

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 3:00 p.m. on Wednesday,
November 12, 2014.

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VOLUME XV

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Wednesday Afternoon Session,
November 12, 2014.

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EXAMINER PIRIK: We'll go on the record.
Prior to taking the next witness, we have a proposed
marked-up version of the confidential section of
Transcript VI. I'll look to Ms. Watts.

MS. WATTS: Your Honor, I think almost
all of the redactions in this document are consistent
with prior discussions with respect to -- they are
all categories of information that are consistent
with previous discussions, so I don't know if we need
to go line by line or how you want to do it.

EXAMINER PIRIK: Well, are there any
objections to the proposed redactions to Transcript
VI?

MS. BOJKO: Did we receive it?

EXAMINER PIRIK: Yeah. It's been a
while. We got it a while ago. Probably with
Transcript IV. Do you want to look at it real quick?

Hearing no objection, the request for
confidentiality of those sections proposed by Duke
will be granted and we will get those to the court
reporters.

MS. WATTS: Thank you, your Honor.

1 EXAMINER PIRIK: All right. We'll look
2 to Mr. Oliker.

3 MR. OLIKER: Sorry, your Honor. What?

4 EXAMINER PIRIK: For your witness.

5 MR. OLIKER: Oh, go ahead with the
6 witness.

7 EXAMINER PIRIK: Yes.

8 MR. OLIKER: That would be great. IGS
9 Energy would call Joseph Haugen to the stand. And
10 before we get started, do parties all have copies of
11 his supplemental testimony in addition to Tim
12 Hamilton's testimony? Because I do have some extra
13 copies in case people are short.

14 Your Honor, I think we determined we were
15 going to mark Tim Hamilton's testimony and
16 supplemental testimony separate.

17 EXAMINER PIRIK: Yes.

18 MR. OLIKER: Okay. Mr. Haugen, are there
19 three documents in front of you related to testimony?
20 Specifically, is there a document in front of you
21 that is -- contains the direct testimony of Tim
22 Hamilton, the public version?

23 MR. HAUGEN: Correct.

24 MR. OLIKER: And is there also a document
25 which contains the confidential testimony of Tim

1 Hamilton?

2 MR. HAUGEN: Yes, I have that.

3 MR. OLIKER: Before we get started, I
4 would like to mark those two documents as IGS
5 Exhibit 12 being the public version and 12a being the
6 confidential.

7 EXAMINER PIRIK: The documents are so
8 marked.

9 (EXHIBITS MARKED FOR IDENTIFICATION.)

10 MR. OLIKER: Okay. Is there also a
11 document in front of you entitled the Supplemental
12 Testimony of Joseph Haugen?

13 MR. HAUGEN: Yes.

14 MR. OLIKER: Okay. I'd like to mark that
15 as IGS Exhibit 13.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. OLIKER: And before we move on with
18 those, could you please state your name for the
19 record?

20 THE COURT REPORTER: He hasn't been sworn
21 in, has he?

22 EXAMINER PIRIK: No, he has not.

23 MR. OLIKER: Sorry.

24 (Witness sworn.)

25 EXAMINER PIRIK: Thank you.

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JOSEPH HAUGEN

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

DIRECT EXAMINATION

By Mr. Oliker:

Q. Maybe I can run around this if -- would
you agree if I asked you the questions I just asked
you, would your answers be the same after you have
taken the oath?

A. I do.

Q. Would you please state your name for the
record?

A. Joseph Haugen.

Q. And who is your employer?

A. IGS Energy.

Q. And what is your -- the address of your
place of business?

A. 6100 Emerald Parkway, Dublin, Ohio.

Q. Okay. Do you see the documents that have
been marked IGS Exhibit 12 and 12a?

A. I do.

Q. And could you please identify what those
documents are?

A. There's a direct testimony of Tim
Hamilton, a confidential and public version.

1 Q. Okay. And have you adopted those
2 documents as your own testimony in this proceeding?

3 A. I have.

4 Q. If -- do you have any changes that you
5 would make to those documents?

6 A. I do not.

7 Q. And if you were asked the same questions
8 that are contained in those testimonies today, would
9 your answers be the same?

10 A. They would.

11 Q. Okay. And could you please turn to what
12 has been marked as IGS Exhibit 13.

13 A. Okay.

14 Q. Could you identify what that document is?

15 A. The supplemental testimony of myself.

16 Q. And did you prepare that testimony or was
17 it prepared under your direction?

18 A. It was prepared under my direction with
19 counsel.

20 Q. And if you were asked those same
21 questions today would your answers be the same?

22 A. They would.

23 Q. And you have no corrections to that
24 testimony?

25 A. I don't.

1 MR. OLIKER: Okay. I believe that I
2 would move for the admission of Exhibits 12, 12a, and
3 13, subject to cross-examination.

4 EXAMINER PIRIK: Thank you, Mr. Oliker.

5 First, I would note that you filed a
6 motion to substitute testimony. I think we should
7 address that motion before we move any further.

8 MR. OLIKER: Sure. Thank you, your
9 Honor.

10 EXAMINER PIRIK: Would you like to
11 explain the motion?

12 MR. OLIKER: Very briefly. On Monday,
13 after consulting with the parties in the proceeding,
14 IGS Energy filed a motion to substitute testimony of
15 Joseph Haugen for Tim Hamilton as well as a request
16 to file supplemental testimony and a request for
17 expedited ruling based on the belief that Tim
18 Hamilton has become injured and cannot testify in his
19 current condition, and the parties have not opposed
20 the motion, and the proposed witness has also been
21 made available for deposition, so it appears that the
22 motion is unopposed and hopefully we can have a
23 ruling from the Bench.

24 EXAMINER PIRIK: Are there any responses?

25 MS. SPILLER: Your Honor, no, not with

1 respect to the motion itself.

2 EXAMINER PIRIK: So with respect to the
3 motion to substitute testimony and submit
4 supplemental testimony, hearing no objections, the
5 motion will be granted.

6 MR. OLIKER: Thank you, your Honor.

7 EXAMINER PIRIK: Thank you.

8 MS. SPILLER: Your Honor, with respect to
9 cross-examination, Duke Energy Ohio does have a
10 motion to strike portions of the testimony of
11 Mr. Hamilton that Mr. Haugen has adopted.

12 EXAMINER PIRIK: That would be
13 appropriate now. We also need to do the confidential
14 sections before we go through, but we'll take the
15 motion to strike first.

16 MS. SPILLER: And, your Honor, I am going
17 to identify, if I might, the portions of the
18 testimony of Mr. Hamilton subject to the motion. The
19 argument with respect to all of these identified
20 portions is the same. So, if I may, I'll identify
21 first the testimony at issue and then discuss the
22 argument.

23 And I will be referring, your Honor, to
24 Exhibit 12a, the confidential version, just for
25 purposes of identification. The first portion of the

1 testimony at issue is that which begins at page 4,
2 the sentence that begins midway through line 10 and
3 continuing on to line 13.

4 The next portion of the testimony subject
5 to the motion to strike, page 8, there's a sentence
6 that begins specifically on line 23, carrying over to
7 page 9 through line 13.

8 Page 10, there's a sentence that begins
9 at the end of line 1, that sentence carrying through
10 line 5 on page 10.

11 The next we have is page 11, line 6,
12 through the sentence that ends on line 11.

13 The next is page 12, there's a sentence
14 on line 8, toward the end of that particular line,
15 that begins "OVEC," so that particular line carrying
16 through line 10, that particular sentence.

17 Page 12, there is one complete sentence
18 in line 16.

19 EXAMINER PIRIK: I'm sorry. I thought
20 that was page 12.

21 MS. SPILLER: Page 12, two different
22 portions. Line 8, the sentence beginning on line 8,
23 carrying through line 10, and then there is, on line
24 16, one complete sentence there subject to the
25 motion.

1 Page 13, line 12, the sentence that
2 begins on page 13, line 12, carrying over through the
3 first word on line 14.

4 Page 15 --

5 EXAMINER PIRIK: Sorry. Carrying over --
6 okay. So the one beginning on line 12 on page 13
7 carries over to --

8 MS. SPILLER: So line 13, I'm sorry.
9 Page 13, there's a sentence, line 12 through line --
10 and then it ends on line 14.

11 EXAMINER PIRIK: Oh, just that sentence.

12 MS. SPILLER: Just that one sentence,
13 yes.

14 EXAMINER PIRIK: Okay.

15 MS. SPILLER: Page 15, line 5, the
16 sentence that begins about midway through line 5
17 carrying through line 9 page 17, this one is --
18 there's the sentence that begins on line 17 and what
19 I would say is in this particular portion it's going
20 to have to be the sort of the particular -- the
21 second sentence on line 17, so the text at issue
22 would be that which begins "and testimony from" and
23 then carrying through to line 18, and then the name
24 of John Brodt there.

25 MR. OLIKER: I'm sorry.

1 MS. SPILLER: It's just a part of this
2 particular sentence.

3 MR. OLIKER: Page 15, you're saying?

4 MS. SPILLER: Page 17.

5 MR. OLIKER: Okay.

6 MS. SPILLER: So there's a portion of the
7 sentence that begins on line 17.

8 EXAMINER PIRIK: So "No. On advice of
9 counsel" is still --

10 MS. SPILLER: Correct. You would just
11 have the comma and lead to "there are two paths," the
12 balance of that particular first clause is subject to
13 the motion.

14 EXAMINER PIRIK: Okay.

15 MS. SPILLER: And then page 18, line 7,
16 the sentence that begins at the end of line 7
17 carrying through to line 18.

18 And the basis for the motion, your Honor,
19 is all of these identified portions of the testimony
20 of Mr. Hamilton that Mr. Haugen has adopted, all of
21 this is referencing deposition testimony. And in
22 this particular case, these three individuals all
23 testified so their deposition testimony is not
24 substantive evidence. So we have a particular
25 witness who needs to testify based upon facts

1 perceived by him or those admitted into the record.

2 And in this instance, that deposition
3 testimony is not substantive evidence, it is not
4 rightly before Mr. Haugen, and it is not testimony on
5 which he can rely for purposes of his direct
6 testimony in this case. So it is our position that
7 the deposition testimony fails to qualify as facts
8 upon which Mr. Haugen, as a witness in this
9 proceeding, can offer his opinions.

10 MR. OLIKER: Would you like me to
11 respond, your Honor?

12 EXAMINER PIRIK: Yes. Go ahead.

13 MR. OLIKER: Before I even respond, Amy,
14 do you dispute in any manner that these same
15 questions were not asked to the witness in the
16 proceeding and that they are not in the record?

17 MS. SPILLER: That's not the point.
18 You're referencing deposition testimony which is not
19 substantive evidence and this individual had the
20 opportunity to review this testimony as early as two
21 days ago and offered no changes whatsoever. And, in
22 fact, you know, he has not even relied upon or
23 reviewed the transcripts from this proceeding.

24 MR. OLIKER: That's not wholly true and a
25 misstatement of what he said yesterday in his

1 deposition, but to the extent transcripts have been
2 available, he has reviewed those transcripts that are
3 consistent with his testimony. And every single one
4 of these questions that is in his testimony was asked
5 to Duke's witnesses at the time of the depositions
6 and we didn't know whether they would be called. We
7 didn't know whether we would have an opportunity to
8 ask the questions, but they were called and the same
9 questions were exact -- almost verbatim to what are
10 contained in the transcripts and their answers were
11 exactly the same.

12 So to the extent Counsel is even
13 mentioning prejudice in any way is completely unclear
14 but they were statements by a party and against the
15 interest of the company.

16 MS. SPILLER: Mr. Brodt is not a party.

17 MR. OLIKER: Mr. Brodt did testify and
18 offered the same statements that are in here. There
19 was very limited amounts. He has reviewed that
20 testimony. And he has the transcripts with him now,
21 I believe, to the extent you will let him.

22 EXAMINER PIRIK: We are not having a
23 discussion. Mr. Oliker has the stand at this point
24 in time and then we'll ask if there is any other and
25 then I will come back and ask for a reply, but you

1 can continue.

2 MR. OLIKER: Thank you, your Honor. And
3 to the extent that they are factual statements, they
4 are admissions. And if you remember, there was a
5 very difficult time in discovery in this case where
6 parties had to use subpoenas and depositions to get
7 evidence when we weren't getting fully responsive
8 discovery answers from the company. So, in large
9 part, it was the only way we could get factual
10 statements regarding cash flow analysis and other
11 elements of what was happening.

12 It was appropriate at the time of
13 submitting prefiled testimony not knowing whether
14 those witnesses would take the stand, and now to just
15 take those statements out which are corroborated by
16 the witnesses that testified, it would make the
17 testimony very confusing, because you would
18 effectively have to go through and replace every
19 single cite in the deposition to a transcript cite
20 when really there would be little difference.

21 So to the extent the company has an issue
22 with the statements in there, I'm -- they are free to
23 rebut that in their pleadings. I don't believe they
24 can do that because everybody has been in this room
25 and knows exactly what these witnesses stated. So

1 I'm just having difficulty understanding the basis of
2 the objection or any prejudice at all to the company.

3 EXAMINER PIRIK: Are there any other
4 responses?

5 MS. BOJKO: Your Honor, we would support
6 Mr. Olikar. I think that if the company had a
7 problem with the fundamental issue that I am hearing
8 her have referring to depositions, then a motion to
9 strike could have been filed weeks ago. These have
10 been filed since, well, May 29, I believe. Testimony
11 has been filed, so if there was a problem with
12 underlying assumptions.

13 But the bottom line is the witness did
14 rely on these deposition testimonies in order to
15 formulate his opinions and that's why they are in
16 here and that's the basis for the statements. So to
17 wait until the day of the hearing to try to strike
18 substantial portions of the testimony is -- is unfair
19 and prejudicial, I think, to other people that relied
20 on that testimony. Thank you.

21 MR. BERGER: And OCC would echo those
22 comments also. The witness's testimony from the
23 deposition was utilized in preparation of written
24 testimony that was prepared prior to any hearing
25 testimony and is the best evidence that the witness

1 had available at the time in developing that
2 viewpoint that is expressed in the testimony and is
3 essential in order for them to prepare the testimony.

4 The fact that they reference deposition
5 testimony, it is sworn testimony. All of these
6 witnesses appeared again at the hearing. And unless
7 there is some indication that they change -- or, that
8 their testimony was incorrect or was corrected in
9 some way, that testimony should stand given the fact
10 that that testimony was submitted prior to their
11 hearing testimony and after -- and their hearing
12 testimony was given after the witness prepared his
13 testimony. Thank you.

14 EXAMINER PIRIK: Now, Ms. Spiller, do you
15 have a response?

16 MS. SPILLER: I do, your Honor, thank
17 you.

18 I first would note that this discussion
19 about the discovery process is all too convenient for
20 the intervenors, but not at all relevant to what
21 we're talking about here. There is a process for
22 discovery and that's not the issue.

23 The issue here is one of the permissible
24 bases for a witness's testimony, and if Mr. Haugen is
25 being identified as an expert witness, there are two

1 criteria on which -- that he needs to satisfy before
2 he can offer testimony as an expert. It's either
3 facts perceived by him which is not the case, or it's
4 facts admitted into the evidence. And in this
5 particular instance, as I was told on Friday, I could
6 not rely upon the deposition of Mr. Hamilton for
7 purposes of this case. And now we have a witness who
8 wants to take deposition testimony which has not been
9 admitted into the record, cannot be admitted into the
10 record, and utilize that for purposes of his direct
11 testimony.

12 I'm not required to file a motion to
13 strike at any particular time prior to the hearing.
14 We have a particular instance where this witness --
15 and we'll cross this bridge during his examination,
16 did not review transcripts relative to that on which
17 he's citing in respect of Mr. Whitlock,
18 Mr. Dougherty, or Mr. Brodt. If he did, he could
19 have and should have changed the testimony that he
20 adopted two days ago. He didn't. He just
21 acknowledged he has no changes whatsoever to that
22 testimony. His basis is on information that has not
23 been introduced into the record and, as a result of
24 that, it should be struck.

25 MR. OLIKER: Your Honor, briefly.

1 First of all, the note about the
2 deposition of Mr. Hamilton versus Mr. Haugen are very
3 different. We're not talking about deposing the
4 individual, Mr. Whitlock, and then substituting
5 somebody else's testimony and then offering
6 Mr. Whitlock's testimony against that person. We are
7 talking about the deposition of one person and the
8 hearing testimony of the same person and the answers
9 being the same.

10 I would be happy to stipulate that
11 Mr. Haugen's belief is based upon the facts
12 represented at the deposition and to the extent those
13 facts were not represented the same in the hearing,
14 he understands that Duke may have arguments about the
15 basis for his opinion.

16 But Duke can't make that argument because
17 the same statements were made during the hearing.
18 It's just not -- it's not plausible to talk about
19 facts that aren't in the record when the only
20 difference is whether it's written on a deposition or
21 written in a hearing transcript. The facts are the
22 same and they are consistent.

23 And if they are talking about him
24 changing his testimony yesterday, if you look at
25 yesterday was the first day -- actually, this morning

1 was the first day Mr. Brodt's hearing transcript was
2 filed in the docket. Mr. Wathen's is the only other
3 witness that was filed in the docket. He indicated
4 he has read Mr. Wathen's and now he has read
5 Mr. Brodt's transcript.

6 He could not have possibly changed his
7 testimony to put in all the hearing transcripts
8 unless we paid \$1,000 a transcript to get expedited
9 delivery. And that's just not really a practical
10 request to put on the other parties especially when
11 you don't have recovery of your transcript costs
12 through distribution rates.

13 MR. BERGER: Can I make one further
14 comment, your Honor?

15 EXAMINER PIRIK: Yes. Go ahead.

16 MR. BERGER: I just want to point out
17 that deposition testimony is discovery. Written
18 discovery responses are sworn responses. Deposition
19 testimony are sworn responses. For purposes of
20 somebody preparing their testimony, the use of either
21 is appropriate in that they both constitute sworn
22 responses and may be reflected in the preparation of
23 written testimony that is subsequently examined on
24 the record. Thank you.

25 EXAMINER PIRIK: Thank you.

1 Duke's objection will be noted for the
2 record. However, you know, the facts of the case
3 will be borne out in the record and exactly what
4 those witnesses from Duke specifically said on the
5 stand, you will have an opportunity to cross
6 Mr. Haugen and ask additional questions. But, you
7 know, in the end, what those witnesses said on the
8 record will be -- will be the facts of the case.
9 That being said, the motion will be denied.

10 MR. OLIKER: Thank you, your Honor.

11 EXAMINER PIRIK: Now, with regard to the
12 confidential information, I think we need to get --
13 make sure we are all on the same page with that
14 before we go any further. I think I am looking to
15 the company. We all received further redactions. Do
16 we all have the further redactions?

17 MS. SPILLER: Your Honor, I don't know
18 that we do.

19 EXAMINER PIRIK: Does the witness have a
20 copy of that?

21 MR. OLIKER: He has a copy of the
22 confidential. He can follow along and it's got
23 marked within the document where the confidential
24 begins and ends.

25 EXAMINER PIRIK: The latest from

1 October 31?

2 MR. OLIKER: He does not have that one.
3 The one -- that, I think, you just provided to Duke.

4 MS. BOJKO: I have a copy if that would
5 be helpful.

6 EXAMINER PIRIK: It would be good to give
7 the witness a copy.

8 MR. OLIKER: I will switch you a blank
9 copy of the confidential.

10 MS. BOJKO: I don't need it.

11 MR. OLIKER: This is the truncated
12 version. When they ask questions, you'll know what
13 to say in the confidential and what not to.

14 THE WITNESS: Okay.

15 EXAMINER PIRIK: We will just go off the
16 record a minute to allow Duke some time to go through
17 the document.

18 (Discussion off the record.)

19 EXAMINER PIRIK: We will go back on the
20 record.

21 Ms. Spiller.

22 MS. SPILLER: Thank you, your Honor.
23 With respect to IGS Exhibit 12a, the confidential
24 testimony of Tim Hamilton. If we may discuss the
25 portions of this for which Duke Energy Ohio is

1 seeking confidential treatment. The suggested
2 redactions have been circulated to the Bench and the
3 parties. And I will just talk, perhaps, in general
4 terms given that we are on the public record.

5 The first redactions are on line 11,
6 line 19, there is text that appears, the third word
7 in. So following the word "approximately."

8 MR. OLIKER: I am sorry. What page are
9 you on?

10 EXAMINER PIRIK: Just to be clear,
11 page 11.

12 MS. SPILLER: Page 11, line 19. So the
13 text that is sort of the three words in, if you
14 would, immediately following the word "approximately"
15 on line 19.

16 On line 21 of page 11, it would be the
17 text that follows the phrase "in the" concluding
18 through to the comma toward the end of line 21.

19 Carrying over to page 12, line 1, the
20 text that precedes the period in footnote 17.
21 Additionally on page 12, line 1, there is text that
22 precedes "megawatt projection." That specific text
23 we are seeking confidential treatment.

