

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

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

- - -

PROCEEDINGS

before Ms. Christine M.T. Pirik and Mr. Nick Walstra,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:00 a.m. on Friday,
November 7, 2014.

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VOLUME XIII

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1 Friday Morning Session,

2 November 7, 2014.

3 - - -

4 EXAMINER PIRIK: Okay. We will go on the
5 record. Would you please raise your right hand.

6 (Witness sworn.)

7 EXAMINER PIRIK: Thank you.

8 Mr. Petricoff.

9 MR. PETRICOFF: Thank you, your Honor.

10 At this time we would like to have marked the direct
11 prepared testimony of Dwayne R. Pickett as RESA
12 Exhibit 3.

13 EXAMINER PIRIK: The exhibit is so
14 marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. PETRICOFF: Thank you.

17 - - -

18 DWAYNE R. PICKETT

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

21 DIRECT EXAMINATION

22 By Mr. Petricoff:

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

25 A. Dwayne Pickett. My business address is

1 355 Campus View, Suite 150, Columbus, Ohio 43235.

2 Q. Mr. Pickett, on whose behalf do you
3 appear today?

4 A. On behalf of RESA, the Retail Energy
5 Supply Association.

6 Q. And did you prepare testimony in this
7 case?

8 A. Yes.

9 Q. And is RESA Exhibit No. 3 the testimony
10 that you prepared or was prepared under your
11 supervision?

12 A. Yes.

13 MR. SERIO: Your Honor, I think
14 Mr. Campbell's testimony was No. 3.

15 EXAMINER PIRIK: I was going to wait
16 until he was finished. It should be RESA Exhibit 4.

17 MR. PETRICOFF: Oh, okay.

18 EXAMINER PIRIK: We are on No. 4.

19 MR. PETRICOFF: Thank you, your Honor.

20 THE WITNESS: I think it's RESA
21 Exhibit 4.

22 EXAMINER PIRIK: It is.

23 A. It's RESA Exhibit 4.

24 Q. Right. And it's a basic truism that the
25 client is always right, so. And was RESA Exhibit 4

1 prepared by you or under your direction?

2 A. Yes.

3 Q. Are there any updates or amendments that
4 you have to that testimony?

5 A. No amendments, but I would like to make
6 the Commission aware that, since my testimony,
7 Constellation Energy has purchased Integrys Energy
8 Services, but Integrys Energy Services is operating
9 as an independent company.

10 Q. And if I were to ask you all the
11 questions that are contained in RESA Exhibit No. 4
12 now, would your answers be the same?

13 A. Yes.

14 MR. PETRICOFF: Your Honor, the witness
15 is available for cross-examination.

16 EXAMINER PIRIK: Thank you.

17 Ms. Hussey?

18 MS. HUSSEY: No questions, your Honor.

19 EXAMINER PIRIK: Ms. Bojko?

20 MS. BOJKO: No questions, your Honor.

21 EXAMINER PIRIK: OCC?

22 MR. SERIO: Thank you, your Honor.

23 - - -

CROSS-EXAMINATION

By Mr. Serio:

Q. Good morning, Mr. Pickett.

A. Good morning.

Q. I would like to ask you a couple of questions about the last thing you just mentioned, Constellation purchased Integrys?

A. Yes.

Q. And both Constellation and Integrys have been CRES providers in the various distribution services for the different electric companies in Ohio, correct, Electric Choice?

A. I wouldn't be an expert on Constellation, but I would say yes.

Q. And going forward, will Constellation and Integrys still participate separately or will we see a consolidation of the offers that they are making in the Choice programs, if you know?

A. I don't know. I couldn't speak to those business decisions.

Q. Okay. You indicated in your testimony that you are responsible for governmental and regulatory affairs in a number of states including Ohio, correct?

A. Yes.

1 Q. And what exactly does it mean by you're
2 responsible for governmental and regulatory affairs?

3 A. My role in Integrys is to monitor and
4 participate in regulatory proceedings and legislative
5 proceedings and direct and monitor the policies and
6 the policy changes that happen in those regulatory
7 jurisdictions.

8 Q. And then you indicated that you're the
9 State Electric Chair for RESA or Vice President in
10 different states and then Secretary of the Ohio Gas
11 Suppliers Association. Now, I assume your
12 responsibilities there are different than your
13 responsibilities for -- for your direct
14 responsibilities, for Integrys?

15 A. Yes. Yes.

16 Q. Now, as far as your participation for
17 RESA and Ohio Gas Suppliers Association, that also
18 involves regulatory proceedings?

19 A. For the Ohio Gas Suppliers Association it
20 doesn't often involve regulatory proceedings, but
21 today, my role in RESA, I am here today on behalf of
22 RESA.

23 Q. Okay. And you're not an attorney, right?

24 A. No.

25 Q. Okay. Now, prior -- you said that you

1 worked for the PUCO, correct?

2 A. Correct.

3 Q. And when you worked for the PUCO, were
4 you involved in any of the regulatory proceedings in
5 your role at the PUCO?

6 A. Some regulatory proceedings, yes.

7 Q. Okay. To the extent that you've
8 participated in regulatory proceedings, both when you
9 worked for the PUCO and since then, are you familiar
10 with the concept of burden of proof?

11 A. Like I said before, I'm not a lawyer.
12 I've heard of the concept. I'm not an expert on the
13 law of the burden of proof.

14 Q. I understand. Now, in your role, getting
15 involved in governmental and regulatory affairs, what
16 is your nonlegal understanding of what the burden of
17 proof requires?

18 A. I don't have a legal understanding of it.
19 I have a nonlegal understanding of the concept that
20 burden of proof is on a particular entity. They have
21 to prove whatever case they're making.

22 Q. Okay. And is it your understanding that
23 generally in proceedings before the PUCO that the
24 burden of proof rests with the applicant or the party
25 that is bringing a proposal forward?

1 A. I couldn't speak to that. I don't know.
2 I'm not an attorney.

3 Q. I'm asking for your understanding as a
4 participant in regulatory affairs.

5 A. Again, I couldn't speak to it.

6 Q. So in your role directing governmental
7 and regulatory affairs, you've never had any workings
8 with burden of proof or what a burden of proof
9 constitutes in a proceeding?

10 MR. PETRICOFF: Your Honor, at this point
11 I'm going to object. I let this go for basic
12 foundation questions, but this appears to now just be
13 an examination of a nonlawyer's view of a legal
14 concept and that's irrelevant.

15 MR. SERIO: Your Honor --

16 EXAMINER PIRIK: I will allow a couple
17 more questions, but I think the witness is answering
18 honestly, so.

19 Q. And my question was in your role in
20 governmental and regulatory affairs, have you ever
21 had the opportunity to have discussions about or any
22 understanding of what constitutes burden of proof in
23 a proceeding?

24 A. So in both my role at RESA, my role at
25 Integritys, and my role at the Commission, I relied on

1 lawyers and other legal entities for their
2 interpretations of burden of proof. So it wasn't --
3 it wasn't my decision to make or a particular
4 concern.

5 Q. Without asking you to divulge any
6 confidential information, have you been advised by
7 counsel as to what constitutes burden of proof in
8 your role in regulatory governmental affairs?

9 MR. PETRICOFF: Your Honor, I object.
10 This violates attorney-client privilege and work
11 product protections.

12 EXAMINER PIRIK: Sustained.

13 Q. In the current proceeding, Duke has made
14 a number of proposals, correct?

15 A. Yes.

16 Q. And if -- is it your understanding that
17 Duke has to prove that those are reasonable in order
18 for the Commission to approve them?

19 A. I think the Commission, when they make
20 their decisions, have a lot of questions to
21 contemplate.

22 Q. And is one of those questions, if you
23 know, whether Duke has to show that its proposals are
24 reasonable before the Commission can approve them?

25 A. I couldn't speak to the Commission's

1 legal authority on approving a case. I would say
2 that Duke -- I would assume Duke had a legal
3 responsibility to prove their case, but I imagine
4 there's other considerations to -- in the law, but
5 I'm not an expert.

6 Q. As part of its application in this case,
7 did Duke propose an "Enroll From Your Wallet"
8 modification in any of their programs?

9 A. No, they didn't.

10 Q. And as part of their application in this
11 case, did Duke propose a -- a Market Enrollment Plan,
12 an MEP?

13 A. No. But what I could say is that Duke
14 does speak to the competitive market in their
15 application and Duke speak's to the robustness of a
16 competitive market and the state energy policy also
17 speaks to a robust competitive market. What the
18 Market Energy Program and the Enroll From Your Wallet
19 Program seek to do is to accomplish the goals that
20 Duke set out for themselves in their ESP.

21 Q. Is there any testimony in Duke's
22 application supporting either the Enroll From Your
23 Wallet or the MEP programs?

24 A. No.

25 Q. So there's nothing in any of Duke's

1 application or any of the witness's testimony that
2 even supports or even mentions any of those programs,
3 correct?

4 A. I would say they don't directly mention
5 or support these programs, but the application itself
6 does speak to developing a robust competitive market
7 and that's what these programs seek to do as part of
8 Duke's application.

9 Q. Okay. Now, on page 3 of your testimony,
10 you indicate that in Duke's prior ESP the case that
11 we're in -- the ESP that's in place right now, that
12 Duke made several market development program
13 recommendations; is that correct?

14 A. Yes.

15 Q. And then you indicate that Duke did not
16 put forth new plans in the current application,
17 correct?

18 A. Yes.

19 Q. Are you aware of any requirement that
20 Duke was supposed to put forth any new programs as
21 part of its ESP proceeding?

22 A. So state policy is to promote
23 competition, robust competition, and a diversity of
24 supplies and suppliers. That is the policy goal of
25 all default service plans and these programs seek to

1 foster those goals. And as I said before, in Duke's
2 application they bring up the robustness of the
3 competitive market themselves and they seek to foster
4 a robust competitive market. These programs look to
5 foster Duke's goals and the State's policy goal.

6 Q. But to the extent that Duke did not
7 mention either program, am I correct that Duke
8 supported the robustness of its Choice program
9 without those two items?

10 A. I'm not sure I understand your question.

11 Q. Duke's testimony in this case supports
12 its position that its electric competitive market is
13 robust, correct?

14 A. Yes.

15 Q. And Duke supported its position that its
16 robust without mentioning the Enroll From Your Wallet
17 or the MEP programs, correct?

18 A. Yes. And what I would say is, while I
19 have a deep amount of respect for Duke and their
20 knowledge of competitive markets, as the retail
21 energy suppliers in the state, we have a particular
22 expertise on competitive markets and their
23 robustness, and our testimony seeks to further the
24 competitive markets, that there can be improvements
25 and that's what we have in our testimony.

1 Q. Is the Duke electric market robust today?

2 A. I would say that the Duke market could be
3 more robust in that 50 percent of the folks not on
4 competitive products, retail residential customers
5 not being on competitive products is not robust.

6 Q. Okay. I understand you're saying it
7 could be more. Is it robust today?

8 A. So I would say no. I would say to have a
9 robust market, you would need more than 50 percent of
10 residential customers shopping.

11 Q. So if Duke's market is not robust today,
12 it would be your position that the Commission should
13 reject the ESP because Duke hasn't put forth any
14 modifications that would make it more robust; is that
15 correct?

16 A. No. I would propose that the Commission
17 accept RESA's proposals to further enhance
18 competition.

19 Q. Okay. I'm not looking at the RESA's
20 proposals right now. I am basing it just on the
21 company's application. If the Commission looks at
22 the application, in your opinion the company's
23 application does not support a robust market,
24 correct?

25 A. That wasn't -- that wasn't the way I

1 answered your question. Your question to me was is
2 Duke's market currently robust and I answered no.

3 Q. Okay. So my follow-up question is if the
4 market is not robust today, and Duke's application
5 does not put forth any modifications to make it more
6 robust, would it be your recommendation that the
7 Commission, if -- if faced with "Accept the
8 application because it's robust, or reject it because
9 it's not," would your recommendation be to reject the
10 ESP because it's not robust?

11 A. Joe, the Commission isn't faced with that
12 dichotomy. You are asking the Commission to accept a
13 situation that doesn't exist. RESA has proposed
14 proposals to make the market more robust.

15 Q. Okay. I will put it in terms of a
16 hypothetical. If the PUCO is faced with a choice
17 that based on Duke's application alone, they can
18 approve the ESP because there is robust competition
19 or deny it because there is not robust competition,
20 is it your recommendation then the Commission would
21 be better off rejecting the ESP because it does not
22 support robust competition?

23 MR. PETRICOFF: Your Honor, I object to
24 the question. The hypothetical is premised on the
25 theory that there is a legal requirement that the --

1 that the Commission basically deny all applications
2 in toto if there is a problem or two, and there has
3 been no showing, either legally or factually, that is
4 the case; yet, that is an underlying premise of the
5 question.

6 MR. SERIO: Your Honor, we've had about
7 100 hypotheticals throughout the proceeding, and I
8 think mine is consistent with the hypotheticals, and
9 I in no way said to him that the Commission would be
10 legally precluded. I said under the hypothetical, if
11 their choices are A or B, would you recommend A or B,
12 and that's the answer I am trying to get.

13 EXAMINER PIRIK: I think Mr. Petricoff is
14 asking that you have a further assumption that's a
15 requirement in your hypothetical, if it's a
16 hypothetical.

17 MR. PETRICOFF: Your Honor, it goes
18 further than that. The hypothetical itself saying,
19 you know, it's the -- the classic wall switch
20 analogy. Is the Commission's own -- in order for
21 that question to be valid there has to be the premise
22 that the Commission has to either accept it in toto
23 or reject it in toto and that's been the answers up
24 to now, the witness has said that's not the case. So
25 the hypothetical is improper.

1 EXAMINER PIRIK: I will allow you to
2 rephrase.

3 Q. (By Mr. Serio) If the Commission chose to
4 make a decision solely upon Duke's application, it's
5 your recommendation that Duke's application does not
6 support a robust market because it doesn't propose
7 any new changes to the Choice program, correct?

8 A. So if I am understanding your new
9 question, you're not asking me to play the role of
10 the Commission to accept or reject the application,
11 you're asking me specifically on the question of
12 robust markets, does Duke's application support a
13 robust market. I think that question has been asked
14 and answered, and I said Duke's current market is not
15 robust.

16 Q. So your recommendation to the Commission
17 would be based on Duke's application alone, you
18 should reject the ESP because it does not support a
19 robust market?

20 A. That was specifically the opposite of
21 what I said. So you -- your second question wasn't
22 about the Commission's acceptance or rejection. It
23 was about robust markets. So the hypothetical that I
24 object to is that the Commission has one dichotomy,
25 one or two choices to accept or reject. The question

1 on robust markets, I asked -- you asked and I
2 answered. The answer was current markets are not
3 robust.

4 Q. My follow-up question that you still
5 haven't answered was: So is it your recommendation
6 to the Commission that based on the application alone
7 that it reject the ESP because it does not support a
8 robust market?

9 A. Again, you are asking me to be a
10 Commissioner, and the Commission has to weigh the
11 application in its entirety, not just whether or not
12 markets are robust or not robust.

13 MR. SERIO: Your Honor, the word
14 "Commission" was not in the question. I asked him if
15 his recommendation would be. And he is still not
16 answering me.

17 EXAMINER PIRIK: I think he's
18 appropriately answered in his responses.

19 Move on, Mr. Serio.

20 Q. Is it your position that if a customer is
21 not on Choice, that that means, by definition, they
22 have not taken advantage of the retail energy market?

23 A. I would say that it's not that simple of
24 a question. I would agree that certain customers can
25 choose not to choose, so make an informative choice

1 not to select a supplier.

2 I would say my experience is the vast
3 majority of the case -- the vast majority of the time
4 that's not the case. The vast majority of the time
5 customers who haven't shopped are either -- aren't
6 well educated about Customer Choice in Ohio or don't
7 know much about their options or aren't quite
8 trustful of Competitive Choice yet.

9 Q. Are you done?

10 A. Yes.

11 Q. Okay. The last thing you just said, so
12 if a customer is not trustful of Choice, then that
13 means somehow that they haven't taken advantage of
14 retail markets.

15 A. I didn't say that.

16 Q. You used the word "trustful."

17 A. Yeah. And what I meant by that is the
18 customer -- say a customer is not trustful of Choice,
19 that mistrust might come from a lack of education.

20 So my prescription for that would be that
21 we enhance education in ways such as the Market
22 Energy Program would, so that those customers that
23 are distrustful could learn more about the
24 competitive market and could learn that competitive
25 retail energy service providers are registered with

1 the utilities, are bonded with the utilities, have to
2 show their standing with the Utility Commission, are
3 semi-regulated in certain ways at the Commission, and
4 are trustful partners, trustworthy partners.

5 Q. If I am a customer and I get brochures in
6 the mail, I open them, look at them, decide I don't
7 want it and throw it away, does that customer
8 participate in Choice?

9 A. They haven't participated in a Choice
10 program. They are making a choice not to entertain
11 the offer.

12 Q. And if they choose not to entertain the
13 offer, have they taken advantage of the retail energy
14 market?

15 A. If the offer, like, for example, is for a
16 guaranteed discount to their current service, if they
17 are on default service, no, they haven't taken
18 advantage of the rewards that Choice brings.

19 Q. So if a customer just doesn't want to
20 participate, even if they get a guaranteed savings,
21 you're saying that that means they didn't take
22 advantage of something and they should be forced to
23 take advantage of it?

24 A. No, I didn't say that.

25 Q. Okay. So if that customer chooses --

1 A. So can I clarify?

2 Q. Sure.

3 A. What I said was if a customer chooses no
4 to do -- not to enroll with the program -- chooses
5 not to enroll with the program that guarantees them a
6 discount, then they haven't taken advantage of
7 Customer Choice. Now, I didn't say anything about
8 forcing them to choose or a compulsory choice.

9 Q. But in that instance they have made a
10 conscientious decision, correct?

11 A. Yes.

12 Q. Okay.

13 A. And what I would say is that decision was
14 borne out of a lack of information because I think
15 the Consumers' Counsel would agree that paying less
16 for energy is a good thing.

17 Q. Have you done any surveys of customers to
18 show why they do or don't take advantage of Choice
19 offers that are put out there?

20 A. As a member of a competitive retail
21 supplier, I know from my experience with customers
22 that many customers have not chosen because they
23 don't know much about Choice.

24 Q. Is there anything attached to your
25 testimony that shows the results of customer surveys,

1 hard numbers, answers and questions, so we could
2 determine for ourselves or the Commission can
3 determine what customers do and don't understand?

4 A. No surveys are attached to my testimony.

5 Q. Is there any evidence in the record that
6 you're aware of that shows what customers'
7 understanding is of Choice and why they do or don't
8 take advantage of the retail energy market?

9 A. I would say no, but I would also say
10 there is no evidence in the record that say that
11 customers are affirmatively, as you say in your one
12 hypothetical example, choosing not to shop, that they
13 are not just sliding the offer, in your example,
14 under the Giant Eagle offers or Kroger offers that
15 they are not paying attention to. There is no
16 evidence to show that people are conscientiously,
17 affirmatively choosing not to entertain choices
18 offers. So the negative is true in both directions.

19 Q. Now, you're critical of what you would
20 call "customer inertia" because customers choose not
21 to do nothing and just stay on the standard offer,
22 correct?

23 A. Can you rephrase the question or repeat
24 the question?

25 Q. Sure. Do you know what inertia is?

1 A. Yeah.

2 Q. If I am a customer and I do nothing and I
3 stay on the standard offer, would you say in that
4 situation the customer is just -- it's just inertia
5 causing the customer to stay on the standard offer
6 and they have done nothing to show that's what they
7 really want; is that your position?

8 A. One more time. I am trying to understand
9 the question. Are you asking me to -- what's my
10 position on each customer's particular thought?

11 Q. Are you critical of customers not
12 participating in Choice because, by doing nothing,
13 they stay on the standard offer?

14 A. I don't understand what you mean by
15 "critical." Am I criticizing or am I --

16 Q. Yes.

17 A. -- antagonistic towards?

18 Q. Yes. Are you saying that's why they fail
19 to take advantage?

20 A. No, no. I would say that those customers
21 are well-meaning, upstanding individuals, smart
22 people, but they don't know enough about Customer
23 Choice, and that it's our responsibilities as policy
24 makers in a -- to educate folks and let them know the
25 benefits of Choice.

1 Q. Customers have a right to be educated if
2 they want to be, correct?

3 A. Sure.

4 Q. Can customers choose they don't want to
5 be educated about something?

6 A. Yes, the customer can choose to be
7 uneducated.

8 Q. And does the Commission have numerous
9 education programs out there about Choice?

10 A. The Commission does have education
11 programs, yes.

12 Q. And has not the Consumers' Counsel done
13 education on Choice in the past?

14 A. I couldn't speak to the Consumers'
15 Counsel.

16 Q. Have the marketers done education for
17 customers in the past?

18 A. Yes.

19 Q. And they, in fact, do a lot of that
20 today, correct?

21 A. Yes.

22 Q. So if a customer wants to be educated
23 about Choice, there's numerous avenues out there
24 today that the customer can go to to be educated by
25 Choice, correct?

1 A. Yes. But what I would say is that there
2 is no education program currently in the market that
3 goes into such detail or allows the customer to
4 participate in Customer Choice in a safe way similar
5 to that that we're proposing with the Market Energy
6 Program. The Market Energy Program allows customers
7 to participate in the MEP as a participant.

8 So you're a participant in Choice.
9 You're learning about Choice. You learn what happens
10 when you enroll with the supplier. You learn that
11 suppliers are trusted entities, and you do it in a
12 way that holds no penalties for you. You are
13 guaranteed a discount. There is no termination fees
14 for leaving the program. There is no termination
15 fees for leaving a renewal product that stems from
16 the program. There's no education from the PUCO,
17 from the OCC, from marketers, or utilities today that
18 allows customers to learn by participating.

19 Q. Is there anything that precludes
20 marketers from offering products today that are
21 guaranteed savings off the standard offer?

22 A. No.

23 Q. Is there anything that precludes them
24 from having the identical terms of 6 months and
25 3 percent off as proposed in your MEP?

1 A. No.

2 Q. Is there anything that precludes you from
3 offering the same no termination fees, you can leave
4 whenever you want, et cetera, et cetera, all the
5 different specifics that are in the MEP?

6 A. No. But what I would say is the key
7 difference -- and this is something that's
8 important --

9 MR. SERIO: Your Honor, before he goes
10 on, I asked him if there was anything precluding him.
11 If he wants to get into elaborating that's something
12 counsel can do on redirect.

13 EXAMINER PIRIK: Please allow him to
14 finish his answer.

15 A. No. But what I would say in response to
16 that is a lot of customers in our experience, in the
17 experience of retail suppliers, don't know enough
18 about suppliers quite yet, so they don't trust
19 suppliers completely. And what we've heard from
20 customers is that there is a fear that if you join
21 the supplier, that potentially Duke would look at you
22 different or that your electric utility might not
23 turn your power on as quickly as they turn other
24 folks' power on, which isn't true.

25 But if you allow a customer to

1 participate in Choice in a way that we've proposed,
2 and what we propose in MEP is that the utility is the
3 entity that introduces them to Choice directly in
4 participation. That allows the customer to learn
5 that suppliers are trusted by utilities and that
6 Customer Choice is a safe way to save money in Ohio.

7 Q. It's your testimony that the MEP has a
8 guarantee of no harm to customers, correct?

9 A. Yes.

10 Q. Okay. But if a customer signs up under
11 MEP, at the end of six months they do nothing
12 affirmatively to get off the program, are they
13 automatically renewed?

14 A. So that -- that detail isn't in the MEP
15 program. So what happens on renewal isn't laid out
16 in the program itself. It's one of the things that
17 we, in our testimony, leave for the stakeholder
18 group. But what I would say is renewal will be dealt
19 with in accordance with all Ohio law.

20 Q. And Ohio law today permits renewal,
21 correct?

22 A. Yes.

23 Q. So if nothing else is done under your
24 proposal at the end of six months, if a customer does
25 not affirmatively get out of the program, they could

1 be automatically renewed, correct?

2 A. They could be renewed in the CRES but not
3 renewed in the program.

4 Q. And if they are renewed by the CRES, is
5 there any guarantee the renewal would be at a
6 guaranteed price off the standard offer?

7 A. No, there is no guarantee, but there is
8 no guarantee to the opposite, the renewal offer could
9 be a bigger discount renewal.

10 Q. But without a guarantee that the customer
11 is going to get a discount off of the SSO, it is
12 possible that the renewed rate would be equal to or
13 greater than the SSO, correct?

14 A. Or -- yes, or less than the SSO. But
15 what I would say, Joe, is your question, your
16 original question was about the MEP and would the
17 customer be harmed by participating in the MEP. The
18 answer is no. The MEP program itself causes no harm
19 to customers.

20 Q. But if they don't realize to get out of
21 MEP, they could be auto-renewed into a CRES offer
22 that was above the standard offer and, in that case,
23 they could lose money and they wouldn't know it until
24 they got a bill after the fact showing they paid more
25 than they had to, correct?

1 A. I would say that's not true. Under the
2 MEP program as we have it, we don't know the answer
3 to that. The answer to that question is we'll have
4 to see what the stakeholder group comes up with. I
5 am really hoping that OCC participates if this is
6 approved, but we don't know the answer to that. All
7 we know -- all we know from the MEP program proposed
8 today is whatever that renewal product is, the
9 customer is allowed to leave that product without a
10 termination fee.

11 Q. But the customer wouldn't leave the
12 product until after they got a bill for the time
13 period that they were under the renewal, correct?

14 A. I couldn't speak to what customers would
15 do, Joe. The question -- so the question, again,
16 that you're asking can't be answered today because
17 there is no process for renewal determined by the
18 stakeholder -- the stakeholder group. So what
19 happens on renewal, we can't assume one way or
20 another. All we know about renewal is that there
21 cannot be a termination fee.

22 Q. So you've made no proposal, as part of
23 the MEP, that any renewal product would guarantee the
24 customer would not end up paying more than the
25 standard offer, correct?

1 A. That is not in the proposal, correct.

2 Q. And without the guarantee that they
3 wouldn't pay more, it's possible they could pay more.

4 A. I would say yes, but it's also possible
5 that they could pay even less.

6 Q. Now, the Enroll From Your Wallet, if I
7 understand it correct, you're concerned that
8 customers don't have their account number handy and,
9 as a result, it's more difficult for them to enroll
10 in Choice, correct?

11 A. Yes. RESA considers it a barrier to
12 Choice that customers aren't allowed to -- well, that
13 customers have to have their account number with them
14 to enroll in a CRES product.

15 Q. Would you agree with me that because they
16 have to have their account number, it is more
17 difficult for a customer to be slammed because the
18 account number is the one thing that they have to
19 have in order to change from one product to another?

20 A. No. Honestly, I would say the opposite.
21 I would say it's more difficult -- it would be more
22 difficult to slam a customer if the identifier for
23 gaining -- for enrolling a customer was personal and
24 known only by that customer; whereas, the account
25 number is knowable by any CRES that ever served that

1 customer's account or that served a previous customer
2 at that same residence, or by anyone who happens to
3 could come in contact with their bill, or by any
4 supplier that served an aggregation in which that
5 account was located within.

