

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 8:30 a.m. on Wednesday,
November 5, 2014.

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VOLUME XI

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OCC EXHIBITS IDENTIFIED ADMITTED

43 Direct Testimony of James F. IX-2481 3194
Wilson

43a Direct Testimony of James F. IX-2481 3194
Wilson (Confidential)

43.1 Revised Attachment JFW-1, 3111 3194
page 8 (Confidential)

45 Direct Testimony of Jerome D. 3037 3072
Mierzwa

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COMPANY EXHIBITS IDENTIFIED ADMITTED

26 4th Quarter 2013 Statistical 3180 3195
Supplement

27 IGS-INT-02-006 3281 3328

28 IGS-INT-02-004 3294 3328

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IGS EXHIBIT IDENTIFIED ADMITTED

10 Direct Testimony of Matthew 3195 3328
White

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1 Wednesday Morning Session,
2 November 5, 2014.

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4 EXAMINER PIRIK: We'll go on the record.

5 Before we continue with Mr. Zhang, I was
6 going to call on the company. There's one document
7 that has been waiting ruling on confidentiality that
8 would be helpful for the witness if we could rule on
9 it.

10 Ms. Kingery.

11 MS. KINGERY: Yes. I don't actually know
12 the exhibit number. I know it as the interrogatory.

13 EXAMINER PIRIK: It's attached to
14 Ms. Jackson's testimony. Let me get that exhibit
15 number which is Exhibit 4a and it's Exhibit 5a
16 attached to her testimony SEJ-5.

17 MS. KINGERY: Okay. And that's also OCC
18 Interrogatory 16-414, and I had proposed some
19 redactions to it, I think a couple of days ago. And
20 I would suggest that if you look at those proposed
21 redactions, we would take the words "Monte Carlo
22 Simulation" out of the confidential piece and move
23 that into the open record, as Dr. Zhang has talked
24 about the CBM being a Monte Carlo Simulation.

25 EXAMINER PIRIK: Okay. We appreciate the

1 fact that you have narrowed down the scope of what
2 you redacted from the document. And we understand
3 that this is also part of other documents that would
4 be presented later today.

5 With that edit, putting "Monte Carlo
6 Simulation," into the record we find -- we had
7 already taken arguments on these documents, so we
8 find that your request for protection in the form
9 that you provided us minus that one change should --
10 is appropriate and should be granted.

11 MS. KINGERY: Thank you very much. And
12 may I approach the witness and give him -- a copy
13 with the redactions showing?

14 EXAMINER PIRIK: Yes.

15 MS. HUSSEY: Your Honor, do you have the
16 exhibit number reference for that document?

17 EXAMINER PIRIK: It's Jackson's testimony
18 which is Exhibit 4a and it's her Attachment 5.

19 MS. HUSSEY: Okay. Thank you.

20 EXAMINER PIRIK: I believe we are still
21 with Mr. Berger.

22 MR. BERGER: Thank you, your Honor.
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BEN ZHANG

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

FURTHER CROSS-EXAMINATION

By Mr. Berger:

Q. Good morning, Dr. Zhang.

A. Good morning.

Q. Dr. Zhang, yesterday we were talking
about the attachment to IGS-POD-01-003 which is OCC
Exhibit 4 and 4a. Do you recall that? Do you have
that?

A. I don't have that anymore, but I remember
it.

Q. Okay. Let me provide it to you again.

A. All right.

EXAMINER PIRIK: Just to clarify, we are
at this point in time in the confidential record.

MR. BERGER: I thought we were in the
public record, your Honor. I still have a half an
hour on the public record.

EXAMINER PIRIK: Then we are still in the
open record. It was late.

Q. So, Dr. Zhang, that means please refrain
from referencing any specific numbers and if you have
any concerns that information you're discussing is

1 proprietary in nature, please indicate that you
2 believe that to be the case and we'll hold that for
3 the confidential record. Thank you.

4 Dr. Zhang, when we were discussing this
5 particular exhibit, you indicated, I believe during
6 your examination that you thought that the
7 projections reflected on that exhibit were
8 reasonable. Do you recall something like that being
9 stated? I don't recall the exact words.

10 A. I'm just saying a projection is just a
11 particular time based on a particular set of inputs.
12 So when you are asking me about the model, that's
13 what I said. Testing of the model. Given reasonable
14 inputs, produces a reasonable set of outputs. That's
15 what I said, I remember.

16 Q. Okay. My interpretation of that,
17 Dr. Zhang, is that what you're saying is that the
18 outputs appear to be reasonably consistent with the
19 inputs that you're familiar with from the model.

20 A. That is correct.

21 Q. Okay. But if the inputs -- you're not
22 making any -- you're not expressing any opinion
23 regarding the accuracy of the inputs when you're
24 making that statement. You're just saying that there
25 is a reasonable consistency between what you know as

1 the inputs and what you see as the outputs.

2 A. That is actually not entirely correct.

3 So when we make model runs -- actually, in the very
4 beginning, before I started to be in charge of this
5 organization, that used to be the case. People would
6 come to us, give us something, price this deal for
7 me, but we changed the practice. Said you cannot
8 tell me this is the inputs, you price this for me.

9 We have the inputs either from market,
10 from the operation side which are totally validated
11 and tested, or from a very trustworthy source of the
12 information, for example, which is our firm that help
13 us to have the fundamental curve, so, in other words,
14 we don't determine, for example, necessarily what the
15 input is, but we know what area inputs we need have
16 to be factual, they have to be correct in our
17 opinion.

18 Q. But you would agree you're entirely
19 relying upon the inputs that you receive from other
20 parties including the consultant you referenced,
21 right?

22 A. Not -- once again, that's not entirely
23 correct. For example, on the operation stuff, we
24 have the information. We have our opinions, for
25 example, our own units, fuel or anything related to

1 the operation parameters, we have to have the check.
2 That's when we call that the input change of control.

3 So for any change of any sort in the
4 input side, people need to go through a process, we
5 call them "input change control persons." They do
6 model run. You see the results. They send to a
7 committee which includes myself, includes the risk
8 management and operation and fuel people, and we all
9 agree that's good, that's when we move forward.

10 But regarding the marketing inputs, if it
11 is all related to market inputs, nobody determines
12 what the market does. For example, if you are
13 talking about a three-year, four-year time window
14 where you have the visible market, even though it may
15 or may not entirely be very deep, the market, but a
16 market is the market.

17 So we have the market curve which is
18 marketed by the front office, checked by corporation
19 risk management. We take that, in other words, we
20 trust we have professional practices in place that
21 give us good inputs on the market side.

22 On the fundamental curve side, we also
23 trust that we have very qualified people at Duke that
24 will work with outside firms that are doing a very
25 good job. And also, I can't do other people jobs,

1 but I trust the other people doing their best job
2 they can in their expertise, in their areas.

3 So once again, we look at the source. We
4 don't just take a random, for example, if someone
5 come to me do this variation, do this projection,
6 here is the input. We don't take it. I already
7 expressed this yesterday. Corporate curve is a -- we
8 do everything based on this. Buy or sell. No buys.
9 That's the only reason we take it. In other words, I
10 am not puppet being pushed around; otherwise, I
11 wouldn't have been here for 15 years. Long answer.

12 Q. Yes, it is. You would agree with me that
13 the accuracy of your model, in terms of the outputs,
14 depends upon the accuracy of the inputs.

15 A. That is correct. The inputs has to be
16 very good, yes.

17 Q. Okay. And you -- did you personally
18 review the fundamental curve -- did you personally
19 review the fundamental curve to assess its accuracy?

20 A. No. From time to time. We, once again,
21 have communications with different people, but I am
22 not the person who is responsible for how the curve
23 is being developed. And also in terms of accuracy,
24 once again, I come back, they have professionals from
25 the consulting firms who work with professionals from

1 Duke Corporation; they work together. And once we
2 validate the model -- by the way, Duke is a very big
3 corporation. We are no pushovers either. I heard of
4 the work of many, many firms, they select the most
5 credible firm they think they have. So once again, I
6 trust the professionals, but I am not personally
7 validating how that model works.

8 Q. Okay. And you would agree with me that
9 to the extent that the fundamental curve or the
10 forward curves for that matter don't reflect what
11 actually occurs, that the outputs will be inaccurate?

12 A. That's incorrect. So once again, you're
13 trying to get me to say we are predicting using some
14 kind of magic. Can I say something?

15 Q. First of all, I'm not saying that you're
16 predicting. I'm just saying the outputs will not be
17 consistent with what the actual results are if the
18 inputs turn out to be not consistent with what
19 actually occurs. That's all I am asking you.

20 A. Yeah. Once again, I don't want to be
21 taking too much time on this one, but can I give you
22 an example?

23 Q. Sure.

24 A. Forward market is a real market. For
25 example, if you're talking about the amount of prices

1 of July, 2015, people are actually buying and selling
2 that contract right now. That's a real price. It's
3 real. Either it's future market or forward market.
4 That's real deal. I'm predicting July, 2015. This
5 is exactly the price will be. So if you're telling
6 me that today the price of \$40 and I use this to buy
7 and sell, so when July, 2017 -- '15 actually happens,
8 the price is \$100, you are saying okay, by the way,
9 the day you traded all wrong because \$40 is not
10 really what transpired on July, 2015. That's what I
11 am trying to tell you.

12 So the forward price is a price you see
13 today and expiration in the future date, but the
14 transaction actually price is right now. People buy,
15 sell right now. That's why I keep saying it's not a
16 prediction of what may or may not be the case.

17 Q. Let me talk to you about that for a
18 minute.

19 A. Sure.

20 Q. I agree with you that some purchasers out
21 there are purchasing at the current forward market
22 price.

23 A. Yes.

24 Q. However, some purchasers out there won't
25 purchase until -- will purchase in the day-ahead

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1 market in 2015 or the realtime market when that
2 actually occurs. Do you agree with that?

3 A. No, I do not agree with that. Can I once
4 again, can I just show my knowledge a little bit? If
5 I have a transaction or one unit, \$40 today, that \$40
6 is actually binding. So when the real thing happens,
7 unless I sold you at one -- 1 megawatt-hour at \$40
8 for a July, 2015, contract, when the actual thing
9 happens, let's say it's \$100. I actually lost \$60.
10 For the day you would be getting that 1 megawatt-hour
11 at \$40 for real. But you can turn around and sell it
12 at 100 to PJM or whoever. Make 60 bucks.

13 I would -- I am not be complaining, oh, I
14 would say oh, oops, I made a mistake, I sold it at
15 40. No. Actually, I might have made money too
16 because I did other things. But the transaction is
17 binding. In other words, you don't wait until then
18 and say oops, it's 100. So we actually have to
19 transact at 100. No, \$40 is binding. We get that
20 \$40. I have to give it to you at \$40. Even though
21 the day-ahead market is 100. I don't know if that
22 will make it more clear for you.

23 Q. Well, it makes it clear your model
24 incorporates the fact that the price may be different
25 in 2015 and it makes adjustments for that fact. But

1 your model doesn't -- can't contradict the fact that
2 there are purchasers in the market who will purchase
3 it at a different price in 2015 than the power is
4 being offered for today.

5 A. Well, yes, sure. You are basically
6 saying to me, the price today on the future market,
7 the forward market will not necessarily be the same
8 as the spot market.

9 Q. That's what I'm saying. You would agree
10 with that, right?

11 A. I believe everybody would agree to that,
12 yes.

13 Q. Other than the price forecast, are there
14 other inputs to your model that are outside of the
15 control of your department?

16 A. For our own units, most of them we know.
17 But for this particular case, I think OVEC for the
18 short-term, we do have inputs from them. Some of
19 them are provided to us.

20 Q. And that would include the cost of
21 operation and the fuel costs associated with OVEC; is
22 that right?

23 A. I would say mostly fuel costs, but they
24 give us one number, just all-in number.

25 Q. They give you an all-in number for fuel

1 costs. I'm sorry, I didn't understand. Is that what
2 you were saying?

3 A. All-in dispatching cost, includes fuel
4 and whole other things.

5 Q. So you would agree with me that to the
6 extent OVEC's forecast of those costs is inaccurate,
7 that the outputs reflected on IGS-POD-01-003 won't
8 reflect the actual results.

9 A. Once again, I want to say if their
10 forecast is not exactly the same as what actually
11 transpires or is realized two years from now, so that
12 means the result would be different. But for us,
13 once again, the projection transaction, we take the
14 numbers -- we actually do transactions, let's say,
15 you know, I don't know how you actually want to
16 measure this and realize what's projected, but we
17 would hope their prediction -- their projection of
18 the cost is to their best of knowledge and is most
19 accurate in the information they have.

20 Q. Okay. So you're saying you're relying on
21 the accuracy of the projection, correct?

22 A. For their part of the cost, yes,
23 short-term.

24 Q. And certainly you put together a weather
25 simulation, I think we discussed your -- basically,

1 when you do that, you're saying, well, this is what
2 we -- what the best information that we have is
3 saying the weather is likely to be at any particular
4 time, and to the extent the weather turns out to be
5 different, your model will not necessarily -- will
6 produce different outputs than what actually results,
7 correct?

8 A. Once again, that's only partially
9 correct. I want to say the reason you have weather
10 simulation is you don't want to predict -- you don't
11 want to try, kind of pretend you are predicting the
12 weather two years from now, even tomorrow. So that's
13 why you do simulation.

14 You do simulation means you consider the
15 probabilistic distribution of the entire spectrum.
16 So what have as an outcome is your outcome, it does
17 not rely on a particular pattern of weather, but,
18 rather, it's the probabilistic distribution.

19 So you don't really predict, for example,
20 the July, 2015, weather. You actually simulate the
21 distribution of the weather pattern which in our case
22 we use 510 scenarios, you can also use 1,000
23 scenarios. It's a distribution. So technically
24 speaking we're not predicting the weather. The
25 outcome does not rely on the so-called prediction of

1 weather, no.

2 Q. You don't disagree, though, that if your
3 probabilistic model doesn't reflect actual events,
4 that the outcome will -- will likely be different.

5 A. Can I -- the reason you call it a
6 "probabilistic" is nobody knows exactly what's going
7 to happen. That's why you have a distribution. So
8 in any event, no matter what model people have, no
9 matter what probabilistic distribution they have,
10 their realization is always one of the scenarios.
11 It's one situation. You have 1,000 possibilities but
12 only one transpired.

13 For example, if today's price at \$30,
14 tomorrow is either going to be higher than 30, lower
15 than 30 or equal to 30. That's all we can say. But,
16 on average, I know my expected is \$30 because \$30 is
17 what's on the market.

18 Q. Would you agree with me your model is
19 updated on a daily basis for forward-market prices?

20 A. Yes. The model for the five-year run
21 actually uses the most updated information on the
22 market every day.

23 Q. And did you hear Mr. Whitlock's testimony
24 yesterday, Dr. Zhang?

25 A. Most of it, yes.

1 Q. Did you hear him testify that the -- that
2 the -- he thought that the fundamental curve was
3 updated biannually, twice a year?

4 A. Yes, something like that.

5 Q. Is that -- is that your understanding of
6 when the fundamental curve is updated in your model
7 is twice a year?

8 A. I would say in general that's the case.
9 But sometimes maybe less or more frequent based on
10 situations. Can I give you an example? For example,
11 before the PJM market made the changes, they had
12 fundamental curves. But as soon as things started
13 happening, they say now the situation has changed,
14 the structure has changed, the rule has changed, so,
15 hence, you need an update, so they will do an update.

16 Or sometimes there's new, for example,
17 they had just announced oh, the new regulation on the
18 environmental side is no longer the same as we were
19 predicting, the government is changing. Then you
20 have, okay, now, let's ask them to refresh the
21 numbers because the things have changed.

22 Once again, regulation on the
23 environmental side and a lot of other things which
24 are really determining the fundamental environment of
25 the supply and demand situation, when that happens,

1 Duke would request an update. But, other than that,
2 maybe once a year, maybe twice a year, yes.

3 Q. And are you familiar with the methodology
4 through which the fundamental forecast is developed
5 by the outside consultant?

6 A. As an economist, I know theoretically,
7 but I don't know exactly.

8 Q. You don't know how they specifically
9 develop it. You don't know their specific
10 methodology?

11 A. No. Once again, as an economist I know
12 it's all about supply and demand, and economic growth
13 and constraints, and regulation of environmental
14 side, but I don't really know exactly how their model
15 works.

16 Q. The price -- the prices in the future for
17 different fuels that are included in your model as, I
18 believe, as inputs, do those come from -- for the
19 period 2019 forward, do those come from the -- from
20 the outside consultant as well?

21 A. That is correct. So the entire
22 information set is tied together. They do all things
23 in a consistent manner.

24 Q. And for the period through 2018, you use
25 the forward curves for those energy inputs, correct?

1 A. That is correct.

2 Q. Those fuel inputs.

3 A. That is correct. Once again, that's just
4 for the units we have information for. But for OVEC
5 we rely on their projections, which they use -- may
6 use the same information on the market, but we don't
7 really know.

8 Q. And for the rest of the -- you talked
9 yesterday about this supply-demand curve you use for
10 the rest of PJM as a component of your analysis -- of
11 your model. Do you remember that?

12 A. I wouldn't call it the "supply-demand
13 curve." We have the PJM units. We also have the PJM
14 weather points and demand situations. We have, we
15 call it "base model" which we use, we run maybe once
16 a year, maybe quarterly, to simulate the first
17 distribution of power prices. And afterwards, we
18 calibrate on a daily basis based on how the market
19 move, both at the level and also at the volatility.
20 So, yes, we simulate the PJM units. We also simulate
21 the PJM load. So that's -- if that's what you're
22 referring to as "supply-demand," then yes. That is
23 used for solving the power prices.

24 Q. And when you are using that base model,
25 you said you do that -- you do that annually. Is

1 that base model analysis done for any -- a certain
2 period of time into the future or is it done -- how
3 is that -- how is that done?

4 A. Once again, the simulation model you are
5 referring to which we call the "base model," is used
6 for generating the hour-by-hour, scenario-by-scenario
7 power price distribution, so.

8 Q. Indefinitely into the future? That's
9 what I am trying to determine. Is it something
10 that's a simulation indefinitely into the future?

11 A. No. We typically do only for the -- for
12 the part that you have market information for because
13 once again, I come back and emphasize, that is only
14 used to generate the distribution but the
15 distribution has to match the market. When I say
16 "market," I mean forward market, future market, and
17 option market.

18 So come back to your point, if I don't
19 have the prices for a particular timeframe, then I'm
20 not predicting prices. Once again, the model I am
21 talking about is a model that it generated the
22 probabilistic distribution. That distribution on the
23 expected level has to meet the criteria of what the
24 market is and option distribution same way. So, in
25 other words, you can run that for one year, two year,

1 up to five years. But no matter how many years you
2 run, we are not predicting the prices. We are just
3 generating the distribution that will match the
4 market you see now both at the forward-price level
5 and the volatility.

6 Q. And for the period after the forward --
7 after the observable market beginning in 2019, how do
8 you develop the base model distribution?

9 A. The base model distribution will be
10 used -- will be using, for example, the --
11 hypothetically speaking, if you don't give me any
12 information on the option side, and we don't have any
13 special kind of information about the volatility
14 structure beyond 2018, we would take the
15 hour-by-hour, scenario-by-scenario distribution of
16 2018, and use that as the foundation for all the
17 future distributions, but the future distribution
18 would have to be -- give us back whatever fundamental
19 curve level that we are giving.

20 In other words, the volatility structure
21 you cannot predict but, however, if someone give me a
22 fundamental curve, and we can make sure whatever of
23 distribution I have, from the basis of 2018
24 distribution, would give me back all the on-peak
25 prices and off-peak prices for all the future years

1 based on the fundamental curve that I would get.

2 Q. Would you agree with me that your model
3 utilizes projections of on-peak and off-peak prices
4 that are either in the observable market or -- or
5 forecasted monthly in the fundamental curves?

6 A. The market is identified as on-peak
7 market and off-peak market. That's how the market is
8 transacted. So the model has to reflect that. So,
9 in other words, if you tell me the around-the-clock
10 price is 30, I can't be having confidence if I'm just
11 giving back 30. I want to make sure the model also
12 know that on-peak is 45, off-peak is 25, which I'm
13 just -- don't take my math there, I'm just giving an
14 example.

15 So, in other words, just making the model
16 consistent with \$30 around-the-clock is not good
17 enough. You have to match both the on-peak price and
18 off-peak price individually on a monthly basis.
19 That's why you have on-peak prices and off-peak
20 prices as inputs.

21 Q. Now, the cost of goods sold is an output
22 of the model; is that correct? If you look at
23 IGS-POD-01-003, you'll see that on pages, I believe
24 it's page 6 and following.

25 A. Yes. I see that.

1 Q. Actually, it's not page 6. It's page 11.
2 Can you explain to me what cost of goods sold means
3 as used on page 11 through 16?

4 A. Yes. From my perspective that's just the
5 cost of generation projected. But I want to qualify
6 that by saying if you have a business who does not
7 hedge anything, who does not buy fuel, who does not
8 do any other hedging, so you just buy your fuel on
9 the spot, then with the model output is exactly what
10 it is. It's called the cost of goods sold.

11 But if you have hedges, for example, you
12 buy fuel and in the future you use this fuel for this
13 production, then there's some sort of adjustment,
14 which I'm not an accounting expert, so I don't know.

15 In other words, I bought it at 10, in the
16 market it becomes 5, we dispatch at 5, but we don't
17 trick ourselves saying okay, now, the model spit out
18 5, that's what's my cost of goods; no, I bought it at
19 10. So you realize the loss. It could be the other
20 way around. Yesterday I talked about you realize the
21 gain. So that's why I'm not -- once again, that's
22 beyond my expertise.

23 Q. Are you saying that your model reflects
24 these gains and losses in the -- experienced by Duke
25 in the purchase and use of fuel to produce energy?

1 A. No, no, that's not what I'm saying. I am
2 saying just the opposite. I'm saying if this is
3 accounting paper, that's what it means. The model
4 does not have that information about people bought
5 coal at what contract or what price. The model
6 simply look at the market as of the day when the
7 model has been run. Whatever the market is, the
8 model will say I don't know if you have fuel or not.
9 I'm just saying you just dispatch the unit based on
10 the information you see on the day or the time when
11 the model is being run.

12 So that's I'm trying to make sure I don't
13 trick myself saying okay, now, this is strictly from
14 the model. I mean, in some instances, yes, because
15 you don't have enough adjustment required because
16 nothing is hedged, but other situations, if there is
17 hedging, once again I don't know, I am just telling
18 you there could be, I don't want to trick myself into
19 that because I am not an accounting expert.

20 Q. Now, in developing the projected
21 generation output megawatt-hours, does your model --
22 has your model accounted for the increase in
23 production costs that may be experienced as a result
24 of the new carbon rules in developing that generation
25 output by unit?

1 A. Once again, I did not make this
2 particular model. My team members did, but I'm
3 confident, 99.99 percent confident that yes, we do.

4 MR. OLIKER: Could I have the question,
5 just the question read back?

6 (Record read.)

7 MR. OLIKER: Thank you.

8 MS. KINGERY: I would just like to insert
9 a caution here again on confidentiality. We are
10 keeping assumptions that we rely on in the
11 confidential record, so we don't want to go any
12 further on this particular line in the public record.

13 THE WITNESS: Thanks.

14 Q. Do you know how the model predicts what
15 carbon reduction requirements would be in the future?

16 A. Once again, I can only give you basically
17 on the advice of counsel, I can give you the concept.
18 The concept would be, as I previously have stated,
19 the fundamental curve does not just include the power
20 curve. It's the entirety of all the commodities that
21 consider all that environmental regulation factors.
22 By that I mean they also have a price on a per ton
23 basis of CO-2. If that's what you mean. So the
24 model has not only the cost of the fuel, it also has
25 the cost of CO-2. So all things are modeled. That's

1 why I take pride in this model.

2 This model is a combination of
3 mathematical financial theory and operational
4 features. So we take all that and factor them in and
5 compute just as you are computing the real cost of
6 the unit of the entire cost, all the components, all
7 the way from fuel, from the chemical costs which we
8 call the "variable cost of the chemicals," and also
9 in this particular case you are referring to the
10 CO-2, yes. That's the -- that's the conceptual. I'm
11 not giving anything away because everybody knows
12 that.

13 Q. Are you saying the fundamental curves --
14 as I understand what you're saying the fundamental
15 curves that you are provided include a price for
16 CO-2?

17 A. That's correct. That's my understanding.
18 I can check, but I'm 99 percent sure.

19 Q. But am I correct that you haven't --
20 other than including that price that the
21 fundamental -- that the consultant has developed for
22 CO-2 for the period 2019 to 2024, you haven't
23 specifically adjusted the generation output of the --
24 of Duke's units or the base model for that matter to
25 reflect a reduction in the output of particular units

1 because of increases in production costs for those
2 units?

3 A. That's incorrect. That's just the
4 opposite of what I said. I said the model took it
5 into consideration. The model also took into
6 consideration that because -- as a result of the CO-2
7 a lot of other things might happen. Once again, I
8 don't want to put the words into the consulting
9 firm's mouth, but I think that's pretty reasonable to
10 say.

11 Because of the CO-2-related regulations,
12 a lot of other things would happen. Retirement, for
13 example, and a lot of other things, for example,
14 sudden increases of load, economic growth which I
15 don't know, and transmission issues or lack of
16 transmission. All of those things might, for
17 example, make the power prices go up more than the
18 CO-2 price which, once again, I don't take my word
19 for that. I am just giving an example.

20 Or they would totally change the pattern.
21 They would totally change the pattern of the on-peak
22 and off-peak prices. I think that should be pretty
23 clear. The CO-2 might change the on-peak/off-peak
24 price patterns which will have an impact on the -- on
25 the generation, but the projection would reflect all

1 of the above. So once again, no, actually, we have
2 taken that into consideration.

3 Q. Mr. Zhang, I am going to provide you with
4 a copy of the deposition transcript from your
5 deposition on October 1.

6 MR. BERGER: May we approach, your Honor?

7 EXAMINER PIRIK: Yes.

8 Q. This is a difficult area because we are
9 not all technical experts such as yourself,
10 Dr. Zhang.

11 A. Sure.

12 Q. But when I took your deposition on page
13 38, I asked you the question "And how did you -- how
14 does the model, if you know, project what the
15 carbon-reduction requirements," which I repeated
16 "carbon...reduction requirements would be in the
17 future?" Do you remember? Do you recall that?

18 A. Where is it? Which line?

19 Q. On line 5. You --

20 MS. KINGERY: And just for the record, I
21 would note when you repeated it, you said
22 "carbon-emission reduction requirements," not sure
23 that it matters, but.

24 A. Yes, I see that.

25 MR. OLIKER: Why don't you just read his

1 answer too, Tad.

2 Q. Yes. And your answer was "I don't think
3 the model, the CBM, has the requirement in there. If
4 there is a reduction criteria, it would have been
5 reflected in the curves which is input into the
6 model." Was that your answer?

7 A. That was my answer. By the way that's
8 what I just told you. So all the output changes
9 would be determined by the curves which I just told
10 you. So I was just telling you this answer is the
11 model doesn't, for example, model, for example,
12 superficially impose a reduction. So the curve of
13 all of the fuel changes, of all the power prices and
14 the CO-2 would give us an indication, the model would
15 say, oops, it's no longer economic because of the
16 CO-2, but the model doesn't say, okay, now I have to
17 cut it by 25 percent, no. My model, our Duke model
18 does not do that; the fundamental model does. That's
19 why they have different curves because of the CO-2
20 regulation. That's exactly what I mean, yes.

21 Q. Okay. And have you reviewed specifically
22 the CO-2 prices in the model?

23 A. Once again, I did not make a model run,
24 but I have a general idea of the CO-2 prices.

25 Q. Okay.

1 A. I think it's probably in the 20-,
2 40-dollar range, which --

3 MR. OLIKER: You may want to put that in
4 the confidential.

5 THE WITNESS: I think everybody knows
6 that.

7 MR. OLIKER: Okay.

8 MS. BOJKO: Could you put your mic closer
9 to you. You're trailing off.

10 THE WITNESS: Oh, I'm sorry.

11 MS. BOJKO: Thank you.

12 Q. Once again, you did not review the
13 models -- the fundamental curves for purposes -- you
14 didn't specifically evaluate the fundamental curves.
15 I think you stated earlier you were not personally
16 involved in that evaluation.

17 A. Once again, I emphasize that's not my
18 job. My job is do what I do, but I trust that Duke
19 have the professionals that they have the necessary
20 expertise, they have the best interest of the
21 customers in mind where they would spend time with
22 the consulting firm, they would appropriately examine
23 all the assumptions, make sure they are reasonable.
24 When we receive the curve, they will look at the
25 curves just to make sure all things are correct. So

1 that's just not my -- my point. So I am not
2 personally involved in the determination of the
3 curves.

4 MR. OLIKER: At this point, your Honor, I
5 would move to strike his answer because the witness
6 does not have the capacity to testify what somebody
7 else would do.

8 EXAMINER PIRIK: Overruled.

9 Q. Dr. Zhang, you're not familiar, are you,
10 with the different costs of operation at the two OVEC
11 plants, Kyger Creek and Clifty Creek?

12 A. No. I do not have the detailed
13 knowledge. I only have general knowledge. Once
14 again, because we have the base model where we model
15 MISO and we also model PJM. So they have the --
16 generation units are public information, you know
17 that, right? So in terms of heat rate, the average
18 heat rate, all those information, they are publicly
19 available. In that sense, I would say I have general
20 knowledge, but I don't claim that I know the details,
21 no, I do not.

22 Q. You're talking about historic heat rates
23 there, not their forecasted heat rates; is that
24 correct?

25 A. I don't think there is a big difference,

1 plus/minus 5, 10 percent.

2 Q. And you haven't evaluated the fuel costs
3 that are incorporated into OVEC's forecast to
4 determine whether they are consistent with the fuel
5 costs that are reflected in the fundamental curves,
6 have you?

7 A. No. I emphasize fundamental curve is one
8 set.

9 Q. Is what?

10 A. Is one -- it's entirety. So when you say
11 "fundamental curve," you just mean power curve. When
12 they give us the fundamental curves, it's all the
13 curves tied together. We have the fuels, not just,
14 for example, NYMEX, they have all the fuels we have
15 our plants burning. They have the gas. They even
16 have capacity. So all things are in there. So
17 that's why we call them kind of a -- it's a package.
18 They don't want to pull things around and just give
19 us power curves, then we will be tricking ourselves
20 because the assumptions are disconnected. No, they
21 have the whole thing tied together.

22 Q. Who has the whole thing tied together?
23 The consultants?

24 A. The consulting firm, yes. When Duke
25 receives the curves and, once again, I may be

1 repeating myself too much, they don't give us just
2 one curve. They give us the whole set of curves
3 including fuel, for example, coal, gas, everything.
4 So that's why I kind of keep saying this because
5 that's the only way you make everything consistent.

6 Q. But I think you earlier stated you rely
7 on OVEC's information and that OVEC's information
8 that's provided to you includes their estimate of
9 fuel costs.

10 A. Once again, you know, I think I have a
11 pretty good memory. When I told you that, I said two
12 things. No. 1, is I'm pretty sure what the
13 production run, the short-term and medium-term, the
14 three-year, two-year. I'm very confident we entirely
15 rely on their projections. For longer term, I
16 remember I said that they may or may not have
17 provided us information. It's subject to check, but
18 I don't know.

19 Then I said, second thing I said I'm
20 pretty sure all the curves are reflected, including
21 the fuel costs, the CO-2 costs. I may not have said
22 it in that kind of pattern, but I think that's what I
23 made clear. Short-term, medium term, yes, they give
24 us. But longer-term I said is subject to check. So
25 they may or may not have.

1 But I'm pretty confident our guys and my
2 team, just because we just did a transaction and we
3 did it a number of transactions in the past, and I
4 know when we do variations, how we check all the
5 curves to make sure, so that's why I kind of know.
6 But for this particular model run, I was not
7 personally involved, but I'm pretty confident.

8 Q. Do you see -- would you turn to page 36
9 of your transcript of your deposition.

10 A. Sure.

11 Q. Do you see on page 36, at line 3 where I
12 asked you "And how does fuel cost relate to costs of
13 goods sold"?

14 If you go down to line 18 of your answer
15 there where -- where you said "So the reason, once
16 again, I'm not the person to answer this is because
17 he may be using other things. For example, for OVEC,
18 we do not have the fuel costs; rather, we just have a
19 projected number on a dollar-per-megawatt-hour basis
20 from OVEC, I believe." Do you -- do you have more
21 knowledge today regarding this subject matter than
22 you did when you testified at your deposition?

23 A. No. I don't believe so. I have the same
24 knowledge. Let me say two things. For example, I
25 say the "For example, for OVEC, we do not have the

1 fuel costs" from them, that's true, we don't have.
2 And we have the projected dollar number from OVEC,
3 which means this is for the medium term.

4 And I also had other places, I don't know
5 where it is, but I said I don't know where it's from,
6 but it's subject to check. I have the same
7 understanding, once again only for the medium term,
8 maybe up to three years, maybe up to five, which,
9 actually, on that I'm not positive, maybe just three
10 years. But beyond that, I said it's subject to check
11 because I don't know.

12 But I'm pretty sure we have the fuel
13 curves and the CO-2 curves in the fundamental curve
14 as one set. They should be tied together whenever
15 the model run is done. No matter for this purpose or
16 for the transaction we just had done.

17 MR. BERGER: Thank you. That's all I
18 have in the public record, your Honor.

19 THE WITNESS: Thank you.

20 EXAMINER PIRIK: Ms. Hussey?

21 MS. HUSSEY: Thank you, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Hussey:

25 Q. Okay. Dr. Zhang, I would like to go

1 through a couple of issues with you that you
2 discussed with Mr. Berger. You discussed that the
3 model has the cost of CO-2 included in the
4 fundamental curves, so the price for CO-2 would be
5 included therein. So when you discussed the CO-2
6 cost, specifically what are you talking about?

7 A. I believe the information I was talking
8 about is the CO-2 curve. So kind of -- they make
9 that as a treatable commodity. Whether or not and
10 how is that done, I don't know, but they have the
11 CO-2 cost on a per-ton basis based on the reduction
12 requirement and all other things which is the
13 information that I have seen before, I have seen
14 before, yeah.

15 Q. Okay. So we are talking about the costs
16 associated with CO-2 emissions?

17 A. That's right.

18 Q. Okay. Thank you.

19 So, to your knowledge, do
20 environmental-control investments in generating units
21 have an impact on the cost of generation?

22 A. That's a very difficult question. I
23 would say, yes or no. So yes, in the sense it may
24 have impact on the -- are you talking about the fixed
25 costs, right? Or the variable cost?

1 Q. Why don't you answer both for me if you
2 are able to do so.

3 A. Yeah. First of all, you need to spend
4 money, you have the investment, that's the capital,
5 and also there is O&M related because you have to,
6 you know, stop, make outages, all those kind of
7 things.

8 But it also has impact on a variable part
9 which once you have the equipment installed, you have
10 certain chemicals you need to put in there for it to
11 work, no matter is FGD or SCR. So, as a result, that
12 number could be very small, 20 cents, a dollar, which
13 I don't know. So in that sense, yes, it has impact,
14 but specifically I don't know. I'm not the right
15 person to answer that, yeah.

16 Q. Okay. And is it accurate to state that
17 the CBM provides an economic valuation of Duke's
18 generation into the future?

19 A. I would say -- I wouldn't say it's
20 economic valuation. It's only the model, the CBM
21 model, is not -- in terms of the generators, we are
22 not trying to evaluate how much is it worth, for
23 example, if someone come and buy it.

24 But, rather, just on a kind of an
25 hour-by-hour, month-by-month basis what kind of cost

1 we're projecting, just on the generation side, the
2 variable part, just fuel and all the other variables,
3 and also the revenue that you get from the market.

4 So it's not really taking into
5 consideration of tax issues and all the interest, all
6 the other cash flow, discounting, so that's why I
7 wouldn't call it a valuation model. It's a model
8 that projects based on optimization on hour-by-hour
9 basis.

10 Q. Okay. Then would it be accurate to say
11 the model determines what margins can be realized
12 from the OVEC generation during the modeling period?

13 A. I would say for the margins to be
14 expected, yes.

15 Q. Okay. And forgive me, we've talked about
16 several different documents, but what was the period
17 of time that was actually modeled?

18 A. You mean for OVEC?

19 Q. For OVEC.

20 A. Oh, actually I just know it's for a very
21 long term. It covers up to 20 -- from 2015 to 2018
22 and 2019 up to, I don't know, 2025. I don't know the
23 specific term for this one. I'm not involved in
24 this.

25 Q. Okay. So specifically to your

1 understanding then you've modeled through 2025, 2024?

2 MS. KINGERY: Objection. The witness
3 just said he didn't know.

4 A. I didn't know. I was given this. I can
5 see this. I guess I can read this right here. So
6 '25, yeah.

7 Q. Okay.

8 MS. KINGERY: Let the record reflect that
9 he just read the piece of paper. He said he didn't
10 know and he was just reading what was on the piece of
11 paper.

12 EXAMINER PIRIK: We can let the witness
13 answer if he can.

14 Q. And to your knowledge was this only
15 modeled through 2024 or was it modeled through 2040
16 which is what the company has proposed for the rider
17 that's associated with it?

18 A. I said I don't know.

19 Q. You don't know. Okay. Thank you.

20 And we just discussed the period that was
21 actually modeled. Were you asked to model any
22 shorter or longer periods of time for these units?

23 A. As I have said before, we model this
24 every day in our production run so we don't really do
25 specific special runs for this necessarily. And our

1 daily transaction includes all of the units we have
2 including this particular, I don't know, is this the
3 PPA or contract, it's all modeled in our production
4 run. So every day, after the market closes, the
5 model will be run.

6 But also for planning purposes and
7 budgeting purposes, they also take a particular run
8 of any particular day, but they don't anything
9 special. So that's why I'm saying they don't really
10 necessarily value this kind of in a special way. It
11 is in there, yeah.

12 Q. Okay. And forgive me if I wasn't clear,
13 I'm asking about the term for the model. So were you
14 asked to model any shorter period of time than what
15 you modeled or any longer period of time than what
16 you actually modeled?

17 A. You mean for this particular case?

18 Q. For this particular, yeah, for this --

19 A. Yeah, it's longer than our production
20 run.

21 Q. And you were -- were you asked to model
22 that longer period of time?

23 A. We were asked to provide the output for a
24 term that is longer than the production run every
25 day, that is correct, yeah.

1 Q. Okay. How frequently do you or your team
2 look back and determine how well the model performed?

3 A. Our team do that on their own from time
4 to time.

5 Q. Okay. Do you --

6 A. The corporation has a quarterly
7 back-testing requirement, yes.

8 Q. Okay. So corporate policy would be a
9 quarterly review?

10 A. That's right.

11 Q. But you do that, from time to time, based
12 on what you feel might be necessary, your team?

13 A. Based on, I think, the front office
14 requirement, and also sometimes just our people,
15 professionals, they want to check whether or not, for
16 example, the patterns have changed, the output would
17 be consistent with the market change.

18 For example, if the coal price went up,
19 if the model is showing that we are producing more,
20 then they would say, okay, something going on. Then
21 they would check, so that's what I mean.

22 Q. Thank you.

23 And have you previously performed any
24 analysis regarding the deviation experienced from the
25 models -- or, excuse me, the deviation from the

1 models that have been run to project margins from
2 electric generation?

3 A. For?

4 Q. For this particular --

5 A. No.

6 Q. -- these OVEC units.

7 A. No. This -- we just provided the model
8 runs. We were not updating the model runs if that's
9 what you are asking.

10 Q. What about a look-back, though, is what I
11 am asking. In the past have you performed any
12 analysis to perform how -- see how well this model
13 has performed?

14 A. You mean for this particular longer --
15 long term?

16 Q. No, for past quarters.

17 A. Yes, we have.

18 Q. Okay.

19 A. Yeah.

20 Q. And to the extent that it is not
21 confidential, what were the results associated with
22 that analysis?

23 A. So far, since the implementation of the
24 policy, we have not had violations, so within the
25 level of tolerance.

1 Q. Okay. And can you explain what the level
2 of tolerance is or if it's a certain percentage
3 threshold?

4 THE WITNESS: Is that okay?

5 MS. KINGERY: I actually don't know
6 whether that's public or not. I would say it's
7 probably better to wait until the confidential
8 record.

9 MS. HUSSEY: That's fine.

10 Q. Dr. Zhang, are you familiar with the
11 proposed Clean Power Plan?

12 A. No.

13 Q. Okay. Assuming that additional
14 environmental controls become necessary for the OVEC
15 units in the relatively near future, would you expect
16 the results yielded by your model to change?

17 A. Can you repeat that again?

18 Q. Sure. I am asking you to make an
19 assumption.

20 A. Sure.

21 Q. So assuming that additional environmental
22 controls become necessary for the OVEC units in the
23 near future, would you expect the results yielded by
24 your model to change?

25 A. Most likely, yes. But I can't really say

1 for sure because if that requirement changes --

2 Q. I'm sorry. Could you repeat that last
3 bit?

4 A. If, for example, the requirement
5 changes --

6 Q. Okay. Thank you.

7 A. -- the market might also change. So
8 that's why I'm saying most likely, yes. But also
9 depending on how the other things will change, the
10 market might make changes also, so.

11 Q. Okay. And would the model need to be
12 redesigned in any way?

13 A. No.

14 Q. Okay. Would inputs need to be added or
15 changed?

16 A. Yes.

17 Q. And I'm just looking for a "yes" or "no"
18 answer here. I don't need you to elaborate because I
19 think that will be most likely confidential, but in
20 the wake of the proposed Clean Power Plan, which I
21 understand you aren't necessarily familiar with, in
22 light of the fact that carbon or CO-2 regulations
23 have been proposed, have you done any analysis of how
24 your model will need to be changed -- excuse me, how
25 the inputs will need to be changed?

1 A. As I said before, when we have the
2 fundamental curves, they give us the entire set of
3 the curves which included the CO-2 prices. So the
4 model already has the function of taking into
5 consideration all the cost components. It's just a
6 matter of, for example, mercury, we have no cost in
7 there but there is a calculation, and as soon as you
8 have the cost information in there, the model would
9 take in.

10 Same thing for CO-2. Even for now, if we
11 look at our model, the model actually does a CO-2
12 calculation cost, but it just treat it as zero
13 because it is zero. But the functions are there.

14 To come back to your question, no, you do
15 not change the model because the model has been
16 upgraded over the 15 years to reflect all those
17 features, but you do need to change the input if
18 there is a new set, yes.

19 Q. Okay. So assuming -- and I am asking you
20 to make the assumption that CO-2 prices spike, that
21 would be reflected already in the fundamental curve
22 and thus the output would likely -- or, the results
23 under your model would change subject to the change
24 for the upward change in CO-2 costs?

25 A. Most likely. Once again, it depending on

1 all the other things, for example, what kind of
2 impact would that have on the power curve because it
3 would stretch out the retirement, all those things.
4 When I say "retirement," I don't mean my retirement,
5 I mean the retirement of the units. So that's why I
6 said "most likely," but I don't know. I'm not the
7 expert on the fundamental curves.

8 MS. HUSSEY: Okay. Thank you. That's
9 all I have.

10 THE WITNESS: Thank you.

11 EXAMINER PIRIK: Ms. Bojko.

12 MS. BOJKO: I have no questions. Thank
13 you.

14 EXAMINER PIRIK: Mr. Boehm.

15 MR. K. BOEHM: No questions.

16 EXAMINER PIRIK: Mr. Oliker.

17 MR. OLIKER: Thank you, your Honor.

18 Before I get started, parameters of
19 confidentiality, because there's been a discussion
20 earlier about if we are talking trends versus actual
21 numbers, I want to know where the line is before I
22 set my questions.

23 MS. KINGERY: Trends in what?

24 MR. OLIKER: If I am talking about
25 increases in specific years as opposed to actual

1 numbers, is that confidential, or decreases?

2 MS. KINGERY: If you're talking about
3 general questions, I think that's not confidential.
4 If you are talking about what the assumptions are in
5 running the model, so upward assumptions in fuel
6 costs, so inputs.

7 EXAMINER PIRIK: I think he is also
8 asking about directional, up, down, jump, lower,
9 those types of directional terminology.

10 MS. KINGERY: Right. So those, I think,
11 we've said are confidential if we're talking about
12 things that are inputs to the model or outputs from
13 the model. But not if we're talking about what ended
14 up in that cash flow line.

15 MR. OLIKER: Okay.

16 MS. KINGERY: So the cash flow line was
17 okay to talk about direction or numbers. But the
18 rest of the analysis we weren't going to talk about
19 direction.

20 MR. OLIKER: So if I talk about output or
21 market prices at all and their direction, then that
22 would be confidential.

23 MS. KINGERY: Correct.

24 MR. OLIKER: Just wanted to clear that up
25 before I get started.

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1 EXAMINER PIRIK: That's very good.

2 MR. OLIKER: Thank you.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Oliker:

6 Q. Good morning, Dr. Zhang.

7 A. Good morning.

8 Q. Just a few questions. My name is Joe
9 Oliker and I represent IGS Energy.

10 A. Hi, Joe.

11 Q. Just, I think you've talked about this
12 before, but the commercial business model, it's a
13 mathematical model, correct?

14 A. Actually, I said it is not just a
15 mathematical model. It's a combination of Stochastic
16 calculus and operational features.

17 Q. But it's all based on calculations, it's
18 all numbers, right?

19 A. No. The process is simulations, yeah.

20 Q. Okay. And you are not an expert on PJM
21 rules, correct?

22 A. No, I am not.

23 Q. Okay.

24 A. Generally aware of it, but, no, I believe
25 not.

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1 MR. OLIKER: Jeanne, questions about any
2 of the assumptions specifically are confidential?