24 Page 12 --

25 MR. OLIKER: I'm sorry. Are you not

1 seeking confidential treatment of page 11, line
2 through 6 through 13?

3 MS. SPILLER: I don't think we were.

4 MR. OLIKER: I was making sure.

5 MS. SPILLER: I think we've identified
6 what we had previously marked for the parties and the
7 Bench.

8 MR. OLIKER: Okay. Sorry for that
9 clarification.

10 MS. SPILLER: And then page 12, line 11,
11 there is text that immediately precedes, toward the
12 end of this sentence, the comma "if not lower." That
13 particular text.

14 And, your Honor, moving to page 13,
15 line 18. So there are, I guess, the three texts that
16 precede, in line 18, the word "price." So between
17 "price" and "projecting," the text that falls in
18 between that. And then on that same line between
19 "price in" and "per megawatt-hour," the text that is
20 there. The last text on page 13, line 18, the first
21 text on page 13, line 19, and then there is text in
22 between "to" and "per" on that same line 19. Line
23 20, the third text in, immediately following the
24 words "in the."

25 Moving to page 14, so this would be on

1 line 1 there's text immediately following "a result
2 of." So the words at the balance of that line
3 carrying through line 2 immediately prior to the
4 footnote 25.

5 On line 3, the text that follows "will
6 see an." So the text that -- all of the text prior
7 to the final two words on line 3. Line 4, the first
8 three words in the line. Everything in the
9 parenthetical in line 4 save the parens and the word
10 "the." Line 5, the text that begins with the fifth
11 word in and there are five particular words or text
12 there. So everything between "allegedly see" and
13 "according."

14 Page 14, line 6, the word that is in
15 between "additional" and "because." Line 7, the
16 fourth word in. Line 14 -- I'm sorry, page 14,
17 line 12, sort of more than halfway through that
18 particular line, the word that follows "output will."
19 And then the second-to-last word in that particular
20 sentence. In line 13, second text in -- I'm sorry,
21 third text in, fifth text in, as well as the text
22 that immediately precedes the period in footnote 27.

23 Page 14, line 14, the second and third
24 text in the line. Page 14, line 15, the third and
25 fourth text in the line. Page 15, line 1 -- the

1 seventh word or text in the line.

2 Page 6, the two words -- I'm sorry.

3 Page 15, line 6, the two words that appear at the end
4 of that sentence. Page 15, line 8.

5 EXAMINER PIRIK: Okay. Wait just a
6 second. Line 3 of page 15, in between the words
7 "its" and "projections," those two words?

8 MS. SPILLER: Okay. Yes, your Honor.

9 Page 15, line 8, fourth word in. Line 9,
10 the second text in. Page 15, line 18, the first,
11 third, sixth, as well as the last word or text on
12 that line. Page 15, line 20, the text that appears
13 between "approximately" and "in."

14 Page 16, line 1, the text that appears
15 between "average" and "per." Page 16, line 9, the
16 last two words on that line. Page 16, line 11, the
17 third word on that line.

18 I believe, your Honor, that's all I have
19 for the written portion of the testimony. There are
20 certain attachments to the confidential portion. The
21 Exhibit TH No. 4 is an exhibit that was previously
22 admitted into the record. We've discussed this both
23 with respect to a prior IGS exhibit, I believe, maybe
24 it was 7 and then the OCC Exhibit No. 4. So we would
25 renew the same request associated and consistent with

1 that prior document.

2 Then there is Exhibit TH-5. Consistent
3 with the redactions that the company is seeking in
4 the body of Mr. Hamilton's testimony, the discovery
5 response, the second page of TH-5, under subpart a.,
6 the text that follows the abbreviations "MW" or
7 "megawatts." The same for subpart b., the text that
8 immediately precedes the three different
9 abbreviations of megawatts.

10 We then have attachments to Mr. Brodt's
11 deposition which I believe we'll need to address as
12 well. Page 135, line 10, the first word. Page 135,
13 line 18, the text that immediately precedes the word
14 "percent." On page 135, line 20, the second-to-last
15 word in that particular sentence. So in between "an"
16 and "use."

17 Page 136 of Mr. Brodt's deposition,
18 page -- again, page 136, line 7, the first word.
19 Page 136, line 9, the second-to-last word in that
20 line. Page 136, line 19, the third word in that
21 line. Page 136, line 22, the second-to-last word in
22 that line.

23 EXAMINER PIRIK: Just the second-to-last
24 word?

25 MS. SPILLER: I think the word that

1 immediately precedes that as well, your Honor.

2 TH-7, this is a document we have already
3 addressed. I think the redactions have been made
4 previously.

5 MR. BERGER: Where have we previously
6 addressed this?

7 MS. SPILLER: This table is absolutely
8 familiar.

9 MR. BERGER: This is familiar.

10 MR. OLIKER: It's IGS 4, I believe, which
11 was initially introduced against Don Wathen and
12 discussed with Mr. Dougherty.

13 EXAMINER PIRIK: Attachment 9.

14 MS. SPILLER: This, your Honor, again is
15 a document -- this is a document from OVEC, a
16 billable cost summary. We've already addressed this
17 particular document as well, so we would ask for
18 confidential treatment consistent with the Bench's
19 prior rulings. In effect, it's the information below
20 each calendar year in those tables, as well as when
21 we look at the section for "Demand Charge," about
22 midway through there is text which says "Projected
23 Capital Improvements" in prior treatments -- as well
24 as the information that falls below each table and
25 that's consistent on each of these tables.

1 MR. OLIKER: We discussed that document
2 with Mr. Brodt.

3 EXAMINER PIRIK: Okay. Are there any
4 responses?

5 MS. SPILLER: I should give the basis.
6 These proposed redactions are consistent with what we
7 previously discussed with the Bench. This
8 information concerns confidential information for
9 OVEC and Duke Energy both that would have been
10 received from OVEC. This is financial forecasting
11 information, proprietary information, and
12 confidential information that concerns activities
13 relative to participants or engagements in a
14 competitive market, information that the company
15 takes care to protect.

16 And so, consistent with the prior rulings
17 from the Bench, we are offering these redactions.
18 Again limited in scope, but to address assumptions
19 relevant to forecasting of future activities.

20 EXAMINER PIRIK: Now, responses.

21 Ms. Bojko?

22 MS. BOJKO: Sure. From what I have
23 heard, there are a couple of citations on, like,
24 page 14, for instance, that discuss words that are
25 additional to the words that we have been talking

1 about with regard to direction. So I thought we only
2 agreed to do directional words and not other words
3 that might be related to that such as line 3 and
4 line 4. I thought it was just the directional words.

5 And then there was some references, I
6 believe, to some environmental issues. Again, I
7 thought we opened up all the environmental language
8 per the OVEC exhibit that was filed as well as prior
9 testimony.

10 Also thought that was true to the
11 discussion of years. Some of this is on 15, page 15.
12 You'll find two of these phrases or terminology that
13 I believe we already opened up. And I don't
14 understand on 3 why those words are confidential.
15 It's a fact. We've talked about it a lot in the
16 billing cost summary. I don't know why that has to
17 be hidden in that context. It has nothing to do with
18 the direction or the costs. Page 16, line 9, also
19 has one of the environmental regulations that we
20 talked about.

21 Those are all of my comments. Thank you.

22 EXAMINER PIRIK: So just to be clear, on
23 page 16, the last two words in line 9, you're
24 saying -- those are the two words you are talking
25 about.

1 MS. BOJKO: Those and page 15, line 6,
2 the last two words there. It's been discussed in the
3 open record many times. And line 9 is, I thought,
4 something that we've discussed openly as well, as
5 well as line 3.

6 EXAMINER PIRIK: Okay. Anything else?
7 Anybody?

8 MR. BERGER: I'm generally in agreement
9 with Ms. Bojko's comments. I note at the bottom of
10 page 11, line 21, I'm not sure that -- well,
11 certainly "MW" does not have to be redacted.

12 EXAMINER PIRIK: Well, we are in the open
13 record, so.

14 MR. BERGER: Well, I thought --

15 EXAMINER PIRIK: We are trying to
16 preserve their request, at least, while we are having
17 the discussion, and then we'll make a ruling.

18 MR. BERGER: That's fine. So everything
19 after the fifth word.

20 EXAMINER PIRIK: So, Karen, can you put a
21 note there in the event we decide to redact that
22 piece of it and we'll need to redact it.

23 MR. BERGER: Everything after the fifth
24 word other than the seventh item and the third from
25 the end and the second item on the next page.

1 I think everything else, I don't see a
2 reason to redact that.

3 On page 13, at line 18, I'm not sure why
4 it's necessary to redact the fourth item or the ninth
5 item or the last item on that line or the second item
6 on the next line.

7 On page 14, I do not see a reason to
8 redact. I think Ms. Spiller indicated the first two
9 words on line 3, I don't see a reason to redact that.

10 EXAMINER PIRIK: I'm sorry. We're on
11 page 14?

12 MR. BERGER: Yes. Maybe I'm wrong about
13 the item there.

14 EXAMINER PIRIK: You are saying line 3?

15 MR. BERGER: Yeah. Line 3, did she
16 redact the -- I thought she said the first two words,
17 but maybe I'm wrong. Maybe she just said the seventh
18 word.

19 EXAMINER PIRIK: The words in between
20 "an" and "to."

21 MR. BERGER: On the third line?

22 EXAMINER PIRIK: Yes.

23 MR. BERGER: "An" and "to." Again, I
24 don't see anything other than the seventh word, the
25 word after "an," as being necessary to redact.

1 And, again, line 4, other than the first
2 word, I don't see anything to redact. I think
3 Ms. Bojko said that. In terms of -- again, on
4 line 13, the third item and the item right before the
5 period, I don't see a reason to redact that.

6 I agree with Ms. Bojko's comments on
7 page 15, I think she said the item right before the
8 second -- on line 9, the second word, as well as the
9 other things I think she already indicated.

10 And I think that Ms. Bojko addressed
11 everything else. Thank you.

12 EXAMINER PIRIK: Any other responses?

13 MR. OLIKER: No. Thank you.

14 EXAMINER PIRIK: We are going off the
15 record for a few minutes.

16 (Discussion off the record.)

17 EXAMINER PIRIK: Go back on the record.

18 Ms. Spiller, did you want to add anything
19 or respond to the -- to the comments made by the
20 other parties?

21 MS. SPILLER: Yes, your Honor, just very,
22 very briefly. The redactions that we have proposed
23 are fundamental to assumptions that the company
24 makes. And so, our belief is that disclosing them,
25 as OMA and OCC, suggests is indicative of the

1 assumptions utilized by the company. And, again,
2 this is in connection with activities that occur in a
3 competitive market. So we believe that it would work
4 an unfair prejudice to the company if this
5 information is, in fact, revealed. Thank you.

6 EXAMINER PIRIK: In an effort to be
7 consistent with previous rulings, and we appreciate
8 the parties' patience and actual assistance with
9 trying to do this, I think everyone's worked together
10 to try to make the record as open as possible and we
11 appreciate that.

12 Our ruling would be on page 11, line 21,
13 the phrase after the words "OVEC" and "the," the
14 first phrase will be open. The next numeric figure
15 will be closed after that. So that we don't have to
16 make the other record, we were going to open this
17 anyway, is the "MW" will be open. So that previous
18 section does not have to be confidential.

19 The next phrase, the next item will be
20 open. The numeral three from the end will be closed.
21 And the "MW," the last "MW," second from the end will
22 be open.

23 Likewise on page 12, the first item on
24 line 1 will be open. The second one will be closed.
25 And the "MW" will be open. And the other items on

1 that page will be closed. That were proposed by the
2 company.

3 On page 13, on line 18, the fourth item
4 in, in between "in" and "projecting" will be open.
5 Then we have an item between "price in" and the word
6 "of" that will be open and the last item on that line
7 will be open. The remainder of the items on that
8 page as proposed by Duke will be closed.

9 On page 14, recognizing that we have been
10 doing directional items, closing directional items
11 but leaving as much as we can possibly leave open in
12 all other respects, I understand that Duke has made a
13 proposal and it's not on the open record yet, so I
14 think it's appropriate to have the distinguishing
15 factor here.

16 What the Bench would like to see is on
17 line 1, the third item from the end -- from the
18 beginning of that line would be closed. The three
19 words at the end of that line would be open. And on
20 line 2, all the way to the footnote 25 would be open.

21 On line 3, the sixth word in would be
22 closed. The seventh, eighth, ninth, and tenth words
23 would be open, and the eleventh and twelfth words
24 would be closed.

25 On line 4, the first word would be

1 closed. The second and third words would be open.
2 The fifth, sixth, and seventh words would be open,
3 and the eighth and ninth words would be closed. That
4 takes us to the end of that sentence.

5 On line 5, the fifth and sixth words
6 would be closed. Seventh, eighth, and ninth words
7 would be open.

8 And going down to line 13, the third item
9 in would be open. The sixth item in would be open
10 and the last item at the end of that sentence before
11 the footnote 27 would be open.

12 MS. WATTS: I'm sorry, your Honor, the
13 fifth item or the sixth item?

14 EXAMINER PIRIK: The sixth item would be
15 open. Before the word "ours."

16 MS. WATTS: So the --

17 EXAMINER PIRIK: The item before and
18 after the "to" would be closed.

19 MS. WATTS: Thank you.

20 EXAMINER PIRIK: So that's what I was
21 going to say is all the other proposals on that page
22 would be -- the motion would be granted.

23 MS. BOJKO: Your Honor, did you rule on
24 the word on line 6?

25 EXAMINER PIRIK: Pardon me? Oh, that's

1 one of the items I didn't mention. That will be
2 closed. Yeah. I didn't go through every -- I was
3 just trying to say the ones that were open.

4 MS. BOJKO: I see. Thank you.

5 EXAMINER PIRIK: Everything else that
6 would be proposed by the company would be closed.
7 Does that make sense?

8 MS. BOJKO: Yes.

9 EXAMINER PIRIK: Are we good?

10 Page 15, I'm just going to, again I am
11 going to say the things that we're opening. Line 3,
12 the third and fourth words from the end of that line,
13 between the words "its" and "projections" will be
14 open. Line 6, the last two words on that line will
15 be open. Line 9, the second item will be open. And
16 all of the other items on that page proposed by Duke
17 will be closed.

18 Page 16, line 9, the last two items on
19 that line will be open, and all of the other items
20 will be closed.

21 Turning to Attachment 4. Those items
22 will be as we previously have done in the other
23 exhibits. That will be the same for -- well, with
24 regard to Attachment 5, the proposed redactions on
25 the second page will be granted as proposed by Duke.

1 With regard to Attachment 6, the redactions as
2 proposed by Duke will be granted.

3 With regard to Attachment 7, it is the
4 same item as IGS Exhibit 4a. The proposed redactions
5 are different, however, so our ruling will be that
6 the redactions need to match the ones that are in
7 IGS 4. So just have to be sure that's accomplished.

8 And, finally, Attachment 9 is something
9 we've seen before and those redactions should be the
10 same as what we've ruled on previously.

11 Are there any questions?

12 Clear as mud for the witness, isn't it?

13 MR. OLIKER: I don't have any questions
14 about the redactions. But I do have just one or two
15 matters to bring to the Bench's attention. Is it
16 possible that Duke may ask confidential questions
17 related to IGS's business and we'll cross that bridge
18 if we come to it, like we did with direct.

19 And also the other possibility is that
20 this witness was previously employed by Buckeye Power
21 and I would like to just make sure that he is not in
22 a position where he has to disclose anything that
23 might be proprietary to Buckeye, because Buckeye is
24 not here to assert its privilege, and I would just
25 like to be able to object if that were to happen.

1 EXAMINER PIRIK: It's always good to
2 remind the witness to be careful. If you feel like
3 you are going over to confidential information, of
4 course, your counsel will be there, trying to get
5 things to stop, but it's always good to have a
6 reminder at this point we are in the open record. If
7 we have to have a closed session, we'll have a closed
8 session for confidential testimony.

9 THE WITNESS: Okay.

10 EXAMINER PIRIK: We'll cross that bridge
11 when we get there.

12 MR. OLIKER: Thank you, your Honor.

13 EXAMINER PIRIK: I think we're ready.
14 Ms. Hussey.

15 MS. HUSSEY: No questions, your Honor.

16 EXAMINER PIRIK: Ms. Bojko.

17 MS. BOJKO: I do, briefly. Thank you,
18 your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Ms. Bojko:

22 Q. Good afternoon. My name is Kim Bojko. I
23 represent the Ohio Manufacturers' Association. I
24 have a few questions. Does IGS participate in
25 hedging strategies?

1 A. We do, but if you want to know the
2 details of it, that would be confidential.

3 Q. Well, could you briefly -- could you give
4 me an example or briefly explain what you think the
5 definition of "hedging" means without talking
6 specifically about IGS, just the concept of hedging.

7 A. Hedging is creating some sort of fixed
8 contract or agreement in order to reduce risk at a
9 future time.

10 Q. Okay. And can you turn to page 6 of your
11 adopted testimony. On lines 2 and 3, you talk about
12 "Duke claims that the purpose of the PSR is to hedge
13 against market volatility," and then you say "the
14 actual function" -- sorry. Are you there?

15 A. You said page 6?

16 Q. Page 6, lines 2 and 3.

17 A. Okay. What was the question?

18 Q. Do you believe that the PSR is a similar
19 type of hedge to that with which IGS or other
20 suppliers use in the marketplace?

21 MS. SPILLER: Objection to the leading
22 cross.

23 EXAMINER PIRIK: Overruled.

24 MR. OLIKER: I would just advise you to
25 be careful that your answer doesn't indicate anything

1 confidential, but go ahead, Mr. Haugen.

2 A. I do not believe that because, in this
3 instance, the risk or reward would lie with the
4 consumer. So, with a typical hedge, you would try
5 and reduce the risk for the consumer.

6 Q. And so, from that, where you go on to say
7 that "the actual function of the PSR is to insulate
8 Duke" from that risk, and that is the risk that you
9 were just talking should be used to insulate
10 consumers, not Duke; is that correct?

11 A. Correct.

12 MS. BOJKO: I have nothing further.
13 Thank you, your Honor.

14 EXAMINER PIRIK: Thank you.

15 OCC. Mr. Berger?

16 MR. BERGER: Thank you.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Berger:

20 Q. Good afternoon, Mr. Haugen. I am Tad
21 Berger with the Office of Consumers' Counsel. I just
22 have a few questions for you. You would agree with
23 me that the SSO auctions are a form of hedging, would
24 you?

25 MS. SPILLER: I am going to again object

1 to the friendly cross-examination.

2 EXAMINER PIRIK: Overruled.

3 A. I believe it can be, yes.

4 Q. And would you agree that the objective of
5 the SSO auctions is, as you indicated, to reduce the
6 risk to consumers?

7 A. Correct.

8 Q. Now, you would agree that the PSR does
9 not provide generation service to any customer.

10 A. Correct.

11 Q. And you would agree SSO customers, to the
12 best of your knowledge, have not requested the PSR
13 rider.

14 A. Correct.

15 MS. SPILLER: Again, objection to the
16 friendly cross.

17 EXAMINER PIRIK: Objection noted.
18 Overruled.

19 Q. Would you also agree that either SSO
20 suppliers or CRES suppliers are any more likely to
21 end up with power produced by OVEC?

22 A. Correct.

23 Q. And under the company's proposal, SSO
24 customers and shopping customers would be treated the
25 same under the PSR.

1 A. That's the way I understand it, yes.

2 Q. Neither of them, would you agree, would
3 receive any OVEC power directly and each of them
4 would have to pay the PSR even though they don't
5 receive that power?

6 A. Correct.

7 Q. And would you agree with me that both
8 would be paying to take away the risk from Duke?

9 A. That's the way I understand it, yes.

10 Q. Would you also agree that CRES suppliers
11 may offer customers variable rates as well as fixed
12 rates?

13 MS. SPILLER: Your Honor, I am going to
14 again object to this line of friendly
15 cross-examination.

16 MR. OLIKER: And I would object to the
17 relevance of this question.

18 EXAMINER PIRIK: Overruled.

19 A. Can you restate, please?

20 Q. CRES suppliers may offer customers both
21 variable rates and fixed rates; would you agree with
22 that?

23 A. Correct, yes.

24 Q. And would you agree with me that because
25 CRES customers may -- may be subject to variable

1 rates, they may actually experience greater stability
2 risk than SSO customers?

3 MR. OLIKER: Can you clarify that
4 question? I am not sure that was clear.

5 Q. Would you agree with me that because CRES
6 customers may sign up for a variable rate contract or
7 be placed on a variable rate contract at some point,
8 that they would be subject to greater stability risk
9 than -- then SSO customers in the case of those
10 variable rate customers?