6 Whereas, with a state driver's license
7 number, that's something that is particular to that
8 individual, that they know, that a customer typically
9 has with them, and it's personal to the customer. So
10 I would say it's more difficult to get that type of
11 information than it would be for a supplier to get an
12 account number.

13 Q. A driver's license never gets stolen or
14 lost, correct?

15 A. No. Driver's licenses get stolen or lost
16 from time to time.

17 Q. And when they get stolen or lost, other
18 people can get access to the driver's license number,
19 correct?

20 A. If a driver's license number is stolen
21 then the person who stole it could get the driver's
22 license number.

23 Q. And if it's lost, whoever finds it would
24 have access to that number, correct?

25 A. Yes.

1 Q. And a lot of times people are required to
2 give their driver's license number when they're
3 cashing checks or doing other things, correct?

4 A. And, Joe, I think you just made my point.
5 The reason why certain entities make you give the
6 driver's license number is because it's particular
7 and secure enough. Just like I pointed out with the
8 account number that there are security flaws, yeah,
9 there's security flaws with a driver's license
10 number.

11 And that's why the Enroll With Your
12 Wallet program, we don't say specifically what those
13 criteria should be other than the account number.
14 But the group -- the stakeholder group, once again,
15 the stakeholder group should identify maybe two or
16 three sets of values that are secure enough that we
17 can -- we can limit that type of behavior.

18 Q. Now, to the extent that you consider the
19 requirement of an account number to be a barrier to
20 entry, is there anything attached to your testimony
21 that shows any kind of economic analysis that
22 demonstrates that the requirement to use an account
23 number constitutes an effective barrier to entry?

24 A. No. But once again I would speak to the
25 experience of retail suppliers in the market, and

1 what my experience has been and what the experience
2 of other retail suppliers has been are that customers
3 often do want to sign up in places that aren't in
4 their home, but they don't have their account number
5 when they are with them. And so, wanting to sign up
6 and not being able to because you don't have your
7 account number with you is a barrier.

8 Q. Okay. My question to you is -- do you
9 understand a barrier to entry to be an economic
10 concern?

11 A. Yes.

12 Q. Okay. And when a party claims that
13 something is a barrier to entry, they generally
14 provide some type of economic analysis, correct?

15 MR. PETRICOFF: Your Honor, I am going to
16 object. There's been no foundation laid that in
17 order to make a proposal you have to have some type
18 of quantification survey or numbers or whatever is
19 required in order to have a study.

20 MR. SERIO: I asked him the question,
21 your Honor.

22 EXAMINER PIRIK: Overruled.

23 A. Can you repeat the question?

24 Q. Are you aware if there is any kind of
25 requirement that there be an analysis of some type

1 that supports a claim of an economic impact from a
2 barrier to entry?

3 A. I'm not familiar with any requirements
4 that we attach a survey with our testimony. But what
5 I would say is the Commission doesn't need to have a
6 survey to determine whether or not customers should
7 be able to sign up outside of their home. All the
8 Commission needs to know is whether or not it would
9 be a benefit to customers to sign up somewhere that's
10 not in their home and whether or not that can be done
11 in a safe, secure way.

12 Q. Your testimony says that requiring the
13 number is a barrier to shopping. Do you think that
14 the Commission can determine it's a barrier to
15 shopping without evidence that supports that it's a
16 barrier to shopping?

17 A. Yes.

18 Q. So you don't think the Commission has to
19 rely on evidence?

20 A. I think there -- I think there -- I think
21 in our testimony we amply show that not having your
22 account number with you is a barrier to enrolling
23 with the customer --

24 Q. Can you --

25 A. -- to enrolling with the CRES supplier.

1 Q. Can you show me in your testimony,
2 documentation that one single customer was not able
3 to sign up because they didn't have their account
4 number with them at the time?

5 A. There is no stats or survey in our
6 testimony, but it is a verifiable fact that if you
7 don't have your account number in Ohio, that you
8 cannot enroll with a CRES supplier.

9 Q. Right. But there's no fact that shows
10 that that actually ever happened, correct?

11 A. I would disagree with you. I would say
12 in my own customer experience I have been unable to
13 shop without my account number.

14 Q. Can you show me where in your testimony
15 it specifically says "I was not able to shop without
16 my account number"?

17 MR. PETRICOFF: Your Honor, at this point
18 I want to object on the basis this has been asked and
19 answered, and it's now, on the second basis, has
20 become argumentative.

21 EXAMINER PIRIK: Sustained.

22 Q. On page 6 of your testimony, line 18, you
23 use the word "too often." And can you quantify what
24 constitutes too often?

25 A. I would say in our experience as a

1 supplier, several times customers have indicated to
2 us they were unable to enroll because they did not
3 have their account number, and I would say that one
4 time is one time too many.

5 Q. The MEP program would be limited to new
6 customers, correct?

7 A. No. So define "new customers."

8 Q. You're asking me to define "new
9 customers"?

10 A. Right. So the MEP program, the folks
11 that are eligible for the MEP program are customers
12 that haven't shopped. So new customers are
13 eligible -- or, customers that aren't currently
14 shopping, rather. So new customers are eligible, but
15 they are not the only customers that are eligible.

16 Q. If a customer shopped once and is no
17 longer shopping, are they eligible for the MEP?

18 A. Yes. So line 14 and 15 of the testimony.

19 Q. So anyone that is not currently shopping
20 would be eligible for the MEP.

21 A. At line 15, yes.

22 Q. And MEP would propose a 3-percent
23 discount, correct?

24 A. Yes.

25 Q. In Pennsylvania is there a 7-percent

1 discount?

2 A. Yes.

3 Q. And the MEP in Ohio is for a six-month
4 period, proposed, correct?

5 A. Yes.

6 Q. And the Pennsylvania proposal is for a
7 12-month program, correct?

8 A. Actually, I'd like to amend my answer to
9 the previous Pennsylvania question. So, in
10 Pennsylvania, all the programs are administered by --
11 from utility to utility, so they are different. So
12 the term and the discount changes from utility to
13 utility.

14 The reason the Commission did that in
15 Pennsylvania and the reason they have that
16 flexibility is because markets are different and the
17 level of discount is important to both attracting
18 suppliers to participate and attracting customers to
19 participate. So I know that one of the programs is
20 at 7 percent and I know one of the terms is for 12
21 months, but I think the Commission has other programs
22 that aren't on the same terms.

23 Q. Did you propose the same 3-percent
24 discount in a six-month term for an MEP in the recent
25 AEP ESP proceeding?

1 A. Yes.

2 Q. Are the AEP and Duke service territories
3 the same?

4 A. Are they the same territory? No.

5 Q. Okay. Now, if someone signed up under
6 the MEP for a six-month period, is it possible that
7 six-month period would miss the peak of the winter
8 heating season or the peak of the summer cooling
9 season?

10 A. Yes.

11 Q. And if a customer signed up under the
12 MEP, is it possible they could sign up for a discount
13 that was less than other offers that the same
14 marketer was making under CRES offers?

15 MR. PETRICOFF: Your Honor, could I have
16 that question read back?

17 EXAMINER PIRIK: Yes.

18 (Record read.)

19 A. So you're asking me could there be offers
20 on the market that are lower than the MEP offer?

21 Q. Yes.

22 A. Yes.

23 Q. And if there's a lower offer out there,
24 then the customer could be signing up under a MEP
25 that was not the best offer at the time, correct?

1 A. So I disagree with that question. The
2 question indicates that there is a standard for best
3 offer. What I would say is each customer's risk
4 tolerances and personal -- personal desires are
5 different. So a customer makes choices based on
6 their own desire. So it's hard to identify what is
7 best. But what I would say is the MEP program offers
8 no harm to customers and that the worst-case scenario
9 for a customer enrolling in the MEP is that they get
10 a discount on their electric service for six months.

11 Q. And is it possible that the marketer
12 could have a six-month product out there that's
13 identical in all its terms and conditions to the MEP,
14 but offers an 8-percent discount that the customer
15 would lose out on because they signed up with the
16 MEP?

17 A. Yes. And I would say that customers that
18 the MEP is designed to attract are customers that
19 otherwise wouldn't know about any offers, and the
20 idea is to introduce the customer to shopping so that
21 they can go out and look around and see what choices
22 are best for them.

23 Q. Now, the MEP program would require the
24 company to actively engage the customer in
25 discussions about the benefits of Choice, correct?

1 A. Actually, that's not entirely true.
2 Under the MEP program, the company can contract with
3 a third party. There are other third -- there are
4 third-party entities in Pennsylvania that serve these
5 functions. Allconnect Ohio is one of those parties.
6 PPLSolutions has a company that firms -- performs
7 those functions.

8 And what that allows is for the company
9 to remove themselves from the conversation about
10 Choice, and a third independent party can have that
11 conversation with customers. So it's possible that
12 Duke in this case could perform those functions by
13 themselves. They could also hire a third party to
14 perform those functions.

15 Q. Okay. Let's look at the first option if
16 the company does it themselves. If the company does
17 it themselves and the company then has become
18 involved in the process of further education and
19 actually endorsing a Choice product to customers,
20 correct?

21 A. Could you repeat the question?

22 Q. If an EDU decides to do it in house
23 instead of getting a third party to do it, then they
24 have now become part of the process of additional
25 education or actually endorsing a competitive choice

1 product, correct?

2 A. I would say that the company -- I would
3 say the company would be endorsing the product
4 they're offering to them. I would say they would be
5 offering the product.

6 Q. So the company in no way would be
7 endorsing it?

8 A. So I consider "endorse" to be a marketing
9 term. I guess it depends on how you define
10 "endorse." If you consider endorse to be "This is
11 Duke's product," which it is not, then I would say
12 that Duke would not be endorsing the product, but
13 they would be offering it to customers.

14 Q. And to the extent the utility is offering
15 a product to customers, is it possible that customers
16 would get a false sense that somehow it's a better
17 product because the utility is offering it and not a
18 Choice provider?

19 A. Can you repeat the question?

20 MR. SERIO: Can you read that question
21 back, please?

22 (Record read.)

23 A. Again, I would object to the line of
24 questioning about better product, best product,
25 because that's up to each individual customer. What

1 I would say is the company would be offering a
2 product to customers that guarantee them a discount
3 and allow them to leave the product with no
4 termination fee.

5 Q. In your mind is there a benefit to the
6 customer being pitched a product by the utility
7 versus from the CRES?

8 A. Yes, yes. And I spoke to that a bit
9 earlier. Some customers that are reluctant to shop
10 are reluctant because they don't know much about
11 suppliers or are distrustful of suppliers for one
12 reason or another. And I think this offers them an
13 opportunity to learn from the utilities themselves
14 that the suppliers are trusted entities with them and
15 registered and certified with them.

16 Q. Okay. So a customer being pitched the
17 MEP product -- being offered the MEP product by the
18 utility, gives the customer a better sense that it's
19 a good product; is that correct?

20 A. Yes.

21 Q. Okay. So the utility encourages the MEP,
22 when I call, I sign up for the program, I have a bad
23 experience, I am going to turn around and be very
24 upset with the utility, so that results in the
25 utility getting a negative impact from the MEP

1 program, doesn't it?

2 MR. PETRICOFF: Your Honor, I am going to
3 object to the hypothetical. It's got no basis in
4 facts that have been presented in this proceeding.

5 MR. SERIO: Okay. We'll break it down,
6 your Honor.

7 Q. If a customer signs up and gets a MEP
8 offer, is it possible that the customer could have a
9 negative experience?

10 A. Monetarily there is no risk to the
11 customers on a cost basis. I can't imagine a
12 scenario where the customer could have a negative
13 experience, but is it possible? It's possible. I
14 can't imagine that scenario.

15 Q. Okay. Let's picture this scenario.
16 Customer signs up for a six-month MEP product, at the
17 end of the six months they get auto-renewed to a
18 product that's priced above the standard offer.

19 A. So that's not part of the MEP program.
20 Now, a customer is having a bad experience with
21 supplier on a supplier Choice product. That's not a
22 bad experience on the MEP.

23 Q. And does the customer at that point
24 understand the difference between the MEP program and
25 the CRES program?

1 MR. PETRICOFF: Your Honor, I am going to
2 object. What customer? There's been no foundation
3 for this.

4 EXAMINER PIRIK: Mr. Serio, please
5 clarify.

6 Q. If a customer calls an EDU, they call
7 Duke, they sign up for the MEP program, at the end of
8 the MEP program the customer gets auto-renewed if
9 they don't take affirmative action, correct?

10 A. That's not correct. Joe, once again,
11 those details aren't in the MEP program itself.
12 There's no detail for what happens on renewal. It
13 doesn't say that customers auto-renew at all in our
14 testimony.

15 Q. Since there is no reference to what
16 happens on auto-renewal, we fall back to the PUCO
17 rules, correct?

18 A. All of the -- all of the circumstances
19 are under the PUCO rules.

20 Q. And the PUCO rules allow auto-renewal
21 today, correct?

22 A. Yes.

23 Q. So if there's no prohibition to
24 auto-renewal, auto-renewal would occur at the end of
25 a six-month term, correct?

1 A. No. A CRES provider could choose not to
2 auto-renew. There's no guarantee of auto-renewal.
3 And so, Joe, this is what I would suggest even for
4 the hypothetical that I think you were driving
5 towards: To preclude confusion with Duke and the
6 customer and the CRES, the stakeholder group should
7 delineate a specific script that educates the
8 customers about the difference and that is specific
9 about renewal, when the term ends, what the customer
10 should look to do when the term ends, specific that
11 the customer is no longer in the MEP after six
12 months, and specific that this is not a Duke product
13 at all.

14 So it's important that the stakeholder
15 group take into account the hypothetical that
16 you're -- that you're proposing, but that scenario
17 isn't in the testimony.

18 Q. In a hypothetical, at the end of a
19 six-month term, a customer takes no affirmative
20 action to get out of his contract and the CRES
21 provider doesn't take action to terminate the
22 contract, then the CRES provider can auto-renew the
23 customer, correct?

24 A. That's also not true. It's not just
25 about not taking action. If the contract doesn't say

1 you can auto-renew, then you can't auto-renew.

2 Q. As you've proposed it, is there a
3 prohibition to auto-renewal in the MEP?

4 A. I haven't proposed a contract in the MEP.

5 Q. Are you testifying that there should be a
6 prohibition in an MEP contract?

7 A. I'm testifying there should be a
8 stakeholder group to discuss the terms of the
9 contract.

10 Q. So if the stakeholder group agreed there
11 should be auto-renewal and a customer gets
12 auto-renewed at a higher rate, would it be fair to
13 assume that the customer might not be happy about
14 getting renewed at a higher rate?

15 A. So we're assuming a hypothetical where --
16 where we have already had a stakeholder process to
17 delineate a contract, and I don't see that contract,
18 so to know what a customer's options are or what they
19 could do inside of a contract that doesn't exist is a
20 hard question for me to answer because there is no
21 contract. There is no stakeholder process that's
22 happened.

23 Q. It's equally difficult for the Commission
24 to rule on an MEP that they don't have any details
25 on, correct?

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1 A. I disagree. All the Commission needs to
2 know to affirmatively approve the MEP program as part
3 of Duke's ESP is that the MEP program is fair and
4 offers customers a guaranteed discount, that the MEP
5 program has no cost to customers, that the MEP
6 program, as we proposed it, is a proven program, and
7 that in Pennsylvania a similar program has offered
8 customers, 259,000 Pennsylvania residents a
9 guaranteed discount to their utility service, 259,000
10 in Pennsylvania.

11 And all the Commission needs to know is
12 that it's -- it's fair, it's cost-free, that
13 customers in a neighboring state to the amount of
14 250,000 have benefited, and that there will be a
15 process to delineate the next steps.

16 And also, after that process, the
17 Commission will have another chance to either approve
18 or deny parts of what the stakeholder group comes out
19 with. So the Commission twice gets to approve a
20 proven program.

21 Q. So you don't see any -- any -- any
22 scenario where the possibility exists that a customer
23 could sign up for MEP and have a contract that would
24 call for automatic renewal? Is that scenario
25 possible?

1 A. There is no contract, so all scenarios
2 are possible.

3 Q. Okay. So let's accept that under the
4 MEP, a customer can be automatically renewed, okay?
5 At the end of the six months, if the customer takes
6 no affirmative action and the CRES does not terminate
7 the contract, then the customer would be
8 auto-renewed, correct?

9 MR. PETRICOFF: Objection, your Honor.
10 Asked and answered.

11 EXAMINER PIRIK: I think that's true,
12 Mr. Serio. I'll allow a couple more questions, but I
13 think the witness has answered this question.

14 THE WITNESS: Can you read the question
15 back?

16 Q. Let me try this way: At the end of a
17 contract three things can happen. The customer can
18 affirmatively act to get out of the contract, the
19 CRES could terminate the contract, or it can be
20 auto-renewed, correct?

21 A. At the end of a contract, only things
22 that are allowable by the Commission rules can happen
23 and things that are determined in the contract can
24 happen. Those are the only things that can happen.
25 So whatever is determined in the contract, those

1 things can happen. What we don't have in front of us
2 is a contract.

3 Q. In any contracts that you're familiar
4 with, is there anything other than those three
5 options that can happen at the end of a term?

6 A. What were the three options again?

7 Q. The contract terminates because the
8 customer took affirmative action, the contract
9 terminates because the CRES terminated it, or the
10 contract is auto-renewed.

11 A. A customer can negotiate for a new
12 contract.

13 Q. Okay. That's the fourth -- or a customer
14 can negotiate for a fourth, but that takes an
15 affirmative action, correct?

16 A. All these steps take an affirmative
17 action.

18 Q. Auto-renewal requires affirmative action?

19 A. Yes. You have to consent in the first
20 contract to auto-renewal. That's an affirmative
21 action.

22 Q. And when the auto-renewal occurs, does
23 the customer, at that point in time, make any
24 affirmative assent that they want to continue with a
25 new contract on renewal?

1 A. They've already made affirmative consent
2 when they agreed to contract renewal.

3 Q. So they don't make a second affirmative
4 agreement at the time of the renewal, correct?

5 A. Do they agree to the contract they have
6 already agreed to again at a second time to the
7 contract? No.

8 Q. So if the customer doesn't agree a second
9 time to renewal, they could be renewed, correct?

10 A. If a customer agrees to contract renewal,
11 they can be renewed.

12 Q. Okay. The term for renewal was part of
13 the original contract, so the customer then could be
14 renewed, correct?

15 A. There is no contract in the MEP program
16 currently. What I would propose, Joe, is the OCC, if
17 they are really interested in what happens on
18 contract renewal, that if they also are interested in
19 customers receiving a guaranteed 3-percent discount
20 to default service if they otherwise chose to do
21 nothing, that the OCC participants in the stakeholder
22 process and shares those views with the Commission;
23 and that when the operational plan is finalized and
24 there is a contract and if there is a concern that
25 the OCC still has with renewal, that they bring it up

1 through the Commission when the Commission is asked
2 to approve the operational plan.

3 Q. Under current contracts today, if a
4 customer signs a contract that permits auto-renewal,
5 then, at the end of the term, that contract can be
6 renewed, correct?

7 MR. PETRICOFF: Objection, your Honor
8 asked and answered. We're approaching the
9 Groundhog's Day movie where we are just in a loop
10 going around with the same question.

11 MR. SERIO: I'm trying to get to a
12 different question, your Honor. I am trying to get
13 to where I tried to go originally, but I keep getting
14 responses that while there is no real contract, but
15 the Commission is going to determine it, and I can't
16 answer questions about the contract because we don't
17 know what the contract is.

18 I'm trying to explore what the Commission
19 is being asked to decide here and it seems like what
20 the MEP is after is a blank check, and I am just
21 trying to determine what the limits are.

22 MR. PETRICOFF: Your Honor, in response
23 to the blank check, we've had a lengthy discussion
24 here on all the possible contract options that could
25 happen with a contract that doesn't exist and there's

1 clear testimony that that is going to be in a
2 separate phase of the proceeding and the Commission
3 will deal with that at a second time -- at a later
4 time.

5 EXAMINER PIRIK: With regard to the
6 renewal issue, I think we've exhausted the questions
7 for this witness on that. If you have any questions
8 that are unique from that, you may proceed.

9 Q. (By Mr. Serio) The benefit of the MEP is
10 that it's a guaranteed savings, correct?

11 A. One of the benefits, one of the many
12 benefits.

13 Q. And if a customer ends up paying, at some
14 point, more than the standard offer, then that would
15 be seen from a customer's perspective as not being a
16 benefit, correct?

17 A. A customer will never pay more than the
18 SSO in the MEP program. The customer will always
19 receive a guaranteed discount.

20 Q. Have you put anything in your proposal on
21 the MEP that would specifically tell the customer at
22 the end of the original six-month term, you've now
23 gone from the MEP, that if you are renewed, you are
24 going to go to a totally different product. Is that
25 part of your proposal?

1 A. So we propose that a stakeholder group
2 comes up with a script, and in the script I would be
3 comfortable suggesting to the stakeholder group that
4 there should be specific language that there is going
5 to be a new product -- if there is going to be a new
6 product for a customer as part of the second product,
7 not an MEP product. I would support that script as
8 part of the MEP if the stakeholder group agrees to
9 it.

10 Q. And would you be comfortable if that
11 language included at that time a comparison between
12 the standard offer and the new term that was going to
13 be proposed to the customer?

14 A. I am sorry. Can you repeat the question?

15 Q. Would you be comfortable with that script
16 including specific language that required a
17 comparison between the price to compare at that time
18 and any new rate that the customer might get renewed
19 to?

20 A. So I would be comfortable fully preparing
21 the customers to have their next affirmative choice
22 in the competitive market. What I would say is the
23 stakeholder group should weigh the pros and cons of
24 over information and giving the customer the right
25 information to choose.

1 So I think the PTC is an important factor
2 in that choice, so the customer should definitely be
3 made aware of their PTC, but I wouldn't suggest
4 having an enormous amount of dialogue or confirmation
5 with the -- information with the customers that would
6 over-confuse them and dissuade them from making an
7 affirmative choice.

8 Q. Now, you talk about this process that
9 we're supposed to go through and it says the plan
10 should be developed by the staff with staff
11 discretion.

12 A. Can you show me what page?

13 Q. Page 12 of your testimony, lines 10 and
14 11.

15 A. Okay. Yes.

16 Q. Now, what happens if there's no
17 consensus?

18 A. So, again, line 11, "The final MEP plan
19 should be developed by Staff with Staff discretion
20 after attempting consensus with the stakeholder
21 group." So "attempting consensus." If there is no
22 consensus, the detailed MEP that the staff comes up
23 with to be delivered to the Commission for a
24 decision.

25 Q. Is there going to be some kind of formal

1 evidentiary proceeding involved there? Do you know?

2 Are you recommending that?

3 A. Not in my testimony.

4 Q. Well, would anyone that doesn't agree to
5 the consensus have an opportunity to present its case
6 in an evidentiary hearing to the Commission?

7 A. So I think the Commission would want to
8 balance the timing of getting a MEP proposal into the
9 market with having another evidentiary hearing, as
10 much as I like to testify in front of the Commission.

11 So what I would say is there's -- that
12 there should be some type of due process afforded.
13 Say, for example, hypothetically, if the OCC objects
14 to any type of MEP proposal regardless of the
15 contract terms, that they should be able to voice
16 those concerns in some type of process. I would not
17 propose an onerous litigating process that delays the
18 MEP even further.

19 Q. In such a proceeding, who would have the
20 burden to prove whether the MEP is reasonable or not?

21 A. So we -- so we went through this earlier.
22 I am not a lawyer and I am not an expert on burden of
23 proof. I don't know. I don't know is the answer.

24 Q. So you're suggesting the Commission have
25 some type of proceeding that you haven't defined the

1 parameters of, and that you haven't suggested to the
2 Commission in such a proceeding who would be required
3 to prove whether that plan, where there was no
4 consensus, was reasonable or not?

5 MR. PETRICOFF: Objection, your Honor.
6 Argumentative. You can ask him what he proposes, but
7 that question is just filled with negative comments.

8 MR. SERIO: No. It's filled with
9 condescendence, but I will go to another question.

10 EXAMINER PIRIK: Please try to reframe,
11 Mr. Serio.

12 Q. Mr. Pickett, you are familiar with the
13 purchase of receivables program, correct?

14 A. Are you talking -- are you speaking of
15 Duke's?

16 Q. Duke's purchase of receivables program.

17 A. Yes.

18 Q. And that's, in fact, one of the programs
19 that Duke implemented after the second -- as part of
20 the second ESP case, correct, the case that is in
21 place today?

22 A. Yes.

23 Q. And under the purchase of receivables
24 program, CRES providers get 100 percent of their
25 receivables purchased by the company, correct?

1 A. I don't think that's exactly the case. I
2 think some CRES providers are allowed to not
3 participate in the purchase of receivables program.

4 Q. I believe there's two, correct?

5 A. I couldn't speak to it.

6 Q. For any -- any CRES provider that
7 participates in the program, they get receivables
8 purchased at 100 percent, correct?

9 A. Yes.

10 Q. So to the extent they get receivables
11 purchased at 100 percent, that means that the CRES
12 experiences no bad debt, correct?

13 A. So what I would say is RESA already had a
14 witness on the purchase of receivables program, RESA
15 Witness Teresa Ringenbach. She's our expert witness
16 on POR and Duke in this case, and I would defer to
17 that witness.

18 Q. Purchase of receivables program is one of
19 the topics in your expertise in your responsibilities
20 in governmental and regulatory affairs, correct?

21 A. My testimony in this case is about Enroll
22 With Your Wallet and the Market Energy Program.

23 Q. I understand. But I'm permitted to ask
24 you questions about your expertise in areas of
25 responsibilities. Is purchase of receivables

1 something that is part of your responsibility in
2 governmental and regulatory affairs?

3 A. Do I handle our purchase of receivables
4 program, no.

5 Q. Are you familiar with the program as part
6 of your responsibilities?

7 A. Am I familiar, yes. Am I the RESA
8 witness in this case, no.

9 Q. Have you, in fact, presented arguments to
10 the Commission on behalf of either Integrys or RESA
11 in the past in support of purchase of receivables
12 programs?

13 A. I have never been a witness in a case
14 supporting purchase of receivable programs.

15 Q. As part of the retail market
16 investigation, Docket 12-3151, did you present
17 testimony to the PUCO regarding the purchase of
18 receivables program?

19 MR. PETRICOFF: Your Honor, at this point
20 I am going to object to the line of questioning. The
21 RESA witness on POR has come and the RESA witness on
22 POR has gone, and using this witness as a collateral
23 attack on the RESA position on POR should not be
24 permitted.