3 MS. KINGERY: Yes, assumptions.

4 MR. OLIKER: Okay.

5 Q. I think this was talked about earlier, I
6 just want to be clear, the commercial business model
7 does not place any limitations on the amount of
8 output that a generation unit can produce, correct?

9 A. I don't know what you mean, it's physical
10 limit.

11 Q. For example, it assumes relationships
12 between market prices and cost of production, but it
13 doesn't assume any limitations on specific amounts of
14 megawatt output, correct?

15 A. Not anymore. In the past, when there it
16 was -- before MISO Day 2, the model had the so-called
17 market depth assumptions, meaning, for example, the
18 off-peak hour, the company can sell -- cannot sell
19 more than 2,000 megawatts, for example, in a
20 particular hour, but now since the PJM, really has
21 the market depth is really infinite. It always
22 clears, so no matter how, right, so that's why you
23 don't have up to the limit of the full capacity.
24 That's the limit, yeah.

25 Q. Okay. So I think we're really -- I think

1 you said what I was saying. So if the model assumes
2 there is a margin between cost of production and the
3 clearing -- and a market price, the unit will clear.
4 It doesn't assume any other factors would prevent a
5 unit from dispatching, correct?

6 A. Once again, you know, if you are talking
7 about this generally, I would say that's not entirely
8 true because there is a commitment decision first.
9 And I say that because if you are talking about a
10 model in our units, there is a forward and
11 back-and-forth looking. The model does not look at
12 it as oh, this hour, I am making money, and so,
13 hence, I'm going to run. No.

14 The model will look at the next, for
15 example, for one unit, I don't want to mention the
16 name, but the next 172 hours, and is saying if I run
17 for the next 172 hours we will make money. Or if I
18 turn it off in hour 173, the cost of start-up can be
19 recovered. The model will take that into
20 consideration to make the commitment decision first.
21 Then, once the unit is committed on an hour-by
22 hour-basis, the model will kind of set the megawatt
23 level based on the incremental cost.

24 So, for example, if the model is already
25 committed, but on an off-peak hour, you are losing

1 money, the model would not turn the unit off. The
2 model would say I would have to ramp this down, as
3 far down as I can, based on the speed -- by the way,
4 the model does also model the ramp rate on a
5 per-every-5 minute basis. The model will push it
6 down to the lowest level it can based on the speed of
7 ramping.

8 So I just want to make sure you don't
9 think that our model is turning the unit off and on,
10 no. We don't do that. It's much more sophisticated
11 than that. It's a dynamic optimization model.

12 Q. Thank you for that answer, Dr. Zhang, but
13 I don't think that answered my question.

14 A. Okay.

15 Q. My question is, for example, if -- if
16 Ohio had specific limitations on the amount of output
17 that a coal plant can produce, your model would not
18 reflect those limitations, correct?

19 A. Our model is capable of doing that.
20 Actually, we -- can I --

21 Q. But your model doesn't do it now,
22 correct?

23 A. We don't require it to be now.

24 Q. Thank you.

25 A. But we did do that for North Carolina in

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1 their national -- I don't know the term, what is it,
2 something legal. We do studies for them. If you
3 have a hard cap on CO-2 or on SO-2, the model that
4 you have -- by the way, we have that capability. It
5 can be turned on, yeah.

6 Q. You might -- you might not want to lose
7 that capability.

8 You said this earlier, I think, you are
9 not an expert in environmental rules at all, correct?

10 A. No. I am generally aware of it, but no.

11 Q. And historically, when Duke Energy Ohio
12 owned its generation fleet and now when the
13 generation fleet is in Duke Energy Corporation's
14 possession, the commercial business model has been
15 the tool that Duke Energy Ohio and Duke Energy
16 Corporation has used to estimate the margins of the
17 midwest generation fleet.

18 A. Actually, I don't quite get that
19 question.

20 Q. Okay. Let's break it up into parts.

21 A. Yeah.

22 Q. Until very recently, Duke Energy Ohio
23 owned several generating assets, mostly coal, but
24 there was also the Duke Energy North America gas
25 assets, correct?

1 A. No. So the reason I hesitate is because
2 there is a transfer, so.

3 Q. I understand that.

4 A. You know what I mean? DEO versus DECAM.

5 Q. Let's take it more globally. There is
6 generating assets that are currently owned by Duke
7 Energy Corporation, but they used to be owned by Duke
8 Energy Ohio. Now, the commercial business model
9 would be the tool that is used to estimate the cash
10 flows, the margins of those generating units,
11 correct?

12 A. It could.

13 Q. Okay.

14 A. It could have been, yeah. But they
15 also -- once again, I hesitate. A lot of time we
16 invite outside firms to conduct assessment of margins
17 of our units and all that. So I don't want to --
18 yeah, so. It could. It could have, yeah.

19 Q. And I think you touched on this, you
20 agree that Duke Energy Corporation has entered in a
21 definitive purchase agreement to sell the midwest
22 generation fleet to Dynegy?

23 A. I'm aware of that.

24 Q. And although the sale included Duke's
25 profitable gas assets, you agree that Duke has

1 written -- taken an accounting impairment in that
2 sale of over a billion dollars?

3 MS. KINGERY: Objection. This witness
4 has already said he is not an accounting expert and
5 he most certainly was not subpoenaed to talk about
6 the issue that Mr. Olier is raising at this point.

7 EXAMINER PIRIK: I'll allow the question.

8 A. Once again, I read it in the news just as
9 you have, but I don't know how the number is being
10 calculated, so that's -- that would be my answer.

11 Q. And only if you know, you would agree
12 that an impairment is when the forecasted cash flows
13 of a unit will not recover the embedded cost of a
14 unit.

15 MS. KINGERY: Again, I am going to
16 object. Dr. Zhang has stated repeatedly that he is
17 not an accountant and he's -- he's here as an
18 economist and as the architect of the CBM.

19 MR. OLIER: I just want to know if he
20 knows.

21 EXAMINER PIRIK: Overruled. If he knows.

22 A. Actually, I wouldn't be able to tell you
23 that because the accounting rules are becoming more
24 and more complicated.

25 MR. OLIER: Your Honor, I think my

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1 remaining questions are probably better left for the
2 confidential transcript.

3 Thank you, Dr. Zhang.

4 THE WITNESS: Thank you.

5 EXAMINER PIRIK: Ms. Kingery.

6 - - -

7 CROSS-EXAMINATION

8 By Ms. Kingery:

9 Q. Dr. Zhang, I believe you were asked
10 yesterday by Mr. Berger about whether Mr. Dougherty
11 had provided you with a different set of assumptions
12 on which he wanted you to run or somebody in your
13 department to run the CBM, and you had indicated
14 that, no, he -- you don't run the CBM on different
15 assumptions. Is there any circumstance in which you
16 would use different assumptions?

17 A. I don't quite --

18 Q. Do you ever change the assumptions on
19 which the model runs?

20 A. If, for example, someone is telling me
21 there is a situational change and they want me to
22 evaluate what that change will be, what kind of
23 impact will that have, then, yes, I would call that a
24 test CBM, test run, yes, we do that. But we don't do
25 that for any official estimation of variations.

1 Q. Would it distort the integrity of the
2 output if you were to change the assumptions on which
3 it runs?

4 A. Absolutely, yeah.

5 Q. A few minutes ago you were asked by
6 Ms. Hussey about Mr. Dougherty's request for a run of
7 the CBM and how long he had requested that it be run
8 for. Do you recall that line of questioning?

9 A. Yes, I do.

10 Q. And were you personally involved with
11 receiving that request from Mr. Dougherty?

12 A. No.

13 Q. And did you hear from any of your direct
14 reports who might have run -- performed the run,
15 about what that request was?

16 A. Yes.

17 Q. So you were personally aware of the time
18 period that he requested at that time.

19 A. No. I just know there was a request.

20 Q. Okay. But you did not at the time hear
21 he's requested for X period of years?

22 A. That's correct. I want to emphasize, you
23 know, our practice at Duke Energy, especially I think
24 in the midwest, are what we call the "everything
25 follows from the cost -- the policy and control,"

1 it's basically we have a process that is basically
2 implemented so that we don't rely on particular
3 individuals, so to avoid bias, any bias that people
4 may have. So if people want to have information from
5 the CBM, they can have confidence just go to the
6 model themselves, the interface, or go to the people
7 who run the model to make requests, they know
8 everything will be in sync.

9 MS. BOJKO: Objection, your Honor. He
10 went well beyond the scope of the question and
11 gratuitously added a whole bunch of policy
12 information that wasn't requested by Ms. Kingery.

13 EXAMINER PIRIK: Overruled.

14 MS. HUSSEY: Your Honor, briefly, I just
15 wanted to clarify, I object just to the extent that I
16 don't believe I brought Mr. Dougherty's name up
17 whatsoever when I asked you those questions. I just
18 want to make that clarification for the record.
19 Thank you.

20 EXAMINER PIRIK: We'll have recross.

21 Q. And last question. Yesterday, there was
22 some talk with Mr. Berger about the accuracy of -- of
23 the CBM, and I believe I heard you say that the goal
24 of the CBM is not forecasting or predicting. Do you
25 recall that?

1 A. Yes.

2 Q. If it's not intended to forecast or
3 predict the future prices or -- or volumes or the
4 margins, what is it intended to do if it's not
5 forecasting?

6 A. Okay. I think the main purpose is to
7 tell you what is -- what action you should take today
8 because you have access to the market. Even though I
9 am talking about for the next three years, but I can
10 actually transact today on the market. So the model
11 give you what your position should be on all the
12 commodities. So which means even though I don't know
13 what exactly will happen, but I know what people are
14 transacting at for the next three years. So I can
15 actually lock in my margin, if I want to. That's
16 purpose No. 1.

17 Purpose No. 2 is to give you the fair
18 assessment that a particular time, based on a
19 particular set of inputs, what is the unbiased, most
20 reasonable expectation you should have.

21 Q. So let me see if I understand. So rather
22 than saying I believe that three years from now the
23 margins will be X, what the model would say is -- and
24 I think you've used the term "probabilistic," so what
25 the model would say is what is most likely is X.

1 A. That's right.

2 Q. And that's why you've said that it's not
3 predicting the future.

4 A. That's correct.

5 MS. KINGERY: Okay. Thank you for that
6 clarification.

7 I have nothing further, your Honor.

8 EXAMINER PIRIK: Thank you.

9 Mr. Berger -- staff?

10 MR. BEELER: Nothing. Thank you.

11 - - -

12 RE CROSS-EXAMINATION

13 By Mr. Berger:

14 Q. Dr. Zhang, saying that something is most
15 likely in the future, you don't think that that's a
16 forecast?

17 A. No. That's not a forecast.

18 Q. Okay.

19 A. Can I give you -- once again, give an
20 example?

21 Q. I'm not going to ask for an example right
22 now. I guess you and I just have a difference in
23 viewpoint of what a forecast is.

24 A. I think I am -- I insist. I think this
25 is really important.

1 MR. OLIKER: I don't think that was a
2 question.

3 EXAMINER PIRIK: I think we need to focus
4 on the questions. Go ahead, Mr. Berger.

5 MR. BERGER: Thank you.

6 Q. In terms of whether Mr. Dougherty,
7 Dr. Zhang, conducted a production run or a CBM test
8 run, did you confirm with your -- your directors that
9 it was, in fact, just a production run and not a CBM
10 test run?

11 A. Two things. No. 1 is it's probably not
12 my direct report because once again, you know, my
13 direct reports have people working for them, so this
14 is probably someone who work for my direct reports.

15 Having said that, I have confidence that
16 we have the process control in place so whoever is
17 making the model run, it doesn't matter if it's A or
18 B. They have done the same thing that he is supposed
19 to do. That's No. 1.

20 No. 2, I don't think anyone can come to
21 us and give us a set of inputs. I told you before,
22 he can only say I need this. And if we don't have
23 the necessary market information, we will go for the
24 market fundamental information. So that's why I'm
25 saying that.

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1 No. 3, he did not make that model run.
2 He just requested the information from the model, but
3 he did specify the term.

4 Q. Well, and my question was simply did you
5 confirm with somebody, whether it's a direct report
6 or somebody who works for a direct report, that it
7 was, in fact, just a production run? Did you confirm
8 that?

9 A. Okay. Can I emphasize if it is a
10 production run, it's in the system. You can repeat
11 the run. Nobody is changing anything so I don't need
12 to confirm. You know, once again, I am not a big
13 shot like Mr. Chuck Whitlock, but if I were to check
14 every run, do you know how many pricing deals we do
15 on the retail side?

16 Every day, thousands of them. And also,
17 all the other model requests that we have, every day,
18 10, 20, 30. Then I would not be able to do anything
19 else, even if I spent my entire time on it, I
20 probably would make mistakes -- will be making
21 mistakes, so that's why we have the process in place,
22 policy in place, so that everybody follow the same
23 thing.

24 They don't have to report to me oh, by
25 the way someone asked me to do this. No, they don't

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1 have to do that. I have confidence that whatever
2 they do is in the books and they are following the
3 books.

4 Q. And in terms of that, "following the
5 books" means if there is a CBM test run that you
6 earlier referenced does happen, to test a situation
7 that somebody wants to know about, well, what would
8 be the effect of this -- if this was, in fact, the
9 case rather than what's in the model.

10 A. Okay.

11 Q. All I am trying to ask is whether you
12 know that, in fact, the run that was done was simply
13 a production run and not a test run.

14 A. Okay. First of all, it is longer than
15 five years. It cannot be production run because a
16 production run only covers five years. If it goes
17 beyond five years, it's not a normal production run.

18 But, however, I wouldn't call it a "test
19 run" because a test run, as I just indicated, meaning
20 someone is discussing the potential change with me or
21 with my team. They want to see what impact that
22 would have.

23 But this is not a test run. Test run,
24 once again, you are trying to figure out what kind of
25 technical change that you want to have on fuel and

1 other things. And Mr. Dougherty, he cannot do that.
2 And he is not really in the business of doing it.
3 It's only the operation people, fuel guys, they do
4 that to test the water of a particular new strategy.
5 So he would have to only be able to make the request.

6 So that's really two things. No. 1, if
7 it was beyond five years, it is -- it is not a normal
8 production run, for the term is out of the five-year
9 window. But the five-year window is the same.

10 But for the five year and beyond, it's a
11 new run. It's not a production run, but it's a run
12 that's based on the inputs of the corporation. It's
13 not a test. So that's why I want to emphasize the
14 different -- there is a difference. It's not a test
15 run.

16 MR. BERGER: Thank you. That's all I
17 have on the public record on redirect. Thank you.

18 EXAMINER PIRIK: Thank you.

19 Ms. Hussey.

20 - - -

21 RECROSS-EXAMINATION

22 By Ms. Hussey:

23 Q. Mr. Zhang, you just spoke with
24 Ms. Kingery about a probabilistic model, and I wonder
25 if you can draw the comparison for me. Would you say

1 that the information that we have in IGS-POD-01-003,
2 which you have before you which I believe is OCC
3 Exhibit 4a, would be akin to a snapshot in time of
4 what you expect to happen over the term that's
5 reflected here?

6 A. That's fair, yeah.

7 Q. And do you know exactly when this
8 snapshot, so to speak, was taken?

9 A. I don't know the exact dates.

10 Q. Okay. Approximately when, do you know?

11 A. Actually, I don't know the exact dates,
12 no.

13 Q. I'm sorry, I didn't hear that.

14 A. I don't know the exact dates.

15 Q. Okay. So if one of the inputs into this
16 model significantly changes, would you expect the
17 results yielded by your model would likewise change?

18 A. Most likely, yes.

19 MS. HUSSEY: Okay. Thank you. No
20 further questions.

21 EXAMINER PIRIK: Ms. Bojko.

22 MS. BOJKO: No questions, your Honor.

23 EXAMINER PIRIK: Mr. Boehm.

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

25 EXAMINER PIRIK: Mr. Olikar.

1 MR. OLIKER: Just very briefly, your
2 Honor.

3 - - -

4 RECROSS-EXAMINATION

5 By Mr. Olikar:

6 Q. Mr. Zhang, you spoke with Ms. Kingery
7 about the use of the model estimating the future to
8 transact today, correct?

9 A. Yes. The purpose No. 1, yes.

10 Q. Okay. And so, let me ask you a
11 hypothetical. Assuming Duke Energy Ohio were to sell
12 its generating assets for \$2.8 billion, but it
13 believes that the necessary forecasted cash flows for
14 those generating assets to recover their fixed costs
15 is \$3.8 billion. Would you agree Duke has made a
16 decision today that its generating assets have a
17 negative cash flow of a billion dollars?

18 A. You lost me.

19 MS. KINGERY: I impose -- interpose the
20 normal objection that it's assuming facts not in the
21 record.

22 EXAMINER PIRIK: It's a hypothetical.

23 A. So can you repeat that again?

24 MR. OLIKER: Could you read it back,
25 Karen?

1 Q. Maybe I will just ask it again, maybe it
2 will be quicker. Dr. Zhang, would you agree if Duke
3 sold its generating assets for \$2.8 billion, but the
4 amount of cash flow necessary to cover all the fixed
5 costs of those generating assets was \$3.8 billion,
6 would you agree that Duke has made a decision today,
7 in a transaction today, that shows that those
8 generation assets have a negative cash flow of a
9 billion dollars over their life?

10 A. Once again, you say "cash flow" because
11 discounted versus undiscounted, you know.

12 Q. Take the hypothetical either way.

13 A. Yeah.

14 MS. KINGERY: I would just note again
15 this is outside the scope of the --

16 EXAMINER PIRIK: Overruled.

17 A. When you say "cash flow," it typically
18 means the flow at the time, right? So when you --
19 are you talking about just right now? Because when
20 you say re -- \$3.8 billion to recover, is that right
21 now 3.8 billion or over time? So that's why I keep
22 saying, you know, I don't really know, because I
23 don't know what you are trying to get at on this one,
24 because I cannot really say all the future costs,
25 summed together, 3.8, compare with the cash, 2.8

1 billion today. That's not a comparable.

2 Q. Assuming a discount factor is built in.

3 A. Then there is \$1 billion short.

4 MR. OLIKER: Okay. Thank you. That's
5 all the questions I have, your Honor.

6 Thank you, Dr. Zhang.

7 EXAMINER PIRIK: Ms. Kingery.

8 MS. KINGERY: Thank you. Just one.

9 - - -

10 RECROSS-EXAMINATION

11 By Ms. Kingery:

12 Q. Dr. Zhang, I am still a little bit
13 confused about the difference between a forecast and
14 a prediction of the future. I believe you were
15 talking with Mr. Berger and you had an example that
16 you were going to provide.

17 A. Yes, sure. So when you have a particular
18 set of information today, you want to see what's
19 going to happen, for example, one year from now or
20 five years from now, the best we can do is what is
21 the most likely scenario that you believe will
22 transpire which we call either the expected or the
23 P50. So there are other situations that are also
24 likely to happen, but it would be more or less, but
25 this is the most likely.

1 Q. And that is what is -- that's the output
2 from the model.

3 A. That's true. That's right.

4 MS. KINGERY: Okay. Thank you.

5 THE WITNESS: Thank you.

6 EXAMINER PIRIK: Staff?

7 MR. BEELER: Nothing, your Honor.

8 EXAMINER PIRIK: Go into the confidential
9 record.

10
11 EXAMINER PIRIK: Mr. Berger.

12 MR. BERGER: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION (Continued)

15 By Mr. Berger:

16 Q. Dr. Zhang, the weather simulation part of
17 your model is based on (Confidential)
18 weather data at (Confidential) locations in order to
19 develop a forecast of weather; is that correct?

20 A. Approximately (Confidential), yeah.

21 Q. And the forecast is developed for -- it
22 forecasts weather on an (Confidential) going
23 forward; is that correct?

24 A. I want to say again it's a simulation,
25 not a forecast. That's why you have many scenarios,

1 yeah.

2 Q. It simulates weather on an (Confidential)
3 basis going forward, correct?

4 A. That's correct.

5 Q. Okay. And if you look at
6 IGS-POD-01-003 --

7 EXAMINER PIRIK: Mr. Berger, do you think
8 you can say OCC Exhibit 4a?

9 MR. BERGER: OCC Exhibit 4a. Thank you.

10 Q. And do you see the change in generation
11 volumes reflected between 2018 and 2019 of
12 approximately a (Confidential)-percent (Confidential).
13 Do you see that?

14 A. What page are you on?

15 Q. The first page.

16 A. The first page, okay.

17 Q. Do you see that (Confidential), 2018 to 2019?

18 A. Yep, I see that.

19 Q. Is it your understanding that the primary
20 reason for that (Confidential) is the change from the
21 forward-market prices in the observable market, to
22 the fundamental energy prices in that -- that were
23 developed by Duke's outside consultant?

24 A. That's largely true, yes. The
25 fundamental curve covers 2019 and beyond. And the

1 power price is (Confidential) because of the CO-2
2 regulated issues which I am not an expert of, there
3 was a pattern change between (Confidential),
4 yes.

5 Q. That -- is that your belief or did you
6 specifically evaluate it, that that was the reason
7 for the change?

8 A. That's the factual change based on the
9 input we have. That's the same thing I believe
10 happened in late part of 1999, okay? We did not have
11 the comprehensive model. I was just starting to
12 work.

13 Someone asked me from the operation side
14 just like you ask me. I was telling them 2000, that
15 then Cinergy would be producing 64 million
16 megawatt-hours and where everybody told me you are
17 stupid, you are just a professor from Duke because I
18 taught at Duke and just got in. Because we -- the
19 maximum we have ever produced was 59 million. And
20 back in 1999 was a horrible year. Are you telling me
21 that 2000, I said that's all the information I have
22 on the market. The best predictor is whatever I see
23 on the market. Guess what happened? We produced
24 6.5 -- 65.6 million megawatt-hours.

25 So if that's what you are trying to get

1 at, then I don't think we know because the input
2 drives the output. The input is determined by a
3 comprehensive review of all the people, Duke and the
4 consulting firm, so we produce a set of curves that
5 give us the pattern which determine this output
6 change.

7 Q. Yeah, my only question to you was whether
8 you had specifically evaluated that that was the
9 reason for the -- for the (Confidential) in the output.

10 A. Oh, you mean, I personally did the --

11 Q. Did you personally review the model run
12 to determine that the cause was the change in
13 fundamental prices? Change from forward prices to
14 fundamental prices?

15 A. Okay. For this particular one, I only
16 have the general understanding but I have seen the
17 curves before. There are many other assessments that
18 were done by our team for other purposes including
19 the asset transaction. So, once again, as I said
20 about an hour ago, I am 99.9 percent sure --

21 Q. Okay.

22 A. -- that was the reason.

23 Q. Okay.

24 A. Yeah.

25 Q. And in terms of that being driven by the

1 fundamental forecast reflection of an (Confidential) in
2 prices caused by CO-2 requirements, CO-2
3 emission-reduction requirements, are you equally sure
4 that's the reason for those fundamental curves being
5 increased at that point in time?

6 A. The power price has shifted and also, as
7 I just stated, the pattern between (Confidential) and
8 (Confidential) also shifted.

9 Q. I understand. But are you equally sure
10 that that was the reason for that (Confidential) in
11 the projection of fundamental prices versus where the
12 forward curves indicated they were at that point in
13 time?

14 A. I think I'm pretty sure.

15 Q. But not 98.9 percent sure?

16 A. Once again, I was not the person who dig
17 in the -- digging in the hour-by-hour information,
18 but.

19 Q. You did not communicate with anybody,
20 with the outside consultants specifically regarding
21 the reason for this change, correct?

22 A. No. But also I trust them. They are
23 professionals. They know what to do. Can I add to
24 that? Duke does not make -- make a request to have
25 particular curves for a particular purpose. You know

1 that, right? So we use the curve for everything for
2 buy and for sale.

3 Q. Now, would you agree with me that if you
4 look at the numbers for 2016 on that first page of
5 Exhibit 4a, do you see the generation volume for
6 (Confidential)?

7 A. Yes, I do.

8 Q. And relative to the -- to Duke's
9 installed capacity, would you agree with me that that
10 is approximately (Confidential) percent of the megawatt
11 hours that these units can produce in a year?

12 MS. KINGERY: Objection. Mr. Berger
13 referred, I believe, to "Duke's installed capacity."

14 MR. BERGER: I'm sorry.

15 Q. Relative to OVEC's installed capacity
16 which is shown on this page.

17 A. You mean relative to the megawatt level
18 that we are contracted at, right?

19 Q. Yes.

20 A. Okay. So, once again, my math is not
21 that good in my brain, but I think that's pretty
22 close. You take (Confidential) megawatts -- (Confidential)
23 megawatts and multiply by (Confidential), which is taking out the
24 outages, multiply by 8,600 hours, that's about (Confidential),
25 something like that, right? It's about (Confidential) percent,

1 yes.

2 Q. Okay. And Duke's share of that
3 projection would be about (Confidential)
4 megawatt-hours. At 9 percent? Maybe I have got the
5 number wrong here.

6 MS. KINGERY: Mr. Berger, I believe the
7 witness just provided an answer to that calculation
8 in his last response.

9 Q. Can we do -- do you have a calculator
10 with you?

11 A. No, I do not.

12 Q. Okay. If we took the (Confidential) megawatts
13 of capacity and multiplied that by, is it 8,760 hours in
14 a year?

15 MS. KINGERY: Your Honor, should I
16 provide the witness with a calculator?

17 EXAMINER PIRIK: That would be -- if you
18 have one.

19 A. 8,760.

20 Q. 8,760, that would be --

21 A. That's typical. Go ahead.

22 Q. That would be (Confidential), would that be --
23 would that be megawatt-hours?

24 A. Yeah. Can you multiply that by .9 to
25 make sure you take into consideration the forced

1 outages?

2 Q. Okay. So that's (Confidential)
3 megawatt-hours; is that correct?

4 A. That's correct. So it's about
5 (Confidential) percent.

6 Q. And the projected production is (Confidential),
7 so that's about (Confidential) percent, correct? I think
8 you indicated it's about (Confidential) percent.

9 A. Yeah. So my brain is not as good as a
10 calculator, sorry.

11 Q. And then Duke's share of that would be --
12 would be 9 percent of that production, its share of
13 the entitlement; is that correct?

14 A. I'm probably the wrong person to ask, but
15 I'm generally aware that's 9 percent, yes.

16 Q. Okay. And that --

17 MS. KINGERY: Your Honor, if I might add
18 one clarifying objection. I don't know quite how to
19 do this but, I think the (Confidential) megawatts of capacity
20 is already our 9 percent share, so you don't have to
21 take another 9 percent.

22 THE WITNESS: He is trying to get back to
23 the total. You want to divide by 9 percent. Is that
24 what you are trying to do? Because you cannot
25 multiply 9 percent anymore. It's in the --

1 otherwise.

2 Q. My question really is if -- is why -- if
3 9 percent of (Confidential) is -- no?

4 A. It's not 9 percent.

5 Q. It's not 9 percent. Duke's share is not
6 9 percent?

7 A. Duke's share is 9 percent. It's
8 9 percent of -- (Confidential) divided by 9 percent,
9 which comes back to (Confidential).

10 Q. Oh, okay.

11 A. Okay?

12 Q. But that's the megawatts -- that's the
13 total megawatts in terms of megawatt-hours, 9 percent
14 of the (Confidential) million megawatt-hours --

15 A. No, no. (Confidential) million megawatt-hours
16 is already taking into consideration --

17 Q. Oh, that already takes into
18 consideration.

19 A. Yes. Otherwise, it would be
20 (Confidential) megawatts, okay?

21 Q. Okay.

22 A. Maybe (Confidential).

23 Q. And so, the generation volumes that are
24 shown here, the (Confidential), is only (Confidential) percent
25 of what Duke is entitled to utilize, correct?

1 A. So --

2 Q. It's only (Confidential) percent of what
3 Duke is entitled to use, right?

4 A. I believe Duke is entitled to use the
5 whole thing. That's just what's being projected
6 economically. Duke can use every hour, but based on
7 the information we see, we don't want to use every
8 hour because we will be losing money. We only want
9 to use half of the time when we actually make money.
10 That's what that says.

11 MR. BERGER: Thank you. That's all I
12 have on the confidential record.

13 THE WITNESS: Thank you.

14 EXAMINER PIRIK: Ms. Hussey.

15 - - -

16 CROSS-EXAMINATION (Continued)

17 By Ms. Hussey:

18 Q. Dr. Zhang, I previously asked you if your
19 team had performed any analysis regarding the
20 deviation experienced from the models you guys had
21 run to project margins from the OVEC units. Do you
22 recollect that?

23 A. Yes.

24 Q. And I believe when I asked what the
25 results had been, you indicated that there had been

1 no violation, correct?

2 A. That's correct.

3 Q. Okay. And can you explain to me what you
4 mean by no violation?

5 A. Duke Risk Management corporation has
6 established a tolerance level for deviations for load
7 is plus/minus (Confidential) percent. Of generation on
8 an individual basis, when I say "individual," individual
9 generators is plus/minus (Confidential) percent.

10 Q. Okay. I'm sorry, could you repeat that?
11 Plus minus 10 percent per individual generators?

12 A. Yes, yes, yeah. But not every hour, you
13 know that, right? That's for on a monthly aggregated
14 level plus/minus (Confidential) percent.

15 Q. And you mentioned that you had previously
16 performed this analysis about the deviation. Do you
17 know how long ago you performed the last round of
18 analysis?

19 A. Probably for Q1, Q2, 2014. By the way, I
20 don't do that personally. Once again, there's a
21 process.

22 Q. So I mean your team then.

23 A. That's right.

24 Q. And when you say for Q1, Q2, 2014, the
25 look-back period was for those two quarters then?

1 A. That is correct, yes.

2 Q. Do you know how far back in the past
3 you've looked -- you've reflected upon this model and
4 done that type of analysis?

5 A. For validation purposes by external
6 parties, they did it in early years, and our risk
7 management team did another type of test, and also
8 prior to 2006. This process, on a quarter-by-quarter
9 basis, was implemented starting 2006. But, before
10 then, they had a different type of test. Now they do
11 a quarterly test.

12 Q. Okay. And do you have any reason to
13 believe that the threshold that you mentioned will
14 change in the future, the plus or minus (Confidential) percent and
15 then plus or minus (Confidential) percent for an individual unit?

16 A. Potential that they have violated?

17 Q. No, no. If the company plans to change
18 those threshold levels and, I'm sorry, I don't
19 recollect the term that you used. "Tolerance," I
20 believe maybe.

21 A. Yeah, that's right, yeah.

22 Q. Do you have any reason to believe that
23 the company might change those levels in the future?

24 A. I haven't heard about it.

25 MS. HUSSEY: Okay. That's all the

1 questions I have. Thank you.

2 EXAMINER PIRIK: Ms. Bojko.

3 MS. BOJKO: No questions.

4 EXAMINER PIRIK: Mr. Boehm.

5 MR. BOEHM: No, nothing.

6 EXAMINER PIRIK: Mr. Olikar.

7 MR. OLIKAR: Just very briefly, your
8 Honor. Thank you.

9 - - -

10 CROSS-EXAMINATION (Continued)

11 By Mr. Olikar:

12 Q. Dr. Zhang, just a few more questions.
13 You do not personally know if the commercial business
14 model considers any (Confidential) that is
15 applied to external PJM resources?

16 A. That's not entirely true. There is a
17 database that's publicly available that may be one or
18 two years old, but it do have the general information
19 in there.

20 Q. Dr. Zhang, you said you're not familiar
21 with PJM's rules, correct?

22 A. No. I am generally aware, but I'm not an
23 expert on the rules, not at all.

24 Q. And you are not familiar with how they
25 apply to internal PJM resources versus external PJM

1 resources?

2 A. Once again, I'm generally aware, but no,
3 I don't.

4 Q. Okay. Thank you.

5 And in 2019, you discussed this a little
6 bit with Mr. Berger, the CBM projects a (Confidential) in
7 OVEC's generation output, correct?

8 A. That's what's shown here, yes.

9 Q. Okay. And the increase is largely
10 related to a (Confidential) contained in the EVA
11 forward curve, correct?

12 A. I believe so.

13 Q. And that (Confidential) is largely driven
14 by carbon regulations, correct?

15 A. I believe so.

16 Q. And although you're not an expert on
17 environmental regulation, it's your testimony that
18 you believe environmental regulations that are
19 intended to reduce power plant carbon emissions is
20 going to result in two coal plants, Clifty Creek and
21 Kyger Creek, producing 50 percent more power.

22 A. That's incorrect. That's not what I
23 believe. That's what a lot of professionals both at
24 Duke and the consulting firm, they produced a set of
25 input. I simply take that set of input in an

1 unbiased way and use that in the model to make the
2 projection using this coherent set of information.
3 That's not -- it doesn't really matter whether I
4 believe or not believe. I am really not -- really
5 not there to say. That's not really up to me. Up to
6 me, you know.

7 Q. Have you ever heard of the laugh test?
8 Sir, you don't have to answer that.

9 A. Sure.

10 MR. OLIKER: No more questions, your
11 Honor.

12 EXAMINER PIRIK: Ms. Kingery?

13 MS. KINGERY: Thank you.

14 - - -

15 CROSS-EXAMINATION (Continued)

16 By Ms. Kingery:

17 Q. I wanted to clarify one thing. You
18 talked about the risk tolerance level and you said
19 that it's at (Confidential) percent considered with per --
20 well, I have forgotten exactly what your words were, I
21 think it was an individual generator basis. Were you
22 talking about, when you said that, about the
23 generating station as a whole or is it per unit
24 within the station?

25 A. Generally we take all the units together

1 and also that's on an aggregated monthly basis.

2 Q. Okay.

3 A. We are not talking an hour-by-hour.

4 MS. KINGERY: Okay. Great.

5 A. And also I want to add, when I say the
6 "tolerance level," it means you know with a given set
7 of input what it is the output do. So, in other
8 words, if my price inputted is 30, so the realized is
9 close to 30, that's when you apply the so-called
10 tolerance. I don't mean the price at \$30, the actual
11 price is \$100 then you are within (Confidential) percent,
12 I said this before, and nobody has the magic box.

13 Q. Right.

14 A. And I also want to add on one thing about
15 the gentleman here mentioned the laugh test. When I
16 just got out of school from Duke, that's what I used
17 to think. I used to think other people are stupid, I
18 called them stupid, they called me stupid too because
19 of the laugh test.

20 Just give an example, I was produced --
21 projecting 650 million megawatt-hours. People called
22 me stupid because they said the maximum was 56, 57.
23 They said there's no way. Then I also, in the
24 simulation, we pulled the gas price of \$11.50, I
25 remember very clearly, on the per BTU. People are

1 thinking you are an idiot. The market is \$3.50. You
2 are telling me there is one particular case, one
3 particular scenario it's \$11.50. I said that's what
4 probabilistic means. Guess what? Pretty soon we saw
5 that.

6 So that's why, Joe, once again, I
7 understand where you are coming from, but I
8 wouldn't -- I wouldn't call that necessarily, you
9 know, the laughing test or whatever, so. It's not
10 that simple. Otherwise, you know, we don't need to
11 file PODs to do modeling. Sorry.

12 Q. If it were that simple, we could all do
13 what you do.

14 A. That's right.

15 Q. But we can't.

16 MS. KINGERY: All right. I don't have
17 anything more. Thank you.

18 THE WITNESS: Thank you.

19 EXAMINER PIRIK: Staff?

20 MR. BEELER: No questions.

21 EXAMINER PIRIK: Thank you, Mr. Zhang.

22 MR. OLIKER: Do we have rebuttal or, not
23 rebuttal, redirect on the confidential?

24 EXAMINER PIRIK: Oh, on the confidential.

25 MR. OLIKER: Yeah.

1 EXAMINER PIRIK: Yes, I guess we do. We
2 just did the direct.

3 Mr. Berger, do you have anything else?

4 MR. BERGER: No, I don't. Thank you.

5 EXAMINER PIRIK: Ms. Hussey.

6 MS. HUSSEY: Nothing, your Honor.

7 EXAMINER PIRIK: Ms. Bojko.

8 MS. BOJKO: No.

9 EXAMINER PIRIK: Mr. Boehm.

10 MR. K. BOEHM: No.

11 EXAMINER PIRIK: Mr. Olikar.

12 MR. OLIKER: Just one question, I think.

13 - - -

14 RECROSS-EXAMINATION

15 By Mr. Olikar:

16 Q. Would you agree that if coal plants --
17 the amount of coal plants that are in operation today
18 stay in operation and there are not significant
19 amounts of coal retirements, it's mathematically
20 impossible for all coal plants in the PJM system to
21 produce (Confidential) power and, yet, comply with
22 EPA's proposed regulations?

23 MS. KINGERY: Objection. The witness is
24 not an expert on the EPA proposed regulations.

25 EXAMINER PIRIK: Overruled.

1 A. And once again, if you are that ideal to
2 hold one factor constant -- to leave everything else
3 constant, just changing one thing, yes, that's
4 possible. But that's not how the economy or how the
5 market moves. Everything changes as a chain
6 reaction, which I'm not at all claiming that I am
7 expert on, but I don't think you can hold everything
8 constant and just change one thing. That would be my
9 position.

10 MR. OLIKER: Thank you, Dr. Zhang.

11 That's all I have.

12 THE WITNESS: Thank you.

13 MS. KINGERY: And I had just one more
14 question, your Honor.

15 - - -

16 REXCROSS-EXAMINATION

17 By Ms. Kingery:

18 A. The tolerance level we were just speaking
19 of, would that tolerance level within Duke Energy
20 become moot once the assets are sold to Dynegy?

21 MR. OLIKER: Objection. Exceeds the
22 scope of redirect.

23 A. Once again --

24 EXAMINER PIRIK: I'll allow a very brief
25 answer.

1 A. Once again, I don't know. Probably.

2 MS. KINGERY: Okay. Thank you very much.

3 EXAMINER PIRIK: Staff.

4 MR. BEELER: Nothing. Thank you.

5 EXAMINER PIRIK: Now, thank you,

6 Mr. Zhang.

7 THE WITNESS: Thank you.

8 EXAMINER PIRIK: We will go in the open
9 record.

10

11 EXAMINER PIRIK: We will take a break
12 until -- well, a 15-minute break before we begin our
13 next witness.

14 (Recess taken.)

15 EXAMINER PIRIK: On the record.

16 Mr. Mierzwa, would you please raise your
17 right hand.

18 (Witness sworn.)

19 EXAMINER PIRIK: Thank you.

20 MR. SERIO: OCC would like to call Jerome
21 Mierzwa to the stand, please.

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JEROME D. MIERZWA

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

DIRECT EXAMINATION

By Mr. Serio:

Q. And, Mr. Mierzwa, do you have in front of
you what I would like to mark for purposes of
identification as OCC Exhibit No. 45.

(EXHIBIT MARKED FOR IDENTIFICATION.)

A. Yes, I do.

Q. And can you identify that document,
please?

A. That is my direct testimony in this
proceeding.

Q. And can you give us, just for the record,
your business address.

A. My business address is 10480 Patuxent
Parkway, Suite 300. It's in Columbia, Maryland
21044.

Q. And the document you have in front of
you, OCC Exhibit 45, was that prepared by you or
under your direct supervision?

A. Yes, it was.

Q. And do you have any corrections to make
to that testimony?

1 A. Yes, I have several corrections to that
2 testimony.

3 Q. Okay. If you would like to go through
4 those.

5 A. On page 1, line 4, the word "Vice" should
6 be entered in before the word "President."

7 Q. Okay.

8 A. Okay. Page 11, line 1, it says "...thus
9 improving service reliability." It should say "Thus,
10 service reliability has improved."

11 Q. Could you repeat that? On line 1, it
12 should now read what?

13 A. "Thus, service reliability has improved."

14 Q. Okay.

15 A. On page 13, beginning at line 23, after
16 the word "Yes," all the text should be deleted all
17 the way through to line 1, on page 14, up to the word
18 "In addition," and then the following word "the"
19 should be capitalized.

20 I believe there is one more change. Yes.
21 On page 22, line 7, after the word "excluded," there
22 should be a comma, the next word should be an "and"
23 with the lowercase "a," and the comma after the "and"
24 should be deleted. And that's all the changes I'm
25 aware of.

1 Q. Okay. The change that you made on page
2 13, carry-overing to page 14, can you explain why
3 that change was necessary?

4 A. That change was necessary because at the
5 time I prepared my testimony, I relied on certain
6 data responses, and after the preparation of my
7 testimony, additional data responses were received to
8 show that statement was not completely accurate.

9 Q. And when you were deposed by the company
10 in this proceeding, did you make these corrections to
11 your testimony at that time also?

12 A. Yes, I did.

13 Q. And if I was to ask you the same
14 questions today, would your answers be the same?

15 A. Yes.

16 MR. SERIO: Your Honor, Mr. Mierzwa is
17 available for cross-examination.

18 EXAMINER PIRIK: I'm not sure I
19 understand the change on page 22, before we go to
20 cross. Could you restate that for me?

21 THE WITNESS: Yeah. Starting at line 7
22 it -- after the word "excluded," the period should be
23 deleted and a comma inserted and the next word "and,"
24 the "a" should be lowercase, and then the comma after
25 "and" should be deleted.

1 EXAMINER PIRIK: So it still says
2 "excluded."

3 THE WITNESS: Yes.

4 EXAMINER PIRIK: Okay.

5 Ms. Hussey.

6 MS. HUSSEY: No questions, your Honor.

7 MS. SPILLER: Oh, your Honor, I'm sorry.
8 We did actually have a motion to strike portions of
9 Mr. Mierzwa's testimony, please.

10 EXAMINER PIRIK: Okay.

11 MS. SPILLER: The first one, if I may,
12 your Honor, the attachment, JDM-Attachment 1, the
13 article that is attached to Mr. Mierzwa's testimony
14 as well as the associated text which references this
15 article on page 4, line 17, carrying over to page 5,
16 line 5. This is not a document that Mr. Mierzwa has
17 authored. It is not a document that he relied upon
18 for purposes of his testimony in this case. It's
19 simply a report that indicates what he believes to be
20 a description of issues that he attached to his
21 testimony. We believe that this particular document
22 constitutes nothing more than hearsay and should be
23 struck from the record as well as the associated
24 testimony.

25 Similarly, with regard to Mr. Mierzwa's

1 testimony that appears on page 21, the question and
2 answer that begin on line 15 and conclude through
3 line 23. In this particular portion of Mr. Mierzwa's
4 direct testimony, he's simply reiterating the
5 opinions of another OCC witness. This is -- this is
6 not relevant to the issues on which Mr. Mierzwa is
7 testifying in this case; at best, it reflects
8 cumulative and thus unnecessary evidence.

9 EXAMINER PIRIK: Are there any other
10 motions?

11 Okay. Mr. Serio, response?

12 MR. SERIO: Yes, your Honor. The
13 document is a report by NRRI. It's a treatise from
14 an organization. Mr. Mierzwa did indicate he looked
15 at the report, he read it, and it coincides with his
16 views.

17 And most importantly, your Honor, the
18 same document was attached to the witness -- to the
19 testimony of OCC Witness Effron in the recent AEP ESP
20 proceeding 13-2385-EL-SSO, and the document was
21 accepted by the Attorney Examiner as an attachment to
22 Mr. Effron's testimony.

23 So we think it is relevant. It supports
24 his conclusions and he's available to answer
25 questions about it.

1 Regarding the second motion, with the
2 testimony of Mr. Kahal that is referenced in the
3 testimony of Mr. Mierzwa, Mr. Kahal was available for
4 cross-examination and the company had an opportunity
5 to ask him any questions about his recommendation.
6 Mr. Mierzwa is simply accepting Mr. Kahal's
7 recommendation and incorporating that into his
8 finding. He's available to be cross-examined about
9 his conclusions.

10 However, to the extent that there is
11 cross-examination on the specific numbers that
12 Mr. Kahal provided to Mr. Mierzwa, that opportunity
13 was last week when Mr. Kahal was -- was available as
14 a witness.

15 EXAMINER PIRIK: Thank you.

16 The motion will be denied.

17 Ms. Hussey, I don't recall whether you
18 said you were going to cross.

19 MS. HUSSEY: No questions, your Honor.

20 EXAMINER PIRIK: Ms. Bojko.

21 MS. BOJKO: No questions, your Honor.

22 EXAMINER PIRIK: Mr. Boehm.

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

24 EXAMINER PIRIK: Duke.

25 MS. SPILLER: Thank you, your Honor.

CROSS-EXAMINATION

By Ms. Spiller:

Q. Good morning, Mr. Mierzwa.

A. Good morning.

Q. You are offering -- you are offering opinion only on two aspects of Duke Energy Ohio's proposed electric security plan, correct?

A. That's correct.

Q. And those two aspects concern rider DCI and rider DSR, correct?

A. That's correct.

Q. And in connection with preparing your testimony in this case on behalf of the OCC, you did not review all of the testimony that the company filed in -- in connection with its application, correct?

A. I did not retest -- the only testimony I read was generally that associated with the two issues which I address. I may have read additional testimony searching to see if the issue I address come up further, but generally that's correct.

Q. And so, you would agree with me, sir, that within the direct testimony of Don Wathen and Peggy Laub is discussion about the two issues on which you're offering testimony, correct?

1 A. That's correct.

2 Q. And in forming your opinions in this
3 case, sir, you also reviewed certain discovery
4 responses that were exchanged between the parties,
5 correct?

6 A. Correct.

7 Q. And the discovery responses that you
8 reviewed were those that were provided to you by the
9 OCC, correct?

10 A. That's correct.

11 Q. And there are also Commission decisions
12 that you have reviewed and relied upon for purposes
13 of forming your opinions in this case, correct?

14 A. That's correct.

15 Q. And, sir, can you tell me how you
16 determine which Commission decisions were relevant to
17 your work in this case?

18 A. I think some of the testimony of the
19 company mentioned some of the other -- some of the
20 other proceedings which I took a look at.

21 Q. Okay.

22 A. And counsel may have informed me of other
23 testimony or cases to look at.

24 Q. But beyond what you may have read in the
25 company's filing and what the OCC's attorneys may

1 have told you, am I fair in assuming that you didn't
2 conduct any additional individual review of the
3 Commission's dockets?