11 A. A variable rate will naturally see more
12 volatility than a fixed rate, moving up or down.

13 Q. So you would agree with my question.

14 A. Yes.

15 MR. BERGER: Thank you. That's all I
16 have.

17 Thank you, Mr. Haugen.

18 EXAMINER PIRIK: Mr. Allwein?

19 MR. ALLWEIN: No questions, your Honor.

20 EXAMINER PIRIK: Ms. Mooney?

21 MS. MOONEY: No questions.

22 EXAMINER PIRIK: Ms. Spiller?

23 MS. SPILLER: Thank you, your Honor.

24 - - -
25

CROSS-EXAMINATION

By Ms. Spiller:

Q. Good afternoon, Mr. Haugen.

A. Good afternoon.

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

A. Correct.

Q. And you have not previously testified in Ohio regulatory proceedings, correct?

A. Correct. I have not.

Q. Your current position is that of Senior Power Supply and Schedule Analyst for IGS Energy, correct?

A. Yes.

Q. And as a scheduler and supply analyst, it is not required of you, day in and day out, to read and interpret Ohio statutes, correct?

A. Correct.

Q. To the extent you have a general understanding of Ohio regulatory law, that concerns retail choice, correct?

A. That's correct.

Q. And that's an understanding that you developed since coming to IGS Energy in February of 2013, correct?

A. Correct.

1 Q. And the focus of your testimony in this
2 proceeding is the company's proposed rider PSR,
3 correct?

4 A. That's correct.

5 Q. You are not offering any opinions with
6 regard to any other aspects of the company's
7 application, correct?

8 A. Correct.

9 Q. And prior to adopting the testimony of
10 Mr. Tim Hamilton, you reviewed the attachments to his
11 testimony, correct?

12 A. I did.

13 Q. Okay. And you would agree with me that
14 many of those attachments are excerpts, correct?

15 A. That's correct.

16 Q. They are not complete documents, correct?

17 MR. OLIKER: I would object without
18 defining "excerpt."

19 Q. Sir, you know what an "excerpt" is, don't
20 you?

21 A. I believe the excerpts that I have are
22 the cross-examinations from Joe Olikier.

23 Q. Okay. And when you say that, Mr. Olikier
24 provided you certain pages of deposition testimony,
25 correct?

1 A. He provided relevant information, yes.

2 Q. And that included certain pages of
3 deposition testimony, correct?

4 A. Correct.

5 Q. You did not seek out and read all of
6 the -- all of the entire transcripts from any
7 deposition in this case, correct?

8 A. No. I did not.

9 Q. Okay. And you have not reviewed the
10 transcripts of this particular hearing, correct?

11 A. I've reviewed portions.

12 Q. And you reviewed the portion that
13 concerned testimony rendered by Mr. Don Wathen,
14 correct?

15 A. I did.

16 Q. And that's the only transcript -- that's
17 the only portion of the transcript that you've
18 reviewed, correct?

19 A. I reviewed portions this morning of some
20 of the other transcripts.

21 Q. And, sir, do you have your deposition in
22 front of you? Do you have a copy of that, sir?

23 A. I do not.

24 MS. SPILLER: Your Honor, may we
25 approach?

1 EXAMINER PIRIK: Yes.

2 MS. BOJKO: Your Honor, may I have the
3 answer read back?

4 MR. OLIKER: I am pretty sure this isn't
5 going to be impeaching, but go ahead.

6 (Record read.)

7 Q. And, sir, could you turn to page 21 of
8 your deposition. On line 9, the question begins:
9 "And you have just a portion of Mr. Wathen's hearing
10 testimony, correct?"

11 Answer: "Correct."

12 Next question: "Have you read any other
13 portions of the hearing transcript?"

14 Answer: "I have not." Have I read that
15 correctly?

16 MR. OLIKER: Objection. It's not
17 impeaching. She asked him what he read yesterday and
18 then he said what he read today.

19 EXAMINER PIRIK: I'll allow the witness
20 to clarify.

21 A. Can you repeat?

22 Q. Sure. Did I read that portion of your
23 deposition transcript correctly?

24 A. Which page and line items?

25 Q. Page 21, beginning on line 9.

1 "And you have just a portion of
2 Mr. Wathen's hearing testimony, correct?"

3 Answer: "Correct."

4 Question: "Have you read any other
5 portions of the hearing transcript?"

6 Answer: "I have not." Have I read that
7 correctly?

8 A. That's correct.

9 Q. And, sir, you were given the
10 opportunity --

11 MR. OLIKER: He has an opportunity to
12 clarify his statement, I believe, per your Honor's
13 ruling.

14 EXAMINER PIRIK: Yes. Could you clarify
15 just for the record. I know you had a previous
16 answer and could you clarify?

17 THE WITNESS: Yeah, I read some small
18 portions of the testimony this morning.

19 Q. And, sir, you were also given an
20 opportunity to review your deposition transcript,
21 correct?

22 A. Very short time, yes.

23 Q. You took advantage of that opportunity,
24 correct?

25 A. I did.

1 Q. And, in fact, you signed an errata page
2 and a signature page, correct?

3 A. Correct.

4 Q. And when you filled out your errata page
5 you made one correction on page 48 of your testimony,
6 correct?

7 A. Correct.

8 Q. Mr. Haugen, you're familiar with the
9 Intercompany Power Agreement or ICPA, correct?

10 A. I am.

11 Q. And that is a contract between the Ohio
12 Valley Electric Corporation and sponsoring companies,
13 correct?

14 A. Yes.

15 Q. And when I say "OVEC," do you understand
16 that to be the Ohio Valley Electric Corporation?

17 A. I do.

18 Q. And OVEC owns the Kyger Creek generating
19 station, correct?

20 A. Correct.

21 Q. And you are also aware, sir, that OVEC
22 wholly owned the Indiana-Kentucky Electric
23 Corporation, correct?

24 A. I believe so.

25 Q. And IKEC or the Indiana-Kentucky Electric

1 Corporation owns the Clifty Creek generating station,
2 correct?

3 A. I believe so, yes.

4 Q. Okay. And, sir, can we agree through the
5 balance of your -- of our conversation this afternoon
6 that to the extent I reference "OVEC-owned assets,"
7 that would include both Clifty Creek and Kyger Creek,
8 unless otherwise noted?

9 A. Yes.

10 Q. Okay. OVEC has its own employees,
11 correct?

12 A. Yes.

13 Q. And a purchase power agreement is a
14 contract through which one entity agrees to pay a
15 price for energy that is being delivered by another
16 company, correct?

17 MR. OLIKER: Objection. Vague. Not
18 enough parameters to discuss all purchase power
19 agreements.

20 EXAMINER PIRIK: You can clarify the
21 question, but the witness, if you have any questions
22 about anything that's asked, you can also ask for
23 clarification.

24 A. There are many different types of power
25 purchasing agreements and a lot of those different

1 functionalities are built into their contracts. So
2 if there is something specific in a power purchase
3 agreement you are asking about?

4 Q. Well, sir, would you agree that a
5 purchase power agreement is a contract where one
6 entity agrees to pay a price for energy that is being
7 delivered by another company?

8 A. I believe that can be a power purchasing
9 agreement, yes.

10 Q. And, in fact, sir, you liken the ICPA to
11 a purchase power agreement, correct?

12 A. Correct.

13 Q. And you would agree with me that the
14 ICPA, as is typical in a contracting process,
15 establishes the rights and obligations of the parties
16 to that agreement?

17 A. I do.

18 Q. And the ICPA includes a cost structure
19 that sets out the obligations of each sponsoring
20 company, correct?

21 A. It does.

22 Q. Okay. And that cost structure was
23 approved by the FERC when it approved the amended
24 ICPA, correct?

25 A. I believe so.

1 Q. And you have no reason to believe that
2 the FERC would have approved the ICPA if it found
3 that document to be unreasonable, do you?

4 MR. OLIKER: Objection. Calls for
5 speculation on what FERC would do.

6 EXAMINER PIRIK: Overruled.

7 A. I have no reason to think that FERC would
8 do anything unreasonable.

9 Q. And, sir, you are here today offering
10 testimony with regard to the extent of the FERC's
11 jurisdiction, correct?

12 A. That is part of the testimony.

13 Q. Okay. And to the extent there is a
14 complaint with a FERC-approved cost or rate form --
15 cost or rate formula, a party can challenge that cost
16 or rate formula at the FERC, correct?

17 A. I believe so, yes.

18 Q. Now, under the ICPA, Duke Energy Ohio has
19 a 9-percent entitlement of the output of the
20 OVEC-owned generating units, correct?

21 A. That is part of the ICPA, yes.

22 Q. And that output would include both energy
23 and capacity, correct?

24 A. Yes.

25 Q. The ICPA does not transfer title of the

1 OVEC-owned generating assets to Duke Energy Ohio,
2 correct?

3 MR. OLIKER: Objection. Calls for a
4 legal conclusion.

5 EXAMINER PIRIK: Overruled.

6 A. It does not transfer title, but it does
7 allow Duke Energy to operate the plants as if they
8 had ownership.

9 Q. And we'll get to that in a moment, but my
10 first question is it does not transfer title,
11 correct?

12 MR. OLIKER: Asked and answered.

13 EXAMINER PIRIK: Overruled.

14 A. Correct.

15 Q. Okay. And the ICPA does not establish a
16 fixed capacity price payable to any of the sponsoring
17 companies including Duke Energy Ohio, correct?

18 A. Can you repeat?

19 Q. Sure. The ICPA does not establish a
20 fixed capacity price payable to any of the sponsoring
21 companies including Duke Energy Ohio, correct?

22 A. Correct.

23 Q. The ICPA does not establish a fixed
24 energy price payable to any of the sponsoring
25 companies including Duke Energy Ohio, correct?

1 A. Correct.

2 Q. And, sir, you would agree with me that
3 both Kyger Creek and Clifty Creek were existing
4 generating stations when PJM established its
5 reliability pricing model or RPM in approximately
6 2006, correct?

7 MR. OLIKER: Objection to the relevance.

8 EXAMINER PIRIK: Overruled.

9 A. Yes, the plants were physically built.

10 Q. Okay. And under the ICPA, OVEC operates
11 and maintains Clifty Creek and Kyger Creek, correct?

12 A. Under the direction of the board and
13 sponsoring companies.

14 Q. But the IC -- do you have the ICPA in
15 front of you, sir?

16 A. I do.

17 Q. And this, Mr. Haugen, I will represent to
18 you, this has previously been marked as IEU Exhibit 5
19 in this case. Under Article 4, on page 6, Section
20 4.01 of the ICPA, indicates that the "corporation
21 shall operate and maintain the project generating
22 stations in a manner consistent with safe, prudent,
23 and efficient operating practice," correct?

24 MR. OLIKER: Your Honor, if we are just
25 going to read the document and ask him to read lines

1 from the ICPA, I don't see what this
2 cross-examination is achieving and why that's
3 relevant.

4 MS. SPILLER: Your Honor, I think there
5 has been a lot of that, but --

6 MR. OLIKER: Anybody can say "Correct?
7 You read those statements, correct?

8 EXAMINER PIRIK: Go ahead, Ms. Spiller.

9 MS. SPILLER: Thank you, your Honor.

10 A. So are you asking me if you read that
11 correctly?

12 Q. Is that what Article 4, Section 4.01
13 indicates, sir?

14 A. That is part of that sentence.

15 Q. And the corporation under the ICPA is
16 OVEC, correct?

17 A. Correct.

18 Q. Sir, with regard to Duke Energy Ohio's
19 proposed rider PSR, you are aware that Duke Energy
20 Ohio has committed to liquidating all of the energy
21 and capacity associated with its 9 percent
22 contractual entitlement under the ICPA into the PJM
23 wholesale markets, correct?

24 A. I'm aware that's what's in the proposal.

25 Q. Okay. And Mr. Wathen, a Duke Energy Ohio

1 witness, has testified in this case concerning rider
2 PSR, and specifically that all energy will be
3 dispatched into the PJM day-ahead market when the
4 price is higher than variable cost, correct?

5 A. I'm not sure how he could dispatch it
6 into the day-ahead market without knowing the price
7 since the price clears after they would have to
8 schedule it.

9 Q. But he would dispatch it when the -- when
10 the variable costs are lower than the expected price,
11 correct?

12 A. How would he develop an expected price?

13 Q. Are you aware that that's what Mr. Wathen
14 testified to?

15 A. I was not.

16 Q. Okay. And after liquidating its
17 contractual entitlement, Duke Energy Ohio will pass
18 all of the net benefits to all of its customers on a
19 nonbypassable basis, correct?

20 A. Correct.

21 Q. You would agree with me, sir, that the
22 standard service offer supply will not be displaced
23 if rider PSR is approved?

24 A. Correct.

25 Q. And you would agree that any supply

1 associated with competitive retail electric service
2 offers will not be displaced if rider PSR is
3 approved, correct?

4 A. That's correct.

5 Q. And there is no physical delivery of
6 power to end-use retail customers under rider PSR as
7 proposed by the company, correct?

8 A. There would not be physical power, but
9 there would be a related cost.

10 Q. But there is no physical power, correct?

11 A. There's no way --

12 MR. OLIKER: Asked and answered.

13 EXAMINER PIRIK: Overruled. Go ahead.

14 A. There is no way of knowing what power
15 that flows onto the transmission system flows to
16 which end-use customer.

17 Q. And that's true irrespective of rider
18 PSR, correct?

19 A. Yes, ma'am.

20 Q. Generators sell their capacity into the
21 PJM or they offer their capacity into the PJM market,
22 correct?

23 A. They do.

24 Q. And then you don't know ultimately when
25 the electrons end up in my home. I don't know the

1 original generation source for those electrons, do I?

2 A. That's correct.

3 Q. If rider PSR is approved, customers in
4 Duke Energy Ohio's service territory will still have
5 the ability to engage in retail choice, correct?

6 A. Correct.

7 Q. And you would agree with me, and I
8 believe you just confirmed with Mr. Berger, that all
9 customers, all retail customers in Duke Energy Ohio's
10 service territory are treated the same under rider
11 PSR, correct?

12 A. That portion is correct, yes.

13 Q. Okay. And because rider PSR is proposed
14 as a nonbypassable rider, it will not affect retail
15 competition, correct?

16 A. As a nonbypassable rider it should not
17 affect the competition.

18 Q. Thank you.

19 Sir, I would like to talk for a moment
20 just with respect to transacting in the wholesale
21 market and you talk about these sorts of topics in
22 your testimony. If rider PSR did not exist and Duke
23 Energy Ohio offered capacity associated with its
24 9 percent entitlement into the base residual auction
25 and that capacity cleared, Duke Energy Ohio would be

1 paid the base residual auction clearing price,
2 correct?

3 A. Correct. As long as they provided the
4 service. You can't clear capacity and not show up.

5 Q. Okay. So assuming they clear and
6 ultimately fulfill their obligations in connection
7 with the base residual auction, they would be paid
8 for their capacity resources, correct?

9 A. Correct.

10 Q. And they are paid the base residual
11 auction clearing price regardless of the offer price,
12 correct?

13 A. As long as their offer price was below
14 the clearing price.

15 Q. Well, that's a fair point. So if I offer
16 in at zero and my resources clear, I am paid the
17 clearing price.

18 A. But the problem you have with the PSR is
19 it doesn't incentivize them to provide a cost base
20 offer.

21 Q. I am talking about the mechanics of the
22 PJM market at this point.

23 A. Okay.

24 Q. If I offer in at zero, then I clear, I'm
25 paid the base residual clearing price.

1 A. For the localized area, yes.

2 Q. Correct. If I offer in -- if my offer is
3 higher than that clearing price, I won't clear the
4 auction, correct?

5 A. Correct.

6 Q. And then I won't -- I won't have the
7 opportunity to receive any capacity revenues, will I?

8 A. That's correct.

9 Q. And the circumstance, sir, we have just
10 talked about offering into the base residual auction
11 and if you clear and ultimately show up, you receive
12 the clearing price in the form of a capacity revenue,
13 that's true today with respect to Duke Energy Ohio
14 and its contractual entitlement in OVEC, correct?

15 A. I believe so, yes.

16 Q. And whether or not rider PSR is approved,
17 that would still be true, correct?

18 A. That would be a business decision for
19 Duke.

20 Q. If they continue to have the OVEC
21 entitlement.

22 A. And they continue to operate in the same
23 way they are today.

24 Q. Okay. And when PJM established RPM or
25 the reliability pricing model, it established a

1 minimum offer pricing rule, correct?

2 A. Correct.

3 Q. And very generally, under this rule there
4 is a minimum offer that new generators must bid into
5 the BRA, correct?

6 A. I'm not as familiar with the rule.

7 Q. You don't know whether existing
8 generators are excepted or exempted from that rule.

9 A. Correct.

10 Q. So you don't know whether new generators
11 are permitted, under PJM rules and tariffs, to offer
12 their -- their existing generation into the BRA at
13 zero?

14 MR. OLIKER: Objection. The witness just
15 said he is not that familiar with MOPR.

16 EXAMINER PIRIK: Objection overruled. I
17 will allow him to answer.

18 A. I can't answer with regards to the MOPR
19 rule. I am not as familiar with it.

20 Q. And you did not attempt -- you did not
21 attempt, for purposes of your testimony in this case,
22 to review the MOPR or minimum offer pricing rule, to
23 determine whether it excludes existing generators,
24 correct?

25 MR. OLIKER: Objection. Asked and

1 answered.

2 EXAMINER PIRIK: He can respond.

3 A. I really have nothing further to say on
4 MOPR as I am not as familiar with it.

5 Q. Okay. And although you are offering
6 testimony in connection with the wholesale capacity
7 market and bidding activities in respect of that
8 market, you didn't research MOPR, correct?

9 A. I did not.

10 Q. Okay. Now, on the energy side, a
11 resource the clears the base residual auction has a
12 "must offer energy" obligation, correct?

13 A. During certain times of the year it does,
14 yes.

15 Q. And that's an obligation pursuant to
16 which the resource is required to offer into the
17 day-ahead energy market, correct?

18 A. I believe that is the way it works, yes.

19 Q. Okay. And if we could focus still on
20 energy, sir. If rider PSR did not exist and Duke
21 Energy Ohio offered its share of energy from its OVEC
22 entitlement into the day-ahead market whenever the
23 price exceeded its variable cost, then Duke Energy
24 Ohio would be compensated based upon those daily
25 energy prices, correct?

1 A. I believe this goes back to I'm not sure
2 how they would offer in the portion above their
3 variable costs before knowing the day-ahead prices,
4 as those clear after offer deadlines.

5 Q. But you would have an estimate of what
6 those prices are, correct?

7 A. A forecaster could speculate on offer
8 prices, yes.

9 Q. And then if you're picked up in the
10 market, you are -- you receive those daily clearing
11 prices, correct?

12 A. You would receive the day-ahead clearing
13 price, yes.

14 Q. Okay. And that's true whether or not
15 rider PSR is approved, correct, in respect of Duke
16 Energy Ohio's entitlement to energy under the ICPA?

17 MR. OLIKER: Object to the extent it
18 calls for speculation on what happens if the PSR is
19 not approved, but if Mr. Haugen knows.

20 EXAMINER PIRIK: You can go ahead and
21 answer if you know.

22 A. It's difficult to speculate on how Duke
23 would offer in its units. But I would say I imagine
24 they would offer their units into the day-ahead
25 markets.

1 Q. Well, they've committed to offering them
2 into the day-ahead market, correct?

3 A. But you said that's based off of the
4 day-ahead clearing price being above their variable
5 cost.

6 Q. But you agree that suppliers alter their
7 bids all the time in anticipation or as a result of
8 market prices, correct?

9 A. I wouldn't say they alter their bids with
10 regards to market prices. They would probably alter
11 the bids in relation to cost. They would -- they
12 could adjust their output with regards to market
13 prices.

14 Q. With regard to price signals from PJS
15 [verbatim].

16 A. Yes, PJM.

17 Q. I'm sorry, from PJM.

18 A. That's correct.

19 Q. And that makes sense, correct?

20 A. That you adjust your output with regards
21 to market signals?

22 Q. Yes.

23 A. I would agree that is correct.

24 Q. Okay.

25 A. But you are talking about two different

1 things. You are talking about making the unit
2 available based off of offer prices that haven't
3 cleared yet or adjusting the units as you have the
4 prices.

5 MS. SPILLER: I am going to move to
6 strike, your Honor. There wasn't a question pending
7 at the point -- at this time.

8 EXAMINER PIRIK: Denied.

9 Q. And, Mr. Haugen, if rider PSR is
10 approved, nothing will change under the ICPA in terms
11 of the dollars to be paid to OVEC, correct?

12 A. Under the current agreements, that is
13 correct. But I cannot speculate on what Duke Energy
14 would do if the PSR was not approved.

15 Q. You believe that rider PSR is, and you
16 use the word "unlawful" in your testimony, because it
17 results in the Ohio Commission setting rates for
18 wholesale energy and capacity, correct?