25 MR. SERIO: Your Honor --

1 EXAMINER PIRIK: Where are you going with
2 this, Mr. Serio?

3 MR. SERIO: I'm sorry?

4 EXAMINER PIRIK: Where are you going with
5 this?

6 MR. SERIO: I would like to confirm
7 everything I went through with Ms. Ringenbach with
8 Mr. Pickett. He deals with governmental and
9 regulatory affairs and POR as part of his
10 responsibilities. I think he should be required to
11 answer the same questions, no different than how
12 virtually every Duke witness has answered questions
13 about the OVEC issue, whether it was specifically
14 mentioned in their testimony or not.

15 EXAMINER PIRIK: I am going to sustain
16 the objection.

17 Q. To the extent that a utility call center
18 is involved in the MEP program, is it possible that
19 that would require -- that that could result in the
20 call center spending more time on individual calls?

21 A. Yes.

22 Q. And are you aware if, today, EDUs' call
23 centers are monitored for how long it takes them to
24 respond to calls from customers?

25 A. Yes.

1 Q. And if an EDU call center spends
2 additional time talking to customers, is it possible
3 that could mean that it takes longer for the call
4 center to pick up calls from other customers?

5 A. I think that's possible. I would also
6 suggest that the EDU look into third parties to
7 administer the MEP. One thing that's important as
8 part of the MEP program that isn't in the testimony
9 is that the call center would not be required to
10 offer the MEP during times of emergencies or outages.
11 So the key time wouldn't be when, my understanding
12 is, the utility call centers are particularly busy.

13 Q. As part of the MEP, would you recommend
14 the Commission track any cost savings or negative
15 impact from customers participating with the MEP or
16 resulting contracts that come about as a result of
17 auto-renewal from the MEP?

18 A. So in our testimony we propose that the
19 Commission evaluate the use and effectiveness of the
20 MEP on an ongoing basis. We ask that Duke submit
21 quarterly reports to the Commission about CRES
22 providers and participation levels. One of the --
23 one of the key things I think they should do, I think
24 it's a good idea there, Joe, is cost savings to
25 customers. I agree with that.

1 Q. Whether it's cost savings, or whether the
2 opposite, that there is no cost savings, correct?

3 A. So that's -- under our program we're
4 proposing a guaranteed discount.

5 Q. Would you agree that the impact of
6 auto-renewals from customers that originally signed
7 up on MEP, if auto-renewals are approved, should be
8 part of such cost-savings conversations?

9 A. So I would -- in our proposal, the
10 quarterly study is on the MEP program, not on other
11 Choice products.

12 Q. So you would only look at that initial
13 six-month term and you wouldn't look at what happens
14 to any customer after that initial six-month term?

15 A. I would say that the reports on the MEP
16 program should be about the MEP program.

17 Q. And not the fallout from the MEP program.

18 A. I would say that renewal products are not
19 MEP products and that the report is about MEP
20 products.

21 Q. But if a customer never signed up with
22 MEP, they might never -- let me try wording it
23 differently.

24 If a customer stays on the standard offer
25 and never goes to the MEP or Choice, they never face

1 the situation where they get auto-renewed as a result
2 of a MEP contract, correct?

3 A. There is no construct right now for
4 renewal. There is no auto-renewal in any contract
5 now for any MEP program. There's no MEP program now.
6 So your hypothetical doesn't exist. In your
7 hypothetical, if there is a stakeholder process that
8 doesn't allow renewal, then there is no renewal
9 product to discover.

10 Q. Okay. Let me ask a different question.
11 On page 5 of your testimony you talked about the
12 barrier to shopping. Has there been any Public
13 Utilities Commission in the United States issue a
14 decision that said requiring a utility account
15 number, in and of itself, is a barrier to shopping in
16 Choice?

17 A. So I would say partly yes. So the
18 Pennsylvania Commission, in 2013, ordered all
19 utilities to have a look-up mechanism, similar to the
20 one we are proposing in Duke, for suppliers to
21 receive customer account numbers through a look-up
22 process.

23 Q. Did the Commission --

24 A. And as part of that decision, they
25 inherently acknowledge not having the account number

1 as a barrier and not having access to signing up with
2 a CRES without the account number in a public place
3 as a barrier.

4 Q. Okay. Let me break it into two parts.
5 So in that order, did the Pennsylvania Commission
6 specifically say requiring an account number is a
7 barrier to entry?

8 A. I can't recall every letter of that
9 order, but I could look it up and get back to you.

10 Q. Other than Pennsylvania, has any other --
11 the other 49 commissions indicated that requiring an
12 account number is a barrier to shopping?

13 A. I couldn't speak for every commission in
14 the United States. I know that the issue has been a
15 topic in various commissions.

16 Q. To the commissions that have considered
17 it, have any of them, other than Pennsylvania, issued
18 an order that said relying on the account number is a
19 barrier to shopping?

20 A. I can't say. Are you saying other than
21 Pennsylvania?

22 Q. Yes, other than Pennsylvania, are you
23 aware of anybody that has said that?

24 A. I can't say. I would also remind -- I
25 would also remind you that most states in the United

1 States do not have customer Choice for retail
2 customers. So your example of 50 is a dichotomy;
3 that's kind of a misnomer.

4 Q. Okay. For the states that have shopping,
5 other than Pennsylvania, are you aware that any -- of
6 any of those Commissions, however many or few there
7 are, have any of them issued an order that said
8 requiring an account number is a barrier to entry?

9 A. So I couldn't -- put it this way: I
10 couldn't tell you all of them have -- any of them
11 have it and I couldn't tell you that all of them have
12 it.

13 Q. Can you tell me if any of them have it?

14 A. Pennsylvania.

15 Q. Other than Pennsylvania?

16 A. So I couldn't speak to the rest. They
17 all might have or they all might not have.

18 MR. PETRICOFF: Your Honor, this has been
19 asked and answered.

20 EXAMINER PIRIK: Sustained.

21 Q. The Commission has established a working
22 group as a result of the retail market investigation,
23 correct?

24 A. Yes.

25 Q. That's the 12-3151 docket?

1 A. Correct.

2 Q. And does that working group give CRES
3 providers an opportunity to raise the Market Energy
4 Program?

5 A. So the Commission asked -- I believe the
6 Commission asked the work group to look at various
7 competitive interests. They didn't mention this
8 specifically.

9 Q. Is there anything in the Commission order
10 establishing the working group that precluded the MEP
11 from being discussed as part of the 12-3151 working
12 group?

13 A. Not precluded, yes. Or, I agree with
14 you. I don't know if I should say "yes" or "no," but
15 I agree with your statement.

16 MR. SERIO: Well, since you agreed with
17 me, I am going to have to end it on that.

18 Thank you, your Honor.

19 THE WITNESS: That's what I should have
20 done.

21 EXAMINER PIRIK: Ms. Kyler?

22 MS. KYLER-COHN: No questions.

23 EXAMINER PIRIK: Mr. Olikier?

24 MS. OLIKER: No questions.

25 Mr. Hart?

1 MR. HART: No questions.

2 EXAMINER PIRIK: Duke?

3 MS. KINGERY: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Ms. Kingery:

7 Q. How are you this morning, Mr. Pickett?

8 A. Doing just fine. Good morning.

9 Q. You talk in your testimony about the
10 percent of various classes of customers who have not
11 shopped from Duke Energy Ohio territory, don't you?

12 MR. PETRICOFF: Do you know the cite,
13 Counsel?

14 MS. KINGERY: Yes. I believe page 3.

15 A. Yes. So we assigned 50 percent
16 residential and 40 percent of commercial.

17 Q. And let's talk about the residential
18 first. Is that a percentage that reflects load or
19 customer account?

20 A. Customer account. I looked at the
21 Commission's second quarter report and I think the
22 latest numbers was 51 percent of customer account.

23 Q. And on your commercial percentage, was
24 that customer account or load?

25 A. I don't recall. But I'm assuming

1 customer account once again. I think it's customer
2 account.

3 Q. And I believe we already have
4 administrative notice of the shopping statistics page
5 on the Commission's website. Are you aware,
6 Mr. Pickett, that the commercial load shopping
7 statistics for Duke is more than 80 percent?

8 A. For the load and not customer account?

9 Q. Yes.

10 A. Yes. I think that's true.

11 Q. And do you have any evidence looking at
12 these customers that you're -- both the commercial
13 and the residential that you note are not shopping,
14 why they have not shopped?

15 A. So RESA suppliers have a vast experience
16 in retail markets in the competitive states in
17 America, and some of those reasons that we've come
18 into contact with customers is because a lot of
19 customers aren't educated about Choice and also
20 because some customers, when they are approached by
21 Choice, don't have their account numbers with them,
22 so that's two things we did identify. Do we have
23 a -- a reason for each customer why they haven't
24 shopped? No. Not for each individual customer.

25 Q. How about in your experience, not RESA's

1 experience?

2 A. Mine as an individual?

3 Q. Yours in the industry, working -- you
4 worked with Integrys.

5 A. Yes, yes. I would say it's a similar
6 experience. A lot of individuals in Ohio don't know
7 much about Choice, and in my experience and I've run
8 into customers before who don't have their account
9 numbers with them who would like to shop.

10 Q. Have you -- how many customers have you
11 interviewed in Cincinnati?

12 A. I haven't interviewed many customers in
13 Cincinnati, any customers, I don't think. I have
14 spoken to customers in Cincinnati but interviewed,
15 no.

16 Q. I believe you said earlier, speaking with
17 Mr. Serio, that there is no testimony in the record
18 that customers are not engaged. Did I hear that
19 correctly?

20 A. I said a lot to Mr. Serio. So -- repeat
21 the question. If there's no --

22 Q. I believe you said that there was no
23 testimony in the record that customers are not
24 engaged.

25 A. No. So I think what I said was we don't

1 have -- he was asking me for statistics and a survey
2 or study that we've done. I said we didn't have that
3 in our testimony, but our testimony speaks that
4 certain customers are engaged and aren't educated to
5 the extent that we think it consequence --
6 constitutes a robust market.

7 Q. And have you been here in the hearing
8 room for all of the prior testimony?

9 A. No. I missed it.

10 Q. That's too bad. So you were not here,
11 for example, for Mr. Higgins' testimony, were you?

12 A. No.

13 Q. Okay. Are you aware of how Duke Energy
14 Ohio's price to compare compares to the other CRES
15 offers that are out there on the Apples to Apples
16 chart?

17 A. So the offers on the Apples to Apples
18 chart change frequently, so to stay abreast of that
19 on a daily basis would be quite difficult.

20 Q. Have you reviewed, any time in the last
21 month, what other -- what offers might be out there?

22 A. No.

23 Q. But you work for Integrys, correct?

24 A. Correct.

25 Q. And are you aware of Integrys's current

1 offers in the Duke service territory?

2 A. So Integrys has a plethora of current
3 offers, some that are posted on the Apples to Apples
4 chart, some that are not posted, some that are
5 particular for groups. I couldn't speak to that
6 offer today because, like those other offers, they
7 change quite frequently with the market.

8 Q. And I believe we also have taken
9 administrative notice of the Apples to Apples page.
10 And would it surprise you -- well, first of all, do
11 you know what Duke Energy Ohio's price to compare is
12 currently?

13 A. So my understanding of Duke Energy Ohio's
14 price to compare is that it fluctuates from customer
15 to customer, so I think it would be impossible for me
16 to know what it would be for any particular customer,
17 but if you're going to give me an example of an
18 average customer, I would be willing to entertain it.

19 Q. Okay. Would you take it, subject to
20 check, that the current price to compare for an
21 average residential customer is 6.3 cents?

22 MR. OLKER: I'm sorry. I object. Could
23 we add some more parameters to that, please?

24 EXAMINER PIRIK: Could you clarify,
25 Ms. Kingery?

1 MS. KINGERY: Give me just a moment.

2 Q. That number, subject to check, would be
3 for a typical residential customer taking a thousand
4 kilowatt hours a month.

5 A. I'm not -- I wouldn't know.

6 Q. Okay. Would you take it, subject to
7 check, that it's 6.3.

8 A. Subject to check.

9 Q. Okay. Thank you.

10 And looking at the Integrys offers on the
11 Apples to Apples site today, and I recognize you are
12 here for RESA and this is only an example, the
13 current offers are 7.74 cents per kilowatt hours for
14 6 months, fixed; there's a 12-month fixed price at
15 7.49; and a 24-month fixed price at 7.24.

16 MR. PETRICOFF: Your Honor, at this point
17 I would like to object. First, the witness is a RESA
18 witness, and unlike Ms. Ringenbach or Mr. Campbell,
19 his company has not intervened, so I think it's
20 improper to bring his individual company's offers
21 into the record at the moment. They are not parties.

22 And then, secondly, I don't think a
23 comparison can be done on the offers unless you went
24 through and had all the information -- assuming I
25 don't get sustained on this -- if you are going to

1 talk about offers, you have to talk about what the
2 terms are and how that compares and what the term
3 would be of the -- of the standard service offer and
4 what that -- how that would compare over the time of
5 projection of that.

6 MS. KINGERY: And, your Honor, all I am
7 trying to do here is talk to the witness about the
8 fact that there may be other reasons why people
9 choose not to shop besides the fact that they simply
10 aren't engaged and don't know enough. It may be that
11 they would prefer the price offered under the SOS. I
12 can talk about an IGS offer which is -- would avoid
13 the Integrys problem.

14 MR. SERIO: Your Honor, I would like to
15 weigh in on this. To the extent that Ms. Ringenbach
16 was a witness, she wasn't the witness on MEP, so we
17 get -- we get to cross this witness as to this topic,
18 but this witness isn't a member in the proceeding.
19 They don't have a single witness that talks about the
20 MEP who you can ask about the Apples to Apples chart,
21 under counsel's objection, and that would be
22 inherently unfair to the other parties in the
23 proceeding.

24 MR. PETRICOFF: Your Honor, if I could be
25 heard on that. What it would be doing is presenting

1 the proper focus. The proper focus here is how does
2 the SSO price compare with the MEP price. That's a
3 very good question. That's a very proper question.
4 Asking him to compare it to Integrys's or IGS's or
5 anyone else's offer is outside the scope because
6 we're not here to discuss what those offers are. We
7 are only here to discuss the MEP, that's the scope of
8 the testimony.

9 MR. OLIKER: I would say Mr. White has
10 already testified and I believe the record reflects
11 that the IGS offer is right around the PTC and below
12 the PTC, so those questions would be better for
13 Mr. White. And to the extent we are going to go to a
14 different witness, I don't think it's appropriate for
15 this witness.

16 MS. KINGERY: And if I could say one more
17 thing. This witness is advocating the MEP on the
18 ground that he says that customers are not making
19 appropriate choices in the marketplace, they're not
20 engaging in Customer Choice, and he proves that by
21 saying they should be because the price would be
22 lower, they would be getting a good deal.

23 So I'm trying to talk about what the
24 reality is that the customers are looking at, and
25 that is, as you would see from the Apples to Apples

1 chart, that there are many CRES offers out there that
2 are higher than the current price to compare for
3 Duke.

4 EXAMINER PIRIK: Okay. Is this on?

5 MS. KINGERY: We can hear it.

6 EXAMINER PIRIK: You can hear it?

7 MR. PETRICOFF: The light's not on.

8 EXAMINER PIRIK: The light is on down
9 here, that's why I'm confused. I can't tell if it's
10 on or not.

11 MR. PETRICOFF: We hear you.

12 EXAMINER PIRIK: I think with regard to
13 what Mr. Petricoff said as far as there being a whole
14 lot of other parameters with regard to items that are
15 on the Apples to Apples chart, I think that's very
16 pertinent for the question at hand.

17 If you are asking it in a general sense
18 and you are asking the witness to generally talk
19 about that just as a comparison, then, you know, I
20 will allow the question, but I think you have to be
21 really careful about the breadth of what you are
22 asking.

23 MS. KINGERY: Thank you, your Honor.

24 Q. (By Ms. Kingery) Mr. Pickett, would you
25 agree with me that price is an important factor as

1 customers choose where to get their generation
2 service?

3 A. Yes. And I would say that's why in the
4 MEP program, the price would be a 3-percent discount
5 to the PTC regardless of what CRES providers are
6 posting on Apples to Apples.

7 Q. And would you agree that as the
8 Commission looks to see how involved customers are in
9 the shopping program overall, it should take into
10 account that some people are choosing not to go to a
11 CRES provider because they like the price being
12 offered by the utility?

13 A. I would say -- can you repeat the
14 question one more time? I'm sorry.

15 Q. You're proposing MEP is advisable because
16 not enough people are engaged in Choice, correct?

17 A. Yeah.

18 Q. Let me finish. So a lot of people aren't
19 engaged, you say, because they are not shopping. And
20 I'm suggesting that maybe they are engaged, they are
21 making an active choice to choose the lower
22 price-to-compare from the EDU. Is that possible?

23 A. So I would say that's possible. But just
24 like there are no statistics -- you asked me if there
25 are statistics on why customers are making a switch,

1 I haven't seen any evidence that that is a widespread
2 issue in our experience as a CRES supplier.

3 Q. Who is "our" in that statement?

4 A. RESA's experience.

5 Q. RESA's not a CRES provider, is it?

6 A. So, as CRES providers, the RESA
7 experience has not been that there is any evidence
8 that that would be the case.

9 Q. Has RESA done an investigation of -- to
10 compare what offers are available at any given time
11 to the price-to-compare?

12 A. Again, that's -- the price-to-compare is
13 a hard benchmark in Ohio, specifically because it
14 changes from customer to customer. So even if you
15 are using an average price-to-compare, you would have
16 to assume, in an average, half of the customers are
17 higher than whatever that average is, so.

18 Q. And wouldn't it be possible also to look
19 at the variation and see how wide that is? So you
20 get to a point where you had say, two-thirds of the
21 customers within your band that you were looking at
22 and see whether CRES provider offers that are out
23 there are higher or lower than that band?

24 A. I am not sure I understand the "band."
25 So you're saying --

1 Q. You just said that half are above an
2 average and half are below. So we can go out one
3 standard deviation or two standard deviations and get
4 a band of people. So you have a range of prices that
5 is would be those customers' prices to compare.

6 A. So to answer --

7 Q. -- then compare it to the CRES suppliers
8 that are out there.

9 A. To answer your question, there is no
10 study. And to repeat something that I said before,
11 when making the choice, price is important, but it's
12 not the only factor. So there are other factors such
13 as other rewards or benefits or gift cards or the
14 length of the contract or the fact that it is fixed.

15 The PTC is a variable product. So though
16 you may be at a certain level today, you have no idea
17 what it's going to be next month. And even when
18 you're selecting a supplier, you're only looking at
19 what your PTC was last month. So it's hard to see
20 what you are going to have in the next month. So
21 there's a lot of considerations.

22 Q. And I don't disagree with you about any
23 of that. All I'm trying to look at is whether the
24 fact that a person has chosen to stay with the SSO
25 means that he is not engaged in Choice.

1 A. So I admitted it was possible -- I
2 admitted it was possible if a person affirmatively is
3 not engaging in Choice, but asserted it wasn't likely
4 to be widespread.

5 Q. All right. Let me just make sure I
6 understand your question, so you would agree with me
7 then that a person may be engaged in making a choice
8 and choose affirmatively to stay with the standard
9 service offer.

10 A. Again, I said to Mr. Serio and to you
11 before, that that's possible, but in our experience
12 it's not likely to be widespread. That's not the
13 feedback we, at RESA, have heard from customers.

14 Q. Okay. I am trying to understand how RESA
15 hears from customers. Does RESA have -- you said you
16 haven't done any surveys as an organization, correct?

17 A. Surveys on?

18 Q. What you just said, hearing from
19 customers about why they have stayed with the SSO.

20 A. No. There's no surveys. There's no
21 surveys in my testimony.

22 Q. When you say that's not what RESA has
23 heard from customers, has RESA heard anything from
24 customers?

25 A. Yes. I, as a RESA member, have heard

1 from customers. So I admit it's anecdotal, but yes,
2 we are the suppliers in the industry space and we
3 deal with the customers and I'm telling you from our
4 experience dealing with the customers.

5 Q. But it's from your experience as an
6 employee of Integrys that you hear from customers.

7 A. Yes.

8 Q. Okay. So you're not getting customer
9 calls in your role with RESA.

10 A. Correct.

11 Q. The Enroll From the Wallet proposal, you
12 were involved in the recent Commission investigation
13 into the retail market, correct?

14 A. Yes. I participated.

15 Q. And the Commission entered an entry in
16 that proceeding, correct?

17 A. Yes.

18 Q. And what was the Commission's decision
19 with regard to Enroll From the Wallet?

20 A. So I believe the Commission decided to
21 ask the Market Development Working Group that they --
22 that they came up with the same entry to look at the
23 issue and address whether or not to go forward with
24 the issue, come up with different ideas and plans.

25 I think we proposed the Enroll With Your

1 Wallet program in this particular case, and the way
2 to propose is to have a pilot project, and the
3 Commission has done many pilot projects before.

4 And the idea is not to usurp the Market
5 Development Working Group or to upstage the Market
6 Development Group, but that Duke specifically has the
7 technological capability to implement such a program
8 in a cheap and effective way, and that a limited
9 Enroll With Your Wallet Program could be beneficial.

10 What we saw in the Commission's order
11 from some parties was a hesitation to engage in
12 Enroll With Your Wallet because of the unknowns of
13 what such a program, the effect the program could
14 have. And so, we are proposing that Duke, because
15 they can do it with their technology, be first, in a
16 limited way, so that we can study it and perhaps
17 bring that to the Market Development Working Group as
18 an on-the-job example.

19 Q. I thought you also wanted AEP to be
20 first.

21 A. So we didn't propose Enroll With Your
22 Wallet in AEP; only the Market Entry Program.

23 Q. And did the Commission's order in the
24 market investigation that you were a part of propose
25 that there be a pilot case through Duke?

1 A. No.

2 Q. Or any pilot?

3 A. No. I can't remember the exact wording
4 of the Commission's order.

5 Q. So they sent it for a working group and
6 did not order it in any regard or suggest it as
7 something that would be put into practice at this
8 time, correct?

9 A. I wouldn't know that they didn't suggest
10 it. I would have to go back and read it. I know
11 that they wanted the working group to look at it, so
12 it was something of their interest.

13 I would say that all the Commission needs
14 to know to approve this program and in this
15 proceeding is that it's a program that would be
16 beneficial to customers, that would help relieve a
17 barrier that CRES providers see in the market, it's
18 something that Duke could implement in a way that's
19 not overly costly or burdensome, and would give them
20 an opportunity to look at something that they had
21 questions about in realtime.

22 It wouldn't preclude the Market
23 Development Working Group from continuing to complete
24 the Commission's order of examining Enroll From Your
25 Wallet. In fact, it would bolster their examination

1 of Enroll From Your Wallet.

2 Q. But this pilot program that you are
3 proposing that Duke spend its resources on was not
4 ordered in the COI, correct?

5 A. So the question was Duke ordered to do
6 Enroll With Your Wallet in the COI?

7 Q. Yes.

8 A. The answer is no.

9 Q. Thank you.

10 You told Mr. Serio, I believe, that the
11 current system of enrollment has some security flaws
12 and I believe you identified some, correct?

13 A. No. That was not the point of my
14 comments. So I was responding to a comment that
15 Mr. Serio made about the security flaws of driver's
16 licenses and, in response, I pointed out that the
17 current system isn't foolproof either.

18 But that, in my opinion, slamming is
19 awful, should never happen, but you don't create laws
20 assuming that they will never be broken. But what
21 you do is you offer customers, in this case, laws
22 that protect them, but also don't prevent them from
23 freedom of choice.

24 Q. You indicated earlier in your testimony
25 today that the account number is -- has a security

1 flaw in that it can be known by any prior CRES
2 provider you've had, correct?

3 A. I think that's -- that's correct.

4 Q. Okay. And then immediately following
5 that you said also that it can also be known by any
6 CRES provider who has served a previous customer at
7 that same residence, correct?

8 A. Yes.

9 Q. Would you agree with me that when a new
10 customer moves into a given residence, the EDU always
11 gives that new customer a new and different account
12 number?

13 A. I think it's different in each utility.
14 I think you might be correct that Duke assigns a
15 different -- a POD ID for the customers for the new
16 account numbers. I think, for certain utilities, the
17 account number does change from address -- from
18 resident to resident, but not all.

19 Q. So you think that for some EDUs the
20 account number is related not to the customers but to
21 the address.

22 A. Yes.

23 Q. On page 7, if you would look at that for
24 a moment, line 5, you're talking about the detailed
25 administration of how the Enroll From Your Wallet

1 would work, and on line 5 you say in parentheses that
2 the portal system would need some modification. You
3 say "with little modification." I wondered what is
4 the modification that you're referring to?

5 A. So Duke presented, in an open forum, the
6 public presentation at the Commission about their new
7 web portal system, and at that time the web portal
8 system had the capability of allowing Enroll With
9 Your Wallet. I think after that presentation the
10 Commission had questions about the legality of
11 that -- that application, and Duke withdrew or toned
12 down that particular capability, the Enroll With Your
13 Wallet capability.

14 So "little modification" means the
15 capability exists. And CRES providers, myself, I was
16 at the presentation, saw Duke had the capability. So
17 I think the modification would be just allowing that
18 capability to come back.

19 Q. So you don't think that any of Duke
20 Energy's billing system or internal IT systems would
21 have to be modified?

22 A. I would say if they did, that Duke
23 already did that when they had the capability to have
24 Enroll With Your Wallet before. So that if there
25 were modifications that had to be made when they took

1 it down, it would be easier to bring it back up than
2 it were if they never had Enroll With Your Wallet,
3 and that's why we use Duke -- that's why we think
4 Duke would be a prime example for a pilot program.

5 Q. And how much do you think it would cost
6 for Duke to agree to be the guinea pig in this
7 project?

8 A. I wouldn't know.

9 Q. Has RESA developed any budgets or
10 evaluated the costs that might be inherent in this
11 program?

12 A. No.

13 Q. So we also, for the Enroll With Your
14 Wallet program, propose a stakeholder process. I
15 imagine that cost would be a central development in
16 that stakeholder process.

17 A. Yes, I imagine it would. In determining
18 how functional the website would be and balancing
19 that with the cost would be a key -- a key factor.

20 Q. Would you agree with me that it's likely
21 that Duke would incur some costs if it started using
22 the Enroll From Your Wallet approach?

23 A. I couldn't speak for Duke. You would
24 assume -- I would assume that the costs could not be
25 massive or significant because Duke had the

1 technology and capability before.

2 Q. Perhaps; perhaps not.

3 A. Perhaps; perhaps not.

4 Q. And to the extent that Duke would incur
5 costs to be the trial run for this, how would you
6 propose that Duke would recover those costs?

7 A. So the testimony doesn't have a proposal
8 for cost recovery. I would say that cost recovery
9 should be a fair and a prudent -- so a fair and
10 prudent process, fair to Duke, fair to customers that
11 may have to pay them. So just a fair -- a fair and
12 open process.

13 Q. And would this be something that you
14 would think should be paid by all ratepayers?

15 A. So in previous proceedings the Commission
16 has ordered costs that benefit the entire system,
17 such as upgrades to the supplier portal, to be paid
18 by Duke distribution customers. That's happened
19 before.