4 A. I did not conduct an independent review.

5 Q. And one of the Commission decisions on
6 which you relied for purposes of your work in this
7 case was the Commission's decision in an AEP ESP
8 proceeding, correct?

9 A. That's correct.

10 Q. And I believe you reference that in your
11 testimony. It's the case filed under 11-346,
12 correct?

13 A. Correct.

14 Q. Okay. And, sir, do you have a copy of
15 that with you at the witness stand today? If not, I
16 am happy to provide one for you.

17 A. I have a copy of certain pages from that
18 order.

19 Q. Okay.

20 A. Pages 42 through 47, around 68 through
21 69.

22 EXAMINER PIRIK: Could the Bench have a
23 copy, please?

24 MS. SPILLER: Certainly, your Honor.
25 And, your Honor, I believe that the Bench took

1 administrative notice of this decision.

2 EXAMINER PIRIK: Yes.

3 MS. SPILLER: Thank you.

4 Q. And, sir, we'll get to those particular
5 portions of the AEP stipulation in a moment.

6 You did not, for purposes of your work in
7 this case, review the Commission's decision in the
8 FirstEnergy ESP proceeding in which distribution
9 investment riders were approved for the FirstEnergy
10 operating companies, correct?

11 A. That's correct.

12 Q. But you know, sir, having acknowledged
13 that you reviewed the testimony of Don Wathen and
14 Peggy Laub, that they referenced that FirstEnergy
15 decision in their testimony, correct?

16 A. I don't recall reading that. I may have
17 read it. I just don't recall.

18 Q. Well, I thought you just told me you
19 looked at the company's testimony and the cases cited
20 in that testimony to determine what to review for
21 purposes of your work.

22 A. I referred -- I'm sorry, I looked up some
23 of the cases referenced. I did not look up all the
24 cases.

25 Q. So if Ms. Laub was discussing the

1 FirstEnergy decision regarding distribution
2 investment riders in her testimony, you just chose to
3 ignore that particular case?

4 A. I didn't look up that case.

5 Q. Is there a particular reason, sir, that
6 you focused only on the AEP case and not the FE case?

7 A. No particular reason.

8 Q. No one suggested to you not to read the
9 FE case?

10 A. No.

11 Q. And so, am I to conclude, sir, that
12 although you knew the company had referenced the FE
13 decision in connection with our -- with the company's
14 proposed rider DCI, you simply determined, without
15 looking at it, that that decision was not relevant to
16 your work.

17 A. I just -- I did not look under the
18 proceeding. I didn't make a determination whether it
19 was relevant or not.

20 Q. Well, you don't know whether or not it
21 was relevant without having reviewed it, correct?

22 A. Well, if it was mentioned, I know there
23 was another proceeding. I did not look it up. So it
24 was relevant, but I did not look up the case. I
25 assume there were other cases that were relevant,

1 too, I just didn't look up every case.

2 Q. And, Mr. Mierzwa, you have testified in
3 regulatory proceedings before today, correct?

4 A. That's correct.

5 Q. And you would agree with me that you
6 address matters concerning natural gas and water,
7 correct?

8 A. Primarily I address those matters. I
9 also address electric fuel cost proceeding issues.

10 Q. And that was one case in which you
11 testified in Louisiana, correct?

12 A. I believe there is more than one case.
13 Just complete -- there was one case that I testified
14 in, Cleco, and we are just completing another case
15 now.

16 Q. But your work here in Ohio, with respect
17 to regulatory matters, has involved those proceedings
18 related to natural gas companies, correct?

19 A. Yes. We generally do the GCR audit work
20 for staff.

21 Q. And before today you've not testified in
22 Ohio in connection with a standard service offer in
23 the form of an ESP, correct?

24 A. That's correct.

25 Q. And, sir, in your direct testimony you

1 identify your conclusions as well as the bases for
2 those conclusions, correct?

3 A. Correct.

4 Q. And you believe, Mr. Mierzwa, that the
5 company's proposed riders DCI and DSR should be
6 rejected because both of those riders are contrary to
7 sound ratemaking principles, correct?

8 A. Yes, that's correct.

9 Q. And, in fact, sir, you believe that
10 riders in general are contrary to sound -- they are
11 contrary to sound ratemaking principles, correct?

12 A. Generally, yes.

13 Q. And so, to the extent that the Ohio
14 Commission has approved such riders, you believe that
15 it is engaging in unsound ratemaking principles,
16 correct?

17 A. I would not have approved those riders.

18 Q. So you would disagree with the Commission
19 to the extent that they approved those riders,
20 correct?

21 A. Those riders I would not approve.

22 Q. And, sir, there is an article attached to
23 your testimony, correct?

24 A. That's correct.

25 Q. You are not the author of the document,

1 are you?

2 A. No, I am not.

3 Q. And you did not rely upon that document
4 to form your opinion that riders are contrary to
5 sound ratemaking principles, correct?

6 A. No. I relied on that article to support
7 my position.

8 Q. And so, in that respect, the article is
9 something that you found after you formed your
10 opinions in this case, correct?

11 A. Yes, but my opinions on riders were
12 formed well before this case.

13 Q. Okay. So the article didn't form your
14 conclusions in this case, correct?

15 A. Correct.

16 Q. And, Mr. Mierzwa, with respect to riders
17 or cost trackers, you believe that those should be
18 used only to recover costs that are substantial,
19 unpredictable, and beyond the utility's control,
20 correct?

21 A. That's correct. And also to avoid a dire
22 financial situation.

23 Q. Okay. And we'll get to that. So even if
24 such costs are substantial, unpredictable, and beyond
25 a utility's control, you still oppose recovery via a

1 rider mechanism unless that rider is necessary to
2 protect the utility from dire financial situations,
3 correct?

4 A. That's correct.

5 Q. And so, sir, you would agree that it is
6 contrary to sound ratemaking principles to approve a
7 cost tracker or rider where that rider is not
8 necessary to protect a utility from dire financial
9 consequences, correct?

10 A. Correct.

11 Q. And so, you would not agree with the Ohio
12 Commission should it approve a cost tracker that was
13 not necessary to protect a utility from dire
14 financial consequences, correct?

15 A. That's correct.

16 Q. And you believe, Mr. Mierzwa, that rider
17 DCI, if approved, would reduce Duke Energy Ohio's
18 incentives to control costs, correct?

19 A. Yes, it would reduce incentives to
20 control costs.

21 Q. And you believe that to be the case
22 because you believe that Duke Energy Ohio's cost
23 recovery under rider DCI would be automatic, correct?

24 A. Yes. There's been no review procedure
25 proposed, and I believe Ms. Laub uses the word

1 "automatic" in her testimony.

2 Q. And do you believe that the Ohio
3 Commission conducts reviews of cost trackers before
4 authorizing the costs that may actually be recovered
5 through those trackers?

6 A. I don't know to the extent which it
7 reviews those.

8 Q. And you certainly would agree with me
9 that a regulated utility such as Duke Energy Ohio can
10 only charge rates as determined and approved by the
11 Ohio Commission, correct?

12 A. That's correct.

13 Q. And do you believe that the Ohio
14 Commission approves unreasonable rates?

15 A. Not that I'm aware of.

16 Q. Mr. Mierzwa, if a utility knew that its
17 distribution capital costs would be reviewed by the
18 Commission or its staff in a rider proceeding, would
19 you agree that it would have an incentive to control
20 costs?

21 A. It would have a greater incentive to
22 control costs depending on the extent of the review.

23 Q. Okay. But in this case you're not
24 familiar with the extent to which the Ohio Commission
25 or its staff reviews cost trackers, correct?

1 A. That's correct. There's no -- there is
2 no review procedure proposed in this proceeding.

3 Q. You've mentioned, sir, that you have
4 reviewed and relied upon the AEP ESP II decision for
5 purposes of forming your opinions in this case, and
6 I'll tell you the "ESP II" reference simply comes
7 from the fact that this was the second ESP that AEP
8 had filed. You know that is Case 11-346, correct? I
9 just want to make sure we are talking about the same
10 decision, sir.

11 A. I'm not -- I just don't recall if that's
12 the first or second one.

13 Q. Okay. But the document that you have
14 before you, it was one docketed under Case 11-346,
15 correct?

16 A. That's correct.

17 Q. And having reviewed that decision, you
18 are aware that the Ohio Commission approved a
19 distribution capital investment rider for AEP,
20 correct?

21 A. It approved the rider based on the
22 circumstances and facts presented in that proceeding.

23 Q. Okay. And it reviewed the rider with an
24 ROE of 10.2 percent, correct?

25 A. I don't recall.

1 Q. And, sir, I believe you've indicated --
2 well, strike that.

3 You got the -- certain portions of the
4 AEP decision in front of you, correct?

5 A. That's correct.

6 Q. And I believe you've indicated that you
7 have pages what, 42 through 47, correct?

8 A. Correct.

9 Q. And those are the pages of the decision
10 concerning AEP Ohio's capital distribution investment
11 rider, correct?

12 A. That's correct.

13 Q. And on page 42 of this decision, in
14 paragraph 9, there is a recitation of the company's
15 proposal that includes a return on common equities of
16 10.2 percent, correct?

17 A. I'm sorry, did you say 10.2?

18 Q. Yes, sir.

19 A. Yes, I see that.

20 Q. And having read the decision, you're not
21 aware of the Commission altering that return on
22 equity, are you?

23 A. I did not review this case -- or this
24 order to look for any further discussion of return on
25 equity.

1 Q. Okay. And, sir, you were not involved in
2 AEP Ohio's ESP proceeding docketed under Case 11-346,
3 correct?

4 A. That's correct.

5 Q. And you've not reviewed the evidentiary
6 record in that decision, have you, or in that case?

7 A. I can't say, as I sit here now, whether I
8 looked at any other documents or not. I certainly
9 didn't review everything in that proceeding because
10 there are hundreds of documents in that proceeding.

11 Q. And, sir, have you reviewed the
12 subsequent filings that AEP Ohio has made with
13 respect to their annual work plans associated with
14 their distribution capital investment rider?

15 A. No, I have not.

16 Q. So you're not aware of the structure that
17 the Ohio Commission has established with respect to
18 the ongoing distribution investment efforts of AEP
19 Ohio, correct?

20 A. That's correct.

21 Q. And, sir, I believe you've indicated that
22 you have before you another portion of the AEP ESP
23 decision, correct?

24 A. Yes, I do.

25 Q. Pages 68 through 69, I believe you said?

1 A. Yes.

2 Q. But, sir, those were not portions of the
3 AEP decision that you read for purposes of performing
4 your -- for purposes of drafting your direct
5 testimony in this case, correct?

6 A. That's correct.

7 Q. Mr. Mierzwa, you believe that Duke Energy
8 Ohio is also seeking to automatically recover costs
9 through rider DSR, correct?

10 A. Yes.

11 Q. And you form that opinion after having
12 read the testimony of Direct Energy -- or, Duke
13 Energy Ohio witness Peggy Laub, correct?

14 A. Correct.

15 Q. And so, you understand the company is
16 proposing rider DSR as a tracking mechanism, correct?

17 A. Correct.

18 Q. The company proposes to create a
19 regulatory asset that will be debited or credited to
20 reflect incremental costs from major storms that are
21 either less than or greater than a baseline, correct?

22 A. Correct.

23 Q. And that baseline, for purposes of
24 tracking storm costs, is the amount included in the
25 company's base rates, correct?

1 A. Correct.

2 Q. And the company has further proposed that
3 they would not seek to adjust rider DSI -- DSR
4 outside of a base rate case unless the balance of the
5 rider exceeded \$5 million, correct?

6 A. I'm sorry. Could you repeat that?

7 Q. Sure. The company further proposed that
8 they would not seek to adjust rider DSR outside of a
9 base rate case unless the balance of the rider
10 exceeded \$5 million, correct?

11 A. The rider is established at zero now.
12 I'm not sure of the language -- I'm not sure that
13 they propose to adjust in the base rate. It was my
14 understanding it would be adjusted outside of a base
15 rate case.

16 Q. And that's what you believe the company's
17 proposal to be, correct?

18 A. That it would be adjusted outside the
19 base rate case, yes.

20 Q. In all circumstances.

21 A. Well, if there was a balance in the
22 account at the time of the base rate case, I believe
23 the company wanted to amortize that cost through the
24 base rates.

25 Q. And so, the company would not

1 automatically recover that regulatory -- the balance
2 in that regulatory asset outside of a base rate case
3 and without Commission review, correct?

4 A. If the amount was less than 5 million,
5 that's correct.

6 Q. Mr. Mierzwa, would you agree with me that
7 Duke Energy Ohio cannot control the storms that
8 affect its service territory?

9 A. I would generally agree with that.

10 Q. And it can't predict the damage that is
11 actually caused by a storm that damages its service
12 territory until the event is over, correct?

13 A. I would also agree with that.

14 Q. And, sir, you do not dispute that Duke
15 Energy Ohio is entitled to recover its storm costs,
16 do you?

17 A. No, I do not. I'm sorry. Their
18 prudently-incurred storm costs.

19 Q. So you do not dispute that Duke Energy
20 Ohio is entitled to recover its prudently-incurred
21 storm restoration costs, correct?

22 A. That's correct.

23 Q. But you believe the company must recover
24 these storm restoration costs only through base rate
25 proceedings, correct?

1 A. No. I think they can recover through a
2 separate filing.

3 Q. So we could do it through the rider DSR
4 as proposed in the case.

5 A. Through a separate filing, and I think
6 subject to the provision that all parties could
7 review those costs, and there would be more than the
8 limited review that's currently proposed, yes.

9 Q. So while you originally told me that cost
10 trackers or rider reflect unsound ratemaking
11 principles, you are now saying the company could use
12 a separate rider for purposes of recovering its storm
13 costs?

14 A. My comments on riders, one of the reasons
15 they were unreasonable is because it was a generally
16 limited review. If there was a thorough review,
17 then, yes, it can be done that way.

18 Q. So do they or do they not reflect unsound
19 ratemaking principles in your opinion?

20 A. My reference was to riders generally.

21 Q. Okay. But your reference in this case is
22 also to riders DCI and DSR, correct?

23 A. Right.

24 Q. And you predicate your opinions in this
25 case with regard to riders DSR and DCI on your belief

1 that cost trackers reflect unsound ratemaking
2 principles, correct?

3 A. Correct.

4 Q. And if the company were forced to recover
5 its incremental storm costs only through base rate
6 proceedings, that would invite potentially
7 back-to-back rate cases depending on the whims of
8 mother nature, correct?

9 A. If that was the only avenue open to the
10 company, yes.

11 Q. And rate cases cost money to prosecute,
12 correct?

13 A. That's correct.

14 Q. And you don't know whether Duke Energy
15 Ohio's customers would react favorably to more
16 frequent rate cases, do you?

17 A. No, I don't.

18 Q. Mr. Mierzwa, you do not dispute that Duke
19 Energy Ohio is entitled to recover its prudent
20 distribution capital investment, correct?

21 A. That's correct.

22 Q. Now, sir, if we could turn, please, to
23 page 5 of your testimony.

24 A. I have it.

25 Q. And you're indicating in the portion of

1 your testimony, the question and answer, sir, that
2 begins on line 19, you believe that the collection of
3 costs through riders can lead to increases in revenue
4 collected by the utility, correct?

5 A. Yes.

6 Q. And, sir, for purposes of that statement,
7 would you agree with me that incremental O&M costs
8 are -- are not recovered under rider DCI?

9 A. It's my understanding there would be
10 incremental O&M savings.

11 Q. You believe that there are simply
12 incremental O&M savings projected in connection with
13 the capital improvement projects that Duke Energy
14 Ohio has identified under rider DCI?

15 A. Based on my review of discovery, yes.

16 Q. And, sir, you were not here for direct --
17 or, for the live testimony of Marc Arnold, correct?

18 A. No, I was not here.

19 Q. And so, you don't know whether the
20 company has acknowledged there would be incremental
21 O&M costs under rider DCI, correct?

22 A. My review of the discovery in this case
23 says there would be incremental savings. They never
24 mentioned incremental costs.

25 Q. And this, again, is the discovery that

1 the OCC gave you to review, correct?

2 A. Correct. And the issue was addressed in
3 that discovery.

4 Q. Again, but this was the discovery that
5 the OCC gave you to review, correct?

6 A. I received my discover from the OCC, yes.

7 Q. Sir, as a general proposition, would you
8 agree with me that incremental O&M costs are incurred
9 by a company in between rate cases?

10 A. There are changes in O&M costs between
11 rate cases. I'm not sure what you mean by
12 "incremental." They go up. They go down. So I am
13 not sure what you mean.

14 Q. Well, in a base rate case, there is
15 included, in base rates, O&M costs, correct?

16 A. That's correct.

17 Q. And until those rates are adjusted
18 through the next base rate proceeding, any increase
19 in those O&M costs are absorbed by the utility,
20 correct?

21 A. Any increases are absorbed by the utility
22 and any decreases are realized by the utility.

23 Q. Sir, on page 6 of your testimony, please,
24 you begin, about mid-page, a discussion about the
25 distribution capital investment rider or rider DCI,

1 correct?

2 A. That's correct.

3 Q. And you mention, on line 13, the
4 company's rider DR-IM, correct?

5 A. Correct.

6 Q. And given that you included a reference
7 to this rider in your testimony, you would have gone
8 and reviewed that rider, correct?

9 A. Prior to preparing the testimony, I did
10 not review that rider because it was excluded from
11 this proceeding. Subsequent to my deposition, I
12 looked at the rider.

13 Q. Okay. And that's the company's rider
14 through which it recovers infrastructure investment
15 costs related to its SmartGRID deployment program,
16 correct?

17 A. That's correct.

18 Q. And did you review the history of the
19 SmartGRID proceeding?

20 A. I briefly reviewed the history of the
21 proceeding. I didn't review every detail.

22 Q. And what did you review, sir?

23 A. Just the type of costs that were included
24 in the rider. The proposed results of the rider.

25 Q. Okay. There's a portion of your direct

1 testimony, sir, that relates to various surveys,
2 correct?

3 A. Correct.

4 Q. And you indicate that the company's
5 reliability indices are improving, correct?

6 A. Correct.

7 Q. But at the time you drafted your
8 testimony and formed these opinions, sir, you had no
9 understanding as to the company's SmartGRID program,
10 correct?

11 A. I did not review the SmartGRID program
12 prior to my testimony.

13 Q. Okay. So you did not have an
14 understanding of that program when you drafted your
15 testimony, correct?

16 A. That's correct.

17 Q. And you don't know whether reliability --
18 the reliability improvements that you note in your
19 testimony are the result of the company's SmartGRID
20 program, do you?

21 A. They could be the result of many things.

22 Q. But you don't know whether they are the
23 result of the company's SmartGRID program, do you?

24 A. Not in itself, no.

25 Q. And you don't know what commitments Duke

1 Energy Ohio has made with regard to reducing SAIFI
2 under its SmartGRID program, do you?

3 A. I know they have commitments. I don't
4 have the exact numbers at this time.

5 Q. Sir, you didn't know those commitments at
6 the time you drafted your testimony, did you?

7 A. No, I did not.

8 Q. And you don't know when the company will
9 complete its deployment of its SmartGRID program,
10 correct?

11 A. Not exactly. I think it's pretty -- it's
12 coming up pretty soon.

13 Q. And again, you didn't know any of that
14 when you drafted your direct testimony in this case,
15 did you?

16 A. No. Because those costs were excluded
17 from this case.

18 Q. And you have not performed any
19 independent analysis of customer expectations for
20 purposes of your work in this case, correct?

21 A. No. I relied on Duke's surveys in this
22 case, the J.D. Power surveys.

23 Q. Do you believe that the Ohio Commission,
24 in reviewing the company's rider DCI in the context
25 of an ESP, will look only at the surveys, customer

1 surveys?

2 A. The Commission will look at anything they
3 think is relevant.

4 Q. Thank you.

5 Having reviewed the distribution capital
6 investment rider in the AEP case, you know that that
7 rider does not include O&M savings, correct?

8 A. That's correct.

9 Q. And, sir, for purposes of your work in
10 this case you've not reviewed the programs that Duke
11 Energy Ohio has identified for inclusion under rider
12 DCI, correct?

13 A. No. I believe OCC Witness Williams
14 addresses those programs.

15 Q. Sir, on page 23 of your direct testimony
16 you reference here a Commission filing that concerned
17 Duke Energy Ohio storm costs associated with
18 Hurricane Ike, correct?

19 A. That's correct.

20 Q. And that was a rider that was initially
21 approved in the context of a base rate proceeding,
22 correct?

23 A. That's correct.

24 Q. And, sir, for purposes of your opinions
25 in this case that rider DSR should be rejected, are

1 you aware that the Commission's staff has recommended
2 to Dayton Power and Light that it proposes a storm
3 tracker?

4 A. I knew there was a reference to somewhere
5 in the proceeding that staff had proposed a storm
6 tracker. I don't remember which company it was. I
7 know staff has proposed revisions to the company PSR
8 storm rider that I think we can it -- I would agree
9 with.

10 Q. I'm sorry. You are talking about a staff
11 recommendation to Duke Energy Ohio's proposed DSR?

12 A. Yes.

13 Q. Sir, I was asking you whether you were
14 aware that Commission staff has proposed that Dayton
15 Power and Light, another electric distribution
16 utility here in Ohio, that it propose a storm
17 tracker?

18 A. I said I know staff proposed one -- a
19 company adopted. I don't recall as I sit here today
20 which company it was.

21 Q. Okay. Well, we know that AEP Ohio has a
22 storm tracker, right?

23 A. Yes.

24 Q. Do you know whether the FirstEnergy
25 distribution utility have a storm tracker?

1 A. Offhand, no.

2 Q. And you know that Duke Energy Ohio, in
3 the context of this proceeding, is proposing a storm
4 tracker, correct?

5 A. That's correct.

6 Q. To your knowledge are there any other
7 electric distribution utilities in Ohio?

8 A. I've not done an inventory of electric
9 distribution companies in Ohio.

10 Q. Now, Mr. Mierzwa, you agree with the Ohio
11 Commission that electric distribution utilities
12 should proactively and efficiently replace their
13 infrastructure, correct?

14 A. Yes.

15 Q. And the reliability indices that you
16 mention in your testimony, sir, those are a
17 measurement of outages that have actually occurred,
18 correct?

19 A. That's correct.

20 Q. Okay. And would you agree with me that
21 replacing aging equipment before it fails will not
22 affect reliability indices?

23 A. If you change your equipment before there
24 is an outage, even if it's not aging, it would affect
25 the -- the reliability indexes.

1 MS. SPILLER: Thank you.

2 One moment, please, your Honor.

3 Nothing further. Thank you.

4 EXAMINER PIRIK: Staff?

5 MR. BEELER: Nothing, your Honor, thanks.

6 EXAMINER PIRIK: Mr. Serio?

7 MR. SERIO: Can I have a few minutes,
8 your Honor?

9 EXAMINER PIRIK: We will wait for you.

10 (Discussion off the record.)

11 EXAMINER PIRIK: We will go back on the
12 record.

13 Mr. Serio.

14 MR. SERIO: Thank you, your Honor. I
15 think I just have one question.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. Serio:

19 Q. Counsel for Duke asked you if you
20 reviewed discovery that was forwarded to you by OCC.
21 Do you recall that?

22 A. Yes, I do.

23 Q. And is it your understanding that OCC
24 forwarded all discovery responses to you and then you
25 went through the discovery and determined which --

1 which questions were appropriate for your subject
2 areas, correct?

3 A. That's correct.

4 MR. SERIO: That's all I have, your
5 Honor.

6 EXAMINER PIRIK: Thank you.

7 Ms. Hussey.

8 MS. HUSSEY: No questions, your Honor.

9 EXAMINER PIRIK: Ms. Bojko.

10 MS. BOJKO: No questions.

11 EXAMINER PIRIK: Mr. Boehm.

12 MR. K. BOEHM: No questions.

13 EXAMINER PIRIK: Ms. Spiller.

14 MS. SPILLER: Nothing, your Honor.

15 EXAMINER PIRIK: Staff?

16 MR. BEELER: Nothing.

17 EXAMINER PIRIK: Thank you, Mr. Mierzwa.

18 MR. SERIO: Your Honor, OCC would move
19 for the admission of Exhibit No. 45 which is
20 Mr. Mierzwa's testimony. And just to clarify for the
21 record, when he filed his testimony, he did file a
22 public and a confidential version. As a result of
23 previous rulings by the Bench, the information that
24 was initially marked as confidential is no longer
25 deemed to be confidential so the document that he

1 filed as a confidential piece of testimony is the
2 complete piece and that's no longer confidential and
3 that is what's identified as OCC Exhibit 45.

4 EXAMINER PIRIK: Thank you.

5 Are there any objections to admitting
6 this document?

7 MS. SPILLER: Yes, your Honor. Again,
8 Duke Energy Ohio would renew its motion to strike.
9 As Mr. Mierzwa indicated with respect to the
10 attachment, he did not review it for purposes of his
11 work. He formed his opinions and then happened to
12 find the report later.

13 Mr. Mierzwa is here as an expert witness,
14 so the basis for his opinions must be those that are
15 perceived by him or admitted into the evidence in
16 this case. There's been no foundation laid with
17 respect to this particular article. It's not one
18 that he authored. There have been no facts
19 introduced into this case concerning that particular
20 article. There's been no foundation whatsoever and,
21 at best, that article is hearsay. It's also
22 irrelevant to the testimony in his case.

23 So we would renew the motion to strike
24 both the attachment and the testimony that appears on
25 pages 4, line 17, through page 5, line 5. Thank you.

1 EXAMINER PIRIK: Mr. Serio.

2 MR. SERIO: Your Honor, he did review the
3 document. He had made his opinion about riders. The
4 document which is a treatise is a document that
5 confirmed his belief. He attached it to his
6 testimony in order to make access available to
7 everyone. It's consistent with his views on riders
8 as he indicated in his testimony. And as I indicated
9 previously, the Examiner in the American Electric
10 Power case allowed it into the record, and the
11 Commission has the benefit of the NRRI report and its
12 determinations regarding the particular rider in AEP,
13 and it would only be appropriate since the company is
14 relying on references to the AEP rider in this case
15 that the Commission have the same information
16 available to it.

17 EXAMINER PIRIK: Let me just note for the
18 record, again, what happened in another proceeding
19 doesn't affect what we actually do in this
20 proceeding. However, in light of the fact that it is
21 a treatise from the National Regulatory Research
22 Institute, we will allow it to continue to be
23 attached to his testimony. The objection is noted
24 for the record, and the document will be admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 MR. SERIO: Thank you, your Honor.

2 EXAMINER PIRIK: Thank you, Mr. Mierzwa.

3 Your next witness can take the stand.

4 MR. BERGER: I think he is in the
5 restroom. He will be here in a minute.

6 EXAMINER PIRIK: Okay.

7 MR. BERGER: Can we have 5 minutes, your
8 Honor, before he takes the stand?

9 EXAMINER PIRIK: That will be fine.

10 MS. SPILLER: And, your Honor, I would
11 also note that consistent with the Bench's
12 instructions previously, we had -- Duke Energy Ohio
13 had proposed redactions to Mr. Wilson's testimony and
14 that was prior to rulings on various --

15 EXAMINER PIRIK: We will go off the
16 record.

17 (Discussion off the record.)

18 EXAMINER PIRIK: We will go on the
19 record.

20 Mr. Berger.

21 MR. BERGER: Yes, your Honor. At this
22 time OCC calls James Wilson to the stand. I note
23 that we previously marked Mr. Wilson's testimony as
24 OCC Exhibits 43 and 43a because of the reference that
25 was made to certain documents that are already

1 included in his testimony as attachments.

2 EXAMINER PIRIK: Okay.

3 (Witness sworn.)

4 EXAMINER PIRIK: Please be seated.

5 MR. BERGER: Your Honor, at this time, as
6 I noted, we have already marked Mr. Wilson's
7 testimony, both the public and the confidential
8 versions. It's my understanding that with respect to
9 the confidential version that we are going to, at
10 this point in time, review that or do you want me to
11 introduce Mr. Wilson as a witness?

12 EXAMINER PIRIK: I think you should go
13 ahead and introduce him and then we will do it right
14 before we start with cross.

15 MR. BERGER: Okay.

16 - - -

17 JAMES F. WILSON

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

20 DIRECT EXAMINATION

21 By Mr. Berger:

22 Q. Mr. Wilson, did you cause -- will you
23 please state your full name and business address for
24 the record?

25 A. James F. Wilson. Wilson Energy

1 Economics, 4800 Hampden Lane, Suite 200, Bethesda,
2 Maryland 20814.

3 Q. Mr. Wilson, your confidential testimony
4 has been previously marked as OCC Exhibit 43a. Was
5 this testimony prepared by you or under your direct
6 supervision?

7 A. Yes.

8 Q. Do you have any changes, additions, or
9 corrections to make to that testimony at this time?

10 A. Yes. The same changes as at the time of
11 the deposition.

12 Q. Would you please go over those with us,
13 please.

14 A. Yes. Exhibit JFW-1.

15 EXAMINER PIRIK: Would you turn on your
16 microphone, please.

17 A. Exhibit JFW-1 which is on page 8, is
18 replaced, subtle change to the -- to one of the
19 lines. On page 18, line 4 --

20 EXAMINER PIRIK: I'm sorry. I don't --
21 are we looking at page 8 of the testimony?

22 THE WITNESS: Yes.

23 MR. BERGER: Page 8 of the testimony or?

24 THE WITNESS: Yes. Exhibit JFW-1.

25 EXAMINER PIRIK: Okay.

1 MR. BERGER: Okay.

2 EXAMINER PIRIK: Okay.

3 Q. (By Mr. Berger) I note, Mr. Wilson, we
4 are on the public record, so if you have any
5 references to confidential, you can point to
6 confidential exhibits, but you can't reference any
7 information on them that's confidential.

8 A. Okay.

9 Q. The correction in your -- in your
10 exhibit. You made a correction in your exhibit?

11 A. Yes.

12 EXAMINER PIRIK: Is that correction in
13 the body of the chart?

14 A. One of the lines changed subtly.

15 EXAMINER PIRIK: Can we go off the
16 record?

17 (Discussion off the record.)

18 EXAMINER PIRIK: We'll go back on the
19 record. Mr. Wilson, thank you for making the
20 statement with regard to the chart on page 8. We
21 will get copies of those so that all the parties will
22 have the benefit of that during your review of your
23 testimony. So any further changes?

24 MR. BERGER: That's what I was about to
25 ask Mr. Wilson.

1 Q. (By Mr. Berger) Any other changes to your
2 testimony?

3 A. Yes. On page 18, line 4, the "7 million"
4 is changed to "5 million."

5 Q. Mr. Wilson, is that --

6 EXAMINER PIRIK: We will go off the
7 record.

8 (Discussion off the record.)

9 EXAMINER PIRIK: Let's go back on the
10 record. The Bench has decided, prior to doing the
11 changes to Mr. Wilson's testimony, since there are
12 areas in his testimony that have been alleged
13 confidential that we will go through those areas so
14 that the witness will have the benefit of the Bench's
15 ruling.

16 So, at this time, I would call upon Duke.
17 I don't know any other way to do this since -- since
18 we don't know what the latest proposed redactions are
19 then to ask the company to go page by page. I know
20 you provided everybody copies on Friday with further
21 open information and that was very helpful. So why
22 don't we go through page 7.

23 MS. SPILLER: Certainly, your Honor. I
24 believe the dollar figures on line 5, the first
25 dollar figure on line 7 would be open consistent with

1 the Bench's ruling with regard to OCC 4. I think
2 again that's simply information from the cash flow
3 lines.

4 The megawatt-hour on average, I will tell
5 you I am not sure what the denominator may have been,
6 so that's when we may need some additional input from
7 the OCC as to how that was calculated. If the
8 denominator was confidential, then I suspect that
9 number would need to remain confidential as well.

10 On the question and answer, I guess it
11 would be Question 12, Answer 12, again, I believe
12 that the language here could be released consistent
13 with the Bench's ruling regarding OCC Exhibit 4.
14 Again, if that cash flow line is open and the years
15 are open, I think this information has already been
16 released into the public.

17 Exhibit JFW-1, the chart that appears at
18 the top of page 8 -- thank you, Joe -- it looks to me
19 like the bar graphs are simply -- although the legend
20 doesn't necessarily coordinate in color, that these
21 are a depiction, in bar graph, of the cash flow line.
22 And then, again, an analysis of those particular
23 numbers using a net present value. And, again, if
24 the cash flow lines are released into the public, I
25 believe it would be consistent to release this

1 particular exhibit as well.

2 The next redaction that I show, your
3 Honor, is on page 12, a couple of numbers, one in
4 line 18 and the other in footnote 8. The footnote,
5 that particular generation allocation is for 2016, a
6 forecasted number, which we believe is confidential
7 consistent with the rulings regarding OCC Exhibit 4.
8 And given that the number in the body of the text on
9 line 18 is derived from that confidential number, we
10 believe that that -- the number in the text,
11 preceding the word "percent" in line 18 should remain
12 confidential as well.

13 Page 14, line 2, again, this is a number
14 that I believe could be released at this point given
15 the Bench's ruling on OCC Exhibit 4. Again, a number
16 derived from the cash flow line that has been
17 released into the public.

18 Page 17, the numeric references on lines
19 15 and 17, similar with my -- the comments made just
20 now, again release would be appropriately consistent
21 with the Bench's ruling on the cash flow line.

22 And it looks like the text on the bottom
23 of page 17, again, this is consistent with prior
24 portions of Mr. Wilson's testimony. Again, generally
25 discussing the cash flow line that has been released

1 into the public. So I believe that those would not
2 need to be redacted.

3 Carrying over to top of page 18, we had
4 initially proposed redaction of -- of the first word
5 in line 2 as well as the dollar figure in line 4.
6 Again, given that the cash flow line has been
7 released, this information similarly could be
8 released.

9 With respect to the proposed redactions
10 in Question 27 and the Answer 27, we believe that
11 this information should remain confidential. Again,
12 these are both directional words, if you will, while
13 they are primarily directional words indicating
14 forecasted information for outer years, and we
15 believe that consistent with the rulings on OCC
16 Exhibit 4, this confidential information should
17 remain as such.

18 The same would hold true with the text in
19 lines 14 through 17. Again, this is forecasted
20 information, forecasted assumptions, all of which
21 have previously been given confidential treatment in
22 this particular case.

23 Footnote 14, the proposed redactions that
24 the company had suggested, we would renew again today
25 consistent with the rulings on OCC Exhibit 4. This

1 is forecasted information.

2 Page --

3 EXAMINER PIRIK: Ms. Spiller, on page 18,
4 I do have a question. On line 16, I just want to be
5 sure that we're -- that the last two words in that
6 line, are they proposed redacted or not?

7 MS. SPILLER: Your Honor, we would
8 believe so because, again, these are future energy
9 costs, and if you did release those, I think you
10 would certainly be -- one, it would be directional
11 and give at least the amount of the -- related to the
12 assumption. So, yes, we would propose redaction of
13 those final two words on line 16.

14 EXAMINER PIRIK: Okay.

15 MS. SPILLER: Page 19, your Honor, there
16 is Exhibit JFW-2. This particular document is
17 predicated based upon the bar graph upon forecasted
18 information. So we believe that consistent with
19 prior treatment of forecasted information, this graph
20 should be confidential as well.

21 The text that appears on line 4, the two
22 words that we have proposed redaction of, we believe
23 that redaction should remain. Again, directional
24 information that would be reflective of forecasts as
25 well as assumptions that were made in respect of

1 those forecasts.

2 Page 20, the text that appears on lines 1
3 through 5, the company had proposed revisions to the
4 redactions initially submitted by Consumers' Counsel.
5 The particular redactions that the company has
6 proposed as reflected in the red boxes, we would,
7 again, request confidential treatment of those. This
8 is information as to future events, forecasted
9 events, directional in respect to what is
10 potentially -- directional in respect of what those
11 forecasts would indicate.

12 Page 20, line 9, the dollar information
13 that appears on line 9 we believe should remain
14 confidential, consistent with the confidential
15 treatment given in OCC Exhibit 4 with respect to
16 future capacity prices.

17 Page 20, the text that runs from line 13
18 through line 18, the company had proposed some
19 revision -- modest revision to what was originally
20 filed by the OCC. We would renew the request for
21 confidential treatment here. Again, this is
22 information reflective of forecasted information,
23 assumptions related to those particular forecasts and
24 the outcome from that forecasting process. So
25 consistent with prior rulings, seeking confidential

1 treatment of the designated words.

2 Page 21, lines 3 through 8, the
3 particular words that the company has proposed
4 redaction of here again reflected in the red boxes,
5 we would continue -- strike that.

6 If I can look at page 21 in its entirety,
7 lines 3 through 15, the company has proposed some
8 revision to what was originally identified as
9 confidential. The proposed revisions reflected in
10 the text in the red boxes, we would request
11 confidential treatment of this particular language.
12 Again, reflecting future forecasted events,
13 assumptions, in connection with those particular
14 forecasts.

15 Page 22, if I may, it looks like, your
16 Honor, on line 4, I believe that the three words at
17 the end of the line can be open. It looks like, your
18 Honor, based upon the exchange that occurred with
19 Dr. Zhang during his examination, so it looks like,
20 your Honor, based upon the rulings in connection with
21 Dr. Zhang's examination, the text on lines 4, 5, and
22 6 can be released into the public.

23 And then the balance of the text for
24 which the company sought confidential information in
25 this particular answer, 31, we would renew the

1 request for confidential information, again
2 consistent with prior rulings. This concerns
3 particular projections, confidential and proprietary
4 projections utilized by Duke Energy Ohio.

5 Page 23 --

6 EXAMINER PIRIK: Could you hold on just a
7 minute?

8 MS. SPILLER: Yes, your Honor.

9 EXAMINER PIRIK: With regard to line 6.

10 MS. SPILLER: Yes, your Honor.

11 EXAMINER PIRIK: The Bench is -- we would
12 like to have that open. However, I do want to point
13 out that in SEJ-5, those certain words in that line
14 are not open. So if we are opening them up in this
15 line, we want them open in SEJ-5. Like I said, we
16 would prefer to have them open.

17 MS. KINGERY: Your Honor, if they were
18 said in the open record this morning by Dr. Zhang,
19 then obviously they would be open. But I guess since
20 we are not looking at it right now, it might be
21 easier if we kept them confidential for now and then
22 we can open it if need be.

23 EXAMINER PIRIK: I just want the two to
24 be consistent.

25 MS. SPILLER: No, understood.

1 EXAMINER PIRIK: I think we walked a fine
2 line with Mr. Zhang.

3 MS. KINGERY: If you give me a moment, I
4 can try and look.

5 EXAMINER PIRIK: No. We can -- because
6 you have to do the proposed redactions, we would ask
7 for you to seriously consider, based upon the line
8 that we drew with Mr. Zhang, that you open up those
9 words in SEJ-5, and do likewise here. But, again, if
10 you would just keep us informed with your proposed
11 redactions on those. I think we can move on from
12 there.

13 MS. KINGERY: Okay. We will confirm
14 that.

15 MS. SPILLER: Certainly, your Honor.
16 Thank you.

17 Page 23, your Honor, the information for
18 which the company had requested confidential
19 treatment previously, we would renew that request
20 here. This information is all confidential
21 forecasted information or words that describe the
22 results of that forecasted information in a
23 directional manner. Again, as forecasted,
24 proprietary information, we would -- we believe this
25 information should remain redacted consistent with

1 prior rulings of the Bench.

2 Page 24, the redactions for which the
3 company is seeking confidential treatment are on
4 line 2 as well as line 13. Again, your Honor,
5 consistent with prior comments, this -- this
6 afternoon, we would request confidentiality of the
7 information that's in the boxes on lines 2 and 13,
8 forecasted, proprietary, confidential information.

9 Page 25, the company had proposed some
10 revisions based upon the -- or, subsequent to the OCC
11 submission redactions on line 7, two redactions on
12 line 8, two on line 10, and then two on line 12, and
13 by "two redactions," I'm indicating the number of
14 boxes on those lines. We would similarly request
15 confidential treatment of this information,
16 forecasted information is reflected in the proposed
17 redactions.

18 JFW-3, the box or chart that appears on
19 page 26. Again, this information, as confirmed by
20 the dates at the bottom of the bar graph, is all
21 future information, forecasted. The sources of this
22 include the OVEC power cost projection or the
23 billable cost summary as it's been referred to in
24 other instances in this proceeding. That information
25 has already been afforded confidential treatment.

1 Consequently, this exhibit should similarly be
2 afforded confidential treatment.

3 Moving forward, your Honor, I think the
4 next spot that I see redactions as proposed by the
5 company subsequent to the submission of Mr. Wilson's
6 testimony appear on page 30. Numeric figures or
7 words on lines 3, 6, and 7. We would propose
8 confidential treatment of that information and this
9 is consistent with my prior comments with respect to
10 Mr. Wilson's testimony on line 12 -- I'm sorry, on
11 page 12. So, again, the forecasted information
12 concerning generation allocated to the company is
13 confidential and, as such, calculations derived from
14 that confidential information should be similarly
15 protected.

16 The same would hold true, your Honor,
17 with respect to page 31, line 15. Essentially the
18 same reason as that is a second -- or, another
19 recitation of that particular bit of information.

20 And then it looks like the only other
21 spot in the body of Mr. Wilson's testimony that I
22 see, your Honor, is on page 43, line 17. Consistent
23 with prior conversations today as well as the Bench's
24 prior ruling, I believe this is simply a reflection
25 of the cash flow line that's already been released

1 into the public. So it could be released as well,
2 your Honor.

3 And then there are attachments as well.
4 I believe many of these have already been addressed
5 by the Bench. I will note that Attachment JFW-3, a
6 discovery response, OCC Interrogatory 16-414, the
7 response to that, which is page 2 of that particular
8 discovery response, is one that may merit some
9 revision based upon the examination today of
10 Dr. Zhang. So we simply need to confirm consistency
11 between the proposed redactions here and what was
12 ruled upon in connection with that exam.

13 EXAMINER PIRIK: We're looking at page 3?

14 MS. BOJKO: I'm sorry. Page 3 of which
15 exhibit?

16 EXAMINER PIRIK: Page 3 -- I don't know.
17 Can you say again where we are?

18 MS. SPILLER: Sure. It's JFW-3, it's
19 Attachment JFW-3, the attachments to Mr. Wilson's
20 testimony. The beginning of this attachment is a
21 discovery response, OCC Interrogatory 16-414.

22 EXAMINER PIRIK: Okay.

23 MS. SPILLER: And it looks like this is
24 one, your Honor, there had been discussion earlier
25 today with reference to Ms. Jackson's testimony.

1 Well, the words, some of the words.

2 MR. BERGER: Did you say page 3 of the
3 attachment?

4 MS. SPILLER: I am looking at JFW-3. The
5 cover of that is the discovery request and then the
6 response -- the company's response begins on page 2
7 of JFW-3 -- oh, I'm sorry. It looks like JFW-3 is 54
8 pages. So let me do it this way. JFW-3, page 49 of
9 54.

10 MR. BERGER: Thank you.

11 MS. SPILLER: Is OCC Interrogatory
12 61-414.

13 MR. BERGER: Thank you.

14 MS. SPILLER: Page 50 of 54 is the
15 company's response and we simply need to align the
16 redactions here with what was addressed earlier this
17 morning.

18 EXAMINER PIRIK: Okay. Page 52 of 54 of
19 JFW-3, is that an exhibit in the record already?

20 MS. SPILLER: Your Honor, we'll have to
21 go back and check that.

22 EXAMINER PIRIK: I think the final three
23 pages of that attachment, 52, 53, and 54 have items
24 on it -- while they may be subject matters that we've
25 found confidential, at least on the last page, I

1 don't think we've ever had that item redacted. So I
2 just want to confirm your proposed redactions on
3 those three pages and why.

4 MS. SPILLER: Yes, your Honor. On
5 page 52 of 54, the proposed redactions, again, this
6 is information that has been, certainly on the first
7 redactions there, the numeric information, is
8 information that I believe has previously been
9 afforded confidential treatment.

10 Certainly with respect to the company's
11 activities in OVEC, this is not -- I'm sorry, in PJM,
12 this is not information that is published. This is
13 confidential information. It's information that the
14 company certainly takes care to protect. And this
15 information is not available through the PJM website
16 or otherwise put into a public domain. So
17 information that is offered and compared in a base
18 residual auction is confidential.

19 I would further note this information
20 concerns future years. So although the auctions may
21 have already occurred, again this is information that
22 has not yet been realized and I would suggest to
23 remain confidential.

24 The question, we proposed redaction of
25 the one word in question or subpart a., because that

1 is a directional word concerning the confidential
2 information -- oh, I'm sorry, your Honor, it looks
3 like OCC Exhibit 30. We did rule on the redactions
4 and it looks like, based upon what we've prepared in
5 Mr. Wilson's testimony, that the proposed redactions
6 to OCC Interrogatory 16-417 as attached to his
7 testimony are consistent with the ruling from the
8 Bench in respect of OCC Exhibit 30.

9 And then, your Honor, the final
10 attachment, page 54 of 54, this is one that we can
11 withdraw the request for confidential information of
12 the Pnode identifier.

13 EXAMINER PIRIK: Are there any responses
14 to the request for protection?

15 MR. BERGER: Yes, your Honor. Just
16 turning briefly to the testimony at page 20 --
17 actually, going back to page 18. There are some
18 words on line 11 that I don't think reveal any
19 confidential information. The three words before the
20 period, without any modifying information. The first
21 two words that are proposed to be redacted in the
22 sentence also don't reveal any confidential
23 information absent the directional modifier.

24 Actually, going back to line 6 there, the
25 fifth, sixth, and seventh word and anything but

1 the --

2 EXAMINER PIRIK: Well, I think you may be
3 looking at a different version than the one we got on
4 Friday.

5 MR. BERGER: Okay.

6 EXAMINER PIRIK: Because the one we got
7 on Friday just asks for -- line 6, just asked for the
8 third word from the end to be open on line 6.