19 A. Correct.

20 Q. Okay. And rider PSR does not establish a
21 fixed capacity payment for Duke Energy Ohio, correct?

22 A. It does not, but it subsidizes any sort
23 of payment received by PJM up to its cost.

24 Q. But rider PSR does not establish a fixed
25 capacity payment for Duke Energy Ohio, correct?

1 MR. OLIKER: Objection. Asked and
2 answered. Exact same question.

3 EXAMINER PIRIK: Overruled.

4 Q. And Duke Energy Ohio -- I'm sorry.

5 A. I'm sorry. Can you repeat it then?

6 Q. Sure. Rider PSR does not establish a
7 fixed capacity payment for Duke Energy Ohio, correct?

8 A. It does not offer a fixed price, no. It
9 would be a variable cost where the risk would be
10 pushed onto the consumers.

11 Q. And Duke Energy Ohio will be -- will
12 continue to be paid the base residual auction
13 clearing prices in the daily energy prices, correct?

14 A. Correct.

15 Q. Do you know whether OVEC provides
16 estimates to the sponsoring companies on a daily
17 basis so that they can determine whether or not to
18 offer into the day-ahead energy market?

19 A. Are you talking about prices or output?

20 Q. Estimates.

21 MR. OLIKER: Is this confidential, Amy?

22 A. I would assume --

23 MR. OLIKER: Hold on, Mr. Haugen, I'm
24 sorry.

25 Is this confidential information?

1 MS. SPILLER: No.

2 MR. OLIKER: Okay. I just wanted to make
3 sure.

4 A. I would assume they would provide them
5 with some sort of output estimates based off of unit
6 capability. There's no way for me to know if they
7 would provide them some sort of day-ahead forecast of
8 LNPs.

9 Q. You don't know if OVEC provides any
10 information related to cost to its sponsoring
11 companies, correct?

12 MR. OLIKER: Objection. The sentence is
13 vague. Please put time parameters on the question so
14 the witness can respond appropriately.

15 EXAMINER PIRIK: Could you just clarify
16 the question?

17 MS. SPILLER: Sure.

18 Q. Do you know whether OVEC provides cost
19 estimates to sponsoring companies on a daily basis so
20 that they can determine whether to offer into the
21 day-ahead market?

22 A. I do believe they provide a cost
23 estimate. But I do not believe they provide or know
24 if they would provide a price estimate.

25 Q. Mr. Haugen, is it fair to say that you

1 believe that in order for the Ohio Commission to
2 regulate wholesale energy prices for capacity and
3 energy under rider PSR, that rider PSR would have to
4 result in Duke Energy Ohio altering its bidding
5 practices in a way that impermissibly affects or
6 manipulates the wholesale markets?

7 MR. OLIKER: Could I have that question
8 read back, please, before you answer, Mr. Haugen.

9 (Record read.)

10 MR. OLIKER: I object. That calls for a
11 legal conclusion, but if Mr. Haugen can clarify
12 himself.

13 EXAMINER PIRIK: Yes.

14 A. I believe that having a subsidy to cover
15 your costs could affect the way that Duke Energy bids
16 its units into the markets.

17 Q. Okay. And a subsidy, in your mind, is
18 any payment additional to market rates whether that's
19 positive or negative, correct?

20 A. Correct. But when it flows negative, it
21 would be positive to someone else.

22 Q. So we've mentioned briefly, Mr. Haugen,
23 the base residual auction. This is the auction
24 through which PJM secures capacity resources
25 sufficient to meet its reliability commitments plus

1 the reserve, correct?

2 A. That's correct.

3 Q. And these auctions are held annually for
4 a delivery period three years forward, correct?

5 A. The base auction is, yes.

6 Q. And PJM operates on a planning year that
7 is not consistent with a calendar year, correct?

8 A. It's June to May, correct.

9 Q. Okay. And for the three planning years
10 that coincide with the term of Duke Energy Ohio's
11 proposed ESP, June 1, 2015, through May 31, 2018, the
12 base residual auctions for those planning years have
13 already occurred, correct?

14 A. Those auctions have occurred, yes.

15 Q. So we know what the capacity prices are
16 for those three PJM planning years, correct?

17 A. We do.

18 Q. And there is nothing to be done in terms
19 of the Ohio Commission regulating those wholesale
20 capacity prices if rider PSR is approved, correct?

21 A. It is my understanding that the rider PSR
22 would go beyond May of 2018.

23 Q. But with respect to the three planning
24 years associated with the term of the proposed ESP,
25 the Ohio Commission cannot regulate those already

1 established capacity prices, correct?

2 A. Correct.

3 Can I add onto that?

4 MR. OLIKER: Of course.

5 Q. You can do that in response to questions
6 from your lawyer, sir.

7 MR. OLIKER: Don't ask me.

8 EXAMINER PIRIK: No. I think you don't
9 have to just say "yes" or "no." If you have
10 something that you need to say after that, you can
11 add.

12 A. I will say with regards to auctions that
13 have cleared three years out, they cannot alter
14 those, but there is a day-ahead hourly clearing price
15 of energy that could be altered.

16 Q. Okay. I am still focused on capacity.
17 We will get to energy in a moment, sir.

18 Now, with regard to future planning
19 years, you assume that if rider PSR were approved,
20 Duke Energy Ohio would somehow impermissible be
21 offering the capacity associated with its contractual
22 entitlement in OVEC into the BRA at some number other
23 than its cost, correct?

24 A. I believe that they have no incentive to
25 offer it at its cost.

1 Q. Well, do you know what Duke Energy --
2 well, your concern is that if Duke Energy Ohio were
3 to offer its capacity at zero, this might not create
4 enough headroom for other auction participants,
5 correct?

6 MR. OLIKER: Are you directing to a part
7 of his testimony, Amy, or is this outside of his
8 testimony?

9 MS. SPILLER: This all relates to his
10 testimony, but he doesn't state this particular fact
11 in his testimony.

12 MR. OLIKER: Is there a part of his
13 testimony where he can attest to the capacity prices
14 and cash flow statement?

15 MS. SPILLER: I'm sorry?

16 MR. OLIKER: Are you talking about his
17 discussion of the cash flow statement? What part of
18 his testimony are you referring to?

19 MS. SPILLER: We are talking about his
20 statements that the Ohio Commission would be
21 regulating the wholesale markets.

22 A. Any time that a unit is not -- does not
23 have to offer their capability in at least at cost,
24 it will create anti-competitive conditions in the
25 market.

1 Q. So is it your belief that every generator
2 that offers in at zero, results in anti-competitive
3 conditions in the market?

4 A. I believe that those are specific
5 business decisions that these companies have to make.

6 Q. But, sir, that's not my question. My
7 question is do you believe that to the -- to the
8 extent every order -- strike that.

9 Do you believe that every generator that
10 offers their capacity resource into the base residual
11 auction at zero results in an anti-competitive
12 condition in the market?

13 MR. OLIKER: I would object to the extent
14 it assumes facts not in evidence, even establishing
15 other people are offering in at zero.

16 MS. SPILLER: Mr. Olikier, I appreciate
17 your testimony here.

18 EXAMINER PIRIK: I will allow the witness
19 to clarify if he needs to.

20 A. I believe that those are specific market
21 positions that those companies are taking. But those
22 companies do not have their cost subsidized, so they
23 are running the risk under a business decision.
24 Under the PSR, if Duke's capacity can clear at any
25 price, they will always have their costs recovered.

1 Q. So let's back up. Now you're making
2 general statements about every generator that offers
3 in at zero, correct?

4 A. The only statements I was making, those
5 are specific business decisions where they are
6 willing to assume the risk of the auction clearing
7 below their cost. But when those auctions clear
8 below their cost, they have to recoup that cost
9 somehow in the markets and the wholesale energy
10 markets.

11 Q. But, sir, I am going to go back to my
12 question, because you made a statement that offering
13 in at zero creates an anti-competitive condition in
14 the market. So I would like to understand that
15 statement. And my question is do you believe when a
16 generator offers in at zero, that they are creating
17 an anti-competitive condition in the market?

18 MR. OLIKER: Objection. Mischaracterizes
19 his testimony. He didn't say that statement by
20 itself. He said when you offered in at zero with
21 guaranteed cost recovery.

22 EXAMINER PIRIK: He can clarify.

23 A. So I believe I've already answered this.
24 A company who bids in at zero is taking a market
25 position and assumes the risk. A company who has

1 guaranteed cost recovery can bid it at anything low
2 such as zero with no competitive reason to.

3 Q. But, sir, I'm still just trying to get an
4 answer to the question. You indicated that offering
5 in at zero creates an anti-competitive condition in
6 the market.

7 A. No. What I indicated was a company that
8 has no reason to not offer in at zero can make an
9 uncompetitive statement or uncompetitive position.

10 Q. You're familiar with the base residual
11 auctions, correct?

12 A. Yes.

13 Q. You follow those pretty regularly,
14 correct?

15 A. I do.

16 Q. You're well versed in what has occurred
17 in those auctions from year to year, correct?

18 A. Correct.

19 Q. Okay. And you would agree with me that
20 about 170,000 megawatts cleared the 2017-2018 base
21 residual auction?

22 A. Close to that.

23 Q. And of that, sir, 140,000 megawatts
24 offered in at zero, right?

25 A. I'm not sure off the top of my head.

1 Q. Would a PJM document refresh your
2 recollection?

3 A. I don't have any in front of me.

4 MS. SPILLER: Your Honor, may I approach?

5 EXAMINER PIRIK: Yes.

6 MS. SPILLER: Thank you. Your Honor, we
7 would ask this document be marked as Duke Energy Ohio
8 Exhibit 39, please.

9 EXAMINER PIRIK: Yes. The document is so
10 marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. OLIKER: I am going to ask is this
13 part of a document or the entire document?

14 MS. SPILLER: It was just one page from
15 the PJM website.

16 MR. OLIKER: Is there a website that I
17 can access right now to verify that?

18 MS. SPILLER: Www.PJM.com.

19 MR. OLIKER: That's not my question, Amy.

20 MS. SPILLER: But that's where it is.
21 And I can tell you, you go into the markets and then
22 you look under reliability pricing model.

23 MR. OLIKER: And I would object to any
24 further cross-examination until the witness can see
25 the entire document.

1 MS. SPILLER: Well, your Honor, it's --
2 that is the entire document. I am more than happy to
3 give the website as we've done with a lot of other
4 documents in this case.

5 A. I don't have a problem answering the
6 question that you have asked.

7 Q. Okay.

8 MR. OLIKER: Okay.

9 Q. Sir, you have seen these sorts of
10 documents on the PJM website, correct?

11 A. Correct.

12 Q. So, typically, PJM will provide a review
13 of the capacity resource offer prices for each of the
14 delivery years, correct?

15 A. On an aggregate basis like this, yeah.

16 Q. And on an aggregate basis it looks like,
17 I am not going to be really good with the bar graph,
18 but 140,000 megawatts of capacity resources offered
19 in at zero, correct?

20 A. That's right. Those are business
21 decisions based on the participants' willingness to
22 accept whatever market price cleared.

23 Q. And you understand that PJM has an
24 independent market monitor, correct?

25 A. I do.

1 Q. And the independent market monitor, among
2 other things, will review for allegations of market
3 manipulation, correct?

4 A. They will. He will.

5 Q. And generators participating in the base
6 residual auction are also subject to PJM's rules
7 requirement.

8 A. Correct.

9 Q. Existing generators that extend sell
10 offers in the base residual auction are also subject
11 to market power mitigation, correct?

12 A. That's correct.

13 Q. Mr. Haugen, Duke Energy Ohio's
14 contractual entitlement in OVEC, its 9 percent
15 interest, equates with about 200 megawatts of
16 capacity, correct?

17 A. Give or take, given confidential
18 information.

19 Q. And if Duke Energy Ohio -- strike that.

20 A generator that offers its cost, but
21 does not clear the base residual auction, does not
22 receive any capacity revenues, correct?

23 A. That's correct.

24 Q. And what incentive, under rider PSR,
25 would Duke Energy have not to want to clear the base

1 residual auction and earn capacity revenues?

2 A. That it would make absolutely no
3 difference to them if they did or not, because their
4 costs would be absorbed through the PSR.

5 Q. But where is the incentive to try to
6 manipulate offer prices in the base residual auction?

7 A. There's not incentive. This is a
8 disincentive.

9 Q. And Duke Energy Ohio has committed that
10 it will participate in the base residual auction,
11 correct?

12 A. I believe so.

13 Q. And if it participates in the base
14 residual auction, it can earn capacity revenues only
15 if it clears the auction, correct?

16 A. That's correct.

17 Q. Mr. Haugen, throughout the testimony that
18 you have adopted, there is discussion of jurisdiction
19 and specifically that of the Federal Energy
20 Regulatory Commission or the FERC, correct?

21 A. That's correct.

22 Q. Okay. With regard to the scope of the
23 FERC's jurisdiction, you believe that that extends to
24 all wholesale matters between generators and
25 load-serving entities, correct?

1 A. That's correct. In the regions I'm
2 familiar with.

3 Q. And you, for purposes of your testimony
4 in this case, generally familiarized yourself with
5 the company's application, correct?

6 A. Correct.

7 Q. And you know that Duke Energy Ohio is
8 proposing to conduct wholesale auctions for purposes
9 of procuring SSO supply, correct?

10 A. That's correct.

11 Q. And in connection with those wholesale
12 supply auctions, Duke Energy Ohio will enter into
13 master SSO supply agreements with the successful
14 auction winners, correct?

15 A. That's correct.

16 Q. Okay. Do you believe that the FERC has
17 exclusive jurisdiction over those contracts between
18 the successful auction winners and Duke Energy Ohio?

19 A. I'm not sure.

20 Q. On page 8 of the testimony you've
21 adopted, sir, there is a discussion about cases from
22 federal circuit courts, correct?

23 A. That's correct.

24 Q. And these are cases you have read and you
25 offer opinion, without the advice of counsel,

1 concerning interpretation of these cases, correct?

2 A. Correct.

3 Q. In this case you are not offering any
4 opinions as an attorney, correct?

5 A. Correct.

6 Q. With respect to these particular cases,
7 and we can focus first on New Jersey, the legislature
8 in that state was concerned with reliability in the
9 state of New Jersey, correct?

10 MR. OLIKER: Your Honor, first, if she is
11 going to ask him about the cases, I would like him to
12 have an opportunity to look at the cases if she is
13 going to go into specific details. I will let her
14 proceed generally for now, but if it goes much
15 further.

16 EXAMINER PIRIK: That sounds appropriate.
17 I mean, if we get somewhere where you can't answer
18 the question, you can ask for more information.

19 A. Okay. I reviewed these cases generally
20 for overall concepts.

21 Q. So were the facts of the cases not
22 important?

23 A. The facts were important. But if you are
24 going to ask me specific questions about the facts, I
25 would like to go back and review them. If you want

1 to ask me overarching comments about the ideas behind
2 the cases, I can speak to those directly.

3 Q. Well, you're stating in your testimony
4 that because of decisions from the third and fourth
5 circuit courts of appeal, that Duke Energy Ohio's
6 proposed PSR is unlawful because it infringes upon
7 the exclusive jurisdiction of the FERC, correct?

8 A. That's correct.

9 Q. And so, the underlying facts in those
10 decisions, were they important to your conclusions?

11 MR. OLIKER: Objection. He just said if
12 she asked him about the facts themselves on a
13 specific basis, he wants to look at the cases. He
14 didn't say he wasn't familiar with them. He just
15 said he wanted to be clear.

16 EXAMINER PIRIK: I think she is still
17 asking general questions, so I'll overrule.

18 A. I believe the facts are important, but I
19 can't remember them all right now.

20 Q. Okay. Well, do you remember whether in
21 New Jersey the legislature was concerned with
22 reliability in their state?

23 A. I do believe that was the issue, yes.

24 Q. And they were concerned that the base
25 residual auction was not working to attract new

1 generation, correct?

2 A. I believe that was the case, yes.

3 Q. Do you believe it also was the case in
4 New Jersey that the legislature passed what was
5 called the "Long-Term Capacity Pilot Program Act?

6 A. They did pass that, correct.

7 Q. And as a result of that law, regulators
8 adopted long-term contracts that were required to be
9 signed by the electric distribution utilities,
10 correct?

11 A. That's correct.

12 Q. And under the New Jersey law, the
13 electric distribution utilities were required in --
14 were required to enter into these long-term contracts
15 with new generators, correct?

16 A. That's the way I understand it, yes.

17 Q. Okay.

18 A. But I believe that would be very similar
19 to this instance, but with existing generators
20 instead of new generation.

21 Q. Okay. We will talk a little bit more
22 about that. So these new eligible generators had to
23 agree to conduct -- to construct generation in the
24 state, correct?

25 A. They did.

1 Q. And the long-term contracts at issue in
2 the New Jersey case included a fixed capacity
3 payment, correct?

4 A. Correct.

5 Q. And with these long-term contracts that
6 included fixed capacity payments in hand, the
7 generators were also told to go participate in the
8 base residual auction, correct?

9 A. Correct.

10 Q. And having read these decisions for
11 purposes of your testimony in this case, do you
12 believe that these federal circuit courts have
13 concluded that every aspect of the energy market is
14 within the exclusive jurisdiction of the FERC?

15 MR. OLIKER: Could I have that question
16 read back?

17 (Record read.)

18 A. I believe the wholesale energy markets
19 are within the jurisdiction of FERC.

20 Q. Do you know how Duke Energy Ohio
21 currently bids its OVEC entitlement into the
22 day-ahead markets?

23 A. I do not.

24 Q. And you did not, for purposes of your
25 work in this case, seek that information out,

1 correct?

2 A. I did not.

3 Q. And you did not, for your purposes of
4 work in this case, seek out how Duke Energy Ohio
5 intends to bid its OVEC entitlement into the day-head
6 energy market, correct?

7 A. That's correct. But from my experience,
8 as you are bidding in units, you're making day-to-day
9 decisions and adjusting those strategies on a regular
10 basis.

11 Q. Do you believe that if rider PSR is
12 approved, Duke Energy Ohio would alter its bidding
13 practices in the day-ahead energy market in a way
14 that would impermissibly affect those clearing --
15 those energy prices that are paid to Duke Energy Ohio
16 and other participants in that market?

17 A. I believe it has no incentive to put much
18 effort into how it bids in its units.

19 Q. So if Duke Energy Ohio bids in and
20 doesn't clear, it's not paid, correct?

21 MR. OLKER: Objection. Can you clarify
22 paid by who and under what assumptions, you're
23 talking about if the PSR is approved or not approved?

24 Q. Sir, we are still talking under the PSR,
25 correct?

1 A. Under the PSR.

2 Q. And they are going to be paid by -- Duke
3 Energy Ohio would be paid by PJM, correct?

4 A. For whatever energy they clear in their
5 offer.

6 Q. Okay.

7 A. But they could adjust their offer every
8 day.

9 Q. Okay. But what incentive did -- would
10 Duke Energy Ohio have to hold back energy?

11 A. If they've -- under the PSR?

12 Q. Yes, sir.

13 A. They would have no incentive. But they
14 also would have no incentive to create a bidding
15 strategy to try to optimize the markets.

16 Q. But, sir, you are aware that the company
17 has again made proposals or commitments with respect
18 to its participation in the day-ahead market,
19 correct?

20 A. Yes.

21 Q. Okay. And if the Commission were to
22 review those bidding strategies, would that alleviate
23 your concern?

24 A. Not completely because it would require
25 Duke Energy Ohio to have a generation group to kind

1 of forecast these strategies and create them.

2 Q. Well, it's an objective strategy,
3 correct, if you are going to bid in all of your
4 entitlement when, based upon a cost estimate, your
5 costs are less than prices?

6 A. But I believe there are more strategies
7 that could be provided besides that.

8 Q. And you've not offered any of those in
9 this case, have you?

10 A. I have not. But the fact that there are
11 other strategies and Duke has no incentive to even
12 look at them under the PSR is the issue that I am
13 uncomfortable with.

14 Q. But, again, Duke Energy Ohio offered
15 their commitment to what they would do in respect of
16 their contractual entitlement and you are not
17 offering anything other than that, correct?

18 MR. OLIKER: Objection. Asked and
19 answered.

20 EXAMINER PIRIK: Overruled.

21 Q. You can answer.

22 A. Can you state again, please?

23 Q. Sure. You indicate that you're
24 uncomfortable with Duke Energy Ohio's proposed -- or,
25 uncomfortable with their commitment regarding how

1 they'll handle their contractual entitlement in OVEC
2 in the wholesale markets. But you, on behalf of IGS,
3 have not offered any other strategies for the
4 Commission to consider, correct?

5 A. I have not.

6 Q. Okay. Sir, if we could please turn to
7 page 6 of your direct testimony. On this particular
8 part of your testimony -- are you there, sir?

9 A. Yes.

10 Q. Thank you. You're talking about the ESP
11 stipulation in Duke Energy Ohio's current ESP case,
12 correct?

13 A. Can you refer to line items?

14 Q. Sure. You are looking, page 6, second
15 part of line 6. You indicate "as part of Duke's last
16 ESP proceeding." Do you see that?

17 A. I do.

18 Q. And that is the proceeding that concerns
19 the ESP currently in effect, correct?

20 A. Correct.

21 Q. IGS was a party to that ESP proceeding,
22 correct?

23 A. I was not involved in that case, but I do
24 believe they were.

25 Q. And you've reviewed the stipulation,

1 correct?