20 Q. So you are advocating a nonbypassable
21 approach?

22 A. No. We're not advocating for any cost
23 approaches.

24 Q. Okay. You talked with Mr. Serio a little
25 bit about the MEP, correct?

1 A. Quite a bit.

2 Q. Okay. Correct me if I'm wrong, as I read
3 the proposal it appears that a customer signing up
4 with a CRES supplier under the MEP program would be
5 choosing -- well, would be assigned a supplier from a
6 limited list of suppliers, not all of the suppliers
7 who are -- are registered in Duke's service
8 territory; is that correct?

9 A. Almost. Mostly correct. So the customer
10 could choose a supplier of the participating
11 suppliers in the MEP or they could be assigned out of
12 the participating suppliers. So you're correct that
13 it would be only those participating, only those that
14 have fulfilled the certification requirements that
15 are determined in the stakeholder process.
16 Hopefully, by Duke, that has -- Duke has a large
17 influence on what those certification processes are
18 to be a participant. But the customer could either
19 choose out of those suppliers or be assigned one.

20 Q. So not all certified retail suppliers in
21 a given territory would be able to participate in the
22 MEP.

23 A. We're assuming a fair process for all
24 suppliers that participate would be allowed. But
25 participation isn't compulsory. So you can choose

1 not to participate; or if I don't fulfill a certain
2 requirement, you can be precluded from participating.
3 But the -- but the operative here should be to have
4 as many suppliers participating as possible.

5 Q. Mr. Serio talked with you also about the
6 possible negative impact on Duke as a result of a
7 customer potentially having a negative experience.
8 I'm sure you recall that line of questioning?

9 A. Yes.

10 Q. And as you and he talked, I was trying
11 also to imagine what possible negative experiences
12 might happen, and I would suggest that you think
13 about the possibility that a supplier actually fails
14 as a business during that six-month period when the
15 customer is taking service under the MEP.

16 So you were having a hard time thinking
17 of a circumstance where the customer might be unhappy
18 during the MEP, correct? So what -- what if there's
19 a spike in the -- in prices, wholesale prices during
20 the six-month period that a given customer is taking
21 service from Integrys, let's say, and just as an
22 example, and Integrys then goes out of business.

23 A. I mean under the same --

24 Q. Is -- I am getting to the question.

25 A. Okay.

1 Q. So is it not possible that the customer
2 would then be upset with Duke because it was the Duke
3 call center representative who put the customer into
4 the contract with Integrys?

5 A. So I think the first response would be
6 it's kind of -- I feel it's an unfair question
7 because it's entirely possible that Duke could go out
8 of business, and Integrys has a large amount of
9 customers with Duke, and if Duke is out of business,
10 I could see us getting calls from customers and
11 customers being upset and having questions.

12 Q. But Duke is the regulated entity here and
13 what your program would be asking us to do is to
14 market for you, get you customers, and essentially
15 enforce your company. That's why you want to do it
16 through the MEP because you want the endorsed -- the
17 apparent endorsement of the utility.

18 MR. PETRICOFF: Your Honor, I object to
19 the question. It has -- implicit in it is the
20 statement about what the goal is of the -- of the
21 marketers, and that matter hasn't been -- that hasn't
22 been established.

23 EXAMINER PIRIK: Ms. Kingery, do you have
24 a question maybe in there somewhere?

25 MS. KINGERY: I will rephrase.

1 EXAMINER PIRIK: Thank you.

2 Q. Mr. Pickett, have you previously agreed
3 in testimony today that an advantage of the MEP would
4 be that customers would have more assurance that the
5 CRES supplier was a trustworthy entity simply because
6 they were getting into the program through the
7 trusted utility?

8 A. Yes.

9 Q. Thank you. So the customer, then, is
10 relying on the utility to that extent, correct?

11 A. No. And I think this goes to your next
12 question. I would say that there is very little risk
13 of Duke having a negative impact because of this
14 program.

15 The first reason is because customers for
16 the term of the MEP would get a guaranteed discount.

17 The second reason is because the
18 stakeholder group will be coming up with the script,
19 and I would imagine that Duke will participate in
20 such a stakeholder group if they were ordered, and
21 that Duke and RESA would want that script to be very,
22 very specific, and have customers understand the
23 difference between CRES suppliers and Duke, and that
24 in the event of any type of calamity or change in the
25 contract, that it's not Duke at all, and be very

1 explicit with customers so they understand before you
2 hang up the phone that you are dealing with your CRES
3 provider with your service now and no longer dealing
4 with Duke. I think that would be one of the benefits
5 of the MEP.

6 Unlike, you know, a customer who may, on
7 a whim, sign up online with Apples to Apples who
8 doesn't get an opportunity to interface directly with
9 a person and understand everything all the time,
10 other than they want a particular item.

11 With the MEP, the customer has a chance
12 to interface directly either with the utility or
13 third party and understand from a script, delineated
14 between OCC, staff, RESA, Duke, others, exactly what
15 the difference is between your CRES and your EDU.

16 I think it would be -- I think it would
17 be better for Duke. So in situations of default
18 hypothetically from the supplier, now the customer is
19 educated enough to know this is my supplier, this has
20 nothing to do with Duke, because I spoke to someone
21 on the phone about it when I enrolled with the MEP.

22 MS. KINGERY: And, your Honor, I would
23 move to strike everything after "no" as it was not
24 responsive to my question. Indeed he started the
25 discussion by saying "and in response" to your next

1 question, which I had not even asked.

2 EXAMINER PIRIK: I'll deny.

3 Ms. Kingery, I just wondered how much you
4 had.

5 MS. KINGERY: I would say 10 or 15
6 minutes maybe.

7 EXAMINER PIRIK: Why don't we go ahead
8 and take a 10-minute break, and the witness maybe
9 needs a little break, so.

10 MS. KINGERY: All right. Thank you.

11 (Recess taken.)

12 EXAMINER PIRIK: Back on the record.

13 Ms. Kingery.

14 MS. KINGERY: Thank you, your Honor.

15 Q. (By Ms. Kingery) A couple more questions.
16 I thought I might want to ask about the Enroll From
17 Your Wallet program. You had indicated that there's
18 just as much risk that the utility might go out of
19 business as that the CRES supplier under the MEP
20 program might go out of business, and I just wondered
21 when's the last time you saw a regulated utility go
22 out of business?

23 A. I can't recall. I know that utilities
24 from time to time are bought and sold, so ownership
25 may change. In the case of DPL, DPL was acquired by

1 AES.

2 Q. But it didn't go out of business; it's
3 still operating.

4 A. Yeah.

5 Q. And is there any reason why a customer
6 couldn't choose to carry his account number around
7 with him in his wallet so he could enroll from his
8 wallet if he wanted to?

9 A. I think the most reasonable reason would
10 be to limit the amount of things in your wallet.

11 Q. But somebody could choose to do that if
12 they wanted to be able to enroll from the wallet,
13 correct?

14 A. Yep, could choose. I don't think it's
15 reasonable to assume many customers carry around
16 their account number.

17 Q. If they are interested in Electric Choice
18 and think they might want to switch, then they could
19 choose to do that.

20 A. I would say that there are customers that
21 are interested in Choice that don't carry around
22 their -- their account number --

23 Q. But --

24 A. -- or bill in their wallet.

25 Q. But they could do so and that would be

1 free. It doesn't cost them anything.

2 A. It's possible. You could carry around
3 your account number.

4 Q. Okay. So going back to talking about the
5 MEP. What infrastructure or IT changes would Duke
6 Energy Ohio have to make to accommodate the MEP?

7 A. So it's possible that Duke has to make
8 very little changes. Say, for example, Duke decides
9 to contract with a third party. Duke could simply
10 transfer calls to a third party and not have to
11 upgrade their IT systems at all.

12 Q. And would that third party be paid for by
13 the suppliers?

14 A. Technically, yes. So what would happen
15 there is Duke would contract with the third party and
16 Duke would, in the stakeholder process, include that
17 as the maintenance cost for Duke to run the program
18 and that would be paid through the suppliers, through
19 the preferred customer fee, by the suppliers.

20 Q. And how did you arrive at the cap of \$25
21 per customer that I believe you state in your
22 testimony?

23 A. So with the program we try to have a
24 balance of -- of costs for the program, discounts for
25 the customers, ease of entry, ease of exit, and it's

1 designed to attract the buyer, not to scare them
2 away, and also to allow for customers to participate
3 in the program.

4 Q. So the \$25 per customer, that would be
5 charged to any customer who enrolls with a CRES
6 provider through the MEP; is that correct?

7 A. No. Customers are not charged the \$25
8 fee. Suppliers are charged the \$25 fee.

9 Q. For every customer that the supplier
10 enrolls through the MEP.

11 A. Yes.

12 Q. Have you done any research into the
13 market for third-party administration of Duke's
14 requirements, to determine whether \$25 per customer
15 is going to cover those third-party contractor costs?

16 A. I have spoken to several providers,
17 third-party providers in Pennsylvania. And they have
18 costs that are similar, I think one of the costs is
19 \$32 in Pennsylvania, but those -- those per customer
20 costs are sufficient for the Pennsylvania programs.

21 Q. Okay. So you said one has 32, but you're
22 suggesting \$25 as a cap. So assume that the prices
23 were the same, assuming the Commission adopted the
24 \$25 cap and that the best price we could find was
25 \$32, what would happen to that other 7?

1 A. So we propose a stakeholder process where
2 Duke offers the maintenance cost, and any cost above
3 25, we change the amortization period. But what I
4 also found with my discussions with third-party
5 providers is they learned a lot from their -- the
6 year and a half or so of administering this -- this
7 program and they found ways to do it better. So the
8 \$25 is a reasonable assumption that the process here
9 would be easier.

10 Q. Wouldn't it make more sense just to say
11 that whatever Duke's costs were they would be
12 funneled through to all the suppliers participating
13 in the MEP program?

14 A. No. Because to have a well-designed
15 program, you have to have suppliers participating.
16 If there aren't constraints on what the costs can be,
17 suppliers will not participate. Most likely. I
18 couldn't speak for every supplier, but it's unlikely
19 for suppliers to participate without constraints or a
20 reasonable process, transparency, fairness, et
21 cetera.

22 Q. So the risk then that the costs -- the
23 actual costs would go higher than that cap would have
24 to be borne by the utility; is that what you're
25 suggesting?

1 A. No. Still paid by the suppliers.

2 Q. How?

3 A. By changing the amortization period.

4 Q. What amortization period?

5 A. So we propose a three-year amortization
6 period for these costs in the testimony.

7 Q. Yes, I see that on page 11. But the
8 problem is there are -- isn't it true that there are
9 both start-up costs and maintenance costs? You do
10 talk about start-up --

11 A. It depends on -- yeah.

12 Q. You talk about start-up costs in your
13 testimony on line 8 of page 11.

14 A. Uh-huh.

15 Q. And then you talk about ongoing program
16 maintenance costs on line 8 to 9.

17 A. So the assumption is that -- the charge
18 would go down, so that start-up costs would be more
19 expensive than ongoing maintenance costs. But
20 there's also a difference in the way the program is
21 administered.

22 So the 25 number that we proposed, we
23 think is the upper bound, so we're expecting it to be
24 less than 25. But it would all depend on the process
25 that Duke sees most usable and what they bring to the

1 stakeholder group. And I would imagine that there
2 might be some pushback from suppliers, the OCC, if we
3 take a different process. So say Duke does it on
4 their own and it's more costly, I could see suppliers
5 saying actually a better way to do it would be X.
6 But we don't know that.

7 Q. Okay. But just using the only fact that
8 we have in the record which is that one supplier in
9 Pennsylvania was charging \$32 per customer --

10 A. I am not even sure about that number. It
11 was in the 30s.

12 Q. Okay. So in the 30s. So -- but that's
13 an ongoing cost, right?

14 A. Actually in -- this is something that
15 we've picked up on and that we are trying to develop
16 for Ohio. Those costs are going down and they're
17 having stakeholder workshops, like we are proposing,
18 to examine what those costs should be.

19 Q. Okay. But that wasn't my question.
20 That's a --

21 A. The charge itself is ongoing.

22 Q. The charge itself is ongoing. So that's
23 part of the ongoing maintenance aspect of the costs
24 that you have described, correct?

25 A. Yes.

1 Q. Okay. And you also indicated that there
2 are start-up costs.

3 A. Yes.

4 Q. Okay. So if you're talking about
5 amortizing, is it not the start-up cost that you're
6 talking about amortizing?

7 A. Yes, in the testimony.

8 Q. Okay. So you would have an amortized,
9 over some period, pot of costs for start-up, and then
10 you would have monthly maintenance costs or annual
11 maintenance costs, whatever the charge is, so that --
12 and that's the piece that was the 32 or in the 30s as
13 you are now saying.

14 A. So, in Pennsylvania it was all considered
15 one pot, right? And it was the -- the decision is to
16 make it reasonably spread across the amount of years
17 in a per-customer charge, so that you could continue
18 to have suppliers participate, right? So you include
19 the start-up costs and you get the start-up costs
20 paid, but you also include the maintenance costs, to
21 a reasonable amount. And if you need more time to
22 make it reasonable, then you extend the amount of
23 time.

24 Q. My concern is with whether the proposal
25 that you're asking the Commission to consider takes

1 care of reimbursing Duke for all of Duke's costs, and
2 if it's going to be amortized over a period of time,
3 the start-up costs are going to be amortized over a
4 period of time, that should be at a reasonable
5 interest rate so that Duke doesn't have to incur
6 carrying charges and it would need to cover all of
7 the expenses, and it appears to me that you're saying
8 the \$25 might not cover that; is that correct?

9 A. Not correct. We're assuming that the \$25
10 will cover all the expenses, and I agree that all the
11 expenses should be covered if they are prudent and
12 reasonable expenses and that's why this stakeholder
13 process is necessary. So that suppliers assert that
14 they are not paying for things unrelated to the
15 administration and maintenance of the MEP.

16 Q. So are you proposing the Commission would
17 do a prudency review of Duke's costs in administering
18 this program?

19 A. No. In the testimony we -- we say that
20 the Commission could adjust it, but that the
21 stakeholder group would be agreeing to the prior --
22 the ongoing costs.

23 Q. So now you are saying that the
24 stakeholder group would be doing a prudency review?

25 A. Not -- not a prudency review. It's a

1 stakeholder process to design the MEP. So the MEP's
2 design is going to be based on what Duke tells us,
3 because we are not the experts about what Duke can or
4 can't do. But to the extent that what Duke presents
5 wouldn't result in a workable program, that's
6 something that the stakeholder group would have to
7 have input on.

8 Q. But I thought I heard you say that the
9 costs that Duke would get reimbursed are prudent
10 costs.

11 A. Right.

12 Q. So I'm trying to understand who makes the
13 decision as to whether those costs are prudent.

14 A. The stakeholder group.

15 Q. Okay. So Duke then --

16 A. But not a -- not a rate case.

17 Q. I understand.

18 A. Duke proposes the costs, the maintenance
19 costs. These are -- these are pretty simple concepts
20 to understand in the context of a customer program,
21 they are not complex, so they are easily
22 understandable by suppliers and OCC and others. And
23 if there are things that are imprudent, say, a trip
24 to Colorado to visit just because or something,
25 something of that nature, those type of costs

1 shouldn't be included.

2 Q. So here's -- here's the question that I'm
3 trying to ask: If the stakeholders find that costs
4 that Duke incurs are imprudent, is Duke then expected
5 to carry those costs?

6 A. No. So there wouldn't be -- so there has
7 to be a program established by the Commission. So
8 the stakeholder group attempts consensus, the staff
9 will hear Duke's maintenance costs, it will hear any
10 objections to those maintenance costs. Staff will
11 make a decision on what is appropriate for the
12 program, capped at \$25 or changing the amortization
13 period. And after that, we allow, in our testimony,
14 Duke can petition the Commission to address the
15 charge on a per-customer basis.

16 Q. Doesn't that mean that there is risk to
17 Duke that not all of its costs are recovered because
18 it has to petition the Commission, it has to prove
19 prudence, et cetera?

20 A. Not if Duke proposes fair and reasonable
21 costs in the stakeholder process.

22 Q. So there is risk, okay.

23 A. I would say no.

24 Q. Mr. Serio has asked many of my questions.

25 How much does it cost on average for a

1 CRES provider to acquire a customer? Looking at
2 marketing cost, et cetera.

3 A. So that information is proprietary in
4 particular to each CRES provider.

5 Q. So RESA does not have any studies or data
6 regarding that question.

7 A. No.

8 Q. Would you agree with me there is a cost
9 of acquisition?

10 A. In what circumstance?

11 Q. Almost any time. If a CRES supplier
12 wishes to acquire new customers, there is some cost
13 of doing business to find the customer and get the
14 customer enrolled.

15 A. Can you --

16 Q. Do marketers have marketing costs?

17 A. Again, that's specific marketer to
18 marketer. "Marketing costs," you know, that term is
19 broad. So there may be market -- or, suppliers who
20 do not market, who do not advertise.

21 Q. Are there suppliers who hire door-to-door
22 salespeople?

23 A. Yes.

24 Q. Or engage them in some way?

25 A. Yes.

1 Q. Yes. Are there suppliers who hire or
2 otherwise engage people to be at shopping malls to
3 try and get customers?

4 A. I don't -- I don't know.

5 Q. Or would like to?

6 A. I don't know.

7 Q. Are there customers -- are there
8 suppliers who engage people to make telephone
9 solicitation calls?

10 A. Yes.

11 Q. So -- and those marketers who engage
12 those people must pay them, correct?

13 A. I assume so. I couldn't speak to any
14 particular contract or anything.

15 Q. And I am not asking you about any
16 particulars. I am just asking in general whether it
17 costs CRES providers money in general to inquire
18 customers.

19 A. It would be reasonable to assume that in
20 those -- in those particular scenarios that you've
21 pointed out.

22 Q. And would you agree with me that under
23 the MEP, the CRES provider would have no acquisition
24 costs?

25 A. I disagree with you. The CRES provider

1 would be paying the per-customer charge through a
2 preferred fee and the CRES provider would also have
3 to do all the current operating and maintenance
4 requirements that it takes to sign up a customer,
5 enroll the customer, follow all the disclosure rules
6 that are in practice in Ohio, so you have got to know
7 about them, you have to hire somebody to know about
8 them, and you have to hire somebody to make sure
9 you're paying attention to them. All the costs that
10 come -- the business expenses as you said.

11 Q. And that \$25 fee that you're talking
12 about, that's preset and predictable, right?

13 A. The \$25 is a cap. So the fee, itself, we
14 don't know. But the cap --

15 Q. It's predictable that the cap is there.

16 A. The cap is set in the program.

17 Q. Right. As opposed to regular marketing
18 costs which, I assume you would agree with me, are
19 not predictable.

20 A. So we talk about various different
21 channels of marketing and those are all different. I
22 couldn't -- I couldn't speak to that -- I couldn't
23 answer that question.

24 Q. Do you believe that Duke Energy Ohio has
25 access to the terms of every competitive supply

1 contract that CRES providers offer in its service
2 territory?

3 A. No, I don't think they do.

4 Q. So when customers call about an expiring
5 offer under the MEP, they call Duke, would you agree
6 that Duke Energy Ohio call center representatives
7 will not be able to help them with any information
8 about specific questions?

9 A. I think you raise a good point for the
10 stakeholder group to include that in the script. If
11 Duke decides that it's best for Duke to run the
12 program and if Duke hires an independent third party,
13 then the independent third parties are well equipped
14 to answer those questions.

15 Q. So the independent third party would have
16 information about all the other CRES supplier offers
17 that are out there?

18 A. You don't need information about all CRES
19 supplier offers to tell a customer that on renewal,
20 they should look at their contract to see what
21 happens.

22 Q. So are you proposing that the third party
23 call center or Duke's call center would have
24 available to them each contract under the MEP?

25 A. No. I don't need to have the customer's

1 contract to tell them to look at their contract to
2 learn about renewal.

3 Q. Can all customers understand their
4 contract terms?

5 A. Yes. I think the Commission has done a
6 great job at making contract materials understandable
7 and delineating what should and shouldn't be in
8 contracts.

9 Q. So in your experience with Integrys,
10 since you have talked about Integrys to some extent
11 here, do customers ever call confused with their
12 contract terms?

13 A. I'm actually not familiar with any
14 statistics from our call center, so I couldn't speak
15 to it.

16 Q. Do you know how many CRES suppliers are
17 registered and active in the Duke Energy Ohio service
18 territory?

19 A. So in the application and in the
20 testimony you said 52, but I understand that's gone
21 up since, but I don't know the number currently.

22 Q. So would you agree with me that supplier
23 diversity already exists in Duke Energy Ohio's
24 territory?

25 A. I would agree with you that there's more

1 than one supplier. I would say that supplier
2 diversity in Duke's territory could be attained to a
3 greater extent. So -- I will let you ask your
4 question.

5 Q. The MEP that you are proposing is just
6 limited to electric service, correct?

7 A. Yes.

8 Q. So Duke Energy Ohio customers who have
9 questions about gas choice offers would still have to
10 call the individual competitive retail natural gas
11 providers, correct?

12 A. We are not proposing a MEP proposal in
13 the CSP for gas service.

14 Q. And in the MEP that RESA has proposed, as
15 it has proposed it, there would be no Commission
16 regulation over the terms and conditions of the
17 initial offer under the MEP, correct?

18 A. That's not true. The MEP contract would
19 be subject to all Commission rulings and regulations.

20 Q. Yes. It would be subject to the normal
21 rules and regulations, but the Commission would not
22 have a role in determining what the terms and
23 conditions are of any offer under the MEP?

24 A. That's not true. The Commission would
25 approve the terms and conditions, either agreed to or

1 failed to be reached, by the stakeholder group.

2 Q. Is your proposal that there would be one
3 standard set of terms and conditions for all MEP
4 contracts?

5 A. No. We leave that decision up to the
6 stakeholder group.

7 Q. So if not all of them are the same, if
8 the stakeholder group were to determine that
9 individual CRES providers could have different terms
10 and conditions under the MEP, then I would repeat my
11 question, isn't it true that the Commission is not --
12 would not be approving the terms and conditions?

13 A. No. The Commission could approve the
14 terms and conditions, and what they could say and
15 what they couldn't say, and if contracts are
16 different because they have different logos or
17 different types or different things on them, they
18 could be different, but still have the same basic
19 tenants agreed to by the stakeholder group.

20 Q. You don't have any background in the
21 antitrust area, do you?

22 A. I'm not an attorney.

23 Q. You've also proposed the MEP program in
24 AEP's pending ESP case, correct?

25 A. Correct.

1 Q. And AEP's ESP proceeding is farther along
2 in its process than Duke's, correct?

3 A. Correct.

4 Q. So is it likely that the Commission will
5 issue an order in AEP's proceeding before it issues
6 an order in Duke's proceeding?

7 A. I couldn't speak to the Commission.

8 Q. Assuming that it does, since we can't
9 predict when the Commission may act, assuming that it
10 would act on AEP's first and assuming that the
11 Commission decided to approve the MEP in AEP's case,
12 would you expect that the details of the MEP
13 established by AEP's stakeholder group would then
14 apply with equal force to Duke in this case?

15 A. No.

16 Q. So you would think there would be
17 different stakeholder processes and different
18 outcomes?

19 A. We propose them as different stakeholder
20 processes with different outcomes because we know
21 specifically that the utility territories are
22 different.

23 Q. And you don't think that the Commission
24 would look to the AEP stakeholder process and
25 approval of the outcome of that process as precedent

1 for Duke's territory?

2 A. I think there will be some similarities
3 in the programs if they are both approved because
4 they are both proposed by us. They are very similar
5 programs.

6 Q. And to the extent then that the AEP case
7 was a precedent and the stakeholders in the
8 stakeholder process are, to a large extent,
9 overlapping, other than the utilities, is it possible
10 that Duke Energy Ohio would then be obligated to use
11 its resources on this program even though it had no
12 input into that process?

13 A. No. I would say the Commission is a -- a
14 well-reasoned, semi-judiciary body, and they have
15 cases in front of them that they deal with on a
16 case-by-case basis. Yes, there would be precedent
17 for AEP, but, as you've said before, AEP and Duke are
18 different companies and I've agreed to that in my
19 testimony here.

20 Q. But the CRES providers would be
21 comparable. Integrys, IGS, various members of RESA
22 are going to overlap between the two, correct?

23 A. Like I said, there will be some
24 similarities. As you know, not all CRES providers
25 serving load in Duke serve load in AEP.

1 Q. And one final couple of questions. We've
2 talked about the fact that there are more than 50
3 active CRES suppliers in Duke Energy Ohio's
4 territory, correct?

5 A. We talked about 50 registered and
6 certified. Now, you are saying "active." I am not
7 sure how you are defining.

8 Q. Let's leave it at registered and
9 certified.

10 A. Okay.

11 Q. And are you aware of how many of those
12 suppliers are members of RESA?

13 A. No.

14 Q. Would it surprise you if only a dozen or
15 so were members of RESA?

16 MR. PETRICOFF: Objection, your Honor.
17 That fact is not in the record.

18 MS. KINGERY: I just asked whether he
19 would be surprised, and I believe there is testimony
20 in Mr. Pickett --

21 EXAMINER PIRIK: Overruled.

22 MS. KINGERY: Thank you.

23 A. Would I be surprised if?

24 Q. Yes.

25 A. No. No.

1 Q. Okay.

2 A. Not surprised.

3 Q. And so, this program that you're
4 suggesting would be, if adopted by the Commission,
5 binding on non-RESA members just as it is on RESA
6 members, correct?

7 A. Yes. And if you will allow me to
8 elaborate, what I would say is there are over 20 RESA
9 members, and the fact that only 12 are serving in
10 Duke's territory speaks to the need for a program
11 like this and that a program like this might actually
12 attract more RESA suppliers, more supplier diversity,
13 as I put it before, in Duke's territory.

14 Q. And a customer having signed up -- with a
15 given supplier under the MEP, would you agree that
16 when that six-month contract is over, that customer
17 would be somewhat more likely to stay with his
18 current supplier than to change to a new supplier,
19 correct?

20 A. I didn't speak to a particular customer's
21 decisions on Choice at the end of a contract.

22 Q. I would think that the -- any supplier
23 not participating in the MEP might be worried about
24 that, but that's all I have. Thank you.

25 Oh, wait. I apologize.

1 That's all I have.

2 EXAMINER PIRIK: Thank you.

3 Staff?

4 MR. LINDGREN: No questions, your Honor.

5 EXAMINER PIRIK: Mr. Petricoff.

6 MR. PETRICOFF: I think we have no
7 redirect, your Honor.

8 EXAMINER PIRIK: Okay. Thank you,
9 Mr. Pickett.

10 With regard to RESA Exhibit 4, I believe
11 it is.

12 MR. PETRICOFF: Yes, your Honor. We move
13 that it be admitted into evidence.

14 EXAMINER PIRIK: Are there any
15 objections?

16 MS. KINGERY: No, your Honor.

17 EXAMINER PIRIK: It will be admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER PIRIK: Staff.

20 MR. LINDGREN: Thank you, your Honor.

21 The staff calls Tamara Turkenton to the stand.

22 EXAMINER PIRIK: Raise your right hand.

23 (Witness sworn.)