9 MR. BERGER: Okay.

10 MS. SPILLER: I think that question can
11 be open, Question 27.

12 EXAMINER PIRIK: Okay.

13 MR. BERGER: The whole question can be
14 open?

15 MS. SPILLER: The question, yes, but the
16 redactions in the answer, we believe, as proposed by
17 the company, are appropriate.

18 MR. BERGER: Yeah. In terms of line 11,
19 we would maintain that without -- as long as the
20 fifth word in that line remains confidential, it
21 doesn't reveal anything.

22 MS. BOJKO: Right. And we would support.
23 The last two words in that line that are -- three
24 words, those are common words used throughout and it
25 doesn't reveal anything if you take the direction

1 away.

2 MS. SPILLER: But I'm not -- so
3 collectively you're proposing publication of the last
4 five words in the sentence that ends on line 11?

5 MS. BOJKO: No.

6 MS. SPILLER: Well, Mr. Berger just said,
7 I think, the fifth word.

8 MR. BERGER: The last three words in the
9 sentence that ends on line 11 with the period, and
10 the first -- the first and third word as well.

11 EXAMINER PIRIK: Anything else,
12 Mr. Berger?

13 MR. BERGER: Line 17, the third word from
14 the end of the line and the last word don't need to
15 be redacted, I don't think. Again, on page 19, I
16 don't think, on line 4 and 5, those two words need to
17 be redacted at the end of the sentence.

18 EXAMINER PIRIK: They've already been
19 open.

20 MR. BERGER: Oh, they are already open.
21 My mistake.

22 EXAMINER PIRIK: That's okay.

23 MR. BERGER: On page 20, your Honor, at
24 line 5, I don't think -- perhaps I'm wrong, but this
25 is talking about --

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1 EXAMINER PIRIK: The only two items in
2 that line that are proposed redacted are the last
3 word.

4 MR. BERGER: The last word.

5 EXAMINER PIRIK: And the
6 fourth-to-the-last word.

7 MR. BERGER: Okay.

8 EXAMINER PIRIK: Do you have any response
9 to that?

10 MR. BERGER: Well, I don't think the
11 fourth-to-the-last word needs to be redacted
12 unless -- if the directional indicator is redacted.

13 On page 21 at line 7, the word that's
14 five words from the end, I don't think that needs to
15 be redacted.

16 EXAMINER PIRIK: The only things in that
17 line that are proposed are the third and fourth word
18 in that sentence, and going to the end of the line,
19 the third and fourth word from the end.

20 MR. BERGER: Okay.

21 EXAMINER PIRIK: Do you have a response?

22 MR. BERGER: No, I'm fine with that.

23 EXAMINER PIRIK: You're not objecting,
24 okay.

25 MR. BERGER: Again, you have a different

1 copy.

2 EXAMINER PIRIK: Yeah. That's why I am
3 trying to help you out.

4 MR. BERGER: I appreciate that.

5 On line -- I don't think on line -- on
6 line 10 that the -- you have redacted --

7 EXAMINER PIRIK: I believe line 10 is all
8 open now.

9 MR. BERGER: Oh, that's all open? Okay.
10 Is that the same for line 11?

11 EXAMINER PIRIK: Line 11, the second word
12 and the fifth word to the beginning of the line, and
13 then the two words after the words "have the" are
14 proposed redacted.

15 MR. BERGER: Okay. And on lines 13 and
16 14 --

17 EXAMINER PIRIK: 13, the only word is the
18 third word from the end. And 14, the only word is --
19 there's two items and they are the two items after
20 "also have."

21 MR. BERGER: Two items -- the three words
22 after "also have"?

23 EXAMINER PIRIK: The two words after
24 "also have."

25 MR. BERGER: Okay. I agree with that.

1 I think on page 23 at line -- line 17,
2 are three words redacted on that line?

3 EXAMINER PIRIK: Proposed, yes.

4 MR. BERGER: I think only the first of
5 those three words needs to be redacted. And then on
6 page 25 at line 9, are three words redacted on that
7 line?

8 EXAMINER PIRIK: Actually those are all
9 open.

10 MR. BERGER: The rest of that page is
11 open?

12 EXAMINER PIRIK: Just those three words
13 are open. There are proposals on the other lines.
14 Do you want to know what those are?

15 MR. BERGER: Yes, if you don't -- that
16 would be great.

17 EXAMINER PIRIK: Line 10, it's the
18 second, third, and fourth words as well as the words
19 in between "for" and "in." Line 11 is open.

20 MR. BERGER: So the words after "in" are
21 open?

22 EXAMINER PIRIK: They are open.

23 MR. BERGER: On line 10?

24 EXAMINER PIRIK: Yes.

25 MR. BERGER: And then on line 11?

1 EXAMINER PIRIK: It's open.

2 Line 12, the first word and the words
3 between "run" and "in" are proposed.

4 MR. BERGER: Everything else is open.

5 EXAMINER PIRIK: Is the third from the
6 end word open?

7 MS. SPILLER: Yes, your Honor.

8 EXAMINER PIRIK: Okay. So the words
9 between "run" and "hours" are proposed redacted.

10 MR. BERGER: Okay. On page 30, I
11 don't -- on line 6, I think we've been -- the company
12 proposed to redact this figure, this percentage
13 number in several places. I don't think that the
14 percentage of OVEC's entitlement relative to Duke's
15 total load is really confidential. It's in so many
16 annual reports, essentially it can be calculated
17 readily. I don't understand why that would need to
18 be treated as confidential.

19 MS. BOJKO: Your Honor, if I might, on
20 this point, speed this up a little bit.

21 EXAMINER PIRIK: Ms. Bojko.

22 MS. BOJKO: I believe I asked Mr. Wathen
23 on the stand and he did the calculation for us right
24 there on the stand. The number is different than
25 what's in this testimony, but he did the calculation

1 in the open record.

2 MS. SPILLER: But I think the difference
3 here is the number that is reflected on line 3,
4 page 30 is an assumed number about future activities,
5 and to the extent the percentage is derived from that
6 future assumed number which should be confidential,
7 that particular number should be confidential as
8 well.

9 MS. BOJKO: We have the denominator, we
10 can do any percentage off any number.

11 MS. HUSSEY: Your Honor, I understand
12 what Ms. Spiller has indicated, but it's my
13 understanding the company has characterized rider PSR
14 as a hedge and, arguably, customers should be aware
15 of the percentage of their load to which the hedge
16 might actually apply. So I contend that this should
17 be public information.

18 MS. SPILLER: But, again, I think it
19 depends on the percent and numbers used to derive the
20 percent. So here, if you disclose the percent that
21 appears on lines 6 and 7, and given that line 5 is in
22 the public record, you back in pretty quickly to
23 future assumptions.

24 MR. BERGER: I don't have anything
25 further, your Honor.

1 EXAMINER PIRIK: But your last argument
2 also goes for page 31?

3 MR. BERGER: I think that -- that figure
4 is used in several places in the testimony, yes. If
5 you go to page 31.

6 MS. HUSSEY: 12, 30, and 31.

7 EXAMINER PIRIK: 12, 30, and 31?

8 MS. HUSSEY: Yes.

9 MR. BERGER: Yes.

10 EXAMINER PIRIK: Are there any other
11 objections?

12 MS. BOJKO: Yeah, just quickly, your
13 Honor. On page 24, similar to our discussion
14 earlier, I don't believe the -- after the -- what are
15 we calling it, movement words, I don't believe that
16 the two items then redacted need to be redacted. I
17 mean that's pretty common terminology that we have
18 been using throughout the hearing, as long as the
19 movement words are redacted. And then that would
20 go --

21 EXAMINER PIRIK: Are we -- we're on page
22 24. Are you on line 13?

23 MS. BOJKO: Oh, yes, I'm sorry.

24 EXAMINER PIRIK: I just want to be sure
25 of the line. So the first two words at the beginning

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1 of the sentence you are not objecting to. It's the
2 remainder of the proposed redactions.

3 MS. BOJKO: Right.

4 EXAMINER PIRIK: Okay.

5 MS. BOJKO: And then the similar
6 argument, which I believe that Mr. Berger might have
7 mentioned briefly, was on page 18, lines 11, with
8 regard to the last three words in that sentence.

9 MS. SPILLER: I'm sorry, Ms. Bojko.
10 Page 18?

11 MS. BOJKO: Yes. Line 11, the last three
12 words in the sentence before the period.

13 MS. SPILLER: And I guess, just to be
14 clear on this collectively between OMA and OCC, the
15 discussion is only the last three words in the
16 sentence that end on 11?

17 MS. BOJKO: I mean the Consumers' Counsel
18 made different arguments than I did. I was drawing
19 the Commission's attention to the last three words of
20 that sentence similar to the argument I just had on
21 page 24.

22 MR. BERGER: I also pointed to the first
23 and third words of the sentence.

24 EXAMINER PIRIK: Correct. Okay.
25 Anything else?

1 MS. BOJKO: Nothing further.

2 EXAMINER PIRIK: Ms. Spiller, do you have
3 any response to the objections?

4 MS. SPILLER: Briefly, your Honor, and I
5 am going to start, I think there was a comment that
6 transcended several pages of the document including
7 page 12, footnote 8. As well as later in the
8 document. Page 30, page 31.

9 EXAMINER PIRIK: Are you talking
10 footnote 8 or line 18?

11 MS. BOJKO: We weren't talking
12 footnote 8.

13 EXAMINER PIRIK: I think we're talking --

14 MS. SPILLER: But I think it all goes
15 together.

16 EXAMINER PIRIK: Okay.

17 MS. SPILLER: When we look at page 12,
18 line 18 and the footnote 8, and if you look at page
19 30, again, the proposed redactions here, and page 31,
20 the proposed redaction there, as I've indicated,
21 certainly the numeric information in footnote 8 as
22 well as the numeric information on page 30, line 3,
23 that information has already been afforded
24 confidential treatment.

25 And again, if you release the percentage

1 information, given that the information that appears
2 on page 30, line 5, is in the public record, you
3 readily back into that which has already been
4 forwarded confidential information.

5 And so, for that reason, we are asking
6 that both the generation allocation number that
7 appears in footnote 8 and line 3 be afforded
8 confidential treatment as well as the other part of
9 that equation or calculation which is the percentage
10 information.

11 With respect to the comments from OMA and
12 OCC regarding page 18, line 11, I would simply
13 indicate that disclosure of this information,
14 particularly the first and third words on line 11 as
15 proposed by the OCC is indicative of assumptions that
16 have been made, assumptions as to future events and
17 confidential forecasted information, assumptions that
18 certainly, in other respects in this proceeding, have
19 been afforded confidential information.

20 It looks like, your Honor, with respect
21 to page 23, line 17, I believe the OCC had proposed
22 release into the public record of the two words that
23 appear before the period. Again, line 17, I simply
24 indicate that we believe that the proposed redaction
25 is consistent with our request for redaction of

1 assumptions in connection with forecasted material
2 and we would just view that as part of the -- part of
3 the assumption.

4 And then a similar response, if I may,
5 with respect to page 20, line 13, I believe a comment
6 from OMA proposing release of the fourth, sixth, and
7 seventh words that appear on line 13. The OMA's
8 proposal would be, I believe, to simply leave
9 redacted the first two words in line 13. Although
10 some terminology may be common when used in this
11 context, it would reveal assumptions that have been
12 made.

13 EXAMINER PIRIK: Okay. The last one,
14 you're saying, page 20.

15 MS. SPILLER: I'm sorry. Page 24, your
16 Honor, I believe. I'm sorry. Page 24, line 13. I
17 believe this was a portion of the testimony addressed
18 by Ms. Bojko.

19 EXAMINER PIRIK: And your arguments are
20 again? I was still looking at page 20, looking for
21 words.

22 MS. SPILLER: And I apologize for that.
23 Again, Ms. Bojko has indicated that all but the first
24 two words in that particular language that appears on
25 13 is common, it's been referenced. Generally that

1 may be an accurate statement, but I believe
2 disclosure here would be indicative of assumptions.
3 And so, this is information that was considered as
4 part of assumptions regarding forecasted information,
5 so we believe that that information should remain
6 confidential.

7 MS. BOJKO: Your Honor, just to be clear
8 those are all listed -- those phrases, items,
9 assumptions, whatever you want to call them, are all
10 listed on the OVEC analysis, so I don't see the
11 secrecy of that.

12 MS. SPILLER: Well, I think they're --
13 simply listing something doesn't mean that it was
14 considered. And here, if you don't redact the
15 information, you indicate that you've expressly
16 considered something for purposes of your assumptions
17 and, again, it would be indicative of your thought
18 processes and methodologies; that's the only point we
19 are indicating.

20 MS. BOJKO: This is not Duke -- I mean
21 this is somebody else's testimony, so it's not the
22 same.

23 EXAMINER PIRIK: Okay. I'm not going to
24 go through and specifically go through what each word
25 and each item is that you've requested. What we'll

1 do is go ahead through each page and grant or deny
2 it. On those pages where there has been some
3 objection, we will clarify as to what we're granting
4 or denying. So when I say "grant," essentially going
5 back into the transcript, you'll see what you had
6 requested and then you'll give us a proposed redacted
7 version and we'll look at it from there to be sure
8 it's consistent with what the ruling is.

9 MS. SPILLER: Okay.

10 EXAMINER PIRIK: Okay? Your proposal on
11 page 7 will be granted.

12 Your proposal, and although I had to take
13 the proposal with regard to the item on page 12, line
14 18, as well as the same reference on page 30 and 31,
15 we are going to grant protective status for that.
16 Although, realizing that the parties, in their
17 arguments, mentioned that perhaps it was referenced
18 in previous testimony. We will -- we are open to
19 reconsidering that ruling based on the parties
20 looking into the transcripts and actually seeing what
21 that information actually was. So we would be open
22 to that. Although, those arguments need to be made
23 before the end of the day tomorrow so we can close
24 the record at the conclusion of the hearing.

25 Page 18 is the next page. I believe Duke

1 clarified that the word they had proposed on line 6
2 is now open. With regard to the arguments on
3 line 11 -- oh, the item on line 7 is granted.

4 MS. SPILLER: I think that can be open as
5 well.

6 EXAMINER PIRIK: Oh, it's open as well.

7 MS. SPILLER: It should be consistent
8 with the cash flow disclosure.

9 EXAMINER PIRIK: Okay. Okay. So those
10 two items on line 6 and line 7 will be open.

11 On line 11, the first two proposed
12 redactions on either side of the word "to" will be
13 granted. Those are the ones that were previously
14 argued about.

15 And with regard to the two words at the
16 end of that sentence, on either side of the word
17 "and" we will deny protective treatment of those.

18 The rest of the items on that page -- oh,
19 we still have another one on line 17. The proposal,
20 the word -- the last word in that sentence will be
21 open, and the third to the last word in that sentence
22 will be open.

23 MR. BERGER: Did you say line 17?

24 EXAMINER PIRIK: Line 17, yes. The
25 second to the last word will be closed consistent

1 with the arguments made by OCC.

2 MS. SPILLER: So the final -- and I'm
3 sorry, your Honor, I was looking at a different line.
4 So line 17, the last two words in the sentence, open?

5 EXAMINER PIRIK: I believe OCC's
6 argument -- well, clarify your argument.

7 MR. BERGER: You're ruling according with
8 our argument which was the --

9 EXAMINER PIRIK: That's what I thought.

10 MR. BERGER: -- last word and the third
11 from the last word should be open.

12 MS. SPILLER: Okay. Thank you.

13 EXAMINER PIRIK: Okay. Everything on the
14 page as proposed by the company is granted.

15 Page 19, the proposed redactions are
16 granted.

17 20, with regard to line 5, OCC had
18 recommended that the -- proposed that the word after
19 the word "coming" be in the open record. We agree,
20 so the motion for redaction of that will be denied.

21 The remainder of the proposals on that
22 page will be granted.

23 Line 20 -- or, page 21, those proposed
24 redactions are granted.

25 Likewise, page 22, those proposed

1 proposals are granted.

2 Page 23, OCC has recommended that on
3 line 17, the last two words of that sentence be in
4 the open record. We agree, so the redaction will be
5 denied. The remainder of the proposed redactions on
6 this page will be granted.

7 Page 24, line 13, we find that the words
8 between "in" and "among" should be open, so the
9 proposed redaction is denied. The remainder of the
10 page is granted.

11 Page 25, the proposed redactions are
12 granted.

13 Page 26 -- well, there weren't any
14 arguments on this page. The Bench notes that in the
15 center of the box there's some language right beside
16 the \$10 amount, and that was actually mentioned by
17 Duke counsel in stating what the -- what the chart
18 is. Is there any reason why those -- those words
19 can't be in the open record?

20 MS. SPILLER: I think that's fine, your
21 Honor.

22 EXAMINER PIRIK: Okay. So just with
23 regard to that one piece of the chart that will be
24 denied.

25 Page 30, I already ruled on two of the

1 items on this page. With regard to the item on line
2 3, that will be granted.

3 Likewise, page 31, we already ruled on
4 that.

5 And finally, with regard to the
6 attachment. For the most part the items in the
7 attachments and the redactions should be consistent
8 with what we had already ruled on in other -- per
9 other exhibits and we'll look forward to seeing those
10 proposed redactions.

11 As far as what may be first-time
12 redactions proposed on JFW-3, pages 52 and 53, we
13 will grant those redactions.

14 I believe that covers everything. Did I
15 miss anything?

16 MR. BERGER: No, your Honor.

17 EXAMINER PIRIK: Okay. All right.

18 MS. SPILLER: I don't believe so, your
19 Honor. Thank you.

20 EXAMINER PIRIK: I think we should
21 take -- I'm sorry, Mr. Wilson, but I think we should
22 take our lunch break now and come back at, you know,
23 5 after 1, or 5 after 2, 2:10. Come back at 2:10.

24 (Thereupon, at 1:11 p.m., a lunch recess
25 was taken.)

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1 Wednesday Afternoon Session,
2 November 5, 2014.

3 - - -

4 EXAMINER PIRIK: We'll go back on the
5 record.

6 - - -

7 JAMES F. WILSON

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

10 DIRECT EXAMINATION (Continued)

11 By Mr. Berger:

12 Q. Mr. Wilson, I think we previously marked
13 your testimony Exhibit 43a. And after we discussed
14 the confidential issues, do you have any further
15 changes, additions, or corrections to your testimony
16 at this time?

17 A. No, I don't.

18 Q. And with the corrections you've
19 previously described, is your testimony in Exhibit
20 43a and 43 true and correct to the best of your
21 knowledge, information, and belief?

22 A. Yes, it is.

23 Q. And if I were to ask you the same
24 questions contained in that testimony today, would
25 your answers be the same?

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1 A. Yes.

2 MR. BERGER: Your Honor, there was the
3 additional -- the revised exhibit that's shown -- or,
4 revised Exhibit JFW-1 on page 8 which, as I
5 understand it, we are not treating as confidential.
6 I would suggest we mark that as Exhibit 43b.

7 EXAMINER PIRIK: Rather than mark it as a
8 letter because we're reserving that for confidential
9 information, we can mark it as 43.1.

10 MR. BERGER: 43.1? Okay.

11 EXAMINER PIRIK: And that will be the
12 errata for the chart on page 8. That will be the
13 change -- correction.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. BERGER: Thank you.

16 Q. And, Mr. Wilson, is Exhibit 43.1, which
17 is your revised page 8 reflecting your revision to
18 Exhibit JFW-1, is that true and correct to the best
19 of your knowledge, information, and belief?

20 A. Yes.

21 MR. BERGER: Thank you. With that, your
22 Honor, the witness is available for cross-examination
23 and I will hold my motion to admit his testimony
24 until the end of his examination. Thank you.

25 EXAMINER PIRIK: Thank you.

1 Ms. Hussey?

2 MS. HUSSEY: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Hussey:

6 Q. Mr. Wilson, I have just one question for
7 you. If you could turn to page 4 of your testimony.
8 And are you there?

9 A. Yes.

10 Q. Okay. Beginning on line 10, there's a
11 question presented and it says: "The stipulation that
12 resolved all of the issues in Duke Ohio's ESP II
13 proceeding called for Duke Ohio to transfer its
14 ownership interests in generation," and then a
15 parenthetical, "(Stipulation and Recommendation in
16 Case No. 11-3549-EL-SSO, page 25)." Then the
17 question reads: "Did this provision apply to Duke's
18 interest in OVEC?"

19 And on line 15, the first word is "No,"
20 and then you go on to opine about Duke Ohio's
21 position. My question is does the "no" that's the
22 first word of line 15, is that your opinion or is
23 that your categorization of what Duke's opinion was?

24 A. Well, and this was discussed on
25 deposition, all I'm really doing here is noting that

1 the language in the stipulation when it talks about
2 the contractual obligations, and the ICPA is a
3 contractual obligation, it says that -- that they
4 shall be permitted to remain, without approval, to
5 the extent that, and then there was some conditions.

6 So I guess my answer was saying there is
7 not an unconditional obligation to transfer. They
8 can remain if certain conditions are met. They
9 basically can remain if it's, you know, impossible,
10 or something, to transfer them. This is just a
11 background Q and A to note -- to make that
12 observation.

13 Q. Okay. So, by your response, you're
14 basically providing background then.

15 A. Yes. That's what I intended to do here.

16 MS. HUSSEY: Okay. No further questions.
17 Thank you.

18 EXAMINER PIRIK: Thank you.

19 Mr. Boehm.

20 MR. K. BOEHM: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. K. Boehm:

24 Q. Good afternoon, Mr. Wilson.

25 A. Good afternoon.

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1 Q. My name is Kurt Boehm. I represent the
2 Ohio Energy Group. On page 7 of your testimony.

3 MR. K. BOEHM: And I just want to
4 confirm, I think this number is not confidential, but
5 the number on page -- or, on line 5 of page 7, that's
6 not confidential, correct?

7 EXAMINER PIRIK: That's open.

8 MR. K. BOEHM: That's open. Okay.
9 Thanks.

10 Q. You state, beginning on line 4 of page 7,
11 "Under Duke Ohio's estimate, the cumulative net cost
12 to customers of Duke Ohio's OVEC entitlement over the
13 ESP Period would be \$22 million"; is that correct?

14 A. Yes.

15 Q. The ESP period is three years?

16 A. Yes.

17 Q. So just simple math, if we divide the
18 22 million divided by the three years, the average
19 cost of the OVEC entitlement per year would be
20 7.33 million; is that correct?

21 A. That's roughly correct.

22 Q. Now, on page 30, line -- line 4, you -- 4
23 and 5, you cite Duke Energy's 2013 annual report and
24 Form 10-K, and you state that the total end use
25 consumption by Duke Ohio's customers of

1 \$24.6 million -- I'm sorry, 24.6 million
2 megawatt-hours per year; is that correct?

3 A. Yes.

4 Q. Now, this might not be math that you can
5 do in your head, but if we take the 7.33 million
6 annual cost of the OVEC entitlement and we divide
7 that by the 24.6 million megawatt-hours per year,
8 would you accept my math that the number you come up
9 with is -- is 29.8 cents, approximately 30 cents per
10 megawatt-hour?

11 A. That's ballpark, yes.

12 Q. Now, the -- I looked up on Duke's website
13 the typical residential bill and it stated that the
14 typical -- they use a thousand kilowatt hours per
15 month as the typical -- or, 1 megawatt-hour per month
16 is a typical residential bill. Does that sound about
17 right to you?

18 A. Yes.

19 Q. So would you agree with me that the --
20 if -- if Duke's projections are correct, the typical
21 residential household would be facing about 30 cents
22 per month from the OVEC entitlement if it's approved,
23 correct?

24 A. That sounds right if those pieces fit
25 together right, yes.

1 Q. And that's consistent with your statement
2 that the impact on customers' bills would be very
3 small, correct?

4 A. Yes.

5 MR. K. BOEHM: Thank you. Those are all
6 the questions I have.

7 EXAMINER PIRIK: Thank you.

8 Mr. Oliker?

9 MR. OLIKER: No, thank you, your Honor.

10 EXAMINER PIRIK: Ms. Petrucci?

11 MS. PETRUCCI: No questions.

12 EXAMINER PIRIK: Duke?

13 MS. SPILLER: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Spiller:

17 Q. Good afternoon, Mr. Wilson.

18 A. Good afternoon.

19 Q. You testified in the recent ESP
20 proceeding, correct?

21 A. That's correct.

22 Q. Rendered testimony in that case in
23 approximately June of this year?

24 A. Yes.

25 Q. And in that case, sir, like here, you

1 offered testimony on the utility's proposal with
2 regard to its OVEC contractual entitlement and the
3 rider's estimated net costs or benefits as determined
4 by the information provided by the utility in
5 discovery, correct?

6 A. Correct.

7 Q. And you know that both AEP Ohio and Duke
8 Energy Ohio have contractual entitlements in OVEC,
9 correct?

10 A. Correct.

11 Q. And, sir, the acronym "OVEC," to your
12 knowledge, stands for the Ohio Valley Electric
13 Corporation?

14 A. That's correct.

15 Q. And with regard to AEP Ohio and Duke
16 Energy Ohio, the percentages may differ for those
17 entities under the ICPA, correct?

18 A. Correct.

19 Q. And the ICPA is the Intercompany Power
20 Agreement between OVEC and various sponsoring
21 companies, correct?

22 A. Yes.

23 Q. Now, the OVEC-owned assets from which AEP
24 Ohio and Duke Energy Ohio have a contractual
25 entitlement to the output are the same assets,

1 correct?

2 A. That's correct.

3 Q. And those two OVEC-owned assets are Kyger
4 Creek and Clifty Creek, correct?

5 A. Yes.

6 Q. They are both coal generating stations,
7 correct?

8 A. Yes.

9 Q. And given your work in the AEP Ohio ESP
10 case, you know from its filing that with regard to
11 the OVEC-related proposal that's similar to what Duke
12 Energy Ohio is proposing here, correct?

13 A. I'm not sure I got the question in that.

14 Q. Sure. I'll restate it. With the AEP
15 Ohio proposal -- strike that.

16 The testimony on which you provided
17 comment in the AEP Ohio case concerned AEP's Ohio
18 proposed rider PPA, correct?

19 A. Yes.

20 Q. And certainly in the context of the AEP
21 ESP proceeding, the PPA concerned AEP's Ohio
22 contractual entitlement in the OVEC-owned assets,
23 correct?

24 A. Yes.

25 Q. And that proposal is similar to what Duke

1 Energy Ohio is proposing in this case under its rider
2 PSR, correct?

3 A. There are similarities, yes.

4 Q. Mr. Wilson, you are not an attorney,
5 correct?

6 A. Correct.

7 Q. And you are not familiar with Ohio law
8 regarding the interpretation of contracts, correct?

9 A. Correct.

10 Q. But in this particular case you've
11 offered testimony regarding Duke Energy Ohio's ESP
12 stipulation docketed under Case 11-349, correct?

13 A. Well, we just discussed that. It's
14 background material, yes.

15 Q. But, sir, you are offering testimony with
16 respect to Duke Energy Ohio's obligations under that
17 document, correct?

18 A. I'm not sure. I think my testimony
19 speaks for itself. I observed what the stipulation
20 says.

21 Q. Well, sir, in observing what the
22 stipulation says, you're offering an opinion as to
23 what that document says, correct?

24 A. I don't really think I'm offering an
25 opinion or interpretation. I'm just observing that

1 that document says the contractual obligation can
2 remain if, you know, certain problems exist that
3 prevent it from being transferred. I'm just
4 observing that by way of background for my testimony.

5 Q. And we'll get to whether -- we will get
6 to the background for your testimony. But in
7 connection with the ESP stipulation that you cited
8 beginning on page 4 of your testimony, you had
9 conversations with the attorneys about what the
10 stipulation said with respect to the transfer of
11 owned or contractual generation, correct?

12 MR. BERGER: Objection, your Honor. Is
13 she asking the witness for conversations he had with
14 attorneys? Is she asking for attorney-client
15 privilege?

16 MS. SPILLER: He's already said this,
17 Mr. Berger.

18 MR. BERGER: He has already said what?

19 MS. SPILLER: Well, he's already
20 acknowledged that this -- that these conversations
21 occurred.

22 MR. BERGER: In an earlier question
23 today?

24 MS. SPILLER: In his deposition.

25 MR. BERGER: Well, would you reference us

1 to his deposition so we can confirm that?

2 MS. SPILLER: Sure. It's on page 23.

3 EXAMINER PIRIK: I am going to overrule
4 the objection. Just so you are aware, if there's
5 anything confidential, attorney-client, but with
6 regard to the facts of the case and exactly how you
7 came about your testimony, general conversations are
8 not a problem.

9 MS. SPILLER: Thank you, your Honor.

10 Q. (By Ms. Spiller) And, Mr. Wilson, in
11 connection with Duke Energy Ohio's proceeding in this
12 case, you had conversations with the attorneys about
13 what the ESP stipulation said with respect to
14 transfer of owned or contractual generation, correct?

15 A. We had conversations about the
16 stipulation. I don't remember exactly the substance
17 of them.

18 Q. Sir, do you have your deposition before
19 you?

20 A. I do.

21 Q. If you could turn to page 23, please.

22 MS. SPILLER: Does the Bench need a copy?

23 EXAMINER PIRIK: Yes.

24 Q. And, sir, at your deposition you were
25 placed under oath by a court reporter, correct?

1 A. Yes.

2 Q. Okay. And on line 6 I asked you "And,
3 Mr. Wilson, for purposes of your work in Duke Energy
4 Ohio's pending ESP proceeding, what caused you to
5 search out the stipulation and recommendation in its
6 current ESP?"

7 Your response, beginning on line 10,
8 "Well, there were conversations with the attorneys
9 about what the stipulation -- what the stipulation
10 said with respect to transfer of owned and
11 contractual generation. And consequently, I wanted
12 to understand what it said, so I asked for a copy of
13 it and was provided a copy of the stipulation." Did
14 I read that correctly?

15 A. Yes.

16 Q. And the attorneys to whom you refer, were
17 those OCC attorneys?

18 A. Yes.

19 Q. And were there other attorneys outside
20 off the OCC involved in those conversations?

21 A. No.

22 Q. And as a result of your conversations,
23 what was your understanding of what the stipulation
24 said with regard to the transfer of owned and
25 contractual generation?

1 MR. BERGER: Objection, your Honor.
2 That's attorney work product. It's reflecting the
3 impressions of counsel for purposes of litigation.
4 And I don't think that is -- should be permitted to
5 be revealed. All he did here in his testimony on
6 page 23 was acknowledge that he had conversations.
7 None of those communications were discussed.

8 MS. SPILLER: Your Honor, I will note
9 that Mr. Wilson has revealed there were conversations
10 about a specific -- specific subject matter. There
11 was no objection whatsoever and I believe that to the
12 extent there is any work product, that that privilege
13 has been waived.

14 MR. BERGER: Your Honor, all he did was
15 acknowledge the subject was discussed. He never said
16 what the communications were. It's the
17 communications that are protected, not the fact that
18 there was a communication. If we were to have a
19 privilege log, we could identify what the subject
20 matter of a privileged document is without
21 identifying what he communicated.

22 EXAMINER PIRIK: I think general
23 questions with regard to how he came about the
24 information that's in his testimony, however -- is
25 fine. However, specifics as to what was discussed

1 with counsel would be crossing the line. So I think
2 you just need to be careful about questioning him
3 about how he arrived at his conclusions in his
4 testimony, whether it was through his own reading of
5 the stipulation or through advice of counsel.

6 MS. SPILLER: Thank you, your Honor.

7 Q. (By Ms. Spiller) Mr. Wilson, after you
8 had conversations with the OCC attorneys regarding
9 the ESP stipulation and what it said concerning the
10 transfer of owned or contractual generation, you then
11 asked for a copy of the ESP stipulation, correct?

12 A. Well, not exactly. I wanted to
13 understand what the status was of the OVEC generation
14 and because I understood there was an obligation to
15 transfer assets. The attorneys said the stipulation
16 addresses that. And then I wanted to see the
17 stipulation. So it wasn't a lot of conversation and
18 interpretation going on.

19 By way of background I wanted to
20 understand where the OVEC entitlement -- what its
21 status was according to, you know, under -- in light
22 of the transfer. And I was told the stipulation
23 answers that, so I got a copy of the stipulation.

24 Q. Well, sir, let's go back to page 23 of
25 your deposition. And I am not going -- I am not

1 going to reread the question on line 6 again, but
2 your answer on line 10 was "Well, there were
3 conversations with the attorneys about what the
4 stipulation said with respect to transfer of owned
5 and contractual generation. And consequently, I
6 wanted to understand what it said, so I asked for a
7 copy of it and was provided a copy of the
8 stipulation." Did I read that correctly, sir?

9 A. Yes. And that's consistent with what I
10 just explained.

11 Q. And so, you read the ESP stipulation
12 filed under Case 11-354, correct?

13 A. Yes.

14 Q. And do you have a copy of that document
15 with you, sir?

16 A. I believe I do.

17 Q. Do you have the entire document, sir?

18 A. I have, without attachments, through
19 page 44.

20 Q. And, sir, you've used the word
21 "contractual generation" with respect to transfer
22 requirements under the ESP -- the current ESP
23 stipulation, correct?

24 A. I believe I said "contractual
25 obligations."

1 Q. Sir, do we need to go back to your
2 deposition? Page 23. Again, your answer that begins
3 on line 10 --

4 A. Just a moment.

5 Q. Yes, sir. Do you have that?

6 A. Yes.

7 Q. Line 10, "Well, there were conversations
8 with the attorneys about what the stipulation said
9 with respect to transfer of owned and contractual
10 generation," correct?

11 A. Yes.

12 Q. And, sir, the contractual generation, as
13 you've used that term, is generation that is under
14 contract, not owned by, but under contract to Duke
15 Energy Ohio, such as, in your opinion, the OVEC
16 generation, correct?

17 A. Well, I used -- I don't believe I used
18 "contractual generation" in my testimony. And
19 contractual generation is a phrase that you used
20 multiple times, and I used it in that one instance,
21 but I'm generally talking about contractual
22 obligations, yes.

23 Q. Well, sir, what I just read to you from
24 your deposition was your testimony, correct?

25 A. Yes.

1 Q. Those were not my words, were they?

2 A. No.

3 Q. And, sir, when you use the term
4 "contractual generation," you're referring to
5 generation that is under contract, not owned by, but
6 under contract to Duke Energy Ohio, such as, in your
7 opinion, the OVEC generation, correct?

8 MR. BERGER: Objection, your Honor. He
9 answered this question.

10 EXAMINER PIRIK: Overruled.

11 A. Yes.

12 Q. And, sir, did you read the entire ESP
13 stipulation for purposes of providing your testimony
14 regarding the current ESP stipulation?

15 A. I believe I skimmed much of it. I read
16 sections of it that were relevant.

17 Q. Okay. And you would have included what
18 you thought to be the relevant sections of the ESP
19 stipulation in your testimony, correct?

20 A. Yes.

21 Q. And you did not perform any technical or
22 specialized analysis in the field of economy for
23 arriving at the testimony that appears beginning on
24 page 4, line 15 of your testimony, correct?

25 A. Correct.

1 Q. And you would agree with me, sir, that
2 your statements regarding the current ESP stipulation
3 merely reflect what you believe the parties to that
4 document intended, correct?

5 A. I'm not interpreting intention. All I
6 did was cite some plain language.

7 Q. Okay. And, sir, specifically what you
8 cite is one clause to one sentence, correct?

9 A. Correct.

10 Q. You did not refer in your testimony to
11 the entire sentence in which that clause appears,
12 correct?

13 A. Yes. The rest was not relevant.

14 Q. The rest of the sentence was not relevant
15 to you?

16 A. That clause was the only part that
17 referred -- referred to obligations which was what I
18 was looking for, yes.

19 Q. So you believe that in interpreting a
20 contractual document that only parts of a sentence
21 should be reviewed?

22 MR. BERGER: Objection, your Honor. She
23 is asking for a legal opinion.

24 MS. SPILLER: No, I'm not.

25 EXAMINER PIRIK: I would just ask that he

1 refrain from voicing a legal opinion and just with
2 your own perception.

3 THE WITNESS: Can you reread the
4 question, please?

5 (Record read.)

6 A. No. I don't have an opinion about that.
7 That's a very vague, broad question about that. I
8 can't have an opinion about it.

9 Q. Well, sir, somehow you determined that
10 the rest of the sentence was not relevant to the
11 testimony that you're providing in this case,
12 correct?

13 A. That was my impression, yes.

14 Q. So you just selected certain words in
15 order to restate what you believe transfer
16 obligations under the current ESP stipulation to be,
17 correct?

18 A. I cited the portion that I felt was
19 relevant to a question that I wanted to provide as
20 background, and the rest was referring to something
21 different, so I didn't cite the whole sentence,
22 correct.

23 Q. And so, for purposes of background, sir,
24 is it your testimony here in this case that Duke
25 Energy Ohio has certain transfer obligations in

1 respect of its contractual entitlement under the
2 ICPA?

3 A. The language there is very clear that it
4 is not required to be transferred if certain
5 conditions are present.

6 Q. And, sir, I am going to try again. Are
7 you offering in this case your opinion with respect
8 to what Duke Energy Ohio is required to do in respect
9 of its contractual entitlements under the ICPA?

10 A. I don't believe I am offering an opinion.
11 I believe I'm just pointing out what the stipulation
12 says by way of background.

13 Q. Okay. And, again, just so we are clear,
14 you are not in this case intending to provide the
15 Commission with any testimony as an expert witness
16 with respect to the current ESP stipulation or Duke
17 Energy Ohio's obligations under that stipulation,
18 correct?

19 A. Yes.

20 MR. BERGER: Objection.

21 Q. Thank you.

22 Mr. Wilson, would you agree with me that
23 the ESP stipulation under Case 11-3549 contained a
24 definition of "generation assets"?

25 A. Yes.

1 Q. And you would agree with me that the word
2 "OVEC" or the "Ohio Valley Electric Corporation" does
3 not appear in the ESP stipulation, correct?

4 A. That's my understanding, yes.

5 Q. And the phrase "contractual generation"
6 also does not appear in the stipulation, does it?

7 A. I don't know.

8 Q. Okay. We would be able to read the
9 document and ascertain whether it does, correct?

10 A. I will take your word for it.

11 Q. Thank you.

12 Mr. Wilson, you were not involved in Duke
13 Energy Ohio's ESP proceeding filed under Case
14 11-3549, were you?

15 A. Which case again?

16 Q. It's the case, sir, the current ESP, the
17 stipulation that you have there handy.

18 A. No.

19 Q. Mr. Wilson, you would agree with me that
20 the OVEC assets, Kyger Creek and Clifty Creek, are
21 not owned by Duke Energy Ohio, correct?

22 MR. BERGER: Objection, your Honor. He
23 just testified he is not offering an opinion on the
24 subject matter. He has merely provided this
25 information as background citing to the stipulation.

1 EXAMINER PIRIK: Overruled.

2 A. Duke Energy Ohio owns 9 percent of OVEC,
3 and OVEC and its subsidiary own power plants.

4 Q. So the answer to my question is "No, Duke
5 Energy Ohio does not own Clifty Creek and Kyger
6 Creek," correct?

7 A. Directly own?

8 Q. Correct.

9 A. Do they directly own them?

10 Q. Yes, sir.

11 A. No, they don't. They own OVEC that owns
12 them, yes.

13 Q. They own a percentage of OVEC, correct?

14 A. Correct.

15 Q. And you discuss, sir, on page 5 of your
16 testimony, beginning actually on the end of line 4
17 carrying over through line 6, you discuss the process
18 under the Intercompany Power Agreement or ICPA for
19 transferring entitlements, correct?

20 A. Yes.

21 Q. And, again, sir, is your reference here
22 simply for purposes of background?

23 A. Yes.

24 Q. You are not offering any testimony to the
25 Commission in respect of transferring requirements

1 under the ICPA, are you?

2 A. That's correct.

3 Q. Did you review the ICPA transfer
4 provisions for purposes of forming your opinion on
5 this particular page?

6 A. No. I had reviewed them earlier.

7 Q. So your -- I'm sorry. Go ahead.

8 A. I had reviewed them earlier, but not at
9 the time of this testimony.

10 Q. Okay. And so, you are familiar with what
11 those transfer provisions require, correct?

12 A. Yes.

13 Q. And you know that if an affiliate of a
14 sponsoring company is not creditworthy, the ICPA
15 precludes the sponsoring company from transferring
16 its contractual entitlement under the ICPA, unless
17 that sponsoring company agrees to an unlimited
18 indemnity, correct?

19 A. I don't remember the details, no.

20 Q. Would it refresh your recollection, sir,
21 if we showed you the ICPA?

22 A. If you wish.

23 Q. I would be happy to.

24 MR. BERGER: Again, I would object in
25 that he only provided information regarding the

1 stipulation as background. He does not discuss the
2 terms of the ICPA and its transfer provisions
3 otherwise in his testimony.

4 EXAMINER PIRIK: The objection is noted
5 for the record.

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

7 EXAMINER PIRIK: Yes.

8 MS. SPILLER: Thank you.

9 Q. Mr. Wilson, I have handed you what has
10 been previously marked in this case as IEU Exhibit 5
11 and admitted into the record. Is that the ICPA you
12 had reviewed previously?

13 A. Yes. It's one of them.

14 Q. Okay. And in the definitional section
15 there is a definition of a "permitted assignee,"
16 correct?

17 A. Yes.

18 Q. And that definition, sir, is relevant
19 with respect to the transfer obligations under
20 Section 9.182, correct?

21 A. I believe so.

22 Q. And the definition provides that a
23 permitted assignee is one that meets credit
24 requirements as set forth in the definition.
25 Alternatively, if the permitted assignee does not

1 meet the credit requirements, the transfer by the
2 sponsoring company can occur if the sponsoring
3 company agrees to remain liable for all rights and
4 obligations under the ICPA, correct?

5 A. I haven't quite found that.

6 Q. There is a part (a) and part (b) to the
7 definition, correct?

8 A. Yes. I see it now, yes.

9 Q. Was my interpretation correct, sir?

10 A. I don't know.

11 Q. Sir, do you believe that a permitted
12 assignee is one that either has a specific credit
13 rating as required by the ICPA or one that has a
14 sponsoring company willing to provide an unlimited
15 indemnity?

16 A. I don't see the -- okay. I see the
17 credit rating. What was the other part?

18 Q. That if the permitted assignee does not
19 have the credit rating, this would be under part (b)
20 of the definition.

21 A. Okay.

22 Q. That the sponsoring company agrees to
23 remain liable for all obligations and respons -- and
24 responsibilities under the ICPA.

25 A. It says "obligated" and it also allows

1 for an affiliate. You've not quite got all the
2 details.

3 Q. The affiliate is the sponsoring company,
4 correct?

5 A. No. "A sponsoring company or its
6 Affiliate" it says.

7 Q. Keep reading.

8 MR. BERGER: Your Honor, is this
9 necessary? I mean, the provision speaks for itself
10 as we've said many times.

11 MS. SPILLER: Oh, your Honor, I am happy
12 to move on.

13 Q. Mr. Wilson, would you agree with me that
14 the ICPA sets out the provisions pursuant to which a
15 transfer of the ICPA interests may occur?

16 A. Yes.

17 Q. And I would ask you to assume,
18 Mr. Wilson, that John Brodt, the Chief Financial
19 Officer for OVEC, has testified that if an affiliate
20 is not creditworthy or the sponsoring company --
21 sponsoring company is not willing to provide an
22 unlimited indemnity, then the ICPA precludes
23 transfer, absent unanimous consent of the other
24 sponsoring companies. With that assumption in mind,
25 would you have reason, having reviewed the ICPA, to

1 disagree with Mr. Brodt?

2 A. No.

3 Q. Mr. Wilson, would you agree me that Duke
4 Energy Ohio has proposed, under rider PSR, to sell
5 all of the energy and capacity associated with its
6 contractual entitlement in the OVEC-owned generating
7 assets into the wholesale markets?

8 A. Into the PJM wholesale markets, yes.

9 Q. And it further proposes, sir, to provide
10 all of the net benefits to its retail customers,
11 correct?

12 A. The "benefits" is kind of a vague term
13 and there were various benefits described. I think
14 what you mean is the revenues minus cost.

15 Q. Yes, sir.

16 A. Yes.

17 Q. So the energy and capacity associated
18 with Duke Energy Ohio's 9 percent entitlement under
19 the ICPA will not displace any of the supply procured
20 in the company's proposed SSO supply auctions,
21 correct?

22 A. Correct.

23 Q. And the energy and capacity associated
24 with Duke Energy Ohio's 9 percent entitlement under
25 the ICPA will not be used as a source of supply under

1 competitive retail electric service offers, correct?

2 A. Correct.

3 Q. As proposed under rider PSR, Duke Energy
4 Ohio will not be providing retail generation service
5 directly to end-use customers in its service
6 territory, correct?

7 A. Correct.

8 Q. And customers in Duke Energy Ohio's
9 service territory will still maintain the right to
10 choose if rider PSR is approved, correct?

11 A. Yes.

12 Q. And when I say "the right to choose,"
13 that's the right to choose their competitive
14 generation supplier, correct?

15 A. Yes.

16 Q. Mr. Wilson, you have referred in your
17 testimony to documents that you have called the "OVEC
18 analysis," correct?

19 A. Yes.

20 Q. And this document reflects a forecast of
21 future events, correct?

22 A. Yes.

23 Q. And you would agree with me, sir, that
24 the accuracy of any forecast cannot be known until
25 the events described in that forecast actually occur,

1 correct?

2 A. Yes. Although if you provide a range of
3 different forecasts, it's possible in advance to have
4 an opinion on which are more plausible than others.
5 It's not simply accurate/inaccurate. But yes.

6 Q. And in your testimony, sir, is it fair to
7 say that you criticize the OVEC analysis as prepared
8 by the company because it relies upon a variety of
9 assumptions?