2 A. I have.

3 Q. And you know IGS is a signatory, they
4 signed off on the settlement?

5 A. Yes.

6 Q. And you would agree with me that IGS
7 would have taken care to ensure that the settlement
8 agreement clearly and accurately described the terms
9 to which it was agreeing, correct?

10 MR. OLIKER: Objection to the extent that
11 he said he wasn't involved in the case at the time
12 and he doesn't know what IGS would have and wouldn't
13 have done.

14 EXAMINER PIRIK: Overruled.

15 A. I believe that would be IGS's process.

16 Q. Okay. And you would agree with me that
17 under the ESP stipulation Duke Energy Ohio is not
18 required to transfer its contractual entitlement in
19 OVEC?

20 MR. OLIKER: Object to the extent it
21 calls for a legal conclusion, but Mr. Haugen can
22 provide his layman's understanding.

23 EXAMINER PIRIK: Yes. He can go forward
24 with what his understanding is.

25 A. My understanding under the ESP is that

1 they would not have to transfer contractual
2 agreements.

3 Q. Okay. Thank you.

4 A. But under other -- other portions of the
5 Ohio law, they would.

6 Q. Okay. And we will get to those.

7 And you, despite the ESP language and the
8 fact that the ICPA does not transfer title in the
9 OVEC-owned units to Duke Energy Ohio, you go on in
10 various places in your testimony to describe Duke
11 Energy Ohio's contractual entitlement under the ICPA
12 is tantamount to Duke Energy Ohio owning Clifty Creek
13 and Kyger Creek, correct?

14 A. I do believe that the way the contract in
15 the ICPA is written that Duke is acting as an owner
16 of OVEC.

17 Q. Okay. And you are not offering that in
18 terms of a legal opinion in respect of legal
19 ownership, correct?

20 A. Correct.

21 Q. Okay. In fact, sir, am I fair to state
22 that you believe Duke Energy Ohio -- strike that.

23 Am I fair to state that because Duke
24 Energy Ohio owns shares in OVEC, you believe that
25 Duke Energy Ohio also owns the assets owned by OVEC?

1 A. I believe their -- they own the
2 responsibility of the assets, yes.

3 Q. They own a responsibility to pay
4 consistent with Articles 5 and 7 of the ICPA,
5 correct?

6 A. Yes.

7 Q. And, Mr. Haugen, can an entity enter into
8 a contract with itself?

9 MR. OLIKER: Objection to the extent it
10 calls for a legal conclusion.

11 Q. If you know.

12 A. I don't know.

13 Q. Do you know if an entity can sue itself?

14 A. I do not know. As I've stated earlier, I
15 am not a lawyer.

16 Q. Okay. Sir, we've talked a little bit
17 about the master SSO supply agreements that Duke
18 Energy Ohio will enter into with the successful
19 auction winners relative to the wholesale SSO
20 auctions. By entering into those master supply
21 agreements, do you believe that Duke Energy Ohio has
22 an ownership interest in the assets owned by the
23 auction winners?

24 A. I don't believe so, no.

25 Q. Now under -- under the IC --

1 MR. OLIKER: Do you have more response,
2 Mr. Haugen?

3 A. But they're also not entering into any
4 sort of obligation with them. The obligation flows
5 the other way, correct?

6 Q. You don't think Duke Energy Ohio has any
7 obligations under the master SSO supply agreement?

8 A. Not with regards to bidding in generation
9 units of the participants.

10 Q. They have to take energy and capacity
11 from those auction winners, correct?

12 A. Correct.

13 Q. And they have to pay for that energy and
14 capacity, correct?

15 A. I believe so.

16 Q. Now, under the ICPA, Duke Energy Ohio is
17 entitled to output from the OVEC-owned units,
18 correct?

19 A. That's one of the things they are
20 entitled to, yes.

21 Q. And under the ICPA, a sponsoring company
22 informs OVEC of the amount of energy that it wants
23 and then OVEC supplies that energy, correct?

24 A. Within the limits of the plan.

25 Q. And OVEC then determines, based upon

1 requests from the sponsoring companies, which units
2 to dispatch to meet those requests, correct?

3 A. That's correct. But the PJM, it looks at
4 it as one plant.

5 Q. You state, sir, on page 17 of your
6 testimony, the question and answer, sir, that begins
7 on line 7, you state that "Ohio law and policy favors
8 competition and requires electric distribution
9 utilities to structurally separate their generation
10 assets," correct?

11 A. Correct.

12 Q. And you are offering this opinion not as
13 an attorney, correct?

14 A. That's correct.

15 Q. And the law on which you rely for
16 purposes of this particular portion of the testimony
17 that you've adopted is Ohio's corporate separation
18 statute, correct?

19 A. That's correct.

20 Q. And that's Ohio Revised Code 4928.17,
21 correct?

22 A. Correct.

23 Q. And you would agree with me, sir, that
24 Revised Code Section 4928.17 concerns retail electric
25 service, correct?

1 A. I am --

2 MR. OLIKER: Before he answers the
3 question, I would like you to give him a copy of the
4 statute.

5 THE WITNESS: I have it here. I have it.

6 Q. And, sir, you have got it, okay.

7 A. It pertains to retail service and other
8 services as well.

9 Q. But they are retail services, correct?

10 MR. OLIKER: Asked and answered.
11 Mischaracterized his answer.

12 EXAMINER PIRIK: He can review it and
13 clarify if he needs to.

14 A. Can you restate the question?

15 Q. Sure. Revised Code Section 4928.17
16 concerns the provision of retail electric service,
17 correct?

18 A. Correct.

19 Q. And you would agree with me, sir, that
20 the Ohio Commission does not have jurisdiction to
21 regulate wholesale matters.

22 A. That's correct.

23 Q. And one of the requirements, within
24 4928.17, concerns the provision of competitive retail
25 electric service through a separated affiliate,

1 correct?

2 A. That's correct.

3 Q. And you believe that structural
4 separation between an electric distribution utility
5 and its generation business would satisfy this
6 requirement, correct?

7 MR. OLIKER: Could I have that question
8 read again? I'm sorry.

9 (Record read.)

10 MR. OLIKER: Just object to the extent
11 she hasn't defined "structural separation" before
12 asking the question.

13 Q. Sir, do you understand the term?

14 EXAMINER PIRIK: Ms. Spiller, can you
15 clarify?

16 MS. SPILLER: Sure.

17 Q. Do you understand the term "structural
18 separation"?

19 A. Through a separate affiliate.

20 Q. Through a entirely separate affiliate or
21 just separating the books of the -- of the EDU?

22 A. I believe they would have to be on
23 separate accounting requirements.

24 Q. Okay. And you have read the statute in
25 its entirety for providing your testimony in this

1 case, correct?

2 A. I have.

3 Q. And you realize that the statutory
4 language begins with a notation that there are
5 exceptions from this corporate separation rule,
6 correct?

7 A. That's correct, but I believe the
8 stipulation ends the current Duke exception.

9 Q. I'm sorry?

10 A. The stipulation. The stipulation and
11 recommendation.

12 Q. Okay.

13 A. It states that the exception should end
14 at the end of December.

15 Q. The exception to what?

16 A. To being fully structurally separated.

17 Q. Okay. But the exceptions under 4928.17
18 are exceptions that are written into the law,
19 correct?

20 A. Yes.

21 EXAMINER PIRIK: Before we get too far, I
22 want to be sure the record is clear, what you are
23 talking about is the stipulation in Case No. 11-3549.

24 THE WITNESS: That's correct.

25 EXAMINER PIRIK: Okay.

1 MR. OLIKER: And do you have much more,
2 Ms. Spiller?

3 MS. SPILLER: Not too terribly much.

4 MR. OLIKER: Mr. Haugen has been up there
5 awhile.

6 MS. SPILLER: Sir, are you doing all
7 right?

8 THE WITNESS: I could use some water.

9 MS. SPILLER: Mr. Oliker, did you have
10 some water for your witness?

11 MR. OLIKER: Unfortunately, I don't have
12 any. Zuppa, it's not called that anymore, was
13 closed. There is a water fountain.

14 MS. SPILLER: It looks like Mr. Serio
15 might be able to help you out.

16 EXAMINER PIRIK: We are off the record.

17 (Discussion off the record.)

18 EXAMINER PIRIK: We are going to take a
19 15-minute break.

20 (Recess taken.)

21 EXAMINER PIRIK: We'll go back on the
22 record.

23 Ms. Spiller.

24 MS. SPILLER: Thank you, your Honor.

25 Q. Mr. Haugen, the OVEC analysis for --

1 strike that.

2 Mr. Haugen, you've reviewed the company's
3 analysis with regard to the OVEC entitlement,
4 correct?

5 A. Which specifically are you referring to?
6 Are you referring to the --

7 Q. So it would be an attachment to the
8 testimony, and if you have the confidential IGS
9 Exhibit 12a before you, sir, it would be the
10 attachment that was marked Exhibit TH-4.

11 A. Yes, I have that here.

12 Q. And you've reviewed that?

13 A. I have.

14 Q. Correct?

15 A. Yes.

16 Q. And you understand that the information
17 that's reflected in what is marked as Exhibit TH-4
18 was derived from forecasting or modeling, correct?

19 A. Yes.

20 Q. Okay. You would agree that forecasting
21 is predicated upon a series of assumptions, correct?

22 A. Yes.

23 Q. As one goes through time, those
24 assumptions can change, correct?

25 A. They can.

1 Q. When more information about a particular
2 assumption -- about a particular assumption, such as
3 environmental regulation, becomes known, the
4 particular assumptions may be modified, correct? And
5 that was an awful question. I can start over.

6 A. Yes.

7 Q. So as more information about a particular
8 assumption becomes known, the assumptions can then be
9 modified to incorporate that known information,
10 correct?

11 A. Correct. But you would want to also
12 review your other assumptions to make sure they
13 didn't change as well.

14 Q. Okay. And so, that's a fair point. If
15 you are doing modeling, you are not necessarily just
16 going to modify one element or one assumption. You
17 will review all of the assumptions, correct?

18 A. You can review them all, but you may not
19 have to modify them all.

20 Q. Okay. And in this process, the
21 forecasting process, as assumptions change and are
22 modified, the forecasted results can change, correct?

23 A. That's probable, yes.

24 Q. Okay. And the OVEC analysis reflects one
25 point in time, correct?

1 A. That's my understanding of how they
2 created it.

3 Q. Is it fair for me to state, sir, that you
4 are critical of some of the assumptions made by Duke
5 Energy Ohio in arriving at or performing the OVEC
6 analysis?

7 A. That's fair.

8 Q. Sir, you've read the OVEC annual report
9 for 2013 that's attached to the testimony that you've
10 adopted, correct?

11 A. That's correct.

12 Q. Okay. And you know that environmental
13 equipment, FGDs, were installed on the OVEC-owned
14 generating units in 2012 and 2013, correct?

15 A. Yes.

16 Q. Would you agree with me that while this
17 capital equipment was being installed, the units were
18 not running?

19 A. That's correct, but I would not be able
20 to quantify it.

21 Q. Would you agree, Mr. Haugen, that Kyger
22 Creek and Clifty Creek are currently in compliance
23 with all existing environmental regulations?

24 A. As far as I'm aware.

25 Q. Okay. And you are aware of the EPA's

1 proposed 111(d) regulations which are also commonly
2 referred to as the Clean Power Plan, correct?

3 A. I'm aware of them, yes.

4 Q. For purposes of this case you've read
5 materials generated only by the EPA with respect to
6 its proposed regulation, correct?

7 A. I've read mostly information produced by
8 the EPA, but I will say there are -- there's a
9 possibility that I've read other industry news
10 sources.

11 Q. Okay. You did not search out and read
12 any of the litigation that challenges the EPA's
13 authority in connection with the Clean Power Plan,
14 correct?

15 A. I did not.

16 Q. And you did not search out and read the
17 initial report from the North American Electric
18 Reliability Corporation with regard to reliability
19 implications resulting from the implementation of the
20 111(d) regulations, correct?

21 MR. OLKER: Object to the relevance.

22 EXAMINER PIRIK: Overruled.

23 A. I did not.

24 Q. You have not examined, for purposes of
25 your testimony in this case, how Ohio may choose to

1 implement any final carbon regulation that is
2 ultimately enacted, correct?

3 A. Can you restate? Repeat?

4 Q. Sure. You have not examined, for
5 purposes of your testimony in this case, how -- how
6 Ohio may seek to implement any final -- any final
7 carbon regulation that is ultimately enacted.

8 A. I have not sought any out, no.

9 Q. And you have not examined whether power
10 plants will be required to convert from coal to
11 natural gas or the resulting costs of that
12 conversion, correct?

13 A. Correct.

14 Q. You've not examined whether new
15 transmission facilities or natural gas pipelines will
16 be required under the final EPA regulations, correct?

17 MS. BOJKO: Objection, your Honor. I'm
18 sorry. I am not sure what "examined" means. There
19 has been no document that's been produced. I don't
20 think one exists. So I am not sure what the word
21 "examined" means. Are we looking at a document that
22 we should all be privy to?

23 MR. OLKER: Your Honor, I would also
24 object. What's the relevance of transmission
25 facilities to this case?

1 MS. SPILLER: Your Honor, this gentleman
2 is challenging assumptions and I'm clear to say this
3 on the open record with regard to environmental
4 regulation, so I think I'm certainly allowed to
5 explore the basis for his criticisms.

6 MR. OLIKER: Trans -- sorry, your Honor.

7 EXAMINER PIRIK: Yeah, I'll allow
8 questioning to a point, but I do think -- can you
9 just clarify what you mean by "examined" for the
10 witness?

11 MS. SPILLER: Sure. Happy -- happy to do
12 that, your Honor.

13 Q. (By Ms. Spiller) Sir, you've not --
14 you've not performed any analysis or you've not
15 inquired into whether any new transmission facilities
16 or natural gas pipelines will be required under the
17 final EPA rules on carbon, correct?

18 MS. BOJKO: Objection. Your Honor,
19 again, I don't understand who is inquiring of or
20 where -- it doesn't exist yet. So we're -- we're
21 basing our questions on facts that aren't in evidence
22 and haven't been established. There is no foundation
23 to what rules exist or don't exist, what Ohio plans
24 exist or don't exist. There's been no foundation and
25 she is asking the witness if he's examined something

1 that doesn't exist.

2 MS. SPILLER: I am asking him if he's
3 looked at whether these facilities would be required
4 or could be required.

5 A. If you want me to speculate, I would say
6 it's possible.

7 Q. Okay.

8 EXAMINER PIRIK: You might wait to answer
9 until I actually resolve the issue. But, you know, I
10 think to a point, I mean, I think it can be addressed
11 on redirect, but, you know, I'll allow the questions
12 to a certain point.

13 MS. SPILLER: There is only a few more.

14 MR. OLIKER: And I would advise the
15 witness not to speculate.

16 Q. And, sir, I am not asking you to
17 speculate either, but you don't know today whether,
18 as a result of the carbon regulations that are
19 ultimately passed, new transmission facilities or
20 natural gas pipelines will be required, correct?

21 A. I have not seen any documents stating
22 that directly.

23 Q. And you've not looked at whether coal
24 prices could decrease because of less demand as a
25 result of the EPA regulations on carbon, correct?

1 A. I have not seen any documents that would
2 state that directly.

3 Q. Okay. Would you agree with me, sir, that
4 there is a lot of uncertainty today with regard to
5 this final carbon rule, when it will take effect, and
6 how Ohio will proceed to implement it?

7 A. I believe there is uncertainty with any
8 pending legislation.

9 Q. You suggest, Mr. Haugen, on page 16,
10 line 12 of your testimony, in discussing what you
11 contend to be a flaw with the OVEC analysis, you
12 suggest that there is a risk that the OVEC-owned
13 generating units could, as external resources, be
14 excluded from the PJM energy markets, correct?

15 A. Correct.

16 Q. Okay. In order for this to occur, there
17 would need to be a tariff revision at PJM, correct?

18 A. There would need to be a rule change,
19 correct.

20 Q. And those rules changes do not simply
21 entail PJM offering and implementing its change,
22 correct?

23 A. It would go through a stakeholder
24 process, but this specific process, it brings up
25 external resources quite often and that's often a

1 topic of discussion.

2 Q. Okay. But that rule change requires, as
3 you mentioned, a stakeholder process.

4 A. Uh-huh.

5 Q. There would also be a filing at the FERC,
6 correct?

7 A. Yes.

8 Q. There would be an opportunity for parties
9 to file protests or comments, correct?

10 A. Correct.

11 Q. Okay. And then the FERC ultimately,
12 having reviewed all information, would make a
13 decision, correct?

14 A. Yes.

15 Q. And you know, Mr. Haugen, that PJM has
16 established capacity import limit rules, correct?

17 A. Which were just impacted in this last
18 auction.

19 Q. So the FERC approved those in the spring
20 of 2014 before the May, 2014, base residual auction,
21 correct?

22 A. I am not sure of the exact timeline, but
23 it was before the May auction, yes.

24 Q. And the capacity import limit rules were
25 needed because PJM was concerned with external

1 resources clearing the BRA, but then not having firm
2 transmission in order to deliver into PJM, correct?

3 A. That was one of the specific arguments,
4 yes.

5 Q. And the capacity import limit rules
6 establish criteria to guard against this reliability
7 concern, correct?

8 A. That was the point of that ruling, but I
9 can't speculate on what will happen in the future.

10 Q. Okay. The capacity import limit rules
11 that the FERC recently approved prior to the May base
12 residual auction contained exceptions for pseudo-tied
13 units, correct?

14 A. I believe so.

15 Q. And you know that OVEC-owned plants to be
16 pseudo-tied into PJM, correct?

17 A. That's my understanding.

18 Q. And pseudo-tied units -- strike that.

19 PJM has defined pseudo-tied units as
20 electrically equivalent to internal resources,
21 correct?

22 MR. OLKER: Do you have a rule you would
23 like him to review? Ms. Spiller, are you reading
24 from a document in a PJM tariff?

25 MS. SPILLER: No. Just if he knows.

1 EXAMINER PIRIK: If you know, you can
2 answer.

3 A. That's my understanding of the way it
4 works right now. But the point of this bullet point
5 is that these rule changes have happened and they
6 just happened this previous year, so I have no way of
7 knowing, on a long-term agreement that's going out to
8 2040, if the current rules will be in place.

9 Q. And the rules that just happened this
10 year provided an exception to those rules for
11 pseudo-tied units, correct?

12 A. Correct, but possibly next time it
13 wouldn't.

14 Q. Okay. And PJM calculates LMP for
15 pseudo-tied units, correct?

16 A. It calculates an LMP for the interface
17 point.

18 Q. And the pseudo-tied units are subject to
19 the day-ahead energy must-offer obligations just like
20 an internal unit, correct?

21 A. I believe so.

22 Q. Pseudo-tied units are subject to RPM
23 capacity market must-offer obligations in subsequent
24 auctions just as an internal resource is, correct?

25 A. Correct.

1 Q. And pseudo-tied units cannot avoid their
2 must-offer obligation without approval of the
3 independent market monitor, correct?

4 A. Correct.

5 Q. Mr. Haugen, if we could go back to the
6 Ohio corporate separation statute that you've
7 reviewed, Revised Code 4928.17. Do you believe, sir,
8 that under that statute the Ohio Commission can
9 require or force Duke Energy Ohio to sell or transfer
10 wholesale contracts?

11 A. I believe it states they must provide
12 those services through a fully separated affiliate.

13 Q. And when you say "those services," it's
14 retail electric services, correct?

15 A. It's competitive retail service versus
16 nonelectric products.

17 Q. Okay. Do you believe that Duke Energy
18 Ohio is prohibited from owning generation?

19 MR. OLIKER: Could you please specify a
20 timeframe, Ms. Spiller?

21 MS. SPILLER: Today.

22 A. I believe they have a current waiver of
23 the stipulation which allows them to operate as an
24 owner of generation as long as they are separated.

25 Q. Okay. Do you believe that under Ohio law

1 an electric distribution utility providing default
2 service or a standard service offer in the form of an
3 electric security plan can own generation?

4 MR. OLIKER: Can I have that question
5 read again? Sorry.

6 EXAMINER PIRIK: Yes.

7 (Record read.)

8 MR. OLIKER: And I would object to the
9 extent that she hasn't specified whether the utility
10 is operating with a waiver or under (A)(1) of
11 4928.17(A). It's an incomplete question.

12 EXAMINER PIRIK: Could you clarify,
13 please?

14 MS. SPILLER: Well, I don't believe that
15 the corporate separation plan that Mr. Olikier
16 references is even relevant. And, Mr. Olikier, I
17 would appreciate you not testifying so much here.

18 Q. Sir, are you familiar with Ohio's
19 electric security plan statutes?

20 A. I'm familiar with the general principles.

21 Q. And those principles that you are
22 familiar with are what, sir?

23 A. That default customers in utilities would
24 be served through SSO auctions.

25 Q. Okay. Anything else in terms of your

1 general familiarity?