24 EXAMINER PIRIK: Thank you.

25 - - -

1 TAMARA S. TURKENTON

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

4 DIRECT EXAMINATION

5 By Mr. Lindgren:

6 Q. Good morning, Ms. Turkenton.

7 A. Good morning.

8 EXAMINER PIRIK: Mr. Lindgren, could you
9 please turn your microphone on.

10 MR. LINDGREN: Certainly.

11 Q. Could you please state your full name and
12 business address for the record?

13 A. Tamara Turkenton. 180 East Broad,
14 Columbus, Ohio 43215.

15 Q. And where are you employed and what is
16 your position?

17 A. Public Utilities Commission of Ohio. I
18 am the Chief of Accounting and Electricity.

19 Q. Did you file some testimony in this
20 proceeding?

21 A. I did.

22 Q. And do you have your testimony before
23 you?

24 A. I do.

25 MR. LINDGREN: And I would ask to have

1 that testimony marked as Staff Exhibit 2, please.

2 EXAMINER PIRIK: The document is so
3 marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Did you prepare this testimony or cause
6 it to be prepared under your direction?

7 A. I did.

8 Q. And are you filing this on behalf of the
9 PUCO staff?

10 A. I am.

11 Q. Do you have any changes or corrections to
12 your testimony?

13 A. I do not.

14 Q. Thank you.

15 And if I asked you the same questions
16 today, would your answers be the same?

17 A. They would.

18 MR. LINDGREN: Thank you.

19 Your Honor, I would move for the
20 admission of Staff Exhibit 2, subject to
21 cross-examination.

22 EXAMINER PIRIK: Thank you.

23 I just want to note that Ms. Bojko did
24 mention that she would be out of the room, but that
25 she did have cross for Ms. Turkenton, so we may take

1 it out of order just a little bit, but we'll continue
2 around the table as we normally do.

3 Ms. Hussey.

4 MS. HUSSEY: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Hussey:

8 Q. Good morning, Ms. Turkenton.

9 A. Good morning.

10 Q. Would you turn to page 3 of your
11 testimony, please.

12 A. I'm there.

13 Q. Okay. So when asked whether you believe
14 the proposed ESP is more favorable than an MRO
15 application would be, you state that when all
16 provisions of the ESP application are considered,
17 along with staff recommendations, you believe that
18 the ESP would be more favorable in the aggregate; is
19 that accurate?

20 A. That's correct.

21 Q. Okay. And to the extent that the
22 Commission does not decide to adopt all of staff's
23 recommendations, would you still believe that the ESP
24 is more favorable in the aggregate than an MRO?

25 A. It depends on what modifications you're

1 referencing.

2 Q. We can take them, I suppose, one by one.
3 To your understanding, are there certain
4 recommendations that you've made that if the Attorney
5 Examiners or the Commission adopt the proposal, it
6 would no longer be more favorable in the aggregate?

7 A. Could you -- could you repeat that
8 question?

9 Q. Sure, sure. Let me rephrase.
10 Are there certain recommendations that
11 staff has made that to the extent the Commission does
12 not decide to adopt them, staff would no longer
13 believe that the proposed ESP is more favorable in
14 the aggregate than an MRO?

15 A. I think in reference to probably the PSR,
16 if the Commission were to determine that that rider
17 was a viable rider that the company could collect, I
18 would have to redo my quantitative analysis to
19 determine whether it was still favorable in the
20 aggregate.

21 Q. Okay. And are there any other provisions
22 that jump out at you at this point in time that if
23 the Commission does not adopt them, that it would be
24 problematic for your analysis?

25 A. Not that I can think of.

1 Q. Okay. I have one other short line of
2 questioning for you. You mentioned that your title
3 is Chief of the Accounting and Electricity Division;
4 is that correct?

5 A. That's correct.

6 Q. Okay. And as part of your roles in that
7 position, are you generally familiar with Duke's
8 rider LFA?

9 A. Generally.

10 Q. Okay. And are you also familiar with
11 Staff Witness Donlon's proposal with regard to rider
12 LFA?

13 A. I am.

14 Q. In general would you agree that
15 Mr. Donlon has proposed rider LFA be phased out over
16 the term of the ESP rather than being discontinued
17 effective at the end of Duke's current ESP?

18 A. That's his recommendation.

19 Q. Okay. And do you believe that if rider
20 LFA were extended, as Mr. Donlon has proposed, that
21 it would continue to be revenue neutral for Duke?

22 A. That's my understanding.

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

25 EXAMINER PIRIK: OCC?

1 MR. STINSON: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Stinson:

5 Q. Good morning, Ms. Turkenton.

6 A. Good morning.

7 Q. Just a follow-up on a question that
8 Ms. Hussey had, you stated that if the Commission
9 were to adopt rider PSR, you would be required to
10 redo your quantitative analysis, correct?

11 A. That's correct.

12 Q. What about your qualitative analysis?

13 A. I believe there's qualitative factors, at
14 least with the proposal that's based on staff
15 recommendations at this point, makes the
16 more-favorable-in-the-aggregate test pass, so I would
17 assume it would pass in that regard if the PSR was
18 approved.

19 MR. STINSON: Could you read that back,
20 please?

21 (Record read.)

22 Q. So what you're saying is regardless of
23 its quantitative effect, you still believe the ESP
24 would be more favorable than an MRO based upon the
25 qualitative factors?

1 A. I believe there's qualitative factors as
2 outlined in my testimony that would pass under either
3 scenario.

4 Q. Well, I want an answer to the question
5 that if the PSR is approved, you would still
6 recommend that the ESP be approved.

7 A. What I would say to the Commission is
8 that the quantitative -- I would have to do the
9 quantitative analysis, which I have not done because
10 it's not staff's recommendation, but if the PSR was
11 approved, I'd need to do a quantitative analysis and
12 then recommend to the Commission based upon a
13 quantitative analysis whether the ESP is more
14 favorable in the aggregate.

15 I would give the Commission the
16 qualitative determining factors. The Commission
17 could then determine quantitatively and qualitatively
18 whether they believed it was more favorable in the
19 aggregate.

20 Q. So at this point you're not prepared to
21 say if the PSR is approved that the ESP should be
22 approved as --

23 A. No. What I was just saying in reference
24 to your question was that there are qualitative
25 benefits whether the PSR is approved or not approved

1 that I believe are important that the Commission
2 should consider.

3 Q. But you're not saying those qualitative
4 benefits, as they exist today, would warrant the
5 approval of the ESP if the PSR were approved?

6 A. No, not in that scenario.

7 Q. Did you agree with me or disagree with
8 me?

9 A. I agree with you. I would not, at this
10 time, be able to say that only the qualitative
11 benefits would make the
12 more-favorable-in-the-aggregate test pass.

13 Q. Okay. Thanks.

14 I want to go into your background just a
15 bit. You've been with the Commission since 1994 in
16 various capacities, right?

17 A. That's correct.

18 Q. And on page 1, line 18 of your testimony,
19 you state that you worked on SB 3.

20 A. I did.

21 Q. And what type of work did you do on SB 3?

22 A. Mainly my role -- I didn't certainly --
23 my predecessor actually worked on most of the
24 legislative aspects of Senate Bill 3. I would say I
25 was more in the implementation stage, mainly

1 surrounding, in my early career, CRES issues,
2 competitive electric supplier issues.

3 And then in my current role, obviously
4 there's Senate Bill 221, but Senate Bill 3 and Senate
5 Bill 221 both have items, you know, I have
6 implemented in my current role.

7 Q. Did you follow the legislative progress
8 of Senate Bill 3?

9 A. You know, I don't recollect. Like I said
10 my predecessor was mainly doing the legislative
11 happenings in regard to Senate Bill 3.

12 Q. Now, with respect to you also stated you
13 did work on Senate Bill 221. Did you work on the
14 legislative side of that implementation or what was
15 your duties with respect to 221?

16 A. 221, I was probably a little more
17 involved in Section 143 and 142 and providing
18 comments to the legislature as to how those areas can
19 be implemented.

20 Q. So were you familiar with the various
21 iterations of 141 -- or 141, 142, 143, as they passed
22 through the House and Senate?

23 A. It's been a while. I can't recollect.

24 Q. You followed them at that time though?

25 A. Generally, yes.

1 Q. If they gave recommendations to the
2 legislature, I would assume you followed.

3 A. What I remember, Mr. Stinson, is seeing
4 draft rules come over and providing comment based on,
5 you know, the market rate offer and then the ESP
6 section and providing comment on what draft
7 legislation would look like.

8 Q. You kind of lost me. Draft rules coming
9 from -- you are talking about draft legislation
10 coming from where to where?

11 A. I assume the Governor's office. I don't
12 remember.

13 Q. I'm just confused because you said there
14 were draft rulings coming over and you made comments
15 on them. I have no idea where those rules came from.

16 A. Actually, "rules" is possibly not the
17 right word. Rules are implemented from legislation;
18 draft legislation.

19 Q. Okay. So the Governor's office sent over
20 legislation, draft legislation, you reviewed it and
21 commented on it.

22 A. That's my recollection.

23 Q. I understand you are not an attorney, but
24 based upon what you have done with Senate Bill 221
25 and Senate Bill 3, you have a working knowledge of

1 the components of the ESP and MRO test, correct?

2 A. A working knowledge, yes.

3 Q. Of the components, and those components
4 are contained in -- we have been talking about
5 4928.142 and .143, correct?

6 A. That's correct.

7 Q. And if we refer to those -- we already
8 have, as ".142" and ".143," you understand what we
9 are talking about?

10 A. I do.

11 Q. As part of your responsibilities at the
12 Commission, do you also assist in rulemaking
13 proceedings?

14 A. Depending on which rule procedures you're
15 talking about, but yes, if they pertain to my area, I
16 would certainly provide comment.

17 Q. So you're familiar with the rulemaking
18 process.

19 A. I am.

20 Q. And did you assist in the rulemaking for
21 Revised Code 4901:1-35, particularly 1-3-03 which
22 pertains to the filing of SSO and MRO applications?

23 A. That was part of what we reviewed, yes.

24 Q. So you were involved in that rulemaking
25 process.

1 A. Tangentially. There were other
2 predecessors that were here that worked on that also,
3 but yes, I was involved.

4 Q. I just want to talk with you a little bit
5 about the components of the MRO and ESP. Would you
6 like to have copies of 142 and 143, or do you have
7 copies?

8 A. I have a copy of 142, but I do not have a
9 copy of 143.

10 MR. STINSON: Okay. If I can approach,
11 your Honor?

12 EXAMINER PIRIK: Yes.

13 A. I have them.

14 Q. First, the MRO, under .142, essentially
15 it sets price through the competitive bid process,
16 correct?

17 A. That's correct.

18 Q. And under the ESP, .143(B)(1) provides
19 the pricing for generation service, correct, for the
20 ESP?

21 A. That's correct.

22 Q. And in this proceeding, Duke decided to
23 procure electric supply and pricing through the CBP
24 process for the ESP as would be done under an MRO,
25 correct?

1 A. It's under an ESP framework, but yes,
2 it's a descending clock option and it's a competitive
3 bid process.

4 Q. To fulfill the requirement to procure
5 supply in its pricing, Duke Energy chose to -- chose
6 a CBP.

7 A. That's right.

8 Q. And that's the same process as would be
9 under an MRO, correct?

10 A. Aspects of it, yes.

11 Q. What's different?

12 A. I mean, they don't follow the MRO statute
13 in terms of 10 percent, 15 percent. I mean under an
14 ESP framework there was latitude or flexibility
15 regarding how soon they went to market.

16 Q. Right. But in this proceeding, the CBP
17 proposed in this ESP proceeding would be the CBP, the
18 same type of CBP proposed in an MRO, and for that
19 reason it's considered a wash as between what price
20 would be obtained under either an MRO or an ESP,
21 correct?

22 A. If you are asking me that under an ESP
23 scenario versus an MRO scenario, because Duke is
24 already at 100 percent market, would this
25 quantitative analysis and tests be the same? Yes.

1 Q. Thank you.

2 Now, 143(B)(2) permits an electric
3 utility to include, in an ESP, the nine items listed
4 in subdivisions (a) through (i), correct?

5 A. Yes.

6 Q. And do you agree that an ESP is limited
7 to containing those nine items?

8 A. I think that's up for Commission
9 determination but, yes, there are nine items that the
10 Commission has to consider that anything that would
11 be added to an ESP should be included in one of these
12 nine items.

13 Q. And that's my question. The test limits
14 consideration to those nine items.

15 A. Yes.

16 Q. And those nine items involve cost
17 considerations, don't they?

18 A. They are generally related to cost. They
19 are not all related to cost, but yes.

20 Q. Are you aware of any Supreme Court
21 decisions that indicate those nine items are cost
22 related?

23 MR. LINDGREN: Objection. The witness is
24 not an attorney.

25 EXAMINER PIRIK: Overruled.

1 THE WITNESS: Could you repeat the
2 question, please, or have that reread? Sorry.

3 (Record read.)

4 A. I'm not aware.

5 Q. You have read Supreme Court decisions
6 related to 142 and 143, correct?

7 A. You would have to reference me to what
8 Supreme Court decisions you are talking about. There
9 have been several that have been appealed to the
10 Supreme Court.

11 Q. Thank you.

12 Now, the actual test for the ESP versus
13 MRO test is contained in 143(C), right?

14 A. Did you say 143(C)?

15 Q. Right.

16 A. Yeah. Actually, no.

17 Q. Where is the test contained?

18 A. I believe it's in 143(E). I apologize,
19 Mr. Stinson. It is in (E), but it's also in (C).
20 It's in both. We are both right.

21 Q. Well, let's talk about -- you can rely on
22 143(E), but I am going to talk about 143(C).

23 A. That's fine. I'm with you.

24 Q. Okay. And that test is the Commission
25 may approve or modify and approve an ESP if "its

1 pricing and all other terms and conditions, including
2 any deferrals and any future recovery of deferrals,
3 is more favorable in the aggregate as compared to the
4 expected results that would otherwise apply under
5 section 4928.142 of the Revised Code," right?

6 A. You read that correctly.

7 Q. And based upon your work on Senate Bill 3
8 and Senate Bill 221, as well as your experience
9 working at the Commission since 1994, do you have an
10 opinion as to the overall purpose of this test?

11 A. The purpose of the test is to look at
12 whether, on a quantitative basis and qualitative
13 basis, that an ESP is more favorable than any market
14 rate offer.

15 Q. And you mentioned the -- I think we
16 talked about the quantitative portion of the test and
17 we talked about the nine items in 143(B)(2) that
18 contained cost considerations. Upon what do you base
19 your opinion that there are qualitative factors
20 considered in the test?

21 THE WITNESS: Could you please reread
22 that, please?

23 (Record read.)

24 A. The statute and our rules that were
25 promulgated from the statute says that the Commission

1 can consider not only quantitative but qualitative
2 benefits.

3 Q. But where in the statute does it say
4 "qualitative"?

5 A. I would have to look through all this.
6 I'm familiar with 143. I don't read it every day.
7 In this paragraph that you are referencing me to,
8 (C)(1), I do not see the word "qualitative."

9 Q. Well, I'm willing to wait if you want to
10 look through and tell me if you can find a reference
11 to the Commission considering qualitative benefits.

12 A. I can certainly do that. And we are just
13 talking in 143, correct?

14 Q. If you know of any other provision in the
15 law, in any statute that permits this Commission to
16 consider qualitative benefits when considering the
17 ESP versus MRO test, I'm all ears.

18 A. Let me look over 143 here quickly.

19 In 143, based on my quick read, sitting
20 here on the stand, I don't see the word
21 "qualitative."

22 Q. So you can't tell me, sitting on the
23 stand today, whether there is any provision that
24 permits the Commission to consider qualitative
25 benefits in considering the ESP versus MRO test; is

1 that your testimony?

2 A. Not in 143, no.

3 Q. Or anywhere else to your knowledge.

4 A. I believe the Commission has spoken that
5 they can consider qualitative benefits when they
6 consider their decision in the aggregate test.

7 Q. The Commission -- the Commission, through
8 its orders.

9 A. Through its orders, yes.

10 Q. Now, would you agree with me that with
11 passage of Senate Bill 3, the policy of the state
12 became to give customers a choice of electric
13 suppliers?

14 A. I would agree.

15 Q. And that electric generation service be
16 provided at market base rates -- a market-based
17 standard service offer?

18 A. Yes. Either through an ESP or an MRO,
19 yes.

20 Q. And would you also agree that with the
21 passage of Senate Bill 21, that policy was tweaked to
22 provide an electric utility with two alternatives to
23 provide the SSO?

24 A. Yes. As I just stated, yes.

25 Q. And those alternatives are what we are

1 talking about now, the MRO under 142, and the ESP
2 under 143?

3 A. Yes.

4 Q. And the only way an ESP can be approved
5 is if it is more favorable than an MRO, correct?

6 A. Correct.

7 Q. So the test does not prefer an ESP over
8 an MRO, does it?

9 A. The test does not perform -- prefer --
10 I'm sorry. Could you repeat that?

11 Q. The test does not prefer an ESP over an
12 MRO.

13 A. No. There's an option.

14 Q. Well, in fact, there would be a
15 preference for the MRO over an ESP unless there could
16 be a showing that the ESP were more favorable,
17 correct?

18 A. I think that's how you would interpret
19 the statute, yes.

20 Q. Thank you.

21 Now, let's look a little bit just at the
22 mechanics of how the test is applied. Of course, it
23 starts with the filing of an application for an ESP,
24 right?

25 A. That's correct.

1 Q. And the first consideration then would be
2 to look at the specific provisions and terms included
3 in that application, correct?

4 A. When you say the "first step," the first
5 step for me, the first step for it?

6 Q. For anybody performing the ESP versus MRO
7 test.

8 A. Yes.

9 Q. And then the step would be to compare
10 that specific ESP application to the results that
11 would be obtained under 142, correct?

12 A. In a generalized sense, yes.

13 Q. Why do you say "generalized"?

14 A. I mean there are a lot of factors that go
15 into looking at, you know, what's -- what's recovered
16 in the ESP versus what can be recovered in an MRO.
17 Yes, I generally agree with your --

18 Q. That is the test, is it not, that we look
19 at the ESP application and compare that with the
20 results of what would be obtained under 142.

21 A. Yes.

22 Q. And, now, just to be sure, the test does
23 not provide for a comparison of the specific ESP
24 application filed to a previous ESP, correct?

25 A. That's correct.

1 Q. Or an alternative ESP.

2 A. That's correct.

3 Q. The comparison is to the results that
4 would obtain under 142.

5 A. Under our current market rate offer, yes.

6 Q. Now, have you reviewed the prefiled
7 testimony of Mr. Wathen, Duke Witness Wathen?

8 A. I -- yes, I skimmed it at one time.

9 Q. And are you aware, under his analysis of
10 the test, he reviewed three items in considering
11 whether the ESP was more favorable, and those items
12 were rider PSR, rider DCI, and various modifications
13 to rate design; would you agree with that?

14 A. I would agree.

15 Q. Now, you did not agree with Mr. Wathen
16 that the PSR is a benefit of the ESP, correct?

17 A. It was not part of staff's recommendation
18 that we approve that rider, so no.

19 Q. Did you do any analysis of the costs that
20 customers would incur under the PSR?

21 A. I did not.

22 Q. Did you consider a staff's witness who
23 performed that analysis in making a recommendation?

24 A. I relied on Dr. Choueiki's testimony.

25 Q. And did you use that testimony in making

1 your recommendation as to whether the ESP is more
2 favorable?

3 A. Yes. The quantitative analysis, without
4 recommending rider PSR, is zero.

5 Q. Do you understand that the PSR would
6 permit Duke to recover the costs of its OVEC power
7 entitlement?

8 A. Yes.

9 Q. That's related to OVEC generation,
10 correct?

11 A. Yes.

12 Q. We've covered some of this,
13 Ms. Turkenton. I am going to pare some of this down.

14 A. That would be great.

15 Q. For all of us, wouldn't it?

16 Let's talk a little bit about rider DCI.
17 I'm a little confused with your rider DCI analysis.
18 In the question and answer beginning on page 3,
19 line 17, you state that rider DCI is a qualitative
20 benefit of the ESP, correct?

21 A. Yes. The rate case process is a
22 qualitative benefit of the test. I can explain
23 further if you would like me to. The cost of the
24 company not filing a distribution rate case I believe
25 is a benefit to customers not having to go through a

1 long arduous case and not paying the cost of the
2 distribution rate case.

3 Q. Wouldn't that be a quantitative benefit?

4 A. I didn't quantify it, if you look at my
5 testimony.

6 Q. I think you're on page 5. I'm on page 3.

7 A. That's fine, but I didn't quantify it
8 because quantifying the cost of a rate case is --

9 Q. Okay. Go ahead.

10 A. I didn't quantify it. It could be a
11 quantifiable benefit, but I used it as a qualitative
12 benefit.

13 Q. Okay. Getting back to page 3.

14 A. Uh-huh.

15 Q. It's my understanding that what your
16 testimony states is that it's a qualitative benefit
17 because it provides an economical and efficient
18 process, enabling the Company to make investments and
19 approve both safety and reliability of its
20 distribution system?

21 A. That's correct.

22 Q. And that is the basis of your qualitative
23 benefit for the DCI?

24 A. Yes. It's a more efficient process than
25 a rate case.

1 Q. Isn't it true that rider DCI could also
2 be approved in a base rate proceeding?

3 A. It could be.

4 Q. Can riders be approved in any other
5 proceedings?

6 A. Single issue ratemaking needs to come out
7 of Senate Bill 221.

8 Q. Or a base rate proceeding.

9 A. True.

10 Q. If rider DCI were approved in a prior
11 base rate proceeding and Duke filed an MRO, Duke
12 would have available to it the benefits you claim are
13 associated with rider DCI, correct?

14 THE WITNESS: Could you repeat that
15 question, please?

16 (Record read.)

17 A. I don't necessarily agree with that, no.

18 Q. And why not?

19 A. I mean, under an MRO scenario, they have
20 the right, as a company, to file a distribution rate
21 case. But, again, the efficiency of approving DCI
22 based on Ms. McCarter's testimony in an ESP under
23 single issue ratemaking, that is a quantitative
24 benefit that wouldn't be afforded under an MRO. They
25 would have to do it through a rate case.

1 Q. Let's back up a little bit and just
2 assume that in Duke's last base rate proceeding rider
3 DCI were approved. Okay? Are you with me?

4 A. I mean, typically in a base rate case
5 it's base rates, yes. There can be a rider for a
6 limited period of time, 3- or 5- or 6-year recovery
7 is not uncommon, but usually you're just -- you file
8 base rate cases for base rates.

9 Q. But didn't we just establish that a
10 rider -- a single issue rate -- a single rate issue
11 can be established in a base rate proceeding and a
12 rider can be established?

13 A. I wouldn't use the words "single issue"
14 because I connotate that with Senate Bill 221, but,
15 yes, there are various rate issues, with a limited
16 term or a limited recovery period, that can be
17 recovered in a base rate case.

18 Q. Now, would you agree, again talking about
19 rider DCI in the base rate process, that there would
20 be more of an incentive for a company or a utility to
21 control its costs, its distribution costs, its
22 capital investment costs, in a base rate recovery
23 scenario versus a rider?

24 A. I can't speak to whether the company
25 would more efficiently control their costs whether

1 they received it in base rates or under a single
2 issue ratemaking such as DCI.

3 Q. Under rider DCI the company would receive
4 a cost recovery more quickly or sooner than it would
5 under a base rate recovery system, would it not?

6 A. I do agree with that, yes.

7 Q. And would you also agree if the company
8 has areas in which it has expected increases in
9 revenues or decreases in expenses, it is not likely
10 to propose an adjustment mechanism for such increases
11 or revenues? Let me start over.

12 Would you agree if the company has areas
13 in which it has expected increases in revenues or
14 decreases in expenses, it is not likely to propose an
15 adjustment mechanism for such increases of revenues
16 or decreases in expenses?

17 A. I'm sorry, Mr. Stinson. I don't -- I
18 didn't see the question in that question.

19 Q. Let me try to rephrase it for you then.

20 A. I appreciate it.

21 Q. Thank you.

22 There's an incentive for a utility such
23 as in a -- for a DCI rider, where the utility is
24 going to be making investments to recover those
25 investments, as you stated, sooner. Let's say in a

1 different situation where the utility's expenses are
2 decreasing, is there an incentive for that utility to
3 come in and seek some type of adjustment to recognize
4 those decreased expenses?

5 MS. WATTS: Objection, your Honor, as to
6 the form of that question.

7 EXAMINER PIRIK: Overruled.

8 A. I certainly cannot speak for the company,
9 but if the company's costs are decreasing, then
10 petitioning the Commission for a decrease in costs is
11 probably not likely.

12 Q. The same would go with the rate of
13 return, correct?

14 A. Again, I can't speak to the company
15 and/or its business decisions, but I wouldn't think
16 they would come in and ask for a reduced return on
17 equity.

18 Q. Have you ever seen a company come in and
19 do that in your experience with the PUCO?

20 A. Not that I can think of.

21 Q. Now, this ESP case was filed in May of
22 2014, correct?

23 A. I don't remember, but subject to check,
24 I'll agree with you.

25 Q. Okay. Thanks.

1 And prior to filing, would you agree that
2 Duke went to considerable time and expense preparing
3 its ESP application?

4 A. Again, I can't speak for Duke, but yeah,
5 it appears they would have time and considerable
6 effort in preparing an application of that size.

7 Q. And since that time would you agree that
8 20 or more parties have intervened in this case?

9 A. I don't know the number, but subject to
10 check, I will agree.

11 Q. And several rounds of discovery?

12 A. I would agree.

13 Q. Depositions, data requests?

14 A. I would agree with confidentiality
15 issues. Sorry.

16 Q. Two, three, four weeks of hearings?

17 A. I would agree.

18 Q. What I'm getting at is that prosecuting
19 an ESP proceeding is very time consuming and
20 expensive for consumers, correct?

21 A. The overall ESP, yes.

22 Q. And you wouldn't be surprised if it were
23 into the millions of dollars, correct?

24 A. I have no idea.

25 Q. Would you disagree with that?

1 A. Subject to check, no, I wouldn't
2 disagree.

3 Q. And the terms of the ESP proceedings
4 typically last three years.

5 A. Typically.

6 Q. So say, every three or so years, the --
7 under an ESP scenario, the parties would incur the
8 same typical costs and expenses in prosecuting an ESP
9 case.

10 A. Yeah. On -- if you are just talking
11 about the ESP case as a whole, yes, I would agree.

12 Q. Now, if the company or utility were to
13 move to an MRO, the parties would not be litigating
14 whether an ESP is more favorable than an MRO,
15 correct?