10 A. Well, I am much more specific than that.
11 I don't criticize it for just relying on assumptions.
12 Every analysis, every forecast relies on assumptions.

13 Q. You're critical of this analysis,
14 correct?

15 A. Yes, I am.

16 Q. You call it highly speculative, correct?

17 A. Yes.

18 Q. You indicate that the analysis performed
19 by the company relies upon uncertain assumptions that
20 include energy, capacity, environmental, and other
21 regulations, correct?

22 A. Yes.

23 Q. And one of your assumptions relates to
24 the company's -- strike that.

25 One of your criticisms relates to the

1 company's assumptions regarding future capacity
2 prices, correct?

3 A. Yes.

4 Q. And these would be capacity prices in
5 PJM's capacity market, correct?

6 A. Yes.

7 Q. Sir, I would like to talk a little bit
8 about that capacity market, if we may. The PJM
9 capacity market is designed to assure adequate
10 availability of resources that can be called upon to
11 ensure the reliability of the electric grid, correct?

12 A. Roughly, yes.

13 Q. Sir, that's a lawyer's definition of the
14 PJM market, would you accept that?

15 A. Okay.

16 Q. And this wholesale capacity market will
17 form the basis for the capacity prices that retail
18 customers will pay in Duke Energy Ohio's service
19 territory, correct?

20 A. Yes.

21 Q. And, Mr. Wilson, you are involved in
22 various matters before the FERC, correct?

23 A. From time to time, yes.

24 Q. And you have been involved in matters
25 concerning the market design of the PJM wholesale

1 market, correct?

2 A. I think we're talking about the capacity
3 market.

4 Q. Yes, sir.

5 A. Yes.

6 Q. Okay. And, in fact, since PJM proposed
7 the reliability-pricing-model-capacity construct in
8 2005, you prepared numerous affidavits, reports, and
9 analyses of RPM and RPM-related issues, correct?

10 A. Yes, I have.

11 Q. And the affidavits, sir, that you have
12 filed include those on behalf of consumer groups,
13 correct?

14 A. Yes.

15 Q. And public interest organizations,
16 correct?

17 A. Yes.

18 Q. And certainly, sir, in connection with
19 your work before the FERC and in matters involving
20 the PJM capacity market, you regularly keep abreast
21 of the activities occurring at the PJM level,
22 correct?

23 A. Some activities, yes.

24 Q. And you're aware of reports made by PJM
25 as well as its independent market monitor, correct?

1 A. Yes. I wouldn't say I've read every
2 report, but I do follow much of what's going on at
3 PJM.

4 Q. And is it fair to say, Mr. Wilson, in
5 connection with the work in which you've been
6 involved concerning PJM's wholesale capacity market,
7 that you don't always disagree with PJM?

8 A. That's correct.

9 Q. You believe that PJM misunderstands how
10 major new resources are developed and offered into
11 the PJM capacity market, correct?

12 A. Try that again.

13 Q. Sure. You believe that PJM
14 misunderstands how major new resources are developed
15 or built and offered into the -- into RPM?

16 A. There have been times when the manner in
17 which they have characterized that has been something
18 that I disagreed with. There has been disagreement
19 at times, yes.

20 Q. And you believe that power plants will be
21 built independent of RPM and then offered into RPM
22 with the belief that they will clear, correct?

23 A. Not -- that's not quite how I put it. I
24 know what you are getting at, and I can explain it if
25 you wish, but, no, I never quite put it like that.

1 Q. Sir, you also believe that PJM's 1 day in
2 10 resource adequacy is too conservative, correct?

3 A. It's very conservative, yes.

4 Q. And this 1 day in 10 resource adequacy
5 standard is one in which PJM manages the grid, and
6 under which the expected frequency of having to
7 curtail firm load due to inadequate capacity should
8 be no greater than once every 10 years, correct?

9 A. I -- it's more complicated than that.
10 That's not quite right, no.

11 Q. So you believe that the 1 day in 10
12 standard is not one under which the expected
13 frequency of having to curtail firm load due to
14 inadequate capacity should be no greater than once
15 over 10 years -- every 10 years?

16 A. That sounds about right, put it that way.

17 Q. And when you say that standard is too
18 conservative, you believe that more than one outage
19 over a 10-year period is acceptable, correct?

20 A. Well, this is highly uncertain. So if
21 you plan for 1 day in 10 years, you may go 30 years
22 without an outage due to resource adequacy, or you
23 may have 3 in 3 consecutive years, it's all
24 probabilistic. What's acceptable should be to plan
25 based on a criterion that makes a reasonable tradeoff

1 between reliability and its cost, and then accept the
2 outcomes which, again, might be no -- no outages in
3 30 years, or 2 or 3 in a 3-year period because it's
4 uncertain.

5 Q. And, sir, you have recently filed an
6 affidavit in support of the PJM load group with
7 regard to PJM's request to change its tariff
8 regarding the reliability pricing model variable
9 resource requirement curve, correct?

10 A. That's correct.

11 Q. And the VRR or variable resource
12 requirement curve is the downward sloping curve
13 supporting PJM's objective of attracting and
14 maintaining sufficient capacity, correct?

15 MR. OLIKER: Your Honor, at this point
16 I'm just trying to see where the cross-examination is
17 going anywhere near his testimony besides things he
18 may or may not have filed at FERC, and I don't see
19 how it's relevant to this case.

20 MS. SPILLER: And, your Honor, I will get
21 there quickly, but Mr. Wilson is quite critical of
22 the company and its assumptions concerning capacity
23 prices. And so, I believe the events at PJM and his
24 involvement in those events is relevant to his
25 testimony in this case.

1 EXAMINER PIRIK: I'll allow you to
2 continue.

3 MS. SPILLER: Thank you, your Honor.

4 Q. And, sir, did I provide a reasonably
5 accurate definition of the VRR curve?

6 A. I believe you did.

7 Q. Okay. And that's also known as the
8 "demand curve," correct?

9 A. Yes.

10 Q. And if I remember my economy classes
11 correctly, where supply and demand cross is the
12 established price, correct?

13 A. Yes.

14 Q. And in connection with this -- the PJM
15 request to change its tariff regarding the VRR curve,
16 you know that PJM retained The Brattle Group to
17 perform an analysis, correct?

18 A. Yes.

19 Q. And The Brattle Group used a Monte Carlo
20 Simulation for purposes of arriving at its opinions,
21 correct?

22 MR. OLKER: Objection. Now, we are
23 talking about somebody else's testimony in a
24 different case that's not before us, and The Brattle
25 Group is simply not here. I don't think it's

1 appropriate to pull their testimony in through
2 Mr. Wilson.

3 MS. SPILLER: I am not asking for Brattle
4 Group's testimony. I am asking about -- I will get
5 to Mr. Wilson's affidavit in a moment here.

6 A. Yes.

7 Q. And you believe that that Monte Carlo
8 Simulation should be rejected because it's
9 oversimplified, correct?

10 A. I lodged a number of criticisms of it.
11 Oversimplification, I think the main issue is that it
12 doesn't get at the core structure of the problem.

13 Q. Mr. Wilson, do you believe that the
14 current PJM capacity market or capacity construct
15 appropriately functions to allow wholesale capacity
16 prices to rise and fall?

17 A. Appropriately functions. It does
18 function to allow prices to rise and fall, yes.

19 Q. And you believe that these changes are to
20 be expected, correct?

21 A. Yes.

22 Q. And so, volatility should be expected in
23 wholesale capacity prices, correct?

24 A. Well, we haven't defined "volatility"
25 but, yes, prices should rise and fall as supply and

1 demand change.

2 Q. And, Mr. Wilson, you are aware of several
3 matters proceeding before the FERC and involving PJM
4 that concerns the wholesale capacity market, correct?

5 A. Yes.

6 Q. You're aware that demand response as a
7 capacity resource is the subject of litigation right
8 now, correct?

9 A. That's correct.

10 Q. The FirstEnergy companies have filed a
11 complaint asking that demand response be excluded
12 from the PJM base residual auctions, correct?

13 A. Yes.

14 Q. And, in fact, they are asking that base
15 residual auctions that have already been conducted,
16 be redone, correct?

17 A. They have, yes.

18 Q. And there is an acknowledgment that these
19 proceedings could be protracted because of the
20 litigation uncertainty, correct?

21 A. Which proceedings?

22 Q. Those with respect to FirstEnergy's
23 emergency complaint as well as Order 745.

24 A. That those could be protracted?

25 Q. Yes, sir.

1 A. Because of --

2 Q. Ongoing litigation.

3 A. Okay. I mean, that is the litigation.

4 Q. Right. They are either going to settle,
5 or they will be litigated, correct?

6 A. Okay. You are talking about a lot of
7 different things at the same time. I am not sure
8 which one you're referring to right now.

9 MR. BERGER: Your Honor, I am going to
10 object at this point. Counsel has not provided any
11 clear tie-in between her discussion of PJM market,
12 FirstEnergy's response to various PJM guidelines,
13 rules, and Mr. Wilson's testimony. I think she
14 should direct her questions to the scope of his
15 testimony.

16 MS. SPILLER: And, your Honor, again,
17 this witness has criticized Duke Energy Ohio and
18 their assumptions in regards to capacity, so this
19 is -- we are close to the end of this conversation,
20 but, again, I think this is important groundwork with
21 respect to a witness who is being critical of the
22 company and their assumptions in regard to the
23 wholesale market.

24 MR. BERGER: Then I would ask she point
25 Mr. Wilson to the specific portion of his testimony

1 where she asserts he criticizes the capacity
2 forecast. I'm not saying that he doesn't. I am just
3 saying she should reference him to that portion of
4 his testimony so that we can all be on the same page
5 regarding the scope of the testimony she is
6 questioning him about. Thank you.

7 EXAMINER PIRIK: Ms. Spiller, we have
8 allowed quite a bit of leeway with regard to the
9 questioning, but it has gone on for a while, so I am
10 interested in moving on to actually ask questions
11 with regard to his testimony. If you can wrap it up
12 in the next couple of questions.

13 MS. SPILLER: Sure. Happy to do that,
14 your Honor.

15 Q. (By Ms. Spiller) Mr. Wilson, would you
16 agree with me that the PJM capacity market is in
17 uncertain times right now?

18 A. Yes.

19 Q. And we don't know what will become of PJM
20 capacity prices in the future, do we?

21 A. Well, like any prices, they are always
22 uncertain.

23 Q. Okay. Sir, you state in your
24 testimony -- I am just looking for the reference.
25 One moment, please. But you indicate in your

1 testimony that you believe Duke Energy Ohio's SSO
2 customers are protected from the volatilities of the
3 market, correct?

4 A. Yes. They are insulated from the
5 volatility of the day-ahead and realtime market.

6 Q. And, on page 12, you similarly believe
7 that shopping customers could be insulated from the
8 volatility of the market depending on their
9 contractual preferences, correct?

10 A. Yes.

11 Q. And, sir, again, the market that forms
12 the bases of the SSO prices as well as CRES offers is
13 the wholesale market, correct?

14 A. The wholesale market?

15 Q. Yes.

16 A. That's very vague. I mean I just don't
17 see any point to that question. I don't get the
18 question, no.

19 Q. Well, sir, the SSO supply will be
20 procured pursuant to competitive auctions, correct?

21 A. Yes.

22 Q. And these are wholesale auctions,
23 correct?

24 A. Yes.

25 Q. So the wholesale suppliers will be

1 procuring their energy and capacity to serve the SSO
2 load from the PJM markets, correct?

3 A. Or they may own it, yes, and they may --
4 they may rely on imports also.

5 Q. But it's certainly fair to assume that at
6 least some portion of the supply provided to SSO
7 customers will be based upon the PJM wholesale market
8 prices, correct?

9 A. Do you mean day-ahead and realtime
10 prices? I'm not --

11 Q. In capacity --

12 A. Capacity?

13 Q. Yes, sir.

14 A. Could you ask the question again?

15 Q. SSO suppliers are going to bid into an
16 SSO auction, correct?

17 A. Yes.

18 Q. There will be an auction clearing price,
19 correct?

20 A. An SSO auction clearing price, yes.

21 Q. These suppliers then will have a
22 contractual obligation to provide capacity and energy
23 consistent with the number of tranches that they've
24 won under the SSO auction, correct?

25 A. Yes.

1 Q. And that capacity will probably come from
2 PJM, correct?

3 A. Yes.

4 Q. And so, the SSO auction winners are going
5 to be responsible to PJM to buy the capacity,
6 correct?

7 A. To provide the capacity, yes.

8 Q. And so, there will be a cost with respect
9 to that obligation, correct?

10 A. They will have to either already own it
11 or acquire it.

12 Q. And if they acquire it, they are going to
13 pay the PJM base residual auction price for the
14 capacity, correct?

15 A. Not necessarily, if they acquire it on a
16 bilateral basis.

17 Q. If they acquire it from PJM, they will
18 pay the base residual auction price, correct?

19 A. If they acquire it from --

20 MR. BERGER: Objection, your Honor.
21 Capacity is not acquired from PJM.

22 THE WITNESS: No.

23 MR. BERGER: It's acquired from --

24 EXAMINER PIRIK: We will let the witness
25 do the testimony.

1 A. No. They don't acquire it from PJM.

2 Q. PJM will supply the capacity, correct?

3 A. No. PJM is just a regional transmission
4 organization. They don't have capacity. They are
5 just sort of a market-maker.

6 Q. Sir, there will be an arrangement between
7 the SSO auction winners in PJM for purposes of
8 each -- of the auction winner's obligation to supply
9 capacity, correct?

10 A. They will be obligated to provide
11 capacity to PJM, yes.

12 Q. And they will be paid for that, correct?

13 A. Yes.

14 Q. And you would expect them to be paid
15 consistent with the base residual auction price,
16 correct?

17 A. Not necessarily.

18 Q. So you think PJM is going to pay a
19 supplier something other than the clearing price for
20 capacity.

21 A. Okay. The capacity that clears in the
22 base residual auction that was offered and cleared in
23 the base residual auction will be paid the base
24 residual auction price. Capacity that clears in
25 incremental auctions will receive a different price.

1 And capacity that's acquired by an SSO provider, for
2 instance, on a bilateral basis, will pay whatever
3 price that SSO provider agrees with that bilateral
4 provider. And an SSO provider that owns generation,
5 there really isn't any price at all for that
6 particular capacity.

7 Q. Do you know whether any current SSO
8 auction suppliers own their own generation that is
9 used to supply the SSO load?

10 A. I don't know. I suspect some do.

11 Q. Do you know whether their own generation
12 is being used to supply the SSO load?

13 A. I don't know.

14 Q. And you didn't inquire of that for
15 purposes of your work in this case, correct?

16 A. No.

17 Q. And so, if an SSO supplier is not using
18 their own owned generation for purposes of meeting
19 their SSO supply obligations, they will either
20 acquire that capacity from PJM or they will acquire
21 it through a bilateral, correct?

22 A. I'm not sure what you mean by acquire it
23 from PJM, but, yes, they can certainly acquire it
24 from bilateral.

25 Q. And would you expect that bilateral price

1 to reflect the market conditions for capacity?

2 A. At the time of the bilateral agreement,
3 it probably would, yes.

4 Q. And CRES suppliers you would expect to
5 incorporate the wholesale capacity prices their
6 offers, correct?

7 A. Not necessarily.

8 Q. You think CRES suppliers will simply
9 ignore what the capacity market prices may be when
10 pricing their offers?

11 A. No.

12 Q. So how is the wholesale capacity price
13 then relevant to CRES suppliers' offers?

14 A. It depends on their circumstances and
15 their portfolio. They may have already made capacity
16 arrangements. They will take into account the market
17 value of the capacity that they may already hold, but
18 the market value of that capacity may be different
19 than what occurred at some prior time in a base
20 residual auction.

21 Q. And, Mr. Wilson, would you agree me that
22 SSO suppliers that may be using their own generation
23 to supply the SSO load, would have an opportunity
24 cost associated with that capacity because they could
25 have otherwise sold that capacity into the RPM?

1 A. But RPM occurs before the SSO auctions
2 generally.

3 Q. Correct.

4 A. So they've already missed the opportunity
5 to sell it into RPM. So there's no opportunity cost
6 at the time of the SSO auction.

7 Q. Mr. Wilson, I would ask you to assume
8 that Teresa Ringenbach has testified on behalf of
9 Direct Energy in this case and has discussed the
10 terms and conditions of offers, competitive retail
11 supply offers extended by her company, and those
12 include variable pricing terms. Would you agree with
13 me, sir, that a variable pricing term is one that
14 would be predicated upon the then-current market
15 prices for energy and capacity?

16 MR. BERGER: I'm sorry, I didn't hear the
17 question.

18 MR. OLIKER: And, your Honor, I would
19 also object to the extent he doesn't have that
20 contract in front of him at all and he may or may not
21 be familiar with those contracts. I don't know if he
22 has the capacity to answer the question.

23 EXAMINER PIRIK: Ms. Spiller.

24 Q. Mr. Wilson, are you familiar with a
25 variable pricing contract?

1 A. I don't know -- I'm not familiar with
2 that term, no.

3 Q. You don't know what a variable pricing
4 contract is.

5 A. It could be a lot of different things. I
6 would like to see the contract to know what it means
7 in a particular context.

8 EXAMINER PIRIK: Mr. Berger asked for
9 that question to be read. Karen, could you reread
10 that, please.

11 (Record read.)

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

14 EXAMINER PIRIK: Yes.

15 MS. SPILLER: Thank you.

16 Q. Sir, you have before you what has been
17 marked as Duke Energy Ohio Exhibit 8, a document
18 that's already been introduced into evidence in this
19 case. It is a supply -- competitive supplier's
20 contract. It is one, if you look at paragraph 7 of
21 the exhibit, refers to the pricing conditions that
22 would happen upon a renewal if, in fact, a new fixed
23 price contract is not entered into.

24 Would you agree with me that under the
25 provisions of that contract, the contract, if no

1 action is taken by the customer, will automatically
2 renew as a variable price contract with pricing based
3 upon the then-current wholesale prices for energy and
4 capacity plus an adder?

5 A. Are you referring to the language that
6 says upon renewal, Duke -- Direct Energy will charge
7 you for all electricity billed by your EDU at
8 variable price per kWh based upon generally
9 prevailing market and business conditions for
10 electricity in the PJM market at the applicable load
11 zone for that period plus an adder of up to 10 cents
12 per kWh. Are you asking me if it says that?

13 Q. Yes, sir.

14 A. That's what it says.

15 Q. And so, you would agree with me that
16 under that contract, under the variable pricing
17 provision that the then-current PJM prices for energy
18 and capacity would be flowed through to the customer.

19 MR. BERGER: Objection, your Honor. The
20 language says what it says. I would say that the
21 language is unclear as to exactly what the customer
22 would pay, and I don't think Mr. Wilson, given the
23 vague terms of the contract, should be -- can
24 reasonably be asked to testify that it means what
25 Ms. Spiller is saying it means.

1 EXAMINER PIRIK: Sustained.

2 MS. PETRUCCI: Your Honor, was this
3 exhibit admitted under seal?

4 MS. SPILLER: No, it's on the website.

5 MS. PETRUCCI: Thank you.

6 Q. Mr. Wilson, would you agree with me that
7 wholesale capacity prices will change in the future?

8 A. Probably.

9 Q. Well, sir, you know there are several
10 initiatives under way at PJM that will affect the
11 capacity price, correct?

12 A. If there are changes made, then, it would
13 affect the capacity prices, yes.

14 Q. And those changes could include a
15 capacity performance payment, correct?

16 A. A capacity performance payment. I'm not
17 sure.

18 Q. You know that PJM is exploring a capacity
19 performance initiative, correct?

20 A. Yes.

21 Q. And you know that this initiative is
22 underway because of the winter 2014 operations issues
23 related to generation performance and the increased
24 dependency on natural gas, correct?

25 A. Those --

1 MR. OLIKER: Objection.

2 Q. If you know.

3 MR. OLIKER: Mischaracterization.

4 EXAMINER PIRIK: Mr. Oliker.

5 MR. OLIKER: Mischaracterization of what
6 the proposal is.

7 A. Those are some of the motivating factors,
8 yes.

9 Q. And if an entity is a capacity
10 performance resource, it would receive an increased
11 payment, correct?

12 A. Not necessarily, no.

13 EXAMINER PIRIK: Just so the witness
14 knows, when someone objects, you probably should wait
15 until I rule to answer.

16 THE WITNESS: Sorry.

17 Q. Sir, you would agree with me that as a
18 result of this initiative, wholesale capacity prices
19 for the 2017-2018 planning year to change, correct?

20 A. It's possible that something coming out
21 of this initiative could affect capacity prices for
22 2017-'18.

23 Q. And you would agree with me that the
24 initiatives concerning demand response in Order 745
25 could affect capacity prices, correct?

1 A. They could, yes.

2 Q. And, sir, you, on page 8, carrying over
3 to line 9 of your testimony, again are critical of
4 the company's analysis, particularly assumptions that
5 it has made regarding topics that include
6 environmental regulation, correct?

7 A. No, not really.

8 Q. So you think the company's assumptions
9 with respect to environmental regulations are
10 correct?

11 A. I don't believe I evaluated assumptions
12 on environmental regulations.

13 Q. So environmental regulations were not at
14 all relevant to your work in this case; is that a
15 fair statement?

16 A. No.

17 Q. Sir, you've not studied the impact of
18 environmental regulations on generation supply in
19 PJM, have you?

20 A. Studied? I'm interested in it. I've
21 seen reports on it. I follow it. I wouldn't say
22 I've performed a study, no.

23 Q. Well, sir, given that you've followed it
24 and you are interested in it, you know that we have
25 yet to know what will happen with respect to the

1 EPA's carbon -- proposed carbon rules, correct?

2 A. Yes.

3 Q. We don't know when those rules will be
4 issued, do we?

5 A. No.

6 Q. We don't know what the individual states
7 will do in connection with their own state
8 implementation plans, do we?

9 A. That's correct.

10 Q. And we don't know whether the next
11 president of the United States will further influence
12 or have an affect on the outcome of those rules, do
13 we?

14 A. We don't.

15 Q. So, at this point, we don't know how the
16 final carbon rules will at all affect coal generators
17 such as Clifty Creek and Kyger Creek, correct?

18 A. Agreed.

19 Q. And, Mr. Wilson, you have reviewed the
20 OVEC annual -- strike that.

21 Have you reviewed the OVEC annual reports
22 for purposes of your work in this case?

23 A. Portions thereof, yes.

24 Q. So you are aware that the generating
25 assets have installed FGDs and SCRs, correct?

1 A. Yes. I'm aware they have made some
2 environmental upgrades.

3 Q. Okay. And that they are well situated at
4 this point to comply with MATS, correct?

5 A. I'm not familiar with the detail.

6 Q. You wouldn't dispute what's in the
7 content of the OVEC annual reports in respect of the
8 ability of those units to comply with MATS, would
9 you?

10 A. No.

11 Q. And, Mr. Wilson, you believe that the
12 analysis -- strike that.

13 You believe that the modeling utilized by
14 Duke Energy Ohio for purposes of the OVEC analysis is
15 too simplified, correct?

16 A. Well, I observed, in the data that was
17 provided, some patterns that reflected that something
18 very simplified had gone on, and I explain that in my
19 testimony.

20 Q. And you understand how the modeling was
21 performed, correct?

22 A. I've seen the descriptions of how the
23 modeling was performed which, in some cases, seem
24 inconsistent with the results that were provided.

25 Q. And you were not here for the examination

1 of Dr. Ben Zhang and the commercial business modeling
2 tool from which the OVEC analysis was derived, were
3 you?

4 A. That's correct.

5 Q. Mr. Wilson, you don't believe OVEC --
6 strike that.

7 You don't believe that Duke Energy Ohio's
8 9 percent entitlement in the OVEC-owned assets is
9 sufficient to enable it to control the daily
10 operations of OVEC, do you?

11 A. Well, as I explained, they are entitled
12 to 9 percent, on any day they can call to have that 9
13 percent or to not have that 9 percent, so they have
14 some amount of control over OVEC operation through
15 their 9 percent entitlement.

16 Q. Sir, I'll go back. You don't believe
17 that Duke Energy Ohio's 9 percent contractual
18 entitlement in the OVEC-owned assets is sufficient to
19 enable it to control the daily operations of OVEC,
20 correct?

21 A. To control the daily operations, when
22 they ask for or don't ask for their 9 percent, that
23 can have some impact on the daily operations.

24 Q. So you believe that they can control the
25 daily operations.

1 MR. BERGER: Objection, your Honor. He
2 has answered this twice now.

3 A. The question is just overly broad and
4 vague.

5 Q. Sir, if we go to page 47 of your
6 deposition. Line 7, I asked you: "Do you believe
7 that that 9 percent ownership is sufficient to enable
8 Duke Energy Ohio to control the daily operations of
9 OVEC?"

10 Line 10, Answer: "Not to control the
11 daily operations, but they do request or not request
12 at any time their portion of the output." Did I read
13 that correctly?

14 MR. BERGER: Your Honor, I would object
15 to her offering this as impeachment. He said exactly
16 this answer on the -- on the record twice now and
17 bringing in the deposition for this purpose is
18 inappropriate. I would move to strike the question.

19 MS. SPILLER: Your Honor --

20 EXAMINER PIRIK: Okay. I am going to
21 overrule the objection. The witness has an
22 opportunity to read it and if he feels this needs to
23 be clarified, he can do so.

24 A. "Control the daily operation" is a vague
25 term that it's easy to answer yes or no to. As I've

1 explained, they have a 9 percent entitlement. On any
2 day they can ask for it and they can not ask for it.
3 And when they do or don't ask for it, that's likely
4 to have some impact on OVEC's operation. Does that
5 control the daily operation? It has an affect on it.
6 Maybe it controls a piece of it.

7 Q. Sir, you had an opportunity to -- during
8 your deposition, ask me if I was stating a question
9 that you didn't understand, correct?

10 A. Yes.

11 Q. And you didn't ask me to restate this
12 particular question, did you?

13 A. I went on to clarify my result -- my
14 answer.

15 Q. Okay. And you also had an opportunity,
16 sir, to review your deposition and provide any
17 corrections, correct?

18 A. Yes.

19 Q. And you didn't change this particular
20 answer, did you, sir?

21 A. That's correct.

22 Q. Duke Energy Ohio, to your knowledge, does
23 not have any direct involvement in the fuel contracts
24 entered into by OVEC, correct?

25 A. Not to my knowledge, no.

1 Q. And you would agree that the -- strike
2 that.

3 Duke Energy Ohio employees do not operate
4 the OVEC plants, do they?

5 A. No.

6 Q. And you would agree with me that coal
7 prices are stable as compared to the cost of other
8 fuel sources?

9 A. Relatively stable, yes.

10 Q. With respect to your comments on page 12
11 concerning SSO customers and whether they are exposed
12 to market volatility, you've not reviewed any Ohio
13 SSO auction results that were conducted after the
14 polar vortex in early January, 2014, have you?

15 A. I've seen the prices. I've seen the news
16 reports, yes.

17 Q. Okay. So do you know how those auction
18 clearing prices compare to the auction clearing
19 prices for those auctions that occurred prior to the
20 early January, 2014, polar vortex?

21 A. They trended upward.

22 Q. Would you agree with me, sir, that in the
23 First Energy territory that trend upward was about
24 8 percent?

25 MR. OLIKER: Objection.

1 A. I don't know.

2 EXAMINER PIRIK: Overruled.

3 A. I haven't made that calculation, no.

4 Q. You've seen the reports and acknowledge,
5 subsequent to the polar vortex, prices are trending
6 upward?

7 A. They had. I don't know if they still
8 are. The forward prices went up and have drifted
9 back down, so I wouldn't be surprised if that will
10 happen with the SSO also.

11 Q. And you understand, sir, that there's
12 more than one SSO auction that Duke Energy Ohio is
13 proposing in this case, correct?

14 A. Yes.

15 Q. A series of auctions, correct?

16 A. Yes.

17 Q. And with every auction there will be a
18 different auction clearing price, correct?

19 A. Correct.

20 Q. And you would expect that those -- that
21 any clearing price in an SSO auction would
22 incorporate the risks that the auction participants
23 believe to exist, correct?

24 A. They might, yes.

25 Q. And you don't anticipate that an auction

1 participant would include any risk premium in their
2 offers?

3 A. No. I didn't say that.

4 Q. Well, sir, I believe you said they might,
5 correct? I'm just trying to understand.

6 A. They might, yes.

7 Q. So do you believe -- let me back up. Do
8 you believe that SSO auction participants incorporate
9 risk premiums into their offers?

10 A. They might, yes.

11 Q. It's fair to say, sir, that you don't
12 like the idea of a cost tracker?

13 A. No.

14 Q. Sir, if you could turn to your direct
15 testimony on page 10. Do you support the use of cost
16 trackers in the regulatory environment?

17 A. There are circumstances where they are
18 appropriate, yes.

19 Q. And appropriate where a utility doesn't
20 have the opportunity to control the costs?

21 A. They are typically approved for costs
22 that are outside the utility's control, yes.

23 Q. And I believe --

24 A. Among other circumstances.

25 Q. And you've indicated that a cost tracker

1 would be appropriate for something such as fuel,
2 correct?

3 A. They have been used for passing through
4 fuel cost, yes.

5 Q. And so, you believe a utility, such as
6 Duke Energy Ohio, would have greater opportunity to
7 control its fuel costs than to control the costs --
8 that it receives under the ICPA, correct?

9 A. No.

10 Q. Strike that. Let me reverse that.

11 Do you believe that Duke Energy Ohio has
12 less availability to control its fuel costs than it
13 does to control the costs that it receives from OVEC
14 under the ICPA?

15 A. That's not an appropriate -- let me try
16 it again. It's not making any sense to me. Try it
17 again.

18 Q. Well, sir, you believe that a tracker is
19 appropriate in instances where a utility cannot
20 control its costs, correct?

21 A. A cost tracker can be appropriate for
22 costs that are largely outside of the utility
23 control, yes.

24 Q. And one such instance would be a fuel
25 tracker, correct?

1 A. Yes.

2 Q. So you believe that a utility's ability
3 to control its fuel costs -- you believe that a
4 utility cannot control its fuel costs, correct?

5 A. To a great extent, that's correct.

6 Q. Okay. But you believe that Duke Energy
7 Ohio, with a 9 percent contractual entitlement in
8 OVEC, can control OVEC's cost, correct?

9 A. The OVEC sponsoring companies and the
10 OVEC owners, collectively OVEC, are responsible for
11 its fixed costs, and also call on the output and
12 determine when it does and doesn't run. So,
13 collectively, they very much control the asset.

14 Q. How about individually, Duke Energy Ohio
15 and its 9 percent interest, do you believe that's
16 sufficient for Duke Energy Ohio to control the costs
17 of OVEC?

18 A. They control a little portion of it and
19 they influence the -- they participate in the
20 management and the ownership, so they have some
21 amount of control.

22 Q. Sir, I'll go back to my question. Do you
23 believe that a 9-percent interest is sufficient for
24 Duke Energy Ohio to control the cost of OVEC?

25 A. They, as a 9-percent owner, they should

1 participate in the management. They should, along
2 with the other owners, pressure management to reduce
3 costs and to operate efficiently. As a 9-percent
4 sponsoring company, they should ask for the output
5 when the output is valuable in the market and not ask
6 for it when it isn't. So they should play their role
7 in ensuring that OVEC operates efficiently.

8 Q. And you don't know whether or not the
9 company is doing that today, do you?

10 A. No, I don't.

11 Q. And you don't know what the company would
12 do if rider PSR were approved, do you?

13 A. Well, as I point out, if rider PSR were
14 approved, they would have no particular incentive to
15 pressure OVEC management to reduce costs or to
16 operate efficiently, and they would have no
17 particular incentive to call on the output when the
18 output is valuable and not call on it when it's not
19 valuable. So if the rider were approved, I would
20 have a lot of concern about whether they would
21 appropriately exercise the amount of control they do
22 have over the OVEC asset.

23 Q. And, sir, what facts do you rely upon to
24 make this suggestion that Duke Energy Ohio, if rider
25 PSR were approved, would simply sit back and do

1 nothing as a board director for OVEC?

2 MR. BERGER: Objection, your Honor,
3 that's not what he said. He only indicated they lack
4 the incentive to do so. The financial incentive, I
5 believe he was talking about. Thank you.

6 EXAMINER PIRIK: Thank you. I will allow
7 the witness to respond as he sees appropriate.

8 A. I mean, it's clear, with the rider in
9 place, it would have no impact on them whether OVEC's
10 costs rose or were controlled and fell, and it would
11 have no impact on them whether the asset was used
12 efficiently in the market or inefficiently and, based
13 on that, it's hard to see where the incentive would
14 come from for them to operate efficiently.

15 Q. Mr. Wilson, will OVEC receive -- strike
16 that.

17 If rider PSR is approved, will the
18 amounts due and owing from Duke Energy Ohio under the
19 ICPA to OVEC at all change?

20 A. Would their entitlement quantity change?

21 Q. Would any obligations that Duke Energy
22 Ohio has under the ICPA to OVEC change if rider PSR
23 were approved?

24 A. No.

25 Q. And you know that the company is

1 proposing, as part of rider PSR, to bid all of its
2 entitlement of the energy and capacity into the
3 wholesale markets, correct?

4 A. Yes.

5 Q. And, sir, on page 9 of your testimony, at
6 the bottom, you suggest that the OVEC operation,
7 because of the owner -- because of the number of
8 sponsoring companies under the ICPA is inefficient,
9 correct?

10 A. It potentially introduces inefficiencies,
11 yes.

12 Q. Do you know whether those inefficiencies
13 exist today?

14 A. I suppose those inefficiencies exist to
15 some extent today, yes.

16 Q. And on what do you base that statement,
17 sir?

18 A. Well, it's already the case today that
19 some of the sponsors use the OVEC asset to
20 self-supply, while others do not. Some are in MISO,
21 while some are in PJM. So those circumstances, I
22 think at least to some extent, are already there
23 today.

24 Q. Sir, you have not attempted to quantify
25 this alleged inefficiency with respect to the costs

1 assigned to the sponsoring companies by OVEC,
2 correct?

3 A. No.

4 Q. And, sir, you certainly understand --
5 strike that.

6 Do you know that Duke Energy Ohio has, in
7 the past, co-owned generating assets with other
8 utilities?

9 A. I can imagine that they have.

10 Q. And you believe that those co-ownerships
11 also create inefficiencies?

12 A. Not necessarily, no.

13 Q. But this one is different?

14 A. Well, I would have to look at the nature
15 of the agreement. This is a very awkward agreement
16 with sponsoring companies separately who are
17 identified -- who are in different market areas, some
18 who are self-supplying and some who are involved in
19 the market. Multiple owners, large and small shares,
20 participating as sponsoring companies, separate in a
21 way from their ownership. That's a very unusual and
22 awkward arrangement, yes.

23 Q. Sir, you know that this arrangement was
24 approved by the FERC, correct?

25 A. Correct.

1 Q. Do you believe that the FERC would have
2 approved an unreasonable contract?

3 A. I'm not going to have an opinion on that.
4 I don't know if they evaluated it or not.

5 Q. Do you suspect that the FERC approved it
6 without reading the contract?

7 A. I -- of course, they read the contract,
8 yes.

9 Q. Thank you.

10 Mr. Wilson, on page 25 of your testimony.
11 Strike that.

12 If we could stop on page 20, sir. On
13 line 7, you are referencing new gas-fired generation
14 that's entering the capacity markets, correct?

15 A. Yes.

16 Q. And you've indicated capacity prices in
17 the \$120 per megawatt-day range?

18 A. Yes.

19 Q. And that is the capacity price for the
20 current -- strike that.

21 That is the capacity price that cleared
22 for the 2017-2018 base residual auction, correct?

23 A. Yes.

24 Q. And you understand, sir, that there is
25 generation expected to retire between now and 2019,

1 correct?

2 A. 2019, yes.

3 Q. And the majority of that is coal
4 generation, correct?

5 A. Yes.

6 Q. And is it your understanding that that
7 coal generation will be replaced with natural -- or,
8 with gas-fired generation?

9 A. Not exclusively, but through PJM's
10 reliability pricing model capacity market on a
11 three-year forward basis they clear offers for
12 capacity. And so, generally, when there are
13 retirements, it usually means some new resources
14 clear which may be gas-fired generation and other
15 types of generation and demand response,
16 historically, which may be on the load side in the
17 future.

18 Q. Okay. And if it's on the load side, that
19 demand response would not participate in the base
20 residual auctions in the capacity market, correct?

21 A. No.

22 Q. No, that's incorrect?

23 A. Uh-huh.

24 Q. If demand response is on the load side,
25 it will participate in the base residual auction as a

1 capacity resource?

2 A. Yes. It looks like a modification to the
3 VRR curve. That's one approach to it.

4 Q. And would you agree with me that the less
5 coal generation, the higher the dependency on
6 gas-fired generation?

7 A. Not necessarily.

8 Q. What else would be -- why not, sir?

9 A. There's wind. There's imports that might
10 be various fuels. I mean, it's most likely that as
11 coal retires, there will be a significant amount of
12 new gas-fired generation, yes.

13 Q. And is wind a dispatchable resource?

14 A. It can be.

15 Q. And the imports that you talk about, are
16 those imports coming from MISO?

17 A. And other regions.

18 Q. Do you know whether MISO has projected to
19 be short for the 2015-2016 calendar year?

20 A. I haven't seen their most recent updates.

21 Q. And if MISO is short, you would expect
22 them to use their own capacity resources for
23 themselves first, correct?

24 A. If those resources are committed to
25 another region, no.

1 Q. Do you believe today, Mr. Wilson, that
2 there is uncertainty about future supply conditions?

3 A. Always.

4 Q. And does this uncertainty in future
5 supply conditions create uncertainty and risk for
6 suppliers?

7 A. For suppliers, yes.

8 Q. Now, on your testimony, sir, page 25,
9 line 5, you are referencing again the OVEC analysis
10 indicating that it calls into question whether the
11 OVEC plants are economic and whether they should
12 instead be retired or repowered, correct?

13 A. Correct.

14 Q. You don't know -- strike that.

15 Are you suggesting that the OVEC units
16 should be retired?

17 A. I'm suggesting that the information calls
18 into question, raises that question, yes.

19 Q. Are you aware that there are currently no
20 plans to retire the OVEC generating assets?

21 A. I am.

22 Q. Are you aware that the majority of the
23 OVEC-owned generating units were running during the
24 polar vortex in January this year?

25 A. That's my understanding, yes.

1 Q. Sir, I would like to reference both to
2 page 12 and page 30 of your testimony. And there is
3 some confidential information. I don't need to talk
4 with you about that. We'll talk about the other
5 information that's not been redacted.

6 But in your footnote on page 12, as well
7 as on line 30 -- I'm sorry, page 30, line 5, you make
8 reference to Duke Energy Ohio's total sales, correct?

9 A. Yes.

10 Q. And the number you have there is 24,557
11 gigawatt-hours, correct?

12 A. Yes.

13 Q. And that's information, sir, that you
14 obtained from Duke Energy Ohio's annual report,
15 correct?

16 A. Correct.

17 Q. And, sir, if we may --

18 MS. SPILLER: I'm sorry, your Honor, if
19 we may approach.

20 EXAMINER PIRIK: Yes.

21 MS. SPILLER: I believe we are on Duke
22 Energy Ohio Exhibit 26.

23 EXAMINER PIRIK: Yes.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Mr. Wilson, do you have before you what's

1 been marked as Duke Energy Ohio Exhibit 26?

2 EXAMINER PIRIK: Could the Bench have
3 another copy?

4 MS. SPILLER: Oh, sorry.

5 A. I don't know.

6 Q. You don't have a copy?

7 A. I have a copy of the 4th Quarter 2013
8 Statistical Supplement.

9 Q. And we have asked that be marked as Duke
10 Energy Ohio Exhibit 26.

11 A. Okay.

12 Q. And does that, sir, look like a summary
13 of the 2013 annual report?

14 A. I don't know.

15 Q. And, well, sir, let's go to page 18.

16 MR. OLIKER: Your Honor, there hasn't
17 been any foundation for this document yet.

18 EXAMINER PIRIK: Yes. We will need to
19 have a foundation.

20 MS. SPILLER: And, your Honor, I am
21 getting there.

22 Q. Do you have page 18, sir?

23 A. I do.

24 Q. And these are the operating statistics
25 for Duke Energy Ohio Electric, correct?

1 MR. OLIKER: Objection, again. Has she
2 shown that the witness has seen the document before?

3 MS. SPILLER: I'm getting there.

4 EXAMINER PIRIK: Okay. I'll allow some
5 leeway here.

6 MS. SPILLER: Thank you, your Honor.

7 A. Is there a question?

8 Q. Yes, sir. Is this the Operating
9 Statistics for Duke Energy Ohio - Electric?

10 A. That's the title on the page.

11 Q. And the numeric information under 2013,
12 total gigawatt-hour sales --

13 MR. OLIKER: Objection. She still has
14 not demonstrated that the witness has ever seen this
15 document.

16 Q. Sir, does this information reflect the
17 same information that you would have reviewed for
18 purposes of your testimony on page 12 and page 30?
19 Information from the annual report.

20 A. I see the same 24,557 number here, yes.

21 Q. And that reflects total gigawatt-hour
22 sales, correct?

23 A. Yes.

24 Q. For calendar year 2013?

25 A. Yes.

1 Q. Okay. And, sir, would you agree with me
2 that there's a notation at the bottom of this page
3 that indicates that the sales include both Duke
4 Energy Ohio and Duke Energy Kentucky's retail sales?

5 A. Okay. I see that.

6 Q. And so, the number that you reference in
7 your -- in your testimony, the 24,557 gigawatt-hour
8 sales, is not exclusive to Duke Energy Ohio, is it?

9 A. Apparently.

10 Q. Apparently it's not exclusive?

11 A. Apparently, yes.

12 Q. Thank you.

13 Mr. Wilson, you're aware that OVEC is --
14 is implementing or has implemented a continuing
15 improvement process, correct?

16 A. I remember something with that, yes.

17 Q. Cost-saving initiatives, if you will?

18 A. Yes.

19 Q. And you have no reason to believe that if
20 rider PSR is approved, that those cost-saving
21 initiatives would cease, do you?

22 A. Well, as I explained, if the rider is
23 approved and if other sponsors and owners of OVEC,
24 especially, also have similar arrangements approved
25 then those would be entities that are passing all

1 those costs through to customers and would have no
2 particular incentive to continue, as in their role in
3 OVEC governance and in their role also as sponsoring
4 companies, to pressure OVEC to reduce costs.

5 Q. Well, sir, let's be clear. We keep --
6 you keep talking about passing on costs. The
7 company's proposal is to pass on the net benefits,
8 correct?

9 A. They will pass on all the costs netted
10 after netting market earnings, yes.

11 Q. And you would agree with me, as a general
12 matter, that a financial hedge can provide rate
13 stability for retail customers, correct?

14 A. It can, yes.

15 Q. And you would agree with me, under the
16 company's proposed rider PSR, as market prices
17 increase, the benefits under the rider would be
18 greater?

19 A. Yes.

20 Q. Page 37 of your testimony, sir. Now, the
21 Question 50 and Answer on this particular page, you
22 suggest that Duke Energy Ohio's affiliation with
23 unreg -- with unregulated entities in PJM is of
24 concern under its proposed rider PSR, correct?

25 A. Could you ask the question again?

1 Q. Sure. I am just generally summarizing
2 your statement here, but you indicate that Duke
3 Energy Ohio's affiliation with other entities that
4 participate in the PJM markets raises a concern, in
5 your mind, with respect to rider PSR.

6 A. Well, yes. If there's -- if there is
7 other generation that's affiliated with Duke Ohio and
8 is participating in the market, then that can give
9 Duke Ohio, as a sponsor -- as an OVEC sponsor, an
10 incentive because they are passing through all the
11 costs and revenues and incentive to manage that
12 resource in a way that benefits the affiliate, yes.

13 Q. And how do you use the term "affiliate"
14 in that response, sir?

15 A. Well, an affiliated generation, another
16 party who can potentially benefit from the actions of
17 Duke Ohio and within the corporate family, they would
18 potentially recognize that, in their actions in the
19 marketplace.

20 Q. And so, an "affiliate," as you have used
21 it, sir, in your testimony is one that would be
22 associated with Duke Energy Ohio by way of corporate
23 ownership, correct?

24 A. Yes.

25 Q. And, sir, you understand that Duke Energy

1 is in the process of selling the Midwest Commercial
2 Generation to Dynegy, correct?

3 A. I understand that, yes.

4 Q. And as of the effective date of Duke
5 Energy Ohio's ESP on June 1, 2015, will it have any
6 affiliate -- any affiliates who participants in PJM's
7 base residual auction?

8 A. I don't know.

9 Q. You've not looked at that for purposes of
10 forming your opinions in this case?

11 A. No.

12 Q. Page 40 of your testimony, sir. You
13 indicate, beginning on line 15, that the proposed
14 rider PSR would make Duke Energy Ohio's portion of
15 the OVEC generation unavailable to competitive
16 suppliers, correct?

17 A. Correct.

18 Q. Do you know whether competitive suppliers
19 today have access to Duke Energy Ohio's OVEC
20 entitlement?

21 A. No.

22 Q. You don't know?

23 A. I don't know.

24 Q. Okay. And given that Duke Energy Ohio is
25 proposing to sell all of the energy and capacity

1 associated with this contractual entitlement into
2 PJM, that energy and capacity is no more or less
3 available to competitive suppliers, correct?

4 A. Than what?

5 Q. Than today.

6 A. I don't know about the circumstance today
7 so I am not in a position to make any comparison.

8 Q. The rider PSR will not affect whether
9 that energy and capacity that's sold into PJM is more
10 or less available to competitive suppliers, will it?

11 A. No. I disagree.

12 Q. You believe that if rider PSR is
13 approved, the energy and capacity will not be
14 available to competitive suppliers?

