9 Q. So you don't believe it is up to the
10 customer to determine whether or not to disclose the
11 information?

12 A. The rules say that we, you know, obtain
13 the customer's authorization to release that data.
14 But Duke Energy Ohio is retrieving that data. It's
15 in its own system. So we own the meters and, you
16 know, all the information that's recorded by those
17 meters.

18 Q. But, to be clear, the right exists for
19 the customer.

20 A. That's the way the rules state, yeah. We
21 are to release that kind of information, that
22 granular information. The EDU, for residential
23 customers, must hold on to that customer
24 authorization. There is a very specific format for
25 that before we can release any interval data to a

1 CRES provider.

2 Q. And staying on that topic, do you agree
3 that access to interval data information empowers a
4 customer to make decisions that impact their energy
5 usage?

6 A. I think that's a question for a customer.

7 Q. Do you agree it has that potential?

8 A. Sure, it has potential.

9 MR. OLIKER: That's all I have. Thank
10 you, Mr. Jones.

11 THE WITNESS: Okay. Thank you.

12 EXAMINER WALSTRA: Go ahead.

13 - - -

14 RECROSS-EXAMINATION

15 By Ms. Petrucci:

16 Q. There was nothing in the Commission's
17 decision in the 12-2050 case that required the
18 definition of "interval meter" to be limited to just
19 the IDR meters in Duke's supplier tariff; isn't that
20 correct?

21 A. Okay. What I recall with regard to
22 12-2050, we, I think, in our comments, with regard to
23 those rules said, well, what are we talking about
24 here because it wasn't -- it wasn't truly defined as
25 to what was meant by "customer authorization." Does

1 the EDU have to hold all customer authorizations for
2 all interval data? And then what came out in the
3 next order after those comments was that it was for
4 residential customers only and not for the
5 nonresidential customers.

6 So, basically, what has been in place for
7 14 years with regard to customer authorizations being
8 held for the CRES provider for the IDRs, that still
9 remains in place, but now we have this other set of
10 rules for the advanced meters.

11 Q. Okay. But going back to my question, the
12 Commission did not require that the definition of
13 interval meter in the supplier tariff be limited to
14 just the IDR or -- or non-AMI meters; is that
15 accurate?

16 A. Well, for the purpose that we are using
17 these interval meters, we needed to change the
18 definition and make it clearer what we meant by
19 "interval meter."

20 Q. And you agreed with me earlier, I
21 believe, that the effect of this change for the
22 definition of interval meter means that the supplier
23 tariff does not address the AMI meters at all. It
24 only discusses the two sections we talked about
25 earlier. And just a moment, I will tell you what

1 they are again. Section 7.4 and 9.3 which deal with
2 the customer information and meter requirements,
3 correct?

4 A. Those are the -- yeah, the sections we
5 discussed.

6 Q. Then you are agreeing with me that as a
7 result of the proposed change, this proposed supplier
8 tariff will not address the provision of customer
9 information or meter requirements associated with AMI
10 meters.

11 A. Well, as we've already mentioned, the
12 12-2050, you know, defines those -- those meters, and
13 the fact that, for residential customers,
14 authorization must be held by the EDU to release that
15 interval data.

16 Q. But, effectively, Duke has not included
17 anything in the proposed supplier tariff to
18 incorporate that new requirement as you've just
19 described.

20 A. As I mentioned, there's a great deal of
21 costs that will be involved even to make that
22 interval data available --

23 Q. Okay. My question --

24 A. -- to CRES providers.

25 Q. I'm sorry. My question wasn't about

1 cost. I am asking whether you've included anything
2 in this proposed supplier tariff, any language that
3 you're saying is now being required as a result of
4 the decision in the 12-2050 case, and that's my
5 question.

6 A. And how I would respond to that is that's
7 all still under discussion. There's nothing clear as
8 to how all this data gets shared with -- with CRES
9 providers and who is paying for the cost for us to do
10 that.

11 And I also understand standing out there
12 are others that are going to provide other energy
13 services that are going to want this data some day as
14 well, so a lot of costs associated with that, and
15 there's no definite plan as far as how that would get
16 implemented.

17 MS. PETRUCCI: I have nothing further.

18 EXAMINER WALSTRA: Thank you.

19 Ms. Hussey?

20 MS. HUSSEY: Nothing, your Honor.

21 EXAMINER WALSTRA: Ms. Bojko?

22 MS. BOJKO: No, thank you.

23 EXAMINER WALSTRA: Mr. Serio?

24 MR. SERIO: No, thank you, your Honor.

25 EXAMINER WALSTRA: Mr. Hart?

1 MR. HART: No, thank you.

2 EXAMINER WALSTRA: Staff?

3 MR. BEELER: No, thank you, your Honor.

4 EXAMINER WALSTRA: Thank you.

5 Just had a couple of exhibits.

6 MS. WATTS: Yes, thank you. I am trying
7 to find the number. Duke Energy Ohio Exhibit 12, we
8 would move that into evidence.

9 EXAMINER WALSTRA: Okay. Are there any
10 objections? It's 13.

11 MS. WATTS: 13.

12 EXAMINER WALSTRA: No objections?

13 Hearing none, it will be admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER WALSTRA: Mr. Olikar.

16 MR. OLICKER: Your Honor, I would move for
17 admission of IGS Exhibit 6.

18 EXAMINER WALSTRA: Any objections?

19 MS. WATTS: No objection.

20 EXAMINER WALSTRA: Hearing none, it will
21 be admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 EXAMINER WALSTRA: All right. Regarding
24 tomorrow, just to let everyone know there is a good
25 chance we'll be going over. I know we are scheduled

1 to go to 6, but to try to play catch up a little bit,
2 there is a good chance we will be going over
3 tomorrow.

4 We are adjourned.

5 (Thereupon, at 5:25 p.m., the hearing was
6 adjourned.)

7 - - -

8 CERTIFICATE

9 I do hereby certify that the foregoing is
10 a true and correct transcript of the proceedings
11 taken by me in this matter on Monday, October 27,
12 2014, and carefully compared with my original
13 stenographic notes.

14
15
16 _____
17 Karen Sue Gibson,
18 Registered Merit Reporter.

19 (KSG-5949)

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Summary: Transcript in the matter of Duke Energy Ohio hearing held on 10/27/14 - Volume IV electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.