16 A. If the Commission approved that the
17 company could move to an MRO, yes, that would be
18 correct.

19 Q. Yes. If the company went to an MRO, the
20 ESP MRO test is applicable, correct?

21 A. Correct.

22 Q. So the parties would avoid those costs,
23 right?

24 A. They could, yep.

25 Q. And is the avoidance of those costs a

1 qualitative benefit of an MRO?

2 A. Sure.

3 Q. Let's turn to page 5 of your testimony,
4 and the Q and A beginning at line 12.

5 A. You mean Question 12, line 8?

6 Q. Yeah, I'm sorry.

7 A. That's fine. Yes, I'm there.

8 Q. And on line 12 you state, "In fact, it
9 may be argued that pursuing the recovery of these
10 distribution related costs through a rider mechanism
11 as opposed to a rate case would result in cost
12 savings by avoiding costly base rate case
13 proceedings," right?

14 A. That's correct, but -- go ahead with your
15 question. Sorry.

16 Q. You go ahead.

17 A. You were asking me in your earlier line
18 of questioning about the ESP as a whole and comparing
19 apples and oranges. I am comparing, in my question,
20 Question 12, the DCI, under a base rate proceeding
21 versus an ESP proceeding. Just the DCI rider itself,
22 not the whole entire ESP case.

23 MR. STINSON: Could I have that read
24 back?

25 (Record read.)

1 A. I am just stating you would have to
2 quantify the benefit or quantify the cost of the DCI
3 itself to the base rate proceeding itself.

4 Q. Thank you. But that's not responsive to
5 my question, so I probably should just ask the
6 question and we should go from there.

7 A. Okay.

8 Q. Now, backing up to the portion I just
9 read, and to be clear, your testimony assumes that
10 Duke would not take advantage of the ability to
11 obtain a DCI rider in a base rate proceeding, but
12 would continue to seek recovery of distribution
13 capital investments in base rate proceeding, correct?

14 A. Correct.

15 Q. Now, is that approach economical?

16 A. I mean, you have to define "economical."

17 Q. Well, I think what you're assuming is
18 that the company through the years is never going to
19 implement a DCI, but you assume each year -- each
20 time that the company is going to be going to a base
21 rate proceeding to recover its investment capital
22 investment costs.

23 A. That's correct.

24 Q. And that wouldn't be the case if there
25 were an established DCI at some point in time.

1 A. Through an ESP?

2 Q. Yes.

3 A. Yes. They could only get recovery one
4 place or the other.

5 Q. So the company wouldn't have to come in
6 each time in a base rate proceeding to recover those
7 capital investment costs; they would already have a
8 DCI in place.

9 A. The DCI is for a period of usually three
10 years. So, yes, if they have one in place, they
11 wouldn't need to come in for a base distribution
12 case.

13 Q. And say the DCI were for a period of
14 three years and if there were a rider approved in a
15 base rate proceeding, how many years would that rider
16 be in effect?

17 THE WITNESS: I apologize. Could you
18 please read that back?

19 (Record read.)

20 A. It's -- it could be a one-year recovery,
21 a three-year recovery, a five-year.

22 Q. It could be the same as the three-year
23 DCI rider.

24 A. Are we talking about recovering the same
25 costs in a base distribution case and a DCI?

1 Q. We are talking about recovering capital
2 investment costs through a rider.

3 A. In a base rate case? I apologize,
4 Mr. Stinson.

5 Q. We were talking about initially that a
6 rider could be approved in a base rate proceeding,
7 correct?

8 A. It could be.

9 Q. And you said yes, for a limited period of
10 time.

11 A. I did.

12 Q. And then you stated that rider DCI would
13 typically be for the term of the three-year ESP,
14 correct?

15 A. Yes.

16 Q. So now my question is, the rider approved
17 in the base rate proceeding to recover the same
18 capital investment costs, could also be for a three-
19 to five-year period, correct?

20 A. It could be if that's what the Commission
21 ordered, yes.

22 Q. And if that rider were approved in the
23 base rate proceeding for that three- to five-year
24 period, if approved by the Commission, the same
25 benefits would be available to the utility that you

1 claim in your testimony that are associated with
2 rider DCI, correct?

3 A. What do you mean "same benefits"?

4 Q. Well, you state that the benefits of
5 rider DCI, on page 3, are it provides an economical
6 and efficient process. What do you mean by
7 "economical and efficient process" at page 5, line 21
8 and 22?

9 A. As I stated earlier, the company is
10 available to get the recovery on a more efficient
11 basis through an ESP and, in my opinion, saving the
12 time of a base rate proceeding, because they are
13 already in here seeking an application for an ESP.

14 Q. And those benefits also would extend to
15 improve the safety and reliability of the
16 distribution system?

17 A. I would hope the company would be
18 diligent in being safe and reliable in any scenario,
19 but yes.

20 Q. And that would be because the company
21 could recover its investments more quickly under the
22 DCI or the rider in the base proceeding?

23 A. Yeah, through single issue ratemaking,
24 they can recover this cost on a more efficient basis.

25 Q. So on -- improving the safety and

1 reliability as a benefit would be the same under the
2 DCI or the rider approved under a base rate
3 proceeding?

4 A. I don't think I agree, no.

5 Q. And why not?

6 A. Are you talking in relation to the safety
7 and reliability or just to the efficient process?

8 Q. I said the safety and reliability.

9 A. It would be the same. I'm sorry,
10 Mr. Stinson. Yes, the same.

11 Q. And with the efficiency, what do you mean
12 by efficiency, the benefit of efficiency?

13 A. They are proposing an --

14 Q. I'm sorry. I can't hear.

15 A. They are proposing an application for an
16 ESP in front of this Commission. They propose rider
17 DCI as part of that application. It's a more
18 efficient process because they are already in here to
19 set generation rates, transmission rates, and other
20 related items, it's a more efficient process than
21 going through a base rate case, another proceeding.

22 Q. So your testimony isn't that the DCI is
23 more efficient because it can collect revenues as you
24 go, as investments are made?

25 A. I mean that's part of it, yes.

1 Q. That's the same benefit that can be
2 incurred under a single-issue ratemaking if a rider
3 was approved in a base rate case?

4 A. That's correct.

5 Q. I think we've already discussed this a
6 little bit, but I want to follow up on it some, too,
7 Ms. Turkenton. I think we've both agreed if the DCI
8 were approved in this proceeding, the company could
9 begin making its investments, recovering those
10 investments from customers almost immediately; is
11 that correct?

12 A. That's correct.

13 Q. And if a base rate case were filed, the
14 company would experience a lag in collecting its
15 investments from consumers, correct?

16 A. That's correct.

17 Q. And the company would get its money
18 sooner under a DCI, right?

19 A. That's correct.

20 Q. Did you attempt to quantify those costs?

21 A. I did not.

22 Q. And generally the same is true with the
23 distribution storm rider, that it permits the company
24 to begin collecting those riders sooner in this case
25 once a certain threshold is reached rather than going

1 to a base rate proceeding?

2 A. That's true.

3 Q. Now, at page 4, line 5 of your testimony.

4 A. I'm there.

5 Q. I'm paraphrasing, you state that the ESP
6 can provide more benefits than an ESP -- "An ESP
7 filing as opposed to an MRO filing provides a
8 mechanism where the Company's tariffs can be further
9 refined to be more reflective of the current
10 competitive environment thus providing more benefits
11 for customers that may be available under an MRO
12 application."

13 A. That's correct.

14 Q. Now, under 142, when a utility files for
15 an MRO and submits a competitive bid proposal, it
16 also must submit a proposed rate design, correct?

17 A. That's what the statute says, yes.

18 Q. Is that also contained in the rules?

19 A. It is.

20 Q. And isn't it true in considering the
21 expected results that would apply under 142, Duke did
22 not provide a proposed rate design?

23 MS. WATTS: Your Honor, I object to the
24 question because Mr. Stinson referred to 142, and the
25 company's application was filed under 143.

1 MR. STINSON: Well, your Honor --

2 EXAMINER PIRIK: Overruled.

3 MR. STINSON: Thanks.

4 A. I'm not aware that they filed any rate
5 design under 142.

6 Q. Did they indicate how they convert
7 wholesale prices to retail rates?

8 A. In the ESP application they did that
9 through RC and RE, yes.

10 Q. But for determining the results under
11 142, that's the question.

12 A. I'm not aware in the application that
13 they provided rate design under 142.

14 Q. Okay. For its ESP pricing, Duke also
15 chose to secure and supply pricing through the
16 competitive bid process just like an MRO, correct?

17 A. Correct.

18 Q. And as a part of that CBP analysis, Duke
19 submitted a detailed analysis of how it could convert
20 those wholesale prices to retail rates, right?

21 A. Through RC and RE, yes.

22 Q. Isn't it true that nothing prohibits Duke
23 from employing the same analysis for the identical
24 CBP performed under an MRO?

25 A. I disagree.

1 Q. Why?

2 A. I think, in an MRO scenario, a kilowatt
3 is a kilowatt and everyone would be charged the
4 same -- the same rate which is why I believe there
5 are qualitative benefits to the rate design they
6 proposed in the ESP framework.

7 Q. Then what's the purpose of submitting a
8 rate design under the rules in the statute?

9 A. Based on an earlier question from about
10 an hour ago, the --

11 Q. Am I keeping things too long?

12 A. No, no. When I was mentioning the draft
13 legislation and rules that we worked on, I think
14 sometimes terminology and nomenclature just got
15 transferred from 143 to 142. "Rate design" is a
16 general term. It doesn't mean that they -- the rate
17 design would be the all kilowatt hours are the say
18 under an MRO scenario.

19 Q. So now you are disputing the language of
20 the rule.

21 A. I am not disputing it, no.

22 Q. The rule does require the company to
23 submit rate design for an MRO.

24 A. Yeah, and the rate design would be that
25 all kilowatt hours are the same under each.

1 Q. It could, right, and it could not. It
2 could be a different rate design.

3 A. If the Commission would approve that. I
4 don't believe it wouldn't be staff's recommendation
5 that the Commission approve that.

6 Q. But the Commission could.

7 A. The Commission could.

8 Q. And the company is required to submit
9 that rate design.

10 A. Per the statute and the rules, yes.

11 Q. Right. And it is required to show how
12 it's going to convert the wholesale prices to retail
13 rates.

14 A. That's what the rules and the statute
15 says, yes.

16 Q. And we've talked before in this hearing
17 that once an MRO approved -- is approved for a
18 utility, the utility cannot revert back to an ESP,
19 correct?

20 A. Correct.

21 Q. But a utility can file another MRO
22 application or fail to amend or modify its CBP,
23 correct?

24 A. Correct.

25 Q. And with that new application the utility

1 would also be required to submit a rate design,
2 right?

3 A. Under the ESP statute, yes.

4 Q. And under the MRO rules, right?

5 A. That's correct.

6 Q. I have a final question. I guess two
7 more questions. On page 4, line 17.

8 A. Yes, I'm there.

9 Q. Where you talk about subjecting customers
10 to substantial rate impacts, have you done any
11 quantitative analysis of that?

12 A. Did you say qualitative or quantitative?

13 Q. Any quantitative.

14 A. Quantitative?

15 Q. Yes.

16 A. I have.

17 Q. Have not?

18 A. I have.

19 Q. You have? Are those --

20 A. Typical bill impacts.

21 Q. Are they available?

22 A. They are. They're related to JEZ-3.

23 Q. They are not a part of your testimony.

24 A. They are not a part of my testimony, no.
25 They are JEZ-3. I've analyzed those typical bill

1 impacts.

2 Q. If you agree with Duke's estimate for the
3 PSR of 22 million in net costs over the term of the
4 ESP, considering both quantitative and qualitative
5 factors, do you know how you would recommend whether
6 an MRO versus and -- whether -- do you know -- let me
7 start over.

8 If you agree with Duke's estimate for the
9 PSR of \$22 million net costs over the term of the
10 ESP, considering both quantitative and qualitative
11 factors, what would be your recommendation of whether
12 an ESP would be more favorable than an MRO or not?

13 A. In your scenario where they say -- where
14 you say 22 million in costs --

15 Q. Uh-huh.

16 A. -- over the term?

17 Q. Right.

18 A. In that scenario, under a quantitative
19 benefit, the test would fail.

20 Q. And under both a quantitative and
21 qualitative benefit, what would be your
22 recommendation?

23 A. As I stated earlier, the qualitative
24 benefits I have outlined in my testimony would be the
25 same under an ESP as they would be under an MRO. So

1 I would recommend to the Commission that on a
2 quantitative basis, the test would fail based on the
3 \$22 million cost in your scenario, but would
4 recommend or at least give them the qualitative
5 benefits they could consider in making their
6 decision.

7 Q. You will leave it to the Commission.

8 A. Leave it to the Commission.

9 MR. STINSON: Thank you for your time and
10 patience, Ms. Turkenton.

11 THE WITNESS: You're welcome.

12 EXAMINER PIRIK: Ms. Bojko, did you have
13 questions for this witness?

14 MS. BOJKO: I did, your Honor. Thank
15 you.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Bojko:

19 Q. And, I'm sorry, Ms. Turkenton. I did
20 miss a few minutes, but I am going to try not to
21 repeat what I've heard, but I may need to just for
22 foundation purposes.

23 So on page 2 of your testimony, as I
24 understand your testimony, there are two items that
25 you discuss and these are two items that you do not

1 support or that you are proposing to modify; is that
2 correct?

3 A. Yes. My testimony is surrounding the
4 better-in-the-aggregate test and the proposed --
5 actually, the bill impacts around proposed rider --
6 not proposed riders, but riders RC and RE.

7 Q. And you propose to modify these aspects
8 of Duke's application; is that correct?

9 A. The rate design that Duke has proposed
10 under RC and RE, from a philosophical policy
11 standpoint I'm fine with. It's the typical impacts
12 associated with the policy that I believe the
13 Commission should consider and is the purpose of my
14 testimony.

15 Q. Okay. And then also you discuss the MRO;
16 is that correct?

17 A. Correct, correct.

18 Q. And the MRO test, I should call it, and
19 you understand what I mean when I say the "MRO test"?

20 A. I do.

21 Q. Okay. So let's just focus on the MRO
22 test, and this is the comparison between the ESP and
23 the MRO, and as I understand your position, you
24 believe that the ESP is more favorable -- favorable
25 in the aggregate only after staff's modifications are

1 adopted; is that correct?

2 A. That's correct.

3 Q. So as modified by staff, Duke's ESP would
4 be more favorable; is that right?

5 A. Yeah. On a quantitative basis, it's zero
6 with the rejection of staff's proposal on the PSR,
7 and I believe there are qualitative benefits that I
8 would recommend to the Commission that it is better
9 in the aggregate.

10 Q. Okay. And so, you -- we'll get back to
11 the quantitative/qualitative. But you believe that
12 as filed Duke's proposal, is not better in the
13 aggregate than the MRO?

14 A. As filed?

15 Q. Yes.

16 A. Correct.

17 Q. Okay. Okay. And you talked about the
18 zero dollar qualitative benefit that you have
19 concluded that there's a zero-dollar quantitative
20 benefit of the company's proposed ESP over the MRO;
21 is that correct?

22 EXAMINER PIRIK: I think your microphone
23 went out. I don't know if it's the battery or --

24 MS. BOJKO: It's dead.

25 Q. Sorry about that. Would you like me to

1 repeat that?

2 You just stated, in response to my
3 question, that you concluded after your analysis that
4 there is a zero-dollar quantitative benefit of Duke's
5 ESP over the MRO; is that correct?

6 A. Based on staff's modifications, yes.
7 Based on staff's modification, yes.

8 Q. So the only benefits that you have been
9 able to ascertain are the benefits related to
10 qualitative benefits; is that correct?

11 A. That's correct.

12 Q. Okay. And if -- so, from your
13 discussion, I believe you've stated that you did not
14 consider the actual costs associated with the DCI in
15 your evaluation from a quantitative perspective; is
16 that right?

17 A. No. I believe it would be the same under
18 an MRO versus an ESP.

19 Q. Okay. So there was a zero-dollar value
20 associated with the cost of the DCI in your
21 calculation.

22 A. Correct.

23 Q. Okay. And does Duke's proposal include a
24 commitment to not have a base rate case?

25 A. It does not.

1 Q. So they have not proposed to freeze
2 distribution rates during the ESP; is that right?

3 A. That's how I understand their proposal.

4 Q. And on page 5 of your testimony, do I
5 understand your testimony to -- that -- or, do I
6 understand that you believe that there will be a rate
7 freeze or they will not come in for a rate case
8 because -- and that's why you talked about savings
9 from not having a rate case?

10 A. Could you read that back, please.

11 (Record read.)

12 Q. A bad question. Let me rephrase.

13 On page 5 of your testimony and with
14 Mr. Stinson you talked about savings from not having
15 a base rate case; is that right?

16 A. That's correct.

17 Q. Okay. But in order to state that you
18 believe that there is savings from not having a rate
19 case, you have to believe that there actually won't
20 be a base rate case; is that right?

21 A. Yeah. I would hope that if they got
22 recovery from the DCI, that they would not come in
23 for a base rate case, but from listening through
24 testimony, I do realize the company has not proposed
25 a base rate freeze.

1 Q. Okay. So part of your analysis of the
2 qualitative benefit from rider DCI is the underlining
3 assumption that they won't have a base rate case and
4 thus they won't incur the costs associated with that
5 base rate case.

6 A. That's correct.

7 Q. And for the quantitative side again, you
8 considered zero dollars for the PSR rider because
9 staff is opposing the implementation of that rider;
10 is that correct?

11 A. That's correct.

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

14 EXAMINER PIRIK: Thank you.

15 Ms. Kyler?

16 MS. KYLER: No questions.

17 EXAMINER PIRIK: Mr. Olikar?

18 MR. OLICKER: No questions, your Honor.

19 EXAMINER PIRIK: Mr. Petricoff?

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Petricoff:

23 Q. Good afternoon, Ms. Turkenton.

24 A. Good afternoon.

25 Q. You are the Chief of the Electric Rate

1 and Analysis Group?

2 EXAMINER PIRIK: Mr. Petricoff, could you
3 turn your microphone on. Thank you.

4 Q. Okay. You're the Chief of the Electric
5 Rate and Analysis Group?

6 A. Actually, no.

7 Q. No.

8 A. I'm the Chief of Accounting and
9 Electricity. We have a separate rate department.

10 Q. Oh, okay. From your experience though
11 and in your current position, are you familiar with
12 the criteria that goes into rate design?

13 A. Generally.

14 Q. Okay. Fair to say that one of the
15 criterion that the Commission looks at in rate design
16 is cost causation, that basically those who use the
17 service should pay for the service?

18 A. That's a principle of cost causation,
19 yes.

20 Q. And one of the other basic principles is
21 price transparency, that the customer ought to know
22 what they're paying for so that they can adjust their
23 use of the service?

24 A. I would agree that is a factor.

25 Q. And the final one is gradualism, that

1 the -- that the changes in utility rates shouldn't
2 come suddenly and there shouldn't be price spikes?

3 A. We try to always employ gradualism, yes.

4 Q. Right. Now, I want you to turn to page 6
5 of your testimony. And here you're talking about the
6 riders and I'm only interested in the rider RC, the
7 retail capacity rider. Do you see the question on
8 the RC and your answer on the top of page 6?

9 A. I do.

10 Q. Okay. Now, you indicate that -- that the
11 "Staff does not oppose the rate design changes in
12 concept" for the rider RC. That's on line -- line 4.
13 What do you mean "in concept"?

14 A. Basically, they are changing their
15 generation rate design to be more reflective of the
16 market. I support that position because obviously we
17 want it to be more reflective of the market and it's
18 easier for customers to better line -- it's aligning
19 rates with CRES offers, it's an apples to apples
20 comparison. So they are trying to, in redesigning
21 their RC and RE, they are trying to close the gap.
22 In the blocks, like in the first block, the middle
23 block, and the tail block, to align them more to
24 market, and I think that's the direction we should be
25 going.

1 Q. And is one of the reasons for that the
2 cost causation, that the market pricing should
3 reflect what the cost of the service is?

4 A. Yes.

5 Q. Now, part of the proposal by the company
6 for the service classes DS, DP, and TS, is to remove
7 the demand component. Are you familiar with that?

8 A. I'm generally aware of the proposal. I
9 looked at it from a typical bill impact, but yeah,
10 I'm aware of the proposal.

11 Q. Okay. And when -- when you said that you
12 agreed with the rate design that it should reflect
13 the market, that doesn't necessarily mean that there
14 shouldn't be a demand component for those service
15 groups?

16 A. I don't agree with that. I think that
17 the company in its restructure of the rate classes
18 that you just mentioned, is moving from a demand and
19 kilowatt-hour based rate design, to more of a
20 kilowatt-hour rate design which is, again, more
21 reflective of the market.

22 Q. Okay. What is the purpose of the -- of
23 the demand component in the DS, DP, and TS rates?

24 A. In the current rates or -- there is --

25 Q. Let me rephrase. Would you agree with me

1 that the -- that the purpose of the demand component
2 in the DS, DP, and TS current rates is to collect
3 capacity costs?

4 A. Yes.

5 Q. Right. And capacity costs basically are
6 calculated by PPM?

7 A. True.

8 Q. Okay. And so, if in designing market
9 rates, marketers figure in those capacity costs
10 into -- into their rates, then should Duke, in their
11 SSO rates for customers of those size, also figure in
12 the costs of the capacity?

13 A. I mean, cost of capacity is a component.
14 I don't know that they necessarily need to design
15 rates that have a demand component associated with
16 it.

17 Q. Okay. But at the end of the day, should
18 the DS, DP, and TS rates reflect the actual costs of
19 capacity that it takes to serve those customers?

20 A. I would agree with that, yes.

21 Q. One of the other items that are in the --
22 would you agree with me that one of the other rate
23 design changes that the company is proposing in rider
24 RC is to allocate to the class, the capacity costs
25 based on each class's contribution to the 5 CP PJM

1 charges?

2 A. Yes, I am aware that they have changed
3 that cost allocation.

4 Q. Should the company do something similar
5 in terms of allocating within the class to the
6 customers that are -- that -- I'm sorry. Let me
7 rephrase that.

8 Should the company then be as careful
9 intra-class to allocate those capacity costs to the
10 individual members of the DS, DP, and TS classes?

11 A. I haven't looked at it on that level.
12 What I looked at was the fact that they were moving
13 from a 1 CP allocation to a 5 CP allocation, and I
14 looked at the associated rate impacts with DS, DP,
15 and TS, and saw that there were really no adverse
16 affects to those customers classes based on that new
17 cost allocation.

18 So based on that new cost allocation from
19 a typical bill impact, which was the purpose of my
20 testimony, I did not believe that the change to make
21 it more market friendly or market driven based on
22 PJM's 5 CP was unreasonable.

23 Q. So is it fair to say then that your
24 analysis and your testimony goes strictly to compare
25 what the company was charging the individual members

1 under the -- when I say "the individual members," the
2 individual DS, DP, and TS customers, under the
3 current system to what they were going to charge them
4 under the new system?

5 A. Yeah. I mean, I mainly looked at the
6 typical impacts in JEZ-3 to just ensure that
7 customers, based on, you know, my qualitative
8 benefits from the MRO versus ESP test, that I believe
9 are more reflective of the market, did not harm
10 customers from a typical bill impact.

11 Q. And you did not go to -- to do an
12 analysis to see whether, in fact, the new rates under
13 the 5 CP and the kilowatt-only allocation for the DS,
14 DP, and TS customers reflected the costs of service?

15 A. I did not.

16 MR. PETRICOFF: Okay. I have no further
17 questions. Thank you very much.

18 EXAMINER PIRIK: Thank you. Before we go
19 with the next question, I think we should take our
20 lunch break. Just to -- Mr. Hart -- off the record.

21 (Discussion off the record.)

22 EXAMINER PIRIK: We'll go off the record
23 and take a lunch break until 2 o'clock.

24 (Thereupon, at 12:59 p.m., a lunch recess
25 was taken.)

1 Friday Afternoon Session,
2 November 7, 2014.

3 - - -

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

6 Mr. Hart.

7 MR. HART: Thank you, your Honor.

8 - - -

9 TAMARA S. TURKENTON
10 being previously duly sworn, as prescribed by law,
11 was examined and further testified as follows:

12 CROSS-EXAMINATION

13 By Mr. Hart:

14 Q. Ms. Turkenton, I just want to clarify a
15 little bit about your approach to the balancing test
16 between the MRO and the ESP. If we could just talk
17 first about the rider DCI from a quantitative
18 standpoint. I believe you testified that you see
19 them as neutral because they would be available under
20 each scenario.

21 A. That's correct.

22 Q. Now, are you assuming under the MRO
23 scenario there would also be a base rate case?

24 A. Yes.

25 Q. And so, if we were to just look at a

1 stand-alone ESP versus a stand-alone MRO with no base
2 rate case, would you agree that the DCI would only be
3 available under the ESP scenario?

4 A. Yes.

5 Q. And does that mean that quantitatively an
6 ESP with a DCI rider would be less favorable than an
7 MRO without a DCI rider?

8 A. Yes.

9 Q. Okay.

10 A. In this scenario, yes.

11 Q. Thank you.

12 Now, turning to rider PSR. I always have
13 to remember what the initials are. With respect to
14 rider PSR, I understand your conclusion excludes that
15 from the equation. So you're looking at an ESP
16 without rider PSR.

17 A. Yeah, based on staff's modifications of
18 the company's proposal, yes.

19 Q. Okay. And am I correct you've not, at
20 this point, done a quantitative analysis of rider
21 PSR?

22 A. I have not.

23 Q. Has anyone on staff done that?

24 A. I don't know. That was probably suited
25 for Dr. Choueiki.

1 Q. Okay. Now, here is what I am a little
2 confused by. I thought I heard you this morning --
3 yeah, I guess it was this morning, before lunch, that
4 if the Commission were to approve an ESP with a rider
5 PSR, you would then want to do a quantitative
6 analysis to compare the two. So it seemed to me you
7 wouldn't know that until after the Commission has
8 issued an order, so what opportunity would there be
9 at that point to present a quantitative analysis? If
10 you follow my question.

11 A. No, I do understand. Yes, I mean if the
12 Commission just, through this case, issued the PSR, I
13 could not do a quantitative analysis. They would
14 just have to take my testimony at face value based on
15 staff modifications that we didn't approve a PSR.

16 Q. If you were to do a quantitative analysis
17 of rider PSR, what exactly would that mean? What
18 would you do?

19 A. Honestly, I would probably rely on
20 Dr. Choueiki's group to give me that number and then
21 I would factor it into the test. So that analysis
22 would probably be done outside of my group, but it
23 would obviously be used within my test.

24 Q. Okay. I believe in the past cases you've
25 actually done an equation where you've calculated the

1 benefits of two different plans; is that correct?

2 A. Oh, yes, many times.

3 Q. Okay. So you would do a quantitative
4 comparison of the two plans?

5 A. Correct.

6 Q. And I take it then, if the rider PSR were
7 determined to have a negative net value, that all
8 other things being equal, the ESP would be less
9 favorable than the MRO?