15 A. If the rider is approved, the resource
16 will be sold in the PJM markets, and it won't be
17 available to competitive suppliers. Under an
18 alternative arrangement that resource might be
19 available to competitive suppliers to include in
20 their portfolio.

21 Q. But you don't know whether that's the
22 case today, do you?

23 A. No, I don't. In my testimony I don't
24 make comparisons to the status quo. I make
25 comparisons to alternatives.

1 Q. And you don't know whether or not Duke
2 Energy Ohio's capacity entitlements under the ICPA
3 have already been bid into the base residual auction
4 through the 2017-2018 planning year, do you?

5 A. I believe we do know that through
6 discovery.

7 Q. Would you agree with me that a capacity
8 resource cannot be committed -- strike that.

9 Would you agree with me that a capacity
10 resource could only be committed once?

11 A. You mean sold and committed under RPM,
12 yes. Of course, that obligation is transferable; a
13 different party can take it on.

14 Q. For purposes of your work in this case,
15 you've not conducted any independent modeling,
16 correct?

17 A. Correct.

18 Q. And you're certainly familiar with
19 dispatch modeling, having done it in connection with
20 other projects or assignments, correct?

21 A. Not -- I have been involved in it, yes.

22 Q. Well, you are familiar with the process,
23 sir, correct?

24 A. Yes.

25 Q. And how it can be done, correct?

1 A. Yes.

2 Q. And have you done it before, dispatch
3 modeling?

4 A. I have been involved in projects that
5 involve dispatch modeling, yes.

6 Q. Sir, in your testimony you identify the
7 CME Group as a source for future energy prices,
8 correct?

9 A. Forward prices, yes.

10 Q. That is not the only source of forward
11 energy prices, is it?

12 A. Yes.

13 Q. It's the only source?

14 A. It's not the only source, yes.

15 Q. Thank you.

16 And you would agree with me those forward
17 prices probably change on a daily basis?

18 A. They -- yes, some of them do, yes.

19 Q. And we won't know the accuracy of CME's
20 forward prices until those prices are actually
21 realized, correct?

22 A. Correct. Well, by "accuracy," I think
23 you're -- I mean, a forward price is the price today
24 that parties are willing to transact for that future
25 delivery month. And I think by "accuracy," what you

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1 mean is that price close to the actual value in that
2 future month, such that if the price is accurate,
3 neither party has particular regrets when the month
4 comes. I think that's what you mean by that.
5 Because one interpretation of accuracy, it's an
6 accurate price if it accurately reflects the prices
7 that the parties were willing to transact today.
8 It's not a forecast.

9 Q. And, sir, you have not attempted to
10 forecast the capacity prices for the 2018-2019
11 planning year and beyond? Strike that.

12 You have not, for purposes of your work
13 in this case, forecasted the capacity prices through
14 2040, correct?

15 A. No. Correct, yes.

16 Q. And, in fact, you have not attempted to
17 forecast any capacity prices for purposes of your
18 work in this case; is that correct?

19 A. Correct.

20 MS. SPILLER: One moment, please, your
21 Honor.

22 Q. Mr. Wilson, you've indicated you've
23 reviewed the ICPA, and you know that the FERC has
24 approved that, correct?

25 A. Correct.

1 Q. Did you review the filings at the FERC in
2 connection with the ICPA approval process?

3 A. There was the cover application. I think
4 I may have reviewed that.

5 Q. But did you review the -- the entire --
6 did you review all the filings that were made in that
7 docket, sir?

8 A. No.

9 Q. And you've indicated what you believe to
10 be inefficiencies with respect to OVEC's operations
11 given the structure and nature of the sponsoring
12 companies, correct?

13 A. Not so much the structure and nature of
14 the sponsoring companies, but the fact there are
15 multiple sponsors and multiple owners and the nature
16 of the ICPA in that it allows the various different
17 types of sponsors to independently ask for their
18 output, yes, introduces inefficiencies.

19 Q. And I believe you've also referenced,
20 sir, some sponsoring companies being in PJM and
21 others in MISO?

22 A. Yes.

23 Q. Do you know whether Duke -- strike that.
24 You've indicated that it would not
25 surprise you that Duke Energy Ohio had co-owned

1 generating assets with other utilities, correct?

2 A. In the past, yes.

3 Q. And do you know whether, during that
4 period of co-ownership, Duke Energy Ohio was situated
5 in MISO, while its co-owners, AEP and DP&L, were in
6 PJM?

7 A. I don't know, no.

8 MS. SPILLER: I don't have any further
9 questions. Thank you, your Honor.

10 EXAMINER PIRIK: Thank you.

11 Staff?

12 MR. BEELER: Nothing, thank you.

13 EXAMINER PIRIK: Why don't we take a 10-
14 or 15-minute break and we'll come back for the
15 redirect, and then we will go to Mr. White once we're
16 concluded with the witness.

17 (Recess taken.)

18 EXAMINER PIRIK: Go back on the record.

19 Mr. Berger.

20 MR. BERGER: No redirect, your Honor.

21 EXAMINER PIRIK: And I understand there
22 was no confidential that anyone needed. So I think
23 we're all set. Thank you very much.

24 With regard to exhibits, OCC.

25 MR. BERGER: Yes. We would move OCC

1 Exhibits 43, 43a, and 43.1. Exhibit 43, of course,
2 is subject to the confidential markings that are
3 going to be circulated.

4 EXAMINER PIRIK: Thank you.

5 MR. BERGER: Thank you.

6 EXAMINER PIRIK: Duke?

7 MS. SPILLER: Your Honor, based upon the
8 testimony of Mr. Wilson, I would move to strike that
9 portion of his testimony that begins on page 4,
10 line 10, carries over through line 6. This is where
11 he discusses the ESP stipulation.

12 He indicated that this was background.
13 However, in his -- in his testimony, this isn't tied
14 in elsewhere with respect to his testimony, and it's
15 simply him taking portions of a stipulation and
16 putting it in here without adopting or applying to it
17 any expertise analysis, any sort of specialized
18 review based upon his expertise as an economist, so I
19 think it should be struck from his testimony.

20 MR. BERGER: Your Honor, I think
21 Mr. Wilson -- if you are looking for a response, I
22 don't know.

23 EXAMINER PIRIK: No. I would be looking
24 for a response. I was just trying to get it marked
25 exactly what she's talking about. You can go ahead.

1 MR. BERGER: Yes. As Mr. Wilson
2 explained, his testimony on these pages was simply
3 background, establishing why we are here, discussing
4 the OVEC asset and the proposed PSR in that the
5 company has asserted that the contractual obligation
6 was not transferred -- to point out the contractual
7 obligation was not transferred and to point out the
8 language from the stipulation related to the
9 circumstances under which it is -- can be retained.

10 EXAMINER PIRIK: Thank you.

11 MR. BERGER: Thank you.

12 EXAMINER PIRIK: Are there any other
13 objections to the testimony?

14 Ms. Spiller's motion to strike and
15 objection will be noted for the record. However, the
16 motion to strike is denied, and the testimony will be
17 admitted.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 MS. SPILLER: Thank you, your Honor.

20 EXAMINER PIRIK: Mr. Olikar --

21 MR. SERIO: Your Honor, before we get
22 there -- we can do this off the record.

23 (Discussion off the record.)

24 EXAMINER PIRIK: We're back on the
25 record.

1 MS. SPILLER: Duke Energy Ohio would move
2 for the admission of Duke Energy Ohio Exhibit 26.

3 EXAMINER PIRIK: Are there any objections
4 to Duke 26?

5 Hearing none, it will be admitted into
6 the record.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 EXAMINER PIRIK: Mr. Olikier.

9 MR. OLIKER: Thank you, your Honor.
10 Interstate Gas Supply, Inc., or IGS Energy would call
11 Matthew White to the stand.

12 And IGS Energy would mark Mr. White's
13 testimony as IGS Exhibit 10.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 EXAMINER PIRIK: Mr. White, would you
16 please raise your right hand.

17 (Witness sworn.)

18 EXAMINER PIRIK: Thank you. You may be
19 seated.

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MATTHEW WHITE

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

DIRECT EXAMINATION

By Mr. Olikar:

Q. Mr. White, I think your microphone isn't
on yet. Good afternoon, Mr. White.

A. Good afternoon.

Q. Would you please state your name for the
record.

A. Matthew White.

Q. And who are you employed by?

A. IGS Energy.

Q. And what is your address?

A. 6100 Emerald Parkway, Dublin, Ohio 43016.

Q. Thank you.

A document has been placed in front of
you marked as IGS Exhibit 10. Can you please
identify what that document is?

A. Direct Testimony of Matthew White on
behalf of Interstate Gas Supply, Inc.

Q. That was a document prepared by you?

A. Yes.

Q. Do you have any changes to make to that
document?

1 A. No.

2 Q. If asked those questions again today,
3 would your answers be the same?

4 A. Yes.

5 MR. OLIKER: Your Honor, I would move to
6 admit the testimony subject to cross-examination.

7 EXAMINER PIRIK: Thank you.

8 Ms. Hussey?

9 MS. HUSSEY: No questions, your Honor.

10 EXAMINER PIRIK: Ms. Bojko?

11 MS. BOJKO: No questions, your Honor.

12 EXAMINER PIRIK: Mr. Serio?

13 MR. SERIO: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Serio:

17 Q. Good afternoon, Mr. White.

18 A. Good afternoon.

19 Q. Am I correct in your testimony that
20 you're alleging that Duke is engaging in
21 discriminatory behavior?

22 A. Can you point --

23 Q. Yes, page 4 of your testimony.

24 A. Yeah -- yes, I do say that.

25 Q. Okay. And how long has this been going

1 on to your knowledge?

2 A. So, for the -- specifically for the
3 ability to -- where Duke is billing for a utility
4 affiliate and itself, and not billing -- not allowing
5 other -- other competitive participants in the market
6 to bill?

7 Q. Yes.

8 A. I'm not sure how long it's been going on.

9 Q. Has IGS, or any other marketer to your
10 knowledge, filed a complaint against Duke with the
11 Commission alleging this behavior?

12 A. Not to my knowledge against Duke.

13 Q. Are you familiar with Revised Code
14 Section 4905.26?

15 A. Not off the top of my head. You would
16 have to refresh my memory as to what that specific
17 statute says.

18 Q. Would you accept, subject to check, it's
19 the complaint statute?

20 A. Yes.

21 Q. Now, you are an attorney, correct?

22 A. Yes.

23 Q. And you have appeared in PUCO proceedings
24 as an attorney, correct?

25 A. Yes.

1 Q. And some of those proceedings have
2 included rate cases, correct?

3 A. Yes.

4 Q. So you understand the concept of burden
5 of proof in proceedings before the PUCO?

6 A. I'm generally familiar with that concept.

7 Q. And is it your understanding that in a
8 proceeding like the one we are in today, an ESP
9 proceeding, that the applicant or Duke has the burden
10 of proof?

11 A. Yes, that's generally how it works in a
12 rate case proceeding.

13 Q. Okay. But this is not a rate case
14 proceeding. It's a -- it's an ESP case, but they
15 also have the burden of proof here, correct?

16 A. Yes, generally, yes.

17 Q. Now, did Duke propose supplier
18 consolidated billing in this proceeding?

19 A. No.

20 Q. Did Duke propose a retail price adder in
21 this proceeding?

22 A. No.

23 Q. Did Duke propose a retail auction in this
24 proceeding?

25 A. No.

1 Q. Am I correct that all three of those
2 items were proposed either by IGS or other CRES
3 providers?

4 A. Yes.

5 Q. To the extent that those three items,
6 supplier consolidated billing, the retail price
7 adder, and the retail auction, are proposed by either
8 IGS or other CRES providers, then would you agree
9 that IGS or the other CRES providers have the burden
10 of proof with respect to those three items?

11 MR. OLIKER: Objection to the extent it
12 calls for a legal conclusion, but if Mr. White has an
13 opinion, he can answer.

14 EXAMINER PIRIK: I would agree.

15 Mr. White, do you have an opinion?

16 A. My opinion is it's -- it's not been
17 established in the law whose burden of proof it is.

18 Q. So you don't believe that the applicant
19 of an issue before the Commission in an ESP
20 proceeding has the burden of proof.

21 A. As a general principle, an applicant in a
22 rate case proceeding who files an application has the
23 burden of proof, but I would not necessarily agree
24 that this is the same instance.

25 Q. So you're not agreeing that the applicant

1 in an ESP proceeding has the burden of proof?

2 MR. OLIKER: Mr. Serio, would you like to
3 put the statute in front of him? It might help us
4 rather than just going off the cuff here.

5 Q. Okay. We will dig that up and we will
6 get back to it.

7 On page 4 of your testimony, you also
8 talk about value added. I think it's in line 19 and
9 20. You indicate that Duke's proposal to restrict
10 CRES supplier billings diminishes the customer's
11 ability to receive value-added products. And my
12 question is what -- what is the value or how do you
13 quantify the value that you allege Duke diminishing?

14 THE WITNESS: Could I have that question
15 read again? I'm sorry.

16 (Record read.)

17 A. So what I'm referring to in my testimony
18 are products and services that are beyond just the
19 commodity of product and service. It would be a
20 product and service that adds additional value to the
21 customer including, for example, energy efficiency
22 smart -- product or service, a smart thermostat
23 product or service, distributed solar, or any product
24 or service that did not necessarily relate to the
25 electric commodity.

1 Q. So the value isn't something that can be
2 quantified in any way, correct?

3 A. Not necessarily. They -- those products
4 and services do have probably a dollar value, yes.

5 Q. Is there anything attached to your
6 testimony or anywhere in the -- in this proceeding
7 where you indicate with some kind of data that
8 customers perceive value in those noncommodity topics
9 or items that you're talking about?

10 A. I didn't attach any study, no.

11 MR. SERIO: Could I approach, your Honor?

12 EXAMINER PIRIK: Yes.

13 MR. SERIO: I am going to hand Mr. White
14 a copy of the Ohio Revised Code and I am looking at
15 section 4928.143(C)(1). If you could take a look at
16 that, please.

17 A. Yes.

18 Q. And would you agree with me that that
19 section of the Code indicates that the burden of
20 proof in an electric security plan proceeding is on
21 the applicant?

22 A. It says the burden of proof in this
23 proceeding shall be on the electric distribution
24 utility.

25 Q. And the electric distribution utility is

1 the applicant, correct?

2 A. The -- to the extent that Duke filed an
3 ESP application in this case, then yes.

4 Q. Okay. Let me ask you this: If Duke did
5 not propose consolidated supplier billing, the retail
6 price adder, or the retail auction, then they can't
7 meet the burden of proof, correct?

8 A. Duke made proposals that relate to those
9 proposals. So the proposals that were made in my
10 testimony -- the suggested modifications that I make
11 in my testimony relate to the actual proposals that
12 Duke made.

13 Q. And my question to you is, who has the
14 burden of proving that supplier -- that consolidated
15 supplier billing, the retail price adder, or the
16 retail auction is reasonable for the Commission?

17 A. I don't think that's a decision that's
18 been made by the Commission at this point.

19 Q. Okay. If the Commission hasn't made the
20 decision, in your opinion who has that burden of
21 proof?

22 A. In my opinion the decision of the
23 Commission is whether or not the modifications I
24 propose in my testimony are reasonable is the burden
25 that should be applied.

1 Q. You understand that the concept of burden
2 of proof is that someone has to go forward and prove
3 a point, correct?

4 A. My understanding is there is a large,
5 different spectrum of burden of proof. Each burden
6 of proof is -- is -- there's not just one burden of
7 proof.

8 Q. Right. But I'm talking about the burden
9 of proof in utility proceedings before the Public
10 Utilities Commission.

11 A. Okay.

12 Q. In an electric security plan proceeding,
13 if the company does not propose an item, who has the
14 burden of proving that that item is reasonable?

15 MR. OLIKER: Objection. Asked and
16 answered several times.

17 EXAMINER PIRIK: I'll allow it one more
18 time.

19 A. My opinion is I -- my opinion is that's
20 up to the Commission to decide.

21 MR. SERIO: Your Honor, that's a
22 nonanswer. I mean, he said the same thing three
23 times, but that's a nonanswer.

24 EXAMINER PIRIK: I think he answered the
25 question.

1 Q. On page 5 of your testimony you indicate
2 that "Duke has not demonstrated that distribution
3 ratepayers are not unduly subsidizing Duke's
4 affiliate or unregulated products and services." Do
5 you see that?

6 A. Yes.

7 Q. What evidence can you point to in the
8 proceeding that shows that Duke is subsidizing its
9 affiliate or unregulated products at the expense of
10 distribution ratepayers?

11 A. I discuss that in my testimony. I would
12 refer to my testimony.

13 Q. And can you point to what in your
14 testimony is the evidence that you are referring to?

15 MR. OLIKER: I just object to the extent
16 he mischaracterized what Mr. White says in his
17 testimony. I think there's two different things
18 going on with what Mr. Serio read and then what he
19 asked the witness to answer.

20 EXAMINER PIRIK: Mr. Serio.

21 MR. SERIO: I asked for evidence. The
22 witness said it is in his testimony. I would like
23 him to show me where specifically in his testimony,
24 so we can explore it.

25 EXAMINER PIRIK: Can you just clarify

1 what you are asking him to show you?

2 MR. SERIO: Sure.

3 A. On lines 5 and 6, you indicate Duke has
4 failed to demonstrate that they are not subsidizing
5 the affiliate because it's your position that Duke is
6 subsidizing its affiliate, correct?

7 MR. OLKER: That's a mischaracterization
8 of his testimony.

9 A. I can point -- I mean, without reciting
10 my testimony verbatim, so there is evidence in my
11 testimony. But just off the top of my head, the fact
12 that Duke bills for its utility, that I am aware of
13 there is no cost that it's charging or it's not clear
14 that they are allocating appropriately the cost for
15 the billing of the affiliate. Those are two of
16 the -- two of the pieces of evidence that I presented
17 in my testimony.

18 Q. Let me ask you this way: Is there any
19 evidence in your testimony that quantifies the amount
20 of the subsidization that you allege is occurring?

21 A. I don't place a dollar amount in my
22 testimony on that, largely because we haven't gotten
23 the data from Duke to make that dollar amount
24 available.

25 Q. You indicated in your testimony that you

1 had asked questions but didn't get answers from Duke.

2 Do you know if you moved to compel Duke to provide
3 responses to that information?

4 A. I do not believe we filed a motion to
5 compel specifically on those discovery requests.

6 Q. Now, on page 5 of your testimony, you
7 talk about some of the items where the SSO does not
8 reflect the full cost of providing SSO service. Do
9 you see that?

10 A. Yes.

11 Q. And is there anywhere in your testimony
12 that you provide any kind of quantification for any
13 of those cost items that you allege are being
14 subsidized by the distribution customers?

15 A. I did not place a dollar amount on it in
16 my testimony.

17 Q. Now, am I correct that the subsidy that
18 you are alleging at the bottom of page 5 is different
19 than the subsidy you are alleging at the top of
20 page 5?

21 MR. OLKER: Give the witness a moment
22 just to look at his testimony.

23 MR. SERIO: Sure.

24 A. To the extent you are referring to the
25 subsidy that is -- that Duke is currently -- giving

1 towards its affiliate by billing for its affiliate,
2 yes, that's different than the subsidy I was talking
3 about.

4 Q. Okay. So with regards to the subsidies
5 on page 5, lines 14 through 20, has IGS or any CRES
6 provider, to your knowledge, filed a complaint with
7 the PUCO alleging that a subsidy is occurring?

8 A. I'm not aware of any complaint that's
9 been filed. For subsidies that are going from
10 distribution rates to support -- the costs going into
11 distribution rates to support the SSO service that is
12 not being recovered through SSO service, I'm not
13 aware of a complaint that relates to that.

14 Q. Okay. Thank you.

15 Page 6 of your testimony, line 16 and 17,
16 you talk about new products and services. Can you
17 give me an idea of what kind of products and services
18 you're talking about there?

19 MR. OLIKER: I would just advise
20 Mr. White to be careful to the way he answers that
21 question if it involves proprietary information.

22 EXAMINER PIRIK: Thank you.

23 A. I think I list in my testimony certain
24 products and services including, but not limited to,
25 "electricity bundled with energy efficiency, demand

1 response, direct load control, smart thermostats,
2 distributed solar generation and other forms of
3 on-site generation, micro-grids, battery storage
4 technology, products bundled with loyalty rewards and
5 products bundled with home protection, to name a
6 few."

7 Q. Are any of those products offered today
8 in the Duke service territory by IGS or any CRES
9 provider to your knowledge?

10 A. I believe some may be.

11 Q. And do you know if any of those services
12 or products are offered by IGS or any CRES provider
13 in any other distribution territory in Ohio other
14 than Duke?

15 A. Yes, I believe some of them are.

16 Q. And to the extent they are being offered
17 in other service territories, do you know if they are
18 being offered in the AEP service territory?

19 A. Yes, I believe some of those products I
20 listed are being offered in the AEP service
21 territory.

22 Q. Are there any products you list at the
23 bottom of page 6 and the top of page 7 that are
24 offered exclusively in the Duke service territory by
25 either IGS or any CRES provider to your knowledge?

1 A. That I don't know. There could be, but I
2 just don't know.

3 Q. If you know, are there any products or
4 services listed on pages 6 and 7 of your testimony
5 that are only offered in service territories where an
6 EDU has a purchase of receivables program?

7 A. Can you repeat the question, please?

8 Q. Sure. To the best of your knowledge,
9 looking at those services at the bottom of page 6,
10 top of page 7, to the best of your knowledge, are any
11 of those offered only in service territories in Ohio
12 where the electric distribution utility has a
13 purchase of receivables program?

14 A. I don't know the answer to that question.

15 Q. Now, on page 7 of your testimony you
16 indicate Duke's proposal to prohibit billing for CRES
17 nonelectric products would limit the CRES supplier's
18 ability to offer those products. Do you see that?

19 A. Yes.

20 Q. Doesn't a CRES supplier have the ability
21 to offer any products they want to today?

22 A. A CRES provider can offer a product that
23 it likes to, but it cannot necessarily bill for that
24 product jointly with distribution service and
25 generation service.

1 Q. So it's not that Duke's ability is
2 limiting your ability to offer the products. What it
3 does is it limits your ability to offer the products
4 with a consolidated bill.

5 A. It restricts the value that we can
6 provide to customers and the value of those products
7 and services because they are not able to receive
8 those products and services via a consolidated bill
9 like Duke offers it utility affiliate to provide
10 through a consolidated bill.

11 Q. Is there any analysis or customer surveys
12 attached to your testimony that would support your
13 claim that customers won't get as much value if they
14 are not getting a consolidated bill for the
15 value-added products that you talk about?

16 A. We've marketed in other utility service
17 territories where there is no consolidated bill and
18 almost categorically customers prefer a consolidated
19 bill. They are much less likely to enroll in a
20 product where you cannot have a consolidated bill.

21 Q. Other than you stating that, is there
22 anything in your testimony that shows numbers,
23 surveys, any kind of analysis that demonstrates that
24 customers want that consolidated bill and feel that
25 there's that value added?

1 A. No, other than IGS's experience in
2 multiple utility markets, there's no specific numbers
3 listed in my testimony.

4 Q. Let me ask you a question. In a rate
5 proceeding, if a company files for an increase but
6 doesn't attach any supporting documentation, in your
7 opinion does that meet the company's burden of proof?

8 A. That -- there is a lot of variables
9 attached to what the company is applying for, that I
10 can't answer that question as a yes or no.

11 Q. The company files an application, they
12 have testimony that includes no schedules, no
13 surveys, no analysis, but simply says we need a
14 \$50 million rate increase because we need it. Does
15 that meet the company's burden of proof in your
16 opinion?

17 MR. OLIKER: Object to the relevance.

18 EXAMINER PIRIK: Mr. Serio?

19 MR. SERIO: Well, he is making a lot of
20 allegations and he is raising a lot of items where
21 our experience says we need this, and it's going to
22 come down to whether they have met the burden of
23 proof. And my question is would he accept the
24 utility having that minimal information versus the
25 amount of information that IGS or the CRES providers

1 are offering. I would like to see how consistent
2 they are in what they consider the amount of evidence
3 necessary to meet the burden of proof in a
4 proceeding.

5 EXAMINER PIRIK: I am going to sustain
6 the objection. I think we've discussed burden of
7 proof earlier.

8 Q. (By Mr. Serio) On page 11 of your
9 testimony you have further discussion about Duke
10 billing for some of its affiliates. Do you see that
11 on lines 8 through 11?

12 A. Yes, I discuss that.

13 Q. You indicate it's not clear whether Duke
14 is allocating for billing these services. Does that
15 mean it's possible that Duke is billing and you just
16 don't know it?

17 A. I know that Duke is billing for its
18 affiliate.

19 Q. Right. But it says here it's not clear
20 if Duke is allocating costs for billing these
21 services. So is it possible that Duke is allocating
22 costs for billing these services?

23 A. We've tried to get that out of Duke in
24 discovery and there was minimal information given to
25 us regarding that topic. From what I remember, there

1 were no significant costs allocated to its affiliate
2 for these services. And Duke certainly hasn't
3 demonstrated its allocated fully embedded costs as it
4 is required to do so under the statute.

5 Q. When you indicate there is no evidence,
6 what were you relying on?

7 A. Discovery responses from Duke.

8 Q. And are any of those discovery responses
9 attached to your testimony?

10 A. No. But I think my attorney got them in
11 as exhibits in this case.

12 Q. Now, on page 17 of your testimony, you
13 start talking about supplier consolidated billing.
14 And I believe you indicate there that purchase of
15 receivables would have to occur, correct?

16 A. Can you point me to where that's said?

17 Q. Sure. At the top of the page you talk
18 about the CRES supplier purchasing receivables from
19 the utility.

20 A. Okay, yes.

21 Q. Now, if a CRES provider purchased
22 receivables from a utility, would they purchase those
23 at 100 percent?

24 A. I think that would have to be worked out.
25 I think in a market such as Texas that's what CRES

1 providers do when there's supplier consolidated
2 billing. But I think that would have to be worked
3 out in a collaborative process once the Commission
4 orders that Duke provide the supplier consolidated
5 billing option.

6 Q. If the CRES provider purchased
7 receivables at 100 percent, that means that all of
8 the bad debt from the utility is going to the CRES
9 provider, correct?

10 A. On the initial purchase there could be
11 other mechanisms like uncollectible expense riders
12 that would be available, but if that's the case, yes,
13 then all the bad debt would go to the CRES provider.

14 Q. And if all the bad debt goes to the CRES
15 provider, how does the CRES provider collect the bad
16 debt?

17 A. The CRES provider would initiate
18 collections much like the utility does today.

19 Q. So if -- if the CRES provider, under that
20 scenario, is unable to collect the bad debt, then the
21 CRES provider would eat the bad debt, correct?

22 A. Again, that's a detail that -- for the
23 distribution receivables, that would be a detail that
24 I would recommend working out in a collaborative
25 process after the Commission has ordered Duke to --

1 to implement consolidated billing.

2 Q. So you're not making any recommendation
3 as to how the receivables issue should be handled?

4 A. I'm making a general recommendation that
5 the CRES provider purchase the receivables from Duke.
6 The details of what happens to that bad debt, I am
7 not making a specific recommendation.

8 Q. Now, on page 18 of your testimony, you
9 indicate "Under supplier consolidated billing, CRES
10 providers would still be subject to the same billing
11 requirements in the rules and statutes today." Can
12 you specify which rules and statutes you're talking
13 about?

14 A. I can -- it's my understanding, without
15 being able to specifically list the rules and
16 statutes to the numbers, it's my understanding that
17 there are requirements as far as bill formatting,
18 certain items that must be contained on the utility
19 bill. Those kind of standards that would apply also
20 to the supplier consolidated billing.

21 Q. But there's nowhere in your testimony
22 where you identify all the particular rules and
23 statutes that you would recommend also applying to a
24 CRES provider if they were to do consolidated
25 billing, correct?

1 A. Like I said, I did not list the specific
2 rules and standards, but it's my understanding that
3 public -- and I've reviewed these -- these rules,
4 that the Public Utilities Commission has rules
5 specifically that dictates the requirements for
6 utility billing, and I would suggest that those rules
7 would apply to a CRES provider that's conducting
8 supplier consolidated billing.

9 Q. Right. But we don't know which one
10 you're talking about, just that they should apply.

11 A. I could probably point them out if you
12 gave me the utility rules.

13 Q. Are you talking about the Administrative
14 Code?

15 A. Sure, yeah.

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

17 EXAMINER PIRIK: Yes.

18 MR. SERIO: I am going to hand the
19 witness a copy of the Ohio Administrative Code. And
20 if he can identify for me the specific rules and
21 regulations he is referring to.

22 A. Let me note this is a very large book and
23 we've been here a long time, so.

24 MR. OLICKER: Mr. Serio, do you have any
25 hints for the witness or do you want him to find it

1 himself?

2 THE WITNESS: Yeah, if you can assist me.

3 MR. SERIO: I just would like to know
4 which ones the witness wants to apply there, and he
5 just indicated he could identify them, so I think
6 it's important for both the Commission and customers
7 to know, if consolidated billing is going to occur,
8 what specific rules and regulations would also apply
9 to the CRES provider.

10 THE WITNESS: If I had a laptop, it would
11 probably be easier. I looked at this -- I haven't
12 used a book in a really long time.

13 MR. OLIKER: Do you mind if I let him use
14 my laptop.

15 MR. SERIO: He's welcome to use a laptop.
16 I'm sorry that I'm such a lag.

17 MS. SPILLER: Joe, it's old school. I
18 prefer old school.

19 A. For instance, and again, this is not an
20 exhaustive list necessarily, but I would imagine
21 4901:1-10-22 titled "Electric Utility Customer
22 Billing and Payments."

23 Q. Rather than make you spend time up there,
24 am I correct that you would agree with me that it
25 would be important for the Commission to know which

1 specific rules and statutes you would want to apply
2 to supplier consolidated billing?

3 A. I would -- I believe that it's up to the
4 Commission to decide which of their statutes they
5 would like to apply to utility consolidated billing.

6 Q. On page 19 of your testimony, lines 9 and
7 10, you indicate that the current SSO service
8 discourages customer engagement and encourages
9 customers to view service as a commodity-only product
10 over which they have no control.

11 MR. OLIKER: Joe, before he answers that,
12 do you mind if I grab my laptop?

13 MR. SERIO: Go ahead.

14 MR. OLIKER: Unless you want him to use
15 it again later.

16 Do you need the question again?

17 Q. Page 19, lines 9 and 10, you are saying
18 the SSO discourages customer engagement, correct?

19 A. Yes.

20 Q. And is there any kind of analysis or
21 surveys attached to your testimony that shows that
22 customers believe the SSO discourages their
23 engagement?

24 A. Yes.

25 Q. There is. And can you point to that?

1 A. On line -- on page 19, I discuss -- I
2 discuss the different analyses I did with respect to
3 the number of customers in the market and the number
4 of customers that are taking SSO service versus the
5 number of customers that are affirmatively enrolled
6 in SSO -- or, with a CRES provider, and provide a
7 chart that lists the number of customers that are on
8 the SSO service, roughly the amount of customers that
9 are on aggregation, and the number of customers
10 affirmatively electing a CRES product.

11 Q. So am I correct in your analysis you are
12 assuming that any customer on SSO service or being
13 served through aggregation is not engaged?

14 A. I'm extrapolating from that data that
15 since a large majority -- or, the majority of the
16 customers are on -- the majority of the customers are
17 still on SSO service and SSO service is one product
18 in the market. They are vastly more products in the
19 market available to customers than SSO service. And
20 I am making -- making the conclusion that it's
21 indicative that at least some, but likely a large
22 percentage of those customers that have power on SSO
23 service are not engaged in the market.

24 Q. And you are basing that purely on the
25 numbers, correct? You don't have any kind of surveys

1 to back that up, do you?

2 A. I didn't attach a survey to my testimony.

3 Q. I mean, it's very possible that customers
4 on the SSO service are very engaged and just make the
5 conscientious decision to take SSO service over a
6 CRES service, correct?

7 A. I would characterize that as highly
8 unlikely.

9 Q. But there's no survey information
10 attached to your testimony that would support that
11 conclusion, correct?

12 MR. OLIKER: Asked and answered.

13 EXAMINER PIRIK: Overruled.

14 A. I did not attach a survey to my
15 testimony.

16 Q. On page 20 of your testimony, lines 18
17 through 22, you indicate that you can conclude that
18 the markets have done a good job of encouraging
19 shopping for commercial/industrial customers but not
20 for residential customers. Can you tell me what the
21 electric markets have done in marketing to commercial
22 and industrial customers different than what they've
23 done to market to residential customers?

24 A. I would say that certain
25 commercial/industrial customers have -- have energy

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1 buyers dedicated specifically to informing themselves
2 about -- about the energy markets. They are aware of
3 the pricing of products that are available to them in
4 the market. They are aware of their options;
5 whereas, residential customers are less aware of
6 their current pricing and their options.

7 Q. Right. But that's something that the
8 customer themselves is doing, correct?

9 A. The decision to have a default rate was a
10 legacy policy decision, and the customer, most
11 customers are -- there's a significant portion of
12 customers that when that was their only option when
13 they enrolled in electric service, that is -- that's
14 the option that they remain on, and so you can't
15 necessarily say that the customer has affirmatively
16 elected to remain on that service.

17 Q. Can commercial and industrial customers
18 take SSO service if they want to?

19 A. Yes.

20 Q. So it's a default service for all
21 customer classes, correct?

22 A. SSO service is available for all
23 customers.

24 Q. And to the extent that it's available for
25 all customers or all classes, when an EDU talks about

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1 the SSO, they never only talk to the industrial and
2 commercial customers and ignore residential
3 customers, correct?

4 A. When the EDU talks to?

5 Q. Yes.

6 A. I don't know what the EDU does when it
7 talks to customers.

8 Q. Okay. When you say the "competitive
9 electric markets," who or what is the competitive
10 electric market?

11 A. Can you please point me?

12 Q. Yes. Line 18 on page 20.

13 A. Line 18. The -- there's no --
14 competitive electric markets are the regulatory
15 construct adopted by the Commission --

16 Q. And --

17 A. -- in the state legislature of Ohio.

18 Q. Does the electric market, set up by the
19 Commission, treat commercial and industrial customers
20 different with regard to the ability to have the SSO
21 as a default option?

22 A. There are different standards required of
23 residential customers as far as contracting,
24 verification and other standards, so there is
25 different treatment of residential and

1 commercial/industrial customers.

2 Q. That wasn't my question. My question was
3 when it comes to the default service, has the
4 Commission, in its rules, done anything that would
5 say that industrial and commercial customers are
6 treated differently than residential customers?

7 A. To the extent that they can both choose
8 SSO service, they are the same, but there are
9 different standards that are required, and switching
10 fees and other things that are applicable to
11 residential customers.

12 Q. Now, on page 21 of your testimony you
13 indicate that in the recent AEP ESP proceeding you
14 proposed the Commission do the retail auction with
15 the retail price adder, correct?

16 A. Yes.

17 Q. And does your testimony detail how the
18 retail price adder would work or how the retail
19 auction would work?

20 A. In the AEP case or --

21 Q. In this case.

22 A. No. I don't go into the specifics in
23 this proceeding.

24 Q. Do you provide any -- any supporting
25 information for the retail price adder or the retail

1 auction in this proceeding beyond what you provided
2 to the Commission in the AEP ESP proceeding?

3 A. No.

4 Q. And just so the record is clear, that AEP
5 ESP proceeding was Case No. 13-2385-EL-SSO, correct?

6 A. Yes.

7 Q. On page 22 you talk about the Commission
8 unbundling costs that Duke incurs in distribution
9 rates that are required to support SSO service,
10 correct?

11 A. Yes.

12 Q. Are you aware that Duke had a rate case
13 back in 2012?

14 A. Yes. Distribution rate case, yes.

15 Q. And did IGS participate in that rate case
16 and raise the question of unbundling costs that are
17 buried in distribution rates that support SSO service
18 that shouldn't be there?

19 MR. OLIKER: Objection to the relevance.

20 EXAMINER PIRIK: Mr. Serio.

21 MR. SERIO: Your Honor, it seems to me he
22 is asking the Commission to do something here that
23 IGS had an opportunity to do just two years ago, and
24 I think it's reasonable to find out if they did
25 anything about it, and if not, why not.

1 EXAMINER PIRIK: I'll overrule.

2 A. In the electric rate case I am not aware
3 of IGS filing testimony on that topic.

4 Q. Do you know why IGS did not pursue
5 unbundling costs in distribution rates that are used
6 to support SSO service?

7 A. One of the factors is IGS is
8 relatively -- was relatively new to the electric
9 market then. Another factor may have been that the
10 competitive markets are evolving and at that point
11 that was not part of our -- part of our thinking, but
12 that has become part of our positions now.

13 Q. So you're saying that the idea that
14 distribution rates need to be unbundled is something
15 that has only developed with IGS since the 2012 Duke
16 electric rate case.

17 A. It's an idea that's been around for --
18 for a long time in unbundled markets in other states
19 and that's why other states have unbundled specific
20 costs that are recovered through distribution rates
21 that support default supply service, including
22 Pennsylvania, New York, and Illinois.

23 But from an IGS perspective at that time
24 in 2012, we had recently just gotten into the
25 markets. I don't even know if we filed any testimony

1 in that 2012 distribution rate case. So we just did
2 not take that position.

3 Q. Am I correct that other CRES providers
4 share IGS's belief that Duke's distribution rates
5 should be unbundled to support SSO service?

6 A. Generally, yes, I believe there are other
7 CRES providers that do take that position.

8 Q. Do you know if any of those CRES
9 providers participated in the 2012 Duke distribution
10 rate case on the electric side to raise that issue?

11 A. I don't know.

12 Q. And on page 23 of your testimony, you
13 list some of these specific items that you think
14 should be unbundled, correct?

15 A. Yes.

16 Q. And did you -- were you able to identify
17 the amount of money involved with any of the items
18 that you list on page 23?

19 A. I do not list dollar amounts.

20 Q. Okay. Just so we're clear, I counted six
21 separate items. The first one would be legal
22 expenses on line 4, correct?

23 A. Yes.

24 Q. The second one is allocating Duke
25 employee costs for the time that Duke employees use

1 on the SSO.

2 A. Yes.

3 Q. The third one is Duke infrastructure,
4 correct?

5 A. Yes.

6 Q. The fourth is the cost of working
7 capital?

8 A. Yes.

9 Q. Fifth is the customer call center?

10 A. Yes.

11 Q. And sixth is a portion of overhead
12 expenses. Those are the individual items you're
13 talking about.

14 MR. OLIVER: Joe, could you read the last
15 one?

16 Q. Sure. The last one would be overhead
17 expenses on line 10.

18 MR. OLIVER: Okay. Thanks.

19 A. Yes.

20 Q. Okay. So you agree with me, you listed
21 six items and only six, correct?

22 A. I don't think that list is necessarily an
23 all-inclusive list. Those are the -- those are the
24 costs that I list in my testimony.

25 Q. And was IGS able to establish, in this

1 proceeding, the amount of money that is involved in
2 any one of those six items?

3 A. We do not -- we do not -- we do not list
4 a specific cost, but we recommend that the Commission
5 establish a proceeding or order that Duke -- or order
6 that Duke establish a proceeding to -- to determine
7 those costs, similar to what other states have done.

8 Q. On page 23 -- I'm sorry, page 24 of your
9 testimony, you list a number of charges that CRES
10 providers have. Do you see those, lines 6 through
11 12?

12 A. Did you say 24?

13 Q. On page 24, yes.

14 A. Yes.

15 Q. Does your testimony -- I'm sorry.

16 A. Those are the supplier fees charged to
17 CRES providers.

18 Q. And does anywhere in your testimony list
19 the amount of the fees that CRES providers are
20 charged?

21 A. I discuss -- in my testimony I cite to
22 Tariff Sheet 52.3, that's a public document.

23 Q. And that's the only thing that you're
24 citing to for these fees?

25 A. That's where the supplier fees are listed

1 in the Duke tariff.

2 MR. OLIKER: Joe, just to -- I think this
3 is an exhibit that's already been admitted.
4 Mr. Ziolkowski.

5 MR. SERIO: Okay.

6 Q. But I guess my question to you is: All
7 the fees that you are talking about are listed on
8 that tariff sheet, correct?

9 A. With respect to that specific question, I
10 believe those are the charges that I'm talking about,
11 but I don't have that tariff sheet in front of me.
12 But I believe when I made that list I included the --
13 all the charges on the tariff sheet.

14 Q. Did you do any kind of analysis to
15 quantify the amount of fees that CRES providers get
16 compared to the costs that you think are embedded in
17 base rates that shouldn't be there that you list on
18 page 23?

19 MR. OLIKER: Object to the relevance.

20 EXAMINER PIRIK: Mr. Serio?

21 MR. SERIO: I am trying to get an idea of
22 the magnitude of the costs in the two different
23 bundles that he is referring to, to see if they
24 offset each other or if the difference is sufficient
25 that it warrants any Commission action.

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1 MR. OLIKER: Your Honor, these are two
2 completely different things. We are talking about
3 creating competitive parity of the SSO price and CRES
4 prices. Now he is talking about something else which
5 isn't necessarily embedded in CRES prices. We are
6 conflating two entirely different things.

7 EXAMINER PIRIK: I'll allow the question,
8 but I am really not sure where you are going with
9 this. I am not sure how this relates to this
10 specific case.

11 A. Okay. I can just explain. So what I am
12 talking about in the question you are asking, I'm
13 saying that the competitive parity is even more
14 skewed in favor of the SSO to the extent that there's
15 also supplier fees that Duke charges us to make
16 available our products in the market and that we have
17 to pay, but the SSO does not pay any costs to make --
18 to make that product available in the market. So
19 there wouldn't be an offset. It would actually --
20 these fees would be in addition to the additional
21 costs that the SSO recovers through distribution
22 rates. The costs are recovered through distribution
23 rates to support the SSO.

24 Q. To the extent that the SSO is a default
25 service, that's a service that's available to all

1 customers, correct?

2 A. Yes.

3 Q. And all customers pay the charges that
4 you list on page 23 as part of their distribution
5 costs, correct?

6 MR. OLIKER: Could you please clarify
7 what charges you mean, Joe, on 23?

8 Q. The charges on page 23, lines 4 through
9 10, the six items.

10 A. Those costs are the costs that are
11 utilized to support the SSO specifically, but are
12 recovered through distribution rates. So all
13 distribution customers, even those customers that
14 aren't taking SSO service are paying those costs that
15 are directly supporting SSO service.

16 Q. Even if a customer is taking CRES
17 service, the customer is eligible to use a default
18 service if they choose to, correct?

19 A. They are eligible to use that service but
20 they should also pay for the cost of that service.

21 Q. And do they not pay the cost of that
22 service through their distribution base rates?

23 A. The SSO customers pay for the wholesale
24 commodity costs and they do not pay for the
25 noncommodity costs required to support SSO service

1 under -- unlike CRES customers whose prices reflect
2 not only the wholesale commodity costs, but also the
3 noncommodity costs required to support that service,
4 including call center costs and the other costs I've
5 listed in my testimony.

6 Q. Is there a single customer in the Duke
7 service territory that is eligible to shop that is
8 not paying distribution base rates?

9 A. I believe that all customers are paying
10 distribution rates.

11 Q. So all customers are eligible for the
12 SSO, all customers pay distribution rates, correct?

13 A. All customers pay distribution rates and
14 not all customers are -- yeah, all -- I take that
15 back. I don't know how you characterize PIPP
16 customers, but.

17 Q. Can you identify a customer of Duke that
18 is not eligible for the SSO?

19 A. Again, I don't know how you characterize
20 PIPP customers. I don't know if they're SSO
21 customers or they're not SSO customers. But
22 excluding that distinction, then all customers are
23 eligible to take SSO service.

24 Q. Okay. Thank you.

25 On line -- on page 24, line 16, you

1 indicate that presumably Duke charges CRES suppliers
2 the fees in order to recover costs. Do you know for
3 a fact that's why Duke charges the costs?

4 A. I would assume it's either they charge
5 the fees to recover costs or they're using it to
6 keep -- they are keeping it themselves. I would
7 assume those fees are somehow recovered in costs --

8 Q. Do you know if --

9 A. -- or alleged costs.

10 Q. I'm sorry.

11 A. Or purported costs.

12 Q. Do you know if the fees that Duke charges
13 cover all the costs that Duke incurs in providing
14 services to CRES providers?

15 A. No.

16 Q. On page 25 of your testimony, at the
17 bottom of the page, you indicate the Commission
18 encourages customers to remain on SSO service. Do
19 you see that?

20 MR. OLIKER: What's the line number?

21 Q. Page 22, line 25, carrying over to
22 line 1, page 26.

23 A. I'm sorry. Can you repeat that again?

24 Q. You're indicating there --

25 A. I meant the page number.

1 Q. Page 25.

2 A. 25.

3 Q. Line 22.

4 A. Line 22. Okay.

5 Q. And page 26, line 1.

6 A. I say "By encouraging customers to remain
7 on SSO service, the Commission is effectively
8 adopting a policy that discourages engagement in the
9 retail electric markets."

10 Q. So your testimony is the PUCO, today,
11 encourages customers to stay on the SSO instead of
12 shopping.

13 A. My testimony today is that the SSO
14 service is -- is encouraging customers to not engage
15 in the retail electric markets.

16 Q. But that's not what your sentence at the
17 bottom of 25 and 26 says. It says that the
18 Commission is encouraging customers to remain there.

19 A. It says the Commission is effectively
20 adopting a policy and that policy is the provision of
21 SSO service. And so, my testimony is that the
22 provision of SSO -- the current construct of SSO
23 service, where all customers are assigned to that
24 service by default, is effectively discouraging
25 customer engagement in the retail electric markets.

1 Q. Is it your testimony that the Commission
2 has a policy that favors SSO service over shopping?

3 A. My testimony is that the current -- the
4 current SSO construct that's been approved by the
5 Commission effectively discourages engagement in the
6 retail electric market.