2 A. That's all.

3 Q. Okay. And is Duke Energy Ohio, as an
4 electric distribution utility, prohibited, under Ohio
5 law, from entering into generation-related contracts?

6 MR. OLIKER: I am going to object to the
7 vagueness of the question.

8 EXAMINER PIRIK: Overruled.

9 A. I believe that under the corporate
10 separation plans that they would have to operate as a
11 separate affiliate.

12 Q. And you believe that structural
13 separation would satisfy that requirement, correct?

14 A. But in regards to generation contracts?

15 Q. Yes, sir.

16 A. I do.

17 Q. Okay. Mr. Haugen, you do not believe
18 that sponsoring companies of OVEC would make an
19 imprudent decision, do you?

20 A. I believe that prudence can be debatable
21 by point of view.

22 Q. But you would not anticipate the
23 sponsoring companies to make an imprudent decision,
24 correct?

25 MR. OLIKER: Objection to the extent it

1 calls for speculation of what somebody else would do.

2 EXAMINER PIRIK: I'll sustain.

3 Q. Mr. Haugen, can any one party to the ICPA
4 compel retirement of the OVEC-owned units?

5 A. No, I don't believe any one party can
6 compel anything.

7 Q. Okay. And you are not aware of any
8 current intentions by OVEC to retire the units,
9 correct?

10 A. Not -- no.

11 Q. No, you are not aware?

12 A. I am not aware.

13 Q. And, sir, if we could turn, please, to
14 page 7 of your testimony, the answer that you provide
15 beginning on line 1 is one that references the state
16 policy of Ohio as well as Revised Code
17 Section 4928.03, correct?

18 A. You are saying .02?

19 Q. 4928.03, you reference on line 7.

20 A. Okay. Towards the middle. Yes, correct.

21 Q. You also reference 4928.02(H) --

22 A. Correct?

23 Q. -- in line 1 of this answer, correct?

24 A. Correct.

25 Q. You render conclusions, beginning on

1 line 7, carrying through to line 13. Are these
2 conclusions that were formed based upon what your
3 lawyer told you?

4 MR. OLKER: Could you please clarify for
5 the record, Amy, what conclusions are you talking
6 about?

7 MS. SPILLER: The conclusions that begin
8 on line 7 and carry through to line 13.

9 A. The advice of counsel helped me find the
10 correct statutes to apply.

11 Q. Okay.

12 A. But I believe the conclusions could be
13 drawn out by myself.

14 Q. And these statutes that you reference in
15 this answer on page 7, are the only statutes you
16 relied upon for purposes of your testimony on lines 1
17 through 13, correct?

18 A. As far as this section, yes.

19 Q. Okay. And if rider PSR were to -- were
20 to provide a credit to all retail customers, you
21 believe that this is an unlawful subsidy under Ohio
22 law, correct?

23 A. Correct.

24 Q. And in that instance the wholesale energy
25 market would be providing the subsidy in your

1 opinion, correct?

2 A. That's correct.

3 Q. And you would agree with me that 4928.02,
4 which reflects the policy of the state, concerns
5 retail electric services, correct?

6 MR. OLKER: Objection to the extent it
7 mischaracterizes the statute.

8 EXAMINER PIRIK: He can speak to what's
9 in his testimony.

10 A. I believe the statute is in regards to
11 the unbundling of services. So when one is
12 subsidizing the other, it would go against the
13 statute.

14 Q. And the statute refers to retail electric
15 service as you note on line 2 of your testimony,
16 correct?

17 A. Yes.

18 Q. Sir, IGS is capable of performing
19 forecasts, correct?

20 A. Anybody can provide a forecast, yes.

21 Q. But IGS certainly is capable of doing it
22 and has the tools to do it, correct?

23 A. We do.

24 Q. Okay. And you have not done any
25 forecasting of OVEC -- Duke Energy Ohio's contractual

1 entitlement in OVEC in connection with your opinions
2 on proposed rider PSR, correct?

3 A. Correct.

4 Q. Sir, I would like to ask about some of
5 your specific criticisms with the company's analysis.
6 And so, this might be a little choppy because part of
7 this we are going to have to move to the confidential
8 portion of your testimony. If you could just bear
9 with me for a moment, sir.

10 A. Sure.

11 Q. Let me ask this generally. Would you
12 agree that within your testimony you have cited
13 portions of the testimony of John Brodt who is the
14 CFO for OVEC?

15 A. Yes.

16 Q. Specifically, sir, on page 12, you do
17 that, correct?

18 A. Yes, I believe that's the page.

19 Q. Okay. And you indicate that Mr. --
20 Mr. Brodt indicated that OVEC was taking on
21 additional risk that could lead to increased forced
22 outages, correct?

23 A. That's correct.

24 Q. Sir, you didn't read all of Mr. Brodt's
25 deposition, did you?

1 A. No, I don't believe so.

2 Q. So you don't know what Mr. Brodt
3 testified to with regard to OVEC's intentions
4 concerning capital expenditures or O&M activities,
5 correct?

6 MR. OLIKER: Would you please clarify
7 what you mean his "intentions?"

8 A. It was my understanding that since they
9 had been operating at a lower level, they were
10 pushing off capital expenditures, but --

11 MR. OLIKER: You may want to put that in
12 the confidential transcript. I'm okay, but --

13 A. Well, my next statement would be
14 providing directional --

15 EXAMINER PIRIK: Just a minute. Did you
16 look at it?

17 MS. SPILLER: I think it's okay based
18 upon the rulings from earlier today.

19 EXAMINER PIRIK: I do too.

20 MR. OLIKER: Okay. Sorry, just trying to
21 be careful.

22 EXAMINER PIRIK: No. Appreciate that.
23 I'm sorry. You can go ahead with your
24 answer.

25 A. Am I allowed to speak on the directional

1 forecasting of their output?

2 Q. No. I'm simply asking whether or not for
3 purposes of the direct testimony that you've adopted
4 in this case, you're aware of OVEC's planned capital
5 improvements or ongoing O&M activities.

6 EXAMINER PIRIK: Okay. I just want to be
7 sure because your question was about directional.
8 And you are absolutely right, directional language,
9 you should not use that, that would be in the
10 confidential record. So words such as increase,
11 decrease, jump, plus, minus. So go ahead with that
12 in mind.

13 A. The portion that I've read had some
14 explanations on why they had pushed off capital
15 expenditures.

16 Q. Okay. And I appreciate that, but you've
17 not been presented with the balance of Mr. Brodt's
18 testimony in -- insofar as it concerns operating and
19 maintenance activities, correct?

20 MR. OLIKER: I would object. If she has
21 a question about whether he's read something or not,
22 she should show it to him.

23 MS. SPILLER: I am trying to keep this
24 public for the moment, Joe.

25 MR. OLIKER: Asking in the abstract, he

1 has no way of knowing, these very general statements,
2 how to answer them.

3 EXAMINER PIRIK: If he needs more
4 clarification, you can ask for more clarification,
5 and we'll be sure that you get it.

6 A. So what exactly are you asking?

7 Q. Well, let me try it this way. You formed
8 an opinion based upon a couple of pages of a
9 deposition transcript that your lawyer provided to
10 you, correct?

11 MR. OLIKER: Object to the extent she
12 hasn't defined "a couple of pages."

13 Q. Well, sir, let's satisfy your lawyer's
14 concerns there. The confidential portion, IGS
15 Exhibit 12a, there is an Exhibit TH-6, correct?

16 A. Correct.

17 Q. And these are portions of the deposition
18 of Mr. John Brodt, correct?

19 A. Correct.

20 Q. And there are two pages of that
21 deposition provided, correct?

22 MR. OLIKER: And are you asking whether
23 that's all he reviewed or if that's what's attached
24 to his testimony?

25 EXAMINER PIRIK: I think she is getting

1 ready to clarify, I'm thinking.

2 Q. That's what's attached to the testimony?

3 A. That's what is attached to the testimony.

4 Q. Okay. And that's -- those are the
5 attachments that you reviewed for purposes of
6 adopting Mr. Hamilton's testimony, correct?

7 A. I reviewed several documents with these
8 in mind, yes.

9 Q. Okay. And after receiving just two pages
10 of Mr. Brodt's deposition testimony, did you request
11 or seek out the balance of that transcript?

12 A. I have been --

13 MR. OLKER: Object. Object to the
14 extent she is now mischaracterizing what he has
15 reviewed.

16 EXAMINER PIRIK: Okay. I am just going
17 to clarify for the record, because you have several
18 pages of Mr. Brodt's deposition attached to the
19 document, of the testimony. Are those the only pages
20 of Mr. Brodt's deposition that you reviewed or did
21 you review other pages?

22 THE WITNESS: I reviewed several pages,
23 but if you would like to ask me specific questions
24 about them, I would like to have them in front of me.

25 EXAMINER PIRIK: So you reviewed pages in

1 addition to the ones that were attached to this.

2 THE WITNESS: Correct.

3 EXAMINER PIRIK: Okay.

4 MR. OLIKER: Thank you, your Honor.

5 MS. SPILLER: Well, I will just save this
6 for the confidential. I don't think I can avoid it,
7 your Honor, otherwise.

8 EXAMINER PIRIK: Okay.

9 Q. (By Ms. Spiller) You opine on this page,
10 Mr. Haugen, as to an "appropriate unforced capacity
11 level," correct?

12 A. Please refer to which page.

13 Q. Sure. Page 12, the page we were on,
14 line 11.

15 A. What do you mean by "opine"?

16 Q. Well, you offer an opinion on what you
17 believe the appropriate unforced capacity levels
18 should be, correct?

19 A. I do.

20 Q. And in arriving at that opinion, is it
21 fair to state that you took some information from one
22 discovery response?

23 A. I believe most of that opinion came from
24 the Exhibit TH-4. And also there was another
25 response as well which gave the past three years.

1 Q. Okay. And of those past three years, you
2 took the most recent year, correct?

3 A. Correct.

4 Q. And that was the extent of your analysis
5 for purposes of arriving at this particular opinion
6 in your testimony, correct?

7 A. And just a general understanding of how
8 coal units operate as they become older.

9 Q. You are critical, on page 14, of the
10 company's assumptions regarding environmental
11 regulation, correct?

12 A. Which line, please?

13 Q. It's actually at the top -- the part that
14 I am looking at, sir, is on the top part, line 1
15 through 9, the particular question and answer begin
16 on the prior page, page 13 at line 8.

17 A. Yes.

18 Q. Fair to state that you're critical of the
19 company's assumptions with regard to environmental
20 regulation, correct?

21 A. Correct.

22 MS. SPILLER: Your Honor, I think that
23 last one is probably confidential, as well, relative
24 to that.

25 Q. Mr. Haugen, we talked a little bit about

1 the independent market monitor. And to your
2 knowledge, does the independent market monitor have
3 the opportunity to intervene in state proceedings if
4 he believes there could be a concern?

5 A. I believe he has the right if it is going
6 to cause an affect to the wholesale markets.

7 Q. Do you know whether the independent
8 market monitor has intervened in this proceeding?

9 A. I'm not aware.

10 Q. Okay.

11 A. I believe he may have intervened in other
12 proceedings in Ohio though.

13 MS. SPILLER: Okay. One moment, please,
14 your Honor.

15 Your Honor, I think I have a couple of
16 questions for the confidential, but I don't think I
17 can ask them without going to that particular portion
18 of the transcript.

19 EXAMINER PIRIK: Okay. But that
20 concludes -- does that conclude your public portion?

21 MS. SPILLER: Yes, your Honor.

22 EXAMINER PIRIK: Staff?

23 MR. BEELER: No, thank you.

24 EXAMINER PIRIK: Redirect? Do you need a
25 couple of minutes?

1 MR. OLIKER: Do we -- if you don't have
2 much, do you want to do it all at once? Do you want
3 to do the confidential --

4 EXAMINER PIRIK: We can't really split
5 it.

6 MR. OLIKER: Okay. Yeah, if I could just
7 have less than 5 minutes to talk to him, do it
8 quickly. I don't think I have much.

9 EXAMINER PIRIK: Okay.

10 (Discussion off the record.)

11 EXAMINER PIRIK: Back on the record.

12 MR. OLIKER: Thank you, your Honor.

13 - - -

14 REDIRECT EXAMINATION

15 By Mr. Olikier

16 Q. Mr. Haugen, just briefly. Do you
17 remember a question you received from Ms. Spiller
18 about subsidies flowing from noncompetitive service
19 to retail electric service?

20 A. I do.

21 Q. Now, your testimony does not indicate
22 that subsidies can only flow from noncompetitive
23 service to competitive retail electric service,
24 correct?

25 MS. SPILLER: Objection to the leading

1 form of the question.

2 EXAMINER PIRIK: Overruled.

3 A. It's my understanding that the only
4 service that can be subsidized in Ohio is
5 noncompetitive service. And it's of my opinion that
6 no matter what they do with OVEC, it is not a
7 noncompetitive service.

8 MS. SPILLER: I am going to object and
9 move to strike as nonresponsive everything after "and
10 it's of my opinion."

11 EXAMINER PIRIK: Denied.

12 MR. OLIKER: Just to clarify -- actually,
13 no more questions, your Honor.

14 EXAMINER PIRIK: Okay. Ms. Hussey?

15 MS. HUSSEY: No questions, your Honor.

16 EXAMINER PIRIK: Ms. Bojko?

17 MS. BOJKO: No questions. Thank you.

18 EXAMINER PIRIK: Mr. Berger?

19 MR. BERGER: No questions, your Honor.

20 EXAMINER PIRIK: Mr. Allwein?

21 MR. ALLWEIN: No questions, your Honor.

22 EXAMINER PIRIK: Ms. Spiller?

23 MS. SPILLER: No more questions, your
24 Honor.

25 EXAMINER PIRIK: No questions. Okay. We

1 will go into the confidential portion of the record.

2
3 EXAMINER PIRIK: Ms. Spiller.

4 MS. SPILLER: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION (Continued)

7 By Ms. Spiller:

8 Q. And, Mr. Haugen, we were talking somewhat
9 about generalities because we were on the public
10 record. I would like to focus on page 12 of your
11 testimony, sir.

12 A. Okay.

13 Q. And you believe with regard to generation
14 output that Duke Energy Ohio has overstated the
15 generation output of the OVEC units, correct?

16 A. Correct.

17 Q. And, sir, are you aware that Mr. Brodt
18 has indicated OVEC does not intend to forego capital
19 investments in the OVEC-owned units?

20 MR. OLIKER: Could you please clarify
21 timeframe or what you mean by "forego"?

22 Q. Sir, you know what it means to forego,
23 right?

24 A. It was my understanding that they already
25 had foregone some expenses due to their generation

1 output not needing that, and in doing so, they have
2 possibly increased the risk between now and when they
3 actually do perform those services.

4 Q. But you don't know that the OVEC units
5 will experience forced outages because of deferred
6 capital investments, correct?

7 A. On the portion of John Brodt's testimony
8 that I -- not testimony, excuse me, deposition which
9 I quote here, he has stated that himself.

10 Q. Okay. But have you -- are you aware of
11 Mr. Brodt's testimony in this case that OVEC -- OVEC
12 does not intend to forego the deferred capital
13 investments?

14 A. I'm not aware of that directly.

15 Q. Are you aware of it indirectly?

16 A. I would assume for any power plant at
17 some point you can't defer capital investments. Or
18 else you will see a (Confidential) of (Confidential)
19 unforced outages.

20 MS. SPILLER: Okay. Nothing further,
21 your Honor. Thank you.

22 EXAMINER PIRIK: Thank you.

23 Any redirect?

24 MR. OLIKER: Yes, briefly. I can
25 probably do this without taking a break even.

1 REDIRECT EXAMINATION (Continued)

2 By Mr. Oliker:

3 Q. Do you remember a question from
4 Ms. Spiller about criticizing the output of Duke's --
5 strike that.

6 Do you remember a question from
7 Ms. Spiller about the forecasted output of the OVEC
8 units?

9 A. I do.

10 Q. And how you criticize the forecasted
11 output?

12 A. Correct. So now we are in confidential,
13 I can say I criticize the (Confidential) due to the
14 energy price assumptions.

15 MS. SPILLER: And, your Honor, I am going
16 to object. This is beyond the scope of the question.
17 I think it's also beyond the scope of the recross.

18 EXAMINER PIRIK: Overruled.

19 Q. Would you agree that whether or not the
20 carbon rules go into effect that OVEC will probably
21 be cash flow negative?

22 MS. SPILLER: Your Honor, I asked nothing
23 about carbon rules. This is beyond the scope of the
24 cross-exam.

25 MR. OLIKER: This is tied to the output,

1 your Honor.

2 EXAMINER PIRIK: Overruled.

3 A. I believe that there -- the problem with
4 their forecasted increase in usage is due to the
5 forecasted (Confidential) in energy prices including
6 a -- some sort of carbon impact.

7 Now, if the carbon rules do go into
8 effect and the energy prices (Confidential), the costs
9 on coal plants will (Confidential) as well. So they
10 won't see the net benefit that they are forecasting.

11 Now, if the carbon rules do not go into
12 effect, the energy prices will (Confidential) the way
13 they are forecasting and they will be in the same
14 position they are at right now as regards to
15 generation volumes. And if the generation volumes do
16 not increase, the cash flow will stay negative.

17 MS. SPILLER: Your Honor, I would move to
18 strike. This is beyond the scope of the
19 cross-examination.

20 EXAMINER PIRIK: Denied.

21 MR. OLIKER: And I believe that that is
22 all the questions I have, your Honor. Thank you.

23 EXAMINER PIRIK: Thank you.

24 Recross, Ms. Hussey?

25 MS. HUSSEY: No questions, your Honor.

1 EXAMINER PIRIK: Ms. Bojko?

2 MS. BOJKO: No questions.

3 EXAMINER PIRIK: Mr. Berger?

4 - - -

5 RECROSS-EXAMINATION

6 By Mr. Berger:

7 Q. Just one clarification, Mr. Haugen. You
8 were talking about the fact that if maintenance is
9 deferred, that would result in (Confidential) in
10 unforced outages. Did you mean forced outages?
11 Wouldn't there be (Confidential) in forced outages if
12 maintenance is deferred?

13 A. Correct. It would (Confidential) either
14 probably.

15 MR. BERGER: Thank you.

16 EXAMINER PIRIK: That's it?

17 Mr. Allwein?

18 MR. ALLWEIN: No questions, your Honor.

19 EXAMINER PIRIK: Ms. Spiller?

20 MS. SPILLER: No questions, your Honor.

21 EXAMINER PIRIK: Staff?

22 MR. BEELER: No, thank you.

23 EXAMINER PIRIK: Thank you. That
24 concludes the confidential portion of the record.

25

1 EXAMINER PIRIK: Go back on the open.

2 With regard to exhibits.

3 MR. OLIKER: Your Honor, thank you. IGS
4 would move for the admission of 12, 12a, and 13.

5 EXAMINER PIRIK: Any objections?

6 MS. SPILLER: Your Honor, I would simply
7 note our prior objection in respect of the motion to
8 strike.

9 EXAMINER PIRIK: The objection is noted
10 for the record.

11 MS. SPILLER: Thank you.

12 EXAMINER PIRIK: Those exhibits will be
13 admitted.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 EXAMINER PIRIK: Duke.

16 MS. SPILLER: Your Honor, Duke Energy
17 Ohio would move for admission into the record of Duke
18 Energy Ohio Exhibit 39.

19 EXAMINER PIRIK: Are there any
20 objections?

21 MR. OLIKER: No objection.

22 EXAMINER PIRIK: Hearing none, it will be
23 admitted into the record.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 MS. SPILLER: Thank you, your Honor.

1 EXAMINER PIRIK: Also, we want to clarify
2 for the record, Duke has provided a revision of Duke
3 Exhibit 36 and we waited to -- it had already been
4 moved, but we waited to admit it until we received
5 the corrected version. So we didn't have any
6 objections to that exhibit, so with the corrected
7 version, we will admit that into the record.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 MS. WATTS: And I have copies of that in
10 case anybody needs it.

11 EXAMINER PIRIK: Yeah. The court
12 reporter would need the corrected copies.

13 MS. WATTS: I have to discharge my
14 responsibilities here or I am going to be in big
15 trouble.

16 MS. SPILLER: I can't go back to the
17 office telling Jeanne you didn't do it.

18 EXAMINER PIRIK: Okay. We have some
19 confidential transcripts we need to go through and
20 rule on.

21 MR. OLIKER: Can Mr. Haugen leave the
22 stand?

23 EXAMINER PIRIK: Oh, yes.

24 Mr. Haugen, thank you very much.

25 Is Duke prepared to -- I mean, you

1 haven't requested rebuttal, but I suppose we could
2 ask about that at this time, then we can do the
3 confidential transcripts, but is Duke prepared to --

4 MS. WATTS: Yes, your Honor. We're
5 prepared to propose it.

6 EXAMINER PIRIK: Yeah, that's the
7 question. I know we were waiting until after
8 Mr. Haugen's testimony.

9 MS. WATTS: We are interested in
10 providing rebuttal.

11 EXAMINER PIRIK: Could you turn your
12 microphone on.

13 MS. WATTS: Very limited. Two witnesses.
14 We can file the testimony on Monday. We can have the
15 witnesses available on Thursday.