10 A. That is correct.

11 MR. HART: Okay. Thank you.

12 EXAMINER PIRIK: Duke?

13 MS. WATTS: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Watts:

17 Q. Good afternoon, Ms. Turkenton.

18 A. Good afternoon.

19 Q. In response to questions from
20 Mr. Stinson, you answered various things with respect
21 to 4928.142 and 143, correct?

22 A. Yes, I did.

23 Q. And one of the questions he asked you was
24 whether -- what you're relying upon in looking at the
25 qualitative benefits under the ESP statute which is

1 the 143 statute, correct?

2 A. Correct.

3 Q. Would you turn to 143(C)(1), please.

4 A. I'm there.

5 Q. And that's the statute that contains the
6 language that causes you to do the comparison in the
7 first place, correct?

8 A. That is correct.

9 Q. And do you see a section in there that
10 refers to "including its pricing and all other terms
11 and conditions"?

12 A. Yes. I looked at that at lunch and, yes,
13 I see that language.

14 Q. And is that possibly the language that
15 you were relying upon in considering additional
16 qualitative factors with respect to the company's ESP
17 application?

18 A. In my questioning with Mr. Stinson --

19 MR. STINSON: Well, I am going to object.
20 It's redirect on cross-examination.

21 EXAMINER PIRIK: Overruled.

22 A. Yes. I think you could interpret that
23 all other terms and conditions would be a qualitative
24 type benefit.

25 Q. Thank you.

1 A. Or provision.

2 Q. Okay. Thank you.

3 And you also were testifying with respect
4 to the expense incurred by the company in litigating
5 an ESP proceeding, correct?

6 A. Yes.

7 Q. And Mr. Stinson asked you a bunch of
8 questions about data and discovery and attorneys and
9 so forth.

10 A. Correct.

11 Q. Are you aware of any way in which the
12 company is paid for those costs, the incremental
13 costs of an ESP?

14 A. I am not aware. I believe, though,
15 they're shareholder dollars.

16 Q. Thank you.

17 And with respect to the company's
18 application for proposed rider DCI, the company will
19 recover dollars for the work done in that -- for the
20 prudent work done, pursuant to that rider, sooner
21 rather than later if the rider is approved in the ESP
22 as opposed to in a rate case, correct?

23 A. Yes, the recovery would be on a more
24 efficient basis than it would be through a rate case.

25 Q. And likewise, the company will be able to

1 begin the work to enhance reliability as a result of
2 that, correct?

3 A. That's correct.

4 Q. Now, you've also testified with respect
5 to your knowledge about Revised Code 4928.42 which is
6 the MRO statute, right?

7 A. That's correct.

8 Q. So if the company files an MRO and that
9 MRO was approved by the Commission, that's -- the
10 company cannot come back and file an ESP subsequent
11 to that, correct?

12 A. That's my understanding of 142.

13 Q. And once an MRO is approved for a utility
14 in Ohio, what provision in the statute would allow
15 the company to come back to tweak anything relative
16 to that approval?

17 A. In the MRO statute?

18 Q. Right.

19 A. I don't believe there is anything.

20 Q. So there's no mention in the statute
21 about any subsequent action other than once that MRO
22 is approved?

23 A. Yes. Once it's approved, it's permanent.

24 Q. And are you generally aware that Duke
25 Energy Ohio has a purchase of receivables program?

1 A. Generally, yes.

2 Q. And did you see anything in the company's
3 application with respect to the discontinuation of
4 that program?

5 A. I did not review that.

6 Q. And so, based upon your review or your
7 comparison of the company's proposed ESP versus an
8 MRO, your testimony is that if -- given staff's
9 recommendations, all the other elements are a wash,
10 not -- not including rider PSR, correct?

11 A. On a quantitative basis, yes.

12 Q. Were you present for Dr. Choueiki's
13 testimony yesterday?

14 A. I was in and out. But I was present for
15 most of it.

16 Q. Did you hear him explain that you and he
17 were the staff representatives with respect to
18 negotiating -- analyzing and negotiating Duke Energy
19 Ohio's second ESP case which was in Docket 11-3549?

20 A. I heard him reference that, yes.

21 Q. You're not offering any testimony in this
22 proceeding with respect to an interpretation of the
23 meaning of that stipulation, correct?

24 A. In this case?

25 Q. Yes.

1 A. I am not.

2 Q. Okay. Did you also hear him state that
3 he believed that the Commission believes that an ESP
4 has qualitative value in that if there's a
5 reliability concern, it allows the Commission to
6 maintain control such that it could address those
7 reliability concerns?

8 A. I don't remember him specifically saying
9 that, but, subject to check, I would agree he said
10 that.

11 Q. Okay. And do you agree with that
12 statement?

13 A. Yes, I do believe that the Commission, in
14 looking at ESPs, does look at qualitative benefits.

15 Q. Okay. And one of the those qualitative
16 benefits would be the ability to maintain some
17 regulatory control over reliability concerns.

18 A. I would agree.

19 Q. Okay. And are you aware that the
20 Commission opened a docket to consider the status of
21 retail competition in Ohio?

22 A. I am.

23 Q. And is it fair to assume the Commission
24 is interested in fostering a fair and robust
25 competitive market?

1 A. I believe that's part of our mission
2 statement, yes.

3 Q. And one way to do this is to ensure
4 there's a level playing field for all rivals in the
5 market, correct?

6 A. I would agree with that.

7 Q. So the SSO price to compare should be on
8 an equal footing with the competitive retail electric
9 supplier prices generally, correct?

10 A. Generally I am concerned about rate
11 impacts, but, yeah, I do believe that rate design and
12 other issues associated with generation rates should
13 be aligned so that they are comparable to CRES
14 offers, should be comparable, yes.

15 Q. And, ideally, auction winners should not
16 be disadvantaged, correct?

17 A. I agree.

18 Q. And you've offered a recommendation in
19 your testimony that the company's proposed
20 modifications to rider RE and RC be done at a slower
21 pace, so, for example, over three years, correct?

22 A. Actually over two years.

23 Q. Okay. Sorry. And that proposal is due
24 to the staff's concern that the company's proposal
25 could result in a rate increase of 12 percent for

1 certain classes of customers, correct?

2 A. For the rate quotes that I mentioned in
3 my testimony, some are above 12 percent. It's in a
4 range between 12 and 18 percent.

5 Q. And so, that proposal is only with
6 respect to riders RE and RC, correct?

7 A. That's correct.

8 Q. And you are not suggesting any changes to
9 riders other than RE and RC?

10 A. I am not.

11 Q. With respect to the consideration of the
12 riders proposed in this proceeding, would you agree
13 with me that rider PSR is only available in the
14 context of an ESP and not in an MRO?

15 A. I can't answer that. That's up to a
16 Commission determination.

17 Q. And you're aware that rider PSR concerns,
18 to some extent, Duke Energy Ohio's contractual
19 entitlement to 9 percent of the output of the Ohio
20 Valley Electric Corporation?

21 A. I am.

22 Q. And if I refer to that as "OVEC," you
23 understand what OVEC means?

24 A. I do.

25 Q. And are you aware whether the OVEC plants

1 have ever been included in rate base?

2 A. I'm not. I do not know.

3 Q. So far as you know, have they ever been
4 included in the rate base, in Duke Energy Ohio's rate
5 base?

6 A. I don't believe so.

7 Q. Okay. And the company is not proposing
8 rider PSR to be in existence for a period of three
9 years, correct?

10 A. I do not know. I did not review the
11 aspects around PSR.

12 Q. Okay.

13 A. Actually, I will restate that I do know,
14 through testimony up here, you proposed it didn't
15 end, that it would continue on for 20 years, I
16 believe.

17 Q. Okay.

18 A. I apologize.

19 Q. Thank you.

20 MS. WATTS: One moment, please, your
21 Honor. I think I'm almost done.

22 Q. One more question. Ms. Turkenton, you
23 were here when -- when Dr. Choueiki was testifying at
24 least for part of the time, correct?

25 A. I was.

1 Q. Did you hear him discuss his view that
2 one of the tools available to the Commission in the
3 context of an ESP is the ability to ensure stability
4 with respect to customer rates?

5 A. I honestly don't recollect that
6 conversation.

7 Q. Okay. Well, do you believe that one of
8 the tools available to the Commission with respect to
9 an ESP is the ability to assure -- ensure stability
10 with respect to rates?

11 A. Most certainly.

12 MS. WATTS: Okay. Thank you. I have
13 nothing further.

14 EXAMINER PIRIK: Thank you.

15 Mr. Lindgren?

16 MR. LINDGREN: Could we have a moment to
17 confer, please?

18 EXAMINER PIRIK: Yes, a moment.

19 (Discussion off the record.)

20 MR. LINDGREN: Your Honor, I have no
21 redirect questions.

22 EXAMINER PIRIK: Thank you.

23 Thank you, Ms. Turkenton.

24 With regard to Staff Exhibit 2.

25 MR. LINDGREN: Your Honor, I renew my

1 motion to admit Staff Exhibit 2.

2 EXAMINER PIRIK: Are there any
3 objections?

4 Hearing none, Staff Exhibit 2 will be
5 admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 MR. LINDGREN: Mr. Strom will be here
8 momentarily. He's in the restroom.

9 EXAMINER PIRIK: Okay. We will go off
10 the record for a minute.

11 (Discussion off the record.)

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

14 Mr. Strom, would you please raise your
15 right hand.

16 (Witness sworn.)

17 EXAMINER PIRIK: Thank you.

18 MR. O'ROURKE: Thank you, your Honor.

19 - - -

20 RAYMOND W. STROM

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

23 DIRECT EXAMINATION

24 By Mr. O'Rourke:

25 Q. Could you please state your full name and

1 business address.

2 A. Raymond W. Strom. 180 East Broad Street,
3 Columbus, Ohio.

4 Q. And by whom are you employed?

5 A. Public Utilities Commission of Ohio.

6 Q. And did you prefile or prepare some
7 prefiled testimony in this matter?

8 A. Yes, I did.

9 MR. O'ROURKE: And, your Honor, could we
10 mark his prefiled testimony as Staff Exhibit 3?

11 EXAMINER PIRIK: The document is so
12 marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. And do you have any changes to this
15 testimony, Mr. Strom?

16 A. I have one small addition that I would
17 like to make.

18 Q. Go ahead.

19 A. When I was preparing for today, I ran
20 across something that I had planned to talk about and
21 forgot to talk about. It's a somewhat minor thing.

22 It's on -- let's see, the communication
23 protocols for Duke Energy Ohio's competitive bidding
24 process. I just wanted to point out, on page 6, that
25 at the very top of the page it talks about the

1 auction manager shall review the PUCO consultant's
2 post-auction report and that the -- Duke Energy shall
3 also receive a copy of that report.

4 In practice in the past that has not
5 taken place and I don't foresee a reason that it
6 would be taking place. And I would think these
7 things, instead of saying "shall," it probably should
8 say "may." I mean, that would allow the possibility
9 that if it's necessary for the consultant to show
10 something to the auction manager to confirm various
11 information, then they could do that. So I think
12 "may" would be more appropriate in that context.

13 Q. Thank you. Any other changes?

14 A. That's all.

15 Q. And if I were to ask you the same
16 questions in your testimony, subject to that
17 clarification, would your answers be the same?

18 A. Yes.

19 MR. O'ROURKE: Your Honor, we would move
20 for the admission of Mr. Strom's prefiled testimony,
21 subject to cross-examination.

22 EXAMINER PIRIK: Thank you.

23 Ms. Hussey?

24 MS. BOJKO: I'm sorry, your Honor. Could
25 we have the page number again for the "may" to

1 "shall"? I'm sorry.

2 EXAMINER PIRIK: Go ahead, Mr. Strom.

3 THE WITNESS: Page 6 of Attachment E, the
4 communication protocol for Duke Energy Ohio's
5 competitive bidding process auctions.

6 MS. BOJKO: Page 6 or attachment?

7 THE WITNESS: Well, it's -- I'm not sure
8 exactly how -- how it's paginated in the filing, but
9 it's in the communication protocol, and the -- the
10 page I have here says page 6 of 10.

11 MS. SPILLER: It's Attachment E to the
12 application.

13 MR. HART: Not the testimony.

14 EXAMINER PIRIK: Oh, okay.

15 THE WITNESS: I'm sorry, not the
16 testimony.

17 EXAMINER PIRIK: Do you reference it on
18 page 6 of your testimony?

19 THE WITNESS: No, I don't.

20 EXAMINER PIRIK: Oh.

21 MS. BOJKO: Good. I wasn't the only one
22 lost.

23 THE WITNESS: I don't believe I did. I
24 don't have my testimony in front of me.

25 MS. BOJKO: So you're recommending a

1 change to the company's attachment to its
2 application?

3 EXAMINER PIRIK: Could he get a copy of
4 his testimony, Mr. Rourke?

5 MR. O'ROURKE: Oh, I thought I brought
6 one.

7 EXAMINER PIRIK: No. He doesn't have
8 one.

9 THE WITNESS: No, this is not mentioned
10 on page 6 of my testimony. The company's filing,
11 it's in their main application, the first thing they
12 docketed in the case, and they have the master supply
13 agreement, they have various bidding-related
14 documents, and it's the communication protocol
15 document.

16 MS. BOJKO: I'm sorry, your Honor. We're
17 just really confused. Is this in addition to your
18 testimony, a suggested change?

19 THE WITNESS: This was something I -- I
20 planned to mention and I forgot to mention in my
21 testimony.

22 MS. BOJKO: Oh, I see. Okay. So you're
23 adding to your testimony. It's not a change to what
24 we have in front of us.

25 THE WITNESS: That's correct.

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1 EXAMINER PIRIK: And then where in
2 Attachment E to the application are you recommending
3 this change?

4 THE WITNESS: Page 6 of 10 in the top
5 paragraph.

6 EXAMINER PIRIK: So in the top paragraph,
7 second sentence -- no.

8 Mr. O'Rourke, could you help the witness
9 explain exactly what his edit is he is recommending?

10 MR. O'ROURKE: Sure. I'm sorry, your
11 Honor.

12 MS. SPILLER: Your Honor, could I
13 approach so he is referring to the same document you
14 are?

15 EXAMINER PIRIK: Yeah.

16 Mr. O'Rourke, I don't mind if you go up
17 and talk with him and then we will go back on the
18 record.

19 (Discussion off the record.)

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

22 Mr. Strom.

23 THE WITNESS: Okay. To clarify what
24 my -- the addition to my testimony was, it is, as I
25 said, Attachment E to the company's filing which is

1 the communication protocol. On page 6 of 10, the
2 first paragraph, the first sentence I have no
3 concerns about. The second sentence starts out with
4 "The auction manager shall review...." I think that
5 "shall" should be "may." And then the final sentence
6 says "Duke Energy shall receive...." I think that
7 "shall" should be a "may" also.

8 EXAMINER PIRIK: Okay. Thank you.

9 With that clarification, Ms. Hussey?

10 MS. HUSSEY: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Hussey:

14 Q. Good afternoon, Mr. Strom.

15 A. Good afternoon.

16 Q. I just have a couple of clarifying
17 questions. On page 5 of your testimony, you refer to
18 Exhibit RWS-1, so I wondered if we could turn to
19 RWS-1.

20 A. Okay.

21 Q. And I just wondered if you would be able
22 to supply some labels to a couple of the numbers that
23 appear here. In the bars appearing horizontally,
24 could you let me know what the label would be for
25 each of those numbers?

1 A. You mean the 17, 17, 16?

2 Q. Exactly.

3 A. That would be percentage of SSO supply or
4 number of tranches which would essentially be
5 equivalent.

6 Q. And then the numbers running across the
7 bottom essentially is a legend, 100s and then 51 and
8 15; could you supply a label for those?

9 A. That's the same label.

10 MS. HUSSEY: Okay. Those are my only
11 questions. Thank you.

12 EXAMINER PIRIK: Ms. Bojko?

13 MS. BOJKO: Thank you.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Bojko:

17 Q. Good afternoon, Mr. Strom.

18 A. Good afternoon.

19 Q. On page 4 of your testimony, you talk
20 about the company's desire to have a unilateral
21 ability to terminate the ESP. So it's your
22 understanding in this -- in Duke's proposal that they
23 may terminate the ESP as of May 31, 2017?

24 A. Yes.

25 Q. And your recommendation solution to that

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1 is to eliminate the ability of Duke to terminate
2 early so that the ESP term would last through May 31
3 of 2018; is that correct?

4 A. That's correct.

5 MS. BOJKO: No further questions. Thank
6 you.

7 EXAMINER PIRIK: Thank you.

8 OCC?

9 MR. BERGER: No questions, your Honor.

10 EXAMINER PIRIK: Ms. Kyler?

11 MS. KYLER-COHN: No questions.

12 EXAMINER PIRIK: Mr. Olikar?

13 MR. OLICKER: No questions.

14 EXAMINER PIRIK: Mr. Hart?

15 MR. HART: No questions.

16 EXAMINER PIRIK: Duke?

17 MS. SPILLER: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Spiller:

21 Q. Good afternoon, Mr. Strom.

22 A. Good afternoon.

23 Q. Picking up where Ms. Bojko left off in
24 discussing the early termination, am I fair to
25 summarize your testimony on pages 3 and 4, as

1 indicating staff's belief that Duke Energy Ohio's
2 proposed right to terminate would introduce
3 unnecessary risk and uncertainty in the SSO supply
4 procurement process?

5 A. Yes. In the way that it's structured it
6 would, yes.

7 Q. And, sir, you've not attempted to
8 quantify just how much risk would be created by that
9 early termination right, correct?

10 A. That's correct.

11 Q. And you understand that Duke Energy Ohio
12 is not proposing in its application to terminate the
13 ESP one year early for just any reason, correct?

14 A. That's not clear to me.

15 Q. And, sir, you have got the application in
16 front of you, correct?

17 A. Yes, I do.

18 Q. On page 16 of the application, there's
19 the provision of the application which discusses the
20 early termination, correct?

21 A. It starts on page 16 and then goes to
22 page 17, yes.

23 Q. And the company indicates that its right
24 would be predicated in the event there is a
25 substantive change in either Ohio or federal law that

1 affects SSOs or rate plans concerning SSOs, correct?

2 See that about the second sentence under paragraph F?

3 A. That's what it says.

4 Q. Okay. Would you agree with me,
5 Mr. Strom, that there is some level of volatility
6 inherent in the market process and market prices?

7 A. Yes, I would.

8 Q. And would you agree with me that SSO
9 auction participants already face risk and
10 uncertainty because of the volatile market prices?

11 A. I think there's some risk and uncertainty
12 in any kind of activity like this. I would certainly
13 agree to that.

14 Q. Okay. And you would agree that reducing
15 uncertainty and potential rate volatility is an
16 appropriate goal for the Commission to pursue,
17 correct?

18 A. Can you try that one more time, the
19 connection of the two, uncertainty and volatility? I
20 am trying to get that straight.

21 Q. Sure. Would you agree with me that
22 reducing uncertainty and potential rate volatility is
23 an appropriate goal for the Commission -- Commission
24 to pursue?

25 A. The rate volatility yes, I mentioned

1 that. Uncertainty, may -- it may depend on the
2 situation.

3 Q. And it's the uncertainty that there's
4 uncertainty that could lead to rate volatility,
5 correct?

6 A. Uncertainty in the context of risk?

7 Q. Yes, sir.

8 A. Then yes.

9 Q. Risk from the wholesale market prices,
10 correct?

11 A. That's correct. The market prices may go
12 up or down and they may do so suddenly.

13 Q. Okay. And risk, certainly SSO suppliers
14 do face migration risk with some customers leaving
15 the SSO and choosing competitive suppliers, correct?

16 A. That's correct.

17 Q. And because of the potential rate
18 volatility that customers face, the staff is
19 proposing some arrangements to address that
20 volatility, correct?

21 A. Yes.

22 Q. Okay. And I believe, sir, you've
23 testified or indicated in your testimony, sir, that
24 at the end of an ESP, as currently proposed by Duke
25 Energy Ohio, and at the conclusion of that

1 procurement schedule which terminates on May 3, 2018,
2 customers would again be exposed to the then-current
3 market volatility, correct?

4 A. That's correct.

5 Q. And that's one of the reasons you're
6 proposing some of the things that you are in this
7 case, correct?

8 A. Yes.

9 Q. Sir, on page 5 of your direct testimony,
10 you indicate that if the Commission accepts the
11 company's proposal to terminate the ESP one year
12 early, that the Commission should also require the
13 company to include, in its next SSO application, the
14 same competitive bidding process plan that's being
15 proposed in this case, correct?

16 A. I don't think so.

17 Q. Up on line -- well, actually, it begins
18 on the bottom of page 4 and carries over to the top
19 of page 5.

20 A. I think, didn't you leave off the part
21 that says "the auction blending process would
22 continue unabated"?

23 Q. Well, I guess that's what I just want to
24 understand. Are you -- is it staff's recommendation
25 that the subsequent SSO application include the same

1 competitive bidding process if the early termination
2 right is approved or is it that any contracts entered
3 into for the 2017-2018 delivery year would persist?

4 A. That the contracts would persist and that
5 the -- so the blending didn't come to an end in
6 May 31, 2017, but they would continue through May 31,
7 2018.

8 Q. And in a somewhat similar theme on page 5
9 of your testimony, sir, you also suggest that the
10 Commission should require Duke Energy Ohio, in this
11 pending case, to commit to SSO auctions that extend
12 through May of 2021, correct?

13 A. That's not exactly correct, but it's
14 along the right -- right framework. I'm not
15 proposing that the precise schedule that I laid out
16 would have to be followed exactly. It was laid out
17 to show the concept that I had in mind.

18 Q. Okay.

19 A. That the procurement activities would not
20 come to a sudden halt at May 31, 2018, but the
21 blending of auction products would continue, and the
22 auctions would have multiple years, maybe 1-, 2- and
23 3-year auctions or possibly other combinations of
24 auctions, but that it would get extended past the end
25 of this ESP and into the next ESP.

1 Q. And that was one thing, sir, from reading
2 your attachment that I maybe was not so clear on
3 because you provide the date or the term for the
4 currently proposed ESP, correct?

5 A. Yes.

6 Q. And then at the top of your bidding
7 schedule there's then a column for the next ESP,
8 correct?

9 A. That's correct.

10 Q. And if I'm reading that correctly, that
11 ESP would similarly have a proposed three-year term
12 June 1, 2018, through May 31, 2021, correct?

13 A. That's what I put on there just for
14 example purposes. I don't know what might be
15 proposed at that time.

16 Q. Okay. So when you suggest extending out
17 the competitive bidding process plan, your attachment
18 is for illustrative purposes in that staff is not
19 telling the Commission today that Duke Energy Ohio's
20 next SSO must be for three years, correct?

21 A. Oh, that's certainly correct. I say that
22 in my testimony. I say, on page 5, line 1, an
23 example of how this could occur, as presented on
24 RWS-1. It's not intended to be the only way or a
25 definitive recommendation.

1 Q. Okay. And you also indicate also in that
2 paragraph the inclusion of or the extension of the
3 current competitive bidding process into and through
4 the next ESP, correct?

5 A. Can you try that again?

6 Q. Sure. The schedule that you're -- that
7 you're discussing on page 5 of your testimony to
8 extend the competitive bidding process beyond the
9 current -- beyond the term of the proposed ESP, and
10 I'll just focus, sir, on your testimony, page 5,
11 line 10, you indicate that "This would allow
12 transition from this currently proposed ESP to the
13 next ESP....," correct?

14 A. Yes.

15 Q. And in that regard are you asking the
16 Commission, in its Opinion and Order in this case, to
17 require Duke Energy Ohio to file an ESP as its next
18 standard service offer?

19 A. No, I am not.

20 Q. Okay. The proposal, sir, that you
21 discuss on page 5 and that we've just been talking
22 about, as well as your attachment, is it accurate to
23 describe that particular proposal as simply extending
24 one part of the ESP beyond the three-year term?

25 A. Just the competitive bidding process

1 part, yes.

2 Q. Okay. Thank you.

3 And I understand, sir, that your
4 attachment is an example, but I would just like to
5 talk about it for a moment, if I may. In looking at
6 the attachment and the suggested bid schedule there,
7 the auctions -- auction -- you would suggest that
8 auctions be conducted during the next ESP, the one
9 that we are talking about today, that auctions would
10 be conducted during the term of the proposed ESP and
11 then those -- that auction -- or, those auction
12 results effectively incorporated into the company's
13 next SSO filing, correct?

14 A. That's correct.

15 Q. And is it fair to assume, again, in
16 looking -- strike that.

17 Is it fair to assume that the company's
18 next SSO, which would take effect on June 1, 2018, if
19 not earlier terminated, would be approved perhaps in
20 early 2018?

21 A. That's a reasonable assumption. I don't
22 know if it would be late 2017 or 2018 or some other
23 time, but that sounds reasonable, like a reasonable
24 timeframe.

25 Q. Okay. And if that is a reasonable

1 timeframe, according to your schedule, all of the
2 auctions for Duke Energy Ohio's fourth SSO will have
3 occurred before that SSO is approved, correct?

4 A. The next one is the fourth?

5 Q. Correct. We are here talking about the
6 third one, sir.

7 A. I don't think so.

8 Q. Well, we've got the next ESP, according
9 to your chart and I just want to make sure I'm
10 reading correctly, you would have an auction for
11 supply of three month -- you would actually conduct
12 an auction in this ESP, February of 2016, for 36
13 months, correct?

14 A. That's correct.

15 Q. And so, that auction would carry-over
16 into the company's next SSO, correct?

17 A. Yes.

18 Q. Okay. And then we would have -- we would
19 have auctions again in November '16, for SSO supply
20 relative to the next SSO, correct?

21 A. It would encompass both the one we are
22 talking about now and the one afterwards, yes.

23 Q. Okay. And then the same with auction 6,
24 auction 7 -- well, same with auction 6, correct?

25 A. That's correct.

1 Q. And then auctions 7 and 8 concern only
2 SSO supply for the SSO after the one currently before
3 the Commission, correct?

4 A. Yes.

5 Q. So would you agree with me, sir, based
6 upon your proposed -- or, your example in your
7 exhibit that SSO suppliers would be participating in
8 an auction relative to SSO supply, not knowing what
9 the other terms of that SSO will be.

10 A. I think that would be correct.

11 Q. So SSO suppliers would not know the rate
12 design approved by the Commission in SSO IV or the
13 SSO after the one we are here talking about, correct?

14 A. Yes.

15 Q. The SSO suppliers would not know if there
16 were any -- any riders that could influence or effect
17 switching when asked to participate in the -- in this
18 auction process, correct?

19 A. That's correct.

20 Q. SSO auction participants participating in
21 those auctions that would extend beyond this proposed
22 ESP, do you agree that they may face legislative
23 risk? We don't know if there will be changes in
24 legislation today that could affect periods after
25 June 1 of 2018?