7 Q. I understand that. My question to you
8 was is it your testimony that the Commission has a
9 policy that favors the SSO over shopping?

10 A. No, that's not my testimony.

11 Q. Okay. And you're familiar that the
12 Commission has its Apples to Apples site in order to
13 help customers shop and compare different products,
14 correct?

15 A. Yes.

16 Q. And you're familiar that the Commission
17 has a call center and does outreach to customers to
18 encourage customers to be educated to shop, correct?

19 A. Yes. I am aware of customer education
20 initiatives undertaken by the Commission for customer
21 choice.

22 Q. Are you aware of anything in any of the
23 Commission initiatives to educate customers where
24 they indicate to customers that the SSO is a better
25 option and you are encouraged to stay with the SSO

1 rather than shop?

2 A. I'm not aware of that and that's not what
3 I testified to.

4 Q. Do you believe that the Duke retail
5 electric market is a robust market?

6 A. No.

7 Q. And the Duke retail market has a purchase
8 of receivables program, correct?

9 A. Yes.

10 Q. Do you believe that AEP has a robust
11 retail electric program?

12 A. No. Particularly with respect to
13 residential customers, no.

14 Q. And does AEP currently have a purchase of
15 receivables program?

16 A. No, although they've proposed one in
17 their previous case -- or, their SSO case.

18 Q. You indicated in your testimony, on
19 page 20, you said there's 30 suppliers listed in the
20 Apples to Apples chart for Duke, correct?

21 A. Excuse me. Yes, that's what I say.

22 Q. Is there a minimum number of CRES
23 suppliers that need to be in a market in order for it
24 to be considered competitive or robust?

25 A. I don't think the amount of CRES

1 suppliers in a market is sufficient in -- any number
2 of CRES suppliers in a market is sufficient to
3 indicate whether there is robust competition in that
4 market.

5 Q. So is it possible with only three
6 providers you could have a competitive and robust
7 market?

8 A. It would depend on multiple
9 characteristics of the market.

10 Q. And what would those be?

11 A. Whether all products are treated equally
12 in the market, whether any -- any of the products can
13 exercise undue market power, whether customer --
14 customers are engaged in the market and actively
15 aware of the products and services that they receive
16 or actively aware of the products and services
17 available to them in the market, to name a few.

18 Q. Is it your opinion that the standard
19 service offer prevents the electric market in the
20 Duke territory from being competitive?

21 A. It's my opinion that the standard service
22 offer, particularly for the residential customer
23 class, limits the competitiveness, significantly
24 limits the competitiveness of the retail electric
25 markets.

1 Q. And would that be true of all four
2 electric distribution utilities in Ohio or just Duke?

3 A. Yes, that would be applicable to the
4 extent that Duke's SSO is the same as the SSOs of
5 other utilities in Ohio.

6 Q. And to the extent that the SSO is based
7 on an auction product, and you would agree that the
8 four SSOs are similar, correct?

9 A. They are largely similar, yes.

10 Q. You talk about customer acquisition costs
11 that CRES providers have that the SSO doesn't,
12 correct?

13 A. Can you point to me in that testimony
14 where I discuss that?

15 Q. Well, let me ask it this way: Are
16 customer acquisition costs one of the items that CRES
17 providers believe they have to pay that are not
18 associated with the SSO?

19 A. There are no customer acquisition costs
20 to the SSO, and CRES providers do have customer
21 acquisition costs.

22 Q. Is there any quantification anywhere in
23 your testimony of the customer acquisition costs that
24 marketers face?

25 A. There is no quantification, I believe, I

1 don't know -- and I don't know if I specifically
2 discuss customer acquisition costs in my testimony.
3 I just don't know. So if you could point me to that
4 portion where I'm referring to customer acquisition
5 costs.

6 Q. Let me ask you this: Is there anywhere
7 in your testimony where you indicate IGS pays this
8 much in customer acquisition costs and that's why
9 it's not fair compared to the SSO? Is there anywhere
10 that you indicate a number?

11 MR. OLIKER: Joe, could you give him a
12 section of his testimony?

13 Q. I am not referring to the testimony in
14 any specific place. I'm asking does he include that
15 anywhere in the testimony.

16 A. I don't know if I discuss customer
17 acquisition costs in my testimony.

18 Q. Okay. Are customer acquisition costs a
19 factor in comparing CRES service to the SSO?

20 A. I'm not sure I understand that question.

21 Q. Your testimony is critical of the SSO and
22 indicates that the SSO limits the competitiveness of
23 the market. Is one of the factors that limits the
24 competitiveness of the market the fact that CRES
25 providers have costs -- customer acquisition costs

1 that the SSO does not?

2 A. Yes. I think that's one of the factors
3 that would -- would favor the SSO in the regulatory
4 construct currently offered in Ohio.

5 Q. And is there anywhere in your testimony
6 that you have any quantification of what those SSO
7 costs -- I'm sorry, those customer acquisition costs
8 would be so that the Commission could look at that
9 and determine how much of a factor customer
10 acquisition costs are?

11 A. I don't think I discuss that in my
12 testimony.

13 Q. Now, am I correct that one of the
14 criticisms that IGS and CRES providers have of the
15 SSO is that if a customer goes on the SSO, they have
16 to stay on it for a minimum period of time?

17 A. I believe that's one of our criticisms.

18 MR. OLIKER: Joe, do you have a page?

19 A. Again, I don't know where.

20 Q. I am not referring to anywhere in your
21 testimony. I am just asking in general. Is one of
22 your concerns that with the SSO, customers have to
23 stay on it for a minimum period of time?

24 A. Yes, that's one of the inequities between
25 the treatment in the SSO and other competitive

1 products.

2 Q. Have you done any kind of analysis or
3 quantification of the impact of requiring customers
4 to stay on the SSO for a minimum period of time
5 before they can switch to CRES service?

6 A. I specifically haven't done any
7 quantification of that.

8 Q. Do you know if any CRES provider has done
9 that type of analysis and provided it in the record
10 of this proceeding?

11 A. I'm not aware of any.

12 Q. You're familiar with hedging as a
13 strategy for minimizing risk, correct?

14 MR. OLKER: Is this a question about his
15 testimony, Joe?

16 MR. SERIO: It's a general question based
17 on his background as a marketer.

18 A. Yes.

19 Q. And you would agree with me that IGS
20 hedges when they -- when they get involved with
21 customers, whether it's through the SSO or whether
22 it's through bilateral contracts with individual
23 customers, correct?

24 MR. OLKER: Mr. White, to the extent you
25 can answer the question without divulging proprietary

1 information.

2 A. Yes, generally our company does undertake
3 hedging.

4 Q. Generally speaking, when you engage in
5 hedging, is there anything you do different for
6 bilateral contracts than what IGS would do if they
7 were involved in SSO provision of service?

8 A. IGS does not serve SSO on the electric
9 side.

10 Q. Does IGS get involved in the comparable
11 SSO on the gas side if you know?

12 A. IGS does serve SSO on the gas side or SCO
13 on the gas side.

14 Q. And to the extent that IGS serves SSO on
15 the gas side, is the hedging that you do on the gas
16 side any different for the SSO than it is for
17 individual customers?

18 MR. OLIKER: Your Honor, I just object to
19 the relevance at this point now that we are moving
20 into the gas world.

21 EXAMINER PIRIK: Sustained.

22 MR. OLIKER: Thank you.

23 Q. Am I correct that IGS has acquired
24 customers in the Duke service territory through
25 bilateral contracts?

1 A. Yes.

2 Q. And IGS has been able to do that despite
3 the fact that the SSO is in place today, correct?

4 A. Yes.

5 Q. Now, am I correct that it's your belief
6 that customers that are on the SSO or through
7 aggregation may not be engaged similar to customers
8 that choose to take service from a CRES provider
9 through a bilateral contract?

10 A. Yes. It's my -- my opinion that
11 customers have -- who have taken -- who affirmatively
12 elected a product in the market are more engaged in
13 the market than a customer that has not affirmatively
14 elected a product in the market.

15 Q. So you would say that customers that stay
16 on the SSO are doing so through inertia, correct?

17 A. I believe there are a great number of
18 customers that are.

19 Q. Now, if I'm a customer and I sign up with
20 IGS or another CRES provider and I sign up for a
21 one-year contract, what happens when that contract
22 expires?

23 MR. OLIKER: Objection to the extent that
24 question is vague, but if you can make sense of it,
25 Mr. White.

1 A. It would depend on the terms of the
2 contract.

3 Q. And does IGS have contracts where the
4 term is that the contract would continue on a
5 month-to-month basis following the expiration of the
6 initial term?

7 A. Yes.

8 Q. And if a customer does nothing but stays
9 on that month to month, would it be fair to say that
10 you could say that customer is doing it through
11 inertia?

12 A. Every customer is different.

13 Q. But a customer that takes no affirmative
14 action to get off of a month-to-month contract that
15 expired is no different than a customer that takes no
16 action and takes SSO service, correct?

17 A. I would disagree with that. The customer
18 that's taking an affirmative action into a rolling
19 product has indicated they have entered into an
20 agreement that has terms and conditions which are
21 laid out to that customer at the time of the
22 enrollment.

23 A customer on the SSO does not enter into
24 any kind of agreement that lays out the terms and
25 conditions, the nature of the pricing, or any other

1 kind of mechanism to indicate the type of service
2 that it would be receiving on the SSO.

3 Q. Other than electing the initial contract,
4 is there any affirmative action on the part of the
5 customer who then remains on a month-to-month
6 contract?

7 A. The customer who entered into an
8 agreement at the time and is made aware of that,
9 there's notice requirements upon the expiration of
10 fixed terms. I mean, there's, you know, there's
11 plenty of times when the customer is touched.

12 Q. But does the customer have to take any
13 affirmative action to remain on the month-to-month
14 service?

15 A. No.

16 Q. So if the customer does nothing, they
17 stay on that service, correct?

18 A. Well, again, you're -- you're balling all
19 contracts into one contract, one contract type. But
20 for a customer that rolls onto a variable contract,
21 generally speaking the customer remains on that
22 variable contract. But there are also plenty of
23 other contracts that are offered in the market that
24 don't necessarily have those terms.

25 Q. Now, one last area. You're familiar with

1 the purchase of receivables program, correct?

2 A. Yes.

3 Q. And would you agree with me that under
4 the Duke purchase of receivables program, to the
5 extent that marketers get 100 percent of receivables
6 purchased, that means that all bad debt associated
7 with shopping customers is paid for, correct?

8 A. I believe that there is a discount rate
9 in Duke, but I'm not 100 percent sure.

10 Q. If the discount rate is zero, then that
11 would mean that the 100 percent is recovered,
12 correct?

13 A. If the discount rate is zero, that would
14 imply there's no bad debt.

15 Q. Do you know what the discount rate is for
16 Duke's POR program?

17 A. Off the top of my head, no.

18 Q. Would you accept, subject to check, that
19 it is zero, that 100 percent of the receivables are
20 purchased by Duke?

21 A. Yes.

22 Q. So to the extent that 100 percent of the
23 receivables are purchased, does that mean that Duke
24 has no bad debt?

25 A. Again, I don't know. It could mean a lot

1 of things. It could mean the late fees recovered
2 from customers, covers the bad debt. I don't know
3 exactly how Duke sets its discount rate.

4 Q. All distribution customers pay any
5 uncollectible riders that Duke would have, to recover
6 bad debt, correct?

7 MR. OLIKER: Your Honor, I object to the
8 extent the witness has said he's not very familiar
9 with the specific details of Duke's POR program, so
10 this probably isn't an appropriate witness and I
11 would hate to muddy the record.

12 Q. If you know, Mr. White.

13 EXAMINER PIRIK: I would say, you know,
14 I'll overrule the objection. If he knows, then I
15 will allow him to answer.

16 A. I don't really discuss POR. It's not a
17 topic in my testimony so I don't -- I don't know.

18 Q. Have you, in your course of proceedings
19 before the PUCO, ever argued in favor of purchase of
20 receivables programs?

21 A. I don't believe that I've specifically
22 submitted testimony. Again, I don't know. I've
23 submitted testimony but I'm not sure -- I don't think
24 that I've submitted testimony in support of purchase
25 of receivables programs. Specifically, that's not to

1 say my company hasn't.

2 Q. Did you participate in the Commission's
3 retail market investigation, Docket No. 12-3151?

4 A. Yes.

5 Q. And as part of that participation, did
6 you provide any oral testimony to the Commission
7 during which you supported the purchase of
8 receivables programs?

9 A. Yes, I did provide that testimony in that
10 proceeding.

11 Q. So you are familiar with the purchase of
12 receivables programs, correct?

13 A. Generally, yes; not the specifics of
14 Duke's discount collections process.

15 Q. Would you agree with me that shopping
16 customers that purchase electric retail service from
17 CRES providers that that is not a regulated price by
18 the PUCO, correct?

19 A. No.

20 Q. Are you aware of any industry other than
21 the utility industry where a priced deregulated
22 commodity is guaranteed 100 percent recovery of bad
23 debt?

24 A. Again, I'm not testifying on purchase of
25 receivables in this proceeding, but I'm not aware of

1 that scenario.

2 MR. SERIO: That's all I have, your
3 Honor.

4 Thank you, Mr. White.

5 EXAMINER PIRIK: Thank you.

6 Mr. Boehm.

7 MR. BOEHM: Nothing, your Honor.

8 EXAMINER PIRIK: Thank you.

9 Duke.

10 MS. SPILLER: Oh, yes, your Honor. Thank
11 you.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Spiller:

15 Q. Good evening, Mr. White.

16 A. Good evening.

17 Q. You are a licensed attorney in the state
18 of Ohio, correct?

19 A. Yes.

20 Q. And you are providing testimony in this
21 case in your capacity as an attorney, correct?

22 A. Among others, yes.

23 Q. Okay. And you believe it is helpful for
24 the Commission to have an expert witness -- strike
25 that.

1 You believe that it is helpful to the
2 Commission for an expert witness to have a legal
3 background, as that can add a very unique
4 perspective, correct?

5 A. Yes, to the extent that a diverse
6 background is helpful to the Commission, yes.

7 Q. And you believe that that is helpful,
8 correct?

9 A. I believe, just like all different,
10 diversity of backgrounds, that a legal background can
11 be helpful, yes.

12 Q. And you are the manager of regulatory and
13 legal affairs for IGS Energy, correct?

14 A. Yes.

15 Q. And in that role you both manage and
16 participate in regulatory proceedings before the Ohio
17 Commission, correct?

18 A. Yes.

19 Q. And, in fact, you are actively involved
20 in regulatory proceedings on behalf of IGS before the
21 Ohio Commission, correct?

22 A. Yes.

23 Q. And in this case you were an attorney of
24 record for IGS until the day before you filed your
25 testimony, correct?

1 A. I'll take your word for that.

2 Q. Sir, do you recall having to file a
3 notice of withdrawal on September 25, 2014?

4 MR. OLIKER: Your Honor, I would just
5 object to the relevance.

6 EXAMINER PIRIK: I'll overrule.

7 A. I mean, I was the attorney of record. I
8 know that we filed attorney -- or, a notice of
9 withdrawal. I'm not sure of the exact date of when
10 that was filed.

11 Q. Okay. And as an attorney you are called
12 upon, from time to time, to interpret and render
13 legal advice in regard to Ohio statutes and
14 Commission regulation, correct?

15 A. Yes.

16 Q. And you would agree with me, sir, that
17 IGS believes there are legal issues in connection
18 with -- with Duke Energy Ohio's ESP proceeding,
19 correct?

20 A. Yes.

21 Q. And despite your profession and your
22 belief that a lawyer provides a unique perspective,
23 you have not, on behalf of IGS, provided your
24 opinions with regard to the extent of the FERC's
25 jurisdiction, have you?

1 MR. OLIKER: Could you please clarify,
2 Amy, just FERC's jurisdiction regarding what?

3 Q. Regarding the company's proposed rider
4 PSR.

5 A. I did not put that in my testimony, no.

6 Q. And despite your profession and your
7 belief that a lawyer provides a unique perspective,
8 you have not, on behalf of IGS, provided your
9 opinions with regard to what Ohio law requires
10 concerning a regulated utility being on its own in
11 the competitive market, correct?

12 A. I make legal claims in my testimony. I'm
13 not sure if that's one of them.

14 Q. Okay. Despite your profession and your
15 belief that a lawyer provides a unique perspective,
16 you have not, on behalf of IGS, provided your
17 opinions with regard to whether any of the company's
18 proposals include a subsidy to support an interest in
19 competitive generation service, correct?

20 A. I don't testify to that topic, correct.

21 Q. And those are topics, sir, you have --
22 strike that.

23 Those are topics, legal issues that IGS
24 Witness Tim Hamilton addresses, correct?

25 A. I don't recall 100 percent what Tim

1 Hamilton testifies to, but generally I believe he
2 discusses those topics.

3 Q. And Mr. Hamilton is not an attorney, is
4 he?

5 A. No.

6 Q. Okay. Sir, if you could please turn to
7 page 3 of your testimony.

8 A. Okay.

9 Q. And there on line 18, Mr. White, you
10 reference "The IGS family of companies," correct?

11 A. Yes.

12 Q. And when you say "family of companies,"
13 what do you mean, sir?

14 A. I mean companies that are affiliated with
15 IGS Energy.

16 Q. And what do you mean by "affiliated with
17 IGS Energy"?

18 A. Companies that share a common ownership
19 of IGS Energy.

20 Q. So the IGS family of companies that you
21 identify in the parenthetical are those that have
22 commonality in terms of parent ownership, correct?
23 They have a common parent?

24 A. Let me make sure. Yes.

25 Q. And, Mr. White, do the IGS affiliates

1 interact with each other by virtue of service
2 agreements?

3 MR. OLIKER: I would object, your Honor,
4 to the relevance to his testimony.

5 MS. SPILLER: It's relevant to his
6 allegations with respect to Duke Energy Ohio and its
7 interactions.

8 MR. OLIKER: The corporate separation
9 requirements don't apply to CRES providers that don't
10 have electric distribution utilities they are
11 connected to.

12 EXAMINER PIRIK: Sustained.

13 Q. Mr. White, do you know whether Duke
14 Energy Ohio operates pursuant to Commission-approved
15 service agreements?

16 A. I know that Duke should operate under
17 Commission-approved service agreements. I'm not --
18 to the extent they do, I'm not 100 percent aware of
19 their internal operations.

20 Q. Well, you're aware Duke Energy Ohio has
21 service agreements that have been approved by the
22 Ohio Commission, correct?

23 A. I believe there are some service
24 agreements that have been approved by the Commission
25 that Duke has, yes.

1 Q. And do you recall IGS being a party to
2 Duke -- the Cinergy-Duke Energy merger proceeding
3 filed under Case 05-732 pursuant to which the
4 Commission approved service agreements?

5 A. I do not, no. I was not working at IGS
6 at that time.

7 Q. Okay. And who is Vince Parisi, sir?

8 A. He is an individual that works at IGS.

9 Q. And is he still general counsel?

10 A. No.

11 Q. Okay. At one time did he serve as
12 general counsel?

13 A. I believe so, yes.

14 Q. And IGS Energy is a competitive supplier
15 of retail natural gas and electricity, correct?

16 A. Yes.

17 Q. And IGS Energy and/or its affiliates
18 provide other products and services in the
19 competitive arena, correct?

20 A. Can you repeat the question, please?

21 Q. IGS Energy and/or its affiliates provide
22 other products and services in the competitive arena,
23 correct?

24 A. Other than -- other than competitive
25 electric and natural gas service?

1 Q. Yes, sir.

2 A. Yes.

3 Q. And I believe you discussed those with
4 Mr. Serio; some of them are listed on page 3 at the
5 bottom of your testimony, correct?

6 A. Yes.

7 Q. And IGS Home Services, sir, do they
8 provide home protection?

9 A. Yes.

10 Q. And that would be matters such as HVAC
11 protection, furnace and air conditioning tune-ups?

12 A. Yes.

13 Q. With respect to these noncommodity
14 products and services that IGS Energy and/or its
15 affiliates provide, would you agree that their
16 competitors include other competitive retail electric
17 service providers?

18 A. Yes, other retail electric providers
19 offer similar products in the market.

20 Q. And do competitive natural gas service
21 providers also offer similar noncommodity products
22 and services?

23 A. Similar to what?

24 Q. Similar to IGS and/or its affiliates.

25 A. Yes, there are -- I believe, sure, there

1 are some that offer similar products, not necessarily
2 all, but some, yes.

3 Q. And you would agree with me that in
4 addition to other CRES and other CRNG providers, that
5 there are other entities that would similarly provide
6 items such as HVAC protection and smart thermostats,
7 correct?

8 A. Yes.

9 Q. And so, IGS Energy and its affiliates,
10 their competitors are not only other CRES or CRNG
11 providers, correct?

12 A. For the noncommodity products I discuss,
13 yes.

14 Q. Thank you.

15 Sir, I believe you have indicated you
16 have been called upon from time to time to render
17 legal advice in connection with Commission rules and
18 regulations. Would the same hold true with respect
19 to Ohio statutes that in your position as an attorney
20 for IGS that you are called upon from time to time to
21 render legal advice on statutory -- on statutes?

22 A. Yes.

23 Q. And you are aware, sir, that under
24 Revised Code 4928.141, all Ohio electric distribution
25 utilities are required to provide a standard service

1 offer of competitive generation service, correct?

2 A. I believe there is a requirement that
3 electric distribution utilities make available
4 competitive retail -- or, standard service offer
5 service.

6 Q. And that is a standard service offer that
7 would be made available to every customer in that
8 electric distribution utility's service territory,
9 correct?

10 A. Yes.

11 Q. And you understand, sir, that the
12 standard service offer can be provided in only one of
13 two forms, correct?

14 MR. OLICKER: Your Honor, at this point I
15 think I am going to object. I don't understand the
16 relevance of this questioning and how this pertains
17 to his testimony or anything in this case right now.

18 MS. SPILLER: Well, certainly with
19 respect to relevancy, I think we've established in
20 this proceeding we can ask any witness any matters
21 that's relevant to the proceeding, but we have a
22 witness who is asserting proposals with respect to a
23 standard service offer and what they may potentially
24 include, so I think what the law provides is, in
25 fact, very relevant to this attorney witness.

1 EXAMINER PIRIK: I'll overrule.

2 MS. SPILLER: Thank you, your Honor.

3 A. I wouldn't characterize that the standard
4 service offer can be only offered in two forms.
5 There's two statutes under which the standard service
6 offer can be offered under, which is an MRO and an
7 ESP. Although, under those statutes the standard
8 service offer can take many different forms, as it
9 has in Ohio previously.

10 Q. Okay. But -- and you answered my
11 question. The standard service offer will either be
12 within the form of a market rate offer, or MRO, or an
13 ESP, or electric security plan, correct?

14 A. It's approved under those statutes.

15 Q. Thank you.

16 And Ohio law provides for what must be
17 included in an ESP, correct?

18 MR. OLIKER: Amy, would you rather give
19 him the ESP statute at this point?

20 Q. Sir, do you know?

21 A. I'd like to look at the statute before I
22 give specific testimony --

23 MS. SPILLER: Sure. May we approach,
24 your Honor?

25 EXAMINER PIRIK: Yes.

1 A. -- as to what's in the law.

2 THE WITNESS: Thanks.

3 A. Can you reference me to a specific
4 section in the statute?

5 Q. Sure, Mr. White. Under Section (B)(1).

6 A. Okay.

7 Q. This indicates what the electric security
8 plan shall include, correct?

9 A. Yes. It says "An electric security plan
10 shall include provisions relating to the supply and
11 pricing of electric generation service."

12 Q. And -- I'm sorry. Go ahead.

13 A. "In addition, if the proposed electric
14 security plan has a term longer than three years, it
15 may include provisions in the plan to permit the
16 Commission to test the plan pursuant to division (E)
17 of this section and transitional conditions that
18 should be adopted by the Commission if the Commission
19 terminates the plan as authorized under that
20 division."

21 Q. So 4928.143(B)(1) identifies what must be
22 included and in an electric security plan, correct?

23 A. It is a -- yes, it says what shall be
24 included in that plan.

25 Q. And then if we drop down, sir, to

1 paragraph (B)(2), this provides what may be included
2 in an electric security plan, correct?

3 A. Yes. (B)(2) says "The plan may provide
4 for or include, without" -- "without limitation any
5 of the following."

6 Q. Okay. And then the following reflects
7 subparts that run through section (a) through section
8 (i), correct?

9 A. Yes.

10 Q. Thank you.

11 And you believe that this statutory list
12 as to what may be included in an ESP is not
13 exhaustive, correct?

14 A. I believe that there is -- that the
15 provisions of (a), (b), (c), (d), do not include
16 everything that -- that may be included in the ESP.

17 Q. And when you say (a), (b), (c), (d), sir,
18 just so we're clear with respect to the statute, is
19 it your testimony that provisions (B)(2)(a) through
20 (B)(2)(i) do not reflect the exhaustive list of items
21 that may be included in an ESP?

22 A. Again, I haven't -- I mean, I haven't
23 taken a full read of all the -- of the entire
24 statute. It's lengthy, but my general understanding
25 is that there are things that are -- that are not

1 listed in that that have been included in ESPs in the
2 past. So, to that extent, I believe that there is
3 not -- it's not an exhaustive list.

4 Q. Okay. Thank you.

5 Mr. White, are you familiar with the
6 rules established by the Ohio courts with regard to
7 contract interpretation?

8 MR. OLIKER: Your Honor, I object. I
9 think at this point we are getting pretty far afield.

10 MS. SPILLER: Your Honor, again, this is
11 an issue relevant to the case as indicated by
12 Mr. Berger this afternoon. It's just a few
13 questions.

14 EXAMINER PIRIK: I'll see where this
15 goes. Go ahead.

16 A. I'm generally familiar with principles
17 and contract interpretation.

18 Q. And you would agree with me, under those
19 principles, all of the words of the contract are to
20 be given their plain and ordinary meaning, correct?

21 A. Generally that is a principle.

22 Q. All -- all of the words are to be read,
23 correct?

24 A. Generally, in a general, broad sense,
25 that is a principle.

1 Q. Thank you.

2 Mr. White, IGS was a party to Duke Energy
3 Ohio's current ESP proceeding, correct?

4 MR. OLICKER: Amy, could you please
5 clarify what you mean by "current ESP proceeding."
6 The one we are talking about today or the one that
7 will be in effect until this case is resolved?

8 Q. The proceeding, sir, that was filed under
9 Case 11-354, the ESP currently in effect.

10 A. Yes.

11 Q. Okay. And, in fact, you were one of the
12 attorneys of record for IGS, correct?

13 A. I believe I was, but I'm not a hundred
14 percent sure. I'll take your word for it.

15 Q. Would it help you to see the stipulation?

16 A. I will take your word for it.

17 Q. Thank you.

18 And you would agree with me that before
19 IGS signs on to a stipulation, it takes care to
20 ensure that that document reflects accurately all of
21 the terms and conditions to which it is agreeing,
22 correct?

23 A. I would generally agree that we review
24 the stipulation before we sign it.

25 Q. And you have no reason to believe that

1 that did not happen when IGS Energy signed on to the
2 stipulation in Case 11-3549, do you?

3 A. I don't know. That was a while ago and I
4 don't think I signed the stipulation, so.

5 Q. And, Mr. White, you're not familiar with
6 the commitments under the ESP stipulation docketed in
7 Case 11-3549, so you don't know if your testimony in
8 this proceeding is relevant to those prior
9 commitments, correct?

10 A. Can you tell me what specific commitments
11 you are referring to in the stipulation?

12 Q. Are you familiar with the commitments in
13 the ESP stipulation?

14 A. I'm generally familiar with some of the
15 commitments, but I'm not -- I don't know, word for
16 word, every word that's in that stipulation.

17 Q. Would you agree with me, sir, that if the
18 current ESP stipulation were relevant to your direct
19 testimony in this proceeding that you would have
20 referenced that ESP stipulation in your direct
21 testimony?

22 MR. OLKER: Objection.

23 EXAMINER PIRIK: Go ahead.

24 MR. OLKER: IGS has another witness who
25 testifies about the stipulation, and now, she's

1 talking about this witness. I mean, it doesn't seem
2 like it's the appropriate venue for these questions.

3 MS. SPILLER: I would just like --

4 EXAMINER PIRIK: I will go ahead and
5 allow you to answer.

6 A. Can you repeat the question, please.

7 Q. Sure. Would you agree with me that if
8 the current ESP stipulation docketed under Case
9 11-3549 was relevant to your direct testimony in this
10 case, that you would have referenced that ESP
11 stipulation in your testimony?

12 A. That depends on your definition of
13 "relevant." I mean, I don't testify to everything
14 that would be relevant in a legal sense in my
15 testimony. There's stuff that's relevant to my
16 testimony that's not necessarily in my testimony.
17 But it's a vague question so it's hard for me to
18 answer that question.

19 Q. Sir, what's your definition of
20 "relevant"?

21 A. I would adopt the legal definition of
22 relevant, which I don't know off the top of my head.
23 Sorry. It's a long day.

24 Q. Sir, would you agree with me that if you
25 were testifying -- testifying about the stipulation

1 that was entered into in the last ESP, then you would
2 have included it in your direct testimony?

3 A. If -- if I was specifically testifying to
4 the stipulation, then I would have included that
5 stipulation testimony.

6 Q. Thank you.

7 When you say stipulation testimony, what
8 is -- is that testimony about the stipulation?

9 A. If I was making a representation about
10 the stipulation in the last ESP, I would have made
11 that representation in my testimony, in my testimony.

12 Q. Thank you.

13 Sir, if we could turn to page 4 of your
14 testimony, please.

15 A. Uh-huh.

16 Q. And you state on page 4 that the
17 company's proposed ESP does not comply with Ohio law,
18 correct?

19 A. Can you point to me?

20 Q. Sure. Line 3.

21 A. Line 3. Yes, I made that statement.

22 Q. And, in fact, you've gone on to allege
23 that Duke Energy Ohio is engaging in discriminatory
24 conduct, correct?

25 A. Yes.

1 Q. And making this statement as an attorney,
2 you certainly took care to ensure there were facts
3 upon which you could rely in your sworn testimony in
4 claiming discrimination on the part of Duke Energy
5 Ohio, correct?

6 A. Yes.

7 Q. And the opinions that you have with
8 regard to the alleged lack of compliance with the law
9 and Duke Energy Ohio's alleged discriminatory conduct
10 are all set forth in your direct testimony, correct?

11 A. My opinions are set forth in my
12 testimony.

13 Q. Thank you.

14 And one of the facts upon which you rely
15 for this statement that Duke Energy Ohio is engaging
16 in discriminatory conduct is that it is currently
17 providing nonelectric utility service in the form of
18 customer-sited lightning maintenance, correct?

19 A. That is one of the facts, yes.

20 Q. And although you reference this service
21 of customer-owned -- customer-sited lighting
22 maintenance as a service that is reflective of
23 discriminatory conduct on the part of Duke Energy
24 Ohio, you don't know what kind of lighting
25 maintenance service this involves, do you?

1 A. I know that it's to the extent that Duke
2 represented in their discovery that it's
3 customer-sited lighting maintenance. That's what I
4 know.

5 Q. And although you reference this service
6 as one reflecting discriminatory conduct on the part
7 of Duke Energy Ohio, you don't know whether the
8 maintenance services that Duke Energy Ohio provides
9 with respect to customer-sited lighting are services
10 provided pursuant to Commission-approved tariffs, do
11 you?

12 A. I just want to be clear, just so you
13 characterize my testimony correctly. The
14 discrimination that I'm alleging is the fact that
15 Duke is billing for that service and not allowing
16 other CRES providers to bill for that service or
17 similar services.

18 Q. But you understand the customer-sited --
19 customer-sited lightening maintenance answer is one
20 provided by Duke Energy Ohio.

21 A. Yes.

22 Q. Okay. And you believe that to be a basis
23 for the claims of discrimination, correct?

24 A. I believe the provision of that service
25 coupled with the fact that Duke bills for that

1 service, but Duke will not -- or, is proposing in
2 this ESP to prohibit CRES providers from billing for
3 products and services that were similar to that
4 product -- to that product and service, that is
5 discriminatory and contrary to the law.

6 Q. Do you know whether the customer-sited
7 lighting maintenance service provided by Duke Energy
8 Ohio are done pursuant to Commission-approved
9 tariffs?

10 A. I believe there is a tariff, yes.

11 Q. And is this something, sir, that has
12 recently come to your attention?

13 A. Yes. I believe that I've recently
14 reviewed the tariff.

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

17 EXAMINER PIRIK: Yes.

18 Q. Mr. White, do you recall, on October 9,
19 2014, having your deposition taken in this case?

20 A. Yeah.

21 Q. And at that time you were placed under
22 oath, correct?

23 A. Yes.

24 Q. And if we could turn to page 40, please.

25 A. Okay.

1 Q. Line 17, you were asked "Do you know
2 whether the maintenance services that Duke Energy
3 Ohio provides with respect to customer-sited lighting
4 are services provided pursuant to a
5 Commission-approved tariff?" You answered "No,"
6 correct?

7 A. I answered "no" and then I went and
8 reviewed the tariff --

9 Q. And, sir --

10 A. -- after I made that answer.

11 Q. And did you review the tariff -- strike
12 that.

13 When did you review the tariff?

14 A. After you had brought it up in the
15 deposition.

16 Q. Did you review the tariff before you
17 signed your signature page and errata page to your
18 deposition transcript?

19 A. I believe it was after.

20 Q. Okay. And, sir, given that you -- strike
21 that.

22 Have you found all of the tariffs
23 concerning customer-owned lighting maintenance
24 services provided by Duke Energy Ohio?

25 A. I don't know. I asked someone who works

1 for me to look for those tariffs, and I believe she
2 had provided that tariff to me to review.

3 MS. SPILLER: Your Honor, may we
4 approach, please?

5 A. I don't know if that's an exhaustive
6 list.

7 EXAMINER PIRIK: Yes.

8 Q. Mr. White, we are handing you what has
9 been marked as Duke Energy Ohio's Exhibit 18, the
10 direct testimony of James Ziolkowski. As your
11 attorney has remarked, this particular exhibit as
12 well as its attachments have already been introduced
13 or admitted into evidence in this case. We have put
14 some Post-Its, just for ease of reference, and to
15 expedite on tariff sheets. Would you look, please,
16 at the Tariff Sheet No. 61.15.

17 A. Yes.

18 Q. Rate TL?

19 A. Yes.

20 Q. Is this the tariff, sir, you reviewed?

21 MR. OLIKER: Your Honor, at this point I
22 would object that if there's any relevance to whether
23 there is a tariff or no tariff and it's just not
24 relevant to Mr. White's testimony which is about bill
25 access for noncommodity service. It doesn't matter

1 where those services are.

2 MS. SPILLER: Your Honor, this is a
3 witness who's alleging discrimination on the part of
4 Duke Energy Ohio and part of the basis for his claim
5 is Duke Energy Ohio providing a service. I think
6 it's absolutely relevant whether the service it
7 provides is one the Commission has approved pursuant
8 to these riders.

9 MR. OLIKER: And alleging the Commission
10 has authorized discriminatory treatment, then I don't
11 think there is any relevance.

12 EXAMINER PIRIK: I'm not real sure where
13 this is going with regard to his testimony in
14 particular, but I'll allow you to ask a couple
15 questions.

16 MS. SPILLER: Thank you, your Honor.

17 Q. (By Ms. Spiller) Mr. White, was rate TL
18 the tariff that you found?

19 A. I believe so. I'm not 100 percent sure.

20 Q. If you could turn to Tariff 65.

21 A. Okay.

22 Q. Were you also presented, by one of your
23 assistants, with rate SC?

24 A. Again, I'm not 100 percent sure which
25 tariff I saw. I know that I had asked her to look up

1 the tariffs. She sent me some tariff sheets, and I
2 reviewed them briefly.

3 Q. And rate OLE, Tariff Sheet 68.2, do you
4 recall if that was one that you briefly reviewed?

5 A. I may have.

6 Q. And would you agree me, sir, that these
7 tariffs indicate that -- make provision for
8 maintenance services provided by Duke Energy Ohio?

9 A. Yes. Although, I will say in the
10 discovery response Duke sent back they did not
11 distinguish between the three separate services.
12 They only said there was one.

13 Q. And am I correct in understanding, sir,
14 that when you formed your direct testimony --
15 testimony in this case, you were not aware of these
16 publicly-available tariffs, correct?

17 A. I was not aware that they were -- of
18 these tariffs, yes.

19 Q. Okay. And you don't know what costs
20 associated with these tariffs may be included in Duke
21 Energy Ohio's base rates, do you?

22 A. I'm not sure, but regardless of the costs
23 there is still discrimination for billing and not
24 having equal access to the billing services.

25 Q. And so, if Duke Energy Ohio is providing

1 these services pursuant to Commission-approved
2 tariffs, it's your testimony that it is engaging in
3 discriminatory conduct?

4 A. If Duke is proposing, which they are in
5 this ESP, to deny CRES providers the right to bill
6 noncommodity charges on the bill similar to the same
7 ones they are billing for their own services, then,
8 yes, the proposal to deny CRES providers the ability
9 to bill for noncommodity services is discrimination.

10 Q. There's no -- is there any Duke -- strike
11 that.

12 Is there any entity, other than Duke
13 Energy Ohio, who currently bills for
14 customer-sited -- customer-sited lighting
15 maintenance?

16 A. I don't know.

17 Q. Do you know whether Duke Energy Ohio has
18 refused every entity an opportunity to bill for
19 customer-sited lighting maintenance on its utility
20 bills?

21 A. Duke Energy is making a proposal in this
22 ESP to prohibit customer -- the CRES providers from
23 billing for anything other than the commodity service
24 on the utility bill. In my mind that is Duke saying
25 we want to discriminate against CRES providers. They

1 are applying to the Commission to discriminate
2 against CRES providers, and I testified that that
3 should not be approved because it's contra --
4 contradicting Ohio law.

5 Q. And I believe you've indicated to
6 Mr. Serio that IGS has not filed a complaint against
7 Direct -- Duke Energy Ohio with respect to this
8 allegation, correct?

9 A. My testimony relates to Mr. Jones's
10 proposal to prohibit CRES providers from billing for
11 any noncommodity charges. I am testifying to the
12 reasonableness of that proposal. My testimony is
13 that it's not reasonable because it would be
14 discriminating against CRES providers.

15 Q. And Mr. Jones's testimony was filed on
16 May 29, 2014, correct?

17 A. I don't know the exact date, but that
18 sounds about right to me.

19 Q. Okay. And since that time, IGS has not
20 thought it important enough to file a complaint
21 against Duke Energy Ohio on this allegation of
22 discrimination, correct?

23 A. IGS, I think, didn't want to exhaust the
24 Commission resources that -- during that time, given
25 that there's already a lot going on and given that

1 Mr. Jones has made the proposal to prohibit CRES
2 providers from billing for noncommodity charges. We
3 felt that issue could be and should be addressed in
4 this proceeding.

5 Q. You also indicate that on page 4 of your
6 testimony and I believe again on page 8 of your
7 testimony that Duke Energy Ohio is engaging in
8 discriminatory conduct by allowing an affiliate, Duke
9 Energy One, to include its charges on the utility
10 bill, correct?

11 A. Yes.

12 Q. And you claim that Duke Energy Ohio's
13 distribution assets are used to support these
14 unregulated noncommodity products and services,
15 correct?

16 MR. OLKER: Do you have a --

17 MS. SPILLER: Page 5.

18 MR. OLKER: Do you have a line so I can
19 get there?

20 MS. SPILLER: That's the bottom of page 4
21 carrying over to page 5, line 1.

22 A. 4, 23. Yes, I make that statement in my
23 testimony.

24 Q. And, again, in making that allegation,
25 you would have taken care to ensure there was a

1 factual basis to support the claim of discrimination;
2 is that correct?

3 A. Yes.

4 Q. And that care would have involved
5 reviewing the discovery responses exchanged in this
6 case, correct?

7 A. Yes.

8 Q. And that would have involved discovery
9 tendered not only by IGS but other participants in
10 this case, correct?

11 A. I did not review every discovery response
12 tendered by all in this case.

13 Q. Sir, you reviewed the discovery responses
14 from RESA, correct?

15 A. Generally, I know there was a lot of
16 random discovery that came in because Duke originally
17 objected to our discovery and then we sent a demand
18 letter and there was a number of supplemental
19 responses. So there was a lot of different discovery
20 that went through and Duke answered their answers to
21 discovery in different ways. And it just so happened
22 a lot of the supplemental discovery came in the exact
23 day the testimony was due. So it was kind of hard
24 always to differentiate between what Duke's actual
25 response was and what Duke's supplemental response

1 was.

2 Q. Sir, certainly the supplemental responses
3 were in your possession prior to the time of your
4 deposition, correct?

5 A. Yes.

6 Q. Okay. And they were available prior to
7 your live testimony, correct, today?

8 A. Yes.

9 Q. And you did not make any changes to your
10 direct testimony because of the supplemental
11 discovery responses, correct?

12 A. Yes.

13 Q. So fair to assume that you're still
14 standing on the allegation of discrimination on the
15 part of Duke Energy Ohio, correct?

16 A. Yes.

17 Q. And fair to assume that you still would
18 have taken sure and standing on that allegation that
19 you had facts to support the claim, correct?

20 A. Yes, and there are facts to support that
21 claim.

22 Q. And the claim of discrimination would
23 exist if Duke Energy Ohio is providing an unfair
24 advantage to its affiliate vis-a-vis that affiliate's
25 competitors, correct?

1 A. Yes.

2 MR. OLIKER: How much more time do you
3 have?

4 MS. SPILLER: It will be a little bit,
5 Joe.

6 MR. OLIKER: He has been going for a
7 while, and I want to get an idea.

8 MS. SPILLER: I don't know. 45 minutes.

9 MR. OLIKER: Are you okay, Mr. White?

10 THE WITNESS: Yeah.

11 MR. OLIKER: Okay.

12 EXAMINER PIRIK: Are the court reporters
13 okay? Do you want to take just 5 minutes? We'll
14 take -- we'll take a break once cross is finished.

15 MS. SPILLER: Thank you, your Honor.

16 Q. (By Ms. Spiller) And, Mr. White, a claim
17 of discrimination, would it require that Duke Energy
18 Ohio is not requiring its affiliate, Duke Energy One,
19 to pay for the services that it receives?

20 A. Even if there's a payment, discrimination
21 can exist.

22 Q. But do you believe that if an entity is
23 paying for the services that it receives, that there
24 is not discrimination?

25 MR. OLIKER: Asked and answered.

1 EXAMINER PIRIK: Overruled.

2 A. I mean, it would depend on the situation.
3 You're just throwing a hypothetical situation at me.
4 I would need more facts.

5 MS. SPILLER: Your Honor, may we
6 approach, please?

7 EXAMINER PIRIK: Yes.

8 MS. SPILLER: Your Honor, I would ask
9 that the following be marked as Duke Energy Ohio
10 Exhibit 27.

11 EXAMINER PIRIK: The document is so
12 marked.

13 MS. SPILLER: Thank you, your Honor.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. Mr. White, do you have before you what
16 has been marked as Duke Energy Ohio Exhibit 27 in
17 this case?

18 A. Yes.

19 Q. And this is a discovery response provided
20 by Duke Energy in connection with a request tendered
21 by IGS, correct?

22 A. Yes.

23 Q. And IGS asked Duke Energy Ohio to
24 identify the cost that it allocates to Duke Energy
25 One, correct?

1 A. Yes.

2 Q. And Duke Energy Ohio indicated it made
3 those allocations consistent with the terms of the
4 Commission-approved service agreements, correct?

5 MR. OLIKER: Your Honor, here I would
6 object to the discovery response. It actually just
7 points to a docket and doesn't really answer the IGS
8 question.

9 A. And I believe I reviewed that docket. I
10 went to the docket and it -- and it -- and then the
11 service agreement refers to the cost allocation
12 manual which Duke refused to produce in discovery.

13 Q. Sir, if you thought that important, you
14 certainly know there are opportunities for a motion
15 to compel, correct?

16 A. Yes, but unlike Duke, IGS is unable to
17 recover its litigation costs through distribution
18 ratepayers.

19 Q. Are you speaking of outside counsel
20 costs, sir?

21 A. I am just saying IGS is not able to
22 recover its costs through distribution ratepayers so
23 we have limited legal resources to fight Duke in
24 discovery.

25 Q. Well, we'll certainly move on from that

1 interesting response.

2 MS. BOJKO: Your Honor. Move to strike
3 counsel's commentary.

4 EXAMINER PIRIK: Denied.

5 MS. SPILLER: Your Honor, may we
6 approach, please?

7 EXAMINER PIRIK: Yes.

8 MS. SPILLER: I would ask another
9 document be marked as Duke Energy Ohio Exhibit 28.

10 EXAMINER PIRIK: The document is so
11 marked.

12 MS. SPILLER: Thank you.

13 MR. OLIKER: Amy, before we mark this,
14 this is already, I think, an IGS exhibit, to avoid
15 duplication.

16 EXAMINER PIRIK: Do you know which one?

17 MR. OLIKER: I don't know off the top of
18 my head though. It's interrogatories 1, 2 and --

19 MS. SPILLER: I'm sorry. It's what, Joe?

20 MR. OLIKER: IGS 1 -- 1, 5, and 7. It's
21 a bundle of interrogatory responses. It's IGS 5 or
22 6.

23 EXAMINER WALSTRA: 5.

24 EXAMINER PIRIK: It's IGS 5.

25 MS. SPILLER: They are all 5, Joe.

1 MR. OLIKER: It will be IGS 5. The
2 second response in that list. For simplicity, maybe
3 we could present IGS 5.

4 EXAMINER PIRIK: Yeah. Rather than
5 marking a new exhibit, we'll use the IGS exhibit.

6 MS. SPILLER: Thank you. May we
7 approach, your Honor?

8 EXAMINER PIRIK: Yes.

9 Q. (By Ms. Spiller) Mr. White, just so we
10 are clear, with respect to the documents which we
11 have been referring, I'm handing you what's
12 previously been marked as IGS Exhibit 5, a
13 compilation of discovery responses. IGS
14 Interrogatory 02-001 --

15 A. Yeah.

16 Q. -- through 02-007, correct?

17 A. Yes.

18 Q. Okay. And IGS Interrogatory 02-006 is
19 contained in IGS Exhibit No. 5 and it's the same
20 discovery response, sir, that we had just discussed,
21 correct?