16 MR. OLIKER: Can I inquire of the subject
17 matter?

18 EXAMINER PIRIK: Well, yeah, I was going
19 to ask the same thing.

20 MS. WATTS: The first witness would be in
21 respect of ROE to respond to many of the arguments
22 raised by the intervenors dealing with the fact that
23 the rider DCI would provide -- would reduce revenue
24 lag and, therefore, reduce risk and should impact the
25 company's returns. So that would be the first one

1 and that would be the reason we would propose that
2 witness.

3 EXAMINER PIRIK: And the second one?

4 MR. BERGER: Who would be the witness for
5 that? Do we know?

6 MS. WATTS: Who would be the ROE witness?

7 MR. BERGER: Yes.

8 MS. WATTS: Dr. Morin, who may be
9 familiar to you.

10 MR. BERGER: He is.

11 MS. WATTS: And the second witness is
12 with respect to arguments made suggesting that the
13 rider PSR affects the wholesale market design and
14 resulting prices therefore. And that would be a
15 brief witness and that would be Ken Jennings.

16 EXAMINER PIRIK: Any responses?

17 MR. SERIO: Well, your Honor, it's my
18 understanding for rebuttal testimony the standard is
19 that the company couldn't have put the evidence in
20 place with its application. And there's absolutely
21 no showing that the company couldn't have addressed
22 rate of return testimony in its application. There
23 is no rate of return testimony from any Intervenor
24 witnesses that they are rebutting to. They are
25 simply trying to rebut cross-examination questions

1 and that's inappropriate.

2 There's no showing -- until we see the
3 actual testimony itself, we can't look at the
4 specifics, but they are simply saying we want to
5 respond to something somebody did in
6 cross-examination and that's not the standard. The
7 standard is could they have addressed it, was it
8 something they could have done at the time.

9 And the questions about the DCI rider are
10 no different than similar questions that were
11 presented in the AEP ESP proceeding regarding rate of
12 return in that case. So to the extent that the
13 company is modeling what they did in the DCI rider
14 off of other riders, they are aware that parties
15 raised similar issues in other proceedings. They
16 could have made that part of their application; they
17 chose not to. That would have given all the parties
18 ample opportunity to address rate of return with
19 witnesses if the company was going to put a witness
20 on for rate of return.

21 Doing it at this late date would
22 incredibly make it unfair to the other parties that
23 may not be in a position to put testimony together on
24 any potential surrebuttal.

25 MR. OLIKER: Your Honor, I would also add

1 regarding Mr. Jennings. As everybody knows, he's
2 already testified in this case, and they testified
3 after they saw Mr. Higgins' testimony. So they had
4 the opportunity, during the time when he was
5 subpoenaed, to put this case on. They could have
6 easily done this then and now they are trying to call
7 him back at a time that seems a little late.

8 MS. BOJKO: Your Honor, OMA would support
9 the opposition. I agree that these issues have been
10 out there prior to the hearing. It's nothing new
11 that has been raised in the hearing so I think they
12 had an opportunity to address it.

13 With regard to Mr. Jennings specifically,
14 the Bench gave a lot of leeway, even though it was a
15 company representative and a company employee, to
16 allow extensive cross-examination of Mr. Jennings,
17 and even over objections of other parties in this
18 case, he was allowed to testify extensively to these
19 issues. So I don't believe that there is anything
20 new that needs to be raised on rebuttal, and doing so
21 would be unfair and prejudicial to the parties or
22 require surrebuttal.

23 EXAMINER PIRIK: Response?

24 MS. SPILLER: Yes, your Honor. Briefly,
25 if I may, I am going to start with ROE. There is no

1 requirement under the ROE -- the ESP rules that speak
2 about the need for an ROE witness. What it indicates
3 is that the Commission is entitled when -- the
4 Commission is permitted, when looking at distribution
5 riders, to allow for a just and reasonable rate of
6 return.

7 The company put evidence in this case
8 consistent with what has been done in other
9 proceedings concerning appropriate rates of return
10 for this sort of distribution capital investment
11 rider.

12 It was within the testimony of the
13 Intervenor that these issues concerning reduced
14 regulatory lag and an alleged commensurate reduction
15 in risk to the company were addressed. The company,
16 I believe, is entitled to address those particular
17 issues in the context of rebuttal testimony.

18 With regard to Mr. Jennings, he was a
19 subpoenaed witness. He was not a company witness in
20 this case. He was subpoenaed with respect to a
21 discrete issue; an issue concerning one element of a
22 forecast.

23 I would certainly perhaps have a
24 different recollection of Mr. Jennings' examination
25 by the company then did Ms. Bojko, but Mr. Jennings

1 did not provide testimony on how the wholesale market
2 functions. And this fact that Mr. Hamilton may have
3 provided this in his testimony in this case, I don't
4 believe is the appropriate standard with respect to
5 rebuttal. That suggests that with every Intervenor
6 testimony, somehow the company is required, in their
7 testimony from the stand, to go on and address every
8 bit of that testimony.

9 In this particular instance, the
10 intervenors have raised this issue with regard to the
11 impacts on the wholesale market that they believe
12 would result from rider PSR if it's approved. This
13 is a very district topic that was not previously
14 addressed by Mr. Jennings.

15 EXAMINER PIRIK: Mr. Olier.

16 MR. OLIER: Just briefly, your Honor.
17 As Ms. Bojko notes, they were given substantial
18 leeway in direct examination or cross-examination of
19 the witness, whatever you would call it, and they had
20 full access to Mr. Higgins' testimony at the time,
21 and they were allowed to ask him subject matter
22 outside of the issues that he was cross-examined on,
23 the intervenors discussed over objections.

24 And I think it's a very unusual case.
25 This is not an instance where Mr. Jennings filed

1 direct testimony and couldn't change that testimony
2 on the fly. He didn't have anything set in stone.
3 It was effectively a fresh slate. They knew what
4 Mr. Higgins was going to testify to and they could
5 have addressed it then.

6 And I would also note that they've
7 addressed market impacts in their initial testimony.
8 I think Don Wathen and also the President of Duke
9 Energy Ohio, they talked about the market -- the
10 impact in the market. They've already discussed
11 these issues. They'd just like a second bite of the
12 apple.

13 MS. SPILLER: And, your Honor, if I may,
14 I guess I am not entirely clear, but I don't know if
15 the objection is with Mr. Jennings or the subject
16 matter, because certainly the former can be avoided
17 with another witness from Duke Energy Ohio.

18 MR. OLKER: It's both.

19 EXAMINER PIRIK: I think what we are
20 going to do is, you know, I think everyone is aware
21 I've already said I'm not a real fan of rebuttal
22 testimony and I think it should be very limited.
23 It's really hard to tell how the company is
24 necessarily going to limit that, although you are
25 saying it is very short testimony, so I'm not certain

1 exactly what that means, but until we see it we are
2 just actually not going to know.

3 So I'm thinking, although the company and
4 parties need to be prepared to make whatever
5 arguments they need to make if they desire to do
6 that, we need to point to portions of the record
7 where -- when you are bringing these witnesses on, as
8 to what specifically you are rebutting. So that what
9 I am anticipating is, on the day of testimony, there
10 will be requests to strike potentially, and we need
11 to have a very thorough understanding of exactly the
12 issues they are bringing before us and where those
13 issues are coming from. So however that is done, in
14 argument or in the documents.

15 But I think what we'll do is we will
16 allow those two rebuttal witnesses to appear next
17 Thursday. We would expect that the testimony would
18 be prefiled. We would prefer by noon on Monday so
19 that parties will have adequate time to be able to
20 review the information and -- and we can move from
21 there. So we will reconvene next Thursday at 9 a.m.
22 for rebuttal testimony.

23 I think we are also able to schedule --
24 on that motion --

25 MR. SERIO: I had another question. To

1 the extent that the company had the additional
2 opportunity to depose the witness that took
3 Mr. Hamilton's place, I guess my question is to the
4 extent that we have at least one new witness, would
5 the opportunity for a deposition be available if
6 parties wanted to avail themselves of that?

7 EXAMINER PIRIK: I think that's why I
8 want it -- they need to be filed by noon because I
9 think parties need to have the ability to do that, to
10 request deposition of those witnesses once you see
11 what's actually in the document. Is your concern,
12 then, that Thursday is too early to do that?

13 MR. SERIO: Well, you know, obviously
14 Dr. Morin did not submit testimony. So not knowing
15 how limited his testimony is going to be, that might
16 be something that the parties want to do. And if we
17 don't get the testimony until noon Thursday -- or,
18 Monday, you know, at least it's going to take the day
19 of Monday to review the testimony, even if a
20 deposition is scheduled, you know, you've got to have
21 time for the court reporter to transcribe it.

22 I just don't know, not knowing how in
23 detail it might or might not be. I am raising it now
24 since we are in the room rather than dealing with it
25 Monday after we see something.

1 EXAMINER PIRIK: Are those witnesses
2 available on Friday of next week?

3 MS. SPILLER: Dr. Morin is not.

4 MS. WATTS: Monday, Tuesday, Wednesday,
5 Thursday.

6 MR. OLIKER: 17th?

7 MS. SPILLER: That's Monday.

8 MS. BOJKO: I'm sorry? He's only
9 available next week?

10 MS. SPILLER: Next week he's available
11 Monday through Thursday.

12 EXAMINER PIRIK: Let's go off the record.
13 (Discussion off the record.)

14 EXAMINER PIRIK: We'll go back on the
15 record. Duke had proposed -- has a proposal for two
16 rebuttal witnesses. After discussion off the record,
17 it's been determined that the rebuttal witness
18 testimony will be filed Monday, November 17, by noon.
19 We will reconvene at 2 p.m. on Thursday, November 20,
20 with a potential that we may have to go over into
21 Friday.

22 And then we determined that the briefing
23 schedule will be the initial briefs being filed
24 Monday, December 15th, with the reply briefs being
25 filed Monday, December 29th. And we stated that the

1 parties do not have to file the background
2 information in the briefs. That they should just
3 merely keep the briefs to the substantive arguments
4 and not the background information.

5 Are there any questions about the
6 procedure so far?

7 MR. OLIKER: No surrebuttal?

8 EXAMINER PIRIK: We won't address that
9 right now. We'll save that until we see what's in
10 rebuttal.

11 Okay. I think that's all the procedural
12 things we had on the record with the exception of
13 these transcripts. So hopefully we will be able to
14 get through these relatively quickly.

15 I guess my request would be of the
16 company to maybe not go page by page, but if you have
17 a general overall, because we have been through this
18 so many times with so many other items that I think
19 we could do this relatively quickly.

20 MS. WATTS: Okay.

21 EXAMINER PIRIK: So to probably cut this
22 shorter, I guess you could do a quick review of
23 transcript VII. And we could probably shortcut it
24 from the Bench by just asking if there is any
25 objections to transcript VII?

1 MS. WATTS: I think it's only two pages.

2 MS. BOJKO: I have yellow circles. We
3 haven't done transcript VII?

4 EXAMINER PIRIK: We haven't done VII. It
5 doesn't sound like there is any objection. The Bench
6 is fine with the redactions on transcript VII. Those
7 motions for protective order will be granted.

8 MS. WATTS: Thank you, your Honor.

9 EXAMINER PIRIK: With regard to
10 transcript IX.

11 MS. BOJKO: There's only four words in
12 this one proposed to be redacted?

13 EXAMINER PIRIK: No. It's much longer
14 than that.

15 MS. WATTS: IX.

16 EXAMINER PIRIK: You must have Direct
17 Energy's section.

18 Go ahead.

19 MS. WATTS: Okay. How do you want me to
20 address this or do you want to just do it like VII
21 and see if there is any objection first?

22 EXAMINER PIRIK: Well, let's go piece by
23 piece.

24 MS. WATTS: Okay.

25 EXAMINER PIRIK: With regard -- does

1 everyone have a copy of it?

2 MR. BERGER: No.

3 MS. BOJKO: What did you do? Sent it?

4 MS. SPILLER: Sent it.

5 MS. BOJKO: E-mail?

6 MS. WATTS: It was sent to everyone this
7 morning and here are copies for everyone.

8 MS. BOJKO: It was sent now.

9 MS. SPILLER: We sent it.

10 MS. WATTS: It was -- yeah.

11 MR. BERGER: It was e-mailed?

12 MS. BOJKO: No.

13 MS. WATTS: They are getting giddy on
14 that end of the table. There should be IX, X, XI,
15 XII.

16 EXAMINER PIRIK: Are they stapled
17 together?

18 MS. WATTS: They are packets, yeah.

19 MR. BERGER: This is X.

20 EXAMINER PIRIK: This is off the record,
21 Karen.

22 (Discussion off the record.)

23 EXAMINER PIRIK: We are going back on the
24 record.

25 On page 2538 through 2538, 2539 --

1 MR. BERGER: Are you -- let's make sure
2 everybody has this.

3 MS. BOJKO: We do not. We end at 2522.

4 MS. WATTS: I'm looking at Volume IX. Is
5 that where we are starting?

6 MS. BOJKO: We're on Volume IX.

7 EXAMINER PIRIK: We are off the record.

8 (Discussion off the record.)

9 EXAMINER PIRIK: Now we will go back on
10 the record. With regard to transcript IX, pages
11 2538, 2539 --

12 MR. BERGER: We don't have 2539.

13 EXAMINER PIRIK: Well, there is nothing
14 on 2539. I just happen to have it.

15 MR. BERGER: Thank you.

16 EXAMINER PIRIK: So hopefully we're fine.
17 I am just going through the packet. 2510, 2511,
18 2512, 2513, the Bench is okay with those redactions
19 and we find that they should be considered
20 confidential.

21 Skipping now to 2516, 2517, and 2518,
22 we'll take responses from the parties.

23 MS. BOJKO: Yes, your Honor, thank you.
24 Similar to the prior transcripts, I think that the
25 environmental issues have been open in the public

1 record before, so I would propose to open references
2 to environmental controls as well as dates that's
3 contained on this one. And there's, like, on
4 line 21, I'm not that -- that isn't directional, so I
5 don't understand why that would be confidential.

6 MR. BERGER: OCC would echo those
7 comments. In addition, I would suggest that words
8 like on line 12, the second word from the end, on
9 line 13, the two words -- the third and fourth line
10 from the end. Line 14, the second, third, and fourth
11 line from the end. The date on line 18. The words
12 on line 21 that are the third, fourth, and fifth from
13 the end. The second and third word on line 25 would
14 also -- should also be treated as public.

15 EXAMINER PIRIK: Company.

16 MS. WATTS: I don't know if I can say
17 anything that hasn't already been said. Again, these
18 are issues with respect to internal analyses done by
19 the company and we think they should be protected for
20 those reasons.

21 EXAMINER PIRIK: Okay. With regard to
22 the remainder of the document, are there any -- 2519,
23 2520, 2521, and 2522, are there any responses to
24 those proposals?

25 MR. BERGER: I think OCC would make

1 similar comments regarding --

2 EXAMINER PIRIK: On those pages that I
3 just specifically said?

4 MR. BERGER: I'm sorry?

5 EXAMINER PIRIK: The pages I just said?
6 2519, 2520, 2521, and 2522?

7 MS. BOJKO: Well, words like "the" and "a
8 and "on." Is what you are referring to? Articles,
9 that's what I was looking for.

10 MR. BERGER: On page 2522, line 10, the
11 fourth word from the end, I don't think needs to be
12 redacted. Other than that, I'm okay with those.

13 MS. WATTS: I would specifically disagree
14 with that particular recommendation.

15 EXAMINER PIRIK: Go ahead, Ms. Watts.

16 MS. WATTS: That word on page 2522 on
17 line 10 has a value to it that discloses some amount
18 of information and I would prefer that it remain
19 redacted.

20 EXAMINER PIRIK: Okay. Okay. Hearing
21 the arguments, on page 2516, line 13, at this point I
22 am going to say what we are holding confidential and
23 everything else will be in the open. Line 13, the
24 third and fourth words will be confidential.
25 Line 14, the fourth and fifth words will be

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1 confidential. Line 24 -- lines 24 and 25, the last
2 words in each of those lines will be confidential.

3 Page 2517, line 1, the first word will be
4 confidential. Line 20, the last two words in that
5 line will be confidential. Line 21 and 22, the first
6 words in those lines will be confidential. Line 25,
7 the third to the last word in that line will be
8 confidential.

9 Page 2518, the last two words in that
10 line will be confidential.

11 MS. WATTS: I'm sorry, your Honor. 2518,
12 the last two words in what line?

13 EXAMINER PIRIK: Wait a minute. 2518,
14 line 3.

15 MS. WATTS: Thank you.

16 EXAMINER PIRIK: The last two words will
17 be confidential. Line 14 -- okay. Line 14, the item
18 between "a" and "percent" will be confidential and
19 the second to last word will be confidential.
20 Line 19, the first three words will be confidential.
21 Line 25, the first word will be confidential.

22 On pages 2519, 2520 --

23 MR. BERGER: There's nothing marked on
24 2520, I am assuming?

25 EXAMINER WALSTRA: Correct.

1 EXAMINER PIRIK: On page 2519, line 4,
2 the last two words in that sentence -- that line will
3 be open. The remainder of the words will be
4 confidential on that page.

5 2521, everything on that page proposed by
6 Duke will be confidential.

7 2522, everything on that page proposed by
8 Duke will be confidential. That's transcript IX.

9 Transcript X, this one -- this one is a
10 lot different than the other ones we've done. So I
11 think -- I think we are going to take responses first
12 and I think we have to, you know, I need specificity
13 as far as what your arguments are.

14 Ms. Bojko.

15 MS. BOJKO: Well, I don't understand --
16 this -- I guess this -- if you look at page 2793, my
17 argument is right there. Line 9, this was all in the
18 public deposition that was filed, so I'm not sure why
19 we are now going back and trying to make something
20 confidential that was -- has already been released
21 into the public record.

22 He already talked about these documents
23 and what happened and what the role was with these
24 documents, so I don't know why this individual's
25 responsibility for that document should be deemed

1 confidential. So that's for the first couple of
2 pages.

3 If you go to line -- page 2795, if you
4 redact the part of the question, I'm not sure why the
5 answer has to be redacted. It doesn't give out
6 anything confidential to redact the answer. And same
7 with the next question.

8 Again, on page 2822 and -23, these were
9 discussions in the public record, so I don't know why
10 we are going back.

11 I guess my recommendation would be to go
12 and look at what's in the public domain in the
13 deposition and go off that. I thought, your Honor,
14 chose to or has already ruled that we should redact
15 names of individuals and names of companies. I'm not
16 sure why this other stuff needs to be redacted or
17 not. If you take out the company's name, then you
18 don't know what the applicability of the other things
19 apply to, so there's no trade secret or confidential
20 reason to keep them hidden. I think I did the
21 opposite of what you asked. You asked me line by
22 line, but --

23 EXAMINER PIRIK: No, that's fine. Any
24 other -- Mr. Berger.

25 MR. BERGER: Yeah, we're just seeing this

1 for the first time, of course, your Honor, and so
2 I -- I would note that on page 2889, on line 11, the
3 question posed regards whether these individuals
4 would be better qualified to answer questions
5 regarding communications that happened during
6 subcommittee meetings. And I question whether that
7 really addresses any topic that would -- should be
8 considered confidential.

9 Other than that, as much as I have been
10 able to review this to this point in time, I think
11 generally consistent with the rulings that have been
12 made to date, and although I would echo Ms. Bojko's
13 comment that if you don't have the names of the
14 individuals talking about these matters then we're
15 not revealing anything confidential because we are
16 not tying it to any particular company, I think that
17 was her comment, and it's a known fact that requests
18 for consent were made by AEP so that's -- that's not
19 a confidential fact.

20 I would -- up to this point of the review
21 which there is many pages here, so I would defer to
22 other people who may have comments at this point.

23 MS. BOJKO: Your Honor, I am sorry to
24 jump out, but if we are talking about specific to
25 2892, the end of line 6 into line 7 and 8, that I

1 think you've already ruled that that word and all the
2 e-mails should be open. And so, I'm not sure why
3 that phrase would be confidential. It's already been
4 discussed and it's in the emails as an issue.

5 EXAMINER PIRIK: Does Duke have a
6 response?

7 MS. SPILLER: Your Honor, just briefly.
8 I mean, we certainly endeavor, consistent with the
9 prior rulings on exhibits that were associated with
10 this testimony, to make the redactions. There is a
11 discussion, and we've had this discussion earlier in
12 this proceeding, about information being put in the
13 public record; therefore, somehow it is not entitled
14 to protection here.