1 A. I would think that legislative risk
2 always exists, but, yes, I would not disagree with
3 you.

4 Q. Okay. And there's also certainly the
5 risk associated with the PJM capacity market,
6 correct?

7 A. That is correct.

8 Q. And are you aware of the various reforms
9 being discussed at PJM currently?

10 A. I'm aware they are under discussion. I
11 don't have firsthand knowledge of what all the
12 reforms are. I do -- I do understand that there
13 are -- PJM has concerns and they are trying to
14 restructure some aspects of their capacity product
15 and that there is some uncertainty there.

16 Q. And that uncertainty could be realized
17 for those periods relative to the company's fourth
18 SSO, correct?

19 A. I would expect that they would, yes.

20 Q. And with that uncertainty, sir, faced by
21 SSO suppliers who would be participating during the
22 term of the proposed ESP in SSO supply auctions
23 relative to the fourth SSO, would you expect those
24 auction participants to include a risk premium into
25 their bids to account for this uncertainty?

1 A. I'm sorry, which uncertainty was it?

2 Q. Sure. We've talked about during the term
3 of this current ESP, the auctions that you've
4 proposed to be held during the term of this ESP to
5 procure supply for the next ESP, when those auction
6 participants are going through the auction process,
7 they don't know what that next ESP will look like,
8 correct?

9 A. They won't know. Now, the ones you
10 pointed out in, say, late November -- or, November --
11 auction 7 and 8, they probably have some idea what's
12 being proposed, but they won't know what the final
13 result is, that's correct.

14 Q. Okay. But certainly for auctions 4, 6 --
15 so 4, 5, 6, those auction participants won't know
16 what the next SSO looks like, correct?

17 A. I believe you are correct.

18 Q. And we've talked about some of the risks
19 that could materialize relative to that next SSO,
20 correct?

21 A. Yes.

22 Q. And would you expect, Mr. Strom, that
23 auction participants would, in these auctions held
24 during the proposed ESP, incorporate some risk
25 premium to account for those future uncertainties?

1 A. I think it's reasonable to expect that
2 they would, yes. But I'll add that I don't know if
3 that would necessarily be a significant risk premium.
4 It would depend on what their view of the world is.

5 Q. And would that similarly be the case,
6 sir, with regard to the company's request to be able
7 to terminate the ESP early for changes in Ohio or
8 federal law that affects standard service offers?

9 A. I don't know. I see that -- I see that
10 differently. You're essentially entering into a
11 contract with another entity and saying that you have
12 the right to terminate the contract as you see fit
13 and they don't. I would think that they would find
14 that to be a fairly risky proposition.

15 Q. But the reason isn't unlimited for the
16 early termination, is it?

17 A. I view it as unlimited.

18 Q. You view the company's stated basis for
19 its reserving its right to reflect an unlimited right
20 to terminate?

21 A. I don't view their stated basis as that,
22 but, as I understand it, the company does not want
23 the Commission to have any authority to review that
24 decision. So I just see it as a decision to be made
25 for essentially any reason whatsoever.

1 Q. Sir, in your testimony, and I will get
2 the page reference, in your testimony you reference
3 the staggered blended auction process. I mean, you
4 discuss that in various parts in your testimony. For
5 example, one of them is again here on page 5 when you
6 are talking about the extension, and the Commission
7 staff believes that the staggered blended auction
8 process is an appropriate tool for mitigating risk
9 associated with the wholesale market, correct?

10 A. I'm not sure where you are referencing.

11 Q. I think it's just a general review -- or
12 view of your testimony. Does staff believe that the
13 staggered blended auction process is the appropriate
14 tool for mitigating risk associated with the
15 wholesale market?

16 A. I don't think risk is what I'm saying.
17 It's volatility.

18 Q. Okay. Is that staggered blended auction
19 process the only tool to mitigate against volatility?

20 A. I can't answer. I don't know. I haven't
21 gone through a process trying to determine all the
22 ways volatility could be eliminated so I just don't
23 know.

24 Q. Okay. Thank you.

25 The company is proposing, in the context

1 of this ESP, to hold, I believe, a total of six
2 auctions, correct?

3 A. Yes.

4 Q. And would you agree with me that with
5 respect to each one of those six auctions and the
6 clearing prices associated with each one of those six
7 auctions, that the clearing prices will reflect the
8 then-existing market conditions?

9 A. It would be our expectation that they
10 would, and if they didn't, we would expect there
11 would be some problem associated with that auction.

12 Q. Okay. Would you agree with me,
13 Mr. Strom, that having one SSO auction at the
14 beginning of the ESP term would eliminate the changes
15 to the SSO price during that ESP term?

16 A. I would have to ask what you mean by one
17 auction, like if you were to do just 100 percent
18 supply for the three years?

19 Q. Yes.

20 A. And then what were you proposing would be
21 the result of that?

22 Q. That result would provide the SSO price
23 for the term of the ESP.

24 A. Yes, it would.

25 Q. And that would eliminate incorporating

1 changes in market conditions and the associated
2 volatility into the SSO price, correct?

3 A. Not necessarily the way I see it. You
4 still have that potential huge volatility at the very
5 outset because it's -- 100 percent is bid out all at
6 once, so you have that potential. Now, when you have
7 the two auctions, it's held at different times, I
8 think the potential for volatility is decreased
9 somewhat because it's -- it's not dependent upon a
10 single specific market condition. It could be two
11 market conditions blended together.

12 Q. But when we have the second auction, we
13 don't know what those then-existing market conditions
14 will be, do we?

15 A. No.

16 Q. We don't know if they will invite more or
17 less volatility, correct?

18 A. We wouldn't know if -- say the market was
19 going up. We wouldn't know if it was going to
20 continue to go up, and so the second one would add
21 more to it. That's certainly a possibility.

22 Q. Mr. Strom, do you -- you've been involved
23 in the various SSO supply auctions for Ohio's
24 electric distribution utilities, correct?

25 A. That's correct.

1 Q. Fair to say that you're pretty familiar
2 with the processes and the results, correct?

3 A. Yes.

4 Q. And is bidder participation an issue that
5 would affect the auction, the SSO auction clearing
6 prices?

7 A. Bidder participation is important for --
8 I'm not quite sure how to say this. I am trying to
9 be careful to not accidentally say something that
10 might be construed as release of confidential
11 information.

12 Q. And I am not asking that, sir.

13 A. I know. That's why I'm trying to work
14 through how to say it. I think bidder participation
15 is seen by the auction manager and others that are
16 involved in these kind of auctions as an important
17 aspect to help assure that you get to a reasonable
18 market price.

19 Q. And over the course of the years during
20 which SSO supply auctions have been occurring in
21 Ohio, what has been the trend for bidder
22 participation?

23 A. I'm not quite sure how to answer. I
24 don't know if I can answer.

25 Q. So you don't know if the trend has been a

1 relatively constant number of auction participants or
2 fewer participants, more participants, as we go
3 through time?

4 A. I'm not sure I can answer that without
5 divulging confidential information.

6 Q. Well, the number of participants and the
7 number of winning suppliers is published in the
8 Commission dockets, correct?

9 A. There's the number of registered bidders
10 and the number of winning bidders, yes.

11 Q. And so, in terms of registered bidders,
12 do you know whether bidder participation -- what the
13 trend has been for bidder participation?

14 A. I think the number of registered bidders
15 has declined a bit recently.

16 Q. Is there any particular reason that you
17 would attribute to that decline, sir?

18 A. Nothing that I would necessarily
19 attribute it to. The bidders don't confide in me as
20 to why they participate and why they don't, so I
21 can't really say why.

22 Q. Okay. Thank you.

23 On the bottom of page 5, you indicate in
24 your testimony, in the answer that begins on line 18,
25 that there was an area or an item that perhaps needed

1 some clarification.

2 A. Okay.

3 Q. And this simply concerns, I guess I'll
4 just summarize it as the company's expectation with
5 regard to what the Commission would do in terms of
6 selecting the winning bidders, correct?

7 A. That's it.

8 MS. SPILLER: And, your Honor, may we
9 approach?

10 EXAMINER PIRIK: Yes.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Mr. Strom, do you have before you what's
13 been marked as Duke Energy Exhibit 44 -- I'm sorry,
14 34?

15 MR. O'ROURKE: One second. I don't have
16 a copy yet.

17 A. No, I don't think so. I have 38.

18 Q. Oh, geez, I'm sorry. And this is a
19 discovery request that staff had sent to the company,
20 correct?

21 A. Yes, and the response.

22 Q. Okay. And is this -- is Duke Energy Ohio
23 Exhibit 38, sir, is that related to the concern that
24 you raise on page 5, line 18 of your testimony?

25 A. Yes.

1 Q. And so, in the -- in the request, staff
2 had asked the company to clarify whether the company
3 intended for the Commission to select the winning
4 bidders or whether the company intended for the
5 Commission to accept or reject the auction manager's
6 selection of the bidders, correct?

7 A. That's correct.

8 Q. And the process today is that the auction
9 manager submits a report to the Commission of the
10 results of the auction. The Commission has the
11 benefit of commentary from the independent auction
12 consultant, correct?

13 A. That's correct.

14 Q. And then the Commission reviews and then
15 approves or doesn't approve the auction results,
16 correct?

17 A. That's correct.

18 Q. And the company's response to staff's
19 inquiry, as reflected in Duke Energy Ohio Exhibit 38,
20 would you agree that the company intends that status
21 quo to persist?

22 A. That's what the response states, and I
23 don't have reason to doubt it. I just wanted to
24 clarify that.

25 Q. Okay. Thank you.

1 On page 6 of your testimony, sir, a
2 recommendation that you have is one, is it fair to
3 say, is derived from the Dayton Power & Light ESP
4 proceeding?

5 A. Are you talking the middle paragraph?

6 Q. Yes, sir.

7 A. Yes.

8 Q. Okay. And what you're asking is that
9 Duke Energy Ohio's competitive bidding process plan
10 include a provision that the Ohio Commission -- that
11 the Ohio Commission be permitted to modify any
12 feature of the competitive bidding process, correct?

13 A. Yes, that's correct.

14 Q. And so it -- if that particular provision
15 or recommendation is adopted, the Commission would
16 have the ability to modify any feature of the
17 competitive bidding process plan for any reason,
18 correct?

19 A. That's awfully broad, but I -- I would
20 essentially say yes, with the caveat that I don't
21 believe that there -- that the Commission would do
22 such modification without good reason.

23 Q. And I'm not suggesting that. I think my
24 question is simply that that particular
25 recommendation is not further qualified to identify

1 the circumstances for which there could be
2 modification or the particular elements of the
3 competitive bidding process plan that could be
4 modified, correct?

5 A. Yes, that's correct. But as I say, I
6 think there should be a process to accomplish that.
7 I'm not suggesting that the Commission just
8 spontaneously issue orders, every week or two,
9 modifying the plan.

10 And example of a process would be if --
11 if the company and the auction manager were to
12 determine that there is a concern about an upcoming
13 auction or planned auction, that they may want to
14 modify the time period in which its held or the time
15 period for which the procurement is going to take
16 place, or maybe even modify the -- instead of an
17 auction, do an RFP for this particular point in time.

18 This would have to be something I think
19 presented to the Commission for the Commission to
20 make a decision about, but I think that possibility
21 should be there because things happen and things can
22 happen and changes may need to be made.

23 And so, I just think there should be the
24 recognition that potential is there that we may need
25 to make some changes along the way and we don't just

1 get set on the fact that there is a system in place
2 and we have to follow that system no matter what.

3 Q. So there would be some -- some
4 parameters, if you will, around the Commission's
5 ability to change any element of the competitive
6 bidding process plan, correct?

7 A. Yes. I don't know that I can lay out
8 exactly what those parameters are. It would depend
9 on the circumstance at the time.

10 Q. And absent those parameters, then the
11 language that simply indicates that the Commission
12 should be permitted to modify any feature of the
13 competitive bidding process plan, that more general
14 language, do you believe that that creates some risk
15 of uncertainty for SSO suppliers?

16 A. Could you reference me to the --

17 Q. Sure. On page 6, sir, line 6, you're
18 referencing the DP&L ESP case, indicating that the
19 Commission retain the right not only to modify and
20 alter the load cap, but also to modify any of the --
21 of the -- to modify any other feature of the
22 competitive bidding process, correct?

23 A. Yes, I state that.

24 Q. And do you believe that that option of
25 the Commission to modify any feature of a competitive

1 bidding process creates some risk of uncertainty for
2 auction participants?

3 A. I don't think so.

4 Q. And why not, sir?

5 A. I'm talking about auctions that are going
6 to take place, not have taken place. It could very
7 well be that the Commission may determine that a
8 change is needed in order to reduce risk and
9 uncertainty, and so I could see this going the other
10 way, but I can't see it increasing the risk and
11 uncertainty.

12 Q. But at this point we don't know what the
13 changes would be, do we?

14 A. No, we don't.

15 Q. And we don't know whether those changes
16 would detract or dissuade bidders, do we?

17 A. Not knowing what the decisions are going
18 to be, I couldn't say one way or another with
19 certainty, but it's hard for me to imagine a
20 situation where the Commission would want to make
21 changes that would dissuade bidders and harm auction
22 participation.

23 Q. You indicate, on page 6, line 16 of your
24 testimony, a recommendation concerning advertising
25 the SSO auction, correct?

1 A. That's correct.

2 Q. To date, sir, does any Ohio electric
3 distribution utility that conducts competitive SSO
4 supply auctions advertise those?

5 A. I know at least one has recently
6 advertised an auction. In the context of the AEP
7 case, I asked if they requested one similar to the
8 one they asked in your case, and they provided me
9 with a copy of their advertisement.

10 Q. Okay. And that was for the energy-only
11 auctions that AEP is conducting?

12 A. Yes.

13 Q. Do you know whether that advertisement
14 was -- whether the advertisement solicited additional
15 auction participants?

16 A. Oh, I don't know.

17 Q. And in what sort of trade journals or
18 publications would you suggest the advertising
19 appear, sir?

20 A. I don't have any suggestions, and other
21 than the fact that -- other than the recommendation
22 that it should be one that would be, say, widely read
23 in the energy capacity kind of market.

24 MS. SPILLER: Just a moment, please, your
25 Honor.

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1 Nothing further, your Honor. Thank you.

2 Thank you, Mr. Strom.

3 EXAMINER PIRIK: Mr. O'Rourke?

4 MR. O'ROURKE: May I have a moment, your
5 Honor?

6 (Discussion off the record.)

7 MR. O'ROURKE: No redirect, your Honor.

8 EXAMINER PIRIK: Thank you.

9 Thank you, Mr. Strom.

10 MR. O'ROURKE: We would move for the
11 admission of Mr. Strom's --

12 EXAMINER PIRIK: Yes. Did you move?

13 MR. O'ROURKE: I'm renewing the motion to
14 move his testimony.

15 EXAMINER PIRIK: Okay. Are there any
16 objections?

17 Hearing none, it will be admitted into
18 the record.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER PIRIK: Duke, I believe you had
21 an exhibit?

22 MS. SPILLER: Your Honor, we would move
23 for admission of Duke Energy Ohio Exhibit 38.

24 EXAMINER PIRIK: I would also ask that --
25 that I get another copy for the Bench. I only got

1 one copy.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 EXAMINER PIRIK: I think that concludes
4 our witnesses for the day, but we have some process
5 things that we need to clarify on the record.

6 MS. SPILLER: Thank you, your Honor.

7 EXAMINER PIRIK: First of all, I would
8 like to note this is our 13th day of hearing and many
9 of us have been here for the duration of absolutely
10 everything. But I would like to do a special thank
11 you to the court reporters, and especially Karen who
12 has been here with us through everything and beyond,
13 because she's stay very late at night with all of her
14 other cohorts to get the record to our satisfaction
15 so that we can have the next-day or same-day
16 transcript.

17 But, today, her husband, who I think gets
18 the award for the best spousal support, John, sent
19 her a wonderful bouquet of flowers, and I just want
20 to say it's much appreciated all the effort that
21 Karen and the other court reporters have put forth
22 for us, and I wanted to put that on the record, so
23 that she can frame that for John and let him know
24 that we all appreciate her very much.

25 With that being said, I have just a

1 couple of clarifications for the record. I believe
2 we have an OCC Exhibit 35 and Exhibit 47, while
3 Mr. Williams had stellar testimony, he doesn't have
4 two sets of testimony, he only has one. So,
5 unfortunately, we marked both of them as his
6 exhibits.

7 I believe Exhibit 47 was, for certain,
8 admitted into the record, but it appears 35 was too.
9 For citing purposes -- we are going to go ahead and
10 leave the mark of 35 and 47 on his testimony.
11 However, for citing purposes, in briefs and orders
12 and whatnot, we will deem it OCC Exhibit 47.

13 MR. BERGER: Thank you, your Honor.

14 EXAMINER PIRIK: The only thing we want
15 to clarify is IGS's exhibits. I believe Mr. Olier
16 had moved their admission. However, we may not have
17 stated that they were admitted into the record so we
18 want to clarify that.

19 MR. OLIER: And I believe the exhibit we
20 are discussing is IGS Exhibit 8 which was initially
21 proffered and then the back page of the exhibit was
22 removed and it was entered as IGS Exhibit 8, and 8a
23 as well, I believe.

24 EXAMINER PIRIK: 8 and 8a, and I am
25 pretty sure 7 and 7a.

1 MR. OLIKER: Yes, your Honor.

2 EXAMINER PIRIK: Officially they are
3 admitted into the record to ensure that they are
4 there.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER PIRIK: The last thing we need
7 to do, the Bench has OCC Exhibit 44 which has OCC
8 Exhibit 44, 44a, and 44b under our consideration. We
9 had already moved for the admission, so they have
10 already been admitted into the record, but what we
11 hadn't done is stated for the record what our ruling
12 was as far as the confidential information, final
13 ruling, as well as the protective order
14 information -- or, privileged information.

15 So, first, we'll go through and rule on
16 the privileged information which is Exhibit 44b.

17 MR. BERGER: None of us have that other
18 than you. Just so you understand that.

19 EXAMINER PIRIK: Correct, yes, I do.
20 We've already discussed this. We already have all
21 the information on the record. I'm going to go
22 through and explain to Duke what our rulings are and,
23 at the conclusion of that, if you have an objection
24 and you think that something needs to continue to be
25 redacted and not put in Exhibit 44a --

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1 MS. KINGERY: We'll speak up.

2 EXAMINER PIRIK: Actually, I think the
3 information that we're going to say needs to be open,
4 could be in the open record, it could be in 44, I
5 don't think it needs to be confidential. But we'll
6 go through it, and I won't say any specific words,
7 but hopefully we will be on the same page.

8 On page 7, I am going to go by the
9 numbers on the top of the page and not the ticket
10 numbers. We have the tickets 1, 2, 3.

11 MS. KINGERY: Top of the page? You mean
12 bottom.

13 EXAMINER PIRIK: That's where I wrote my
14 page numbers. Did you write page numbers on each
15 page?

16 MS. KINGERY: Are you looking at the
17 original pack we submitted, or are we looking at 44a?

18 EXAMINER PIRIK: That's what I am looking
19 at, the one we worked from.

20 MS. KINGERY: It has Bates numbers at the
21 bottom right?

22 MR. BERGER: 44a has Bates number. I
23 don't know about 44b.

24 MS. KINGERY: 44b, yeah, probably didn't.
25 But I can do it however you like.

3845

1 EXAMINER PIRIK: Okay. Let me see. Hold
2 on just a second.

3 MS. KINGERY: I don't think there is
4 actually a 44b yet because that would require me to
5 take OVEC's pile and create a "b" version.

6 EXAMINER PIRIK: That's correct.

7 MS. KINGERY: We could also go by the
8 privilege log that I supplied.

9 EXAMINER PIRIK: That won't help me.

10 MS. KINGERY: I can also count pages.

11 EXAMINER PIRIK: I think the Bates
12 numbers are the same. I'm pretty sure they're the
13 same. So I'm pretty sure they're the same without me
14 requesting on each one.

15 Okay. So the first -- and I'll describe
16 the page and you can tell me if we are on the same
17 page. I believe it's Bates number 7.

18 MS. KINGERY: Okay.

19 EXAMINER PIRIK: It has the "3," yellow
20 "3" at the top of it.

21 MS. KINGERY: Yes.

22 EXAMINER PIRIK: In the privileged area,
23 the first line doesn't have any numbers beside it,
24 it's the first line with a colon after it.

25 MS. KINGERY: Yes.

1 EXAMINER PIRIK: We believe that should
2 be in the open record. So, for the record, this is
3 our ruling, and then if you disagree with that, when
4 I'm done with everything, you can go through it.

5 Bates 8, there's a small block of
6 privileged information at the top of the page.

7 MS. KINGERY: Yes.

8 EXAMINER PIRIK: We believe that should
9 be in the open record. And our reason for this is
10 that we believe it gives some context to the
11 information and some assurance to the other parties
12 that it is, in fact, privileged information.

13 MS. KINGERY: Okay.

14 EXAMINER PIRIK: Bates 9, we believe the
15 first sentence in the privileged area should be in
16 the open record.

17 MS. KINGERY: And you're not ruling on
18 it, whatever we proposed is going to be okay.

19 EXAMINER PIRIK: The remainder of it
20 would be okay, correct.

21 MS. KINGERY: Okay.

22 EXAMINER PIRIK: Bates 12, there's a
23 small request for privileged information on that page
24 and we don't see why that should be privileged. We
25 think that should be in the open record.

3847

1 MS. KINGERY: Can I comment on that one
2 because that's going to come up several times?

3 EXAMINER PIRIK: Yes.

4 MS. KINGERY: Okay. That is a number --
5 that's a number that refers to the list that's right
6 below it. Although, the number changed because above
7 it there's another list, and so automatic numbering
8 changed the number.

9 EXAMINER PIRIK: I don't see how that
10 gives away anything that's privileged, though, since
11 the item itself is --

12 MS. KINGERY: Okay.

13 EXAMINER PIRIK: That's our basic
14 thought. You don't get anything when you look at
15 that number other than what's in the open record, so.

16 MS. KINGERY: Okay.

17 EXAMINER PIRIK: And that would be our
18 same response unless you find one of the other ones
19 later for a different reason.

20 MS. KINGERY: Okay.

21 EXAMINER PIRIK: Bates 23, which is what
22 we labeled as No. 7, likewise, at the bottom of the
23 page, there are two small privilege requests and
24 that's the same thing as the previous one. We don't
25 think those should be confidential or privileged.

1 MS. KINGERY: I'm still struggling to
2 find that one. Do you know what document number that
3 was in?

4 EXAMINER PIRIK: Well, it was 7.
5 Remember, we had to take off a couple of the pages
6 because it messed up the numbering.

7 MS. KINGERY: I'll find it later.

8 MR. BERGER: Bates 23.

9 EXAMINER PIRIK: Yeah, it's Bates 23. Do
10 you see it at the bottom, Mr. Berger?

11 MR. BERGER: I see it. It's in the
12 document we circulated.

13 MS. KINGERY: Yes, I have it in that
14 document, just not in my open one where I can see
15 what's under things.

16 EXAMINER PIRIK: Oh, okay.

17 MS. KINGERY: But I'll find it later. I
18 know what that is.

19 EXAMINER PIRIK: Okay. Bates 24.

20 MS. KINGERY: Same thing.

21 EXAMINER PIRIK: Same thing.

22 And Bates 49. I think that's the last
23 one. Are you there?

24 MS. KINGERY: Bates 49, I don't see it.
25 It's all in white. Oh.

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1 EXAMINER PIRIK: Yeah, it's all white.

2 MS. KINGERY: I got that.

3 EXAMINER PIRIK: And we believe that the
4 first sentence in the white -- whited-out version
5 should be in the open record. I think that gives
6 context to what the following is and why it would be
7 privileged.

8 MS. KINGERY: Okay.

9 EXAMINER PIRIK: And that's it.

10 The remainder of the document, our ruling
11 is that the remainder of it should be privileged as
12 marked by Duke and that would be documented as 44b.

13 MS. KINGERY: Yes.

14 EXAMINER PIRIK: And the proposed
15 redactions that are confidential are consistent with
16 our previous rulings on confidentiality of those
17 items would be deemed confidential and part of 44a.

18 MS. KINGERY: Okay.

19 EXAMINER PIRIK: Okay?

20 MS. KINGERY: Yes.

21 EXAMINER PIRIK: So that's our ruling.

22 Are there any questions? Do you have any objections?

23 I mean, I think we went through your objections, but
24 what I get from your response is a positive response
25 in that those items that were requested privileged

1 that I just mentioned, you are willing to put those
2 in the open record.

3 MS. KINGERY: I think they're all right.

4 EXAMINER PIRIK: Okay. Are there any
5 questions or objections from anyone else?

6 MR. BERGER: If you're in the dark,
7 you're in the dark.

8 EXAMINER PIRIK: I think once you see the
9 context, once they open those up, you will see what
10 the context of them are, I think. It will at least
11 put context to them.

12 MR. BERGER: We appreciate that. Thank
13 you.

14 EXAMINER PIRIK: Hearing none,
15 Exhibits -- OCC Exhibit 44, 44a, and 44b will be
16 admitted into the record, and I would just ask OCC
17 and Duke to work together to get the appropriate
18 document filed with the court reporters.

19 MR. BERGER: I'm sorry. Are you making
20 any rulings regarding the confidential information
21 versus the privileged information?

22 EXAMINER PIRIK: Yeah. I just made that
23 ruling.

24 MR. BERGER: Okay.

25 EXAMINER PIRIK: Do you want me to

1 restate it?

2 MR. BERGER: No. I thought you were
3 referring to the rest of the privilege markings, so
4 that includes all the confidential?

5 EXAMINER PIRIK: Well, I said all the
6 proposed privilege markings, with the exception of
7 what I just listed, that motion is granted and that
8 will be filed as Exhibit 44b and that's admitted into
9 the record.

10 With regard to the confidential
11 information as marked in 44a, it is -- it was done
12 consistent with what our previous rulings were and,
13 therefore, that would be likewise granted and marked
14 as 44a.

15 MR. BERGER: Thank you.

16 EXAMINER PIRIK: Okay. All right. Any
17 questions?

18 MR. OLIKER: Just the questions we had
19 earlier about uses of deposition in the event
20 Mr. Haugen goes forward.

21 EXAMINER PIRIK: Yeah. We need to
22 resolve that for a couple of minutes. Let's go off
23 the record.

24 (Discussion off the record.)

25 EXAMINER PIRIK: We are going to recess

1 for today and reconvene Monday at 9 a.m., and we are
2 discussing exactly what to do with Mr. Hamilton's
3 testimony which we will clarify whatever the decision
4 is on Monday morning.

5 We're off the record.

6 (Thereupon, at 3:39 p.m., the hearing was
7 adjourned.)

8 - - -

9 CERTIFICATE

10 I do hereby certify that the foregoing is
11 a true and correct transcript of the proceedings
12 taken by me in this matter on Friday, November 7,
13 2014, and carefully compared with my original
14 stenographic notes.

15
16
17 _____
18 Karen Sue Gibson,
19 Registered Merit Reporter.

20 (KSG-5956)

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Summary: Transcript in the matter of Duke Energy Ohio hearing held on 11/07/14 - Volume XIII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.