22 MR. OLIKER: Amy, 6 is not contained in
23 that discovery response. We only moved 1, 5, and 7,
24 I believe, into the record.

25 MS. SPILLER: Oh, all right.

1 EXAMINER PIRIK: No. I think 6 is in the
2 document.

3 MR. OLIKER: It was and then we talked
4 about -- we didn't talk about the other ones, and I
5 thought we decided we would only move a portion of it
6 into the record and that's what we gave the court
7 reporter.

8 MS. SPILLER: So 1, 5, and 7 are in?

9 EXAMINER PIRIK: Yes.

10 MR. OLIKER: I probably didn't give you
11 an updated copy, your Honor.

12 EXAMINER PIRIK: Thanks.

13 Q. (By Ms. Spiller) So, Mr. White, Duke
14 Energy Ohio Exhibit No. 27 is the discovery response
15 to IGS Interrogatory 02-006, correct? Duke Energy,
16 it's just the single page, Duke Energy Exhibit 27.

17 A. Yes.

18 Q. And then you have before you what's been
19 previously marked as IGS Exhibit 5. A portion of
20 this document, Interrogatory Responses 02-001,
21 02-005, and 02-007, have been admitted into the
22 record.

23 A. Okay.

24 Q. And, sir, if you could refer to IGS
25 Interrogatory 02-005.

1 A. Okay.

2 Q. This response indicates that with respect
3 to system upgrades, no such system upgrades were
4 necessary in order for Duke Energy One to invoice and
5 collect for any noncommodity service that is
6 currently offered, correct?

7 A. Yes.

8 Q. Thank you.

9 Mr. White, would you agree with me Duke
10 Energy Ohio has not refused to include other CRES
11 providers' charges on its utility bill?

12 A. To the extent Duke is -- Duke is
13 proposing, in its ESP proceeding, to prohibit CRES
14 providers from billing noncommodity charges, I would
15 take that as a refusal.

16 Q. Today, is Duke Energy Ohio refusing to
17 include other CRES providers' charges on the utility
18 bill?

19 MR. OLIKER: Can you please clarify by
20 "other charges," are you talking about noncommodity
21 charges?

22 MS. SPILLER: Noncommodity.

23 MR. OLIKER: Then I would object that it
24 misstates Mr. Jones's testimony.

25 EXAMINER PIRIK: I'll allow the witness

1 to answer to the best of his knowledge what his
2 understanding is.

3 A. We have asked Duke, and Duke has not
4 gotten back to us as far as whether or not we can
5 include noncommodity charges on the utility bill.

6 Q. They haven't told you no, have they?

7 A. You can tell us yes right now.

8 Q. That's not for me to do, I'm just the
9 lawyer, so. They haven't told you no?

10 A. No. We haven't gotten a response.

11 Q. So the claim of discrimination, is that a
12 claim that you're asserting is I'm going on today or
13 is that a claim that you believe will arise if the
14 company's proposed ESP approved as filed?

15 A. My claim of discrimination is primarily
16 concerning the -- if it is approved, if Duke -- if it
17 is determined by the Commission that CRES providers
18 are unable to bill noncommodity charges on the
19 utility bill, that applies to -- that discrimination
20 applies to that and it applies to Duke's request to
21 do that.

22 Q. Now, if I understand your testimony, sir,
23 IGS is opposed to Duke Energy Ohio's proposal that
24 would prohibit CRES providers from including
25 noncommodity charges on the utility bill, correct?

1 A. Can you repeat the question?

2 Q. Sure. IGS opposes Duke Energy Ohio's
3 proposal that would prohibit CRES providers from
4 including noncommodity charges on the utility bill,
5 correct?

6 A. Yes.

7 Q. And you understand that that proposal was
8 made by Mr. Jones in connection with Duke Energy
9 Ohio's purchase of accounts receivable program,
10 correct?

11 A. Mr. Jones referenced, as a rationale, the
12 purchase of receivables program as to why he
13 cannot -- Duke is proposing to exclude the CRES
14 providers non -- noncommodity charges, and I
15 explained in my testimony why that's not a valid
16 rationale.

17 Q. But IGS does not oppose the company's
18 proposed purchase of accounts receivable program,
19 correct?

20 A. No.

21 Q. No, that's not correct?

22 A. I'm sorry. We don't. Yes, that is
23 correct.

24 Q. Sir, if you could turn to page 8 of your
25 testimony.

1 A. Yes.

2 Q. Line 11, you indicate that Duke
3 advertises these services on its website and
4 advertises that these services are billed on the
5 utility bill, correct?

6 A. Yes.

7 Q. And is the "Duke" that you are referring
8 to there Duke Energy Ohio?

9 A. Yes.

10 Q. And so --

11 A. I mean, just to clarify, it is -- it is a
12 joint web page, but when you go on to Duke Energy
13 Ohio's services, there's a link to this particular
14 noncommodity service that Duke Energy Ohio provides
15 on their bill.

16 Q. What noncommodity service are you
17 referring to, sir?

18 A. In my testimony the StrikeStop and the
19 Underground Protection Service.

20 Q. So is it your testimony Duke Energy Ohio
21 provides those services?

22 A. No. My testimony is Duke Energy Ohio
23 offers those services on their bill and advertises
24 them on their website.

25 Q. So you're saying that Duke Energy Ohio

1 advertises StrikeStop on their Duke Energy Ohio
2 website.

3 A. I'm saying that when you go to the Duke
4 Energy Ohio website, there is a link to StrikeStop
5 and Underground Protection Service which you can just
6 click on from the Duke Energy Ohio website and then
7 that is where they -- and present -- present that you
8 can enroll in these services, and they will be
9 conveniently billed on the Duke Energy Ohio bill. I
10 don't know the proprietor of that website, but I'm
11 assuming it's Duke Energy Ohio's website.

12 Q. And when you went to find this, did you
13 log on to www.DukeEnergy.com?

14 A. I believe I did a Google search for -- I
15 believe I found it on Google search.

16 Q. And when you say "advertises," what do
17 you mean?

18 A. I mean, that it's, like I said, you go to
19 the Duke Energy Ohio website, and you can click on
20 other services that are available, and it links you
21 to a site with Duke's branded logo that says you can
22 enroll in these particular services and when they are
23 billed on the utility bill.

24 Q. And, sir, you've attached to your
25 testimony the terms and services for the Duke Energy

1 One's StrikeStop program, correct?

2 A. Yes.

3 Q. And you accessed this document from
4 where?

5 A. From linking through the website to the
6 terms of service and then that's linked on the
7 StrikeStop, the website.

8 Q. And you have set forth on page 14 of your
9 testimony -- I'm just looking for the reference.
10 Sir, are you aware whether on the Duke Energy Ohio
11 website there is also a link to every competitive
12 retail electric service provider active in Duke
13 Energy's service territory?

14 MR. OLIKER: Objection to the relevance.

15 MS. SPILLER: Well, he's indicating that
16 only affiliates are given access to the website.

17 A. I don't know. Sorry.

18 MR. OLIKER: That's not what he.

19 EXAMINER PIRIK: I'll overrule. Go
20 ahead. He already answered it.

21 Q. Would you agree with me, sir, that if
22 Duke Energy Ohio provides on its website the
23 identification and a link to all of the competitive
24 retail electric service providers in its service
25 territory, that it is not discriminating against

1 those competitors in favor of its affiliates?

2 A. Well, Duke is allowing all competitive
3 suppliers to be able to go to that website, and the
4 bill, in this instance Duke is excluding that ability
5 only to its affiliate so I think that there's
6 probably a distinction.

7 Q. And when you say excluding -- when you
8 say "excluding that ability only to its affiliate,"
9 is this the ability to be included on the utility
10 bill?

11 A. For the noncommodity products and
12 services such as the StrikeStop and Underground
13 Protection that I referenced --

14 Q. Okay.

15 A. -- that Duke Energy One provides.

16 Q. Okay. Thank you.

17 On page 14, sir, just to be sure I
18 understand your testimony, line 3, carrying through
19 the balance of that particular answer through line 5,
20 is it your position that Duke Energy Ohio's
21 affiliates are receiving preferential access to Duke
22 Energy Ohio's customer information which includes
23 customer accounts and customer lists?

24 A. My position is that you can enroll in the
25 Duke -- the services by simply returning a receipt --

1 receiving the mailer, the customer does not have to
2 include any additional information on the utility
3 bill -- or, to return it to Duke for them to get
4 those charges billed on the utility bill.

5 Q. But my question is do you believe that
6 Duke Energy Ohio is impermissibly giving customer
7 account numbers and customer lists only to its
8 affiliate?

9 A. I believe that that's something that Duke
10 has a requirement to demonstrate that it's not doing
11 in this proceeding. I believe that there is some
12 evidence that they may be given that you can simply
13 enroll in that service by returning a mailer that
14 Duke provides to you without having to provide an
15 account number to Duke. And I believe that given
16 that Duke hasn't been fully disclosing a lot of the
17 information that we requested in discovery, as I
18 noted in my testimony, there is a reason not to
19 believe that they are not in compliance with
20 corporate separation.

21 MS. SPILLER: Your Honor, may we
22 approach, please?

23 EXAMINER PIRIK: Yes.

24 MS. SPILLER: And we will, given
25 Mr. Olikier's indication, withdraw the previous Duke

1 Energy Ohio Exhibit 28 which was part of IGS
2 Exhibit 5 in this case, and would ask that the
3 following be marked as Duke Energy 28.

4 EXAMINER PIRIK: The document is so
5 marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MS. SPILLER: Thank you, your Honor.

8 Q. Mr. White, do you have before you what
9 has been marked as Duke Exhibit 28?

10 A. This is the IGS Interrogatory 02-004?

11 Q. Yes, sir. And this is one in which IGS
12 had asked Duke to provide an answer to the question
13 as to whether it provides any of its affiliates with
14 customer lists or account numbers, correct?

15 A. Yes.

16 Q. And Duke Energy Ohio answered that it
17 "only provides account numbers to affiliates or third
18 parties upon proper authorization from the customer
19 and consistent with Commission rules," correct?

20 A. Yes.

21 Q. Now, Mr. White, you believe that because
22 Duke Energy Ohio can include one provider's
23 charges -- strike that.

24 Mr. White, if I understand your
25 testimony, is it IGS's position that Duke Energy Ohio

1 should include, on its utility bill, every CRES
2 provider's charge for every nonelectric product or
3 service that it may offer?

4 MR. OLIKER: Could I have that question
5 read back again?

6 EXAMINER PIRIK: Yes.

7 (Record read.)

8 A. It's our testimony that Duke -- or,
9 excuse me, that the Commission should not approve
10 Duke's request to exclude any nonelectric charges on
11 the utility bill.

12 Q. So, again, any CRES provider that offers
13 a product or service in Duke Energy Ohio's service
14 territory, under your proposal would be allowed to
15 include the charges for that product or services on
16 the Duke Energy Ohio bill.

17 A. It would be up to the discretion of the
18 Commission if they wish to limit the character and
19 the nature of the charges that -- the noncommodity
20 charges that the -- that could be billed on the Duke
21 Energy bill by a CRES provider. But it's my belief
22 that the Commission should not prohibit any
23 nonelectric charges to be billed on the utility bill
24 as Duke is proposing in this proceeding.

25 Q. And I appreciate the comments with

1 respect to the Commission, but I would like to focus
2 on the IGS proposal. And, sir, is that a proposal
3 that is rooted in competitive equity or fairness?

4 A. Yes.

5 Q. That if one competitor gets access, all
6 should get access?

7 A. Generally, yes.

8 Q. Okay. And you also, I believe, have
9 indicated that your proposal is consistent with
10 customers' desire for a single bill, correct?

11 A. Yes.

12 Q. So, in your circumstance, for competitive
13 products or services, Duke Energy Ohio is potentially
14 providing access to its utility bill to CRES
15 providers that offer competitive products and
16 noncommodity products and services, CRNG providers
17 that provide noncommodity products and services, and
18 a non-CRES or non-CRNG provider that provides
19 noncommodity products and services, correct?

20 A. That is not what my proposal would do.

21 Q. Is your proposal then limited to only
22 CRES providers?

23 A. Our proposal is to reject Mr. Dan Jones's
24 proposal. Effectively that would have the effect of
25 allowing CRES providers to bill noncommodity charges

1 on -- CRES providers only to bill noncommodity
2 charges on the utility bill. If the Commission
3 wished to expand or restrict, you know, what those --
4 those CRES -- those noncommodity charges, the
5 nature -- what the nature of those noncommodity
6 charges should do or should be, then I would leave
7 that to the discretion of the Commission, and if
8 the -- I am not proposing it in this proceeding but,
9 you know, it would be at the discretion of the
10 Commission if they wish to open it up to even more
11 providers outside of the CRES community.

12 Q. Okay. But IGS's position is such that
13 only CRES providers would be allowed access to a
14 utility bill with regard to noncommodity products and
15 services that are offered by more than just CRES
16 providers, correct?

17 MR. OLIKER: Objection, asked and
18 answered.

19 EXAMINER PIRIK: I'll overrule.

20 A. The effect of IGS's position would be
21 that only CRES providers would be allowed to utilize
22 the bill for noncommodity charges, only -- only
23 providers that are set up to do the bill ready
24 function.

25 Q. Thank you.

1 Mr. White, you don't know whether the
2 company's systems can accommodate billings by every
3 commodity -- by every competitive provider of
4 nonelectric products or services, do you?

5 A. I know that Duke offers bill ready
6 billing for CRES providers which enables CRES
7 providers to list a number of charges on the utility
8 bill. I know that Duke is able to exclude
9 noncommodity charges from uncollectible accounts and
10 from disconnect given that they do this also for
11 their affiliate. I know that they already bill
12 noncommodity charges for their affiliate. So it
13 would leave me to believe -- I know that they --
14 according to your discovery response, they don't have
15 any incremental cost to do that for their affiliate,
16 so it would leave me to believe that Duke would have
17 the capability to do this for CRES providers.

18 Q. But you don't know that to be true,
19 correct?

20 A. Based on the information that I have, I
21 believe that a -- I strongly believe Duke has the
22 ability to do this.

23 Q. You indicate, sir, beginning on page 15
24 of your testimony, there is a discussion there that
25 talks about supplier consolidated billing, correct?

1 A. Yes.

2 Q. Supplier consolidated billing is one in
3 which the competitive supplier issues the bill and
4 includes distribution and transmission charges of the
5 local utility, correct?

6 A. On the bill, yes.

7 Q. And keeping with the spirit of
8 competitive fairness that you've identified, would
9 you agree with me that under supplier consolidated
10 billing, that the billing supplier should be required
11 to include the charges of another competitive
12 supplier with respect to the noncommodity products
13 and services offered by that other supplier?

14 MR. OLKER: I'm sorry, that was a long
15 question. Could I have it read back again.

16 (Record read.)

17 MR. OLKER: Thank you.

18 A. I would say that I would -- that would be
19 up to the Commission's discretion. That said, there
20 is a distinction between supplier consolidated
21 billing and utility consolidated billing. In utility
22 consolidated billing Duke is the single monopoly
23 provider of distribution service and distribution
24 billing. In a consolidated -- supplier
25 consolidated -- and Duke gets cost recovery through

1 distribution ratepayers.

2 In the supplier consolidated billing
3 model, multiple CRES providers will have the ability
4 to bill these distribution charges and issue a
5 utility-consolidated bill, and they would not get
6 cost recovery from distribution ratepayers for doing
7 so.

8 Q. So is the short answer "no"?

9 A. The short answer is I would leave that up
10 to the Commission as to which -- whether they would
11 like to make that requirement, and I gave them some
12 facts as to what they could use to make that
13 determination.

14 Q. Okay. So if the Commission decides that
15 under supplier consolidated billing, the billing
16 supplier is not required to include the charges for
17 noncommodity products and services offered by another
18 supplier, that other supplier has to issue its own
19 bill, correct?

20 A. If the Commission decides as part of the
21 supplier-consolidated billing that they don't --
22 that -- I'm sorry, I am just repeating your question
23 so I understand it.

24 Q. Sure.

25 A. If the Commission decides as part of a

1 supplier-consolidated billing which they've
2 adopted -- which they have adopted that they are --
3 that if another provider wishes to put charges on the
4 bill, then -- and then they decide that's not
5 allowed, the Commission decides that's not allowed,
6 then that provider would have to go and use their own
7 bill, the answer would be "yes."

8 Q. Okay. So the customer gets potentially
9 two bills, right?

10 A. In that situation -- hypothetical
11 situation there would be, yes.

12 Q. Okay. And with respect to our other
13 situation where we've talked about the IGS proposal
14 of only CRES providers being allowed to include their
15 charges for noncommodity products and services on the
16 bill, to the extent a customer enrolls in
17 noncommodity products and services from a CRNG or a
18 non-CRES or a CRNG provider, that customer's also
19 getting multiple bills, correct?

20 A. If they enrolled separately in the
21 contractual relationship with -- they entered into
22 with either party, and it's spelled out that they
23 would get separate billing, then they would get
24 separate billing, yes.

25 Q. Thank you.

1 Mr. White, you know IGS is a participant
2 in the Commission's investigation into the retail
3 market, correct?

4 A. Yeah.

5 Q. Do you know whether supplier-consolidated
6 billing is a topic of discussion in the statewide
7 market development working group established under
8 that case?

9 A. I don't believe that was a topic of
10 discussion, specific subgroup. I know we broke out
11 into working groups. I don't believe that was a
12 topic of discussion for one of the working groups.
13 It may have been discussed informally, but I don't
14 think it was one of the specific working groups that
15 were formed.

16 Q. Okay.

17 A. But I could be wrong.

18 Q. And you mentioned, sir, in your
19 conversation with Mr. Serio, some of the way things
20 are done in other states, and I believe you also
21 included Texas, correct?

22 A. Yeah, I may have referenced Texas.

23 Q. And are you familiar with ERCOT, the
24 Electric Reliability Counsel of Texas?

25 A. Yes.

1 Q. And ERCOT is the entity that actually
2 facilitates retail registration and switching,
3 correct?

4 A. In Texas, ERCOT, I don't know. I think
5 they have to get certified at the Commission, too,
6 but there is some level of certification at ERCOT as
7 well for competitive suppliers in Texas.

8 Q. And does ERCOT do all of the billing
9 whether it's generation supply or other noncommodity
10 products and services?

11 A. No. In Texas the utility -- the
12 competitive suppliers do all the billing like I am
13 proposing here.

14 Q. And so, in Texas does one supplier
15 include the noncommodity products and services of
16 other suppliers on its bill?

17 A. I don't know. Most -- Texas, you have
18 to -- you have to bill your own service. So if you
19 are a CRES provider or competitive supplier in Texas,
20 you have to have a bill. So it wouldn't make sense
21 for a -- if a provider that has a bill to go and
22 include its charges on some other bill.

23 Q. Sir, you provide, beginning on page 18,
24 your opinions regarding the unbundling of costs,
25 correct?

1 A. Yeah.

2 Q. And you believe that under Revised Code
3 Section 4928.143 it would be permissible under an ESP
4 for the Commission to require Duke Energy Ohio to
5 unbundle the costs related to SSO supply, correct?

6 A. Yes.

7 Q. Do you understand -- do you agree with me
8 that a distribution utility such as Duke Energy Ohio
9 must provide an SSO for all retail customers?

10 MR. OLIKER: Asked and answered.

11 EXAMINER PIRIK: Overruled.

12 A. Could I just defer to the answer that I
13 gave last time?

14 Q. Do you recall right now?

15 A. Yeah. I think I read the statute, and
16 they must make available an SSO to customers, yes.

17 Q. So to the extent a shopping customer has
18 a question about CRES offers or a CRES charge that
19 appears on their bill and they call the Duke Energy
20 Ohio call center and that call center rep spends time
21 talking with that shopping customer, is that the sort
22 of charge that you believe should be carved out and
23 paid for only by SSO customers?

24 A. I believe a portion of the customer care
25 costs should be attributed to SSO customers, yes.

1 Q. And carving out costs, as you suggest,
2 and recovering them through a bypassable rider would
3 result in an increase in the price to compare,
4 correct?

5 A. All else being equal, it would be -- it
6 would be lowering the distribution rates and
7 assigning those costs to the SSO price, yes.

8 Q. And the price to compare is the price
9 that customers can compare to CRES offers to decide
10 on whether or not to shop, correct?

11 A. I mean, the price to compare is a product
12 in the market just like any other product that the
13 customer enrolls in.

14 Q. I don't understand.

15 A. They can compare their offerings to the
16 price to compare or other CRES provider products.

17 Q. And the price to compare reflects the
18 price for taking standard service offer from the
19 distribution utility, correct?

20 A. Yes.

21 Q. You were asked questions by Mr. Serio
22 with regard to surveys or market analyses with
23 respect to customers' preference for a single bill.
24 And I understand you've indicated they're not
25 attached to your testimony. But, sir, you know that

1 IGS conducts market analyses, correct?

2 A. I'm generally aware that our marketing
3 department does analysis, yes.

4 Q. Those analyses have not been discussed in
5 your testimony, correct?

6 A. Correct.

7 Q. And you believe that the current SSO
8 structure discourages participation in Choice,
9 correct?

10 A. Yes.

11 Q. And you believe that to be the case
12 because in your opinion customers on the SSO have not
13 chosen to be on the SSO, correct?

14 A. I believe that there are significant
15 number of customers on the SSO that have not made an
16 affirmative -- affirmative choice to enroll in SSO
17 service.

18 Q. But you don't know whether customers
19 have, in fact, made an affirmative election to remain
20 on the SSO, do you?

21 A. I don't know every single customer, but I
22 believe that there's a significant majority of the
23 customers that have not affirmatively chosen to
24 remain on SSO service.

25 Q. And on what do you base that, sir?

1 A. On my -- you can read my testimony, but
2 on the fact that all customers -- all legacy
3 distribution customers were automatically assigned to
4 SSO. Any customer that enrolls into distribution
5 service must go take SSO service for a period of
6 time. The fact that, you know, there's a large
7 percentage of SSO in Duke's service territory for
8 residential customers holds a disproportionately high
9 market share given the number of products that are
10 available in the market, based on a number of those
11 facts that I present in my testimony.

12 Q. Sir, would you agree with me that the
13 price of the company's SSO could be a determining
14 factor for a customer on whether or not they switch?

15 A. Yes.

16 Q. Do you know how the company's SSO price
17 compares to the CRES offers that are out there?

18 A. After you -- I looked at some of the
19 offers out there. Some of the offers are higher than
20 the SSO; for example, we had an offer out there that
21 was right at the SSO or might have even been a little
22 bit lower. And, again, just because there's Price to
23 Compare, it's not the same for every customer, so
24 based on the average customer's SSO. It also was a
25 renewable product, and it also had no cancellation

1 fees, and it was for a term of fixed year -- or, full
2 year, and it was at the SSO price or slightly lower,
3 and there's still -- we don't have over 50 percent of
4 the market share.

5 Q. The SSO structure that you describe is
6 not unique to Duke Energy Ohio, is it?

7 A. No.

8 Q. And you've not attempted to quantify the
9 degree to which the SSO structure has had a negative
10 impact on shopping, have you?

11 A. I don't put a dollar number in my
12 testimony, no.

13 Q. Okay. And, sir, you have proposed, in
14 this testimony, a retail price adder and then a
15 retail auction, correct?

16 A. I made that proposal in the AEP
17 testimony. I -- in my testimony there was a brief
18 question and answer as to whether the Commission
19 should adopt those proposals. And assuming the
20 ruling is favorable in the AEP case, it's something I
21 think the Commission should consider. The bulk of my
22 testimony -- the Commission consider for Duke. The
23 bulk of my testimony in this case was focused on an
24 alternative proposal or, at the very minimum, the
25 Commission should consider unbundling some of the

1 costs to support the SSO from distribution rates and
2 charging them to the SSO price.

3 Q. But just to be clear, you are proposing
4 in this case that the Commission consider a retail
5 price adder and a retail auction, correct?

6 A. Yes.

7 Q. Okay. And you did not detail in your
8 testimony in this case either how the retail price
9 adder would work or how the retail auction would
10 work, correct?

11 A. Correct.

12 Q. You simply referred back to testimony
13 that you submitted in the AEP ESP proceeding under
14 Case 13-2385, correct?

15 A. Correct.

16 Q. If I could talk for a minute about the
17 retail auction, this is one that in your opinion
18 would completely displace the wholesale auction for
19 SSO supply, correct?

20 A. Correct.

21 Q. And you understand, sir, that in the
22 company's current ESP, docketed under Case No. 11-349
23 that all the signatory parties to that stipulation
24 agreed that for purposes of the company's next SSO,
25 it would use a wholesale, full requirements,

1 descending clock auction for purposes of SSO supply.

2 A. I don't have that stipulation in front of
3 me.

4 Q. I would be happy to hand it to you.

5 MS. SPILLER: May we approach, your
6 Honor?

7 EXAMINER PIRIK: Yes.

8 A. Can you point me to the section?

9 Q. Certainly, sir. Page 5. Actually, for
10 purposes of entirety, page 4 begins "Section I, Term"
11 discussing the term of the ESP. And then on page 5,
12 about six lines down, it indicates that a competitive
13 bidding process plan will be included in the
14 company's next SSO application, that that plan --
15 that through that plan, Duke Energy Ohio will seek to
16 procure, on a slice-of-system basis, the aggregate
17 wholesale full requirements as SSO supply. Do you
18 see that?

19 A. It says it will "seek to procure." It
20 doesn't mean the Commission can't modify that.

21 Q. So you're asking the Commission to modify
22 the agreement that all the parties to the stipulation
23 made, correct?

24 A. I wouldn't -- I mean, again, I am reading
25 the stipulation for the first time in three years, so

1 I wouldn't necessarily agree to your interpretation
2 of what you're saying as to what that stipulation
3 says. I would need, you know, more time to read the
4 stipulation in it's full context. It's 15 pages. I
5 would not stipulate that that's exactly what the
6 stipulation says.

7 Q. Well, let's talk about the retail auction
8 that you propose. It is one that would be open only
9 to CRES providers, correct?

10 A. Yes.

11 Q. And under your retail auction process,
12 there's only one auction at the beginning of the
13 company's proposed ESP, correct?

14 A. Yes.

15 Q. And what happens under the retail auction
16 that you're proposing is the Commission establishes
17 an initial price, the floor, if you will, correct?

18 A. Yes.

19 Q. And then the competitive retail electric
20 service providers bid above that floor and the final
21 auction price would be the highest dollar amount that
22 the competitive retail electric suppliers are willing
23 to pay to serve the SSO load, correct?

24 A. Yes.

25 Q. And the delta between the floor and that

1 highest price is one that you believe should be
2 returned to all distribution customers, correct?

3 A. Again, I'm refreshing my -- I don't have
4 my AEP testimony in front of me and that's where I
5 spelled out the specifics. I thought -- in that case
6 I testified that there should -- the Commission
7 should order a retail auction and a lot of the
8 specifics should be set forth in the collaborative,
9 but generally that's how the mechanics of a retail
10 auction would work.

11 Q. Okay. With the incremental between the
12 floor and that auction price, those dollars being
13 returned to all distribution customers, correct?

14 A. Yeah. I believe I think I said that
15 should go to cover the costs of the auction and the
16 price that -- yes, yes.

17 Q. And this is true, although all
18 distribution customers may not receive the SSO
19 service, correct?

20 A. Yes. But as I testified, all
21 distribution customers support SSO generation
22 service.

23 Q. Thank you.

24 And the auction price that forms the
25 basis of the SSO rates is one -- the initial floor,

3313

1 if you will, is one that you propose be established
2 by way of a collaborative, correct?

3 A. Yes.

4 Q. Okay. And given that there is only one
5 auction at the beginning of the ESP term, new CRES
6 suppliers that may enter the market after the
7 effective date of the ESP would be precluded from
8 participating in that SSO supply auction, correct?

9 A. Again, I don't think that -- the initial
10 auction, yes. I believe in my AEP testimony I
11 discussed mechanisms by which CRES providers entering
12 the market could -- could be eligible to serve newly
13 enrolled SSO customers meaning SSO customers that --
14 that elected to take SSO service upon enrolling in
15 distribution service with Duke.

16 Q. So then, would I be correct in saying,
17 sir, there would be a series of subsequent mini
18 retail auctions as new CRES providers enter the
19 market and new customers enter the Duke Energy Ohio
20 service territory?

21 A. Again, I'm not -- I can't remember
22 exactly how I spelled it out in my testimony. I
23 believe that's in the AEP case. I believe that's
24 something that could be determined in a collaborative
25 process but, you know, that's something that could

1 occur, yes.

2 Q. And you believe that this retail auction
3 is necessary to allow for the establishment of a
4 retail relationship, correct?

5 A. I believe it would help create the direct
6 retail relationship with the customer and competitive
7 supplier.

8 Q. But there's nothing now that prevents a
9 competitive supplier from having a relationship with
10 its customers, is there?

11 A. As I discussed in my testimony in this
12 proceeding, there's -- there's significant forces
13 that discourage customer engagement into the
14 competitive market based on the current construct of
15 the SSO.

16 Q. And under your proposed retail auction
17 there would have to be contracts between the CRES
18 providers and the EDU with respect to that SSO
19 service, correct?

20 A. There would have to be contracts between
21 the CRES provider and the EDU. Again, there would
22 have -- the -- again, there would have to be
23 requirements that the CRES providers have to meet to
24 participate in that, providing that SSO service,
25 similar to the requirements, they have to do retail

1 auction on the gas side in Ohio today.

2 Q. Well, the distribution utility has the
3 statutory default obligation to provide the SSO
4 service, correct?

5 A. There's a requirement to make available
6 SSO service. The retail auction would still make
7 available SSO service just like default service is
8 made available on the gas side in Ohio today.

9 Q. But you understand that certainly in Duke
10 Energy Ohio's ESP and the wholesale auctions that are
11 being proposed, that there is a master standard
12 service offer supply agreement to be executed between
13 Duke Energy Ohio and each successful auction winner,
14 correct.

15 A. Yes. And there will probably be similar
16 agreements to serve customers in the retail auction
17 that I'm proposing.

18 Q. And you've not proposed to the Commission
19 the content of the master SSO supply agreements that
20 you believe would be appropriate for the retail
21 auction, correct?

22 A. Correct.

23 Q. The retail price adder is another
24 proposal that you made in the AEP case that, by way
25 of short reference, you're including in this case as

1 well, correct?

2 A. Yes. I referenced it to the extent the
3 Commission chooses to adopt that -- that proposal in
4 that proceeding. The Commission should also consider
5 it in this proceeding as it would apply equally to
6 Duke.

7 Q. And, Mr. White, with respect to the
8 retail auction, is the AEP ESP proceeding the first
9 proceeding in which IGS has made that proposal?

10 A. I believe it was not.

11 Q. Did IGS Energy also make that proposal in
12 connection with the investigation into the market?

13 A. I believe we probably made something
14 similar to that in the retail market investigation
15 proceeding.

16 Q. And did the company accept IGS's proposal
17 in the retail market investigation proceeding with
18 regard to the retail auction?

19 A. You mean the Commission?

20 Q. Yes, sir.

21 A. They did not adopt a retail action at
22 this time. They did not adopt that proposal, I think
23 their words were, "at this time." Although, they did
24 not foreclose the possibility of it in the future.

25 Q. So the retail price adder is one in which

1 you would propose the quantification of costs beyond
2 commodity supply that are incurred in providing SSO
3 service and then including those costs in the price
4 to compare?

5 A. Can you repeat the question, please?

6 Q. Sure. Well, strike that.

7 What is your retail price adder proposal?

8 A. As I recall, as it was presented in the
9 AEP testimony, it would -- similar to the proposal I
10 make in this case except that in this case I -- I
11 limit the costs directly to direct costs recovered
12 through distribution rates required for the SSO
13 service.

14 So, you know, direct Duke costs in the --
15 in the -- in the retail auction -- I'm sorry, retail
16 price adder proposal I made in the AEP case, I also
17 included avoided costs such as costs to -- required
18 for competitive suppliers to comply with regulatory
19 requirements that the SSO avoids because they are
20 assigned customers, and I -- I accounted for that in
21 the retail price adder proposal that I made in the
22 AEP case. I did not account for those costs in the
23 unbundling proposal I made in this case.

24 Q. And the retail price adder, that one that
25 you propose be paid by SSO customers or wholesale

1 suppliers?

2 A. Wholesale suppliers.

3 Q. Or if your retail action is adopted,
4 would that be paid by the CRES providers?

5 A. Yes. It would be the providers of the
6 SSO service in either instance.

7 Q. And in addition to the costs of --
8 associated with Duke Energy Ohio's provision of the
9 standard service offer, you would propose that the
10 OCC's maintenance fee be included in the retail price
11 adder as well, correct?

12 A. That was a cost that I listed that the
13 regulatory assessment that all -- that's paid to
14 support regular activities, that was the cost --
15 included in one of the costs that I propose the
16 Commission should consider in the retail price adder
17 proposal that I included in the AEP case, although I
18 did not specifically reference that cost in this
19 proceeding.

20 Q. Sir, just a few more questions. I
21 believe you mentioned a minimum stay provision in
22 your conversation with Mr. Serio? With respect to
23 customers and their ability to switch providers.

24 A. I referenced the fact that, for a period
25 of time, customers must enroll in Duke SSO service

1 before they can -- upon enrolling in Duke
2 distribution service they must take Duke SSO service
3 before enrolling in a competitive offer. They must
4 take Duke SSO service for a period of time.

5 Q. And that period of time is aligned to
6 meter-reading dates, correct?

7 A. I don't know what's the basis for that
8 time, period of time.

9 Q. Are you aware of any minimum stay
10 provisions for customers in the Duke Energy Ohio
11 service territory that would require them to stay on
12 the SSO for, for example, 30 days, 60 days, 90 days?

13 A. No. Other than being required to take
14 SSO service immediately. Upon enrollment, I believe
15 it's for at least one billing cycle, maybe more, but
16 at least one billing cycle before they can switch.

17 Q. You were asked questions from Mr. Serio
18 regarding the robust and competitive nature of the
19 retail market, and you had questions -- you had
20 comments to him regarding concentration. With
21 respect to concentration in a market, do you know
22 what the Herfindahl Index or HHI Index is?

23 A. I mean, I'm not specifically aware of
24 that. I took some antitrust back in law school,
25 several years ago, it may have been referenced, but

1 beyond that I have no specific knowledge of that
2 index.

3 Q. So you've not measured the HHI Index for
4 the Duke Energy Ohio service territory, correct?

5 A. Correct.

6 MS. SPILLER: One moment, please, your
7 Honor.

8 Q. Mr. White, just very briefly with respect
9 to the adder or the unbundling of SSO cost, do you
10 know whether the company's costs would vary depending
11 on the amount of switching that -- the company's cost
12 to provide an SSO would vary depending on the number
13 of customers who switch?

14 A. I -- it would be a per -- I would
15 envision it's a per-customer fee. So it wouldn't
16 actually -- it wouldn't actually increase or decrease
17 on a per-customer amount based on the number of
18 switched customers.

19 Q. But do you believe that, for example,
20 legal fees would be less if shopping in Duke Energy
21 Ohio's service territory increased?

22 A. I believe if you had 100 percent shopping
23 and no default service, you couldn't incur any legal
24 fees in these SSO cases.

25 Q. But that's not the current structure that

1 we're under, is it? Duke Energy Ohio has a statutory
2 obligation --

3 A. I believe as customers migrate, the cost
4 of conducting these SSO cases will decrease.

5 Q. Sir, are you suggesting that Duke Energy
6 Ohio can control its litigation fees in the context
7 of an SSO proceeding?

8 A. To some extent they can.

9 Q. I can't control the number of
10 intervenors, can I?

11 A. No.

12 Q. Can't control the number of intervenor --
13 I can't control the number of intervenor witnesses,
14 can I?

15 A. No. But you can control the amount of
16 discovery you produce.

17 Q. I don't issue most of the discovery, do
18 I, sir?

19 A. I don't know.

20 Q. I can't control the amount of time that
21 intervenor attorneys cross-examine Duke Energy Ohio
22 witnesses, can I?

23 A. You can control how long you cross me.

24 (Laughter.)

25 Q. Sir, all things considered, I think we

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1 are being pretty efficient today, but I can't control
2 how much time intervenors spend crossing witnesses,
3 can I?

4 A. No.

5 MS. SPILLER: Thank you.

6 Nothing further, your Honor.

7 EXAMINER PIRIK: Mr. Olikier, could you
8 use a minute and take a quick bathroom break?

9 MR. OLIKER: Yeah, that would be great,
10 your Honor, and I think we could do it probably
11 pretty briefly.

12 EXAMINER PIRIK: That would be good.
13 Let's take a quick break. I'm not going anywhere so.

14 (Recess taken.)

15 EXAMINER PIRIK: We will go back on the
16 record.

17 Mr. Olikier.

18 MR. OLIKER: Thank you, your Honor.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Olikier:

22 Q. Mr. White --

23 A. Yes.

24 Q. -- do you remember a line of questioning
25 from Duke's attorney about how it may be leveraging

1 distribution assets to support competitive services
2 of its affiliates?

3 A. Yes.

4 Q. What kind of service is the utility bill
5 related to?

6 A. It's distribution service.

7 Q. And is that the type of service you are
8 relying on in your testimony on page 4, line 23
9 through page 5, line 1?

10 A. Yeah. It's -- it's -- my basis is that
11 it's distribution assets that Duke is utilizing to
12 favor its competitive affiliate and discriminating
13 against other competitors in the market.

14 Q. Okay. And you also received some
15 questions about when the timing of Duke's
16 discrimination against competitors of Duke Energy One
17 occurred. Do you remember that question?

18 A. Yes.

19 Q. Assuming that Dan Jones previously
20 testified in this proceeding for Duke Energy Ohio
21 that it does not currently allow CRES providers to
22 use the utility bill for noncommodity service, do you
23 have an opinion of when Duke's discrimination began?

24 MS. SPILLER: Objection. Misstates the
25 record.

1 EXAMINER PIRIK: Overruled.

2 A. I would say that Duke is currently
3 discriminating against CRES providers and would
4 continue that discrimination with Mr. Jones's
5 proposal.

6 Q. And do you remember a line of questioning
7 from counsel for Duke Energy Ohio about CRES
8 customers that may call Duke Energy Ohio about their
9 utility bill?

10 A. Yes.

11 Q. Do CRES providers also receive calls from
12 customers they serve regarding distribution outages?

13 A. Yes, we get calls. We -- we have to take
14 some -- some of those calls from distribution
15 customers, and we refer them to -- to -- to the
16 distribution utility much like, as I imagine, Duke
17 does if they get called requesting generation charges
18 on -- on their bill to our customers.

19 Q. Thank you, Mr. White.

20 Do CRES providers receive calls from
21 their customers about distribution charges that
22 appear on their bill?

23 A. Yeah. Is that the same question?

24 Q. I think the first one was about outages.

25 A. Oh, yes. I'm sorry. Yes, we do. Again,

1 we refer them to the utility. Just like Duke, I'm
2 sure, refers our customers to us about our generation
3 charges.

4 Q. Would you agree -- let me rephrase that.

5 Are CRES providers' call center expenses
6 significant?

7 A. Yes, call center expenses are significant
8 costs.

9 Q. And do CRES providers get cost recovery
10 through guaranteed cost recovery from the Commission
11 for those expenses?

12 MS. SPILLER: I am going to object to the
13 leading form of this examination.

14 EXAMINER PIRIK: Overruled.

15 A. No. CRES providers must reflect their
16 call center prices, their call center costs in their
17 price, unlike the SSO which does not reflect that in
18 the price.

19 Q. Okay. Just one last question on this
20 issue. Your recommendation regarding call center
21 expenses, are you -- what portion of Duke's call
22 center expenses are you recommending be allocated to
23 the standard service offer?

24 A. Not -- not a -- not the entire portion by
25 any means. Just the portion that relates to

1 generation service that Duke offers customers.

2 MR. OLIKER: Thank you, Mr. White.

3 No more questions, your Honor.

4 EXAMINER PIRIK: Thank you.

5 I forgot to ask Mr. Beeler if he had any
6 cross.

7 MR. BEELER: I didn't.

8 EXAMINER PIRIK: Ms. Hussey?

9 MS. HUSSEY: No questions, your Honor.

10 EXAMINER PIRIK: Ms. Bojko?

11 MS. BOJKO: No questions, your Honor.

12 EXAMINER PIRIK: Mr. Serio?

13 MR. SERIO: No, thank you, your Honor.

14 EXAMINER PIRIK: Mr. Boehm?

15 MR. K. BOEHM: Nothing, your Honor.

16 EXAMINER PIRIK: Ms. Spiller?

17 MS. SPILLER: Briefly, your Honor.

18 - - -

19 RECROSS-EXAMINATION

20 By Ms. Spiller:

21 Q. Mr. White, does the Ohio Commission set
22 the rates or prices for CRES supplier offers?

23 A. No.

24 Q. Have you reviewed Mr. Jones's live
25 testimony in this case?

1 A. No.

2 Q. And so, the question that your attorney
3 asked you with respect to when this discrimination
4 allegedly arose, you're relying simply on what he has
5 told you, correct?

6 A. It was a hypothetical, so I was just
7 answering. If he did make that testimony, then it --
8 that the CRES providers are currently not allowed to
9 bill on the utility bill, then I would say that's
10 currently discrimination.

11 Q. And you would agree with me that the
12 transcript in this proceeding would bear out whether
13 that hypothetical is actually proven out in the
14 facts, correct?

15 A. Yes.

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

18 EXAMINER PIRIK: Thank you.

19 Staff?

20 MR. BEELER: Nothing. Thank you.

21 EXAMINER PIRIK: Thank you, Mr. White.

22 With regard to exhibits. IGS.

23 MR. OLIKER: Thank you, your Honor. IGS
24 would move for the admission of Exhibit 10.

25 EXAMINER PIRIK: Thank you. Are there

1 any objections?

2 MS. SPILLER: No, your Honor.

3 MR. SERIO: No, your Honor.

4 EXAMINER PIRIK: Hearing none, it will be
5 admitted into the record.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER PIRIK: Duke.

8 MS. SPILLER: Thank you, your Honor.

9 Duke Energy Ohio would move for the admission of Duke
10 Energy Ohio Exhibit 27, the discovery response to IGS
11 Interrogatory 02-006, and Duke Energy Ohio
12 Exhibit 28, the discovery response to IGS
13 Interrogatory 02-004.

14 EXAMINER PIRIK: Are there any
15 objections?

16 MR. SERIO: No, your Honor.

17 MR. OLIKER: No objections, your Honor.

18 EXAMINER PIRIK: They will be admitted
19 into the record.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 MS. SPILLER: Thank you.

22 EXAMINER PIRIK: Thank you, Mr. White.

23 THE WITNESS: Thank you.

24 EXAMINER PIRIK: We have one procedural
25 matter in order to allow the court reporters to

1 finalize transcript III. We said that we would
2 consider the protective ruling with regard to
3 transcript No. III and the confidential portion of
4 it. Duke had provided the parties with proposed
5 redactions.

6 Are there -- I guess I would turn to Duke
7 first and see whether or not they would like to make
8 their argument.

9 MS. KINGERY: Certainly. So, the first
10 item I am looking at is on page 734. And this is
11 talking about an assumption and projections. It was
12 a movement-type word such as we have redacted
13 previously.

14 The next would be on page 735. I'm
15 sorry. Does everybody have a copy of what we've
16 proposed so I don't have to be more specific than
17 that?

18 MR. OLIKER: I don't, but I am probably
19 not going to fight you.

20 MS. KINGERY: Okay. 735, it's the
21 third-to-last word in line 1, and the first word in
22 line 2. And this is, again, a projection of market
23 prices, and directional- and general-level-type
24 words.

25 Later on that same page there are two

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1 words on line 18. Again, these are talking about
2 forecasts of market prices and roughly how much and
3 what direction they might move. Same thing on
4 line 19.

5 Line 22 there is one word and, again,
6 this is talking about a forecast of market prices.
7 This is an answer to the previous question and,
8 again, it's an adjective giving a sense of quantity.

9 The next proposed redactions would be on
10 page 738 and this is talking about projections of
11 OVEC's costs to production and the assumptions
12 underlying those projections, so that was line 1.
13 And then line 2, the identified words, and that's it.

14 EXAMINER PIRIK: Okay. Are there any
15 responses to the proposal?

16 Hearing none, the request for protection
17 of the designated information will be granted.

18 MS. KINGERY: Thank you, your Honor.

19 EXAMINER PIRIK: I think the court
20 reporters have a method for doing those redactions;
21 is that true, Karen?

22 THE COURT REPORTER: Yes.

23 MS. KINGERY: I have them electronically
24 done. All I have to do is hit "apply redactions" and
25 it will be done.

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1 EXAMINER PIRIK: Well, I would just ask
2 Duke to work with the court reporters to be sure that
3 the appropriate redactions are completed so that they
4 can finalize the transcript. And we'll rule on the
5 remainder of the transcripts later.

6 Okay. I believe we're concluded for the
7 night. We will adjourn until tomorrow at 9 a.m.

8 (Thereupon, the hearing was adjourned at
9 7:25 p.m.)

10 - - -

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Wednesday, November 5,
2014, and carefully compared with my original
stenographic notes.

Karen Sue Gibson,
Registered Merit Reporter.

(KSG-5954)

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- Public electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and
Gibson, Karen Sue Mrs.