15 And I think it's important to note that
16 in a particular deposition transcript where there
17 isn't a ruling from a judge as to what objection is
18 sustained or not, there was testimony that was
19 rendered and the witness indicated that he believed
20 that that should be confidential.

21 And so, I think it's just somewhat unfair
22 to suggest that that comment of his is ignored and
23 somehow information is allowed to be placed into the
24 public record. And, again, these redactions were
25 consistent or attempt to be consistent with the

1 Bench's prior rulings.

2 EXAMINER PIRIK: Okay.

3 MR. BERGER: Your Honor, on one thing
4 with respect to the redaction of the two individuals
5 who participated on the subcommittee. I think that
6 there was that one document in exhibit -- just one
7 minute. I have it here. On OCC Exhibit 44, I don't
8 think the redactions have been finished yet on that
9 document as far as I know, but my thought was that
10 those two individuals, the fact that they
11 participated in the subcommittee was not confidential
12 but I'm not sure about that. Actually, I don't have
13 that with me right now.

14 MS. BOJKO: I think that's right, the
15 part at the top of that one e-mail that we deemed --

16 MS. WATTS: That would be the e-mail
17 where there was a mistake made and we weren't
18 permitted to redact it; is that correct?

19 MS. BOJKO: No. This was --

20 MR. BERGER: No. This is OCC Exhibit 44
21 that was used during Mr. Whitlock's cross and I think
22 it was the first page of that exhibit.

23 MS. BOJKO: It was inside the exhibit.
24 It was an e-mail that listed the subcommittee
25 members.

1 MR. BERGER: Here it is. Document 1 in
2 that exhibit.

3 MS. SPILLER: You are saying it's
4 Document 1 with a yellow Post-It?

5 MS. BOJKO: No. That was redacted.
6 That's not redacted.

7 MR. BERGER: Okay.

8 MS. BOJKO: It was the e-mail that listed
9 out all the subcommittee members that wasn't
10 redacted.

11 MR. BERGER: I may be wrong about that.

12 MS. BOJKO: It's right here. It's on
13 page 3 -- Bates stamp 36.

14 EXAMINER PIRIK: 44?

15 MS. BOJKO: Uh-huh.

16 MR. BERGER: So I think there are a
17 couple of places in transcript X where the same
18 matter is referenced. That's the reason I bring it
19 up.

20 On page 2902, if I may comment.

21 EXAMINER PIRIK: Uh-huh.

22 MR. BERGER: I am still going through on
23 the document, on line 5, the fifth and sixth words,
24 and on line 10, the second through fourth words, I
25 would question the need to keep those words that

1 don't identify any party as confidential.

2 On page 2903, line 9, fourth, fifth, and
3 sixth words, I don't believe would need to be
4 confidential.

5 EXAMINER PIRIK: Does Duke have anything
6 else they want to say about the exhibit? We are back
7 on the record.

8 MS. WATTS: I think we're worn down.

9 EXAMINER PIRIK: You're worn down, okay?
10 I'll wear you down further. I am going to -- I mean,
11 you know, I hear what everybody is saying. I
12 remember the discussion on the record regarding, you
13 know, certain information that was in deposition but,
14 again, you know we are trying to keep this record the
15 way this record is.

16 We had checked Exhibit 44, OCC Exhibit
17 44, earlier today when we were reviewing this, and in
18 keeping with -- but we were waiting for everyone's
19 argument to kind of finalize exactly where we were
20 going with everything. And in keeping with trying to
21 be consistent with that, realizing that this is --
22 this is a really difficult transcript, you know, we
23 tried to keep at least identities of individuals and
24 companies out of the picture.

25 So here's our ruling: Page 2792 -- and I

1 am going to say those things that we deem
2 confidential. 2792, line 25, the first five words of
3 that answer will be confidential.

4 2793, line 2, the fifth, sixth, and
5 seventh words will be confidential. Line 3, the
6 three words before the last word of that line which
7 is "so" will be confidential. Line 4, the third,
8 fourth, fifth, sixth, seventh, and eighth words are
9 confidential. Line 10, the fourth word is
10 confidential.

11 Page 2795, line 3, after the quote, the
12 the next three words are confidential.

13 Page 2822, line 25, the second to the
14 last word is confidential.

15 Page 2823, the first six words of that
16 line on line 1 are confidential. Line 27, the fourth
17 word is confidential.

18 MS. BOJKO: I'm sorry, line 27 or 7?

19 EXAMINER PIRIK: Line 7. Sorry. Fourth
20 word is confidential.

21 Page 2887, we don't have any on there
22 that's confidential. It's open.

23 Page 2888, the second to the last word is
24 confidential on line 1. Line 4, the fifth -- the
25 sixth word is confidential.

1 Page 2889, line 1, the last word is
2 confidential. Line 2, the first word is confidential
3 and the fifth word on line 2 is confidential. The
4 items on line 11, we agree with OCC those are open.
5 Line 19, the third to the last word on that line is
6 confidential.

7 Page 2890, as proposed by Duke, the items
8 on line 3 are confidential. Line 4, the first word
9 is confidential. Line 13, the third, fourth, fifth,
10 sixth, seventh words are confidential. Line 14, the
11 fifth and sixth words are confidential and the last
12 two words on line 14 are confidential. Line 17, the
13 third and fourth words are confidential. Line 18,
14 the last word is confidential. Line 19 the first
15 word is confidential and the third, fourth, and fifth
16 words are confidential. Line 22, the sixth word is
17 confidential. Line 25, the words up to the word
18 "but" are confidential.

19 Page 2891, the last three words on line 4
20 are confidential. The first word on line 5 is
21 confidential. The fifth, sixth, and seventh words on
22 line 5 are confidential. The first three words on
23 line 6 are confidential. Line 15, the second word is
24 confidential and the last word on that line 15 is
25 confidential. Line 19, the last word is

1 confidential. Line 20, the first word is
2 confidential. And the second to the last word before
3 the word "or" is confidential. Line 21, the first
4 word is confidential. Line 22, the last word is
5 confidential. Line 24, the first three words are
6 confidential.

7 Page 2892, line 16, the first three words
8 are confidential. Page 2893 -- did I say 92? Yeah.

9 Page 2893, line 5, the second, third, and
10 fourth words are confidential. Line 11, the first
11 three words are confidential. Line 17, the sixth and
12 seventh words are confidential. Line 21, the last
13 word is confidential. Line 22, the third and fourth
14 words are confidential before the word "would."
15 Line 24, the second word is confidential.

16 2894, page 2894, the last word in line 1
17 and the first three words in line 2 are confidential.
18 Line 18, the first three words after the question are
19 confidential. Line 22, the second to the last word
20 is confidential.

21 Page 2895 --

22 MS. WATTS: I'm sorry, your Honor. Can
23 I?

24 EXAMINER PIRIK: Sure.

25 MS. WATTS: Line 22, the second to the

1 last word?

2 EXAMINER PIRIK: I'm sorry. Line 21, the
3 second to the last word --

4 MS. WATTS: Thank you.

5 EXAMINER PIRIK: -- is confidential.

6 Thank you.

7 2895 page, line 9, the last three words
8 are confidential. Line 13, the third, fourth, and
9 fifth words are confidential. Line 23, the second to
10 the last word is confidential. Line 24, the last
11 five words on that line before the question mark are
12 confidential.

13 Page 2896, the first word in line 12 is
14 confidential. Line 16, the sixth word is
15 confidential. Line 17, the first word is
16 confidential. Line 18, the three words before the
17 period at the end of that line are confidential.

18 Page 2897, line 2, the fourth, fifth, and
19 sixth words on that line are confidential after the
20 word "that." Line 17, after the word "that" and the
21 sixth -- the fourth, fifth, and sixth words are
22 confidential before the word "had." Line 22, the
23 last three words or four words on that line are
24 confidential.

25 MR. BERGER: Do you mean line 21?

1 EXAMINER PIRIK: Yes. Thank you. The
2 last words of that sentence after the word "that" on
3 that line are confidential.

4 Page 2898, the third, fourth, fifth, and
5 sixth words on line 25 are confidential.

6 Page 2899, the fourth and fifth words on
7 line 10 are confidential.

8 All the recommendations by Duke on
9 page 2899 and 2900 are confidential.

10 2901, line 6, the second and third words
11 are confidential. Line 9, the last word on that line
12 is confidential. Line 12, the word -- the fourth
13 word in that line is confidential. Line 12, the
14 fourth and fifth words are confidential. Line 25,
15 the fifth, sixth, and seventh words are confidential.

16 Page 2902, line 1, the second, third --
17 second, third, fourth, fifth, and sixth words are
18 confidential. Line 5, the second, third, and fourth
19 words are confidential. Line 11, the sixth word is
20 confidential. Line 12, the sixth word is
21 confidential.

22 Okay. 2903, I am going to do something
23 different and I am going to say what is not
24 confidential. Line 9, the fourth, fifth, and sixth
25 words before the word "referencing" are not

1 confidential. Everything else on that page is
2 confidential as proposed by Duke.

3 2904, I am going to do it different. I
4 am going to say what's not confidential. Line 25,
5 the last word of that line is not confidential.
6 Everything else as proposed by Duke is confidential.

7 Page 2905, now I am going to say what is
8 confidential on this page. Line 14, after the words
9 "it had," those next two words are confidential.
10 Line 15, the last word in that line is confidential.
11 Line 16, the first two words in that line are
12 confidential.

13 Page 2906, as proposed by Duke,
14 everything on that page is confidential.

15 Likewise, pages 2907 and 2908, as
16 proposed by Duke, everything is confidential. Line
17 29 -- or page 2909, again, I am going to say what is
18 not confidential. Line 13, the first word is not
19 confidential. Line 18, the first two words are not
20 confidential. Everything else on that page is
21 confidential as proposed by Duke.

22 Page 2910, I am going to go back to what
23 is confidential. Line 9, the third, fourth, and
24 fifth words are confidential. Line 13, the second
25 and third words are confidential. Line 14, the

1 second and third words after the question are
2 confidential. Line 24. The first second and third
3 words and the seventh word in that line are
4 confidential.

5 2911, page 2911, what is confidential,
6 line 2, the fifth and sixth words are confidential,
7 and the last two words in that sentence are
8 confidential, as well as in line 3, the first two
9 words are confidential. That completes transcript X.

10 Transcript XI, okay. Let's do responses.
11 Is there any responses? If it's any help, I think
12 this is the last transcript I think we are going to
13 have questions with.

14 Mr. Berger.

15 MR. BERGER: I'm sorry. I am just
16 starting to review it. If you could give us a couple
17 of minutes. We're trying to move this as quickly as
18 possible.

19 MS. HUSSEY: Your Honor, I would submit
20 anything relating to environmental regulations of any
21 kind would be in the public record. I think there is
22 a reference line 1 of page 3019. There are also
23 multiple references on page 3021.

24 EXAMINER PIRIK: And are you specific --
25 looking at 3019, are you specifically looking at the

1 item that's on the last -- the last item on line 1?

2 MS. HUSSEY: Yes. And the first word of
3 line 2.

4 EXAMINER PIRIK: Okay.

5 MS. HUSSEY: And then on the first three
6 lines of page 3021, I guess it's the second and third
7 lines actually, I would submit that all of those
8 words that are proposed for confidential treatment be
9 released.

10 MR. BERGER: That was on 3021, did you
11 say?

12 MS. HUSSEY: And on page 3030, at lines
13 14, 17, 18, and 19.

14 MS. BOJKO: Are you done?

15 Your Honor, in addition to that, I think
16 there are many pages in here that just have number
17 changes and I wouldn't object to 3031, 3032, and the
18 same for I think it's 3022, through 3028, are all
19 numbers that I have no objections.

20 The pages that I would focus on would be
21 3017, I think this could be pared down significantly.
22 I don't believe that the -- the numbers should be
23 available. So I would, on line 17, I think that the
24 sixth word is confidential, not the seventh and
25 eighth, and I guess the ninth, tenth, and eleventh

1 could be. Line 18, the first three words wouldn't be
2 confidential, and I think that the fourth word would
3 be confidential. And I guess arguably the next word
4 could be confidential but not the last word in that
5 section. I think that on line 25, that word is
6 something that's pretty common and standard in
7 modeling and in the industry that it wouldn't need to
8 be confidential.

9 Then if you turn to page 3019, I think if
10 you want to -- in addition to Ms. Hussey's comments,
11 on line 3, I don't think that that, at least the one,
12 two, three, first three words would be confidential
13 in the square. I guess it would be the fourth --
14 third, fourth, and fifth words.

15 On line -- page 3020, line 19, I don't
16 see and I think that was somewhere else too I saw
17 that. Oh, yes, it's on 3020, line 19. I'm not sure
18 what the appropriate rationale would be for redacting
19 that. It doesn't appear to be anything that would be
20 a trade secret.

21 I think on 3021, in addition to
22 Ms. Hussey's environmental discussion, I think line 7
23 could be pared down to not include fifth, sixth, and
24 the eighth word -- words. And then in line 8, I
25 don't think the third word needs to be redacted.

1 And then if you turn to 3029, 15 -- I
2 don't think that line 15, if you redact line 14, I
3 don't think that line 15 would need to be redacted.

4 And then on page 3030, line 7, we've had
5 a discussion about these two words and we've opened
6 them up previously. It was my understanding, from
7 testimony on the stand, that line 10, that that
8 entity was talked about freely, and I think Mr. Zhang
9 told us that that wasn't confidential and I think
10 it's been open in other things. I believe he said
11 line 10, the last word, and then the next two words
12 were not confidential, and I think we talked in
13 Dougherty's testimony about that as well. And then
14 the rest on that page that I would propose to open up
15 regarding the environmental that were already
16 discussed previously.

17 And then on the last page, 3034, I think
18 line 21, the -- the fifth word of that could be
19 opened up. Thank you.

20 EXAMINER PIRIK: Any other responses
21 other than what we've already heard?

22 MR. BERGER: Just on page 3019, on the
23 first three lines, I just don't think there is any
24 directional indicator there that makes that worth --
25 justifies confidentiality. And I think the fourth

1 and fifth words on the first line there have been
2 used throughout this proceeding, as well as the last
3 word in the line.

4 So -- and the same would apply to 3021,
5 other than the directional indicator on line 1 and
6 the directional indicator on line 10.

7 And then I just don't -- the only other
8 thought I had was on 3029. I'm not sure that that
9 question really elicits a response and this is on
10 line 14 and 15 that suggests anything confidential
11 because it's referring -- although it's asking about
12 the commercial business model, it's talking about
13 a -- a constraint that applies generally in these
14 models. So thank you.

15 EXAMINER PIRIK: Does Duke have any
16 response to any of that?

17 MS. SPILLER: Your Honor, briefly. Thank
18 you.

19 On page 3030, I believe Ms. Bojko is
20 correct in respect to that last word that appears on
21 line 10. I do think that's in the public record.

22 And then I am just going to generally
23 discuss the comments and I appreciate that some words
24 may have been put into the public record, but our
25 redactions here should not be taken out of context.

1 We've proposed redactions to testimony
2 that discusses a confidential proprietary model, one
3 that is derived based upon a series of assumptions.
4 And so, if you reveal the information that the
5 intervenors are proposing, you are necessarily
6 revealing the aspects, the assumptions, and the like,
7 incorporated into that confidential proprietary
8 modeling.

9 So while I appreciate that certain words
10 are in the public domain, I don't think we can take
11 them out of context in connection with this
12 particular portion of the transcript. And, again, we
13 proposed redactions focused on the assumptions.

14 And I would specifically note, and we've
15 had this discussion earlier this evening with respect
16 to certain regulations, IGS Exhibit 4 was one where
17 there were redactions made, redactions made to
18 protect assumptions made by the company, and our
19 proposals here with regard to these redactions are
20 very consistent and in line with the prior
21 confidential treatment that's been rendered.

22 EXAMINER PIRIK: Let's look at page 3024.
23 Line 12, the third item on that line that's requested
24 redaction, that appears a number of times on that
25 page as well as 3025. Is it possible to open?

1 MS. SPILLER: Yeah.

2 EXAMINER PIRIK: I mean, really, on both
3 pages.

4 MS. WATTS: Yes.

5 EXAMINER PIRIK: Okay. All right.
6 Page 3017, the proposal on line 17, we'll grant
7 protection of that proposal as proposed by Duke.
8 Line 18, we will give protection to the fourth and
9 fifth words; the rest of it will be open. Line 20
10 will be protected. Line 22, as proposed by Duke,
11 will be protected. Line 25, the last word will be
12 open.

13 Page 3018, protection will be approved as
14 proposed by Duke.

15 Page 3019, line 1, the last word will be
16 open. The first word on line 2 will be open.
17 Line 3, the third, fourth, and fifth words will be
18 open. Page 3020, line 19, the second word will be
19 open. The other proposal on that page will be
20 granted protected -- protection.

21 Page 3022 -- or -21, I'm sorry, line 1,
22 that proposal will be protected -- protection
23 granted. Line 2 and line 3, those items will be in
24 the open record. Line 7, the third to the last word
25 will be protected. The rest of it will be open.

1 Line 8 -- I guess I should say on line 7 it's the
2 third and fourth words from the end of that line will
3 be protected; the rest of it will be open. On
4 line 8, the first and second words will be protected
5 and the remainder will be open. Line 10, that item
6 will be protected.

7 MR. BERGER: Just, your Honor, on
8 page 3021, when you say the first and second word on
9 line 8, are you talking about -- can we say
10 "hyphenated word"?

11 EXAMINER PIRIK: I am counting them as
12 two words.

13 MR. BERGER: You are counting the
14 hyphenated word as two words?

15 EXAMINER PIRIK: Yes.

16 MR. BERGER: Okay. I just wanted to make
17 sure of that.

18 EXAMINER PIRIK: 3022, 3023, those items
19 will be granted protection.

20 MS. BOJKO: Excuse me, your Honor.
21 Except for line 4, the same? 3023, that same
22 percentage?

23 EXAMINER PIRIK: Oh, thank you for
24 pointing that out. That's correct.

25 Let me say, on page 3022, 3023, 3024, and

1 3025, with the exception of the 9 percent figure on
2 all of those pages, protection is granted to
3 everything else on those pages. But we will look
4 forward to the company opening up that 9 percent.

5 Pages 3026 and 3027, 3028, protection is
6 granted as requested by Duke on those pages.

7 3029, line 15, the third and fourth words
8 are open. The item on line 14 is granted protection.

9 Page 3030, I will say what's going to be
10 open. Everything else on this page will be
11 considered confidential as proposed by Duke. Line 7,
12 the second and third words will be open. Line 10,
13 the last word will be open. Line 14, the second and
14 third words will be open. The items in line 17 and
15 18 and 19 will be open. Everything else is
16 protected.

17 Page 3031, 3032, those items will be
18 protected.

19 Page 3034, the fifth word will be open.
20 The rest of the items on that line will be protected
21 as proposed by Duke.

22 I believe that's all for transcript XI.

23 Last but not least, there's only one item
24 in transcript XII. If there is any response, it's on
25 page 3334. We find that that item should be

1 protected. I believe that concludes all of our
2 transcripts.

3 Is there anything else we need to do
4 before we recess to reconvene then later for
5 rebuttal?

6 MS. WATTS: Your Honor, I have copies of
7 OCC Exhibit 44 which I understand was sent to you
8 with all of the redactions done and, if it's okay
9 with you, then I can give the corrected versions out
10 to everyone, but I didn't want to do that until --

11 EXAMINER PIRIK: I would go ahead and
12 give the corrected versions to everyone. And, yes, I
13 would do that. Okay.

14 MS. SPILLER: And then, your Honor, just
15 for purposes of deadline. The very brief
16 confidential portion this evening with Mr. Haugen.

17 EXAMINER PIRIK: Yes.

18 MS. SPILLER: Just want to get a sense
19 from the Bench the proposed redactions and when you
20 would like those?

21 EXAMINER PIRIK: Well, luckily, we are --
22 not luckily, we will be back here on Thursday so we
23 can rule on them then.

24 MS. SPILLER: Okay.

25 EXAMINER PIRIK: I think we have enough

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1 time for transcript time for that? We do? Okay.
2 So, you know, I think if you can get it to us by noon
3 on Wednesday, then it's not much, and if you could
4 give it to the other parties it will make it go
5 faster.

6 MS. SPILLER: Okay. We will. Thank you.

7 EXAMINER PIRIK: Thank you. Okay. We'll
8 recess --

9 MR. BERGER: Your Honor, I just wanted to
10 point out that earlier we handed out OCC public
11 Exhibits 19 through 27, 29 through 31, and 39 and 41.
12 I believe Duke is okay with all those redactions.
13 And if they aren't, I am sure they will let us know.

14 EXAMINER PIRIK: Okay. Thank you. We'll
15 go off the record. We will reconvene next Thursday.

16 (Thereupon, at 7:44 p.m., the hearing was
17 adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Wednesday, November 12,
2014, and carefully compared with my original
stenographic notes.

Karen Sue Gibson,
Registered Merit Reporter.

(KSG-5958)

- - -

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- Public electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and
Gibson, Karen Sue Mrs.